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THIS INDEX is based on a consolidation of contents entries appearing in the January-December issues of the **FEDERAL REGISTER** together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **FEDERAL REGISTER** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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Department of the Interior, Bureau of Indian Affairs	Bureau of Indian Affairs Manual Index and Table of Contents dated June 23, 1983	Division of Management Support, Bureau of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245 No charge	Division of Management Support, Bureau of Indian Affairs, Room 334-Interior South, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C.(202) 343-3577
Department of the Interior, Bureau of Mines	Basic Bureau of Mines Manual General Table of Contents and Checklist—July 6, 1976	In accordance with fee schedule in 43 CFR 2, Appendix A	William C. Mackay Chief, Branch of Management Analyst, 2401 E St., NW., Washington, DC 20541 Telephone 634-1338
	Numeric and subject listing of internal policies and procedures by series, part, chapter, paragraph, and subordinate paragraph	Bureau of Mines	
Department of the Interior, Bureau of Reclamation	Reclamation Instructions Index dated July 7, 1983	Management Operations Center, E&R Center, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225. No charge	Management Operations Center, E&R Center, Bureau of Reclamation, Denver Federal Center, Bldg. 67, Denver, CO 80225 Telephone: A.C. 303-238-9814
Department of the Interior, U.S. Geological Survey	Geological Survey Manual Table of Contents, Checklist, and Subject Index	1) U.S. Geological Survey, Administrative Division, Branch of Administrative Services, Management Support Section, Paperwork Management Unit, 208 National Center, 12201 Sunrise Valley Drive, Reston, VA 22092 2) No charge In accordance with fee schedule in 43 CFR 2, Appendix A	Administrative Division, Branch of Administrative Services, Management Support Section, Paperwork Management Unit, 208 National Center, 12201 Sunrise Valley Drive, Reston, VA 22092 Telephone 703-648-7309 or FTS 859-7309
Department of the Interior, Minerals Management Service	Basic Minerals Management Service Manual Table of Contents and Checklist—December 30, 1987 Listed numerically by part, series, chapter, release number, date, and page Director's appeals decisions and index	In accordance with fee schedule in 43 CFR 2, Appendix A	Dorothy Christopher, Directives Management Officer, 12203 Sunrise Valley Drive, Reston, VA 22091 Telephone 435-6213
			David Schuentz, Chief, Division of Appeals, Office of Program Review, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091. Telephone (703) 648-7729

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Interior, National Park Service	NPS Guidelines and Directives Index. Dated January, 1987	National Park Service, Administrative Service Division, P.O. Box 37127, Washington, DC 20013-7127. Attn: Paperwork Branch No charge Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203.	National Park Service, Administrative Service Division, P.O. Box 37127, Washington, DC 20013-7127. Attn: Paperwork Branch Telephone A.C. 202-523-5138 Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3791
Department of the Interior, Office of Hearings and Appeals	Index-Digest - Index of synopses for all decisions decided by OHA Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis	Price: \$50 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks payable to Department of the Interior. Price for photocopies as prescribed in Department fee schedule for FOIA information (43 CFR Part 2, Appendix A). Checks payable to Department of the Interior. Price on Quinquennial issue is set by Government Printing Office and available from that agency. Editorial Branch, OHA, 4015 Wilson Blvd., Arlington, VA 22203.	Administrative Officer, OHA, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: (703) 235-3793
Department of the Interior, Office of Inspector General	Inspector General Manual Index, August 18, 1983. Numeric and subject listing of internal policies and procedures by volume, chapter, section, and subsection	In accordance with fee schedule in 43 CFR Part 2, Appendix A - Fees Office of Inspector General	Betty Foyes, Information Officer, Department of the Interior, Office of Inspector General, 18th and C Streets, NW., Washington, DC 20240 Telephone: 343-4356
Department of the Interior, Office of Surface Mining	Functional Index (OSMRE Directives Listed by Functions) dated October 22, 1982	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 No charge Office of the Solicitor, Division of Fair Labor Standards, Room N-2716, Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Price is \$1.10 per page. Make checks payable to Department of Labor	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: A.C. (202) 343-2210 Executive Secretary, Wage Appeals Board, Room N-6507, (202) 523-9039; or Department of Labor Library, Room N-2439 (202) 523-6992 200 Constitution Ave., NW., Washington, DC 20210
Department of Labor, Office of the Secretary, Wage Appeals Board	Davis-Bacon Act Index. The index contains abstracts of final decisions of the Wage Appeals Board from 1989-1984. The index will be updated periodically. The current 127 page index is available in whole, or the 3 page subject matter table of contents and any individual section may be ordered separately	Office of the Solicitor, Division of Fair Labor Standards, Room N-2716, Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Price is \$1.10 per page. Make checks payable to Department of Labor	Executive Secretary, Wage Appeals Board, Room N-6507, (202) 523-9039; or Department of Labor Library, Room N-2439 (202) 523-6992 200 Constitution Ave., NW., Washington, DC 20210
Department of Labor, Office of the Secretary, Wage Appeals Board	Wage Appeals Board Index-Digest. The index contains abstracts of final decisions of the Wage Appeals Board from 1984-1988. The index is fifty pages long and is supplemented by the new Davis-Bacon Act Index	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20580. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20580
Department of Transportation, Federal Highway Administration (FHWA)	CrossReference Index of current directives. The index is alphabetical by subject and within each subject, applicable directives are identified. The index also includes a three-part cross-reference for the FHWA, 23 U.S.C. and 23 CFR. The index is updated semi-annually (March and September) Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1989-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1989-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20580. No charge FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20580. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20580 FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20580

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Treasury, Department Offices	Index of Selected Records, July 1987 to December 1988. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, United States Savings Bond Division, Federal Law Enforcement Training Center, Office of the Assistant Secretary for Tax Policy.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220. Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.6. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982. Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Telephone: 202-245-1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1989 incorporates all additions and deletions through November 15, 1988; (b) Current index November 1988-December 1988	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3508. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. April 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission) Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. April 21, 1975 to date Index of Commission administrative manuals and instructions to staff that affect a member of the public. April 21, 1975 to date. (Commission instructions no longer in use are not included in this index)	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20561 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20561 Telephone 202 254-6314

Agency and subagency name	Index title; period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
General Services Administration (GSA)	GSA Freedom of Information Index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public.	GSA, Freedom of Information Officer (ATRA), Washington, DC 20405. Price: \$4.75. Make checks payable to: General Services Administration.	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 28 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL 60604 Region 6: 1500 East Bennett Rd., Kansas City, MO 64128 Region 7: 519 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41, Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amsted Dam and Reservoir Brochure: Falcon Dam and Power Plant Water Bulletin: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas for years 1991 through 1990 Water Bulletin: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1990 through 1990 Color print map - Lower Rio Grande Valley United States and Mexico Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries. Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: \$4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: \$5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: \$4.00 per map; 10"x26" \$3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: \$10.00 per map. Payable to: International Boundary and Water Commission, U.S. Section Section Secretary, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: \$6.00 per brochure. Payable to: International Boundary and Water Commission, U.S. Section	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840 Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545 Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902 Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902 Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902 Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902 Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902 Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

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National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since April 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Program Policy and Evaluation Division, National Archives (NAA), Washington, DC 20408	Program Policy and Evaluation Division, Room 408, National Archives Building, 9th and Pennsylvania Ave., NW., Washington, DC. Mailing address: National Archives (NAA), Washington, DC 20408. 202/523-3214
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year Numerical index of the following NSF agency-wide issuances and Important Notices in effect as of January 24, 1986: (1) Office of the Director Staff Memoranda (O/D's); (2) NSF Bulletin; (3) NSF Manuals/Circulars; (4) NSF Handbook; and (5) NSF Important Notices. O/D's are used by the NSF Director and Deputy Director to communicate information to the staff. O/D's also may be used to convey short-term policy statements or the initial statement of long-term policy. NSF Bulletins transmit approved changes to policy and convey administrative or "housekeeping" information. Significant NSF policy and procedure are located in NSF Manuals. NSF Circulars (historically used to communicate policies and procedures of a continuing nature) are being converted to Manuals and will be discontinued. Handbooks, less formal than Manuals, provide compendia of information concerning NSF programs, i.e., they do not establish NSF policy. Important Notices are the Director's primary means of communicating with organizations receiving or eligible for NSF support. Important Notices are issued over the Director's signature and convey information on NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences. Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 85-18) NSF Guide to Programs. A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free) NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price \$5.00	NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550 Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550 For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550

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Office of Personnel Management	NSF Grant Policy Manual. A compendium of basic NSF grant policies and procedures for use by the grantee community and NSF Staff. The Manual implements OMB Circular No. A-110, which is directed toward standardizing and simplifying the various accountability and reporting requirements among Federal granting agencies. (NSF Publication 77-47)	Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 036-000-81001-4. Unit Price \$13.00	NSF Division of Grants and Contracts. Room 1150, 1800 G St., NW., Washington, DC 20550
Pennsylvania Avenue Development Corporation	Index to Information, OPM Document No. 1. As of June 1986. A listing of publications and information systems arranged alphabetically by title. This index includes some information formerly published in the Index to Civil Service Commission Information	Internal Distribution Subunit, Room B-443, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Free	OPM Library or any OPM Office, including regional and area offices
Pension Benefit Guaranty Corporation, Legal Department	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since October 27, 1972, to date. This index is updated semi-annually (March and September).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703. Fee charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Corporate Administrative Planning Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual, Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge \$0.10 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, 202-254-5527 (202-254-8010 for TTY and TDD), 2020 K St., NW., Washington, DC 20006
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge \$0.10 per page, payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for price of entire Operating Policy Manual	
Pension Benefit Guaranty Corporation, Participant and Employer Appeals Department	Index to Pension Benefit Guaranty Corp. Appeals Board decisions; from Feb. 28, 1980, to present; contains closed appeal case decision letters that are final decisions of the Appeals Board made pursuant to PBGC regulation, 29 CFR Part 2606, Rules for Administrative Review of Agency Decisions	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Room 7104, 2020 K St., NW., Washington, DC 20006. Charge \$0.10 per page, payable to Pension Benefit Guaranty Corp.	
Veterans Administration	Board of Veterans Appeals Index I-01-1, an index to appellate decisions. Annual indexes are available from July 1977 to the present. This index is published on microfiche only	Indexes from July 1977 through December 1983 may be obtained from the Chairman, Board of Veterans Appeals (01C1), 810 Vermont Avenue, NW., Washington, DC 20420. Indexes since January 1984 may be purchased for \$7.00 per quarter or for the annual cumulative from: Promisel & Korn, Inc., 4720 Montgomery Lane, Suite 1009, Bethesda, Maryland 20814	Board of Veterans Appeals, Room 824, Lafayette Building, 811 Vermont Avenue, NW., Washington, DC 20420, or contact your nearest VA regional office
Veterans Administration	Veterans Administration Publication Index, I-03-1. All information is current as of Oct. 31, 1984. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the Veterans Administration Forms and Publications Depot, 9307 Gravel Ave., Alexandria, VA 22310, ATTN: Depot Officer (0368)	For inspection: VA Central Office, Editorial Section, Room C-4, 810 Vermont Ave., NW., Washington, DC 20420. Phone: (202) 366-3986 OR: Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Veterans Administration, or ask your Directory Assistance Operator for the number in your area

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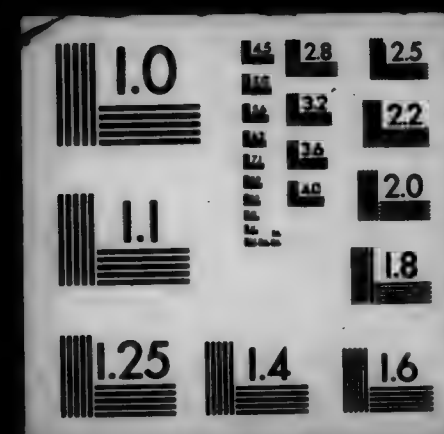
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Title 3—

The President

Proclamation 5836 of June 28, 1988

Withdrawal of Nondiscriminatory Treatment for Products of Romania

By the President of the United States of America

A Proclamation

1. Pursuant to section 402(c) of the Trade Act of 1974, as amended ("the Act") (19 U.S.C. 2432(c)), I previously waived the requirements of sections 402(a) and (b) of the Act (19 U.S.C. 2432 (a) and (b) with respect to the Socialist Republic of Romania ("Romania"). As a result, articles the product of Romania imported into the United States were eligible for nondiscriminatory treatment (most-favored-nation status). Romania also was eligible to participate in programs of the U.S. Government that extend credits, credit guarantees, or investment guarantees. Pursuant to section 404(a) of the Act (19 U.S.C. 2434(a)), I extended most-favored-nation status to Romania under the terms of a commercial agreement that entered into force on August 3, 1975, and was entered into under the authority of section 405 of the Act (19 U.S.C. 2435), with such status contingent upon the annual renewal of a waiver pursuant to section 402(c) of the Act (19 U.S.C. 2432(c)).

2. The Government of Romania has announced that it has decided to renounce the renewal of nondiscriminatory treatment accorded to the products of Romania by the United States subject to the terms of section 402 of the Act (19 U.S.C. 2432).

3. Accordingly, I have decided to allow the waiver for Romania under section 402 of the Act (19 U.S.C. 2432) to expire as scheduled at the close of July 2, 1988, without renewal at that time, and I have so reported to the Congress. Therefore, effective July 3, 1988, all articles the product of Romania that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States shall be subject to the customs duties set forth in the Rates of Duty column 2 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Furthermore, effective as of that date, Romania shall no longer be eligible to receive credits or guarantees under any program of the U.S. Government that extends credits, credit guarantees, or investment guarantees, including the Commodity Credit Corporation and the Export-Import Bank of the United States.

4. Section 404(c) of the Act (19 U.S.C. 2434(c)) authorizes the President to suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to section 404(a) of the Act (19 U.S.C. 2434(a)).

5. Section 604 of the Act (19 U.S.C. 2483) authorizes the President to embody in the TSUS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States of America, including but not limited to sections 402, 404, and 604 of the Act, do proclaim that:

(1) Effective with respect to all articles the product of Romania that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after July 3, 1988, such articles, whether

imported directly or indirectly, shall be subject to duty at the rates set forth in the Rates of Duty column 2 of the TSUS.

(2) General Headnote 3(d) to the TSUS, setting forth those countries whose products, whether imported directly or indirectly, shall be dutied at the rates of duty shown in the column numbered 2 of such schedules, is modified by inserting in alphabetical sequence "Socialist Republic of Romania".

(3) Romania will no longer be eligible to receive credits or guarantees under any program of the U.S. Government that extends credits, credit guarantees, or investment guarantees.

(4) The action taken in this Proclamation shall be effective July 3, 1988.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of June, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-027]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding to the list areas in five counties in North Carolina and one county in South Carolina. We are also deleting from the list areas in eight counties in North Carolina and three counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles for the purpose of preventing the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective July 1, 1988. Consideration will be given only to comments postmarked or received on or before August 30, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Specifically refer to Docket Number 88-027. You may review comments at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, National Programs, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

Witchweed is a parasitic plant that causes degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 *et seq.*, and referred to below as the regulations) quarantine the states of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts from regulated areas in the quarantined states for the purpose of preventing the artificial spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both in order to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in places designated as suppressive areas.

Designation of Areas as Suppressive Areas

We are amending the list of suppressive areas by adding areas in Beaufort, Duplin, Greene, Hoke, and Sampson Counties in North Carolina, and Florence County in South Carolina to the list of suppressive areas in § 301.80-2a of the regulations.

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread, or is likely to spread, to certain areas beyond the outer perimeter of areas previously designated as suppressive areas. Therefore, those additional areas in these counties in North Carolina and South Carolina, which were previously nonregulated areas, are designated as witchweed suppressive areas. We are taking this action in order to prevent the spread of witchweed and to facilitate its eradication.

Deletion of Areas From List of Regulated Areas

We are also amending the list of suppressive areas by deleting areas in Craven, Cumberland, Duplin, Hoke, Lenoir, Richmond, Scotland, and Wayne Counties in North Carolina, and Florence, Horry, and Marlboro Counties

in South Carolina in § 301.80-2a of the regulations.

We are taking this action because we have determined that witchweed no longer occurs in these areas and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. Therefore, we are deleting these areas from the list of suppressive areas in order to remove unnecessary restrictions on the movement of articles designated as witchweed regulated articles.

The regulations list the suppressive areas for each county. Non-farm areas, if any, are listed first; farms are then listed alphabetically.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, that warrants publication of this interim rule without prior opportunity for public comment. Because of the possibility that witchweed could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to control the spread of this pest. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these circumstances, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 for making it effective upon publication in the Federal Register. We will consider comments postmarked or received within 60 days of publication of this interim rule in the Federal Register. Any amendments we make to this interim rule as a result of these comments, and a discussion of the comments received, will be published in the Federal Register as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have

determined that this rule will have an estimated annual effect on the economy of less than \$4,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 281,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 172 of these entities by removing 164 entities from regulation and placing 8 new entities under regulation. We have determined that the 164 deregulated entities will realize combined annual savings of approximately \$3,800, or \$23.17 each, in regulatory and control costs. We estimate that the 8 newly regulated entities will need to invest a similar amount, approximately \$23 each, per year, in order to comply with our regulations. We therefore estimate that the overall impact from this action will be less than \$4,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

Accordingly, we are amending 7 CFR Part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.80-2a is revised to read as follows:

§ 301.80-2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of the provisions of this subpart; and these regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below.

North Carolina

(1) Generally infested areas. None.

(2) Suppressive areas.
Beaufort County. The Osborne, H.R., farm located on both sides of State Secondary Road 1609 and 0.5 mile southeast of the junction of this road and State Highway 32.

Bladen County. The entire county.

Columbus County. The part of the county lying north and west of a line that begins at a point where State Highway 410 intersects the Bladen-Columbus County line, then south along this road to its junction with U.S. 76, then west along U.S. 76 to its junction with State Secondary Road 1358, then south along this road to its junction with the North Carolina-South Carolina border, where the line ends.

The Brown, Annie, farm located on the west side of State Highway 11 and 0.6 mile south of the junction of this road with State Highway 87.

The Brown, Joseph, farm located on the east side of a farm road 0.1 mile south of its intersection with State Secondary Road 1530 at a point 0.6 mile east of the junction of State Secondary Road 1532.

The Harmon, Thelma, (formerly the Lloyd Spaulding farm) located in the southeast corner of the junction of State Secondary Roads 1726 and 1713.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1647 and 1 mile northeast of the junction of this road with State Secondary Road 1740.

The Jacobs, Mrs. Willie C., farm located on both sides of a farm road 0.5 mile southeast of its intersection with State Secondary Road 1713 at a point 2.7 miles northeast of the junction of this road with State Secondary Road 1001.

The Lennor, J.C., farm located on the east side of State Secondary Road 157 at a point

0.3 mile northwest of the junction of this road with State Secondary Road 1003.

The Walters, Eugene, farm located on the southeast side of a farm road 0.2 mile southeast of its intersection with State Highway 131 at a point opposite the junction of this highway with State Secondary Road 1539.

Craven County. The Bellamy, Willie, farm located on the north side of State Secondary Road 1444 and 0.9 mile southwest of its junction with State Secondary Road 1440.

The Jones, Vann, farm located on the west side of State Secondary Road 1459 and 0.1 mile north of the junction of State Secondary Road 1463 with this road and 0.4 mile off the west side of State Secondary Road 1459.

The Morris, Gerald K., farm located on the north side of State Secondary Road 1444 and 1.4 miles northwest of the junction of State Secondary Road 1447.

The Nelson Estate, Joseph, located on both sides of State Secondary Road 1450 and located 0.1 mile northeast of the intersection of State Secondary Road 1454.

The Tripp, Dudley, farm located on the north side of State Secondary Road 1444 and 1.1 miles southwest of its junction with State Secondary Road 1440.

The West, Gladys W., farm located on both sides of State Secondary Road 1283 and 1.4 miles east of its southern junction with State Secondary Road 1282.

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, then east along this highway to its intersection with the Fayetteville city limits, then south, east, and northeast along these city limits to its junction with U.S. Highway 301 north, then northeast along this highway to its junction with U.S. Interstate 95, then northeast along this interstate to its junction with U.S. Highway 13, then east and northeast along this highway to its intersection with the Cumberland-Sampson County line, then southerly along this county line to its junction with the Bladen-Cumberland County line, then westerly along this county line to the junction with the Cumberland-Robeson County line, then northwesterly along this county line to its junction with the Cumberland-Hoke County line, then northwesterly along this county line to the point of beginning.

The Contrell, C.T., farm located on the west side of State Secondary Road 1400 at its junction with State Secondary Road 1401.

The Elliott, Lattie, farm located on the north side of State Secondary Road 1722 and 0.4 mile east of its junction with State Secondary Road 1714.

The Elliott, W.H., farm located on the south side of State Secondary Road 1609 and 0.5 mile east of its junction with State Secondary Road 1710.

The Gerald, Rufus, farm located on the east side of State Secondary Road 1818 and 0.5 mile north of its intersection with U.S. Highway 13.

The Holiday, Waddell, farm located on the south side of State Secondary Road 3122 and its junction with State Secondary Road 1402.

The Jackson, J.T., farm located on the west side of State Secondary Road 1403 and 0.7

mile north of its junction with U.S. Highway 401.

The Lewis, Gennie, farm located on the north side of State Secondary Road 1724 and 0.2 mile west of its junction with State Secondary Road 1723.

The Lockamy, Earl, farm located on the west side of U.S. Highway 301 and 0.3 mile south of its junction with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The Matthews, Ada H., farm located on the east side of State Secondary Road 1818 and 0.7 mile north of its intersection with U.S. Highway 13.

The Matthews, Isiah, farm located on a private road off the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The McKeithan, Sarah E., farm located on the west side of U.S. Highway 301 and 0.3 mile north of its junction with State Secondary Road 1815.

The McLaurin, Burnice, farm located on the north side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The McLaurin, Elwood, farm located on the west side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1828.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, Greg, farm located on the south side of State Secondary Road 1722 and 0.3 mile west of its junction with U.S. Highway 301.

The McLaurin, McLaurin, farm located on the north side of State Secondary Road 1722 and 0.5 mile west of its junction with U.S. Highway 301.

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722 and 0.51 mile west of its junction with U.S. Highway 301.

The McMillan, Vander, farm located on the west side of U.S. Highway 301 and 0.5 mile north of its junction with State Secondary Road 1722.

The Powell, William Clinton, farm located on the south side of State Secondary Road 1722 and 0.3 mile east of its junction with State Secondary Road 1714.

The Pruitt, K.D., farm located on the west side of U.S. Highway 13 and 0.6 mile north of its intersection with State Secondary Road 1818.

The Roberts, Christine Dawson, farm located on the south side of State Secondary Road 1714 and 0.5 mile west of its junction with State Secondary Road 1716.

The Shirman, Harry, farm located on the west side of State Secondary Road 1400 and 0.1 mile south of its junction with State Secondary Road 1401.

The Smith, Agnes, farm located on the south side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The Smith, Larry Don, farm located on a private road off the west side of U.S.

Highway 301 and 0.2 mile south of its junction with State Secondary Road 1722.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Valentine, Ike, farm located on the west side of State Secondary Road 1402 and 0.9 mile south of its junction with State Secondary Road 1400.

The Vann, W. E., farm located on the northwest side of State Secondary Road 1819 at its junction with State Secondary Road 1813.

The Williams, Maggie, farm located on the north side of State Secondary Road 1719 and 1.2 miles north of its intersection with State Secondary Road 1720.

Duplin County. The Branch, Hall, farm located 0.3 mile northwest of State Highway 11 and 0.1 mile northeast of the junction of this highway and State Secondary Road 1378.

The Dobson, Elizabeth S., farm located on the north side of State Highway 24 and 0.2 mile east of its intersection with State Secondary Road 1737.

The Dodson, Twillie, farm located on the south side of State Secondary Road 1912 and 0.7 mile west of the junction of this road and State Highway 11.

The Grand, Pietro, farm located 0.2 mile southwest of the end of State Secondary Road 1981.

The Hamilton, John, farm located on both sides of State Secondary Road 1921 and 1.4 miles southeast of the junction of this road and State Secondary Road 1922.

The Holland, William, farm located on the west side of U.S. Highway 117 at the junction of State Secondary Road 1909.

The Jones, H. A., No. 2, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of its intersection with Northwest Cape Fear River.

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

The Miller, O'Berry, farm located on the north side of State Secondary Road 1700, and 0.1 mile east of its junction with State Highway 11.

The Moore, Macy J., farm located on the south side of State Secondary Road 1301 at the junction of this road with State Secondary Road 1353.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1375 and 0.7 mile northwest of its junction with State Highway 24.

The Pigford, P. H., farm located on the south side of State Secondary Road 1980 and 0.2 mile east of the dead end of this road.

The Stokes, J. D., Jr., farm located on both sides of State Secondary Road 1980 and 0.3 mile east of the dead end of this road.

The Thomas, Douglas M., farm located on the southwest side of State Secondary Road 1700 and 0.4 mile northwest of the intersection of this road with State Secondary Road 1728.

The Thomas, J. R., farm located on the south side of State Secondary Road 1700 and 1.8 miles east of the intersection of this road and State Secondary Road 1701.

The Tyner, J. R., farm located on the south side of State Highway 24 and the east side of

State Secondary Road 1737 at the intersection of this road.

Greene County. The Alexander, Jenny, farm located on the west side of State Secondary Road 1419 and 0.3 mile south of its junction with State Highway 903.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with State Highway 903.

The Edwards, Joe E., farm located on the west side of State Secondary Road 1413 and 0.4 mile north of its junction with State Secondary Road 1400.

The Lane, Sylvester, farm located on both sides of State Secondary Road 1400, 2.8 miles southeast of its junction with U.S. Highway 13.

The Nethercutt, Lawrence, farm located on the north side of State Secondary Road 1400 and 3.0 miles southeast of its junction with U.S. Highway 13.

The Warren, Francis, farm located on the west side of State Secondary Road 1418 and 0.3 miles north of its junction with State Secondary Road 1419.

Harnett County. That area bounded by a line beginning at a point on the Harnett-Lee County line due west of the head of Barbecue Swamp and extending east to the head of this swamp, then south and east along Barbecue Swamp to its intersection on State Secondary Road 1201, then south and southeast along this road to its junction with State Highway 27, then southeast along this highway to its junction with State Highway 24, then southeast along this highway to its junction with State Secondary Road 1111, then southwest along this road to its intersection with the Harnett-Moore County line, then northwest along the Harnett-Moore County line to its junction with the Moore-Harnett-Lee County line, then northeast along the Harnett-Lee County line to the point of beginning.

That area bounded by a line beginning at a point where the Harnett-Cumberland County line and McLeod Creek intersect and extending northwest along this creek to its intersection with State Secondary Road 1117 then northeast, northwest and north along this road to its intersection with Anderson Creek, then southeast along this creek to its intersection with State Highway 210, then northeast along this highway to its junction with State Secondary Road 2030, then southeast along this road to its junction with State Secondary Road 2031, then southwest along this road to its intersection with the Harnett-Cumberland County line, then southwest and west along this county line to the point of beginning.

The Cook, A. L., farm located on the east side of State Secondary Road 1201 and 0.8 mile south of the junction of this road with State Secondary Road 1203.

The Forthberry, Bennett, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of this road with State Secondary Road 1139.

The Frizzelle, Roscoe, farm located on the south side of State Secondary Road 1141 and 0.3 mile east of its junction with State Secondary Road 1139.

The McNeil, Raymond F., farm located on the east side of State Secondary Road 1201 and north of its junction with State Secondary Road 1202.

The Pulley, Clarence E., farm located on the north side of State Secondary Road 1141 and 0.4 mile east of its junction with State Secondary Road 1139.

The Serina, David, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of its junction with State Secondary Road 1139.

The Spaulding, James, farm located on the north side of State Secondary Road 1141 and 1.3 miles east of its junction with State Secondary Road 1139.

The Thomas, Floyd E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of its junction with State Secondary Road 1117.

The Womack, E. H., farm located on the east side of State Highway 27, and 1 mile north of the junction of this highway with State Highway 24.

Hoke County. The Bryant, James, farm located on the south side of State Secondary Road 1003 and 0.8 mile west of its junction with State Secondary Road 1440.

The Butler, James, farm located on the southwest side of State Secondary Road 1003 and 0.2 mile east of its junction with State Secondary Road 1429.

The Fowler, Arne, farm located on the north side of State Secondary Road 1203 and 0.2 mile northeast of its junction with State Secondary Road 1207.

The Goodman, E. A., farm located on the northeast side of State Secondary Road 1001 and 0.9 mile southeast of its junction with State Secondary Road 1105.

The Goodman, Roy, farm located on both sides of State Secondary Road 1001 and 0.8 mile southeast of its junction with State Secondary Road 1105.

The Hough, E. J., farm located on both sides of State Secondary Road 1413 and 0.4 mile east of its junction with State Secondary Road 1426.

The Jacobs, Verla, farm located on a farm road 0.4 mile north of State Secondary Road 1111 and 0.2 mile southeast of State Secondary Road 1114.

The Johnson, George, farm located on the south side of State Secondary Road 1219 and 0.3 mile east of its junction with State Secondary Road 1218.

The Kelton, Worthy, farm located on the west side of State Secondary Road 1461 and 0.4 mile north of its junction with State Secondary Road 1422.

The Lesane, Homer, farm located on the north side of State Secondary Road 1003 and 0.7 mile east of its junction with State Secondary Road 1427.

The Locklear, Alton, farm located on the northeast side of State Secondary Road 1448 at its junction with State Secondary Road 1436.

The McGregor, Gilbert, farm located on the south side of State Secondary Road 1219 and 0.4 mile east of its junction with State Secondary Road 1218.

The McMillan, James, farm located 0.3 mile south of the junction of State Secondary Road 1113 with State Secondary Road 1130.

The McNeill, Ken, farm located on the west side of State Secondary Road 1429 at the dead end of this road.

The McPhatter, Neil, farm located on the northwest side of State Secondary Road 1100 and 0.1 mile southwest of its junction with State Secondary Road 1102.

The McPhatter, Neil, farm located 0.1 mile west of State Secondary Road 1102 and 0.3 mile northwest of its junction with State Secondary Road 1100.

The McQueen, Rosetta, farm located on the south side of State Secondary Road 1134 and 0.4 mile southeast of its junction with State Secondary Road 1135.

The McRae, Ervin, farm located on the north side of State Secondary Road 1302 and 0.1 mile west of its junction with State Secondary Road 1303.

The McRae, Mary Della, farm located on the south side of State Secondary Road 1134, 0.7 mile east of the junction of this road with State Secondary Road 1116.

The Melvin, Sylvester, farm located on the north side of State Secondary Road 1003 and 0.4 mile east of its junction with State Secondary Road 1427.

The Oldham, James, farm located on the west side of State Secondary Road 1200 and 0.1 mile north of its junction with State Secondary Road 1201.

The Rushin, Henry J., farm located on the west side of State Secondary Road 1102 and 0.3 mile north of its junction with State Secondary Road 1100.

The Sandy, L. A., farm located 0.5 mile north of State Secondary Road 1003 and 0.2 mile east of its junction with State Secondary Road 1431.

The Sandy, Lewis, farm located on the east side of State Secondary Road 1429 at the dead end of this road.

The Saunders, J. W., farm located on the south side of State Secondary Road 1447 and 0.6 mile southeast of its junction with State Highway 211.

Lenoir County. The Barwick, Charles H. and Evelyn Sutton, farm located on the north side of State Secondary Road 1324 and 0.1 mile east of its junction with State Secondary Road 1308.

The Dawson, Wayne, farm located on State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1316.

The Faulkner, Isabelle, farm located on both sides of State Secondary Road 1809 and 0.5 mile east of its junction with State Secondary Road 1720.

The Herring, Frances P., farm located on the west side of State Secondary Road 1310 and 0.6 mile south of its junction with State Secondary Road 1311.

The Herring, Robert, farm located in the northwest junction of State Secondary Roads 1318 and 1316.

The Hill, Nannie T., farm located in the east junction of State Highway 55 and State Secondary Road 1161.

The Jarman, F. R., farm located on the southeast side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 miles northwest of its junction with State Secondary Road 1318.

The Rouse, James, farm located on the southeast side of State Secondary Road 1307 and 0.4 mile southwest of its junction with State Secondary Road 1307 and State Secondary Road 1324.

The Taylor, Heber, farm located on the north side of State Secondary Road 1161 and 0.3 mile east of its junction with State Highway 55.

The Taylor, Heber, No. 2, farm located on the south side of State Secondary Road 1161, 0.9 mile east of its junction with State Highway 55.

Pender County. That area bounded by a line beginning at a point where State Secondary Road 1104 intersects the Pender-Bladen County line, and extending northeast along this county line to its junction with Black River, then southeast along this river to its intersection with State Highway 210, then southwest along this highway to its junction with State Secondary Road 1103, then southeast along this road to its junction with State Secondary Road 1104, then southwest and northwest along this road to the point of beginning.

That area bounded by a line beginning at a point where State Secondary Road 1517 junctions with U.S. Highway 117, and extending northwest along this highway to its intersection with Walker Swamp, then northeast along this swamp to its junction with Pike Creek, then southeast along this creek to its junction with the Northeast Cape Fear River, then south along this river to its intersection with State Highway 210, then southwest along this highway to its junction with State Secondary Road 1518, then southeast along this road to its junction with State Secondary Road 1517, then westerly along this road to the point of beginning.

The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and 0.9 mile northwest of its junction with State Secondary Road 1107.

The Batson, Arthur, farm located on the east side of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Dees, Betty, farm located 0.6 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Fensel, F. P., farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Hardie, George, farm located on the north side of a field road 0.4 mile east of State Secondary Road 1104 and 0.2 mile northeast of its intersection with Lyon Canal.

The Hutcheson, Katie, farm located on a field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411 and 1.4 miles east of its intersection with U.S. Highway 117.

The Marshall, Crawford, farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of this road and State Secondary Road 1104.

The Terrell, Nancy, farm located on a field road 2.0 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Thompson, Dick, farm located on the southwest side of State Secondary Road 1106 and 0.5 mile northwest of its junction with State Secondary Road 1107.

The Ward, Mary Alice, farm located on a field road 0.9 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

Robeson County. The entire county.

Sampson County. That area bounded by a line beginning at a point where State Secondary Road 1927 intersects the Sampson-Duplin County line, then southerly and easterly along this county line to its junction with the Sampson-Pender County line, then southwesterly along this county line to its junction with the Sampson-Bladen County line, then northwesterly along this county line to its junction with the Sampson-Cumberland County line, then northwesterly, north, and northeast along this county line to its junction with the Sampson-Harrell County line, then easterly along this county line to its junction with the Sampson-Johnston County line, then southeast along this county line to its intersection with State Highway 421, then southeast along this highway to its intersection with U.S. Highway 13, then east along this highway to its junction with State Secondary Road 1845, then east along this road to its intersection with U.S. Highway 701, then south along this highway to its junction with State Highway 403, then east along this highway to its junction with State Secondary Road 1919, then east along this road to its intersection with State Secondary Road 1909, then southerly along this road to its junction with State Secondary Road 1904, then southerly along this road to its junction with State Secondary Road 1911, then southerly along this road to its junction with State Secondary Road 1927, then southerly along this road to the point of beginning.

The Bradshaw, Delmon, farm located on the southwest side of State Secondary Road 1740 and 0.2 mile northwest of its junction with State Highway 403.

The Darden, Jessie, farm located on the southwest side of State Secondary Road 1758 and 1.0 mile west of its junction with State Secondary Road 1742.

The Harrell, Jerry, farm located on the southwest side of State Secondary Road 1740 and 0.8 mile northwest of its junction with State Secondary Road 1742.

The Hawley, William, farm located on the southwest side of State Secondary Road 1731 and 2.5 miles west of its intersection with State Secondary Road 1725.

The Jackson, Tony, farm located on the northwest side of the intersection of State Secondary Roads 1740 and 1742.

The Precise, Stewart, farm located on both sides of State Secondary Road 1757 and 0.5 mile north of its junction with State Secondary Road 1731.

The Shipp, Estelle, B., farm located on the southwest side of State Secondary Road 1758

0.6 mile east of the southern junction of this road and State Secondary Road 1104.

The Terrell, Nancy, farm located on a field road 2.0 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Thompson, Dick, farm located on the southwest side of State Secondary Road 1106 and 0.5 mile northwest of its junction with State Secondary Road 1107.

The Ward, Mary Alice, farm located on a field road 0.9 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

Robeson County. The entire county.

Sampson County. That area bounded by a line beginning at a point where State Secondary Road 1927 intersects the Sampson-Duplin County line, then southerly and easterly along this county line to its junction with the Sampson-Pender County line, then southwesterly along this county line to its junction with the Sampson-Bladen County line, then northwesterly along this county line to its junction with the Sampson-Cumberland County line, then northwesterly, north, and northeast along this county line to its junction with the Sampson-Harrell County line, then easterly along this county line to its junction with the Sampson-Johnston County line, then southeast along this county line to its intersection with State Highway 421, then southeast along this highway to its intersection with U.S. Highway 13, then east along this highway to its junction with State Secondary Road 1845, then east along this road to its intersection with U.S. Highway 701, then south along this highway to its junction with State Highway 403, then east along this highway to its junction with State Secondary Road 1919, then east along this road to its intersection with State Secondary Road 1909, then southerly along this road to its junction with State Secondary Road 1904, then southerly along this road to its junction with State Secondary Road 1911, then southerly along this road to its junction with State Secondary Road 1927, then southerly along this road to the point of beginning.

The Bradshaw, Delmon, farm located on the southwest side of State Secondary Road 1740 and 0.2 mile northwest of its junction with State Highway 403.

The Darden, Jessie, farm located on the southwest side of State Secondary Road 1758 and 1.0 mile west of its junction with State Secondary Road 1742.

The Harrell, Jerry, farm located on the southwest side of State Secondary Road 1740 and 0.8 mile northwest of its junction with State Secondary Road 1742.

The Hawley, William, farm located on the southwest side of State Secondary Road 1731 and 2.5 miles west of its intersection with State Secondary Road 1725.

The Jackson, Tony, farm located on the northwest side of the intersection of State Secondary Roads 1740 and 1742.

The Precise, Stewart, farm located on both sides of State Secondary Road 1757 and 0.5 mile north of its junction with State Secondary Road 1731.

The Shipp, Estelle, B., farm located on the southwest side of State Secondary Road 1758

and 0.5 mile west of its junction with State Secondary Road 1742.

The Swain, Robert W., farm located on the northeast side of State Secondary Road 1740 and 1.0 mile northwest of its intersection with State Secondary Road 1742.

The Thorton, Eldon, farm located on both sides of State Secondary Road 1731 and 1.3 miles north of its junction with State Highway 403.

Wayne County. The Barwick, Jack, farm located on the west side of State Secondary Road 1932 and 0.8 mile south of the junction of this road and State Secondary Road 1934.

The Bowden, B. J., farm located on the west side of State Secondary Road 1931 and 0.2 mile south of the intersection of this road and State Secondary Road 1120.

The Broadhurst, Johnny Lee, farm located on the north side of State Secondary Road 1744, 1.2 miles northeast of the intersection of this road and State Secondary Road 1915.

The Daniels, Riley, farm located on the east side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1120.

The Exum, Molly, farm located on the east side of State Secondary Road 1739 and 0.1 mile south of the junction of this road and State Highway 55.

The Gautier, Rosa Mae, farm located on the east side of State Secondary Road 1915 and 0.8 mile south of the junction of this road and State Secondary Road 1914.

The Georgia-Pacific Corp., farm located on the north side of State Secondary Road 2010 at the junction of this road and State Secondary Road 1938.

The Grady, Annie, farm located on the west side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1120.

The Greenfield, Charlie, farm located on both sides of State Secondary Road 1915 and 0.2 mile north of the junction of this road and State Secondary Road 1914.

The Greenfield, Mattie, farm located on the north side of State Secondary Road 1914, 0.9 mile east of the junction of this road and State Secondary Road 1915.

The Greenfield, William, No. 1, farm located 4 miles west of the Seven Springs on State Secondary Road 1744, 0.2 mile west of the junction of this road and State Secondary Road 1913.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, Thedy, Estate, farm located on the west side of State Secondary Road 1913, 0.5 mile south of the junction of this road and State Highway 111.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Lofton, Mary F., farm located on the south side of State Secondary Road 1745 and 0.1 mile west of its junction with State Secondary Road 1952.

The O'Quinn, Earl, farm located on the north side of State Secondary Road 1914, 0.4 mile east of the junction of this road and State Secondary Road 1915.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3

mile east of its junction with State Secondary Road 1207.

The Sasser, Johnny, farm located on the west side of State Secondary Road 1931 and 0.3 mile south of its junction with State Secondary Road 1930.

The Sherrill, Robert G., farm located 9.1 miles southeast of Goldsboro on the east side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1930.

The Simmons, James, farm located on the southwest side of State Secondary Road 1932 and 0.2 mile northwest of the junction of this road and State Secondary Road 1934.

The Smith, Allen J., farm located on both sides of State Secondary Road 1953 and 0.5 mile north of State Highway 55.

The Wayne County Landfill property located on the southeast side of State Secondary Road 1726 and 0.5 mile northeast of its junction with State Highway 111.

South Carolina

(1) Generally infested areas: None.

(2) Suppressive areas.

Dillon County. The entire county.

Florence County. The Belin, Hezikeh, farm located on the southeast side of a dirt road and 0.4 mile northeast of its junction with Florence County Secondary Road 1129; this junction being 0.9 mile northwest of the junction of Florence County Secondary Roads 1129 and 732.

The McAllister, Armstrong, farm located at the end of a dirt road and 0.4 mile northwest of its junction with another dirt road, then south along this dirt road to its junction with another dirt road, then westerly along this dirt road to its junction with State Secondary Highway 34, this junction being 1.1 miles southeast of the junction of State Secondary Highway 149 with State Secondary Highway 34.

The Munn, F. M., farm located on the southeast side of the intersection of State Secondary Road 24 with Jefferies Creek, this intersection being 1.3 miles northeast of the junction of State Secondary Road 24 with State Secondary Road 57.

The Parker, Boston, farm located on the northwest side of State Secondary Road 791 and 0.3 mile northeast of its junction with State Secondary Road 791 with State Secondary Road 732, this junction being 1.7 miles northeast of the junction of State Secondary Road 732 with State Highway 51.

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along this highway to its intersection with State Secondary Highway 306, then west along this highway to its intersection with State Secondary Highway 142, then south along this highway to its junction with State Primary Highway 9, then northwest along this highway to its intersection with State Secondary Highway 59, then southwest and south along this highway to its junction with State Primary Highway 917, then southwest along this highway to its intersection with State Secondary Highway 19, then south and southeast along Highway 19 to its intersection with U.S. Highway 701 at

Allbrook, then northeast along this highway to its intersection with State Primary Highway 9, then southeast and south along this highway to its intersection with the Waccamaw River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this state line to its intersection with U.S. Highway 17, then southwest along this highway to its junction with State Primary Highway 90, then west along this highway to its intersection with a dirt road known as Telephone Road, this intersection being 1.3 miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along this swamp to its junction with the Waccamaw River, then west along this river to its intersection with Stanley Creek, then north along this creek 1.6 miles, then northwest along this creek 2.8 miles, then north along a line projected from a point beginning at the end of the main run of this creek, and extending north to the junction of this line with State Primary Highway 905, then southwest along this highway to its junction with State Secondary Highway 10, then north along this highway 2.4 miles to its junction with a dirt road.

Then southwest along this road to its intersection with Maple Swamp, then north along this swamp to its intersection with State Secondary Highway 65, then southwest along this highway to its junction with U.S. Highway 701, then south along this highway to its intersection with U.S. Highway 501, then northwest along this highway to its intersection with State Secondary Highway 548, then west along this highway to its junction with a dirt road, then west along a dirt road to its junction with State Secondary Highway 78, then north along this highway to its junction with State Secondary Highway 391, then northeast along this highway to its junction with U.S. Highway 501, then southeast along this highway to its junction with State Secondary Highway 591, then north along this highway to its intersection with State Secondary Highway 97, then east 0.2 mile to its intersection with a dirt road, then north along this dirt road to its junction with State Primary Highway 319, then northwest along this highway to its junction with State Secondary Highway 131, then east and north along this highway to its intersection with Loosing Swamp, then west and northwest along this swamp to its intersection with State Secondary Highway 45, then southwest along this highway to its junction with State Secondary Highway 129, then northwest along this highway to its junction with U.S. Highway 501, then northwest along this latter highway to its intersection with Little Pee Dee River, then northwest along this river to its junction with the Lumber River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this state line to the point of beginning, excluding the area within the corporate limits of the towns of Conway and Loris.

The Alford, Alex, farm located on the south side of a dirt road and being 2 miles

southwest and west of the junction of this dirt road and State Secondary Highway 98, this junction being 1.75 miles north of the junction of this highway and State Secondary Highway 97.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the intersection of this dirt road with rural paved road No. 109, this intersection being 2.25 miles northeast of the junction of rural paved road No. 109 with rural paved road No. 79.

The Edge, Nina L., farm located on the west side of a dirt road and 0.8 mile southeast of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, this second junction being 0.8 mile southwest of the junction of this highway and State Secondary Highway 31.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of this highway and State Secondary Highway 377.

The Richardson, Talmage, farm located on the north side of a dirt road and 1 mile southwest of the junction of this dirt road with State Secondary Highway 99, this junction being 1.75 miles north of the junction of State Secondary Highway 99 and State Secondary Highway 97.

The Williamson, Vide, farm located on both sides of a dirt road and 0.4 mile from the junction of this dirt road and State Primary Highway 410, its junction being 0.7 mile northeast of the intersection of State Primary Highway 410 and State Secondary Highway 19.

Marion County. The entire county.
Marlboro County. The Berry, Wilbur, farm located on both sides of State Secondary Road 625 and 0.37 mile south of its intersection with State Secondary Road 624, this intersection being 0.6 mile southwest of the junction of State Secondary Road 624 with State Highway 38.

The Brigman, Ansel, farm located on the southwest side of State Highway 38 and 0.7 mile southeast of the intersection of Highway 38 with State Highway 34, this intersection being 1.6 miles southwest of the intersection of Highway 34 with the Dillon County line.

Done in Washington, DC, on this 27th day of June, 1988.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-14898 Filed 6-30-88; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

(Lemon Regulation 620)

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 620 establishes the quantity of fresh California-Arizona

lemons that may be shipped to market at 400,000 cartons during the period July 3 through July 9, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 620 (§ 910.920) is effective for the period July 3 through July 9, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on June 28, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 13-0 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for

lemons is very good in both domestic and export markets.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register, because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.920 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.920 Lemon Regulation 620.

The quantity of lemons grown in California and Arizona which may be handled during the period July 3, 1988, through July 9, 1988, is established at 400,000 cartons.

Dated: June 28, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-15024 Filed 6-30-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 947

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 947 for the 1988-89 fiscal period. Authorization of this budget will allow the Oregon-California Potato Committee to incur expenses reasonable and necessary for it to administer the program. Funds to cover these expenses will be derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1988 through June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-5610.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 947 [7 CFR Part 947] regulating the handling of potatoes grown in designated counties in Oregon and California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register [53 FR 18844, May 25, 1988]. That document contained a proposal to add § 947.241 to establish expenses and an assessment rate for the Oregon-California Potato Committee. That rule provided that interested persons could file comments through June 18, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such

expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register [5 U.S.C. 553].

List of Subjects in 7 CFR Part 947

Marketing agreements and orders, Potatoes (Oregon and California).

For the reasons set forth in the preamble, 7 CFR Part 947 is amended as follows:

PART 947—POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 947.241 is added to read as follows (this section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations):

§ 947.241 Expenses and assessment rate.

Expenses of \$37,175 by the Oregon-California Potato Committee are authorized, and an assessment rate of \$0.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: June 28, 1988.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-14894 Filed 6-30-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-099]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of swine by adding Tennessee to the list of validated brucellosis-free states. We have determined that Tennessee now meets the criteria for classification as a validated brucellosis-free state. This action relieves certain restrictions on moving breeding swine from Tennessee.

DATES: Interim rule effective July 27, 1988. Consideration will be given only to comments postmarked or received on or before August 30, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-0464. Please state that your comments refer to Docket Number 88-098. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-430-5961.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) prescribe conditions for the interstate movement of cattle, bison, and swine. States, areas, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for animals are based upon the disease status of the herd, area, or state from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated brucellosis-free states, to include Tennessee. After reviewing its brucellosis program records, we have concluded that Tennessee meets the criteria for validated brucellosis-free states. We are therefore adding Tennessee to the list of states in § 78.43. This action relieves certain restrictions on moving breeding swine from Tennessee.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists warranting publication of this rule without prior opportunity for public comment. Immediate action is warranted to

remove unnecessary restrictions on the interstate movement of breeding swine from Tennessee.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the Federal Register. Any amendments we make to this interim rule as a result of these comments will be published in the Federal Register as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action will allow breeding swine to move interstate from Tennessee without being tested for brucellosis. The groups affected by this action are herd owners in Tennessee. We expect the economic impact to be minimal; of the approximately 4,000 herd owners nationwide who regularly ship breeding swine interstate, less than 50 regularly ship breeding swine interstate from Tennessee.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(j).

§ 78.43 [Amended]

2. Section 78.43 is amended by adding "Tennessee," immediately after "South Dakota,"

Done in Washington, DC, this 27th day of June, 1988.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 88-14907 Filed 6-30-88; 8:45 am]

BILLING CODE 3910-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

(Regulation D; Docket No. R-0641)

Interpretation Regarding Treatment of Loan Strip Participations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation; technical amendment to regulations.

SUMMARY: The Board is aware that institutions have not been treating loan strip transactions as creating a reservable liability and, therefore, have not been reporting or reserving against these funds when appropriate. Therefore the board is clarifying that the ostensible sale of a short-term loan made under a long-term lending commitment, known as a loan strip or strip participation, is regarded as a "deposit" for the purposes of Regulation D whenever the depository institution selling the loan at the end of the short-term period if the original investor does not wish to renew its interest and another investor cannot be located. In such a circumstance, the legal commitment of the lender/seller to

advance funds to the borrower, which would, in substance, permit repayment of the short-term loan to the purchaser, is comparable to a repurchase agreement. This is true regardless of whether the commitment is exercised. Actual reporting of and reserve maintenance against these liabilities will begin after final approval of a new reporting form being adopted in order to monitor these liabilities for monetary policy purposes. This approval is expected by July or August of 1988.

EFFECTIVE DATE: June 29, 1988. However, depository institution should not include these liabilities on their reports of deposits or maintain reserves against them at this time. Depository institutions will be informed individually when and how these deposits should be so included and when appropriate reserve maintenance should begin following final approval of the new reporting form for these liabilities which is expected in July or August of 1988.

FOR FURTHER INFORMATION CONTACT: Patrick Mahoney, Economist (202/452-3827), Division of Monetary Affairs; or John Harry Jorgenson, Senior Attorney (202/452-3778), Legal Division; for the hearing impaired only.

Telecommunications Device for the Deaf, Earmestine Hill or Dorothea Thompson, (202-452-3254); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Effective March 31, 1988, the glossary section of the instructions for the Report of Condition and Income (FFIEC 031-034; OMB No. 7100-0036) ("Call Report") was amended to clarify that short-term loan participation arrangements known or styled as strip participations should be regarded as borrowings rather than sales for Call Report purposes whenever the seller has a continuing legal commitment to advance funds to the borrower. The Board has considered whether the same treatment should be given to such transactions for purposes of the Board's Regulation D. This interpretation is intended to clarify that such transactions should be treated as borrowings for purposes of Regulation D. As such, they may be deposits and, if so, should be included on the selling institution's report of deposits (Form FR 2900, FR 2910q, or FR 1910a) as appropriate. The interpretation also clarifies that, if they are interbank borrowings (also known as "federal funds" transactions), they are exempt from reserves and reporting in the same manner as other federal funds transactions.

The Board is aware that institutions have not been treating these

transactions as creating a reservable liability and, therefore, have not been reporting or reserving against these funds when appropriate. This clarification will result in a correction in this lapse in reporting and maintenance of reserves on these obligations when called for by Regulation D. This result, in turn, will affect the demand for reserves and, without adjustments, result in a break in series for the monetary aggregates. Consequently, the Board has adopted a special reporting form (FR 2916) to be used by depository institutions filing the weekly form FR 2900 and that have sizable amounts of loan strips outstanding to report such transactions so that the size of this activity can be determined in order to assess its effects on the demand for reserves and in order to make appropriate adjustments in the monetary aggregates. Notice of adoption of the form is being given separately, and interested parties will be given the opportunity to comment on the form and the information collection it represents. Depository institutions need not report or maintain reserves on these deposits until individually advised to do so following final adoption of the form FR 2916.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board has considered the impact of this interpretation on small entities. In this regard, it is the Board's view that the interpretation does not impose any additional reporting or recordkeeping requirements (although a related action under the Paperwork Reduction Act, being published separately, would impose such an additional burden). The purpose of this interpretation is to clarify that the requirements of Regulation D already apply to certain liabilities of depository institutions. The interpretation applies to all depository institutions but, because of the nature of the liabilities in question, is not likely to have an effect on smaller depository institutions.

List of Subjects in 12 CFR Part 204

Banks, Banking, Currency, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.*), the Board is amending 12 CFR Part 204 as follows:

PART 204—[AMENDED]

1. The authority citation for 12 CFR Part 204 continues to read as follows:

Authority: Secs. 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. A new § 204.132 is added to read as follows:

§ 204.132 Treatment of Loan Strip Participations.

(a) Effective March 31, 1988, the glossary section of the instructions for the Report of Condition and Income (FFIEC 031-034; OMB No. 7100-0036; available from a depository institution's primary federal regulator) ("Call Report") was amended to clarify that certain short-term loan participation arrangements (sometimes known or styled as "loan strips" or "strip participations") are regarded as borrowings rather than sales for Call Report purposes in certain circumstances. Through this interpretation, the Board is clarifying that such transactions should be treated as deposits for purposes of Regulation D.

(b) These transactions involve the sale (or placement) of a short-term loan by a depository institution that has been made under a long-term commitment of the depository institution to advance funds. For example, a 90-day loan made under a five-year revolving line of credit may be sold to or placed with a third party by the depository institution originating the loan. The depository institution originating the loan is obligated to renew the 90-day note itself (by advancing funds to its customer at the end of the 90-day period) in the event the original participant does not wish to renew the credit. Since, under these arrangements, the depository institution is obligated to make another loan at the end of 90 days (absent any event of default on the part of the borrower), the depository institution selling the loan or participation in effect must buy back the loan or participation at the maturity of the 90-day loan sold to or funded by the purchaser at the option of the purchaser. Accordingly, these transactions bear the essential characteristics of a repurchase agreement and, therefore, are reportable and reservable under Regulation D.

(c) Because many of these transactions give rise to deposit liabilities in the form of promissory notes, acknowledgments of advance or similar obligations (written or oral) as described in § 204.2(a)(1)(vii) of Regulation D, the exemptions from the definition of "deposit" incorporated in

that section may apply to the liability incurred by a depository institution when it offers or originates a loan strip facility. Thus, for example, loan strips sold to domestic offices of other depository institutions are exempt from Regulation D under § 204.2(a)(1)(vii)(A)(7) because they are obligations issued or undertaken and held for the account of a U.S. office of another depository institution. Similarly, some of these transactions result in Eurocurrency liabilities and are reportable and reservable as such.

By order of the Board of Governors of the Federal Reserve System, June 24, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-14704 Filed 6-30-88; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

Utility Relocations, Adjustments, and Reimbursement

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on utility adjustments to clarify the circumstances under which Federal-aid highway funds may be used to reimburse highway agencies for costs incurred in implementing projects solely for corrective measures to reduce the hazards of utility facilities to highway users. This revision is being made to implement section 108 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100-17, 101 Stat. 132) as it affects utility safety work.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering, (202) 366-4852; or Mr. Michael J. Laake, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 108 of the STURAA of 1987 added to the definition of "construction" for work under Title 23, U.S. Code, the phrase "elimination of roadside obstacles."

This amendment clarified that identified roadside obstacles which present a hazard to the highway user can be removed as a discrete Federal-aid highway project as opposed to being addressed only in association with a general highway construction project.

A State highway agency through its highway safety improvement program may identify utility facilities, such as utility poles, as roadside obstacles which present a hazard to the highway user. A State highway agency has the flexibility to develop a Federal-aid highway project limited to corrective measures to reduce the roadside hazards associated with these utility facilities or to incorporate such work in other construction projects. Utility adjustment costs incurred by a State or local highway agency solely for this safety purpose are eligible for Federal-aid highway funding participation. The eligibility criteria for utility adjustments required by the actual physical construction of a highway project remain unchanged by this new authority.

This final rule amends 23 CFR Part 645, Subpart A, to clarify that costs incurred by highway agencies in implementing utility safety projects solely are eligible for participation with Federal-aid highway funds. Such projects would be administered in accordance with the procedures in 23 CFR Part 645. This new authority should not be interpreted to imply that a highway agency should assume any obligation for such safety corrective work other than that permitted or required by State law or administrative policy.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the revision in this document is being issued for the purpose of literally complying with statutory language mandated by section 108 of the STURAA of 1987, public comment is impracticable and unnecessary. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedures Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such

action could result in the receipt of useful information since the revisions incorporated in the regulation require no interpretation and provide for no discretion. It is anticipated that the economic impact of this rulemaking, although mandated by the statutory provision itself, will be minimal. Therefore, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 645

Grant programs—transportation, Highways and roads, Utilities.

In consideration of the foregoing, Part 645, Subpart A to Chapter I of Title 23, Code of Federal Regulations, is amended as set forth below.

Issued on: June 27, 1988.

Robert E. Farris,
Federal Highway Administrator.

The FHWA hereby amends 23 CFR Part 645, Subpart A as follows:

PART 645—UTILITIES

Subpart A—Utility Relocations, Adjustments, and Reimbursement

1. The authority citation for Part 645 is revised to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 28961 (May 24, 1977).

2. In § 645.107, paragraphs (a), (b), and (c) are amended and a new paragraph (k) is added to read as follows:

§ 645.107 Eligibility.

(a) When requested by the SHA, Federal funds may participate, subject to the provisions of § 645.103(d) of this part and at the pro rata share applicable, in an amount actually paid by an HA for the costs of utility

relocations. Federal funds may participate in safety corrective measures made under the provisions of § 645.107(k) of this part. Federal funds may also participate for relocations necessitated by the actual construction of highway project made under one or more of the following conditions when:

(b) On projects which the SHA has the authority to participate in project costs. Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities, other than those proposed under the provisions of § 645.107(k) of this part, when State law prohibits the SHA from making payment for relocation of utility facilities.

(c) On projects which the SHA does not have the authority to participate in project costs, Federal funds may participate in payments made by a political subdivision for relocation of utility facilities necessitated by the actual construction of a highway project when the SHA certifies that such payment is based upon the provisions of § 645.107(a) of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the HA or for utility safety corrective measures under the provisions of § 645.107(k) of this part.

(k) Federal funds may participate in projects solely for the purpose of implementing safety corrective measures to reduce the roadside hazards of utility facilities to the highway user. Safety corrective measures should be developed in accordance with the provisions of 23 CFR 645.209(k).

[FR Doc. 88-14650 Filed 6-30-88; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is revising its disclosure regulation, 28 CFR 2.56(b), to comply with the Supreme Court's May 16, 1988 decision in *United States Department of Justice v. Julian*, ___ U.S. ___, 56 L.W. 4403, wherein the Court held that first-party requesters are

entitled to copies of their presentence investigation reports under the Freedom of Information Act except as to matters relating to confidential sources, diagnostic opinions or potentially harmful information. The Commission is amending its disclosure regulation found at 28 CFR 2.56(b) by deleting the last sentence of this subsection which, at present, directs persons seeking copies of presentence investigation reports to the sentencing court where the document originated.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Janice G. McLeod, Attorney, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, telephone (301) 492-5859.

SUPPLEMENTARY INFORMATION: Prior to May 16th, 1988, the United States Parole Commission, in response to first-party requests (those submitted by the subject of the record), would direct requesters to the appropriate district court for copies of their presentence investigation reports that had been prepared by the probation service of the court prior to sentencing. Further, it was the Parole Commission's position that presentence investigation reports were exempt from disclosure in their entirety under the Freedom of Information Act, 5 U.S.C. 552. As the Supreme Court has now held to the contrary, the Parole Commission will no longer direct persons requesting copies of their presentence investigation reports to the sentencing court. The Commission is deleting that portion of its disclosure regulation requiring this procedure. Because this deletion will remove a present restriction, this rule will become effective upon publication.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.56 [Amended]

2. In 28 CFR 2.56(b), the last sentence is removed.

Jasper R. Clay, Jr.,
Commissioner, National Appeals Board, U.S. Parole Commission.

[FR Doc. 88-14670 Filed 6-30-88; 8:45 am]
BILLING CODE 4410-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from July 1, 1988, to September 30, 1988.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects

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the applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 9 percent, which will be effective from July 1, 1988, through September 30, 1988. This rate represents an increase of ½ percent from the rate in effect for the second quarter of 1988. See 53 FR 10531 (April 1, 1988). This rate is based on the prime rate in effect on June 15, 1988.

This amendment also revises the entry for the second quarter of 1988 to reflect that the quarter begins on the first of April, not the first of March.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of \$100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR part 2644

Employee benefit plans, Pensions.
In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1309(c)(6).

Appendix A—[Amended]

2. Appendix A to Part 2644 is amended by revising the last entry of the table of interest rates therein and by adding a new entry as follows:

From	To	Date of quotation	Rate (percent)
04/01/88	06/30/88	03/15/88	8.50
07/01/88	09/30/88	06/15/88	9.00

Issued at Washington, DC, on this 27th day of June 1988.

Kathleen P. Utgoff,
Executive Director.

[FR Doc. 88-14879 Filed 6-30-88; 8:45 am]
BILLING CODE 7708-01-88

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD1 87-101]

Changes to Coast Guard Captain of the Port Zones and Marine Inspection Zones

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule redescrines Captain of the Port Zones and Marine Inspection Zones in the southern part of the First Coast Guard District that were previously under the jurisdiction of the former Third Coast Guard District. These changes are intended to enhance performance of the Environmental Response, Marine Inspection, Marine Licensing, and Port Safety and Security programs of the Coast Guard by simplifying and aligning boundaries to reflect the best distribution of resources and responsibilities. This rulemaking is a follow-on to organizational changes described in the Federal Register (52 FR 13082) on April 21, 1987. These organizational changes will not adversely affect any Coast Guard services to the public.

DATES: This regulation is effective on July 1, 1988. Comments on this regulation must be received on or before August 1, 1988.

ADDRESSES: Comments should be mailed to Commander (mps), First Coast Guard District, 408 Atlantic Ave., Boston, MA, 02210-2209.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Peter C. Blaisdell, Commander (mps), First Coast

Guard District, 408 Atlantic Ave., Boston, MA 02210-2209, (617-223-0437).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. These amendments are matters relating to agency organization and are exempt from the notice and comment requirements of 5 U.S.C. 553(b). Since this rule reflects current organizational changes being placed in effect and has no substantive effect, good cause exists to make it effective in less than 30 days after publication, under 5 U.S.C. 553(d). The rulemaking merely changes Marine Inspection Zones and Captain of the Port Zones to conform with internal organizational policy. There will be no effect on the public, since First Coast Guard District units will continue to perform all functions affecting the public.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESSES" in this preamble. Persons making comments should include their names and addresses, identify the docket number for this rulemaking (CGD1 87-101), and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant Commander Peter C. Blaisdell, Project Manager; and Commander Michael A. Leone, Project Counsel, First Coast Guard District.

Discussion of Regulation

Legal authority to enforce laws and carry out statutory responsibilities for geographical areas in the environmental response, and port safety and security programs are vested in Coast Guard officials called the "Captain of the Port" (COTP). Similarly, marine inspection and licensing functions are carried out by the "Officer-in-Charge, Marine Inspection" (OCMI). The authority of these officials is limited to the geographical areas specifically designed as their Captain of the Port Zone or Marine Inspection Zone, respectively.

As a result of recent consolidation and realignment of Coast Guard districts, it has become apparent that the Captain of the Port Zones and Marine Inspection Zones in the southern part of the expanded First Coast Guard District should be realigned to create

more rational and uniform areas of responsibility. These changes are being made for three primary reasons: First, the seaward entrance of Long Island Sound should be under the sole authority of the COTP, Long Island Sound. This simplifies command and control which is necessary to achieve port security objectives for vessels entering and departing Long Island Sound through the Race during war or national emergencies. At present, three COTP zones converge in this area.

Second, the environmental response and port safety and security programs on eastern Long Island would be better served if the area were removed from the COTP, New York Zone and placed entirely in the COTP, Long Island Sound Zone. This change will reduce response time to oil and chemical spills on eastern Long Island because COTP Long Island Sound personnel in Port Jefferson are located closer than COTP New York personnel who are based on Governors Island in New York City. Third, internal policy and common sense dictate that boundaries should be as simple and uniform as possible. This increases public understanding and awareness of divisions between areas of responsibility. These changes in COTP boundaries will require an insignificant adjustment in the Marine Inspection Zone boundaries between OCMI New York and OCMI Providence.

No search and rescue stations or other types of Coast Guard units will be closed or moved as a result of these changes. This notification serves to inform the public of the new COTP, Marine Inspection boundaries so that in those instances where contact is desired, the public can determine the office and location of the proper official.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided for in section 1(a)(3) of the Order. It is considered to be non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This final rule places no requirements on any sector of the public. It will not affect Coast Guard services delivered to the public. The rule reflects a change in internal Coast Guard organization. Since the impact of the final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Analysis

In accordance with Commandant Instruction M16475.1B—National Environmental Policy Act Implementing Procedures, this action has been determined to be categorically excluded from the need to prepare further environmental documentation. A Categorical Exclusion Statement has been prepared and is included in the regulatory package.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

In consideration of the foregoing, Part 3 of Title 33, Code of Federal Regulations, is amended as follows:

PART 3—[AMENDED]

1. The authority citation for Part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. In § 3.05-20, paragraph (b) is revised to read as follows:

§ 3.05-20 Providence Marine Inspection Zone and Captain of the Port Zone.

(b) The boundary of the Providence Marine Inspection Zone and Captain of the Port Zone extends along a line bearing 132° T. from Watch Hill Light, Rhode Island, and shoreward from Watch Hill Light in a northerly direction along the east bank of the Pawcatuck River to 41°22.6' N. latitude, 71°50.0' W. longitude at Westerly, Rhode Island; thence northerly along the Rhode Island-Connecticut boundary, including the waters of Beach Pond, to the Massachusetts State Line; thence easterly to 42°04.1' N. latitude, 71°06' W. longitude; thence southeasterly to the shore at Manomet Pt. at 41°55' N. latitude, 70°33' W. longitude; thence seaward northeasterly to 42°08' N. latitude, 70°11' W. longitude; thence due east to the search and rescue boundary between the United States and Canada at 67° W longitude.

3. In § 3.05-25, paragraph (b) is revised to read as follows:

§ 3.05-25 New York Marine Inspection Zone.

(b) The New York Marine Inspection Zone encompasses the geographical areas delineated in sections 3.05-30 and 3.05-35 of this part.

4. In § 3.05-30, paragraph (b) is revised to read as follows:

§ 3.05-30 New York Captain of the Port Zone.

(b) The New York Captain of the Port Zone boundary extends along a line bearing 122° T. from the New Jersey shoreline at 39°57' N. latitude, and shoreward along a line extending due west to 74°27' W. longitude; thence north-northeasterly to the junction of the New York, New Jersey, and Pennsylvania boundaries at Tristate; thence along the east bank of the Delaware River in a northwesterly direction to 42°00' N. latitude; thence due east to 74°39' W. longitude; thence due north to the Canadian border; thence easterly along the Canadian border to the northeast corner of the Orleans County line in Vermont; thence following the eastern and southern boundaries of Orleans, Franklin, Chittenden, Addison, and Rutland counties to the Vermont-New York boundary; thence southerly along the Vermont-New York boundary to its juncture with the Massachusetts-New York boundary; thence south-southwesterly along the Massachusetts-New York boundary to the junction of the Massachusetts, New York, and Connecticut boundaries; thence southerly along the New York-Connecticut boundary to 41°01.5' N. latitude, 73°40.0' W. longitude; thence southerly to the southern shore of Manursing Island at 40°58.0' N. latitude, 73°40.0' W. longitude; thence south-southeasterly to the north shore of Long Island at Dosoris Island at 40°53.7' N. latitude, 73°38.2' W. longitude; thence southerly, including the waters of Hempstead Harbor, to 40°40' N. latitude, 73°40' W. longitude; thence southwesterly to the south shore of Long Island at 40°35.4' N. latitude, 73°46.6' W. longitude; thence along a line bearing 135° T.

5. In § 3.05-35, paragraph (b) is revised to read as follows:

§ 3.05-35 Long Island Sound Captain of the Port Zone.

(b) The Long Island Sound Captain of the Port Zone boundary extends along a line bearing 135° T. from the south shore of Long Island at 40°35.4' N. latitude, 73°46.6' W. longitude, and shoreward along a line northeasterly to 40°40' N. latitude, 73°40' W. longitude; thence

northerly, excluding all waters of Hempstead Harbor, to the north shore of Long Island at Dosoris Island at 40°53.7' N. latitude, 73°38.2' W. longitude; thence north-northwesterly to the southern shore of Manorsing Island at 40°58.0' N. latitude, 73°40.0' W. longitude; thence northerly to the Connecticut-New York boundary at 41°01.5' N. latitude, 73°40.0' W. longitude; thence northerly along the western boundary of Connecticut to the Massachusetts boundary; thence easterly along this boundary, including the waters of the Congamond Lakes, to the Rhode Island boundary; thence southerly along the Connecticut-Rhode Island boundary, excluding the waters of Beach Pond to 42°22.6' N. latitude, 71°50.0' W. longitude at Westerly, Rhode Island; thence in a southerly direction along the east shore of the Pawcatuck River to Watch Hill Light, Rhode Island; thence along a line bearing 132° T. from Watch Hill Light.

Dated: June 20, 1988.

P.C. Lauridsen,
Captain, U.S. Coast Guard, Acting Chief,
Office of Marine Safety, Security and
Environmental Protection.

[FR Doc. 88-14800 Filed 6-30-88; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 4

[CGD 88-038]

OMB Control Numbers; Reporting and Recordkeeping Requirements; Correction

AGENCY: Coast Guard, DOT.
ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting errors in the table of control numbers assigned by the Office of Management and Budget appearing at 33 CFR 4.02 published on June 17, 1988 at 53 FR 22650.

FOR FURTHER INFORMATION CONTACT: Lt. Commander Don Wrye, (202) 267-1534.

In rule document 88-13638 beginning on page 22650 in the issue of Friday, June 17, 1988, make the following correction:

§ 4.02 [Corrected]

On page 22651, remove entries for §§ 165.15 and 165.25 from the table.

Dated: June 28, 1988.

J.E. Vorbach,
Chief Counsel.
[FR Doc. 88-14863 Filed 6-30-88; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CCGD7 88-18]

Special Local Regulations; Suncoast Offshore Grand Prix Races

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Suncoast Offshore Grand Prix Races. This event will be held on Sarasota Bay and the Gulf of Mexico on 1, 2 and 3 July 1988. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 1 July 1988 and terminate on 3 July 1988.

FOR FURTHER INFORMATION CONTACT: LCDR W. P. Prosser, c/o Commanding Officer, CG Marine Safety Office, 155 Columbia Dr., Tampa, FL 33606-3598, Tel: (813) 228-2194.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 6 June 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT M.E. Maes, Project officer for the Captain of the Port Tampa, and LCDR S.T. Fuger, Jr. Project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event for which this Regulation was drafted is the Suncoast Offshore Grand Prix races, which are held in the Gulf of Mexico adjacent to and within Sarasota Bay. These race courses were set up by the Suncoast Offshore Racing Association. The United States Coast Guard Group, St. Petersburg, Florida issued permits for these marine events. The Coast Guard Captain of the Port Tampa, Florida has established special local regulations prohibiting all vessels, other than those officially entered in the races, from entering the race courses.

The storm course is an alternate course to be used in the event that weather conditions preclude racing on the open waters of the Gulf of Mexico. Should the storm course be utilized, the special local regulations adopted for the fair weather course(s) will be cancelled.

The Coast Guard Marine Safety Office, Tampa will notify the maritime community of the establishment of the Special local regulations and which course will be used via a marine Broadcast Notice to Mariners.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-07-18 is added to read as follows.

§ 100.35-07-18 Suncoast Offshore Grand Prix Races.

(a) *Regulated Areas*—(1) *Race 1*. Sarasota Bay between Light 13 (LLNR 48035 page 379) and Light 17 (LLNR 48190 page 381) east of the intracoastal waterway channel.

(2) *Race II Fair Weather Course*. Gulf of Mexico from Buoy "2" New Pass (LLNR 18095 page 151). Northward to a turn marker located approximately 2 miles north of Buoy "2". Then South to Big Sarasota Pass Buoy "1" (LLNR 18000 page 150). Then North back to New Pass Buoy "2".

(3) *Race II Storm Course*. If foul weather is encountered (seas 6 feet or more), the race will be run on Sarasota Bay west of the Intracoastal Waterway between markers Siesta Key—Tampa Bay Light "17" (LLNR 48190) and Light "13" (LLNR 48035). The course will be a closed oval.

(4) *Race III Fairweather Course*. Gulf of Mexico from Buoy "2" (LLNR 18095) New Pass south to Buoy "1" Big Sarasota Pass (LLNR 18000); then east to a marker just north of Point O' Rocks; then south to a marker 1.5 miles south of the Venice Inlet, then north to a marker 2 miles north of New Pass; then south to New Pass Buoy "2".

(5) *Race III Storm Course*. If foul weather is encountered (seas 6 feet or more), the race will be run on Sarasota Bay west of the Intracoastal Waterway between markers Siesta Key—Tampa Bay Light "17" (LLNR 48190) and Light "13" (LLNR 48035). The course will be a closed oval.

(b) *Special Local Regulations*. (1) All vessels other than those officially entered in the Suncoast Offshore Grand

Prix, are prohibited from entering these regulated areas.

(2) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be a signal for any nonparticipating vessel to stop immediately. The display of orange smoke signal from any patrol vessel will be a signal for any and all vessels to stop immediately.

EFFECTIVE DATES: These regulations become effective: For Race 1, from 7:00 a.m. EDT until 2:00 p.m. EDT on 1 July 1988; for Race 2, from 1:00 p.m. EDT until 4:00 p.m. EDT on 2 July 1988; and, for Race 3, from 1:00 p.m. EDT until 4:00 p.m. EDT on 3 July 1988.

Dated: June 19, 1988.

L.A. Eagan,
Captain, U.S. Coast Guard, Acting
Commander, Seventh Coast Guard District.
[FR Doc. 88-14799 Filed 6-30-88; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD8-88-12]

Special Local Regulations; Blessing of the Fleet, Morgan City, LA

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for The Blessing of The Fleet. This event will be held on September 4, 1988 from 9:00 a.m. until 12:30 p.m. on Berwick Bay in the Atchafalaya River at Morgan City. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on September 4, 1988 at 8:30 a.m. and terminate on September 4, 1988 at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: CWO William G. Whitehouse, Eighth U.S. Coast Guard District, Tel: (504) 589-2972.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published. Following normal rulemaking procedures would have been impracticable. The details of the event were not finalized until 13 June, 1988 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data or arguments. Commenters should include their name and address, identify this notice (CGD8-88-12) and the specific

section of the proposal to which the comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are CWO William G. Whitehouse, Project Officer, Eighth Coast Guard District, New Orleans, LA, and LCDR James J. Vallone, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion Of Regulations

The marine event requiring this regulation is a blessing of the fleet called "The Blessing Of The Fleet." This event is sponsored by the Louisiana Shrimp and Petroleum Festival and Fair Association, Inc. It will consist of approximately 60 fishing and offshore supply vessels. Approximately 25-30 spectator boats are expected for the event. While viewing the event at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within areas designated by the sponsor.

List of Subjects in 33 CFR Part 100
Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-8-88-12 is added to read as follows:

§ 100.35-8-88-12 Berwick Bay, Atchafalaya River, Louisiana.

(a) *Regulated area*. The following area will be closed to all vessel traffic: Berwick Bay from the junction of the Lower Atchafalaya River and Bayou Boeuf at Morgan City, LA to Atchafalaya River Buoy 27 (LLNR 18725/32710).

(b) *Special Local Regulations*. All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) The specific carriage requirements for lifejackets (Personal Flotation

Devices) onboard vessels sponsored by the Louisiana Shrimp and Petroleum Festival and Fair Association, Inc. while participating in this event are waived for each person onboard 12 years of age or older. A lifejacket (Personal Flotation Device, Type I, III, or III) must be readily available and of proper size for each person carried onboard under 12 years of age.

(2) No spectator shall anchor, block, loiter or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(3) When hailed and/or signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(4) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and/or property. He may be reached on VHF-FM Channel 16, when required, by the call sign "PATCOM".

(c) *Effective Dates*. These regulations will be effective from 8:30 a.m. to 1:00 p.m. 4 September, 1988.

Dated: June 21, 1988.

W. F. Merlin,
Rear Admiral, U.S. Coast Guard Commander,
Eighth Coast Guard District.
[FR Doc. 88-14796 Filed 6-30-88; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Part 562

Bilingual Education: Fellowship Program

AGENCY: Department of Education.
ACTION: Final rule; correction.

SUMMARY: On June 7, 1988, the final regulations for the Bilingual Education: Fellowship Program were published in the Federal Register. On page 21401, in the second column at § 562.2(b)(1)(iii), the regulations are corrected by removing the comma after "the Trust Territories of the Pacific Islands" and placing the words "Republic of Palau" in parentheses.

FOR FURTHER INFORMATION CONTACT: Joyce Brown, Office of Bilingual

Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245-2595.

Program Authority: 20 U.S.C. 3253(c).
Dated: June 27, 1988.

Alicia Coro,
Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 88-14797 Filed 6-30-88; 8:45 am]

BILLING CODE 4000-01-M

VETERANS ADMINISTRATION

38 CFR Part 4

Evaluation of Hearing Loss; Disabilities Rating Schedule

AGENCY: Veterans Administration.
ACTION: Final rule; correction.

SUMMARY: In the Federal Register of November 18, 1987 (52 FR 44117-44122), the Veterans Administration (VA) adopted a rule concerning evaluation of hearing loss. This notice is to correct errors in that rule.

EFFECTIVE DATE: December 18, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Regulations Staff (211B), Compensation and Pension Service, Department of Veterans Benefits, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: In Federal Register document 87-26497, November 18, 1987, the VA published a final rule on evaluation of hearing loss.

Appendix B is corrected to reflect that diagnostic codes 6100 through 6110 are added, and diagnostic codes 6277 through 6297 are removed.

Appendix C is corrected to make diagnostic codes 6100-6110 consistent with existing information.

Dated: June 27, 1988.

Priscilla B. Carey,
Chief, Directives Management Division.

FR document 87-26497 published in the Federal Register of November 18, 1987, pages 44117 through 44122, is corrected as follows:

1. On page 44122, first column, paragraph 6, third line, change the word "revised" to "added."

2. On page 44122, first column, paragraph 7 is redesignated as paragraph 8.

3. On page 44122, first column, after paragraph 6, new paragraph 7 is added to read as follows:

7. In Part 4, Appendix B—Numerical Index of Disabilities, the heading titled "Impairment of Auditory Codes" and

diagnostic codes 6277 through 6297 are removed.

4. On page 44122, first column, in newly-designated paragraph 8, the table is revised to read as follows:

0% evaluation based on Table VII.....	6100
10% evaluation based on Table VII.....	6101
20% evaluation based on Table VII.....	6102
30% evaluation based on Table VII.....	6103
40% evaluation based on Table VII.....	6104
50% evaluation based on Table VII.....	6105
60% evaluation based on Table VII.....	6106
70% evaluation based on Table VII.....	6107
80% evaluation based on Table VII.....	6108
90% evaluation based on Table VII.....	6109
100% evaluation based on Table VII.....	6110

[FR Doc. 88-14803 Filed 6-30-88; 8:45 am]
BILLING CODE 3320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 65

[FRL-3406-5]

Federal and State Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Delayed Compliance Order for American National Can Company, Neenah Plant, Neenah, WI

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA is approving a Delayed Compliance Order (DCO) issued by the Wisconsin Department of Natural Resources (WDNR) to American National Can Company, in Neenah, Wisconsin. The Order requires the company to bring volatile organic compound (VOC) emissions from its flexible packaging manufacturing facility into final compliance by May 1, 1988, with the limits established by the Wisconsin Administrative Code, Section NR 154.13(4)(1), which is a part of the federally approved Wisconsin State Implementation Plan (SIP).

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on August 30, 1988. However, if we receive notice by August 1, 1988, that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

DATE: This action will be effective August 30, 1988, unless notice is

received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State order, supporting material, and public comments received in response to this rulemaking are available for inspection at the following address: U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this final action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

SUPPLEMENTARY INFORMATION: On November 24, 1987, the WDNR submitted to USEPA for review and approval, a DCO issued to American National Can Company (Neenah Plant) located in Neenah, Wisconsin. The DCO addresses the emission of VOCs from surface coating lines at the facility. These emissions are subject to the requirements of the Wisconsin Administrative Code, sections NR 154.13(4)(e) and NR 154.13(4)(f), which are part of the federally approved Wisconsin SIP.¹ The DCO requires final compliance with NR 154.13(4)(1) by May 1, 1988. At final compliance, VOC emissions from rotogravure and flexographic presses at the plant shall not exceed the following limitations specified in section NR 154.13(4)(1)(2):

- The volatile fraction of ink, as it is applied to the substrate, contains 25% by volume or less of organic solvent and 75% by volume or more of water;
- The ink, as it is applied to the substrate, less water, contains 60% by volume or more nonvolatile material; or
- The owner or operator installs and operates:

- A vapor recovery system which reduces the VOC emissions from the capture system by at least 90% by weight;
- An incineration or catalytic oxidation system, provided that 90% of the nonmethane

¹ The Wisconsin Administrative Code has been recodified. Section NR 154.13(4)(e) has been recodified to section NR 422.07. Section NR 154.13(4)(f), has been recodified to section NR 422.14. USEPA has not approved the recodification. The DCO reviewed in this Federal Register notice permits delayed compliance with section NR 154.13(4)(1). The company is currently in compliance with section NR 154.13(4)(e).

VOCs (VOC measured as total combustible carbon) which enter the incinerator or oxidation unit are oxidized to nonorganic compounds; or

3. An alternative VOC emission reduction system demonstrated to have at least a 90% reduction efficiency, as measured across the control system, and approved by the department.

The company has agreed to meet the terms of the DCO. USEPA evaluated the DCO using criteria set forth in section 113(d) of the Clean Air Act (the Act), as amended August 1977, and in an April 26, 1983, memorandum from Kathleen M. Bennett, then Assistant Administrator for Air, Noise and Radiation, and determined that it meets all requirements as shown below:

- The Order must provide for final compliance as expeditiously as practicable, but no later than 3 years after the date for final compliance specified in the SIP. This requirement is met by the Order, as original compliance with NR 154.13 was required by December 31, 1985. The final compliance date specified in the Order is May 31, 1988.
- The Order must include reasonable requirements for monitoring and reporting. The Order requires monthly reports summarizing actual and allowable VOC emissions for each day of operation.
- The Order must include reasonable and practicable interim controls. The company shall continue to make all reasonable efforts, such as scheduling adjustments and obtaining customer approvals of products produced with low solvent or water based technology, to minimize VOC emissions during the term of this Order.
- The Order must include a finding that the source is currently unable to comply with the

SIP requirements. The Order contains such a finding.

5. Notice and opportunity for a public hearing must be provided. A public hearing was held on August 11, 1987.

6. The Order must include a schedule and timetable for compliance. The Order includes a schedule which contains increments of progress to achieve and maintain compliance.

7. If the Order is for a major source, it must notify the source of its possible liability for noncompliance penalties under section 120 of the Act. This requirement is met by the Order.

Because the DCO has been issued to a major source of VOC emissions and permits a delay in compliance with provisions of the SIP, it must be approved by USEPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Act. When approved by USEPA, the company's full compliance with the DCO precludes Federal enforcement action of section NR 154.13(4)(1), under sections 113(b) and 304 of the Act until termination of the DCO. However, source compliance with the DCO will not preclude assessment of any noncompliance penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2)(B) or (C). When approved, the DCO becomes a modification to the Wisconsin SIP.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on August 30, 1988. However, if

we receive notice by August 1, 1988, that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: June 22, 1988.

Lee M. Thomas,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. The authority citation for Part 65 continues to read as follows:

Authority: Secs. 113 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7413 and 7601.

2. The table in § 65.541, EPA approval State Delayed Compliance Orders issued to Major Stationary Sources, is revised to read as follows:

§ 65.541 EPA approval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	SIP regulations (s) involved	Date of Federal Register promulgation	Final compliance date
American National Can Co.	Neenah, Wisconsin	None	Section NR 154.13(4)(1)	[date of publication of this notice]	5/1/88

[FR Doc. 88-14848 Filed 6-30-88; 8:45 am]
BILLING CODE 5500-55-M

40 CFR Part 440

[OW-FRL-3407-8]

Ore Mining and Dressing Point Source Category; Gold Placer Mine Subcategory; Clarification of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification of comment period.

SUMMARY: On May 24, 1988, EPA published a final rule promulgating effluent limitations guidelines and standards limiting effluent discharges to waters of the United States from

facilities engaged in gold placer mining operations (53 FR 18764). In the preamble to this final regulation the Agency provided an opportunity for the public to comment regarding the economic impacts of the final rule on small (those processing less than 35,000 cu yd of ore per year) gold placer mines. The Agency provided for a 60-day period, but did not specify the beginning or end of this period. This notice clarifies the period of time during which the Agency will receive comments. The Agency made the administrative record for this rulemaking available to the public on June 17, 1988. In order to provide adequate time for the public to acquaint itself with the administrative record and submit new data and comment, the Agency is setting the 60-

day period to start June 17, 1988 and close on August 16, 1988.

DATE: Comment will be received by EPA for a 60-day period starting on June 17, 1988, and ending on August 17, 1988.

ADDRESSES: Send information to Baldwin M. Jarrett, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Attention: ITD Docket Clerk, Final Rule Gold Placer Mining. The supporting information, all previous comments and final record on the final rule are available for inspection and copying at the following locations: EPA Public Information Reference Unit, Room 2904 (Rear), 4th and M Streets SW., Washington, DC 20460; EPA Library, 1200 Sixth Avenue, Seattle, WA 98101;

EPA Alaska Field Office, Federal Building, Room E-551, 701 C Street, Anchorage, Alaska 99513; EPA Alaska Field Office, 3200 Hospital Drive, Suite 101, Juneau, Alaska 99801; and Alaska Department of Environmental Conservation Field Office, 1001 Noble Street, Fairbanks, Alaska 99701. The EPA Information Regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall (202) 382-7126.

Date: June 23, 1988.

William A. Whittington,
Acting Assistant Administrator for Water.
[FR Doc. 88-14851 Filed 6-30-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[CC Docket No. 86-494; DA 88-895]

Common Carrier Services; in the Matter of Regulatory Policies and International Telecommunications

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Order extending filing deadlines for reporting requirements.

FOR FURTHER INFORMATION CONTACT: William J. Kirsch, Common Carrier Bureau, (202) 632-4047.

SUMMARY: On February 25, 1988 (published on April 15, 1988, 53 FR 12527), the Commission adopted a Report & Order and Supplemental Notice of Inquiry, CC Docket No. 86-494, FCC 88-71, (Order) establishing annual procurement reporting requirements for Tier I local exchange carriers, their holding companies and affiliates, and for interexchange carriers with common carrier operations revenues exceeding \$100 million in annual revenues. The Order also established quarterly revenue and traffic reporting requirements for all foreign-owned carriers providing common carrier services within the United States and concluded that all foreign-owned carriers that initiate domestic common carrier services within the United States after July 1, 1988, must notify the Commission within thirty days of the commencement of service. The Order further concluded that initial procurement reports and revenue and traffic reports must be filed on or before July 1, 1988.

The Common Carrier Bureau has extended the above filing deadlines for

the reporting and notification requirements established in this proceeding until further notice. This action will provide the Commission additional time to consider the Office of Management and Budget's (OMB) request to refile an information reporting submission addressing the Paperwork Reduction Act issues raised in their May 20, 1988 letter.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order, CC Docket 86-494, adopted June 14, 1988, and released June 15, 1988.

The Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, 1919 M Street NW., Room 230, Washington, DC 20554. It may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street, Suite 140, Washington, DC 20037, (202) 857-3800.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-14804 Filed 6-30-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-385; RM-5804]

Radio Broadcasting Services; West Lafayette, IN

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel *267A to West Lafayette, Indiana, and reserves it for noncommercial educational use, in response to a petition filed on behalf of Purdue University. The reference coordinates utilized for the allotment are 40-27-06 and 86-55-06. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-385, adopted May 9, 1988, and released June 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230),

1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding West Lafayette, Channel *267A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14907 Filed 6-30-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-358; RM-5932]

Radio Broadcasting Services; Marlow and Mangum, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Austin Broadcast Services, Inc., substitutes Channel 221C2 for Channel 221A at Marlow, Oklahoma, and modifies its permit for Station KFXI(FM) to specify operation on the higher powered channel. The Commission also substitutes Channel 249A for Channel 221A at Mangum, Oklahoma, and modifies the permit of Station KZKQ(FM) to specify operation on Channel 249A. Both channels can be allocated in compliance with the Commission's minimum distance separation requirements. In addition, Channel 221C2 can be used at the present transmitter site of Station KFXI(FM) and Channel 249A can be used at both the present site and the applied-for site of Station KZKQ(FM). The coordinates for Channel 221C2 at Marlow are North Latitude 34-42-30 and West Longitude 98-03-13. The coordinates for Channel 249A at Mangum are North Latitude 34-42-30 and West Longitude 98-03-13 (present site) and North Latitude 34-52-15 and West Longitude 99-29-14 (applied-for

site). With this action, this proceeding is terminated.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-358, adopted April 5, 1988, and released June 7, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Oklahoma is amended by revising the entry for Mangum to delete Channel 221A and add Channel 249A and for Marlow to delete Channel 221A and add Channel 221C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14808 Filed 6-30-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-356; RM-5871]

Radio Broadcasting Services; Alamo, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 226A to Alamo, Tennessee, as that community's first FM service, at the request of Charles C. Allen. The allotment can be made in compliance with the Commission's minimum spacing requirements using the center city coordinates (35-47-06 and 89-07-06). With this action, this proceeding is terminated.

DATES: Effective August 8, 1988; the window period for filing applications

will open on August 9, 1988, and close on September 8, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-356, adopted May 13, 1988, and released June 23, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Tennessee, by adding Channel 226A to Alamo.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14809 Filed 6-30-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-415; RM-5654]

Radio Broadcasting Services; West Lafayette, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 294A to West Lafayette, Indiana, as that community's first local FM service, in response to an expression of continuing interest filed on behalf of David L. Stevenson. The reference coordinates utilized for the allotment are 40-27-06 and 86-55-06. With this action, the proceeding is terminated.

DATES: Effective July 25, 1988; The window period for filing applications on Channel 294A at West Lafayette, Indiana, will open on July 26, 1988, and close on August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation.

Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-415, adopted May 9, 1988, and released June 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Indiana, by adding West Lafayette, Channel 294A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14805 Filed 6-30-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-395; RM-5962; RM-6194]

Radio Broadcasting Services; Brownsville, OR, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of P-N-P Broadcasting, Inc., allots Channel 272A to Brownsville, Oregon, as the community's first local FM service. In addition, Channel 274C1 is substituted for Channel 273C1 at Newport, Oregon, and the license of Central Coast Broadcasting Co., Inc. for Station KYQT, Newport, Oregon, is modified to specify operation on the new channel. Channel 272A can be allotted to Brownsville in compliance with the Commission's minimum distance separation requirements.

without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44-23-48 and West Longitude 122-59-08. Channel 274C1 can be allotted to Newport in compliance with the Commission's minimum distance separation requirements and can be used at Station KYQT's present transmitter site. The coordinates for this allotment are North Latitude 44-45-24 and West Longitude 124-02-47. The counterproposal filed by School District 4J, Lane County, Oregon, requesting the substitution of Channel 272C1 for Channel 221A at Oakridge, Oregon, and the substitution of Channel 277A for Channel 221A at Reedsport, Oregon, as well as the substitution of Channel 274C1 for Channel 273C1 at Newport, is denied. With this action, this proceeding is terminated.

DATES: Effective August 8, 1988. The window period for filing applications for Channel 272A at Brownsville, Oregon, will open on August 9, 1988, and close on September 8, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-395, adopted May 17, 1988, and released June 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 (Amended)

2. Section 73.202(b), the FM Table of Allotments for Oregon is amended by adding Brownsville, Channel 272A, and by revising the entry for Newport by removing Channel 273C1 and adding Channel 274C1.

Federal Communications Commission.
Steve Kaminer.

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14806 Filed 6-30-88; 8:45 am]

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47 CFR Part 73

[MM Docket No. 87-131; DA 88-875]

AM Radio; Correction of an Earlier Decision Concerning Presunrise and Postsunset AM Operation

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This action corrects an error associated with the *Report and Order* in MM Docket No. 87-131 (53 FR 1030, January 15, 1988) concerning presunrise and postsunset AM radio operation.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rita S. McDonald, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Erratum* in Docket 87-131, released June 15, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 1919 M Street NW., Room 246, Washington, DC.

SUMMARY: 1. The Commission amends the regulatory text of its decision in Docket 87-131, to correct the designation of newly added paragraph (1) to paragraph (m) in 47 CFR 73.99, as described below.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—(AMENDED)

2. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

3. 47 CFR 73.99 is corrected by redesignating newly added paragraph (1) published January 15, 1988, 53 FR 1030 as paragraph (m).

§ 73.99 Presunrise service authorization (PSRA) and Postsunset service authorization (PSSA):

The Note in paragraph (k) is moved to paragraph (l) (published December 30, 1987, 52 FR 49182) and paragraph (l) and (m) are republished to read as follows:

(l) A station having an antenna monitor incapable of functioning at the authorized PSRA and PSSA power when using a directional antenna shall take the monitor reading using unmodulated

carrier at the authorized daytime power immediately prior to commencing PSRA or PSSA operations. Special conditions as the FCC may deem appropriate may be included for PSRA or PSSA to insure operation of the transmitter and associate equipment in accordance with all phases of good engineering practice.

Note.—Extended hours of operations are subject to international agreements governing all operations. These agreements are in the process of revision, but until this process is completed it will not be possible to allow full operation as outlined above.

(m) The authorization of unlimited-time operation by daytime-only stations that are reclassified as Class II-S or Class III-S stations will not affect their right to operate during prescribed presunrise and postsunset hours in accordance with PSRA's and PSSA's issued pursuant to this section.

Federal Communications Commission.

Alex D. Folker,

Chief, Mass Media Bureau.

[FR Doc. 88-14203 Filed 6-30-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, 193, and 195

[Docket No. PS-88; Amdts. 191-6, 192-59, 193-5, 195-39]

Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: Operators of gas pipelines, associated liquefied natural gas (LNG) facilities, and hazardous liquid pipelines are required to begin reporting certain safety-related conditions in addition to the incidents and accidents they currently are required to report. They also must revise their operating and maintenance (O&M) plans to enhance discovery of the conditions. These new requirements were mandated by the 99th Congress in the pipeline safety authorization act for fiscal year 1987, Pub. L. 99-516 (October 22, 1986). The reports are intended to prevent known hazardous conditions from going uncorrected by prompting government intervention, if needed, to avoid the occurrence of an incident or accident.

EFFECTIVE DATE: This final rule takes effect September 29, 1988. Operators are

given more than 30 days to prepare for compliance because additional time is needed to revise O&M plans, instruct personnel, and otherwise prepare for this first instance of reporting safety-related conditions.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392, regarding the subject matter of this document, or the Dockets Unit, (202) 366-5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 3 of Pub. L. 99-516 directs the Secretary of Transportation to issue regulations requiring operators of gas and hazardous liquid pipeline facilities (other than operators of master meter systems) to report certain safety-related conditions, and to provide for discovery of such conditions in their inspection and maintenance plans.

More specifically, the following new reporting requirements were added to section 3(a) of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 App. U.S.C. 1672(a)):

(3) Not later than 12 months after the date of the enactment of this paragraph, the Secretary shall issue regulations requiring each person who operates pipeline facilities, not including master meters, to report to the Secretary—

(A) any condition that constitutes a hazard to life or property, and
(B) any safety-related condition that causes or has caused a significant change or restriction in the operation of pipeline facilities.

Reports submitted under this paragraph shall be in writing and shall be received by the Secretary within 5 working days after any representative of a person subject to the reporting requirements of this paragraph first determines that such condition exists. Notice of any such condition shall concurrently be supplied to appropriate State authorities.

In conjunction with these new reporting requirements, section 13 of the NGPSA (49 App. U.S.C. 1680) was amended by adding the following requirement concerning inspection and maintenance plans: "Such plan(s) shall include terms designed to enhance the ability to discover safety-related conditions described in section 3(a)(3)."

Substantially identical amendments were made respectively to section 203(a) and section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) (49 App. U.S.C. 2002(a) and 2009).

Currently, RSPA requires operators of gas and hazardous liquid pipeline facilities to report gas "incidents" and liquid "accidents." Generally speaking, these events involve releases of gas or hazardous liquid that have had serious consequences. Operators have not had

to report conditions that may be precursors of these events. Public Law 99-516 changed this situation by mandating that operators also be required to report conditions that potentially could cause "incidents" or "accidents."

Because the statutory language broadly describes the conditions to be reported, RSPA has exercised administrative discretion to determine through this proceeding precisely what conditions are to be reported and under what circumstances.

For insight into the conditions Congress thought should be reported, RSPA looked at the situation that led the House Committee on Energy and Commerce to include the new reporting requirements in Pub. L. 99-516. An earlier investigation of one major pipeline incident in Kentucky revealed that an employee had discovered on the pipeline a seriously corroded area that eventually failed, but the employee's internal report of the matter was not acted on promptly. The Committee apparently reasoned that had there been a legal obligation to report the corrosion condition to the government, the information might have prompted government intervention in time to assure correction and thus avoid the eventual major incident. (132 Cong. Rec. H6935).

The legislative history of Pub. L. 99-516 in the Senate indicates that the primary purpose of the reports is to permit State and Federal pipeline inspection officials to review the reported information and investigate the problem to assure that appropriate remedial action is taken (132 Cong. Rec. 515587).

To avoid a flood of routine reports, however, operators were expected to disclose only "glaring, hazardous conditions which might, if left to linger, constitute an imminent danger," or "potentially cause an incident." (132 Cong. Rec. H6935).

Additional information about the conditions to be reported is contained in "Pipeline Safety Reauthorization," a report by the House Committee on Energy and Commerce to accompany H.R. 4426 (H.R. Rept. 99-779, Part 1, 99th Cong., 2d Sess., 10). The Committee indicated that the reports are for "near accident" or "severe" conditions that are not subject to reporting under 49 CFR Part 191 (and by implication Part 195), and not for "routine replacement, repair or other types of maintenance."

Based on this legislative history, RSPA's Office of Pipeline Safety published a notice of proposed rulemaking in the *Federal Register* on September 25, 1987 (52 FR 36068). The

Notice set forth various unsafe conditions that were proposed to be made subject to the new reporting requirements. The Notice also proposed a few reporting limitations, or exceptions from reporting; the information to be submitted; and certain changes that operators would have to make to their existing plans for pipeline operation and maintenance (O&M).

Ninety five persons submitted comments on the Notice, and RSPA has considered them all in developing this final rule, even those that were received well after the November 9 deadline for filing comments. The following discussion explains RSPA's disposition of significant comments, including many changes to the final rule made as a result of those comments.

Conditions Subject to Reporting

The statute divides conditions that are subject to reporting in two categories:

(A) Any condition that constitutes a hazard to life or property, and

(B) Any safety-related condition that causes or has caused a significant change or restriction in the operation of pipeline facilities.

In the Notice, the proposed §§ 191.23(a)(1)-(7) and 195.55(a)(1)-(6) described specific conditions on pipelines and LNG facilities that RSPA considered hazards under the statute's category A. More broadly stated conditions related to category B were proposed under §§ 191.23(b) and 195.55(b).

A large number of commenters objected to labeling the conditions under §§ 191.23(a) and 195.55(a) "hazardous." Some recommended the term, "unsafe," for it would be less inflammatory and consistent with a designation used elsewhere in the Notice. Others recommended using the term, "reportable," instead of "hazardous." In the final rule, all conditions subject to reporting are called "safety-related," recognizing that this is the general term of reference used in the heading of Section 3 of Pub. L. 99-516.

RSPA proposed in § 191.23(a)(1) that gas operators report "[g]eneral or localized corrosion on a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength [SMYS] requiring pipe replacement or reduction in operating pressure." A similar requirement was proposed under § 195.55(a)(1), but without regard to hoop stress because pipelines operating at a hoop stress of 20 percent or less of SMYS are not regulated by Part 195. The primary response to this proposal was that more

exact criteria are needed to distinguish severe corrosion that demands immediate corrective action from a lesser degree of corrosion that usually is treated routinely. Suggestions to this end ranged from general, such as "corrosion where rupture is imminent," to the specific, involving the application of algebraic formulas. RSPA agrees that the degree of corrosion should be stated precisely, but believes that, for uniformity, language used in existing regulations to describe the degree of corrosion should be used instead of new terms. Therefore, in keeping with the degree of corrosion specified by §§ 192.485, RSPA has changed § 191.23(a)(1) so that "general corrosion" is subject to reporting if it has reduced the pipe wall thickness to less than that needed to support the pipeline's maximum allowable operating pressure, and "localized corrosion pitting" is subject to reporting if it exists to a degree where leakage might result. A similar amendment has been made to § 195.55(a)(1) based on § 195.418. The *ASME Guide for Gas Transmission and Distribution Piping Systems* provides criteria for evaluating the pressure strength of corroded areas. These criteria are found as well in the *ANSI B31.4 Code* for liquid pipelines and the *B31.8 Code* for gas pipelines.

Another significant comment frequently made about the proposed § 191.23(a)(1) was that 20 percent of SMYS was too low to indicate a severe condition on gas pipelines, such as an imminent rupture, whether due to corrosion or other defects. Several of these commenters advised increasing the threshold to 30 or 40 percent of SMYS. RSPA proposed the 20 percent limit for both paragraphs (a) (1) and (4) in recognition of the lesser threat of imminent danger posed by corrosion and other defects on low stress level gas pipelines. The comments were not persuasive that this proposed threshold for reporting stress related hazards should be increased. Thus, the final rule remains as proposed.

Under §§ 191.23(a)(2) and 195.55(a)(2), RSPA proposed that operators report any environmentally induced movement or abnormal loading that impairs a pipeline's structural integrity or the integrity or reliability of certain LNG facilities. Almost all the comments on this proposal objected to the phrase "impairs the structural integrity" as a measure of the severity of pipeline damage. Many commented that guidelines would be needed to detect such impairment and metallurgical analyses would have to be performed. Others felt the phrase would not

necessarily reflect a severe pipeline hazard, since a slight defect, such as a small dent, could potentially impair structural integrity yet not affect safe pipeline operations. These objections were not raised with respect to LNG facilities, however, because of the higher level of risk LNG poses. The most often offered substitute for "impairs structural integrity" was "impairs serviceability," in light of the frequent use of this latter term in RSPA's pipeline safety standards to refer to damage that could adversely affect safe operations. (See §§ 192.307, 192.309, 192.311, 192.325, 192.711, 192.713, 195.206, and 195.212). Because it is desirable to use the same terms throughout the regulations when the same meaning is intended, RSPA has amended the final rule to substitute the phrase "impairs the serviceability" for "impairs the structural integrity" wherever it was proposed to describe a degree of pipeline damage.

Comments generally had two themes with respect to the proposed reporting of material defects under §§ 191.23(a)(3) and 195.55(a)(3). The first was that for simplification all pipeline material problems should be set forth as a single item in the new reporting rules. (I.e., cracks and other defects mentioned in paragraph (a)(3) should be included with the physical damage problem (dents and gouges) covered by the proposed §§ 191.23(a)(4) and 195.55(a)(4)). This approach would limit § 191.23(a)(3) to LNG facilities without substantive change. The second was that, as discussed above, the term "impairs the structural integrity" is not an appropriate measure of pipeline hazards, and should be replaced by some other qualifier, such as "impairs the serviceability."

With respect to physical damage problems under the proposed §§ 191.23(a)(4) and 195.55(a)(4), most commenters remarked that the mere existence of physical damage without regard for the degree of damage would not necessarily indicate a hazardous condition. Many of these commenters noted that the Part 192 construction requirements (§ 192.309) and the steel pipe manufacturing specification, "API 5L," referenced in Part 192 both permit small sizes of dents and gouges that would be reportable under the proposal. To indicate the degree of physical damage that should be reported, commenters offered such terms as "creates an unsafe condition," "adversely affects serviceability," or "requires repair, replacement or reduction in operating pressure."

RSPA has no objection to placing all conditions involving pipeline material

problems in a single item as suggested; and this is done under the revised §§ 192.23(a)(4) and 195.55(a)(3). Moreover, RSPA agrees that the requirements should specify the degree of damage that is subject to reporting. Because, as has been discussed, the phrase "impairs serviceability" is a suitable qualifier to describe pipeline damage that poses a hazard, it is also used in the revised §§ 191.23(a)(4) and 195.55(a)(3) to modify material and physical damage. Operators will be able to determine whether an observed condition involving a material defect or physical damage meets the test of "impairs serviceability" by applying sound engineering criteria.

Almost all the commenters who addressed the proposed §§ 191.23(a)(5) and 195.55(a)(5) disliked describing an overpressure condition in terms of relief capacity. A majority urged RSPA to set a more easily measured upper pressure limit, such as 110 percent of maximum operating pressure. Others noted that small liquid pipelines may not have relief devices. Still others said that pressure in excess of relief capacity would not necessarily indicate a hazardous condition, since pipelines are pressure tested to much higher levels.

By this proposal RSPA did not intend to imply that pressure above relief capacity was by itself a hazardous condition, even though the wording created this impression. Rather such overpressure was viewed as an indication of a possible severe malfunction or operating error in the system. It is the cause of an overpressure condition that needs prompt corrective action. Therefore, the final rule is revised to make reportable any malfunction or operating error that results in pressure exceeding an amount equal to the maximum operating pressure (or working pressure for LNG facilities) permitted for the pipeline or LNG facility concerned plus the build-up allowed for operation of pressure limiting or control devices. In general, the allowable build-up is 10 percent, as provided by §§ 195.408(b) and 193.2429. However, greater build-ups are permitted for some gas pipelines under § 192.201.

There were many comments suggesting that the proposed §§ 191.23(a)(6) and 195.55(a)(6), concerning severe leaks that require prompt repair, be deleted. Commenters suggesting deletion noted that almost all such leaks would be excepted from reporting by the proposed §§ 191.23(c) and 195.55(c), because they either would constitute a reportable "incident" or "accident" or be permanently repaired

before the deadline for reporting. RSPA recognized this likelihood, but still thought it important to require reports for leaks that are large enough and close enough to people to threaten imminent harm if left to linger, yet do not meet the criteria for incident or accident reporting. Generally, these would be gas pipeline leaks that have not resulted in at least \$50,000 in property damage or any deaths or injuries; or liquid pipeline leaks smaller than 50 barrels (5 barrels a day for highly volatile liquids) without any ensuing deaths, injuries, property damage above \$5,000, fire, or explosion.

Most of the other comments on this proposal indicated that it would greatly impact large gas distribution companies. Commenters said their pipelines have numerous leaks that require prompt repair but cannot be precisely located and repaired in time to qualify under the limitation on reporting proposed in § 191.23(c)(4). One large gas company said it had over 5,000 such leaks a year. To lessen the reporting burden, many commenters suggested that condition reports be required only if leaks are not made safe in advance of permanent repair, as by venting or aerating, or if they require "immediate emergency action" rather than prompt action as proposed.

Upon further consideration, RSPA believes the proposed leak reporting requirement potentially could have an impact far broader than intended, because it would encompass leaks that while of a serious nature are not "glaring, hazardous conditions." To narrow the proposal but still keep within the statutory intent, the final rule is changed so that leaks are subject to reporting only when they constitute an emergency. Emergencies are characterized by the need for immediate operator corrective action to protect the public or property. Examples of leaks that may constitute an emergency are those that occur in residential or commercial areas in conjunction with a natural disaster, those where a flammable vapor is detected inside a building, and those that involve response by police or fire departments.

In §§ 191.23(b) and 195.55(b), RSPA proposed the following as a general reportable condition: "any safety-related condition . . . that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator) a reduction in operating pressure or shutdown of operation . . ." This proposal was put forth to clarify by regulation the statutory requirement that operators report "any safety-related condition that causes or has caused a significant

change or restriction in the operation of pipeline facilities." (Section 3, Pub. L. 99-516).

Most commenters felt the proposed language should be modified to remove any implication that reports would be required for temporary shutdowns or reductions in pressure in connection with routine maintenance or construction, including hot taps, live line welding, and tests of emergency shutdown capability. Likewise, these commenters felt that temporary shutdowns or pressure reductions done as a precaution to facilitate inspection for potential problems, to avoid problems related to external loading from blasting or subsidence, or to provide for safe line movement should not have to be reported. In this same vein, a few commenters argued that reports should not be required when operating pressure is reduced to conform with the pressure limitation of § 192.619(a)(6), which requires an evaluation of operating history in setting a safe maximum allowable operating pressure.

RSPA agrees that except for actions taken under § 192.619(a)(6), none of these conditions should be reported. The focus of the proposal was on shutdown or pressure reduction in reaction to a known unsafe condition. Shutdown or pressure reduction as a precaution to avoid an unsafe condition was of no concern for reporting purposes. RSPA believes that almost all temporary pressure reductions or shutdowns to facilitate routine maintenance or construction or to avoid potential problems would be scheduled or planned in advance by operators. Therefore, they clearly would not come within either the proposed or final reporting requirement. By comparison, § 192.619(a)(6) requires reduction in reaction to a known unsafe condition. Such reductions would be subject to reporting if they amount to 20 percent or more of operating pressure (as discussed hereafter) and are done in reaction to a safety-related condition that could lead to an imminent hazard.

A few commenters argued that the proposed § 191.23(b) should be changed to exempt service lines because they are beyond the limits of Pub. L. 99-516. They also argued that customer-owned service lines which are hazardous may be shutdown for unpredictable periods until customers effect repairs, and that causing the repair is outside the operator's control. In response, RSPA believes there is no sound legal basis from which to conclude that Congress intended to exclude service lines from the reach of Pub. L. 99-516.

Nevertheless, it would be senseless for distribution operators to report the shutdown of service lines whose repair is the responsibility of customers, since RSPA does not regulate customer activities. Therefore, the final rule is changed by adding a further limitation under § 191.23 that excepts from the reporting requirements safety-related conditions on customer-owned service lines. Operators are still responsible to assure that customer-owned service lines that are shutdown for repair meet all applicable safety standards upon their return to operation.

An additional concern raised about the proposed §§ 191.23(b) and 195.55(b) was whether reports would be required when lines are shutdown preceding abandonment. This concern is valid because government intervention to oversee corrective action is not needed for lines that operators will not return to service. Therefore, the proposal is modified in the final rule to except shutdowns done to effect abandonment.

One commenter noted a possible substantive discrepancy between the language of Pub. L. 99-516 and the proposed §§ 191.23(b) and 195.55(b). The statute requires reports for safety-related conditions that cause "a significant change or restriction in operation," while the proposal was to require reports of conditions that cause "a reduction in operating pressure." This commenter argued the proposal was more stringent than the statute because small pressure reductions are not "significant" changes or restrictions in operation. No specific amount of pressure reduction was said to be significant, but the commenter suggested that it should be an amount significantly below MAOP.

In the Notice, RSPA interpreted a "significant" change or restriction in the sense of how long it persists, without regard to the amount of change or restriction. In accordance with the proposed limitations on reporting under §§ 191.23(c)(4) and 195.55(c)(3), temporary pressure reductions in conjunction with prompt permanent repair of the safety-related condition that gave rise to the reduction were not considered a "significant" change or restriction in operation for which Pub. L. 99-516 requires reports. Upon further consideration, RSPA believes that it is also appropriate to interpret "significant" to mean there is an amount of pressure reduction below which a safety-related condition is not severe enough to be reportable. This is in keeping with a plain reading of the statute, and would foster uniform reporting of otherwise subjective

conditions. Therefore, in the final rule, RSPA has required that for a safety-related condition to be reportable due to pressure reduction, it must cause at least a 20 percent reduction in operating pressure. This amount corresponds to pressure reductions imposed on certain unsafe pipelines by hazardous facility orders issued under Part 190.

Because, as discussed above, all reportable conditions are identified as safety-related conditions in the final rule, there no longer is sufficient reason to segregate in two paragraphs the conditions proposed in §§ 191.23(b) and 195.55(b) (called "safety-related" in the Notice) and the conditions proposed in §§ 191.23(a) and 195.55(a) (called "hazardous" in the notice). Therefore, the final rule combines in paragraph (a) all safety-related conditions that are subject to reporting. The proposed §§ 191.23(b) and 195.55(b) are redesignated §§ 191.23(a)(8) and 195.55(a)(6).

Reporting Limitations

RSPA proposed three limitations on reporting based on the legislative history of Pub. L. 99-516. Only two of these proposals received significant comment.

Under §§ 191.23(c)(3) and 195.55(c)(1) (redesignated (b)(3) and (b)(1) in the final rule), RSPA proposed that reports not be required for pipeline conditions that occur "outside any railroad or public road right-of-way, or more than 220 yards from any building intended for human occupancy or outdoor place of assembly." In response to a specific inquiry in the Notice directing commenters' attention to this proposed limitation, only one commenter opposed the provision. This commenter said that reports should be submitted for pipelines on the Outer Continental Shelf due to the need to protect the environment. In this regard, many of RSPA's existing safety standards and reporting rules for liquid pipelines are aimed at preventing water pollution. (See, for example, §§ 195.52(a)(4) and 195.234(e)(1).) In view of these requirements and the need to prevent environmental damage, RSPA believes it is appropriate to amend the proposed limitation so that safety-related conditions that occur offshore or threaten to pollute inland waters would be subject to the new reporting requirements. This change is effected in § 195.55(b)(1).

Two commenters thought "public road" should be changed to "highway" to better indicate a location where special attention is needed to protect the public. RSPA agrees with the intent of this comment, but believes that the word

"highway" is too limiting to distinguish those roads where pipelines pose a greater risk to public safety. In the final rule, RSPA has adopted "paved road, street, or highway" to indicate a frequently traveled road where conditions could threaten imminent danger.

One commenter suggested that the proposed limitation be revised to clarify that reports are not required for conditions on inactive or abandoned railroad or public road rights-of-way. This point is clarified in the final rule by addition of the word "active" to describe "railroad, paved road, street, or highway."

Also in response to two comments and to improve clarity, editorial changes have been made in the final rule.

Under §§ 191.23(c)(4) and 195.55(c)(3) (redesignated (b)(4) and (b)(3) in the final rule), RSPA proposed that conditions other than corrosion not be reported if they are corrected by permanent repair or replacement before the filing deadline.

Most of the comments of this provision disputed the need to make "permanent" repairs to qualify under the reporting limitation. These commenters argued that prompt temporary repairs should be sufficient as long as the hazard is eliminated. They felt the status of the repair as temporary or permanent is unimportant, because it becomes a routine matter after the hazard is removed. Some pointed out that the distinction between a temporary and permanent repair is unclear, and that so-called permanent repairs may not be needed for safety. One commenter speculated that operators might rush the completion of permanent repairs just to avoid a report and thereby jeopardize safety.

The intent of this proposed reporting limitation was to exclude reports of certain conditions for which prompt corrective action is taken before the report is due. Reports are unnecessary in these cases because once the problem is corrected, there no longer is a need for government intervention to prevent the occurrence of an incident or accident. While repairs called "permanent" may be more desirable than repairs called "temporary" to achieve safety over the long run, the distinction between the two is not always discernable. More important, though, RSPA is persuaded by the comments that temporary repairs performed in accordance with applicable safety standards would meet the intent of the proposed limitation. Prompt temporary repairs adequately performed can be just as effective as permanent repairs in removing the

threat of imminent danger and thereby making government intervention unnecessary. Therefore, the final rule is amended by deleting "permanent" and requiring that repairs be in accord with applicable safety standards.

RSPA was not persuaded to broaden the limitation, as some suggested, to include the mitigating measures of pressure reduction and venting. Congress was particularly interested in reports of severe safety-related conditions that cause significant pressure reductions, as discussed above. Thus, such mitigating action could not be allowed as an exception to reporting. Venting leaks is done to mitigate a hazard. It does not remove the source of the problem, and thus there could be a continuing need for government involvement as Congress contemplated.

Many commenters contended that RSPA's rationale for excluding corrosion conditions from the proposed exception for prompt repair or replacement was faulty. They argued that in most cases corrosion is a localized condition, requiring only site-specific corrective action. They said it normally does not indicate a broader problem that might show up in later reports, as RSPA predicted in the Notice. RSPA agrees that for effectively coated and cathodically protected pipelines, the existence of localized corrosion pitting probably would not indicate a more extensive problem on the pipeline. Therefore, the final rule has been revised so that reports of localized corrosion pitting on effectively coated and cathodically protected pipelines are not required if the corroded pipe is promptly repaired and replaced.

Only two commenters objected to the proposed exception for conditions that are promptly repaired. They speculated that some conditions besides corrosion that are fixed promptly might indicate a more widespread pipeline problem involving for example, defective materials or equipment, improper construction methods, or inadequate O&M procedures. These commenters felt all conditions should be reported to give the government an opportunity to investigate both the adequacy of repairs and the need for further operator action. RSPA has not adopted this recommendation because the reporting requirements were not enacted primarily to enable government agencies to investigate the adequacy of repairs, but more importantly to see that hazardous conditions are corrected before an incident or accident results. Checking on the correctness of repair work is a function that Federal and State pipeline safety inspectors now handle through

routine inspection visits. Moreover, as many comments emphasized, the reporting burden on the industry would be vastly increased if the proposed exception were deleted in the final rule.

Filing Deadline

Most commenters who addressed §§ 191.25(a) and 195.56(a), objected to the proposed requirement that reports be filed within 5 working days after an operator's representative "discovers" a reportable condition. Basically, these commenters argued that the proposed filing deadline conflicts with the language of Pub. L. 99-516, which requires that reports be filed within 5 working days after a representative of the operator "first determines that such condition exists." The commenters asserted that this language allows operators a somewhat longer period to assess a potentially reportable condition and, if it fits the reporting criteria, to prepare and deliver the report.

In developing the Notice, RSPA assumed that members of field crews who are likely to discover potentially reportable conditions would have sufficient knowledge to determine whether those conditions are subject to reporting. Under this assumption, the time of "discovery" would be roughly equivalent to the time a representative "first determines" the existence and nature of the condition. Since the time of discovery would be easier to note than the time of first determination, RSPA proposed that it rather than time of first determination mark the beginning of the 5-day period.

Commenters pointed out, however, that field personnel could not be trained sufficiently to recognize on sight or by simple tests all the safety-related conditions that would be subject to reporting. They argued that in many cases engineering analyses would be required, as in assessing the effect of corrosion, and that these analyses would have to be done by more knowledgeable company personnel than those that normally make up field crews.

They reasoned further that the additional time needed for a determination by an appropriate person could make it impossible or at least very difficult to meet the proposed 5-days-after-discovery filing deadline. RSPA agrees that technical analysis may be needed to properly evaluate a potentially reportable condition to determine whether it is a condition that is subject to the reporting requirements. Given this consideration and the clear statutory language, modification of the proposed filing deadline is appropriate. However, the statute imposes no time limit on when determinations must be

made following discovery of a potentially reportable condition. Thus, requiring reports within 5 days of a determination would allow an unlimited amount of time to submit a report depending on how long it takes to determine that a reportable condition exists. To assure timely receipt of reports, while allowing a reasonable period for making determinations, RSPA has amended the final rule to require that reports be filed within 5 working days after a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition.

A few commenters asked that RSPA clarify the beginning of the 5-day period in connection with pig runs. Does the period begin when the operator learns from the results of a run that there is a potentially reportable condition on a pipeline? Given the current state-of-the-art, it is unlikely the results of a pig run would be definitive enough for a positive determination that a safety related-condition subject to reporting exists on a pipeline. To make such a determination, an operator would have to uncover the pipeline and visually inspect it or obtain confirmatory information by some other means. The 5-day period would begin to run for a given condition when the operator positively determines that the condition is subject to reporting.

Written Reports

RSPA received very few comments on §§ 191.25(b) and 195.56(b), which proposed information to be submitted about safety-related conditions.

Under the proposed paragraph (b)(4), operators were asked to provide the name and job title of the person who discovered the condition being reported. RSPA considered the identity of this person important for any follow-up investigation. Similar information is not required, however, in connection with incident or accident reports. As one commenter pointed out, the name of a company representative who can provide detailed information about the condition would be more useful. RSPA agrees and believes that such person would be the one who first determined that the condition exists. Therefore, RSPA has made this change in the final rule.

In paragraph (b)(6), RSPA proposed that operators give the location of the condition being reported, with reference to the nearest street address, station number, or landmark. Commenters suggested that the terms "milepost," "offshore platform," and "pipeline

name" be added to the list of possible reference points. These are included in the final rule.

Further, RSPA has amended paragraph (b)(5) of the Notice by adding "date condition was first determined to exist." This change is made to comport with the revised filing deadline discussed above.

Delivery of Reports

Public Law 99-516 requires that reports of safety-related conditions be in writing and received by the Secretary within 5 working days after any representative of the operator first determines that such condition exists. In addition, the statute requires that notice of the condition be supplied concurrently to appropriate State authorities.

In developing the Notice, RSPA contemplated that operators would utilize overnight mail services to meet these requirements. Consequently, the proposed §§ 191.7 and 195.56 provided a mailing address for receipt of the reports by the Department. As suggested by some commenters, the final rule sets forth a more complete address for use by express delivery services.

A substantial number of commenters expressed a desire to deliver written reports to DOT by telephone, using facsimile or computer transmission. They said that such reporting would allow more time to prepare reports within the 5-day period. Also, it would provide operators more direct control over filing reports than the use of delivery services.

In addition, some noted that the capability of reporting by telephone would lengthen the time available to complete repairs before the filing deadline, and perhaps reduce the number of reports that are filed.

RSPA does not dispute any of these presumed advantages. However, the change discussed above with regard to the reporting deadline effectively gives operators more time to prepare and submit reports than was indicated by the Notice. This change combined with others previously discussed that clarify the conditions to be reported reduce the urgency of establishing a means of filing written reports by telephone. In addition, RSPA is studying the need to provide for receipt of electrically transmitted incident and accident reports as part of an overall review of its data collection system. Therefore, RSPA has postponed a decision on providing an electronic means to receive reports of safety-related conditions until the results of this broader study become available later this year.

One commenter wanted operators to send the Minerals Management Service (MMS) of the Department of the Interior copies of reports that pertain to conditions on the Outer Continental Shelf (OCS). RSPA will make all OCS reports available to the MMS. However, to require operators to submit reports directly to MMS would exceed the agency's authority under Pub. L. 99-516.

Written Plans

Public Law 99-516 requires operators to adopt in accordance with DOT regulations, written plans "designed to enhance the ability to discover safety-related conditions" that are subject to the new reporting requirements.

In response to this directive, RSPA proposed amendments to §§ 192.605, 193.2605, and 195.402 to require that operators amend existing O&M plans to include "instructions enabling personnel who perform operation and maintenance activities to recognize the safety-related conditions that are subject to the reporting requirements."

One commenter questioned whether these instructions would have to be given to contractor personnel who engage in pipeline activities but are not employees of a pipeline operator. Because only pipeline operators and not their contractors are subject to the standards in Part 192, 193, and 195, the regulations do not require contractors to develop and carry out plans. Rather, it is the legal obligation of operators under Part 192, 193, and 195 to see that the O&M plans are fully executed. Operators cannot avoid this obligation by contracting with persons who are not their employees to conduct pipeline activities. Therefore, in carrying out the O&M plans, operators must see that appropriate contractor personnel are just as informed by the instructions as their own personnel.

Although there were only a few comments on the proposed plans, most of these focused on the impracticability or difficulty of instructing O&M personnel to recognize conditions that are subject to reporting. Commenters noted that further analysis of a potential condition by more informed personnel would, in most cases, be needed to determine whether that condition is subject to reporting. These commenters suggested that the instructions be limited to enabling personnel to recognize potential safety-related conditions that must be evaluated further. In light of the foregoing discussion regarding discovery of a potentially reportable condition and the subsequent determination of whether it is subject to reporting, RSPA has adopted the suggestion of these

commenters. Under the final rule, O&M personnel would have to be instructed to recognize safety-related conditions that are potentially subject to reporting.

Advisory Committee Review

At a meeting in Washington, DC on September 22, 1987, RSPA's gas pipeline safety advisory committee, the Technical Pipeline Safety Standards Committee, whose members represent industry, government, and the public, considered the notice of proposed rulemaking on reporting unsafe conditions. Likewise, a similarly composed committee, which provides advice on hazardous liquid pipeline safety matters, the Technical Hazardous Liquid Pipeline Safety Standards Committee, considered the Notice at a meeting in Washington, DC on September 24, 1987.

The gas committee voted to approve the proposed amendments to §§ 192.605 and 193.2605 regarding development of written O&M plans to facilitate discovery of safety-related conditions. The liquid committee did likewise with respect to the similar proposed amendment to § 195.402. The reasons RSPA adopted a final rule different from what was proposed and approved by the committees are discussed above under "Written Plans."

Although the gas committee took no formal action on the reporting aspects of the Notice, the committee's discussion brought out several significant recommendations for changes in the final rule. Also, the liquid committee voted to recommend that the final rule for reporting be changed from the Notice in several respects. RSPA took the advice of each committee into account in developing the final reporting rules.

A report of the meeting of each committee is available in the docket.

Impact Assessment

This final rule is considered to be nonmajor under E.O. 12291, but is a significant rule under DOT procedures (44 FR 11034) because it implements a safety statute passed in response to a serious gas pipeline incident. The economic impact of these final rules is not considered large enough to warrant production of a detailed economic evaluation.

In the Notice, RSPA estimated the proposed rules would add less than 2 percent to the existing paperwork burden imposed on pipeline operators. At the same time, commenters were asked to estimate the number of reports they would have to file under the proposed rules, and the time it would take to prepare the reports. The responses varied, ranging from none or a

few per year to several hundred or a thousand annually, and from a few hours to a few days per report. RSPA believes the estimates indicating large numbers of reports may be disregarded because they either failed to take into account the proposed limitations on reporting, or they were based on reporting what the gas distribution industry calls Class 1 (most serious) leaks. Under the final rule such leaks (which do not amount to an incident) would be subject to reporting only when they involve emergency situations. Even then such leaks would not be reportable if they are corrected by repair or replacement before the filing deadline, which would normally happen if the leak involves an emergency. Similarly, estimates of a few days to prepare reports may be considerably beyond the norm. RSPA believes this amount of time would be needed very infrequently, only when a detailed investigation is conducted to determine if a report is required.

After considering the responses on this issue, RSPA believes its original estimate of reporting burden (which assumed an average of one report per operator each year, taking an average of four hours to prepare and an average of 2 hours to respond to government inquiries) is as good an estimate as is available, particularly with the substantive changes and clarifications discussed above.

Because operators are currently required to prepare O&M plans, RSPA believes that the changes to regulations affecting the existing plans should have a minimal impact. While the comments on the Notice have caused RSPA to raise its original estimate of the burden of preparing plans from an average of 20 hours per operator to 40 hours per operator, the overall estimated increase in paperwork burden remains at about 2 percent of the existing burden.

Based on the facts available about the impact of this rulemaking action, I certify pursuant to Section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains new information collection requirements in the following sections:

Sections 191.7, 191.23, 191.25, 192.605, 193.2605, 195.55, 195.56, 195.58, and 195.402. These requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The OMB approval number is 2137-0578 (expires June 30, 1991).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612. RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 191

Pipeline safety, Gas, Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety, Gas, Operation, Maintenance.

49 CFR Part 193

LNG facility, Operation, Maintenance.

49 CFR Part 195

Pipeline safety, Hazardous liquids, Reporting and recordkeeping requirements, Operation, Maintenance.

In consideration of the foregoing RSPA amends 49 CFR Parts 191, 192, 193, and 195 as follows:

PART 191—(AMENDED)

1. The authority citation for Part 191 is revised to read as follows:

Authority: 49 App. U.S.C. 1601(b) and 1808(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. The title of Part 191 is revised to read as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

§ 191.1 (Amended)

3. In § 191.1(a) immediately after the word "incidents" the following is added: "safety-related conditions."

4. Section 191.7 is revised to read as follows:

§ 191.7 Addressee for written reports.

Each written report required by this part must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 8417, 400 Seventh Street SW., Washington, DC 20590. However, incident and annual reports for intrastate pipeline transportation subject to the jurisdiction of a State agency pursuant to a certification under

section 5(a) of the Natural Gas Pipeline Safety Act of 1968 may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt for incident reports and not later than March 15 for annual reports to the Information Resources Manager. Safety-related condition reports required by § 191.23 for intrastate pipeline transportation must be submitted concurrently to that State agency, and if that agency acts as an agent of the Secretary with respect to interstate transmission facilities, safety-related condition reports for these facilities must be submitted concurrently to that agency.

5. Section 191.23 is added to read as follows:

§ 191.23 Reporting safety-related conditions.

(a) Except as provided in paragraph (b) of this section, each operator shall report in accordance with § 191.25 the existence of any of the following safety-related conditions involving facilities in service:

(1) In the case of a pipeline (other than an LNG facility) that operates at a hoop stress of 20 percent or more of its specified minimum yield strength, general corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result.

(2) Unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline or the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.

(3) Any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG.

(4) Any material defect or physical damage that impairs the serviceability of a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength.

(5) Any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices.

(6) A leak in a pipeline or LNG facility that contains or processes gas or LNG that constitutes an emergency.

(7) Inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank.

(8) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent or more reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility that contains or processes gas or LNG.

(b) A report is not required for any safety-related condition that—

(1) Exists on a master meter system or a customer-owned service line;

(2) Is an incident or results in an incident before the deadline for filing the safety-related condition report;

(3) Exists on a pipeline (other than an LNG facility) that is more than 220 yards from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway; or

(4) Is corrected by repair or replacement in accordance with applicable safety standards before the deadline for filing the safety-related condition report, except that reports are required for conditions under paragraph (a)(1) of this section other than localized corrosion pitting on an effectively coated and cathodically protected pipeline.

6. Section 191.25 is added to read as follows:

§ 191.25 Filing safety-related condition reports.

(a) Each report of a safety-related condition under § 191.23(a) must be filed (received by the Secretary) in writing within 5 working days (not including Saturday, Sunday, or Federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related.

(b) The report must be headed "Safety-Related Condition Report" and provide the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Name, job title, and business telephone number of person who determined that the condition exists.

(5) Date condition was discovered and date condition was first determined to exist.

(6) Location of condition, with reference to nearest street address, offshore platform, survey station number, milepost, landmark, or name of pipeline, as appropriate.

(7) Description of the condition, including circumstances leading to its discovery and any significant effects of the condition on safety.

(8) The corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up future corrective action, including the anticipated schedule for starting and concluding such action.

7. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1604; 49 CFR 1.53.

8. Section 192.605 is amended by adding a new paragraph (f) and republishing the introductory text of the section to read as follows:

§ 191.605 *Essentials of operating and maintenance plan.*

Each operator shall include the following in its operating and maintenance plan:

(f) Instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of § 191.23 of this subchapter.

PART 193—[AMENDED]

9. The authority citation for Part 193 is revised to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; 49 CFR 1.53.

10. Section 193.2605 is amended by adding a new paragraph (c) to read as follows:

§ 191.2605 *Maintenance procedures.*

(c) Each operator shall include in the manual required by paragraph (b) of this section instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of § 191.23 of this subchapter.

PART 195—[AMENDED]

11. The authority citation for Part 195 is revised to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

12. The title of Subpart B of Part 195 is revised to read as follows:

Subpart B—Reporting Accidents and Safety-Related Conditions

13. The introductory text and title of § 195.50 are revised to read as follows:

§ 195.50 *Reporting accidents.*

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid transported resulting in any of the following:

14. Section 195.54 is revised to read as follows:

§ 195.54 *Accident reports.*

(a) Each operator that experiences an accident that is required to be reported under § 195.50 shall as soon as practicable, but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000-1, or a facsimile.

(b) Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall file a supplemental report within 30 days.

15. Section 195.55 is added to read as follows:

§ 195.55 *Reporting safety-related conditions.*

(a) Except as provided in paragraph (b) of this section, each operator shall report in accordance with § 195.50 the existence of any of the following safety-related conditions involving pipelines in service:

(1) General corrosion that has reduced the wall thickness to less than that required for the maximum operating pressure, and localized corrosion pitting to a degree where leakage might result.

(2) Unintended movement or abnormal loading of a pipeline by environmental causes, such as an earthquake, landslide, or flood, that impairs its serviceability.

(3) Any material defect or physical damage that impairs the serviceability of a pipeline.

(4) Any malfunction or operating error that causes the pressure of a pipeline to rise above 110 percent of its maximum operating pressure.

(5) A leak in a pipeline that constitutes an emergency.

(6) Any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20

percent or more reduction in operating pressure or shutdown of operation of a pipeline.

(b) A report is not required for any safety-related condition that—

(1) Exists on a pipeline that is more than 220 yards from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway, or that occur offshore or at onshore locations where a loss of hazardous liquid could reasonably be expected to pollute any stream, river, lake, reservoir, or other body of water;

(2) Is an accident that is required to be reported under § 195.50 or results in such an accident before the deadline for filling the safety-related condition report; or

(3) Is corrected by repair or replacement in accordance with applicable safety standards before the deadline for filling the safety-related condition report, except that reports are required for all conditions under paragraph (a)(1) of this section other than localized corrosion pitting on an effectively coated and cathodically protected pipeline.

16. Section 195.56 is added to read as follows:

§ 195.56 *Filling safety-related condition reports.*

(a) Each report of a safety-related condition under § 191.55(a) must be filed (received by the Secretary) in writing within 5 working days (not including Saturday, Sunday, or Federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related.

(b) The report must be headed "Safety-Related Condition Report" and provide the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Name, job title, and business telephone number of person who determined that the condition exists.

(5) Date condition was discovered and date condition was first determined to exist.

(6) Location of condition, with reference to nearest street address, offshore platform, survey station

number, milepost, landmark, or name of pipeline, as appropriate.

(7) Description of the condition, including circumstances leading to its discovery and any significant effects of the condition on safety.

(8) The corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up or future corrective action, including the anticipated schedule for starting and concluding such action.

17. Section 195.58 is revised to read as follows:

§ 195.58 *Addressee for written reports.*

Each written report required by this subpart must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 8417, 400 Seventh Street SW., Washington, DC 20590. However, accident reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to a certification under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Resources Manager. Safety-related condition reports required by § 195.55 for intrastate pipelines must be submitted concurrently to the State agency, and if that agency acts as an agent of the Secretary with respect to interstate pipelines, safety-related condition reports for these pipelines must be submitted concurrently to that agency.

18. Section 195.402 is amended by adding a new paragraph (f) to read as follows:

§ 195.402 *Procedural manual for operations, maintenance, and emergencies.*

(f) *Safety-related condition reports.* The manual required by paragraph (a) of this section must include instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of § 195.55.

Issued in Washington, DC, on June 27, 1988.

M. Cynthia Douglass,
Administrator, Research and Special
Programs Administration.
[FR Doc. 88-14758 Filed 6-30-88; 8:45 am]
BILLING CODE 4910-00-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Use of Steel Shot in Muzzleloading Shotguns; Migratory bird hunting

AGENCY: Migratory Bird Management Office, Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of study results.

SUMMARY: The Fish and Wildlife Service (Service), Department of Interior, is providing in this notice the summary of a study report titled "Suitability, compatibility, limitations and safety of steel shot in 12 gauge black powder muzzleloading shotguns." Also, the Service has decided to remain with the September 1, 1988, effective date for all waterfowl and coot hunters, including those using loose shot, to comply with nontoxic shot requirements in nontoxic shot zones.

FOR FURTHER INFORMATION CONTACT: Keith A. Morehouse or Rollin D. Sparrowe at (202) 254-3207.

SUPPLEMENTARY INFORMATION: Concern was expressed in 1986 that muzzleloading hunters should also be included in the developing nationwide ban on lead shot to take waterfowl and coots. As a result, in 1987 in the proposed rule on "Zones in which lead shot will be prohibited for the taking of waterfowl, coots and certain other species in the 1988-89 season (52 FR 1636), the Service proposed inclusion of loose shot in the 50 CFR 20.21(j) restrictions on methods of taking. On the basis of response from the muzzleloading industry and community, the Service concluded that: (a) No unusually great health and safety problems exist for muzzleloading hunters using steel shot in modern construction muzzleloading shotguns; (b) shooting steel shot will not harm the modern muzzleloading shotgun that steel shot is used in (provided the appropriate loading components are used); and (c) steel shot is an effective tool for harvesting waterfowl when used in a muzzleloading shotgun at ranges commonly accepted by muzzleloading hunters as being effective for lead shot. The Service then published, as a final rule (52 FR 27352), the changes in § 20.21(j) that require all hunters of wild waterfowl and coots to use nontoxic shot in nontoxic shot zones. The inclusion of muzzleloading hunters becomes effective on September 1, 1988. This action is taken pursuant to the authority vested in the Secretary of the

Interior by the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755).

Since the final rulemaking, the Service has funded a study on the use of steel shot in muzzleloaders. This two-part study, load data development and destruction testing, demonstrated that hunting waterfowl with steel shot in muzzleloaders can be safe and effective. The abstract of the study report is as follows:

The suitability, compatibility, limitations, and safety of steel shot when loaded in 12 gauge, black powder muzzleloading shotguns were assessed in field testing in North Dakota and Arkansas and in laboratory testing in Oregon and Maryland during 1987-88. Three successful 12-gauge 1 1/4 ounce (492 grains) and four successful 1 ounce (437 grains) steel shot loads were developed using GOEX FFg black powder and Non-Toxic Components steel shot wads. Destruction testing of four 12-gauge muzzleloading shotguns, using the highest pressure load of the successful loadings as a baseline load together with overcharge variations thereof, produced no significant damage to any of the guns tested. All seven of the black powder steel shot loads developed were found to be within the safe operating limits of each of the guns tested. Surmountable problems were encountered in effecting unhampered release of steel shot pellets from the one-piece plastic steel shot wads tested. Insurmountable problems were encountered in seating one-piece plastic steel shot wads on black powder charges in muzzleloading shotguns containing choke configurations of conical or parallel design and constrictions of any significant degree. Successful patterns were obtained from steel shot in unchoked (cylinder bored) muzzleloaders, but only with a very limited range of pellet sizes per firearm.

Results indicate that steel shot can be successfully loaded in unchoked muzzleloading shotguns of modern design, but safety can be absolutely assured only in the four specific models subjected to destruction testing. However, steel shot could not be successfully loaded in muzzleloading shotguns containing choke constrictions, except jug-choked muzzleloaders. If coarse-thread, screw-on choke devices can be developed and marketed for muzzleloaders, then there is a high likelihood that all problems with wad seating in choked, single-barreled muzzleloaders can be resolved. If sufficiently strong, coarse-thread, screw-in choke devices can be developed and marketed for muzzleloaders, then there

is a high likelihood that all problems with wad seating in choked, double-barreled muzzleloaders can be resolved. Additional research is necessary if it is desired that black powder steel shot loading data and the inventory of tested and proven-safe muzzleloading shotgun makes and models be expanded. Additional research is also necessary if it is desired that Pyrodex powder be included in steel shot muzzleloading data development efforts.

Recently, a survey was conducted by the Service regarding the regulatory and/or statutory actions that have been taken at the State level with regard to including muzzleloading hunters in the

requirement to use nontoxic shot for waterfowling in nontoxic shot zones. Of the 46 States affected by zoning, approximately 34 currently require muzzleloaders to shoot steel shot in nontoxic shot zones. The other 12 States are awaiting further Service actions and/or will simply adopt the Federal regulations. The results of the load development and destructive testing study indicate that some, but probably few, hunters will be inconvenienced by this decision. However, it has been demonstrated that shooting steel shot with some muzzleloaders can be both safe and effective.

In consideration of the positive results of the study and regulatory/statutory processes of both the States and the Federal government, the Service has decided not to delay the implementation of this rule.

For a copy of the full report referenced above, please send a request to the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240.

Dated: June 27, 1988.

Frank Dunkle,

Director.

[FR Doc. 88-14635 Filed 6-30-88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

Proposed Expenses and Assessment Rate for Marketing Order Covering Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 927 for the 1988-89 fiscal year established for that order. The proposal is needed for the Winter Pear Control Committee to incur operating expenses during the 1988-89 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by July 15, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20900-6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and California. The order is effective under the

Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 96 handlers of winter pears under this marketing order, and approximately 1,800 winter pear producers in Washington, Oregon, and California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

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The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Winter Pear Budget Committee, which is a subcommittee of the Winter Pear Control Committee, recommended proposed 1988-89 fiscal year expenditures of \$3,593,110 and an assessment rate of \$.30 per standard box, or equivalent, of pears shipped under M.O. 927. In comparison, 1987-88 fiscal year budgeted expenditures were \$3,816,563 and the assessment rate was \$.30 per standard box or equivalent. There was also a supplemental assessment at the rate of \$.16 per standard box, or equivalent, of comice pears for promotion.

Major expenditure items this year in comparison to 1987-88 budgeted expenditures (in parentheses) are \$2,850,997 (\$3,049,494) for paid advertising, \$372,118 (\$324,413) for contingencies to cover unanticipated expenses, and \$145,000 (\$141,235) for research designed to improve winter pear yields and quality. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts.

Assessment income for the 1988-89 fiscal year is expected to total \$3,167,775, based on the shipment of 10,559,250 packed boxes of pears. Other available funds, such as \$20,000 in prior year assessments, \$15,000 in miscellaneous income, \$75,000 in voluntary intrastate assessments, and a reserve of \$315,335 carried into this fiscal year, will be utilized to cover the proposed 1988-89 fiscal year expenditures of \$3,593,110.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these

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costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Winter Pear Control Committee plans to meet July 12, 1988, to finalize the proposed expenses and assessment rate for the 1988-89 fiscal year.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the pear program need to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Winter Pears, Oregon, Washington, and California.

For the reasons set forth in the preamble, it is proposed that § 927.228 be added as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: Secs. 1-19, 46 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New § 927.228, is added to read as follows:

§ 927.228 Expenses and assessment rate. Expenses of \$3,593,110 by the Winter Pear Control Committee are authorized, and an assessment rate of \$30 per standard box, or equivalent, of pears is established, for the fiscal year ending June 30, 1989. Unexpended funds from the 1988-89 fiscal year may be carried over as a reserve.

Dated: June 20, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-14895 Filed 6-30-88; 8:45 am]

BILLING CODE 3410-02-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 180

Arbitration or Other Dispute Settlement Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend its rules governing arbitration or other dispute settlement procedures. The proposed amendment would require that when a customer who has signed a pre-dispute agreement notifies a registrant, or when a registrant notifies such a customer, of its intent to submit a claim to arbitration, the registrant must provide the customer with a list of three or more organizations qualified to conduct arbitration proceedings under the Commission's rules. One of the listed organizations would have to be a registered futures association. The National Futures Association ("NFA") is currently the only registered futures association. The Commission's rules currently require that only two organizations qualified to conduct arbitration proceedings be listed, and a registered futures association is not specifically required to be included on the list. The Commission anticipates that this proposed rule amendment, if adopted, would encourage greater use of the NFA as an arbitration forum.

DATE: Comments must be submitted on or before August 30, 1988.

ADDRESS: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. References should be made to Part 180—Arbitration.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, at the above address. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Proposed Amendment to Commission Rule 180.3(b)(4)

The Commodity Exchange Act ("Act") requires each contract market and registered futures association to provide a fair and settlement of customers' claims and grievances against any member or employee thereof. Sections 5a(11) and 17(b) (10) of the Act, 7 U.S.C. 7a(11) and 21(b)(10) (1982). The Commission has adopted regulations relating to such proceedings and to voluntary predispute agreements. 17 CFR Part 180 (1987).

The Commission amended its Part 180 rules relating to arbitration or other dispute settlement procedures in 1983. 48 FR 22133 (May 17, 1983). At that time, the substance of the current Rule 180.3(b)(4) was adopted, which provides that a pre-dispute agreement must advise the customer that he or she may select an arbitration forum when a

dispute arises.¹ Therefore, a customer is not bound to arbitrate in an unfavorable or distant forum without his or her consent. A registrant is required to supply the customer with a list of at least two arbitration forums, and the rules of procedure of those forums, within ten business days after the receipt of notice from the customer that he or she intends to submit a dispute to arbitration. If the registrant seeks to initiate arbitration proceedings, notice to that effect must be accompanied by the list of at least two arbitration forums and their applicable rules. The list of forums must include: (1) The contract market, if available, upon which the transaction giving rise to the dispute was executed or could have been executed, or a registered futures association designated by such contract market;² and (2) at least one other organization which will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions, and which provide "mixed panels" of arbitrators.³

Although the NFA potentially could be included in the arbitration forums list under either the first or second category of current Rule 180.3(b)(4), and many registrants do include the NFA under the second category, there is no requirement that NFA be listed. This may have been appropriate in 1983 when NFA's arbitration program was in its nascent stage. However, NFA's arbitration program is now fully developed, as evidenced by the fact that NFA currently has a roster of more than 1,450 qualified persons in 49 states who volunteer to serve as arbitrators.⁴

Although the Commission notes that the NFA received a record 288 demands for arbitration and issued 116 arbitration decisions during the 12 months ending September 30, 1987,⁵ substantial

¹ The Commission subsequently amended the Part 180 rules to cover certain new categories of registrants. 48 FR 41152 (September 14, 1983). All categories of registrants are now covered by the Part 180 rules except for leverage transaction merchants and their associated persons.

² To date no contract market has so designated the NFA, the only registered futures association.

³ 48 FR 22133, at 22140. Customers who do not enter into a pre-dispute agreement are not required to be afforded the choice of at least two organizations, as provided for in Rule 180.3(b)(4). The Commission considered whether to allow customers who had not entered into a pre-dispute agreement the same protection, but determined that further rulemaking in this area was not necessary. *Id.* at 22141.

⁴ National Futures Association 1987 Annual Review, at 11.

⁵ *Id.*

numbers of futures customer arbitration disputes are being conducted by the alternative arbitration forums, which include the American Arbitration Association ("AAA"), the New York Stock Exchange ("NYSE"), and the National Association of Securities Dealers ("NASD"). The NFA conducted an arbitration survey last year at the request of the Commission's Division of Trading and Markets and attempted to obtain information on the number of futures disputes arbitrated at forums other than the NFA or a contract market. The NFA contacted the AAA, NYSE and NASD for information, but it was only able to obtain specific data from the AAA, with the other two organizations providing estimates. The specific data supplied by AAA showed that 92 futures disputes had been filed with AAA in 1984, 81 had been filed in 1985 and 58 had been filed in 1986. The last year for which the Commission has specific statistics regarding NYSE arbitrations of futures disputes is 1984, when the NYSE conducted 259 arbitrations of futures disputes. Even if the NYSE arbitrations of futures disputes have declined at a rate similar to the decrease in futures filings with the AAA, the number of arbitrations under the auspices of the NYSE of futures customer disputes would be about the same as those conducted by the NFA.

Such a situation, where large numbers of futures-related arbitration cases are heard in forums other than a futures industry self-regulatory organization ("SRO"), raises concerns for the Commission in the context of its oversight responsibilities under sections 5a(11) and 17a(8)(10) of the Act, and Part 180 of the rules and Rule 170.8 promulgated thereunder. Particularly, Commission Rule 180.3(b)(7) requires that if a pre-dispute agreement specifies a forum for arbitration other than a contract market or registered futures association, the procedures of such forum must be "fair and equitable" as prescribed in Commission Rule 180.2. The Commission monitors compliance with the Part 180 rules through its regular oversight program. The Commission is also concerned that arbitrators in non-futures forums may not be familiar with the intricacies of futures trading.

The Commission believes that futures customers should be made aware that the NFA is an arbitration forum for disputes, and that such awareness may lead to greater use of the NFA forum as compared to non-futures forums. The arbitration survey conducted by the NFA shows that although a majority (53.3 percent) of all futures commission

merchants ("FCMs") responding to the survey list the NFA as a qualified arbitration forum, barely one-third (35.7 percent) of those firms dually registered as FCMs and securities broker-dealers list the NFA as a qualified arbitration forum. Even among those FCMs which are not also securities broker-dealers, only about two-thirds (68.7 percent) of those firms list NFA as a qualified arbitration forum. The Commission believes that those percentages should be raised to 100 percent in all cases, and that this in turn will lead to greater use of the NFA as an arbitration forum and simplify the Commission's arbitration oversight function.

II. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously has determined that FCMs and registered commodity pool operators should not be considered small entities for purposes of the RFA.⁶ With respect to commodity trading advisors, floor brokers, and introducing brokers, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some should be considered to be small entities, and if so, that it would analyze the economic impact on them of any rule.⁷ Because the rule proposed herein would amend the Commission's arbitration rules that currently are applicable to the above-mentioned registrants and would not result in any additional burdens, the Commission believes that the proposals, if adopted, would not have a significant economic impact on the above-noted entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commission certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comments on the impact, if any, the proposed rule amendment may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information.

⁶ 47 FR 18618-18620 (April 30, 1982).

⁷ 47 FR 18618, 18620 (April 30, 1982) (commodity trading advisors and floor brokers); 48 FR 35248, 35276 (August 3, 1983) (introducing brokers).

as defined by the PRA. In compliance with the PRA, the Commission has submitted Rule 180.3 as part of information collection number 3038-0022. The Commission has determined that this proposed rule amendment will not change materially the information collection burden associated with number 3038-0022.

Copies of the OMB approved information collection package concerning OMB control number 3038-0022 may be obtained from Bob Neal, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340.

List of Subjects in 17 CFR Part 180

Arbitration, Claims.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4d, 4f, 4k, 5a, 8a, and 17 thereof (7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21), hereby proposes to amend Part 180 of Chapter I of Title 17 of the Code of Federal Regulations as follows.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

1. The authority citation for Part 180 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 6c, 6d, 6f, 6k, 7a, 12a, and 21, unless otherwise noted.

2. Section 180.3 is proposed to be amended by revising paragraph (b)(4) to read as follows:

§ 180.3 Voluntary procedure and compulsory payments.

(b) * * *

(4) The agreement must advise the customer that, at such time as he or she may notify the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding. Within ten business days after receipt of such notice from the customer, or at the time the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person so notifies the customer, the futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or associated person must provide the

customer with a list of three or more organizations whose procedures qualify them to conduct arbitrations in accordance with the requirements of § 180.2 of this part, together with a copy of the rules of each forum listed. The list must include: (i) The contract market, if available, upon which the transaction giving rise to the dispute was executed or could have been executed or a registered futures association designated by such contract market; (ii) A registered futures association; and (iii) At least one other organization which will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and which will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of a contract market or employee thereof, and which are not otherwise associated with a contract market (mixed panel). The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

Issued in Washington, DC on June 29, 1988 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-14887 Filed 6-30-88; 8:45 am]

BILLING CODE 535-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-020]

Air Contaminants; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed Rule; Changes in Dates for Submission of Documents and Hearing; Corrections.

SUMMARY: OSHA proposed on June 7, 1988 at 53 FR 20960 to amend its Air Contaminants standards, 29 CFR 1910.1000, Tables Z-1, Z-2 and Z-3 and to add a Table Z-4. A number of organizations have requested extensions of the time to comment. Accordingly OSHA is extending the dates for submissions and comments and

changing the hearing dates as set forth below. It should be noted that the new dates for submissions are dates for receipt by OSHA, not post mark dates.

In addition several corrections are made. Some numbers in the Executive Summary of Appendix B are corrected. The correct numbers did appear in the body of Appendix B and in section V of the preamble. A correction is also made to the nuisance dust entry to indicate that the proposed change is to the Total Dust entry. For several Silica and Vanadium entries the term "respirable" was mistakenly omitted and is corrected. Mistakenly omitted explanatory text is inserted for the Vegetable Oil Mist and Wood Dust entries.

DATES: Written comments on the proposed standard must be received by OSHA no later than July 25, 1988. Notices of intention to appear at the informal rulemaking hearings on the proposed standard must be received by OSHA no later than July 11, 1988. Individuals who wish to comment or appear during the public hearings must see section VIII of the June 7, 1988 Notice, 53 FR 21262, for specific requirements.

Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence so it is received by OSHA no later than July 25, 1988. The informal rulemaking hearing is scheduled to begin on July 28, 1988 and continue through August 12, 1988 or such earlier date when all testimony is completed. It is intended that August 19, 1988 be the deadline for post hearing evidence and September 2, 1988 be the deadline for post hearing briefs.

ADDRESSES: Written comments should be submitted to the Docket Officer, Docket No. H-020, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-7894.

Notices of intention to appear, testimony and documentary evidence to be submitted at the hearing are to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-020, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8615.

The hearing will be held in Washington, DC, in the Auditorium, Frances Perkins Department of Labor Building, Third and Constitution Avenue NW. The informal public hearing will begin at 9:30 A.M.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3649, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

Corrections

Federal Register Document 88-12213, 50 FR 20960-21392 of June 7, 1988 is corrected as follows:

1. On page 21276, Table Z-3, listing for "INERT OR NUISANCE DUST," the asterisk is removed from the entry "Respirable fraction" and added to the entry "Total dust".

2. On page 21295, Table Z-4, the words, "Respirable Dust" are added following the entry "1354 Silica, Crystalline, Cristobalite", "1356 Silica, Crystalline Tridymite" and "1358 Silica, Fused".

3. On page 21295, Table Z-4, the word "Dust" is added following the entry "1355 Silica, Crystalline Quartz, Respirable".

4. On page 21295, Table Z-4, entry 1357 is corrected to read "Silica, Crystalline Tripoli (As Contained Respirable Quartz)".

5. On page 21298, Table Z-4, entry 1421 is corrected to read "Vanadium (V₂O₅, Respirable Dust)" and entry 1422 is corrected to read "Vanadium (V₂O₅, Respirable Fume)".

6. On page 21298, Table Z-4, entry "1423 Vegetable Oil Mist", a Footnote "****" is added to read "Except castor oil, cashew nut or similar irritant oils."

7. On page 21298, Table Z-4, entry 1430a is corrected to read "WOOD DUST (Certain Hard Woods Such as Beech and Oak)".

8. On page 21313, column 3, the last 14 lines are corrected to read: "health effects. OSHA estimates that promulgation of the proposed exposure limits will result in a potential reduction of over 55,000 work-related illness cases per year, over 23,600 lost-workday illness cases per year, and over 533,000 lost workdays due to illness per year. OSHA's preliminary estimate is that industry compliance with the proposed exposure limits will result in a reduction of 519 fatalities caused by exposure to substances that cause cancer, respiratory disease, cardiovascular disease, or liver or kidney disease per year."

Signed at Washington, DC, this 28th day of June 1988.

John A. Pendergrass,
Assistant Secretary of Labor.

[FR Doc. 88-14889 Filed 6-30-88; 8:45 am]

BILLING CODE 4510-25-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment submitted by the Commonwealth of Kentucky as a modification to its permanent regulatory program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment restructures the preliminary hearing process in accordance with the supplemental memorandum of understanding pertaining to the settlement agreement in *National Wildlife Federation et al. v. Miller et al.*, Civil Action No. 86-99 (E.D. KY) [hereinafter referred to as *NWF v. Miller*].

This notice sets forth the times and locations that the amendment is available for public inspection, the comment period during which interested persons may submit written comments, and information pertinent to the public hearing.

DATES: Written comments must be received on or before 4:00 p.m. on August 1, 1988, to ensure consideration during the decision process. If requested, a public hearing will be held on July 26, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on July 18, 1988.

ADDRESSES: Written comments and requests to testify at the public hearing should be mailed or hand-delivered to Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement at the address listed below.

Copies of the amendment, the Kentucky program, the administrative record on Kentucky program and all written comments received in response to this notice will be available for public review at the addresses listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the amendment by contacting OSMRE's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Lexington Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5215, 1100 "L" Street NW., Washington, DC 20240, Telephone: (202) 343-5492.

Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of Amendment
III. Procedures for Public Comment

I. Background on the Kentucky Program

The Kentucky program was conditionally approved by the Secretary of the Interior effective upon publication of the approval notice in the May 18, 1982 *Federal Register* (47 FR 21404-21435). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 *Federal Register*. Other actions concerning program approval, subsequent amendments and required program amendments are identified at 30 CFR 917.13, 30 CFR 917.15, and 30 CFR 917.16.

II. Submission of Amendment

In the supplemental memorandum of understanding pertaining to settlement of *NWF v. Miller*, the Commonwealth of Kentucky agreed to propose a program amendment to specify that, except for notices or orders ceasing mining, a preliminary hearing on any notice or order of the Cabinet need be scheduled only if requested in writing by the permittee or operator. By letter dated April 27, 1988 (Administrative Record No. KY-799), Kentucky submitted this amendment, which also contains numerous editorial revisions and clarifications of other provisions of the Kentucky Administrative Regulations (KAR) at 405 KAR 7:090.

III. Procedures for Public Comment

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is also seeking comment on whether the amendments proposed by Kentucky fully satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become a permanent part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the changes proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on July 18, 1988. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to testify and all persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Lexington Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES." A written summary of

each public meeting will be entered into the administrative record.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Richard J. Seibel,
Acting Assistant Director, Eastern Field Operations.

Date: June 23, 1988.

[FR Doc. 88-14834 Filed 6-30-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 88-07]

Drawbridge Operation Regulations; Youngs Bay and Lewis and Clark River, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Oregon Department of Transportation (ORDOT), the Coast Guard is considering a change to the regulations for the New Youngs Bay bridge across Youngs Bay, mile 0.7, the Old Youngs Bay bridge across Youngs Bay, mile 2.4, and the Lewis and Clark River bridge across the Lewis and Clark River, mile 1.0, at Astoria, Oregon. This change would require that at least one half hour's advance notice be given for opening the Old Youngs Bay and the Lewis and Clark River bridges at all times. Between the hours of 9:00 p.m. and 5:00 a.m. one half hour's notice would be required for opening the New Youngs Bay bridge. Under this proposed rule the New Youngs Bay bridge would have a person continuously on duty except for those times when the operator must be absent to open one of the other bridges in the vicinity. The Lewis and Clark River bridge would have an operator in attendance from 5:00 a.m. to 9:00 p.m. and the Old Youngs Bay bridge would not have an operator in attendance. Between the hours of 5:00 a.m. and 9:00 p.m. requests for opening the Old Youngs Bay bridge would be made to the operator of the Lewis and Clark bridge. Between 9:00 p.m. and 5:00 a.m. the bridge would be operated by the drawtender of the New Youngs Bay bridge. The same operator would also open the Lewis and Clark River bridge between 9:00 p.m. and 5:00 a.m. During these same night hours one half hour's notice would be required for opening the New Youngs Bay bridge. This action

should relieve the bridge owner of the burden of having persons constantly available at the bridge to open the draw and should still provide for the reasonable needs of navigation.

The regulations for the Burlington Northern railroad bridge across Youngs Bay at mile 0.8 would be revoked since the bridge has been removed.

DATE: Comments must be received on or before August 15, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: Austin Pratt, project officer, and Lieutenant Commander Lawrence I. Kiern, project attorney.

Discussion of the Proposed Regulations

The Oregon Department of Transportation has asked the Coast Guard to approve a change to the operating regulations which would require that vessels request openings at least one half hour in advance of the time they wish to transit the Youngs Bay and Lewis and Clark River bridges. Requests for openings would be made to the drawtender at the New Youngs Bay and the Lewis and Clark bridges by marine radio, telephone, or other suitable means. This is the same procedure that is presently being used

between the hours of 9:00 p.m. and 5:00 a.m. for openings of the Old Youngs Bay bridge. The drawtenders on duty would be provided with a portable radio and a vehicle to facilitate prompt response to opening requests. Records maintained by the bridge owner show that there has been a significant and consistent decrease in the number of Old Youngs Bay bridge opened a total of 431 times. This is not a large number when considered on a daily basis. Requests for opening of the Old Youngs Bay and Lewis and Clark bridges are infrequent during the night. If approved, this change would allow the two bridges to be maintained without operators continuously present at all times.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 28, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine related businesses will not be affected by this proposed rule because the subject bridges have been required to open infrequently. The reasonable needs of these interests would still be met by the proposed operating regulations. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 409; 48 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.899 is amended by revising paragraphs (a), (c), and (d); removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c) respectively, to read as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7 across Youngs Bay at Smith Point, shall open on signal for the passage of vessels from 5 a.m. to 9 p.m. At all other times, the draw shall open on signal if at least one half hour's notice is given to the drawtender at the New Youngs Bay bridge by marine radio, telephone, or other suitable means. The opening signal is two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4 across Youngs Bay at the foot of Fifth Street, shall open on signal if at least one half hour's notice is given. Requests shall be made to the drawtender at the Lewis and Clark River bridge by marine radio, telephone, or other suitable means between the hours of 5 a.m. and 9 p.m. At all other times the request for opening shall be made to the operator of the New Youngs Bay bridge. The opening signal is two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State highway bridge, mile 1.0 across the Lewis and Clark River, shall open on signal if at least one half hour's notice is given from 5 a.m. to 9 p.m. At all other times requests for opening shall be given to the operator of the New Youngs Bay bridge by marine radio, telephone, or other suitable means at least one half hour in advance. The opening signal is one prolonged blast followed by four short blasts.

Dated: July 15, 1988.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 88-14801 Filed 6-30-88; 8:45 am]

BILLING CODE 4810-14-M

33 CFR Part 166

[CGD 88-034]

RIN 2115-AC81

Port Access Routes, Approach to Mobile, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to adjust a portion of the western boundary of the Mobile Ship Channel Safety Fairway in the approach to Mobile, Alabama. The adjustment was requested to free a portion of a Federal leaseblock from fairway structure restrictions. A port access route study, conducted by the Coast Guard, concluded that the adjustment is

necessary and can be made without adversely affecting the purpose for which the fairway was established.

DATE: Comments must be received on or before August 1, 1988.

ADDRESSES: Comments should be submitted to Commandant (C-LRA-2/21) (CGD 88-034), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Comments may be delivered to, and will be available for inspection and copying in, Room 2110, between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, Short Range Aids to Navigation Division, Office of Navigation Safety and Waterway Services, telephone (202) 267-0415 between 7:30 a.m. and 3:00 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice as CGD 88-034, and give the reasons for the comment. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received, and if it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are: Lieutenant Commander Frederick V. Newman, Jr., Project Officer, Marine Environmental Response and Port Safety Branch, Eighth Coast Guard District; Margie G. Hegy, Project Manager, Office of Navigation Safety and Waterway Services, Coast Guard Headquarters; and Christena G. Green, Project Counsel, Office of Chief Counsel, Coast Guard Headquarters.

Background

The Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223 authorizes the Secretary of the Department in which the Coast Guard is operating to

establish traffic separation schemes and shipping safety fairways, where necessary, to provide safe access routes for vessels proceeding to or from United States ports.

The PWSA also authorizes the Secretary to adjust the location or limits of designated shipping safety fairways in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise. The adjustment, however, cannot adversely affect the purpose for which the existing designation was made and the need for which continues.

A shipping safety fairway is an area in which no fixed structures, temporary or permanent, are permitted. Shipping safety fairways are routing measures which provide safe port access routes for vessels where the primary risk to vessels is collision with offshore structures. Vessel use of shipping safety fairways is voluntary and the direction of traffic flow within a shipping safety fairway may be recommended. Shipping safety fairways may inhibit exploration for and exploitation of mineral resources in the designated area.

Before establishing or adjusting a shipping safety fairway, the PWSA requires the Coast Guard to conduct a port access route study taking into account all other uses of the area under consideration and ensuring that the interests of all affected parties are considered. These uses include, as appropriate, the exploration for, or exploitation of, oil, gas or other mineral resources; the construction or operation of deepwater ports or other structures; the establishment or operation of marine or estuarine sanctuaries; and activities involving recreational or commercial fishing. Publication of a notice of study advises all bidders in future lease sales that occupancy rights within the study area may be restricted by a routing measure developed as a result of the study. In the interest of promoting a multiple use approach to offshore waters, the Coast Guard, as far as practicable, will try to minimize impacts on other uses of the area. Once a shipping safety fairway is designated under the authority of the PWSA, however, the paramount right of navigation is recognized within the designated area.

Regulatory History

The U.S. Army Corps of Engineers (COE) originally developed the system of shipping safety fairways in the Gulf of Mexico as areas in which no permits for structures would be issued. These shipping safety fairways were established to control the erection of

structures and to provide safe approaches through oil fields in the Gulf of Mexico to entrances to the major ports along the Gulf Coast. Once established, the shipping safety fairways were subject to modification after consideration of the views of interested parties, and advance publication of any adverse determination.

The Mobile Safety Fairway was established by the COE in 1966 (31 FR 955, January 26, 1966). In 1968 it was renamed the Mobile Ship Channel Safety Fairway (33 FR 15797, October 25, 1968).

The 1978 Amendments to the PWSA required the Coast Guard to undertake a port access route study to determine the need for traffic separation schemes and shipping safety fairways to increase vessel traffic safety in offshore areas subject to the jurisdiction of the United States. The Coast Guard initiated this study by publishing a Notice of Proposed Study on April 16, 1979 (44 FR 22543). For purposes of this port access route study, the U.S. coastline was divided into 32 geographically defined areas. The Eighth Coast Guard District, New Orleans, LA, conducted the study for area 21 which included Mobile, AL. Through public participation and government agency consultation, the study evaluated potential traffic density patterns, waterways use conflicts, and the need for safe access routes in offshore areas.

The Study Results for area 21 were published on October 8, 1981, (46 FR 49969). The Coast Guard concluded that the fairway network in the Gulf of Mexico was effective, and recommended only minor changes to the existing shipping safety fairways. There

were no recommendations to modify the Mobile Ship Channel Safety Fairway. However, to make the other recommended changes under the authority of the PWSA, it was necessary for the Coast Guard to first adopt the existing COE shipping safety fairway designations. On May 13, 1982, (47 FR 20580) the Coast Guard adopted, without change, the shipping safety fairways designated by the COE and published them in 33 CFR Part 166.

On June 30, 1983, (48 FR 30100) the Coast Guard revised the rules in 33 CFR Part 166 and published the definition of "shipping safety fairway" as a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted.

On August 5, 1985, Texaco Producing Inc. (TPI) requested that the Coast Guard adjust the southernmost four miles of the western boundary of the Mobile Ship Channel Safety Fairway to accommodate a proposed drilling and production site.

In response to TPI's request, on February 2, 1986, the Coast Guard published a Notice of Proposed Study to be conducted by the Eighth Coast Guard District (51 FR 6923). The port access route study was also announced in the Eighth Coast Guard District's Local Notice to Mariners in April and May 1986.

Port Access Route Study

The study area encompassed the southernmost four miles of the Mobile Ship Channel Safety Fairway (hereinafter referred to as the fairway), and the area at the junction of the Mobile to Pensacola Safety Fairway, the Mobile Ship Channel to Sea Safety Fairway, the Mississippi River-Gulf

Outlet to Mobile Ship Channel Safety Fairway, and the Horn Island Pass to Mobile Ship Channel Safety Fairway.

The configuration of the existing fairway, established by the COE in 1966 to provide a structure free access route to the port of Mobile, has never been changed. The portion of this fairway examined during the port access route study was the flared seaward end. This section is two miles wide at its northern end and flares to five and one-half miles at its southern end where it joins with four other fairways to form a junction area. The Mobile Outer Bar Entrance Channel (Bar Channel), which is 42 feet deep, 600 feet wide and approximately 8 miles in length, is near the center of this section of the fairway. The Mobile Entrance Lighted Whistle Buoy (hereinafter referred to as the sea buoy), is located at the seaward end of the Bar Channel. This sea buoy is used by mariners to line up with the channel entrance and is a reference point for the boarding of pilots.

The requested adjustment would modify the last four miles of the western boundary along a line connecting the following points:

Latitude	Longitude
30°10'36" N.	08°03'53" W.
30°06'10" N.	08°04'40" W.
30°07'15" N.	08°06'54" W.

The study examined TPI's need for the requested adjustment of the western boundary of the fairway. TPI's federal lease, Mobile Area Block 869, is located entirely within the present fairway. Block 869 is close to an area that has proven highly productive of natural gas by wells drilled on nearby Federal and State oil and gas leases. (See Figure 1.)

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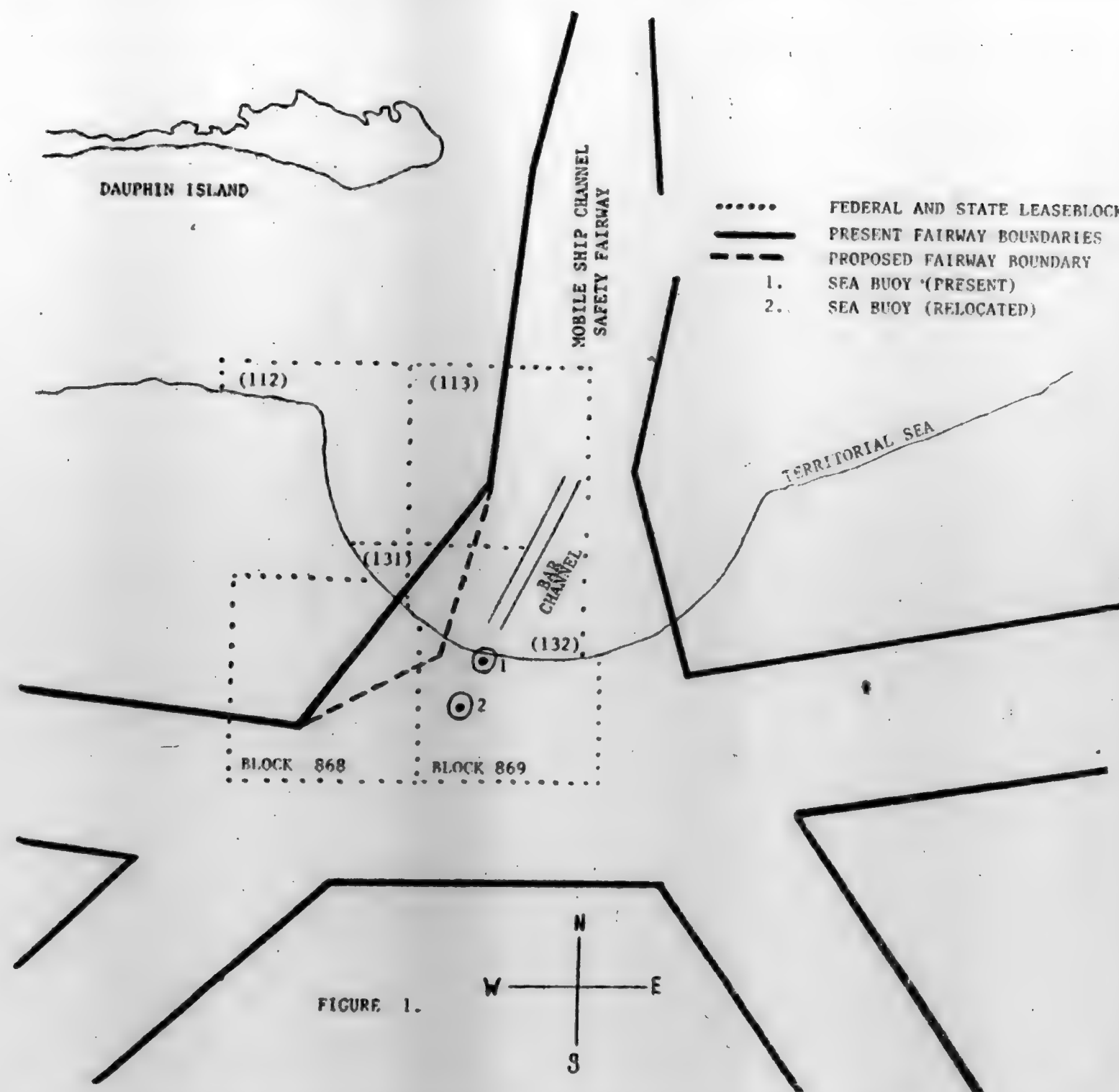


FIGURE 1.

Because no structures, temporary or permanent, are permitted within shipping safety fairways, the only access to Block 869 is by directional drilling from TPI's adjacent Block 868, outside the fairway. Current drilling technology limits the maximum horizontal displacement in Mobile Bay Norphlet Wells to approximately 6,000 feet. TPI's optimum well sites are greater than 6,000 feet from the present fairway boundaries. The limitations of directional drilling from outside the present fairway prevent access to these sites and would preclude recovery of an estimated 120 billion cubic feet (BCF) of gas reserves. Adjusting the western boundary will remove a portion of Block 869 from the fairway, allowing TPI to access an estimated additional 106 BCF of gas reserves. The lease on Block 869 will expire on May 31, 1989, unless TPI demonstrates that the lease is productive.

The Minerals Management Service (MMS) validated TPI's estimate of the additional recovery of 106 BCF of gas with the fairway adjustment. MMS found that, although somewhat complex and costly, it is possible to drill additional drainage wells from outside the current fairway. However, MMS concluded that the associated risks involved in drilling and completion operations from outside the present fairway outweigh any potential benefits that would be derived. MMS further concluded that TPI does not have a reasonable alternate means of accessing the target area, nor does it have an alternate drill site which would be less intrusive on the fairway. MMS supports the request for the fairway adjustment because it will permit more efficient exploration of the Federal oil and gas lease on Block 869.

The study also examined the configuration of the fairway; the impact of a fairway adjustment; existing and potential vessel traffic; local conditions, within the study area; deep draft vessel maneuvering characteristics; COE dredging and channel-deepening projects; and, environmental factors.

The study included contacts with other Federal agencies, state government officials, and comments from the maritime community. Discussions were held with representatives of TPI, COE, Mobile Bar Pilots Association, Alabama State Docks Department and the Coast Guard Marine Safety Office, Mobile, AL. The Coast Guard received 24 comments as a result of this study, three of which raised objections to the requested adjustment.

The Coast Guard Marine Safety Office, Mobile, reported approximately

1,200 round trips by vessels transiting the channel via the sea buoy in calendar year 1985. About 200 of these were deep draft vessels. Approximately 40% of these vessels used the west and southwest fairways in the approaches to Mobile.

The COE estimated, based on existing and projected commodity movements for the Port of Mobile, that channel use for all sizes of vessels by the year 2005 would be 1,871 round trips and 1,978 round trips by the year 2015.

A National Ocean Service hydrographic survey reported considerable shoaling along the eastern edge of the Bar Channel causing deep-draft vessels to favor the outbound or western edge of the channel even when inbound. However, the COE has a planned three-phase project to deepen and widen the Bar Channel. The first phase will deepen the channel to 47 feet and maintain the current width of 600 feet. This phase will be completed in 1990. Two additional phases will deepen the channel to 57 feet and widen it to 800 feet. In conjunction with the first phase of this project, the sea buoy will be relocated approximately .575 nautical miles seaward along the entrance channel range to 30°07'33" N. latitude and 86°04'06" W. longitude.

The National Ocean Service commented that the requested fairway adjustment will actually improve vessel safety from the standpoint of hydrography, and that the new location of the western fairway boundary would guide traffic further away from known obstructions.

There are currently two drilling structures immediately adjacent to the western border of the present fairway in State leaseblocks 531 and 532. The establishment of additional structures outside the fairway would be subject to COE structure permit regulations.

Wind and current are predominantly from the southeast; thus, vessels may tend toward the modified western boundary of the fairway. However, through proper notice and charting, vessels will be aware of structures or other obstructions that are adjacent to the fairway.

The Mobile Bar Pilots Association, the primary users of the Mobile Ship Channel, initially commented that the fairway adjustment would be detrimental to shipping interests. The pilots were handling vessels up to 140,000 deadweight tonnage and were scheduled for 150,000 deadweight tons in the near future. They believed that the present fairway design allowed a margin for safety on approach to the entrance of Mobile Ship Channel, but that the adjustment would negate the

safety margin. The Alabama State Docks Department and the USCG Marine Safety Office, Mobile, were also concerned about the proximity of the sea buoy to the modified fairway boundary and its effect on navigation safety. When they learned of the planned relocation of the sea buoy in conjunction with the COE channel-deepening project, this was no longer a concern. The distance from the closest point of the modified fairway to the relocated sea buoy will be .787 nautical miles.

The Alabama State Docks Department continues to object to the requested adjustment if there are other alternative exploratory drilling plans which would not require modifying the present fairway configuration. They feel that adjustment of the fairway should be a last resort measure.

In the Gulf of Mexico, shipping safety fairways are funneled to and from numerous ports and may encompass a buoyed or other defined channel. The ordinary practice of seamen prescribes that vessels normally navigate within the limits of a channel. For deep-draft vessels the impact of the requested fairway boundary adjustment is negligible because their draft requires that they transit the deeper waters of the channel. The fairway encompassing the channel is still necessary, however, to provide a structure-free port access route to Mobile and to allow smaller vessels to safely navigate outside the defined channel.

Piloted vessels are usually constrained by their draft to using the channel and are committed to line up and transit via the buoyed entrance channel. Relocation of the sea buoy moves the reference point for vessels that require pilotage and will shift the navigational maneuvering of deep-draft vessels further seaward, providing an adequate safety margin.

While all the intersecting shipping safety fairways in the approach to Mobile are approximately two miles wide, the portion of the fairway surrounding the sea buoy is considerably wider. The original fairway design for this area created a wide convergence of the intersecting shipping safety fairways which allows for a margin of safety for vessels meeting in the vicinity of the sea buoy and sufficient maneuverability for vessels embarking and debarking pilots. The adjusted fairway will be greater than two miles wide and will continue to provide a safe area for vessel maneuvering and embarking and debarking pilots. No data was received to indicate that the requested

adjustment will reduce the present level of navigation safety.

Relocation of the sea buoy will be required before making the requested adjustment to the fairway boundary.

TPI's need can not be reasonably accommodated without the proposed adjustment to the fairway. While there exists a continuing need for this fairway, the Coast Guard concludes that the requested modification is feasible and will not unacceptably adversely affect the original purpose of the fairway. Therefore the Coast Guard proposes to modify the western boundary of the Mobile Ship Channel Safety Fairway as requested by TPI. The sea buoy will be relocated prior to adjustment of the fairway.

Regulatory Evaluation

The proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and Nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The proposed regulation was preceded by a Port Access Route Study which considered a variety of issues including its economic impact. No adverse economic data was presented in the study.

Adjustment of the western boundary of the existing fairway will provide a number of advantages. TPI will recover an estimated 106 BCF of additional gas reserves. Potential drilling and completion problems would be minimized.

The data presented by TPI has been verified by MMS. The Department of the Interior supports the proposed fairway adjustment because the administration attaches a high priority to the development of domestic oil and gas resources and analysis indicates substantial natural gas resources are at stake. The recovery of domestic oil and gas resources will benefit both the Federal and State of Alabama economies. TPI estimates that the additional 106 BCF of natural gas will result in over 45 million dollars in royalty and tax revenues to the Federal Government and the State of Alabama over a period of 20 years. Other supporting comments have been received from the entire Alabama U.S. congressional delegation and other political factions. Comments from State of Alabama agencies favor the fairway adjustment. The Department of Conservation and Natural Resources, responsible for managing the oil and gas resources located in Alabama's territorial waters, support TPI's efforts

to discover and produce domestic mineral resources as long as those efforts are compatible with environmental and public safety concerns. The Department is satisfied that these important concerns will not be adversely impacted by the slight fairway adjustment requested. Similarly, the State Oil and Gas Board of Alabama commented that the proposed modification could facilitate hydrocarbon exploration on some State and Federal leases by reducing the costs of drilling exploratory wells and well production costs. Further, the requested adjustment could prevent waste by permitting the drilling and production of wells at more optimum geologic locations, consistent with sound oil and gas conservation practices. If wells drilled on nearby Federal and State leases are placed on production, without production from Block 869, gas will be lost to them via drainage.

MMS concluded that the proposed fairway adjustment benefits adjacent lease operators. The modification will release portions of State leases, Blocks 113, 131, and 132 and Federal leases, Blocks 868 and 869, from the fairway restrictions prohibiting structures. The Coast Guard therefore concludes that the proposed adjustment will not deny a leaseholder the effective exercise of their lease.

The economic impact of the proposed fairway adjustment on vessel traffic will be negligible. The principle economic impact of the proposed adjustment will be the projected increase in recovery of gas resources.

The economic impact of this proposal is expected to be so minimal that further regulatory evaluation is unnecessary.

Environmental Impact

This action has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation, in accordance with section 2.B.2.c. of Commandant Instruction (COMDTINST) M16475.1B.

Regulatory Flexibility

The impact of this proposal is expected to be minimal and the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This proposed rulemaking has been analyzed in accordance with the principles and criteria contained in

Executive Order 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping Safety Fairways.

In consideration of the foregoing, the Coast Guard proposes to amend Part 166.

PART 166—[AMENDED]

1. The authority citation for Part 166 is revised to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Section 166.200 is amended by revising paragraph (d)(39)(i) to read as follows:

§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.

(d) . . .

(39) Mobile Safety Fairway—(i) Mobile Ship Channel Safety Fairway. The areas between rhumb lines joining points at:

Latitude	Longitude
30°36'46" N.	86°03'24" W.
30°36'14" N.	86°02'42" W.
30°31'59" N.	86°02'00" W.
30°31'59" N.	86°04'59" W.

and rhumb lines joining points at:

Latitude	Longitude
30°31'06" N.	86°05'30" W.
30°31'00" N.	86°01'54" W.
30°28'55" N.	86°01'28" W.
30°16'35" N.	86°02'45" W.
30°14'09" N.	86°03'24" W.
30°10'36" N.	86°03'53" W.
30°08'10" N.	86°04'40" W.
30°07'15" N.	86°06'54" W.

and rhumb lines joining points at:

Latitude	Longitude
30°39'55" N.	86°01'15" W.
30°37'06" N.	86°01'23" W.
30°26'11" N.	86°00'11" W.
30°16'16" N.	86°01'35" W.
30°13'52" N.	86°01'12" W.
30°13'14" N.	86°01'12" W.
30°10'36" N.	86°01'35" W.
30°08'04" N.	86°00'30" W.

Dated: May 28, 1988.

Martin H. Daniel,
Rear Admiral, U.S. Coast Guard, Chief, Office
of Navigation Safety and Waterway Services.
(FR Doc. 88-14867 Filed 6-30-88; 6:45 am)
BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[FRL-3408-2]

Approval and Promulgation of Implementation Plans; Idaho**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: By this Notice, EPA invites public comment on its proposed approval of (1) revised State of Idaho Department of Health and Welfare (IDHW) rules regulating the height of stacks and the use of dispersion techniques, and (2) several administrative rule changes, submitted on March 27, 1987, as revisions to the Idaho State Implementation Plan (SIP). These revisions clarify and correct portions of the existing rules for stack heights and dispersion techniques and were submitted to satisfy the requirements of section 123 (Stack Heights) of the Clean Air Act (hereinafter the Act).

DATE: Comments must be postmarked on or before August 1, 1988.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT-092 Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-87-7), Environmental Protection Agency, 1200 Sixth Avenue AT-092 Seattle, Washington, 98101.

State of Idaho Department of Health and Welfare (IDHW) 450 W. State Street, Statehouse, Boise, Idaho 83720.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT-092 Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION:**I. Plan Revisions.**

On March 27, 1987 the State of Idaho Department of Health and Welfare (IDHW) submitted revised rules regulating the use of stack heights and dispersion techniques and several other administrative rule changes as revisions to the Idaho State Implementation Plan (SIP). The revisions to Section 16.01.1002.94 "Stack" (definition) and Section 16.01.1014 "Stack Heights and Dispersion Techniques" of the Rules and Regulations for Control of Air

Pollution in Idaho clarify and correct portions of the existing rules for stack heights and dispersion techniques to comply with revised EPA stack height regulations as promulgated in 40 CFR Part 51. These rules apply to all new sources and modifications in Idaho as required in 40 CFR 51.164, as well as to existing sources as required in 40 CFR 51.118. These rules apply to all sources that were or are constructed, reconstructed, or modified subsequent to December 31, 1970. EPA has reviewed the revisions to these rules and has determined that the revised rules are consistent with EPA's requirements for stack heights and dispersion techniques regulations as promulgated by EPA on July 8, 1985. EPA is therefore proposing to approve these revisions to the IDHW rules as a revision to the Idaho SIP.

The revisions to Section 16.01.1009 "Total Compliance", Section 16.01.1201.03 "Visible Emissions—Exception", and Section 16.01.1908 "Standards for New Sulfite Pulp Mills (title)" clarify the applicability of these Sections. EPA finds that these revisions satisfy the requirements of the Act and EPA's regulations and is proposing to approve them as revisions to the Idaho SIP.

II. Summary of Action

EPA is today soliciting public comment on its proposed approval of the revised stack heights and dispersion techniques rules as a revision to the Idaho SIP satisfying the requirements of section 123 of the Act, and its proposed approval of the administrative rule revisions for "Total Compliance", "Visible Emission", and "New Sulfite Pulp Mills".

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by August 1, 1988 will be considered in the final rulemaking action taken by EPA.

Administrative Review

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (48 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401-7042.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide,

Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Editorial Note: This document was received at the Office of the Federal Register June 28, 1988.

Date: July 21, 1987

Gary L. O'Neal,

Acting Regional Administrator.

[FR Doc. 88-14050 Filed 6-30-88; 8:45 am]

BILLING CODE 5550-52-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 36**

[CC Docket No. 80-286; FCC 88J-1]

Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board**AGENCY:** Federal Communications Commission.**ACTION:** Joint board order inviting comments and requests for data.

SUMMARY: This Federal-State Joint Board Order Inviting Comments and Request for Data seeks comments and data from interested parties on a proposed method of categorizing and allocating marketing expenses that may more accurately reflect cost-causation principles than the current procedures in Part 36 of the Commission's Rules. This proposed method incorporates a functional categorization of the various types of marketing expenses.

DATES: Comments and data must be filed on or before June 30, 1988 and reply comments on or before July 18, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Quail, Accounting and Audits Division, Common Carrier Bureau, at (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Joint Board's Order Inviting Comments and Request for Data, CC Docket 80-286, DA 88-898, adopted May 4, 1988, and released May 18, 1988.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractors, International Transcription Services, Inc. 2100 M Street, NW., Suite 140, Washington DC 20037, (202) 857-3900.

Summary of Order Inviting Comments and Request for Data

1. Marketing expenses include product management, sales, and advertising expenses.¹ Under the former Part 67 separations rules, these expenses were allocated between the jurisdictions on the basis of current billings (current revenues) which includes access revenues. In revising the Separations Manual, the Docket 80-287 Joint Board recommended, and the Commission adopted, new procedures which would have allocated marketing expenses on the basis of revenues, excluding access revenues. Several local exchange carriers (LECs) and the United States Telephone Association (USTA) filed petitions for reconsideration of that decision, arguing that a significant shift in revenue requirement to the state jurisdiction would result from the exclusion of access revenues. In response to those petitions, the Commission issued a Supplemental Notice of Proposed Rulemaking (*Supplemental NPRM*) On August 18, 1987, seeking comments and data on the appropriate allocation factor for these expenses and referring this issue to the Docket 80-286 Joint Board. In that decision the Commission also included access revenues in the allocation factor on an interim basis pending a final resolution of this inquiry.²

2. In the *Supplemental NPRM*, The Commission requested that the LECs specifically identify their marketing activities that are related to access service and any such activities that are related to a specific jurisdiction. The Commission requested comment on the appropriate allocation factor and recovery mechanism for marketing expenses. The Commission also requested that LECs submit annualized 1987 data that both the Commission and the Joint Board could use in evaluating the proposals received in response to the *Supplemental NPRM*.

3. According to the data received in response to the *Supplemental NPRM*, the LECs predict a shift of \$760 million in revenue requirement to the state jurisdiction if the Commission adopts an allocation factor that excludes access revenues. Because the comments and data received in response to the *Supplemental NPRM* are insufficient for the Joint Board to recommend a permanent solution, the Joint Board requests further comment and data regarding this issue.

4. The Joint Board requests more disaggregated 1987 data to provide it

with sufficient information to recommend a permanent solution for the allocation of marketing expenses. In addition to new data, the Joint Board requests comment on the allocation procedures applicable to marketing expenses. These comments and data should enable the Joint Board staff to develop recommendations for allocation procedures that reflect cost-causation principles to ensure that each jurisdiction bears its fair share of the carrier's regulated marketing costs. Based on the data and comments filed in response to the *Supplemental NPRM*, the Joint Board develop and alternative approach for the allocation of marketing expenses. The proposed plan segregates marketing expenses into three functional categories: (1) Product Management, (2) Sales, and, (3) Advertising. These major categories are further segregated into subcategories based on functional analyses and allocated on various allocation factors that reflect cost-causation principles. The Order seeks comments and data on this proposal. It also seeks additional data so that the Joint Board can analyze the effects of various alternative allocation factors the parties may propose.

Comments

5. Interested parties may file comments and data on the issues discussed above on or before June 13, 1988, and reply comments on or before July 13, 1988.

Regulatory Flexibility Act

6. We certify that the Regulatory Flexibility Act³ is not applicable to the rule changes we are proposing in this proceeding. In accordance with the provisions of section 605 of that Act, copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of a summary of this *Order Inviting Comments and Request for Data* in the Federal Register. As part of our analysis of the proposal described in this *Order Inviting Comments and Request for Data*, however, the joint Board and the Commission will consider the impact if the proposal on small telephone companies, i.e., those serving 50,000 or fewer access lines.⁴ The action

¹ 5 U.S.C. 601.

² Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. See MTS and WATS Marketing Structure, 93 FCC 2d 241, 338-39 (1983). Thus, the Commission is not required by the terms of that Act to apply the formal procedures set forth therein. The Commission and the Joint Board are nevertheless committed to reducing the regulatory burdens on small telephone

³ See 47 CFR 32.8610.

⁴ See 47 CFR 30.372.

proposed herein would have a beneficial economic impact on all such carriers because the proposed rules will result in allocation procedures that better reflect cost-causation principles. These carriers will therefore be able to develop rates that better reflect their actual costs.

Paperwork Reduction Act

7. We have analyzed the proposal contained herein with respect to the Paperwork Reduction Act of 1980⁵ and have tentatively concluded that it will not, if adopted, impose new or modified information collection requirements on the public. The instant proposal is a general solicitation of comments from the public and as such, does not constitute a collection of information.⁶ All comments will be considered in this proceeding. Parties need not specifically respond to the data request for their comments to be considered. Therefore, implementation of the proposed requirements will not be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

Ex Parte Contacts

8. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the sunshine agenda period.⁷ The sunshine agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission: (1) releases a final order; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice that the matter has been returned to the staff for further consideration, whichever occurs first.⁸ During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding.⁹

companies whenever possible consistent with other public interest responsibilities. Accordingly, we have chosen to utilize, on an informal basis, appropriate Regulatory Flexibility Act procedures to analyze the effect of proposed regulations on small telephone companies.

⁴ 44 U.S.C. 501.

⁵ See 5 CFR 1320.7(k)(4).

⁶ See generally 47 CFR 1.1206(a).

⁷ 47 CFR 1.1202(f).

⁸ 47 CFR 1.1203.

9. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which: (1) if written, is not served on the parties to the proceeding; or, (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present.¹⁰ Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.¹¹

10. For Joint Board actions, special *ex parte* rules apply.¹² For those actions, all written materials that are not filed in accordance with a pleading cycle established by this Joint Board shall be accompanied by a Petition for Leave to File showing cause why the material should be considered by this Joint Board. This Joint Board will not consider any filing made outside the authorized pleading cycle and received by the Commission less than fifteen days¹³ in advance of a Joint Board meeting at which we will consider the subject matter of that filing. Written *ex parte* presentations, as defined by the Commission's rules, need not be accompanied by a Petition for Leave to File and may be received in the discretion of the Joint Board member or staff personnel involved. No written *ex parte* presentations, however, shall be made during the fifteen day period immediately preceding a Joint Board meeting except in response to an inquiry initiated by a member of this Joint Board or our staff.

¹⁰ 47 CFR 1.1202(b).

¹¹ 47 CFR 1.200.

¹² Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-236, 89 FCC 2d 36 (1982).

¹³ In calculating this fifteen day period, neither the day on which the material is filed nor the day on which the Joint Board meeting is scheduled shall be counted.

Authorizing Provisions

11. This action is taken pursuant to sections 4 (i) and (j), 201-205, 221(c), 403 and 410 of the Commission's Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 201-205, 221(c), 403 and 410.

For the Federal-State Joint Board.
H. Walker Foster III,
Acting Secretary, Federal Communications Commission.
[FR Doc. 88-14811 Filed 6-30-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-265, RM-6069]

Radio Broadcasting Services; Grundy Center, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Stoner Broadcasting System, Inc., licensee of Station KHAK-FM, Cedar Rapids, Iowa, requesting the substitution of Channel 241A for Channel 249A at Grundy Center, Iowa, and the modification of the license of Grundy Broadcasting Company for Station KGCI(FM) to specify operation on Channel 241A. Stoner Broadcasting requests the substitution at Grundy Center so as to avoid a short-spacing between its application specifying a new transmitter site and minimum Class C facilities and Station KGCI(FM). Channel 241A can be allocated to Grundy Center in compliance with the Commission's minimum distance separation requirements and can be used at Station KGCI(FM)'s licensed site and the site specified in its construction permit. An *Order to Show Cause* is directed to KGCI(FM) as to why its license should not be so modified. Stoner Broadcasting System is also requested to state its intention to reimburse Grundy Broadcasting Company for the reasonable costs associated with Station KGCI(FM)'s frequency change.

DATES: Comments must be filed on or before August 15, 1988, and reply comments on or before August 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph D. Sullivan, Esq., Latham & Watkins, 1333 New Hampshire Avenue, NW., Suite 1200, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 88-266, adopted May 11, 1988, and released June 23, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3600, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. This is a restricted notice and comment rule making proceeding. See 47 CFR 1.1206. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-14814 Filed 6-30-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-267, RM-6353]

Radio Broadcasting Services; Vidalia, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by John H. Pembroke, proposing the allocation of Channel 284A to Vidalia, Louisiana, as that community's first local FM service. A site restriction of 1.0 kilometer (0.6 mile) northwest of the community is required. The coordinates for the proposal are 31-34-20 and 91-25-51.

DATES: Comments must be filed on or before August 15, 1988, and reply comments on or before August 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or its counsel or consultant, as follows: Joseph H. Pembroke, P.O. Box 22604, 1816 Pleasant Avenue, Jackson, MS 39203 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-267, adopted May 12, 1988, and released June 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3600, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-14810 Filed 6-30-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-269, RM-6281]

Radio Broadcasting Services; Frankfort and Stephenson, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Forum

Communications, Inc., proposing the substitution of FM Channel 257C2 for Channel 257A at Frankfort, Michigan, and modification of its license for Station WBNZ(FM) to specify operation on the higher class channel. To accommodate Channel 257C2 at Frankfort, Channel 261A must be substituted for vacant Channel 257A at Stephenson, Michigan. Canadian concurrence must be obtained for the allotment of Channel 257C2 at Frankfort and Channel 261A at Stephenson, Michigan. The coordinates for Frankfort are 44-36-38 and 86-09-38. The coordinates for Stephenson are 45-24-54 and 87-36-24.

DATES: Comments must be filed on or before August 15, 1988, and reply comments on or before August 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert Paul Brink, President, Forum Communications, Inc., Post Office Box 960, Otsego, Michigan 49078.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-269, adopted May 17, 1988, and released June 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3600, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1206. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-14813 Filed 6-30-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-271, RM-6357]

Radio Broadcasting Services; Farmville, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James H. Dulaney, proposing the allocation of Channel 267A to Farmville, Virginia, as that community's second local FM service. The coordinates for the proposal are 37-16-00 and 78-23-48.

DATES: Comments must be filed on or before August 15, 1988, and reply comments on or before August 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, Esquire, Law Office of Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, MD 21701 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-271, adopted May 13, 1988, and released June 23, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3600, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14612 Filed 6-30-88; 6:45 am]

BILLING CODE 5712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-95, Notice 2]

RIN: 2137-AB24

Gas and Hazardous Liquid Pipelines; Referenced Standards Deletion Affecting Iron, Steel, and Copper Pipe and Other Materials

AGENCY: Office of Pipeline Safety (OPS),
DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This notice proposes deleting references to certain voluntary design and construction standards concerning cast iron, ductile iron, wrought steel, and wrought iron pipe; electric resistance welded coiled steel tubing; copper pipe and tubing; well casing, tubing and drill pipe; bronze flanges; and other materials. The references are no longer needed for safety because the materials have minimal or no usage in new gas and hazardous liquid pipelines. Deletion of references to these standards would not prevent the use of these materials in new pipelines or as replacement parts in existing pipelines if the materials meet applicable general safety requirements. This action would significantly reduce the number of voluntary standards that are now incorporated by reference in Parts 192 and 195 and the burden of keeping these references up-to-date.

DATE: Interested persons are invited to submit written comments on this notice by August 15, 1988. Late filed comments will be considered to the extent practicable. All persons must submit as part of their written comments all of the material that they consider relevant to any statement of fact made by them.

ADDRESS: Comments should identify the docket and notice numbers and be

submitted in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m., each working day.

FOR FURTHER INFORMATION CONTACT:

Paul J. Cory, (202) 368-4561, regarding content of this notice or the Dockets Unit, (202) 368-4148, regarding copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION: OPS issued an Advance Notice of Proposed Rulemaking (ANPRM) published June 4, 1987 (52 FR 21087), that invited comment on the advisability of deleting references in Part 192 to 15 voluntary design and construction standards of the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), and the American Petroleum Institute (API). OPS had determined that the references may no longer be needed for materials that have minimal usage in new construction of gas pipelines and deleting the references would minimize the effort required to update to current editions all the Part 192 references to voluntary standards. These 15 voluntary standards are applicable to cast iron, ductile iron, wrought steel, and wrought iron pipe; electric resistance welded coiled steel tubing; copper pipe and tubing; well casing, tubing, and drill pipe; copper pipe; and bronze flanges. The ANPRM lists each of these 15 voluntary standards and gives OPS's arguments for deleting references to them in Part 192. Deleting the references would, in most cases, involve revising individual Part 192 sections that directly reference a voluntary standard, or deleting the reference from that section when the section has meaning apart from the reference. In other cases, references are expressed indirectly by referring to a "listed specification," which Part 192 defines as a voluntary standard listed in section I of Appendix B of Part 192. Deleting these references would require either revising the section involved or deleting one or more voluntary standards from Appendix B. When a reference to a voluntary standard is proposed to be deleted from either the Part 192 section involved or Appendix B, the designation of the standard would also be deleted from Appendix A, which lists all the voluntary standards incorporated by reference in Part 192.

Summary of Comments to the ANPRM

In response to the ANPRM, there were 41 comments. Commenters included four state pipeline safety regulatory agencies, four industry organizations, 23 gas distribution operators, and 10 gas transmission operators. Thirty-one of these comments agreed with deleting all references proposed for deletion in the ANPRM. Those that did not favor such action are discussed hereafter.

Several commenters argued that references to voluntary standards for materials not frequently used in new construction should, nevertheless, be retained because the standards are used in judging the safety of existing installations.

OSP disagrees. The acceptability of pipe or a component manufactured according to a referenced standard is judged against the edition of the standard referenced in part 192 at the time the pipe or component was manufactured, not necessarily the latest edition of the referenced standard. For instance, to evaluate a polyethylene plastic pipeline made of pipe that was manufactured in 1977, it would be necessary to use ASTM D2513-1974a edition. This edition was incorporated by reference in Part 192 at the time the pipe was manufactured, while currently Part 192 references the 1981 edition. Deleting a reference to a voluntary standard has no effect on the acceptability of materials installed previously that were manufactured to that standard. Thus, retaining references to voluntary standards for materials not currently being installed in gas pipelines is not needed to determine whether existing pipelines comply with Part 192.

The following discussion gives the disposition of the references to 15 voluntary standards that the ANPRM proposed no longer be referenced in Part 192:

1. ANSI A21.1, "Thickness Design of Cast Iron Pipe" (formerly ANSI C101)

There were no negative comments on the proposal to delete the references to ANSI A21.1. Therefore, § 192.117, "Design of cast iron pipe," would be removed, and in § 192.557, "Upgrading . . .," paragraph (d)(1) would be revised to delete the reference to ANSI C101 and to reflect removal of § 192.117.

2. ANSI A21.11, "Rubber Gasket Joints for Ductile Iron and Grey Iron Pressure Pipe and Fittings"

There were no negative comments on the proposal to delete the reference to ANSI A21.11 in paragraph (a) of § 192.277, "Ductile iron pipe." Because this paragraph includes another

reference which OPS is proposing to delete (see ANSI A21.52 below) as well as the reference to ANSI A21.11, OPS proposes to remove § 192.277(a) in its entirety.

3. ANSI A21.50, "Thickness Design of Ductile Iron Pipe"

There were no negative comments on the proposal to delete the references to ANSI A21.50. Therefore, paragraph (a) of § 192.119, "Design of ductile iron pipe," would be removed. Under item 4 below, OPS also is proposing to remove paragraph (b) of § 192.119. In § 192.557, "Upgrading . . .," paragraph (d)(1) would be revised to reflect removal of § 192.119 and to delete the reference to ANSI A21.50.

4. ANSI A21.52, "Ductile Iron Pipe, Centrifugally Cast in Metal Molds, or Sand Lined Molds for Gas"

Two operators and one industry association took exception to deletion of the references to ANSI A21.52 in § 192.57 (listed specification), § 192.119(b), and § 192.277(a). They said ductile iron pipe would be installed were it not for DOT's position that it is subject to the corrosion control requirements of § 192.455, and that research could prove that these requirements are not necessary for ductile iron pipe. When the original corrosion control requirements in Subpart I of Part 192 were published on June 30, 1971, no persuasive arguments were given for excluding ductile iron pipe from the requirements of § 192.455. In fact, research conducted just prior to that time indicated the corrosion resistance of grey iron, ductile iron, and carbon steel is similar for identical exposure conditions. OPS has no new data that would change the original conclusion that corrosion protection is equally justified for grey iron, ductile iron, and carbon steel pipelines in underground installations. Therefore, the comment is not considered adequate justification for withdrawing the OPS proposal in the ANPRM to delete references to ANSI A21.52 or to other voluntary standards relating to ductile iron.

Therefore, paragraph (b) of § 192.119, "Design of ductile iron pipe," would be removed; and the reference to ANSI A21.52 would be deleted from § 192.277(a). Also, § 192.57, "Cast iron or ductile iron pipe," would be removed. The ANPRM proposed to remove only § 192.57 (a) and (b)(2), which reference ANSI A21.52 as a "listed specification." However, the remaining provisions of § 192.57, which concern used pipe, would be of little benefit because used cast iron pipe and used ductile iron pipe are rarely installed in new construction.

In the rare cases when used pipe is installed in new construction, the general material requirements of § 192.53 would apply. Also, see ASTM A377 below for further discussion of removing § 192.57 in its entirety.

5. ASTM A377, "Standard Specifications for Gray Iron and Ductile Iron Pipe"

There were no negative comments on the proposal to delete from § 192.57 (a) and (b)(2) the reference to ASTM A377 as a "listed specification."

Section 192.57 would be removed entirely because, as discussed above with regard to ANSI A21.50, the portion of § 192.57 not in paragraphs (a) and (b)(2) would be of little benefit.

6. ANSI B16.1, "Cast Iron Pipe Flanges and Flanged Fittings"

One operator objected to deleting the reference to ANSI B16.1 in paragraph (e) of § 192.275, "Cast iron pipe," because cast iron pipe flanges and flanged fittings are still used to install flanged valves, regulators, and similar components with bodies made of cast iron.

As a result of this comment, OPS investigated further and determined there is widespread use of cast iron flanges on valves, regulators, and similar components. For this reason, OPS is not proposing to revise § 192.275(e) as suggested in the ANPRM. However, because § 192.275(e) relates only to cast iron flanges, this paragraph would be moved to § 192.147, "Flanges and flange accessories," and be designated as paragraph (c).

7. ANSI B36.10, "Wrought Steel and Wrought Iron Pipe"

There were no negative comments on the proposal to delete the reference to ANSI B36.10 in § 192.279, "Copper pipe," for purposes of determining the thicknesses of standard wall pipe. In the ANPRM, OPS suggested that performance language be substituted for the reference, although none was proposed and none was suggested by commenters. However, ANSI B16.5, "Steel Pipe Flanges, Flanged Fittings" (referenced in § 192.147), provides a source comparable to ANSI B36.10 for standard wall pipe thicknesses, and it could be referenced for that purpose in § 192.279(a) in lieu of ANSI B36.10. Therefore, in § 192.279(a) the designation "ANSI B36.10" would be deleted and replaced with "ANSI B16.5."

8. API 5A, "API Specification for Casing, Tubing, and Drill Pipe"

There were no negative comments on the proposal to delete the reference to API 5A. Therefore, in paragraph (b)(1) of

§ 192.177, "Additional provisions for bottle type holders," the reference to API 5A would be deleted.

9. ASTM A539, "Standard Specification for Electric Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines"

One state, one industry organization, and one pipeline operator opposed deleting from § 192.55 the reference to ASTM A539 as a "listed specification" for qualifying the use of electric resistance welded coiled steel tubing (X-Trube). They said X-Trube would be used if it were available at a competitive price. The industry association said it thought X-Trube is still being installed.

After further investigation, OPS has determined that X-Trube is not being manufactured for use in gas pipelines. Although OPS believes steel tubing manufactured to meet ASTM A539 is satisfactory for use in gas systems, since the material is not being used in new construction, there is no need to maintain ASTM A539 as a "listed specification." In the event that an operator wishes to use X-Trube, the material may be qualified for use by demonstrating that it meets the requirements of § 192.53, "General," and the requirements of § 192.55 for steel pipe of an unlisted specification. Therefore, OPS proposes to delete from § 192.55 the reference to ASTM A539 as a "listed specification" by deleting "ASTM A539" from Section I of Appendix B of Part 192.

Items 10 through 14 are discussed following Item 14.

10. ASTM B42, "Standard Specification for Seamless Copper Pipe, Standard Sizes"

11. ASTM B68, "Standard Specification for Seamless Copper Tube, Bright Annealed"

12. ASTM B75, "Standard Specification for Seamless Copper Tube"

13. ASTM B88, "Standard Specification for Seamless Copper Water Tube"

14. ASTM B251, "Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube"

Two pipeline operators and two state regulatory agencies objected to deletion of the references to voluntary standards for copper pipe and tubing. Under § 192.61, "Copper pipe," ASTM B42, ASTM B68, ASTM B75, ASTM B88, and ASTM B251 are each a "listed specification" for qualifying copper pipe; and ASTM B88 is referenced in paragraph (b) of § 192.125, "Design of

copper pipe," to specify minimum wall thicknesses for copper service lines. These comments indicate there may be no more than eight gas distribution operators who use copper pipe and tubing in new construction.

With so few operators using copper pipe and tubing out of the approximately 1,500 gas distribution utilities in the U.S., OPS is proposing to remove § 192.61 to delete references to voluntary standards for qualifying copper pipe and tubing. Even if § 192.61 is removed as proposed, copper pipe and tubing in new construction would still be subject to the general safety requirements of § 192.53 governing qualification of materials. The reference to *ASTM B88* in § 192.125(b) would be deleted and replaced with a table of minimum wall thicknesses for Type L copper tubing taken from Table 3 of *ASTM B88*.

15. *ANSI B16.24, "Bronze Pipe Flanges and Flanged Fittings"*

There were no negative comments on the proposal to delete the reference to *ANSI B16.24* from § 192.147, "Flanges and flange accessories." Therefore, because bronze flanged pipe and fittings are no longer being installed in gas piping, the reference to *ANSI B16.24* would be deleted from § 192.147(a).

Other Referenced Standards

In the ANPRM, OPS asked commenters to identify any other voluntary standards referenced in Parts 192, 193, and 195 not mentioned in the ANPRM that pertain to little used materials. There were eight comments that recommended deleting references to nine other voluntary standards. These comments stated that certain API and ASTM standards were no longer being used, and that references to certain standards of the Manufacturer's Standardization Society of the Valve and Fittings Industry (MSS) were not necessary for pipeline safety.

The following table gives the designation of each of these voluntary standards and the reference source:

API 6A, "API Specification for Wellhead Equipment", § 192.145
ASTM A134, "Standard Specification for Electric-Fusion (Arc) Welded Steel Plate Pipe, Sizes 16 Inch and Over", §§ 192.55 (listed specification), 192.113, 195.106
ASTM A135, "Standard Specification for Electric-Resistance Welded Steel Pipe", *ibid.*
ASTM A139, "Standard Specification for Electric-Fusion (Arc) Welded Steel Pipe, Sizes 4 Inch and Over", *ibid.*
ASTM A211, "Standard Specification for Spiral-Welded Steel or Iron Pipe", *ibid.*

MSS SP-25, "Standard Marking System for Valves, Fittings, Flanges and Unions", § 192.63

MSS SP-70, "Cast Iron Gate Valves, Flanged and Threaded Ends", § 192.145

MSS SP-71, "Cast Iron Swing Check Valves Flanged and Threaded Ends", *ibid.*

MSS SP-78, "Cast Iron Plug Valves", *ibid.*

OPS believes that pipe specifications *ASTM A134*, *ASTM A135*, *ASTM A139*, and *ASTM A211* are no longer being used to manufacture pipe intended to transport gas or hazardous liquids. Therefore, OPS is proposing to delete each of these voluntary standards as a "listed specification" under § 192.55, "Steel pipe," and to delete references to them from the tables in § 192.113, "Longitudinal joint factor (E) for steel pipe," and § 195.106, "Internal design pressure."

OPS is aware that *API 6A*, *MSS SP-25*, *MSS SP-70*, *MSS SP-71*, and *MSS SP-78* are still being used for materials in gas pipelines. However, OPS believes that many of the requirements included in these voluntary standards may not be needed for pipeline safety, although they may provide standardization that makes construction easier. Therefore, in lieu of referencing these voluntary standards, OPS is proposing that § 192.63, "Marking of materials," and § 192.145, "Valves," be amended to provide appropriate safety requirements set forth hereafter as adapted from language in the MSS standards.

Impact Assessment

The proposal is considered to be nonmajor under Executive Order 12291 and not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034). Deleting references to voluntary standards that are no longer needed for pipeline safety would have a minimal economic effect and a Draft Regulatory Evaluation is not warranted. Based on the facts available concerning the impact on this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities. OPS has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 (52 FR 41685), and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

List of Subjects

49 CFR Part 192

Cast iron pipe, Ductile iron pipe, Cooper pipe, Flanges.

49 CFR Part 195

Pipeline safety, Design pressure, Specification.

In view of the above, OPS proposes to amend Parts 192 and 195 of Title 49 of the Code of Federal Regulations as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1904; 49 CFR 1.53.

§ 192.57 [Removed and Reserved]

2. Section 192.57 would be removed and reserved.

§ 192.61 [Removed and Reserved]

3. Section 192.61 would be removed and reserved.

4. Section 192.63(a) would be revised to read as follows:

§ 192.63 Marking of materials.

(a) Except as provided in paragraph (e) of this section, each valve, fitting, length of pipe, and other component must be marked—

(1) As prescribed in the specification or standard to which it was manufactured; or

(2) To indicate size, type, manufacturer, model, pressure rating, and temperature rating.

§ 192.113 [Amended]

5. In the table in § 192.113, the entries for the following specifications would be removed: "ASTM A134," "ASTM A135," "ASTM A139," and "ASTM A211."

§ 192.117 [Removed and Reserved]

6. Section 192.117 would be removed and reserved.

§ 192.119 [Removed and Reserved]

7. Section 192.119 would be removed and reserved.

8. Section 192.125(b) would be revised to read as follows:

§ 192.125 Design of copper pipe.

(b) Copper pipe used in service lines must be Type "L" with wall thickness not less than that indicated in the following table:

Standard size (inch)	Nominal O.D. (inch)	Wall Thickness (inch)	
		Nominal	Tolerance
1/4	0.825	0.040	.0035
3/8	.750	.042	.0035
1/2	.875	.045	.004
3/4	1.125	.050	.004
1	1.375	.055	.0045
1 1/4	1.625	.060	.0045

9. In § 192.145, paragraph (a) would be revised, paragraphs (b) through (d) would be redesignated as (c) through (e), respectively, and a new paragraph (b) would be added as follows:

§ 192.145 Valves.

(a) Except for cast iron valves, each valve must meet the minimum requirements, or the equivalent, of API 6D. A valve may not be used under operating conditions that exceed the applicable pressure temperature ratings contained in those requirements.

(b) Each cast iron valve must comply with the following:

(1) The valve must have a maximum service pressure rating for temperatures that equal or exceed the maximum service temperature.

(2) The valve must be tested prior to painting, as part of the manufacturing, as follows:

(i) With the valve in the fully open position, the shell must be tested with no leakage to a pressure that for plug valves is at least 2.00 times the maximum service pressure rating, and for gate valves or swing check valves is at least 1.75 times the maximum service pressure rating.

(ii) After the shell test, the seat must be tested to a pressure not less than the maximum service pressure rating. Except for swing check valves, test pressure during the seat test must be applied successively on each side of the closed valve with the opposite side open. No visible leakage is permitted.

(iii) After the last pressure test is completed, the valve must be operated through its full travel to demonstrate freedom from interference.

10. Section 192.147 would be amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 192.147 Flanges and flange accessories.

(a) *General requirements.* Each flange or flange accessory (other than cast iron) must meet the minimum requirements of ANSI B16.5, MSS SP-44, or the equivalent.

(c) Each flange on a flanged joint in cast iron pipe must conform in

dimensions and drilling to ANSI B16.1 and be cast integrally with the pipe, valve, or fitting.

§ 192.177 [Amended]

11. In § 192.177(b)(1), the words "either API Standard 5A or" would be removed.

§ 192.275 [Amended]

12. Section 192.275(e) would be removed.

§ 192.277 [Amended]

13. In § 192.277, paragraph (a) would be removed and paragraphs (b) and (c) would be redesignated as (a) and (b), respectively.

14. Section 192.279 would be revised to read as follows:

§ 192.279 Copper pipe.

Copper pipe may not be threaded, except that copper pipe used for joining screw fittings or valves may be threaded if the wall thickness is equivalent to the comparable size of Schedule 40 or heavier wall pipe listed in Table C1 of ANSI B16.5.

15. Section 192.557(d)(1) would be revised and the introductory text to paragraph (d) is republished to read as follows:

§ 192.557 Upgrading: Steel pipelines to a pressure that will produce a hoop stress less than 30 percent of SMYS: plastic, cast iron, and ductile iron pipelines.

(d) If records for cast iron or ductile iron pipeline facilities are not complete enough to determine stresses produced by internal pressure, trench loading, rolling loads, beam stresses, and other bending loads, the following procedures must be followed:

(1) In estimating the stresses, if the original laying conditions cannot be ascertained, the operator shall assume that cast iron pipe was supported on blocks with tamped backfill and that ductile iron pipe was laid without blocks with tamped backfill.

Appendix A to Part 192—[Amended]

16. Section II of Appendix A to Part 192 would be revised by removing items (1) and (2) from subdivision A; items (3), (4), (5), (9), (12), (14), (15), (16), (17), (18), and (19) from subdivision B; items (1), (2), (3), (6), (7), and (8) from subdivision C; and items (1), (3), (4), and (5) from subdivision E. The remaining items in each subdivision would be renumbered in appropriate sequence.

Appendix B to Part 192—[Amended]

17. Section I of Appendix B to Part 192 would be revised by removing the

following entries: "ASTM A134—Steel pipe (1974)," "ASTM A135—Steel pipe (1975)," "ASTM A139—Steel pipe (1974)," "ASTM A211—Steel and iron pipe (1975)," "ASTM A377—Cast iron pipe (1979)," "ASTM A539—Steel tubing (1979)," "ASTM B42—Copper pipe (1980)," "ASTM B68—Copper tube (1980)," "ASTM B75—Copper tube (1980)," "ASTM B88—Copper tubing (1980)," "ASTM B251—Copper tube (1976)," and "ANSI A21.52—Ductile iron pipe (1971)."

PART 195—[AMENDED]

18. The authority citation for Part 195 is revised to read as follows:

Authority: 49 App. U.S.C. 2002; and 49n CFR 1.53.

§ 195.106 [Amended]

19. In the table in § 195.106(e), the entries for the following specifications would be removed: "ASTM A134," "ASTM A135," "ASTM A139," and "ASTM A211."

Issued in Washington, DC, on June 27, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 88-14780 Filed 6-30-88; 6:45 am]

BILLING CODE 4910-22-41

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105 and 1152

[Ex Parte No. 274 (Sub-Nos. 8 and 10A)]

Environmental Compliance; Out-of-Service Rail Line Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission invites comments on draft rules set forth below to codify its recently announced policy¹ of routinely staying the effectiveness of out-of-service class exemptions where an informed decision on pending environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation of the effects of abandonment on the environment and energy consumption) cannot be made prior to the time the exemption authority would otherwise become effective. The purpose of this proposal is to assure the Commission's full and timely consideration of environmental issues in

¹ See exemption of Out-Of-Service Rail Lines, 4 I.C.C.2d 400 (1986).

individual out-of-service abandonment proceedings, consistent with requirements of the National Environmental Policy Act and other environmental statutes.

DATE: Comments are due on August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, TDD for hearing impaired (202) 275-1721

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. A copy of the full decision is available from the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, [(202) 275-7428]. (Assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., Room 2229 at Commission Headquarters.)

Implementing this proposal would not have a significant adverse effect on the quality of the human environment or energy conservation because it involves rail lines that have provided no local service for at least 2 years, and that would have been used only for overhead traffic that would be rerouted.

It is certified that, for the same reasons, this proposal, if adopted, would have no significant impact on small businesses.

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and record keeping requirements.

49 CFR Part 1152

Administrative practice and procedure, Environmental protection, National resources, Railroads, Reporting and record keeping requirements.

Authority: 5 U.S.C. 553 and 559; 42 U.S.C. 4332; and 49 U.S.C. 10321, 10505, 10903 and 10904.

Decided: June 24, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Kathleen M. King,
Acting Secretary.

Title 49, Subtitle B, Chapter X, Parts 1105 and 1152 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1105—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

1. The authority citation for 49 CFR Part 1105 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903—10906; 16 U.S.C. 1247(d); 42 U.S.C. 4332; and 5 U.S.C. 553 and 559.

2. Section 1105.10 is proposed to be amended by adding a new paragraph (g)(3) to read as follows:

§ 1105.10 Commission procedures and public involvement.

(g)
(3) In out-of-service rail line abandonment exemption proceedings under 49 CFR 1152.50, the Commission

will stay the effective date of individual notices of exemption when an informed decision on pending environmental issues cannot be made prior to the date that the exemption authority would otherwise become effective.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES IN RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

3. The authority citation for 49 CFR Part 1152 would continue to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d); and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

4. Section 1152.50 is proposed to be amended by redesignating paragraphs (d)(4) and (5) as paragraphs (d)(5) and (6) and by adding a new paragraph (d)(4) to read as follows:

§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.

(d)
(4) In out-of-service rail line abandonment exemption proceedings under 49 CFR 1152.50, the Commission will stay the effective date of individual notices of exemption when an informed decision on pending environmental issues cannot be made prior to the date that the exemption authority would otherwise become effective.

[FR Doc. 88-14835 Filed 6-30-88; 8:45 am]
BILLING CODE 7035-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 88-018N]

National Advisory Committee on Microbiological Criteria for Foods; Meetings of Committee and Working Groups

Notice is given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on Thursday and Friday, October 20 and 21, 1988, from 8:00 a.m. to 5:00 p.m., at the Grosvenor Hotel, Lake Buena Vista, Florida.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

The agenda for the October 20 and 21 meeting follows:

- (1) Approval of the June 22 and 23, 1988, Meeting Minutes;
- (2) Working Group Assignments;
- (3) Working Group Comments to the Full Committee;
- (4) Future Activities; and
- (5) Public Comments.

Notice is also given that the meat and poultry, and the seafood working groups of the National Advisory Committee on Microbiological Criteria for Foods will meet on Thursday and Friday, August 4 and 5, 1988, from 8:00 a.m. to 5:00 p.m., at the Hyatt Regency Westshore, 8200 Courtney Campbell Causeway, Tampa, Florida. The working groups, which are comprised of committee members, will be meeting to review and discuss assignments referred to them by the full committee and to prepare comments on those assignments for the October 20 and 21 committee meeting.

The Committee and working group meetings are open to the public on a space available basis. Comments of interested persons may be filed 30 days prior to the meeting in order that they may be considered by the Committee and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-9150.

Done at Washington, DC on: June 27, 1988.
Robert Melland,
Acting Assistant Secretary.
[FR Doc. 88-14802 Filed 6-30-88; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Intent To Prepare an Environmental Impact Statement on Forest Management Activities in the Vicinity of Park Lake, Helena National Forest, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to analyze and disclose the environmental impacts of implementing forest management activities in the Park Lake area of the Helena Ranger District, Helena National Forest, Jefferson and Lewis and Clark Counties, Montana. The agency invites written comments and suggestions on the scope of the analysis and management opportunities in the analysis area. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by July 30, 1988.

ADDRESS: Submit written comments and suggestions on the scope of the analysis to Ernest R. Nunn, Forest Supervisor,

Federal Register

Vol. 53, No. 127

Friday, July 1, 1988

Helena National Forest, 301 S. Park, Room 328, Helena, MT 59626.

FOR FURTHER INFORMATION CONTACT:

Direct written comments on management opportunities and questions about the proposed activities and the environmental impact statement to the District Ranger, Helena Ranger District, Helena National Forest, 2001 Poplar Street, Helena, MT 59601.

SUPPLEMENTARY INFORMATION: The USDA Forest Service proposes to implement a wide range of forest and range management activities in the vicinity of Park Lake over the period from 1988 to 1995. The area under consideration covers approximately 38,800 acres and starts 1 mile south of Helena, Montana and 6 miles west of Clancy, Montana, extending south to the Helena National Forest boundary and west to the eastern edge of the Tenmile Creek drainage divide. The legal description for the area includes portions of sections 34 and 35, T10N R4W; sections 1-5, 8-17, 19-24 and 26-35, T9N R4W; sections 14, 22-26, 35 and 36, T9N R5W; sections 1-3, 11-15, 21-27 and 34-36, T8N R5W; sections 1, 2, 12, 13 and 24-26, T7N R5W; sections 6, 7, 18 and 19, T7N R4W; sections 5-8, 17-20 and 29-31, T8N R4W, Principal Meridian.

The proposed management activities include trail construction, campground construction and renovation, wildlife and fishery habitat improvement, timber sales, prescribed burning, livestock forage improvement, road construction and reconstruction and access management in various portions of the management area for the 1988 to 1995 period. The Forest Service will consider a range of alternatives from deferring any activities, to implementing activities other than timber sales and road construction, to implementation of all activities including timber sales and road construction, to accelerating implementation of activities scheduled for the next decade (1996-2005) into the 1988 to 1995 period. The activities considered are activities projected for implementation over the next 50 years by the Helena National Forest Plan Final Environmental Impact Statement, approved May 20, 1986, as well as some which have been proposed during the scoping process to date.

Public participation will be important during the analysis. The first point of

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public participation is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identifying additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determining potential cooperating agencies and task assignments.

Scoping has already been initiated through letters to potentially affected parties sent December 22, 1987 and meetings with several citizens organizations and sporting groups. Additional public involvement will include release of the draft alternatives for public review and comment in June 1988, and an open house at the time of release of the Draft Environmental Impact Statement. The Montana Department of Fish, Wildlife and Parks and the Jefferson Ranger District, Deerlodge National Forest have cooperated in development of the issues and alternatives and have been invited to continue as the analysis continues.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in August, 1988. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is very important that those interested in management of the Park Lake area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure

their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978) and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by November 1988. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

Ernest R. Nunn, Supervisor of the Helena National Forest, is the Responsible Official.

Ernest R. Nunn,
Forest Supervisor, Helena National Forest.

Date: June 26, 1988.

[FR Doc. 88-14833 Filed 6-30-88; 8:45 am]
BILLING CODE 3410-11-M

Intent To Prepare Environmental Impact Statement; Partin Limestone Products, Inc. Mine Operating Plan; San Bernardino National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to approve an operating plan for the development of the Partin Limestone Mine on the Big Bear Ranger District, San Bernardino National Forest, San Bernardino County, California. The Land Management Department, County of San Bernardino, will participate as a cooperating agency. The Forest Service invites written

comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by July 21, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Richard Stauber, Forest Supervisor, San Bernardino National Forest, 1824 So. Commercial Circle, San Bernardino, CA 92408-3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to George Kenline, Lands and Minerals Officer, Big Bear Ranger District, Fawnskin, California, 92333, phone 714-866-3437.

SUPPLEMENTARY INFORMATION: The U.S. Mining Laws, Act of May 10, 1872, as amended, gives limestone operators a statutory right to extract minerals, subject to regulations prescribed by law.

36 CFR Part 228, Subpart A, first issued on August 28, 1974, prescribes the need for an approved Plan of Operations, including reclamation. The Forest Service has a responsibility to approve some form of Plan. Withholding an approval would be a rare exception, but might occur in instances where any activity at all would adversely affect a Federally listed Threatened or Endangered Species or other significant resource.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this site. One of these will be no development of the site. Other alternatives will consider the company proposal, an environmentally modified proposal and an environmentally constrained proposal. Alternative locations for overburden dumps, roads, and support facilities also will be considered.

Richard Stauber, Forest Supervisor, San Bernardino National Forest, San Bernardino, California is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be

used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Land Management Department, County of San Bernardino, will be invited to participate as a cooperating agency to evaluate reclamation practices and thereby meet their responsibility for the implementation of the California Surface Mining and Reclamation Act of 1975, (SMARA) California Public Resource Code, Division 2, Chapter 9.

Partin Limestone and three other limestone mining companies have extracted ore rock from within the San Bernardino National Forest for many years under a variety of Plans of Operations and amendments. For a variety of reasons, most of the plans and amendments have become obsolete, incomplete, or for some other reason, no longer adequate.

Early in 1987, Partin Limestone and the other limestone mining companies were asked by the Forest Service to update their Plans of Operation for continued operations within the Forest. Since all four operations were fairly close together, since there was an element of combined effects, and since all proposals were in hand at the same time, it was decided to evaluate them all in a single process.

Two public meetings were held jointly by the Forest Service and the mining companies to inform and gather information. Also, during 1987 the Forest Service solicited input from a number of agencies, special interest groups and individuals on concerns and issues relating to mining activity on the north slope of the San Bernardino Mountains. Additional public meetings are not planned at this time.

Public concerns were noted and were addressed in an environmental assessment. Each plan was then reviewed, assessed individually and then in combination. Negotiations over various proposed activities took place to develop individual plans into mutually acceptable packages from the mining law and resource protection

standpoints. Issues and concerns addressed in the plan and the environmental assessment were confined essentially to methods, resource impacts, impact mitigation, and reclamation. The intent was not to revalidate previously approved activities, since most of those activities have proceeded and cannot be reversed.

During the environmental analysis process, it was determined that a large area of Forest Service sensitive plants and their habitat exists on the Partin limestone area, and that the plants and habitat would be impacted by any developmental alternative. For that reason, it was determined that the proposal could have significant effects on the environment, and an EIS was needed.

It was recommended that Partin be allowed to continue their existing operation under the September 1975 approved Plan but not to disturb new ground containing Forest Service sensitive plants or their habitat until an EIS is completed.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by August, 1988. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the north slope of the San Bernardino Mountains participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to

ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final. After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by September, 1988. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Dated: June 27, 1988.

Richard L. Stauber,

Forest Supervisor.

[FR Doc. 88-14827 Filed 6-30-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-008]

Color Television Receivers From Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 11, 1987 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on color television receivers from Korea. The review covers the four known manufacturers and/or exporters of this merchandise to the United States currently covered by the order, and generally the period April 1, 1985 through March 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. Based on the timely comments we received, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Laura Merchant or David Mueller.

Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 17617) the preliminary results of its administrative review of the antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are sales of color television receivers, complete and incomplete, from Korea.

The order covers all color television receivers regardless of tariff classification. The merchandise is currently classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9664, 684.9666, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, 687.3520, of the Tariff Schedules of the United States Annotated. The results of this review cover complete color television receivers and incomplete color televisions, the components of which are imported together. The results do not include imports of incomplete color television receivers (i.e. color picture tubes or printed circuit boards). We have postponed review of these items until the next administrative review. This review covers four known manufacturers and/or exporters of Korean color television receivers to the United States currently covered by the order, and generally the period April 1, 1985 through March 31, 1986.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by section 353.53a(c) of the Commerce Regulations. We received timely comments from the petitioners (International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO-CLC, Independent Radionic Workers of America, and Industrial Union Department, AFL-CIO), Zenith Electronics Corporation, and three respondents, Gold Star Co., Samsung Electronics Co., and Daewoo Electronics

Co. We received additional comments from Samsung on July 22, 1987, but because those comments were received after the close of the comment period, we have not considered them for the final results. (We also received comments from the petitioners, Zenith, and the respondents concerning mathematical or clerical errors. We have corrected such errors but have not addressed them specifically in this notice.)

Comment 1: Zenith and the petitioners argue that the Department should implement the Court of International Trade's ("the CIT's") ruling in *Zenith v. United States* (April 24, 1986) by adding to United States price ("USP") the internal taxes rebated or forgiven upon the exportation of the merchandise to the extent that those taxes were "passed through" and included in the price of televisions sold in Korea.

DOC Position: The Court of International Trade issued its final decision in *Zenith* on January 14, 1986. Because we have appealed that decision, we are continuing to assume that all indirect taxes in the home market are passed through to the ultimate customers. For our reasons as to why we did not attempt to measure the amount of tax "passed through" to customers in the Korean market, see our final results of review of the Japanese television case (53 FR 4051 (February, 1988)).

We agree that the amount of tax forgiven by reason of the export of televisions to the United States should be added to USP under the statute. We calculated the adjustment by multiplying the net sales price by the tax rate and added the result to USP. To avoid artificially inflating or deflating margins, we made circumstance-of-sale adjustments, where appropriate.

Comment 2: Zenith is concerned that the respondents have included, and the Department has accepted, various indirect expenses in the FMV offset which are not selling expenses. Respondents have an incentive to assign non-selling expenses to sales offices so the pool of expenses included in the offset is maximized. Zenith urges the Department to require respondents to demonstrate that each home market indirect expense is a selling expense.

DOC Position: We do not interpret § 353.15 of our Regulations concerning indirect selling expenses in the home market to be limited only to selling expenses in sales offices and, as excluding so-called non-selling expenses incurred by those offices. The pool of indirect selling expenses in the home market should include those expenses which are similar to the expenses

incurred by the subsidiary in the U.S., whose function it is to sell merchandise. In this instance, the equivalent home market expenses are those which are incurred by the home market selling division in support of the home market sales effort and which include certain general expenses associated with selling.

Comment 3: Zenith claims that the Department erred in not taking into account the average age and balance of each account payable relating to home market sales, and applying the respondents' short term interest rate to those average ages and balances to offset claimed selling expenses. Zenith maintains that the true cost of a discount or rebate is the discount or rebated amount minus the savings the respondent realizes by paying the rebate or discount after the obligation to pay has been incurred.

DOC Position: It is unnecessary to impute expenses/costs where a company quantifies such expenses/costs, provides adequate documentation of those expenses, and the company's quantification accurately reflects the expense to the seller. This is unlike situations when an expense inherently exists in a transaction (e.g., credit costs when payment is delayed), yet no sales-specific quantification of such costs exists in a company's records and a sales-specific quantification must be calculated. In most cases when a rebate or discount system is in place, an allocated sales-specific cost exists in the company's records. Our examination of the rebate and/or discount systems used by the Korean manufacturers indicates a system where the manufacturers paid rebates and/or discounts according to set schedules governed by contracts and/or purchase orders between the manufacturers and the customers. As such, the amount of the rebate/discount paid to the customer represents the allocated expense to the seller.

Comment 4: Zenith asserts that it is inappropriate for the Department to accept an imputed credit claim as a circumstance of sale adjustment, while using lower actual financing expenses for the respondents' cost of production. While the Department recognizes that there is a distinction between respondents' production and selling expenses, it also must recognize that a producer's or seller's borrowing can be used to finance both production and sales. Therefore, the Department still must account for the extent to which the imputed credit exceeds actual financing costs. Zenith proposes that the Department account for the excess of

imputed credit over actual financing expenses by making an adjustment to price in the cost of production analysis.

DOC Position: We disagree. The extension of credit by a seller is a selling expense. Therefore, differences in credit terms affecting price comparability are adjusted for under § 353.15(b) of our Regulations as a circumstance of sale. When it is not possible to determine the actual costs associated with such credit terms, or where no express provision for credit has been made, we use imputed costs as the best reasonable alternative of the costs for the total length of time credit is extended. For example, if a seller extends credit to its home market customers but makes no provision for credit on its U.S. sales, yet there is a time lag between shipment and payment on U.S. sales, we would impute a cost of credit on the U.S. sales in order to make a circumstance of sale adjustment, even though the cost of credit on the U.S. sales did not result in an actual out-of-pocket expense to the seller.

On the other hand, in a cost of production calculation we are not concerned with costs in the same way we are where there are differences in circumstances of sale and adjustments must be made in order to compare U.S. and home market prices on an "apple-to-apple" basis. Therefore, whether imputed costs used for a circumstance of sale adjustment are higher or lower than respondents' actual financing costs is not relevant for purposes of determining cost of production. Under § 353.7(b) of our Regulations, we are interested in determining the actual costs incurred to produce the merchandise under investigation in order to compare those costs with the revenue generated from the sale of the merchandise to determine whether, in fact, sales have been made at below cost. To accomplish this, we are required to use the best available information. Here, respondents' actual financing expenses represent the best available information for computing the cost of production.

Comment 5: The petitioners and Zenith argue that respondents' allocation of home market advertising only over distributor sales is erroneous because advertising promotes respondents' color television sales regardless of the class of customer. Further, this home market methodology is inconsistent with the DOC's acceptance of respondents' U.S. advertising claim which is based on an allocation of expenses over all U.S. color television sales, Korean-made televisions, U.S.-made televisions, and

samples, even though sales of samples were not included in the DOC analysis.

DOC Position: We disagree. We compare U.S. sales to respondents' home market sales to distributors or dealers because these sales are at the same level of trade. As we stated in the previous review with respect to Samsung (51 FR 41365 (1986)), the home market advertising expense is an assumption of distributors' selling costs and is best quantified by the total sales to distributors. Likewise, an allocation base that includes sales of both Korean and U.S.-made televisions is appropriate because advertising benefits sales of all color televisions sold in the U.S., whether made in Korea or in the U.S., and whether or not included in the sales analysis. However, we agree with the Petitioners and Zenith that the U.S. samples do not benefit from advertising in the U.S. Therefore, we have eliminated samples in the allocation of U.S. advertising expenses.

Comment 6: In the deficiency responses, respondents provided answers to the Department's inquiries about compensating deposits made against loans from Korean financial institutions. Zenith argues that the Department "net out" the interest earned on such deposits from the interest paid on short-term debt that is used to calculate the home market credit adjustment.

DOC Position: We adhere to our position in the second administrative review of this antidumping duty order (51 FR 41365, Comment 77), that when the compensating deposit is not required by the loaning institution, the cost of the loan as reflected in the interest rate is unchanged. Therefore, any interest earned on the deposit does not affect the cost of the loan for antidumping purposes. The respondents indicated that the compensating deposits were not required as a condition of obtaining the loans.

Comment 7: In the final results of the previous review, the Department addressed an issue concerning salary subsidies paid to independent contractors as part of Samsung's home market warranty claim (51 FR 41365 (1986), Comment 15). Zenith is concerned that in this current review, these salary payments have not been stripped out of Samsung's claim. Zenith argues that the salary payments are ordinary payroll expenses and should not be included as variable warranty expenses. Further, Zenith argues that to the extent that salary payments to "independent contractors" are a common business practice in Korea, the Department

should strip out such expenses from other respondents' warranty claims.

DOC Position: We agree. In our deficiency letter to Samsung, we requested that they separately identify that portion of the agents' salaries devoted to repair work. However, Samsung did not comply with our request. It stated that Samsung only pays warranty fees from warranty services provided by those agents.

We stated in our final results in the previous review (Comment 15) that we did not remove fees to outside agents from the claim because the correction would change the claim by less than .1 percent *ad valorem*. However, because Samsung did not identify that portion of the outside agents' salaries attributable to repairs, we have deducted the entire "fees to outside agents" portion of Samsung's direct expenses in its warranty claim and have included it in the total of Samsung's indirect selling expense adjustment.

Comment 8: Zenith comments that in the first administrative review, the Department discovered that a dual pricing structure exists in Korea. Because respondents have not disclosed the full costs of manufacture of home market and export model matches, Zenith urges the Department to require them to submit those full costs of manufacture so that the differences in merchandise adjustment will include the effects of the dual pricing structure.

DOC Position: We disagree. In our verification of respondents' differences in merchandise claims during our second administrative review, we verified that respondents used the actual prices paid for differing parts when calculating an average price for physical differences. In accordance with our position stated in the final results of the second administrative review, we have not made any changes to respondents' calculations of physical differences in merchandise. (See Comment 78, 51 FR 411365 (1986)).

Further, we disagree with Zenith that the total cost of manufacture of export models and home market matches should be used to calculate the differences in physical characteristics adjustment. Differences in manufacturing costs which are not due to physical differences in the merchandise itself do not qualify as adjustments. Comparing total manufacturing costs, as Zenith suggests, would result in characterizing all cost differences as resulting from physical differences, regardless of the actual nature of the costs.

Comment 9: Zenith argues that the Department should include in its margin

analysis those color televisions imported as "samples". Respondents claim that ownership of those televisions did not transfer from the manufacturer. Zenith believes that even if the respondents correctly omitted these "sample" sets, all costs associated with the importation of those sets must be deducted from the USP. Further, Zenith argues that Samsung's upward adjustments of total quantity and value of U.S. sales, to account for certain televisions and parts used for warranty purposes, is inappropriate. By upwardly adjusting the total quantity and value of its U.S. sales, Samsung is artificially inflating total purchase price (PP) sales value.

DOC Position: As explained in our final results of review in the Japanese television case, (52 FR 8941 (1987)), concerning color televisions imported as samples, we agree that goods entered for consumption are subject to an antidumping order whenever ownership transfers from the exporter of such goods. However, information on the record in this proceeding shows that transfer of ownership of the receivers referred to as "samples" never occurred. The televisions referred to as "samples" were used for engineering or testing purposes, or were used as display models at electronic products shows and were either kept by the exporter or were destroyed. Therefore, they have not been included in our analysis.

We agree with Zenith that Samsung has inappropriately accounted for the parts and televisions used for warranty replacement parts. As we stated in the final results of the previous review, we accepted Samsung's downward adjustment of gross unit price to account for the parts and televisions. (See Comment 19, 51 FR 41365 (1986)) However, in Samsung's deficiency response in this administrative review, it stated that it adjusted its sales quantities and prices on the computer tape to account for certain televisions and parts. We have examined the computer tape data and have concluded that Samsung has upwardly adjusted its PP sales values and quantities. For the reasons stated in our previous review, we have stripped out the additional sales values and quantity sold, using Samsung's response as best information available.

Comment 10: Zenith notes that the statute limits the duty drawback adjustment to drawback which can be attributable to duties originally paid with respect to the content of the merchandise later exported. Therefore, the Department should remove that

portion of the drawback adjustments received on a fixed-rate basis.

Further, Zenith highlights certain problems with Daewoo's drawback adjustment. Zenith maintains that Daewoo's adjustment is based on the amount applied for, not the amount actually received. Further, for several models Daewoo has used estimates to establish its claim, such as drawback paid in prior reviews or drawback from similar models for instances in which it has no record of payment. Zenith concludes that Daewoo's claim should be denied *in toto*.

DOC Position: We disagree that duty drawback given on a fixed-rate basis should not be included in the duty drawback claim. In this review we have adhered to our position in the final results of the second administrative review (See Comment 20). Respondents have shown that their calculation of the fixed-rate amount was in accordance with Korean Customs Law. Therefore, we have accepted that portion of their claims.

Concerning Daewoo's duty drawback claim, Daewoo states in its response that for four models, it had no record of duty drawback during the review period but would submit the actual amounts as soon as they were available. Daewoo has not submitted those amounts during this proceeding. Therefore, we conclude that no duty drawback was paid and we have not added duty drawback to USP for those models.

Comment 11: Zenith comments that the Department has incorrectly offset U.S. commissions with indirect selling expenses in the home market. Zenith argues that commissions paid on U.S. sales compensate the recipients for both direct and indirect selling expenses. Unless the commission is broken up into its direct and indirect expense components, and the FMV offset capped at the level of the indirect expense element only, the commission offset will overcompensate for the indirect expense portion of the commission and not allow for the removal of the direct selling expense portion of the commission from USP.

DOC Position: We disagree. Our regulations require us to make an adjustment for situations in which a commission is paid in one market but not in the other market. That adjustment is limited to "actual other selling expenses", or the "total amount" of the commission granted in the other market (Commerce Regulations, 353.15(c)). We do not interpret our Regulations to require us to limit the offset to the direct expenses of the commissionaire. Therefore, we have offset the full

amount of the commission in the U.S. with indirect selling expenses in the home market.

Comment 12: Zenith urges the Department to remove from respondents' USP all antidumping legal fees. Zenith argues that legal fees are expenses incurred in selling merchandise covered by an order in the U.S.

DOC Position: We disagree. For our position on this matter, see Comment 79 in our final results of the second administrative review in this case, cited *supra*.

Comment 13: Zenith argues that the statute instructs the Department to reduce USP by the amount of any charges or expenses incidental to bringing the merchandise from the country of exportation to its place of delivery in the U.S. (19 U.S.C. 1677a(d)(2)(A)). Therefore, the Department should reduce the USP by the amount of estimated antidumping duties and any expense associated with paying such duties.

DOC Position: We disagree. We do not consider antidumping duties to be expenses related to the sales under consideration. In addition, adding these estimated duties to the dumping margins would artificially inflate them.

Comment 14: Zenith notes that the Department has ignored its request to verify respondents' submissions. Zenith states that the failure to perform verification allows the possible misclassification of expense claims by respondents to remain hidden from the Department.

DOC Position: In accordance with section 776 of the Act, it is the Department's practice to conduct verification only when we receive a request for revocation from a respondent, when we receive a request from the domestic industry and have not conducted a verification during the two immediately preceding reviews and determinations, or when the domestic party has shown "good cause" for verifying the information received during the administrative review. In its written request (April 30, 1988) for an administrative review of the antidumping duty order, Zenith requested the Department to conduct a verification of certain specified Korean manufacturers. Zenith speculated that a verification in the third administrative review would be necessary because the Department would be including sales of U.S.-assembled sets in its analysis, and because the recent decision of the Court of International Trade regarding the treatment of taxes rebated or not collected by reason of exportation of the

merchandise (19 U.S.C. 1677a(d)(1)(C)), would effect the Department's analysis. See *Zenith Electronics Corp. v. United States*, Slip Op. 86-43, cited *supra*.

We determine that Zenith has not shown "good cause" in accordance with 1677e(a)(3)(B), for verifying the information submitted by the respondents. Zenith requested the verification before the Department even initiated the third administrative review. Therefore, Zenith's request did not result from an analysis of the information submitted in the course of this review. Further, we have postponed our analysis of U.S.-assembled sets until the fourth administrative review, for which we have conducted verifications. With regard to Zenith's speculation that the Department would not receive enough information to act in accordance with the ruling in *Zenith*, cited *supra*, we have determined that adequate information exists on the record, and we have made the necessary changes to our analysis. (See Comment 1)

Comment 15: Zenith argues that the Department severely understates the antidumping cash deposit on entered merchandise by basing the weighted-average margins on statutory USP and not on the merchandise's entered value. Upon entry of the merchandise into the U.S., the Customs Service applies the weighted-average percentage to the declared transfer price as best information available. Zenith argues that because this transfer price is often less than statutory USP, the absolute dollar amount of dumping duty is less than the dollar amount that would be the result if the percentage were based on statutory USP. Therefore, Zenith urges the Department to calculate the deposit rate as a percentage of the entry's entered value and not as a percentage of statutory USP.

DOC Position: We disagree. In this review we have followed our position as stated in the final results of the review of the Japanese television review (52 FR 8940 (1987), Comment 7). Section 736 of the Statute requires the Department to instruct U.S. Customs "to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise." (19 USC 1673e(a)(1)). At the time of entry of any shipment, U.S. price has yet to be determined. Since cash deposits of estimated dumping duties are required at that time, we instruct Customs to require such cash deposits expressed as a percentage of the only value available, which is the entered value. If the amount of the antidumping duties deposited should be less than the amount

assessed, the Department will assess interest on the difference.

Comment 16: Zenith and the petitioners comment that the Department incorrectly disregarded Gold Star's returned, home market merchandise in its calculation of the FMV for Gold Star's sales. Returned merchandise appears on the computer tapes as negative quantity sales.

DOC Position: We consider it appropriate to eliminate returned merchandise from the analysis by matching the returns with the original sale. We requested Gold Star to eliminate the returns by matching them with the original sale and eliminating both transactions from the database. Gold Star made the corrections and submitted a revised tape which the domestic parties received under administrative protective order.

Comment 17: Zenith notes that in its test for sales made below the cost of production for Gold Star, the Department omitted from the analysis certain commissions granted on home market sales.

DOC Position: We agree and have discussed those commissions from the home market price in our test for below-cost sales for Gold Star.

Comment 18: Zenith argues that in its test for Gold Star's home market sales made below the cost of production, the Department erroneously applied Gold Star's production expense ratio to the cost of manufacture of its home market models. Zenith states that it is inappropriate to apply an expense ratio based on sales to manufacturing costs.

DOC Position: We agree that it is inaccurate to apply an expense ratio based on sales value to a production cost value. We have recalculated Gold Star's expense ratios using the cost of goods sold listed in its audited financial statements.

Comment 19: Zenith notes that the Department removed from its analysis of Gold Star's PP sales those sales with a negative net USP. Zenith points out that this is inconsistent with the Department's treatment of negative net U.S. prices in ESP calculations.

DOC Position: We agree. A negative net U.S. price indicates that the sale was made at a loss. We see no reason to exclude these sales from the margin analysis. Therefore, we have corrected the PP computer program to include those sales with a negative net USP.

Comment 20: Zenith notes that the Department incorrectly adjusted Daewoo's FMV for physical differences in merchandise for one model because Daewoo has miscalculated the claim on the computer tape. Zenith argues that

the Department should use the amount listed in Daewoo's questionnaire response.

Further, Zenith contends that Daewoo's freight expense claim for home market freight from the factory to one of several regional warehouses should be treated as an indirect selling expense.

DOC Position: We have accepted Daewoo's physical differences adjustment for that model, as listed in Daewoo's response, because we consider that amount to represent Daewoo's claim. Accordingly, we have made the correction to the computer tape.

Additionally, we intended to treat Daewoo's freight claim from the factory to the warehouse as an indirect expense in accordance with our final determination in the previous review (See Comment 93, 51 FR 41365 (1986)). We have corrected this for the final results.

Comment 21: Zenith notes that Daewoo had stated in its questionnaire response that it did not yet know the exact amount of its U.S. advertising expense for the review period; however, it would report that expense to the Department at a later date. Daewoo has failed to provide the Department with its claim. Zenith argues that the Department should disallow Daewoo's home market advertising claim because the statute only permits an adjustment for a difference in expenses between the home and U.S. markets. The statute does not allow a one-sided reduction in FMV when similar expenses are known to exist in the U.S. but which are unreported.

DOC Position: We agree with Zenith. Because Daewoo has not reported its U.S. advertising expenses, we have denied its home market advertising claim as no difference in this type of expense has been established by respondent.

Comment 22: Zenith notes that the Department failed to adjust Daewoo's ESP sales for royalty payments, certain movement charges and discounts.

DOC Position: Concerning the royalty payments, Daewoo's questionnaire response indicated that it did not make payments for those months in which it had made ESP sales. However, Daewoo incorrectly calculated an average model-by-model expense using the sales totals for each model; it should have applied the per-unit royalty amounts to its ESP sales. We have corrected this omission and have deducted the allocated royalty amounts from USP. Regarding Daewoo's movement charges and discounts, the omission of those expenses from our

analysis was an oversight and we have made the necessary corrections.

Comment 23: Zenith argues that the Department should deduct, from Daewoo's ESP, overseas market development expenses incurred in Korea and listed in Daewoo's Electronic Co. Ltd's income statement.

DOC Position: We agree. A portion of Daewoo's export selling expenses incurred in the home market should be considered an indirect selling expense "incurred by or for the account of the exporter in the United States", in accordance with 19 U.S.C. 1677a(e)(2), and should be deducted from ESP.

Comment 24: Zenith notes that certain of Daewoo's sales of DCB-415PR, sold in March and April, 1986, and matched with home market model TCK-405PRW, were not included in the Department's analysis because there were no above-cost sales of TCK-405PRW in those months. Zenith suggests that the Department use the weighted average FMV for TCK-405PRW in October 1985 as the best information available.

Daewoo suggests that the Department use sales of its home market model TCK-406VSW for comparison to export model DCB-415PR for those months in which no contemporaneous above-cost sales of TCK-405PRW are available.

DOC Position: When there are no home market sales made in the same month as the U.S. sale, we use a home market sale up to 90 days prior to and 60 days after the date of the U.S. sale (See Comment 6, 51 FR 41365 (1986)). However, in this instance, we were unable to use such sales of the home market model because 95 percent of those sales were made below the cost of production for nine months out of the twelve month review period.

We generally offer Zenith and the petitioners an opportunity to comment on all proposed model matches. Zenith and the petitioners had accepted the original match of TCK-405PRW to DCB-415PR. However, because Daewoo's proposal was submitted at the end of the final comment period, Zenith and the petitioners have not had an opportunity to comment. Therefore, we use constructed value for TCK-405PRW using cost information submitted during this proceeding. This is in accordance with section 773(a)(2) of the Act (19 U.S.C. 1677b(a)(2)).

Comment 25: Zenith and the petitioners argue that the Department should use Samsung's home market model CT-0901 for comparison with model C8102MA. They believe this is a more suitable choice because model CT-0901 has the same screen size as C8102MA and it satisfies the Department's viability criteria.

The petitioners argue that Samsung's home market model CT-2090 is a superior match to CT-500WDC compared to CT-2086 because CT-2090 contains the same color picture tube.

Further, Zenith adds that the Department incorrectly matched Samsung's U.S. model CT-389ZA to home market model CT-1629 in February, 1986—a month during which Samsung had reported earlier that it had no sales of CT-1629.

DOC Position: We agree that home market model CT-0901 is a preferable comparison to C8102MA because it is more similar in screen size, an extremely important physical characteristic of television. Additionally, we find that there were adequate sales of CT-0901 to warrant its use for comparison purposes.

Concerning the February, 1986 sales of model CT-1629, the computer program instead used sales of that model in February, 1985. The program also matched sales of the export model with model CT-1639 in all months except February, 1986 when our intention was to use CT-1639 for February only, and CT-1629 for all other months. This is in accordance with our June 20, 1987 letter in which we preliminarily accepted Samsung's model matches. We have corrected the errors and have matched sales of CT-389ZA with CT-1639 in February, 1986 and with CT-1629 in all other months during the review period.

Finally, we have rejected the petitioner's suggestion that we match CT-2090 to U.S. sales of CT-500WDC. When selecting home market models for comparison to U.S. models, we generally allow all parties an opportunity to comment on the proposed matches. Because the selection of models for comparison purposes can affect the margins on individual models, we conclude that it is appropriate to seek comments from all parties. Samsung made its selections at the beginning of this proceeding and Zenith and the petitioners were given the opportunity to comment on Samsung's suggested matches.

However, because the petitioners did not propose this alternative until the end of the period for final comments, we did not have sufficient information to evaluate the suggested match, and Samsung did not have an opportunity to respond to the petitioner's comments.

Therefore, we have accepted Samsung's original match of export model CT-500WDC to home market model CT-2086, as we are not convinced that this match was incorrect.

Comment 26: Zenith argues that Samsung has failed to net out of its home market SYPM rebate claim the

income earned from the transactions through the related financial institution. Transactions between related parties are intracorporate transfers of funds for which no adjustment should be allowed. Zenith suggests that the interest income from the rebate could be shifted from Samsung to its related financial institution. Therefore, Zenith proposes that in those instances in which the interest income on SYPM sales exceeds the amount of SYPM rebate claimed by Samsung, the Department should add the amount of the excess to FMV.

DOC Position: We were able to determine during the verification in the previous review that the interest terms were the same for both the related and non-related banks that Samsung used in its SYPM transactions. Therefore, the relationship between Samsung and its banks did not affect the interest cost. Further, we have no basis to conclude that Samsung is shifting any income earned on the rebates it finances through its related institution. Therefore, we used the actual interest paid. For our treatment of Samsung's SYPM rebate for this review, see Comment 60.

Comment 27: The petitioners argue that the Department should analyze indirect purchase price sale ("IPP") as ESP transactions. The Department has been informed in *PQ Corp. v. United States* (Jan. 27, 1987) that an ESP analysis is appropriate when a foreign producer exports, and its U.S. subsidiary imports, merchandise which is sold by the U.S. subsidiary to an unrelated purchaser prior to importation of the merchandise.

Further, the petitioners argue that Samsung's IPP sales fail to satisfy the DOC stated criteria. First, the petitioners state that Samsung Electronics America (SEA) imported the merchandise for sale and maintained an inventory in the U.S. Second, the petitioners contend there is nothing on the record that established these sales transactions as the customary commercial channel of that merchandise between the parties involved. Third, the petitioners believe that SEA functions in the U.S. much more as Samsung's U.S. marketing arm than as a mere agent. SEA acted as the importer for these sales and incurred significant marketing expenses for sales in the U.S.

DOC Position: We disagree with the petitioners that Samsung's IPP transactions do not meet the criteria we set forth in our preliminary results notice for this review, which were designed to address the Court's concerns in *PQ Corp. v. United States*. According to its sales listings, SEA's IPP customers are a distinct and separate

group from its ESP customers. Samsung has stated for the record that it does not put the televisions it sells to this group of customers into SEA's inventory in the United States and that such direct shipments are the customary commercial channel of trade for that group of customers. For these IPP sales, we are not aware of any evidence on the record to suggest that SEA functions as anything more than an agent for these sales. The IPP/ESP distinction recognizes SEA's different roles by the allocation and deduction of all indirect selling expenses from the inventoried sets.

Comment 28: The petitioners argue that the Department erred in allowing respondents' duty drawback claims because their claims include both import duties and defense taxes. The Department should not have added the taxes to the USP as import duties refunded because the taxes are not import duties. Section 772(d)(1)(C) of the Act provides that USP shall be increased by the amount of taxes imposed in the country of exportation which have been rebated or which have not been collected by reason of the exportation of the merchandise to the U.S. It is wrong to assume that the taxes are passed on in the home market, and, unless the respondents can demonstrate that the taxes are passed on, the Department should deny respondents that portion of their duty drawback claims.

DOC Position: During our verification of respondents' responses in the second administrative review, respondents were able to show that the duties and defense taxes included in their duty drawback claims were rebated on merchandise exported to the United States. Absent evidence to the contrary, we have accepted the tax amounts as part of respondents' claims. Regardless of its name, a tax imposed upon importation and rebated upon exportation, in a manner identical to the treatment of the import duty, should not be treated any differently than an import duty.

Comment 29: The petitioners note that there are discrepancies between the home market sales quantities reported in Gold Star's June 1986 model match submission and those used by the Department in its preliminary analysis. The Department should reconcile Gold Star's home market sales as reported in its model match submission with the sales listed on the computer tape, or else use best information available for the final analysis.

DOC Position: In the revised home market sales data Gold Star submitted in February, 1987, we are satisfied that

Gold Star accounted for its returned merchandise by matching the returns with the original sales. We consider the model-by-model sales quantities listed in the model match submissions to be only estimates of quantities sold. The listing of individual sales entered on the computer tape is inherently more accurate than the summary totals submitted with model match information because entries on the sales listing are obtained from individual source documents such as invoices.

Comment 30: The petitioners question the methodology of the DOC home market sales viability test in this proceeding. In its June 20, 1986 letter, the Department preliminarily accepted sales of one of Gold Star's home market models to be compared with sales of several U.S. models, while the sales of that home market model amount to less than five percent of the total sales of the U.S. models. In another proceeding involving color picture tubes from Korea, the Department determined that the home market sales volume relative to that in the United States should be considered in the selection of models for comparison purposes.

DOC Position: In order to determine whether respondents have sufficient home market sales to use for comparison to sales of models in the United States, section 353.4 of our Regulations instructs us to determine that the total sales of such or similar merchandise is 5 percent or more of the sales of that merchandise to third countries. In making this determination, we established separate "such or similar" categories based on CTV screen size. All home market models generally within two screen sizes and containing the same tuning system as a given U.S. model were grouped in the same category. The 5% viability test described above was then applied to each category and all were found viable. We do not consider sales of one model to constitute the universe of sales for viability of the entire home market. We consider such an interpretation of "such or similar merchandise" for purposes of determining home market viability, to be overly specific.

Comment 31: Concerning Gold Star, the petitioners argue that it is inappropriate to use model CNR-842KZ for comparison purposes. The petitioners note that this model is a discontinued model and the test for below-cost sales reveals that few sales were made above its cost of production. Therefore, this model should not be used for comparison purposes because it was not sold in the ordinary course of trade.

DOC Position: We disagree with the Petitioner's general proposition that

because a model was sold below its cost of production it necessarily was sold out of the ordinary course of trade. The legislative history to the below-cost provision of the Trade Act of 1974 explicitly states that it is normal business practice both in the U.S. and in foreign countries to sell discontinued merchandise at less than cost; therefore, such sales should not be automatically excluded from consideration. See H.R. Rep. No. 571, 93d Cong. 1st Sess. 71; S. Rep. No. 1296, 93d Cong., 2d Sess. 7310 (1973).

However, we conclude that it is inappropriate to compare sales of model CNR-842KZ for the two months during which 70 percent of its total sales were made below its cost of production in the home market, due to its discontinuation, with sales in the U.S. for those same months (where the such or similar model was not being discontinued). If such comparisons were allowed, it would be possible for the manufacturer to use the below cost sales of a discontinued model in an antidumping analysis to manipulate its margins. In that way, U.S. sales could be made at unfairly low prices while at the same time masking the true extent of the dumping margins. To avoid the possibility for such manipulation, we conclude that where a model is discontinued in the home market but not in the U.S., home market sales at below cost are not in the ordinary course of trade for comparison purposes as intended in the legislative history and thus may be properly disregarded. (Our consideration of the below-cost home market sales might have been different if at the same time the such or similar U.S. model was simultaneously being discontinued in the U.S.)

Therefore, instead of model CNR-842KZ, we used the home market sales of model CNR-9082 for comparison purposes for the two month period. CNR-9082 is the model we selected prior to our preliminary determination to be compared to sales of these same U.S. models in subsequent months, since it is the most similar model.

Comment 32: The petitioners object to the DOC decision to combine the commission offset with the ESP offset. They argue that § 353.15(c) provides that the commissions given in one market and not the other may be offset by actual "other selling expenses" incurred in the other market. The petitioners claim that "other selling expenses" only includes salesmen's salaries, bonuses, and similar selling functions, whereas the ESP offset permits the inclusion of all actual selling expenses. Therefore, salesmen's salaries should be

segregated from indirect selling expenses and compared to commissions.

DOC Position: We disagree. We have applied the same methodology in this review as we used in the previous review. For our position on this matter, see Comment 3 of our final results of the second administrative review (51 FR 41365 (1986)).

Comment 33: The petitioners urge the Department to offset the average duration of accounts receivable by the average duration of accounts payable. They state that the purpose of the imputed credit formula is to approximate each respondent's working capital needs, while it carries its accounts receivable.

DOC Position: We disagree for the reasons stated in our final results of the previous review. (See Comment 7, 51 FR 41365 (1986)).

Comment 34: The petitioners argue that the cost accounting system Daewoo used at its factory to allocate costs to individual products can lead to distortions because it does not take into consideration differences in manufacturing resources required, such as labor time, in the production of each product.

Further, the petitioners suspect that Daewoo's cost of production is understated because it does not include production engineering costs which generally relate to implementing the design and technological changes of Daewoo's products.

DOC Position: We disagree that Daewoo's methodology for allocating costs is inappropriate. Daewoo uses an accepted cost accounting system for goods produced in an assembly-line fashion. Further, differences in manufacturing resources, such as labor hours, are recognized in Daewoo's calculation of standard costs. Therefore, we see no reason to require Daewoo to make additional adjustments for differences in manufacturing resources.

Concerning engineering costs, we are not aware of any evidence to indicate that Daewoo has excluded those costs from its cost of production calculation.

Comment 35: The petitioners are concerned that Daewoo's intra-company transfers of products do not reflect the fully-absorbed cost of production. Further, the petitioners believe that Daewoo's allocation of materials and labor costs will not reflect the actual costs for each model. They argue that distortions in the allocations will be eliminated if price and efficiency variances are calculated for each model under review.

DOC Position: Daewoo stated in its cost of production response that its transfer prices of these products include

the cost of parts, labor and factory overhead. Such a statement indicates that Daewoo has in fact calculated a fully-absorbed cost of production for these semi-manufactured parts.

We do not regard the recognition of costs and calculation of variances on a model-by-model basis to be a requirement of all generally accepted cost accounting systems. The creation of such variances when models share production facilities, while desirable, would be artificial absent a pre-existing method of associating actual costs with specific models. Daewoo's cost system does not have that ability.

Comment 36: The petitioners object to Daewoo's removal of profit included in the parts Daewoo purchases from Orion Electric Co. They argue that if, as Daewoo claims, its purchases of parts from Orion are at an arm's length price there is no reason for the Department to back out an amount for profit for those parts.

DOC Position: We agree. However, the petitioners are mistaken in their belief that the Department has accepted Daewoo's removal of profit from parts. For our preliminary determination, we added back the profit Daewoo had stripped out.

Comment 37: The petitioners are concerned that Daewoo has not accurately accounted for indirect labor costs in its calculation of total labor costs for the cost of production. Because wage rates differ, based on skills and seniority, Daewoo's allocation of indirect labor costs should be based on direct labor man-hours and not on direct labor costs. Further, the petitioners believe that a manufacturer considers the time its workers spend actually working, plus the time they are physically at the plant earning wages, in calculating its total labor costs. Therefore, the petitioners urge the Department to confirm that these labor costs are included in the cost of production calculations.

DOC Position: We disagree that Daewoo's allocation of indirect labor costs is not based on man-hours. To allocate its indirect labor costs, Daewoo used standard man-hours for each model as a percentage of total man-hours, and then applied that percentage to its actual labor cost. We consider Daewoo's methodology to be a reasonable one, and we do not consider that this methodology has created any distortions in the allocation of indirect labor costs.

Concerning Daewoo's inclusion of workers' downtime in the cost of production, we have no evidence to indicate that Daewoo has not included those costs in its calculation of total

labor costs. Normally, labor cost is based on payroll, and this includes both productive and non-productive time. Nothing indicates Daewoo reduced its labor cost by non-productive hours before allocation.

Comment 38: The petitioners argue that Daewoo should expense its Research and Development ("R&D") costs during the review period in accordance with the generally accepted accounting principles ("GAAP") in the United States and not in accordance with the "GAAP" in Korea which allows for the amortization of R&D costs.

DOC Position: Because Daewoo is a Korean-based company, it is obligated to follow the Korean GAAP for its financial statements. We consider this to be an acceptable practice and we do not find that the amortization of R&D has distorted Daewoo's expenses.

Comment 39: The petitioners urge the Department to reject Daewoo's calculation of the GS&A allocation percentage used in the test for below-cost sales. The methodology is incorrect because these cost of production expenses are allocated using net dealer sales, which is a revenue element. Daewoo should allocate the expenses using cost of goods sold so that a cost element will be allocated over a similar unit of measure.

DOC Position: We agree and have revised the SG&A expense calculations accordingly.

Comment 40: The petitioners comment that Daewoo should include bad debt in its cost of production. They note that Daewoo excluded bad debt from GS&A in its cost of production calculations because under Korean tax law, the expense cannot be deducted for five years. However, in Daewoo's income statement, gross profit was reduced by an amount for "provision for doubtful accounts." Daewoo cannot have it both ways. Further, because U.S. GAAP requires that bad debt be recognized as a reduction in income once the account is determined to be uncollectable, the Department should include the bad debt expense in Daewoo's GS&A for the calculation of cost of production.

DOC Position: Concerning expenses that are appropriately included in the cost of production, we adhere to our position in the first administrative review (49 FR 50420, Comment 32). In that determination we stated that the fact that a particular adjustment is not applicable in a foreign market value calculation does not necessarily mean that no expense was incurred. In some instances an expense is incurred in the manufacturing process, and therefore is included in the cost of production, but is

not allowable as a circumstance of sale adjustment to FMV.

In its decision not to include bad debt in its cost of production, Daewoo cites a determination in the second administrative review in which we stated that only those expenses which we have allowed as adjustments to FMV should be included in the calculation of cost of production (49 FR 41365, Comment 109). Upon further review, we realize that our statement was too broadly worded. In the situation to which this comment referred, we were unable to determine at verification if the expense was actually incurred. If we cannot determine that an expense was actually incurred, we do not make an adjustment to FMV and do not include the amount in the cost of production.

In reference to Daewoo, its financial statements indicate that it did incur bad debt expenses during the review period. According to the Commerce Department's *Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change* ("Adjustments Study"), bad debt incurred on earlier sales of the merchandise under consideration, but written off during the review period, is an indirect selling expense. Because Daewoo did not demonstrate that its bad debt was incurred on sales of color televisions, we cannot allow it as an indirect selling expense. However, Daewoo's bad debt is a general expense and should be included in the G&A expenses in the cost of production. We have amended our calculations accordingly.

Comment 41: The petitioners contend that Daewoo incorrectly calculated its net financing cost for the cost of production by subtracting both long- and short-term interest income from its total interest expense. Only short-term interest income should be subtracted from total financing expenses.

DOC Position: We agree with the petitioners that only short-term interest income should be subtracted from Daewoo's total financing cost. Long-term interest expense is considered to be a general administrative expense. It is appropriate to offset financing expenses with short-term interest income because only short-term interest income is considered to be earned from operational activities such as managing revenue from current sales. Long-term interest income ordinarily results from investment activities which are not related to production or sales, and therefore should not offset interest expenses derived from production or sales activities.

However, we did not deduct short-term interest income from Daewoo's

total financing expense as noted in its financial statement because Daewoo did not separately identify long- and short-term interest elements as was requested in section D.5 of the questionnaire. Therefore, we have used Daewoo's total interest expense from its financial statement in our cost of production calculations.

Comment 42: The petitioners argue that Daewoo understates its G&A expenses for cost of production by not including its goodwill expenses. These expenses should be included in Daewoo's G&A because they provide a direct benefit to Daewoo in the manufacturing and selling of its products. Moreover, the petitioners argue that the Department incorrectly revised Daewoo's G&A allocation by multiplying total G&A by the ratio of net sales to cost of goods sold. The Department should instead multiply Daewoo's total G&A expenses by the ratio of cost of goods sold of the color televisions under review to Daewoo's total cost of goods sold.

DOC Position: We agree that in this case goodwill expenses should be included in Daewoo's G&A. Absent any information on the record indicating that Daewoo's goodwill should not be included in our calculations, we have included a portion of the goodwill listed in Daewoo Electronic's income statement in the cost of production calculation.

Concerning the basis for allocation of Daewoo's G&A expenses, in the absence of more detailed cost information for televisions, we have used Daewoo Electronic Co.'s ratio of net sales to cost of goods sold as best information. We consider the ratio of sales to cost of sales for Daewoo Electronics to be reasonable as the best information available because television sales account for a significant part of its total sales of all products.

Comment 43: The petitioners note that Daewoo holds stock in a delivery company in Korea. They argue that if Daewoo employs this company to deliver color televisions to its unrelated customers, Daewoo's home market freight costs should be treated as overhead expenses.

DOC Position: We note that Daewoo does hold stock in a delivery company. However, in the prior review we determined that Daewoo also employs other delivery companies to deliver color televisions. Further, we are not aware of any evidence to indicate that this delivery company's charges to Daewoo are not at arm's length. Therefore, we determine that it is appropriate to include those costs with the freight costs from unrelated delivery companies in our final analysis.

Comment 44: The petitioners argue that Daewoo's home market indirect selling expense claim, based on the number of employees in its domestic sales division, appears to be quite high when considering that the Seoul headquarters staff is also responsible for several corporate functions other than sales. Further, in order for Daewoo's indirect selling expense claim to reflect Daewoo's color television sales to total sales, the allocation should be made on the basis of the relative sales value of the televisions under review over total domestic electronic product sales.

DOC Position: We have accepted Daewoo's allocation of its indirect selling expenses because it is consistent with Daewoo's past methodology which was verified and accepted by the Department in the previous review. Concerning Daewoo's allocation ratio based on the number of employees in its Domestic Sales Division, we have no evidence on the record to indicate that the claimed number of employees is incorrect.

Comment 45: The petitioners contend that while Daewoo calculated its U.S. credit claim using the Federal Reserve short-term prime interest rate, its actual interest income, as listed in its financial statement, differs from the Reserve rate. Petitioners argue that unless Daewoo can explain this inconsistency in data, the Department should use Daewoo's actual interest rate in the calculation of its U.S. credit claim.

DOC Position: We agree with the petitioners and have calculated Daewoo's U.S. credit claim using the interest rate noted in the financial statements. It is the purpose of the credit calculation to approximate as accurately as possible the manufacturers' actual experience. Therefore, whenever possible we use respondents' actual cost of financing. If that rate is not known, we use the Federal Reserve short-term prime interest rate as best information available.

Comment 46: The petitioners question Daewoo's claimed credit period for U.S. sales. They state that the direct costs on PP sales should be based on the period from time of shipment from Korea to the time Daewoo receives payment from its customers. The petitioners argue that it is unreasonable for Daewoo to report a payment date which precedes the date which the customer received the merchandise. The petitioners maintain that the payment periods used to calculate the accounts receivable turnover ratio for Daewoo's U.S. subsidiary, (Daewoo Electronics Co. of America ("DECA")), do not coincide

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with its financial statements and therefore grossly understate the credit expense claim.

DOC Position: We disagree with the petitioners that it is unreasonable to report payment before receipt of goods. Payment terms differ on a sale-by-sale basis, and in fact, when a letter of credit is involved, as is this situation, the manufacturer often receives payment from the customer before delivery of the merchandise. Therefore, we did not alter Daewoo's reported payment periods.

In its calculation of the accounts receivable period for ESP sales, DECA used net sales and average accounts receivable only for the month in which the ESP sales were made. Because DECA has claimed a credit expense on a sale-by-sale basis for PP sales, it would then be double-counting its credit expenses if it used those sales to calculate an imputed credit claim for ESP sales.

Therefore, we consider DECA's calculation of its accounts receivable turnover ratio to be a reasonable estimation of its credit expense on ESP sales.

Comment 47: The petitioners argue that Daewoo should calculate its return loss claim on a model-by-model basis and not average the expense over sales of all models. In addition, Daewoo should include in its return loss claim the costs it incurred in reworking the returned set, and any freight expenses for the return of the set to Daewoo.

DOC Position: We agree that Daewoo's averaging of its return loss expenses is inappropriate if the information to calculate a model specific claim is available. We have recalculated Daewoo's claim on a model-by-model basis using the average loss amount as a percentage of sales of each model.

We agree with the petitioners that, in theory, costs incurred in reworking returned merchandise and any freight expenses should be included in the return loss claim. Commonly, these expenses are included as part of the warranty and freight claims for U.S. sales. We consider this to be the case for Daewoo since Daewoo is unable to identify its returns on a transaction-specific basis.

Comment 48: The petitioners argue that Daewoo's home market indirect advertising claim is inadequate because it does not reflect the relative sales weight of each of Daewoo's product lines. It should be allocated using the ratio of color television sales over Daewoo's total sales value.

DOC Position: We agree and have recalculated Daewoo's home market indirect advertising claim to better reflect the value of its color television

sales relative to the sales of all its products.

Comment 49: The petitioners contend that the Department should only use Gold Star's home market sales to retail stores in the final analysis. They argue that sales to "collective end-users" (hospitals and hotels, and tax-free sales to military px's and Korean construction workers) are not in the ordinary course of trade and should not be used to establish the FMV or to test for sales below-cost.

DOC Position: While these sales are in the ordinary course of trade, sales to military exchanges, hospitals and hotels, and Korean construction workers are not at the same level of trade as television sales to distributors, franchise stores, department stores or buying groups for resale to the end-user in the home market. Because sales to "collective end-users" are at a different level of trade from the U.S. sales, we have disregarded these sales in our calculation of home market price.

Comment 50: The petitioners contend that Gold Star's short-term loans from related companies should be excluded from its home market credit claim. Because these loans are related-company transactions, any profit realized by one entity is passed on to all related parties.

DOC Position: We disagree that Gold Star's loans from related companies should be excluded from the credit calculations. Because Gold Star's loans come from several sources, at a variety of interest rates, we consider the best estimate of the cost of funds to Gold Star is the weighted-average of its loans from all sources. Further, we did not find the terms of the loans from related parties to differ significantly from the loans of other, unrelated, lending institutions that Gold Star used. Therefore, we have not altered Gold Star's home market claim.

Comment 51: Gold Star has consistently used a lag period in sales for the calculation of its U.S. warranty claim. Gold Star has relied on a study which determined that, on average, a certain number of months elapse between the sale of the television and any warranted repair. However, Gold Star has not relied on a similar study in the calculation of its home market warranty claim. The petitioners argue that Gold Star should employ the same methodology in the calculation of warranty claims in both markets.

DOC Position: We disagree that Gold Star's U.S. warranty methodology gives it any advantage in the calculation of margins because it has been consistent in its approach, and because there have been no significant changes in its sales.

Gold Star has used the same methodology for all administrative reviews. Each administrative review in this case starts at the time the previous review ends. Therefore, we only look at the expenses and sales within that time period. We consider this consistency to be important because as long as the expense is allocated over the same time period, the sales volume during that period will bear the expenses incurred during that same period. Therefore, we consider Gold Star's home market and U.S. warranty expenses to have been captured for this review period.

Comment 52: The petitioners claim that the Department failed to make an adjustment for certain postage expenses Samsung incurred in its direct purchase price transactions.

DOC Position: We consider this expense to be a general expense incurred on U.S. sales and we have included it in Samsung's export selling expense total.

Comment 53: The petitioners comment that the Department has understated the imputed credit expense for Samsung's indirect purchase price sales. They argue that, if the Department intends to treat these sales as purchase price transactions, the credit expense for those sales should be calculated based on the time period from the date of shipment in Korea to date of payment by the U.S. customer.

DOC Position: We agree and have adjusted Samsung's U.S. credit claim accordingly.

Comment 54: The petitioners state that the Department should use best information available for Samsung's cash discounts for early payment and for deduction from invoice ("DFI") advertising in the calculation of U.S. price. They argue that the DFI and cash discount claims should be made on a sale-by-sale, or customer-by-customer basis.

DOC Position: Samsung allocated its claims for cash discounts and DFI advertising over sales of all products because it grants these discounts on sales of all products. However, because these discounts are specific to individual sales transactions, we have treated these claims as adjustments to gross price for our final results.

Comment 55: The petitioners claim that the Department should not have accepted Samsung's U.S. freight allowance claim because the allocation methodology produces an amount to be applied to USP which is lower than the minimum discount given. The Department should reject Samsung's claim unless it resubmits the claim on a per-sale or per-customer basis.

DOC Position: In its questionnaire response, Samsung indicated its U.S. subsidiary, SEA, knows on a sale-by-sale basis whether freight to the customer was included in the invoice price. Therefore, we conclude that SEA is able to identify on a per-sale or per-customer basis whether a freight allowance was given. We agree with the petitioners that Samsung should not be allowed to allocate an expense over U.S. sales which it is able to identify on a more specific basis. In the absence of sale- or customer-specific expenses, we have assumed, as best information available, that the highest percent-discount SEA offers was granted on sales which have freight-out charges and have deducted that amount from USP as best information available.

Comment 56: The petitioners claim that Samsung has overstated its home market credit claim. Samsung took account of the fact that the amount of taxes included in the sales price is not payable on the date of invoice. However, the petitioners note that Samsung did not account for reductions to distributors' account balances when SYPM rebates were granted on those sales.

DOC Position: We disagree that Samsung's credit claim should reflect any reductions to distributors' account balances for rebates. For our position, see Comment 3.

Comment 57: The petitioners argue that the Department incorrectly allowed a portion of Samsung's differences in merchandise adjustment to be based on the "quality of raw material" used in Samsung's cabinets. Unless the quality difference stems from an actual physical difference in the merchandise, the Department should deny Samsung's claim.

DOC Position: We disagree. Because there is no evidence on the record in this proceeding on which to conclude that the "quality difference" in raw materials is not due to an actual physical difference in the materials Samsung uses, we have accepted Samsung's physical difference claim.

Comment 58: For this review period, Samsung revised its methodology for calculating home market and U.S. warranty and return loss adjustments from the methodology it used in the previous administrative reviews. In all prior reviews Samsung allocated its review-period U.S. and home market warranty and return loss expenses over sales made during the same review period. For this review period, however, Samsung argues that because its U.S. sales of Korean-made televisions have dropped significantly, the allocation of current expenses over the lower volume

of current sales would unfairly overstate the expense to be applied to those sales. A ratio of review-period expenses to review-period sales is only appropriate as long as the sales volume remains stable. However, during the third review, the sales of Samsung's Korean-produced sets did not remain stable; in fact, they dropped precipitously while at the same time sales of its American subsidiary-produced CTVs increased substantially.

To avoid an overstatement of expenses due to the precipitous decline in sales, Samsung suggests two possible alternative methodologies which would more accurately estimate the warranty expenses for this review period. First, Samsung suggests that its warranty expenses be allocated over a three year sales average. Samsung argues such a methodology is reasonable because there is a natural time-lag between sales and warranty expenses incurred on those sales. Alternatively, Samsung suggests that its warranty expenses be allocated over the combined sales of its Korean- and American subsidiary-produced sets for this review period. This methodology recognizes the reason for the significant decline in Samsung's Korean-produced sets (assembly operations being shifted to its American subsidiary), yet permits the allocation of expenses over sales of the same review period.

DOC Position: As we stated in our *Adjustments Study* (November 1985, page 49), we use warranty costs incurred during the review period or a longer historical period as the best information available for the eventual warranty costs for the sales under consideration. Thus, for Samsung to change its methodology to a rolling three-year average is inappropriate because it will allow current warranty and return loss expenses to go unaccounted for on actual sales since current year expenses were not actually deducted from prices of prior year sales in prior reviews. However, given the unique circumstances involving the precipitous decline in sales of Samsung's Korean-produced CTVs, some change in methodology is warranted in order to avoid overstating the estimated warranted expenses that would result from using our normal methodology.

We agree that Samsung's alternative methodology of allocating warranty expenses over the combined sales of its Korean- and American subsidiary-produced CTVs for this review period provides the best reasonable alternative for determining the most accurate estimate of its warranty and return loss expenses for this review period. The

advantage of this alternative is that it conforms with our normal methodology of allocating review-period expenses to review-period sales. Further, this alternative is in keeping with our prior determination that Samsung's Korean-produced CTVs are essentially the same as those assembled by its American subsidiary from picture tubes and printed circuit boards imported from Korea. See Final Results of Changed Circumstances Review and Determination Not to Revoke Antidumping Duty Order: Color Television Receivers from Korea, 52 Fed. Reg. 24500 (July 1, 1987).

Comment 59: Samsung argues that the Department should comply with the previous administrative reviews of this order and treat return loss as an indirect selling expense.

DOC Position: We disagree. In the home market we treat a return loss expense as a circumstance of sale adjustment when the respondent is able to show on a model-by-model basis that the returns were the result of sales made during the review period. Respondents incur a return loss expense when a television is returned to the manufacturer as defective and resold at a loss. This expense is incurred only if an initial sale is made and the merchandise returned. Therefore, it is directly related to sales and is allowable as a circumstance of sale adjustment.

The nature of the return loss expense incurred on U.S. sales is no different from that incurred on home market sales. It is an expense which results from an initial sale. As respondents were able to identify the expense, we made deduction from USP. This treatment is consistent with our treatment of this claim in the home market.

Comment 60: Samsung argues that the Department should allow its home market Shin Yong Pan Mae (SYPM) rebate program as a circumstance of sale adjustment. Samsung notes that the Department has treated this claim as an indirect selling expense in prior reviews because the exact amount of the rebate attributable to sales during the review period cannot be known until after the review period. Samsung reasons that it is often the case that the rebate is not known until after the end of the review period. Whether or not the rebated amount is known before the review period ends, this rebate is a variable expense and should be treated as a circumstance of sale adjustment.

DOC Position: We agree with Samsung that the amount of a rebate is often not known until after it is granted. The purpose of Samsung's SYPM rebate

program is to assume some of its distributor's costs on credit sales. For this reason, it is allowable as an adjustment in our antidumping analysis.

However, the SYPM rebate program is not allowable as a circumstance of sale adjustment because Samsung cannot identify the rebate on a model specific basis. It is important that Samsung be able to identify the expense model-by-model because CTVs with different screen sizes will have differing credit experiences. As we state in Comment 67 of this notice concerning Gold Star's rebate program, large CTVs, unlike small screen CTVs, are more likely to be sold on credit. Therefore, our calculation of the FMV on a model-by-model basis will be distorted if we accept an allocation of this expense based on credit sales of all size CTVs. It is not adequate that Samsung identify the rebate expense distributor-by-distributor because we do not calculate the FMV on that basis. However, because Samsung can identify the expense on CTVs, we have allowed the rebate as an indirect expense in our calculations.

Comment 61: Samsung argues that under section 772(c) of the statute, the Department cannot adjust for selling expenses relating to ESP sales, which are incurred in the home market, as indirect selling expenses. Samsung reasons that the Department does not have the authority to make the adjustment because the expenses incurred by Samsung in Korea are not "incurred by or for the account of the exporter in the United States".

DOC Position: In accordance with section 772(e)(2) of the Act, we only require that the expenses be incurred on behalf of the exporter who is in the United States. For our position on this matter, see our final results of the second administrative review (51 FR 41365 (1986), Comment 117), and *Silver Reed v. United States*, Slip Op. 88-37 (CIT Mar. 10, 1988).

Comment 62: Gold Star argues that the Department should grant a circumstance of sale adjustment to its FMV for the cash discounts granted to its home market customers. These discounts are given on the basis of early payment for purchases, and therefore are directly related to sales. Gold Star explains that at the time of payment for merchandise, it credits the customer's account for the amount of the discount and the payment for the goods. Therefore, the right to receive a discount occurs on a sale-by-sale basis. Gold Star claims that it does not keep a record of discounts granted on specific sales but that the nature of the discount is not altered because the

expense has been allocated over total sales to each customer.

DOC Position: We agree with Gold Star that its cash discount should be treated as a reduction in price. We have amended our calculations accordingly.

Comment 63: Gold Star argues that the Department should use the computer tape submitted in April, 1987 containing ESP sales and expense data that correct certain "clerical and programming errors" found on the tape submitted in August, 1986.

DOC Position: Gold Star submitted this corrected tape prior to the publication of our preliminary results. However, we did not use this tape for our preliminary determination because the petitioners had not yet had an opportunity to comment on the revised data. We consider that Gold Star has truthfully accounted for its mistakes and has accurately reported the expense items, and neither the petitioners nor Zenith have given us any reason to doubt the revised data. Therefore, we have used the April ESP data in our final results.

Comment 64: Gold Star objects to the Department's application of its "90/10" rule in determining which home market sales to disregard in the calculation of foreign market value. Gold Star argues that the "90/10" rule violates the terms set out in section 773(b) of the Act because it fails to measure whether Gold Star's home market "prices permit the recovery of all costs within a reasonable period of time in the normal course of trade." Gold Star instructs the Department to follow the criteria set forth in *Toho Titanium Co., Ltd. v. United States*, 11 CIT ___, 657 F. Supp. 1280, 1288 (1987), ("Toho").

DOC Position: Our determination in this case is not effected by *Toho* which is subject to remand and therefore is not a final decision.

In our analysis of Gold Star's below-cost sales, we excluded below-cost sales of model CN-0611 because more than ten percent of its sales were made below its cost of production, over an extended period of time. For an explanation of why we excluded certain sales of model CNR-842KZ from our analysis, see Comment 31.

Comment 65: Gold Star states that the Department should not make a circumstance of sale adjustment for royalty expenses in the calculation of FMV and USP. According to the Department's recent LITV final determination in fresh cut flowers from Colombia (52 FR 6842 (1987)), and Gold Star's accounting procedures, royalties are properly treated as a cost of

production and not as a circumstance of sale adjustment.

However, if the Department continues to adjust FMV for royalty expenses, Gold Star contends that the Department should use the ESP royalty claim Gold Star originally submitted. Gold Star explains that the Department's recalculation of its royalty claim in the preliminary determination misconstrues Gold Star's royalty expense allocation.

DOC Position: The treatment of royalties as a cost of manufacture in our investigation of cut flowers from Colombia was based on the specific facts of that investigation. We do not consider a similar treatment of Gold Star's royalty expenses to be appropriate. Gold Star's royalty obligation is based on the televisions to be sold in the home market or exported for sale in the U.S. If Gold Star's expenses are based on the televisions it manufactures, rather than on the number and destination of sales, it has not adequately demonstrated that fact. Therefore, we will continue to deduct royalty expenses from the FMV.

Concerning our recalculation of its ESP royalty claim, we agree with Gold Star that our revision was inappropriate. Because Gold Star based its claim on its actual royalty expenses, we consider an allocation based on actual sales and expenses to be reasonable. Therefore, in our final calculations we have applied Gold Star's original claimed adjustment.

Comment 66: Gold Star comments that for the final determination, the Department should use the revised home market sales information that Gold Star submitted in February, 1987. This computer tape eliminates all returns and contains the proper number of home market observations.

DOC Position: Gold Star has adequately accounted for its returned merchandise in its February, 1987 tape, and we have used that tape for our final calculations.

Comment 67: Gold Star argues that the Department should allow its home market rebate as a circumstance of sale adjustment. The rebate expense bears a direct relationship to the sales under consideration and is a difference in circumstance of sale because the comparable U.S. sales are not subject to or eligible for this rebate.

DOC Position: We disagree with Gold Star that the characteristics and quantification of its rebate warrant its treatment as a circumstance of sale in the FMV. First, we should clarify our position in the previous review concerning this rebate. In Comment 107 of the final results of the second administrative review (51 FR 41377), we

incorrectly stated that we had accepted Gold Star's revised claim because we were able to verify the expenses. In Korea, we were able to verify that Gold Star could identify the total rebated amount and the total television sales which had qualified for the rebate. However, Gold Star could not identify the rebate on a sale by sale basis.

In Comment 111 of the final results of the second administrative review, we stated that we were unable to verify the expense amounts. Our reasoning in Comment 111 was broadly stated and should be clarified. Because Gold Star granted the same rebate for televisions and other items, it could not identify the actual amount paid for color televisions alone. To reach an estimate of its CTV expenses, Gold Star allocated the total rebate expense based on the ratio of CTV sales to total sales. However, an allocation of the total expense over CTV sales assumes that the rebate experience is the same for all goods for which the rebate was granted. Such an assumption is not valid because the rebate is based on the sale of a television on credit, and the credit experience varies among different screen sizes. Further, Gold Star cannot identify its expenses on a model-by-model basis. Therefore, for our previous review, we still found Gold Star's claim to be deficient, and we allowed the expense only as an indirect selling expense.

The amount of a rebate expense depends on the incidence of the dealer's time payment sales. Smaller screen sizes are generally less expensive and may not as often require an extension of credit, while sales of larger screen sizes will more likely require an extension of credit, and will more often receive a rebate. Therefore, we consider Gold Star's ability to identify a rebate on a model-by-model basis to be an important requirement for the treatment of this expense as a circumstance of sale.

In this third administrative review, Gold Star has not indicated that it has altered its methodology from the previous review, or that it can now identify the rebate expense on a model-by-model basis. Therefore, we have treated this expense as an indirect selling expense in the calculation of the FMV. We do not question the existence of the rebate; we simply cannot apply it with sufficient specificity to sales of particular models to make a direct adjustment to the price of those sales.

Comment 68: Gold Star argues that the Department erred in denying certain home market warranty expenses as

circumstance of sale adjustments. Specifically, four categories should be allowed as directly related to the FMV because they are variable in nature and they relate directly to repairs. These categories include: service car operating costs, expenses for travel, communications, and overtime pay expenses.

DOC Position: For our position concerning directly related warranty expenses, see Comment 109 of our final results of the second administrative review (51 FR 41365 (1986)). We do not consider the expenses included in the four categories mentioned above to be directly related to repairs. Further, Gold Star has not provided information which ties its expenses for travel or service operating costs to specific repairs. The fact that Gold Star is billed for telephone calls made from its repair centers does not indicate that these calls can be tied to specific repairs. The communication expense essentially includes costs incurred in the normal conduct of business. Therefore, we have not allowed these warranty-related expenses as circumstance of sale adjustments.

Comment 69: Gold Star comments that the Department's decision to average prices in the home market for purposes of calculating the FMV, while failing to average prices in the U.S. market for purposes of calculating statutory USP results in a distortion of dumping margins and is an abuse of the Department's discretion under the current antidumping law.

DOC Position: We disagree. Because of the significant volume and frequency of price changes of Gold Star's home market sales, we have used a monthly weighted-average of those home market sales in accordance with 19 U.S.C. 1677f-1. There was no need to employ similar averaging techniques in regard to U.S. sales since that sales volume was much smaller.

Comment 70: Gold Star requests that the Department exclude its model RCV-0615, CTV and AM/FM radio, and model KMV-9002, videocassette recorder and CTV, from the order. Gold Star argues that these units constitute combinations of items that are not, and were never intended to be, encompassed in the Department's and International Trade Commission's original determinations.

DOC Position: We have received a number of requests for the clarification of the scope of this order, and those on televisions from Taiwan and Japan, concerning televisions in combination with other consumer electronic items,

such as radios, audio cassette players, clocks, and video cassette players and recorders. Before making further case-specific and model-specific decisions, we are soliciting comments from interested parties to assist us in developing overall methodological guidelines. Forthwith, we will request comments from the interested parties in the above-mentioned cases, on the general methodology to be followed for combination units. Accordingly, we are deferring our determination on the Gold Star models RCV-0615 and KMV-9002 until we receive all comments.

Comment 71: In its May 11, 1987 preliminary determination (52 FR 17617), the Department included in the calculation of the FMV, Daewoo's home market sales to military post exchanges and buying groups, Daewoo employees, and bonus sales to Daewoo Corporation employees. Daewoo argues that it is inappropriate and unwarranted to include its employee or other special sales in the FMV calculations. The Daewoo employee sales are neither in the usual wholesale quantities nor in the ordinary course of trade. The sales to Daewoo Corp. were related-company transactions and therefore the prices are not at arm's length. Daewoo argues that the use of the sales to post exchanges and buying groups is also unprecedented and Daewoo had not provided transaction-specific adjustments for those sales. Additionally, most of these sales were sold subject to commissions that vary customer to customer, and the credit terms are different from dealer sales. Because calculating the adjustments for those sales would be costly and time consuming, Daewoo urges the Department to use only the dealer sales for calculating the FMV.

DOC Position: We agree with Daewoo that sales to employees, military post exchanges, and Daewoo Corporation are at a different level of trade, and we have excluded these transactions in calculating FMV. As we stated in Comment 49, we have used home market sales to distributors, franchise stores, department stores and buying groups in our final analysis.

We have included Daewoo's sales to its buying groups in the calculation of the FMV because these sales are made in the ordinary course of trade, at the same level of trade, and in the same commercial quantities as Daewoo's sales to dealers. Because Daewoo neglected to include in its response any adjustments to the FMV for its sales to buying groups, we have used Daewoo's

claimed adjustments for its dealer sales as best information available.

Comment 72: Daewoo argues that the Department did not correctly adjust its home market sales prices for inland freight expenses. Daewoo states that the portion of the inland freight costs representing shipments from the warehouse to the customer should be treated as a circumstance of sale adjustment because these expenses directly offset the price paid by the customer. All freight costs should be treated as direct expenses in the home market because on U.S. sales all freight charges are deducted whether they occur before or after the sale.

DOC Position: Our treatment of Daewoo's home market freight expense from the warehouse to the customer as an indirect expense was a clerical error. We intended to treat this expense as a circumstance of sale adjustment because a post-sale delivery to the customer is directly related to that sale.

We disagree that the freight expense from the factory to the warehouses is an expense which is directly related to any one sale. Daewoo inventories its merchandise in warehouses in anticipation of sales. Any freight costs to transport a television to the warehouses are incurred prior to a sale, not as the result of a sale. Therefore, we have treated freight expenses from Daewoo's factory to its warehouses as an indirect selling expense.

Comment 73: Daewoo argues that the Department incorrectly treated its March 1986 sales rebate program as an indirect selling expense. This rebate was a product-specific program and is analogous to a fall 1984 rebate that the Department allowed as a direct selling expense in the previous administrative review.

DOC Position: We agree. Our treatment of the March 1986 rebate program as an indirect selling expense was a clerical error. We have corrected our calculations for the final results.

Comment 74: Daewoo argues that the Department erred in including Orion Electric Co.'s profit from its sales of color picture tubes to Daewoo in the cost of production calculations. Daewoo states that it is related to Orion within the meaning of section 773(e)(3)(E) of the Act. Therefore, Orion's profit should not be part of Daewoo's cost of producing the merchandise under section 773(b) of the Act.

DOC Position: We disagree. We consider Daewoo's transactions with Orion during the review period to have been made at the equivalent of arm's length. Therefore, we have not revised our calculations from the preliminary determination. For our position on this matter, see Comment 36.

Final results of the Review

As a result of the comments received, we have revised our preliminary results and for appraisal purposes margins range from 0 to 49.08 percent, 0 to 158.47 percent, 0 to 43.49 percent and 0 to 4.50 percent for Samsung, Gold Star, Daewoo, and Quantronics, respectively. Also, cash deposit rates are as follows:

Manufacturer/Exporter	Time period	Cash deposit (percent)
Samsung Electronics Co.	04/85-03/86	3.21
Daewoo Electronics Co.	04/85-03/86	23.30
Gold Star Co.	04/85-03/86	2.34
Quantronics Manufacturing, Korea, Ltd.	04/85-03/86	1.74

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above.

Further, as provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties as noted above shall be required for these firms.

For any shipments from a new exporter, not covered in this or prior administrative reviews, whose first shipments of Korean color television receivers, complete or incomplete, occurred after March 31, 1988 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 23.29 percent shall be required. These deposit requirements are in effect for all shipments of Korean color televisions, complete or incomplete, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,
Assistant Secretary for Import Administration.

Date: June 27, 1987.

[FR Doc. 88-14893 Filed 6-30-88; 8:45 am]
BILLING CODE 3510-05-0

[A-357-902]

Initiation of Antidumping Duty Investigation; Certain Welded Carbon Steel Pipe and Tube Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain welded carbon steel pipe and tube products (light-walled rectangular or L-WR tubing) from Argentina are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 21, 1988, and we will make our preliminary determination on or before November 23, 1988.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Debra Conner or Mike Ready, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-1778 or (202) 377-2613.

SUPPLEMENTARY INFORMATION:

The Petition

On June 6, 1988, we received a petition filed in proper form by the mechanical tubing subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by each of the individual manufacturers who are members of this subcommittee on behalf of the U.S. industry producing L-WR tubing. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of L-WR tubing from Argentina are being or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act) 19 U.S.C. 1673, and that these imports materially injure, or threaten material injury, to a U.S. industry.

Petitioner's estimate of United States price was based on statements by an importer of L-WR tubing. Petitioner

made adjustments for freight, duties, profit and indirect taxes.

Petitioner based foreign market value on information obtained in Argentina on quoted prices for L-WR tubing. Petitioner made adjustments for discounts. Petitioner made no adjustment for inland freight but stated that it was a small part of the net price.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins of 67.14 percent.

Petitioner alleges that "critical circumstances" exist with respect to imports of L-WR tubing from Argentina.

Initiation of Investigation

Under section 732(c) of the Act 19 U.S.C. 1673a(c), we must determine, within 20 days after a petition is filed, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petitions on L-WR tubing from Argentina and found that it met the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of L-WR tubing from Argentina are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by November 23, 1988.

Scope of Investigation

The products covered in this investigation are certain light-walled welded carbon steel pipes and tubes, of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch, provided for in item 610.4928 of the Tariff Schedules of the United States (TSUSA) and currently classifiable under Harmonized system (HS) item number 7303.60.5000.

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this harmonized system (HS). In view of this, we will be providing both the appropriate TSUSA item number and the appropriate HS item number with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioner to include the appropriate HS item number as well as the TSUSA item number in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the central Records Unit, Room B-099, U.S. Department of Commerce, 154th Street, and Constitution Avenue, NW., Washington, DC 20230.

Additionally, all customs offices have reference copies, and petitioners may contact the Import Specialist at their local customs office to consult the schedule.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with information used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information.

We will also allow the ITC access to all privileged and business proprietary information in our files, provides it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by July 21, 1988 whether there is a reasonable indication that imports of L-WR tubing from Argentina materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will continue according to statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

June 27, 1988.
Jan W. Mares,
Assistant Secretary for Import Administration.

[FR Doc. 88-14899 Filed 6-30-88; 8:45 am]
BILLING CODE 3510-05-0

[A-583-803]

Initiation of Antidumping Duty Investigation; Certain Welded Carbon Steel Pipe and Tube Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S.

Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain welded carbon-steel pipe and tube products (light-walled rectangular or L-WR tubing) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 21, 1988, and we will make our preliminary determination on or before November 23, 1988.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Debra Conner or Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-1778 or (202) 377-2613.

SUPPLEMENTARY INFORMATION:

The Petition

On June 6, 1988, we received a petition filed in proper form by the mechanical tubing subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by each of the individual manufacturers who are members of the subcommittee on behalf of the U.S. industry producing L-WR tubing. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of L-WR tubing from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner's estimate of United States price was based on price lists obtained from an importer of L-WR tubing. Petitioner made adjustments for freight, insurance, handling charges, interest, profit and duties.

Petitioner based foreign market value on U.S. domestic producer's costs, adjusted for difference in Taiwan pursuant to § 353.36(a)(7) of the Regulations. Petitioner included in these costs, 10 percent for general, selling and administrative expenses and 8 percent for profit.

Based on a comparison of United States price and foreign market value,

petitioner alleges dumping margins of 49.3 percent.

Petitioner alleges that "critical circumstances" exist with respect to imports of L-WR tubing from Taiwan.

Based on information from a prior antidumping investigation concerning this same product from Taiwan, petitioner also requested that the Department initiate a cost of production investigation.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on L-WR tubing from Taiwan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of L-WR tubing from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We also will make a determination as to whether critical circumstances exist with respect to the subject merchandise. Because petitioner failed to provide sufficient information, we are not initiating a cost of production investigation at this time. If our investigation proceeds normally, we will make our preliminary determination by November 23, 1988.

Scope of Investigation

The products covered in this investigation are certain light-walled welded carbon steel pipes and tubes, of rectangular (including square) cross-section, having a wall-thickness of less than 0.156 inch, as provided for in item 610.4020 of the *Tariff Schedules of the United States Annotated (TSUSA)* and currently classifiable under Harmonized System item number 7306.60.5000. The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this harmonized system (HS). In view of this, we will be providing both the appropriate TSUSA item number and the appropriate HS item number with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HS item number

as well as the TSUSA item number in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Additionally, all customs offices have reference copies, and petitioners may contact the Import Specialist at their local customs office to consult the schedule.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by July 21, 1988, whether there is a reasonable indication that imports of L-WR tubing from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative the investigation will terminate; otherwise it will proceed according to statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

June 27, 1988.

Jan W. Mares,
Assistant Secretary for Import
Administration.

[FR Doc. 88-14900 Filed 6-30-88; 8:45 am]
BILLING CODE 3510-05-M

[C-122-903, C-557-802 and C-583-802]

Postponement of Preliminary Countervailing Duty Determinations; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Malaysia and Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, Triplex InterControl (USA) Inc., the Department of Commerce (the

Department) is postponing its preliminary determinations in the countervailing duty investigations of thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada, Malaysia and Taiwan. The preliminary determinations will be made on or before July 18, 1988.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION: On May 5, 1988, the Department initiated countervailing duty investigations on thermostatically controlled appliance plugs and internal probe thermostats therefor from Canada, Malaysia and Taiwan. In our notices of initiation we stated that we would issue our preliminary determinations on or before July 9, 1988 (53 FR 16752-16755, May 11, 1988).

On June 16, 1988, the petitioner filed a request that the preliminary determinations in these investigations be postponed for seven days.

Section 703(c)(1)(A) of the Tariff Act of 1990, as amended (the Act), provides that a preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in these investigations, the Department is postponing its preliminary determinations until no later than July 18, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

June 21, 1988.

Jan W. Mares,
Assistant Secretary for Import
Administration.

[FR Doc. 88-14901 Filed 7-1-88; 8:45 am]
BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a

forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will be advised on legislative and management updates within NOAA and the Department of Commerce and discuss the progress of various subcommittees of the Panel. Time will also be devoted to discussion of the applications of two Sea Grant Programs for Sea Grant College Status.

The last session of the afternoon of July 18 and the first session scheduled for the morning of July 19 will be devoted to discussions of two applications for Sea Grant College designation. These sessions will be closed since the discussion is likely to disclose information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy.

DATES: The announced meeting is scheduled for two days, July 18 and July 19, 1988, as follows: July 18, 8:30-11:30 a.m. and 1:00-2:00 and 2:00-4:00 p.m., and July 19, 8:30-10:30 a.m. and 10:30-12:00 noon. The July 18, 2:00-4:00 p.m., July 18, 8:30-10:30 a.m. will be closed to the public.

ADDRESS: The meeting will be held at: The National Association of State Universities and Land Grant Colleges Conference Room (NASULGC) One Dupont Circle, Suite 710, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shepherd, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 6010 Executive Blvd., Rm. 826, Rockville, Maryland 20852, (301) 443-8886.

or

Suzette Kern, Information Resources Management, U.S. Department of Commerce, Rm. 5321, Washington, DC 20230, (202) 377-0142.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined on June 24, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in this closed portion may be exempted from the provisions of the Act relating to open meetings and public participation therein because this item will be concerned with matters that are within the purview of 5 U.S.C. 552(c)(6). This section covers discussions which are likely to disclose information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy. (A copy of the

determination is available for public inspection and copying in the Public Reading Room, Central Reference and Records Inspection Facility, Room 0628, Department of Commerce.)

Date: June 29, 1988.

Joseph O. Fletcher,
Assistant Administrator, Oceanic and
Atmospheric Research.
[FR Doc. 88-15031 Filed 6-30-88; 8:45 am]
BILLING CODE 3510-12-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

Summary: The Commission on Merchant Marine and Defense was established by Pub. L. 96-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, July 18, 1988, Beginning 9:00 a.m.; Tuesday, July 19, 1988, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302-0268.

Type of Meeting: Closed

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

Supplementary Information: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence. Public

meetings to be held on July 18 and July 20 have announced separately.

Allan W. Cameron,
Executive Director, Commission on Merchant
Marine and Defense
[FR Doc. 88-14881 Filed 6-30-88; 8:45 am]
BILLING CODE 3520-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Exemption from Import Levels for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Polish People's Republic

June 28, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting certain products from import levels.

EFFECTIVE DATE: July 6, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended, section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see *Federal Register* notice 52 FR 47745, dated December 11, 1987). Also see 48 FR 4708, published in the *Federal Register* on February 2, 1983.

James H. Babb,
Chairman, Committee for the Implementation
of Textile Agreements.
June 28, 1988.

Committee for the Implementation of Textile Agreements

June 28, 1988

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive of January 27, 1983 issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to permit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and valued at U.S. \$250 or less, which have been

properly certified prior to exportation by the Government of the Polish People's Republic.

Effective on July 6, 1988, and until further notice, merchandise imported for the personal use of the importer, and not for resale, regardless of value, and properly marked commercial sample shipments, valued at U.S. \$250 or less, shall not be charged to agreement levels.

The exempt certification arrangement for goods valued at \$250 or less is no longer in effect.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14871 Filed 6-30-88; 8:45 am]

BILLING CODE 3510-01-M

Textile and Apparel Categories; Changes in Visa Arrangements To Coincide With the Onset of the New Category System; Correction

June 28, 1988.

In the letter to the Commissioner of Customs under the "Country Specific Section" for China, add TSUSA number 384.2960 to footnote 1 for Category 339-S (see 52 FR 49189, published on December 30, 1987).

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14672 Filed 6-30-88; 8:45 am]

BILLING CODE 3510-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1988 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 1, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 22, 1988, the Committee for Purchase from the Blind and Other Severely

Handicapped published a notice (53 FR 13310) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 48926).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1988: Janitorial/Custodial, Naval Weapons Station, Concord, California.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-14891 Filed 6-30-88; 8:45 am]

BILLING CODE 5830-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and a service to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before August 1, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47 (a)(20, 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service

listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Strap, Assembly, Litter.
1680-00-878-6964BZ.

Service

Janitorial/Custodial,
National Institute for Occupational Safety and Health,

Rober A. Taft Laboratories,
4676 Columbia Parkway,
Cincinnati, Ohio.

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-14892 Filed 6-30-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF THE DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 27 June 1988 through 28 August 1988.

Times of Meeting: To be determined.

Place: To be determined.

Agenda: The Army Science Board has established an Independent Assessment Panel which has been tasked to review immediately numerous software and hardware problems encountered by the Army on particular weapons. The panel will meet at a number of different locations on various dates to gather information in order to formulate recommendations for corrective action to be taken. Due to the urgency of the requirement, the Army Science Board members must gather data expeditiously. Therefore, the 15-day notification requirements cannot be met. These meetings will be closed to the public in accordance with section 552(b)(3) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 895-3039 or 895-7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary.

[FR Doc. 88-14888 Filed 6-30-88; 8:45 am]

BILLING CODE 5710-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.078]

Inviting Applications for Centers for Deaf Individuals Awards for Fiscal Year 1989

Title of Program: Postsecondary Education Program for Handicapped Persons.

Purpose: To provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing or adult education for handicapped individuals.

Deadline for Transmittal of Applications: September 23, 1988.

Deadline for Intergovernmental Review: November 23, 1988.

Applications Available: July 11, 1988.

Estimated Range of Awards: \$450,000-\$550,000.

Estimated Average Size of Award: \$500,000.

Estimated Number of Awards: 4.

Project Period: 5 years.

Applicable Regulations: (a) The Postsecondary Education Program for Handicapped Persons, 34 CFR Part 338; and (b) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Priority: In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3) and 34 CFR 338.30, the Secretary will give an absolute preference under this program to applications that respond to the priorities described at 34 CFR 338.10(a)(1) and (4). The priority at 34 CFR 338.10(a)(1) provides for the operation of centers for deaf individuals, including models of comprehensive supportive services to those individuals. To meet the priority described at 34 CFR 338.10(a)(4), the centers must stimulate and develop model statewide, regional, and national programs to improve access for handicapped individuals including the fostering of cooperative and consortia arrangements.

Within this priority, the Secretary particularly invites applications for projects that (1) provide a range of postsecondary education alternatives for individuals who are deaf; and (2) provide consultation, technical assistance, and inservice training for faculty and staff at a variety of schools. However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described at 34 CFR 338.10(a)(1) and (4).

For Applications or Information Contact: Joseph Clair, U.S. Department of Education, Office of Special Education Programs, Division of Educational Services, 400 Maryland Avenue, SW., Switzer Building, Room 4086, Washington, DC, 20202. Telephone: 732-4503.

Program Authority: 20 U.S.C. 1424a.

Dated: June 27, 1988.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance No. 84.078: Postsecondary Education Program for Handicapped Persons)

[FR Doc. 88-14621 Filed 6-30-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time:

Wednesday, July 20, 1988 7:30 p.m. to 10:30 p.m.

Thursday, July 21, 1988 8:00 a.m. to 6:00 p.m.

Place: Hanford Science Museum, Federal Building, 825 Jadwin Avenue, Richland, Washington 99352.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S-3, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda:

July 20, 1988

• 7:30 p.m.-10:30 p.m. Evening Session Reserved for Public Comment

July 21, 1988—Technical Session

• Response to the National Academy of Science Report
• Presentations on Selected Issues
• Noon to 1:00 p.m.—Lunch
• Presentations on Selected Issues (Continued)
• General Committee Business

• Agenda for Next Meeting

• 5:30 p.m.-6:00 p.m. Public Comment

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Howard H. Raiken,

Advisory Committee, Management Officer.

[FR Doc. 88-14682 Filed 6-30-88; 8:45 am]

BILLING CODE 5850-01-M

Office of Energy Research

Energy Research Advisory Board; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and the Final Rule on Advisory Committee Management, (41 CFR Part 101-6) and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Energy Research Advisory Board has been renewed for a 2-year period ending June 30, 1990. The Committee will continue to provide advice to the Secretary of Energy on the research and development activities of the Department of Energy.

The renewal of the Energy Research Advisory Board has been determined to be necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463), the Department of Energy Organization Act (Pub. L. No. 95-91), and regulations and directives implementing those statutes.

Further information regarding this advisory committee can be obtained from Robert Franklin (202/586-6904).

BEST COPY AVAILABLE

Issued in Washington, DC, on June 27, 1988.
Howard H. Raiken,
Advisory Committee Management Officer.
[FR Doc. 88-14884 Filed 6-30-88; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration
[Docket No. ERA C&E 88-14; Certification Notice—19]

**Filing of Certification of Compliance;
Coal Capability of New Electric
Powerplants**

AGENCY: Economic Regulatory
Administration, Department of Energy.
ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 et seq.), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a

base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with § 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with § 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Energy Management Inc., Chestnut Hill, MA	6-20-88	Cogeneration Combined Cycle	50	Pawtucket, RI

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on June 23, 1988.
Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.
[FR Doc. 88-14883 Filed 6-30-88; 8:45 am]
BILLING CODE 6450-01-M

**Federal Energy Regulatory
Commission**

[Docket Nos. ER88-558-020 et al.]

**Gulf States Utilities Co. et al.; Electric
Rate, Small Power Production, and
Interlocking Directorate Filings**

June 27, 1988.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ER88-558-020]

Take notice that on April 22, 1988, Gulf States Utilities Company (Gulf States) tendered for filing a compliance report for the total refund to Deep East Texas Electric Cooperative, Inc., including interest, which resulted from the acceptance by the Commission of the executed Settlement Agreement filed on December 11, 1987. Gulf States that it has filed detailed workpapers showing the computation of the refund and interest calculation for Deep East Texas Electric Cooperative, Inc.

Copies of this filing have been served upon Deep East Texas Electric Cooperative, Inc. and the Public Utility Commission of Texas.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket Nos. ER88-046-003; ER88-047-008; (Phase I)]

Take notice that on June 20, 1988, New England Power Company tendered for filing revised rate schedules for its W-7(S), W-8(a) and W-9 rates which NEP states comply with the Commission's Opinion and Order in this proceeding with respect to the amortization of NEP's investment in Seabrook Unit 2. NEP further states that the tendered rate schedules conform to the terms of an integrated comprehensive settlement proposal filed by NEP and other parties in three pending NEP rate cases, including those dealing with NEP's W-8(a) and W-9 rates, on June 3, 1988.

Copies of this filing have been served on all parties to Phase I of these dockets.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. KPL Gas Service

[Docket Nos. ER83-418-010; ER84-100-004]

Take notice that on June 20, 1988, KPL Gas Service tendered for filing in compliance with the Commission order dated May 10, 1988, a refund to Kansas Electric Power Cooperative, Inc. (KEPCo).

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Arkansas Power & Light Company

[Docket No. ER83-297-008]

Take notice that on June 14, 1988, Arkansas Power & Light Company (AP&L) tendered for filing, pursuant to Commission order issued on April 29, 1988, a Compliance Report showing the monthly billings determinants which were modified under this filing, revenue receipt dates, and monthly interest computed for the total refund period from October 1985 through February 1988.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Gulf States Utilities Company

[Docket No. ER88-477-000]

Take notice that on June 20, 1988, Gulf States Utilities Company (Gulf States) tendered for filing rate schedule changes applicable to the provision by Gulf States of transmission service to Cajun Electric Power Cooperative, Inc. (Cajun) under Service Schedule CTOC. The filing updates "Factor APM," which is used to calculate the equalizing charge under Service Schedule CTOC, and the "CTOC Credit" which is applied pursuant to Service Schedule CTOC.

Gulf States has requested that the Commission waive its notice requirements and grant the following effective dates for the changes.

Proposed effective date	Factor APM (percent)	CTOC credit		
		Voltage level	CTS/CTS/CTS firm credit/kw	CTS nonfirm credit/kwh
July 11, 1982	27.6536	13.2kv 34.5kv 69/138kv 230kv	\$0.507 .505 .502 .495	\$0.000670 .000670 .000680 .001000
July 26, 1985	26.3880	13.2/34.5kv 69/138kv 230kv	.941 1.005 1.022	.000658 .001312 .001314
July 26, 1986	24.6179	13.2/34.5kv 69/138kv 230kv	.743 .999 .954	.000633 .001256 .001241

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Montana-Dakota Utilities Company
[Docket No. ER88-478-000]

Take notice that on June 20, 1988, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing a request for authority to amend or replace entirely its Rate Schedule FPC No. 6, Supplement Nos. 1 through 19 and submitted a new concise contract with the United States Department of Energy, Western Area Power Administration (Western).

Montana-Dakota requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the amended contract be made effective as of June 30, 1988.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER88-479-000]

Take notice that on June 21, 1988, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order

of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during April 1988, along with cost justification for the rate charged. This filing includes the following supplements:
Montana Power Co., Supplement No. 57
Sierra Pacific Power Co., Supplement No. 75
Puget Sound Power & Light Co., Supplement No. 34
Portland General Electric Co., Supplement No. 59
Pacific Gas & Electric Co., Supplement No. 33

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests will be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14931 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 9784-001]

**North American Hydro, Inc. and
Renaissance Hydro Associates;
Availability of Environmental
Assessment and Finding of No
Significant Impact**

June 29, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for exemption listed below and has assessed the environmental impacts of the proposed development.

Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14915 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

LICENSE

Project No.	Project Name	State	Water Body	County	Applicant
9784-001	Manawa Dam	Wisconsin	Little Wolf River	Waupaca	North American Hydro, Inc. and Renaissance Hydro Associates.

An Environmental Assessment (EA) was prepared for the above proposed project. Based on independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this project would not have significant effects on the quality of the

human environment. Therefore, an environmental impact statement for this project will not be prepared. Copies of the EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North

[Project No. 2205-006 et al.]**Hydroelectric Applications; Central Vermont Public Service Corp. et al.**

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: New License Major (over 5 MW).

b. Project No.: 2205-006.

c. Date filed: May 27, 1987.

d. Applicant: Central Vermont Public Service Corporation.

e. Name of Project: Lamoille River Project.

f. Location: Lamoille River in Chittenden, Franklin, and Lamoille Counties, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Mr. Darrow R. McLeod, Vice President—Engineering & Operations, Central Vermont Public Service Corp., 77 Grove St., Rutland, VT 05701, (602) 773-2711.

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: July 29, 1988.

k. Description of Project: The existing 4 developments consist of:

Peterson Development.

(1) Dam: concrete gravity spillway-dam, 347 feet long between 51 and 75 feet high.

(a) 100-foot-long bascule gate, 6 feet high, El. 151.0 top;

(b) 247 feet of flashboards, 5 feet high, El. 152.0 top;

(c) dam crest El. 145.0; and

(d) 60-foot intake section in left bank.

(2) Reservoir: 2.5 miles of pondage upstream to Milton Dam.

(a) normal pool elevation 151 feet;

(b) normal operating head 52 feet;

(c) surface area, 136 acres; and

(d) storage, 2840 acre-feet.

(3) Intake:

(a) 60-foot section, integral part of dam;

(b) 24-foot intake channel in left bank; and

(c) 14-foot diameter penstock with intake gate through dam.

(4) Powerhouse:

(a) concrete substructure, steel frame, brick walls;

(b) turbine, 8,100 hp adjustable blade, propeller-type at 55-foot head;

(c) 5,600 kW generator;

(d) remote controlled from the Milton Plant; and

(e) substation, 2.76 miles of 33-kV transmission line, access road and other necessary appurtenances.

Milton Development

(1) Dam: concrete gravity spillway dam 136 feet long, 25 feet high.

(a) 136-foot spillway controlled by flashboards 2'10" high;

(b) dam crest El. 243.4; top of flashboards El. 246.2; and

(c) canal forebay channel 200 feet long with headgate.

(2) Reservoir:

(a) surface area 11 acres; and

(b) storage, 93 acre-feet.

(3) Intake:

(a) 11-foot-diameter steel penstock 380 feet long;

(b) one 16-foot diameter surge tank with provisions for an additional surge tank; and

(c) two 7-foot 9-inch diameter penstocks about 70 feet long to the powerhouse.

(4) Powerhouse:

(a) concrete substructure, brick superstructure;

(b) two 4,500 hp Francis turbines, net operating head 97 feet;

(c) two 3,000 kW generators;

(d) excavated tailrace; and

(e) substation, trash rack and other necessary appurtenances.

Clark Falls

(1) Dam: concrete gravity spillway-dam 40 feet high.

(a) 387 feet length of spillway as follows: 170 feet of stanchion flashboards 20.5 feet high, three 24-foot-wide taintor gates 23.5 feet high, 100 feet of crest controlled by 2-foot-high flashboards;

(b) impervious earth core dike 440 feet long; and

(c) 23-foot intake gate section.

(2) Reservoir: storage, 6,000 acre-feet; surface area 890 square miles.

(3) Intake:

(a) 12-foot-diameter penstock 360 feet long to;

(b) forebay 28 x 22 feet; and

(c) 2 gates between forebay and powerhouse.

(4) Powerhouse:

(a) concrete substructure, steel frame, brick walls;

(b) turbine, 4,000 hp adjustable blade, propeller-type at 42 feet of head;

(c) 3,000-kW generator;

(d) excavated tailrace;

(e) remote controlled from Milton plant; and

(f) substation and 0.25 mile of 33-kV transmission line.

Fairfax Falls Development

(1) Dam: concrete gravity spillway dam in two sections.

(a) a 90-foot-long section with 2-foot-high flashboards and a 165-foot-long section with 3-foot-high flashboards;

(b) a 53.5-foot-long section with a waste, trash and sand sluice together with two penstock openings; and

(c) a left bank concrete wing wall.

(2) Reservoir: storage, 142 acre-feet; surface areas 529 square miles.

(3) Intake:

(a) intake with head gates; and

(b) two 27-foot-diameter steel penstocks each 27 feet long.

(4) Powerhouse:

(a) concrete and brick structure;

(b) 2 Francis type turbines each rated at 2,000 hp at 80-foot net head;

(c) two 21,440 kW generators;

(d) excavated tailrace; and

(e) substation.

The Lamoille River Project, as proposed, would consist of: The Milton, Clark Falls, and Peterson Developments would remain the same. The Fairfax Falls Development would remain the same on the west bank, except that on the east bank there would be proposed facilities consisting of: (1) a proposed intake structure; (2) a proposed 8-foot-diameter concrete power tunnel 60 feet long; (3) a proposed powerhouse built in the existing 1904 underground rock powerhouse cavern having one generating unit with an installed capacity of 3,500-kW, (4) an enlarged existing tailrace; (5) a proposed 450-foot-long 34.5-kV transmission line to tie in at the existing switchyard at the west bank powerhouse; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 113,700,000-kWh. The applicant owns all of the existing project facilities.

The existing project would also be subject to Federal take-over under Sections 14 and 15 of the Federal Power Act. Based on the license expiration of December 31, 1987, the applicant's estimated net investment in the project would amount to \$2,305,381, and the estimated severance damages would amount to \$42,925,000.

1. Purpose of Project: All project energy generated would be utilized by the applicant for sale to its customers.

m. This notice also consists of the following standard paragraphs: B and C.

2a. Type of Application: Transfer of License.

b. Project No.: 5062-003.

c. Date Filed: May 6, 1988.

d. Applicant: Diamond Power Corporation and Quinebaug Partnership.

e. Name of Project: Quinebaug-Five Mile Pond Project.

f. Location: On the Quinebaug River and Five Mile Pond in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Ms. Lisa A. Shapiro, Van Ness, Feldman, Sutcliffe & Curtis, A Professional Corporation, 105 Thomas Jefferson St., NW, 7th floor, Washington, DC 20007, (202) 298-1870.

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: July 29, 1988.

k. Description of Project: On March 19, 1987, a license was issued to Diamond Power Corporation (Licensee), to construct, operate, and maintain the Quinebaug-Five Mile Pond Project No. 5062. The licensee intends to transfer the license to the Quinebaug Partnership (transferee) which will purchase, build, and operate the project. Quinebaug Partnership agrees to accept the terms and conditions of the license as if it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

3. a. Type of Application: Minor License.

b. Project No.: 10514-000.

c. Date filed: November 16, 1987.

d. Applicant: C & A Wallcoverings, Inc.

e. Name of Project: Imperial Dam Project.

f. Location: On the Saranac River in Clinton County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Ernest F. Godshall, Jr., Collins & Aikman Corporation, Science & Service Division, 701 McCullough Drive, P.O. Box 32665, Charlotte, NC 28232, (704) 547-8500.

i. FERC Contract: Thomas O. Murphy (202) 376-8773.

j. Comment Date: July 29, 1988.

k. Competing Application: Project No. 10047-000, Date Filed: July 22, 1986.

1. Description of Project: The constructed project consists of: (1) An existing 287-foot-long, 24-foot-high rock and masonry dam with a 275-foot-long earth berm at the north end; (2) an existing impoundment with the surface area of 68 acres at elevation 186 feet m.s.l. and a gross storage capacity of 836 acre-feet; (3) a new concrete intake structure with fish passage facilities at the south end of the dam; (4) an existing integral powerhouse containing two turbine-generator units with a total installed capacity of 600 kW at a head of 21.5 feet; (5) an existing tailrace; and (6) appurtenant facilities.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

4. a. Type of Application: Preliminary Permit.

b. Project No.: 10541-000.

c. Date filed: February 4, 1988.

d. Applicant: The Front Range Toll Road Company.

e. Name of Project: Front Range Toll Road.

f. Location: A 160-mile water pipeline connecting the South-Platte River north of Denver and the Arkansas River near

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: July 29, 1988.

k. Description of Project: On March 19, 1987, a license was issued to Diamond Power Corporation (Licensee), to construct, operate, and maintain the Quinebaug-Five Mile Pond Project No. 5062. The licensee intends to transfer the license to the Quinebaug Partnership (transferee) which will purchase, build, and operate the project. Quinebaug Partnership agrees to accept the terms and conditions of the license as if it were the original licensee.

1. This notice also consists of the following standard paragraphs: B and C.

3. a. Type of Application: Minor License.

b. Project No.: 10514-000.

c. Date filed: November 16, 1987.

d. Applicant: C & A Wallcoverings, Inc.

e. Name of Project: Imperial Dam Project.

f. Location: On the Saranac River in Clinton County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Ernest F. Godshall, Jr., Collins & Aikman Corporation, Science & Service Division, 701 McCullough Drive, P.O. Box 32665, Charlotte, NC 28232, (704) 547-8500.

i. FERC Contract: Thomas O. Murphy (202) 376-8773.

j. Comment Date: July 29, 1988.

k. Competing Application: Project No. 10047-000, Date Filed: July 22, 1986.

1. Description of Project: The constructed project consists of: (1) An existing 287-foot-long, 24-foot-high rock and masonry dam with a 275-foot-long earth berm at the north end; (2) an existing impoundment with the surface area of 68 acres at elevation 186 feet m.s.l. and a gross storage capacity of 836 acre-feet; (3) a new concrete intake structure with fish passage facilities at the south end of the dam; (4) an existing integral powerhouse containing two turbine-generator units with a total installed capacity of 600 kW at a head of 21.5 feet; (5) an existing tailrace; and (6) appurtenant facilities.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

4. a. Type of Application: Preliminary Permit.

b. Project No.: 10541-000.

c. Date filed: February 4, 1988.

d. Applicant: The Front Range Toll Road Company.

e. Name of Project: Front Range Toll Road.

f. Location: A 160-mile water pipeline connecting the South-Platte River north of Denver and the Arkansas River near

Pueblo crossing Weld, Adams, Arapahoe, Elbert, El Paso and Pueblo Counties, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Ray S. Wells, Suite 150, 820 S. Syracuse Way, Englewood, CO 80111, (303) 779-4525.

i. FERC Contract: Ms. Julie Berni, (202) 376-1936.

j. Comment Date: August 18, 1988.

k. Description of Project: The proposed project would consist of: (1) 160 miles of 72-inch pipe which will discharge into wet wells at the midpoint powerhouses and into a storage reservoir at elevation 7,300 feet; (2) a storage reservoir 10 miles south of Kiowa, Colorado, having a surface area of 11 acres, a storage capacity of 135 acre-feet, and a normal maximum surface elevation of 15 feet; (3) four powerhouses each containing one generating unit with a rated capacity of 2,100 kW, one located at elevation 4,500 feet at the intake structure at the South Platte River, one at elevation 5,900 feet southeast of Denver and one at elevation 5,950 southeast of Colorado Springs; and (4) 4,000 feet of interconnecting transmission lines.

Applicant estimates the average annual energy production to be 245,000 MWh and the cost of the work to be performed under the preliminary permit to be \$25,000.

1. Purpose of Project: The power produced is to be sold to the local power companies.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5a. Type of Application: License.

b. Project No.: 10547-000.

c. Date Filed: February 24, 1988.

d. Applicant: Charwill Realty.

e. Name of Project: Badger Pond.

f. Location: On the Tioga River in Belknap County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: C.W.H. Lowth, Jr., Managing Partner, Charwill Realty, P.O. Box 689, Meredith, NH 03253, (603) 279-6538.

i. FERC Contact: Thomas O. Murphy (202) 376-8773.

j. Comment Date: August 19, 1988.

k. Description of Project: The constructed project would consist of: (1) An existing 16-foot-high and 225-foot-long concrete capped rockfill dam with 4.0-foot-high flashboards; (2) a reservoir with a surface area of 20 acres and a gross storage capacity of 180 acre-feet at a spillway crest elevation of 577.0 feet and a surface area of 51 acres and a

Pueblo crossing Weld, Adams, Arapahoe, Elbert, El Paso and Pueblo Counties, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. Applicant Contact: Ray S. Wells, Suite 150, 820 S. Syracuse Way, Englewood, CO 80111, (303) 779-4525.

i. FERC Contract: Ms. Julie Berni, (202) 376-1936.

j. Comment Date: August 18, 1988.

k. Description of Project: The proposed project would consist of: (1) 160 miles of 72-inch pipe which will discharge into wet wells at the midpoint powerhouses and into a storage reservoir at elevation 7,300 feet; (2) a storage reservoir 10 miles south of Kiowa, Colorado, having a surface area of 11 acres, a storage capacity of 135 acre-feet, and a normal maximum surface elevation of 15 feet; (3) four powerhouses each containing one generating unit with a rated capacity of 2,100 kW, one located at elevation 4,500 feet at the intake structure at the South Platte River, one at elevation 5,900 feet southeast of Denver and one at elevation 5,950 southeast of Colorado Springs; and (4) 4,000 feet of interconnecting transmission lines.

Applicant estimates the average annual energy production to be 245,000 MWh and the cost of the work to be performed under the preliminary permit to be \$25,000.

1. Purpose of Project: The power produced is to be sold to the local power companies.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5a. Type of Application: License.

b. Project No.: 10547-000.

c. Date Filed: February 24, 1988.

d. Applicant: Charwill Realty.

e. Name of Project: Badger Pond.

f. Location: On the Tioga River in Belknap County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: C.W.H. Lowth, Jr., Managing Partner, Charwill Realty, P.O. Box 689, Meredith, NH 03253, (603) 279-6538.

i. FERC Contact: Thomas O. Murphy (202) 376-8773.

j. Comment Date: August 19, 1988.

k. Description of Project: The constructed project would consist of: (1) An existing 16-foot-high and 225-foot-long concrete capped rockfill dam with 4.0-foot-high flashboards; (2) a reservoir with a surface area of 20 acres and a gross storage capacity of 180 acre-feet at a spillway crest elevation of 577.0 feet and a surface area of 51 acres and a

gross storage capacity of 510 acre-feet at the top of the dam (elevation 563.0 feet); (3) an existing 270-foot-long, 36-inch-diameter penstock; (4) an existing concrete, steel and wood 12-foot-long by 12-foot-wide by 16-foot-high powerhouse containing two turbines mechanically belted to one generator, and having a rated capacity of 75 kW; and (5) an existing 125-foot-long 12.5 kV transmission line. The estimated average annual energy generation is 134,000 kWh.

1. Purpose of Project: The power generated will be sold to Public Service of New Hampshire.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6a. Type of Application: Exemption (5MW).

b. Project No.: 10560-000.

c. Date Filed: March 17, 1988.

d. Applicant: Metropolitan Water District of Provo City.

e. Name of Project: Upper Falls Power Project.

f. Location: On a small spring which is a tributary of the Provo River in Sec. 34, T5S, R2S, near Provo in Utah County, Utah.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Applicant Contact: Mr. Wayne Hillier, 210 West 200 North, Room 104, Provo, Utah 84601, (801) 377-0502.

i. FERC Contract: Ms. Julie Berni, (202) 376-1936.

j. Comment Date: July 28, 1988.

k. Description of Project: The proposed run-of-river project would consist of: (1) an existing 4-foot-high diversion weir at elevation 5,228 feet msl to be rehabilitated; (2) a 10-inch-diameter, 1,000-foot-long cast iron penstock; (3) a powerhouse containing one generating unit with a rated capacity of 65 kW; and (4) approximately 2,700 feet of transmission line. The average annual energy output would be 420,000 kWh. The estimated cost of the project is \$128,000

Juab County, Utah, Township 12 South, Range 1 East.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. Applicant Contact: Mr. Michael J. Graham, P.O. Box 1929, Lake Havasu City, AZ 86403, (802) 855-1615.

i. FERC Contact: Mr. James Hunter (202) 376-1943.

j. Comment Date: August 18, 1988.

k. Description of Project: The proposed project would consist of: (1) An existing 5-foot-high, reinforced concrete irrigation diversion at elevation 7,000 feet, MSL; (2) a 10,000-foot-long, 8-inch-diameter penstock; (3) a powerhouse at elevation 5,400 feet, MSL, containing a generating unit rated at 1000 kW, producing an average annual output of 7.4 GWh; (4) a tailrace discharging back into the irrigation canal; and (5) a 0.25-mile-long transmission line connecting to the existing Mona substation. The estimated cost of permit activities is \$37,500.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 10600-000.

c. Date filed: May 17, 1988.

d. Applicant: Bear Canyon Hydro Associates.

e. Name of Project: Bear Canyon Hydro.

f. Location: On Bear Creek, on federal land administered by the Bureau of Land Management in Juab County, Utah, Township 11 South, Range 1 East.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. Applicant Contact: Mr. Michael J. Graham, P.O. Box 1929, Lake Havasu City, AZ 86403, (802) 855-1615.

i. FERC Contact: Mr. James Hunter (202) 376-1943.

j. Comment Date: August 18, 1988.

k. Description of Project: The proposed project would utilize an existing irrigation diversion at elevation 6,000 feet, MSL, and would consist of: (1) A 5,000-foot-long, 8-inch-diameter penstock; (2) a powerhouse at elevation 5,200 feet, MSL, containing a generating unit rated at 600 kW, producing an average annual output of 4.5 GWh; (3) a tailrace discharging back into the irrigation canal; and (4) a transmission line connecting to the Mona distribution system. The estimated cost of permit activities is \$37,500.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9a. Type of Application: Preliminary Permit.

b. Project No.: 10607-000.

c. Date Filed: May 18, 1988.

d. Applicant: Reeds Creek Hydro, Inc.

e. Name of Project: Reeds Creek Hydroelectric Project.

f. Location: On Reeds Creek and Snake Creek, near the town of Headquarters, in Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: James R. Morris, Vice President, Reeds Creek Hydro, Inc., P.O. Box 1016, Lewiston, ID 83501, (208) 799-1352.

i. FERC Contact: Thomas Dean, (202) 376-8562.

j. Comment Date: August 8, 1988.

k. Description of Project: The proposed project would consist of: (1) a diversion structure on Reeds Creek with an inlet elevation of 2,240 feet msl; (2) a 60-inch-diameter, 16,800-foot-long penstock; (3) a diversion structure on Snake Creek with an inlet elevation of 2,580 feet msl; (4) a 30-inch-diameter, 14,250-foot-long penstock; (5) a shared powerhouse at elevation 1,630 feet msl containing 4 generating units with a combined capacity of 4,800 kW; (6) a 47,000-foot-long, 60-kV transmission line; and (7) a tailrace diverting flows into Reeds Creek.

The applicant estimates the average annual energy production to be 15.2 GWh. The approximate cost of the studies under the permit would be \$700,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10a. Type of Application: Surrender of License.

b. Project No.: 7483-004.

c. Date filed: May 3, 1988.

d. Applicant: Willow River Hydro Associates.

e. Name of Project: Mounds Hydro Project.

f. Location: On the Willow River in St. Croix County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. David M. Coombe, 410 Severn Ave., Suite 313, Annapolis, MD 21403, (301) 288-8820.

i. FERC Contact: Ed Lee on (202) 376-9118.

j. Comment Date: August 5, 1988.

k. Description of Application: The license for this project was issued on February 28, 1985, for an installed capacity of 490 kW. The licensee states that it has determined that the project

would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B and C.

11a. Type of Application: Preliminary Permit.

b. Project No.: 10546-000.

c. Date Filed: February 19, 1988.

d. Applicant: Millwood Hydro Associates.

e. Name of Project: Millwood Dam Hydro.

f. Location: On Little River in Hempstead County, Arkansas.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: David M. Coombe, 410 Severn Ave., Suite 313, Annapolis, MD 21403, (301) 288-8820.

i. FERC Contact: Charles T. Raabe, (202) 376-9778.

j. Comment Date: August 26, 1988.

k. Description of Project: The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers' Little Rock District. The proposed project would consist of: (1) A new intake facility; (2) a new 18-foot-diameter, 320-foot-long steel penstock; (3) a new reinforced-concrete powerhouse containing three new 5,000 kW generating units for a total installed capacity of 15,000 kW operated at a 62-foot head and at a 3300-cfs flow; (4) a new 70-foot-wide, 100-foot-long tailrace; (5) a new 200-foot-long, 13.2 kV transmission line; and (6) appurtenant facilities.

Applicant estimates that the average annual energy production would be 85 GWh and that the cost of the work to be performed under the terms of the preliminary permit would be \$300,000.

l. Purpose of Project: Energy produced at the project would be sold to the Southwestern Electric Power Company or to private industry.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12a. Type of Application: Preliminary Permit.

b. Project No.: 10582-000.

c. Date Filed: March 23, 1988.

d. Applicant: Timothy C. Baker and Margaret L. Baker.

e. Name of Project: Whittlesey Dam.

f. Location: On the Salmon River, in the Village of Malone, Franklin County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. Applicant Contact: Timothy C. Baker, 114 Adams Avenue, Ogdensburg, NY 13669, (315) 393-7900.

i. FERC Contact: Charles T. Raabe—(202) 376-9778.

j. Comment Date: August 26, 1988.

k. Completing Application: Project No. 10522-000; Date Filed: December 7, 1987 Due Date: March 28, 1988.

l. Description of Project: The proposed project would consist of: (1) An existing 13-foot-high gravity-type concrete dam having a 79-foot-long ogee-type spillway with crest elevation 662 feet MSL, surmounted by 20-inch-high flashboards; (2) a reservoir having a 2 acre surface area and an 8 acre-foot storage capacity at normal water surface elevation 662 feet MSL; (3) a renqvanted inlet structure; (4) a new concrete powerhouse containing a 300-kW generating unit operated at a 13-foot head and at a flow of 291 cfs; (5) a 20-foot-wide, 140-foot-long, excavated tailrace; (6) a new 40-foot-long underground transmission cable, a transformer, and a 110-foot-long, 13.2-kV transmission line; and (7) appurtenant facilities. Applicant estimates that the average annual generation would be 1,712,580 kWh. The dam is owned by the Village of Malone.

m. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Company.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: 10573-000.

c. Date Filed: April 7, 1988.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Fowlerville.

f. Location: on the Moose River in Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. Applicant Contact: Mr. Fred T. Samel, P.O. Box 109, Prospect, NY 13435.

i. FERC Contact: Thomas O. Murphy (202) 376-9773.

j. Comment Date: August 25, 1988.

k. Description of Project: (1) a natural falls, approximately 32-foot-high, which creates a small pool with a normal maximum surface elevation of 1168 feet MSL; (2) a rehabilitated intake; (3) a proposed 40-foot-wide, 34-foot-long, and 45-foot-high powerhouse which will contain a total installed generating capacity of 2 MW; (4) a proposed 5,000-foot-long, 46-Kv transmission line; and (5) appurtenant facilities.

The estimated annual power production is 14,592,000 kWh. Project power will be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14a. Type of Application: Preliminary Permit.

b. Project No.: P-10597-000.

c. Date filed: April 18, 1988.

d. Applicant: Public Resource Development Associates.

e. Name of Project: Grays Landing Project.

f. Location: On the Monongahela River in Greene County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)-825(r).

h. Applicant Contact: Mr. Donald W. McKee, Public Resource Development Associates, 217 Scott Drive, Monroeville, PA 15146, (412) 372-2329.

i. FERC Contact: Robert Bell, (202) 376-9237.

j. Comment Date: August 26, 1988.

k. Description of Project: The proposed project would utilize the proposed U.S. Corps of Engineers Grays Landing Dam and impoundment and would consist of: (1) a proposed head race channel around the west abutment of the spillway; (2) a proposed intake structure; (3) a proposed powerhouse containing two generating units having a total installed capacity of 6,700 kW; (4) a proposed tailrace channel; (5) a proposed transmission line; and (6) appurtenant facilities. The proposed project would have an average annual generation of 34,000,000 kWh.

l. Purpose of Project: All project energy generated would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A7, A9, A10, B, C, and D2.

15a. Type of Application: Preliminary Permit.

b. Project No.: 10608-000.

c. Date Filed: May 18, 1988.

d. Applicant: Beaver Creek Hydro, Inc.

e. Name of Project: Beaver Creek Hydroelectric Project.

f. Location: Occupies lands in the Clearwater National Forest, on Beaver Creek near the town of Pierce, in Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: James R. Morris, Vice President, Beaver Creek Hydro, Inc., P.O. Box 1016, Lewiston, ID 83501, (208) 799-1352.

i. FERC Contact: Thomas Dean, (202) 376-8562.

j. Comment Date: August 26, 1988.

k. Description of Project: The proposed project would consist of: (1) a diversion structure with an inlet elevation of 2,660 feet msl; (2) a 54-inch-diameter, 9,200-foot-long penstock leading to; (3) a powerhouse at elevation 1,670 feet msl containing 3 generating units with a combined capacity of 4,950 kW; and (4) a 121,000-foot-long, 69-kV transmission line.

The applicant estimates the average annual energy production to be 21.6 GWh. The approximate cost of the studies under the permit would be \$630,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

The applicant estimates the average annual energy production to be 21.6 GWh. The approximate cost of the studies under the permit would be \$630,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application.

Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application.—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a

notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments,

protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1966, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-20, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant

to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are required, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Issued: June 28, 1988.
Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14916 Filed 6-30-88; 8:45am]
BILLING CODE 4717-01-M

[Docket Nos. CP88-468-000 et al.]

Northern Natural Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP88-468-000]

June 24, 1988.

Take notice that on June 14, 1988, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251, filed in Docket No. CP88-468-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Petrus Oil Company, L.P. (Petrus), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that pursuant to a Gas Transportation Agreement dated April 21, 1988, Northern would transport up to 200,000 MMBtu of natural gas per day for Petrus from four (4) points of receipt in the State of Oklahoma to two (2) points of delivery in the State of Texas. Northern further states that construction of facilities would not be required to provide the proposed service.

Comment date: August 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP88-472-000]

June 27, 1988.

Take notice that on June 15, 1988, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP88-472-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a sales tap located in Maricopa County, Arizona, in order to permit the delivery of volumes of natural gas to Southwest Gas Corporation for resale to consumers in the Community of Estrella, Arizona, under the authorization issued in Docket No. CP82-435-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that by order issued December 22, 1947, at Docket No. C-931, 6 FPC 1104, El Paso is authorized to provide natural gas service to Southwest in accordance with the terms and conditions of the currently effective

Service Agreement between El Paso and Southwest dated August 15, 1970. It is further stated that the Service Agreement provides, *inter alia*, for the sale and delivery by El Paso and the purchase and receipt by Southwest of natural gas for distribution and resale to consumers in Maricopa County, Arizona.

It is stated that Southwest has requested El Paso to provide natural gas service at a location on its existing 8% inch O.D. Avondale Line in Maricopa County, Arizona. Southwest indicated that the additional volumes of natural gas would be utilized to serve residential and commercial space heating requirements of consumers in Estrella, Arizona. El Paso avers that initial deliveries of natural gas are requested to begin by second quarter of 1988.

El Paso proposes to install a sales tap consisting of one 2 inch O.D. tap and valve assembly with appurtenances, located on its existing 8% inch O.D. Avondale Line. El Paso avers that the estimated cost of the sales tap facilities is \$85,827. It is stated that Southwest would install other related facilities, as needed, for the ultimate distribution of the requested volumes of natural gas for residential and commercial use in Estrella.

It is stated the volumes of natural gas to be delivered would be sold by El Paso to Southwest for resale in Estrella in order to accommodate Priority 1 and Priority 2(c) requirements. It is averred that the projected Priority 1 and Priority 2(c) load growth would not alter Southwest's entitlements under El Paso's Permanent Allocation Plan. It is further averred that the proposed sale of natural gas is permitted by and consistent with the high-priority load growth provisions set forth in section 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: August 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-468-000]

June 27, 1988.

Take notice that on June 14, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-468-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on

behalf of Enron Gas Marketing, Inc., a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a Gas Transportation Agreement dated May 6, 1988, Northern would transport up to 100,000 MMBtu/day for Enron Gas Marketing, Inc., from seventeen (17) points of receipt in Offshore Texas to six (6) points of delivery onshore and offshore, Texas. Northern states further that construction of facilities would not be required to provide the proposed service.

Comment date: August 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-471-000]

June 27, 1988.

Take notice that on June 14, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-471-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Mobil Oil Corporation, a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a Gas Transportation Agreement dated April 21, 1988, Northern would transport up to 20,000 MMBtu/day on behalf of Mobil Oil Corporation from one (1) point of receipt in Kansas to one (1) point of delivery in Kansas. Northern states further that construction of facilities would not be required to provide the proposed service.

Comment date: August 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-467-000]

June 27, 1988.

Take notice that on June 14, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-

467-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Northern Natural Gas Supply Co., a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a Gas Transportation Agreement dated April 19, 1988, Northern would transport up to 300,000 MMBtu/day for Northern Natural Gas Supply Co. from ninety-eight (98) points of receipt in Oklahoma, Kansas, Texas, New Mexico and Iowa to twenty (20) points of delivery in Kansas, Texas, and Wisconsin. Northern states further that construction of facilities would not be required to provide the proposed service.

Comment date: August 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14832 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-45-004]

Arkla Energy Resources; Compliance Filing

June 28, 1988.

Take notice that on June 22, 1988, Arkla Energy Resources (AER) filed as Appendix A certain tariff sheets to its FERC Gas Tariff, in compliance with the Commission's January 29, and May 20, 1988 orders. Appendix B consists of a cost of service summary and allocation schedules supporting the Appendix A tariff sheets, and Appendix C details

AER's excess deferred federal income taxes (EDIT).

AER states that this filing reflects the removal from AER's test period rate base of the facilities involved in Docket No. CP87-445-000 and reflects the elimination of Rate Schedule CD-1 since service has not been certificated.

AER states that as required by the Commission's January 29, 1988 order, AER has reflected the change in the federal corporate income tax rate to 34 percent and will flow back the EDIT balances shown on Appendix C in accordance with the "reverse South Georgia" methodology.

AER states that in accordance with the Commission's May 20, 1988 order, the rates shown on the Appendix A tariff sheets and the cost classification and allocation schedules contained in Appendix B reflect the reclassification of AER's products extraction plant from transmission to gathering. AER also states that it removed the carrying costs associated with certain gas prepayments from its transportation rates and has allocated these costs instead to its sales commodity rates only.

AER requests that these tariff sheets be placed into effect on July 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14838 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-45-005]

Arkla Energy Resources; Compliance Filing

June 28, 1988.

Take notice that on June 22, 1988, Arkla Energy Resources (AER) filed, as part of its FERC Gas Tariff, Second Substitute 47th Revised Sheet No. 4 to First Revised Volume No. 1, Original Sheet No. 185.1 and Second Substitute

46th Revised Sheet No. 185 to Original Volume No. 3, proposed to be effective July 1, 1988, in compliance with Commission orders issued January 29 and May 20, 1988.

AER states that this filing reflects its most recently filed cost of gas and is intended to replace the tariff sheets filed on June 22, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14839 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-196-000]

Interstate Power Co.; Filing

June 28, 1988.

Take notice that on June 21, 1988, Interstate Power Company submitted in Docket No. RP88-196-000 information to establish a volumetric rate for recovery of the costs of upstream pipeline take-or-pay billings.

Interstate proposes that all such take-or-pay costs be recovered through a volumetric charge per MMBTU.

Interstate has submitted information establishing the volumetric charge which will provide for the recovery, commencing June 1, 1988. These sheets conform to the billing procedures approved by the Commission in Order No. 500 and 18 CFR 2.104.

Interstate requested an effective date of June 1, 1988 for the proposed take or pay recovery rate.

Interstate states that a copy of its filing has been mailed to all affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests

must be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14840 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-116-001]

Louisiana-Nevada Transit Co.; Filing

June 28, 1988.

Take notice that on June 21, 1988, Louisiana-Nevada Transit Company (LNT) filed First Revised Sheet Nos. 19, 20, 21, 22 and 23 to its FERC Gas Tariff, First Revised Volume No. 1.

LNT states these tariff sheets are filed in compliance with the Commission's May 27, 1988 order which directed LNT to file revised tariff sheets pursuant to § 154.64 of the Commission's regulations to eliminate its PGA clause.

LNT states that the Commission's May 27, 1988 order also directed LNT to file a plan for the distribution of its balance in Account 191. Compliance Schedule A, included in the June 21, 1988 filing, proposes the refund of the balance, with appropriate interest, to jurisdictional customers based on actual sales in the twelve-month test period. LNT states that the only jurisdictional sales during that period were to United Gas Pipe Line Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14841 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-193-000]

Midwestern Gas Transmission Co.; Filing

June 28, 1988.

Take notice that on June 15, 1988, Midwestern Gas Transmission Company (Midwestern) filed the following tariff sheets to amend Volume 1 of its FERC Gas Tariff, to be effective July 1, 1988:

Fourteenth Revised Sheet No. 7
First Revised Sheet No. 192
First Revised Sheet No. 193
Original Sheet No. 194
Original Sheet Nos. 195 through 242

Midwestern states that the purpose of the filing is to permit flow through to its Southern System jurisdictional sales customers Tennessee Gas Pipeline Company's (Tennessee) take or pay costs and contract reformation costs (TOP Costs) that Tennessee is recovering from Midwestern and other sales customers pursuant to a Settlement approved and modified by the Commission in Docket No. RP88-119, and a Tennessee tariff filing implementing the Settlement as modified in Docket No. RP88-191.

Midwestern states that in accord with Order No. 500 and the Commission's policy requiring as-billed flowthrough by downstream pipelines, Midwestern is allocating its share of Tennessee's TOP Costs to Midwestern's customers on the same cumulative purchase deficiency basis as Tennessee allocated the TOP Costs to its customers.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14842 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ88-2-5-001]

Midwestern Gas Transmission Co.; Filing

June 28, 1988.

Take notice that on June 21, 1988, Midwestern Gas Transmission Company (Midwestern) filed Substitute Thirty-Sixth Revised Sheet No. 5 and Alternate Substitute Thirty-Sixth Revised Sheet No. 5 to its FERC Gas Tariff, Original Volume No. 1.

Midwestern states that the purpose of this filing is to correct demand billing determinants for the quarterly PCA previously filed on May 31, 1988. Midwestern states that the May 31, 1988 filing misstated the billing determinants due to a mistake in the calculations.

Midwestern states that these revisions have been posted to all affected customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14843 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 1473-000]

Montana Power Co.; Issuance of Annual License

June 28, 1988.

On July 29, 1967, Montana Power Company, licensee for the Flint Creek Project No. 1473, located on Georgetown Lake, near Anaconda, in Deer Lodge and Granite Counties, Montana, notified the Commission of its intent not to file an application for a new license for the project and filed an application to surrender its license.

The license for Project No. 1473 was issued for a 50-year term ending June 30, 1988. In order to authorize the continued operation and maintenance of the project pending Commission action

under section 15 of the Federal Power Act, 16 U.S.C. 808, an annual license must be issued to Montana Power Company pursuant to said section.

Take notice that an annual license is issued to the Montana Power Company for a period effective July 1, 1988, to June 30, 1989, or until federal takeover, or until the issuance of a new license to another entity for the project, or until the Commission acts on Montana Power Company's request to surrender the license, whichever comes first, for the continued operation and maintenance of Project No. 1473, subject to the terms and conditions of the original license.

Take further notice that if federal takeover, issuance of a new license, or Commission approval of the surrender of license request does not take place on or before June 30, 1988, an annual license will be issued each year thereafter, effective July 1 of each year, until such time as federal takeover takes place, a new license is issued, or surrender of the license is approved, without further notice being given by the Commission.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14830 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-195-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 28, 1988.

Take notice that on June 17, 1988, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 163.

Northern Border states that this tariff sheet reflects certain modifications to the Credit Worthiness provision of Rate Schedule IT-1 to enable Northern Border to operate more effectively within the objectives of Order Nos. 436/500 and to improve the ability of our customers to respond and participate in their market environment. In First Revised Sheet Number 163, Northern Border proposes to make three changes to Subsection 8.1, Credit Worthiness: (1) To eliminate a refundable, non-interest bearing deposit as a form of credit support, (2) to modify the time period upon which the amount of a standby letter of credit is based (the lesser of 90 days or the contract term), and (3) to add a "prepayment" as an alternative form of credit support. Northern Border has requested that these revised tariff

sheets be effective on July 20, 1988.

Copies of this filing have been sent to all of Northern Border's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.11, 385.214). All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14844 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-47-005]

Northwest Pipeline Corp.; Filing

June 28, 1988.

Take notice that on June 16, 1988, Northwest Pipeline Corporation (Northwest) filed the following tariff sheets to its FERC Gas Tariff, proposed to be effective June 3, 1988:

Volume No. 1

Amended Substitute First Alternate Fortieth Revised Sheet No. 10
Substitute First Alternate Twenty-Second Revised Sheet No. 10-A
First Amended Substitute First Alternate First Revised Sheet No. 303

Volume No. 1-A

First Alternate Fourteenth Revised Sheet No. 201
First Alternate Fourth Revised Sheet No. 202
Substitute First Alternate Second Revised Sheet No. 313
Substitute First Alternate Original Sheet No. 602

Volume No. 2

First Alternate Thirteenth Revised Sheet No. 2
First Alternate Fifth Revised Sheet No. 2.1
Substitute First Alternate Fifth Revised Sheet No. 2.2
First Alternate Fifth Revised Sheet No. 2.3

Northwest states that by letter and motion dated June 3, 1988, Northwest filed certain "First Alternate Tariff

Sheets" and "Third Alternate Tariff Sheets" reflecting the elimination of the minimum annual commodity charge from its PL-1 Rate Schedule and requested one of set of alternate tariff sheets be made effective at the end of the suspension period, July 3, 1988, depending, respectively, on whether Northwest accepted its blanket open-access certificate at that time.

Northwest states that it accepted said blanket certificate in Docket No. CP86-578 and filed all tariff sheets necessary to comply with the Commission's orders and regulations so as to implement blanket open-access transportation effective June 10, 1988. Northwest states that as a result of the open-access tariff sheets filed in Docket No. CP86-578 to be made effective on June 10, 1988, and as a result of corresponding Sheet Nos. 300, 301 and 302 of Volume No. 1 filed May 2 and June 1, 1988, in Docket Nos. RP86-154, TQ88-1-37 and TQ88-2-37 to be made effective July 1, 1988, only the foregoing tariff sheets included in the set of "First Alternate Tariff Sheets" filed on June 3, 1988, remain to be made effective July 3, 1988 pursuant to Northwest's June 3, 1988 motion.

Northwest states that these tariff sheets are identical to those included as part of the "First Alternate Tariff Sheets" as filed June 3, 1988, with only two exceptions: (1) Amended Substitute First Alternate Fortieth Revised Sheet No. 10 to Volume No. 1 and (2) Substitute First Alternate Second Revised sheet No. 313 to Volume No. 1-A, which sheets have been revised only as necessary to conform to the tariff sheets to be made effective June 10, 1988 in Docket No. CP86-578.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14845 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-47-005]

Northwest Pipeline Corp.; Compliance Filing

June 28, 1988.

Take notice that on June 22, 1988, Northwest Pipeline Corporation (Northwest) tendered for filing a revised revenue and cost study for the twelve-month period ending February 29, 1988, in support of its Restatement of Base Tariff Rates on Substitute Third Amended Thirty-Ninth revised Sheet No. 10 of First Revised Volume No. 1 of its FERC Gas Tariff made effective May 1, 1988. Northwest states that said filing is in compliance with the Commission's May 18, 1988 order making such Restated Base Tariff Rates effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14846 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TQ88-1-11-001 and TM88-1-11-001]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 28, 1988.

Take notice that on June 20, 1988, United Gas Pipe Line Company (United) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, Revised Eightieth Revised Sheet No. 4 to be effective June 1, 1988 and Second Revised Eightieth Revised Sheet No. 4 to be effective on July 1, 1988.

United states that the tariff sheets are being filed pursuant to the Commission's letter order dated May 31, 1988, and reflect base tariff rates which exclude take-or-pay amounts which United has proposed to direct bill, pursuant to Order No. 500, in Docket Nos. RP88-27-006 and RP88-208-015. United states that these base rates have been

accepted by Commission order dated May 16, 1988 in these dockets.

United states that these revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14847 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD8814327T]

Designation of Tight Formation; McMullen County, TX; Texas-16 (Addition 3)

June 29, 1988.

Take notice that on June 13, 1988, the Railroad Commission of Texas (Texas) submitted to the Commission its determination that an additional portion of the AWP (Olmos) Field located in McMullen County, Texas, qualifies as a tight formation under Section 107(b) of the Natural Gas Policy Act of 1978. The application includes the Railroad Commission's order issued May 23, 1988, finding that the proposed addition meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

Any person desiring to be heard or to protest Texas' determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1987)). All such comments should be filed within 20 days after publication of this notice in the Federal Register. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-14917 Filed 6-30-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP88-22-000]

Woods Petroleum Corp.; Petition for Waiver

June 29, 1988.

Take notice that on May 27, 1988, Woods Petroleum Corporation (Woods) filed with the Commission a petition for waiver pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1987). Woods requests waiver of any obligation to refund to Natural Gas Pipeline Company of American (Natural) amounts paid by Natural to Woods for production from the Lacy 27-1 well located in Oklahoma for the period November 1979 to July 1986 in excess of the applicable maximum lawful price under section 104 of the NGPA.

Woods states that it is the general partner of a limited partnership, Woods 1977 Drilling Program, that owns a working interest in the Deweese well. Woods states that a proper NGPA section 102 determination was received from the Oklahoma Corporation Commission (OCC) for the well's initial production. However, the well was plugged back and recompleted in November 1979 in the Red Fork Sand. Since that time Woods has collected the section 102 price although the Red Fork Sand completion has never received a section 102 determination. Woods states that it is not possible to reconstruct why the necessary well category filing was not made in 1979 because the pertinent records have been destroyed and the persons who were responsible for such filing in 1979 are no longer employed by Woods. Woods has contacted the OCC and has been advised that it is possible to obtain retroactive certification of the well. Woods asserts that if it is unable to obtain such retroactive certification it should be granted a waiver because requiring payment of the refund would be inequitable. Woods states that the remaining reserves are not sufficient to permit recoupment of the alleged overpayment of approximately \$495,000. Woods also states that it will probably be unable to recover any of the overpayments made to royalty interest owners.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance

with Rules 214 or 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and § 385.211 (1987). All motions to intervene or protests should be submitted to the Federal Energy Commission, 825 North Capitol Street, NE, Washington, DC 20426, not later than 30 days following publication of this notice in the *Federal Register*. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-14918 Filed 6-30-88; 9:45 am]

BILLING CODE 6717-21-M

ENVIRONMENTAL PROTECTION AGENCY

[EPA-FRL-3408-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 13, 1988 through June 17, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-BLM-L67018-AK, Rating EO2, Beaver Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, White Mountain National Recreation Area, Anchorage, AK.

Summary. EPA has environmental objections regarding the range of alternatives addressed, the significance of potential long-term and cumulative impacts, and the availability of mitigation measures. Also, EPA's effluent limitation guidelines and new source performance standards for placer mines should be reflected in BLM's proposed action.

ERP No. DB-COE-K38014-CA, Rating EO2, Santa Ana River Mainstem and Santiago Creek Multipurpose Flood Control Project, Additional Alternatives

and Updated Information, Riverside, Orange and San Bernardino Counties, CA.

Summary. EPA expressed environmental objections because additional mitigation measures are needed to compensate for adverse impacts to aquatic habitat. EPA asked that the supplemental final EIS provide further information on impacts and mitigation for riparian habitats, water quality, and air quality.

ERP No. DS-COE-L32003-WA, Rating EC1, Grays Harbor Navigation Improvement Project, Updated Description of Impacts, Implementation, Chehalis and Hoquiam Rivers, Grays Harbor County, WA.

Summary. EPA feels this document identifies significant impacts to Dungeness crab and juvenile salmonids due to construction and maintenance dredging. Mitigation measures are proposed for both which EPA believes to be acceptable. However, EPA has environmental concerns with regard to ensuring their implementation.

ERP No. D-FHW-L40163-WA, Rating EC2, I-5 Widening, Main Street Interchange to I-205, Funding and 404 Permit, Clark County, WA.

Summary. EPA's concerns include the potential for biomanification of Highway pollutants at the detention pond/wetland site and whether the wetland has the capacity to safely assimilate the expected runoff and pollutant loadings. Additional information is needed on the proposed mitigation plan for wetland fill, water quality concentrations, and impacts associated with removal/disposal of underground storage tanks in the proposed right-of-way.

ERP No. D-FHW-L40165-WA, Rating EC2, I-90 Improvements, Four Lakes to the Idaho State Line, Funding and 404 Permit, Spokane County, WA.

Summary. EPA's concerns involve the potential for localized induced growth resulting from I-90 improvements. Additional information is needed on the proposed mitigation plan for wetland impacts and the extent of private developer involvement in improvements.

ERP No. D-OSM-J01071-WY, Rating EC2, Dry Fork Surface Coal Mine, Mining Plan Approval, Campbell County, WY.

Summary. EPA has requested additional protection for fisheries, water quality, groundwater, and information on particulate modeling and wetland mitigation.

Final EISs

ERP No. F-COE-J20814-CO, Metropolitan Denver Water Supply Project, Two Forks Dam and Reservoir

and Williams Fork Gravity Collection System Construction, 404 Permit and Approvals, Douglas, Jefferson and Grand Counties, CO.

Summary. EPA found that there is insufficient information in the area of indirect impacts to wetlands, the effectiveness of mitigation and lack of commitment to mitigate. EPA was concerned that the project would cause degradation to the waters of U.S., especially regarding water quality and aquatic impacts. EPA requested that a supplement to the final EIS be prepared prior to the Record of Decision. EPA will continue to consider its options under NEPA, section 309 of Clean Air Act, and the processes identified in the Clean Water Act, Section 404(q) Memorandum of Understanding. (Note: The above summary should have appeared in the 6-24-88 FR Notice.)

ERP No. FS-FAA-B51008-NH, Lebanon Municipal Airport Runway 18 Extension, Outer Marker and Compass Locator Facility Installation, Approval, Grafton County, NH.

Summary. EPA has no objections to the action as proposed in this document.

ERP No. F-USN-L11008-AK, Southeast Alaska Acoustic Measurement Facility (SEAFAC) Construction, Establishment and 404 Permit, Behm Canal, Back Island, Ketchikan Gateway Borough, AK.

Summary. EPA has no objections to the proposed project.

Dated: June 28, 1988.

William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 88-14865 Filed 6-30-88; 9:45 am]

BILLING CODE 6560-50-M

[EPA-FRL-3407-9]

Environmental Impact Statements; Availability; Weekly Receipts

Responsible Agency: Office of Federal Activities, General Information (202) 382-5075 or (202) 382-5074.

Availability of Environmental Impact Statements Filed June 20, 1988 Through June 24, 1988 Pursuant to 40 CFR 1508.9.

EIS No. 880199, Final, EPA, TX, Corpus Christi/Inglese Ocean Dredged Material Disposal Site Designation for Material Dredged from the Corpus Christi Ship Channel in Conjunction with the U.S. Navy's Gulf Coast Strategic Homeport Project, TX, Due: August 1, 1988, Contact: Norm Thomas (214) 655-6651.

EIS No. 880200, Final, BLM, MT, West Hilline Planning Area, Resource Management Plan, Implementation, several Counties, MT, Due: August 1,

1988, Contact: James Beaver (406) 585-6815.

EIS No. 880201, Final, BOP, KY, Manchester Federal Correctional Institution Complex, Construction and Operation, Clay County, KY, Due: August 1, 1988, Contact: William J. Patrick (202) 724-3232.

EIS No. 880202, Draft, USA, HI, Helemano Military Reservation, Family Housing Construction Project, Implementation, City and County of Honolulu, Island of Oahu, HI, Due: August 15, 1988, Contact: James E. Maragos (808) 438-2263.

EIS No. 880203, DSUpl, COE, NY, NJ, Port of New York-New Jersey Dredged Material Disposal Project, Use of Subaqueous Barrow Pits for Disposal of Dredged Material, Designation, NY and NJ, Due: August 15, 1988, Contact: Len Houston (212) 264-4862.

EIS No. 880204, Final, BLM, UT, Aptus Industrial and Hazardous Waste Treatment Facility Construction and Operation, Land Exchange, Right-of-Way Grants, Temporary Use Permits and Possible 404 Permit, Tooele County UT, Due: August 1, 1988, Contact: John Stephenson (801) 524-6762.

Amended Notices

EIS No. 880141, DSUpl, NRC, PA, Three Mile Island Nuclear Power Station, Decontamination/Disposal of Radioactive Waste Resulting from the March 28, 1979 Accident, Post Defueling Monitored Storage (PDMS), Londonderry Township, Dauphin County, PA, Due: August 1, 1988, Contact: Micheal Masnik (301) 492-1373.

Published FR 5-5-88—Review period extended.

Dated: June 28, 1988.

William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 88-14866 Filed 6-30-88; 9:45 am]

BILLING CODE 6560-50-M

[FRL-3408-4]

Sediment Criteria Subcommittee of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two-day meeting of the Sediment Criteria Subcommittee of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board (SAB) will be held on August 8th and 9th, 1988. The meeting will begin at 1:00 p.m. and will be held in the Conference Facilities (14th Floor) of the

Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado 80202-2405. The meeting will adjourn no later than 5:00 p.m. on Tuesday.

The Subcommittee has been charged by the Office of Water, Criteria and Standards Division, with the scientific review of the approach to be used in the derivation of sediment quality criteria for non-polar organic contaminants. The objective of this meeting is to inform the Subcommittee of Agency activities concerning contaminated sediment, so that they can provide broad-based oversight to EPA's criteria setting approach as it is being developed. Activities and issues that will be presented to the Subcommittee include the national perspective or extent of sediment contamination, as well as regional or specific case studies, including the Great Lakes, and Pudget Sound, and Superfund sites; and methods that may be applied to set criteria or criteria ranges, such as screening level concentrations, the apparent effects threshold method, and the equilibrium partitioning method. In addition, current research activities that are being conducted, for example, methods validation, and future research plans, such as a sediment initiative to begin in 1990, will be described. Finally, the regulatory applications of sediment quality criteria will be detailed, and the various methods for setting criteria will be compared.

The charge to the Subcommittee will be discussed and refined, and plans will be made for the receipt and review of the sediment quality criteria document for non-polar organic contaminants, anticipated in November of 1989. The meeting will be open to the public. Any member of the public who wishes to attend, present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary or Mrs. Lutithia Barbee, Staff Secretary (A-101 F) Science Advisory Board, U.S. EPA, 401 M Street SW., Washington, DC. Telephone (202) 382-2552 or FTS-6-383-2552. Written comments will be accepted and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than August 1, 1988, to be assured of space on the agenda.

Donald G. Barnes,

Director, Science Advisory Board.

Date: June 24, 1988.

[FR Doc. 88-14852 Filed 6-30-88; 9:45 am]

BILLING CODE 6560-50-M

[FRL-3408-5]

Environmental Effects, Transport and Fate Committee of the Science Advisory Board; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a one-day meeting of the Environmental Effects, Transport and Fate Committee of the Science Advisory Board (SAB) will be held on August 10, 1988. The meeting will begin at 9:00 a.m. and will be held in the Conference Facilities (14th Floor) of the Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado 80202-2405. The meeting will adjourn no later than 5:00 p.m.

Several objectives will be accomplished at this meeting. First, the Environmental Effects, Transport and Fate Committee (EET&FC) will be brought up to date on the activities of the various Subcommittees it oversees, including the Municipal Waste Combustion Subcommittee, the Water Quality Advisories Subcommittee, and the Sediment Criteria Subcommittee. The Committee will also be informed of activities ongoing under the Research Strategies Committee, especially regarding ecological effects, the Global Climate Change Subcommittee and the Long-Range Ecological Research Needs Subcommittee, since these activities are related to the mission of the EET&FC.

Next, briefings will be provided from Agency program staff. The Office of Research and Development will describe their activities related to groundwater protection, as will the Office of Water (OW). The committee will also hear plans for updating the OW's Water Quality Guidelines for Developing Criteria, especially as they relate to the WQC for Ammonia, Selenium and Aluminum. Additionally, the activities of the Environmental Risk Assessment Forum especially as they relate to the Agency's requirement to develop research plans toward Reducing Uncertainty in Risk Assessment (RURA) will be detailed. Finally, future planning will take place, including identification of new issues for 1989 and 1990, such as environmental monitoring programs and eco-region concepts; and planning for a Committee workshop on Biological Indicators or Endpoints.

The meeting will be open to the public. Any member of the public who wishes to attend, present information, or receive further details should contact Ms. Janis C. Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary (A-101 F) Science Advisory Board, U.S. EPA, 401 M Street SW., Washington,

DC. Telephone (202) 382-2552 or FTS-8-382-2552. Written comments will be accepted and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than August 1, 1988, to be assured of space on the agenda.

Donald G. Barnes,
Director, Science Advisory Board.

Date: June 24, 1988.
[FR Doc. 88-14853 Filed 6-30-88; 8:45 am]
BILLING CODE 5560-55-M

[OPTS-44511; FRL-3408-3]**TSCA Chemical Testing; Receipt of Test Data**

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on diethylenetriamine (CAS No. 111-40-0) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460. (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submission

Test data for diethylenetriamine was submitted by Union Carbide Corporation pursuant to a test rule at 40 CFR 799.1395. It was received by EPA on June 17, 1988. The submission describes a 90-day (subchronic) dietary toxicity study with the dihydrochloride salt of DETA in albino rats. An oral subchronic toxicity test is required by the test rule. DETA is used primarily for production of wet-strength resins, epoxy-curing

agents, chelating agents, lubricating oil and fuel additives, surfactants and corrosion inhibitors.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice [docket number OPTS-44511]. This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Room NE-G004, 401 M Street SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Date: June 23, 1988.

J. Morenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-14854 Filed 6-30-88; 8:45 am]
BILLING CODE 5560-55-M

FEDERAL COMMUNICATIONS COMMISSION**Applications for Consolidated Hearing; Lozada, Jose A. Ortiz et al.**

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, and city state	File no.	MM Docket No.
A. Jose A. Ortiz Lozada, Arecibo, Puerto Rico.	BPCT-861117KS	88-209
B. Aurelio Matos, Jr. d/ b/a The Children Television Media; Arecibo, Puerto Rico.	BPCT-870211KE	
C. Hector Negroni Carliaga, Arecibo, Puerto Rico.	BPCT-870212KK	
D. Fredrick Grimm d/ b/a Mountlake Productions, Ltd.; Arecibo, Puerto Rico.	BPCT-870212KY	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Minimum Separations. A, D
Air Hazard. B, C, D
Environmental Impact. D
Comparative. A, B, C, D
Ultimate. A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 88-14815 Filed 6-30-88; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Palmetto Broadcasting Inc. of Morris Inlet et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Palmetto Broadcasting, Inc. of Morris Inlet	Murrells Inlet, S.C.	BPH-870715MD	88-209
B. Inlet Broadcasting Co.	do	BPH-870724MA	
C. Olde Point CATV, Inc.	do	BPH-870730MC	
D. Murrells Media Corporation	do	BPH-870730ME	
E. Gary S. Morris & Nancy C. Morris, a General Partnership	do	BPH-870730MJ	
F. Murrells Inlet Radio Limited Partnership	do	BPH-870730MN	
G. Jerry W. Oakley	do	BPH-870730MQ	

Applicant	City/State	File No.	MM Docket No.
H. Augusta Radio Fellowship Institute, Inc. d/b/a South Carolina Radio Fellowship	do	BPH-870730MV	
I. Rita A. Capobianchi	do	BPH-870730MS (dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Environmental. E
2. Air Hazard. F
3. Financial. C, E, F, G, H
4. Misrepresentation. H
5. Comparative. A, B, C, D, E, F, G, H
6. Ultimate. A, B, C, D, E, F, G, H

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.
[FR Doc. 88-14816 Filed 6-30-88; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM**The Fuji Bank, Ltd., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Fuji Bank, Limited*, Tokyo, Japan; to engage de novo through its subsidiary Kleinwort Benson Government Securities, Inc., Chicago, Illinois, in: (1) Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by a bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks (such obligations

being "eligible securities"), pursuant to § 225.25(b)(16) and activities incidental thereto, including repurchase and reverse repurchase transactions on such securities, collateralized borrowing and lending of such securities, clearing, settling, accounting, record keeping and other ancillary services, pursuant to § 225.21(a)(2) of the Board's Regulation Y; (2) engaging in futures, forward and options contracts on eligible securities for hedging purposes in accordance with 12 CFR 225.142; (3) providing portfolio investment advice and research and furnishing general economic information and advice, general economic statistical forecasting services and industry studies in connection with, and as an incident to, the proposed eligible securities activities, pursuant to §§ 225.25(b)(4) (iii) and (iv) of the Board's Regulation Y; (4) acting as a futures commission merchant ("FCM") for affiliated and nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts on bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, pursuant to § 225.25(b)(18) of the Board's Regulation Y (Applicant argues that providing FCM activities to affiliates is permissible under § 225.25(b)(18) or, alternatively, permissible under sections 4(c)(1)(C) and 4(c)(8) of the BHC Act); (5) providing investment advice including counsel, publication, written analyses and reports, with respect to the purchase and sale of futures contracts and options on futures contracts, pursuant to § 225.25(b)(19) of the Board's Regulation Y. Applicant has also applied for approval to acquire indirectly through the company, one percent of the voting shares of Liberty Brokerage, Inc., an inter-dealer blind broker of government securities.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to engage de novo through its subsidiary Georgia Interchange Network, Inc., Atlanta, Georgia, in (1) Providing consulting services to member and nonmember depository institutions

to assist in the development of institution-specific marketing and promotional EFT programs in such areas as ATM side selection, card design, EFT program graphics, customer and employee education and promotion, strategic EFT marketing planning and advertising and public relations planning; (2) providing consulting services relating to EFT operations, including, among other things, hardware and software selection, ATM/POS installation, telecommunications, card plastic production, encoding and distribution, and transaction set selections; (3) providing consulting services of EFT issues to senior officers of member and nonmember depository institutions; (4) organizing and coordinating EFT research studies sponsored by participating institutions and/or processors; (5) assisting participating institutions to establish disaster recovery plans in areas such as equipment, personnel, operations documentation, system software, transportation, environmental and contractual considerations and test plans and execution. The activities are permissible pursuant to § 225.25(b)(11) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 1010 Market Street, San Francisco, California 94105:

1. *Business Bancorp.*, San Jose, California, to engage *de novo* in providing data processing services permissible under § 225.25(b)(7) of the Board's Regulation Y (which is an expansion of the data processing services currently provided).

Board of Governors of the Federal Reserve System, June 27, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-14817 Filed 6-30-88; 8:45 am]
BILLING CODE 3210-01-M

Granite State Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 21, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Granite State Bankshares, Inc.*, Keene, New Hampshire; to merge with First Peterborough Bank Corp., Peterborough, New Hampshire, and thereby indirectly acquire First National Bank of Peterborough, Peterborough, New Hampshire.

2. *Mercantile Capital Corp.*, Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Mercantile Bank and Trust Company, Boston, Massachusetts.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Apple Bancorp, Inc.*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Apple Bank for Savings, New York, New York. Apple Bank for Savings operates a savings bank life insurance department and engages through its subsidiary, Apple Associates of New York, Inc., in acting as agent or broker in the sale of life insurance and annuities; Applicant commits to divest the activities of Apple Associates of New York, Inc. within two years of the date of consummation, with activity during that two-year period limited to renewal of existing policies.

2. *Banco Bilbao-Vizcaya, S.A.*, Bilbao, Spain; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Comercial de Mayaguez, Mayaguez, Puerto Rico.

C. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire up to 24.9 percent of the voting shares of First Capitol Bank (in organization), York, Pennsylvania.

D. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Richwood Bancshares, Inc.*, Richwood, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Richwood Banking Company, Richwood, Ohio.

E. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Terrabank Holding Corporation*, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Terrabank National Association, Miami, Florida.

F. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60606:

1. *Edgewood Bancshares, Inc.*, Countryside, Illinois; to merge with Edgemark Financial Corporation, Countryside, Illinois, and thereby indirectly acquire Edgemark Bank—Lombard, Lombard, Illinois.

2. *Edgewood Bancshares, Inc.*, Countryside, Illinois; to merge with Cosmopolitan Financial Services, Inc., Countryside, Illinois, and thereby indirectly acquire First National Bank of Lockport, Lockport, Illinois; Merchandise National Bank of Chicago, Chicago, Illinois, and Edgemark Bank—Rosemont, Rosemont, Illinois.

4. *Mid-City Incorporated*, Chicago, Illinois; to acquire 100 percent of the voting shares of Union Bank & Trust Company, Oklahoma City, Oklahoma.

5. *Western Illinois Bancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 50.01 percent of the voting shares of The First National Bank in Blandinsville, Blandinsville, Illinois.

G. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Magna Group, Inc.*, Belleville, Illinois (through its wholly owned subsidiary Mascoutah Acquisition Company, Wilmington, Delaware); to become a bank holding company by acquiring 100 percent of the voting shares of First Bancorp of Mascoutah, Ltd., Mascoutah, Illinois, and thereby indirectly acquire First National Bank in Mascoutah, Mascoutah, Illinois.

H. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cedar Financial Holding, Inc.*, Fordyce, Nebraska; to become a bank holding company by acquiring 100

percent of the voting shares of Cedar Security Bank, Fordyce, Nebraska.

2. *Financial Partners, Inc.*, Worland, Wyoming; to become a bank holding company by acquiring at least 80 percent of the voting shares of Stockgrowers State Bank, Worland, Wyoming.

3. *Hassenstab Management Co., Inc.*, Humphrey, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Humphrey, Nebraska.

4. *Peoples, Inc.*, Ottawa, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Savings, Inc., Ottawa, Kansas, parent of Peoples National Bank of Ottawa, Ottawa, Kansas.

5. *Telluride Bancorp, Ltd.*, Telluride, Colorado; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Telluride, Telluride, Colorado.

Board of Governors of the Federal Reserve System, June 27, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-14818 Filed 6-30-88; 8:45 am]
BILLING CODE 3210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; John D. Kelly, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Mr. John D. Kelly*, Fargo, North Dakota; to retain an additional 24 percent of the voting shares of Lamb's Bancorporation, Ltd., Michigan, North Dakota, and thereby indirectly acquire Lamb's Bank of Michigan City, Michigan, North Dakota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Mr. David A. Hartman*, El Paso, Texas; to acquire 79.65 percent of the voting shares of Central Texas Bancshares, Inc., Austin, Texas, and thereby indirectly acquire Guaranty National Bank, Austin, Texas.

2. *Mr. John E. Hartman*, El Paso, Texas; to acquire 11.37 percent of the voting shares of Central Texas Bancshares, Inc., Austin, Texas, and thereby indirectly acquire Guaranty National Bank, Austin, Texas.

3. *Mr. Wayne P. Hartman*, Minneapolis, Minnesota; to acquire 3.79 percent of the voting shares of Central Texas Bancshares, Inc., Austin, Texas, and thereby indirectly acquire Guaranty National Bank, Austin, Texas.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Donald K. Barton*, Salt Lake City, Utah; to acquire up to 20.06 percent of the voting shares of Bank of Ephraim, Ephraim, Utah.

2. *Mr. Larry A. Shehaday*, Fresno, California; to acquire a maximum of 7.3 percent of the voting shares of Fresno Bancorp, Fresno, California, and thereby indirectly acquire Bank of Fresno, Fresno, California.

Board of Governors of the Federal Reserve System, June 27, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-14819 Filed 6-30-88; 8:45 am]
BILLING CODE 3210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on June 24, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Center for Disease Control

1. **Trade Named Products Ingredient Clarification—0920-0135**—This information collection activity is necessary to complete the National Occupational Exposure Survey (NOES). This data base is used by NIOSH and others to suggest priorities for research activities, and to identify occupational groups with a potential for elevated health risk. Product manufacturers are the respondent group. Respondents: Business or other, for profit. Number of Respondents: 4,000; Frequency of Response: On occasion; Estimated Annual Burden: 6,167.

2. **National Household Seroprevalence Survey (NHSS)—Pilot Studies—NEW**—To determine the feasibility of and best approaches for a National Household survey of HIV seroprevalence. The purpose of the NHSS are to estimate the number of persons in the U.S. currently infected with HIV, the number of new infections each year, the extent of heterosexual transmission, and the size and location of populations at highest risk to target prevention efforts. (Including testing, counseling, and education/information); to evaluate the impact of prevention efforts; and to determine the future needs for health-care and social service. Respondents: Individuals or Households. Number of Respondents: 10,977; Frequency of Response: On Occasion; Estimated Annual Burden: 2,680 hours.

3. **Cancer Patients in a Case-Control Study of Pancreatic Cancer Among Blacks and Whites—Questionnaire for Next of Kin—NEW**—In an ongoing case-control study of pancreatic cancer, direct interviews could not be obtained for a high proportion of patients because of the poor survival associated with this disease. The purpose of this adjunct study is to determine if pancreatic cancer patients, who were not interviewed because of death, are different from those who were interviewed with regard to key potential risk factors for pancreatic cancer. Respondents: Individuals or Households; Frequency of Response: Single Time Study; Estimated Annual Burden: 60 hours.

OMB Desk Officer: Shannah Koss-McCallum.
OMB Desk Officer: Shannah Koss-McCallum.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. **Statement Regarding Date of Birth and Citizenship—0960-0016**—The information collected by this form is used by the Social Security Administration in conjunction with other evidence to establish a claimant's age or citizenship when better proofs are not available. Respondents: Individuals or Households. Number of Respondents: 24,000; Frequency of Respondents: On Occasion; Estimated Annual Burden: 4,000 hours.

2. **Request to Obtain Certain Financial Data from States Which Administer Their Own Supplementary Payments Programs—0960-0240**—The information requested is needed by the Social Security Administration to determine if certain States are in compliance with the "passalong" provisions of the Social Security Act. Respondents: States or Local governments; Number of Respondents: 28; Frequency of Response: Quarterly and Annually; Estimated Annual Burden: 71 hours. OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-604-1234 for copies of package)

1. **Information Collection Requirements for Corf's Contained in 42 CFR 485.56, 485.60, 485.64, 485.66 and 405.262—NEW**—In order to participate in MEDICARE/MEDICAID as a corf provider of services, providers must be in compliance with the standards for coverage set forth in regulations. Respondents: State or local Government; Number of Respondents: 162; Frequency of Response: On Occasion; Estimated Annual Burden: 77,014 hours.

OMB Desk Officer: Allison Herron. Office of Human Development Services (Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. **Follow-Up of Youth Using Runaway and Homeless Youth Centers—NEW**—Evaluation of Services and long-term effects of services provided by runaway and homeless youth centers will be used by program managers and child welfare planning and administrative staffs to improve their overall effectiveness. Respondents: Individuals or Households; Number of Respondents: 889; Frequency of Response: 1; Estimated Annual Burden: 751 hours.

2. **Final Rule for the Child Abuse Prevention and Treatment Act—0960-0164**—New requirement for States to establish programs and/or procedures

within the child protective services system to response to reports of medicine neglect, including instances of withholding medically indicated treatment from disabled infants with lifesaving conditions. Respondents: State or local Governments; Number of Respondents: 57; Frequency of Response: 1; Estimated Annual Burden: 4,560 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
FSA: 202-245-0652
SSA: 301-965-4149
OS: 202-245-6511
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Shannah Koss-McCallum.

Date: June 28, 1988.

James V. Oberthaler,
Deputy Assistant Secretary for Information Resources Management.
[FR Doc. 88-14886 Filed 6-30-88; 8:45 am]
BILLING CODE 4180-04-M

Centers for Disease Control

Committees; Establishment, Renewals, Terminations, etc.: Diabetes Translation and Community Control Programs, Technical Advisory Committee

ACTION: Notice of establishment—Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control (CDC) announces the establishment by the Secretary of Health and Human Services, on June 15, 1988, of the following Federal advisory committee:

Designation: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Purpose: This Committee will advise the Director, Centers for Disease Control, regarding priorities and feasible goals for translation activities and

community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee will advise regarding policies, strategies, goals and objectives; and priorities; identify research advances and technologies ready for translation into widespread community practice; recommend public health strategies to be implemented through community interventions; advise on operational research and outcome evaluation methodologies; identify research issues for further clinical investigation; and advise regarding the coordination of programs with Federal, voluntary and private resources involved in the provision of services to people with diabetes.

Authority for this Committee will expire June 15, 1990, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: June 27, 1988.

Elvin Hilyer,
Associate Director for Policy Coordination,
Centers for Disease Control.
[FR Doc. 88-14886 Filed 6-30-88; 8:45 am]
BILLING CODE 4180-10-M

Prevention Centers Grant Review Committee; Meeting

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Prevention Centers Grant Review Committee.

Time and Date: 8:30 a.m.—5:00 p.m., July 18-20, 1988.

Place: Days Hotel at Lenox, 3377 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited by the space available, 8:30-9:30 a.m., July 18, 1988. Closed 9:30 a.m., July 18-5:00 p.m., July 20, 1988.

Purpose: This Committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, Centers for Disease Control, regarding the scientific merit and technical feasibility of grant applications relating to the establishment, maintenance, and operation of centers for research and demonstration with respect to health promotion and disease prevention.

Agenda: Agenda items for the meeting will include announcements, discussion of review procedures, and review of grant applications. Beginning at 9:30 a.m., Monday, July 18, through 5:00 p.m., Wednesday, July 20, the

Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(9), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92-463.

Agenda items are subject to change as priorities dictate.

Contact Person: Steven L. Solomon, M.D., Assistant Director for Prevention, Training and Laboratory Program Office, Centers for Disease Control (24 EP-180), 1600 Clifton Road NE, Atlanta, Georgia 30333, Telephone: FTS: 236-1986, Commercial: 404/639-1986.

Dated: June 27, 1988.

Elvin Hilyer,
Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 88-14861 Filed 6-30-88; 8:45 am]

BILLING CODE 4160-10-M

Food and Drug Administration

[Docket No. 88N-0242]

Hydrocortisone Acetate and Pramoxine Hydrochloride; Drugs for Human Use; Proposal To Withdraw Approval; Opportunity for a Hearing

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of abbreviated new drug applications (ANDA's) for fixed-combination drug products that contain hydrocortisone acetate and pramoxine hydrochloride, and is offering an opportunity for a hearing on the proposal. The proposal to withdraw approval is based on a finding that the drug products lack substantial evidence of effectiveness in that there is no evidence that hydrochloride contributes an effect to the combination drug. These combination drug products are used for relief of the inflammatory and pruritic manifestations of corticosteroid-responsive dermatoses.

DATES: Requests for a hearing are due on or before August 1, 1988; data in support of a hearing request are due on or before August 30, 1988.

ADDRESS: Requests for a hearing, supporting data, and other comments should be identified with Docket No. 88N-0242, and submitted to: Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:**I. Background**

In the Federal Register of April 28, 1971 (36 FR 7982), FDA announced its effectiveness conclusions, under the agency's Drug Efficacy Study Implementation program, concerning topical corticosteroids. The agency concluded that the listed topical corticosteroids, including hydrocortisone acetate, were effective for symptomatic relief and adjunctive treatment of various steroid-responsive dermatoses. The agency also announced the acceptability of ANDA's for these products.

In the mid-1970's, FDA approved ANDA's for drug products in cream and lotion form sold under the trade name "Pramosone," which contained hydrocortisone acetate and pramoxine hydrochloride. The labeling of the products listed only hydrocortisone acetate as an active ingredient and contained claims relating only to hydrocortisone. The agency approved the products as single-active-ingredient hydrocortisone acetate products under the conditions of approval announced in the April 1971 notice as amended by notices published in the Federal Register of June 1, 1973 (38 FR 14424) and September 22, 1975 (40 FR 43531). Subsequently, FDA recognized that the pramoxine component was an active ingredient (a local anesthetic) and required disclosure of this information in the labeling. However, the agency did not permit any labeled indications regarding the therapeutic effects of the pramoxine component pending evaluation of the product as a combination drug. Other ANDA's for hydrocortisone acetate and pramoxine hydrochloride combination drug products were subsequently approved under the same conditions of approval as applied to the Pramoxine ANDA's.

The Center for Drug Evaluation and Research has evaluated the effectiveness of a fixed-combination of hydrocortisone acetate and pramoxine hydrochloride and finds no evidence that the pramoxine component contributes an effect to the combination drug (21 CFR 300.50). Accordingly the Director of the Center for Drug Evaluation and Research proposes to withdraw approval of the following ANDA's that provide for fixed combinations of hydrocortisone acetate and pramoxine hydrochloride:

ANDA 83-213: Pramoxone Topical Lotion; Ferndale Laboratories, Inc., 780W. Eight Mile Rd., Ferndale, MI 48220.

ANDA 83-778: Pramoxone Topical Cream; Ferndale Laboratories, Inc.,

ANDA 85-368: Pramoxone Topical Cream; Ferndale Laboratories, Inc.,

ANDA 85-979: Pramoxone Topical Cream; Ferndale Laboratories, Inc.,

ANDA 85-980: Pramoxone Topical Cream; Ferndale Laboratories, Inc.,

ANDA 86-195: Protofoam-HC Topical Aerosol; Reed & Carnick, 1 New England Ave., Piscataway, NJ 08855.

ANDA 86-457: Epifoam Topical Aerosol; Reed & Carnick.

ANDA 89-440: Hydrocortisone Acetate and Pramoxine Hydrochloride Topical Aerosol Foam; Copely Pharmaceutical, Inc., 881 E. First St., Boston, MA 02127.

II. Notice of Opportunity for Hearing

On the basis of all the data and information available to him, the Director of the Center for Drug Evaluation and Research is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and 21 CFR 314.126(b) and 300.50, and demonstrating the effectiveness of the drug products listed above.

Therefore, notice is given to the holders of the ANDA's listed above, and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act, withdrawing approval of the ANDA's and all amendments and supplements thereto on the ground that new information before him, evaluated together with the evidence available to him at the time of approval of the ANDA's, shows there is a lack of substantial evidence that the products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with section 505 of the act and 21 CFR Part 314, the applicants are hereby given an opportunity for a hearing to show why approval of the ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before August 1, 1988, a written notice of appearance and request for hearing, and (2) on or before August 30, 1988, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for a hearing,

BEST COPY AVAILABLE

a notice of appearance and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in 21 CFR 314.200.

The failure of an applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to make use of the opportunity for a hearing concerning the action proposed and a waiver of any contentions concerning the legal status of that person's drug product.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact that precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(f) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053 as amended (21 U.S.C. 352, 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: June 22, 1988.

Carl C. Peck,
Director, Center for Drug Evaluation and Research.

[FR Doc. 88-14876 Filed 6-30-88; 8:45 am]
BILLING CODE 4160-01-M

Health Care Financing Administration (BERC-499-N)

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing
Administration (HCFA), HHS.
ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday and Friday, July 21 and 22, 1988, from 9:00 a.m. to 5:00 p.m. Eastern Daylight Saving Time.

ADDRESS: The meeting will be held in Room 703A Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Jan Niessing (301) 966-5319.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At this meeting, the Committee will discuss: endoscopic procedures of the gastrointestinal system; orthopedic procedures; spinal fusion; excision of acoustic neuroma and other cranial lesions; coronary arteriography using two catheters; extracorporeal lithotripsy of the gall bladder; photon absorptiometry; endoscopic retrograde cholangiopancreatography; acute exacerbation of COPD; ICD-10 update; and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 22, 1988.

William L. Roper,
Administrator, Health Care Financing
Administration.

[FR Doc. 88-14800 Filed 6-30-88; 8:45 am]
BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AA-150-08-4830-11-ADVB-2410)

Call for District Advisory Council Nominations

AGENCY: Bureau of Land Management,
Interior.

ACTION: Call for Nominations for District
Advisory Councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 district advisory councils. Each council has four such positions to fill—except the California Desert District Advisory Council and the Northern Alaska Advisory Council, each of which has five such positions to fill.

Each affected council comprises 10 members, except the California Desert District Advisory Council and the Northern Alaska Advisory Council, which comprise 15 and 11 members, respectively. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1982, the terms of five members on the California Desert District Advisory Council and the terms of four members on each of the remaining 51 councils will expire on December 31, 1988. The Northern Alaska Advisory Council has five positions to fill because its membership is being increased from 10 to 11 members. Current council members may be reappointed or new members may be appointed. However, the eligibility of current council members for reappointment may be affected by governing regulations (49 CFR 1784.3(b), revised as of October 1, 1987). Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1991.

To ensure council membership that is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas identified with each council position now up for appointment. Categories for specific councils will be announced through local news releases in the appropriate States and Districts and will include the following:

Elected General Purpose Government
Environmental Protection
Recreation
Renewable Resources (livestock, forestry,
agriculture)

Non-Renewable Resources (mining, oil and
gas, extractive industries)
Transportation/Rights-of-Way (or occupancy
issues)
Wildlife
Public-at-Large.

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on an advisory council should contact the appropriate District Manager of the Bureau of Land Management at the corresponding District Office address below to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses, professions, and other biographic data of qualified nominees.

DATE: All nominations should be received by August 1, 1988.

ADDRESSES: The Districts and their mailing addresses are as follows:

ALASKA

Arctic, Kobuk, and Steese-White Mountain
(jointly served by the Northern Alaska
Advisory Council); c/o Public Affairs
Staff, Fairbanks Support Center, 1541
Gaffney Rd., Fairbanks, AK 99703
Anchorage and Glennallen (jointly served
by the Southern Alaska Advisory
Council); c/o Public Affairs Staff, Alaska
State Office, Box 13, Anchorage, AK
99513

ARIZONA

Arizona Strip: 390 N., 3050 E., St. George,
UT 84770
Phoenix: 2015 W. Deer Valley Rd., Phoenix,
AZ 85027
Safford: 425 E. 4th St., Safford, AZ 85546
Yuma: 3150 Winsor Ave., Yuma, AZ 85365

CALIFORNIA

Bakersfield: 800 Truxtun Ave., Bakersfield,
CA 93301-4782
California Desert: 1895 Spruce St.,
Riverside, CA 92507-2497
Susanville: 705 Hall St., Susanville, CA
96130-3730

Ukiah: 555 Leslie St., Ukiah, CA 95482-5599

COLORADO

Canon City: Box 311, Canon City, CO 81212
Craig: 455 Emerson St., Craig, CO 81625
Grand Junction: 764 Horizon Dr., Grand
Junction, CO 81506
Montrose: 2465 S. Townsend Ave.,
Montrose, CO 81401

IDAHO

Boise: 3948 Development Ave., Boise, ID
83705
Burley: Route 3, Box 1, Burley, ID 83318

Coeur d'Alene: 1808 N. 3rd St., Coeur
d'Alene, ID 83814

Idaho Falls: 940 Lincoln Rd., Idaho Falls, ID
83401
Salmon: Box 430, Salmon, ID 83467
Shoshone: Box 2B, Shoshone, ID 83352

MONTANA

Butte: Box 3388, Butte, MT 59702
Lewistown: 80 Airport Rd., Lewistown, MT
59457
Miles City: Box 940, Miles City, MT 59301

NEVADA

Battle Mountain: Box 1420, Battle
Mountain, NV 89820
Carson City: 1535 Hot Springs Rd., Suite
300, Carson City, NV 89701
Elko: Box 831, Elko, NV 89801
Ely: Star Route 5, Box 1, Ely NV 89301
Las Vegas: Box 26569, Las Vegas, NV 89126
Winnemucca: 705 E. 4th St., Winnemucca,
NV 89445

NEW MEXICO

Albuquerque: 435 Montano Rd., NE.,
Albuquerque, NM 87107
Las Cruces: 1800 Marquess St., Las Cruces,
NM 88005
Roswell: Box 1397, Roswell, NM 88201-1397

NORTH DAKOTA

Dickinson: Box 1229, Dickinson, ND 58602

OREGON

Burns: 74 S. Alvord St., Burns, OR 97720
Coos Bay: 333 S. 4th St., Coos Bay, OR
97420
Eugene: Box 10226, Eugene, OR 97401
Lakeview: Box 151, Lakeview, OR 97630-
0055

Medford: 3040 Biddle Rd., Medford, OR
97504

Prineville: Box 550, Prineville, OR 97754

Roseburg: 777 N.W. Garden Valley Blvd.,
Roseburg, OR 97470

Salem: 1717 Fabry Rd., SE., Salem, OR
97302

Vale: Box 700, Vale, OR 97918

UTAH

Cedar City: Box 724, Cedar City, UT 84720
Moab: Box 970, Moab, UT 84532
Richfield: 150 E. 900 N., Richfield, UT 84701
Salt Lake: 2370 S. 2300 W., Salt Lake City,
UT 84119

Vernal: 170 S. 500 E., Vernal, UT 84078

WASHINGTON

Spokane: E. 4217 Main Ave., Spokane, WA
99202

WYOMING

Casper: 1701 East "E" Street, Casper, WY
82601
Rawlins: Box 670, Rawlins, WY 82301
Rock Springs: Box 1869, Rock Springs, WY
82902-1869
Worland: Box 119, Worland, WY 82401

FOR FURTHER INFORMATION CONTACT:

The appropriate District Managers.

Dean Stepanek,

Acting Deputy Director.

Date: June 15, 1988.

[FR Doc. 88-14778 Filed 6-30-88; 8:45 am]

BILLING CODE 4310-04-M

INTERSTATE COMMERCE COMMISSION

(Finance Docket No. 31275)

The Olympic Railroad Co., Acquisition and Operation Exemption; Rail Line of Port Townsend Paper Co.

The Olympic Railroad Company (OR) has filed a notice of exemption to acquire by lease and to operate the approximately 2 miles of rail line owned by Port Townsend Paper Company (PTP) extending between the immediate vicinity of PTP's mill at or near Port Townsend, WA, and the rail/barge transfer bridge located to the northeast of this mill at or near Port Townsend, WA. Any comments must be filed with the Commission and served on: Dennis A. Robertson, 6429 129th Avenue, SE., Bellevue, WA 98006.

OR must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470 is achieved.¹ See *Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. 10901*, I.C.C.2d, served February 17, 1988.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 24, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-14756 Filed 6-30-88; 8:45 am]

BILLING CODE 7035-01-M

(Docket No. AB-55 (Sub-No. 260X))

CSX Transportation, Inc., Abandonment Exemption, La Porte County, IN, and Berrien County, MI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 20.4-mile line of railroad between milepost 15.29 near Wellsboro, IN, and milepost 35.73 near New Buffalo, MI.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years, and that overhead

¹ OR has certified that it has provided the appropriate State Historic Preservation Officer with the identification (including maps, photographs and descriptions of the sites and structures it will be leasing from PTP in the subject transaction.

traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective July 31, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 11, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 21, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

² See *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164, served December 21, 1987 and final rules published in the *Federal Register* on December 22, 1987 (52 FR 46440-46446).

will serve the EA on all parties by July 8, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 23, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-14757 Filed 6-30-88; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation and address of principal office: Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, Pennsylvania 15219.

2. Wholly-owned subsidiaries which will participate in the operations and state of incorporation.

Advanced Closures, Inc., Delaware
Alcoa Defense Systems, Inc., Delaware
Alcoa Inter-America, Inc., Delaware
Alcoa Packaging Machinery, Inc., Delaware

Alcoa Recycling Company, Delaware
Alcoa Specialty Chemicals, Inc., Delaware

Alcoa Steamship Company, Delaware
American Powdered Metals Company, Delaware

Dalton Alumina and Chemicals Company, Georgia

GR Holdings, Inc., Delaware
H-C Products Company, Delaware
Illinois Water Treatment Company, Delaware

Lancy International, Inc., Pennsylvania
Northwest Alloys, Inc., Delaware
Penn Way Transportation, Inc., Delaware

Permatech, Inc., Delaware
Southco Metal Services, Inc., Delaware
T.H.E. Tool Co., Inc., Colorado

The Stolle Corporation, Ohio
TRE Financial Corporation, California
Tifton Aluminum Company, Delaware

B. 1. Parent corporation and address of principle office: Foodcraft, Inc., 1880 E. Third Street, Williamsport, PA 17701.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

Valley Farms, Inc., Pennsylvania Corporation

Valley Farms Equipment, Inc., Pennsylvania Corporation.

C. 1. Parent corporation and address of principal office: GATE PETROLEUM COMPANY, a Florida corporation, 9540 San Jose Boulevard, Jacksonville, Florida 32217.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation: Gate Fuel Service, Inc., a Florida corporation.

D. 1. GKN Aftermarket Import Parts (GKN-AIP).

The parent company and principal office of GKN-AIP is located at 1020 Space Park South, Nashville, Tennessee 37211. The participating subsidiaries are:

2. Name of Corporation and State of incorporation

GKN-Aftermarket Import Parts, Inc., Delaware

Beck Arnley Corporation, New York

Beck Arnley Corporation, California

Worldparts Corporation, Tennessee

Products, Inc., California

E. 1. The parent corporation is: James River Corporation (a Virginia corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217.

2. The wholly-owned subsidiaries which will participate in the operations are as follows:

James River-U.S. Holdings, Inc. (a Delaware corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217

*James River Paper Company, Inc. (a Virginia corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217

*James River-Norwalk, Inc. (a Delaware corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217

Arkon Corporation (a South Carolina corporation), 315 Pendleton Road, Greenville, South Carolina 29611

*Riverside Transportation, Inc. (a Virginia corporation), Post Office Box 2218, Richmond, Virginia 23217

*James River II (a Virginia corporation), Tredegar Street, Post Office Box 2218, Richmond, Virginia 23217

The Specialty Paper Company (an Ohio corporation), One Specialty Place, Post Office Box 1031, Dayton, Ohio 45401

*Riegel Products Corporation (a Delaware corporation), Frenchtown Road, Milford, New Jersey 08848

All subsidiaries indicated by an asterisk (*) each have divisions with truck fleets of their own. James River-Norwalk, Inc. has trucks operating in Darlington, South Carolina, Easton, Pennsylvania, Corte Madera, California, Chicago, Illinois and Metuchen, New Jersey. James River Paper Company has trucks operating in Rochester, Michigan; Southhampton, Pennsylvania; Kalamazoo, Michigan; South Hadley, Massachusetts and Johnston, Rhode Island.

Compensated intercompany hauling operations will be performed by and between the subsidiaries of James River Corporation.

F. 1. Parent corporation and address of principal office: Servistar Corporation, P.O. Box 1510, Butler, PA 16001.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and states of incorporation:

Name	State
Advocate Services, Inc.	PA
Total Exposition Concepts, Inc.	PA
Speer Hardware Company	AR

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-14856 Filed 6-30-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-301 (Sub-No. 1X)]

Southrail Corp.; Exemption; Discontinuance of Trackage Rights Between Tupelo and New Albany, MS

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue its trackage rights over a line of the Burlington Northern Railroad Company (BN) between milepost 588.20 near Tupelo, MS, and milepost 582.30 near New Albany, MS. BN will continue to operate over the line.

Applicant has certified that: (1) No local traffic has moved over the line under the trackage rights agreement for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been

notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective July 31, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 11, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 21, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Mark M. Levin, Esq., Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Ave., NW., Suite 800, Washington, DC 20005-4797.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

The Section of Energy and Environment has issued a finding of no significant effect as a result of the discontinuance of trackage rights in this proceeding.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 20, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-14857 Filed 6-30-88; 8:45 am]

BILLING CODE 7035-01-M

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

² See *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 46440-46446).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 14, 1988, Abbott Laboratories, 14th Street and Sheridan Road, Attention: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance bulk dextropropoxyphene (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than August 1, 1988.

Dated: June 23, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-14877 Filed 6-30-88; 8:45 am]

BILLING CODE 4110-02-M

Manufacturer of Controlled Substances Application

Pursuant to § 1301.43(a) of Title 21, of the Code of Federal Regulations (CFR), this is notice that on May 27, 1988, Applied Science Laboratories, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

	Sched. No.
Lysergic acid diethylamide (7315)	1
Tetrahydrocannabinols (7370)	1
Mescaline (7381)	1
3,4-methylenedioxy amphetamine (7400)	1

Sched.	List of Recordkeeping/Reporting Requirements Under Review
3,4-methylenedioxy-n-ethylamphetamine (7404).....	I
3,4-methylenedioxymethamphetamine (7405).....	I
Psilocybin (7437).....	I
Psilocyn (7438).....	I
Ethylamine analog of phencyclidine (7455).....	I
Pyrrolidine analog of phencyclidine (7456).....	I
Thiopene analog of phencyclidine (7470).....	I
Dihydromorphine (9145).....	I
Normorphine (9313).....	I
1-phenylcyclohexylamine (7490).....	II
Phencyclidine (7471).....	II
1-piperidinocyclohexanecarbonitrile (PCC) (8803).....	II
Codeine (9050).....	II
Dihydrocodeine (9120).....	II
Benzoylcegonine (9180).....	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than August 1, 1988.

Dated: June 23, 1988.

Gene R. Haislip,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.

[FR Doc. 88-14878 Filed 6-30-88; 8:45 am]

BILLING CODE 4410-25-M

DEPARTMENT OF LABOR

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer,

Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor,

200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration

Optional Use Payroll Form under Davis-Bacon

1215-0149; WH-347

45 weeks per year average
Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; small businesses or organizations
244,400 responses; 5,500,000 total hrs.; .5 hr. average per response; 1 form
Report is used by contractors to certify payrolls in accordance with requirements of Copeland and Davis-Bacon Acts, attesting that proper wage rates and fringe benefits were paid; reviewed by contracting agencies to verify that rates are legal and that employees are properly classified (29 CFR 3.3, 5.5(a)(3)(ii)).

Occupational Safety and Health Administration

Accident Prevention Tags

1218-0132

On occasion

State or local governments, Businesses or other for-profit; Federal agencies or employees; Small business or organizations

5,231,250 Responses; 30,225 Hours; 20 seconds per response; 0 Forms

These requirements regulate the design and use of accident prevention tags.

Accident prevention tags are used to temporarily identify hazardous or potentially hazardous workplace conditions that are out of the ordinary, unexpected or not readily apparent. The affected public includes all sections of "general industry".

Mine Safety and Health Administration

Radiation Sampling and Exposure Records

1219-0003

Weekly; annually

Underground uranium mine operators and metal and nonmetal underground mine operators where radon daughter concentrations exceed 0.3 WL

35 respondents; 7.75 hours per response

Requires operators of uranium mines and metal and nonmetal mines, where concentrations of radon daughters exceed 0.3 WL, to calculate, record, and report to MSHA individual miner's exposures to concentrations of radon daughters. Records are maintained by the mine operator and are submitted to MSHA annually.

Signed at Washington, DC, this 28th day of June, 1988.

Paul E. Larson,
Departmental Clearance Officer.

[FR Doc. 88-14019 Filed 6-30-88; 8:45 am]

BILLING CODE 4510-27-M

Report of a Computer Matching Project Involving Recipients of Job Training Partnership Act Benefits and Department of Education Pell Grants

a. *Authority:* The Office of Inspector General (OIG) pursuant to its authority under Pub. L. 95-452 (Inspector General Act of 1978) has initiated a program of computer matching.

b. *Description of the Match:* Two responsibilities of the Inspector General under the Act are to prevent and detect fraud and abuse in the programs and operations of the Department of Labor, and to keep Congress fully informed about the problems and deficiencies relating to the administration of such programs and operations and the need for the progress of corrective actions.

Since July 1, 1983 the Department of Labor's Employment and Training Administration (ETA) has administered the Job Training Partnership Act (JTPA). JTPA provides job training and other assistance to individuals with special barriers to employment, dislocated workers, and to the economically disadvantaged. Title IIA of the Act provides classroom training to participants to enable them ultimately to obtain unsubsidized employment. Funds are granted to 57 states and entities which, in turn, distribute them to Service Delivery Areas (SDAs). In Fiscal Year 1987, ETA's budget for JTPA was 3.7 billion.

The Department of Education awards "Pell grants" to individuals as authorized by the Higher Education Act (Pub. L. 96-374 and amendments thereto). Grants are awarded to all eligible students, and institutions must ensure that recipients meet the eligibility requirements for the Pell Grant program.

The JTPA classroom training file of participants to be used in this match is derived from a larger OIG file of JTPA participants. This larger file was created during a prior OIG audit of the JTPA program in which a random sample of 57 SDAs was selected. During the prior audit, OIG selected approximately 50 participants at each Service Delivery Area for further audit work. However, for the purposes of this match, OIG further refined the OIG-maintained file to include those participants who received classroom training only from JTPA.

The purpose of this crossmatch is to determine whether service providers (training institutions) are billing JTPA SDAs and the Department of Education Pell Grant Program for the same services for the same time periods. Matched records will be further analyzed on an individual basis to determine if, in fact, duplicate payments have been made by

JTPA which should be reimbursed to the Department of Labor.

Matched records will be provided to OIG's New York Regional Audit Office. Each matched record will be manually verified on site at the SDA and/or training provider to determine whether the provider has: (1) Received a Pell Grant from Education for the student and (2) billed the JTPA program for the same training.

If the results of OIG's testing indicate a significant level of duplicate payments, then OIG plans to expand the sample by selecting additional records. Depending on the results of OIG's analysis of the hits, OIG may expand the match to additional JTPA participant files at other SDAs, or OIG may review additional participants at SDAs already selected.

c. *Federal Records To Be Matched:* The description of the records to be matched is as follows:

—JTPA Title IIA classroom training participants file derived from an earlier JTPA audit file and currently maintained by OIG. This file consists of JTPA participants at 57 randomly selected SDAs throughout the U.S. who received classroom training only. The file was created in 1987.

—Pell Participant Application files (alphabetical and by Social Security Number) maintained by Education. (These files contain the names of all individuals who applied for Pell grants during program years 1986 and 1987.)

—Pell Student Payment Summaries, by Institution. (These records contain all Pell payments made by Education to individual students at each training institution during program years 1986 and 1987.)

The Department of Education records are contained in the following records systems: (i) Pell Grant Application File, ED/OPE/OSFA, 18-40-0014; (ii) Pell Grant Student Eligibility Report Subsystem, ED/OPE/OSFA, 18-40-0015; (iii) Pell Grant Alternate Disbursement System, ED/OPE/OSFA, 18-40-0016 (46 FR 29508, as amended by 47 FR 10828).

Pursuant to 47 FR 27885, these records may be disclosed to OIG as a routine use under the Privacy Act for the purpose of a computer matching program.

The result of this match will be a listing of those JTPA classroom training participants who either: (1) Applied for or (2) received a Pell Grant during program years 1986 and 1987 at the 57 randomly selected SDAs discussed above.

d. *Period of the Match:* The match will compare program years 1986 and 1987.

Program years run from July 1 to June 30. The match will be completed by December 31, 1988.

e. *Privacy protection and data security:* The personal privacy of individuals identified through the listing created by OIG is protected by strict compliance with the Privacy Act, 5 U.S.C. 553(a) et seq., and Office of Management and Budget Circular A-108. Information obtained from the Department of Education and information derived from matching programs will be used only for official purposes.

As previously stated, the purpose of the crossmatch is to identify training providers who may have received funding from Labor and Education for identical services provided. Therefore, individual privacy records will be used only to the extent necessary to identify the training institution attended by the participant. Although OIG anticipates potential recommendations for disallowance of duplicate reimbursements from training institutions, OIG does not expect its audit to recommend repayment of benefits by individuals.

All data will be kept in locked file cabinets and will be made available only to those individuals working on the matching project and/or ancillary projects.

Matched records will not be released to either the press or the public.

f. *Disposition of source and matched records:* Source records provided by Education will not become part of any DOL OIG system of records, and will be returned to Education after the match. The matched records listing will be maintained with the audit workpapers for a period of 8 years after which time they will be destroyed.

Dated: June 9, 1988.

Approved:

J. Brian Hyland,
Inspector General, U.S. Department of Labor
[FR Doc. 88-14920 Filed 6-30-88; 8:45 am]

BILLING CODE 4510-21-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment

and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 11, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 11, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 B Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 20th day of June 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petition No.	Articles produced
At-A-Glance Div. of Keith Clark, Inc. (UPI)	Pittsfield, MA	6/20/88	5/16/88	20,731	Address Books; Appointment Books; and Desk Calendars.
Carter Footwear, Inc. (UFCW)	Wilkes-Barre, PA	6/20/88	6/7/88	20,732	Casual and Athletic Footwear.
Halsey Taylor/Thermos (Company)	Taftville, CT	6/20/88	6/7/88	20,733	Vacuum Ware (Thermos) Lunch Kits.
JM Apparel Companies, Inc. (Workers)	Norwich, CT	6/20/88	6/2/88	20,734	Women's Apparel.
Leads & Northrup Co. (UAW)	North Wales, PA	6/20/88	6/5/88	20,735	Electronic Control Instrumentation.
Martin Shirt Co. (ACTUW)	Shenandoah, PA	6/20/88	6/9/88	20,736	Ladies' Blouses.
Schlage Lock Co. (Workers)	Rocky Mount, NC	6/20/88	5/26/88	20,737	Door Locks and Door Hardware.
Witco Corp. (Workers)	Canton, OH	6/20/88	5/18/88	20,738	Oil and Gas.

[FR Doc. 88-14921 Filed 6-30-88; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (40 Stat. 1494; as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1.

Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseding decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is

earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut:	
CT88-1 (Jan. 8, 1988)	P. 63.
Florida:	
FL88-17 (Jan. 8, 1988)	P. 144.
Massachusetts:	
MA88-1 (Jan. 8, 1988)	Pp. 376-381.
MA88-2 (Jan. 8, 1988)	Pp. 392-395.
MA88-3 (Jan. 8, 1988)	Pp. 406-414.
New York:	
NY88-4 (Jan. 8, 1988)	Pp. 710-712.
NY88-5 (Jan. 8, 1988)	Pp. 719-720.
NY88-6 (Jan. 8, 1988)	Pp. 728-730.
NY88-8 (Jan. 8, 1988)	Pp. 756-760.
NY88-11 (Jan. 8, 1988)	Pp. 782-783.
NY88-14 (Jan. 8, 1988)	P. 810.
NY88-15 (Jan. 8, 1988)	Pp. 814-815.
NY88-17 (Jan. 8, 1988)	Pp. 820-822.
NY88-18 (Jan. 8, 1988)	Pp. 830-834.

Volume II

Illinois:	
IL88-12 (Jan. 8, 1988)	P. 164, Pp. 168-172b.
Michigan:	
MI88-1 (Jan. 8, 1988)	P. 424.
MI88-7 (Jan. 8, 1988)	Pp. 480-492.
Ohio:	
OH88-1 (Jan. 2, 1988)	Pp. 724-728.
OH88-2 (Jan. 8, 1988)	Pp. 738-740.
OH88-3 (Jan. 8, 1988)	Pp. 758-763.
OH88-28 (Jan. 8, 1988)	Pp. 814-817.
OH88-29 (Jan. 8, 1988)	Pp. 820-856b.
Wisconsin:	
WI88-8 (Jan. 8, 1988)	Pp. 1112-1127.

Volume III

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 24th day of June, 1988.

Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 88-14846 Filed 6-30-88; 8:45 am]
BILLING CODE 4510-27-M

Mine Safety and Health Administration (Docket No. M-88-99-C)

Becky Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Becky Mining, Inc., P.O. Drawer 1160, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 2 (I.D. No. 44-06170) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Blair coal seam ranging from 40 to 78 inches in height. The coal is mined at two different intervals because of a split in the coal bed.

3. Petitioner states that lowering cabs or canopies on the mine's electric face equipment during the extraction of the top split of the coal bed would result in a diminution of safety to the miners affected because the cabs or canopies would limit the equipment operator's visibility. Also, the cabs or canopies could strike and dislodge roof bolts, and could strike and damage electrical cables, exposing the equipment operator to the possibility of even greater danger from unsafe conditions.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and

Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 1, 1988. Copies of the petition are available for inspection at that address.

Date: June 23, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.
[FR Doc. 88-14922 Filed 6-30-88; 8:45 am]
BILLING CODE 4510-43-M

(Docket No. M-88-77-C)

Paramount Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Paramount Coal Corporation, P.O. Box 800, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.1713-6 (first-aid training program; minimum requirements) to its Deep Mine No. 6 (I.D. No. 44-04886), its Deep Mine No. 7 (I.D. No. 44-05222), and its Deep Mine No. 16 (I.D. No. 44-06427) located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all first-aid training programs include 10 class hours of training; and 5 class hours of refresher training in a course of instructions similar to that outlined in "First Aid, A Bureau of Mines Instruction Manual."

2. Petitioner requests a modification of the standard to eliminate the requirements for 10 class hours of training in a course of instruction for initial first aid training, and 5 class hours of refresher first aid training annually.

3. As an alternate method, petitioner proposes that—

(a) Paramount's company policy requires that each supervisor assigned to an underground operation fulfill the prerequisite of being either properly trained in first aid training and a state certified Emergency Medical Technician (EMT) and/or being properly trained in first aid training and/or a state certified First Responder (FR);

(b) Training guidelines are established by the Virginia Department of Health and Emergency Medical Services;

(c) The Commonwealth of Virginia Department of Mines, Minerals, and Energy enforces Title 45.1 of the State mine laws which contains within Section 45.1-101-1 a statute dealing with

"emergency medical care technicians"; and

(d) Petitioner contends that present company EMT/FR policy exceeds the first aid proficient level in all categories.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 1, 1988. Copies of the petition are available for inspection at that address.

Date: June 22, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-14923 Filed 6-30-88; 8:45 am]

BILLING CODE 4310-43-M

[Docket No. M-88-106-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and underground pumps) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that an underground rectifier supplying DC power to the mine's main trolley haulage at 127 + 45 is not able to be ventilated effectively to the returns, due to deteriorating roof conditions. Even if ventilation tubing could be installed to the return, it would be ineffective due to the extreme distance. Supporting the falls to the return would pose unnecessary risks to the miners.

3. As an alternate method, petitioner proposes that—

(a) The rectifier installation would be housed in a fireproof structure equipped

with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit. Such fire doors would be designed to enclose all associated electric components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) A signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure.

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure;

(e) Flammable or combustible material would not be stored or be allowed to accumulate in the fireproof structure;

(f) Firefighting equipment, would be provided on the outside of the fireproof structure on the intake side;

(g) The electric equipment would be examined, tested, and maintained by a qualified person;

(h) The area enclosing the structure would be examined daily for hazardous conditions. A record of the examinations would be kept in a book on the surface; and

(i) Grounded-phase devices protecting three-phase circuits would be adjusted to remove incoming power at not more than 40 percent of the available ground fault current.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 1, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 24, 1988.

[FR Doc. 88-14924 Filed 6-30-88; 8:45 am]

BILLING CODE 4310-43-M

[Docket No. M-88-98-C]

Rushton Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Rushton Mining Company, P.O. Box 509, Philipshurg, Pennsylvania 16866 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Rushton Mine (I.D. No. 38-00856) located in Centre County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to the deterioration of conventional roof bolts from the wet acidic environment, certain areas of the mine cannot be safely traveled. These areas cannot be rehabilitated without a long and hazardous period of work.

3. As an alternate method, petitioner proposes to establish monitoring stations at which examination for hazardous conditions would be conducted. In support of this request, petitioner states that—

(a) The monitoring stations would be maintained in a safe condition. Access routes would be kept in a travelable and safe condition; and air lock doors would be provided when needed;

(b) Methane and air readings would be made weekly by a certified person at each monitoring station;

(c) Methane would not be allowed to accumulate beyond legal limits in the described areas;

(d) A date board or book would be located at each monitoring station;

(e) The examiner would record initials, time, and date of examination on the date board; and

(f) The date, time, methane readings and air quantity measurements of each examination would be recorded in a book on the surface for this purpose.

4. In further support of this request, petitioner states that—

(a) The areas described are not a part of the ventilation system of active working sections;

(b) The amount of methane generated from these areas and adjacent areas is negligible; and

(c) The bleeder evaluation stations located in the areas would be examined.

5. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 1, 1988. Copies of the petition are available for inspection at that address.

Date: June 22, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-14925 Filed 6-30-88; 8:45 am]

BILLING CODE 4310-43-M

[Docket No. M-88-95-C]

Wolf-Creek Collieries Co.; Petition for Modification of Application of Mandatory Safety Standard

Wolf-Creek Collieries Company, Caller 802, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its No. 4 Mine (I.D. No. 15-04020) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to clean out and plug all active oil and gas wells encountered in the No. 4 Mine using specific techniques and specific procedures as outlined in the petition.

3. In addition, petitioner proposes to mine through the plugged oil and gas wells. Prior to mining through, the petitioner would confer with the MSHA District Manager for approval of the specific mining procedures, and appropriate officials would be allowed to observe the process and all mining would be under the direct supervision of a certified official. In addition:

(a) Firefighting equipment would be provided within 10 shields on the headgate side of the cut-through area;

(b) Ventilation would be 20,000 cubic feet per minute at the intake of the longwall and 100 feet per minute at Shield No. 100 with shield in the pulled up position;

(c) The face methane monitor would be calibrated on the shift prior to cut-through and the results recorded. Tests for methane would be made at least every 20 minutes during the mining;

(d) The longwall electrical face equipment would be checked for permissibility prior to mining through the well and the results recorded;

(e) When the wellbore is intersected, all longwall face equipment would be deenergized and safety checks would be made before mining is resumed;

(f) The wellbore would be cut off with the shearer or other means agreed to by the parties present. Once the face has been determined to be safe the mine would return to normal operations.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 1, 1988. Copies of the petition are available for inspection at that address.

Date: June 22, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 88-14926 Filed 6-30-88; 8:45 am]

BILLING CODE 4310-43-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards, Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses Nos. DPR-77 and DPR-79, issued to Tennessee Valley Authority (TVA or the licensee), for operation of the Sequoyah Nuclear Plants, Units 1 and 2, located in Hamilton County, Tennessee.

The Tennessee Valley Authority proposes to modify the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS). This is TS change 88-21 in the TVA submittal dated June 20, 1988. The proposed changes would revise the limiting condition for operation (LCO)

3.7.5 to increase the maximum allowable ultimate heat sink (UHS) temperature from 83 degrees Fahrenheit (F) to 84.5 degrees F and add a minimum water-level requirement. The wording to LCO 3.7.5 and surveillance requirement (SR) 4.7.5 would be modified to clearly specify that the UHS temperature limit applies to the essential raw cooling water (ERCW) supply water temperature. The action statement and surveillance requirements would also be modified to be consistent with the addition of an LCO for reservoir level. The bases for TS 3.7.5 would be modified to reflect these changes.

In its submittal, TVA provided the following information on its proposed TS change:

The Tennessee River watershed is currently experiencing an extended drought. The lack of rainfall has significantly decreased the upstream cold water reservoir volumes. This results in decreased river flowrates and increased river temperatures at the site.

Current projects indicate that a maximum river temperature of 84.4 degrees F may be reached this summer at the site. The Chickamauga Dam, located downstream of SQN, forms a reservoir at the site. Therefore, if the temperature of the Tennessee River exceeds 83 degrees F, LCO 3.7.5 would require a forced unit shutdown.

TVA has evaluated the effects of increasing the maximum UHS temperature above 83 degrees F. This evaluation has determined that increasing the maximum UHS temperature to 84.5 degrees F is acceptable.

The minimum water-level requirement is added to the technical specification in order to support flow balance test changes that take credit for the dynamics of reservoir drawdown after an assumed loss of downstream dam coincident with a loss of coolant accident (LOCA).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided by

the licensee in its submittal and is given below.

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of ERCW as described in FSAR (Sequoyah Final Safety Analysis Report) Section 9.2.2 and the function of the UHS as described in FSAR Section 9.2.5 remain unchanged. The UHS temperature is not assumed to be an initiating cause for FSAR evaluation events. As such, increasing the UHS temperature will not affect the probability of any previously evaluated accidents. The increase in the maximum UHS temperature was found to be acceptable by evaluating the impacts on various systems, components, and analyses. The following were evaluated:

ECES (emergency core cooling system)
Other FSAR Chapter 15 accident analyses
Containment subcompartment pressure analysis (FSAR Section 6.2)
Peak containment temperature
Peak containment pressure
Long-term containment cooling
Long-term cooling for pipe breaks outside containment

EQ (Environmental Qualification) temperature profiles

The increase in UHS temperature was found to impact the peak containment pressure analysis and long-term cooling for pipe breaks inside and outside of containment. These impacts, however, are neither significant nor detrimental to the plant for the proposed increase in the UHS temperature limit from 83 degrees F to 84.5 degrees F. Therefore, the consequences of a previously evaluated accident are not significantly increased.

The addition of a minimum UHS reservoir level requirement ensures that plant operation is bounded by the analysis that established ERCW flow rates to the major transient heat load components. The establishment of flows based on time-dependent heat loads merely provides more operational margin without being overly conservative. As such, the proposed specification addition does not increase the probability or consequences of a previously evaluated accident.

The wording changes to Specification 3/4.7.5 are administrative in nature and are made for consistency and clarification. The revisions to the action statement and the SR are made for consistency with the new requirement for UHS reservoir level. The additional wording change is made to clearly specify that the UHS temperature limit applies to the ERCW supply water temperature. The change does not affect the probability or consequences of a previously evaluated accident.

(2) create the possibility of a new or different kind of accident from any previously analyzed.

The proposed increase in the maximum allowable UHS temperature is made to accommodate elevated river temperature at the SQN site. These elevated river temperatures are the result of an extended drought in the Tennessee River watershed. The performance of the UHS and ERCW has been analyzed and found to be acceptable at the increased maximum temperature. Because the UHS and ERCW still perform their intended function and these functions remain unchanged, the probability of a new or different kind of accident from any previously analyzed is not created.

The addition of a minimum UHS reservoir level ensures that plant operation is bounded by analyses performed to establish ERCW flow rates to transient heat load equipment. Adequate performance of the heat exchangers is ensured. The addition of the specification will not create the possibility of a new or different accident.

The wording changes to Specification 3/4.7.5 are administrative in nature and are made for consistency and clarification. The revisions to the action statement and the SR are made for consistency with the new requirement for UHS reservoir level. The additional wording change is made to clearly specify that the UHS temperature limit applies to the ERCW supply water temperature. As such, the proposed change will not create the possibility of a new or different accident.

(3) involve a significant reduction in a margin of safety.

The proposed increase in the UHS maximum temperature has only minor impacts on the peak containment pressure analysis and long-term cooling for pipe breaks outside containment. The peak containment pressure increases by approximately 0.14 lb/in (psi) and remains below the containment design pressure of 12 lb/in (psi). The ESF room cooler performance remains acceptable and maintains the 100-day average room temperature below EQ limits. As such, the increase in the UHS temperature limit does not significantly reduce the margin of safety.

The addition of a minimum UHS reservoir level ensures that the ERCW flow rates to the CCS and CS heat exchangers meet or exceed the values assumed in the peak containment pressure analysis as performed for this change. This establishes a level of operational margin for performance of the heat exchangers. The margin of safety is not significantly reduced by the proposed change.

The wording changes to Specification 3/4.7.5 are administrative in nature and are made for consistency and clarification. The revisions to the action statement and the SR are made for consistency with the new requirement for UHS reservoir level. The additional wording change is made to clearly specify that the UHS temperature limit applies to the ERCW supply water temperature. The proposed change does not reduce the margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the *Federal Register* notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave intervene is discussed below.

By August 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, with rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR Section 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition shall specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received.

Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1(800) 325-6000 (in Missouri 1(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902, attorney for the licensee.

Not timely filings for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or requests, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, 20555, and at the Local Public Document Room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 24th day of June 1988.

For the Nuclear Regulatory Commission,
David H. Moran,
Acting Assistant Director for Projects, TVA
Projects Division, Office of Special Projects.
[FR Doc. 88-14675 Filed 6-30-88; 8:45 am]
BILLING CODE 7550-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of Records Systems Changes.

SUMMARY: This document gives notice of the Postal Service's addition of a routine use to each of its systems USPS 120.120, Personnel Records—Personnel Research and Test Validation Records, and USPS 050.020, Finance Records—Payroll System. The routine uses will permit disclosure of limited information about applicants for postal employment and current employees, respectively, for comparison with registrant files of the Selective Service System to identify potential nonregistrants.

EFFECTIVE DATE: The new routine uses will become effective without further notice on August 1, 1988, unless comments received on or before that date result in a contrary determination.

ADDRESS: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5010, or delivered to room 6121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in room 6121.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Selective Service System has asked the Postal Service to participate in computer matching programs under which files containing limited information about applicants for postal employment during the years 1967 and 1968 and about current employees will be compared with a file of registrants under the Selective Service System Registration Compliance Program. Disclosure of information will be limited to those data elements necessary to identify and locate males born in the years of birth (1963 through 1970) of the age groups which are required to register, to verify their registration status, and to seek registration of those who have not met the requirement. In addition, the Postal Service will provide its file of applicants for employment only for target areas

where registration compliance is low, as identified by the Selective Service System. Potential nonregistrants identified through these programs will be contacted by the Selective Service System for verification of their registration status. Those not meeting their registration responsibility will be encouraged to do so to avoid possible prosecution. Proposed routine use No. 9 to be added to USPS 120.120, Personnel Records—Personnel Research and Test Validation Records, and proposed routine use No. 35 to be added to USPS 050.020, Finance Records—Payroll System, will permit disclosure of only that information necessary to accomplish the above-described purpose of these matching programs. These programs will be conducted in accordance with the Office of Management and Budget's Revised Supplemental Guidelines for Conducting Matching Programs (47 FR 21656, May 19, 1982).

System USPS 120.120 collects information needed to make personnel selection decisions, and system USPS 050.020 collects information about postal employees needed by supervisors in the performance of their managerial duties. In making hiring decisions and in the management of its employees, the Postal Service expects both an employee and a potential employee to adhere to Federal laws including the Military Selective Service Act which requires registration with the Selective Service System. For this reason, disclosure under the proposed routine uses is compatible with the purposes for which the information in both systems is collected.

Accordingly, the Postal Service is adding new routine use Nos. 9 and 35, as shown in *italic*, under the "Routine Uses of Records" * * * Purposes of Such Uses" segment of the following complete descriptions of systems USPS 120.120, Personnel Records—Personnel Research and Test Validation Records, and USPS 050.020, Finance Records—Payroll System:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

SYSTEM LOCATION:

Payroll system records are located and maintained in all Departments, facilities and certain contractor sites of the Postal Service. However, Postal Data Centers are the main locations for payroll information. Also, certain information from these records may be stored at emergency records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees, postmaster relief/replacement employees, and certain former spouses of current and former postal employees who qualify for Federal Employees Health Benefits Coverage under Pub. L. 95-815.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain general payroll information including retirement deduction, family compensations, benefit deductions, accounts receivable, union dues, leave data, tax withholding allowances, FICA taxes, salary, name, social security number, payments to financial organizations, dates of appointment or status changes, designation codes, position titles, occupation code, addresses, records of attendance, and other relevant payroll information. Also includes automated Form 50 records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1003; 5 U.S.C. 6339

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

1. Information within the system is for handling all necessary payroll functions and for use by employee supervisors for the performance of the managerial duties.

2. To provide information to USPS management and executive personnel for use in selection decisions and evaluation of training effectiveness. These records are examined by the Selection Committee and Regional Postmasters General.

3. To compile various lists and mailing list, i.e., Postal Leader, Women's Programs, Newsletter, etc.

4. To support USPS Personnel Programs such as Executive Leadership, Non-Bargaining Positions Evaluations of Probationary Employees, Merit Evaluation, Membership and Identification Listings, Emergency Locator Listings, Mailing Lists, Women's Programs, and to generate retirement eligibility information and analysis of employees in various ranges.

Use—

1. Retirement Deduction—To transmit to the Office of Personnel Management a roster of all USPS employees under Title 5 U.S.C. 8334, along with a check.

2. Tax Information—To disclose to Federal, State and local government agencies having taxing authority, pertinent records, relating to individual employees, including names, home

address, social security number, wages and taxes withheld for other jurisdiction.

3. Unemployment Compensation Data—To reply to State Unemployment Offices at the request of separated USPS employees.

4. Employee Address File—For W-2 tax mailings and Postal mailing such as Postal Life, Postal Leaders, etc.

5. Salary payments and allotments to financial organizations—To provide pertinent information to organizations receiving salary payments or allotments as elected by the employee.

6. FICA Deductions—The Social Security Act requires that FICA deductions be made for those employees not eligible to participate in the Civil Service Retirement System (casuals). In addition, the Tax Equity and Fiscal Responsibility Act of 1982 requires that contributions to the Medicare program be deducted from all employees; earnings. (These statutes do not apply to employees in the Trust Territories who are not U.S. citizens.) Accordingly, records of earnings (i.e., W-2 information) must be disclosed to the Social Security Administration in order that it may account for funds received and determine individual's eligibility for benefits. Information disclosed includes name, address, SSN, wages paid subject to withholding, Federal, state, and local income tax withheld, total FICA wages paid and FICA tax withheld, occupational tax, life insurance premium and other information as reported on an individual's W-2 form.

7. Determine eligibility for coverage and payments of benefits under the Civil Service Retirement System, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program and transfer related records as appropriate.

8. Determine the amount of benefit due under the Civil Service Retirement System, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program and authorizing payment of that amount and transfer related records as appropriate.

9. Transfer to Office of Workers Compensation Program, Veterans Administration Pension Benefits Program, Social Security Old Age, Survivor and Disability Insurance and Medicare Programs, military retired pay programs, and Federal Civilian employee retirement systems other than the Civil Service Retirement System, when requested by that program or system or by the individual covered by this system for use in determining an individual's claim for benefits under such system.

10. Transfer earnings information under the Civil Service Retirement System to the Internal Revenue Service as required by The Internal Revenue Code of 1954, as amended.

11. Transfer information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010.

12. Transfer information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program in a health insurance carrier or plan participating in the program.

13. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

14. To request or provide information from or to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses. If necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefits.

15. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies, may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individual for personal research or the personnel management functions.

16. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

17. Certain information pertaining to Postal Supervisors may be transferred to the National Association of Postal Supervisors.

18. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

19. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

20. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

21. Inactive records may be transferred to a Federal Records Center prior to destruction.

22. To provide to the Office of Personnel Management (OPM) approximately 19 data elements (including SSAN, DOB, service computation date, retirement system, and FEGLI status) for use by OPM's Compensation Group. Data collected are not for the purpose of making determinations about specific individuals but are used only as a means of ensuring the integrity of the active employee/annuitant data systems and for analyzing and statistically projecting Federal retirement and insurance system costs. The same data submission will be used to produce summary statistics for reports of Federal employment.

23. Information contained in this system of records may be disclosed to an authorized investigator appointed by the Equal Employment Opportunity Commission upon his request, when that investigator is properly engaged in the investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR 1613, and the contents of the requested record are needed by the investigator in the performance of his duty to investigate a discrimination issue involved in the complaint.

24. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

25. May be disclosed to a Federal or State agency providing parent locator services or to other authorized persons as defined by Pub. L. 93-647.

26. Disclosure of information about current or former postal employees may be made to requesting States under approved computer matching efforts in which either the Postal Service or the requesting State acts as the matching agency, but limited to only those data elements considered relevant to making a determination of employee participation in and eligibility under unemployment insurance programs administered by the States (and by those States to local governments); to

improve program integrity; and to collect debts and overpayments owed to those governments and their components.

27. To union-sponsored insurance carriers for the purpose of determining eligibility for coverage and payments of benefits under union-sponsored non-Federal insurance plans and transferring related records as appropriate.

28. Disclosure of information about current or former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts in which either the Postal Service or the requesting entity acts as the matching agency, but limited to only those data elements considered relevant to making a determination of employee participation in and eligibility under particular benefit programs administered by those agencies or entities or by the Postal Service; to improve program integrity; and to collect debts and overpayments owed under those programs.

29. (Temp.) To provide the Department of Housing and Urban Development the names, social security account numbers and home addresses of postal employees for the purpose of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Housing and Urban Development and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of five years ending September 24, 1993.

30. To provide to the Department of Defense (DOD) upon request, on a semiannual basis, the names, social security account numbers and home addresses of current postal employees for the purpose of identifying those employees who are indebted to the United States under programs administered by the Secretary, DOD, and for taking subsequent actions to collect those debts.

31. To provide to the Department of Defense (DOD), upon request, on an annual basis, the names, social security account numbers, and salaries of current postal employees for the purposes of updating DOD's listings of Ready Reservists and reporting reserve status information to the Postal Service and the Congress.

32. Disclosure of information about current or former postal employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts in which either the Postal Service or the requesting entity acts as the matching

agency, but limited to only those data elements considered relevant to identifying those employees who are absent parents owing child support obligations and to collection debts owed as a result thereof.

33. Disclosure of information about current or former postal employees may be made on a semi-annual basis to the Department of Defense (DOD) under approved computer matching efforts in which either the Postal Service or DOD acts as the matching agency, but limited to only those data elements considered relevant to identifying retired military employees who are subject to restrictions under the Dual Compensation Act as amended (5 U.S.C. 5532), and for taking subsequent actions to reduce military retired pay or collect debts and overpayments, as appropriate.

34. Disclosure of information about current or former postal employees may be made to requesting Federal agencies under approved computer matching efforts in which either the Postal Service or the requesting entity acts as the matching agency. Disclosure will be limited to only those data elements considered relevant to identify individuals who are indebted to those agencies and to provide those individuals with due process rights prior to initiating any salary offset, pursuant to the Debt Collection Act.

35. Disclosure of information about current and former employees may be made to the Selective Service System (SSS) under approved computer matching efforts in which either the Postal Service or SSS acts as the matching agency. Disclosure will be limited to only those data elements considered relevant to identify individuals eligible for registration under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), to determine whether those individuals have complied with registration requirements, and to enforce compliance when necessary.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Preprinted forms, magnetic tape, microforms, punched cards, computer reports and card forms.

RETRIEVABILITY:

These records are organized by location, name and social security number.

SAFEGUARDS:

Records are contained in locked filing cabinets; are also protected by computer

passwords and tape library physical security.

RETENTION AND DISPOSAL:

- Leave Application Files (Absence Control) and Unauthorized Overtime—Destroy when 2 years old.
- Time and Attendance Records (Other than payroll) and local payroll records—Destroy when 3 years old.
- PDC records retention—contact PDC Payroll Office or Records Office.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Department of the Controller and APMG, Employee Relations Departments at Headquarters.

NOTIFICATION PROCEDURE:

Request for information on this system of records should be made to the head of the facility where employed giving full name and social security number. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURE:

See NOTIFICATION above.

CONTESTING RECORD PROCEDURES:

See NOTIFICATION PROCEDURE above.

RECORD SOURCE CATEGORIES:

Information is furnished by employees, supervisors and the Postal Source Data System.

USPS 120.120

SYSTEM NAME:

Personnel Records—Personnel Research and Test Validation Records, 120.120.

SYSTEM LOCATION:

USPS National Tests Administration Center, Los Angeles, CA; USPS National and Regional Headquarters; Bulk Mail Centers; District Offices; and the Oklahoma City Computer Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for postal employment and USPS employee applicant for reassignment and/or promotion.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer scannable information and the applicants answers to the test questions. Reports and analyses that have resulted from comparison of information from this system and from system USPS 120.121.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1001.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—To provide verification of the applicants' test score. Data are collected whenever an examination is given and are used for construction, analysis and validation of written tests; for research on personnel measurement and selection methods and techniques and research on personnel management practices such as performance evaluation or productivity. Race and national origin data are used to evaluate any adverse impact of the selection process. Use of these race and national origin data is limited to research projects and test validation conducted by the Postal Service. No personnel decisions are made in the use of these research records. Many data are collected under conditions assuring their confidentiality. This confidentiality will be protected. Personnel information in this system of records is used by the personnel research staff in the Office of Personnel Management of the U.S. Postal Service.

Use—

1. To disclose information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection process, in reviewing allegations of discrimination, or in assessing the status of compliance with Federal law.

2. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, or order issued pursuant thereto.

3. To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain relevant information to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

4. To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

5. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

8. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

9. Disclosure of information about applicants for employment with the Postal Service may be made to the Selective Service System (SSS) under approved computer matching efforts in which either the Postal Service or SSS acts as the matching agency. Disclosure will be limited to only those data elements considered relevant to identify individuals eligible for registration under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), to determine whether those individuals have complied with registration requirements, and to enforce compliance when necessary.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Answer sheets in handwritten form and computer storage media.

RETRIEVABILITY:

This system of records is indexed by employee name, batch number or employee's date of examination and examination center administering the examination.

SAFEGUARDS:

These records are maintained in closed file cabinets in a secure facility.

RETENTION AND DISPOSAL:

- Hard Copy—Destroy 6 months after processing.
- Magnetic Tape—Maintain for 30 years—DO NOT TRANSFER TO A FEDERAL RECORDS CENTER.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Employee Relations Department, Headquarters.

NOTIFICATION PROCEDURE:

Persons wishing to know whether this system of records contains information on them should address inquiries to the head of the Test Administration Center where they were examined. Inquiries should contain full name, social security number, date of examination, examination number, and place of participation in the examination.

RECORD ACCESS PROCEDURES:

See "NOTIFICATION" above.

CONTESTING RECORD PROCEDURES:

See "NOTIFICATION" above.

RECORD RESOURCE CATEGORIES:

Applicant's test answers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Reference 39 CFR 266.9 for details.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-14625 Filed 6-30-88; 8:45 am]

BILLING CODE 1716-12-41

SECURITIES AND EXCHANGE COMMISSION

(Release No. 24-25859; File Nos. SR-Amex-83-4, SR-NYSE-87-23)

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by American and New York Stock Exchanges Relating to the Automated Submission of Customer and Proprietary Trading Data by Member Firms.

I. Introduction

The American ("Amex") and New York ("NYSE") Stock Exchanges (collectively, the "Exchanges") have submitted for Commission consideration, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ proposed rule changes that would require member firms to submit certain customer and proprietary trading information in an automated format.² The information to be submitted is what the Exchanges routinely request in connection with their market surveillance inquiries (so-called "blue sheet information")

¹ 15 U.S.C. 78e(b).

² The Amex proposal (File No. SR-Amex-88-4) was noticed in Securities Exchange Act Release No. 25358, February 17, 1988, 53 FR 5504. The NYSE proposal (File No. SR-NYSE-87-23) was noticed in Securities Exchange Act Release No. 24852, August 25, 1987, 52 FR 33300. No comments were received on either proposal.

II. Description of Proposed Rules

The proposed rules submitted by the Amex and the NYSE are virtually identical.³ Under the proposals, where the Amex or the NYSE requests information on proprietary transactions by a member or member firm, the member firm must submit specified information to the exchange in the designated automated format.⁴ Where an information request to a member firm from the Amex or the NYSE involves transactions executed for a customer's account, the proposed rules require submission, in the automated format, of the information required for proprietary trades plus additional data identifying the customer.⁵ The proposed rules also provide that the Exchanges to grant exception to member firms from the requirement that requested blue sheet information be submitted in an automated format.

With regard to the blue sheet information that would be subject to submission in automated format under the proposed rules, both the Amex and the NYSE have stated that they will not require member firms to store or to submit in automated format data on trading that occurred prior to the time the firm is required to comply with the rule. For data on trading that occurred after a firm is required to comply with the rule, the Amex states that it intends to require member firms to maintain trading data "on line" (i.e. in the automated system) for six months after the trade date and readily accessible (i.e., on disk or magnetic tape) for three

³ Under the Amex proposal, these requirements would be contained in Rule 155A. The NYSE proposal would place these requirements in Rule 410A.

⁴ The proposed rules specify that member organizations will submit in an automated format the following information for proprietary trades: Clearing house member for the organization submitting the data, and the member or member firm on the opposite side of the trade; symbol identifying the security; date of transaction; number of shares in each transaction and description of the type of transaction (e.g., purchase sale, short sale); transaction price; account number; and the market center where the transaction was executed.

⁵ The proposed rules provide that the additional information required for these non-proprietary trades includes: Customer name; address; branch office number; registered representative number; whether the order was solicited or unsolicited; date account was opened; employer name; tax identification number(s); and, if the customer was also a member broker-dealer, whether the firm executing the order was acting as a principal or agent on the transaction.

⁶ Any proposed rule requiring submission of additional information in an automated format would have to be submitted to the Commission for approval pursuant to the requirements of section 19(b) of the Act and Rule 19b-4 thereunder.

years after the trade date. The NYSE states that member firms would be expected to keep the data specified in the rule "on line" for a minimum period of six months.⁷

In their filings, the Amex and the NYSE state that a universal automated format for the transmission of member firms' proprietary and customer transaction data has been developed by the Intermarket Surveillance Group and the Securities Industry Association, working in conjunction with the self-regulatory organizations. The Exchanges believe that their adoption of this automated blue sheet format will significantly enhance their regulatory and surveillance capabilities.

At present, Amex and NYSE member firms are required to submit blue sheet information, where it is requested in connection with the Exchanges' market surveillance activities.⁸ This information is now submitted on paper. In their filings, the Exchanges have stated that member firms are currently collecting somewhat different trading information and submitting the data in different formats. In addition, the Amex states that substantial delays can be encountered in obtaining requested blue sheet information. These factors, together with the sheer bulk of the information that often results from such requests, can make analysis of blue sheet information by the surveillance staffs of the Exchanges difficult and time consuming, particularly where they must manually review records involving a large number of transactions, firms, and accounts.

III. Discussion

The Amex and the NYSE believe that implementation of the new automated format will enable their surveillance staffs to review and analyze blue sheet information more rapidly and more effectively. Receiving the data in a compatible automated format will permit the Exchanges to enter the data directly into their computer systems for analysis. In addition, the Exchanges believe that the new automated format

will enable member firms complying with the proposed rule to respond to such information requests with greater speed and efficiency since complying firms will no longer have to manually assemble the requested blue sheet information.⁹

In order to facilitate members' conversion to automated submission of blue sheet information, the Amex and the NYSE have grouped their member firms into two categories. The first category consists of larger member firms from which the Exchanges regularly request trading data. Firms in this category would be expected to come into compliance with the requirements of the proposed rules within a relatively short time. The second group of member firms consists of those firms that less frequently receive requests for trading information from the Exchanges. Firms in this category are generally smaller than firms in the first category. The Exchanges anticipate that many firms in the second category will need additional time to come into compliance with the proposed rule. In addition, some of these firms may also be considered for temporary exemptions from the proposed rules.

The Amex and the NYSE indicate that they have contacted a number of their larger member firms during the development phase of this program. The NYSE stated that it contacted 33 member firms in January 1987, regarding the adoption of the proposed rule change.¹⁰ These firms account for 75% of the trading volume involved in investigations initiated by the NYSE's Market Trading Analysis Department. The NYSE indicates that these firms began, at that time, to implement the necessary programming and computer system modifications to enable them to submit blue sheet information to the NYSE in the designated automated format. According to the NYSE, 15 of these firms are currently in full compliance with the proposed rule and approximately 11 more are in the final

phase of actions necessary to come into compliance with the rule.¹¹

The NYSE proposes that the 33 member firms comprising this first category of firms be given 30 days, from the date of Commission approval of the proposed rule change, to comply with the requirements of the rule.

Subsequently, in December 1987, the NYSE contacted 79 more member firms to inform them of the requirements of the proposed rule. The NYSE states that these firms, plus all other member firms that were not formally contacted regarding the proposed rule, constitute the second category of member firms.¹² Since these firms will not have had as much time to adapt their computer systems to the requirements of the proposed rule, the NYSE proposes that these firms be given six months from the date of approval of the proposed rule to either comply with the requirements of the rule or receive an exemption from the rule.

The Amex, working in conjunction with the NYSE, contacted four member firms, all of which were also NYSE members. Figures supplied by the Amex indicate that almost half of the Amex member firms affected by the proposed rule change are also NYSE member firms.¹³ In view of this, the Amex has stated that, in the interest of uniformity, it will employ the same compliance requirement deadlines (30 days for category one firms and six months for category two firms) proposed by the NYSE.¹⁴ Because the Amex and the NYSE would be adopting the same automated format for the reporting of blue sheet information, once a firm with Amex and NYSE memberships has made the hardware and programming modifications necessary to comply with either the Amex or NYSE rule, it will

¹¹ The NYSE has informed us that, as of June 24, 1988, a total of 61 NYSE member firms are in compliance with the proposed rule. In addition, ADP, Inc., which provides computerized back office operations for 79 NYSE member firms, has completed the necessary programming modifications to be able to comply with the proposed rule at the direction of their NYSE member clients. Telephone conversation between Kathleen McCarthy, Senior Market Analyst, NYST, and Robert Sevigny, Attorney, Division of Market Regulation, on June 24, 1988.

¹² See NYSE April 8 letter, *id.*

¹³ The NYSE currently has 626 members and member firms. Telephone conversation between Kathleen McCarthy, Senior Market Analyst, NYSE, and Robert Sevigny, Attorney, Division of Market Regulation, on June 22, 1988.

¹⁴ The Amex currently has 594 members and member firms. Of those 212 are also NYSE members. Telephone conversation between Frank Savarese, Assistant Vice President, Amex, and Robert Sevigny, Attorney, Division of Market Regulation, on May 27, 1988.

¹⁵ See Amex May 18 letter.

then be able to comply with both Exchanges' requirements.

As noted previously, under paragraph (d) of the proposed rules the Amex and the NYSE would be able to exempt member firms from the requirement that blue sheet information be submitted in an automated format. Both Exchanges have stated that they would consider applications for exemption from the rule on a case by case basis. Where such an exemption was granted, it would be reviewed at least annually. An Amex or NYSE member firm seeking such an exemption would need to present a supportable claim that it would be an undue burden for it to comply with the rule because of the small number of information requests it normally receives.¹⁵ At the expiration of a member firm's exemption, or where the Amex or the NYSE have determined that a member firm is no longer eligible for an exemption, the Exchanges have stated that they will grant a reasonable amount of time for the firm to comply with the rule. Depending on the circumstances of the firm, this time would not generally be expected to exceed six months.

IV. Conclusion

The Commission has closely reviewed the provisions of the proposed Amex and NYSE rules, and believes that they are consistent with the requirements of the Act, particularly sections 6(b)(1) and 6(b)(5). The adoption of the universal automated format for blue sheet information under the proposed rules will significantly improve the ability of the Amex's and the NYSE's regulatory and surveillance staffs to conduct their market surveillance and monitoring responsibilities under section 6(b)(1), 6(b)(5) and other provisions of the Act. The Commission also believes that adoption of the automated format will make it easier for member firms complying with the proposed rules to gather and submit information in response to requests from the Exchanges in a timely manner and will thus reduce the regulatory burden on those firms. Further, receipt of such market surveillance information in an automated format will permit the Exchanges' surveillance staffs to review and analyze the data more rapidly and effectively by enabling them to directly

¹⁵ Both the Amex and the NYSE have also stated that member firms that clear their trades through another firm or use a service bureau for their automated submissions will be required to submit a letter of understanding stating that they will have the information submitted in the required format through another, specifically named, party or parties. See Amex May 18 letter; NYSE April 8 letter.

enter the data into the Exchanges' own computer systems for analysis. In addition, in instances where the Exchanges refer matters to the Commission for further action, availability of the pertinent blue sheet information in an automated format will also facilitate the Commission's ability to analyze and evaluate relevant trading and market surveillance data.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 27, 1988.

[FR Doc. 88-14907 Filed 6-30-88; 8:45 am]

BILLING CODE 8010-01-01

(Release No. 34-25858; File No. SR-CSE-88-3)

Self-Regulatory Organizations; Proposed Rule Change by The Cincinnati Stock Exchange Relating to the Exposure Time of Agency Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1988, The Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the Proposed Rule Change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Cincinnati Stock Exchange proposes to amend on a six months pilot basis Rule 11.9(o) in order to reduce the exposure period after an agency order has interacted with the CSE book (and, in the case of a public agency order, received a guaranteed execution of up to 2,099 shares) from thirty seconds to fifteen seconds.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Cincinnati Stock Exchange's National Securities Trading System

("NSTS" or the "System") processes a public agency market order by (1) pricing it at the national best bid or offer ("NBBO"), (2) exposing it to the CSE market by matching and executing it against similarly priced contra interest resident in the System's central limit order book, (3) automatically forcing an execution of the remainder against the Designated Dealer of the day for up to 2,099 shares, (4) further exposing any remainder to all Approved Dealers for execution via a flash on NSTS terminals for thirty seconds, and (5) automatically reformatting any remainder not taken after all these steps into an ITS commitment and transmitting it to whichever ITS Participant market is then displaying the NBBO. Except for the fact that it does not receive a guaranteed execution against the Designated Dealer of the day, a professional agency market order is processed in the same manner.

The purpose of the Proposed Rule Change is to reduce an unnecessarily long processing period for public and professional agency orders by lowering the second exposure period—the "flash"—from thirty seconds to fifteen seconds. This reduction is analogous to and consistent with recent Securities and Exchange Commission orders which approved similar reductions in the overall processing time for certain agency principal orders on other exchanges. Specifically, the Commission has allowed both the Midwest Stock Exchange ("MSE") and the Pacific Stock Exchange ("PSE") to implement pilot programs which reduce the exposure time provided for price-improvement on orders executed through their MAX and SCOREX systems from thirty seconds to fifteen seconds. In addition, the Commission has permitted MSE to eliminate this order exposure time altogether and provide immediate executions for orders of up to 1,099 shares entered into MAX where, at the time of order entry, there is a ½ point spread between the best ITS bid and offer and the stock is quoted at a minimum variation of ½ point. Finally, the Commission recently approved an extension of MSE's portfolio execution system pilot program, wherein the time frame between entry of a principal market order into MAX and its automatic execution was reduced from fifteen seconds to zero seconds.¹

¹ See Securities Exchange Act Release No. 34-22357 (August 26, 1985), 50 FR 35890; No. 34-21329 (September 17, 1984), 49 FR 57199; No. 34-22814 (January 21, 1986), 51 FR 3556; No. 34-22965 (March 13, 1986); and No. 34-25493 (March 25, 1988), 53 FR 8838.

⁷ See letter from Claudia Crowley, Senior Counsel, Amex, dated May 18, 1986 ("Amex May 18 letter"), and letter from Donald J. Solider, Senior Vice President, NYSE, dated April 8, 1986 ("NYSE April 8 letter").

⁸ Currently, the Commission's regulations regarding the retention of blue sheet information require that the information must be easily accessible for at least two years and retained by the broker-dealer for at least six years. See 5 CFR 240.17a-2, 240.17a-4, (1987). The Exchanges' requirements regarding "on-line" access to the blue sheet information under the proposed rules overlap the Commission's requirements and should not be construed as modifying or reducing those requirements.

⁹ See Article V, Section 4(b) of the Amex Constitution; NYSE Rule 420(a).

¹⁰ The Amex and the NYSE state that member firms will be given a reasonable amount of time (currently 10 days from the date of the request letter) to respond to a request for blue sheet information in an automated format. See Amex May 18 letter and NYSE April 8 letter.

¹¹ In its filing the NYSE noted that member firms failing to provide blue sheet information within the allotted time would be subject to summary fines under proposed amendments to NYSE Rule 476A. (See File No. SR-NYSE-87-10). This proposed rule has been approved by the Commission. Securities Exchange Act Release No. 25763, May 27, 1988, 53 FR 20225. The Amex states that while requests for blue sheet information currently, and under the proposed rule, are not subject to the Amex's minor fine system, it may be incorporated into the system in the future. See Amex May 18 letter.

¹² See NYSE April 8 letter.

In the above SEC orders, the Commission recognized the importance of creating an effective balance between a customer's need to receive the best possible execution price and his need for a timely execution. CSE's Proposed Rule Change attempts to achieve a similar balance for its members. No specific order exposure period is needed in NSTS to provide an opportunity for price improvement because market makers on an automated exchange such as CSE, with its open book geographically dispersed trading floor, must always display the best at which they are willing to trade. In addition, fifteen seconds is a more adequate time period for Approved Dealers to respond to the interest being exposed to them in the flash.

As part of the negotiated settlement relating to the implementation by CSE of its automated interface with ITS on April 1, 1988, the Exchange adopted Rules which, among other things, provided for the exposure of all public and professional agency orders in NSTS for thirty seconds prior to the automatic reformatting and transmitting of such orders by the System to another ITS market. Since that time, the Commission has approved the rule changes involving MAX and SCOREX cited above. These rule changes have obviated the ITS access concerns which led the other exchanges to impose a thirty-second flash requirement on CSE because the rule changes have reduced certain regional exchanges' ITS access time to a level equal to or below that of CSE. For example, the total intra-MSE time committed to certain agency and principal orders, combined with the time it takes for MSE to manually reformat any remainder of such orders into ITS commitments, is now less than the time it takes CSE to process public and professional agency orders in its market and then automatically reformat them into ITS commitments. The Proposed Rule Change would serve to equalize this total processing time, thus removing a competitive disadvantage to CSE members and giving them the ability to better meet their fiduciary obligation to obtain the best execution for their customers. In addition, the Proposed Rule Change would encourage the use of a technical improvement to the ITS trading linkage. Finally, by reducing the overall processing time, the Proposed Rule Change would lessen the chance of CSE generating an execution which trades through another ITS Participant's market.

Rule 11.9(o), as amended, is consistent with those provisions of section 6(b)(5) and 11(A) of the Act which encourage

fair competition among markets, the perfection of the National Market System, and the use of new data processing and communications techniques to facilitate economically efficient executions of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Proposed Rule Change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange solicited but received no comments on the Proposed Rule Change from the other ITS Participants.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such Proposed Rule Change, or
- (B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file

number in the caption above and should be submitted by July 22, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

June 27, 1988.

(FR Doc. 88-14908 Filed 6-30-88; 8:45 am)
BILLING CODE 8010-01-M

(Rel. No. IC-16455; (812-7916))

AHA Investment Funds, Inc.; Application

June 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: AHA Investment Funds, Inc.

Relevant 1940 Act Sections: Order requested under section 6(c) exempting Applicant from certain provisions of section 15(a) and Rule 18f-2, and, from certain disclosure requirements set forth in Rules 20a-2(a)(1), 20a-2(b)(1), 20a-2(a)(6), 20a-2(a)(9) and 20a-2(b)(4), Items 5(b)(iii) and 10(a)(iii) of Form N-1A, Items 47-52 and 72(f) of Form N-SAR under the 1940 Act, and Sections 6-07.2(a), (b) and (c) of Regulation S-X as it pertains to registered investment companies.

Summary of Application: Applicant seeks an order which will permit investment managers approved by Applicant's Board of Directors ("Investment Managers") to serve as its investment advisers without obtaining shareholder approval of the advisory agreements between the Investment Managers and Applicant's principal manager, Hewitt Associates ("Hewitt"), and to permit those agreements to be terminated without shareholder approval. Applicant also seeks an order granting exemption from various disclosure requirements which would otherwise necessitate disclosure of the methods of computation, rates and amounts of advisory fees paid to the Investment Managers by Hewitt.

Filing Dates: The application was filed on April 13, 1988, and amended on June 20, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must

be received by the SEC by 5:30 p.m., on July 19, 1988. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 100 Half Day Road, Lincolnshire, Illinois 60015.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272-3047, or Brian R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a newly organized, no-load, open-end, diversified management investment company of the "series" type incorporated under Maryland state law. Initially, Applicant will offer shares of five separate investment portfolios ("Portfolios"), each with distinct investment objectives, policies and restrictions. These Portfolios will be: The Limited Maturity Fixed Income Portfolio; the Full Maturity Fixed Income Portfolio; the Diversified Stock Portfolio; the Balanced Portfolio; and the U.S. Government Money Market Portfolio.

2. Applicant was organized through the joint cooperation of Hewitt and American Hospital Association Services, Inc. ("AHA Services"), as part of a program to make asset management consulting and related services available to the member hospitals and affiliated organizations ("Member Organizations") of the American Hospital Association ("AHA"), including employee benefit plans. AHA Services is a subsidiary of AHA.

3. Hewitt is a partnership organized under Illinois state law and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Hewitt will be an investment adviser to Applicant within the meaning of section 2(a)(20) of the Advisers Act. Hewitt is, among other things, engaged in the business of providing asset management consulting services to large pools of investment assets of institutional investors,

principally assets of corporate employee benefit plans. In providing these services Hewitt acts as a "consultant" and not as an "investment manager" in that it does not advise a client to invest in particular securities or assets. At the core of Hewitt's investment consulting services are the functions of assisting a client in defining appropriate investment objectives and desired investment returns based upon the client's unique situation and tolerance for risk; assisting a client in allocating its assets among different investments; and assisting a client in selecting investment managers to make specific portfolio investments. Hewitt's consulting relationships with its clients are intensive, and include in-person meetings with the client; telephone communications between the client and Hewitt's consultants serving the client; open access to Hewitt's staff specialists in particular areas; and the ability to use Hewitt's expertise on "special projects" (e.g., the evaluation and assistance in the selection of a master trustee for an employee benefit plan).

4. Applicant was organized to enable Hewitt to provide its asset management consulting and investment manager selection services to Member Organizations with small to medium sized pools of assets on a basis which is efficient and cost-effective. Applicant will be provided the benefit of Hewitt's investment manager evaluation and selection services, and, in turn, make its shares available to Member Organizations to permit implementation of the allocation, objective setting and manager selection decisions made with the assistance given by Hewitt to those organizations. By pooling the assets of Member Organizations in the Portfolios, Hewitt will be able to provide its consulting services to these smaller institutional investors and permit them to implement those decisions on an economically viable basis, without compromising the standards to which Hewitt presently adheres in providing these services.

5. Shares of the Portfolios will not be offered to individual investors and will be offered only to Member Organizations which have entered into Asset Management Services Agreements ("Asset Agreements") with Hewitt. The Asset Agreements provide for payment of a single fee directly to Hewitt in order to obtain the services offered in the asset allocation and management problem. Pursuant to these Asset Agreements, Hewitt will assist the Member Organizations in defining appropriate investment objectives and desired investment returns and assist the Member Organizations in allocating

their assets among different investment media in a manner most likely to achieve those objectives. The Member Organizations will then be able to use one or more of the Portfolios as investment vehicles to gain access to Hewitt's multiple manager diversification and Investment Manager selection services. Subject to general supervision by the Board of Directors and officers of Applicant, and to the coordination of portfolio investment activities by Hewitt as principal manager, specific portfolio investments for each Portfolio will be selected by the Investment Managers.

6. Applicant is structured and proposed to operate in a different manner than a conventional registered investment company. Hewitt will serve as Applicant's principal manager pursuant to a written Corporate Management Agreement, and will provide Applicant with various management and administrative services necessary for its operations. Hewitt's services will include the evaluation, selection (subject to the approval of Applicant's directors) and monitoring of Investment Managers. Specific portfolio investments for Applicant's Portfolios will be made by the Investment Managers. Initially, Applicant proposes to use multiple Investment Managers for each of its Portfolios, except the U.S. Government Money Market Portfolio. As Applicant's assets grow it is anticipated that additional Investment Managers will be employed.

7. Applicant's Corporate Management Agreement with Hewitt will be submitted for approval to Applicant's Board of Directors, including a majority of the directors who are not "interested in persons" of Applicant Hewitt, and will also be subject to all the shareholder approval and termination provisions of the 1940 Act. Information concerning Hewitt, Applicant, and the Investment Managers will be disclosed in public documents such as prospectuses, proxy statements, and periodic reports as required by the relevant provisions of the 1940 Act, except to the extent of Applicant's requested exemptive order.

8. Hewitt will furnish to Applicant's Board of Directors, and such directors will request and evaluate, such information as may reasonably be necessary to evaluate the terms of the Corporate Management Agreement. The directors will be provided with and will evaluate information such as: The fees which Hewitt is charging clients who have entered into Asset Agreements; the fees which Hewitt is paying to

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Investment Managers pursuant to Portfolio Management Contracts (described below); and information concerning the reductions in fees, if any, which Hewitt has been able to obtain from the Investment Managers. Applicant will not pay any advisory or management fee to Hewitt and will pay no investment advisory fee to the Investment Managers. Hewitt will be solely responsible for the payment of the Investment Managers' fees.

9. After Hewitt recommends an Investment Manager, the selection and approval will be made by Applicant's Board of Directors, including a majority of Applicant's directors who are not interested persons of Applicant, Hewitt, or the Investment Manager. Applicant and Hewitt will enter into a written Portfolio Management Contract with each Investment Manager which: (1) Will precisely describe the compensation to be paid by Hewitt to the Investment Manager; (2) shall continue in effect for two years only so long as such continuance is specifically approved at least annually by Applicant's Board of Directors as required by the 1940 Act; (3) will provide for termination at any time, without the payment of any penalty, by Applicant's Board of Directors on not more than sixty days written notice to the Investment Manager; and (4) will terminate automatically in the event of its assignment.

Applicant's Legal Analysis

1. Applicant asserts that shareholder approval of the Investment Managers is not necessary for the protection of Applicant's shareholders. Applicant notes that unlike the investor in a conventional investment company who specifically undertakes to evaluate and select the investment adviser that will manage the investor's assets, the investor in Applicant has clearly chosen to have Hewitt and Applicant undertake those responsibilities. The primary reason for an investor's decision to invest in Applicant is to obtain Hewitt's expertise in selecting investment managers, and is based upon the investors' determination that is unable, or at least unwilling, to make those selections. Applicant's shareholders are independent of, and not dependent upon, Applicant's Investment Managers under its organizational structure and proposed method of operation. The relationship over which Applicant's shareholders should and will be able to exercise control is the relationship with Hewitt, the entity to which the investors, by their choice, are looking for investment results and related services. Applicant submits that by choosing to

invest in this type of vehicle, investors are not seeking any relationship with the Investment Managers, and are not directly concerned with the choice of specific Investment Managers.

2. In the ordinary course of events, Applicant does not expect to hold annual shareholders meetings, thus avoiding the expenses entailed in preparing, filing with the Commission, printing, mailing, and tabulating proxy material. If, for any reason, it becomes necessary to employ an additional manager or enter into a new contract, Applicant and the particular Portfolio will be forced to incur additional expenses to obtain shareholder approval of such manager unless the requested exemptive relief from section 15(a) is granted. To avoid such expenses and any potential delay it is submitted that the best interests of shareholders are served if Applicant can immediately, subject to review and approval by its Board of Directors, employ a new Investment Manager or enter into a revised contract without first receiving shareholder approval. Accordingly, Applicant requests exemption from section 15(a) of the 1940 Act and Rule 18f-2, to the extent necessary, to permit the advisory arrangements described above.

3. Applicant also seeks relief from various disclosure provisions under the 1940 Act and Regulations S-X which would require disclosure of fees paid to the Investment Managers by Hewitt. Applicant believes that its shareholders will have adequate information concerning fees and expenses and notes that its shareholders will each have entered into an Asset Management Agreement with Hewitt, which will set forth the fees to be paid by the shareholder to Hewitt. The services provided and fees payable under these agreements will be established individually with each investor and compensation will reflect the specific services to be provided and the costs and expenses (including the Investment Managers' compensation) to Hewitt of managing the investor's assets and Applicant's business. Thus, investors will know in advance the total expenses and rate of fees which they will bear and will, therefore, be able to determine whether, in their judgment, the total package of services and cost is competitive with the services and costs which could be obtained elsewhere. Under these circumstances, it is submitted that the particular fees of the Investment Managers are not relevant to the investor.

4. Applicant believes that because some Investment Managers price their

services based upon "posted" fee rates, such managers would be unwilling to serve Applicant and Hewitt at reduced rates if any fee reductions negotiated by Hewitt are publicly disclosed. Disclosure of the fees Hewitt will pay to the Investment Managers could result in adverse consequences to Applicant's shareholders because an increase in cost to Hewitt must necessarily result in increased charges to its consulting clients. Applicant also believes that disclosure of fee related information will provide no meaningful information to investors since the rates these Investment Managers would charge to Applicant would not be directly available to Applicant's shareholders. In addition, disclosure of fees paid to the Investment Managers by Hewitt would not be relevant to shareholders of other investment companies advised by the Investment Managers because the Investment Managers will be providing much more comprehensive services to those companies than to Applicant. For the reason set forth above, Applicant seeks relief from Rule 20a-2(a)(1), 20a-2(b)(1), and 20a-2(b)(4), Items 5(b)(iii) and 16(a)(iii) of Form N-1A, and Item 47 through 52 and 72(f) of Form N-SAR under the 1940 Act and sections 6-07.2 (a), (b) and (c) of Regulation S-X as it pertains to registered investment companies, to the extent necessary, to permit Applicant to refrain from disclosing fees paid to the Investment Managers by Hewitt.

5. Applicant also seeks relief from the requirement that proxy materials disclose transactions by, among other persons, the principal executive officer, any director or general partner, or any parent of any Investment Manager in securities issued by the Investment Manager or its parent. Neither Hewitt nor any director, officer or employee of Applicant knowingly has or will have a direct or indirect beneficial interest in any security issued by an Investment Manager or a controlling person of any Investment Manager or stand to profit or benefit in any manner from transactions in the Investment Managers' securities. Disclosure concerning transactions in securities of its Investment Managers who are unrelated in any manner to Applicant or Hewitt other than as portfolio managers does not provide necessary or meaningful investor information or protection. Making the inquiries of each Investment Manager and gathering and assembling the information required to respond to such a requirement would impose substantial administrative burdens and expenses upon Applicant and Hewitt without providing a meaningful corresponding

benefit to Applicant's shareholders. Thus, Applicant requests exemptive relief from Rule 20a-2(a)(8) under the 1940 Act, to the extent necessary, to permit Applicant to omit from its proxy statements the types of securities transactions contemplated by that provision.

6. Applicant submits that the inclusion of balance sheets of the Investment Managers in Applicant's proxy statements is unnecessary in view of Applicant's unique structure. Unlike the conventional investment company which is dependent upon its investment adviser not only for portfolio management services but also for the day-to-day operations of the company, Applicant is not dependent upon its Investment Managers for any of its ongoing corporate or administrative requirements. Under these circumstances, it is submitted that the inclusion of the Investment Managers' balance sheets has limited relevance to Applicant's shareholders and that obtaining balance sheets from numerous Investment Managers will impose significant administrative burdens and expenses upon Applicant. In view of the potential burdens and expenses and the lack of benefit to Applicant's shareholders, Applicant requests relief from Rule 20a-2(a)(9) under the 1940 Act, to the extent necessary, to omit balance sheets of the Investment Managers from its proxy statements.

Applicant's Conditions

If the requested order is granted, Applicant expressly consents to the following conditions:

1. Prior to any investment of a Member Organization's assets in any of the Portfolios, the Member Organization will have received Applicant's current prospectus containing information concerning the Portfolios, as well as information concerning Hewitt. The client will receive additional information concerning Hewitt contained in Part II of Hewitt's Form ADV, as required by Rule 204-3 under the Advisers Act.

2. The Corporate Management Agreement will specifically provide that section 36(b) of the 1940 Act shall be deemed applicable to Hewitt which shall have "a fiduciary duty with respect to the receipt of compensation for services" attributable to Applicant.

3. The Board of Directors of Applicant will discharge the duties imposed on it by section 15(c) prior to the entry into a new or amended Portfolio Management Contract, and Applicant agrees to notify its shareholders, as promptly as is practical under the specific circumstances, of any event or change

which would, but for the exemptions requested hereby, require shareholder approval.

4. Applicant will make general disclosure in its proxy statement that Investment Managers may serve other clients, including other registered investment companies.

5. No director of Applicant will be an "interested person" of any Investment Manager.

6. Applicant will disclose in its prospectus that all Investment Managers are compensated on a fixed-fee or percentage of assets fee basis without an incentive or penalty for performance or, if in the future Applicant implements any performance fee, that certain Investment Managers are compensated on a performance fee basis.

For the Commission, by the Division of Investment Management under delegated authority.

Jonathan G. Katz,

Secretary.

(FR Doc. 88-14903 Filed 6-30-88; 8:45 am)

BILLING CODE 8010-01-01

[Rel. No. IC-16456; (811-4836)]

Astrop Family of Funds Trust; Application

June 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Astrop Family of Funds Trust.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 19, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, Five Piedmont Center, Atlanta, Georgia 30305.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On September 10, 1986, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On September 10, 1986, Applicant also filed Form N-1A pursuant to the Securities Act of 1933 and it commenced the initial public offering of its shares on January 23, 1987. Applicant is a Massachusetts business trust and intends to file a notice of termination of existence with the Commonwealth of Massachusetts.

2. Applicant's shares were divided into three series, each of which represented a separate portfolio of investments. Pursuant to a plan of liquidation and dissolution approved by the securityholders of two of the operating series, Astrop High Yield Bond Fund and Astrop New South Fund, on of December 3, 1987, the net assets of each of such series were distributed to each series' securityholders on a pro-rata basis and both series were terminated.

3. On February 18, 1988, the Board of Trustees of Applicant approved a plan of liquidation and dissolution (the "Plan") dated March 31, 1988, with respect to the Astrop Established Growth Fund ("Growth Fund"), the sole outstanding series of shares, and recommended approval of the Plan by the securityholders. At a meeting of securityholders of Growth Fund on March 31, 1988, the securityholders approved the Plan by the requisite vote and the Trustees authorized deregistration and dissolution of Applicant.

4. Pursuant to the Plan, within 60 days of March 31, 1988, applicant and mailed to each securityholder of the Growth Fund a liquidating distribution equal to each securityholder's proportionate interest in the remaining assets of the Growth Fund. The amount of the distribution was approximately \$7.99 per share, aggregating \$69,407. Expenses

relating to the Plan were borne by applicant's manager, Astrop Funds Advisor, Inc.

5. Applicant does not have any assets or liabilities and is not a party to any litigation or administrative proceeding. Applicant has no securityholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14904 Filed 6-30-88; 8:45 am]

BILLING CODE 3010-01-M

[Rel. No. IC-16454; 512-7008]

Freedom Investment Trust, et al; Application

June 27, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Freedom Investment Trust, Freedom Investment Trust II, Tucker Anthony Mutual Fund, Tucker Anthony Group of Tax Exempt Funds, and all future investment companies for which Tucker Anthony Management Corporation serves as investment adviser (collectively "Funds"), and Tucker Anthony Management Corporation ("Adviser").

Relevant 1940 Act Sections: Order requested under section 17(d) of the 1940 Act and Rule 17d-1 thereunder.

Summary of Application: Applicants seek an order permitting the Funds to deposit their uninvested cash balances into a single joint account, the daily balance of which would be used to enter into one or more overnight (or weekend or holiday) repurchase agreements in a total amount equal to the aggregate daily balance in the joint account.

Filing Date: The application was filed on March 15, 1988, and amended on June 13, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to

the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC. **ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Beacon Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3026 or Curtis R. Hilliard, Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the existing Funds is a series company, registered under the 1940 Act as an open-end, management investment company. The Funds are authorized to invest in repurchase agreements. The Adviser serves as investment adviser to each of the Funds.

2. Each of the Funds has or may be expected to have from time to time uninvested cash balances in its custodial bank, State Street Bank and Trust Company ("State Street"), which would not otherwise be invested in portfolio securities by the Adviser at the end of each trading day. In the normal course of business, if the amount of such assets of each Fund is separately of sufficient size, the Adviser attempts to invest the assets of such Fund in federal securities, overnight repurchase agreements with a bank or major brokerage house, or primary U.S. government securities dealer, or other short-term investments authorized by the Fund's investment policies, in order to earn additional income for that Fund.

3. Generally, there can remain in the respective account of each Fund, some amount of its assets which is received too late or is too small to be effectively invested in a separate transaction and/or at a rate reflecting the cost and investment risk of the transaction. At present, each Fund must separately pursue, secure and implement its repurchase agreement investments. The Funds pay approximately \$12.00 per transaction to State Street for processing each repurchase agreement. This fee is a processing fee only and is not related to the size of the transaction. During the twelve months ended December 31, 1987, the average daily amounts

invested by all the Funds in repurchase agreements was \$16,142,768 and the fees amounted to approximately \$87,380 for the Funds.

4. Applicants propose to establish with the Funds' custodial bank a single joint account ("Account") into which each Fund will automatically transfer its uninvested cash balances remaining after the conclusion of daily trading, and will be used to enter into one or more large repurchase agreements in a total amount equal to the aggregate daily balance in the Account.

5. Applicants represent that the Account will operate subject to the following procedures:

(a) A separate custodial cash account will be established at State Street into which each Fund will cause its uninvested net cash balances to be deposited daily.

(b) Cash in the Account will be invested solely in repurchase agreements collateralized by suitable U.S. Government obligations (i.e., obligations issued or guaranteed as to principal and interest by the U.S. Government or by any of its agencies or instrumentalities), and satisfying the uniform standards set by any of the Funds for such investments.

(c) All investments held by the Account will be valued on an amortized cost basis.

(d) Each Fund subject to an exemptive order permitting valuation of its securities on an amortized cost basis or relying upon Rule 2a-7 under the 1940 Act will use the average maturity of the Account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such Account on that day.

(e) In order to assure that there will be no opportunity for one Fund to use any part of a balance of the Account credited to another Fund, no Fund will be allowed to create a negative balance in the Account for any reason, although it will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the Account will be solely at the Fund's option and no Fund will be obligated to invest in nor to maintain any minimum balance in the Account. In addition, each Fund will retain the sole rights of ownership of any of its assets, including interest payable on such assets invested in the Account. Each Fund's investment in the Account will be documented daily on the books of each Fund as well as on the books of the Fund's custodian.

(f) Each Fund will participate in the income earned or accrued in the Account and all instruments (i.e., cash and U.S. Government securities) held in

the Account on the basis of the percentage of the total amount in the Account on any day represented by its share of the account.

(g) The Adviser will administer the investment of the cash balances in and operation of the Account as part of its duties under its existing or any future investment advisory contract with each Fund and will not collect any additional or separate fees for the management of the Account. The Adviser will collect its fees based upon the assets of each separate Fund as provided in each respective investment advisory agreement.

(h) The administration of the Account will be within the fidelity bond coverage required by section 17(g) of the 1940 Act and Rule 17g-1 thereunder. The Boards of Trustees of the existing Funds and of future Funds participating in the Account will evaluate the Account arrangements annually, and will continue the Account only if they determine that there is a reasonable likelihood that the Account will benefit the Funds and their shareholders.

6. Each of the Funds has established the same systems and standards, including quality standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements will be at least 100% collateralized at all times. Such uniform systems and standards will apply to the joint transactions contemplated herein. Furthermore, such joint transactions will be effected in accordance with the guidelines set forth in Investment Company Act Release No. 13005 (February 3, 1983) and with whatever positions may be taken in the future by the SEC or its staff by rule, release, letter or otherwise relating to such transactions. Finally, any future Funds will be required to participate in the Account on the same terms and conditions as the existing Funds have set forth in the Application.

7. Each Fund will participate in the Account on the same basis as every other Fund and in conformity with each Fund's fundamental investment objectives, policies and restrictions. The Adviser will have no monetary participation in the Account, but will be responsible for investing monies in the Account, establishing accounting and control procedures and ensuring the equal treatment of each Fund. The assets of the Funds will continue to be held under proper bank custodial procedures with State Street.

8. The Account will not be distinguishable from any other account maintained by a Fund with State Street except that monies from each Fund could be deposited with State Street on

a commingled basis. The Account would not have any separate existence which would have indicia of a separate legal entity. The sole function of the Account would be to provide a convenient way of aggregating what otherwise would require daily management by each Fund of its uninvested cash balances.

Applicants' Legal Conclusions

1. For the reasons set forth herein, the granting of the requested order is consistent with the provisions, policies and purposes of the 1940 Act and the participation in the Account by each Fund will not be on a basis different from or less advantageous than any other Fund participants and the participation by the Adviser will be ministerial only so that the criteria for issuance of an order under section 17(d) of the 1940 Act and Rule 17d-1 thereunder are met. In considering the establishment of the Account, the Trustees have sought and received advice from the Funds' legal counsel, as well as the advice of "outside" counsel of the "disinterested" Trustees, both of which are expected to be retained on a continuing basis. They have also considered the fact that although the Adviser would gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries would be the Funds and their shareholders.

2. Applicants believe that the Account will have the following benefits for the Funds: (a) If the Account had been in place for the year ending December 31, 1987, and the daily balances invested in a single repurchase agreement each business day, the estimated aggregate savings in transaction costs would have been approximately \$62,400; (b) the Funds will be able to negotiate a higher rate of return and eliminate certain inefficiencies; (c) there would be a reduction in the number of trade tickets to be processed and in opportunities for error; and (d) the Funds will have enhanced flexibility in the management of their uninvested cash balances.

3. The Board of Trustees of each of the Funds has considered the Account and determined that its use would be fair, economically desirable and beneficial to each Fund; would not result in any conflicts of interests between any of the Funds or between a Fund and the Adviser; would be free of any inherent bias favoring one Fund over another and should eliminate bias due to size or lack thereof in any transaction; and that the anticipated benefits flowing to each Fund would fall within an acceptable range of fairness. They have further determined that future participation in the Account by one or more future

Funds would not alter their conclusion with respect to participation by the existing Funds, and that it would be desirable to permit such future participation without the necessity of applying for an amendment to this requested order.

Applicants' Conditions

Applicants agree to operate the Account in accordance with the procedures set forth in paragraph 5 above and agree that such procedures may be made express conditions of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14905 Filed 6-30-88; 8:45 am]

BILLING CODE 3010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1068]

Notice Convening Accountability Review Board on Incidents in Tegucigalpa

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4631 et seq.), I have determined that recent events at the United States Mission in Tegucigalpa involve significant destruction of property at that mission. Extensive damage, estimated at several million dollars, was inflicted on the United States Embassy annex rendering it unusable and at least 22 vehicles were destroyed. Therefore, on May 24, 1988 I convened an Accountability Review Board, as required by the statute, to examine the facts and circumstances of the loss in Tegucigalpa and report to me such findings and recommendations as it deems appropriate, in keeping with the attached mandates.

As provided in section 302 of the Act, I have appointed Benjamin Read, Carol Laise, Thomas Boyatt, and Joseph Lucca to serve on this Board, and Director of Central Intelligence William H. Webster has appointed Willis Reilly. I have designated Mr. Read as Chairperson of the Board.

Director Webster and I have appointed members with long and distinguished foreign affairs experience and a variety of backgrounds to assure not only an accurate and focused report but also the establishment of procedures which might be followed to expedite the work of subsequent boards, if they are

needed for other events. Chairman Read is eminently qualified, because of his experience both in the public sector as Under Secretary for Management for the Department of State and on the Hill and in the private sector as well, to take the sort of responsible view of major issues connected with the incident which is called for by the legislation.

I have asked the Board to report back to me within sixty days of its first meeting, unless Chairman Read determines that additional time is needed to complete the view. Appropriate action will be taken and reports made to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of the causes of and lessons learned from the Tegucigalpa incident should contact the Board promptly on 647-8456.

George P. Shultz,
Secretary of State.

[FR Doc. 88-14014 Filed 6-30-88; 8:45 am]
BILLING CODE 4710-10-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee: Written Comments on U.S. Negotiations with the People's Republic of China (PRC) in the Context of the Request of the PRC To Participate in the General Agreement on Tariffs and Trade (GATT) as a Contracting Party

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written comments on the PRC's announced intention to participate in the GATT as a contracting party and on the negotiations that are part of this process. Comments received will be considered by the Executive Branch in developing the U.S. position and objectives for the negotiation of terms for the accession of the People's Republic of China to the GATT and for bilateral tariff negotiations to establish its GATT schedule of concessions.

FOR FURTHER INFORMATION CONTACT: Cecilia Leahy Klein, Director for GATT Affairs (202-395-3063), or Angus Simmons, Director for China (202-395-5050), Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: The Chairman of the Trade Policy Staff Committee invites public written comments on the issues that will be addressed in the course of examination by the Contracting Parties to the GATT of the request by the PRC for participation in GATT as a contracting

party. In addition, public advice is also sought concerning possible tariff concessions that might be requested as part of the negotiations. The Committee is particularly interested in views on the impact on U.S. trade of PRC accession to the GATT, on specific bilateral issues that should be addressed in developing the terms of PRC accession, and on particular problems and experiences of U.S. firms in trading with the PRC.

On July 15, 1986, the People's Republic of China informed the GATT Contracting Parties of its desire to participate in GATT as a contracting party. A Working Party to examine this request, composed of interested GATT contracting parties, was established in March 1987, following the tabling of a description of its foreign trade regime. This Working Party is charged with the consideration of the PRC's request, the examination of its foreign trade regime, and the submission to the GATT Council of recommendations that may include a draft Protocol containing the terms of association for the PRC with the General Agreement as a full contracting party. In four meetings since October 1987, the Working Party has centered its efforts on the development of further information concerning the PRC trade regime and economic reforms. Future meetings will focus on assessing the GATT consistency of PRC trade policies and practices, and on the negotiation of a Protocol. The Protocol will set forth the agreed terms of the PRC's GATT membership, including the relationship of its foreign trade regime to the Articles of the General Agreement.

As part of the accession process and in recognition of the benefits of GATT membership, the PRC will also initiate bilateral negotiations with interested GATT members to formulate a schedule of tariff concessions that will become part of its Protocol, attached to the text of the General Agreement. These concessions will consist of tariff reductions and bindings on specific items in trade.

The advantages of full participation in GATT as a contracting party are several. As a GATT member, the PRC will enjoy a multilateral guarantee of most-favored nation treatment that is more comprehensive than that available through bilateral negotiations. The bindings on tariffs maintained in the tariff schedules of other GATT contracting parties will be extended to PRC exports. The People's Republic of China will also have recourse to GATT procedures to protect itself from unfair or unreasonable trade actions by its trading partners. Through the dispute settlement provisions in the General

Agreement, member countries are able to utilize a multilateral forum, largely independent of the political pressures influencing bilateral relationships, to resolve disputes.

In return for these benefits, and in addition to tariff concessions negotiated at the time of accession, the PRC will be expected to conduct its trade policies in accordance with the rules set out in the General Agreement, and the terms of its Protocol.

At the present time, the United States does not have the authority to extend MFN treatment to the PRC unconditionally, and the terms of the U.S.-PRC trade relationship are contained in the U.S.-China Bilateral Trade Agreement. In the absence of a change in U.S. trade law, this situation will continue after PRC accession to the General Agreement.

Deadline, Address and Format for Comments: Persons wishing to submit comments should provide a written statement by close-of-business August 15, 1988, to Carolyn Frank, TPSC Secretary (Office of the U.S. Trade Representative, Room 521, 600 17th Street, NW., Washington, DC 20506). Comments must be submitted in not less than twenty (20) copies and in accordance with 19 CFR 2003.2. Comments will be available for public inspection pursuant to 19 CFR 2003.5. Business confidential information will be subject to the requirements of 19 CFR 2003.6. Any business confidential material must be clearly marked as such, and must be accompanied by a non-confidential summary thereof.

Donald Phillips,
Chairman, Trade Policy Staff Committee.
[FR Doc. 88-14020 Filed 6-30-88; 8:45 am]
BILLING CODE 3100-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 24, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the

adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45800

Date Filed: June 20, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 18, 1988.

Description: Application of Aeropuma, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit for authority to transport for a period of no less than five years, property and mail by air between Miami, Florida and the Republic of El Salvador, utilizing the direct air carrier services of other carriers.

Phyllis T. Kaylor,

Chief, Documentary Services Division.
[FR Doc. 88-14896 Filed 6-30-88; 8:45 am]
BILLING CODE 4010-25-M

Coast Guard (CGD 88-044)

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS)

AGENCY: Coast Guard, DOT.

ACTION: Notice of granting of certificates of alternative compliance to vessels.

SUMMARY: This notice lists Coast Guard vessels granted Certificates of Alternative Compliance by the Commandant since 20 October 1987. Due to their special construction and purpose, the listed vessels cannot comply fully with certain provisions of the International Navigation Rules for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessel's special functions. The intent of this notice is to advise the mariner to be aware of these Coast Guard vessels that have been granted Certificates of Alternative Compliance.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Peter S. Palmer, Office of Navigation Safety and Waterway Services, (C-NSR-3), 2100 Second Street, SW., Washington, DC 20593. (202) 267-0362.

SUPPLEMENTARY INFORMATION: Under the provisions of 33 U.S.C. 1605(c), the Coast Guard publishes, in the Federal Register, a listing of vessels granted Certificates of Alternative Compliance.

A vessel is issued a Certificate of Alternative Compliance when it is determined that it cannot comply fully with the International Rules for light(s), shape(s), and sound signal provisions without interference with its special function. The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The following list of Coast Guard vessels are not in compliance with certain particulars of the light provisions of the 72 COLREGS and have been issued Certificates of Alternative Compliance.

The Certificates of Alternative Compliance issued allow the following vessels to carry the forward and after masthead lights at a vertical separation of 6.5 feet and the sidelights to be placed 20 feet in front of the forward masthead light:

Vessel	Class/Number
USCGC BOUTWELL	378/(WHEC 719)
USCGC CHASE	378/(WHEC 718)
USCGC DALLAS	378/(WHEC 716)
USCGC GALLATIN	378/(WHEC 721)
USCGC HAMILTON	378/(WHEC 715)
USCGC JARVIS	378/(WHEC 725)
USCGC MELLON	378/(WHEC 717)
USCGC MIDGETT	378/(WHEC 726)
USCGC MORGENTHAU	378/(WHEC 722)
USCGC MUNRO	378/(WHEC 724)
USCGC RUSH	378/(WHEC 723)
USCGC SHERMAN	378/(WHEC 720)

The Certificates of Alternative Compliance issued allow the following vessels to carry the forward and after masthead lights at the noted horizontal distances in feet:

Vessel	Class/Number	Horizontal separation
USCGC POLAR SEA	POLAR/(WAGB 11)	38 FT.
USCGC POLAR STAR	POLAR/(WAGB 10)	38 FT.
USCGC ACUSHNET	213/(WMEC)	22 FT.
USCGC YOCONA	213/(WMEC)	31 FT.

The Certificates of Alternative Compliance issued allow the following vessels to carry the forward and after masthead lights at the noted vertical distances in feet:

Vessel	Class/Number	Vertical separation
USCGC NORTHWIND	WIND/(WAGB 282)	11 FT.
USCGC ALERT	210/(WMEC 630)	5.25 FT.
USCGC ACTIVE	210/(WMEC 618)	5.25 FT.
USCGC CONFIDENCE	210/(WMEC 619)	5.25 FT.
USCGC COURAGEOUS	210/(WMEC 622)	5.25 FT.
USCGC DAUNTLESS	210/(WMEC 624)	5.25 FT.
USCGC DECISIVE	210/(WMEC 629)	5.25 FT.
USCGC DEPENDABLE	210/(WMEC 626)	5.25 FT.
USCGC DELIGENCE	210/(WMEC 616)	5.25 FT.
USCGC DURABLE	210/(WMEC 628)	5.25 FT.
USCGC RELIANCE	210/(WMEC 615)	5.25 FT.
USCGC RESOLUTE	210/(WMEC 620)	5.25 FT.
USCGC STEADFAST	210/(WMEC 623)	5.25 FT.
USCGC STORIS	210/(WMEC 638)	5.25 FT.
USCGC VALIANT	210/(WMEC 621)	5.25 FT.
USCGC VENTUROUS	210/(WMEC 625)	5.25 FT.
USCGC VIGILANT	210/(WMEC 617)	5.25 FT.
USCGC VIGOROUS	210/(WMEC 627)	5.25 FT.

* USCGC NORTHWEST will be decommissioned in November 1988.

Dated: June 23, 1988.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.
[FR Doc. 88-14802 Filed 6-30-88; 8:45 am]
BILLING CODE 401-014-M

Maritime Administration

Initial Inventory of U.S.-Flag Launch Barges: Correction

Notice is hereby given that the listing published at Federal Register Vol. 53, No. 123/Monday, June 27, 1988 page 24165 contains certain errors relating to labelling of listings of Length, Beam, Depth, GRT, DWT, Approx. Launch capacity and Volume. These errors are corrected in the following table.

REPORTED U.S.-FLAG LAUNCH BARGES

INDEX	VESSEL NAME	OWNER	CURRENT REGISTRY	BUILT		LENGTH	BEAM	DEPTH	REPORTED		APPROX. LAUNCH CAPACITY	VOLUME LKXND CUBIC FEET	ESTIMATED FULL LOAD DIS-PLACE	RATIO DIS-PLACE/ LAUNCH CAP.
				COUNTRY	YEAR				GRT	DWT				
1	KSC 700	KAISER	U.S.	KOREA	1965	700	182	40	42,727	50,000	40,200	5,095,000	116,480	2.9
2	INTERMAC 650	MCDERMOTT	U.S.	JAPAN	1960	450	170	40	28,834	40,000	40,200	4,420,000	101,029	2.5
3	INTERMAC 627	MCDERMOTT	U.S.	SOUTH KOREA	1978	580	180	30			22,800	3,340,800	70,361	3.3
4	INTERMAC 600	MCDERMOTT	U.S.	JAPAN	1973	500	120	33	15,189	15,000	15,000	1,980,000	45,357	2.0
5	OCEANIC 93	MCDERMOTT	U.S.	JAPAN	1978	450	150	30	11,678		14,700	2,025,000	46,289	3.1
6	MWB-403	MWB, INC.	U.S.	U.S.	1979	400	105	25	8,581	17,994	8,300	1,050,000	23,718	3.6
7	BAR 287	BROWN & ROOT	U.S.	U.S.	1966	300	100	25	8,136		5,800	850,000	21,714	3.7
8	SF-4000	SANTA FE	U.S.	TAIWAN	1979	400	100	25	9,028	12,000	5,400	1,000,000	22,057	4.2
9	OCEANIC 91	MCDERMOTT	U.S.	U.S.	1964	402	90	22			4,500	705,560	18,193	4.0
10	BAR 398	SAUSE	U.S.	U.S.	1976	304	90	22	2,975		1,100	601,920	13,750	4.4
11	INTERMAC 404	MCDERMOTT	U.S.	U.S.	1978	300	90	20	3,100		3,100	540,000	12,343	4.0
12	BAR 397	BROWN & ROOT	U.S.	U.S.	1979	300	90	20	3,310		3,100	540,000	12,343	4.0
13	LAUNCHER 500	SIDMAR	U.S.	U.S.	1982	315	90	19	4,008		3,100	538,050	12,312	4.0
14	TIDE LAND 021	MCDERMOTT	U.S.	U.S.	NA	240	72	17	2,180		2,700	203,700	8,719	2.5
	AVERAGE													3.5

SOURCES:
(1) OCEAN CONSTRUCTION LOCATOR, DECEMBER, 1987
(2) BARNETT & CASBARIAN, NAVAL ARCH.
(3) AMERICAN BUREAU OF SHIPPING
(4) AKIN, GUMP, STRAUSS, HAUER & FELD
(5) MARAD OFFICE OF DOMESTIC SHIPPING

Dated: June 29, 1988.

By Order of the Maritime Administrator.

Joel C. Richard,
Assistant Secretary, Maritime
Administration.

[FR Doc. 88-15034 Filed 6-30-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE TREASURY

Public Information Collection
Requirements Submitted To OMB for
Review.

Date: June 24, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0089.
Form Number: TD F 90-22.25.
Type of Review: Reinstatement.
Title: Nicaraguan Trade Control Regulations.

Description: The submission of TD F 90-22.25 will provide the USG information to be used in administering and enforcing the trade sanctions against Nicaragua.

Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: On occasion.

Estimated Average Reporting Burden: 100 hours.

Clearance Officer: Dale A. Morgan, (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 88-14822 Filed 6-30-88; 8:45 am]

BILLING CODE 4810-35-M

Public Information Collection
Requirements Submitted To OMB for
Review

Date: June 24, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0991.

Form Number: 8833.

Type of Review: Revision.

Title: Electronic Filer Application to File 1988 Individual Income Tax Returns Electronically.

Description: Form 8833 will be filled in by tax preparers and submitted to IRS as an application to file individual income tax returns electronically; and by software firms, service bureaus, electronic transmitters, and communication networks, to develop auxiliary services.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 12,000.

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: Annually.

Estimated Average Reporting Burden: 4,000 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-14823 Filed 6-30-88; 8:45 am]

BILLING CODE 4810-35-M

Public Information Collection
Requirements Submitted to OMB for
Review

Date: June 27, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0815.

Form Number: IRS Form 706.

Type of Review: Revision.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return.

Description: Form 706 is used by executors to report and compute the Federal Estate Tax imposed by IRS section 2001, the Federal GST tax imposed by IRC section 2001 and the additional Estate Tax imposed by Code section 4981A. IRS uses the information to enforce these taxes and to verify that the tax has been properly computed.

Respondents: Individual or households; Businesses or other for-profit.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Response: 46 minutes.

Frequency of Response: On Occasion.
Estimated Total Reporting Burden: 2,350,554 hours.

OMB Number: 1545-0007.

Form Number: IRS Forms 1040-ES, 1040-ES (NR), 1040-ES (Espanol).

Type of Review: Revision.

Title: Estimated Tax for Individuals (3 forms) (1) U.S. Citizens and Residents,

(2) For Nonresident Aliens, (3) For Use in Puerto Rico (in Spanish).

Description: Form 1040-ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax is \$500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.

Respondents: Individual or households.

Estimated Number of Respondents: 14,561,250.

Estimated Burden Hours Per Response: 20 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 6,908,795 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-14824 Filed 6-30-88; 8:45 am]

BILLING CODE 4810-35-M

Customs Service

[T.D. 88-38]

Notice of a New Information
Dissemination Product Pursuant to
OMB Circular A-130

AGENCY: U.S. Customs Service,
Treasury.

ACTION: Final notice of new information dissemination product.

SUMMARY: This document informs the public of a new information dissemination product developed by Customs. As an integral part of its Automated Commercial System (ACS), Customs has developed a module called the Automated Manifest System (AMS), which will allow carriers, port authorities (PAs) and service centers to electronically transmit data from inward vessel manifests, thereby facilitating and expediting the release of cargo from Customs custody.

Customs intends to provide to eligible PAs electronic access to manifest data being transmitted electronically to Customs, and to other data concerning the status of cargo moving within their port limits. Customs further intends to provide to the public a magnetic tape which will contain data from all the manifests being transmitted

electronically to Customs except where confidentiality has been requested. Parties receiving manifest data from Customs will be responsible for meeting all costs associated with providing these services.

Timely receipt of the AMS data will enable port authorities to more efficiently and effectively control the movement of cargo through their facilities, as well as perform their cargo release responsibilities in addition to expediting Customs processing as a result of this operational interface. The confidentiality will be assured by deletion of the names and addresses of importers, consignees, and their shippers upon request.

EFFECTIVE DATE: This notice is effective July 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: Kathryn C. Peterson,
Chief, Regulations Control and
Disclosure Law Branch, (202) 566-
8881.

Operational Aspects: Eula D. Walden,
Office of Automated Commercial
System Operations (202) 566-8012.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to OMB Circular A-130, dated December 12, 1985 (50 FR 52730), Federal agencies must inform the public of significant new proposed information dissemination products, allowing agencies to gauge the impact of such products upon affected segments of the public. Accordingly, a notice was published in the Federal Register dated February 2, 1988 (53 FR 2906), in which Customs informed the public that it was proposing to disseminate information provided by persons participating in the Automated Manifest System (AMS) as part of the Automated Commercial System (ACS). The proposal involved the dissemination of the AMS data to participating port authorities and the public. The notice set forth the scope of the program, specifically enumerated the data elements involved, and invited public comment on any aspect of this proposed information dissemination product. Specifically, the public was asked whether providing this information would have an impact on their conduct of Customs business.

As proposed, the AMS is an integral module of the Automated Commercial System. The ACS has been in development for several years and the ultimate goal is to automate all phases of the commercial processing of imported merchandise to create a single automated system. The AMS module contains both an imported merchandise

inventory control system and a cargo release notification system. This system will facilitate Customs determinations with respect to inspection and release of merchandise, thereby expediting the procedure for release of cargo from Customs custody.

The automated manifest data may be transmitted to Customs by one of two methods. Carriers may transmit data directly to the AMS with their own compatible automated system, or carriers may use the computer facilities of PAs or service centers which have established interface capability with Customs. After receiving and analyzing the data, Customs makes its decision with respect to inspection and release of the merchandise.

Once the merchandise is authorized for release, the carrier, service center or PA which transmitted the data will receive a message from the system informing it of that fact. In this fashion, each user will be able to track the status of cargo for which it transmitted data.

Section 431, Tariff Act of 1930, as amended (19 U.S.C. 1431), requires that the master of every vessel arriving in the U.S. have on board a manifest which contains, among other things, certain information with respect to the nature of the merchandise on board the vessel. Subsection (c)(1) of section 431 provides that the following information when contained on the manifest shall be made available for public disclosure:

1. The general character of the cargo.
2. The number of packages and gross weight.
3. The name of the vessel or carrier.
4. The port of loading.
5. The port of discharge.
6. The country or origin of the shipment, and
7. The name and address of each importer or consignee who has not requested confidential treatment of such information.

In the prior notice, it was proposed that participating PAs would assume the role as conduit for transmission of AMS data and receive all automated manifest data for those manifests which Customs receives for vessels calling in their ports regardless of whether the carrier used the PA to transmit its data. The data elements that comprise the manifest file are set forth in Appendix 1 to this document. The data elements are the same as identified in the February 2, 1988, notice except that data elements relating to Notify Party name and address have been added. The names and addresses of the Notify Party will be protected if they are the same parties to whom confidentiality has been extended.

In addition to receiving manifest data, it was proposed that PAs would be entitled to receive release data conveying the status of the cargo being processed through their ports. If an automated manifest is filed at the port, release data from that manifest will be provided. It was further proposed that where no automated manifest is filed, PAs would receive release data obtained from entry documents for all formal entries made in the port, provided that the entry filer has given his written consent. The data elements pertaining to this release data are set forth in Appendix 2.

Port authorities who have developed a complete interface capability will receive the aforementioned data for those shipments unladen in their port. These port authorities will then be able to pass this data to Customs brokers, freight forwarders, warehouse operators, trucking companies, and others directly involved in the movement of the import shipment who are unable to acquire their own automated capability. In addition, these port authorities will provide those entities with the means to electronically transmit data to Customs.

To accomplish this task, the port authorities involved have developed or are developing Community Cargo Release Systems. These systems are designed to enhance current import capability by providing for automated data exchange between all parties involved in the import transaction. In doing so, these systems fulfill a vital operational role in the actual import process.

Finally, it was proposed that eligible PAs will receive manifest data which is transmitted through AMS with respect to all cargo which moves via master in bond procedures to their ports. For example, when a carrier files an automated manifest for cargo from a vessel which calls at Seattle but will move via master in bond procedures to Boston, the Massachusetts Port Authority (Massport), would receive an extract of the manifest filed at Seattle. This would enable Massport to have a more accurate account of cargo in transit to it.

Eligibility Criteria

In order to be eligible to receive automated manifest data, release data, and the master in bond data, PAs must develop the full technical capacity to transmit as well as receive AMS data. A participating PA must demonstrate to Customs satisfaction that it possesses all the necessary facilities to be capable of immediately providing full AMS services for any interested carrier.

Customs will not require a minimum number of manifests to be transmitted in order for a PA to be eligible to receive this data; however, Customs will condition continued access to the data on efforts by the PAs to acquire customers for this service. Should Customs learn that a PA has declined to provide AMS services when requested by a carrier, or has not made efforts to obtain participation by carriers, Customs will reevaluate its decision to provide access.

Providing Automated Manifest Data to the Public

Separate and apart from its decision to provide manifest data to PAs as described above, Customs intends to make available to the public, in the form of magnetic tape, certain data with respect to all the manifests captured by AMS nationwide. Because the public is not operationally involved in the cargo movement, a distinction is made in the type of access to data which is to be provided. This magnetic tape will be available at a price which reflects production cost and will contain the same data elements that are in the manifest file to be provided to the PAs. See Appendix 1 for the precise data elements involved. It is contemplated that the tape will be available on a weekly basis. Persons interested in receiving this tape or in obtaining further information about it may contact the Office of Automated Commercial System Operations at (202) 566-6012.

In addition, parties seeking to receive manifest data from Customs will be responsible for meeting all costs associated with providing these services. The cost to Customs Service inherent in the dissemination of AMS data has not yet been determined.

Confidentiality of Manifest Data

Section 103.14(d), Customs Regulations (19 CFR 103.14(d)), sets forth the procedures pursuant to which an importer or consignee may request confidential treatment of its name and address and that of its shippers. To date, Customs Headquarters has on file approximately 1,100 requests for confidential treatment.

Presently, Customs compiles a list of those importers and consignees who have requested confidentiality. The list is updated on a weekly basis, and is provided to all Customs offices nationwide. The list is also provided to certain commercial trade publications such as King Publishing Co., the Journal of Commerce and others who review hard copy vessel manifests and extract that data authorized to be released

under the provisions of title 19, United States Code, section 1431(c). These trade publications publish the manifest data, taking steps to make certain that the names and addresses of those who have requested confidentiality on behalf of themselves and for their shippers are deleted.

The manifest data to be provided to the PAs and to the public from the AMS will be sanitized by Customs by removing the names and addresses of those importers/consignees and that of their shippers when confidentiality has been requested. Customs has developed a computer program which will automatically delete the name and address of these requesters when manifests containing their names are transmitted through AMS.

Customs proposed to achieve confidentiality in dissemination of data through AMS, by using a computer program based on an "alpha" approach. The alpha approach is limited because the program will only delete the name of the importer/consignee when there is an exact match as to spelling and formulation between the way the name has been transmitted by the carrier, port authority, or service center and the name which has been programmed into the computer.

In order to safeguard the names and addresses of companies which have requested confidentiality, Customs advised each of the requesters of the limitations of the alpha program and invited them to enumerate variations of their name which they believe may be transmitted into the AMS. Many importers have responded with these variations and Customs has added them to its database so that confidentiality will be protected whenever a match is made between any of the versions of the name submitted and the version transmitted by the carrier, port authority, or service center. A copy of the letter to the requesters is provided as Appendix 3 to this document. Customs remains willing to program these additional variations as they are received, as well as new requests for confidentiality. Such requests should be directed to the Regulations Control and Disclosure Law Branch, Customs Headquarters. Attention: Mr. Gerald Crowley.

Dissemination of the Entry Number

Among the data elements which will be provided to the port authorities as part of the bill of lading status report is the entry number assigned to the goods once entry has been filed. See Appendix 2 to this document. Providing this entry number is an essential link between the data in the manifest file and entry file.

Customs has identified two potential issues with respect to providing the entry number to the PAs in certain instances. Each of these issues relates to Customs obligation to protect the identity of the importer or consignee of the merchandise when confidentiality has been requested.

The Bulletin Notice of Liquidation, Customs Form 4331, lists the entry number together with the name of the entry filer. By matching this data with the manifest data being provided, one may determine the identity of the entry filer and the nature of the goods being imported despite the importer's request for confidentiality. In order to resolve this issue, Customs will amend the Bulletin Notice of Liquidation so as to remove any reference to the name of the entry filer. Importers and brokers will be able to identify their entries through entry number.

The second issue that is presented with dissemination of the entry number arises because the first three digits of the entry number (the National Filer Code) identify the broker or importer filing the entry. Knowing an importer's filer code together with the manifest data would clearly enable a person who is not entitled to that data to link the importer to the particular goods being imported. Even where the code pertains to a broker, in some instances, knowledge of the broker and the port involved is tantamount to knowledge of the identity of the importer. In each case, confidentiality could be breached. In order to protect against this unintended effect, Customs invites any importer or broker who has a presently assigned filer code to apply for a new filer code. This new code will not be revealed by Customs to any party not involved in the import transaction without the authorization of the entry filer so that the filer code will not be a means by which the filer's identity may be ascertained. Persons interested in obtaining a new filer code should write to the Office of Automated Commercial Systems, Customs Headquarters, Attention: Dick Bonner.

Discussion of Comments

Eleven comments were received in response to the notice, some quite detailed, touching on various aspects of the proposal. Of primary concern was the proposed dissemination of on line electronic manifest information to port authorities while making available for sale to the public a magnetic tape containing the same data. Many commenters raised concerns surrounding the dissemination of air manifest data through the AMS. Finally, several commenters expressed doubt as

to whether Customs proposed "alpha" program will adequately protect confidentiality of the importers. The comments are further discussed in detail below.

Comment: A number of respondents to the notice represented the concerns of the air industry in relation to the dissemination of air manifest data.

Customs Response: The notice appearing in the Federal Register on February 2, 1988 [53 FR 2906], informing the public that Customs was proposing the AMS, only addressed the dissemination of manifest data from "vessels", and did not encompass dissemination of "air" manifest data or any other non-vessel manifest data through the AMS.

Comment: One commenter suggested that the proposed dissemination of electronic manifest data constitutes unequal access.

Customs Response: If the AMS is to function properly, it will be necessary for port authorities to assume the role of conduit for transmission of manifest data by participating in a Community Cargo Release System (CCRS). As such, they are operationally involved in the movement of cargo through the port. Accordingly, it is imperative that port authorities have direct electronic access to AMS data to allow the system to function at its maximum capacity. Electronic access to AMS data allows port authorities, carriers, and service centers to plan ahead for the movement of cargo and to maximize the efficient utilization of each port facility. The general public on the other hand has no operational involvement in the movement of cargo within the port. Providing the general public with direct electronic access to AMS data would interfere with Customs use of the system in meeting its operational goals and objectives by impeding receipt of information by those directly involved in transmitting data and manifest information for the AMS and facilitating the movement of cargo within the port. Providing the general public with data at this early stage would convert a system designed to achieve significant operational advancements into a system which would significantly detract from the efficient and effective attainment of the operational goals. To allow the general public to insert itself in the operational process at this early stage is not feasible or mandated by any provision of law. Customs believes that because the general public is not operationally involved in the movement of cargo, there is no equal access issue and that the right of the public to manifest data is satisfied by the

availability of the data on a magnetic tape or via present procedures for release of data from hard copy manifest.

Comment: Several comments expressed concern for the safeguarding of confidentiality in the automated manifest system.

Customs Response: Various approaches to safeguarding of confidentiality in the automated manifest system were extensively examined. In selecting the "alpha" program method, Customs determined that this approach would allow for the greatest dissemination of information while still imposing adequate safeguards to preserve confidentiality. Customs also notified the public of our proposed action and offered concerned parties the opportunity to request confidentiality based on name variations. We anticipate no breaches of confidentiality with this approach.

Comment: One commenter suggested that entry numbers be deleted from the disseminated information because of the possibility of cross referencing the manifest data with information on the Bulletin Notice of Liquidation.

Customs Response: The entry number is essential to the proper delivery of and release of cargo and deletion of it would cause the data provided to port authorities to be of little operational value. Customs will pursue the deletion of the name of importer of record from the posting copy of the bulletin notice of entries liquidated (CF 4333).

Comment: One commenter expressed concern that certain data, such as marks and numbers, are not required in the electronic transmission of manifest data, thus requiring the continued submission of a paper manifest, thereby defeating the benefits of an automated system.

Customs Response: Legislative changes are required to delete the reporting of marks and numbers on a manifest allowing for the electronic transmission of data. Until such time, Customs must operate under a dual manifesting system of hard-copy and electronic transmissions. In addition, the following points should be made. Customs presently has no operational need for marks and numbers from the manifest. Programming the computer to include marks and numbers could be an extremely difficult task since marks could be in a language other than English (e.g., Arabic, Chinese, Japanese, etc.) or no language at all. Finally, marks and numbers are not identified as a category of data per title 19, United States Code, section 1431(c), to which the public has a right to access.

Comment: Two commenters determined that the AMS "unnecessarily duplicates" and competes with existing

private sector databases in violation of OMB Circular A-130, Section 8.b.(7).

Customs Response: It is Customs' view that the AMS does not duplicate and compete with the existing private sector databases. Customs has an obligation to provide an efficient and effective means of operationally interfacing and exchanging data with those persons involved in the entry and clearance of cargo. This is necessary to satisfy the statutorily mandated mission of the Customs Service. Further, Customs is bound by international agreement to facilitate international trade by simplifying Customs procedures and operations. The AMS will reduce paperwork involved in commercial transport thus allowing the U.S. to achieve increased efficiency and expeditious movement of cargo. Customs obligations under international agreement necessarily require that we should go forth with the AMS. There is no competition with existing private sector databases. Customs is fulfilling its operational mission and legal obligations.

Comment: One respondent stated that the AMS will not include all the information now required by statute, treaty, or Customs Service Regulations because the cargo declaration will require less information from participants.

Customs Response: Presently, the AMS does not capture certain information that is required by statute to appear on the manifest. Customs recognizes that should the automated manifest replace the paper manifest, changes will have to be made. In the meantime, Customs will continue to make available all of the information presently required by law in the hard-copy manifest.

Comment: The issue was raised as to whether the AMS would provide enforceable restrictions on the use of information by port authorities.

Customs Response: Presently, Customs has no plans to promulgate such restrictions. It is questionable whether Customs has the authority to do so.

Comment: One commenter raised the concern over eligibility requirements for AMS participation because port authorities must develop the full technical capacity to transmit and receive data which is a costly expenditure. It was suggested that Customs consider each port authority and circumstances on an individual basis in enforcing compliance with this requirement.

Customs Response: Customs has set forth the general eligibility requirement that all port authorities must establish

full technical capacity to transmit as well as receive AMS data. This will enable them to become a fully operational member of the CCRS. Satisfactory implementation of the system requires that we cannot selectively forgo the eligibility criteria on an individual basis.

Comment: Several commenters urged against Customs proceeding with the proposed assignment of new confidential filer codes brokers. The commenters perceived this to be costly and cumbersome to ports who develop their AMS modules in strict accordance with criteria set forth by Customs. One commenter was further concerned that exclusion of the broker's identity sidestepped Customs' commitment to supply ports with broker information.

Customs Response: Customs believes that the security of commercial information requires that Customs make such new codes available to brokers and importers. They are not, however, required.

Implementation

After a careful review and analysis of all the comments and further consideration of the subject matter, Customs has decided to adopt the aforementioned new information dissemination product as proposed, with the addition of two data elements in Appendix 1 covering Notify Party Name and Notify Party Address as discussed above. This notice shall take effect upon publication in the Federal Register.

Dated: June 28, 1988.

Michael H. Lane.

Acting Commissioner of Customs.

Appendix 1—Data Elements From the Manifest to be Provided to Eligible Port Authorities Via Direct Computer to Computer Link and to the Public Via Magnetic Tape

1. Carrier code.
2. Vessel country code.
3. Vessel Name.
4. Voyage Number.
5. District/Port of Unloading.
6. Estimated Arrival Date.
7. Bill of Lading Number.
8. Foreign Port of Lading.
9. Manifest Quantity.
10. Manifest Units.
11. Weight.
12. Weight Unit.
13. Shipper Name.¹

¹ Data element will be deleted where confidentiality has been requested.

14. Shipper Address.¹
15. Consignee Name.¹
16. Consignee Address.¹
17. Notify Party Name.¹
18. Notify Party Address.¹
19. Piece Count.
20. Description of Goods.
21. Container Number.
22. Seal number.

Appendix 2—Cargo Release Data Elements Derived From the Manifest or from Entry Documents.² To be provided to eligible Port Authorities Via Direct Computer to Computer Link.

1. Carrier code.
2. District/port of unloading.
3. Vessel Name.³
4. Voyage Number.³
5. Bill of Lading Number.
6. Disposition code.
7. Quantity.
8. Entry Type.
9. Entry Number.
10. Action date and time.

Appendix 3

Department of the Treasury, U.S. Customs Service, Washington, DC.

October 18, 1987

(Dis-3-CORR.D: 575949 MBH)

Dear Sir or Madam:

This is in reference to previous correspondence from your company to the Customs Service in which you requested confidentiality for your name and address and that of your shippers on inward vessel cargo manifests.

The Customs Service wishes to inform you that it is in the process of changing the method by which it collects and disseminates inward cargo manifest data. Customs is developing an Automated Manifest System which will process vessel manifest data transmitted electronically by carriers, port authorities and others. In return, Customs will provide parties manifest data and information concerning the release of the goods electronically to those parties. The system is designed to improve efficiency in the inspection and cargo release process.

As you know, Customs is required by law to make certain manifest information available to the public except for the names and addresses of importers/consignees and that of their shippers when confidentiality is requested. In the near future, this manifest data will be available to any requester in the

¹ Where the source is entry documents, data relating to formal entries will be furnished, provided that the written consent of the entry filer is obtained.

² This element will only be provided where an automated manifest or an ABI entry has been filed.

form of a magnetic computer tape. Requests for confidentiality will continue to be honored. The limitations of the automated system are such, however, that it will only safeguard the precise spelling of the company's name that is provided to it. Therefore, in order to safeguard your data, it is essential that you provide within 10 working days of your receipt of this letter all spellings or formulations (such as abbreviations) of the name of your company that appear or could appear on the manifest or related shipping documents. These spellings or formulations will be entered into the computer data base so as to protect any transactions on which the formulation appears.

A more detailed explanation of the Automated Manifest System and the release of vessel manifest information will appear in the Federal Register shortly. Your comments on that notice would be appreciated if you have any questions concerning this matter, you may contact Gerald Crowley at (202) 566-0881.

Sincerely,

B. James Fritz.

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 88-14913 Filed 6-30-88; 8:45 am]

BILLING CODE 4820-02-0

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private Not-Profit Organizations in Support of International Educational and Cultural Activities," announced in the Federal Register June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate: Museum Exchange; Central and West Africa; The Office of Private Sector

Programs will assist in supporting a four-week program for museum professionals from Niger, Mali, Senegal, Ivory Coast, and Benin. The participants will be selected by USIA

representatives in Africa. This project, scheduled for late fall 1988, will be executed by a U.S. not-for-profit institution with expertise in the field of museology. The program design will include a series of workshops at an American museum or university museum laboratory in the following areas: Installation, documentation, archiving, storage management, and conservation of ethnic art, objects, and artifacts. The African delegation will also visit several museums which maintain traditional U.S. cultures and ethnic folklife collections.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. Please refer to this specific program by name in your letter of interest. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs,
Bureau of Educational and Cultural Affairs (ATN) Initiatives—Africa
Museum Exchange, United States Information Agency, 301 4th Street SW, Washington, DC 20547.

Dated: June 17, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-14928 Filed 6-30-88; 8:45 am]

BILLING CODE 4725-01-0

Sunshine Act Meetings

Federal Register

Vol. 53, No. 127

Friday, July 1, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 1, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTRACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-8314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-15017 Filed 6-29-88; 3:21 pm]

BILLING CODE 8351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 8, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTRACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-8314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-15018 Filed 6-29-88; 3:21 pm]

BILLING CODE 8351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 15, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTRACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-8314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-15019 Filed 6-29-88; 3:21 pm]

BILLING CODE 8351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 22, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTRACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-8314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-15020 Filed 6-29-88; 3:21 pm]

BILLING CODE 8351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 29, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Matters.

CONTRACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 254-8314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-15021 Filed 6-29-88; 3:21 p.m.]

BILLING CODE 8351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, June 28, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Application of Longview Bank and Trust Company, Longview, Texas, an insured State nonmember bank, for consent to merge, under its charter and title, with Oak Forest National Bank, Longview, Texas, and for consent to establish the sole office of Oak Forest National Bank as a branch of the resultant bank.

Matters relating to the possible closing of certain insured banks.

In calling the meeting, the board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clark (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was

practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 28, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-14977 Filed 6-29-88; 11:44 am]

BILLING CODE 8714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Wednesday, July 6, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Request for a modification of Order granting Federal deposit insurance:

Sumitomo Trust and Banking Co. (U.S.A.), New York City (Manhattan), New York.

Applications for consent to purchase assets and assume liabilities:

Community Bank, Blountsville, Alabama, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Oneonta Branch of Coosa Federal Savings and Loan Association, Gadsden, Alabama, a non-FDIC-insured institution.

One Valley Bank, National Association, Charleston, West Virginia, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the Ravenswood, Ripley, Charleston, and Hurricane, West Virginia, branches of Poughkeepsie Savings Bank, FSB, Poughkeepsie, New York, a non-FDIC-insured institution.

Application for consent to merge and establish two branches:

Bank of Lake of the Ozarks, Osage Beach, Missouri, an insured State nonmember bank, for consent to merge, under its charter and title, with Camden County Bank, Camdenton, Missouri, and for consent to establish the two offices of Camden County Bank as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47-215

Orlando Consolidated Office, Orlando,

Florida

Case No. 47-219

Addison Consolidated Office, Addison,

Texas

Case No. 47-225

Midland Consolidated Office, Midland,

Texas

Memorandum and resolution re:

(1) Proposed amendments to Part 336 of the Corporation's rules and regulations, entitled "Employee Responsibilities and Conduct"; (2) Proposed amendments to the Corporation's Privacy Act systems of records, which amendments would (a) reflect the addition of the Employee Certification and Acknowledgment of FDIC Standards of Conduct Regulations to the system; (b) delete Financial Disclosure Reports submitted pursuant to title II of the Ethics in Government Act of 1976 from the Corporation's system of records; (c) reflect a change in system location from one location in Washington, DC, to designated divisional, regional, and consolidated offices of the Corporation; and (d) generally clarify and update the system; and (3) Notice of Withdrawal of Statement of Policy Regarding Loans to Corporation Examiners by National Banks, District Banks and State Member Banks of Federal Reserve System.

Memorandum and resolution re:

Notice of Proposed System of Records, which notice advises, in accordance with the Privacy Act of 1974, of the Corporation's establishment of a new system of records entitled "Fitness Center Records System."

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Report on the status of the Corporation's efforts to sell the Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, loan portfolio.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: June 29, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15029 Filed 6-29-88; 3:58 pm]

BILLING CODE 8714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Wednesday, July 6, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(8), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings, (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Matters relating to the Corporation's assistance agreement with an insured bank.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:

Bank Terminations, Kansas City Regional Office, Cost Center—300 (Memo dated May 31, 1988).

Audit Report re:

FIS/GL Audit Report (Memo dated May 18, 1988)

Audit Report re:

Audit of Owned Real Estate—DOL Orlando Consolidated Office (Memo dated June 8, 1988)

Trend Analysis Report re:

Analysis of Regional/Consolidated Office, Audit Results (Memo dated May 25, 1988)

Discussion Agenda:

Request for an exemption pursuant to § 348.4(b)(2) of the Corporation's rules and regulations:

Metropolitan Bank, Phoenix, Arizona.

Requests for relief from adjustment for violations of Regulation Z:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(8), and (c)(9)(A)(ii)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: June 29, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15030 Filed 6-29-88; 3:58 pm]

BILLING CODE 8714-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SERVICES

TIME AND DATE: 8:00 a.m., July 11, 1988.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Board of Regents (1) Approval of Minutes—April 11, 1988; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—President, USUHS; (6) Comments—Members, Board of Regents; (7) Comments—Chairman, Board of Regents

New Business

SCHEDULED MEETINGS: October 17, 1988.**CONTACT PERSON FOR MORE INFORMATION:** Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3028.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 27, 1988.

[FR Doc. 88-14963 Filed 6-29-88; 12:56 pm]

BILLING CODE 3010-01-M

Corrections

Federal Register

Vol. 53, No. 127

Friday, July 1, 1988

25049

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 761 and 796

[OPTS 29000A; FRL-3394-6]

Polychlorinated Biphenyls and Chemical Fate Testing Guidelines; Incorporation by Reference; Update*Correction*

In rule document 88-12957 beginning on page 21641 in the issue of Thursday, June 9, 1988, make the following correction:

On page 21641, in the first column, in the eighth line from the bottom, "ASTM D 3178" should read "ASTM D 3178-84".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300163; FRL-3374-3]

Definitions and Interpretations; Technical Amendments*Correction*

In proposed rule document 88-9754 beginning on page 15854 in the issue of Wednesday, May 4, 1988, make the following corrections:

1. On page 15854, in the first column, under **SUMMARY**, in the ninth line, "asp." should read "app."

2. On the same page, in the same column, under **ADDRESS**, in the eighth line, the ZIP Code should read "20460".

3. On the same page, in the same column, under **FOR FURTHER INFORMATION CONTACT**, in the last line, the ZIP Code should read "20460".

4. On the same page, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the seventh line, "general" was misspelled.

5. On the same page, in the same column, in the same paragraph, in the next to last line, "commodity" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180780; FRL-3388-7]

Receipt of Application for an Emergency Exemption From New York To Use Metolachlor; Solicitation of Public Comment*Correction*

In notice document 88-12106 appearing on page 20011 in the issue of Wednesday, June 1, 1988, make the following corrections:

1. In the second column, in the ninth line, "concerning" was misspelled.

2. In the third column, in the second complete paragraph, in the fourth line, "IF-4" should read "IR-4".

3. Also in the third column, insert "Dated: May 18, 1988." above the signature.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-52063; FRL-3389-4]

Asbestos-Containing Materials in Schools; EPA-Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA)*Correction*

In notice document 88-12195 beginning on page 20066 in the issue of Wednesday, June 1, 1988, make the following corrections:

1. On page 20067, in the third column, the fourth line from the bottom should read "The New York City Department of".

2. On page 20068, in the first column, in the first complete paragraph, in the fifth line, "accreditation" was misspelled.

3. On page 20070, in the first column, in the 35th line, "(iv)(a)" should read "(vi)(a)".

4. On page 20071, in the first column, in the 18th line from the bottom, "(iii)(a)" should read "(ii)(a)".

5. On the same page, in the same column, in the ninth line from the bottom, "(ii)(a)" should read "(iii)(a)".

6. On page 20073, in the first column, in the 12th line, the phone number should read "(800) 634-7234".

7. On page 20074, in the first column, in the 18th line from the bottom, "Services" should read "Sciences".

8. On page 20075, in the second column, in the 17th line from the bottom, "2/2/88" should read "2/1/88".

9. On the same page, in the third column, the 26th line should read "53575-0031".

10. On page 20076, in the first column, in the 24th line from the bottom, "32730" should read "32740".

11. On page 20077, in the second column, in the second line from the bottom, "Contractor" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44506; FRL-3381-9]

TSCA Chemical Testing; Receipt of Test Data*Correction*

In notice document 88-11128 appearing on page 17760 in the issue of Wednesday, May 18, 1988, make the following corrections:

In the second column, under **SUPPLEMENTARY INFORMATION**, in the fifth line, remove "88T-412". Also in the second column, under **II. Public Record**, in the fifth line, "reported" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53103; FRL-3396-7]

Premanufacture Notices; Monthly Status Report for February 1988*Correction*

In notice document 88-13213 beginning on page 24402 in the issue of Tuesday, June 28, 1988, make the following correction:

On page 24403, in the second column, in the first line of the heading for "III", "1982" should read "182".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 88N-0009]

Clinical Chemistry and Clinical Toxicology Devices; Exemptions From Premarket Notification

Correction

In rule document 88-12855 beginning on page 21447 in the issue of Wednesday, June 8, 1988, make the following correction:

PART 862—[CORRECTED]

On page 21450, in the first column, after the section heading for § 862.3850 insert a line of asterisks.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0187]

Cook Pacemaker Corp.; Premarket Approval of Sensor Model Keivin® 500 Pulse Generator, Model K Unipolar Temperature Sensing Lead, Model 5000 Transceiver, and Model 50 Lead Tester

Correction

In notice document 88-12942 beginning on page 21729 in the issue of Thursday, June 9, 1988, make the following corrections:

1. On page 21730, in the first column, in the signature line at the end of the document, "John C. Willforth" should read "John C. Villforth".
2. On the same page, in the same column, in the file line at the end of the document, "FR Doc. 88-2942" should read "FR Doc. 88-12942".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Machis Lower Alabama Creek Indian Tribe, Inc.

Correction

In notice document 88-14222 beginning on page 23694 in the issue of Thursday, June 23, 1988, make the following correction:

On page 23694, in the third column, in the first complete paragraph, in the 18th line, "geographical" should read "genealogical".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25531 Amdt. No. 91-203]

RIN 2120-AC86

Transponder with Automatic Altitude Reporting Capability Requirement

Correction

In rule document 88-14065 beginning on page 23356 in the issue of Tuesday, June 21, 1988, make the following corrections:

1. On page 23360, in the second column, in the sixth line from the bottom, "ther" should read "the".
2. On page 23364, in the first column, in the first line, after "both" insert "aircraft".
3. On page 23367, in the first column, in the second complete paragraph, in the 13th line, "inspection" should read "inspections".
4. On page 23368, in the first column, in the second paragraph, in the second line, after "the" insert "docket contains additional information related to the".

BILLING CODE 1505-01-D

Friday
July 1, 1988

Part II

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Publication of Annual List

federal register

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1988 Rev.)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON
FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective: July 1, 1988

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of this Circular and other information pertinent to Federal sureties may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227. Telephone: (202) 287-3921. Interim changes are published in the FEDERAL REGISTER as they occur.

The following companies have complied with the law and the regulations of the Treasury Department and are acceptable as sureties and reinsurers on Federal bonds under Sections 9304 to 9308 of Title 31 of the United States Code (See Note a/).

Mitchell A. Levine
Mitchell A. Levine
Assistant Commissioner, Comptroller
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

ACCELERATION NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 475 Metro Place North, P.O. Box 7000, Dublin, OH 43017. UNDERWRITING LIMITATION b/: \$1,106,000. SURETY LICENSES: AL, DC, GA, IA, KY, MI, MS, NM, OH, OK, WY. INCORPORATED IN: Ohio.

Accredited Surety and Casualty Company, Inc. BUSINESS ADDRESS: 918 South Orange Avenue, Orlando, FL 32806. UNDERWRITING LIMITATION b/: \$330,000. SURETY LICENSES c/: AL, FL, GA, IN, LA, MS, VA. INCORPORATED IN: Florida.

ABCON REINSURANCE COMPANY OF AMERICA. BUSINESS ADDRESS: 127 John Street, New York, NY 10038. UNDERWRITING LIMITATION b/: \$2,027,000. SURETY LICENSES c/: AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, LA, MD, MA, MS, NY, OK, TX. INCORPORATED IN: New York.

The Aetna Casualty and Surety Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: \$204,042,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois. BUSINESS ADDRESS: 1020 31st Street, Downers Grove, IL 60515. UNDERWRITING LIMITATION b/: \$41,260,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: \$327,455,000. SURETY LICENSES c/: CT, DC. INCORPORATED IN: Connecticut.

Affiliated FM Insurance Company. BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: \$4,511,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 2525 "C" Street, Suite 400, Anchorage, AK 99503. UNDERWRITING LIMITATION b/: \$2,108,000. SURETY LICENSES c/: AK, CA, ID, MS, SD. INCORPORATED IN: Alaska.

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335. UNDERWRITING LIMITATION b/: \$309,000. SURETY LICENSES c/: DC, FL, IL, IN, IA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania.

Allendale Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: \$29,130,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Allied Mutual Insurance Company. BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50309. UNDERWRITING LIMITATION b/: \$11,803,000. SURETY LICENSES c/: AZ, AR, CA, CO, ID, IL, IN, IA, KS, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

*See footnotes at end of Circular.

BEST COPY AVAILABLE

Allstate Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: \$338,161,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois.

American Automobile Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: \$7,147,000. SURETY LICENSES c/: All except AS, GU, MA, PR, VI. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA.1* BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. UNDERWRITING LIMITATION b/: \$4,047,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Florida.

American Bonding Company. BUSINESS ADDRESS: 7470 North Figueroa Street, Los Angeles, CA 90041. UNDERWRITING LIMITATION b/: \$388,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, HI, ID, IA, KS, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: Nebraska.

American Casualty Company of Reading, Pennsylvania. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: \$8,154,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Pennsylvania.

American Credit Indemnity Company. BUSINESS ADDRESS: 300 St. Paul Place, Baltimore, MD 21202. UNDERWRITING LIMITATION b/: \$5,676,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

American Economy Insurance Company.1* BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: \$16,682,000. SURETY LICENSES c/: All except AS, CT, GU, NH, NJ, PR, VI. INCORPORATED IN: Indiana.

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: \$9,538,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Massachusetts.

American Fidelity Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: \$981,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NH, ND, OK, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont.

American Fidelity Insurance Company. BUSINESS ADDRESS: P.O. Box 25523, Oklahoma City, OK 73125. UNDERWRITING LIMITATION b/: \$1,658,000. SURETY LICENSES c/: AR, CA, CO, FL, GA, ID, IN, IA, KS, KY, LA, MS, MO, MT, NE, NV, NJ, NM, ND, OK, PA, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Oklahoma.

American Fire and Casualty Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: \$6,114,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA. INCORPORATED IN: Florida.

*See footnotes at end of Circular.

American General Fire and Casualty Company. BUSINESS ADDRESS: Post Office Box 1502, Houston, TX 77001. UNDERWRITING LIMITATION b/: \$3,284,000. SURETY LICENSES c/: AR, LA, NM, OK, TX. INCORPORATED IN: Texas.

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 231 North Martingale Road, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: \$3,862,000. SURETY LICENSES c/: All except AS, GU, HI, OH, PR, VT, VI. INCORPORATED IN: New York.

American Home Assurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: \$46,624,000. SURETY LICENSES c/: All except AS, PR. INCORPORATED IN: New York.

The American Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: \$15,748,000. SURETY LICENSES c/: All except AS, MA. INCORPORATED IN: New Jersey.

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: \$13,103,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

American Motorists Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: \$29,123,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Illinois.

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: \$1,086,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New York.

American Re-Insurance Company. BUSINESS ADDRESS: One Liberty Plaza, 91 Liberty Street, New York, NY 10006. UNDERWRITING LIMITATION b/: \$34,549,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Delaware.

American Resources Insurance Co., Inc. BUSINESS ADDRESS: P.O. Box 91149, Mobile, AL 36691. UNDERWRITING LIMITATION b/: \$389,000. SURETY LICENSES c/: IN, KY, TN. INCORPORATED IN: Alabama.

THE AMERICAN ROAD INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 6027, Dearborn, MI 48121-6027. UNDERWRITING LIMITATION b/: \$25,091,000. SURETY LICENSES c/: All except AS, CT, GU, MA, PR, VI, WI. INCORPORATED IN: Michigan.

American Southern Insurance Company. BUSINESS ADDRESS: Post Office Box 7369, Station C, Atlanta, GA 30357. UNDERWRITING LIMITATION b/: \$1,204,000. SURETY LICENSES c/: AL, FL, GA, SC. INCORPORATED IN: Georgia.

*See footnotes at end of Circular.

American States Insurance Company. 1* BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: \$62,213,000. SURETY LICENSES c/: All except AS, CT, GU, NH, NY, PR, VI. INCORPORATED IN: Indiana.

American Surety Company. BUSINESS ADDRESS: 7470 North Figueroa St., Los Angeles, CA 90041. UNDERWRITING LIMITATION b/: \$109,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

American Surety and Casualty Company. BUSINESS ADDRESS: Post Office Box 10239, Jacksonville, FL 32247-0239. UNDERWRITING LIMITATION b/: \$534,000. SURETY LICENSES c/: FL. INCORPORATED IN: Florida.

Amwest Surety Insurance Company. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: \$1,059,000. SURETY LICENSES c/: All except AS, CT, MD, NH, NJ, NY, PR, RI, SC, VT, VA, VI. INCORPORATED IN: California.

Antilles Insurance Company. BUSINESS ADDRESS: Post Office Box 3507, Old San Juan, PR 00904. UNDERWRITING LIMITATION b/: \$1,077,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

ANVIL INSURANCE COMPANY. BUSINESS ADDRESS: 18021 Cowan Street, Irvine, CA 92714. UNDERWRITING LIMITATION b/: \$870,000. SURETY LICENSES c/: AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, WY. INCORPORATED IN: California.

Argonaut Insurance Company. BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025. UNDERWRITING LIMITATION b/: \$19,670,000. SURETY LICENSES c/: All except AS, ME, PR, VI. INCORPORATED IN: California.

Arkwright Mutual Insurance Company. BUSINESS ADDRESS: 225 Wyman Street, Waltham, MA 02254-9198. UNDERWRITING LIMITATION b/: \$29,462,000. SURETY LICENSES c/: All. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: \$4,129,000. SURETY LICENSES c/: All except AS, GU, MA, OK, VI. INCORPORATED IN: California.

ATLANTIC CASUALTY AND FIRE INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 6108, Columbia, SC 29260-6108. UNDERWRITING LIMITATION b/: \$1,001,000. SURETY LICENSES c/: AL, AK, AZ, DE, GA, IN, IA, LA, MD, MN, MS, NM, OH, OK, PA, SC, SD, TN, UT, VA, WY. INCORPORATED IN: South Carolina.

Atlantic Mutual Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: \$23,339,000. SURETY LICENSES c/: All except AL, GU, VI. INCORPORATED IN: New York.

*See footnotes at end of Circular.

The Automobile Insurance Company of Hartford, Connecticut. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: \$3,607,000. SURETY LICENSES c/: All except AL, AS, DE, GU. INCORPORATED IN: Connecticut.

Auto-Owners Insurance Company. BUSINESS ADDRESS: Post Office Box 30660, Lansing, MI 48909. UNDERWRITING LIMITATION b/: \$46,984,000. SURETY LICENSES c/: AL, AZ, CA, FL, GA, IL, IN, IA, MI, MN, MO, NE, NC, ND, OH, SC, SD, TN, TX, UT, WI. INCORPORATED IN: Michigan.

Balboa Insurance Company. BUSINESS ADDRESS: 3349 Michelson Drive, Irvine, CA 92715-1606. UNDERWRITING LIMITATION b/: \$2,407,000. SURETY LICENSES c/: All except AS, DC, IA, PR. INCORPORATED IN: California.

Bankers Multiple Line Insurance Company. BUSINESS ADDRESS: 4810 North Kenneth Avenue, Chicago, IL 60630. UNDERWRITING LIMITATION b/: \$2,501,000. SURETY LICENSES c/: All except AS, DE, GU, HI, ME, PR, VI. INCORPORATED IN: Iowa.

Binford Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60193. UNDERWRITING LIMITATION b/: \$117,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

BOND SAFEGUARD INSURANCE COMPANY. BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. UNDERWRITING LIMITATION b/: \$98,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$1,963,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Massachusetts.

The Buckeye Union Insurance Company. BUSINESS ADDRESS: Post Office Box 1499, Columbus, OH 43216. UNDERWRITING LIMITATION b/: \$28,594,000. SURETY LICENSES c/: DC, FL, IL, IN, KY, MI, MO, NY, OH, PA, VA, WV. INCORPORATED IN: Ohio.

CBIC Bonding and Insurance Company. 2*

CIM Insurance Corporation. 1* BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI, 48202. UNDERWRITING LIMITATION b/: \$1,268,000. SURETY LICENSES c/: AL, AK, DC, ID, IL, IA, ME, MD, MI, MN, MS, NW, NY, NC, ND, OH, RI, SC, SD, TN, TX, VT, WY. INCORPORATED IN: New York.

CNA CASUALTY OF PUERTO RICO. BUSINESS ADDRESS: Call Box 70128, San Juan, PR 00936. UNDERWRITING LIMITATION b/: \$1,010,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

*See footnotes at end of Circular.

The Camden Fire Insurance Association. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: \$30,183,000. SURETY LICENSES c/: CA, CO, CT, DC, FL, IL, IN, IA, KS, KY, MD, MI, MN, MO, NV, NJ, NM, NY, NC, ND, OH, PA, RI, UT, VA, WV, WI. (Fidelity only in AL, SC.) INCORPORATED IN: New Jersey.

Capitol Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. UNDERWRITING LIMITATION b/: \$1,054,000. SURETY LICENSES c/: AZ, FL, ID, IL, IN, IA, LA, MI, MN, MO, MT, NM, ND, OR, SD, TX, WI, WY. INCORPORATED IN: Wisconsin.

Centennial Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: \$6,056,900. SURETY LICENSES c/: All except AL, GU, VI. INCORPORATED IN: New York.

Central Mutual Insurance Company. BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. UNDERWRITING LIMITATION b/: \$3,430,000. SURETY LICENSES c/: All except AS, AR, GU, HI, ND, OR, PR, SD, VI, WI. INCORPORATED IN: Ohio.

Century Indemnity Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$771,000. SURETY LICENSES c/: All except AS, GU, HI, OR, PR, VI. INCORPORATED IN: Connecticut.

Century Reinsurance Company. BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA 19102. UNDERWRITING LIMITATION b/: \$2,218,000. SURETY LICENSES c/: AL, CA, DE, GA, HI, IN, IA, KS, LA, MS, NJ, NY, OK, TX, UT. INCORPORATED IN: Delaware.

CENTURY SURETY COMPANY. BUSINESS ADDRESS: 1889 Fountain Square Court, Columbus, OH 43224. UNDERWRITING LIMITATION b/: \$304,000. SURETY LICENSES c/: IN, OH, WV. INCORPORATED IN: Ohio.

The Charter Oak Fire Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: \$8,086,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Connecticut.

CHRYSLER INSURANCE COMPANY. BUSINESS ADDRESS: 901 Wilshire Drive, Troy, MI 48064. UNDERWRITING LIMITATION b/: \$7,048,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Michigan.

CIGNA INSURANCE COMPANY. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$14,115,000. SURETY LICENSES c/: All except AS, HI, LA. INCORPORATED IN: California.

CIGNA Reinsurance Company. BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA 19102. UNDERWRITING LIMITATION b/: \$11,221,000. SURETY LICENSES c/: All except AS, GU, ME, VI. INCORPORATED IN: Delaware.

*See footnotes at end of Circular.

Cumis Insurance Society, Inc. BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. UNDERWRITING LIMITATION b/: \$6,252,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY. BUSINESS ADDRESS: 9501 East Shea Blvd., Scottsdale, AZ 85260-6719. UNDERWRITING LIMITATION b/: \$7,238,000. SURETY LICENSES c/: All except AS, GU, PR, VA, VI. INCORPORATED IN: Wisconsin.

DELTA CASUALTY COMPANY. BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. UNDERWRITING LIMITATION b/: \$894,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois.

DEVELOPERS INSURANCE COMPANY. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: \$387,000. SURETY LICENSES c/: AZ, CA, NV. INCORPORATED IN: California.

Empire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. UNDERWRITING LIMITATION b/: \$2,857,000. SURETY LICENSES c/: All except AS, CT, DE, DC, GU, IA, MA, NJ, NY, OK, OR, PR, RI, TN, VA, VI, WV. INCORPORATED IN: Nebraska.

The Employers' Fire Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: \$3,973,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Massachusetts.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company. BUSINESS ADDRESS: 2000 Westwood Drive, Wausau, WI 54401. UNDERWRITING LIMITATION b/: \$12,965,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company. BUSINESS ADDRESS: Post Office Box 712, Des Moines, IA 50303-0712. UNDERWRITING LIMITATION b/: \$12,908,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation. BUSINESS ADDRESS: 5200 Metcalf, Post Office Box 2991, Overland Park, KS 66201. UNDERWRITING LIMITATION b/: \$80,763,000. SURETY LICENSES c/: All except AS, GU, HI, VI. INCORPORATED IN: Missouri.

Erie Insurance Company. BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. UNDERWRITING LIMITATION b/: \$651,000. SURETY LICENSES c/: DC, IN, KY, MD, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

EVANSTON INSURANCE COMPANY. BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING LIMITATION b/: \$6,959,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

THE EXPLORER INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92138-5563. UNDERWRITING LIMITATION b/: \$365,000. SURETY LICENSES: AZ, CA. INCORPORATED IN: Arizona.

*See footnotes at end of Circular.

The Cincinnati Insurance Company. BUSINESS ADDRESS: Post Office Box 145496, Cincinnati, OH 45250-5496. UNDERWRITING LIMITATION b/: \$34,662,000. SURETY LICENSES c/: All except AS, CT, GU, HI, IA, ME, NH, SD, VT, VI. INCORPORATED IN: Ohio.

Commercial Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$6,378,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: \$21,789,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Massachusetts.

Consolidated Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: \$1,855,000. SURETY LICENSES c/: FL, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: \$158,456,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Illinois.

The Continental Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$27,079,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New Hampshire.

Continental Reinsurance Corporation. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$6,738,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, MI, MT, NV, NJ, NM, NY, NC, OK, OH, TX, UT, VA, WA. INCORPORATED IN: California.

Continental Western Insurance Company. BUSINESS ADDRESS: Post Office Box 1594, Des Moines, IA 50306. UNDERWRITING LIMITATION b/: \$4,895,000. SURETY LICENSES c/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, NE, NH, NV, NM, ND, OH, OK, SD, UT, WI, WY. INCORPORATED IN: Iowa.

Contractor's Bonding and Insurance Company. BUSINESS ADDRESS: 1213 Valley Street, Seattle, WA 98109-0271. UNDERWRITING LIMITATION b/: \$484,000. SURETY LICENSES c/: All except AL, AS, CT, GU, IL, ME, NH, NJ, NY, NC, PA, PR, RI, VT, VI, WI. INCORPORATED IN: Washington.

Cooperativa de Seguros Múltiples de Puerto Rico. BUSINESS ADDRESS: P.O. Box 3846, San Juan, PR 00936. UNDERWRITING LIMITATION b/: \$4,227,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Cornhusker Casualty Company. BUSINESS ADDRESS: 9290 West Dodge Road, Omaha, NE 68114. UNDERWRITING LIMITATION b/: \$4,737,000. SURETY LICENSES c/: CO, IA, KS, NE, SD, WY. INCORPORATED IN: Nebraska.

*See footnotes at end of Circular.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. UNDERWRITING LIMITATION b/: \$3,772,000. SURETY LICENSES c/: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. UNDERWRITING LIMITATION b/: \$3,266,000. SURETY LICENSES c/: AR, CO, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, ND, OH, OK, SD, TX, UT, WI, WY. INCORPORATED IN: Iowa.

FAR WEST INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: \$180,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

Federal Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$111,472,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New Jersey.

FEDERATED MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 121 East Park Square, Oatonna, MN 55060. UNDERWRITING LIMITATION b/: \$24,257,000. SURETY LICENSES c/: All except AK, AS, GU, HI, NH, PR, RI, VI. INCORPORATED IN: Minnesota.

The Fidelity and Casualty Company of New York. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$12,659,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: \$378,000. SURETY LICENSES c/: KS, MD, MO, TX. INCORPORATED IN: Maryland.

Fidelity and Deposit Company of Maryland. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: \$16,480,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Maryland.

Fidelity and Guaranty Insurance Underwriters, Inc. BUSINESS ADDRESS: 100 Light Street, P.O. Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: \$4,975,000. SURETY LICENSES c/: TX. INCORPORATED IN: Ohio.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: \$84,825,000. SURETY LICENSES c/: All except AS, MA. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$40,034,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Jersey.

*See footnotes at end of Circular.

First Financial Insurance Company. BUSINESS ADDRESS: 401-417 Fayette Avenue, Springfield, IL 62704-2788. UNDERWRITING LIMITATION b/: \$565,000. SURETY LICENSES c/: All except AL, AS, CT, GU, ME, NE, NH, NJ, NY, OK, PA, PR, VT, VI. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd.¹ BUSINESS ADDRESS: Post Office Box 2866, Honolulu, HI 96803. UNDERWRITING LIMITATION b/: \$2,398,000. SURETY LICENSES c/: GU, HI. INCORPORATED IN: Hawaii.

First National Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: \$3,189,000. SURETY LICENSES c/: All except AS, GU, HI, ME, NH, PR, VT, VI. INCORPORATED IN: Washington.

Fritz Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: \$131,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

FRONTIER INSURANCE COMPANY. BUSINESS ADDRESS: 196 Broadway, Monticello, NY 12701. UNDERWRITING LIMITATION b/: \$729,000. SURETY LICENSES c/: AZ, CO, DE, DC, FL, ID, MD, MS, MT, NM, NY, TX, VA. INCORPORATED IN: New York.

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: \$106,431,000. SURETY LICENSES c/: All except AL, AS, AR, GU, ME, MA, SC, VI. (Fidelity only: AL, SC). INCORPORATED IN: Pennsylvania.

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED. BUSINESS ADDRESS: G.P.O. Box 3786, SAN JUAN, PR 00936. UNDERWRITING LIMITATION b/: \$1,252,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

GENERAL CASUALTY COMPANY OF WISCONSIN. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: \$8,336,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, SD, WI. INCORPORATED IN: Wisconsin.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: \$24,889,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Washington.

General Reinsurance Corporation. BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. UNDERWRITING LIMITATION b/: \$151,823,000. SURETY LICENSES c/: All except AS, GU, HI, VI. INCORPORATED IN: Delaware.

The Glens Falls Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$1,841,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Delaware.

*See footnotes at end of Circular.

Global Surety & Insurance Co. BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. UNDERWRITING LIMITATION b/: \$2,305,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska.

Globe Indemnity Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd. Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: \$16,440,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Delaware.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, IN 46206. UNDERWRITING LIMITATION b/: \$3,200,000. SURETY LICENSES c/: All except AL, AK, AS, CT, DE, DC, FL, GU, HI, ID, ME, MD, MA, MT, NH, NJ, NY, ND, PA, PR, RI, UT, VT, VI, WV. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY.¹ BUSINESS ADDRESS: 1001 Texas Avenue, Suite 240, Houston, TX 77002. UNDERWRITING LIMITATION b/: \$230,000. SURETY LICENSES c/: DE, MD, TX. INCORPORATED IN: Texas.

Granite State Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: \$956,000. SURETY LICENSES c/: All except CT, DE, HI, PR, VI. INCORPORATED IN: New Hampshire.

Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: \$43,956,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Ohio.

Great Northern Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$3,625,000. SURETY LICENSES c/: All except AS, CA, CT, DE, GU, ID, NC, PR, TN, VI. INCORPORATED IN: Minnesota.

Greater New York Mutual Insurance Company. BUSINESS ADDRESS: 215 Lexington Avenue, New York, NY 10016. UNDERWRITING LIMITATION b/: \$7,712,000. SURETY LICENSES c/: All except AK, GU, HI, VI. INCORPORATED IN: New York.

Gulf Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: \$11,384,000. SURETY LICENSES c/: All except AS, GU, NJ, PR, VI. INCORPORATED IN: Missouri.

The Hamilton Mutual Insurance Company of Cincinnati, Ohio. BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206. UNDERWRITING LIMITATION b/: \$221,000. SURETY LICENSES c/: IN, KY, MI, OH. INCORPORATED IN: Ohio.

The Hanover Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: \$20,371,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Hampshire.

*See footnotes at end of Circular.

HARCO NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. UNDERWRITING LIMITATION b/: \$2,491,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

Harleysville Mutual Insurance Company. BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438. UNDERWRITING LIMITATION b/: \$17,620,000. SURETY LICENSES c/: CA, CO, DE, DC, GA, IL, IN, IA, KS, MD, MI, MS, MO, NJ, NM, NC, OH, OK, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$65,940,000. SURETY LICENSES c/: All except AS, GU, VI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$10,281,000. SURETY LICENSES c/: All except AS, GU, IN, PR, VI, WY. INCORPORATED IN: New Jersey.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$147,993,000. SURETY LICENSES c/: All except AS, GU, IN, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Alabama.3*

Hartford Insurance Company of Connecticut.3* BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$1,416,000. SURETY LICENSES c/: AL, PA. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$3,543,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$1,379,000. SURETY LICENSES c/: All except AL, AS, AZ, CO, DE, GU, HI, IN, ME, MA, MN, MS, MO, NV, NH, NJ, NC, OH, OK, PR, RI, TN, VT, VI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$1,126,000. SURETY LICENSES c/: FL, GA, LA, PA. INCORPORATED IN: Florida.

THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 2255, Honolulu, HI 96804. UNDERWRITING LIMITATION b/: \$339,000. SURETY LICENSES c/: AK, AZ, CA, HI, NV, OR, WA. INCORPORATED IN: Hawaii.

Heart of America Fire and Casualty Company. BUSINESS ADDRESS: 215 West Pershing Road, Kansas City, MO 64108-2540. UNDERWRITING LIMITATION b/: \$382,000. SURETY LICENSES c/: AK, AZ, IN, IA, KS, MS, MO, NV, UT. INCORPORATED IN: Missouri.

*See footnotes at end of Circular.

Highlands Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002-7392. UNDERWRITING LIMITATION b/: \$19,770,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002-7392. UNDERWRITING LIMITATION b/: \$1,667,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

The Home Indemnity Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$6,876,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Hampshire.

The Home Insurance Company. BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$50,520,000. SURETY LICENSES c/: All except AS, VI. INCORPORATED IN: New Hampshire.

Houston General Insurance Company. BUSINESS ADDRESS: Post Office Box 2932, Fort Worth, TX 76113-2932. UNDERWRITING LIMITATION b/: \$1,401,000. SURETY LICENSES c/: All except AS, CT, GU, HI, ME, MA, MN, NE, NH, NJ, NC, PA, PR, RI, VT, VI, WV, WI. INCORPORATED IN: Texas.

ITT Lyndon Property Insurance Company. BUSINESS ADDRESS: 12555 Manchester Road, St. Louis, MO 63131. UNDERWRITING LIMITATION b/: \$4,786,000. SURETY LICENSES c/: All except AS, GU, ME, NH, NJ, PR. INCORPORATED IN: Missouri.

Illinois National Insurance Co. BUSINESS ADDRESS: 133 South 4th Street, Springfield, IL 62701. UNDERWRITING LIMITATION b/: \$1,800,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MO, MT, NE, NH, NM, NY, ND, OH, SD, TX, UT, VT, WA. INCORPORATED IN: Illinois.

Indemnity Company of California. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: \$632,000. SURETY LICENSES c/: AZ, CA, NV, OR. INCORPORATED IN: California.

Indemnity Insurance Company of North America.1* BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$14,013,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New York.

Indiana Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: \$11,360,000. SURETY LICENSES c/: FL, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana.

Indiana Lumbermens Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 68600, Indianapolis, IN 46268. UNDERWRITING LIMITATION b/: \$1,446,000. SURETY LICENSES c/: All except AS, CT, GU, HI, ME, MA, NH, NJ, NY, PR, RI, VT, VI. INCORPORATED IN: Indiana.

*See footnotes at end of Circular.

Industrial Indemnity Company. BUSINESS ADDRESS: Post Office Box 7468, San Francisco, CA 94120. UNDERWRITING LIMITATION b/: \$10,363,000. SURETY LICENSES c/: All except AS, PR, VI, WV. INCORPORATED IN: California.

Industrial Indemnity Company of the Northwest. BUSINESS ADDRESS: 2121 4th Avenue, Suite 1500, Seattle, WA 98121. UNDERWRITING LIMITATION b/: \$547,000. SURETY LICENSES c/: AK, AZ, CA, DC, HI, ID, MT, NV, OR, UT, WA. INCORPORATED IN: Washington.

Inland Insurance Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: \$1,869,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of North America.1* BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$46,089,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: \$11,877,000. SURETY LICENSES c/: All except GU. INCORPORATED IN: Pennsylvania.

Insurance Company of the West. BUSINESS ADDRESS: Post Office Box 85563, San Diego, CA 92138-5563. UNDERWRITING LIMITATION b/: \$3,357,000. SURETY LICENSES c/: AZ, CA, NV, NM, OR, TX, UT, WA. INCORPORATED IN: California.

Integon Indemnity Corporation. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: \$969,000. SURETY LICENSES c/: All except AS, CA, CO, CT, DC, GU, HI, IL, ME, MD, MA, MI, MN, MT, NH, NJ, NY, ND, PR, RI, SD, VT, VI, WI, WY. INCORPORATED IN: North Carolina.

International Cargo and Surety Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60193. UNDERWRITING LIMITATION b/: \$157,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

International Fidelity Insurance Company. BUSINESS ADDRESS: 24 Commerce Street, Suite 333, Newark, NJ 07102. UNDERWRITING LIMITATION b/: \$864,000. SURETY LICENSES c/: All except AS, CA, GU, KY, ME, NH, RI, VT, VI, WV, WI. INCORPORATED IN: New Jersey.

International Insurance Company. BUSINESS ADDRESS: 305 Madison Avenue, CN-1932, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: \$4,846,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

ISLAND INSURANCE COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96813. UNDERWRITING LIMITATION b/: \$3,139,000; SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

*See footnotes at end of Circular.

John Deere Insurance Company. BUSINESS ADDRESS: 34th Avenue and 80th Street, Moline, IL 61265. UNDERWRITING LIMITATION b/: \$10,362,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Illinois.

The Kansas Bankers Surety Company. BUSINESS ADDRESS: Post Office Box 1654, Topeka, KS 66601. UNDERWRITING LIMITATION b/: \$621,000. SURETY LICENSES c/: CO, IA, KS, MO, NE, OK, SD, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company. BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$1,221,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: Missouri.

Kentucky Central Insurance Company. BUSINESS ADDRESS: Kincaid Towers, Lexington, KY 40507. UNDERWRITING LIMITATION b/: \$1,211,000. SURETY LICENSES c/: AL, GA, IN, KS, KY, MD, MS, MO, NM, TN, UT, VA. INCORPORATED IN: Kentucky.

Lawyers Surety Corporation. BUSINESS ADDRESS: 1221 River Bend Drive, Dallas, TX 75247. UNDERWRITING LIMITATION b/: \$488,000. SURETY LICENSES c/: AL, AR, CA, DC, FL, GA, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. UNDERWRITING LIMITATION b/: \$153,831,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Massachusetts.

Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: \$137,542,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

MCA Insurance Company.4* BUSINESS ADDRESS: 484 Central Avenue, Newark, NJ 07107. UNDERWRITING LIMITATION b/: \$2,862,000. SURETY LICENSES c/: All except AS, CT, GU, NH, PR, VI, WV. INCORPORATED IN: New Jersey.

MIC Property and Casualty Insurance Corporation.1* BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: \$4,358,000. SURETY LICENSES c/: All except AL, AS, CA, DE, GU, HI, IL, ME, NH, NC, OR, PR, RI, VT, VI, WY. INCORPORATED IN: Michigan.

Maine Bonding and Casualty Company. BUSINESS ADDRESS: Post Office Box 448, Portland, ME 04112. UNDERWRITING LIMITATION b/: \$996,000. SURETY LICENSES c/: ME, MA, NH, RI, VT. INCORPORATED IN: Maine.

Maryland Casualty Company. BUSINESS ADDRESS: Post Office Box 1228, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: \$73,624,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Maryland.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: \$932,000. SURETY LICENSES c/: All except AK, AS, AZ, DE, GU, HI, ID, ME, MT, NV, NM, ND, OR, PR, SD, UT, VI, WV, WY. INCORPORATED IN: Massachusetts.

*See footnotes at end of Circular.

The Mercantile and General Reinsurance Company of America. BUSINESS ADDRESS: 177 Madison Avenue, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: \$5,247,000. SURETY LICENSES c/: All except AL, AK, AS, AZ, DC, GU, HI, ME, MN, MO, MT, NM, NC, ND, OR, RI, SD, VA, VI. INCORPORATED IN: New York.

Merchants Bonding Company (Mutual). BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. UNDERWRITING LIMITATION b/: \$480,000. SURETY LICENSES c/: AZ, CA, CO, FL, IA, KS, MI, MN, MO, NE, NV, NM, OK, PA, TX, WA. INCORPORATED IN: Iowa.

Meritplan Insurance Company. BUSINESS ADDRESS: 3349 Michelson Drive, Irvine, CA 92715-1606. UNDERWRITING LIMITATION b/: \$1,441,000. SURETY LICENSES c/: All except AK, AS, AR, CT, DC, GU, IL, ME, MA, NH, NJ, ND, OK, PA, PR, RI, SD, VT, VA, VI, WV, WY. INCORPORATED IN: California.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 30060, Lansing, MI 48909. UNDERWRITING LIMITATION b/: \$5,827,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, ID, IN, KS, KY, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, UT, VA, WA. INCORPORATED IN: Michigan.

Michigan Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 5110, Southfield, MI 48066-5110. UNDERWRITING LIMITATION b/: \$18,376,000. SURETY LICENSES c/: All except AS, DE, GU, HI, OR, PR, VI. (DC - Fidelity only.) INCORPORATED IN: Michigan.

Mid-Century Insurance Company. BUSINESS ADDRESS: Post Office Box 2478, Terminal Annex, Los Angeles, CA 90051. UNDERWRITING LIMITATION b/: \$2,571,000. SURETY LICENSES c/: AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, UT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: \$4,001,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, IN, IA, KS, MN, ME, MO, MT, NE, NM, ND, OK, OR, SD, TN, TX, UT, WA, WI. INCORPORATED IN: Oklahoma.

The Millers Mutual Fire Insurance Company of Texas. BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, TX 76113. UNDERWRITING LIMITATION b/: \$4,988,000. SURETY LICENSES c/: CO, DC, ID, IL, IN, IA, LA, NM, OK, OR, PA, TX, UT, WA, WY. INCORPORATED IN: Texas.

Millers Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, Alton, IL 62002. UNDERWRITING LIMITATION b/: \$4,291,000. SURETY LICENSES c/: AL, AR, CO, DC, GA, IL, IN, IA, ME, LA, MN, MS, ND, MT, NE, NC, ND, OH, OK, SD, TN, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: 107 West Oakland Avenue, Post Office Box 463, Austin, MN 55912. UNDERWRITING LIMITATION b/: \$121,000. SURETY LICENSES c/: MN, MT, ND. INCORPORATED IN: Minnesota.

MOTOR CLUB OF AMERICA INSURANCE COMPANY. 1*

*See footnotes at end of Circular.

MOTORS INSURANCE CORPORATION. 1* BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: \$56,306,000. SURETY LICENSES c/: All except AS, AZ, CA, CO, CT, GU, HI, KS, MA, MO, OH, PR, UT, VI. INCORPORATED IN: New York.

Munich American Reinsurance Company. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: \$19,538,000. SURETY LICENSES c/: All except AS, FL, GU, KY, ME, MD, MA, NE, NC, PR, RI, SD, VT, VI, WY. INCORPORATED IN: New York.

National Automobile and Casualty Insurance Company. BUSINESS ADDRESS: Post Office Box 7040, Pasadena, CA 91109. UNDERWRITING LIMITATION b/: \$331,000. SURETY LICENSES c/: AK, AZ, CA, NV, TX. INCORPORATED IN: California.

National-Ben Franklin Insurance Company of Illinois. BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: \$11,173,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MN, NY, NC, ND, WI. INCORPORATED IN: Illinois.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: \$16,708,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Connecticut.

National General Fire & Casualty Insurance Company. BUSINESS ADDRESS: 855 South Plaza Drive, Jackson, MS 39204. UNDERWRITING LIMITATION b/: \$251,000. SURETY LICENSES: FL, IA, MS, TN. INCORPORATED IN: Mississippi.

National Grange Mutual Insurance Company. 1* BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. UNDERWRITING LIMITATION b/: \$4,943,000. SURETY LICENSES c/: CT, DE, DC, ME, MD, MA, NH, NY, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: \$118,272,000. SURETY LICENSES c/: All except AL, AS, AZ, GU, HI, MA, NJ, NY, PR, VI. INCORPORATED IN: Nebraska.

NATIONAL REINSURANCE CORPORATION. BUSINESS ADDRESS: 777 Long Ridge Road, Stamford, CT 06904-2167. UNDERWRITING LIMITATION b/: \$16,391,000. SURETY LICENSES c/: All except AL, AS, CT, FL, GA, GU, LA, ME, MS, MO, NC, OR, SC, SD, TN, VI, WV. INCORPORATED IN: Delaware.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: \$5,869,000. SURETY LICENSES c/: All except AS, GU, MA, VI. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: \$46,952,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Pennsylvania.

*See footnotes at end of Circular.

Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. UNDERWRITING LIMITATION b/: \$198,678,000. SURETY LICENSES c/: All except AS, GU, NJ. INCORPORATED IN: Ohio.

The Netherlands Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: \$1,067,000. SURETY LICENSES c/: AZ, CA, DC, ID, IN, IA, ME, MD, MA, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: \$29,265,000. SURETY LICENSES c/: All. INCORPORATED IN: New Hampshire.

New South Insurance Company. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: \$594,000. SURETY LICENSES c/: IN, MS, NC, OH, PA, TX, VA, WA, WV. INCORPORATED IN: North Carolina.

New York Underwriters Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$8,429,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New York.

Newark Insurance Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: \$4,167,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New Jersey.

North American Reinsurance Corporation. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: \$19,106,000. SURETY LICENSES c/: All except AS, GU, VI, WY. INCORPORATED IN: New York.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY. BUSINESS ADDRESS: 650 Elm St., 6th floor, Manchester, NH 03101. UNDERWRITING LIMITATION b/: \$1,285,000. SURETY LICENSES c/: All except AS, CA, GU, HI, OK, PR, VI. INCORPORATED IN: New Hampshire.

The North River Insurance Company. BUSINESS ADDRESS: 305 Madison Ave., CN-1932, Morristown, NJ 07960-1932. UNDERWRITING LIMITATION b/: \$6,266,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New Jersey.

North Star Reinsurance Corporation. BUSINESS ADDRESS: Morris Corporate Center 1, 300 Interpace Parkway, Parsippany, NJ 07054. UNDERWRITING LIMITATION b/: \$5,477,000. SURETY LICENSES c/: All except AS, GU, HI, ME, NC, PR, VI, WY. INCORPORATED IN: Delaware.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: \$11,284,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois.

*See footnotes at end of Circular.

The Northern Assurance Company of America. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: \$10,909,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Vermont.

NORTHWESTERN PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$1,505,000. SURETY LICENSES c/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

Oceanic Insurance and Surety Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 2046, Schaumburg, IL 60193. UNDERWRITING LIMITATION b/: \$113,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

The Ohio Casualty Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: \$44,240,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: \$19,546,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, KS, NH, PR, VI. (Restricted to existing business only in NH.) INCORPORATED IN: Ohio.

Oklahoma Surety Company. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: \$542,000. SURETY LICENSES c/: KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company. BUSINESS ADDRESS: Post Office Box 789, Greensburg, PA 15601. UNDERWRITING LIMITATION b/: \$19,396,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company. BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: \$1,246,000. SURETY LICENSES c/: DC, IL, IN, MD, OR, UT, WI. INCORPORATED IN: Wisconsin.

Omaha Property and Casualty Insurance Company. BUSINESS ADDRESS: 3102 Farnam Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: \$1,537,000. SURETY LICENSES c/: All except AS, AR, GU, IA, ME, NH, NJ, OK, PR, RI, VI, WV. INCORPORATED IN: Delaware.

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$5,581,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: California.

Pacific Indemnity Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$20,449,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: California.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: \$3,597,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

*See footnotes at end of Circular.

PACIFIC STATES CASUALTY COMPANY. BUSINESS ADDRESS: 5757 Wilshire Blvd., Suite 670, Los Angeles, CA 90036. UNDERWRITING LIMITATION b/: \$715,000. SURETY LICENSES c/: AZ, CA. INCORPORATED IN: California

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: \$6,086,000. SURETY LICENSES c/: All except AS, GU, HI, NJ, PR, VI. INCORPORATED IN: New Hampshire.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. UNDERWRITING LIMITATION b/: \$1,530,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania Manufacturers' Association Insurance Company.1* BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. UNDERWRITING LIMITATION b/: \$14,501,000. SURETY LICENSES c/: All except AL, AS, AR, CT, GU, HI, KS, ME, MN, ND, OR, PR, VI, WY. INCORPORATED IN: Pennsylvania.

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box-P, Wilkes-Barre, PA 18773-0016. UNDERWRITING LIMITATION b/: \$3,224,000. SURETY LICENSES c/: CT, DC, FL, GA, ID, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, UT, VT, VA, WA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: 1900 Derry Street, Harrisburg, PA 17105. UNDERWRITING LIMITATION b/: \$5,759,000. SURETY LICENSES c/: All except AS, CA, CT, GU, HI, NV, NH, ND, PR, VI, WY. INCORPORATED IN: Pennsylvania.

The Personal Service Insurance Co. BUSINESS ADDRESS: P.O. Box 1226, Columbus, OH 43216. UNDERWRITING LIMITATION b/: \$1,541,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: Ohio.

Phoenix Assurance Company of New York.1* BUSINESS ADDRESS: 1270 Avenue of the Americas, Suite 2920, New York, NY 10020. UNDERWRITING LIMITATION b/: \$6,004,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: New Hampshire.

The Phoenix Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: \$52,241,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Connecticut.

PINNACLE INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 1919, Carrollton, GA 30117. UNDERWRITING LIMITATION b/: \$345,000. SURETY LICENSES c/: AL, AK, GA, MD, MS, OH. INCORPORATED IN: Georgia.

PLANET INDEMNITY COMPANY. BUSINESS ADDRESS: 8 Greenway Plaza, Suite 1450, Houston, TX 77046. UNDERWRITING LIMITATION b/: \$302,000. SURETY LICENSES c/: TX. INCORPORATED IN: Texas.

*See footnotes at end of Circular.

PLANET INSURANCE COMPANY. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$765,000. SURETY LICENSES c/: All. INCORPORATED IN: Wisconsin.

Progressive Casualty Insurance Company. BUSINESS ADDRESS: P.O. Box 5070, Cleveland, OH 44101. UNDERWRITING LIMITATION b/: \$27,496,000. SURETY LICENSES c/: All except AS, GU, HI, IL, PR. INCORPORATED IN: Ohio.

The Progressive Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box 5070, Cleveland, OH 44101. UNDERWRITING LIMITATION b/: \$995,000. SURETY LICENSES c/: DE, DC, GA, KY, MS, NJ, OH. INCORPORATED IN: Ohio.

Protective Insurance Company. BUSINESS ADDRESS: 3100 North Meridian Street, Indianapolis, IN 46208. UNDERWRITING LIMITATION b/: \$6,620,000. SURETY LICENSES c/: All except PR. INCORPORATED IN: Indiana.

Prudential Reinsurance Company. BUSINESS ADDRESS: 100 Mulberry Street, Newark, NJ 07102. UNDERWRITING LIMITATION b/: \$34,688,000. SURETY LICENSES c/: All except AS, GU, NV, NC, VI, WV, WY. INCORPORATED IN: Delaware.

Puerto Rican-American Insurance Company. BUSINESS ADDRESS: Post Office S-112, San Juan, PR 00902. UNDERWRITING LIMITATION b/: \$4,299,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

Ranger Insurance Company. BUSINESS ADDRESS: Post Office Box 2807, Houston, TX 77252-2807. UNDERWRITING LIMITATION b/: \$3,967,000. SURETY LICENSES c/: All except AS, CT, GU, VI. INCORPORATED IN: Delaware.

REGENCY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 190, Hallandale, FL 33009-0190. UNDERWRITING LIMITATION b/: \$229,000. SURETY LICENSES c/: FL. INCORPORATED IN: Florida.

Regent Insurance Company. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: \$2,571,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, ND, SD, WI. INCORPORATED IN: Wisconsin.

The Reinsurance Corporation of New York. BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: \$5,872,000. SURETY LICENSES c/: All except HI. INCORPORATED IN: New York.

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$41,222,000. SURETY LICENSES c/: All. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$1,630,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

*See footnotes at end of Circular.

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REPUBLIC INSURANCE COMPANY.1* BUSINESS ADDRESS: Post Office Box 660560, Dallas, TX 75266-0560. UNDERWRITING LIMITATION b/: \$9,570,000. SURETY LICENSES c/: All except AL, AS, FL, GU, HI, ME, MA, MT, NH, ND, RI, SD, VT, VI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company. BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004. UNDERWRITING LIMITATION b/: \$5,696,000. SURETY LICENSES c/: All except AS, CT, GU, HI, IN, ME, MN, NH, PR, VT, VI, WY. INCORPORATED IN: Arizona.

Royal Indemnity Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd. Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: \$10,986,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Delaware.

Royal Insurance Company of America. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: \$25,682,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: \$32,745,000. SURETY LICENSES c/: All except AS, NY, PR, VT, VI. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois. BUSINESS ADDRESS: 1900 West Hassell Rd., Hoffman Estates, IL 60196. UNDERWRITING LIMITATION b/: \$4,372,000. SURETY LICENSES c/: AZ, CO, IL, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI. INCORPORATED IN: Illinois.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: \$2,165,000. SURETY LICENSES c/: MO, NY. INCORPORATED IN: Missouri.

St. Paul Fire and Marine Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: \$119,760,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: \$1,635,000. SURETY LICENSES c/: All except AS, GU, MA, NV, NJ, PA, PR, VI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: \$3,055,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Minnesota.

Seaboard Surety Company. BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. UNDERWRITING LIMITATION b/: \$5,815,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New York.

Security National Insurance Company. BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: \$867,000. SURETY LICENSES c/: AL, AR, CA, CO, IL, IN, KS, KY, NM, OH, OK, TX, WY. INCORPORATED IN: Texas.

*See footnotes at end of Circular.

Select Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: \$1,668,000. SURETY LICENSES c/: All except AS, CT, GU, HI, KS, LA, ME, MA, NH, NJ, NY, ND, OK, PA, PR, RI, UT, VI. INCORPORATED IN: Texas.

Selective Insurance Company of America. BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. UNDERWRITING LIMITATION b/: \$15,134,000. SURETY LICENSES c/: AL, DE, DC, FL, GA, MD, MS, NJ, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: \$836,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

Sentry Insurance a Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: \$39,370,000. SURETY LICENSES: All except AS, GU, PR, VI. INCORPORATED IN: Wisconsin.

Skandia America Reinsurance Corporation. BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: \$17,763,000. SURETY LICENSES c/: AZ, CA, DE, DC, GA, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, PA, UT, VA, WA, WI. INCORPORATED IN: Delaware.

South Carolina Insurance Company. BUSINESS ADDRESS: P.O.Box 1, Columbia, SC 29202. UNDERWRITING LIMITATION b/: \$5,131,000. SURETY LICENSES c/: All except AS, GU, HI, NH, PR, RI, VT, VI. INCORPORATED IN: South Carolina.

SOUTHEASTERN CASUALTY AND INDEMNITY INSURANCE COMPANY, INC. BUSINESS ADDRESS: 499 N.W. 70th Avenue, Suite #200, Plantation, FL 33317. UNDERWRITING LIMITATION b/: \$220,000. SURETY LICENSES c/: FL, GA, LA, MD, MA, OH, SC. INCORPORATED IN: Florida.

SOUTHEASTERN REINSURANCE COMPANY, INC. BUSINESS ADDRESS: 499 N.W. 70th Avenue, Suite #200, Plantation, FL 33317. UNDERWRITING LIMITATION b/: \$1,456,000. SURETY LICENSES c/: FL. INCORPORATED IN: Florida.

The Standard Fire Insurance Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: \$23,776,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Connecticut.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43216. UNDERWRITING LIMITATION b/: \$17,634,000. SURETY LICENSES c/: AL, AR, FL, GA, IN, KY, MD, MI, MS, MO, NC, OH, PA, SC, TN. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. UNDERWRITING LIMITATION b/: \$302,534,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

*See footnotes at end of Circular.

State Surety Company. BUSINESS ADDRESS: P.O. Box 1976, Des Moines, IA. 50306. UNDERWRITING LIMITATION b/: \$443,000. SURETY LICENSES c/: AZ, CO, DC, IL, IA, KS, MN, MO, MT, NE, NM, ND, SD, WI, WY. INCORPORATED IN: Iowa.

Statewide Insurance Company. BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079. UNDERWRITING LIMITATION b/: \$222,000. SURETY LICENSES c/: AZ, AR, IL. INCORPORATED IN: Illinois.

Surety Company of the Pacific. BUSINESS ADDRESS: Post Office Box 2105, Santa Monica, CA 90406. UNDERWRITING LIMITATION b/: \$191,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

TEXAS PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$462,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas.

Transamerica Insurance Company. BUSINESS ADDRESS: 1150 South Olive Street, Los Angeles, CA 90015. UNDERWRITING LIMITATION b/: \$59,500,000. SURETY LICENSES c/: All except AS, PR, VI. INCORPORATED IN: California.

Transamerica Insurance Company of Michigan. BUSINESS ADDRESS: 103 West Michigan Avenue, Battle Creek, MI 49016. UNDERWRITING LIMITATION b/: \$2,863,000. SURETY LICENSES c/: AR, IL, IN, IA, KS, MI, MN, OH, SD, TX. INCORPORATED IN: Michigan.

Transamerica Premier Insurance Company. BUSINESS ADDRESS: 333 South Anita Drive, Orange, CA 92668. UNDERWRITING LIMITATION b/: \$6,578,000. SURETY LICENSES c/: All except AS, NH, NY, PR, VI. INCORPORATED IN: California.

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: \$5,245,000. SURETY LICENSES c/: All except AS, GU, HI, VI. INCORPORATED IN: New York.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: \$2,062,000. SURETY LICENSES c/: All except AS, GU, PR, VI, WV. INCORPORATED IN: Illinois.

The Travelers Indemnity Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: \$83,015,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Connecticut.

THE TRAVELERS INDEMNITY COMPANY OF AMERICA. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: \$5,369,000. SURETY LICENSES c/: All except AS, AR, FL, GU, KS, MA, OR, VI. INCORPORATED IN: Georgia.

The Travelers Indemnity Company of Illinois. BUSINESS ADDRESS: 200 West Madison Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: \$1,910,000. SURETY LICENSES c/: All except AS, AR, CT, DE, GU, KS, IA, MA, NH, NJ, NC, OR, PA, PR, VI, WV, WI, WY. INCORPORATED IN: Illinois.

*See footnotes at end of Circular.

The Travelers Indemnity Company of Rhode Island. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: \$13,766,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Trinity Universal Insurance Company. BUSINESS ADDRESS: Post Office Box 655028, Dallas, TX 75265. UNDERWRITING LIMITATION b/: \$56,283,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NM, OH, OK, OR, TX, WI, WY. INCORPORATED IN: Texas.

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. UNDERWRITING LIMITATION b/: \$506,000. SURETY LICENSES c/: AL, AZ, CO, KS, KY, LA, NE, OH, OK, TX. INCORPORATED IN: Kansas.

Tri-State Insurance Company. BUSINESS ADDRESS: Post Office Box 3269, Tulsa, OK 74102. UNDERWRITING LIMITATION b/: \$4,262,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NM, ND, OK, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

Tri-State Insurance Company of Minnesota. BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. UNDERWRITING LIMITATION b/: \$2,556,000. SURETY LICENSES c/: IA, MN, NE, ND, SD, WI. INCORPORATED IN: Minnesota.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: \$5,592,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Minnesota.

ULICO CASUALTY COMPANY. BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. UNDERWRITING LIMITATION b/: \$5,063,000. SURETY LICENSES c/: All except AS, CA, FL, GU, ID, KY, ME, MA, NH, NM, NC, PR, RI, VT, VI, WY. INCORPORATED IN: Delaware.

Unigard Security Insurance Company.*1 BUSINESS ADDRESS: 15805 N.E. 24th Street, Bellevue, WA 98008-2409. UNDERWRITING LIMITATION b/: \$7,303,000. SURETY LICENSES c/: All except AS, GU, NJ, PR, VI. INCORPORATED IN: Washington.

Union Insurance Company. BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: \$5,243,000. SURETY LICENSES c/: CO, IA, KS, MN, MO, ND, OK, SD, TX, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company. 1400 Lake Hearn Drive, Atlanta, GA 30319. UNDERWRITING LIMITATION b/: \$2,924,000. SURETY LICENSES: AZ, WI. INCORPORATED IN: Wisconsin.

United Fire & Casualty Company. BUSINESS ADDRESS: Post Office Box 4909, Cedar Rapids, IA 52407. UNDERWRITING LIMITATION b/: \$5,972,000. SURETY LICENSES c/: All except AL, AS, CT, DE, DC, FL, GA, GU, HI, ME, MA, MI, NV, NH, NC, PA, PR, RI, TN, VT, VA, VI, WV. INCORPORATED IN: Iowa.

*See footnotes at end of Circular.

UNITED NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: 1737 Chestnut Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$5,555,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$11,574,000. SURETY LICENSES c/: All. INCORPORATED IN: Washington.

United Pacific Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: \$1,591,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: Post Office Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: \$101,749,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Maryland.

United States Fire Insurance Company. BUSINESS ADDRESS: 305 Madison Ave., CN-1932, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: \$24,246,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: New York.

UNIVERSAL INSURANCE COMPANY. BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. UNDERWRITING LIMITATION b/: \$2,149,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: \$832,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, UT, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America. BUSINESS ADDRESS: 1812 Durham, Houston, TX 77007. UNDERWRITING LIMITATION b/: \$225,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY. BUSINESS ADDRESS: 6363 College Blvd. Overland Park, KS 66211. UNDERWRITING LIMITATION b/: \$22,638,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 530, Utica, NY 13503. UNDERWRITING LIMITATION b/: \$1,643,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New York.

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: \$4,230,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED. BUSINESS ADDRESS: 424 Fifth Street, P. O. Box 57 Brookings, SD 57006. UNDERWRITING LIMITATION b/: \$149,000. SURETY LICENSES c/: SD. INCORPORATED IN: South Dakota.

*See footnotes at end of Circular.

Vigilant Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$11,102,000. SURETY LICENSES c/: All except AS, PR. INCORPORATED IN: New York.

Washington International Insurance Company. BUSINESS ADDRESS: 1930 Thoreau Drive, Suite 101, Schaumburg, IL 60173. UNDERWRITING LIMITATION b/: \$384,000. SURETY LICENSES c/: AZ, CA, FL, IL, MD, MA, MO, NY, OH, OR, TX, VA, WA. INCORPORATED IN: Arizona.

West American Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: \$42,247,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, ME, MT, NH, PR, RI, VT, VI, WV. INCORPORATED IN: California.

Westchester Fire Insurance Company. BUSINESS ADDRESS: 305 Madison Avenue, CN-1932, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: \$11,310,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New York.

The Western Casualty and Surety Company.1* BUSINESS ADDRESS: 500 N. Meridian St., Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: \$17,134,000. SURETY LICENSES c/: All except AS, CT, GU, HI, ME, MA, NH, NY, PR, RI, VT, VA, VI. INCORPORATED IN: Kansas.

The Western Fire Insurance Company.1* BUSINESS ADDRESS: 500 N. Meridian St., Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: \$14,683,000. SURETY LICENSES c/: All except AL, AS, CT, DE, DC, GA, GU, HI, IN, IA, ME, MA, NH, NJ, PR, RI, SC, VT, VI. INCORPORATED IN: Kansas.

Western Surety Company. BUSINESS ADDRESS: 101 South Phillips Avenue, Sioux Falls, SD 57192. UNDERWRITING LIMITATION b/: \$1,622,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: South Dakota.

Westfield Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: \$8,231,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, ME, NH, PR, VI. (Existing business only in NH.) INCORPORATED IN: Ohio.

Westfield National Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: \$3,009,000. SURETY LICENSES c/: IA, OH. INCORPORATED IN: Ohio.

*See footnotes at end of Circular.

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE
REINSURING COMPANIES UNDER 31 CFR, Part 223.3(b) REVISED
SEPTEMBER 1, 1978 (See Note (e))

Alliance Assurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$4,221,000.

Frankona Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: P.O. Box 419069, Kansas City, MO 64141-6070. UNDERWRITING LIMITATION b/: \$2,078,000.

The London Assurance, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$8,243,000.

Munich Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: \$24,223,000.

The Sea Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$4,732,000.

Sun Insurance Office, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: \$8,106,000.

Swiss Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: \$26,187,000.

The Tokio Marine and Fire Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. UNDERWRITING LIMITATION b/: \$6,126,000.

Trans Pacific Insurance Company. BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. UNDERWRITING LIMITATION b/: \$597,000.

"Winterthur" Swiss Insurance Company, U.S. Branch. BUSINESS ADDRESS: One World Trade Center, Suite 8911, New York, NY 10048. UNDERWRITING LIMITATION b/: \$12,380,000.

Zurich Insurance Company, U.S. Branch. BUSINESS ADDRESS: 231 North Martingale Road, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: \$34,065,000.

*See footnotes at end of Circular.

FOOTNOTES

- 1* License information is not current. Confirmation regarding whether a company is licensed for surety in a particular state may be obtained from that State's Department of Insurance.
- 2* Contractor's Bonding and Insurance Company does business in the State of California as CBIC Bonding and Insurance Company.
- 3* Hartford Insurance Company of Alabama changed its name to Hartford Insurance Company of Connecticut, effective December 31, 1987.
- 4* MOTOR CLUB OF AMERICA INSURANCE COMPANY changed its name to MCA Insurance Company, effective May 1, 1988.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Treasury reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess, the limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed (28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5(b)). The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

(d) **FEDERAL PROCESS AGENTS:** Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

[FR Doc. 88-14276 Filed 6-30-88; 8:45 am]
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Friday
July 1, 1988

federal register

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 45 and 53

Federal Acquisition Regulations; Plant
Clearance Policies and Improvements to
Standard Form 255; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 45

Federal Acquisition Regulation (FAR);
Plant Clearance Policies

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) Part 45 to clarify FAR plant clearance policies and procedures.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 30, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88-30 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils propose changes to (1) FAR 45.600-5, Instructions for preparing and submitting inventory schedules, to require that hazardous material or property contaminated with hazardous material must be clearly identified on inventory schedules; (2) FAR 45.600-7, Reimbursement of costs for transfer of contractor inventory, and 45.600-8, Report of excess personal property (SF 120) to clarify guidance regarding transportation costs and packing, crating, and handling costs; and (3) FAR 45.600-5(f) regarding construction and construction-related architect-engineer materials since it does not contain special screening procedures and is duplicative of other portions of FAR Subpart 45.6. Several changes are also proposed to FAR section 45.614, Subcontractor inventory. Section 45.614(c) is proposed to be amended since it conflicts with section 45.614(b), and additional guidance is being added

to address excess subcontractor inventory. Revision to Standard Form (SF) 1423, Inventory Verification Survey, is proposed to correct inconsistencies to expand the examples of property types requiring special processing. A copy of the proposed revised form is available by contacting the FAR Secretariat.

B. Regulatory Flexibility Act

Analysis of the proposed revision indicates that it is not a "significant revision" as defined in FAR 1.501, i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or have significant effect beyond the internal operating procedures of the issuing agencies.

Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation) solicitation of agency and public views on the proposed revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed rule does not impose recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 41 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 45

Government procurement.

Dated: June 20, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 45 be amended as set forth below:

PART 45—GOVERNMENT PROPERTY

1. The authority citation for Part 45 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 45.600-5 is amended in paragraph (d)(3) by adding a second sentence to read as follows:

45.600-5 Instructions for preparing and submitting schedules of contractor inventory.

(a) * * *

(3) * * * In addition, hazardous material or property contaminated with

hazardous material shall be identified as to the type of hazardous material.

45.600-5 (Amended)

3. Section 45.600-5 is amended by removing paragraph (f).

4. Section 45.600-7 is revised to read as follows:

45.600-7 Reimbursement of costs for transfer of contractor inventory.

The contracting agency shall not be reimbursed for the acquisition cost of any property selected by another agency or for overhead or administrative costs associated with such property. The transferee will pay any transportation costs that are not the contractor's responsibility. Costs for packing, crating, preparation for shipment, and loading of contractor inventory are chargeable to the contract for assets subject to the Government property clauses at 52.245-2, Government Property (Fixed-Price Contracts) and 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), and such costs are ordinarily included in the contractor's settlement proposal for termination inventory. The transferee will pay such costs for property subject to 52.245-7, Government Property (Consolidated Facilities), or 52.245-10, Government Property (Facilities Acquisition), or 52.245-11, Government Property (Facilities Use), unless such costs are otherwise the contractor's responsibility. The contract administration office is responsible for obtaining packing, crating, and handling services. To accelerate plant clearance, the transferee shall include all appropriate data, including funding data, in the transfer or shipping document.

5. Section 45.600-8 is amended in paragraph (b) by revising Items 5, 13, 17, and paragraph (3) of Item 18 to read as follows:

45.600-8 Report of excess personal property (SF 120).

(b) All items on the form are self-explanatory, except as follows:

Item 5. To. Enter the name(s) and address(es) of the screening agencies or the GSA regional office cognizant of the location of the property. (ADPE, except supply items under \$1,500, is reported to the Central Office GSA.)

Item 13. FSC group number, if known. If inventory schedules contain multiple

FSC groups, insert "See Inventory Schedules."

Item 17. Surplus release date (see 45.600-2).

Item 18. * * * The following notation: "It is imperative that fund appropriations for the transportation of the materials be furnished with the transfer order." If, pursuant to 45.600-7, the transferee is responsible for funding packing, crating, and handling, include this additional notation: "Fund appropriations for packing, crating, and handling of inventory described herein must also be provided by the transferee."

6. Section 45.614 is amended in paragraph (a) by removing the parenthetical reference "(see 49.108)" and inserting in its place the reference "(see 49.108-4)"; by adding in paragraph (b) a fifth sentence; by removing in paragraph (c) the first sentence; and by revising paragraph (d) to read as follows:

45.614 Subcontractor inventory.

(b) * * * This includes review and, if necessary, physical survey of subcontractor inventory that is contained in a termination settlement proposal to assure that it is physically, technically, and quantitatively allocable to the contract, and cannot be reasonably diverted to other work of the subcontractor.

(d) Contract administration offices shall assure that prime contractors have performed adequate allocability reviews of subcontractor inventory and have determined that materials reasonably usable on other prime or subcontractor work are not included in a termination settlement proposal. The plant clearance officer for the prime contractor plant is responsible for determining the adequacy of screening, allocability reviews, and proper crediting of proceeds for the disposal of subcontractor inventory by the prime contractor. Assistance should generally be secured from other offices for verification, determination of

allocability, local screening, and plant clearance action when property is located outside the geographic area of the cognizant contract administration office.

[FR Doc. 88-14687 Filed 6-30-88; 8:45 am]

BILLING CODE 5020-01-M

48 CFR Part 53

Federal Acquisition Regulation (FAR);
Improvements to Standard Form 255

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; notice of availability and request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise Standard Form (SF) 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, to provide space for interested parties to enter information on number and discipline of consultant personnel proposed for a specific project, and the name and telephone number of the individual to be contacted as a reference.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 30, 1988.

ADDRESS: Interested parties may obtain copies of the proposed instructions to revise SF 255 from the FAR Secretariat and written comments should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87-21 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed revisions to Standard Form (SF) 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, would (1) request and provide space in Block No. 4 on the SF

for interested firms to enter information on number and discipline of consultant personnel proposed for use on a specific project, and (2) request and provide space in Block 8 on the SF to enter the name and phone number of individual to contact for reference. This information will assist in the evaluation of individual firms and eliminate the burden of having to collect the information at a later date by other means.

B. Regulatory Flexibility Act

Analysis of the proposed revision indicates that it is not a "significant revision" as defined in FAR 1.501-1, i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors or a significant effect beyond the internal operation procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1-5, Agency and Public Participation), solicitation of agency and public views on the proposed revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act (Pub. L. 96-354) does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the proposed rule requests that interested firms provide certain information and provides space on the standard form to enter the requested information. Accordingly, an approval of OMB Control No. 9000-0005 paperwork clearance has been submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Comments concerning the OMB Control 9000-0005 for OMB approval were invited through a May 25, 1988, Federal Register notice (53 FR 18875).

List of Subjects in 48 CFR Part 53

Government procurement.

Dated: June 21, 1988.

Harris S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 88-14688 Filed 6-30-88; 8:45 am]

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Part IV

**Department of
Education**

**34 CFR Parts 602 and 603
Secretary's Procedures and Criteria for
Recognition of Accrediting Agencies;
Final Regulations**

DEPARTMENT OF EDUCATION

34 CFR Parts 602 and 603

Secretary's Procedures and Criteria for Recognition of Accrediting Agencies

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations concerning the criteria and procedures for the Secretary's recognition of accrediting agencies for post-secondary purposes. These changes clarify current regulations, place greater emphasis upon assessment of educational effectiveness by accrediting bodies, highlight the responsibilities of accrediting agencies for encouraging the truthfulness of institutional claims, and encourage accrediting agencies and associations to take into account each other's accrediting actions. These changes enhance the Secretary's ability to judge those agencies that are reliable authorities as to the quality of education or training offered. Through elimination or simplification of current regulations, the changes also reduce the burden on accrediting agencies that apply for recognition.

EFFECTIVE DATE: These regulations take effect 45 days after publication in the Federal Register or later if Congress takes certain adjournments, with the exception of § 602.3. Section 602.3 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: H. Reed Saunders, Office of Postsecondary Education, US Department of Education, (Room 3012, ROB-3) 400 Maryland Avenue, SW., Washington, DC 20202, telephone number (202) 732-4822.

SUPPLEMENTARY INFORMATION: These regulations revise procedures and criteria for the Secretary's recognition of accrediting agencies. Recognition is based on the Secretary's determination that accrediting agencies are reliable

authorities concerning the quality of education or training offered by the postsecondary educational institutions or programs within the agencies' respective scopes of operation.

Accreditation of postsecondary institutions or postsecondary programs of institutions by agencies recognized by the Secretary—or one of the statutory substitutes for it—is a status that is a prerequisite for eligibility for many types of Federal financial assistance for those institutions or programs and for the students enrolled in those institutions or programs.

An accrediting agency that desires to be recognized by the Secretary submits a petition addressing the criteria and procedures in these regulations. If the Secretary recognizes an accrediting agency, the recognized agency will need to petition periodically for continued recognition.

To help ensure that Federal money devoted to postsecondary education is spent wisely, the Secretary is using the Secretary's legal authority for recognition of accrediting agencies to improve the quality of postsecondary education. Although educational quality is primarily the responsibility of the institutions themselves, and secondarily of private regulatory bodies established by the institutions as well as of local and State governments, the Secretary has a stewardship responsibility to ensure that Federal monies are used at institutions or in programs that meet certain standards with regard to quality. As a principal means of accomplishing this objective, Congress has given the Secretary the statutory responsibility for publishing periodically a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education offered.

As one of his first initiatives upon taking office, the Secretary requested the National Advisory Committee on Accreditation and Institutional Eligibility (NACAE) to undertake a comprehensive review of the criteria used by the Secretary to recognize accrediting agencies. The NACAE prepared recommendations which were submitted to the Secretary at its December 1986 meeting.

The NACAE recommendations included a number of modifications in the existing criteria, but the NACAE concluded that the "triad" of institutional eligibility—the phrase used to describe the partnership of the Federal Government, State governments, and accrediting agencies—is working reasonably well and remains the most effective and workable system available for the

evaluation of postsecondary educational institutions and practices. The intention of the recommendations developed by the NACAE was to preserve the voluntary, self-regulatory character of accreditation, while providing those working within the system with the encouragement and the support to meet the challenge of improving the quality of postsecondary education, as measured through the assessment of educational effectiveness. The Secretary agreed with this basic strategy and charged the Assistant Secretary for Postsecondary Education with revising the current regulations based upon the NACAE recommendations.

On September 8, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for Part 602 in the Federal Register (52 FR 33908).

Summary of Major Proposed Changes

The NPRM included a discussion of the major issues addressed by the proposed regulations. The following is a brief summary of the proposed major changes contained in the NPRM to the existing criteria and procedures:

1. The regulations would place greater emphasis upon the consistent assessment of documentable student achievement as a principal element in the accreditation process.
2. An accrediting body would be required to refuse to accept for accreditation or preaccreditation, for a twelve month period, an institution or program that was affected by an adverse action of another accrediting body. If two agencies had granted status to the same institution, and one of them withdrew that status, the other agency would be required to review promptly the status it had granted to the institution.
3. Accrediting agencies would be required to adopt and act upon guidelines for examining an institution's or program's representations of its programs, practices, and student achievements.
4. Accrediting agencies would be required to agree in writing to notify the Secretary within 30 days of each of their decisions to deny or withdraw accreditation or preaccreditation of an institution or program or to place an institution or program on public probation.
5. A new criterion would be added concerning the obligations of agencies that accredit institutions that admit students on the basis of their "ability to benefit" instead of a high school graduation diploma or G.E.D. certificate.
6. The scopes of recognition of the agencies listed by the Secretary would

be restricted solely to the postsecondary level of education.

7. In an effort to reduce burden on agencies, several criteria largely relating to accreditation procedures would be eliminated, and the maximum period of recognition would be changed from four to five years.

Changes Resulting From Public Comment

As result of the comments received on the NPRM and as discussed in detail in the Analysis of Comments and Changes section which follows, the Secretary has made the following significant changes in the final regulations.

1. The requirement that accrediting agencies impose a twelve-month moratorium on granting accreditation status to an institution or program receiving an adverse action by another recognized agency has been eliminated. Instead, agencies are called on to take such adverse actions into account when considering whether to grant the status of accreditation or pre-accreditation.

2. The criterion relating to the use of guidelines to ensure honesty of institutional representations is changed to eliminate the necessity for the adoption and implementation of those guidelines. Agencies are given greater flexibility in defining and assessing appropriate institutional disclosure in their respective fields of operation.

3. Section 602.17 has been retitled "Focus on educational effectiveness," and the wording of the section has been revised to address commenters' concerns about the limits of the Secretary's authority.

4. The requirement concerning reporting agency actions to the Secretary has been modified to eliminate the necessity for reporting denials of initial accreditation status and actions that are subject to appeal.

5. The requirement for certain accrediting agencies to develop criteria covering preadmission counseling and testing for students admitted based on "ability-to-benefit" has been deleted, and the area of "ability-to-benefit" is instead addressed in the contexts of educational effectiveness (Section 602.17) and agency practices (Section 602.13).

6. Several current requirements for accrediting agencies, omitted from the NPRM, were restored: publication of the agency's next regularly scheduled review of an institution or program; publication of procedures for review of complaints against accredited institutions or programs; public representation on accrediting bodies; and advance public notice of proposed or revised accreditation standards along

with the opportunity for public comment upon them prior to their adoption.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 212 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the final regulations referenced in parentheses. Other substantive issues are discussed under the section or subsection of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Focus on Educational Effectiveness (§ 602.17)

Comments: The criterion requiring accrediting agencies to place a substantial emphasis upon assessment of student achievement in the accreditation process drew the greatest number of comments. Most of the commenters indicated that they could not accept the criterion as written, although a number of commenters specifically stated that the basic principles are supportable. Some felt that the existing regulations adequately covered the intent of the proposed new criterion. They stated their perception that the proposal differed markedly from the 1986 recommendations adopted by the National Advisory Committee on Accreditation and Institutional Eligibility (NACAE) regarding assessment of educational outcomes in accreditation, and some commenters asked that the criterion be revised to relate more closely to those recommendations. Some commenters stated that the proposed criterion has the effect of placing departmental requirements directly upon educational institutions, which they felt the Secretary is explicitly prohibited by law from doing. They felt that the Secretary, in adopting this criterion, was directly specifying educational standards, which they again viewed as prohibited by law.

Many commenters objected to the criterion's possible implication that assessment of student achievement is the only educational evaluation technique that can be used to establish the reliability of an accrediting agency concerning assessment of educational quality. They indicated that the language of the criterion was too inflexible to take into account the fact that the science of educational

assessment is still in the developmental stages within the higher education community. They also stated that such assessment is not applicable to the entire range of postsecondary institutions or educational goals but is more suited to programs directed at immediate employment of graduates. One commenter stated that the use of a single approach to educational evaluation would "grossly distort" the wide range of available, effective assessment procedures. Several commenters indicated their fears that the criterion would "homogenize" education and prevent future evolution of valid educational assessment techniques by accrediting agencies.

Some commenters described the difficulty that this criterion, or parts of it, would create for their particular kinds of programs and students, especially with regard to the reporting of employment. Several commenters felt the language of the criterion was unclear. They had specific questions regarding the application of it to their own particular situations, whether as an institution or accrediting agency.

Some commenters suggested the broadening of the concept from focusing upon assessment of student achievement to focusing upon educational effectiveness. Many commenters objected to the assumption they perceived in the proposed regulations that accrediting agencies currently are not involved in assessment of educational achievement. Some commenters felt that enforcement of the criterion would place unnecessary burdens on institutions.

Two commenters suggested that the educational mission of the institution be considered in the assessment of outcomes, to allow for institutional differences.

A number of commenters objected to the reference to testing as the only example given of means of assessing student achievement. They did not want preeminence given to any one method of assessment when many approaches are available.

Discussion: The Secretary reaffirms the importance of considering assessment of educational effectiveness in the accreditation process. One of the principal purposes in reissuing regulations in this area is to emphasize this importance. To fulfill this objective, the Secretary desires to clarify the currently used criterion regarding educational outcomes as was recommended by the National Advisory Council on Accreditation and Institutional Eligibility in December of 1986. In doing so, the Secretary is also

reinforcing a current trend within the postsecondary educational community and recognizing that accrediting bodies already are moving in the direction of strengthening their assessment of educational effectiveness.

The commenters have provided a healthy discussion of the issues. In several instances it appeared as if the Secretary's intentions were not fully understood. This highlighted the need for the Secretary to convey more clearly the flexibility that exists within this criterion. These final regulations do not lock accrediting agencies into a particular methodology, or impose burdensome directives on postsecondary educational institutions. They focus on the need for accrediting agencies to use educational outcomes as a principal measure of the quality of education or training offered by an institution or program seeking to obtain or continue accredited status. The means of accomplishing this objective are outlined in Section 602.17 of the regulations. This section calls for accrediting agencies to determine, among other things, whether the degrees or certificates awarded by the institution are consistent with its mission and educational objectives, whether the certificate or degree requirements conform with commonly accepted standards for similar degrees, whether institutions have adequate means in place for assuring that they admit only students who are able to benefit from the education being provided, and whether students are, in fact, meeting the requirements for the relevant degrees or certificates. Also as part of the focus on educational effectiveness, the Secretary is asking accrediting agencies to confirm that institutional documentation of student achievement is carried out in consistent, verifiable and meaningful ways. A number of acceptable methods or measures are mentioned but are not meant to be exhaustive.

Another revision to this criterion is in response to the expressed perception of a number of commenters that the NPRM afforded the Secretary too much control over accrediting bodies. On the contrary, neither the NPRM nor these final regulations presuppose new Secretarial authority. Furthermore, the intent expressed in § 603.6(b)(6) of the current regulations does not differ from the intent expressed in § 602.17 of the NPRM and these final regulations. The focus of this criterion has been changed from the more "directive" language of the NPRM to the language in these final regulations which, as a condition of recognition, considers whether

accrediting agencies systematically obtain and consider substantial and accurate information on educational effectiveness. The Secretary believes that this change should allay the fear of those commenters who believed that the language of the NPRM exceeded the Secretary's statutory authority.

Changes: The criterion has been rewritten to indicate that it provides far more latitude on the part of accrediting agencies and schools than was inferred by the commenters. For example, it has been retitled to emphasize the focus upon educational effectiveness. The wording has been changed since some readers apparently inferred that the Secretary was imposing particular types of performance standards upon institutions. Rather, the Secretary expects accrediting agencies to seek evidence that their accredited institutions or programs are satisfactorily assessing educational effectiveness.

The Secretary now specifically acknowledges in paragraph (a) of § 602.17 the role of the institution's or program's mission in shaping the objectives against which educational effectiveness should be measured.

Paragraph (b) of § 602.17 now states that the accrediting body determines if students' satisfaction of degree or certificate requirements is "reasonably documented, and conforms with commonly accepted standards for the particular certificates and degrees involved," and that "appropriate" measures are used to assess student achievement. This change is related closely to the language recommended to the Secretary by the NACAE.

Test results are listed in paragraph (c) of § 602.17 as one of many recognized measures that are available for the determination of whether educational achievements are adequately documented.

Subsection (d) recognizes that institutions or programs which admit students on the basis of their ability to benefit from the education or training offered must employ appropriate admissions procedures. (A discussion of the comments and responses that led to these changes follows.)

"Ability to benefit" Requirements (§ 602.20 of the NPRM; § 602.13 and § 602.17 of the Final Regulations.)

Comments: A large number of commenters stated that the criterion relating to an accrediting body's role in supporting the statutory requirement regarding a student's ability to benefit from instruction, found in Title IV of the Higher Education Act, is inappropriate and exceeds both the law and

congressional intent. They stated, for example, that the approval by accrediting agencies of aptitude tests, as contemplated by Title IV, is quite apart from the use of accreditation to establish the eligibility of educational institution or programs to participate in Federal student financial assistance programs.

It was further pointed out that the congressional conference report concerning the Act stated, with regard to the relationship of accrediting bodies to the "ability to benefit" eligibility requirement, "It is the intention of the conferees that a nationally recognized standardized or industry developed test be one which meets criteria established by the appropriate accrediting body or bodies, but which is not subject to prior approval by such body or bodies." It was also pointed out that, contrary to the interpretation given in the proposed criterion, the use of aptitude testing is not mandatory in assessing "ability to benefit" but is one of several options for making the determination. Some commenters indicated their opinion that adequate aptitude testing is not now available. Others objected to the general concept of assessing "ability to benefit" as being intrusive and counterproductive to making educational opportunities available.

A minority of the commenters indicated their support for the criterion but suggested changes. One commenter stated that the Secretary should establish special standards regarding counseling. Another commenter suggested that admissions testing not be emphasized but that a broader range of aptitude assessments be highlighted. Another commenter suggested that it be made clear that any accrediting agency review of tests be done free of charge. Two commenters suggested that a definition of "ability to benefit" be added to the section. Another indicated that the criterion is appropriate but should avoid misinterpretation of the pertinent statutes.

Discussion: The Secretary believes that accrediting bodies should play an appropriate role in assisting in the implementation of the requirements regarding the assessment of a student's ability to benefit from instruction, within the meaning of the statute. In the Secretary's view, one cannot fairly assess the quality of the training or education offered by a school without considering whether students are able to benefit from that training or education. Thus, it is imperative that accrediting agencies look to whether institutions have effective means of assuring that students are able to benefit from the

relevant training. The Secretary agrees, however, that compelling accrediting agencies to issue criteria for testing may be too rigid an approach.

Changes: The proposed § 602.20 has been revised and relocated at paragraph (k) of § 602.13. The revised requirement states that the Secretary determines if the agency makes available current materials describing any criteria it has established with regard to testing students' "ability to benefit." An agency need not promulgate such criteria, but if it chooses to do so, it would be called upon to make those criteria publicly available. Also, in § 602.17, the section entitled "Focus on educational effectiveness," the Secretary will take into account the manner in which accrediting agencies review methods employed by institutions or programs for determining that any students admitted on the basis of ability to benefit in fact possess such ability. The Secretary expects accrediting agencies to ensure that those institutions or programs which they accredit act responsibly when admitting students that do not have the formal educational credentials (i.e., a high school diploma or the equivalent) typically associated with students undertaking postsecondary education. These institutions or programs should be expected to undertake some evaluative procedures designed to assure prospective students that students admitted under "ability-to-benefit" provisions have a reasonable chance to complete the relevant courses of study successfully.

Recognition Only of Postsecondary Accrediting Activities (§ 602.1)

Comments: The Secretary received many comments on that part of § 602.1 that indicates that the purpose of the Secretary's listing of accrediting agencies will no longer permit the Secretary's recognition of accreditation of education below the postsecondary level. The commenters asked that the proposed restriction of the Secretary's list to only postsecondary accrediting activities be removed, and that the past practice of recognizing accrediting bodies at all levels be reinstated.

Several commenters stated that the change appears to be inconsistent with the Secretary's frequently stated message in support of educational excellence at all levels across the United States.

Some commenters noted that the effect of the limitation would be to deprive elementary and secondary accrediting agencies of the only available opportunity for external review.

Some commenters observed that the limitation of the Secretary's list would devalue the worth of accreditation at the elementary and secondary level. Another commenter stated that the change would be viewed as a message that elementary and secondary education had already ~~received~~ the evaluation issues addressed in the regulations.

Several commenters noted that the proposed limitation would adversely affect particular agencies now listed by the Secretary that include in their activities the accreditation of elementary and secondary education.

Discussion: The Secretary continues to stress the need for educational excellence at all levels. However, the Secretary only has legal authority to recognize accrediting agencies when a statutory purpose is served. No such purpose currently exists at the elementary and secondary educational levels. Therefore, the Secretary's list of recognized accrediting agencies must be limited to those operating at the postsecondary level of education. Retraction of the Secretary's scope of recognition of previously listed accrediting bodies does not mean that these agencies are deficient in their evaluation of elementary or secondary education, but only that there is currently no statutory basis for recognition of that level of accreditation.

Changes: None.

Description of the Degree to Which an Accrediting Agency Must Meet the Regulations in Order to be Recognized (§ 602.10)

Comments: Two commenters presented opposing views concerning the provision for an accrediting body to demonstrate that a particular criterion, defined as a section of these regulations, should not be applied to it.

One commenter said that accrediting agencies should not be allowed such broad exemption from the regulations, or that, in the alternative, exemptions could be granted concerning paragraphs, rather than sections.

One commenter, on behalf of the accrediting body, stated that the provision for demonstration of the inappropriateness of a section is welcome.

Discussion: While the treatment of sections as criteria is new, the Secretary has always taken into consideration whether a segment of the regulations is appropriate for a particular applicant. Since accrediting bodies vary in their structure and purposes, a "safety valve" is necessary when a single set of regulations is being used.

Changes: None.

Experience in Accreditation Prior to Recognition (§ 602.11)

Comments: One commenter asked that "scope of activity" used in this criterion be clarified. Others indicated their concurrence with that commenter.

Discussion: The Secretary decided that imposing a two-year requirement concerning specific degrees, certificates, and programs is not necessary to ensure the reliability of the agency that is seeking recognition. Instead, the Secretary will make an individual judgment, taking into account the accrediting agency's prior experience accrediting similar institutions or degree or certificate programs, the adequacy of its criteria, procedures, and standards for its proposed accrediting activity, and the appropriateness of its proposed geographical scope.

Changes: The Secretary has modified § 602.11 to indicate that the agency's scope as recognized by the Secretary is subject to its demonstration of sufficient experience concerning both its geographic area and the degrees, certificates, and programs covered by its accrediting activities.

Geographic Scope of Secretarily Recognized Accrediting Agencies (§ 602.12(a))

Comments: Several commenters remarked upon the perceived exclusion of State approval agencies from the Secretary's list of recognized accrediting agencies. One of them stated that recognition of State agencies would be a useful means of allowing institutions or programs to qualify for Federal programs by offering the least burdensome means for their meeting the statutory eligibility requirement concerning accreditation.

Discussion: The Secretary has chosen to continue the geographic requirements that have been in place since the first accrediting agency recognition regulations were issued in 1952. These requirements do not entirely exclude the recognition of State agencies, if they can meet the geographic requirements, as has the New York State Board of Regents. It should also be noted that these regulations do not change the Secretary's recognition procedures for State agencies (Part 603, Subpart B) that are reliable authorities as to the quality of public postsecondary vocational education in their respective States.

Changes: None.

The Necessity for an Eligibility Connection (§ 602.12(b))

Comments: Four commenters opposed the requirement that accrediting agencies demonstrate that their

recognition is needed to serve an eligibility requirement for participation in one or more Federal programs. They stated that the demonstration of an eligibility connection is burdensome for petitioning agencies; that compliance with that requirement is not related to determining the reliability of an accrediting body, as the law charges the Secretary to do; and that no accrediting body seems to be absolutely necessary for establishing eligibility in view of both the choices among agencies and other statutory alternatives to accreditation.

Discussion: Since a determination has been made that the Secretary only has the legal authority to recognize accrediting agencies when a statutory purpose is served, seeking information about an applicant agency's ability to serve that purpose is consistent with the Secretary's authority. An agency need not demonstrate that it is the sole means of satisfying the statutory requirement related to accreditation for each of its institutions or programs.

Changes: The paragraph has been reworded to indicate that the agency must show that it accredits the types of institutions or programs that must be accredited by that agency in order to participate in one or more Federal programs.

Requirements Concerning Clarity of Operational Information (§ 602.13)

Comments: Several commenters expressed concern about the Secretary's regulations relating to the accrediting agency's maintenance of written material. One commenter felt that the proposed section diminished the Secretary's requirements about accrediting agency accountability.

Several commenters, on the other hand, stated that the language could be interpreted as requiring accrediting bodies to maintain overly detailed information on an indefinite basis, and force agencies to adopt action categories, e.g., probation or restriction of status, that are not suited to their particular accreditation operation. In that vein, some commenters indicated confusion over the Secretary's requirement that "criteria" be published as well as "standards."

One commenter requested the restoration of the current requirement that the agency's next regularly scheduled review of an institution or program be publicized.

Discussion: In redrawing requirements concerning an accrediting body's clarity of operational information, the Secretary attempted to eliminate regulatory requirements that did not relate directly to determining an

accrediting agency's reliability in assessing educational quality. At the same time, the Secretary favored clarifying those provisions that are relevant to such determinations. The Secretary believes that an appropriate balance has been struck in this regard. However, the comments received indicated that certain refinements would help lay to rest concerns about overly stringent interpretations or about the imposition of categories of policy not perceived as necessary to every accrediting body.

With respect to the language in § 602.13 (d) and (e), "criteria" refers to matters relating to educational quality and other matters that an accrediting agency considers in making a judgment about the quality of the petitioning institution or program. "Procedures" refers to the process that is to be followed by an agency in applying the criteria to institutions or programs. "Standards" refers to the level of quality that an institution or program is expected to attain in order to satisfy the agency's criteria as a condition for becoming accredited or preaccredited.

Changes: A clarification has been added to indicate that the Secretary desires accrediting agencies to be responsible for maintaining and making publicly available only their current policies and procedures, and that information need be offered on probationary status only if the accrediting body has such a category.

A clarification has been added to indicate that the agency need make available only its "publicly conferred" actions.

The Secretary has restored the requirement of publicizing the next currently scheduled review of the accredited institution or program.

National Recognition (§ 602.14)

Comments: One commenter requested that the concept of national acceptance of an accrediting agency be changed to acceptance only throughout the geographical area served by the agency. The commenter felt that the criterion as stated serves as a means of restricting the number of recognized accrediting bodies. The commenter believes that the restriction is inappropriate.

Discussion: The Secretary believes that demonstration of national acceptance should continue as a concept in the determination of the reliability of an accrediting agency concerning the quality of education. National acceptance is a quality indicator that serves more to demonstrate acceptance than does a parochial survey of acceptance.

Changes: None.

Resources (§ 602.15)

Comments: Three commenters expressed support for the criterion concerning accrediting agency resources. One of them desired that it be more clearly stated that the agency's future resources are important.

One commenter asked that the Secretary bar personnel affiliated with proprietary schools from any position in an accrediting body.

Discussion: The Secretary appreciates the support for this criterion among those in the accreditation community. Clearly, future resources are important to establishing accrediting agency reliability.

It is not reasonable to bar personnel from the proprietary school sector from the accreditation process, since such a policy would be counter to the basic intent of accreditation as peer evaluation. The regulations have other safeguards against conflict of interest.

Changes: The criterion now more clearly states that the Secretary will take into account an accrediting body's future resources.

Evaluation of Off-campus Programs (§ 602.16)

Comments: Two commenters asked that review of off-campus activities be specifically singled out as a required item for attention by accrediting bodies. They felt that the quality of educational programs "exported" off campus is a significant problem in postsecondary education because of their perception that accrediting bodies do not adequately conduct on-site evaluations of these programs.

Discussion: The Secretary expects that each recognized accrediting agency will have in place adequate policies and procedures for reviewing off-campus activities. This is consistent with the NPRM. The Secretary is concerned that accrediting agencies, in the conduct of their reviews and in the making of their decisions, consider the entire institution, or the entire program, for which accreditation has been requested including all off-campus locations. The final regulations make this explicit. An accrediting agency is not, however, required to make a site visit to all off-campus locations.

Changes: Off-campus locations are now specifically mentioned in section 602.16(a).

Appeals in the Accreditation Process (§ 602.16(e))

Comments: Two commenters responded to the proposed paragraph concerning the role of appeals in the accreditation process. One of them

asked that the Secretary's previous level of specificity concerning the appeals process, such as requiring the opportunity for an appeal hearing, be restored. They also requested the retention of the requirement that the chief executive official of the institution be notified of the institution's or program's right to appeal a negative decision. Another commenter asked that "limitation" of status be appealable. Both commenters indicated that the matter of appeals is very serious, since accreditation sometimes is a matter of economic necessity. Thus, there should be a full course of due process available.

Discussion: The Secretary does not intend to diminish the necessity for adequate due process but believes that this can be accomplished by a variety of valid approaches. Therefore, in the interest of burden reduction, the detailed requirements related to appeals have been eliminated.

While the limitation of accreditation status may have such serious repercussions as to merit the availability of an appeals process, the Secretary believes that each accrediting body should have the latitude to determine what actions beyond withdrawal or denial of status should be appealable. Moreover, it is not clear what "limitation" of accreditation would encompass. Therefore, the Secretary has decided to maintain the current practice of requiring accrediting bodies to provide for appeals of withdrawal or denial of status.

The Secretary concurs, however, that the chief executive official of the institution should be notified of the institution's or program's opportunity to appeal a negative decision. The Secretary has decided, therefore, to restore that provision.

Changes: The Secretary now specifies that the appeals procedures must be made available to the chief executive official of any institution affected by appealable changes in status.

Reporting Decisions to the Secretary (§ 602.16(f))

Comments: One commenter indicated support for the newly introduced requirement that accrediting bodies quickly report their decisions to the Secretary. The commenter requested that any non-public probationary status also be reported to the Secretary. The commenter also suggested that the accrediting agency be required to report its decisions to other accrediting bodies in view of the criterion concerning regard for the decisions of other agencies (§ 602.19).

A large number of other commenters requested that the subsection be deleted

or changed. They objected to the negative connotations of a written agreement with the Department, favoring instead a written agency policy. They questioned what use the Department would make of information on probationary actions, actions subject to appeal, and negative actions on initial accreditation or preaccredited status. They stated that dissemination of actions on which the appeal process is not yet concluded removes the element of due process from accreditation. They felt that probation might ultimately be treated inappropriately as a withdrawal. Many commenters foresaw more harm than benefits coming from what they felt was the premature release of information on appealable actions.

Discussion: The Secretary introduced this criterion because of past departmental experience with the late reporting of actions by accrediting bodies that permitted ineligible programs or institutions to continue participating in Federal financial assistance programs. The Secretary is seeking to secure timely information in areas that directly affect the stewardship of Federal funds. The Secretary also wishes to encourage accrediting bodies to share necessary information among themselves but does not want to impose directly a specific requirement about the conduct of this kind of information sharing.

Changes: The requirement for reporting denial of initial accreditation and preaccreditation has been deleted. The requirement for the reporting of actions that are subject to appeal has been deleted. The concept of a written agreement has been modified to indicate that the agency must maintain a written policy which ensures that the Secretary will be notified whenever a final decision has been made to withdraw accredited or pre-accredited status from an institution or to place the institution or program on public probation.

Disclosure by Institutions or Programs of Status (§ 602.16(h))

Comments: Several commenters objected to the perceived implication in the paragraph that schools or programs must disclose their accreditation status. They stated that there is no reason why such a requirement should be made and advocated institutional choice regarding the matter of publicizing status. One commenter supported the criterion, as stated in the NPRM, as being a public service, especially for students. Another commenter took a middle ground stance by suggesting that broad public dissemination not be required, but that prospective students be apprised of both favorable and unfavorable agency

actions taken on the institution or program.

Discussion: The intent of the proposed paragraph is to ensure that any public statements an institution or program makes about its status are accurate and not misleading. The Secretary concurs that publicizing accreditation status is an institutional prerogative but encourages institutions and programs voluntarily to disclose all actions that would significantly affect a student's decision about an institution or program.

Changes: The subsection has been reworded to require accrediting bodies to ensure the accuracy of any disclosure of accredited or preaccredited status that the institution or program chooses to make.

Maintenance of Accrediting Agency Records (§ 602.16(j))

Comments: Several commenters objected to the implied requirement that accrediting agency records be maintained indefinitely. They also questioned the interpretation of the word "full" in conjunction with the kinds of records to be kept. They questioned the usefulness and reasonableness of the maintenance of highly detailed documentation on a permanent basis.

Discussion: The Secretary desires that accrediting bodies keep sufficient material to support their recent decisions. However, it is not the intent of the Secretary to impose an unreasonable record-keeping requirement upon the agencies.

Changes: The subsection has been modified to require the maintenance of complete records only of an agency's last two reviews of each institution or program.

Regard for Adequate and Accurate Public Disclosure (§ 602.18)

Comments: There were numerous comments concerning this criterion, most of them objecting to the specificity of the items of disclosure. Most of the commenters either did not support the criterion as a whole, or supported the principle behind it but not the particular points.

Some commenters had questions about the implementation of this section. As a major point, these commenters noted that while the items of public disclosure were couched in terms of guidelines, the accrediting bodies were expected to take adverse action against institutions or programs that failed to meet them. Thus, the commenters noted that the guidelines were given the weight of standards, which they felt

were beyond the statutory charge of the Secretary to specify.

One commenter stated that the use of site visits to monitor compliance should be left to the discretion of each agency. One commenter specifically noted that it is not appropriate for accrediting agencies to serve as policing bodies.

The commenters who supported the criterion in principle noted that accrediting agencies did have an obligation to determine the reasonableness of certain broad categories of public information pertaining to educational institutions or programs, but that the specific items of the proposed criterion would not apply across the board to every institution or program. One commenter suggested that the area of public disclosure reviewed by an accrediting body include the appropriateness and accuracy of information on alumni employment at any time an institution or program publishes this information.

There were, however, mixed comments regarding the necessity for disclosing graduation rates and alumni employment. One commenter unqualifiedly endorsed the necessity for disclosing that type of information and further advocated that accrediting agencies constantly monitor that information.

Other commenters pointed out that there are pitfalls in disclosing graduation rates, since a low rate of graduation can signify either that there were high standards of academic excellence or that there was an institutional failure to ensure satisfactory academic progress. Another commenter was concerned that the criterion would require unreasonable efforts to secure postgraduation employment information. Two commenters stated that there are factors affecting postgraduation employment that are beyond the control of the institution, to the point where erroneous conclusions might be drawn by the public regarding program quality.

A small group of commenters indicated their support for this criterion. One of these suggested that agencies should be required to have proprietary schools accurately disclose employment information. Another commenter suggested the inclusion of an assessment of the administrative capabilities of the institutions' financial offices as a means of ascertaining institutional integrity. A third commenter simply stated that the criterion is commendable.

Discussion: The Secretary firmly believes that accrediting bodies should have a responsibility for ensuring adequate and accurate public disclosure

by educational institutions and programs. Because such information is vital to students making educational decisions, the Secretary believes that an accrediting agency cannot be considered a reliable authority as to the quality of training offered if it does not play an oversight role in this area. The Secretary has left it to each agency to determine the adequacy of the information disclosed by institutions or programs it accredits, provided that its disclosure is accurate and not misleading.

The regulation as rewritten cites three general areas which accrediting agencies should pay particular attention to when reviewing an institution's public disclosure practices. The Secretary recognizes, that owing to the variety of types of institutions and programs seeking accreditation, accrediting agencies will have to make individual judgments in particular cases about what is adequate, accurate, and not misleading.

With respect to those institutions seeking accreditation that train persons for employment in specific occupations or that make claims to prospective students regarding job placement upon completion of the educational program, the Secretary continues to believe that accrediting agencies can play an important role in validating the claims and assessing the outcome data that is disclosed by these institutions.

Changes: The reference to maintaining, disseminating, and monitoring "guidelines" has been deleted, as has the requirement that accrediting agencies take adverse action against institutions or programs that do not adhere to the guidelines.

The section has been retitled "Regard for adequate and accurate public disclosure" from "Regard for institutional integrity." It requires agencies to address thoroughly several broad categories of institutional or program integrity in the course of making accreditation decisions. The major categories of public disclosure do not differ from those cited in the NPRM.

Regard for Decisions of States and Other Accrediting Agencies (§ 602.19)

Comments: There were many comments on the section relating to an accrediting body's regard for the decisions of States and other accrediting bodies. The overall reaction to this criterion was mixed, including both requests for elimination of it and suggestions for modification, either to make it more stringent or to address issues such as inconsistency. Those who did not favor the section included one commenter who stated that the proposed criterion seems to be based

upon the unfair assumption of bad faith when the institution or program changes agencies and that the implied reporting and review procedures would be burdensome. Another commenter stated that the language of the section is unclear and also that the criterion is likely to lead to an accelerated struggle between accrediting agencies. Another commenter stated he did not favor the criterion because it stifled healthy competition among accrediting agencies. One commenter stated that, overall, the section went beyond the Secretary's statutory authority to recognize accrediting bodies.

Among the commenters favoring the criterion, two indicated their support for it as published. One commenter supported it because it prevented institutions from "shopping around" for the best accreditation bargain. Another supporting commenter observed that the criterion needed clarification, since it lacks the necessary distinction between institutional and programmatic accreditation. Another commenter supported the criterion in principle, because it encouraged reciprocity among accrediting agencies. However, he stated that the actual requirements exceeded the Secretary's statutory authority to recognize accrediting agencies. Another supporter requested modifications to take into account the responsibility of each individual agency to establish standards. Two commenters wanted the criteria to be strengthened to bar institutions from acquiring multiple, presumably duplicate, accreditations. Another commenter asked that all accreditation actions be required to be reported to the appropriate agency of the State in which the school is located.

Paragraph (a) of § 602.19 drew several negative comments. However, one commenter supported the limitation of scope of operations of an accrediting agency to only those postsecondary institutions or programs legally authorized by their respective States. The commenter favoring that paragraph stated that it was an important quality assurance mechanism in relation to the "exportation" of educational programs from one State to another.

Several negative commenters all stated that paragraph (a) of this section was unreasonably restrictive, because not all categories of educational institutions are subject to approval of every State. These categories include federally sponsored institutions, foreign institutions, and theological schools. The commenters also stated that there is almost no case in which State authorization is needed for an

educational program. They also indicated that several recognized accrediting bodies accredit institutions both at and below the postsecondary level. The impact of the requirement, they stated, would be not only to eliminate Secretarial recognition of most of the currently listed accrediting bodies but also to remove scores of institutions or programs from Federal eligibility. One commenter stated that the paragraph is unnecessary, since an institution operating without proper State authority would be closed down by the relevant State agency.

Paragraph (b) of § 602.19 attracted the attention of many commenters who saw the prohibition for 12 months of one agency's grant of accreditation when accreditation is denied or revoked by another agency as a direct specification by the Secretary of an educational standard. They felt that the requirement is unsupportable by the laws affecting the Secretary's recognition of accrediting bodies. Several commenters indicated that there was a lack of clarity concerning the Secretary's expectations about the interaction between institutional and programmatic accreditation in terms of this requirement. While some of these commenters supported a greater exchange of information among the agencies, they felt that the proposed subsection is seriously flawed, because it disregards the right of each agency to establish its standards and make its own decisions. A commenter objected to the stigma that the Secretary seemed to have attached to any change of accrediting agency by an institution or program. There were two commenters who supported this paragraph, which one of them stated encourages professional courtesy among accrediting agencies.

Several commenters indicated their support for paragraph (c) of § 602.19 as being a reasonable and appropriate requirement. One asked that it be changed to cover programmatic as well as institutional agencies. One commenter asked if any harm came from an institution's holding two accreditations when one is removed but the standards of the other agency continue to be met.

Discussion: The Secretary, in light of the comments, chooses to consider the accrediting decisions of accrediting agencies as indicative of their attitudes regarding educational quality. Under the final regulations accrediting agencies are expected to take into account the decisions of other accrediting agencies.

The Secretary, based on the public comment, is persuaded that it is not necessary to prohibit a recognized

accrediting agency from considering for accreditation an institution or program that has been denied status by another agency or has lost its accredited status with that other agency. Instead, the Secretary has determined that it will be sufficient, for recognition purposes, to ensure that agencies establish and adhere to a policy under which the accreditation review includes an examination of the reasons that another agency refuses to confer accreditation on, or continue accreditation of, an institution or program.

It was not the intention of the Secretary to eliminate eligibility of institutions or programs that are not subject to State oversight. A clarification is made in the final rule.

Changes: Paragraph (a) of § 602.19 has been revised to take into account the absence of State authority over certain postsecondary institutions. Agencies now would be required to consider an institution's or program's State approval status when there is an "applicable State law."

The twelve month moratorium previously proposed under paragraph (b) of § 602.19 has been eliminated. The requirement has been modified to indicate that the agency considering whether to grant initial status to an institution or program should take into account the actions of agencies that have previously denied that institution or program status, withdrew its status, or invoked probationary status.

Paragraph (c) of § 602.19 has been modified to require an accrediting agency to consider another agency's placing of an institution (or the principal program offered by an institution) on probation as well as revoking an institution's (or its principal program's) accreditation, to determine whether it too should take any action.

Restoration of Current Provisions

Comments: Several commenters requested the restoration of current regulations that were not included in the NPRM. Two of them requested restoration of virtually all excluded items, because they believe that the requirements are significant to the determination of whether an accrediting agency is a reliable authority concerning educational quality and that they also provide for a more equitable accreditation system.

Two commenters, advocating the Secretary's role in discouraging the proliferation of fragmentation of accrediting bodies, suggested that the statement be restored that, in view of these regulations, it is unlikely that more than one agency will qualify for recognition in a defined geographical

jurisdiction or in a defined field of program specialization, and that, if two agencies seek recognition, they must demonstrate need for their activities.

Two commenters specifically asked that the current criterion regarding the consideration of student complaints by accrediting agencies be retained, in the interest of protecting the student as a consumer of education.

Five commenters asked for the restoration of the criterion calling for public representation in the accreditation process. They stated that the accreditation community should have substantial and meaningful representation by the lay public. One of the commenters characterized the deletion of that criterion as "destructive" and stated that it "could be deleterious to both schools and students."

One commenter requested the restoration of the criterion requiring accrediting agencies to demonstrate that they take into account the "rights, responsibilities, and interests of students, the general public, the academic, professional, or occupational fields involved, and institutions." The agency stated that the elimination of the requirement could be interpreted as condoning the ascendancy in accreditation of one group or interest above another. They suggested continuing the current regulations' philosophy of fostering a balance of interests in the accreditation process.

Two commenters suggested retention of the two criteria related to nondiscrimination. One of these asked that the reference to nondiscrimination in the selection of accreditation personnel be retained. The other commenter asked that both the reference to nondiscrimination in the selection of agency personnel and the reference to the accrediting agency's fostering of nondiscriminatory practices among the institutions or programs it accredits be retained. The latter commenter suggested that the deletions might not serve public interests. He further stated that the Secretary should provide leadership in encouraging nondiscrimination in accreditation.

Discussion: In writing the final regulations, the Secretary has restored the provisions of the current regulations which commenters have shown to directly affect educational quality. To reduce burdens on the petitioning bodies, the Secretary eliminated those items that do not appear to have a direct impact upon the ability of accrediting agencies to be reliable authorities as to educational quality.

With regard to the use of the regulations to limit proliferation and fragmentation in accreditation, the Secretary determined that arbitrarily limiting the number of accrediting bodies serves no educational purpose. The Secretary wishes to foster appropriate competition among accrediting bodies and does not wish to see the recognition process used in such a way as to create a monopoly in any educational field.

Having received comments asking for the restoration of the complaint review requirement and of public representation, the Secretary is agreeable to restoring these items as being helpful in determining the reliability of accrediting bodies.

The Secretary does not believe that the specific criterion related to taking into account the rights, responsibilities, and interests of certain consumers of accreditation need be restored. There are sufficient safeguards in the proposed regulations to foster a balance of interests in accreditation.

The Secretary chooses not to restore the two items related to nondiscrimination in accreditation, because the Secretary believes that the issue is covered adequately in Federal civil rights legislation.

Upon reviewing these regulations since publication of the NPRM, the Secretary decided to restore the criterion regarding providing advance notice of proposed or revised accreditation standards to those individuals and organizations significantly affected by the accreditation process and affording these interested parties the opportunity to comment on the proposed standards. The Secretary determined that the procedure is integral to assuring the relevancy of accreditation standards to the particular field of education being accredited. The Secretary also decided to restore the provisions that authorize Departmental staff to observe an accrediting agency's conduct of site visits and other official proceedings so as to clarify that the Department retains access to all the necessary information regarding an agency's accrediting activities.

Changes: At paragraph (g) of § 602.13 the Secretary has provided that the agency issue procedures for the timely and fair review of complaints that relate to its standards.

At paragraph (j) of § 602.13 the Secretary restored the former criterion calling for public representation in the accreditation process.

At paragraph (b) of § 602.3 a provision has been added to clarify that the Secretary retains his current authority to

observe an accrediting agency's site visits and proceedings.

The Secretary added to paragraph (c) of § 602.18 the requirement that the accrediting agency provide advance public notice of proposed new or revised standards and provide interested parties the opportunity to comment upon those proposals prior to their adoption.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 602

Colleges and universities, Education.

Dated: June 7, 1988.

William J. Bennett,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

PART 603—[AMENDED]

1. The authority citation for Part 603 is revised to read as follows:

Authority: 20 U.S.C. 403(b), 1065(b), 1141(a), 1248(11); 42 U.S.C. 293a(b), 295f-3(b), 295h-4(1)(D), 298b(f); 38 U.S.C. 1775(a), unless otherwise noted.

2. The title of Part 603 is amended by removing the words "National Accrediting Bodies And".

Subpart A—[Removed and Reserved]

3. Subpart A (consisting of §§ 603.1 through 603.6) of Part 603 is removed and reserved.

PART 602—[NEW]

4. A new Part 602 is added, to read as follows:

PART 602—SECRETARY'S PROCEDURES AND CRITERIA FOR RECOGNITION OF ACCREDITING AGENCIES

Subpart A—General Provisions

- Sec.
602.1 Purpose.
602.2 Definitions.
602.3 Recognition procedures.
602.4 Participation of National Advisory Committee.
602.5 Publication of list of recognized agencies.

Subpart B—Criteria for Secretarial Recognition

- 602.10 Criteria for recognition.
602.11 Experience.
602.12 Scope of activity.
602.13 Clarity of purpose, scope, and operational information.
602.14 National recognition.
602.15 Resources.
602.16 Integrity of process.
602.17 Focus on educational effectiveness.
602.18 Regard for adequate and accurate public disclosure.
602.19 Regard for decisions of States and other accrediting agencies.

Authority: 20 U.S.C. 1058, 1061, 1065, 1068, 1141, 1401, 2471, and 3381, unless otherwise noted.

Subpart A—General Provisions

§ 602.1 Purpose.

(a) This part establishes procedures and criteria for the Secretary's recognition of accrediting agencies. Recognition is based on the Secretary's determination that accrediting agencies are reliable authorities concerning the quality of education or training offered by the postsecondary educational institutions or programs within the agencies' respective scopes of operation.

(b) Accreditation of postsecondary institutions or postsecondary programs by agencies recognized by the Secretary is a prerequisite to eligibility for many types of Federal financial assistance for those institutions or programs and for the students enrolled in those institutions or programs.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.2 Definitions.

The following definitions apply to terms used in this part:

(a) *Definitions in the Education Department General Administrative Regulations.* The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary

(b) *Definitions that apply to this part.* The following definitions also apply to this part:

"Accrediting" and "accreditation" refer to the status of public recognition which an agency grants to an educational institution or program which meets the agency's established qualifications and educational standards.

"Accrediting agency" and "agency" mean a legal entity, including an association, council, commission, or corporation, or a part of that entity, which conducts accrediting activities.

"Act" means the Higher Education Act of 1965, as amended.

"Educational program" or "program" means a legally authorized program of instruction or study, offered by an educational institution or other organization, that leads to an academic or professional degree, vocational certificate, or other recognized educational credential.

"Preaccreditation" means an agency's formal grant of status to an educational institution or program that signifies that the agency has determined that the institution or program is progressing towards accreditation within a reasonable period of time.

"Recognized agency" means an accrediting agency currently recognized by the Secretary under this part.

"State" means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.3 Recognition procedures.

(a) An accrediting agency that desires to be recognized by the Secretary under this part shall apply in writing to the United States Department of Education, Office of Postsecondary Education, Washington, DC 20202.

(b) For initial recognition and for renewal of recognition, the accrediting agency will furnish information establishing its compliance with the criteria set forth in Subpart B by the submission of written materials and by affording the Secretary access to the agency's accreditation site visits and proceedings.

(c) To the extent that the documentation submitted by an agency under paragraph (b) of this section does not demonstrate to the satisfaction of the Secretary that the agency meets one or more of the criteria in Subpart B, an agency nonetheless wishing to be recognized shall, at the Secretary's request—

(1) Make its personnel available for interviews; and

(2) Submit additional records and information.

(d) The Secretary does not deny or withdraw recognition of an agency, or limit recognition of an agency to a scope narrower than that requested, without first giving the agency an opportunity to show cause why that action should not be taken.

(e) The Secretary re-evaluates each recognized agency at the Secretary's discretion, but at least once every five years.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.4 Participation of National Advisory Committee.

In making determinations under this part, the Secretary considers the recommendations of the National Advisory Committee on Accreditation and Institutional Eligibility.

(Authority: 20 U.S.C. 1058 *et al.*, 1145)

§ 602.5 Publication of list of recognized agencies.

The Secretary periodically publishes in the *Federal Register* a list of recognized agencies, including the scope of recognition of each agency.

(Authority: 20 U.S.C. 1058 *et al.*)

Subpart B—Criteria for Secretarial Recognition

§ 602.10 Criteria for recognition.

(a) The Secretary recognizes an accrediting agency only if the Secretary determines that the agency is a reliable authority as to the quality of the education or training offered by postsecondary educational institutions or programs within the agency's scope of activity, taking into account the degrees or certificates offered and the education or specific occupational training offered. In making this determination, the Secretary decides whether the agency possesses the characteristics and follows the procedures described in this subpart.

(b) To be recognized by the Secretary, an agency must satisfactorily meet each of the criteria in §§ 602.11–602.19 unless it can demonstrate to the Secretary's satisfaction why one or more criteria should not appropriately be applied.

(c) For purposes of the determination in paragraph (b) of this section, each section, taken as a whole, constitutes a criterion.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.11 Experience.

An accrediting agency must demonstrate sufficient experience with respect to both—

(a) The geographical scope of activity for which it seeks recognition; and

(b) The specific degrees, certificates, and programs which would be covered by its recognized accreditation and preaccreditation activities.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.12 Scope of activity.

The Secretary determines whether an accrediting agency—

(a) (1) Is national in the scope of its operation; or

(2) Includes in its geographical scope of operation at least three States that are contiguous or that otherwise constitute a distinct geographic region, and defines its accrediting activity as the accreditation of entire institutions; and

(b) Accredits types and academic levels of institutions or programs that must be accredited by an accrediting agency recognized by the Secretary in order for those institutions or programs, or their students, to be eligible for participation in one or more Federal programs.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.13 Clarity of purpose, scope, and operational information.

The Secretary determines whether an accrediting agency maintains, and makes publicly available, current written material clearly describing each of the following matters:

(a) Its purposes and objectives.

(b) The geographical area and the types and academic levels of educational institutions or programs covered by the agency's accrediting activity.

(c) The definition of each type of accreditation and preaccreditation status, including probationary status, if any, that the agency grants.

(d) The criteria and procedures used by the agency for determining whether to grant, reaffirm, reinstate, deny, restrict, or revoke each type of accreditation and preaccreditation status that the agency grants.

(e) The standards to which an agency holds an educational institution or program for the purpose of making determinations respecting each of the criteria referred to in paragraph (d) of this section.

(f) The procedures established by the agency for appeal of its denials or withdrawals of accreditation or preaccreditation status.

(g) The procedures followed by the agency for the timely review of complaints pertaining to institutional or program quality, as these relate to the agency's criteria, in a manner that is fair

and equitable to the person making the complaint and to the institution or program.

(h) The current accreditation or preaccreditation status publicly conferred on each educational institution or program within the agency's scope of operation, and the date of the next currently scheduled review or reconsideration of accreditation of each of those institutions or programs.

(i) The names and relevant employment and organizational affiliations of the members of the agency's policy and decision-making bodies responsible for the agency's accrediting activities, and the names of the agency's principal administrative staff.

(j) Provisions for the inclusion of representatives of the public in its policy and decision-making bodies, responsible for its accrediting activities or for the retention of advisors who can provide information about issues of concern to the public.

(k) With regard to institutions or programs of study that admit students on the basis of their ability to benefit from the education or training offered, any criteria established by the agency with respect to nationally recognized, standardized, or industry-developed tests designed to measure the aptitude of prospective students to complete successfully the program to which they have applied.

(Authority: 20 U.S.C. 1058 *et al.* and 1091(d))

§ 602.14 National recognition.

The Secretary determines whether an accrediting agency demonstrates that its policies, evaluation methods and decisions are accepted throughout the United States by, as appropriate—

(a) Educators and educational institutions;

(b) Licensing bodies; practitioners, and employers in the professional or vocational fields for which the educational institutions or program within the agency's jurisdiction prepare their students; and

(c) Recognized agencies.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.15 Resources.

The Secretary determines whether an accrediting agency has, and will be likely to have sufficient resources to carry out its accreditation function in light of its requested scope of recognition, including—

(a) Administrative staff and financial resources; and

(b) Competent and knowledgeable personnel responsible for on-site

evaluation, policy-making and decisions regarding accreditation and preaccreditation status.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.16 Integrity of process.

The Secretary determines whether an accrediting agency adheres to the following practices and procedures in making its determinations concerning accreditation and preaccreditation status:

(a) As an integral part of its accrediting activity, it—

(1) Requires self-analysis by each subject educational institution or program in accordance with guidance provided by the agency; and

(2) Conducts an on-site review of the institution or program, conducts its own independent analyses and evaluations of the data furnished by the institution or program, and provides a written report on the review to the institution or program concerning—

(i) The strengths and weaknesses of the institution or program (both at the main campus and branch campus or off-campus locations), including areas needing improvement; and

(ii) The institution's or program's performance respecting the assessment of student achievement as described in § 602.17.

(b) It re-evaluates at reasonable intervals the institutions or programs to which it has granted accreditation or preaccreditation status.

(c) It bases its decisions regarding the award of accreditation or preaccreditation status upon its published criteria and provides advance public notice of proposed new or revised criteria, providing interested parties adequate opportunity to comment on such proposals prior to their adoption.

(d) With regard to the award of preaccreditation status, it applies criteria and follows procedures that are appropriately related to those used to award accreditation status.

(e) It offers appropriate and fair written procedures for appeals of its denial or withdrawal of accreditation or preaccreditation status. Such written procedures shall be made promptly available to the chief executive official of any institution or program affected by such a change in status.

(f) It maintains a written policy under which it notifies the Secretary within 30 days of any final decision—

(1) To withdraw accreditation or preaccreditation status from an institution or program; or

(2) To place an accredited or preaccredited institution or program on a publicly announced probationary status.

(g) Its organization, functions, and procedures include effective controls against conflicts of interest and against inconsistent application of its criteria and standards.

(h) If the institution or program elects to make public disclosure of its status, it requires that each institution or program to which it has granted accreditation or preaccreditation status disclose that status accurately, including the academic or instructional programs covered by that status.

(i) It maintains a systematic program of review designed to assess the validity and reliability of its criteria, procedures, and standards relating to its accrediting and preaccrediting activity and their relevance to the educational and training needs of affected students.

(j) It maintains complete and accurate records of its last two reviews of each institution or program, and accurate permanent records of its decisions with respect to preaccreditation, accreditation, and adverse actions.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.17 Focus on educational effectiveness.

The Secretary determines whether an accrediting agency, in making its accrediting decisions, systematically obtains and considers substantial and accurate information on the educational effectiveness of postsecondary educational institutions or programs, especially as measured by student achievement, by—

(a) Determining whether an educational institution or program maintains clearly specified educational objectives consistent with its mission and appropriate in light of the degrees or certificates it awards;

(b) Verifying that satisfaction of certificate and degree requirements by all students, including students admitted on the basis of ability to benefit, is reasonably documented, and conforms with commonly accepted standards for the particular certificates and degrees involved, and that institutions or programs confer degrees only on those students who have demonstrated educational achievement as assessed and documented through appropriate measures;

(c) Determining that institutions or programs document the educational achievements of their students, including students admitted on the basis of ability to benefit, in verifiable and consistent ways, such as evaluation of senior theses, reviews of student portfolios, general educational assessments (e.g., standardized test results, graduate or professional school

test results, or graduate or professional school placements), job placement rates, licensing examination results, employer evaluations, and other recognized measures;

(d) Determining that institutions or programs admitting students on the basis of ability to benefit employ appropriate methods, such as preadmissions testing or evaluations, for determining that such students are in fact capable of benefiting from the training or education offered;

(e) Determining the extent to which institutions or programs broadly and accurately publicize, particularly in representations directed to prospective students, the objectives described in paragraph (a) of this section, the assessment measure described in paragraph (c) of this section, the information obtained through those measures, and the methods described in paragraph (d) of this section; and

(f) Determining the extent to which institutions or programs systematically apply the information obtained through the measures described in paragraph (c) of this section toward steps to foster enhanced student achievement with respect to the degrees or certificates offered by the institution or program.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.18 Regard for adequate and accurate public disclosure.

The Secretary determines whether an

accrediting agency, in making its accrediting decisions, reviews elements of institutional or program integrity as demonstrated by the adequacy and accuracy of disclosures of information that do not mislead the public (and especially prospective students) as to—

(a) The institution's or program's resources, admission policies and standards, academic offerings, policies with respect to satisfactory academic progress, fees and other charges, refund policies, and graduation rates and requirements;

(b) The institution's or program's educational effectiveness as described in § 602.17;

(c) Employment of recent alumni related to the education or training offered, in the case of an institution or program offering training to prepare students for gainful employment in a recognized occupation, or where the institution or program makes claims about the rate or type of employment of graduates; and

(d) Data supporting any quantitative claims made by the institution with respect to any matters described in paragraphs (a), (b) and (c) of this section.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.19 Regard for decisions of States and other accrediting agencies.

The Secretary determines whether an accrediting agency, in making its

decisions, shows regard for the decisions of States and of other recognized accrediting agencies by conforming with the following practices:

(a) Recognizing only those institutions or programs that are legally authorized under applicable State law to provide a program of education beyond secondary education.

(b) In considering whether to grant initial accreditation or preaccreditation status to an institution or program, taking into account actions by other recognized agencies which have denied accreditation or preaccreditation status to the institution or program, have placed the institution or program on public probationary status, or have revoked the accreditation or preaccreditation status of the institution or program.

(c) If another recognized agency places an institution or the principal program offered by an institution on public probationary status or revokes the accreditation of the institution or principal program within an institution, promptly reviewing the accreditation or preaccreditation status it has previously granted to that institution to determine if there is cause for it to withdraw or otherwise alter that status.

(Authority: 20 U.S.C. 1058 *et al.*)

[FR Doc. 88-14912 Filed 6-29-88; 9:14 am]

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Federal Register

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Part V

Department of Defense
General Services
Administration

National Aeronautics and
Space Administration

48 CFR Parts 42 and 52
Federal Acquisition Regulation (FAR);
Report of Shipment; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 42 and 52

Federal Acquisition Regulation (FAR);
Report of Shipment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR Subpart 42.14 and the clause at 52.242-12 to require contractors to provide advance notice of shipment for categories of material requiring preparation by the consignee for safety and security consideration.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 30, 1988 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 88-29 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:**A. Background**

Storage and distribution points, depots, and other receiving activities of the DoD and some civilian agencies require advance notice by contractors of shipments of minimum carload or truckload shipments. The advance notice facilitates arrangements for transportation control, labor, space and use of materials handling equipment at destination.

The proposed rule would also require advance notice of shipments of classified material; sensitive and controlled material; explosives; and some other hazardous materials. The

notice is necessary so the consignee can make special preparations for safety or security reasons.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant cost or administrative impact on a substantial number of small business contractors under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The rule would not affect the competitive posture of, or preference for small businesses, solicitation or small purchase procedures, impose nonreimbursed administrative costs, or required professional skill requirements or business systems beyond those normally available in-house to small businesses. Therefore, a Regulatory Flexibility analysis is not required.

Comments from small businesses and other interested parties are solicited and will be considered in the formulation of a final rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 42 and 52**Government procurement.**

Dated: June 21, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 42 and 52 be amended as set forth below:

**PART 42—CONTRACT
ADMINISTRATION**

1. The authority citations for Parts 42 and 52 continue to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Sections 42.1406-1 and 42.1406-2 are revised to read as follows:

42.1406-1 Advance notice.

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments enroute from contractors' plants. Generally, this notification is required

only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

42.1406-2 Contract clause.

The contracting officer shall insert the clause at 52.242-12, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilians agency facilities.

**PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

3. Section 52.242-12 is amended by inserting in the introductory text a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1988)"; by revising the first sentence of the clause; and by removing the derivation line following "(End of clause)" to read as follows:

52.242-12 Report of Shipment (REPSHIP).

As prescribed in 42.1406-2, insert the following clause:

Report of Shipment (REPSHIP) (Jun 1988)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer for all shipments of classified material, protected sensitive, and protected controlled material; explosives and poisons, classes A and B; radioactive materials requiring the use of a III bar label; or when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract, or private) for transportation to a domestic (i.e., within the United States excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii within Alaska or Hawaii respectively) destination (other than a port for export).

[FR Doc. 88-14686 Filed 6-30-88; 8:45 am]
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Friday
July 1, 1988

Part VI

Department of
Education

Agency Information Collection Activities
Under OMB Review; Projects With
Industry; Notice

federal register

DEPARTMENT OF EDUCATION**Agency Information Collection
Activities Under OMB Review; Projects
With Industry****AGENCY:** Department of Education.**ACTION:** Notice of information collection
request.

SUMMARY: The Secretary of Education provides notice that all Projects With Industry (PWI) program grantees are required to submit to the Rehabilitation Services Administration (RSA) project information for fiscal year 1987 and, separately for the first six months of fiscal year 1988. This information is necessary to enable the Commissioner of RSA to comply with a statutory requirement to establish minimum

compliance indicators for the PWI program. The Office of Management and Budget approved the data collection form on June 24, 1988.

DATE: Information must be received on or before August 30, 1988.

ADDRESSES: All information requested by this notice should be addressed to the Commissioner, Rehabilitation Services Administration, 330 C Street, SW., Room 3024, Mary E. Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Suzanne Choisser, Rehabilitation Services Administration, U.S. Department of Education, Mary E. Switzer Building, Room 3216, 330 C Street, SW., Washington, DC 20202. Telephone: (202) 732-1337.

SUPPLEMENTARY INFORMATION: On June 15, 1988, the Secretary published a notice of proposed information collection for the Projects With Industry program in the Federal Register (53 FR 22450).

That notice described the reasons for and identified the areas of the proposed information collection. The explanatory statements in that proposed notice are fully applicable to this notice, and readers are referred to 53 FR 22450.

Authority: 29 U.S.C. 795g(f)(1).

Dated: June 23, 1988.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special
Education and Rehabilitative Services.

[FR Doc. 88-14911 Filed 6-30-88; 6:45 am]

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Part VII

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water
Regulations; Synthetic Organic Chemicals;
Monitoring for Unregulated Contaminants;
Correction; Final Rule

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Parts 141 and 142

[WH-FRL-3408-6]

National Primary Drinking Water
Regulations; Synthetic Organic
Chemicals; Monitoring for Unregulated
Contaminants; CorrectionAGENCY: Environmental Protection
Agency.

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors in, and clarifying the preamble and the final rule promulgating National Primary Drinking Water Regulations (NPDWRs) for eight volatile synthetic organic chemicals in drinking water and monitoring requirements for 51 unregulated contaminants. This final regulation was published in the Federal Register on July 8, 1987 (52 FR 25690).

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Criteria and Standards Division, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202/382-4258).

EFFECTIVE DATE: This regulation was effective January 1, 1988.

SUPPLEMENTARY INFORMATION: EPA promulgated national primary drinking water regulations for benzene, carbon tetrachloride, para-dichlorobenzene, 1,2-dichloroethane, 1,1-dichloroethylene, 1,1,1-trichloroethane, trichloroethylene, and vinyl chloride, and monitoring requirements for 51 unregulated compounds on July 8, 1987 (52 FR 25690). The preamble and regulation contained errors which are corrected by this notice. In addition, this notice clarifies some provisions in the July 8 notice.

I. Corrections to the Preamble

There are twenty-two changes to the preamble. Ten of these changes are simply corrections of typographical errors. The other changes are described below:

On page 25691 of the July 8 notice, the term "regulated VOCs" is changed to read "VOCs" to correspond to the rule language (see 40 CFR 141.24(a)(8)). Also, a phrase has been added to clarify that reduced monitoring is allowed when contaminants are not detected during initial monitoring and the system is not "vulnerable" as determined by the State to clarify that a system must meet both conditions to qualify for the reduced monitoring. In addition, the summary of the monitoring requirements for unregulated contaminants on page 25691

is expanded to better reflect the provisions in 40 CFR 141.40.

On page 25702, a phrase is added to the description of the proposed monitoring requirements to clarify the conditions for reduced monitoring under the second option. In the description of the third option, some language on page 25703 is removed because it was incomplete and therefore confusing.

A paragraph has been added to explain that the requirement specifying where the water supplier must sample is intended to insure that samples for ground and surface waters be taken at points representative of the water delivered to the consumer.

A statement has been added and to clarify that only ground-water systems are eligible for reduced initial monitoring.

A footnote is added to Table 3 on page 25705 to make it clear that the repeat monitoring requirement for ground-water systems that are not vulnerable and that do not detect VOCs in the initial monitoring is one sample per source; i.e., one sample every three or five years, as appropriate.

The section describing the use of existing data to fulfill monitoring requirements has been changed to clarify that EPA's intent was to allow the use of high quality data, when available, and not to force duplicative monitoring. EPA did not intend to require that the existing data strictly adhere to the method detection limits and statistical criteria promulgated in this rule. As stated on page 25704, EPA did not intend to allow the results of EPA's national survey, the Ground Water Supply Survey (GWSS), to be used for the initial sample for ground-water systems served by one well. The reason for allowing only systems using one well to use the GWSS data is because the GWSS samples were taken in the distribution system, so that more than one source could have contributed to the sample. These provisions allowing the use of existing high quality data, including GWSS data, were meant to apply to the monitoring requirements for both regulated VOCs and unregulated contaminants. Therefore, EPA is adding two statements to the preamble section on unregulated contaminants to reflect this intent.

An additional change eliminates the statement that public water systems must meet secondary drinking water standards, as well as primary drinking water standards, when using point-of-use devices or supplying bottled water to avoid an unreasonable risk to health. The Agency, and generally owners and operators of public water systems, believe that water supplied to the public

should be palatable as well as devoid of harmful substances and waterborne disease agents. For this reason, the preamble stated that water from point-of-use devices and bottled water used as a condition of a variance or exemption was to meet primary and secondary standards. However, secondary standards are not Federally enforceable and thus EPA is removing the reference to them in the preamble. The Agency, however, encourages States to require public water systems using point-of-use devices and bottled water to provide water that meets secondary standards. Also, in the case of bottled water, it must meet the applicable Food and Drug Administration standards. In addition, the phrase "primary drinking water standards" has been changed to "primary drinking water regulations" to correspond to the statutory terminology.

On page 25711, the term "VOCs" is changed to read "contaminants" to correctly describe the statutory provision at issue.

A sentence has been added that clarifies that the monitoring location for the unregulated contaminants should be after treatment, if treatment exists.

II. Corrections to the Regulation

This notice also corrects errors and adds clarifications of the regulatory language. These corrections are described below.

Section 141.24(g)(1) is revised to clarify that sampling must take place after application of any treatment, and that the quarterly monitoring takes place for one year unless paragraph (g)(8)(i) applies, as specified in the preamble.

Section 141.24(g)(7) is revised to clarify that samples must be analyzed within fourteen days of collection. Specifically, the word "should" has been changed to "must." This is consistent with the description of this provision in the preamble.

Various changes are made to the introductory phrase of paragraph (g)(8) and paragraph (g)(8)(i) in § 141.24 to eliminate repetitious language and to clarify that the reduced monitoring requirement is one sample (i.e., not four quarterly samples).

In § 141.24, paragraph (g)(8)(ii)(A) is amended to add parentheses missing from the reference to paragraph (g)(8)(iv).

In § 141.24, paragraph (g)(8)(ii)(B)(1) is revised by changing the sentence to state that monitoring must be repeated every three years. Previously, the sentence said that monitoring must be repeated in three years.

In § 141.24, paragraph (g)(8)(v) is amended by adding the statement that a system is considered vulnerable if it detects any of the contaminants listed in § 141.40(j), in addition to the contaminants already cited in § 141.61(a) and § 141.40(e). This citation to the other group of unregulated contaminants was inadvertently left out of the rule. The intent was to classify a water system as vulnerable if any of the regulated VOCs or the unregulated contaminants (except disinfection-byproducts) were detected.

In § 141.24, paragraph (g)(15) concerns monitoring for unregulated contaminants but was inadvertently included in the section on monitoring for the eight regulated VOCs. It states that any small public water system, defined as one that supplies water to fewer than 150 service connections, may send a letter to the State saying that the system is available for sampling in lieu of actually taking samples. The Safe Drinking Water Act does provide this exception for small systems, but it only applies to monitoring for unregulated contaminants, not compliance monitoring for regulated contaminants. See Section 1445 of the Safe Drinking Water Act. Thus, this notice deletes this provision. (This same provision was properly included in the section on monitoring for unregulated contaminants. See § 141.40(k).) EPA's intent was to require every system to monitor for the regulated volatile organic chemicals at least once to determine whether or not these substances were present at levels above the MCLs.

This notice deletes paragraphs (g)(16) and (17) in § 141.24 because monitoring by consecutive systems is already covered by 40 CFR 141.29. In § 141.24, paragraph (g)(18) is redesignated as paragraph (g)(16) and the OMB control number is added at the end of the paragraph.

In § 141.35, a sentence is added to paragraph (d) to clarify that, for surface water systems, public notification is required only after the first quarter's monitoring for unregulated contaminants, with a statement that monitoring will be conducted for three more quarters with the results available upon request. The rule was silent on the frequency of public notification for systems that sampled more than one time.

Table 1 in § 141.40 is corrected by changing the title to clarify that the table is referring to the date when monitoring is to begin, not the date when monitoring is to be completed.

In § 141.40 (b) and (c), the paragraphs are revised to clarify that both surface

water systems and ground-water systems must sample after the application of any treatment.

In § 141.40(i), a sentence is added which states that the results of EPA's Ground Water Supply Survey may be used for the initial sample for ground-water systems served by a single well. (Other systems may not use these results, for the reasons explained above.)

This notice adds a sentence to § 141.40(k) to explain that public water systems serving fewer than 150 connections that choose to send a letter stating that the system is available for sampling (rather than actually taking samples) are not to send samples of water to the State unless requested and that the letter is to be sent no later than January 1, 1991 (which corresponds to the date by which monitoring would otherwise begin). In addition, § 141.40 is amended by adding a new paragraph (m) which states that the States or public water systems may composite up to five samples when monitoring for the unregulated contaminants as explained in the preamble.

This notice corrects a typographical error in § 141.60(b) (this paragraph was not amended in the July 8, 1987 notice; it was simply reprinted for the convenience of the reader). The correct citation in this paragraph is § 141.62(b)(1).

Section 141.61(b) is changed by omitting the word "generally," which was mistakenly included before the word "available." The 1986 amendments to the SDWA removed the word "generally" from the definition of "feasible" in Section 1412(b)(5). Under Subpart J, Use of Non-Centralized Treatment Devices, § 141.100(c) is corrected to remove the phrase "Secondary Drinking Water Standards" from the definition of the term "equivalent" and to change the term "standards" to "regulations" for the reasons discussed above in the explanation of preamble changes.

The typographical error in § 141.100(d)(2) is corrected by changing the term "post-contractor" to "post-contractor."

In Part 142, two typographical errors are corrected: the citation in the introductory phrase in item 2.a. and the title of the new section it adds are corrected to read § 142.57 (instead of § 142.56). Section 142.56 remains "Extension for Date of Compliance," as set out in the codification rule for the SDWA amendments (52 FR 20676, June 2, 1987).

Section 142.62 is corrected by changing the title to read "Variances and exemptions from the maximum

contaminant levels for synthetic organic chemicals," because the provisions of this section apply to exemptions, as well as variances. Likewise, paragraphs (e), (f), and (g) in § 142.62 are corrected by including the word "exemptions" in addition to "variances" to clarify that these paragraphs refer to both variances and exemptions, as indicated in the preamble. Also, in paragraphs (b) and (c), the references to "§ 141.61(a)" are corrected to read "§ 142.62(a)." Finally, § 142.62(g)(5) is corrected by changing "post-contractor" to "post-contractor."

William A. Whittington,

Acting Assistant Administrator for Water.

Date: June 23, 1988.

The following corrections are made in FRL-321-4, National Primary Drinking Water Regulations; Synthetic Organic Chemicals; Monitoring for Unregulated Contaminants, published in the Federal Register on July 8, 1987 (52 FR 25690).

PARTS 141 AND 142—(AMENDED)

1. On page 25691, column 2, line 14, remove the word "regulated" and on line 15, add the phrase "and the system is not vulnerable" after "sample".
2. On page 25691, column 3, line 22, after "years", add the phrase "for ground-water sources and quarterly sampling of each source for one year every five years for surface water sources."
3. On page 25691, column 3, line 26, change "50" to "51".
4. On page 25697, column 2, line 42, in the table of MCLs, change the last number from "0.2" to "0.20."
5. On page 25698, column 3, lines 35-36, change "86 cents/gallon" to "86 cents/1,000 gallons."
6. On page 25702, column 3, line 56, add the phrase "and the system is not vulnerable" after "sample".
7. On page 25703, column 1, lines 6-11, remove the following phrase and sentence: "i.e., each system samples once every 3 months for a year. If no VOCs are found and the system is not vulnerable to contamination, the State may reduce the sample to that taken in the first quarter."
8. On page 25703, column 2, following line 55, add the following text:
"Thus, surface water systems may sample at points in the distribution system representative of each source or at entry points to the distribution system. Ground-water systems must sample at points of entry to the distribution system representative of each well."

points representative of the water delivered to the consumer. The entrance to the distribution system is an appropriate sampling point for treated water unless a number of wells in the well field are being used intermittently. In this case, the system must either sample the raw water from each source to assure that the MCL at each source is not exceeded or develop a monitoring scheme for sampling when new sources (e.g., wells) are brought on line or taken off line. Since the regulation requires quarterly sampling to be representative, more than one sample per quarter may be necessary. In the case of multiple sources, the State would determine the monitoring requirements that best ensure sampling is representative of each source."

9. On page 25704, column 2, line 6, change "Table 4" to "Table 3."

10. On page 25704, column 3, line 43, change "NTNCW systems" to "NTNCWS."

11. On page 25704, column 3, lines 46-48, the sentence which reads "If a system is not classified as 'vulnerable' and the first quarterly sample does not detect VOCs, the State may waive the requirement for additional sampling." is revised to read as follows:

"If a ground water system is classified as 'not vulnerable' and the first quarterly sample does not detect VOCs the State may waive the requirement for additional sampling."

In general, in determining vulnerability, States should assess the presence of both regulated VOCs and unregulated contaminants."

12. On page 25705, Table 3, change the subheading "Ground Water" to "Ground Water" and add the following as a footnote to the bottom of the table:

"One sample except when VOCs are detected."

13. On page 25705, column 1, lines 60-65, the phrase which reads "Allow the use of monitoring data collected after January 1, 1983, in lieu of new data for the first sample if the data are of an acceptable quality and will provide information equivalent to that required in the rule" is revised to read as follows:

"Allow the use of monitoring data collected after January 1, 1983, for purposes of compliance monitoring. If the State determines that the data are of an acceptable quality, i.e., consistent with the quality of data collected as specified in the rule, the State may authorize the use of that data to fulfill the system's initial monitoring requirements if the system is determined by the State not to be vulnerable. 'Consistent' means the sampling location, sampling techniques, and analytical methods were performed by

qualified laboratories (i.e., laboratories that are THM-certified) with adequate quality control. EPA does not intend that the data must adhere strictly to the method detection limits and statistical criteria in the rule for new analyses."

14. On page 25707, column 1, line 60, change "Table 3" to "Table 4."

15. On page 25707, column 2, line 60, change "Table 3" to "Table 5."

16. On page 25708, column 2, line 49, change "section III.A.1" to "Section III.D."

17. On page 25709, column 1, line 54, change the last word "is" to "of."

18. On page 25709, column 1, lines 60-63 which reads "Equivalent means water that meets all Primary and Secondary Drinking Water Standards and is not an acceptable quality." is revised to read as follows:

"Equivalent means water that is of acceptable quality and meets all national primary drinking water regulations."

19. On page 25711, column 1, line 17, change "VOCs" to "contaminants."

20. On page 25711, column 1, line 20, after "control," insert the following sentence: "EPA does not intend that the data must adhere strictly to the method detection limits and statistical criteria in the rule for new analyses."

21. On page 25711, column 1, lines 30, 35, and 36, change "33" to "34."

22. On page 25711, column 1, line 47, at the end of the line, add the following sentence:

"In addition, results of EPA's Ground Water Supply Survey can be used in a similar manner for systems supplied by a single well."

23. On page 25711, column 2, line 4, after "Monitoring," add the following sentence:

"All samples for unregulated contaminants should be taken after treatment, if any."

§ 141.24 [Amended]

24. In § 141.24(g)(1), on page 25712, column 3, line 57, after "well," insert "after any application of treatment."

25. The second and third sentences of § 141.24(g)(1) on page 25712, column 3, lines 57-65, are revised to read as follows:

"Sampling must be conducted at the same location(s) or more representative location(s) every three months for one year except as provided in paragraph (g)(8)(i) of this section."

26. In § 141.24(g)(7) on page 25713, column 2, lines 8 through 10, change "Samples should be analyzed within fourteen days of collection." to "Samples must be analyzed within fourteen days of collection."

27. In the introductory phrase of § 141.24(g)(8) on page 25713, column 2, lines 60-61, remove the phrase "as follows".

28. In § 141.24(g)(8)(i)(A) on page 25713, column 3, line 1, after "monitoring," insert "may be reduced to one sample and".

29. In § 141.24(g)(8)(i)(B) (1) and (2) on page 25713, column 3, lines 8 and 10, after "Monitoring," insert "(i.e., one sample)" in both lines.

30. In § 141.24(g)(8)(ii)(A) on page 25713, column 3, line 25, the citation is corrected to read "(g)(8)(iv)".

31. In § 141.24(g)(8)(ii)(B)(1) on page 25713, column 3, lines 33 and 34, change "repeated in three years" to "repeated every three years."

32. Section 141.24(g)(v) on pages 25713 and 25714, which reads "A system is deemed to be vulnerable for a period of three years after any positive measurement of one or more contaminants listed in either § 141.61(a) or § 141.40(e) except for trihalomethanes or other demonstrated disinfection by-products" is corrected to read as follows:

"(v) A system is deemed to be vulnerable for a period of three years after any positive measurement of one or more contaminants listed in § 141.40 (e) or (j) or § 141.61(a), except for trihalomethanes or other demonstrated disinfection by-products."

33. In § 141.24 on page 25714, column 3, lines 10-32, paragraphs (g) (15), (16), and (17) are deleted.

34. In § 141.24, on page 25714, column 3, paragraph (g)(18) is redesignated as paragraph (g)(15) and the following is added at the end of the paragraph:

(Approved by the Office of Management and Budget under control number 2040-0090)

§ 141.35 [Amended]

35. In § 141.35, on page 25715, column 1, line 20, the following sentence is added to the end of paragraph (d):

"For surface water systems, public notification is required only after the first quarter's monitoring and must include a statement that additional monitoring will be conducted for three more quarters with the results available upon request."

36. In § 141.40(a) on page 25715, column 1, the title of Table 1 is corrected to read as follows:

"Table 1. MONITORING SCHEDULE BY SYSTEM SIZE"

37. In § 141.40, the first sentence in paragraph (b), on page 25715, column 1, line 48, is corrected to read as follows:

"(b) Surface water systems shall sample at points in the distribution system representative of each water source or at entry points to the distribution system after any application of treatment."

38. In § 141.40(c), on page 25715, column 1, line 54, after "well" insert "after any application of treatment".

39. In § 141.40, at the end of paragraph (i) on page 25715, column 3, line 42, add the following sentence: "In addition, the results of EPA's Ground Water Supply Survey may be used in a similar manner for systems supplied by a single well."

40. In § 141.40 paragraph (k) on page 25715, column 3, lines 61 through 67, is correctly revised and paragraph (m) is added after paragraph (l) on page 25716, column 1, to read as follows:

§ 141.40 Special monitoring for organic chemicals.

(k) Instead of performing the monitoring required by this section, a community water system or non-transient non-community water system serving fewer than 150 service connections may send a letter to the State stating that the system is available for sampling. This letter must be sent to the State no later than January 1, 1991. The system shall not send such samples to the State, unless requested to do so by the State.

(m) States or public water systems may composite up to five samples when monitoring for substances in § 141.40 (e) and (j) of this section.

41. In § 141.60, paragraph (b) on page 25716, column 1, lines 27 and 28, is corrected to read as follows:

§ 141.60 Effective dates.

(b) The effective date for § 141.62(b)(1) is October 2, 1987.

42. In § 141.61, paragraph (b) on page 25716, column 1, lines 54-65, is correctly revised to read as follows:

§ 141.61 Maximum contaminant levels for organic chemicals.

(b) The Administrator, pursuant to section 1412 of the Act, hereby identifies

the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for synthetic organic chemicals (§ 141.61(a)): central treatment using packed tower aeration; central treatment using granular activated carbon for all these chemicals except vinyl chloride.

43. Section 141.100(c) on page 25716, column 2, is correctly revised to read as follows:

§ 141.100 Criteria and procedures for public water systems using point-of-entry devices.

(c) The public water system must develop and obtain State approval for a monitoring plan before point-of-entry devices are installed for compliance. Under the plan approved by the State, point-of-entry devices must provide health protection equivalent to central water treatment. "Equivalent" means that the water would meet all national primary drinking water regulations and would be of acceptable quality similar to water distributed by a well-operated central treatment plant. In addition to the VOCs, monitoring must include physical measurements and observations such as total flow treated and mechanical condition of the treatment equipment.

44. In § 141.100(d)(2) on page 25716, column 2, line 56, change "post-contractor" to "post-contactor."

45. On page 25716, column 3, lines 17 and 19, change "§ 142.56" to "§ 142.57."

46. The title of § 142.62, on page 25716, column 3, and § 142.62 (b), (c), (e), (f), (g) introductory text and (g)(5) on page 25717, columns 1 through 3, are correctly revised to read as follows:

§ 142.62 Variances and exemptions from the maximum contaminant levels for synthetic organic chemicals.

(b) A State shall require community water systems and non-transient non-community water systems to install and/or use any treatment method identified in § 142.62(a) as a condition for granting a variance except as provided in paragraph (c) of this section.

If, after the system's installation of the treatment method, the system cannot meet the MCL, the system shall be eligible for a variance under the provisions of section 1415(a)(1)(A) of the Act.

(c) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in § 142.62(a) would only achieve a *de minimis* reduction in contaminants, the State may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(e) The State may require a public water system to use bottle water or point-of-use devices or other means as a condition of granting a variance or an exemption from the requirements of § 141.61(a), to avoid an unreasonable risk to health.

(f) Public water systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of § 141.61(a) must meet the following requirements in either paragraph (f)(1) or (f)(2) of this section in addition to requirements in paragraph (f)(3) of this section:

(g) Public water systems that use point-of-use devices as a condition for obtaining a variance or an exemption from NPDWRs for volatile organic chemicals must meet the following requirements:

(5) The design and application of the point-of-use devices must consider the tendency for an increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contactor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

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Part VIII

Department of the
Treasury

Customs Service

List of Customs-Approved Commercial
Gaugers and Customs-Accredited
Commercial Laboratories; Extension of
All Petroleum Gaugers' Approval To
Include Organic Chemicals and Vegetable
and Animal Oils; Notice

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DEPARTMENT OF THE TREASURY
(7.D. 55-37)

List of Customs-Approved Commercial Gaugers and Customs-Accredited Commercial Laboratories; Extension of all Petroleum Gaugers' Approval To Include Organic Chemicals and Vegetable and Animal Oils

AGENCY: U.S. Customs Service, Treasury.

ACTION: Publication of the complete list of Customs-approved commercial gaugers and Customs-accredited commercial laboratories.

SUMMARY: Customs is publishing a list of all Customs-approved commercial gaugers and all Customs-accredited commercial laboratories, along with the products each is approved to gauge or accredited to analyze for Customs purposes. Customs is also extending the approval of all Customs-approved commercial gaugers of petroleum to include the gauging of bulk liquid organic chemicals and vegetable and animal oils. This list, which includes these extensions, supersedes all previous notices of approvals and accreditations.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for

the acceptance of gauging reports and analysis reports from Customs-approved commercial gaugers and Customs-accredited commercial laboratories, respectively, for certain products. Section 151.13(f) requires that notices of approval of these organizations and individuals be published in the Federal Register and the Customs Bulletin. Notices of individual approvals have been published under both the present and preceding regulations over several years and cover a number of gaugers and laboratories. One of the purposes of this notice is to consolidate and supersede all of the previously issued individual approvals into one current listing for the guidance of the importing public and Customs officers. The practice of publishing individual approval notices will continue as required by the regulations. Any decision to publish consolidated updates in the future will be made according to the needs at that time.

Over a period of several months a number of gaugers have requested Customs to extend their approval to gauge petroleum and petroleum products under § 151.13(a)(1)(i) to include bulk liquid organic chemicals under § 151.13(a)(1)(ii) and vegetable and animal oils under § 151.13(a)(1)(iii). In reviewing these requests, Customs has

concluded that essentially the same procedures and equipment are used to gauge imports of all three products, and that gaugers qualified to gauge petroleum would be equally qualified to gauge the others.

Therefore, by this notice, Customs is granting the approval to gauge bulk liquid organic chemicals and vegetable and animal oils to all currently-approved gaugers of petroleum products regardless of whether these gaugers have requested an extension of their approval. Nothing in this notice requires the affected gaugers to provide gauging services in all of these products to the importing public, however.

The approvals and accreditations of the organizations and individuals listed in the table are effective in all Customs districts.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2446).

Dated: June 27, 1988.

John B. O'Loughlin,
Director, Office of Laboratories and Scientific Services.

CUSTOMS-APPROVED COMMERCIAL GAUGERS AND CUSTOMS-ACCREDITED COMMERCIAL LABORATORIES AND THE PRODUCTS AND LABORATORY ANALYSES EACH IS APPROVED OR ACCREDITED TO GAUGE OR ANALYZE UNDER § 151.13(a) OF THE CUSTOMS REGULATIONS (19 CFR 151.13(a))

Name of Gauger/Laboratory (Gaugers and Laboratories Marked With an Asterisk (*) and a Date Were Conditionally Approved on That Date.)	Products that may be gauged under § 151.13(a)(1)			Laboratory Analyses of products that may be performed under § 151.13(a)(2)														
	(a)	(b)	(c)	Petroleum and petroleum products				Sugar, sirups and molasses			Organic chemicals		Standard newsprint					
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Amspec, Inc. (*) (3-16-88)	X	X	X															
Atlantic Petroleum Services	X	X	X	X	X													
Bay Area Services, Inc.	X	X	X															
Bulk Liquid Surveys, Inc.	X	X	X	X	X													
C.J. Thibodeaux Co.	X	X	X															
Caleb Brett U.S.A., Inc.	X	X	X	X	X													
Camin Cargo Control, Inc.	X	X	X	X	X													
Capt. W.A. Walls, Inc.	X	X	X															
Captain G. McKay & Sons Marine	X	X	X															
Caribbean Petroleum Inspectors	X	X	X															
Charles V. Bacon, Inc.	X	X	X	X	X													
Chas. Martin Corporation	X	X	X	X	X													
Chem Coast, Inc.	X	X	X	X	X													
Coastal Gulf & International	X	X	X															
Columbia Inspection Inc.	X	X	X	X	X													
Commodity Control Services Corp.	X	X	X	X	X													
Compo-Survey (*) (4-25-88)	X	X	X															

CUSTOMS-APPROVED COMMERCIAL GAUGERS AND CUSTOMS-ACCREDITED COMMERCIAL LABORATORIES AND THE PRODUCTS AND LABORATORY ANALYSES EACH IS APPROVED OR ACCREDITED TO GAUGE OR ANALYZE UNDER § 151.13(a) OF THE CUSTOMS REGULATIONS (19 CFR 151.13(a))—Continued

Name of Gauger/Laboratory (Gaugers and Laboratories Marked With an Asterisk (*) and a Date Were Conditionally Approved on That Date.)	Products that may be gauged under § 151.13(a)(1)			Laboratory Analyses of products that may be performed under § 151.13(a)(2)														
	(a)	(b)	(c)	Petroleum and petroleum products				Sugar, sirups and molasses			Organic chemicals		Standard newsprint					
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
ComSource, Inc. (*) (5-23-88)				X	X	X	X				X	X						
Core Laboratories (*) (5-2-88)				X	X	X	X											
Curtis & Tompkins, Ltd.	X	X	X	X	X													
Daher American Inspection and Testing, Inc.	X	X	X															
Dahl & Company, Inc.	X	X	X	X	X													
Dide Services Inc.	X	X	X	X	X													
E. W. Seybolt and Company	X	X	X	X	X													
Ellen Hill Inspection Company	X	X	X	X	X													
Grover Morgan, Inc.	X	X	X	X	X													
Gulf Coast Independent Marine Surveyors (*) (5-23-88)	X	X	X	X	X													
Halycon Transport Corporation	X	X	X	X	X													
Herguth Petroleum Labs	X	X	X	X	X													
Hermann Runne	X	X	X	X	X													
Independent Inspectors Corp.	X	X	X	X	X													
James Woods & Co., Inc.	X	X	X	X	X													
Johnnie Wilson Inspections	X	X	X	X	X													
King Inspection & Testing, Inc.	X	X	X	X	X													
Laboratory Service, Inc.	X	X	X	X	X													
Law & Co. of Wilmington	X	X	X	X	X													
Marintech	X	X	X	X	X													
Oil Inspections (U.S.A.)	X	X	X	X	X													
Oiltest, Inc.	X	X	X	X	X													
P. J. Heinick, Inc.	X	X	X	X	X													
Pan Pacific Surveyors, Inc.	X	X	X	X	X													
Petroquest, Inc.	X	X	X	X	X													
PKK Scanla (USA) Inc.	X	X	X	X	X													
Ray A. Bergeron, Inc.	X	X	X	X	X													
Robinson International (USA)	X	X	X	X	X													
Seatran, Inc.	X	X	X	X	X													
SGS Control Services, Inc.	X	X	X	X	X													
Thionville Surveying Co., Inc.	X	X	X	X	X													
Thornston Laboratories, Inc.	X	X	X	X	X													
Transcan Marine Consultants and Surveyors, Inc.	X	X	X	X	X													
Unimer, Inc. (*) (5-23-88)	X	X	X	X	X													
United Surveyors of Chemicals	X	X	X	X	X													
W. B. Branson & Company, Inc.	X	X	X	X	X													
Watson Gray (U.S.A.) Inc.	X	X	X	X	X													
William A. Finn	X	X	X	X	X													
William C. Brann	X	X	X	X	X													
William R. Vaden	X	X	X	X	X													

- a Petroleum and petroleum products, § 151.13(a)(1)(i).
 b Organic chemicals of Schedule 4, Part 2, Subpart D, TSUS, in bulk and in liquid form, § 151.13(a)(1)(ii).
 c Vegetable and animal oils of Schedule 1, Part 14, Subparts B and C, TSUS, in bulk and in liquid form, § 151.13(a)(1)(iii).
 1 API gravity, § 151.13(a)(2)(i)(A).
 2 Amount of sediment and water (S&W), § 151.13(a)(2)(i)(B).
 3 Antiknock index, § 151.13(a)(2)(i)(C).
 4 Distillation characteristics, § 151.13(a)(2)(i)(D).
 5 Sugar degrees determined by polariscope, § 151.13(a)(2)(ii)(A).
 6 Percent soluble nonsugar solids, § 151.13(a)(2)(ii)(B).
 7 Percent total sugars, § 151.13(a)(2)(ii)(C).
 8 Weight per gallon in air at 60° F., § 151.13(a)(2)(ii)(D).
 9 Identity using common or IUPAC nomenclature, § 151.13(a)(2)(iii)(A).
 10 Composition, giving percent by weight of each component, § 151.13(a)(2)(iii)(B).
 11 Weight per (Customs) ream, § 151.13(a)(2)(iv)(A).
 12 Thickness, § 151.13(a)(2)(iv)(B).
 13 Time of transudation of water (ground glass method), § 151.13(a)(2)(iv)(C).
 14 Percent by weight ash, § 151.13(a)(2)(iv)(D).
 15 Ingersoll gloss, § 151.13(a)(2)(iv)(E).

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Friday
July 1, 1988

Part IX

Department of
Transportation

Coast Guard

33 CFR Part 1, etc.
Editorial Changes Reflecting Recent
Coast Guard Reorganization; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 3, 19, 26, 54, 67, 81, 89, 114, 116, 117, 130, 131, 132, 135, 136, 137, 140, 144, 148, 149, 150, 153, 154, 156, 157, 159, 160, 164, 174, 179, 181, and 183

[CGD 88-052]

Editorial Changes Reflecting Recent Coast Guard Reorganization

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document corrects titles, telephone numbers and addresses of various Coast Guard offices and units. This action is necessary to reflect recent restructuring of Coast Guard headquarters offices and field organizations. These changes will make it easier for those persons affected by the regulations to contact the appropriate Coast Guard officials.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Sam Watkins, Office of Chief Counsel, (202) 267-1534.

SUPPLEMENTARY INFORMATION: Recently the Coast Guard undertook a major restructuring of its internal organization. This reorganization caused the disestablishment of certain Headquarters Offices, the establishment of others, and the transfer of selected responsibilities between certain offices. Additionally, the Third and Twelfth Coast Guard Districts have been disestablished and their respective responsibilities absorbed by other Districts. Because of these changes, many titles, telephone numbers and addresses in existing regulations need to be updated. The purpose of this document is to update those titles, telephone numbers and addresses.

Notice of Proposed Rulemaking

This rule merely updates Coast Guard office titles, telephone numbers and addresses contained in 33 CFR Ch. I. Therefore, under the provisions of 5 U.S.C. 553, this amendment is being issued as a final rule without publication of a notice of proposed rulemaking, which is unnecessary. Additionally, since the organizational changes have already been implemented, good cause exists for making these rules effective upon publication.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT

regulatory policies and procedures (44 FR 11034, February 28, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rulemaking merely updates Coast Guard office titles, telephone numbers and addresses. There is no substantive change to current Coast Guard regulations.

Drafting Information

The principal person involved in drafting this Final rule is: Lieutenant Sam Watkins, Office of Chief Counsel.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

Regulatory Flexibility Evaluation

Since this rulemaking merely updates Coast Guard office titles, telephone numbers and addresses, the Coast Guard certifies that there is no significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations make only title, telephone number and address changes; they do not contain any information collection or record keeping requirements.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 19

Navigation (water), Vessels.

33 CFR Part 26

Communications equipment, Marine safety, Radio telephone, Vessels.

33 CFR Part 54

Alimony, Child support, Military personnel, Wages.

33 CFR Part 67

Continental shelf, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 81

Navigation (water), Reporting and recordkeeping requirements, Treaties.

33 CFR Part 89

Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 114

Bridges.

33 CFR Part 116

Bridges.

33 CFR Part 117

Bridges.

33 CFR Part 130

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 131

Alaska, Insurance, Maritime carriers, Oil pollution, Pipelines, Reporting and recordkeeping requirements.

33 CFR Part 132

Continental shelf, Insurance, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 135

Administrative practice and procedure, Advertising, Claims.

33 CFR Part 136

Administrative practice and procedure, Claims, Continental shelf, Oil pollution.

33 CFR Part 137

Claims, Harbors, Insurance, Oil pollution, Reporting and recordkeeping requirements, Vessels.

33 CFR Part 140

Continental shelf, Investigations, Marine safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements.

33 CFR Part 144

Continental shelf, Marine safety, Occupational safety and health.

33 CFR Part 148

Administrative practice and procedure, Environmental protection, Harbors, Petroleum.

33 CFR Part 149

Fire prevention, Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution.

33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 153

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 154

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous materials transportation, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 159

Sewage disposal, Vessels.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Vessels, Waterways.

33 CFR Part 164

Marine safety, Navigation (water), Waterways.

33 CFR Part 174

Intergovernmental relations, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 179

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 183

Marine safety.

This document is issued under the authority of 14 U.S.C. 633. In consideration of the foregoing, the Coast Guard hereby amends Chapter I of Title 33 of the Code of Federal Regulations as set forth below.

PART 1—GENERAL PROVISIONS

§ 1.01-60 [Amended]

1. In § 1.01-60(a), introductory text, the words "Office of Navigation" are removed, and the words "Office of Navigation and Waterway Services" are added in their place.

§ 1.01-70 [Amended]

2. In § 1.01-70(b) the words "Office of Marine Environment and Systems" are removed, and the words "Marine Safety, Security and Environmental Protection" are added in their place.

§ 1.05-1 [Amended]

3. Section 1.05-1 is amended as follows:

a. In paragraph (c), introductory text, the words "Office of Marine Environment and Systems, U.S. Coast Guard Headquarters" are removed, and the words "Office of Navigation Safety and Waterway Services" are added in their place.

b. In paragraph (i), introductory text, the words "Office of Marine Environment and Systems, U.S. Coast Guard Headquarters" are removed, and the words "Office of Navigation Safety and Waterway Services" are added in their place.

c. In paragraph (j), introductory text, the words "Office of Navigation, U.S. Coast Guard Headquarters" are removed, and the words "Office of Navigation Safety and Waterway Services" are added in their place.

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

4. Section 3.25-05(a) is revised to read as follows:

§ 3.25-05 Philadelphia Marine Inspection Zone and Captain of the Port Zone.

(a) The Philadelphia Marine Inspection Office and the Philadelphia, Captain of the Port Office are located in Philadelphia, Pennsylvania.

PART 19—WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS

§ 19.06 [Amended]

5. Section 19.06 is amended as follows:

a. In the section heading, the words "Sea Transportation Service" are removed, and the words "Sealift Command" are added in their place.

b. In paragraph (b), introductory text, the words "Commandant, U.S. Coast Guard, Washington, D.C. 20226" are removed, and the words "Commandant (G-MVI), U.S. Coast Guard, Washington, DC 20593-0001" are added in their place.

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIO TELEPHONE REGULATIONS

§ 26.06 [Amended]

6. In § 26.06(b), introductory text, the words "(G-W), 2100 Second Street SW., Washington, DC 20593" are removed, and the words "Office of Navigation Safety and Waterway Services, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

PART 54—ALLOTMENTS FROM ACTIVE DUTY PAY FOR CERTAIN SUPPORT OBLIGATIONS

§ 54.07 [Amended]

7. In section 54.07 the words "Commandant (G-LGL), General law Division, U.S. Coast Guard Headquarters, Washington, DC. 20593-0001" are removed, and the words "Commanding Officer (LGL), U.S. Coast Guard Pay and Personnel Center, Federal Building, 444 S.E. Quincy Street, Topeka, KS 66683-3591, (913) 295-2520" are added in their place.

PART 67—AIDS TO NAVIGATION ON ARTIFICIAL ISLANDS AND FIXED STRUCTURES

§ 67.10-25 [Amended]

8. In section 67.10-25(a), introductory text, the words "(GWAN), 2100 Second Street SW., Washington, DC 20593" are removed, and the words "Short Range Aids to Navigation Division, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

9. In § 67.50-10, the heading and paragraph (a) are revised to read as follows:

§ 67.50-10 Second Coast Guard District.

(a) Description. See § 3.05-1 of this Chapter.

§ 67.50-40 [Removed]

10. Section 67.50-40 is removed.

PART 81—72 COLREGS: IMPLEMENTING RULES

§ 81.18 [Amended]

11. In § 81.18(b) the words "Coast Guard Headquarters, Office of Navigation, 2100 Second Street S.W., Washington, D.C. 20593" are removed, and the words "the Office of Navigation Safety and Waterway Services, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

PART 89—INLAND NAVIGATION RULES: IMPLEMENTING RULES**§ 89.18 [Amended]**

12. In § 89.18(a) the words "Coast Guard Headquarters, Office of Navigation, 2100 Second Street SW, Washington, D.C. 20593" are removed, and the words "the Office of Navigation Safety and Waterway Services, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

PART 114—GENERAL**§ 114.05 [Amended]**

13. § 114.05(1) the words "Office of Navigation" are removed, wherever they appear, and the words "Office of Navigation Safety and Waterway Services" are added in their place.

§ 114.50 [Amended]

14. In § 114.50 the words "Commandant (G-N), U.S. Coast Guard Headquarters, Washington, D.C. 20593" are removed, and the words "the U.S. Coast Guard Office of Navigation Safety and Waterway Services, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

PART 116—ALTERATION OF OBSTRUCTIVE BRIDGES

15. In Part 116 the words "Office of Navigation" are removed, and the words "Office of Navigation Safety and Waterway Services" are added in their place, in the following places:

- (a) Section 116.15(a) and (b); and
- (b) Section 116.20(a) and (c) introductory text.

PART 117—DRAWBRIDGE OPERATION REGULATIONS**§ 117.191 [Amended]**

16. In § 117.191(b) the words "Commander, Twelfth Coast Guard District" are removed, and the words "District Commander" are added in their place.

PART 130—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION

17. In Part 130 the words "Commandant (G-WFR)" are removed, and the words "Commandant (G-MER-1)" are added in their place, in the following places:

- (a) Section 130.8(d);
- (b) Section 130.7(a);
- (c) Section 130.9(b)(1), (b)(2), (b)(3)(iii), (b)(3)(iv), (b)(3)(vi) introductory text, the undesignated paragraph following (b)(3)(vi), and (b)(4);

(d) Section 130.9(d) and (e) introductory text;
(e) Section 130.11(e) and (g); and
(f) Section 130.12(b)(3).

§ 130.4 [Amended]

18. Section 130.4 is amended as follows:

- a. In paragraph (a) the words "(G-WFR/21)" are removed, and the words "(G-MER-1)" are added in their place.
- b. Paragraph (c) is revised to read as follows: Application forms may be obtained from the Headquarters address set forth in paragraph (a) of this section.
- c. In paragraph (d), the telephone number "(202) 426-8806" is removed, and the telephone number "(202) 267-0530" is added in its place.

PART 131—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—ALASKA PIPELINE

19. In Part 131 the words "Commandant (G-WFR)" are removed, and the words "Commandant (G-MER-1)" are added in their place, in the following places:

- (a) Section 131.4(g) and (h);
- (b) Section 131.4(a)(1), (a)(2), (a)(3)(iv), (a)(3)(v), (a)(4), and (f);
- (c) Section 131.7(b) introductory text; and
- (d) Section 131.8(b).

§ 131.4 [Amended]

20. Section 131.4 is amended as follows:

- a. In paragraph (a) the words "(G-WFR/21)" are removed, and the words "(G-MER-1)" are added in their place.
- b. Paragraph (b) is revised to read as follows: Application forms may be obtained from the Headquarters address set forth in paragraph (a) of this section.
- c. In paragraph (i), the telephone number "(202) 426-8806" is removed, and the telephone number "(202) 267-0530" is added in its place.

PART 132—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—OUTER CONTINENTAL SHELF

21. In Part 132 the words "Commandant (G-WFR)" are removed, and the words "Commandant (G-MER-1)" are added in their place, in the following places:

- (a) Section 132.3(b);
- (b) Section 132.6(c);
- (c) Section 132.7(a);
- (d) Section 132.8(b)(1), (b)(2), (b)(3)(iii), (b)(3)(iv), (b)(3)(vi) introductory text, the undesignated paragraph following (b)(3)(vi), and (b)(4);

(e) Section 132.9(d) and (e) introductory text; and
(f) Section 132.11(b)(4).

§ 132.4 [Amended]

22. Section 132.4 is amended as follows:

- a. In paragraph (a), the words "(G-WFR/21)" are removed, and the words "(G-MER-1)" are added in their place.
- b. In paragraph (b), the words "Forms may be obtained from the address set forth in paragraph (a) of this section and from the 12 Coast Guard District Offices at New York, NY; Miami, FL; New Orleans, LA; San Francisco, CA; Seattle, WA; Cleveland, OH; St. Louis, MO; Juneau, AK; Long Beach, CA; Honolulu, HI; Boston, MA; or Portsmouth, VA" are removed, and the words "Forms may be obtained from the Headquarters address set forth in paragraph (a) of this section" are added in their place.
- c. In paragraph (c), the telephone number "(202) 426-8806" is removed, and the telephone number "(202) 267-0530" is added in its place.

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND**§ 135.9 [Amended]**

23. In § 135.9 the words "Commandant (G-MFR-1)" are removed, and the words "Commandant (G-MER-4)" are added in their place.

PART 136—OFFSHORE OIL POLLUTION COMPENSATION FUND, CLAIMS PROCEDURES**§ 136.3 [Amended]**

24. In § 136.3 the words "(G-W/73)" are removed, and the words "(G-MER-4)" are added in their place.

PART 137—DEEPWATER PORT LIABILITY FUND**§ 137.5 [Amended]**

25. In § 137.5 the definition of "Fund Administrator" is revised to read as follows: "Fund Administrator" means the Chief, Office of Marine Safety, Security and Environmental Protection.

§ 137.101 [Amended]

26. In § 137.101 the words "Financial Responsibility Division, located within the Office of Marine Environment and Systems at U.S. Coast Guard Headquarters" are removed, and the words "Marine Environmental Response Division, located within the Office of Marine Safety, Security and Environmental Protection at U.S. Coast Guard Headquarters" are added in their place.

§ 137.103 [Amended]

27. In § 137.103 the words "(G-WFR-1)" are removed, and the words "(G-MER-4)" are added in their place.

§ 137.505 [Amended]

28. In § 137.505 the words "(G-WFR-1)" are removed, and the words "(G-MER-4)" are added in their place.

PART 140—GENERAL**§ 140.7 [Amended]**

29. In § 140.7(a) the telephone number "(202) 426-1477" is removed, and the telephone number "(202) 267-1477" is added in its place.

§ 140.15 [Amended]

30. In § 140.15(b) the words "Commandant (G-MMT-2), U.S. Coast Guard, Washington, DC 20593" are removed, and the words "Commandant (G-MVI), U.S. Coast Guard, Washington, DC 20593-0001" are added in their place.

PART 144—LIFESAVING APPLIANCES**§ 144.30-5 [Amended]**

31. In § 144.30-5(a) the words "(G-MVI-3/24), Washington, DC 20593" are removed, and the words "(G-MVI), Washington, DC 20593-0001" are added in their place.

PART 148—GENERAL**§§ 148.211, 148.217 [Amended]**

32. In Part 148, the words "Office of Marine Environment and Systems" are removed, and the words "Office of Marine Safety, Security and Environmental Protection" are added in their place, in the following places:

- (a) Section 148.211, introductory text; and
- (b) Section 148.217(a).

§ 148.503 [Amended]

33. In § 148.503 the words "Commandant (G-W)" are removed, and the words "Commandant (G-M)" are added in their place.

PART 149—DESIGN, CONSTRUCTION, AND EQUIPMENT

34. In Part 149, the words "Commandant (G-W)" are removed, and the words "Commandant (G-M)" are added in their place, in the following places:

- (a) Section 149.203(a) introductory text, (c), and (d) introductory text;
- (b) Section 149.205(a);
- (c) Section 149.707(c); and
- (d) Section 149.799(a).

PART 150—OPERATIONS**§§ 150.105, 150.106 [Amended]**

35. In Part 150, the words "Commandant (G-W)" are removed, and the words "Commandant (G-M)" are added in their place, in the following places:

- (a) Section 150.105(b); and
- (b) Section 150.106.

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL**§ 153.103 [Amended]**

36. In § 153.103(d) the words "Office of Marine Environment and Systems" are removed, and the words "Office of Marine Safety, Security and Environmental Protection" are added in their place.

§ 153.105 [Amended]

37. In § 153.105(b), introductory text, the words "Office of Marine Environment and Systems" are removed, and the words "Office of Marine Safety, Security and Environmental Protection" are added in their place.

§ 153.203 [Amended]

38. In § 153.203 the telephone number "426-2675" is removed, and the telephone number "(202) 267-2675" is added in its place.

§ 153.205 [Amended]

39. Table 1 in § 153.205 is amended as follows:

a. In Region I telephone number "617-223-7265" is removed, and telephone number "617-565-3715" is added in its place.

b. In Region II telephone number "201-548-8730" is removed, and telephone number "212-264-2525" is added in its place.

c. In Region III telephone number "215-597-8898" is removed, and telephone number "215-597-9800" is added in its place.

d. In Region IV telephone number "404-347-4062" is removed, and telephone number "404-347-4727" is added in its place.

e. In Region V telephone number "312-353-2318" is removed, and telephone number "312-353-2000" is added in its place.

f. In Region VI "First International Building, 1201 Elm Street, Dallas, TX 75270" are removed, and the words "1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202" are added in their place.

g. In Region VI telephone number "214-767-2866" is removed, and

telephone number "214-655-6444" is added in its place.

h. In Region VII telephone number "913-236-3778" is removed, and telephone number "913-236-2800" is added in its place.

i. In Region VIII the words "One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202-2413" are removed, and the words "999 18th St., Suite 500, Denver, CO 80202-2405" are added in their place.

j. In Region VIII telephone number "303-293-1788" is removed, and telephone number "303-293-1603" is added in its place.

k. In Region IX telephone number "415-974-6131" is removed, and telephone number "415-974-8071" is added in its place.

l. In Region X telephone number "206-442-1263" is removed, and telephone number "206-442-5810" is added in its place.

m. The words "3rd . . . Governors Island, New York, NY 10004-5098, 212-668-7152" are removed from Table 1.

n. In District 7th telephone number "305-350-5270" is removed, and telephone number "305-536-5651" is added in its place.

o. In District 8th telephone number "504-589-6296" is removed, and telephone number "504-589-6901" is added in its place.

p. In District 11th telephone number "213-590-2301" is removed, and telephone number "213-499-5330" is added in its place.

q. The words "12th . . . Coast Guard Island, Alameda, CA 94501, 415-437-3465" are removed from Table 1.

r. In District 14th telephone number "808-546-7510" is removed, and telephone number "808-541-2114" is added in its place.

40. Table 2 in § 153.205 is amended as follows:

a. In Region I, the words "Northwestern portion . . . 3rd" are removed, and the words "Northwestern portion . . . 1st" are added in their place.

b. In Region I, the words "Connecticut . . . 3rd" are removed, and the words "Connecticut . . . 1st" are added in their place.

c. In Region II, the words "Coastal area and Eastern portion . . . 3rd" are removed, and the words "Coastal area and Eastern portion . . . 1st" are added in their place.

d. In Region II, the words "New Jersey . . . 3rd" are removed, and the words "New Jersey: Upper portion . . . 1st Lower portion . . . 5th" are added in their place.

e. In Region III, the words "Eastern portion . . . 3rd" are removed, and the words "Eastern portion . . . 5th" are added in their place.

f. In Region III, the words "Delaware . . . 3rd" are removed, and the words "Delaware . . . 5th" are added in their place.

g. In Region VIII, the words "Utah: Northern . . . 12th Southern . . . 11th" are removed, and the words "Utah . . . 11th" are added in their place.

h. In Region IX, the words "California: Northern . . . 12th Southern . . . 11th" are removed, and the words "California . . . 11th" are added in their place.

i. In Region IX, the words "Nevada: Northern . . . 12th Southern . . . 11th" are removed, and the words "Nevada . . . 11th" are added in their place.

PART 154—OIL POLLUTION PREVENTION REGULATIONS FOR MARINE OIL TRANSFER FACILITIES

§ 154.106 [Amended]

41. In § 154.106(c) the telephone number "202-426-2167" is removed, and the telephone number "202-267-2967" is added in its place.

§ 154.108 [Amended]

42. In § 154.108, the words "Office of Marine Environment and Systems" are removed, and the words "Office of Marine Safety, Security and Environmental Protection" are added in their place, in paragraph (a) introductory text, and (d).

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

§ 156.110 [Amended]

43. In § 156.110, the words "Office of Marine Environment Systems" are removed, and the words "Office of Marine Safety, Security and Environmental Protection" are added in their place, in paragraphs (a), introductory text, and (d).

§ 156.210 [Amended]

44. In § 156.210(b) the words "Commandant (G-WPE)" are removed, and the words "Commandant (G-M)" are added in their place.

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

45. In Part 157 the numbers "20593" are removed, and the numbers "20593-

0001" are added in their place, in the following places:

- (a) Section 157.04(b) and (d)(5);
- (b) Section 157.06(c);
- (c) Section 157.24a(b)(1) introductory text;
- (d) Section 157.102 introductory text;
- (e) Section 157.110;
- (f) Section 157.144(a);
- (g) Section 157.147(a);
- (h) Section 157.202 introductory text;
- (i) Section 157.208; and
- (j) Section 157.302(a).

§§ 157.06, 157.306 [Amended]

46. In Part 157, the words "Chief, Office of Merchant Marine Safety", wherever they appear, are removed, and the words "Chief, Office of Marine Safety, Security and Environmental Protection" are added in their place, in the following places:

- (a) Section 157.06(c) and (d); and
- (b) Section 157.306(a).

§ 157.306 [Amended]

47. In addition to the amendments set forth above, in § 157.306(c) the words "Commandant, U.S. Coast Guard, Washington, D.C. 20593" are removed, and the words "Commandant (G-MVI), U.S. Coast Guard, Washington, DC 20593-0001" are added in their place.

PART 159—MARINE SANITATION DEVICES

48. In Part 159 the numbers "20593" are removed, and the numbers "20593-0001" are added in their place, in the following places:

- (a) Section 159.12(c) introductory text;
- (b) Section 159.15(a) introductory text, and (c);
- (c) Section 159.17(a) and (c);
- (d) Section 159.19(a);
- (e) Section 159.201(a) introductory text; and
- (f) Section 159.205(j) and (k).

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

§ 160.7 [Amended]

49. In § 160.7(c) the words "Office of Marine Environment and Systems" wherever they appear, and removed, and the words "Office of Marine Safety, Security and Environmental Protection" are added in their place.

PART 164—NAVIGATION SAFETY REGULATIONS

§ 160.41 [Amended]

50. In § 164.41(a)(3) the words "to: Commandant (G-WWM), U.S. Coast Guard, Washington, D.C. 20593" are removed, and the words "to the Office of Navigation Safety and Waterway

Services, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS

§ 174.7 [Amended]

51. In § 174.7 the words "U.S. Coast Guard (G-BBS), 2100 Second Street SW., Washington, DC 20593" are removed, and the words "the U.S. Coast Guard Auxiliary, Boating, and Consumer Affairs Division, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

52. Section 174.125 is revised to read as follows:

§ 174.125 Coast Guard address.

The report required by § 174.123 must be sent to the U.S. Coast Guard Auxiliary, Boating, and Consumer Affairs Division, 2100 Second Street SW., Washington, DC 20593-0001.

PART 179—DEFECT NOTIFICATION

53. Section 179.19 is revised to read as follows:

§ 179.19 Address of the Commandant.

Each report and communication sent to the Coast Guard required by this part must be submitted to the U.S. Coast Guard Recreational Boating Product Assurance Branch, 2100 Second Street SW., Washington, DC 20593-0001.

PART 181—MANUFACTURER REQUIREMENTS

§ 181.31 [Amended]

54. Section 181.31 is amended as follows:

a. In paragraph (a), the words "Commandant (G-BP), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593" are removed, and the words "U.S. Coast Guard Recreational Boating Product Assurance Branch, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

b. In paragraph (b), the words "write: Commandant (G-BP), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593" are removed, and the words "write to the U.S. Coast Guard Recreational Boating Product Assurance Branch, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

§ 181.33 [Amended]

55. In § 181.33 the words "Commandant (G-BP), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593" are removed, and the words "U.S. Coast Guard

Recreational Boating Product Assurance Branch, 2100 Second Street SW., Washington, DC 20593-0001" are added in their place.

PART 183—BOATS AND ASSOCIATED EQUIPMENT

§ 183.5 [Amended]

56. In § 183.5(a) the words "United States Coast Guard Boating Safety Division" are removed, and the words "U.S. Coast Guard Recreational Boating Product Assurance Branch, 2100 Second Street SW." are added in their place.

Dated: June 28, 1988.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard, Chairman, Marine Safety Council.

[FR Doc. 88-14864 Filed 6-30-88; 8:45 am]

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Part X

Department of
Health and Human
Services

Food and Drug Administration

21 CFR Part 81
Provisional Listing of FD&C Red No. 3,
D&C Red No. 33, and D&C Red No. 36;
Postponement of Closing Date; Final
Rule

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Food and Drug Administration****21 CFR Part 81.****[Docket No. 76N-0266]****Provisional Listing of FD&C Red No. 3,
D&C Red No. 33, and D&C Red No. 36;
Postponement of Closing Date****AGENCY:** Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listings of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs, the lakes of FD&C Red No. 3 for use in coloring food and ingested drugs, and D&C Red No. 33 and D&C Red No. 36 for use as color additives in drugs and cosmetics. The new closing date for the provisional listing of these color additives will be August 30, 1988. This postponement will provide additional time for FDA to complete its evaluation of the information on FD&C Red No. 3 and to prepare appropriate Federal Register documents for FD&C Red No. 3, D&C Red No. 33, and D&C Red No. 36. **EFFECTIVE DATE:** Effective July 1, 1988, the new closing date for FD&C Red No. 3 and its lakes, D&C Red No. 33, and D&C Red No. 36 will be August 30, 1988.

FOR FURTHER INFORMATION CONTACT: Gerard L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:**I. FD&C Red No. 3**

FDA established the current closing date of July 1, 1988, by a rule published in the Federal Register on May 2, 1988 (53 FR 15551). At that time, FDA postponed the closing date to provide time for the agency to: (1) Complete its review of the report of the scientific review panel, (2) consider the impact, if any, of the recent decision in *Public Citizen v. Young*, 831 F.2d 1108 (D.C. 1987), and (3) develop and issue appropriate Federal Register documents.

Because of the complexity of the issues involved in the evaluation of the data for FD&C Red No. 3, the agency previously concluded that the closing date for the provisional listing of FD&C Red No. 3 should be extended until July 1, 1988. (For further discussion of the issues concerning FD&C Red No. 3 see

50 FR 26377 at 26379; June 20, 1985, and 50 FR 35783 at 35786; September 4, 1985.) By letter of June 14, 1988, the Certified Colors Manufacturers Association (CCMA) advised the agency that it has initiated a short-term study to demonstrate the hormonal effects of FD&C Red No. 3. The CCMA states that the results from this and earlier studies will show that the color works through a secondary effect in the causation of thyroid cancer. The agency believes that it is appropriate to extend the closing date to provide time for it to evaluate the protocol of the study, the progress of the study, to determine an appropriate period of time for completion of the study, and the agency's evaluation of the study. In addition, the extension of time will be used to evaluate the data submitted in response to the request for usage information on FD&C Red No. 3 which published in the Federal Register of November 19, 1987 (52 FR 44485) and December 21, 1987 (52 FR 48326). For these reasons, the agency believes it is reasonable to postpone the closing date for FD&C Red No. 3 until August 30, 1988. The extension will provide time for the development of a Federal Register proposal setting forth the amount of time required for the preparation of final Federal Register documents ruling on the status of FD&C Red No. 3 under the color additive amendments.

II. D&C Red No. 33 and D&C Red No. 36

FDA establishes the current closing date of July 1, 1988, for D&C Red No. 33 and D&C Red No. 36, by a rule published in the Federal Register of May 2, 1988 (53 FR 15551). At that time, FDA postponed the closing date to provide time for the agency to prepare Federal Register documents that would explain the basis for the agency's decisions concerning the conditions under which these color additives could be safely used.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until August 30, 1988, to provide time for the preparation and publication of appropriate Federal Register documents. The agency intends to publish these documents as soon as possible.

III. Conclusions

The agency has considered what, if any, effect this extension would have on the public health. FDA has concluded that there is no basis to believe that a 2-

month extension would present a hazard to public health. This extension is thus consistent with *McIlwain v. Hayes*, 690 F.2d 1041 (D.C. Cir. 1982). Because of the shortness of time until the July 1, 1988, closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing the postponement as a final rule and for an effective date of July 1, 1988. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b) and (d)(1) and (3), this postponement is issued as a final regulation, effective July 1, 1988.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

**PART 81—GENERAL SPECIFICATIONS
AND GENERAL RESTRICTIONS FOR
PROVISIONAL COLOR ADDITIVES
FOR USE IN FOODS, DRUGS, AND
COSMETICS**

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the tables of paragraph (a) for the entry "FD&C Red No. 3," and of paragraph (b) for the entries "D&C Red No. 33" and "D&C Red No. 36" by revising the closing date to read "August 30, 1988."

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table, appearing in the introductory text in paragraph (d), by revising the closing date for the entries "FD&C Red No. 3", "D&C Red No. 33", and "D&C Red No. 36" to read "August 30, 1988."

Dated: June 29, 1988.

John M. Taylor,
Associate Commissioner for Regulatory
Affairs.

[FR Doc. 88-14966 Filed 6-29-88; 4:43 pm]

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LIST OF PUBLIC LAWS

Last List June 30, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2203/Pub. L. 100-355

To increase the amount authorized to be appropriated with respect to the Sewall-Belmont House National Historic Site. (June 28, 1988; 102 Stat. 667; 2 pages) Price: \$1.00

S. 2156/Pub. L. 100-356

To amend the National School Lunch Act to require eligibility for free lunches to be based on the nonfarm income poverty guidelines prescribed by the Office of Management and Budget. (June 28, 1988; 102 Stat. 668; 2 pages) Price: \$1.00

S. 2167/Pub. L. 100-357

National Appliance Energy Conservation Amendments of 1988. (June 28, 1988; 102 Stat. 671; 5 pages) Price: \$1.00

CFR ISSUANCES 1988

January-April 1988 Editions and Projected July, 1988 Editions

This list sets out the CFR issuances for the January-April 1988 editions and projects the publication plans for the July, 1988 quarter. A projected schedule that will include the October, 1988 quarter will appear in the first Federal Register issue of October.

For pricing information on available 1987-1988 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the Federal Register and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

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Titles 17-27—April 1

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All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

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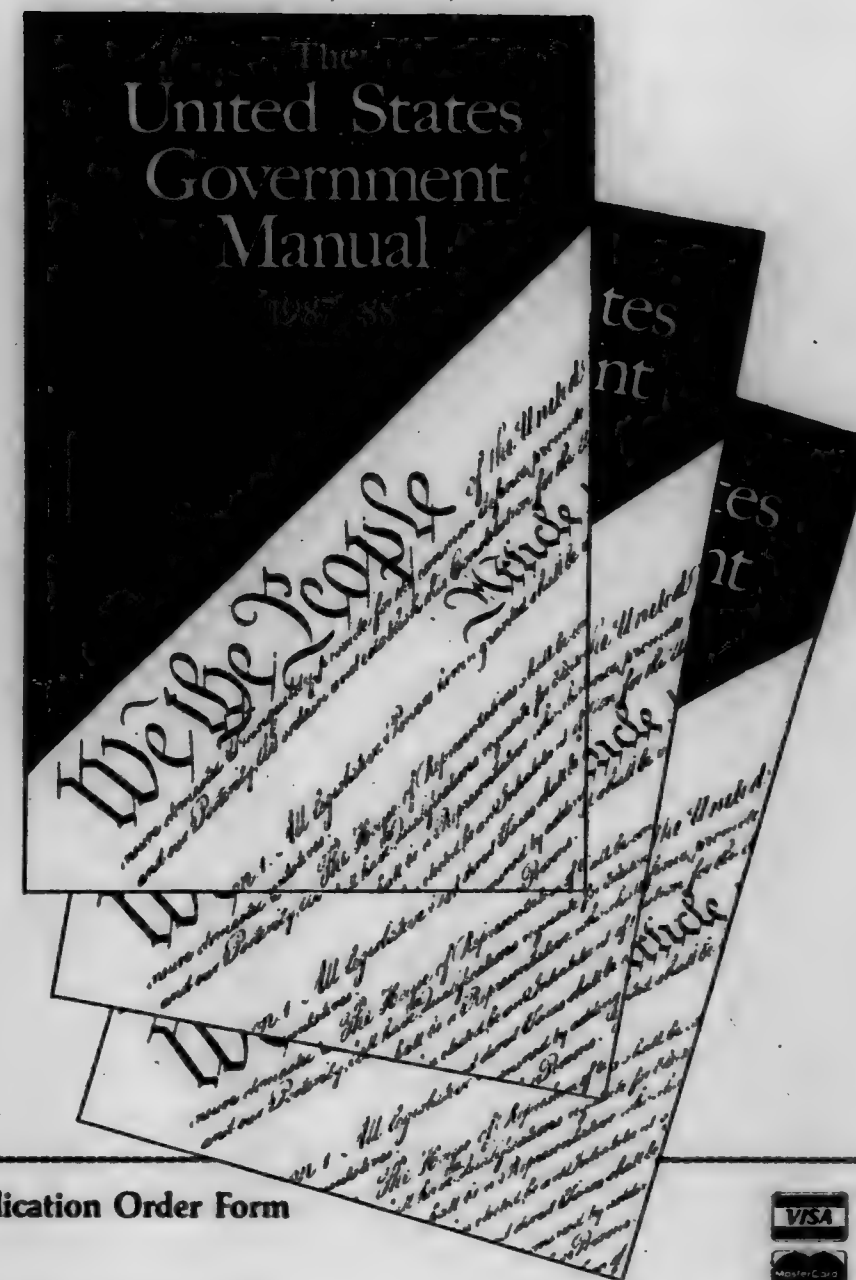
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Offices; Jurisdictional Changes

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.
ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (f) of the rules and regulations of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority published at 5 CFR Part 2400 *et seq.* (1987) to provide for changes in the geographical jurisdictions of the Washington, DC and Atlanta Regional Offices concerning unfair labor practice charges and representation petitions arising in Virginia.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel, (202) 382-0834.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and the General Counsel published, at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1987).

Appendix A, paragraph (f) of the foregoing rules and regulations sets forth the geographic jurisdictions of the Regional Directors of the Authority. Under paragraph (f), Appendix A, all counties within Virginia, except for Alexandria, Arlington, Fairfax, Fauquier, Loudoun and Prince William,

are listed within the geographic jurisdiction of the Authority's Atlanta Regional Office. The above listed counties are within the geographic jurisdiction of the Washington, DC Regional Office. In the best interest of efficient and cost-effective case processing by the Office of the General Counsel, notice of a proposed amendment requiring that all cases arising in Virginia shall be within the geographic jurisdiction of the Authority's Washington, DC Regional Office was published on May 5, 1988, at 53 FR 18843 soliciting comments. No written comments were received.

The address of the Washington, DC Regional Office, as set forth in Appendix A, paragraph (d)(3) of the rules and regulations is as follows:

(3) *Washington Regional Office:* 1111—18th Street, NW., 7th Floor, Washington, DC 20033-0758, Telephone FTS-653-8500, Commercial: 202-653-8500; Mailing Address: P.O. Box 33758, Washington, DC 20033-0758.

For the reason set out in the preamble, Appendix A to 5 CFR Chapter XIV is amended by revising the entry for the state of Virginia and republishing the introductory text in paragraph (f) to read as follows:

Appendix A to 5 CFR Chapter XIV—
Current Address and Geographic
Jurisdictions

(f) The geographic jurisdictions of the Regional Directors of the Authority are as follows:

State or other locality	Regional office
Virginia	Washington, DC

(5 U.S.C. 7134)

Dated: June 26, 1988.

For the Authority,

Jerry L. Calhoun,

Chairman,

Jean McKee,

Member.

Dennis M. Devaney,

Acting General Counsel.

[FR Doc. 88-14992 Filed 7-1-88; 8:45 am]

BILLING CODE 6737-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 549, 569a, and 569c

Conservators and Receivers; Priority of Claims

Date: June 23, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as the operating head of the Federal Saving and Loan Insurance Corporation ("FSLIC" or "Corporation") is promulgating as a final rule certain portions of the Proposed Receivership and Conservatorship Regulations that were published in the Federal Register of November 27, 1985 (50 FR 48970, 48995) ("Proposed Receivership Regulations"). This final rule adopts § 569c.11 of the Proposed Receivership Regulations (with certain technical modifications to accord with the administration of recent FSLIC receiverships), thereby establishing a priority structure for unsecured claims applicable to all FSLIC receiverships under a new Part 569c of Title 12 of the Code of Federal Regulations. This priority of claims structure replaces the provisions for priorities of unsecured claims in 12 CFR 549.5-1(b) and 569a.7.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-8428; Ronald A. Brown, Associate General Counsel for FSLIC, (202) 377-7044; or Michael B. Phillips, Attorney, Office of General Counsel, (202) 377-6755, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the Federal Register of November 27, 1985 (50 FR 48970), the Board proposed comprehensive revisions to its regulations covering the conservatorship and receivership of associations with Federal or State charters and the accounts of which are insured by the FSLIC.

Under the Proposed Receivership Regulations, the Board would: (1) Unify FSLIC receivership procedures under new Parts 569a, 569b, 569c, of Title 12 of

the Code of Federal Regulations; (2) adopt procedures for the appointment of FSLIC as a receiver or conservator under section 406(c)(1)(B) of the National Housing Act ("NHA"), 12 U.S.C. 1729(c)(1)(B); and (3) adopt rules governing substantive issues, including priorities in liquidation.

Since the publication of the Proposed Receivership Regulations, the Board has concluded that certain provisions ought to be promulgated in a final rule to provide for the uniform administration of FSLIC receiverships. This would replace a practice in recent receiverships in which the Board has addressed some issues by resolution on a case-by-case basis. The Board may issue other receivership and conservatorship regulations in final form in the near future.

This final rule adopts a section of the Proposed Receivership Regulations, proposed § 569c.11, which covers the priority structure for unsecured claims in receiverships in which the Board appoints the FSLIC as receiver. To provide definitions of key terms used in proposed § 569c.11 and a reference to the scope of new Part 569c for FSLIC receiverships, this rule includes portions of proposed §§ 569c.1 (Definitions) and 569c.2 (Scope), respectively. In addition, two technical changes have been made to clarify the priority treatment of: (1) Administrative expenses of the association in receivership for wages and salaries earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interests of the receivership to retain for a reasonable period of time (see new § 569c.11(a)(3)); and (2) claims of the United States for unpaid Federal income taxes (see new § 569c.11(a)(6)). Other technical, but not substantial modifications have been made to various portions of new § 569c.11 to reflect recent FSLIC procedures for the conducting of its receiverships.

Approximately twenty comment letters were received with respect to various sections of the Proposed Receivership Regulations. Only two comment letters were received on proposed § 569c.11 ("Priorities"). Neither of these two comment letters addressed the proposed priority of claims structure in proposed § 569c.11(a). These comment letters addressed proposed § 569c.11 (b) and (c), respectively. (For a discussion of the Board's response to these comments, see part IV of this introduction.)

The following sections of this introduction to this final rule include: (a) A review of the statutory authority for the scope of this rulemaking; (b) a

description of new § 569c.11; (c) a response to the public comments received on proposed § 569c.11; and (d) an analysis of this rule under the Regulatory Flexibility Act.

II. Statutory Authority for the Scope of this Rulemaking

Pursuant to section 5(d)(11) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. 1464(d)(11), the Board has plenary authority to make rules and regulations for federally chartered associations in conservatorship or receivership, for the conduct of conservatorships and receiverships, and for the liquidation and dissolution of such associations. Pursuant to section 406(c)(3)(A) of the NHA, 12 U.S.C. 1729(c)(3)(A), the provisions of section 5(d)(11) of the HOLA are applicable to a State-chartered insured institution for which the Board has appointed the FSLIC as conservator or receiver "in the same manner and to the same extent as if such [State-chartered] institution were a Federal association. . . ."

For a discussion of the enlargement of the Board's authority to regulate conservatorships and receiverships under section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA, see the introduction to the Proposed Receivership Regulations (50 FR 48970). Concerning the Board's authority to promulgate extensive rules for the receivership and liquidation of FSLIC-insured, State-chartered associations, see section 6 of the Bank Protection Act of 1968, Pub. L. No. 90-389, 82 Stat. 294. Congress based this extension of regulatory powers on the FSLIC's "vital interest in seeing that the liquidation of the [State-chartered] association proceeds in an orderly manner". S. Rep. No. 1263, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. & Ad. News 2530, 2531.

A further revision was made in 1982 extending these powers to receivership appointments under the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"), Pub. L. No. 97-320, 96 Stat. 1469, 1482. Section 122(d) of the Garn-St Germain Act added the following statutory override provision as section 406(c)(1)(B) of the NHA:

"(B)(i)(I) Notwithstanding any provision of the constitution of laws of any State, or of this section, in the event the Federal Home Loan Bank Board determines that any of the grounds specified in section 1464(d)(6)(A) (i), (ii), (iii) of this title exist with respect to an insured institution, other than a Federal association, the Board shall have exclusive power and jurisdiction to appoint the

Corporation as sole conservator or receiver of such institution.

(II) In such cases the corporation shall have the same powers and duties with respect to insured institutions as are conferred upon it under subsection (b) of this section with respect to Federal associations.

(ii)(I) The authority conferred by this subparagraph shall not be exercised without the written approval of the State official having jurisdiction over the State-chartered insured institution that the grounds specified for such exercise exist.

(II) If such approval has not been received by the Board within 90 days of receipt of notice by the State that the Board has determined such grounds exist, and the Board has responded in writing to the State's written reasons, if any, for withholding approval, then the board may proceed without State approval only by a unanimous vote of the Board. The corporation may also proceed without State approval if the Corporation has been appointed conservator, receiver, or other legal custodian pursuant to State law under subparagraph (A)."

Pursuant to section 406(c)(3) of the NHA, this final rule promulgated as section 569c.11 applies to receiverships instituted under section 406(c)(1)(B) of the NHA.

In a proposal issued concurrently with the promulgation of this rule, the Board is publishing for comment a rule that would revise priorities of unsecured claims for Federal associations. The proposed revision invites comment on the following alternatives: (1) A recognition of depositor priority over unsecured claims of general creditors in FSLIC or FDIC receiverships of federally chartered associations or savings banks in States with depositor preference legislation; (2) depositor priority for all Federal associations and Federal savings banks, regardless of location; or (3) depositor priority for all Federal savings banks and for all institutions for which the FSLIC is appointed as receiver by the Board.

III. § 569c.11—Priority of Claims in FSLIC Receiverships

New § 569c.11 establishes a priority of claims structure applicable to all FSLIC receiverships. This priority structure replaces previous priorities structures, which included: (a) Section 569a.7 (only applicable to the receivership of State-chartered institutions where the receiver was appointed pursuant to section 406(c)(2) of the NHA), (b) section 549.5-1(b)(5) (applicable to the receivership of a federally chartered deposit institutions, which provided depositors in Federal associations with the status of general creditors); and (c) resolutions of the Board in FSLIC receiverships of State-chartered institutions pursuant to

section 406(c)(1)(B) of the NHA, which adopted State law priorities.

For purposes of the administration of FSLIC receiverships, this final rule recognizes State law priorities with respect to depositors in State-chartered institutions, including a proviso in § 569c.11(a)(6) for depositor priority over claims of unsecured general creditors for State-chartered, FSLIC-insured institutions in those States with depositor preference legislation. Under the final form of § 569c.11(a)(6), as in the proposed rule published previously, depositor claims in Federal associations have the same priority status as the claims of unsecured general creditors. This final rule sets forth other elements of the priority structure for FSLIC receiverships substantially in accordance with the proposed rule published previously.

Priorities established for the liquidation of banks and savings and loan associations may affect not only traditional liquidations of assets in an orderly manner conducted over an extended period of time, but also "purchase and assumption" transactions in which substantial portions of the assets and liabilities of a bank or thrift institution are transferred by the FDIC or the FSLIC as receiver to an assuming bank or thrift institution. In some cases, the options available to a receiver may be expanded by changes in priority legislation or rules.

The authority of the FSLIC as receiver to effect a purchase and assumption transaction is contemplated by several statutory and regulatory provisions, including section 406(f) of the NHA, and is specifically granted in section 406(b) of the NHA, which provides that the Corporation as receiver enjoys numerous powers, including authority "to proceed to liquidate [the association's] assets in an orderly manner; or . . . to make such other disposition of the matter as it deems appropriate, whichever it deems to be in the best interest of the association, its savers, and the Corporation." The powers set forth in section 406(b) are those of the FSLIC as receiver of a Federal association (or the FDIC as receiver of an FDIC-insured Federal savings bank). Section 406(c)(1)(B)(i)(II) of the NHA confers such powers upon the FSLIC as receiver of a State-chartered association pursuant to appointment by the Board under section 406(c)(1)(B). The FSLIC as receiver of a State-chartered association pursuant to appointment under section 406(c)(1) or (2) of the NHA has "authority to liquidate such institution in an orderly manner or to make such other

disposition of the matter as it deems to be in the best interests of the institution, its savers, and the Corporation." (Section 406(c)(3) of the NHA.)

In purchase and assumption transactions entered into by the FSLIC as receiver of Federal associations or as receiver of associations chartered by States that provide equal priority for depositors and general creditors, the FSLIC has usually effected transfers of substantially all assets and liabilities of such associations, excluding claims having lesser priority than general creditor claims, such as subordinated debt and stockholder claims. If the FSLIC should be appointed receiver for an association chartered by a State that provides for depositor priority over claims of unsecured general creditors, and if the assets of such association should be determined by the Board to be less than the claims of secured creditors and depositors, the FSLIC, at its option, might effect a "purchase and assumption" pursuant to which all claims of general creditor status or higher would be transferred with the assets of the association, or alternatively might effect a purchase and assumption transaction in which deposits and secured claims would be transferred, but general creditor claims would not.

In adopting certain State law priorities for the liquidation of State-chartered institutions, by resolution or by this final rule, the Board has not intended and does not intend to imply that purchase and assumption transactions engaged in by the FSLIC as receiver for State-chartered associations must all be fashioned on the lines of State law priorities. As indicated, the FSLIC may, if it determines that such a disposition is "in the best interests of the institution, its savers, and the Corporation", effect a purchase and assumption transaction that satisfies not only depositors and those having equal or higher priority, but also claimants having a lesser priority. Any disposition will be structured in a manner determined by the FSLIC to be most advantageous to the discharge of its statutory responsibilities.

Under § 569c.11 (a)(1)-(a)(5), several categories of claims, in addition to administrative expenses of the receiver, are accorded priority over claims of general unsecured creditors and depositors, including certain administrative expenses of the association in receivership, claims for wages and salaries, administrative expenses of the association for wages and salaries earned prior to the appointment of the receiver by an

employee of the association under certain circumstances, and claims of governmental units for unpaid taxes (other than Federal income taxes).

Under § 569c.11(a)(6), claims of the United States for unpaid Federal income taxes have priority over (1) claims that have been subordinated in whole or in part to general creditor claims, and (2) claims by holders of nonwithdrawable accounts. This modification of the proposed rule arises from section 7507 of the Internal Revenue Code, 26 U.S.C. 7507, and a recent Internal Revenue Service ruling (Rev. Rul. 88-18, I.R.B. 1988-11, 17) finding that "bank and trust company" as that term is used in section 7507 applies to savings and loan associations.

New § 569c.11(b) specifically addresses the right of general creditors and depositors to receive interest after the date of default if a surplus is available and provides that this interest be paid at rates adjusted monthly to reflect the average rate for U.S. Treasury Bills with maturities of not more than 91 days during the preceding three months. The new uniform rate of interest will avoid any uncertainty about the rate to be paid and will eliminate disputes about the possible applicability of State law concerning interest due to creditors or depositors under certain circumstances.

Section 569c.11(c) makes it clear that any claim arising from the rejection or repudiation of an executory contract or an unexpired lease would constitute a general unsecured claim deemed to have arisen on or before the date of default. Such claims would not be administrative expenses of the receiver entitled to Priority under § 569c.11 (a)(1)-(a)(4).

Section 569c.11(d) sets forth the general rule that claims shall be paid in full, or provision for their payment shall be made, in accordance with the priorities of claims, and that claims of a lesser priority will not be paid before claims of a higher priority. In the event that funds are insufficient to pay all claims of a category or class in full, distribution to claimants in such category or class shall be made *pro rata*. The regulation also provides, however, that (1) distributions to claimants in one or more of the first six priority categories are necessary to conduct the receivership, and (2) the receiver determines that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.

The FSLIC's experience as receiver for numerous saving and loan associations indicates that this flexibility is essential in order to perform the functions of the receivership efficiently for the benefit of

all interested parties. Under the terms of the § 569.11(d) exception, advance payment to particular creditors would never be made under circumstances in which any other creditor with a higher priority will ultimately fail to receive payment in full.

Section 569c.11(e) recognizes the right of the depositors of a mutual association to receive any surplus remaining after payment of all claims in full plus interest, under § 569c.11(b). The regulation also provides that such surplus would be distributed to depositors in proportion to the balance of their accounts as of the date of default.

New §§ 569c.1 ("Definitions") and 569c.2 ("Scope") provide necessary definitions and a description of the scope of the Board's statutory authority for purposes of the promulgation of new § 569c.3. In addition, §§ 569a.7 and 549.5-1(b)(5) are revised to remove any conflict between those sections and the priority of claims structure in § 569c.11(a).

IV. Response to Public Comments on Proposed § 569c.11

The following discussion summarizes the two public comments on proposed § 569c.11 and presents the Board's response to those comments.

A Federal regulatory agency for certain financial institutions commented that proposed § 569c.11(b) provided a method of computation for interest on deposit and general creditor claims that was "confusing and possibly ambiguous". The Board has determined that the method of computation of interest in new § 569c.11(b) (which is identical to proposed § 569c.11(b)) is workable and equitable for purposes of the administration of FSLIC receiverships—the reference to the average rate for U.S. Treasury bills with maturities of not more than ninety one days during the preceding three months is readily accessible and objective.

A securities firm commented that proposed § 569c.11(c), which concerns the classification within the list of priorities of rejected executory contracts and unexpired leases, should be clarified. In its comment, the firm proposed that damages for the rejection of an executory contract should be measured as of the point in time of the rejection of the executory contract, not the date of the appointment of the receiver. For purposes of articulating its position, this commenter stated:

For instance, if the receiver thought that interest rates would move in its favor during the election period, but in fact interest rates moved adversely to it, the receiver should not then be able to terminate the contract and

limit the counterparty to its lesser measure of damages as of the date of the appointment of the receiver. Of course, if interest rates indeed moved in the receiver's favor, arguably the counterparty would be disadvantaged, but it would not be deprived of the benefits of its bargain.

Section 569c.11(c) is limited to establishing the priority of a rejected executory contract. The determination of a point in time from which damages should be measured is not within the limited purposes of § 569c.11(c); but this issue will be reviewed in connection with other regulations under Part 569c concerning the conduct of receiverships, to be considered by the Board in the near future.

V. Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in the "SUPPLEMENTARY INFORMATION" regarding this final rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in "SUPPLEMENTARY INFORMATION".

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed \$100 million." 13 CFR 121.13(a). This final rule treats all institutions in the same manner, and this rule would not have a substantial impact on small entities.

List of Subjects in 12 CFR Parts 549, 569a, and 569c

Administrative practice and procedure, Reporting and record-keeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 549, Subchapter C, Part 569a, Subchapter D, and adds Part 569c, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 549—POWERS OF RECEIVER AND CONDUCT OF RECEIVERSHIP

1. The authority citation for Part 549 is revised to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 258, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 402, 403, 48 Stat. 1250, 1257,

as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.

2. Amend § 549.5-1 by revising paragraph (b)(5); and by removing the authority citation located at the end of the section to read as follows:

§ 549.5-1 Deposit associations.

(b)
(5) Section 569c.11 shall govern the priorities of unsecured claims with respect to all FSLIC receiverships to which Part 549 is applicable.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 569a—RECEIVERS FOR INSURED INSTITUTIONS OTHER THAN FEDERAL ASSOCIATIONS

3. The authority citation for Part 56a is revised to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); sec. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1726, 1728-1730); sec. 408, 62 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

4. Section 569a.7 is revised to read as follows:

§ 569a.7 Priority of claims.

Section 569c.11 shall govern the priorities of unsecured claims with respect to all FSLIC receiverships to which Part 569a is applicable.

5. Add a new Part 569c to read as follows:

PART 569c—RECEIVERSHIP RULES

Sec.

569c.1 Definitions.

569c.2 Scope.

569c.3-569c.10 [Reserved]

569c.11 Priorities.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 402, 403, 48 Stat. 1250, 1256, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

§ 569c.1 Definitions.

As used in this part—

(a) "Association" means an insured institution, including a Federal association, for which the Board has appointed the Corporation as receiver;

(b) "Board" means the Federal Home Loan Bank Board;

(c) "Corporation" or "FSLIC" means the Federal Savings and Loan Insurance Corporation, except that, with respect to a federal savings bank for which the

Board has appointed the Federal Deposit Insurance Corporation ("FDIC") as receiver, "Corporation" means the FDIC;

(d) "Default" means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured institution for the purpose of liquidation.

(e) "Depositor" means the holder of a withdrawable account or accounts in an association;

(f) "Federal association" means a Federal savings and loan association or a Federal savings bank chartered by the Board under section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464;

(g) "HOLA" means the Home Owners' Loan Act of 1933, as amended; and

(h) "NHA" means Title IV of the National Housing Act of 1934, as amended.

§ 569c.2 Scope.

The rules and regulations of this Part are issued pursuant to the power granted to the Board by section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA to make rules and regulations for the liquidation and dissolution of associations, for associations in receivership, and for the conduct of receiverships; and such rules and regulations apply to all associations. A receiver shall have all powers granted by section 5 of HOLA and section 406 of NHA.

§ 569c.3-§ 569c.10 [Reserved]

§ 569c.11 Priorities.

(a) Unsecured claims against an association or the receiver that are proved to the satisfaction of the receiver shall have priority in the following order:

(1) Administrative expenses of the receiver, including the costs, expenses, and debts of the receiver;

(2) Administrative expenses of the association, provided that such expenses were incurred within thirty (30) days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit

to the receivership, and shall not include wages or salaries of employees of the association;

(3) Claims for wages and salaries, including vacation and sick leave pay and contributions to employee benefit plans, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interests of the receivership to engage or retain for a reasonable period of time;

(4) If authorized by the receiver, claims for wages and salaries, including vacation and sick leave pay and contributions to employee benefits plans, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars (\$3,000) per person, by an employee of the association not engaged or retained pursuant to a determination by the receiver pursuant to the third category above;

(5) Claims of governmental units for unpaid taxes, other than Federal income taxes, except to the extent subordinated pursuant to applicable law; but no other claim of a governmental unit shall have a priority higher than that of a general creditor under paragraph (a)(6) of this section;

(6) Claims for withdrawable accounts, including those of the Corporation as subrogee or transferee, and all other claims which have accrued and become unconditionally fixed on or before the date of default, whether liquidated or unliquidated, except as provided in paragraphs (a)(1) through (a)(5) of this section, provided, however, that if the association is chartered and was operated under the laws of a state that provided a priority for holders of withdrawable accounts over such other claims or general creditors, such priority within this paragraph (a)(6) shall be observed by the receiver;

(7) Claims other than those that have accrued and become unconditionally fixed on or before the date of default, including claims for interest after the date of default on claims under paragraph (a)(6) of this section, provided that any claim based on an agreement for accelerated, stipulated, or liquidated damages, which claim did not accrue prior to the date of default, shall be considered as not having accrued and become unconditionally fixed on or before the date of default;

(8) Claims of the United States for unpaid Federal income taxes;

(9) Claims that have been subordinated in whole or in part to general creditor claims, which shall be

given the priority specified in the written instruments that evidence such claims; and

(10) Claims by holders of nonwithdrawable accounts, including stock, which shall have priority within this paragraph (a)(10) in accordance with the terms of the written instruments that evidence such claims.

(b) Interest after the date of default on claims under paragraph (a)(6) of this section shall be at a rate or rates adjusted monthly to reflect the average rate for U.S. Treasury bills with maturities of not more than ninety-one (91) days during the preceding three (3) months.

(c) If the rejection or repudiation of an unexpired lease or executory contract by the receiver gives rise to a claim for damages, such claims, if allowed, shall be classified as a claim that has accrued and become unconditionally fixed on or before the date of default, and not as an administrative expense of the receiver.

(d) All unsecured claims of any category or class or priority described in paragraphs (a)(1) through (a)(10) of this section shall be paid in full, or provision made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class in full, distribution to claimants in such category or class shall be made pro rata. Notwithstanding anything to the contrary herein, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority classes outlined in paragraphs (a)(1) through (a)(6) of this section as the receiver believes are reasonably necessary to conduct the receivership, provided that the receiver determines that adequate funds exist or will be recovered during the receivership to pay in full all claims of any higher priority.

(e) If the association is in mutual form, and a surplus remains after making distribution in full of allowed claims as set forth in paragraphs (a) and (b) of this section, such surplus shall be distributed to the depositors in proportion to their accounts as of the date of default.

By the Federal Home Loan Bank Board.

Neddie Y. Washington,

Assistant Secretary.

[FR Doc. 88-15047 Filed 7-1-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-12-AD; Amdt. 39-5967]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which requires modification of the propeller brake electronic control wiring. This amendment is prompted by reports of electrical interference causing the brake to engage prior to command. This condition, if not corrected, could result in an unsymmetrical drag/thrust on landing, and/or damage to the propeller brake and engine.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31000 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, applicable to Model ATR-42 series airplanes, which requires modification of the propeller brake electronic control wiring, was published in the Federal Register on March 16, 1988 (53 FR 86323).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the proposed AD.

The other commenter objected to a statement in the preamble to the Notice that the unsafe condition addressed by this action is unsymmetrical drag/thrust on landing. The commenter suggested that this was inaccurate and stated that the service bulletin was initiated to prevent damage to the propeller brake by overheating, which could cause damage to the engine. The commenter

also stated that the unsafe condition discussed above has never been observed. The FAA does not totally concur with these comments. The FAA agrees that damage to the propeller brake by overheating can occur. Even though there have been no reported incidents of unsymmetrical drag/thrust on landing, there have been reports of electrical interference causing the brake to engage prior to command; in this situation, the potential exists for unsymmetrical drag/thrust to occur on landing.

Since the issuance of the Notice, Aerospatiale has issued Service Bulletin ATR42-01-0016, dated April 28, 1988, which describes procedures for removal of the propeller brake. The FAA has determined that the removal of the propeller brake, in accordance with this service bulletin or in accordance with FAA-approved procedures, is an acceptable alternate means of compliance with the intent of this AD. Accordingly, a new paragraph B. has been added to the final rule to reflect this.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change previously described.

It is estimated that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$5,520.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12812, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$240). A final evaluation has been prepared for this

regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, as listed in the Aerospatiale Service Bulletin ATR42-01-0013, Revision 1, dated December 8, 1987, certificated in any category. Compliance is required, within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent electrical interference with propeller brake system, accomplish the following:

A. Modify the propeller brake electronic control wiring in accordance with Aerospatiale Service Bulletin ATR42-01-0013, Revision 1, dated December 8, 1987.

B. As an alternate to paragraph A., above, operators may remove the propeller brake from the airplane in accordance with Aerospatiale Service Bulletin ATR42-01-0016, dated April 28, 1988, or an FAA-approved method.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the

Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-14934 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-15-M

14 CFR Part 39

[Docket No. 88-NM-10-AD; Amdt. 39-5968]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires modification of the aft lavatories to reduce the risk of fire. This amendment requires installation of a shroud behind the towel and cup dispensers in the aft lavatories to prevent accumulation of combustible materials behind the aircraft sidewall. Accumulation of combustible materials in this inaccessible location constitutes a fire hazard.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information, when available, may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the addition of a shroud behind the towel and cup dispensers in certain Model 737 aft lavatories, was published in the Federal Register on March 10, 1988 (53 FR 7764).

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the two comments received.

The first commenter concurred with the proposed AD.

The second commenter requested clarification of the effectivity intended by the AD and noted that the term "non-modular" used in the text of the AD was not sufficiently descriptive to identify the affected airplanes. The FAA agrees that there may be non-modular lavatories which have a satisfactory design and would, therefore, not be subject to the requirements of this amendment. However, due to the variation and multiple part number configurations possible on Model 737 airplanes, it is not practical to identify each airplane requiring modification. The final rule has been changed to limit the airplane applicability and allow certain existing installations as a means of compliance.

As noted in the preamble to the NPRM, Boeing has developed a design change for production airplanes and is developing appropriate service information which may be an acceptable means of compliance. This information is not yet available, however, and cannot be incorporated into this amendment.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the change noted above.

It is estimated that 550 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The cost of parts would not exceed \$100. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$231,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12812, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act

that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line numbers 001 through 1425, equipped with non-modular aft lavatories, certificated in any category. Compliance required as indicated, unless previously accomplished.

Note.—"Non-modular" refers to lavatories which are not stand-alone components, and are assembled on the airplane.

To prevent accumulation of combustible materials behind the airplane sidewall, accomplish the following:

A. Within 3 months after the effective date of this AD, inspect the area behind the towel and cup dispenser for the presence of a shroud enclosing the dispenser back.

1. If the dispenser is equipped with a shroud which prevents material from falling behind the lavatory sidewall and is acceptable to the Manager, Seattle Aircraft Certification Office, or an FAA Principal Maintenance Inspector, no further action is required.

2. If an acceptable existing shroud has not been installed, inspect the area behind the towel and cup dispenser in the aft lavatories and remove all foreign material. Repeat this inspection at intervals not to exceed 3 months, until the requirements of paragraph B., below, are accomplished.

B. Within 15 months after the effective date of this amendment, install a shroud behind the towel and cup dispenser in the aft lavatories, which encloses the dispenser back and prevents material from falling behind the sidewall, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, or an FAA Principal Maintenance Inspector.

C. An alternate means of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-14932 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-01-AD; Amdt. 39-5970]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of final rule.

SUMMARY: This action clarifies an existing airworthiness directive (AD), applicable to Boeing Model 767 series airplanes, which currently requires recurring functional testing of the wing and engine anti-ice control system. To support issuance of the AD, the airplane manufacturer provided to the FAA, detailed instructions for cockpit verification of thermal anti-ice switch and circuit integrity. These instructions failed to recognize certain airplane configuration differences. This action is necessary to clarify the anti-ice functional test instructions applicable to the different airplane configurations.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-1306, Seattle Aircraft Certification Office; telephone (206) 431-1948. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-88986, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On January 27, 1988, the FAA issued AD 88-04-04, Amendment 39-5842 (53 FR 3001; February 2, 1988), which requires functional testing of the wing and engine anti-ice control system on Boeing Model 767 series airplanes. That action was prompted by reports of problems associated with the switches used in anti-ice control panels and of the inadequacy of the anti-ice circuit logic

that can result in the flight crew not being warned that the engine or wing anti-ice system has not been activated. This condition, if not corrected, could result in an unacceptable ice build-up on the wings or engine inlets.

The requirements of that AD contained detailed instructions to be followed to accomplish the functional test. Boeing assisted the FAA in preparation of those instructions. Since issuance of that AD, however, the FAA has received reports that some instructions were applicable only to airplanes equipped with certain engine configurations. The FAA has determined that the existing AD must be clarified to include detailed instructions for cockpit verification of thermal anti-ice switch and circuit integrity applicable, as appropriate, to airplanes with various engine configurations.

Since this action only clarifies instructions in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Clarification

Pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration clarifies § 39.19 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1353(a), 1421 and 1423; 40 U.S.C. 109(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By providing clarification of the requirements of paragraph A.3.a., A.4., and A.17. of AD 88-04-04, Amendment 39-5842 (53 FR 3001; February 2, 1988), as follows:

Boeing: Applies to all Model 767 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure wing and engine anti-ice system integrity, accomplish the following:

A. Within the next 300 hours time-in-service after the effective date of this AD (March 4, 1988), and thereafter at intervals not to exceed 300 hours time-in-service, perform the following functional test of the wing and engine anti-ice control system:

1. Apply electrical power in accordance with the Boeing Model 767 Maintenance Manual 24-22-00.

2. If the pneumatic system is depressurized, continue to step 3. If the pneumatic system is pressurized, depressurize the pneumatic system in accordance with 767 Maintenance Manual 36-00-00, then go to step 3.

3. Deactivate airplane systems which are adversely affected when air/ground relay system No. 2 is in flight mode by performing deactivation instructions as follows:

a. Open the following circuit breakers and attach DO-NOT-CLOSE identifiers:

Main Power Distribution Panel P8

0J23, Probe Heat R TAT, where installed;

some airplanes have L TAT only

0K20, Pitot Heat L AUX—Phase C

0K21, Pitot Heat L AUX—Phase B

0K22, Pitot Heat F/O—Phase B

0K23, Pitot Heat F/O—Phase A

0K24, Pitot Heat R AOA

0K25, Probe Heat R ENG; applicable only to airplanes with PW4000 or PW JT9D-7R4 engines

Overhead Circuit Breaker Panel P11

11T27 ENG Mach Probe HT R; applicable

only to airplanes with PW JT9D-7R4 engines.

Fwd Miscellaneous Electrical Equipment Panel P33

33AX Drain Mast HTG FLT

b. Check that EQUIP COOLING mode

selector on pilot's overhead panel P5 is in

AUTO.

4. Open LDC GR POS AIR/GND SYST 2

circuit breaker 11U23 or 11U24, as applicable,

on P11 overhead circuit breaker panel.

5. On the wing and engine anti-ice module

located on the P5 panel, depress and release

the wing anti-ice switch.

6. Verify that the switch latches and

indicates ON.

7. Verify that both wing anti-ice amber

VALVE lights illuminate.

8. Depress and release the wing anti-ice

switch.

9. Verify that the switch unlatches and

does not indicate ON.

10. Verify that both wing anti-ice amber

VALVE lights are extinguished.

11. On the wing and engine anti-ice

module, depress and release both engine anti-

ice switches.

12. Verify that both switches latch and

indicate ON.

13. Verify that both engine anti-ice amber

VALVE lights illuminate.

14. Depress and release both engine anti-

ice switches.

15. Verify that both switches unlatch and

do not indicate ON.

16. Verify that both engine anti-ice amber

VALVE lights are extinguished.

17. Close LDC GR POS AIR/GND SYST 2

circuit breaker 11U23 or 11U24, as applicable.

18. Remove DO-NOT-CLOSE identifiers

and close the circuit breakers opened in Step

3.a. The test is complete. Remove electrical

power.

B. Any switch or circuit malfunction,

identified by a negative verification during

the functional test required by paragraph A,

above, must be corrected prior to further

flight, in accordance with the Boeing Model

767 Maintenance Manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the tests required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This clarification becomes effective July 21, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-14935 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-76-AD; Amdt. 39-5972]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, which requires inspection of the rear fuselage lap joints for cracks, and repair, if necessary. This amendment is prompted by reports of improper bonding of rear fuselage lap joints. This condition, if not corrected, could result in cracking of the rear fuselage skin at lap joint rivet holes, which could lead to a reduced ability of the fuselage structure to withstand design loads.

EFFECTIVE DATE: July 21, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service

Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-88986, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA) of the United Kingdom has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146 series airplanes. Following the introduction of a new bonding technique, manufacturer testing has revealed unsatisfactory bonding that could lead to cracking of the rear fuselage skin at lap joint rivet holes. This condition, if not corrected, could lead to a reduced ability of the fuselage structure to withstand expected loading conditions in service. This new bonding technique has been discontinued.

British Aerospace has issued Service Bulletin 53-70, dated March 4, 1988, which describes eddy current inspections for cracking of the inner and outer fuselage skin, and repair, if necessary. The United Kingdom CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires eddy current inspections of the inner and outer fuselage skins and, if cracks are found, repair prior to further flight, in accordance with the service bulletin previously mentioned.

Since a condition exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with

Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 108(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to certain British Aerospace (BAe) Model 146 series airplanes, as shown in BAe 146 Service Bulletin 53-70, dated March 4, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking of the rear fuselage skin, accomplish the following:

A. Prior to the accumulation of 18,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings, inspect lap joints at stringer 2 between stations 541.0 and 672.04 for cracks, in accordance with Service Bulletin 53-70, dated March 4, 1988. If cracks are found which exceed the limits specified, repair before further flight, in accordance with the service bulletin.

B. Prior to the accumulation of 12,000 landings or within 30 days after the effective

date of this AD, whichever occurs later, and thereafter at intervals not to exceed 9,000 landings, inspect lap joints at stringer 10 and stringer 19 between stations 541.0 and 672.04 for cracks, in accordance with Service Bulletin 53-70, dated March 4, 1988. If cracks are found which exceed the specified limits, repair before further flight, in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 21, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-14933 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-03-AD; Amdt. 39-5571]

Airworthiness Directives; Cessna Model S550 and 552 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Cessna Model S550 and 552 series airplanes by individual letters. This AD requires a visual inspection to ensure that three drain/vent holes, required on the inboard end of each of the four flap

panels, have been installed. This action is prompted by a report where a left outboard flap, not equipped with the drain/vent holes, shattered during flight. This condition, if not corrected, could lead to loss of the flap panel during flight, which could result in loss of control of the airplane during critical flight regimes.

DATE: Effective July 21, 1988.

This AD was effective earlier to all recipients of Priority Letter AD 88-11-07, dated May 24, 1988.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, Citation Jet Marketing Division, Technical Services Department, Attention: Roger Hatfield, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT:

Mr. Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: On May 24, 1988, the FAA issued Priority Letter AD 88-11-07, applicable to certain Cessna Model S550 and 552 series airplanes, which requires visual inspection to ensure that three drain/vent holes, required on the inboard end of each of the four flap panels, have been installed. That action was prompted by a report of an incident wherein the left outboard flap of a Cessna Model S550 series airplane shattered during flight. Investigation revealed that the subject flap was not equipped with the required drain/vent holes. Without these holes, the flaps are pressurized when the airplane is operating at altitude, a condition for which they were not designed. Subsequent to this incident, a second airplane was found with a flap panel without the required holes. This condition, if not corrected, could lead to loss of a flap panel during flight, which could result in loss of control of the airplane during critical flight regimes.

Subsequent to the issuance of AD 88-11-07, the FAA reviewed and approved Cessna Service Bulletins SBS550-57-5 (for Model S550 series airplanes) and 552-57-5 (for Model 552 series airplanes), both dated May 24, 1988, which provide instructions for adding drain holes to the lower surface of the inboard end of each flap, if necessary. The final rule has been revised to reflect

the use of this service bulletin as a means to accomplish the requirements of the AD.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1321 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Cessna: Applicable to Model S550 and 552 airplanes, Serial Numbers S550-0001 through S550-0153, and 552-0001 through 552-0017, certificated in any category. Compliance is required prior to further flight after the effective date of this amendment, unless already accomplished.

To prevent loss of a flap panel, accomplish the following:

A. Visually inspect the inboard lower surface of each of the four flap panels to verify that each panel has the three required drain/vent holes, and verify that these holes are unobstructed. If all required holes are installed and unobstructed, no further action is required.

Note.—The drain holes are 3/16-inch diameter and are located approximately one inch outboard of the inboard end of the lower surface of each flap panel. (Reference: Maintenance Manual, Section 5-10-01, "Hour and Calendar Inspection Requirements, Item Z(6), "Flaps;" or Cessna Service Letter SLAS550-57-01, dated May 20, 1988.)

B. If any drain/vent hole in any flap panel is not present or is found to be obstructed, repair or replace prior to further flight, in accordance with Cessna Service Bulletin SBS550-57-5 (for Model S550 series airplanes), dated May 24, 1988; Cessna Service Bulletin 552-57-5 (for Model 552 series airplanes), dated May 24, 1988; or an FAA-approved method.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Cessna Aircraft Company, Citation Jet Marketing Division, Technical Services Department, Attention: Roger Hatfield, P.O. Box 7706, Wichita, Kansas 67277. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas.

This amendment becomes effective July 21, 1988.

It was effective earlier to all recipients of Priority Letter AD 88-11-07, issued May 24, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-14931 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-28; Amdt. 39-5929]

Airworthiness Directives; Dowty Rotol Propeller Model (C)R.354/4-123-F/13 Installed on SAAB SF340 Series Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Dowty Rotol Model (C)R.354/4-123-F/13 propellers by individual telegram. This AD requires a torque check and a magnetic particle inspection of the propeller retaining bolts; and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface. This AD is needed because past inspections revealed that propeller retention bolts were loose or below acceptable torque requirements and cracks were found in the backface of the propeller hub which could result in detachment of the propeller.

DATES: Effective July 5, 1988, as to all persons except those to whom it was made immediately effective by the individual Telegraphic Airworthiness Directive (TAD) T87-21-51, issued October 15, 1987, which contained this amendment.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of July 5, 1988.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Dowty Rotol Limited, Product Support Division, Cheltenham Road, Gloucester, England or Sully Road, P.O. Box 5000, Sterling, Virginia 22170.

A copy of the service bulletin is contained in the Rules Docket, Docket Number 87-ANE-28, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Systems and Propulsion Branch, ANE-153, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7066.

SUPPLEMENTARY INFORMATION: On October 15, 1987, TAD T87-21-51 was issued and made effective immediately as to all known U.S. owners and operators of certain Dowty Rotol Model (C)R.354/4-123-F/13 propellers. This TAD superseded TAD T87-15-52, issued July 23, 1987. This AD requires torque checks and magnetic particle inspections of the propeller retention bolts, and dye penetrant, ultrasonic, and eddy current inspections of the hub backface. These checks and inspections are necessary to identify possible low torque bolts, or cracks in the backface of the propeller hub. Previous inspections revealed 36 propellers with cracked hubs. This AD is necessary to detect cracks in the hub backface and prevent possible loss of the propeller.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegram, issued October 15, 1987, as to all known U.S. owners and operators of certain Dowty Rotol Model (C)R.354/4-123-F/13 propellers. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

CONCLUSION: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed,

may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Dowty Rotol: Applies to Model (C)R364/4-123-F/13 propellers installed on, but not limited to, SAAB SF340 series aircraft.

Compliance is required as indicated, unless already accomplished.

To detect cracks in the hub backface and prevent possible loss of the propeller, accomplish the following:

(a) Torque check the 9/16 UNF retaining bolts connecting the hub to the engine flange in accordance with Dowty Rotol Service Bulletin (SB) SF340-01-A21, Revision 4, dated October 1, 1987, (hereinafter referred to as SB SF340-01-A21) within 10 days or 75 hours time in service, whichever occurs first, after the effective date of this AD.

(b) Remove propellers from the aircraft before further flight and inspect and rework in accordance with SB SF340-01-A21, when any of the retaining bolts is found to have a torque value below requirements.

(c) Propellers on which all the retaining bolts are found to meet torque requirements may remain in service an additional 20 days or 150 hours time in service, whichever occurs sooner, before removal; then inspect and rework in accordance with SB SF340-01-A21, unless already accomplished in accordance with earlier revisions to the SB.

(d) Lubricate the retaining bolts with engine oil, and install the propeller in accordance with Dowty Rotol Maintenance Manual procedures and Appendix D of SB SF340-01-A21.

(e) Torque check the 9/16 retaining bolts, remove the propeller from the aircraft, and reinspect in accordance with SB SF340-01-A21, at intervals of 450 hours, but no later than 550 hours time in service since last inspection.

(f) Remove from service before further flight propeller hubs/bolts found to have cracks. Replace with serviceable hubs/bolts.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, ANE-150, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(i) Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Boston Aircraft Certification Office, ANE-150, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may adjust the compliance time specified in this AD.

Dowty Rotol SB SF340-01-A21, Revision 4, dated October 1, 1987, including Appendices A through G, inclusive, identified and described in this document, is incorporated herein and made part hereof pursuant to 5 U.S.C. 552 (a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Dowty Rotol Limited, Product Support Division, Cheltenham Road, Gloucester, England, or Sully Road, P.O. Box 5000, Sterling, Virginia 22170.

This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket No. 88-ANE-28, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective July 5, 1988, as to all persons except those persons to whom it was made immediately effective by individual TAD T87-21-51, issued October 15, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on May 11, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88-14030 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-8

14 CFR Part 39

[Docket No. 88-ANE-20; Amdt. 39-5930]

Airworthiness Directives: Hoffmann Aircraft Ges.m.b.H. Model H36 Dimona Motor Glider

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Hoffmann Aircraft Ges.m.b.H. Model H36 Dimona motor gliders which requires inspection and replacement of the rod end bearing on the front horizontal tail surface mount with a new design rod end bearing. This action was prompted by the determination that the rod end bearing

on the front horizontal tail surface mount may develop cracks from shock loads resulting from improper ground handling. This condition, if not corrected, could result in failure of the horizontal tail surface front mounting with a subsequent loss of the motor glider.

DATES: Effective—July 13, 1988.

Compliance: As required in the body of the AD.

Incorporation by Reference: Approved by the Director of the Federal Register as of July 13, 1988.

ADDRESSES: The applicable technical information and replacement parts specified in this AD may be obtained from Hoffmann Aircraft Ges.m.b.H., Richard Neutra Gasse 5, A-1214 Vienna, Austria. A copy of the service bulletin is contained in the Rules Docket, Docket Number 88-ANE-20, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Munroe Dearing, Brussels Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone 513.38.30, extension 2710; or John J. Maher, New York Aircraft Certification Office, ANE-172, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6221.

SUPPLEMENTARY INFORMATION: Hoffmann Aircraft Ges.m.b.H. has determined that cracks may develop in the horizontal tail surface front mount rod end bearing as a result of shock loads induced from improper ground handling. The manufacturer has issued Service Bulletin (SB) No. 15/2, dated January 20, 1987, which recommends inspection of the rod end bearing on the front horizontal stabilizer mount for cracks, before further flight, and replacement of the rod end bearing with a new design rod end bearing before further flight. If the existing rod end bearing is cracked, if not cracked, replace within 50 flight hours of inspection. The FAA is requiring an initial inspection within 10 hours and, if cracked, replacement before further flight. If not cracked, replacement is required within fifty hours or prior to August 1, 1988, whichever comes first. The FAA relies upon certification of the Bundesamt für Zivilluftfahrt (BAZ), combined with FAA review of pertinent

documentation, in finding compliance of the design of these motor gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Hoffman Aircraft Ges.m.b.H. SB No. 15/2, and the issuance of BAZ Airworthiness Directive No. 53. Based on the foregoing, the FAA has determined that the condition addressed by Hoffman Aircraft Ges.m.b.H. SB No. 15/2 is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued to require inspection and replacement of the rod end bearing on the front horizontal tail surface mount on Hoffman Aircraft Ges.m.b.H. Model H36 Dimona motor gliders.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to the major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket. (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Hoffmann Aircraft Ges.m.b.H.: Applies to model H36 Dimona motor gliders certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent failure of the rod end bearing on the front horizontal tail surface mount, accomplish the following:

(a) Within the next ten hours time in service after the effective date of this AD, visually inspect the rod end bearing on the front horizontal tail surface mount using a 5 power or greater magnifying glass for cracks in the area of the threaded shank, in accordance with inspection requirements of paragraph 1 of the Actions section of Hoffmann Aircraft Ges.m.b.H. Service Bulletin (SB) No. 15/2, dated January 20, 1987.

(b) Before further flight, replace cracked rod end bearings (SMXCP 10 M) with a modified rod end bearing, Hirschmann "SMXC 10 special design", in accordance with Work Instruction No. 7, contained in Hoffmann Aircraft Ges.m.b.H. SB No. 15/2, dated January 20, 1987.

(c) Within 50 flight hours after accomplishment of inspection per paragraph (a) of this AD, or prior to August 1, 1988, whichever comes first, replace any rod end bearing (SMXCP 10 M) not replaced in accordance with paragraph (b), in accordance with Work Instruction No. 7, contained in Hoffmann Aircraft Ges.m.b.H. SB No. 15/2, dated January 20, 1987.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone No. 513.38.30, Ext. 2710; or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6880.

(e) Upon submission or substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, or the Manager,

New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Hoffmann Aircraft SB No. 15/2, dated January 20, 1987, including Work Instruction No. 7, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Hoffmann Aircraft, Ges.m.b.H., Richard Neutra Gasse 5, A-1214, Vienna, Austria. This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 88-ANE-20, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective July 13, 1988.

Issued in Burlington, Massachusetts, on May 11, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88-14829 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-8

14 CFR Part 71

[Airspace Docket No. 85-AAL-4]

Alteration of Colored Federal Airway R-39; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Colored Federal Airway R-39 located in the vicinity of Nenana, AK. The Julius, AK, nondirectional radio beacon (NDB), also located in that area has been relocated. This action alters the description of R-39 to reflect the realignment and changes the name of the relocated Julius NDB to Ice Pool, AK. **EFFECTIVE DATE:** 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-0250.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of Colored Federal Airway R-39 located in the vicinity of Nenana, AK, (50 FR 15581). However, the

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Alaskan Regional Office advised that the project to relocate the Julius, AK, NDB had been temporarily delayed until budget problems and priorities have been resolved. Based on this information, Docket 85-AAL-4 was withdrawn (51 FR 23789), effective July 1, 1988. The Julius NDB has now been relocated in the vicinity of Nenana and has been renamed Ice Pool, AK. This action is required due to the NDB relocation and the name change. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations realigns Colored Federal Airway R-39 located in the vicinity of Nenana, AK. The Julius, AK, NDB has been relocated approximately 4 miles northwest of its former location and renamed Ice Pool NDB. R-39 has been realigned over the new Ice Pool NDB. This action amends the description to reflect the realigned R-39. While this action was withdrawn after the close of the comment period, the FAA is reopening the docket and issuing a final rule without further notice and opportunity for comment, in view of the minor nature of the amendment; the earlier opportunity for public comment; and the fact that no comments were received objecting to the proposal.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Colored Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.017 [Amended]

2. Section 71.107 is amended as follows:

R-39 [Amended]

By removing the words "Julius, AK, NDB" and substituting the words "Ice Pool, AK, NDB"

Issued in Washington, DC, on June 21, 1988.

Temple H. Johnson,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-14939 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Part 71

(Airspace Docket No. 88-AGL-5)

Transition Area Establishment; Salem, OH

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Salem, OH, transition area to accommodate a new VOR-A Standard Instrument Approach Procedure (SIAP) to Salem Airpark, Inc. Airport, Salem, OH. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, May 13, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the

Federal Aviation Regulations (14 CFR Part 71) to establish the Salem, OH, transition area (53 FR 17079).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area airspace near Salem, OH.

The development of a new VOR-A SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Salem, OH [New]

The airspace extending upward from 700 feet above the surface within a 6-mile radius of the Salem Airpark, Inc. Airport, Salem, OH, (lat. 40°56'55"N., long. 80°51'38"W.), and within 2 miles each side of the Akron, OH VOR/DME 126 radial, extending from the 6-mile radius area to 7 miles northwest of Salem Airpark, Inc. Airport, excluding that portion within the Youngstown, OH, Alliance, OH, and North Lima, OH transition areas.

Issued in Des Plaines, Illinois, on June 16, 1988.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 88-14936 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Part 71

(Airspace Docket No. 88-AGL-6)

Transition Area Alteration; Ft. McCoy, WI

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Ft. McCoy, WI, transition area to accommodate both military and civil aircraft utilizing the existing NDB RWY 29 Standard Instrument Approach Procedure (SIAP) to McCoy Army Airfield, Ft. McCoy, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, May 13, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR

Part 71) to alter the existing Ft. McCoy, WI, transition area (53 FR 17080).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the designated transition area airspace near Ft. McCoy, WI.

The present transition area is being modified to accommodate aircraft utilizing the NDB RWY 29 SIAP. The modification consists of retaining the 11 mile radius and eliminating the existing transition area extension and returning that portion of the airspace to a non-controlled status.

McCoy Army Airfield requested the Federal Aviation Administration (FAA) to review a proposal to include the existing McCoy (CMY) Nondirectional Radio Beacon (NDB) into the National Airspace System (NAS). The intent of the action was to provide a dual use military/civil NDB RWY 29 SIAP to McCoy Army Airfield. This review was accomplished under a separate study to the public. The airspace case number was 87-AGL-149-NR.

The modification of the procedure required the FAA to alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter

that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ft. McCoy, WI [Revised]

That airspace extending upward from 700 feet above the surface within an 11 mile radius of the McCoy Army Airfield (Lat. 43°57'36" N., Long. 90°44'12" W.) excluding that portion that overlies the La Crosse, WI, transition area.

Issued in Des Plaines, Illinois, on June 17, 1988.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 88-14937 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Part 75

(Airspace Docket No. 88-AGL-2)

Alteration of Jet Route; Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment realigns Jet Route J-186 located in the vicinity of Appleton, OH. Restricted Areas R-5503 A and B will be relocated eastward to improve the arrival/departure traffic flow in the Cincinnati Municipal and Greater Cincinnati Airports. It is necessary to alter the description of J-186 by relocating the route eastward to ensure the safety of en route traffic in that area.

DATES: Effective date—0910 u.t.c., August 25, 1988.

Comments must be received on or before August 11, 1988.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88-ACI-2, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 918, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-2400, Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves relocation of Jet Route J-186 eastward to ensure air traffic operation safety while in the vicinity of Restricted Areas R-5503 A and B during military training activity in that area and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is to relocate Jet Route J-186 eastward to ensure en route traffic air safety while in the vicinity of Restricted Areas R-5503 A and B. Military training conducted within this area is considered hazardous to nonparticipating aircraft. This action

improves aviation safety. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.8C, dated January 2, 1987.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to relocate J-186 eastward in the vicinity of Restricted Areas R-5503 A and B due to the military training activity which has been determined to be hazardous to nonparticipating aircraft. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest as safety concerns require the immediate promulgation of this rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-186 [Revised]

From Toccoa, GA; Snow Bird, TN; to Appleton, OH.

Issued in Washington, DC, on June 17, 1988.
Shelomo Wugalter,
Manager, Airspace—Rules and Aeronautical
Information Division.
[FR Doc. 88-14833 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 375

[Docket No. 88597-81671]

Establishment of Import Certificate/ Delivery Verification Procedure for Australia

AGENCY: Bureau of Export
Administration, Commerce.
ACTION: Final rule.

SUMMARY: The Bureau of Export Administration requires a foreign importer to file an Import Certificate (IC) in support of individual validated license applications to export certain commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List, which identifies those items subject to Department of Commerce export controls. By issuing an IC, the government of the importing country confirms that it will exercise legal control over the disposal of those commodities covered by the IC.

The Bureau of Export Administration also requires a Delivery Verification Certificate (DV) on a selective basis, as described in 15 CFR 375.3(i). By issuing a DV, the government of a country to which an export has been made confirms that the exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

New documentation practices adopted by Australia warrant inclusion of that country in the IC/DV procedure. This rule amends the Export Administration Regulations by adding Australia to the list of countries that issue Import Certificates and by adding the name and address of the Australian authorities to the list of foreign offices that administer the IC/DV systems.

DATES: This rule is effective July 5, 1988. In accordance with 15 CFR 375.9(b)(2), the Australian Import Certificate must be submitted with export license applications as of August 10, 1988. However, applications will be accepted if supported by either a Form ITA-629P

or the appropriate IC up to October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-3858.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The Import Certificate and Delivery Verification (IC/DV) requirement set forth in Part 375 supersedes the requirement for Form ITA-629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0625-0138) to accompany license applications for exports and reexports to Australia. The Import Certificate and Delivery Verification Certificate are issued by the Government of Australia and do not constitute collection of information requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be addressed to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 375

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 375 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

PART 375—[AMENDED]

1. The authority citation for 15 CFR Part 375 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 375.1 [Amended]

2. The table in § 375.1 is amended by adding "Australia" before the entry "Austria" in the column titled "and the country of destination is:".

§ 375.3 [Amended]

3. The list of countries in § 375.3(b) is amended by adding "Australia" before "Austria".

4. Supplement No. 1 to Part 375 is amended by adding a new entry for "Australia" immediately before the entry for "Austria", as follows:

Supplement No. 1 to Part 375— Authorities Administering Import Certificates/Delivery Verification System in Foreign Countries¹

Country	IC/DV Authorities	System administered ²
Australia	Director, Technology Transfer and Analysis, Defence Industry and Material Policy Division, Department of Defence, Russell Office F-1-46 Canberra, A.C.T. 2600.	IC/DV

¹ Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may

² IC—Import Certificate and/or DV—Delivery Verification.

Dated: June 21, 1988.

Vincent F. DeCain,
Deputy Assistant Secretary for Export
Administration.
[FR Doc. 88-14873 Filed 7-1-88; 8:45 am]
BILLING CODE 3510-07-M

15 CFR Part 386

[Docket No. 80504-8104]

Shipper's Export Declaration; Conformance of the Export Administration Regulations With the Foreign Trade Statistics Regulations

AGENCY: Bureau of Export
Administration, Commerce.
ACTION: Final rule.

SUMMARY: On March 2, 1987, the Bureau of Export Administration published a final rule (52 FR 6137) that conformed certain provisions of the Export Administration Regulations (EAR) with the Foreign Trade Statistics Regulations (FTSR) issued by the Bureau of the Census. The FTSR rule raised the Shipper's Export Declaration filing exemption from \$500 to \$1,000 for non-mail shipments of commodities. However, the EAR conforming amendment of March 2, 1987 inadvertently raised the filing exemption to \$1,000 for mail shipments as well as non-mail shipments. This rule revises the EAR exemption for mail shipments to read \$500.

Then on August 31, 1987 (52 FR 32782), the Bureau of the Census again raised the Shipper's Export Declaration filing exemption for non-mail shipments of commodities, this time from \$1,000 to \$1,500. The exemption applies to non-mail shipments of commodities classified under a single Schedule B number, shipped to Country Group T or V on the same carrier from one exporter to one importer, and not shipped under a validated export license. With the new value limit, exporters are not required to file Shipper's Export Declarations for such shipments if valued at \$1,500 or less. This rule amends the EAR to reflect the new limit of \$1,500 for non-mail shipments.

EFFECTIVE DATE: This rule is effective July 5, 1988.

be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660-3198 or at any U.S. Department of Commerce District Office (see list on page (ii) under District Office Addresses) or at the Office of Export Licensing, Room 10000, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection, which reduces the paperwork burden, has been approved by the Office of Management and Budget under control numbers 0607-0001, 0607-0018, 0607-0150 and 0607-0152.

5. This rule does not contain policies with Federalism implications sufficient

to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 398

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 398-399) are amended as follows:

PART 398—[AMENDED]

1. The authority citation for 15 CFR Part 398 continues to read as follows:

Authority: Pub. L. 95-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 28, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 10, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 398.1 [Amended]

2. Section 398.1(b)(2)(i) is amended by revising the reference to "\$1,000" to read "\$500".

3. Section 398.1(c)(2)(i) is amended by revising the reference to "\$1,000" to read "\$1,500".

Dated: June 21, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-14674 Filed 7-1-88; 6:45 am]

BILLING CODE 3010-07-M

15 CFR Part 399

[Docket No. 80590-8090]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronics and Precision Instruments

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends a number of CCL entries in the category of electronics and precision instruments.

These amendments have resulted from a review of strategic controls maintained by the U.S. and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to

controlled countries. With the concurrence of the Department of Defense, the Department of Commerce has determined that these amendments to the Export Administration Regulations are necessary to protect U.S. national security interests.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT:

For questions of a technical nature on communication, detection or tracking equipment (ECCN 1502) or radio relay equipment (ECCN 1520), call Monty Baltas, Telecommunications Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377-0730.

For questions of a technical nature on solid state amplifiers (ECCN 1521), lasers (1522), frequency synthesizers (1531), microwave equipment (ECCN 1537), or cathode ray tubes (ECCN 1541), call Robert Anstead, Electronic Components Technology Center, Office of Technology and Policy Analysis, Telephone: (202) 377-1641.

SUPPLEMENTARY INFORMATION:

Savings Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before July 19, 1988, may be exported under the general license provisions up to and including August 2, 1988. Any such items not actually exported before midnight (four weeks after date of publication) require a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule implements regulatory changes based on COCOM

review, it is not subject to section 13(b) of the EAA. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 398 through 399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 95-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 28, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 10, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), in ECCN 1502A, the "List

of Equipment Controlled by ECCN 1502A" and the Advisory Note for the People's Republic of China are revised to read as follows:

1502A. Communication, detection or tracking equipment of a kind using ultraviolet radiation, infrared radiation or ultrasonic waves, and specially designed components therefor.

List of Equipment Controlled by ECCN 1502A

Notes.—1. This ECCN 1502A controls infrared or ultraviolet sensing devices, not otherwise controlled for export by Supp. No. 2 to Part 370 of the Export Administration Regulations, containing image intensifiers controlled for export by ECCN 1555A on the Commodity Control List.

2. This ECCN 1502A does not control ultrasonic devices that operate in contact with a controlled material to be inspected, or that are used for industrial cleaning, sorting or materials handling, industrial and civilian intrusion alarm, traffic and industrial movement control and counting systems, medical applications, emulsification, homogenization, or simple educational or entertainment devices.

Note.—Simple educational devices are defined as devices designed for use in teaching basic scientific principles and demonstrating the operation of those principles in educational institutions.

3. This ECCN 1502A does not control underwater ultrasonic communications equipment designed for operation with amplitude modulation and having a communications range of 500 m or less (See State 1), a carrier frequency of 40 to 60 kHz and a carrier power supplied to the transducer of 1 W or less.

4. This ECCN 1502A does not control the following equipment:

- (a) Industrial equipment employing cells not controlled by ECCN 1548A;
- (b) Industrial and civilian intrusion alarm, traffic and industrial movement control and counting systems;
- (c) Medical equipment;
- (d) Industrial equipment used for inspection, sorting or analysis of the properties of materials;
- (e) Simple educational or entertainment devices that employ photo cells;
- (f) Flame detectors for industrial furnaces;
- (g) Equipment for non-contact temperature measurement for laboratory or industrial purposes utilizing a single detector cell with no scanning of the detector;
- (h) Instruments capable of measuring radiated power or energy having a response time constant exceeding 10 milliseconds;
- (i) Equipment designed for measuring radiated power or energy for laboratory, agricultural or industrial purposes using a single detector cell with no scanning of the detector and single detector cell assemblies or probes specially designed therefor, having a response time constant exceeding 1 microsecond;
- (j) Infrared geodetic equipment, provided that equipment uses a lighting source other than a laser and is manually operated or uses

a lighting source (other than a laser or a light-emitting diode) remote from the measuring equipment.

Advisory Note 5 for the People's Republic of China—Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of thermal imaging cameras provided that they:

- (a) Contain pyroelectric vidicons;
- (b) Are designed for fire fighting and buried body detection; and
- (c) Have optimum sensitivity in the wavelength range from 8 to 14 micrometers. (For communication equipment employing fiber optics, see ECCN 1519A.)

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1520A is amended by revising paragraph (a)(1):

By redesignating paragraph (a)(2) as (a)(3); By adding new paragraphs (a)(2) and (a)(4) and a NOTE after paragraph (a)(4);

By revising paragraphs (a) and (b) of Advisory Note 2;

By adding paragraphs (c) and (d) to Advisory Note 2; and

By revising Advisory Notes 4 and 6, as follows:

1520A. Radio relay communication equipment, specially designed test equipment, and specially designed components and accessories therefor.

List of Equipment Controlled by ECCN 1520A

(a) . . .

(1) Microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz, employing analog transmission with a capacity of up to 2,700 voice channels of 4 kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;

(2) Microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz, employing digital transmission techniques designed for operation at a total bit rate not exceeding 8.5 Mbit per second;

(3) Ground communication radio equipment . . .

(4) TV-receive-only (TVRO) stations for satellite reception specially designed for use at fixed frequencies meeting ITU standards in civil television or sound radio systems in the following frequency ranges:

- (i) S-band: 2.5-2.69 GHz;
- (ii) C-band: 3.4-4.2 GHz, 4.5-4.8 GHz;
- (iii) KU- and KA-band: 10.7-12.75 GHz.

Note.—Nothing in the above shall be construed as permitting the export of technology for equipment employing quadrature-amplitude-modulation (QAM) techniques, except technology for installation, operation or maintenance.

ADVISORY NOTE 2: . . .

(a) The equipment is not designed for operation at a total bit rate exceeding 45 Mbit per second;

(b) The equipment does not employ quadrature-amplitude-modulation (QAM) techniques;

(c) No equipment with a base bandwidth exceeding the limits set forth in paragraph (c) of Advisory Note 1 to ECCN 1519A is included; and

(d) Associated or integrated multiplex equipment is considered separately under the provisions of ECCN 1519A.

ADVISORY NOTE 3: . . .

ADVISORY NOTE 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of equipment controlled by paragraph (a) above for industrial use, e.g., remote supervision, control and metering of oil and gas pipelines, public utility services (e.g., electricity networks), including telephone channels for the operation of such networks and the engineering service circuits required for the maintenance of telecommunication links, provided that:

(a) Microwave radio links employing analog transmission techniques have a capacity not exceeding 2,700 voice channels of 4 kHz each;

(b) Microwave radio links employing digital transmission techniques operate at a frequency not exceeding 19.7 GHz and are designed to operate at a total digital bit rate not exceeding 45 Mbit per second;

(c) The equipment does not employ quadrature-amplitude-modulation (QAM) techniques;

(d) Associated or integrated multiplex equipment is considered separately under the provisions of ECCN 1519A.

ADVISORY NOTE 5: . . .

ADVISORY NOTE 6 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following radio relay communication equipment:

(a) Analog microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 20 GHz with a capacity of up to 1,920 voice channels of 4 kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Digital microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19.7 GHz with a capacity of up to 1,920 voice channels of 3.1 kHz or four television channels of 6 MHz maximum nominal bandwidth and associated sound channels;

(c) Ground communication radio equipment for use with temporarily-fixed services operated by the civilian authorities and designed to be used at fixed frequencies not exceeding 20 GHz;

(d) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by (a) or (b) above;

(e) Power amplifiers not exceeding 10 W and 9/4-GHz-transmitters/receivers for communication satellites.

4. In Supplement No. 1 to § 398.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1521A is amended by revising the heading, by adding a "List of Solid State Amplifiers and Specially Designed Components and Accessories Controlled by

ECCN 1521A" and by revising the Notes and Technical Note, as follows:

1521A Solid-state amplifiers having any of the following characteristics, and specially designed components and accessories therefor.

List of Solid-State Amplifiers and Specially Designed Components and Accessories Controlled by ECCN 1521A

Solid-state amplifiers having any of the following characteristics, and specially designed components and accessories that:

(a) Exceed a maximum output power of 2 kW at operating frequencies between 10 and 35 MHz inclusive;

(b) Exceed a maximum output power of 50 W at operating frequencies between 35 and 400 MHz; or

(c) Have a product of the maximum output power times the maximum operating frequency of more than 2×10^{10} watt-hertz at operating frequencies above 400 MHz.

Notes.—1. This ECCN 1521A does not control solid state amplifiers with any of the following characteristics:

(a) Specially designed for community television distribution systems; or

(b) Having a "bandwidth" of 10 MHz or less.

2. For amplifiers designed to operate at frequencies above 1 GHz, see ECCN 1537A.

3. For amplifiers specially designed for and intended to work with oscilloscopes, see ECCN 1564A.

4. For amplifiers specially designed for transmitters, see ECCN 1517A.

Technical Note: "Bandwidth" is defined as the range of frequencies over which the power amplification does not drop to less than one half of its maximum value.

5. In Supplement No. 1 to § 398.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by revising the words "Advisory Notes 4 or 6" that appear in the "GFW Eligibility" paragraph to read "Advisory Notes 5 or 6";

By adding a Note after paragraph (b)(iii);

By revising the reference in paragraph (b)(xx)(1) to "ECCN 1565A(h)(2)(v)(K)" to read "ECCN 1565A(h)(2)(iv)(K)" and the reference in paragraph (b)(xx)(2) to "ECCN 1565(h)(2)(v)(H)" to read "ECCN 1565A(h)(2)(iv)(H)";

By revising Note 1:

By inserting "or" between "output power" and "energy capability" in the last sentence of Advisory Note 5; and

By revising the Advisory Note for the People's Republic of China after Advisory Note 7, as follows:

ECCN 1522A "Lasers" and "equipment containing lasers."

List of "Lasers" and "Equipment Containing Lasers" Controlled by ECCN 1522A

(b)(iii) . . .

Note.—The educational equipment referred to in this paragraph is defined as devices designed for use in teaching basic scientific

principles and demonstrating the operation of those principles in educational institutions.

Technical Note 4: . . .

Note 1.—Nothing in the following shall be construed as permitting the export of technical data for the following specially designed components for "lasers", except for the minimum technical data for their use (i.e., installation, operation and maintenance):

Paragraph (a) does not control uncooled, unsegmented mirrors with glass or dielectric substrates for use as end reflectors for "laser" resonators. (For segmented mirrors, see ECCN 1566A.)

Advisory Note 8 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Tunable pulsed flowing-dye lasers having all of the following characteristics, and specially designed components therefor:

(1) An output wavelength shorter than 0.8 micrometer;

(2) A pulse duration not exceeding 100 ns; and

(3) A peak output power not exceeding 15 MW;

(b) CO₂, CO or CO/CO₂ lasers having an output wavelength in the range from 9 to 11 micrometers and a pulsed output not exceeding 2 joules per pulse and a maximum rated average single or multi-mode output power not exceeding 5 kW or a continuous wave maximum rated single- or multi-mode output power not exceeding 10 kW;

(c) Equipment specially designed for medical applications using "lasers" not freed from control by paragraph (a)(vi) above;

(d) "Laser" systems for trimming resistors or thick/thin film electronic circuits;

(e) Equipment incorporating CO₂ "lasers" with average or continuous wave output power not exceeding 5 kW, not exceeding the parameters of ECCN 1081A and specially designed for welding, cutting, bonding or drilling metals for civil applications.

6. In Supplement No. 1 to § 398.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended by revising the heading to the entry:

By removing the word "illustrative" that appears in the "Illustrative List of Frequency Synthesizers Controlled by ECCN 1531A";

By revising the reference to "ECCN 1529A(a)" in paragraph (a) to read "ECCN 1529A(a)(1)";

By revising the reference to "1,200 MHz" in the Note after paragraph (b)(2)(iv) to read "1,400 MHz";

By revising paragraph (b)(5);

By revising paragraph (c)(3);

By revising the remaining text to ECCN 1531A that appears after paragraph (d)(2), as follows:

1531A "Frequency synthesizers" (and equipment containing such "frequency synthesizers").

List of Frequency Synthesizers Controlled by ECCN 1531A

(b) . . .

(5) Having a level of spurious components in the output, measured relative to the selected output frequency, better than:

(i) -60 dB harmonic; or

(ii) -92 dB nonharmonic;

(c) . . .

(3) With a "frequency switching time" of less than 10 milliseconds;

(d) . . .

(2) . . .

Notes.—1. This paragraph does not control "frequency synthesizers" specially designed for use in tuners for entertainment type receivers.

2. See also ECCN 1516A.

(e) Radio transmitters incorporating transmitter drive units, exciters and master oscillators using frequency synthesis, as follows, and specially designed components and accessories therefor:

(1) Having an output frequency of up to 32 MHz with a frequency resolution of better than 10 Hz and with a "frequency switching time" of less than 10 milliseconds;

(2) Having an output frequency from 32 MHz to 235 MHz with a frequency resolution of better than 250 Hz and with a "frequency switching time" of less than 10 milliseconds;

(3) Having an output frequency of more than 235 MHz, except:

(i) Television broadcasting transmitters having an output frequency from 470 MHz to 960 MHz with a frequency resolution of not better than 1 kHz and where the manually-operated "frequency synthesizer" incorporated in or driving the transmitter has an output frequency not greater than 120 MHz;

(ii) FM and AM ground communication equipment for use in the land mobile service and operating in the 420 to 470 MHz band, with a power output of 50 W or less for mobile units and 300 W or less for fixed units, with a frequency resolution of not better than 6.25 kHz and with a "frequency switching time" of more than 50 milliseconds;

(iii) Portable (personal) or mobile radiotelephones for civil use, e.g., for use with commercial civil cellular radiocommunications systems having all of the following characteristics:

(A) Operating in the 420 to 960 MHz range;

(B) A power output of 10 W or less; and

(C) A "frequency switching time" of 10 ms or more.

Note.—For stored program controlled communications switching equipment used with cellular radio-base stations, see ECCN 1567A.

(4) Having more than three different selected synthesized output frequencies available simultaneously from one or more outputs;

(5) With facilities for pulse modulation of the output frequency of the transmitter or of the incorporated "frequency synthesizer";

(6) "Frequency synthesizers" designed for the above equipment, whether supplied separately or with the said equipment, exceeding the parameters specified in paragraph (b) above;

Note.—See also ECCN 1517A.

Technical Notes: 1. "Frequency synthesizer" means any kind of frequency source or signal generator, regardless of the actual technique used, providing a multiplicity of simultaneous or alternative output frequencies, from one or more outputs, controlled by, derived from or disciplined by a lesser number of standard (or master) frequencies.

2. "Frequency switching time" means the maximum time (i.e., delay), when switched from one selected output frequency to another, selected output frequency, to reach:

(a) A frequency within 100 Hz of the final frequency; or

(b) An output level within 1.0 dB of the final output level.

Note 1.—This ECCN does not control equipment in which the output frequency is produced by the addition or subtraction of two or more crystal oscillator frequencies, which may be followed by multiplication of the result.

Advisory Note 2: Licenses are likely to be approved for export to satisfactory civil end-users in Country Groups QWY of equipment controlled by paragraph (b)(3) above, with a "frequency switching time" not less than 5 milliseconds.

(Advisory) Note 3 for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following, and specially designed components and accessories therefor:

(a) "Frequency synthesizers" controlled only by paragraph (a) and not incorporating cesium beam standards;

(b) Instrument "frequency synthesizers" and synthesized signal generators controlled only by paragraphs (b)(1) and (b)(3) and having a maximum output frequency of 18 GHz, provided the "frequency switching time" is 2.0 ms or more;

(c) Instrument "frequency synthesizers" and synthesized signal generators not controlled by paragraph (b)(4) and having a maximum output frequency of 2.6 GHz, provided the "frequency switching time" is 0.3 ms or more;

(d) Conventional synthesizer based, digitally controlled, civil land or marine mobile radio receivers and transmitters, provided that:

(1) They operate at frequencies not exceeding 960 MHz;

(2) The power output and frequency resolution parameters specified in paragraph (e)(3)(ii) above remain in force;

(3) The equipment has a "frequency switching time" of 5 ms or more;

(4) The equipment does not employ either frequency agility or other spread spectrum techniques; and

(5) The synthesizers must be embedded in the radio receivers or transmitters;

(e) Radio receivers controlled by paragraph (d)(1) above that have 1000 selective channels or fewer.

7. In Supplement No. 1 to § 398.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended by removing the word "or" that appears at the end of paragraph (c)(2);

By replacing the colon that ends paragraph (c)(2) with a semicolon;

By revising paragraph (g);

By removing the Note that appears after paragraph (g);

By removing the word "and" that appears at the end of paragraph (1) and by replacing the semicolon that ends the paragraph with a period.

By revising the reference to "(d)(1)" that appears in Advisory Note 1 to read "(d)";

By redesignating Advisory Note 5 as Advisory Note 6 and by adding a new Note 5;

By adding a Note to appear after paragraph (a) and before paragraph (b) of newly redesignated Advisory 6;

By designating the "Note" that appears at the end of 1537A as "Note 7" to appear after newly redesignated Advisory Note 6;

By redesignating the "Advisory Note for the People's Republic of China" that appears after paragraph (1) as "Advisory Note 8 for the People's Republic of China" and by moving it to the end of the text, as follows:

1537A Microwave, including millimetric wave, equipment, including parametric amplifiers, capable of operating at frequencies over 1 GHz (other than microwave equipment controlled for export by ECCNs 1501A, 1517A, 1520A, or 1529A).

List of Equipment Controlled by ECCN 1537A

(g) Phased array antennae and sub-assemblies, designed to permit electronic control of beam shaping and pointing (see Supp. No. 2 to Part 370 of the Export Administration Regulations), and specially designed components therefor (including but not limited to duplexers, phase shifters and associated high-speed diode switches);

Advisory Notes: . . .

Note 5.—Paragraph (g) above is not intended to cover duplexers and phase shifters specifically designed for use in civil television systems or in other civil radar or communication systems not covered by other ECCNs on the Commodity Control List identified by the code letter "A," nor covered by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810;

ADVISORY NOTES: . . .

(a) . . .

Note.—Simple educational devices are defined as devices designed for use in teaching basic scientific principles and demonstrating the operation of those principles in educational institutions.

(b) **Note 7.**—Nothing in the following shall be construed . . .

Advisory Note 8 for the People's Republic of China: . . .

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1541A is amended by revising paragraph (c), by adding a Note to appear after paragraph (c), and by removing paragraph (d), as follows:

1541 Cathode-ray tubes.

List of Cathode-Ray Tubes Controlled by ECCN 1541A

(c) Incorporating microchannel-plate electron multipliers, *except* cathode-ray tubes, having all of the following characteristics:

- (1) The microchannel-plate electron multipliers have a hole pitch of 25 micrometers or more;
- (2) The tubes are not ruggedized for military use;
- (3) The tubes have a horizontal sweep slower than 200 ns/cm; and
- (4) The electron gun is mounted parallel to the screen surface.

Note.—Technology for the design or production of cathode-ray tubes incorporating microchannel-plate electron multipliers is not released under this paragraph (c).

Dated: June 22, 1988.

Vincent F. DeCain,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-14753 Filed 7-1-88; 8:45 am]
BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Optional State Supplementary Payments; Calculation; Spousal Deeming

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations provide nationwide implementation of

the Court of Appeals decision in *Livermore v. Heckler*, 743 F.2d 1396 (9th Cir. 1984). The issue in this case involves the method of calculating optional State supplementary payments in the Supplemental Security Income (SSI) program where spousal deeming is involved. The rules set out a new method of calculating such payments which conforms to the decision of the circuit court.

EFFECTIVE DATE: These rules are effective October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301-665-1758.

SUPPLEMENTARY INFORMATION: These regulations were published as a Notice of Proposed Rulemaking in the Federal Register on August 13, 1987 (52 FR 30169). No comments were received.

Section 1614(f)(1) of the Social Security Act (the Act) provides that, for purposes of determining eligibility for and the amount of Federal SSI benefits for an individual whose spouse is living with him or her in the same household but is not eligible for SSI benefits, the individual's income and resources shall be deemed to include the income and resources of the spouse. This is referred to as "spousal deeming". Current regulations (20 CFR 416.1163) provide that when calculating the Federal SSI benefit of an eligible individual living with an ineligible spouse, the eligible individual's income will be combined with that of the ineligible spouse (if the ineligible spouse's income is above a certain amount after allocations for any ineligible children) and subtracted from the Federal benefit rate for a couple. When calculating the State supplementary payment, however, under current regulations (20 CFR 416.2025(b)) we subtract countable income in excess of the Federal benefit rate from one of the existing variations in optional State supplementary payment rates for an eligible individual. Our policy was the subject of litigation in *Livermore v. Heckler*, 743 F.2d 1396 (9th Cir. 1984), and *Bouchard v. Secretary, C.A. No. 78-0632-F* (D. Mass. 1984). In those cases, it was held that our method of calculating optional State supplementary payments involving spousal deeming was inconsistent with the Act. The courts in this litigation held that the Secretary should calculate those payments by subtracting the excess countable income of these couples from an optional State supplementary payment rate for an eligible couple. We believe that the *Livermore* and

Bouchard courts' interpretation of the Act, as requiring the application of the same type of rate (couple or individual) in Federal SSI determinations and federally administered optional State supplement determinations, is a reasonable one. Moreover, considering that 74 percent of the cases affected by this regulation (State-supplement-only cases) are California and Massachusetts cases already subject to the *Livermore* and *Bouchard* decisions, we believe it is reasonable to extend the courts' interpretation to all those affected. Therefore, we are applying this policy nationally, except when the State has an individual rate that is higher than the comparable couple rate. In these situations we will continue to use the individual rate. The Notice of Proposed Rulemaking (NPRM) referenced the situation where a State has, or in the future elects, a special individual rate for an eligible individual living with an ineligible spouse and indicated that such a rate will be treated as the couple rate where it is higher than the otherwise applicable eligible couple rate. The NPRM did not cover the anomalous situation where a State has a higher rate for an individual than the comparable couple rate. Section 416.2025(b)(3) has been revised to cover both situations.

Unlike Federal SSI benefits, most States have more than one supplementary payment rate for couples. State payment rates may vary by geographic area, living arrangement, and category, i.e., aged, blind, or disabled (20 CFR 416.2020 through 416.2030). Only four States, Massachusetts, California, Nevada, and Iowa, vary their supplementary payment rates by category. In Massachusetts, under the *Bouchard* ruling, the ineligible spouse is considered to be in the category that yields the lowest couple rate. In California, under the *Livermore* ruling, the ineligible spouse is considered to be in the same category as the eligible individual; i.e., if the eligible individual is disabled, the ineligible spouse will be considered disabled, and the rate for a disabled couple will be used. We have chosen this policy to be implemented in these regulations, because California cases comprise 88 percent of the State-supplement-only cases in the four States that vary their supplement by category. That is, 88 percent of those affected by a choice of which couple rate to apply are covered by the *Livermore* decision. In order to assure a uniform policy, we are effectuating the *Livermore* policy nationwide.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because no Federal SSI program costs are involved and administrative costs would be negligible and resulting State costs are also negligible. In addition, Medicaid costs would be negligible. Therefore a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations impose no new reporting or recordkeeping requirements necessitating Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities since they affect primarily individuals receiving or applying for SSI benefits. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 13.007, Supplemental Security Income Program).

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: March 9, 1988.

Dorcas R. Hardy,
Commissioner of Social Security.

Approved: April 19, 1988.

Otis R. Bowen,
Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154; sec. 2639 of Pub. L. 98-369, 98 Stat. 1144.

2. Paragraph (d)(2)(iii) of § 416.1163 is revised to read as follows:

§ 416.1163 How we deem income to you from your ineligible spouse.

(d) *Determining your eligibility for SSI.* . . .

(2) . . .
(iii) Subtracting the couple's countable income from the Federal benefit rate for

an eligible couple. (See § 416.2025(b) for determination of the State supplementary payment amount.)

3. The authority citation of Subpart T of Part 416 continues to read as follows:

Authority: Secs. 1102, 1616, 1618, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382e, 1382g, and 1383; sec. 212 of Pub. L. 93-66, 87 Stat. 155; sec. 401 Pub. L. 92-603, 86 Stat. 1485; sec. 8 of Pub. L. 93-233, 87 Stat. 956; secs. 1 and 2 of Pub. L. 93-335, 86 Stat. 291.

4. Paragraphs (b) (1) and (3) of § 416.2025 are revised to read as follows:

§ 416.2025 Optional supplementation; Countable income.

(b) . . .
(1) As provided in § 416.420, countable income will first be deducted from the Federal benefit rate applicable to an eligible individual or eligible couple. In the case of an eligible individual living with an ineligible spouse with income (the deeming provisions of § 416.1163 apply), the Federal benefit rate from which countable income will be deducted is the Federal benefit rate applicable to an eligible couple, except that an eligible individual's payment amount may not exceed the amount he or she would have received if he or she were not subject to the deeming provisions (§ 416.1163(e)(2)).

(3) If countable income exceeds the amount of the Federal benefit rate, the State supplementary benefit will be reduced by the amount of such excess. In the case of an eligible individual living with an ineligible spouse with income (the deeming methodology of § 416.1163 applies), the State supplementary payment rate from which the excess income will be deducted is the higher of the State supplementary rates for an eligible couple or an eligible individual, except that an eligible individual's payment amount may not exceed the amount he or she would have received if he or she were not subject to the deeming provisions (see § 416.1163(e)(2)). For purposes of determining the State supplementary couple rate, the ineligible spouse is considered to be in the same category as the eligible individual.

[FR Doc. 88-14976 Filed 7-1-88; 8:45 am]

BILLING CODE 4160-11-M

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Purina Mills, Inc.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., has informed FDA of a change of address from 835 South Eighth Street, St. Louis, MO 63102, to P.O. Box 66812, St. Louis, MO 63166-6812. The agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600. *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Purina Mills, Inc." and in paragraph (c)(2) in the entry for "017800" by revising the sponsor address to read "P.O. Box 66812, St. Louis, MO 63166-6812."

Dated: June 27, 1988.

Richard A. Camevale,
Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 88-15005 Filed 7-1-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole; Technical Amendment

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that reflected approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. (April 26, 1988; 53 FR 14788). The NADA provided for use of Type A medicated articles containing 4 and 20 percent fenbendazole for making Type C medicated cattle feeds. In reflecting this approval in the regulations, the assay limits for Type A medicated articles were incorrectly stated as 95-113 percent. This document corrects that oversight by listing the assay limits for Type A articles to read 93-113 percent.

EFFECTIVE DATE: July 5, 1988.
FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 26, 1988 (53 FR 14788), FDA amended § 558.4 (21 CFR 558.4) to reflect approval of NADA 137-000 filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for use of Safe-Guard™ Type A medicated articles containing 4 and 20 percent fenbendazole for making Type C medicated cattle feeds. A Type C medicated feed requires a 13-day withdrawal period. Because fenbendazole now requires a withdrawal period at the lowest use level in at least one species, it became a Category II drug. Section 558.4(d) was also amended to reflect the change from Category I to Category II. This document amends the table entitled "Category II" in § 558.4(d) by revising the assay limits for Type A articles to read "93-113."

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in the table entitled "Category II" in paragraph (d), in the entry "Fenbendazole" by revising the Type A assay limits (second column) to read "93-113."

Dated: June 27, 1988.

Richard A. Carnavale,
Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
(FR Doc. 88-15004 Filed 7-1-88; 8:45 am)
BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

(Docket No. R-88-1400; FR-2437)

Revision to the Performance Funding System: Insurance Costs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: Section 9(a)(3)(A) of the United States Housing Act of 1937, as added by section 110(a)(2) of the Housing and Community Development Act of 1967, requires the Secretary to revise the Performance Funding System (PFS) by June 15, 1988, "to accurately reflect the increase in insurance costs incurred by public housing agencies." This rule will increase the amount included in a public housing agency's/Indian housing authority's (PHA's/IHA's) per unit month allowable expense level for insurance in its next fiscal year by \$8.45. This increase in the allowable expense level (AEL) used to compute operating subsidy eligibility for the next fiscal year will result in higher amounts for insurance in following years as well, since each year's AEL is based on the previous year's AEL, adjusted for intervening changes in the PHA's/IHA's housing stock and for inflation. This rule is being issued as an interim rule so that it may take effect before the first round of funding to PHAs in Fiscal Year 1989, but public comments are invited and a final rule will be issued following evaluation of the comments.

DATES: Comment due date: September 8, 1988.

Effective date: January 1, 1989.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Room 10270,

Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0600. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Theodore R. Daniels, Director, Project Financial Management and Occupancy Division, Office of Public Housing, Room 4206, 451 Seventh Street SW., Washington, DC 20410-5000, telephone (202) 755-8145. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**Background**

The Annual Contributions Contract (ACC) and the Mutual Help Annual Contributions Contract (MHACC) between PHAs/IHAs and the U.S. Department of Housing and Urban Development (HUD), require (in section 305 of the ACC and Article IX of the MHACC) that PHAs/IHAs maintain specified insurance coverage for property and casualty losses that would jeopardize the financial stability of the PHAs/IHAs. When the current system of determining the level of operating subsidy to be provided PHAs/IHAs was developed in 1974 and 1975, the AEL for each PHA/IHA was based on the PHA/IHA operating budget of the immediately preceding fiscal year. In the initial year of the PFS, AELs nationally reflected the inclusion of an average of \$1.34 per unit month (PUM) for insurance. Since 1975, the amount for insurance in the AELs has been increased by local inflation factors, bringing the average amount for insurance for fiscal year 1988 to \$3.38 PUM.

During recent years, insurance premiums for the required liability, fire and extended coverage increased for many PHAs/IHAs, with a particularly notable increase affecting PHAs/IHAs in the spring of 1985. Many insurance companies withdrew from the marketplace and coverage was either not available or not affordable for a large number of PHAs/IHAs. Some housing agencies used operating reserve funds as well as operating subsidies to pay insurance premiums during that period, jeopardizing their financial solvency.

Congress took several actions in response to this change of circumstances. It passed the Liability Risk Retention Act of 1986 (Pub. L. No. 99-563, 100 Stat. 3170, 15 U.S.C. 3901

note), to permit the formation of risk retention groups and purchasing groups that were authorized to provide liability insurance to policyholders across State lines. It required HUD to distribute some \$124 million of the Department's FY 1987 appropriation for operating subsidies to PHAs/IHAs to cover the increase in insurance costs not reflected in the PFS. In the FY 1988 Appropriations Act, Congress directed HUD to distribute \$65 million in fiscal year 1988 to PHAs/IHAs to compensate "for insurance costs not covered by the current PFS formula." (H.R. Rep. 498, 100th Cong., 1st Sess. 480.) Subsequently, it enacted the Housing and Community Development Act of 1987 (Pub. L. No. 100-242, 101 Stat. 1815), to require the Department to revise the PFS itself to reflect increased insurance costs.

Six PHA/IHA non-profit insurance entities have been formed and recognized by HUD, for purposes of compliance with ACC/MHACC requirements, as being substantially equivalent to a financially sound and responsible insurance company: Amerind Risk Management Corporation (providing fire, extended coverage, general liability, and fidelity bond coverages to IHAs in 28 States), Assisted Housing Risk Management Association (providing fire, extended coverage and general liability coverages to Illinois PHAs), Housing Authority Risk Retention Group (authorized to provide general liability coverages in all States), Housing Authority Risk Retention Pool (providing fire, extended coverage, and general liability coverages to PHAs in Northern California, Oregon, and Washington), New York Public Housing Authority Reciprocal (providing fire, extended coverage, and general liability coverages to New York PHAs), and North Carolina Housing Authorities Risk Retention Pool (providing fire, extended coverage, general liability and automobile coverages to North Carolina PHAs).

The Department is also experimenting in cost reduction by removing some restrictions in the traditional method of selecting insurance coverage. For example, although many PHAs may, as governmental entities, have sovereign immunity as a defense to litigation, insurance contracts have specified that the insurer could not assert the PHA's sovereign immunity defense. Now HUD is permitting PHAs to solicit bids for insurance with and without that clause, to determine whether coverage is less expensive with the removal of that legal restraint.

In response to the appropriations earmarked for covering higher insurance costs, HUD distributed some \$124 million in fiscal year 1987 on the basis of \$7.94 PUM. In fiscal year 1988, the Department expects to distribute in a similar manner the \$65 million available in this fiscal year that is earmarked to cover increased insurance costs, which will result in approximately \$4.36 additional PUM for PHAs/IHAs. To effect a permanent change in the PFS for fiscal year 1989 and subsequent years to reflect increased insurance costs, this rule will increase the amount included in the formula, as described below.

Rulemaking Petition

On November 2, 1987, the Council of Large Public Housing Authorities (CLPHA) submitted a petition for rulemaking to the Department. The petition requested that HUD issue a proposed rule to make the PFS "reflect with reasonable accuracy the cost of insurance for a prototype well-managed public housing project." The petition attached a draft proposal rule that provided for a separate factor to be used for insurance and risk protection in calculating the AEL. This separate factor was then to be adjusted at the end of each year to reflect the actual insurance and risk protection expense for the PHA fiscal year, including insurance premiums paid, contributions to any risk protection reserve, out-of-pocket cost of any claims not covered by insurance, legal and claims settlement expenses, and other risk protection-related costs. The proposed provided for an adjudicatory proceeding in which an Administrative Law Judge (ALJ) would decide any disputes between a PHA and HUD concerning year-end adjustments. Costs were to be controlled by constraining additional funding in any year (beyond the estimated risk protection costs) by the availability of operating subsidy and by findings by an ALJ that the difference between estimated and actual risk protection costs was the result of the PHA's/IHA's unreasonable refusal to act to reduce its risk protection costs. The stated intention was to make risk protection costs a "pass-through" item, like utility expenses (which are regulated by local public utility commissions) and independent audits.

While HUD was considering its response to this petition, the Housing and Community Development Act of 1987 was passed by Congress (December 22, 1987) and signed by the President (February 5, 1988). The 1987 Act mandates revision of the PFS to more accurately reflect PHA/IHA insurance costs, although it does not

require the approach recommended by CLPHA.

The Department is concerned that the pass-through approach contained in CLPHA's proposed rule would have insufficient incentives for cost containment and that the ALJ procedure would be administratively burdensome and expensive. The insurance industry is not subject to public rate approval commissions, so there is no independent party controlling insurance costs as there is for utility costs. Allowing each PHA/IHA to pass through its costs would permit PHAs/IHAs that have unreasonably high insurance expenses because of a lack of competition in the local insurance industry or for other reasons not directly attributable to an unreasonable refusal by the PHA/IHA to reduce its risk protection costs to continue their practices without penalty. Moreover, if each PHA/IHA could obtain a year-end review of its insurance costs by an ALJ, HUD would have to pay for the costs of staff to investigate the practices of each PHA/IHA that requested an increase over estimated risk protection costs, the costs for one or more Administrative Law Judges and support staff, as well as the costs for an official to review the ALJ's finding and make a recommendation to the Secretary on each case—potentially as many as 3,000 cases. This procedure would be time-consuming as well as costly.

As a result of the very high cost of CLPHA's proposal and its inequity for an insurance cost-conscious PHA/IHA in a year of meager Federal funding, the Department has decided to grant the petition for rulemaking but issue a rule to revise the PFS that increases funding eligibility for insurance by way of an adjustment for FY 1989 that is based on the average actual increase in insurance costs experienced by PHAs/IHAs. This increase in the AEL then will be embedded in the AEL for future years, since each year's AEL is based on the prior year's AEL, adjusted by the local inflation factor used for all non-utility costs. This method of increasing PFS subsidy eligibility treats insurance costs in the same way as other costs, to encourage PHAs/IHAs to find the most cost-effective way to obtain coverage—whether through the use of private insurance, coverage through risk retention groups (PHA/IHA sponsored insurance entities), or some form of self-insurance. The Department believes that this approach satisfies the request for revision in the PFS made in CLPHA's petition and the requirement for change contained in section 118 of the 1987 Act, and this rule is being made effective in

time to assure that there is no gap in special funding for insurance costs from one fiscal year to the next. (For a discussion of the timing, see justification for issuance of an interim rule, below.)

The amount of the adjustment for FY 1989 used in this rule is based on the currently available PHA data for FY 1986, the most recent year for which we have substantial year-end data. HUD has determined that the required insurance coverages—fire and extended coverage, general liability, workers' compensation, automobile liability, flood insurance, boiler coverage, and fidelity bond coverage—would have cost an average of \$10.01 PUM, based on a sample of PHAs. (This sample contained PHAs with as few as 104 units and as many as 150,000+ units. It was the original, randomly selected 120 PFS-sample PHAs representing an equal number of three sizes of operation that have been used since the inception of the PFS to adjust the formula on an annual basis, which was supplemented by the addition of all PHAs/IHAs with more than 1250 units.) By trending this \$10.01 upward by using the Implicit Price Deflator for State and Local Government Goods and Services factor in the PFS since then (5.6% for 1987, 7.5% for 1988, and an estimated 4.1% for 1989), the estimated average cost of these coverages for FY 1989 was determined to be \$11.83 PUM. Since the average amount currently contained in the AEL for required insurance coverages is \$3.38 PUM, the amount to be added for this one fiscal year (and thereafter trended by the local inflation factor used for all non-utility costs) is the difference between \$11.83 and \$3.38, or \$8.45.

Since there were not yet any PHA/IHA sponsored non-profit entities offering risk protection coverages in 1986, the data collected for FY 1986 did not include any costs based on rates charged by such entities, which are generally less than premiums charged by private carriers. Therefore, the above projection may actually be greater than if later data could be factored into the calculations. The increasing availability of a number of types of risk protection coverages from such entities may permit some PHAs/IHAs to reduce their costs below the amounts charged by private for-profit insurance carriers.

Based on the estimated number of dwelling units receiving operating subsidy in FY 1989 (1.242 million), full funding of this increase in the AELs would require \$125.6 million, or a net increase of \$95.6 million for FY 1989 over the \$30 million of increased operating subsidy for insurance costs

already requested by the Department in the FY 1989 Budget submitted to Congress. If the funds appropriated for PFS are insufficient to cover these requirements, each PHA's/IHA's total operating subsidy will be prorated downward to stay within the limit of the total funds appropriated by Congress.

The current PFS rule, Part 990, does not address the manner of obtaining the required insurance coverages. Section 305 of the ACC and Article IX of the MHACC provide that required coverages must be obtained from the private market, with the general liability, fire and extended coverages subject to competitive bidding procedures. PHAs/IHAs that have sought to participate in PHA/IHA insurance entities (e.g., pools) or to self-insure, have been required by HUD to obtain waivers of applicable provisions of the ACC/MHACC. That procedure will continue; however, this revision to the PFS rule recognizes that risk protection coverage may be obtained under one of these alternative methods, with HUD approval.

Justification for Interim Rule

It is the policy of this Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public procedure are not required by statute, the procedure for advance public comment may be omitted if the Department determines it is impracticable, unnecessary or contrary to the public interest. In this case, a recent statute mandates the revision of the PFS, which is prescribed by regulation, by June 15, 1988. Another statute restricts the Department's rulemaking process, however, requiring an opportunity for Congress to review any rule before it is published for comment, and requiring that the effectiveness of any rule be delayed for thirty days of continuous session of Congress (section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)).

The Department finds that it is impracticable and contrary to the public interest to solicit public comment before issuing this rule. If the Department were to issue a proposed rule (sending it to Congress for review on June 15, 1988), wait for the receipt of comments, and then formulate a final rule after considering the comments, that process along with the statutorily mandated delays, would preclude the Department from having the revision in PFS implemented for the first PHA/IHA fiscal years that are to be funded from HUD's FY 1989 appropriation (i.e., those whose budgets cover 12-month periods

starting January 1, April 1, July 1, and October 1, 1989), as anticipated by the statute. Providing the benefit of increased funding eligibility for PHAs/IHAs starting on January 1, 1989 is important to assure that there is no gap in providing additional funding eligibility for insurance costs from federal fiscal year 1988 (in which \$85 million above current PFS requirements is being provided) to federal fiscal year 1989.

It should be noted that the process of determining a PHA's/IHA's eligibility for operating subsidy includes submission by the PHA/IHA of an operating budget, based on the PHA's/IHA's calculation of its own AEL for the next budget year and its estimated expenses, approximately three months in advance of the beginning of its fiscal year for approval by HUD. Therefore, a PHA/IHA needs to know substantially in advance of the beginning of its next fiscal year what the rules are for calculation of its AEL. With the publication of this interim rule in the summer of 1988, PHAs/IHAs will have sufficient advance notice of how to calculate the AEL affecting the budgets they need to submit for their first fiscal year under this rule, which may start as early as January 1, 1989.

Despite publication of this rule for effect, the Department does invite public comments on the rule and comments received within the sixty day comment period will be considered during development of a final rule that will supersede this interim rule.

Findings and Certifications

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of Regulations, Room 10276, 451 Seventh Street SW., Washington, DC 20419-0500.

Economic Impact. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 (on Federal Regulation) issued by the President on February 17, 1981. Analysis of the rule indicates that it is not likely to have an annual effect on the economy of \$100 million or more, since requested funding for FY 1989 includes only \$30 million for increased insurance costs. The rule will not cause a major increase in costs or prices for consumers, individual industries,

Federal, State or local government agencies or geographic regions, or have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities. Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because its effect would be to implement a statutory directive to increase subsidy to PHAs/IHAs to reflect increases they have experienced in the costs of insurance coverage in a way that will have the same effect on small and large PHAs/IHAs. The insurance costs experienced by a PHA/IHA are affected more by location and risk factors than on its size. Therefore, the rule provides no differential treatment based on PHA/IHA size.

Regulatory Agenda. This rule was listed as sequence number 1035 under the Office of the Assistant Secretary for Public and Indian Housing in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13893) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction. There are no information collection requirements contained in this rule which would be subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

Catalog. The Catalog of Federal Domestic Assistance Program Number is 14.146, Low Income Housing Assistance Program (Public Housing).

List of Subjects in 24 CFR Part 990

Grant programs—housing and community development, Low and moderate income housing, Public housing.

Accordingly, 24 CFR Part 990 is amended as follows:

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

1. The authority citation for Part 990 continues to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 990.105, a new paragraph (g) is added, to read as follows:

§ 990.105 Computation of allowable expense level.

(g) **Adjustment for FY 1989.** To reflect the increased costs incurred by PHAs/IHAs to obtain required risk protection coverage (through private insurance, PHA/IHA sponsored insurance entities, or through self-insurance, as approved in accordance with the ACC/MHACC), the calculation of AEL for the PHA's/IHA's fiscal year beginning in 1989 will include an additional step following the determination made in accordance with paragraphs (a) through (f) of this section: the AEL per unit month derived in accordance with those paragraphs is to be adjusted by adding \$8.45. This adjustment is a one-time permanent adjustment made only in fiscal year 1989.

Dated: May 31, 1988.

Jacqueline Aamot,
Associate General Deputy Assistant
Secretary for Public and Indian Housing.
[FR Doc. 88-15043 Filed 7-1-88; 8:45 am]
BILLING CODE 4210-35-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 20 and 252

(T.D. ATF-274)

Manufacture of Articles in a Foreign-Trade Zone—Using Domestic Denatured Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This rule revises regulations in order to implement section 1894 of the Tax Reform Act of 1986, Pub. L. 99-514. Section 1894 amended the fifth proviso of Section 3 of the Foreign-Trade Zones Act (19 U.S.C. 81c) so that commencing October 22, 1986, articles may be manufactured in a foreign-trade zone from domestic denatured distilled spirits, and articles thereof.

EFFECTIVE DATE: These regulations are effective retroactive to October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Petrangelo, Distilled Spirits and Tobacco Branch, (202) 566-7531, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION: Background

The fifth proviso of section 3 of the Foreign-Trade Zones Act, 19 U.S.C. 81c, provides that neither the rectification of distilled spirits and wine, nor the manufacture or production of alcoholic products unfit for beverage purposes shall be permitted in a zone. However, the Act was amended by Section 1894 of the Tax Reform Act of 1986, Pub. L. 99-514, to provide that notwithstanding the provisions of the fifth proviso, any article, within the meaning of 28 U.S.C. 5002(a)(14) may be manufactured or produced from domestic denatured distilled spirits, and articles thereof, in a zone. The alcohol in domestic denatured distilled spirits must be produced entirely in the United States, including Puerto Rico. The basic purpose of Section 1894 was to make certain types of manufacturing operations in the United States as desirable, from an investment point of view, as the same types of operations in foreign countries.

Requirements

In order to implement the new law, the regulations which govern the use of denatured spirits have been amended to extend to operations involving the manufacture of articles from domestic denatured distilled spirits in a foreign-trade zone. Persons who wish to manufacture products in a foreign-trade zone from domestic specially denatured distilled spirits are required to hold a permit and to otherwise comply with statutory and regulatory provisions pertaining to the procurement or use of such spirits. These permits are issued by ATF under the provisions of 28 U.S.C. 5271(a)(2). Implementing regulations appear at 27 CFR Part 20. In addition, permittees intending to withdraw more than 5000 gallons of specially denatured spirits per annum must file a bond with ATF. There is no requirement for a permit covering the use (without recovery) of completely denatured spirits. However, other sections of Part 20 are applicable to users of completely denatured spirits. The provisions of 27 CFR Part 252 relating to the transfer of specially denatured spirits to a foreign-trade zone for exportation, or storage pending exportation, do not apply to domestic denatured spirits which are transferred to qualified users in a foreign-trade zone free of tax under the provisions of 27 CFR Part 20. Domestic denatured spirits transferred to a foreign-trade zone for use in the manufacture of articles pursuant to the provisions of Part 20 may subsequently be transferred domestically from the zone. Specially denatured spirits and

completely denatured spirits are formulations specifically prescribed in 27 CFR Part 21, Subparts D and C, respectively.

Statutory References Expanded

The informational cites at the end of 27 CFR 19.540, 20.2 and 20.161 are expanded to include a reference to the Foreign-Trade Zones Act.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, are satisfied because reporting requirements under 27 CFR Part 20 (Distribution and Use of Denatured Alcohol and Rum) have been approved by the Office of Management and Budget under control number 1512-0336. Similarly, recordkeeping requirements under 27 CFR Part 20 have been approved by the Office of Management and Budget under control number 1512-0337.

Administrative Procedure Act

Since this final rule merely extends existing procedures for permit and bonding requirements with respect to the manufacture of articles in foreign-trade zones, it is found to be unnecessary to issue this final rule, with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Petrangelo of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List Of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol, Authority delegations, Chemicals, Claims, Cosmetics, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign-trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine issuance.

Title 27 CFR is amended to read as follows:

PART 19—[AMENDED]

1. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271-5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5556, 5561, 5562, 5601, 5612, 5682, 6001, 6005, 6108, 6302, 6311, 6670, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. Section 19.540(a), and the informational cite at the end of the section, are revised to read as follows:

§ 19.540 Removal of denatured spirits and articles.

(a) *Specially denatured spirits.* (1) Specially denatured spirits withdrawn free of tax under § 19.538(d) shall be shipped in approved containers to the consignee designated on the permit. If such spirits are for export or for transfer to a foreign-trade zone for export or for

storage pending exportation, they shall be withdrawn under the applicable provisions of Part 252 of this chapter.

(2) Domestic specially denatured spirits may be transferred to qualified users located in a foreign-trade zone for use in the manufacture of articles under the applicable provisions of Part 20 of this chapter. The alcohol, as defined in 27 CFR Part 20, in domestic specially denatured spirits must be produced entirely in the United States, including Puerto Rico.

(3) When specially denatured spirits are shipped to a qualified user, dealer, or an applicant or prospective applicant under paragraph (c)(2)(ii) of this section, the proprietor shall prepare a record of shipment in accordance with § 19.779. Bulk conveyances used to transport specially denatured spirits shall be secured in accordance with the provisions of § 19.96.

(48 Stat. 999, as amended, 72 Stat. 1362, as amended, 1370, as amended (19 U.S.C. 81c; 26 U.S.C. 5214, 5271))

PART 20—[AMENDED]

3. The authority citation for Part 20 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5206, 5214, 5271-5275, 5311, 5552, 5555, 5007, 6055, 7805.

4. Section 20.2 is revised and an informational cite is added at the end of the section, to read as follows:

§ 20.2 Territorial extent.

(a) This part applies to the several States of the United States, the District of Columbia and to denatured spirits and articles coming into the United States from Puerto Rico or the Virgin Islands.

(b) For the purposes of this part, operations in a foreign-trade zone located in any State of the United States or the District of Columbia are regulated in the same manner as operations in any other part of such State or the District of Columbia, with the exception that under this part only domestic denatured spirits may be used in the manufacture of articles in a foreign-trade zone.

(48 Stat. 999, as amended (19 U.S.C. 81c))

5. Section 20.161(a) and the informational cite at the end of the section are revised to read as follows:

§ 20.161 Withdrawals under permit.

(a) *General.* The permit, Form 5150.9, issued under Subpart D of this part, authorizes a person to withdraw specially denatured spirits from the bonded premises of a distilled spirits plant or a dealer. If the permittee is

located in a foreign-trade zone, the permit will be qualified so that the permittee may obtain domestic specially denatured spirits only. The alcohol in domestic denatured spirits must be produced entirely in the United States, including Puerto Rico.

(19 U.S.C. 81c; Sec. 201, Pub. L. 95-650, 72 Stat. 1370, as amended, 1395, as amended (26 U.S.C. 5271, 5555))

PART 252—[AMENDED]

6. The authority citation for Part 252 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5006, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5173, 5175-5177, 5204-5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

7. Section 252.30 is revised, to read as follows:

§ 252.30 Export status.

(a) Distilled spirits and wines manufactured, produced, bottled in bottles packed in containers, or packaged in casks or other bulk containers in the United States; and beer brewed or produced in the United States may be transferred to a foreign-trade zone for the sole purpose of exportation, or storage pending exportation. Liquors deposited in a foreign-trade zone under this part solely for such purposes are considered to be exported. Export status is not acquired until application on Form 214 for admission of the liquors into the zone has been approved by the district director of customs under the appropriate provision of 19 CFR Chapter I, and the required certification of deposit has been made on the ATF form prescribed in this part.

(b) The provisions of Subpart H of this part do not apply to specially denatured spirits transferred to a foreign-trade zone for use in the manufacture of articles pursuant to the provisions of 19 U.S.C. 81c(c). Transfer of domestic specially denatured spirits to a qualified user in a foreign-trade zone is made free of tax under the provisions of Part 20 of this chapter. Such transfer does not place the domestic specially denatured spirits in an export status.

(48 Stat. 999, as amended (19 U.S.C. 81c))

8. The informational cite following § 252.122 is revised to read as follows:

(Sec. 201, Pub. L. 95-650, 72 Stat. 1360, as amended (26 U.S.C. 5362))

Signed: March 30, 1988.

Stephen E. Higgins,
Director.

Approved: April 14, 1988.

John P. Simpson,
Acting Assistant Secretary (Enforcement).
[FR Doc. 88-14085 Filed 7-1-88; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 292

Availability to the Public of Defense Intelligence Agency Information

AGENCY: Defense Intelligence Agency, DOD.

ACTION: Final rule.

SUMMARY: This final rule revises the Defense Intelligence Agency's earlier version of this part which implements the Freedom of Information Act, as amended (5 U.S.C. 552) within the DIA. This revision supercedes a final rule (Federal Register, Vol 51, No. 161 at 33035) published on 16 September 1986 at 32 CFR Part 292. This revision incorporates changes occasioned by the publication of DoD 5400.7-R, the controlling DoD regulation on the FOIA Program.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Hardzog, Freedom of Information and Privacy Act Staff, Defense Intelligence Agency, RTS-1B, Washington, DC 20340-3299; Telephone, 202-373-3910, 3911, or autovon 243-3910.

SUPPLEMENTARY INFORMATION: Subsection (a) of the Freedom of Information act, as amended (5 U.S.C. 552), requires that Federal agencies publish rules "stating the time, place, fees (if any), and procedures to be followed" in making records available to the public.

The Defense Intelligence Agency has determined that this revision is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 292

Freedom of information.

Accordingly, Part 292 of 32 CFR is revised to read as follows:

PART 292—AVAILABILITY TO THE PUBLIC OF DEFENSE INTELLIGENCE AGENCY (DAI) INFORMATION

Sec.
292.1 Purpose.
292.2 Applicability.
292.3 Indices.
292.4 Basic policy.
292.5 Specific policy.
292.6 How the public submits requests for records.
292.7 FOIA exemptions.
292.8 Filing an appeal for refusal to make records available.
292.9 Responsibilities.
Authority: 5 U.S.C. 552.

§ 292.1 Purpose.

This part implements the "Freedom of Information Act (FOIA)," 5 U.S.C. 552, as amended, within the DIA and outlines policy governing release of records to the public.

§ 292.2 Applicability.

The provisions of this part apply to all DIA elements, and govern the public release of records of these elements. This part is effective on July 5, 1988.

§ 292.3 Indices.

The DIA does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect members of the public of the type covered by the indexing requirement of 5 U.S.C. 552 (a)(2) or required to be published for the guidance of the public under 5 U.S.C. 552 (a)(1). The Director, DIA, has therefore determined, pursuant to pertinent statutory and Executive Order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552 as amended.

292.4 Basic policy.

(a) Upon receipt of a written request, the DIA will release to the public records concerning its operations and activities which are rightfully public information. Generally, information, other than that exempted by 5 U.S.C. 552(b), will be provided to the public. The following policy will be followed in the conduct of this program.

(1) The provisions of the FOIA, as implemented by DoD 5400.7-R and this part, will be supported in both letter and spirit.

(2) Requested records will be withheld only when a significant and legitimate governmental purpose is served by withholding them. Records which require protection against unauthorized release in the interest of the national defense or foreign relations of the United States will not be provided.

(3) Requests from Members of Congress will be governed by DoD 5400.4, from the General Accounting Office by DoD 7650.1, and from other agencies and courts by DoD 5400.7-R.

(4) Records will not be withheld solely because their release might result in criticism of DoD or this Agency.

(5) The applicability of the FOIA depends on the existence of an "identifiable record" (5 U.S.C. 552(a)(3)). Accordingly, if the DIA has no record containing information requested by a member of the public, it is under no obligation to compile information to create such a record.

(6) The mission of the DIA does not encompass regulatory or decisionmaking matters in the sense of a public use agency; therefore, extensive reading room material for the general public is not available. However, unclassified DIA regulations and related material have been placed in the joint reading room managed by DoD Public Affairs.

(7) Pursuant to 5 U.S.C. 552(a)(4)(A) fees may apply with regard to services rendered the public under the Freedom of Information Act. With regard to fees, the specific guidance of DoD, as set forth in DoD Regulation 5400.7-R, will be followed. This schedule of fees is found at § 286.60 *et seq.* Remittances will be personal check or bank draft on a bank in the United States or by U.S. postal money order. Remittances will be made payable to the "Treasurer of the United States" and forwarded to the address listed in § 292.6(b).

(b) This basic policy is subject to the exemptions recognized in 5 U.S.C. 552(b) and discussed in § 292.7 of this part. Even where denial is authorized by 5 U.S.C. 552(b) and § 292.7 of this part, requested records will be provided if no significant and legitimate Government purpose is served by withholding them.

§ 292.5 Specific policy.

(a) Definition of a Record. The products of data compilation, regardless of physical form or characteristics, made or received by the DIA in connection with the transaction of public business and preserved by the DIA primarily as evidence of the organization, policies, functions, decisions, or procedures of this Agency.

(b) The following are not included within the definition of the word "record":

(1) Library or museum material made, acquired, and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles and

equipment, whatever their historical value or value as evidence.

(3) Commercially exploitable resources, including but not limited to:

(i) Maps, charts, map compilation manuscripts, map research materials and data, if not created or used as primary sources of information, about organizations, policies, functions, decisions, or procedures of a DoD Component.

(ii) Computer software and related software documentation, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software).

(4) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(5) Any thing that is not a tangible or documentary record, such as an individual's memory or oral communication.

(6) Personal notes of an individual not subject to Agency creation or retention requirements, created and maintained primarily for the convenience of an Agency employee, and not distributed to other Agency employees for their official use.

(7) Information stored within a computer for which there is no existing computer program or printout.

(c) The prior application of FOR OFFICIAL USE ONLY (FOUO) markings is not conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it will be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate Government purpose is served by withholding the record or portions of it.

(d) A record must exist and be in the possession or control of the DIA at the time of the request to be considered subject to this regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(e) Identification of the Record. (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables the DIA to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When the DIA receives a request that does not

"reasonably describe" the requested record, it will notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below. This Agency is not obligated to act on the request until the requester responds to the specificity letter. When practicable, the DIA will offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the Agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the DIA's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inferences of the Category I elements needed to conduct such a search.

(F) Requests for records may be denied only when the official designated in § 292.9 determines that such denial is authorized by this part and the Freedom of Information Act (5 U.S.C. 552).

(g) Initial availability, releasability, and cost determinations will normally be made within 10 working days of the date on which a written request for an identifiable record is received by the DIA. If, due to unusual circumstances, additional time is needed, a written notification of the delay will be forwarded to the requester within the 10 working days period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantive response. The period of delay, by law, may not exceed 10 additional working days.

§ 292.6 How the public submits requests for records.

(a) Requests to obtain copies of records must be made in writing. The

request should contain at least the following information:

(1) Reasonable identification of the desired record as specified in 292.5, including (if known) title or description, date, and the issuing office.

(2) With respect to matters of official records concerning civilian or military personnel, the first name, middle name or initial, surname, date of birth, and social security number of the individual concerned, if known.

(b) Persons desiring records should direct inquiry to:

Defense Intelligence Agency
ATTN: RTS-1B
Freedom of Information Act Office
Washington, DC 20340-3290

§ 292.7 FOIA exemptions.

The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

(a) Exemption (b)(1). Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1-R. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified.

(b) Exemption (b)(2). Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal rules or practices of the DIA if their release to the public would substantially hinder the effective performance of a significant function of the DoD, and they do not impose requirements directly on the general public.

(c) Exemption (b)(3). Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld.

(d) Exemption (b)(4). Those containing trade secrets or commercial or financial information that the DIA receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government's ability to obtain

necessary information in the future, or impair some other legitimate Government interest.

(e) Exemption (b)(5). Those concerning internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decisionmaking process of an agency, whether within or among agencies or within or among DoD components.

(f) Exemption (b)(6). Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy.

(g) Exemption (b)(7). Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law.

§ 292.8 Filing an appeal for refusal to make records available.

(a) A requester may appeal an initial decision to withhold a record. Appeals should be addressed to:

Director
Defense Intelligence Agency
ATTN: RTS-1 (FOIA)
Washington, DC 20340-3290

(b) Final determination on appeals normally will be made within 20 working days of receipt of the appeal at the above address. If additional time is needed to decide the appeal because of unusual circumstances, the final determination may be delayed for the number of working days, not to exceed 10, which were not utilized as additional time for responding to the initial request.

(c) When an appeal is denied, the requester will be apprised of the following:

(1) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this part.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester with regard to denied information whether or not any reasonably segregable portions were found.

(5) The response shall advise the requester of the right to judicial review.

§ 292.9 Responsibilities.

When a request of material is received, the following will apply:

(a) RTS-1B.

(1) Receives requests and assigns tasking.

(2) Maintains appropriate suspenses and authorizes all extensions of response time.

(3) Acts as the responsible operating office for all Agency actions related to the FOIA.

(4) Drafts and transmits responses on:

(i) The release of records and/or information.

(ii) Obtaining supplemental information from the requester.

(iii) Informing the requester of any fees required.

(iv) The transfer to another element or agency of the initial request.

(5) Fulfills the annual reporting requirement and maintains appropriate records.

(6) Acts as the responsible official for all initial denials of access to the public.

(b) All DIA elements:

(1) When identified by RTS-1B as the Office of Primary Responsibility (OPR) will:

(i) Search files for any relevant records, and/or

(ii) Review records for possible public release within the time constraints assigned, and

(iii) Prepare a documented response in all cases of nonrelease.

(2) All employees are required to read this part to ensure familiarity with the requirements of the FOIA as implemented.

(c) The General Counsel:

(1) Ensures uniformity in the FOIA legal positions within the DIA and with DoD.

(2) Secures coordination when necessary with the DoD General Counsel on denials of public requests.

(3) Acts as the focal point in all judicial actions.

(4) Reviews all final denials.

(d) The Director, and on his behalf the Deputy Director or Executive Director:

(1) Exercises overall staff supervision of the FOIA activities of the Agency.

(2) Acts as the responsible officials for all denials of appeals.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

June 16, 1988.

[FR Doc. 88-14948 Filed 7-1-88; 8:45 am]

BILLING CODE 3010-01-0

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Mining and Mining Claims

AGENCY: National Park Service, Interior.
ACTION: Final rule.

SUMMARY: This final rulemaking revised existing National Park Service regulations at 36 CFR Part 9, Subpart A. These regulations govern the exercise of mineral rights within National Park System units in connection with patented and valid unpatented mining claims held under the Mining Law of 1872. The existing regulations were promulgated in 1977. This revision is intended to clarify the scope of the regulations and the relationship of these regulations to regulations governing access in Alaska at 43 CFR Part 36.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Carol McCoy, Land Resources Division (660), National Park Service, P.O. Box 37127, Washington, DC 20013-3127, (202) 523-5120.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published in the *Federal Register* on April 3, 1987, with a 45-day public comment period (52 FR 10866). On May 29, 1987, the National Park Service published a notice in the *Federal Register* extending the public comment period until June 29, 1987 (52 FR 19889). The National Park Service extended the public comment period a second time until September 4, 1987 (52 FR 28850).

During the public comment period, timely written comments were received from 81 sources: 8 corporations, 8 organizations, 1 State governmental agency, 1 State legislator, and 63 individuals. Several of these sources submitted comments on the proposed rule more than once.

In general, comments received from owners of mining claims or persons involved in the mining industry opposed the rule. Comments received from environmental organizations and over half of the individuals supported the proposed revision to 36 CFR 9.1 but were critical of proposed 36 CFR 9.3(d) that states that access across Alaska National Park System units to claims is governed by the regulations at 43 CFR Part 36. A section by section discussion of the public comments follows.

Section 9.1 Purpose and scope.

Thirty-one commenters questioned the authority of the National Park Service to regulate patented mining claims in

National Park System units. In response, the Mining in the Parks Act (16 U.S.C. 1901) explicitly directed the Secretary of the Interior to regulate "all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within any area of the National Park System" (16 U.S.C. 1902), without regard to when the claims were located or patented. The Congress did not modify this direction with the passage of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101, *et seq.*).

In 1977, pursuant to the Mining in the Parks Act, the National Park Service promulgated its current regulations contained at 36 CFR Part 9, Subpart A governing mineral development of patented and valid unpatented claims. The proposed revision at 36 CFR 9.1 made clear that these regulations govern all operations within National Park System units resulting from the exercise of valid mineral rights to mining claims, without regard to how access is gained to the claims. Under 36 CFR 9.2(b) "operations" is defined to include "all activities and uses, regardless of whether such activities and uses take place on Federal, State or private lands."

The proposed language at 36 CFR 9.1 was designed to address any confusion that may have resulted from the Department of the Interior's September 4, 1986, rulemaking (51 FR 31619) at 43 CFR Part 36, governing transportation and utility systems and access in Alaska pursuant to Title XI of ANILCA. ANILCA guarantees, subject to reasonable regulations, adequate and feasible access to inholdings, including valid mining claims, within or effectively surrounded by National Park and other conservation system unit lands in Alaska. ANILCA also provides temporary access across conservation system units to State or private lands outside such units.

In accordance with Title XI of ANILCA, the National Park Service promulgated interim regulations at 36 CFR 13.10-15 on June 17, 1981, governing access within and across National Park System units in Alaska. Those regulations at 36 CFR 13.15(d)(1), stated that "no plan of operations is required for patented claims where access is not across federally-owned parklands." The Departmental rulemaking of September 4, 1986, at 43 CFR Part 36 repealed all of the 36 CFR 13.15(d). Since ANILCA does not amend the Mining in the Parks Act, the Department determined that there was no basis for the exception at 36 CFR 13.15(d)(1). Thus, the provisions of former 36 CFR 13.15(d) no longer apply.

Several commenters concluded that the clarification regarding 36 CFR 13.15(d)(1) adversely affects proposed mining operations because such operations would no longer be exempt from the plan of operations requirements of 36 CFR Part 9, Subpart A. However, the National Park Service knows of no operators who have or would have qualified for the exemption at former 36 CFR 13.15(d)(1), even if that regulation had not been removed.

Two commenters stated that the proposed change to 36 CFR Part 9, Subpart A could affect the subsurface estate owned by Native Regional Corporations in National Park System units in Alaska. The 36 CFR Part 9, Subpart A regulations do not govern mineral activities in connection with Native Corporation-owned subsurface mineral rights established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). Rather, the 36 CFR Part 9, Subpart A regulations govern mineral development in National Park System units in connection with mineral rights established under the Mining Law of 1872 (30 U.S.C. 28 *et seq.*).

Forty-six commenters supported the revision to 36 CFR 9.1 because they said Congress clearly intended the Secretary to regulate all mining activities in National Park System units in connection with mining claims, including patented claims.

In conclusion, the Service is finalizing the language of § 9.1 as proposed.

Section 9.3 Access permits.

Forty-six commenters expressed a negative opinion on proposed § 9.3(d). Proposed § 9.3(d) sought to clarify the relationship of the regulations at 36 CFR Part 9, Subpart A and 43 CFR Part 36. In promulgating 43 CFR Part 36, the Department stated that all access in conservation system units in Alaska would be governed by those regulations. As a result, the National Park Service stated in its proposed rule that, in Alaska, an operator's access to a claim within or outside a unit is governed by 43 CFR Part 36 and thus § 9.3 (a), (b) and (c) are inapplicable.

The commenters correctly pointed out that the Mining in the Parks Act and the regulations at 36 CFR Part 9, Subpart A govern all mining activities in National Park System units in connection with mining claims. The commenters, therefore, concluded that 36 CFR Part 9, Subpart A should govern access to claims in Alaska National Park System units just as 36 CFR Part 9, Subpart A governs access to claims in units outside Alaska. The commenters requested that

the National Park Service delete or modify proposed 36 CFR 9.3(d).

The National Park Service has considered this issue and decided that the proposed regulation at 36 CFR 9.3(d) is necessary to make the mining regulations consistent with the Department's Title XI regulations at 43 CFR Part 36. A detailed explanation of the rationale for 36 CFR 9.3(d) and its practical effect follows.

Access for Inholders. Title XI of ANILCA provides a right of adequate and feasible access for economic and other purposes to inholdings in conservation system units, including National Park System units, in Alaska, subject to reasonable regulations (16 U.S.C. 3170(b)).

On September 4, 1986, the Department promulgated regulations at 43 CFR Part 36 that govern all access across Alaska National Park System units, pursuant to ANILCA and the National Park Service Organic Act (16 U.S.C. 3). These regulations at 43 CFR 36.10 govern "adequate and feasible" access to inholdings within National Park System units in Alaska. ANILCA and the Title XI rulemaking explicitly include mining claims as inholdings (43 CFR 36.10(a)(4)). Moreover, the right of "adequate and feasible access" to an inholding is a right not simply to ingress and egress, but a right to construct larger systems, such as those defined in 43 CFR 36.2(p). (See 51 FR 31624.)

Under the 43 CFR Part 36 regulations, an operator, as an inholder, may secure access to a claim if the desired access is affirmatively provided for by the regulations. Or, if the operator requires more extensive access than that provided affirmatively under the 43 CFR Part 36 regulations, the operator may seek that access by filing a Standard Form (SF) 299 for a right-of-way permit. For operators on mining claims that are inholdings, the regulations provide that the operator may file a proposed plan of operations, pursuant to 36 CFR Part 9, Subpart A as the application for access, in lieu of a SF 299. However, the regulations do not require that operators file plans of operations prior to applying for or obtaining a right-of-way permit for access to a claim. Thus, it is possible that an operator in an Alaska National Park System unit may file a SF 299 for a right-of-way permit for access without first submitting a proposed plan of operations under 36 CFR Part 9, Subpart A.

The forty-six commenters objected to operators independently gaining access to a mine on a claim under 43 CFR Part 36, without first having an NPS approved plan of operations. For example, an operator intending to mine

on a claim may wish to bring heavy equipment to a claim, or construct a road or powerline to a claim under the regulations at 43 CFR Part 36, even though the operator has no assurance that the National Park Service will subsequently approve operations on the claim. Since the operator may not conduct any "operations" on the claim without an approved plan, the heavy equipment, road or powerline are of little value for mining the claim. Moreover, such access may result in unnecessary disturbance to park resources.

The 43 CFR Part 36 regulations are written to prevent the type of situations described above. The regulations provide that an inholder's application for a right-of-way permit is tied to the use that the inholder intends for the inholding (43 CFR 36.10(c)(2)). The regulations further require that before issuing a right-of-way permit to the inholder, the National Park Service must determine, among other things, that the method of access sought is necessary "to accomplish the applicant's land use objective" (43 CFR 36.10(e)). If the National Park Service determines that the proposed method of access sought in the application is not necessary for that objective, the National Park Service must specify an alternative route or method of access that will provide the inholder with adequate and feasible access (43 CFR 36.10(e)(2)).

Access to Claims Outside National Park System Units. The regulations at 43 CFR Part 36 also provide access to claims in Alaska that lie outside National Park System units and that are not inholdings as defined by 43 CFR 36.10(a)(4).

Operators on claims outside National Park System units in Alaska may apply for temporary, short-term access across Federal lands in the unit, if such access does not require permanent facilities (43 CFR 36.12). Such operators need not submit a proposed plan of operations under 36 CFR Part 9, Subpart A to gain a permit for access across lands in the National Park System unit in Alaska.

Outside Alaska, the provisions of 36 CFR 9.3(c) continue to govern access across lands in a National Park System unit to claims outside the unit. The regulations at 36 CFR 9.3(c) limit such access to foot, pack animal or designated road. To gain access by designated road, the operator must possess an NPS approved plan of operations covering the access that is proposed, routes, times, frequencies, and methods of ingress and egress. Additionally, the operator must post a bond.

In conclusion, the National Park Service has determined that proposed § 9.3(d) is necessary and adopts it through this final rulemaking.

Federal Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this regulation is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331, *et seq.*), the National Park Service prepared an environmental assessment on the proposed rulemaking and made it available to the public upon request. Because the language contained in this final rulemaking mirrors the language contained in the proposed rulemaking, no additional analysis was needed to comply with NEPA. Based on the assessment, the National Park Service has concluded that the implementation of this final rule will not have a significant effect on the quality of the human environment. The assessment is on file in the Land Resources Division offices of the National Park Service: Room 3223, 1100 L Street NW., Washington, DC (P.O. Box 37127, WASO 680, Washington, DC 20013-7127); and 12795 West Alameda Parkway, Room 221, Denver, Colorado (P.O. Box 25287, Denver, Colorado 80225) and at the National Park Service Alaska Regional Office, 2525 Gambell Street, Room 206, Anchorage, Alaska 99503.

List of Subjects in 36 CFR Part 9

Environmental protection, Mines, National Parks, Oil and gas exploration, Public lands—Minerals resources, Public lands—Right-of-way.

For reasons set out in the preamble, Title 36, Chapter I, Part 9, Subpart A of the Code of Federal Regulations, is amended as follows:

PART 9—[AMENDED]

1. The authority citation for Part 9 continues to read as follows:

Authority: Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 *et seq.*); Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 1 *et seq.*).

BEST COPY AVAILABLE

Act of September 20, 1976 (90 Stat. 1342; 16 U.S.C. 1901 *et seq.*).

2. Section 9.1 is revised to read as follows:

§ 9.1 Purpose and scope.

These regulations control all activities within units of the National Park System resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims without regard to the means or route by which the operator gains access to the claim. The purpose of these regulations is to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units is preserved for the benefit of present and future generations. These regulations apply to all operations, as defined herein, conducted within the boundaries of any unit of the National Park System.

3. Section 9.3 is amended by adding a new paragraph (d) to read as follows:

§ 9.3 Access permits.

(d) In units of the National Park System in Alaska, regulations at 43 CFR Part 36 govern access to claims, and the provisions of 36 CFR 9.3 (a), (b) and (c) are inapplicable.

Dated: May 24, 1988.

Susan Recca,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-15022 Filed 7-1-88; 8:45 am]

BILLING CODE 4310-70-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

[FPMR Amdt. G-97]

Prepayment Transportation Audit Procedures

AGENCY: Federal Supply Service, GSA.
ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations for the purpose of implementing Pub. L. 99-627 relating to prepayment audits of transportation bills. This regulation prescribes procedures, conditions, and limitations relevant to any delegation of authority to another agency for the purpose of conducting prepayment audits.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, Office of the Controller, (202) 786-3065 or FTS 786-3065.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) was published on December 23, 1987, (52 FR 48547), inviting comments within 60 days ending February 22, 1988. The period for comments on the proposed rule was extended until March 23, 1988, at the request of a carrier association. The extension was requested and granted prior to the expiration of the comment period.

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Final Regulatory Flexibility Analysis

In accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 603), the following final regulatory flexibility analysis is provided:

(a) A description of the reasons why action by GSA is being considered is provided in the "Reasons and Basis for this Rule" section below.

(b) The objective of this rule is set forth in the "Summary" paragraph above. The legal basis is provided by law, 31 U.S.C. 3726. Any activities conducted pursuant to this rule, when permitted, must be cost-effective or otherwise in the public interest.

(c) This rule may affect all transportation firms doing business with the United States Government to the extent that their bills are selected for prepayment audit by either GSA or its designee. For the most part, it is not expected that the effect will be either adverse or noticeable since this rule requires a prepayment audit to be accurately completed within 15 days. There is, however, the distinct possibility that prepayment audit activity could occasionally delay otherwise proper payments to carriers. On those occasions, the Government is obligated to pay interest in accordance

with the Prompt Payment Act. Further, if it appears that a prepayment audit activity is not continuing to audit in a timely, accurate, or cost-effective manner, GSA has authority to withdraw its delegation of authority. Delegations may involve any mode of transportation and/or type of bill, and in particular instances, may affect a lesser or greater number of similar entities. While they are not being treated any differently than other carriers/forwarders, small general commodity or other freight trucking, trip lease, or forwarding firms; small air carriers/forwarders of freight and/or passengers; small domestic household goods carriers/forwarders (including office and electronic movers); and other small business entities may be less able to handle the adverse cash flow effects of this rule, if any, because of their own peculiar circumstances.

(d) No recordkeeping or reporting is required beyond that which is usual and customary for the ordinary conduct of business.

(e) There are no known Federal rules which duplicate, overlap, or conflict with the proposed rule.

(f) Suggestions from commenting parties to the proposed rule were considered, and if appropriate, adopted. The only known alternative to the final rule is not to publish it. This alternative would result, in many circumstances, in the Government initially paying more for a transportation service than it would be legally required to pay. Congress has already determined that agencies will avoid paying overcharges in the first place and that they will avoid this through the development of a prepayment audit for transportation services. Congress granted no exemptions from this mandate for particular carriers/forwarders or classes of carriers/forwarders, and the granting of exemptions from the rule would be discriminating and counterproductive.

Reasons and Basis for This Rule

Public Law 99-627, dated November 7, 1986, amended section 3726 of title 31 of the United States Code to provide the Administrator of General Services with authority to audit selected transportation bills prior to payment, and to allow the delegation of any authority conferred by section 3726 to another agency or agencies if the Administrator determined that such a delegation would be "cost-effective or otherwise in the public interest."

Since 1975, GSA's Office of Transportation Audits has had Governmentwide responsibility for the postpayment audit of all freight and passenger transportation invoices and

recovery of charges paid by Federal agencies that are not based on the lowest applicable rates. Prior to 1975, the General Accounting Office (GAO) performed the Government's rate audit function.

Historically, there were significant delays from the date of the transportation service to the date the Government made payment, because of the time required by GAO to perform the very intricate rate audit. In the 1940's, in reaction to industry complaints, Congress directed agencies to pay bills for transportation services upon presentation by the carrier with audit after payment.

Determining whether a transportation charge is correct is a complex process. An auditor must possess a thorough knowledge of tariffs (published commercial rates), tenders (special, lower Government rates), contracts (negotiated rates for specific shipments or groups of shipments), and other rate authorities, to properly audit a carrier's bill.

During fiscal year 1987, GSA's Office of Transportation Audits identified more than \$56 million in rate overcharges. GSA employs 187 professional and support staff members to handle the large volume of transportation invoices paid by civilian and military activities.

For the most part, GSA intends to exercise its prepayment audit authority primarily in those instances specified in 41 CFR 101-41.103(i) where it can be reasonably concluded that the Government's right to setoff, if necessary, to prevent overpayments and to collect overpayments and other debts, is not adequately protected.

Many agencies believe that a prepayment audit would prevent overpayments. However, knowledgeable of the complexities of auditing transportation payments, GSA concludes that prepayment audit authority should be delegated only to those agencies which clearly demonstrate they are capable of performing a timely, accurate, and cost-effective audit within the requirements of the Prompt Payment Act.

It is not GSA's intention to relinquish its postpayment audit of oversight role.

Discussion of Major Comments, Suggestions, and Determinations, and Actions Taken

All comments received were considered in the final determination. There were nine responses to the NPRM: Six from carrier trade associations, two from carrier companies, and one from a Government department. Both carrier companies filed comments after the deadline of the comment period. Since

these two filings were intended as attachments to a carrier association comment which was timely filed, GSA considered the carrier company comments along with the other responses to the proposed rulemaking.

The following summarizes major comments and suggestions, and GSA's determinations and actions taken.

Cost-effectiveness of Rulemaking

Four carrier associations questioned the cost-effectiveness of prepayment audits and expressed the concern that GSA has already made a determination of cost-effectiveness without proof. We have not decided that prepayment audits by any particular Government activity is cost-effective. GSA's rulemaking requires activities to demonstrate cost-effectiveness or other public benefits at the time an agency requests prepayment audit authority. GSA also added paragraph (n) to § 101-41.103 which states that a prepayment audit delegation may be suspended if the cost of the audit exceeds the benefits derived.

One carrier association suggested that specific criteria for determining cost-effectiveness be included in the final rule. This proposal is impractical and has not been adopted because the cost factors incident to the implementation of prepayment audit authority will vary with the situation. In its review of any prepayment audit delegation request, GSA will ensure assertions of cost-effectiveness are based on generally recognized cost elements and that agency evaluations are comprehensive and consider all pertinent data. GSA also plans to exercise continuous oversight of prepayment audit delegations. Cost-effectiveness will be a factor that is reviewed on an on-going basis.

Four carrier associations also questioned whether a prepayment audit could ever be cost-effective if a postpayment audit is also conducted. One carrier association wanted bills subjected to a prepayment audit to be exempted from GSA's postpayment audit. One carrier expressed concern that the same transportation transaction could be ultimately disputed by both prepayment and postpayment auditors. We took no action on these issues. In enacting Pub. L. 99-627, the legislation authorizing prepayment audits, it is clear that Congress anticipated that a dual audit would be conducted. The related House Report (99-932, p. 11) indicates the Congress envisioned a system where the Government would verify the accuracy of most charges before a transportation provider is paid. In addition, the Report makes it clear

that the Committee intended no departure from the concept of a centralized audit responsibility with a postpayment audit as embodied in Pub. L. 93-604 (see House Report 93-1300.) GSA acknowledges the cost-effectiveness factor and plans to reallocate postpayment audit resources as agency prepayment audits are proven to be effective in specific modal areas. However, GSA transportation audits oversight responsibility will always require the postpayment audit of some bills as part of its quality control efforts.

Selection of Bills for Prepayment Audit

Concern was expressed by all parties about the method used to select bills for prepayment audit. Comments from the Government department opposed GSA's requirement that the character of the bills to be audited ("case by case basis") be indicated in any request for prepayment audit delegation and recommended a more flexible arrangement where a general delegation would be provided. Carrier industry comments, on the other hand, wanted specific standards incorporated in the rule which would discourage agencies from targeting specific carriers or groups of carriers for prepayment audit. To resolve these issues, GSA made three revisions to the rule. To provide more flexibility for the Government department, GSA removed the phrases "the character of the bills to be audited," (§ 101-41.103(a)); and "the type of bills that are subject to prepayment audit," (§ 101-41.103(f)). To preclude the possibility of discriminatory treatment against a carrier or group of carriers, GSA added subparagraph (m) to § 101-41.103 which specifies that prepayment audits must be conducted in a nondiscriminatory manner.

Special Prepayment Audits of Particular Carriers by GSA

Five carrier associations objected to § 101-41.103(i), and recommended that guidelines be included in the final rule. We adopted this recommendation and revised § 101-41.103(i) to provide criteria as to when GSA may conduct a prepayment audit of carrier bills and to specify the goal of such auditing. One carrier association recommended that § 101-41.103(i) be deleted because the provision of the Bankruptcy Code (11 U.S.C. 362(a)(7)) which stays setoff of prepetition debts upon the filing of the petition requires the Government to pay carriers in bankruptcy. We did not adopt this proposal because such action would waive the Government's right to setoff, as provided in 11 U.S.C. 553. As

clarification, amounts withheld by GSA are limited to the adequate protection of our right of setoff against amounts of existing and projected overpayments and any other debts due to other agencies. Prepayment audits are also conducted to identify excess billings. Actual setoff will be accomplished in accordance with the law. Ultimately, the Bankruptcy Court will decide on what adequate protection is sufficient. See 11 U.S.C. 362(d).

Interest on Late Payments

Some carrier associations expressed concern that a prepayment audit would lead to late or withheld carrier payments because the Prompt Payment Act is ignored by agencies or is an inadequate remedy for late payments because it does not offset carrier cash flow problems. One carrier recommended a definitive list of specific provisions (e.g., the method for calculating interest) be included in the final rule. We did not adopt this proposal because interpretation of the Prompt Payment Act is a matter of agency discretion and may not be augmented by GSA. Some carrier associations recommended amendments which would provide for interest pursuant to the Contracts Dispute Act of 1978. We did not adopt these proposals because claims for transportation services acquired under section 321 of the Transportation Act of 1940, as amended (49 U.S.C. 10721), are not subject to the disputes resolution procedure of the Contract Disputes Act.

Other Actions To Assure Timely Payments

Three carrier associations recommended that provisions be added to the final rule to encourage timely payments by agencies. Some suggested provisions would impose: (a) Termination of prepayment audit authority should accurate audits and notices of overcharge not be completed within 15 calendar days; (b) a minimum percentage of timely payments required during a specific period and loss of audit authority for an equal period should the percentage not be achieved; and (c) a payment equivalent to the interest rate be extracted from an audit contractor or agency for late payments. In response to carrier concerns, GSA added a subparagraph to the final rule (41 CFR 101-41.103(n)) which specifies the conditions under which a prepayment audit delegation may be suspended. One carrier suggested that agencies with audit backlogs might send transportation bills to GSA as doubtful claims, perhaps citing 41 CFR 101-41.604-2(b)(3), and thereby avoid

interest payments. Our rule directs agencies to pay up to the amount that is proper, and to withhold only those amounts which can be reasonably disputed. GSA will not tolerate the type of agency abuse envisioned by the carrier and will take immediate appropriate action should the abuse occur.

While GSA cannot promulgate rules interpreting rights under the Prompt Payment and Contract Disputes Acts, we invite carrier comments on instances of suspected Prompt Payment abuse as a supplement to our postpayment oversight auditing and onsite inspections.

Initial Regulatory Flexibility Analysis

One carrier association expressed the concern that GSA was targeting small household goods carriers in development of the proposed rule. In referencing small carriers in the NPRM, GSA was simply trying to alert small businesses to the proposed rule and elicit their comments since these activities would be the most sensitive to changes in Government payment procedures.

Review of Audit Actions

One carrier association suggested that agency Boards of Contract Appeals (BCAs) must be used as a forum for audit disputes. To be reviewed by the BCA, a claim must be subject to the Contract Disputes Act of 1978. This is not the case for transportation claims arising under section 321 of the Transportation Act of 1940 which are subject to review by GSA, the Comptroller General, or the Court of Claims. (See the Comptroller General's Decision in 62 Comp. Gen. 203.)

Other Dispute Resolution Procedures

One carrier association proposed that agencies be allowed only 10 days to adjudicate a claim, not the 30 days proposed in the rulemaking. This proposal was not adopted. While most claims could be reviewed and a decision reached within 10 days, necessary documentation is not always available and some claims would require additional time. However, GSA will include timely review of claims in its performance reviews of prepayment auditors.

The same carrier association recommended that GSA place time limits on its processing of appeals and provide a standard for review. GSA intends to process claims in accordance with procedures prescribed in 41 CFR 101-41.6. These procedures do not specify time limits for GSA actions but do provide for a complete and

independent review based on all facts of the record. We are not adverse to the placement of time limits on GSA claim processing, but those limits ought to be considered in the context of a rulemaking involving all claims.

Required Automation

One carrier association recommended that GSA's requirement concerning use of automation be strengthened to require an agency to demonstrate existing automation capabilities sufficient to handle the estimated volume of transportation bills without payment delays. The Government department, on the other hand, recommended that automation not be required if an opportunity exists to save substantial transportation dollars in a less than fully automated environment. On consideration of both arguments, we determined that full automation should not be a requirement for a prepayment audit delegation and deleted the reference in § 101-41.103(c). The 15-day time constraint and cost-effectiveness requirements imposed by the rulemaking should foster automation. Therefore, we believe no additional regulatory requirement is necessary.

Public Comment on Delegations

Three carrier associations recommended that each proposed delegation of prepayment audit authority be made the subject of public review and comment. We did not adopt this proposal. The purpose of this rulemaking is to establish guidelines which will enable the Administrator of GSA or his/her designee to make prudent decisions on prepayment audit delegation requests. Interested parties, however, may obtain copies of delegation requests under the Freedom of Information Act.

Exemptions for Delegations

One carrier association recommended that transportation bills from air passenger and small package air carriers be exempted from prepayment audit. Three other carrier associations suggested that bills from household goods carriers be exempted. We did not adopt these proposals. Congress' mandate that the Government avoid paying overcharges in the first place is related to all modes of transportation. No exemptions were provided in the authorizing legislation.

Recovery of Administrative Costs

One association recommended the final rule contain a provision imposing fees to cover administrative costs incurred by carries to process claims to

recover amounts "wrongfully" withheld for adjudication. GSA does not have the authority to prescribe rules incident to the recovery of administrative costs. We may, however, withdraw a prepayment audit delegation from any agency abusing its authority.

Content of Notice Advising Carriers of Incorrect Billings

One carrier association suggested that the content of the notice advising carriers of incorrect billings be GSA-prescribed, and another also critical about GSA's failure to prescribe the content of the notice, used as examples notice documents issued by an agency conducting a test of International Through Government Bill of Lading prepayment audits. We did not adopt the proposal of the first association because the specificity of a notice of overcharge varies with transportation mode and the provisions of the rulemaking are as specific as possible. However, we invite carriers to forward examples of an audit activity's failure to provide an adequate notice. GSA will take steps to ensure future notices contain the necessary information.

Prompt Payment Act

Several carrier associations expressed a variety of concerns about the exceptions permitted under the Prompt Payment Act itself. The general exceptions permitted under this legislation are not within our purview, and criticisms could be better addressed by the agency involved, the Office of Management and Budget or the appropriate congressional committee.

List of Subjects in 41 CFR Part 101-41

Accounting, Air carriers, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

Title 41, Part 101-41 of the Code of Federal Regulations is amended as follows:

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101-41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 489(c).

2. The table of contents for Part 101-41 is amended by adding § 101-41.103 and revising § 101-41.401 as follows:

101-41.103 Procedures, conditions, and limitations relevant to the delegation of authority to perform prepayment audits of selected transportation bills.

101-41.401 Payment of transportation bills.

Subpart 101-41.1—General

3. Section 101-41.101 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 101-41.101 Examination of payments, settlement of claims, and review of requirements.

Section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726), permits transportation bills to be paid prior to audit by the Administrator of General Services or his/her designee in accordance with regulations that the Administrator shall prescribe.

(a) The authority vested in the Administrator of General Services by 31 U.S.C. 3726, as amended, enables the Administrator, or his/her designee, to:

(1) Audit selected transportation bills prior to payment;

(2) Examine, settle, and adjust accounts involving payment for transportation and related services for the account of the United States;

(3) Adjudicate and settle transportation claims by and against the United States;

(4) Deduct the amount of any overcharge by any carrier or forwarder from any amount subsequently found to be due such carrier or forwarder; and

(5) Delegate any authority conferred on the Administrator to another agency or agencies if the Administrator determines that such a delegation would be cost-effective, accurate, timely, or otherwise in the public interest.

4. Section 101-41.103 is added to read as follows:

§ 101-41.103 Procedures, conditions, and limitations relevant to the delegation of authority to perform prepayment audits of selected transportation bills.

(a) Except for the authority exercised by GSA in § 101-41.103(i), requests for a delegation of authority from the Administrator of General Services to conduct prepayment audits shall be accompanied by a specific and complete description of the organization to perform the audit and the manner whereby the audit will be conducted. Such requests shall demonstrate cost-effectiveness or other public benefits.

(b) Prepayment audits by GSA's Office of Transportation Audits on behalf of itself and/or other agencies, need not be approved by the Administrator because the authority to conduct prepayment audits is already provided by law.

(c) Each request shall include a detailed model of the audit process from

receipt of carrier bills to disbursement and the subsequent submission of paid vouchers to GSA for postpayment audit.

(d) The requester shall demonstrate the capability not only to complete an accurate audit within 15 calendar days of receipt of a carrier's bill, but also evidence the ability to generate an accurate notice to the carrier which specifically describes the reason for any full or partial rejection of the carrier's charges, citing the rate authority applicable thereto.

(e) The request shall contain a mechanism to report savings, on a monthly basis and in a manner acceptable to GSA, accomplished by identifying overcharges/overbillings through prepayment audit.

(f) Public notice of delegated authorities will be effected by publication in the *Federal Register* notices section. Such notices will specify the Government department/agency whose bills are subject to such audit and the organization or command; i.e., the activity which will conduct such audits.

(g) Authority delegated in accordance with this section is subject to complete oversight by GSA. This oversight and a test of accuracy will be made through the postpayment audit process and through onsite inspection. To assist in this process, prepayment audit activities (and/or their contractors) are required to stamp each bill so audited with a certification substantially as follows: "I certify that this bill was audited and certified for payment in the amount of \$_____." The stamp will also indicate both the name of the audit activity and the name of any contractor involved, and be initialed and dated by the auditor. Paid bills that were subject to prepayment audit must be forwarded to GSA, Attn: FWA (Code PA), under separate cover.

(h) Except as provided in § 101-41.604-2, when a prepayment audit results in a reduction to a properly presented invoice, interest penalties will be paid if required by the Prompt Payment Act. The designee must approve for payment the amount claimed by the carrier, reduced only by the amount disputed on prepayment audit, or otherwise allowed to be withheld by law or regulation.

(i) *Unpaid bills.* (1) Notwithstanding any other provision herein, GSA may request that agencies forward unpaid transportation bills approved for payment after prepayment audit by a designee agency (if any), in lieu of payment to the carrier/forwarder, in order to adequately protect the Government's right to setoff or where

the best interests of the Government so require.

(2) These unpaid bills shall be audited only to the extent necessary to prevent excess billings and to adequately protect the Government's right to setoff for identified and projected overpayments, and for known debts owed to other agencies.

(3) Consistent with the purpose of paragraphs (i) (1) and (2) of this section, GSA may conduct a prepayment audit of carrier bills in the following circumstances:

(i) The carrier/forwarder is involved in a proceeding under the Bankruptcy Code as a debtor or possible debtor, or is subject to the control of a receiver, trustee, or other similar representative;

(ii) The carrier/forwarder consistently fails to refund overcharges without assertion of substantial defense or other valid reasons when notified by GSA or any other interested Government agency;

(iii) The carrier/forwarder, without good cause, fails to make timely disposition or settlement of loss or damage or other claims asserted by agencies of the United States;

(iv) The carrier/forwarder owes substantial sums of money to the United States for which no adequate arrangements for settlement have been made;

(v) The carrier/forwarder, as a person or business entity, was determined administratively for valid reasons to be ineligible for payment, unless after review of the facts and in the absence of objection by the U.S. General Accounting Office, it is determined administratively that the best interests of the United States will not be jeopardized by such payment;

(vi) The carrier/forwarder voluntarily withdraws or is otherwise involuntarily terminated from an agency-wide transportation program; or

(vii) Any other circumstances where a reasonable person, in the exercise of ordinary prudence, would conclude that the carrier/forwarder is in such financial condition that is ability to pay debts owed to the Government is questionable.

(4) Carriers/forwarders subject to prepayment audit by GSA for the reasons outlined in § 101-41.103(i)(3), may offer substitute arrangements to adequately protect the Government's right to setoff in consideration for the avoidance of prepayment audit and/or a release of funds deemed adequate by the Government to pursue its right of setoff.

(5) The exercise of actual setoff shall

be conducted in accordance with the law.

(j) All forms used by the designee or its audit activity in performing the prepayment audit must be approved by GSA (attn: FWC) prior to usage, and no rules or procedures relative to the prepayment audit may be published by them without GSA approval.

(k) The designee and any audit activity under him/her is required to follow Comptroller General decisions and Federal Property Management Regulations, instructions, and precedents regarding substantive and procedural matters.

(l) The designee may utilize contractors to accomplish the prepayment audit, but contractors are subject to all of the requirements that apply to the designee and his/her audit activity.

(m) Except as provided for GSA in § 101-41.103(i), prepayment audit authority exercised under this paragraph will not be directed to a particular carrier but may be directed toward specific types or categories of bills or exercised in some other nondiscriminatory manner.

(n) GSA will exercise continuous oversight of the delegated prepayment audit authority. A delegation of authority to conduct a prepayment audit may be suspended in whole or in part by the Director, Office of Transportation Audits for failure to properly conduct prepayment audits. Such failures may include any of the following:

(1) Failure to conduct an accurate audit (not less than 85 percent accuracy).

(2) A pattern of failure to make timely payments, or failure to inform carriers within 15 days of defective invoices (Prompt Payment Act time limitations).

(3) Audit not cost-effective, i.e., where the cost of the audit exceeds the benefits derived.

(4) Failure to adjudicate carriers' claims disputing prepayment audit positions of the designee agency within 30 days of receipt.

(5) Failure of the designee, or any audit authority under it to follow Comptroller General decisions, Federal Property Management Regulations, and instructions, or precedents regarding substantive and procedural matters.

(6) Failure to provide information/data, or to cooperate in onsite inspections, necessary to analyze cost-effectiveness or to conduct a quality assurance review.

Subpart 101-41.4—Standards for the Payment of Charges for Transportation Services Furnished for the Account of the United States

5. Section 101-41.401 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101-41.401 Payment of transportation bills.

(a) Unless GSA's Office of Transportation Audits determines that a prepayment audit is necessary under 41 CFR 101-41.103(i), each agency or department shall pay any properly documented bill (claim) for freight passenger transportation charges that is not excepted by the provisions of § 101-41.604-2.

Subpart 101-41.6—Claims Against the United States Relating to Transportation Services

6. Section 101-41.604-1 is amended by revising the introductory paragraph to read as follows:

§ 101-41.604-1 Transportation claims payable by agencies.

Unless GSA's Office of Transportation Audits determines that a prepayment audit is necessary under 41 CFR 101-41.103(i), each agency or department shall pay any properly documented bill (claim) for freight or passenger transportation charges that is not excepted by the provisions of § 101-41.604-2 provided the following guidelines are observed:

7. Section 101-41.604-2 is amended by adding paragraph (b)(7) to read as follows:

§ 101-41.604-2 Transportation claims not payable by agencies.

(b) (7) Irreconcilable claims disputing prepayment audit positions of agencies that are subject to a delegation of authority by the Administrator under § 101-41.103. All claims protesting an audit activity's prepayment audit position will be addressed to that activity. The activity shall promptly acknowledge the claim in writing and stamp it with its date of receipt. The activity must adjudicate the claim within 30 days of receipt, but if the authority fails to approve all or any portion of the carrier's claim, it shall make a final decision providing a clear, specific, and detailed written explanation of its position. If the carrier is dissatisfied with the activity's final

decision, it may appeal that decision to GSA, providing a copy of all documentation involved in the record, including a copy of the audit activity's decision. All such appeals shall be forwarded by the carrier to GSA, Attn: FWC (Code PA), Washington, DC 20405. Dated: June 10, 1988.

John Alderson,
Acting Administrator of General Services.
[FR Doc. 88-14052 Filed 7-1-88; 8:45 am]
BILLING CODE 5020-34-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

(MM Docket No. 87-301; RM-5821)

Radio Broadcasting Services; Dunnellon, FL

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C2 for Channel 272A at Dunnellon, Florida, and modifies the Class A license for Station WTRS-FM to specify Channel 272C2, at the request of the licensee, Asterisk Communications, Inc., at coordinates 29-14-06 and 82-24-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-301, adopted May 11, 1988, and released June 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 657-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments is amended for Dunnellon,

Florida by adding Channel 272C2 and removing Channel 272A.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-14056 Filed 7-1-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

(MM Docket No. 87-365; RM-5777)

Radio Broadcasting Services; Pella, IA

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: The Commission, at the request of GBA, Inc., substitutes Channel 277C for Channel 277C1 at Pella, Iowa, and modifies its license for Station KFMD(FM) to specify the higher powered channel. Channel 277C can be allotted to Pella in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41-24-36 and West Longitude 92-55-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 87-365, adopted May 2, 1988, and released June 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 657-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Iowa is amended by revising the entry for Pella by removing Channel 277C1 and adding Channel 277C.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-14059 Filed 7-1-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

(MM Docket No. 86-163; RM-5190 and RM-5441)

Radio Broadcasting Services; Camden and Rockland, ME

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 277B1 for Channel 228A at Rockland, Maine, in response to a counterproposal filed by Passamaquoddy Broadcasting, Inc. The original petition filed by Northern Lights Broadcasting requested the allotment of FM Channel 277B to Camden, Maine. Northern Lights Broadcasting did not file comments in support of a channel at Camden. John J. Pineau did file comments in support of a channel at Camden but has since withdrawn his interest in applying for the channel. In accordance with § 1.420(g) of the Commission's Rules, we shall modify the license for Station WMCM-FM, Rockland, Maine, to specify operation on Channel 277B1, since no other expressions of interest have been received for the channel. Concurrence of the Canadian government has been obtained since Rockland, Maine is within 320 kilometers of the U.S.-Canadian border. In addition, the proposal for Rockland must conform with the technical requirements of § 73.1030(c)(1)-(5) of the Rules regarding protection to the Commission's monitoring station at Belfast, Maine. The coordinates for Channel 277B1 are 44-06-12 and 69-06-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-163, adopted May 2, 1988, and released June 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the

Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Maine by removing Channel 228A and adding Channel 277B1 of Rockland.

Federal Communications Commission, Steve Kammer, Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14957 Filed 7-1-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-600; RM-6117]

Radio Broadcasting Services; White Rock, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Torjaq Radio, Inc., substitutes Channel 266C2 for Channel 266A at White Rock, New Mexico, and modifies its permit for Station KTJB to specify the higher powered channel. Channel 266C2 can be allotted to White Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) northeast to avoid a short-spacing to the pending applications for Channel 267A at

Albuquerque, New Mexico. The coordinates for this allotment are North Latitude 35-54-12 and West Longitude 106-09-16. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 25, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-600, adopted May 9, 1988, and released June 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New Mexico is amended by revising the entry for White Rock by removing Channel 266A and adding Channel 266C2.

Federal Communications Commission, Steve Kammer, Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-14960 Filed 7-1-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Public Workshop for NRC Rulemaking on Maintenance of Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of information to be discussed at workshop.

SUMMARY: On March 23, 1988, the Commission published a final Policy Statement on Maintenance of Nuclear Power Plants. In the Policy Statement, the Commission stated it expected to publish a Notice of Proposed Rulemaking in the near future, and has directed the staff to develop such a Notice of Proposed Rulemaking. In order to solicit information and comment from the public and regulated industry early in the formulation of the proposed rule, NRC plans to conduct a workshop. The agenda of the workshop was published in the *Federal Register* (53 FR 20856) on June 7, 1988. A memorandum from Victor Stello, Jr., Executive Director for Operations, to the Commissioners, dated June 27, 1988, "Proposed Rulemaking for the Maintenance of Nuclear Power Plants," providing information to be discussed at the workshop, is now available for review at the NRC Public Document Room in Washington, DC. The memorandum presents five rulemaking options including a "strawman" rule for the Commission's preferred option. Comments on the "strawman" rule for the preferred Commission option and approaches for other rulemaking options will be solicited at the workshop.

DATE: Workshop will be held on July 11-13, 1988.

ADDRESS: Workshop will be held at the Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Memorandum is available for review at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3730.

Dated in Rockville, Maryland this 28th day of June, 1988.

For the Nuclear Regulatory Commission,

Moni Dey,

Task Manager, Advanced Reactors and Generic Issues Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 88-15007 Filed 7-1-88; 8:45 am]

BILLING CODE 7530-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 569c

[No. 88-496]

Conservators and Receivers; Priority of Claims; Depositor Priority

Date: June 23, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is publishing a proposed rule to revise its receivership regulations at 12 CFR 569c.11(a)(6) to establish a priority for withdrawable deposits and accounts, including those of the FSLIC as subrogee or transferee, over unsecured claims of general creditors in receiverships of federally chartered associations or savings banks in States that provide such a priority for depositors in State-chartered savings and loan associations ("depositor preference legislation"). In addition, the Board is requesting public comment whether § 569c.11(a)(6) should be revised to recognize a depositor priority in the administration of FSLIC receiverships of: (1) All Federal associations and Federal savings banks, regardless of location, or (2) all Federal savings bank and all institutions for which the FSLIC is appointed as receiver by the Board.

DATE: Comments must be received by August 4, 1988.

ADDRESS: Director, Information Services Section, Office of the Secretariat,

Federal Register

Vol. 53, No. 128

Tuesday, July 5, 1988

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Public comments received on this proposed rule and the request for comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; Ronald A. Brown, Associate General Counsel for FSLIC, (202) 377-7044; or Michael B. Phillips, Attorney, Office of General Counsel, (202) 377-6755; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction—The Establishment of a Depositor Priority for Purposes of the Administration of FSLIC Receiverships

In a final rule published concurrently with the issuance of this proposed rule, the Board promulgated as a final rule certain portions of the Proposed Receivership and Conservatorship Regulations that were published in the *Federal Register* of November 27, 1985 (50 FR 48970, 48995). The final rule established a priority structure for unsecured claims applicable to all FSLIC receiverships under a new Part 569c of Title 12 of the Code of Federal Regulations.

This proposed rule would amend § 569c.11 to recognize a depositor priority for deposits registered at offices of federally chartered institutions located in States with depositor preference legislation. The Board also requests comment whether this rule should provide (1) depositor priority over general creditors for all Federal associations, regardless of location, or (2) depositor priority over general creditors for all Federal savings banks and all institutions for which the Board appoints the FSLIC as receiver.

Current § 569c.11(a)(6) recognizes State law priorities with respect to depositors for State-chartered institutions, including a provision in that section for depositor priority over claims of unsecured general creditors for FSLIC-insured institutions chartered by those States having depositor preference legislation. Depositor claims in Federal associations have the same priority as the claims of unsecured general creditors.

The primary benefits of revising current receivership regulations at

§ 569c.11(a)(6) to recognize a "depositor preference" for Federal associations (to parallel the coverage for State-chartered institutions under that section) have been described, for purposes of bank receiverships and Purchase and Assumption Transactions, by a former Director of the Division of Research and Strategic Planning of the Federal Deposit Insurance Corporation ("FDIC") as follows:

When state bank have failed in depositor preference states during the past several years, the FDIC has passed only deposits to an acquiring bank. A smaller cash outlay is necessary. Standing in place of depositors who have been made whole through the transaction, the FDIC is entitled to get paid back before other creditors. Contingent claimants (and other creditors) only have access to receivership collections after the FDIC has been repaid. The transaction [a Purchase and Assumption Transaction] is thus simpler, losses are more predictable and it is less expensive to the deposit insurance fund.

See S.C. Silverberg, "A Case for Depositor Preference," *Banking and Economic Review* 7, 6, (May 1986).

Twenty-three States have enacted legislation to recognize depositor preference for bank receiverships. These States are: Alaska, California, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia.

Eight States have enacted legislation to recognize full depositor preference for their savings and loan associations. These States are: Georgia, Indiana, Nebraska, North Carolina, Oklahoma, Texas, Utah, and West Virginia.¹ (South Dakota, Tennessee, and Washington State have enacted statutes providing an extremely limited and minimal depositor priority.)

II. Statutory Authority for the Scope of this Rulemaking

Pursuant to section 5(d)(11) of the Home Owners' Loan Act of 1933, ("HOLA"), 12 U.S.C. 1464(d)(11), the

Board has plenary authority to make rules and regulations for federally chartered associations in conservatorship or receivership, for the conduct of conservatorships and receiverships, and for the liquidation and dissolution of such associations. Pursuant to section 406(c)(3)(A) of the National Housing Act ("NHA"), 12 U.S.C. 1729(c)(3)(A), the provisions of section 5(d)(11) of the HOLA are applicable to a State-chartered insured institution for which the Board has appointed the FSLIC as conservator or receiver "in the same manner and to the same extent as if such [State-chartered] institution were a Federal association"

For a discussion of the enlargement of the Board's authority to regulate conservatorships and receiverships under section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA, see the introduction to the Proposed Receivership Regulations (50 FR 48970). Concerning the Board's authority to promulgate extensive rules for the receivership and liquidation of State-chartered associations for which the Board has appointed the FSLIC as receiver, see section 6 of the Bank Protection Act of 1968, Pub. L. No. 90-389, 82 Stat. 294. Congress based this extension of regulatory powers on the FSLIC's "vital interest in seeing that the liquidation of the [State-chartered] association proceeds in an orderly manner". S. Rep. No. 1283, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. & Ad. News 2530, 2531.

Pursuant to cited authority, the Board is publishing for comment a revision of § 569c.11 that would provide for depositor priority over unsecured claims of general creditors for deposits booked at offices of federally chartered associations or savings banks located in States with depositor preference legislation. The Board asks for comment on alternative revisions of § 569c.11 that would provide (1) depositor priority over general creditor claims for all Federal associations and Federal savings banks, regardless of location or (2) depositor priority for all Federal savings banks and for all institutions for which the FSLIC is appointed a receiver by the Board.

III. FSLIC's Claims as Subrogee

An important element in this proposal for expanding the depositor priority coverage in current § 569c.11(a)(6) is to better protect FSLIC's claims as subrogee to the claims of insured depositors up to the statutory maximum. Section 405(b) of the NHA, 12 U.S.C. 1728(b), directs the FSLIC, in the event of a default by any insured institution, to

pay each insured account in such insured institution which is "surrendered and transferred" to the FSLIC. Payment is to be made "as soon as possible either (1) by cash or (2) by making available to each insured member a transferred account in a new insured institution in the same community or in another insured institution in an amount equal to the insured account of such member"

Pursuant to section 406(b)(2) of the NHA, 12 U.S.C. 1729(b)(2), the FSLIC as receiver of a Federal association is directed to pay insurance in accordance with section 405 of the NHA. Section 406(b)(2) of the NHA also provides that the FSLIC, upon "surrender and transfer" of an insured account in any Federal association which is in default, shall become subrogated with respect to such account. The provisions of section 406(b)(2) of the NHA are applicable to the FSLIC as receiver of a State-chartered institution under appointment by the Board pursuant to section 406(c)(1)(B) of the NHA.

Under the statute and the doctrine of equitable subrogation, the FSLIC is entitled to exercise the rights of depositors with respect to their insured accounts after making available transferred accounts. Subrogation is a remedy which has been available in courts of equity at least since the seventeenth century.² The doctrine is explained as follows in the Restatement of the Law of Restitution:

Where property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be unjustly enriched by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lienholder.

Restatement of the Law of Restitution Section 162 (1937) ("Restatement"). According to the Restatement, the underlying justification and purpose for subrogation, as with most forms of restitution, is to prevent unjust enrichment. In this regard, the FSLIC's rights are like those of any insurer.

IV. Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These

¹ 1 G. Palmer, *Law of Restitution* § 1.5(b) (1978). See *Ford v. Stobridge*, 21 Eng. Rep. 780 (Ch. 1682); *Morgan v. Seymour*, 21 Eng. Rep. 525 (Ch. 1637).

elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. *Small institutions to which the proposed rule applies.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed \$100 million." 13 CFR 121.13(a) (1987). Therefore, small entities to which the proposed rule would apply are the 1,651 insured institutions that had assets totaling \$100 million or less as of December 31, 1986.

3. *Impact of the proposed rule on small institutions.* All institutions, including small institutions, should benefit from the proposal. The proposed rule would impose no new recordkeeping requirements or other additional administrative burden on any insured institution. The Board therefore believes that the proposed rule would not have a significant economic impact on small institutions.

4. *Overlapping or conflicting Federal rules.* There are no known Federal rules that would duplicate, overlap, or conflict with this proposed rule.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposed in addressing the concerns expressed in the SUPPLEMENTARY INFORMATION set forth above.

List of Subjects in 12 CFR Part 569c

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Part 569c, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 569c—RECEIVERSHIP RULES

1. The authority citation for Part 569c continues to read as follows:

Authority: Sec. 5, 46 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 406, 46 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

2. Amend § 569c.11 by revising paragraph (a)(6) to read as follows:

§ 569c.11 Priorities.

(a)
(6) Claims for withdrawable accounts, including those of the Corporation as subrogee or transferee, and all other claims which have accrued and become unconditionally fixed on or before the date of default, whether liquidated on

unliquidated, except as provided in paragraphs (a)(1) through (a)(5) of this section, provided, however, that if the association is chartered and was operated under the laws of a state that provided a priority for holder of withdrawable accounts over such other claims or general creditors, such priority within this paragraph (a)(6) shall be observed by the receiver; and provided further, that if deposits of a Federal association are booked or registered at an office of such association that is located in a State that provides such priority with respect to State-chartered associations, such deposits in a Federal association shall have priority over such other claims or general creditors, which shall be observed by the receiver;

By the Federal Home Loan Bank Board,
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-15048 Filed 7-1-88; 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-73-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require replacement of the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft of the main landing gear with a new bolt, castellated nut, and cotter pin. This proposal is prompted by reports of incidents involving loosening of the self-locking nut which resulted in loss of nut and, in one case, loss of bolt. This condition, if not corrected, could lead to separation of the forward pushrod from the downlock torque shaft, which could result in door jamming that could prevent the extension of the affected landing gear.

DATES: Comments must be received no later than August 25, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional

Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-73-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 8010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-73-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several incidents involving Boeing Model 727 series airplanes where loosening of the self-locking nut at the attachment of the downlock forward pushrod assembly to the downlock torque shaft of the main

¹ The following list presents citations for the eight State statutory sections recognizing full depositor preference for receiverships involving FSLIC-insured institutions:

(1) Georgia: GA. Code Ann. § 7-1-202(a)(2);
(2) Indiana: Ind. Code § 28-1-3.1-10(3);
(3) Nebraska: Neb. Rev. Stat. § 6-1, 110;
(4) North Carolina: N.C. Gen. Stat. § 54B-70(m)
(5) Oklahoma: Okla. Stat. Ann. tit. 18, § 381.76(K)(1)(b);
(6) Texas: Tex. Rev. Civ. Stat. Ann. art. 652a, § 4.06(a)(3);
(7) Utah: Utah Code Ann. § 7-2-15(d); and
(8) West Virginia: W. VA. Code § 31A-7-12(a)(3).

landing gear has been found. This has resulted in loss of the nut and, in one case, loss of the bolt. Loss of the nut and bolt from the joint can result in separation of the forward pushrod from the downlock torque shaft, which could result in door jamming that could prevent the extension of the affected landing gear.

The FAA has reviewed and approved Boeing Service Bulletins 727-32-0353 and 727-32-0237, Revision 4, both dated February 25, 1988, which describe the procedure for replacing the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft with a new bolt, castellated nut, and cotter pin. The FAA has also reviewed and approved Boeing Service Bulletin 727-32-275, Revision 2, dated March 30, 1984, which describes installation of an improved safety bar. Airplanes that have had the improved safety bar installed during manufacture, or by the incorporation of Boeing Service Bulletin 727-32-275, are not affected by this proposed rule because the affected landing gear on these airplanes can be extended after door jamming.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the existing bolt and self-locking nut that attaches the downlock forward pushrod assembly to the downlock torque shaft with a new bolt, castellated nut, and cotter pin on all airplanes not equipped with the improved safety bar, in accordance with the service bulletins previously mentioned.

It is estimated that 1,018 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$366,480.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12812, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A copy of a draft regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—(AMENDED)

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1432; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 (Amended)

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, prior to line number 1620, not equipped with the safety bar modification described in Boeing Service Bulletin 727-32-275, Revision 2, dated March 30, 1984, certificated in any category.

Compliance required within the next 2,000 flight hours after the effective date of this AD, unless previously accomplished.

To prevent failure of the main landing gear (MLG) to extend as a result of loosening of the self-locking nut at the attachment of the downlock forward pushrod assembly to the downlock torque shaft, accomplish the following:

A. Modify airplanes listed in Boeing Service Bulletin 727-32-0237, Revision 4, dated February 25, 1988, by installing the bolt, washer, nut, and cotter pin called out in Item 10 of Figure 5 of that service bulletin.

B. Modify airplanes listed in Boeing Service Bulletin 727-32-0353, dated February 25, 1988, by installing the bolt, washer, nut, and cotter pin in accordance with that service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-14944 Filed 7-1-88; 8:45 am]

BILLING CODE 4810-12-M

14 CFR Part 39

[Docket No. 88-NM-77-AD]

Airworthiness Directives; Boeing Model 727 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require inspection, and modification, if necessary, of main landing gear door actuators. This proposal is prompted by reports of door actuators failing to unlock due to failure of the pivot trunnions. This condition, if not corrected, could lead to inability to retract or extend the main landing gear.

DATE: Comments must be received no later than August 25, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One operator of Boeing Model 727 airplanes has reported eleven occurrences of fractured pivot trunnions in the main landing gear door actuators. Four additional actuators were found with cracked pivot trunnions. Examination by Boeing revealed that the pivots cracked due to fatigue. In one case, the operator reported, following takeoff, the right main landing gear would not retract. Examination of the door actuator revealed that the upper main trunnion had fractured and was wedged in the actuator mechanism, preventing the actuator from unlocking. With the actuator locked, the door cannot be opened and the landing gear cannot be retracted or extended. The normal and alternate landing gear extension systems are both rendered inoperative. This condition, if not corrected, could lead to inability to retract or extend the main landing gear.

The FAA has reviewed and approved Boeing Service Bulletin 727-32-0358, dated March 31, 1988, and Sargent Controls Service Bulletin 7-3141-32-06, Revision 1, dated November 2, 1987, which describe inspection and replacement, if necessary, of the main landing gear door actuator pivot.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and replacement, if necessary, of the main landing gear door actuator pivot in accordance with the service bulletin previously mentioned.

It is estimated that 1,246 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required initial inspection, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$99,680. In addition, the required repetitive inspections would take 2 manhours per airplane every 800 flight cycles, which is approximately 1,040 flight hours or .35 years. The average cost associated with the repetitive inspections is approximately \$285,000 per year.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12812, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1432; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 (Amended)

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent jamming of the main landing gear door actuator caused by fracturing of the pivot trunnion, accomplish the following:

A. Within the next 1,600 flight cycles after the effective date of this AD, accomplish the visual inspection of the main landing gear door actuator pivots in accordance with Boeing Service Bulletin 727-32-0358, dated May 31, 1988. Repeat this inspection at intervals not to exceed 800 flight cycles.

B. If any of the pivot trunnion shafts are found loose or missing during the inspection performed in accordance with paragraph A., above, prior to further flight, replace the pivot in accordance with Boeing Service Bulletin 727-32-0358, dated May 31, 1988.

C. Accomplishing the pivot replacement with a part number 3-3141-54 pivot, in accordance with Sargent Controls Service Bulletin 7-3141-32-06, Revision 1, dated November 2, 1987, constitutes terminating action for the initial and repetitive inspections required by paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 23, 1988.
Thomas J. Howard,
Acting Director, Northwest Mountain Region.
 [FR Doc. 88-14043 Filed 7-1-88; 8:45 am]
 BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-9]

Proposed Revision to Fairfield, CA; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Fairfield, CA, control zone. This revision will provide controlled airspace for instrument flight rules (IFR) departures from the Travis AFB Aeroclub airport and will also provide additional controlled airspace for slow climbing large jet departures from Travis Air Force Base (AFB).

DATES: Comments must be received on or before September 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-9, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, Telephone (213) 297-1842.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Fairfield, CA, control zone. This revision will provide controlled airspace for IFR departures from the Travis AFB Aero Club Airport and will also provide additional controlled airspace for slow climbing large jet departures from Travis AFB. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 (Amended)

2. Section 71.171 is amended as follows:

(Revised)

Within a 5-mile radius of Travis AFB, Fairfield, CA, (lat. 38°15'45" N., long. 121°55'35" W.); within 2 miles each side of the Travis VOR (lat. 38°20'40" N., long. 121°48'35" W.) 047° radial extending from the 5-mile radius zone to 10 miles NE of Travis AFB; within 2 miles each side of the Travis VOR 227° radial extending from the 5-mile radius zone to 10 miles SW of Travis AFB; and within 2 miles each side of the 237° bearing from the Travis Aero Club Airport (lat. 38°16'10" N., long. 121°58'27" W.) extending from the Travis Aero Club Airport to 5 miles SW of the airport.

Issued in Los Angeles, California, on June 10, 1988.

Jacqueline L. Smith,
Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 14041 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-8]

Proposed Establishment of Barking Sands, HI; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700' AGL transition area at Barking Sands, HI. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to the Barking Sands PMRF Airport, Kauai, Hawaii.

DATES: Comments must be received on or before August 31, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1842.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit

with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWP-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700' AGL transition area at Barking Sands, HI. This transition area will provide controlled airspace for aircraft executing instrument approach procedures to the Barking Sands PMRF Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when

promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 (Amended)

2. Section 71.181 is amended as follows:

Barking Sands, HI [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Barking Sands PMRF Airport (lat. 22°01'18" N., long. 159°47'12" W.); within 2 miles each side of the Barking Sands TACAN (lat. 22°02'12" N., long. 159°47'06" W.) 173° radial extending from the 5-mile radius area to 8.5 miles south of the Barking Sands PMRF Airport; and within 2 miles each side of the Barking Sands TACAN 341° radial extending from the 5-mile radius area to 8.5 miles north of the Barking Sands PMRF Airport.

Issued in Los Angeles, California, on June 10, 1988.

Jacqueline L. Smith,
Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-14040 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AWP-10]

Proposed Revision to Flagstaff Pulliam Airport, AZ; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Flagstaff Pulliam Airport, AZ, transition area. This revision will increase the 1200 feet above ground level (AGL) transition area and provide additional controlled airspace for

aircraft in the FRISY intersection holding pattern.

DATES: Comments must be received on or before September 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 88-AWP-10, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1842.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 88-AWP-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and

Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Flagstaff Pulliam Airport, AZ, transition area. This revision will increase the 1200 feet AGL transition area and will provide additional controlled airspace for aircraft in the FRISY intersection holding pattern. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Flagstaff Pulliam Airport, AZ [Revised]

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Pulliam Airport (lat. 35°06'16" N., long. 111°40'14" W.); and that airspace extending upward from 1,200 feet above the surface within 9.5 miles each side of the Flagstaff VOR 127° and 307° radials, extending from 5 miles northwest to 19 miles southeast of the VOR, excluding that portion within R-2302; and within that airspace bounded by a line beginning at lat. 35°13'32" N., long. 111°04'28" W.; to lat. 35°17'17" N., long. 111°02'32" W.; to lat. 35°22'00" N., long. 111°16'40" W.; to lat. 35°24'00" N., long. 111°26'13" W.; to lat. 35°17'43" N., long. 111°36'07" W.; thence clockwise via the 11.5-mile radius circle of Pulliam Airport; to lat. 35°16'25" N., long. 111°33'02" W.; to lat. 35°19'58" N., long. 111°24'07" W.; to the point of beginning.

Issued in Los Angeles, California, on June 10, 1988.

Jacqueline L. Smith,
Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 88-14942 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-13-28

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3406-9; KY-039]

Approval and Promulgation of Implementation Plans; Kentucky; Group III CTG Regulation

AGENCY: Environmental Protection Agency. (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a regulation submitted by the Commonwealth of Kentucky. The regulation, 401 KAR 61:175 "Leaks from existing synthetic organic chemical and polymer manufacturing equipment", relates to Kentucky's State Implementation Plan (SIP) for ozone and is based upon the Group III control techniques guideline (CTG) document. The intent of the regulation is to apply

reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before August 4, 1988.

ADDRESSES: Written comments should be addressed to Jill Perry of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Environmental Protection Agency,
Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Air Pollution Control, 18 Reilly Road Building #2, Fort Boone Plaza, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Jill Perry, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On August 7, 1984, the Kentucky Division of Air Pollution Control committed to adopt a regulation for sources covered by the Group III CTG document. "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment" (EPA-450/3-83-006) which was issued by EPA in March 1984. On December 29, 1986, Kentucky submitted a revision to the SIP to add Regulation 401 KAR 61:175.

The regulation requires all applicable facilities to implement a quarterly leak detection program to control fugitive VOC emissions. Upon detection of a leak, a weatherproof and readily visible tag must be affixed to the leaking component. Repair of any affected facility found to be leaking must be made within fifteen (15) days. A recheck of any repaired component is required within five (5) days of the repair.

The regulation also requires that a survey log denoting the location, tag number, date, and stream composition of the leak be maintained for a period of two (2) years after the inspection is completed. In addition, the facility is required to submit to Kentucky a report listing all leaks which were located but

not repaired within the prescribed time period.

Proposed Action

This regulation is consistent with the requirements specified in the CTG document (EPA-450/3-83-006). Therefore, EPA is today proposing to approve Kentucky's Group III regulation.

The public is invited to participate in this rulemaking by submitting written comments on the proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 48 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Editorial Note.—This document was received at the office of the Federal Register June 19, 1988.

Lee A. DeHilms, III,
Acting Regional Administrator.
[FR Doc. 88-14986 Filed 7-1-88; 8:45 am]
BILLING CODE 4910-50-M

40 CFR Part 52

[FRL-3406-9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; correction and extension of the public comment period.

SUMMARY: On April 21, 1988 (53 FR 13135), USEPA proposed rulemaking and solicited public comment on a revision to the Illinois State Implementation Plan for Ozone concerning a variance for the Ford Motor facility in Cook County. This notice corrects information that appeared in the proposed rulemaking and extends the public comment period until June 22, 1988.

DATES: Comments must be received on or before June 22, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Randolph O. Cano at (312) 886-6036 before visiting the Region V office).

U.S. Environmental Protection Agency,
Region V, Air and Radiation Branch,
230 South Dearborn Street, Chicago,
Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulatory Analysis Section, Air and Radiation Branch, Environmental Protection Agency, Region V, Chicago, Illinois, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On April 21, 1988, USEPA proposed rulemaking and solicited public comment on a revision to the Illinois State Implementation Plan for Ozone concerning a variance from Illinois volatile organic compound Rule 205(n)(1) for the Ford Motor facility in Cook County. On page 13135 of the April 21, 1988, *Federal Register* at the bottom of the second column the following was incorrectly stated:

However, elsewhere in today's *Federal Register*, USEPA is proposing to disapprove Illinois ozone attainment demonstration for Chicago because the presently effective ozone control measures are not sufficient to attain the ozone national ambient air quality standards (NAAQS) by December 31, 1987.

This statement is not correct in that USEPA did not propose to disapprove the Illinois plan elsewhere in the April 21, 1988, *Federal Register*, but instead had proposed to disapprove the Illinois attainment demonstration on this basis on July 14, 1987 (52 FR 26424). This is the correct reference as to when USEPA last proposed to disapprove Illinois' plan. USEPA regrets any inconvenience this incorrect reference may have caused.

At the request of the State of Illinois, USEPA extends the public comment period an additional 30 days until June 22, 1988, to allow additional time to develop comments on this proposed rulemaking.

Dated: June 23, 1988.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 88-14985 Filed 7-1-88; 8:45 am]

BILLING CODE 4910-50-M

40 CFR Part 81

(FRL-3409-1 TN-056)

Designation of Areas for Air Quality Planning Purposes; Redesignation of an Ozone Nonattainment Area in Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a request by Tennessee that Roane County be redesignated from nonattainment to attainment for ozone. The redesignation of this county to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 per year and on implementation of EPA-approved control strategies. The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before August 4, 1988.

ADDRESSES: Written comments should be addressed to Melinda Privott of EPA Region IV's Air Program Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency,
Region IV, Air Programs Branch, 345
Courtland Street NE, Atlanta, Georgia
30365

Tennessee Air Pollution Control
Division, Custom House, 4th Floor, 701
Broadway, Nashville, Tennessee
37219.

FOR FURTHER INFORMATION CONTACT:
Melinda Privott, Air Programs Branch,
EPA Region IV, at the above address
and telephone number 404/347-2864 or
FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the March 3, 1978, Federal Register (43 FR 8962), EPA designated Roane County as nonattainment for ozone. This designation was based on ambient air quality monitoring data which revealed that Roane County had experienced oxidant violations. Several areas in Tennessee were designated nonattainment of ozone and the State was therefore required to revise their State Implementation Plan (SIP) for ozone. Tennessee drafted and adopted statewide regulations for controlling volatile organic compound (VOC) emissions from stationary sources. Through the Federal Motor Vehicle Control Program and through implementation of Group I and Group II VOC regulations, Tennessee demonstrated attainment of the ozone

standard in Roane County. EPA approved Tennessee's ozone SIP on August 13, 1980 (45 FR 53813).

Tennessee has requested that EPA change the attainment status of Roane County from nonattainment to attainment for ozone. In order to redesignate a nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 per year. In the event that three years of ozone data are not available, the most recent eight quarters of quality assured ambient air data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy.

Tennessee's request for redesignation is based on three years of ambient ozone data. Specifically, the most recent three years of air quality data (1982, 1983, and 1984 for Roane County) show the number of expected exceedances to be less than or equal to 1.0 per year, as is summarized below:

	Exceed- ances (ppm)	Number of expected exceed- ances ¹	NAAQS ozone ²
Roane County:			
1982	none	0.00	0.12 ppm
1983	none		
1984	none		
(Total)	0		

¹ Three-year average.

² Not to be exceeded more than once per year.

Evidence submitted by the State and the Region IV Air Compliance Branch files have been reviewed to determine if the sources in Roane County to which the VOC regulations apply are fully implementing the EPA-approved control strategy. This review confirms that all sources in Roane County subject to the VOC regulations have either installed and are operating RACT controls or are on an enforceable compliance schedule.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action

Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control.

The public is invited to participate in this rulemaking by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), the Administrator has certified that area redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7642.

Editorial note.—This document was received at the office of the Federal Register June 29, 1988.

Dated: June 23, 1987.

Lee A. DeHihns, III,
Acting Regional Administrator.
[FR Doc. 88-14987 Filed 7-1-88; 8:45 am]
BILLING CODE 6060-30-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

(MM Docket No. 87-528; RM-5958)

Radio Broadcasting Services; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: At the request of the petitioner, Contemporary Communications, this document dismisses the petition to substitute FM Channel 282C1 for Channel 282C at Great Falls, Montana. Petitioner filed supporting comments but has since retracted its comments and requests that Channel 282C be allowed to remain as is. No other comments were received in this proceeding. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT:
Kathleen Scheuerle, Mass Media Bureau, (202) 634-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-528, adopted May 11, 1988, and released June 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service,

(202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14956 Filed 7-1-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Magazine Mountain Shagreen (*Mesodon magazinensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Magazine Mountain shagreen (*Mesodon magazinensis*) as a threatened species. The snail is found only on Magazine Mountain in Logan County, Arkansas, in a very restricted area and is vulnerable to any land use changes or management activities that may have an adverse effect on it or its habitat. This proposal, if made final, would implement the protections provided by the Endangered Species Act (Act) of 1973, as amended. The Service requests comments and data from the public on this proposal.

DATES: Comments from all interested parties must be received by September 6, 1988. Public hearing requests must be received by August 19, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 318, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:
Mr. John J. Pulliam at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION: Background

The Magazine Mountain shagreen (*Mesodon magazinensis*) is a dusky brown, or buff colored, medium-sized snail, approximately 13 millimeters (mm) (0.5 inches) wide and 7 mm (0.3 inches) high. The rough shell surface is covered with half-moon, scale-like processes that can be seen with a hand lens. The outer lip of the aperture has a small triangular shaped tooth, the inner side has a blade-like tooth, and there is a small swelling on the basal lip near the center of the shell (Pilsbry and Ferriss 1906).

The Magazine Mountain shagreen was originally described as a subspecies of *Polygyra edentatus* (Pilsbry and Ferriss 1906). Pilsbry (1940) subsequently placed this snail into the genus *Mesodon* and elevated it to specific status. This species can be separated from *M. infectus*, a similar but widespread species also found on Magazine Mountain, by genitalia differences (Hubricht 1972) and a large maximum diameter of 12.7-14.0 mm (0.50-0.55 inches) for the former and 8.3-13.8 mm (0.33-0.54 inches) for the latter (R.S. Caldwell, Lincoln Memorial University, pers. comm.).

This snail is known only from rock slides on the north slope of Magazine Mountain in Logan County, Arkansas. A single dead specimen was found on the south slope of Magazine Mountain in 1903 (Pilsbry and Ferriss 1906), but this population has not been verified since that time (Caldwell 1986). Preferred habitat is found on approximately 60 percent slope between 600 meters (2,000 feet) and 790 meters (2,600 feet) elevation. Apparently this species prefers cool moist conditions. Therefore, the species moves deeper into the rock crevasses and becomes inaccessible for collection during the warm dry weather in July and August (Caldwell 1986). Because of its limited range, this snail would be vulnerable to any land use change or activities that would have an adverse effect on these rock slides. The species' entire range is within the Ozark National Forest and is classified as a Special Interest Area. The mountain is being considered as a candidate for a Research Natural Area.

On April 28, 1976, the Service published a proposed rule (41 FR 17742-6) to determine 32 species of snails as endangered or threatened, including *Mesodon magazinensis*. The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn if not finalized by November 1979. On December 10, 1979, the Service published a notice (44 FR 70796)

withdrawing the proposal of April 28, 1976.

The Magazine Mountain middle-toothed snail (recently changed to Magazine Mountain shagreen) was included as a Category 2 species in a Notice of Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species on May 22, 1984 (49 FR 21664). Category 2 included taxa for which information then in possession of the Service indicated that proposing to list the species was possibly appropriate, but for which available data were not judged sufficient to support a proposed rule. In 1986, Dr. Ronald S. Caldwell completed a status survey on this species under contract to the Arkansas Nongame Species Preservation Program. The U.S. Forest Service, the U.S. Army Corps of Engineers, the Arkansas Game and Fish Commission, the Arkansas Division of State Parks, and the Logan County government are all aware of the rarity of this snail and are supportive of the proposal. There is a local concern for the effect listing the snail would have on the proposed development of a State Park on top of the mountain. Certainly, the effect on the snail's habitat would have to be considered during any future developments or land use changes.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Magazine Mountain shagreen (*Mesodon magazinensis*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Because of the restricted range of the Magazine Mountain shagreen, it is vulnerable to any land use change or activity that would have an adverse effect on the rock slides where it is found. The Arkansas Division of State Parks is contemplating trading some other land to the Forest Service so that they could develop a State Park on Magazine Mountain. Any construction or recreational activities, such as buildings, roads, pipelines, or trails, could have an adverse effect on the snail if the rock slides on the north slope are disturbed. The U.S. Army would like to use the

National Forest in this area for training exercises. If any troop movements, vehicle movements, or artillery operations affected the north slope, they also could have a negative impact on the snail. These activities, as well as forestry and recreational activities, represent potential threats, unless such activities are planned and conducted with the protection of the north slope of Magazine Mountain in mind. The Service has contacted the U.S. Forest Service, the Arkansas Division of State Parks, and the U.S. Army regarding protection needs of the Magazine Mountain shagreen.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Although it is difficult to collect this species during hot, dry periods, a knowledgeable collector could damage the population during a cool period following a rain. Therefore, collecting should be carefully controlled because of this species' rarity and limited range.

C. Disease or predation. There are no known diseases or predators that pose a significant threat to the snail.

D. The inadequacy of existing regulatory mechanisms. Other than the Special Interest Area designation by the U.S. Forest Service, there are no regulations in effect that provide protection for this species.

E. Other natural or manmade factors affecting its continued existence. The Magazine Mountain shagreen is a very rare snail, being found only on part of the north slope of Magazine Mountain at the foot of the cliff. It occurs in small numbers and is dependent on a cool, moist microhabitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Magazine Mountain shagreen as threatened. Since the species has a very restricted range, it is vulnerable to collecting and to any adverse habitat modification. Therefore, it seems appropriate to propose the snail as threatened, defined as likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that

designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species", uncontrolled collecting could be a problem. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. In addition, the entire range is in the Ozark National Forest and the U.S. Forest Service is aware of its presence. Protection of this species' habitat will also be addressed through the recovery process and through section 7 jeopardy standard. Therefore it would not be prudent to determine critical habitat for the Magazine Mountain shagreen at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only Federal activities that may be affected

by this proposal are any land use changes or activities adversely affecting the habitat, which is exclusively found on U.S. Forest Service land. The U.S. Army is interested in the area for training exercises. However, the north slope could be excluded from this activity.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

If listed under the Act, the Service will review this species to determine whether it should be considered for placement on the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Supervisor (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

- Caldwell, R.S. 1966. Status of *Mesodon magazinensis* (Pilsbry and Ferriss), the Magazine Mountain Middle-toothed Snail. Grant Number 64-1 for Arkansas Nongame Species Preservation Program. 16 pp.
- Hubricht L. 1972. The land snails of Arkansas. *Sterkiana* 46:15-16.
- Pilsbry, H.A. and J. Ferriss. 1907. Mollusca of the Ozarkian Fauna. *Proc. Acad. Nat. Sci., Philadelphia*. 1906:529-567.
- Pilsbry, H.A. 1940. Land Mollusca of North America (North of Mexico). *Acad. Nat. Sci., Philadelphia, Monog.* 3, 1(2):575-994.

Author

The primary author of this proposed rule is Mr. John J. Pulliam, III (see ADDRESSES section).

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
Shagreen, Magazine Mountain.	<i>Mesodon magazinensis</i>	U.S.A. (AR)	NA	T		NA	NA

Dated: June 3, 1988.

Susan Recco,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-14910 Filed 7-1-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Astragalus osterhoutii* and *Penstemon penlandii* To Be Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine two plants, *Astragalus osterhoutii* (Osterhout milk-vetch) and *Penstemon penlandii* (Penland beardtongue), to be

endangered species under the Endangered Species Act (Act) of 1973, as amended. Both species are endemic to Middle Park in Grand County, Colorado, where they grow on shale badlands. Penland beardtongue is only known from the type locality, a set of badlands between Sulphur Gulch and Troublesome Creek, about 5 miles northeast of Kremmling.

The Osterhout milk-vetch occurs in scattered populations over a 12-mile range in Middle Park: From Troublesome Creek on the east, where it occurs with the Penland beardtongue, to Muddy Creek and its tributaries on the west. Both species occur largely on Federal land administered by the Bureau of Land Management, with smaller occurrences on State and private land. Most of the Osterhout milk-vetch occurs on shale benches along Muddy Creek, the possible site of a proposed water

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "SNAILS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

storage project (Muddy Creek Reservoir). The Osterhout milk-vetch would be impacted directly by dam construction and inundation, and secondarily by recreational uses and development around the proposed reservoir. The single Penland beardtongue site, 7 miles east of the dam site, is a fragile habitat vulnerable to off-road vehicle damage. Off-road vehicle damage would likely increase if the proposed reservoir is constructed. This proposal, if made final, would implement Federal protection provided by the Act for *Astragalus osterhoutii* and *Penstemon penlandii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 6, 1988. Public hearing requests must be received by August 19, 1988.

BEST COPY AVAILABLE

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 529 25½ Road, Suite B113, Grand Junction, Colorado 81505. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Anderson at the Grand Junction address above (303/243-2778 or FTS 322-0351).

SUPPLEMENTARY INFORMATION:

Background

Astragalus osterhoutii and *Penstemon penlandii* are herbaceous perennial wildflowers endemic to Middle Park, a sagebrush basin in north-central Colorado. They are restricted to badlands of Upper Cretaceous Niobrara and Pierre Shale and of Tertiary (Miocene Troublesome Formation) siltstone sediments at 2,250-2,350 meters (7,450-7,700 feet) elevation within 6 miles to the north and east of the town of Kremmling. *Astragalus osterhoutii* Jones was described in 1923 by Marcus Jones (1923) from material collected by George Osterhout, an early Colorado botanist. Osterhout first collected it in fruit July 17, 1905 (specimen 3038), and in flower June 9, 1906 (specimen 3235), about 4 miles below "Sulphur Springs, Grand County." The holotype (at the Pomona College Herbarium, Rancho Santa Ana Botanic Garden, California) is a combination of material from these two specimens. The type locality had been interpreted to be near the town of Hot Sulphur Springs, which is 17 miles east of Kremmling (Barneby 1964, Peterson *et al.* 1981); but, despite several searches, the Osterhout milk-vetch has never been found in this area. However, the population recently located along Troublesome Creek is adjacent to Sulphur Gulch, which contains a sulphur spring (about 6 miles northeast of Kremmling), and this is likely the type locality (Barneby 1987).

Until the 1980's, *Astragalus osterhoutii* was collected only five times from two additional localities: a small population 1 mile northeast of Kremmling and the largest population along Muddy Creek 6 miles north of Kremmling. These populations were discovered by Beath in 1939 and 1940 respectively (Peterson *et al.* 1981). The population along Muddy Creek was further delineated during the preparation of the status report (Peterson *et al.* 1981) and the Rock Creek/Muddy Creek Reservoir Draft Environmental Impact Statement (Grah

and Neese 1987). Occurrences along Pass Creek and Red Dirt Creek near Hinman Reservoir, a few miles west of Muddy Creek, were also discovered during inventories for the Draft Environmental Impact Statement (Grah and Neese 1987). During graduate studies at the University of Colorado, Jeff Karron located two sites, 1 mile and 5 miles northeast of Kremmling. These sites probably represent Beath's 1939 locality and Osterhout's original "Sulphur Springs" locality in the Sulphur Gulch/Troublesome Creek vicinity, respectively.

There are an estimated 25,000 to 50,000 Osterhout milk-vetch plants, approximately 90 percent of the total for the species, in the vicinity of Muddy Creek. The remaining 10 percent of the species occurs on the eastern and western extremities of the range at Troublesome and Red Dirt Creek (a tributary of Muddy Creek), respectively.

Penstemon penlandii Weber was independently discovered in the summer of 1986 by David Johnson of Western Resource Development Company (Weber 1986) and the author while on visits to the Osterhout milk-vetch Troublesome Creek site located by Karron. While the Osterhout milk-vetch is found only along one gulch here, the Penland beardtongue population of approximately 5,000 plants extends over the whole series of badlands between Troublesome Creek and Sulphur Gulch, which are approximately one-and-a-half miles long and one-half mile wide. This is the only known site for the Penland beardtongue.

Astragalus osterhoutii and *Penstemon penlandii* are both distinct from their nearest relatives, which occur approximately 150 miles away in southwestern Wyoming and northwestern Colorado: *Astragalus grayi* and *A. nelsonianus* (Barneby 1964), and *Penstemon paysoniorum* (Weber 1986) and *P. gibbensii* (personal observation), respectively. The proposed species may be remnants of a previous extension of northern species southward during glacial or pluvial periods. As such, they can provide clues to past floristic migrations and are scientifically valuable in the study of biogeography. *Astragalus osterhoutii* has also been the subject of evolutionary studies comparing rare and common species of *Astragalus* (Karron 1987).

Astragalus osterhoutii is a tall rush-like plant with linear leaflets and several bright green stems up to 100 centimeters (40 inches) tall. There are 12-25 large white flowers, 2.4 centimeters (1.0 inch) long, per inflorescence (flowering stalk), and

stipitate pendulous pods, 4.5 centimeters (1.8 inches) long. *Penstemon penlandii* is a short plant with linear leaves and several clumped, pubescent stems up to 25 centimeters (10.0 inches) tall. There are 5-15 bright bicolored flowers with blue lobes and a violet throat, 1.2-1.5 centimeters (0.5-0.6 inches) long, per inflorescence; the fruits are small brown capsules. Both species are characterized by clusters of showy flowers relative to the size of the plant.

The largest population of the Osterhout milk-vetch occurs on shale benches along Muddy Creek, the site of the proposed Muddy Creek Reservoir. While the lower edges of this population would be inundated by the proposed reservoir, there would be additional impacts to the remainder of the population from associated development and recreational use of the reservoir and the surrounding benches (U.S. Forest Service 1987). Changes in vegetative composition, particularly an increase in big sagebrush density due to past grazing history, may have resulted in a decrease in the size and/or density of Osterhout milk-vetch populations. The Troublesome Creek/Sulphur Gulch badlands, the habitat of both the Osterhout milk-vetch and Penland beardtongue, are a fragile habitat susceptible to damage from off-road vehicle use. Approximately two-thirds of the large Osterhout milk-vetch population along Muddy Creek is on Federal land administered by the Bureau of Land Management (BLM); the remaining one-third is mostly on private land, with two colonies on State land (although the edges of other Osterhout milk-vetch colonies may be within State highway rights-of-way). The small occurrences up Pass Creek and Red Dirt Creek near Hinman Reservoir are on private land. The small site 1 mile northeast of Kremmling is on BLM land, and the Troublesome Creek/Sulphur Gulch populations of Osterhout milk-vetch and Penland beardtongue are on BLM land and private land.

Federal action involving *Astragalus osterhoutii* began with section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service (Service) published a notice of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants.

Astragalus osterhoutii was included as "endangered" in the July 1, 1975, petition. On December 15, 1980 (45 FR 82485), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Astragalus osterhoutii* was included in these notices as a category 2 species. Category 2 comprises taxa for which the Service possesses information indicating that proposing to list them as endangered or threatened species is possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) are not currently available to support listing. The present proposal is based on biological data from Peterson *et al.* (1981), Karron (1987), and Grah and Neese (1987).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *Astragalus osterhoutii*, were treated as being newly petitioned on October 13, 1982. On October 13, 1983, October 12, 1984, October 11, 1985, October 10, 1986, and October 9, 1987, the Service made successive 1-year findings that the petition to list *Astragalus osterhoutii* was warranted, but precluded by other listing actions of higher priority. The present proposal constitutes the next 1-year finding for this species.

Because it was discovered in 1986, after the last notice of review for plants was published in the Federal Register in 1985, there has been no previous Federal action involving *Penstemon penlandii*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus osterhoutii* Jones (Osterhout milk-vetch) and *Penstemon penlandii* Weber (Penland beardtongue) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Astragalus osterhoutii* and *Penstemon penlandii* are both naturally rare species. *Astragalus osterhoutii* has only one major population along Muddy Creek, with small scattered outlying colonies up to a distance of 6 miles away. *Penstemon penlandii* is known only from one locality at Troublesome Creek/Sulphur Gulch (which is also the easternmost site of *Astragalus osterhoutii*). The badlands on which an estimated 5,000 individuals of *Penstemon penlandii* occur are currently vulnerable to modification from off-road vehicle use because of their fragile soils, steep topography, and arid environment. There are presently dirt roads running through the badlands which would provide easy access for off-road vehicle use that would likely occur if the Muddy Creek Reservoir is constructed without measures to control off-road vehicle use. The resulting modification of the habitat could result in a curtailment of the range for the Penland beardtongue. The major population of *Astragalus osterhoutii* along Muddy Creek has an estimated 25,000 to 50,000 plants (personal observation; represents about 90 percent of the total for the species) on 132 acres and is threatened by the proposed Muddy Creek Reservoir. With construction of the high dam proposal at 7,485 feet elevation, 18 acres or 14 percent of the Muddy Creek population would be inundated. An alternative lower dam proposal at 7,475 feet would inundate 10 acres or 8 percent of the population (Bio/West 1988). Additional direct losses from reservoir construction could result from the raised water table through perennial soil saturation, and from surface disturbance due to construction activities such as road building, creation of borrow pits, and heavy equipment movement (Grah and Neese 1987). While direct inundation and bench stuffing would destroy only marginal habitat at the lower edges of the population, significant secondary impacts to the benches around the reservoir and along Pass Creek could occur with the building of recreation facilities and increased use of the area by people and off-road vehicles. These potential secondary impacts would be the same for either dam height and could cause destruction, modification, or curtailment of Osterhout milk-vetch habitat or range. Depending upon the degree of future recreational usage, secondary impacts from the Muddy Creek Reservoir may be even greater to the Osterhout milk-vetch than direct impacts from reservoir construction

(Grah and Neese 1987). In addition to the direct impacts, 80 acres, or 60 percent of the habitat of *Astragalus osterhoutii*, could be threatened by secondary impacts from recreational activities associated with the Muddy Creek Reservoir proposal (Bio/West 1988). Proposed mitigation plans to offset direct and secondary impacts of the reservoir construction and recreation include management of the habitat remaining around the reservoir to minimize effects to the milk-vetch; fencing the habitat and designing public recreational facilities to minimize the impact on the species; protection of an offsite population west of the reservoir from private recreational development; a monitoring program with possible habitat manipulation; and plant surveys for avoidance of the milk-vetch during construction.

The density of *Astragalus osterhoutii* has been observed to be lower in big sagebrush stands than in the adjacent open benchlands where it normally grows. It may be that the past grazing history has caused an increase in big sagebrush cover with a resultant canopy closure and modification of Osterhout milk-vetch habitat with loss of individuals through lowered densities of populations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been documented. However, both plants have showy flowers and grow in accessible areas, thus both are vulnerable to collecting and vandalism.

C. *Disease or predation.* No threats are known.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal or State laws protecting *Astragalus osterhoutii* and *Penstemon penlandii*. Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* The geographically restricted range of the species increases the possibility that one severe inadvertent disturbance, either natural or human-caused, could destroy a significant portion of these species' population and habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astragalus osterhoutii* and *Penstemon penlandii* as endangered. Both are restricted endemics occurring on a limited habitat.

and with only one major population each. *Astragalus osterhoutii* would be impacted directly by construction of the proposed Muddy Creek Reservoir, and secondarily by recreational uses and development around the reservoir. *Penstemon penlandii* is vulnerable to the increased off-road vehicle use that would likely occur as a result of the increased recreational activity associated with completion of the proposed reservoir. There presently exists no opportunity for protection under existing legislation (State and Federal). For reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service believes that designation of critical habitat is not prudent for these species at this time because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might increase if detailed critical habitat maps are published. Such maps would identify areas on public and private land, thereby making it more difficult for Federal enforcement agencies to protect the species. Federal involvement in the areas where the plants occur can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting these species' habitat, and such protection will be addressed through the recovery process and through section 7 procedures.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Astragalus osterhoutii and *Penstemon penlandii* occur primarily on Federal land administered by the BLM. The BLM's involvement could include section 7 consultation on the proposed Muddy Creek Reservoir, monitoring the impacts of off-road vehicle use, and studying the effects of grazing systems on vegetative composition. The Army Corps of Engineers would also be involved in any section 7 consultation for the reservoir because of the need for a 404 permit. On both Federal and private land, the Service expects that listing would elevate the awareness of these plants' status and foster efforts aimed toward their conservation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to

Astragalus osterhoutii and *Penstemon penlandii*, it is anticipated that few, if any, trade permits would ever be sought or issued since these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329 (202/343-4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Astragalus osterhoutii* and *Penstemon penlandii*;
(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on *Astragalus osterhoutii* and *Penstemon penlandii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the State Supervisor, Fish and Wildlife Enhancement, Grand Junction, Colorado (see ADDRESSES above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as

amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is John L. Anderson, Botanist, U.S. Fish and Wildlife Service, Grand Junction, Colorado (303/243-2778; FTS 322-0351, see ADDRESSES above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Species	Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Fabaceae—Pee family:							
<i>Astragalus osterhoutii</i>		Osterhout milk-vetch	U.S.A. (CO)	E		NA	NA
Scrophulariaceae—Snapdragon family:							
<i>Penstemon penlandii</i>		Penland beardtongue	U.S.A. (CO)	E		NA	NA

Dated: June 3, 1988.

Susan Reock,
Acting Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 88-14908 Filed 7-1-88; 8:45 am]
BILLING CODE 4310-55-01

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Anastasia Island Beach Mouse and Threatened Status for the Southeastern Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to determine the Anastasia Island beach mouse (*Peromyscus polionotus phasma*) as an endangered species and the southeastern beach mouse (*Peromyscus polionotus niveiventris*) as a threatened species pursuant to the Endangered Species Act

of 1973 (Act), as amended. Both subspecies occur only on the Atlantic beaches of central Florida. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for the mice. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 6, 1988. Public hearing requests must be received by August 19, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 67 Stat. 884; Pub. L. 94-350, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-150, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order, under the families Fabaceae and Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.
(h)

SUPPLEMENTARY INFORMATION:

Background

Beach mice are pale-colored, coastal-inhabiting subspecies of the oldfield mouse (*Peromyscus polionotus*), a species which ranges widely throughout much of the southeastern United States. Beach mice occur only along the Atlantic coast of Florida and along the Gulf coast of Alabama and the Florida panhandle. Three subspecies of Gulf coast beach mice, the Alabama beach mouse (*Peromyscus polionotus ammobates*), Perdido Key beach mouse (*P. p. trissyllepsis*), and the Choctawhatchee beach mouse (*P. p. allophtys*), have already been listed as endangered species pursuant to the Act (June 6, 1985; 50 CFR 23872). The present document proposes to list two of the Atlantic coast subspecies. One of these, the Anastasia Island beach mouse (*P. p. phasma*) is being proposed as an endangered species, and the other, the southeastern beach mouse (*P. p. niveiventris*), is being proposed as

threatened. Both occur only in Florida. The Anastasia Island beach mouse was known historically from the mouth of the St. Johns River, Duval County, south to Matanzas Inlet, St. Johns County. The southeastern beach mouse formerly occurred from Ponce (Mosquito) Inlet, Volusia County, south to Hollywood Beach, Broward County (Humphrey 1987).

The Anastasia Island beach mouse (*Peromyscus polionotus phasma*) was named by Bangs in 1898 as a full species, *Peromyscus phasma*. Osgood (1909) relegated it to subspecific rank under the species *Peromyscus polionotus*. It is one of the largest of the beach mice, ten adults from the type locality averaged 138.5 millimeters (mm) in total length with an average tail length of 53 mm (Osgood 1909). Like all beach mice, it is considerably paler than inland races of *P. polionotus*. The coloration is light ochraceous buff on the back, with pure white underparts, unicolor tail, and rather indistinct white markings on the nose and face (Howell, unpubl. ms., circa 1940). The type locality is Point Romo, Anastasia Island, St. Johns County, Florida (Hall 1981).

The Southeastern beach mouse (*Peromyscus polionotus niveiventris*) was named by Chapman as *Hesperomys niveiventris* in 1899. Bangs placed it in the genus *Peromyscus* in 1898, and Osgood (1909) relegated it to subspecies rank under *Peromyscus polionotus*. This is the largest of the beach mice, with 10 adults averaging 139 mm in total length and 52 mm in tail length (Osgood 1909). It is slightly darker and more buffy than *Peromyscus polionotus phasma* but still considerably paler than most inland subspecies (it is similar in coloration to inland *P. p. rhoadsi* but is much larger in size) (Howell, unpubl. ms., circa 1940). The type locality is Oak Lodge, east peninsula opposite Micco, Brevard County, Florida (Hall 1981).

Both *Peromyscus polionotus phasma* and *P. p. niveiventris* are restricted to sand dunes mainly vegetated by sea oats (*Uniola paniculata*) and dune panic grass (*Paspalum amarulum*) and to the adjoining scrub, characterized by oaks (*Quercus* sp.), sand pine (*Pinus clausa*), and palmetto (*Serenoa repens*) (Humphrey and Barbour 1981, Humphrey 1987). Extinct and Stout (1987) studied dispersion and movements of *Peromyscus polionotus niveiventris* on Merritt Island. The habitat of these mice consisted of three contiguous zones of vegetation running parallel with the beach and dune lines. Zone 1 was seaward and supported sea oats; Zone 2 was characterized by clumps of palmetto and sea grape (*Coccoloba*

uvifera), and expanses of open sand; Zone 3 was interior and consisted of dense scrub dominated by palmetto, sea grape, and wax myrtle (*Myrica cerifera*). Zones 2 and 3 were found to be the preferred habitats of the beach mice, whereas Zone 1 was marginal.

Very little is known about the life history of any of the subspecies of beach mice. The following information pertains mostly to Gulf coast beach mice, but probably applies equally well to subspecies along the Atlantic coast, since Gulf coast and Atlantic coast beach mice are morphologically similar and live in similar habitats.

Blair (1951) found that food plants most utilized by beach mice are various beach grasses and sea oats. The fruits of beach grass are readily available to the mice, but those of sea oats are usually obtainable only after they have been blown down by heavy winds. These foods are often found stored in mouse burrows. Beach mice also probably eat invertebrates from time to time, especially in late spring and early summer when seeds are scarce (Ehrhart in Layne 1978).

Beach mice are burrow-inhabiting animals. Ehrhart (in Layne 1978), writing about the Atlantic coast subspecies *P. p. decoloratus*, noted that burrow entrances are usually placed on the sloping side of a dune at the base of a shrub or clump of grass. Often old burrows of ghost crabs are utilized, but more commonly the burrows are dug by the mice themselves (Blair 1951). A beach mouse's home range may contain up to 20 burrows in different parts of the range. The burrows are used as safe refuges, nesting sites, and food storage areas.

Along the Gulf coast, much breeding activity was evident in November, December, and early January, and large numbers of immature animals were in the population at that time (Blair 1951). Litter sizes range from two to seven, with an average of about four; young mice reach reproductive maturity as early as six weeks of age. In the laboratory, Bowen (1968) found that a female beach mouse is capable of producing 80 or more young during her lifetime, and that litters are produced regularly at 26-day intervals. Mortality is very high, however. Blair (1951) found that only 19.5 percent of the beach mice on the Gulf coast survived more than the four months from January to early May. Similar breeding activity for the two beach mice considered under this proposal can be expected.

Myers (1983) reported that the following could be beach mouse predators on the Gulf coast dunes:

raccoons, skunks, snakes, great blue herons, domestic dogs, and domestic cats. All of these potential predators occur on the Atlantic coast and could prey on beach mice there as well.

Hall (1981) cites two historical records for the Anastasia Island beach mouse (*P. p. phasma*): the type locality at Point Romo, Anastasia Island, St. Johns County; and the beach dunes at the border of the St. Johns and Duval County line. This subspecies, therefore, could have ranged along the ocean dunes from the mouth of the St. Johns River in Duval County south to the end of Anastasia Island at Matanzas Inlet, St. Johns County. A recent survey of this subspecies by Humphrey (1987) was able to locate the mouse only on Anastasia Island, where its remaining habitat is fragmented and discontinuous, and populations are small. Much of its former habitat on Anastasia Island has been converted to lawn or concrete associated with development of houses and condominiums.

The original distribution of the southeastern beach mouse (*P. p. niveiventris*) was along the beach dunes from Ponce (Mosquito) Inlet, Volusia County, south along the coast to Hollywood Beach, Broward County. Recent studies by Humphrey (1987) have disclosed that this mouse still occurs in good numbers at Cape Canaveral and in smaller numbers to the north in Cape Canaveral National Seashore. To the south, from Sebastian Inlet to Hutchinson Island, only a few small, scattered remnant populations survive. South of Hutchinson Island, nearly all of the beach dune habitat has been totally destroyed by housing and condominium developments.

A third Atlantic coast beach mouse subspecies, *Peromyscus polionotus decoloratus*, formerly occurred between the ranges of *P. p. phasma* to the north and *P. p. niveiventris* to the south. This very pale race lived on the beach dunes from Matanzas Inlet, St. Johns County, south to Ponce (Mosquito) Inlet, Volusia County. Humphrey and Barbour (1981) searched extensively for *decoloratus* but were unable to find any existing populations. They concluded that extensive habitat destruction and alteration throughout its entire range had brought about its extinction. The Service intends to place *decoloratus* in Category 3A on the next list of candidate vertebrate species. Category 3A is for those that have been determined to be extinct.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Anastasia Island beach mouse (*Peromyscus polionotus phasma*) and the southeastern beach mouse (*Peromyscus polionotus niveiventris*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* (1) Anastasia Island beach mouse (*Peromyscus polionotus phasma*)—Published literature records this subspecies from the type locality at Point Romo, Anastasia Island, St. Johns County, and along the beach dunes at the line between Duval and St. Johns Counties (Hall 1981). Therefore, this mouse could have occurred from the mouth of the St. Johns River in the north, to Anastasia Island in the south. Much of the dune habitat along this beach has been developed around Jacksonville and St. Augustine and no longer is suitable for beach mice. Some suitable habitat occurs between Ponte Vedra Beach and South Ponte Vedra Beach, St. Johns County, in the Guana River Wildlife Management Area, but Humphrey (1987) was unable to find the mice there. In fact, Bangs (1898) reported that these beach mice were absent from the beaches north of St. Augustine. Humphrey (1987) did find populations distributed along the length of Anastasia Island, but reported that much of their former habitat has been converted to lawn or concrete associated with development of houses and condominiums. As a result, the remaining habitat is fragmented and discontinuous, and the populations are small. The number of specimens caught by Humphrey (live-trapped and released) suggests that viable populations may remain only at the ends of Anastasia Island, along the publicly-owned dune grassland of both Anastasia State Recreation Area and Fort Matanzas National Monument. A proposed new bridge across the Matanzas Inlet, scheduled for construction early in the 1990's, would lead directly into the small amount of habitat (about 25 acres) available to this mouse on the Fort Matanzas National Monument. Unless this bridge is

carefully planned and constructed, it could be extremely detrimental to the survival of the mouse in this area.

(2) Southeastern beach mouse (*Peromyscus polionotus niveiventris*)—this subspecies occurred on the sand dunes along the beach from Ponce (Mosquito) Inlet, Volusia County in the north to Hollywood Beach, Broward County, in the south (Hall 1981). Bangs (1898) found it to be "extremely abundant on all the beaches of the east peninsula from Palm Beach at least to Mosquito (Ponce) Inlet," and Howell (unpubl. mms., about 1940) found that it was abundant in the 1930's. I.J. Stout (personal communications to Humphrey 1987) also found it abundant in the middle and late 1970's on Cape Canaveral. However, by the early 1970's, M.H. Smith (personal communications to Humphrey 1987) found that most other populations had disappeared. Humphrey (1987), during extensive trapping for the subspecies in 1986, captured southeastern beach mice on Cape Canaveral National Seashore, Merritt Island, Cape Kennedy Air Force Station, the southern half of Sebastian Inlet State Recreation Area, and Pepper Park. He reported that the dune grassland at Cape Canaveral is excellent, extensive habitat for beach mice, and the population density there is apparently high. Northward, the habitat narrows to a single dune in Canaveral National Seashore, where population density appears to be lower. To the south, Humphrey's study suggested that beach mice no longer occur on East Peninsula, where the habitat has been severely disrupted by development. His sampling from Sebastian Inlet to Hutchinson Island shows that only a few, small, fragmented populations of beach mice remain. The subspecies apparently no longer occurs in the southern part of its range where beach development has destroyed its habitat at Jupiter Island, Palm Beach, Lake Worth, Hillsboro Inlet, and Hollywood Beach.

B. *Overutilization for commercial, recreation, scientific, or educational purposes.* Not applicable for either subspecies.

C. *Disease or predation.* (1) Anastasia Island beach mouse (*Peromyscus polionotus phasma*)—House Mice (*Mus musculus*) have colonized much of the dune grasslands on which the Anastasia Island beach mouse depends for survival. The inference that these two mice strongly compete is speculative, but Humphrey and Barbour (1981) presented *prima facie* evidence for competitive exclusion of other subspecies of beach mice by house mice.

The situation on Anastasia Island is unprecedented because for the first time beach mice and house mice have been found to co-occur locally. Also, house cats (*Felis catus*) are widespread on Anastasia Island. Blair (1951) and Bowen (1968) felt that house cats were extremely threatening to beach mouse populations on the Florida West Coast. The effect of these two exotic species—house mice and house cats—on the survival of beach mouse populations is speculative but may be quite important (Humphrey and Barbour 1981). Either a competitor or a predator alone can eliminate another species, and the effects of a competitor and predator together would be additive. On the assumption that native beach mice and exotic house mice compete strongly enough to cause competitive exclusion of the former, Humphrey (1987) inferred that the survival status of the Anastasia Island beach mouse was precarious on Anastasia Island. The population on the northern end of the island may soon disappear. The population appearing to be at least risk is at Fort Matanzas National Monument, where he recorded no house mice. Even here, however, Humphrey feels that the likelihood of colonization by house mice is high, and poses a threat to the beach mice.

(2) Southeastern beach mouse (*Peromyscus polionotus niveiventris*)—Humphrey (1987) found no evidence of house mice colonizing southeastern beach mouse habitat, but activity of house cats was widespread in the areas studied. Although the effects of house cat predation specifically on the southeastern beach mouse are not known, it is known that house cats are a major threat to beach mice elsewhere. Blair (1951) felt that predation by house cats was the single-most important factor affecting the chances of survival of a beach mouse population on Santa Rosa Island in the Florida panhandle, and Bowen (1968) was so concerned about the role of domestic cats as predators on Gulf coast beach mice that he avoided trapping mice wherever he found cat tracks on the beaches. It can be safely assumed that house cats pose as serious a threat to Atlantic coast beach mouse populations as they do to those on the Gulf coast.

D. *The inadequacy of existing regulatory mechanisms.* There are no regulatory mechanisms currently in effect that provide any sort of protection for either the Anastasia Island beach mouse or the southeastern beach mouse, or their habitat. Neither subspecies is listed by the State of Florida, and the Federal Government offers no protection on Federal lands beyond that which

applies to wildlife in general on such lands. Federal listing will provide protection to the animals themselves through section 9 of the Act, and to their habitat on Federal lands or on private lands where Federal funding or Federal permits are involved. In addition, Federal listing of these mice will automatically bring into effect State protection for them as provided for by Florida's Cooperative Agreement with the Federal Government under section 6 of the Act.

E. Other natural or manmade factors affecting its continued existence. (1) Anastasia Island beach mouse (*Peromyscus polionotus phasma*)—Except for each end of Anastasia Island, on the Fort Matanzas National Monument and the Anastasia State Recreation Area, the habitat is fragmented and discontinuous, and remaining populations are small. There is apparently little or no gene flow between these small disjunct populations and the probability of loss of genetic viability is high. (2) Southeastern beach mouse (*Peromyscus polionotus niveiventris*)—According to Humphrey (1987) beach erosion may soon become a threat to the population of this subspecies on the Canaveral National Seashore.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these two subspecies of beach mice in determining to propose this rule. Based on this evaluation, the preferred action is to list the Anastasia Island beach mouse as an endangered species, and the southeastern beach mouse as a threatened species.

Relatively secure populations of the Anastasia Island beach mouse occur only on the northern and southern ends of Anastasia Island on the Fort Matanzas National Monument and Anastasia State Recreation Area. Elsewhere, all populations have either already been destroyed or face imminent threats from beachfront developments. Even on the Anastasia State Recreation Area the mice face what appear to be serious threats from competition with house mice and predation by house cats. On the Fort Matanzas National Monument, house cats are plentiful, and there is the distinct possibility that house mice may become established in the near future. In addition, a proposed new bridge across the Matanzas Inlet could be detrimental to the small amount of habitat remaining for this mouse on the Fort Matanzas National Monument. The survival of this subspecies is precarious and it is in

danger of extinction throughout all of its range. Therefore, it qualifies for a proposed listing as an endangered species.

The range of the southeastern beach mouse has been substantially reduced and fragmented by habitat conversion and invasion of exotic animals over the past century. These threats are anticipated to continue, and the range of this subspecies ultimately may be limited to public lands that are properly managed. However, because substantial populations remain on the Canaveral National Seashore and on Merritt Island (both publicly owned), the subspecies is one that is not likely to become extinct but rather to become an endangered species within the foreseeable future. It therefore, qualifies for proposal as threatened rather than endangered.

Based on current knowledge, all other alternatives to the proposed listing of the Anastasia Island beach mouse as endangered and the southeastern beach mouse as threatened do not adequately reflect the biological facts and therefore have been rejected. Critical habitat is not being proposed for reasons described in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Anastasia Island beach mouse and the southeastern beach mouse at the present time. The only viable populations of both subspecies occur on lands managed by Federal or State agencies. These Federal and State agencies have been informed of the occurrence of the mice on lands they manage and must take measures to provide necessary protection for both the mice and their habitat. Therefore, a determination of critical habitat would provide no benefits to the mice over and above that provided by the listing action alone. Outside of Federal and State lands, these beach mice occur in very small, disjunct populations on a number of privately owned parcels of land. To determine each of the small parcels of land as critical habitat would be impossible from a practical standpoint, and might be detrimental to the populations that inhabit them by calling public attention to the presence of the mice. Publication of maps and precise descriptions delineating these areas, as required for a determination of critical habitat, could lead vandals and curiosity seekers to them and might as a

consequence result in the destruction of the very fragile habitat that a critical habitat determination is intended to protect. Therefore, since determination of critical habitat on public lands would not benefit the mice, and determination of critical habitat on private lands might be harmful to them, it is not prudent to determine critical habitat for the conservation of the Anastasia Island beach mouse or the southeastern beach mouse.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Federal agencies that might be affected by the Anastasia Island beach mouse and/or southeastern beach mouse proposals and listings include the U.S. Air Force (Cape Canaveral Air Force Station and Patrick Air Force Base), NASA (Kennedy Space Center),

the U.S. Fish and Wildlife Service (Merritt Island and Hobe Sound National Wildlife Refuges), the National Park Service (Canaveral National Seashore and Fort Matanzas National Monument), and, perhaps, the Federal Emergency Management Agency (FEMA).

With the publication of this proposed rule, these Federal agencies will now be required to informally confer with the Service on their activities that are likely to jeopardize the continued existence of the beach mice. If these mice are listed, the agencies need to insure that their activities, authorized, funded, or carried out, are not likely to jeopardize the continued existence of these animals. Except for the National Park Service at the Fort Matanzas National Monument, and, perhaps, the FEMA, impacts on Federal agencies are expected to be minimal. In the case of the Fort Matanzas National Monument, the Park Service will need to insure that a new bridge proposed for the Matanzas Inlet will not jeopardize the survival of the Anastasia Island beach mouse on land it manages at the Monument.

Under the National Flood Insurance Program the FEMA is required to determine whether communities are eligible for Federal flood insurance. If the determination of eligibility for flood insurance by the FEMA authorizes and/or in effect partially subsidizes construction activity that may affect a listed species, then the FEMA must request the initiation of formal section 7(a)(2) consultation. If the species is only proposed for listing, then the FEMA must informally confer under section 7(a)(4). Due to the unknown or hypothetical nature of the consultations and/or conferences, if any, that may occur, it is not now known whether any activities or FEMA's management costs will be affected.

There will be no effect on private landowners from the listing unless their activities involve use of Federal funds or require Federal permits. In such cases, the funding or permitting Federal agency must insure that the activities will not jeopardize the continued existence of the beach mice before they can provide the funds or issue the permits to the private landowner. However, the Service is not aware of any cases at the present time where activities of private landowners would be affected by this requirement.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of

the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Anastasia Island beach mouse and/or southeastern beach mouse;
- (2) The location of any additional populations of these beach mice, and the reasons why any habitat should or should not be determined to be critical habitat for them as provided by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of these beach mice; and
- (4) Current or planned activities in the subject areas and their possible impacts on the Anastasia Island beach mouse and the southeastern beach mouse.

Final promulgation of the regulations on the Anastasia Island beach mouse and the southeastern beach mouse will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32218.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environment Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

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Peromyscus. I. Variation in the old-field mouse (*Peromyscus polionotus*). Univ. Texas Studies in genetics 6:49-60.

Author

The primary author of this proposed rule is John L. Paradiso, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216, (904) 791-2580 or FTS 946-2580.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife.

Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-350, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) . . .

Species		Historic range.	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Mouse, Anastasia Island beach	<i>Peromyscus polionotus phaeus</i>	U.S.A. (FL)	Entire	E		NA	NA
Mouse, southeastern beach	<i>Peromyscus polionotus riverianus</i>	U.S.A. (FL)	Entire	T		NA	NA

Dated: June 3, 1988.

Susan Rocco,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-14909 Filed 7-1-88; 8:45 am]

BILLING CODE 4310-66-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Standish Road Site # 2 Critical Area Treatment RC&D Measure; New York

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Standish Road Site # 2 Critical Area Treatment RC&D Measure, Clinton County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423-5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan to provide for stabilization of an eroding roadbank adjacent to Standish Road. Sediment and boulders dislodged from the eroding bank come to rest on the road surface creating a severe safety hazard to users of the highway. Much of the sediment produced enters Cold Brook, impairing the water quality. The integrity of the roadbank will be assured

through the installation of project measures. The planned works of improvement include minor shaping of the bank and vegetating the site with varieties of shrub type plants and grasses.

This Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.)

Paul A. Dodd,

State Conservationist.

Dated: June 23, 1988.

[FR Doc. 88-14980 Filed 7-1-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Oceanic Gamefish Investigations—Big Game Fishing Log.

Form Number: Agency—N/A; OMB—0648-0031.

Type of Request: Revision of a currently approved collection.

Burden: 100 respondents; 160 reporting/recordkeeping hours; average hours per response .08 hours.

Needs and Uses: NOAA needs to obtain a better understanding of the condition of the Atlantic billfish

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fishery. A significant portion of the billfish catch is made in organized tournaments which already create records on fishing catch and effort. Tournament organizers will be asked to voluntarily provide this information to NMFS; those not responding may be selected for mandatory reporting. The information will be used to evaluate stock levels and trends in the fishery.

Affected Public: Individuals and small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary/Mandatory.

OMB Desk Officer: John Griffen 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 24, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-14999 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-27-M

International Trade Administration

[A-588-707]

Final Determination of Sales at Less Than Fair Value; Granular Polytetrafluoroethylene Resin From Japan; Antidumping

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that granular polytetrafluoroethylene (PTFE) resin from Japan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially

injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen (202) 377-3464 of Michael J. Ready (202) 377-2613, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Final Determination

We have determined that granular PTFE resin from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On April 14, 1988, we made an affirmative preliminary determination (53 FR 12968, April 20, 1988). The following events have occurred since the publication of that notice.

The questionnaire responses from respondent Asahi Fluoropolymers Co., Ltd. (Asahi) were verified in the United States from May 2 to May 3 and in Japan from May 9 to May 13, 1988.

In accordance with § 353.47 of our regulations (19 CFR 353.47), interested parties were provided an opportunity to comment on our preliminary determination by requesting a public hearing. Interested parties waived their rights to a hearing and submitted comments for the record in briefs dated June 2 and 7, 1988.

While Asahi initially opposed the inclusion of filled PTFE resins within the scope of the order, on March 30, 1988, Asahi withdrew its opposition.

Scope of Investigation

In its petition, Du Pont asked the Department to investigate both filled and unfilled granular polytetrafluoroethylene (PTFE) resin as provided for in item 445.54 of the *Tariff Schedules of the United States* (TSUS) and currently classified under Harmonized System (HS) item 3904.61.00. Although Du Pont does not produce filled PTFE, Du Pont asked that it be included in the investigation to prevent the possible circumvention of any order on unfilled PTFE through the transfer of domestic U.S. filling operations abroad. Du Pont did not request that PTFE dispersions in water and fine powders be covered by this investigation; we accordingly have not

included these products in our investigation.

In a March 30, 1988 submission, the respondent Asahi opposed the inclusion of filled PTFE resin within the scope of the investigation. On June 2, 1988, the petitioner reiterated its views that filled and unfilled granular PTFE resins constitute the same "class or kind" of merchandise. On June 7, 1988, Asahi withdrew its March 30 submission. Even though Asahi has withdrawn its opposition, we are still obliged to address the issues raised in order to properly define the merchandise subject to this investigation and any resulting order.

The issue of whether filled resins should be included in this investigation depends on whether it is within the same "class or kind" of merchandise as unfilled resins. In our preliminary determination, the Department found that both filled and unfilled resins are within the same class or kind of merchandise. After carefully reviewing this issue, we have found no reasons to alter this decision.

The product under investigation, granular PTFE resin, consists of three types: Pelletized, fine cut, and presintered. Of these three types only fine cut can be filled. In order to understand the class or kind of merchandise analysis which follows, it is necessary to understand that the various types of granular PTFE share the same production process and that filled granular fine cut PTFE arises from a continuation of this processing.

All three types are produced by the conversion of the tetrafluoroethylene (TFE) monomer into granular resin by suspension polymerization, a process unique to the production of granular, as opposed to other PTFE. This process is designed to enhance the handleability, moldability, physical and electrical properties of all types of granular PTFE resin.

Subsequent to the polymerization process, granular PTFE resin consists of stringy, raw polymers which are wet cut to achieve the desired size, pelletized (agglomerized) and dried. If granular fine cut or presintered resin is desired, the pelletized granular PTFE resin can be ground to form fine cut resin or ground and baked to form presintered resin. Once fine cut granular PTFE resin is formed, a producer may mix certain fillers or extenders, such as glass, bronze, carbon or graphite with the fine cut resin to strengthen the resin or enhance its mechanical properties. Filler can also be used merely to color the intermediate product in order to identify the product's source or dimension where the fabricator is unable to mark the

product because of the consistency of PTFE.

In deciding that both filled and unfilled PTFE resin constitute one class or kind of merchandise, we have considered the following factors: (1) General physical characteristics; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the merchandise in question; (4) channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed.

First, filled and unfilled granular fine cut PTFE have the same general physical characteristics. Filled is simply unfilled fine cut PTFE with filler added. The filler is added to strengthen, color, or extend the unfilled fine cut resin. Adding filler is generally a simple process involving the mechanical mixing or stirring of the unfilled fine cut granular PTFE resin with the filler. According to the ITC preliminary determination report, filled PTFE is comprised on average of 20 percent filler material and 80 percent unfilled PTFE. See USITC Publication 2043 at A-3 (December 1987). Therefore, within this sub-division of the product under investigation, the base product, granular fine cut PTFE resin, generally constitutes the major portion of the product in question.

Second, with respect to ultimate use and customer expectations, the filling process produces a filled fine cut granular PTFE resin, similar in processability to unfilled fine cut granular PTFE resin. Most granular PTFE resin (filled and unfilled) is sold to fabricators. Fabricators expect to further process all granular PTFE resin by molding or extruding the resin under pressure in order to produce a variety of intermediate molded shapes and mechanical parts.

Third, the vast majority of granular PTFE resin is sold directly to fabricators who use the resin to produce a wide range of intermediate mechanical, chemical and electrical products.

Finally, we have no evidence that the manner in which the product was advertised and displayed is not the same.

On balance, we conclude that filled and unfilled granular PTFE resin comprise a single class or kind of merchandise. To exclude filled granular fine cut PTFE resin, which is merely a sub-category of granular fine cut PTFE resin, from this investigation would result in an unduly narrow definition of the product subject to this investigation.

Standing

We preliminarily determined that the petitioner, Du Pont, had standing with respect to both filled and unfilled granular PTFE resins, based on the facts that (1) Du Pont filed its petition on behalf of the granular PTFE resin industry; (2) no producer not excusable under section 771(4)(B) of the Act has objected to the inclusion of filled granular PTFE resin within the scope of the investigation; (3) the ITC preliminarily found that there is one industry producing one like product in the United States; and (4) Du Pont manufactures the product under investigation, granular PTFE resin. Therefore, in accordance with section 771(9)(C) of the Act (19 U.S.C. 1677(9)(C)), we preliminarily found that the petition was brought on behalf of the U.S. industry and that Du Pont is an interested party with respect to the "like product", granular PTFE resin.

With respect to claims that the petition was not filed on behalf of the industry producing granular PTFE resins, on June 7, 1988, counsel for Asahi and ICI formally withdrew the March 30, 1988, submission. Therefore, we have no basis to find that the petition was not brought on behalf of the U.S. industry.

Moreover, we have continued to find that Du Pont is an interested party with respect to the "like product", granular PTFE resin, and has standing to bring a case with respect to filled PTFE resin. Although the parties have submitted various arguments on this issue, we have not received sufficient evidence to reach a decision contrary to that in our preliminary determination. Nevertheless, because of the importance we placed in our preliminary determination on the ITC's finding of one like product and one industry, we will not consider Du Pont to have standing with respect to filled granular PTFE resins (since, as noted above, Du Pont does not produce filled), if the ITC determines finally that filled and unfilled are separate like products. As a result, if the ITC finds separate like products, we will rescind the initiation of this investigation as it pertains to filled PTFE resin.

Fair Value Comparisons

To determine whether sales of granular PTFE resin from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Since Daikin failed to respond to our questionnaire, we have determined that use of best information available is appropriate, in accordance with section 776(b) of the

Act. This statutory provision requires the Department to use best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation." Therefore, we have assigned Daikin, as best information available, the margin supplied in the petition. This is the same rate as it was assigned in the preliminary determination.

With regard to Asahi, it did not respond to the Department's request for information concerning sales of filled PTFE resins by ICI Americas Inc. (ICIA), a related party, to unrelated U.S. customers. Therefore, for that portion of its margin attributable to filled PTFE resins, we have assigned it, as best information available, the margin supplied in the petition. This is also the same rate as it was assigned in the preliminary determination.

The period of investigation for granular PTFE resin from Japan was June 1, 1987 through November 30, 1987.

United States Price

For all sales by Asahi of unfilled granular PTFE resin, we based United States Price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation. We calculated exporter's sales price based on packed, ex-warehouse or delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and insurance, brokerage and handling charges, ocean freight, marine insurance, U.S. duty, U.S. inland freight, credit expenses and other U.S. selling expenses pursuant to sections 772(e) (1) and (2) of the Act.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value for sales of unfilled granular PTFE resin by Asahi based on packed, delivered prices to unrelated purchasers in Japan. We made deductions, where appropriate, for inland freight and insurance, credit and warranty expenses. We deducted indirect selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from foreign market value and added U.S. packing costs.

Currency Conversion

Since all U.S. sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: As noted in the "Scope of Investigation" section of our preliminary determination (53 FR 12968, April 20, 1988), the petitioner requested in the petition that filled granular PTFE resin be included in our investigation to prevent probable circumvention of a final dumping order on unfilled granular PTFE resin. On June 2, 1988, petitioner reiterated its views that filled and unfilled granular PTFE resins constitute the same "class or kind" of merchandise.

On June 7, 1988, respondent Asahi withdrew its March 30, 1988 submission in opposition to the inclusion of filled PTFE resins within the scope of the investigation.

DOC Position: As noted in the "Scope of Investigation" section of this notice, we have continued to treat all granular PTFE resins, both filled and unfilled, as one class or kind of merchandise.

Comment 2: Asahi argues that the Department should deduct the amount of indirect selling expenses incurred in the United States market as stated in Asahi's response to the questionnaire because the methodology used to obtain the claimed amount as both reasonable and accurate given the manner in which the product was sold. Asahi claims that the sales under consideration did not require as much technical and/or selling effort as did the sales of other ICIA products and, therefore, should bear a smaller proportion of total U.S. indirect selling expenses.

DOC Position: At verification, ICIA was unable to provide documentation in support of its contention that the sales under consideration should be allocated a smaller proportion of U.S. indirect selling expenses than other products

sold by ICIA. Furthermore, we verified that ICIA's indirect selling expenses were substantially more than what was reported. On June 13, 1988, six weeks after verification of Asahi's questionnaire response, Asahi submitted information in support of its claim. Since the information was not submitted in a timely fashion, we were unable to verify it, and it could not be considered for our final determination. Therefore, we rejected the amount in the questionnaire response and allocated the verified amount of total U.S. indirect selling expenses over total fluoropolymer products sold by ICIA during the same time period.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of granular PTFE resin from Japan that are entered or withdrawn from warehouse, for consumption, on or after April 26, 1988, the date of publication of the preliminary determination in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of granular PTFE resin from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Daijin Industries, Inc.	103.00
Asahi Fluoropolymers Co., Ltd.	51.45
All others	91.74

This suspension of liquidation covers imports of granular PTFE resin from Japan as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on granular PTFE resin from Japan entered, or withdrawn

from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,
Assistant Secretary for Import Administration.

June 27, 1988.

[FR Doc. 88-15037 Filed 7-1-88; 8:45 am]
BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit (EFP) to harvest groundfish on domestic trawl vessels using detachable codends of various mesh sizes in the exclusive economic (EEZ) zone off the coasts of Washington, Oregon and California. The permit authorizes experimental fishing practices which otherwise would be prohibited by federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations.

EFFECTIVE DATES: June 1, 1988, through December 31, 1988.

ADDRESS: For further details or for a copy of the permit, write to Rolland A. Schmitt, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, NMFS, 3000 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-528-6140; or Rodney R. McInnis, 213-514-6199.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in § 663.10.

An EFP application to harvest groundfish with bottom trawl gear using detachable codends of various mesh sizes in the EEZ off Washington, Oregon, and California was received from Dr. Ellen Pikitch, University of Washington, on March 11, 1988. The major goal of the experimental fishery is

to compare the effectiveness of different mesh size gear regulations with the current trip limit regime set forth in the FMP. Current groundfish regulations at § 663.26 prohibit the use of a mesh size smaller than 4 1/2 inches in bottom trawls and prohibit detachable codends if the vessel is carrying a net with smaller than 4 1/2 inch mesh. In addition, the applicant requested that the EFP waive the current trip limits and groundfish quota restrictions for the duration of the experiment. A notice acknowledging receipt of the application, describing the proposal, and requesting public comment was published in the Federal Register (53 FR 11110, April 5, 1988). No comments were received. The applications was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its April, 1988 public meeting in San Francisco, California. The Council recommended that NMFS issue an EFP, as requested by the applicant, except that each experimental fishing trip should be subject to the trip frequency limits published in the Federal Register (53 FR 248, January 8, 1988). NMFS has incorporated the Council recommendations in the terms and conditions of the EFP.

The EFP was issued on May 27, 1988. It authorizes 46 domestic trawl vessels to engage in experimental fishing under the direction of Dr. Pikitch, according to the terms and conditions of the permit, from June 1, 1988, through December 31, 1988, in the EEZ off Washington, Oregon and California. An observer from the University of Washington must be aboard each vessel during experimental fishing and present during the unloading of fish taken from each experimental fishing trip. The permitted vessels are authorized to use detachable codends of various mesh sizes when involved in experimental fishing as directed by the permit holder. The groundfish trip poundage limitations and optimum yield (quota) closures do not apply to each experimental fishing trip; however, the trip frequency limits will apply. The permittee is required to provide advance notification to NMFS of each departure and arrival of vessels conducting experimental fishing. The permittee plans to schedule up to 68 experimental fishing trips under the EFP. The permittee will prepare a comprehensive report on the results of the experimental fishery under a project supported by a Saltonstall-Kennedy grant entitled "West Coast Groundfish Mesh Size Study".

(16 U.S.C. 1801 et seq.)

Dated: June 29, 1988.

Ann D. Terbush,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-14996 Filed 7-1-88; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Socialist Republic of Romania

June 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Adjusting a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 29, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6497. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 435 and 444 are being increased for carryover. Also, swing is being applied to Category 444, reducing Category 435 to account for swing.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 7783, published on March 10, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the

implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 1988.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1988, concerning imports into the United States of certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 29, 1988, the directive of March 7, 1988 is amended to adjust the previously established limits for wool textile products in the following categories, under the provisions of the current bilateral textile agreement between the Governments of the United States and the Socialist Republic of Romania:

Category	Adjusted twelve-month limit ¹
435.....	3,623 dozen.
444.....	58,032 numbers.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14996 Filed 7-1-88; 8:45am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Romania; Correction

June 29, 1988.

In the table in the letter to the Commissioner of Customs published in the Federal Register on April 7, 1988 (53 FR 11542), the TSUSA coverage for sublimit 334pt. should be corrected as indicated below:

... shall be in Category 334pt. (other than knit athletic jackets) in all TSUSA

numbers in Category 334 except 381.0211, 381.3905, 384.0240 and 384.3007.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14967 Filed 7-1-88; 8:45 am]
BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Singapore

June 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: July 7, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 340 is being reduced for carryforward used in 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive

issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 7, 1988, the directive of December 24, 1987 is being amended to adjust to 567,322 dozen¹ the current limit for cotton textile products in Category 340, as provided under the terms of the current bilateral agreement between the Governments of the United States and Singapore.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-14068 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: CHAMPUS CHOICE Enrollment Form; DD Form X414; and OMB Control Number 0704-0162.

Type of Request: Extension.
Annual Burden Hours: 70.
Annual Responses: 215.

Needs and Uses: The CHAMPUS CHOICE Enrollment Form is used by prospective CHAMPUS CHOICE enrollees. The requested information establishes the eligibility participation in the prepaid health care plan.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: One-time only.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer.

¹ The limit has not been adjusted to account for any imports exported after December 31, 1987.

Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Roscoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 19, 1988.

[FR Doc. 88-15040 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: Under Secretary of Defense (Acquisition), DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is firmly committed to reducing the amount of data acquired from contractors under defense contracts. These data requirements are imposed in contracts through the citing of Data Item Descriptions (DID's) in the Contract Data Requirements List (CDRL). We suspect that there are DID's which overspecify requirements, are duplications of other DID's, or otherwise result in an unnecessary paperwork burden upon the public. Internal efforts are being undertaken by DoD to reduce the number of these types of DID's. Your help in specifically identifying the DID's which could be eliminated or improved will be appreciated. The input resulting from this request will be used to reduce the number of DID's and thereby reduce the paperwork burden placed upon the public. At this time comments are requested on DID's that fall into the following categories (reference DoD 5010.12-L, Acquisition Management Systems and Data Requirements Control List (AMSDL): ADMN (Administrative); FNCL (Financial); MGMT (Management); QCIC (Quality Control/Assurance and Inspection); SDMP (Standardization and Data Management); TCSP (Technical Support); MISC (Miscellaneous). Comments on other categories of DID's were requested in previous Federal Register Notices and will be requested in future Federal Register Notices.

DATE: Comments or a request for extension should be received by September 6, 1988. Requests for extensions will be considered on a case-by-case basis.

ADDRESS: Comments should be forwarded to Mr. Carl Berry, Defense Data Management Office, OASD(P&L)DDMO, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: A list or a copy of the DID's included in the above categories, or a copy of individual DID's included in the above categories may be obtained from Mr. Carl Berry, Defense Data Management Office, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041, telephone (703) 756-2554.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 30, 1988.

[FR Doc. 88-15042 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DOD FAR Supplements Part 19, Small and Disadvantaged Business Concerns; No Form; and OMB Control Number 0704-021A.

Type of Request: Extension.
Annual Burden Hours: 402.
Annual Responses: 1,610.

Needs and Uses: Information concerns certain data required to support evaluation of certain set-aside awards and to provide a basis for required reporting on awards placed in labor surplus areas under combined small business labor surplus procedures. Reporting is necessary to ensure proper evaluation and to obtain a contractor's statement of intent to perform in a labor surplus area.

Affected Public: Small business firms.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 27, 1988.

[FR Doc. 88-14984 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-01-M

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 14-15 July 1988 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with strategic weapons requirements, US space policy and developments at the Moscow Summit and future prospects.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II (1982)), it has determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 29, 1988.

[FR Doc. 88-15041 Filed 7-1-88; 8:45 am]

BILLING CODE 3510-01-M

Department of the Army

U.S. Army Laboratory Command; Availability of Millimeter Wave Microstrip Circulator for Exclusive Licensing

In accordance with 37 CFR 404.7 announcement is made of the availability of a millimeter wave microstrip circulator for exclusive licensing. Inventors at the U.S. Army Electronics Technology and Devices Laboratory (USAETDL) have applied for

a patent on a new "drop-in" millimeter wave microstrip circulator. The rights to the circulator belong to the United States Government.

This new circulator is used to allow a millimeter wave transmitter and receiver to share a common antenna, provide protection to millimeter wave transmitter from unwanted incoming signals, or provide injection locking in a transmitter. It consists of a Y-shaped ferrite element which is placed appropriately on the surface of a millimeter wave microstrip circuit and electrically connected to the circuit at the three ports. The research and development of this device has been completed such that working prototypes have been built and successfully demonstrated.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, United States Code, the Department of the Army as represented by USAETDL wishes to exclusively license rights to the millimeter wave microstrip circulator to a party interested in manufacturing and selling the circulator.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Stern, U.S. Army Electronics Technology and Devices Laboratory, ATTN: SLICET-DT, Fort Monmouth, NJ 07703-5000; (201) 544-4666.

Kenneth L. Denton,

Alternate Liaison Officer With the Federal Register.

[FR Doc. 88-14981 7-1-88; 8:45 am]

BILLING CODE 3710-04-M

Senior Executive Service; Performance Review Boards; Membership

AGENCY: Army Department.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: July 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robert C. Zenda, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives'

performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office, Secretary of the Army are:

1. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research) Office, Under Secretary of the Army.

2. Dr. George E. Dickey, Deputy for Programs, Planning, Review and Evaluation, Office, Assistant Secretary of the Army (Civil Works).

3. Mr. Charles A. Chase, Director, Review and Oversight, Office, Assistant Secretary of the Army (Financial Management).

4. Mr. Eric A. Orsini, Deputy Assistant Secretary of the Army (Logistics), Office, Assistant Secretary of the Army (Installations and Logistics).

5. Mr. William E. Manning, Deputy Assistant Secretary of the Army Readiness, Force Management and Training, Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).

6. Brigadier General Richard D. Belton, Deputy for Technology and Assessments, Office, Assistant Secretary of the Army (Research, Development and Acquisition).

7. Mrs. Susan Crawford, General Counsel, Office, General Counsel.

8. Mr. Daniel R. Gill, Director, Small and Disadvantaged Business Utilization, Office, Small and Disadvantaged Business Utilization.

9. Mr. Steven Dola, Deputy for Management and Budget, Office, Assistant Secretary of the Army (Civil Works).

10. Major General James F. McCall, Director, Army Budget, Office, Assistant Secretary of the Army (Financial Management).

11. Mr. Michael W. Owen, Principal Deputy Assistant Secretary of the Army (Installations and Logistics), Office, Assistant Secretary of the Army (Installations and Logistics).

12. Mr. John W. Matthews, Deputy Assistant Secretary of the Army (DA Review Boards and Personnel Security) Office, Assistant Secretary of the Army (Manpower and Reserve Affairs).

13. Mr. Joseph R. Varady, Jr., Director for Procurement Policy, Office, Assistant Secretary of the Army (Research, Development and Acquisition).

14. Mr. Michael A. Janoski, Director, Acquisition and Systems Audits, Office, Army Audit Agency.

15. Mr. Thomas W. Taylor, Deputy General Counsel (Installations and Operations) Office, General Counsel.

16. Mr. Thomas A. Grant, Director, Personnel and Force Management Audits, Office, Army Audit Agency.
17. Mr. Peter Stein, Deputy, Administrative Assistant to the Secretary of the Army, Office, Administrative Assistant to the Secretary of the Army.

The members of the Performance Review Board for the Program Executive Officer structure are:

1. Mr. Arthur O. Rosenblum, PEO, Management Information Systems.
2. Mr. Feliciano Giordano, PEO, Networks.

3. Mr. Robert F. Giordano, Deputy, PEO, Command and Control Systems.
4. Mr. Neil Atkinson, Deputy PEO, Communications Systems.

5. Mr. William T. Tobias, Deputy Program Manager, Satellite Communications (SATCOM).

6. Mr. Andrew R. D'Angelo, Deputy PEO, Intelligence and Electronic Warfare.

7. Mr. Michael F. Fiset, Deputy PEO, Ammunition.

8. Mr. George T. Singley III, PEO, Combat Support Aviation.

9. Mr. Robert D. Hubbard, Deputy Project Manager, Light Helicopter Family.

10. Mr. Jerry L. Chapin, Deputy PEO, Close Combat Vehicles.

11. Mr. Melvin E. Burcz, Deputy PEO, Combat Support.

12. Mr. Clarence A. Tidwell, Deputy PEO, Forward Air Defense.

13. Mr. James B. Emahiser, PEO, Troop Support.

14. Mr. Charles Baronian, Deputy Program Manager, Chemical Demilitarization.

15. Dr. Billy Richardson, PEO, Chemical and Nuclear.

16. Mr. Stephen R. Burdt, Deputy for Program Evaluation, Office, Assistant Secretary of the Army (Research, Development and Acquisition).

17. Mr. Joseph R. Varady, Jr., Director for Procurement Policy, Office, Assistant Secretary of the Army (Research, Development and Acquisition).

18. Major General Ronald K. Anderson, Program Manager, LHX, U.S. Army Aviation Systems.

19. Brigadier General Edward R. Baldwin, Jr., PEO, Communications Systems, U.S. Army Communications-Electronics Command.

20. Brigadier General James W. Ball, PEO, Combat Support System, U.S. Army Tank-Automotive Command.

21. Brigadier General John S. Drosdeck, Jr., PEO, Fire Support System, U.S. Army Missile Command.

22. Brigadier General William J. Fiorentino, PEO, Forward Air Defense Systems, U.S. Army Missile Command.

23. Brigadier General William H. Forster, PEO, Combat Aviation, U.S. Army Aviation Systems Command.

24. BG Paul L. Greenberg, PEO, Ammunition, U.S. Army Materiel Command.

25. Lieutenant General E. R. Heiberg III, Chief of Engineers, U.S. Army Corps of Engineers.

26. Brigadier General Peter M. McVey, PEO, Close Combat Vehicle, U.S. Army Tank-Automotive Command.

27. Brigadier General David A. Nydam, Program Manager, Chemical Demilitarization, U.S. Army Chemical Research and Development Center.

28. Major General Joseph D. Schott, PEO, Command and Control Systems, U.S. Army Communications-Electronics Command.

The members of the Performance Review Board for the Office, Chief of Staff of the Army are:

1. Mr. Elmer M. Mitchell, Chief, Discrimination Division Sensors Directorate, Strategic Defense Command.

2. Doctor Michael J. Lavan, Director, Directed Energy Weapons Directorate, Strategic Defense Command.

3. Brigadier General Charles H. Armstrong, Director, Force Programs Integration, Office, Deputy Chief of Staff for Operations and Plans.

4. Mr. John A. Riente, Technical Director to the Deputy Chief of Staff for Operations, Office, Deputy Chief of Staff for Operations and Plans.

5. Major General James R. Klugh, Assistance Deputy Chief of Staff for Logistics, Office, Deputy Chief of Staff for Logistics.

6. Major General Charles M. Murray, Director, Supply and Maintenance Directorate, Office, Deputy Chief of Staff for Logistics.

7. Major General Donald W. Jones, Assistant Deputy Chief of Staff for Personnel, Office, Deputy Chief for Personnel.

8. Brigadier General (P) Charles A. Hines, Director of Manpower, Office, Deputy Chief of Staff for Personnel.

9. Mr. Charles W. Weatherholt, Deputy Director of Civilian Personnel, Office, Deputy Chief of Staff for Personnel.

10. Major General Jerome B. Hilmes, Commander, Operations Test and Evaluation Agency, OTEA.

11. Ms. Mary H. Smith, Director, Program Management System Development Agency, Office, Chief of Staff.

12. Mr. James D. Davis, Special Assistant to the Deputy Chief of Staff for Intelligence, Office, Deputy Chief of Staff for Intelligence.

13. Brigadier General Paul E. Menoher, Jr., Assistant Deputy Chief of Staff for Intelligence, Office, Chief of Staff for Intelligence.

14. Mr. William S. Rich, Jr., Deputy and Technical Director, U.S. Army Foreign Science and Technology Center, Office, Chief of Staff for Intelligence.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General George K. Withers, Jr., Deputy, Corps of Engineers, USA Corps of Engineers.

2. Mr. Jack Kiper, Chief, Construction Operations Division, Ohio River Division.

3. Major General Peter J. Offringa, Assistant Chief of Engineers, Office of the Chief of Engineers.

4. Brigadier General Patrick J. Kelley, Commanding General, USA Engineering Division, South Pacific.

5. Brigadier General Arthur E. Williams, Commanding General, US Army Engineering Division, Pacific Ocean.

6. Brigadier General Theodore Vander Els, Commanding General, USA Engineering Division, North Central.

7. Mr. Bob Benn, Assistant Director for Research and Development (Military Programs).

8. Mr. Edward T. Watling, Deputy Chief, Engineering Division (Engineering and Construction).

9. Mr. Daniel Mauldin, Chief, Planning Division (Civil Works), Army Corps of Engineers.

10. Mr. William L. Robertson, Deputy Chief Counsel, Headquarters, U.S. Army Corps of Engineers.

11. Mr. William P. Todson, Chief, Engineering Division, Missouri River Division.

12. Doctor Robert Whalin, Technical Director, U.S. Army Engineer Waterways Experiment Station.

13. Mr. Richard E. Hanson, Chief, Construction Division (Engineering and Construction).

14. Mr. Joe G. Higga, Chief, Engineering Division, Europe Division.

The members of the Performance Review Board for the U.S. Army Surgeon General are:

1. Major General Robert H. Buker, M.D., Deputy Surgeon General.

2. Major General Billy B. Lefler, D.D.S., Assistant Surgeon General for Dental Services.

3. Brigadier General Clara L. Adams-Ender, RN Chief, Army Nurse Corps.

4. Dr. Timothy J. O'Leary, M.D., Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology.

5. Dr. Louis S. Baron, PhD, Chief, Department of Bacterial Immunology, Walter Reed Army Institute of Research.

6. Dr. Michael A. Chirigos, PhD, Deputy for Science, US Army Institute of Infectious Disease.

7. Dr. Bhupendra P. Doctor, PhD, Director, Division of Biochemistry, Walter Reed Army Institute of Research.

8. Dr. Robert R. Engle, PhD, Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research.

9. Dr. Samuel B. Formal, PhD, Chief, Department of Bacterial Diseases, Walter Reed Army Institute of Research.

10. Dr. Elson D. Helwig, M.D., Chairman, Department of Bacterial Diseases, Walter Reed Army Institute of Research.

11. Dr. Nelson S. Irey, M.D., Chairman, Department of Environmental and Drug Induced Pathology, Army Forces Institute of Pathology.

12. Dr. Kamal G. Ishak, M.D., Chairman, Department of Hepatic Pathology, Armed Forces Institute of Pathology.

13. Dr. Frank B. Johnson, M.D., Chairman, Department of Chemical Pathology, Armed Forces Institute of Pathology.

14. Dr. Arthur D. Mason, Jr., M.D., Chief Laboratory Division, U.S. Army Institute of Surgical Research.

15. Dr. Fathollah K. Mostofi, M.D., Chairman, Department of Gastrointestinal Pathology, Armed Forces Institute of Pathology.

16. Dr. Henry J. Norris, M.D., Chairman, Department of OB/GYN Pathology, Armed Forces Institute of Pathology.

17. Dr. Howard E. Noyes, PhD, Associate Director for Research Management, Walter Reed Army Institute of Research.

18. Dr. Joseph V. Osterman, PhD, Special Assistance for Biotechnology, US Army Medical Research and Development Command.

19. Dr. Donald E. Sweet, M.D., Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology.

20. Dr. James A. Vogel, PhD, Director, Exercise Physiology Division, U.S. Army Research Institute of Environmental Medicine.

21. Dr. Florabelle G. Mullick, M.D., Assoc. Dir, Group D. Center for Advanced Pathology, Armed Forces Institute of Pathology.

22. Dr. Leslie H. Sobin, M.D., Assoc. Director for Scientific Publications, Armed Forces Institute of Pathology.

23. Dr. Liselotte Hochholzer, M.D., Chairman, Department of Pulmonary

and Mediastinal Pathology, Armed Forces Institute of Pathology.

The members of the Performance Review Board for the U.S. Army Materiel Command are:

1. Major General Charles D. Bussey, Deputy Chief of Staff for Personnel, Headquarters, U.S. Army Materiel Command.

2. Major General Joseph D. Schott, Program Executive Officer, Control Systems for Command.

3. Brigadier General James Hall, Program Executive Officer, Combat Support.

4. Brigadier General Donald R. Williamson, Deputy Commanding General, U.S. Army Aviation Systems Command.

5. Brigadier General John S. Drosdeck, Jr., Program Executive Office, Fire Support.

6. Brigadier General Terrence L. Arndt, Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command.

7. Brigadier General Peter D. Hildago, Deputy Commanding General for Chemical Material, U.S. Army Armament, Munitions and Chemical Command.

8. Brigadier General Joseph Raffiani, Jr., Deputy Commanding General for Armament and Munitions, U.S. Army Armament Munitions and Chemical Command.

9. Brigadier General Edward R. Baldwin, Program Executive Officer, Communications Systems.

10. Brigadier General George A. Bombell, Director, Joint Tactical Command, Control and Communications.

11. Mr. Joseph A. Floyd, Assistant Deputy for Procurement and Readiness, U.S. Army Tank Automotive Command.

12. Mr. Henry B. Jones, Director for Procurement and Production, U.S. Army Tank Automotive Command.

13. Mr. Melvin E. Burcz, Deputy Program Executive Officer, Combat Support.

14. Mr. Alvert A. Dawes, Chief Counsel, U.S. Army Tank Automotive Command.

15. Dr. Richard M. Carlson, Director, Research and Technology Activity, Research, Development and Engineering Center, U.S. Army Aviation Systems Command.

16. Mr. Donald W. Schmitz, Director for Procurement and Production, U.S. Army Aviation Systems Command.

17. Mr. Daniel M. McEneaney, Director of Engineering, Research, Development and Engineering Center, U.S. Army Aviation Systems Command.

18. Mr. David V. Gaggin, Deputy, Avionics Research and Development

Activity, Research, Development and Engineering Center, U.S. Army Aviation Systems Command.

19. Mr. Harry J. Peters, Technical Director, U.S. Army Test and Evaluation Command.

20. Mr. John A. Lockerd, Technical Director/Chief Scientist, White Sands Missile Range, U.S. Army Test and Evaluation Command.

21. Mr. James A. Wise, III, Technical Director, National Range Operations, U.S. Army Test and Evaluation Command.

22. Mr. Grady H. Banister, Jr., Technical Director, Electronic Proving Ground, U.S. Army Test and Evaluation Command.

23. Mr. James C. Kelton, Technical Director, USA Combat Systems Test Activity, U.S. Army Test and Evaluation Command.

24. Dr. Lothar L. Salomon, Scientific Director, Dugway Proving Ground, U.S. Army Test and Evaluation Command.

25. Mr. William L. Vomocil, Technical Director, Yuma Proving Ground, U.S. Army Test and Evaluation Command.

26. Mr. Raymond G. Pollard, Director for Test, U.S. Army Test and Evaluation Command.

27. Mr. James B. Emahiser, Program Executive Officer, Troop Support.

28. Mr. Harold L. Mabrey, Director for Procurement and Production, U.S. Army Troop Support Command.

29. Mr. Morris K. Zusman, Director, Logistics Support Directorate, Belvoir Research, Development and Engineering Center, U.S. Army Troop Support Command.

30. Dr. Robert W. Lewis, Director, Science and Advance Technology Directorate, Natick Research, Development and Engineering Center, U.S. Army Troop Support Command.

31. Dr. Abner S. Salant, Food Engineering Directorate, Natick Research, Development and Engineering Center, U.S. Army Troop Support Command.

32. Mr. Kenneth A. Reinhart, Director Individual Protection Directorate, Natick Research, Development and Engineering Center, U.S. Army Troop Support Command.

33. Dr. Larry C. Mixon, Director for Structures, Research, Development and Engineering Center, U.S. Army Missile Command.

34. Mr. Truman W. Howard, III, Director of Product Assurance, U.S. Army Missile Command.

35. Dr. Clarence G. Thornton, Director, Electronics Technology and Devices Laboratory, U.S. Army Laboratory Command.

36. Dr. John T. Fraiser, Director, Ballistic Research Laboratories, U.S. Army Laboratory Command.

37. Dr. George A. Neece, Scientific Advisor, Army Research Office, U.S. Army Laboratory Command.

38. Dr. John D. Weisz, Director, Human Engineering Laboratory, U.S. Army Laboratory Command.

39. Mr. Bruce M. Fonoroff, Associate Technical Director for Research and Technology, U.S. Army Laboratory Command.

40. Dr. Edward S. Wright, Director, Army Materials Technology Laboratory, U.S. Army Laboratory Command.

41. Mr. A. David Mills, Assistant Deputy Chief of Staff for Supply, Maintenance and Transportation, Headquarters, U.S. Army Materiel Command.

42. Mr. Michael C. Sandusky, Assistant Deputy Chief of Staff for Program Analysis and Evaluation, Headquarters, U.S. Army Materiel Command.

43. Dr. Kenneth J. Oscar, Assistant Deputy Chief of Staff for Systems Management, Headquarters, U.S. Army Materiel Command.

44. Mr. Anthony V. Campi, Technical Director/Director, Research, Development and Engineering Center, U.S. Army Communications-Electronics Command.

45. Mr. Victor J. Ferliss, Chief Counsel, U.S. Army Communications-Electronics Command.

46. Mr. James M. Skurka, Assistant Deputy for Procurement and Readiness, U.S. Army Communications-Electronics Command.

47. Mr. Seymour J. Lober, Deputy Chief of Staff for Product Assurance and Testing, Headquarters, U.S. Army Materiel Command.

48. Dr. William C. McCorkle, Jr., Technical Director for Missile Command and Director, Research, Development and Engineering Center, U.S. Army Missile Command.

49. Dr. Richard G. Rhoades, Associate Director for Technology, Research, Development and Engineering Center, U.S. Army Missile Command.

The members of the Performance Review Board for the Consolidated Commands are:

1. Brigadier General Richard G. Larson, Commander, Military Traffic Management Command, Western Area.
2. Mr. Thomas D. Collingsworth, Special Assistant for Transportation Engineering, Military Traffic Management Command.
3. Brigadier General Theodore G. Stroup, Jr., Deputy Chief of Staff for Resource Management, Training and Doctrine Command.

4. Mr. Larry C. Hanson, Assistant Deputy Chief of Staff for Resource Management, Training and Doctrine Command.

5. Mr. Leonard J. Mabus, Technical Director/Chief Engineer, Office of the Commanding General, Headquarters, USA Information Systems Command.

6. Brigadier General Alonzo E. Short, Jr., Commanding General, Army Information Systems Engineering Command, Information Systems Command.

7. Mr. C. Cary Jones, Assistant Deputy Chief of Staff for Engineering and Housing, USA Europe and Seventh Army.

8. Major General W. H. Gourley, Director, Personnel, J1, Forces Command.

9. Mr. William S. Fraim, Deputy Director (Civilian Personnel, Directorate of Personnel, J1) Forces Command.

10. Mr. William M. Wilkerson, Deputy Director, Directorate of Resource Management, J8, Forces Command.

Carol Bliss,
Acting Chief, Senior Executive Service Office.
[FR Doc. 88-15027 Filed 7-1-88; 8:45 am]
BILLING CODE 3710-06-01

Military Traffic Management; Carrier Disqualification Procedures; Proposed Revision

AGENCY: Military Traffic Management Command, Department of the Army, DOD.

ACTION: Proposed revision of regulation and request for public comment.

SUMMARY: The Military Traffic Management Command (MTMC) proposes to revise its regulation concerning carrier disqualification procedures. This action is necessary to accommodate changes in statutes, regulations, and administrative procedures that have occurred since the last revision was published on 12 December 1984. The intent of the revision is to clarify and improve processing procedures within MTMC's various disqualification programs. Since these programs form an integral part of the relationship between MTMC and its carriers, MTMC requests public comment on the proposed revision prior to its publication in final form.

DATES: Comments must be submitted on or before August 4, 1988.

ADDRESS: Comments on the revision and requests for full text copies of the proposed revision should be addressed to the Office of the Staff Judge Advocate, Headquarters, Military Traffic Management Command, 5611

Columbia Pike, Room 405, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: William J. Dowell (MTMC General Attorney), 703-756-1580 or Captain Bjarne R. Henderson (Assistant Staff Judge Advocate), 703-756-1581.

SUPPLEMENTARY INFORMATION: As the single manager of traffic management for the Department of Defense (DOD), MTMC is responsible for ensuring that DOD passenger, freight, and personal property transportation services are procured only from qualified carriers. In the event of unsatisfactory performance or other appropriate circumstances, the procedures defined in MTMC Regulation 15-1 are used to verify whether a carrier is presently responsible and thereby eligible for continued participation in DOD transportation programs.

The proposed revision would supersede Headquarters, MTMC and MTMC area command procedures heretofore published in MTMC Regulation 15-1, Transportation and Travel, Procedure for Disqualifying and Placing Carriers in Non-use (12 December 1984) (49 FR 44124), and in Chapter 42 of the Defense Traffic Management Regulation (31 July 1986). The significant changes contained in the proposed revision are as follows:

- a. "Non-use" is incorporated into disqualification; the term "probation" redefines concept of "suspended disqualification."
- b. Area command board disqualification authority is expanded to include outbound, inbound, and intra-area traffic instead of outbound traffic only.
- c. Carriers who fail to meet objective criteria (e.g., operating authority, insurance, or program approval) are excluded from the hearing procedures.
- d. Examples of disqualification causes and conditions are expanded and clarified.
- e. Guidelines for coordination of MTMC's disqualification program with other agency and suspension programs are included.
- f. Expedited procedures are included for decisions by board chairpersons where the carrier fails to exercise its right to a hearing or submit a written response.
- g. Appeal and reconsideration procedures are clarified. Appellate review of facts (other than new evidence not previously available) is limited to evidence presented to and considered by a board.
- h. The scope of parties eligible for disqualification is expanded to include

carrier affiliates, agents, and individuals.

Pursuant to requirements codified at 41 U.S.C. 418b, MTMC is providing notice of this proposed revision and offering a 30-day period for receiving and considering the views of all interested parties. Because of the draft revision's length and specialized nature, full text copies will be mailed to interested parties upon written request. Timely written comments will be reviewed and considered for incorporation prior to publication of the regulation in final form.

Nelson H. Maier, Jr.
Colonel, U.S. Army, Chief of Staff.
[FR Doc. 88-15026 Filed 7-1-88; 8:45 am]
BILLING CODE 3710-06-01

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Greenbrier River Basin Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Huntington District currently is studying potential flood damage reduction measures for the Greenbrier River Basin. Catastrophic floods in November 1985 prompted a redirection of ongoing studies to provide a more comprehensive examination of flood problems and solutions thereto. Implementation of flood damage reduction measures could impact on resources in the basin. Consequently, the Huntington District Engineer has determined that the preparation of a Draft Environmental Impact Statement (DEIS) may be necessary.

Questions about the proposed action and DEIS can be answered by: Mr. John P. Justice, Jr., P.E., 502 Eighth Street, Huntington, West Virginia 25701, Phone: 304-529-5712.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* As of the date of this notice, the Huntington District does not know which, if any, of the flood damage reduction alternatives being considered will be recommended for implementation. From the alternatives being evaluated, flood reduction measures may be recommended to the Congress for authorization.

2. Efforts during the preliminary study involved screening studies and a detailed phase. The following options were initially considered: Tributary dam system; headwater dam system; main stem dams; floodwalls and/or levees;

nonstructural; and, no action. As a result of the screening studies, some alternatives were screened out and others were modified. The preliminary study was completed with an evaluation of a combination tributary/headwater dam system, main stem dams, floodwalls and/or levees, nonstructural, and no action.

These study efforts were discussed at great length at numerous public meetings and workshops with the residents of the Greenbrier River Basin during the period January 1986 through February 1988. The preliminary phase of the study concluded that there was a federal interest in proceeding with a feasibility study for flood control in the Greenbrier River Basin. Alternatives that survived the preliminary study process are: Nonstructural; no action; and, a main stem dam at various locations on the Greenbrier River between the communities of Marlinton and Cloverlick. The reservoir being evaluated varies in size and performance capabilities. The results of the feasibility study may lead to a recommendation for authorization of one of these alternatives by Congress.

3. a. A draft feasibility report containing a summary of investigations is scheduled for completion in 1989. Public involvement will continue throughout the study in the form of workshops, information furnished to the local media, and individual contacts. A public meeting will be held following the completion and distribution of the draft report and DEIS, and the public can formally present their views regarding the tentatively recommended plan. Federal, state, and local agencies as well as other interested organizations will be afforded the opportunity to be represented or attend the meetings.

b. Major significant environmental impacts to be analyzed in the DEIS are:

- Impacts of impoundments on existing terrestrial and aquatic resources.
- Social and cultural impacts resulting from implementation of an alternative.
- Wild and scenic river status for portions of the Greenbrier River.
- Institutional implications of cost-sharing.
- Economic impacts resulting from implementation of alternatives.

c. The U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, U.S. Forest Service, National Park Service, U.S. Soil Conservation Service, West Virginia Department of Commerce, West Virginia Department of Natural Resources, and West Virginia Governor's Office of Economic and Community Development have been

invited to serve as Cooperating Agencies in the preparation of the DEIS.

d. Full compliance with all environmental protection statutes and regulations will be accomplished prior to, or as a result of, the circulation of the draft EIS. The federal and local entities responsible for enforcing these laws will be consulted throughout the planning process to ensure these requirements are adequately met. A brief discussion of the District's consulting efforts on major statutes follows. The U.S. Environmental Protection Agency and the West Virginia Air Quality Control Commission will be consulted to assure compliance with the Clean Air Act, as amended, 42 U.S.C. 1857h-7, *et seq.* The U.S. Environmental Protection Agency in addition to the West Virginia Department of Natural Resources, will review the project for compliance with the Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.* Several agencies of the U.S. Department of the Interior and their related local agencies, will provide input throughout the planning process to assure compliance with requirements pertaining to natural, recreational, cultural, historical, and archeological resources. Consultation with the U.S. Fish and Wildlife Service will ensure compliance with the Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661, *et seq.* The U.S. Fish and Wildlife Service and the West Virginia Department of Natural Resources will each provide input concerning the Endangered Species Act, as amended, 16 U.S.C. 1531, *et seq.* The U.S. Park Service Office of Archeological and Historical Preservation, the National Advisory Council on Historic Preservation, and the West Virginia Historic Preservation Officer will each be consulted throughout all project planning and construction stages concerning statutes such as the Archeological and Historical Preservation Act, as amended, 16 U.S.C. 469, *et seq.*; and the Preservation of Historic and Archeological Data Act (86 Stat. 174) (Pub. L. 93-291) and Executive Order 11593. Input from the U.S. Park Service, West Virginia Department of Natural Resources, and the West Virginia Department of Commerce will ensure the project's compliance with recreation related requirements such as the Federal Water Project Recreation Act, as amended, 16 U.S.C. 460-1 (12), *et seq.* The U.S. and West Virginia Departments of Agriculture will be advising the Huntington District on requirements to comply with the Farmlands Protection Policy Act (Pub. L. 97-98) (7 CFR Part 658). Consultation and advice will be sought from the U.S.

BEST COPY AVAILABLE

Forest Service concerning impacts on both national forest lands and the national wild and scenic river system. The U.S. Soil Conservation Service (SCS) will be consulted concerning prime and unique farmlands, as well as potential impacts on SCS facilities within the Greenbrier River Basin.

4. No additional public scoping meetings are anticipated during DEIS development.

5. It is anticipated that the DEIS will be made available for public review in 1989.

Date: June 10, 1988.

David J. Hall,

Captain, U.S. Army, Deputy District Engineer.
[FR Doc. 88-15028 Filed 7-1-88; 8:45 am]

BILLING CODE 3710-02-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Planning and Technology Base Task Force will meet September 27-28, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for the meeting will consist of discussion of key issues regarding the integration of technology management with strategic planning and requirements definition, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: June 27, 1988.

Jane M. Virga,
Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.
[FR Doc. 88-14989 Filed 7-1-88; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Lower Level Conflict Task Force will meet September 7-8 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of the meeting is to the employment of Naval forces in armed conflict with third world adversaries and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting will be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: June 27, 1988.

Jane M. Virga,
Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.
[FR Doc. 88-14970 Filed 7-1-88; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Lower Level Conflict Task Force will meet October 11-12, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to the employment of Naval forces in armed

conflict with third world adversaries and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: June 27, 1988.

Jane M. Virga,
Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.
[FR Doc. 88-14971 Filed 7-1-88; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Lower Level Conflict Task Force will meet November 2-3, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to the employment of Naval forces in armed conflict with third world adversaries and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: June 27, 1988.

Jane M. Virga,
Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.
[FR Doc. 88-14972 Filed 7-1-88; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet September 21-22, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: June 28, 1988.

Jane M. Virga,
Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.
[FR Doc. 88-14973 Filed 7-1-88; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet August 9-11, 1988 from 9 a.m. to 5 p.m. each day, in Norfolk, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense, and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: June 28, 1988.

Jane M. Virga,
Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.
[FR Doc. 88-14974 Filed 7-1-88; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

(ERA Docket No. 88-19-NG)

Hydro Engineering Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 6, 1988, of an application filed by Hydro Engineering, Inc. (Hydro Engineering), for authorization to import from TransCanada PipeLines Limited (TransCanada) up to 8,250 Mcf per day of natural gas over a 15-year term to fuel a combined cycle cogeneration facility to be owned and constructed by Ada Cogeneration at the Amway World Headquarters in Ada, Michigan.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable,

requests for additional procedures and written comments are to be filed no later than August 4, 1988.

FOR FURTHER INFORMATION CONTACT:

William L. Durbin, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9516.
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-6667

SUPPLEMENTARY INFORMATION: Hydro Engineering, a corporation organized under the laws of the State of Washington with its principal place of business in Tiburon, California, intends to import gas from TransCanada on behalf of Ada Cogeneration, a limited partnership and developer of the cogeneration facility, for use as the project's primary energy source. Hydro Engineering is a general partner in Ada Cogeneration.

According to the application, the gas would be imported at the point of interconnection between the existing gas transmission facilities of TransCanada and Great Lakes Transmission Company (Great Lakes) at or near Emerson, Manitoba. The gas would then be delivered to ANR Pipeline Company (ANR) at ANR's Crystal Falls, Michigan, interconnect with Great Lakes. ANR would deliver the gas to the facilities of Michigan Consolidated Gas Company (MichCon) at or near Grand Rapids, Michigan, from where the gas would be delivered to the site of the cogeneration facility. MichCon will construct approximately 7,200 feet of 8-inch pipeline necessary to deliver the gas to the cogeneration site or will upgrade the existing pipeline to the size. In addition, MichCon will construct approximately 1,000 feet of 8-inch service pipeline on the Amway World Headquarters site to the facility.

Construction of the cogeneration facility is scheduled to be completed by late 1989 or early 1990, at which time the initial delivery of natural gas would take place. The applicant estimates that the facility would begin taking the daily contract quantity on or before March 1, 1992. The project's gas-fired combustion turbine combined cycle cogeneration unit will burn No. 2 fuel oil for back-up purposes and is expected to produce up to 80,000 lb/hour of 100 psig process steam for use at Amway's office and manufacturing complex and 29.5 kW of electricity. All electricity produced by

the facility would be purchased by Consumers Power Company (Consumers), located in Jackson, Michigan, under a 35-year term power sales agreement dated June 29, 1987.

Hydro Engineering furnished with its application copies of a December 2, 1987, precedent agreement and a proposed gas purchase agreement with TransCanada. The initial term of the proposed purchase contract is 15 years after delivery begins with provision for contract extensions in five-year increments through the 35-year term of the power sales agreement between Ada Cogeneration and Consumers. The contract provides for a daily contract quantity (DCQ) of 8,250 Mcf of gas subject to certain adjustments. Hydro Engineering agrees to purchase from TransCanada all of the gas required to supply the project. The applicant may adjust the DCQ up or down (1) in any amount (not to exceed project requirements) prior to the initial delivery date, and (2) by 10 percent at any time within two years of the initial delivery date. This adjustment right is exercisable only once during each of the above periods.

The gas purchase contract establishes a two-part, demand-commodity border price. The demand component would be a monthly charge equal to the DCQ times the sum of the tolls for firm transportation of the gas on Canadian pipelines. The commodity charge would be comprised of a base charge (\$1.65 (U.S.) per MMBtu) multiplied by a price adjustment mechanism less a percentage of the demand charges. The price adjustment mechanism will reflect a change in the fuel and operating costs of existing and future coal-fired generating stations on Consumer's system.

In support of its application, Hydro Engineering states that by linking the price paid for the gas with the costs of producing alternate supplies of electricity on Consumer's system, its proposed arrangement should allow the imported gas and the price of electricity generated by the facility to remain cost competitive during the term of the gas purchase contract. Hydro Engineering notes that it sought to negotiate with numerous domestic producers gas supply terms comparable to those contained in the proposed gas purchase contract agreed to by TransCanada, but that the majority declined to support the long-term nature and the price adjustment mechanism provision in the contract. This, according to the application, demonstrates a regional need for the Canadian gas supplies.

With respect to the security of its supply source for the term of its contract, Hydro Engineering states that the natural gas supply to support this project is 26.4 Tcf of natural gas currently dedicated or otherwise available for delivery to TransCanada and/or its agent, Western Gas Marketing, Ltd. In addition, the gas purchase agreement provides that deliveries to the Ada Cogeneration project cannot be curtailed unless TransCanada similarly curtails existing domestic (Canadian) and foreign customers.

The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). To the extent there are any issues that are unique to cogeneration facilities, the ERA may consider these in making a public interest determination. Further, in accordance with the National Environmental Policy Act of 1969, no final decision will be issued in this proceeding until the DOE has considered the environmental effects of any such decision.

Parties that may oppose this application should comment in their responses on the issue of the competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., August 4, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

In an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 27, 1988.

Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.
[FR Doc. 88-15052 Filed 7-1-88; 8:45 am]
BILLING CODE 6450-01-M

(ERA Docket No. 88-02-NG)

Northern Minnesota Utilities; Authorization to Import and Export Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Northern Minnesota Utilities (NMU) blanket authorization to import and export natural gas from and to Canada. The order issued in ERA Docket No. 88-02-NG authorizes NMU to import, export and re-import up to 66.43 Bcf over a two-year period for system supply or sales in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 21, 1988.

Constance L. Buckley,
Director, Natural Gas Division, Office of
Fuels Programs, Economic Regulatory
Administration.
[FR Doc. 88-15053 Filed 7-1-88; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 8706-004]

Kittitas Reclamation District; Surrender of Preliminary Permit

June 29, 1988.

Take notice that Kittitas Reclamation District, Permittee for the Keechelus to Kachess Project No. 8706, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8706 was issued September 27, 1985, and would have expired August 31, 1988. The project would have been located on a proposed pipeline between Lake Keechelus and Lake Kachess in Kittitas County, Washington.

The Permittee filed the request on April 20, 1988, and the preliminary permit for Project No. 8706 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving

this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-14979 Filed 7-1-88; 8:45 am]

BILLING CODE 8717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3409-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT:
Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Administration and Resource Management

Title: Technical and Financial Reports Submitted in Accordance with Contracts Requirements. (EPA ICR #1039).

Abstract: The Government contractor's technical and financial reports are used by program officials to monitor their progress in providing required services. Not only is technical progress tracked, but current and future costs for completing the project are also tracked on a monthly basis.

Burden Statement: Public reporting burden for this collection of information is estimated to average 58.26 hours per response for government contractors. This estimate includes time for contractors to complete monthly reports. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503.

Respondents: Government Contractors.

Estimated No. of Respondents: 1,400.
Estimated Burden: 979,256 hours.
Frequency of Collection: Monthly.

Comments on the ICR should be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223); 401 M St., SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503.
(Telephone (202) 395-3084)

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1448, Survey of Indoor Air Quality Diagnostic and Mitigation Firms, was approved 5/31/88 (OMB #2060-0166; expires 10/31/88).

EPA ICR #1230, New Source Review and Prevention of Significant Deterioration Permitting Programs, was not approved.

Date: June 24, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-14986 Filed 7-1-88; 8:45 am]

BILLING CODE 6562-50-M

[FRL-3409-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT:
Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

National Pollutant Discharge Elimination System (NPDES)

Title: NPDES Discharge Monitoring Report (EPA ICR No. 0229)

Abstract: Any facility discharging wastewater must obtain a permit.

periodically monitor its discharges, and report to EPA or the state permitting authority. EPA and the states use the data to assess compliance with permit conditions.

Respondents: Businesses, publicly owned treatment works, and other facilities discharging wastewater.

Estimated No. of Respondents: 81,414.

Estimated Average Response Frequency: 9.9 per year.

Estimated Average Time Per Response: 18.1 hours.

Total Estimated Annual Burden: 14,551,229 hour.

Office of Solid Waste and Emergency Response

Title: Information Requirements for Hazardous Waste Storage and Treatment Facilities. (EPA ICR # 0614.)

Abstract: This clearance package provides burden hours associated with the information requirements for tank and container facilities. Under RCRA, each hazardous waste facility must apply for an operating permit. The required information is submitted voluntarily or when EPA calls in Part B of the RCRA permit application. The information will be used by EPA to determine eligibility for a RCRA permit.

Respondents: Owners and Operators of Hazardous Waste Facilities.

Estimated No. of Respondents: 196.

Estimated Average Time Per Response: 386 hours.

Frequency of Collection: Varies depending on term of permit.

Total Estimated Annual Burden: 75,625.

Send comments regarding the burden estimates, or any other aspects of these collections of information, including suggestions for reducing these burdens, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 2046

and

Timothy Hunt (for ICR # 0229) or Marcus Peacock (for ICR # 0614), Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084)

Date: June 24, 1988.

Paul Lapeley, Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-14989 Filed 7-1-88; 8:45 am]

BILLING CODE 5550-50-M

(FRL-3406-7)

Proposed Administrative Penalty Assessment and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalty assessments for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22, as amended on an interim final basis at 52 FR 30671 (August 17, 1987). The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules, as amended. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceedings for the assessment of penalties:

In the Matter of Floyd Spilman, dba Magna Plating Company 3063 N. California Avenue, Burbank, CA 91504; EPA Docket No. IX-FY88-31; filed on June 24, 1988, with Regional Hearing Clerk, U.S.E.P.A., Region 9, 215 Fremont Street, San Francisco, California, 94105, (415) 974-8038; proposed penalty, \$30,000, for violations of pretreatment categorical standards and local limits.

In the Matter of A-H Plating, Inc., 1837 Victory Place, Burbank, California, 91504, EPA Docket No. IX-FY88-32; filed on June 24, 1988, with Regional Hearing Clerk, U.S.E.P.A., Region 9, 215 Fremont Street, San Francisco, California, 94105, (415) 974-8038; proposed penalty, \$45,000, for violations of pretreatment categorical standards and local limits.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of

EPA's Consolidated Rules, review the complaints or other documents filed in these proceedings, comment upon the proposed assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

In order to provide opportunity for public comment, EPA will not issue a final order assessing a penalty in these proceedings prior to 30 days after publication of this notice.

Dated: June 24, 1988.

Keith Takata, Acting Director, Water Management Division, [FR Doc. 88-14990 Filed 7-1-88; 8:45 am]

BILLING CODE 5550-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

June 23, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Yvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3080-0104

Title: Temporary Permit to Operate a Part 90 Radio Station

Form No.: FCC 572

Action: Extension

Respondents: Individuals, State or local governments, Business (including

small business), and Non-profit institutions

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 17,023

Recordkeepers @ six minutes each

Needs and Uses: Applicants eligible to hold a radio station authorization in the Private Land Mobile Radio Service may use this form to acquire a temporary permit to operate their radio station during the processing of an application for license grant. The form is retained by the applicant and is valid for 180 days, and becomes a permanent part of the station's records.

OMB No.: 3060-0079

Title: Application to Renew or Modify an Amateur Club, RACES or Military Recreation Station License

Form No.: FCC 610-B

Action: Extension

Respondents: Non-profit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 1,000

Responses @ five minutes each

Needs and Uses: Filing is required to renew or modify the existing station license. The data is used by examiners to determine the applicant's continued eligibility.

OMB No.: 3080-0054

Title: Application for Exemption from Ship Radio Station Requirements

Form No.: FCC 820

Action: Extension

Respondents: Individuals and Business (including small business)

Frequency of Response: On occasion

Estimated Annual Burden: 100

Responses @ two hours each

Needs and Uses: Filing is required by applicants for exemption from radio provisions of statute, treaty or international agreement. The data is used by examiners to determine the applicant's qualifications for the requested exemption.

Federal Communications Commission.

H. Walker Foster III,

Acting Secretary.

[FR Doc. 88-14963 Filed 7-1-88; 8:45 am]

BILLING CODE 5712-01-M

Application; Allen County Broadcasting Ltd. Partnership, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM Docket No.	Applicant, city, and state	File No.	MM Docket No.
A. Allen County Broadcasting Limited Partnership; New Haven, IN.	BPH-870615MC	88-295	B. Georgia Family Radio Limited Partnership; Crawford, Georgia.	BPH-870506KB	
B. Joseph G. Parson; New Haven, IN.	BPH-870615MG		C. Crawford Broadcasting Company, Inc.; Crawford, Georgia.	BPH-870506KC	
C. Larko Communications, Inc.; New Haven, IN.	BPH-870615ML		D. Crawford FM Limited Partnership; Crawford, Georgia.	BPH-870506KD	
D. Frank Kovas; New Haven, IN.	BPH-870615NC				

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, D
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037, (Telephone (202) 857-3800).

W. Jan Gay, Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-14964 Filed 7-1-88; 8:45 am]

BILLING CODE 5712-01-M

Applications for Consolidated Hearing; Alfred A. Johnson et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM Docket No.
A. Alfred A. Johnson; Crawford, Georgia.	BPH-870505KA	88-294

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant

1. Comparative, All
2. Ultimate, All

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicant to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037, (Telephone (202) 857-3800).

W. Jan Gay, Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-14965 Filed 7-1-88; 8:45 am]

BILLING CODE 5712-01-M

(MM Docket No. 79-184; FCC 88-179)

Inquiry Into the Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet North Atlantic Telecommunications Needs During the 1991-2000 Period

AGENCY: Federal Communications Commission.

ACTION: Final rule of particular applicability.

SUMMARY: This rule establishes policies and guidelines for the construction and

use of cable and satellite facilities to meet demands for common carrier services in the North Atlantic Region during the 1991-2000 period. The Commission concluded that the United States International Service Carriers' (USISCs) plan to introduce a TAT-9 digital optical fiber cable system as early as 1991 with landing points in the United States, Canada, the United Kingdom, France and Spain, is in the public interest. In reaching this conclusion, the Commission found that introduction of the TAT-9 cable in 1991 will: (1) Meet the specific service requirements for digital cable facilities; (2) provide digital connectivity with the Mediterranean cable systems; (3) provide restoration for the optical fiber TAT-8 cable and other facilities while increasing both media and path diversity; (4) promote national security interests by satisfying the operational requirements of Department of Defense in the Atlantic and Mediterranean regions; (5) provide further technological innovations which should provide users with the widest range of service options; (6) further enhance intermodal and intramodal competition; and (7) promote international comity. The Commission concluded that there is insufficient information to reach any decision on the number and type of follow-on-satellites (FOS) to the INTELSAT VI series to be deployed in the North Atlantic Region during the planning period. Finally, the Commission decided that there was no present basis for consideration of private and cable satellite facilities in the North Atlantic planning process.

EFFECTIVE DATE: August 4, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jodi L. Cooper, International Facilities Division, Common Carrier Bureau, (202) 632-7265.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Common Carrier Docket No. 79-184, FCC 88-179, adopted May 18, 1988 and released June 24, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Commission initiated this proceeding on January 15, 1988, with the release of a Notice of Proposed Rulemaking (NPRM), published on January 27, 1988 (53 FR 2285), for the purpose of developing policies and guidelines for the authorization of cable and satellite facilities to meet demands for common carrier services in the North Atlantic Region during the 1991-2000 period. Comments in this proceeding were filed on February 10, 1988 and reply comments were filed on March 2, 1988.

2. In the NPRM, the Commission tentatively concluded that introduction of an optical digital fiber TAT-9 cable system as early as 1991 with landing points in the United States, Canada, the United Kingdom, France and Spain, is in the public interest. The Commission, after evaluating the Comsat alternative plans and the plan submitted by the USISCs, recommended that the plan submitted by the USISCs be accepted in order to best serve the public interest in meeting the telecommunications needs of the North Atlantic during the 1991-2000 time frame. In reaching this tentative conclusion the Commission applied criteria including demand flexibility, cost, service reliability, digital connectivity, furtherance of the Commission's pro-competitive policies, satisfaction of defense communications requirements and foreign correspondent acceptance.

3. The Commission requested additional information in the NPRM on the following issues: (1) The need for providing digital connectivity with the Mediterranean Region through TAT-9 rather than a TAT-8 spur; (2) whether authorized digital cable facilities (i.e. TAT-8) will provide sufficient demand flexibility to meet the USISCs' perceived demand for digital terrestrial services and the amount of capacity required to fill that demand; (3) the allocation of contract awards for construction of the various TAT-9 cable segments and how excess capacity, particularly on the U.S. end, will be owned; (4) whether DoD's circuit projections were included in the USISCs' circuit projections; and (5) information pertaining to costs. Additionally, the Commission specifically requested further comment from the USISCs on the issue of a Portugal landing point. Comments were received from the USISCs, Communications Satellite Corporation (Comsat), Private Transatlantic Telecommunications System, Inc. (PSI), Pan American Satellite (PAS), DoD and Submarine Lightwave Cable System (SLC).

4. The USISCs maintained that TAT-9 is the "core of the facilities plan" developed by them in conjunction with foreign correspondents for meeting the region's telecommunications needs for the 1991-2000 period. In addition to providing a necessary restoration alternative for the TAT-8 cable and other facilities, the USISCs asserted that TAT-9 provides other benefits such as increasing media and path diversity in the region, establishing digital connectivity with the Mediterranean Region, increasing intramodal and intermodal competition, promoting international comity and introducing the latest developments of fiber optic technology to the region. DoD supported installation of TAT-9, pointing out that its wideband digital requirements in the AOR, not reflected in the USISCs' forecast, could quadruple over the next five to ten years. The USISCs maintained that the DoD projections, when combined with their own forecasts, may exceed the capacity of TAT-8 early into the planning period. Therefore, they asserted that there is a need for an additional fiber optic cable in 1991.

5. Comsat did not oppose the tentative conclusion of the Commission to approve the introduction of the TAT-9 as early as 1991, assuming that the Commission also accepted the Agreement on circuit loading between Comsat and AT&T. (On April 14, 1988, the Commission released its Order ending circuit distribution guidelines on AT&T and approving an Agreement between AT&T and Comsat that was intended as a replacement for Commission imposed circuit distribution guidelines (3 FCC Rcd 2158, 53 FR 13270 (April 22, 1988)). PSI contended that the availability of the capacity of its PTAT-1 cable should be considered as an external marketplace reality and as an important consideration in the Commission's public policy determinations with respect to facility authorizations. Similarly, PAS argued that the Commission should consider its facilities in this proceeding stating that there are certain services that they would be able to offer carriers via the PAS satellite. Finally, SLC inquired about the design of the TAT-9 in addition to excess capacity and new services issues.

6. The Commission concluded that the USISCs' plan to introduce a TAT-9 optical fiber cable in the North Atlantic Region, linking the United States, Canada, the United Kingdom, France and Spain, is in the public interest. In reaching this conclusion the Commission found that introduction of the TAT-9

cable in 1991 will: (1) Meet the specific service requirements for digital cable facilities; (2) provide digital connectivity with the Mediterranean cable systems; (3) provide restoration of the optical fiber TAT-8 cable and other facilities, including the capability for self-restoration of the French leg of the TAT-8 cable; (4) increase media and path diversity; (5) satisfy the operational requirements of DoD in the Atlantic and Mediterranean regions; (6) provide further technological innovations which should provide users with the widest range of service options; and (7) promote international comity.

7. The Commission concluded that there is no present basis for consideration of private facilities in the North Atlantic planning process. Although these systems were intended to introduce a meaningful level of intramodal and intermodal competition with common carrier facilities, the Commission noted that these systems were authorized as alternatives to, and not substitutes for, common carrier traffic systems. The Commission also concluded that there is insufficient information before them to reach any conclusions as to the number and type of FOS to the INTELSAT VI series to be deployed during the planning period. However, the Commission expects that INTELSAT, in reaching a final decision on FOS, will take into account the amount of capacity that will exist in the region with the introduction of TAT-9 in 1991. Finally, with respect to a Portugal landing point, the Commission pointed out that Portugal announced its plans to construct a new digital cable system (TAGIDE-2) between Portugal and France which would allow connection of both TAT-8 and TAT-9 to Portugal via France. Therefore, the Commission concluded that the USISCs should not be required to pursue this matter further.

Ordering Clauses

8. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 201-205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 214, 303(r) and 403 (1978) that we adopt the following policy guidelines for the North Atlantic Region:

We find that a TAT-9 digital fiber optic submarine cable, as described in paragraph 3, with a ready for service date as early as 1991, is in the public interest.

9. It is further ordered that PSI's request to file a response to the reply comments of the USISCs is denied.

10. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605, it is ordered, that sections 603 and 604 of

the Act do not apply because the policy guidelines adopted herein is a rule of particular applicability and economic impact on AT&T and other members of USISCs which are not small entities, and is, hence, not subject to the Regulatory Flexibility Act.

11. It is further ordered that CC Docket 79-184 remains open for additional proceedings upon further order of the Commission.

12. It is further ordered that the Secretary of the Commission shall cause a summary of this Report and Order to be published in the Federal Register and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-14901 Filed 7-1-88; 8:45 am]

BILLING CODE 6715-01-8

FEDERAL HOME LOAN BANK BOARD

(No. AC-723; FHLBB No. 5691)

Charter Federal Savings Bank, Randolph, NJ; Final Action, Approval of Conversion Application

Date: June 27, 1988.

Notice is hereby given that on June 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Charter Federal Savings Bank, Randolph, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-15051 Filed 7-1-88; 8:45 am]

BILLING CODE 6720-01-8

Lynnwood Savings and Loan Association, Lynnwood, WA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C.

1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Lynnwood Savings and Loan Association, Lynnwood, Washington, on June 24, 1988.

Dated: June 28, 1988.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-15049 Filed 7-1-88; 8:45 am]

BILLING CODE 6720-01-8

Stanford Savings and Loan Association, Palo Alto, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Stanford Savings and Loan Association, Palo Alto, California, on June 24, 1988.

Dated: June 27, 1988.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-15050 Filed 7-1-88; 8:45 am]

BILLING CODE 6720-01-8

FEDERAL MARITIME COMMISSION

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on June 23, 1988, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201-200063-001

Title: NYSA-ILA Assessment Agreement.

Parties:

New York Shipping Association, Inc.
International Longshoremen's Association, AFL-CIO

Synopsis: The agreement provides that effective July 1, 1988, the assessment rate will be reduced from \$5.85 to \$2.85 per ton on cargo originating at or destined for North American points more than 200 miles from the Port of New York/New Jersey.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: June 28, 1988.

[FR Doc. 88-15036 Filed 7-1-88; 8:45 am]

BILLING CODE 8730-01-M

Ocean Freight Forwarder License; Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Ken Lehat & Associates, Inc., 5 Beekman Street, New York, New York 10038;

Officers: Kenneth Lehat, President, Esfir Lekho Lehat, Vice President

NIMA Transport, Inc., 7615 Cambridge, Houston, Texas 77054; Officers: Mardy Ann Schweitzer, President, Nilda Valles, Vice President/Secretary

C.F.K. Logistics Inc. A/K/A CFK Line, 345 W. 74th Place, Hialeah, Florida 33014; Officers: William E. Perry, President, Richard A. Cuneo, Sec., Mitchell E. Greene, V. Pres.

Global International Freight Forwarder, Inc., 4455 E. 10 Ave., Hialeah, Florida 33013; Officers: Antonio Machado, President/Dir., Nilda Machado, Vice President/Sec./Dir., Robert Villanueva, Senior Vice President

Techno Export Inc. dba Customhouse Broker & Freight Forwarder, 182-30 150th Road—Rm. 207A, Jamaica, N.Y. 11434; Officers: Pierre Gawi, President

United Express Freight Forwarding, Inc., 710 S. Old Ranch Road, Arcadia, CA 91006; Officers: Pauline Liu, President/Secretary, Frank K. Liu, Vice President/Treasurer

Norse Shipping Service, Inc., 681 Mill Street, Rahway, N.J. 07065; Officers: Trygve Bernhardsen, President, Barry Tien, Vice President

Andrew Buchanan Rogers, 7256 SPA Rd., North Charleston, S.C. 29419; Officer: Andrew Buchanan Rogers, Sole Proprietor

Blue Sky Forwarding Corp., 114 Liberty Street, Suite 702, New York, N.Y. 10006; Officer: Sunder Sakhrani, President

Fracht FWO Inc., 147-39 175th Street, Suite 204, Jamaica, N.Y. 11434; Officers: Ruedi Reisdorf, Director, Roland Meier, President/Director, Tahera Thaver, Vice President

J.H. World Express, Inc., 5310 W. 144th St., Lawndale, CA 90280; Officers: James Hsu, President, Mei-Sung Hsu, Secretary.

By the Federal Maritime Commission. Dated: June 28, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-15035 Filed 7-1-88; 8:45 am]

BILLING CODE 8730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060188 AND 062488

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Boral Limited, Warren Reed and Rita Sprinkel Living Trust, Fontana Paving, Inc.	88-1671	06/01/88
Procordia AB, American Brands, Inc., The American Tobacco Company	88-1500	06/03/88
ITT Corporation, BICC plc, Sealectro Corporation	88-1565	06/03/88
General Electric Company, Artra Group Incorporated, Ultrasonic, Inc.	88-1579	06/03/88
B/S Investments, The Allen Group Inc., The Allen Group Inc.	88-1601	06/03/88
Lux Service PLC, Campbell Automotive Group, Inc., Campbell Automotive Group, Inc.	88-1631	06/03/88
Johnson Group Cleaners PLC, Dryclean U.S.A., Inc., Dryclean U.S.A., Inc.	88-1654	06/06/88
MagneTek, Inc., The Ohio Transformer Corporation, Ohio Transformer Corporation	88-1657	06/06/88
Fritz R. Kundrun, Pohang Iron & Steel Co., Ltd., Tanoma Coal Company, Inc.	88-1665	06/06/88
Prime Motor Inns, Inc., EG Associates, a PA limited partnership [L.P.], Luxury Development Associates, L.P.	88-1673	06/06/88
Prime Motor Inns, Inc., ACP Budget Associates, L.P., Luxury Development Associates, L.P.	88-1674	06/06/88
Prime Motor Inns, Inc., 1985 ACP Budget Associates, L.P., 1985 Luxury Development Associates, L.P.	88-1675	06/06/88
Prime Motor Inns, Inc., 1986 ACP Budget Associates, L.P., 1986 Luxury Development Associates, L.P.	88-1676	06/06/88
Bechtel Investments, Inc., Transco Energy Company, Petro Source Corporation	88-1693	06/06/88
Daimler-Benz AG, Gould, Inc., Gould, Inc.	88-1697	06/06/88
LEP Group PLC, William R. Berkley, The National Guardian Corporation	88-1698	06/06/88
William J. Stoecker, CNW Corporation, Douglas Dynamics, Inc.	88-1716	06/06/88
Wind Point Partners II, L.P., George R. Lees, PBM Industries Inc.	88-1719	06/06/88
Leonard Tow, Voting Trust of the Providence Journal Company, Michiana Metronet, Inc., South Bend Metronet, Inc.	88-1581	06/07/88
Marvin Josephson, Josephson International Inc., Josephson International Inc.	88-1706	06/07/88
C. Itoh & Co., Ltd., Mazda Motor Corporation, Mazda Distributors (West), Inc.	88-1725	06/07/88
Sumitomo Corporation, C. Itoh & Co., Ltd., Mazda Motors of America (East), Inc.	88-1726	06/07/88
PacificCorp, Placid Oil Company, Blacklake Pipeline Company	88-1727	06/07/88
Sumitomo Corporation, Mazda Motor Corporation, Mazda Motors of America (East), Inc.	88-1730	06/07/88
Ford Motor Company, BDM International, Inc., BDM International, Inc.	88-1731	06/07/88
Ares-Serono S.A., The Proctor & Gamble Company, Baker Instruments Corporation	88-1734	06/07/88
C. Itoh & Co., Ltd., Sumitomo Corporation, Mazda Distributors (West), Inc.	88-1752	06/07/88
JWP Inc., University Industries, Inc., University Industries, Inc.	88-1623	06/08/88
Crompton & Knowles Corp., Ingredient Technology Corp., Ingredient Technology Corp.	88-1637	06/08/88
Siemens Aktiengesellschaft, Burdick Corporation, Burdick Corporation	88-1616	06/08/88
Pacific Enterprises, Pay'n Save, Inc., Pay'n Save, Inc.	88-1634	06/08/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060188 AND 062488—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Humana Inc., Maxicare Health Plans, Inc., Maxicare Kentucky, Inc. and Maxicare San Antonio, Inc.	88-1642	06/09/88
Allied-Lyons PLC, River Oaks Agricorp, River Oaks Agricorp	88-1661	06/09/88
Enron Corp., Tesoro Petroleum Corporation, Tesoro Crude Oil Company	88-1668	06/09/88
Del E. Webb Corporation, Nevada Casino Associates, Limited Partnership, Nevada Casino Associates, Limited Partnership	88-1686	06/09/88
CDI Corp., James Bronce Henderson Residuary Trust, Detroit Center Tool, Inc.	88-1692	06/09/88
Dr. Michael Otto, General Mills, Inc., Eddie Bauer, Inc.	88-1702	06/09/88
Edward P. Evans, Macmillan, Inc., Macmillan Information Company, Inc.	88-1710	06/09/88
All Nippon Airways Co., Ltd., La Compagnie Nationale Air France, Tag-Arcon-Pioneer, Ltd.	88-1717	06/09/88
Onset Corporation, Momentum Technologies, Inc., Momentum Technologies, Inc.	88-1729	06/09/88
Budget Rent a Car Corporation, Budget Rent-A-Car of Washington-Oregon, Inc., Budget Rent-A-Car of Washington-Oregon, Inc.	88-1564	06/10/88
Leonard Tow (Century Communications Corp.), Billy J. Parrott, Roanoke Valley Cellular Telephone Company	88-1567	06/10/88
Xerox Corporation, Datacopy Corporation, Datacopy Corporation	88-1624	06/10/88
Highness Kosen Co., Inc., Ronald L. Fenolio, Koko Marina Shopping Center	88-1740	06/10/88
Casual Corp., Oxford First Corp., Oxford First Corp.	88-1757	06/10/88
Harry Weinberg, Alexander & Baldwin, Inc., Alexander & Baldwin, Inc.	88-1778	06/10/88
GenCorp Inc., Bailey Corporation, Bailey Manufacturing Corporation	88-1625	06/14/88
Mr. Sumner M. Redstone, WMS Industries, Inc., WMS Industries, Inc.	88-1645	06/14/88
Sonac Inc., W.L. Suddeth, SMK Energy Corp. and SMK Resource Co.	88-1744	06/14/88
Sonac Inc., Michael H. Neufeld, SMK Energy Corporation and SMK Resource Co.	88-1747	06/14/88
Freepoint-McMoran Inc., Tesoro Petroleum Corporation, Tesoro Petroleum Corporation	88-1787	06/14/88
Herbert H. Haft, Kenneth M. Herman, Jumbo Food Stores, Inc.	88-1663	06/15/88
Daishowa Paper Mfg. Co., Ltd., Merrill & Ring Inc., Merrill & Ring Inc.	88-1737	06/15/88
Michael C. Cameron and Karen P. Cameron, W. Galen Weston, Peter J. Schmitt Co., Inc.	88-1774	06/15/88
Amerada Hess Corporation, Phillips Petroleum Company, Phillips 66 Natural Gas Company	88-1641	06/16/88
Daimler-Benz AG, AEG-Weatinghouse Transportsysteme Beteiligungsgesellschaft, AEG-Weatinghouse Transportsysteme Beteiligungsgesellschaft	88-1695	06/16/88
Westinghouse Electric Corporation, AEG-Weatinghouse Transportsysteme Beteiligungsgesellschaft, AEG-Weatinghouse Transportsysteme Beteiligungsgesellschaft	88-1696	06/16/88
Vodavi Technology Corporation, Isoetec Communications, Inc., Isoetec Communications, Inc.	88-1715	06/16/88
Forest Laboratories, Inc., E.I. du Pont de Nemours and Company, E.I. du Pont de Nemours and Company	88-1756	06/16/88
Hirschmann Foundation, PHH Group, Inc., PHH Executive Air Fleet, Inc.	88-1773	06/16/88
The Broken Hill Proprietary Company Limited, The Penn Central Corporation, Gulf Energy Holding Inc.	88-1681	06/17/88
R.T. Holdings S.A., Alan Bond, Amber Baking Inc.	88-1666	06/17/88
Wetterau Incorporated, Scott B. Laurans, Scott B. Laurans	88-1691	06/17/88
XTRA Corporation, Forsch Corporation, Evans Trailer Leasing Company	88-1714	06/17/88
Blockbuster Entertainment Corporation, Major Video Corp., Major Video Corp.	88-1768	06/17/88
Caterpillar Inc., Beirne Carter, Carter Machinery Company, Incorporated	88-1771	06/17/88
Royal Dutch Petroleum Company, T. E. Pawel, Concord Oil Company	88-1775	06/17/88
Beer Island Timberlands Co., L.P., Peter Kiewit Sons', Inc., KMI Continental Hardwood, Inc., KMI Continental	88-1791	06/17/88
RCS III, a limited partnership, IMS Holdings, IMS Holdings	88-1786	06/17/88
Sir Run Run Shaw, Grosvenor Kasnapell Associates, Grosvenor Kasnapell Associates	88-1799	06/17/88
Sy Syma, Stanley Blacker, Stanley Blacker, Inc.	88-1801	06/17/88
Beta Partners, Merlin J. Norton, Norton Enterprises, Inc.	88-1813	06/17/88
Merv Griffin, Donald Trump, Resorts International, Inc.	88-1828	06/17/88
Donald J. Trump, Merv Griffin, Resorts International, Inc.	88-1829	06/17/88
Merv Griffin, Donald J. Trump, Resorts International, Inc.	88-1855	06/17/88
The Walt Disney Company, GenCorp Inc., GTH-102, Inc.	88-1527	06/19/88
PacificCorp, James Hooker, Ceres Capital Corporation	88-1667	06/19/88
Dyckerhoff AG, Southdown, Inc., Moore McCormack Resources, Inc.	88-1776	06/20/88
McDonnell Douglas Corporation, USF&G Corporation, Capital Re Corporation	88-1816	06/20/88
AMR Corporation, Wings West Airlines, Inc., Wings West Airlines, Inc.	88-1819	06/20/88
International Paper Company, The Sealford Paper Company, The Sealford Paper Company	88-1820	06/20/88
AMR Corporation, Wings West Airlines, Inc., Wings West Airlines, Inc.	88-1822	06/20/88
THORN EMI PLC, The Drexel Burnham Lambert Group Inc., FTS Incorporated	88-1835	06/20/88
Daniel J. Sullivan, Jack U. Dalton, Kolpak Holdings, Inc.	88-1841	06/20/88
Daniel J. Sullivan, Hisham Aram, Holpak Holdings, Inc.	88-1842	06/20/88
Leas Slegler Holdings Corp., Clarity Holdings Corp., AFG Auto Glass, Inc.	88-1699	06/21/88
Fleming Companies, Inc., Bassamer Securities Corporation, American Foodservice Supply, Inc.	88-1720	06/21/88
PepsiCo, Inc., Pepsi Cola Bottling Company of Annapolis, Inc., Pepsi Cola Bottling Company of Annapolis, Inc.	88-1733	06/21/88
Sherman C. Vogel, Ezra and Cashe Zikher, c/o Union Holdings, Inc., Union L. P. Gas System, Inc.	88-1739	06/21/88
The Renco Group, Inc., The LTV Corporation, LTV Steel Corporation	88-1754	06/21/88
Fleming Companies, Inc., Pitco Associates L.P., Malone & Hyde, Inc.	88-1764	06/21/88
Mobil Corporation, Atlantic Richfield Company, Atlantic Richfield Company	88-1782	06/21/88
Atlantic Richfield Company, Mobil Corporation, Mobil Producing Texas & New Mexico, Inc.	88-1783	06/21/88
Gulf Western Inc., Aetna Life and Casualty, Aetna Life and Casualty	88-1732	06/22/88
Fiserv, Inc., GLENFED, Inc., GESCO Corporation	88-1749	06/22/88
Arabian Investment Banking Corporation (INVESTCORP) E.C., E.P. Limited, BVL International Limited	88-1751	06/22/88
Nitto Electric Industrial Co., Ltd., Avery International Corporation, Permace	88-1763	06/22/88
Horseshoe Club Operating Company, Del Webb Corporation, Del Webb Corporation	88-1815	06/22/88
Counsel Corporation, Wessex Corporation, Wessex Corporation	88-1833	06/22/88
SSM Health Care, Sisters of St. Francis, Mt. Vernon, Ill., Inc., Sisters of St. Francis, Mt. Vernon, Ill., Inc.	88-1694	06/23/88
Harry S. Fleming, Wornald International Limited, Wornald Security, Inc.	88-1762	06/23/88
Evangelical Health Systems Corporation, South Chicago Health Care Corporation, South Chicago Health Care Corporation	88-1767	06/23/88
Draka Holding B.V., BIW Cable Systems, Inc., BIW Cable Systems, Inc.	88-1800	06/23/88
Dunavant Enterprises, Inc., Producers Holding Company, Producers Holding Company	88-1708	06/24/88
The First Women's Bank, The Chase Manhattan Corporation, The Chase Manhattan Bank, N.A.	88-1772	06/24/88
Baker Handels-Gesellschaft AG, Johnny Appleseed's, Inc., Johnny Appleseed's, Inc.	88-1785	06/24/88
Klaus J. Jacobs, Rowntree PLC, Rowntree PLC	88-1817	06/24/88
The Australian Gas Light Company, Alcorn International, Inc., Alcorn International, Inc.	88-1865	06/24/88

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 060188 AND 062488—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
OXOCO, Inc., Amfac, Inc., Amfac Distribution Corporation	88-1869	06/24/88
RCK Holdings, Ltd., Jacob Krauszer, Dairy Stores, Inc.	88-1888	06/24/88
Bertram R. Firestone, The McKnight Foundation, Calder Race Course, Inc.	88-1804	06/24/88

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact
Representative, Premerger Notification
Office, Bureau of Competition, Room
301, Federal Trade Commission,
Washington, DC 20580, (202) 328-3100.

By direction of the Commission.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 88- Filed 7-1-88; 8:45 am]

BILLING CODE 6750-01-M

**GENERAL SERVICES
ADMINISTRATION****Advisory Committee on the FTS2000
Procurement; Closed Meeting**

Notice is hereby given that the General Services Administration (GSA) Advisory Committee on the FTS2000 Procurement will meet on July 15, 1988, from 9:00 a.m. to 3:30 p.m., in the board room of the MITRE Corporation, 7525 Colshire Drive, McLean, VA 22109. The agenda will relate to (1) competitive range recommendations; (2) current status including the results of the operational capability demonstrations; and (3) negotiation issues and strategy.

The entire meeting will be closed to the public because procurement sensitive matters, especially the initial evaluations of vendor proposals and the negotiation issues and strategy will be discussed. The exemptions for closing the meeting are cited in 5 U.S.C. 552b(c)(4) and (9)(B) (Government in the Sunshine Act).

Questions regarding this meeting should be directed to John J. Landers (202) 523-5308.

Dated: June 22, 1988.

John J. Landers,
Director, Office of Administration,
Information Resources Management Service.
[FR Doc. 88-14040 Filed 7-1-88; 8:45 am]

BILLING CODE 4820-01-M

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Food and Drug Administration**

[Docket No. 88N-0248]

**Drug Export; Platinol AQ Injection 1
mg/1 ml (Cisplatin)**

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bristol-Myers Co. has filed an application requesting approval for the export of the human drug Platinol AQ injection one milligram per one milliliter (1 mg/1 ml) (Cisplatin) to Canada. **ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public

participation in its review of the application. To meet this requirement, the agency is providing notice that Bristol-Myers Co., 345 Park Ave., New York, NY 10154, has filed an application requesting approval for the export of the drug Platinol AQ injection 1 mg/1 mL (Cisplatin), to Canada. The product is for human use in the treatment of cancer. The application was received and filed in the Center for Drug Evaluation and Research on June 15, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 15, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 16, 1988.

Samuel R. Young,
Deputy Director, Office of Compliance,
Center for Drug Evaluation and Research.
[FR Doc. 88-15006 Filed 7-1-88; 8:45 am]
BILLING CODE 4160-01-M

National Institutes of Health**National Institute of Environmental
Health Sciences; Environmental Health
Sciences Review Committee; Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 25-28, in Building 18

Conference Room, North Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on July 25 from 9 a.m. to approximately 10:30 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 25, from 10:30 a.m. to adjournment on July 26, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun or Carol Shreffler, Executive Secretaries; Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919-541-7826), will provide summaries of meetings and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: June 24, 1988.

Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 88-15000 Filed 7-1-88; 8:45 am]
BILLING CODE 4160-01-M

Public Health Service**National Toxicology Program;
Availability of Technical Report on
Toxicology and Carcinogenesis
Studies of 2-Amino-5-Nitrophenol**

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 2-amino-5-nitrophenol, a coloring component in semi-permanent hair dyes that produces red and gold/blond shades. 2-Amino-5-nitrophenol has also been used in the manufacture of C.I. Solvent Red 8, an

azo dye for synthetic resins, lacquers, and wood stains.

Two-year toxicology and carcinogenesis studies were conducted by administering 2-amino-5-nitrophenol (98% pure) by gavage in corn oil 5 days per week to groups of F344/N rats and B6C3F₁ mice of each sex in 16-day, 13-week and 2-year studies. In the 2-year studies, male and female rats were given doses of 0, 100, or 200 mg/kg and male and female mice were given doses of 0, 400, or 800 mg/kg.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity¹ for male F344/N rats that received 100 mg/kg 2-amino-5-nitrophenol, as shown by the increased incidence of acinar cell adenomas of the pancreas. Reduced survival of male F344/N rats that received 200 mg/kg decreased the sensitivity of this group for detecting a carcinogenic response. There was no evidence of carcinogenic activity for female rats that received 100 or 200 mg/kg per day. Marginally increased incidences of preputial or clitoral gland adenomas or carcinomas (combined) occurred in male and female F344/N rats administered 200 mg/kg 2-amino-5-nitrophenol. There was no evidence of carcinogenic activity for B6C3F₁ mice that received 400 mg/kg 2-amino-5-nitrophenol; reduced survival of B6C3F₁ mice that received 800 mg/kg caused this group to be considered inadequate for detecting a carcinogenic response.

The Study Scientists for this bioassay is Dr. R. Irwin. Questions or comments about the contents of this technical report should be directed to Dr. Irwin at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3340; FTS: 629-3340.

Copies of Toxicology and Carcinogenesis Studies of 2-Amino-5-Nitrophenol in F344/N Rats and B6C3F₁ Mice (Gavage Studies) (TR 334) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541-3991; FTS: 629-3991.

Dated: June 22, 1988.

David P. Rall,
Director.
[FR Doc. 88-15001 Filed 7-1-88; 8:45 am]
BILLING CODE 4160-01-M

¹ The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effect ("no evidence"); and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

**National Toxicology Program;
Availability of Technical Report on
Toxicology and Carcinogenesis
Studies of 1,2-Epoxybutane**

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of 1,2-epoxybutane, used primarily as a stabilizer in chlorinated hydrocarbon solvents (e.g., 1,1,1-trichloroethane, trichloroethylene, and dichloromethane).

Toxicology and carcinogenesis studies of 1,2-epoxybutane were conducted by exposing groups of 50 animals per species and sex to the chemical by inhalation 6 hours per day, 5 days per week. Rats were exposed at concentrations of 0, 200, or 400 ppm for 103 weeks and mice at 0, 50, or 100 ppm for 102 weeks.

Under the conditions of these 2-year inhalation studies, there were clear evidence of carcinogenic activity¹ of 1,2-epoxybutane for male F344/N rats, as shown by an increased incidence of papillary adenomas of the nasal cavity, alveolar/bronchiolar carcinomas, and alveolar/bronchiolar adenomas or carcinomas (combined). There was equivocal evidence of carcinogenic activity for female F344/N rats, as shown by the presence of papillary adenomas of the nasal cavity. There was no evidence of carcinogenic activity for male or female B6C3F₁ mice exposed at 50 or 100 ppm. 1,2-Epoxybutane exposure was associated with adenomatous hyperplasia and inflammatory lesions of the nasal cavity in rats and inflammatory lesions of the nasal cavity in mice.

The study scientist for this bioassay is Dr. June Dunnick. Questions or comments about the contents of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-4811; FTS: 629-4811.

Copies of Toxicology and Carcinogenesis Studies of 1,2-Epoxybutane in F344/N Rats and B6C3F₁ Mice (Inhalation Studies) (TR 329) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research

¹ The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effect ("no evidence"); and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Triangle Park, NC 27709. Telephone: (919) 541-3991; FTS: 629-3991.

Dated: June 22, 1988.
David P. Rall,
Director.
[FR Doc. 88-15002 Filed 7-1-88; 8:45 am]
BILLING CODE 4140-01-2

**National Toxicology Program;
Availability of Technical Report on
Toxicology and Carcinogenesis
Studies of Trichloroethylene**

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of trichloroethylene, an industrial solvent used primarily for vapor degreasing and cold cleaning of fabricated metal parts.

Toxicology and carcinogenesis studies were conducted by administering trichloroethylene (more than 99% pure, stabilized with 8 ppm diisopropylamine) in corn oil by gavage at doses of 0, 500, or 1,000 mg/kg per day, 5 days per week, for 103 weeks to groups of 50 male and 50 female ACI, August, Marshall, and Osborne-Mendel rats.

Under the conditions of these 2-year gavage studies of trichloroethylene in male and female ACI, August, Marshall, and Osborne-Mendel rats, trichloroethylene administration caused renal tubular cell cytomegaly and toxic nephropathy in both sexes of the four strains. However, these are considered to be inadequate studies of carcinogenic activity¹ because of chemically induced toxicity, reduced survival, and deficiencies in the conduct of the studies. Despite these limitations, tubular cell neoplasms of the kidney were observed in rats exposed to trichloroethylene and interstitial cell neoplasms of the testis were observed in Marshall rats exposed to trichloroethylene.

Copies of Toxicology and Carcinogenesis Studies of Trichloroethylene in Four Strains of Rats (ACI, August, Marshall, Osborne-Mendel) (Cavage Studies) (TR 273) are available without charge from NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park,

¹ The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments which cannot be evaluated because of major flaws ("inadequate study").

NC 27709. Telephone: (919) 541-3991; FTS: 629-3991.

Date: June 22, 1988.
David P. Rall,
Director.
[FR Doc. 88-15003 Filed 7-1-88; 8:45 am]
BILLING CODE 4140-01-2

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**Seminole Indian Land Claims
Settlement Act of 1987; Validation of
Settlement Agreement**

June 27, 1988

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of findings and
publication of settlement agreement.

SUMMARY: Notice is hereby given that the events enumerated in section 4(b) of the Seminole Indian Land Claims Settlement Act of 1987, Pub. L. 100-228, have occurred. This notice, and the publication of the Settlement Agreement included herein, are required by section 5(a)(2) of the Act.

DATE: Any action by an "Indian, Indian nation, or tribe of Indians, other than the Seminole Tribe * * *," whose claims are extinguished hereby, will be barred unless filed in the United States District Court for the Southern District of Florida by July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Stan Webb, Bureau of Indian Affairs, Division of Real Estate Services, 1951 Constitution Avenue NW., Washington, DC 20245. Telephone: (202) 343-2951.

SUPPLEMENTARY INFORMATION: The Seminole Indian Land Claims Settlement Act of 1987, Pub. L. 100-228, was enacted to implement the following Settlement Agreement, which was executed on October 29, 1987, by representatives of the Seminole Tribe of Indians of Florida, the State of Florida, and the South Florida Water Management District.

Settlement Agreement

It is hereby stipulated and agreed between the parties that the above-entitled case shall be settled in accordance with the terms of this Settlement Agreement (hereafter referred to as the "Agreement") and upon its approval by the Court. For the purpose of this Agreement, the parties shall be named and defined as follows:

Plaintiff, the Seminole Tribe of Indians of Florida (hereafter referred to as the "Tribe") is recognized by the State of Florida, pursuant to Chapter 285, Florida Statutes, and is an Indian tribe recognized by the United States and organized under the Indian Reorganization Act of 1934, 25 U.S.C. 476,

with a constitution and bylaws approved by the Secretary of the Interior pursuant to that Act. The Tribe approves this Agreement through its duly recognized and authorized Tribal Council, and its approval of this Agreement will bind the Tribe and any predecessor or successor in interest and all members thereof.

The State of Florida (hereafter referred to as the "State") approves this Agreement through the Governor and Cabinet as the Board of Trustees of the International Improvement Trust Fund and as head of the Department of Natural Resources.

The South Florida Water Management District (hereafter referred to as the "District") approves this Agreement through action by its Governing Board.

The term "lands or natural resources," as used in this Agreement, shall mean any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

Witnesseth

Whereas, the parties recognize that a settlement of this litigation could not have been reached unless the Agreement included an extinguishment of any and all outstanding or potential claims the Tribe might have against the State, with the exception of the right-of-way claim involving Highway 441 across the Seminole Hollywood (Dania) Reservation, which may have arisen at anytime prior to the effective date of this Agreement; and

Whereas, the parties further recognize that implementation of this settlement will require action by the Congress of the United States and the Legislature of the State; and

Whereas, it is the intent of this Agreement to resolve all outstanding disputes and differences between the State, the District and the Tribe, and, in particular, to extinguish all claims presently in existence or arising out of any previous actions, inactions, or duties of the State or the District, with the exception of the Highway 441 claim mentioned above, so that the future relations between the State, its citizens, the District and the Tribe will be one of harmony, cooperation, friendship and peace; and

Whereas, the parties further recognize that if, for any reason, the Agreement fails to become final and binding, the Tribe shall have the right to reassert its land claims, to renew its objection to the Modified Hendry County Plan, to again enjoy full use and possession of the approximately six sections of Seminole State Reservation land north of the southern boundary of the L-4 works and the approximately 14,720 acres within Conservation Area 3A, and further that the State and the District shall retain all their defenses in the lawsuit *Seminole Tribe of Indians of Florida v. State of Florida, et al.*, described herein below.

Now therefore, the Seminole Tribe, the State of Florida, and the South Florida Water Management District stipulate and agree as follows:

1. The parties agree that upon the effective date of this Agreement, the lawsuit filed in 1978 by the Tribe, styled *Seminole Tribe of Indians of Florida v. State of Florida, et al.*, Case No. 78-6118-CIV.-NCR, shall be dismissed with prejudice to the Plaintiff upon the joint motion of the parties hereto. No appeal or review is to be sought by any of the parties.

2. **Effective Date.** This Agreement shall not become final and shall be without any binding force or effect until:

a. The Tribe and the District have executed the Escrow Agreement attached hereto as Exhibit A in order to place \$4,500,000 in funds into escrow.

b. The following two events have occurred:

(1) The Tribe has executed the sales agreement attached hereto as Exhibit B, offering to sell to the State all of its state reservation lands north of the south boundary of the L-4 works (approximately six sections). The sale price shall be either two million dollars (\$2,000,000); or, if these lands are determined to contain more than 3,840 acres, the price shall be the greater of two million dollars (\$2,000,000) or the average of the State's land appraisal price computed on a per acre basis multiplied by the number of acres in the approximate six sections described hereinbelow at paragraph 4(d); and

(2) The State has accepted the offer pursuant to the terms set out in the sales agreement.

c. The United States Congress enacts appropriate legislation, which: (1) Approves the conveyances to be made or recognized by the Tribe pursuant to this Settlement Agreement; (2) provides for the extinguishment of the claims of the Tribe to lands or natural resources in Florida, as specified in this Agreement; (3) approves the water rights compact between the Tribe, the State and the District with respect to Seminole tribal water rights, surface water management and related developmental and environmental considerations to be attached hereto as Exhibit C; and (4) directs the transfer to the United States in trust for the Tribe as an Indian Reservation those portions of the Seminole Reservation established under the provisions of Chapter 285, Florida Statutes, remaining in the Tribe's beneficial ownership after implementation of this Agreement. A draft of this proposed federal legislation which reflects the intentions of the parties is to be attached hereto as Exhibit D. It is understood that the provisions of the draft bill, reflecting the regulatory concerns of the State and the District, shall be part of any transfer of Seminole tribal lands into federal trust, unless otherwise agreed by the parties.

d. The State enacts appropriate legislation providing for the approval and implementation of this Agreement. A draft of this proposed state legislation, which reflects the intentions of the parties, is attached hereto as Exhibit E.

e. The Tribe, the District and the State enter into a Water Rights Compact (Exhibit C) which: (1) Commits the Tribe to follow the essential principles of the state water rights system as presently codified in Chapter 373, Florida Statutes and the rules of the District; (2) creates alternative water rights in the

Tribe as described in said Water Rights Compact, replacing the Federal water rights presently asserted by the Tribe; (3) provides a mechanism for resolving conflicts between the Tribe, the State and other water users without litigation; (4) allows the Tribe to engage in reasonable development of its federal reservations and avoids penalizing the Tribe for not heretofore participating in the State's permit system codified in Chapter 373, Florida Statutes; and (5) provides essential protection for endangered wetlands within reservation boundaries.

This Agreement shall become effective as of the signing of the Agreement by the last of the parties to execute upon the effective date of the above-described federal legislation, the effective date of the above-described state legislation, the effective date of the above-described Water Rights Compact or the date of the approval of this Agreement and dismissal of the lawsuit described in paragraph 1 by the Court, whichever last occurs.

3. **Cooperation of Parties.** The parties agree to cooperate fully in requesting and supporting passage by the United States Congress and the Florida Legislature of the statutes described in paragraph 2, above.

The parties also agree that further proceedings in this lawsuit shall be stayed while the settlement is pending, provided, however, that this stay shall terminate on December 31, 1987, or earlier if the Court determines that favorable action by either Congress or the Legislature within a reasonable time does not seem likely.

4. **Commitments of the Tribe.** The Tribe agrees:

a. To the extinguishment of any right, title, interest, or claim the Tribe may now possess in any public or private lands or natural resources in Florida, other than hunting, fishing, trapping and frogging rights conferred by state law, and certain "excepted interests" consisting of:

(1) The Seminole West Big Cypress, Brighton and Hollywood (Dania) Federal Reservations, the lands of which are held in trust for the Tribe by the United States, as recognized and described in the records of the Bureau of Indian Affairs, United States Department of the Interior. It is understood that there are minor problems as to the exact status of title of certain tribal lands within the aforementioned Seminole Federal Reservations. Nothing in this Agreement is intended to alter the status of title of any lands within or adjacent to said reservations; (2) all lands purchased by or donated to the Tribe which are held in fee by the Tribe or a corporation wholly owned by the Tribe or in trust by the United States for the benefit of the Tribe; (3) those portions of the state reservation established under the provisions of Chapter 285, Florida Statutes, which are to be transferred to the United States in trust for the Tribe as an Indian Reservation pursuant to this Agreement; (4) rights recognized in the Tribe in the Everglades National Park pursuant to 16 U.S.C. 410(b), and in the Big Cypress National Preserve pursuant to 16 U.S.C. 699(j)(k) and in the Big Cypress area pursuant to Section 380.055 Florida Statutes; and (5) the non-exclusive right of the Tribe to hunt, trap, fish and frog in those portions of

the Seminole State Reservation being transferred to the State under subsection e of this paragraph. The Tribe also agrees to the extinguishment of any and all claims which the tribe may have other than the foregoing "excepted interests" involving lands or natural resources in the State arising at any time prior to the effective date of this Agreement; provided, however, that nothing in this Agreement or otherwise shall be construed as extinguishing any right, title, interest, or claim to lands or natural resources in the State based on use and occupancy or acquired under federal or state law by any individual Indian which is not derived from, or through the Tribe, its predecessor or predecessors in interest, or some other American Indian Tribe. Further, that nothing herein shall be construed to limit the right of the Tribe to convey interests in any of the excepted lands listed in this subsection to tribal members. The rights, titles, interests and claims outside the "excepted interests" with are being extinguished or waived by the Tribe; include, but are not limited to:

(i) Any and all claims the Tribe might have to any public or private lands or natural resources in Florida; such as claims or rights based on executive order or recognized title, including but not limited to:

(ii) Any and all other claims the Tribe might have to any public or private lands or natural resources in Florida; such as claims or rights based on executive order or recognized title, including but not limited to: (a) Any claims the Tribe might have to all or any part of the approximately five million (5,000,000) acres of lands allegedly set aside in Florida for use and benefit of the Seminole Indian Nation, including the Tribe, during the period 1839-1845, or at any other date, by Executive Order of the United States Government, commonly known as the "Macomb" Reservation Area; (b) any claim based upon the grant and withdrawal of title to the State Indian Reservation in Monroe County, specifically returned to the State by Section 285.06, Florida Statutes; and (c) any claim based upon the alleged grant of a license to Seminole Indians residing in Florida by the Board of Commissioners of State Institutions on April 5, 1960;

b. To the extinguishment of any and all other claims, without regard to the "excepted interests" specified above in paragraph 4a, related to the following matters:

(1) Any and all claims arising out of any alleged breach of fiduciary relationship between the Tribe and the State, acting in a capacity as trustee for the Tribe, arising out of any actions or inactions by the State prior to the date this Agreement is executed by the parties;

(2) Any and all claims against the State, the District or its predecessor, the Central and South Florida Flood Control District, for trespass damages or use and occupancy of any lands or natural resources in the State occurring prior to the effective date of this Agreement with the exception of the Highway 441 right-of-way claim mentioned above;

(3) Any and all other claims against the State and the District, or its predecessor, the Central and South Florida Flood Control

District, arising out of any actions or inactions by the State or the District in regulating the use, flow, management, or storage of water, including the construction of canals and levees, at any time prior to the effective date of this Agreement;

(4) Any and all other claims by the Tribe against the State and the District related to any of the matters listed in this paragraph 4b and in paragraphs 4a(1) and (2) above, or arising out of any actions or inactions whatsoever by the State, or the District, including but not limited to real property, tort, tax, contract, or constitutional claims prior to the date this Agreement is executed by the parties with the exception of the Highway 441 right-of-way claim mentioned above.

c. To withdraw its pending request for a public hearing by the Corps of Engineers on the Modified Hendry County Plan and cease all opposition to any approval required thereof, including but not limited to approval by the Corps of Engineers.

d. Take necessary steps for conveyance to the State of the Tribe's lands in Palm Beach and Broward Counties, north of the south boundary of the L-4 works. The State shall convey an easement to the District for maintenance of its presently constructed project works in Sections 7, 8 and 9, Township 46 South, Range 35 East, Broward County, Florida. The State shall also convey an easement to the Tribe giving the Tribe full rights of access to the lands the Tribe is retaining from the East Big Cypress Reservation and for access to the lands in Conservation Area 3A, which are being transferred to the State but where the Tribe has reserved hunting, fishing, trapping and frogging rights.

e. To take necessary steps to transfer to the State full fee title in the approximately 14,720 acres of that portion of the state reservation east of the western boundary of the L-28 works and south of the southern boundary of the L-4 works, with the Tribe to retain non-exclusive rights to hunt, fish, trap and frog in said area. The State, acting by and through the Trustees of the Internal Improvement Trust Fund, upon approval by Congress of transfer of lands from the Tribe, shall convey an easement (hereinafter "the flowage easement") to the District for the flowage and storage of water and all rights necessary for the conduct of the federally authorized project for central and south Florida and to fulfill the statutory obligations of the District pursuant to the laws and rules of the State as they presently exist or as they may exist in the future. A copy of the transfer documents (deeds) are to be attached hereto as Exhibit F.

5. *Commitments of the State and the District.* The State and the District agree:

a. Subject to prior compliance with the provisions of Chapter 253, Florida Statutes, to pay the Tribe the sum of six million five hundred thousand dollars (\$6,500,000) and provide five hundred thousand dollars (\$500,000) in services by the District for water project design and construction, as requested by the Tribe. The District promises to use its best efforts to obtain matching federal funds for this project.

b. That the amount of six million five hundred thousand dollars (\$6,500,000), to be

paid to the Tribe by the State and the District, shall be paid as follows:

(1) Subject to prior compliance with Chapter 253, Florida Statutes, the State shall, for the purchase of the approximately six sections of lands north of the south boundary of the L-4 works in Palm Beach and Broward Counties, pay the Tribe either two million dollars (\$2,000,000) or, if the lands constitute more than 3,040 acres, the greater of two million dollars (\$2,000,000) or the average of the State's land appraisal price computed on a per acre basis multiplied by the number of acres in the approximate six sections.

(2) The and consisting of 14,720 acres lying within Water Conservation Area 3 shall be transferred to the State in fee for the sum of four million five hundred thousand dollars (\$4,500,000) with one million dollars (\$1,000,000) being attributable to the flowage easement and three million five hundred thousand dollars (\$3,500,000) attributable to the fee title subject to the flowage easement.

(a) The one million dollars (\$1,000,000) for the flowage easement shall be paid by the State and the District with each contributing one-half of the amount, or \$500,000 each, provided that the District shall pay the entire sum initially and shall be reimbursed by the State.

(b) The fee simple title (subject to the flowage easement) in that portion of the Seminole Reservation within Water Conservation Area 3, consisting of approximately 14,720 acres will be transferred to the State Trustees of the Internal Improvement Trust Fund (TIIF) for the sum of three million five hundred thousand dollars (\$3,500,000). The State shall, immediately upon such transfer, convey a perpetual easement to the District, which shall include sufficient rights for the District to construct, operate and maintain the federally authorized project and fulfill its obligations pursuant to Chapter 373, Florida Statutes, and which shall be sufficient to prevent and restrict any and all encroachment or uses of the area which may be in conflict with the maintenance of the area as a water conservation area. This amount will be paid by the State and the District with each contributing one-half of the amount, or one million seven hundred fifty thousand dollars (\$1,750,000) each; provided, however, that (i) initially the District shall provide the entire sum; (ii) the District shall be reimbursed by the State in the sum of one-half of the actual appraised value of the remaining fee simple interest in the event that the required appraisals do not support the intended contribution of one million seven hundred fifty thousand dollars (\$1,750,000). The State shall use its best efforts to place the State's share of this acquisition on the CARL fund list in order to complete the acquisition as soon as possible; and (iii) if the State Department of Natural Resources (DNR) cannot predict the listing and acquisition of this interest prior to the legislative session of 1988, the DNR and the Attorney General's Office (AGO) will request the funds from the Florida Legislature. The amount sought will be the lesser of one-half of the appraised value or one million seven hundred and fifty thousand dollars (\$1,750,000).

(c) The District shall provide water management services in aid of the development of Seminole Indian lands on the remaining reservation west of Levee 28, including West Big Cypress and/or at the Brighton Reservation in the value of no less than five hundred thousand dollars (\$500,000). This amount shall be estimated by the District, with the concurrence of the Tribe, by evaluating the actual cost of the work to be done. The District will work with the Tribe and the Bureau of Indian Affairs in an effort to procure matching funds from the Federal government of a nature and from sources to be determined. The parties to this Agreement agree to use best efforts to resolve any dispute arising with respect to implementation of this subsection. Disputes under this subsection which cannot be resolved by informal means will be submitted to compulsory arbitration, with a panel of five arbitrators. The Tribe shall choose one arbitrator, the State shall choose one arbitrator, the District shall choose one arbitrator, and the fourth and fifth arbitrators shall be chosen according to the rules of the American Arbitration Association.

c. To waive any and all claims for offsets, including but not limited to tort or contract claims, which were or could have been asserted against the Tribe by the District, or by the Trustees of the Internal Improvement Trust Fund or any other agency of the State prior to the date this Agreement is executed by the parties.

d. To release any and all interest in the three sections of land located in the state reservation in Broward County and subject to the provisions of the August 8, 1950 Dedication Deed from the Board of Commissioners of State Institutions to the Central and South Florida Flood Control District but not needed for conservation purposes, said lands described in Sections 7, 8 and 9, Township 46 South, Range 35 East, Broward County, Florida.

e. The Trustees of the Internal Improvement Trust Fund shall execute a dedication deed valid under Chapter 265, Florida Statutes, conveying in its entirety the State's interest in the approximately fifteen sections of the state reservation west of the western boundary of the L-28 works and south of the southern boundary of the L-4 works, said lands being situated in Township 46 south, Range 35 east, lying and being in Broward County, Florida. Said conveyance shall be to the United States in trust, and as a Reservation, for the Tribe and shall be subject to the restrictions applicable thereto found in the federal legislation (Exhibit D) the State Legislation which authorizes the Compact (Exhibit E) as well as Fla. Stat. Ann. Section 285.16.

6. The State and the District agree to use their best efforts to obtain suitable land to be made available to the Tribe which is equal in value to some or all of the compensation to be paid to the Tribe under paragraph 5 hereof. It is understood that if such land cannot be found, then the 8.5 million dollar fund provided in paragraph 5 hereof, shall be earmarked for the purchase of land, if possible, by the Tribe is understood that the Tribe will not exercise the option specified

herein unless there is a subsequent agreement between the State and the Tribe that said lands shall be conveyed by the State to the United States in trust for the Tribe as an Indian Reservation pursuant to the terms embodied in the federal legislation, Exhibit D. If the Tribe exercises the option to accept compensation in the form of land, the monetary payment to the Tribe shall be reduced by the appraised value of the lands actually transferred in trust to the United States for the benefit of the Tribe.

When the Settlement Agreement is approved by the United States District Court for the Southern District of Florida, the lawsuit entitled *Seminole Tribe of Indians of Florida, v. State of Florida, et al.*, Case No. 78-6116-CIV, will be terminated.

The events enumerated in section 4(b) of the Act have now occurred, to wit: (1) The State and the District have placed \$4,500,000 and \$2,000,000 in separate escrow accounts with the Sun Bank Trust Banking Group, pursuant to an Escrow Agreement incorporated into the Settlement Agreement; (2) the State of Florida has enacted legislation to implement the Settlement Agreement, including the *Water Rights Compact Among the Seminole Tribe of Florida, the State of Florida, and the South Florida Water Management District* incorporated therein; and (3) the State and the District have waived any claims for offsets against the Tribe, pursuant to Paragraph 5(c) of the Settlement Agreement.

Pursuant to section 5(a)(2) of the Act, the publication of this notice will operate to (1) validate the "transfers, waivers, releases, relinquishments, and other commitments made by the Tribe in the Settlement Agreement," including the *Water Rights Compact*; (2) extinguish "all claims to lands within the State based upon aboriginal title by the Tribe or any predecessor or successor in interest", not including those "excepted interests" defined in paragraph 4(a) of the Settlement Agreement; (3) retroactively approve and validate the questionable land/resource transfers upon which the extinguished claims were based; and (4) bar any actions based on extinguished claims, unless such actions are filed by July 5, 1988.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Ross O. Swimmer,
Assistant Secretary, Indian Affairs.
[FR Doc. 88-15032 Filed 7-1-88; 8:45 am]
BILLING CODE 4310-42-M

National Park Service
Cape Cod National Seashore, South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C., app. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory

Commission will be held Friday, July 15, 1988.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m., for the following reasons:

Renewal of Commercial Occupancy Certificates.

Land Protection Plan.

The meeting is open to the public. It is expected that as many as 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Steven H. Lewis,
Acting Regional Director.
Date: June 27, 1988.
[FR Doc. 88-14975 Filed 7-1-88; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations; District of Columbia, et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 25, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 20, 1988.

Patrick Andrus,
Acting Chief of Registration, National Register.
DISTRICT OF COLUMBIA
Washington
Chesapeake and Potomac Telephone Company Building, 730 Twelfth St. NW.

IOWA

Allamakee County
Fish Farm Mound Group (Prehistoric Mounds of the Quad-State Region of the Upper Mississippi River Valley (MPS))
Slinde Mound Group (Prehistoric Mounds of the Quad-State Region of the Upper Mississippi River Valley (MPS))

Iowa County
Indian Fish Weir

Lee County
Fort Madison, Beck, Chief Justice Joseph M. House, 630 Avenue E.

MINNESOTA

Ramsey County
St. Paul, Manhattan Building, 360 N. Robert St.

MONTANA

Cascade County
Great Falls, Chicago, Milwaukee and St. Paul Passenger Depot, River Dr., N.

Custer County
Miles City, Mountain States Telephone and Telegraph Company, 908 Main St.

Miles City, Olive Hotel, 501 Main St.

Deer Lodge County (also in Silver Bow)

Anaconda (also in Butte), Butte, Anaconda and Pacific Railway Historic District.

Right-of-way begins in Butte and travels to Anaconda, generally along course of Silver Bow Creek.

Musselshell County

Roundup, St. Benedict's Catholic School, 524 First St., W.

NEW MEXICO

Eddy County

Carlsbad vicinity, Rattlesnake Springs Historic District, W. of US 62-180, off CR 418

NORTH CAROLINA

Yadkin County

Yadkinville, Second Yadkin County Jail, 241 E. Hemlock St.

OREGON

Douglas County

Winston, Moyer, C. E., Nurseries Property, 8374 Old Hwy. 99, S.

Jackson County

Fort Lane Military Post Site
Ashland, Lucas, Robert and Ruth, House and Rose, Mary E., House, 59, 77 Sixth St.

RHODE ISLAND

Bristol County

Little Compton, Whalley, William, Homestead, 33 Burchard Ave.

Providence County

Cranston, Sheldon House, 458 Scituate Ave.
Cranston, Westcott, 101 Mountain Laurel Dr.
Cranston, Westcott, Nathan, House, 150 Scituate Ave.

IOWA

Allamakee County
Fish Farm Mound Group (Prehistoric Mounds of the Quad-State Region of the Upper Mississippi River Valley (MPS))
Slinde Mound Group (Prehistoric Mounds of the Quad-State Region of the Upper Mississippi River Valley (MPS))

Iowa County
Indian Fish Weir

Lee County
Fort Madison, Beck, Chief Justice Joseph M. House, 630 Avenue E.

MINNESOTA

Ramsey County
St. Paul, Manhattan Building, 360 N. Robert St.

MONTANA

Cascade County
Great Falls, Chicago, Milwaukee and St. Paul Passenger Depot, River Dr., N.

Custer County
Miles City, Mountain States Telephone and Telegraph Company, 908 Main St.

Miles City, Olive Hotel, 501 Main St.

Deer Lodge County (also in Silver Bow)

Anaconda (also in Butte), Butte, Anaconda and Pacific Railway Historic District.

Right-of-way begins in Butte and travels to Anaconda, generally along course of Silver Bow Creek.

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Ashland, Lucas, Robert and Ruth, House and Rose, Mary E., House, 59, 77 Sixth St.

RHODE ISLAND

Bristol County

Little Compton, Whalley, William, Homestead, 33 Burchard Ave.

Providence County

Cranston, Sheldon House, 458 Scituate Ave.
Cranston, Westcott, 101 Mountain Laurel Dr.
Cranston, Westcott, Nathan, House, 150 Scituate Ave.

Cranston, Wood, Arad, House, 407 Pontiac Ave.
[FR Doc. 88-15023 Filed 7-1-88; 8:45 am]
BILLING CODE 4310-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 301X)]

Burlington Northern Railroad; Company Abandonment Exemption; Cass County, ND

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon its 8.07-mile line of railroad between milepost 0.54 near Fargo and milepost 8.50 near Horace, in Cass County, ND.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co. Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 4, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 15,

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

² See, *Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance*, 4

1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 25, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by July 10, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 29, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-15132 Filed 7-1-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Other Statutes; A&F

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States of America v. A & F Materials Company*, Civil Action No. 83-2123 was lodged with the United States District Court for the Southern District of Illinois. The first amended complaint filed by the United States in this action alleged that AM International, Inc. ("AMI") is jointly and severally liable to abate conditions presenting an imminent and substantial endangerment at a hazardous waste facility located in Greenup, Illinois,

I.C.C.2d 164, served December 21, 1987, and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

pursuant to section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and section 7003 of the Resource Conservation and Recovery Act. The first amended complaint also alleged that AMI is liable under section 107 of CERCLA and section 311(e) of the Clean Water Act to reimburse the United States for costs incurred in responding to releases and threatened releases of oil and hazardous substances from the Greenup facility.

The proposed decree requires AMI to withdraw objections to a proof of claim previously filed by the United States in *In re AM International, Inc.*, (Bkr.Ct. N.D. Illinois), a pending bankruptcy reorganization of AMI pursuant to Chapter 11 of the Bankruptcy Code, and to take necessary steps to secure allowance of such claim in the amount of \$100,000. Upon allowance of the United States' bankruptcy claim, the United States would receive a distribution in accordance with the provisions of the Amended Plan of Reorganization approved by the Bankruptcy Court. Under the terms of this plan, the United States would receive approximately \$81,000 in cash and 9000 shares of common stock of Newcorp, a corporation formed pursuant to the reorganization proceeding.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC and should refer to *United States v. A & F Materials Company, Inc.*, D.J. Ref. No. 90-7-1-140.

The proposed Consent Decree may be examined at the office of the United States Attorney, 750 Missouri Avenue, East St. Louis, Illinois 62203 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.90 (ten cents per page

reproduction cost) payable to the Treasurer of the United States.

Roger Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-14950 Filed 6-30-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA; USX Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 8, 1988, a proposed consent decree in *United States v. USX Corporation*, Civil Action No. H 82-3945 was lodged with the United States District Court for the Southern District of Texas, Houston Division. The proposed consent decree resolves a judicial enforcement action brought by the United States against USX Corporation for the violation of a prior consent decree entered into on April 26, 1983 pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.*

The proposed consent decree requires the defendant to meet certain limitations on emissions from its No. 1 Electric Arc Furnace Shop and to pay the sum of twenty-five thousand dollars (\$25,000.00) to the United States Government as a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. USX Corporation*, D.J. Ref. 90-5-2-1-572.

The proposed consent decree may be examined at the office of the United States Attorney, 515 Rusk Avenue, Houston, Texas 77702.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Ninth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.40 (10 cents per page

reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-14951 Filed 7-1-88; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-3411]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to the Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) for operation of Fermi-2 located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Fermi-2 Technical Specifications (TSs) to delete the Non-regenerative Heat Exchanger Outlet Temperature-High signal from the listing of Reactor Water Cleanup (RWCU) system isolation signals.

The Need for the Proposed Action

The proposed changes to the TSs are required to eliminate an unnecessary isolation signal. Elimination of this signal would assure timely restoration of the RWCU following an isolation to enhance reactor water level control and reactor water chemistry control without loss of filter-demineralizer high temperature resin protection. The isolation signal is not an accident mitigation function and is not utilized in the RWCU leak detection system. The signal is intended to prevent damage of the filter demineralizer resins in the event the temperature exceeds 140°F. This function will still be retained in the system design.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would eliminate from the Fermi-2 TSs an unnecessary isolation signal and allow the RWCU to be returned to service in a timely

manner to enhance reactor water level control and reactor water chemistry control. The isolation signal has no accident mitigation function and is not utilized in the RWCU leak detection system. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed amendment involves changes to surveillance and testing requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing was published in the *Federal Register* on May 11, 1988 (53 FR 16801). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Because the Commission has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative would have either no or greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributed to the facility but could result in prolonging an outage with attendant costs and consequently result in an unnecessary loss of power to the grid.

Alternative Use of Resources

This action involves no use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Fermi-2," dated August 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not

to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with aspect to this action, see the application for amendment dated March 10, 1988, as supplemented April 21, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 28th day of June 1988.

For the Nuclear Regulatory Commission,
Martin J. Virgilio,
Director, Project Directorate III-1, Division of
Reactor Projects—III, IV, V and Special
Projects.
[FR Doc. 88-15000 Filed 7-1-88; 8:45 am]
BILLING CODE 7590-01-M

Application for License To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

NRC EXPORT APPLICATION

Name of application, Date of application, Date received, Application No.	Material type (percent)	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., 6-20-88, 6-22-88, XSNMO2388	93.3 enriched uranium	12.600	11.737	Fuel for BER-II reactor	West Germany.

For the Nuclear Regulatory Commission,
Marvin R. Peterson,
Assistant Director for International Security,
Office of Governmental and Public Affairs.

Dated this 28th day of June 1988, at Rockville, Maryland.

[FR Doc. 88-15008 Filed 7-1-88; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Decay Heat Removal Systems; Meeting

The ACRS Subcommittee on Decay Heat Removal Systems will hold a meeting on July 20, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 20, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC Staff Resolution Position for USI A-45: "Shutdown Decay Heat Removal Requirements." The Subcommittee will also discuss the status of the proposed resolution of Generic Issue 99: "Improved Reliability of RHR Capability in PWRs."

Oral statements may be presented by members of the public with the

concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267).

between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 28, 1988.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 88-15012 Filed 7-1-88; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on July 21, 1988, Room 1130, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, July 21, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review the status of the MIST Phase III and IV Programs and the proposed OTSG Follow-on Program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 28, 1988.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 88-15011 Filed 7-1-88; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on TVA Organizational Issues; Notice of Meeting

The ACRS Subcommittee on TVA Organizational Issues will hold a meeting on July 22, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, July 22, 1988—8:30 a.m. until the conclusion of business.

The Subcommittee will review the generic lessons learned from the Staff's review of TVA in regard to the restart of Sequoyah 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 27, 1988.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 88-15010 Filed 7-1-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 30-16055-SP ASLSP No. 87-545-01-SP (Suspension Order) and Docket No. 30-16055-OM ASLSP No. 87-555-01-OM (Decontamination Order)]

Advanced Medical Systems, Inc., Order Setting Prehearing Conference

June 28, 1988.
Atomic Safety and Licensing Board: Before Administrative Judges, Robert M. Lazo, Chairman, Harry Foreman, Ernest E. Hill.

Counsel for the Licensee, Advanced Medical Systems, Inc., One Factory Row, Geneva, Ohio 44041, and counsel

for the NRC Staff are directed to appear at a prehearing conference on Wednesday, July 20, 1988, beginning at 1 p.m. at the Commission's Hearing Room, Fifth Floor, East West Towers, 4350 East West Highway, Bethesda, Maryland.

The parties shall be prepared to present their respective views on the legal and factual issues surviving for hearing in each of these two related proceedings. In particular, the parties shall be prepared to specify the relief sought by each in both proceedings. The parties shall also attempt to arrive at a joint position as to the issues and present their position orally at the beginning of the prehearing conference. Once the issues for hearing have been identified, the scope of discovery on the issues and the schedule for hearing will be addressed.

Dated at Bethesda, Maryland, this 28th day of June, 1988.

It Is So Ordered.

For The Atomic Safety and Licensing Board.

Robert M. Lazo,
Chairman, Administrative Judge.
[FR Doc. 88-15013 Filed 7-1-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 150 to Facility Operating License No. DPR-49, issued to Iowa Electric Light and Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative (the licensee), which revised the Technical Specifications for operation of the Duane Arnold Energy Center (the facility) located in Linn County, Iowa. The amendment was effective as of the date of its issuance.

The amendment revises requirements for logic system functional testing by extending the interval for performance of those tests from annually to once per operating cycle (typically 18 months), clarifying the definition of "Logic System Functional Test," and revising other sections to reflect new testing practices.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10

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CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on May 4, 1988 (53 FR 15031). No request for a hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated December 11, 1987, (2) Amendment No. 150 to License No. DPR-49, (3) the Commission's related Safety Evaluation dated June 23, 1988 and (4) the Environmental Assessment dated June 10, 1988 (53 FR 22588). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 23rd day of June 1988.

For the Nuclear Regulatory Commission,
M.D. Lynch

Acting Director, Project Directorate III-3,
Division of Reactor Projects—III, IV, V and
Special Projects.

[FR Doc. 88-15014 Filed 7-1-88; 8:45 am]
BILLING CODE 7550-01-M

[Docket Nos. 50-277 and 50-278]

**Philadelphia Electric Co. et al.
Issuance of Amendment to Facility
Operating License and Final
Determination of No Significant
Hazards Consideration**

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 132 to Facility Operating License No. DPR-44 and Amendment No. 135 to Facility Operating License No. DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised the Technical Specifications for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania. The amendments were effective as of the date of issuance. The subject changes in the organizational structure are to be completed within ninety (90) days of the issuance of the amendments.

The amendments modified section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure, (III) a revised composition of the Plant Operations Review Committee and (IV) several administrative changes.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the *Federal Register* on December 23, 1987 (52 FR 48593). On January 22, 1988 the Commonwealth of Pennsylvania filed a document entitled "Commonwealth of Pennsylvania's Petition To Intervene, Request for Hearing and Comments Opposing No Significant Hazards Consideration." On April 1, 1988 the Commission issued an Order which referred the matter to the Chairman of the Atomic Safety and Licensing Board Panel for consideration of whether the petition to intervene should be granted. The Order also indicated that the request for a discretionary formal restart hearing on matters outside the scope of this proceeding would be addressed in a separate letter to Governor Casey. This letter, which concluded that such hearings are unnecessary, was issued on April 8, 1988.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it had determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action.

Accordingly, as described above, the amendments have been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that the amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental

impact statement or environmental assessment need be prepared for these amendments.

For further details with respect to the action see (1) the application for amendments dated November 19, 1987, as augmented by information in the "Plan for Restart of Peach Bottom Atomic Power Station, Section I, Corporate Action" dated November 25, 1987 and in revisions to Section I of the Plan submitted on April 8, 1988, (2) Amendment No. 132 to License No. DPR-44, (3) Amendment No. 135 to License No. DPR-56, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education, Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 22nd day of June 1988.

For the Nuclear Regulatory Commission,
Walter E. Botler,

Director Project Directorate I-2, Division of
Reactor Projects I/II, Office of Nuclear
Reactor Regulation.

[FR Doc. 88-15015 Filed 7-1-88; 8:45 am]
BILLING CODE 7550-01-M

[Docket No. 50-286]

**Power Authority of the State of New
York; Consideration of Issuance of
Amendment to Facility Operating
License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 located in Westchester County, New York. The application for amendments is dated May 9, 1988.

This amendment would revise the Technical Specifications 5.3 and 5.4 to allow the replacement of the existing high density spent fuel storage racks with maximum density storage racks. This replacement would result in an increase in the spent fuel storage capability of the spent fuel pool.

The Indian Point 3 spent fuel pool currently has 840 total storage cells. There are currently 368 fuel assemblies stored in the spent fuel pool. By 1994, it is expected that full core discharge capability will not be available. In order to expand the storage capacity of the spent fuel pool, the existing high density storage racks will be replaced with maximum density storage racks. The design of the replacement racks will facilitate a more dense storage of spent fuel. This replacement will result in a spent fuel pool storage capacity of 1345 fuel assemblies.

The maximum density storage racks are designed for a fuel enrichment of up to 4.5 w/o U-235, which is higher than the currently allowable maximum of 4.3 w/o U-235. This amendment would also increase the maximum fuel enrichment allowed in the spent fuel pool and the reactor core from 4.3 w/o to 4.5 w/o U-235.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 3, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's

property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-8000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 10

Columbus Circle, New York, New York 10019.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPAA), 42 U.S.C. 10154. Under section 134 of the NWPAA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPAA are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, October 15, 1985) 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.)

The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated May 9, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 23rd day of June 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects I/II.

[FR Doc. 88-15016 Filed 7-1-88; 8:45 am]

BILLING CODE 7590-91-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25846; File No. SR-AMEX-88-15]

Proposed Rule Change; American Stock Exchange, Inc.; Relating to Increased Flexibility in Determining Position and Exercise Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 16, 1988 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to amend Rule 904 as set forth below.

Note: Italics indicates material proposed to be added.

Rule 904—No Change.

* * * Commentary

.01 through .06—No change.

.07 The position limit shall be 8,000 contracts for options:

(i) On an underlying security which had trading volume of at least 40,000,000 shares during the most recent six-month trading period; or

(ii) On an underlying security which had trading volume of at least 30,000,000 shares during the most recent six-month trading period and has at least 120,000,000 shares currently outstanding.

The position limit shall be 5,500 contracts for options:

(i) On an underlying stock which had trading volume of at least 20,000,000 shares during the most recent six-month trading period; or

(ii) On an underlying stock which had trading volume of at least 15,000,000 shares during the most recent six-month trading period and has at least 40,000,000 shares currently outstanding.

The position limit shall be 3,000 contracts for all other options.

The Exchange will review the volume and outstanding share information of all underlying stocks every six months to determine which limit shall apply. A higher limit will be effective on the date set by the Exchange while any change to a lower limit will take effect after the last expiration then trading, unless the requirement for the same or a higher limit is met at the time of an intervening six-month review. *However, if subsequent to a six-month review, an increase in volume and/or outstanding shares would make a stock eligible for a higher position limit prior to the next review, the Exchange in its discretion may immediately increase such position limit.*

.08 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes that its rules be amended to provide greater flexibility in the establishment of position limits for stock options.

Currently, position limits for individual stock options are determined in accordance with a three-tiered system established in April 1985. Pursuant to this system, an underlying stock which meets specific standards governing trading volume and/or number of outstanding shares, will qualify the underlying option for either 8,000, 5,500 or 3,000 contract position limits. Under current practices, the Exchange reviews the volume and outstanding share information of all underlying stocks every six months—in January and July—and determines the contract limit that applies for the following six months. If an underlying stock meets the requirements of a higher position limit, the higher limit is effective the first business day following the January or July expiration.

Frequently, an underlying stock meets or surpasses the eligibility requirements for a higher position limit prior to the next six-month review. Usually this occurs when a stock becomes subject to heavy trading activity or splits its shares, thus increasing the number of outstanding shares. Under current rules, an option so qualified for a higher position limit still remains at the lower limit until the next semi-annual review is conducted. Limiting an option otherwise qualified for a higher position limit to the lower limit can discourage participation by institutions and other market participants with substantial hedging needs.

Therefore, it is proposed that if the Exchange determines that an underlying stock has become eligible for the higher position limit prior to the next six month review, the Exchange may, in its discretion, immediately increase such position limits to the next higher limit. It should be noted that no change to the existing criteria relating to outstanding shares and/or trading volume is being proposed.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange in that it will help provide liquidity to certain options

without increasing the potential for market manipulation.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change. No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 26, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

June 24, 1988.

[FR Doc. 88-14993 Filed 7-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25863; File No. SR-AMEX-88-14]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc. Relating to Specialist Capital Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 14, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend Exchange Rule 171 to require each registered specialist to maintain a cash or net liquid asset position in the amount of \$600,000 or in an amount sufficient to assume a position of 60 trading units of each security in which such specialist is registered, whichever amount is greater.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 171 currently requires each specialist unit to maintain cash or net liquid assets equal to the greater of \$100,000 or an amount sufficient to assume a position of 20 trading units of each speciality security. The proposed amendment would increase the minimum dollar requirement to \$600,000 and the trading unit requirement to 60 units. These increases are intended as preventive measures designed to ensure that capital levels will be sufficient to enable specialists to carry out their affirmative obligations in turbulent markets, and more closely align specialist financial requirements with actual capital needs in view of changing market and economic conditions.

Commentary to Rule 171 would be added to create an exception to the 60 trading unit requirement for securities for which the Exchange is not the primary marketplace. This exception would retain the 20 trading unit standard for such securities in recognition of the limited role Amex specialists play with respect to specialty securities that may be traded or priced principally in another U.S. market.

(2) Basis

The proposed rule change is consistent with the provisions of section 6(b) of the Act in general and, in particular, furthers the objectives of section 6(b)(5) in that it is designed to promote fair and equitable principles of trade and the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule, change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-88-14 and should be submitted by July 26, 1988.

IV. Commission Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 11(b) which permits national securities exchanges to promulgate rules regulating the activities of specialists as necessary or appropriate in the public interest, for the protection of investors, and to maintain fair and orderly markets, and section 6(b)(5) which directs that the rules of a national securities exchange be designed to facilitate transactions in securities and to protect investors and the public interest.

The Commission believes that, in view of the market volatility encountered during and in the period since the October 1987 market break, it is appropriate to approve the proposed increases in capital requirements and trading unit position requirements for Amex specialists. The Commission staff study on the October 1987 market break found that while specialist capital appears sufficient during normal trading situations, it will not be sufficient if markets continue at present volatility levels.¹ The report also stated that additional specialist capital might ensure that in any future down market specialists do not reach the limit of their buying power or become in jeopardy of failing. The Commission believes that the proposed rule change will provide an increased level of protection against market volatility for specialists, and

ensure that specialists' buying power is not jeopardized.²

The Commission believes that the requirements of the proposed rule are reasonable and that conformity with these standards will not be unduly burdensome on Amex specialist units. In this regard, the Amex has stated that all of its specialist units are already in compliance with the requirements of the proposed rule.³ Finally, the Commission notes that it views this increase in specialist capital requirements as an interim measure by the Amex to ensure the adequacy of specialist financial responsibility requirements in light of market conditions. The Commission anticipates that additional changes to specialist capital requirements may be proposed by Amex as it continues to study this issue.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Exchange may impose increased capital requirements and trading unit position requirements on specialists as soon as possible to help ensure greater specialist liquidity as a response to recent market volatility. It is important that the Exchange be assured immediately of the adequacy of its specialists' financial capacity in light of increased market volatility.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 28, 1988.

[FR Doc. 88-14094 Filed 7-1-88; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-16458; 812-6771]

Mortgage Bankers Financial Corporation I, et al.; Application

June 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

¹ The Commission recently approved a similar proposed rule change by the New York Stock Exchange, Inc. ("NYSE") (SR-NYSE-88-12) increasing the capital requirements and trading unit position requirements for NYSE specialists. See Securities Exchange Act Release No. 25677, May 6, 1988, 53 FR 17258.

² According to the Exchange, as of June 17, 1988, all Amex specialists meet or exceed the standards in the proposed rule. Telephone conversation between James M. McNeil, Assistant Vice President, Amex, and Robert Sevigny, Attorney, Division of Market Regulation, on June 17, 1988.

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Mortgage Bankers Financial Corporation I ("MBFC I") Mortgage Bankers Financial Corporation ("Mortgage Bankers"), Michael J. BeVier and John W. Biasucci.

Relevant 1940 Act Section: Order requested under section 6(c).

Summary of Application: Applicants seek an order amending an existing order, Investment Company Act Rel. No. 15061 (April 10, 1986) ("Existing Order") which exempts MBFC I from all provisions of the 1940 Act, to further exempt MBFC I and certain Affiliates and Trusts (as defined below) from all provisions of the 1940 Act in connection with the issuance of collateralized mortgage obligations and sale of equity interests.

Filing Dates: The application was filed on June 23, 1987, and amended on April 25, May 18, and June 22, 1988. A fourth amendment will be filed during the notice period, the substance of which is included herein.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Service the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 712 Rugby Road, Charlottesville, Virginia 22903.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney at (202) 272-3026 or Brion R. Thompson, Special Counsel at (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. MBFC I, a Delaware corporation, is the surviving corporation from the

merger of the former Mortgage Bankers Financial Corporation I, to which the Existing Order was granted, and its parent, Mortgage Bankers Financial Corporation. The only purposes of MBFC I are to issue collateralized mortgage obligations or other evidences of indebtedness (the "Bonds") secured by Mortgage Collateral (as defined below) in one or more series (the "Series") and to establish Affiliates or Trusts (as defined below), each of which will issue one or more Series of Bonds. The proceeds from such issuances will be used to purchase Mortgage Collateral or will be loaned to borrowers ("Borrowers") pursuant to funding agreements between MBFC I and Borrowers ("Funding Agreements") for use in connection with the funding or acquisition of Mortgage Collateral and other activities incidental to or necessary for such purposes including the sale of residential or beneficial interests in a Trust ("Beneficial Interests"), or participation interests in a pool of Mortgage Collateral ("Participation Interests") or "Excess Interests" (as defined herein). The voting stock of MBFC I is owned by Messrs. BeVier and Biasucci. Mr. BeVier is the Chairman of the Board, the Treasurer and a 50% shareholder of MBFC I. Mr. Biasucci is a Director, the President, the Secretary and a 50% shareholder of MBFC I.

2. Messrs. BeVier and Biasucci own all the voting stock of Mortgage Bankers, a financial intermediary which specializes in the structuring, issuance and administration of collateralized securities. Mortgage Bankers will provide administrative accounting and clerical services to MBFC I pursuant to a management agreement.

3. Applicants seek to amend the Existing Order to permit MBFC I, any other limited purpose finance company (an "Affiliate") issuing Bonds and residual interests on the same terms and conditions applicable pursuant to the application to MBFC I, which is similar in structure to MBFC I and which is owned by any of the Applicants, and any trust (a "Trust") established or to be established by the Applicants or an Affiliate (each, an "Issuer") to issue Bonds secured by Mortgage Collateral and to permit the sale of Beneficial Interests in such Trusts, Participation Interests in a pool of Mortgage Collateral, and/or Excess Interests in the Agency Certificates held by a Trust or in a pool of Mortgage Collateral.

4. Applicants state that "Mortgage Collateral" consists of (i) mortgage loans secured by first liens on single (one-to-four family) residential properties

("Mortgage Loans"), (ii) fully modified pass-through certificates guaranteed as to payment of principal and interest by the Government National Mortgage Association ("GNMA Certificates"), (iii) guaranteed mortgage pass-through certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), (iv) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), (v) stripped mortgage backed securities issued or guaranteed by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") ("Stripped Mortgage Backed Securities") (GNMA Certificates, FNMA Certificates, FHLMC Certificates and Stripped Mortgage Backed Securities are collectively referred to herein as "Agency Certificates"), (vi) other pass-through certificates evidencing an undivided interest in pools of Mortgage Loans ("Private Mortgage Certificates") and (vii) Funding Agreements secured by Mortgage Loans, Agency Certificates or Private Mortgage Certificates. Mortgage Collateral and any reserve funds, credit supports, collection accounts or other collateral for Bonds are sometimes collectively referred to herein as "Bond Collateral." Agency Certificates and Private Mortgage Certificates are collectively referred to herein as "Mortgage Certificates." Each Series of Bonds issued may contain one or more classes of variable or floating rate Bonds ("Variable Rate Bonds"), each of which will have a fixed maximum rate or rates of interest ("Interest Rate Cap" or "Interest Rate Caps") payable on the Bonds.

5. MBFC I issues the Bonds pursuant to indentures (the "Indentures") between MBFC I and independent trustees (the "Indenture Trustees"), as supplemented by a supplemental indenture with respect to each such Series. Any Affiliate organized by an Applicant will operate in the same manner as MBFC I, as described herein.

6. MBFC I assigns and (other than in the case of uncertificated or "book entry" securities) physically delivers to the Indenture Trustee, as security for the Bonds, its entire right, title and interest in any Mortgage Collateral. Payments on the Mortgage Collateral are the primary source of funds for payments of principal and interest due on the Bonds. The scheduled available principal and interest payments on the Mortgage Collateral securing the Bonds plus income received thereon are sufficient to

make the interest payments on and amortize the principal of the Bonds by their stated maturity.

7. The Trusts will be formed by MBFC I or an Affiliate for the limited purpose of issuing one or more Series of Bonds, investing in certain Mortgage Collateral which will be used to collateralize such Bonds or purchasing Mortgage Collateral from MBFC I or an Affiliate subject to the lien of the Indenture for the Series of Bonds secured by such collateral. Each Trust will be established pursuant to a separate deposit trust agreement (the "Deposit Trust Agreement") between MBFC I or an Affiliate and an independent trustee for the holders of the beneficial interests of the Trusts (the "Owner Trustee"). Pursuant to each such Deposit Trust Agreement, MBFC I or an Affiliate will, except as described below, assign to each Trust Bond Collateral (which will be deposited with the Indenture Trustee for the Series of Bonds secured by such collateral) which the Owner Trustee will purchase in whole or in part from MBFC I or an Affiliate or from third parties, on behalf of the Trust with the proceeds of the issuance of the Bonds.

8. In certain circumstances MBFC I or an Affiliate may transfer its remaining interest in the Bond Collateral, including any Mortgage Certificates securing the Bonds it has issued, to a Trust. The Trust's interest in such Bond Collateral will be subject to and subordinate to the lien of the Indenture and the rights of Bondholders. The Trust's interest in the Bond Collateral will be limited to that portion of the Bond Collateral exceeding that level necessary to make the interest payments on, and amortize the principal of, the Bonds by their stated maturity. The Mortgage Certificates will remain in the possession of the Indenture Trustee (or, in the case of "book entry" certificates, will remain registered in the name of the Indenture Trustee) to maintain the Indenture Trustee's first priority perfected security interest and lien on such Certificates. Each such Trust will purchase the residual interest in the Bond Collateral from MBFC I or an Affiliate with the proceeds of a private placement of Beneficial Interests in the Trust. Except for the fact that the Trust itself will not issue the Bonds directly and will not be a party to the Indenture for such Bonds, it will be structured and operated in accordance with the description of the Trusts herein and in the Application.

9. The Owner Trustee for each Trust will be a bank or trust company or other fiduciary organized under the laws of the United States or any state. The Owner Trustee will not purchase any

Beneficial Interests itself, but will function as the legal stakeholder of the assets of the related Trust for the benefit of the owners of the Beneficial Interests. Under each Deposit Trust Agreement, the Owner Trustee is obligated to collect all amounts released from the lien of the Indenture by the Indenture Trustee for the Bonds to pay all expenses of the Trust, including its own fees, and to remit the balance to the owners of the Beneficial Interest on a pro rata basis.

10. Initially, all of the Beneficial Interests in each Trust will be held by MBFC I or an Affiliate. However, upon the issuance of the Bonds, or at some later time, MBFC I or an Affiliate may sell, directly or through a firm engaged in investment banking, commercial banking or mortgage banking or dealing in mortgage-related securities, Beneficial Interests in any Trust to (i) sophisticated institutional investors ("Eligible Institutions") or (ii) non-institutions which are "accredited investors" as defined in Rule 501 under the Securities Act of 1933 ("1933 Act") ("Accredited Investors") in compliance with the conditions below. (Eligible Institutions and Accredited Investors are collectively referred to herein as "Eligible Investors").

11. The Applicants may also sell Participation Interests in the cash flow on Mortgage Collateral not required to pay interest on and principal of the related Series of Bonds and any related expenses without forming a Trust. Such sale of Participation Interests will be subject to the restrictions enumerated above and herein as to sales of Beneficial Interests in a Trust.

12. In connection with the issuance of certain series of Bonds secured in whole or in part by Agency Certificates, MBFC I, an Affiliate or a Trust may purchase all the right, title and interest in and to the Agency Certificates except for the right to receive that portion of the interest payable thereunder not necessary to pay the debt service on the bonds secured by such Agency Certificates (the "Excess Interest"). The ownership of the Excess Interest need not be transferred to MBFC I, such Affiliate or such Trust. In such circumstances, MBFC I, such Affiliate or such Trust acquires full control over the Agency Certificates, including all rights exercisable upon default against the issuer or guarantor thereof. The owner or owners of the Excess Interest will assign its or their rights to the Excess Interest to the Indenture Trustee as security for the Bonds and Indenture Trustee will have a perfected first priority security lien and interest on each Agency Certificate underlying such

Excess Interests. In the event of default on such Bonds, the Excess Interest will be available to satisfy principal and interest payments due to Bondholders.

13. The Excess Interest may subsequently be sold by the owner thereof, which will be a firm engaged in mortgage banking, investment banking or commercial banking or dealing in mortgage-related securities only to Eligible Investors and only upon the terms and conditions provided herein for the sale of Beneficial Interests and Participation Interests. No sale or transfer of the Excess Interest will affect the pledge of the entire related Mortgage Certificate or Mortgage Certificates as security for the full payment of principal and interest on the Bonds, including the assignment by the owner or owners of the Excess Interest of its or their rights to such Excess Interest to the Indenture Trustee. The document providing for any such sale or transfer will provide that the related Certificates remain pledged under the Indenture to secure the Bonds. Each such firm will represent that it is an Eligible Institution and will covenant that it will transfer the Excess Interests only in compliance with the agreement creating such interests. Each purchaser of an Excess Interest will be required to make the representations set forth in the application required of purchasers of Beneficial or Participation Interests and agree to comply with the terms of the agreement creating such interests.

14. Applicants represent that the creation of Excess Interests does not disadvantage the Bondholder in any way because, from the Bondholder's standpoint, it is as if the Excess Interest had in fact been transferred to the issuer of the Bonds. The entire Agency Certificate is pledged to secure the Bonds and, in the event of default under the Indenture, the Indenture Trustee may foreclose on the Agency Certificate, including the Excess Interests.

Applicants' Legal Conclusions

The Applicants submit that granting the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because: MBFC I, and Affiliate or any Trust are not the type of entities that the provisions of the 1940 Act are intended to regulate; Applicants may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; the Applicants' activities are intended to serve a recognized and critical public housing need; Bondholders will be protected

during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by an Indenture Trustee representing their interests under the Indenture; and the prospective purchasers of Beneficial Interests, Participation Interests or Excess Interests will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number.

Applicants' Conditions
Applicants agree that the requested order may be expressly continued on the following:

A. Conditions Relating to the Bond Collateral

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration either pursuant to section 4(2) of the 1933 Act or because such Series of Bonds is offered and sold outside the United States to non-U.S. persons in reliance upon an opinion of U.S. counsel that registration is not required. No single offering of Bonds sold both within and outside the United States would be made without registration of all such Bonds under the 1933 Act, without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicants will adopt agreements and procedures reasonable designed to prevent such Bonds from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to U.S. investors in United States offerings.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the 1934 Act. In addition, the Mortgage Collateral underlying the Bonds issued by MBFC I, an Affiliate or a Trust will be limited to Mortgage Loans, Private Mortgage Certificates, GNMA Certificates, FNMA Certificates, FHLMC Certificates, Stripped Mortgage Backed Securities and Funding Agreements. In the event that Beneficial Interests in a Trust, Participation Interests in a pool of Mortgage Collateral or Excess Interests are sold or otherwise transferred to persons or entities unaffiliated with MBFC I or any Affiliate, the Mortgage Collateral related to such Interests will be limited to Agency Certificates or Funding Agreements secured by Agency Certificates.

3. If new Mortgage Collateral is substituted, the substitute collateral

must (i) be of equal or better quality than the collateral replaced, (ii) have similar payment terms and cash flow as the collateral replaced, (iii) be insured or guaranteed at least to the same extent as the collateral replaced, and (iv) meet the conditions set forth in conditions A.2, 4 and 6 of this notice. In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Mortgage Loans initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. New Mortgage Loans may be substituted for Mortgage Loans initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. New Private Mortgage Certificates may be substituted for Private Mortgage Certificates initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral. New Funding Agreements may be substituted for initial Funding Agreements only if the substitution of the Mortgage Collateral securing such Funding Agreements would be permitted under this condition.

4. All Mortgage Loans, Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian (the "Custodian"). Neither the Indenture Trustee nor the Custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of any of the Applicants or of the master servicer or originating lender of any Mortgage Loans that are pledged as Mortgage Collateral. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Custodian. The Indenture Trustee will have a first priority perfected security or lien interest in and to all Bond Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one Rating Agency that is not affiliated with the Issuer of the securities or with any of the Applicants or the holder of a controlling interest in a Trust. The Bonds will not be redeemable securities within the meaning of section 2(a)(32) of the 1940 Act.

6. The master servicer of any Mortgage Loans (including, for purposes of this paragraph, mortgage loans

underlying Private Certificates) pledged as Mortgage Collateral may not be an affiliate of the Indenture Trustee. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee. Any master servicer and any other servicer of a Mortgage Loan will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential Mortgage Loans. The agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to the Mortgage Loans as it is then currently required to provide in connection with the servicing of Mortgage Loans insured by the Federal Housing Administration, guaranteed by the Veterans Administration or eligible for purchase by FNMA or FHLMC.

7. So long as applicable law requires, no less often than annually, an independent public accountant will audit the books and records of MBFC I, each Affiliate and each Trust and in addition will report on whether the anticipated payments of principal and interest on the Bond Collateral relating to a Series of Bonds continue to be adequate to pay the principal and interest on such Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Indenture Trustee.

B. Conditions Relating to Variable-Rate Bonds

1. Each Series of the Bonds to be issued with one or more classes of Variable Rate Bonds will have a fixed maximum Interest Rate Cap or Interest Rate Caps payable (which may vary from period to period) on the Bonds.

2. The Bond Collateral pledged to secure a Series of Bonds will be sufficient to provide for the full and timely payment of such Bonds then outstanding, assuming the maximum applicable interest rates for each specified period on Variable Rate Bonds.¹ Specifically, reduction of

¹ In the case of a Series of Bonds that contains a class or classes of Variable Rate Bonds, a number of mechanisms have been described in the application which will ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the Variable Rate Bonds. Applications will give the Commission notice by letter of any additional mechanisms which may be identified in the future before they are utilized in order to give the Commission an opportunity to raise any questions as to the appropriateness of their use. In addition, sufficient mechanisms will be in place to ensure the payment of principal of and interest on Variable Rate Bonds secured by Stripped Mortgage Backed Securities. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one

interest payments due on a Series of Bonds that contains a class or classes of Variable Rate Bonds will not result in the release of any of the Bond Collateral (except as aforesaid) from the lien of the Indenture prior to the payment in full of the Bonds.

C. Conditions Relating to the Sale of Beneficial Interests, Participation Interests and Excess Interests

1. If the sale of Beneficial Interests in a Trust results in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of such Trust from the Applicants, the relief afforded by any Commission order granted pursuant to this Application would not apply to any Series of Bonds issued by such Trust subsequent to such change of control. Similarly, if the sale of Participation Interests in Mortgage Collateral held by MBFC I or an Affiliate or the sale of equity interests in MBFC I or such Affiliate results in such a transfer of control of MBFC I or such Affiliate from the Applicants, the relief afforded by any Commission order granted pursuant to the Application would not apply to any Series of Bonds issued by MBFC I or such Affiliate subsequent to such change of control.

2. The owners of the Beneficial Interests will agree to be bound by the terms of the applicable Deposit Trust Agreement. The owners of Participation Interests, or Excess Interests, will agree to be bound by the terms of the agreement creating such interest.

3. Beneficial Interests, Participation Interests and Excess Interests will be offered and sold only to (a) Eligible Institutions or (b) Accredited Investors. Accredited Investors will each purchase at least \$200,000 of Beneficial Interests, Participation Interests or Excess Interests, and have a net worth at the time of purchase that exceeds \$1,000,000 (exclusively of primary residence). Eligible Institutions will have such knowledge and experience in financial and business matters as to be capable of evaluating risks and volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests in mortgage-related securities, such as those represented by Beneficial Interests, Excess Interests and Participation Interests. Accredited Investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing

of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

Beneficial Interests, Participation Interests or Excess Interests, will have direct, personal and significant experience in making investments in mortgage-related securities and, because of such knowledge and experience, will be able to understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests therein. Eligible Institutions include mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts, mutual funds or other institutions that customarily engage in the purchase of mortgages and other types of mortgages collateral. Each such mutual fund will be required to satisfy itself that any such purchase will comply with the provisions of section 12(d)(1) of the 1940 Act.

4. Each sale of Beneficial Interests, Participation Interests or Excess Interests will qualify as a transaction not involving a public offering within the meaning of section 4(2) of the 1933 Act.

5. In no event will Applicant sell Beneficial Interests, Participation Interests or Excess Interests related to any Trust or Series of Bonds to more than 100 investors, of which no more than 15 will be Accredited Investors. The Deposit Trust Agreement relating to each Trust or the Participation Agreement relating to Participation Interests will prohibit the transfer of any Beneficial Interest or Participation Interest if there would be more than 100 beneficial owners of any class of Interests. In the event MBFC I, an Affiliate or a Trust issues Participation Interests or Beneficial Interests in a pool of Mortgage Collateral with respect to which Excess Interests have been created, the maximum permitted number of holders of such Participation Interests or Beneficial Interests and of Excess Interests, will be fixed, with the number of holders of such types of interests limited in the aggregate to 100 (including no more than 15 Accredited Investors in the aggregate). The permitted number of holders will not be dependent on the actual number of holders of the other. In connection with any such transaction, the Applicants will fix the maximum number of holders of each type of interest and the Deposit Trust Agreement or similar agreement pursuant to which Participation Interests or Beneficial Interests are issued and the

agreement pursuant to which the Excess Interests are created will prohibit the transfer of each such class of interests, if the transfer would result in more than the permitted number of holders (i.e., no more than 100).

6. Each purchaser of Beneficial Interests, Participation Interests or Excess Interests will represent (other than a firm engaged in investment banking, mortgage banking or commercial banking or dealing in mortgage-related securities through which such interests are sold to Eligible Investors) that it is purchasing such securities for investment purposes only and that it will hold such securities in its own name and not as nominee for undisclosed investors. Each such firm will represent that it is an Eligible Institution, and will covenant that it will transfer the Beneficial Interests, Participation Interests or Excess Interests only in compliance with the underlying Deposit Trust Agreement or similar agreement, which will provide for transfer only to those Eligible Institutions and Accredited Investors in accordance with the conditions and representations described in the Application. No sale or transfer of the Excess Interest will affect the pledge of the entire related Mortgage Certificate or Mortgage Certificates as security for the full payment of principal and interest on the Bonds, including the assignment by the owner or owners of the Excess Interest of its or their rights to such Excess Interest to the Indenture Trustee.

7. No owner of Beneficial Interests, Participation Interests or Excess Interests will be affiliated with the Indenture Trustee; no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in MBFC I, any Affiliate, or any Trust will be affiliated with either the custodian of the Bond Collateral or the agency rating the Bonds; and the Owner Trustee will not purchase any Beneficial Interests, but will function as a legal stakeholder for the assets of the Trust.

8. The Applicants will secure the consent of each Affiliate and Trust to comply with all of the representations and conditions set forth in the application.

D. Conditions Relating to REMICs

1. The election by an Issuer to be treated as a real estate mortgage investment conduit (a "REMIC") will have no effect on the level of the expenses that will be incurred by such

Issuer. All administrative fees and expenses in connection with the administration of any Issuer that elects to be treated as a REMIC will be paid or provided for in a manner satisfactory to the Rating Agency or Agencies rating the Bonds. If an Issuer elects to be treated as a REMIC it will provide for the payment of administrative fees and expenses, by the methods set forth in the application.

2. Each Issuer will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all such methods are selected.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-14995 Filed 7-1-88; 8:45 am]

BILLING CODE 8010-01-0

DEPARTMENT OF STATE

[Public Notice 1088]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: The proposed information collection is made necessary by the Hague Convention on the Civil Aspects of International Child Abduction and Pub. L. 100-300. The requested information will be used in evaluating applicants' claims, locating abducted children, and advising applicants about available legal remedies. The Convention enters into force for the United States on July 1, 1988, therefore the Department of State is requesting an expedited (5 day) OMB review. The following summarizes the information collection proposal submitted to OMB:

Type of request: New
Originating office: Bureau of Consular Affairs

Title of information collection:
Application for Assistance Under the Hague Convention on Child Abduction.

Form number: DSP-105

Frequency: On occasion
Respondents: Individuals
Estimated number of responses: 100
Average hours per response: 1
Total estimated burden hours: 100

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments:
A copy of the proposed form is published herewith. Comments and questions should be directed immediately to (OMB) Francine Picoult (202) 395-7340 or Gail J. Cook (202) 647-3538.

Date: June 28, 1988.

Richard C. Faulk,

Acting Assistant Secretary for Administration.

BILLING CODE 5710-04-0

UNITED STATES DEPARTMENT OF STATE					
APPLICATION FOR ASSISTANCE UNDER THE HAGUE CONVENTION ON CHILD ABDUCTION					
SEE PRIVACY STATEMENT ON REVERSE					
I. IDENTITY OF CHILD AND PARENTS					
CHILD'S NAME (LAST, FIRST, MIDDLE)		DATE OF BIRTH	PLACE OF BIRTH		
ADDRESS (Before removal)		U.S. SOCIAL SECURITY NO.	PASSPORT/IDENTITY CARD COUNTRY NO.	NATIONALITY	
HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES		
FATHER		MOTHER			
NAME (Last, First, Middle)		NAME (Last, First, Middle)			
DATE OF BIRTH	PLACE OF BIRTH	DATE OF BIRTH	PLACE OF BIRTH		
NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY NO.	NATIONALITY	OCCUPATION	PASSPORT/IDENTITY CARD COUNTRY NO.
CURRENT ADDRESS AND TELEPHONE NUMBER		CURRENT ADDRESS AND TELEPHONE NUMBER			
U.S. SOCIAL SECURITY NO.		U.S. SOCIAL SECURITY NO.			
COUNTRY OF HABITUAL RESIDENCE		COUNTRY OF HABITUAL RESIDENCE			
DATE AND PLACE OF MARRIAGE AND DIVORCE, IF APPLICABLE					
II. REQUESTING INDIVIDUAL OR INSTITUTION					
NAME (Last, First, Middle)		NATIONALITY	OCCUPATION		
CURRENT ADDRESS AND TELEPHONE NUMBER		PASSPORT/IDENTITY CARD COUNTRY NO.			
COUNTRY OF HABITUAL RESIDENCE					
RELATIONSHIP TO CHILD	NAME, ADDRESS, AND TELEPHONE NO. OF LEGAL ADVISER, IF ANY				
III. INFORMATION CONCERNING THE PERSON ALLEGED TO HAVE WRONGFULLY REMOVED OR RETAINED CHILD					
NAME (Last, First, Middle)		KNOWN ALIASES			
DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY			
OCCUPATION, NAME AND ADDRESS OF EMPLOYER		PASSPORT/IDENTITY CARD COUNTRY NO.	U.S. SOCIAL SECURITY NO.		
CURRENT LOCATION OR LAST KNOWN ADDRESS IN THE U.S.					
HEIGHT	WEIGHT	COLOR OF HAIR	COLOR OF EYES		

FORM 6-88 DSP-105

OTHER PERSONS WITH POSSIBLE ADDITIONAL INFORMATION RELATING TO THE WHEREABOUTS OF CHILD (Name, address, telephone number)		
IV. TIME, PLACE, DATE, AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION		
V. FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST		
VI. CIVIL PROCEEDINGS IN PROGRESS, IF ANY		
VII. CHILD IS TO BE RETURNED TO:		
NAME (Last, First, Middle)	DATE OF BIRTH	PLACE OF BIRTH
ADDRESS		TELEPHONE NUMBER
PROPOSED ARRANGEMENTS FOR RETURN TRAVEL OF CHILD		
VIII. OTHER REMARKS		
IX. DOCUMENTS ATTACHED (PREFERABLY CERTIFIED)		
<input type="checkbox"/> DIVORCE DECREE <input type="checkbox"/> PHOTOGRAPH OF CHILD <input type="checkbox"/> OTHER		
<input type="checkbox"/> CUSTODY DECREE <input type="checkbox"/> OTHER AGREEMENT CONCERNING CUSTODY		
SIGNATURE OF APPLICANT AND/OR STAMP OF CENTRAL AUTHORITY	DATE	PLACE
PRIVACY ACT STATEMENT		
THIS INFORMATION IS REQUESTED UNDER THE AUTHORITY OF THE INTERNATIONAL CHILD ABDUCTION REMEDIES ACT, PUBLIC LAW 100-300. THE INFORMATION WILL BE USED FOR THE PURPOSE OF EVALUATING APPLICANTS' CLAIMS UNDER THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, LOCATING ABDUCTED CHILDREN, AND ADVISING APPLICANTS ABOUT AVAILABLE LEGAL REMEDIES. WITHOUT THE REQUESTED INFORMATION, U.S. AUTHORITIES MAY BE UNABLE EFFECTIVELY TO ASSIST IN LOCATING ABDUCTED CHILDREN.		
Comments concerning the accuracy of the burden hour estimate on page 1 may be directed to OMB, OIRA, State Department Desk Officer, Wash., D.C. 20503		

[FR Doc. 88-15039 Filed 7-1-88; 8:45 am]

BILLING CODE 4710-34-C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on June 15, 1988

AGENCY: Office of the Secretary, DOT.
ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on June 15, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Telephone, (202) 368-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the *Federal Register*, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "for Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date on publication are

needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on June 15, 1988.

DOT No: 3080.

OMB No: 2130-0505.

Administration: Federal Railroad Administration.

Title: Steam Locomotive Inspection.

Need for Information: To assure safe operation of steam locomotives.

Proposed Use of Information: FRA uses this information to assure that carriers make inspections and repair defects in steam locomotives as required by the Locomotive Inspection Act.

Frequency: Recordkeeping, On

Occasion, Monthly, Annually.

Burden Estimate: 511 Hours.

Respondents: Railroads.

Form(s): Agency does not provide forms.

DOT No: 3081.

OMB No: 2130-0526.

Administration: Federal Railroad Administration.

Title: Control of Alcohol and Drug Use in Railroad Operations.

Need for Information: To deter use of alcohol or drug involvement in railroad operations.

Proposed Use of Information: FRA and the railroad industry uses this information to determine the extent of the alcohol and drug problems and to curtail any widespread use.

Frequency: Recordkeeping, on

Occasion.

Burden Estimate: 3,394 Hours.

Respondents: Railroads.

Form(s): FRA F 6180.73 and FRA F 6180.74.

DOT No: 3082.

OMB No: 2127-0535.

Administration: National Highway Traffic Safety Administration.

Title: Production Reporting System for Automatic Occupant Restraint Compliance.

Need for Information: This standard specifies performance requirements for the protection of vehicle occupants in crashes.

Proposed Use of Information: Compliance with FMVSS No. 208 (Occupant Crash Protection) requires motor vehicle manufacturers to comply with a 3-year phase-in schedule introducing air bags, or other automatic restraints.

Frequency: Annually for 3 years.

Burden Estimate: 838 Hours.

Respondents: 23 Manufacturers.

Form(s): None.

DOT No: 3083.

OMB No: 2125-0190.

Administration: Federal Highway Administration.

Title: Time Records.

Need for Information: To meet the requirements of 49 CFR 395.8(1) to provide an exemption from the driver's record of duty status for drivers operating within a 100 air-mile radius of the location to which they report for work.

Proposed Use of Information: For FHWA and motor carriers to determine compliance with maximum time limitations as required by 49 CFR 395.3.

Frequency: Recordkeeping/6 months.

Burden Estimate: 10,804,553.

Respondents: Motor carriers.

Form(s): None.

DOT No: 3084.

OMB No: 2120-0034.

Administration: Federal Aviation Administration.

Title: Medical Standards and Certification FAR-67.

Need for Information: FAA Act of 1958, Section 602 requires airmen to be physically able to perform the duties of the certificate sought.

Proposed Use of Information: The information collected is used to show applicant eligibility.

Frequency: On occasion.

Burden Estimate: 1,149,025 Hours.

Respondents: Individuals.

Form(s): FAA Forms 8500-7, -8, -14, -20.

DOT No: 3085.

OMB No: 2127-0539.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR Part 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard.

Need for Information: To provide for the identification of certain motor vehicles and their major replacement parts to impeded motor vehicle theft.

Proposed Use of Information: Manufacturers of passenger automobiles identify new model introductions that are likely to be high-theft lines as defined in Title VI of the Motor Vehicle Information and Cost Savings Act.

Frequency: One time only.

Burden Estimate: 4,216.

Respondents: Manufacturers.

Form(s): None.

DOT No: 3086.

OMB No: 2108-0007.

Administration: Department of Transportation/Office of the Secretary.

Title: Navigation of Foreign Civil Aircraft Within the United States.

Need for Information: Renewal of OMB Approvals.

Proposed Use of Information: Implement provisions of section 1108(b) of the Federal Aviation Act of 1958, as amended; monitor foreign civil aircraft operations in the United States.

Frequency: On occasion.

Burden Estimate: 573.

Respondents: Foreign Civil Aircraft Operators.

Form(s): OST F 4500, Application for Foreign Aircraft Permit or Special Authorization under Part 375.

DOT No: 3087.

OMB No: 2115-0557.

Administration: U.S. Coast Guard.

Title: Advance Notice of Vessel Arrival and Departure and Waiver.

Need for Information: This information collection requirement is needed to safeguard the United States against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, of vessels, harbors, and waterfront facilities. It is further needed to establish, operate, and maintain vessel traffic services.

Proposed Use of Information: The Coast Guard Captain of the Port uses this information for (1) vessel traffic supervision; (2) oil and hazardous substance spill; (3) firefighting contingency planning; (4) controlling vessels from Warsaw Pact nations and vessels from nations not permitted to enter U.S. waters or certain U.S. ports; (5) controlling free flag vessels carrying Communist country nationals in the crews; and (6) targeting certain type vessels for examination. It is also used to determine if a waiver of the regulations can be granted.

Frequency: On occasion.

Burden Estimate: 52,060.

Respondents: Vessel Operators.

Form(s): None.

DOT No: 3088.

OMB No: 2115-0077.

Administration: U.S. Coast Guard.

Title: Letter of Intent.

Need for Information: This information collection requirement ensures compliance with 33 U.S.C. 1221. It is needed to alert Coast Guard and enforcement personnel that a facility falling under the regulation is planned or an existing facility has changed ownership and to provide a point of contact in case of an emergency.

Proposed Use of Information: This information is used to identify terminals at which oil and hazardous materials transfer operations will take place. It is a preventive measure against oil and hazardous materials pollution.

Frequency: On occasion.

Burden Estimate: 720.

Respondents: Owners/operators of marine bulk oil or hazardous materials facilities.

Form(s): None.

DOT No: 3089.

OMB No: 2115-0506.

Administration: U.S. Coast Guard.

Title: Declaration of Inspection.

Need for Information: This

information collection requirement is needed to ensure compliance with 33 U.S.C. 1221. It provides a method for determining whether vessels and facilities transferring oil or hazardous materials have followed established procedures.

Proposed Use of Information: The Coast Guard uses this information to identify potential or actual violations of the pollution prevention regulations. The record is further used to determine culpability in spill and accident investigations.

Frequency: On occasion.

Burden Estimate: 60,000.

Respondents: Owners/operators of marine bulk oil or hazardous materials facilities.

Form(s): None.

DOT No: 3090.

OMB No: 2115-0078.

Administration: U.S. Coast Guard.

Title: Operations Manual and Amendments.

Need for Information: This information collection requirement is needed to ensure compliance with 33 U.S.C. 1221. It makes certain that procedures are established and amended, as necessary, for transferring oil to reduce the number of oil spills caused by defective procedures and human effort.

Proposed Use of Information: This information is used to ensure that adequate pollution prevention measures are in place. Once the manual is approved, it becomes a guide for the persons-in-charge of transfer operations.

Frequency: On occasion.

Burden Estimate: 12,232.

Respondents: Owner/operators of marine bulk oil or hazardous materials facilities.

Form(s): None.

DOT No: 3091.

OMB No: 2115-0120.

Administration: U.S. Coast Guard.

Title: Transfer Procedures.

Need for Information: This information collection requirement ensures compliance with 33 U.S.C. 1221. It is needed to make certain that proper transfer procedures are available to crewmembers who may be involved with transferring oil or hazardous materials from tank to tank within the vessel.

Proposed Use of Information: The vessel personnel use this information whenever they transfer oil or hazardous materials from tank to tank within the vessel. It provides a means of ensuring that new personnel become familiar with the complex systems of pumps, piping and valving used for the procedure.

Frequency: On occasion.

Burden Estimate: 32,742.5.

Respondents: Owner/operators of marine bulk oil or hazardous materials facilities.

Form(s): None.

DOT No: 3093.

OMB No: 2115.

Administration: U.S. Coast Guard.

Title: Alternative Provisions for

Reinspections of Offshore Supply

Vessels in Foreign Ports.

Need for Information: This information collection is needed to permit alternative examinations of Offshore Supply Vessels (OSV) of less than 400 gross tons operating from foreign ports. This alternative will replace the need for the Coast Guard to conduct examinations for reinspections of OSV's that are continuously employed outside of the United States.

Proposed Use of Information: The Coast Guard Officer in Charge of Marine Inspection units will use this information to evaluate the alternative examination program and to ensure that the above mentioned vessels remain fit for the route and service specified in the original certificate of inspection.

Frequency: Annually.

Burden Estimate: 780.

Respondents: Offshore supply vessel

owner/operators.

Form(s): None.

DOT No: 3094.

OMB No: New.

Administration: Federal Railroad Administration.

Title: Class II and Class III Railroad Infrastructure Study.

Need for Information: To respond to request in Senate Report accompanying FY 1988 Continuing Resolution.

Proposed Use of Information: To prepare a report from the Secretary of Transportation to the House and Senate Committees on Appropriations on deferred maintenance and delayed capital improvements on Class II and Class III Railroads.

Frequency: One Time.

Burden Estimate: 660 Hours.

Respondents: Class II and Class III

Railroads.

Form(s): One time questionnaire.

Issued in Washington, DC on June 15, 1988.
Robert J. Woods,
Director of Information Resource Management.
 [FR Doc. 88-15033 Filed 7-1-88; 8:46am]
 BILLING CODE 4810-52-M

Federal Aviation Administration
 [Summary Notice No. PE-88-25]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the

application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 25, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation

Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10); Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 26, 1988.
Denise D. Hall,
Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of Relief Sought
23358	Clarke Outdoor Spraying Company, Inc.	14 CFR 91.31(a)	To extend Exemption No. 4308 that allows petitioner, under certain conditions, to carry passengers in restricted category aircraft.
24934	American Airlines Flight Academy	14 CFR Part 121, Appendix H, Phase II, par. 2(a)(i).	To allow petitioner to administer the airline transport pilot certification (ATPC) check in a Phase II simulator to airmen who do not meet the experience qualifications of Appendix H, Part 121. These airmen would exercise the ATPC only during the en route cruise portion of transoceanic flights as described in § 121.543(b)(2).
25629	Air Transport Association of America	14 CFR 63.37(b)(7)	To allow the flight engineers of any Part 121 certificate holder to satisfy the aeronautical experience requirements for a flight engineer certificate with a class rating by substituting successful completion of training in an approved Part 121 initial flight engineer training course for completion of a Part 63, Appendix C flight engineer training course. This exemption, if granted, would only apply to airmen who hold commercial pilot certificates with instrument ratings.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
23980	United States Hang Gliding Association	14 CFR 91.17 and 103.1(b)	To extend Exemption No. 4144, as amended, that allows petitioner to tow unpowered ultralights with a powered ultralight. Grant, June 22, 1988, Exemption No. 4144B.
25344	General Electric Aviation Service Operation Pte. Ltd. of Singapore	14 CFR 145.73(a)	To amend Exemption No. 4873 that allows petitioner to perform maintenance, preventive maintenance, and alteration of certain GE-manufactured aircraft with no restriction as to their geographic scope of operation. This amendment, if granted, would include additional GE-manufactured parts. Grant, June 16, 1988, Exemption No. 4873A.
25424	Douglas Aircraft Company	14 CFR 121.312	To allow the manufacture of two DC-10-30 model airplanes without complying with the interim requirement of a heat release rate of 100 kilowatts per square meter and a peak heat release of 100 kilowatt-minutes per square meter for certain cabin interior materials. Grant, June 23, 1988, Exemption No. 4931.
25431	Helicopter Association International	14 CFR 21.181(a)(1), 43.13, 91.27(a), and 135.143(b)	To allow petitioner's members engaged in Part 135 operation of single-engine helicopters to conduct those operations with inoperative equipment and/or systems. Partial Grant, June 20, 1988, Exemption No. 4952.
25552	The Commissioner of the Department of Alaska Department of Transportation	14 CFR 45.29(h)	To amend Exemption No. 4910 that allows persons operating aircraft within, to, or from the State of Alaska to operate their aircraft without displaying 12-inch nationality and registration marks when penetrating the Alaska Air Defense Identification Zone (ADIZ) or Defense Early Warning Identification Zone (DEWIZ). Grant, June 23, 1988, Exemption No. 4910A.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
25555	SilverStar Aviation, Inc.	14 CFR 135.271(g)	To allow petitioner to assign certain of its flight crewmembers to other duties during a helicopter emergency medical evacuation service assignment. These duties would be limited to conducting training, public relations, or routine transportation missions. Denial, June 22, 1988, Exemption No. 4954.
25577	Lake Union Air Service, Inc.	14 CFR 135.203(a)(1)	To allow pilots of petitioner to conduct operations at an altitude below 500 feet over water outside of controlled airspace. Grant, June 22, 1988, Exemption No. 4953.

[FR Doc. 88-14945 Filed 7-1-88; 8:45 am]
 BILLING CODE 4810-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 163 (6th Meeting) on Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the 6th meeting of RTCA Special Committee 163 on Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications to be held on July 25-27, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of the minutes of the fifth meeting, (3) review task assignments, (4) review the third draft of the MOPS, (5) assignment of tasks, (6) other business, (7) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1988.

Herbert P. Goldstein,
Designated Officer.

[FR Doc. 88-14946 Filed 7-1-88; 8:45 am]
 BILLING CODE 4810-13-M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 22, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions, (2) approval of minutes of the meeting held on May 13, 1988, (3) Executive Director's Report, (4) Special Committee Activities Report for May-June 1988, (5) Fiscal and Management Subcommittee Report on mid-year review of RTCA 1988 budget, (6) review text for RTCA Federal charter proposal, (7) consideration of proposals to establish new special committees, (8) other business, and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1988.
Herbert P. Goldstein,
Designated Officer.
 [FR Doc. 88-14947 Filed 7-1-88; 8:45 am]
 BILLING CODE 4810-13-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: June 23, 1988.

By Direction of the Administration.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Burial Benefits.
3. VA Form 21-530.
4. This form is used to determine basic eligibility and whether the person who paid the veteran's burial expenses should be paid, or if expenses are unpaid, whether the creditor is to be paid.
5. On occasion.

6. Individuals or households;
Businesses or other for-profit.
7. 389,760 responses.
8. 129,920 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Student Verification of Enrollment for a Course Leading to a Standard College Degree (Under Chapter 30, Title 38, U.S. Code).
3. VA Form 22-8979.
4. This form is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree under chapter 30 of Title 38, U.S. Code.
5. On occasion.
6. Individuals or households.
7. 60,508 responses.
8. 5,042 hours.

9. Not applicable.

[FR Doc. 88-14954 Filed 7-1-88; 8:45 am]
BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of System Notice; Revised System of Records

AGENCY: Veterans Administration.
ACTION: Notice correction.

SUMMARY: In the Federal Register of June 24, 1988 (53 FR 23845-23847), the Veterans Administration (VA) published a notice revising certain paragraphs and considering the addition of 14 new routine use statements in the system of records entitled, "Veterans' Spouse or Dependent Civilian Health and Medical Care Records-VA" (54VA136). In this notice, one paragraph was improperly formatted and one word was inadvertently omitted. The VA hereby corrects those errors.

Dated: June 27, 1988.

Priscilla B. Carey,
Chief, Directives Management Division.

In FR Doc. 88-14242, published in the Federal Register of June 24, 1988, page 23846, first column, in "Categories of Individuals Covered by the System;" paragraph 3 is corrected to read as follows:

3. The surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct; and

Who are not eligible for medical care under CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) or Medicare.

[FR Doc. 88-14953 Filed 7-1-88; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 128

Tuesday, July 5, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

June 29, 1988.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 24398, Tuesday, June 27, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Wednesday, July 6, 1988.

CHANGE IN THE MEETING:**Open Session**

The items listed below have been added to the agenda:

• Regulations Implementing section 504 of the Rehabilitation Act in the Commission's Federally Conducted programs: FINAL RULE: Response to Public Comment on Notice of Proposed Rulemaking.

• Advance Notice of Proposed Rulemaking on Employee Benefit Plans Under section 4(f)(2) of the ADEA.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-8748.

Date: June 29, 1988.

Frances M. Hart,
Executive Officer, Executive Secretariat.
This Notice Issued June 28, 1988.

[FR Doc. 88-15068 Filed 6-30-88; 10:16 am]
BILLING CODE 6570-06-M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 12, 1988.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTERS TO BE DISCUSSED: FY 1990 Budget.

CONTACT PERSON FOR MORE

INFORMATION: Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,
Secretary.

[FR Doc. 88-15133 Filed 6-30-88; 3:37 pm]
BILLING CODE 7025-01-M

Corrections

Federal Register

Vol. 53, No. 128

Tuesday, July 5, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket No. RM97-5-000; Order No. 497]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Correction

In rule document 88-13344 beginning on page 22139 in the issue of Tuesday, June 14, 1988, make the following corrections:

§ 161.3 [Corrected]

1. On page 22161, in the third column, in § 161.3(j), in the first line, "August 15, 1988" should read "September 12, 1988".

§ 250.16 [Corrected]

2. On page 22162, in the third column, in § 250.16(c)(2), in the third line, "August 15, 1988" should read "September 12, 1988".

3. In the same column, in § 250.16(d)(1), in the 11th line, "August 15, 1988" should read "September 12, 1988".

BILLING CODE 1505-01-0

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-368-P]

Medicare Program; Effect of Appeals on the Hospital-Specific Portion of the Prospective Payment Rate

Correction

In proposed rule document 88-13227 beginning on page 22028 in the issue of Monday, June 13, 1988, make the following correction:

§ 412.71 [Corrected]

On page 22032, in the second column,

in § 412.71(b)(2), in the fourth line, after "is" insert "the hospital's most".

BILLING CODE 1505-01-0

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 1003

[BERC-383-P]

Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hospital Responsibility for Emergency Care

Correction

In proposed rule document 88-13513 beginning on page 22513 in the issue of Thursday, June 16, 1988, make the following correction:

§ 1003.109 [Corrected]

On page 22526, in the third column, in § 1003.109(a)(5), in the last line, after "penalty" insert "and assessment and the period".

BILLING CODE 1505-01-0

Tuesday
July 5, 1988

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 251 and 280

Geological and Geophysical Exploration of the Outer Continental Shelf; Prospecting for Minerals Other Than Oil, Gas, and Sulphur; Final Rule

federal register

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 251 and 280

Geological and Geophysical (G&G) Exploration of the Outer Continental Shelf; Prospecting for Minerals Other Than Oil, Gas, and Sulphur

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes a separate set of requirements designed to govern geological and geophysical (G&G) prospecting and scientific research activities relating to minerals other than oil, gas, and sulphur in the Outer Continental Shelf (OCS) of the United States. The rule recognizes the special circumstances, issues, and requirements associated with those OCS minerals. It establishes practices and procedures for wise management of OCS resources, allowing balanced, orderly G&G prospecting and scientific research for minerals other than oil, gas, and sulphur while protecting the human, marine, and coastal environments; preserving and maintaining free-enterprise competition; and minimizing or eliminating conflicts between OCS G&G prospecting and scientific research activities and other users and uses of the OCS. This final rule is the first in a series of three rules designed to establish a comprehensive leasing and regulatory program for OCS minerals other than oil, gas, and sulphur.

EFFECTIVE DATE: August 4, 1988.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella or Jane A. Roberts; Branch of Rules, Orders, and Standards; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone: (703) 646-7816 or (FTS) 950-7816.

SUPPLEMENTARY INFORMATION:

Synopsis

The Minerals Management Service (MMS) is establishing a separate regulatory regime governing activities associated with G&G prospecting and scientific research in the OCS for minerals other than oil, gas, and sulphur; the leasing of such OCS minerals; and operating activities associated with production of such OCS minerals. The new regulations are designed in recognition of the differences between the OCS activities associated with the discovery, development, and production of oil and gas and those associated with minerals other than oil, gas, and sulphur. These regulations address issues

identified by MMS as well as issues raised by representatives of industry (potential OCS mineral lessees and permittees under these regulations), other Federal Agencies, State and local governments, and the public. To accomplish this goal, it was felt that the regulatory regime should be designed to do the following:

(1) Recognize the special circumstances, issues, and requirements associated with G&G prospecting and scientific research and the discovery, development, and production of OCS minerals other than oil, gas, and sulphur; (2) Assure that States, and through the States local governments which are directly affected by OCS mineral mining activities, are provided an opportunity for consultation and coordination on policy and planning decisions relating to the management of OCS resources;

(3) Avoid or minimize conflicts between OCS G&G prospecting and scientific research and mineral mining activities and other users and uses of OCS resources;

(4) Balance orderly mineral resource development with protection of the human, marine, and coastal environments;

(5) Insure the public a fair and equitable return on the resources of the OCS;

(6) Preserve and maintain free enterprise competition;

(7) Encourage development of new and improved technology for producing OCS mineral resources other than oil, gas, and sulphur which will avoid or minimize risk of damage to the human, marine, and coastal environments; and

(8) Establish practices and procedures for G&G prospecting and scientific research and wise management of the natural resources of the OCS including OCS minerals other than oil, gas, and sulphur.

This final rule is the first part of the regulatory regime to govern OCS mineral mining activities associated with minerals other than oil, gas, and sulphur and establishes practices and procedures specific to the activities associated with G&G prospecting and scientific research for OCS minerals other than oil, gas, and sulphur. Regulations are also being developed to govern leasing and postlease activities to develop and produce OCS minerals other than oil, gas, and sulphur. Notices of proposed rules will be published for those regulations in the near future.

Background

On September 28, 1945, the United States declared its jurisdiction over the natural resources of the continental

shelf with the Truman Proclamation, "Policy of the United States with Respect to the Natural Resources of the Subsoil and Seabed on the Continental Shelf." At the same time, President Truman placed these natural resources under the jurisdiction of the Secretary of the Interior (Secretary) by Executive Order, pending enactment of legislation. Congress passed the OCS Lands Act (OCSLA) in 1953 and delegated the administration of the OCS mineral resources of the United States to the Department of the Interior (DOI), giving legislative expression to the Truman Proclamation. Section 8(k) of the OCSLA provides the legal authority for leasing OCS minerals other than oil, gas, and sulphur in the OCS.

This final rule is an action within DOI's statutory authority and is intended to promote and encourage private enterprise in the development of economically sound and stable domestic materials industries in the national interest and provides an appropriate level of protection for the human, marine, and coastal environments.

Under the National Materials and Minerals Policy, Research, and Development Act of 1980 (30 U.S.C. 1601 *et. seq.*), the President is " . . . to encourage Federal agencies to facilitate availability of domestic resources to meet critical needs." The statute further mandates that the President direct " . . . the Secretary of the Interior to act immediately within the Department's statutory authority to attain the goals contained in section 21(a) of this title" Section 21(a) of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) provides the following:

The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs. . . .

President Reagan reemphasized these themes in April 1982 by stating in the National Minerals and Materials Program Plan that this country will seek to reduce its dependence on imported minerals by eliminating barriers to the development of marine mineral resources. The MMS believes that issuance of comprehensive regulations for activities associated with OCS mineral discovery, development, and production which recognize the need for environmental protection and the

avoidance of unnecessary conflict with other users of the oceans is in full accord with Federal policies. Implementation of this rule is appropriate in view of the resource potential in areas of U.S. jurisdiction and the long lead times projected for development of certain OCS minerals other than oil, gas, and sulphur.

The lack of comprehensive regulations applicable to prospecting, leasing, and the recovery of minerals other than oil, gas, and sulphur from the OCS may have inhibited interest in development

of a domestic marine mining industry. This has not been the case in Europe and Asia where vigorous marine mining industries have developed with government regulation. This rule is intended to dispel uncertainty and demonstrate governmental commitment to OCS minerals development and production. Regulations at 30 CFR Parts 251 and 256 are presently applicable to prelease prospecting activities and to the leasing of all OCS minerals. However, these existing regulations were designed primarily for oil and gas

and to a lesser degree sulphur, and MMS believes that there is a need for regulations optimally designed for use with OCS minerals other than oil, gas, and sulphur.

In the United States, industry interest in OCS mining has been focused on heavy metal placers, strategic minerals, sand and gravel, and phosphorite. Table 1 lists the permits that have been issued under existing regulations by MMS and its predecessor Agencies to prospect for OCS minerals other than oil, gas, and sulphur.

TABLE 1.—GEOLOGICAL AND GEOPHYSICAL PERMITS ISSUED BY DOI TO PROSPECT FOR OCS MINERALS OTHER THAN OIL, GAS, AND SULPHUR

OCS Region	Permittee	Minerals of Interest	Year
Atlantic	Newport News Shipbuilding	Phosphate	1966
Pacific	Ocean Resources, Inc.	Phosphorite	1967
Pacific	Bear Creek Mining Co.	Phosphorite	1967
Atlantic	Global Marine, Inc.	Sand and gravel	1968
Atlantic	Ocean International, Inc.	Heavy minerals	1969
Pacific	Global Marine, Inc.	Sand and gravel	1969
Atlantic	Deepsea Ventures, Inc.	Manganese nodules	1970
Gulf of Mexico	Ridgill Materials, Inc.	Sand and gravel	1975
Alaska	Harding Lawson	Sand and gravel	1982
Alaska	Sohio	Sand and gravel	1982
Alaska	Tenneco	Sand and gravel	1982
Alaska	Geocubic	Sand and gravel	1983
Alaska	Geocubic	Sand and gravel	1983
Alaska	Woodward	Sand and gravel	1983
Alaska	Woodward	Sand and gravel	1983
Alaska	Sohio	Sand and gravel	1983
Alaska	Dames & Moore	Sand and gravel	1983
Alaska	Dames & Moore	Sand and gravel	1983
Alaska	Harding Lawson	Sand and gravel	1983
Alaska	Harding Lawson	Sand and gravel	1983
Alaska	Harding Lawson	Sand and gravel	1983
Alaska	McClelland	Sand and gravel	1983
Alaska	McClelland	Sand and gravel	1983
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	Ertec	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	MTS	Sand and gravel	1984
Alaska	Comap	Sand and gravel	1984
Alaska	Comap	Sand and gravel	1984
Alaska	Sohio	Sand and gravel	1984
Alaska	Sohio	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1984
Alaska	Union	Sand and gravel	1984
Alaska	McClelland	Sand and gravel	1984
Alaska	McClelland	Sand and gravel	1984
Alaska	Harding Lawson	Sand and gravel	1985
Alaska	Harding Lawson	Sand and gravel	1986
Atlantic	E. I. Du Pont de Nemours & Company, Inc.	Heavy minerals	1986
Atlantic	Associated Minerals Co.	Heavy minerals	1986
Pacific	East-West Center	Cobalt-rich crusts	1986
Alaska	Inspiration Gold, Inc.	Heavy minerals	1986
Atlantic	Geomarex	Carbonate sands	1987

¹ No geological or geophysical data acquisition activities were initiated under these permits.

² Two separate permits were issued, one for geological work and one for geophysical work.

Gold is being recovered from placer deposits in Alaska's State waters near Nome, and sand and gravel are being produced from Lake Erie and the lower bay of New York Harbor in New Jersey's and New York's State waters. Interest has been expressed in acquiring

prospecting permits for sand and gravel in Federal OCS waters.

Due to the growing interest in OCS minerals, MMS is working closely with the Bureau of Mines (BOM) to assess the economic feasibility of mining OCS minerals. Two studies dealing with sand

and gravel and heavy mineral placers were completed in early 1987: "An Economic Reconnaissance of Selected Sand and Gravel Deposits in the U.S. Exclusive Economic Zone," Open File Report 3-87, and "An Economic Reconnaissance of Selected Heavy

Mineral Placer Deposits in the U.S. Exclusive Economic Zone," Open File Report 4-87. Both of these reports are available from the BOM, Division of Minerals Availability, 2401 E Street NW., Washington, DC 20241.

Preliminary indications are that heavy mineral placers, sand and gravel, and precious metal placers in near-shore waters have the nearest term potential for development. Other published studies on OCS minerals include the evaluation of cobalt-rich manganese crusts, polymetallic sulfides, and phosphorites.

The MMS is working closely with a number of coastal States through joint State/Federal task forces to study the engineering, economic, and environmental aspects associated with marine mining. Six task forces have been established involving 10 coastal States: Hawaii; Oregon and California; Georgia; North Carolina; Alabama, Louisiana, Mississippi, and Texas; and Alaska.

Most mineral activity on continental shelves is for sand and gravel for use as construction aggregate and fill. The most extensive marine sand mining occurs in Japan where approximately 1,000 small dredges produce 60 to 70 million tons of sand (and some gravel) annually for use in concrete as well as for fill. This is about one-fifth of all sand and gravel mined in Japan.

The other major sand and gravel mining area in the world is northern Europe, in the North Sea and English Channel, where about 100 dredges annually produce 40 to 50 million tons of sand and gravel, largely for use as concrete aggregate. The United Kingdom, the Netherlands, Denmark, and France are the major producers. The United Kingdom obtains an estimated 15 percent of its total concrete aggregate by marine mining.

Next to sand and gravel, the largest marine mining operations are for tin in Indonesia and Thailand where significant production results from seabed dredging and where continued exploration and development can be anticipated. In Thailand, large-scale marine tin mining operations accounted for nearly half of that nation's production of almost 37,000 metric tons (tin content) in 1986.

Phosphorite deposits also hold promise for development in the near term. One of the most promising prospects is the phosphorite deposit of the Chatham Rise east of New Zealand. A New Zealand company, Fletcher Challenge, has been exploring the deposit on the Chatham Rise in association with two West German firms, Preussag and Salzgitter. It has

been reported that German mining engineers are designing mining equipment to recover these deposits which lie in 1,200 feet of water. Other prospective phosphorite deposits are located off the coast of West Africa. These deposits have been under investigation by the French.

A major deep ocean project in the Red Sea, now under consideration, is the development of metalliferous muds containing zinc, copper, and silver in 8,500 feet of water. This project is now entering the pilot stage of production that will involve a 5-year investigation of mining and processing strategies. A Saudi-Sudanese joint commission is managing the project with technical assistance provided by German and French firms.

Exploration activity for manganese nodules is also continuing, at a pace significantly reduced from the 1970's, in international waters in the Clarion-Clipperton fracture zone in the northeastern equatorial region of the Pacific Ocean.

A West German firm, Preussag, in cooperation with Japanese and U.S. firms, is also conducting detailed investigations of cobalt-rich manganese crusts in the Hawaiian Archipelago and Johnston Island EEZ's as well as other mid-Pacific areas. One or more Japanese firms have been exploring for polymetallic sulfides in the Pacific basin for the past 2 years and have now added cobalt enriched manganese crusts in the mid-Pacific area to their exploration objectives.

Minerals other than oil, gas, and sulphur in the OCS include over 80 different commodities, including a number of strategic minerals with limited domestic availability. Although OCS resource data are limited, estimated quantities of minerals associated with cobalt-rich manganese crusts would appreciably increase the U.S. reserve base for strategic materials such as cobalt, nickel, and manganese. Another strategic mineral possibility is platinum. Existing world ore reserves for these minerals are adequate for the foreseeable future, but with respect to cobalt, nickel, and manganese, they are controlled by relatively few producer countries that could potentially leverage commodity prices.

The OCS deposits that have nearer term economic potential include heavy-mineral placers containing gold, chromium, platinum-group minerals, tin, and titanium, as well as sand and gravel for construction material. Phosphorite crusts and nodules, as well as extensive bedded deposits off the U.S. east coast, are a potential future source of phosphate—now a major U.S. mineral

export and an essential mineral import to many world agricultural regions.

The OCS polymetallic sulfide deposits containing zinc, copper, lead, silver, and other metals have long-term but little near-term potential as they pose new mining problems and must compete with a large number of alternative onshore domestic and foreign sources. Economic production from OCS deposits, as in onshore deposits, is ultimately dependent upon cost-competitive mining systems, ore grade, and commodity markets.

The MMS recognizes the potential for environmental impacts as a result of G&G prospecting and some scientific research. These possible impacts will be identified and appropriate mitigation measures determined as part of DOI's environmental review process. Some potential impacts that may be postulated now may never come to pass as experience provides added knowledge and modifies expectations and practices. Under DOI's case-by-case approach, issues common to all forms of OCS mining and all commodities will be covered by regulations governing G&G prospecting and scientific research, leasing, and operations. Using this case-by-case approach, mitigation measures can be defined with specificity as mineral resource targets are identified and recovery methods are proposed. Commodity-specific issues will be covered by specially designed lease stipulations specified at the time the OCS minerals are offered for lease. Site-specific issues identified after the issuance of a lease will be addressed through conditions of approval for the conduct of leasehold activities. Based on this approach and information obtained as a result of MMS's Environmental Studies Program (ESP), MMS believes that protection of the environment can be compatible with the recovery of minerals from the OCS.

The MMS has prepared OCS Report No. 87-0035, "Environmental Effects Overview: Marine Mining on the Outer Continental Shelf," to provide the public with an early overview of the likely activities and potential impacts on the environment resulting from prospecting and postlease operations. The likely mining activities and their potential impacts will be covered in more detail in the environmental evaluations carried out as part of the decisionmaking process for all phases of OCS minerals mining.

Detailed coverage of potential environmental issues is not practicable at this point in time since many uncertainties remain at this early stage with respect to the nature, magnitude,

location, and rate of future G&G prospecting and scientific research activities. Many types of ore deposits exist in a variety of environmental settings requiring a diverse set of prospecting and mining technologies. This raises questions as to whether a meaningful assessment can be conducted at this time. However, this regulatory program is designed to ensure that necessary environmental evaluations will be conducted prior to permit issuance.

Further, through the National Environmental Policy Act (NEPA) process, MMS's preparation of prelease environmental evaluations addressing proposals to lease individual commodities in identified areas will provide a series of opportunities for public involvement in the evaluation of environmental impacts. It is anticipated that an Environmental Impact Statement (EIS) will be prepared in connection with the decision to hold the first lease sale in an area. The additional site-specific and technology-specific environmental impact evaluations,

which will be conducted during the evaluation of proposed leasehold activities, will provide further opportunities for public participation.

Two sale-specific EIS's have been completed or are in the process of completion. They are for: (1) Sand and gravel in the Beaufort Sea off Alaska, published as a final EIS in March 1983, and (2) cobalt-rich manganese crusts in the Hawaii and Johnston Island EEZ's, published as a draft EIS. The notice of availability for the Hawaii draft EIS was published in the Federal Register on March 27, 1987 (52 FR 9958), with public comments due by June 25, 1987. The comment period was subsequently reopened from December 10, 1987, until February 8, 1988. A draft EIS was published in December 1983 for metalliferous sulfides in the Gorda Ridge area off California and Oregon. This EIS was cancelled in the Federal Register on March 31, 1988 (53 FR 10447). Lease sale EIS's such as these will be augmented by additional environmental documentation prior to

postlease development and production operations.

Program History

Federal study of OCS mining began as an outgrowth of the concern with mineral shortages during and after World War II and the Korean Conflict. In the early 1950's, President Truman created the Paley Commission to investigate means to avoid shortages. This was followed by major studies by the National Academy of Sciences (NAS), the National Academy of Engineering (NAE), and others which further focused attention on the critical nature of steadily declining mineral resources in terms of U.S. and foreign supplies, U.S. vulnerability, and national goals.

During the period of 1956 through 1988, seven lease offerings were completed for salt, sulphur, and phosphate minerals using the regulations under the OCSLA as a basis for the actions. Over \$54 million was received by the Federal Government in bonuses and rents during this period (see Table 2).

TABLE 2.—MINERALS MANAGEMENT SERVICE

Lease offering	Date of offering	Location	No. of tracts offered	Acres offered	No. of tracts bid on	Total bonus high bid	No. of tracts leased	No. of bids rejected	No. of bids received
Gulf of Mexico Salt & Sulphur Lease Offerings: ¹									
1	10/23/54	Sul-LA	108	523,630	5	\$1,233,500	5	0	5
8	05/19/60	Sa-LA	10	22,065	1	75,250	1	0	1
13	12/14/65	Sul-TX	658	957,520	50	33,740,309	50	0	113
17	09/05/67	Sa-LA	8	16,995	1	30,584	1	0	1
20	05/13/69	Sul-LA	120	165,605	38	3,678,045	4	24	43
S/S	02/24/88	Sul-CGOM	51	593,971	14	15,149,327	14	0	20
Total			955	2,279,806	109	53,906,995	75	24	183
Pacific Phosphate Lease Offering: ²									
PH	12/15/61	So-CA	15	50,540	6	122,000	6	0	6

¹ Total Amount of All Bids Received for All Lease Offerings—\$82,527,068. Total Amount of All Rentals for All Lease Offerings—\$297,860.

² Total Amount of All Bids Received—\$122,000. (Total bonuses (and rentals) were refunded due to discovery of unexploded Naval projectiles on ocean floor.)

In 1970, in its report to Congress, the Public Land Law Review Commission concluded that the regulations associated with the OCSLA, which were designed primarily for oil and gas development, were not conducive to the development of other minerals. The Commission also stated that a location system was not desired and that where competition is known to exist, competitive bidding procedures should be utilized. The rules being proposed for the leasing of minerals other than oil, gas, and sulphur are consistent with the Commission's report. The benefits of leasing were reiterated in 1975 by the NAS/NAE Panel on Operational Safety in Marine Mining in its comprehensive

report entitled "Mining in the Outer Continental Shelf and the Deep Ocean." This study examined basic issues including the importance and potential of OCS mining, mining technology, environmental protection and safety, regulations, and leasing. The panel recommended that operations be undertaken in representative areas.

Draft OCS hard minerals leasing and postlease operating regulations and a draft EIS were published in 1974. Following public comment, DOI undertook a series of actions culminating in the present policy of leasing on a case-by-case basis in consultation with adjacent States. A proposed long-range program for

resource evaluation and lease management was drawn up by the U.S. Geological Survey (USGS) in 1974 but was not funded.

In November 1977, the Directors of the USGS and the Bureau of Land Management (BLM) recommended establishment of an inter-Agency task force to develop policy recommendations for leasing OCS minerals other than oil, gas, and sulphur. The resulting Program Feasibility Document, published in 1979 with 18 technical appendices, concluded that sufficient national interest and economic incentives existed to support selected-commercial-scale mining in the OCS.

On January 19, 1982, DOI announced approval of the development of a leasing program for OCS minerals other than oil, gas, and sulphur on a case-by-case basis. The Secretary published a notice of interpretation in the Federal Register on December 8, 1982 (47 FR 55313), relating to DOI's jurisdiction over OCS minerals other than oil, gas, and sulphur. Further clarification was published on January 19, 1983 (48 FR 2450).

The case-by-case approach to the leasing of OCS minerals other than oil, gas, and sulphur was selected to provide practical experience with the variety of potential mineral resources found in the OCS, the different potential environmental settings, and the range of potential technology that might be used. The case-by-case approach provides for management flexibility, opportunity for effective coastal State participation, and extensive environmental review. The regulations will establish a broad regulatory framework; the subsequent lease stipulations will define site-, commodity-, and technology-specific requirements; and the appropriate public and environmental review of leasing proposals and lease development proposals will facilitate the consultation and coordination processes authorized under Federal law.

As a first step in the preparation of regulations under this case-by-case approach, an advance notice of proposed rulemaking for regulations to govern G&G prospecting and scientific research activities associated with minerals other than oil, gas, and sulphur in the OCS was published in the Federal Register on December 7, 1984 (49 FR 47871), and a notice of proposed rulemaking on the same subject was published in the Federal Register on March 26, 1987 (52 FR 9758).

Public Comments and Agency Responses

The following discussion summarizes the comments received as a result of the request for comments and recommendations contained in the notice of proposed rulemaking. Agency responses are also included.

Section 280.0

Comment—One commenter asserted that the information collection required approval from the Office of Management and Budget (OMB); and that if OMB refuses to approve or substantially reduces the information collection requirements, then the rule as a whole should not go forward.

Response—The information collection requirements of this final rule have been approved by OMB under 44 U.S.C. 3507

and assigned OMB clearance number 1010-0072.

Section 280.1

Comment—Numerous commenters questioned DOI's authority over marine mining under the OCSLA.

Response—Section 8(k) of the OCSLA states, as follows:

The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the Outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

Thus, section 8(k) specifically and clearly authorizes the Secretary to lease minerals in the OCS other than oil, gas, and sulphur.

Comment—Several commenters disagreed with DOI's interpretation of its jurisdiction under the OCSLA, specifically as to the definition of the OCS. Some of the commenters expressed the opinion that the Presidential Proclamation on the EEZ was not intended to impact on OCS jurisdiction. Other commenters opined that the definition has no basis in international law.

Response—In an opinion dated May 30, 1985, the Solicitor of DOI concluded that the OCSLA definition of "Outer Continental Shelf" includes all lands seaward of those granted to the States in the Submerged Lands Act (43 U.S.C. 1301 *et seq.*) to which the United States claims jurisdiction and control under international law. The Presidential Proclamation on the EEZ formally claimed U.S. jurisdiction to a minimum of 200 nautical miles from its coasts. The 1958 Geneva Convention on the continental shelf defined a nation's continental shelf as "the seabed and subsoil of submarine areas . . . outside the area of the territorial sea, to a depth of 200 meters, or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas." Since the seabed and subsoil of submarine areas beyond 200 miles may admit to the exploration of the natural resources of the area, the OCS encompasses, at a minimum, an area within 200 nautical miles of the coasts of the 50 States. The "continental shelf" doctrine in international law is a legal, not geologic or geographic, concept. The United States regards the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) as reflecting existing or evolving customary international law,

aside from those parts which cover deep seabed mining beyond national jurisdiction and which are purely contractual. The international community now accepts that the continental shelf extends to a minimum of 200 nautical miles for all nations, essentially concurrent with the 200-mile EEZ, and may extend beyond 200 miles if certain criteria are met. The United States recognizes both the continental shelf and EEZ doctrines set forth in UNCLOS as codifications of existing customary international law. Both confirm U.S. sovereign rights and control over the seabed adjacent to our coast. The DOI considers that the OCSLA is both meaningful and adequate as a basis for management of the mineral resources of the submerged lands of the United States adjacent to the 50 States and beyond those lands granted to the States by the Submerged Lands Act. The DOI recognizes that the OCSLA does not provide it jurisdiction over the entire EEZ, namely, those areas adjacent to lands over which the United States exercises jurisdiction and control but which are not one of the States (e.g., Johnston Island).

Comment—Several commenters asserted that the OCSLA was an inappropriate and inadequate vehicle for marine mining for a number of reasons. Some said that the OCSLA was too oil and gas oriented and was never intended for marine mining. Others said the OCSLA did not adequately balance national and State interests and provided few, if any, mechanisms for State involvement in a marine mining program. Still others stated that the requirement for up-front competitive cash-bonus bidding was a disincentive to the development of a marine mining industry. They generally favored a preference-right system similar to that under the Deep Seabed Hard Minerals Resources Act (DSHMRA), administered by the National Oceanic and Atmospheric Administration (NOAA). (The NOAA has a program to issue licenses for manganese nodule recovery from the deep seabed areas beyond the limits of exclusive U.S. jurisdiction.) Others felt that environmental safeguards under the OCSLA were inadequate. In light of these objections, six commenters recommended that DOI desist from further rulemaking under the OCSLA and request new legislation.

Response—The recommendation to stop the promulgation of rules under the OCSLA and seek new legislation was not adopted. Section 8(k) specifically and clearly places authority for the leasing of OCS minerals with DOI and provides the Secretary with broad

authority to prescribe appropriate terms and conditions for OCS mining activities. Leases have previously been issued for salt and phosphates. Recognizing the differences between oil and gas and other minerals, the OCSLA allows greater flexibility in the administration of a program for the leasing and development of other OCS minerals.

States are being encouraged to participate jointly in planning for the development of a marine mineral program. Ten coastal States have been and are actively involved in joint State/Federal task forces or other coordinating mechanisms that have been developed with the intent of providing better consultation and coordination as well as effective opportunities for communication between all parties and to assure consideration of the concerns of all interests.

The MMS's Environmental Studies Program (ESP) has developed a wealth of data and information about the marine environment. Application of this and additional environmental information will enable MMS to develop and require adequate environmental safeguards. Environmental impact evaluations and the definition of measures for effective mitigation will be accomplished by MMS in conjunction with actions taken and approvals for activities given under the OCSLA.

These rules apply to all minerals other than oil, gas, and sulphur. Prior to final promulgation of these rules, 30 CFR Part 251 covered all minerals in the OCS. This final notice also revises § 251.1 to limit the applicability of Part 251 to oil, gas, and sulphur. While the activities to be conducted under Parts 251 and 280 permits may be similar or identical, the mineral(s) involved determines which rules apply. After the effective date of these rules, permits under Part 251 are only needed if the G&G exploration or scientific research activities relate to oil, gas, or sulphur. Any other G&G activity, whether commercial or research, will be governed by these rules. However, if a person wishing to conduct G&G activities is looking for all minerals including oil, gas, and sulphur, a permit under these rules is sufficient. Two separate permits are not necessary. The rules at Part 251 are currently being reviewed in toto, and all references to minerals other than oil, gas, and sulphur in sections other than § 251.1 will be proposed for deletion along with any other proposed changes to the part.

Section 280.2

Comment—One commenter objected to the singular definition of an adjacent

State. It was pointed out that there may be more than one adjacent State.

Response—The comment has been accepted. The definition of adjacent State has been revised to more accurately reflect the concerns of an adjacent State and that an adjacent State could be more than one State.

Comment—The term "CZMA" is defined in proposed § 280.2 but is not used in the text of the rules.

Response—The term was inappropriately included in the list of definitions and is not included in the final rule.

Comment—One commenter stated that the definition of G&G data and information needs clarification. According to their interpretation, only data that has been documented by location and time can technically be considered usable data subject to these regulations.

Response—Location and, to a certain extent, time are important parts of physical measurements. The definition of G&G data and information has been deleted and new definitions added for "data" and "information."

Comment—There was one comment stating that the word "portions" should be replaced by "materials constituting or within the seabed" in the definition of geological sample.

Response—The first part of the definition is believed to be clear as written. The phrase concerning the location and time has been stricken as unnecessary and the phrase "acquired while conducting prospecting or scientific research activities" added to make the wording of the definition more precise.

Comment—A single comment was received stating that the word "geological" should be stricken from the definition of interpreted geophysical information.

Response—The definition has been eliminated.

Comment—A commenter found the definition of lease too ambiguous and stated that the authorization of activities should be clarified by stating which specific mineral deposits were within specific geographic areas.

Response—The definition of lease is written to recognize the dual meaning of the term as commonly used; i.e., as the contract document or the property covered by the contract. The definition has been reworded to more clearly state those meanings. Also, the term "specific" has been added before "minerals."

Comment—A commenter stated that the inclusion of geothermal resources in the definition of mineral deposits was

too broad for a reasonable interpretation of the OCSLA. In their opinion, new legislation would be required before this permit program could be undertaken.

Response—New legislation is not required. The definition of mineral deposit has been replaced with the definition of minerals which refers to the definition in section 2(q) of the OCSLA. Section 2(q) defines the term minerals to include " . . . oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from 'public lands'" Tracking the language of the OCSLA best serves the purpose of these regulations.

Comment—Comments were received from seven groups on the definition of OCS. Five of these asserted that the EEZ and OCS were separate and legally distinct. They stated that there is no jurisdictional or at least questionable authority for Federal Agencies under the OCSLA for the rules. They stated that the Presidential Proclamation on the EEZ made reference to existing jurisdiction, thereby implying no change in the status quo as regarding the authority of the DOI to regulate minerals in the EEZ. They stated that legislation is required to resolve these issues. One commenter wanted a more inclusive definition of OCS to include Archipelago ridges, island slopes, and terraces which are not geologically related to the continental shelf. Another commenter wanted to change the definition of OCS to include the jurisdiction and control of the United States under international law for purposes of the OCSLA. This would take account of legal developments since the OCSLA was enacted, including the EEZ Proclamation of March 10, 1983.

Response—As previously stated, the OCS includes the EEZ and such additional submerged lands off the coasts of the 50 States to the seaward limit of the continental shelf. The authority for these regulations comes from specific authorization contained in the OCSLA; therefore, a definition of the OCS which is consistent with the provisions of the OCSLA is appropriate for these regulations. The definition of the OCS is not solely based on the geologic continental shelf. Archipelago ridges are included in the OCS if they " . . . appertain to the United States and are subject to its jurisdiction, control, and power of disposition" provided in the OCSLA (43 U.S.C. 1332(1)).

Comment—Comments were received from three groups on the definition of

person. Two commenters were concerned that the definition excluded foreigners. Another commenter stated that this definition is much broader than under the oil and gas exploration regulations and, therefore, may require foreigners to obtain a permit.

Response—The definition has been revised so that text parallels the regulations in 30 CFR Part 251 which prior to promulgation of these rules covered all minerals. Nonresident aliens are clearly excluded from the definition. Nonresident aliens who want to carry out prospecting activities that are subject to these rules must incorporate in the United States or work through a U.S. subsidiary.

Comment—Three comments were received from universities and a Federal Agency on the definition of prospecting activities. They were concerned that scientific research would be subject to these regulations. To encourage marine scientific research, they would exclude such research from the regulations.

Response—The definition of prospecting relates to G&G activities having a commercial purpose; therefore, prospecting permits are required for such activities no matter who is conducting the activities. Generally scientific research does not have a commercial purpose and a prospecting permit would not be required. The definition of G&G scientific research includes by definition a requirement that the data and information will be made available to the public at the earliest practicable time. If data and information are not to be made available, then the activities are considered to have a commercial purpose, and a prospecting permit is required.

To meet the Secretary's responsibilities under the OCSLA and other applicable laws, G&G scientific research permits are required where explosives are proposed for use or where a test borehole will be drilled to a depth greater than 300 feet. The use of explosives poses a threat to OCS natural resources which may be unacceptable where endangered species or marine mammals may be harmed. Test drilling operations to a depth greater than 300 feet may permit oil and gas from a shallow accumulation to escape into and pollute the sea or may permit seawater to enter and pollute a freshwater aquifer.

The final rule excludes G&G scientific research from the requirement for a permit if—

(1) The scientific research activities will not interfere with or endanger operations under any lease or right-of-way maintained or issued pursuant to the OCSLA;

(2) The scientific research activities will not be unduly harmful to aquatic life in the area; result in pollution; create hazardous or unsafe conditions; unreasonably interfere with the other uses of the area; or disturb any site, structure, or object of historical or archaeological significance; and

(3) The person conducting the scientific research activities or operating the vessel from which the research is to be conducted has consulted and coordinated the activities with the other users of the area.

Any person who is planning to conduct G&G scientific research activities and has questions as to whether the activities fit under the criteria or who the other users are in an area is encouraged to contact MMS for assistance in determining whether the planned activities qualify.

If proposed activities cannot be modified to meet the criteria cited above, then such activities are barred by section 11 of the OCSLA and cannot be permitted under any type of authorization.

Federal Agencies are excluded from the requirements of these regulations as provided for in the OCSLA.

Comment—One commenter wanted a definition of superjacent waters added so that the scope and area of the G&G data would be better defined.

Response—The definition of G&G data has been deleted. The word "superjacent" has been replaced with "overlying" in the definition of geological sample; therefore, a definition of superjacent is unnecessary.

Section 280.3

Comment—Several parties commented on provisions requiring a permit for all seafloor survey or sampling activities, regardless of the motive behind the activities. Most opined that exemptions should be made for certain categories (i.e., university research, basic research, academic research and surveys, defense oriented research, and marine scientific research). Three of the commenters pointed out that the imposition of such a requirement for foreigners would be inconsistent with U.S. ocean policy.

Response—The OCSLA states that "[A]ny agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the Outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area." Whether "exploration" activities have a potential to adversely

impact the marine environment depends upon the nature of the activity and not on whether the activity is conducted to gain data and information in the name of research or for a commercial enterprise. The MMS has responsibilities for the prevention of undue harm to the environment or interference with other uses of the OCS. The MMS has revised § 280.3 to specify that prospecting permits are required for activities which are conducted for commercial purposes. Scientific research permits are required if a borehole is to be drilled deeper than 300 feet or explosives are to be used. Permits are only required for "persons" who are defined to exclude foreigners.

Provision has also been made in § 280.3 for oral approval by the Director of plan revisions or emergency permit applications to be followed by written confirmation of oral requests and approvals.

Section 280.4

Comment—Two commenters stated that a permit term of 2 years is somewhat shorter than would be needed to properly evaluate the mineral potential of a large section of the OCS. Because of the high cost of mobilization requirements, coupled with extremes in offshore weather, they suggested a permit term of 3 or 4 years. Another commenter suggested that "good cause" for extending a permit should be more clearly defined. Another commenter stated that there should be a total time limit that a permit can remain in force.

Response—Under the final rule, the initial permit will be for a term of up to 3 years and may be extended by the Director for up to 2 additional years for "good cause" (e.g., the amount of additional activity to be performed, time required to obtain equipment, or for severe weather conditions).

This gives a longer permit term, defines "good cause," and sets a limit of 5 years on the time period that a permit can remain in force.

Section 280.5

Comment—Several commenters asserted that requiring applications 60 days prior to initiation of planned activities was too short. It was suggested that 90 days would allow more time for Federal, State, and local review. Another commenter opined that MMS should have a deadline for approval as the applicant has the 60-day timeframe.

Response—The 60-day timeframe has been retained. However, the provision in § 280.11(a) for applications to be sent to States has been changed to provide that

States will be notified and a copy of the application provided immediately upon following the submission of an application. Section 280.5(e) specifies that the Director shall approve, disapprove, or require the applicant to modify an application within 30 days after the submission of the application for a permit. The MMS anticipates approving applications within the 30-day timeframe. In the event circumstances require the preparation of an environmental impact statement (EIS), the time for MMS action would be extended by the time required to prepare the assessment, and adjacent States would be afforded an opportunity for review and comment on the proposed activities.

The requirement to provide a description and map of the proposed area(s) in the application has been revised to allow for submission of a general description at the time of application if more detailed information is not available at that time. However, more detailed location information is to be submitted prior to approval and initiation of the specific activity.

Comment—Several commenters stated that it was unclear whether the plan was part of the application or a separate document.

Response—Section 280.5 has been amended to add paragraphs (b)(1)(vii) and (d)(6) to clarify that the prospecting and scientific research plans are part of the permit application.

Comment—Several States were concerned with the provision of § 280.5(b)(2) that applicants should indicate which data and information they considered proprietary. The commenters stated that much of the application information was necessary for State review.

Response—The MMS believes it necessary to protect proprietary data and information from unauthorized disclosure. Section 280.5(b)(2) allows the applicant to identify what it considers proprietary. It is still the Director's responsibility to determine what data and information will be protected as proprietary. In addition, provision is made under which States can enter into an agreement with MMS to permit access to proprietary data and information.

A provision has been added to allow the Director to approve conversion of permits issued under Part 251 to permits under these rules. Existing permits which are converted would be subject to all requirements under these rules.

Section 280.6

Comment—Generally, the commenters were supportive of the

requirement for a prospecting plan. However, several commenters stated it should not be required for scientific research.

Response—Researchers are required to obtain a G&G scientific research permit if they propose to drill a borehole to a depth greater than 300 feet or use solid or liquid explosives. In those cases, a plan is needed to allow MMS to evaluate the proposed activities and either approve, disapprove, or require modification of the application. Section 280.6(c) was added to provide a means of applying for a permit when all required information is not available (e.g., when a ship of opportunity will be used). Researchers whose activities qualify under § 280.3(c) are not required to get a permit or submit a plan.

Comment—Several commenters suggested that the prospecting plan include baseline environmental information to characterize marine environmental conditions and biological resources. They asserted that environmental monitoring would be meaningless without such information.

Response—The MMS's ESP has developed considerable data and information concerning the marine environment which are transferable directly to evaluation of potential impacts of G&G prospecting and scientific research activities on the marine environment. Under § 280.6(a)(6) of the final rule, a description of the anticipated environmental consequences of each activity is required; (a)(7) calls for mitigation measures to offset environmental impacts and (a)(8) requires submission of a monitoring plan for approval. The MMS anticipates that baseline information will be submitted as the foundation for the information required in paragraphs (a) (6), (7), and (8). To the extent that adequate background information is not submitted with the plan, MMS can request that such information be provided to assist it in evaluating the plan.

Comment—Two commenters requested inclusion of information about the probable port of operations and onshore support facilities. It was also suggested that coastal zone management (CZM) concurrence be required for permits.

Response—It is expected that the name and location of the expected port of operation, if any, will be included in the application for approval of a permit and in a plan. It is not expected that information concerning onshore support facilities will be needed because the permitted activities are not expected to generate a significant level of onshore support activity. To the extent that other

Federal, State, or local governmental approvals are needed for related onshore activities, the information should be provided relative to that approval. The suggestion that CZM concurrence be required for permits was not adopted.

Comment—A number of commenters were concerned about multiple-use conflicts and stated that they should be addressed in the plan.

Response—Section 280.6(a)(10) of the final rule requires the submission of a description of potential conflicts with other users. In addition, one of the requirements for researchers under § 280.3(c) is for consultation and coordination with other users to avoid or minimize conflicts.

Comment—One commenter requested inclusion of the anticipated volume and type of liquid and solid wastes and proposed disposal means.

Response—A phrase has been added to § 280.6(a)(3) that equipment descriptions shall emphasize safety and pollution-prevention features. It should also be noted that permits for discharges into the ocean or ocean dumping are regulated by other Agencies such as the Environmental Protection Agency (EPA).

Comment—A commenter suggested that the plan require inclusion of any known reefs in the area.

Response—It is expected that known reefs will be identified as part of the description of the location(s) and activity(s) to be conducted as well as the description of anticipated environmental consequences of the activities the applicant proposes.

Comment—One commenter said that § 280.6 should provide for copies of the plan to be given to adjacent States.

Response—Section 280.11(a) of the final rule provides that a copy of the application and plan be given to adjacent States as notification of proposed activities. Thus, inclusion of this provision in § 280.6 is unnecessary.

Section 280.7

Comment—Several commenters suggested that the introductory phrase in § 280.7(a) was improperly worded by having the word "unreasonably" apply to all categories listed below. It was also recommended that some criteria be provided for determining what is reasonable or unreasonable.

Response—The section has been rewritten to clarify that persons conducting activities under this rule should not create conditions that pose an unreasonable risk of the listed occurrences. The reasonableness relates to the risk and not the listed occurrences. Because of this

clarification, criteria are not needed for determining the reasonableness of the listed occurrences.

Comment—A commenter suggested that a mechanism or procedure was necessary to handle the situation where oil and gas and other minerals existed in the same area.

Response—Section 280.7 requires that activities authorized under this part not interfere with or endanger operations pursuant to existing leases or permits.

Comment—Some commenters wanted a permittee to notify MMS of any archaeological resources in addition to not disturbing them (§ 280.7(a)(4)).

Response—Identification of any known archaeological resources is already required as part of a plan in § 280.6(a)(9). The final report under § 280.8(a)(4) also requires a summary of effects of activities on archaeological resources. Any previously unknown archaeological resources should be identified in the final report.

Comment—Several commenters agreed with the concept of multiple use but pointed out the potential for interference with military operations.

Response—The MMS recognizes the potential for prospecting or scientific research activities to interfere with military activities in some areas of the OCS. The MMS currently coordinates its oil and gas activities with the Department of Defense (DOD) pursuant to the Memorandum of Agreement (MOA), dated July 20, 1983. The MOA covers all minerals; therefore, DOD is also expected to be involved with planning and coordinating the MMS's activities with respect to OCS minerals other than oil, gas, and sulphur. As a result of military use, some areas of the OCS are completely off limits; others are restricted as to types and timing of activities; and still others are subject to temporary short-term abandonment, such as when rocket launches occur at Vandenberg Air Force Base, California. The MMS interface with the military has been successful and will continue.

Comment—Several States requested participation as observers along with MMS under § 280.7(b). Other States requested that they be allowed to inspect activities and possibly contract with MMS to carry out the Federal inspection responsibility.

Response—The level of participation by adjacent States will vary. It is anticipated that the level of participation for a specific adjacent State will be dictated by the degree to which the Governor of that State wants to participate, and mutually acceptable conditions can be established. While the final rule does not discuss contracting with States, cooperative agreements are

permissible under Federal law and can be considered on a case-by-case basis.

Comment—Some States requested that States see all substantial changes to plans required under § 280.7(c). They also requested a definition of a substantial change and that any such changed plan go through the same review as a new plan.

Response—Substantial changes to approved permits and plans will be treated in the same manner as a new application. What constitutes a substantial change will vary with the circumstances and, therefore, cannot be specifically defined. A permittee is required to conduct activities in accordance with the approved plan. Therefore, any substantive change from the approved plan needs MMS approval before the change is made. The level of review depends on the nature of the proposed change and its potential for adverse effects. Copies of applications for permission to change approved plans will be forwarded to adjacent States immediately upon their submission to MMS.

Section 280.9

Comment—A commenter took exception to the statement in the preamble to the proposed rule concerning the frequency of reporting. It was asserted that in addition to whale migration, there were many other unusual circumstances, particularly off Alaska, that would require more frequent reporting.

Response—The MMS recognizes that there are other situations where reporting more frequently than quarterly should be required. Whale migration in the Beaufort Sea was only cited as an example of such a situation.

Comment—A commenter questioned the requirement to submit final reports outside of the normal timeframe if a sale was scheduled to be held within 60 days. The commenter did not consider 60 days adequate to assess data and information for holding a sale. The information in the final report should be necessary prior to consideration of a sale.

Response—It is not anticipated that the 60-day requirement will be utilized very often. The majority of data and information concerning an area will have been gathered and analyzed in order to decide whether to schedule a lease offering. However, some permittees do gather "last minute" data for use in preparing their bids on tracks offered for lease. The MMS also needs to have those data.

Comment—A commenter questioned how MMS could ensure the accuracy and impartiality of the environmental

effects information contained in the reports required under § 280.8.

Response—Under § 280.7, the permittee is required to allow the Director to be present on any cruise. It is expected that an MMS official will be present on selected cruises. The MMS reports from the cruises, the reports of other permittees or leasees in the area, and the environmental information available to MMS through the ESP and other studies will provide MMS with enough data and information to evaluate the accuracy and impartiality of reports.

Comment—A number of States requested that adjacent States routinely receive copies of reports.

Response—Adjacent States can make arrangements with the appropriate OCS Regional Director to receive copies of reports, subject to the requirements to protect confidentiality under § 280.13.

Section 280.9

Comment—Some States requested that they have access to samples acquired by permittees.

Response—Section 280.13 has been amended to specifically include samples as part of the material available for inspection by States, subject to the requirement to protect confidentiality under § 280.13.

Comment—Several States suggested that States be able to archive any samples or data that permittees intend to discard after the retention period is over.

Response—States are free to negotiate with permittees regarding access to samples and data which the permittee intends to discard. After the time prescribed in § 280.9 for retaining data, information, and samples expires, MMS has no further control over what a permittee does with the material. The MMS has no objection to a transfer of materials to an adjacent State.

Comment—It was commented that records should not simply be kept but should be submitted to MMS in their entirety.

Response—The MMS does not want, need, or desire to bear the continuing costs for warehousing all the data, information, and samples obtained under every permit. The purpose of the retention periods in § 280.9 is to allow MMS to inspect data, information, and samples and decide which, if any, MMS desires to obtain. It would be unnecessarily costly and administratively burdensome to have to reproduce and ship these materials. Therefore, MMS has concluded that it is less burdensome to the permittee and MMS, and just as effective, to require retention of records for a period of time

to allow MMS the opportunity for inspection and selection as needed.

Comment—Several commenters questioned the absence of provisions for reimbursement for providing data, information, or samples under these rules. They pointed out that reimbursement is provided for under 30 CFR Part 251.

Response—Reimbursement for providing data, information, or samples was intentionally omitted from this rule. Section 280.9 does not require the submission of data, information, or samples to MMS for retention. Under this rule, the permittee must keep the samples, data, and information for a specified period of time. During that time, the Director is authorized to inspect and cut samples or copy data and information. The permittee is not required to submit copies. It is the Government's responsibility to cut the samples or copy the information. It is also the Government's choice to do so itself or pay to have it done either by the permittee or a third party.

Section 280.10

Comment—It was questioned whether the regulations meet the needs and concerns of environmental interests.

Response—The OCS minerals mining program has been designed to provide a framework for comprehensive environmental protection during G&G prospecting and scientific research activities and postlease operations through requirements for site-specific and commodity-specific evaluations and lease stipulations which include appropriate mitigation measures. Protection of the environment will be a high priority at every stage of the process starting with the review of permit applications and plans under this rule through leasing and postlease operations.

Comment—A commenter remarked that the OCSLA does not provide environmental guidelines for marine mining.

Response—Guidelines for protecting the environment come from a wide variety of other laws such as the NEPA, Endangered Species Act, Marine Mammal Protection Act, National Historic Preservation Act, and Clean Water Act, as well as the authorities and guidance found in OCSLA. Although some sections of the OCSLA are oil and gas specific, provisions of other sections are applicable to all minerals in the OCS. These provisions require that activities be conducted in a safe manner to prevent or minimize the likelihood of occurrences which may cause damage to the environment. They also permit cancellation or suspension if there is a

threat of serious, irreparable, or immediate harm to the marine, coastal, or human environment. The absence of specific guidelines provides flexibility to develop a framework for environmental protection tailored to the specific commodity and location in the OCS.

Comment—Several commenters questioned MMS's approach in conducting environmental analyses. One commenter stated that the intent to prepare a first lease-sale EIS per commodity is inadequate. The commenters suggested that NEPA needs should be looked at on a case-by-case basis.

Response—The MMS is taking the case-by-case approach. The specific requirements contained in the NEPA and Council on Environmental Quality regulations (40 CFR Parts 1500-1506) dictate that environmental impacts be addressed on a case-by-case basis. An EIS is anticipated for the first lease sale of minerals other than oil, gas, and sulphur (e.g., placers, phosphates, and heavy minerals) in areas where leaseable targets are identified. Additionally, the potential environmental impacts of all actions authorized under the OCSLA will be evaluated during MMS's decisionmaking process pursuant to the requirements of NEPA and other Federal statutes and governing regulations.

Comment—Several commenters stated that the rules were inadequate to protect the environment and mitigate impacts. They were especially concerned that activities should be excluded in high-value habitats.

Response—The MMS does not share that view. It is MMS's responsibility to evaluate OCS development proposals and associated environmental concerns. Through that evaluation process, certain areas of the OCS may be found to be of such exceptional natural resource value that the advantages of maintaining those values outweigh the advantages of leasing the area. In other areas, limited mineral-related activity may be allowed subject to strict stipulations designed to avoid or minimize harm to the environment. In every area, the potential impacts will be evaluated, and mineral-related activities will be authorized only when operations can be safely accomplished without unacceptable environmental effects using the best available and safest technologies as required by section 21(b) of the OCSLA.

Comment—Two commenters recommended that MMS prepare a programmatic EIS and an EIS or EA for the regulations.

Response—The MMS recognizes the potential for environmental impacts of OCS minerals activities. The MMS has

prepared a report, "Environmental Effects Overview: Marine Mining in the Outer Continental Shelf" (OCS Report No. 87-0035), to provide the public with an early overview of the likely activities and potential impacts on the environment resulting from OCS mineral activities. Detailed coverage of potential environmental issues is not practicable now since many uncertainties remain at this early stage with respect to the nature, magnitude, location, and rate of future mining. However, sufficient environmental safeguards have been included in this rule to ensure that environmental evaluations will be conducted prior to issuance of a permit.

Comment—One party recommended that environmental baseline data be required for permits on a case-by-case basis.

Response—The environmental data and information needed for a permit application and proposed plan will be required on a case-by-case basis. Much baseline data has been, and continues to be, developed by MMS's ESP. It is expected that OCS mineral activities will be similar in character to onshore mineral activities in the sense that enormous areas will be looked at for each discovery that is made and that not all discovered deposits will be developed for production. Additional environmental studies are expected to be conducted in those areas where data and information are sparse or the potential for adverse impact is great. Nonimpacting activities, such as acoustic subbottom profiling over vast areas, will not be subject to the same environmental evaluation requirements that are required of activities such as dredging tons of seabed material for testing. The review and evaluation of a plan to dredge tons of seabed material will likely include the development of an EA which could reveal the need for additional environmental baseline data. In that situation, the collection of data could be required of the permittee as part of its environmental monitoring plan § 280.6(a)(8).

Comment—A commenter suggested that biological surveys are needed if surface disruption is proposed.

Response—Where prospecting or scientific research is expected to cause significant surface disruption, biological surveys may be required.

Comment—One commenter drew a parallel to the requirements of the DSHMRA, which calls for an EIS for each exploration license and each commercial recovery permit, and recommended that MMS prepare an EIS for each permit.

Response—The DSHMRA does not require an EIS or a permit for activities similar to those conducted pursuant to this rule. Citizens of the United States are free to prospect for manganese nodules beyond the limits of national jurisdiction virtually anywhere in the world without evaluating the impact of their activities on the environment or obtaining a permit or license. When activity begins to concentrate in a specific area, an application for an exploration license is required. The review and approval or disapproval of the application for an exploration license must comply with the requirements of NEPA.

Comment—A commenter suggested that activity should be allowed only where production is imminent and defer activity elsewhere.

Response—A mineral deposit must be discovered and delineated before decision regarding production can be considered. Thus, there must be a way for industry and Government to obtain the data and information on which to determine interest and potential for discovery. Prospecting is one such mechanism. The MMS intends to offer areas for leasing based on indications of industry interest, potential for discovery and ultimate recovery of minerals, and consideration of environmental consequences. Prospecting permits allow industry to do a limited level of work to find areas of promise. Based on data and information obtained through prospecting and other available information, including environmental data, MMS may offer likely areas for lease or withhold environmentally sensitive areas from leasing.

Comment—Another commenter drew a parallel to the requirements of the DSHMRA which calls for NOAA to continue research into the effects of mining deep seabed manganese nodules by recommending that MMS implement a similar program for OCS marine mining.

Response—The NOAA program is directed toward identifying environmental effects associated with the future use of one technology, hydraulic mining, involving one mineral commodity, manganese nodules. Even though DSHMRA covers all deep-sea areas outside the limits of U.S. jurisdiction, NOAA's research has been focused on the environmental characteristics of a single area. The MMS OCS minerals program is much more comprehensive. The OCS Report 87-0035 describes 14 types of mining systems which could be utilized in 10 types of mineral deposits in a variety of marine environmental settings throughout the entire OCS.

Combinations of technology, deposit type, and environmental setting could be endless, and some hypothetical combinations may never be encountered. This raises questions whether a meaningful assessment of all potential aspects of OCS minerals mining could be conducted at this time. Efforts to conduct such an assessment would consume resources that should be focused on relevant combinations as they emerge and/or are proposed for use.

Additional independent assessments of expected effects of OCS mining were made available in an analysis by the Office of Technology Assessment (OTA). The OTA 1987 report, "Marine Minerals: Exploring the Nation's New Ocean Frontier," concluded that surface and midwater effects should be minimal if appropriate precautions are taken. Effects on bottom organisms were judged in the OTA report to be the most pronounced. Extinctions, which are the severest form of impact, sublethal effects, and recovery rate were deemed to need continued study. The report indicated that these needs were particularly strong in the deep sea where the environments and identities of the organisms and their life histories are generally unknown.

The NOAA-sponsored research already directed at the deep sea is expected to be at least partially transferable to the deeper portions of the OCS. In addition, the environmental baseline data acquired on much of the OCS under MMS's ESP are applicable to OCS mining activities.

The MMS believes that the efforts of its ESP can be focused on new issues as they are identified during the course of evaluating a discovery, and the mining practices and technology that would be used to bring OCS mineral deposits into production.

Comment—Several commenters disagreed with the statement in the preamble to the proposed rule that offshore mining could be advantageous over onshore mining because of costs arising from strong environmental constraints onshore. These commenters asserted that MMS showed a lack of sensitivity to the environmental vulnerability of offshore areas.

Response—The statement was misinterpreted. The MMS is not insensitive to the vulnerability of offshore environments. The MMS is fully aware of its responsibility to protect the environment and of the special environmental values of marine and near-shore areas. The statement was meant to point out that, under certain circumstances for certain commodities, the specific economic consideration and

the costs of mitigation and environmental compliance could balance in favor of the development of an OCS mineral deposit over a similar onshore mineral deposit.

Comment—Several commenters remarked that the regulations should indicate that the National Pollution Discharge Elimination System (NPDES) is applicable to discharges from vessels.

Response—The fact that NPDES permits are applicable to discharges from vessels does not make it necessary or appropriate to include references in this rule to the NPDES permit or other requirements of any Federal Agencies other than MMS which are applicable to OCS activities governed by this rule. It is the permittee's responsibility to be aware of and to obtain all the necessary approvals and permits for operations in the OCS.

Comment—Commenters stated that the rules are not specific enough in only requiring monitoring when the potential for impacts has been identified.

Response—Under this rule, the need for monitoring will be based on the amount of data and information available for the specific area, the sensitivity of the environment to the activities being proposed, and the technology to be used.

Comment—Several commenters disagreed with the listing in proposed § 280.10 as to which activities did or did not have the potential for significant impact. Some commenters suggested that it gave the Secretary too much discretion as to when to do an EA. Numerous commenters questioned the levels of activity used as thresholds for EA's in proposed § 280.10(b).

Response—Under this rule, each proposed activity and its potential for adverse impacts on the environment will be evaluated on a case-by-case basis. Section 280.10 has been rewritten to include activities which normally receive a categorical exclusion review to determine if a more detailed environmental analysis is required.

Comment—Several commenters made specific requests that certain activities trigger the preparation of an EA. Multiple-use conflicts and nonexplosive seismic work during intensive commercial fishing seasons were two of the specifically recommended triggers.

Response—As previously indicated, each proposed activity and its potential for impacting the environment will be evaluated on a case-by-case basis. Potential conflict with other uses of the area is one of the factors that will be considered during the evaluation of environmental impacts.

Comment—Several commenters objected to the inclusion of proposed § 280.10(a)(11) that gave the Secretary the ability to add to the list of activities that pose little or no environmental effect.

Response—The list of activities contained in § 280.10 includes activities which will be subject to a categorical exclusion review. The potential of each activity for adverse effect will be evaluated on a case-by-case basis.

Comment—A number of States suggested that research activities be treated differently from prospecting for purposes of findings of no significant impact under § 280.10.

Response—Section § 280.10 has been rewritten to include a listing of activities which will normally receive a categorical exclusion review to determine if a more detailed environmental analysis is required. The need for any environmental evaluation will depend on the nature of the activities to be conducted and not the purpose for those activities. The impact of a specific activity on the environment is the same no matter who conducts the activity or for what purpose the activity is conducted.

Comment—One commenter requested an explanation of the type of water and biotic sampling envisioned in proposed § 280.10(a)(4).

Response—The types of sampling envisioned in § 280.10(d) (proposed § 280.10(a)(4)) are those typically conducted by oceanographers. Water samples are commonly taken by means of clusters of bottles (e.g., rosettes of 30-liter Niskin bottles) arranged so that each bottle samples the water at a different depth. The water is examined for nutrients, suspended particulate matter, and other constituents. Biotic sampling commonly involves a 0.25 m² box-corer which is designed to recover all of the benthic fauna in a small portion of the seafloor for subsequent analysis. Sampling techniques such as these are described in standard oceanographic references.

Section 280.11

Comment—Nine commenters objected, in general, to what they saw as too limited a role for States under the proposed rules. Several commenters traced their objections to inadequacies in the OCSLA.

Response—States are permitted and encouraged to participate fully in this program pursuant to these regulations and the OCSLA. Additional mechanisms have been established for consultation and coordination of activities with adjacent States. Consultation and coordination with States concerning

prospecting for OCS minerals other than oil, gas, and sulphur have primarily been accomplished through joint State/Federal task forces established by MMS and the Governors of adjacent States. A cooperative arrangement with Alaska and five such task forces are actively involved in the program at this time. It should be noted that under DSHMRA and legislation presently under consideration by the Congress, States have no role during the prospecting phase. The DSHMRA has no provision for a permit or an evaluation of the environmental impacts of activities governed by this rule and OCSLA. Under DSHMRA, citizens of the United States are free to conduct prospecting activities without evaluating the impact of their activities on the environment or obtaining a permit or license.

Comment—One commenter recommended the need for a more efficient State/Federal consultation process than proposed, including joint management of deposits straddling the State/Federal boundary. Another commenter suggested establishment of a buffer zone to allow work begun by a State in State waters to continue into Federal waters without a permit in order to best understand the deposit being evaluated. Also, a commenter suggested that at a minimum, States should not be required to do an EA unless it is required under their own rules.

Response—To address management of a mineral deposit which straddles the boundary between Federal and State jurisdiction, the DOI expects to develop agreements with the adjacent State when joint management is necessary or desirable. These agreements would assure coordination and cooperation between MMS, agencies of the adjacent State, and State and Federal lessees in order to maximize efficiency, reduce regulatory burden, and obtain the most equitable return to all parties. When a mineral deposit straddles the State/Federal boundary, the lessees of adjoining Federal and State leases typically will negotiate an agreement to cover such actions as applying for a mining unit that embraces Federal and State leases. The idea of a buffer zone, where Federal permits or other authorizations and environmental documentation are not required, was not adopted. The location of the jurisdictional boundary with respect to a mining activity will not alter the environmental consequences of that activity. A lessee or permittee of a State may apply for a permit under this rule or ask MMS to offer the lands for lease. States conducting scientific research in the OCS are subject to the same requirements as other researchers and

will need to get a permit or self-certify, as appropriate. Activities to be conducted in Federal waters will be subject to the appropriate level of environmental analysis and documentation.

Comment—Seven commenters opined that permits should be subject to consistency concurrence under the CZMA.

Response—The extent to which activities allowed under prospecting permits are subject to consistency review is determined by the CZMA. This rule does not need to address that issue.

Comment—Several comments were received as to the specifics of § 280.11. Numerous commenters objected to the 30-day notification in § 280.11(a) to a Governor of an adjacent State of the application for a permit. All comments received stated that the time was too short for adequate State review. Suggested timeframes ranged from 45 to 90 days.

Response—Under the final rule, MMS will notify the Governor of an adjacent State immediately upon the submission with a copy of an application for approval of a permit and a plan. Section 280.5(e) requires the Director to take action on an application within 30 days following its submission.

The MMS believes that immediate State notification is reasonable. Section 280.11(b) permits the Director to grant a Governor a specified period of time for review and comment in instances where an EA is to be prepared. Under § 280.11(b), MMS will set deadlines on a case-by-case basis, taking into consideration the specific circumstances of the proposed activities.

Comment—One commenter requested that a copy of the plan, as well as the application, be provided to the adjacent State Governor under § 280.11(a).

Response—The Governor of an adjacent State(s) will be provided copies of both the application and plan subject to the requirement for the protection of proprietary data and information.

Comment—One commenter requested that cities and counties adjacent to proposed activities receive notice of permit applications. Another commenter suggested that all interested parties be allowed to comment on permit applications.

Response—The nonproprietary portions of an application for a permit will be placed in the MMS's Public Inquiries room in the Regional Director's office. As previously noted, States are provided copies of the application and plan. The 30-day timeframe for MMS

approval action under § 280.5(e) does not anticipate time for receipt of comments unless an EA is to be prepared. In such instances, States will be provided a specified period of time for review and comment. As subdivisions of a State, cities and counties can comment through the Governor as time and State procedures permit.

Comment—Several States commented that States should have an opportunity for review and comment on all permit applications and not just those requiring the preparation of an EA.

Response—Under this rule, States are notified with copies of all applications and plans. However, provision is not made for review and comment unless an EA is to be prepared. In instances where an EA is to be prepared, the Governor will be given a specific time for review and comment. Most of the prospecting activities that will be described in a plan are activities which will have a de minimus impact upon the environment and no effect within an adjacent States' coastal zone. Under DSHMRA and legislation presently under consideration in Congress, citizens of the United States are or would be free to conduct prospecting activities without evaluating the impact of those activities on the environment or obtaining a permit or license. Adjacent States have no role in that situation. Under this rule, in those instances where MMS's environmental review of the proposed prospecting plan indicates that the impact of those proposed activities needs more extensive evaluation pursuant to the processes and procedures prescribed in NEPA, those procedures would be initiated and participation of the adjacent States invited through the NEPA procedures.

Comment—One commenter recommended that a mechanism be set up to deal with situations when MMS and a State disagree on whether an EA should be prepared.

Response—This recommendation was not adopted. It is the MMS's responsibility to determine the need for environmental analysis and documentation under NEPA. The State/Federal task force system affords an adjacent State a mechanism for input, but in the final analysis, it is MMS's responsibility to determine the need for environmental evaluation and to prepare the appropriate environmental documentation.

Comment—One commenter suggested that Federal Agencies also be allowed to review and comment under § 280.11(b).

Response—Section 280.11(c) provides for MMS notice of all permit

applications to Federal Agencies, as appropriate. When another Agency has jurisdiction over some aspect of the proposed prospecting activity, such as EPA's or the U.S. Army Corps of Engineers' responsibility for approval of discharge permits, then its own laws and regulations would apply, regardless of what is provided in these rules.

Section 280.12

Comment—Seven commenters expressed views concerning the protection of proprietary data and information in § 280.12. Some questioned the justification for withholding the release of data and information in the possession of MMS; while others stated that it is unfair to release information which could benefit a competitor in a lease sale. On the side of releasing the information, one example was cited where results of federally funded research had prompted commercial development. The commenters asserted that such information should be available to the public.

In addition to comments on the general concept of protecting data and information, several commenters objected to the specific length of the protection. Several expressed the opinion that 20 years was too long. Others expressed concern that 6 months after a lease sale was too soon to exhaust legal challenges and, also, that releasing data and information after a tract was leased was unfair, because that information would be applicable to adjacent tracts.

Another commenter expressed the concern that releasing proprietary data and information 6 months after a lease sale is unreasonable because it would result in the exposure of exploration and development techniques.

One commenter was against protection of information for 20 years, but suggested that if data and information were to be kept proprietary, then hydrothermal vents should be announced immediately.

Response—The OCSLA enables the Secretary to obtain privileged or proprietary data. Geological and geophysical data and information submitted by a lessee or permittee will only be available to the public subject to the limitations of the Freedom of Information Act and the OCSLA. The final rule establishes a 50-year period of protection for geophysical data and a 25-year period of protection for all other G&G data, information, and samples. These periods of protection are the same as the periods of protection for geophysical data and information provided in § 251.14 as revised February

16, 1988 (53 FR 4390). The proposed provision for the release of data and information 6 months after issuance of a lease has been deleted from the final rule. This action is being taken to permit further consideration of the need to protect data and information relating to minerals other than oil, gas, and sulphur. The period of protection provided in the final rule for geological data and information is 25 years. This is longer than the period of protection provided in 30 CFR 251.14-1(c)(2). It is believed that this longer period of protection for geological data and information is warranted by the nature of minerals other than oil, gas, and sulphur and the relative importance of geological data and information during the early stages of exploration for such minerals.

With regard to the comment concerning data and information from federally funded research, these rules do not prevent the party funding exploration activities from providing for early release of the data and information obtained by these activities. Where the Federal Government funds research, the funding Agency determines the circumstances (such as national security) which permit or prevent release of the data and information developed by the activity.

The MMS has not provided any exception to the protection provided for proprietary data and information to allow for the announcement of a hydrothermal vent. The MMS believes that the development of offshore resources will be best served by protecting this prelease information as proprietary.

Section 280.13

Comment—One commenter suggested that § 280.13 be revised to provide States with a summary of data and information rather than showing them the actual proprietary data and information. The commenter further suggested that language describing the summary could be found in the OCSLA.

Response—The commenter appears to be referring to section 28 of the OCSLA which requires the issuance of oil and gas summary reports. The MMS agrees that nonproprietary summaries would be useful documents. However, issuing a summary of nonproprietary information would be in addition to, not instead of, the sharing of data and information under § 250.13. The MMS can issue such a report under the final rule.

Comment—One commenter noted that some States will not be able to sign the confidentiality agreement required in § 280.13(b) and, as a result, will not be able to view proprietary data and

information. The commenters suggested that nonproprietary summaries of the information be prepared and that these summaries be shared with the States.

Response—The problem noted by the commenter has been recognized. Consultations and other work with the States will be designed to provide coordination based on nonproprietary information in cases where a State has not signed an agreement to protect the confidentiality of data and information.

Comment—One commenter stated that there was no justification for the provision in proposed § 280.13(b)(2) which requires the State and Federal Governments to waive sovereign immunity and the defense that the employee was acting outside the scope of the person's employment.

Response—Section 19(e) of the OCSLA, which concerns coordination and consultation with affected States and local governments, applies to all minerals. This section authorizes the Secretary to share information with States in accordance with specific limitations contained in section 28 of that Act. Section 28(e) specifically requires any State to waive the defense of sovereign immunity and the defense that an employee who releases information was acting outside of the person's employment. This waiver is, therefore, included as a requirement in § 280.13.

Sections 280.14 and 280.15

Proposed § 280.14, Suspension, was separated into two sections in the final rule. Proposed § 280.14(a) became § 280.14 and proposed § 280.14(b) became § 280.15.

Comment—One commenter agreed with the provision concerning suspensions in § 280.14 but suggested that "threat of serious, irreparable, or immediate harm" be defined.

Response—These terms are used in the OCSLA. The concept of a threat of serious, irreparable, or immediate harm is one which is generally understood by MMS and potential permittees. To try to create a more specific definition of the criteria could unnecessarily limit the authority of MMS to respond to a special set of circumstances.

Comment—One commenter suggested that provision for suspensions or cancellations in proposed § 280.14 be mandatory on MMS.

Response—The recommendation was not adopted. It is necessary for the Director to retain discretion to determine on a case-by-case basis whether a suspension, temporary prohibition, permit cancellation, civil penalty, or other action is appropriate. There could be cases where a

suspension or a cancellation may not be in the national interest, even though that action may be an option available to the Director. The Director has diverse responsibilities derived from law, Executive Orders, and internal directives. The balanced exercise of these responsibilities will dictate the appropriate action to be taken in a given case.

Comment—Two commenters suggested that criteria be established to govern when a permit could be disapproved under § 280.3 or cancelled under proposed § 280.14 (final § 280.15). One of the commenters noted that the proposed rule required that reasons be given for cancellation but gave no guidance as to criteria.

Response—These comments were not adopted. By not establishing specific criteria, DOI retains the necessary flexibility to manage the resources of the OCS. The MMS believes that from time-to-time there will be reasons why a permit should be cancelled or an application denied. All of these reasons cannot be defined at this time. Permits are obtained without cost and can be terminated by either party pursuant to § 280.15 (proposed § 280.14(b)), although MMS must have a reason for cancellation and must provide that reason to the permittee.

Comment—One commenter suggested that the criteria for issuing a suspension under proposed § 280.14 be expanded to include a threat of serious, irreparable, or immediate harm or damage to important uses of the environment, such as commercial fishing and subsistence hunting and fishing activities.

Response—The final rule provides for suspensions or temporary prohibitions to prevent harm to other uses of the OCS. The criteria concerning harm or damage to life will apply to threats of harm or damage to fish or animals. In addition, § 280.7(a)(7) requires that the permittee's activities not create conditions which will pose an unreasonable risk of interference with, or serious, irreparable, or immediate harm to other uses of the area. Since § 280.14 allows the Director to suspend or temporarily prohibit the conduct of activities when there is a failure to comply with a provision of the Act, other applicable law, the permit, or provisions of these or other applicable regulations, a suspension could be issued when the activities pose an unreasonable risk of interference with, or serious, irreparable harm to, other uses of the area.

Comment—One commenter suggested that a 15-day period be provided prior to a suspension to allow the permittee recourse through a hearing process or

other related method. Another commenter suggested that States be allowed to review and comment prior to a suspension.

Response—Section 280.14 provides that a suspension will be issued when there is "a threat of serious, irreparable, or immediate harm or damage * * *." Under these conditions, a delay for a hearing or for a State to review and comment does not appear to be appropriate. Prior to issuing a suspension or directing a temporary prohibition, the Director will review the available information and, if it is considered to be necessary, request additional information from the permittee, the researcher, the State, or other parties, as appropriate. A suspension may be issued while needed information is acquired or developed. In addition, a permittee or researcher can appeal a suspension or temporary prohibition as provided for in § 280.16; however, the suspension would be in effect during the appeal.

Section 280.16

No comments were received concerning § 280.16, Remedies and penalties (proposed § 280.15, Remedies), which has been retitled to better reflect the content.

Section 280.17

Comment—One commenter requested that notices of cancellation pursuant to proposed § 280.14(b) (final § 280.15) be included as appealable under proposed § 280.16, Appeals (final § 280.17).

Response—Notices of cancellation under § 280.15, like all actions of an MMS official, are appealable. However, it is unnecessary to change the language of § 280.17 (proposed § 280.16). Cancellation notices are included in the phrase, "[o]rders or decisions issued under the regulations in this part * * *."

General Comments

Comment—The Federal Register Notice of March 26, 1987, invited interested parties to respond to several questions on incentives. A number of commenters stated that incentives should be provided because of the great cost, the technological lead times, and other difficulties involved in developing OCS mineral deposits. They anticipated that even the initial investigations and efforts will be very costly for most minerals. As a result, commenters made suggestions that incentives be provided, such as crediting prospecting and development expenses against bonus, rent, or royalty payments. It was suggested that leases should be free to

the lessee until economic commercial production is demonstrated. Commenters further suggested that incentive programs should vary depending upon the commodity, location, facility, and quantity; environmental difficulties; and other appropriate considerations.

Response—The incentives suggested are more appropriately considered at the leasing stage; therefore, they are not included as part of these regulations.

Comment—Several commenters asked if the States will receive any revenues under these regulations.

Response—These regulations do not provide any revenues; thus, State governments will receive no revenues pursuant to these rules.

Comment—A number of comments were received concerning the need for bonding.

Response—This rule incorporates no bonding requirements. However, permittees who propose to drill deep test holes may be required to meet bonding requirements similar to the bonding requirements contained in 30 CFR 251.8-4.

Comment—A comment was received as to whether MMS will educate the public on offshore mining.

Response—Consideration is being given to the development of a public information program on minerals prospecting and mining in the OCS.

Authors

Andrew Bailey, Charles Ham, John Mirabella, Jane Roberts, and William Wolf of MMS; Ransom Read of BOM; and Ronald Smith and Donal Ziehl of BLM; John Padan of NOAA, Department of Commerce; and Joseph Wilson of the U.S. Army Corps of Engineers.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an EIS is not required.

The DOI has also determined that the document is not a major rule under Executive Order 12291 because the annual economic effect is less than \$100 million. The overall effect is expected to be approximately \$58,000 per year. The cost to the permittees is estimated at just over \$19,000 based on nine permits per year. The cost to the Government is estimated at just over \$39,000 per year.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources

needed to conduct activities under these rules.

The information collection requirements contained in 30 CFR Part 280 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0072.

List of Subjects

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands/mineral resources, Reporting and recordkeeping requirements, Research.

30 CFR Part 280

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mines, Public lands/mineral resources, Reporting and recordkeeping requirements.

Dated: May 20, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out in the preamble, Title 30, Chapter II, Subchapter B of the Code of Federal Regulations (CFR) is amended as set forth below.

PART 251—[AMENDED]

1. The authority for Part 251 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 623; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.* (1970).

2. Section 251.1 is revised to read as follows:

§ 251.1 Purpose.

(a) The Act authorizes the Secretary to prescribe rules and regulations necessary to carry out the provisions of the Act. The primary purpose of the regulations in this part is to prescribe policies, procedures, and requirements for conducting geological and geophysical activities associated with exploration for oil, gas, or sulphur not authorized under a lease in the Outer Continental Shelf (OCS). These activities may take place on unleased lands or on lands under lease to a third party. These activities are limited to geological and geophysical exploration for oil, gas, and sulphur and geological and geophysical research related to oil, gas, or sulphur, which involves the use of solid or liquid explosives or drilling activities. The requirements of the regulations in this part implement the provisions of sections 5, 8(g), 11 (a) and (g), 19, 24, and 26 of the Act. Federal Agencies are exempt from the regulations in this part.

(b) Notwithstanding any other provisions of the regulations in this part, geological and geophysical exploration for OCS minerals other than oil, gas, and sulphur and geological and geophysical research associated with OCS minerals other than oil, gas, and sulphur are governed by the provisions of Part 280 of this title.

3. A new Part 280 is added to Title 30 of the CFR to read as follows:

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Sec.	Authority for information collection.
280.0	Purpose and applicability.
280.1	Definitions.
280.2	Activities requiring a permit.
280.3	Term of permit.
280.4	Application for a prospecting or scientific research permit.
280.5	Prospecting or scientific research plan.
280.6	Obligations of persons.
280.7	Reporting.
280.8	Recordkeeping.
280.9	Environmental effects.
280.10	Notification.
280.11	Disclosure of information to the public.
280.12	Disclosure of data and information to the adjacent States.
280.13	Suspension or temporary prohibition of activities.
280.14	Cancellation or relinquishment.
280.15	Remedies and penalties.
280.16	Appeals.

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*; National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.*

§ 280.0 Authority for information collection.

The information collection requirements contained in Part 280 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned OMB clearance number 1010-0072. The information is being collected to inform the Minerals Management Service (MMS) of OCS minerals activities. The information will be used to ensure that such activities are conducted in a safe and environmentally responsible manner in compliance with governing laws and regulations. The obligation to respond is mandatory.

§ 280.1 Purpose and applicability.

Section 5(a) of the Act (43 U.S.C. 1334(a)(1)) states that the Secretary "shall prescribe such rules and regulations as may be necessary to carry out the provisions of the Act. The primary purpose of the regulations in this part is to prescribe policies,

procedures, and requirements for conducting data and information-gathering activities associated with geological and geophysical (G&G) prospecting and scientific research in the OCS for minerals other than oil, gas, and sulphur. The regulations in this part do not apply to activities authorized under a mineral lease. Activities authorized under the regulations in this part do not give rise to any rights or interests in any OCS mineral discovered as a result of approved prospecting or scientific research activities.

§ 280.2 Definitions.

When used in this part, the following terms shall have the meaning given below:

"Act" means the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*)

"Adjacent State" means with respect to any activity proposed, conducted, or approved under this part, any coastal State(s)—(1) That is used, or is scheduled to be used, as a support base for G&G prospecting or scientific research activities; or (2) in which there is a reasonable probability of significant effect on land or water uses from such activity.

"Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.

"Data" means G&G facts and statistics or samples which have not been analyzed, processed, or interpreted.

"Director" means the Director of the MMS of the U.S. Department of the Interior or an official authorized to act on the Director's behalf.

"Geological and geophysical (G&G) scientific research" means any investigation conducted in the OCS for scientific research purposes which involves the gathering and analysis of G&G data and information which are made available to the public for inspection and reproduction at the earliest practicable time. This does not include scientific research related to oil, gas, and sulphur.

"Geological sample" means a collected portion of the seabed, the subseabed, or the overlying waters acquired while conducting prospecting or scientific research activities.

"Governor" means the Governor of a State or the person or entity lawfully designated to exercise the powers granted to a State Governor.

"Information" means G&G data that has been analyzed, processed, or interpreted.

"Lease" means one of the following, whichever is required by the context: Any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, specific minerals or the area covered by that authorization.

"Minerals" has the same meaning as the term is defined in section 2(q) of the Act.

"National Environmental Policy Act (NEPA)" means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

"OCS minerals" means any mineral found on or below the surface of the seabed but does not include oil, gas, or sulphur.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Permit" means the contract or agreement, other than a lease, approved pursuant to this part under which a person acquires the right to conduct prospecting or scientific research activities.

"Permittee" means the person authorized by a permit issued pursuant to this part to conduct prospecting or scientific research activities in the OCS.

"Person" means a citizen or national of the United States; an alien lawfully admitted for permanent residency in the United States as defined in 8 U.S.C. 1101(a)(20); a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof; and an association of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States; or anyone operating in a manner provided for by treaty or other applicable international agreements. The term does not include Federal Agencies.

"Prospecting activities" means the gathering of any G&G data and information for the purpose of determining the feasibility of commercial recovery, which has as its objective the establishment and documentation of the nature, shape, concentration, location, and tenor of an OCS mineral resource. Such activities shall include (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals; and (2) the gathering through drilling or other

means of geological samples which could be used for the purpose of discovering, characterizing, or evaluating OCS mineral deposits. Prospecting activities do not include G&G scientific research.

"Secretary" means the Secretary of the Interior or an official authorized to act on the Secretary's behalf.

§ 280.3 Activities requiring a permit.

(a) No prospecting activities shall be conducted in the OCS without a permit approved by the Director pursuant to this part, unless such activities are being conducted pursuant to authority contained in a lease issued or maintained under Part 256 or Part 281 of this title or unless such activities are conducted by a Federal Agency.

(b) No person may conduct G&G scientific research activities in the OCS without a permit approved by the Director pursuant to this part if the proposed activities include either: (1) The drilling of a borehole to a depth greater than 300 feet below the seafloor; or (2) the use of solid or liquid explosives.

(c) Any person may conduct G&G scientific research in the OCS without obtaining a permit pursuant to this part if—

(1) The activities will not interfere with or endanger operations under any lease or right-of-way maintained or issued pursuant to the Act;

(2) The activities will not be unduly harmful to aquatic life in the area; result in pollution; create hazardous or unsafe conditions; unreasonably interfere with other uses of the area; or disturb any site, structure, or object of historical or archaeological significance; and

(3) The person conducting the activities or operating the vessel from which the activities are to be conducted has consulted and coordinated the conduct of those activities with any other users of the area.

(d) The Director may orally approve plan revisions or issue emergency permits to accommodate unforeseen or special circumstances. Oral approvals given for a written application shall be followed with a written confirmation by MMS. In the event an oral approval is given in response to an oral request, the applicant shall confirm the oral request in writing within 72 hours of the approval.

§ 280.4 Term of permit.

Permits approved under this part shall be granted for a term not to exceed 3 years. The Director may extend the term of a permit for an additional period(s) of time not to exceed a total of 2 years

when the Director determines that the additional time is appropriate based upon a showing of good cause by the permittee.

§ 280.5 Application for a prospecting or scientific research permit.

(a) An application for a prospecting or scientific research permit shall be submitted to the Director at least 60 days prior to the date proposed as the startup date for activities in the permit area.

(b)(1) An application for a prospecting permit shall be submitted in a form and manner approved by the Director. Three copies of each application shall be submitted and shall include—

(i) The name, address, and nationality of the person(s) submitting the application;

(ii) The name, address, and telephone number of the person(s) directly responsible for conducting the activities proposed;

(iii) A description and a map of the area(s) covered by the application;

(iv) The period of time to be covered by the primary term of the permit not to exceed 3 years;

(v) A narrative description in nonproprietary terms of the activities to be conducted, such as mapping, geophysical surveying, drilling, bottom sampling, and dredging;

(vi) A detailed description and schedule giving the estimated starting and completion dates for the proposed activities that are to be authorized under the permit; and

(vii) A prospecting plan.

(2) An applicant for a prospecting permit shall indicate which data and information included in the application and plan the applicant considers proprietary.

(c) Upon application submitted by a permittee pursuant to this section, the Director may approve the conversion of a permit issued under Part 251 of this title to a permit issued under this part. A permit issued under Part 251, which is converted to a permit issued under this part, shall be subject to all the requirements of this part.

(d) An application for a permit to conduct scientific research activities shall be submitted in a form approved by the Director. The application should be signed by an officer of the organization proposing to carry out the activity and shall state—

(1) The name of the person conducting the proposed research;

(2) The type of research activity and manner in which it will be conducted;

(3) The location designated on a map, plat, or chart where the research activity will be conducted;

(4) A schedule indicating the starting and completion dates for each proposed scientific research activity;

(5) The proposed time and manner in which the information and data resulting from the research will be made available to the public for inspection and reproduction, such time being the earliest practicable time;

(6) An agreement that the information and data resulting from the scientific research activity will not be sold or withheld for exclusive use;

(7) The name, registry number, registered owner, and port of registry of vessels used in the operation; and

(8) A scientific research plan.

(e) Within 30 days following the receipt of an application for a permit and the accompanying plan which does not require preparation of an environmental analysis the Director shall—

(1) Approve the application and plan;

(2) Require the applicant to modify the application and/or plan; or

(3) Disapprove the application and plan. If the Director disapproves an application and plan, the statement of rejection shall give the reasons for the disapproval and shall advise the applicant of the changes needed to obtain approval.

§ 280.6 Prospecting or scientific research plan.

(a) The applicant shall submit a plan with its application for a prospecting or scientific research permit. The plan shall include—

(1) Identification of the mineral(s) or material(s) of primary interest, if appropriate;

(2) A detailed description of the activities to be conducted;

(3) The type(s) of equipment to be used with special attention to safety and pollution prevention and control features and the name, registration, and mobile communication system of vessel(s);

(4) Maps showing location of proposed activities including drill holes, grab or basket samples, anticipated depth of penetration of drill holes, water depth, and location of proposed survey grids for each surveying method which is to be employed;

(5) A schedule indicating the starting and completion dates for each proposed activity;

(6) Anticipated environmental consequences of each proposed activity;

(7) Mitigation measures to be used to avoid or minimize adverse environmental impacts of proposed activities;

(8) For any activities which are to occur in an environmentally sensitive

area, a plan for monitoring the effects of the activities on the environment;

(9) Any known archaeological resources in the area of the proposed activities; and

(10) Description of any potential conflicts with other uses or users in the permit area.

(b) If the penetration of one or more proposed drill holes will exceed 300 feet, the Director may require a drilling plan to be included as part of the plan before a permit is issued.

(c) If all needed information is not available at the time the plan is submitted, a plan shall indicate when the needed information will be obtained and submitted. In such a case,

depending on the significance of the missing information, the Director may disapprove the plan, approve the plan based on the information submitted, or approve the plan with a specific condition that certain specified activities are not authorized and shall not be conducted until additional information is obtained and submitted for evaluation, and the Director gives specific approval to proceed with those activities.

§ 280.7 Obligations of persons.
(a) Activities authorized under a prospecting or scientific research permit issued under this part or research authorized pursuant to the provisions of § 280.5(c) of this part shall be conducted so as not to create conditions which will pose an unreasonable risk of—

(1) Interference with, or endangerment of, operations under any lease or permit issued or maintained pursuant to the Act;

(2) Serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life) or to the marine, coastal, or human environment;

(3) Serious, irreparable, or immediate harm or damage to property or to any mineral (in areas leased or not leased);

(4) Pollution;

(5) Disturbance of archaeological resources;

(6) Hazardous or unsafe conditions; or

(7) Interference with or serious, irreparable, or immediate harm to other uses of the area.

(b) The permittee or scientific researcher shall allow the Director to be present on any cruise.

(c) The permittee shall notify and obtain the prior approval of the Director before a substantial change from the approved plan is initiated.

§ 280.8 Reporting.

(a) The permittee shall submit a status report to the Director within 30 days of

the close of each calendar quarter or more frequently if requested by the Director. The report shall include a summary of the prospecting or scientific research activities conducted prior to the end of the reporting period and the results obtained. The last quarterly report may be combined with the final report if the final report is submitted within 30 days after the end of the last quarter in which permitted activity occurs. Each permittee shall submit to the Director a final report of activities conducted under the permit within 6 months after expiration of the permit or after the completion of prospecting or scientific research activities, or 60 days prior to a planned lease offering when prospecting or scientific research activities are within the planned leasing area, whichever is sooner, provided that no report shall be required less than 30 days after completion of permitted activities. The report shall include—

(1) A description of the work performed;

(2) Charts, maps, or plats depicting the area and blocks in which any activities were conducted specifically, identifying the lines of geophysical traverses and/or the locations where geological activity was conducted;

(3) The dates on which the actual activities were performed;

(4) A narrative summary of any mineral occurrences encountered including location, environmental features, and the nature and degree of adverse effects, if any, of the permitted activities on the environment, aquatic life, archaeological resources, or other uses of the area in which the activities were conducted;

(5) A report of the results of the environmental monitoring required in § 280.6(a)(8) of this part; and

(6) Such other descriptions of the activities conducted as may be specified by the Director.

(b) All persons shall immediately notify the Director of all serious accidents, any death or serious injury, or fire or explosion connected with any activity conducted pursuant to this part.

§ 280.9 Recordkeeping.
(a) Any permittee who acquires rock and mineral samples under a permit shall keep for 1 year after submittal of the final report a representative split of each geological sample and a quarter longitudinal segment of each core which shall be available for inspection at the convenience of the Director who may cut such core and geological samples for retention by MMS.

(b) Any permittee who acquires G&G data and information under a permit shall keep the data and information

available for 3 years after submittal of the final report. The data and information shall be available for inspection and copying at a location within the appropriate OCS Region or at another location approved by the Director. The records shall include environmental data and information; G&G data and information; drill logs; analyses of cores, cuttings, and samples; and maps and navigation tapes showing the location where samples were taken and test drilling conducted.

§ 280.10 Environmental effects.

The potential of proposed prospecting or scientific research activities for adverse impact on the environment will be evaluated by MMS to determine the need for mitigation measures. The MMS anticipates that activities of the type listed below typically will not cause significant environmental impact and, in accordance with 516 DM 6, Appendix 10 to the Departmental Manual, will normally be categorically excluded from additional environmental analysis. The types of activities include—

(a) Gravity and magnetometric observations and measurements;

(b) Bottom and subbottom acoustic profiling or imaging without the use of explosives;

(c) Mineral sampling of a limited nature such as that using either test drillholes or cores to less than 300 feet below the seafloor;

(d) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species or if permitted by the National Marine Fisheries Service or another Federal Agency;

(e) Meteorological observations and measurements, including the setting of instruments;

(f) Hydrographic and oceanographic observations and measurements, including the setting of instruments;

(g) Sampling by box core or grab sampler to determine seabed geological or geotechnical properties;

(h) Television and still photographic observation and measurements;

(i) Shipboard mineral assaying and analysis; and

(j) Placement of positioning systems, including bottom transponders and surface and subsurface buoys reported in Notices to Mariners.

§ 280.11 Notification.

(a) The Governor(s) of adjacent State(s) shall be notified by the Director with a copy of the application for a permit with the accompanying plan immediately upon the submission of an application for approval.

(b) In cases where an environmental assessment is to be prepared, the Director will invite the Governor(s) of adjacent States(s) to review and provide comments regarding the proposed activities. The Director's invitation to provide comments shall allow the Governor a specified period of time to comment.

(c) The Director shall notify Federal Agencies, as appropriate, with a copy of the application for a permit with the accompanying plan immediately upon the submission of the application for approval.

§ 280.12 Disclosure of information to the public.
(a) The Director shall make data, information, and samples available in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations.

(b) For geological data, information, and samples and geophysical information submitted under a permit and retained by MMS, the Director shall make such data, information, and samples available to the public 25 years after the date of submission of the data and information or such earlier time as may be agreed to by the permittee who provides the data or information.

(c) The Director reserves the right to disclose any data, information, or samples submitted by a permittee to an independent contractor or agent for the purpose of reproducing, processing, reprocessing, or interpreting the data or information. Such contractor or agent shall be subject to the same limitations on disclosure of data, information, and samples as those applicable to the Director under paragraph (b) of this section.

§ 280.13 Disclosure of data and information to the adjacent States.
(a) Proprietary data, information, and samples submitted to MMS by permittees shall be made available to adjacent State(s) upon request by the Governor(s) in accordance with paragraphs (b), (c), and (d) of this section.

(b) Disclosure shall occur only after the Governor has entered into an agreement with the Secretary providing that—

(1) The Director shall make data, information, and samples available in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations.

(2) For geological data, information, and samples and geophysical information submitted under a permit and retained by MMS, the Director shall make such data, information, and samples available to the public 25 years after the date of submission of the data and information or such earlier time as may be agreed to by the permittee who provides the data or information.

(3) The Director reserves the right to disclose any data, information, or samples submitted by a permittee to an independent contractor or agent for the purpose of reproducing, processing, reprocessing, or interpreting the data or information. Such contractor or agent shall be subject to the same limitations on disclosure of data, information, and samples as those applicable to the Director under paragraph (b) of this section.

(4) Proprietary data, information, and samples submitted to MMS by permittees shall be made available to adjacent State(s) upon request by the Governor(s) in accordance with paragraphs (b), (c), and (d) of this section.

(5) Disclosure shall occur only after the Governor has entered into an agreement with the Secretary providing that—

(1) The Director shall make data, information, and samples available in accordance with the requirements and subject to the limitations of the Act, the Freedom of Information Act (5 U.S.C. 552), and the implementing regulations.

(2) For geological data, information, and samples and geophysical information submitted under a permit and retained by MMS, the Director shall make such data, information, and samples available to the public 25 years after the date of submission of the data and information or such earlier time as may be agreed to by the permittee who provides the data or information.

(3) The Director reserves the right to disclose any data, information, or samples submitted by a permittee to an independent contractor or agent for the purpose of reproducing, processing, reprocessing, or interpreting the data or information. Such contractor or agent shall be subject to the same limitations on disclosure of data, information, and samples as those applicable to the Director under paragraph (b) of this section.

(4) Proprietary data, information, and samples submitted to MMS by permittees shall be made available to adjacent State(s) upon request by the Governor(s) in accordance with paragraphs (b), (c), and (d) of this section.

(5) Disclosure shall occur only after the Governor has entered into an agreement with the Secretary providing that—

(1) The confidentiality of the information shall be maintained;

(2) In any action commenced against the Federal Government or the State for the failure to protect the confidentiality of proprietary information, the Federal Government or the State, as the case may be, may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the proprietary information, which is the basis of the suit, was acting outside the scope of the person's employment in revealing the information;

(3) The State agrees to hold the United States harmless for any violation by the State or its employees or contractors of the agreement to protect the confidentiality of proprietary data and information and samples; and

(4) The materials containing the proprietary data, information, and samples shall remain the property of the United States.

(c) The data, information, and samples available to the State(s) pursuant to an agreement shall be related to leased lands.

(d) The materials containing the proprietary data, information, and samples shall be returned to MMS when they are no longer needed by the State or when requested by the Director.

§ 280.14 Suspension or temporary prohibition of activities.

The Director may suspend or temporarily prohibit the conduct of G&G prospecting or scientific research activities by notifying the person conducting the activity, either orally or in writing, when the Director determines that there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment; or there is a failure to comply with a provision of the Act or of any applicable law, the provisions of the permit, or provisions of these and other applicable regulations. Such suspension or temporary prohibition shall be effective immediately upon receipt of the notice. Suspensions or temporary prohibitions issued orally shall be followed by a written notice confirming the action, and all written notices will be sent by certified or registered mail. A suspension or temporary prohibition shall remain in effect until the basis for the suspension or temporary prohibition has been corrected to the satisfaction of the Director.

§ 280.15 Cancellation or relinquishment.

The Director may cancel or a permittee may relinquish, in whole or in part, a permit to conduct prospecting or scientific research activities at any time by sending a notice of cancellation or a notice of relinquishment. Such notices shall state the reason for the cancellation or relinquishment and shall be sent by certified or registered mail to the other party at least 30 days in advance of the date that the cancellation or relinquishment will be effective.

§ 280.16 Remedies and penalties.

Persons conducting activities in the OCS pursuant to this part shall be subject to the remedies and penalties provisions of section 24 of the Act and the applicable civil penalty procedures contained in Part 250 of this title for noncompliance with any provision of the Act, permit, regulation, or order issued under the Act. The remedies or penalties prescribed in this section shall be in addition to any other penalty afforded by any other law or regulation.

§ 280.17 Appeals.

Orders or decisions issued under the regulations in this part may be appealed as provided in Part 290 of this title.

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Tuesday
July 5, 1988

Part III

Department of Health and Human Services

Office of Human Development Services

Temporary Child Care for Handicapped
Children and Crisis Nurseries; Notice

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Temporary Child Care for Handicapped Children and Crisis Nurseries

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of the availability of funds and request for applications from States for grants to provide temporary non-medical child care for handicapped children; and crisis nurseries for children who are abused or neglected, at high risk of abuse or neglect, or in families receiving child protective services.

SUMMARY: The Office of Human Development Services announces the implementation of two demonstration programs for grants to States to assist private and public agencies and organizations in providing: (A) In-home or out-of-home temporary non-medical child care for handicapped children and children with chronic or terminal illnesses to alleviate social, emotional and financial stress among families responsible for their care; and (B) crisis nurseries for children at risk of or experiencing abuse or neglect, or in families receiving child protective services.

Funding for these grants to States is authorized under Title II of the Children's Justice and Assistance Act (Pub. L. 99-401).

DATE: The closing date for receipt of applications is September 8, 1988.

ADDRESSES: Application should be sent to: Office of Human Development Services, Grants and Contracts Management Division, HDS/OMS, 200 Independence Avenue, SW., Room 345-F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White.

FOR FURTHER INFORMATION CONTACT: Stuart Swayze, (202) 755-7730.

SUPPLEMENTARY INFORMATION:

PART I: General Information

A. Background

Title I of the Children's Justice and Assistance Act of 1986 (Pub. L. 99-401) encourages States to enact child protective reforms designed to improve legal and administrative proceedings in the investigation and prosecution of

cases of abuse and sexual abuse of children.

Title II of Pub. L. 99-401, the "Temporary Child Care for Handicapped Children and Crisis Nurseries Act of 1986" (the Act), directs the Department of Health and Human Services to make grants to States to assist private and public agencies in developing two types of services:

- (1) In-home or out-of-home temporary non-medical child care for handicapped children and children with chronic or terminal illnesses; and
- (2) Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services.

The Continuing Resolution for FY 1988 made available \$4.787 million to establish two programs of demonstration grants. Section 205(b)(3) of the Act requires that such appropriations be divided equally between section 203 of the Act, "Temporary Child Care for Handicapped and Chronically Ill Children," and section 204, "Crisis Nurseries." Both programs are intended to support the maintenance of the family unit and strengthen the parent-child bond.

B. Section 203 of the Act: Temporary Child Care for Handicapped and Chronically Ill Children

The purpose of establishing a temporary child care program for handicapped or chronically or terminally ill children is to alleviate the social, economic, and financial stress among children and families of such children.

Temporary child care, also known as respite care, is short-term, non-medical child care, provided either in or out of the home, for families with handicapped or chronically-ill children. "Non-medical child care" is defined in section 205(d) of the Act to mean the provision of care to provide temporary relief for the primary caregiver. Such care provides families or primary caregivers periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress.

The Act authorizes temporary child care programs for children who are terminally-ill, chronically-ill or handicapped as defined by section 602(a)(1) of the Education of the Handicapped Act: "... mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired children, or children with specific learning disabilities, who by reason thereof,

require special education and related services."

In distributing funds made available under section 203, States must give priority consideration to agencies and organizations experienced in working with handicapped and chronically-ill children and their families; and agencies service communities with the greatest need for such services. States awarded grants for temporary child care must assure that all such care funded under section 203 will be provided on a sliding fee scale with hourly and daily rates. The following components may be included in temporary child care or respite care projects:

- 24-hour services
- Access to primary medical services
- Referral to counseling/therapy services
- Staff training program including child abuse/neglect reporting responsibilities
- Public awareness program

C. Section 204 of the Act: Crisis Nurseries

A "crisis nursery" is defined in section 205(d) of the Act to mean a center providing temporary emergency services and care for children.

Crisis nurseries are child care facilities which protect children by providing a safe environment at a time when the chances of neglect or physical abuse in the home are increased. These programs offer parents the option of "time out" as a preventive measure in reducing the incidence of child maltreatment. They are designed to: (1) Develop a safe environment as a resource for children at risk of abuse; (2) deliver non-punitive, non-threatening services as a resource to caregivers of at-risk children; and (3) utilize existing community-based services to further diminish the potential for maltreatment among families in crisis.

Services funded under section 204 of the Act must be provided without fee for a maximum of 30 days in any year. Crisis nurseries must also provide referral to support services. The following components may be included in crisis nursery programs:

- 24-hour services
- Referral to counseling/therapy services including out-of-home placement (when indicated)
- Access to primary medical services
- Staff training including child abuse/neglect reporting responsibilities
- Public awareness program

Part II: Programmatic Priorities for Funding Projects

OHDS proposes to award approximately 15 to 20 demonstration grants of between \$120,000 and \$150,000 to States under each section of the Act. Funds will be divided equally between the two types of demonstrations, with consideration given to their equitable geographic distribution. In making grant awards under section 203, OHDS will give a preference to States in which such care is unavailable. Grant awards will be made for a 17-month project period.

The Chief Executive Officer of each State will designate an agency to apply for and administer funds under the Act. The designated agency will retain not more than five percent of these funds for administrative costs and must distribute the remaining funds to an agency(s) or organization(s) in the State to carry out the purposes of the Act. Funds may be distributed by the designated agency as start-up costs or to supplement existing programs or projects.

A. Eligible Applicants

Only States may submit an application under this announcement. The term State refers to the 50 States, the District of Columbia and the four insular areas: Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands. Individuals, agencies (public or private), or organizations are not eligible to apply.

States are invited to apply under either section 203 or section 204, or both. A separate application must be submitted for each section of the Act under which grant support is requested.

B. Available Funds

Total combined funding for grants under section 203 of the Act and section 204 of the Act is \$4.787 million appropriated for fiscal year 1988. Funds will be divided equally between the two demonstration programs with consideration given to equitable geographic distribution.

C. Grantee Share of the Project

Under this demonstration grants program, OHDS will not make awards for the entire project cost. Successful applicants must contribute \$1, secured from non-Federal sources, for every \$3 received in Federal funding. This grantee share amounts to 25 percent of the total project cost.

The non-Federal share of total project costs may be in the form of third party in-kind contributions or cash. The amount of non-Federal share required

will be the amount specified in the approved grant. If the required non-Federal share is not met by a grantee, OHDS will disallow any unmatched Federal dollars. Applicants will be required to include in their budget any funds proposed as match.

D. Application Consideration

Applications conforming to the requirements of this program announcement will be grouped by category (section 203 or 204), and reviewed by non-Federal experts in the field or by Federal experts outside of the Administration for Children, Youth and Families (ACYF). The results of their review will be a primary factor in the decision process. Applications will be evaluated on the basis of the criteria set forth in this announcement.

E. Executive Order 12372

These programs are not covered under Executive Order 12372. All assurances relevant to non-discrimination under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Protection of Human Subjects, and assurance of compliance with 45 CFR Part 74 and OMB circulars and such other assurances that are required by Part V of Standard Form 424 are applicable.

Part III: Application Process

A. Application Requirements

Applications from States for grant support under either section 203 or 204 of the Act must be submitted on Standard Form 424 and must include all the information and assurances set forth in this announcement. Each application must be signed by the Chief Executive Officer of the State or the individual authorized to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

The applicant must provide all information requested under the evaluation criteria (Part IV, below). In addition to the information requested by Form 424, the application must include the following information and assurances:

1. **Designated State Agency and Contact Person.** The application must specify the agency, designated by the Chief Executive Officer of the State, to administer programs and activities assisted under the Act, and a contact person and telephone number if different from the head of the designated agency. (Section 205(a)(1)(D)).
2. **Plans for Coordination.** The application must include the designated agency's plans for coordinating

interagency support of the program(s). (Section 205(a)(1)(D)).

3. **Description of Program.** The application must describe the proposed State program to assist private and public agencies or organization in providing in-home or out-of-home temporary non-medical care of handicapped children and children with chronic or terminal illnesses and/or crisis nurseries for abused and neglected children. The application must also include the services to be provided, the agencies and organizations that will provide the services, and the criteria for selection of children and families for participation in projects under the program. (Section 205(a)(1)(A)).

4. **Estimate of Cost.** The application must include an estimate of the cost of developing, implementing and evaluating the State program. (Section 205(a)(1)(B)).

5. **Dissemination.** The application must set forth the plan for dissemination of the results of the programs and projects funded under the Act. (Section 205(a)(1)(C)).

6. **Need for the Project.** Only for applications under section 203, the application must identify those communities with the greatest demonstrated need for such services, including the extent to which these services are unavailable in the State. (Section 205(b)).

7. **Assurances.** The following assurances must be included in the application:

- a. That not more than 5 percent of funds made available under each section of the Act will be used for State administrative costs. (Section 205(a)(2)(A)).
- b. That projects funded by the State will be of sufficient size, scope and quality to achieve the objectives of the program. (Section 205(a)(2)(B)).
- c. That in the distribution of funds under section 203, the State will give priority consideration to agencies and organizations with experience in working with handicapped and chronically ill children and their families and which serve communities with the greatest need for such services. (Section 205(a)(2)(C)).
- d. That in the distribution of funds under section 204, the State will give priority consideration to agencies and organizations with experience in working with abused or neglected children and their families and/or with children at high risk of abuse and neglect and their families and which serve communities which demonstrate the greatest need for such services. (Section 205(a)(2)(D)).

e. That Federal funds made available under this title will be so used as to supplement and, to the extent practicable, increase the amount of State and local funds that would in the absence of such Federal funds be made available for the uses specified in this title, and in no case supplant such State or local funds. (Section 205(a)(2)(E)).

f. That the State will use the definition of handicapped children found in section 602(a)(1) of the Education of the Handicapped Act in implementing programs under section 203. (See Section 205(d)).

g. That the State will comply with the requirements of 45 CFR Part 74.

h. That all agencies and organizations funded under section 203 will provide temporary child care only on a sliding fee scale with hourly and daily rates.

i. That services provided under section 204 will be provided without fee for a maximum of 30 days in any year.

j. That collaborative efforts have been discussed with other agencies or organizations. (Written assurances of these agreements should be included with the application if available.)

k. That an annual report evaluating the funded programs will be submitted to OHDS. The report must include information concerning costs, the numbers of participants, impact on family stability, and such other information as OHDS may require.

B. Authorship

The author(s) of the application must be clearly identified together with his/her current relationship to the applicant organization and any future project role they may have if the application is funded.

C. Grantee Share of the Project

The non-Federal share must be at least 25 percent of the total cost of each proposed project (e.g., if the total program cost is \$160,000, the non-Federal share will be \$40,000).

Part IV: Criteria for Review and Evaluation of Application

In considering how the grantee will carry out the responsibilities under Part I of this announcement, competing applications will be reviewed and evaluated against the following criteria:

A. Objectives and Need for This Assistance (10 Points)

State the specific objectives and needs addressed by the project in terms of its national, regional or State significance, its theoretical importance and its applicability to practices and subordinate objectives of the project. Provide a discussion of the "state-of-the-

art" relative to the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. Indicate goals or service objectives of the proposal. Any relevant data based on planning or demonstration studies must be summarized, evaluated and related to the proposed project.

B. Results or Benefits Expected (10 Points)

This section must identify the results and benefits for target groups and human services programs to be derived from implementing the proposed project. The anticipated contribution to policy, practice, theory and/or research should be indicated.

C. Approach (Project Implementation Plan) (40 Points)

Provide major milestones of events, activities and products and a timetable for completion, including the time commitments of all key staff to individual project tasks.

Design and Methodology

This portion of the program narrative must identify the specific problem(s), issue(s), and objectives of the proposal addressed by the applicant (agency) and provide a detailed discussion of how the proposed approach will accomplish these project objectives. Also, the research methodology, demonstration plan, design of training program or other appropriate techniques to be used should be fully described.

Dissemination and Utilization

Describe the steps to be taken to disseminate and promote the utilization of project products and findings using Federal and/or non-Federal resources. The specific audience to whom the products will be addressed must be specified.

Geographic Location

Give a precise location of the project(s) or area(s) to be served. Maps or other graphic aids may be included.

D. Staffing and Management (25 Points)

This section must address:

Staffing Pattern

Describe the staffing pattern for this proposed project, clearly linking operational staff responsibilities to project tasks and specifying the contribution to be made by senior staff.

Competence of Staff

Indicate the qualifications of the project team, the variety of skills to be used, relevant experience, educational background and the demonstrated

ability to produce comprehensive and usable results.

Adequacy of Resources

Specify the adequacy of the facilities, resources and organizational experience with regard to the tasks of the proposed project.

E. Budget Appropriateness and Reasonableness (15 Points)

This section must address:

Budget

Relate the proposed budget to the level of effort required to attain project objectives. Demonstrate that the project's costs are reasonable in view of the anticipated results. Not more than five (5) percent of funds made available under this section is to be used for State administrative costs.

Part V: The Application Process

A. Availability of Forms

All instructions and forms required for submittal of applications are included in this announcement. Additional copies of this announcement may be obtained by writing or telephoning: Stuart Swayze, Child Welfare Training Specialist, Children's Bureau, Program Support Division, Room 2044, Donohoe Building, 400 Sixth Street SW., Washington, DC 20201, Telephone (202) 755-7730.

B. Application Submission

One signed original and two copies of the grant application must be mailed or hand delivered to: Office of Human Development Services, Grants and Contracts Management Division, HDS/OMS, 200 Independence Avenue SW., Room 345-F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White.

In order to be considered for a grant under this program announcement, an application must be submitted on the forms and in the manner required by this announcement. The application must be executed by the Chief Executive Officer for the State, or the individual authorized to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation by qualified individuals. Applicants will be scored against the evaluation criteria listed above. The Commissioner, ACYF determines the final action to be taken with respect to each grant application for this program. In addition to the

results of the competitive review, the Commissioner will also consider comments from Central and Regional Office staff in making final decisions.

After the Commissioner has made the final selections, unsuccessful applicants will be notified in writing of this final decision. The successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds awarded, the budget period for which support is given, the non-Federal share requirements, and the total period for which project support is contemplated.

D. Closing Date for Receipt of Applications

The closing date for receipt of applications under this program announcement is September 26, 1988.

1. Mailed applications: Applications shall be considered as meeting the deadline if they are either:
a. Received on or before the deadline date at the OHDS Grants Office; or
b. Sent on or before the deadline date, and received by the granting agency in time to be considered during the competitive review and evaluation process.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier of the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Applications submitted by other means: Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the OHDS Grants and Contracts Management Division during the normal working hours of 9:00 a.m. to 5:30 p.m. Monday through Friday.

3. Late Applications: Applications which do not meet criteria one or two above are considered late applications and will not be considered.

4. Extension of deadlines: OHDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if OHDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for

review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under the Part IV narrative under OMB Control Number 0980-0016. (Catalog of Federal Domestic Assistance Program Number 13.665 (Temporary Child Care for Handicapped Children and Crisis Nurseries))

Dated: June 20, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: June 21, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

INSTRUCTIONS FOR APPLYING FOR FEDERAL ASSISTANCE FROM HDS PROGRAMS

HHS Application Instructions Rev. 10/85

Introduction

Use of Forms

The forms included in this "kit" shall be used to apply for all new discretionary grants and cooperative agreements awarded by the Office of Human Development Services. They shall also be used to request supplemental assistance, proposed changes or amendments, and request continuation or refunding for previously approved grants or cooperative agreements from the Office of Human Development Services. An original and two copies of the forms should be submitted to the responsible grants management office. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

Applications

Applicants for new awards and competing continuations are required to submit a complete application which consists of Parts I (SF-424) through Part V. Applicants for new projects must include completed Standard Forms 441, Civil Rights Assurance, and HHS-641, Rehabilitation Act Assurance. Applicants for additional funding (such as a non-competing continuation or supplemental grant) or amendments to a previously submitted application should include only affected pages. Previously submitted pages whose information is still current need not be resubmitted. Additionally, applicants for certain HDS programs may be subject to Executive Order 12372, Intergovernmental Review of Federal Programs (see Attachments 1

and 2). These applicants must follow the instructions provided relative to Executive Order 12372 coverage where appropriate, as listed on page 11.

Submission of Applicants

(1) Non-competing Continuation Grants—Applicants for continuation grants must submit these forms not later than 90 days prior to the budget period end date.

(2) New Projects and Competing Continuations—Applicants for Assistance to support new projects or for competing continuations should refer to program announcements for information regarding deadline dates for submission of forms.

Instructions for Completion of Part I (SF-424)

Section I

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk (*) and use Section IV. An explanation follows for each item.

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A-102 and HDS program instructions. Use of the SF-424 as a Notice of Intent is a State option. HDS does not require Notice of Intent.

2a. Applicant's own control number, if desired.

2b. Date application is signed.

3a. For a program covered by Executive Order 12372, enter the number assigned, if any, by the State Single Point of Contact. Applications submitted to OHDS must contain this identifier, if provided by the State Single Point of Contact. Note: Item 22 of this form must be completed for programs covered by E.O. 12372.

3b. Date identifier is assigned by State.

4a-4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION "PAYEE" THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER AND DHHS ENTITY NUMBER.

If an individual's name and/or title is desired on the payment instrument, the name/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by the Internal Revenue Service. If the applicant organization has been assigned a DHHS Entity Number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full Entity Number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number, enter PIN in parentheses () beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint funding) check "multiple" and explain in Section IV, remarks. If unknown, cite Public Law or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate if necessary.

7. Enter title and appropriate description of project. For Notification of Intent, continue in Section IV if necessary to convey proper description. If project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line, e.g., Council of Governments. *Note:* Non-profit organizations which have not previously received HDS program support must submit proof of nonprofit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit is affected, list it rather than subunits.

10. Indentify estimated number of persons directly benefiting from project, as described in the program narrative.

11. All applicants for new, competing continuation and non-competing continuation grants should enter the letter "A". And applicants for supplemental grant funding should enter the letter "B". For proposed changes or amendments, enter "E".

12. Enter amount requested or to be contributed during the initial funding/budget period by each contributor. Where allowable the value of in-kind contributions should be included. If the action is a change in dollar amount of existing grant (a revision or augmentation), indicate only the amount of the change. For decreases,

enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding use totals and show program breakdowns in remarks. Item definitions: 12a, amount requested from Federal Government; 12b, amount from local government, if applicant is not a local government; 12c, amount from any other sources, explain in Section IV.

13a. Self explanatory. Enter the appropriate Congressional District number(s). If the State has only one Congressional District, enter "at large".

13b. Enter the district(s) where most of the actual work will be accomplished. If city-wide or State-wide covering several districts, write "city-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

A. *New.* A submittal for the first time for a new project or project period (includes competing continuations).

B. *Renewal.* Not applicable to HDS grant programs.

C. *Revision.* A modification to project after the initial funding/budget period and within the approved project period.

D. *Continuation.* Support for a non-competing continuation project after the initial funding/budget period and within the approved project period.

E. *Augmentation.* (Referred to elsewhere in these instructions and in other HDS publications as a "supplemental"). An application for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, explain in Part IV.

16. Enter estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14C), or augmentations (Supplements) (Item 14E).

18. Date application/preapplication must be submitted to HDS in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Enter existing HDS award number from item 3 of the Notice of Financial Assistance Awarded if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".

21. Check appropriate box as to whether Section IV of form contains

remarks and/or additional remarks are attached.

Section II

Applicants will always complete either item 22a or 22b and items 23a and 23b. An explanation follows for each item.

22a. Complete if application is subject to Executive Order 12372 (State review and comment). *Note:* All written comments submitted by or through the State Contact must be attached, if available. Applicants are advised of the delay of funding near the end of the fiscal year, if a timely notification to the State Contact is not made.

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory. *Note:* The authorized representative signature cannot be signed by designee.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II. SECTION III IS COMPLETED BY FEDERAL AGENCIES.

Instructions for Completion of Part II

Negative answers will not require an explanation unless the responsible HDS program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained. If the application is covered by Executive Order 12372, this item should be completed.

Item 4—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian

reservations are not "Federal Installations").

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions, if additional data is needed.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source. If this application is for a non-competing continuation, a supplement or a revision, do not refer to the prior or current HDS award.

Instructions for Completion of Part III

This form is designed so that application can be made for funds to support one or more functions or activities. Generally, HHS funded programs do not require a breakdown by function or activity. Therefore, only Line 1 need be completed. However, Head Start, funded by the Administration for Children, Youth and Families requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1-4 under Section A and Columns 1-4 under Section B).

Since HDS programs award funds to support activities for budget periods which are generally 12 months in duration, Section A, B, C, and D must provide budget information for the requested budget period. Section E should reflect the need for Federal Assistance in subsequent budget periods.

Applicants for research grants are not required to complete information items related to non-Federal share. Rather, research cost sharing shall be negotiated separately with the funding office.

Section A—Budget Summary

Lines 1-4

Col. (a): For applications pertaining to a single grant program and not requiring a functional activity or program account breakout enter on Line 1 under Column (a) the Federal Domestic Assistance Catalog program title (See attached

listing). For "Head Start", enter the activities (program accounts) name for which funds are being requested on separate lines.

Col. (b): Enter appropriate Catalog of Federal Domestic Assistance number. For "Head Start", enter the activities (program accounts) number for which funds are being requested on separate lines.

Col. (c)-(g): For new applications, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the first budget period.

For non-competing, or competing continuation applications, enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the current budget period. Enter in columns (e), (f), and (g) the appropriate amounts needed to support the project for the new budget period. (Column (g) should equal the total of Column (e) and Column (f).)

For augmentation (supplements) and changes to existing grants, leave Columns (c) and (d) blank and enter in Columns (e) and (f) the amount of increase or decrease of Federal and non-Federal funds, as appropriate. Enter in Column (g) the new total budgeted amount (Federal and non-Federal) which includes the previously authorized total budgeted amounts for the current budget period plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Columns (g) should not equal the sum of the amounts in Columns (e) and (f).

Line 5

Enter the totals for all columns completed.

Section B—Budget Categories

Column 1-5

In the Column heading (1) through (4), enter the same titles of the grant programs and/or program accounts shown on Lines 1 through 4, Column (a), Section A. For each grant program or activity (program account) enter in Columns (1) through (4) the total requirements for Federal funds by object class categories and enter total in Column 5.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74 and the HDS Grants Administration Manual.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies. (See Section F, Line 21, for additional requirements.)

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate. Provide break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, F.I.C.A., retirement insurance, etc.

Travel—Line 6c: Enter total costs of out-of-town travel (travel requiring per diem) for employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions.)

Equipment—Line 6d: Enter the total costs of all equipment to be acquired by the project. "Equipment" means an article of tangible personal property having a useful life or more than two years and an acquisition cost of \$500 or more per unit. An applicant may use its own definition of equipment, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21 for additional requirements.)

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.), and (2) contracts agreements with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization; the purpose of the contract; statement (scope) of work; period of performance; and the estimated dollar amount of the award. If the name of contractor, scope of work and estimated total is not available or has not been negotiated, include in Line h, "Other". (Note: Whenever the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total cost of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost-elements.)

Construction—Line 6g: Enter the costs of alterations or renovation. Provide narrative justification and break-down

of costs. New construction is unallowable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the totals of Lines 6(a) through 6(h).

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none". This line should be used only when the applicant (except local governments) has an indirect cost rate approved by the Department of Health and Human Services. Applicant should enclose a copy of the current negotiated agreement. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments, the reimbursement of indirect costs will be limited to the lesser of actual indirect costs of 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alteration and renovations. *It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.*

Total—Line 6k: Enter the amounts of Lines 6(i) and 6(j). For all new competing and non-competing continuation applications, the total amount shown in Column (5), Line 6(k), should be the same as the amount shown in Section A, Column (e), Line 5.

For all supplements or changes, the total of the amount shown in Columns (1) through (4) should equal the amount shown in Section A, Line 5(e). The amount shown in Column (5) should include the cumulative total of the previously approved Federal share for the current budget period plus or minus, as appropriate, the increase or decrease of Federal funds.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this

project. Do not add or subtract this amount from the total project amount. Show the nature and source of income, in the program narrative statement.

Section C—Non-Federal Resources

Line 8-11: Enter amounts of non-Federal resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in-kind. If in-kind is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space (use only), including number of square feet and value assigned per square foot; and

(3) Determination of depreciation or use allowance for grantee-owned space; (include statement specifying whether space was purchased or constructed, totally or in part with federal funds for items (2) and (3)).

(4) Type and value of other in-kind contributions expected.

Column (a): Enter the program title or activities (program accounts) as in Column (a) Section A.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the totals of Columns (b), (c), and (d).

Line 12—Enter total of each of Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Projects

Line 16-19—Enter the Column (a) the same program title or activities (program accounts) as in Column (a) Section A. For new or competing continuation or non-competing continuation grant applications, enter in the proper

columns amounts of Federal funds which will be needed to complete the program or project over the succeeding budget periods (usually in years). Do not enter current year budget amount; enter second, third, fourth, and fifth year budget estimate needs. This Section need not be completed for Headstart applicants with indefinite project periods or for revisions or supplements for the current budget period which do not increase the general level of support.

Line 20—Enter the totals of each of the Columns (b) through (e).

Section F—Other Budget Information

Line 21—Use this space to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the HDS program office. Budget items which require identification and justification shall include, but not be limited to, the following:

1. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative.

2. Travel requiring per diem and foreign travel, number of trips traveled, destinations, length of stay, transportation cost, subsistence allowance, purpose of trip.

3. A list of all equipment (See Part III, Section B, Line 6d) and estimated cost of each item to be purchased. Need for equipment must be supported in program narrative.

4. Contractual: Major items or groups of smaller items; and

5. Other: group and major categories, e.g., consultants, local transportation, space rental, training allowances, staff training, computer equipment, etc. Provide a complete break-down of all costs that make up this category.

Line 22—Enter the type of indirect cost rate (provisional, final, fixed or predetermined) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense. Also, enter the date HDS approved the rate, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations required or deemed necessary.

BILLING CODE #150-01-M

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION IDENTIFIER	3. STATE APPLICATION IDENTIFIER	4. NUMBER
1. TYPE OF SUBMISSION (Mark appropriate box)	<input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION	b. DATE Year month day	NOTE TO BE ASSIGNED BY STATE	b. DATE ASSIGNED Year month day
4. LEGAL APPLICANT/RECIPIENT		5. EMPLOYER IDENTIFICATION NUMBER (EIN)		
a. Applicant Name		a. NUMBER		
b. Organization Unit		b. TITLE		
c. Street/P.O. Box		6. TYPE OF APPLICANT/RECIPIENT		
d. City		<input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Local <input type="checkbox"/> Other		
e. State		<input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Local <input type="checkbox"/> Other		
f. Contact Person (Name & Telephone No.)		<input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Local <input type="checkbox"/> Other		
7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)		8. TYPE OF APPLICANT/RECIPIENT		
9. AREA OF PROJECT IMPACT (Name of cities, counties, states, etc.)		<input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Local <input type="checkbox"/> Other		
10. ESTIMATED NUMBER OF PERSONS BENEFITING		11. TYPE OF ASSISTANCE		
12. PROPOSED FUNDING		12. TYPE OF APPLICATION		
a. FEDERAL \$.00		<input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Local <input type="checkbox"/> Other		
b. APPLICANT \$.00		13. TYPE OF CHANGE (For 14c or 14d)		
c. STATE \$.00		<input type="checkbox"/> Increase <input type="checkbox"/> Decrease <input type="checkbox"/> Extension <input type="checkbox"/> Other		
d. LOCAL \$.00		14. PROJECT DURATION		
e. OTHER \$.00		15. PROJECT START DATE		
f. Total \$.00		16. DATE DUE TO FEDERAL AGENCY		
17. FEDERAL AGENCY TO RECEIVE REQUEST		18. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER		
a. ORGANIZATIONAL UNIT (IF APPROPRIATE)		19. REMARKS ADDED		
b. ADDRESS		<input type="checkbox"/> Yes <input type="checkbox"/> No		
20. THE APPLICANT CERTIFIES THAT:		21. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:		
22. CERTIFYING REPRESENTATIVE		22. DATE		
23. TYPED NAME AND TITLE		23. SIGNATURE		
24. APPLICATION RECEIVED 19		24. FEDERAL APPLICATION IDENTIFICATION NUMBER		
25. ACTION TAKEN		25. FEDERAL GRANT IDENTIFICATION		
<input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> e. DEFERRED <input type="checkbox"/> f. WITHDRAWN		26. FUNDING		
27. ACTION DATE		27. ACTION DATE		
a. FEDERAL \$.00		28. STARTING DATE		
b. APPLICANT \$.00		29. ENDING DATE		
c. STATE \$.00		30. REMARKS ADDED		
d. LOCAL \$.00		<input type="checkbox"/> Yes <input type="checkbox"/> No		
e. OTHER \$.00				
f. TOTAL \$.00				

**PART II
PROJECT APPROVAL INFORMATION**

Item 1
Does this assistance request require State, local regional, or other priority rating? _____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2
Does this assistance request require State, or local advisory educational or health clearances? _____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3
Does this assistance request require State, local, regional or other planning approval? _____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4
Is the proposed project covered by an approved comprehensive plan? _____ Yes _____ No
Check one State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 5
Will the assistance requested serve a Federal installation? _____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6
Will the assistance requested be on Federal land or installation? _____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7
Will the assistance requested have an impact or effect on the environment? _____ Yes _____ No
See instructions for additional information to be provided

Item 8
Will the assistance requested cause the displacement of individuals, families, businesses, or farms? _____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9
Is there other related assistance on this project previous, pending, or anticipated? _____ Yes _____ No
See instructions for additional information to be provided.

PART III - BUDGET INFORMATION**SECTION A - BUDGET SUMMARY**

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

OMB NO. 0548-0008

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION (Attach Additional Sheets if Necessary)	
21. Direct Charges:	
22. Indirect Charges:	
23. Remarks:	

PART IV PROGRAM NARRATIVE (Attach per instruction)

Prepare the program narrative section in accordance with the instructions included in Parts III and IV of this Announcement. The program narrative should be clear and concise, and should not exceed 35 single-spaced (or 70 double-spaced) pages plus such necessary attachments as organization charts, resumes, and letters of agreement and support.

BILLING CODE 4130-01-C

Part V.—Assurances

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher

education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on or after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for

the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.6) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46.42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients

include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding \$10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c)

pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds \$2,500.

(FR Doc. 88-14001 Filed 7-1-88; 8:45 am)

BILLING CODE 4130-01-M

Tuesday
July 5, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for
Public and Indian Housing

24 CFR Part 964
Tenant Management in Public Housing

federal register

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 964

[Docket No. R-88-1398; FR-2519]

Tenant Management in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would establish a new program of resident management of public housing. Under the program, resident councils that represent public housing residents could approve the formation of a resident management corporation. A qualifying resident management corporation could enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the PHA and the corporation with respect to the public housing project involved. The program would give PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.

The program would permit resident management corporations to retain any income generated by the corporations that exceeds estimated revenues for the project. Retained amounts could be used for purposes of improving the maintenance and operation of public housing projects, establishing business enterprises that employ public housing residents, or acquiring additional dwelling units for lower income families.

The program contains special provisions for HUD technical assistance to resident councils and resident management corporations; HUD waiver of certain non-statutory requirements for resident management corporations and the PHA; and the employment of public housing management specialists to help determine the feasibility of, and to help establish, resident management corporations, and to provide training and other duties in connection with the daily operations of the project. This rule implements section 122 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437r) and coordinates the resident management provisions of the 1987 Act with HUD's existing rules on PHA tenant participation and management.

DATES: Comment due date: August 4, 1988.

ADDRESS: HUD invites interested persons to submit comments to the

Office of General Counsel, Rules Docket Clerk, Room 10270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business at this address.

FOR FURTHER INFORMATION CONTACT:

Nancy S. Chisholm, Director, Policy Staff, Public and Indian Housing, Department of Housing and Urban Development, Room 4118, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6713. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Overview

This proposed rule would implement section 20 of the United States Housing Act of 1937 (the 1937 Act). This provision was contained in section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Section 20 establishes a new program of resident management of public housing. Under the program, resident councils that represent residents of a public housing project or projects could approve the formation of a resident management corporation. A qualifying resident management corporation could enter into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the PHA and the corporation with respect to the public housing project involved. The program would give PHAs and resident management corporations wide latitude in establishing their respective roles and relationships under the contract.

The program would permit resident management corporations to retain any income that they generate in excess of estimated revenues for the project. Retained amounts could be used for purposes of improving the maintenance and operation of public housing projects, establishing business enterprises that employ public housing residents, or acquiring additional dwelling units for lower income families.

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corporations, and to provide training and other duties in connection with the daily operations of the project.

Note: A number of similar terms are used throughout the proposed rule and this preamble, such as "tenant" and "resident", "tenant management corporation" and "resident management corporation", "tenant management" and "resident management", and "tenant organization" and "resident council".

These terms are *not* intended to denote different meanings, and may be used interchangeably. They merely reflect the differences in terminology between the existing provisions of 24 CFR Part 964—with its emphasis on "tenant"—and section 20 of the 1937 Act—which uses the parallel term "resident."

Special Features of Section 20

Section 20 of the 1937 Act would be implemented as a new Subpart D to 24 CFR Part 964. The provision contains a number of special provisions dealing with resident management programs, including the following.

1. Approval of Resident Management Corporation

Section 20 requires the formation of a resident management corporation as a condition to the assumption by tenants of public housing management functions. A resident council must approve the formation of the corporation in all instances. Where no council exists, section 20 requires that a majority of the households of the project approve the establishment of a resident council that can approve the formation of the corporation. Subpart C of Part 964—the existing regulatory authority for public housing tenant management—permits a corporation to be formed, even if there is no tenant organization to approve the corporation's establishment.

The Department believes that the participation of tenant organizations is essential to the success of resident management efforts. The proposed rule would, therefore, apply the requirement for resident council/tenant organization approval of management corporations to both Subparts C and D. This provision would be implemented through the requirements for a management corporation set out in the definition of "tenant management corporation or resident management corporation."

Section 20 references an "elected resident council" of a public housing project as the body that must approve the establishment of a resident management corporation. This rule equates the term "resident council" with "tenant organization"—the term used in HUD's existing rules at Part 964 to refer to the *entire body* of tenants

participating in the affairs of a project. Given this usage of the term, it is not feasible to provide for an "elected" resident council. The rule is, however, faithful to section 20's intent, since it provides, at § 964.7, that the resident council must make provision for the periodic election of its officers, and must have a democratically elected governing board. These requirements, HUD believes, appropriately carry out the statutory specification that there be an "elected" resident council.

2. "Project"

Section 20 permits a "public housing project" for purposes of that section, to include one or more contiguous buildings, or an area of contiguous row houses. This provision is designed to allow a "project"—for resident management purposes—to cover fewer structures than comprise a "project" for purposes of the development of public housing under the 1937 Act. For example, a "project" managed by a resident management corporation may involve only three of five buildings in a development "project."

Subject to a resident council's decision to establish a resident management corporation, the precise scope of the "project" would be defined by the management contract between the PHA and the resident management corporation. Generally, the "project" chosen would be subject only to such factors such as the feasibility of the "project's" configuration to contribute to the successful operation of the resident management functions to be carried out by the corporation.

The Department proposes to adopt section 20's definition of "project" for both Subparts C and D, and to use its discretion to expand upon the definition in one respect: A "project"—for tenant management purposes—could include "scattered site" buildings. The Department believes that requiring contiguity as a condition of a building's participation in Part 964 would unnecessarily constrict the types of resident management arrangements that PHAs and resident management corporations could successfully carry out.

In proposing this elaboration of section 20's authority, however, the Department is concerned that the spatial separation of buildings that are participating in a resident management program, such as scattered site buildings, may in certain circumstances affect the feasibility and ultimate success of the resident management program involved. The Department specifically requests comments on the feasibility of resident management in

buildings that may be spatially separate, particularly in the scattered site context, and on any techniques that may serve to make such arrangements more feasible.

The Department wants to provide PHAs and resident management corporations maximum flexibility to determine the nature and extent of their obligations under a management contract, but is concerned that the rights of individual tenants of projects identified for resident management also be protected.

It is clear that unanimity in favor of resident management on the part of tenants of a building is not required in order for a PHA and a resident management corporation to contract under section 20. It would be possible, however, for the Department to prescribe specific rules governing circumstances wherein resident families opposed to tenant management might be permitted to opt out. For example, a scattered site project involving detached dwellings could permit resident management *only* of those dwellings occupied by families supporting the management corporation—since normally it would be feasible for the PHA to continue to manage individual units occupied by families who objected to resident management. Similarly, circumstances may exist in which families situated in other types of living arrangements—e.g., in row houses—who object to resident management might feasibly be permitted to remain under PHA management, while other nearby units are subject to management by the resident management corporation.

The proposed rule would leave these issues for resolution in the contract. Comment is invited, however, concerning steps that might be taken by HUD, the PHA, or the resident management corporation to ensure the feasibility of management arrangements, while permitting families not supportive of these arrangements to remain subject only to PHA management.

3. Rights of Families; Operation of Project

Where the "project" for purposes of section 20 is less than the entire development project, such as where three buildings in a five-building project are participating in the resident management program, section 20 prohibits the program from interfering with the rights of other residents of the project or harming the efficient operation of the project as a whole. The proposed rule would adopt these prohibitions for both Subparts C and D, with a requirement that the PHA be responsible for determining where these conditions exist.

4. Management Specialist

Section 20 requires the resident council of a project, in cooperation with the PHA, to select a qualified public housing management specialist (1) to assist in determining the feasibility of, and to help establish, a resident management corporation; and (2) to provide training and other duties in connection with the daily operations of the project.

The proposed rule (§ 964.40) would require the PHA and the resident council to agree in advance upon: (1) The qualifications that the management specialist must possess; (2) the terms and conditions of the search and selection process; (3) the duties and responsibilities to be performed by the management specialist, including the remuneration to be provided the specialist, a clear specification of the nature and degree of supervision to be provided the specialist, and a clear specification of the title of the person or persons in the organizational structure of the PHA for the resident council (or both) to whom the specialist is to report for supervision and for evaluation of his or her performance; and (4) such other matters with respect to the selection and functions of the management specialist as the PHA and the resident council may determine, consistent with the ACC and applicable law and regulations. The resident council must select the housing management specialist, in accordance with the terms of its agreement with the PHA.

It should be noted that § 964.40 would require selection of a public housing management specialist only in circumstances where there was no previously established resident management corporation. An already-established tenant management corporation, if it qualified to become a resident management corporation under Subpart D of this rule, would have discretion to determine whether the services of public housing management specialist were needed. Under the contract between the PHA and a resident management corporation, the corporation typically would be authorized to contract for services under conditions mutually agreeable to the PHA and the corporation.

5. Management Contract

Section 20(b)(4) of the 1937 Act raises a number of interpretational issues with respect to the duty of a PHA to enter into a management contract with a qualifying resident management corporation. The provision states in part:

A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public agency, shall enter into a contract with the public housing agency establishing the respective management rights and responsibilities of the corporation and the public housing agency. (Emphasis supplied.)

This language raises several questions.

(a) Qualification of a Resident Management Corporation To Enter Into a Management Contract

An initial issue is whether the resident management corporation must meet only the literal terms of section 20(b)(4) to trigger the "enter into a management contract" requirement. The Department does not believe that this language was intended to provide the only qualifications for a resident management corporation's assumption of resident management responsibilities. Section 20's requirements for a corporation are indeed "bare bones," speaking only to the approval of the corporation by a resident council, the non-profit and corporate structure of the corporation, and its voting structure. If these were the only requirements for a qualifying resident management corporation, the PHA could be forced to "enter into a contract" with a corporation that lacked even basic management skill and capacity to perform the most rudimentary project management tasks.

The Department does not believe that section 20 envisions such a result, and does not view the quoted language as a bar to imposing reasonable additional qualifications on resident management corporations. Thus, the Department would apply the existing requirements for a tenant management corporation under § 964.29 of Subpart C on a resident management corporation under Subpart D. The Department believes that § 964.29's requirements are the minimum necessary to ensure the structure and capacity of a corporation to enter into a successful management relationship with the PHA.

(b) Duty to Contract

A second interpretational issue concerns the "enter into a contract" requirement. One possible construction is that the PHA must accept the contract offer of the resident management corporation, on the basis of either the initial terms offered by the corporation or after some negotiation, but in either event, on the corporation's (and not the PHA's) terms. The Department does not believe that the statute intended the PHA to be bound by the contract terms

offered by the corporation. Such a construction could cause severe disruption to the PHA's ability and responsibility, not only to manage the project involved in the management program, but also to establish coherent policies for all the PHA's projects.

Another interpretation emphasizes the following language: "A resident management corporation . . . shall enter into a contract with the public agency establishing the respective management rights and responsibilities" of the PHA and the resident management corporation. (Emphasis added.) The underscored word, "establishing," could be interpreted as meaning "in order to establish." Under this interpretation, the requirement for a contract would be for the purpose of establishing, in binding fashion, the respective rights and responsibilities under the contract; that is, if the PHA and the corporation wish to divide management rights and responsibilities, they must first enter into a contract establishing the terms and conditions of their respective management roles.

The Department believes that this interpretation is far more in accord with the normal view of the discretionary nature of decisions to enter into contracts. Moreover, it does not share the strained, and even "shotgun marriage," view of the contractual process that is implicit in the other possible interpretation, noted above.

Both PHAs and resident management corporations should have discretion to determine whether to enter into resident management arrangements and on what terms. The mandate to "enter into a contract" should be viewed as a *sine qua non* to any establishment of a resident management program, not as a requirement that such a program be established: i.e., if the PHA and the resident management corporation choose to enter into resident management arrangements, they must enter into a contract in order to establish and confirm their relationship.

The rule would, however, impose a number of responsibilities on PHAs that are designed to ensure that they support resident management and seriously negotiate with resident management corporations seeking to enter into a management contract with the PHA. Specifically, the rule would provide that PHAs shall be supportive of resident interest in forming a resident management corporation, and shall work with residents to determine the feasibility of resident management. The rule would also provide that PHAs give full and serious consideration to resident management corporations seeking to enter into a management

contract with the PHA. PHAs would be prohibited from arbitrarily or capriciously refusing to negotiate with resident management corporations seeking to contract to provide management services. The PHA would have to document appropriately the reasons for rejecting any management contract offer from the corporation, and would have to make these reasons available to the corporation. (The Department proposes to apply these PHA duties to resident management under both Subparts C and D.)

An informal appeals process to HUD is proposed in § 964.9, under which the Department would seek, through conciliation with the resident management corporation and the PHA, to arrange for resumption of negotiations that have been unsuccessful and to encourage the ultimate adoption of a resident management contract. Where HUD believes that a PHA is not negotiating in good faith, the rule would permit the Department to require negotiations, or their resumption.

The Department has provided no process under which HUD compel the parties to enter into a contract, although HUD recognizes that there is concern among tenant management support groups that some PHAs may resist resident management. The Department does not believe that the statute requires that PHAs enter into contracts under such compulsion, and accordingly the rule approaches the issue on the basis of establishing, instead, a "duty to bargain." Public comment is invited concerning the appropriate HUD role in resolving contract impasses associated with resident management proposals.

6. Responsibilities Relating to Tenant Selection

While the rule proposes to leave as much as possible to PHA and resident management corporation discretion in formulating the nature of their relationship, the Department is proposing revisions to § 964.29 that are intended to set out minimum standards regarding the functions to be assumed under the contract by the resident management corporation—especially as those functions relate to tenant selection concerns.

The rule proposes to permit a resident management corporation to contract with the PHA to conduct tenant eligibility determinations, which includes only determining the number of persons in the household and the amount of family income. (The resident management corporation may also perform income verification.) These

functions are identified in the statute as possible functions of the corporation. However, in accordance with equal opportunity requirements and HUD regulations on tenant selection and preferences for certain classes of applicants, tenant applications must feed into one community-wide waiting list. For this reason, HUD expects that the resident management corporation usually would not be performing these functions for its own potential tenants, but rather would be assisting the PHA with the community-wide list. In addition, the resident management corporation could arrange by contract to screen prospective tenants referred to it by the PHA for residence in the tenant-managed project. The standards for such screening would have to be included in the resident management contract and would have to be consistent with civil rights requirements. The resident management corporation's recommendations as to the suitability of an applicant would be required to be accepted by the PHA, unless the PHA determined that favorable action on a recommendation would be inconsistent with applicable laws. Exercise by the PHA of the final decision on these matters is necessary to assure consistent application of civil rights requirements.

7. Comprehensive Improvement Assistance

Section 20 provides that HUD may enter into a contract with the PHA to provide comprehensive improvement assistance under 24 CFR Part 968 (CIAP) to modernize a project managed by a resident management corporation under this subpart. If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the resident management corporation, the PHA would not be permitted to retain, for any administrative or other reason, any portion of the CIAP assistance provided, unless the PHA and the resident management corporation provide otherwise by contract. The resident management corporation and the PHA could, for example, through mutual agreement, provide funds to the PHA for supervision or auditing of the CIAP project.

The proposed rule contains these provisions without substantive change. However, in recognition that PHAs will continue to have responsibility for CIAP application processes, and that CIAP activity may well include resident-managed projects, the proposed rule adds a new paragraph (d) to § 964.33, requiring PHA consultation with the corporation during any assessment of

PHA-wide modernization needs. Evidence of this required consultation must be included as part of the CIAP submission to HUD.

8. Operating Subsidy, Preparation of Operating Budget, Operating Reserves and Retention of Excess Revenues

The proposed rule contains instructions for calculating operating subsidy that differ from those contained in Part 990. The Department intends to make any necessary conforming amendments to Part 990 when this proposed rule is made final. The terms of support for the corporation-managed project will be reflected in an amendment to the Annual Contributions Contract (ACC) between HUD and the PHA, so that the statutory directives for the provision of subsidy to these projects can be more easily accomplished.

As noted above, the PHA and the tenant council would have considerable latitude in determining what constitutes a "project" for resident management purposes.

Operating subsidy will be calculated separately for projects managed by a resident management corporation. In order to ensure that tenant-managed projects will receive income sufficient to maintain the level of expenditures supported by operating subsidy and by rents and income from the low-rent housing program that was available in the year preceding management by the resident management corporation, the operating subsidy for the resident management corporation will be calculated as an amount sufficient to cover any gap between such income and total allowable expenses recognized under Part 990. This will be accomplished by setting an Allowable Expense Level based on the actual non-utility expenses for the project in the fiscal year immediately preceding the institution of tenant management under Subpart D. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation. The expenses must represent a normal year's expenditures for the project, and documentation of this expense level must be presented with the project budget and approved by HUD. The utility expense level for the resident management corporation project will be computed in accordance with Part 990. Utility expenses are estimated separately under rules that set consumption at the average of a prior three-year period. HUD will reimburse projects for increased costs associated

with changes in utility rates, and will share in cost increases and savings attributable to changes in consumption.

(a) Income Estimate

To allow the resident-managed project to retain income generated that exceeds the income estimated, the definition of "income" used in the calculation of operating subsidy will be modified as follows:

(1) dwelling rental income will be estimated based on the rent roll of the project immediately preceding management under Subpart D, increased by the estimate of inflation of tenant income used in calculating PFS subsidy. Any increases above this assumption would be treated as "income generated" by the corporation. Normally, this assumption is six percent per year, resulting in a PFS change factor of 1.03 applies to the rent roll. For projects under management contract, the six percent increase will be applied to the rent roll immediately before assumption of management responsibility by the corporation. In the first year, this rent roll will be multiplied by the PFS change factor of 1.03. This assumes a six percent increase from the rent roll at the beginning of the year to the rent roll at the end of the year—an average increase of three percent. In subsequent years, dwelling rental income will be estimated by multiplying the previous year's estimate by 1.06.

(2) Any increased income directly related to activities by the resident management corporation, or facilities operated by the resident management corporation, will be excluded from the estimate of other income.

(3) Any reduction in the subsidy of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA, shall not affect the subsidy calculation for the resident management corporation project.

By establishing a resident management corporation project-level subsidy calculation, this rule establishes a predictable level of funding for the resident management corporation project that is responsive to inflation in utility and non-utility expenses and is independent of circumstances affecting other projects in the PHA. Subsidy will make up the gap between income and allowable expense levels. Any decreases in PHA income due to rent rolls, occupancy rates, or utility consumption levels, or utility rates in other projects, will have absolutely no effect on the income level of the resident management corporation project.

(b) Preparation of Operating Budget

The resident management corporation and the PHA shall submit a separate operating budget for the project managed by the resident management corporation to HUD for approval, including the calculation of operating subsidy eligibility. This budget will reflect all project expenditures, and will identify which expenditures are related to responsibilities of the resident management corporation and which are related to functions which continue to be performed by the PHA. The proposed rule would exclude the provision of technical assistance by the PHA to the resident management corporation from the operating budget developed for the project.

(c) Operating Reserves

If the resident management corporation is responsible for maintenance functions in the project, the PHA and the resident management corporation may provide in the contract for the establishment of a separate operating reserve for the resident management corporation project.

Each project or part of a project which is operating in accordance with an ACC amendment relating to this subpart, may have established a sub-account of the operating reserve of the host PHA. The amount of the reserve made available to projects under the subpart will not exceed the per unit cash amount available in the PHA fiscal year preceding implementation, multiplied by the number of units in the project operated in accordance with the provisions of this subpart.

The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditures of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget which is subject to approval by HUD.

Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7478.1 REV, and such interest as is generated will be included in the calculation of operating subsidy in accordance with 24 CFR Part 980.

(d) Retention of Excess Revenues

Section 20 provides that any income generated by a resident management corporation that exceeds the income estimated for the income category in the management contract under item (a), must be excluded in subsequent years in calculating:

(i) The operating subsidy provided to a PHA under Part 980;

(ii) The funds provided by the PHA to the resident management corporation.

This change in the definition of income used to calculate operating subsidy allows the resident management corporation to retain excess revenues.

(e) Use of Retained Revenues

Section 20 requires that any revenues retained by a resident management corporation under item (d) may only be used for purposes of: (i) Improving the maintenance and operating of the project, (ii) establishing business enterprises that employ residents of public housing, or (iii) acquiring additional dwelling units for lower income families.

Resident management corporations will, under this rule, be receiving grant funds (operating subsidy) through the PHAs and will be managing other project income. Accordingly, they will be subject to OMB financial management controls applicable to entities responsible for the expenditure of Federal funds. The final rule in this proceeding will include provisions setting out the obligation of resident management corporations to comply with OMB financial management requirements—either requirements identical to those applied to PHAs, or the requirements made applicable to nonprofit organizations under OMB Circulars A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations" and A-122, "Cost Principles for Nonprofit Organizations". Public comment is invited concerning the appropriate means of regulating resident management corporation financial management practices.

9. Waiver of HUD Requirements**(a) Waiver Conditions**

Section 20 provides that upon the joint request of a resident management corporation and the PHA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the PHA, (1) that the requirement unnecessarily: (i) increases the costs to the project or (ii) restricts the income of the project and (2) that the waiver would be consistent with the management contract and any applicable collective bargaining agreement. Section 984.52 provides that any waiver granted to a resident management corporation under this section will apply as well to the PHA to the extent the waiver affects the PHA's

remaining responsibilities relating to the corporation's project.

(b) Notice and Opportunity for Comment

Section 20 permits HUD to grant a waiver only after notice is provided to the residents whom the waiver would affect and the residents are given at least 30 days to comment. The proposed rule would provide that the PHA serve this notice by any or all of the following means, as HUD determines appropriate:

- (1) First class mail addressed to each affected resident.
- (2) Delivery to the unit of each affected resident.
- (3) In the case of high-rise buildings, posting in one or more conspicuous locations in any building in which affected residents live.

(c) Role of PHAs and Resident Management Corporations

The proposed rule would specify the following role for PHAs and resident management corporations in the waiver process: All resident comments would have to be sent to the PHA. The PHA would summarize the comments, prepare (at its option) a recommended response to the comments, and provide the resident management corporation with the opportunity to prepare a recommended response to the comments. The PHA would have to send to HUD all the tenant comments received, along with the recommendations (if any) of the PHA and the resident management corporation.

The PHA would be required to carry out such responsibilities with respect to the determination of whether to grant a waiver as HUD may prescribe in administrative instructions. (These responsibilities will include both the initial and later service of notice on affected tenants.)

(d) Action on Resident Comments

HUD would give careful consideration to all resident comments received within the comment period, and would require the PHA to serve written notice of HUD's final decision on the proposed waiver, including written responses to the resident comments, in the same manner and upon the same resident population as the original notice was served.

(e) Waiver to Permit Employment

Upon the request of a resident management corporation, HUD may, subject to the terms and procedures of applicable collective bargaining agreements, permit residents of the

project to volunteer a portion of their labor.

(f) Exceptions

HUD may not waive any regulatory or other requirement under paragraph (a) of this section with respect to: (1) Income eligibility for purposes of §§ 913.104 and 913.105 of this Chapter, (2) rental payments under § 913.107 of this Chapter, (3) tenant or applicant protections under this Chapter, (4) employee organizing rights, or (5) the rights of employees under collective bargaining agreements.

10. Technical Assistance

Section 20 requires HUD to provide financial assistance to PHAs, within prescribed funding limitations, for the use of resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities. Eligible activities would include the formation of resident management entities; the development of the management capability of newly formed or existing entities; identification of the social support needs of residents of projects, and the securing of this support; preparing feasibility studies of activities to be undertaken by the resident organization; obtaining information from the communities which have existing resident organizations to learn about their experiences; training residents for participation and leadership in the resident organization; obtaining legal assistance in incorporating resident organizations; preparing by-laws and drafting corporate charters; developing performance standards and assessment procedures to measure success of resident participation; assistance in acquiring surety bonding and insurance; designing and implementing financial management systems that include budgeting, accounting, and auditing; developing and implementing a long-range planning system; assessing potential impacts and benefits of resident management and identifying management functions or tasks to be contracted; and advice in developing and negotiating management contracts and related monitoring and management procedures. Technical assistance may not exceed \$100,000 with respect to any project, and is subject to limitations on available funding. In determining the size of technical assistance grants, HUD will take into consideration the size of the resident-managed project and the anticipated complexity of the proposed change to resident management.

11. Audit

Section 20 requires that the books and records of a resident management corporation managing a public housing project be audited annually by a certified public accountant, and that a written report of each audit be sent to HUD and the PHA. The proposed rule contains this provision, with language indicating that the books and records of the corporation would also be subject to all applicable Federal statutory and other requirements.

12. Additional Waivers

HUD is required by section 20 to submit to the Congress by August 5, 1988 a report identifying any provisions of Federal law that should be waived to carry out the provisions of this Part. PHAs, tenant organizations, resident management corporations, and other interested parties are encouraged to include in their comments to the Rules Docket Clerk on this proposed rule any statutory or non-statutory provisions that should be considered as candidates for waiver, with an explanation of how the provision conflicts with the optimum execution of section 20.

Relationship Between Section 20 and Existing 24 CFR Part 984

As noted earlier, 24 CFR Part 984 contains the Department's regulations for tenant participation and management in public housing, as they were written before passage of the 1987 Act. Section 20 was written to provide additional rights and responsibilities for resident management corporations seeking to manage public housing projects. Section 20 does not eliminate the other, more generally applicable responsibilities previously set out in Part 984, Subpart C.

Specifically, Subpart C of Part 984 contains the Department's current (pre-1987 Act) policies, procedures, and requirements for tenant management of public housing. The basic program design of Subpart C is similar to that established in section 20: Public housing tenants must form a tenant management corporation that will enter into a management contract with the PHA, establishing the respective management rights and responsibilities in connection with the project that will be carried out by the PHA and the corporation. Subpart C also contains provisions that are not contained in section 20, discussing the scope and contents of the management contract, the continued responsibility of the PHA to HUD after a management contract is in place, and permissible PHA financial support for tenant management corporations.

The Department proposes to implement section 20 of the 1937 Act as a new Subpart D to Part 984. Existing Subpart B would be retained without substantive change, thereby applying its tenant participation provisions both to public housing tenants and tenant organizations under Subpart C and public housing residents and resident councils under proposed Subpart D. Subpart B contains basic provisions designed to improve communication between PHAs and their tenants, and to enhance tenant understanding of, and participation in, issues that affect their projects. These features are beneficial to all tenant/PHA relationships, irrespective of whether the tenants are represented by a tenant organization (resident council), or a tenant (resident) management corporation under Subpart C or D.

The tenant participation provisions of Subpart B would apply to resident management activities under Subpart D. Among other things, a resident council that proposes to form a resident management corporation to assume management responsibilities under that Subpart D would have to meet the requirements for a tenant organization under Subpart B.

Subpart C would retain its existing substance, except that a number of section 20's provision, as described above, would be added to that Subpart. Under the proposed revisions to Part 984, Subpart C would apply to tenant (resident) management under both Subparts C and D. Subpart D would contain the special features of section 20 of the 1937 Act, and would be available for PHAs and resident management corporations that wish to proceed under section 20.

Section 20 provides only a "bare bones" recitation of the requirements for establishing a resident management corporation: It must be approved by a resident council and be a non-profit corporation whose sole voting members are the tenants of the project or projects it represents. The Department proposes that resident management corporations under Subpart D meet the requirements for tenant management corporations under Subpart C as well. These include such essential provisions as requiring the activities and expenditures of the corporation to be consistent with Federal, State, and local law and the ACC; the corporation to submit annual budgets for PHA approval; and the PHA to conduct annual performance reviews of the corporation.

PHAs and tenant management corporations (resident management corporations) that enter into

management contracts under either Subpart C or D—including tenant management corporations that have entered into such contracts under Subpart C before the effective date of this rule—could elect to switch to the tenant (resident) management provisions of the other subpart. Subject to the resident council's decision to establish a resident management corporation under Subpart D, a corporation so established will alone determine whether to seek to become a resident management corporation under the new option provided by section 20. The responsibilities of the corporation would be subject to terms and conditions negotiated with the PHA, consistent with the ACC and applicable laws and regulations. The PHA and the corporation would be required to enter into a new or amended contract meeting the additional requirements of Subpart D. If the switch is from Subpart D, it must be subject to such agreement between the PHA and the corporation as may be necessary to ensure that revenues which have been retained under § 964.49(d) are used for the purposes specified in section 20 of the 1937 Act.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a

significant economic impact on a substantial number of small entities. This rule would add a new resident management option for public housing residents. Although the rule may have some effect on small entities—both PHAs and resident management corporations—its economic effect on them would be slight.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program rule number for this rule program number 14.850.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the Federal Register.

List of Subjects in 24 CFR Part 964

Public and Indian housing.

Accordingly, 24 CFR Part 964 would be amended as follows:

PART 964—TENANT PARTICIPATION AND MANAGEMENT IN PUBLIC HOUSING

1. The authority citation for Part 964 would be revised to read as follows:

Authority: Secs. 8, 9, 14, 20, United States Housing Act of 1937 (42 U.S.C. 1437d, 1437g, 1437l, 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 964.3, paragraph (b) would be revised, and new paragraphs (c), (d), and (e) would be added, to read as follows:

§ 964.3 Applicability and scope.

(b) Subpart B of this part contains HUD's policies, procedures, and requirements for the participation of public housing tenants in public housing management. These policies, procedures, and requirements apply to all tenant participation under this part.

(c)(1) Subpart C of this part contains HUD's policies, procedures, and requirements for tenant management of public housing under that subpart. Subpart C also applies to resident

management of public housing under Subpart D of this part.

(2) Subpart C of this part is not intended to negate any pre-existing arrangements between a PHA and a tenant organization or tenant management corporation. Current tenant management contracts that do not meet the requirements of Subpart C need not be modified until the first renewal on or after March 2, 1987.

(d)(1) Subpart D of this part contains HUD's policies, procedures, and requirements for resident management of public housing under section 20 of the United States Housing Act of 1937. As provided by paragraph (c)(1) of this section, the policies, procedures, and requirements of Subpart C of this part apply to resident management under Subpart D. Subpart D contains policies, procedures, and requirements, in addition to those specified in Subpart C, that are required under section 20 of that Act.

(2) The provisions of Subpart D of this part apply only to PHAs and resident management corporations that elect, in accordance with HUD's administrative instructions, to adopt them. If this election is made, the resident management involved will be governed by the provisions of Subpart D. In all other cases, the management involved will be governed by the provisions of Subpart C of this part.

(3) PHAs and tenant management corporations or resident management corporations that have entered into management contracts under either Subpart C or D of this part, including tenant management corporations that have entered into such contracts under Subpart C before [insert effective date of this rule], may elect to enter into management contracts under the other subpart. This election will be subject to such terms and conditions as the PHA and the corporation may decide, consistent with the ACC and applicable laws and regulations. If this election involves a change from Subpart D to Subpart C, it must be subject to such agreement between the PHA and the corporation as may be necessary to ensure the use of retained revenues under § 964.49(d) for the purposes specified in § 964.49(e).

(4) Subpart D of this part is designed to encourage increased resident management of public housing, as a means of improving existing living conditions in public housing, by providing increased flexibility for public housing resident management by:

(i) Permitting the retention, and use for certain purposes, of any income generated by a resident management

corporation in excess of estimated project income; and

(ii) Providing funding for technical assistance to promote the formation and development of tenant management entities.

(e) A number of similar terms are used throughout this part, such as "tenant" and "resident," "tenant management corporation" and "resident management corporation," "tenant management" and "resident management," and "tenant organization" and "resident council." These terms are not intended to denote different meanings, and may be used interchangeably. They merely reflect the difference in terminology between the provisions of this part before the addition of Subpart D to this part, and section 20 of the United States Housing Act of 1937, as implemented in Subpart D.

3. Section 964.5 would be revised to read as follows:

§ 964.5 Relation to other requirements.

(a) Subparts B and C of this part are intended to be consistent with the regulations in other parts of this chapter regarding tenant participation in specific aspects of public housing management. To the extent any provision in these subparts conflicts with any regulatory requirement related to tenant participation in any other part in this chapter, the other provision controls. Subparts B and C are generally consistent with previous HUD instructions and guidelines on various aspects of tenant participation in the management of public housing. To the extent that Subparts B and C conflict with previous guidelines or instructions (other than those involving regulatory requirements), the provisions of those subparts control.

(b) Subpart D of this part contains a resident management program that was established by section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). This subpart is independent of regulations in other parts of this chapter, as well as other HUD instructions or guidelines under those regulations, with respect to resident participation in the management of public housing.

4. In § 964.7, the definitions of "Tenant Management," "Tenant Management Corporation," and "Tenant Organization" would be deleted; the definitions of "Annual Contributions Contract (ACC)" and "Management Contract" would be revised; and new definitions of "Project," "Tenant Management or Resident Management," "Tenant Management Corporation or Resident Management Corporation,"

and "Tenant Organization or Resident Council" would be added in alphabetical order, to read as follows:

§ 964.7 Definitions.

Annual Contributions Contract (ACC). A contract (in the form prescribed by HUD) under which (a) HUD agrees to provide financial assistance, and the PHA agrees to comply with HUD requirements for the development and operation of the public housing project.

Management contract. A written agreement between (a) a tenant management corporation and a PHA, as provided by § 964.29 of Subpart C of this part, or (b) a resident management corporation and a PHA, as provided by § 964.43 of Subpart D of this part.

Project. Includes any of the following that meet the requirements of this part: (a) One or more contiguous buildings. (b) An area of contiguous row houses. (c) Scattered site buildings.

Tenant management or resident management. The performance of one or more management activities for one or more projects by a tenant management corporation or a resident management corporation under a management contract with the PHA.

Tenant management corporation or resident management corporation. The entity that proposes to enter into, or enters into, a management contract with a PHA under Subpart C or Subpart D, respectively, of this part. The corporation must have each of the following characteristics:

(a) It must be a non-profit organization that is incorporated under the laws of the State in which it is located.

(b) It may be established by more than one tenant organization or resident council, so long as each such organization or council: (1) Approves the establishment of the corporation and (2) has representation on the Board of Directors of the corporation.

(c) It must have an elected Board of Directors.

(d) Its by-laws must require the Board of Directors to include representatives of each tenant organization or resident council involved in establishing the corporation.

(e) Its voting members must be tenants of the project or projects it manages.

(f) It must be approved by the tenant organization or the resident council. If there is no organization or council, a majority of the households of the project must approve the establishment of such an organization to determine the

feasibility of establishing a corporation to manage the project.

(g) It may serve as both the tenant management corporation (or the resident management corporation) and the tenant organization (or the resident council), so long as the corporation meets the requirements of this part for a tenant organization or resident council.

Tenant organization or resident council. An incorporated or unincorporated non-profit organization or association that meets each of the following requirements:

(a) It must be representative of the tenants it purports to represent.

(b) It may represent tenants in more than one project or in all of the projects of a PHA, but it must fairly represent tenants from each project that it represents.

(c) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years).

(d) It must have a democratically elected governing board. The voting membership of the board must consist of tenants of the project or projects that the tenant organization or resident council represents.

5. Section 964.9 would be revised to read as follows:

§ 964.9 HUD role in activities under this part.

(a) **General.** Subject to the requirements of this part and other requirements imposed on PHAs by statute or regulation, the form and extent of tenant participation and tenant management or resident management are local decisions to be made by a PHA after consultation with its tenants. HUD will promote tenant participation and tenant and resident management, and provide additional guidance, as necessary and appropriate. In addition, HUD will endeavor to provide technical assistance in connection with resident management under Subpart D of this part, as provided by § 964.58.

(b) **Duty to bargain in good faith.** If a PHA refuses to negotiate with a resident management corporation, or after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD may require the PHA to respond with a report stating the PHA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD may require the parties (with or without direct HUD participation) to undertake or to resume

negotiations on a contract providing for resident management.

6. Part 964, Subpart A, would be revised by adding new §§ 964.11 and 964.12, to read as follows:

§ 964.11 HUD policy on tenant participation.

It is HUD's policy to encourage tenant participation in the management of public housing, as may be found appropriate by PHAs after consultation with the tenants. HUD encourages PHAs and tenants to work together to determine the most appropriate ways to foster constructive relationships, particularly through tenant organizations. Tenant organizations are generally the best vehicle for achieving effective tenant participation on a continuing basis.

§ 964.12 HUD policy on tenant management and resident management.

It is HUD's policy to encourage tenant management where it is feasible. HUD encourages PHAs, tenants, and tenant organizations to explore the various functions involved in project management to identify appropriate opportunities for contracting with a tenant management corporation or a resident management corporation. Potential benefits of tenant management of public housing include improved quality of life and resident satisfaction, and other social and economic benefits to tenants, the PHA, and HUD.

§ 964.15 [Removed and Reserved]

7. Section 964.15 would be removed and reserved.

8. In § 964.17, the introductory language would be revised to read as follows:

§ 964.17 Tenant participation requirements.

The following are requirements for implementing HUD's policy on tenant participation, as expressed in § 964.11:

9. In § 964.19, paragraphs (b) and (c) would be revised to read as follows:

§ 964.19 Tenant participation guidelines.

(b) A tenant organization may request that it be recognized as the official organization representing the tenants in meetings with the PHA or with other entities. A PHA should grant formal recognition of the tenant organization, if it meets the requirements for such an organization specified in § 964.7.

(c) At a minimum, the PHA and tenant organization should put in writing their understanding concerning the elements of their relationship. If such an agreement includes contracting for the

tenant organization to perform any of the functions for which the PHA is responsible to HUD under the ACC, the provisions of Subpart C or Subpart D (as appropriate) apply.

§§ 964.25 and 964.27 [Removed and Reserved]

10. Section 964.25 would be removed and reserved.

11. Section 964.27 would be removed and reserved.

12. In § 964.29, paragraphs (a) through (d) would be redesignated as paragraphs (b) through (e), respectively; new paragraphs (a), (d)(6), (f), and (g) would be added; and the introductory language, and newly redesignated paragraphs (b), (c) and (d)(1) would be revised, to read as follows:

§ 964.29 Tenant management requirements.

The following requirements apply when a PHA and its tenants are interested in providing for tenant performance of management functions in one or more projects under this subpart.

(a) *PHA responsibilities.* PHAs shall be supportive of tenant interest in forming a tenant management corporation, and shall work with tenants to determine the feasibility of tenant management. PHAs shall give full and serious consideration to tenant management corporations seeking to enter into a management contract with the PHA under this subpart. PHAs shall not arbitrarily or capriciously refuse to negotiate with tenant management corporations seeking to contract to provide management services. PHAs shall appropriately document their reasons for rejecting any management contract offer from a tenant management corporation, and must make the reasons available to the corporation.

(b) *Tenant management corporation.* Tenants interested in contracting with a PHA must establish a tenant management corporation that meets the requirements for such a corporation, as specified in § 964.7.

(c) *Management Contract: scope.* (1) A management contract between the PHA and a tenant management corporation is required for tenant management. The PHA and the corporation may agree to the performance by the corporation of any or all management functions for which the PHA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations.

(2) The management contract may include specific provisions governing management personnel; compensation

for maintenance laborers and mechanics, and administrative employees, employed in the operation of the project, except that the amount of this compensation must meet applicable labor standard requirements of Federal law; rent collection procedures, tenant income verification; tenant eligibility determinations; tenant eviction; the acquisition of supplies and materials; and such other matters as the PHA and the corporation deem appropriate, and as HUD may specify in administrative instructions.

(3) The management contract may permit a tenant management corporation to conduct tenant eligibility determinations (the number of persons in the household and their income) and tenant income verifications. A tenant management corporation also may participate in the screening of applicants and tenant selection on a PHA-wide basis. In addition, the tenant management corporation may screen tenants referred by the PHA for residence in the tenant-managed project. The tenant management corporation may make a recommendation to the PHA regarding the suitability of each such applicant, in accordance with screening criteria that are consistent with HUD guidelines and incorporated in the management contract. Standards for screening applicants shall be consistent with the requirements of Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Age Discrimination Act of 1973; and all other applicable civil rights laws and executive orders. The tenant management corporation's recommendation on a specific applicant shall be accepted by the PHA unless the PHA determines that action in accordance with the recommendation would be inconsistent with applicable laws.

(4) The management contract must be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the PHA is subject.

(5) Before entering into a management contract, the PHA must make a written determination that the corporation has the capability for satisfactory performance of all management functions covered by the contract. The ACC provisions on competitive bidding and prior written HUD approval of contracts do not apply to the decision of a PHA to contract with a corporation.

(d) * * *

(1) Tenant management corporation activities and expenditures must be

consistent with the requirements of applicable Federal, State, and local law and regulations and with the ACC and PHA policies, including requirements pertaining to access to books and records, accounting, and audit.

(6) All activities carried out pursuant to the management contract must be conducted in conformity with Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Age Discrimination Act; Section 504 of the Rehabilitation Act of 1973; and all other applicable civil rights laws and executive orders. In addition, the management contract must indicate what records must be kept by the tenant management corporation and made available to the PHA and HUD with respect to activities associated with tenant management.

(f) *Bonding and insurance.* Before assuming any management responsibility under its contract, the tenant management corporation must provide fidelity bonding and insurance, or equivalent protection.

(1) That is adequate (as determined by HUD and the PHA) to protect HUD and the PHA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees; and

(2) That meets such other requirements as may be specified by the PHA and in HUD's administrative instructions. The cost of such risk protection may be included in the management contract, and paid for as part of the operating budget.

(g) *Rights of families; operation of project.* If a tenant management corporation is approved by the tenant organization representing one or more buildings or an area of row houses that are part of a public housing project for purposes of Part 941 of this chapter, the resident management program under this subpart may not, as determined by the PHA,

(1) Interfere with the rights of other residents of such project or

(2) Harm the efficient operation of such project.

13. Section 964.33 would be amended by adding a new paragraph (d), to read as follows:

§ 964.33 PHA financial support for tenant management.

(d) In assessing the modernization needs of its projects for purposes of CIAP application (or other grant mechanisms established by the Housing and Community Development Act of

1987) under 24 CFR Part 968, PHAs must consult with the tenant management corporation with reference to any project managed by the corporation, in order to determine the modernization needs of tenant-managed projects. Evidence of this required consultation must be included with a PHA's initial submission to HUD.

14. Part 964 would be further amended by adding a new Subpart D (§§ 964.37 through 964.58) to read as follows:

Subpart D—Tenant Management Under Section 20 of the United States Housing Act of 1937

Sec.

964.37 Applicability of subpart.

964.40 Management specialist.

964.43 Management responsibilities.

964.46 Comprehensive improvement assistance.

964.49 Operating subsidy, total income, preparation of operating budget, operating reserves and retention of excess income.

964.52 Waiver of HUD requirements.

964.55 Audit.

964.58 Technical Assistance.

§ 964.37 Applicability of subpart.

The provisions of Subpart C of this part apply to resident management under this subpart. This subpart contains special provisions, in addition to those specified in Subpart C, to implement the resident management features of section 20 of the United States Housing Act of 1937.

§ 964.40 Management specialist.

(a) *Requirement for a management specialist.* Except under the circumstances described in paragraph (c) of this section, the resident council of a project, in cooperation with the PHA, must select a qualified public housing management specialist

(1) To assist in determining the feasibility of, and to help establish, a resident management corporation; and

(2) To provide training and other duties in connection with the daily operations of the project.

(b) *Agreement between the PHA and the resident council.* In carrying out their responsibilities under paragraph (a) of this section, the PHA and the resident council must agree in advance upon

(1) The qualifications that the management specialist must possess;

(2) The terms and conditions of the search and selection process;

(3) The duties and responsibilities to be performed by the management specialist, including the remuneration to be provided the specialist, a clear specification of the nature and degree of supervision to be provided the specialist, and a clear specification of

the title of the person or persons in the organizational structure of the PHA or the resident council (or both) to whom the specialist is to report for supervision and for evaluation of his or her performance; and

(4) Such other matters with respect to the selection and functions of the management specialist as the PHA and the resident council may determine, consistent with the ACC, and applicable law and regulations.

The resident council must select the housing management specialist in accordance with the terms of its agreement with the PHA.

(c) A tenant management corporation that entered into a management contract with a PHA under subpart C of this part before [insert effective date of this rule], and thereafter elects to enter into a management contract with the same PHA under this Subpart D, may select a management specialist in accordance with this section but is not required to do so.

§ 964.43 Management responsibilities.

(a) *PHA responsibilities.* PHAs shall be supportive of resident interest in forming a resident management corporation, and shall work with residents to determine the feasibility of resident management. PHAs shall give full and serious consideration to resident management corporations seeking to enter into a management contract with the PHA under this subpart. PHAs shall not arbitrarily or capriciously refuse to negotiate with resident management corporations seeking to contract to provide management services. PHAs shall appropriately document their reasons for rejecting any management contract offer from a resident management corporation, and make these reasons available to the corporation.

(b) *Management contract.* If a PHA and a resident management corporation that qualifies under this part agree to establish a resident management project, they shall enter into a management contract establishing the respective rights and responsibilities of the PHA and the corporation with respect to management of the project. Where a tenant management corporation already has a management contract with a PHA that meets the requirements of Subpart C, but wishes to meet the additional requirements of this Subpart D, the corporation, subject to the approval of its tenant council, may seek to enter into a new or amended contract with the PHA to accomplish that purpose. A copy of any such contract or amended contract shall

be provided to the HUD field office at the time of its execution.

(c) *Income estimate in contract.* The management contract must specify the amount of income expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the PHA (such as operating subsidy under Part 980 of this chapter, interest income, administrative fees, and rents). The income estimates under this paragraph (c) must be calculated on a PHA-wide basis, as well as for each category of income as the PHA and the resident management contract agree, consistent with HUD's administrative instructions.

§ 964.46 Comprehensive improvement assistance.

(a) *Eligibility.* HUD may enter into a contract with the PHA to provide comprehensive improvement assistance under Part 980 of this chapter to modernize a project managed by a resident management corporation under this subpart.

(b) *Administration of activities.* If the entirety of modernization activity referred to in paragraph (a) of this section (including the planning and architectural design of the rehabilitation) is administered by the resident management corporation, the PHA shall not retain, for any administrative or other reason, any portion of the comprehensive improvement assistance provided, unless the PHA and the corporation provide otherwise by contract.

§ 964.45 Operating subsidy total income, preparation of operating budget, operating reserves and retention of excess revenues.

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the PHA in accordance with Part 980, with the following exceptions:

(1) The resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. The expenses must represent a normal year's expenditures for the project, and documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the

locally owned public housing program will be excluded from the subsidy calculation.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of tenant income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly related to activities by the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA shall not affect the subsidy calculation for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget.* (1) Subject to paragraph (c) of this section, the amount of funds provided by a PHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on February 5, 1988 or on such later date as a resident management corporation first assumes management responsibility for the project.

(2) For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the PHA to the resident management corporation will not be included.

(3) The resident management corporation and the PHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the PHA.

(4) *Operating reserves.*

(i) Each project or part of a project that is operating in accordance with an ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host PHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the

amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the PHA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the PHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(ii) The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7478.1 REV and interest generated will be included in the calculation of operating subsidy in accordance with 24 CFR Part 980.

(c) *Adjustments to total income.* (1) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this subpart, the contract may specify that income be provided to the project from other sources of income of the PHA.

(2) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(i) Any reduction in the total income of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA.

(ii) Any change in the total income of a PHA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

(d) *Retention of excess revenues.* (1) Any income generated by a resident management corporation that exceeds the income estimated for the income category involved in accordance with § 964.43(c) must be excluded in subsequent years in calculating:

(i) The operating subsidy provided to a PHA under Part 980 of this chapter.

(ii) The funds provided by the PHA to the resident management corporation.

(2) For purposes of determining income generated by a resident management corporation under paragraph (d)(1) of this section, excess

income available to the project because of lower utility costs than initially estimated will be excluded.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of

(1) Improving the maintenance and operation of the project,

(2) Establishing business enterprises that employ residents of public housing, or

(3) Acquiring additional dwelling units for lower income families.

§ 964.52 Waiver of HUD requirements.

(a) *Waiver conditions.* Upon the joint request of a resident management corporation and the PHA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the PHA,

(1) That the requirement unnecessarily

(i) Increases the costs to the project or

(ii) Restricts the income of the project and

(2) That the waiver would be consistent with the management contract and any applicable collective bargaining agreement.

Any waiver granted to a resident management corporation under this section will apply as well to the PHA to the extent the waiver affects the PHA's remaining responsibilities relating to the corporation's project.

(b) *Notice and opportunity for comment.* HUD may grant a waiver under paragraph (a) of this section only after requiring the PHA to provide notice to the residents whom the waiver would affect and giving them at least 30 days to comment on it. Notice under this paragraph (b) may be served by any or all of the following means, as HUD determines appropriate:

(1) First class mail addressed to each affected resident.

(2) Delivery to the unit of each affected resident.

(3) In the case of high-rise buildings, posting in one or more conspicuous locations in any building in which affected residents live.

(c) *Role of PHAs and resident management corporations.* (1) All resident comments must be sent to the PHA. The PHA must summarize the comments, prepare (at its option) a recommended response to the comments, and provide the resident management corporation an opportunity to prepare a recommended response to the comments. The PHA must send to HUD all the tenant comments received, along with the summary of comments prepared by the PHA and the recommendations (if any) of the PHA and the resident management corporation for the disposition of the comments.

(2) The PHA must carry out such responsibilities with respect to the determination of whether to grant a waiver under paragraph (a) of this section as HUD may prescribe in administrative instructions. These responsibilities will include the service of notice on affected tenants under paragraphs (b) and (c) of this section.

(d) *Action on resident comments.* HUD will give careful consideration to all resident comments received within the comment period provided under paragraph (b) of this section. HUD, through the PHA, will provide written notice of its final decision on the proposed waiver, including written responses to the resident comments, served in the same manner and upon the same resident population as the original notice under paragraph (b) of this section was served.

(e) *Waiver to permit employment.* Upon the request of a resident management corporation, HUD may, subject to the terms and procedures of any applicable collective bargaining agreement, permit residents of the project to volunteer a portion of their labor.

(f) *Exceptions.* HUD may not waive any regulatory or other requirement under paragraph (a) of this section with respect to

(1) Income eligibility for purposes of §§ 913.104 and 913.105 of this chapter,

(2) Rental payments under § 913.107 of this chapter,

(3) Tenant or applicant protections under this chapter or other applicable laws,

(4) Employee organizing rights, or

(5) The rights or employees under collective bargaining agreements.

§ 964.55 Audit.

(a) *Annual audit of books and records.* The financial statements of a resident management corporation managing a project under this subpart must be audited annually by a license 1 certified public accountant, designated by the PHA, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the PHA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of books and records of resident management corporations under this part.

§ 964.58 Technical assistance.

(a) *Nature of assistance.* HUD will endeavor to provide financial assistance to PHAs for the use of resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capability of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart. In determining the amount of any technical assistance grant, HUD will take into consideration the size of the resident-managed project and the anticipated complexity of the proposed change to resident management.

(b) *Maximum amount of assistance.* The assistance referred to in paragraph (a) of this section may not exceed \$100,000 with respect to any project.

Dated: June 9, 1988.

James E. Baugh,
General Deputy Assistant Secretary for
Public and Indian Housing.

[FR Doc. 88-15044 Filed 7-1-88; 8:45 am]

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July 5, 1988

Part V

Department of
Education

Grants Availability; School, College, and
University Partnerships Program for
Fiscal Year 1988; Notices

DEPARTMENT OF EDUCATION

(CFDA No. 84.204)

Notice Inviting Applications for New Awards Under the School, College, and University Partnerships Program for Fiscal Year 1988

Purpose of Program: To encourage partnerships between institutions of higher education and secondary schools serving low-income students, and to support programs that improve the academic skills of public and private nonprofit secondary school students, increase their opportunity to continue a program of education after secondary school, and improve their prospects for employment after secondary school.

Deadline for Transmittal of Applications: August 9, 1988.

Deadline for Intergovernmental Review: September 8, 1988.

Available Funds: \$1,394,000.

Estimated Range of Awards: No less than \$250,000 per year.

Estimated Average Size of Awards: \$275,000.

Estimated Number of Awards: 5.

Project Period: Up to 36 months.

Application: Since this is the first year of this program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates. This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application package is necessary. Applicants are directed to the Appendix of this notice for applications and instructions.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

Eligibility: To be eligible to apply for a grant under this program, an institution of higher education and a local educational agency must enter into a written partnership agreement. The partnership may also include businesses, labor organizations, professional associations, community-based organizations, or other private or public agencies or associations. All partners must sign the agreement which shall include—

(1) A listing of all participants in the partnership;

(2) A description of the responsibilities of each participant in the partnership; and

(3) A listing of the resources to be contributed by each participant in the partnership.

In addition, the partnership must establish a governing body that includes one representative of each participant in the partnership.

The legal applicant may be one member of the partnership designated by the group to apply for the grant. However, the legal applicant must be a local educational agency, an institution of higher education, or, provided that the partnership has been established as a separate legal entity, the partnership.

Activities: Grant funds may be used by the partnership to support programs that—

(a) Use college students to tutor secondary school students and improve their basic academic skills;

(b) Are designed to improve the basic academic skills of secondary school students;

(c) Are designed to increase the understanding of specific subjects of secondary school students;

(d) Are designed to improve the opportunity to continue a program of education after graduation for secondary school students; and

(e) Are designed to increase the prospects for employment after graduation of secondary school students.

Funding requirements: (a) The Secretary will reserve 65 percent of program funds for programs operating during the regular school year and 35 percent to carry out programs during the summer. An applicant may request funds to operate programs during the regular school year, the summer, or both. The budget must clearly separate the amount requested for the regular school year programs and the summer programs.

(b) The partnership must provide at least 30 percent of the cost of the project in the first year, 40 percent in the second year and 50 percent in the third and any subsequent years. (Regulations governing the Federal matching requirements can be found in 34 CFR Part 74, Subpart C.)

(c) A local educational agency receiving funds under this program shall use these funds so as to supplement and not supplant non-Federal funds, and, to the extent practical, increase the resources that would, in the absence of Federal funds received under this program, be made available from non-Federal sources for the education of students participating in a project under this program. A local educational

agency receiving funds under this program shall not reduce its combined fiscal effort per student or its aggregate expenditure on education.

Absolute priorities: In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary has established the following absolute priorities. Applications submitted under the School, College, and University Partnerships Program for fiscal year 1988 must meet two or more of the following priorities in order to be considered under this competition.

(1) Programs which will serve predominantly low-income communities;

(2) Partnerships which will run programs during the regular school year and the summer; and

(3) Programs which will serve educationally disadvantaged students; potential dropouts; pregnant adolescents, and teen parents; or children of migratory agricultural workers or of migratory fishermen.

Selection criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under the School, College, and University Partnerships Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) **The criteria.**—(1) **Meeting the purposes of the authorizing statute.** (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

Note to Applicants: A statement of the purposes of the authorizing statute is found in the Purpose of Program section of this notice.

(2) **Extent of need for the project.** (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) **Plan of operation.** (20 points) The Secretary reviews each application to

determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(4) **Quality of key personnel.** (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of the section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) **Budget and cost-effectiveness.** (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) **Evaluation plan.** (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) **Adequacy of resources.** (3 points) The Secretary reviews each application

to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on November 18, 1987, pages 44338-44340.

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372-CFDA #84.204, U.S. Department of Education, MS 6355, 400 Maryland Avenue, SW., Washington, DC 20202. In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications: No grant may be awarded unless a complete form has been received.

(a) If an applicant wants a new grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.204), Washington, DC 20202; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.204), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed post card containing the CFDA number and title of this program.

For Further Information Contact: For specific information concerning the program, contact: Mrs. Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, Department of Education, Room 3066, ROB-3, Mail Stop 3323, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 732-4804.

Program Authority: 20 U.S.C. 1105a-1105c.

Dated: June 7, 1988.

William J. Bennett,

Secretary of Education.

Appendix—Application Instructions and Forms:

This application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Fact Sheet (Forms SF-424 and instructions).

Part II: Budget Information (form and instructions).

Part III: Application Narrative.

Part IV: Assurances.

In addition, the application must include:

- (1) The written partnership agreement signed by all partners; and
- (2) A listing of the public and private nonprofit secondary school or schools to be involved in the project.

Instructions for Part I—Federal Assistance Face Sheet (SF-424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted in accordance with OMB Circular A-102.

The applicant completes only items 1-23. Items 24-33 are completed by Federal agencies.

Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A."

Below is a list of instructions to assist you in completing the applicable items on the form.

Item

- 2a. Applicant's own control number, if desired.
- 2b. Date form is prepared (at applicant's option).

4a-h Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. If the applicant's organization has been assigned an ED-CRS number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

6b. Program title from CFDA. Abbreviate if necessary.

7. Provide the title and a summary description of the project.
8. "City" includes town, township or other municipality.
9. List only largest unit or units affected, such as State, county or city.
10. Indicate the estimated number of persons directly benefiting from the project.
- 12a. Amount requested or to be contributed during the first funding/budget period by the Federal Government.
- 12f. Enter the amount shown in Item 12a.
13. Self-explanatory.
15. Self-explanatory.
16. Indicate the estimated number of months to complete project after Federal funds are available.
21. Self-explanatory.
23. Name and title of authorized representatives of legal applicant and signature.

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FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION IDENTIFIER	3. STATE APPLICATION IDENTIFIER	4. NUMBER
1. TYPE OF SUBMISSION (Mark appropriate box) <input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input checked="" type="checkbox"/> APPLICATION	5. DATE Year month day 19	6. DATE ASSIGNED Year month day 19	7. DATE ASSIGNED Year month day 19	
8. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & Telephone No.)		9. EMPLOYER IDENTIFICATION NUMBER (EIN) a. NUMBER 84204 b. TITLE School, University, and University Partnerships		
10. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)		11. TYPE OF APPLICANT/RECIPIENT A-State B-Intermediate C-Substate D-County E-City F-School District G-Special Purpose District H-Community Action Agency I-Higher Education Institution J-Indian Tribe K-Other (Specify): Enter appropriate letter <input type="checkbox"/>		
12. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)		13. ESTIMATED NUMBER OF PERSONS BENEFITING A-New Grant B-Supplemental Grant C-Loan D-Insurance E-Other Enter appropriate letter(s) <input type="checkbox"/>		
14. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$.00		15. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT 16. PROJECT START DATE Year month day 19 17. PROJECT DURATION Months 18. DATE DUE TO FEDERAL AGENCY Year month day 19		
19. FEDERAL AGENCY TO RECEIVE REQUEST a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Application Control Center c. ADDRESS Washington, D.C. 20202		20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER		
21. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		22. THE APPLICANT CERTIFIES THAT: a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW <input type="checkbox"/>		
23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE		24. APPLICATION RECEIVED 19 Year month day		
25. FEDERAL APPLICATION IDENTIFICATION NUMBER		26. FEDERAL GRANT IDENTIFICATION		
27. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> e. DEFERRED <input type="checkbox"/> f. WITHDRAWN		28. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		
29. ACTION DATE Year month day 19		30. STARTING DATE Year month day 19		
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number) Mrs. Jowava M. Leggett (202) 732-4804		32. ENDING DATE Year month day 19		
33. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No				

PART II
BUDGET INFORMATION

Section A - Budget Categories for the 1988-89 Regular School Year Programs

1.	Salary and Wages
2.	Fringe Benefits
3.	Travel
4.	Equipment
5.	Supplies
6.	Contractual Services
7.	Other (itemize)
8.	Total Direct Costs (lines 1 to 7)
9.	Total Indirect Costs
10.	Total Project Costs (lines 8 + 9)

Section B - Cost Sharing

1.	Program Income
2.	Non-Federal Funds (State, local, etc.)
3.	In-Kind Contributions

Section C - Estimate of Funding Needs

	Federal	Non-Federal
1.	First Fiscal Year	
2.	Second Fiscal Year	
3.	Third Fiscal Year	

Section D - Estimate of Unobligated Funds

Not Applicable

Section E - Budget Narrative

See Instructions

PART II
BUDGET INFORMATION

Section A - Budget Categories for the 1989 Summer Programs

1.	Salary and Wages
2.	Fringe Benefits
3.	Travel
4.	Equipment
5.	Supplies
6.	Contractual Services
7.	Other (itemize)
8.	Total Direct Costs (lines 1 to 7)
9.	Total Indirect Costs
10.	Total Project Costs (lines 8 + 9)

Section B - Cost Sharing

1.	Program Income
2.	Non-Federal Funds (State, local, etc.)
3.	In-Kind Contributions

Section C - Estimate of Funding Needs

	Federal	Non-Federal
1.	First Fiscal Year	
2.	Second Fiscal Year	
3.	Third Fiscal Year	

Section D - Estimate of Unobligated Funds

Not Applicable

Section E - Budget Narrative

See Instructions

Instructions for Part II—Budget Information**Section A—Budget Summary**

Enter the total Federal funds requested by budget categories. Use both forms to separate the amounts requested for the regular school year programs and the summer programs, if applicable.

1. Salaries and Wages: Show the salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included on line 8.

2. Fringe Benefits: Includes contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect cost rate.

3. Travel: Indicate the amount requested for travel of employees only.

4. Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of \$300 or more per unit.

5. Supplies: Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than \$300 per unit with a useful life of less than two years.

6. Contractual Services: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) subgrants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

7. Other: Indicate all direct costs not clearly covered by lines 1-6 above.

8. Total Direct Costs: Show totals for lines 1-7.

9. Total Indirect costs: Indicate the amount of indirect costs to be charged to the program or project. Indirect costs may not exceed 8 percent of "Total Direct Costs" (See 34 CFR Part 75.562).

10. Total Project Costs: Total lines 8 and 9.

Section B—Cost Sharing

1. Program Income: Enter the dollar amount of estimated program income that will be generated by Federal funds if authorized by the Department of Education.

2. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g. State governments, local governments, private organizations, etc.

3. In-Kind Contributions: Enter the dollar value of donated services and goods to be used to support the program or project.

Section C—Estimate of Funding Needs

1. Enter the amount of Federal funds needed for the first year of the program or project.

2. Enter the amount of Federal funds needed to complete a multi-year program or project in its second year.

3. Enter the amount of Federal funds needed to complete a multi-year program or project in its third year.

Section D—Estimate of Unobligated Funds

Not Applicable.

Section E—Budget Narrative

Attach a budget narrative that explains the amounts for individual direct cost categories that may appear to be out of the ordinary, including indirect cost rate and base.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully all the information included in this notice, especially the program purpose, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications. The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with a one-page abstract; that is, a summary of the proposed project;

2. Describe the programs to be developed and operated by the partnership and provide information on how the purposes of the program are to be met;

3. Describe the proposed project in light of each of the selection criteria in the order the criteria are listed in this notice; and

4. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only).

(Approved under OMB Control Number 1040-0602.)

Part IV—Assurances

INSTRUCTIONS: Applicants are required to provide the following assurances. This assurance form must be signed by authorized representatives of the legal applicant.

ASSURANCES

The applicant hereby assures and certifies that:

—The partnership will establish a governing body that includes one representative of each participant in the partnership.

—Federal funds will provide no more than 70 percent of the cost of the project in the first year, 60 percent of such costs in the second year, and 50 percent of such costs in the third and any subsequent year.

—A local educational agency receiving funds under this program will not reduce its combined fiscal effort per student or its aggregate expenditure on education.

—A local educational agency receiving funds under this program will use the Federal funds so as to supplement and, to the extent practical, increase the resources that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of students participating in the project, and in no case will the Federal funds be used to supplant such non-Federal funds.

Date

Authorized Official(s)

Name of Applicant or Recipient

Street

City, State, Zip Code

(FR Doc. 88-15119 Filed 7-1-88; 8:45 am)

BILLING CODE 4000-01-0

(CFDA No. 84.204)

Notice Inviting Applications for Community College Pilot Projects Under the School, College, and University Partnerships Program for Fiscal Year 1988

Purpose: To provide assistance to certain designated community colleges to enter into partnerships with secondary schools serving low-income students and at least one local business or industry in order to provide programs that improve the academic skills of public and private nonprofit secondary school students, increase their opportunity to continue a program of education after secondary school, and improve their prospects for employment after secondary school.

Eligibility: The program statute, section 525 of the Higher Education Act of 1965, as amended (HEA), restricts eligibility under this competition to the following institutions:

- (1) The Wayne County Community College of Wayne County, Michigan;
- (2) The Community College of Vermont;
- (3) The Compton Community College of Compton, California; and

(4) The Metropolitan Community College of Kansas City, Missouri.

Deadline for Transmittal of Applications: August 9, 1988.

Deadline for Intergovernmental Review: September 8, 1988.

Applications Available: July 5, 1988.

Available Funds: \$1,000,000.

Estimated Range of Awards: No less than \$250,000 per year.

Estimated Average Size of Awards: \$250,000.

Estimated Number of Awards: 4.

Project Period: Up to 36 months. Since this is the first year of this program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78

(Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

Priority: In accordance with section 525(e) of the HEA and the Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.105(c)(2)(ii), the Secretary has chosen to give competitive preference to applications that indicate that the business or industry partner is engaged in technological or aerospace activities. An application that meets the priority may be selected for funding over an application of comparable merit that does not meet the priority.

Selection Criteria: The Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.210(c), authorize the Secretary to distribute an additional 15 points among the criteria described in section 75.210(b) to bring the total to a maximum of 100 points. For the purposes of this competition, the

Secretary will distribute the additional points as follows:

Extent of need for the project. (§ 75.210(b)(2)) Five (5) additional points will be added for a possible total of 25 points for the criterion.

Evaluation plan. (§ 75.210(b)(6)) Ten (10) additional points will be added for a possible total of 15 points for this criterion.

For Applications or Information: Contact: Mrs. Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, U.S. Department of Education, Room 3066, ROB-3, Mail Stop 3323, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 732-4804.

Program Authority: 20 U.S.C. 1105a-1105d.

Dated: June 16, 1988.

Kenneth D. Whitehead,
Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-15120 Filed 7-1-88; 8:45 am]

BILLING CODE 4000-01-0

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1988

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federal register

Tuesday
July 5, 1988

Part VI

The President

Proclamation 5837—National Safety Belt
Use Week, 1988

Presidential Documents

Title 3—

The President

Proclamation 5837 of June 30, 1988

National Safety Belt Use Week, 1988

By the President of the United States of America

A Proclamation

Today, 32 States and the District of Columbia have laws requiring the use of safety belts, and all 50 States and the District of Columbia have child safety seat laws requiring the use of safety seats and belt systems. These laws were enacted because of the widespread recognition of the tremendous benefits provided by the use of these essential protective devices.

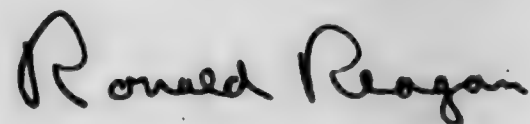
Studies of motor vehicle crashes show that front-seat occupants who do not wear safety belts are twice as likely to be killed or seriously injured as occupants who wear their belts. In 1987 alone, safety belts saved the lives of 2,450 front-seat passengers and prevented thousands of serious injuries. "Buckling up" is clearly one of the most valuable acts we can perform for ourselves and our loved ones.

With the increase in publicity about safety belts and the enactment of safety belt use laws, belt use has been steadily increasing. But there is still a long way to go: Less than half of our citizens are using safety belts regularly. A higher percentage of children are restrained by child seats, but many of these seats are incorrectly installed. Each of us can help improve safety by wearing safety belts at all times, by encouraging others to do so, and by making sure that our children ride in safety seats that are properly installed.

In order to encourage the people of the United States to wear safety belts, to have their children use child safety seats, and to encourage safety and law enforcement agencies and other concerned organizations, individuals, and officials to promote greater use of these essential safety devices, the Congress, by H.J. Res. 485, has designated June 26 through July 2, 1988, as "National Safety Belt Use Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 26 through July 2, 1988, as National Safety Belt Use Week. I call upon the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, the Mayor of the District of Columbia, and the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm our commitment to encouraging universal seat belt use.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of June, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.



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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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LIST OF PUBLIC LAWS

Last List July 1, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3827/Pub. L. 100-358
Indian Housing Act of 1988.
(June 29, 1988; 102 Stat. 676;
6 pages) Price: \$1.00...

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is \$595.00 domestic, \$148.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	\$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
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400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	July 1, 1988
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1-199	11.00	Jan. 1, 1988
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220-299	14.00	Jan. 1, 1988
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500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
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1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988

Title	Price	Revision Date
140-199	9.50	Jan. 1, 1988
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
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0-149	12.00	Jan. 1, 1988
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1988
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240-End	19.00	Apr. 1, 1987
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1-149	15.00	Apr. 1, 1987
150-279	14.00	Apr. 1, 1987
280-399	13.00	Apr. 1, 1987
400-End	8.50	Apr. 1, 1987
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*300-End	13.00	Apr. 1, 1988
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1700-End	12.00	Apr. 1, 1987
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§§ 1.61-1.169	22.00	Apr. 1, 1987
§§ 1.170-1.300	17.00	Apr. 1, 1987
§§ 1.301-1.400	14.00	Apr. 1, 1988
*§§ 1.401-1.500	24.00	Apr. 1, 1988
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300-499	15.00	Apr. 1, 1988
500-599	8.00	Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	21.00	Apr. 1, 1987
200-End	13.00	Apr. 1, 1987
28	23.00	July 1, 1987

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100-499.....	7.00	July 1, 1987	61-999.....	5.50	Oct. 1, 1987
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30 Parts:			4000-End.....	11.00	Oct. 1, 1987
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* The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing these parts.

* No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

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The President

Proclamation 5838 of July 1, 1988

National Literacy Day, 1988

By the President of the United States of America

A Proclamation

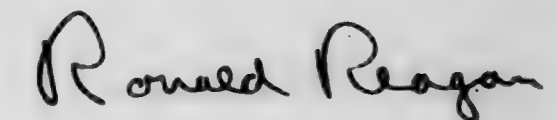
We know that America offers freedom and opportunity to every citizen; yet we know too that the burden of illiteracy keeps some of us from taking full advantage of all our country has to offer and from contributing all we can. Fortunately, dedicated citizens have been working hard to help their neighbors learn to read and write; and in recent years the Adult Literacy Initiative has encouraged many people to volunteer in this effort.

We can be proud of the volunteers and the public-private partners who are carrying America's promise to their fellow citizens. National Literacy Day gives us a special chance to let more people know of the help and hope that are available—that they can truly learn to read and write. On this day and throughout the year, let us extend a helping hand to our fellow citizens and offer them the priceless opportunity of literacy and the world of potential it creates.

The Congress, by Senate Joint Resolution 304, has designated July 2, 1988, as "National Literacy Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim July 2, 1988, as National Literacy Day. I invite the Governors of the several States, local officials, and all Americans to observe this day with appropriate programs, ceremonies, and activities to increase awareness about illiteracy and to encourage participation in the fight for literacy and learning in our land.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.



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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, and 226

Revision of Infant Meal Pattern for Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On December 31, 1986, the Department proposed to amend regulations governing the infant meal pattern for the National School Lunch Program, the School Breakfast Program, and the Child Care Food Program. This rule provides a standard infant meal pattern which will be uniformly applicable to all meal service Child Nutrition Program, and is in response to requests for consistency due to the potential for confusion in agencies which administer more than one meal service Child Nutrition Program. This rule is intended to establish consistency in the infant meal pattern requirements and reflects the most recent information regarding infant feeding practices.

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT:

Patricia N. Daniels, Branch Chief, Nutrition Science and Education Branch, Nutrition and Technical Services Division, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756-3554.

SUPPLEMENTARY INFORMATION:**Classification**

This final rule has been reviewed under Executive Order 12291 and has been classified nonmajor because it does not meet any of the three criteria of the Executive Order. It will not have an annual effect on the economy of \$100 million, will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State or local governments, or geographical regions, and will not have a significant impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete with foreign based enterprises in domestic or export markets. This rule provides greater flexibility to schools and institutions participating in the Child Nutrition Programs, rather than imposing more restrictive requirements upon them.

These programs are listed in the Catalog of Federal Domestic Assistance under Numbers 10.553, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985). The rule has also been reviewed with regard to the provisions of Pub. L. 96-354. Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this final rule will not have a significant economic impact on a substantial number of small entities.

This rule does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act.

Background

The requirements for the infant meal pattern have differed among the meal service Child Nutrition Programs administered by the Food and Nutrition Service. These differences can be attributed to the fact that the meal patterns were developed and issued at different times. There have been requests to establish consistency in the infant meal pattern due to the potential for confusion in agencies which administer more than one meal service Child Nutrition Program. Also, same-aged infants in the National School Lunch Program, School Breakfast Program, and Child Care Food Program were being offered different meal patterns. In addition, there had been requests from child care providers, parents, and health care providers to update the infant meal pattern requirements to reflect currently recommended infant feeding practices. New information on infant nutrition was available which had not been

incorporated into the infant meal pattern requirements.

In an effort to provide a standard infant meal pattern that would be uniformly applicable to all meal service Child Nutrition Programs and that would incorporate the advice of leading authorities on infant nutrition, the Department published a proposed rule on December 31, 1986 (51 FR 47245). The proposed rule addressed changes in the infant meal pattern requirements under five categories: (1) Age groupings, (2) type of milk, (3) introduction of solid foods, (4) use of juice, and (5) type of meat alternates. The proposed rule also solicited comments on allowing a fruit or vegetable in the Child Care Food Program's supplemental meal pattern, for infants 6 through 12 months of age.

The Summer Food Service Program regulations (7 CFR Part 225) require that the infant meal pattern for that program be the same as the Child Care Food Program infant meal pattern. Therefore, the proposed rule was applicable to the Summer Food Service Program.

The Department provided a 60-day comment period which ended on March 2, 1987. During that comment period 68 comments were received from a variety of sources including State and local agency staff, advocacy groups, professional organizations, infant formula companies, USDA staff, and the general public. The Department would like to thank all who responded to the proposed rule.

In addition to publishing this final rule the Department will be issuing guidance material to help State and local cooperators interpret and implement the revisions in the infant meal pattern requirements. The guidance material is further described in the preamble.

Comment Analysis

The 68 comments received during the 60-day comment period were carefully reviewed and considered in formulating the final rule. In general, the comments were very favorable toward the proposed revisions in the infant meal pattern requirements. Commenters were especially supportive of the Department's intentions to provide an up-to-date meal pattern from both a nutritional and developmental perspective. Commenters approved of the meal pattern responding to infants' individual needs and showing

consistency among the meal service Child Nutrition Programs.

Commenters addressed all proposed provisions in the proposed rule in addition to suggesting changes in the meal pattern requirements which were not considered in the proposed rule.

These comments are all summarized below under the following headings: (1) Age Groupings, (2) Type of Milk, (3) Introduction of Solid Foods, (4) Use of Juice, (5) Use of Meat and Meat Alternates, and (6) Child Care Food Program Supplemental Meal Pattern.

Commenters also recommended making technical and editorial changes, and requested clarification. Although all of these comments are not specifically discussed, all were considered and some of the recommendations and requests for clarification are incorporated in the final rule.

1. Age Groupings

Change in Terminology: The Department proposed to reword the interval "month up to month" to read "month through month" to avoid confusion and provide for a clearer delineation of age groups by month. Of the 19 commenters who responded to this provision, 18 approved of the change in wording and one opposed it. The one opposed commenter felt the wording should be consistent with that used for the older child which uses "year up to year". However, guidance material for the older child has been revised to use the wording "year through year."

The final rule is consistent with the most recent material developed for Child Nutrition Programs and reflects the proposed provision. In addition, in response to requests by commenters, the final rule has been revised to reflect this change in terminology in the chart as well as in the written text.

Change in Breakdown of Age Groupings: The proposed rule maintained three age groups to allow for both the changing nutritional needs of infants during the first year of life as well as the variation in infants' growth rates, but modified the breakdown by month to better facilitate the introduction of solid foods into the diets of infants. Twenty-nine commenters responded to this proposed change. All felt a change in the meal pattern was necessary to allow for the flexibility in introducing solid foods.

Seventeen commenters concurred with the proposed provision. Twelve commenters did not agree with the proposed change because it would not allow a gradual introduction of solid foods to infants just beginning to eat solids at 6 months of age. These

commenters explained the proposed change in age groupings merely delayed the requirement for solid foods to 6 months of age but it did not provide for a gradual introduction of solids. In addition, commenters believed 6 months of age was too early for an infant to be consuming the required amounts of food, even those infants who began solids at 4 months of age.

Three commenters suggested extending the middle age group, when solids are optional, through 6 months and eight commenters suggested extending it through 7 months. This would allow providers and parents flexibility in introducing foods at a rate appropriate for infants in various stages of growth and development. By extending this transitional period, a 6 month old infant who is being started on solids could be introduced to new foods slowly, as recommended by leading authorities in infant nutrition. Instead of being required to eat food from all food groups as stated in the proposed rule. Such a revision would also allow a 6 month old infant who had begun to eat solids at 4 months of age to eat a variety of foods at 6 months of age.

The Department acknowledges that although the proposed change in age groupings solved one problem by providing flexibility in when solids are introduced to infants, it did not allow for the gradual introduction of solid foods. Leading authorities in infant nutrition recommend that new foods be introduced slowly. For example, the American Academy of Pediatrics recommends that solid foods be started one at a time at weekly intervals. Therefore, to allow for the gradual introduction of solid foods the Department has decided to extend the middle age group through 7 months and reinstate the age groupings in the previous final regulations: Birth through 3 months, 4 through 7 months, and 8 through 11 months (to the first birthday).

One commenter pointed out that an infant's oral-motor status changes each month from 6 months onward and the meal pattern should be broken out each month in the 6 through 11 month period. The final rule does not provide a breakdown by month but guidance material will specify the quantity, texture and type of food appropriate for each developmental age.

Several commenters questioned the inconsistency in the proposed rule of the wordings "through 11 months" and "to 1 year." Although they mean the same thing and could be used interchangeably, the final rule uses only the wording "through 11 months" to avoid confusion.

2. Type of Milk

Whole Milk: Thirty-two commenters responded to the provision to allow whole milk in place of iron-fortified infant formula at 6 months of age, instead of at 8 months, as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods, and do not have medical conditions such as anemia, gastrointestinal malfunctions, or allergies. Four commenters were in favor of this provision and 28 were opposed. This overwhelming disapproval was due to several reasons.

Fifteen commenters opposed the provision because it would be too difficult to determine if infants were consuming one-third of their calories from a variety of foods and if an infant did not have the medical conditions that contraindicate the use of whole milk. Others opposed the provision because they claimed infants do not consume a varied enough diet at 6 months of age to account for the nutrients that would be lost by discontinuing infant formula or breast milk. Still others were concerned that infants would not be receiving adequate amounts of iron without the use of iron-fortified infant formula. Also, several commenters indicated that one-third of infants' calories equaled too much food for most infants and this requirement could encourage care-givers to force feed the infants. In addition, other commenters pointed out that recent research has shown iron-fortified dry infant cereal, the major source of iron other than formula in an infant's diet, may not be as good a source of iron as was previously thought. They explained that iron-fortified infant formula would therefore be a very important source of iron in an infant's diet.

Other objections cited to allowing the option of whole milk at 6 months of age included: (1) The need to periodically assess an infant's iron status; (2) the inconsistency with the Special Supplemental Food Program for Women, Infants, and Children (WIC), which strongly encourages the use of iron-fortified infant formula for the entire first year but allows State agencies to permit whole cow's milk at 6 months of age on a case-by-case basis under certain conditions; (3) the fear that providers would use milk rather than infant formula due to the cost and convenience, and not base their decision on the infant's development and diet; (4) the problem with milk allergies; and (5) the difficulty in enforcing such a meal pattern.

Of those opposed to the provision, six commenters believed whole milk should not be allowed until 8 months of age and 16 commenters believed it should not be allowed until 1 year of age. Many commenters recommended that whole milk be allowed in the infant meal pattern only as a dietary substitute which would require a special diet statement from a recognized medical authority for its use.

The Department acknowledges the objections to allowing whole milk as an option at 6 months of age. In response to these concerns, the Department has revised the proposed provision. The final rule recommends that either breast milk or iron-fortified infant formula be served for the entire first year but allows whole milk as an option beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to assure adequate sources of both iron and vitamin C. Allowing the option of whole milk maintains the flexibility in the meal pattern. In delaying the option of whole milk until 8 months of age, however, more infants may be eating the necessary variety of solid foods and may be ready for the introduction of whole milk.

This policy is compatible with that of the Special Supplemental Food Program for Women, Infants, and Children (WIC). As in WIC the infant meal pattern requirements recommend that either breast milk or iron-fortified infant formula be served for the entire first year but allow whole milk as an option with the specified condition.

This policy is also consistent with that of the American Academy of Pediatrics. The American Academy of Pediatrics recommends that infants be consuming one-third of their calories as supplemental foods consisting of a balanced mixture of cereal, vegetables, fruits and other foods, in order to assure adequate sources of both iron and vitamin C, before being introduced to whole milk.

The Department would like to point out that the condition for serving whole milk, that infants be consuming one-third of their calories as a balanced mixture of cereal, vegetables, fruits and other foods, was included in the proposed rule preamble but was mistakenly omitted from the meal pattern requirements of the regulatory text. It is clear from the commenters' responses to the proposed rule, however, that this condition was understood to be part of the meal pattern requirements. Given that there was the opportunity for public comment and the desire to be consistent with the

recommendations of the American Academy of Pediatrics, the Department includes the condition for serving whole milk in the final rule.

The Department would also like to point out that the second condition for serving whole milk specified in the proposed rule preamble, that infants do not have medical conditions such as anemia, gastrointestinal malfunction, or allergies, is not included in the final rule. Commenters were generally opposed to this condition due to the difficulty in trying to enforce such a requirement, and the Department agrees with the commenters' concerns.

As stated in the proposed rule, the Department will issue guidance material to assist the provider in determining when infants are consuming one-third of their calories as solid foods. Because iron-fortified infant formula is a good source of iron and vitamin C, and whole milk is not, the guidance will identify dietary sources of iron and vitamin C which should be provided to infants when they receive whole milk. The guidance will also give instructions on how to gradually change from breast milk or formula to whole milk as the consumption of solid food increases.

The Department is aware of the recent research which raises questions about iron-fortified dry infant cereal as a good source of iron. The Department is following this issue and consulting with the professional community concerning changes in infant feeding practices. As changes are made, the Department will consider issuing a proposal to further revise the infant meal pattern requirements, such as the requirement for whole milk.

Low-Iron Formula: Three commenters requested that low-iron formula be allowed in the infant meal pattern. The final rule does not allow low-iron formula in the infant meal pattern. Low-iron formula may be served only as a dietary substitute when prescribed by a medical doctor or a recognized medical authority as defined by the State agency.

Reduced-Fat Milk: Five commenters agreed with the provision to not allow reduced-fat milk, either skim or 2 percent fat, in the infant meal pattern and one commenter disagreed because she claimed many physicians recommend 2 percent fat milk for infants. The final rule does not allow reduced-fat milk in the infant meal pattern. It may be served only as a dietary substitute which requires a special diet statement from a medical doctor or a recognized medical authority as defined by the State agency. As stated in the proposed rule reduced-fat milk could result in a low level of

essential fatty acids due to the low fat content, and in an increased renal solute load because of the higher protein and sodium levels.

Breast Milk: The proposed rule included a provision for the reimbursement of meals which contain breast milk in place of infant formula for infants 4 months of age and older when at least one other required meal component is supplied by the school or child care facility. Of the 10 comments received concerning breast milk, eight were in favor of reimbursing meals containing breast milk and three of those were in favor of reimbursing for meals even when breast milk is served by itself. One commenter in favor believed the proposed reimbursement policy would encourage more parents and providers to use the Child Care Food Program. The two commenters opposed to the provision believed that only foods purchased should be reimbursed and that all meal components should be served in order to be reimbursable.

The final rule reflects the proposed provision. A meal in which breast milk is substituted for infant formula may be claimed for reimbursement when an infant is 4 months of age or older and when the other required meal component or components are supplied by the school or child care facility. This is consistent with current policy which allows the reimbursement for meals served with a certified substitute food as long as all other components of such meals are served.

Several commenters questioned if the provision included breast milk that was purchased by the provider or if it included having the provider breastfeed the infant. The final rule specifies that the mother must provide the breast milk for her infant.

3. Introduction of Solid Foods

Flexibility in Introduction: Thirty-five commenters addressed the proposed provision to allow flexibility in introducing solid foods. As proposed, solid foods would be optional for infants 4 through 5 months of age and should be introduced only if the infant is developmentally ready.

Of the 35 comments received, all either supported or conditionally supported the proposal. Although all commenters were in favor of providing more flexibility in when solids are introduced, several expressed an interest in also allowing for a gradual introduction to solid foods. As noted above under "Age Groupings: Change in Breakdown of Age Groupings," the proposed rule did not allow solids to be

introduced slowly to an infant who was beginning to eat solids at 6 months of age.

The decision to reinstate the age groupings in the previous final rule responds to the Department's desire to provide for the gradual introduction to solid foods in addition to giving flexibility in when solids are first introduced. With a longer transition period in the middle age grouping, solids can be introduced to infants one at a time at weekly intervals. The final rule has been revised to allow that solid foods be optional for infants 4 through 7 months of age. An infant would not be required to eat solid foods from most food groups until 8 months of age.

Some commenters questioned the provision to allow the provider to make the decision to introduce solids. Other commenters expressed the need for guidance material to help providers know when to introduce solids to infants. The final rule encourages the school or child care facility to consult with the infant's parent whenever possible in making the decision to introduce solid foods. The Department will also issue guidance material to assist the provider in knowing when to introduce solid foods in the cases where the parent does not make the decision.

Two commenters requested guidelines for introducing solids to the low birthweight or developmentally delayed infant. This will be included in the guidance material. Another commenter requested that the regulations state that solid foods be introduced by spoon and not in a bottle. This subject will also be covered in guidance material.

Meat and Meat Alternates Substitute for Infant Cereal: Four commenters were in agreement with the provision to allow meat and its alternates to substitute for infant cereal in the 6 through 11 month age group at lunch and supper and five commenters were opposed. Those opposed to the provision were most concerned with the iron content of the diet if low-iron meat alternates were selected in place of iron-fortified dry infant cereal.

Two commenters suggested substituting iron-fortified infant foods for iron-fortified dry infant cereal since the food industry is currently working on the iron fortification of foods other than cereal. However, until the foods are on the market the Department cannot provide guidelines for their use and cannot include them in the meal pattern.

The final rule reflects the proposed provision to allow meat and meat alternates to substitute for infant cereal. Meat and meat alternates are optional in the 6 through 11 month age group at

lunch and supper which allows for the gradual introduction to new solid foods.

The Department acknowledges the importance of a good iron source in the infant's diet but the substitution of meat and meat alternates for iron-fortified dry infant cereal will not necessarily decrease the iron content of the infant's diet. As noted above under "Type of Milk: Whole Milk" recent research has raised questions concerning iron-fortified dry infant cereal as a good source of iron. The Department does recommend the use of either breast milk or iron-fortified infant formula for the entire first year to assure the proper intake of iron. The Department will also provide information on high-iron meats and meat alternates in the guidance material.

4. Use of Fruit Juice

Fruit Juices at 6 Months: Seventeen commenters addressed the provision to allow juice at 6 months of age, instead of at 4 months in the current Child Care Food Program and at 8 months in the current National School Lunch and School Breakfast Programs. Fifteen commenters were in agreement with the provision and two commenters were opposed. One opposed to the provision believed that infants might not be ready to drink from a cup at 6 months of age and would therefore be consuming juice from a bottle at the same time they are teething which could lead to baby bottle tooth decay, also called nursing bottle caries. The other commenter opposed to the provision recommended that juice be optional at 8 months of age since not all 6 month old infants have been introduced to juice. Several commenters suggested allowing a fruit instead of juice to meet the vitamin C requirement.

Fruit juice is included as an optional item beginning at 8 months of age in the final rule. This decision was affected by the change in the breakdown of age groupings in the final rule. The Department chose 8 months, rather than 4 months, as the time to introduce juice, since developmentally more infants would be drinking from a cup at that time. As discussed below under "Fruit Juice with Whole Milk", fruit juice is no longer required at meals when whole milk is provided, and is therefore only included in the infant meal pattern as an optional item in the supplement for the Child Care Food Program.

Several commenters questioned whether juice could be served to infants before it is included in the meal pattern. As with all foods, the final rule allows the use of additional foods. However, guidance material will discuss the proper introduction of foods to infants and the use of additional foods.

Comments were also received on the recommendation to offer juice from a cup. Ten commenters were in favor of the recommendation and two were opposed. One opposed to the recommendation claimed that it may be unrealistic to use cups in a child care setting, and that the recommendation should be deleted from the regulation and included in guidance material. The other commenter opposed to the recommendation to serve juice from a cup claimed that a cool juice bottle is pleasing to infants when they are teething to soothe their gums. In an effort to encourage behaviors that may prevent baby bottle tooth decay the recommendation to serve juice from a cup is included, in the final rule as proposed.

Fruit Juice with Whole Milk: The Department proposed to require fruit juice at meals, from 6 months through 11 months of age, when whole milk is provided. Nine commenters were in favor of this provision and 14 commenters were opposed. Those in favor felt a source of vitamin C was necessary when providing whole milk since whole milk is a poor source of vitamin C. Several commenters felt the regulations should specify a high vitamin C juice.

Those opposed to the provision felt that the total amount of required fluid was excessive at meals which may discourage consumption of the solid foods. Many suggested allowing a fruit or vegetable, high in vitamin C, as an alternate for the juice. One commenter pointed out that the required amount of fruit juice could lead to diarrhea. Several commenters were opposed to the requirement for full-strength juice, claiming that some physicians require diluting juice.

Due to the concern that the requirement at meals for fruit juice in addition to milk could discourage the consumption of solids, the final rule does not require fruit juice at meals when whole milk is provided. Fruit juice is included in the infant meal pattern only as an optional item in the supplement for the Child Care Food Program in the 6 through 11 month age group. Guidance material will include a list of foods high in vitamin C that should be included when whole milk is provided. Providers who wish to dilute the juice will be instructed in guidance material to use at least the minimum required amount and then to dilute with an equal amount of water.

5. Use of Meat and Meat Alternates

Meat or meat alternates at 6 months of age: Of the 13 commenters who

responded to the provision, 11 commenters were in agreement with delaying the requirement for meat or meat alternates from 4 months until 6 months and two commenters believed the requirement should be delayed further to 8 months or even to 1 year. One of the commenters interested in delaying the requirement further believed the consumption of meat and meat alternates at 6 months of age would place a strain on the infant's kidneys.

Due to the Department's desire to introduce solids gradually to infants, the optional requirement for meat and meat alternates is delayed in the final rule until 8 months of age. At that time, infants will have already been introduced to infant cereal, fruit, and vegetables.

Cooked dry beans and peas: The proposed rule allowed cooked dry beans and peas, in the appropriate consistencies, as meat alternates. Fifteen commenters responded to this provision. Eleven commenters were in favor of including dry beans and peas as meat alternates in the infant meal pattern and three commenters were opposed. One commenter in favor felt their inclusion would help to meet the needs of the population served. Another felt the inclusion of beans and peas would allow for greater flexibility in the meal pattern. One commenter thought they should be allowed but not encouraged due to their tendency to produce abdominal discomfort. The commenters opposed to including dry beans and peas disapproved due to the difficulty in digesting them; the claim that they are low in iron; and the questionable palatability to infants.

Dry beans and peas are included in the final rule as proposed. The Department acknowledges that there may be some difficulty in digesting beans and peas and in getting infants to accept them. The Department will issue guidance material explaining that if problems with digestibility or palatability arise, their use should be discontinued. Several commenters expressed the need for guidance on serving methods, preparation techniques, and on how to combine beans and peas with other foods to form a complete protein. These topics will also be discussed in guidance. And concerning the claim that dry beans and peas are not an acceptable meat alternate due to low iron content, the Department would like to point out that dry beans and peas are actually a good source of iron.

As noted above, the Department will include meat and meat alternates as optional items in the infant meal pattern

at lunch and supper at 8 months of age and older in order to encourage solids to be introduced slowly. Dry beans and peas are therefore included at 8 months of age and older at lunch and supper.

Peanut butter: The proposed rule did not include peanut butter as a meat alternate due to its association with choking. Two commenters were in favor and one opposed to including peanut butter as a meat alternate. One commenter in favor claimed the infant would not be in danger of choking if the peanut butter were thinly spread.

The Department acknowledges that the risk of choking can be minimized with the proper serving of peanut butter. However, the overwhelming evidence does associate peanut butter with choking in infants and the Department is not including peanut butter in the final rule. One commenter questioned if nuts, seeds, and other nut butters are allowed since they are now included in the meal pattern for older children. No nuts, seeds, or nut butters are included in the infant meal pattern final rule. Again, there is a concern with these foods being associated with choking in infants. The Department believes there is sufficient variety offered in meat and meat alternates, and there is no need to include foods which place the infant at risk of choking.

Other Meat Alternates: Although the Department did not propose other changes to meat alternates, comments were received concerning meat alternates currently being offered.

Three commenters were opposed to including cheese food and cheese spread as meat alternates due to the high sodium content. The American Academy of Pediatrics states that high sodium intake during infancy does not correlate with high blood pressure later in life. Therefore, although the Department is not advocating adding salt to infants' food, cheese food and cheese spread continue to be optional meat alternates.

Four commenters questioned the inclusion of cheese and cottage cheese due to their low-iron content. The Department does not recommend the use of low-iron meat alternates unless iron-fortified infant formula is provided. Guidance material will include a list of meat and meat alternates that are good sources of iron. Cheese and cottage cheese are included as meat alternates in the final rule because they are a good source of protein and they add variety to the meal pattern. It is recommended that they be served at meals only when iron-fortified infant formula is also provided.

And finally, one commenter was opposed to allowing egg yolk before 9 months of age due to its high fat and

caloric content, and the fact that it may interfere with iron absorption. Since all meat alternates will be allowed only at 8 months of age, egg yolk is included as an optional meat alternate at 8 months.

6. Child Care Food Program Supplemental Meal Pattern

The Department solicited comments regarding the inclusion of a serving of fruit or vegetable of appropriate consistency as an optional second component of the supplemental meal pattern for infants 6 through 11 months of age.

Of the 21 commenters who responded, four were opposed. Those in favor felt the inclusion of a fruit or vegetable would provide additional variety, help to establish a healthy eating pattern, encourage the consumption of nutrient-dense foods, increase menu diversity, and provide a way for infants to get vitamin C if they are unable to drink juice from a cup. Those opposed felt it unnecessary to include a fruit or vegetable in the supplement since fruits and vegetables are required at all other meals for infants 6 months of age and older, and providers are allowed to serve additional foods under the current regulations.

Although the majority of commenters were in favor of including a fruit or vegetable as an optional second component of the supplemental meal pattern, the Department does not believe there is sufficient cause for changing the current regulations. The Department recognizes the benefits of providing fruits and vegetables, but a fruit or vegetable is an optional item at lunch and supper for infants 4 through 7 months of age and is a required item at each meal for infants 8 months of age and older. In addition, if a provider wishes to serve a fruit or vegetable as an additional food in the supplement, they are allowed to do so. In fact, they may choose to provide a fruit or vegetable in place of the bread or crackers, since the bread or crackers are optional items. Due to this flexibility in the requirements the Department has not revised the supplemental meal pattern requirement.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 226

Daycare, Food assistance programs, Grant programs—Health, Infants and Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Parts 210, 220, and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2-12, 80 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 42 Stat. 270, 42 U.S.C. 1751-1760, 1779.

2. In § 210.10, paragraph (h) is revised to read as follows:

§ 210.10 Lunch components and quantities.

(h) *Infant lunch pattern.* When infants from birth through 11 months of age participate in the Program, an infant lunch shall be served. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other required meal component or components are supplied by the school. Although it is recommended that either

breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) *Birth through 3 months.* 4 to 6 fluid ounces of iron-fortified infant formula.

(2) *4 through 7 months.* (i) 4 to 6 fluid ounces of iron-fortified infant formula;

(ii) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and

(iii) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(3) *8 through 11 months.* (i) 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk;

(ii) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4

tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4

ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and

(iii) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

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PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 889, 890 (42 U.S.C. 1773, 1779).

2. In § 220.8, paragraph (b)(2) is revised as follows:

§ 220.8 Requirements for breakfast.

(b) • • •

(2) When infants from birth through 11 months of age participate in the Program, an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional

well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when the other required meal component or components are supplied by the school. Although it is recommended that either breast milk or iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 6 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. The infant breakfast pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(i) *Birth through 3 months.* 4 to 6 fluid ounces of iron-fortified infant formula.

(ii) *4 through 7 months.* 4 to 6 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional).

(iii) *8 through 11 months.* 6 to 8 fluid ounces of iron-fortified infant formula or 6 to 8 fluid ounces of whole milk; 2 to 4

tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

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PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 323, 326 and 361, Pub. L. 99-500 and 99-501, 100 Stat. 1783 and 3341 (42 U.S.C. 1758, 1760, and 176-6); sec. 803, 810 and 820, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In § 226.20, paragraph (b) is revised as follows:

§ 226.20 Requirements for meals.

(b) *Infant meal pattern.* When infants from birth through 11 months of age participate in the Program, an infant

meal shall be offered. Foods within the infant meal pattern shall be of texture and consistency appropriate for the particular age group being served, and shall be served during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only if the infant is developmentally ready. Whenever possible the child care facility should consult with the infant's parent in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food authorized in the meal patterns set forth below must be provided in order to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months of age or older may be claimed for reimbursement when the other required meal component or components are supplied by the child care facility. Although it is recommended that either breast milk or

iron-fortified infant formula be served for the entire first year, whole milk may be served beginning at 8 months of age as long as infants are consuming one-third of their calories as a balanced mixture of cereal, fruits, vegetables, and other foods in order to ensure adequate sources of iron and vitamin C. Juice should not be offered to infants until they are ready to drink from a cup, in order to develop behaviors that may prevent baby bottle tooth decay. The infant meal pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) *Birth through 3 months.* (i)

Breakfast—4 to 6 fluid ounces of iron-fortified infant formula;

(ii) Lunch or supper—4 to 6 fluid ounces of iron-fortified infant formula;

(iii) Supplemental food—4 to 6 fluid ounces of iron-fortified infant formula.

(2) *4 through 7 months.* (i) Breakfast—4 to 6 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional);

(ii) Lunch or supper—4 to 6 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and 0 to 3

tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional);

(iii) Supplemental food—4 to 6 fluid ounces of iron-fortified infant formula.

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(4) The minimum amount of food components to be served as breakfast, lunch, supper or supplement as set forth in paragraphs (b), (1), (2), and (3) of this section are as follows:

CHILD CARE INFANT MEAL PATTERN

	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast	4-6 fl.oz. formula ¹	4-8 fl.oz. formula ¹ or breast milk	6-8 fl.oz. formula ¹ breast milk, or whole milk
		0-3 Tbsp. infant cereal ² (optional)	2-4 Tbsp. infant cereal ²
Lunch or supper	4-6 fl.oz. formula ¹	4-8 fl.oz. formula ¹ or breast milk	6-8 fl.oz. formula ¹ breast milk, or whole milk
		0-3 Tbsp. infant cereal ² (optional)	2-4 Tbsp. infant cereal ² and/or
		0-3 Tbsp. fruit and/or vegetable (optional)	1-4 Tbsp. meat, fish, poultry, egg yolk, or cooked dry beans or peas, or 1/2-2 oz. cheese or 1-4 oz. cottage cheese, cheese food, or cheese spread
Supplement	4-6 fl.oz. formula ¹	4-6 fl.oz. formula ¹ or breast milk	1-4 Tbsp. fruit and/or vegetable
			2-4 fl.oz. formula ¹ breast milk, whole milk, or fruit juice ³
			0-½ bread or 0-2 crackers (optional)

¹ Shall be iron-fortified infant formula.

² Shall be iron-fortified dry infant cereal.

³ Shall be full-strength fruit juice.

⁴ Shall be from whole-grain or enriched meal or flour.

Date: June 29, 1988.

Anna Kondratas,
Administrator.

[FR Doc. 88-15092 Filed 7-5-88; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Temporary Additional Administrative Funding for Food-Cost-Cutting Initiatives, and Other Provisions**AGENCY:** Food and Nutrition Service, USDA.**ACTION:** Interim rule.

SUMMARY: This interim rule amends regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to comply with the mandates of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100-237) enacted January 8, 1988. First, the rulemaking implements the method established in section 8(a) and (b) of this legislation whereby State agencies initiating an approved competitive bidding, rebate, home delivery, or direct distribution system can convert a portion of the savings generated by the system from food funding into administrative and program services funding. This conversion authority addresses the cost of managing the additional participation that the system makes possible. State agencies can exercise this authority only to the extent

that they actually achieve participation increases through the approved initiative. This is a short-term supplement to administrative funding which will defray the increased costs of managing increased participation until the WIC administrative funding formula in § 246.16 of regulations has had time to respond fully to the increases. Funds conversion authority will be available to all State agencies implementing or significantly changing approved systems on or after October 1, 1987, the effective date of this provision. Increases achieved after this date through systems implemented in Fiscal Year 1987 will also generate funds conversion. Finally, State agencies which implemented such systems before Fiscal year 1987 will be eligible if they significantly changed their systems so as to generate participation increases after October 1, 1987.

Second, this rule implements section 9 of Pub. L. 100-237 by mandating that State agencies make provision in their State Plans for coordination of the WIC Program with Medicaid counseling.

Third, this rule implements section 11 of Pub. L. 100-237 by mandating that infant formula manufacturing wanting to supply formula to the program register with the Department of Health and

Human Services under the Food, Drug, and Cosmetic Act. In further compliance with Pub. L. 100-237, this interim rulemaking stipulates that such manufacturers wishing to bid on State contracts to supply formula to WIC must first certify with the State health department that the formula complies with the Food, Drug and Cosmetic Act and regulations issued pursuant to the Act.

Fourth, this rulemaking modifies States' authority to carry forward and backspend their WIC grants. As required by section 12 of Pub. L. 100-237, the rule permits State agencies to backspend and/or carry forward food funds and to carry forward nutrition services and administration funds as long as the total amount backspend and carried forward does not exceed one percent of the amount of funds allocated to the State agency for the fiscal year. Because this provision is effective on the date of enactment of Pub. L. 100-237, that is, January 8, 1988, it applies to the use of funds allocated by the Food and Nutrition Service (FNS) to State agencies for Fiscal Year 1988 and following years.

DATES: The following effective dates for provisions in this rulemaking are established by law:

Section	Provision and number in preamble	Effective date
246.4(a)(8)	Medicaid Coordination (Item #1)	January, 1988 (Applies to Fiscal Year 1988 State Plans)
246.4(a)(14)(viii)	Funds Conversion (Item #4)	October 1, 1987.
246.10(f)	Infant Formula Registration (Item #2)	January 8, 1988.
246.14(a)(2)	Funds Conversion (Item #4)	October 1, 1987.
246.16(b)(2)	Backspending/Carry-forward (Item #3)	January 8, 1988.
246.16(g)	Funds Conversion (Item #4)	October 1, 1987.

Comments must be received on or before December 1, 1988.

ADDRESS: Comments may be mailed to Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1017, Alexandria, Virginia 22302 (703) 756-3746. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel at the above address or telephone number.

SUPPLEMENTARY INFORMATION:**Classification**

This interim rule has been reviewed under Executive Order 12291, and has

been determined to not be major. The Department does not anticipate that this rule will have an impact on the economy of \$100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Nor will this rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 606-612). Pursuant to that review, Anna

Kondratas, Administrator of the Food and Nutrition Service, has certified that this interim rule does not have a significant economic impact on a substantial number of small entities. The reporting requirements established by this rulemaking are under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

The provisions in this rulemaking concerning conversion of food funds to administrative and program services funds mandated by Pub. L. 100-237 and implemented in this rulemaking have a legislatively established effective date of October 1, 1987. State agencies are eligible to convert funds for actions taken as early as Fiscal Year 1987 and are authorized by Pub. L. 100-237 to

initiate new actions which generate conversion authority from the beginning of Fiscal Year 1988. In addition to the retroactive effective date, there is the immediate need to facilitate food-cost-cutting initiatives through funds conversion. For these reasons, Anna Kondratas, Administrator of FNS, has certified that public comment on this rule and a post-publication waiting period prior to implementation are impracticable and contrary to the public interest and that, therefore, good cause exists for making this rule effective immediately upon promulgation.

The provisions contained in this rule are all pursuant to mandates of Pub. L. 100-237 and made effective in accordance with legislatively mandated effective dates. For these reasons, prior public comment and publication of this rulemaking not less than 30 days prior to the effective dates are not required under 5 U.S.C. 553. However, the Department has found it necessary to exercise limited discretion in implementing these mandates and believes that, where choices have been made in the absence of legislative dictates, the rule may be improved by public comment. Therefore, comments are solicited on this rule until December 1, 1988. This long comment period will afford the public the opportunity to benefit from the experience of the funds conversion provisions as implemented through the remainder of the current fiscal year and carried forward at the outset of Fiscal Year 1989. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated in a subsequent final rule.

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

1. Coordination of WIC Program Operations with Medicaid Counseling (Section 246.4(a)(8))

Section 9 of Pub. L. 100-237, which amends section 17(f)(1)(C)(iii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)(iii)), requires that program operations be coordinated with Medicaid counseling. Accordingly, § 246.4(a)(8) of this rulemaking is amended to require that each State agency describe in its State Plan how it will achieve the mandated coordination.

2. Requirements for Infant Formula Manufacturers Providing Formula to the WIC Program (Section 246.10(f))

Section 11 of Pub. L. 100-237, which amends section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)), imposes requirements on manufacturers of infant formula to ensure that WIC participants receive only formulas which comply fully with the Federal Food, Drug, and Cosmetic Act (the "Act") (21 U.S.C. 321 *et seq.*). In order to supply formula to the WIC Program, manufacturers must register with the Secretary of the Department of Health and Human Services (DHHS). The Act already requires manufacturers wanting to sell their formulas in the United States to inform DHHS that their products comply with the requirements of the Act. Therefore, the registration requirement in Pub. L. 100-237 stresses in specific references to the WIC Program a standing legislative mandate rather than establishing an additional requirement. Public Law 100-237 also mandates that formula manufacturers wishing to bid on State contracts certify to the State health department that their formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations issued pursuant to the Act. This constitutes a new requirement. State agencies undertaking competitive formula procurements must ensure that this notification requirement is integrated into their standard procurement procedures.

3. Backspending and Carryover of State Agency Program Allocations (Section 246.16(b)(2))

Under the provisions of Pub. L. 99-591 and the implementing regulations of June 4, 1987 (see 52 FR 21232), a State agency could either use up to one percent of its food grant to cover food costs incurred in the preceding fiscal year or carry forward up to one percent of its total allocation of food and administrative and program services funds into the following fiscal year. The State agency could not direct funds from a single fiscal year both backward and forward. This prohibition proved unduly limiting. For example, a State agency might have unmet food costs from the preceding year equal to one-tenth of one percent of its current food grant. If it used current-year funds to cover past costs, no matter how small, it could not carry forward any unspent funds into the next year. Therefore, section 12 of Pub. L. 100-237 amended section 17(i)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)) to permit State agencies to both backspend and carry over funds from a given fiscal year's

allocation, provided that the total amount transferred out of any fiscal year does not exceed one percent of the State's total grant. Thus the State in the above example could backspend the very small portion of its food grant and carry over administrative or food funds, or both, into the next year. The prohibition against backspending administrative funds was not removed by Pub. L. 100-237. This rulemaking also confirms that food funds carried forward by the State agency retain their identity as food funds and cannot be converted by the State agency into administrative and program services funding. (See § 246.14(a)(2), which establishes the general prohibition against changing food funds into administrative and program services funds and provides for exceptions to it.)

4. Administrative Funding for Food-Cost-Cutting Initiatives (Sections 246.4(a)(14)(viii), 246.14(a)(2))**a. General Discussion**

In response to rising food costs and the desire to use their food grants more efficiently, State agencies have recently become increasingly interested in food-cost-cutting initiatives; for example, infant formula rebate systems. Such initiatives may serve the best interest of the program by providing benefits to more participants at no additional food cost. Yet these participation increases may generate additional administrative costs for State agencies. Some State agencies have expressed reluctance to undertake such initiatives without the additional administrative and program services funds they consider necessary to manage the resultant increased participation. State agencies have recommended that this need be addressed by allowing them to convert a portion of the savings to administrative and program services funding. Until now, food cost savings have retained their identity as food funds; thus savings were channeled entirely into participation increases. The newly established WIC administrative funding formula (see 53 FR 2213) bases funding directly on the State agency's participation level. Over the long term, this formula will award additional administrative funds for participation increases. However, Congress has provided a means for short-term relief through which the State agency can be funded for the cost of managing additional participation as it is generated, until the formula takes full cognizance of the increases. To this end, section 8 of Pub. L. 100-237 amends sections 17(k) and (f) (42 U.S.C. 1786(k)

and (f) and describes in detail the method whereby a portion of the savings resulting from specified food-cost-cutting initiatives will be converted into administrative and program services funding. As the legislation specifies, this conversion process can take place only to the extent that the State agency actually adds participants as the result of the initiative.

b. Eligibility for Conversion Authority

Congress intended that the conversion authority be available to all State agencies implementing approved initiatives or making approved *significant changes* to food-cost-cutting systems on or after October 1, 1987, the legislative effective date of this provision. Increases achieved after this date through initiatives implemented in Fiscal Year 1987 can also trigger funds conversion. Finally, State agencies which implemented such systems before Fiscal Year 1987 will be eligible if they have *significantly changed* these systems and the modified systems generate participation increases after October 1, 1987. These conditions were described by Senator Leahy in debate concerning H.R. 1340, which became Pub. L. 100-237. See generally 133 Cong. Rec. S18568-18570 (daily ed. December 19, 1987) (remarks of Senator Leahy).

c. Categories of Included Initiatives

Congress has specifically identified, to the exclusion of all others, the categories of food-cost-cutting initiatives for which conversion authority can be granted: "a competitive bidding, rebate, direct distribution, or home delivery system" (42 U.S.C. 1786(h)(5)(A)). Although these categories are not mutually exclusive and can exist in various combinations, they are all readily identifiable. "Competitive bidding" refers to the standard free and open competition through which one bidder, all other things being equal, is selected on the basis of price. In "rebate" systems, the State agency receives rebate payments from suppliers based on the amount of the suppliers' product purchased with WIC funds. Rebates and competitive bidding are combined in systems in which the State agency offers an exclusive contract for a program food to the bidder offering the best WIC cost reduction. The successful bidder then provides a rebate to the State agency for each unit of the food product purchased by program participants at retail stores with WIC food instruments. A State agency may also accept rebates from manufacturers without having engaged in competitive bidding, as long as suppliers who do not provide a rebate may continue to sell to

the WIC Program in the State. Direct distribution and home delivery systems are undertaken by State agencies so that they can obtain foods for participants at less than retail prices. Both systems may include competitive bidding. Other management initiatives which may also have food-cost-cutting implications, such as vendor selection systems and breast-feeding promotions, are ineligible by law for the conversion of food-cost savings to administrative and program service funding.

d. Identifying New and "Significantly Changed" Initiatives

The categories of initiatives specified in Pub. L. 100-237 are self-evident. However, in order to implement this legislation it is also necessary to distinguish between a *new* initiative in one of the specified categories, a significant change to an existent system, and a minor modification of an established system. This distinction must be made for the following reasons: First, Congressional sponsors of the legislation have stressed that the authority to convert food funding to administrative and program services funding is intended as an incentive to States to initiate new systems. See 133 Cong. Rec. S18568-18570 (daily ed. December 19, 1987) (remarks of Senator Leahy). (Systems already in place were intended to benefit only if: (1) Started in Fiscal Year 1987 in anticipation of this legislation and resulting in participation increases as of October 1, 1987, or (2) implemented before Fiscal Year 1987 but, as the result of a significant change in the system, generating increases after October 1, 1987.) Second, Congress intended the conversion process to fill a temporary need until such time as the participation-based WIC administrative funding formula has incorporated the increases achieved through the initiative. The status of the conversion process as a temporary incentive to promote new efforts creates the need to be able to identify genuinely new initiatives and significant changes to established systems. Mere modifications of established systems may not benefit from the conversion process. See 133 Cong. Rec. S18568-18570 (daily ed. December 19, 1987) (remarks of Senator Leahy).

Whenever an initiative is *prima facie* new, e.g., a State agency which had previously paid retail prices for all WIC foods institutes an infant formula rebate system, no test of newness need be applied. However, an objective standard must be applied to determine whether a system has been significantly changed when it is related to a previous action of the State agency. For example, if a State

with a longstanding competitive procurement of infant formula begins to purchase WIC cereals through competitive bidding, has it significantly changed or made only a minor modification in a standing practice? In the absence of a narrative definition of significant change which can be uniformly, equitably applied to this and other systems where change has taken place, an objective numerical standard must be developed. The Department believes that the significance of a change can be quantified in terms of the amount of savings it can be expected to achieve. Only a significant departure from established practice can generate a significant food cost savings. Thus the Department will authorize conversion authority for system changes if the Department determines, based on State agency estimates, that they will generate a minimum of a 3-percent reduction in the State agency's average food package cost for the first 12 months of implementation. The potential savings will be calculated using the State agency's average food package cost, adjusted for inflation, as established through the administrative funding formula. Like newly established systems, significantly changed systems will generate funds conversion only to the extent that they actually yield increased participation.

The concept of significant change to an existent system can be further clarified through a few examples. Significant change rules out increases in participation which do not result from actions taken by the State agency. Therefore, increases made possible by a statewide retail food price war, for example, cannot generate conversion authority. If a State agency signs a multi-year contract with a food supplier which provides for an unconditional rebate increase each year, or if a supplier agrees to increase a State's rebate to match any higher rebate it may subsequently provide to any other State, such increases are not significant changes to an existing system. However, they are an integral part of the originally approved system and, as such, they will result in a recalculation of the State's estimate of participation increases and a consequent expansion of its conversion authority. Since they are integral to the originally approved system, such increases are not subject to the 3-percent standard. (Inflation clauses in a contract with a supplier, or changes which call for the contractor to increase rebates in the same amount it increases its wholesale prices, have no impact on conversion authority because they merely enable the State to maintain its

level of food cost savings and do not make further participation increases possible.)

e. Description of System in State Plan or Amendment

The State agency planning to significantly change an existent system or implement a new food-cost-cutting system for which it seeks conversion authority must first include a full description of the system or change in its State Plan or in a plan amendment. Section 8(b) of Pub. L. 100-237, which amends section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)), requires that the system be described in the Plan or amendment. This is not a new requirement. Rather, it is encompassed by § 246.4(a)(14), which requires the State agency to describe its food delivery system. All of the food-cost-cutting initiatives specified in Pub. L. 100-237 are either types of food delivery systems or major modifications of food delivery systems. However, pursuant to this legislation, a new requirement is added to § 246.4(a)(14). The plan must now provide an estimate of the increased participation which will result from the initiative, including an explanation of how the estimate was developed.

In reviewing the State Plan or amendment, FNS will assess the State's estimate of increased participation and, if necessary, make adjustments. (An adjustment of this estimate after conditional plan approval will be necessary if, for example, the net product price in a competitive procurement turns out to differ from the State agency's expectation.)

f. Projection of Participation Exclusive of Approved System

FNS will use the participation projection process established for the purpose of allocating administrative and program services funds in the administrative funding formula (see 53 FR 2216-2217) in order to determine base participation for the fiscal year, excluding anticipated increases which are yet to be achieved through the food-cost-cutting initiative. That is, the State agency's current fiscal year food grant will be divided by its average food expenditure per participant over the past July through June. This is the most recent 12-month period for which final, closed-out cost data will always be available for all States. The average food expenditure per participant will be adjusted to reflect the anticipated effects of inflation. The quotient of this computation will be divided by 12 to yield a monthly participation level. This

three-step procedure can be expressed as follows:

- (1) average food expenditure per participant for past July-June times inflation factor equals adjusted food expenditure per participant
- (2) current fiscal year food grant divided by adjusted food expenditure per participant equals base participation projection
- (3) base participation projection divided by 12 equals monthly base participation projection

g. Computation of Conversion Rate and Conversion Process

FNS will also, at the time of approval, compute the State agency's average monthly administrative grant per participant for the prior fiscal year. The 12-month period employed in this computation is more recent than the period used to determine the base participation projection because this computation requires only final participation figures, which are available much sooner than final food cost data. The average administrative grant per person, adjusted for inflation, will be the rate at which the State agency can convert food funds to administrative and program services funding for each additional participant per month above the base level projected by FNS. The two-part computation of the conversion rate is expressed as follows:

- (1) administrative grant for prior fiscal year divided by total participation for prior fiscal year equals average monthly administrative grant per participant
- (2) average monthly administrative grant per participant times inflation factor equals adjusted average monthly administrative grant per participant

Section 246.16(g)(4)(i) implements the limit in Pub. L. 100-237 on the number of added participants for whom funds can be converted. The maximum number of conversions allowed in any fiscal year will be established through an annualized calculation. Thus conversion will not be subject to a monthly limit. The fiscal year cap on conversions will be calculated by multiplying the approved monthly estimate of the participation increase that can be achieved through the food-cost-cutting system times the number of months in the fiscal year during which the approved system operates. For example, a State with an approved monthly increase estimate of 30 participants which begins its rebate system in October would have a conversion cap of 30 participants X 12 months = 360 conversions. This provision allows States leeway in managing large participation influxes without penalty

for major monthly fluctuations in participation growth.

However, it should be noted that the kinds of food-cost-cutting systems specified in the law and regulations all have the potential to generate significant participation increases in a short period of time. Therefore, they present a relatively unfamiliar caseload management challenge. State agencies must exercise special diligence in order to ensure that they do not, at the end of a fiscal year, increase participation to a level which cannot be maintained in the following fiscal year. The Department considered placing a limit on conversion authority for participants added in the fourth quarter of a fiscal year in order to discourage year-end build-ups which could not be sustained in the next year. However, caseload management has traditionally been the exclusive responsibility of the State agencies. Therefore, the Department decided that States should be allowed to address the additional caseload management challenge presented by food-cost-cutting systems without the imposition of new regulatory controls. FNS will continue to monitor caseload management and work with State agencies in this area in an advisory capacity. In the event that participation patterns in States implementing food-cost-cutting systems do reveal year-end peaks followed by caseload reductions, the Department will reconsider the appropriateness of fourth-quarter conversion caps.

The Department recognizes that the administrative costs of serving additional participants are not incurred at the same rate as conversion funds are earned through participation increases. A State agency may, for example, need to hire additional staff in advance of assigning the increased caseload expected to result from the food-cost-cutting initiative. Therefore, this rulemaking does not prohibit State agencies with approved initiatives from converting funds prior to the time they are actually earned through monthly participation increases. However, States must not convert more funds in any fiscal year than they have earned through participation increases.

h. Year-end Reconciliation

After the end of a fiscal year for which conversion authority has been granted, FNS will determine the amount of food funds the State agency is entitled to convert to administrative and program services funds based on the increase in participation achieved through its approved system. In the event that the State agency has converted excessive funds, FNS will

recover the amount of the excess conversion.

i. Conversion in Subsequent Fiscal Years

At the beginning of subsequent fiscal years, FNS will (1) reestablish the State agency's base participation projection as part of the administrative funding formula computations; (2) with input from the State agency, determine the participation increase expected to be achieved through the approved food-cost-cutting initiative; and (3) recompute the State agency's conversion rate. The

State agency can continue to convert funds for each participant per month in excess of the base participation projection, up to the sum of the base projection and the estimated increase, until the end of the fiscal year in which its actual participation equals the projection for the following fiscal year. When the State agency's actual participation equals this sum, its achieved participation increase will be fully credited under the administrative funding formula.

In the following example of the conversion process, it is assumed that:

(1) The State agency receives no grant increases, and there is no inflation, in the years covered by the example; (2) the State agency implements a rebate system in Fiscal Year 1988; and (3) FNS has approved the State agency's estimate that it can serve an additional 20 participants per month as a result of the rebate system. This example is intended only to represent the basic operation of the conversion process in conjunction with the administrative funding formula over time; it does not incorporate all factors which affect the rate of participation growth.

CONVERSION PROCESS: HOW PARTICIPATION INCREASES ARE CREDITED OVER TIME

Fiscal year:	Food expenditure per participant used for base projection	FNS-projected base participation (mo. avg.)	Actual participation (mo. avg.)	Number of additional participants		Participation increases credited by—	
				Estimated	Actual	Conversion	Funding formula
1986	\$30.00	100	100	20	9	9	0
1987	28.75	104	120	16	16	16	4
1988	25.00	120	120	0	0	0	+16
							20

j. Stability Grants Unaffected by Conversion

For purposes of establishing a State agency's food and administrative and program services grants, funds converted during the preceding fiscal year will be treated as though no conversion had taken place.

k. Conforming Amendment

A conforming amendment to permit conversion of food funds to administrative and program services funds for the purpose described above is made in § 246.14(a)(2).

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation is revised to read as follows:

Authority: Sec. 6-12, Pub. L. 100-237, 101 Stat. 1733 (42 U.S.C. 1786); sec. 341-353, Pub. L. 96-500 and 96-501, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 3, Pub. L. 95-627, 92 Stat. 3611 (42 U.S.C. 1786); sec. 203, Pub. L. 96-490, 94 Stat. 2599; sec. 815, Pub. L. 97-35, 96 Stat. 521 (42 U.S.C. 1786).

2. In § 246.4:

a. Paragraph (a)(8) is revised.

b. A new paragraph (a)(14)(viii) is added.

The revision and addition read as follows:

§ 246.4 State plan.

(a) * * *

(8) A description of how the State agency plans to coordinate program operations with special counseling services and other programs, including, but not limited to, the Expanded Food and Nutrition Education Program (7 U.S.C. 343(d) and 3175), the Food Stamp Program (7 U.S.C. 2011 *et seq.*), the Early and Periodic Screening, Diagnosis and Treatment Program (Title XIX of the Social Security Act), the Aid to Families with Dependent Children (AFDC) Program (42 U.S.C. 601-615), the Maternal and Child Health (MCH) Program (42 U.S.C. 701-709), Medicaid Program (42 U.S.C. 1396 *et seq.*), family planning, immunization, prenatal care, well-child care, alcohol and drug abuse counseling, and child abuse counseling.

(14) * * *

(viii) For State agencies applying for authority to convert food funds to administrative and program services funds under § 246.16(g) of this part, a full description of their proposed food-cost-cutting system or system modification, including an estimate of the increased participation which will result from their

system or modification, together with an explanation of how the estimate was developed.

3. In § 246.10, paragraph (f) is added to read as follows:

§ 246.10 Supplemental foods.

(f) *Infant formula manufacturer registration.* Infant formula manufacturers supplying formula to the WIC Program shall register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*). Such manufacturers wishing to bid for a State contract to supply infant formula to the program shall first certify with the State health department that their formulas comply with the Federal Food, Drug, and Cosmetic Act and regulations issued pursuant to the Act.

4. In § 246.14, paragraph (a)(2) is revised to read as follows:

§ 246.14 Program costs.

(a) * * *

(2) Except as provided in paragraph (e) of this section and § 246.16(g), funds allocated by FNS for food purchases may not be used to pay administrative and program services costs. However, administrative and program services funds may be used to pay for food costs.

5. In § 246.16:

a. Paragraph (b)(2) is revised.

b. A new paragraph (g) is added.

The revision and addition read as follows:

§ 246.16 Distribution of funds.

(b) * * *

(2) All funds not made available to the Secretary in accordance with paragraph (b)(1) of this section shall be distributed to State agencies on the basis of funding formulas which allocate funds to all State agencies for food costs and administrative and program services costs incurred during the fiscal year for which the funds had been made available to the Department. A State agency may transfer funds allocated to it for any fiscal year under the following conditions:

(i) Not more than one percent of the funds allocated to the State agency for food costs incurred in any fiscal year may be expended by such State agency for food costs incurred in the preceding fiscal year;

(ii) Not more than one percent of the total funds allocated to the State agency for food costs and for administrative and program services costs in any fiscal year may be carried forward and expended by such State agency for such costs incurred in the subsequent fiscal year. Food funds carried forward by the State agency shall be used by the State agency only for food costs incurred in the subsequent fiscal year and, in accordance with § 246.14(a)(2) of this part, shall not be used to cover administrative and program services costs. Any funds carried forward by the State agency for expenditures in the subsequent fiscal year shall not affect the amount of funds allocated to such State agency for the subsequent fiscal year. FNS shall presume that the funds thus carried forward are the first funds expended by such State agency for costs incurred in the subsequent fiscal year; and

(iii) The total amount of funds transferred from any fiscal year shall not exceed 1 percent of the funds allocated to such State agency for such fiscal year.

(g) *Conversion of food funds.* For participation increases achieved on or after October 1, 1987 through implementation of a competitive bidding, rebate, home delivery, or direct distribution system, State agencies implementing or significantly changing such systems after October 1, 1986 and State agencies implementing such systems before that date but significantly changing such systems so as to generate participation increases after October 1, 1987 shall be authorized to convert food funds to administrative

and program services funds in accordance with the following conditions and procedure.

(1) The State agency shall provide in a State Plan or plan amendment for review and approval by FNS the information required under § 246.4(a)(14)(viii) of this part:

(2) FNS shall, for each State agency with an approved State Plan or plan amendment incorporating such information—

(i) Project the State agency's participation for the fiscal year in which the approved system will be implemented, exclusive of the increase expected to result from the system, by dividing the State agency's average food expenditures per participant for the closed-out 12-month period of the preceding July through June, adjusted for inflation anticipated in the fiscal year of implementation, into the State agency's food grant for the fiscal year of implementation; and

(ii) Establish the State agency's average administrative and program services grant per participant for the fiscal year preceding the fiscal year of implementation and adjust this amount to reflect the rate of inflation anticipated in the fiscal year of implementation.

(3) For State agencies implementing such systems prior to October 1, 1987, FNS shall apply the procedure in paragraph (2) of this section retrospectively.

(4) The State agency may, for each month of the fiscal year, for each additional participant above the base participation projected under paragraph (g)(2)(i) of this section, convert food funds to administrative and program services funds at the rate established under paragraph (g)(2)(ii) of this section; Provided, however, that the number of participants for whom funds are converted for the fiscal year shall not exceed the product of the estimated participation increase approved by FNS under paragraph (g)(1) of this section and the number of months of the fiscal year during which the approved food-cost-cutting system operates.

(5) For each fiscal year following the fiscal year of implementation, ending with the fiscal year in which the State agency's actual participation equals its projected base participation for the following fiscal year, FNS shall—

(i) Project the State agency's participation independent of the increase still to be achieved through the approved system;

(ii) Estimate, with input from the State agency, the participation increase which remains to be achieved through the approved systems; and

(iii) Recompute the rate at which the State agency may convert food funds to administrative and program services funds.

(6) If a State agency seeks authority under this section to convert food funds to administrative and program services funds based on a proposed modification to an existent competitive bidding, rebate, home delivery, or direct distribution system, FNS shall grant conversion authority if FNS determines that, for the first 12 months of implementation of the modification, the State agency will, as a result of the modification, reduce its average food package cost by at least 3 percent of the average monthly food package cost projected for the State agency by FNS in conjunction with the administrative funding formula under paragraph (c)(3)(i) of this section.

(7) After the end of the fiscal year, FNS shall determine the amount of food funds which the State agency is entitled to convert to administrative and program services funds under paragraph (4) of this section. In the event that the State agency has converted more than the permitted amount of funds, FNS shall recover the State agency the amount of the excess conversion.

(8) For purposes of establishing a State agency's stability food grant and stability administrative and program services grant under paragraphs (c)(2)(i) and (c)(3)(i) of this section, respectively, amounts converted from food funds to administrative and program services funds during the preceding fiscal year shall be treated as though no conversion had taken place.

Dated: June 29, 1988.

Anna Kondratas,
Administrator, Food and Nutrition Service.
[FR Doc. 88-15089 Filed 7-5-88; 8:45 am]
BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-21; Amdt. 39-5928]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, -20, -59A, -70A, -7Q, and -7Q3 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA) DOT.
ACTION: Final Rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) to add requirements for a radioisotope

inspection for PW JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 turbofan engines. This amendment amends AD 86-09-01, Amendment 39-5268 (51 FR 12509; April 11, 1986), to require a radioisotope inspection of the low pressure turbine (LPT) vane antirotation pins. This amendment is needed to further reduce the probability of LPT antirotation pin failures that can cause uncontained engine failures.

DATE: Effective July 6, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—

Approved by the Director of the Federal Register as of July 6, 1988.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket Number 85-ANE-21, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7054.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) by amending AD 86-09-01, Amendment 39-5268 (51 FR 12509; April 11, 1986), to add a requirement for radioisotope inspection of the LPT antirotation pins in certain JT9D turbofan engines, was published in the Federal Register on July 2, 1987, (52 FR 25028). AD 86-09-01 requires: (1) Replacement of the stainless steel antirotation pins installed in the LPT module of PW JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 turbofan engines with nickel alloy antirotation pins, and (2) incorporation of additional nickel alloy antirotation pins in the LPT module of PW JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines.

Four uncontained failures and twenty-seven contained failures occurred in PW JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 turbofan engines; and one uncontained failure and six contained failures in PW JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines occurred as

a result of LPT antirotation pin failures before issuance of the AD.

Since issuance of AD 86-09-01, one uncontained failure in a JT9D-7J turbofan engine, two contained failures in JT9D-7A turbofan engine, and one contained failure in a JT9D-7Q turbofan engine have occurred from failure of the LPT antirotation pins. The FAA has determined, as noted in the notice of proposed rulemaking (NPRM), that the original compliance schedule for the PW JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines provides an adequate level of safety without the radioisotope inspection requirements. Therefore, an inspection procedure has been developed to detect broken antirotation pins which further reduces the probability of additional failures in PW JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 turbofan engines.

After issuance of the proposal to amend the AD, an additional uncontained failure of a JT9D-7J turbofan engine occurred. This failure is still under investigation and pending the results, this AD may be further amended if deemed necessary.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Five comments were received.

Three commenters requested that the radioisotope inspection schedule in PW SB 5735 be adopted instead of the FAA proposed schedule. The SB schedule referred to sets forth a less restrictive pin replacement schedule along with repetitive inspections as compared to the FAA proposal for a replacement schedule following a one time inspection.

The FAA agrees with these commenters, with the exception of the initial inspection threshold requirement as discussed below. The FAA had determined prior to issuing the proposal to amend AD 86-09-01, based on the data submitted at that time, that the compliance schedule as stated in PW SB 5735 was not substantiated in its entirety. Since issuance of the proposal to amend AD 86-09-01, additional data was submitted to the FAA both from engine service experience and development testing. Further analysis of this data indicates that there is now adequate substantiation to justify the requirement for repetitive radioisotope inspection and the revised engine removal requirements contained in the Accomplishment Instructions of PW SB 5735. The AD has been revised accordingly.

Four commenters stated that there is no provision in the proposed AD to

establish reinspection requirements for the LPT cases found upon radioisotope inspection to have no pins broken.

The FAA agrees. The proposed AD did not specify repetitive inspections for LPT cases found to contain no broken pins, since the FAA has determined that no further reinspection prior to pin replacement is necessary. It was not the FAA's intent in the NPRM to require removal within 2,500 hours, of LPT cases containing no broken pins.

Two commenters proposed a longer compliance period than 500 hours for the initial radioisotope inspection, which they stated was too restrictive. One commenter recommended 6 months and the other recommended 1,000 hours or 250 cycles.

The FAA has determined that an extension to the initial radioisotope inspection requirement from 500 hours to 750 hours is still within the demonstrated service experience and the AD has been revised accordingly. However, recent service experience does not justify extending this requirement to 1,000 hours or 6 months as recommended.

On commenter requested that a public hearing be convened to discuss the proposal if the PW SB 5735 repetitive inspection requirements were not to be adopted in the AD.

The FAA has determined that a public hearing is not necessary due to the above stated changes to the AD.

The same commenter stated that the total cost to the operators has been underestimated. The FAA agrees. The FAA has reevaluated the economic impact of this rule with the changes incorporated. No aircraft down-time was anticipated because it was assumed that the one inspection required could be accomplished overnight or at a convenient maintenance check. The total economic impact estimate of the proposal reflected only that one inspection. The man-hour estimate applied by the FAA in the calculation of the economic impact of this rule is in agreement with the estimate listed in PW SB 5735. The flexibility now provided by the allowance for the repetitive inspection versus engine removal should reduce the impact on operational disruptions from the original FAA proposal.

Since the AD compliance requirements have been relaxed, relative to the proposed requirements while maintaining an equivalent level of safety, no further public notice is deemed necessary and the proposal is adopted with the above stated changes.

Since this condition is likely to exist or develop on other engines of the same

type design, this AD amends AD 86-09-01, Amendment 39-5268 (51 FR 12509; April 11, 1986), to add a requirement for a radioisotope inspection of the antirotation pins installed in certain PW JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 turbofan engines.

Conclusion

The FAA has determined that this regulation involves approximately 900 engines at an approximate total cost of \$421,200. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Boeing 747 and McDonnell Douglas DC-10-40 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1982); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By amending § 39.13, Amendment 39-5268 (51 FR 12509; April 11, 1986), Airworthiness Directive (AD) 86-09-01. The amended AD is restated in its entirety for clarity as follows:

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, -20, -59A, -70A, -7Q, and -7Q3 series turbofan engines.

Compliance is required as indicated, unless already accomplished. To prevent low pressure turbine (LPT) case penetration that

can result from turbine vane antirotation pin failure, accomplish the following:

(a) Radioisotope inspect, and remove from service or reinspect stainless steel (AMS 5735) antirotation pins in LPT cases installed in PW JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 turbofan engines as follows:

(1) Radioisotope inspect for broken LPT stages three, four, five, and six turbine vane antirotation pins in accordance with the Accomplishment Instructions contained in PW Service Bulletin (SB) 5735, dated February 20, 1987, within the next 750 hours time in service (TIS) after the effective date of this AD or within 4,000 hours TIS since the last LPT module shop visit, whichever occurs later.

(2) Remove from service, prior to further flight, engines with LPT cases found to contain more than 10 pins broken in any stage, or with any number of broken pins which results in a circumferential gap between any two vanes that exceeds 0.500 inch as measured on the film and replace the pins in accordance with paragraph (b) below.

(3) Reinspect thereafter and remove from service in accordance with the requirements of Table 1 in PW SB 5735, dated February 20, 1987. LPT cases found to have no broken pins do not require reinspection prior to pin replacement in accordance with paragraph (b) below.

(b) Remove from service the entire set of stainless steel (AMS 5735) antirotation pins in LPT cases installed in PW JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 turbofan engines, and replace with nickel alloy (AMS 5680/5661) pins in accordance with the Accomplishment Instructions contained in PW SB 5292, Revision 2, dated June 24, 1985, when removed from service as required by paragraph (a) above; or at the next LPT module shop visit after May 13, 1986; or by December 31, 1989, whichever occurs first.

(c) Incorporate additional LPT antirotation pins in the fourth, fifth, and sixth stage stator locations on PW JT9D-59A, -70A, -7Q, and -7Q3 turbofan engines at the next LPT module shop visit after May 13, 1986, or by December 31, 1989, whichever occurs first, in accordance with the Accomplishment Instructions contained in PW SB 5507, Revision 3, dated December 5, 1984.

Notes:

(1) Compliance with this AD requires that the entire set of the antirotation pins must be replaced, since it has been determined that partial incorporation of pins in accordance with PW SB 5292, Revision 3, dated June 24, 1985, or earlier revisions of the SB, may not preclude failure of the pins. LPT modules incorporating partial sets of pins in accordance with the requirements of PW SB 5292, Revision 3, dated June 24, 1985, or earlier revisions of the SB are subject to the requirements of this AD.

(2) For the purpose of this AD, an LPT module shop visit occurs when the LPT rotor is removed from the case and vane assembly.

(3) Incorporation of the requirements of the PW SB's listed below constitutes an equivalent means of compliance with the respective paragraphs of this AD that reference these SB's:

1. PW SB 5292, Revision 4, dated April 6, 1987, or Revision 5, dated October 26, 1987.

2. PW SB 5735, Revision 1, dated June 12, 1987, or Revision 2, dated March 7, 1988.

3. PW SB 5507, Revision 4, dated June 16, 1987.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an equivalent means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

(f) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

PW SB 5735, dated February 20, 1987, identified and described in this document, is incorporated herein and made in part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311. Rules Docket Number 85-ANE-21, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on July 6, 1988.

This amendment amends Amendment 39-5268, (51 FR 12509; April 11, 1986), AD 86-09-01.

Issued in Burlington, Massachusetts, on May 11, 1988.

Lawrence C. Sullivan,

Acting Director, New England Region.

[FR Doc. 88-15059 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-32-51

14 CFR Part 39

[Docket No. 85-ANE-39; Amdt. 39-5952]

Airworthiness Directives; TEXTRON Lycoming (Formerly Avco Lycoming TEXTRON) LTS101 Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) which requires inspections and

maintenance actions to ensure the satisfactory condition of the engine lubrication system and the integrity of the Number 3 bearing in the rear bearing support housing (RBSH) and the Number 4 bearing in the engine gearbox. This AD supersedes Amendment 39-5787 (52 FR 48187; December 21, 1987), AD 87-28-10, effective December 23, 1987, by requiring inspections and maintenance actions which are less restrictive than those of AD 87-28-10, while ensuring the satisfactory condition of the engine lubrication system and the integrity of the Number 3 and Number 4 bearings. This AD also provides an alternate procedure for cleaning the RBSH and oil feed ring. This AD is needed to prevent an uncontained failure of the power turbine (PT) disk which could result from failure of the Number 3 or Number 4 bearing.

DATES: Effective—July 6, 1988.

Compliance Schedule: As prescribed in the body of the AD.

Incorporation by Reference:

Approved by the Director of the Federal Register as of July 6, 1988.

ADDRESSES: The applicable service documents may be obtained from TEXTRON Lycoming, Williamsport Division, LT101 Product Support, 652 Oliver Street, Williamsport, Pennsylvania 17701.

A copy of the service documents is contained in Rules Docket Number 86-ANE-39, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Robbin Goulet, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7089.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD that would supersede AD 87-28-10 was published in the Federal Register as a notice of proposed rulemaking (NPRM) on February 22, 1988, (53 FR 5189).

The proposal was prompted by a determination that a significant number of engines have unnecessarily been disassembled and that an acceptable procedure following illumination of the RBSH or the airframe mounted full flow scavenge debris monitor chip light is

now available to determine when a disassembly is required.

This AD supersedes Amendment 39-5787 (52 FR 48187; December 21, 1987), AD 87-28-10, which requires inspections and maintenance actions to ensure the satisfactory condition of the engine lubrication system and the integrity of the Number 3 and Number 4 bearings.

The provisions of this final rule AD are identical to those of the NPRM except that the requirements following illumination of the full flow or the RBSH scavenge debris monitors have been relaxed in the following areas: (1) Maintenance action following a chip light event classified as minor fuzz or light fuzz; (2) restarting the chip light event count to zero under certain conditions; (3) maximum operating time for return to service following a chip light event; and (4) clarification of the required maintenance action following loss of the laboratory sample.

There have been two uncontained PT disk failures on LTS101-750 series engines which resulted from failure of the Number 3 bearing. In one case, failure was attributed to progressive deterioration of the bearing, and in the second case, failure was attributed to insufficient lubrication. The LTS101-750 series engine Number 3 bearing assembly and lubrication system type design are similar to those in all LTS101 series engines. There have been several additional cases of Number 3 bearing failures due to similar failure modes in which the PT disk was retained.

In addition, there have been two uncontained PT disk failures on LTS101-650 series engines which resulted from failure of the Number 4 bearing. The investigations aimed at identifying the cause of the Number 4 bearing failures are continuing. The LTS101-605 series engine Number 4 bearing and power pinion gear assembly type design is similar to that in all LTS101 series engines. There have been several additional Number 4 bearing failures in which the PT disk was retained.

Two of the four uncontained disk failures were each preceded by several debris monitor cockpit indication light illuminations due to metal contamination. In one of the four cases, the light was not illuminated due to a break in the indication light system wiring. In another case, the light was not illuminated due to an excessive buildup of carbon on the debris monitor. The Number 4 bearing failure can result in loss of, or erratic PT speed (Np) indication, in addition to the debris monitor indication light illumination. The Np signal was lost prior to both uncontained failures attributed to Number 4 bearing failures. In all four

cases, fragments from the failed disks damaged the other engine, resulting in loss of power. In three of the four cases, fragments severed the tail rotor drive shaft resulting in loss of tail rotor control.

Since this condition is likely to exist or develop on other engines of the same type design, this AD supersedes AD 87-28-10, Amendment 39-5787 (52 FR 48187; December 21, 1987), and requires: (1) Maintenance action upon illumination of the debris monitor cockpit indication light that is wired to the RBSH scavenge debris monitor and/or the airframe mounted full flow scavenge debris monitor; (2) a functional check of the full flow, and RBSH if so configured, scavenge debris monitor indication light system(s) each day of operation; (3) a one-time oil pump pressure output check; (4) repetitive oil acidity checks under certain conditions; (5) a one-time inspection of the front face of the Number 4 bearing cage for cracking or metal release; (6) a 50-hour repetitive visual inspection of the RBSH scavenge debris monitor, if so configured, otherwise an inspection of the full flow scavenge debris monitor for metal contamination; and (7) maintenance action following engine assembly under certain conditions such as a change in engine oil type, downward adjustment of the oil pump output pressure, and/or exceedance of the appropriate engine maintenance manual limit for the clogging inspection of the Number 2 and Number 3 bearing oil jets.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Several comments were received concerning the proposed rule.

In addition, several comments were received regarding Final Rule, Request for Comments, AD 87-28-10, effective December 23, 1987, which this amendment supersedes. Those comments are relevant to the proposed requirements in the NPRM. Due to the short period between the effectivity of AD 87-28-10 and issuance of the NPRM, comments received concerning AD 87-28-10, have also been considered herein.

This amendment incorporates changes from those proposed based on consideration of those comments. The changes have also been incorporated in Revision 1 of TEXTRON Lycoming Service Bulletin (SB) Number LT 101-77-30-0104, dated March 18, 1988.

Discussion of The Comments

Two commenters requested that the daily requirement to check the

continuity of the debris monitors be relaxed. The FAA disagrees. The FAA has evaluated the data submitted and has determined that there is insufficient data available at this time to substantiate relaxing this requirement.

One commenter stated that in cases where the particulates are classified as fuzz and the category is rated as minor or light, that material identification and verification of type may in some cases be impossible due to the difficulty encountered in collecting the fuzz. The commenter also stated that fuzz probably would not be the type of particulate liberated from a failing bearing. The commenter requested that material identification and verification of type not be required for fuzz particulates because of their relative insignificance.

The FAA has determined, based on bearing failure data, that particulates other than fuzz will be detected, presuming the detection system is properly operating, and the frequency of detection will increase prior to a bearing failure. The FAA agrees that the requirement for material identification of fuzz when rated in the minor or light category is therefore not required. The SB, which the AD incorporates, has been revised accordingly.

One commenter requested to extend the maximum allowance for return to service following a chip light illumination from 25 hours to 50 hours. This request was primarily to prevent aircraft being grounded, especially those that are operated frequently in distant locations.

The FAA agrees in part. The FAA has determined from recent data, that safety of flight will not be compromised by extending the 25 hours to 50 hours for only those chip light events determined to be Type 1 (other than fuzz) in the minor category. The requirement to cease engine operation if a chip light illumination occurs during the time allowance (50 hours), until the materials laboratory results from the previous chip light illumination are made available, still remains. The SB, which the AD incorporates, has been revised accordingly.

One commenter questioned when the chip light event count may be returned to zero for the counting purposes of certain category and type of chip light events. The commenter suggested that the event count could be returned to zero providing no chip light event occurred during 25 hours subsequent to the event.

The FAA disagrees. The FAA has determined, based on analysis, that 25 hours would not provide an adequate margin of safety, but that 100 hours

would be satisfactory only for those chip light events determined to be Type 1 (other than fuzz) in the minor category or fuzz in the light category. Cases where the event is determined to be Type 2, minor, the previous chip light event of the same type/category shall always be counted unless the engine or module where the particulates previously came from is disassembled subsequent to the previous chip light event and the hardware was inspected and the source of metal corrected. The SB, which the AD incorporates, has been revised to establish a 100 hour interval prior to returning the chip light event to zero.

One commenter questioned what action would be required if the laboratory sample is lost. The FAA has determined that under this circumstance, the engine must be removed prior to further flight and the source of debris must be corrected. The SB, which the AD incorporates, has therefore been revised accordingly.

One commenter recommended that the FAA consider requiring a Spectrographic Oil Analysis Program (SOAP) as an effective means to detect wear of the Number 4 bearing.

The FAA has determined that the requirements set forth in this AD ensure the integrity of the Number 3 and Number 4 bearings and that mandating a SOAP analysis, although it may be an effective means to detect wear of the bearings, is not necessary.

One commenter recommended that a radial deflection runout check of the power pinion gear be required upon reassembly every time certain hardware is assembled to prevent excessive power pinion gear runout and thus wear of the Number 4 bearing. The LTS101 series engine maintenance manuals require this inspection only when certain hardware is replaced, not when the same hardware is reinstalled. The same commenter recommended that a dimensional inspection be required of the Number 4 bearing for diametrical wear each time the gearbox is disassembled.

The FAA has determined that these inspections are advisable but that mandating them by incorporation in this amendment is not necessary because an adequate level of safety is already ensured herein. TEXTRON Lycoming agrees that these maintenance actions are advisable and will incorporate them in all LTS101 series engine maintenance manuals in the near future.

This amendment is considered relaxatory. The immediate adoption of this regulation is necessary to prevent an undue burden on operators, and

therefore, good cause exists for making it effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of the Federalism Assessment.

Conclusion

The FAA has determined that this regulation is relaxatory and is not considered to be major under Executive Order 12291. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft. Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-448, January 12, 1983); and 14 CFR 11.49.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 87-28-10, Amendment 39-5787 (52 FR 48187; December 21, 1987), as follows:

TEXTRON LYCOMING (formerly Avco Lycoming **TEXTRON**): Applies to TEXTRON Lycoming LTS101 series turboshaft engines.

Compliance is required as indicated, unless already accomplished.

To prevent an uncontained failure of the power turbine (PT) disk, which could result from failure of the Number 3 or Number 4 bearings, accomplish the following:

(a) Visually inspect all chip detectors, rate the amount and type of debris, and determine the category and type of chip light event, prior to further flight, in accordance with TEXTRON Lycoming Service Bulletin (SB) LT 101-77-30-0104, Revision 1, dated March 18, 1988, and accomplish the requirements of the Accomplishment Instructions, paragraph II. E. and II. F. of the SB, whenever the debris monitor cockpit indicator light that is wired to the rear bearing support housing (RBSH) and/or the airframe mounted full flow scavenge debris monitor is illuminated.

(b) Check, each day of operation, the continuity of the RBSH scavenge debris monitor, if so configured, and the full flow scavenge debris monitor cockpit indication light system(s) by removing the monitor(s), shorting the magnetic contacts, and ensuring that the cockpit indication light(s) illuminates. If the light does not illuminate, correct the condition prior to further flight.

Note:

(1) Refer to the appropriate aircraft maintenance manual for corrective action.

(2) FAA approved RBSH and full flow scavenge debris monitor indication light systems which permit the continuity to be checked from the aircraft cockpit, coupled with other appropriate checks, may be approved as an equivalent means of compliance to this paragraph by the Manager, Engine Certification Office, Federal Aviation Administration, New England Region.

(c) Check the engine oil pump output pressure as follows within 50 hours in service after receipt of priority letter AD 87-10-10, issued May 15, 1987, or priority letter AD 86-22-08, issued October 30, 1986, otherwise within 50 hours in service after December 23, 1987, and immediately following an oil pump change and whenever oil pressure adjustment is required. If an engine oil pump output pressure check has been accomplished in accordance with the requirements of priority letter AD 87-10-10 R1, issued June 18, 1987, or priority letter AD 86-22-08, and documentation does not exist verifying that the pump output pressure was set at a value within the revised range given in the table of paragraph (c)(3) below, accomplish this check, as set forth below, within 50 hours in service after December 23, 1987.

(c)(1) Install a tee fitting in the line connecting the oil pressure transmitter to the engine oil pump, and install a direct reading wet pressure gauge (any gauge ranging from 0-125 up to 200 psig, calibrated to ± 2.0 percent at 100 psig) and an orifice of 0.025 inches in the line between the tee fitting and the wet pressure gauge.

Caution: Ensure that the orifice is installed in the line between the tee fitting and the wet pressure gauge and not in the oil pressure supply line to the engine.

(c)(2) Start the engine and warm the oil to 150 degrees Fahrenheit minimum. Increase the gas producer speed (Ng) to 95 percent. Stabilize at this Ng for at least one minute.

(c)(3) Adjust the engine oil pressure, in accordance with the table given below, by removing the lockwire from the slotted oil pressure adjustment plug on the right side of the oil pump and filter housing assembly, and turning the plug clockwise to increase pressure or counterclockwise to decrease

pressure (one turn equals approximately 15 psig). If, prior to the above adjustment, the engine oil pump pressure indicated 70 psig or less for the LTS101-750 series engines, or 58 psig or less for the LTS101-600 and -650 series engines, prior to further flight, disassemble the RBSH assembly and inspect the Number 2 and Number 3 bearings and associated components.

Engine model	Specified range (psig)
LTS101-600A-2/-650B-1/-650C-1A/-650C-2/-650C-3/-650C-3A/-750B-1/-750C-1	80-100
LTS101-600A-3/-750B-2	90-100

Note: Refer to the appropriate engine maintenance manual instructions.

(c)(4) Verify that the aircraft oil pressure indicator indicates in the green arc when the oil pump is properly adjusted. If, upon completion of the check, the aircraft pressure gauge does not indicate in the green arc, the aircraft indicating system must be checked and corrected.

Note: Refer to the appropriate aircraft maintenance manual instructions.

(c)(5) Remove the wet gauge, orifice, and tee fitting, and reconnect the oil pressure transmitter.

(c)(6) Ensure that the slotted oil pressure adjustment plug is lockwired after proper adjustment.

Note: Accomplishment of the oil pump output pressure check at new production engine acceptance testing or at installation of new production engines by the engine or aircraft manufacturer, respectively, is considered an equivalent means of compliance with the requirement of the above paragraph for the initial check within 50 hours in service.

(d) Conduct an oil acidity check in accordance with the procedure given in the appropriate engine maintenance manual, Chapter 71-00-00, as follows:

(d)(1) Check the oil acidity within 25 hours in service after receipt of priority letter AD 87-10-10 or priority letter AD 86-22-08, otherwise within 25 hours in service after December 23, 1987, or within 50 hours in service since the last oil change, whichever occurs later, and repeat at intervals not to exceed 25 hours in service until the oil pump filter and engine oil are changed.

(d)(2) Thereafter, perform an initial oil acidity check within 50 hours in service after the oil pump filter and engine oil are changed, and repeat at intervals not to exceed 25 hours in service until the oil pump filter and engine oil are changed.

(d)(3) If the oil acidity check limit, as specified in the appropriate engine maintenance manual, Chapter 71-00-00, is exceeded, prior to further flight, flush the engine lubrication system (including airframe-supplied oil cooler, tank, lines, etc.) and change the oil pump filter and engine oil.

Notes:

(1) Refer to the appropriate engine maintenance manual instructions.

(2) Information regarding the availability of approved acidity test kits may be obtained by contacting TEXTRON Lycoming, LT101 Product Support.

(e) Visually inspect the Number 4 power pinion gear roller bearing for cage cracks or metal release within 25 hours in service after receipt of priority letter AD 87-12-11, issued June 10, 1987, otherwise within 25 hours in service after December 23, 1987, by removing the Np indicator cover from the front of the gearbox.

(e)(1) If the cage is cracked or any metal is evident in the bearing area, prior to further flight, disassemble the gearbox to correct the condition.

(e)(2) If no cracking or metal release is noted, reinstall the Np indicator cover.

Notes:

(1) Removal and installation of the Np indicator cover should be accomplished in accordance with the appropriate engine maintenance manual and Avco Lycoming TEXTRON Maintenance Alert Notice, MA-LTS-101-72-00-0015, Revision 1, dated September 5, 1986.

(2) Inspection of the Number 4 bearing at new production engine assembly by the engine manufacturer is considered an equivalent means of compliance with the above requirement for engines with no time in service upon receipt of priority letter AD 87-12-11, otherwise as of December 23, 1987.

(f) Visually inspect the RBSH scavenge debris monitor, if so configured, otherwise inspect the full flow scavenge debris monitor, within 50 hours in service after December 23, 1987, and thereafter, at intervals not to exceed 50 hours in service since last inspection, for metal contamination. If metal debris of sufficient quantity to illuminate the debris monitor cockpit indication light is evident on the respective debris monitor, prior to further flight, accomplish the requirements of paragraph (a) above pertaining to debris monitor light illumination.

Note: Individual chips, flakes, slivers, granules, splinters, or fuzz accumulation of sufficient dimension to bridge the magnetic contacts and illuminate the debris monitor cockpit indication light, though it has not done so prior to this repetitive inspection, are also cause for rejection. Metal of insufficient quantity to illuminate the debris monitor cockpit indication light is acceptable and may be cleaned from the debris monitor upon completion of this repetitive inspection.

(g) Following assembly of an engine in which the PT module was built-up with a used RBSH and/or a used oil feed ring, conduct a post-build engine run-up and inspect the RBSH assembly in accordance with step 1.7 of Avco Lycoming TEXTRON Commercial Service Letter (CSL) 047, dated October 10, 1986, prior to return to service. If a clogging inspection value of 2.5 psig is exceeded, clean and inspect the RBSH and oil feed ring in accordance with steps 1.1 through 1.7 of Avco Lycoming TEXTRON CSL 047, dated October 10, 1986, or in accordance with SB LT 101-72-40-0103, dated January 15, 1988.

Note:

(1) Compliance with the requirements of TEXTRON Lycoming SB LT 101-72-40-0103, dated January 15, 1988, is considered an equivalent means of compliance to the post-build engine run-up and inspection requirements of this paragraph.

(2) Accomplishment of a clogging inspection of the Number 2 and Number 3 bearing oil jets, prior to RBSH disassembly, may be advantageous under certain conditions. Refer to the appropriate engine maintenance manual instructions.

(h) If the type of oil is changed, conduct a clogging inspection of the Number 2 and Number 3 bearing oil jets in accordance with the procedure given in the appropriate engine maintenance manual, Chapter 79-30-00 for LTS101-600A-2/-600A-3/-750A-1 engines and Chapter 72-00-00 for the remaining LTS101 engine models, not less than 5 hours and not to exceed 10 hours in service after the oil change. If the clogging inspection limit of 5.0 psig is exceeded, accomplish paragraph (j) below.

(i) If at any time, excluding initial engine oil pump installation, the pump output pressure is or was adjusted downward, prior to further flight, conduct a clogging inspection of the Number 2 and Number 3 bearing oil jets in accordance with the procedure given in the appropriate engine maintenance manual, Chapter 79-30-00 for LTS101-600A-2/-600A-3/-750A-1 engines and Chapter 72-00-00 for the remaining LTS101 engine models. If the clogging inspection limit of 5.0 psig is exceeded, accomplish paragraph (j) below.

(j) If the limit for the clogging inspection of the Number 2 and Number 3 bearing oil jets of 5.0 psig is exceeded during accomplishment of paragraph (h) or (i) above, or during accomplishment of the applicable TEXTRON Lycoming engine maintenance manual periodic clogging inspection requirement, prior to further flight, accomplish the following:

(j)(1) Disassemble the RBSH assembly to correct the cause of clogging, and inspect the Number 2 and Number 3 bearings and associated components.

Note: Refer to the appropriate engine maintenance manual instructions.

(j)(2) Clean and inspect the RBSH and oil feed ring in accordance with Avco Lycoming TEXTRON CSL 047, dated October 10, 1986, or in accordance with the requirements of TEXTRON Lycoming SB LT 101-72-40-0103, dated January 15, 1988.

Note: Any time the clogging inspection results of the Number 2 and Number 3 bearing oil jets are recorded to document compliance with paragraph (g), (h), (i), or (j) of this AD, it is recommended that the actual gauge Number 2 value be recorded in the engine logbook.

(k) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(l) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(m) Upon submission of substantiating data

by an owner or operator, through an FAA Airworthiness Inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance schedule specified in this AD.

TEXTRON Lycoming SB LT 101-77-30-0104, Revision 1, dated March 18, 1988, TEXTRON Lycoming SB LT 101-72-40-0103, dated January 15, 1988, and Avco Lycoming TEXTRON CSL 047, dated October 10, 1986, identified and described in this document are incorporated herein and made a part hereof, pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to TEXTRON Lycoming, Williamsport Division, LT101 Product Support, 654 Oliver Street, Williamsport, Pennsylvania 17701. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86-ANE-39, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on July 6, 1988.

This amendment supersedes Amendment 39-5787 (52 FR 48187; December 21, 1987), AD 87-26-10.

Issued in Burlington, Massachusetts, on May 26, 1988.

Timothy P. Forte,
Acting Director, New England Region.
[FR Doc. 88-15058 Filed 6-30-88; 1:28 pm]

BILLING CODE 4915-15-12

14 CFR Part 71

(Airspace Docket No. 87-AGL-7)

Control Zone Designation Revocation; Various Locations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to revoke the existing control zones designated for Ironwood, MI, Menominee, MI, and Manitowoc, WI. The weather reporting for these three airspace areas has been inadequate. The intended effect of this action is to raise the floor of controlled airspace from the surface to 700 feet above ground level at three locations. The basic requirements for retaining a control zone are: (1) A communications capability must exist to the surface of the airport and (2) hourly and special weather observations must be taken and reported to the air traffic

control facility having jurisdiction of the controlled airspace. This action also cancels Airspace Docket No. 85-AGL-13.

EFFECTIVE DATE: 0001 UTC, October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7380.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 26, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the control zone designations for the following locations: Ironwood, MI, Menominee, MI, and Manitowoc, WI (52 FR 19521).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The following comments to the proposal were received: Three letters were received regarding the revocation of the Manitowoc control zone airspace. All three letters requested an extension of time, in order to resolve unacceptable weather reporting, and to train observers for taking weather observations. The letters were from Manitowoc County Airport, Oil-Rite Corporation, and the Wisconsin Department of Transportation, Bureau of Aeronautics. One letter was received from Alliance Airlines requesting a delay in revoking the Manitowoc and Menominee designated areas until current weather reporting data could be obtained. One letter was received from the Michigan Aeronautics Commission requesting the action to revoke the Menominee and Ironwood control zones be delayed to allow for time to work with local airport users and sponsor to meet the weather observation reporting.

The FAA postponed action to revoke the designated airspace areas in order to allow time for correcting the weather reporting deficiencies and to conduct weather observation surveys. Deficiencies have not been corrected and recent surveys conducted disclosed that weather observation reporting is not sufficient enough to justify retention of the control zone designations.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the control zone designations for the following locations: Ironwood, MI, Menominee, MI, and Manitowoc, WI. During the period May 3-8, 1988, Simmons Airlines provided only 85% of the minimum required weather observations for Gogebic Co. Airport at Ironwood, MI; and, Alliance Airlines provided only 62% and 64% for Menominee Co. Airport at Menominee, MI, and for Manitowoc Municipal Airport at Manitowoc, WI, respectively. Past records further indicate that for the three identified locations weather observations have to varying degrees been irregular, inadequate and/or totally missing. It is therefore concluded that the weather reporting at the locations identified is unacceptable for retention of the designated, airspace status; the control zone designations should be revoked; and, aeronautical charts should be amended to reflect the revocations.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Ironwood, MI [Revoked]

Menominee, MI [Revoked]

Manitowoc, WI [Revoked]

Issued in Des Plaines, Illinois, on June 21, 1988.

Teddy W. Burcham,
Manager, Air Traffic Division.
[FR Doc. 88-15067 Filed 7-5-88; 8:45 am]
BILLING CODE 4910-15-28

14 CFR Part 71

[Airspace Docket No. 88-AWP-2]

Revision to Glendale, AZ, and Phoenix-Luke AFB, AZ, Control Zones

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: The Glendale, AZ, and Phoenix-Luke AFB, AZ, control zones share a common boundary. This action revises the description of the Glendale, AZ, control zone and corrects the common boundary coordinates. Adjustments to these coordinates are minor and range up to a maximum of 13".

This action also revises the description of the Phoenix-Luke AFB, AZ, control zone to include the coordinates for the common boundary between the Phoenix-Luke AFB, AZ, and Glendale, AZ, control zones. The present description excludes "that portion within the Glendale control zone." However, the Glendale control zone is a part time control zone and does not exist during certain periods when the Phoenix-Luke AFB control zone is activated.

EFFECTIVE DATE: 0901 U.T.C., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1642.

SUPPLEMENTARY INFORMATION:

The Rule

These amendments to Part 71 of the Federal Aviation Regulations revise the description of the Glendale, AZ, control zone to include the correct coordinates for the common boundary between the Glendale, AZ, and the Phoenix-Luke AFB, AZ, control zones and revise the

description of the Phoenix-Luke AFB control zone to include the common boundary coordinates in the description. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor amendments in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (52 FR 31384), is further amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Glendale, AZ [Revised]

Within a 3-mile radius of Glendale Municipal Airport (lat. 33°31'38"N., long. 112°17'40"W.) excluding that portion west of a line beginning at lat. 33°34'01"N., long. 112°16'23"W. to lat. 33°33'13"N., long. 112°17'55"W. to lat. 33°29'29"N., long. 112°19'28"W. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will

thereafter be continuously published in the Airport/Facility Directory.

Phoenix-Luke AFB, AZ [Revised]

Within a 5-mile radius of Luke AFB (lat. 33°32'06"N., long. 122°22'56"W.); within 2 miles each side of the Luke TACAN 058° radial, extending from the 5-mile radius zone to 6 miles northeast of the TACAN; and within 2 miles each side of the Luke TACAN 209° radial, extending from the 5-mile radius zone to 6.5 miles southwest of the Luke TACAN; excluding that portion east of a line beginning at lat. 33°34'01"N., long. 112°16'23"W. to lat. 33°33'13"N., long. 112°17'55"W. to lat. 33°29'29"N., long. 112°19'28"W. thence counter clockwise via a 3-mile radius circle of Glendale Municipal Airport (lat. 33°31'38"N., long. 112°17'40"W.) to the 5-mile radius zone. This control zone is effective from 0800 to 0000 hours local time daily, or during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on June 17, 1988.

Jacqueline L. Smith,
Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 88-15066 Filed 7-5-88; 8:45 am]
BILLING CODE 4910-13-28

14 CFR Part 73

[Airspace Docket No. 87-ANM-20]

Establishment of Restricted Area R-2602, Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R-2602 near Colorado Springs, CO, to provide restricted airspace around an automated remote tracking system satellite communications antenna which poses a radiation hazard to aircraft carrying electroexplosive devices.

EFFECTIVE DATE: 0901 UTC, August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 5, 1988, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to establish Restricted Area R-2602 near Colorado Springs, CO (53 FR 11102). Interested

parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.26 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations establishes Restricted Area R-2602 at the site of an automated remote tracking system satellite communications antenna operated by the United States Air Force. It has been determined that operation of this antenna poses a radiation hazard to aircraft in flight which are carrying electroexplosive devices. This amendment provides for aircraft separation from the hazard zone.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.26 [Amended]

2. Section 73.26 is amended as follows:

R-2602 Colorado Springs, CO [New]

Boundaries. Beginning at lat. 38°46'35"N., long. 104°32'03"W.; to lat. 38°46'35"N., long.

104°30'57"W.; to lat. 38°47'43"N., long. 104°30'56"W.; to lat. 38°47'43"N., long. 104°32'02"W.; to the point of beginning. Designated altitudes. Surface to 1,000 feet AGL.

Time of designation. Continuous.
Controlling agency. FAA, Denver ARTCC.
Using agency. USAF, Air Force Space Command, 2nd Space Wing, Falcon Air Force Station, CO.

Issued in Washington, DC, on June 28, 1988.

Temple H. Johnson Jr.,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-15061 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-13-28

14 CFR Part 73

[Airspace Docket No. 87-AGL-29]

Alteration of Restricted Areas R-5503A and R-5503B, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action realigns Restricted Areas R-5503A and R-5503B near Wilmington, OH, by moving the areas slightly to the south and east in order to enhance access to the national airspace system for local aviation users. This action constitutes a refinement of a previous relocation of these areas which provided additional airspace in the vicinity of Federal Airway V-5 to accommodate a major expansion of air carrier operations of Greater Cincinnati Airport.

EFFECTIVE DATE: 0901 U.T.C., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On March 8, 1988, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to realign Restricted Areas R-5503A and R-5503B near Wilmington, OH (53 FR 7378). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Thirty responses were received of which 27 commenters supported the proposal. Three commenters objected to portions of the proposal and/or offered alternative suggestions.

Discussion of Comments

The Aircraft Owners and Pilots Association (AOPA), the Ohio Sport Aviation Association and the Ohio Department of Transportation (DOT) all commented that the boundaries of R-5503A and R-5503B should be realigned with ground references easily identifiable in flight. The Ohio DOT further suggested that the eastern boundary of the area should parallel the 360° radial of the York VORTAC. The preferred method for defining the horizontal limits of special use airspace is the selection of reference points which are easily discernible from the air. Selection of distinct landmarks to define the boundaries of R-5503A and R-5503B was considered during the design of this alteration. In order to maintain the minimum size restricted area that would meet military requirements, and due to the nature of the geographical features in the area, it was not possible to place the boundaries along specific features in this case. Alignment of the eastern boundary along the closest natural landmarks, i.e., U.S. Route 23 and the Scioto River, would have required a reduction in the size of the restricted areas below the minimum required by the military.

On April 9, 1987, R-5503 was relocated to the east to make additional airspace available along Federal Airway V-5 to accommodate expanded air carrier operations at Greater Cincinnati Airport (52 FR 5077). Therefore, a westward movement of the boundaries was not acceptable. The boundaries described herein were determined to have the least en route impact by keeping the restricted airspace clear of airways in the area bounded by Federal Airways V-5, V-128 and V-493.

AOPA and Ohio Sport Aviation Association recommended that the northern boundary of the Brush Creek Military Operations Area, which underlies R-5503A, be relocated so as to coincide with the northern boundary of R-5503A. Although not the subject of this docket action, this suggestion has merit and is scheduled for further study.

Ohio DOT suggested that the floor of R-5503A be raised, preferably to 8,000 feet MSL. Due to current user requirements, a reduction in vertical limits of the restricted area was determined to be unfeasible at this time.

A commenter proposed that the York or Newcomb VORTAC be relocated to enable the displacement of Federal Airway V-493 by approximately 10

nautical miles from the eastern boundary of R-5503A to provide additional separation from R-5503A for VFR pilots navigating along the airway. Federal Airway V-493 was realigned in a previous action (Docket 86-AGL-20, 52 FR 4893) to ensure lateral separation from R-5503A. Since this action maintains lateral separation between R-5503A and V-493, relocation of VORTACs is not required.

Another commenter expressed concern that the proximity of the western boundary of R-5503B to Federal Airway V-5 may place an unnecessary burden on civil aviation. In addition, the commenter had received reports that air traffic controllers currently route civil air traffic so as to provide a 20-mile buffer along the western boundary of R-5503A. This practice reportedly was a result of the excessive military aircraft spill-outs from R-5503A. Military aircraft spill-outs are a reportable incident. A review of records revealed six spill-outs during the past three years. This is not an excessive figure considering the overall usage of this area. The lowest altitude designated for R-5503B is Flight Level 240 which is well above the ceiling of V-5. At its closest point, the western boundary of R-5503A is 12 nautical miles from the centerline of V-5. This provides sufficient distance between the airway and the restricted area. In addition, the Indianapolis Air Route Traffic Control Center Quality Assurance Staff reported that aircraft are not routinely vectored to maintain 20-mile separation from the restricted area as alleged.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.55 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations shifts the boundaries of Restricted Areas R-5503A and R-5503B several miles to the south and east to enhance access to the national airspace system for local aviation users.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73
Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1349(a), 1354(a), 1510, 1522; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.09.

§ 73.55 [Amended]

2. Section 73.55 is amended as follows:

R-5503A Wilmington, OH [Amended]

By removing the present boundaries and substituting the following boundaries. Beginning at lat. 36°54'40" N., long. 83°54'45" W.; to lat. 36°10'45" N., long. 83°53'00" W.; to lat. 36°27'45" N., long. 83°23'00" W.; to lat. 36°24'20" N., long. 82°48'30" W.; to lat. 36°16'00" N., long. 82°44'16" W.; to lat. 36°58'45" N., long. 82°50'00" W.; to lat. 36°47'00" N., long. 82°58'45" W.; to lat. 36°46'20" N., long. 83°14'20" W.; to lat. 36°52'15" N., long. 83°34'00" W.; thence to the point of beginning.

R-5503B Wilmington, OH [Amended]

By removing the present boundaries and substituting the following boundaries. Beginning at lat. 36°54'40" N., long. 83°54'45" W.; to lat. 36°59'00" N., long. 84°05'00" W.; to lat. 36°16'00" N., long. 84°05'00" W.; to lat. 36°29'20" N., long. 83°41'00" W.; to lat. 36°27'45" N., long. 83°23'00" W.; to lat. 36°10'45" N., long. 83°53'00" W.; thence to point of beginning.

Issued in Washington, DC, on June 28, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-15080 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-13-2

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 385

[Docket No. 70635-7195]

Foreign Policy Controls on Exports of Chemicals to Iran, Iraq, and Syria; Clarifications

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On July 31, 1987, Commerce published regulations in the Federal Register (52 FR 28550) that imposed foreign policy controls on the export of eight chemicals to Iran, Iraq and Syria and on the export of five chemicals to all destinations except 18 industrialized nations (Australia, Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, and the United Kingdom). Those regulations amended § 385.4 and the Commodity Control List (15 CFR 399.1, Supplement No. 1) to reflect the expanded foreign policy controls on the eight chemicals (N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethyl phosphite (dimethyl hydrogen phosphite); 3-hydroxy-1-methylpiperidine; phosphorus trichloride; 3-quinuclidinol; thionyl chloride; and trimethyl phosphite). However, only the Commodity Control List (CCL) was amended with regard to the five chemicals (dimethyl methylphosphonate, methyl phosphonyldichloride, methyl phosphonyldifluoride, phosphorus oxychloride; and thiodiglycol) that were controlled to all destinations except 18 industrialized nations.

This Rule revises paragraph (e) of § 385.4 to include those chemicals that were inadvertently omitted by the July regulations and to recodify the paragraph for the sake of clarification. The Export Control Commodity Numbers (ECCNs) for the chemicals are added for the convenience of the reader.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnam, Capital Goods Technology Center, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4777.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or

regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection of information has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 385

Communist countries, Exports.

Accordingly, Part 385 of the Export Administration Regulations (15 CFR Parts 385-399) is amended as follows:

PART 385—[AMENDED]

1. The authority citation for 15 CFR Part 385 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50

U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 18, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Paragraph (e)(1) is revised to read as set forth below; paragraph (e)(2) of § 385.4 is redesignated as paragraph (e)(6) and new paragraphs (e)(2) through (5) are added to read as follows:

§ 385.4 Country Groups T & V.

(e) *Iran, Iraq, and Syria.* In support of U.S. foreign policy, and particularly the U.S. policies of opposing the use of chemical weapons, maintaining U.S. neutrality in the Iran/Iraq war and promoting a mediated end to that war, an individual validated license is required to export from the United States to Iran, Iraq, or Syria the following chemicals, listed by ECCN classification:

(i) ECCN 4707B: Dimethyl phosphite (dimethyl hydrogen phosphite); methyl phosphonyldichloride; 3-quinuclidinol;

(ii) ECCN 4798B: Dimethyl methylphosphonate; methyl phosphonyldifluoride; phosphorous oxychloride; thiodiglycol;

(iii) ECCN 5799C: N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethylamine hydrochloride; 3-hydroxy-1-methylpiperidine; trimethyl phosphite;

(iv) ECCN 6799G: Dimethylamine; ethylene chlorohydrin (chloroethanol); phosphorous trichloride; potassium fluoride; thionyl chloride.

(2) Unless the criteria stated in paragraph (e)(3) or (4) of this section are met, applications to export the chemicals listed in paragraphs (e)(1)(i)-(iv) of this section will generally be denied where there is reason to believe that those chemicals will be used in producing chemical weapons or will otherwise be devoted to chemical warfare purposes.

(3) Applications to export the following chemicals, listed by ECCN number, to Syria, in performance of a contract entered into before April 28, 1986, generally will be approved:

(i) ECCN 4798B: Dimethyl methylphosphonate; methyl phosphonyldifluoride; phosphorous oxychloride; thiodiglycol;

(ii) ECCN 5799C: Dimethylamine hydrochloride;

(iii) ECCN 6799C: Dimethylamine; ethylene chlorohydrin (chloroethanol); potassium fluoride.

(4) Applications to export the following chemicals, listed by ECCN number, to Iran, Iraq, or Syria, in performance of a contract or agreement entered into before July 6, 1987, will generally be approved:

(i) ECCN 4707B: Dimethyl phosphite (dimethyl hydrogen phosphite); methyl phosphonyldichloride; 3-quinuclidinol;

(ii) ECCN 5799C: N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; 3-hydroxy-1-methylpiperidine; trimethyl phosphite;

(iii) ECCN 6799G: Phosphorous trichloride; thionyl chloride.

(5) The reexport provisions of Part 374 and the provisions of § 376.12 are not applicable to the foreign policy controls covered by paragraph (e) of this section. However, the export of these commodities from the United States to any destination with knowledge that they will be reexported, directly or indirectly, in whole or in part, to Iran, Iraq or Syria is prohibited without a validated license.

Dated: June 21, 1988.

Vincent F. DeCain,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-15127 Filed 7-5-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 588

[Docket No. N-88-1776; FR-2495]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Rome, GA; Special Revision

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document establishes new Fair Market Rents for the Rome market area in the State of Georgia. These rents are necessary to provide fair market rents more

comparable to market rents for new construction in this market area.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410-0500. Telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. In addition, for the FY 1986 Fair Market Rents previously promulgated by the Department (see the August 7, 1986 Federal Register, 51 FR 28486), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the entire Fiscal Year 1986 Fair Market Rent schedule applicable to the Rome, Georgia market area. The 1986 FMRs reflected data submitted by the Atlanta Office, as well as the cost containment efforts implemented for all 1986 New Construction and Substantial Rehabilitation Rents. While the data submitted by the field office was proper, it reflected comparables all built during the early 1970s because there has been no construction of modestly designed

rental housing in the Rome market area for the past several years. (Moreover, the Rome market area experienced an economic decline during 1983 and 1984.) HUD's procedures, which are consistent with sound appraisal practices, permit the use of such comparables, which are then adjusted for all variables, including age. Further, where comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The HUD Field Office requested that the Department establish new rents for the Rome, Georgia market area. Careful analysis of this request and reanalysis of the 1986 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of the 1986 FMRs for this market area is needed. Accordingly, the Department proposed a revision of the entire 1986 schedule applicable to the Rome, Georgia market area in the Federal Register on March 28, 1988, and permitted a 30-day public comment period. No comments were received. Therefore, this notice establishes the FMRs which were proposed on March 28, 1988, as they are set forth below. The schedule's applicability is the same as set forth in the preamble to the original Fiscal Year 1986 schedule, published on August 7, 1986, at 51 FR 28486.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Accordingly, the following amendment to the 1986 Fair Market Rent schedule is announced and established for the Rome, Georgia market area:

SCHEDULE A—FAIR MARKET RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES' PROGRAMS)

(Region 4—Atlanta Regional Office Market: Rome)

Structure type	Number of bedrooms				
	0	1	2	3	4+
Detached			442	515	555
Semi-Detached/Row	307	333	384	456	510
Walkup	295	320	379	443	496
Elevator 2-4 STY	320	345	404		
Elevator 5+ STY	361	400	460		

Dated: June 24, 1988.

Thomas T. Demery,
Assistant Secretary for Housing—Federal Housing Commissioner.

FR Doc. 88-15147 Filed 7-5-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

[Order No. 1284-88]

Voting Rights Act of 1965; Procedural Amendments

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This amendment indicates that the Department of Justice has received approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act for the continuation of the collection of information requirements contained in the Procedures for the Administration of section 5 of the Voting Rights Act of 1965, as Amended.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66128, Washington, DC 20035-6128, 202-724-5898, or Larry E. Miesse, Department of Justice Clearance Officer, Justice

Management Division, U.S. Department of Justice, Washington, DC 20530, 202-633-4312.

SUPPLEMENTARY INFORMATION: This amendment reflects neither a substantive nor a procedural change in the administration of section 5 of the Voting Rights Act, 42 U.S.C. 1973c, but merely the renewal of authority under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. That authority has been extended from February 29, 1988 to February 28, 1991.

Accordingly, 28 CFR Part 51 is amended as set forth below.

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

§ 51.26 [Amended]

2. Section 51.26(g) is amended by removing the words "29, 1988" and inserting in their place the words "28, 1991".

Edwin Messer III,
Attorney General.

Dated: June 24, 1988.

[FR Doc. 88-15079 Filed 7-5-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 10]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Modification of Payment Limitation for Multiple Surgical Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements the proposed amendment of rule which was published on March 11, 1987 (52 FR 7453). It revises the comprehensive CHAMPUS regulation, DoD 6010.8-R (32 CFR Part 199), pertaining to payment for multiple surgical procedures performed during the same operative session. This amendment allows payment for second and subsequent surgical procedures at fifty (50) percent of the CHAMPUS-determined allowable charge, whether or not the second and subsequent procedures are related—i.e., performed through the same surgical opening—to the first procedures.

EFFECTIVE DATE: This amendment is effective August 5, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed

Services, (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the Federal Register on July 1, 1986 (51 FR 24008).

On March 11, 1987, we published a proposed amendment of rule to modify the CHAMPUS reimbursement policy for multiple surgical procedures performed during the same operative session. We received no comments regarding our proposed rule. This final rule announces our intention to implement those changes we proposed.

Section 199.4(c)(3)(i)(A) of 32 CFR currently prohibits payment for second and subsequent surgical procedures in many cases. This amendment eliminates that restriction and allows payment for second and subsequent surgical procedures at fifty (50) percent of the CHAMPUS determined allowable charge. There are exceptions to this policy related to procedures involving the fingers and toes and to incidental procedures. We refer the reader to the proposed rule for a more detailed explanation of this change.

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

Result in annual effect on the national economy of \$100 million or more;

Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

We do not consider this proposed rule to be a major rule under Executive Order 12291, and for this reason, we believe it is unnecessary to prepare or publish a regulatory impact analysis.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility

analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation amendment will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions.

This final rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

§ 199.4 [Amended]

2. Section 199.4 is amended by revising paragraph (c)(3)(i) to read as follows:

(c) * * *

(3) * * *

(i) *Multiple Surgery.* In cases of multiple surgical procedures performed during the same operative session, benefits shall be extended as follows:

(A) One hundred (100) percent of the CHAMPUS-determined allowable charge for the major surgical procedure (the procedure for which the greatest amount is payable under the applicable reimbursement method); and

(B) Fifty (50) percent of the CHAMPUS-determined allowable charge for each of the other surgical procedures;

(C) Except that:

(1) If the multiple surgical procedures involve the fingers or toes, benefits for the first surgical procedure shall be at one hundred (100) percent of the CHAMPUS-determined allowable charge; the second procedure at fifty (50) percent; and the third and subsequent procedures at twenty-five (25) percent.

(2) If the multiple surgical procedures include an incidental procedure, no benefits shall be allowed for the incidental procedure.

(3) If the multiple surgical procedures involve specific procedures identified by

the Director, OCHAMPUS, benefits shall be limited as set forth in CHAMPUS instructions.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 30, 1988.

[FR Doc. 88-15102 Filed 7-5-88; 8:45 am]

BILLING CODE 3010-01-M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1636

Selective Service Regulations; Registrant Processing

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*) are revised to assure greater fairness and efficiency in administration in the processing of registrants.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION: This amendment to Selective Service Regulations is published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. This regulation implements the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*).

Analysis of Comments

The proposed amendment to Selective Service Regulations was published in the Federal Register on December 17, 1987 (52 FR 47949) for public comment. Six cards or letters of comment were received during the comment period which expired February 16, 1988. None of the cards or letters of comment received was from a person who claimed to be a registrant of the Selective Service System.

The one writer who objected to the proposal pointed out that the registrant may not know his beliefs sufficiently well to enable him to identify the appropriate classification to request. This is not a substantial objection.

Determinations

As required by Executive Order 12291, I have determined that this regulation is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), I have determined that this regulation does not have a significant economic impact on a substantial number of small entities.

As required by Executive Order 12612, I have determined that this regulation has no federalism implication.

Certificate

Whereas, on December 17, 1987, the Acting Director of Selective Service published a Notice of Proposed Amendments of Selective Service Regulations at 52 FR 47949; and whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)) in that more than 30 days have elapsed subsequent to such publication during which period comments from the public (summarized above) have been received and considered; and I certify that I have requested the view of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended (50 App. U.S.C. section 451 *et seq.*) and Executive Order 11623 of October 12, 1971, the Selective Service Regulations constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, as hereby amended, as stated below.

List of Subjects in 32 CFR Part 1636

Armed Forces—draft, Selective Service System.

Dated: June 23, 1988.

Samuel K. Lessey, Jr.,
Director of Selective Service.

The regulation is:

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

1. The authority citation for Part 1636 continues to read as follows:

Authority: Military Selective Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

§ 1636.9 [Amended]

2. Section 1636.9 (c) and (d) is removed and reserved.

[FR Doc. 88-15106 Filed 7-5-88; 8:45 am]

BILLING CODE 3010-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3408-5; GA-010]

Approval and Promulgation of Implementation Plans; Georgia; Incinerator Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA approves a State Implementation Plan revision submitted by the State of Georgia. This revision amends Georgia's incinerator regulation by setting mass emission limits in place of concentration limits. This revision is necessary to correct inequities resulting from the correction of actual emission rates to 12% carbon dioxide for small industrial type incinerators.

DATES: This action will be effective on September 6, 1988, unless notice is received by August 5, 1988 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, DC 20460
Environmental Protection Agency,
Region IV, Air Programs Branch, 345
Courtland Street NE., Atlanta, Georgia
30365

Georgia Department of Natural
Resources, 205 Butler Street SE., Floyd
Towers East, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Gregg M. Worley, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The old Georgia Rule for Air Quality Control 391-3-1-.02(2)(c), "Incinerators," which set allowable particulate emission limits based on concentration per dry standard cubic foot of flue gas corrected to twelve (12) percent carbon dioxide (CO₂), was federally approved on August 20, 1976 (41 FR 35185).

The incinerator rule primarily affects commercial, institutional, and industrial incinerators with relatively low mass emission rates. The old rule excludes CO₂ produced from the combustion of auxiliary fuel in the incinerator. It was determined, though, that even with this exclusion, large corrections for CO₂ were often necessary and were

particularly significant with incinerators burning waste with low carbon content or high water content. The end result was often noncompliance for an incinerator with a low emission rate.

In an attempt to correct the inequities resulting from the adjustment of actual emission rates to 12% CO₂, the incinerator rule was amended to incorporate mass emission limits in place of the concentration allowable limits. The Georgia Department of Natural Resources submitted to EPA changes to the Georgia State Implementation Plan (SIP) to provide for attainment of the ozone NAAQS in Atlanta and to assure visibility protection for Class I areas throughout Georgia on May 22, 1985. Also included in this submittal were changes to Georgia Rule 391-3-1-.02 Section (2) subsection (c), entitled "Incinerators."

The new mass emission allowable limits are not significantly different from the concentration allowable limits. A comparison of the old limits to the new limits, based on the criteria given in EPA's *Source Category Survey: Industrial Incinerators* (EPA-450/3-80-013, May 1980), shows a slight relaxation for charging rates of 50 tons per day or less from new sources. For existing sources, the comparison shows that the new limits are more stringent. New sources with charging rates greater than 50 tons per day are subject to NSPS under both the old rule and the new rule.

The maximum relaxation possible under the revised rule (occurring at a charging rate of 50 tons per day) would be on the order of 1.3 lb/hr. The maximum tightening possible under the revised rule (also occurring at a charging rate of 50 tons per day) would be on the order of 2.1 lb/hr. The majority of the incinerators, however, are in the range of 400 to 600 lb/hr charging capacity, where the change in emissions either way would be on the order of 0.2 lb/hr. In addition, the sections of the rule specifying opacity requirements, incinerator design and operating parameters have not been changed. Consequently, it is not anticipated that there will be any increase in actual emissions from these minor sources.

These facts, in conjunction with the low number of incinerators and actual emissions, convince EPA that there is little likelihood of any detrimental effect to the National Ambient Air Quality Standards. Therefore, Region IV's Air Programs Branch has determined that a modeling demonstration is not necessary for this rule to be approved. For more details on this action, the reader may examine a Technical Support Document at the EPA Regional Office whose address is listed above.

Relation to PM₁₀

The EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM₁₀). However, at the State's option, EPA will continue to process TSP SIP revisions which were in process at the time the new PM₁₀ standard was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), EPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of state plans specifically aimed at PM₁₀. If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, EPA's general policy would be to approve it. It is EPA's judgment that the regulation in this action would increase the stringency of the TSP plan and would therefore likely result in better control of PM₁₀ as well.

Final Action

EPA is approving Georgia's SIP revision for their incinerator regulation.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 6, 1988 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that the action will be effective September 6, 1988.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 48 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 1988. This action may not be challenged later in

proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note.—Incorporation by reference of the Georgia State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 28, 1988.

A. James Barnes,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7402.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(35) to read as follows:

§ 52.570 Identification of plan.

(c) . . .

(35) A revised subsection (2)(c), "Incinerators," of rule 391-3-1-02 was submitted by the Georgia Department of Natural Resources on May 22, 1985.

(i) Incorporation by reference.

(A) Letter of May 22, 1985, from the Georgia Department of Natural Resources and revised subsection (2)(c) of rule 391-3-1-02, titled "Incinerators," adopted by the Georgia Board of Natural Resources on May 1, 1985.

(ii) Additional material—none.

[FR Doc. 88-15099 Filed 7-5-88; 8:45 am]

BILLING CODE 5590-30-M

40 CFR Part 52

[FRL-3409-4; TN-080]

Approval and Promulgation of Implementation Plans; Tennessee; Revisions to the SIP

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, EPA approves as State Implementation Plan revisions Tennessee Air Pollution Control Board Orders 10-87 and 15-87. These Board Orders revise the Prevention of Significant Deterioration (PSD) regulations of the State of Tennessee and Nashville/Davidson County to

incorporate EPA's new modeling guideline.

DATE: This action will be effective on September 6, 1988, unless notice is received by August 5, 1988 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch, 401 M Street
SW., Washington, DC 20460

Environmental Protection Agency,
Region IV, Air Programs Branch, 345
Courtland Street NE., Atlanta, Georgia
30305

Division of Air Pollution Control,
Tennessee Department of Health and
Environment, Customs House, 4th
Floor, 701 Broadway, Nashville,
Tennessee 37219.

FOR FURTHER INFORMATION CONTACT:
Ms. Rosalyn D. Hughes, Air Programs
Branch, EPA Region IV, at the above
address and telephone number (404)
347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) requires the Administrator to adopt regulations which specify with reasonable particularity the models to be used to comply with the Act's Prevention of Significant Deterioration (PSD) requirements. To carry out these requirements, specified in section 165(e)(3)(D) of the Act, the 1978 EPA guideline document, "Guideline on Air Quality Models," was incorporated by reference in 40 CFR 51.106 (formerly 51.24) and 40 CFR 52.21. The State of Tennessee and Nashville/Davidson County have incorporated this guideline in their PSD regulations.

On September 9, 1986 (51 FR 32176), EPA promulgated amendments to 51.106 and 52.21 to substitute by reference the "Guideline on Air Quality Models (Revised)," EPA 450/2-78-027R, in these regulations. This change, which became effective October 9, 1986, means that all modeling done pursuant to EPA's PSD regulations at 40 CFR 52.21 must either comply with the 1986 version of the modeling guideline or be specifically approved by EPA; modeling done pursuant to the 1978 guidance may no longer be accepted. It also means that a State's PSD regulations approved by EPA pursuant to 40 CFR 51.106 must be revised to require the use of the revised guideline.

Since both Tennessee and Nashville/Davidson County have PSD permitting authority under the State Implementation Plan (SIP), which precludes the use of the revised

modeling guideline, they had to remove the preclusion and include a reference to the revised modeling guideline. On August 13, 1987, the Tennessee Board of Air Pollution Control approved the change in modeling guideline for the State regulations and the Nashville/Davidson County regulations and the Board submitted the changes to EPA on January 6, 1988.

Also on January 6, 1988, EPA promulgated Supplement A to the 1986 modeling guideline (53 FR 392). The Tennessee PSD regulation is worded in such a way as to include any future revision or update to the modeling guideline. Therefore, the Tennessee PSD regulations do not need to be revised to specifically incorporate Supplement A. The Nashville/Davidson County PSD regulation, on the other hand, will need to be revised to incorporate Supplement A. Since the Nashville/Davidson County PSD regulation was adopted prior to January 6, 1988, the local agency has nine months after EPA's promulgation of Supplement A (until October 6, 1988) to revise its regulation to reflect the addition of Supplement A.

Final Action

Since Board Order 15-87, which revises the Tennessee PSD regulation, meets all current and future requirements for updates to the modeling guideline including the addition of Supplement A, it is hereby approved. Since Board Order 10-87, which updates the Nashville/Davidson County PSD regulation, meets the requirements of EPA's 1986 modeling guideline revision, it is hereby approved, even though it will have to be revised to include the addition of Supplement A. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 505(b), I certify that these SIP revisions will not have a significant economic impact on a

substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Date: June 28, 1988.

A. James Barnes,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7402.

2. Section 52.2220 is amended by adding paragraph (c)(85) to read as follows:

§ 52.2220 Identification of plan.

(c) . . .

(85) Board Orders 10-87 and 15-87, incorporating the Prevention of Significant Deterioration modeling guideline in the State of Tennessee and Nashville/Davidson County regulations, submitted on January 6, 1988 by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Board Order 10-87, revision to the Prevention of Significant Deterioration modeling guideline for the State of Tennessee, which was approved on August 13, 1987.

(B) Board Order 15-87, revision to the Prevention of Significant Deterioration modeling guideline for Nashville/Davidson County, which was approved on August 13, 1987.

(C) Letter of January 6, 1988 from the Tennessee Department of Health and Environment.

(ii) Other material—none.

[FR Doc. 88-15098 Filed 7-5-88; 8:45 am]

BILLING CODE 5590-30-M

40 CFR Parts 85 and 600

[FRL-3409-5]

Air Pollution Control; Importation of Nonconforming Motor Vehicles and Motor Vehicle Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule.

SUMMARY: EPA is exercising its discretion to reconsider portions of EPA regulations at 40 CFR 85.1501 *et seq.*, as amended on September 25, 1987 (52 FR 36136), which regulate the importation of nonconforming motor vehicles and nonconforming motor vehicle engines ("nonconforming vehicles"). EPA will also reconsider its revision of 40 CFR Part 600 as it relates to vehicles subject to today's action.

Today's action grants a petition for reconsideration of the revised imports regulations as they apply to importers of new Canadian vehicles which are identical in all material respects to U.S.-certified vehicles. EPA is also announcing a temporary conditional stay of the effectiveness of the new, revised imports regulations with respect to certain importers of such vehicles.

DATES: The conditional stay of the effectiveness of the revised imports regulations as they apply to the importers of certain vehicles specified above will commence on July 1, 1988 and last for a period of three months while EPA reconsiders the rule.

ADDRESS: A copy of the letter granting the petition for reconsideration and staying the effectiveness of the revised imports regulations for a period of three months (from July 1, 1988 to October 1, 1988) and other related documents are contained in Public Docket No. EN-79-9. The docket is located at the U.S. Environmental Protection Agency, Central Docket Section, Room 4 South, Washington Information Center, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between the hours of 8:00 a.m. and 3:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of the letter and related documents may also be obtained by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT:
Patrick Schlesinger, Attorney/Advisor,
Manufacturers Programs Branch (202/
382-2499), Manufacturers Operations
Division (EN-340F), U.S. Environmental
Protection Agency, 401 M Street SW.,
Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The regulations governing EPA's program providing for the importation of nonconforming vehicles were substantially revised on September 25, 1987. On November 24, 1987, Superior Auto Sales, Inc. (Superior) and Auburn Motors, Inc. (Auburn) petitioned EPA for administrative reconsideration of the revised final regulations as they would apply to importers of vehicles originally sold in Canada and purportedly identical to vehicles certified by EPA and sold in the United States. Among other issues raised by the petitioners, Superior and Auburn maintain that, although these vehicles are not labeled as meeting U.S. emissions requirements, these vehicles do not have to be mechanically modified to comply with such requirements and thus do not present air quality concerns similar to those presented by other imported nonconforming vehicles.

Although EPA does not necessarily agree with all of the arguments or assertions raised by Superior and Auburn in their petition for reconsideration, the Agency has concluded that several of the issues raised by the petitioners merit reconsideration. As stated earlier, a copy of the letter granting the petition with an explanation of the Agency's determination may be obtained from EPA as noted above.

In addition, during the reconsideration process, EPA will conditionally stay the effectiveness of the revised imports regulations, only as they apply to vehicles imported from Canada which are identical in all material respects to vehicles certified for sale in the United States, for a period of three months (July 1, 1988 to October 1, 1988). This limited, conditional stay will be applicable only to importers of such vehicles who expressly agree to certain conditions on importation. These conditions will ensure that such vehicles meet EPA emission standards when imported and during their use in the United States. A copy of the express conditions that importers of such vehicles must agree to in order to qualify for the stay may be obtained from EPA as noted above. Any importer or vehicle that does not meet these conditions will not be eligible for the stay and must comply with the revised final regulations as of July 1, 1988.

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

This action is also not a "rule" as defined in 5 U.S.C. 901(2) because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act, or any other law. Therefore, EPA has not prepared a supporting Regulatory Flexibility Analysis addressing the impact of this action on small business entities.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Public Docket EN-79-9 located in EPA's Central Docket Section (LE-131A), 401 M Street SW., Washington, DC 20460.

Dated: June 29, 1988.

A. James Barnes,
Acting Administrator.

[FR Doc. 88-15096 Filed 7-5-88; 8:45 am]

BILLING CODE 5540-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 60

[Docket No. FEMA-FIA]

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Mobile Home Parks or Subdivisions; Suspension of Rule and Amendment of Rule With Request for Comments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Modification of suspension of rule.

SUMMARY: This notice modifies a notice published in the Federal Register on June 30, 1987. (52 FR 24370). That notice suspended certain revisions to National Flood Insurance Program (NFIP) regulations which became effective on October 1, 1986, and restored prior provisions of the regulations through

March 31, 1988. The suspended provisions required the elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions in special flood hazard areas. A subsequent notice published in the Federal Register on September 3, 1987 (52 FR 33410) modified that notice to suspend the subject regulation through September 30, 1988 to be consistent with the Supplemental Appropriations Act of 1987 (Pub. L. 100-71). This notice further extends the suspension of the revisions through July 31, 1989 to allow FEMA sufficient time to complete its analysis of the issue and any necessary rulemaking.

FOR FURTHER INFORMATION CONTACT: Michael F. Robinson, Federal Emergency Management Agency (FEMA), Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; Telephone number (202) 646-2717.

SUPPLEMENTARY INFORMATION: On June 30, 1987, the Federal Emergency Management Agency (FEMA) published a notice in the Federal Register (52 FR 24370) which suspended until March 31, 1988, a portion of a revision to National Flood Insurance Program (NFIP) criteria which became effective on October 1, 1986. The portion of the revision that was suspended required the elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions (those established prior to the adoption of a community's floodplain management regulations). That notice provided for a public comment period which has since closed. Subsequent to this publication, the Supplemental Appropriations Act of 1987 (Pub. L. 100-71) was signed into law on July 11, 1987. This Act suspended the same provision through September 30, 1988. In order to make the June 30, 1987, notice consistent with the Supplemental Appropriations Act, FEMA published a notice in the Federal Register on September 3, 1987 (52 FR 33410) that modified the effective date of the suspension to read "through September 30, 1988". The September 3, 1987 notice also made several technical corrections to the June 30, 1986 notice.

Subsequent to the publication of the modification to the June 30, 1987 Federal Register notice it has become clear that there will be insufficient time for FEMA to thoroughly evaluate and report on the impacts of the October 1, 1986 rule revision, develop alternative actions for addressing the issue, and complete any necessary rulemaking. For this reason, FEMA is hereby modifying the June 30, 1987 Federal Register notice to extend the suspension of the provision through

July 31, 1989 rather than through September 30, 1988.

Accordingly, in the "Suspension of Rule; Amendment of Rule with Request for Comments" (document 87-14527) beginning on page 24370 in the Federal Register of Tuesday, June 30, 1987, make the following modification:

Modification

1. On page 24370 in the first column under **EFFECTIVE DATE** change "until March 31, 1988" to read "through July 31, 1989".

Dated: June 9, 1988.

Harold T. Duryee,
Administrator Federal Insurance
Administration.

[FR Doc. 88-15093 Filed 7-5-88; 8:45 am]

BILLING CODE 5710-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-460; RM-5782]

Radio Broadcasting Services; Northport, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 264A to Northport, Alabama, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Northport Communications. The site coordinates utilized for Channel 264A are 33-13-31 and 87-38-35. With this action, the proceeding is terminated.

DATES: Effective August 15, 1988; The window period for filing applications on Channel 264A at Northport, Alabama, will open on August 16, 1988, and close on September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530, concerning the allotment. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-460, adopted June 7, 1988, and released June 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Alabama, by adding Northport, Channel 264A.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15157 Filed 7-5-88; 8:45 am]

BILLING CODE 5710-01-M

47 CFR Part 73

[MM Docket No. 87-437; RM-5842]

Radio Broadcasting Services; Selma and Union Springs, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C2 for Channel 265A at Selma, AL, and modifies the Class A license of Alexander Broadcasting Company for Station WALX(FM), as requested, to specify operation on the higher class channel, thereby providing that community with the second wide coverage area FM service. Additionally, Channel 231A is substituted for Channel 265A at Union Springs, AL, and the license of Montgomery Christian Radio, Inc. for Station WSFU-FM is modified accordingly to accommodate the Selma allotment.

Channel 265C2 can be allotted to Selma, AL, in conformity with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules, with a site restriction 3.0 kilometers south. The reference coordinates utilized in this determination are 32-23-23 and 87-01-36. Moreover, Channel 231A can be allotted to Union Springs, consistent with our Rules, at the present transmitter site of Station WSFU-FM, the coordinates of which are 32-05-46 and 85-48-16. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-437, adopted May 31, 1988, and released June 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Alabama, is amended by revising the entry for Selma by deleting Channel 265A and adding Channel 285C2, and by revising the entry for Union Springs by deleting Channel 265A and adding Channel 231A.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15159 Filed 7-5-88; 8:45 am]

BILLING CODE 5710-01-M

47 CFR Part 73

[MM Docket No. 87-445; RM-6007, RM-5193]

Radio Broadcasting Services; Pooler, GA and Hardeeville, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Benjamin M. Tuckett, et al., d/b/a Jessup Broadcasting Limited Partnership, substitutes Channel 266C2 for Channel 266A at Hardeeville, South Carolina, and modifies its permit for Station WWDR to specify the higher powered channel. Channel 266C2 can be allotted to Hardeeville in compliance with the Commission's minimum distance separation requirements with a site restriction of 30.2 kilometers (18.8 miles) southwest to avoid a short-spacing to Station WALD-FM, Channel

265A, Walterboro, South Carolina. The coordinates for this allotment are North Latitude 32-03-16 and West Longitude 81-14-25. The counterproposal filed by Pooler Broadcasters requesting the allotment of Channel 263A to Pooler, Georgia, was dismissed at the request of the counterproponent. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-445, adopted May 13, 1988, and released June 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Hardeeville, South Carolina, is revised by deleting Channel 266A and adding Channel 266C2.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15173 Filed 7-5-88; 8:45 am]

BILLING CODE 5710-01-M

47 CFR Part 73

[MM Docket No. 87-276; RM-5714]

Radio Broadcasting Services; Agana, GU

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270C2 to Agana, Guam, as its fifth FM service, at the request of Serafin M. Dela Cruz. With this action, this proceeding is terminated.

BEST COPY AVAILABLE

DATES: Effective August 12, 1988: The window period for filing applications on Channel 270C2 will open on August 15, 1988, and close on September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-278, adopted May 17, 1988, and released June 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Agana, Guam, Channel 270C2 is added.

Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15158 Filed 7-5-88; 8:45 am]

BILLING CODE 4712-01-M

47 CFR Part 73

(MM Docket No. 86-113; RM-5163, RM-5198 & RM-5457)

Radio Broadcasting Services; California and Hollywood, MD and King George, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 275A to California, Maryland, as that community's first FM broadcast service. A notice was issued in response to three mutually exclusive petitions. The first was filed by Richard A. Myers seeking allocation of Channel 275A to Hollywood, Maryland. Tippetty Whicity Communications Company requested the same channel be allocated to California, Maryland, King George

Associates filed a counterproposal requesting the allotment of Channel 275A to King George, Virginia. The three communities are mutually exclusive and no other channel is available for any of the communities. California, Maryland (census designated place) with a population of 5,770, is a significantly larger community than Hollywood, Maryland, with a population of 300 or King George, Virginia, with a population of 200. The population figures were extracted from the 1985 Rand McNally Commercial Atlas and Marketing Guide. Based on population and service received, we have allocated Channel 275A to California, Maryland. The coordinates used for 275A at California are 38-20-48 and 76-34-08. With this action, this proceeding is terminated.

DATE: Effective August 15, 1988: The window period for filing applications will open on August 16, 1988, and close on September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-113, adopted June 1, 1988, and released June 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—(AMENDED)

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maryland is amended by adding Channel 275A at California.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15184 Filed 7-5-88; 8:45 am]

BILLING CODE 4712-01-M

47 CFR Part 73

(MM Docket No. 87-529; RM-5001)

Radio Broadcasting Services; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM channel 298A for Channel 221A at Traverse City, Michigan, in response to a petition filed by Fabiano-Strickler Communications, Inc. In accordance with section 316(a) of the Communications Act of 1934, as amended, we have modified the license of Station WCCW-FM to specify operation on Channel 298A in lieu of Channel 221A. The coordinates for Channel 298A are 44-46-11 and 85-41-22. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-529, adopted May 20, 1988, and released June 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by deleting Channel 221A and adding Channel 298A at Traverse City.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15109 Filed 7-5-88; 8:45 am]

BILLING CODE 4712-01-M

47 CFR Part 73

(MM Docket No. 87-457; RM-5874)

Radio Broadcasting Services; Whitehall, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 273A to Whitehall, Michigan in response to a petition filed by Pyramid Broadcasting, Inc. Petitioner filed comments reaffirming its interest in the channel. No other comments were received. Canadian concurrence has been obtained for the allotment of Channel 273A at Whitehall at coordinates 43-24-24 and 86-20-42. With this action, this proceeding is terminated.

DATES: Effective August 15, 1988: the window period for filing applications will open on August 16, 1988, and close on September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-457, adopted May 25, 1988, and released June 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—(AMENDED)

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by adding Channel 273A at Whitehall.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15156 Filed 7-5-88; 8:45 am]

BILLING CODE 4712-01-M

47 CFR Part 73

(MM Docket No. 88-18; RM-6109)

Radio Broadcasting Services; Waite Park, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 279A to Waite Park, Minnesota, as that community's first FM broadcast service, in response to a petition filed by Waite Park Broadcasting Company. The coordinates for Channel 279A at Waite Park are 45-33-18 and 94-13-36. With this action, this proceeding is terminated.

DATES: Effective August 15, 1988: The window period for filing applications will open on August 16, 1988, and close on September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-18, adopted May 25, 1988, and released June 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—(AMENDED)

The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Minnesota is amended by adding Channel 279A at Waite Park.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15160 Filed 7-5-88; 8:45 am]

BILLING CODE 4712-01-M

47 CFR Part 73

(MM Docket No. 87-458; RM-5901)

Radio Broadcasting Services; West Plains, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 273C2 for Channel 272A at West Plains, Missouri, in response to a petition filed by C M Broadcasting Company. In accordance with § 1.420(g) of the Commission's Rules, we have also modified the license for Station KKDY-FM, West Plains, to specify operation on Channel 273C2 in lieu of Channel 272A, with a site restriction 5.5 kilometers southwest of West Plains. The coordinates used for Channel 273C2 are 36-43-03 and 91-54-38. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-458, adopted May 17, 1988, and released June 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Missouri is amended by deleting Channel 272A and adding 273C2 at West Plains.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15172 Filed 7-5-88; 8:45 am]

BILLING CODE 4712-01-M

47 CFR Part 73

(MM Docket No. 87-273; RM-5922)

Radio Broadcasting Services; Ormond-By-The-Sea, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239A to Ormond-By-The-Sea, Florida, as its first FM channel at the request of Miller Management Group, Inc. Coordinates for Channel 239A are 29-20-48 and 81-04-00. With this action, this proceeding is terminated.

DATES: Effective August 15, 1988; the window period for filing applications will open on August 16, 1988, and close on September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-273, adopted June 8, 1988, and released June 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida is amended by adding Channel 239A at Ormond-By-The-Sea.

Federal Communications Commission.
Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15161 Filed 7-5-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

(MM Docket No. 87-350; RM-5812 and RM-6145)

Radio Broadcasting Services; Millinocket and Lincoln, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 235C2 for Channel 249A at Millinocket, Maine, in response to a petition filed by Katahdin Communications, Inc. We shall also modify the license of Station WSYF-FM to specify operation on Channel 235C2 in accordance with § 1.420(g) of the Rules, since no other party expressed an interest in the channel. Canadian concurrence has been obtained for this allotment. The coordinates for Channel 235C2 at Millinocket are 45-40-26 and 68-43-14. In response to a counterproposal filed in this proceeding by Con Brio Broadcasting, Inc., we shall allocate Channel 289C2 to Lincoln, Maine. In accordance with § 1.420(g) of the Rules we have also modified the license of Station WGUY-FM, to specify operation on Channel 289C2 in lieu of Channel 257A. Canadian concurrence has been obtained for the allotment of Channel 289C2 at Lincoln. The coordinates for Channel 289C2 are 45-20-34 and 68-30-25. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-350, adopted June 1, 1988, and released June 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended for Maine by removing Channel 249A at Millinocket and adding Channel 235C2, and by removing Channel 257A at Lincoln and adding Channel 289C2.

Federal Communications Commission.
Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15163 Filed 7-5-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

(MM Docket No. 88-13; RM-6110)

Radio Broadcasting Services; Paynesville, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 255C2 to Paynesville, Minnesota, as that community's first FM broadcast service, in response to a petition filed by Paynesville Broadcasting Company. The coordinates for Channel 255C2 at Paynesville are 45-22-48 and 94-42-48. With this action, this proceeding is terminated.

DATES: Effective August 12, 1988; the window period for filing applications will open on August 15, 1988, and close on September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-13, adopted May 17, 1988, and released June 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Minnesota is amended by adding Channel 255C2 at Paynesville.

Federal Communications Commission.
Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15155 Filed 7-5-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

(MM Docket No. 85-158; RM-4938, RM-5403 and RM-5808)

Radio Broadcasting Services; Claremore, Locust Grove and Nowata, OK and Barling, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for reconsideration filed by William R. Williams, Trustee in Bankruptcy, licensee of Station KNFB, Nowata, Oklahoma, and Moran Broadcasting Company, directed against the action in the Report and Order in this proceeding allotting Channel 233A to Claremore, Oklahoma. Specifically, this document allots Channel 284A to Claremore and Channel 233A to Locust Grove. The Report and Order had allotted Channel 233A to Claremore and Channel 284A to Locust Grove, and substituted Channel 233C2 in lieu of Channel 233A at Barling. In order to allot Channel 233A at Claremore, it was necessary for Station KNFB to relocate its transmitter site. Inasmuch as the present licensee of Station KNFB would not honor the earlier agreement to relocate its transmitter site, it was necessary to substitute Channel 284A in lieu of Channel 233A at Claremore in order to avoid a short-spacing with Station KNFB. The Commission affirms its policy of not requiring a station to involuntarily relocate its transmitter site. In this regard, the Commission also notes that any such agreement between the parties is not binding on the Commission and an aggrieved party may seek its remedy in a local forum. The Commission rejects arguments by the proponent of Channel 233A at Claremore concerning the preferability of the Channel 233A allotment and the timeliness of the petition for reconsideration. Finally, this document

affords the applicants for the Claremore and Locust Grove allotments an opportunity to amend their applications to specify the new channel without loss of cut-off protection. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 85-158, adopted May 26, 1988, and released June 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Oklahoma by removing Channel 233A and adding Channel 284A at Claremore.

3. Section 73.202(b), the Table of FM Allotments, is amended under Oklahoma by removing Channel 284A and adding Channel 233A at Locust Grove.

Federal Communications Commission.

Bradley P. Holmes,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-15162 Filed 7-5-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-08; Notice 2]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Final rule.

SUMMARY: This rule upgrades the safety belt requirements for new trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating of more than 10,000 pounds. Specifically, this rule:

1. Standardizes the buckle release mechanism for safety belts used in those vehicles;

2. Requires that the safety belts in these vehicles must be equipped either with an emergency locking retractor or with an automatic locking retractor that has certain features to prevent it from progressively tightening the belt around the wearer; and

3. Requires that retractors in these vehicles must be attached to the seat structure that moves, if the retractor is an automatic locking retractor and if the seat at which the safety belt system is installed has some type of suspension system for the seat.

These changes will make the safety belt systems in heavy vehicles more comfortable and convenient to use, which in turn should promote the use of safety belts in those vehicles. This rule will also assist drivers of those vehicles in complying with the Office of Motor Carrier Standards' regulation requiring safety belt use in trucks and buses engaged in interstate commerce and with the mandatory safety belt use laws being adopted by the States.

DATES: Effective date: The changes made in this rule become effective January 3, 1989. Vehicles manufactured on or after September 1, 1990, must be certified as complying with these changes.

Petitions for reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA not later than August 5, 1988.

ADDRESS: Petitions for reconsideration of this rule should refer to the docket and notice number set forth at the beginning of this notice and should be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-2284).

SUPPLEMENTARY INFORMATION.

Background

Since January 1, 1972, Federal Motor Vehicle Safety Standard No. 208,

Occupant Crash Protection (49 CFR 571.208) has required vehicle manufacturers to install safety belt systems in heavy vehicles (i.e., trucks, buses, and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating of more than 10,000 pounds). The safety belts required in those vehicles have had to meet all of the strength requirements set for belt systems in passenger cars and light trucks, buses, and MPV's (those with a gross vehicle weight rating of 10,000 pounds or less). However, the safety belts required in heavy vehicles have not had to meet several requirements for lighter vehicle safety belt systems that make the safety belts easier to use.

There are substantial data showing that occupants of heavy vehicles, particularly heavy trucks, face a significant risk of death and injury in vehicle crashes. For instance, there are approximately 1000 deaths annually of heavy vehicle occupants (*Heavy Truck Safety Study*, DOT HS 807 109). Total or partial ejections, which could be substantially reduced by increased safety belt usage, accounted for about 30 percent of all the heavy vehicle fatalities. The agency estimates that about 43,000 injuries occur in heavy vehicles annually (*Heavy Truck Safety Study*, DOT HS 807 109).

A study entitled "Heavy Truck Occupant Protection" (DOT-HS-806-369) has found that impacts with the steering wheel assembly, as well as ejection and entrapment, are the primary sources of injuries and fatalities to drivers of heavy trucks. This study concluded that safety belts could have reduced the severity of the injuries in as many as 40 to 60 percent of the crashes. Other research studies of heavy vehicle crashes, such as "Study of Heavy Truck Occupant Protection: Accident Data Analyses" (DOT-HS-806-428), have also recommended developing ways of improving safety belt usage in heavy vehicles as a means of improving occupant safety in those vehicles.

Surveys of belt usage among heavy truck drivers have found usage to be as low as 6.2 percent, which is substantially below the national average for passenger car drivers. Surveys of heavy vehicle drivers have noted several behavioral and vehicle design-related reasons for low belt use among heavy truck drivers. Results of any analysis by the Transportation System Center in 1983 of surveys conducted by the Private Truck Council of America and the International Brotherhood of Teamsters revealed that drivers were concerned about the cleanliness of safety belts as well as the design of the

belt system. About 25 percent of those who reported that they did not use the safety belts cited dirty belts as the most important reason for non-use of the belts.

Belts in heavy vehicles were often too dirty to wear because most safety belts in heavy vehicles on the road today are not equipped with retractors. Absent a retractor, the belts can dangle from the seat, become tangled in the seat structure, and become soiled with dirt and grease on the vehicle's floor. Properly working retractors would eliminate these problems.

By way of contrast, a survey by ADTECH (Contract DTNH 22-81-C-07075) found that 75 percent of the United Parcel Service (UPS) drivers who were observed for the survey were wearing their safety belts. UPS has a company policy requiring drivers to wear their belts, under penalty of company-imposed sanctions for failure to do so. UPS also equips its trucks with an upgraded safety belt system that includes retractors mounted on the seat pan and stand-up buckles for easy one-handed operation. The combination of company policy and improved belt systems resulted in very high belt usage.

Notice of Proposed Rulemaking

The agency proposed several changes to the requirements for belt systems in heavy vehicles in a notice of proposed rulemaking (NPRM) published on May 30, 1985 (50 FR 23041). First, that notice proposed that emergency locking retractors (ELR's) be at each outboard seating position in heavy trucks and MPV's and at the driver's seat in heavy buses. Retractors ensure that the belts will not experience cleanliness problems and help ensure that the belts will be readily accessible to vehicle occupants. With respect to the type of retractor, the notice proposed to require ELR's, because they are already required in passenger cars (*see* 49 CFR 571.208; January 8, 1981). This requirement was specified primarily because ELR's permit more freedom of movement than do automatic locking retractors (ALR's). NHTSA tentatively concluded that the proposed requirement for ELR's in heavy vehicles would avoid the typical problems posed for belt occupants by ALR's. With current designs of ALR's, the safety belt "cinches down" (becomes progressively tighter) around an occupant as the vehicle travels over potholes or other jarring surfaces of the road. This "cinching down" effect can discourage continued belt use. To provide the maximum benefits, the notice proposed to also require that ELR's be mounted to the seat frame above any air suspension mechanism used in the vehicle seat.

Second, the notice proposed to require that heavy vehicles' belts have a standardized push button release, just as all safety belt systems in light vehicles are required to have a standardized push button release. Many heavy vehicles currently have flap-type releases such as are found on airplane safety belts. The NPRM explained that the flap-type releases are more susceptible to accidental opening during a crash or rollover, for example, by being caught in a sleeve. Additionally, if there is a need to extricate a belted driver from a vehicle after a crash, a standardized release mechanism would eliminate any potential confusion about how to release the safety belt. Accordingly, NHTSA tentatively concluded that safety belt use in heavy vehicles could be increased if the safety belt release mechanisms in heavy vehicles were the same as those in lighter vehicles.

Finally, the NPRM sought data from commenters to help the agency make a determination of whether to propose amending the anchorage strength requirements for heavy vehicles. Presently, safety belt anchorages in heavy vehicles are required to withstand a 5,000-pound load. However, the European Economic Community has amended its safety belt anchorage requirements downward, lowering them to a 1,517-pound load for lap/shoulder belts and 2,495 pounds for lap belts. The NPRM asked for data from all interested parties on the effects of such a change in the United States driving environment.

The Comments and the Agency Response

The agency received 23 comments in response to this NPRM, all of which were considered in developing this final rule. The most significant points raised in the comments are addressed below, along with the agency's response to the comments. For the convenience of the reader, these issues are set forth in the same order they were presented in the NPRM.

1. Retractors

Five commenters supported the proposal to require ELR's on heavy vehicle safety belts. These commenters were the International Brotherhood of Teamsters (Teamsters), the American Petroleum Institute (API), the California Highway Patrol, the Insurance Institute for Highway Safety (IIHS), and Chrysler Corporation (Chrysler). Chrysler stated that it already equips all of its heavy vehicles with ELR's only.

On the other hand, 11 commenters objected to the proposal to require ELR's

in heavy vehicles. Navistar, formerly called International Harvester, stated that it agreed with the agency's proposal to increase belt usage in heavy vehicles by requiring that safety belts in those vehicles be equipped with retractors. However, Navistar stated its opinion that ELR's would not be acceptable for all heavy truck applications and stated that it installs primarily non-locking retractors (NLR's) in its heavy vehicles. Mack Trucks, Inc., Freightliner, and Volvo White offered comments that raised essentially the same points as Navistar's. Ford, the American Seat Belt Council (ASBC), and the Motor Vehicle Manufacturers Association (MVMA) commented that they agreed with the proposal to require retractors on heavy vehicle safety belts, but they did not support the proposal to specify ELR's. Ford, ASBC, and MVMA alleged that such a requirement would be unnecessarily design restrictive, especially when there are questions about the comfort of webbing-sensitive ELR's in some heavy truck applications. PACCAR also questioned the acceptability of ELR's in all heavy truck applications, and asserted that new designs of ALR's would alleviate the occupant comfort problems associated with older designs of ALR's.

Indiana Mills & Manufacturing, Inc. (IMMI) commented that the proposed requirement for ELR's in heavy vehicles would present problems for the safety belts at the driver's seat in large school buses. Specifically, IMMI stated that two States (Washington and Illinois) currently require that *only* ALR's be installed on the safety belts for the driver's seat in school buses. These State requirements would be preempted if NHTSA were to require *only* ELR's in heavy vehicles. The National School Transportation Association (NSTA) stated that the May 1985 National Conference on School Transportation adopted a resolution supporting *only* ALR's for the safety belts installed at the driver's seat of large school buses. According to NSTA, the reasoning behind this action was that it is believed to be more important to keep the school bus driver in his or her seat at all times, to permit the driver to retain control of the vehicle, than to ensure the driver's comfort. Hence, NSTA opposed the proposal for ELR's to the extent that it would mandate ELR's for the driver's seat in school buses. The Blue Bird Body Company (Blue Bird), a school bus manufacturer, also opposed the proposed ELR requirement. Blue Bird stated that it currently provides NLR's as standard equipment and ALR's as optional equipment on the safety belts

at the driver's position in large school buses. Blue Bird alleged that the primary function of the safety belts for the driver of school buses is to keep the driver in position at all times, and that ELR's might fail to achieve this purpose.

In response to these comments, NHTSA has thoroughly reexamined its proposed requirement for ELR's in heavy vehicles. The agency concludes that a requirement for safety belt retractors in these vehicles would be likely to increase safety belt usage, by keeping the belts clean and reasonably accessible. Therefore, this rule adds a requirement that the safety belts in such vehicles be equipped with retractors.

With respect to the issue of requiring a particular type of retractor, NHTSA had proposed that ELR's be required because those retractors are generally the most comfortable for belt occupants. In proposing that ELR's be required, the agency in effect proposed eliminating the NLR's that several commenters stated were standard equipment on their heavy vehicle safety belts. This proposal was based on the fact that NLR's must be snugly adjusted to provide adequate crash protection. Drivers of heavy trucks who are familiar with the ELR's in their family cars might not snugly adjust the belt in their heavy trucks, because that step is not necessary if the belt has an ELR. If this were to occur, any excess slack in the NLR belt would play out in a crash, potentially allowing the driver to move out of his or her seat and subjecting the driver to an increased risk of injury. To preclude such results, this final rule adopts the proposed prohibition of NLR's for the safety belts in heavy trucks.

On the other hand, the agency explained the proposed prohibition of ALR's was based on the tendency of those retractors to become uncomfortable because of progressive tightening or "cinching down." The agency had no additional reasons for proposing to prohibit ALR's on heavy vehicle belts. At the time the agency proposed to require ELR's only, however, it was not aware of either a requirement by some States that the driver's seat in heavy school buses be equipped with an ALR or the existence of newer ALR designs with anti-cinch capability. Since NHTSA was unaware of the States' requirement for an ALR on the driver's seat of a school bus, the agency did not consider whether it was necessary or desirable to preempt those State regulations by issuing a Federal regulation. Executive Order 12812 compels NHTSA to consider the federalism implications of this final rule, now that the agency is aware of those

State regulations. After considering the federalism implications, the agency has determined that it is not necessary to preempt these State requirements, for the reasons set forth below.

With respect to the issue of newer ALR designs with anti-cinch capability, NHTSA further investigated these newer designs by visiting three retractor manufacturers (IMMI, TRW, and Allied) to review their anti-cinch ALR programs. As a result of the information gained from reviewing these programs, NHTSA has concluded that the cinching problem may be solved for ALR's. Therefore, this rule has been expanded from the proposal, in order to permit ALR's with anti-cinch capability to be installed in heavy vehicles. For the purposes of this rule, anti-cinch capability for an ALR is determined by examining the working of the retractor after it has locked after the initial adjustment of the safety belt. After this initial adjustment and with the webbing extended to 75 percent of its maximum extension, an ALR with anti-cinch capability will *not* retract webbing to the next locking position until at least $\frac{1}{4}$ of an inch of webbing has been retracted into the retractor.

These requirements were derived from existing requirements in Standard No. 209. Section S4.3(i) of Standard No. 209 currently specifies that the webbing of a seat belt assembly equipped with an ALR "shall not move more than 1 inch or 25 millimeters between locking positions of the retractor." This requirement ensures that occupants of seating positions with ALR's will not move forward more than one inch in a crash before the ALR locks. However, Standard No. 209 does not set forth any required minimum distance for the webbing to move between locking positions on an ALR. Absent a provision for a minimum distance of webbing travel between locking positions on ALR's, those retractors have exhibited the tendency to "cinch down" on occupants, as explained above and in the NPRM.

NHTSA believes that anti-cinch capability in ALR's can be defined by incorporating a minimum distance of webbing travel between locking positions on ALR's. The agency started from the premise that this minimum distance should not compromise the one inch maximum distance of webbing travel that is needed for adequate occupant crash protection. NHTSA sought to establish a minimum distance requirement that was not too close to the one-inch maximum distance requirement, in recognition of the item-to-item variations inherent in mass-produced goods. Setting a minimum

distance requirement too close to the one-inch maximum limit could result in manufacturers being forced to scrap a larger than normal percentage of their ALR's because those ALR's exceeded the one-inch maximum limit. On the other hand, NHTSA sought to establish a minimum distance requirement that was sufficiently close to the one-inch limit to minimize instances of "cinch down." The agency has concluded that the 3/4-inch minimum established by this rule represents the most appropriate balance of these competing interests.

The 75 percent extension specified for determining compliance with this requirement is identical to the 75 percent extension already specified in S5.2(i) of Standard No. 209 for determining whether ALR's comply with Standard No. 209. NHTSA believes that it is appropriate to measure compliance with this new 3/4-inch minimum webbing travel requirement for ALR's in Standard No. 208 under the same conditions currently specified for determining compliance with the existing 1-inch maximum webbing travel requirement for ALR's in Standard No. 209.

2. Mounting Position of Retractors

The NPRM proposed that ELR's would have to be mounted to the seat frame above any air suspension mechanism used in the vehicle's seat. This proposed requirement was intended to ensure that the belt would not tighten around the wearer, and possibly discourage continued use, whenever the suspension seat moved.

The Teamsters supported this proposal because it would help increase belt comfort for the wearer. MVMA stated that it supported the intent of the proposal, but that it believed the proposed wording would result in unintended restrictions in retractor location for some suspension seat designs. MVMA suggested that the requirement be reworded to specify that the retractors be mounted on the seat structure that moves with the seat occupant as the suspension system functions. MVMA also stated that the proposed retractor location requirements did not appear to address the possible future installation of lap/shoulder belts in heavy vehicles. This point was echoed in the comments of IMMI and Volvo White, both of which stated that the proposed retractor location requirements would restrict designs of lap/shoulder belts for heavy vehicles. ASBC commented that advanced belt systems are being developed for heavy vehicles, and suggested that NHTSA not preclude installation of such belt systems by

requiring retractors to be mounted on suspension seat frames. Freightliner commented that the EEC allows anchorages for lap/shoulder belts with ELR's that are installed in heavy vehicles to be mounted on the cab structure. Freightliner stated that the proposed retractor location requirements would conflict with the EEC requirement.

Bostrom Seating, Inc. (Bostrom) and Mack asked whether the agency intended to cover only seats with air suspension, as proposed in the NPRM, or whether the agency meant to address all types of suspension seats in heavy trucks, which would include seats that use steel or rubber spring suspensions. Volvo White also commented that the proposed location requirement was too restrictive. According to this commenter, not all heavy vehicle seats are pedestal designs, where it might be appropriate to locate retractors on the seat structure. Some heavy vehicle seats incorporate risers integral to the cab of the heavy truck. According to Volvo White, these types of seats would have different design requirements, and it might be inappropriate to locate the retractors on the seat structure.

In response to these comments, the agency has reevaluated its proposal. NHTSA agrees with the commenters that the proposed language was drafted to address lap belts only, and that it did not fully consider the possibility that some manufacturers would install lap/shoulder belts in heavy vehicles. To accommodate this possibility, this final rule imposes retractor location requirements only for:

1. Lap belts that use ALR's; and
2. The pelvic portion of a dual retractor lap/shoulder belt assembly, if the retractor for the pelvic portion is an ALR. This rule does not impose any retractor location requirements for lap belts that use ELR's or for ELR lap/shoulder belt assemblies. Hence, manufacturers that are developing these types of belt systems for heavy vehicles will not have to change the planned location of the retractor in response to this rule.

There are several reasons why this rule does not adopt the proposed location requirements for ELR's used at a seating position with an air suspension seat. First, such a requirement does not appear necessary in many instances. In general, ELR's do not cinch down on the belt wearer in most applications. Further, some new truck cab designs will have seat risers integral to the cab structure with the seat cantilevered from the riser. A requirement that the retractors for the

belts of such seats be located on the seat structure would be unnecessary, because the belts would not cinch down on the wearer even if the retractors were on the riser or some other part of the cab structure. Additionally, there are now available some electrically activated ELR designs that would prevent the retractor from tightening, even if the retractor were located on the cab structure.

Second, a location requirement for ELR's could preclude manufacturers from exploring some innovative belt system designs that are now being considered for heavy vehicles. For instance, the agency has learned that lap/shoulder belts with ELR's are being evaluated for installation in heavy vehicles, some of which would require the lap belt retractor to be attached to the cab structure. The agency believes that these innovative designs could offer comfort and occupant protection that would be at least as good as that offered by systems that complied with the proposed retractor location requirements.

Accordingly, this rule specifies no location requirements for ELR's used on suspension seats in heavy trucks. NHTSA assumes that vehicle manufacturers will consider wearer comfort when determining the appropriate location of the ELR's, and that manufacturers will not position ELR's in locations that would make the safety belts uncomfortable for wearers. The agency will reexamine this question if these assumptions prove to be incorrect.

With respect to ALR's, the agency has decided that this final rule should include retractor location requirements. As noted in the NPRM, ALR's are not permitted at the front outboard seating positions in passenger cars, because of the wearer comfort problems that have been associated with those belts. If an ALR were used in a single retractor lap/shoulder belt, the retractor would lock when the belt was buckled, thereby preventing the user from leaning forward to reach vehicle controls, items in the glove box, and so forth. Although this rule permits only ALR's with anti-cinch capability to be installed in heavy trucks, NHTSA believes that retractor location requirements are still necessary for seats that have suspension mechanisms. If an ALR were located on the cab structure of a cab with suspension seats, the movement of the suspension seats, which can be different from the movement of the cab structure, would increase the likelihood of belts cinching down on the wearer. With cab-mounted ALR's for suspension seats,

even the anti-cinch capability of the ALR's permitted by this rule would not completely eliminate the likelihood that belt wearers would experience some "cinch down" and discomfort because of the belt tightening around the wearer. To achieve this rule's goal of enhancing belt use in heavy vehicles, it is necessary to eliminate the likelihood of "cinch down" for belt users, by specifying location requirements for ALR's used on suspension seats.

Bostrom and Mack correctly pointed out in their comments that the problems that led the agency to propose retractor location requirements for seats with air suspension systems would occur in seats with other types of suspension systems, including rubber or steel spring suspension systems. Therefore, these retractor location requirements for ALR's apply to all vehicles where an ALR is installed at a subject seat that has its own suspension system.

The agency has also determined that the language suggested by MVMA in its comments effectuates the agency's intent in a less restrictive manner. The NPRM proposed that the retractors be mounted "on the seat assembly and above any adjustment or air-suspension mechanism." MVMA stated that on some designs of suspension seats, the retractor could be located so as to minimize the likelihood of "cinching down," but the retractor would be adjacent to any adjustment or air-suspension mechanism, not "above" it. Further, MVMA correctly noted that a retractor would function as intended by the NPRM if it were mounted below the seat's fore-and-aft track, but that this position also would be prohibited by the requirement that the retractor be mounted "above" any adjustment mechanisms. MVMA suggested that the language be revised to permit the locations described above, while achieving the agency's intent, by specifying that retractors be located "on the seat structure that moves with the seat occupant as the suspension system functions." This final rule adopts MVMA's suggested language.

3. Standardize Buckle Release

The NPRM proposed to require that the belts in heavy vehicles be equipped with a push button release, which is required for all safety belt systems in light vehicles. This proposal was supported by Chrysler, Mack, Volvo White, ASBC, IHHS, Ford, the Teamsters, NHTA, Blue Bird, California Highway Patrol, and Freightliner. IMMI also supported the proposal, but stated that it assumed the "push button release" would permit the continued use of slide-button releases. Section S7.2(c) of

Standard No. 208 requires that a seat belt assembly shall have a latch mechanism that "releases at a single point by a pushbutton action." This requirement has applied to passenger cars since 1972 and to most light trucks and multipurpose passenger vehicles since 1976. Some releases that comply with the requirements of S7.2(c) could be described as "slide-button releases." On the other hand, some designs that could be described as "slide-button releases" would not comply with S7.2(c), because they would not release by a "pushbutton action." If IMMI is uncertain whether the release mechanism that it called a "slide-button release" complies with the requirements of S7.2(c), it should request an interpretation of that section with respect to its release mechanism, and enclose pictures and diagrams of the release mechanism with the request for interpretation.

GM commented that it uses a push button release on all of its vehicles, so it would not be affected by the adoption of the proposed provision. However, GM stated its belief that such a requirement would be design-restrictive. To avoid this, GM suggested that other releases be permitted if they include a means to ensure against inadvertent release. Any standardization effort is necessarily design-restrictive. Accordingly, standardization efforts are undertaken only when the benefits of standardization outweigh the disadvantages of restricting alternative designs. In this instance, NHTSA has concluded that the benefits of having a standardized release mechanism in all types of vehicles, in terms of encouraging use and eliminating confusion about how to release the buckle in an emergency, are sufficiently compelling to justify the prohibition of other types of release mechanisms in heavy vehicles.

Beam's, a heavy vehicle safety belt manufacturer, commented that there would be no advantage to push button buckles, and that most of its customers prefer flap-type buckles, even though there is no price difference between push button and flap-type buckles. Similarly, API commented that there is insufficient information to provide that push button buckles are superior to flap-type buckles, and that flap-type buckles are preferred by some drivers. NHTSA does not question the assertion that some drivers prefer flap-type buckles. Further, while the NPRM explained NHTSA's reasons for believing that there may be safety advantages associated with pushbutton release buckles, the NPRM also explicitly

acknowledged that there were insufficient data to show that push button release buckles have a marked safety advantage over flap-type buckles. However, this rulemaking was initiated to improve the extremely low belt use rate in heavy vehicles. The agency has concluded that a requirement that safety belts in heavy vehicles have the same type of release mechanism that is installed in the driver's personal vehicle will eliminate any confusion or uncertainty about how to release the belts. Eliminating any confusion or uncertainty should increase belt use in heavy vehicles, and increased belt use would enhance vehicle safety.

ATA commented that the standardized push button release was a good idea, but it was concerned that truck drivers wearing work gloves or mittens might find it difficult to release their belts. NHTSA knows of no test results to support this position, nor have any truck drivers raised this complaint. Some NHTSA personnel attempted to open several different buckles while wearing heavily padded ski gloves, and did not encounter any difficulties in releasing the buckles. Therefore, NHTSA has no reason to believe that truck drivers wearing gloves or mittens will encounter any problems releasing their safety belts.

After reconsidering its proposal and the comments received thereon, the agency has adopted in this rule the proposed requirement that the safety belts in heavy vehicles have a push button release mechanism.

4. Safety Belt Loads

The NPRM referred to the EEC action lowering the anchorage strength requirements for safety belts in heavy vehicles, but explained that the agency had insufficient data on the effects of such a change in the U.S. driving environment. Accordingly, the notice requested data from all interested parties on this issue.

In response to this request, Chrysler and GM commented that they had no data on belt loads. Volvo White, Ford, ASBC, and the California Highway Patrol believed that a reduction in the anchorage strength requirements for these vehicles would be appropriate, but offered no data to support this belief. MVMA stated that it had no data on the subject, but recommended that this area be further investigated. ATA commented that a task force of the Society of Automotive Engineers (SAE) was examining the issue of the appropriate anchorage strength requirements for these vehicles. Until that task force completes its work, the

ATA said, the appropriate anchorage strength requirements for heavy vehicles will not be known, so heavy vehicle manufacturers should continue to comply with the existing 5,000-pound load.

Navistar referred to one crash it conducted "some years ago" in which the belt measured in a 27,000-pound straight truck was 533 pounds. Freightliner referred to some German crash tests of a truck moving at 21 kilometers per hour (kmh), which corresponds to about 12.6 miles per hour (mph), into various passenger cars moving at 42 kmh (about 24.2 mph). These crashes yielded a truck deceleration of about 5 g's, which Freightliner interprets as showing that the anchorage strength requirements for heavy vehicles could be lowered. The agency notes that the Navistar information consisted of a single crash, while the data referred to by Freightliner represented a single European-size truck crashing into European-size passenger cars at a single speed.

After evaluating these comments, NHTSA has concluded that it still lacks sufficient data to propose lowering heavy vehicle anchorage strength requirements. The agency will continue to gather data in this area. The agency will consider initiating rulemaking on this topic if and when there are sufficiently probative data on the effects of lowering anchorage strength requirements in heavy vehicles.

5. Other Comments on Buckle Release Accessibility and Ease of Operation

In their comments, Duke Power Company and Mobil Oil asked that the final rule include a requirement that the buckle release mechanism be mounted on the inboard side of the vehicle. Duke Power commented that such a requirement would ensure the buckle could be released if the vehicle was in a crash where it was hit on the driver's side. IIHS commented that the preamble to the NPRM referred to UPS equipping all its trucks with stand-up buckles for easy one-hand operation, and asked that the final rule include a requirement for all heavy vehicles to be equipped with stand-up buckles that allow one hand operation.

The agency does not believe there is a safety need to adopt these requested amendments. NHTSA notes that this rule does not prohibit manufacturers from equipping heavy vehicles with stand-up buckles or buckles on the inboard side of the vehicle, if consumers prefer those features. However, NHTSA is not aware of any data that show that buckles on the inboard side of the vehicle are safer than buckles on the

outboard side. In fact, one might argue that buckles on the outboard side could be released more quickly by rescue personnel in fire and other emergency situations, thus allowing a quicker rescue. Further, adoption of the requested amendments could serve to stifle innovative restraints system and seating system designs, at a time when the agency is seeking to increase safety belt use in heavy vehicles. Therefore, NHTSA has not adopted these requested amendments in this final rule.

6. Leadtime

The NPRM proposed to give one year of leadtime between the publication of the final rule and the effective date of the amendments. Comments were requested on this leadtime. MVMA stated that one year was too short a leadtime, although it did not explain the basis for its assertion. Further, MVMA did not indicate what length of time would be sufficient. Navistar suggested an 18-month leadtime, since it did not install ELR's on any of its heavy vehicles. It asserted that it would need 18 months to evaluate the available ELR's and incorporate acceptable ones into its vehicle production. Ford suggested a two-year leadtime. Ford commented that it could probably change from ALR's to ELR's, as proposed, on its vehicles that included retractors in about 18 to 20 months. However, Ford stated that some of its vehicles did not currently offer any retractors. On those vehicles, Ford commented that it might have to modify seat cushions and trim to make room for retractors, or to move the anchorages. For such vehicles, Ford commented that it would need about two years to make and test all the required changes. Volvo White indicated that it would need a three to five-year leadtime. This was based on 1.5 to 2 years to redesign its seats to comply with the proposed retractor location requirements on suspension seats, another 1 to 1.5 years to redesign its vehicles to incorporate the redesigned seats, and then another 0.5 to 1 year to complete its certification testing of the redesigned vehicles. Volvo White also included a 0.5 to 1-year period to allow it to use up existing supplies of old seats.

After reconsidering this issue, NHTSA has concluded that the proposed one-year leadtime was too short, primarily because that length of time may be needed just to ensure that the vehicle manufacturers can evaluate retractors and obtain adequate supplies of those retractors. The vehicle manufacturers will also have to evaluate the seat designs in each of their heavy vehicle models and perhaps change some of the

retractor locations. NHTSA believes this could be accomplished in approximately 18 months and that this evaluation could be undertaken simultaneously with the retractor evaluation. To account for the uncertainties in the agency estimates, this final rule provides a two-year leadtime for the vehicle manufacturers. This means that heavy vehicles manufactured on or after September 1, 1990 must comply with the requirements of this rule. The agency has concluded that the Volvo White estimate of three to five years is excessive, because it was premised upon that company scrapping all its existing seat designs and lap/shoulder belt restraint system designs. Since neither of those actions is required by this rulemaking, the estimate is not deemed reliable.

7. Costs

The NPRM stated NHTSA's estimates that this rule would cost the consumer about \$14 in 1982 dollars for ELR's at each seating position, based on a study of the belt system installed in a 1980 Citation. Since most heavy vehicles have two seating positions in the cab, the agency estimated incremental costs of installing ELR's would be about \$30 per heavy vehicle, which would result in total annual costs of between \$6 million and \$7 million. Incremental consumer costs for push button releases were expected to be less than 10 cents per vehicle and total estimated annual cost for push button release was estimated at about \$30,000. The NPRM asked for comments on these estimates.

Ford stated that the estimated costs were reasonable. Bostrom stated that the estimated costs were correct, if the intent was to have the retractor mounted on the seat support structure, not the seat cushion itself. Neither the proposal nor this rule requires the retractors to be mounted on the seat cushion, so the agency is treating Bostrom's comment as saying that the cost estimates in the proposal were accurate. Volvo White, on the other hand, stated that the cost estimates were too low. First, Volvo White did not believe the 1980 Citation was a good benchmark for estimating costs, because the sales volume for the 1980 Citation was more than two years' worth of heavy truck sales by all manufacturers. Second, Volvo White now equips some of its vehicles with NLR's, but consumers get a credit of \$20 per seating position if they order the truck without a retractor. According to Volvo White, ELR's cost more than NLR's, so the cost estimate for ELR's should be more than \$20 per seating position.

The agency has concluded that its estimate of costs was reasonable, and is not persuaded by Volvo White's assertions to the contrary. The difference in sales volume between the 1980 Citation and total heavy truck sales has no effect on NHTSA's cost estimate for ELR's. Retractor manufacturers use the identical parts for ELR's regardless of the vehicle type in which the ELR is ultimately installed. Thus, there is no inherent reason that an ELR to be installed in a heavy vehicle would cost any more or less than an ELR to be installed in a passenger car.

Volvo White's consumer credit of \$20 per seating position ordered without a retractor also does not suggest that the agency's cost estimate was inaccurate. These "delete option" credits are not necessarily directly related to the manufacturer's costs to provide the option. Volvo White did not provide any estimates of the costs it would incur if it were to provide ELR's in its heavy vehicles. NHTSA derived its cost estimate from an actual study of an ELR, and two manufacturers (Ford and Bostrom) commented that the cost estimates based on that study were reasonable. Since Volvo White did not provide any cost estimates of its own, and did not establish that NHTSA had somehow erred in its own cost estimates, the agency concludes that its previous cost estimates for ELR's was reasonable.

The agency has no study on which to base a cost estimate for the anti-cinch ALR's permitted by this rule. However, if manufacturers of anti-cinch ALR's want to compete with manufacturers of ELR's for the heavy vehicle market, NHTSA anticipates that the anti-cinch ALR's would be comparably priced. Thus, for the purposes of this rule, NHTSA estimates that the incremental costs of installing anti-cinch ALR's will be about \$30 per heavy vehicle, the same as ELR's.

Regulatory Impacts

NHTSA has examined the impacts of this rulemaking action and determined that this rule is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rule are so minimal that a full regulatory evaluation is not required.

As noted in the NPRM, most new vehicles manufactured today are equipped only with simple safety belt buckles with no retractors. As explained above, the incremental customer costs of requiring ELR's or anti-cinch ALR's

will be about \$14 per seating position, or about \$30 per heavy vehicle. Total estimated annual costs of requiring these retractors would be between \$6 million and \$7 million. The incremental customer cost for requiring a push button release for the safety belts is expected to add less than 10 cents to total vehicle cost, and will result in estimated annual costs of about \$30,000. These figures are far short of the \$100 million costs that result in a rule being classified as a major rule.

Based on the experience of the United Parcel Service in substantially increasing safety belt use by its employees, NHTSA believes that the requirements for retractors and push button release buckles are likely to raise safety belt use up to 15 to 20 percent. An increase in belt use to the 15 to 20 percent range could eliminate 40-60 fatalities annually and reduce the severity of from 8,000 to 12,000 injuries annually for heavy truck occupants. Since the safety belt use rate is unknown for drivers of heavy MPV's and buses, the agency cannot quantify the potential fatality and injury reduction for those vehicles.

NHTSA has also considered the effects of this rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Few, if any, of the heavy vehicle manufacturers are small entities. To the extent that these manufacturers experience a cost increase as a result of this rule, that increase will be minimal, as explained above. Likewise, small organizations and small governmental entities will not be significantly affected by this rule. Although those groups do purchase heavy vehicles, the potential price increases resulting from this rule will be minimal.

The agency has also analyzed this rule for the purposes of the National Environmental Policy Act, and determined that the rule will not have any significant impact on the quality of the human environment.

Finally, NHTSA has considered the federalism implications of this final rule, as required by Executive Order 12612. NHTSA is unaware of any existing State requirements that would be preempted by this rule. After considering this rule in accordance with the principles and criteria contained in Executive Order 12612, NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports. Motor vehicle safety. Motor vehicles. Rubber and rubber products. Tires.

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

\$571.208 Standard No. 208; Occupant crash protection.

2. Section 4.3 of Standard No. 208 is revised to read as follows:

S4.3 Trucks and multipurpose passenger vehicles, with GVWR of more than 10,000 pounds.

S4.3.1 Trucks and multipurpose passenger vehicles with a GVWR of more than 10,000 pounds, manufactured in or after January 1, 1972 and before September 1, 1990. Each truck and multipurpose passenger vehicle with a gross vehicle weight rating of more than 10,000 pounds, manufactured on or after January 1, 1972 and before September 1, 1990, shall meet the requirements of S4.3.1.1 or S4.3.1.2. A protection system that meets the requirements of S4.3.1.1 may be installed at one or more designated seating positions of a vehicle that otherwise meets the requirements of S4.3.1.2.

S4.3.1.1 First option—complete passenger protection system. The vehicle shall meet the crash protection requirements of S5 by means that require no action by vehicle occupants.

S4.3.1.2 Second option—belt system. The vehicle shall, at each designated seating position, have either a Type 1 or a Type 2 seat belt assembly that conforms to S571.209.

S4.3.2 Trucks and multipurpose passenger vehicles with a GVWR of more than 10,000 pounds, manufactured on or after September 1, 1990. Each truck and multipurpose passenger vehicle with a gross vehicle weight rating of more than 10,000 pounds, manufactured on or after September 1, 1990, shall meet the requirements of S4.3.2.1 or S4.3.2.2. A protection system that meets the requirements of S4.3.2.1 may be installed at one or more designated seating positions of a vehicle that otherwise meets the requirements of S4.3.2.2.

S4.3.2.1 First option—complete passenger protection system. The vehicle shall meet the crash protection requirements of S5 by means that require no action by vehicle occupants.

S4.3.2.2 Second option—belt system. The vehicle shall, at each designated seating position, have either a Type 1 or a Type 2 seat belt assembly that conforms to S571.209 of this Part and S7.2 of this Standard. A Type 1 belt assembly or the pelvic portion of a dual retractor Type 2 belt assembly installed at an outboard seating position shall include either an emergency locking retractor or an automatic locking retractor. An automatic locking retractor provided for one of these belt assemblies at an outboard seating position shall not retract webbing to the next locking position until at least ¾ inch of webbing has moved into the retractor. In determining whether an automatic locking retractor complies with this requirement, the webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. An automatic locking retractor that is used at an outboard seating position that has some type of suspension system for the seat shall be attached to the seat structure that moves as the suspension system functions.

3. Section 4.4 of Standard No. 208 is revised to read as follows:

S4.4 Buses.

S4.4.1 Buses manufactured on or after January 1, 1972 and before September 1, 1990. Each bus manufactured on or after January 1, 1972 and before September 1,

1990, shall meet the requirements of S4.4.1.1 or S4.4.1.2.

S4.4.1.1 First option—complete passenger protection system—driver only. The vehicle shall meet the crash protection requirements of S5, with respect to an anthropomorphic test dummy in the driver's designated seating position, by means that require no action by vehicle occupants.

S4.4.1.2 Second option—belt system—driver only. The vehicle shall, at the driver's designated seating position, have either a Type 1 or a Type 2 seat belt assembly that conforms to S571.209.

S4.4.2 Buses manufactured on or after September 1, 1990. Each bus manufactured on or after September 1, 1990, shall meet the requirements of S4.4.2.1 or S4.4.2.2.

S4.4.2.1 First option—complete passenger protection system—driver only. The vehicle shall meet the crash protection requirements of S5, with respect to an anthropomorphic test dummy in the driver's designated seating position, by means that require no action by vehicle occupants.

S4.4.2.2 Second option—belt system—driver only. The vehicle shall, at the driver's designated seating position, have either a Type 1 or a Type 2 seat belt assembly that conforms to S571.209 of this part and S7.2 of this standard. A Type 1 belt assembly or the pelvic

portion of a dual retractor Type 2 belt assembly installed at the driver's seating position shall include either an emergency locking retractor or an automatic locking retractor. An automatic locking retractor provided for one of these belt assemblies at the driver's seating position shall not retract webbing of the next locking position until at least ¾ inch of webbing has moved into the retractor. In determining whether an automatic locking retractor complies with this requirement, the webbing is extended to 75 percent of its length and the retractor is locked after the initial adjustment. An automatic locking retractor that is used at a driver's seating position that has some type of suspension system for the seat shall be attached to the seat structure that moves as the suspension system functions.

4. The introductory phrase of section S7.2 is revised to read as follows:

S7.2 Latch mechanism. A seat belt assembly installed in any vehicle, except an automatic belt assembly, shall have a latch mechanism—

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Issued on June 30, 1988.

Diane K. Steed,
Administrator.

[FR Doc. 88-15121 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-55-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Ninth Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of ninth meeting.

SUMMARY: The Nuclear Regulatory Commission will hold the ninth meeting of the High-Level Waste Licensing Support System Advisory Committee on July 20-21, 1988. The Committee, established under the Federal Advisory Committee Act, is tasked with developing recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). The Committee is attempting to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding.

DATE: The ninth meeting of the HLW Licensing Support System Advisory Committee will be held July 20-21, 1988.

ADDRESS: The location of the July 20-21, 1988, meeting of the HLW Licensing Support System Advisory Committee is the Best Western Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publication Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7211.

SUPPLEMENTARY INFORMATION: The ninth meeting of the HLW Licensing Support System Advisory Committee ("negotiating committee") is scheduled to include continued discussion of

substantive issues related to a high-level waste licensing support system.

Dated at Bethesda, Maryland, this 1st day of July 1988.

For the Nuclear Regulatory Commission,

Michael T. Lesar,
Acting Chief, Regulatory Publications Branch,
Division of Freedom of Information and
Publication Services, Office of
Administration and Resources Management.
[FR Doc. 88-15242 Filed 7-5-88; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-4]

Proposed Alteration of Sault Ste. Marie Additional Control Area, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the description of the Sault Ste. Marie, MI, Additional Control Area (ACA). The Sault Ste. Marie nondirectional radio beacon (RBN) has been decommissioned and the current description which is based, in part, on the RBN is no longer correct.

DATES: Comments must be received on or before August 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88-AGL-4, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence

Federal Register

Vol. 53, No. 129

Wednesday, July 6, 1988

Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 88-AGL-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of the Sault Ste. Marie, MI, ACA. The Sault Ste. Marie RBN has been decommissioned and the ACA description should be redescribed to remove all references to that RBN. The altered description of the Sault Ste. Marie ACA slightly expands the ACA which includes small portions of uncontrolled airspace which will become controlled airspace. However, this change will not adversely affect the flying public because the additional airspace is totally over Lake Superior and is rarely used. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Additional control areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.163 [Amended]

2. Section 71.163 is amended as follows:

Sault Ste. Marie, MI [Revised]

That airspace extending upward from 1,200 feet AGL in an area bounded by a line beginning at lat. 46°33'00" N., long. 84°00'00" W., to lat. 46°13'00" N., long. 84°00'00" W., to lat. 46°58'30" N., long. 86°25'00" W., to lat. 48°07'00" N., long. 89°10'00" W., to lat. 48°23'00" N., long. 88°33'00" W., to the point of beginning. The airspace within Canada is excluded.

Issued in Washington, DC, on June 22, 1988.

Shelomo Wugalter,
Manager, Airspace-Rules and Aeronautical
Information Division.

[FR Doc. 88-15064 Filed 7-5-88; 8:45 am]

BILLING CODE 4810-13-2

14 CFR Part 71

(Airspace Docket No. 88-ANM-7)

Proposed Alteration of Laramie, WY Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to provide controlled airspace for aircraft executing a new instrument approach procedure to the General Breese Field, Laramie, Wyoming. The intended effect is to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 29, 1988.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-7, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-7, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited
Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis

supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-7". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for aircraft executing a new TACAN instrument approach procedure to the General Breese Field, Laramie, Wyoming, utilizing the Laramie VORTAC (LAR) as a navigation aid. The intended effect is to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

Laramie, Wyoming, Transition Area [Amended]

On the seventh line after "VORTAC", add the following description: " * * * that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at Latitude 41°53'00"N., Longitude 105°51'00"W.; to Latitude 41°53'00"N., Longitude 105°08'00"W.; to Latitude 41°13'00"N., Longitude 105°08'00"W.; to Latitude 41°13'00"N., Longitude 105°51'00"W.; thence to point of beginning excluding all other controlled airspace which overlaps.

Issued in Seattle, Washington, on June 20, 1988.

Francis E. Davis,
Acting Manager, Air Traffic Division,
Northwest Mountain Region.
[FR Doc. 88-15063 Filed 7-5-88; 8:45 am]

BILLING CODE 4810-13-2

14 CFR Part 71

(Airspace Docket No. 88-AGL-11)

Proposed Alteration of VOR Federal Airway, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airway V-243 located in the vicinity of Bowling Green, KY. Currently, V-243 is aligned, in part, from Bowling Green, KY, to Terre Haute, IN, a distance of approximately 158 nautical miles. We propose to redescribe that portion of V-243 via the Huntingburg, IN, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). This action would improve navigation in that area and lower the minimum en route altitude (MEA).

DATES: Comments must be received on or before August 18, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88-AGL-11, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holiday, between 8:30 a.m. and 5: p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should

identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 88-AGL-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V-243 from Bowling Green, KY, via Huntingburg, IN, to Terre Haute, IN. The present alignment from Bowling Green to Terre Haute has an MEA of 7,000 feet for fifty percent of the distance. By adding Huntingburg to the route segment, the MEA would be lowered significantly. Currently, traffic arriving/departing the Evansville, IN, terminal are vectored below the MEA to expedite traffic flow in that area. This action would reduce controller workload and reduce delays. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It,

therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1340(a), 1354(a), 1510; Executive Order 10854; 40 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-243 [Amended]

By removing the words "Terre Haute, IN," and substituting the words "Huntingburg, IN; to Terre Haute, IN."

Issued in Washington, DC, on June 24, 1988.

William C. Davis,

Acting Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 88-15062 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 965

[Docket No. R-88-1396; FR-2482]

Change in Consolidated Supply Program (CSP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to delete from the Consolidated Supply Program (CSP), purchase agreements under which Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) purchase supply items with a value not in excess of the current Open Market Purchase Limitation of \$10,000. This proposed rule would reduce HUD's involvement in purchasing supplies to develop, maintain, and repair buildings owned or leased by PHAs and IHAs.

DATE: Comment due date: September 6, 1988.

ADDRESS: All comments concerning this proposed rule should be addressed to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Persons submitting comments should include their names, addresses, and telephone numbers and refer to the docket number and title indicated in the heading of this rule. All comments submitted will be available for public inspection in the Office of the Rules Docket Clerk at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Michael E. Diggs, Chief, Consolidated Supply and Procurement Branch, Public and Indian Housing, Department of Housing and Urban Development, Room 4124, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 472-4703. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department issued regulations that govern the operation of the Consolidated Supply Program (CSP) (24 CFR Part 965, Subpart G also referenced in the Department of Housing and Urban Development Acquisition Regulation (48 CFR 2401.601-70 and 2402.101)), in order to assist Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to assure the low-income character of projects as required under sections 8(a) and (9) of the United States Housing Act of 1937 (the Act). Under the CSP, the Department of Housing and Urban Development (HUD) furnishes technical contractual assistance to PHAs/IHAs for the voluntary use of those agencies that purchase certain supplies, material, equipment, and services necessary for the development, operation, and maintenance of low-income housing.

HUD is proposing to eliminate the use of purchase agreements for purchases of

supplies with a value not in excess of the current Open Market Purchase Limitation of \$10,000 from the Consolidated Supply Program. (See 24 CFR 965.602(f) and 965.604).

Purchase agreements entered into between HUD and suppliers were designed to provide multiple suppliers for specified Supply Items or for a Line of Items (e.g., plumbing supplies, electrical supplies, etc.) at a discount where such discounts would not otherwise be available. The Department believes that PHAs/IHAs can obtain such supplies at competitive prices by using local small purchase procedures.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely reduces HUD's involvement in the purchasing of supplies to develop, maintain, and repair buildings owned or leased by PHAs and IHAs.

This rule was listed as item 1030 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13892) under Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review

under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments relating to information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. After OMB review and approval, the public will be notified of the OMB control number assigned these requirements through a technical amendment to this proposed rule.

List of Subjects in 24 CFR Part 965

Energy conservation, Loan programs: housing and community development, Public housing, Utilities.

Accordingly, 24 CFR Part 965, Subpart G, is proposed to be amended as follows:

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

Subpart G—Consolidated Supply Program

1. The authority citation for Part 965 would continue to read as follows:

Authority: Secs. 2, 3, 6, and 9, United States Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d, and 1427g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 965.602 [Amended]

2. In § 965.602, paragraph (f) would be removed and paragraph (g) and (h) would be redesignated as (f) and (g) respectively.

§ 965.604 [Removed and Reserved]

3. Section 965.604 is proposed to be removed and reserved.

4. Section 965.605(a) would be revised to read as follows:

§ 965.605 Reports.

(a) *Report on purchases.* Within 60 days after the expiration of a CSC, the Contractor shall submit a report to the CSC Contracting Officer including the contract number and the total dollar volume of PHA/IHA purchases under the contract during the preceding fiscal year.

Dated: June 24, 1988.

Jacqueline Aamot,
Associate General Deputy Assistant
Secretary for Public and Indian Housing.

[FR Doc. 88-15148 Filed 7-5-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Safety and Pollution-Prevention Equipment

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: Current rules governing offshore oil and gas operations require that safety and pollution-prevention equipment (i.e., surface safety valves (SSV), underwater safety valves (USV), and subsurface safety valves (SSSV)) be manufactured in accordance with a quality assurance program specified in the rule. The American Petroleum Institute (API) has requested that the quality assurance program developed by it be evaluated by the Minerals Management Service and recognized as an acceptable alternative or option to the quality assurance program presently specified in 30 CFR 250.1 and 250.126. This notice proposes to amend existing rules to update the American National Standard Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE-1 quality assurance standard from the 1985 edition to the 1988 edition and to provide for the recognition of API's quality assurance program, API Spec Q1 in combination with API Spec 14A and 14D, as an acceptable alternate or optional quality assurance program for the manufacture of safety and pollution-prevention equipment.

DATE: Comments must be received or postmarked by August 5, 1988.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior: Minerals Management Service; Mail Stop 646, Room 6A110; 12203 Sunrise Valley Drive; Reston, Virginia 22091; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: M. L. Courtois, Chief, Offshore Inspection and Enforcement Division; Minerals Management Service; Mail Stop 647, Room 6A200; 12203 Sunrise Valley Drive; Reston, Virginia 22091; (703) 648-7750.

SUPPLEMENTARY INFORMATION: The current regulation requires that safety and pollution-prevention equipment be manufactured under the 1985 edition of the ANSI/ASME SPPE-1 quality assurance program. The API has submitted its quality assurance program (API Spec Q1 in combination with API Spec 14A and API Spec 14D) for evaluation and requested its recognition

as an acceptable alternative or optional program to the ANSI/ASME SPPE-1 quality assurance program. The 1988 edition of the ANSI/ASME SPPE-1 and the API Q1 quality assurance programs have been reviewed and are being proposed for recognition in the regulations as acceptable alternative quality assurance programs.

Section 250.126 would be amended by adding a paragraph (c)(3) to specify API Spec Q1 in combination with API Spec 14A and 14D as an acceptable quality assurance program and by moving requirements for installation, inspection, maintenance, testing, removal, redress, remanufacture, and documentation of safety and pollution-prevention equipment from paragraph (c)(2) to a new paragraph (d).

The requirements being moved into paragraph (d) are a reiteration of the requirements also contained in §§ 250.121 and 250.122, and the change is not intended as a substantive change in requirements.

Section 250.1, Documents Incorporated by Reference, is also proposed for modification. The API Spec Q1, Specification for Quality Programs, API Spec 14A, Specification for Subsurface Safety Valve Safety Equipment, and API Spec 14D, Specification for Surface Safety Valves and Underwater Safety Valves, were added to the list of documents incorporated by reference. The API Spec 14A and 14D are an integral part of the API quality assurance program, API Spec Q1. Other changes to the documents incorporated by reference involve the paragraph where the document is incorporated into the rule and, in the case of SPPE-1, the edition and date of the document. The 1988 edition of SPPE-1 has been issued by ANSI/ASME and is being proposed for inclusion in the rule in lieu of the 1985 edition currently cited. Interested persons who wish to submit written comments and suggestions regarding the proposed rule should forward those comments to the address specified above.

The Department of the Interior (DOI) has determined that this rule will have a positive effect on the economy and is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required.

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

This proposed rule does not affect any information collection which requires

approval by the Office of Management and Budget in 44 U.S.C. 3501 *et seq.*
 Author: This document was prepared by Joe Graddy, Offshore Inspection and Enforcement Division, Minerals Management Service.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Minerals Management Service, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 6, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority for Part 250 continues to read as follows:

Authority: Sec. 204 Pub. L. 96-372, 92 Stat. 629 (43 U.S.C. 1334)

2. Section 250.1 is amended by revising paragraph (c)(5) revising the introductory portion of paragraph (d), removing paragraphs (d)(6) and (d)(11), renumbering existing paragraphs (d)(12) through (d)(46) as new paragraphs (d)(15) through (d)(49), renumbering existing paragraphs (d)(8) through (d)(10) as new paragraphs (d)(11) through (d)(13), renumbering existing paragraph (d)(7) as new paragraph (d)(9), renumbering existing paragraphs (d)(1) through (d)(5) as new paragraphs (d)(2) through (d)(6), and adding new paragraphs (d)(1), (d)(7), (d)(8), (d)(10), and (d)(14) as follows:

§ 250.1 Documents incorporated by reference.

(5) ANSI/ASME SPPE-1-1988, Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations, Incorporated by Reference at § 250.126(c)(2).

(d) American Petroleum Institute (API) Documents. The API documents listed in this paragraph may be purchased from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005.

(Paragraphs (d)(22) through (d)(40) of this section refer to the API Manual of Petroleum Measurement Standards.)

(1) API Spec Q1, Specification for Quality Programs, Second Edition, January 1988, API Stock No. 811-00001, Incorporated by Reference at: § 250.126(c)(3).

(7) API Spec 14A, Specification for Subsurface Safety Valve Equipment, Seventh Edition, January 1988, API Stock No. 811-07150, Incorporated by Reference at: § 250.126(c)(3).

(8) API RP 14B, Recommended Practice for Design, Installation, and Operation of Subsurface Safety Valve Systems, Second Edition, November 1981 with Supplement 3, June 1986, API Stock No. 811-03200, Incorporated by Reference at: §§ 250.121(e)(4), 250.124(a)(1)(i), and 250.126(d).

(10) API Spec 14D, Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Seventh Edition, January 1988, API Stock No. 811-07183, Incorporated by Reference at: § 250.126(c)(3).

(14) API RP 14H, Recommended Practice for Use of Surface Safety Valves and Underwater Safety Valves Offshore, Second Edition, April 1984, API Stock No. 811-07196, Incorporated by Reference at: §§ 250.122(d) and 250.126(d).

3. In § 250.126, paragraphs (c) (1), (2) and (3) are revised and paragraph (d) is added to read as follows:

§ 250.126 Quality assurance and performance of safety and pollution-prevention equipment.

(c) * * *

(1) Be identified on the list submitted under paragraph (b) of this section by a lessee of the lease on which the item is to be installed.

(2) Be certified by the manufacturer as having been produced under a quality assurance program that meets the requirements of ANSI/ASME SPPE-1, or

(3) Be certified by the manufacturer as having been produced under a quality assurance program that meets the requirements of API Spec Q1 and the technical specification API Spec 14A for SSSV's and API Spec 14D for SSV's and USV's.

(d) The installation, inspection, maintenance, testing, removal, redress, field repair, and documentation of safety and pollution-prevention equipment used on the OCS shall be in accordance with API RP 14B for an SSSV and API

RP 14H for an SSV or USV. A remanufactured SSV or USV shall meet the requirements of paragraph (c) of this section.

[FR Doc. 88-15025 Filed 7-5-88; 8:45 am]

BILLING CODE 4310-MR-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-284, RM-6138]

Radio Broadcasting Services; Angola and Lagrange, IN; Brooklyn, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Lake Cities Broadcasting Corporation, proposing the substitution of FM Channel 287B1 for Channel 261A at Angola, Indiana, and modification of the license for Station WLKI-FM, Channel 261A, accordingly, to provide that community with its first wide coverage area FM service. Additionally, petitioner seeks the substitution of Channel 262A for Channel 288A at Lagrange, Indiana, as well as the substitution of Channel 225A for Channel 287A at Brooklyn, Michigan, to accommodate its proposal. Reference coordinates utilized in our determinations are, for Angola, IN, Channel 287B1, 41-34-25 and 84-52-32, for Lagrange, IN, Channel 262A, 41-38-36 and 85-22-00, and for Brooklyn, MI, Channel 225A, 42-03-05 and 84-20-35.

DATES: Comments must be filed on or before August 19, 1988, and reply comments on or before September 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., Esq., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-284, adopted May 25, 1988, and released June 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-15168 Filed 7-5-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-285, RM-6373]

Radio Broadcasting Service; West Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bill Dunnivant proposing the allotment of Channel 247A to West Monroe, Louisiana, as that community's second local FM service. The coordinates for the proposal are 32-31-06 and 92-08-51. **DATES:** Comments must be filed on or before August 19, 1988, and reply comments on or before September 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bill Dunnivant, P.O. Box 389, Athens, Alabama 35611 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of

Proposed Rule Making, MM Docket No. 88-285, adopted May 25, 1988, and released June 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-15167 Filed 7-5-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-282, RM-6300]

Radio Broadcasting Services; Greenwood, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of FM Channel 230A for Channel 270A at Greenwood, Mississippi, in order to permit a change in transmitter site for Station WFTA, Channel 270C2, Fulton, Mississippi, in response to a petition filed by Itawamba County Broadcasting Company, Inc. Channel 270A was allocated to Greenwood in MM Docket No. 84-231 and made available for application in window number 32. Two applications are now pending for the channel at Greenwood. The substitution can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the specified sites of each applicant.

DATES: Comments must be filed on or before August 19, 1988, and reply comments on or before September 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Itawamba County Broadcasting Company, Inc., Olvie E. Sisk, President, P.O. Box 587, Fulton, Mississippi 38843.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-282, adopted May 17, 1988, and released June 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-15171 Filed 7-5-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-283, RM-6280]

Radio Broadcasting Services; Port Gibson, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Evan Doss, Jr., proposing the allocation of FM Channel 263A to Port Gibson, Mississippi, as that community's first FM broadcast service. The coordinates for Channel 263A are 31-57-30 and 90-59-00.

DATES: Comments must be filed on or before August 19, 1988, and reply comments on or before September 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Evan Doss, Jr., P.O. Box 653, Port Gibson, Mississippi 39150.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-283, adopted May 17, 1988, and released June 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15166 Filed 7-5-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-328; RM-5740]

Radio Broadcasting Services; Senatobia, MS

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document dismisses a petition for rule making filed by Christian Impact, Inc., requesting the allotment of FM Channel 229A to Senatobia, Mississippi. The petition is dismissed because no expression of interest has been filed by the petitioner or any other party. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-328, adopted May 4, 1988, and released June 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15170 Filed 7-5-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-286, RM-6378]

Radio Broadcasting Services; Henderson, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Chester County Broadcasting Co., Inc., proposing the allocation of Channel 298A to Henderson, Tennessee, as a first local

FM service. The coordinates for the proposal are 35-26-24 and 88-38-24.

DATES: Comments must be filed on or before August 19, 1988, and reply comments on or before September 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Chester County Broadcasting Co., Inc., P.O. Box 203, Henderson, Tennessee 38340 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-286, adopted May 25, 1988, and released June 28, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15165 Filed 7-5-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION Federal Highway Administration

49 CFR Part 382

[FHWA Docket No. MC-116]
RIN 2125-AA79

Motor Carrier Safety Standards; Controlled Substances

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of public hearings.

SUMMARY: In a notice of proposed rulemaking (NPRM) published at 53 FR 22268 on June 14, 1988, the FHWA announced that it was considering holding a public hearing on the proposal. The FHWA has determined that public hearings would be useful in this rulemaking proceeding. This notice announces a series of public hearings to solicit information concerning the proposed rulemaking. Information gathered at the public hearings will be included in Docket No. MC-116 and will be reviewed and evaluated by the FHWA in conjunction with this rulemaking proceeding.

DATES: See SUPPLEMENTARY INFORMATION for dates of hearings.

ADDRESSES: See SUPPLEMENTARY INFORMATION for locations of hearings.

FOR FURTHER INFORMATION CONTACT: Requests to make a statement at any hearing or inquiries about the logistics and locations of a hearing should be directed to Mr. Stanley Hamilton, Office of Motor Carriers, (HPS-1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-0665. Questions concerning the subject matter of the NPRM should be directed to Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Background

On June 14, 1988, the FHWA published an NPRM in the *Federal Register* (53 FR 22268). The NPRM proposes rules to require comprehensive drug testing and rehabilitation for truck and bus drivers operating in interstate commerce. Testing under the proposed rules would be conducted (1) prior to employment, (2) periodically, (3) randomly, (4) after a fatal accident, and (5) where reasonable cause exists. The NPRM also requests comments on four

alternatives under which drivers might qualify for rehabilitation and a return to employment afterward. The alternatives are:

- (1) Offer an opportunity for rehabilitation to drivers who seek help voluntarily and to all drivers whose tests show illegal drug use;
- (2) Offer an opportunity for rehabilitation to drivers who seek help voluntarily or who are found to use drugs through random or periodic testing but not through post-accident or reasonable-cause testing;
- (3) Offer an opportunity for rehabilitation only to drivers who voluntarily seek help; or
- (4) Do not require rehabilitation. Employers would be free to offer more rehabilitation options than the minimums proposed.

In the NPRM, the FHWA announced that it was considering holding a public hearing on the proposal. The FHWA has determined that public hearings would be useful in this rulemaking proceeding. Information gathered at the public hearings will be included in Docket No. MC-116. This information will be reviewed and evaluated by the FHWA in conjunction with this rulemaking proceeding.

The NPRM included many questions regarding the proposed rules, including specific questions about the implementation of a program for small operators, costs associated with the proposed program, and alternatives to the proposed rehabilitation requirements. The questions contained in the NPRM will not be repeated in this notice. The FHWA is also interested in information on any aspect of the proposed rule. The FHWA is also interested in obtaining specific, factual information regarding any other anti-drug programs, "success" rates of those programs based on the population of individuals involved in the program, and difficulties that may be encountered during implementation of anti-drug program.

An individual is not required to make a statement at a hearing in order to participate in this rulemaking proceeding. Any individual may submit comments to the FHWA Docket (Docket No. MC-116) instead of, or in addition to, making a statement at a hearing. All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to Room 4232, Office of the Chief Counsel, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t. Monday through Friday, except legal holidays.

Comments must be received on or before September 12, 1988.

Hearings

The FHWA will be holding a total of five hearings throughout the country. All hearings are scheduled to begin at 9:00 a.m. local time. The FHWA anticipates that each hearing will adjourn at or before noon, except the hearing held in Washington, DC which should adjourn by 5:00 p.m. The hearing officer has sole discretion to extend the time of the hearing.

An individual or representative of an organization should request an opportunity to make a statement at a hearing at least 7 days before the date of the particular hearing that the individual or representative plans to attend. A request to make a statement at a hearing must be directed to the person listed under "FOR FURTHER INFORMATION CONTACT." A request to make a statement that is received after the deadline, including requests made the day of the hearing, will be accommodated to the extent that the schedule permits. The FHWA requests that individuals or representatives submit an advance copy of the statement and/or the material to be presented at the hearing to the FHWA at least 3 days before the date of the hearing that an individual or representative plans to attend. If individuals are not able to provide this material in advance, they are requested to bring at least 10 copies of the material to the hearing for distribution.

The public hearings will be held on the following dates in these cities:
July 12, 1988—Cleveland, Ohio
July 18, 1988—Birmingham, Alabama
July 25, 1988—Dallas, Texas
August 4, 1988—Los Angeles, California
August 9, 1988—Washington, DC

For information regarding the specific locations of these hearings, please call the person listed under "FOR FURTHER INFORMATION CONTACT."

Hearing Procedures

The following procedures have been established by the FHWA to facilitate the hearings:

1. An individual, whether speaking in a personal or private capacity or speaking in a representative capacity on behalf of a company, union, trade association or organization, is limited to a 15-minute statement at any hearing. The time limits are intended to provide an opportunity for a wide variety of individuals and representatives to make statements at a hearing. The hearing officer has sole discretion to grant

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additional time for a statement at the hearing.

2. Statements may be made by the hearing officer or any member of the hearing panel to clarify issues or facilitate discussion during the hearing. Any statements made during the hearing are not intended to be, and should not be construed as, a position of the FHWA with respect to the rulemaking proceeding.

3. The hearing will be recorded by a court reporter. A transcript of the hearings and any material accepted by the hearing officer during the hearing to be included in the record will be included in Docket No. MC-116. Any person interested in purchasing a copy of the transcript should contact the court reporter directly.

4. The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual or representative will not be subject to cross-examination by any other participant. The hearing panel is entitled to ask questions in order to clarify any statement made at the hearing or the material accepted by the hearing officer during the hearing.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 382

Controlled substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program No. 20.217, Motor Carrier Safety.)

Issued on June 30, 1988.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 88-15250 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 58]

RIN 2127-AC 49

Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to make two relatively minor amendments to Standard No. 208. The first proposal involves an extension of the existing requirements for certain passenger car belt systems that incorporate tension-relieving devices. These devices allow a car occupant to introduce slack in the webbing of his or her shoulder belt to relieve belt pressure and thereby promote belt usage. However, these devices could reduce the effectiveness of the belts in a crash situation if the tension-relieving device were misused to introduce excessive slack in the belt webbing.

The agency has already conducted rulemaking to apply special requirements to cars with automatic belts that incorporate tension-relieving devices. The requirements will also apply to cars that use tension-relieving devices on manual belt assemblies, if the requirement for automatic occupant protection in cars is rescinded. However, these special requirements have not been applied to cars that use tension-relieving devices on belt assemblies installed in conjunction with air bags. All manufacturers that currently install air bags at a front outboard seating position also install manual safety belts at those seating positions. We believe that the same potential for misuse of the tension-relieving devices exists for these belt systems as it does for the belt systems already subject to the additional requirements. Therefore, this notice proposes to apply these additional requirements to belt systems installed in cars in conjunction with air bags.

The second proposed change involves adjustable anchorages for belts. The adjustability feature allows an occupant to move one of these anchorages within a limited range, so as to optimize the fit of his or her belt. These adjustable anchorages are available on a few cars now, and may be available on more vehicles in the future.

Standard No. 208 currently does not specify any particular adjustment position at which adjustable anchorages will be set during compliance testing. Absent such guidance, manufacturers may apply different, even inconsistent, criteria in selecting the adjustment positions for anchorages during their certification testing. The adjustment positions selected by the manufacturers might also differ from those selected by NHTSA for the adjustable anchorages during its compliance testing.

To avoid any difficulties or confusion that might result from these circumstances, this notice proposes that adjustable anchorages be set at the

vehicle manufacturer's nominal design position for a 50th percentile adult male (the size of the test dummy used in compliance testing). This would be similar to the existing provision in Standard No. 208 for placing adjustable seat backs in "the manufacturer's nominal design riding position." Such a provision would avoid the compliance testing problems described above without imposing any additional burdens or compliance problems for vehicle manufacturers.

DATES: Comments on this notice must be received by NHTSA not later than August 22, 1988. If a final rule adopts this proposal, it would be effective on September 1, 1989.

ADDRESSE: Comments should refer to the docket and notice number set forth in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are 8:00 am to 4:00 pm Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Chief, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2284).

SUPPLEMENTARY INFORMATION: This notice proposes two minor amendments to Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). The first proposed amendment involves the provisions for passenger car safety belts at front outboard seating positions that incorporate tension-relieving devices. These tension-relieving devices are intended to relieve shoulder belt pressure and increase the comfort of the belt, thereby increasing the likelihood of belt usage. However, such devices may reduce the effectiveness of the belts in a crash situation if the tension-relieving devices are misused so as to introduce excessive slack in the belt webbing.

To strike an appropriate balance between increasing belt use while avoiding belt misuse, section S7.4.2 of Standard No. 208 specifies additional requirements for certain safety belts that incorporate tension-relieving devices and are installed at a front outboard seating position. These additional requirements are:

1. The vehicle owner's manual must include an explanation of how the tension-relieving device works and recommend a maximum amount of slack that should be introduced into the belt under normal circumstances;
2. The vehicle must comply with the injury criteria specified in S5.1 of Standard No. 208 with the shoulder belt webbing adjusted to introduce the

maximum amount of slack recommended by the manufacturer; and

3. The vehicle must have an automatic means to cancel any shoulder belt slack introduced into the belt system by a tension-relieving device.

With respect to passenger cars, these requirements presently apply to vehicles that have automatic belts. If the requirements for automatic occupant crash protection is rescinded, the requirements will also apply to cars with manual belts installed at a front outboard seating position if those belt systems incorporate some tension-relieving device.

However, these are not the only types of belt systems that could be installed in cars in compliance with Standard No. 208. The most obvious example of such a belt system would be one that is installed at a front outboard seating position equipped with an air bag, to comply with the requirements of S4.1.2.1(c)(2) of the Standard. Subsection S4.1.2.1(c) requires that subject vehicles must either (1) meet the lateral crash protection requirements of S5.2 and the rollover crash protection requirements of S5.3 by means that require no action by vehicle occupants, or (2) be equipped with safety belts at the front outboard seating positions, so that the vehicle meets the requirements of S5.1 with the test dummies restrained by the belt assembly in addition to the means that require no action by the vehicle occupant. In practice, all vehicles that have had air bags installed at a front outboard seating position to this date have also had a manual belt assembly installed at that seating position, to comply with S4.1.2.1(c)(2).

Manual belt systems installed at a front outboard seating position to comply with S4.1.2.1(c)(2) are not subject to the tension-relieving device requirements of S7.4.2 of Standard No. 208. As noted in the agency's notice proposing to establish S7.4.2 (50 FR 14580; April 12, 1985) and the final rule adopting that proposal (50 FR 48056; November 6, 1985), NHTSA believes that the added potential to improve belt fit and the added comfort of belts equipped with tension-relieving devices is desirable in certain circumstances, because these features could serve to enhance proper belt use. However, those same notices expressed the agency's concern that excessive slack could compromise belt effectiveness. On balance, the agency concluded that tension-relieving devices should continue to be permitted on belt assemblies, but that certain special conditions (i.e., those specified in S7.4.2) should apply to vehicles that had belt assemblies equipped with tension-

relieving devices to reduce the likelihood of misuse.

NHTSA believes that these same considerations apply to tension-relieving devices on manual belt systems installed to comply with S4.1.2.1(c)(2). Accordingly, this notice proposes to extend the requirements of S7.4.2 to apply to manual belt systems installed to comply with S4.1.2.1(c)(2) of Standard No. 208, if such systems are equipped with tension-relieving devices and installed at front outboard seating positions.

The second change proposed in this notice concerns adjustable anchorages on belt systems. Adjustable anchorages allow the occupant of a seating position to move the anchorage location within a limited range, so as to optimize the fit of his or her belt. Adjustable upper anchorages are already incorporated in some vehicles.

The positioning of an anchorage on a belt system can affect the performance of the belt system during a crash. Thus, the position to which an adjustable anchorage is set during compliance testing might affect the outcome of that testing. Standard No. 208 sets positioning requirements during compliance testing for several vehicle design features that are capable of adjustment. For example, the standard requires horizontally adjustable seats to be adjusted to the midpoint of the adjustment range (S8.1.2) and adjustable head restraints are placed in their highest adjustment position (S8.1.3). However, the standard does not specify any positioning requirements for adjustable anchorages.

When a standard specifies no positioning requirements for an adjustable feature in a vehicle or item of motor vehicle equipment, considerable difficulties could arise. Absent guidance in the standard as to the appropriate adjustment position for adjustable anchorages, the various vehicle manufacturers may apply different criteria in selecting the anchorage adjustment position for their certification testing. Further, the criteria used by the manufacturers to determine the anchorage adjustment position during their certification testing may differ from those used by the agency during its compliance testing. The differing adjustment positions could lead to unreasonable and unnecessary difficulties for both the manufacturers and the agency.

NHTSA believes there is a simple and reasonable means to avoid these problems. This notice proposes to amend Standard No. 208 to provide that all adjustable anchorages would be set to the vehicle manufacturer's nominal

design position for a 50th percentile adult male occupant. This requirement would be comparable to the existing requirements for adjustable seat backs in S8.1.3 of the standard, which provides that those seat backs shall be placed "in the manufacturer's nominal design riding position." When a vehicle is to be tested in Standard No. 208 compliance testing, the agency contacts the vehicle's manufacturer to learn its "nominal design riding position" for the seat backs in the vehicle, and adjusts the seat backs to that position during compliance testing. Under this proposal, the agency could be advised of the vehicle manufacturer's nominal design position for the adjustable anchorages for a 50th percentile adult male during that same contact with the manufacturer. The agency believes that this procedure would avoid the difficulties that could result from the agency using anchorage adjustment positions during compliance testing that differed from the adjustment positions used by the manufacturers during certification testing.

The agency solicits comments on alternative compliance testing procedures that could be established for adjustable anchorages. For instance, would it be appropriate to require that vehicles equipped with adjustable anchorages comply with Standard No. 208 with the anchorages in any adjustment positions? Such a requirement would ensure that the adjustable anchorages afforded adequate protection even if they were not properly adjusted. The agency is also interested in learning of any other suggestions for positioning adjustable anchorages during compliance testing. Any commenter opposing alternative positioning procedures is requested to explain why an alternative positioning procedure should not be established, including any available test results.

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, the proposed requirement to extend the existing requirement to vehicles that have tension-relieving devices on manual belt systems installed in conjunction with an air bag would impose only minimal costs. Commenters are invited to provide information on this subject.

The proposed requirement to specify the position to which adjustable anchorages would be set during compliance testing is not expected to

result in any increase in costs. It would merely ensure that the vehicle manufacturers and other interested members of the public knew how the agency would adjust the anchorages for the purposes of the agency's compliance testing. Accordingly, the agency has not prepared a full regulatory evaluation for this proposal.

Additionally, the agency has analyzed the effects of this proposal on small entities, in accordance with the Regulatory Flexibility Act. Based on this analysis, I hereby certify that this proposal, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities. Few, if any, of the vehicle manufacturers qualify as small entities. To the extent that some might so qualify, the impacts would not be significant, as explained above. The proposed requirements would not significantly affect the manufacturing process of any safety belt manufacturers that are small entities or the retail price of vehicles purchased by any small organizations or small governmental units.

The agency has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant effect on the human environment, if it were adopted as a final rule.

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Office of Management and Budget (OMB) has already approved NHTSA's requirement that instructions appear in the vehicle owner's manual concerning the proper use of any tension-relieving devices incorporated in any automatic belts or manual belts, if the requirement for automatic occupant crash protection is rescinded (OMB #2127-0541). However, this proposal would expand the scope of that requirement to include tension-relieving devices installed on manual belts installed in conjunction with air bags. This expansion is considered to be an information collection requirement, as that term is defined by OMB in 5 CFR Part 1320. Accordingly, this proposed requirement will be submitted to OMB for its approval, pursuant to the requirements

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on this proposed information collection requirement should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.12). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-

addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will result the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposed to amend 49 CFR 571.208 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S7.4.2 of Standard No. 208 would be amended by revising the introductory text to read as follows:

S7.4.2 *Webbing tension-relieving device.* Each vehicle with an automatic seat belt assembly, a manual seat belt assembly installed to comply with S4.1.2.1(c)(2) of this standard, or with a Type 2 manual seat belt assembly that must comply with S4.6 of this standard, installed at a front outboard designated seating position that has either manual or automatic tension-relieving devices permitting the introduction of slack in the webbing of the shoulder belt (e.g., "comfort clips" or "window-shade" devices) shall:

3. S8.1.3 would be revised to read as follows:

S8.1.3 Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place any adjustable anchorages at the manufacturer's nominal design position for a 50th percentile adult male occupant. Place each adjustable head restraint in its highest adjustment position. Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

Issued on June 30, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.
[FR Doc. 88-15177 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-29-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1988 to June 30, 1989.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302. (703) 756-3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under

Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of \$100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this Notice shall have the meanings ascribed to them in the regulations governing the National School Lunch Program (7 CFR Part 210), the regulations for the Special Milk Program (7 CFR Part 215), the regulations for School Breakfast Program (7 CFR Part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk, published by the Bureau of Labor Statistics of the Department of Labor.

Federal Register

Vol. 53, No. 129

Wednesday, July 6, 1988

For the period July 1, 1988 to June 30, 1989, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 9.50 cents. The rate is unchanged due to an increase of less than 1 percent in the Producer Price Index for Fresh Processed Milk from May 1987 to May 1988.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors, and to the maximum Federal reimbursement rates for lunches served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors (NAPFs) for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these Section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price

lunches. The section 11 NAPP for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966, as amended, establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum payments are in effect through June 30, 1989. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced price lunches in School Year 1986-87, the payments are: *Contiguous States*—14 cents, maximum rate 22 cents; *Alaska*—22.75 cents, maximum rate 34.50 cents; *Hawaii*—16.50 cents, maximum rate 25.50 cents.

In school food authorities which served 60 percent or more free and reduced price lunches in School Year 1986-87, payments are: *Contiguous States*—16 cents, maximum rate 22 cents; *Alaska*—24.75 cents, maximum rate 34.50 cents; *Hawaii*—18.50 cents, maximum rate 25.50 cents.

Section 11 National Average Payment Factors—*Contiguous States*—free lunch 132.25 cents, reduced price lunch 92.25 cents; *Alaska*—free lunch 214.25 cents, reduced price lunch 174.25 cents; *Hawaii*—free lunch 154.75 cents, reduced price lunch 114.75 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast 79.25 cents, reduced price breakfast 49.25 cents, paid breakfast 14 cents; *Alaska*—free breakfast 126.50

cents, reduced price breakfast 96.50 cents, paid breakfast 21 cents; *Hawaii*—free breakfast 92.25 cents, reduced price breakfast 62.25 cents, paid breakfast 16 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast 94.75 cents, reduced price breakfast 64.75 cents, paid breakfast 14 cents; *Alaska*—free breakfast 151.50 cents, reduced price breakfast 121.50 cents, paid breakfast 21 cents; *Hawaii*—free breakfast 110.25 cents, reduced price breakfast 80.25 cents, paid breakfast 16 cents.

Payment Chart

The following chart illustrates: The lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

(Expressed in Dollars or Fractions Thereof Effective from July 1, 1988-June 30, 1989)

National school lunch program*	Less than 60%	60% or more	Maximum rate
<i>Contiguous States:</i>			
Paid	1.400	1.600	2.200
Reduced Price	1.0625	1.0825	1.2325
Free	1.4625	1.4825	1.6325
<i>Alaska:</i>			
Paid	2.275	2.475	3.450
Reduced Price	1.9700	1.9900	2.2325
Free	2.3700	2.3900	2.6325
<i>Hawaii:</i>			
Paid	1.650	1.850	2.550
Reduced Price	1.3125	1.3325	1.5075
Free	1.7125	1.7325	1.9075

School breakfast program	Non-severe need	Severe need
<i>Contiguous States:</i>		
Paid	1.400	1.400
Reduced Price	.4925	.8475
Free	.7925	.9475
<i>Alaska:</i>		
Paid	2.100	2.100
Reduced Price	.9650	1.2150
Free	1.2650	1.5150
<i>Hawaii:</i>		
Paid	1.600	1.600
Reduced Price	.8225	.8025
Free	.9225	1.1025

Special milk program	All milk	Paid milk	Free milk
Pricing programs without free option	\$.0950	NA	NA
Pricing programs with free option	NA	\$.0950	Average cost 1/2 pint milk. NA
Nonpricing programs	\$.0950	NA	NA

*Payments listed for Free or Reduced Price Lunches include both Sections 4 and 11 funds.

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended (42 U.S.C. 1753, 1757, 1759(a)) and Sections 3 and 4(b) of the Child Nutrition Act, as amended (42 U.S.C. 1772 and 42 U.S.C. 1773).

Date: June 29, 1988.

Anna Kondratas,
Administrator.

(FR Doc. 88-15090 Filed 6-30-88; 11:54 am)

BILLING CODE 3410-30-M

Child Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1988-June 30, 1989

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care and outside-school-hours care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child Care Food Program (CCFP).

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. The action announced in the notice will

not have an annual effect on the economy of \$100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.588 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

(See 7 CFR Part 3015, Subpart V, and final rule related notice published at 46 FR 29114, June 24, 1983)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CCFP (7 CFR Part 226).

Background

Pursuant to sections 11 and 17 of the National School Lunch Act (42 U.S.C. 1753 and 1759a), section 4 of the Child Nutrition Act (42 U.S.C. 1773) and § 226.4, 226.12 and 226.13 of the regulations governing the CCFP (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1988-June 30, 1989.

As provided for under the National School Lunch Act and the Child Nutrition Act, all rates in the CCFP must be prescribed annually on July 1 to reflect changes in the consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 2, 1987 (for the period July 1, 1987-June 30, 1988).

All States Except Alaska and Hawaii

Meals Served in CENTERS—Per Meal Payment Rates in Cents:

Breakfasts:	
Paid	14.00
Free	79.25
Reduced	49.25
Lunches and Suppers:	
Paid	14.00
Free	146.25
Reduced	106.25
Supplements:	
Paid	3.75
Free	40.25
Reduced	20.00

Meals Served in DAY CARE HOMES—Per Meal Payment Rates in Cents:

Breakfasts:	66.75
Lunches and Suppers:	125.25
Supplements:	37.25
ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	\$55
Next 150 day care homes	42
Next 800 day care homes	33
Additional day care homes	29

¹ These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska

Alaska—Meals Served in CENTERS—Per Meal Payment Rates in Cents:

Breakfasts:	
Paid	21.00
Free	128.50
Reduced	96.50
Lunches and Suppers:	
Paid	22.75
Free	237.00
Reduced	197.00
Supplements:	
Paid	6.00
Free	65.00
Reduced	32.50

Alaska—Meals Served in DAY CARE HOMES—Per Meal Payment Rates in Cents:

Breakfasts:	106.50
Lunches and Suppers:	203.00
Supplements:	60.50

Alaska

Alaska—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:

Initial 50 day care homes	\$89
Next 150 day care homes	58
Next 800 day care homes	53
Additional day care homes	47

¹ These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

Hawaii

Hawaii—Meals Served in CENTERS—Per Meal Payment Rates in Cents:

Breakfasts:	
Paid	16.00
Free	92.25
Reduced	62.25
Lunches and Suppers:	
Paid	16.50
Free	171.25
Reduced	131.25
Supplements:	
Paid	4.25
Free	47.00
Reduced	23.50

Hawaii—Meals served in DAY CARE HOMES—Per Meal Payment Rates in Cents:

Breakfasts	77.75
Lunches and Suppers	146.50
Supplements	43.75

Hawaii—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:

Initial 50 day care homes	64
Next 150 day care homes	49
Next 800 day care homes	38
Additional day care homes	34

¹ These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 3.95 percent increase during the 12-month period May 1987 to May 1988 (from 116.4 in May 1987 to 121.0) in May

1988)¹ in the food away from home services of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 3.9 percent increase during the 12-month period May 1987 to May 1988 (from 113.1 in May 1987 to 117.5 in May 1988) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1759(a), 1766) and Section 4(b)(1)(B) of the Child Nutrition Act of 1966 as amended, (42 U.S.C. 1773b).

Anna Kondratas,
Administrator.

Date: June 29, 1988.

[FR Doc. 88-15091 Filed 6-30-88; 11:54 am]
BILLING CODE 3410-30-M

Soil Conservation Service

Deauthorization of Federal Funds; Garrison Creek Watershed, OK

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Garrison Creek Watershed project, Sequoyah County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: C. Budd Fountain, State Conservationist, Soil Conservation Service, Agricultural Center Building, Stillwater, Oklahoma 74074; telephone (405) 624-4360.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires

¹ The change in the index values, as compared to index values published in the Notice for the preceding year, are due to the general rebasing of the Consumer Price Index by Bureau of Labor Statistics.

intergovernmental consultation with State and local officials.)

C. Budd Fountain,

State Conservationist.

[FR Doc. 88-15130 Filed 7-5-88; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Federal Funding; Pott-Sem-Turkey Watershed, OK

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Pott-Sem-Turkey Watershed project, Pottawatomie and Seminole Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: C. Budd Fountain, State Conservationist, Soil Conservation Service, Agricultural Center Building, Stillwater, Oklahoma 74074; telephone (405) 624-4360.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

C. Budd Fountain,

State Conservationist.

[FR Doc. 88-15131 Filed 7-5-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration (A-588-801)

Postponement of Preliminary Antidumping Duty Determination; Certain All-Terrain Vehicles From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

SUMMARY: This notice informs the public that we have received a request from petitioner in this investigation to postpone the preliminary determination as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination of whether sales of certain all-terrain vehicles from Japan have occurred at less than fair value until not later than August 8, 1988.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Gregory G. Borden or Michael Ready, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-3003 or (202) 377-2613.

SUPPLEMENTARY INFORMATION: On March 7, 1988 (52 FR 7222) we published a notice of initiation of an antidumping duty investigation to determine whether certain all-terrain vehicles from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by July 18, 1988.

As detailed in the notice, the petition alleged that imports of certain all-terrain vehicles from Japan are being, or are likely to be, sold in the United States at less than fair value.

On June 22, 1988 petitioner, Polaris Industries, L.P., requested that the Department extend the period for the preliminary determination until not later than 181 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for determination in this case is hereby extended. We intend to issue a preliminary determination not later than August 8, 1988.

This notice is published pursuant to section 733(c)(2) of the Act.

June 29, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-15152 Filed 7-5-88; 8:45 am]

BILLING CODE 3510-08-M

Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exists.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department

of Commerce, Washington, DC 20230, telephone: (202) 377-2788.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as

defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter, the Department has determined that the subsidy amounts have changed for several of the countries for which subsidies were identified in our last quarterly update to the annual January 1, 1988 annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional

information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Joseph A. Spetrini,
Acting Assistant Secretary, Import Administration.

Date: June 29, 1988.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross ¹ subsidy	Net ² subsidy
Belgium	European Community (EC) Restitution Payments	0.0¢/lb.	0.0¢/lb.
Canada	Export Assistance on Certain Types of Cheese	26.3¢/lb.	26.3¢/lb.
Denmark	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Finland	Export Subsidy	112.1¢/lb.	112.1¢/lb.
	Indirect Subsidies	21.2¢/lb.	21.2¢/lb.
France	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Greece	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Ireland	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Italy	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Luxembourg	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Netherlands	EC Restitution Payments	19.6¢/lb.	19.6¢/lb.
Norway	Indirect (Milk) Subsidy	43.5¢/lb.	43.5¢/lb.
	Consumer Subsidy		
		63.1¢/lb.	63.1¢/lb.
Spain	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
Switzerland	Deficiency Payments	107.0¢/lb.	107.0¢/lb.
U.K.	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.
W. Germany	EC Restitution Payments	0.0¢/lb.	0.0¢/lb.

¹ Defined in 18 U.S.C. 1677(5).

² Defined in 19 U.S.C. 1677(6).

[FR Doc. 88-15151 Filed 7-5-88; 8:45am]

BILLING CODE 3510-08-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of applications.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received one application for an Export Trade Certificate of Review and one application for an amended export trade certificate of review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificates should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International

Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination

whether the certificates should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should reference the application number provided in the application summary. Summaries of the applications follow.

Summary of Application

Applicant: U.S.A. Book-Expo, Inc., 88 Millwood Road, Millwood, NY 10546. Contact: Edward A. Malinowski, President. Telephone: 914/782-2422.

Application #: 88-00008.

Date Deemed Submitted: June 24, 1988.

Members (in addition to applicant): None.

Export Trade Products

Books and book-related materials published in the United States.

Export Trade Facilitation Services (as they relate to the export of Products)

Taking title to Products and providing or arranging for the provision of Transportation Services. Transportation Services include overseas freight transportation (all modes); inland freight transportation to a U.S. export terminal, port or gateway; packing and crating; leasing of transportation equipment and facilities; terminal or port storage; wharfage and handling; forwarder services; insurance; warehousing; foreign exchange; financing and financial services; export sale and trade documentation and services; overseas distribution; paying or charging commissions; marketing; advertising; communication and processing of foreign orders; accounting; clerical services; feasibility studies; investment services; legal services; management services; and translation services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

U.S.A. Book-Expo, Inc. seeks certification to:

1. Consolidate and distribute the freight of suppliers for Products exported or in the course of being exported;
2. Negotiate, procure, provide, and administer Transportation Services to suppliers.
3. Negotiate charges and other terms and enter into contracts which provide for Transportation Services to suppliers including, but not limited to, the chartering and space chartering of vessels, the entering into of service contracts with ocean common carriers, the negotiation and utilization of through intermodal rates with common and contract carriers for inland freight transportation for export shipments to a U.S. export terminal, port, or gateway; and the combination and consolidation of container and less than containerload shipments into full containerized

shipments. U.S.A. Book-Expo, Inc., may conduct this activity on behalf of its suppliers.

4. Meet and discuss with suppliers ideas, methods and information solely concerning Export Trade, including trade opportunities, selling strategies, sales, projected demands and business growth, customary terms of sale, and legal agreements for conducting business in the Export Markets, U.S. and foreign laws and regulatory programs affecting exports and expenses of exporting to specific points in the Export Markets.

5. Establish export prices for Products being exported through U.S.A. Book-Expo, Inc.

Summary of Application

OETCA has received the following application for an amendment to Export Trade Certificate of Review #84-00012, issued on June 11, 1984 (49 FR 24581, June 14, 1984).

Applicant: Northwest Fruit Exporters, 1005 Tieton Drive, Yakima, Washington 98902. Contact: Kenneth Severn, Secretary-Treasurer, telephone: (509) 453-4837.

Application No.: 84-3A012
Date Deemed Submitted: June 23, 1988.

Northwest Fruit Exporters seeks to amend its certificate to add the following company as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Underwood Fruit and Warehouse Company, White Salmon, WA.

Date: June 29, 1988.

John E. Stiner,
Director, Office of Export Trading Company Affairs.

[FR Doc. 88-15128 Filed 7-5-88; 8:45 am]
BILLING CODE 3510-01-3

Minority Business Development Agency

[Transmittal No. 06-10-88018-01, Project I.D. No. 06-10-88018-01]

Lubbock/Midland-Odessa Minority Business Development Center (MBDC) Program Applications; Texas

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at \$194,118 for the project's performance period of

November 1, 1988 to October 31, 1988. The MBDC will operate in the Lubbock/Midland-Odessa Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-Federal	Total
Lubbock/Midland-Odessa SMSA	\$104,118	\$29,118	\$194,118

¹ Can be a combination of cash, in-kind contribution and fees for services.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for receipt of application is August 5, 1988.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0700.

FOR FURTHER INFORMATION, CONTACT: Deselene Crenshaw, Business Development Clerk, Dallas Regional Office, 214/767-6001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Bobby Jefferson,

Supervisory, Business Development Specialist, Minority Business Development Agency, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: Lubbock/Midland-Odessa MBDC (Geographic Area or SMSA).
3. Project Identification Number: 06-10-88018-01.

Budget Period Duration

1. Budget Period (Check One): First X Second ____ Third ____
2. Start Date: November 1, 1988.
3. End Date: October 31, 1989.
4. Budget Period Duration (Months): Twelve Months.

Project Cost

1. Required Federal Funding Level: \$165,000.00.
2. Minimum Non-Federal Contribution: \$29,118.00.
3. Total Project Cost: \$194,118.00.

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: \$12,016,000.00.
2. Billable SM&TA Minimum Goal Level: \$123,000.00.
3. Number of Clients Minimum Goal Level: 110.

Other Project Specifications

1. Closing Date for Submission of this Application: August 5, 1988.
2. Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: Lubbock/Midland-Odessa, Texas SMSA.
3. Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. Budget Period: The competitive award period will be for approximately

three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 88-15118 Filed 7-5-88; 8:45 am]

BILLING CODE 3510-01-3

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 23, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet for the fourth time on 25 August 1988, from 8:00 a.m. to 5:00 p.m., at the Ogden Air Logistics Center (OA-LC), Hill AFB, UT, and on 28 August 1988 from 8:00 a.m. to 5:00 p.m., at the 421 & 388 Tactical Fighter Wings, Hill AFB, UT.

The purpose of this meeting is to receive briefings and gather information on OA-LC's and two typical fighter wings' perception of the problem and their efforts to solve them. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4548.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 88-15081 Filed 7-5-88; 8:45 am]

BILLING CODE 3910-01-3

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Performance Review Board

AGENCY: Defense Logistics Agency, DoD.
ACTION: Notice of membership of the Defense Logistics Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Logistics Agency. The

publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT:

Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274-6049 or 274-6030.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the Performance Review Boards. They will serve a 1-year renewable term, effective upon publication of this notice.

Initial PRB—

Mr. Gary P. Quigley, Associate Counsel, Office of General Counsel.
Mr. Raymond F. Chiesa, Executive Director, Contracting.
Mr. William V. Gordan, Executive Director, Contract Management.
2nd Level Review—
Mr. Anthony W. Hudson, Staff Director, Civilian Personnel.
Mr. William J. Cassell, Comptroller.
RADM James E. Eckelberger, SC, USN, Executive Director, Supply Operations.

Anthony W. Hudson,
Staff Director, Civilian Personnel
[FR Doc. 88-15071 Filed 7-5-88; 8:45 am]
BILLING CODE 3570-01-3

Department of the Navy

Privacy Act of 1974; Amended Record System

AGENCY: Department of the Navy, DoD.
ACTION: Notice of an amended system of records subject to the Privacy Act.

SUMMARY: The Department of the Navy is amending a system of records subject to the Privacy Act, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice on or before August 5, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations

(OP-09B30), The Pentagon, Room 5E521, Department of the Navy, Washington, DC 20350-2000, telephone 202-697-1459, autovon: 227-1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the Federal Register as follows:

FR Doc 86-0485 (51 FR 12906) April 16, 1986
FR Doc 86-10763 (51 FR 18086) May 10, 1986
(Compilation)

FR Doc 86-12448 (51 FR 19884) June 3, 1986
FR Doc 86-19287 (51 FR 30377) August 20, 1986

FR Doc 86-19288 (51 FR 30393) August 26, 1986

FR Doc 86-28835 (51 FR 45931) December 23, 1986

FR Doc 87-1144 (52 FR 2147) January 20, 1987

FR Doc 87-1145 (52 FR 2149) January 20, 1987

FR Doc 87-5783 (52 FR 8500) March 18, 1987

FR Doc 87-9686 (52 FR 15530) April 29, 1987

FR Doc 87-10428 (52 FR 17294) May 7, 1987

FR Doc 87-13500 (52 FR 22671) June 15, 1987

FR Doc 87-27707 (52 FR 45846) December 2, 1987

FR Doc 87-10671 (52 FR 17240) May 10, 1988

FR Doc 87-12882 (52 FR 21512) June 8, 1988

FR Doc 87-13202 (52 FR 22028) June 13, 1988

The specific changes to the record system being amended is set forth below, followed by the system notice, as amended, published in its entirety. This amendment is not within the purview of the provision of 5 U.S.C. 552(a)(1), which requires the submission of a new or altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 29, 1988.

NO5822-1

System name:

Otsu Prison Health and Comfort Items (51 FR 18175, May 10, 1986).

Changes:

System name:

Delete the word: "Otsu" and substitute with: "Yokosuka" * * *

Categories of records in the system:

In line three, delete the word: " * * * Otsu * * *" and substitute with: " * * * Yokosuka * * *"

NO5822-1

System name:

Yokosuka Prison Health and Comfort Items.

System location:

Commander Fleet Activities, FPO Seattle 96702

Categories of individuals covered by the system:

Individuals who have been imprisoned under Japanese Law and jurisdiction for various offenses.

Categories of records in the system:

Record of request for, receipt of, and issues to of individuals imprisoned in Yokosuka Prison located in Yokosuka, Japan.

Authority for maintenance of the system:

5 USC 301, Departmental Regulations.

PURPOSE(S):

Used for billing armed services, other than Navy and Marine Corps, for items of health and comfort issued to their personnel imprisoned. Billing is prepared in accordance with existing interservice support agreements (ISSAS). Additionally, file used to answer complaints in instances where prisoners contend they are not supported properly.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetically by surname. New individual files instituted with arrival of individual in prison. Previous files retrieved to semi-active for one year and thereafter destroyed without report.

SAFEGUARDS:

Files maintained in locked file cabinet in locked office.

RETENTION AND DISPOSAL:

Destroyed without report after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander Fleet Activities, FPO Seattle 96702.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to the systems manager listed above and provide, as a minimum, the following information: Rank/rate, full name, branch of service, and social security number. Files maintained in logistics with command and requesters may visit this office for review of their files during normal working hours. Proof

of identification limited Armed Forces Identification Cards or Passports.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the systems manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Prison officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-15101 Filed 7-5-88; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning FAR Subpart 27.2, Patents:

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition and Regulatory Policy, (202) 523-3547.

SUPPLEMENTARY INFORMATION: a.

Purpose: The Patent Coverage in FAR Subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract above a dollar value of \$25,000 (27.202-1, 52.227-2). The contractor is also required to report all royalties anticipated or paid in excess of \$250 for the use of patented inventions by furnishing the name and address of

licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (27.204-1, 52.227-6, 52.227-9). The information collected is to protect the rights of the patent holder and the interest of the Government.

b. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, 30; responses per respondent, 7; total annual responses, 30; preparation hours per response, .5 hr; and total response burden hours, 15.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-00XX, Patents.

Dated: June 23, 1988.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 88-15088 Filed 7-5-88; 8:45 am]

BILLING CODE 3220-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER88-482-000 et al.]

Southern California Edison Co. et al.; (Electric Rate, Small Power Production, and Interlocking Directorate Filings)

Take notice that the following filings have been made with the Commission:

1. Southern California Edison

[Docket No. ER88-482-020]

June 28, 1988

Take notice that on June 15, 1988, Southern California Edison Company (Edison) tendered for filing, pursuant to § 35.15 of the Federal Energy Regulatory Commission's Regulations (18 CFR 35.15) under the Federal Power Act, a Notice of Cancellation of the Agreement for Interim Operating Procedures with the following entities (Cities):

Entity	Rate schedule FERC No.
1. City of Anaheim	95.17
2. City of Azusa	144.8
3. City of Banning	145.8
4. City of Colton	146.8
5. City of Riverside	94.13

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. EC88-22-000]

June 28, 1988.

Take notice that on June 23, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing an application pursuant to section 203 of the Federal Power Act for authorization for PG&E to sell and convey to the Department of Water Resources of the State of California (DWR) an interest in PG&E's Midway-Wheeler Ridge transmission system.

PG&E, incorporated in the State of California, provides electric and gas service throughout Northern California. It also distributes and sells water in some cities, towns and rural areas and produces and sells steam in certain parts of San Francisco.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Potomac Edison Company

[Docket No. ER88-480-000]

June 28, 1988.

Take notice that on June 20, 1988, Potomac Edison Company (Company) tendered for filing a change in its Electric Service Agreement with the City of Hagerstown, Maryland (City). The change revises Appendix A to that Agreement to increase the maximum and transfer capacities for firm and emergency (or maintenance) service of the three service connections between the Company and the City. The Company has requested that the revised Appendix A be deemed effective as of November 1, 1987.

Copies of this filing have been served upon the City and upon the Maryland Public Service Commission.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this document.

4. Virginia Electric and Power Company

[Docket No. ER88-481-000]

June 28, 1988.

Take notice that on June 14, 1988, Virginia Electric and Power Company (Company) tendered for filing an addendum to a Settlement Agreement dated as of October 16, 1987 between the Company and Old Dominion Electric Cooperative (ODEC). The addendum would limit the percentage adder applicable to emergency purchases to one mill per kilowatt-hour.

Waiver of the Commission's notice requirements is requested so as to permit an effective date of June 1, 1988.

Copies of the filing have been served on ODEC, the Virginia States Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER88-483-000]

June 28, 1988.

Take notice that on June 23, 1988, New England Power Pool (NEPOOL) Executive Committee tendered for filing an Amendment to NEPOOL Agreement, dated as of May 1, 1986,

(AMENDMENT) which changes provisions of the NEPOOL Agreement (NEPOOL FPC No. 2), dated as of September 1, 1971, as previously amended by twenty-four (24) amendments.

The NEPOOL Executive Committee states that the AMENDMENT is in thirteen parts and changes various provisions of the NEPOOL Agreement to adjust the way in which the pool prices energy service received by pool participants in each hour and to revise the way in which certain savings resulting from the pool's central dispatch are divided among the participants. Furthermore, the Committee states that the AMENDMENT revises the NEPOOL Agreement to clarify the authority of the Management Committee and to adjust the formulae for determining transmission charges to conform to the principal changes made by the AMENDMENT and to changes made by a prior amendment to the NEPOOL Agreement that became effective, subject to refund, on November 1, 1986.

The NEPOOL Executive Committee has requested that the AMENDMENT be permitted to become effective on the date specified therein, November 1, 1988, and that the Commission waive its notice requirements to permit the filing to be made more than 120 days prior to the proposed effective date.

Comment date: July 11, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ES88-44-000]

June 29, 1988.

Take notice that on June 21, 1988, Idaho Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act,

seeking an Order authorizing the issuance and sale of up to \$100,000,000 of First Mortgage Bonds of the Applicant.

Comment date: July 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15110 Filed 7-5-88; 8:45 am]

BILLING CODE 8717-01-M

[Project No. 8790-000]

City of Aberdeen, WA; Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 488, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Wishkah Hydro-electric Project No. 8790 and has prepared an Environmental Assessment (EA) for the proposed project. The project would utilize pipeline flow from the City's existing Malinowski Dam, located on the Wishkah River in Grays Harbor County, Washington. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000 of the Commission's offices

at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15139 Filed 7-5-88; 8:45 am]

BILLING CODE 8717-01-M

[Project No. 5357-004]

North Board of Control; Owyhee Project Irrigation Districts; Availability of Environmental Assessment

June 30, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 488, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Mitchell Butte Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the proposed amendment, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000 of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15140 Filed 7-5-88; 8:45 am]

BILLING CODE 8717-01-M

[Project No. 8121-000]

Warren B. Nelson; Availability of Environmental Assessment

June 30, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 488, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Deer Creek Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the project, with appropriate mitigation measures, would not

constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15141 Filed 7-5-88; 8:45 am]

BILLING CODE 8717-01-M

[Docket No. EL85-19-114]

Hydroelectric Development in the Upper Ohio River Basin; Public Meeting on the Draft Environmental Impact Statement

June 30, 1988.

The staff of the Federal Energy Regulatory Commission has issued a Draft Environmental Impact Statement (EIS) for Hydroelectric Development in the Upper Ohio River Basin, FERC Docket No. EL85-19-114. The draft EIS was sent to the Environmental Protection Agency and was made available to the public on or about May 10, 1988.

The draft EIS documents the views of the Commission's staff and includes staff recommendations on licensing 24 proposed hydroelectric projects at 19 sites. Before the Commission makes a decision on issuing licenses for the projects, it will take into account all concerns relevant to the public interest. The final EIS will be part of the record from which the Commission will make its decision.

Applicants, Federal, state, and local agencies, and interested persons are invited to attend a public meeting and to express their views about the draft EIS. The meeting will be held on Friday, July 15, 1988, from 10:00 a.m. to 3:00 p.m. at the William S. Moorhead Federal Building (in Room 200), 1000 Liberty Avenue in Pittsburgh, Pennsylvania.

The Commission's staff will conduct the public meeting. At this meeting, persons may make statements orally or in writing. The meeting will be recorded by a stenographer, and all statements, oral and written, will become part of the public hearing record.

For further information on the public meeting, contact project manager George Taylor at (202) 376-1800 or attorney William O. Blome at (202) 357-8131.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15138 Filed 7-5-88; 8:45 am]

BILLING CODE 8717-01-M

[Docket Nos. CP88-507-000 et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission

[Docket No. CP88-507-000]

June 28, 1988.

Take notice that on June 23, 1988, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-507-000 a request pursuant to §§ 157.206 and 284.223 of the Commission's Regulations under the Natural Gas Act stating that Columbia proposes to transport natural gas on behalf of Citizens Gas Supply Corporation (Shipper) under the blanket certificate issued in Docket No. CP88-240-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport on an interruptible basis up to 1,000,000 MMBtu equivalent of natural gas per day for Shipper under two transportation service agreements attached to the filing. Columbia projects its average day and annual quantities

would be 25,000 and 5,500,000 MMBtu, of natural gas per day respectively.

Columbia states that no facilities would be constructed to provide the service, and that receipt and delivery points are on file with the Commission and are specified in the service agreements. Columbia states that gas has been flowing pursuant to the service agreements since March 5, 1988 under authority of § 284.223(a) of the Commission's Regulations, the notice of which was docketed by the Commission at Docket No. ST88-3553.

Columbia further states that to its knowledge no agency relationship exists under which a local distribution company or affiliate of the Shipper will receive gas on behalf of the Shipper under this transportation arrangement.

Comment date: August 12, 1988, in accordance with standard Paragraph C at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-487-000, CP88-482-000, CP88-483-000, CP88-484-000, CP88-485-000, CP88-486-000, CP88-487-000, CP88-488-000, CP88-489-000, CP88-500-000, CP88-501-000, CP88-502-000, CP88-503-000, CP88-504-000, CP88-505-000, and CP88-506-000]

June 28, 1988.

Take notice that on June 21, 1988 and June 23, 1988, Transcontinental Gas Pipe

Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket Nos. CP88-487-000, et al., applications pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm sales entitlement to sixteen customers, all as more fully set forth in the applications on file with the Commission and open to public inspection.¹

Transco states that pursuant to § 284.10 of the Commission's Regulations, the customers, as noted in the Appendix, converted firm sales entitlements under their respective Service Agreements to firm transportation under Transco's Rate Schedule FT. Transco states that it now requests to abandon firm sales entitlement to each customer associated with the reductions in firm sales service to be effective as of the dates noted on the Appendix. Transco states that pursuant to § 284.10(d)(2), the exercise of contract conversion rights by a firm sales customer under § 284.10(d) constitutes consent by that customer to the abandonment of sales service to the extent of the conversion.

¹ See attached appendix for details of each application, including customer name, rate schedule, revised sales entitlement, etc.

APPENDIX

Docket No. CP88-	Filed	Customer	Rate schedule	Firm sales entitlement (Mcf/d)			Effective date of reduction
				Current	Reduction	Revised	
Comment date: July 19, 1988, in accordance with Standard Paragraph F at the end of this notice.							
487-000	6/21/88	Philadelphia Gas Works	CD-3	159625	23944	135681	12/1/87
492-000	6/23/88	Long Island Light Company	CD-3	149070	34438	114632	11/1/87
493-000	6/23/88	Consolidated Edison Company of New York, Inc.	CD-3	324522	48678	275844	11/1/87
494-000	6/23/88	Piedmont Natural Gas Company, Inc.	CD-2	205200	30780	174420	11/1/87
495-000	6/23/88	UGI Corporation	OG-3	4800	735	4165	11/1/87
				4165	4165	0	5/1/88
496-000	6/23/88	Public Service Electric and Gas Company	CD-3	411527	144828	266599	11/1/87
				266599	28647	227952	5/1/88
497-000	6/23/88	The Brooklyn Union Gas Company	CD-3	237638	115842	121896	11/1/87
498-000	6/23/88	Atlanta Gas Light Company	CD-1	107600	16140	91460	5/1/88
499-000	6/23/88	Lynchburg Gas Company	CD-2	12000	1750	10250	11/1/87
500-000	6/23/88	Elizabethtown Gas Company	CD-3	75128	35424	39702	5/1/88
501-000	6/23/88	Washington Gas Light Company	CD-2	55000	8250	46750	11/1/87
502-000	6/23/88	North Carolina Natural Gas Corporation	CD-2	141000	20280	120710	11/1/87
503-000	6/23/88	Public Service Company of North Carolina, Inc.	CD-2	158600	23790	134810	11/1/87
504-000	6/23/88	Clinton-Newberry Natural Gas Authority	CD-2	9100	1253	7747	1/1/88
505-000	6/23/88	Philadelphia Electric Company	CD-3	126702	7641	119061	11/1/87
				119061	11364	107697	5/1/88
506-000	6/23/88	South Carolina Pipeline Corporation	CD-2	28300	4395	24905	6/1/88

3. Florida Gas Transmission Company

[Docket No. CP88-488-000]

June 29, 1988.

Take notice that on June 22, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas, 77251, filed in Docket No. CP88-488-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to construct and operate a new delivery point to an existing resale customer, Peoples Gas System, Inc. (PGS), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a sales tap on FGT's existing 18-inch and proposed 20-inch main transmission line in Osceola County, Florida, in order to make sales to PGS of up to 36,167 therms of natural gas per day. The estimated \$284,882.00 cost of the delivery point will be borne by PGS, it is stated.

FGT states that the new meter station will allow PGS to more efficiently serve its markets by allowing it to serve existing and new markets from a new location, thus reducing the occurrence of pressure problems for PGS. FGT asserts that the total volumes to be delivered to PGS would not exceed PGS's existing Annual Volumetric Entitlement (AVE) for the Orlando Division.

FGT states that the new delivery point will result in a minimal increase in deliveries to PGS on an average day. Based upon the current flow characteristics of FGT's system, FGT states that there should be no detriment or disadvantage to its existing resale and direct sale customers as a result of the proposed construction. FGT asserts that the volumes to be delivered at the proposed delivery point are not prohibited by FGT's tariff.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. OXY USA Inc.

[Docket No. CI87-233-001]

June 29, 1988.

Take notice that on June 13, 1988, OXY USA Inc. (OXY), formerly Cities Service Oil and Gas Corporation, of 110 West 7th Street, Tulsa, Oklahoma 74110, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and Parts 154 and 157 of the Commission's Regulations requesting extension and amendment of its blanket limited-term

certificate with pregranted abandonment issued August 4, 1987, in Docket No. CI87-233-000. OXY's certificate authorizes the sale of previously uncommitted gas from Ship Shoal Block 91, Eugene Island Block 208 "H" and other unspecified sources for a one-year term. OXY's certificate also authorizes the sale of OXY's previously certificated and abandoned gas from the Wilbert "E" well located in Iberville Parish, Louisiana, for a three-year term. OXY requests extension of its authorization covering uncommitted gas for an unlimited term and amendment of such authorization to include the sale for resale in interstate commerce of NGA gas purchased from or exchanged with other producers or marketing entities that was previously certificated or contractually uncommitted and for which the producer or supplier has the necessary sales and abandonment authorization. OXY also requests that the blanket authorization to make sales for resale in interstate commerce of its previously certificated and abandoned gas (from the Wilbert "E" well) be terminated under the subject docket and that future sales of this gas be covered under the blanket certificate and pregranted abandonment authorized in § 157.301 of the Commission's Regulations pursuant to Order No. 490, issued February 5, 1988, in Docket No. RM87-16-000. The application is on file with the Commission and open to public inspection.

Comment date: July 13, 1988, in accordance with Standard Paragraph J at the end of the notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP88-476-000]

June 29, 1988.

Take notice that on June 17, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-476-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport, on an interruptible basis, up to 100,000 MMBtu of natural gas on an average day and a maximum of 300,000 MMBtu of natural gas on a peak day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Chevron U.S.A. Inc. (Chevron), a natural gas producer. Natural proposes to transport Chevron's gas under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file

with the Commission and open to public inspection.

Natural states that it commenced the proposed transportation service for Chevron on April 28, 1988, at Docket No. ST88-3612 for a one-hundred twenty-day period ending August 26, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000. Natural proposes to continue this transportation service in accordance with §§ 284.221 and 284.223(b) of the Commission's Regulations. Natural states that it would receive Chevron's natural gas volumes at receipt points in Louisiana, offshore Louisiana, New Mexico, Oklahoma, Texas, offshore Texas, and Wyoming, and deliver the gas at delivery points in Louisiana, offshore Louisiana, and Texas.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15112 Filed 7-5-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket Nos. CP88-478-000 et al.]**United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company)

[Docket No. CP88-478-000]

June 27, 1988.

Take notice that on June 20, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-

1478, filed in Docket No. CP88-478-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing United to establish an Authorized Overrun Service (AOS) together with pre-granted abandonment authority, consistent with what was originally proposed by United in the context of its curtailment proceeding in Docket No. TC88-6-000, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

United States that the tariff sheets filed in Docket No. TC88-6-000 are intended to implement a new system management plan on United's system in conjunction with open access operations United States that a central element of the system management plan is a system of annual renominations by United's firm customers of their monthly service requirements. United explains that in connection with these service nominations, the plan also contemplates that AOS services be available as an option to customers who exceed their nominated sales or transportation levels. United notes that in an order issued February 12, 1988, in Docket No. TC88-6-000, the Commission tentatively approved most of the provisions of the proposed management plan, but determined that United lacked the certificate authority to provide all of the proposed AOS services to its customers and directed United to file for such authorization. United further notes that in its "Order Denying Rehearing" issued May 20, 1988, the Commission reaffirmed that requirement. The subject application, it is indicated, is United's response to the above mentioned Commission orders.

United states that it is requesting authority to offer overrun services in excess of nominated service levels, but within existing Maximum Daily Quantities (MDQs), to: (1) Its jurisdictional sales customers, (2) its non-jurisdictional direct sales customers, and (3) its certificated firm and interruptible transportation customers. It is indicated that AOS services would only be offered on an if, as and when available basis and will be subordinate to all other firm and interruptible services. United proposes that the rates for AOS would be those specified in United's existing overrun rate schedules, specifically Rate Schedule AOS (applicable to jurisdictional sales customers) and the AOT rates (applicable to Rate Schedule ITS and FTS transportation customers). United states that in the case of non-jurisdictional sales customers, the rate would be determined by according to

the individual contracts. United requests pre-granted abandonment authority to cease providing AOS under the certificate in the event that disapproval of or modification to the underlying system plan render the AOS service no longer applicable.

Comment date: July 18, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP88-488-000]

June 29, 1988.

Take notice that on June 14, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74102, filed a petition to amend the order issued December 22, 1980, in Docket No. CP80-499-000, as further amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize a one-year extension of its limited-term off-system sale to El Paso Natural Gas (El Paso) with pre-granted abandonment, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that WNG petitions to extend its off-system sale of up to 100,000 Mcf of natural gas per day to El Paso for a limited term of one year with pre-granted abandonment. WNG indicated that Natural Gas Pipeline Company of America (NGPL), which has accepted an open-access transportation certificate, would deliver the natural gas volumes for WNG's account to El Paso at an existing interconnecting point in Lea County, New Mexico.

WNG last received authorization to make this off-system sale to El Paso on May 5, 1987, in the amended order issued in Docket No. CP80-499-008, 39 FERC ¶61,080, for a term of one year.

Comment date: July 20, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP88-474-000]

June 29, 1988.

Take notice that on June 17, 1988, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521 Houston, Texas 77252 filed in Docket No. CP88-474-000 a request pursuant to § 157.208 of the Regulations under the Natural Gas Act for authorization to construct and operate certain offshore pipeline facilities under the blanket certificate issued in Docket No. CP87-535-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with

* FGT has on file with the Commission in Docket No. CP88-704 an application to construct a 20-inch line looping its 18-inch line in this area.

the Commission and open to public inspection.

Texas Eastern requests authority to construct and operate approximately 13.0 miles of 24-inch pipeline and 0.3 miles of 18-inch pipeline, extending from the terminus of Texas Eastern's existing 24-inch pipeline No. 40-B-4 in Main Pass Area Block 105, offshore Louisiana, to production facilities in Viosca Knoll Area Block 203, offshore Louisiana. Texas Eastern states that the purpose of the proposed pipeline is to connect gas reserves for system supply of transportation in Viosca Knoll Area Block 203, offshore Louisiana. It is further stated that the proposed facilities would enable Texas Eastern to expand its system into an area of rapidly growing reserve potential.

Texas Eastern asserts that it has executed a gas purchase contract with Santa Fe Energy which provides for the commitment of 33.33 percent of the gas reserves in Viosca Knoll Block 203. Texas Eastern estimates the total reserves in the field to be 88 Bcf with a deliverability of 70,000 Mcf per day. Texas Eastern states that it anticipates that it will either acquire the remaining non-dedicated reserves or provide transportation of the reserves.

Texas Eastern states that the estimated cost of the proposed facilities is \$12,872,000 and that the facilities would be financed initially through funds on hand with permanent financing undertaken as part of a long-term program at a later date.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Zapata Exploration Company

[Docket No. CI87-340-001]

June 29, 1988.

Take notice that on June 13, 1988, Zapata Exploration Company (Zapata), c/o Mayor, Day & Caldwell, 1900 RepublicBank Center, 700 Louisiana Street, Houston, Texas 77002, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and Parts 154 and 157 of the Commission's Regulations requesting extension of its blanket limited-term certificate with pregranted abandonment which expires August 4, 1988, for an unlimited term. Zapata's certificate authorizes the sale of previously uncommitted gas from Blocks 109, 110 and 154, East Breaks Area, Offshore Texas. This application is on file with the Commission and open to public inspection.

Comment date: July 13, 1988, in accordance with Standard Paragraph J at the end of this notice.

5. Sunrise Energy Company

[Docket No. CI87-073-001]

June 29, 1988.

Take notice that on June 6, 1988, Sunrise Energy Company (Sunrise), formerly Sunshine Energy Company, of Suite 645, 8150 North Central Expressway, Dallas, Texas 75206, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term which expired March 31, 1988, to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: July 13, 1988, in accordance with Standard Paragraph J at the end of this notice.

6. CNG Producing Company, et al.

[Docket No. CI88-481-000, et al.]

June 29, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket limited-term certificate with pregranted abandonment authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Docket No. and Date Filed	Applicant	Requested term of authorization
CI88-481-000 6/8/88	CNG Producing Company, Canal Place One, Suite 3100, New Orleans, Louisiana 70130.	1 year.
CI88-480-000, 6/13/88.	Tecol Gas Services, Inc., Coastal Tower, 9 Greenway Plaza, Houston, Texas 77046.	3 years.

Comment date: July 13, 1988, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Casbell,
Acting Secretary.

[FR Doc. 88-15111 Filed 7-5-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket Nos. CP88-512-000 et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP88-512-000]

June 29, 1988.

Take notice that on June 24, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88-512-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service on behalf of MidCon Marketing Corporation (MidCon) under United's blanket certificate issued in Docket No. CP88-6-000 on January 15, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated February 18, 1988, it proposes to transport natural gas for MidCon, from 26 points of receipt located offshore Louisiana and in the state of Louisiana, to a delivery point on United's system in St. Mary Parish, Louisiana.

United further states that the peak day quantities would be 206,000 MMBtu, the average daily quantities would be 206,000 MMBtu and that the annual quantities would be 75,190,000 MMBtu. It is stated, service under § 284.223(a)

commenced March 4, 1988, as reported in Docket No. ST88-3426 (filed May 2, 1988).

United further requests a waiver of the 120-day limitation to the extent necessary to continue transportation service for MidCon without interruption.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP88-479-000]

June 30, 1988.

Take notice that on June 20, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-479-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional delivery point in Buchanan County, Missouri for the sale and delivery of gas to the Kansas Power and Light Company (KPL), under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that KPL has requested this additional delivery point in order to serve the hydrogen plant of AG Processing Company (AG Processing) in St. Joseph, Missouri. WNG indicates that the projected volume of delivery through these facilities is 150,000 Mcf per year with a maximum peak load of 450 Mcf per day the first year increasing to 300,000 Mcf per year and 900 Mcf per day the second year and remaining constant thereafter. Williams proposes to tap its 16-inch pipeline in Buchanan County, Missouri and to construct measuring, regulating, and appurtenant facilities for the delivery of gas to KPL for resale to AG Processing. WNG estimates the cost of construction at \$30,210 which would be paid from treasury cash.

WNG states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP88-513-000]

June 29, 1988.

Take notice that on June 24, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-

1478, filed in Docket No. CP88-513-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of Mobil Oil Exploration and Producing Southeast, Inc. (Mobil), a natural gas producer, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to an Interruptible Gas Transmission Agreement dated March 21, 1988, United would transport up to a maximum daily quantity of 20,600 MMBtu of natural gas per day. United further states that service commenced April 4, 1988, as reported in Docket No. ST88-3422, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP88-515-000]

June 29, 1988.

Take notice that on June 24, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251-1487, filed in Docket No. CP88-515-000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service to Tejas Power Corporation (Tejas) a natural gas marketer, under United's blanket certificate issued January 15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes an interruptible transportation service for Tejas of up to 30,900 MMBtu of natural gas per day or approximately 11,278,500 MMBtu of gas annually pursuant to a transportation agreement dated February 17, 1988, from a receipt point located in the NW. Oberlin Field, Allen Parish, Louisiana, to a delivery point located in Lafayette Parish, Louisiana, or a delivery point located in Calcasieu Parish, Louisiana.

United states that it reported to the Commission the date of commencement of service as March 1, 1988, in Docket No. ST88-4134, pursuant to the 120-day automatic authorization provisions of § 284.223(a) of the Commission's Regulations.

United requests a waiver of the 120-day limitation to the extent necessary to

continue the transportation service for Texas without interruption. United reports the delay in filing a timely request for authorization is due to administrative problems related to establishing new reporting procedures.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipeline Company

[Docket No. CP88-518-000]

June 29, 1988.

Take notice that on June 24, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-518-000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service to Texas Power Corporation (Tejas) a natural gas marketer, under United's blanket certificate issued January 15, 1988, in Docket No. CP88-0-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes an interruptible transportation service for Tejas of up to 30,900 MMBtu of natural gas per day or approximately 11,278,500 MMBtu of gas annually pursuant to a transportation agreement dated March 23, 1988, from a receipt point located near McFaddin, Victoria County, Texas to a delivery point located in Rapides Parish, Louisiana.

United stated that it reported to the Commission the date of commencement of service of April 6, 1988, in Docket No. ST88-4274, pursuant to the 120-day automatic authorization provisions of § 284.223(a) of the Commission's Regulations.

United requests a waiver of the 120-day limitation to the extent necessary to continue the transportation service for Tejas without interruption. United reports the delay in filing a timely request for authorization is due to administrative problems related to establishing new reporting procedures.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipeline Company

[Docket No. CP88-517-000]

June 29, 1988.

Take notice that on June 24, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88-517-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act

for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-0-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Cities Service Oil and Gas Corporation (Cities Service). United explains that service commenced April 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-3548. United also requests waiver of the 120-day limitation to the extent necessary to continue service for Cities Service without interruption. United explains that the peak day quantity would be 30,900 dekatherms, the average daily quantity would be 30,900 dekatherms, and that the annual quantity would be 11,278,500 dekatherms. United explains that it would receive natural gas for Cities Service's account at points of receipt in Texas and Louisiana. United states that it would redeliver the gas for Cities Service's account at an existing interconnection between United and Clejan Industria Gas, Inc. in Ascension Parish, Louisiana.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipeline Company

[Docket No. CP88-514-000]

June 29, 1988.

Take notice that on June 24, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88-517-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-0-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Oxy Cities Service NGL, Inc. (Oxy). United explains that service commenced April 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-3542. United also requests waiver of the 120-day limitation to the extent necessary to continue service for Oxy without interruption. United explains that the peak day quantity would be 1,545 dekatherms, the average daily quantity would be 1,545 dekatherms, and that the annual quantity would be 563,925 dekatherms. United explains that it would receive natural gas for Oxy's account at an existing

interconnection between United and Cities Service Oil Company in Gregg County, Texas. United states that it would redeliver the gas for Oxy's account at an existing interconnection between United and Dal-Tile Corp. in Dallas County, Texas.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipeline Company

[Docket No. CP88-511-000]

June 29, 1988.

Take notice that on June 24, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88-511-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service on behalf of MidCon Marketing Corporation (MidCon) under United's blanket certificate issued in Docket No. CP88-0-000 on January 15, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated March 8, 1988, it proposes to transport natural gas for MidCon, from eighteen points of receipt located in the state of Louisiana, to a delivery point on United's system in Oachita Parish, Louisiana.

United further states that the peak day quantities would be 103,000 MMBtu, the average daily quantities would be 103,000 MMBtu and that the annual quantities would be 37,595 MMBtu. It is stated, service under § 284.223(a) commenced March 11, 1988, as reported in Docket No. ST88-3420 (filed May 2, 1988).

United further requests a waiver of the 120-day limitation to the extent necessary to continue transportation service for MidCon without interruption.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Company

[Docket No., CP88-480-000]

June 30, 1988.

Take notice that on June 20, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-480-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000

pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Energy Buyers Service Corporation (Energy Buyers). Tennessee explains that service commenced May 21, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4227. Tennessee further explains that the peak day quantity would be 20,000 dekatherms, the average daily quantity would be 151 dekatherms, and that the annual quantity would be 55,115 dekatherms. Tennessee explains that it would receive natural gas for Energy Buyers' account from a point of receipt located in Texas. Tennessee states that the points of delivery are located in the states of Pennsylvania, New Jersey, New York, West Virginia, Ohio, Kentucky, Massachusetts, and Connecticut. Tennessee further explains that locations of the ultimate delivery point of the gas are in the states of Ohio, Pennsylvania, New York and Connecticut.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-489-000]

June 30, 1988.

Take notice that on June 22, 1988, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-489-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing certain firm transportation services for 15 customers in conjunction with conversions from firm sales elected by those customers, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Transco requests authorization pursuant to section 7(c) of the Natural Gas Act, in lieu of authority existing under section 311 of the NGPA, to transport for customers on a firm basis, up to a maximum daily quantity (Daily Transportation Demand Quantity) of natural gas pursuant to certain service agreements under Transco's Rate Schedule FT. It is stated that Transco would receive such quantities of gas for firm transportation at various receipt points on its system. It is further stated that such gas would be redelivered at existing points of interconnection between it and each of the customers.

Transco states that each of the 15 customers has reduced its firm sales entitlement from Transco under their respective service agreements by an amount equal to the Daily Transportation Demand Quantity set forth in the service agreements (See Appendix). It is stated that such reduction in firm sales service to the customers releases the capacity on Transco's mainline necessary to provide the firm transportation requested. Transco notes that the conversions from firm sales to firm transportation have been exercised by the customers in accordance with the conversion rights accorded them by Transco's Commission approved Order No. 426/500 settlement.

Transco asserts that in order to secure the most economically priced gas available, customers require flexibility in sources of gas supply. It is averred that such alternative sources involve changes in the points of receipt by agreement with Transco, but would not involve any increase in firm capacity entitlement on Transco's mainline. Consequently, Transco requests flexible authority to undertake certain filing requirements to advise the Commission in the event customers obtain different sources of supply requiring additions or deletions of points of receipt in furtherance of the transportation authority requested in the application. Transco indicates that upon implementation of the requested flexible authority, it would file by May 1 of each year appropriate tariff sheet revisions with the Commission reflecting additions and deletions of points of receipt during the preceding calendar year.

APPENDIX—CONVERSIONS FOR WHICH SECTION 7 CERTIFICATE AUTHORITY IS REQUESTED

Customer	(Mcf/d) original CD	(Mcf/d) revised CD	(Mcf/d) FT
Atlanta Gas Light	107,000	91,460	15,140
Brooklyn Union	237,638	121,696	115,942
Clinton-Newberry	9,100	7,747	1,353
Consolidated Edison	324,522	275,844	48,678
Elizabethtown	75,126	39,702	35,424
Long Island Lighting	149,070	114,632	34,438
Lynchburg North	12,000	10,250	1,750
Carolina Natural	141,000	120,710	20,290

APPENDIX—CONVERSIONS FOR WHICH SECTION 7 CERTIFICATE AUTHORITY IS REQUESTED—Continued

Customer	(Mcf/d) original CD	(Mcf/d) revised CD	(Mcf/d) FT
Philadelphia Electric	149,061	114,632	34,438
Piedmont	205,200	174,420	30,780
PSE&G	411,527	227,952	183,575
PSNC	158,600	134,810	23,790
South Carolina P/L	29,300	24,905	4,395
UGI	4,500	0	4,900
Washington Gas Light	55,000	46,750	8,250

Comment date: July 21, 1988, in accordance with Standard Paragraph F at the end of this notice.

11. Texas Gas Transmission Corporation

[Docket No. CP88-143-011]

June 30, 1988.

Take notice that on May 25, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-143-011 a petition to further amend the order issued in Docket No. CP88-143-000, as amended, pursuant to section 7(c) of the Natural Gas Act, so as to modify the existing transportation service by increasing contract demand and adding receipt points, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that Texas Gas was authorized in Docket No. CP88-143-000 to transport natural gas on behalf of 52 customers. Texas Gas proposes herein to modify the existing service by increasing contract demand for four customers and to add receipt points for 42 customers (see appendix for details). It is asserted that in all other aspects the existing transportation service, as authorized, would remain the same.

Customer	Proposed Contract Demand (MMBtu/day)
Carrollton/Dow Corning	5,000
Elizabethtown/Crucible Magnetics	1,000
Western Kentucky Gas/General Tire	8,400
Western Kentucky/Southwire Company	1,540

Customers with Additional Receipt Points

ARMCO Inc.
Brownsville/Haywood
Carrollton/Dow Corning

BEST COPY AVAILABLE

Elizabethtown/Crucible Magnetics
Elizabethtown/Dow Corning
Elizabethtown/Gates Rubber
Franklin Boxboard
Georgia-Pacific
Illinois Gas/Pioneer Asphalt
Indiana Gas/Fairfield
Indiana Gas/U.S. Gypsum
Indiana Gas/Knauf Fiber Glass
Jackson/Procter & Gamble
Louisville/Ralston Purina
Memphis/Buckeye
Memphis/DuPont
Memphis/Grace
Memphis/Hunko
Memphis/Beatrice
Memphis/Kellogg
Memphis/Kimberly Clark
Memphis/Q.O. Chemicals
Memphis/Protein Technologies
Memphis/Regional Medical Center
Memphis/Trumbull Asphalt
Memphis/Velsicol Chemical
Middletown/Paperboard
Mississippi Valley/Archer Daniels
Mississippi Valley/System Fuels
Olin Corporation
Terre Haute/CF Industries
Western KY Gas/Alumax Aluminum
Western KY Gas/Emerson Electric
Western KY Gas/General Tire
Western KY Gas/Goodyear
Western KY Gas/Goodyear
Western KY Gas/Green River Steel
Western KY Gas/Logan Aluminum
Western KY Gas/National Southwire
Western KY Gas/Phelps Dodge
Western KY Gas/Southwire Company
Westvaco

Comment date: July 21, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. El Paso Natural Gas Company

[Docket No. CP88-475-000]

June 30, 1988.

Take notice that on June 6, 1988, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application in Docket No. CP88-475-000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to (1) abandon by conveyance to ARCO Oil and Gas Company (ARCO) certain existing compression, pipeline and metering facilities with appurtenances, together described as the Hugoton System, and (2) abandon the delivery of gas on an exchange basis to Northern Natural Gas Company, Division of Enron Corporation (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that by order issued September 17, 1988, as amended, in

Docket No. CP85-304 *et al.*, El Paso was authorized, *inter alia*, to construct and operate certain facilities and to deliver to Northern on an exchange basis, natural gas purchased from Sinclair Oil & Gas Company in the Hugoton area, as provided by an exchange agreement dated March 11, 1985, as amended between El Paso and Northern.

El Paso states that based on a comprehensive review of its gas supply acquisition facilities and its market requirements, it has been determined that the continued operation of the system is no longer justified. El Paso indicates that the Hugoton System essentially serves as a gathering facility not located in close proximity to El Paso's mainline system. El Paso also presents data indicating an excess of design capacity of the Hugoton system over the deliverability underlying the Hugoton area. El Paso states that to facilitate ARCO's existing and future gas exploration in proximity to the system and to resolve El Paso's existing and potential future take-or-pay exposure, El Paso and ARCO entered into a sales agreement dated May 31, 1988, permitting ARCO to acquire El Paso's Hugoton system.

Accordingly, El Paso proposes to abandon by conveyance to ARCO: (1) One 4,000 horsepower field compressor unit, (2) approximately 12.07 miles of 14-inch O.D. pipeline, and (3) one dual 8% inch O.D. meter. El Paso indicates the sale price of the Hugoton System, including the above-described facilities, is \$4,400,000. It is indicated that ARCO would continue to operate the Hugoton System by gathering and transporting its own volumes of gas. It is also indicated that ARCO would negotiate with Northern to facilitate the movement of gas to it market utilizing the existing interconnection is with Northern. El Paso also indicates that it has or will shortly release its purchase rights to its Hugoton System gas with ARCO which would obviate the need for the continuation of the above-mentioned El Paso-Northern exchange agreement. El Paso, therefore, requests authorization to abandon its participation in the exchange agreement.

El Paso states that the abandonment of the Hugoton System would have an insignificant effect upon El Paso's system gas supply activities and would have no significant impact upon El Paso's ability to render natural gas service to its customers.

Comment date: July 21, 1988, in accordance with Standard Paragraph F at the end of this notice.

13. Texas Gas Pipe Line Corporation

[Docket No. CP88-477-000]

June 30, 1988.

Take notice that on June 20, 1988, Texas Gas Pipe Line Corporation (Applicant), 2001 Timberloch Place, The Woodlands, Texas 77380, filed in Docket No. CP88-477-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to acquire, install and operate a 750 horsepower compressor unit, together with related facilities, at a proposed site in Jefferson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the compressor unit, which will be acquired without charge from its affiliate, Winnie Pipeline Company, is necessary in order to modify the basic operation of Applicant's pipeline system as well as to provide greater operating flexibility and efficiency. It is stated that the cost to acquire and install the compression facilities involved is estimated to be \$68,100 plus legal fees and filing fee.

Comment date: July 21, 1988, in accordance with Standard Paragraph F at the end of this notice.

14. United Gas Pipe Line Company

[Docket No. CP88-484-000]

June 30, 1988.

Take notice that on June 21, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-484-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Texaco Producing, Inc., a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the underlying interruptible gas transportation agreement was executed March 31, 1988, and provides for the transportation of a maximum daily quantity of 41,200 MMBtu from seventy-six (76) points of receipt located in Panola and Gregg Counties, Texas to a single point of delivery located in Rapides Parish, Louisiana. United further states that the service commenced April 21, 1988, as reported in Docket No. ST88-4135 on

June 10, 1988, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: August 15, 1988, in accordance with Standard Paragraph G at the end of this notice.

15. Texas Gas Transmission Corporation

[Docket No. CP87-287-001]

June 30, 1988.

Take notice that on May 28, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87-287-001, a petition to amend the order issued in Docket No. CP87-287-000 pursuant to section 7(c) of the Natural Gas Act, so as to modify the existing transportation service for Citizens Gas & Coke Utility (Citizens) by extending the transportation term beyond the presently authorized expiration date, all as more fully set forth in the petition to amend which is on file with the Commission which is on file with the Commission and open to public inspection.

Texas Gas requests an amended certificate to reflect an amended transportation agreement in which Texas Gas agrees to perform the transportation service for Citizens until the earlier of one year from the present expiration date of August 25, 1988, or the date on which Texas Gas accepts a blanket certificate under § 284.221 of the Commission's Regulations. It is asserted that in all other respects the existing transportation service would remain the same.

Comment date: July 21, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

16. Tennessee Gas Pipeline Company

[Docket No. CP88-491-000]

June 30, 1988.

Take notice that on June 23, 1988, Tennessee Gas Pipe Line Company (Tennessee), P.O. Box 2511, Houston, Texas 77251, filed in Docket No. CP88-491-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Tejas Power Corporation (Tejas). Tennessee explains that service commenced June 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4247. Tennessee further explains

that the peak day quantity would be 30,000 dekatherms, the average daily quantity would be 5,000 dekatherms, and that the annual quantity would be 1,825,000 dekatherms. Tennessee explains that it would receive natural gas for Tejas' account in Texas, Louisiana, Mississippi, Offshore Texas, and Offshore Louisiana. Tennessee states that the points of delivery are located in the state of New Jersey. Tennessee further explains that the ultimate delivery points of the gas are located in New Jersey, New York, Massachusetts, Connecticut, and Rhode Island.

Comment date: August 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may within 45 days after the

issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Casbell,
Acting Secretary.

[FR Doc. 88-15143 Filed 7-5-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 9714-001]

Franklin Springer; Surrender of Preliminary Permit

July 1, 1988.

Take notice that Mr. Franklin Springer, permittee for the Springer Hydro Development No. 2 located on the Pine Creek, in Chaffee County, Colorado, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 4, 1986, and would have expired on November 30, 1989.

The permittee filed the request on May 9, 1988, and the preliminary permit for Project No. 9714 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Casbell,
Acting Secretary.

[FR Doc. 88-15142 Filed 7-5-88; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

[Docket No. TM88-4-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 30, 1988.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 22, 1988, tendered for filing to its

FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheet: Twentieth Revised Sheet No. 204

Algonquin states that Twentieth Revised Sheet No. 204 is being filed pursuant to section 7 of its Rate Schedule F-3, to reflect changes in the underlying rates by its pipeline supplier, National Fuel Gas Supply Corporation ("National"). Algonquin states that Twentieth Revised Sheet No. 204 is proposed to be effective July 1, 1988 to coincide with the proposed effective date of National's filing.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15114 Filed 7-5-88; 8:45 am]
BILLING CODE 8717-01-M

[Docket Nos. RP88-169-001]

CNG Transmission Corp.; Proposed Change in FERC Gas Tariff

June 30, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on June 20, 1988, filed Substitute First Revised Sheet No. 125 of Volume No. 1 of its new FERC Gas Tariff, superseding First Revised Sheet No. 125. Pursuant to the Commission's Order issued on June 10, 1988, in Docket No. RP88-169-000, this former sheet was accepted by the Commission subject to CNG refiling the sheet removing a provision which the Commission rejected. The effective date of the submitted sheet is June 1, 1988.

CNG states that this filing removes a new tariff provision in its General Terms and Conditions which the Commission rejected. By this provision CNG had proposed to schedule two-thirds of its available "TSC capacity" to shippers that were qualified for "TSC service" on

Texas Gas Transmission Corporation's system prior to April 11, 1988, and one-third to shippers that became qualified for such service on or after April 1, 1988.

Copies of the filing were served upon CNG's sales, storage and transportation customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before July 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15113 Filed 7-5-88; 8:45 am]
BILLING CODE 8717-01-M

[Project No. 8662-005]

Nockamixon Hydro Associates; Dismissing Appeal

June 28, 1988.

On May 11, 1988, the Director, Division of Project Compliance and Administration (Director), issued an order approving and modifying in part a water quality monitoring plan for the Nockamixon Hydro Project No. 8662. Nockamixon Hydro Associates (Nockamixon), the licensee for the project, had filed the plan pursuant to Article 402 of the license for the project, which was issued on April 6, 1987.¹

On June 10, 1988, the Commonwealth of Pennsylvania, Department of Environmental Resources (DER), an intervenor in the license proceeding and the owner of the dam where the project would be constructed, filed a timely appeal of the Director's order approving the water quality monitoring plan.

Appeals from staff actions are permitted only when filed by parties to the proceeding, pursuant to Rule 1902 of the Commission's Rules of Practice and Procedure.² In the case of orders

¹ 39 FERC ¶ 62,017 (1987).

² 18 CFR 385.1902 (1987).

pertaining to a project issued after the issuance of a license, the Commission will entertain interventions and appeals only where the order would entail material changes in the development plan of the project or in the terms and conditions of the license, or would adversely affect the interests of property holders in a way not contemplated by the license when issued, such that the Commission should have issued notice of the post-license proceeding and entertained intervention petitions therein.³

Since Nockamixon was specifically required to consult with DER in preparing the Article 402 plan, DER is allowed to intervene in and appeal the Director's order, since it concerned matters upon which DER was to be consulted.⁴ However, DER has not filed a petition to intervene in the post-license proceeding. DER's status as an intervenor in the license proceeding does not carry over to post-license filings. DER's appeal, which was neither preceded nor accompanied by an intervention petition, cannot be entertained.⁵ Accordingly, DER's appeal of the Director's June 10, 1988 order is dismissed.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15108 Filed 7-5-88; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. RP88-107-001]

Northern Natural Gas Co.; Compliance Filing

June 30, 1988.

Take notice that on June 24, 1988, Northern Natural Gas Company (Northern) filed Substitute Original Sheet No. 52f.12a to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective June 1, 1988.

Northern states that Substitute Original Sheet No. 52f.12a is filed in compliance with the Commission's order issued May 31, 1988 and that this sheet incorporates revisions to the FT-1 Rate Schedule.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North

³ See, e.g., Northwest Power Company, Inc., 43 FERC ¶ 61,091 (1988); Goose Creek Hydro Associates, 40 FERC ¶ 61,270 (1987); Kings River Conservation District, 38 FERC ¶ 61,365 (1986).

⁴ See Pacific Gas and Electric Company, 40 FERC ¶ 61,035 (1987).

⁵ See Delmar Wagner, 41 FERC ¶ 61,011 (1987); see also Kings River Conservation District, *Supra*, n.3.

Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15115 Filed 7-5-88; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. RP88-198-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 30, 1988.

Take notice that Transwestern Pipeline Company (Transwestern) on June 24, 1988 tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

Second Revised Volume No. 1

45th Revised Sheet No. 5
Original Sheet No. 5C
32nd Revised Sheet No. 6
2nd Revised Sheet No. 8
1st Revised Sheet No. 9
Original Sheet No. 9A
2nd Revised Sheet No. 14
1st Revised Sheet No. 15
2nd Revised Sheet No. 37
Original Sheet No. 87
Original Sheet No. 88
Original Sheet No. 89
Original Sheet No. 90
Original Sheet No. 91
Original Sheet No. 92

Original Volume No. 2

1st Revised Sheet No. 78
1st Revised Sheet No. 93

Transwestern states that these tariff sheets would add section 25, Transition Cost Recovery Mechanism (TCR Mechanism), to the General Terms and Conditions of Transwestern's Volume No. 1 Tariff to permit Transwestern to implement one of the Commission's Order 500 recovery options for take-or-pay buyout and contract reformation costs (Transition Costs). Consistent with the Commission's Order 500 recovery options, Transwestern has elected to (1) absorb twenty-five percent (25%) of the total Transition Costs, (2) direct bill twenty-five percent (25%) of the total Transition Costs (TCR Fee), and (3)

recover the remaining fifty percent (50%) through a Transition Cost Recovery Surcharge (TCR Surcharge). Transwestern proposes to recover from its two major customers, Southern California Gas Company and Williams Natural Gas Company, the TCR Fee through a direct bill due thirty days after the tariff sheets become effective. The TCR Surcharge will be recovered on total throughput, amortized over five years.

Transwestern proposes a settlement cap of \$225 million which represents amounts already incurred or which Transwestern expects it will incur by September 30, 1989. None of the \$225 million has been or will be paid to any of Transwestern's affiliates.

Transwestern states that under the proposal it would be required to make a True-up Filing by December 1, 1989 to reconcile actual payments with the \$225 million amount contained in the filing.

Transwestern requests that the Federal Energy Regulatory Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed tariff sheets to become effective July 24, 1988, which is 30 days after the filing date.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15116 Filed 7-5-88; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. TQ88-2-35-000]

West Texas Gas, Inc.; Filing

June 30, 1988.

Take notice that on June 23, 1988, West Texas Gas, Inc. (WTG) filed Tenth Revised Sheet No. 3a to its FERC Gas

Tariff, Original Volume No. 1, proposed to be effective July 1, 1988.

WTG requests a waiver of the 30-day filing requirement as provided in § 154.308(a) of the Commission's regulations due to the fact that for the past several weeks, WTG has been involved in negotiations regarding a financial restructuring and/or the sale of some or all of its jurisdictional facilities and unable to submit this filing in a timely manner. WTG states that in a few days it will file a diskette in the format specified in the Commission's April 29, 1988 order on WTG's request for waiver of the Order No. 483 computer filing requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15117 Filed 7-5-88; 8:45 am]
BILLING CODE 8717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Eastern Carolina Electronics Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Eastern Carolina Electronics Limited Partnership, Rocky Mount, NC.	BPH-870429MG...	88-299.
B. North Star Broadcasting Corporation, Rocky Mount, NC.	BPH-870429MH...	
C. Holy Hands FM Limited Partnership, Rocky Mount, NC.	BPH-870430MF...	

Applicant, City and State	File No.	MM Docket No.
D. Rocky Mount Broadcasting Limited Partnership, Rocky Mount, NC.	BPH-870430MH	
E. WRMT, Incorporated, Rocky Mount, NC.	BPH-870430MK	
F. FM Rocky Mount Limited Partnership, Rocky Mount, NC.	BPH-870430OL	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Environmental, A
2. Air Hazard, A.C
3. Comparative, A.B.C.D.E.F
4. Ultimate, A.B.C.D.E.F

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).
W. Jan Gay,
Assistant Chief, Audio Services Division,
Mass Media Bureau.
[FR Doc. 88-15174 Filed 7-5-88; 8:45 am]
BILLING CODE 4712-01-M

Applications for Consolidated Hearing; Franklin Broadcasting Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Franklin Broadcasting, Louisville, NC.	BPH-870702MB	88-297

Applicant, City and State	File No.	MM Docket No.
B. Benjamin J. Terry, Louisville, NC.	BPH-870709MF	
C. KB Broadcasting, A Limited Partnership, Louisville, NC.	BPH-870710MC	
D. Louisville FM Radio, Ltd., Louisville, NC.	BPH-870710MD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A.B.C.D
2. Ultimate, A.B.C.D

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).
W. Jan Gay,
Assistant Chief, Audio Services Division,
Mass Media Bureau.
[FR Doc. 88-15175 Filed 7-5-88; 8:45 am]
BILLING CODE 4712-01-M

Applications for Consolidated Proceeding; Lighthouse FM Limited Partnership, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Lighthouse FM Limited Partnership, Odessa, TX.	BPH-870330MD	88-296
B. Peter Winslow, Odessa, TX.	BPH-870330MO	

Applicant, City and State	File No.	MM Docket No.
C. Michael Gitsch, Odessa, TX.	BPH-870331NO	
D. Echonet Corporation, Odessa, TX.	BPH-870331OH	
E. Mid-Cities Corp., Odessa, TX.	BPH-870415KP	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, ALL
3. Ultimate, ALL

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicant to which it applies is set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone No. (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division,
Mass Media Bureau.
[FR Doc. 88-15176 Filed 7-5-88; 8:45 am]
BILLING CODE 4712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change

Title: Annual Report of Trust Assets

Form Number: FFIEC 001

OMB Number: 3004-0024

Expiration Date of Current OMB

Clearance: 9/30/88

Frequency of Response: Annually

Respondents: All insured state nonmember commercial and savings banks operating trust departments or granted consent to exercise trust powers

Number of Respondents: 2,610

Number of Responses Per Respondent: 1

Total Annual Responses: 1

Average Number of Hours per Response: 3.39

Total Annual Burden Hours: 8,867

OMB Reviewer: Robert Neal, (202) 395-

7340, Office of Information and

Regulatory Affairs, Office of

Management and Budget, New

Executive Office Building,

Washington, DC 20503

FDIC Contact: John Keiper, (202) 898-

3810, Assistant Executive Secretary,

Room 6108, Federal Deposit Insurance

Corporation, 550 17th Street NW.,

Washington, DC 20429

Comments: Comments on this collection

of information are welcome and

should be submitted on or before

September 6, 1988.

ADDRESSES: A copy of the submission

may be obtained by calling or writing

the FDIC contact listed. Comments

regarding the submission should be

addressed to the OMB reviewer listed.

The FDIC would be interested in

receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The

FDIC is requesting OMB approval to

continue the Annual Report of Trust

Assets without any change in the

substance or the method of collection.

The purpose of the Annual Report of

Trust Assets is to provide the FDIC with

details concerning the scope and

amount of trust activities of the financial

institutions it supervises. Details

concerning collective investment funds

which may be operated within trust

departments and trust companies are

also included in the scope of the report.

The information is used in the

supervision and examination of trust

institutions by the FDIC.

Dated: June 28, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15089 Filed 7-5-88; 8:45 am]

BILLING CODE 4714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Renewal without any change

Title: Application for Consent to

Exercise Trust Powers

Form Number: FDIC 6200/09

OMB Number: 3064-0025

Expiration Date of Current OMB

Clearance: 9/30/88

Frequency of Response: On occasion

Respondents: Insured state nonmember

banks applying for FDIC's consent to

exercise trust powers

Number of Respondents: 50

Number of Responses per Respondent:

1

Total Annual Responses: 50

Average Number of Hours per Response: 15.7

Total Annual Burden Hours: 785

OMB Reviewer: Robert Neal, (202) 395-

7340, Office of Information and

Regulatory Affairs, Office of

Management and Budget, New

Executive Office Building,

Washington, DC 20503

FDIC Contact: John Keiper, (202) 898-

3810, Assistant Executive Secretary,

Room 6108, Federal Deposit Insurance

Corporation, 550-17th Street NW.,

Washington, DC 20429

Comments: Comments on this collection

of information are welcome and

should be submitted on or before

September 6, 1988.

ADDRESSES: A copy of the submission

may be obtained by calling or writing

the FDIC contact listed. Comments

regarding the submission should be

addressed to the OMB reviewer listed.

The FDIC would be interested in

receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The

FDIC is requesting OMB approval to

continue using form FDIC 6200/09 as an

application form for banks to obtain

FDIC's consent to exercise trust powers.

FDIC's regulation 12 CFR 333.2 prohibits

any insured state nonmember bank from

changing the general character of the

business exercised by it without the

prior written consent of the FDIC. The

application form, FDIC 6200/09, enables

banks to request such consent. Each

application received is evaluated by the

FDIC to verify the qualifications of bank

management to administer a trust

department to ensure that the bank's financial condition will not be jeopardized as a result of trust operations.

Dated: June 28, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15070 Filed 7-5-88; 8:45 am]

BILLING CODE 4714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984. Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010718-003.

Title: Virginia International

Terminals, Inc. Terminal Agreement.

Parties:

Virginia International Terminals, Inc.

Evergreen Marine Corporation

(Taiwan), Ltd.

Synopsis: The agreement adds Costa

Container Lines S.P.A. (CCL) as a party

to the basic terminal use agreement for

so long as CCL remains a party to the

Evergreen and CCL space charter and

sailing Agreement No. 232-011184.

By order of the Federal Maritime

Commission.

Joseph C. Polking,

Secretary.

Dated: June 30, 1988.

[FR Doc. 88-15144 Filed 7-5-88; 8:45 am]

BILLING CODE 4730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 day after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 573.003 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010027-020.
Title: Brazil/U.S. Atlantic Coast Agreement.

Parties:

Companhia De Navegacao Lloyd Brasileiro
Companhia De Navegacao Maritima Netumar
American Transport Lines, Inc.
A/S Ivarans Rederi
Empresa Lineas Maritimas Argentinas S/A
A. Bottacchi S.A. De Navegacion C.F.L.I.
Van Nievelt, Goudriaan and Co., B.V.

Synopsis: The proposed amendment would provide for a special deduction from pool revenue equal to 50 percent from gross pool income on shipments of Wheels for Automobiles.

Agreement No.: 202-010637-031.
Title: North Europe-U.S. Atlantic Conference.

Parties:

Atlantic Container Line B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Nedlloyd Lijnen, B.V.
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)

Synopsis: The proposed amendment would clarify the description of the neutral body authority of the members and provide for cooperation between them and other carriers to discuss procedures and administrative matters concerning self-policing.

Agreement No.: 203-010605-001.
Title: Far East-U.S. Discussion Agreement.

Parties:

Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would delete Showa Line, Ltd. as a party

to the agreement. The parties have requested a shortened review period.

Agreement No.: 202-010987-007.
Title: United States/Central America Liner Association.

Parties:

Crowley Caribbean Transport, Inc.
Sea-Land Service, Inc.
Seaboard Marine Ltd.
Crowley Trailer Marine Transport, Corp.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning Docket No. 86-16, service contract provisions.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: June 30, 1988.

[FR Doc. 88-15145 Filed 7-5-88; 8:45 am]

BILLING CODE 4730-01-M

FEDERAL RESERVE SYSTEM

Commerce Bancorp, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 27, 1988.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19106:

1. **Commerce Bancorp, Inc.**, Cherry Hill, New Jersey; to acquire 17.5 percent of the voting shares of Commerce Bank/Harrisburg, Camp Hill, Pennsylvania.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. **Fifth Third Bancorp.**, Cincinnati, Ohio; to merge with Decatur Bancshares, Inc., Greensburg, Indiana, and thereby indirectly acquire Decatur County Bank, Greensburg, Indiana. Comments on this application must be received by July 22, 1988.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. **Provident Bankshares Corporation**, Baltimore, Maryland; to acquire 100 percent of the voting shares of First Security Bank of Maryland, Baltimore, Maryland, in organization, a *de novo* bank.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **First Bancorporation of Holdenville, Inc.**, Holdenville, Oklahoma; to acquire 100 percent of the voting shares of Alliance Bank, N.A., Oklahoma City, Oklahoma, which engages in the sale of credit life and disability insurance.

Board of Governors of the Federal Reserve System, June 29, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-15085 Filed 7-5-88; 8:45 am]

BILLING CODE 3210-21-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Arnold Skole et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. **Arnold Skole, Burnsville, Minnesota**; to acquire 92.11 percent of the voting shares of Oppegard Agency, Inc., Dilworth, Minnesota, and thereby indirectly acquire Twin Valley State Bank, Twin Valley, Minnesota, and American State Bank, Erskine, Minnesota.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Henry Croak, Midwest City, Oklahoma**; to acquire an additional 2.01 percent of the voting shares of the First Midwest Bancorp, Inc., Midwest City, Oklahoma, and The First National Bank of Midwest City, Midwest City, Oklahoma.

2. **Ed Duggan, Windsor, Colorado**; to acquire an additional 10.0 percent of the voting shares of Windsor Bancorporation, Inc., Windsor, Colorado, and thereby indirectly acquire Bank of Windsor, Windsor, Colorado.

Board of Governors of the Federal Reserve System, June 29, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-15087 Filed 7-5-88; 8:45 am]

BILLING CODE 3210-21-M

Traders Bankshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased

competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. **Traders Bankshares, Inc.**, Spencer, West Virginia, and Commercial BancShares, Inc., Parkersburg, West Virginia; to engage *de novo* through its subsidiary, MOVE Capital, Inc., Charleston, West Virginia, in making and servicing commercial loans and other extensions of credit and making equity investments of 5% or less pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y. These activities will be conducted in the State of West Virginia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60606:

1. **First Wisconsin Corporation**, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Illinois Trust Company, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **Santa Barbara Bancorp.**, Santa Barbara, California; to engage *de novo* through its subsidiary, SBBT Service Corporation, Santa Barbara, California, in providing courier services pursuant to § 225.25(b)(10); and providing management consulting advice to unaffiliated depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted throughout the counties of San Luis Obispo, Santa Barbara, and Ventura, California.

Board of Governors of the Federal Reserve System, June 29, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15086 Filed 7-5-88; 8:45 am]

BILLING CODE 3210-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Statement of Organization, Functions and Delegations of Authority; Public Health Service

Part H, Public Health Service (PHS), Chapter H, of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 53 FR 11348-11349, April 6, 1988), is further amended to restate Section H-30, Public Health Service—Order of Succession. This revision updates successors to head PHS in the absence of the Assistant Secretary for Health.

Public Health Service

Under Section H-30, Public Health Service—Order of Succession, delete the statement in its entirety, and substitute the following:

During the absence or disability of the Assistant Secretary for Health, or if that position becomes vacant, the Deputy Assistant Secretary for Health shall act as Assistant Secretary for Health. In the event of the absence or disability of both the Assistant Secretary for Health and the Deputy Assistant Secretary for Health, the Deputy Assistant Secretary for Health Planning and Evaluation shall act as Assistant Secretary for Health. In the event of the absence or disability of the Assistant Secretary for Health, the Deputy Assistant Secretary for Health, and the Deputy Assistant Secretary for Health Planning and Evaluation, the Senior Advisor for Environmental Affairs shall act as Assistant Secretary for Health. However, during a planned absence the Assistant Secretary for Health may choose to designate a different order.

Should both the positions of Assistant Secretary for Health and Deputy Assistant Secretary for Health be vacant, an official designated by the Secretary of Health and Human Services shall serve as acting head of the Public Health Service.

The above order of succession also applies upon the activation of the

Emergency Health and Human Services Plan upon the order of the Secretary.

Date: June 27, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-15103 Filed 7-5-88; 8:45 am]

BILLING CODE 4160-17-M

Health Resources and Services Administration

Program Announcement, Funding Preferences, Proposed Funding Priorities, and Grant Orientation Conferences for the Health Careers Opportunity Program

The Health Resources and Services Administration announces that applications for Fiscal Year 1989 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 787 of the Public Health Service Act, as amended by Pub. L. 99-129 and invites comments on the proposed funding priorities stated below.

Section 787 authorizes the Secretary to make grants to schools of medicine, osteopathy, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatry, public and nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools. The assistance authorized by this section includes: recruitment, preliminary education, retention in health and allied health professions schools, counseling and advice on financial aid.

Legislative authorization for this program expires September 30, 1988. For FY 1989 the Administration is proposing to consolidate the various health professions categorical programs into a single, flexible grant authority. This announcement is being made in the event that the Health Careers Opportunity Program is reauthorized and funds are made available in FY 1989. Publication of this notice is a contingency measure that will assure that grants can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

The statute requires that no less than 80 percent of the funds appropriated in any fiscal year must be obligated for grants or contracts to institutions of higher education. Also, not more than five percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

To receive support, applicants must meet the requirements of the program regulations which are located at 42 CFR Part 57, Subpart S.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443-6857.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, general instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0080.

The application deadline date is November 4, 1988. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.822 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Funding Preferences

The following funding preferences will govern the distribution of grant awards to approved HCOP grant applicants for Fiscal Year 1989. These preferences were published in a Federal Register notice dated September 12, 1983, (48 FR 40958).

An applicant may request consideration in one of the following five funding preferences:

(1) Health professions school(s) which have Educational Assistance Agreement(s) (EAA) with no more than five undergraduate institutions that separately or collectively satisfy the definition of a feeder institution and who are requesting HCOP support only for:

a. The feeder institution(s) or equivalent to provide individuals from disadvantaged backgrounds with preliminary education; and

b. Either the health professions school or the feeder institution to facilitate the entry of individuals from disadvantaged backgrounds into health professions schools; and

c. The health professions school(s) to provide individuals from disadvantaged backgrounds who are enrolled in their institution(s) counseling or other retention services.

(2) A feeder institution requesting HCOP support only for:

a. Providing individuals from disadvantaged backgrounds with preliminary education; and

b. Facilitating the entry of individuals from disadvantaged backgrounds into health professions schools.

(3) A health professions school requesting HCOP support only for:

a. Facilitating the entry of individuals from disadvantaged backgrounds into its health professions school; and

b. Providing the students who are individuals from disadvantaged backgrounds with counseling or other retention services.

(4) A joint application from two to five institutions of higher education, which, as a group: (1) Has a student body more than 20 percent of which are individuals from disadvantaged backgrounds; (2) has 20 or more graduates annually (as averaged over the last three years) who are disadvantaged individuals and who are accepted into health professions schools; and (3) is requesting HCOP support only for:

a. Providing individuals from disadvantaged backgrounds with preliminary education; and

b. Facilitating the entry of individuals from disadvantaged backgrounds into health professions schools.

(5) A training center for allied health professions requesting HCOP support only for:

a. Facilitating the entry of individuals from disadvantaged backgrounds into allied health training centers; and

b. Providing its students who are individuals from disadvantaged backgrounds with counseling or other retention services.

Greatest weight will be given to applicants in funding preference

Number 1 decreasing, respectively, to funding preference Number 5.

The five preferences do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for the preferences are encouraged to submit applications.

The applicant must indicate on the upper right-hand corner of page one of the application the funding preference in which the applicant wishes consideration. However, the final determination of the category of funding preference will be based on a staff assessment of the contents of the proposal. An applicant may apply for consideration under only one preference. A feeder institution which is identified in an EAA may not apply as a primary grantee to support the same type of HCOP activities. Consideration will be given to assure that funded projects represent a reasonable proportion of the health professions specified in the legislation. However, full consideration will also be given to ensure that final funding decisions include appropriate support of proposals and students representative of the targeted populations served by HCOP.

Proposed Funding Priorities

In addition, a funding priority is being proposed for HCOP applications from health and allied health professions schools that have a disadvantaged student enrollment of more than 70 percent or can document, over the past three year period, an increase in the percentage of first year enrollees and graduates who are disadvantaged. A funding priority is also being proposed for undergraduate institutions that can document over the past three years an increase in the number of their disadvantaged students enrolled in health or allied health professions schools.

Since the inception of the Health Careers Opportunity Program and its predecessor the Special Health Career Opportunity Grants in 1972 individual institutions have received support for as few as three to as many as sixteen years. Requests for continued support of HCOP programs have always called for the demonstration of specific and tangible positive results on the part of the applicant. Ultimate performance indicators are the number of disadvantaged individuals who are admitted, enrolled and graduated from a health or allied health professions school as a consequence of HCOP initiatives. Under the provisions of this priority applicants demonstrating such positive results would receive improved funding consideration relative to the

extent of increase in percent or numbers of disadvantaged.

Interested persons are invited to comment on the proposed funding priorities. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before August 5, 1988, will be considered before the final funding priorities are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities will be applied.

Written comments should be addressed to: Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A-09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the above address, weekdays (Federal Holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Definitions

As used in this notice: "Educational Assistance Agreement (EAA)" means a formal agreement between the grantee and another school or entity to assure continuity of training through health or allied health professions schools. This agreement must provide for financial or other support (excluding direct student aid) for this purpose and support may include funds from the grant awarded under this program, also joint use of facilities, staff, and faculties. An EAA must:

- Contain the names of the participating institutions;
- Identify the prime grantee, subcontractors and other participating institutions;
- State the HCOP purposes addressed by each participating institution;
- Identify the specific activities to be performed by the grantee, including a description of program activities and administrative responsibilities;
- Identify the specific activities to be performed by all collaborating institutions, including a description of program activities;
- Contain a detailed description of proposed expenditures for each participating institution;
- Contain a description of how facilities, faculty, and staff will be shared, including times, places, and dates;

h. State the duration of the EAA:

i. Contain the terms for amending the EAA; and

j. Be signed by the President, Chancellor, Dean, or equivalent official from all participating institutions and health or educational entities.

"Feeder Institution" means an institution of higher education meeting the requirements of section 435 of the Higher Education Act, as amended, Pub. L. 89-239 (20 U.S.C. 1085(b)), which:

a. Has a student body more than 20 percent of which are individuals from disadvantaged backgrounds; and

b. Had ten or more graduates annually (as averaged over the last three years) who are disadvantaged and who are accepted into health professions schools.

"Health Professions Schools" means schools of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine, podiatry, public health, chiropractic or graduate programs in health administration, as defined in section 701(4) of the Public Health Service Act.

"Individual from a Disadvantaged Background" means an individual who (a) comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from the health professions school or from a program providing education or training in an allied health profession or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of these Health Careers Opportunity Program grants for Fiscal Year 1989:

Size of parents' family ¹	Income level ²
1	\$7,600
2	9,900
3	11,800
4	15,100
5	17,800
6 or more	20,000

¹ Includes only dependents listed on Federal income tax forms.

² Adjusted gross income for calendar year 1987 rounded to \$100.

"Training Center for Allied Health Professions" means a junior college, or college, or university as defined in

section 795 of the Public Health Service Act, which:

(a) Provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Doctoral Degree:
Clinical Psychologist
Master's Degree:
Speech Pathologist/Audiologist
Bachelor's Degree:
Dental Hygienist
Dietitian (Coordinated undergraduate program)
Community Health Educator
Health Services Administrator
Medical Records Administrator
Medical Technologist
Occupational Therapist
Physical Therapist
Primary Care Physician Assistant
Sanitarian (Environmental Health)

Associate Degree:
Clinical Dietetic Technician
Cytotechnologist
Dental Assistant
Dental Hygienist
Dental Laboratory Technician
Medical Assistant
Medical Laboratory Technician
Medical Records Technician
Occupational Therapy Assistant
Ophthalmic Medical Assistant
Optometric Technician
Physical Therapy Assistant
Radiologic Technologist
Respiratory Therapist
Sanitarian Technician

(b) Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

(c) Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

Grant Orientation Conferences

Grant applications and program information for the Health Careers Opportunity Program will also be provided through three program technical assistance conferences. The conferences scheduled during

September 1988 are for the benefit of potential applicants and current grantees.

The three conferences will be held as follows:

September 15-18, 1988

Richmond, Virginia—The Ramada Renaissance Hotel, 555 E. Canal Street, Richmond, Virginia 23219, (804) 788-0900, 1-(800) 2-RAMADA

September 19-20, 1988

Chicago, Illinois—McCormick Center Hotel, Lake Shore Drive at 23rd Street, Chicago, Illinois 60616, (312) 791-1900, 1-(800) 621-6909

September 22-23, 1988

Seattle, Washington—Edgewater Inn, 2411 Alaskan Way—Pier #67, Seattle, Washington 98121, (206) 728-7000, 1-(800) 624-0670.

Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: Status of the legislation; application requirements; and grants management information. There will be small work groups to critique specific points in development of applications including evaluation considerations which arise in the review process. Significant focus of the conferences will be directed toward: program activities and reporting requirements of current grantees; the relative merit of strategies employed to facilitate entry of disadvantaged students into health professions schools; and both current and projected academic issues affecting disadvantaged students in health professions schools.

Participation in the technical assistance meetings does not insure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Mr. Darl W. Stephens, Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, Room 8-20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4493.

Dated: June 16, 1988.

John H. Kelso,
Acting Administrator.

[FR Doc. 88-15122 Filed 7-5-88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Cooperative Agreement With the American College of Preventive Medicine of the Science and Practice of Preventive Medicine; Availability of Funds for Fiscal Year 1988

Introduction

The Office of Disease Prevention and Health Promotion (ODPHP), Office of the Assistant Secretary for Health, announces the availability of funds in Fiscal Year 1988 to extend a cooperative agreement with the American College of Preventive Medicine for the purpose of responding to emerging issues in the science and practice of preventive medicine. Under this cooperative agreement, the American College of Preventive Medicine proposes to use its prevention data base, its network of committees and task forces, its position in the prevention and primary care community, and staff with professional preparation and experience in the field in a partnership with the Office of Disease Prevention and Health Promotion in support of their mutual mission to enhance preventive medicine. The College proposes to work with the Office on four principal areas: Organization and support for the U.S. Preventive Services Coordinating Committee; provision of professional information and education; initiation of research reviews and analyses in support of the implementation of clinical preventive services; and technical services to persons engaged in clinical preventive services to expand and improve the influence of preventive medicine and health promotion policies and programs. The Office will participate in the activities of the U.S. Preventive Services Coordinating Committee (with the Assistant Secretary serving as its chair); make available to the College the background information used to develop the guide to clinical preventive services for use in the professional information effort; coordinate with the College to ensure appropriate congruence of its research reviews and analyses with research efforts occurring under Federal sponsorship; and advise the College about the focus and extent of technical services to the field of preventive medicine.

Authority

This cooperative agreement is authorized under section 1701(a)(10)(B) of the Public Health Service Act, as amended. The Catalog of Domestic Assistance Number is 13.990.

Background

Since 1985, the Office of Disease Prevention and Health Promotion has supported the development of age- and sex-specific recommendations for delivery of clinical preventive services in primary care settings. This effort has been carried out primarily through the work of the U.S. Preventive Services Task Force. Its work was concluded in 1988. During the last year of this effort, the American College of Preventive Medicine participated in the effort through a cooperative agreement with the Office and a grant from the Kellogg Foundation. In mid-1988, the next phase of this long-term effort is commencing, with the organization of a U.S. Preventive Services Coordinating Committee, composed of representatives of national professional organizations whose missions relate to the provision of clinical preventive services in primary care settings. The American College of Preventive Medicine has proposed to work with the Office in support of this next phase.

The American College of Preventive Medicine was founded in 1954 to be a scientific society of physicians engaged in the practice, teaching, and research of preventive medicine. It is composed of 2,400 physicians, primarily Board-certified in one or more of the four preventive medicine disciplines: public health, occupational medicine, general preventive medicine, or aerospace medicine. Many members hold board certifications in other primary care specialties as well. Because the College has served already as the executive secretariat for the final work of the last phase of this effort to improve clinical preventive services and because the College is the principal professional organization for the field of preventive medicine, it is appropriate that it continue in this key role.

Availability of Funds

Approximately \$175,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. It is expected that the cooperative agreement will begin on or about July 1, 1988, and depending upon the availability of funds, will be funded in 12-month budget periods within a 24-month project period. A continuation award will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The

funding level may change in the second year.

Executive Order 12372

This cooperative agreement is not covered under the requirements of Executive Order 12372.

Information

Information may be obtained from James A. Harrell, Deputy Director, Office of Disease Prevention and Health Promotion, Public Health Service, Department of Health and Human Services, Washington, DC 20201, telephone (202) 245-7611.

Dated: June 20, 1988.

J.M. McGinnis,
Deputy Assistant Secretary for Health,
Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 88-15153 Filed 7-5-88; 8:45 am]

BILLING CODE 4160-15-M

National Commission on Orphan Diseases; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a meeting of the National Commission on Orphan Diseases scheduled on July 21 and 22, 1988.

DATE: Date, time and place: Open Public Meeting, July 21, 1988 9:00 a.m.-4:00 p.m. and July 22, 1988, 8:30 a.m.-5:00 p.m.; Open Public Session, July 21, 1988, 4:00 p.m.-5:00 p.m.; Wilson Hall 3rd floor, Bldg 1, Center Drive, NIH Campus, Bethesda, MD 20892. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate in the Open Public Session should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Room 18-38, Rockville, MD 20857, 301-443-0158.

Agenda: Open Public Session

Interested persons may present data, information or views orally or in writing, on issues pending before the Commission or on any of the duties and responsibilities of the Commission on July 21 from 4 p.m. to 5 p.m. Those desiring to make oral presentations

should notify the contact person before July 14, 1988 and submit a brief statement of the information they wish to present to the Commission. The request should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. Any person attending the open public session who does not request prior approval to speak may make an oral presentation at the conclusion of the session, if time permits, at the chairperson's discretion.

Agenda: Open Commission Meeting

The Commission will review the draft summary of the four public hearings held by the Commission between July, 1987 and February, 1988. The Commission will discuss the reports on product and professional liability issues and the peer review process. Results of the surveys of rare disease research activities of Federal agencies, foundations and voluntary organizations will also be discussed. In addition, the Commission will review preliminary results of the telephone surveys of physicians, biomedical researchers, and patients with rare diseases.

SUPPLEMENTARY INFORMATION: The Commission meeting will be conducted in accordance with the agenda published in this Federal Register notice. Any changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items to be discussed in the open meeting may ascertain from the contact person the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information from the contact person. In addition, summary minutes of the meeting will be available upon request from the contact person.

This notice is issued under 10(a)(1) and (2) of the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix I).

Dated: June 27, 1988.

Robert E. Windom,
Assistant Secretary for Health.

[FR Doc. 88-15104 Filed 7-5-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy (Docket No. E-88-148)

Intended Environmental Impact Statement; the Stonebridge Ranch Project, McKinney, TX

The Department of Housing and Urban Development, Fort Worth, Texas Regional Office, intends to prepare an Environmental Impact Statement (EIS) for The Stonebridge Ranch Project located in McKinney, Texas as described in the appendix to this Notice. This Notice is required by the Council on Environmental Quality under its rules (40 CFR Part 1500).

Interested individuals, government agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and data with the EIS should consider, and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This Notice shall be effective for one year. If one year after the publication of the Notice in the Federal Register a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a draft EIS is expected more than one year after the publication of the Notice in the Federal Register, then a new and updated Notice of Intent will be published.

Issued at Washington, DC, date June 28, 1988.

Richard H. Brown,
Director, Office of Environment and Energy.

Appendix—EIS on Stonebridge Ranch Project, City of McKinney, Texas

The Department of Housing and Urban Development, Fort Worth, Texas Regional Office, intends to prepare an Environmental Impact Statement (EIS) on the subject project in the City of McKinney, Texas. The Department hereby solicits comments and information for consideration in this EIS.

Description

The Stonebridge Ranch Project is located approximately seven miles west of the Central Business District of

McKinney, Texas. The development is south of U.S. Highway 380, North of State Highway 121, East of County Road 71, and West of County Road 158, McKinney, Collin County Texas. The total development consists of 6,230 acres of land. When fully developed, in about twenty years, approximately 2,500 acres will be devoted to single family housing, 399 acres to multi-family housing, 168 acres to retail and commercial uses, 451 acres to office use, 1,308 acres to light manufacturing, 160 acres to school sites, and 852 acres to parks, open space and golf courses. It is estimated that ultimate development will provide 27,539 dwelling units. The Gilbratter Savings Association c/o Republic Property Group, Dallas, Texas has filed an application for mortgage insurance with the Dallas HUD Office.

Need: The total project exceeds HUD's 2500 unit EIS threshold (24 CFR 50.42(b)(3)). The application is on file requesting Mortgage Insurance under Title II, section 203(b) of the Housing and Community Development Act of 1974 (Pub. L. 93-383).

Alternatives: At this point HUD perceives the relevant alternatives as: (1) Acceptance of the project as submitted for mortgage insurance; (2) acceptance of the project with modification and mitigation measures; and (3) rejection of the project for mortgage insurance.

Scoping: This notice is part of the EIS scoping process and, as such, will be used by HUD to determine environmental issues, define the study boundary, identify data which the EIS should address, and identify cooperating agencies. No formal scoping meeting is anticipated.

Comments: To assist in the preparation of the Environmental Impact Statement, Federal, State, and local agencies, and other interested persons and organizations are invited to participate in the scoping process by submitting comments on the project and its potential impacts. All comments received within 30 days of this invitation will be considered in the Environmental Impact Statement. Please submit all comments to: I. J. Ramsbottom, Regional Environmental Office, U.S. Department of Housing and Urban Development, P.O. Box 2905, Fort Worth, Texas 76113. The commercial telephone number of this office is 817-885-5482. The FTS number is 728-5482. These are not toll free numbers.

[FR Doc. 88-15149 Filed 7-5-88; 8:45 am]

BILLING CODE 4210-29-M

Office of the Regional Administrator

(Docket No. D-88-880)

New York Regional Office; Designation

AGENCY: Department of Housing & Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Acting Regional Administrator is designating officials who may serve as Acting Regional Administrator/Regional Housing Commissioner during the absence, disability, or vacancy in the position of Regional Administrator/Regional Housing Commissioner.

EFFECTIVE DATE: This designation is effective June 20, 1988.

FOR FURTHER INFORMATION CONTACT: Adele S. Germain, Director, Administrative and Management Services Division, Office of Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278, telephone (212) 264-2761. (This is not a toll-free number.)

Designation

Each of the officials appointed to or designated as Acting in the following positions is designated to serve as Acting Regional Administrator/Regional Housing Commissioner during the absence, disability, or vacancy in the position of the Regional Administrator/Regional Housing Commissioner, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator/Regional Housing Commissioner. Provided, that no official is authorized to serve as Acting Regional Administrator/Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Regional Administrator
2. Director, Office of Fair Housing and Equal Opportunity
3. Director, Office of Community Planning and Development
4. Director, Office of Housing
5. Executive Assistant to the Regional Administrator
6. Director, Office of Public Housing
7. Director, Office of Administration
8. Regional Counsel
9. Director, Office of Operational Support.

This designation supersedes the designation effective July 31, 1987.

Authority: Delegation of Authority, 27 FR 4319 (1962); section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); and Interim Order II, 31 FR 815 (1966).

Dated: June 20, 1988.

Geraldine McGann,

Acting Regional Administrator, Regional Housing Commissioner, Region II.

[FR Doc. 88-15150 Filed 7-5-88; 8:45 am]

BILLING CODE 4201-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 343-7340.

Titles: Subchapter H—Land and Water—Colorado River Irrigation Project, Arizona, 25 CFR Part 175; Flathead Indian Irrigation and Power Project, Montana, 25 CFR 178; San Carlos Indian Irrigation Project, Arizona, 25 CFR 177.

Abstract: These irrigation and power projects provide electric power service. Projects need names and addresses of the electric power consumers, namely, households, commercial and industrial businesses, farming enterprise, and municipalities in order to identify and assess the particular customer the monthly charges for receiving electric power.

Bureau form number: None.

Frequency: On occasion.

Description of Respondents: Individuals, households, businesses, farms, and municipalities buying electric power from Indian irrigation projects.

Annual Responses: 4,945.0.

Burden Hours: 2,508.0.

Bureau clearance officer: Cathie Martin, (202) 343-3577.

Donald F. Aebra,

Acting Deputy to the Assistant Secretary, Indian Affairs (Operations).

[FR Doc. 88-15084 Filed 7-5-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

(AK-4213-15; AA-61369)

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Cook Inlet Region, Inc. for approximately 44 acres. The lands involved are in the vicinity of Anchorage, Alaska, within T. 12 N., R. 4 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5980).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 5, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ramona Chinn,
Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 88-15085 Filed 7-5-88; 8:45 am]

BILLING CODE 4310-JA-M

(AZ-020-08-4321-01; A 23376)

Realty Action; Exchange of Public Lands; Apache County, AZ

Public lands managed by the Phoenix District have been determined to be suitable for disposal by exchange with the state of Arizona as authorized by

section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Public land within the following townships and sections will be exchanged for state land on an equal value basis as determined by appraisals.

Gila and Salt River Meridian, Arizona

Apache County

T. 12 N., R. 24 E.

Secs. 24, 28.

T. 13 N., R. 24 E.

Sec. 28.

T. 19 N., R. 24 E.

Secs. 24, 28.

T. 11 N., R. 25 E.

Sec. 12.

T. 13 N., R. 25 E.

Secs. 4, 8, 18.

T. 15 N., R. 25 E.

Sec. 32.

T. 18 N., R. 25 E.

Sec. 6.

T. 19 N., R. 25 E.

Secs. 2, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19.

20, 21, 28.

T. 11 N., R. 26 E.

Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 25.

T. 14 N., R. 26 E.

Secs. 8, 12, 22, 24.

T. 15 N., R. 26 E.

Secs. 4, 8, 10, 12, 14, 18, 20, 24, 30.

T. 16 N., R. 26 E.

Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30.

34.

T. 11 N., R. 27 E.

Secs. 4, 24, 28, 27, 29, 30, 33, 34, 35.

T. 12 N., R. 27 E.

Sec. 28.

T. 14 N., R. 27 E.

Secs. 4, 8, 10, 18, 20, 22, 34.

T. 15 N., R. 27 E.

Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28.

30, 34.

T. 16 N., R. 27 E.

Sec. 20.

T. 17 N., R. 27 E.

Sec. 6.

T. 18 N., R. 27 E.

Secs. 22, 24, 26, 28.

T. 11 N., R. 28 E.

Secs. 18, 19, 20, 28.

T. 12 N., R. 28 E.

Secs. 10, 12, 14, 30.

T. 13 N., R. 28 E.

Secs. 10, 12, 14, 24.

T. 14 N., R. 28 E.

Sec. 4.

T. 15 N., R. 28 E.

Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 28, 30.

T. 16 N., R. 28 E.

Secs. 4, 8, 10, 14, 18, 20, 22, 24, 26, 28, 30.

34.

T. 17 N., R. 28 E.

Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28.

30, 34.

T. 10 N., R. 29 E.

Sec. 18.

T. 12 N., R. 29 E.

Secs. 12, 18, 20, 21, 27, 28, 32.

T. 13 N., R. 29 E.

Sec. 28.

T. 14 N., R. 29 E.

Secs. 4, 8, 10, 12, 20, 24, 28, 30.
T. 15 N., R. 29 E.,
Secs. 12, 14, 26.
T. 16 N., R. 29 E.,
Secs. 28, 34.
T. 12 N., R. 30 E.,
Secs. 1, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 17, 18,
21, 23, 26, 28, 29, 34, 35.
T. 13 N., R. 30 E.,
Secs. 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 30, 34.
T. 12 N., R. 31 E.,
Secs. 3, 10, 15, 21, 22, 27, 28, 33, 34.
T. 13 N., R. 31 E.,
Secs. 4, 6, 8, 10, 19, 21, 27, 28, 29, 30, 33, 34.
T. 14 N., R. 31 E.,
Secs. 18, 20, 22, 28, 30, 34.
T. 15 N., R. 31 E.,
Sec. 18.
Comprising 117,430.27 acres in Apache
County.

Some of the lands involve base
floodplains. Excluding lands within the
base floodplain from the exchange is not
a practicable alternative. The exchange
lands will be subject to Apache
County's floodplain management
ordinance.

The state lands to be acquired are
within the following townships and
sections in Navajo, Mohave and
Coconino Counties, Arizona.

Gila and Salt River Meridian, Arizona

Navajo County

T. 18 N., R. 19 E.,
Secs. 20, 28.
Comprising 1,200 acres in Navajo County.

Coconino County

T. 36 N., R. 4 E.,
Secs. 2, 16.
T. 37 N., R. 4 E.,
Secs. 2, 16, 32, 36.
T. 37 N., R. 5 E.,
Secs. 16, 32.
T. 38 N., R. 3 E.,
Sec. 2.
T. 38 N., R. 4 E.,
Secs. 16, 32, 36.
T. 38 N., R. 5 E.,
Secs. 31, 32, 36.
T. 38 N., R. 6 E.,
Sec. 16.
T. 39 N., R. 5 E.,
Secs. 16, 17, 18.
T. 40 N., R. 1 E.,
Sec. 16.
T. 40 N., R. 3 E.,
Sec. 36.
T. 40 N., R. 5 E.,
Secs. 1, 2, 11, 12, 25, 30.
T. 40 N., R. 6 E.,
Secs. 2, 29, 30, 31, 32.
T. 41 N., R. 1 E.,
Secs. 2, 16, 32.
T. 41 N., R. 2 E.,
Secs. 2, 16, 32, 36.
T. 41 N., R. 3 E.,
Secs. 2, 16, 32, 36.
T. 41 N., R. 4 E.,
Secs. 2, 32, 36.
T. 41 N., R. 5 E.,
Secs. 32, 35, 36.
T. 42 N., R. 1 E.,

Sec. 36.
T. 42 N., R. 2 E.,
Secs. 32, 36.
T. 42 N., R. 3 E.,
Sec. 36.
T. 42 N., R. 6 E.,
Sec. 36.
T. 39 N., R. 1 W.,
Secs. 24, 32.
T. 40 N., R. 1 W.,
Secs. 16, 32.
T. 40 N., R. 2 W.,
Secs. 32, 36.
T. 41 N., R. 1 W.,
Secs. 2, 16, 36.
Comprising 34,953.04 acres in
Coconino County.

Mohave County

T. 32 N., R. 12 W.,
Sec. 2.
T. 33 N., R. 11 W.,
Sec. 16.
T. 33 N., R. 12 W.,
Sec. 36.
T. 33 N., R. 14 W.,
Sec. 36.
T. 33 N., R. 15 W.,
Sec. 2.
T. 34 N., R. 7 W.,
Secs. 16, 32.
T. 34 N., R. 8 W.,
Sec. 16.
T. 34 N., R. 9 W.,
Sec. 32.
T. 34 N., R. 10 W.,
Secs. 2, 16, 32, 36.
T. 34 N., R. 11 W.,
Sec. 32.
T. 34 N., R. 12 W.,
Secs. 2, 16, 30.
T. 34 N., R. 13 W.,
Secs. 2, 16.
T. 34 N., R. 14 W.,
Sec. 32.
T. 34 N., R. 15 W.,
Sec. 2.
T. 35 N., R. 5 W.,
Sec. 2.
T. 35 N., R. 6 W.,
Sec. 2.
T. 35 N., R. 7 W.,
Sec. 2.
T. 35 N., R. 8 W.,
Secs. 2, 32.
T. 35 N., R. 9 W.,
Secs. 2, 16, 18, 19, 20, 32, 36.
T. 35 N., R. 10 W.,
Secs. 5, 16, 29, 30, 32, 34, 36.
T. 35 N., R. 11 W.,
Secs. 2, 32, 36.
T. 35 N., R. 13 W.,
Secs. 16, 36.
T. 35 N., R. 15 W.,
Sec. 16.
T. 36 N., R. 4 W.,
Sec. 2.
T. 36 N., R. 6 W.,
Secs. 2, 16, 32, 36.
T. 36 N., R. 7 W.,
Secs. 16, 32.
T. 36 N., R. 8 W.,
Secs. 2, 16, 32, 36.
T. 36 N., R. 9 W.,
Secs. 16, 32, 36.
T. 36 N., R. 10 W.,

Secs. 2, 5, 6, 8, 9, 10, 16, 17, 20, 29, 31, 32, 36.
T. 36 N., R. 11 W.,
Secs. 2, 15, 16, 22, 27, 28, 31, 32, 36.
T. 36 N., R. 12 W.,
Secs. 2, 16, 32, 36.
T. 36 N., R. 13 W.,
Secs. 32, 36.
T. 36 N., R. 16 W.,
Secs. 4, 8, 9, 10, 32, 36.
T. 37 N., R. 4 W.,
Sec. 16.
T. 37 N., R. 5 W.,
Sec. 32.
T. 37 N., R. 7 W.,
Secs. 2, 36.
T. 37 N., R. 8 W.,
Secs. 2, 16, 32, 36.
T. 37 N., R. 9 W.,
Secs. 2, 10, 16, 32, 36.
T. 37 N., R. 10 W.,
Secs. 2, 10, 15, 16, 21, 22, 32.
T. 37 N., R. 11 W.,
Secs. 16, 32, 36.
T. 37 N., R. 12 W.,
Secs. 2, 36.
T. 37 N., R. 13 W.,
Secs. 16, 32, 36.
T. 37 N., R. 14 W.,
Secs. 2, 16, 32.
T. 38 N., R. 5 W.,
Secs. 2, 15, 16, 21, 22, 32, 36.
T. 38 N., R. 6 W.,
Secs. 2, 4, 5, 6, 11, 12, 16, 32, 36.
T. 38 N., R. 7 W.,
Sec. 36.
T. 38 N., R. 8 W.,
Secs. 2, 16, 32, 36.
T. 38 N., R. 9 W.,
Secs. 16, 32, 36.
T. 38 N., R. 10 W.,
Secs. 2, 16.
T. 38 N., R. 12 W.,
Secs. 2, 10, 36.
T. 39 N., R. 4 W.,
Secs. 2, 13, 14, 16.
T. 39 N., R. 5 W.,
Secs. 32, 36.
T. 39 N., R. 6 W.,
Secs. 14, 20, 31, 32, 36.
T. 39 N., R. 8 W.,
Secs. 2, 16, 32, 36.
T. 39 N., R. 9 W.,
Secs. 2, 16, 32, 36.
T. 39 N., R. 12 W.,
Sec. 36.
T. 39 N., R. 13 W.,
Sec. 2.
T. 40 N., R. 3 W.,
Sec. 32.
T. 40 N., R. 7 W.,
Sec. 16.
T. 40 N., R. 9 W.,
Secs. 16, 32, 36.
T. 40 N., R. 10 W.,
Secs. 16, 32.
T. 40 N., R. 11 W.,
Sec. 16.
T. 40 N., R. 12 W.,
Sec. 16.
T. 40 N., R. 15 W.,
Sec. 16.
T. 41 N., R. 7 W.,
Secs. 8, 16, 32.
T. 41 N., R. 8 W.,
Secs. 16, 36.
T. 41 N., R. 10 W.,

T. 41 N., R. 9 W.,
Secs. 2, 12, 16, 17, 32, 36.
T. 41 N., R. 13 W.,
Secs. 32, 36.
T. 41 N., R. 15 W.,
Sec. 30.
T. 42 N., R. 7 W.,
Sec. 12.
T. 42 N., R. 8 W.,
Secs. 31, 32.
T. 42 N., R. 9 W.,
Secs. 32, 36.
T. 42 N., R. 16 W.,
Sec. 36.
Comprising 108,755.10 acres in Mohave
County.

Coconino and Mohave Counties

T. 38 N., R. 3 W.,
Secs. 16, 32.
Comprising 1,279.41 acres in Coconino and
Mohave Counties.

The public land will be conveyed
under the following terms and
conditions.

1. Subject to rights of record as follows:

Roads: A 18951 through A 18956, A 18557
Transmission lines: A 10117, A 16639,
AR 017703, A 6016
Telephone lines: A 10023, A 6612, A
17432

Reservoirs: PHX 010306, PHX 086591,
PHX 022311, PHX 012973
Railroads: PHX 086786, A 9543
Communication site: AR 033084
Oil and gas leases: A 22136, A 23078

2. Reservations to the United States for the following:

Communications site: A 3544
Roads: AR 030486, PHX 080603

In accordance with the regulations of
43 CFR 2201.1(b), publication of this
Notice will segregate the affected public
lands from appropriation under the
public land laws and the mining laws,
but not the mineral leasing laws or
Geothermal Steam Act.

The segregation of the above-
described lands shall terminate upon
issuance of a document conveying such
lands or upon publication in the Federal
Register of a notice of termination of the
segregation; or the expiration of two
years from the date of publication,
whichever occurs first. This Notice
terminates Notices of Realty Action A
20346-D and A 20346-R affecting the
previously described public lands.

Detailed information concerning this
exchange can be obtained from the
Phoenix District Office. For a period of
forty-five (45) days from the date of
publication of this Notice in the Federal
Register, interested parties may submit
comments to the District Manager,
Phoenix District Office, 2015 West Deer
Valley Road, Phoenix, Arizona 85027.
Any adverse comments will be

evaluated by the State Director who
may sustain, vacate or modify this realty
action. In the absence of any objections,
this realty action will become the final
determination of the Department of the
Interior.

Henri E. Bissom,
District Manager.

Date: June 28, 1988.

[FR Doc. 88-15107 Filed 7-5-88; 8:45 am]
BILLING CODE 4310-32-M

[ID-943-08-4220-11; 1-20243]

Partial Termination of Recreation and Public Purpose Classification, Idaho

AGENCY: Bureau of Land Management,
Interior.

ACTION: Classification termination.

SUMMARY: This order partially
terminates a Bureau of Land
Management classification affecting .99
acre of public land near Wallace, Idaho.
After termination of the classification,
the underlying lands will immediately
become available for disposal through a
pending public sale action.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT:
Nancy Bloyer, BLM, Idaho State Office,
3360 Americana Terrace, Boise, Idaho
83706, 206-334-1471.

By virtue of the authority vested in the
Secretary of the Interior by the
Recreation and Public Purposes Act of
June 14, 1926, as amended; 43 U.S.C. 669;
869-4; it is ordered as follows:

1. Pursuant to regulations in 43 CFR
2091.7-1(b)(1) and the authority
delegated to me by BLM Manual Section
1203 (48 FR 85), the classification
decision of April 28, 1984, which
classified 9.87 acres of public land as
suitable for recreation and public
purposes under the Act of June 14, 1926,
as amended; 43 U.S.C. 669; 869-4, under
serial number I-20243, is hereby revoked
insofar as it affects the following-
described lands, for which approval of
survey is pending:

Boise Meridian, Idaho

T. 46 N., R. 4 E.
Sec. 26, lot 21.

The area described contains .99 acre in
Shoshone County.

2. Upon termination of the
classification, the underlying lands will
immediately become available for
disposal through a pending public sale
action under section 203 of the Federal

Land Policy and Management Act of
1976.

Pieter J. Van Zanden,
Associate State Director.

Dated: June 23, 1988.

[FR Doc. 88-15082 Filed 7-5-88; 8:45 am]
BILLING CODE 4310-05-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied
for permits to conduct certain activities
with endangered species. This notice is
provided pursuant to section 10(c) of the
Endangered Species Act of 1973, as
amended (16 U.S.C. 1531, *et seq.*):

PRT-728605

Applicant: Cleveland Metroparks Zoo,
Cleveland, OH.

The applicant requests a permit to
import one pair of clouded leopards
(*Neofelis nebulosa*), captive born at
Zhongshan Park, Wuhan, People's
Republic of China. The leopards will be
imported from the Wuhan Zoo for
purposes of captive propagation and
display.

PRT-728453

Applicant: San Diego Wild Animal Park, San
Diego, CA.

The applicant requests a permit to
import one wild-caught female mountain
tapir (*Tapirus pinchague*) from the
Zoological de Cali, Colombia, to help
further captive propagation efforts and
reduce the impact of inbreeding.

PRT-728604

Applicant: Cleveland Metroparks Zoo,
Cleveland, OH.

The applicant requests a permit to
import one male and two female captive
born Francois' langurs (*Presbytis
francoisi*) from the Wuhan Zoo, People's
Republic of China, for purposes of
captive propagation and display.

PRT-728684

Applicant: James W. Spencer, Atlanta, GA.

The applicant requests a permit to
import the personal sport-hunted trophy
of one male bontebok (*Damaliscus
dorcus dorcus*), culled from the captive-
herd maintained by Mr. P. Cawood,
Gannahoek, Republic of South Africa,
for the purpose of enhancement of
survival of the species.

PRT-728452

Applicant: San Diego Zoological Society, San
Diego, CA.

The applicant requests a permit to
import six captive-hatched golden-
shouldered (-hooded) parakeets

(*Psephotus chrysoterygius*) from the Royal Melbourne Zoological Gardens, Victoria, Australia, for the purpose of propagation, education and exhibit.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: June 27, 1988.

S.M. Lawrence,
Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-15100 Filed 7-5-88; 8:45 am]

BILLING CODE 4310-35-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5444 and 5446, Blocks 352 and 359, respectively, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 22, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the

accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbat, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 23, 1988.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-15083 Filed 7-5-88; 8:45 am]

BILLING CODE 4310-MT-M

INTERNATIONAL TRADE COMMISSION

(Investigation No. 337-TA-183 Ancillary Proceeding)

Certain Indomethacin; Issuance of an Order Adopting Recommended Determination Finding No Abuse of Commission Process and of Issuance of an Opinion Discussing Allegations of Abuse of Process and Commission's Verification Requirement

AGENCY: U.S. International Trade Commission.

ACTION: (1) Issuance of an order adopting the recommended determination (RD) of the administrative law judge in the investigation, finding no abuse of Commission process, insofar as the RD is not inconsistent with a concurrently issued Commission opinion, and denying respondent Lederle Laboratories' request for oral argument; and (2) issuance of an opinion discussing allegations of abuse of process by complainant in the above-captioned investigation, as well as the obligations of parties who verify submissions pursuant to 19 CFR 210.20(a)(1) and 210.21(b).

SUMMARY: The Commission has reviewed a recommended determination (RD) in which the presiding administrative law judge (ALJ) determined that complainant Merck & Co., Inc. (Merck) had not abused Commission process by filing an arguably misleading complaint or through its discovery and settlement conduct. The Commission has issued an opinion discussing the allegations against Merck and the meaning of the Commission's verification requirements. The Commission has adopted the RD insofar as it is consistent with the Commission's opinion.

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, tel. 202-252-1107.

SUPPLEMENTARY INFORMATION: Investigation No. 337-TA-183 as instituted on February 14, 1984, based on a complaint filed by Merck under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging unfair acts in the importation and sale of indomethacin manufactured abroad by a process which, if practiced in the United States, would infringe claims of U.S. Letters Patent 3,629,284 with the effect or tendency to substantially injure an efficiently and economically operated domestic industry.

On October 3, 1984, respondent Lederle Laboratories (Lederle) filed a motion requesting a "Prima Facie Determination of Abuse of Commission Process by Merck and for Institution of Ancillary Proceedings for the Assessment of Lederle's Fees and Costs Against Merck." Other respondents joined in Lederle's motion.

On December 30, 1986, the Commission issued a notice certifying Lederle's motion alleging abuse of Commission process, together with the motions of other respondents who had joined Lederle's motion, and the responses thereto, to the ALJ. Following

an evidentiary hearing, the ALJ issued the RD that is the subject of this notice.

Copies of the Commission's Order, the opinions issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 30, 1988.

[FR Doc. 88-15136 Filed 7-5-88; 8:45 am]

BILLING CODE 7020-02-M

(Investigation No. 337-TA-257)

Certain Minoxidil Powder, Salts and Compositions For Use in Hair Treatment; Continued Suspension of Investigation

AGENCY: International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: Notice is given that the Commission has determined to continue the suspension of the above-captioned investigation until 30 days after publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1092.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and Commission rule 210.59 (19 CFR 210.59). On February 16, 1988, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding a violation of section 337. The Commission investigation attorney (IA) filed a petition for review which included a suggestion to suspend the investigation pending final action by the FDA. On April 4, 1988, the Commission determined to review portions of the ID. Written submissions were filed by Upjohn and the IA. No public comments were received, but the FDA filed a written submission on May 13, 1988. On

May 13, 1988, the Commission determined to suspend the investigation for 30 days from publication of notice of such decision in the Federal Register.

Copies of the nonconfidential version of the Commission Order, the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 27, 1988.

[FR Doc. 88-15134 Filed 7-5-88; 8:45 am]

BILLING CODE 7020-02-M

(Investigation No. 337-TA-256)

Certain Reclosable Plastic Bags and Tubing; Institution of Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Institution of advisory opinion proceeding.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute and advisory opinion proceeding relating to the exclusive order issued in April 1988 at the conclusion of the above-captioned investigation. Two requests were filed with the Commission requesting the Commission to issue advisory opinions pursuant to 19 CFR 211.54(b) regarding whether certain reclosable plastic bags sought to be exported to the United States are covered by the exclusion order issued at the conclusion of the above-captioned investigation: (1) On March 4, 1988, on behalf of Kingdom Plastics Manufacturing Co. (KPM) of Taiwan, and (2) on June 13, 1988, on behalf of KCL Corp. of Indiana and KCL Corporation of Canada Ltd. (KCL).

FOR FURTHER INFORMATION CONTACT: Paul Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of sections 335 and 337 of the Tariff Act of 1930 (19 U.S.C. 1335 and 1337) and 19 U.S.C. 1337a, and Commission rules

201.4(b) and 211.54(b) (19 U.S.C. 201.4(b) and 211.54(b)).

On November 30, 1987, the Commission issued a temporary exclusion order (TEO) in the subject investigation. On March 4, 1988, KPM filed a request for an advisory opinion as to whether certain reclosable plastic bags that KPM seeks to export to the United States from Taiwan were covered by the TEO. KPM asked that, if the TEO were replaced by a permanent exclusion order before the completion of the Commission's advisory opinion proceeding, KPM's request should be considered to apply to the permanent exclusion order. On April 7, 1988, the Commission determined to delay consideration of institution of an advisory opinion proceeding until after the issuance of permanent relief. On April 29, 1988, the Commission issued a permanent exclusion order in the subject investigation. On June 13, 1988, KCL Corp. of Indiana and KCL Packaging Corporation of Canada Ltd. (KCL) filed a petition for an advisory opinion as to whether certain reclosable plastic bags that KCL seeks to export to the United States from Canada covered by the exclusion order.

Copies of the Commission's Order, public versions of the KPM and KCL submission requesting advisory opinions, and all other nonconfidential documents filed in connection with this proceeding are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired individuals are advised that information on this matter can be obtained contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 28, 1988.

[FR Doc. 88-15135 Filed 7-5-88; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Pollution Control; Consent Judgments; Seabrook, TX et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 23, 1988, a proposed Consent Decree in *United States v. City of Seabrook, Texas and the State of Texas*, Civil Action Number H-67-734, was lodged with the United States

District Court for the Southern District of Texas. The Complaint filed by the United States alleged violations of the Water Pollution Prevention and Control Act, as amended (the "Clean Water Act"). Defendant City of Seabrook owns and operates a wastewater treatment facility that treats municipal wastewater. The City violated the Clean Water Act by discharging pollutants into Pine Gully and thence into Galveston Bay in excess of the amounts authorized under its National Pollutant Discharge Elimination System ("NPDES") permit.

The Consent Decree requires the City to comply with its NPDES permit for six months following filing of the Decree. If the City fails to comply with its permit for six consecutive months, the City is required to design and implement a program to achieve and maintain compliance with the permit. The Consent Decree also provides that the defendant shall pay a civil penalty of \$35,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Seabrook, Texas and the State of Texas*, D.J. No. 90-5-1-1-2735.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Courthouse and Federal Building, 515 Rusk Avenue, 3rd Floor, Houston, Texas 77208, at the Region VI Office of the Environmental Protection Agency, Office of Regional Counsel, 1201 Elm Street, Dallas, Texas 75270, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States v. City of Seabrook, Texas and the State of Texas*, D.J. No. 90-5-1-1-2735, and

include a check for \$1.30 (10 cents per page reproduction charge) payable to the United States Treasury.

Roger J. Mersulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-15080 Filed 7-5-88; 8:45 am]

BILLING CODE 4510-21-38

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Child Labor Advisory Committee; Subcommittee on Child Labor Regulation No. 3

A meeting of the Child Labor Advisory Committee, Subcommittee on Child Labor Regulation No. 3, will be held on July 28, 1988, from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room N2437, Frances Perkins Building, Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The Subcommittee will consider Child Labor Regulation No. 3, Employment Standards for 14- and 15-year-olds, including the permitted hours of work for such youth.

Members of the public are invited to attend these proceedings; however, since these are work sessions, seating is limited. Written data, reviews or arguments pertaining to the business before the Subcommittee must be received by the Committee Coordinator by July 19, 1988. Twenty-six copies are needed for distribution to the members and for inclusion in the meeting minutes.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Nila Stovall, Coordinator for the Child Labor Advisory Committee, Room S-3028, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: area code (202) 523-7840.

Signed at Washington, DC this 28th day of June 1988.

Paula V. Smith,
Administrator.

[FR Doc. 88-15178 Filed 7-5-88; 8:45 am]

BILLING CODE 4510-27-M

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date petition	Petition No.	Article produced
Burlington Industries, Inc., Klopman Fabrics Div. (Workers)	Mountain City, TN	5/27/88	5/7/88	20,739	Polyester Textured Yarn & Woven Fabrics.
Columbia Tool Steel (Workers)	Chicago Hgts, IL	5/27/88	5/9/88	20,740	Tool Steel Products.
Donora Sportswear Inc. (ACTWU)	Donora, PA	5/27/88	5/9/88	20,741	Men's & Women's Wool Coats.

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Burlington Industries, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 18, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 18, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 27th day of June 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date petition	Petition No.	Article produced
Emple Knitting Mills (ILGWU)	Brewer, ME	5/27/88	5/15/88	20,742	Men's Sweaters.
Flair Manufacturing (Company)	Keansburg, NJ	5/27/88	5/10/88	20,743	Paint Rollers & Trays.
Linbro Contractors (ILGWU)	New York, NY	5/27/88	5/27/88	20,744	Girls' Sportswear.
Romeda Moccasins, Inc. (Workers)	Auburn, ME	5/27/88	5/9/88	20,745	Shoes.
Schrader Sport (ILGWU)	Secaucus, NJ	5/27/88	5/7/88	20,746	Ladies' Sportswear.
Sobel Brothers (Workers)	Perth Amboy, NJ	5/27/88	5/13/88	20,747	Costume Jewelry.
Stewart Warner Corp./Bassick Division (IUE)	Bridgeport, CT	5/27/88	5/13/88	20,748	Castors.
Toastmaster Inc. (Workers)	Moberly, MO	5/27/88	5/14/88	20,749	Heaters and Fans.

[FR Doc. 88-15180 Filed 7-5-88; 8:45 am]

BILLING CODE 4510-36-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Forest Enterprises, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 20, 1988-June 24, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,840; Forest Enterprises, Inc.,
USK, WA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,827; Rio Algom Mining Corporation, Lisbon Mine & Mill,
Moab, UT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,638; Edison Battery Product,
Belleville, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,635; Bethlehem Steel Corp.,
Dept 330, Bethlehem Plant,
Bethlehem, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,705; Mellon Bank Corp.,
Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,678; Quarto Mining Co.,
Powhatan, Point, OH

U.S. imports of coal in 1987 were negligible.

TA-W-20,621; Budget Dress Corp.,
Secaucus, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,675; Pea Ridge Iron Ore Co.,
Inc., Sullivan, MO

U.S. imports of iron ore including pellets and sinter declined absolutely and relative to domestic production in the first three quarters of 1987 compared to the same period in 1986.

Affirmative Determinations

TA-W-20,633; Westinghouse Electric Corp., Pittsburgh, PA

A certification was issued covering all workers separated on or after October 1, 1987.

TA-W-20,652; Westland Oil Development Corp., Montgomery,
TX

A certification was issued covering all workers separated on or after April 21, 1987.

TA-W-20,636; Cambridge Instruments, Inc., Buffalo, NY

A certification was issued covering all workers separated on or after April 18, 1987.

I hereby certify that the aforementioned determinations were issued during the period June 20, 1988-June 24, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: June 28, 1988.

[FR Doc. 88-15185 Filed 7-5-88; 8:45 am]

BILLING CODE 4510-36-M

Mine Safety and Health Administration

[Docket No. M-88-102-C]

Colorado Westmoreland Inc.; Petition for Modification of Application of Mandatory Safety Standard

Colorado Westmoreland Inc., P.O. Box 1299, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75-328 (aircourses and belt haulage entries) to its Orchard Valley West Mine (I.D. No. 05-04184) located in Delta County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. In a separate petition (M-88-100-C), petition proposes to install an early warning fire detection system, using a low-level carbon monoxide system. The system would be installed and operated

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with specific conditions in all belt entries used as intake aircourses.

3. As an alternate method, petitioner proposes to use air which is coursed through the belt haulage and/or track entries to ventilate active working places.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1988. Copies of the petition are available for inspection at that address. Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

Date: June 24, 1988.

[FR Doc. 88-15181 Filed 7-5-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-101-C]

Colorado Westmoreland Inc.; Petition for Modification of Application of Mandatory Safety Standard

Colorado Westmoreland Inc., P.O. Box 1299, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Orchard Valley West Mine (I.D. No. 05-04184) located in Delta County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-88-102-C), petitioner proposes to use air which is coursed through the belt entry to ventilate active working places.

3. In lieu of a heat detection system, petitioner proposes to use an early-warning fire detection system using a low-level carbon monoxide detection system. The system would be installed and operated with specific conditions in all belt entries used as intake aircourses.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1988. Copies of the petition are available for inspection at that address. Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

Date: June 24, 1988.

[FR Doc. 88-15182 Filed 7-5-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-108-C]

Colorado Westmoreland Inc.; Petition for Modification of Application of Mandatory Safety Standard

Colorado Westmoreland Inc., P.O. Box 1299, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops and permanent pumps) to its Orchard Valley West Mine (I.D. No. 05-04184) located in Delta County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed into the return.

2. As an alternate method, petitioner proposes to use air currents which are used to ventilate structures to also ventilate active working places rather than coursing such air currents into the returns.

3. In support of this request petitioner proposes that an early warning fire detection system would be installed. A low-level carbon monoxide detection system would be installed in all belt entries utilized as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The low-level CO system would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal

would be activated with the CO level is 10 ppm above the ambient level and an audible signal would sound at 15 ppm above the ambient level for the mine. The CO monitoring system would initiate the fire alarm signals at a central location where a responsible person is always on duty when miners are underground. This person would have two-way communication with all personnel who may be endangered, and would be able to hear or observe the signals and take appropriate action immediately. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and detecting electrical malfunctions.

4. The CO monitoring system would be visually examined at least once each shift and tested for functional operation weekly to ensure that the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If at any time the CO monitoring system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using a hand-held CO detecting device.

6. The details for the fire detection system including, but not limited to, type of monitor, sensor location, alarm system and maintenance and calibration schedule would be included as a part of the Ventilation System and Methane and Dust Control Plan.

7. The permanent stoppings separating the conveyor belt entries from the intake escapeway would be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before

August 5, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: June 24, 1988.

[FR Doc. 88-15183 Filed 7-5-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-93-C]

Drummond Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops and permanent pumps) to its Chetopa Mine (I.D. No. 01-00323) located in Jefferson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, petitioner proposes to install and maintain a carbon monoxide monitoring system when utilizing belt air to ventilate active working places.

3. An early warning fire detection system would be installed. A low-level carbon monoxide detection system would be installed in all belt entries utilized as intake aircourses. The low-level CO system would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated with the CO level is 10 ppm above the ambient level and an audible signal would sound at 15 ppm above the established ambient level. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO monitoring system would initiate the fire alarm signals at an attended surface location where there is two-way communication. This responsible person would notify the working sections and other personnel who may be endangered, when the established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and detecting electrical malfunctions.

4. The CO monitoring system would be visually examined at least once each shift and tested for functional operation weekly to ensure that the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If at any time the CO monitoring system or any portion of the system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using a hand-held CO detecting device.

6. The details for the fire detection system including, but not limited to, type of monitor and specific sensor location, on the mine map would be included as a part of the Ventilation System and Methane Dust Control Plan.

7. In support of this request, petitioner states that—

(a) In addition to the existing intake air entries, the mine would utilize the belt entries as intake air entries. Utilizing the belt entries as intake entries would eliminate any possible dead air areas and prevent possible air reversals due to changes in ventilating pressure. Further, utilizing the belt entries as intake entries would provide some increase in air volume in the last open crosscut, and would provide extra flexibility to the mine to quickly direct more air to dilute any concentrations of methane, which may occur at the working faces;

(b) The mine would continuously maintain the average concentration of respirable dust in belt entries utilized as intake aircourses within the requirements set forth in the regulations;

(c) Main line belt entries are in brushed headings and thus would allow for a less restricted flow of air to the face area, since ceilings in these entries are higher than in the low seam intake entries;

(d) The belt entries would continue to be used as travelways. Thus, it will be easy for those traveling the belt entries to continuously inspect them for safety purposes;

(e) The mine would continue to keep its battery-charging stations located on the belt entries ventilated directly to the return air, so as to prevent any fumes from reaching the workers on the face; and

(f) The mine would continue to isolate the belt entries which are used as intake entries from other intake and return entries with the use of continuous

permanent-type stoppings. The mine would continue to provide an escapeway ventilated with intake air and would continue to keep it separate from the belt and track entries.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 5, 1988. Copies of the petition are available for inspection at that address. Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

Date: June 27, 1988.

[FR Doc. 88-15184 Filed 7-5-88; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

Notice is hereby given that the Ad Hoc Subcommittee on the Preservation of Video Recordings of the Advisory Committee on Preservation will meet on July 28-29, 1988. The meeting will be held from 10 a.m. to 4 p.m. on Thursday, July 28, 1988 and 9 a.m. to 1 p.m. on July 29, 1988, in Room 105 of the National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

The agenda for the meeting will be:

1. Video preservation issues.
2. Review of technological developments.
3. Discussion of preservation options.

This meeting is open to the public. For further information, contact Alan Calmes on (202) 523-1546.

Notice of the meeting is made in accordance with the Federal Advisory Committee Act.

Dated: June 29, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-15186 Filed 7-5-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC. 20508.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20508; telephone 202/788-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9) (B) of section 552b of Title 5, United States Code.

1. DATE: July 25, 1988.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: M-14.
PROGRAM: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after November 30, 1988.

2. DATE: July 27, 1988.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: M-14.
PROGRAM: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education

Programs, for projects beginning after November 30, 1988.
Stephen J. McCleary,
Advisory Committee Management Officer.
[FR Doc. 88-15109 Filed 7-5-88; 8:45 am]
BILLING CODE 7930-01-M

NUCLEAR REGULATORY COMMISSION

(Docket Nos. 58-413 and 50-414)

Duke Power Co. et al.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-35 and NPF-52 issued to Duke Power Company, et al., (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The amendments would change Technical Specification (TS) 5.3.1 "Fuel Assemblies" to provide increased flexibility in the substitution of solid stainless steel rods and open water channels (i.e., vacancies) for fuel rods in reconstitutable fuel assemblies to be reinserted in the reactor core during a refueling outage. Presently, TS 5.3.1 requires that each fuel assembly contain 264 fuel rods clad with Zircaloy-4, except that limited substitutions of fuel rods with filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in peripheral fuel assemblies if justified by cycle-specific reload analyses. The revised TS 5.3.1 would require that each fuel assembly nominally contain 264 fuel rods clad with Zircaloy-4, except that substitutions of fuel rods by filler rods consisting of Zircaloy-4 or stainless steel, or by vacancies, may be made in fuel assemblies if justified by cycle-specific reload analyses using NRC-approved methodology. The proposed revision would also state that should more than 30 rods in the core, or 10 rods in any assembly, be replaced per refueling, a special report describing the number of rods replaced would be submitted to the Commission pursuant to Specification 6.9.2 within 30 days after cycle startup.

The Need for the Proposed Action

The proposed TS change which removes TS requirements concerning "limited substitutions" and "peripheral fuel assemblies" is needed to provide

increased operational flexibility. Under the proposed change, limitations on fuel rod substitutions or omissions and limitations regarding core locations are those implicit in the justifying analyses required to be performed by the licensee for each fuel cycle using NRC-approved methodology to demonstrate that existing design limits and safety analyses criteria continue to be met. The proposed flexibility is intended to provide for improved fuel performance by permitting the timely removal of individual fuel rods which are found to be leaking during a refueling outage. The requirement for special reporting is proposed in response to the NRC's request to be informed in the event a significant deviation from past fuel performance should be observed during a refueling outage.

Environmental Impacts of the Proposed Action

The purpose of the change is to provide for reductions in future occupational radiation exposure and plant radiological releases through improvements in the licensee's fuel performance program. The licensee's goal for fuel reliability improvement is that the cycle average steady-state Iodine-131 activity, corrected for tramp contribution and normalized to a common purification rate, remain below 0.02 microcuries per gram. This corresponds to about 12 leaking fuel rods. The licensee's goal is to achieve one-half the present goal, or 0.01 microcuries per gram, by 1990 and beyond. This will be achieved, in part, by an action plan of outage inspections and reconstitution; if the I-131 activity exceeds 0.06 microcuries per gram anytime during the cycle, then all of the reconstitutable assemblies to be reinserted will be examined by special ultrasonic testing (UT) equipment for defects in individual failed rods and results used for reconstitution decisions. Fuel handling, UT, and reconstitution of failed assemblies of a reconstitutable top-nozzle design would be conducted in parallel during refueling outages. The licensee estimates the fuel improvement program will reduce the total station occupational dose by at least 5 to 10 percent. Radiological releases from the station during normal operation would also be significantly reduced because of improved fuel performance.

The Commission has completed its review of the proposed amendments to revise the TS. The revision does not result in any significant adverse change in the process for determining the adequacy for reload designs and plant operation. The licensee will continue to

justify each cycle-specific reload by analyses using NRC-approved methodology in order to demonstrate that existing design and operating limits are met in advance of operation. Therefore, the proposed change does not increase the probability or consequences of accidents. As discussed above, no adverse changes are being made in the types or amounts of effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant adverse radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of the Catawba Nuclear Station, Units 1 and 2," dated January 1983.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for

amendments dated April 1, 1988 and a previous application of February 5, 1988 which it replaced. Also see D. Hood's memorandum dated April 1, 1988, entitled "Summary of March 22, 1988 Meeting on TS Changes Regarding Use of Steel Rods and Open Water Channels in Reconstitutable Fuel Assemblies." These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 29th day of June 1988.

For the Nuclear Regulatory Commission,

David B. Matthews,
Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-15124 Filed 7-5-88; 8:45 am]

BILLING CODE 7930-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 1.100, "Seismic Qualification of Electric and Mechanical Equipment for Nuclear Power Plants," describes a method acceptable to the NRC staff for complying with NRC's regulations with respect to seismic qualification of mechanical as well as electric equipment. This guide endorses, with certain exceptions, the revised IEEE Std 344-1987, "Recommended Practice for Seismic Qualification of Class 1E Equipment for Nuclear Power Generating Stations."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the

Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5205 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 29th day of June 1988.

For the Nuclear Regulatory Commission,

Eric S. Beckjord,
Director, Office of Nuclear Regulatory Research.

[FR Doc. 88-15126 Filed 7-5-88; 8:45 am]

BILLING CODE 7930-01-M

(Docket No. 50-255)

Consumers Power Co.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

In accordance with the licensee's application for amendment dated March 25, 1986, as modified by the licensee's submittal dated June 17, 1986, the amendment would revise the provisions in the Technical Specifications to add additional limitations to plant operation with less than four reactor coolant pumps operating to conform to the analyses for certain postulated accidents; modify the reactor protection system set points, limiting conditions for operation, and surveillance requirements to reflect the modifications proposed for the reactor protection system; and replace the 1530 psi transient differential limit with a steady state limit of 1380 psi for the steam generator primary to secondary. There are also editorial changes to delete out-of-date footnotes and modify bases and references to reflect the revised licensing basis analyses.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

By August 4, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within scope of the

amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-8000 (in Missouri 1-800-342-8700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for

amendment dated March 25, 1988, and the licensee's submittal dated June 17, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49421.

Dated at Rockville, Maryland, this 28th day of June, 1988.

For the Nuclear Regulatory Commission,
Martin J. Virgilio,
Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-15123 Filed 7-5-88; 6:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-309]

**Maine Yankee Atomic Power Co.;
Issuance of Amendment of Facility
Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 105 to Facility Operating License No. DPR-38 issued to Maine Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Main Yankee Atomic Power Plant located in Lincoln County, Maine. The amendment was effective as of the date of issuance.

The amendment changed the maximum normal enrichment of the fuel allowed to be used in the reactor core for operating cycle 11 and beyond from 3.5 percent nominal weight U-235 to 3.7 percent nominal weight U-235.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on April 29, 1988 (53 FR 15479). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (53 FR 24383) related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 24, 1988, (2) Amendment No. 105 to License No. DPR-38, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Wiscasset Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 28th day of June 1988.

For the Nuclear Regulatory Commission,

Carl R. Stahl,
Project Manager, Project Directorate I-3,
Division of Reactor Projects, I/II.

[FR Doc. 88-15125 Filed 7-5-88; 8:45 am]
BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-25840; File No. SR-CBOE-85-42]

**Self-Regulatory Organizations;
Chicago Board Options Exchange,
Inc.; Order Approving Proposed Rule
Change**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on October 18, 1985, filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposal relating to accommodation liquidations. In a subsequent release, the Commission published for comment and granted accelerated approval to those portions of the proposal relating to options other than foreign currency and government securities options (*i.e.*, equity and index options).³ In two amendments to its original rule filing⁴ and in a letter to the

¹ 15 U.S.C. 78b(1)(1) (1982).

² 17 CFR 240.19b-4 (1986).

³ Securities Exchange Act Release No. 22733 (Dec. 20, 1985), 50 FR 53050. The release also granted approval to the Pacific Stock Exchange's accommodation liquidation procedures (File No. SR-PSE-85-28).

⁴ Amendment No. 1 was received by the Commission on November 15, 1985; Amendment No. 2 on February 12, 1986.

Commission,⁵ the CBOE subsequently modified and clarified its proposal to permit accommodation liquidations in government securities options.⁶ The Commission today is approving that portion of the original CBOE filing, as amended, which would permit under certain circumstances accommodation liquidations in government securities options.

Accommodation liquidations, or cabinet trading, of options contracts is designed to enhance the ability of market participants to effect closing transactions in series of options in which there is no auction market due to the absence of a bid or offer at the lowest fractional price per contract.⁷ Prior to approval of the CBOE's original rule filing, cabinet orders only could be entered for closing or liquidating transactions. Accordingly, closing cabinet orders remained unexecuted unless there were closing cabinet orders with which they could be paired.

The Commission, citing the need to further facilitate the closing out of positions in inactive, out-of-the-money options series for which there are no displayed bids or offers at the lowest fractional price per contract, approved the original CBOE proposal as it related to accommodation liquidations of equity and index options. CBOE Rule 6.54 now permits entry of opening orders in the cabinet, at a limit price of \$1 per contract, against closing cabinet bids or offers, but only if such closing bids or offers are displayed on the public limit order book. All such opening orders, however, must yield to any matching, closing orders in the cabinet, and thus opening orders are permitted only to the extent there are no matching closing bids or offers. In addition, customers, firms, and market makers can enter opening orders only when closing orders already exist in the cabinet.

At the time it approved accommodation liquidations in equity and index options, the Commission declined to approve accommodation liquidation procedures for government securities options. In so doing, the Commission expressed its concern that cabinet trading of government securities options could be difficult to facilitate because of the lack of an Order Book Official ("OBO") or Board Broker in

⁵ Letter from Anne Taylor, Associate General Counsel, CBOE, to David Underhill, Attorney, Division of Market Regulation, SEC, dated October 6, 1987.

⁶ The CBOE since has discontinued foreign currency options trading.

⁷ The lack of bids or offers at the lowest fractional price per contract typically occurs in deep out-of-the-money options series.

such options to accept and keep track of cabinet orders.

As noted above, the CBOE in two subsequent amendments to its original filing and in a letter to the Commission staff clarified and revised its proposal to permit accommodation trading in government securities options. In particular, the Exchange now proposes to permit bids or offers for opening transactions at a price of \$1 per option to be executed only with closing transactions which cannot at that time be executed in open outcry with other closing transactions.⁸

The Exchange also proposes to require all opening and closing trade tickets for government securities options accommodation trades to be stapled together and collected by an exchange official at the relevant trading post.⁹ This would allow the Exchange to maintain a paper trail for surveillance purposes. Last, the CBOE proposes to distribute to members a memorandum explaining the procedures described herein.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6¹⁰ and the rules and regulations thereunder. The Commission believes that the procedures proposed by the CBOE to permit accommodation trading of government securities options will help promote liquidity in the government securities options market. In particular, allowing customers to open positions in out-of-the-money series of government securities options should increase the number of contra orders available to market participants seeking to close out positions in out-of-the-money series. At the same time, the Exchange's new requirements should help ensure that opening \$1 transactions are executed only with closing transactions which at that time cannot be executed in open outcry with other closing transactions. While the presence of an OBO or Board Broker might make it easier to ensure that closing orders are represented continuously at the post, the largely

⁸ CBOE Rule 21.15 would be amended to read as follows: Accommodation trading under the applicable terms and conditions of Rule 6.54 shall be available in each series of government securities option contracts open for trading on the Exchange. However, bids or offers for opening transactions at a price of \$1 per option contract may be executed only with closing transactions that cannot at that time in open outcry be executed with another closing transaction.

⁹ See letter cited at note 6, *supra*.

¹⁰ 15 U.S.C. 78f (1982).

institutional nature of this market makes the presence of an OBO less important for cabinet trading than it would be for equity or index option trading. Moreover, the Commission believes the Exchange has devised procedures adequate to promote the fair and efficient functioning of the largely institutional market for government securities options.

It Therefore Is Ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 28, 1988.

[FR Doc. 88-15075 Filed 7-5-88; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 29, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Dreyfus Strategic Government Income Inc.

Common Stock, \$.001 Par Value (File No. 7-3586)

Long Island Lighting

\$3.50 Cumulative Preferred X, \$25.00 Par Value (File No. 7-3587)

National Australia Bank Limited

American Depository Shares, No Par Value (File No. 7-3588)

Putnam Intermediate Government Income Trust

Shares of Beneficial Interest (File No. 7-3589)

Spain Fund, Inc. (The)

Common Stock, \$1.00 Par Value (File No. 7-3590)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 21, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies

thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15076 Filed 7-5-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-25862; File No. 4-284]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Amendment to Plan for Reporting Minor Disciplinary Rule Violations

The New York Stock Exchange, Inc. ("NYSE") submitted on March 27, 1987 a proposed amendment to its minor rule violation plan, pursuant to Rule 19d-1(2)(c) under section 19(d)(1) of the Securities Exchange Act of 1934 ("Act").¹ The minor disciplinary rule plan relieves the NYSE of the current reporting requirement otherwise imposed by section 19(d)(1) of the Act for "final" disciplinary actions, for those rule violations listed under NYSE Rule 476A designated as minor disciplinary rule violations.² The amendment adds violations of NYSE Rule 342.20 and NYSE Rule 476(a)(11) to the list of minor violations subject to the plan.³

¹ See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23628. The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by an SRO for violation of an SRO rule that has been designated a minor rule pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted the available administrative remedies.

² See NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"); Securities Exchange Act Release No. 21888 (January 25, 1986) 50 FR 5025 (approving NYSE Rule 476A).

³ NYSE Rule 342.20 requires a member or member organization to comply with any request by the Exchange for "detailed information regarding trades" effected in NYSE listed stocks or related financial instruments by the date required by the Exchange. NYSE Rule 476(a)(11) makes the failure to respond in a timely manner actionable pursuant to NYSE disciplinary procedures. See Securities

Violations of Rules 476(a)(11) and Rule 342.20 will be reported to the Commission in a manner identical to all other violations subject to the minor disciplinary rule plan. Such reports include (1) a quarterly report listing the NYSE internal file number for the case, (2) SEC file number, (3) the name of the individual or member organization, (4) the nature of the violation, (5) the specific rule provision violated, (6) the date of violation, (7) the fine imposed, (8) an indication of whether the fine is joint and several, (9) the number of times the violation has occurred, and (10) the date of disposition.⁴

Notice of the proposed amendment to the plan was given by the issuance of a Commission release (Securities Exchange Act Release No. 24565, June 9, 1987), and by publication in the Federal Register (52 FR 23119, June 17, 1987). No comments were received with respect to the proposed amendment.⁵

The Commission finds that the proposed amendment to the minor disciplinary rule plan is consistent with the requirements of sections 6 and 19 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19d-1(c)(2) under the Act, that the proposed plan amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,
Secretary.

Dated: June 28, 1988.

[FR Doc. 88-15074 Filed 7-5-88; 8:45 am]

BILLING CODE 8010-01-M

Exchange Act Release No. 25703 (May 27, 1987), 52 FR 20825 (approving NYSE Rule 342.20 and amendments to NYSE Rule 476(a)(11)).

⁴ The fine schedule under Rule 476A is as follows: (1) First offense, a fine of \$500 for an individual and \$1,000 for a member organization; (2) second offense, a fine of \$1,000 for an individual and \$2,500 for a member organization; and (3) subsequent fines, a fine of \$2,500 for an individual and \$5,000 for a member organization. Fines in excess of \$2,500 are not covered by the minor disciplinary rule plan.

⁵ In connection with the NYSE's proposal to amend Rules 342.20 and 476(a)(11), the Commission received comments critiquing the proposed amendments. These comments, which were addressed in the Commission's order approving the substantive rule changes issued pursuant to Exchange Act Rule 19b-4, do not relate to the reporting plan that is the subject of this approval order issued pursuant to Exchange Act Rule 19d-1. See Securities Exchange Act Release No. 25703 (May 27, 1987), 52 FR 20825 (approving NYSE Rule 342.20 and amendments to NYSE Rule 476(a)(11)).

⁶ See 17 CFR 200.30-3(a)(44).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 29, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Black Hills Corporation

Common Stock, \$1.00 Par Value (File No. 7-3581)

Premier Industrial Corporation

Common Stock, \$1.00 Par Value (File No. 7-3582)

British Gas PLC

Final Installment American Depositary Receipts (File No. 7-3583)

First Fidelity Bancorporation (New)

(File No. 7-3584)

NIPSCO Industries, Inc.

Common Stock, No Par Value (File No. 7-3585)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 21, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearings, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions to unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15077 Filed 7-5-88; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations Services Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Advisory Committee for Trade Negotiations to be held July 7, 1988 from 1:30 p.m. to 4:00 p.m., in Washington, DC, and the Services Policy Advisory Committee to be held July 11-12, 1988, in Geneva, Switzerland, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20503.

Clayton Yeutter,
United States Trade Representative.
[FR Doc. 88-15078 Filed 7-5-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD1 88-049]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on July 28, 1988, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Feedback on Group New York's Anchorage Management performance and the monitoring of channel 13 VHF-FM.
3. Update Kill Van Kull/Newark Bay Dredging Project.

4. Status of the NY Harbor Traffic Management Advisory Committee.

5. Bridge Administration Status Report—Transfer of duties to USACE and safety issues of bridge repairs.

6. Topics from the floor.

7. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L. Brooks, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York, NY 10004; or by calling (212) 688-7834.

Dated: June 27, 1988.

R.I. Rybacki,
Rear Admiral, U.S. Coast Guard, Commander,
First Coast Guard District.

[FR Doc. 88-15072 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

Denial of Petitions for Defect and Noncompliance Investigations

On June 1, 1987, the Center for Auto Safety (CFAS) petitioned the National Highway Traffic Safety Administration (NHTSA) for the commencement of an investigation to determine whether school buses manufactured by the Thomas Built Bus Company contain a defect that relates to motor vehicle safety because of an alleged tendency for these buses' floor joints to separate in crashes. CFAS also petitioned at the same time for an investigation to determine whether the same buses fail to conform to the requirements of Federal Motor Vehicle Safety Standard 221, 49 CFR 571.221, School Bus Body Panel Joint Strength. On November 3, 1987, NHTSA denied the CFAS petitions

¹¹ 15 U.S.C. 78e(b)(2) (1982).

to conduct both investigations. On December 4, 1987, CFAS filed petitions to reconsider the denial of both earlier petitions. The petitions for reconsideration provided no significant new information about the Thomas school buses in question but expressed some new arguments, primarily concerning the intent of Congress in enacting the school bus amendments to the Safety Act in 1974. The agency now denies these petitions for reconsideration.

While the CFAS petitions for reconsideration contain no significant new information, NHTSA's Office of Defects Investigation (ODI) has continued its review of possibly relevant crash data involving school buses. An analysis of this information, including some cases that were not discussed in the petition denials of November 3, 1987, is therefore part of the basis for this petition denial. A memorandum setting out this analysis is being placed in the agency's public file.

The ODI analysis of available school bus crash data indicates that crashes which have generated catastrophic forces due to the size and speed of the vehicles and objects involved may have resulted in floor joint separation or tearing of floor panels in buses made by other manufacturers as well as in Thomas buses and that Thomas buses have also withstood such crashes without floor joint separation in a number of instances. Fortunately, it also appears that such catastrophic crashes involving school buses have been rare events. Because of this, their small number prevents meaningful statistical analysis. The ODI review encompassed 66 potentially catastrophic crashes, 20 of which involved Thomas buses. Floor separation occurred in five of these 20 crashes and may have occurred in at least two involving buses made by other manufacturers.

One of the observations set out in the ODI analysis is that, "To say that one bus of one manufacturer would survive a particular crash in better condition than another is difficult, if not impossible, due to the truly unique circumstances of each and every accident." ODI's report concludes:

Analysis of this issue provides no evidence of a safety-related defect Although floor separation may have contributed to the injury risk in these accidents, there is no pattern of evidence that would warrant further commitment of resources to determine whether such separations might occur in other less catastrophic events.

While ODI's discussion was focused specifically on the defect petition, the conclusion is equally valid with respect to the petition for a noncompliance

investigation. The absence of evidence of floor separation in noncatastrophic crashes supports the agency's exercise of discretion to close its investigations of possible floor joint noncompliances with Federal Motor Vehicle Safety Standard 221, *School Bus Body Panel Joint Strength* in light of the apparent ambiguities in the Standard.

Both new petitions contain arguments that Congress intended the agency to ensure that school buses would be able to withstand catastrophic crashes such as those relied upon by CFAS in its petitions and reviewed by ODI. For the reasons set out below, the agency disagrees with this interpretation of the intent of Congress. However, even if this were a correct interpretation, it would not support the likelihood of finding a safety related defect or noncompliance based on the facts before the agency regarding Thomas buses. If Congress intended a level of crash protection to include such catastrophic crashes as high speed collisions with freight trains and heavy trucks, this would support an argument for standards of crashworthiness far exceeding the joint strength requirements of Standard No. 221, and the only way to accomplish this would be by initiating new rulemaking. Such a Congressional purpose would be difficult, if not impossible, to accomplish by enforcement of the defect notification and remedy provisions of the Act which ordinarily depend on evidence of significant numbers of failures in one kind of vehicle when compared to other vehicles.

We do not agree with the petitioners' interpretation of the 1974 amendment to the Safety Act that related to school bus safety. This amendment which appeared as Title II of the Motor Vehicle and Schoolbus Amendments of 1974, added a new subsection to section 103 of the Safety Act, 15 U.S.C. 1394(i), which directed NHTSA to adopt new Federal motor vehicle safety standards for school bus safety, specifying the aspects of performance to be covered, which included floor strength and crashworthiness of body and frame. Other than the references to these aspects of performance, the 1974 amendments contained no express statement of the substance of the standards to be adopted. Therefore, in the words of the amendment itself, Congress did not specify a level of severity of accidents against which the new standards should protect. However, by placing the amendment regarding new standards in section 103, 15 U.S.C. 1394, the section which contains the general safety standard setting authority of the agency, Congress made clear its intent that the new Federal motor

vehicle safety standards for school buses must conform to the requirements of subsections 103(a) and (f)(3), 15 U.S.C. 1394(a) and (f)(3) that provide that:

Each such Federal motor vehicle safety standard shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms.

and that:

In prescribing standards under this section, the Secretary shall . . . consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed.

If the existing standards applying to schoolbuses were interpreted as requiring school bus construction to withstand such catastrophic crash forces as have been reviewed here, this interpretation would place the standards at variance with the requirements of practicability and reasonableness found in these provisions of section 103. It is not apparent to the agency how school buses could be so constructed without prohibitive expense. Similarly, the evident intent of Congress in placing its mandate for school bus standards within the limits of reasonableness and practicability of section 103 is contrary to petitioners' argument that Congress intended the defect provisions of the Safety Act to require the recall of any school buses that sometimes fail to withstand such rare crashes without floor separation.

Petitioners have quoted the House Committee report on the 1974 amendments as well as the comments of Rep. Gilman of New York, a sponsor of the legislation who cited "disintegration" of a school bus in a catastrophic crash with a freight train as an example of the kind of harm to be avoided by the standards to be adopted pursuant to the amendments. The Committee said in part, "Ideally, there should be no death and injury statistics for schoolbus transportation."

These quotations of parts of the legislative history are not sufficient to support the interpretation of the amendment advanced by petitioners. The comments of one member of Congress, even a sponsor of a measure that is enacted, do not necessarily express the views of the whole Congress with respect to the interpretation of the measure. While the Committee Report may be more authoritative, the Committee's expression of an "ideal" of perfectly safe school bus transportation is not a basis for interpreting its mandate to the agency regarding the specific level of protection to be incorporated in the standards. However,

the Committee did make a more specific statement that is more useful in deciding the question of whether protection against the most catastrophic crashes was intended to flow from the amendment. The Committee said in the concluding paragraph of the same report cited by petitioners:

It is not the intent of this title to mandate the development of schoolbus safety standards which would result in severe cost increases for schoolbus manufacturers and eventually for school communities.

The agency concludes that it is unlikely that protection against any damage such as floor separation in the most catastrophic crashes could be accomplished without severe cost increases. This is evident from the apparent facts that some floor separations have apparently occurred in catastrophic crashes involving the

schoolbuses of more than one manufacturer, and that the crash forces generated by large objects such as heavy trucks and trains moving at high speed are difficult to manage without such damage.

It is the agency's opinion, therefore, that Congress did not intend by the 1974 amendments to the Safety Act that the Federal motor vehicle safety standards that would be adopted pursuant to the amendments should necessarily prevent floor separation in all catastrophic crashes, or that the definition of defect should be interpreted so as to make any school bus having a floor separation in such a crash subject to recall as defective.

The petitions to reconsider the earlier denials of petitions to open defect and noncompliance investigations have not presented new evidence. The arguments

now advanced do not present a basis for changing the agency's earlier assessment that there is no reasonable possibility that the agency would order notification and remedy at the end of the proposed investigations. The agency continues to believe that the proposed investigations would require commitment of resources that would not be warranted by the very remote chance that such investigations would produce evidence of a defect or actionable noncompliance. The petitions are denied.

Authority: 15 U.S.C. 1410(a); 49 CFR Part 552.

Issued on June 30, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88-15105 Filed 7-5-88; 8:45 am]

BILLING CODE 4910-50-01

Sunshine Act Meetings

Federal Register

Vol. 53, No. 129

Wednesday, July 6, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-408) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., July 8, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review, Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88-15238 Filed 7-1-88; 3:42 pm]
BILLING CODE 8351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, July 26, 1988.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application of the Chicago Board of Trade for designation as a contract market in 30-day Interest Rate futures contract.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88-15238 Filed 7-1-88; 3:42 pm]
BILLING CODE 8351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, July 26, 1988.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 88-15240 Filed 7-1-88; 3:42 pm]
BILLING CODE 8351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:04 a.m. on Thursday, June 30, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the application of First Wyoming Bank—East Cheyenne, Cheyenne, Wyoming, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in VFW Federal Credit Union, Cheyenne, Wyoming, a non-FDIC-insured institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: June 30, 1988.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 88-15235 Filed 7-1-88; 3:39 p.m.]
BILLING CODE 8714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, July 8, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1989 Federal Reserve Bank budget objective.
2. Any items carried forward from a previously announced meeting.

NOTE:—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3604 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: July 1, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-15194 Filed 7-1-88; 11:15 am]
BILLING CODE 8210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Friday, July 8, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 1, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-15195 Filed 7-1-88; 11:15 am]
BILLING CODE 8210-01-M

AGENCY: Nuclear Regulatory Commission.

DATE: Weeks of July 4, 11, 18, and 25, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 4

Tuesday, July 5

2:00 p.m.
Briefing on Accountability of Radioactive Material Used by Material Licensees (Public Meeting).

Wednesday, July 6

10:00 a.m.
Briefing on EEO Program (Public Meeting).

Thursday, July 7

2:00 p.m.
Briefing on Continuity of Government Handbook (Closed—Ex. 1).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of July 11—Tentative

Tuesday, July 12

10:00 a.m.
Annual Briefing by INPO (Public Meeting).
2:00 p.m.
Briefing on Policy Paper for Plant Life Extension (Public Meeting).

Wednesday, July 13

1:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting).

10:00 p.m.
Briefing on Final Rule on 10 CFR Part 50.46—ECCS Acceptance Criteria (Appendix K) (Public Meeting).

2:00 p.m.
Periodic Briefing by the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Friday, July 15

10:00 a.m.
Briefing on Matters of Common Interest Between NRC and EPA in the Regulation of Radiological Hazards (Public Meeting).

Week of July 18—Tentative

Thursday, July 21

10:00 a.m.
Briefing on Current Status of Nuclear Materials Transportation (Public Meeting).

2:00 p.m.
Briefing on Individual Plant Examinations Generic Letter (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Friday, July 22

10:00 a.m.

Briefing on Interim Report on BWR Mark I Containment Issues (Public Meeting).

Week of July 25—Tentative

No Commission meetings scheduled for Week of July 25.

ADDITIONAL INFORMATION: Affirmation of "ALAB-891: Remanding Coaxial Cable Issue" (Public Meeting) was held on June 20.

NOTE:—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission to vote on this date.

To verify the status of meetings call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.

June 30, 1988.
[FR Doc. 88-15241 Filed 7-1-88; 3:43 pm]
BILLING CODE 7550-01-M

Corrections

Federal Register
Vol. 53, No. 129
Wednesday, July 6, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

Correction

In notice document 88-13957 beginning on page 23436 in the issue of Wednesday, June 22, 1988, make the following correction:

On page 23437, in the first column, in the second complete paragraph, "(5) Gear" should read "(5) Place".

BILLING CODE 1505-51-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(ID-030-07-4212-12)

Realty Action, Exchange of Public Lands in Bingham County, ID

Correction

In notice document 88-13885 beginning on page 23314 in the issue of Tuesday, June 21, 1988, make the following corrections:

1. On page 23314, in the first column, under T 1 S., R. 33 E., B.M., in Sec. 5 "N $\frac{1}{2}$ SE $\frac{1}{4}$ " should read "N $\frac{1}{2}$ SW $\frac{1}{4}$ "; and in the second column, in Sec. 10, in the second line "S $\frac{1}{2}$ NW $\frac{1}{4}$," should read "S $\frac{1}{2}$ NW $\frac{1}{4}$ ".

2. On the same page, in the third column, the 14th line should read "T. 1 N., R. 35 E., B.M.,".

3. In the same column, the 16th line should read "T. 1 S., R. 35 E., B.M.,".

BILLING CODE 1505-51-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

(Airspace Docket No. 88-AGL-10)

Proposed Establishment of Transition Area; Kenosha, WI

Correction

In proposed rule document 88-13887 appearing on page 23257 in the issue of Tuesday, June 21, 1988, make the following corrections:

1. In the first column, under SUMMARY, in the ninth line, after "procedures" insert "in".

2. In the same column, under FOR FURTHER INFORMATION CONTACT, in the third line, after "East" insert "Devon".

BILLING CODE 1505-51-D

Wednesday
July 6, 1988

Part II

Environmental Protection Agency

Premanufacture Notices; Monthly Status
Report for March 1988

federal register

ENVIRONMENTAL PROTECTION AGENCY

(OPTS-53104; FRL-3393-9)

Premanufacture Notices; Monthly Status Report for March 1988**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for March 1988.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-C004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53104)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during March; (b) PMNs received previously and still under review at the end of March; (c) PMNs for which the notice review period has ended during March; (d) chemical substances for which EPA has received a notice of commencement to manufacture during March; and (e) PMNs for which the review period has been suspended. Therefore, the March 1988 PMN Status Report is being published.

Publication of the monthly status reports for PMNs have been delayed due to a computer sorting error, which has been corrected. A cumulative October 1987 through January 1988 report is currently being prepared, and will be

published shortly. This report for March 1988 reflects the correction of the error and reestablishes the monthly sequential publication of the PMN status reports.

Date: June 1, 1988.

Douglas W. Sellers,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report, March 1988**I. 244 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH****PMN No.**

P 88-905
P 88-906
P 88-907
P 88-908
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P 88-1154

II. 272 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH**PMN No.**

P 88-080
P 88-1182
P 88-1183
P 88-0807
P 88-0216
P 88-0535
P 88-0536
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P 88-0718
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IV. 136 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Identity/generic name	Date of commencement
P 82-0325	G Acrylic resin.	Feb. 12, 1988.
P 83-0293	Polymer of acrylonitrile, 1,3-butadiene, and hydrogen.	Mar. 17, 1983.
P 83-0414	G Diezo substituted aromatic Compound.	Dec. 3, 1985.
P 83-0539	G Substituted aralkylsilanes.	Jan. 22, 1988.
P 83-1238	G Substituted anthraquinone.	Dec. 6, 1985.
P 84-0360	G Substituted nonylphenol Polymer.	May 28, 1985.
P 84-0535	G Alkali metal polycarbonate.	Aug. 28, 1984.
P 84-0587	G Alkyl phosphate salt of polyaminoamide.	Feb. 25, 1988.
P 84-0679	G Salt of dialkylphosphorodithioic acid.	Feb. 11, 1988.
P 84-0712	G Substituted phenylsulfonazaphthalene trisulfonic acid.	Mar. 15, 1988.
P 84-1152	G Copper complex of a substituted phenyl azo.	Mar. 28, 1985.
P 84-1204	G Substituted, sulfonated naphthylazo, sodium salt.	Oct. 29, 1985.
P 85-0054	G Organotin compound.	Jan. 15, 1988.
P 85-0055	G Substituted sulfonated naphthalene.	Oct. 11, 1985.
P 85-0081	N-(3-Methyl-5-(phenyl-amino)-2,4-pentadienylidene benzeneamine, monohydrobromide salt.	Jan. 21, 1988.
P 85-0082	G Tetrasubstituted pyrazole salt.	Feb. 5, 1988.
P 85-0942	G Substituted propenamide.	Feb. 28, 1988.
P 85-1314	G Substituted copper phthalocyanine.	Apr. 3, 1988.
P 85-1344	G Alkali metal salt of substituted sulfo aryl transition metal complex.	May 15, 1988.
P 85-1345	G Polysubstituted sulfo aryl transition metal complex.	Nov. 12, 1985.
P 85-0104	1-(3'-Chloro-5'-(p-ethyl sulfonyl sulfuric ester, sodium salt; phenylamino)-5-triazinylamino)-5-(2"-naphthylazo-1"-5'-disulfonic acid, disodium salt)-6-hydroxy-4-naphthalene-sulfonic acid, sodium salt.	Feb. 10, 1988.
P 86-0191	G Alkyl phosphate salt of an acylated polyamine.	Mar. 10, 1988.
P 86-0192	G Alkyl phosphate salt of an acylated polyamine.	Mar. 10, 1988.
P 86-0195	G Quaternary ammonium salt of alloxane and amidine.	Feb. 20, 1988.
P 86-0223	G Thioether.	Feb. 28, 1988.
P 86-0256	G Substituted heterocycle azonaphthalenesulfonic acid, salt.	Feb. 22, 1988.
P 86-0591	G Ionomer polymer (ethylene-Methacrylic acid copolymer in salt form).	Jan. 9, 1987.
P 86-0689	G A Maleic modified rosin ester, amino alcohol salt.	Feb. 10, 1988.
P 86-0842	G Copolymer of methacrylic and acrylic esters.	Sept. 8, 1986.
P 86-1089	G Potassium alkyl succinate.	Dec. 16, 1988.
P 86-1159	G Substituted imidazole.	Jan. 6, 1987.
P 86-1248	G Carbinol functional silicone fluid.	Feb. 25, 1988.
P 86-1257	G Hydroxy functional acrylic methacrylate polymer.	Feb. 10, 1988.
P 86-1357	G (Alkylaryl heterocycle) alkyl substituted quinolinium salt with trifluoromethanesulfonic acid.	Oct. 13, 1987.
P 86-1359	G Alkyl and acyl substituted quinoline.	Mar. 18, 1987.
P 86-1360	G Dialkyl quinoline.	June 15, 1987.
P 86-1361	G Di(alkylaryl) substituted cyclopropane.	June 3, 1987.
P 86-1362	G Alkylarylindol, alkyl and oxo-substituted dioxane.	Aug. 10, 1987.
P 86-1363	G Dialkyl quinolinium methyl sulfate.	June 4, 1988.
P 86-1641	G Castor oil ester.	Dec. 30, 1987.
P 86-1740	G Mixed arylamides from reaction of arylaminoidenamine with an aryl acid chloride, an alkyl substituted aryl acid chloride and a monobrominated.	July 6, 1987.
P 87-0002	G Substituted polyester of neopentyl glycol.	Feb. 10, 1988.
P 87-0006	G Substituted acrylated methacrylate polymer with styrene.	Do.
P 87-0007	G Styrenated acrylic methacrylic polymer.	Do.
P 87-0008	G Styrenated substituted acrylic methacrylate polymer.	Do.
P 87-0009	G Complex polyester with neopentyl glycol.	Do.
P 87-0011	G Acrylic methacrylic polymer.	Do.
P 87-0041	G Substituted Heteromono-cycyl carbomonocyclic thio benzindol.	Feb. 17, 1987.
P 87-0082	G Polymer from reaction including phenol and diethylenetriamine.	Feb. 3, 1988.
P 87-0094	G Alkylene diol alkyl ether ester.	July 27, 1987.
P 87-0111	G Nitrogen heterocycle derivative.	Feb. 10, 1988.
P 87-0139	G Reaction product of aryl and alkyl dicarboxylic/alkane polyols/ ester polyester with an acrylic prepolymer.	Feb. 25, 1988.
P 87-0246	G Polyvinyl ester coveat urated dicarboxylic acid ester, co-olefin co-acrylate.	Feb. 22, 1988.
P 87-0257	G Polyesteramide resin.	Feb. 10, 1988.
P 87-0421	G Hydrofunctional acrylate methacrylate.	Do.
P 87-0458	G Alkane acid, ester.	Feb. 20, 1988.
P 87-0459	G Hydrogenated condensate of alkane and 2-methoxyphenol.	Do.
P 87-0502	G Dialkylamide.	Jan. 26, 1988.
P 87-0572	Sodium sulfate, sodium bisulfate.	Dec. 16, 1987.
P 87-0667	G Monosubstituted aryl fatty acid ester.	Jan. 15, 1988.
P 87-0706	G Styrenated hydroxy-functional methacrylic acrylic polymer.	Mar. 4, 1988.
P 87-0739	G Polyoxyethylene fatty esters.	Feb. 10, 1988.
P 87-0758	G Amino functional polysiloxane.	Feb. 4, 1988.
P 87-0819	G Silicone modified polyester.	Mar. 6, 1988.
P 87-0837	Sodium chloride, water, isopropanol.	Feb. 18, 1988.
P 87-0841	G Titanium (dialkanolamine) oxide.	Sept. 6, 1987.
P 87-0906	G Styrene/butadiene copolymer.	Mar. 16, 1988.
P 87-0913	G Sulfide antioxidant synergist.	Mar. 4, 1988.
P 87-0934	G Monosubstituted phenyl azonaphthalenesulfonic acid, salt.	Feb. 4, 1988.
P 87-0940	G Monosubstituted phenyl azo disubstituted naphthalenesulfonic acid, alkylamine salt.	Mar. 1, 1988.
P 87-0982		Jan. 26, 1988.
P 87-0995		Feb. 7, 1988.

IV. 136 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-1019	G Modified polyurethane polyacrylate.	Feb. 10, 1988.
P 87-1021	G Styrenated methacrylate polymer.	Do.
P 87-1024	G Hydroxy functional acrylate methacrylate.	Do.
P 87-1052	G Styrenated methacrylate.	Do.
P 87-1111	G Disubstituted quinoxaline.	Do.
P 87-1132	G Cashew nutshell liquid polymer with formaldehyde polyamide.	Mar. 15, 1988.
P 87-1135	Acetic acid, water.	Mar. 3, 1988.
P 87-1173	Isopropylmorpholine.	Mar. 7, 1988.
P 87-1237	1,2-Dimethylsilazane (1-methylsilazane) copolymer.	Feb. 18, 1988.
P 87-1438	G Dodecylphenol-formaldehyde-polyamine resin.	Mar. 8, 1988.
P 87-1487	G Mono substituted aryl resin.	Feb. 24, 1988.
P 87-1508	Alkyd polymer.	Dec. 28, 1987.
P 87-1685	G Styrene acrylic copolymer.	Feb. 9, 1988.
P 87-1637	Chloroethane-2-propenoic acid monoester with 1,2-propandiol-2-butenedioic acid polymer.	Feb. 20, 1988.
P 87-1693	G Polyester resin.	Feb. 11, 1988.
P 87-1781	G Styrene-N-butylacrylate copolymer.	Feb. 17, 1988.
P 87-1799	G Modified trioxane copolymer.	Feb. 25, 1988.
P 87-1834	G Acrylic copolymer resin.	Mar. 11, 1988.
P 87-1840	G Alkylated amine alcohol.	Dec. 20, 1987.
P 87-1842	Dimethyl terephthalate; ethylene glycol; neopentyl glycol; isophthalic acid; adipic Acid.	Feb. 22, 1988.
P 87-1868	G Chloroalkylchlorosilane.	Mar. 14, 1988.
P 87-1869	G Aminoalkylsilane.	Do.
P 87-1883	G Modified acrylic copolymer.	Feb. 19, 1988.
P 87-1887	G Modified acrylic copolymer.	Feb. 5, 1988.
P 87-1901	G Methoxy-methacrylate siloxane.	Mar. 14, 1988.
P 87-1902	G Organofunctional polysiloxane.	Do.
P 87-1903	G Polydimethylsiloxane.	Do.
P 88-0026	G Substituted heteropolycycle alkyl substituted alkyl substituted heteropolycycle, salt.	Jan. 26, 1988.
P 88-0028	G Substituted aminophenyl substituted heteropolycycle, salt.	Do.
P 88-0029	G Disubstituted heteropolycycle, salt.	Mar. 9, 1988.
P 88-0052	G Azomethine dye derivative.	Feb. 19, 1988.
P 88-0053	G Indophenol derivative.	Do.
P 88-0054	G Azomethine dye.	Do.
P 88-0057	Maleic anhydride; maleimide of amino propyltriethoxysilane.	Feb. 11, 1988.
P 88-0060	G Fiber-reactive dye.	Jan. 29, 1988.
P 88-0078	G Styrene, butadiene, polymer with alkanedioic acid and alkane ester.	Feb. 2, 1988.
P 88-0097	G Aliphatic ester.	Do.
P 88-0099	Adipic acid; 1,4-butanediol; neopentyl glycol; dibromoneopentyl glycol; tetrabutyl titanate.	Jan. 14, 1988.
P 88-0104	Adipic acid; polyethylene terephthalate; dipropylene glycol pentaerythritol tetrabutyl titanate.	Jan. 17, 1988.
P 88-0105	Adipic acid; triethylene glycol; tetraethylene glycol tetrabutyl titanate.	Do.
P 88-0106	G Alkyd resin intermediate.	Do.
P 88-0107	G Copolymer alkyd resin.	Do.
P 88-0131	G Salt of polyhydroxystyrene with tertiary aromatic amine.	Feb. 9, 1988.
P 88-0145	G Indophenol derivative.	Feb. 19, 1988.
P 88-0153	G Aromatic phosphinate.	Feb. 1, 1988.
P 88-0159	G Calcium and strontium salt of azo dye.	Mar. 9, 1988.
P 88-0170	G Calcium and strontium salt of azo dye.	Do.
P 88-0185	G Carbamic acid ester.	Do.
P 88-0187	G Indophenol derivative.	Feb. 19, 1988.
P 88-0208	G Substituted aryl aliphatic amine.	Feb. 24, 1988.
P 88-0224	G Unsaturated polyester polymer.	Feb. 10, 1988.
P 88-0228	G Hydrocarbon, steam-cracked aromatic C5-C12 cycloalkadiene fractions polymer with heteromonocyclic-substituted alkylbenzenes.	Mar. 6, 1988.
P 88-0229	G Alkaline metal carboxylate.	Feb. 24, 1988.
P 88-0232	Adipic acid; terephthalic acid; 1,4-butanediol; neopentyl glycol; tetrabutyl titanate.	Feb. 11, 1988.
P 88-0233	Adipic acid; polyethylene terephthalate; 1,4-butanediol; neopentyl glycol tetrabutyl titanate.	Do.
P 88-0259	G Acrylated polyurethane.	Mar. 12, 1988.
P 88-0274	G Polymeric ricinolic acid ester.	Mar. 5, 1988.
P 88-0277	G Reaction product of aluminum isopropoxide, ethyl acetate, and isobutyl alcohol.	Feb. 22, 1988.
P 88-0283	G Polyether polyol.	Feb. 23, 1988.
P 88-0295	G Water reducible copolymer alkyd.	Feb. 22, 1988.
P 88-0306	Dodecenesulfonic acid, sodium salts hydroxydodecane sulfonic acid, sodium salts.	Feb. 26, 1988.
Y 87-0223	G Alkyd resin.	Sept. 14, 1987.
Y 88-0056	G Acrylic resin solution.	Jan. 30, 1988.
Y 88-0058	G Norbornene copolymer.	Feb. 17, 1988.

V. 28. PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.
P 86-0092
P 87-1417
P 87-1672
P 88-0134

P 88-0138
P 88-0187
P 88-0253
P 88-0387
P 88-0388
P 88-0393
P 88-0436
P 88-0485

P 88-0488
P 88-0525
P 88-0601
P 88-0610
P 88-0622
P 88-0716
P 88-0758
P 88-0821

P 88-0827
P 88-0828
P 88-0863
P 88-0910
P 88-0965
Y 88-0124
Y 88-0128
Y 88-0144

[FR Doc. 88-12887 Filed 7-5-88; 8:45 am]

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Wednesday
July 6, 1988

Part III

**Environmental
Protection Agency**

Premanufacture Notices; Monthly Status
Report for April 1988

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

(OPTS-53105; FRL-3403-4)

Premanufacture Notices; Monthly Status Report for April 1988**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for April 1988.

Nonconfidential portion of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53105)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during April; (b) PMNs received previously and still under review at the end of April; (c) PMNs for which the notice review period has ended during April; (d) chemical substances for which EPA has received a notice of commencement to manufacture during April; and (e) PMNs for which the review period has been suspended. Therefore, the April 1988 PMN Status Report is being published.

Publication of the monthly status reports for PMNs have been delayed due to a computer sorting error, which has been corrected. A cumulative October 1987 through January 1988 report is currently being prepared, and will be published shortly. This report for April

1988 reflects the correction of the error and reestablishes the monthly sequential publication of the PMN status reports.

Date: June 1, 1988.

Douglas W. Sellers,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report—April 1988**I. 165 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH****PMN No.**

P 88-1129	P 88-1188
P 88-1130	P 88-1189
P 88-1131	P 88-1190
P 88-1132	P 88-1191
P 88-1133	P 88-1192
P 88-1134	P 88-1193
P 88-1135	P 88-1194
P 88-1136	P 88-1195
P 88-1137	P 88-1196
P 88-1138	P 88-1197
P 88-1139	P 88-1198
P 88-1140	P 88-1199
P 88-1141	P 88-1200
P 88-1142	P 88-1201
P 88-1143	P 88-1202
P 88-1144	P 88-1203
P 88-1145	P 88-1204
P 88-1146	P 88-1205
P 88-1147	P 88-1206
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P 88-1151	P 88-1210
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P 88-1153	P 88-1212
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P 88-1168	P 88-1227
P 88-1169	P 88-1228
P 88-1170	P 88-1229
P 88-1171	P 88-1230
P 88-1172	P 88-1231
P 88-1173	P 88-1232
P 88-1174	P 88-1233
P 88-1175	P 88-1234
P 88-1176	P 88-1235
P 88-1177	P 88-1236
P 88-1178	P 88-1237
P 88-1179	P 88-1238
P 88-1180	P 88-1239
P 88-1181	P 88-1240
P 88-1182	P 88-1241
P 88-1183	P 88-1242
P 88-1184	P 88-1243
P 88-1185	P 88-1244
P 88-1186	P 88-1245
P 88-1187	P 88-1246

P 88-1247	Y 88-0182
P 88-1248	Y 88-0183
P 88-1249	Y 88-0184
P 88-1250	Y 88-0185
P 88-1251	Y 88-0186
P 88-1252	Y 88-0187
P 88-1253	Y 88-0188
P 88-1254	Y 88-0189
P 88-1255	Y 88-0190
P 88-1256	Y 88-0191
P 88-1257	Y 88-0192
P 88-1258	Y 88-0193
P 88-1259	Y 88-0194
P 88-1260	Y 88-0195
P 88-1261	Y 88-0196
P 88-1262	Y 88-0197
P 88-1263	Y 88-0198
P 88-1264	Y 88-0199
P 88-1265	Y 88-0200
P 88-1266	Y 88-0201
P 88-1267	Y 88-0202
Y 88-0150	Y 88-0183
Y 88-0180	Y 88-0184
Y 88-0181	

II. 286 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH**PMN No.**

P 88-0089	P 87-0752
P 88-1182	P 87-0770
P 88-1183	P 87-0790
P 88-0216	P 87-0794
P 88-0535	P 87-0920
P 88-0536	P 87-0931
P 88-0819	P 87-0963
P 88-0716	P 87-0971
P 88-0941	P 87-0973
P 88-0065	P 87-1028
P 88-0067	P 87-1041
P 88-0062	P 87-1066
P 88-0294	P 87-1104
P 88-0295	P 87-1123
P 88-0582	P 87-1150
P 88-1076	P 87-1182
P 88-1180	P 87-1201
P 88-1235	P 87-1218
P 88-1356	P 87-1226
P 88-1440	P 87-1272
P 88-1802	P 87-1273
P 88-1803	P 87-1318
P 88-1804	P 87-1319
P 88-1807	P 87-1337
P 88-1712	P 87-1379
P 87-0057	P 87-1417
P 87-0058	P 87-1436
P 87-0059	P 87-1437
P 87-0060	P 87-1458
P 87-0108	P 87-1471
P 87-0197	P 87-1542
P 87-0198	P 87-1546
P 87-0199	P 87-1547
P 87-0200	P 87-1548
P 87-0201	P 87-1549
P 87-0235	P 87-1553
P 87-0318	P 87-1555
P 87-0323	P 87-1557
P 87-0328	P 87-1573
P 87-0547	P 87-1676
P 87-0548	P 87-1677
P 87-0549	P 87-1679
P 87-0640	P 87-1680
P 87-0641	P 87-1694
P 87-0642	P 87-1756
P 87-0723	P 87-1760

P 87-1709	P 88-0858
P 87-1770	P 88-0863
P 87-1784	P 88-0871
P 87-1787	P 88-0701
P 87-1813	P 88-0712
P 87-1814	P 88-0713
P 87-1830	P 88-0715
P 87-1855	P 88-0716
P 87-1872	P 88-0720
P 87-1879	P 88-0726
P 87-1881	P 88-0742
P 87-1882	P 88-0756
P 88-0049	P 88-0759
P 88-0053	P 88-0768
P 88-0070	P 88-0770
P 88-0083	P 88-0772
P 88-0083	P 88-0773
P 88-0129	P 88-0781
P 88-0132	P 88-0782
P 88-0134	P 88-0792
P 88-0136	P 88-0797
P 88-0156	P 88-0811
P 88-0157	P 88-0813
P 88-0175	P 88-0821
P 88-0176	P 88-0823
P 88-0179	P 88-0825
P 88-0181	P 88-0828
P 88-0182	P 88-0831
P 88-0183	P 88-0836
P 88-0195	P 88-0837
P 88-0212	P 88-0845
P 88-0217	P 88-0854
P 88-0223	P 88-0862
P 88-0244	P 88-0864
P 88-0245	P 88-0870
P 88-0262	P 88-0875
P 88-0283	P 88-0879
P 88-0270	P 88-0883
P 88-0275	P 88-0884
P 88-0288	P 88-0886
P 88-0290	P 88-0888
P 88-0311	P 88-0890
P 88-0318	P 88-0892
P 88-0320	P 88-0894
P 88-0329	P 88-0896
P 88-0334	P 88-0898
P 88-0335	P 88-0900
P 88-0346	P 88-0907
P 88-0353	P 88-0914
P 88-0387	P 88-0916
P 88-0383	P 88-0918
P 88-0395	P 88-0929
P 88-0410	P 88-0931
P 88-0436	P 88-0932
P 88-0465	P 88-0939
P 88-0466	P 88-0951
P 88-0494	P 88-0952
P 88-0515	P 88-0953
P 88-0522	P 88-0954
P 88-0525	P 88-0957
P 88-0547	P 88-0958
P 88-0566	P 88-0960
P 88-0567	P 88-0965
P 88-0569	P 88-0970
P 88-0576	P 88-0972
P 88-0587	P 88-0981
P 88-0588	P 88-0985
P 88-0597	P 88-0997
P 88-0602	P 88-0998
P 88-0606	P 88-1000
P 88-0610	P 88-1005
P 88-0622	P 88-1008
P 88-0628	P 88-1010
P 88-0630	P 88-1011
P 88-0633	P 88-1014
P 88-0648	P 88-1015
P 88-0649	

P 88-1016	P 88-1089
P 88-1017	P 88-1087
P 88-1018	P 88-1088
P 88-1020	P 88-1089
P 88-1021	P 88-1102
P 88-1031	P 88-1106
P 88-1032	P 88-1109
P 88-1033	P 88-1110
P 88-1035	P 88-1115
P 88-1037	P 88-1116
P 88-1040	P 88-1117
P 88-1059	P 88-1118
P 88-1060	P 88-1119
P 88-1063	P 88-1120
P 88-1068	P 88-1121
P 88-1069	P 88-1122
P 88-1070	P 88-1123
P 88-1071	

P 88-0553	P 88-0643
P 88-0554	P 88-0644
P 88-0555	P 88-0645
P 88-0556	P 88-0646
P 88-0557	P 88-0647
P 88-0558	P 88-0648
P 88-0559	P 88-0650
P 88-0560	P 88-0651
P 88-0561	P 88-0652
P 88-0563	P 88-0653
P 88-0564	P 88-0654
P 88-0565	P 88-0655
P 88-0566	P 88-0656
P 88-0567	P 88-0657
P 88-0568	P 88-0658
P 88-0569	P 88-0659
P 88-0570	P 88-0660
P 88-0571	P 88-0661
P 88-0572	P 88-0662
P 88-0573	P 88-0663
P 88-0574	P 88-0664
P 88-0575	P 88-0665
P 88-0576	P 88-0666
P 88-0577	P 88-0667
P 88-0578	P 88-0668
P 88-0579	P 88-0669
P 88-0580	P 88-0670
P 88-0581	P 88-0671
P 88-0582	P 88-0672
P 88-0583	P 88-0673
P 88-0584	P 88-0674
P 88-0585	P 88-0675
P 88-0586	P 88-0676
P 88-0587	P 88-0677
P 88-0588	P 88-0678
P 88-0589	P 88-0679
P 88-0590	P 88-0680
P 88-0591	P 88-0681
P 88-0592	P 88-0682
P 88-0593	P 88-0683
P 88-0594	P 88-0684
P 88-0595	P 88-0685
P 88-0596	P 88-0686
P 88-0597	P 88-0687
P 88-0598	P 88-0688
P 88-0599	P 88-0689
P 88-0600	P 88-0690
P 88-0601	P 88-0691
P 88-0602	P 88-0692
P 88-0603	P 88-0693
P 88-0604	P 88-0694
P 88-0605	P 88-0695
P 88-0606	P 88-0696
P 88-0607	P 88-0697
P 88-0608	P 88-0698
P 88-0609	P 88-0699
P 88-0610	P 88-0700
P 88-0611	P 88-0701
P 88-0612	P 88-0702
P 88-0613	P 88-0703
P 88-0614	P 88-0704
P 88-0615	P 88-0705
P 88-0616	P 88-0706
P 88-0617	P 88-0707
P 88-0618	P 88-0708
P 88-0619	P 88-0709
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P 88-0622	P 88-0712
P 88-0623	P 88-0713
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P 88-0625	P 88-0715
P 88-0626	P 88-0716
P 88-0627	P 88-0717
P 88-0628	P 88-0718
P 88-0629	P 88-0719
P 88-0630	P 88-0720
P 88-0631	P 88-0721
P 88-0632	P 88-0722
P 88-0633	P 88-0723
P 88-0634	P 88-0724
P 88-0635	P 88-0725
P 88-0636	P 88-0726
P 88-0637	P 88-0727
P 88-0638	P 88-0728
P 88-0639	P 88-0729
P 88-0640	P 88-0730
P 88-0641	P 88-0731
P 88-0642	P 88-0732

III. 238 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY)**PMN No.**

P 88-0087	P 88-0506
P 88-0216	P 88-0509
P 88-0535	P 88-0510
P 88-0536	P 88-0511
P 88-0941	P 88-0512
P 88-0282	P 88-0513
P 88-0283	P 88-0514
P 88-0890	P 88-0516
P 88-0892	P 88-0517
P 88-0894	P 88-0518
P 88-0896	P 88-0519
P 88-0898	P 88-0520
P 88-0900	P 88-0521
P 88-0902	P 88-0523
P 88-0904	P 88-0524
P 88-0906	P 88-0526
P 88-0908	P 88-0527
P 88-0910	P 88-0528
P 88-0912	P 88-0529
P 88-0914	P 88-0530
P 88-0915	P 88-0531
P 88-0916	P 88-0532
P 88-0917	P 88-0533
P 88-0918	P 88-0534
P 88-0919	P 88-0535
P 88-0920	P 88-0536
P 88-0921	P 88-0537
P 88-0922	P 88-0538
P 88-0923	P 88-0539
P 88-0924	P 88-0540
P 88-0925	P 88-0541
P 88-0926	P 88-0542
P 88-0927	P 88-0543
P 88-0928	P 88-0544
P 88-0929	P 88-0545
P 88-0930	P 8

IV. 39 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Identity/Generic name	Date of commencement
P 85-0246	G Tetra-substituted-biphenol	Feb. 27, 1988.
P 85-0830	1,2-Benzenedicarboxylic acid-4-((3-aminophenyl)hydroxymethyl) ethyl ester	Mar. 19, 1988.
P 86-0057	G Hydrocarbon resin, hydrogenated	Mar. 21, 1988.
P 86-0134	G Alkyl substituted spiro heterocyclic	Mar. 24, 1988.
P 86-0347	G Polyether	Jun. 24, 1988.
P 87-0112	G Substituted tartaric acids, sodium salts	Aug. 1, 1987.
P 87-0113	G Substituted tartaric acids, sodium salts	Aug. 1, 1987.
P 87-0867	Sodium sulfate, sodium bisulfate	Feb. 18, 1988.
P 87-0705	G Ferrocenium phosphate salt	Apr. 1, 1988.
P 87-0999	G Saturated polyester resin	Mar. 22, 1988.
P 87-1233	G Zirconium Chloride solution	Mar. 23, 1988.
P 87-1265	G 2-Naphthalene carboxamide-n-aryl-3-3-hydroxy-4-aryl hydroxy-4-aryl azo	Mar. 11, 1988.
P 87-1365	G Modified polyacrylic acid, sodium salt	Mar. 16, 1988.
P 87-1809	G Polymer of aromatic diisocyanate, alkanols and alkene diols	Mar. 28, 1988.
P 87-1832	G Calcium salt of butyric acid telomer	Mar. 12, 1988.
P 87-1874	G Biuretinide	Mar. 15, 1988.
P 88-0040	G Fluoro elastomer	Mar. 21, 1988.
P 88-0191	G Nylon salt	Mar. 14, 1988.
P 88-0192	G Polyamide resin	Mar. 16, 1988.
P 88-0193	Dicyclopentadiene, dimerized fatty acids, fumeric acids, resin	Apr. 8, 1988.
P 88-0379	G Aromatic ketone	Apr. 4, 1988.
P 88-0382	G Polymer of aliphatic diols and aromatic carboxylic acids and an aromatic epoxy	Mar. 29, 1988.
P 88-0385	G Acryl styrene resin with cross-linking 1,3,5-triazine-2,4,6-triamine, N,N,N,N,N-hexakis-methoxymethyl(methyloxymethyl)	Mar. 14, 1988.
P 88-0400	G N-(Substituted- imidazolium chloride)-alkyl stearamide	Mar. 30, 1988.
P 88-0495	G Substituted phenylpolyoxyalkylene	Mar. 29, 1988.
P 88-0496	G Distributed naphthol-azo-carboxycyclopolyoxyalkylene	Mar. 29, 1988.
P 88-0497	G Triubstituted naphthol-azo-carboxycyclopolyoxyalkylene	Mar. 29, 1988.
P 88-0498	G Substituted phenylpolyoxyalkylene	Mar. 29, 1988.
P 88-0505	G Hydroxypropyl acrylate, acrylic acid polymer, ammonium salt	Apr. 8, 1988.
Y 88-0105	G Water dispersible alkyl resin	Mar. 15, 1988.
Y 88-0229	G Water dispersible polyester resin	Mar. 16, 1988.
Y 87-0001	G Polyurethane	Nov. 5, 1988.
Y 87-0139	G Tall oil fatty alkyl resin	Mar. 16, 1988.
Y 87-0204	G Polyether block polyamide copolymer	Mar. 16, 1988.
Y 88-0014	G Polymer of Alkenediols and aromatic carboxylic acids	Mar. 14, 1988.
Y 88-0056	G Acrylic resin solution	Jan. 30, 1988.
Y 88-0058	G Norbornene copolymer	Feb. 17, 1988.
Y 88-0101	G 2-oxepanone, polymer with, glycols and 1,1'-methylenebis(isocyanato benzene)	Mar. 10, 1988.
Y 88-0128	Polyacrylic acid, partial sodium salt; modified polyacrylic acid	Mar. 31, 1988.

V. 28 PREMANUFACTURE NOTICES
FOR WHICH THE PERIOD HAS BEEN
SUSPENDED

PMN No.	
P 87-1337	P 88-0649
P 87-1804	P 88-0650
P 88-0187	P 88-0671
P 88-0225	P 88-0701
P 88-0348	P 88-0742
P 88-0515	P 88-0759
P 88-0522	P 88-0770
P 88-0566	P 88-0781
P 88-0568	P 88-0782
P 88-0576	P 88-0875
P 88-0598	P 88-0965
P 88-0602	P 88-1020
P 88-0606	P 88-1025
P 88-0609	Y 88-0181

[FR Doc. 88-14150 Filed 7-5-88; 8:45 am]

BILLING CODE 6560-50-M

Wednesday
July 6, 1988

Part IV

Environmental
Protection AgencyPremanufacture Notices; Monthly Status
Report for May 1988

ENVIRONMENTAL PROTECTION AGENCY

(OPTS-53106; FRL-3405-8)

Premanufacture Notices; Monthly Status Report for May 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the Federal Register each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for MAY 1988.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53106)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during MAY; (b) PMNs received previous and still under review at the end of MAY; (c) PMNs for which the notice review period has ended during MAY; (d) chemical substances for which EPA has received a notice of commencement to manufacture during MAY; and (e) PMNs for which the review period has been suspended. Therefore, the MAY 1988 PMN Status Report is being published.

Date: June 20, 1988.

Steve Newburg-Riano,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report; May 1988

I. 226 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

PMN No.

P 88-1268	P 88-1330
P 88-1269	P 88-1331
P 88-1270	P 88-1332
P 88-1271	P 88-1333
P 88-1272	P 88-1334
P 88-1273	P 88-1335
P 88-1274	P 88-1336
P 88-1275	P 88-1337
P 88-1276	P 88-1338
P 88-1277	P 88-1339
P 88-1278	P 88-1340
P 88-1279	P 88-1341
P 88-1280	P 88-1342
P 88-1281	P 88-1343
P 88-1282	P 88-1344
P 88-1283	P 88-1345
P 88-1284	P 88-1346
P 88-1285	P 88-1347
P 88-1286	P 88-1348
P 88-1287	P 88-1349
P 88-1288	P 88-1350
P 88-1289	P 88-1351
P 88-1290	P 88-1352
P 88-1291	P 88-1353
P 88-1292	P 88-1354
P 88-1293	P 88-1355
P 88-1294	P 88-1356
P 88-1295	P 88-1357
P 88-1296	P 88-1358
P 88-1297	P 88-1359
P 88-1298	P 88-1360
P 88-1299	P 88-1361
P 88-1300	P 88-1362
P 88-1301	P 88-1363
P 88-1302	P 88-1364
P 88-1303	P 88-1365
P 88-1304	P 88-1366
P 88-1305	P 88-1367
P 88-1306	P 88-1368
P 88-1307	P 88-1369
P 88-1308	P 88-1370
P 88-1309	P 88-1371
P 88-1310	P 88-1372
P 88-1311	P 88-1373
P 88-1312	P 88-1374
P 88-1313	P 88-1375
P 88-1314	P 88-1376
P 88-1315	P 88-1377
P 88-1316	P 88-1378
P 88-1317	P 88-1379
P 88-1318	P 88-1380
P 88-1319	P 88-1381
P 88-1320	P 88-1382
P 88-1321	P 88-1383
P 88-1322	P 88-1384
P 88-1323	P 88-1385
P 88-1324	P 88-1386
P 88-1325	P 88-1387
P 88-1326	P 88-1388
P 88-1327	P 88-1389
P 88-1328	P 88-1390
P 88-1329	P 88-1391

P 88-1392	P 88-1443
P 88-1393	P 88-1444
P 88-1394	P 88-1445
P 88-1395	P 88-1446
P 88-1396	P 88-1447
P 88-1397	P 88-1448
P 88-1398	P 88-1449
P 88-1399	P 88-1450
P 88-1400	P 88-1451
P 88-1401	P 88-1452
P 88-1402	P 88-1453
P 88-1403	P 88-1454
P 88-1404	P 88-1455
P 88-1405	P 88-1456
P 88-1406	P 88-1457
P 88-1407	P 88-1458
P 88-1408	P 88-1459
P 88-1409	P 88-1460
P 88-1410	P 88-1461
P 88-1411	P 88-1462
P 88-1412	P 88-1463
P 88-1413	P 88-1464
P 88-1414	P 88-1465
P 88-1415	P 88-1466
P 88-1416	P 88-1467
P 88-1417	P 88-1468
P 88-1418	P 88-1469
P 88-1419	P 88-1470
P 88-1420	P 88-1471
P 88-1421	P 88-1472
P 88-1422	P 88-1473
P 88-1423	P 88-1474
P 88-1424	P 88-1475
P 88-1425	P 88-1476
P 88-1426	P 88-1477
P 88-1427	P 88-1478
P 88-1428	P 88-1479
P 88-1429	P 88-1480
P 88-1430	P 88-1481
P 88-1431	P 88-0185
P 88-1432	P 88-0187
P 88-1433	P 88-0188
P 88-1434	P 88-0189
P 88-1435	P 88-0190
P 88-1436	P 88-0191
P 88-1437	P 88-0192
P 88-1438	P 88-0193
P 88-1439	P 88-0194
P 88-1440	P 88-0195
P 88-1441	P 88-0197
P 88-1442	P 88-0198

II. 267 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.	
P 88-0069	P 87-0057
P 88-1182	P 87-0058
P 88-1183	P 87-0059
P 88-0218	P 87-0068
P 88-0535	P 87-0105
P 88-0536	P 87-0197
P 88-0619	P 87-0198
P 88-0718	P 87-0199
P 88-0941	P 87-0200
P 88-0985	P 87-0201
P 88-0986	P 87-0318
P 88-0987	P 87-0323
P 88-0992	P 87-0326
P 88-0994	P 87-0547
P 88-0995	P 87-0548
P 88-0996	P 87-0549
P 88-1078	P 87-0640
P 88-1189	P 87-0641
P 88-1235	P 87-0642
P 88-1356	P 87-0723
P 88-1440	P 87-0752
P 88-1602	P 87-0770
P 88-1680	P 87-0794
P 88-1604	P 87-0830
P 88-0867	P 87-0831
P 88-1712	P 87-0863

P 87-0871	P 88-0567
P 87-0873	P 88-0568
P 87-1028	P 88-0576
P 87-1041	P 88-0596
P 87-1066	P 88-0602
P 87-1104	P 88-0606
P 87-1159	P 88-0609
P 87-1192	P 88-0622
P 87-1201	P 88-0649
P 87-1226	P 88-0658
P 87-1227	P 88-0665
P 87-1272	P 88-0671
P 87-1273	P 88-0701
P 87-1318	P 88-0712
P 87-1319	P 88-0713
P 87-1337	P 88-0715
P 87-1379	P 88-0718
P 87-1417	P 88-0726
P 87-1436	P 88-0742
P 87-1437	P 88-0758
P 87-1471	P 88-0759
P 87-1542	P 88-0766
P 87-1546	P 88-0770
P 87-1547	P 88-0772
P 87-1548	P 88-0773
P 87-1549	P 88-0781
P 87-1553	P 88-0782
P 87-1555	P 88-0792
P 87-1673	P 88-0811
P 87-1676	P 88-0821
P 87-1677	P 88-0831
P 87-1679	P 88-0836
P 87-1680	P 88-0837
P 87-1694	P 88-0845
P 87-1750	P 88-0854
P 87-1760	P 88-0862
P 87-1769	P 88-0864
P 87-1770	P 88-0870
P 87-1784	P 88-0875
P 87-1787	P 88-0879
P 87-1813	P 88-0883
P 87-1814	P 88-0884
P 87-1830	P 88-0886
P 87-1855	P 88-0888
P 87-1872	P 88-0899
P 87-1879	P 88-0900
P 87-1881	P 88-0904
P 87-1882	P 88-0906
P 88-0049	P 88-0907
P 88-0059	P 88-0907
P 88-0079	P 88-0914
P 88-0083	P 88-0918
P 88-0129	P 88-0929
P 88-0134	P 88-0932
P 88-0138	P 88-0939
P 88-0155	P 88-0952
P 88-0157	P 88-0953
P 88-0179	P 88-0954
P 88-0181	P 88-0965
P 88-0182	P 88-0970
P 88-0183	P 88-0972
P 88-0195	P 88-0981
P 88-0212	P 88-0985
P 88-0225	P 88-0987
P 88-0244	P 88-0990
P 88-0245	P 88-0999
P 88-0262	P 88-1000
P 88-0263	P 88-1005
P 88-0275	P 88-1020
P 88-0288	P 88-1021
P 88-0290	P 88-1031
P 88-0319	P 88-1032
P 88-0320	P 88-1033
P 88-0348	P 88-1035
P 88-0353	P 88-1037
P 88-0387	P 88-1040
P 88-0388	P 88-1059
P 88-0393	P 88-1060
P 88-0410	P 88-1063
P 88-0436	P 88-1066
P 88-0465	P 88-1070
P 88-0466	P 88-1071
P 88-0515	P 88-1076
P 88-0522	P 88-1088
P 88-0547	P 88-1089

P 88-1102	P 88-1200
P 88-1106	P 88-1203
P 88-1109	P 88-1205
P 88-1110	P 88-1208
P 88-1115	P 88-1211
P 88-1116	P 88-1212
P 88-1117	P 88-1217
P 88-1118	P 88-1218
P 88-1119	P 88-1219
P 88-1120	P 88-1220
P 88-1121	P 88-1221
P 88-1122	P 88-1229
P 88-1123	P 88-1231
P 88-1125	P 88-1235
P 88-1129	P 88-1236
P 88-1130	P 88-1238
P 88-1151	P 88-1240
P 88-1153	P 88-1243
P 88-1154	P 88-1244
P 88-1162	P 88-1246
P 88-1163	P 88-1250
P 88-1168	P 88-1251
P 88-1169	P 88-1252
P 88-1170	P 88-1254
P 88-1174	P 88-1255
P 88-1177	P 88-1256
P 88-1186	P 88-1261
P 88-1187	P 88-1262
P 88-1188	P 88-1267
P 88-1189	P 88-0176
P 88-1190	P 88-0195
P 88-1197	

III. 256 PREMANUFACTURE NOTICES AND EXEMPTION REQUEST FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY).

PMN No.	
P 88-0218	P 88-0725
P 88-0535	P 88-0727
P 88-0536	P 88-0728
P 88-0941	P 88-0729
P 88-1007	P 88-0730
P 87-0790	P 88-0731
P 87-1123	P 88-0732
P 87-1306	P 88-0733
P 87-1456	P 88-0734
P 87-1657	P 88-0735
P 88-0059	P 88-0736
P 88-0063	P 88-0737
P 88-0132	P 88-0738
P 88-0181	P 88-0739
P 88-0187	P 88-0740
P 88-0217	P 88-0741
P 88-0270	P 88-0742
P 88-0352	P 88-0743
P 88-0525	P 88-0744
P 88-0598	P 88-0745
P 88-0597	P 88-0746
P 88-0603	P 88-0747
P 88-0610	P 88-0748
P 88-0649	P 88-0749
P 88-0703	P 88-0750
P 88-0704	P 88-0751
P 88-0705	P 88-0752
P 88-0706	P 88-0753
P 88-0707	P 88-0754
P 88-0708	P 88-0755
P 88-0709	P 88-0756
P 88-0710	P 88-0757
P 88-0711	P 88-0759
P 88-0714	P 88-0760
P 88-0716	P 88-0761
P 88-0717	P 88-0762
P 88-0718	P 88-0763
P 88-0719	P 88-0764
P 88-0721	P 88-0765
P 88-0722	P 88-0766
P 88-0723	P 88-0767
P 88-0724	P 88-0768

P 88-0769	P 88-0860
P 88-0770	P 88-0861
P 88-0771	P 88-0863
P 88-0772	P 88-0865
P 88-0773	P 88-0866
P 88-0774	P 88-0867
P 88-0775	P 88-0868
P 88-0776	P 88-0869
P 88-0777	P 88-0870
P 88-0778	P 88-0871
P 88-0779	P 88-0872
P 88-0780	P 88-0873
P 88-0781	P 88-0874
P 88-0782	P 88-0876
P 88-0783	P 88-0877
P 88-0784	P 88-0878
P 88-0785	P 88-0879
P 88-0786	P 88-0881
P 88-0787	P 88-0882
P 88-0788	P 88-0884
P 88-0789	P 88-0885
P 88-0790	P 88-0886
P 88-0791	P 88-0887
P 88-0792	P 88-0889
P 88-0793	P 88-0892
P 88-0794	P 88-0893
P 88-0795	P 88-0895
P 88-0796	P 88-0896
P 88-0797	P 88-0897
P 88-0798	P 88-0899
P 88-0799	P 88-0901
P 88-0800	P 88-0902
P 88-0801	P 88-0903
P 88-0802	P 88-0904
P 88-0803	P 88-0905
P 88-0804	P 88-0906
P 88-0805	P 88-0907
P 88-0806	P 88-0908
P 88-0807	P 88-0909
P 88-0808	P 88-0911
P 88-0809	P 88-0912
P 88-0810	P 88

IV. 35 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Identity/generic name	Date of commencement
P 81-0317	G Copolymer of an unsaturated amide with quaternary ammonium derivative of an unsaturated amide	Dec. 16, 1981
P 86-0134	G Alkyl substituted spiro heterocyclic	Mar. 24, 1986
P 86-0256	G Substituted heterocycle azo naphthalenesulfonic acid, salt	Feb. 22, 1986
P 86-0536	G Substituted phenylpyrazolone	Mar. 24, 1986
P 87-0136	G Reaction product of alkyl and aryl dicarboxylic/alkane diols ester polyester with an acrylate prepolymer	Mar. 21, 1986
P 87-0428	G Polyester	Apr. 28, 1987
P 87-0528	G Substituted aminophenol	Apr. 6, 1986
P 87-0560	G Blocked polyisocyanate	Apr. 14, 1986
P 87-0614	G Polyester resin of aryl dicarboxylic acids, alkane diols, and dimeric fatty acids	Apr. 5, 1986
P 87-0765	G Barium salt of Joncryl 678	Mar. 16, 1986
P 87-1087	G Mercaptide of copolymer of styrene and divinylbenzene	Mar. 21, 1986
P 87-1218	G Unsaturated etherified melamine-formaldehyde resin	Mar. 25, 1986
P 87-1303	G Benzeneamine, n-(substituted phenyl)-2,4-dimethyl	Mar. 24, 1986
P 87-1381	G Extract of a naturally occurring microorganism	Mar. 10, 1986
P 87-1447	Stearic acid-ester with 2,2'-nitrois ethanol	Mar. 1, 1986
P 87-1570	G Blocked aliphatic urethane	Mar. 15, 1986
P 87-1614	G Epoxy-amine adduct	Apr. 12, 1986
P 87-1654	G Blocked aliphatic urethane	Mar. 15, 1986
P 87-1817	G Aromatic anhydride	Apr. 8, 1986
P 88-0324	G Arylsulfonate, metal salt	Mar. 21, 1986
P 88-0325	G Polyamide resin	Apr. 5, 1986
P 88-0331	G Carboxylic acid modified hydrocarbon resin	Mar. 25, 1986
P 88-0375	G Amine-modified polyalkylene glycol polymer	Apr. 5, 1986
P 88-0380	G Polyether ketone	Apr. 13, 1986
P 88-0385	G Aryl styrene resin with cross-linking 1,3,5-triazine-2,4,6-triazine, n,n,n,n-hexakis-methoxymethyl(methoxymethyl)	Mar. 13, 1986
P 88-0444	G Precious metal plating solution	Mar. 21, 1986
P 88-0445	G Precious metal plating solution	Mar. 21, 1986
P 88-0487	G Doo-chloride	Apr. 11, 1986
P 88-0495	G Substituted phenylpolyoxyalkylene	Mar. 29, 1986
P 88-0496	G Disubstituted naphthol-azo-carbocyclopolyoxyalkylene	Mar. 29, 1986
P 88-0497	G Trisubstituted naphthol-azo-carbocyclopolyoxyalkylene	Mar. 29, 1986
P 88-0498	G Substituted phenylpolyoxyalkylene	Mar. 29, 1986
P 88-0546	G Water-reducible styrenated alkyl resin	Apr. 11, 1986
P 88-0588	G Acrylic copolymer emulsion	Apr. 18, 1986
Y 86-0105	G Water-dispersible alkyl resin	Mar. 15, 1986

V. 38 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.	
P 87-1379	P 88-0675
P 88-0158	P 88-0679
P 88-0157	P 88-0686
P 88-0348	P 88-0689
P 88-0365	P 88-0690
P 88-0436	P 88-0694
P 88-0567	P 88-0696
P 88-0622	P 88-0900
P 88-0712	P 88-0914
P 88-0713	P 88-0918
P 88-0720	P 88-0932
P 88-0811	P 88-0939
P 88-0813	P 88-1005
P 88-0831	P 88-1109
P 88-0836	P 88-1131
P 88-0837	P 88-1323
P 88-0854	Y 88-0177
P 88-0862	Y 88-0178
P 88-0864	Y 88-0186

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Wednesday
July 6, 1988

Part V

Department of the
Treasury31 CFR Part 25
Prepayment of Foreign Military Sales
Loans; Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 25

Prepayment of Foreign Military Sales Loans Made by the Defense Security Assistance Agency and Foreign Military Sales Loans Made by the Federal Financing Bank and Guaranteed by the Defense Security Assistance Agency

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to its March 21, 1988, issue of an interim rule with a request for comments, the Department of the Treasury is now issuing its final rule. This final rule is being issued pursuant to the requirement contained in Title III, Pub. L. 100-202, 31 U.S.C. 321, Foreign Military Sales Debt Reform (the refinancing legislation). This final rule concerns the prepayment and refinancing of Foreign Military Sales loans made by the Federal Financing Bank and guaranteed by the Defense Security Assistance Agency (DSAA) as well as Foreign Military Sales loans made directly by DSAA. The purpose of the rule is to establish procedures which will allow countries to which Foreign Military Sales loans have been made (Borrowers) to refinance certain existing Foreign Military Sales loans in a manner consistent with the refinancing legislation so as to achieve total lower debt service costs. The interim rule appeared in the Federal Register on March 24, 1988, in Volume 53, Number 57, page 9728.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Holland, Department of the Treasury, Room 3054, Main Treasury Building, Washington, DC 20220, (202) 566-2468.

SUPPLEMENTARY INFORMATION:

I. Comments

In the interim rule published in the Federal Register on March 24, 1988, in Volume 53, Number 57, page 9728, the Treasury Department stated that it would consider comments received from the public during the 30-day comment period defined in the preamble to the rule. This comment period ended April 25. Some comments, while dated April 25, were not delivered to the Treasury Department until after that date. However, the Treasury Department has reviewed and considered all of the comments received, including those that arrived after April 25.

During the comment period, the Treasury Department received fifteen

letters of comments on the interim rule from the following commenters:

- (1) The firm of Brown & Wood;
- (2) The Republic of Honduras, through its embassy in Washington, DC;
- (3) The Republic of Turkey, through its Undersecretariat of Treasury and Foreign Trade, General Directorate of Foreign Economic Relations;
- (4) The Government of Pakistan, through its embassy in Washington, DC;
- (5) J.P. Morgan Securities Inc.;
- (6) The firm of Skadden, Arps, Slate, Meagher & Flom on behalf of The First Boston Corporation;
- (7) MNC International Bank;
- (8) Manufacturers Hanover Trust Company;
- (9) Goldman, Sachs & Co.;
- (10) The firm of Brown & Wood, on behalf of Citicorp Investment Bank;
- (11) The firm of Sidley & Austin, on behalf of Shearson Lehman Hutton Inc.;
- (12) The firm of Arnold & Porter, on behalf of the State of Israel;
- (13) The firm of Vinson & Elkins on behalf of Salomon Brothers Inc.;
- (14) Shearson Lehman Hutton Inc. on behalf of the Arab Republic of Egypt; and
- (15) Shearson Lehman Hutton Inc. on behalf of the Kingdom of Morocco.

In addition, after the closing of the comment period, the Treasury Department received letters of comment from the following commenters:

- (1) Senators Daniel K. Inouye and Robert W. Kasten, Chairman and Ranking Minority Member, respectively, Subcommittee on Foreign Operations, Senate Committee on Appropriations;
- (2) The Riggs National Bank;
- (3) The firm of Brown & Wood;
- (4) Congressman David R. Obey, Chairman, Subcommittee on Foreign Operations, Export Financing, and Related Programs, House Committee on Appropriations;
- (5) Shearson Lehman Hutton, Inc. and Salomon Brothers Inc. on behalf of the Government of Israel; and
- (6) Bear, Stearns & Co. Inc., Drexel Burnham Lambert Inc., The First Boston Corporation, Merrill Lynch Capital Markets and Smith Barney, Harris Upham & Co. Inc. on behalf of the Government of Israel.

Many commenters focused on three provisions of the interim rule: The prohibition against separating the guaranteed amount of the refinancing loan from the unguaranteed amount; the prohibition against collateralizing the unguaranteed amount of the refinancing loan with securities backed by the full faith and credit of the United States; and the prepayment application processing period. Beyond these three provisions,

there were a number of provisions that received isolated comments.

Some commenters argued that the provision in the refinancing legislation which states that the Treasury Department regulations shall "impose no restriction that increases the cost to borrowers of obtaining private financing for prepayment hereunder or that inhibits the ability of the borrower to enter into prepayment arrangements hereunder" requires the Treasury Department to resolve any statutory ambiguities in favor of the lowest cost result. The Treasury Department believes that, within the constraints imposed by the legislative authority, the interim rule and the following final rule achieve this goal.

Comments and the Treasury Department's response thereto are discussed in the following section-by-section analysis.

II. Section-by-Section Analysis of Comments on the Interim Rule

1. Section 25.100—Definitions

Some comments objected to the lack of a definition for the term "derivative". In response to these comments, the Treasury Department has added a new defined term and definition, titled "Derivative" (§ 25.100(e)). This term is principally used in the section pertaining to registration (§ 25.403) and the revised section pertaining to non-separability (§ 25.404).

One comment objected to the definition of "Eligible FMS Advance" (§ 25.100(f) in the interim rule, renumbered § 25.100(g) in the final rule). Specifically, this commenter believed that this definition precluded the refinancing of any advance bearing interest at a rate of 10 percent or greater that is part of an FFB loan bearing interest at a consolidated rate of less than 10 percent. The commenter stated that it was unclear that separate interest rates continue to exist on FMS advances after a consolidated rate has been established.

Paragraph two of the standard FFB promissory note provides that a consolidated interest rate is established for billing purposes after all funds available under the respective FMS loan agreement have been drawn. However, the respective interest rates continue to apply to individual advances, thus determining their eligibility under the definition. Therefore, the Treasury Department has not altered this definition.

Four comments reflected concern with the definition of "Private Lender" (§ 25.100(p) in the interim rule). This

definition has been renumbered § 25.100(i) and retitled "Eligible Private Lender" in the final rule. One commenter requested that clause (1)(i) should be expanded to include "or any subsidiary or affiliate thereof." The commenter asserted that this addition would allow institutions more flexibility and therefore lower financing costs to the borrower.

While the commenter did not offer any substantive support for this assertion, the Treasury Department has no objection to the comment and has incorporated this comment into the final rule.

Another commenter indicated that the definition described in clause (1)(i) should be expanded to specifically include "investment banking companies."

While the Treasury Department believes that the definition of "Private Lender," as written in the interim rule, effectively covered investment banking companies, the Treasury Department has no objection to modifying this definition to specifically incorporate the comment. Therefore, the definition has been so modified in the final rule.

Another comment on this section concerned the concept of "wholly owned initially" and the relationship of this concept to trusts and partnerships, which are not owned but are created.

The Treasury Department believes that this commenter misunderstood the intent of the phrase "wholly owned initially," and so has modified the phrase to clarify its purpose. The Treasury Department is of the opinion that if trusts or other special purpose financing entities are going to be used in making the Private Loan, then the criteria for "Eligible Private Lender" should be applied to the parties that initially "fund" the trust or other special purpose financing entities, since these parties are in reality making the Private Loan.

In addition to the newly created term "Derivative," the Treasury Department has added two new definitions to the final rule, "Guaranteed-Amount Debt Derivative" and "Guaranteed-Amount Equity Derivative" (§ 25.100 (n) and (o), respectively). These new defined terms are used in the revised section pertaining to non-separability (§ 25.404).

One comment requested that the final rule define the "Guaranty Coverage" of the Guaranty.

The Treasury Department did not accept this comment because it concluded that such a definition in the rule might create an ambiguity or a conflict with the terms of the Guaranty itself. Instead, the Treasury Department has included new defined terms in the

final rule, "Guaranteed Loan Amount" (§ 25.100(q)), "Guaranteed Loan Portion Amount" (§ 25.100(r)), and "Guaranteed Amount Equivalent" (§ 25.100(p)). The term "Guaranteed Loan Amount" refers to the amount of a Private Loan which is guaranteed under the Guaranty. The term "Guaranteed Loan Portion Amount" refers to the amount of a portion of the Private Loan which is guaranteed under the Guaranty. The term "Guaranteed Amount Equivalent" is added to ensure that the prohibition against separating the guaranteed amount of the Private Loan from the unguaranteed amount is not circumvented through the establishment of successive trusts or special purpose financing entities issuing Derivatives of Derivatives. The terms "Guaranteed Loan Amount," "Guaranteed Loan Portion Amount," and "Guaranteed Amount Equivalent" are used in the revised section pertaining to non-separability (§ 25.404).

One comment asked for clarification of a perceived ambiguity between the definition of "Private Lender" in the interim rule and the definition of "Beneficiary" in the form of Guaranty (§ 25.406). Specifically, this commenter indicated that the definition of Private Lender states that the "Private Lender" must be chartered or otherwise organized under the laws of a state, the District of Columbia, the United States or any territory or possession of the United States and lawfully doing business in the United States, while the Guaranty indicates that the Lender may assign its rights under the Guaranty to any entity merely doing business in the United States.

The Treasury Department responds that the class of entities that are authorized to make the refinancing loans under the FMS refinancing legislation is a more narrow class than the class of entities that are permitted to hold guaranties under the Arms Export Control Act. Therefore, the Treasury Department has altered the Guaranty form in the final rule to clarify this point. Moreover, the final rule has added a new defined term, "Permitted Guaranty Holder" (§ 25.100(w)).

Some comments objected to the definition of "Permitted P&I Prepayment Amount" (§ 25.100(x) in the interim rule, renumbered § 25.100(v) in the final rule). Specifically, there was objection to clause (1) of this section which allows only principal amounts that become due and payable after September 30, 1989 to be included in "Eligible FMS Advances" or "Eligible FMS Loans" for refinancing.

The Treasury Department believes that the eligibility criteria established in this definition are mandated by the

terms of the refinancing legislation, which provides authority only "to finance the prepayment at par of the principal amounts maturing after September 30, 1989." Therefore, this definition remains unchanged in the final rule.

A comment on the definition of "Private Loan" (§ 25.100(q) in the interim rule, renumbered § 25.100(y) in the final rule) reflected a concern that these definitions did not specifically address a public sale or private placement of debt obligations secured by the refinancing loan. The comment admitted that such sale or placement was implicit in the interim rule.

The Treasury Department agrees that such sale or placement is implicit in the interim rule. The final rule remains unchanged on this point.

Another comment on this section requested clarification that the "Private Loan" evidences an obligation of a sovereign nation. This commenter asserted that this clarification would reduce the Borrower's costs in obtaining a Private Loan.

The commenter offered no evidence to substantiate this assertion of reduced costs. Further, the Treasury Department did not believe that, for the purposes of this rule, it was either necessary or proper to define what does or does not constitute the sovereign debt of a country. Therefore, the Treasury Department has not changed this section of the rule.

As complements to the newly created definitions of the "Guaranteed Loan Amount" (§ 25.100(q)), the "Guaranteed Loan Portion Amount" (§ 25.100(r)), and the "Guaranteed-Amount Equivalent" (§ 25.100(p)), the Treasury Department has added new definitions for the "Unguaranteed Loan Amount" (§ 25.100(ee)), the "Unguaranteed Loan Portion Amount" (§ 25.100(ff)), and the "Unguaranteed-Amount Equivalent" (§ 25.100(dd)).

2. Section 25.200—General Rule

One commenter on paragraph (c) stated that while § 25.200 generally provided the necessary level of flexibility to a Borrower seeking to refinance existing loans, paragraph (c) did not provide the flexibility to split FMS loans so that early and late maturities could be separated and refinanced separately.

The interim rule allowed for Eligible FMS Loans to be refinanced on an advance-by-advance basis, thus allowing Borrowers and their Eligible Private Lenders great flexibility to structure Private Loans. However, the Treasury Department decided that the

administrative expense that would be incurred in accounting for partially refinanced advances did not warrant including this ultimate degree of flexibility. Moreover, the refinancing legislation does not contemplate the partial prepayment of advances.

Another commenter on this section was of the opinion that the interim rule provided that only whole Eligible FMS Loans could be refinanced.

This is incorrect. As stated above, Eligible FMS Loans can be refinanced on an advance-by-advance basis, but Eligible FMS Advances cannot be partially refinanced. Therefore, this section remains unchanged.

There were a few comments on subsection (b), the requirement that all prepayments must have a Closing Date not later than September 30, 1991. These commenters stated that Borrowers should be given the flexibility to seek approval of a prepayment application through that date and be allowed to close the approved prepayment at any time after that date.

The refinancing legislation authorizes the refinancing program for the period of Fiscal Year 1988 through 1991. The Treasury Department, in consultation with DSAA, the guarantor of the Private Loans, has concluded that authority does not exist to extend the program beyond Fiscal Year 1991. Therefore, this section remains unchanged in the final rule.

In response to a comment on Eligible FMS Advance, the Treasury Department has added § 25.200(d) which describes how principal payments that have already been made on FMS Loans which have already been consolidated will be applied under the terms of the respective promissory note for purposes of determining the outstanding principal balances of Eligible FMS Advances.

3. Section 25.300—Application Procedure

Two commenters stated that the requirement contained in § 25.300(a)(4) for the inclusion of all material transaction documents in substantially final form with a prepayment application was burdensome. One commenter stated that, as an alternative, the prepayment application should contain a detailed description of the proposed financial structure addressing terms of critical interest necessary to properly evaluate the Private Loan.

The Treasury Department has modified the section to allow a Borrower the choice of (1) the application procedure outlined in the interim rule, or (2) an optional additional procedure outlined in a new subsection

(c) in the final rule, which allows the Borrower to obtain a preliminary, nonbinding review by DSAA of a proposed Private Loan. We believe that this optional procedure allows all of the parties concerned the necessary flexibility to place expeditiously a Private Loan.

4. Section 25.301—Approval Procedure

Many commenters objected to the provisions in this section that provide for unlimited review periods of the prepayment application by DSAA and the State Department.

The Treasury Department agrees that the total review and processing time by the DSAA, the State Department, and the Treasury Department should be limited to 30 days. In the final rule, these review periods have been defined and the section modified.

5. Section 25.302—Application Withdrawal

One commenter requested that the final rule provide that an approved refinancing application be permitted to be withdrawn at the option of the Borrower.

The final rule has added a new section to this effect.

6. Section 25.302—Closing Procedure (Renumbered § 25.303 in the Final Rule)

One commenter objected to the provisions contained in this section that would establish a Closing Date at the time that a prepayment application was approved. Further, this commenter urged that the rule be modified to allow the Closing Date to be established solely at the discretion of the Borrower.

The definition of "Closing Date", as written in the interim rule, provides that the Closing Date is to be established after the prepayment application has been approved. The interim rule also provides that the Closing Date is to be established by the mutual agreement of the Borrower, DSAA, and, in the case of FMS Loans which had been made by FFB, FFB. The Treasury Department believes that the reasonable administrative concerns of the respective governmental agencies need to be taken into account when scheduling Closing Dates. The Treasury Department has modified § 25.302 to reiterate that the Closing Date would be established on a date mutually agreeable to the parties involved in the closing. In addition, the Treasury Department has added a new paragraph (c) to this section clarifying that a Borrower may change an agreed upon Closing Date. However if the Borrower chooses to change the Closing Date, the new Closing Date must be mutually

agreeable to the parties involved in the closing and the prepayment must be made in accordance with the approved prepayment application, adjusted for changes in accrued interest.

One commenter requested that prepayments be allowed to be made using "next day funds."

The institutional practice of the Federal Financing Bank is to require that any prepayments be made in "immediately available funds." Therefore, this provision has not been changed in the final rule.

7. Section 25.400—Loan Provisions

Many commenters objected to the requirement that the principal and interest payment schedule and maturity be similar to the Eligible FMS Loans or Eligible FMS Advances that are being refinanced. Many commenters stated that flexibility in payment structures would be of benefit to the Borrowers. Specifically, two commenters asserted that a savings of 5-10 basis points could be achieved if a payment structure of semi-annual payments of interest with annual payments of principal were allowable.

Another commenter indicated that the interim rule did not adequately define the first principal payment date for the Private Loan.

Another commenter on this section stated that the requirement that the principal and interest payment schedules of the proposed Private Loan be substantially the same as that of the eligible debt being refinanced conflicted with the structure that would result from the blending of payment schedules permitted by the interim rule. This commenter then went on to offer an example of how this conflict would lead to Private Loan repayment schedules that would be substantially different from the individual pieces of underlying debt.

The Treasury Department agrees that allowing for additional flexibility would facilitate refinancings. The Treasury Department also agrees that the blending of payment schedules permitted by the interim rule could result in substantial differences between payment schedules in the Private Loan and the Eligible FMS Loans or Eligible FMS Advances being refinanced. In an effort to address these issues in the final rule, the Treasury Department has modified this section to allow Borrowers and their Eligible Private Lenders two options for structuring the Private Loan and for fixing the first principal payment date.

The first option would permit the differing payment structures of Eligible

FMS Loans or Eligible FMS Advances to be consolidated into a single Private Loan payment structure that provides for semi-annual payments of principal and interest, with the amounts of principal of the Private Loan to be paid each year being the same as the principal that would have been paid in such year under the payment structure of the Eligible FMS Loans or Eligible FMS Advances.

The second option would allow for the differing payment structures of the Eligible FMS Loans or Eligible FMS Advances to be consolidated into a single payment structure of equal principal payments, subject to specific criteria relating to final maturity, first principal payment date and subsequent payment dates.

8. Section 25.401—Fees

One commenter indicated that the interim rule be modified to allow for the inclusion of "reasonable fees and expenses" in the amount refinanced. This commenter indicated further that the interim rule did not appear to contemplate the payment of fees and expenses on the Closing Date.

The interim rule states: "The interest rate on the Private Loan may include compensation for costs at prevailing market rates with the agreement of the Borrower and the Private Lender selected by the Borrower." This language is derived from the refinancing legislation, which provides that "the private lender may include, in the interest rate charged, a standard fee to cover costs, such fee which shall be set at prevailing market rates" (emphasis added). The Treasury Department believes that this language prohibits the Private Lender from including fees or expenses in the principal of the Private Loan. Therefore, this section remains unchanged in the final rule.

9. Section 25.403—Registration

One commenter objected to the provision that the Guaranty would cease to be effective if the guaranteed obligation were to provide significant support for a non-registered obligation.

This provision is derived directly from the refinancing legislation, which provides that "any guaranty transferred or extended shall cease to be effective if the private loan or any derivative thereof is to be used to provide significant support for any non-registered obligation."

Another commenter stated that it was unclear whether the Guaranty, as written in the interim rule, would continue to exist at all for any holders of any portion of a Private Loan Note if one

holder of a portion of the Private Loan Note violated this section.

The Treasury Department responds that the Guaranty ceases to be effective only to the extent of, and only with respect to, the violation of this section. Therefore, this section has been modified to clarify this point in the final rule.

10. Section 25.404—Non-Separability

Many commenters objected to this section of the interim rule. In particular, many commenters stated that the Treasury Department was interfering with an Eligible Private Lender's "sources of funds" by applying the concept of non-separability to "derivatives" of the Private Loan.

While some commenters conceded that the prohibition against separating the guaranteed amount of the Private Loan from the unguaranteed amount could be interpreted as being applicable to participation shares of, or undivided ownership interests in, the Private Loan ("equity derivatives"), these same commenters asserted that the prohibition should not be interpreted as being applicable to debt instruments issued by the Eligible Private Lender that are secured by the Private Loan ("debt derivatives").

Many of the commenters also objected to this section having provided that the Guaranty would cease to be effective if the section were violated.

The refinancing legislation provides that the United States Government guaranty of a Private Loan "shall cover no more and no less than ninety percent of the private loan or any portion or derivative thereof" (emphasis added). The refinancing legislation also prohibits separating the guaranteed amount of the Private Loan from the unguaranteed amount. While this second provision is not made explicitly applicable to "derivatives" of the Private Loan, the Treasury Department interpreted the refinancing legislation by reading these two provisions together. Based on such a reading, the Treasury Department concluded in the interim rule that the prohibition against separating the guaranteed amount from unguaranteed amount applied to "derivatives" of the Private Loan.

As some commenters on this section conceded, the interpretation of the prohibition as being applicable to "equity derivatives" of the Private Loan, that is, participation shares of, or undivided ownership interests in, the Private Loan, is well supported by reading the two provisions of the refinancing legislation together. Therefore, the non-separability provision of the interim rule as it applies

to such "equity derivatives" remains unchanged in the final rule.

The greatest objection to the non-separability provision of the interim rule was with respect to how it applied to "debt derivatives" of the Private Loan, that is, debt instruments of the Eligible Private Lender collateralized by the Private Loan. The commenters asserted this provision interfered with a lender's relationships with its investors.

The Treasury Department responds that this provision should have no effect on a lender's sources of funds so long as the lender does not separate the guaranteed amount of the Private Loan from the unguaranteed amount and use the guaranteed amount alone as a means of obtaining funds. The provision does not restrict an Eligible Private Lender from using the entire, unseparated Private Loan as collateral for obtaining funds.

Nevertheless, the Treasury Department recognizes that there is some ambiguity in the refinancing legislation as to the extent to which the non-separability provision of the refinancing legislation should be applied to the Eligible Private Lender's means of obtaining funds. Moreover, some commenters have asserted that some lenders will charge some Borrowers a higher cost of borrowing as a result of the non-separability provision being applied to the lenders' fund-raising activities. Accordingly, the Treasury Department has modified this section in the final rule to create a limited exception to the prohibition against separating the guaranteed amount from the unguaranteed amount of the Private Loan. This section now permits debt derivatives of the guaranteed amount of the Private Loan to be issued if both of two circumstances occur.

First, the Borrower must submit proof, satisfactory to the Treasury Department, that, as a result of the non-separability provision of the final rule, the Borrower will incur a substantial increase in the borrowing cost of the Private Loan, expressed in terms of the true rate of interest of the Private Loan. This increase in costs must be directly attributable to the prohibition against issuing derivatives of the guaranteed portion of the Private Loan. Second, the Treasury Department must determine that allowing a particular Borrower to refinance its loans using derivatives of the guaranteed amount of the Private Loan is necessary to achieve the international economic policy interests of the United States.

11. Section 25.405—Collateralization of Unguaranteed Amount

Many commenters objected to this section of the interim rule, asserting that the prohibition against collateralization with securities of the United States Government or any of its agencies had no foundation in the refinancing legislation.

As in the comments on § 25.403, many commenters objected to the section having provided that the Guaranty would cease to be effective if this section were violated.

The refinancing legislation provides that the United States Government guaranty of the Private Loan shall cover no more than 90 percent of the Private Loan. The Treasury Department interpreted this provision as prohibiting Borrowers from enhancing the credit of the 10 percent unguaranteed amount of the Private Loan to the point that the Private Loan became, in effect, 100 percent guaranteed. To give effect to this interpretation, the Treasury Department included in the interim rule a prohibition against Borrowers collateralizing the unguaranteed amount of their Private Loans with securities backed by the full faith and credit of the United States.

Upon reconsideration of its interpretation, however, the Treasury Department found no explicit direction in the refinancing legislation to prohibit such collateralization. Finding no such requirement, the Treasury Department has eliminated the prohibition in its entirety. The section containing the prohibition has been deleted from the final rule.

12. Section 25.406—Form of Guaranty (Renumbered § 25.405 in the Final Rule)

Some commenters indicated that the form of Guaranty is unattractive to the market and that the Guaranty should be altered to conform to market practice. These commenters asserted that failure to use a more conventional form of Guaranty would lead to more costly financings. In addition, some commenters submitted a form of Guaranty which they proposed to the Department of the Treasury for consideration as a substitute for the form of Guaranty contained in this section.

Debate about whether the use of a more conventional form of Guaranty would result in less expensive refinancings is irrelevant. The refinancing legislation specifically requires that "the terms of guarantees transferred or issued under this paragraph shall be exactly the same as the existing * * * guarantees, except as

modified by this paragraph." Thus, the refinancing legislation allows no flexibility with regards to the Guaranty form. The Guaranty form included in this section follows the form of the existing guarantees attached to the existing FMS Loans, except to the extent that it has been modified to incorporate specific conditions required by the refinancing legislation. Therefore, the form of Guaranty contained in the final rule remains unchanged except as discussed above under the comments on the definition of Private Lender, non-separability and collateralization.

One commenter indicated that the prohibition against acceleration contained in the Guaranty would raise the cost of financing to the Borrower. DSAA, the guarantor of the Private Loan, has advised us that it is necessary that this part of the Guaranty, which is derived from the existing guaranty on the FMS loans being refinanced, remain as provided for in the interim rule. Therefore, this section of the final rule remains unchanged.

Again, many commenters reiterated the argument that the Guaranty should not become ineffective if its terms are violated as discussed in the analysis of §§ 25.403, 25.404 and 25.405 above. The form of Guaranty has been revised in the final rule to clarify that it ceases to be effective only to the extent of, and only with respect to, the violation of the terms of the Guaranty, as in the analysis of these sections cited above. Moreover, the conditional nature of the Guaranty is required by the refinancing legislation.

13. Section 25.407—Savings Clause (Renumbered § 25.406 in the Final Rule)

One commenter objected to the inclusion of this section, arguing that it would be used by "persons or organizations" in an attempt to mislead or confuse Borrowers for narrow personal reasons.

The Treasury Department included this section to make it clear that neither the law nor the rules were intended to change the interpretation or application of existing statutes, including, but not limited to, tax, securities and banking statutes. The Treasury Department continues to believe that this clarification is useful.

As a final point on the interim rule, some commenters requested that the rule allow for refinancings of Private Loans, should such refinancings become financially attractive at some future date prior to the end of the program.

The Treasury Department responds that, inasmuch as a Private Loan made to refinance an Eligible FMS Loan or an Eligible FMS Advance would not have been an existing FMS loan on December

22, 1987, it would not be eligible for refinancing under the authority of the refinancing legislation.

III. Procedural Requirements

Because this rule involves foreign and military affairs functions of the United States, it is not subject to Executive Order 12291 or the public notice and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553).

As no notice of proposed rulemaking is required, this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

IV. Paperwork Reduction Act

The requirements to collect information contained in the rule have been reviewed and approved by the Office of Management and Budget pursuant to section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 31 CFR Part 25

Banks and banking. Loan programs—national defense, Reporting and recordkeeping requirements.

V. Authority

Title III, Pub. L. 100-202, 31 U.S.C. 321, Foreign Military Sales Department Reform.

Subtitle A of Title 31, Code of Federal Rules, is amended by revising Part 25 to read as follows:

PART 25—PREPAYMENT OF FOREIGN MILITARY SALES LOANS MADE BY THE DEFENSE SECURITY ASSISTANCE AGENCY AND FOREIGN MILITARY SALES LOANS MADE BY THE FEDERAL FINANCING BANK AND GUARANTEED BY THE DEFENSE SECURITY ASSISTANCE AGENCY

Subpart A—General

Sec. 25.100 Definitions.
25.101 OMB control number.

Subpart B—Qualifications for Prepayment

25.200 General rules.

Subpart C—Procedures

25.300 Application procedure.
25.301 Approval procedure.
25.302 Application withdrawal: effect of approval.
25.303 Closing Procedure.

Subpart D—Form of Private Loan

25.400 Loan provisions.
25.401 Fees.
25.402 Transferability.
25.403 Registration.
25.404 Non-Separability.
25.405 Form of guaranty.
25.406 Savings clause.

Authority: Title III, Pub. L. 100-202; 31 U.S.C. 321.

Subpart A—General**§ 25.100 Definitions.**

In this part, unless the context indicates otherwise:

(a) "Act" means the provisions entitled "Foreign Military Sales Debt Reform," of Title III, entitled "Military Assistance," of an act entitled "Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988" (Pub. L. No. 100-202), enacted December 22, 1987.

(b) "AECA" means the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*).

(c) "Borrower" means the obligor on an FMS Advance.

(d) "Closing Date" means:

(1) With respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by DSAA, the date designated by the mutual agreement of both the Borrower and DSAA on which the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid; and

(2) With respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by the FFB and guaranteed by DSAA, the date designated by the mutual agreement of the Borrower, the FFB, and DSAA on which the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or Portion thereof which the Borrower has selected to prepay, will be prepaid.

(e) "Derivative" means any right, interest, instrument or security issued or traded on the credit of the Private Loan or any Private Loan Portion, including but not limited to:

(1) Any participation share of, or undivided ownership or other equity interest in, the Private Loan or any Private Loan Portion;

(2) Any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the Private Loan or any Private Loan Portion; or

(3) Any such interest in such an interest or any such instrument secured by such an instrument.

(f) "DSAA" means the Defense Security Assistance Agency, an agency within the Department of Defense.

(g) "Eligible FMS Advance" means any FMS Advance which:

(1) Was outstanding on December 22, 1987;

(2) Has principal amounts becoming due and payable after September 30, 1989; and

(3) Bears interest at a rate equal to or greater than 10 percentum per annum. "Eligible FMS Advance" may include FMS Advances meeting the criteria of Eligible FMS Advance which are made on account of FMS Loans even when such FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loan.

(h) "Eligible FMS Loan" means any FMS Loan which:

(1) Was outstanding on December 22, 1987;

(2) Has principal amounts becoming due and payable after September 30, 1989; and

(3) Bears interest pursuant to the terms of the loan agreement relating thereto at a consolidated rate equal to or greater than 10 percentum per annum. "Eligible FMS Loans" may include FMS Advances which are made on account of FMS Loans meeting the criteria of Eligible FMS Loan even when such FMS Advances do not, in themselves, meet the criteria of Eligible FMS Advance.

(i) "Eligible Private Lender" means either:

(1) Any of the following entities:

(i) Any banking, savings, or lending institution, or any subsidiary or affiliate thereof, chartered or otherwise lawfully organized under the laws of any State, the District of Columbia, the United States or any territory or possession of the United States, including, but not limited to, any bank, trust company, industrial bank, investment banking company, savings association, savings and loan association, building and loan association, savings bank, credit union, or finance company, which is doing business in the United States;

(ii) Any broker or dealer registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934;

(iii) Any company lawfully organized as an insurance company, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or

(iv) Any United States pension fund; or

(2) Any trust or other special purpose financing entity which is funded initially by an entity or entities of the type described in paragraph (i)(1) of this section.

(j) "FFB" means the Federal Financing Bank, and instrumentality and wholly-owned corporation of the United States.

(k) "FMS" means Foreign Military Sales.

(l) "FMA Advance" means:

(1) A disbursement of funds made pursuant to a loan agreement between the Borrower and DSAA, which loan agreement provides for making of an FMS Loan; or

(2) A disbursement of funds made pursuant to a loan agreement between the Borrower and the FFB, which loan agreement provides for the making of an FMS Loan.

(m) "FMS Loan" means either:

(1) A loan made directly by the Secretary of Defense pursuant to section 23 of AECA; or

(2) A loan made by the FFB and guaranteed by the Secretary of Defense pursuant to section 24 of AECA; and "FMS Loans" mean the aggregate of such loans made to or for the account of a Borrower.

(n) "Guaranteed-Amount Debt Derivative" means any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the Private Loan Note or any Private Loan Portion Note or any Derivative, as the case may be, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(o) "Guaranteed-Amount Equity Derivative" means any participation share of, or undivided ownership or other equity interest in, the Private Loan or any Private Loan Portion or any Derivative, as the case may be, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(p) "Guaranteed-Amount Equivalent" means:

(1) With respect to any Derivative which is equal in principal amount to the Private Loan or any Private Loan Portion, that amount of payment on account of such Derivative which is equal to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount, as the case may be; or

(2) With respect to any Derivatives which in the aggregate are equal in principal amount to the Private Loan or any Private Loan Portion, that amount of payment on account of such derivatives which is equal to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount, as the case may be.

(q) "Guaranteed Loan Amount" means that amount of payment on account of

the Private Loan which is guaranteed under the terms of the Guaranty.

(r) "Guaranteed Loan Portion Amount" means that amount of payment on account of any Private Loan Portion which is guaranteed under the terms of the Guaranty.

(s) "Guaranty" means either a new guaranty of the United States issued by DSAA or an existing guaranty of the United States transferred by DSAA, in the form of guaranty set forth in § 25.405, which guaranty will be attached to a Private Loan Note or Private Loan Portion Note.

(t) "Interest Rate Difference" means the difference between:

(1) The cost of funds to the Borrower for the Private Loan (expressed in terms of the true rate of interest applicable to the Private Loan) if paragraph (a) of § 25.404 applies to the Private Loan; and

(2) The cost of funds to the Borrower for the Private Loan (expressed in terms of the true rate of interest applicable to the Private Loan) if paragraph (a) of § 25.404 does not apply to the Private Loan.

(u) "Non-Registered Obligation" means a bearer obligation which does not comply with all of the registration requirements of the Internal Revenue Code.

(v) "Permitted Arrears Prepayment Amount" means the sum of all arrears, if any, on all FMS Loans, which arrears are outstanding on the Closing Date.

(w) "Permitted Guaranty Holder" means:

(1) An individual domiciled in the United States;

(2) A corporation incorporated, chartered or otherwise organized in the United States; or

(3) A partnership or other juridical entity doing business in the United States.

(x) "Permitted P&I Prepayment Amount" means, with respect to each Eligible FMS Loan or Eligible FMS Advance, as the case may be, the sum of:

(1) All principal amounts which become due and payable after September 30, 1988, on the respective Eligible FMS Loan or Eligible FMS Advance; and

(2) All unpaid interest, if any, on the respective Eligible FMS Loan or Eligible FMS Advance accrued as of the Closing Date.

(y) "Private Loan" means, collectively, the loan or loans that is or are obtained by the Borrower from an Eligible Private Lender to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay.

(z) "Private Loan Note" means, collectively, the note or notes executed and delivered by the Borrower to evidence the Private Loan.

(aa) "Private Loan Portion" means any portion of the Private Loan.

(bb) "Private Loan Portion Note" means any note executed and delivered by the Borrower to evidence a Private Loan Portion.

(cc) "Total Permitted Prepayment Amount" means the sum of:

(1) The aggregate of the respective Permitted P&I Prepayment amount for all Eligible FMS Loans and all Eligible FMS Advances on account of FMS Loans which FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loans; and

(2) The Permitted Arrears Prepayment Amount.

(dd) "Unguaranteed-Amount Equivalent" means all amounts of payment on account of any Derivative other than the respective Guaranteed-Amount Equivalent.

(ee) "Unguaranteed Loan Amount" means all amounts of payment on account of the Private Loan other than the Guaranteed Amount.

(ff) "Unguaranteed Loan Portion Amount" means all amounts of payment on account of any Private Loan Portion other than the respective Guaranteed Loan Portion Amount.

§ 25.101 OMB control number.

The reporting requirements in this part have been approved under the Office of Management and Budget Control Number 1505-0109.

Subpart B—Qualifications for Prepayment

§ 25.200 General rules.

(a) To qualify for a loan prepayment at par pursuant to subsection (a) of the Act, a Borrower must have an Eligible FMS Loan or an Eligible FMS Advance.

(b) A Borrower may prepay the Total Permitted Prepayment Amount in portions using more than one closing; however, all prepayments of the Total Permitted Prepayment Amount must have a Closing Date that is not later than September 30, 1991.

(c) A Borrower may prepay all or a portion of the Total Permitted Prepayment Amount; however, if a Borrower selects to prepay any Permitted P&I Prepayment Amount of an FMS Advance, the Borrower must prepay the entire Permitted P&I Prepayment Amount of such FMS Advance.

(d) If the payment billings of an FMS Loan have been consolidated in accordance with the terms of the

respective loan agreement, and if any principal payments have been made on account of the FMS Loan, then the outstanding principal balances of any Eligible FMS Advances shall be determined in accordance with the principal of "first disbursed, first repaid," that is, advances on account of the FMS Loan shall be deemed to have been repaid in the chronological order in which they were disbursed.

Subpart C—Procedures

§ 25.300 Application procedure.

(a) Each Borrower that wishes to prepay at par the Total Permitted Prepayment Amount, or any portion thereof, must submit a written prepayment application. To be considered complete, a prepayment application must contain the following information and materials:

(1) Part I of the prepayment application shall be the identification of each Eligible FMS Loan or Eligible FMS Advance, as the case may be, with respect to which the Borrower has selected to prepay the amount thereof permitted by this part to be prepaid, setting forth with respect to each such Eligible FMS Loan or Eligible FMS Advance:

(i) The date on which the Eligible FMS Advance was made or the date on which the Eligible FMS Loan was signed;

(ii) The original amount of the Eligible FMS Loan or Eligible FMS Advance;

(iii) The principal and interest payment schedule of the Eligible FMS Loan or Eligible FMS Advance; and

(iv) The maturity of the Eligible FMS Loan or Eligible FMS Advance.

(2) Part II of the prepayment application shall be the Borrower's estimate of the Permitted Arrears Prepayment Amount calculated as of the date of the application;

(3) Part III of the prepayment application shall be a description of each Private Loan, 90 percent of which the Borrower seeks to have guaranteed, setting forth with respect to each Private Loan:

(i) The total amount of the Private Loan.

(ii) The proposed principal and interest payment schedule of the Private Loan.

(iii) The proposed maturity of the Private Loan, and

(iv) The identity of each Eligible FMS Loan or Eligible FMS Advance with respect to which amount thereof permitted by this part to be prepaid is to be prepaid with the proceeds of the Private Loan;

(4) Part IV of the prepayment application shall be all material transaction documents, in substantially final form, relating to the prepayment of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, with the proceeds of the Private Loan; and

(5) Part V of the prepayment application shall be the name, address, and telephone number of the Borrower's contact person with whom the FFB or DSAA will communicate to arrange for prepayment and closing.

(b) Each prepayment application shall be submitted in triplicate to DSAA at the following address: Defense Security Assistance Agency, The Pentagon, Washington, DC 20301-2800, Attention: Deputy Comptroller.

(c) A Borrower wishing to obtain preliminary, nonbinding review of a plan to prepay at par the Total Permitted Prepayment Amount, or any portion thereof, may, at the Borrower's option, prior to submitting a prepayment application in accordance with

paragraph (a) of this section, submit to DSAA, at the address set forth in paragraph (b) of this section, a written plan of prepayment. To qualify for review, a plan of prepayment must include a detailed description of the proposed financing structure clearly addressing the terms and conditions of the proposed Private Loan. DSAA will review each plan of prepayment submitted by Borrowers and may engage in informal, non-binding discussions with each Borrower that submitted a plan of prepayment to assist such Borrower in preparing a prepayment application.

(c) Processing by the Treasury Department—(1) *FMS Loans held by DSAA.* (i) The Treasury Department will process Parts I and II of each prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, within 7 days after receipt by the Treasury Department of written evidence of the approvals of the prepayment application by DSAA and the State Department;

(ii) After the Treasury Department has processed Parts I and II of a prepayment application, the Treasury Department will return the parts of the application to DSAA, and thereupon DSAA will commence the Closing Procedures described in § 25.303(a) with respect to the application.

(2) *FMS Loans held by the FFB.* (i) The Treasury Department will process Parts I and II of each prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, within 7 days after receipt by the Treasury Department from the State Department of written evidence of the approvals of the prepayment application by DSAA and the State Department; and

(ii) After the Treasury Department has processed Parts I and II of a prepayment application, the Treasury Department

(3) After DSAA has processed a completed prepayment application, DSAA will either:

(i) Return the application to the Borrower; or

(ii) Deliver to the State Department written evidence of the approval of the prepayment application by DSAA.

(b) *Review and Processing by the State Department.* (1) The State Department will review Parts I and II of each prepayment application received by the State Department from DSAA to ensure that the provisions of subsection (d) of the Act (Purposes and Reports) are considered. The State Department will process Parts I and II of each prepayment application within 7 days after receipt by the State Department of written evidence of the approval of the prepayment application by DSAA.

(2) After the State Department has processed Parts I and II of a prepayment application, the State Department will either:

(i) Return the parts of the application to DSAA for return to the Borrower; or

(ii) Deliver to the Treasury Department written evidence of the approvals of the prepayment application by DSAA and the State Department.

(c) *Processing by the Treasury Department—(1) FMS Loans held by DSAA.* (i) The Treasury Department will process Parts I and II of each prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, within 7 days after receipt by the Treasury Department of written evidence of the approvals of the prepayment application by DSAA and the State Department;

(ii) After the Treasury Department has processed Parts I and II of a prepayment application, the Treasury Department will return the parts of the application to DSAA, and thereupon DSAA will commence the Closing Procedures described in § 25.303(a) with respect to the application.

(2) *FMS Loans held by the FFB.* (i) The Treasury Department will process Parts I and II of each prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, within 7 days after receipt by the Treasury Department from the State Department of written evidence of the approvals of the prepayment application by DSAA and the State Department; and

(ii) After the Treasury Department has processed Parts I and II of a prepayment application, the Treasury Department

will commence the Closing Procedures described in § 25.303(b) with respect to the application.

§ 25.302 Application withdrawn; effect of approval.

A Borrower that submits a prepayment application may withdraw the prepayment application at any time prior to its approval. Even after a Borrower's prepayment application has been approved, the Borrower is not obligated to prepay its Eligible FMS Loans or Eligible FMS Advances.

§ 25.303 Closing procedures.

(a) *FMS Loans held by DSAA.* (1) After the Treasury has processed Parts I and II of a prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, DSAA will communicate with the Borrower's contact person identified in Part V of the prepayment application to establish a Closing Date mutually agreeable to the Borrower and DSAA. DSAA will inform the Borrower of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, as of the Closing Date established. The determination by DSAA of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be conclusive.

(2) On the Closing Date, the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan shall be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid.

(3) The attachment of the Guaranty to the Private Loan Note or the Private Loan Portion Notes, as the case may be, will take place at such location as may be designated by the mutual agreement of the Borrower and DSAA.

(4) Prior to 1:00 p.m. prevailing local time in New York, New York, on the Closing Date, immediately available funds in amounts sufficient to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be transferred by electronic funds transfer to DSAA at the Treasury Department account at the Federal Reserve Bank of New York. The funds transfer message must include the following credit information:

United States Treasury, New York, New York, 021030004, TREAS NYC/ (5037).

For credit to the Defense Security Assistance Agency, The Pentagon, Washington, DC 20301-2800.

This information must be *exactly* in this form (including spacing between words and numbers) to insure timely receipt by the DSAA. Checks, drafts, and other orders for payment will not be accepted.

(b) *FMS Loans held by the FFB.* (1) After the Treasury Department has processed Parts I and II of a prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, the FFB will communicate with the Borrower's contact person identified in Part V of the prepayment application to establish a Closing Date mutually agreeable to the Borrower, the FFB, and DSAA. The FFB will inform the Borrower of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, as of the Closing Date established. The determination by the FFB of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be conclusive.

(2) On the Closing Date, the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid.

(3) The attachment of the Guaranty to the Private Loan Note or the Private Loan Portion Notes, as the case may be, will take place at such location as may be designated by the mutual agreement of the Borrower and DSAA.

(4) Prior to 1:00 p.m. prevailing local time in New York, New York, on the Closing Date, immediately available funds in amounts sufficient to prepay at par the Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be transferred by electronic funds transfer to the Treasury Department account at the Federal Reserve Bank of New York. The funds transfer message must include the following credit information:

United States Treasury, New York, New York, 021030004, TREAS NYC/ (20180006).

For credit to the Federal Financing Bank, Room 143, Liberty Center Building, 401 14th Street SW., Washington, DC 20227.

This information must be *exactly* in this form (including spacing between

words and numbers) to insure timely receipt by the FFB. Checks, drafts, and others for payment will not be accepted.

(c) *Changes in the Closing Date.* If a Borrower does not prepay the Total Permitted Prepayment Amount or the portion thereof which the Borrower has selected to prepay, on the mutually agreed upon Closing Date, the Borrower may prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, on a new Closing Date, provided that the new Closing Date is mutually agreeable to all interested parties, and provided, further, that the Borrower prepays such amount in accordance with the approved prepayment application, adjusted for changes in accrued interest.

Subpart D—Form of Private Loan

§ 25.400 Loan provisions.

(a) Subject to the provisions of paragraph (b) of this section, the principal and interest payment schedule and maturity of the Private Loan must be the same as the payment schedules and maturities of the Eligible FMS Loans or Eligible FMS Advances, as the case may be, which the Borrower has selected to prepay with the proceeds of the Private Loan.

(b) Notwithstanding the preceding paragraph, an Eligible Private Lender that proposes to make a Private Loan, the proceeds of which will be used to prepay Eligible FMS Loans or Eligible FMS Advances, as the case may be, having differing payment structures and maturities, may:

(1) Consolidate the differing payment structures of the Eligible FMS Loans or the Eligible FMS Advances, as the case may be, into a single payment structure which complies with the following criteria:

(i) The Private Loan shall have one set of semi-annual payment dates;

(ii) Interest on and principal of the Private Loan shall be payable semi-annually; and

(iii) The amount of principal to be paid each year on account of the Private Loan shall be equal (rounded to the nearest \$1,000.00 if desired, except for the final payment) to the aggregate amount of principal that is scheduled to be paid in such year on account of the respective Eligible FMS Loans or Eligible FMS Advances; or

(2) Consolidate the differing payment structures and maturities of the Eligible FMS Loans or the Eligible FMS Advances, as the case may be, into a single payment structure and maturity complying with the following criteria:

(i) The final maturity date of the Private Loan shall be the approximate weighted average of the final maturity dates of the Eligible FMS Loans or the Eligible FMS Advances with respect to which the Borrower has selected to prepay amounts thereof permitted by this part to be prepaid;

(ii) The initial principal payment date of the Private Loan shall occur no later than the earliest scheduled principal payment date of the Eligible FMS Loans or the Eligible FMS Advances with respect to which the Borrower has selected to prepay amounts thereof permitted by this part to be prepaid;

(iii) The Private Loan shall have one set of semi-annual payment dates;

(iv) Interest on the Private Loan shall be payable semi-annually; and

(v) The principal of the Private Loan shall be payable in equal installments (rounded to the nearest \$1,000.00 if desired, except for the final payment) and shall be payable either semi-annually or annually.

§ 25.401 Fees.

The interest rate on the Private Loan may include compensation for costs at prevailing market rates with the agreement of the Borrower and the Eligible Private Lender selected by the Borrower.

§ 25.402 Transferability.

Each Private Loan Note, with the Guaranty attached, shall be fully and freely transferable to any Permitted Guaranty Holder.

§ 25.403 Registration.

The Guaranty shall cease to be effective with respect to the Private Loan or any Private Loan Portion or any Derivative to the extent that the Private Loan or the respective Private Loan Portion or the respective Derivative, as the case may be, is used to provide significant support for a Non-Registered Obligation.

§ 25.404 Non-separability.

(a) The Guaranty shall cease to be effective with respect to any Guaranteed Loan Amount or any Guaranteed Loan Portion Amount or any Guaranteed Amount Equivalent to the extent that:

(1) The Guaranteed Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed Amount Equivalent, as the case may be, is separated at any time from the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent, as the case may be, in any way, directly or through the issuance of any Guaranteed Amount

Equity Derivative or any Guaranteed Amount Debt Derivative; or

(2) Any holder of the Private Loan Note or any Private Loan Portion Note or any Derivative, as the case may be, having a claim to payments on the Private Loan receives more than 90 percent of any payment due to such holder from payments made under the Guaranty at any time during the term of the Private Loan.

(b) Notwithstanding the preceding paragraph, if any Guaranteed Amount Debt Derivative is issued, the Guaranty shall not cease to be effective with respect to any Guaranteed Loan Amount or any Guaranteed Loan Portion Amount or any Guaranteed Amount Equivalent, as the case may be, if both of the circumstances described in paragraphs (b)(1) and (b)(2) of this section.

(1) A Borrower shall have delivered to the Secretary of the Treasury evidence, in form and substance satisfactory to the Secretary of the Treasury, that the Interest Rate Difference will be substantial.

(i) To be considered, the evidence must meet the following requirements:

(A) The Borrower must show that the Interest Rate Difference is directly attributable to paragraph (a) of this section being applied to the Private Loan, that is, that the Interest Rate Difference will exist even when all other financing terms of the Private Loan, including any collateralization of the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent, as the case may be, are identical;

(B) When calculating the Interest Rate Difference, the Borrower must assume that the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent, as the case may be, will be collateralized by securities backed by the full faith and credit of the United States, unless the Borrower is legally prohibited from so collateralizing the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent, as the case may be, or the Borrower has demonstrated to the satisfaction of the Secretary of the Treasury that the Borrower is unable to so collateralize the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent;

(C) If the Borrower is legally prohibited from collateralizing the Unguaranteed Loan Amount or the respective Loan Guaranteed Portion

Amount or the respective Unguaranteed Amount Equivalent, as the case may be, with securities backed by the full faith and credit of the United States or has demonstrated to the satisfaction of the Secretary of the Treasury that the Borrower is unable to so collateralize the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent, as the case may be, then the Borrower may calculate the Interest Rate Difference using whatever collateralization assumptions the Borrower elects;

(D) If the Borrower delivers evidence to the Secretary of the Treasury respecting the Interest Rate Difference, which evidence assumes either that the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent, as the case may be, will not be collateralized at all or that the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent, as the case may be, will be collateralized, but not by securities backed by the full faith and credit of the United States, then the Borrower must also deliver to the Secretary of the Treasury the written agreement of the Borrower, which agreement shall be in form and substance satisfactory to the Secretary of the Treasury, that the Borrower will not collateralize the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed Amount Equivalent, as the case may be, at any time during the term of the Private Loan in any way different from the assumptions used in calculating the Interest Rate Difference; and

(E) The Borrower must deliver to the Secretary of the Treasury the evidence pertaining to the Interest Rate Difference at the time that the Borrower submits to DSAA its plan for prepayment, if any, if no plan of prepayment is submitted, then no later than 10 days prior to the time that the Borrower submits to DSAA its prepayment application.

(ii) If the Secretary of the Treasury determines that the evidence submitted by the Borrower pertaining to the Interest Rate Difference is satisfactory in form and in substance, and that the Interest Rate Difference is substantial, a modified version of the Guaranty (deleting therefrom the provision that the Guaranty shall cease to be effective if any Guaranteed Amount Debt Derivative is issued) will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be.

(2) The Secretary of the Treasury shall have determined, in the sole discretion of the Secretary of the Treasury, that the respective Borrower's loan prepayment at par pursuant to subsection (a) of the Act through the issuance of any Guaranteed Amount Debt Derivative is necessary to achieve the international economic policy interests of the United States.

§ 25.405 Form of guaranty.

(a) The Guaranty that will be attached to the Private Loan Note on the Closing Date shall be in the following form (except that the bracketed words shall be deleted if the conditions specified in § 25.404(b) shall have occurred):

For Value Received, the Defense Security Assistance Agency of the Department of Defense ("DSAA"), hereby guarantees to (Name of Lender) ("Lender"), incorporated under the laws of (U.S. State or other U.S. jurisdiction) or if not so incorporated or organized, then the principal place of doing business is (U.S. location, address, and zip code), under the authority of Section 24 of the Arms Export Control Act, as amended ("Act"), the due and punctual payment of ninety percent (90%) of amounts due: (1) on the promissory note ("Note") in the principal amount of up to \$— dated — issued to the Lender by the Government of (Name of Borrower) ("Borrower") pursuant to the Loan Agreement between the Lender and the Borrower dated the —th day of — ("Agreement"); and (2) the Lender from the Borrower pursuant to the Agreement.

This Guaranty is a guaranty of payment covering all political and credit risks of nonpayment, including any nonpayment arising out of any claim which the Borrower may now or hereafter have against any person, corporation, or other entity (including without limitation, the United States, the Lender, and any supplier of defense items) in connection with any transaction, for any reason whatsoever. This Guaranty shall inure to the benefit of and shall be enforceable by the Lender and any Permitted Guaranty Holder (as hereinafter defined). This Guaranty shall not be impaired by any law, regulation or decree of the Borrower now or hereafter in effect which might in any manner change any of the terms of the Note or Agreement. The obligation of DSAA hereunder shall be binding irrespective of the irregularity, invalidity or unenforceability under any laws, regulations or decrees of the Borrower of the Note, the Agreement or other instruments related thereto.

DSAA hereby waives diligence, demand, protest, presentment and any requirement that the Lender exhaust any right or power to take any action against the Borrower and any notice of any kind whatsoever other than the demand for payment required to be given to DSAA hereunder in the event of default on a payment due under the Note.

In the event of failure of the Borrower to make payment, when and as due, of any installment of principal or interest under the Note, the DSAA shall make payment

Immediately to the Lender upon demand to the DSAA after the Borrower's failure to pay has continued for 10 calendar days. The amount payable under this Guaranty shall be ninety percent (90%) of the amount of the overdue installment of principal and interest, plus ninety percent (90%) of any and all late charges and interest thereon as provided in the Agreement. Upon payment by DSAA to the Lender, the Lender will assign to DSAA, without recourse or warranty, ninety percent (90%) of all of its rights in the Note and the Agreement with respect to such payment.

In the event of a default under the Agreement or the Note by the Borrower and so long as this Guaranty is in effect and the DSAA is not in default hereunder:

(i) The Lender or other Permitted Guaranty Holder shall not accelerate or reschedule payment of the principal or interest on the Note or any other note of the Borrower guaranteed by DSAA except with the written approval of DSAA; and

(ii) The Lender or other Permitted Guaranty Holder shall, if so directed by DSAA, invoke the default provisions of the Agreement.

Subject to the limitations set forth below, the Lender's rights under this Guaranty may be assigned to any "Permitted Guaranty Holder," that is: (1) An individual domiciled in the United States; (2) a corporation incorporated, chartered or otherwise organized in the United States; or (3) a partnership or other juridical entity doing business in the United States. In the event of such assignment DSAA shall be promptly notified. The Lender will not agree to any material amendment of the Agreement or Note or consent to any material deviation from the provisions thereof without the prior written consent of DSAA.

Permitted Guaranty Holders shall be severally bound by, and shall be severally entitled to, the rights and obligations of the Lender under the Note, the Agreement, and this Guaranty. The Lender shall maintain a current, accurate written record of the names, addresses, amount of financial interest in the Note and Agreement, and date of acquisition of such interest of each Permitted Guaranty Holder and shall furnish DSAA a copy of such record on its demand without charge. No assignment by the Lender or by any Permitted Guaranty Holder shall be effective for purposes of this Guaranty unless and until so recorded by the Lender.

The total amount of this Guaranty shall not at any time exceed ninety percent (90%) of the outstanding principal, unpaid accrued interest and arrearages, if any, under the Agreement and the Note, including any portion of the Note, or any derivative of the Note or any portion of the Note.

This Guaranty shall cease to be effective with respect to the guaranteed amount of the total amount of the Note (the "Guaranteed Loan Amount") or with respect to the guaranteed amount of any portion of the Note (the "Guaranteed Loan Portion Amount") for

with respect to the amount of any derivative or derivatives of the Note or any portion of the Note equal, or in the aggregate equal, in principal amount to the total amount of the Note or such portion of the Note, as the case may be, which amount of such derivative or derivatives is equal to the respective Guaranteed Loan Amount or Guaranteed Loan Portion Amount, as the case may be (the "Guaranteed-Amount Equivalent") to the extent that (1) the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount for the respective Guaranteed-Amount Equivalent, as the case may be, is at any time separated from the unguaranteed amount of the total amount of the Note or the unguaranteed amount of the respective portion of the Note for the amount of such derivative or derivatives of the Note which is not the amount which is equal to the Guaranteed Loan Amount or Guaranteed Loan Portion Amount, as the case may be, in any way, (a) directly, or (b) through the issuance of participation shares of, or undivided ownership or other equity interests in, the Note, or any portion of the Note, or any derivative of the Note or any portion of the Note, which have an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount for the respective Guaranteed-Amount Equivalent, as the case may be; or (c) through the issuance of notes, bonds or other debt instruments or obligations which are collateralized or otherwise secured by a pledge of, or security interest in, the Note, or any portion of the Note or any derivative of the Note or any portion of the Note, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be; or (2) any holder of the Note, or any portion of the Note, or any derivative of the Note or any portion of the Note, as the case may be, having claim to payment made on the Note, receives more than ninety percent of any payment due to such holder from payments made under this Guaranty at any time during the term of the Note or the Agreement.

This Guaranty is fully and freely transferable to any Permitted Guaranty Holder, except that it shall cease to be effective with respect to the Agreement or the Note, or any portion of the Note, or any derivative of the Note or any portion of the Note, to the extent that the Agreement or the Note, or the respective portion of the Note, or the respective derivative of the Note or any portion of the Note, as the case may be, is used to provide significant support for any non-registered obligation.

The full faith and credit of the United States is pledged to the performance of this Guaranty. No claim which the United States may now or hereafter have against the Lender or any Permitted Guaranty Holder for

any reason whatsoever shall affect in any way the right of the Lender or any Permitted Guaranty Holder to receive full and prompt payment of any amount otherwise due under this Guaranty. The United States represents and warrants that (a) it has full power, authority and legal right to execute, deliver and perform this Guaranty, (b) this Guaranty has been executed in accordance with and pursuant to the terms and provisions of section 24 of the Act, the provisions of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, under the hearing "Foreign Military Sales Debt Reform," and Title 31, Part 25, of the Code of Federal Regulations, (c) this Guaranty has been duly executed and delivered by a duly authorized representative of DSAA, and (d) this Guaranty constitutes the valid and legally binding obligations of the United States, enforceable in accordance with the terms hereof.

Any notice, demand, or other communication hereunder shall be deemed to have been given if in writing and actually delivered to the Comptroller, DSAA, the Pentagon, Washington, DC 20301-2800, or the successor, or such other place as may be designated in writing by the Comptroller, DSAA or the successor thereof.

By acceptance of the Note, the Lender agrees to the terms and conditions of this Guaranty.

Dated: _____

By: _____

Director, DSAA.

(b) The obligations of DSAA under the Guaranty are expressly limited to those obligations contained in the form of Guaranty set forth in paragraph (a) of this section. Any provisions of any agreement relating to the Private Loan purporting to create obligations on the part of DSAA which are inconsistent with the terms of the Guaranty or any other provision of this part be unenforceable against DSAA.

§ 25.406 Savings clause.

Nothing in this rule is intended to authorize any person or entity to engage in any activity not otherwise authorized or permitted for such person or entity under any applicable laws of the United States, any territory or possession of the United States, any State, or the District of Columbia.

Date: June 29, 1988.

M. Peter McPherson,

Deputy Secretary.

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Wednesday
July 6, 1988

Part VI

Department of Housing and Urban Development

24 CFR Parts 200, 203, and 234

Requirements for Single Family Mortgage
Instruments; Notice of Proposed Policy

BEST COPY AVAILABLE

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

24 CFR Parts 200, 203, and 234

(Docket No. H-88-1782; FR-2424)

Requirements for Single Family
Mortgage InstrumentsAGENCY: Office of Housing, HUD.
ACTION: Notice of proposed policy.

SUMMARY: This Notice proposes a new approach for creating mortgage instruments for HUD single family mortgage insurance programs. HUD would no longer print or distribute single family mortgage forms and would not approve the text of a complete form for each State. Mortgagees would be responsible for developing or procuring their own instruments with certain provisions required by HUD, additional optional provisions permitted by HUD, and any additional provisions needed to produce a legally enforceable instrument conforming to the law of the State in which the property is located.

DATE: Comments due September 8, 1988.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Deputy Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9286, 451 7th Street SW., Washington, DC 20410, telephone No. (202) 755-3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:**Background**

The current HUD/FHA regulations require an insured single family mortgage to be on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated. (The term "mortgage" is used in this notice to include all common forms of security interests in real property, including deeds of trust, and related credit instruments or notes.) The regulatory requirement dates from the 1930's when the FHA was in the forefront of developing modern residential lending practices. The FHA developed mortgage and note forms for

each State which ensured that mortgagees would use instruments compatible with program requirements and good mortgage lending practices. The forms also reflected local law and practice, and there was some uniformity among the forms. The FHA mortgage and note forms have been produced and distributed up to the present at no cost to the mortgagees.

Later, the Veterans Administration (VA) developed its separate note and mortgage forms for use with VA programs. Use of approved forms was optional. VA made the forms available to its program participants. Recently, the VA concluded that it was no longer necessary for that agency to provide mortgage forms for each jurisdiction. VA regulations specify certain required and prohibited mortgage provisions. The VA regulations also provide that mortgage instruments for any VA guaranteed or insured mortgage are "amended and supplemented" to conform to the regulations.

In the early 1970's, the Federal National Mortgage Association/Federal Home Loan Mortgage Corporation (FNMA/FHLMC) forms were developed for use with those entities' programs. The FNMA/FHLMC forms consist in large part of "uniform covenants," which reflect the increasingly national nature of mortgage lending, together with "non-uniform covenants" reflecting the law and practice in a particular State. The forms carry out specific policies of those organizations on such matters as due-on-sale clauses, but they generally represent a consensus of views on the kind of provisions to be included in a modern well-drafted mortgage. There are strong similarities in approach between the FNMA/FHLMC "uniform covenants" and most of the corresponding provisions in a representative FHA mortgage. The FNMA/FHLMC documents indicate the feasibility of uniform language for most common mortgage provisions. While FNMA/FHLMC prescribe the specific language and format for documents, they do not distribute documents free of charge but rely on the mortgage lending community to arrange for actual production of the documents.

HUD has examined the approaches of FNMA/FHLMC and VA and has found merit in portions of their approaches. None of these organizations find it necessary to control the printing and distribution of mortgage instruments. HUD has also permitted mortgagees and forms companies to engage in private printing and distribution of approved mortgage forms, although many mortgagees have preferred to obtain the forms from HUD free of charge. After

careful study, HUD was attracted to the concept of a uniform approach for provisions which need not vary by locality. In addition, HUD was attracted to the approach of having all mortgagees arrange for printing of their own forms.

Proposed Requirements

HUD is proposing a new approach for its single family mortgage insurance programs. Under HUD's new approach, the Department would not print or distribute mortgage forms and would not approve the text of a complete mortgage or note form for each jurisdiction. Instead, HUD would require each mortgagee to develop its own instruments or obtain them from some other source. The instruments would have to include HUD-approved uniform language which reflects current HUD policies. The language in the new requirements is primarily adapted from existing mortgage forms approved by HUD or FNMA/FHLMC. Because there is significant variation among current HUD-approved forms, use of uniform language necessarily would result in some language change from the current HUD mortgage in each jurisdiction, although there would generally be little substantive change to the major provisions. The new requirements would not supersede HUD regulations.

Additional mandatory provisions would vary among states. HUD would identify certain additional provisions, taken from the FNMA/FHLMC forms, which could be used at the mortgagee's option. Mortgagees would also have to include any additional provisions needed to produce a legally enforceable instrument conforming to the law of the state in which the property is located. HUD field offices would have authority to impose additional requirements for consistency with their state's laws and would advise mortgagees, by Circular Letter, of any such requirements.

The details of the proposed new requirements are contained in the Appendix to this Notice. The Appendix consists of four parts. Parts I (General Instructions), II (Mortgage Provisions) and III (Note Provisions) are generally applicable. Part IV (Other Requirements) addresses special situations such as non-fixed payment mortgages, condominiums, bond-funded mortgages or requirements for particular localities or programs.

Major Changes from Current Approved Forms

This section describes some of the differences between mortgages and notes that would meet the requirements of the Appendix and current approved

mortgage and note forms. Commenters interested in making a detailed comparison between Appendix requirements and a particular current approved form may obtain a copy of the current form from the appropriate HUD field office.

1. *General.* Many nonsubstantive changes in wording from current HUD forms would be made to eliminate archaic or redundant language and to otherwise improve clarity. In some cases required language has been taken from FNMA/FHLMC forms instead of HUD forms.

2. *Terminology.* The uniform mortgage and note provisions use uniform terminology for the parties to the loan transaction ("lender" and "borrower" instead of such terms as "mortgagee," "mortgagor," "beneficiary," "grantee," "grantor," "holder," and "trustor"). They also use "security instrument" as a uniform term for the mortgage, deed of trust, security deed or any other security instrument. This is consistent with the FNMA/FHLMC mortgages and is necessary for uniformity.

3. *Note changes.* The uniform note provisions cover prepayment rights and late charges. Current HUD forms cover these items in the mortgage rather than the note. Placement in the note is reasonable and consistent with the FNMA/FHLMC forms since these items relate to the debt rather than the security. The note provisions which would be changed by the proposed requirements are mainly a matter of revised format and organization. Also, HUD is considering changing the late charge provision to be consistent with current industry practice. At such time as HUD decides to adopt a change, notice will be published in the Federal Register.

4. *Mortgage insurance premium.* Uniform mortgage provision 2 permits use of the same form whether the MIP is collected in a lump sum or through periodic payments. Current HUD practice requires use of different forms for the different MIP collection methods.

5. *Personal property (chattels).* The proposed requirements adopt the FNMA/FHLMC approach towards including tangible personal property as part of the security. Only property which would be a fixture under applicable law is included. Current HUD forms are inconsistent on this point and many have "chattel clauses" which include extensive lists of equipment and other personal property which might not be fixtures.

6. *Uninsured mortgage.* The proposed requirements omit one provision which appears in all current HUD-approved mortgages. The provision permits

acceleration if the mortgage is not insured within a certain period (generally the period is a blank to be filled in by the mortgagee). This provision has not been used by mortgagees and is obsolete. Historically, the provision served a purpose when national banking associations were restricted as to the amount of uninsured real estate loans they could make in relation to their capital and surplus. There is no longer such a restriction either for national banks or for federal savings banks.

7. *Sale to person without approved credit.* The proposed requirements include, in the body of the mortgage, a due-on-sale clause designed to restrict sales to persons without approved credit. None of the current approved forms contain a due-on-sale clause, but all mortgagees were required by Mortgagee Letter 86-15 to add the clause to the forms. The language of the required due-on-sale clause was modified by Mortgagee Letter 88-2 to comply with section 407 of the Housing and Community Development Act of 1987. The language required by Mortgagee Letter 88-2 is modified slightly by the proposed requirements.

8. *Limitation on acceleration and foreclosure.* Uniform mortgage provision 9 contains an incorporation by reference of the regulations that will usually restrict a mortgagee's ability to accelerate and foreclose immediately upon default by the mortgagor. The regulations would restrict a mortgagee regardless of the mortgage language, but HUD believes that the regulation represent a major policy of the insurance programs and, therefore, should be incorporated.

9. *Mortgagee advances and foreclosure costs.* Mortgagees would be allowed to demand immediate repayment, with interest at the note rate until repayment, of mortgagee advances and reasonable and customary foreclosure costs. Current HUD forms are inconsistent in this area; while most clearly permit such items to be added to the secured debt, many do not address the questions of interest and timing of repayment. Some current forms contain specific limitations on fees and costs in the event of foreclosure. We have concluded that it is not feasible to set uniform limitations, and the proposed requirements permit the mortgage to provide for "reasonable and customary" attorney's and trustee's fees. HUD may set standards for maximum fees.

10. *Mortgagee in possession and assignment of rents.* Instead of the widely varying language now appearing in HUD forms, a uniform approach taken

from the FNMA/FHLMC forms would be required.

11. *New provisions for mortgagor's information.* The uniform mortgage provisions include two items not in any current HUD form in order to better inform mortgagors. The borrower's right to reinstatement as provided in 24 CFR 203.606 is repeated in the mortgage. The borrower is given an express right to receive a copy of the note and mortgage, as in the FNMA/FHLMC forms.

As indicated in the preceding discussion, there is a large amount of consistency between the proposed HUD requirements and FNMA/FHLMC forms. HUD has attempted to minimize differences where not required by established HUD policy. Nevertheless, sufficient differences exist to preclude use of a FNMA/FHLMC form with a short, simple rider containing HUD requirements. Of the 18 uniform covenants which make up pages 2 and 3 of the FNMA/FHLMC mortgage forms, only 4 could be used without any change. Several uniform covenants are not suitable at all for HUD policy reasons, and the remaining ones would need such substantial adaptation that 10 HUD uniform covenants covering some of the same ground are proposed instead.

On the other hand, the proposed HUD requirements are intended to be compatible with pages 1 and 4 of the FNMA/FHLMC forms, with minor changes such as addition of the FHA case number on page 1 and renumbering of paragraphs on page 4. Lenders could choose to comply with HUD requirements by starting with the relevant FNMA/FHLMC form, making extensive amendment of pages 2 and 3 through a rider, and making any other changes the lender might find necessary to conform to requirements of State law. This approach has some clear disadvantages over production of a completely new form, particularly extra recording costs for the rider, and impairment of readability for the typical borrower, and therefore HUD will permit, but not mandate, this approach.

Other Information

Each single family mortgage submitted for insurance would have to be in a form meeting the requirements in the Appendix unless the mortgage was executed within three months after the effective date of a final Notice. During the interim three month period, a mortgagee would be permitted to use either the existing HUD-approved forms or its own instruments meeting the requirements in the Appendix. Upon implementation of the new

requirements, HUD will identify one or more HUD offices which will be available to clarify or aid in interpretation of the requirements. HUD field offices will not be authorized to approve instruments used by mortgagees or to change provisions in the instruments. Therefore, mortgagees should not seek advance approval either at Headquarters or in the field offices before submitting executed mortgages to be insured.

Mortgagees must certify that each insured mortgage complies with HUD requirements, whether the mortgagee develops its own instruments or obtains them from some other source. This policy is set forth for direct endorsement cases in 24 CFR 200.163(c) and for prior approval cases in Mortgagee Letter 87-12. Violation of the HUD requirements may result in withdrawal of approval to participate in the Direct Endorsement Program pursuant to 24 CFR 200.164(h) or administrative action by the Mortgagee Review Board pursuant to 24 CFR 25.9(j). Also, since section 203(e) of the National Housing Act (12 U.S.C. 1708(e)) does not prevent the Department from contesting the validity of a contract of insurance in the event of misrepresentation on the part of a mortgagee, a mortgagee which falsely certifies that a mortgage meets HUD requirements may have an insurance claim denied.

The Department would not expect to consider requests for any variation from the mandatory uniform language in the absence of convincing evidence that the required language prevents a mortgagor or mortgagee from complying with applicable state law. In its approved forms HUD has not ordinarily prevented compliance with matters of state law or practice which were not in conflict with regulations or basic objectives of the insurance programs and the proposed requirements are intended to continue that approach. We recognize that state law may impose requirements upon a mortgagor or mortgagee beyond those stated in the uniform language, but the Department is not aware of any incompatibility between its proposed mandatory uniform language and state requirements which would prevent compliance with the latter. We welcome comments on any such incompatibility.

If the Department decides to adopt the proposed policy described in this Notice and the Appendix, after consideration of public comments, a final Notice will be published together with a final rule making necessary changes to 24 CFR 203.17 and other similar single family regulations. Those regulations would be reworded to clarify that compliance

with HUD mortgage instrument requirements, rather than use of HUD-approved forms, would be mandatory since HUD would no longer approve actual forms.

This Notice is exempt from the requirements of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: June 7, 1988.
James E. Schoenberger,
General Deputy Assistant Secretary for
Housing-Federal Housing Commissioner.

APPENDIX—Requirements for Single Family Mortgage Instruments

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Part I—General Instructions

A. The term "mortgage" as used below includes any form of security instrument commonly used in a jurisdiction in connection with loans secured by a one- to four-family residential property. The term "note" as used below includes any form of credit instrument commonly used in a jurisdiction to evidence such loans.

B. HUD will not provide mortgage and note forms for use with its single family mortgage insurance programs. A mortgagee must develop or procure mortgage and note forms which comply in form and substance with both these requirements and all applicable state and local requirements for a recordable

and enforceable mortgage and an enforceable note, which must be a negotiable instrument. The mortgage and note must be separate documents.

C. A mortgage must include verbatim in each mortgage and note the uniform provisions which are designated as mandatory and are set forth, respectively, in Parts II. B. and III. of this Appendix. Any acceleration and foreclosure by the mortgagee can be based only on breach of these uniform provisions, subject to certain exceptions specifically provided for in these requirements.

D. Parts II. A., II. C. and III. describe additional provisions that must be included in the mortgage or note with some permitted variation in language as well as optional provisions that may be included at the discretion of the mortgagee. No other provisions may be included that affect the rights or obligations of mortgagors except for provisions needed to comply with requirements of state and local law. In particular, the mortgage and note must not contain any provisions that restrict the transferability of the property or that alter the obligations of a mortgagor if the property is transferred, except as provided in Part II. B., Paragraph 9 or in Part IV. A., Paragraph 8 of these requirements. The mortgage or note must not include any requirements not required by HUD that operate to impose any obligation on a successor or assign of the mortgage, unless HUD has expressly agreed thereto. Additional provisions shall conform in style to these requirements and shall not be in substantive conflict with these requirements.

E. Provisions which appear in the note may also appear in the mortgage.

F. A mortgage or note may include the mortgagee's business name and/or logotype on the top of the form. Forms must be printed on 8½" x 11" letter-size paper, unless state law requires legal size. Pages should be numbered to reflect the total number of pages in the document, such as: Page 1 of 2, Page 2 of 2. Although layout and format are within the discretion of mortgagees, size and style of typeface or print should be similar to the FNMA/FHLMC mortgages and notes.

G. These requirements do not supersede HUD regulations. They are intended to supersede anything contained in HUD administrative issuances, such as Handbooks, Notices or Mortgage Letters, that prescribes the form and content of a mortgage or note and conflicts directly with these requirements.

H. Some of the mortgage or note language required or permitted by these requirements may result in a mortgagor granting broad rights to a mortgagee while the exercise of those rights is limited by HUD regulations or administrative issuances. These requirements do not supersede any such limitations on mortgagees, and a mortgagee's rights under the mortgage and note may be exercised only in a manner consistent with all relevant HUD requirements. For example, notwithstanding language which might appear in the mortgage, a mortgagee's right to foreclose may be limited by 24 CFR 203.550(d), 203.554(a), 203.606(a), or 203.650(a), and its ability to collect fees and charges will be limited by 24 CFR 203.552.

I. HUD field offices have authority to impose additional requirements regarding mortgage and note provisions, for consistency with state laws appropriate to their jurisdictions, and to advise mortgagees, through a Circular Letter, of any such requirements.

Part II—Mortgage Provisions

A. Introductory Mortgage Provisions

The general form for the part of a mortgage preceding the numbered paragraphs is set forth below. Mortgagees must follow this form with such adaptation as may be necessary to conform to state or local requirements.

1. On the first page, the name of the state shall appear in the upper left corner, the appropriate title (mortgage, deed of trust, etc.) shall appear in boldface type and be centered at the top, and the FHA case number shall appear in the upper right corner.

2. The first paragraph of the mortgage shall contain:

- a. The date, which shall be the same as the date on the note;
- b. An identification of the parties which clearly indicates which parties will be referred to as "Lender" and "Borrower" in the rest of the text;
- c. An indication that the instrument will be referred to as "Security Instrument" in the rest of the text;
- d. A reference to the note which clearly indicates the meaning of "Note" as used in the rest of the text. The date, maturity date and principal amount of the note must be stated;
- e. A "granting" clause conforming to local usage; and
- f. A statement that the mortgage is an Adjustable Rate Mortgage (ARM), Graduated Payment Mortgage (GPM) or Growing Equity Mortgage (GEM), if applicable.

The first paragraph of the FNMA/FHLMC mortgage for the appropriate

jurisdiction may be used to comply with items 2.a.-e.

3. The second paragraph of the mortgage shall contain a description of property covered by the mortgage.

a. The description of a property must include a legal description (for example, by block and lot number or by metes and bounds) taken from the deed, and street address, if any.

b. The description of the property must indicate if the mortgagor's interest in the property, in whole or in part, consists of a leasehold estate instead of a fee simple estate, and the lease must be identified. With regard to a condominium property, the mortgagor's undivided interest in the common elements must be identified.

c. The property description shall end with the following paragraph:

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

d. If a habendum clause is used for mortgages in the jurisdiction, the phrase "together with" in the preceding paragraph shall be preceded by the following: "To have and to hold this property unto Lender and Lender's successors and assigns, Forever."

4. After the property description the mortgage shall state:

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will generally defend the title to the Property against all claims and demands, subject to any encumbrances of record.

B. Uniform Mortgage Provisions

The mortgage must also contain the following uniform Paragraphs 1-10, excluding explanatory material in brackets:

1. *Payment of Principal, Interest and Late Charge.* Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. *Monthly Payments of Taxes, Insurance Premiums and Other Charges.* Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, an installment of any (a) taxes and special assessments levied or

to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required by Paragraph 4.

Each monthly installment for items (a), (b) and (c) shall equal one-twelfth of the annual amounts, as reasonably estimated by Lender, plus an amount sufficient to maintain an additional balance of not more than one-sixth of the estimated amounts. The full annual amount for each item shall be accumulated by Lender within a period ending one month before an item would become delinquent. Lender shall hold the amounts collected in trust to pay items (a), (b) and (c) before they become delinquent.

If the total of the payments made by Borrower for item (a), (b) or (c) exceeds the amount of payments actually made by Lender for item (a), (b) or (c), respectively, and if payments on the Note are current, then Lender shall either refund the excess to Borrower or credit the excess to subsequent payments by Borrower, at the option of Borrower. If the total of the payments made by Borrower for item (a), (b) or (c) is insufficient to pay the item when due, then Borrower shall pay to Lender any amount necessary to make up the deficiency on or before the date the item becomes due.

As used in this Security Instrument, "Secretary" means the Secretary of Housing and Urban Development or his or her designee. Most Security Instruments insured by the Secretary are insured under programs which require advance payment of the entire mortgage insurance premium. If this Security Instrument is or was insured under a program which did not require advance payment of the entire mortgage insurance premium, then each monthly payment shall also include either: (i) An installment of the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary. Each monthly installment of the mortgage insurance premium shall be in an amount sufficient to accumulate the full annual mortgage insurance premium with Lender one month prior to the date the full annual mortgage insurance premium is due to the Secretary, or if this Security Instrument is held by the Secretary, each monthly charge shall be in an amount equal to one-twelfth of one-half percent of the outstanding principal balance due on the Note.

If Borrower tenders to Lender the full payment of all sums secured by this Security Instrument, Borrower's account

shall be credited with any balance remaining for all installments for items (a), (b) and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b) and (c).

3. *Application of Payments.* All payments under Paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium, unless Borrower paid the entire mortgage insurance premium when this Security Instrument was signed;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note;

Fifth, to late charges due under the Note.

4. *Fire, Flood and Other Hazard Insurance.* Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by flood to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in Paragraph 3, and then to prepayment of principal, or (b) to the

restoration or repair of the property damaged. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in Paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to any insurance policies in force shall pass to the purchaser.

5. *Preservation and Maintenance of the Property.* Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender shall inspect Property if the Property is vacant or abandoned and the loan is in default. Lender shall take reasonable action to protect and preserve such vacant or abandoned Property if such action does not constitute an illegal trespass.

6. *Charges to Borrower and Protection of Lender's Rights in the Property.* Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in the monthly payments as set forth in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by Paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note

rate, and at the option of Lender, shall be immediately due and payable.

7. *Condemnation.* The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in Paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in Paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

8. *Borrower's Copy.* Borrower shall be given one conformed copy of the Note and this Security Instrument.

9. *Grounds for Acceleration of Debt.*

a. *Default.* Lender may, except as limited by regulations issued by the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligation contained in Paragraphs 1 through 7 of this Security Instrument.

b. *Sale Without Credit Approval.* Lender shall, with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or a part of the Property is sold or otherwise transferred (other than by devise, descent or operation of law) by the Borrower,

(ii) The sale or other transfer is pursuant to a contract of sale (or by deed, if there is no contract of sale), executed not later than 12 months (24 months if the Property is not the principal or secondary residence of the Borrower) after the date on which this Security Instrument is endorsed for insurance by the Secretary, and

(iii) The credit of the purchaser or grantee has not been approved in accordance with the requirements of the Secretary.

c. *No Waiver.* If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payment, Lender does not waive its rights with respect to subsequent events.

d. *Regulations of HUD Secretary.* In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure when not permitted by HUD regulations.

10. *Reinstatement.* Borrower has a right to reinstatement if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender to Lender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the mortgage lien.

C. Mortgage Provisions Following Uniform Provisions

1. Because of great variation among state legal requirements and practices, the uniform mortgage provisions do not cover post-default rights or obligations of the mortgagee other than the right to demand immediate full payment of the debt (acceleration), the right to inspect and preserve the property, and the obligation to permit reinstatement by the mortgagor. At a minimum, each mortgage shall set forth a paragraph numbered 11, titled "Foreclosure Procedure," which includes the mortgagee's right to a public sale of the property free and clear of the mortgage, including a power of sale if permissible under applicable state law. A provision should be used that is substantially the

same as Paragraph 19 of the "non-uniform covenants" in the current approved FNMA/FHLMC mortgage form for the appropriate jurisdiction, to the extent consistent with HUD requirements. The mortgage should also preserve all rights to a deficiency judgment to the extent permitted by applicable state law. See Part IV. B., Paragraph 3 for reference to foreclosure procedures in Guam, the Virgin Islands and Puerto Rico. Refer to Paragraph 5 for requirements concerning deficiency judgments in specific states.

2. The mortgage shall set forth a paragraph numbered Paragraph 12, titled "Lender in Possession," which authorizes the mortgagee, upon acceleration of the mortgage or abandonment of the property, to take possession of the property and to receive an assignment of rents and security deposits, if any, and to collect such rents and security deposits. If state law prohibits a mortgagee from exercising these rights directly, the mortgage must provide for exercise of these rights through a receiver. A provision substantially the same as Paragraph 20 of the "non-uniform covenants" in the current approved FNMA/FHLMC mortgage form for the appropriate jurisdiction should be used.

3. The uniform provisions omit common "boilerplate" provisions designed to aid interpretation or clarify rights of each party, on subjects such as the manner of giving notice, interpretation of number and gender references, governing law, joint and several liability of successors and assigns, etc. The lender should include such provisions following Paragraph 12, and should use language substantially the same as Paragraphs 10, 11, 14 and 15 of the "uniform covenants" in the current approved FNMA/FHLMC mortgage forms. See Part IV. B., Paragraph 3 for additional language for Guam, the Virgin Islands and Puerto Rico.

4. The mortgage must identify any riders or other attachments to the mortgage.

5. To the full extent permitted by state law, the mortgage must include all waivers that are set forth in the paragraph titled "waivers" in the "non-uniform covenants" of the current approved FNMA/FHLMC mortgage form for the appropriate jurisdiction.

6. The mortgage may contain a provision to require the mortgagor, in the event of foreclosure, to pay costs and reasonable and customary attorney's fees and trustee's fees. Such fees and costs shall bear interest from the date of disbursement, at the note

rate and, at the option of Lender, shall be immediately due and payable.

7. Each security deed or deed of trust granted to a trustee must provide for appointment of a substitute trustee, except in Colorado.

8. A mortgagee may include language substantially the same as other paragraphs from the "non-uniform covenants" of the current approved FNMA/FHLMC mortgage form for the appropriate jurisdiction to the extent that it is not in conflict with these requirements.

Part III—Note Provisions

The title "Note" shall be in boldface type and be centered at the top of the first page. The FHA case number and date (which shall be the same as the date on the mortgage) shall appear in the upper right corner. The name of the state shall appear in the upper left corner. The address or other property description shall be included at the top of the note, under the title, FHA number and state. In addition, the note must contain the following uniform Paragraphs 1-7, excluding explanatory material in brackets, and may include Paragraphs 8 and 9.

1. *Parties.* Borrower means each person signing at the end of this Note, and the person's successors and assigns. Lender means _____ and its successors and assigns.

2. *Borrower's Promise to Pay: Interest.* In return for a loan received from Lender, Borrower promises to pay the principal sum of _____ Dollars (\$____), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of _____ per cent (____%) per year until the full amount of principal has been paid.

3. *Promise to Pay Secured.* Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." That Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. Manner of Payment.

a. *Time.* Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on _____, 19____. Any principal or interest remaining unpaid on the first day of _____, 20____, will be due on that date, which is called the maturity date.

b. *Place.* Payments shall be made at _____ or at such other place as Lender may designate in writing.

c. *Amount.* Each monthly payment of principal and interest will be in the amount of \$ _____. This amount will be part of a larger monthly payment, required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

d. *Special features.* As explained in Part IV. A. of these requirements, the special features of adjustable rate, graduated payment or growing equity loans must be explained in an additional Subparagraph 4.d. which may be printed in the body of the note or incorporated by an addendum.]

5. *Borrower's Right to Prepay.*

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month.

6. *Borrower's Failure to Pay.*

a. *Late Charge for Overdue Payments.*

If Lender has not received the full monthly installment of principal and interest by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of _____ per cent (____%) of the overdue amount of each payment. [An amount not exceeding four per cent (4%) shall be inserted by the mortgagee.]

b. *Default.* If Borrower defaults by failing to pay in full any monthly payment required by this Note prior to or on the due date of the next monthly payment, then Lender may, except as limited by regulations of the Secretary, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

c. *Payment of Costs and Expenses.* If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and reasonable and customary attorney's fees for enforcing this Note. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. *Waivers.* Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other

persons that amounts due have not been paid.

[Additional language, which may be included as paragraphs 8 and 9, is as follows:

8. *Giving of Notices.* Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by mailing it by first class mail to Lender at the address stated in Paragraph 4.b. above or at a different address if Borrower is given a notice of that different address.

9. *Obligations of Persons under this Note.*

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

The following must appear at the end of the Note:

By SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

Borrower _____ (Seal)

Borrower _____ (Seal)

[Lenders must also include any required or customary form of authentication.]

Part IV—Other Requirements

A. *Special Situations*

As special situations arise, additional language may be required for a mortgage and/or note. Mandatory requirements to be followed in special situations are set forth in this Part. Whenever additional language is to be added to required uniform mortgage or note provisions, the addition may be printed or typed in the body of the instrument or incorporated through use of a rider, addendum or similar document.

1. *Adjustable Rate Mortgage (ARM).* These instructions supersede the instructions in Attachment I to Mortgage Letter 84-16.

a. Subparagraph 4.d. of the note shall be titled "Adjustable Rate." The text of the paragraph shall consist of Paragraphs 1-5 from the "Adjustable Rate Allonge Amending Note" in Attachment I (as amended by the Addendum to Mortgage Letter 84-16), with the following modifications:

i. The term "Holder" shall be changed to "Lender."

ii. Paragraphs 1-5 from the Allonge shall be designated with small Roman numbers as i.-v.

iii. The first two sentences of Paragraph 1 from the Allonge shall be deleted and replaced with the following: "The interest rate and size of monthly payments set forth in Paragraphs 2. and 4.c. may change."

iv. All references in the Allonge to "amendment" of the note shall be deleted; instead, references shall be to Subparagraph 4.d. of the note, as applicable.

b. The following shall be added to the end of Paragraph 2 of the note: "The interest rate is subject to change after an initial period of _____ as set forth in Subparagraph 4.d."

c. The following shall be added to the end of Subparagraph 4.c. of the note. "The monthly payment amount is subject to change after an initial period of _____ as set forth in Subparagraph 4.d."

d. If the mortgage will not be placed in a GNMA pool, the note may contain optional language from Page 3 of Attachment I.

e. The mortgage shall contain a description of adjustments to the interest rate and payment amount if required by state law or as otherwise needed to ensure the enforceability and priority of the mortgage. Otherwise, the mortgagee may include such a description at its option. If a description is included, the mortgage must state: "In case of any conflict between this Security Instrument and Subparagraph 4.d. of the Note, Subparagraph 4.d. shall be the governing provision." However, nothing should be included in the mortgage that conflicts with Subparagraph 4.d. of the note or 24 CFR 203.49.

2. *Graduated Payment Mortgage (GPM).* These instructions supersede the instructions in Handbook 4240.2 Revised Change, Appendix 4.

a. The following shall be added to the end of Paragraph 2 of the note: "Deferred interest shall be added to the principal balance monthly and shall

increase the principal balance to not more than \$ _____."

b. The first sentence of Subparagraph 4.c. of the note shall be changed to read as follows: "Each monthly payment of principal and interest shall be in the amount set forth in Subparagraph 4.d."

c. Subparagraph 4.d. of the note shall be titled "Graduated Payment." The payment schedule shall be set forth in Subparagraph 4.d. in the following form depending on the plan selected:

(for Plans I, II, III)	(for Plans IV, V)
SCHEDULE A	SCHEDULE A
\$ _____ during the 1st note year.	\$ _____ during the 1st note year.
_____ during the 2nd note year.	_____ during the 2nd note year.
_____ during the 3rd note year.	_____ during the 3rd note year.
_____ during the 4th note year.	_____ during the 4th note year.
_____ during the 5th note year.	_____ during the 5th note year.
_____ during the 6th note year, and thereafter.	_____ during the 6th note year.
	_____ during the 7th note year.
	_____ during the 8th note year.
	_____ during the 9th note year.
	_____ during the 10th note year.
	_____ during the 11th note year, and thereafter.

d. The reference in the mortgage to the note, required by Subparagraph 2.d. of Part II. A. of this Appendix, shall include the following: "Deferral of interest may increase the principal balance to \$ _____." Notice that the amount entered is the maximum principal balance, not the amount by which the principal balance may be increased.

e. The mortgage shall contain a graduated payment schedule, consistent with the schedule set forth in Subparagraph 4.d. of the Note, if required by State law or as otherwise needed to ensure the enforceability and priority of the mortgage. Otherwise, the mortgagee may include such a schedule at its option. If such a schedule is included, the mortgage must state: "In case of any conflict between this Security Instrument and Subparagraph 4.d. of the Note, Subparagraph 4.d. shall be the governing provision." However, nothing shall be included in the mortgage that conflicts with Subparagraph 4.d. of the note or 24 CFR 203.45.

3. *Growing Equity Mortgage (GEM).*

These instructions supersede the instructions in Attachment 5 to Mortgage Letter 85-3.

a. The first sentence of Subparagraph 4.c. of the note shall be changed to read as follows: "Each monthly payment of principal and interest shall be in the amount set forth in Subparagraph 4.d."

b. Subparagraph 4.d. of the note shall be titled "Growing Equity." The payment schedule shall be set forth in Subparagraph 4.d. in the following form: \$ _____ during the 1st note year \$ _____ during the 2nd note year \$ _____ during the 3rd note year \$ _____ during the 4th note year

(continue this schedule for each of the remaining note years)

c. The mortgage shall contain a payment schedule, consistent with the schedule set forth in Subparagraph 4.d. of the Note, if required by State law or as otherwise needed to ensure the enforceability and priority of the mortgage. Otherwise, the mortgagee may include such a schedule at its option. If such a schedule is included, the mortgage must state: "In case of any conflict between this Security Instrument and Subparagraph 4.d. of the Note, Subparagraph 4.d. shall be the governing provision." However, nothing should be included in the mortgage that conflicts with Subparagraph 4.d. of the note or 24 CFR 203.47.

4. *Rehabilitation Loans* (Section 203(k) of the National Housing Act). The uniform mortgage provisions set forth in Part II. B must be modified for a Rehabilitation Loan. Mortgagees must follow the instructions in Handbook 4240.4, Paragraph 1-12 and Appendix 4, except that the term "mortgage" should be changed to "Security Instrument."

5. *Condominiums.* Except as specifically provided in this Paragraph, a mortgagee shall not require special language in the mortgage or the note for condominiums. The FNMA/FHLMC Multistate Condominium Rider shall not be used or an insured mortgage.

a. These instructions do not supersede the instructions in Handbook 4285.1, except as follows: (i) The provisions in Paragraph 4-2 of the Handbook shall not be added to the mortgage and note, and (ii) the "Resolution of Inconsistency" in Paragraph 12-6 (10) shall not be contained in the mortgage.

b. The following shall be added to the end of Paragraph 4 of the mortgage: "So long as the Condominium Owners' Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring all property subject to the condominium documents, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for

the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under this Paragraph 4 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Condominium Owners' Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the condominium unit or to the common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto."

c. The title, "Condominium Assessments," shall be added to the title of Paragraph 5 of the mortgage. The following shall be added at the end of Paragraph 5: "Borrower promises to pay Borrower's allocated share of the common expenses or assessments and charges imposed by the Condominium Owners' Association, as provided in the condominium documents."

6. *Cooperatives.* No special uniform language has, as yet, been devised for single family mortgages for use with cooperatives. The instructions in Handbook 4240.3, Paragraph 1-12, continue to apply for mortgages insured under section 203(n). A mortgagee should contact HUD for instructions for mortgages insured under section 213.

7. *Planned Unit Development (PUD).* Except as specifically provided in this Paragraph, a mortgagee shall not require special language in the mortgage or the note for a PUD. The FNMA/FHLMC Multistate PUD Rider shall not be used for an insured mortgage. If a homeowners' association exists which is empowered to impose mandatory assessments on the mortgaged property and to purchase a "master" or "blanket" insurance policy for property in the area covered by the homeowners' association, including residential units, then the following shall be added to the end of Paragraph 4 of the mortgage: "So long as the Owners' Association (or equivalent entity holding title to

common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the property located in the FUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then:

(i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under this Paragraph 4 to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners' Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the FUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto."

8. *Tax-exempt Financing.* A memorandum dated July 8, 1987, from Assistant Secretary Thomas T. Demery to HUD Field Offices permits the mortgage to contain an addendum setting forth a due-on-sale clause concerning tax-exempt financing. The due-on-sale provision may be used whenever the mortgage loan is funded, directly or indirectly, from proceeds of Qualified Mortgage Bonds (QMBs) issued by a state or local agency. The provision may be attached as an addendum to the mortgage, or it may be included in the body of the mortgage after the uniform provisions.

The addendum, which is set forth as Attachment I to the July 8, 1987, memorandum, is revised to conform to the uniform mortgage provisions as follows:

Grounds for Acceleration for Tax-exempt Bond Financing
[Insert name of original lender] _____, or such of its successors or assigns as may by separate instrument assume responsibility for ensuring compliance by the Borrower with the provisions of

this [Paragraph or Addendum], may require immediate payment in full of all sums secured by this Security Instrument if:

(a) All or part of the property is sold or otherwise transferred (other than by devise, descent or operation of law) by Borrower to a purchase or other transferee;

(i) Who cannot reasonably be expected to occupy the property as a principal residence within a reasonable time after the sale or transfer, all as provided in section 143(c) and (i)(2) of the Internal Revenue Code; or

(ii) Who has had a present ownership interest in a principal residence during any part of the three-year period ending on the date of the sale or transfer, all as provided in section 143(d) and (i)(2) of the Internal Revenue Code (except that "100 per cent" shall be substituted for "95 per cent or more" where the latter appears in section 143(d)(1)); or

(iii) At an acquisition cost which is greater than 90 per cent of the average area purchase price (greater than 110 per cent for targeted area residences), all as provided in section 143(e) and (i)(2) of the Internal Revenue Code; or

(iv) Whose family income exceeds 115 per cent of applicable median family income (140 per cent for a family in a targeted area residence), all as provided in section 143(f) and (i)(2) of the Internal Revenue Code; or

(b) Borrower fails to occupy the property described in the Security Instrument without prior written consent of Lender or its successors or assigns described at the beginning of this [Paragraph or Addendum]; or

(c) Borrower omits or misrepresents a fact that is material with respect to the provisions of section 143 of the Internal Revenue Code in an application for this Security Instrument.

References are to the 1986 Internal Revenue Code in effect on the date of execution of the Security Instrument and are deemed to include the implementing regulations.

9. *Open-end Advances.* Nothing in these provisions is applicable to open-end advances. Relevant requirements are set forth in 24 CFR 203.44(h) and 203.70(h).

10. *Leaseholds.* If the mortgage is on a leasehold, the title, "Leasehold," shall be added to the title of Paragraph 5 of the mortgage. The following shall be added at the end of Paragraph 5: "If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing."

For instructions on a mortgage for the purchase of fee simple title from a lessor (Section 248 of the National Housing Act), see Handbooks 4000.2, Rev. 1, Paragraph 2-42c and 4270.1 Rev. The instructions in Handbook 4270.1 Rev are not superseded by these requirements and the modifications to the mortgage shall be followed, except that the sample text of the mortgage used in Appendix 1 of the Handbook is superseded by the uniform mortgage provisions, and the terms used in the Leasehold Rider in Appendix 2 of the Handbook shall conform to the terms used in these requirements.

11. *Junior Mortgages to HUD—Section 235 and TMAP.* These instructions do not supersede the instructions in Handbook 4330.1 concerning junior mortgages to HUD to secure repayment of section 235 assistance. The form of junior mortgage shall be the mortgage approved by HUD for the jurisdiction before these requirements take effect, but modified as required by Paragraph 143 of Handbook 4330.1 (see Appendix 26 of the Handbook). No instructions concerning mortgages and notes for the Temporary Mortgage Assistance Payments (TMAP) program have yet been devised.

B. Special Requirements for Particular States and Localities

1. *Hawaiian Home Lands.* If the mortgage is on a Hawaiian Home Lands leasehold, the title, "Hawaiian Home Lands," shall be added to the title at the top of the first page of the mortgage. The following shall be substituted for the paragraph that sets forth requirements for mortgage insurance premiums, in Paragraph 2 of the mortgage: "If and so long as the Security Instrument is held by the Secretary, then in addition to the payment of the entire mortgage insurance premium when this Security Instrument was signed, Borrower shall pay a monthly service charge to the Secretary, in an amount equal to one-twelfth of one-half per cent of the outstanding principal balance due on the Note, computed without taking into account any delinquent payments, prepayments, agreements to postpone the payments, or agreements to recast the mortgage."

Requirements concerning leaseholds, which are provided in Part IV.A.10, are also applicable.

2. *Northern Mariana Islands.* These requirements are not applicable to the Commonwealth of the Northern Mariana Islands. Until further notice, existing HUD-approved mortgage and note forms shall continue to be used.

3. *Guam, the Virgin Islands and Puerto Rico.* Foreclosure procedure requirements, as set forth in Part II.C.1. of the Appendix should be followed for mortgages in Guam, the Virgin Islands, and Puerto Rico, except that the reference to Paragraph 19 of the FNMA/FHLMC "non-uniform covenants" should be changed to read Paragraph 18.

In Part II.C.3., Paragraph 13 should be included in the list of "boilerplate" Paragraphs 10, 11, 14 and 15 of the FNMA/FHLMC "uniform covenants" for Guam, the Virgin Islands, and Puerto Rico.

In addition, mortgages and notes in Puerto Rico shall be written in English and interlineated with Spanish in the same manner as the FNMA/FHLMC forms for Puerto Rico. A Spanish translation of language required by this Appendix may be obtained from HUD's Caribbean Office. Mortgagees must prepare the remainder of the mortgage and note in English with Spanish interlineation.

4. *Indian Reservations* (Section 248 of the National Housing Act). Mortgagees must attach the rider set forth in Mortgage Letter 88-11, for use with a mortgage covering single family

property located on Indian Reservations, pursuant to section 248 of the National Housing Act. The text of the rider must be modified to conform to the uniform mortgage provisions. Mortgagees must demonstrate, pursuant to 24 CFR 203.43h, that the Bureau of Indian Affairs, Department of the Interior, has approved the mortgage document with rider.

5. Redemption Periods.

a. *Iowa, North Dakota and Wisconsin.* Requirements concerning deficiency judgments are provided in Part II.C.1. of this Appendix. Iowa, North Dakota and Wisconsin are excepted from those requirements because these states permit short-term redemption periods after foreclosure if mortgagees waive their rights to deficiency judgments. Since it may be in the Department's interest to have a short-term redemption period, mortgages in these states shall contain provisions similar to those set forth in the "non-uniform covenants" of the current approved FNMA/FHLMC mortgage forms, in Paragraph 23 for Iowa and 22 for North Dakota and Wisconsin. In addition, the North Dakota mortgage must include in the

title the words "short term mortgage redemption," in boldface type.

b. *New Mexico and South Dakota.* New Mexico and South Dakota provide for short-term redemption periods without requiring a mortgagee to waive any right to a deficiency judgment. Mortgages for these states shall contain a provision similar to those set forth in the "non-uniform covenants" of the current approved FNMA/FHLMC mortgage forms, in Paragraph 22 for New Mexico and immediately before Paragraph 20 for South Dakota.

6. *Plain English Requirements.* Certain states have plain English or plain language requirements that may apply to portions of a mortgage or note not prescribed by HUD. Hawaii Rev. Laws § 487A-1 and N.Y. General Obligations Law § 5-702 (McKinney 1987) contain plain English requirements. Mortgagees are expected to comply with a state's plain English law, such as those in Hawaii and New York, with respect to the non-uniform provisions in both the mortgage and the note.

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Part VII

Environmental Protection Agency

Regulatory Determination for Oil and Gas
and Geothermal Exploration,
Development and Production Wastes;
Regulatory Determination

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3403-9]

Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes**ACTION:** Regulatory determination.

SUMMARY: Section 3001(b)(2)(B) of the Resource Conservation and Recovery Act (RCRA) requires the Administrator to determine whether to promulgate regulations under RCRA Subtitle C for wastes from the exploration, development, and production of crude oil, natural gas, and geothermal energy. The Administrator must make this determination no later than six months after completing a Report to Congress on these wastes and after providing an opportunity for public comment. The Agency has completed these activities and has decided that regulation under RCRA Subtitle C is not warranted. Rather, EPA will implement a three-pronged strategy to address the diverse environmental and programmatic issues posed by these wastes by: (1) Improving Federal programs under existing authorities in Subtitle D of RCRA, the Clean Water Act, and Safe Drinking Water Act; (2) working with States to encourage changes in their regulations and enforcement to improve some programs; and (3) working with Congress to develop any additional statutory authorities that may be required.

FOR FURTHER INFORMATION CONTACT: For further information on the regulatory determination, contact the RCRA/Superfund hotline at (800) 424-8346 (toll free) or (202) 382-3000.

SUPPLEMENTARY INFORMATION:**Preamble Outline**

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I. Summary

This action presents the Agency's regulatory determination required by section 3001(b)(2)(B) of the Resource Conservation and Recovery Act (RCRA) for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy. RCRA requires the Administrator to determine either to promulgate regulations under Subtitle C for wastes from oil, gas, and geothermal exploration, development, and production, or that such regulations are unwarranted. In making this determination, the Administrator is required to utilize information developed and accumulated by the Agency pursuant to a study required under RCRA section 8002(m). The Agency completed this study and published its results in December, 1987 in a Report to Congress entitled "Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy."

In completing the Report to Congress and this determination, EPA gathered and evaluated information on all of the issues raised in section 8002(m), including three key factors pertaining to wastes from the exploration, development, and production of oil, gas, and geothermal energy: (1) The characteristics, management practices, and resulting impacts of these wastes on human health and the environment; (2) the adequacy of existing State and Federal regulatory programs; and (3) the economic impacts of any additional regulatory controls on industry.

In considering the first factor, EPA found that a wide variety of management practices are utilized for these wastes, and that many alternatives to these current practices are not feasible or applicable at individual sites. EPA found that oil, gas, and geothermal wastes originate in very diverse ecologic settings and contain a wide variety of hazardous constituents. EPA documented 62 damage cases resulting from the management of these wastes, but found that many of these were in violation of existing State and Federal requirements.

As to the second factor, EPA found that existing State and Federal regulations are generally adequate to control the management of oil and gas wastes. Certain regulatory gaps do exist, however, and enforcement of existing regulations in some States is inadequate. For example, some States have insufficient controls on the use of landfarming, roadspraying, pit construction and surface water discharge practices. Some States lack sufficient controls for central disposal and treatment facilities and for associated wastes.¹ The existing Federal standards under Subtitle D of RCRA provide general environmental performance standards for disposal of solid wastes, including oil, gas, and geothermal wastes, but these standards do not fully address the specific concerns posed by oil and gas wastes. Nevertheless, EPA has authority under Subtitle D to promulgate more tailored criteria. In addition, the authorities available under the Clean Water Act (CWA) or Safe Drinking Water Act (SDWA) can be more broadly utilized, and efforts are already underway to fill gaps under these programs.

EPA's review of the third factor found that imposition of Subtitle C regulations for all oil and gas wastes could subject billions of barrels of waste to regulation under Subtitle C as hazardous wastes and would cause a severe economic impact on the industry and on oil and gas production in the U.S. Additionally, because a large part of these wastes is managed in off-site commercial facilities, removal of the exemption could cause severe short-term strains on the capacity of Subtitle C Treatment, Storage, and Disposal Facilities (TSDFs), and a significant increase in the Subtitle C permitting burden for State and Federal hazardous waste programs.

As explained in more detail in Section IV of this notice, EPA found that regulation under Subtitle C presents several serious problems. First, Subtitle C contains an unusually large number of highly detailed statutory requirements. It offers little flexibility to take into account the varying geological, climatological, geographic, and other differences characteristic of oil and gas drilling and production sites across the country. At the same time, it does not provide the Agency with the flexibility to consider costs when applying these requirements to oil and gas wastes.

¹ Associated wastes are those wastes other than produced water, drilling muds and cuttings, and rigwash that are intrinsic to exploration, development and production of crude oil and natural gas. See Section II D below.

Consequently, EPA would not be able to craft a regulatory program to reduce or eliminate the serious economic impacts that it has predicted. Furthermore, since existing State and Federal programs already control oil and gas wastes in many waste management scenarios, EPA needs to impose only a limited number of additional controls targeted to fill the gaps in the existing programs. Subtitle C, with its comprehensive "cradle to grave" management requirement, is not well suited to this type of gap-filling regulation. EPA concluded that it would be more efficient and appropriate to fill the gaps by strengthening under the Clean Water Act and UIC programs and promulgating the remaining rules needed under RCRA under the less prescriptive statutory authorities set out in Subtitle D. This narrower approach would also reduce disruption of existing State and Federal control programs.

Thus, the Agency has decided not to promulgate regulations under Subtitle C for wastes generated by the exploration, development, and production of crude oil, natural gas, and geothermal energy for the following reasons:

- (1) Subtitle C does not provide sufficient flexibility to consider costs and avoid the serious economic impacts that regulation would create for the industry's exploration and production operations;
- (2) Existing State and Federal regulatory programs are generally adequate for controlling oil, gas, and geothermal wastes. Regulatory gaps in the Clean Water Act and UIC program are already being addressed, and the remaining gaps in State and Federal regulatory programs can be effectively addressed by formulating requirements under Subtitle D of RCRA and by working with the States;
- (3) Permitting delays would hinder new facilities, disrupting the search for new oil and gas deposits;
- (4) Subtitle C regulation of these wastes could severely strain existing Subtitle C facility capacity;
- (5) It is impractical and inefficient to implement Subtitle C for all or some of these wastes because of the disruption and, in some cases, duplication of State authorities that administer programs through organizational structures tailored to the oil and gas industry; and
- (6) It is impractical and inefficient to implement Subtitle C for all or some of these wastes because of the permitting burden that the regulatory agencies would incur if even a small percentage of these sites were considered Treatment, Storage and Disposal Facilities (TSDFs).

The Agency plans a three-pronged approach toward filling the gaps in existing State and Federal regulatory programs by:

- (1) Improving Federal programs under existing authorities in Subtitle D of RCRA, the Clean Water Act, and Safe Drinking Water Act;
- (2) Working with States to encourage changes in their regulations and enforcement to improve some programs; and
- (3) Working with the Congress to develop any additional statutory authority that may be required.

EPA plans to revise its existing standards under Subtitle D of RCRA, tailoring these standards to address the special problems posed by oil, gas, and geothermal wastes and filling the regulatory gaps. Also, the Agency is moving ahead with improvements in its NPDES and UIC programs under the Clean Water Act and the Safe Drinking Water Act. EPA also plans to work with Congress to obtain any additional authorities that may be required. For example, Subtitle D of RCRA currently does not provide EPA with the authority to address treatment or transportation of wastes. Throughout the process of improving the Federal regulatory program, EPA will work closely with States to encourage improvements in their regulatory programs.

II. Background

Section 3001(b)(2)(A) of the Solid Waste Disposal Act of 1980 (Pub. L. 96-480), which amended the Resource Conservation and Recovery Act of 1976 (RCRA), prohibits EPA from regulating under RCRA Subtitle C "drilling fluids, produced waters, and other wastes associated with exploration, development, or production of crude oil or natural gas or geothermal energy" until at least 6 months after the Agency completes and submits to Congress a comprehensive study required by section 8002(m) (also added by the 1980 amendments). Section 8002(m) directs EPA to conduct

[A] detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy on human health and the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures currently employed by the oil and gas and geothermal energy drilling and production industry. Government agencies, and others to dispose of and utilize such wastes to prevent or substantially mitigate such adverse effects.

The study way to include an analysis of:

1. The sources and volumes of discarded material generated per year from such wastes;
2. Present disposal practices;
3. Potential danger to human health and the environment from surface runoff or leachate;
4. Documented cases that prove or have caused danger to human health and the environment from surface runoff or leachate;
5. Alternatives to current disposal methods;
6. The cost of such alternatives; and
7. The impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy.

The 1980 amendments also added section 3001(b)(2)(B), which requires the Administrator to make a "regulatory determination" regarding the waste excluded from RCRA Subtitle C regulation. Specifically, within 6 months after submitting the Report to Congress, and after the opportunity for public hearings and public comment on the report, the Administrator must "determine to promulgate regulations" under RCRA Subtitle C for oil, gas, and geothermal energy waste, "or that such regulations are unwarranted." Section 3001(b)(2)(C) also specifies that any new regulations under RCRA Subtitle C for the crude oil, natural gas, or geothermal energy industry would not take effect until authorized by an Act of Congress.

EPA was required to complete the study and submit it to Congress by October 1982. In August 1985, the Alaska Center for the Environment sued the Agency for its failure to complete the study by the statutory deadline. EPA entered into a consent order obligating it to submit the final Report to Congress on or before August 31, 1987, and to make its regulatory determination by February 29, 1988. In April 1987, the court-ordered schedule was modified, extending the deadline or submittal of the final Report to Congress to December 31, 1987, and requiring the regulatory determination to be made by June 30, 1988. In accordance with this schedule, EPA completed the technical report on methodology in October 1986, the technical report on the waste sampling and analysis in January 1987, the interim report in April 1987, the draft report in August 1987, and the final report in December 1987.

EPA's Report to Congress, "Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy," was

transmitted to Congress on December 28, 1987. A notice announcing the availability of the report, as well as the dates and locations of public hearings, was published on January 4, 1988 (53 FR 82). EPA held public hearings on the report in Washington, DC on February 23, 1988; Denver, Colorado, on February 25, 1988; San Francisco, California, on March 1, 1988; Anchorage, Alaska, on March 3, 1988; and Dallas, Texas, on March 8, 1988. The comment period on the report closed on March 15, 1988.

EPA's Report to Congress provides information on all of the study areas mandated by RCRA section 8002(m). The Agency received approximately 150 written comments on the report and heard testimony at the hearings from 105 individuals. All individual comments and transcripts from the public hearings are available for public inspection in the docket. The docket also contains a summary of all the comments presented at the hearings or submitted in writing, along with EPA's response to these comments.

A. Technical Summary of Report to Congress

1. Definition of Exempt Wastes

Section 3001(b)(2)(A) exempts produced water, drilling fluids, and "other wastes associated" with the exploration, development, and production activities. These are general terms that do not identify all of the specific waste streams to be exempted and studied. For study purposes, EPA broadly defined the scope of the exemption for oil, gas, and geothermal energy wastes to include not only produced waters and drilling fluids, but also related wastes (referred to herein as "associated wastes"), generated during the exploration, development, and production of crude oil, natural gas, and geothermal energy resources. The Agency excluded from its study those wastes not uniquely associated with exploration, development, and production of crude oil and natural gas which are not exempt from Subtitle C regulation (e.g., used batteries and waste solvents).

For geothermal energy, the definition of drilling-related wastes was identical to that of crude oil and natural gas wastes. Exempt wastes unique to geothermal energy production operations included: Waste streams produced from materials passing through the turbine in dry-steam power generation; waste streams resulting from a geothermal energy fluid or gas that passed through the turbine in flashed-steam and binary power plants; waste streams resulting from the geothermal

energy products passing through only the heat exchanger in binary operations or through the flash separator in the flash process; and most direct use waste streams. A more detailed description of the scope of the exemption and study appears in section IV.D. below.

2. Waste Quantities and Characterization

In the Report to Congress, EPA estimated that 361 million barrels of drilling waste were generated in 1985 from about 70,000 crude oil and natural gas wells, and that over 800,000 active production sites generated 20.9 billion barrels (including produced water injected for enhanced oil recovery (EOR)) of produced water during that year. Associated waste, such as workover fluids and tank bottoms, are produced at the rate of 11 million barrels per year. For geothermal energy wastes, EPA estimated that approximately 111,000 barrels of geothermal energy-related drilling wastes were generated in 1985, along with 56 billion gallons of liquid wastes (geothermal fluid and condensed steam) from both binary and flash process plants, and 8 billion gallons of liquid waste from direct use of geothermal energy.

For crude oil and natural gas wastes, EPA sampled liquids and sludges from several locations. Drilling fluids were sampled at drilling operations while produced water and tank bottoms were sampled at production operations. Samples from central treatment and disposal facilities and central pits contained mixtures of all wastes including associated wastes. The Agency found that organic pollutants at levels of potential concern (levels that exceed 100 times EPA's health-based standards) included the hydrocarbons benzene and phenanthrene. Inorganic constituents at levels of potential concern included lead, arsenic, barium, antimony, fluoride, and uranium.

Tank bottoms, an associated waste sampled and analyzed by the Agency, contained significant levels of contaminants of concern, with some levels exceeding the reference doses (RfDs) for noncarcinogens or the risk-specific doses (RSDs) for carcinogens (health-based standards) for these contaminants.²

² It is the Agency's policy to consider Maximum Contaminant Levels (MCLs) (established by the Office of Drinking Water) when available. Where an MCL has not been developed, RfDs for noncarcinogens and RSDs for carcinogens will be used to set health-based limits. These terms are defined as follows:

• Maximum Contaminant Level (MCL) is the enforceable drinking water standard, based on health and technical feasibility, attained at the tap.

Analysis of the constituents of several geothermal energy waste streams indicated that some of the production wastes exhibited the corrosivity characteristic and extraction procedure (EP) toxicity for certain metals. Factors such as management practices, dilution and attenuation of the contaminant, and hydrogeological characteristics, affect the risk to human health and the environment presented by these chemicals.

3. Current and Alternative Management Practices

A wide range of management practices are employed for crude oil and natural gas wastes. The technological diversity is the result of widely varying geological, climatological, ecological, topographic, economic, geographic, and age differences among drilling and production sites across the country and partially account for varying State regulatory requirements. There are, however, variations from State to State in the stringency of management practices which are not wholly attributable to the varying physical settings of the operations.

Current practices include the use of reserve pits for drilling wastes; landspreading of reserve pit contents; disposal of produced waters through Class II underground injection wells; disposal of produced water in unlined pits; discharge of produced water to surface waters; roadspraying; use of commercial facilities for treatment and disposal of drilling wastes and produced water; and some practices unique to the Alaska North Slope, such as the use of semipermanent production-related reserve pits, and discharges to the tundra. Less frequently used current

This measure is used when ground water is the main exposure pathway.

• Reference Dose (RfD) is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. [Integrated Risk Information System (IRIS) Vol. 1, Supplementary Documentation Appendix A. EPA/600/8-86/032A.]

• Risk-Specific Dose (RSD) is the daily dose of a carcinogen received over a lifetime that will result in an incidence of cancer equal to the specific risk level. The risk level of A and B carcinogens is 10^{-6} (1 in 1 million) and for C carcinogens it is 10^{-5} (1 in 100,000). [51 FR 21667, June 13, 1986.] The classes of carcinogens are: Class A = human carcinogen, Class B = probable human carcinogen, Class C = possible human carcinogen. (Both RfDs and RSDs are converted into medium specific concentrations using intake assumptions for selected routes of exposure. They are expressed in mg/kg/day. Surface and ground water (ingestion): 2 liters/day for a 70-kg adult for a 70-year exposure. Air (inhalation): 20 cubic meters air/day for a 70-kg adult for a 70-year exposure.)

practices discussed in the report are closed-cycle drilling mud systems, annular disposal of produced water and drilling fluid, and trenching of reserve pits to dispose of reserve pit fluids.

These practices vary substantially in the protection they provide to the environment. While changes in State regulatory requirements over the years have led generally to the use of more environmentally protective technologies and management practices, there is a need for increased movement to more protective approaches for discharge to ephemeral streams, surface water discharges in estuaries in the Gulf Coast region, road applications of reserve pit contents and discharge to tundra in the Arctic, and annular disposal of produced waters.

For the major waste streams, EPA was unable to identify any new technologies in the research and development stage that offer promise for wide application in the near term. More widespread use of the best existing technologies, however, would provide substantial additional protection for the environment in many areas.

Waste management practices unique to geothermal power generation wastes include closed-cycle ponding, reinjection into the producing zone or a nonproducing zone, and consumptive secondary use. In California, production wastes are tested for hazardousness, using the California tests for hazardousness, before disposal to determine the appropriate disposal method. After direct use of geothermal energy fluid for heating purposes, these fluids can be discharged to surface waters, injected into the producing zone, or a nonproducing zone, and consumed by secondary uses.

4. Evidence of Damages

To determine the types and severity of damages caused by crude oil and natural gas wastes, EPA assembled information on a substantial number of damage cases, 62 of which were fully documented and passed EPA's "tests of proof." These cases were based on recent information gathered from the States of Alaska, Arkansas, California, Kansas, Kentucky, Louisiana, Michigan, New Mexico, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia, and Wyoming. These damage cases were extensively reviewed by the States, industry, and third parties. On the basis of all available information, the study found that wastes from crude oil and natural gas operations have endangered human health and caused environmental damage when managed in violation of State and Federal requirements. In some instances damage occurred where

wastes are managed in accordance with currently applicable State and Federal requirements.

The major categories of wastes responsible for damages include reserve pit wastes, fracturing and acidizing fluids, stimulation chemicals, waste crude oil, produced water, and other miscellaneous wastes generated by the exploration, development, and production of crude oil and natural gas. The various categories of damages to, or endangerment of, human health and the environment contained in the Report to Congress include:

- Damage to agricultural land, crops, ephemeral streams, livestock, and threats to endangered species, fish, and other aquatic life in estuaries and bays from produced water and drilling fluids;
- Degradation of soil and ground water from runoff and leachate from central treatment and disposal facilities, reserve pits, and unlined disposal pits;
- Potential contamination of aquatic and bird life in estuaries and bays by metals and polycyclic aromatic hydrocarbons resulting from the discharge of drilling fluids and produced waters;
- Potential for endangerment of human health from consumption of contaminated fish and shellfish and from ground water contaminated by seepage from storage and disposal pits;
- Potential damage to tundra on the Alaska North Slope from roadspraying and seepage and discharges from reserve pits;
- Damage to ground water, agricultural land, and domestic and irrigation water caused by seepage of native brines from improperly plugged and unplugged abandoned wells; and
- Ground-water degradation from improper functioning of injection wells.

5. Risk Modeling

EPA used quantitative modeling and a review of the scientific literature to evaluate the health and environmental risks associated with management of oil, gas, and geothermal energy wastes in order to evaluate risks to human health and the environment under a variety of conditions. The Agency characterized selected major risk-influencing factors associated with current operations: Estimated the management of drilling waste in reserve pits, the underground injection of produced water, and the surface water discharge of produced water from stripper wells. The risk analysis did not consider annular disposal, storage of produced water in surface impoundments, migration of produced water contaminants through fractures, unplugged or improperly plugged and abandoned wells,

landspraying, roadspraying, or disposal of associated wastes.

For the selected practices, EPA estimated distributions of these risk-influencing factors across the population of crude oil and natural gas facilities; evaluated these factors in terms of their relative effect on risks; and developed initial quantitative estimates of the possible range of baseline health and environmental risks for the variety of conditions found. Risks were analyzed under assumptions that were broadly consistent with baseline requirements of existing Federal and State programs.

For the specific subset of current practices, EPA modeled the potential effects of arsenic, benzene, boron, sodium, chloride, cadmium, chromium, and total mobile ions at concentrations observed in sampled produced water and drilling waste. The study focused heavily on ground water and indicated that, for the vast majority of the scenarios modeled, risks from the disposal of drilling waste in onsite reserve pits and the disposal of produced water by underground injection were small. Only a few chemicals from either source appear to be of major concern relative to health or environmental risk. The actual human health and environmental threats posed by any of these releases is largely dependent upon site-specific factors, including geophysical conditions and a site's proximity to human populations or sensitive ecosystems. Estimated impacts on human health varied widely, and there were typically a few combinations of environmental settings and high sample toxic constituent concentrations where moderate risks were projected. Quantitative risk modeling indicates the potential in some situations for carcinogenic risks in excess of 1 in 10,000 and sodium levels in drinking water in excess of recommended levels for public drinking water supplies. Modeling of resource damages to ground and surface water generally did not show significant risks at low release rates typical of individual stripper wells although multiple strippers discharging into common water courses were not modeled.

6. Costs and Economic Impacts

EPA developed three estimates of the compliance costs and economic impacts of implementing alternative waste management practices for the large-volume drilling wastes and produced waters in the crude oil and natural gas industries: (1) a "baseline" scenario reflecting current waste management practices; (2) an "intermediate" scenario, in which somewhat stricter

controls on waste disposal practices are assumed; and (3) a "Subtitle C" scenario, in which virtually full RCRA hazardous waste requirements would be met. EPA estimated total annual costs for each scenario and then evaluated the projected economic impacts of these costs on the oil industry as a whole.

Assuming produced waters reinjected for enhanced production would not be regulated, total annual costs for additional management requirements ranged from approximately \$50 million to over \$6.7 billion, depending on the scenario and on assumptions regarding the fraction of wastes (10 to 70 percent) that would be handled as RCRA-hazardous under each scenario. Estimated costs for the Subtitle C scenario ranged between \$1 billion and \$6.5 billion without including land-ban and corrective action costs.

Production declines related to these increased waste management costs could range up to 12 percent in the year 2000. Other impacts also varied greatly under different scenario assumptions. Net impacts on oil prices per barrel could range up to \$0.76 per barrel, with projected maximum costs to consumers of \$4.5 billion per year, and increases in the U.S. balance of payments deficit of up to \$11 billion.

A significant part of any overall economic impact of new requirements would be their effects on stripper wells. Stripper operations (generally, wells producing 10 or fewer barrels of oil per day during the declining phase of their production cycle) cumulatively contribute about 14 percent of total domestic oil production. Generation of production wastes by strippers is more significant than would be expected, however, because many strippers produce very high ratios of water to oil. Many stripper operations are economically marginal and are thus highly sensitive to small fluctuations in market prices and cannot easily absorb additional costs for waste management. Stripper operations, therefore, constitute a special subcategory of the crude oil and natural gas industry and should be given special consideration when developing recommendations for improvements in the management of crude oil and natural gas wastes. At the same time, any additional regulations must recognize the great diversity that exists within the stripper industry. The nature of stripper operations is dependent on the volume of crude oil, natural gas and wastes generated, the age of the well, the technology in use, geological, environmental, and economic considerations, and types of ownership. For example, a family-owned stripper

well in a century-old field in Appalachia bears little resemblance to a field of stripper wells owned by a single large petrochemical company in California. Regulations governing wastes generated by stripper wells must be tailored to meet this great diversity.

B. Legal Authority

Section 3001(b)(2)(B) of RCRA requires EPA to determine either to promulgate regulations under Subtitle C for oil, gas, and geothermal energy wastes, or that such regulations are "unwarranted." This section thus gives EPA broad discretion both to identify what factors to consider and to determine what balance of factors permit the conclusion that Subtitle C regulations are unwarranted.

EPA has concluded that its decision whether to regulate oil, gas and geothermal energy waste under Subtitle C should be based not just on whether that waste is hazardous (as currently defined by EPA regulations) but also on a consideration of the other factors section 8002(m) required EPA to study. The basis of this conclusion is the language of section 3001(b)(2)(B), which states that in making the regulatory determination "the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 8002(m)." Clearly, Congress envisioned that the determination would be based on all the considerations stated in section 8002(m).

In reviewing sections 3001(b) and 8002(m), together with the legislative history of these provisions, EPA has concluded that Congress believed certain considerations to be particularly important to the regulatory determination. First, Congress instructed EPA to study the potential dangers to human health and the environment from oil, gas and geothermal energy waste, indicating that any decision to regulate under Subtitle C must be based on a finding of such danger. Second, section 8002(m) required EPA to study "the adequacy of means and measures currently employed by . . . Government agencies . . . to dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects." The section also permits EPA to review the actions of other Federal agencies, "with a view toward avoiding duplication of effort," and requires the Agency to include in its report of the study "recommendations for Federal and non-Federal actions concerning" the effects of oil, gas and geothermal energy wastes on health and environment. Thus, Congress was concerned that regulations under Subtitle C should not be promulgated

"until further information is developed to determine whether a sufficient degree of hazard exists to warrant additional regulations and whether existing State or Federal programs adequately control such hazards." S. Rep. No. 172, 98th Cong., 1st Sess. (1979), at 6. Congress apparently believed that EPA should not impose Subtitle C regulation unless other programs could not adequately control any hazards identified.

In addition, Congress instructed EPA to analyze fully the disposal practices of the industry, including present practices, alternatives, the cost of alternatives, and the impact of alternatives on the exploration for, and development and production of, crude oil and natural gas and geothermal energy. Thus, EPA was required to consider the impact of Subtitle C regulations on existing hazardous waste facilities, and both the cost and impact of such regulations on the oil, gas and geothermal industries. Clearly, Congress believed that Subtitle C regulation would be unwarranted if it had severe impacts on the nation's future energy production capabilities.

C. Conclusions of the Report to Congress and Response to Comments

Based on the study done by EPA, the Report to Congress developed a number of initial general conclusions. Extensive comments were received on these conclusions. A summary of the comments and EPA's response follows each conclusion (underlined statements) below.

1. Available waste management practices vary in their environmental performance. Some individuals argued that since crude oil and natural gas operations very significantly across the country, Federal regulations could not be effectively enforced or applied, and would therefore not be beneficial. Other commenters focused on local issues and regional environmental problems, calling for increased Federal regulations to solve them. Still others observed that the crude oil and natural gas industry does not manage its "hazardous" wastes in the same manner as other industries manage similar hazardous wastes.

The Agency acknowledges that there are valid reasons for differences in practices among areas. This points to a need for individual, tailored regulations at the State and local level for the management of these wastes, rather than a RCRA Subtitle C program. The Agency also agrees, however, that there may be a need for minimum Federal standards covering basic waste management practices. The Agency agrees that because of the large volumes of these wastes, along with the other

factors discussed in the report, some crude oil and natural gas wastes require different disposal methods than may be used for management of wastes generated by other industries.

2. Any program to improve management of oil and gas wastes in the near term will be based largely on technologies and practices in current use. Commenters agreeing with this conclusion asserted that existing technologies are adequate and that new technologies would be economically infeasible and would serve no valid purpose. Others, especially those concerned with issues in Alaska, believe that many new technologies are available but seldom used and called for their increased use. A few State regulatory agencies called for increased technical assistance and guidance from EPA.

The Agency continues to believe that there are very few techniques that are not in use under some conditions. There is, however, a need to disseminate knowledge and encourage or perhaps require adoption of improved methods nationwide. States and the industry should continue to develop, refine, and encourage the implementation of new and improved waste management techniques.

3. Increased segregation of waste may help improve management of oil and gas wastes. Many commenters strongly opposed the proposal for segregation of wastes and believed that the scope of the exemption in RCRA section 3001 should be construed to include, and should be maintained for, all associated wastes in addition to the currently exempt large-volume wastes. Many commenters asserted that mixing various wastes with produced water prior to injection is environmentally safe and economically beneficial. Other commenters argued that each waste stream generated by the crude oil and natural gas industry should be tested separately to determine its RCRA characteristics and that wastes determined to be hazardous according to RCRA definitions should remain segregated and be disposed of according to RCRA regulations. Some individuals claimed that many hazardous wastes generated by the crude oil and natural gas industry are commingled with nonhazardous wastes prior to landspreading or injection, causing significant environmental damage.

The Agency believes that under certain circumstances waste segregation is technically and economically feasible and environmentally desirable.

4. Stripper operations constitute a special subcategory of the oil and gas industry. Many commenters strongly

agreed with this conclusion, stating that new or additional Federal regulations would be financially harmful to already economically ailing stripper well operators. Other commenters were of the opinion that some stripper wells can cause significant environmental damage, which must ultimately be paid for through general taxes. Some commenters urged that stripper operations should be treated in the same manner as the rest of the crude oil and natural gas industry.

As previously described, the agency recognizes that many, though not all, stripper operations are economically vulnerable to any new regulatory burdens. Stripper wells in many parts of the country are also associated with smaller, independent oil and gas companies that do not have flexibility in pricing and may suffer disproportionate economic impacts from any additional regulation. The Agency is required under the Regulatory Flexibility Act to evaluate impacts of any new regulations on small business enterprises.

5. Documented damage cases and quantitative modeling results indicate that, when managed in accordance with State and Federal requirements, exempt oil and gas wastes rarely pose significant threats to human health and the environment. Opinion on this conclusion was sharply divided. Some commenters strongly agreed, saying that State regulations are fully adequate to control crude oil and natural gas operations and challenged the validity of a few selected damage cases. Others strongly opposed this conclusion, saying that State and Federal regulations are inadequate and seldom enforced. A number of commenters stated that many documented damage cases were omitted from the final Report to Congress. Some commenters provided studies and analytical data alleging environmental damage from crude oil and natural gas wastes; others claimed that the risk modeling conducted for the Report underestimated damage to the environment and did not adequately characterize the significance of human health risks from crude oil and natural gas wastes.

A number of comments were received on the quantitative risk modeling on which this conclusion is partly based. Criticisms included:

- The quantitative risk modeling should not have been performed at all because of the severe lack of suitable data.
- The risk analysis is fatally flawed because it used nonconservative assumptions.
- Values for input parameters used in the liner location model (LLM) have

been developed on the basis of limited data, worst-case assumptions, or modeling limitations.

- The study underestimates toxicity because too much of the sampling was performed on diluted and weathered crude oil and natural gas wastes.
- Very few of the contaminants at the waste sites were analyzed.
- EPA made no effort to correlate its quantitative risk model with the actual damage cases.
- The health-based standards incorporated in the model are insufficiently documented.
- TCLP extractions used in risk modeling for reserve pits misrepresent conditions at pits.
- Risk is overestimated in the risk analysis.

The Agency believes the damage cases in the Report to Congress demonstrate that violations of existing State and Federal requirements lead to most observed damages, although some damages have been shown to result from practices currently allowable in some States. The risk assessment also showed little risk at most locations from the management practices that were analyzed. The Agency believes from the available evidence that State regulations are generally but not entirely adequate for management of crude oil and natural gas wastes. Additionally, enforcement of and compliance with State regulations vary widely from State to State.

With respect to the specific criticisms of the risk modeling, the Agency disagrees that the modeling should not have been performed because of a severe lack of suitable data. Extensive data were gathered from a variety of sources, including EPA field investigation and waste sampling study, numerous Federal and State agencies, an industry survey conducted by API, comments submitted on interim reports and given during peer review meetings, over 300 topographic maps, automated data bases, and a general literature review. The Agency believes these data are the best available and that they adequately support a risk assessment.

As with any detailed modeling study, a number of assumptions in the risk assessment had to be made, sometimes with respect to values used for model inputs. The Agency rejects the notion, however, that the assumptions made were generally worst-case, significantly nonconservative, or driven only by modeling limitations. For most variables, several realistic representative values were selected to evaluate a variety of circumstances. Whenever assumptions were made, best available data and

professional judgment were used and proposed approaches were subjected to peer review, and often outside public review. As noted in the above comments, some of the assumptions tended to result in either overestimates or underestimates of risk. While over- and underestimates are inevitable in any predictive modeling, the Agency believes their impacts on this study have been minimized by (1) analyzing risks under a wide range of conditions across the industry as a whole, in an attempt to even out over- and underestimates of risk for any single scenario; and (2) fully documenting each assumption and its likely effect on risk estimates.

The Agency disagrees that the waste characterization used in the risk assessment was inappropriate. Many of EPA's samples of drilling waste were taken from open reserve pits where the waste could have been "weathered", but these samples were not purposefully diluted and are believed to be representative of drilling waste as it exists in a reserve pit. Contrary to the above comment, all of the contaminants detected in drilling pit waste and produced water were reviewed and considered as candidates for the risk assessment. The eight constituents selected for quantitative modeling were the constituents judged most likely to contribute most significantly to risk to health or the environment. The selection of contaminants for quantitative modeling was based on their frequency of detection, concentration, inherent toxicity, and mobility and persistence in the environment. Finally, the Agency used TCLP extraction results only to model leachate from closed reserve pits (not from operating pits). While uncertainties concerning the applicability of TCLP tests to leachability of reserve pit wastes are acknowledged, the Agency believes the TCLP results were the best data available for modeling this leachate.

The Agency did not attempt to correlate the risk modeling with the damage cases because the risk assessment was intended to complement the damage cases by focusing on different issues. Specifically, the risk assessment analyzed potential current and future effects assuming compliance with a limited subset of typical existing regulations, whereas the damage cases covered past and current effects, many of which were for incidents involving regulatory violations. The risk assessment also focused on more subtle or very long-term impacts, some of which possibly would not be evidenced in the

contemporary damage case file. In addition, several of the damage cases represented situations (e.g., releases through abandoned boreholes) that could not be modeled adequately given existing data and modeling techniques. Other scenarios not modeled include annular deposits, storage of produced water in surface impoundments, migration of produced water contaminants through fractures, and landspreading. (Use of impoundments for produced waters and landspreading are both still frequently practiced.)

The Agency believes that the health-based standards incorporated in the risk model incorporated the best available scientific knowledge at the time of the study. These standards and the studies that support them were summarized only briefly in the Report to Congress; readers are referred to the two-volume technical background report on risk assessment for more detail.⁶

6. *Damages may occur in some instances even where wastes are managed in accordance with currently applicable State and Federal requirements.* No comments specifically addressed this conclusion, but comments on the previous conclusion relate in part to the substance of this one.

The quantitative risk modeling showed that for the specific management practices and scenarios modeled, a few crude oil and natural gas sites (less than five percent) could pose significant risks even if drilling waste and produced water were managed in accordance with existing regulations. In addition, the damage case results indicate that some waste management practices permitted in some States can have undesirable environmental impacts. These practices include landspreading of high chloride drilling mud, annular disposal of produced water, discharge of produced water and drilling fluids to tidally affected wetlands, discharge of produced water to live streams, and discharge of reserve pit contents to tundra.

7. *Unplugged and improperly plugged abandoned wells can pose significant environmental problems.* Opinion on this conclusion was divided. Many of the commenters asserted that there is no evidence to support this conclusion, and that State regulations adequately address the potential problems associated with unplugged and improperly plugged and abandoned wells. Others felt that it is economically

infeasible to plug or re-plug abandoned wells properly. Conversely, commenters agreeing with this conclusion mentioned specific instances in which unplugged wells have caused significant contamination of ground-water supplies. Some State regulatory agencies commented that inadequate funds are available to properly plug all abandoned wells.

The Agency believes there is adequate evidence to indicate a potential threat to ground water from unplugged and improperly plugged abandoned wells based on the large number of unplugged or improperly plugged abandoned wells, the difficulty in observing plugging of abandoned wells, and the difficulty in enforcing State regulations on plugging of abandoned wells. The damage cases collected and the information presented to the Agency support this conclusion. The Agency recognizes that the full extent of the problem is not well defined. The Agency also recognizes that high costs could be incurred if all unplugged or improperly plugged abandoned wells were required to be plugged, and that such a requirement may not be necessary, as not all unplugged or improperly plugged abandoned wells pose a problem.

8. *Discharges of drilling muds and produced waters to surface waters have caused locally significant environmental damage where discharges are not in compliance with State and Federal statutes and regulations or where NPDES permits have not been issued.* Comments were divided on this issue even among those who were critical of similar conclusions; some agreed, while others stated that there is no evidence that drilling muds or produced water cause environmental damage. Some stated that both drilling muds and produced water are relatively nonhazardous and nontoxic. Several comments specific to Alaska stated that the Clean Water Act adequately regulates the management of large-volume wastes in Alaska.

Those agreeing with this conclusion often argued that current State and Federal regulations are not adequate or are not enforced properly. They also asserted that drilling muds and produced waters contain RCRA hazardous constituents and have caused significant environmental damage.

Documented damage cases indicate that disposal of drilling muds and produced waters in violation of State regulations and where NPDES permits have not been issued, has clearly caused damages to the environment and endangered human health, particularly

in Alaska, the Gulf Coast and the Appalachian States. Also, discharges of produced water from stripper well to surface waters were estimated to cause cancer risks greater than one in one hundred thousand in roughly 17 percent of the conservative cases studied in the quantitative risk modeling for 90th percentile produced water constituent concentrations.

9. *For the nation as a whole, regulation of all oil and gas field wastes under unmodified Subtitle C of RCRA would have a substantial impact on the U.S. economy.* Those agreeing with this conclusion did so strongly, stating that RCRA regulations applied to the crude oil and natural gas industry would cause the loss of a significant number of jobs. Some said that RCRA regulation would increase oil imports and pose a threat to national security. Others claimed that the potential costs to industry have been underestimated.

Those in favor of regulating wastes determined to be RCRA-hazardous generally recognized the potential economic impacts of regulation, but nevertheless believed that such wastes should be disposed of consistent with RCRA Subtitle C requirements.

In specific comments on the methodologies used to analyze these issues, some commenters believed that the lower 48 State model masks or understates costs and impacts in some regions, and that data limitations and exclusions of some costs lead to understated economic impacts in all scenarios. Some commenters stated that the number of economically marginal wells that would be forced to shut down if RCRA Subtitle C regulations were imposed has been underestimated, and that certain assumptions in the model are unrealistic. Some commented that the analysis ignores impacts on undiscovered energy reserves and gas production.

Taking the opposite point of view, other commenters argued that the cost analysis ignores public health costs associated with continued improper disposal of crude oil and natural gas wastes, and that the report does not take into account the financial consequences of contamination of ground water and other natural resources. Some claimed that long-term financial burdens to taxpayers to mitigate environmental damage, to provide health care, and to sustain financial burden from lost productivity, will be greater than the cost to the crude oil and natural gas industry to prevent that damage.

The Agency believes that its estimates of impacts to the industry of full regulation under RCRA Subtitle C are

reasonable and that such impacts would be substantial. The Agency acknowledges that costs related to public health effects and contamination of ground water and other natural resources because of improper disposal of crude oil and natural gas wastes have not been determined.

10. *Regulation of all exempt wastes under full, unmodified RCRA Subtitle C appears unnecessary and impractical at this time.* Opinion was divided on this conclusion. Those agreeing did so strongly, while those opposed generally stated that if a waste is RCRA hazardous, it should be treated under RCRA regulations regardless of its origin. Many of those in disagreement with this conclusion argued that the crude oil and natural gas industry can afford the financial burden of RCRA regulation.

For reasons described in Section IV of this regulatory determination, the Agency continues to believe that regulation of all crude oil and natural gas wastes under RCRA Subtitle C is unnecessary and impractical. The Agency believes that these wastes can be managed in a manner so as to protect human health and the environment without regulating them under RCRA Subtitle C.

11. *States have adopted variable approaches to waste management.* Most commenters agreed with this conclusion, but there was considerable disagreement over whether current State regulations are adequately designed and enforced.

Variable approaches to waste management are partly the result of varying environmental conditions, geology, and economics among the producing States. EPA believes, however, that there are many cases where more stringent requirements are both feasible and desirable, and that many States have recognized this in changes made to their regulations in the last few years. Some States have taken significant leadership roles in the development of more environmentally protective requirements.

12. *Implementation of existing State and Federal requirements is a central issue in formulating recommendations in response to section 8002(m).* Opinion was divided on this conclusion. Some commenters urged that existing State and Federal regulations are adequate and that additional State or Federal regulations are unnecessary and impractical. Others argued that existing State and Federal regulations have not been adequately enforced and that additional Federal regulations are necessary.

The Agency believes that the design, enforcement, and implementation of existing State and Federal regulations can clearly be improved.

Public comments on the Geothermal Energy Portion of Report to Congress: Only two comments specifically addressed geothermal energy wastes.

One commenter presented additional information relating to damages resulting from the offsite disposal of geothermal energy production wastes (such as hydrogen sulfide abatement wastes which test nonhazardous by California standards) in commercial facilities. The information alleged potential damages and/or risk by contamination of surface and ground water from the disposal of hydrogen sulfide abatement wastes in centralized or commercial disposal facilities in California. These facilities are designated strictly for the disposal of geothermal energy production wastes determined to be nonhazardous by California standards.

The other commenter specifically addressing geothermal energy, fully supported the conclusions of the report and stated that the California statutes regarding the management of geothermal energy wastes are comprehensive and effective.

The Agency continues to believe that geothermal energy wastes are generally well regulated under existing State and Federal programs. However, the Agency acknowledges that at least one significant undesirable disposal practice is occurring and has taken this into consideration in making this final regulatory determination.

D. Determination of the Scope of the Temporary RCRA Exemption

Based on the language of RCRA section 3001(b)(2)(A) of the 1980 amendments to RCRA, review of the statute, and supporting legislative history, the Agency believes that the following wastes were included in the temporary exemption set forth in the statute.

- Produced water;
- Drilling fluids;
- Drill cuttings;
- Rigwash;
- Drilling fluids and cuttings from offshore operations disposed of onshore;
- Geothermal production fluids; and
- Hydrogen sulfide abatement wastes from geothermal energy production.
- Well completion, treatment, and stimulation fluids;
- Basic sediment and water and other tank bottoms from storage facilities that hold product and exempt waste;

- Accumulated materials such as hydrocarbons, solids, sand, and emulsion from production separators, fluid treating vessels, and production impoundments;
 - Pit sludges and contaminated bottoms from storage or disposal of exempt wastes;
 - Workover wastes;
 - Gas plant dehydration wastes, including glycol-based compounds, glycol filters, filter media, backwash, and molecular sieves;
 - Gas plant sweetening wastes for sulfur removal, including amines, amine filters, amine filter media, backwash, precipitated amine sludge, iron sponge, and hydrogen sulfide scrubber liquid and sludge;
 - Cooling tower blowdown;
 - Spent filters, filter media, and backwash (assuming the filter itself is not hazardous and the residue in it is from an exempt waste stream);
 - Packing fluids;
 - Produced sand;
 - Pipe scale, hydrocarbon solids, hydrates, and other deposits removed from piping and equipment prior to transportation;
 - Hydrocarbon-bearing soil;
 - Pigging wastes from gathering lines;
 - Wastes from subsurface gas storage and retrieval, except for the nonexempt wastes listed below;
 - Constituents removed from produced water before it is injected or otherwise disposed of;
 - Liquid hydrocarbons removed from the production stream but not from oil refining;
 - Gases from the production stream, such as hydrogen sulfide and carbon dioxide, and volatilized hydrocarbons;
 - Materials ejected from a producing well during the process known as blowdown;
 - Waste crude oil from primary field operations and production; and
 - Light organics volatilized from exempt wastes in reserve pits or impoundments or production equipment.
- The Agency believes that the following wastes were not included in the original exemption:
- Unused fracturing fluids or acids;
 - Gas plant cooling tower cleaning wastes;
 - Painting wastes;
 - Oil and gas service company wastes, such as empty drums, drum rinsate, vacuum truck rinsate, sandblast media, painting wastes, spent solvents, spilled chemicals, and waste acids;
 - Vacuum truck and drum rinsate from trucks and drums transporting or containing non-exempt waste;
 - Refinery wastes;

- Liquid and solid wastes generated by crude oil and tank bottom reclaimers;
- Used equipment lubrication oils;
- Waste compressor oil, filters, and blowdown;
- Used hydraulic fluids;
- Waste solvents;
- Waste in transportation pipeline-related pits;
- Caustic or acid cleaners;
- Boiler cleaning wastes;
- Boiler refractory bricks;
- Boiler scrubber fluids, sludges, and ash;
- Incinerator ash;
- Laboratory wastes;
- Sanitary wastes;
- Pesticide wastes;
- Radioactive tracer wastes;
- Drums, insulation, and miscellaneous solids.

In order to determine the scope of the exemption, the Agency reviewed the statute and legislative history. The Agency interprets the term "other wastes associated" to include rigwash, drill cuttings, and wastes created by agents used in facilitating the extraction, development and production of the resource, and wastes produced by removing contaminants prior to the transportation or refining of the resource. Drill cuttings and rigwash are generally co-mingled with drilling muds, and the Agency therefore has grouped them with large-volume wastes for purposes of discussion in this determination. The remaining wastes on the above list of exempt wastes are considered "associated wastes" for purposes of this determination.

The Agency has determined that produced water injected for enhanced recovery is not a waste for purposes of RCRA regulation and therefore is not subject to control under RCRA Subtitle C or RCRA Subtitle D. Produced water used in enhanced recovery is beneficially recycled and is an integral part of some crude oil and natural gas production processes. Produced water injected in this manner is already regulated by the Underground Injection Control program under the Safe Drinking Water Act. The Agency notes, however, that if the produced water is stored in surface impoundments prior to injection, it may be subject to RCRA Subtitle D regulations.

III. Factors Considered in Regulatory Determination

Section 3001(b)(2)(B) of RCRA states that in making the regulatory determination, the Agency must "utilize the information developed or accumulated pursuant to the study required under section 8002(m)." Clearly, Congress envisioned that the

determination would be based on all factors specifically enumerated in section 8002(m), as well as general issues raised by the text of section 8002(m) as a whole. Therefore, in making today's determination, EPA considered not just the impact of these wastes on human health and the environment, but also the other factors that RCRA section 8002(m) required EPA to study.

Specifically, EPA considered three major factors in developing this determination: (1) The characteristics, management practices, and impacts of oil, gas, and geothermal wastes on human health and the environment; (2) the adequacy of existing State and Federal regulatory programs for controlling these wastes; and (3) the economic impacts of any additional regulations on the exploration for, and development and production of, crude oil, natural gas, and geothermal energy. Section 8002(m) required EPA to study each of these factors.

IV. Regulatory Determination for Crude Oil and Natural Gas Wastes

The following discussion summarizes information on the three major factors (discussed above) used in making this regulatory determination and then presents EPA's conclusions and rationale for the regulatory determination for crude oil and natural gas wastes. The information summarized here incorporates information received during the public comment period and additional refinement of the data presented in EPA's December 1987 Report to Congress.

A. Hazard Assessment

For the Report to Congress, EPA conducted a limited analysis which modeled the potential effects of disposal of drilling waste in reserve pits and the disposal of produced water by underground injection and found that the potential risks to human health and the environment were small. Only a few constituents appeared to be of major concern when these wastes are managed in accordance with existing State and Federal regulations. The actual threats posed were largely dependent upon site-specific factors such as populations or sensitive ecosystems. Other management practices such as storage of produced water in unlined pits were not modeled and may pose higher risks.

Analysis of field data collected by EPA and presented in the January 1987 technical report shows that a portion of oil and gas wastes contain constituents

of concern above EPA health- or environmental-based standards. For example, wastes at 7 percent of the sites generating drilling fluids and 23 percent of the statistically weighted sample sites generating produced water contain one or more of the toxic constituents of concern at levels greater than 100 times the health-based standards. The constituents typically exceeding the standards in drilling fluids are fluoride, lead, cadmium, and chromium. The constituents exceeding the standards in produced water are benzene, arsenic, barium, and boron. In addition, wastes at 78 percent of the sample sites generating drilling fluids, and 75 percent of the sample sites generating produced water, contain chlorides at levels greater than 1,000 times the EPA secondary maximum contaminant level for chloride. Like large-volume wastes, associated wastes contain a wide variety of hazardous constituents. Many associated wastes contain constituents that are similar in chemical composition and/or toxicity to other wastes currently regulated under RCRA Subtitle C.

The presence of constituents in concentrations exceeding health- or environmental-based standards does not necessarily mean that these wastes pose significant risks to human health and the environment. In evaluating the risks to human health and the environment, several factors beyond the toxicity of the waste should be considered. These factors include the rate of release of contaminants from different management practices, the fate and transport of these contaminants in the environment, and the potential for human health or ecological exposure to the contaminants.

On the basis of available data, EPA can only roughly estimate how much currently exempt oil and gas waste would be considered hazardous under current or proposed RCRA Subtitle C standards. It is clear that some portions of both the large-volume and associated waste would have to be treated as hazardous if the Subtitle C exemption were lifted. EPA estimates that approximately 10 to 70 percent of large-volume wastes and 40 to 60 percent of associated wastes could potentially exhibit RCRA hazardous waste characteristics under EPA's regulatory tests.

EPA has documented 62 damage cases caused by crude oil and natural gas wastes. Because large-volume wastes and associated wastes are often managed and disposed of together, it is often difficult to isolate the specific waste stream that contributed greatest to the damage. However, available data

does not indicate that significant damage can occur from mismanagement of both large-volume wastes and associated wastes. EPA believes that most of these damages could have been prevented if the wastes had been managed in accordance with existing State and Federal requirements. However, because of certain regulatory gaps, damages have occurred even where wastes are managed in compliance with existing requirements.

B. Economic Impact Analysis

Application of RCRA Subtitle C to exploration, development, and production wastes could be extremely costly if large portions of these wastes were hazardous. The Agency estimates that implementation of RCRA Subtitle C on 10 to 70 percent of the large-volume drilling waste and non-EOR produced water would cost the industry and consumers \$1 billion to \$6.7 billion per year in compliance costs (not including costs for land ban or corrective action regulations mandated by Congress). This would reduce domestic production by as much as 12 percent.

In response to questions raised subsequent to the Report to Congress, the Agency also conducted a preliminary evaluation of the likely range of potential compliance costs and industry impacts that could result from removal of the RCRA Subtitle C exemption for associated wastes. The Agency's preliminary estimate is that the cost to the crude oil and natural gas industry of RCRA Subtitle C management for associated wastes would range between \$200 million and \$550 million per year. These cost estimates are based on American Petroleum Institute survey estimates on the quantities of associated wastes produced and their current management practices, together with the Agency assumption that 40 to 60 percent of these wastes might require management under RCRA Subtitle C, and Agency estimates of the probable range of unit costs for managing these various waste types.

However, it is important to note that these estimates do not include the cost of corrective action. The application of corrective action requirements to facilities that manage associated wastes on-site would impose substantial costs on the units managing the associated wastes as well as any other solid waste management units that exist within the facility boundaries to the extent that the wastes continue to be managed on-site. Since nearly half of the associated wastes are currently managed on-site, this could result in significant costs to the industry. The cost estimates also assume that "land-ban" treatment of

hazardous solids and sludges consists of recycling and resource recovery. It is likely that some fraction of these wastes would need to be incinerated in compliance with the treatment standards established by the "land-ban," implying higher costs of regulating the associated wastes under Subtitle C.

C. Adequacy of State and Federal Regulatory Programs

EPA evaluated State regulations pertaining to large-volume wastes and associated wastes. Often, some of these wastes are co-mingled and disposed of together. Consequently, they are usually managed together under one regulatory program at the State level.

With regard to large-volume wastes, EPA found most existing State regulations are generally adequate for protecting human health and the environment. Most States have requirements specifically controlling the management of drilling muds and produced waters. However, certain gaps do exist in State regulations for large-volume wastes. For example, some States do not have adequate requirements controlling roadspraying or landspraying of large-volume wastes, design or maintenance rules for reserve pits, or have insufficient management specifications for centralized and commercial disposal facilities. As noted previously, EPA also found damages which occurred due to surface discharges not prohibited by State regulation.

Another regulatory gap for some States are controls for associated wastes. Most State regulations do not include specific controls for the management of these wastes. General standards are often difficult to enforce unless a specific pollution incident is discovered and can be attributed to a particular waste disposal event. However, a few States such as Texas do specifically address associated wastes and other States have general standards that provide partial control of these wastes.

The Agency has examined changes in State regulatory programs over the past two years. Some States have improved their regulations, while other States have relaxed specific waste management requirements. For example, while reserve pit management has been strengthened in some States, other States have relaxed controls pertaining to land application of large-volume wastes. Problems also remain regarding adequate State implementation and enforcement of existing regulations.

The Agency also evaluated the Federal Underground Injection Control

(UIC) program under the Safe Drinking Water Act and regulatory programs under the Clean Water Act. The UIC program effectively controls underground injection from the point of the wellhead, while the NPDES program addresses point source discharges to surface water bodies. These programs are particularly important in controlling management of large-volume wastes. However, EPA has identified certain gaps in these programs. For example, UIC regulations currently allow the practice of annular disposal and lack uniform mechanical integrity testing standards. The Clean Water Act regulatory program gaps include the lack of national effluent limitations at the Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) levels. These national limitations are needed to more effectively deal with discharges from facilities in the onshore and coastal subcategories of the industry. EPA also found that improvements are needed regarding implementation and enforcement of existing regulations. The Agency has already undertaken steps to address these deficiencies; these are discussed in Section V of today's notice.

Finally, EPA evaluated the existing Federal criteria under Subtitle D of RCRA. These criteria (40 CFR Part 257) include general environmental performance standards applicable to the disposal of any solid waste, including oil, gas, and geothermal wastes. These criteria include among other things, standards related to surface water discharges, ground-water contamination, and endangered species. Because the programs' criteria are aimed principally at municipal solid waste, EPA believes they do not now fully address oil and gas waste concerns. In addition, many of these criteria, such as control of disease vectors and aviation hazards, are not appropriate for oil and gas waste. Nevertheless, EPA has authority under Subtitle D to tailor requirements appropriate for the disposal of oil and gas wastes.

D. Conclusions

The Agency has decided not to promulgate regulations under Subtitle C for large-volume and associated wastes generated by the exploration, development and production of crude oil and natural gas. The Agency decision is based on the following reasons:

(1) Subtitle C contains an unusually large number of highly detailed statutory requirements, some of which are not only extremely costly, but also are unnecessary for the safe management of oil and gas wastes. Subtitle C does not,

however, allow the Agency to consider costs where applying these requirements to oil and gas wastes. Consequently, EPA would not be able to craft a regulatory program to reduce or eliminate the serious economic impacts that it has predicted. Thus, in light of Congress' concern for the protection of the nation's future energy supply, Subtitle C regulations must be considered unwarranted. A tailored Subtitle D program, by contrast, will enable the Agency to apply all necessary requirements to the management of these wastes, while ensuring that economic impacts are minimized.

(2) As discussed in Section II. B., Congress has indicated that Subtitle C regulations are unwarranted where existing programs can be employed to protect human health and the environment from the problems created by oil and gas wastes. EPA has concluded that, in fact, existing State and Federal programs are generally adequate, and that remaining gaps can be filled by modifying these programs. Subtitle C regulation is, therefore, unwarranted. Moreover, Subtitle C, with its comprehensive "cradle to grave" management requirement, simply is not well suited to this type of gap-filling regulation. It is thus both more efficient and appropriate to fill the gaps by strengthening regulations under the Clean Water Act and UIC program and promulgating the remaining rules needed under RCRA under the less prescriptive statutory authorities set out in Subtitle D.

(3) Since the States and EPA have consistently required long periods of time to process Subtitle C permits, regulation under Subtitle C could delay the start of operations at new facilities. These delays would be particularly disruptive to the exploration phase of oil and gas development.

(4) Subtitle C regulation of these wastes would subject them to all of the land disposal restriction requirements, including BDAT, and thus could severely strain existing Subtitle C facility capacity.

(5) The Agency believes that it is impractical and inefficient to implement Subtitle C for all or some of these wastes because of the disruption and, in some cases, duplication of State authorities that administer programs through organizational structures tailored to the oil and gas industry.

(6) It is impractical and inefficient to implement Subtitle C for all or some of these wastes because of the permitting burden that the regulatory agencies would incur if even a small percentage

of these sites were considered Treatment, Storage and Disposal Facilities (TSDFs).

V. Efforts to Improve State and Federal Programs

The Agency plans a three-pronged approach toward filling the gaps in existing State and Federal programs that regulate the management of wastes from the crude oil, and natural gas, industries. This effort will include:

1. Improving Federal programs using existing authorities under Subtitle D of RCRA and the Clean Water and Safe Drinking Water Acts;
2. Working with the States to encourage changes in their regulations and enforcement programs to achieve more uniformity in the administration of their programs; and
3. Working with Congress to develop any additional statutory authority that may be required.

A. Federal Program Improvements Within Existing Authorities

1. Clean Water and Safe Drinking Water Act Programs

The Agency believes certain improvements in the Safe Drinking Water and Clean Water Acts are desirable with respect to their application to crude oil and natural gas wastes. In the case of the UIC program, the Agency had previously determined that a critical examination of the overall program was in order. The program has now been in effect for approximately 5 years or more, depending on when a State program was approved or a Federal program was promulgated in a State. This examination, currently underway, includes a review of the adequacy of the regulations and policies governing the program and of the way in which States and EPA Regions are implementing and enforcing the program. The review of the adequacy of State implementation is complex because approval of State programs was, by statute, governed by a determination of their effectiveness in protecting underground sources of drinking water, rather than by their conformity with minimum Federal regulations.

Implementation of the UIC program by the EPA Regions is undergoing a peer review process, which will be completed by the fall of 1988. Implementation of the State programs is reviewed routinely by the EPA Regions. In addition, the EPA's Office of Drinking Water has undertaken a cycle of in-depth reviews of the UIC program. The California, Texas, and Kansas programs were

reviewed in 1987. A review of Wyoming and at least one other State, not yet selected, will be conducted in 1988. The States have also undertaken a peer review project directed by the Underground Injection Practices Council.

The Agency has formed a workgroup, which will include participation by the States and other Federal agencies, to review issues pertinent to the UIC regulations. The strategy for this review is available in the RCRA docket. A final report and the recommendations of the workgroup are expected to be available in the winter of 1988-89.

In conjunction with the Clean Water Act, the Agency is currently developing national discharge regulations for the offshore crude oil and natural gas industry and is planning for the development of national discharge regulations for the coastal oil and gas industry. The coastal segment generally includes exploration, development and production facilities that are located in or adjacent to tidal wetlands. These regulations will cover the discharges of produced water, drilling fluids, drill cuttings and various low-income waste streams to surface waters of the U.S. The regulations will address the best available technology (BAT), best conventional technology (BCT) and new source performance standards (NSPS) levels of control. These regulations may result in a prohibition on the discharge of a significant portion of high volume drilling wastes (drilling fluids and cuttings) into U.S. offshore waters. As such, these wastes will be transported to shore by the offshore operators for land disposal. These wastes would then be subject to regulation under RCRA Subtitle D.

The Agency is also planning to begin development of national effluent regulations for onshore stripper oil and gas production. The onshore stripper well regulations will cover the discharges of produced water and well treatment wastes to surface waters of the U.S. These regulations will be established at increasing levels of stringency compared to the best practicable technology (BPT) level of control. Non-stripper wells located onshore are already subject to a "zero-discharge" requirement under NPDES.

22. RCRA Subtitle D Approach

(a) *General Approach.* EPA believes it can design and implement a program specific to crude oil and natural gas wastes under Subtitle D of RCRA that effectively addresses the risks associated with these wastes. EPA is already in the process of developing revised Subtitle D criteria for facilities

that may receive hazardous household waste or small quantity generator hazardous wastes as well as for mining waste disposal facilities. The Agency intends to augment the Subtitle D program by developing appropriate standards and taking other actions as appropriate for crude oil and natural gas wastes.

In developing these tailored Subtitle D standards for crude oil and natural gas wastes, EPA will focus on gaps in existing State and Federal regulations and develop appropriate standards that are protective of human health and the environment. Gaps in existing programs include adequate controls specific to associated wastes and certain management practices and facilities for large-volume wastes, including roadspreading, landspreading, and impoundments. EPA is particularly concerned about centralized and commercial facilities that treat, store, or dispose of oil field wastes in concentrated form. Pits or impoundments at these facilities often contain hazardous constituents in high concentrations. In addition, centralized facilities are responsible for some of the most significant damages the Agency documented.

To ensure proper control over oil and gas disposal facilities and practices, EPA will consider requirements under Subtitle D such as: (1) Engineering and operating practices, including run-off controls, to minimize releases to surface water and groundwater; (2) proper procedures for closing facilities; (3) monitoring that accommodates site-specific variability; and (4) clean-up provisions. EPA will tailor these standards to the special problems posed by oil and gas waste disposal facilities, as well as incorporate appropriate flexibility to address site-specific variability.

In developing a tailored Subtitle D program for oil and gas wastes, EPA will use its RCRA section 3007 authority to collect any additional information needed on the characteristics and management practices of oil and gas wastes. EPA believes this authority does not limit information collection to "hazardous" waste identified under Subtitle C, but also authorizes the collection of information on any solid waste that the Agency reasonably believes may pose a hazard when improperly managed. (EPA may also use this authority in preparing enforcement actions.)

In specifying the appropriate standards, EPA will further analyze existing Federal and State authorities and programs and determine future plans for administering their oil and gas

waste programs. Additionally, EPA will perform analyses of costs, impacts, and benefits and will comply fully with Executive Orders 12291 and 12498, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

The Agency will specifically consider the impact of future regulations on small business operations in the process of regulatory development under the Agency guidelines with respect to the Regulatory Flexibility Act. The Agency believes that the tailored RCRA Subtitle D regulations can provide the flexibility necessary to reflect the marginal economic nature of certain segments of the industry, while at the same time affording improved environmental protection. For example, the Agency recognizes that many stripper operations are, by their nature, more vulnerable to regulatory burdens imposed by any new controls over crude oil and natural gas wastes, and that many stripper wells are associated with small, non-integrated producers. This is particularly significant in certain producing regions such as Appalachia.

(b) *Alaska's North Slope.* Tailored standards under Subtitle D will specifically address controls necessary to protect fragile or sensitive environments; one such sensitive environment is the Arctic North Slope. EPA is particularly concerned about the management of crude oil and natural gas wastes in this area, where oil extraction is performed on a very large scale, accounting for roughly 20 percent of total U.S. production. There also exists the likelihood for future development of potentially significant crude oil and natural gas reserves on the North Slope in areas surrounding Prudhoe Bay and areas in the Arctic National Wildlife Refuge.

The Arctic North Slope is particularly sensitive and fragile, with unique geographic and climatic conditions that make its environment fundamentally different from the lower 48 States. The area is primarily an arctic desert, frozen for about 9 months out of the year and underlain by up to 2,000 feet of permafrost. During the summer months, surface water exists in the form of interconnected tundra ponds, which exhibit little or no flow during the summer season. This, in addition to the severity of the climate and the shortness of the growing season, makes the area particularly vulnerable to ecological impacts, or impacts from less than rigorous waste management practices.

There is a lack of long-term historical data on impacts of crude oil and natural gas industry activities on the North Slope. Based on preliminary studies,

current waste management practices used on the North Slope pose the potential for environmental degradation. As stated in the Report to Congress, a 1983 U.S. Fish and Wildlife Service study found chromium, arsenic, cadmium, nickel, and barium to be present in tundra ponds adjacent to reserve pits at levels significantly greater than in control ponds. Levels of chromium in adjacent ponds were also found to exceed EPA chronic toxicity criteria, and affected distant ponds were found to contain chromium levels significantly higher than background levels. The authors of this study caution, however, that these findings cannot be extrapolated to present-day oil field practices on the North Slope because some industry practices have changed and the State's regulations have become increasingly more stringent since 1983.

Historically, enforcement of environmental controls on the North Slope has been inadequate. EPA believes this inadequacy has contributed to the use of undesirable waste management practices in some cases. For example, as discussed in the Report to Congress, an incident developed involving an oil field service company that was disposing of drums and waste chemicals in an inappropriate manner. The Agency believes that a greater enforcement presence in addition to improved regulations could prevent such incidents from recurring.

Recently, the State of Alaska has improved waste management regulations pertaining to the North Slope. In addition, some operators plan to implement more desirable waste management practices, including the possibility of phasing out reserve pits through the use of closed drilling systems and injection for waste drilling muds and cuttings. If implemented, these changes would be major improvements in waste management practices on the North Slope.

B. Additional Federal Authorities

EPA is concerned over the lack of Federal authority under Subtitle D of RCRA to address treatment and transportation of oil and gas wastes. The Administrator therefore will work with Congress to develop any additional legislative authorities that may be needed to address these issues. In the interim, EPA will use section 7003 of RCRA and sections 104 and 106 of CERCLA to seek relief in those cases where wastes from oil and gas sites pose substantial threats or imminent hazards to human health and the environment. Oil and gas waste problems can also be addressed under RCRA section 7002 which authorizes

citizen lawsuits for violations of Subtitle D requirements in 40 CFR Part 257.

C. Improvement in State Programs

While in the process of completing improvements in the Federal programs, EPA plans to work with the States to improve the content, implementation, and enforcement of existing State regulations. This will be a cooperative effort with voluntary State participation. For example, the Interstate Oil Compact Commission has already begun work in this area and has expressed an interest in cooperating with EPA in this regard. Specifically, the Agency plans to encourage States to take steps to fill the following gaps (where present) in their existing regulatory programs:

- (1) Controls for roadspraying and landspraying;
- (2) Surface impoundment (i.e., pit) location, design, and maintenance;
- (3) Controls for associated wastes; and
- (4) Plugging abandoned oil and gas wells.

According to State officials, many States have tens of thousands of unplugged or improperly plugged abandoned wells. EPA's December 1987 Report to Congress documented groundwater contamination with chlorides from unplugged or improperly plugged abandoned crude oil and natural gas wells and indicated that State requirements for plugging and abandoning crude oil and natural gas wells vary, with inadequacies apparent in some State programs. For example, many States do not require a plugging bond from operators who drill crude oil and natural gas wells. Where bonding is required, the amount is often not adequate to provide for proper plugging once a well is abandoned.

EPA encourages States to develop programs to address abandoned wells. However, the Agency recognizes that locating and identifying these wells is difficult, and sometimes impossible, because of poor record keeping or the absence of records. Because many unplugged wells are several decades old, the owner or operator often cannot be identified. Some States have plugging funds to use in such circumstances, some do not.

The Agency will also work with States to improve implementation and enforcement of existing State regulations. EPA believes that improvements in enforcement of existing regulations will significantly increase protection of human health and the environment.

EPA will also work closely with the State of Alaska on addressing problems associated with management of crude

oil and natural gas wastes on the Arctic North Slope. Because of the remoteness and severe climatic conditions, enforcement is particularly difficult in this area. The Agency will explore with the State of Alaska and the Department of the Interior ways to improve enforcement in this area. The Agency believes operators should continue research into impacts on the environment of their waste management practices. The Agency will develop a list of recommended areas for research in the research, demonstration, and development plan required by RCRA section 8002(m)(2).

VI. Regulatory Determination for Geothermal Energy Wastes

A. Hazard Assessment

There is only a limited record of damages or danger to human health or the environment resulting from the exploration, development, and production of geothermal energy. Based on the limited information available, the Agency has determined that the risk to human health and the environment resulting from the exploration, development, and production of geothermal energy is relatively low. The geothermal energy industry is comparatively small, with a total of 395 wildcat, production, and injection wells drilled between 1981 and 1985. Most geothermal energy production is in California (321 out of 395 wells) and Nevada. It is unlikely that there will be further large-scale development of geothermal energy resources outside of the State of California because the occurrence of accessible geothermal energy is extremely limited.

B. Adequacy of State and Federal Regulations

As indicated in the Report to Congress, the Agency believes that existing State and Federal regulations are generally adequate for controlling wastes from geothermal energy production. However, one public comment on the Report to Congress suggests a possible gap in California's regulatory program addressing these wastes. The commenter documented potential endangerment of human health and damage to the environment because of the disposal of geothermal energy hydrogen sulfide abatement wastes in commercial facilities in California.

C. Conclusions

EPA has decided not to regulate wastes generated by the exploration and development of geothermal energy resources under RCRA Subtitle C. EPA believes that Subtitle C control for these

wastes is unwarranted because of the relatively low risk of these wastes and the presence of generally effective State and Federal regulatory programs. Because these wastes are largely confined to California and Nevada, EPA will work closely with these States to address any gaps in their regulatory programs for the management of hydrogen sulfide abatement wastes.

VII. Research, Development, and Demonstration Plan

The Agency will develop a research, development, and demonstration plan based on the findings of the Report to Congress and subsequent public comments on the report. This plan will outline various topics that the Federal and State governments and/or industry could pursue. This plan will include the following topics:

- Alternative waste management technologies;

- Waste minimization techniques;
- Materials substitution;
- Recycling and reuse;
- Reserve pit construction (percolation, leaching, and erosion control issues);
- Plugging and abandonment of crude oil and natural gas wells;
- Better characterization of produced waters and associated wastes generated by stripper crude oil and natural gas wells; and
- Field monitoring to evaluate the adequacy of waste containment practices.

VIII. EPA RCRA Docket

The EPA RCRA docket is located at: United States Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460.

The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday.

except for Federal holidays. The public must make an appointment to review docket materials. Call the docket clerk at (202) 475-9327 for appointments.

The following documents related to this regulatory determination are available for inspection in the docket:

- Report to Congress on Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy;
- All supporting documentation for the regulatory determination, including public comments on the Report to Congress and EPA response to comments; and
- Transcripts from the public hearings on the Report to Congress.

Dated: June 29, 1988.

A. James Barnes,
Acting Administrator.

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Part VIII

**Department of
Housing and Urban
Development**

Office of the Assistant Secretary for
Community Planning and Development

24 CFR Part 511
Rental Rehabilitation Grants; Interim Rule

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENTOffice of the Assistant Secretary for
Community Planning and
Development

24 CFR Part 511

(Docket No. R-88-1401; FR 2472)

Rental Rehabilitation Grants

AGENCY: Office of Community Planning
and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements sections 150 (a), (c), (d), (e) and 311 of the Housing and Community Development Act of 1987. These provisions make a number of changes in the Rental Rehabilitation Grant Program authorized by section 17(a)(1)(A) of the United States Housing Act of 1937 and codified at 24 CFR Part 511. The major changes herein, which apply to grantees' uncommitted funds from prior years as well as FY 1988 funds unless otherwise stated, include (1) increasing the \$5,000 per-unit limit on the amount of rental rehabilitation assistance for any project by means of a scale ranging from \$5,000 to \$8,500, depending on the number of bedrooms in the unit; (2) permitting grantees to use up to the full amount of any rental rehabilitation funds they receive from FY 1988 and later years' appropriations to rehabilitate units with one bedroom or less to meet applicable seismic standards imposed by the units of general local government within which the rehabilitated units are located, if the initial occupants of the units have incomes not in excess of 50 percent of the median area income; (3) allowing grantees (except those in HUD-administered State programs) to use up to 10 percent of any initial rental rehabilitation grant amounts that they receive from FY 1988 and later year funds for administrative expenses in carrying out their rental rehabilitation programs; and (4) allowing States to use funds allocated in "prior years" for projects located in FmHA Title V-eligible areas until September 30, 1989 for demonstration purposes. Two other 1987 Act amendments, one making eligible for rental rehabilitation assistance real property that will be privately owned upon completion of rehabilitation, and the other making eligible property owned by certain non-profit organizations, are not implemented by this interim rule, for reasons explained under "SUPPLEMENTARY INFORMATION" below.

DATES: Effective Date: September 12, 1988.

Comments Due Date: September 6,
1988.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, Office of Urban Rehabilitation, Room 7162, Department of Housing and Urban Development, at the above address, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule implements sections 150 (a), (c), (d), (e) and 311 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act). Section 150 makes a number of changes in the Rental Rehabilitation Program authorized by section 17(a)(1)(A) of the United States Housing Act of 1937 (the 1937 Act) and codified at 24 CFR Part 511. The changes include the following:

1. **Technical assistance.** Section 150(a) of the 1987 Act requires that, from the overall rental rehabilitation appropriations for each of Fiscal Years 1988 and 1989, \$1.5 million shall be available for technical assistance, including the collection, processing, and dissemination of program information useful for local and national program management. The rule incorporates the statute's illustrative listing of the types of eligible technical assistance at § 511.3.

2. **Property eligible for rehabilitation.** Section 150(b) makes real property that will be privately owned upon completion of the assisted rehabilitation eligible for rental rehabilitation assistance. This provision allows HUD to disburse grant funds to pay for eligible rehabilitation costs prior to the occurrence of a condition upon which eligibility depends—transfer of property not currently privately owned to an eligible private owner, as defined in the statute and HUD's regulations. Such a provision requires precise implementation, since grantees expending funds for projects subject to subsequent eligibility conditions are at risk of being required to repay the grant from their own funds if the condition is not met. Grantees need to know the terms that must be met with respect to the future transfer to private ownership, before accepting the risk of spending

their grant funds for such projects. Similarly, to protect against unauthorized use of grant funds and waste and inefficiency, HUD must establish clear deadlines for meeting all relevant eligibility conditions, and it must monitor and enforce those deadlines. HUD is still considering how best to implement section 150(b). In the interest of expediting the issuance of regulations on the other 1987 Act amendments, some of which are relevant to States deciding whether to administer their own 1988 fund allocations or to elect to have HUD do so, HUD has decided to issue this interim rule and to issue a separate rule to implement section 150(b). HUD still expects to issue such a rule before the end of FY 1988. In the meantime, grantees are not permitted to commit or disburse funds to publicly owned projects.

3. **Property owned by certain non-profit organizations.** Section 150(f) of the 1987 Act addresses real property that is owned by a State or locally chartered, neighborhood-based, nonprofit organization, the primary purpose of which is the provision and improvement of housing. This amendment is not expressly implemented by this interim rule. HUD believes that the principal purpose of this amendment is either already satisfied by existing regulations and policy or can be satisfied without regulatory changes. In general, State or locally chartered nonprofit corporations, whether or not they are neighborhood-based, or are housing-oriented, are already viewed by HUD as eligible to own rental rehabilitation projects, provided that they are not controlled by a public body itself or by individuals acting on behalf of a public body.

HUD may clarify its position on publicly controlled entities in the separate rule on "property that will be privately owned upon completion of rehabilitation" referred to above.

4. **Per unit grant limits.** Section 105(c) of the 1987 Act increases the \$5,000 per-unit limit on the amount of rental rehabilitation grants that grantees may commit to any project, by means of a sliding scale depending on the number of bedrooms in each dwelling unit, as follows:

- \$5,000 for units with no bedrooms.
- \$6,500 for units with one bedroom.
- \$7,500 for units with two bedrooms.
- \$8,500 for units with three or more bedrooms.

Section 511.10(e)(2) of the former regulations stated the existing \$5,000 per-unit limit in terms of an average amount. Thus, for a project containing two three-bedroom units and two one-

bedroom units, or four units in all, the previous overall limit was \$20,000 (\$5,000 multiplied by four units), but the actual amount spent for a given unit could exceed \$5,000, so long as the total expended on all four units was within the \$20,000 overall project limit. This rule continues this concept, by specifying that the amount of a rental rehabilitation grant expended for any project may not exceed the sum of the applicable dollar limits for each unit in the project. Thus, under the new per-unit subsidy provision, the same four-unit project could receive up to \$30,000 ($\$8,500 \times 2 = \$17,000$, plus $\$6,500 \times 2 = \$13,000$, for a total of \$30,000) in subsidy as long as the total rehabilitation cost was \$30,000 or more, with rental rehabilitation funds providing one-half of the eligible rehabilitation costs.

Finally, current § 511.10(e)(2) applies high-cost area increases to the basic limits based on the number of units in the project. This rule continues these increases without substantive change. A technical change has also been made at the end of § 511.10(e)(2)(ii) to clarify that the maximum high cost area increase is 140 percent times the amount of the original limit, making the ultimate high cost area limit 240 percent of the original maximum.

This amendment applies to all rental rehabilitation grant amounts that had not been committed by grantees to specific local projects (as defined in § 511.2) as of the effective date of the 1987 Act, February 5, 1988. Thus, grantees with uncommitted FY 1984, 1985, 1986, or 1987 funds may commit those funds to projects in accordance with the new higher per-unit limits. Of course, grantees continue to have discretion to set the amount of assistance they will provide to particular projects up to the maximums permitted by Part 511. For example, the grantee is not required to make available \$8,500 for each one-bedroom unit.

5. **Seismic standards.** Section 150(d) of the 1987 Act provides that if a unit of general local government has a local ordinance that requires rehabilitation to meet seismic standards, it may use all the rental rehabilitation grant amounts that it receives to rehabilitate units with no bedrooms or one bedroom, if the occupants of the units will have incomes that do not exceed 50 percent of the median income for the area.

It is HUD's understanding that a few units of general local government (perhaps only one) in earthquake prone areas have large numbers of one-bedroom apartments requiring rehabilitation to meet local seismic

standards if they are to continue to be safely occupied by their current very low-income residents. Section 511.10(k) currently requires grantees to use 70 percent or more of each year's grant funds to rehabilitate units containing two or more bedrooms, unless a lower standard is approved by HUD. Section 511.10(k) in turn implements section 17(c)(3)(A), which requires HUD to assure that an equitable share of grant funds is used to rehabilitate units suitable for large families.

Although section 150(d) could be read literally and broadly to relieve local governments from complying with § 511.10(k) and section 17(c)(3)(A) for their entire rental rehabilitation programs merely by enacting an ordinance which requires rehabilitation to meet seismic standards, HUD believes that an interpretation which would so emasculate section 17(c)(3)(A) and § 511.10(k) was not intended. Congress has been particularly concerned about the production of units for large families in the program and it should not be presumed to have allowed such a broad exception.

HUD believes that Congress intended only to relieve affected grantees from the need to comply with section 17(c)(3)(A) and § 511.10(k) to the extent that the grantee actually uses its rental rehabilitation grant amounts to rehabilitate units initially occupied by very low-income families to meet locally required seismic standards. Therefore, the interim rule would amend § 511.10(k) to add a new paragraph (2) which provides in substance that HUD will, through data reported by grantees to HUD under the program's Cash and Management Information System, determine compliance with the existing 70 percent two-bedroom requirement of § 511.10(k) by excluding from the base upon which the 70 percent is calculated the amount of its grant that a grantee uses to rehabilitate to required seismic standards units initially occupied by very low-income persons. In addition, the grantee is required to include in its program description a citation of the local seismic standard ordinance.

The rule allows any grantee, including an urban county, State or consortium, to exclude grant amounts used to rehabilitate less than two-bedroom, very low-income units to meet seismic standards, as long as the rehabilitation meets seismic standards required by the jurisdiction in which such property is located. Rehabilitation to meet seismic standards required only by State law is not covered by section 150(d) or by § 511.10(k)(2), as amended by this interim rule. Furthermore, in accordance with program policy with respect to

other per-unit limitations, the rule does not require grantees to determine whether the rental rehabilitation funds themselves, or the owner's matching funds, were used to rehabilitate the project to seismic standards. As long as a unit did not meet local seismic standards immediately before the rehabilitation and the unit is brought into compliance as a result of the rehabilitation, the unit's proportionate share of the total grant amount expended on the project may be excluded from the 70 percent two-bedroom calculation, to the extent smaller units in the project are occupied by very low-income families after rehabilitation.

The provisions of the interim rule on rehabilitation to meet seismic standards (§ 511.10(k)(2)) apply prospectively only to FY 1988 and later year grant funds.

Finally, the interim rule includes the policy HUD has announced in its annual fund allocation notices for 1985, 1986 and 1987 concerning three or more bedroom units. Section 103(c)(2) of the Housing and Community Development Technical Amendments Act of 1984 (Pub. L. 98-479) revised section

17(c)(3)(A) of the United States Housing Act of 1937 to clarify that the Secretary shall assure that an equitable share of funds is used to provide units for families with children, particularly large families requiring three or more bedroom units. The Department determined that the three or more bedroom feature of this amendment could be satisfied if at least 15 percent of the units rehabilitated nationwide with Rental Rehabilitation Program grant amounts are units of three or more bedrooms. Section 511.10(k)(1) of the interim rule has been revised to reflect that determination and to provide that HUD reserves the right to establish mandatory three or more bedroom unit targets for specific grantees if the national goal is in danger of not being met, or if HUD finds that a grantee's production of three or more bedroom units is significantly below that of similarly situated grantees. Section 511.20(b)(4) is also being revised to require grantees to explain in their program descriptions how they will give selection priority to projects containing three or more bedroom units.

6. **Administrative expenses.** Section 150(e) of the 1987 Act expressly authorizes States and formula cities and counties to retain up to 10 percent of any rental rehabilitation grant amounts they receive for administrative expenses in operating the program. However, the statutory language and the legislative history do not support allowing HUD-

administered grantees to retain up to 10 percent of their respective grants for administrative costs, despite the apparent inequity of this result. In section 17, as a whole, the phrase "receiving resources under subsection (b)," which is used in section 150(e), generally refers to rental rehabilitation formula grantees, and the Conference Report on the 1987 Act (H.R. Rep. No. 100-428, November 8, 1987) confirms that Congress intended to exclude HUD-administered grantees from the administrative costs authority. At page 180, speaking of section 150(e), that Report states: "The conference report contains the House provision with an amendment to require that fees be shared where local governments administer the program in connection with the State and to permit *entitlement communities* to use up to 10 percent of the grant for administrative expenses." (Emphasis added.) HUD believes that the phrase "entitlement communities" must refer to formula grantees, and not to HUD-administered grantees, who apply directly to HUD for funds with no expectation of any particular formula-based or quasi-entitlement grant amount.

Although section 150(e) does not specifically mention administrative expenses by consortia, the Department sees no reason to exclude those entities from the benefits of section 150(e). On the contrary, section 17(k) (final undesignated paragraph) requires the Secretary to encourage consortia to participate in the program, and denying them benefits available to other grantees would have the opposite effect.

Although the statute does not define the term "administrative expenses," HUD is under an executive mandate to adopt the cost eligibility standards of OMB Circular A-87, except as such standards are inconsistent with the law governing the Rental Rehabilitation Program. After review of A-87 and the program legislation, HUD is adopting A-87 as the standard for grantee administrative expense eligibility without change.

Like any other eligible grantee, a State is not required to use any of its grant amount for administrative costs, but if it does so, the statute does require the State to make available to units of general local government some portion of the retained percentage, if a unit of local government incurs any administrative costs eligible under OMB Circular A-87 with respect to the program. While HUD wishes to minimize the extent to which it must oversee the relationship between a State and its subrecipient units of general

local government, HUD must establish procedures which are reasonably designed to assure that States comply with their statutory cost-sharing mandate, and which permit HUD to monitor such compliance, like any other statutory obligation. In order to maximize grantee flexibility, current regulations have been interpreted to permit a wide variety of administrative arrangements between States and units of general local government relative to the distribution of funds, selection of projects, review of rehabilitation costs, negotiations with owners and entering into project agreements, and other program operations and monitoring. (This interim rule makes technical changes to § 511.51 intended to clarify this flexibility.) However, current regulations also require State grantees to document their administrative arrangements with their units of general local government through "appropriate" written agreements designed to assure compliance with section 17 and Part 511 (see § 511.51(b)(1)).

Similarly, HUD is requiring by this rule that the State's written agreements with local governments participating in the State's program specify the functions that the unit of general local government shall perform and the procedures by which the local government's compensation for administrative expenses incurred in performing those functions is to be calculated and paid. The description of functions may be as general or as specific as the State cares to make it. The more general the description, the more latitude local governments will have, but the State may wish to control the performance of local governments more closely, which it may also do through more detailed elaboration of relative functions in the agreement. HUD will not review the substance of these cost-sharing arrangements, either before or after the fact, but it will monitor and review to assure that all administrative costs being paid with grant funds are in accordance with OMB Circular A-87.

By way of example, the most likely situation in a mixed model State is that both the State and units of general local government will incur eligible administrative expenses, and they will exceed in total the percentage of the grant the State has elected to use for administrative expenses (not to exceed 10 percent). The State-local agreement should anticipate this situation and provide how reimbursement will be apportioned. The statute mandates that a unit of general local government that incurs eligible costs must receive some reimbursement, but not necessarily the

same percentage as the State. An agreement might also provide a maximum amount that a local government could receive for administrative expenses; if it incurred more otherwise eligible expenses than that, no additional reimbursement would be paid.

On the other hand, in a State which distributes all funds to State recipients which carry out the program with the minimum of State supervision, the State may simply provide that each State recipient may receive 10 percent of the State recipient's portion of the State's grant for administrative costs, and each State recipient may expend these funds for any eligible administrative cost. That would be perfectly acceptable when included in an agreement between the State and each State recipient.

Grantees are also required by the interim rule to draw down amounts for administrative expenses in accordance with the program's Cash and Management Information System under § 511.74, as closely as possible to the need for payment (the usual standard). The interim rule makes technical amendments to § 511.74 to accommodate drawdowns for administrative expenses. Notwithstanding the authority of States to permit State recipients to draw down rehabilitation funds for projects directly, HUD is requiring that all funds for administrative expenses be drawn down by States. The State will either retain the funds or pay them to a unit of general local government, as agreed between the State and the unit. This decision requires the State initially and continually to enforce its division of funds with its units of general local government, rather than HUD.

Finally, HUD has determined that the maximum amount permissible for administrative expenses must be based upon 10 percent or less of a grantee's initial grant obligation for a fiscal year and that only FY 1988 and later year funds are available for administrative costs. These decisions are based on both equity and administrative convenience.

As to the use of FY 1988 and later year funds, all grantees accepted their previous grants without the benefit of administrative expense reimbursement. Some grantees have already totally or largely expended their funds for past years. Since there is no available source of funds to provide administrative cost reimbursement for grantees that have already expended their funds, it would be unfair to give slower performing grantees the benefit of additional funds for administrative costs. However, FY 1988 and later year funds may be used to administer any part of a grantee's

program, not just projects that are being undertaken with FY 1988 and later year funds. In addition, pursuant to the "pre-agreement" costs authority in OMB Circular A-87, HUD is authorizing grantees to incur eligible administrative costs after February 5, 1988, and prior to the effective date of this rule, and then to reimburse themselves from FY 1988 funds after the effective date of this rule for such otherwise eligible administrative costs.

The Department has determined that 10 percent of a grantee's initial grant obligation for a particular fiscal year will be the maximum available to the grantee for administrative expenses from that year's appropriation.

The Department considered and rejected an alternative approach that would have based the administrative expense limitation on 10 percent of the grant, including all reallocations and excluding all deobligations. To make such a limitation workable, HUD would have been required to adopt a policy of consistently deobligating administrative funds in proportion to the amount of any project funds deobligated, and allowing grantees receiving reallocations to use an additional 10 percent of each reallocation for administrative expenses. The rejected deobligation policy would have presented problems under section 17(l) of the 1937 Act, which prohibits HUD from administratively reducing, or recapturing from future grants, grants which have already been expended on eligible activities. Grantees tend to expend administrative funds at a faster rate than project funds are committed, and authority to deobligate funds under § 511.33(c) is based primarily on lack of progress by grantees in committing project funds. Therefore, HUD is unable under section 17(l) routinely to deobligate expended administrative funds, in proportion to the amount of grant funds that are deobligated, unless HUD were to establish a program requirement that grantees may only incur or drawdown their administrative funds in proportion to their progress in committing funds.

Such a requirement would be an undue restriction on grantees' discretion in structuring their program operations, contrary to the Program's emphasis on State and local discretion, and would fail to take into account that most grantees legitimately have much heavier administrative expenses early in the program year. For example, most grantees develop standard program documents, advertise for project developers and select projects competitively, before making most of

their project commitments. State programs, in particular, incur administrative costs at widely varying rates.

A determination that administrative funds may not be routinely deobligated in proportion to § 511.33(c) deobligations tend to mandate that grantees not be permitted to use 10 percent of any reallocations they may receive for administrative costs, since these deobligations are the principal source of funds for reallocation. While there is no legal limitation specifically prohibiting the use of more than 10 percent of the total annual Rental Rehabilitation appropriation for administrative costs, such an administratively imposed limitation is consistent with the spirit of the legislation. Furthermore, while HUD's § 511.33 deobligation/reallocation policies are intended to create an incentive for grantees to utilize their funds expeditiously, HUD believes that the provision of additional administrative funds could be counterproductive and would reduce the amount of funds available for rehabilitating units for lower income tenants. In fact, with proper use of local economies of scale and scheduling the use of the additional funds, HUD does not believe that additional project funds will result in a substantial need for additional administrative funds. Finally, a grantee, of course, must request and accept any reallocation it receives. If a grantee does not have sufficient resources to administer a reallocation, it should not request or accept the additional funds.

HUD emphasizes that any funds which have not been committed to projects on a timely basis or drawn down for administrative costs (as shown under the grantee's account in the program's Cash and Management Information System) are available for deobligation. HUD will not routinely allow a grantee to retain up to 10 percent of its grants for administrative expenses if eligible costs have not been incurred and drawn down. A technical amendment of § 511.33 has been included in the interim rule to authorize deobligation of unutilized funds set aside in the grantee's account in the program's Cash and Management Information System for administrative expenses, in connection with other § 511.33(c) deobligations. In addition, HUD notes that one of the principal standards for cost eligibility under OMB Circular A-87 is that costs must be "reasonable and necessary." In particular cases, very substantial lack of progress in relation to high levels of administrative costs could be factors

contributing to HUD determining that some administrative costs are not "reasonable and necessary," are hence ineligible, and therefore are subject to recapture in a remedial action under § 511.62(c)(3).

7. *Temporary Authority to Use States' Allocation Funds in FmHA-eligible Areas.* Section 311 of the 1987 Act provides that any rental rehabilitation grant amount provided to a State under section 17 that is unutilized from any prior fiscal year shall be available for use in areas eligible for assistance under title V of the Housing Act of 1949, which is administered by the Farmers Home Administration (FmHA). This authority terminates on September 30, 1989, and is described as a demonstration.

This demonstration does not contemplate a special announcement and distribution of funds to State grantees; it operates on uncommitted prior years' funds currently in the hands of States. In FY 1989, FY 1988 funds remaining uncommitted by States will also be available for the demonstration. HUD will furnish instructions to affected grantees with respect to identifying in the Cash and Management Information System projects which are undertaken in title V-eligible areas, to assure that funds are not committed prematurely to such projects and to facilitate HUD's preparation of the necessary report to Congress on the demonstration. Pursuant to the preagreement costs authority in OMB Circular A-87, HUD is authorizing grantees and owners to incur otherwise eligible soft costs for projects in rural areas after February 5, 1988, and prior to the effective date of this rule, but these projects may not be set up in the C/MI System, construction commenced or funds disbursed until the rule is effective.

Under this demonstration, the rules for use of reallocated funds in title V-eligible areas by States are the same as those for any other funds appropriated for the same fiscal year, without regard to when the reallocation grant is made or the type of grantee from which the reallocated funds came. That is, FY 1984, 1985, 1986, and 1987 funds are immediately available for use in title V-eligible areas, whether they have already been reallocated to a State grantee or are reallocated (if possible) later this year. (In accordance with statutory limitations, funds appropriated for fiscal years 1984 and 1985 which are deobligated in 1988 and later years are not available for reallocation.) In FY 1989, fiscal year 1988 funds will also be available for projects in title V-eligible areas. The standards for deobligation and reallocation under section 17(b)(3)

of the statute and § 511.33 of the regulations remain in effect and will continue to be followed by HUD.

However, this demonstration is not available in States with HUD-administered programs. The language of section 150(e) clearly states that a "grant amount provided to a State" is available for use in a title V-eligible area. HUD-administered grantees are not States, and they receive their grants directly from HUD, which is obviously not a State. Also, the language of section 17(e)(2) provides that HUD shall establish regulations and procedures for HUD-administered programs which are comparable to those for cities and urban counties receiving direct grants. In this case, however, the issue is comparability between States, not between other direct grantees, so section 17(e)(2) is not relevant to this point. Therefore, the prohibition against using rental rehabilitation funds in title V-eligible areas remains in effect as to grantees participating in a HUD-administered State Rental Rehabilitation Program.

Notice and Comment Rule Making

The Department believes that the need for prompt implementation of sections 150 (a), (c), (d), (e) and 311 of the 1987 Act, as contemplated by this rule, makes prior notice and comment impracticable and contrary to the public interest. Each of the statutory provisions implemented makes the Rental Rehabilitation Program more accessible and usable to program participants, thus improving the ability of the program to achieve its objective of helping to increase the supply of affordable housing for lower income families. For these reasons, the Department does not believe that it is appropriate to subject this rule to notice and comment rulemaking before making it effective. On the contrary, the Department believes that the public interest is better served by ensuring that the benefits contained in sections 150 (a), (c), (d), (e) and 311 are made available to the public as soon as possible.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban

Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements several statutory provisions that improve the Rental Rehabilitation Program. These changes will have neither a significant economic impact on, nor an effect on a substantial number of, small entities.

The Catalog of Federal Domestic Assistance Program number is 14.230. This rule was listed as Sequence No. 905 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13654) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 511

Rental rehabilitation grants, Administrative practices and procedure, Grant programs: housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 511 is amended to read as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3635(d)).

2. Section 511.1 is revised to read as follows:

§ 511.1 Applicability and purpose.

(a) This part implements the Rental Rehabilitation Program contained in section 17 of the United States Housing Act of 1937. As more fully described in this part, the program authorizes the Secretary of Housing and Urban

Development to make rental rehabilitation grants to help support the rehabilitation of eligible real property to be used for primarily residential rental purposes, and to pay for eligible administrative costs of grantees (not to exceed 10 percent of a grantee's initial grant obligation for FY 1988 and later years). Grants are made on a formula basis to cities having populations of 50,000 or more, urban counties, States, and qualifying consortia of geographically proximate units of general local government. States may use all or part of their grants to carry out their own rental rehabilitation programs or to distribute them to eligible units of general local government. HUD will administer a State's grant if the State chooses not to do so.

(b) The purpose of the program is to help provide affordable, standard housing for lower income families and to increase the availability of housing units for the use of voucher and certificate holders under Section 8 of the United States Housing Act of 1937. Subject to the availability of vouchers and certificates as determined by HUD, HUD will allocate such assistance for use in connection with the program to minimize the displacement of families residing in projects to be rehabilitated with rental rehabilitation grants, and to assist families who move from projects undergoing assisted rehabilitation activities.

3. Section 511.3 is revised to read as follows:

§ 511.3 Technical assistance.

Subject to the availability of appropriations, the Secretary is authorized to enter into grants, contracts, or cooperative agreements to provide technical assistance to participants in the Rental Rehabilitation Program. Technical assistance is the provision of skills or knowledge by those organizations or individuals that possess them to program participants to help them plan, develop, or administer their rental rehabilitation programs and activities more effectively. Technical assistance includes, but is not limited to, the collection, processing, and dissemination of program information useful for local and national program management. The assistance may be provided in several forms including, but not limited to, written information, person-to-person exchanges, seminars, workshops, or training sessions.

4. Section 511.4 is revised to read as follows:

§ 511.4 Administrative expenses.

(a) Any formula grantee (which does not include units of general local government receiving grants from HUD as provided in § 511.52) may use not to exceed 10 percent of the grant amount initially obligated to the grantee for Federal fiscal year 1988 and later fiscal years for administrative costs eligible under paragraphs (b) and (c) of this section. Eligible grantees may draw down funds to pay for eligible administrative costs through HUD's Cash and Management Information System in accordance with § 511.74 of this part.

(b) Eligible administrative expenses are reasonable and necessary costs, as described in OMB Circular A-87, incurred by the grantee itself, or by a unit of general local government pursuant to a written cost-sharing agreement with a State grantee (see § 511.51(a) of this part), in carrying out the Rental Rehabilitation Program in accordance with this part. Administrative expenses do not include costs of rehabilitation which are incurred by and charged to project owners as eligible project costs under § 511.10(g) of this part.

(c) A State grantee shall determine the amount of its rental rehabilitation grant that it will permit to be used for administrative expenses, not to exceed the maximum permitted by this section. The State grantee shall share the amount of its rental rehabilitation grant designated for administrative expenses with units of general local government that incur eligible administrative costs in carrying out the Rental Rehabilitation Program, whether the unit of general local government receives a distribution of funds from the State and selects and manages projects independently as a State recipient or whether it performs less comprehensive functions by agreement with the State. Before any eligible administrative expenses are incurred by a unit of general local government under a State's grant in FY 1988 or any later fiscal year, the cost-sharing arrangement shall be specified in a written agreement pursuant to § 511.51(a) of this part between the State grantee and each unit of general local government that receives payment from the State for administrative expenses under this part. HUD will not review the relative sharing of administrative expenses between the State and affected units of general local government, but pursuant to §§ 511.73 and 511.80 it will review and audit the State's program on the eligibility of administrative expenses paid with program funds.

§ 511.10 [Amended]

5. In § 511.10, paragraphs (e)(2) and (k) are revised, to read as follows:

(e) * * *

(2) *Per unit.* (i) Except as provided in paragraph (e)(2)(ii) of this section, the amount of a rental rehabilitation grant for any project may not exceed the sum of the following dollar amounts for dwelling units in the project:

(A) \$5,000 per unit for units with no bedrooms.

(B) \$6,500 per unit for units with one bedroom.

(C) \$7,500 per unit for units with two bedrooms.

(D) \$8,000 per unit for units with three or more bedrooms.

(ii) HUD may approve higher amounts for projects in areas of high material and labor costs, as provided in this paragraph (e)(2)(ii) where the grantee demonstrates to HUD's satisfaction that the higher amount is necessary to conduct a rental rehabilitation program and that the grantee has taken every appropriate step to contain the amount of the rental rehabilitation grant within the dollar limits specified in paragraph (e)(2)(i) of this section. These higher amounts will be determined as follows:

(A) HUD may approve higher per unit amounts for a grantee's entire rental rehabilitation program up to, but not to exceed, an amount derived by applying the HUD-approved High Cost Percentage for Base Cities for the area to the applicable per unit dollar limits; and

(B) HUD may, on a project-by-project basis, increase the levels permitted under paragraph (e)(2)(i) of this section by multiplying the original limits by up to 140 percent and then adding the product to the original limits. Therefore, the maximum high cost grant amounts per unit that may be approved are 240 percent of the original per unit limits.

(k) *Use of rental rehabilitation grants for housing for families.* (1) Each grantee shall ensure that an equitable share of rental rehabilitation grant amounts will be used to assist in the provision of housing designed for occupancy by families, including large families with children. This requirement will be deemed satisfied if at least 70 percent of the rental rehabilitation grant amount made available to the grantee is used to rehabilitate units containing two or more bedrooms. HUD may approve a lower percentage standard submitted by the grantee in its program description under § 511.20, or thereafter, based on HUD's determination that the lower standard is justified by factors such as a

short waiting list of large families requiring assistance, the nature of the housing stock available for rehabilitation, or the financial infeasibility of rehabilitating larger units. HUD will assure that on a national basis at least 15 percent of each year's rental rehabilitation grant amounts are used to rehabilitate units containing three or more bedrooms. HUD reserves the right prospectively to establish three- or more bedroom unit targets for individual grantees if the national goal is in danger of not being met, or if HUD finds that a grantee's production of three or more bedroom units is significantly below that of grantees under similar circumstances.

(2) If a unit of general local government has an ordinance which requires rehabilitation to meet seismic standards, any grantee may use up to the full amount of its annual rental rehabilitation grant for Federal fiscal year 1988 and later years (including reallocations under § 511.33(b) of funds for the same fiscal year) without regard to the requirements of paragraph (k)(1) of this section, but only to the extent it uses such grant amounts to rehabilitate units to meet the seismic standards required by the local ordinance and the units rehabilitated are initially occupied after rehabilitation by very low-income families. The grantee shall identify as prescribed by HUD in reports required under the Cash and Management Information System authorized by § 511.74 units which: (i) Have been rehabilitated to meet the requirements of a local seismic standards ordinance, and (ii) are initially occupied by very low-income families after rehabilitation. In determining compliance with paragraph (k)(1) of this section, HUD will multiply the rental rehabilitation grant amounts for the projects containing units rehabilitated to meet local seismic standards by the percentage of units in such projects which are rehabilitated to meet seismic standards and which are initially occupied by very low-income families after rehabilitation, and then HUD will deduct the product from the amount of the grantee's rental rehabilitation grant for the year (including the reallocations of same fiscal year funds). The grantee will be required to meet the 70 percent, or other approved percentage, requirement of paragraph (k)(1) of this section only as to the remainder of its annual grant, so calculated.

6. Section 511.20(b)(4) is revised to read as follows:

§ 511.20 Program descriptions.

(b) * * *

(4) *Use of rental rehabilitation grants for housing for families.* A description of the grantee's plan to ensure that an equitable share of rental rehabilitation grant amounts will be used to assist in the provision of housing designed for occupancy by families, particularly families requiring three or more bedrooms. The grantee will describe how it plans to give priority to projects containing three or more bedroom units. If applicable, the grantee will include an explanation of why it proposes to use less than 70 percent of its rental rehabilitation grant for the rehabilitation of units containing two or more bedrooms, as prescribed in § 511.10(k) (1) and (2). Such explanation shall include the citation to any local seismic standard ordinance.

§ 511.33 (Amended)

7. Section 511.33(c) is revised by adding the following new sentence after the first sentence thereof:

(c) * * * In connection with any such deobligation of project funds, HUD may also deobligate any unutilized funds set aside for administrative expenses in the grantee's program account under the Cash and Management Information system established under § 511.74. * * *

§ 511.50 (Amended)

8. Section 511.50 is amended by redesignating the entire existing text as paragraph (a), and by removing the period at the end and adding " except as specified in paragraph (b) of this section." A new paragraph (b) is added which reads as follows:

(b) For fiscal year 1988, uncommitted fiscal year 1987 and earlier year funds may be used by State grantees and units of general local government receiving funds from State grantees in areas eligible for assistance under title V of the Housing Act of 1949. For fiscal year 1989, uncommitted fiscal year 1988 and earlier year funds may similarly be used by State grantees and their units of general local government in title V-eligible areas. In accordance with statutory limitations, funds appropriated for fiscal years 1984 and 1985 which are deobligated in 1986 and later years are not available for reallocation. This authority to enter into commitments with owners for projects in title V-eligible areas expires on September 30, 1989. Authority to use funds in title V-

eligible areas is not available for HUD-administered programs under § 511.52.

§ 511.51 (Amended)

9. Section 511.51 (a) and (b) are revised to read as follows:

(a) *Type of program.* A State that elects to administer its allocation in accordance with § 511.50 may, in its discretion, use all or part of its rental rehabilitation grant amounts either (1) to carry out its own rental rehabilitation program without the active participation of units of general local government; (2) to distribute grant amounts to State recipients which independently select, enter into commitments with owners for, and manage projects, or (3) to carry out mixed programs in which both the State and all or some units of general local government each perform specified program functions. In cases in paragraphs (a)(2) and (3) of this section, States shall enter into written agreements with each State recipient or other unit of general local government which performs administrative functions in connection with the State's rental rehabilitation grant describing (whether very generally or more specifically) the functions that the unit of general local government shall perform and the terms and conditions under which the unit of general local government participates in the program, including the procedures by which the unit of general local government's compensation for its administrative expenses incurred in performing the authorized functions is to be calculated and paid.

(b) *Program requirements.* States shall carry out their rental rehabilitation programs in accordance with the requirements of this part and other applicable laws. In addition, States that use units of general local government to perform program functions shall:

(1) Ensure that the units of general local government carry out their rental rehabilitation programs in accordance with requirements of this part and other applicable laws. States shall include in their agreements with their units of general local government such additional provisions as may be appropriate to ensure such compliance and to enable the State to carry out its responsibilities under this part, including the withdrawal and reallocation of rental rehabilitation grant amounts based on unit of general local government noncompliance (including State recipient failure to meet a schedule submitted by the State under § 511.20(b)(9)); and

(2) Conduct such reviews and audits of their units of local government as may be appropriate to determine whether the units of general local government, including State recipients, have carried out their programs in accordance with the requirements of this part, whether they have done so in a timely manner, and whether they have continuing capacity to do so in a timely manner.

10. Section 511.74 is revised to read as follows:

§ 511.74 Disbursement of rental rehabilitation grant amounts: Cash and Management Information System.

After the grantee executes the grant agreement and complies with the requirements under Part 58 of this title for release of funds, HUD will disburse rental rehabilitation grant amounts on a project-by-project basis or for administrative expenses by electronic funds transfer to the designated depository institution of the grantee, or of a State recipient (funds for project rehabilitation only). Only States are permitted to request and receive disbursements from HUD of State grant funds for administrative expenses. Any disbursement is conditioned upon the submission of satisfactory information by the grantee or State recipient about the project or the administrative expenses and compliance with other procedures specified by HUD in HUD's issuances concerning the Rental Rehabilitation Program Cash and Management Information System. Copies of these issuances may be obtained from HUD Field Offices. Advances shall be requested by the grantee or State recipient for disbursement by HUD as closely as possible to the time that they are needed by a grantee or State recipient and the owner to pay eligible rehabilitation costs or by a grantee to pay eligible administrative expenses. Rehabilitation funds shall immediately be disbursed by the grantee or State recipient and the owner in payment for eligible rehabilitation costs and shall not be disbursed at any time, relative to a project's matching funds, in any greater proportion than the proportion of rental rehabilitation funds to matching funds for the project.

Dated: June 9, 1988.
Jack R. Stokvis,
General Deputy Assistant Secretary for
Community Planning and Development, CD.
[FR Doc. 88-15146 Filed 7-5-88; 8:45 am]
BILLING CODE 4210-30-M

Wednesday
July 6, 1988

Part IX**Department of
Education**

Notice Inviting Applications for New
Awards for Fiscal Year 1988 Under the
Graduate Assistance in Areas of National
Need Program

federal register

DEPARTMENT OF EDUCATION

(CFDA No. 84.200)

Notice Inviting Applications for New Awards for Fiscal Year 1988 Under the Graduate Assistance in Areas of National Need Program

Purpose of Program: The purpose of the Graduate Assistance in Areas of National Need Program is to provide, through academic departments and programs of institutions of higher education, a fellowship program to assist graduate students of superior ability who demonstrate financial need, in order to sustain and enhance the capacity for teaching and research in areas of national need.

Deadline for Transmittal of Applications: August 10, 1988.

Available Funds: \$7,859,000.

Estimated Range of Awards: \$100,000-\$500,000.

Estimated Average Size of Awards: \$250,000.

Estimated Number of Awards: 30.

Project Period: 36 months.

Application: Since this is the first year of this program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates. This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application package is necessary. Applicants are directed to the appendix of this notice for applications and instructions.

Applicable Authority: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations) and Part 78 (Education Appeal Board). The Graduate Assistance in Areas of National Need Program is authorized under Part D of Title IX of the Higher Education Act of 1965, as amended by Pub. L. 99-498, the Higher Education Amendments of 1986 (20 U.S.C. 1134-1134g).

Eligibility: (a)(1) Any academic department, program or unit (hereafter referred to as "academic department") of an institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, that offers a program of post-baccalaureate study leading to a graduate degree in an area of national need as established in the PRIORITIES section of this notice and that has been in existence for at least four years at the time of application is eligible to apply for a grant.

(2) An academic department, as described in paragraph (a)(1) of this section, may submit a joint application with one or more nondegree granting institutions which have formal arrangements for the support of doctoral dissertation research with degree-granting institutions. For the purposes of this program, a nondegree granting institution is any organization which—

(i) Is described in section 501(c)(3) of the Internal Revenue Code of 1954, and is exempt from tax under section 501(a) of the Code;

(ii) Is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

(iii) Is not a private foundation;

(iv) Has academic personnel for instruction and counseling who meet the standards of the institution of higher education; and

(v) Has necessary research resources not otherwise readily available in the institution of higher education.

(b) An individual is eligible to receive an award from an academic department participating in this program if the individual—

(1) Has financial need, as determined under criteria developed by the institution of higher education;

(2) Has an excellent academic record in the individual's previous program or programs of study;

(3) Plans a teaching or research career;

(4) Plans to pursue the highest possible degree available in the individual's course of study; and

(5)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) An institution must provide assurances that it will seek talented students from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider "traditionally underrepresented backgrounds" to mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded.

(d) The academic department of the institution of higher education is responsible for making accurate

determination concerning the criteria in paragraph (b).

Funding requirements: (a) No grant to an academic department of an institution of higher education shall be less than \$100,000 nor greater than \$500,000 for any fiscal year.

(b) From at least 60 percent of the funds received under this program, an academic department of an institution of higher education shall, consistent with the limitations in this paragraph, make commitments to graduate students at any point of their graduate study to provide stipends for applicable expenses except for tuition and fees for the length of time necessary to complete the course of graduate study. Because original awards to an academic department of an institution of higher education may not be made for longer than three years, an academic department of an institution of higher education may not make a commitment to a graduate student for more than three calendar years of support. If an institution successfully competes for a new award in a subsequent competition, a student may receive additional support, but in no case shall a student receive more than five calendar years of support.

(c) The size of the stipend awarded to students each year shall be determined by the institution, except that no annual stipend award under this program may exceed \$10,000, or the demonstrated level of need, determined on the basis of criteria developed by the institution, whichever is less.

(d) From the remainder of funds, the academic department of program may award fellowship recipients amounts to pay tuition, fees and other costs of education not included in student stipends. No grant funds may be used for the general operational overhead of the academic department.

Matching Requirements: An academic department must provide from non-Federal sources an amount at least equal to 25 percent of the grant. The matching funds must be used for the same purposes as the grant funds, as specified in paragraphs (a) through (d) of the Funding Requirements section of this notice.

Priorities: In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary has established absolute priorities for fiscal year 1988 for applications that propose to provide fellowships in the following areas of national need: 1—Chemistry, 2—Engineering, 3—Mathematics, and 4—Physics. Only applications proposing to provide fellowships in one or more of

these areas of national need will be considered under this competition.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under the Graduate Assistance in Areas of National Need Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) **The criteria.**—(1) **Meeting the purposes of the authorizing statute.** (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statute that authorizes the program, as stated in the Purpose of Program section of this notice, including consideration of—

(i) The objectives of the project; and
(ii) How the objectives of the project further the purpose of the authorizing statute.

(Note: A statement of the purpose of the authorizing statute is found in the Purpose of Program section of this notice.)

(2) **Extent of need for the project.** (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, as stated in the Purpose of the Program section of this notice, including consideration of—

(i) The needs addressed by the project;
(ii) How the applicant identified those needs;
(iii) How those needs will be met by the project; and
(iv) The benefits to be gained by meeting those needs.

(3) **Plan of operation.** (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;
(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program, as stated in the Purpose of Program section of this notice;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(Note: The authorizing statute requires that grantees, in making fellowship awards, seek students from traditionally underrepresented backgrounds.)

(4) **Quality of key personnel.** (7 points)
(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.
(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) **Budget and cost-effectiveness.** (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and
(ii) Costs are reasonable in relation to the objectives of the project.

(6) **Evaluation plan.** (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and
(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) **Adequacy of resources.** (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Selection Procedures: (a) Geographically balanced review panels of nationally recognized scholars will use the selection criteria to evaluate, score, and rank applications.

(b) Consistent with an allocation of awards based on quality of competing applications, an equitable geographic distribution among eligible public and private institutions of higher education will be promoted.

Instructions for Transmittal of Applications:

No grant may be awarded unless a complete form has been received.

(a) If an applicant wants a new grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.200) Washington, DC 20202.

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.200) Room 3633, 7th & D Streets, SW., ROB-3, Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed post card containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 6a of this application form for Federal assistance (Standard Form 2424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Assessment of Educational Impact: The Secretary requests comments on whether any information collection in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

For Further Information Contact: For specific information concerning the program, contact: Dr. Allen P. Cissell, Division of Higher Education Incentive

Programs, Office of Postsecondary Education, Department of Education, Room 3022, ROB-3, Mail Stop 3327, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732-4415.

Program Authority: 20 U.S.C., 11341-q.
Dated: June 10, 1988.

William J. Bennett,
Secretary of Education.

Appendix—Application Instructions and Forms

This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Face Sheet (Form SF-424 and instructions).

Part II: Budget Information (form and instructions).

Part III: Application Narrative. Instructions for Part I—Federal Assistance Face Sheet (SF-424) The standard form is used by applicants as a required face sheet for preapplications and applications submitted in

accordance with OMB Circular A-102. The applicant completes only items 1-23. Items 24-33 are completed by Federal agencies. Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A."

Below is a list of instructions to assist you in completing the applicable items on the form.

ITEM

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option).

4a-h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. If the applicant's organization has been assigned an ED-CRS number consisting of the IRS employer identification number prefixed by "1"

and suffixed by a two-digit number, enter the full entity number in block 5.

7. Provide the title and a summary description of the project.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county or city.

10. Indicate the estimated number of persons directly benefiting from the project.

12a. Amount requested or to be contributed during the first funding/budget period by the Federal Government.

12b-e. Enter the amount of matching funds.

12f. Enter the total of Items 12a-e.

13 & 15. Self-explanatory.

16. Indicate the estimated number of months to complete project after Federal funds are available.

18 & 21. Self-explanatory.

23. Name, title and signature of authorized representative of legal applicant.

BILLING CODE 4000-31-M

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION IDENTIFIER	3. STATE APPLICATION IDENTIFIER	4. NUMBER
1. TYPE OF SUBMISSION (Mark appropriate box.)	<input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input checked="" type="checkbox"/> APPLICATION	a. NUMBER b. DATE Year month day	NOTE TO BE ASSIGNED BY STATE	a. NUMBER b. DATE Year month day
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & Telephone No.)		5. EMPLOYER IDENTIFICATION NUMBER (EIN) a. NUMBER 842000 b. TITLE Graduate Assistance in Areas of National Need		
7. TITLE OF APPLICANT'S PROJECT (Use section IV of the form to provide a summary description of the project)		8. TYPE OF APPLICANT/RECIPIENT A-School B-Individual C-School District D-County E-City F-School District		
9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)		10. ESTIMATED NUMBER OF PERSONS BENEFITING		
12. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$.00		13. CONGRESSIONAL DISTRICTS OF a. APPLICANT b. PROJECT		14. TYPE OF APPLICATION A-New B-Renewal C-Extension D-Continuation
15. PROJECT START DATE Year month day		16. PROJECT DURATION Months		17. TYPE OF CHANGE (For 14c or 14d) A-Increase Others B-Decrease Others C-Increase Duration D-Decrease Duration E-Continuation
18. DATE DUE TO FEDERAL AGENCY		19. DATE DUE TO FEDERAL AGENCY		20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER
21. REMARKS ADDED		22. THE APPLICANT CERTIFIES THAT: a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE
24. APPLICATION RECEIVED 19		25. FEDERAL APPLICATION IDENTIFICATION NUMBER		26. FEDERAL GRANT IDENTIFICATION
27. ACTION TAKEN a. AWARDED b. REJECTED c. RETURNED FOR AMENDMENT d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE e. DEFERRED f. WITHDRAWN		28. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		29. ACTION DATE 19 30. STARTING DATE 19 31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number) Dr. Allen P. Cissell (202) 732-4415
32. ENDING DATE 19		33. REMARKS ADDED		34. YES NO

NSN 7540 01-008-8162
PREVIOUS EDITION
IS OBSOLETE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular 4-102

BEST COPY AVAILABLE

PART II

BUDGET INFORMATION

GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

FISCAL YEAR 1988

SECTION A - SUMMARY OF FELLOWSHIPS

AREA OF APPLICATION

NUMBER OF FELLOWSHIPS REQUESTED

SECTION B - FUNDS REQUESTED AND COST SHARING

1. Federal Funds Requested for Student Stipends	\$
2. Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends.	\$
3. Total Federal Funds Requested	\$
4. Non-Federal Funds	\$
Total Program Funds	\$

BILLING CODE 4000-01-C

Instructions for Part II—Budget Information

Heading Information: Enter the current fiscal year.

Section A—Summary of Fellowships

Enter the number of fellowships requested for area of application.

Section B—Funds Requested and Cost Sharing

1. Federal Funds Requested for Student Stipends: Enter the dollar amount of Federal funds requested for student stipends for applicable expenses except for tuition and fees. (At least 60% of the funds received under this program must be used to provide stipends.) See "FUNDING REQUIREMENTS."

2. Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends: Enter the dollar amount of Federal funds requested for tuition, fees and other costs of education not included in student stipends.

3. Total Federal Funds Requested: Enter the total Federal funds requested (sum of 1 and 2). Total Federal funds requested must not be less than \$100,000 nor greater than \$500,000 per year.

4. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g., state governments, local governments, private organizations, etc., which must equal at least 25 percent of the amount of Federal funds requested. Enter the total program funds (sum of 3 and 4).

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the information regarding priorities, and the SELECTION

CRITERIA the Secretary uses to evaluate applications.

The narrative should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the current academic program and the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice;

3. Set forth policies and procedures to ensure that Federal funds made available under this program will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of the program and in no case to supplant those funds;

4. Set forth policies and procedures to assure that, in making fellowship awards under this part, the institution will make awards to individuals who—

(A) Have financial need, as determined under criteria developed by the institution;

(B) Have excellent academic records in their previous programs of study;

(C) Plan teaching or research careers;

(D) Plan to pursue the highest possible degree available in their course of study; and

(E) To the extent possible, are from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider that "traditionally underrepresented backgrounds" mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded; and

5. Include any other pertinent information that might assist the Secretary in reviewing the application. Please limit the Application Narrative to no more than 25 doublespaced, typed pages (on one side only).

Assurances

The president of the institution, or his/her representative, must certify that the assurances listed below will be met if the applicant receives funds under this program. The signature of the applicant on Item 23 (b) of the cover page (Standard Form 424) certifies compliance with the assurances. (See the printed comment in Item 22 of the cover page.)

1. In the event that funds made available to the academic department under the program are insufficient to provide the assistance due a student under the commitment entered into between the academic department and the student, the academic department will endeavor, from any funds available to it to fulfill the commitment to the student.

2. The applicant will ensure that no student shall receive an award except during periods in which such student is maintaining satisfactory progress in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, or if the student is engaging in gainful employment other than part-time employment involved in teaching, research, or similar activities determined by the institution to be in support of the student's progress towards a degree.

3. The applicant will comply with the matching and funding requirements contained in the FUNDING REQUIREMENTS and MATCHING REQUIREMENTS sections of this application notice.

[FR Doc. 88-15225 Filed 7-5-88; 8:45 am]

BILLING CODE 4000-01-M

VOL

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federal register

Wednesday
July 6, 1988

Part X

The President

Proclamation 5839—United States-Canada
Days of Peace and Friendship

VOL

53

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25479

Federal Register

Vol. 53, No. 129

Wednesday, July 6, 1988

Presidential Documents

Title 3—

The President

Proclamation 5839 of July 1, 1988

United States-Canada Days of Peace and Friendship, 1988

By the President of the United States of America

A Proclamation

The enduring friendship between the American and Canadian peoples is based on our similar aspirations for liberty, justice, individual rights, and democratic values. Our governments differ in form but embody these same principles. Bound by a common vision of the future, the United States and Canada are working together to fulfill international responsibilities in the defense of freedom and lasting peace throughout the world.

Our friendship is reflected as well in our extensive trade with each other. Canada and the United States are each other's most important trading partners. We also have the world's largest bilateral trading relationship, and the recently signed Free Trade Agreement, when implemented, will increase prosperity in both our countries and further strengthen the close ties we enjoy.

July 2 and 3 are an especially good time to commemorate the unique relationship between Americans and Canadians, because these two days fall between beloved holidays—Canada Day on July 1 and America's Independence Day on the Fourth of July. May our celebration of U.S.-Canada Days of Peace and Friendship ever remind us of the history of mutual goodwill that unites us and of the sacrifices so many have made in each country for the freedom, justice, and peace we cherish.

The Congress of the United States, by House Joint Resolution 587, has designated July 2 and 3, 1988, as "United States-Canada Days of Peace and Friendship" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim July 2 and 3, 1988, as United States-Canada Days of Peace and Friendship. I call upon the people of the United States to observe these days with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of July, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-15333

Filed 7-6-88; 11:29 am]

Billing code 3105-01-M

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Federal Register

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H.J. Res. 465/Pub. L. 100-358
Designating June 26 through July 2, 1988, as "National Safety Belt Use Week." (June 30, 1988; 102 Stat. 682; 1 page) Price: \$1.00
H.R. 2470/Pub. L. 100-350
Medicare Catastrophic Coverage Act of 1988. (July 1, 1988; 102 Stat. 683; 135 pages) Price: \$3.75

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code of
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Code of Federal Regulations

Revised as of April 1, 1988

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_____	Part 300—End (Stock No. 869-004-00076-6)	13.00	_____
_____	Title 23—Highways		
_____	(Stock No. 869-004-00077-4)	18.00	_____
	Total Order		\$ _____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aide section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Part 606

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 606 on June 1, 1988 (53 FR 19884). The final regulations to Part 606 prohibit discrimination on the basis of handicap in programs or activities conducted by the FCA. These regulations provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to the programs and activities conducted by the FCA. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 6, 1988.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy E. Lynch, Associate General Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444. (12 U.S.C. 2252(a)(9) and (10))

Dated: July 1, 1988.

David A. Hill,
Secretary, Farm Credit Administration.
(FR Doc. 88-15236 Filed 7-6-88; 8:45 am)
BILLING CODE 8705-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Supplemental Security Income for the Aged, Blind, and Disabled; Against Equity and Good Conscience

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: In this final rule we expand the definition of what we consider to be "against equity and good conscience" in deciding whether or not to recover an overpayment of Social Security and/or supplemental security income (SSI) benefits. The new definition provides a more liberal policy for waiving the recovery of overpayments under certain conditions.

DATE: These regulations are effective with waiver decisions made on or after July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Office of Regulations, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965-8470.

SUPPLEMENTARY INFORMATION:**Background**

Titles II and XVI of the Social Security Act (the Act), sections 204(b) and 1631(b)(1)(B) respectively, provide that the Social Security Administration (SSA) shall not adjust benefits or make recovery because of an overpayment from any individual who is without fault in causing the overpayment if adjustment or recovery from that individual would "defeat the purpose" of the title or be "against equity and good conscience," and for title XVI cases, "impede efficient or effective administration" of that title. Sections 204(a) and 1631(b) provide authority to issue regulations regarding our overpayment and underpayment policies.

Our current regulations, §§ 404.509 and 416.554, define "against equity and good conscience." In addition, there are examples of how we apply the definition in making determinations on requests to waive recovery of overpayments. Our policy, as contained in the definition of "against equity and good conscience," provides that recovery of an

overpayment will be considered inequitable if an individual who is without fault, as defined in §§ 404.510 and 416.552, relinquished a valuable right or changed his or her position for the worse because of a notice that we would make payment or because of the actual payment. The individual's financial circumstances are not considered in our determination of whether recovery would be "against equity and good conscience." Those circumstances are considered, however, in determining whether recovery would "defeat the purpose" of the title (see §§ 404.508 and 416.553).

In title II cases, we generally seek recovery of an overpayment from the individual who actually received the overpayment. If we are unable to obtain repayment from that individual, we then seek recovery by withholding benefits payable to any other individual entitled to benefits on the same record of earnings as the individual who actually received the overpayment. In title XVI cases, the income and resources of both members of the eligible couple are used to determine the monthly payment each receives. Generally, each member will receive a separate check for one-half of the payment due the couple. Thus, when an overpayment occurs in a title XVI case, each member of an eligible couple will, generally, receive one-half of the overpayment. We seek joint recovery from the eligible spouse and the eligible individual. The usual method of recovery is to withhold an equal amount from the benefits of each until the overpayment is recovered. However, if we are unable to obtain recovery from both, we then seek recovery of the entire overpayment from one.

Title II beneficiaries and others have pointed out to us that individuals who are not living the same household as the individual who actually received the overpayment usually have little or no contact with the overpaid individual or that individual's household. As a result, they often do not know the cause or amount of the overpayment. Some individuals in this situation do not learn of the overpayment and their liability for repayment until they become entitled to benefits years later. Additionally, they probably do not derive financial benefit from the overpayment amounts received by someone else because they lived in a separate household from the overpaid

individual at the time the overpayment was made.

We agree that our policy of recovering an overpayment from an individual who receives benefits on the same earnings record as and/or who is the eligible spouse of an eligible individual but who lived in a separate household from the individual at the time the overpayment was made should be changed.

For the reasons stated above, we are expanding the definition for title II at § 404.509 and title XVI at § 416.554 of "against equity and good conscience" in recovery of an overpayment.

Revised Rule

For title II, we are expanding the definition of "against equity and good conscience" at § 404.509 to include an individual who was living in a separate household from that of the overpaid individual and who did not receive the overpayment. For title XVI, § 416.570 provides that each member of an eligible couple is liable for his or her overpayment and the overpayment of his or her eligible spouse. We are expanding the definition at § 416.554 to permit waiver of recovery for that part of the overpayment not received when the overpayment is incurred by members of an eligible couple who are separated 6 months or less as provided in § 416.432.

To show some of the circumstances in which the expanded definition applies, we are adding examples (examples 3 and 4 at § 404.509 and example 3 at § 416.554).

In addition to the expanded definition and the new examples, we are deleting two examples at § 404.509 that are no longer appropriate and editing the remaining examples to reorder or make them clearer.

Public Comments

We published a Notice of Proposed Rulemaking (NPRM) in the Federal Register at 52 FR 10116 on March 30, 1987. We asked for public comments within a period of 60 days. The comment period closed May 29, 1987. The NPRM discussed the application of the revised "against equity and good conscience" rules to title II cases only. Because the criteria for waiver adopted in the proposed policy could also apply to concurrent cases (individuals receiving both title II and title XVI benefits) as well as some individuals receiving only title XVI benefits, we have decided that it would be inconsistent with the purpose of the proposal not to make it applicable to title XVI as well. The result of this extension will be to give certain couples receiving title XVI

benefits an additional basis for waiver in certain limited circumstances.

The rule will apply under title XVI to members of an eligible couple who have been separated 6 months or less as provided in § 416.432. Unless otherwise indicated, the monthly payment for an eligible couple is divided equally and paid in separate checks to each individual. When an eligible couple is overpaid, each individual receives a part of the total overpayment. For the 6 months or less that the members of an eligible couple are separated, the rule provides that adjustment or recovery is "against equity and good conscience" for that part of the overpayment the individual who is without fault did not receive, but is liable for under § 416.570. For that part of the overpayment the individual did receive, the individual may also request waiver under § 416.550.

We received six comments on the NPRM. All commenters approved changing the definition of "against equity and good conscience." However, several commenters proposed additional changes that are addressed below. To facilitate our response, the comments are not addressed individually but rather by issues raised.

Comment: One commenter proposed that we expand the definition to include "or not living with the individual at the time recovery of the overpayment is sought."

Response: We rejected this suggestion. The purpose of the expanded definition reflected in this final rule regarding "against equity and good conscience" is to permit waiver of recovery of an overpayment against an individual who did not receive the overpayment and could not be expected to have known about the overpayment when it was made because the individual was living in a separate household from the person who caused the overpayment. Living arrangements when we initiate recovery of an overpayment are not relevant to the purpose of the definition in the final rule.

Comment: Two commenters suggested that there be a new special waiver definition stating that recovery of an overpayment will not be undertaken against any individual who did not receive the overpayment, whether or not the individual had been living with the overpaid person at the time of the overpayment.

Response: We rejected this suggestion because section 204(a)(1) of the Act requires that we must recover an overpayment either from the individual who received it or from his or her estate or we must decrease any payment that

is payable to any other person on the basis of the earnings record which was the basis of the payment to the overpaid individual.

Comment: One commenter proposed that SSA records be used to determine that an individual is not at fault for the overpayment so that the individual would not have the burden of proving that he/she lived in a separate household at the time of the overpayment and derived no benefit from the overpayment.

Response: We rejected this proposal because SSA records do not contain the information we need to determine whether an individual was at fault in causing the overpayment. Unless the individual is without fault and meets the requirements of either "defeat the purpose" of the title or "against equity and good conscience," we cannot waive adjustment or recovery of the overpayment.

Comment: One commenter recommended that we define the term "derived no benefit" from the overpayment to assist individuals in showing that recovery of the overpayment would be "against equity and good conscience."

Response: We did not adopt the recommendation that we define the term "derive no benefit." However, to avoid public confusion, we are clarifying the standard by substituting "did not receive the overpayment" for the term in question. We believe this new wording is clear and at the same time continues the substance of our policy of providing waiver under the new criteria only to the extent that an individual did not realize financial gain because he or she did not receive the overpayment. We also clarified example 3 and added example 4 at § 404.509 and example 3 at § 416.554 to avoid any confusion.

Comment: One commenter suggested that we eliminate the requirement that the individual must also "derive no benefit from the overpayment" because this is a narrow view of the "against equity and good conscience" standard.

Response: We rejected the substance of this suggestion. We believe it would be unfair to treat those individuals who realized financial gain from the overpayment the same as those who did not.

Comment: One commenter suggested that the regulations show the contents of the notice sent to individuals advising them of the overpayment and of their right to obtain waiver of the overpayment.

Response: We rejected this suggestion because to show this and other notices in the Code of Federal Regulations

(CFR) would expand the CFR to an unmanageable size, make it difficult to revise notices, and would provide little benefit. Section 404.502a explains that we send a notice of right to waiver consideration to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected. We believe the notice mailed to each overpaid individual effectively informs individuals of the right to a waiver determination.

Comment: One commenter proposed that the regulations show the steps we take to recover an overpayment and that we also define what we mean by "unable to collect."

Response: We rejected this proposal because the information is available in the Federal Claims Collection Standards (4 CFR, Parts 101 through 105) which govern our overpayment collection actions and define when an overpayment is to be considered uncollectable. These standards have Federal government-wide application.

Regulatory Procedures

Executive Order 12291

These regulations change the definition of what we consider to be "against equity and good conscience" in recovering an overpayment. The new definition implements a more equitable policy of waiving recovery of overpayments under certain conditions. We estimate the cost to be minor (less than \$4 million per year). Therefore, these regulations do not meet the criteria specified in Executive Order 12291 for a major rule and a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by the Officer of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act of 1980, is not required. (Catalog of Federal Domestic Assistance Program Nos. 13.062—Social Security Disability Insurance; 13.003—Social Security Retirement Insurance; 13.006—Social Security Survivors' Insurance; 13.007—Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Supplemental Security Income (SSI).

Dated: April 20, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: June 8, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Parts 404 and 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Part 404, Subpart F continues to read as follows:

Authority: Secs. 204(a)-(d), 205(a), and 1102 of the Social Security Act; 42 U.S.C. 404(a)-(d), 405(a), and 1302.

2. Section 404.509 is revised to read as follows:

§ 404.509 Against equity and good conscience; defined.

(a) Recovery of an overpayment is "against equity and good conscience" (under title II and title XVIII) if an individual—

(1) Changed his or her position for the worse (Example 1) or relinquished a valuable right (Example 2) because of reliance upon a notice that a payment would be made or because of the overpayment itself; or

(2) Was living in a separate household from the overpaid person at the time of the overpayment and did not receive the overpayment (Examples 3 and 4).

(b) The individual's financial circumstances are not material to a finding of "against equity and good conscience."

Example 1. A widow, having been awarded benefits for herself and daughter, entered her daughter in private school because the monthly benefits made this possible. After the widow and her daughter received payments for almost a year, the deceased worker was found to be not insured and all payments to the widow and child were incorrect. The widow has no other funds with which to pay the daughter's private school expenses. Having entered the daughter in private school and thus incurred a financial obligation toward which the benefits had been applied, she was in a worse position financially than if she and her daughter had

never been entitled to benefits. In this situation, the recovery of the payments would be "against equity and good conscience."

Example 2. After being awarded old-age insurance benefits, an individual resigned from employment on the assumption he would receive regular monthly benefit payments. It was discovered 3 years later that (due to a Social Security Administration error) his award was erroneous because he did not have the required insured status. Due to his age, the individual was unable to get his job back and could not get any other employment. In this situation, recovery of the overpayments would be "against equity and good conscience" because the individual gave up a valuable right.

Example 3. M divorced K and married L. M died a few years later. When K files for benefits as a surviving divorced wife, she learns that L had been overpaid \$3,200 on M's earnings record. Because K and L are both entitled to benefits on M's record of earnings and we could not recover the overpayment from L, we sought recovery from K. K was living in a separate household from L at the time of the overpayment and did not receive the overpayment. K requests waiver of recovery of the \$3,200 overpayment from benefits due her as a surviving divorced wife of M. In this situation, it would be "against equity and good conscience" to recover the overpayment from K.

Example 4. G filed for and was awarded benefits. His daughter, T, also filed for student benefits on G's earnings record. Since T was an independent, full-time student living in another State, she filed for benefits on her own behalf. Later, after T received 12 monthly benefits, the school reported that T had been a full-time student only 2 months and had withdrawn from school. Since T was overpaid 10 monthly benefits, she was requested to return the overpayment to SSA. T did not return the overpayment and further attempts to collect the overpayment were unsuccessful. G was asked to repay the overpayment because he was receiving benefits on the same earnings record. G requested waiver. To support his waiver request G established that he was not at fault in causing the overpayment because he did not know that T was receiving benefits. Since G is without fault and, in addition, meets the requirements of not living in the same household at the time of the overpayment and did not receive the overpayment, it would be "against equity and good conscience" to recover the overpayment from G.

PART 416—[AMENDED]

1. The authority citation for Part 416, Subpart E continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1361, 1361(a), 1382(c), and 1383 (a), (b), (d), and (g).

2. Section 416.554 is revised to read as follows:

§ 418.554 Waiver of adjustment or recovery—against equity and good conscience.

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 418.552) and adjustment or recovery would be "against equity and good conscience." Adjustment or recovery is considered to be "against equity and good conscience" if an individual changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that payment would be made or because of the incorrect payment itself. In addition, adjustment or recovery is considered to be "against equity and good conscience" for an individual who is a member of an eligible couple separated 6 months or less as provided in § 418.432, for that part of an overpayment not received, but subject to recovery under § 418.570.

Example 1. Upon being notified that he was eligible for supplemental security income payments, an individual signed a lease on an apartment renting for \$15 a month more than the room he had previously occupied. It was subsequently found that eligibility for the payment should not have been established. In such a case, recovery would be considered "against equity and good conscience."

Example 2. An individual fails to take advantage of a private or organization charity, relying instead on the award of supplemental security income payments to support himself. It was subsequently found that the money was improperly paid. Recovery would be considered "against equity and good conscience."

Example 3. Mr. and Mrs. Smith—members of an eligible couple—separate. During the 6-month period that they are still considered an eligible couple, Mr. Smith receives earned income resulting in an overpayment to both. Mrs. Smith is found to be without fault in causing the overpayment. Recovery from Mrs. Smith of Mr. Smith's part of the couple's overpayment is waived as being "against equity and good conscience." Whether recovery of Mrs. Smith's portion of the couple's overpayment can be waived will be evaluated separately.

[FR Doc. 88-15256 Filed 7-6-88; 8:45 am]
BILLING CODE 4180-11-01

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****23 CFR Part 160****RIN 2125-AC08****State Fiscal Procedures and Reports; Rescission of Regulation**

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Rescission of regulation.

SUMMARY: The FHWA is rescinding its regulations concerning the transfer of Federal-Aid Highway and Safety funds because the regulations are merely a restatement of statutory provisions.

EFFECTIVE DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Larry C. Hanna, Program Analysis Division, (202) 368-2906; or Michael J. Laska, Office of the Chief Counsel, (202) 368-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The provisions contained in 23 CFR Part 160, were issued to prescribe the procedures for transfer of funds under subsections 104 (c) and (d) and 104(g) of title 23, United States Code. The regulations are primarily a simple restatement of the statutory provisions contained in title 23, U.S.C. It has been determined that since the regulations only serve to repeat statutory language, they are no longer considered necessary. States will be able to refer to Volume 1, Chapter 6, Section 3 of the Federal-Aid Highway Program Manual for statutory guidance.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. No economic impacts are anticipated as a result of this action. Accordingly, a full regulatory evaluation is not required. Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic effect on a substantial number of small entities.

For the reasons stated above, the FHWA finds good cause to rescind the regulation contained in 23 CFR Part 160, without notice and opportunity for comment and without a 30-day delay in effective date required under the Administrative Procedure Act since public comment is impracticable and unnecessary. In addition, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this

document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 160

Grant programs—transportation, Highways and roads.

Authority: 23 U.S.C. 104 (c), (d), and (g), 315; 49 CFR 1.48(b).

PART 160—STATE FISCAL PROCEDURES AND REPORT (REMOVED)

In consideration of the foregoing, the FHWA hereby removes Part 160 from Title 23, Code of Federal Regulations, Chapter 1.

Issued on: June 29, 1988.

Robert E. Farris,
Federal Highway Administrator.
[FR Doc. 88-15248 Filed 7-6-88; 8:45 am]
BILLING CODE 4180-22-01

23 CFR Part 658

[FHWA Docket No. 85-16, Notice No. 3]
RIN 2125-AB68

Truck-Tractor Semitrailer-Semitrailer; B-Trains

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Final rule.

SUMMARY: This document sets forth the designation of a truck-tractor semitrailer-semi-trailer combination vehicle (with a B-train assembly connecting the two trailing units) as specialized equipment under the provisions of section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97-424, 96 Stat. 2097.

EFFECTIVE DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. C.J. MacGowan, Office of Motor Carrier Information Management and Analysis (202) 368-4023 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 368-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPRM) titled "Truck Size and Weight; Revisions" (50 FR 8342, March 1, 1985), the FHWA proposed to interpret 23 CFR 658.13 in such a manner that a combination of vehicles described as a truck-tractor semitrailer-semi-trailer (hereinafter referred to as TTSS) be considered as a truck-tractor semitrailer-trailer for purposes of 23

CFR Part 658. The 1985 NPRM proposed to accomplish this by adding the words "truck-tractor semitrailer-semi-trailer" each time they appeared in § 658.13. Based on the comments received, the FHWA recognized such a rule would be inappropriate.

Subsequently, a supplemental notice of proposed rulemaking titled "Truck-Tractor Semitrailer-Semitrailer; B-Trains" (53 FR 2803, January 29, 1988), proposed to recognize the TTSS vehicle (with a B-train assembly connecting the two trailing units) as specialized equipment under the provisions of section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97-424, 96 Stat. 2097.

There were four responses to the January 29, 1988, supplemental NPRM regarding the proposed definition and the proposed length limitations. All commenters supported the supplemental NPRM, two with minor changes to clarify the definitions as discussed below.

The Government of the District of Columbia and the State of California offered no adverse comment. The State of California offered the comment that the B-train doubles combination vehicle does not off-track as severely as an STAA tractor-semi-trailer combination vehicle and provides better stability characteristics than the more common A-train doubles combination vehicle.

The State of Oregon expressed a concern regarding the design of the fifth-wheel connection that does not have the off-tracking benefit of a B-train. In this design, the frame of the first semitrailer is extended back to allow for a fifth-wheel connection. However, the extended frame does not act as a stinger, but, instead, as an extension of the first semitrailer wheelbase. Although Oregon's observation is true, this vehicle still does not off-track as much as a tractor-semi-trailer (48-foot) combination, a fact that California pointed out. Therefore, FHWA chooses not to limit this provision to stinger-steered B-trains.

The Western Highway Institute expressed concern about possible misinterpretation of the length exclusion clause. Their concern was that since the lead semitrailer was manufactured and "intended" for use in a doubles combination vehicle, some would conclude that the overall length limitation is 28 feet when there is no semitrailer mounted to the B-train assembly. Such an interpretation would be restrictive in that the truck-tractor lead semitrailer combination vehicle could not then operate on the designated system without a second semitrailer connected. The FHWA did not intend this and has clarified the definition to

provide that where there is no semitrailer mounted to the B-train assembly, the lead semitrailer would be limited to an overall length of 48 feet, or longer, if grandfathered.

Regulatory Impact

The FHWA has considered the impacts of this rule and has determined that it is not a major rulemaking action within the meaning of E.O. 12291. Pursuant to E.O. 12498, this rulemaking action has been included on the Department of Transportation's Regulatory Program for significant rulemaking actions.

These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the final rule on truck size and weight (June 5, 1984; 49 FR 23302), by clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this rulemaking have already been fully considered by the impact documentation prepared for the June 5 final rule. Any changes to the June 5 final rule resulting from this rule would not appreciably affect the impact documentation initially prepared. The Regulatory Impact Analysis prepared for the June 5 rulemaking is available for inspection in the headquarters office of FHWA, 400 Seventh Street, SW., Room 4232, Washington, DC.

For the same reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In developing this final rule, the FHWA has considered fully the effect this rule will have on the States as required by E.O. 12612 on "Federalism," and the final rule is consistent with those principles.

In consideration of the foregoing, the FHWA is designating the truck-tractor semitrailer-semi-trailer combination as described in this final rule as specialized equipment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: June 28, 1988.

Robert E. Farris,
Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends Part 658, Chapter 1 of Title 23, Code of Federal Regulations, as set forth below.

PART 658—TRUCK SIZE AND WEIGHT; ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2312, 2313 and App. 2316) as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.5 is amended by adding paragraph (o) as follows:

§ 658.5 Definitions.

(o) *Truck-tractor Semitrailer-Semitrailer.* In a truck-tractor semitrailer-semi-trailer combination vehicle, the two trailing units are connected with a "B-train" assembly. The B-train assembly is a rigid frame extension attached to the rear frame of a first semitrailer which allows for a fifth wheel connection point for the second semitrailer. This combination has one less articulation point than the conventional "A dolly" connected truck-tractor semitrailer-trailer combination.

3. Section 658.13 is amended by adding paragraph (d)(3) to read as follows:

§ 658.13 Length.**(d) Specialized equipment.**

(3) *Truck-tractor semitrailer-semi-trailer.* (i) Truck-tractor semitrailer-semi-trailer combination vehicles are considered to be specialized equipment. No State shall impose a length limitation of less than 28 feet on any semitrailer or 28½ feet if the semitrailer was in legal operation on December 1, 1982, operating in a truck-tractor semitrailer-semi-trailer combination. No State shall impose an overall length limitation on a truck-tractor semitrailer-semi-trailer combination when each semitrailer length is 28 feet, or 28½ feet if grandfathered.

(ii) The B-train assembly is excluded from the measurement of trailer length when used between the first and second trailer of a truck-tractor semitrailer-semitrailer combination vehicle. However, when there is no semitrailer mounted to the B-train assembly, it will be included in the length measurement of the semitrailer, the length limitation in this case being 48 feet, or longer if grandfathered.

[FR Doc. 88-15249 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Approval of Alabama Abandoned Mine Land Reclamation Plan Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: On June 15, 1987, the State of Alabama submitted to OSMRE a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) plan. The amendment consists of minor adjustments in the Alabama policies and procedures regarding land acquisition, management and disposal of property, and reclamation on private land (liens, appraisals and rights of entry). After opportunity for public comment and review of the amendment, OSMRE has determined that the Alabama amendment meets the requirements of the Surface Mining Control and Reclamation Act (SMCRA) and the Secretary's regulations at 30 CFR Part 884. Accordingly, OSMRE is approving the Alabama AMLR plan amendment.

EFFECTIVE DATE: August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Penn, Director, Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, Birmingham, Alabama 35209, Telephone (205) 731-0953.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of SMCRA, Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for

reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State/Tribe or Federal law. Title IV of SMCRA establishes the conditions under which State/Tribes may obtain primary authority to implement this reclamation program.

The Alabama AMLR plan was approved on May 20, 1982 (47 FR 22062). On June 15, 1987, Alabama submitted a proposed amendment to the plan. An approved State/Tribe AMLR plan can be amended under the provisions of 30 CFR 884.15. Under these provisions, if the amendment or revision changes the objectives, scope, or major policies followed by the State/Tribe in the conduct of its reclamation program, OSMRE must follow the procedures set out in 30 CFR 884.14 in approving or disapproving the amendment or revision of a State/Tribe reclamation plan. OSMRE has followed these procedures and effective August 8, 1988, has approved the Alabama AMLR plan amendment.

By letter dated June 15, 1987 (Administrative Record No. AL 423) Alabama submitted an abandoned mine land reclamation plan amendment consisting of revised narratives to replace three sections of the approved Alabama plan. Specifically the following areas of the Plan are being revised.

1. *Land Acquisition, Management and Disposal* (30 CFR Part 879): Alabama submitted revised procedures and forms for conducting appraisals on lands to be acquired by the State under the AMLR program.

2. *Reclamation on Private Lands* (30 CFR Part 882): Alabama submitted revised procedures and forms for conducting appraisals of eligible abandoned mine lands (AML) and for considering lien potential, satisfaction, and release of lien for properties being reclaimed under the AMLR program.

3. *Rights of Entry* (30 CFR Part 887): Alabama submitted revisions making minor changes in the forms used to obtain voluntary and nonconsensual rights-of-entry on AML lands. Minor editorial changes were also proposed to bring the Alabama Plan into line with OSMRE organizational requirements.

OSMRE published a notice of proposed rulemaking on the Alabama amendment and requested public comment on September 18, 1987 (52 FR 34929). The notice addressed in detail the proposed amendment. Since no public hearings were requested, none were held. Comments received by

OSMRE on the amendment are discussed below:

II. Public Comment

The U.S. Fish and Wildlife Service suggested that the State AMLR program provide that agency, or the Alabama Department of Conservation and Natural Resources an opportunity to perform an abbreviated review of land parcels obtained under the abandoned mine land program to determine if the parcels could serve a purpose with regard to the protection, conservation and recovery of endangered or threatened species. OSMRE has considered this comment and finds that the coordination suggested by the Fish and Wildlife Service is part of the general coordination requirement, already in the plan, between the State AML agency and other Federal and State agencies.

III. Director's Findings

In accordance with section 405 of SMCRA, OSMRE finds that Alabama has submitted an amendment to its Abandoned Mine Land Reclamation Plan, subsequently revised and clarified, and has determined, pursuant to 30 CFR 884.15, that:

1. The State provided adequate notice and opportunity for public comment in the development of the amendment and that the record does not reflect major unresolved controversies.
2. Views of other Federal agencies having an interest in the plan have been solicited and considered.
3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.
4. The proposed plan amendment meets all requirements of the OSMRE AMLR program provisions.
5. The State has an approved Surface Mining Regulatory Program.
6. The amendment is in compliance with all applicable State and Federal laws and regulations.

Under SMCRA, OSMRE codifies the approved requirements of individual States, including decisions on State reclamation plans and amendments, under Parts 900 to 950 of 30 CFR Subchapter T. Provisions relating to Alabama are found in 30 CFR Part 901. Based on the findings above, the Director is amending 30 CFR 901.25 to codify his approval of the Alabama amendment of June 15, 1987.

IV. Additional Findings

1. *Federal Paperwork Reduction Act:* This rule does not contain information collection requirements which require

approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On November 23, 1987, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/Tribe reclamation plans or amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No burden will be imposed upon entities operating in compliance with the Act.

3. *National Environmental Policy Act:* Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30).

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 29, 1988.

Robert E. Boldt,
Deputy Director, Office of Surface Mining Reclamation and Enforcement.

PART 901—ALABAMA

1. The authority citation for Part 901 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. A new § 901.25 is added to read as follows:

§ 901.25 Amendment to approved Alabama Abandoned Mine Land Reclamation Plan.

The Alabama amendment, consisting of minor adjustments in the Alabama policies and procedures regarding land acquisition, management and disposal of property, and reclamation on private land (liens, appraisals and rights of entry), as submitted on June 15, 1987,

and modified on January 7, 1988, is approved effective August 8, 1988.

Copies of the approved amendment are available at the following locations.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220.
Alabama Surface Mining Reclamation Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, Room 302, Birmingham, Alabama 34209.

Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, Room 5315, 110 L Street NW., Washington, DC 20240.

[FR Doc. 88-15190 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Princeton

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS PRINCETON (CG-59) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge

Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PRINCETON (CG-59) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Under Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull, Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light, Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions, Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim, Annex I, sec. 2(b)	Forward masthead lights not in forward quarter of ship, Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light, Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS PRINCETON	CG-59	-	-	-	-	-	X	X	38

Dated: June 27, 1988.
H. Lawrence Garrett, III,
Under Secretary of the Navy.
[FR Doc. 88-15200 Filed 7-6-88; 8:45 am]
BILLING CODE 3610-05-01

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS San Juan

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS SAN JUAN (SSN-751) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 27, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA

22332-2400, Telephone number: (202) 325-8744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SAN JUAN (SSN-751) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Under Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS SAN JUAN (SSN-751) is a member of the SSN 608 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables

of § 706.3, are equally applicable to USS SAN JUAN (SSN-751).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance ¹
USS SAN JUAN	SSN-751	3.5

¹ Distance in meters of forward masthead light below minimum required height, § 2(a)(i), Annex I.

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility, Rule 21(a)	Sidelights, arc of visibility, Rule 21(b)	Stern light, arc of visibility, Rule 21(c)	Sidelights, distance inboard of ship's sides in meters, § 3(b), Annex I	Stern light distance forward of stern in meters, Rule 21(c)	Forward anchor light, height above hull in meters, § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters, § 2(k), Annex I
USS SAN JUAN	SSN-751	229°	113°	208°	4.2	5.1	3.5	1.7 below.

Dated: June 27, 1988.
H. Lawrence Garrett III,
Under Secretary of the Navy.
[FR Doc. 88-15201 Filed 7-6-88; 8:45 am]
BILLING CODE 3610-05-01

DEPARTMENT OF EDUCATION

34 CFR Part 600

Institutional Eligibility Under the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Suspension of effective date of 34 CFR 600.3(d).

SUMMARY: On April 5, 1988, the Department of Education published in the Federal Register, final regulations establishing the rules and procedures that the Secretary uses to determine whether an institution or school qualifies as an eligible institution under the Higher Education Act of 1965, as amended (HEA), 53 FR 11208.

These regulations provided that § 600.3(d) would take effect on July 1, 1988. Section 600.3(d) requires postsecondary institutions which were required to measure their educational programs in clock hours on the documentation submitted in application for state authorization, to measure their programs in clock hours in fact in order to be recognized as "legally authorized" by the Secretary.

Subsequent to the April 5, 1988, publication, the Department received numerous objections to the July 1, 1988, effective date. The objecting parties indicated that this effective date would require recalculation, and elimination or reduction, of large numbers of 1988-89 student-aid awards; adversely affect postsecondary institutions which relied on prior practice in preparing for the upcoming academic term and cause them to incur substantial costs; and impose significant burdens on State departments of education as a result of postsecondary institutions seeking immediate changes in State authorization requirements.

As a result of these expressions of concern from representatives of postsecondary institutions and other segments of the education community, regarding the impact of the July 1, 1988, effective date, the Secretary suspends the effective date of paragraph (d) of § 600.3 until July 1, 1989. This delay will provide postsecondary institutions with adequate time to conform to these provisions of the institutional eligibility regulations.

For the above reasons, the Secretary finds, in accordance with 5 U.S.C. 553(b)(B), that the solicitation of public comment on this change would be

impracticable and contrary to the public interest.

EFFECTIVE DATE: This change in the effective date of § 600.3(d) takes effect 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of this change, call or write the Department of Education contact person. When effective, the change in the effective date is retroactive to July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Virginia G. Re, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., (Regional Office Building 3, Room 3030), Washington, DC 20202. Telephone number (202) 732-4906.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: June 30, 1988.

William J. Bennett,
Secretary of Education.
[FR Doc. 88-15215 Filed 7-6-88; 8:45 am]
BILLING CODE 4000-01-01

VETERANS ADMINISTRATION

38 CFR Part 1

Parking Fees at VA Medical Facilities

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) has developed regulations for determining parking fees at certain VA medical facilities and to provide definitions of terms relating to the payment of parking charges at those facilities. The need for this action results from the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 which requires that parking fees be established at VA medical facilities where parking garages are constructed, acquired, or altered at a cost exceeding \$500,000, or, in the case of acquisition by lease, \$100,000 per year; that employees, visitors and other individuals having business at such medical facility be charged a parking fee for the use of a parking facility at the medical facility; and that the established fees be reasonable under the circumstances. The effect of these regulations will be to provide a uniform basis for establishing fees and to provide definitions of terms relating to payment of fees.

EFFECTIVE DATE: These regulations are effective August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Donald E. Johnson, Chief, Real Property Program Management Division, Office of Facilities, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-5026.

SUPPLEMENTARY INFORMATION: On pages 8934-35 of the Federal Register of March 18, 1988, the VA published proposed regulatory amendments to 38 CFR Part 1. Interested persons were given 30 days to submit comments, suggestions or objections.

The VA received two comments concerning the proposal. Of these, one comment supported the proposal in its entirety; the other comment, from the Veterans of Foreign Wars (VFW), suggested that Department Service Officers and other Accredited Representatives of the Veterans of Foreign Wars be added to those for whom no fees shall be established or collected for parking at VA medical facilities. Careful consideration went into the development of the regulations, the requirements of the law, and the effect of the regulations on all concerned. It was determined that only individuals who perform services, without compensation (financial or otherwise), under the auspices of the VA Voluntary Service (VAVS) would be exempt from the payment of parking fees at affected medical facilities. VFW volunteers under the auspices of the VAVS are eligible for free parking. However, compensated VFW employees cannot be exempt from paying required parking fees any more than any VA employee who is required to pay fees.

The regulations are adopted as proposed. We appreciate the interest of the commenters.

The Administrator of Veterans Affairs hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that these regulations do not directly affect any small entities. Only VA employees, visitors and others having business at the medical facilities will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these final regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The VA has determined, in accordance with Executive Order 12291, Federal Regulation, that this final regulation is nonmajor for the following reasons:

(1) It will not have an effect on the economy of \$100 million or more;
(2) It will not cause a major increase in costs or prices;

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

There is no Catalog of Federal Domestic Assistance Program number for these final regulations.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Freedom of information, Government employees, Governmental property, Investigations, Privacy, Veterans.

Approved: June 10, 1988.

Thomas K. Turnage,
Administrator.

PART 1—[AMENDED]

38 CFR Part 1, General, is amended by adding §§ 1.300 to 1.303 and an undesignated center heading to read as follows:

Parking Fees at VA Medical Facilities

Sec.
1.300 Purpose.
1.301 Definitions.
1.302 Applicability and scope.
1.303 Policy.

Parking Fees at VA Medical Facilities

Authority: Sections 1.300 through 1.303 issued under 38 U.S.C. 210, 5009.

§ 1.300 Purpose.

Sections 1.300 through 1.303 prescribe policies and procedures for establishing parking fees for the use of Veterans Administration controlled parking spaces at VA medical facilities.

(Authority: 38 U.S.C. 210(c)(1), 5009)

§ 1.301 Definitions.

As used in §§ 1.300 through 1.303 of this title:

(a) "Administrator" means the Administrator of Veterans Affairs.

(b) "Eligible person" means any individual to whom the Administrator is authorized to furnish medical examination or treatment.

(c) "Garage" means a structure or part of a structure in which vehicles may be parked.

(d) "Medical facility" means any facility or part thereof which is under the jurisdiction of the Administrator for the provision of health-care services, including any necessary buildings and structures, garage or parking facility.

(e) "Parking facilities" includes all surface and garage parking spaces at a VA medical facility.

(f) "Volunteer worker" means an individual who performs services, without compensation, under the auspices of the VA Voluntary Service (VAVS) at a VA medical facility, for the benefit of veterans receiving care at that medical facility.

(Authority: 38 U.S.C. 5009)

§ 1.302 Applicability and scope.

(a) The provisions of §§ 1.300 through 1.303 apply to VA medical facility parking facilities in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, and to such parking facilities for the use of VA medical facilities jointly shared by the VA and another Federal agency when the facility is operated by the VA. Sections 1.300 through 1.303 apply to all users of those parking facilities. Fees shall be assessed and collected at medical facilities where parking garages are constructed, acquired, or altered at a cost exceeding \$500,000 (or, in the case of acquisition by lease, \$100,000 per year). The Administrator, in the exercise of official discretion, may also determine that parking fees shall be charged at any other VA medical facility.

(b) All fees established shall be reasonable under the circumstances and shall cover all parking facilities used in connection with such VA medical facility.

(Authority: 38 U.S.C. 5009)

§ 1.303 Policy.

(a) General. Parking spaces at VA medical facilities shall only be provided under the following conditions:

(1) The VA and its employees shall not be liable for any damages to vehicles (or their contents) parked in VA parking facilities, unless such damages are directly caused by such employees acting in the course of their VA employment.

(2) Parking facilities at VA medical facilities shall only be made available at each medical facility for such periods and under such terms as prescribed by the facility director, consistent with §§ 1.300 through 1.303.

(3) VA will limit parking facilities at VA medical facilities to the minimum necessary, and administer those parking facilities in full compliance with ridesharing regulations and Federal laws.

(b) Fees. (1) As provided in § 1.302, VA will assess VA employees, contractor employees, tenant employees, visitors, and other

individuals having business at a VA medical facility where VA parking facilities are available, a parking fee for the use of that parking facility. All parking fees shall be set at a rate which shall be equivalent to one-half of the appropriate fair rental value (i.e., monthly, weekly, daily, hourly) for the use of equivalent commercial space in the vicinity of the medical facility, subject to the terms and conditions stated in paragraph (a) of this section. Fair rental value shall include an allowance for the costs of management of the parking facilities. The Administrator will determine the fair market rental value through use of generally accepted appraisal techniques. If the appraisal establishes that there is no comparable commercial rate because of the absence of commercial parking facilities within a two-mile radius of the medical facility, then the rate established shall be not less than the lowest rate charged for parking at the VA medical facility with the lowest established parking fees. Rates established shall be reviewed biannually by the Administrator to reflect any increase or decrease in value as determined by appraisal updating.

(2) No parking fees shall be established or collected for parking facilities used by or for vehicles of the following:

(i) Volunteer workers in connection with such workers performing services for the benefit of veterans receiving care at the medical facility;

(ii) A veteran or an eligible person in connection with such veteran or eligible person receiving examination or treatment;

(iii) An individual transporting a veteran or eligible person seeking examination or treatment; and

(iv) Federal Government employees using Government owned or leased or private vehicles for official business.

(Authority: 38 U.S.C. 5009)

[FR Doc. 88-15251 Filed 7-8-88; 8:45 am]
BILLING CODE 6930-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-362; RM-5633]

Radio Broadcasting Services; Copeland, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 256C1 to Copeland, Kansas, as that community's first FM broadcast service, in response to a petition filed by Great Plains Christian Radio, Inc. The coordinates for Channel 256C1 are 37-32-31 and 100-37-45. With this action, this proceeding is terminated.

DATES: Effective July 25, 1988; the window period for filing applications will open on July 28, 1988, and close on August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-362, adopted May 11, 1988, and released June 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Kansas is amended by adding Copeland, Channel 256C1.

Federal Communications Commission.

Steve Kaminar,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-14955 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 71148-8001]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Acting Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total

allowable catches (TACs) of sablefish allocated to hook-and-line gear in the Southeast Outside/East Yakutat District, in the West Yakutat District, and the Central Regulatory Area of the Gulf of Alaska have been taken. Therefore, retention of sablefish by hook-and-line vessels fishing in these areas after 12:00 noon on July 1, 1988, is prohibited. This action is necessary to limit the retention of sablefish to the hook-and-line allocation as established in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: This notice is effective at noon, Alaska Daylight Time, (ADT), July 1, until midnight, Alaska Standard Time (AST) December 31, 1988. Public comments are invited on this closure through July 18, 1988.

ADDRESSES: Comments should be addressed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21688, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central, and Eastern Regulatory Areas in the Gulf of Alaska. This section also defines the regulatory districts of the Eastern Regulatory area, which includes the Southeast Outside, East Yakutat, and West Yakutat Districts. For purposes of managing sablefish, the Southeast Outside and East Yakutat Districts are combined. Under the procedure set forth at § 672.20(a), 1988 TACs were established for each of the groundfish species, which were then apportioned among the regulatory areas or districts. One of the species is sablefish, for which the 1988 TAC in the combined Southeast Outside/East Yakutat is 6,500 mt and the TAC in the West Yakutat District is 4,900 mt (53 FR 890, January 14, 1988).

Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species for

the remainder of the year by persons using that type of gear.

The directed sablefish fisheries with hook-and-line gear were previously closed in the Southeast Outside/East Yakutat and West Yakutat Districts of the Eastern Regulatory Area on May 2, 1988 (53 FR 16129, May 5, 1988) and in the Central Regulatory Area on June 12 (53 FR 22327, June 15, 1988). Under § 672.24(b)(3)(i), incidental catches of sablefish were allowed to be retained by fishermen using hook-and-line gear while fishing for other fish species in each of these districts and the Central Regulatory Area until the TACs in these areas had been reached. Amounts of the TACs assigned to hook-and-line gear have now been reached, and further sablefish catches must be treated as prohibited species after 12:00 noon, ADT, on July 1, 1988 and § 672.24(b)(3)(ii).

Under § 672.22(b)(2), public comments on this notice may be submitted to the Regional Director for 15 days following its effective date. If comments are received, the necessity for this closure will be reconsidered and a subsequent notice will be published in the *Federal Register*, either confirming this closure's continued effect, modifying it, or rescinding it.

Classification

The specified allocations of the sablefish resource between hook-and-line and trawl gear in the Southeast Outside/East Yakutat District, in the West Yakutat District, and in the Central Regulatory Area will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

This action is taken under §§ 672.22 and 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 30, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15218 Filed 7-1-88; 1:29 pm]

BILLING CODE 3510-22-M

50 CFR Part 674

[Docket No. 80630-8130]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) announces the commercial salmon fishing periods in the exclusive economic zone (EEZ) off Southeast (S.E.) Alaska for 1988. The Secretary notes that the Pacific Salmon Commission (Commission) has established a base harvest limit of 283,000 chinook salmon for all commercial and recreational fisheries in S.E. Alaska in 1988. This action by the Secretary is necessary to establish the opening of the commercial troll fishery for 1988 and is intended to conserve chinook salmon stocks covered by the Pacific Salmon Treaty.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS), 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Section 7(a) of Pub. L. 99-5, the Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631 *et seq.*, requires the Secretary to issue conforming amendatory regulations applicable to the U.S. EEZ to fulfill U.S. treaty obligations to Canada. This action amends the regulations at 50 CFR Part 674 to adopt fishing seasons and catch limitations for 1988 that, in conjunction with similar measures adopted by the State of Alaska (State) for its waters, will ensure that the high seas salmon fishery is conducted in a manner that fulfills our international obligations under the Pacific Salmon Treaty.

Quotas for Chinook Salmon

The Commission established the 1988 chinook salmon quotas at its meeting in February 1988. For all salmon fisheries in S.E. Alaska, the Commission set the harvest quota at 283,000 chinook salmon from the base stocks; this number equals last year's base quota. The base stocks are those wild and hatchery stocks that were being harvested in this fishery when the treaty was signed.

In addition, the Commission entitled Alaska to exceed the base harvest quota with a supplemental harvest of chinook salmon produced by Alaska hatcheries that are in excess of those included in the base stocks. The amount of this supplement will be calculated in season using procedures approved by the

Commission; the preseason estimate currently is 27,000 chinook, which will bring the total allowable harvest to about 290,000 chinook.

Chinook Harvest Guidelines for the Troll Fishery

The Alaska Board of Fisheries (Board) met in Sitka during April 1988. It did not consider any changes in the existing harvest guidelines for chinook among the various groups of fishermen; thus, the guidelines established in 1987 apply in 1988. Therefore, of the 283,000 chinook base quota, the harvest guidelines are as follows: Sport—22,000; net (seine, drift gill net, set gill net, and trap)—20,000; troll—221,000. Also, the Board did not allocate the new-enhancement supplement of 27,000, but each fishery will be allowed to catch as many of those supplemental chinook as it can until the Commission's base quota is reached. The exact number of the supplemental chinook salmon each fishery harvests will be determined as the season progresses, from the recovery of coded-wire tags from the Alaska hatchery fish, and these fish will be excluded from the catch in determining when the base quota is reached.

The guideline for the harvest of chinook salmon by the summer troll fishery will be about 158,000 because the winter troll fishery in State waters has already harvested about 65,000 of the 221,000 available. The 158,000 applies to all commercial salmon trolling in the marine waters of S.E. Alaska and the EEZ; there is no separate allocation for the troll fishery in the EEZ.

The Summer Troll Fishing Season

The Board set the opening date of the summer commercial troll season as July 1 and directed that the season be closed when the quota has been harvested. The Board intended that the chinook troll fishery be managed so that there is a single fishing period for chinook salmon and that specific areas be closed if necessary to extend the chinook season.

Seasons are scheduled to avoid, as much as practicable, nonretainable incidental catches of chinook during fisheries for other species. Chinook that are caught and released suffer a high rate of mortality; thus, managers try to keep their incidence low when they cannot be retained. After the troll share of the chinook quota has been harvested, chinook retention in the troll fishery will be prohibited during fishing for the other salmon species (coho, sockeye, pink, and chum). In the past 5 years, NMFS and the State have closed trolling in some small areas in State and Federal waters where chinook are

known to concentrate. These closures might be necessary again.

Also, depending on the size of the coho run and the speed at which the coho move from the offshore waters into the inside waters and spawning grounds, the Secretary and the State might close the troll fishery to the harvest of all salmon species for about 10 days between late July and mid-August to protect coho.

Under existing State and Federal regulations, the commercial troll salmon fishery closes on September 20 each year.

Fishing Periods

The fishing periods (Alaska Daylight Time) for the commercial troll fishery in the EEZ off S.E. Alaska are as follows, unless later modified:

Chinook salmon: From 0001 hours on July 1, 1988, until the chinook harvest guideline is reached (probably about July 20).

All salmon species except chinook: From 0001 hours on July 1, 1988, until 2400 hours on September 20, 1988.

After the fishing season begins, NOAA may issue notices to modify the fishing seasons given above on the basis of the following or other contingencies:

(a) The fishery for all species might be closed for about 10 days between mid-July and mid-August unless an evaluation of the S.E. Alaska coho salmon runs shows them to be well above average in number of coho and that there is good inshore movement. This closure, if necessary, is designed: (i) To stabilize or reduce the proportion of the coho runs harvested in the offshore and coastal fisheries, (ii) to allow adequate harvests by the fisheries in the marine and fresh waters inshore of the surfline as described in 5 Alaska Administrative Code (AAC) 33.312(b) of S.E. Alaska, and (iii) to allow adequate numbers of coho to escape the fisheries and reach the spawning grounds.

(b) The fishery for chinook salmon might be allowed to resume for a short time after it has been closed if statistics on the harvest reveal that the fishery closed before the quota established by the treaty had been reached and that there were enough chinook remaining for the fishery to be reopened for more than 12 hours. Any such reopening of the fishery in the EEZ would be identical to a reopening of the fishery in Alaskan waters.

(c) If management actions need to be taken to reduce the hooking mortality of chinook salmon caught incidentally during the fishery for other salmon species or to restrict the harvest of chinook to an incidental harvest, small

areas known to have high concentrations of chinook may be closed, as they have been in the past.

Other Matters

A provision of the Pacific Salmon Treaty (annex IV, chapter 3) requires each nation to submit the plans it has developed for managing its salmon fisheries to the other nation before the start of the fishing season. The United States and Canada exchanged their fishing plans at the February meeting of the Pacific Salmon Commission.

Copies of this notice have been provided to the North Pacific Fishery Management Council, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard for review and consultation as required by section 7(a) of the Pacific Salmon Treaty Act.

Classification

Under section 7(a) of the Pacific Salmon Treaty Act, this action is exempt from sections 4 through 8 of the Administrative Procedure Act (5 U.S.C. sections 553 to 557), the Regulatory Flexibility Act, and the National Environmental Policy Act. It is exempt from Executive Order 12291 because it involves a foreign affairs function. It contains no requirement for collecting information for purposes of the Paperwork Reduction Act.

The Director of the NMFS Alaska Region has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fisheries, Fishing, International organizations.

Dated: June 30, 1988.

James W. Brennan,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth above, 50 CFR Part 674 is amended as follows:

PART 674—[AMENDED]

1. The authority citation for Part 674 continues to read as follows:

Authority: 16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 674.21, paragraph (a)(2) is revised to read as follows:

§ 674.21 Time and area limitations.

(a) . . .

(2) *East area.* Fishing periods in 1988 (Alaska Daylight Time) are as follows:

(i) Chinook salmon—0001 hours on July 1 until the commercial troll fleet reaches its harvest guideline of 221,000 chinook from the base stocks.

(ii) Salmon species other than chinook—0001 hours July 1 to 2400 hours on September 20.

[FR Doc. 88-15189 Filed 7-1-88; 11:32 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces prohibitions on deliveries to foreign processors in the exclusive economic zone (EEZ) of pollock taken in directed fisheries in the Aleutian Islands subarea. This action is taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), and is necessary to limit joint venture processing (JVP) to the amount of pollock specified for JVP. It is intended to assure optimum use of groundfish and promote the orderly conduct of the groundfish fisheries.

DATES: This closure is effective from 2359 GMT (1559 Alaska Daylight Time ADT), July 1 through December 31, 1988. Comments will be accepted through July 18, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21868, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the EEZ under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by rules appearing at 50 CFR 611.93 and Part 675. The FMP establishes a split-season apportionment of pollock for JVP and divides the JVP amount of pollock into two parts. Part One, equal to 40 percent of the sum of the initial JVP for pollock plus 15 percent of the TAC for pollock, is

available to the directed JVP fishery for pollock from January 15 through April 15 (§ 675.20(b)(3)(i)). Directed fishing is defined in § 675.2, Part Two, the remainder of the initial JVP for pollock plus any reserve releases, is available for the directed JVP fishery from April 16 through December 31 (§ 675.20(b)(3)(ii)).

In 1988, Part One of the JVP apportionment for pollock in the Aleutian Islands subarea was 16,336 metric tons (mt) (53 FR 894, January 14, 1988). Part One of the JVP apportionment was taken by March 4, 1988, when the Aleutian Islands subarea was closed to JVP directed fishing for pollock.

Amounts reapportioned from the reserve on June 22 (53 FR 23402), increased the JVP apportionment for pollock from 34,090 mt to 40,840 mt. NMFS estimates that 38,840 mt of pollock will be taken by July 1, 1988. The Regional Director has determined that the remaining 2,000 mt of the pollock TAC apportioned to JVP is needed for bycatch in other JVP fisheries in the Aleutian Islands subarea during the remainder of the fishing year. Consequently, NOAA is prohibiting the delivery to foreign processors in the EEZ of any pollock taken in a directed fishery.

Notice of Closure to Directed Fishing

Under § 675.20(b)(3)(ii), when the Regional Director determines that the unharvested amount of Part Two is necessary for bycatch in JVP fisheries for other groundfish species during the second period, the Secretary of Commerce will publish a notice in the *Federal Register* prohibiting JVP directed fishing for pollock for the remainder of the second period.

Based on the Regional Director's estimate that directed JVP fisheries for species other than pollock will require a bycatch of 2,000 mt of pollock, the amount of pollock available to foreign processors receiving directed catches of pollock is 38,840 mt. To avoid exceeding the JVP for pollock, U.S. fishermen delivering catches to foreign processing vessels in the Aleutian Islands subarea of the EEZ must cease directed fishing for pollock at 2359 GMT, July 1, 1988.

Under § 675.20(g)(2), interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the

public interest to provide prior notice and opportunity for public comment. Immediate effectiveness of this notice is necessary to prevent the available JVP for pollock from being prematurely exceeded. This action is taken under the authority of § 675.20(b) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15217 Filed 7-1-88; 1:29 pm]

BILLING CODE 3410-22-M

Proposed Rules

Federal Register

Vol. 53, No. 130

Thursday, July 7, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 929 and 967

Expenses and Assessment Rates for Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 929 and 967 for the 1988-89 fiscal year established for the cranberry marketing order and celery marketing order. Both marketing orders require that the assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each order's administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing the anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by July 18, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning

this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 929 [7 CFR Part 929], regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; and 967 [7 CFR Part 967] regulating the handling of celery grown in Florida. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirement set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. There are seven handlers of celery

grown in Florida, and 13 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

The marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Cranberry Marketing Committee conducted a mail vote and unanimously recommended 1988-89 marketing order expenditures of \$198,000 and an assessment rate of \$0.055 per 100 pound barrel of cranberries shipped. In comparison, 1987-88 marketing year budgeted expenditures were \$154,400 and the assessment rate was \$0.043 per 100 pound barrel under M.O. 929. Assessment income for 1988-89 is estimated at \$198,000 based on a crop of 3,600,000 barrels of cranberries. Other sources of income, including interest

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expected to be received, are estimated at \$6,000, bringing total income to \$204,000.

The Florida Celery Committee met on June 9, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$126,000 and an assessment rate of \$0.02 per crate of celery shipped. In comparison, 1987-88 marketing year budgeted expenditures were \$128,000 and the assessment rate was \$0.02 per crate under M.O. 967. Assessment income for 1988-89 is estimated at \$120,000 based on a crop of 6,000,000 crates of celery. Other sources of income, including interest expected to be received, are estimated at \$6,000, bringing total income to \$126,000.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for these programs need to be expedited. The committees must have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 929 and 967

Celery, Connecticut, Cranberries, Florida, Long Island in the State of New York, Marketing agreements and orders, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Washington, Wisconsin.

For the reasons set forth in the preamble, it is proposed that new §§ 929.229 and 967.324 be added as follows:

1. The authority citation for 7 CFR Parts 929 and 967 continues to read as follows:

Authority: Secs. 1-16, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 929—CRANBERRIES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section § 929.229 is added to read as follows:

§ 929.229 Expenses and assessment rate.

Expenses of \$198,000 by the Cranberry Marketing Committee are authorized, and an assessment rate of \$0.055 per 100 pound barrel of assessable cranberries is established for the fiscal year ending August 31, 1989. Unexpended funds may be carried over as a reserve.

PART 967—CELERIES GROWN IN FLORIDA

3. Section 967.324 is added to read as follows:

§ 967.324 Expenses and assessment rate.

Expenses of \$126,000 by the Florida Celery Committee are authorized, and an assessment rate of \$0.02 per crate of assessable celery is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: July 1, 1988.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-15207 Filed 7-6-88; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Parts 969 and 999

(AMS-FV-88-053PR)

Raisins Produced From Grapes Grown in California; Specialty Crops—Import Regulations; Changes to the Administrative, Supplementary, and Quality Control Rules and Regulations for California Raisins; Import Regulations for Specialty Crops; Segregating the Monukka Varietal Type

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a proposed change to the administrative, supplementary, and quality control rules and regulations of the California raisin marketing order and specialty crops import regulations. This proposal would separate the Monukka varietal type into a Monukka varietal type (Monukka raisins) and an Other Seedless varietal type (Ruby Seedless, Flame Seedless, Black Imperial, and other similar seedless raisins). Currently, the Monukka varietal type includes Monukka, Ruby Seedless, Flame Seedless, Black Imperial, and other similar seedless raisins. Monukka grapes are grown primarily for the production of raisins and there is a special market for raisins made from these grapes. Raisins made from the other varietal types in the Monukka

varietal type are generally considered as a salvage outlet for grapes remaining after such grapes have been harvested for table (fresh) use. For those reasons, the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, has recommended segregating the Monukka varietal type. This would allow both varietal types (Monukka and Other Seedless) to be regulated based on their own separate and distinct conditions of supply and demand.

DATE: Comments must be received by July 22, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 969 (7 CFR Part 969), as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulations under the raisin marketing order, and approximately 5,000 producers in the regulated area. There are approximately

45 raisin importers subject to the requirements of the raisin import regulations. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California raisins and importers of raisins may be classified as small entities.

This proposed rule invites comments on changes to the administrative, supplementary, and quality control rules and regulations of the raisin marketing order and import regulations for specialty crops. The proposal to amend the domestic regulations was unanimously recommended by the Committee and would separate the Monukka varietal type group into two varietal types: (1) A Monukka varietal type consisting solely of Monukka raisins; (2) an Other Seedless varietal type consisting of Ruby Seedless, Flame Seedless, Black Imperial, and other similar seedless raisins. The U.S. Department of Agriculture proposes to amend the import regulation to conform to the proposed changes in the marketing order.

Section 989.10 of the order provides that the Committee, with the approval of the Secretary, may change the list of varietal types. Thus, it is proposed to amend § 989.110(h); add a new § 989.110(i); amend §§ 989.156(a); 989.210(a); 989.211 (a), (b), and (c); 989.212 (a) and (b); 989.212 (a), (b), (c), and (d); 989.701(a), and 989-702(c) to include the Other Seedless varietal type. In addition, changes are proposed to the import regulations that appear in Part 999.

Presently, the Monukka varietal type includes Monukka, Ruby Seedless, Flame Seedless, Black Imperial and other similar seedless raisins. Monukka grapes are primarily produced for drying into raisins. The market for Monukka raisins is in health and specialty stores, and the number of Monukka growers is small.

In contrast, the Ruby Seedless, Flame Seedless, Black Imperial and other similar seedless raisins grapes are grown primarily for use as table grapes. Grapes left after the vines have been picked are dried into raisins. Raisins produced from these seedless varieties usually are marketed through grocery stores rather than through specialty stores where Monukkas are sold. The Monukka varietal type possesses characteristics differing from the other seedless raisins sufficient to make it

desirable to have separate identification and classification.

Currently, when volume regulations are in effect, the same free percentage (the amount which can be handled in the primary market) applies to each kind of raisin in the Monukka varietal type irrespective of differences in market demands for such varietal types. This action would allow the Committee to recommend different volume regulations for the Monukka varietal type and the Other Seedless varietal type and thereby recognize distinct differences in supply and demand conditions.

In addition, the weight dockage system, the weight adjustment system and the minimum grade and condition requirements could vary, if deemed appropriate, between Monukkas and Other Seedless as a result of the proposed change. Further, the proposed change would affect the raisin diversion program provisions in the regulations by separating Monukkas and Other Seedless, thereby permitting the quantity eligible for diversion to be announced separately for these proposed varietal types when appropriate.

The Committee has therefore recommended that the Monukka varietal type be separated into two varietal types: (1) Monukka Seedless; and (2) Other Seedless. This would recognize differences in supply and demand conditions for Monukka and Other Seedless raisins and allow producers of Monukka grapes dried into raisins to take advantage of a separate and distinct market for Monukka raisins. Pursuant to section 8e of the Act, this proposed rule would also amend the import regulations which appear in Part 999 to conform to the proposed changes in the regulations issued under the marketing order. Imported raisins are required to meet the same or comparable quality standards as the domestically produced crop.

Based on the available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 15-day comment period is deemed adequate because the proposed changes, if adopted, should be made effective at the beginning of the crop year which is August 1, 1988. Therefore, any changes would be applicable to all 1988-89 crop year raisins.

List of Subjects

7 CFR Part 969

California, Grapes, Marketing agreements and orders, Raisins.

7 CFR Part 999

Dates, Filberts/Hazelnuts, Food grades and standards, Imports, Prunes, Raisins, Walnuts.

For the reasons set forth in the preamble, 7 CFR Parts 969 and 999 are proposed to be amended as follows:

PART 999—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 999 continues to read as follows:

Authority: Secs. 1-10, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Section 989.110, is amended by revising paragraph (h) and adding new paragraph (i) to read as follows:

§ 989.110 Varietal types.

Pursuant to § 989.10, specific definitions for each varietal type of raisins are as follows:

(h) Monukka includes all raisins produced from Monukka grapes.

(i) Other Seedless includes all raisins produced from Ruby Seedless, Kings Ruby Seedless, Flame Seedless and other seedless grapes not included in any of the varietal categories for Seedless raisins defined in paragraph (a), (b), (c), (d) or (h) above.

§ 989.156 [Amended]

3. Section 989.156(a)(1) is amended by revising the second sentence to read: "The quantity eligible for diversion may be announced for any of the following varietal types of raisins: Natural (sun-dried) Seedless, Muscat (including other raisins with seeds), Sultana, Zante Currant, Monukka, and Other Seedless raisins."

Subpart—Supplementary Regulations

§ 989.210 [Amended]

4. Section 989.210(a) is amended by revising the first sentence to read: "A handler may acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, Sultana, Zante Currant and Muscat (including other raisins with seeds) raisins under the weight dockage and/or weight adjustment (moisture) provisions described in §§ 989.211, 989.212 and 989.213."

§ 989.211 [Amended]

5. Section 989.211(a) is amended by revising the first sentence to read:

"Natural (sun-dried) Seedless, Monukka, and Other Seedless raisins containing from 14.1 percent through 16.0 percent moisture or 13.9 percent or lower moisture may be acquired by a handler under a weight adjustment system."

6. Section 989.211(b) is amended by revising the first sentence to read: "Adjustment table for Natural (sun-dried) Seedless, Monukka, and Other Seedless raisins with 14.1 percent through 16.0 percent moisture."

7. Section 989.211(c) is amended by revising the first sentence to read: "Adjustment table for Natural (sun-dried) Seedless, Monukka and Other Seedless raisins with 13.9 percent moisture or lower."

§ 989.212 [Amended]

8. Section 989.212(a) is amended by revising the first sentence to read: "Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka and Other Seedless raisins containing from 5.1 through 10.0 percent, by weight, of substandard raisins may be acquired by a handler under a weight dockage system."

9. Section 989.212(b) is amended by revising the first sentence to read: "Substandard dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins."

§ 989.213 [Amended]

10. Section 989.213(a) is amended by revising the first sentence to read: "Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka and Other Seedless raisins containing from 40.0 through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system."

11. Section 989.213(b) is amended by revising the first sentence to read: "Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins with 45.0 percent through 49.9 percent Grade B or better."

12. Section 989.213(c) is amended by revising the first sentence to read: "Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins with 40.0 percent through 44.9 percent Grade B or better."

13. Section 989.213(d) is amended by revising the first sentence to read: "Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins with 35.0 percent through 39.9 percent Grade B or better."

14. Section 989.701 is amended by revising paragraph (a) introductory text to read as follows:

Subpart—Quality Control

§ 989.701 Minimum grade and condition standards for natural condition raisins.

(a) *Natural (sun-dried) Seedless, Monukka and Other Seedless Raisins.* Natural condition Natural (sun-dried) Seedless, Monukka, and Other Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements:

15. Section 989.702 is amended by revising paragraph (c) to read as follows:

§ 989.702 Minimum grade standards for packed raisins.

(c) *Monukka and Other Seedless Raisins.* Packed Monukka and Other Seedless raisins shall at least meet the requirements prescribed in paragraph (a) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent.

PART 989—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1-10, 48 Stat. 31, as amended; 7 U.S.C. 801-874.2.

2. Section 989.300 is amended by revising paragraphs (a)(2) and (b)(5) to read as follows:

§ 989.300 Regulation governing importation of raisins.

(a)
(2) "Varietal type" means the applicable one of the following: Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Currant raisins, Monukka raisins, Other Seedless raisins, and Golden Seedless raisins.

(b)
(5) With respect to Monukka and Other Seedless raisins—the requirements for Thompson Seedless

Raisins prescribed in paragraph (b)(1) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent;

July 1, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 88-15206 Filed 7-6-88; 8:45 am]
BILLING CODE 3410-34-0

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 88-056]

Change in Disease Status of Papua New Guinea Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations in 9 CFR Part 94 by adding Papua New Guinea to the list of countries declared to be free of rinderpest and foot-and-mouth disease. Rinderpest and foot-and-mouth disease have never been reported in Papua New Guinea, and there are adequate controls to prevent the introduction and spread of these diseases. We are also proposing to add Papua New Guinea to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of meat and other animal products into the United States. This action would allow the importation of ruminants and swine, and fresh, chilled, and frozen meats of ruminants and swine into the United States from Papua New Guinea under certain restrictions.

DATE: Consideration will be given only to comments postmarked or received on or before August 8, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Please state that your comments refer to Docket No. 88-056. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 606, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain animals, meat, and animal products. These regulations are designed, among other things, to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, swine vesicular disease, and viscerotropic venogenic Newcastle disease.

Section 94.1(a)(1) of the regulations provides that rinderpest or foot-and-mouth disease exists in all countries of the world, except those listed in § 94.1(a)(2), which are declared to be free of these diseases. We are proposing to add Papua New Guinea to this list.

Rinderpest and foot-and-mouth disease have never been reported in Papua New Guinea, and there are adequate controls to prevent the introduction and spread of these diseases. We declare a country to be free of rinderpest and foot-and-mouth disease if there has been no case of the disease reported there for the previous one-year period. Based on all pertinent information submitted by its animal health authorities, Papua New Guinea qualifies for listing in § 94.1(a)(2) of the regulations as a country declared to be free of rinderpest and foot-and-mouth disease.

We are also adding Papua New Guinea to the list in § 94.1(a) of countries free of rinderpest and foot-and-mouth disease that are subject to special restrictions on the importation of their meat and other animal products into the United States if they: (1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries designated in § 94.1(a) as infected with rinderpest or foot-and-mouth disease; (2) or have a common land border with countries designated as infected with rinderpest or foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States.

Papua New Guinea has a common land border with Indonesia, which is designated in § 94.1(a)(1) as a country in which rinderpest or foot-and-mouth disease exists. Even though we propose to designate Papua New Guinea as free of rinderpest and foot-and-mouth disease, the meat and other animal products produced in Papua New Guinea may be commingled with meat

and other animal products from an infected country, resulting in an undue risk of introducing rinderpest or foot-and-mouth disease into the United States. Therefore, we are proposing that meat of ruminants and swine and other animal products, and ship stores, airplane meals, and baggage containing these meat or animal products, from Papua New Guinea be imported into the United States only under the restrictions specified in § 94.11 of the regulations.

Executive Order and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This change would not result in the importation of significant numbers of ruminants, swine, animal or meat products. We anticipate an increase in the importation of water buffalo since Papua New Guinea would be one of the few water-buffalo-exporting countries in the world that would be recognized as being free of rinderpest and foot-and-mouth disease. At present, we are aware of only one individual in the United States who has indicated a desire to import water buffalo. This individual is now involved in a project to import these animals from another source, Trinidad. We believe it is unlikely that he would alter his plans in order to import water buffalo from Papua New Guinea, which is farther from the United States than is Trinidad, because of the increased cost of doing so. Since there are only about 700 water buffalo in Papua New Guinea, the number that could be imported from that country would not be great. We do not anticipate that any meat or meat products would be imported.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has

determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this proposal contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR Part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1308; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "Papua New Guinea," immediately after "Panama Canal Zone."

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) would be amended by adding "Papua New Guinea," immediately after "Norway."

Done in Washington, DC, this 29th day of June, 1988.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 88-15154 Filed 7-6-88; 8:45 am]
BILLING CODE 3410-34-0

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 535

(No. 55-538)

Consumer Protections; Unfair or Deceptive Credit Practices; Request for Exemption by State of California

Date: June 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Request for exemption from consumer credit regulation by the State of California.

SUMMARY: The Federal Home Loan Bank Board ("Board") hereby publishes for comment a request from the State of California ("State") for an exemption from the cosigner notice provision of the Board's consumer credit regulation—Prohibited Consumer Credit Practices (12 CFR 535.3).

DATE: Comments must be received on or before August 8, 1988.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments should be captioned: "California Request for Exemption from the Credit Practices Rule." Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Stephen D. Johnson, Attorney/Advisor, Office of Community Investment, (202) 377-8237, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Credit Practices Rule ("Rule") provides that with respect to the extension of credit to consumers after January 1, 1980, it is an unfair act or practice for an institution subject to the Rule to include in a consumer credit contract any of the following clauses: A confession of judgment, a waiver or limitation of exemption from attachment or execution, an assignment of wages (with specified exceptions), or a clause granting a nonpossessory security interest in household goods other than a purchase money security interest.¹ The

¹ The Credit Practices Rule promulgated by the Board applies to member institutions, which by definition are those engaged in the business of providing credit to consumers and which are members of a Federal Home Loan Bank (including service corporations specified in the Rule). This rule became effective January 1, 1980. The Federal Reserve Board ("FRB") and the Federal Trade Commission ("FTC") have adopted substantially similar rules that apply to banks, lenders, and retail installment sellers within their respective

rule also prohibits a lender from engaging in any practice that results in the pyramiding of late charges in connection with the collection of consumer credit debt. Lastly, the Rule prohibits lenders from directly or indirectly misrepresenting the nature or extent of a cosigner's liability and requires that a cosigner be provided a written cosigner disclosure statement that outlines the cosigner's potential liability.

The Credit Practices Rule provides that if a state applies on behalf of insured institutions in that state for an exemption from a provision of the Rule, such exemption will be granted if it is determined by the Office of Community Investment, in conjunction with the Office of General Counsel, that: (1) There is in effect a state requirement or prohibition that applies to any transaction to which a provision of the Rule applies; and (2) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Rule's provision. If such an exemption is granted, the exempted provision of the Rule is not in effect in that state, and the exemption will continue as long as the state effectively administers and enforces its law.

The application of the State of California, through its Attorney General, asserts that California law and enforcement afford a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Rule. In support of this claim, the application contains copies of provisions of California's Business and Professions Code and California's Civil Code ("Cal. Bus. & Prof. Code" and "Cal. Civ. Code") and a comparison of the cosigner provision of the Board's Rule and the relevant California statutory provisions. The application provides information about the public enforcement activities of the consumer law section of the State Attorney General's office and of the 58 county district attorney offices and about the California Banking Department's examination and enforcement activities. Therefore, the State requests that its state-chartered savings and loan associations be exempt from the operation of the Rule and that the Board consider that this exemption be applied to federally-chartered associations located in California as well.

Jurisdictions. The FTC's rule, 12 CFR Part 444, became effective in March 1984; the FRB's rule, 12 CFR Part 227, became effective in April 1985.

The Board deems it necessary to publish this exemption request for public comment for 30 days in order to enable the Board to receive views and information from public on the question of whether the California law meets the Rule's regulatory criteria for exemption. See 12 CFR 535.5.

Call for comment: Interested persons are invited to comment on the State of California's request for exemption, which is summarized below. The Board is particularly interested in receiving comments on specific issues that have been identified below. However, comments are invited on any aspect of the California petition. At the end of the 30-day comment period, the Director of the Office of Community Investment in consultation with the General Counsel will review the comments received and, under authority delegated by the Board, render a decision whether the requested exemption should be granted. The staff will publish its decision to grant or deny the exemption in the Federal Register. In light of the fact that two similar exemption requests by the State of California have been published for comment by the FTC and the FRB, and in light of the early filing of the present request, the Board deems a comment period of 30 days to be sufficient to receive comments from interested parties.

In particular, the Board solicits comment on the following:

- Whether excluding spouses from receipt of a cosigner notice, under the California law, adversely affects the level of protection afforded married persons in light of the state's community property law.
- Whether the provisions of California law on unfair competition and misleading statements afford consumers a level of protection that is substantially equivalent to, or greater than, the provision of the Board's Rule concerning misrepresentation of cosigner liability.
- Whether the remedy for violation of the California provisions affecting cosigners affords consumers a level of protection that is substantially equivalent to, or greater than, that afforded by the Board's Rule.
- Whether California administers and enforces its laws, as they relate to cosigners of consumer credit obligations, effectively.

The requirement set forth at 12 CFR 535.5 that a comparable state requirement be "substantially equivalent" to the Board's rule does not require that a state's rule mirror the Rule's provisions exactly. Any differences that exist, however, should

be so minor as to ensure that consumers are afforded a level of protection equal to that guaranteed by the Rule without significantly complicating compliance by interstate creditors.

California Law As Described in the Application and the Board's Credit Practices Rule.

The State of California asserts that certain provisions of California's Business and Professions Code (Cal. Bus. & Prof. Code 17200 *et seq.* and 17500 *et seq.*) and California's Civil Code (Cal. Civ. Code 1799.90 *et seq.*) afford greater protection to consumers than does the cosigner provision of the Board's Rule and that an exemption should therefore be granted by the Board for as long as the California provisions remain in effect. A comparison of the relevant provisions of California law (as described by the California exemption application) and the cosigner provision of the Board's Rule is set forth below.

A. Cosigner Notice Requirements

1. Coverage

Cal. Civ. Code 1799.91 requires a creditor that obtains the signature of more than one person on a consumer credit contract to deliver (before a person becomes obligated on the contract) a cosigner notice to any person who signs the contract and does not in fact receive any of the money, property, or services that are the subject of the contract, unless the persons are married to each other. A creditor is defined as any person or entity that enters into or arranges for consumer credit contracts in the ordinary course of business (Cal. Civ. Code 1799.90(b)). Consumer credit contracts are obligations primarily for personal, family, or household purposes that are to be paid on a deferred basis. They include retail installment contracts and accounts, conditional sales contracts, credit extensions that are unsecured or secured by personal property, and credit extensions, however secured, that are arranged by real estate brokers or made by consumer financial lenders (Cal. Civ. Code 1799.90(a)). Cal. Civ. Code 1799.99 mandates that the cosigner notice be given in other transactions (other than consumer credit contracts as defined by state law) that are subject to the Board's Rule as well as the rules of the FTC and the FRB. A creditor in California must also give each person signing the consumer credit contract a copy of the debt instrument, security agreement, and any other document evidencing that person's obligation (Cal. Civ. Code 1799.93(b)).

The Board's Rule requires a member institution (or "creditor") to provide a cosigner with a written notice of his or her obligation before the cosigner becomes obligated for an extension of consumer credit (12 CFR 535.3(b)(1)). A creditor bank is not required to give a cosigner copies of the documents evidencing the obligation. Any consumer credit transaction (other than for the purchase of real property) made primarily for personal, family, or household use is covered by the Rule (12 CFR 535.1(b)).

2. Content of the Notice

Under the Board's Credit Practices Rule, a member institution must provide the prescribed disclosure statement, or one that is substantially similar, to the cosigner (12 CFR 535.3(b)(1)). The notice must be clear and conspicuous. It can be contained on the document evidencing the credit obligation or on a separate document.

The California cosigner notice is identical to the notice contained in section 535.3(b)(1) of the Board's Rule. The notice must be in at least 10-point type and can be placed on the contract or other documents establishing liability or on a separate document (Cal. Civ. Code 1799.91(a)). If the notice is contained on a separate document it can also include an identification of the consumer and the consumer credit contract to which it refers, the date, and the consumer's acknowledgement of receipt (Cal. Civ. Code 1799.92(b)). A Spanish language translation of the notice is required to accompany the English version, and if the contract is written in still another language the notice must be translated into that language (Cal. Civ. Code 1799.91 (a) and (b)).

3. Definition of Cosigner

Under the Board's Rule, any natural person who assumes liability for the obligation of a consumer, without receiving goods, services, or money in return for the obligation, is a cosigner. In the case of an open-end credit obligation, a cosigner is a natural person who assumes liability without receiving the contractual right to obtain extensions of credit on an open-end account (12 CFR 535.1(c)). A person who merely pledges property to secure a consumer credit obligation is not a cosigner for purposes of the Board's Rule.

The California Civil Code does not provide a specific definition of cosigner, but Cal. Civ. Code 1799.91 requires that the disclosure notice be given to each person, except a spouse, who signs a consumer credit contract and does not

in fact receive the money, property, or services that are the subject of the contract. A person who pledges collateral to secure a consumer credit obligation (even without assuming personal liability) is, therefore, entitled to receive a disclosure notice under California law.

4. Cosigning Spouses

The Board's Rule requires that a cosigner notice be given to all persons who fall within the cosigner definition, including spouses. California law excludes spouses from receipt of a cosigner notice. The Board does not favor eliminating disclosure statements to spouses, and has asked for specific comment on this divergence of California law from the Board Rule.

Under California law, all real property situated in California and all personal property acquired during marriage is deemed to be community property (Cal. Civ. Code 5110). A spouse's share of community property generally will be liable for the other spouse's debts, whether or not both spouses undertake a credit obligation (Cal. Civ. Code 5120.110). A married person in California may have separate property in addition to community property. Separate property may consist of property acquired before the marriage or through gift or inheritance (Cal. Civ. Code 5107 and 5108). This separate property is not liable for the debts incurred by a spouse unless the debts are incurred to obtain the "necessities of life" (Cal. Civ. Code 5120.130(b) and 5120.140(a)(1)). As a result, when a non-applicant spouse cosigns a spouse's obligation, in addition to community property, that spouse's separate property becomes available to satisfy the debt in the event of default.

California's Attorney General asserts in the State's exemption application that California law does not require a creditor to give a cosigner notice to a spouse because the notice would be a misleading statement of legal responsibilities under California's marital property law.

The Attorney General maintains that giving a spouse the cosigner notice may potentially mislead the spouse to conclude that if he or she does not sign the credit obligation, he or she will not be liable for the spouse's debt, even though California's marital property law provides otherwise. California states that the cosigner notice would have to be modified substantially to reflect accurately California's marital property law; and the State believes that such modifications would be so complex as to undermine the notice's effectiveness

in explaining the consequences of cosigning an obligation.

The Attorney General also maintains that a cosigner spouse subject to California law would generally not fall within the Board's definition of a cosigner. Money or property acquired by either spouse on the credit of community property or the personal credit of either spouse is presumed to be community property.³ Both spouses are legally entitled to enjoy, use, manage and control community property. (Cal. Civ. Code 5125.)

Therefore, both spouses would be entitled to the proceeds of the credit obligation. Under the Board's Rule, a cosigner notice need only be given to a person who assumes liability without receiving money, property or services. Consequently, the California Attorney General argues that as long as community property assets are available to a creditor to satisfy an obligation, even if a nonapplicant spouse were also to obligate his or her separate property by cosigning a spouse's obligation, a creditor in California would not be required to give the Board's cosigner notice to the cosigning spouse. The Attorney General suggests that in California the situation in which the Board's cosigner notice would have to be given to a nonapplicant spouse (where no community property is being relied upon to satisfy a debt) is virtually nonexistent.

B. Misrepresentation of Cosigner Liability

Under the Board's Rule, it is a deceptive act or practice for a member institution to misrepresent the nature or extent of a cosigner's liability to any person in connection with an extension of credit to consumers (12 CFR 535.3(a)(1)). It is also a deceptive act or practice to obligate a cosigner unless the cosigner is informed, prior to becoming obligated, of the nature of his or her liability as a cosigner (12 CFR 535.3(a)(2)).

Misrepresentation of cosigner liability is not specifically prohibited by California law. Cal. Bus. & Prof. Code 17500 does, however, prohibit a person from disseminating untrue or misleading statements in order to induce the public into entering into an obligation. This section has been interpreted by California case law to include actions by financial institutions. In addition, California case law has held that proof

of actual deception, intent of the disseminator, knowledge of the consumer's reliance on the statement, or damages are unnecessary to establish a violation of the section.

Cal. Bus. & Prof. Code 17200 prohibits a wide range of business practices constituting unfair competition. Unfair competition is defined to include unlawful or fraudulent business practices. These prohibitions have been interpreted by California case law to protect consumers as well as businesses from the prohibited practices.

C. Remedies and Enforcement

Compliance with the provisions of the Board's Rule is provided through administrative enforcement, including periodic compliance examinations and investigations. Failure to comply with the cosigner provision of the Board's Rule is deemed an unfair or deceptive act or practice. The rule does not *per se* alter the obligation between the institution and the cosigner. No private right of action is provided under the Board's Rule. Noncompliance may result in administrative actions, including the issuance of cease and desist orders.

To assure compliance with the state law provisions affecting cosigners, California reports that it relies on the private remedy and public enforcement, through the state's unfair business practices law, by various prosecutorial agencies. If a creditor fails to comply with the California cosigner requirements, the creditor is barred from bringing any action or enforcing any security interest against a person entitled to receive notice who did not in fact receive any of the money, property, or services involved in the contract (Cal. Civ. Code 1799.95).

California courts are empowered to issue injunctive relief, to order restitution, and to fashion any appropriate equitable order to redress the dissemination of untrue or misleading statements and any unlawful business practice. An action for an injunction, restitution, and other equitable relief may be brought by the Attorney General, any of the 58 district attorneys, and local prosecutors. The Attorney General, the district attorneys, and certain local prosecutors can obtain a mandatory civil penalty of up to \$2,500 for a violation of each of the statutes. In addition, these agencies may seek a civil penalty of up to \$6,000 per day for each violation of an injunction issued pursuant to Cal. Bus. & Prof. Code 17203 and 17535. In addition, Cal. Bus. & Prof. Code 17204 and 17535 provide that actions for injunctive relief may also be brought by any person acting for the interests by itself, its members, or the

general public. Thus, California case law has held that individuals and organizations have standing to redress violations of these provisions even if they were not directly aggrieved by the violations.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-15285 Filed 7-6-88; 8:45 am]
BILLING CODE 4720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

(File No. 881 0038)

The Vons Companies et al.; Proposed Consent Agreement With Analysis To Aid Public Comment; Comment Period

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement; comment period.

SUMMARY: A Commission document previously published in the *Federal Register* on Thursday, June 2, 1988, 53 FR 20131 incorrectly initiated a comment period of 60 days for the proposed consent agreement. A document published in the *Federal Register* on Monday, June 13, 1988, 53 FR 22022 corrected this error and reduced the public comment period to 30 days to permit earlier consideration of the consent order. In light of the error, the Commission will accept comments for an additional 15 days.

DATE: Comments will be received until July 20, 1988.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. & Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum, FTC/S-3302, Washington 20580. (202) 326-2829.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-12442, appearing in the *Federal Register* issue for Thursday, June 2, 1988, 53 FR 20131, the deadline date for receiving comments should now be July 20, 1988.

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.
Benjamin I. Berman,
Acting Secretary.
[FR Doc. 88-15193 Filed 7-6-88; 8:45 am]
BILLING CODE 4710-01-M

16 CFR Part 419

Games of Chance in the Food Retailing and Gasoline Industries Proposed Amendment of Trade Regulation Rule

AGENCY: Federal Trade Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend the existing Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries (16 CFR Part 419). The Rule imposes certain requirements on users, promoters or manufacturers of such games. The Commission is taking this action in response to a petition for a waiver of certain provisions of the Rule related to broadcast advertising disclosures. In response to the petition, the Commission granted a temporary exemption relating to broadcast media disclosures, and, in an Advance Notice of Proposed Rulemaking, invited public comments upon whether or not other revisions of the Rule would be appropriate. The proposed amendment of the Rule addresses many of the concerns expressed in the public comments received.

The Commission has determined to reexamine the various provisions of the Rule because of the Commission's continuing concerns with reducing the cost burdens on industry and consumers and with the inflationary impact of government regulation. In keeping with these aims the proposed amendment will eliminate a requirement for certain disclosures in advertising and promotional materials; raise the threshold for winners' list disclosures to prizes of \$50.00 and over; permit replenishment of prize game pieces; and eliminate the requirement for a waiting period between games.

This notice sets out the rulemaking procedures to be followed, the text of the proposed Rule, reference to the legal authority under which the amendment is proposed, a statement of the Commission's reasons for proposing this amendment, a list of specific questions and issues upon which the Commission particularly desires written and oral comment, an invitation for written comments, and instructions for prospective witnesses and other interested persons who desire to present oral statements or otherwise participate in the proceedings.

DATES: Written comments should be received on or before September 6, 1988. Notification of interest in questioning witnesses must be submitted on or before August 8, 1988. Prepared statements of witnesses and exhibits, if any, must be submitted on or before

September 20, 1988. Public hearings will commence at 9:30 a.m. October 5, 1988.

ADDRESS: Written comments, notification of interest in questioning witnesses, requests to testify at the hearings and prepared statements of witnesses and exhibits, if any, should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 8th Street and Pennsylvania Avenue NW., Washington, DC 20580. The public hearing will be held in Room 332, Federal Trade Commission Building, 6th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brinley H. Williams, Federal Trade Commission, Cleveland Regional Office, Suite 500, The Mall Building, 118 St. Clair Avenue, Cleveland, Ohio 44114, telephone: (216) 552-4207; or Robert E. Easton, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580, telephone: (202) 326-3029.

SUPPLEMENTARY INFORMATION: The Commission is proposing to modify the Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries (16 CFR Part 419). This proceeding has been instituted upon receipt of a petition for modification of paragraph (b) of the Rule, and the Commission's determination that other aspects of the Rule should be updated. Several petitions have been received by the Commission in recent years requesting waivers of the various provisions of the Rule. The Commission has determined to reexamine the provisions of the Rule because of the Commission's continuing concern with reducing the cost burdens on industry and consumers and with the inflationary impact of government regulation.

Section A. Background

The Games of Chance Rule requires among other things:

- Disclosure of specified information in all broadcast advertising, all promotional material, and all game pieces that meet certain requirements.
 - Post-game disclosure of winners lists and other specified information.
 - Continuation of the game until all game pieces are distributed.
 - No replenishment of winning game pieces.
 - A waiting period between the running of new games.
- The Rule provides certain benefits for consumers. Primarily, it reduces possible deception about consumers' likelihood of winning prizes. It does this by requiring disclosure of information such as odds of winning, and by

imposing and certain restrictions on game procedures such as total random mixing.

The costs engendered by the Rule are difficult to assess, but can be divided into three general groups: costs to the games promoters, costs to consumers, and costs to the Federal Trade Commission (and hence to taxpayers). With regard to the actual costs to games promoters, the Commission has little information. Although the Rule has been in effect for over 15 years, staff is unaware of any study attempting to quantify the costs of regulating games of chance in particular, or sweepstakes in general.

The disclosure and record-keeping requirements are the major source of costs to games promoters. Disclosure requirements increase the costs of print and broadcast advertising, since the inclusion of additional information beyond that which the game promoter might have chosen is required. Additional administrative costs may be incurred by games promoters to assure that retail outlets are complying with the Rule. Also, the retention of records adds storage and administrative costs. To the extent that these costs may deter the use of games as a promotional technique, other marketing promotions, such as coupons, contests, trading stamps, non-regulated forms of sweepstakes (such as random drawings), and general advertising may be selected to help build retail sales. Some of these options may be less efficient than games of chance in building sales, thereby adding interest costs to the Rule of unknown magnitude.

Consumers may experience increased search costs where the Rule requires disclosures that provide more information than consumers want and need; this excess creates possible confusion and requires consumers to expend additional time and effort to choose among the retail options available. Consumers may have difficulty in finding the information that is of most concern to them among the Rule's voluminous disclosures. Furthermore, the disclosure requirements may dissuade firms altogether from promoting games via broadcast advertisements, consequently making it harder for consumers to learn of their existence. The Commission has undertaken a survey of consumers regarding games of chance and finds that consumers do not have a need for many of the disclosures required by the Rule. This survey has been made public and will be introduced as a part of the Rulemaking record.

³ The State cites Cal. Civ. Code 5110 and case law in support of this position. See *In re marriage of Fischer*, 78 Cal. App. 3d 558, 561, 146 Cal. Rptr. 381 (1978); *Ford v. Ford*, 276 Cal. App. 2d 9, 12-13, 60 Cal. Rptr. 435 (1969).

The Commission incurs some costs in enforcing the Rule. In the 15 years of the Rule's existence, enforcement has required few resources. Staff have been called upon primarily for informal interpretations of the Rule, and the Commission has sometimes been asked for formal advisory opinions.

The Commission has carefully and deliberately considered the recommended trade regulation rule and the comments received in response to the Advance Notice of Proposed Rulemaking. Based on the evidence presented to date, the Commission believes that the initiation of a rulemaking proceeding would be in the public interest.

The public is advised that the Commission has not adopted any findings or conclusions of the staff. All findings in this proceeding shall be based solely on the rulemaking record. Accordingly, the Commission invites comment on the advisability and manner of implementation of the proposed amended Rule.

The Commission's Rules of Practice shall govern the conduct of the rulemaking proceeding, except that, to the extent that this notice differs from the Rules of Practice, the provisions of this notice shall govern. This alternative form of proceeding is adopted in accordance with section 1.20 of those rules (16 CFR 1.20).

Section B. Section-by-Section Analysis

The proposed Rule substantially changes the form of the Rule, rather than simply amending certain sections. The purpose of this approach is both greater clarity and closer conformity to current rulemaking practices. The following discussion is intended to highlight the major provisions of the proposed amendments, and to explain briefly their anticipated effect.

Section 419.1 of the proposed Rule is a definition section. The current Rule does not specify any definitions. Over the years, the Commission's staff has routinely been confronted with questions about what the Rule is intended to regulate. The definitions address these questions.

Section 419.2 of the proposed Rule incorporates the preamble and section (a) of the current Rule. There is no substantive revision of this part of the rule, which makes it unfair and deceptive to misrepresent game participants' chances of winning.

Section 419.3 of the proposed Rule requires that in printed advertising of a game of chance, the user, promoter or manufacturer must include the following statement: "Odds of winning, prizes available, and winner lists are available

at participating retail outlets." Section 419.1(b) of the current Rule requires detailed disclosures in all promotional material, broadcast or printed. These disclosures include disclosing odds of winning, number and value of prizes, the geographic area of the game, the termination date of the game and the number of retail outlets where the game is being run. If the game is still offered after four weeks, certain of these disclosures must be updated. The proposed Rule will eliminate these duplicative disclosures, while alerting consumers that the particular information is available at the "retail outlet."

Section 419.4 of the proposed Rule requires the user, promoter, or manufacturer of a game of chance to disclose the number and value of prizes available, the odds of winning such prizes, and the termination date of the game. These disclosures may be made in one of two ways: Either on a poster or in a form likely to be retained by the game participant (such as on game pieces). This section corresponds to § 419.1(b) of the current Rule. The major differences between the proposal and the current Rule are three. First, as noted above, duplicative disclosure in advertising, promotional material and other media are alleviated. Second, disclosure of the geographic area of the game is eliminated. And third, disclosure of the total number of retail outlets is eliminated.

Preliminary indications from the consumer survey support these modifications. In terms of desired information, consumers place little value on knowing the geographic area and number of outlets. Regarding the method of disclosure, game pieces and posters are by far the instruments of choice by consumers for finding disclosures.

Section 419.5 of the proposed Rule requires random mixing of game pieces, but will permit what is termed "batch mixing." The current Rule (section 419.1(c)) requires mixing at the beginning of the game of winning pieces among all game pieces—"total random mixing." The proposed Rule will permit random mixing among smaller batches of game pieces, so long as the odds of winning within each batch are no less favorable than the overall odds disclosed to consumers. Such mixing is done commonly in non-regulated industries without apparent consumer deception or misunderstanding. Staff is unaware of any other federal, state or local statute or regulation that requires "total random mixing."

Section 419.6 of the proposed Rule is identical to § 419.1(d) of the current Rule. This provision prohibits games

susceptible of being solved or "broken" so that winning pieces or prizes can be predetermined.

Section 419.1(e) of the current Rule requires certain postgame disclosures. Sections 419.7 and 419.8 of the proposed Rule address post-game disclosures. There are three primary differences between the current Rule and the proposed Rule. First, the current rule requires disclosure of all winners while the proposed Rule imposed a \$50.00 floor, below which users, promoters and manufacturers need not disclose winners. The consumer survey indicates that game participants are primarily interested in the winners of more valuable prizes. Second, although the current Rule requires that these disclosures be made on an outlet by outlet basis, the proposed Rule would require a single list of all game winners. This will reduce record keeping costs for users, promoters and manufacturers, with no increased risk of deception or unfairness. Third, the winners list itself need not be posted if it is available upon request at each retail outlet that participated in the game.

Section 419.9 of the proposed Rule is a record retention requirement on the part of game users, promoters and manufacturers. The primary difference from the current Rule's § 419.1(e) is that it reduces the retention of records from 3 years to 1 year.

The requirements of § 419.1(f) of the current Rule have been deleted in the proposed Rule. This provision is commonly termed the "hiatus" provision because it requires a waiting period of up to 30 days between new games run by the retail outlets. The original intent of this provision was to prevent confusion among consumers concerning the running of back-to-back or concurrent games. However, consumer confusion has not been an apparent problem with concurrent games run by states, not-for-profit institutions and other types of for-profit business establishments. Staff is unaware of any federal, state or local statute or regulation that imposes a similar "hiatus" period.

Section 419.10 of the proposed rule is identical to § 419.1(g) of the current Rule. This provision prohibits game termination prior to the distribution of all game pieces. This is to prevent a situation in which a substantial number of winning pieces (and hence prizes) have not yet been awarded, but the game user, promoter or manufacturer discontinues the game.

Section 419.1(h) of the current Rule prohibits adding winning pieces during the course of a game. The proposed Rule

would delete this prohibition. Should a user, promoter or game manufacturer wish to add winning pieces, this is permissible. Such persons will continue to be prohibited from misrepresenting chances of winning under § 419.2 of the Rule as being greater than what the odds actually are.

Section C. Questions and Issues

All interested parties are hereby notified that they may submit to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington DC 20580, written data, views, or arguments on any issues of fact, law or policy which may have some bearing on the proposed modification of 16 CFR Part 419. Set forth below is a list of specific questions and issues upon which the Commission particularly desires comment and testimony. The list of questions is not intended to be a list of "disputed issues of material fact that are necessary to resolve," and any right to cross examine will be determined with reference to the criteria set forth in the Commission's Rules of Practice and this notice.

Interested persons are urged to consider carefully the following questions. The Commission retains its authority to promulgate a final rule which differs from the proposed Rule in ways suggested by these questions and based upon the rulemaking record:

(1) Are the proposed Rule's definitions of key terms clear, meaningful, and appropriate (section 419.1)? Should "game users," "game promoters," and "game manufacturers" also be defined?

(2) The proposed Rule defines the terms "food retailing industry," "gasoline industry" and "retail outlets" in section 419.1. Do the definitions expand or reduce the scope of the Rule? If so, what are the costs and benefits of expansion or reduction?

(3) The term "value" is used in the proposed Rule. It is used with regard to disclosure of the odds of winning (section 419.4), to disclosure of the winners (section 419.8), and to retention of records (section 419.9). Should other terms such as "value" be defined? If so, should "value" be based on the cost of the prizes to the promoter, on the retail price of the prize, or on some other measure?

(4) The proposed Rule eliminates detailed disclosure requirements in broadcast and printed advertising, including requirements that the odds of winning and the number and value of prizes be disclosed. Instead, it requires that any printed advertising include a disclosure indicating the availability at each participating retail outlet of the

odds of winning, the number and value of prizes, and the winners list (section 419.3). What are the costs and benefits of this change in the disclosure mechanism?

(5) The proposed Rule only requires that game promoters make disclosures of odds of winning and number or value of prizes on store posters or on game pieces (section 419.4). Under the existing rule, such disclosures were required in any form of advertising or promotional method. What are the advantages and disadvantages of this change? Is the method of disclosure in the proposed Rule adequate to notify consumers effectively of the odds of winning and number or value of prizes?

(6) The proposed Rule requires that display posters and game pieces include a printed reference to the Federal Trade Commission (section 419.4). What are the costs and benefits of this requirement?

(7) If the promoter of the game of chance chooses to disclose odds of winning on a poster (section 419.4(a)), such poster must be located in an "area reasonably accessible to the prospective participants." Is this requirement sufficient to ensure that posters are located in conspicuous locations?

(8) What would be the advantages and disadvantages of allowing game promoters to aggregate prizes having a value of less than \$5.00, \$25.00, \$50.00, or some other value, into one category for the purposes of disclosing odds of winning, and the number or value of prizes available (section 419.4)?

(9) Consumer commentators are asked to address the question of how important it is to know the odds of winning a prize valued at less than \$25.00, \$50.00 or \$100.00?

(10) What would be the costs and benefits of limiting the "odds of winning" disclosure requirement (section 419.4) to apply only to those prizes exceeding specified values such as \$25.00, \$50.00, \$75.00 or \$100.00?

(11) In contrast to the current Rule, the proposed Rule does not require disclosure of the geographic area of the game or the number of participating retail outlets. In eliminating these disclosures, do game participants lose any significant or useful information, considering that the odds of winning disclosure must always be made?

(12) The proposed Rule would permit the use of "batch-mixing" of winning games pieces—that is, it would allow randomness in mixing game pieces in "batches" rather than requiring total randomness among all game pieces (section 419.5). Does "batch-mixing" have any potential for misleading consumers in their assessment of the

odds of winning? For example, would the proposed Rule make it easier or harder for game promoters to "skew" or "load" the odds of winning, so that certain locations or certain classes of consumers would be less likely to win than others?

(13) In what ways and to what extent, if any, might "batch-mixing" affect the ability of the FTC to monitor compliance with the proposed Rule?

(14) The proposed Rule reduces the time that game promoters must retain pertinent records from three years to one year (section 419.9). What are the costs and benefits of reducing this time period?

(15) The proposed Rule reduces the obligation of game promoters to disclose winners' names and addresses to those winners who win prizes of \$50.00 or more (section 419.7 and 419.8). What would be the costs or benefits of raising or lowering the proposed dollar value of prizes that triggers inclusion of the winner on the winner list? What would be the optimal value for disclosure, if different from \$50.00, and why?

(16) Does the requirement of the proposed Rule regarding disclosure of winners' lists (section 419.7 and 419.8) adequately balance winners' interests of privacy and security against non-winners' interests in validating prize distribution? Should the proposed Rule require game promoters either (1) to obtain a release from winners authorizing the use of their names and addresses in the winners' list disclosures required by the Rule, or (2) to disclose in a pre-game notice that winners' names and addresses may be posted or otherwise distributed at the conclusion of the game?

(17) At the discretion of the game promoter, the \$50.00 limitation in the proposed Rule relating to the disclosure of winners' lists (section 419.7 and 419.8) may be substituted with a dollar limit based upon the most recent quarterly Implicit Price Deflator for the Gross National Product. What are the costs and benefits of this alternative?

(18) The proposed Rule eliminates the current Rule's 30-day waiting period between the running of an old game and a new game. What are the advantages and disadvantages of this change?

(19) What are costs and benefits of the proposed Rule's prohibition on termination of a game prior to the distribution of all game pieces to the participating public (section 419.10)?

(20) What effects, if any, would promulgation of the proposed Rule have on existing state law?

(21) To what extent, if any, do the provisions in the current or proposed

Rule correspond to or differ from state provisions regarding the conduct of state lotteries? For example, are state run lotteries required to disclose either on the game piece or on posters reasonably accessible to consumers, the odds of winning, for every prize offered? What accounts for any differences?

(22) Should the proposed Rule be expanded to cover industries other than grocery stores and gasoline stations, such as restaurants, soft drink bottlers and confectionery manufacturers? Is there evidence of deception in the use of game by these other industries?

(23) Is there a continued need for the Rule? What additional benefits or costs, if any, might accrue to consumers or grocery stores and gasoline stations from repeal of the Rule in its entirety?

(24) Are any other modifications to the proposed Rule appropriate?

In all comments, the Commission particularly welcomes empirical evidence. Written comments will be accepted until September 6, 1988. Prepared statements will be accepted until September 20, 1988. To assure prompt consideration of all comments, they should be identified as "Games of Chance Amendment Comment" and, when feasible and not burdensome, submitted in five (5) copies.

Section D. Public Hearings

Public hearings will be held commencing on October 5, 1988, at 9:30 a.m., in Room 332 of the Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Persons desiring to present their views orally at the hearing should so advise Henry B. Cabell, Presiding Officer, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580, 202-326-3642, as soon as possible.

The Presiding Officer appointed for this proceeding shall have all power prescribed in 16 CFR 1.13(c), subject to any modifications prescribed in this notice.

Section E. Instructions to Witnesses

1. Advance Notice

If you wish to testify at the hearings, you must notify the Presiding Officer of your desire to appear and file with him your complete, word-for-word statement no later than September 20, 1988. This advance notice is required so that other interested persons can determine the need to ask you questions and have an opportunity to prepare to do so. Any examination that is permitted will be conducted with regard to the written testimony, which will be entered into

the record exactly as submitted. Consequently, it will not be necessary for you to repeat this statement at the hearing. You may simply appear to answer questions with regard to your written statement, or you may deliver a short summary of the most important aspects of that statement within time limits to be set by the Presiding Officer. As a general rule, such oral summaries should not exceed 20 minutes.

Prospective witnesses are advised that they may be subject to questioning by designated representatives of interested parties and by members of the Commission's staff. Such questioning will be conducted subject to the discretion and control of the Presiding Officer and within such time limitation as he may impose. In the alternative, the Presiding Officer may conduct such examination himself or he may determine that full and true disclosure as to any issue or question may be achieved through rebuttal submissions or the presentation of additional oral or written statements. In all such instances, the Presiding Officer shall be governed by the need for a full and true disclosure of the facts and shall permit or conduct such examination with due regard for relevance to the factual issues raised by the proposed Rule and the testimony delivered by each witness.

2. Use of Exhibits

Use of exhibits during oral testimony is encouraged, especially when they are to be used to help clarify technical or complex matters. If you plan to offer documents as exhibits, file them as soon as possible during the period for submission of written comments so they can be studied by other interested persons. If those documents are unavailable to you during this period you must file them as soon as possible thereafter, and not later than the deadline for filing prepared statements. Mark each of the documents with your name, and number them in sequence (e.g., Jones Exhibit 1). The Presiding Officer has the power to refuse to accept for the rulemaking record any hearing exhibits that are not furnished by the deadline.

3. Expert Witnesses

If you are going to testify as an expert witness, you must attach to your statement a curriculum vitae, biographical sketch, resumé, or summary of your professional background, and a bibliography of your publications. It would be helpful if you would also include documentation for the opinions and conclusions you express by footnotes to your statements

or in separate exhibits. If your testimony is based upon, or chiefly concerned with, one or two major scientific works, copies should be furnished. The remaining citations to other works can be accomplished by using footnotes in your statement referring to those works.

4. Results of Surveys and Others Research Studies

If in your testimony you will present the results of a survey or other research study, as distinguished from simple references to previously published studies conducted by others, you must also present as an exhibit or exhibits in compliance with paragraph 2, above, the following:

(a) A complete report of the survey or other research study and the information and documents listed in (b) through (e), below, if they are not included in that report.

(b) A description of the sampling procedures and selection process, including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.

(c) Copies of all completed questionnaires or interview reports used in conducting the survey or study if respondents were permitted to answer questions in words of their choice rather than to select an answer from one or more answers printed on the questionnaire or suggested by the interviewer.

(d) Description of the methodology used in conducting the survey or other research study, including the selection of and instructions to interviewers, introductory remarks by interviewers to respondents, and a sample questionnaire or other data collection instrument.

(e) A description of the statistical procedures used to analyze the data and all data tables which underlie the results reported.

Other interested persons may wish to examine the questionnaires, data collection forms, and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information, along with punch cards or computer tapes which were used to conduct analyses, should be made available (with appropriate explanatory data) upon request of the Presiding Officer. The Presiding Officer will then be in a position to permit their use by other interested persons or their counsel.

5. Identification, Number of Copies, and Inspection

To assure prompt consideration, all materials filed by prospective witnesses pursuant to the instructions contained in paragraphs 1-4, above, should be identified as "Games of Chance Statement" ("and Exhibits," if appropriate) and submitted in five (5) copies when feasible and not burdensome.

6. Reason for Requirements

The foregoing requirements are necessary to permit us to schedule the time for your appearance and that of other witnesses in an orderly manner. Other interested parties must have your expected testimony and supporting documents available for study before the hearing so they can decide whether to examine or cross-examine you or file rebuttals. If you do not comply with all of the requirements, the Presiding Officer may refuse to let you testify.

7. General Procedures

These hearings will be informal, and courtroom rules of evidence will not apply. You will not be placed under oath unless the Presiding Officer so requires. You are also not required to respond to any question outside the area of your written statement, although, if such questions are permitted, you may respond if you feel you are prepared and have something to contribute. The Presiding Officer will assure that all questioning is conducted in a fair and reasonable manner and will allocate time according to the number of parties participating, the legitimate needs of each group for full and true disclosure, and the number and nature of the factual issues discussed. The Presiding Officer has the right to limit the number of witnesses to be heard if the orderly conduct of the hearing so requires. The deadlines established by this notice will not be extended, and hearing dates will not be postponed unless hardship can be demonstrated.

Section F. Notification of Interest

If you wish to avail yourself of the opportunity to question witnesses you must notify the Presiding Officer by August 8, 1988, of your position with respect to the proposed Rule and each individual provision thereof. Your notification must be in sufficient detail to enable the Presiding Officer to identify groups with the same or similar interests respecting the proposed Rule, and the Presiding Officer may require you to submit additional information if your notification is inadequate. If you fail to file an adequate notification in

sufficient detail, you may be denied the opportunity to question witnesses.

Before the hearings commence, the Presiding Officer will identify groups with the same or similar interests in the proceeding. These groups will be required to select a single representative for the purpose of conducting direct or cross-examination. If the members of a group are unable to agree upon a representative who is willing to serve in that capacity, the Presiding Officer may select one, or alternatively, elect to conduct examinations on behalf of the group himself. The Presiding Officer will notify all interested persons of the identity of the group representatives as soon as possible.

Group representatives will be given an opportunity to question each witness on any issue relevant to the proceeding and within the scope of that witness' testimony. The Presiding Officer may disallow any questioning that is not appropriate for full and true disclosure as to relevant issues. The Presiding Officer may impose fair and reasonable time limitations on the questioning. Since the broad scope of permissible questioning by group representatives and the staff will satisfy the statutory requirements regarding cross-examination, disputed issues will not be identified or designated by the Commission or by the Presiding Officer.

Section G. Post-Hearing Procedures

Interested persons will be afforded forty-five (45) days after the close of the hearings to file rebuttal submissions. Rebuttal representations shall be permitted only if the Presiding Officer determines that the presentation of rebuttal submissions is required for a full and true disclosure with respect to any disputed issue of fact that is material and necessary to resolve. Rebuttal submissions must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions which are essentially additional written comment in contrast to rebuttal. The 45-day rebuttal period is intended to include the time consumed in securing a complete transcript.

Within a reasonable time after the close of the rebuttal period, the staff shall release its recommendations to the Commission as required by the Commission's Rules of Practice. The Presiding Officer's report shall be released not later than 45 days thereafter and shall include a recommended decision based upon his findings and conclusions as to all relevant and material evidence. Post-record comments, as described in § 1.13(h) of the Rules of Practice, shall

be submitted not later than 60 days after the submission of the Presiding Officer's Report.

Section H. Rulemaking Record

In view of the substantial rulemaking records that have been established in prior trade regulation rulemaking proceedings (and the consequent difficulty in reviewing such records), the Commission urges all interested persons to consider the relevance of any material before submitting it for placement on the rulemaking record. While the commission encourages comments on its proposed Rule, the submission of material that is not generally probative of the issues posed by the proposed Rule merely overburdens the rulemaking record and decreases its usefulness, both to those reviewing the record and to interested persons using it during the course of the proceeding. The Commission's rulemaking staff has received similar instructions.

Material that the staff has obtained during the course of its investigation prior to the initiation of the rulemaking proceeding that is not placed in the rulemaking record will be made available to the public, to the extent that it is considered to be non-exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Section I. Preliminary Regulatory Analysis

The following discussion is included in the Commission's Preliminary Regulatory Analysis of the proposed Rule pursuant to the Requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The Act requires an analysis of the anticipated impact of the proposed Rule on small business. The analysis must contain a description of the reasons why action is being considered; the objectives of and legal basis for the proposed Rule; the class and number of small entities affected; the projected reporting, recordkeeping and other compliance requirements of the proposed Rule; any existing federal rules which may duplicate, overlap or conflict with the proposed Rule; and any significant alternatives to the proposed Rule which accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of and legal basis for the proposed Rule have been explained elsewhere in this Notice.

Amendment of the Rule would affect all grocery stores. The Small Business Administration has defined any grocery

store with less than \$13.5 million in revenue as a small business. 13 CFR Part 121.2 (1986). In 1984, there were 156,000 grocery stores, of which 2,400 had sales of less than \$12 million. *Progressive Grocer* 30 (April 1985).

Amendment of the Rule also affects all gasoline service stations. The SEA defines service stations with less than \$4.5 million in revenue as a small business. 13 CFR Part 121.2 (1986). In 1984, there were 132,080 gasoline service stations—23,774 of these were company-owned, the remaining 108,306 were franchisee-owned. *1985 National Petroleum News Factbook Issue* 111. The average revenue of the service station is \$856,322. It is estimated that the majority of the 132,080 franchisee service stations earn less revenue than SBA's definition of a small business.

The Rule currently requires a substantial number of different disclosures to consumers during the game and after the game. The Rule also requires the retention of a certain number of records for three years after the termination of a game of chance. These requirements fall equally on large and small businesses, although many such businesses choose alternative promotional forms which are close substitutes, thereby avoiding application of the Rule.

The proposed Rule will greatly decrease the costs of compliance and recordkeeping. Fewer disclosures are required, fewer records need to be retained after the game, and record retention diminishes to one year. Thus, if a retailer, large or small, chooses to use a form of game of chance regulated by this Rule, costs will be significantly reduced under the proposed Rule.

The Commission is not aware of any existing federal rules which would conflict, duplicate, or overlap with the proposed Rule.

The only significant alternative to the proposed Rule is repeal of the Rule itself. Repeal of the Rule, however, might create uncertainty regarding compliance requirements with the Commission's more general prohibitions against deception and unfairness. The proposed amendments balance the needs of consumers and food retailers of all sizes by reducing compliance burdens and retaining disclosures and procedures to minimize unlawful conduct.

Section J. Paperwork Reduction Act

The Games of Chance Rule contains information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501-3518. Those requirements have been reviewed and approved by the Office of Management

and Budget (OMB Control No. 2084-0067). Because the proposed amendments would affect those information collection requirements, the proposed amendments have been submitted to OMB for review under 5 CFR 1320.13 (1986). Comments on that submission may be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20403. Attention: Don Arbuckle, Desk Officer for the Federal Trade Commission.

Section K. Proposed Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, the provisions of Part I, Subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.7, *et seq.*, and the Administrative Procedures Act, 5 U.S.C. 553, *et seq.*, has initiated a proceeding for the amendment of the Trade Regulation Rule for Games of Chance in the Food Retailing and Gasoline Industries.

List of Subjects in 16 CFR Part 419

Advertising, Foods, Gambling, Gasoline, Trade practices.

Accordingly, the Commission has proposed the following amendment to 16 CFR Chapter I by revising Part 419 as follows:

PART 419—GAMES OF CHANCE IN THE FOOD RETAILING AND GASOLINE INDUSTRIES

Sec.

- 419.1 Definitions.
- 419.2 General duties.
- 419.3 Printed advertising.
- 419.4 Point of sale disclosures.
- 419.5 Game piece mixing.
- 419.6 Game security.
- 419.7 Post-game disclosure.
- 419.8 Winners' list disclosure.
- 419.9 Record keeping.
- 419.10 Game termination.

Authority: 38 Stat. 717, as amended (15 U.S.C. 41-56).

§ 419.1 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Games of Chance.* A promotional mechanism that is one form of sweepstakes in which:

- (1) Winning and non-winning game pieces are purportedly randomly mixed and distributed to retail store visitors;
- (2) The odds of winning can be determined at the beginning of the promotion; and
- (3) Retail store visitors can visit the retail outlet many times to attempt to obtain prize-winning game pieces.

(b) *Food retailing industry.* The industry composed of retail outlets that primarily sell groceries.

(c) *Gasoline industry.* The industry composed of retail outlets at which the sale of gasoline is a significant proportion of sales.

(d) *Index number.* \$50.00, adjusted by a ratio, the numerator of which is the most recent published (prior to the initiation of the game of chance) quarterly "Implicit Price Deflator" for the Gross National Product (IPD), and the denominator of which is the IPD for the last quarter of 1987, adjustments to be rounded to the nearest dollar. IPDs used in these annual adjustments shall have been computed using the same base year. At the discretion of the user, promoter, or manufacturer, where the dollar value "\$50.00" appears in §§ 419.7 and 419.8, the dollar value corresponding to the "Index Number" may be substituted to comply with the Rule.

(e) *Random Basis.* Any method of mixing, dispersing, or distributing game pieces or tickets to participants which ensures that the participants' chances of obtaining a winning piece or ticket are at least as great as those disclosed in posters or on the game pieces or cards, in accordance with 16 CFR 419.4.

(f) *Retail outlets.* Those locations where members of the food retailing and gasoline industries sell groceries or gasoline to consumers. In disclosures required by this Rule, appropriate terms such as "stores" and "gas stations" may be substituted by the promoter, user, or manufacturer of the game of chance for the term "retail outlets." In all other aspects, the wording of the disclosures required by this Rule must be made as specified in this Rule.

§ 419.2 General duties.

In connection with the use of games of chance in the food retailing and gasoline industries, it is an unfair and deceptive act or practice for users, promoters, or manufacturers of such games to engage in advertising or other promotions which misrepresent by any means, directly or indirectly, participants' chances of winning any prize. The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in this paragraph, § 419.2. It is a violation of this Rule for any user, promoter, or manufacturer of a game of chance used in the food retailing or gasoline industries (you) to fail to comply with the requirements set forth in §§ 419.3 through 419.10 of this part.

§ 419.3 Printed advertising.

You must include clearly and conspicuously in any printed advertising that refers to a game of chance the following statement:

The odds of winning, prizes available, and winners lists are available at participating retail outlets.

§ 419.4 Point of sale disclosures.

At your election, you must comply with either paragraph (a) or (b) of this section:

(a) At the beginning of each game, post a display poster at least 30" x 40" in size in an area reasonably accessible to the prospective participants in each individual retail outlet which uses the game. The poster shall remain posted for the duration of the game and must disclose the following information clearly and conspicuously:

(1) The following statement, accompanied by the disclosures required by paragraphs (a)(2) through (a)(5):

The following information is disclosed in compliance with a Regulation issued by the Federal Trade Commission:

(2) The value of each prize that is to be made available during the game program and the minimum number of each such prize that is to be awarded; and

(3) The odds of winning each such prize; and

(4) The scheduled termination date of the game; and

(5) The following statement:

Winners lists are available at participating retail outlets at the conclusion of the game; or

(b) Provide to every game participant in legible print on a form likely to be retained by the game participant (e.g., on game places or on game cards) the following information:

(1) The following statement, accompanied by the disclosures required by paragraphs (b)(2) through (b)(5):

The following information is disclosed in compliance with a Regulation issued by the Federal Trade Commission:

(2) The value of each prize that is to be made available during the game program and the minimum number of each such prize that is to be awarded; and

(3) The odds of winning each such prize; and

(4) The scheduled termination date of the game; and

(5) The following statement:

Winners lists are available at participating retail outlets at the conclusion of the game.

§ 419.5 Game piece mixing.

You must mix, distribute, and disperse all game pieces on a random basis, consistent with the odds of winning disclosures required by § 419.4, and maintain such records as are necessary to demonstrate to the Commission that randomness was used in such mixing, distribution, and dispersal.

§ 419.6 Game security.

You must not promote, sell, or use any game which is capable of or susceptible to being solved or "broken" so that winning game pieces or prizes can be or are predetermined or preidentified by such methods rather than by random distribution to the participating public.

§ 419.7 Post-game disclosure.

You must post clearly and conspicuously for a period of 14 days after the conclusion of each game in an area reasonably accessible to game participants in each individual retail outlet which used the game:

(a) The following statement, accompanied by the disclosures required by paragraphs (b) through (d) of this section:

The following information is disclosed in compliance with a Regulation issued by the Federal Trade Commission:

(b) Either the names and addresses of all persons who redeemed a prize having a value of \$50.00 or more and the dollar value of each prize won by each person, or the statement:

Names and addresses of winners of prizes of \$50.00 or more are available for examination at this retail outlet upon request.

(c) The total number of game pieces distributed in all participating retail outlets; and

(d) The total number of prizes in each category or denomination which were made available in all participating retail outlets.

§ 419.8 Winners' list disclosure.

For a period of 14 days after the conclusion of each game at each participating retail outlet, you must provide for examination to anyone who requests winners' names and addresses: the names and addresses of each person who redeemed a prize having a value of \$50.00 or more, and the dollar value of each prize won by such person.

§ 419.9 Record keeping.

For a period of not less than one (1) year, you must retain:

(a) The records required by § 419.5; and

(b) The information required by paragraphs (c) and (d) of § 419.7; and

(c) The information required to be provided by § 419.8; and

(d) The total number and value of prizes in each category or denomination which were awarded in all retail outlets; and

(e) The odds of winning any prize that was advertised or disclosed to be available during the promotion. Upon reasonable request, such information shall be made immediately available to the Commission and its staff for inspection and copying.

§ 419.10 Game termination

You must not terminate any game, regardless of the scheduled termination date, prior to the distribution of all game pieces to the participating public.

Issued: June 22, 1988.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-15192 Filed 7-6-88; 8:45 am]

BILLING CODE 5750-01-01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FLR 3410-6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a site-specific State Implementation Plan (SIP) revision to the ozone portion of the Ohio SIP, under the Clean Air Act (Act). In the March 10, 1988, revision request, the State requested a compliance date extension and a relaxation of emission limits for Navistar's (formerly called International Harvester) one surface coating line at its Body plant and nine lines at its Assembly plant, both of which are located in Springfield, Clark County, Ohio.

USEPA is today proposing to disapprove this SIP revision because the State has not demonstrated that Navistar's compliance plan is expeditious, that the present emission limits are technically or economically infeasible, and that the approval of this revision will not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone.

DATE: Comments on this revision and on the proposed USEPA action must be received by August 8, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031/FTS 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 Water Mark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible).

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031/FTS 886-6031.

SUPPLEMENTARY INFORMATION: On March 10, 1986, the Ohio Environmental Protection Agency (OEPA) submitted a site-specific revision to the Ohio ozone SIP for volatile organic compound (VOC) emissions from Navistar's one surface coating line at its Body plant and nine lines at its Assembly plant, both of which are located in Springfield, Clark County, Ohio. Clark County is designated nonattainment for the pollutant ozone under section 107 of the Act (40 CFR 81.336).¹

The two Navistar plants contain surface coating lines that are used to paint truck cabs, hoods, chassis, and miscellaneous parts. Under the existing federally approved SIP, each miscellaneous metal parts and products surface coating line is subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U). OAC Rule 3745-21-09(U)(1)(a)(iii) limits the VOC content of an extreme performance coating to 3.5 pounds of VOC per gallon (lbs of VOC/gal) of coating, excluding water. OAC Rule 3745-21-04(C)(28) requires

compliance with this limit by December 31, 1982. USEPA approved these rules and others as meeting the Reasonably Available Control Technology (RACT)* requirements of Part D and the Act on June 29, 1982 (47 FR 28087). Nine lines at the Assembly plant (P001-P004, P007-P009, R004 and R005) and one line at the Body plant (K001) are currently being operated in violation of OAC Rule 3745-21-09(U) for surface coating of miscellaneous metal parts and products. In lieu of the requirements mentioned above, OEPA has submitted for Navistar as a revision to the Ohio SIP (1) a compliance date extension until December 31, 1987, and (2) for seven of the lines, a relaxation from the RACT based limits to the VOC content of coatings currently in use on these lines. The coatings currently used are acrylic enamel, urethane, and chassis coating with VOC contents of 4.88, 4.88, and 3.60 lbs of VOC per gallon of coating, excluding water, respectively.

Compliance Date Extension

OEPA has requested a compliance date extension to December 31, 1987, for lines K001, P001, and P002. By that date, the lines will be shut down and replaced with new coating lines which will be in compliance with OAC Rule 3745-21-09(U). In order for a compliance date extension to be approvable, the request must comply with EPA criteria. The extension for Navistar's surface coating lines does not satisfy one of these criteria because Ohio did not adequately research the compliance status of other similar sources to determine if compliance by the original deadline was reasonable. As explained below, Illinois has documentation that complying coatings are available (and in use) for the heavy duty off highway vehicle manufacturing industry. In addition, EPA policy requires the State to demonstrate that the extension will not interfere with the timely attainment and maintenance of the ozone standard and, where relevant "reasonable further progress" (RFP) towards timely attainment. This would generally be done by comparing the margin for attainment predicted by the approval ozone attainment demonstration and the increased emissions that would result under the proposed extension. However, if the State or USEPA believes that there

* RACT is defined as the lowest emission limit that a source is capable meeting by the application of control technology that is reasonably available considering technological and economic feasibility. In order for a relaxation from an existing SIP limit to be approved as site-specific RACT, the State must demonstrate that it is technically or economically infeasible to meet a limit lower than that proposed as RACT.

has been a substantial change in the inventory since the ozone SIP was approved so that the margin of attainment has changed significantly, a revised demonstration in support of the revision request is required. Such a demonstration would be necessary in areas which purported to demonstrate attainment by 1982, but for which post-1982 monitoring data are indicating exceedances of the ozone standard. Because Navistar is located in such an area, a revised demonstration of attainment for the Dayton area would be required before the compliance date extension can be approved.

Relaxation of the Emissions Limit

OEPA has also requested a relaxation from emission limits contained in OAC Rule 3745-21-09(U) for the remaining seven coating lines at its Assembly plant. OEPA believes that this relaxation is necessary because Navistar claims that it has been unable to reformulate its coatings to a compliance level and that add-on control is not economically feasible. OEPA is proposing to limit the VOC content of coatings used on these lines to that of the coatings currently in use. The total annual VOC emissions from the coating lines in 1984 were 765.5 tons, while the allowable emissions were 460.7 tons.

Part D of the Act requires RACT-level controls in all areas which have not attained a NAAQS. USEPA approved OAC Rule 3745-21-09(U) as meeting the RACT requirements on June 29, 1982. A relaxation from these limits can only be approved if the State can meet two tests: first, it must demonstrate that it is technically or economically infeasible for the source to meet the limit. Second, it must demonstrate the new limits are RACT for that particular source. In the case of the proposed Navistar SIP relaxation, this means that the State must document both that complying coatings are not available and that add-on controls are not feasible in order to meet the first test.

To document this first test, OEPA initially provided correspondence with only four coating suppliers regarding the availability of low solvent coatings. Most of this correspondence is dated October 1983, and states that complying topcoats are not available but that research is continuing. On April 18, 1986, OEPA submitted additional information concerning Navistar's efforts to develop complying coatings. This documentation indicates that although Navistar has been able to reformulate some coatings, there are still many for which reformulation has been unsuccessful.

However, as discussed in a January 1986, "Study of Low-VOC Coatings Available for Use in the Illinois Heavy-Duty Off-Highway Vehicle Manufacturing Industry", complying coatings are available and in use at similar coating facilities. According to this study, there are at least six coating companies supplying complying coatings (3.5 lb/gal) and at least six manufacturing facilities currently using such coatings. OEPA has provided no explanation of why Navistar would be unable to use these coatings. Therefore, it has not been demonstrated that it is infeasible for Navistar to meet the existing SIP limit using reformulated coatings.

OEPA's November 17, 1986, submittal contains cost estimates for add-on control. The cost estimates in this report have not been adequately explained and documented. In particular, OEPA has not provided the following:

1. Documentation of capital costs (e.g., vendor quotes).
 2. Explanation of assumptions used in calculating operating costs.
 3. Possible reasons for the high cost of VOC control for this source compared to the range of estimates contained in the CTG for miscellaneous metal products.
- In addition, the study submitted does not appear to consider possible alternative control methods. For example, it may be less expensive to control oven exhaust than spray booth exhaust.

Status of Ozone Attainment Demonstration—Clark County

Navistar's Body and Assembly plants are located in Clark County, which is designated nonattainment of the ozone NAAQS, and which is a part of the greater Dayton nonattainment area for ozone. Navistar provided an air quality demonstration for the proposed revision which was based on the 1979 USEPA approved ozone SIP for the Dayton area. (See footnote 1.) In order to get approval of a source-specific SIP revision, a State must demonstrate that the revision will not interfere with expeditious attainment and maintenance of the ozone standard and reasonable further progress toward attainment. Dayton's 1979 ozone SIP was approved for attainment of the ozone standard by the end of 1982 and maintenance thereafter. However, because violations have been measured in 1983 and 1984, and there have been more recent exceedances of the ozone standard (as late as 1987), USEPA cannot determine whether the SIP is maintaining the ozone standard. Ohio cannot, therefore, rely on the 1979 demonstration of attainment to show that the revision will not interfere with

continued maintenance of the ozone standard. While USEPA has not chosen to call for a SIP revision because of a substantially inadequate plan for this area, any relaxations, such as the one addressed in this notice, must be accompanied by a persuasive demonstration that the area will continue to maintain the ozone standard for the foreseeable future despite the relaxation. Since the State has not made this demonstration, USEPA cannot approve this relaxation.

USEPA is proposing to disapprove this variance as a SIP revision because (1) the State has not shown that the granting of the variance will not interfere with expeditious attainment of the ozone NAAQS in the area; (2) the State did not demonstrate the Navistar's compliance plan is expeditious; and (3) the State has not demonstrated that the current emission limits for Navistar are technically or economically infeasible and that the proposed limits are RACT for that particular source.

List of Subject in 40 CFR Part 52

Air pollution control, Hydrocarbon, Intergovernmental relations, Ozone.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before August 8, 1988 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP disapproval will not have a significant economic impact on a substantial number of small entities, because the effect of this disapproval is to leave in effect existing emission limitations. Therefore, there is no change or any impact on any source or community.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401-7642.

Dated: June 29, 1987.

Valdas V. Adamkus,
Regional Administrator.

Editorial note: This document was received at the Office of the Federal Register, July 1, 1988.

[FR Doc. 88-15253 Filed 7-6-88; 8:45 am]

BILLING CODE 5550-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Pending Petitions and Description of Progress of Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of findings on pending petitions.

SUMMARY: The Service announces its findings on pending petitions to add to and revise the Lists of Endangered and Threatened Wildlife and Plants. These findings must be made within one year of either the date of receipt of such a petition or of a previous positive finding. The Service also describes its progress in revising the lists during the period from October 1, 1986, to September 30, 1987.

DATES: The findings announced in this notice were made between June 11, 1987, and October 15, 1987. The description of the Service's progress in revising the lists is current as of October 1, 1987. Comments regarding any species or petition mentioned may be submitted until further notice.

ADDRESSES: Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771 or FTS 235-2771). Comments regarding the western or Pacific island species should be addressed to Regional Director, U.S. Fish and Wildlife Service, 500 NE Multnomah Street, Suite 1892, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Gerge Drewry (703/235-1975 or FTS 235-1975.)

SUPPLEMENTARY INFORMATION: Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made on the merits within 12 months of the date of receipt of the petition. Provisions of the Endangered Species Act Amendments of 1982 required that such petitions pending on the date of enactment of the Amendments be treated as having been filed on that date, i.e. October 13, 1982. Section 4(b)(3)(C)(i) of the Act requires that any petition for which a 12-month

finding of "warranted but precluded" is made should be treated as having been resubmitted on the date of such a finding, with substantial scientific or commercial information that the petitioned action may be warranted, thereby requiring an additional finding to be made within 12 months. This notice reports findings made on or before October 14, 1987, in respect to pending petitions for which such additional findings were due, and describes the Service's progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the fifth year following the enactment of the 1982 Amendments.

All but one of the plant species involved in these petition findings were listed individually in a comprehensive notice of review for plants first published in the *Federal Register* on December 15, 1980 (45 FR 82480), and most recently updated as a notice of review published September 27, 1985 (50 FR 39526). The animal species mentioned below, but not named individually, were identified individually in the first announcement of 12-month petition findings published in the *Federal Register* on January 20, 1984 (49 FR 2485), and again in the second annual announcement published on May 10, 1985 (50 FR 19781).

Findings

Section 4(b)(5)(B) of the Act requires that the Service make one of the following 12-month findings on each petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action

is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Petitioned actions found to be warranted are the subjects of proposals that will be published promptly or have already been published in the *Federal Register*. Therefore only findings of "not warranted" and "warranted but precluded" for pending petitions are reported here.

"Not warranted" and "warranted but precluded" findings for pending plant petitions repeat the findings made in October 1986 and announced in the *Federal Register* for June 30, 1987 (52 FR 24312), except for the removal of 24 plant species proposed for listing as threatened or endangered during fiscal 1987. Findings on the plants are made by notice of review categories; application of these to individual taxa is published in a notice of review for plants published September 27, 1985 (50 FR 39526). The plant notice category number opposite the name of each taxon that is the subject of a pending petition indicates the Service's finding on that taxon. Findings of "not warranted" on the petitioned action are reported by the designation of subcategories 3A, 3B, or 3C for such taxa. Findings of "warranted but precluded" are reported by the designation of category 1, 1*, 1**, 2, or 2** for subject taxa. The complete definitions of these category numbers are described on pages 39526 and 39527 in the 1985 general plant notice of review (50 FR 39526). A finding of

"warranted but precluded" was also made for a petition to list the plant *Talinum humile* (the Pinos Altos fame flower) received October 15, 1985, from Mr. Paul R. Neal. This plant is being treated as a category 2 candidate species.

The Service's 12-month findings of "not warranted" and "warranted but precluded" on pending animal petitions are presented in Table 1. Each petition mentioned in Table 1 has had one or more previous findings of "warranted but precluded" reported in the *Federal Register*. The initial (90-day) findings for petitions listed in Table 1 were announced in the *Federal Register* on February 15, 1983 (48 FR 6752), January 16, 1984 (49 FR 1919), December 18, 1984 (49 FR 49118), April 2, 1985 (50 FR 13064), July 5, 1985 (50 FR 27637), August 30, 1985 (50 FR 35272), or May 2, 1986 (51 FR 16363).

The word "Yes" in the "Warranted?" column of Table 1 indicates petitions to list, delist, or reclassify species for which the principal findings are "warranted but precluded" from immediate proposal by other efforts to revise the lists. Note in the "Description" column that at least some species mentioned in the original petitions have been individually found to be warranted. The species so noted were named in previous notices of petition findings. Three of the species (noted by the word "No" in the "Warranted?" column) have new 1987 findings of "not warranted" announced here.

TABLE 1.—TWELVE-MONTH FINDINGS ON PENDING ANIMAL PETITIONS

Description	Petitioner	Date received	Warranted? ¹
5 species of sponges (2 others not warranted)	Mr. Ronald M. Cowden	June 17, 1974	Yes
38 species of cave crustaceans (12 others not warranted)	National Speleological Society	Sept. 9, 1974	Yes
6 species of cave amphipods (1 other not warranted)	Dr. John Holsinger	July 12, 1974	Yes
Uncompahgre fritillary butterfly	Dr. Lawrence F. Gail	Nov. 5, 1979	Yes
Columbia River tiger beetle	Mr. Gary Shook	Dec. 15, 1979	Yes
Shoshone sculpin	Dr. Peter A. Bowler	Dec. 3, 1979	Yes
Bonneville cutthroat trout	Desert Fishes Council	Oct. 23, 1979	Yes
Silver rice rat	Center for Action on Endangered Species	March 12, 1980	Yes
Bliss Rapids snail and Snake River physa snail	Dr. Peter A. Bowler	Feb. 7, 1980	Yes
10 U.S. and 60 foreign species of birds (4 others listed, 5 not warranted)	International Council for Bird Preservation	Nov. 24, 1980	Yes
Guam rufous-fronted fantail	Hon. Paul M. Calvo, Governor of Guam	Dec. 23, 1981	No
Organefin madtom and Roanoke logperch	Mr. Noel M. Burkhead	Oct. 6, 1983	Yes
Barbara Anne's tiger beetle and Guadeloupe Mountains tiger beetle	W.D. Sumlin, III and Christopher D. Nagano	July 24, 1984	Yes
Spiny River Snail	American Malacological Union	Aug. 13, 1984	Yes
Desert tortoise in remainder of its range	Dr. Martha L. Stout, Dr. Faith T. Campbell, and Mr. Michael J. Bean	Sept. 14, 1984	Yes
Samoan fruit bat (flying fox)	Mr. Paul Allen Cox	Nov. 27, 1984	No
Lower (Florida) Keys marsh rabbit	Ms. Joel L. Beardsley	April 27, 1985	Yes
Henne's eucosman moth	Mr. Bruce S. Mannheim, Jr.	May 31, 1985	Yes
Lora Aborn's moth	Mr. Bruce S. Mannheim, Jr.	May 21, 1985	No

¹ But precluded by other actions to revise the List of Endangered and Threatened Wildlife.

Three findings of "not warranted" in Table 1 require explanation. The Service was requested by the Governor of Guam to list the Guam rufous-fronted fantail, *Rhipidura rufifrons uraniae*, in a petition received by the Service December 23, 1981. Repeated efforts to locate the species subsequently have been unsuccessful, and the accumulated evidence has reached the point at which the Service considers this bird to be extinct. It will be treated in future notices of animal review as a category 3A species, believed to be extinct. The appropriate petition finding is "not warranted" in respect to its addition to the List of Endangered and Threatened Wildlife and Plants.

A second finding of "not warranted" was made for a petition to list the Samoan fruit bat (flying fox), *Pteropus samoensis samoensis*. This petition came from Mr. Paul Allen Cox and was received by the Service on November 27, 1984. An earlier finding of "warranted but precluded" was announced on May 2, 1986 (51 FR 16363), but discrepancies between the population levels indicated by the petitioner and those found in subsequent (1985) surveys were mentioned at that time. Continued study has led to the conclusion that although the species is rare enough for some concern, there is not sufficient evidence that it is threatened to warrant its listing. It is a solitary species not as easily decimated by hunting as are some of its colonial relatives, and populations on several of the islands of Samoa appear to be stable at or near the carrying capacity of the environment. Remaining habitat is estimated to constitute 74 percent of Western and American Samoa. According to the best scientific and commercial information available, including the Service's own positive field survey data, the action requested by the petitioner is not warranted. It should be noted, however, that this species was recently included with other western Pacific *Pteropus* species on Appendix II of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora), to regulate trade. The Service therefore expects to continue monitoring of its welfare at some level, and to be able to respond to any evidence of further decline. That commitment will be reflected in retention of category 2 status for this species in the next notice of animal review.

The other "not warranted" finding in Table 1 concerns Lora Aborn's moth, *Lorita abornana*. One of two subjects of a petition received from Mr. Bruce S. Mannheim, Jr., on May 21, 1985, it belongs to a group that was the subject

of dissertation research study by Dr. Michael G. Pogue. His research into the genus led to the scientific conclusion that *Lorita abornana* Busck is a synonym of *Lorita scarificata* (Meyrick), a widely distributed species of the New World tropics and Hawaii. Therefore, the population of *Lorita* at the El Segundo dunes of Los Angeles, California, does not appear to represent an entity qualified for listing under the Endangered Species Act. Separate findings are now indicated for the two subjects of Mr. Mannheim's petition on the basis of the best scientific and commercial information available, a finding of not warranted for Lora Aborn's moth, *Lorita abornana*, and a continued finding of warranted but precluded for Henne's eucosman moth, *Eucosma hennei*. *Lorita abornana* will be included in category 3B of the next notice of animal review, signifying that it lacks taxonomic validity.

The information in previous 12-month finding notices is current for the species indicated by "Yes" in the "Warranted?" column of Table 1. In the case of the desert tortoise the Service has some information to add to the finding announced on July 1, 1987 (52 FR 24485). A name recognized by many authorities for the desert tortoise is *Xerobates agassizii*. Three major genetic groups of the desert tortoise exist, separated by the Colorado and Yaqui Rivers, apparently as genetically distinct from one another as is the Texas tortoise, *X. berlandieri*, from the desert tortoise. The Service believes that for certain areas of the species' range in Arizona and Mexico additional study is needed to determine the species' status. However, substantial information suggests that the degree of threat facing the species in California and Nevada is increasing. The Service retains the option to list those populations that currently face the highest degree of threat while studies proceed to resolve existing questions regarding remaining portions of the species' range.

The following petitions are not included in Table 1 and have first one-year findings announced here:

Dr. Thomas O. Lemke of Thomson Falls, Montana, in a petition dated February 24, 1986, and received March 4, 1986, requested the Service to determine endangered status for populations of the Marianus fruit bat, *Pteropus mariannus mariannus* and *Pteropus mariannus paganensis*, in the Commonwealth of the Northern Mariana Islands. The population of this species on Guam was listed as endangered on August 27, 1984 (49 FR 33885). The entire species, including the populations identified in

this petition, was already the subject of a status review initiated May 18, 1979 (44 FR 29128). In respect to Dr. Lemke's petition, the Service made a 90-day administrative finding that substantial information was presented that the action requested may be warranted; the 90-day finding was reported in the *Federal Register* on January 21, 1987 (52 FR 2239).

After subsequent review of all the scientific and commercial information available, the Service has determined that the action requested in respect to populations of this species on the islands of Agiguan, Tinian and Saipan is warranted but precluded by other pending proposals of higher priority. The finding is based on low population and decline in the fruit bat populations on these islands owing to their vulnerability to human disturbance, hunting, and inadequate legal protection. On Rota, Asuncion, Guguan, and other northern islands of the Commonwealth that may be inhabited by this species, the Service has determined that existing legal protection and inaccessibility to hunting are adequate to protect the populations, and that the action requested by the petitioner is not presently warranted.

In a separate petition dated February 24, 1986, and received March 4, 1986, Dr. Thomas O. Lemke also requested the Service to determine endangered status for the Sheath-tailed bat (*Emballonura semicaudata*) in the Commonwealth of the Northern Mariana Islands. This species in Guam was the subject of a status review initiated December 30, 1982 (47 FR 58454), and the distribution corrected to include the Northern Mariana Islands on September 18, 1985 (50 FR 37958). The Service made a 90-day administrative finding for this petition that substantial information was presented that the action requested may be warranted, and reported that finding in the *Federal Register* on January 21, 1987 (52 FR 2239).

After review of the best scientific and commercial information available, the Service has determined that the action requested by this petitioner is not warranted. The basis for the finding was that there is only sketchy evidence of any decline in the petitioned population, and that it may be an "outlier" of a widespread species in the western Pacific.

In a petition dated March 10, 1986, and received March 19, 1986, the Service was requested by Mr. Tom R. Johnson, representing the Missouri Department of Conservation, to list the Oklahoma salamander (*Eurycea taylorensis*) as threatened. A status report of this

species in Missouri was submitted with the petition. An administrative finding that the action requested may be warranted was made on June 20, 1986. The species was already the subject of a status review initiated September 18, 1985 (50 FR 37958). A Federal Register notice announced the 90-day petition finding on January 21, 1987 (52 FR 2240).

The Oklahoma salamander is a neotenic (retaining larval gills throughout its life) member of the family Plethodontidae (lungless salamanders). It is restricted to stream systems and springs in the mountainous areas of northwestern Oklahoma, southwestern Missouri, and northwestern Arkansas. Oklahoma, southwestern Missouri, and northwestern Arkansas. Oklahoma has the largest known distribution (several sites along two river systems); Missouri has 40 recorded localities, and Arkansas has five. Surveys supported by the Missouri Department of Conservation and information furnished by the Arkansas Natural Heritage Program and by Bill Resperman of Oklahoma State University all indicated widespread deterioration of habitat throughout this species' range. Grazing and pollution have reduced the habitat quality at a number of sites, especially in Missouri and Oklahoma. Recent surveys of the Arkansas Heritage Program failed to find Oklahoma salamanders in at least two sites where they formerly occurred. Although general population data is still unavailable, former sites of occurrence that are either polluted or heavily grazed appear to have reduced or no Oklahoma salamander populations.

The action requested by this petition for the Oklahoma salamander was judged to be warranted according to the best information available, but precluded by other pending proposals of higher priority. The Service will continue to evaluate the status of the Oklahoma salamander. Additional data are needed on populations of this species in Oklahoma and Arkansas; the species will therefore be retained in Category 2 of the next comprehensive notice of animal review.

In a petition dated July 20, 1986, and received July 25, 1986, the Service was requested by Alexander R. Brash of the Rutgers University Graduate School, New Brunswick, New Jersey, to list the white-necked crow, *Corvus leucognathus* as an endangered species. This bird is in the somewhat unique position of being extirpated, as far as known, from the United States (Puerto Rico), but still extant in the Dominican Republic on the island of Hispaniola. It is, therefore, a foreign species at present, but one that could

conceivably be used in domestic restoration attempts. The petition was accepted as an action that may be warranted in a 90-day finding made in October 1986 and reported in the Federal Register for July 1, 1987 (52 FR 24485).

The information needed to determine the actual status of the white-necked crow in Hispaniola is not yet available. As a foreign species the priority for seeking the necessary data is somewhat lower than that accorded domestic species, while at the same time costs to obtain the data are expected to be higher. The evidence presented by this petitioner is not adequate alone to justify a decision to list the species. At this time, however, the best scientific and commercial information available support a finding that the action requested is warranted, but precluded by work on other species judged to be in greater need of protection.

A petition submitted by Mr. Rodney Bartgis and Mr. D. Daniel Boone of the Maryland Natural Heritage Program was dated July 22, 1986, and received by the Service on August 18, 1986. It requested the Service to list the Appalachian Bewick's wren, *Thryomanes bewickii alius*, as endangered. The petition acknowledged that not all authorities agree on the exact geographic limits of the various subspecies of this wren, but included extensive documentation that a definable Appalachian population is nearly extirpated from the few remaining States in which it has been reported since 1960. This petition was accepted as an action that may be warranted in a 90-day finding made in November 1986 and reported in the Federal Register for July 1, 1987 (52 FR 24485).

Subsequent review of the data on Bewick's wren in the eastern United States indicates that the action requested by this petitioner is warranted. An immediate rule to propose this species for listing is precluded by work on other species judged to be in greater need of protection. It has, however, been accorded a high priority within the Service's priority ranking system.

Progress in Revision of the Lists

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. The Service's progress in revising the lists in the year following October 1, 1986, the cutoff date of the previous report, is described below. For simplification in reporting, the 12-month period described

actually coincides with the 1987 fiscal year; activity during the last 12 days preceding the anniversary of the Amendments will be described in a subsequent notice. The described activities prevented immediate action on the "warranted but precluded" petitioned actions.

The Service's progress in revising the lists during fiscal year 1987 is represented by the publication in the Federal Register of final listing actions on 52 species, and proposed listing actions on 45 species. The number of species affected by each type of listing action published during this period is presented in Table 2.

TABLE 2.—LISTING ACTIONS TAKEN DURING THE PERIOD OCTOBER 1, 1986, THROUGH SEPTEMBER 30, 1987

Type of action	Number of species affected
Final endangered status	36
Final threatened status	15
Final reclassification to threatened due to similarity of appearance to a listed species	1
Proposed endangered status	31
Proposed threatened status	11
Proposed critical habitat	1
Proposed delisting	1
Proposed reclassification from endangered to threatened	2
Total	96

As of October 1, 1987, the Service's Division of Endangered Species and Habitat Conservation was also reviewing draft documents that would propose or make final listing actions on 37 species. The types of action and numbers of affected species are given in Table 3.

TABLE 3.—SUMMARY OF POTENTIAL LISTING ACTIONS NOT FINALIZED BUT UNDER ACTIVE REVIEW AS OF THE END OF THE REPORTING PERIOD

Type of action	Number of species affected
Final endangered status	10
Final threatened status	0
Final delisting	1
Proposed endangered status	11
Proposed threatened status	4
Proposed change from endangered to threatened status	1
Proposed experimental population	1
Total	37

The general plant and animal notices of review are important tools for gathering data on species that are

candidates for listing and for informing interested parties on the Service's general views on the status of present and past candidate species. The Service is currently preparing a general notice of review for animals, to include both vertebrate and invertebrate species. The most recent previous general notices were for plants on September 27, 1985 (50 FR 39526), for vertebrate animals on September 18, 1985 (50 FR 37958), and for invertebrate animals on May 22, 1984 (49 FR 21664).

Author

This notice was prepared by George Drewry, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1975 or FTS 235-1975).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-

304, 96 Stat. 1411); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 27, 1988.

Susan Rocco,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-15257 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-55-M

BEST COPY AVAILABLE

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 1, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

- (1) Agency proposing the information collection;
- (2) Title of the information collection;
- (3) Form number(s), if applicable;
- (4) How often the information is requested;
- (5) Who will be required or asked to report;
- (6) An estimate of the number of responses;
- (7) An estimate of the total number of hours needed to provide the information;
- (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies;
- (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer of USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB

Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service.
- Nutrition Education and Training Program-State Plan and Annual Participation Report.
- FNS-42.
- Recordkeeping: Annually.
- State or local governments: 60 responses; 3,120 hours; not applicable under 3504(h).
- Martha A. Poolton (703) 756-3554.

Reinstatement

- Food and Nutrition Service.
- State Plans, Operating Guidelines, Forms and Waivers.
- FNS-368A; FNS-368B.
- Annually.
- State or local governments: 159 responses; 2,586 hours; not applicable under 3504(h).
- Paul Jones (703) 756-3385.

Revision

- Farmers Home Administration.
- 7 CFR 1980-A, Guaranteed Loan Program (General).
- FmHA 449-14, -30, -35, -36; 1980-19, -41, -43, and -44.
- On occasion.
- Businesses or other for-profit: 29,356 responses; 45,127 hours; not applicable under 3504(h).
- Jack Holston (202) 362-9736.
- Farmers Home Administration.
- 7 CFR 1965-A, Servicing of Real Estate Security for Farmer Program Loans and certain Note-only cases.
- FmHA 440-2, -8, -26, 443-16, 465-1, -5, 1965-11, -13, -15.
- On occasion.
- Individuals or households: Farms; Businesses or other for-profit; Small businesses or organizations: 82,150 responses; 34,433 hours; not applicable under 3504(h).
- Jack Holston (202) 362-9736.
- Farmers Home Administration.
- 7 CFR 1980-B, Guaranteed Farmer Program Loans.
- FmHA 449-11, -12; 1980-15, -24, -25, -36, and -58.
- On occasion.
- Individuals or households: State or local governments; Farms; Businesses or other for-profit: 54,990 responses; 47,365 hours; not applicable under 3504(h).

Federal Register

Vol. 53, No. 130

Thursday, July 7, 1988

Jack Holston (202) 362-9736.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 88-15210 Filed 7-6-88; 8:45am]

BILLING CODE 3410-01-M

Office of the Secretary

Meat Import Act; Third Quarterly Estimate

Public Law 88-482, enacted August 22, 1964, as amended by Pub. L. 96-177 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1988 by section 2(c) as adjusted under section 2(d) of the Act.

As published on January 6, 1988 (53 FR 267), the estimated aggregate quantity of meat articles prescribed by section 2(c), as adjusted by section 2(d) of the Act, for calendar year 1988 is 1,386.8 million pounds. In accordance with the requirements of the Act, I have determined that the third quarterly estimate for 1988 of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1988 is 1,510 million pounds.

Done at Washington, DC this 1st day of July, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-15278 Filed 7-6-88; 8:45 am]

BILLING CODE 3410-10-M

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of establishment of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture (USDA), in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), proposes to establish a system of records: USDA/SCS-2, Volunteers—Soil Conservation Service. This action is necessary to implement the program authorized by 7 U.S.C. 2272, and to keep necessary records required by the program.

Records are kept on each volunteer in order to credit each volunteer with the appropriate number of hours worked for work experience credit and for suitable recognition in the form of certificates of appreciation. Names are also used for inclusion in agency directories and for general mailings pertaining to the program. Documentation is also required to implement available coverage under the Federal Tort Claims Act, 28 U.S.C. 1346, 2671 et seq., and the Federal Employees Compensation Act, 5 U.S.C. Chapter 81. Records contain personal data such as names, home addresses, home telephone numbers, Social Security Account numbers, educational level, driver's license, emergency data, duty station, previous occupation, skills, interests, job titles, dates of service, hours worked, work performed, performance evaluation data, and reason for separation. Social Security Account numbers are required in order to enter the data in the National Finance Center recordkeeping system.

DATES: Public comments must be received by August 8, 1988. This system shall take effect without further notice on September 6, 1988, unless comments received during the comment period cause a contrary decision.

ADDRESS: Interested individuals may comment on this notice by writing to Gerald D. Seinwill, Director, Information Resources Management Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013. All comments will be available for public inspection during business hours in room 6644-S, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Gerald D. Seinwill, at the above address, telephone (202) 475-4047.

SUPPLEMENTARY INFORMATION: USDA hereby establishes a new system of records, USDA-SCS-2, Volunteers—Soil Conservation Service. This system of records is the primary source of information SCS uses to manage its Earth Team Volunteer Program. It will consist of a manual system of volunteer applications and position descriptions

and an automated data base that will include information from the applications and information on the management of the program.

A "Report on New System," required by 5 U.S.C. 552a(o), as implemented by OMB Circular A-130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget on June 10, 1988.

Signed at Washington, DC, on June 10, 1988.

Peter C. Myers,

Acting Secretary.

USDA-SCS-2

SYSTEM NAME:

Volunteers—Soil Conservation Service, USDA/SCS.

SYSTEM LOCATION:

All offices of the Soil Conservation Service. Addresses of Soil Conservation Service offices are listed in the telephone directories under the heading, "United States Government, Department of Agriculture, Soil Conservation Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who volunteer to serve the Soil Conservation Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an automated retrieval system and file folders on individual volunteers which record information on the volunteers and their positions and hours worked. These files contain personal data including names, home addresses, home telephone numbers, Social Security Account numbers, education level, driver's license, emergency data, duty station, previous occupation, skills, interests, job titles, dates of service, hours worked, work performed, performance evaluation data, and reason for separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 7, U.S. Code, Section 2272, authorizes USDA to utilize volunteers to carry out soil and water conservation work.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Records and data may be disclosed, as is necessary: (1) To Members of Congress to respond to inquiries made on behalf of individual constituents who are record subjects; (2) to the Department of Justice when: (a) The agency, or any component thereof; or (b)

an employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected; (3) in a proceeding before a court or adjudicative body before which the agency is authorized to appear when: (a) The agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected; (4) in the event that material in this system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be disclosed to the appropriate Federal, State, foreign or local agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an automated database retrieval system and in file folders in the offices in which volunteers work.

RETRIEVABILITY:

Records are retrieved by name of volunteer, Social Security Account Number, and duty station.

SAFEGUARDS:

System access is restricted to authorized Soil Conservation Service employees. The automated data retrieval system is secured by a series of restricted user passwords. Manual files are maintained in file cabinets. Offices are locked during nonbusiness hours.

RETENTION AND DISPOSAL:

Records are maintained in the system for as long as the individual volunteer works for the agency. Upon termination, records of hours worked are transferred to the National Finance Center in New Orleans, to provide the individual credit for the work experience.

SYSTEM MANAGER(S) AND ADDRESS:

The system is managed by the Coordinator of Volunteer Services, Judith K. Johnson, 7515 NE Ankeny Road, Ankeny, Iowa 50021.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records by contacting the state volunteer program coordinator. For general information regarding the system or if the location of the record is not known with sufficient specificity, the individual should address his request to the Chief, Records Management Branch, Information Resources Management Division, USDA Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, who will refer it to the appropriate office.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the above-named system manager or to the Chief, Records Management Branch, USDA-SCS, Washington, DC 20013.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the Chief, Records Management Branch, USDA-SCS, Washington, DC 20013.

RECORD SOURCE CATEGORIES:

Information in this system is supplied by the volunteers themselves, using application forms and interest and skills questionnaires approved for this use. Information on hours worked is provided by the volunteers through their direct supervisors.

[FR Doc. 88-15200 Filed 7-6-88; 8:45 am]

BILLING CODE 3410-11-M

Agricultural Stabilization and Conservation Service**1988-1989 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas**

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination: 1988-1989 marketing year penalty rates for all kinds of tobacco subject to quotas.

SUMMARY: This notice sets forth the determination of the 1988-1989 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013, (202) 382-0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local

officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 314 of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1314), provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year. The Agricultural Statistics Board, National Agricultural Statistical Service, U.S. Department of Agriculture determines and announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

Since the determination of the 1988-1989 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined that the 1988-1989 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY
(1988-1989 Marketing Year)

Kinds of tobacco	Cents per pound
Flue-Cured	110
Burley	117
Fire-Cured (Type 21)	90
Fire-Cured (Types 22, 23 and 24)	113
Dark Air-Cured (Types 35 and 36)	90
Virginia Sun-Cured (Type 37)	77
Cigar-Filler and Binder (Types 42, 43, 44, 53, 54, and 55)	75

Signed at Washington, DC on June 29, 1988.
Milton Hertz,
Administrator, Agricultural Stabilization and Conservation Service.
[FR Doc. 88-15205 Filed 7-6-88; 8:45 am]
BILLING CODE 3410-05-M

Commodity Credit Corporation**Proposed Determinations With Regard to the 1989 Feed Grains Program and Farmer-Owned Reserve Program Provisions**

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1989 crop of feed grains: (a) The established

"target" price for corn, grain sorghums, barley, and oats; (b) the percentage reduction under an acreage reduction program (ARP); (c) whether an optional paid land diversion (PLD) should be established and, if so, the percentage of diversion under the program; (d) whether a marketing loan program should be implemented; (e) if a marketing loan program is implemented, whether the inventory reduction program (IRP) should also be implemented; (f) whether corn silage should be eligible for loans and purchases; and (g) other related provisions. The Secretary also requests comments with respect to the entry of 1988 crops of wheat and feed grains into the Farmer Owned Reserve (FOR) Program.

These determinations are made pursuant to the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation (CCC) Charter Act, as amended.

DATE: Comments must be received on or before August 1, 1988, in order to be assured of consideration.

ADDRESS: Dr. Orval Kerchner, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Philip Sronce, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, Room 3746, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7924. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major."

It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases	10.051
Feed Grains Production Stabilization	10.055

It has been determined that the Regulatory Flexibility Act is not

applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On April 19, 1988 (FR Vol. 53, No. 75) a notice of proposed determinations was published which set forth provisions common to the 1989 feed grains, wheat, upland cotton, ELS cotton, and rice price support and production adjustment programs.

Accordingly, the following program determinations are proposed to be made by the Secretary with respect to the 1989 crop of feed grains and the FOR Program.

a. **Established "Target" Price:** Section 105C(c)(1)(A) of the 1949 Act provides that the Secretary shall make available to producers payments for the 1989 crop of corn, grain sorghums, oats, and, if designated by the Secretary, barley, in an amount computed by multiplying (1) the payment rate by (2) the individual farm program acreage by (3) the farm program payment yield.

Section 105C(c)(1)(C)(i) of the 1949 Act provides that the payment rate for the 1989 crop of corn shall be the amount by which the established "target" price for the crop exceeds the higher of (1) the national weighted average market price received by producers during the first five months of the marketing year for such crop and (2) the basic loan level for such crop. Section 105C(c)(1)(D) provides that if the level of basic loan is adjusted, the Secretary shall provide emergency compensation by increasing the established price "deficiency" payments by an amount determined necessary to provide the same total return to producers as if the adjustment in the basic loan level had not been made. In determining the "deficiency" payment rate, the Secretary shall use the national weighted average market price of corn received by producers during the marketing year for such crop. Section 105C(c)(1)(E) provides that the established "target" price for the 1989 crop of corn shall not be less than \$2.84 per bushel.

In accordance with section 105C(c)(1)(D), notwithstanding the provisions of sections 105C(c)(1)(A)-(C), if the Secretary exercises the discretionary authority to adjust the loan and purchase level the Secretary shall increase the established price payments in such amount as the Secretary determines necessary to provide the same total return to producers as if such adjustment had not been made. This second payment rate level will be determined based on the difference between (1) the weighted national average market price of corn received by producers during the 1989-1990 marketing year (September 1989-August 1990) and (2) the adjusted loan level, but not less than \$1.65 per bushel. The maximum payment rate would be \$0.41 per bushel. Payments that are made based upon this payment rate would not be subject to the \$50,000 payment limitation but would be subject to the overall \$250,000 payment limitation.

Section 105C(c)(1)(F) provides that the payment rate for grain sorghums, oats, and, if designated by the Secretary, barley, shall be such rate as the Secretary determines fair and reasonable in relation to the rate at which payments are made available to corn.

The Secretary proposes to designate barely, to set forth the target price for corn at the minimum statutory level of \$2.84 per bushel and to use feed value relationships to corn to determine the target prices for grain sorghums, oats and barley. The target prices per bushel would be as follows: \$2.84 for corn; \$2.70 for grain sorghums; \$1.46 for oats; and \$2.41 for barley.

Comments are requested on the proposed determinations by the Secretary for the corn, grain sorghums, oats and barely established "target price" levels for purposes of making 1989 crop deficiency payments in accordance with section 105C(c)(1)(C) of the 1949 Act.

b. **Acreage Reduction Program (ARP):** Section 105C(f) of the 1949 Act provides, with respect to the 1989 crop of feed grains, that if the Secretary estimates, not later than September 1, 1988, that the quantity of corn on hand in the United States on the first day of the marketing year (September 1, 1989) for such crop (not including any quantity of corn of such crop) will be more than 2 billion bushels, the Secretary shall provide for an ARP under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base (CAB) for the farm for the crop reduced by not

less than 12.5 percent nor more than 20 percent.

If the quantity is estimated to be 2 billion bushels or less, the Secretary may provide for an ARP under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain CAB for the farm for the crop reduced by not more than 12.5 percent.

If a feed grain ARP is announced, such limitation shall be achieved by applying a uniform percentage reduction to the feed grain CAB for the crop for each feed grain-producing farm. Producers who knowingly produce feed grains in excess of the permitted feed grain acreage for the farm shall be ineligible for loans, purchases, and payments with respect to feed grains produced on that farm. An acreage on the farm shall be devoted to acreage conservation reserve (ACR) determined by dividing: (1) The product obtained by multiplying the number of acres required to be withdrawn from the production of feed grains times the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the ARP announced by the Secretary.

The quantity of feed grains on hand on September 1, 1988, is currently estimated to exceed 2 billion bushels. Accordingly, the Secretary would be required to implement an ARP of 12.5-20.0 percent.

Comments are requested as to the percentage level, if any, at which an ARP should be implemented for the 1989 crop of feed grains.

c. Paid Land Diversion (PLD): Section 105C(f)(5) of the 1949 Act provides that the Secretary may make land diversion payments to producers of feed grains, whether or not an ARP or set-aside program for feed grains is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of feed grains to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved ACR an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the

acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to adversely affect the economy of the county or local community.

In the case of the 1989 crops of corn, grain sorghums, and barley, except if the Secretary determines that it is necessary to maintain an adequate supply of corn, grain sorghums, or barley, the Secretary shall make land diversion payments to producers of corn, grain sorghums, and barley, under which the required reduction in the CAB shall be 10 percent and the diversion payment rate shall be \$1.75 per bushel for corn. The Secretary shall establish the diversion payment rate for grain sorghums and barley at such level as the Secretary determines is fair and reasonable in relation to the rate established for corn.

Any additional acreage reduction under a PLD would be at a producer's option.

Comments are requested with respect to the need for an optional PLD and, if implemented, the provisions of such program.

d. Marketing Loans and Loan Deficiency Payments: Section 105C(a)(4) of the 1949 Act provides that the Secretary may permit a producer to repay a loan for feed grains at a level that is the lesser of: (1) The announced loan level or (2) the higher of: (i) 70 percent of the basic loan level or (ii) the prevailing world market price for feed grains, as determined by the Secretary.

If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation: (1) A formula to define the prevailing world market price for feed grains and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for feed grains.

Section 105C(b) provides that the Secretary may, for the 1989 crop of feed grains, make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments. The payment shall be computed by multiplying: (1) The loan payment rate by (2) the quantity of feed grains the producer is eligible to place under loan.

For purposes of this section, the quantity of feed grains eligible to be placed under loan may not exceed the product obtained by multiplying: (1) The individual farm program acreage for the crop by (2) the farm program payment yield established for the farm. The loan payment rate shall be the amount by which the announced loan level exceeds the level at which a loan may be repaid.

The Secretary does not intend to implement a marketing loan and other related provisions for the 1989 crop of feed grains since other price support authorities permit adjustments in support levels that generally make feed grains competitive in domestic and international markets. Accordingly, comments are requested with respect to the Secretary's intentions or whether the Secretary should implement marketing loans and "loan deficiency" payments for the 1989 crop of feed grains and the formula and methodology for determining the prevailing world market price to be used if marketing loans are implemented.

e. Inventory Reduction Program (IRP): Section 105C(g) of the 1949 Act provides that the Secretary may, for the 1989 crop of feed grains, make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency payments; and (3) do not plant feed grains for harvest in excess of the CAB reduced by one-half of any acreage required to be diverted from production under the announced ARP. Such payments shall be made in the form of feed grains owned by CCC. Payments under this program shall be determined in the same manner as established with respect to the marketing loan program.

Accordingly, the implementation of this program is considered to be dependent on whether a marketing loan program is also instituted. Comments are requested on whether an IRP should be implemented for the 1989 crop of feed grains if marketing loans are also implemented.

f. Inclusion of Corn Silage Grain Equivalent in Loans and Purchases Program: Section 403 of the Food Security Act of 1985 provides that the Secretary may make available loans and purchases to producers on a farm who: (1) For silage, cut corn (including mutilated corn) that the producers have produced in a crop year or purchase or exchange corn (including mutilated corn) that has been produced in such crop year by another producer and (2) participate in an acreage reduction or set-aside program established for such crop year.

Such loans and purchases may be made on the quantity of corn of the same crop, other than the corn cut for silage, which is acquired by the producer and which is equal to the number of acres cut for silage multiplied by the lower of the farm program yield or the actual yield on a field, as determined by the Secretary, that is similar to the field from which silage was obtained. Corn which is to be

substituted for corn cut for silage could either be purchased in the market or be produced by the producer on a non-complying farm.

In 1987, 5.9 million acres of corn was cut for silage, with about 60 percent of silage production occurring in ten States: Wisconsin, New York, Pennsylvania, Minnesota, Michigan, South Dakota, North Dakota, California, Virginia, and Nebraska. These States also represent major areas of livestock production, especially dairy production.

Comments are requested whether loans and purchases should be available for corn silage grain equivalent in accordance with the 1989 feed grain program.

g. Farmer-owned Reserve (FOR) Program: Section 110 of the 1949 Act provides that the Secretary shall formulate and administer a program under which producers will be able to store wheat or feed grains when in abundant supply, extend the time period for its orderly marketing, and provide for adequate, but not excessive, carryover stocks in order to ensure a reliable supply. The Secretary is required to establish safeguards to assure that wheat or feed grains held under the program shall not be utilized in any manner to unduly depress, manipulate, or curtail the free market.

Wheat and feed grains are required to be permitted entry into the FOR whenever the total quantity entered under such program is less than 300 million bushels of wheat or 450 million bushels of feed grains and the market price of the respective commodity, as determined by the Secretary, does not exceed 140 percent of the nonrecourse loan rate for the respective commodity. In establishing such a program, original or extended price support loans for wheat or feed grains are to be made available under terms and conditions designed to encourage participation by producers. Loans made in accordance with this program shall be made at such level of support as the Secretary determines appropriate, but not less than the then current level of support available under the wheat or feed grains program. The program may provide for:

(1) Repayment of such loans in not less than three years, with extensions as warranted by market conditions; (2) payments to producers for storage in such amounts and under such conditions as the Secretary determines appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate charged CCC by the United States Treasury, except the Secretary may waive or adjust such interest as the Secretary deems appropriate to effectuate the purposes of

section 110; (4) recovery of amounts paid for storage and for the payment of additional interest or other charges if such loans are repaid by producers when the total amount of wheat or feed grains in storage under this program is below the maximum limits for such storage and the market price for wheat or feed grains is below the higher of: (i) 140 percent of the nonrecourse loan rate for wheat or feed grains or (ii) the established "target" price; and (5) conditions designed to induce producers to redeem and market the wheat or feed grains securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the commodity has attained the higher of: (i) 140 percent of the nonrecourse loan rate for the commodity or (ii) the established price for such commodity.

The rate of interest applicable to loans made under this program shall be not less than the rate of interest charged CCC by the United States Treasury. However, the Secretary may: (1) Waive or adjust the rate of interest to effectuate the purpose of the program and (2) increase the applicable rate of interest as determined appropriate to encourage the orderly marketing of wheat or feed grains securing such loans if the market price for wheat or feed grains exceeds the higher of 140 percent of the nonrecourse loan rate or the established "target" price.

The Secretary may require producers to repay the principal amount of loans obtained under this program, plus accrued interest and other related charges, prior to the maturity date of such loans, if the Secretary: (1) Determines that emergency conditions exist which require that wheat or feed grains be made available to meet urgent domestic or international needs and (2) reports such determination to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives at least fourteen days before taking such action.

Announcement of the terms and conditions of the program are to be made as far in advance of making loans as practicable and shall specify the quantity of wheat or feed grains to be stored under the program which is determined appropriate to promote the orderly marketing of wheat or feed grains. Prior to the harvest of each crop of wheat or feed grains upper limits on the total of wheat (feed grains) that may be stored under such program during the marketing year for such crop are to be established. The upper limit for wheat (feed grains) shall not exceed 30 (17) percent of the estimated total domestic

and export usage during the marketing year for such crop. Such upper limit may be increased, but not in excess of 110 percent, if the Secretary determines that the higher limits are necessary to achieve the purposes of the program.

The following table sets forth information relevant for making determinations with respect to entry of 1988 crops of wheat and feed grains into the FOR (in million bushels).

Commodity	[Bushels in millions]			
	Estimated total domestic and export use for 1988/89	Statutory maximum FOR quantity	Statutory minimum FOR quantity	FOR commodities as of May 11, 1988
Wheat	2,620	786	300	483
Corn	8,060	1,370	450	1,295

Based upon FOR contract maturities, it is estimated that the FOR quantity on hand during the 1988/89 marketing year will be between the statutory minimum and maximum levels. Accordingly, the Secretary proposes not to permit entry of maturing 1988 crop wheat or feed grains price support loans into the FOR if during the 1988/89 marketing year, the quantities of the commodity in the FOR are: (1) Above the respective statutory minimum; or (2) are below the statutory minimum and the market price of the respective commodity, as determined by the Secretary, exceeds 140 percent of the nonrecourse loan rate for the respective commodity.

Comments on proposed determinations with respect to the entry of 1988 crop wheat and feed grains regular CCC price support loans into the FOR are requested.

h. Other Related Provisions: A number of other determinations must be made in order to carry out the feed grain loan and purchase programs such as: (1) Commodity eligibility; (2) premiums and discounts for grades, classes, and other qualities; and (3) such other provisions as may be necessary to carry out the programs.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 105C, 107E, 107F, and 110 of the Agricultural Act of 1949, as amended 69 Stat. 1445, 1395, as amended, 1448, 91 Stat. 951, (7 U.S.C. 1444e, 1445b-4, 1445b-5 and 1445e); Sec. 403 of the Food Security Act of 1985, as amended, 99 Stat. 1406 (7 U.S.C. 1444e-1).

Signed at Washington, DC on July 1, 1988.
 Milton Hertz,
 Executive Vice President, Commodity Credit
 Corporation.
 (FR Doc. 88-15220 Filed 7-1-88; 2:22 pm)
 BILLING CODE 3410-06-06

Forest Service

Skewed Bidding Policy

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service hereby gives notice of adoption of a final skewed bidding policy that establishes minimum procedures and restrictions to limit skewed bidding on Forest Service timber sales. The policy provides Regional Foresters flexibility to establish alternative approaches as long as they are no less restrictive than the minimum standards. The intended effect is to provide both the purchaser and the government from the adverse effects of the speculative practice of skewed bidding.

EFFECTIVE DATE: This policy will become effective August 1, 1988. This date allows adequate time for issuance of instructions to Forest Service personnel through appropriate sections of the Forest Service Manual and the Timber Sale Preparation Handbook.

FOR FURTHER INFORMATION CONTACT: Address questions about this policy to Milo Larson, Timber Management Staff, Forest Service, USDA, P.O. Box 80090, Washington, DC 20080-0090, (202) 475-3784.

SUPPLEMENTARY INFORMATION: Timber is sold from the National Forest System to private purchasers through competitive bidding. Timber sales often include more than one species. In a sale species are sometimes combined into groups of similar value. In these sales, prospective purchasers offer bids by species or species group. The high bid for a sale is determined by adding the totals for the price bids for each species (group) multiplied by the estimated timber volume of that species. The sale is awarded to the qualified bidder whose cumulative bid has the highest total value.

Skewed bidding occurs when an unusually high bid is placed on a timber species that represents a minor proportion of the total sale volume, thus, allowing the bidder to offer lower bid rates on high volume timber species. Usually high bids on low volume or low value species are speculative in nature and can be harmful to either the purchaser or the government.

The volume estimates by the Forest Service are only estimates and are subject to verification by the timber purchaser. The estimates for individual species have less statistical reliability than do the volume estimates for the total sale. The reliability is usually poorest for those species in a timber sale representing the lowest volumes or highest incidence of defect. Even small inaccuracies can have major financial impact when the bid is skewed. If more than the estimated volume of a skewed bid species is present, the purchaser must pay disproportionately more. If less than the estimated volume is present, the government receives much less than it should, because the purchaser is paying lower rates on the remaining high volume species.

Also, an unsuccessful bidder who submits an unskewed bid may actually offer the highest bid based on the actual timber volume which is often measured after it is sold and cut. When such a bid is compared to a skewed bid, the unsuccessful bidder was, in effect unfairly denied the sale, and the Government does not receive the highest value for the sale.

Skewed bidding on National Forest timber sales has been the subject of a General Accounting Office Review (GAO/RCED-83-87). In partial response to the recommendations of that review, the Forest Service published a proposed policy to control skewed bidding on National Forest System timber sales January 30, 1987, at 52 FR 3027. On May 15, 1987, at 52 FR 18399 that policy was withdrawn. After consideration of comments received on the previous proposal, the Forest Service published another proposal on November 6, 1987, at 52 FR 42701. This latter proposal recognized the need for timber purchasers to pay different rates for timber species in accordance with their individual manufacturing or marketing capabilities. However, it limited the bid increase on any species or species group to twice the average bid increase for the timber sale.

Public Comment on the Proposed Policy

In response to the notice of November 6, 1987, the Forest Service received 17 written comments. These came from individuals (4), timber processing firms (6), associations representing the interests of timber oriented firms (6), and one logging company.

The comments were about equally divided in support of and in opposition to the proposal. Twelve of the respondents recognized the need for some form of control of skewed bidding, with eight favoring the proposed policy in existing or modified form. Of those in

opposition, three wished to retain the ability to bid without limitation as a means to obtain a competitive advantage over other bidders or the government. The agency disagrees with this argument since the policy is designed specifically to limit the unfair advantages that can be achieved through speculative skewed bidding.

Five respondents indicated it should be the Forest Service responsibility to estimate the standing timber to a higher level of accuracy, thus, removing any advantage skewed bidding may provide. The agency recognizes the necessity to estimate timber to specified levels of accuracy, but it rejects this argument as a means of eliminating the need for control of skewed bidding.

To estimate the volume of timber on a given area according to species, size, quality, or other characteristics trained Forest Service personnel, designated as certified cruisers, cruise the timber. The cruise is an on-the-ground sampling of selected trees or plots, an estimate of gross volume on those plots, estimates of defect and of breakage, and the extension of sample results to the whole sale. If cruise sampling was increased enough to avoid skewed bidding, timber could then be paid for on the cruise estimates rather than the scaling of logs after timber is cut. This would increase the expense of cruising but expenses incurred of scaling would then be unnecessary. However, it is unlikely that the agency could institute such a change. Although accepted in eastern areas of the country, cruising as a basis for payment for timber has been consistently opposed by the majority of timber purchasers in the west, where the skewed bidding policy is most likely to be invoked.

Several respondents on both sides of the issue recommended that Regional Foresters be granted the authority to consult with industry to arrive at a policy suited to local conditions that would be applied in place of the proposal, with one suggesting the final policy would apply only if agreement could not be reached. The agency accepts this suggestion and the final policy provides for regionally developed alternatives, if they provide at least the same degree of control of skewed bidding as this policy.

Final Policy

Based on the need identified for a skewed bidding policy and consideration and analysis of the comments received, the Forest Service is adopting the final policy as proposed on November 6, except for the change previously noted, allowing Regional

Foresters to establish alternate procedures. The policy will be incorporated in Chapter 2430 of the Forest Service Manual, and the Sale Preparation Handbook, FSH 2409.18, as direction to Forest Service line officers and timber sale contracting personnel as follows:

Regional Foresters shall take prompt action to limit skewed bidding on advertised timber sales on those National Forests, or specific market areas where the Regional has occurred or, because of species mix, intensively competitive bidding, highly variable defect, unusual difficulty of accurate volume measurement, or other factors, is likely to occur. In such cases, apply the minimum standards of this section to advertised timber sales in the affected area or alternatively establish other standards tailored to local circumstances. Incorporate appropriate language in the standard timber sale

prospectus for use on any timber sale where skewed bidding limitations would apply. In establishing alternative standards, the Regional Forester shall consult with representatives of the timber industry in the affected area and must ensure any alternative approaches provide at least the same or greater degree of control of skewed bidding as the minimum standards.

Minimum Standards for Limiting Skewed Bidding

The bid premium (the amount bid above the advertised rates set by the Forest Service for a timber sale) shall be bid for the estimated volume of the timber sale as a whole. A purchaser can elect to assign the bid premium by species or species groups after successfully bidding for the sale but must do so prior to contract execution.

Contracting Officers shall only accept purchaser assignments of bid premium that meet the following standards:

1. The rate for a species or species groups cannot be less than the advertised rate.
2. The assigned bid premium for a species or species group cannot be more than twice the average bid premium for the sale as a whole.
3. The average of the bid premiums assigned, weighted by the volume of species or groups, must total to within \$0.01 of the average bid premium for the sale.

If the purchaser does not elect to assign the bid premium to species or groups prior to contract execution, the Contracting Officer shall assign the average bid premium to each species or group.

The following exhibit illustrates how these standards would apply to a representative sale.

EXHIBIT 1

	Species			Total
	Douglas-fir	White pine	White fir and other	
Volume	5MMBF	4MMBF	1MMBF	10MMBF
Advised rate	\$20/MBF	\$30/MBF	\$10/MBF	\$430,000
Bid for sale	XXXX	XXXX	XXXX	530,000
Total bid premium	XXXX	XXXX	XXXX	100,000
Average bid premium (\$100,000/10MMBF = \$10.00/MBF)	XXXX	XXXX	XXXX	10.00/MBF
Maximum rate (includes \$20.00 (\$10.00 x 2) maximum assignable bid premium)	40/MBF	100/MBF	30/MBF	XXXX

ALTERNATIVE ASSIGNMENT OF BID RATES FOR THE EXAMPLE SALE

	Rates	Rates	Rates	Total bid premium
Purchaser is Douglas-fir Mill	\$40/MBF	\$30/MBF	\$10/MBF	\$100,000
Purchaser is White Pine Mill	20/MBF	100/MBF	30/MBF	100,000
Purchaser defers to contracting officer	30/MBF	90/MBF	20/MBF	100,000

Calculations:

Douglas-fir Mill—\$20.00 max. assignable bid premium assigned to D.fir adv. rate of \$20.00=\$20/mbf rate. \$20.00×5mmmbf D.fir volume=\$100,000 total bid premium. \$100,000 divided by 10mmmbf sale volume=\$10.00/mbf average bid premium.

White Pine Mill—\$20.00 max assigned to W.pine=\$100/m rate (\$20.00×4mmmbf white pine volume=\$80,000) and \$20.00 max assigned to W.fir=\$30/mbf (\$20.00×1mmmbf=\$20,000). \$80,000+\$20,000=\$100,000 divided by 10mmmbf sale volume=\$10.00/mbf average bid premium.

Contracting Officer—Assign average bid premium to each species (\$10.00×5mmmbf+\$10.00×4mmmbf+\$10.00×1mmmbf=\$100,000, divided by 10mmmbf=\$10.00 average bid premium.

Impacts

This policy has been reviewed under Executive Order 12291 and Departmental policies and it has been determined that this policy is not a major rule. The policy will not have an annual effect on the economy of \$100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local Government agencies or geographic regions, and will not have

significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based industries to compete with foreign-based enterprises in domestic or export markets. To the contrary this policy will protect both the United States and timber sale purchasers from adverse effects of the speculative practice if skewed bidding.

The Chief of the Forest Service has determined that this policy will not have

significant economic impacts on a substantial number of small entities. The policy should help small and large entities by making the bid process fair to both.

Based on both experience and environmental analysis, this proposed policy will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental

assessment or an environmental impact statement (40 CFR 1508.4).

This policy will not require any public reporting or record keeping as defined in 5 CFR Part 1320.

Date: June 10, 1988.

George M. Leonard,
Associate Chief.

[FR Doc. 88-15206 Filed 7-6-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Amended Notice of Hearing on Indian Civil Rights Issues; Postponement

Notice is hereby given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Pub. L. 98-183, 97 Stat. 1304, that a public hearing on Indian civil rights issues before a Subcommittee of the U.S. Commission on Civil Rights has been postponed. The rescheduled hearing will be held on July 20, 1988, and continue on such succeeding days as may be deemed appropriate at the discretion of the Chairman of the Subcommittee.

The purpose, time and location of the hearing remain as previously published in 53 FR 20881 (June 7, 1988).

Dated at Washington, DC, July 5, 1988.

Murray Friedman,
Vice Chairman.

[FR Doc. 88-15409 Filed 7-6-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Post Enumeration Survey—Follow-up Questionnaire—1988 Census.

Form Numbers: Agency—DX-1301; OMB—NA.

Type of Request: New collection. Burden: 3,350 respondents; 670 reporting hours.

Average Time Per Response: 12 minutes.

Needs and Uses: This survey is a follow-up to the 1988 Post Enumeration Survey (PES). The PES is a study designed to measure the completeness of the 1988 Census of households. The 1988 PES will also be used to rehearse the PES activities for the 1990 Census. This follow-up survey is needed to determine if persons were counted in

both the Post Enumeration Survey and in the Census. This will be done by conducting interviews with persons that are not matched on both surveys, or that may be a possible match.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory. OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 29, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-15259 Filed 7-6-88; 8:45 am]

BILLING CODE 3510-07-M

Minority Business Development Agency

Business Development Center Applications: Phoenix, AZ

AGENCY: Minority Business Development Agency, Commerce. ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is \$184,260 in Federal funds and a minimum of \$32,516 in non-Federal contributions for the budget period December 1, 1988 to November 30, 1989. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combination thereof. The MBDC will operate in the Phoenix, Arizona geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services

to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (30 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost of firms with gross sales of \$500,000 or less and 35% of the total cost for firms with gross sales of over \$500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date, quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds Agency priorities.

Closing Date: The closing date for applications is August 12, 1988. Applications must be postmarked on or before August 12, 1988.

ADDRESS: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11,800 Minority Business Development (Catalog of Federal Domestic Assistance). Xavier Mena,

Regional Director, San Francisco Regional Office.

July 1, 1988.

[FR Doc. 88-15227 Filed 7-6-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, July 13, 1988, at 8 a.m., at The Philadelphia Hershey Hotel, Broad and Lucas Streets, Philadelphia, PA (telephone: 215-993-1600), to adopt Amendment #8 to the Surf Clam and Ocean Quahog Fishery Management Plan (FMP) for public hearing, discuss the 600, etc. guidelines/regulations, FMP priorities, and other fishery management and administrative matters. The public meeting will adjourn on the afternoon of July 14 but may be lengthened or shortened depending upon progress of the agenda. The Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901-6790; telephone (302) 674-2331.

Date: June 30, 1988.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15219 Filed 7-6-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting of its Red Drum Plan Development Team at the Council's office (address below). The Team will convene July 26, 1988, at 1 p.m., to continue development of a fisheries profile for Atlantic Coast Red Drum, and adjourn at 5 p.m. The public meeting will reconvene on July 27 at 8 a.m., and will adjourn at 12:30 p.m. A detailed agenda will be available to the public on or about July 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4368.

Date: June 30, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15220, Filed 7-6-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification: Dr. Steven L. Swartz and Dr. Randall S. Wells (P146A)

Notice is hereby given that Dr. Steven L. Swartz, Cetacean Research Associates, P.O. Box 7980, San Diego, California 92107, and Dr. Randall S. Wells, Institute of Marine Sciences, Long Marine Laboratory, University of California, 100 Shaffer Road, Santa Cruz, California 95060, have requested a modification of Permit No. 609 issued on September 5, 1987 (52 FR 34267), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

The Permit Holders are authorized to radio tag humpback whales (*Megaptera novaeangliae*), blue whales (*Balaenoptera musculus*), and fin whales (*Balaenoptera physalus*). The Permit Holders are requesting authorization to increase the number of blue whales to be tagged from two (2) to five (5) and the number of humpback whales to be tagged from three (3) to five (5).

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of the modification request to the

Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this proposed modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular Modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modification are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: June 30, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-15190 Filed 7-6-88; 8:45 am]

BILLING CODE 3510-32-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Negotiated Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 30, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an amending limits.

EFFECTIVE DATE: July 8, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on

embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: During consultations held between the Governments of the United States and the People's Republic of China, agreement was reached to amend further the current Bilateral Textile Agreement. As a result, the limit for Category 611, which is currently filled, will re-open.

A copy of the bilateral agreement, as amended, is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 18, 1987). Also see 52 FR 34269, published on September 10, 1987; and 53 FR 55, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on September 4, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain man-made fiber products in Category 611, produced or manufactured in the People's Republic of China and exported during the period which began on July 24, 1987 and extends through July 23, 1988.

Also, this directive amends, but does not cancel, the directive of December 30, 1987 concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 8, 1988 the directive of December 30, 1987 is amended to include the following new and amended limits:

Category	New and amended 12-month limit ¹ (square yards)
611	5,100,000
615	22,900,000

¹ The limits have not been adjusted to account for any imports exported after December 31, 1987.

Textile products in Category 611 which have been exported to the United States prior to January 1, 1988 shall not be subject to this directive.

For the import period January 1, 1988 through March 31, 1988, there are no import charges to be made to Category 611.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-15107 Filed 7-6-88; 8:45 am]

BILLING CODE 3510-07-M

Amendment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Socialist Republic of Romania

June 30, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits.

EFFECTIVE DATE: June 30, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6497. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The Governments of the United States and the Socialist Republic of Romania, in consultations on the Interim Category System, determined that the previous adjustments made to Categories 435 and 444 did not adequately reflect current trade patterns. Therefore, the current limit for Category 444 is being further increased and the current limit for Category 435 is being further decreased.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 18, 1987). Also see 53 FR 7783, published on March 10, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1988, concerning imports into the United States of certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 30, 1988, the directive of March 7, 1988 is further amended to include the following amendments to the previously established limits for Categories 435 and 444:

Category	Amended 12-month limit ¹
434 (dozen)	2,372
444 (numbers)	73,044

¹ The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-15108 Filed 7-6-88; 8:45 am]

BILLING CODE 3510-07-M

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

June 30, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: July 8, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: During consultations held recently, agreement was reached between the Governments of the United States and the Republic of Turkey on a new bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 18, 1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 1988

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding of June 21, 1988 between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 8, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories produced or manufactured in Turkey and exported during the twelve-month period which begins on July 1, 1988 and extends through June 30, 1989, in excess of the following levels of restraint:

Category	12-month restraint limit
Fabric group: 219, 313, 314, 315, 317, 326, 617, 625, 626, 627, and 628.	97,000,000 square yards of which not more than 22,500,000 syds shall be in 219, 27,500,000 syds shall be in 313, 16,000,000 syds shall be in 314, 21,500,000 syds shall be in 315, 22,500,000 syds shall be in 317, 2,500,000 syds shall be in 326, 15,000,000 syds shall be in 617, 2,500,000 syds shall be in 625, 2,500,000 syds shall be in 626, 2,500,000 syds shall be in 627, 2,500,000 syds shall be in 628.
Limits not in a group:	
200	1,500,000 pounds.
300/301	7,303,400 pounds.
335	93,000 dozen.
337/637	125,000 dozen.
338/339	1,300,000 dozen of which not more than 910,000 dozen shall be in other than T-shirts and tank tops in Categories 338-S/339-S. ¹
340/640	540,000 dozen of which not more than 216,000 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340-Y/640-Y. ²
341	325,000 dozen of which not more than 183,750 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the filling in Categories 341-Y. ³
342/642	280,900 dozen.
47/348	1,325,000 dozen of which not more than 662,500 dozen shall be in trousers in Categories 347-T/348-T. ⁴
350	139,000 dozen.
361	500,000 numbers.
369-S ⁵	1,630,000 pounds.
604	1,573,195 pounds.

¹ In Categories 338-S/339-S, only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924, 384.0216, 384.0223, 384.0229, 384.0232, 384.2618, 384.2930, 384.2970, and 384.3437 in Category 338; and 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2615, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339.

² In Categories 340-Y/640-Y, only TSUSA numbers 381.0522, 381.5500, 381.5610, 381.5625, 381.5637 and 381.5660 in Category 340; and 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, 381.9550 and 384.2306 in Category 640.

³ In Category 341-Y, only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4610, 384.4612 and 384.4768.

⁴ In Category 347-T/348-T, only TSUSA numbers 376.5435, 381.0005, 381.0252, 381.0254, 381.0429, 381.0540, 381.0542, 381.0546, 381.0832, 381.3509, 381.3630, 381.3940, 381.4343, 381.6005, 381.6220, 381.6230, 381.6240, 381.6250, 381.6260, 381.6270, 381.6611, 381.6924, 381.8510, 381.8634, 381.9530, 384.0262, 384.0266, 384.0614, 384.0726, 384.0734, 384.3026, 384.3042, 384.4648, 384.4740, 384.4755, 384.4770, and 791.7418 in Category 347; and 376.5440, 384.0015, 384.0263, 384.0265, 384.0267, 384.0269, 384.0350, 384.0608, 384.0612, 384.0618, 384.0711, 384.0712, 384.0722, 384.0724, 384.0729, 384.0731, 384.0733, 384.0736, 384.0965, 384.2706, 384.2751, 384.3027, 384.3029, 384.3035, 384.3038, 384.3044, 384.3466, 384.4520, 384.4647, 384.4651, 384.4652, 384.4735, 384.4746, 384.4747, 384.4750, 384.4763, 384.4764, 384.4765, 384.4774, 384.4776, 384.5275, 384.5422, 384.5526, 384.7716, 384.7815, 384.9527, and 791.7420 in Category 348.

⁵ In Category 369-S, only TSUSA number 366.2640.

Imports charged to these category limits, except for Categories 314, 315, 338, 617, 625, 626, 627, 628 and 637, for the periods January 1, 1987 through December 31, 1987, July 1, 1987 through December 31, 1987 and January 1, 1988 through June 30, 1988 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the

limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumptions into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James H. Babb,
Chairman, Committee for the Implementation
of Textile Agreements.
[FR Doc. 88-15199 Filed 7-6-88; 8:45 am]
BILLING CODE 3510-06-01

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Amendments Relating to the Implementation of the Globex Trading System

AGENCY: Commodity Futures Trading
Commission.

ACTION: Notice of proposed contract
market rule changes.

SUMMARY: The Chicago Mercantile
Exchange ("CME") has submitted to the
Commodity Futures Trading
Commission ("Commission") for
Commission approval amendments to
CME rules and other materials which
would permit CME to implement the
Globex trading system. The proposal
would allow CME's members to trade
before and after regular trading hours by
means of an automated trading system.
The Commission has determined that
this proposal is of major economic
significance and that, accordingly,
publication of the proposal is in the
public interest, will assist the
Commission in considering the views of
interested persons and is consistent
with the purposes of the Commodity
Exchange Act ("Act").

DATE: Comments must be submitted by
September 6, 1988.

ADDRESS: Interested persons should
submit their views and comments to
Jean A. Webb, Secretary, Commodity
Futures Trading Commission, 2033 K
Street NW., Washington, DC 20561.
Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT:
Lystra G. Blake, Attorney Advisor, or
David P. Van Wagner, Attorney
Advisor, Division of Trading and
Markets, Commodity Futures Trading
Commission, 2033 K Street NW.,
Washington, DC 20561. Telephone: (202)
254-8955.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

A. Introduction.

By letter dated May 11, 1988, the CME
submitted for Commission approval
proposed rule amendments which would
establish post (pre) market trading
("PMT") pursuant to Section 5a(12) of
the Act and Commission Regulation
1.41(b). On June 20, 1988, the Exchange

changed the name of the system from
PMT to Globex. The proposed
amendments would create an automated
system for trading CME futures and
options contracts before and after
CME's regular pit trading hours. Globex
is being developed pursuant to an
agreement between the CME and
Reuters Limited ("Reuters"). Under the
proposed agreement, Reuters will
provide the technology for the
computerized system to be used in
connection with trading CME contracts.
CME and Reuters have indicated that
they intend to open the system to other
vendors and exchanges on mutually
agreeable terms. Reuters will make
other services such as news and cash
market quotations available via Globex
terminals to users who wish to
subscribe. Reuters also will allow other
vendors to provide terminals capable of
interfacing with the system.

CME intends to use its clearing
facilities, auditing, compliance, market
surveillance and information
dissemination systems in connection
with Globex. CME rules also will apply
to Globex. CME has stated that all
existing and subsequent CME futures
and options contracts eventually will be
eligible for trading through the Globex
system. Initially, however, Globex
trading will be limited to certain
currency, interest rate, and precious
metal contracts.

Salient features of the Globex trading
system are set forth below. CME and
Reuters, of course, are continuing
development of the system and will be
submitting additional details in the
future.

B. Access to System

At the commencement of Globex, only
CME clearing members, their parents
and affiliates, and individual members
authorized by a clearing member will be
eligible to have Globex terminals.
Additionally, only clearing members
will be able to act as agents for
customers in entering orders through the
Globex terminals. Non-clearing CME
members with Globex terminals will be
able to enter only proprietary orders.
Under amended CME Rule 901.M., each
clearing member will "assume
responsibility for all trading through its
Globex terminals and for the proper use
of those Globex terminals that it
provides to others." The Exchange has
not determined whether to establish
special standards for customer use of
Globex.

The CME will assign each user an
identification number and password
which must be entered before accessing
the system. Only those authorized by a
clearing member will be eligible to

receive an identification number and
password. In addition, all terminals will
have dedicated lines into the system.
There will be no unauthorized access to
the system from outside telephone lines.

C. Trading Day

Each trading day on the Exchange will
have two trading sessions. One trading
session will consist of the hours
designated for Globex trading and the
other will consist of the hours
designated for regular trading. Each
trading day will begin with the Globex
session and end with the regular trading
session. The CME anticipates that the
Globex session will run from
approximately 5:00 p.m. to
approximately 8:00 a.m.

D. Order Entry and Execution

Prior to Globex hours, an estimated
opening price will be calculated and
displayed on Globex terminal screens
based on the orders which have been
entered for execution on the open.
Globex orders may be keyed into the
system during the time between the end
of the regular session and the beginning
of Globex hours. Proposed CME Rule
571, sets forth the information which
must be entered into the system with the
order. Only limit orders may be entered.
Upon entry of an order, the system will
verify that the order was received by
transmitting such verification to the
printer associated with the entry
terminal. The screen will display the
price and quantity of the best bid and
best offer currently in the system
showing the total quantity bid or offered
at those levels. The screen also will
display the price and quantity of the last
sale. (The CME has indicated, however,
that at a later date it may expand the
display to include bids and offers
behind the best ones.)

Orders will be executed automatically
by the Globex system based first on the
price and, for equal prices, on the time
of entry. Globex is structured so that
there cannot be a tie between orders as
to entry time. For purposes of execution,
the system will not distinguish between
customer and proprietary orders. Upon
execution of an order, the Globex
system immediately will generate a
confirmation to the printer associated
with the entry terminal. The time of
order entry and order execution will be
recorded automatically by the system.
Hard copy and machine readable
records of each transaction will be
generated by the system. The CME
states that the system will provide an
audit trail timed to the second for each
transaction. Office order tickets for
customer orders will be prepared in the

same way as they are for regular
trading.

E. Financial Safeguards

Each clearing member will receive
immediate notification of all trades
executed on its terminals. In order to
prevent misuse of terminals or undue
financial exposure to clearing members,
proposed Rule 511B provides that a
clearing member may terminate without
notice a member's ability to place orders
through one of its terminals. As an
additional safeguard, the CME
anticipates that approximately six
months after trading starts, the system
will have the capability of putting
numerical position limits on each
terminal. Approximately one year after
trading starts, this capability will be
upgraded to a risk-based position limit
system. In addition, at least at the
outset, the Exchange does not plan to
require any special or additional
financial security for Globex trading,
regardless of where such trading
originates.

F. Clearing of Globex Transactions

CME intends to use its current
clearing facilities in connection with
Globex transactions. Reuters will submit
all matched trade data to the CME on a
periodic basis throughout the trading
session. Prior to the beginning of regular
trading hours, all Globex trade data
from the immediately preceding Globex
session will be entered into the CME's
clearing system. Original margin for all
matched Globex trades will be collected
at the same time each morning as the
original margin for trades done during
the regular trading hours immediately
following the Globex trading session.
Currently, the CME has a regular
settlement variation collection and
disbursement in the morning and an
intra-day settlement variation collection
and disbursement in the afternoon. The
morning variation margin collection will
not include Globex transactions from
the immediately preceding Globex
trading session. However, such
transactions will be included in the
afternoon settlement variation
collections.

G. Self-Regulatory Functions

CME will use its auditing, compliance
and market surveillance systems in
connection with Globex trading. CME's
Audit Department will include auditing
of Globex transactions in its regulatory
scheduled audits; CME's Compliance
Department will perform a daily
analysis of Globex transactions along
with its daily analysis of transactions
executed during regular trading hours;
and CME's Market Surveillance

Department will expand its surveillance
activities to include Globex
transactions. CME intends to provide
staff during Globex hours to monitor
trading activity through terminals
located on CME's premises which will
receive information regarding all
executed transactions on a real time
basis.

H. Dissemination of Market Information

CME will utilize its current quotation
vendors to transmit Globex quotation
information. Reuters will transmit to the
CME information from Globex
transactions for distribution to CME's
quotation vendors, and CME will use its
quotation vendors to retransmit this
information. CME will also transmit
necessary price information to Reuters
for dissemination through the Globex
system.

I. Backup Systems

At the commencement of trading,
Reuters will have backup
communication lines in place connecting
administrative terminals to the system.
Backup lines for individual terminals
will be at the option of the user. Reuters
also plans to have a backup computer
containing all data running during
Globex hours. In the event of a systems
failure during the first year of operation,
it would be necessary for the system to
shut down for approximately one minute
before a backup system could begin to
operate. The orders in the system at the
time of such a failure would be retained,
but would be treated as if they had been
entered prior to the commencement of a
Globex trading session. Globex would
find a single equilibrium price that
affords execution of the maximum
number of bids and offers previously
entered.

J. Location of Terminals Overseas

The Exchange intends to permit
Globex terminals to be located
overseas. Such terminals would function
in the same manner and subject to the
same restrictions as terminals located in
the United States. The Exchange expects
that there will be terminals overseas for
both proprietary trading by institutional
accounts and for the use of foreign
branch offices of clearing members. The
Exchange has not made a determination
yet whether it would be necessary or
appropriate to enter into any agreements
with foreign regulators. The Exchange
currently takes the position that United
States law is controlling as to the
regulation of the Exchange's markets,
including Globex. The Commission's
Division of Trading and Markets has
asked the Exchange to provide its legal
analysis in support thereof.

II. Request for Comments

The Commission requests comments
on any aspect of the proposal that
members of the public believe may raise
issues under the Commodity Exchange
Act or the Commission's regulations. In
particular, the Commission has
identified the following matters for
which comment may be appropriate:

1. Whether trading under the proposal
would be open and competitive within
the meaning of Commission Regulation
1.38, 17 CFR 1.38 and otherwise
consistent with the requirements of
section 4b of the Act, 7 U.S.C. 6b,
2. Whether special or additional
financial, trade practice, or customer
safeguards are necessary or appropriate
for trading under the proposal;
3. Whether special regulatory or self-
regulatory oversight procedures or
safeguards should be implemented in
connection with the proposal; and
4. Whether location of terminals
overseas raises any statutory or
regulatory issues.

Copies of the proposed rule
amendments and other information
relevant to Globex will be available for
inspection at the Office of the
Secretariat, Commodity Futures Trading
Commission, 2033 K Street NW.,
Washington, DC 20561 except to the
extent that the submission may be
entitled to confidential treatment as set
forth in 17 CFR 145.5 and 145.9. The
CME has requested confidential
treatment of Exhibit I of its submission
describing the operation of the system
pursuant to Regulation 145.9(d)(1)(ii).
Copies also may be obtained through
the Office of the Secretariat at the above
address or by telephoning (202) 254-
6314. Requests for copies of materials
subject to petitions for confidentiality
must be made pursuant to the Freedom
of Information Act (5 U.S.C. 552) and the
Commission's regulations thereunder (17
CFR Part 145 (1987)). Requests for copies
of such materials should be made to the
FOI, Privacy and Sunshine Acts
Compliance Staff of the Office of the
Secretariat at the Commission's
headquarters in accordance with 17 CFR
145.7 and 145.8.

Any person interested in submitting
written data, views or arguments on the
proposed rule amendments, or with
respect to other materials submitted by
the CME in support of its submission,
should send such comments to Jean A.
Webb, Secretary, Commodity Futures
Trading Commission, 2033 K Street NW.,
Washington, DC 20561, by the specified
date.

Issued in Washington, DC, on July 1, 1988.
 Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 88-15284 Filed 7-6-88; 8:45 am]
 BILLING CODE 9351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of Change 1 to DoD 5025.1-1, "DoD Directives System Annual Index"

ACTION: Notice.

SUMMARY: This notice is to inform the public and U.S. Government Agencies other than the Department of Defense of the availability of Change 1 to DoD 5025.1-1, January 1988 edition. The Change may be purchased from the following organizations:

National Technical Information (NTIS),
 5285 Port Royal Road, Springfield,
 Virginia 22161, Telephone number
 (703) 487-4800

or

U.S. Naval Publications and Forms
 Center (NPFC), 5801 Tabor Avenue,
 Attention: Code 1062, Philadelphia,
 Pennsylvania 19120-5089, Telephone
 number (215) 697-3321.

The NTIS accession number for
 Change 1 is PB88 219712; NPFC
 identifies it as Change 1 to DoD 5025.1-1.

FOR FURTHER INFORMATION CONTACT:
 Ms. Linda Bynum, Correspondence and
 Directives Directorate, Directives
 Division, Room 2A286, the Pentagon,
 Washington, DC 20301-1155, telephone
 number (202) 697-4111.

L.M. Bynum,

*Alternate OSD Federal Register Liaison
 Officer, Department of Defense.*

July 1, 1988.

[FR Doc. 88-15214 Filed 7-6-88; 8:45 am]

BILLING CODE 5010-01-M

Department of the Army

Close Out of the Public Comment Period for the Draft Environmental Impact Statement, Proposed Biological Aerosol Test Facility, Dugway Proving Ground, UT

AGENCY: Department of the Army, DOD.

ACTION: Notice to announce the close out of the public comment period for the proposed biological aerosol test facility, Dugway Proving Ground, Utah.

1. SUMMARY: The Department of the Army, as Executive Agency for the Department of Defense (DOD), published a Draft Environmental Impact Statement (DEIS), for the Biological

Aerosol Test Facility, Dugway Proving Ground, Utah, in February 1988. The public comment period was originally scheduled to end on March 28, 1988. The Commander, Dugway Proving Ground, extended the public comment period to April 14, 1988. In April, the Army decided to extend the public comment period beyond 14 April. The Army now announces the closing date for public comments to be received. All comments should be received by 1 August 1988.

2. The Draft EIS for the Biological Aerosol Test Facility may be obtained by contracting Ms. Kathy Whitaker at commercial telephone (801) 831-2116, or by writing to the following address: Commander, U.S. Army Dugway Proving Ground, STEDP-PA, Dugway Utah 84022-5000. Written comments should be submitted to the same address.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (16L).

[FR Doc. 88-15234 Filed 7-6-88; 8:45 am]

BILLING CODE 3710-06-M

Department of the Navy

Naval Research Advisory Committee Meeting

Notice was published June 9, 1988 at 53 FR 21723 that the Naval Research Advisory Committee Panel on the Role of Unmanned Vehicles in Support of Naval Warfare will meet on June 30 through July 1, 1988. The meeting has been canceled. In accordance with 5 U.S.C. 552b(e)(2), the cancellation of this meeting is publicly announced at the earliest practical time.

Date: June 28, 1988.

Jane M. Virga,

*Lieutenant, JAGC, U.S. Navy Reserve,
 Alternate Federal Register Liaison Officer.*

[FR Doc. 88-15202 Filed 7-6-88; 8:45 am]

BILLING CODE 3010-06-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Executive Committee Meeting

AGENCY: Education Department.

ACTION: Notice of Executive Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming Executive Committee meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the

Federal Advisory Committee Act, 5 U.S.C. App. 2. This document is intended to notify the general public of their opportunity to attend.

DATES: July 21, 1988, 1:00 p.m. until conclusion of business and July 22, 1988, 8:30 a.m. until conclusion of business.

ADDRESS: Oneida Rodeway Inn, 2040 Airport Drive, Green Bay, Wisconsin 54303 (414) 494-7300.

FOR FURTHER INFORMATION CONTACT:
 Gloria Duus, Acting Executive Director,
 National Advisory Council on Indian
 Education, 330 C Street, SW., Room
 4072, Switzer Building, Washington, DC
 20202 (202) 732-1353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act (Title IV of Pub. L. 92-318), and to advise Congress, and the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

- (1) Public Testimony,
- (2) Executive Director Vacancy,
- (3) Other Council Business.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street, SW., Room 4072, Switzer Bldg., Mail Stop 2419, Washington, DC 20202 (202) 732-1353.

Date: July 5, 1988. Signed at Washington, DC.

Gloria Duus,

*Acting Executive Director, National Advisory
 Council on Indian Education.*

[FR Doc. 88-15374 Filed 7-5-88; 3:36 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

U.S. Fossil Fuel Technologies for Developing Countries; Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Department of Energy's Office of Fossil Energy (DOE/FE) is announcing a public meeting to explore the possibility for enhancing the

competitiveness of U.S. fossil energy technologies in developing countries.

DOE/FE has organized an initiative to identify, evaluate, analyze, and recommend market opportunities to improve the U.S. trade balance and energy security through increased exports of coal and coal technology. Fossil Energy has been screening world energy markets to identify opportunities for using the technical innovations we are promoting domestically as the basis for encouraging foreign countries to look to U.S. coal and coal technologies to meet their energy needs in the future. Converting these opportunities to concrete realities requires that DOE accomplish the following: (1) An accurate screening of opportunities; (2) a correct focus on the most attractive possibilities; (3) provide U.S. industry with sufficient information to permit following up on opportunities; and (4) provide potential foreign project participants with an accurate picture of U.S. coal and technology capabilities.

The objective of this meeting is to provide industry with a readout on our progress to date and to get industry reaction to our efforts in order to steer our activities in the most productive directions possible.

The meeting is planned to consist of (1) a morning plenary session at which DOE will provide industry with a background of the initiative and present its preliminary findings, (2) an afternoon breakdown into small working groups for interactive discussion of private sector viewpoints regarding all issues involved in proceeding with this initiative, followed by (3) a closing summary session at which working group leaders will report the results of their individual sessions.

A no-host luncheon will be offered to participants at a cost of \$30.00 per person. A speaker will be provided who will focus on Private Sector Financial Support for Project Implementation. An expression of interest in attending this luncheon, along with payment of fee, must be received no later than July 12, 1988, at the address below. Make checks payable to Sheladia Associates, Inc.

Addressee: Sheladia Associates, Inc.,
 15825 Shady Grove Road, Suite 100,
 Rockville, MD 20850, ATTN: Judith
 Kimel.

In addition, any questions or comments may be submitted to the following address:

Addressee: Peter J. Cover, Office of
 Business Operations, U.S. Department of
 Energy, FE-13, B-110, Washington, DC
 20545, (301) 353-2137.

The public meeting will be held July 21, 1988, at: The Ritz-Carlton Hotel, 2100

Massachusetts Avenue, NW.,
 Washington, DC 20008, (202) 293-2100.

A subsequent meeting is planned to be held in the Fall of 1988, hopefully in conjunction with a major international industrial/technical meeting scheduled within the same time frame. At this meeting, emphasis will be placed on coal combustion technologies and equipment for use in small combustor markets, work being done on coal-water mixtures at the DOE Pittsburgh Energy Technology Center, and barriers to commercialization and international competitiveness for U.S. Clean Coal Technologies. The date, location and further information for this meeting will be announced in a later notice.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-15270 Filed 7-6-88; 8:45 am]

BILLING CODE 9410-01-M

Bonneville Power Administration

Proposed Modification of Rate Schedule SL-87 and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Request for Comments. *BPA File No: SL-87.* BPA requests that all comments and documents submitted with respect to the modification of the SL-87 rate contain the file number designation SL-87.

SUMMARY: BPA proposes to reopen and supplement the Official Record in the 1987 Wholesale Power and Transmission Rate Proceeding in order to modify the Long-Term Surplus Firm Power rate (SL-87). This rate is available for long-term sales of surplus firm power. Modification of the rate has been suggested by the Federal Energy Regulatory Commission in an April 6, 1988, order and by certain intervenors in the SL-87 rate proceeding.

Responsible Official: Shirley Melton, Division Director, Division of Contracts and Rates, is the official responsible for the development of the SL-87 modified rate.

DATES: BPA proposes the following schedule for the modification of the SL-87 rate schedule.

July 7, 1988—Proposed Modified Schedule SL-87 and documentation and analyses available at BPA's Public Information Center, 905 NE 11th, 1st Floor, Portland, Oregon.

July 11, 1988—Informal question and answer meeting

July 19, 1988—Formal meeting for oral comment

August 5, 1988—Final Modified Schedule SL-87 and Record of Decision

For the specific time and place of the meetings, please contact the Public Involvement Office at the phone numbers listed below. Any interested person may submit written comments to BPA no later than 5 p.m., P.D.T., Tuesday, July 19, 1988, at the address listed below.

ADDRESSES: Written comments should be submitted to Ms. Jo Ann C. Scott, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT:
 Wayne Sugai, Public Involvement office,
 at the address listed above, 503-230-3478. Oregon callers may use 800-452-6429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnett, Lower Columbia Area Manager, Suite 243, 1500 Plaza Building, 1500 NE Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 900 Kensington, Missoula, Montana 59807, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98807, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Anne Ave., Suite 400, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-8225.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2708.

Mr. Thomas H. Blankenship, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

1. Background

The SL-87 rate was originally developed pursuant to section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839(e)(i). This process began when BPA published its notice of intent to revise its wholesale power and transmission

rates. 51 FR 40,484 (November 7, 1986). Forty-five parties, consisting of publicly-owned and investor-owned utility customers, direct service industrial customers, State Agencies, Federal agencies and public interest groups, intervened in this proceeding. The SL-87 rate was subject to discovery and cross-examination by the parties.

After consideration and review of all comments received during the course of the proceeding, the Administrator adopted the SL-87 rate. The Administrator's final rate determinations are contained in the Administrator's Record of Decision, 1987 Final Rate Proposal, WP-87-A-02 (July 31, 1987). Although the SL-87 rate was developed during BPA's 1987 general rate proceeding, BPA filed SL-87 for confirmation and approval by the Federal Energy Regulatory Commission (FERC) under a separate subdocket to facilitate FERC's review of the SL-87 rate on an expeditious basis. Docket No. EP87-2011-001. Initially, fourteen parties filed motions to intervene in the SL-87 proceedings before FERC.

On September 29, 1987, FERC granted interim approval of the SL-87 rate stating that more information would be needed before it could make a final determination. *United States Dep't of Energy—Bonneville Power Administration*, 40 FERC ¶ 61,350 (1987). In the same order, FERC granted the intervening parties additional opportunities to file comments and cross comments on the final confirmation and approval of BPA's SL-87 rate. *Id.* at 62,055. By October 29, 1987, six intervenors filed comments with FERC. BPA's answer to these comments was filed on November 24, 1987. No intervenor filed across comments to the comments filed by other intervenors.

By letter dated September 28, 1987, FERC staff posed questions to BPA regarding the SL-87 rate filing. FERC staff requested responses from BPA within 45 days. BPA responded to FERC's questions on November 11, 1987. Three intervenors filed cross comments on BPA's responses to the FERC staff questions. BPA submitted an answer to these cross comments on December 18, 1987.

On April 6, 1988, FERC issued an order disapproving the SL-87 rate as too vague. *United States Dep't of Energy—Bonneville Power Administration*, 43 FERC ¶ 61,032, 61,086 (1988). That order provided guidance to BPA as to what modifications of the rate would be acceptable to FERC and would address its concerns regarding the adequacy of the overall long-term revenues projected for the SL-87 rate. Section 300.21(f) of FERC's regulations, 18 CFR 300.21(f),

provides that when FERC disapproves a rate, the Administrator will be provided a 120-day period to prepare rates which address FERC's concerns.

FERC suggested that the rate schedule provide that no individual contract allow a purchaser to terminate the long-term sale early without imposing additional obligations on the purchaser. In addition, FERC suggested that if the rate schedule included a provision assuring that each contract contain a provision which would allow adjustments to the price or a firm price escalator, FERC would more likely find that the rate schedule meets the applicable cost recovery standards. 43 FERC at 61,086.

II. The SL-87 Rate Schedule

The SL-87 rate schedule allows BPA to sell a portion of its firm surplus power under long-term contracts to purchasers inside and outside the Pacific Northwest. The rate schedule is not available for contracts which obligate BPA to acquire additional energy resources to support the sale; thus the sale tracks the availability of BPA's firm surplus.

The SL-87 rate affords flexibility to negotiate mutually agreeable rates that fit each individual sale within predetermined rate parameters. These parameters, defined by a floor and ceiling, create a rate zone within which the negotiated rate must fall. All negotiated rates under the SL rate are subject to a revenue test to assure that the negotiated rate fits within the rate zone. The revenue test requires that the negotiated rate result in greater revenues, on a present value basis, over the term of the contract than the forecasted present value revenues from the floor, but no greater revenues than the forecasted present value revenues from the ceiling. Both the floor and ceiling are based on BPA's costs.

The floor for a power sale consists of the higher of BPA's projected PF rate or opportunity cost for surplus power. The ceiling is based on the projected total cost of BPA's highest cost resource. For capacity sales, the floor is the projected PF demand rate, and the ceiling is equal to the project capacity cost of BPA's highest cost resource. The floor and ceiling projections for each year over a 21-year period are redetermined annually.

III. Reasons For Modifying SL-87

The reasons for modifying the SL-87 rate to gain final approval by FERC are the same reasons that led BPA to seek earlier approval. BPA currently expects the Federal Columbia River Power System to have up to 600 average MW

of surplus firm power available to support long-term sales into the next century. BPA projects substantial Federal long-term surplus capacity, at least 2,600 MW, to be available through the year 2007. BPA still seeks to create a diversified portfolio for its sales of surplus firm power, selling some on a short-term basis and some under longer term arrangements, in order to strengthen BPA's repayment position and minimize the exposure to risks associated with complete reliance on either market.

Revenues from sales of surplus firm power on a short-term basis are subject to the vagaries of the market. Historically, BPA has been unable to recover its fully-allocated cost of surplus firm power through short-term sales. In contrast, sales of surplus firm power on a long-term basis command a higher price as purchasers defer or avoid resource development to meet future load. In exchange for a long-term purchase commitment some purchasers require assurance of rate stability over time. A rate for long-term sales is necessary to address both the purchasers need for long-term rate stability and BPA's goal of recovering as much of its cost of surplus firm power as possible.

BPA proposes to reopen and supplement the 1987 Official Record for the limited purpose of modifying the SL-87 rate to address FERC's concerns and concerns raised by parties intervening at FERC. BPA proposes to adopt FERC's suggestions that SL-87 contracts contain termination provisions in the event of early termination by the purchaser of the contract and a firm price escalator. Because of the uncertainties raised by FERC's April 6 order regarding BPA sales of surplus firm power outside the Pacific Northwest, BPA also is modifying the availability of the rate schedule to allow sales only to Pacific Northwest purchasers. BPA intends to revisit the issue of availability of SL-87 for sales outside the Pacific Northwest after FERC or the courts address the uncertainties raised by the April 6 order. The proposed modifications also incorporate the suggestions made by intervenors that BPA reduce the amount of surplus firm energy sold and reduce to two years the amount of time available for execution of contracts using the SL-87 rate.

IV. Modified SL-87 Rate Schedule and Related General Rate Schedule Provisions

The following rate schedule shows the modifications to the SL-87 rate schedule

proposed by BPA. Additions are italicized; deletions are bracketed.

Modified Schedule SL-87—Long-Term Surplus Firm Power Rate

Section I. Availability

This rate schedule is effective October 1, 1988, and is available for the long-term purchases of Surplus Firm Power (and Firm Displacement Power) for use within the Pacific Northwest Region under BPA contracts executed on or before October 1, 1990. This rate schedule shall be offered for an amount of purchases not to exceed (1350 MW peak and 725 MW average) 2,228 MW peak and 572 MW average, less long-term purchases (under the SC-88 rate schedule) of Surplus Firm Power sold under other rate schedules pursuant to contracts executed after July 1, 1988. This rate schedule shall not be available for contracts that obligate BPA to acquire energy resources to support the sale. Sales of surplus firm energy under this rate schedule will not be included as a firm load in BPA's long-term resource planning. For contracts executed on or before October 1, 1990, this rate schedule shall continue in effect for 20 years from the date of execution of such contract, but in no event later than September 30, 2010. This rate schedule shall not be available for contracts executed after October 1, 1990. Schedule SL-87 supersedes schedule FD-85 and associated GRSPs (except in the case of contracts for sales under FD-85 that become effective on or before September 30, 1987). Sales under this schedule are made subject to BPA's General Rate Schedule Provisions.

Section II. Rates

The rate for the long-term purchase of Surplus Firm Power (and Firm Displacement Power) shall be mutually agreed to by BPA and the purchaser, (the parties,) provided that the present value of the forecasted revenue under the contract rate, as projected for the contract term at the date of contract execution, shall be equal to or greater than the forecasted revenue under the Floor projection, specified in subsection A below, and less than or equal to the forecasted revenue under the Ceiling projection, specified in subsection B below.

A. Floor Projection

1. [For] Firm Power Sale[s]

The Floor projection shall be the greater of BPA's average Priority Firm rate or BPA's opportunity cost of surplus firm power, as projected for each year of the contract term in accordance with

section IV.D. of the GRSP's. The average PF rate or successor rate(s) shall be calculated at the load factor of the proposed sale and assume (a) uniform demand and energy charges in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

2. [For] Firm Capacity Sale[s]

The Floor projection shall be the Priority Firm demand charge, as projected for each year of the contract term in accordance with section IV.D. of the GRSP's.

3. Combination Firm Power and Firm Capacity Sale

The floor projection shall be the sum of:

- a. the floor in section A.1. for each year in which the purchase is a firm power sale; and
- b. the floor in section A.2. for each year in which the purchase is a firm capacity sale.

B. Ceiling Projection

1. Firm Power Sale

The ceiling projection (for firm power sales) shall be the fully-allocated cost of BPA's highest cost resource including transmission costs, as projected for each year of the contract term in accordance with section IV.D. of the GRSP's.

2. [For] Firm Capacity Sale[s]

The ceiling projection shall be the demand component of BPA's highest cost resource including transmission costs, as projected for each year of the contract term in accordance with section IV.D. of the GRSP's.

3. Combination Firm Power and Firm Capacity Sale

The ceiling projection shall be the sum of:

- a. the ceiling in section B.1. for each year in which the purchase is a firm power sale; and
- b. the ceiling in section B.2. for each year in which the purchase is a firm capacity sale.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Measured Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. Escalation Requirement

Adjustments to the contract rate shall occur on the dates specified in the contract but the intervals between

adjustment dates shall not exceed five years. Each contract shall include an escalation provision specifying the method for adjusting the rate over the contract term and shall specify a minimum escalator based on either changes in BPA's Priority Firm Power rate or changes in BPA's Average System Cost over the term of the contract. For the first five years, the minimum escalator may be based on the forecasted changes in BPA's Priority Firm Power rate or changes in BPA's Average System Cost at the date of contract execution. For every rate adjustment date after year five, the minimum escalator shall be based on actual changes determined in accordance with either subsection 1. or 2. below. The specific formula and index for escalating the contract rate will be mutually agreed to by the parties.

1. Escalation Based on BPA's Priority Firm Power Rate

To determine the change in BPA's Priority Firm Power rate the average Priority Firm Power rate or successors rate(s) in mills per kilowatt-hour in effect on the rate adjustment date specified in the contract shall be divided by average Priority Firm Power rate or successors rate(s) in mills per kilowatt-hour in effect on the date contract purchases began under this rate schedule. The average Priority Firm Power rate shall be calculated in the same manner described in section III.A. of this rate schedule.

2. Escalation Based on BPA's Average System Cost

Changes in BPA's Average System Cost shall be calculated by dividing BPA's Average System Cost in effect on the rate adjustment date specified in the contract by BPA's Average System Cost in effect on the date contract purchases began under this rate schedule. For purposes of this rate schedule, BPA's Average System Cost shall be determined by dividing BPA's total system costs by BPA's total system sales. BPA's total system costs and total system sales are defined in section IV.E. of the GRSP's.

B. Early Termination Charge

If BPA and a purchaser agree to a rate where in each year of the contract the cumulative present value of the projected contract revenues through that year is not equal to or greater than the cumulative present value revenues at the floor projection as specified in section II.A. and the purchaser has an option to terminate the sale, the purchaser shall be subject to an early

termination charge. Such a charge shall be greater than or equal to the difference between the floor revenues projected for that sale at the time the contract was executed and the contract revenues in each year over the period beginning from the date purchases began through the termination date with interest compounded quarterly, as determined by BPA's Office of Financial Management. The termination charge shall be payable in a lump sum within 30 days after the date the sale terminates unless an alternative payment schedule is otherwise mutually agreed to by BPA and the purchaser.

C. Power Factor Adjustment

The adjustment for power factor for BPA customers that are billed for the long-term purchase of Surplus Firm Power [and Firm Displacement Power] on metered amounts, when specified in this rate schedule or in the contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand or energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SL-87 rate is 99.3 percent Exchange and 0.7 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.7 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 28.7 mills per kilowatthour.

Applicable Sections of the GRSPs

Section II. Types of BPA Service

G. Surplus Firm Power

Surplus Firm Power is firm energy, firm power (firm energy with capacity), [(capacity, energy, or capacity and energy)] and firm capacity (capacity with energy return requirements) in excess of the amount required to meet

BPA's existing contractual obligations to provide firm service. Surplus Firm Power may be used either for resale or direct consumption by purchasers both inside and outside the United States. Such power, however, may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section V.E).

J. Firm Displacement Power

Firm Displacement Power is firm power (capacity, energy, or capacity and energy) that BPA makes available to Pacific Northwest utilities for use within the Pacific Northwest. The purchased power will replace the generation from resources that is exported from the Pacific Northwest on a firm basis for a period of at least 3 years. Such power may be restricted pursuant to the Restriction of Deliveries section of the GRSPs (section V.E.)

Section IV. Other Definitions

D. Determination of SL Floor Projection and Ceiling Projection

By October 1 of each year, BPA shall determine the present value of the forecasted Priority Firm rate or successor rate(s). BPA's opportunity cost of surplus power, and the cost of BPA's highest cost resource for each fiscal year of the succeeding 21-year period. This determination shall be used to calculate the Floor projection and Ceiling projection for any contract using the SL-87 rate schedule executed during the succeeding 12 months. The Floor projection and Ceiling projection shall be calculated as stated in Section II.A. and II.B. of Rate Schedule SL-87.

An initial determination of the present value of the Priority Firm rate, BPA's opportunity cost, and the cost of BPA's highest cost resource shall be published on or about August 1 of each year. Within 14 days of the date of BPA's notice, any interested parties shall notify BPA's Office of Public Involvement in writing that they request to be placed on a list of interested parties. The request shall state the name and address of the person, and shall designate no more than two persons on whom service shall be made. Thereafter, communications by and between BPA and interested parties will be limited to those parties appearing on the interested parties list.

Following BPA's notice of its initial determination, BPA shall afford interested parties the opportunity to:

- (1) Obtain or be provided reasonable access to nonproprietary and nonprivileged BPA financial data and support relevant to BPA's determination.
- (2) Submit written comments to BPA by September 15 regarding the

determination. Interested parties shall mail copies of their comments to all parties appearing on the list of interested parties compiled by BPA.

Consideration of comments and more current information may result in a different calculation from that initially proposed. The final determination shall be published on October 1.

E. Determination of BPA's average system cost

For purposes of determining BPA's average system cost (BASC), the following definition shall apply:

a. BPA's total system costs shall be the sum of all BPA's costs forecasted in each general rate case for the applicable rate period, including total transmission costs, Federal base system costs, new resource costs, exchange resource costs, and other costs not specifically allocated to a rate pool, such as section 7(g) costs.

b. BPA's total annual system sales shall be the sum of all BPA's system firm and nonfirm sales forecasted in each general rate case for the applicable test period.

BACS shall be redetermined in each subsequent general rate case according to the above formula and will be in effect for the entire rate period over which the rates are in effect.

V. Rate Modification Process

FERC regulations provide that when FERC disapproves a BPA rate, the Administrator will be provided a 120-day period to prepare rates that resolve FERC's concerns. 18 CFR 300.21(f). Because the SL-87 rate was disapproved on April 6, 1988, BPA has until August 6, 1988, to submit the modified SL-87 rate schedule to FERC for approval.

On or about July 7, 1988, BPA will make available to its customers, parties to BPA's 1987 rate proceeding, intervenors before FERC in the SL-87 Docket No. EF87-2011-001, and other interested persons the proposed Modified Schedule SL-87, together with documentation and analyses related to the modification. All parties to BPA's 1987 rate proceeding and all parties to FERC docket EF87-2011-001, unless they notify BPA in writing otherwise by July 19, 1988, will automatically become parties to this reopened proceeding. BPA will conduct an informal question and answer meeting on July 11, 1988, in the BPA Headquarters Building in Portland, Oregon, to clarify any aspect of the modified rate. On July 19, 1988, BPA will conduct a formal meeting for the purpose of obtaining any oral comment on the proposed modification. July 19, 1988, will also be the close of both oral

and written comment. BPA will submit the final proposal regarding Modified Schedule SL-87 with an Administrator's Record of Decision to FERC on or about August 5, 1988.

VI. Statement of Issues

The scope of this SL-87 rate modification process is limited to only the SL-87 Long-Term Surplus Firm Power rate schedule. No other 1987 wholesale power or transmission rate is subject to modification, and comment will not be accepted on any other rate contained in the 1987 Official Record.

Issued in Portland, Oregon, on June 28, 1988.

Walter E. Pollock,
Acting Administrator.

[FR Doc. 88-15280 Filed 7-6-88; 8:45 am]
BILLING CODE 4910-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Petition for Waiver of Furnace Test Procedures From Rheem Manufacturing Co. (F-016)

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from the Rheem Manufacturing Company (Rheem), Fort Smith, Arkansas, requesting a waiver from the existing Department of Energy (DOE) test procedure for furnaces. In addition, today's notice publishes the granting of Rheem's application for an Interim Waiver. Rheem manufactures residential heating appliances. The petition requests DOE to grant relief from the DOE test procedure relating to the blower time delay specification for Rheem's condensing furnaces (-) GEB up-flow models and (-) GKA down-flow models. Rheem seeks to test using a blower delay time of 30 seconds instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data and information respecting the petition.

DATE: DOE will accept comments, data and information not later than (30 days from publication).

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-016, Mail Stop CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Esher R. Kweiler, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3286, and the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100-12, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process, 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of a waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic

hardship if the Application for Interim Waiver is denied, if it appears likely that the petition for waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Rheem's petition seeks a waiver from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and the starting of the circulating air blower. Instead, Rheem requests the allowance to test using a 30 second blower time delay when testing its condensing furnaces models (-) GEB and (-) GKA. Rheem states that the 30 second delay is indicative of how these condensing furnaces actually operate. Such a delay results in an energy savings of approximately 1.8 percent. Since current DOE test procedures do not address this variable blower time delay, Rheem asks that the waiver be granted.

The Department finds that it would be desirable to public policy reasons to grant Rheem's Application for Interim Waiver. Specifically, in those instances where DOE has granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Previous waivers for this type of timed blower delay control have been granted to the Coleman Company, and to the Magic Chef Company. 50 FR, 2710, January 18, 1985, 50 FR 41553, October 11, 1985, respectively.

Therefore, Rheem's Application for an Interim Waiver requesting relief from the DOE test procedures for its condensing furnace models (-) GEB and (-) GKA is granted.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to the Rheem Manufacturing Company.

Issued in Washington, DC, June 17, 1988.

Donna R. Fitzpatrick,
Assistant Secretary, Conservation and Renewable Energy.
June 29, 1988.

Mr. Daniel J. Canclini,
Vice President, Product Development and Research Engineering, Rheem Manufacturing Company, P.O. Box 6444, Fort Smith, AR 72906-0444

BEST COPY AVAILABLE

Dear Mr. Candini: This is in response to your March 11 and April 8, 1988, Application for Interim Waiver, from the Department of Energy (DOE) test procedures for furnaces when testing Rheem's gas-fueled forced-air condensing furnace identified as (-) GKA and (-) GEB series.

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure regulations on September 28, 1980 [45 FR 64106] and November 26, 1986 [51 FR 42423]. These provisions allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments provide that an interim waiver from test procedure requirements will be granted by the Assistant Secretary for Conservation and Renewable Energy if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. Paragraph 430.27.

The Department finds that it would be desirable for public policy reasons to grant Rheem's Application for Interim Waiver. Specifically, in those instances where DOE has granted a waiver for a similar product design, it is in the public's interest to have similar products tested and rated for energy consumption on a comparable basis.

Previous waivers for this type of timed blower delay control have been granted to the Coleman Company and to Magic Chef Company. 50 FR 2710, January 18, 1985, and 50 FR 41553, October 11, 1985, respectively.

Therefore, Rheem's Application for an Interim Waiver requesting relief from the DOE test procedures for its (-) GKA series and (-) GEB series of condensing furnaces is granted.

Rheem shall be permitted to test its (-) GKA series and (-) GEB series of condensing furnaces on the basis of the test procedures specified in 10 CFR Part 430, with the modification set forth below.

(1) Section 9.3.1 of ANSI/ASHRAE Standard 103-1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace

and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ± 0.01 inch of water gauge of the manufacturer's recommended on-period draft.

This interim waiver shall remain in effect for 180 days from the date of issuance or until the Department of Energy issues a determination on Rheem's Petition for Waiver, whichever occurs first.

This interim waiver is based upon the prescribed validity of statements and allegations submitted by the applicant. This interim waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Yours truly,

Donna R. Fitzpatrick,
Assistant Secretary, Conservation and Renewable Energy.

March 11, 1988.
Assistant Secretary, Conservation and Renewable Energy,
United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Gentlemen: This is a petition for waiver and petition for interim waiver submitted pursuant to Title 10 CFR Part 430.27. Waiver is requested from the condensing furnace test procedure found at Appendix N to Subpart B of Part 430. This test procedure requires a 1.5 minute delay between burner on and blower on. Rheem is requesting authorization to use a 30 second delay instead of 1.5 minutes. Rheem will be manufacturing a series of condensing furnaces which include the (-) GEB upflow models and (-) GKA downflow models. Maximum energy efficiency is achieved by fixed timing controls installed in these models that activate the circulating air blower 30 seconds after the burner is on. Under the Appendix N procedures, the stack temperature is allowed to climb higher than its equilibrium temperature allowing a substantial amount of energy to be lost out the vent system. This waste of energy would not occur in actual operation. If this petition is granted, the true blower on time delay would be used in the calculations. Proposed ASHRAE Standard 103-1982R of 9/25/87 paragraph 9.3.1.2.2

specifically addresses the use of time blower operation.

The current test procedures do not give Rheem credit for the energy savings which averages approximately 1.6%. This improvement is an average reduction of 20% of the energy loss. Rheem is of the opinion that a 20% reduction is a significant energy savings.

Current prescribed test procedures prohibit Rheem from taking credit for the saved energy, thus providing inaccurate comparative data.

Confidential comparative test data is available to you upon your request, confirming the above energy savings.

Sincerely,

Daniel J. Candini,
Vice President, Product Development & Research Engineering.

April 8, 1988

Assistant Secretary Conservation and Renewable Energy.

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Subject: Addenda to Petition for Interim Waiver, March 11, 1988

Gentlemen: In order to further satisfy the requirements for Interim Waiver, Rheem will be producing it new (-) GKA series and (-) GEB series that last part of April 1988. Since the Secretary has granted similar waivers to Coleman and Magic Chef, Rheem believes the waiver should be granted.

If the waiver would not be granted, Rheem would suffer an economic hardship since the efficiency ratings would be less than what the furnaces actually deliver. Manufacturers that domestically market similar products have received the March 11 letter and will be receiving a copy of this Addenda.

Sincerely,

Daniel J. Candini,
Vice President—Product Development & Research Engineering.

[FR Doc. 88-15281 Filed 7-6-88 8:45 am]
BILLING CODE 6450-1-M

Economic Regulatory Administration

[ERA Docket No. 88-12-NG]

Standard Gas Marketing Co.; Order Granting Blanket Authorization to Export Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Standard Gas Marketing Company (Standard) blanket authorization to export natural gas to Canada. The order issued in ERA Docket No. 88-12-NG authorizes Standard to export up to 75 Bcf of

natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 29, 1988.
Constance L. Buckley,

Acting Director, Office of Fuels Programs
Economic Regulatory Administration.

[FR Doc. 88-15282 Filed 7-6-88; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3410-3]

Fuels and Fuel Additives; E.I. DuPont de Nemours and Co., Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On February 1, 1988, the Environmental Protection Agency (EPA) conditionally granted a waiver requested by the Texas Methanol Corporation (Texas Methanol) for a gasoline-alcohol fuel, pursuant to section 211(f) of the Clean Air Act (53 FR 3636, February 8, 1988). A minor correction was made on May 12, 1988 (53 FR 17977, May 19, 1988). On April 25, 1988, E.I. DuPont de Nemours and Company, Inc. (DuPont) submitted a request to modify this waiver. The new request seeks approval of an alternative corrosion inhibitor, DMA-67, to be used in Texas Methanol's gasoline-alcohol fuel. EPA considers this to be a request for modification of the waiver under section 211(f) of the Clean Air Act (Act). DATE: Comments should be submitted on or before August 8, 1988.

ADDRESS: Copies of the information relative to this request are available for inspection in public docket EN-87-06 at the Central Docket Section (LE-131A) of the EPA, South Conference Center, Room 4, 401 M Street, SW., Washington, DC, (202) 382-7548, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying service. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Attorney-Advisor, Field Operations and Support Division (EN-397F), U.S. E.P.A., 401 M Street, SW., Washington, DC 20460, (202) 382-2635.

SUPPLEMENTARY INFORMATION:

I. Background

The Texas Methanol Corporation received a waiver for a gasoline-alcohol fuel blend, known as OCTAMIX, providing that the resultant fuel is composed of a maximum of 3.7 percent by weight fuel oxygen, a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume cosolvents and 42.7 milligrams/liter (mg/l) of Petrolite TOLAD MFA-10 corrosion inhibitor. As was the case with a previous waiver granted by EPA, the Agency invited other corrosion inhibitor manufacturers to submit test data to establish, on a case-by-case basis, whether their formulations are acceptable as alternatives to TOLAD MFA-10.

II. Today's Announcement

On April 25, 1988 DuPont requested that EPA allow the use of an alternative its corrosion inhibitor, DMA-67, in the gasoline-alcohol fuel blend, OCTAMIX, which otherwise would not be allowed under the waiver. DMA-67 is a formulation consisting of a corrosion inhibitor and a carburetor detergent, much like Petrolite's TOLAD MFA-10. EPA considers DuPont's request to be a request for modification of the Octamix waiver.

Section 211(f)(1) of the Act, 42 U.S.C. 7545(f)(1), states that effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce or to increase the concentration of any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act.

Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4), provides that the Administrator may waive the prohibitions of section 211(f)(1) if the applicant has established that the fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act within 180 days of receipt of the application, the waiver shall be treated as granted.

Pursuant to section 211(f)(4), therefore, EPA will examine the data submitted by DuPont, along with all comments received from interested parties, to determine whether this corrosion inhibitor formulation, DMA-67, if used in place of TOLAD MFA-10, would cause or contribute to such failures by vehicles using OCTAMIX. If use of DMA-67 does not cause or contribute to such failures, EPA will modify the Octamix waiver to allow the use of DMA-67 as an alternative to TOLAD MFA-10.

Dated: June 30, 1988.

Don R. Clay,
Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-15228 Filed 7-6-88; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3410-4]

Municipal Settlement Discussion Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Agency is developing a Municipal Settlement Policy to address issues related to notifying and bringing municipalities that are responsible parties into the Superfund settlement process. In order to provide a public forum for interested parties to provide input into how municipalities should fit in the settlement process, the Agency has formed a Municipal Settlement Discussion Group. The discussion group is not designed to promote consensus on the Municipal Settlement Policy, nor to advise the Agency on policy directions. The group consists of approximately 20 members representing EPA, States, local governments, industry, business, and environmental concerns. The group's first meeting was held on June 7, 1988 in Washington, DC. Copies of the minutes from that meeting are available upon request.

FOR FURTHER INFORMATION CONTACT: Mary Kay Voytilla of the Environmental Protection Agency, Office of Waste Programs Enforcement (WH-527), Washington, DC 20460; telephone 202/475-6367.

Lloyd S. Guleri,
Director, CERCLA Enforcement Division.
[FR Doc. 88-15229 Filed 7-6-88; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3410-2]

Southern Hills Regional Aquifer System in Southeast Louisiana and Southwest Mississippi; Sole Source Aquifer; Final Determination**AGENCY:** Environmental Protection Agency.**ACTION:** Notice.

SUMMARY: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act, the Regional Administrator, Region VI of the U.S. Environmental Protection Agency (EPA), has determined that the Southern Hills regional aquifer system is the sole or principal source of drinking water for an area comprising 10 parishes in southeast Louisiana and all or parts of 14 counties in southwest Mississippi, and that this aquifer, if contaminated would create a significant hazard to public health. As a result of this action, Federal financially assisted projects constructed in the designated area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. Eastern time, two weeks after the date of Federal Register publication.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the library of the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202, or at the U.S. Environmental Protection Agency, Region IV, Groundwater Protection Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Clay Chesney, Office of Groundwater, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (214-655-6446) or Bernie Hayes, Groundwater Protection Branch, U.S. Environmental Protection Agency Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365 (404-347-3866).

SUPPLEMENTARY INFORMATION:**I. Background**

Section 1424(e) of the Safe Drinking Water Act states:

(e) If the Administrator determines on his own initiative or upon petition that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the *Federal Register*. After the publication of any such

notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On May 19, 1980, the Capital Area Ground Water Conservation Commission of Louisiana petitioned EPA to designate the aquifer system in southeast Louisiana and southwest Mississippi as a sole or principal source of drinking water. On September 10, 1981, EPA published a notice in the *Federal Register* announcing receipt of the petition and requesting public comment. Subsequently, two technical reports on the aquifer system were funded by EPA and completed by 1980. Public hearings were held in Baton Rouge, Louisiana, on June 3, 1987, and McComb, Mississippi, on June 4, 1987. The public was invited to submit comments and information on the petition until June 17, 1987.

After review of available information, EPA determined that the aquifer system and its recharge zone occupies a ten parish area in Louisiana (consisting of all of E. Baton Rouge, E. Feliciana, Livingston, Pointe Coupee, St. Helena, St. Tammany, Tangipahoa, Washington, W. Baton Rouge, and W. Feliciana) and all or parts of fourteen counties in Mississippi (Adams, Amite, Claiborne, Copiah, Franklin, Hinds, Jefferson, Lawrence, Lincoln, Marion, Pike, Walthall, Warren, and Wilkinson).

II. Basis for Determination

Among the factors to be considered by the Region VI Administrator in connection with the designation of an area under Section 1424(e) are: (1) Whether the Southern Hills regional aquifer system is the area's sole or principal source of drinking water; and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Region VI Administrator has made the following findings, which are the bases for the determination noted above:

1. The Southern Hills regional aquifer system supplies approximately 80% of the public and domestic water consumed in the aquifer area.

2. There is no existing alternative drinking water source or combination of sources which provides fifty percent or more of the drinking water to the designated area, nor is there any

available cost effective future source capable of supplying the drinking water demands for the designated area.

3. The Southern Hills regional aquifer system consists predominantly of a series of sands interbedded with discontinuous clay layers. Where these sands are exposed at the surface in the recharge area, they are vulnerable to contamination from a number of sources including, but not limited to, chemical spills, highway and urban runoff, septic systems, leaking storage tanks and landfill leachate. Public and domestic wells which withdraw water from shallow aquifers under water table conditions in the recharge area are most susceptible to contamination. Since groundwater contamination can be difficult or sometimes impossible to reverse and since most of the drinking water in the designated area is provided by the Southern Hills regional aquifer system, contamination of the aquifer system would pose a significant public health hazard.

III. Description of the Southern Hills Regional Aquifer System and its Recharge Zone

The designated area of the Southern Hills regional aquifer system occupies a portion of southeast Louisiana consisting of the ten parishes named in the petition, and an area in Mississippi bordered on the east by the Pearl River, on the west by the Mississippi River and on the north by the northernmost contiguous outcrop of the Catahoula formation. The recharge zone covers all of this area with the possible exception of a small portion near the southern border. From its northern boundary, the aquifer system thickens progressively toward the south, attaining a thickness greater than 3,000 feet at the southern edge of the designated area where a natural increase in the salinity of the groundwater renders it nonportable for local use.

The aquifer system may contain a dozen or more fresh-water bearing sands at a single locality but many of these sands have not been reliably traced over long distances. The sands are recharged where they crop out in the recharge zone or by infiltration from the overlying Citronelle formation which occurs as a blanket deposit over a sizable portion of the area. The area in which Federal financially assisted projects will be subject to review is the designated area described above. The streamflow source zone is not included in the project review area; only a small part of the northern portion of the recharge zone is traversed by a stream (the Big Black River) which originates

outside the designated area, and under the existing climatic conditions flow of groundwater into streams strongly predominates over flow from streams into the groundwater.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public, and various technical publications. The above data are available to the public and may be inspected during normal business hours at the library of the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202, or at the U.S. Environmental Agency, Region IV, Groundwater Branch, 345 Courtland Street, Atlanta, Georgia 30365.

V. Project Review

EPA Regions IV and VI will work with Federal agencies that in the future may provide financial assistance to the projects in the area of concern. Interagency procedures will be developed in which EPA will be notified of proposed commitments by Federal agencies for projects which could contaminate the aquifer. EPA will evaluate such projects and where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment may be entered into for Federal financial assistance. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into a plan or design the project to assure that it will not so contaminate the aquifer. Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible, on any existing or future State and local control mechanisms in protecting the groundwater quality of the aquifer.

Included in the review of any Federal financially assisted project, will be coordination, as needed, with the State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local groundwater protection mechanisms.

VI. Summary of Public Comments

The great majority of public comments from Louisiana were in favor of designation but an equally great majority of the public comments from Mississippi were opposed to

designation. Many commenters from Mississippi were concerned that designation would have serious adverse economic impacts. EPA responded that the economic impact resulting from the project reviews under the program would be minimal because relatively few projects are reviewed under the program and most reviews will be conducted within the time frames normally used for review by the lending agencies.

Another frequent comment was the belief that designation would benefit Louisiana at the expense of Mississippi. EPA responded that the benefits of designation will be shared equally across the designated area and that designation will not confer any special privilege or right of control to the Louisiana portion of the designated area. Project reviews will be conducted in both states and will be of most benefit to wells which withdraw water from shallow unconfined aquifers. Such wells are found throughout the designated area.

Some commenters questioned whether there was adequate technical information available to determine that the individual sands of the system do not act as separate aquifers and to show that the sands in Louisiana are actually recharged in Mississippi. EPA responded that the sands can be inferred to be interconnected on a regional scale because of the variable number of sands from one locality to another, suggesting merging of some sands, and because of the local disappearance of confining layers. The relatively continuous section of fresh water of good quality from the northern portion of the aquifer into Louisiana suggests an aquifer system with continuous recharge and flow toward the south where potentiometric levels are lower.

One commenter maintained that recharge for the aquifer system at Baton Rouge was derived from the Mississippi River after passing through overlying sediments. EPA responded that the occurrence of local recharge areas caused by overpumping does not disqualify the area for designation but may influence the recharge area boundaries. Because the recharge area in question was already included in the area proposed for designation, EPA did not find it necessary to alter any proposed boundaries.

EPA has prepared a Responsiveness Summary which addresses the comments received at the public hearings and during the comment periods.

Since the designation affects more than one EPA region, this designation

has the prior concurrences of the Regional Administrator of Region IV and the Acting Assistant Administrator for Water.

Date: June 10, 1988.

Robert E. Layton, Jr.,
Regional Administrator, Region VI.
[FR Doc. 88-15231 Filed 7-6-88; 8:45 am]
BILLING CODE 6560-50-51

FEDERAL HOME LOAN BANK BOARD**[No. 88-537]****FSLIC Insurance Premium**

Date: June 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation orders the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one quarter of one-eighth of one percent (one thirty-second of one percent) of the total amount of the accounts of the insured members of each insured institution determined as of March 31, 1988.

EFFECTIVE DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Deputy Director of Operations, FSLIC, (202) 254-2029; or Deborah Siegel, Attorney, Office of General Counsel (202) 377-6848, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

WHEREAS, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *Provided* that the total amount so assessed in any one year against any insured institution shall not exceed one-eighth of one per centum of the total amount of the accounts of the

insured members of such institution and provided further that the amount of the additional premium for the calendar year 1988 may not exceed one-twelfth of one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 28, 1985, by Resolution No. 85-1142, dated December 9, 1985, by Resolution No. 86-213, dated March 6, 1986, by Resolution No. 86-582, dated June 10, 1986, by Resolution No. 86-941, dated September 2, 1986, by Resolution No. 86-1253, dated December 15, 1986, by Resolution No. 87-281 dated March 16, 1987, by Resolution No. 87-610 dated May 27, 1987, by Resolution No. 87-950 dated September 9, 1987, by Resolution No. 87-1254 dated December 14, 1987, and by Resolution No. 88-256 dated April 7, 1988, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, as of June 30, 1987, for the eleventh, as of September 30, 1987 for the twelfth, and as of December 31, 1987 for the thirteenth; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85-142, dated February 22, 1985, Resolution No. 85-437, dated June 5, 1985, Resolution No. 85-770, dated August 28, 1985, Resolution No. 85-1142, dated December 9, 1985, Resolution No. 86-213, dated March 6, 1986, Resolution No. 86-582, dated June 10, 1986, Resolution No. 86-941, dated September 2, 1986, Resolution No. 86-1253, dated December 15, 1986,

Resolution No. 87-281, dated March 16, 1987, Resolution No. 87-610, dated May 27, 1987, Resolution No. 87-950, dated September 9, 1987, Resolution No. 87-1254, dated December 14, 1987, and Resolution No. 88-256, dated April 7, 1988, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through the first quarter of 1988; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85-142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85-142, No. 85-437, No. 85-770, No. 85-1142, No. 86-213, No. 86-582, No. 86-941, No. 86-1253, No. 87-281, No. 87-610, No. 87-950, No. 87-1254, and No. 88-256, in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant to the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of the Corporation; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the second quarter of 1988, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of March 31, 1988; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about July 20, 1988; and

Resolved further, That the Executive Director or a Deputy Director of the

FSLIC, or a designee of either of them, ("Director"), shall determine the amount of the additional premium due, including an offset of one quarter of twenty percent (five percent) of each insured institution's pro rata share of the statutorily prescribed amount as provided in section 404(e)(2) of the NHA, to be paid on July 20, 1988, by each insured institution, and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the Federal Register.

By the Federal Home Loan Bank Board,
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-15286 Filed 7-6-88; 8:45 am]
BILLING CODE 6725-01-M

[No. 88-540]

Approval of Applications for Unlisted Trading Privileges; Cincinnati Stock Exchange

Date: June 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Cincinnati Stock Exchange filed with the Federal Home Loan Bank ("Board") an application ("Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange; Northeast Savings, F.A., Hartford, Connecticut (FHLBB No. 3231), Common Stock, \$.01 Par Value.

Notice of the Application and opportunity for hearing was published in the Federal Register on April 11, 1988, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 88-239, dated April 6, 1988 (53 FR 11908, April 11, 1988). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General

Counsel or his designee, approved the Application for unlisted trading privileges in these securities on June 21, 1988.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Cincinnati Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act (17 CFR 240.11Aa3-1). The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Cincinnati Stock Exchange are executed at prices which are reasonable related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

It is noted that the Cincinnati Stock Exchange withdrew, on May 2, 1988, its application for unlisted trading privileges for the common stock of American Savings and Loan Association, Miami, Florida.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on June 21, 1988.

By the Federal Home Loan Bank Board,
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-15287 Filed 7-6-88; 8:45 am]
BILLING CODE 6725-01-M

[No. 88-541]

Approval of Applications for Unlisted Trading Privileges; Midwest Stock Exchange, Inc.

Date: June 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Midwest Stock Exchange, Inc. filed with the Federal Home Loan Bank ("Board") applications ("Applications"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange;

Crossland Savings Bank, FSB, Brooklyn, New York (FHLBB No. 7812), Common Stock, \$1.00 Par Value
Centrust Savings Bank, Miami, Florida (FHLBB No. 2745), Common Stock, \$.01 Par Value
Empire of America, FSB, Buffalo, New York (FHLBB No. 5160), Common Stock, \$1.00 Par Value
Comfed Savings Bank, Lowell, Massachusetts (FHLBB No. 3483), Common Stock, \$.01 Par Value.

Notice of the Applications and opportunity for hearing was published in the Federal Register on April 11, 1988, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 88-240 dated April 6, 1988 (53 FR 11909, April 11, 1988). The Board received no comments with respect to the Applications. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in these securities on June 21, 1988.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange, Inc. is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the

market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act (17 CFR 240.11Aa3-1). The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange, Inc. are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in the above named securities on June 21, 1988.

By the Federal Home Loan Bank Board,
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-15286 Filed 7-6-88; 8:45 am]
BILLING CODE 6725-01-M

[No. 88-539]

Applications for Unlisted Trading Privileges and Opportunity for Hearing Philadelphia Stock Exchange

Date: June 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Philadelphia Stock Exchange has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, applications ("Applications") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities.

Downey Savings and Loan Association, Costa Mesa, California (FHLBB No. 6189), Common Stock, No Par Value
Mercury Savings and Loan Association, Huntington Beach, California (FHLBB No. 6649), Common Stock, \$1.00 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in

the consolidated transaction reporting system.

Comments: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the *Federal Register*, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552, written data, views and arguments bearing upon whether the extension of unlisted trading privileges pursuant to the Applications is consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Applications after the date mentioned above if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to the Applications is consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377-6415 or at the above address.

By the Federal Home Loan Bank Board,
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-15289 Filed 7-6-88; 8:45 am]
BILLING CODE 6720-01-M

[No. 88-542]

Approval of Applications for Unlisted Trading Privileges; Philadelphia Stock Exchange

Date: June 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Philadelphia Stock Exchange filed with the Federal Home Loan Bank ("Board") applications ("Applications"), pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange; Standard Federal Bank, Troy, Michigan (FHLBB No. 0161), Common Stock, \$1.00 Par Value; Coast Savings and Loan Association, Los Angeles, California (FHLBB No. 7046), Common Stock, No Par Value. Notice of the Applications and opportunity for hearing was published in

the *Federal Register* on April 11, 1988, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 88-241, dated April 6, 1988 (53 FR 11909, April 11, 1988). The Board received no comments with respect to the Applications. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in these securities on June 21, 1988.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to Section 6 of the Act, the Philadelphia Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act (17 CFR 240.11Aa3-1). The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Philadelphia Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Applications for unlisted trading privileges in the above named securities on June 21, 1988.

By the Federal Home Loan Bank Board,
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-15290 Filed 7-6-88; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200135.
Title: City of Los Angeles Terminal Agreement.

Parties:
City of Los Angeles
American President Lines, Ltd. (APL)
Synopsis: The agreement provides for the City's assignment of four container handling cranes to APL for APL's preferential though non-exclusive use.

Agreement No.: 224-011031-001.
Title: Los Angeles Terminal Agreement.

Parties:
City of Los Angeles
American President Lines, Ltd. (APL)
Synopsis: The agreement amendment effects the APL sale and transfer of cranes and a crane construction contract to the City of Los Angeles on July 1, 1988.

Agreement No.: 224-200134.
Title: Delaware Operating Company Assignment Agreement.

Parties:
Philadelphia Port Corporation (PPC)
Delaware Operating Company (DOC)
Delaware River Stevedore, Inc. (DRS)
Synopsis: The agreement provides that DOC, with PPC's consent, assigns to DRS all of its rights and interests as lessee and marine terminal operator under various agreements that DOC has with PPC for certain Packer Avenue

marine terminal facilities at the Port of Philadelphia.

Agreement No.: 224-010774-001.
Title: Georgia Ports Authority Terminal Lease Agreement.

Parties:

Georgia Ports Authority
Evergreen Marine Corporation
(Taiwan), Ltd.
Costa Container Lines SPS (Costa)

Synopsis: The agreement amends the terms of the basic lease to include Costa as being entitled to all rights and privileges under the lease pertaining to Evergreen and to be bound by all obligations therein.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Date: July 1, 1988.

[FR Doc. 88-15258 Filed 7-6-88; 8:45 am]
BILLING CODE 6720-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expired report 3090-0014, Transfer Order Surplus Personal Property/Continuation Sheet (SF 123), which is used by nonprofit agencies to request donations of surplus property.

AGENCY: Property Management Division, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Audrey L. Harris, 703-557-1234.

Annual Reporting Burden: Agency requests, 50,000; one request per agency; average time to complete form, 20 minutes; burden hours, 15,000.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Information Collection Management Branch (CAIR), Room 3016, GS Bldg., Washington, DC 20405 or by telephoning 202-566-1659.

Date: June 29, 1988.

Mary L. Cunningham,
Acting Director, Information Management
Division (CAI).
[FR Doc. 88-15187 Filed 7-6-88; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Management and Budget; Statement of Organization, Functions and Delegations of Authority

Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to reflect the transfer of the OS Office of Equal Employment Opportunity function from the Immediate Office of the Assistant Secretary for Management and Budget to the Office of the Deputy Assistant Secretary for Administrative and Management Services. Specifically, Chapter AM, HEW Management and Budget Office, as last published at 44 FR 28729 (May 16, 1979); and Chapter AMS, Office of Administrative and Management Services, as last published at 53 FR 18609 (May 24, 1988) is revised as follows:

1. In Chapter AM, Section AM.10 Organizations, paragraph 2, line 4, delete OS Equal Employment Opportunity Office (AM-2).
2. In Chapter AM, Section AM.20 Functions, A., delete paragraph 2, in its entirety.
3. In Chapter AMS, Section AMS.00 Mission, line 9 after the word "responsibilities," delete remainder of the paragraph and replace with the following:
Provides administrative services, and facilities management services to all HHS components in the Southwest Washington, DC area complex. Plans and administers telecommunications responsibilities and carries out equal employment activities within the Office of Secretary.

4. In Chapter AMS, Section AMS.10 Organization, add as the last office under line 14, OS Office of Equal Employment Opportunity.

5. In Chapter AMS, Section AMS.20 Functions, at the end of paragraph F., add new paragraph G., to read as follows:

G. OS Office of Equal Employment Opportunity. The OS Office of Equal Employment Opportunity receives program direction from the Assistant

Secretary for Management and Budget (ASMB), and supervision and administrative support from the Office of the Deputy Assistant Secretary for Administrative and Management Services (OAMS). The OS Office of Equal Employment Opportunity assists the ASMB in carrying out the delegated authority to establish and maintain equal employment opportunity programs within the Office of the Secretary. The Office is responsible for ensuring that all OS employment policies and actions are based on merit, without regard to race, color, religion, national origin, sex, age, or physical/mental handicap. Major functions include: (1) Pre-complaint counseling, (2) formal complaint processing, (3) affirmative employment planning and implementation, and (4) technical guidance and policy development. The functions of the office also include program efforts which focus on the Federal Women's Program, the Hispanic Employment Program, and the Handicapped Employment Program.

June 29, 1988.

S. Anthony McCann,
Assistant Secretary for Management and Budget.
[FR Doc. 88-15211 Filed 7-6-88; 8:45 am]
BILLING CODE 4150-04-M

Assistant Secretary for Personnel Administration; Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that on June 16, 1988, to be effective October 1, 1988, the Secretary of Health and Human Services delegated to the Chair and members of the Departmental Grant Appeals Board his authority to make final determinations with respect to the imposition of civil remedies, including exclusions and civil monetary penalties and assessments, on review of, or by declining to review, initial decisions of Administrative Law Judges as provided in the regulations implementing sections 1128, 1128A, 1833(l), 1842(b), (j), (k), (l)(3), and (m), and 1866(g) of the Social Security Act; and sections 421(c) and 427(b)(2) of the Health Care Quality Improvement Act of 1986 (Title IV of Pub. L. 99-660) (42 U.S.C. 1320a-7; 1320a-7a; 1395i; 1395u(b), (j), (k), (l)(3), and (m); 1395cc(g); 11131; and 11137. The delegation does not include decisions under sections 1128(b)(6)(B), (C), and (D), 1128A(b) and 1156 of the Social Security Act (42 U.S.C. 1320a-7a(b), and 1320c-5), (C), and (D), 1320a-7a(b), and 1320c-5). The delegation with regard to section 1842(l) of the Social Security Act (42 U.S.C. 1395u(l)) does not apply to

hearings or decisions concerning a physician's obligation to make a refund pursuant to section 1842(l) of the Social Security Act; it is limited to decisions by Administrative Law Judges concerning the imposition of a civil monetary penalty for failure to make a required refund (section 1842(l)(3) of the Social Security Act (42 U.S.C. 1395u(l)(3)).

The delegation rescinds the earlier delegation of authority to the Under Secretary and Principal Deputy Under Secretary, dated April 16, 1986, to review Administrative Law Judge decisions under section 1128A and (then) 1128(c) of the Social Security Act. The rescission is effective October 1, 1988; however, the delegation of April 16, 1986 remains in effect with respect to any case for which a party has filed timely exceptions pursuant to 42 CFR 1003.125(d) prior to October 1, 1988. The Under Secretary or his or her delegatee, however, may transfer on or after October 1, 1988 any such case to the Departmental Grant Appeals Board.

Also included in the delegation to the Departmental Grant Appeals Board is authority to review Administrative Law Judge decisions under the Program Fraud Civil Remedies Act (section 6103 of Pub. L. 99-509 (31 U.S.C. 3803)). Final regulations implementing the Program Fraud Civil Remedies Act in the Department of Health and Human Services designated the Departmental Grant Appeals Board as the authority head to hear appeals from initial decisions by Administrative Law Judges in cases arising under that Act. (53 FR 11656 (April 8, 1988).)

Dated: June 29, 1988.

S. Anthony McCann,
Assistant Secretary for Management and Budget.

[FR Doc. 88-15212 Filed 7-6-88; 8:45 am]
BILLING CODE 4150-04-M

Assistant Secretary for Personnel Administration; State of Organization, Functions and Delegations of Authority

Notice is hereby given that on June 16, 1988, the Secretary of Health and Human Services delegated to any and all Administrative Law Judges in, assigned to, or detailed to, the Departmental Grant Appeals Board the authority to conduct hearings and render decisions with respect to the imposition of civil remedies, including exclusions and monetary penalties and assessments, under sections 1128, 1128A, 1833(j), 1842(b), (j), (k), (l)(3), and (m), and 1866(g) of the Social Security Act; and sections 421(c) and 427(b)(2) of the Health Care Quality Improvement

Act of 1986 (Title IV of Pub. L. 99-600); and the Program Fraud Civil Remedies Act (section 6103 of Pub. L. 99-509) (42 U.S.C. 1320a-7; 1320-7a; 1395f; 1395u(b), (j), (k), (l)(3), and (m); 1395cc(g); 11131; and 11137; and 31 U.S.C. 3803). The delegation does not include sections 1128(b)(6)(B), (C), and (D), 1128A(b), and 1156 of the Social Security Act (42 U.S.C. 1320a-7(b)(6)(B), (C), and (D), 1320a-7a(b), and 1320c-5). The delegation with regard to section 1842(l) of the Social Security Act (42 U.S.C. 1395u(l)) does not apply to hearings or decisions concerning a physician's obligation to make a refund pursuant to section 1842(l) of the Social Security Act; it is limited to hearings and decisions concerning the imposition of a civil monetary penalty for failure to make a required refund (section 1842(l)(3) of the Social Security Act/42 U.S.C. 1395u(l)(3)).

The delegation includes, but is not limited to, the authority to administer oaths and affirmations, to subpoena witnesses and documents, to examine witnesses, to exclude or receive and give appropriate weight to materials and testimony offered as evidence, to make findings of fact and conclusions of law, and to determine the civil remedies to be imposed. The determination by the Administrative Law Judge is final unless reviewed by a member or members of the Departmental Grant Appeals Board in accordance with regulations.

The delegation was effective on signing.

Dated: June 29, 1988.

S. Anthony McCann,
Assistant Secretary for Management and Budget.

[FR Doc. 88-15213 Filed 7-6-88; 8:45 am]
BILLING CODE 4150-04-M

Office of Human Development Services

Administration for Children, Youth and Families; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part D of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Office of Human Development Services as follows: Chapter D, Office of Human Development Services (45 FR 64254) as last amended, September 29, 1980; and Chapter DC, Administration for Children, Youth and Families (ACYF) (49 FR 17593), as last amended April 24, 1984. This reorganization would consolidate the major operational functions of the Title IV-E program, i.e. Foster Care and Adoption Assistance

program under the Children's Bureau, ACYF.

1. Amend Chapter D, Office of Human Development Services, D.20, paragraph "F. The Administration for Children, Youth and Families (ACYF)" by deleting the last sentence of the paragraph and adding the following:

Develops strategies of programmatic reviews of State Plans for programs for children, youth and families funded by HDS. Participates with the Office of Regional Operations and Regional Offices in the development of strategies for joint financial reviews of the Title IV-E program.

2. Amend Chapter DC, as follows:

a. Paragraph "DC.10 Organization.

The Administration for Children, Youth and Families" by deleting lines 11-13 and replacing them with the following:

Children's Bureau: National Center on Child Abuse and Neglect and Office of Discretionary Grants: National Center on Child Abuse and Neglect Division, Program Support Division; Office of Child Welfare State Grants: Program Operations Divisions, Formula Grants Division, Financial Operations Review Division;

b. Under DC.20 Functions:

(1) Delete paragraph B. "2 Management Support Division" in its entirety and replace with the following:

2. Management Support Division provides or coordinates all headquarters' management support services including personnel, contracts and grants, budget formulation and executive secretariat, and administrative services.

In conjunction with HDS/Office of Management Services, is responsible for budget formulation and execution. Manages the annual ACYF budget formulation and presentation process for program funds and salary and expense resources; coordinates development of necessary budget documents, exhibits, and support materials.

For ACYF programs in the regions and in headquarters, recommends allowances; develops apportionment materials; maintains commitment registers; and reconciles monthly accounting reports from the DHHS accounting system. Develops the annual plan for obligation of grant and contract funds; monitors funding units for compliance with those plans. Manages the central office salaries and expenses budget. Assists regional offices and the Head Start Bureau in the appeals and hearings process related to suspension or termination of Head Start grants.

Provides Executive Secretariat services to ACYF: receives, assigns and tracks all controlled mail; and assures

timely and accurate responses. Serves as the primary ACYF liaison with HDS offices in administrative areas of personnel, payroll, training, word/data processing systems, and equal opportunity and civil rights. Manages the Merit Pay and Employee Performance Management System process in ACYF headquarters.

Develops and manages management information systems and other data analysis systems handling data which report on or affect ACYF programs; analyzes data from these systems and other sources; and provides assistance and services on data systems to ACYF units. Serves as the ACYF/OMB Forms Clearance Officer.

Delete paragraph "D. Children's Bureau" in its entirety and replace with the following:

D. Children's Bureau advises the Commissioner in child welfare, foster care, and adoption matters. Recommends legislative and budgetary proposals, operational planning system objectives and initiatives, and projects and issue areas for evaluation, research and demonstration activities. Represents ACYF in initiating and implementing inter-agency activities and projects affecting children. Provides leadership and coordination for the programs, activities, and subordinate units of the Bureau.

D. 1. National Center on Child Abuse and Neglect and Office of Discretionary Grant Programs manages and provides direction and leadership to the National Center on Child Abuse and Neglect and directs and coordinates the administration of discretionary grants under section 426 of the Social Security Act and under the Adoption Opportunities Act. Advises the Associate Commissioner and the Commissioner in matters related to child abuse and neglect and the development and operation of the discretionary grant program. Provides advice and guidance to the Regions in these areas of responsibility.

D.1.a. National Center on Child Abuse and Neglect Division develops policies and plans on programs relating to the prevention, identification, and treatment of child abuse and neglect. Proposes budgetary and legislative initiatives. Develops regulations, guidelines and instructions to assist State grant programs on child abuse and neglect. Develops and implements, through grants and contracts, approved research and demonstration programs and plans to prevent, identify and treat child abuse and neglect. Plans and implements training and technical assistance activities by directly managing grants

and contracts. Manages the Child Abuse and Neglect State Grant Program.

Develops, maintains, and updates the information clearinghouse on child abuse and neglect research programs and other related activities. Through surveys and other information collection activities, provides information on research programs directed at preventing, identifying and treating child abuse and neglect. Compiles, analyzes, and disseminates publications and other materials on child abuse and neglect. Provides assistance to government agencies, public and private service organizations, and the general public concerning information on child abuse and neglect. Studies the trends of incidence of child abuse and neglect and assists in the development of central registries and forms for reporting child abuse and neglect. Provides staff support to the Advisory Board on Child Abuse and Neglect in developing and updating Federal standards, preparing special reports, coordinating Federally funded programs, and other activities of the Board.

(1) Program Policy and Planning Branch

In coordination with the ACYF Division of Planning, Research, and Evaluation, establishes objectives, determines priorities, develops and implements research and demonstration programs, and plans to prevent, identify and treat child abuse and neglect. Recommends evaluation activities to be performed.

With the Regional Offices, verifies eligibility and allocates funds to States found to be in compliance with the requirements of the Child Abuse Prevention and Treatment Act, and monitors State programs funded under the Act.

Plans and implements training and technical assistance activities by directly managing grants and contracts.

Provides staff support to the Advisory Board on Child Abuse and Neglect in the development and updating of Federal Standards, the preparation of special reports, the coordination of Federally funded programs, and other activities of the Board.

(2) Clearinghouse Branch

Develops, maintains, and updates the Information Clearinghouse on Child Abuse and Neglect on research and demonstration projects, operating programs and other activities. Through surveys and other information collection activities provides information on a continuing basis on research and demonstration projects and operating programs, directed at preventing,

identifying and treating child abuse and neglect.

Complies, analyzes, prepares and disseminates information, publications and other materials on child abuse and neglect.

Provides assistance to other government agencies, public and private service organizations and the general public concerning the availability and use of information on child abuse and neglect.

Studies the incidence of child abuse and neglect to show severity and trends and assists in the development of central registries and forms for reporting child abuse and neglect.

D.1.b. Program Support Division manages the Title IV-B Child Welfare Training Program and the Adoption Opportunities Program. Provides technical expertise in specific, substantive program areas for developing programmatic policies, standards, model laws, regulations and guidelines for child welfare services. Provides expert advice and assistance to a broad array of public and private agencies in these areas. Develops areas for research, demonstration, and evaluation activities to investigate the current status of child welfare practices and to improve the quality and levels of service provided to children. Manages discretionary projects assigned to the Bureau which are related to child welfare services and related areas. Reviews current practices and problems; recommends action to meet special needs of children at risk; and promotes successful models.

Develops and implements training and technical assistance plans. Analyzes regional Children's Bureau training and technical assistance reports and provides technical guidance to the regional offices. Develops model curricula and other materials for training persons engaged in child welfare programs.

(1) Assistance Branch

Acts as the principal focus within the Program Support Division for developing and implementing policies, advice and plans on identifying and diagnosing children and families who need child welfare assistance including improving and upgrading services to children and families in their own homes; services for children and families in need of emergency care; services to children in need of substitute care (with foster families or in institutions or group homes); and services relating to restoration of children with their families and permanency planning.

(2) Adoption Opportunities Branch

Acts as the principal focus within the Division for development of policies, advice and plans on programs relating to the improvement of adoption services, especially those for children with special needs. Provides technical expertise in developing programmatic policies, standards, model laws, regulatory material and guidelines for improving adoption services. Provides expert knowledge, training and technical assistance to a broad array of public and private social service agencies in improvement of adoption services.

Develops and manages the Adoption Opportunities Program (Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act) to facilitate the elimination of barriers to adoption and to provide permanent homes for children who would benefit by adoption. Develops model adoption legislation and procedures and provides training and technical assistance in their use by States; develops and manages a national adoption information exchange system, including the operation of a national adoption exchange; develops, manages and monitors a training and technical assistance program to promote quality standards and services in the adoption of children with special needs.

Develops training and technical assistance objectives and program guidance for the Regional Offices in the improvement of adoption services. Identifies, develops, demonstrates and disseminates training curricula and technical assistance materials for persons providing adoption services. Recommends areas for research, demonstration and evaluation activities. Manages assigned discretionary projects.

D.2. Office of Child Welfare State Grants manages, coordinates and provides direction and leadership in the program operation, policy development and fiscal operations and review activities included under titles IV-B and IV-E of the Social Security Act. Advises the Associate Commissioner and the Commissioner in child welfare, foster care, adoption assistance and independent living matters. Provides advice and guidance to Regions on the implementation, operation and review of child welfare, foster care, adoption assistance and independent living programs under titles IV-B and IV-E.

D.2.a. Program Operations Division generates policies and procedures for developing State child welfare program plans authorized under titles IV-B and IV-E of the Social Security Act including child welfare services, foster care and

adoption assistance; develops and interprets regulations, guidelines, and instructions. Coordinates child welfare services with other Federal agencies and non-Federal groups.

Provides technical direction on administration of state grant programs. Advises Regional Offices on recommendation for disapproval of State plans or amendments.

(1) Implementation Branch

Performs reviews for eligibility of funds under Section 427, Pub. L. 96-272 and program reviews when required; develops compliance review procedures and reviews compliance of State plans and expenditures with the requirements and makes recommendations to the Associate Commissioner; prepares appropriate orientation materials for regional offices and States; assists or prepares regional orientation plans; analyzes and, in conjunction with regional offices, collects child welfare services program data; formulates and implements the Division's planning strategy including the development of the annual operational plan; and engages in joint program planning with States.

(2) Policy Branch

Develops policies and procedures for developing State plans for title IV-E and the Child Welfare Program authorized under title IV-B of the Social Security Act; develops and interprets regulations, guidelines and instructions under title IV-B and IV-E of that Act and Pub. L. 96-272; interprets questions of State implementation; assists regional office technical assistance activities to meet requirements for State grants; coordinates child welfare services with other Federal agencies and non-Federal groups; analyzes regional offices monitoring and training and technical assistance reports; and provides program technical direction to regional offices.

D.2.b. Formula Grants Division develops and interprets program-specific fiscal regulations, guidelines and instructions for the management of formula grant and entitlement programs including Child Welfare Services, Foster Care, and Adoption Assistance. Provides technical guidance to the regional offices in all fiscal aspects of these programs and develops procedures for the regional offices to use in acting on requests for funds.

Develops the annual funding allocations and quarterly financial plans, reviews all States estimates of need. Prepares quarterly State grants for award, makes adjustments to State funding plans as required.

Makes financial adjustments associated with deferral and disallowance actions. Provides technical expertise to the regional offices in the development of these actions. Processes all these actions in concert with the Office of Management Services/Division of Grants and Contracts Management.

Manages technical and procedural activities incident to audit questions and appeals. Provides technical assistance to the HHS/Inspector General in developing comprehensive audit techniques for these programs, including sampling and review methodology. Takes part in audits of State programs. Designs audit plans to meet special circumstances.

Provides technical advice on regulations, guidelines, and fiscal practices to Office of General Counsel in all related audit appeals being heard by the DHHS Grants Appeals Board. Provides technical assistance on issues affecting ACYF formual and entitlement programs to staff of the Assistant Secretary for Legislation and for Management and Budget.

D.2.c. Financial Operations Review Division arranges for and participates in financial reviews of State Child Welfare Services, Foster Care and Adoption Assistance grant operations. This requires coordination with Regional Administrators, and includes developing and refining procedures, establishing standards and criteria, and training Regional and Central Office Staff in conducting regular on-site financial reviews.

Coordinates and consults as appropriate and necessary, with the Commissioner, ACYF, Staff Office Directors, and Regional Administrators in organizing, assigning staff, conducting the reviews, and analyzing review findings.

Analyze and review results for consistency in application and operation, and make recommendations to the Commissioner, ACYF, on policies and procedural improvements.

Assists OGC with cases appealed to the Departmental Grant Appeals Board as a result of the financial reviews.

3. For this realignment, there will be no change in the functional statement for the Office of Management Services. The current functional statement is generically stated and does not mention IV-E as part of its function.

Otis R. Bowen,

Secretary

[FR Doc. 88-15216 Filed 7-6-88; 8:45 am]

BILLING CODE 4150-01-M

Centers for Disease Control

Vital and Health Statistics National Committee; Meeting

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics.

Time and Date: 10:00 am-5:00 pm—July 19, 1988; 8:30 am-3:30 pm—July 20, 1988.

Place: Hubert H. Humphrey Building, Room 337A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to consider a draft of the DHHS Long-Term Care Facilities Minimum Data Set, status reports on the Client Minimum Data Set and board and care homes and modifications of the Subcommittee charge.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Richard J. Havlik, M.D., Staff, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: July 1, 1988.

Elvin Hillyer,
Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 88-15357 Filed 7-6-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

(Docket No. 80P-0157 et al.)

Approved Variances for Laser Light Shows; Availability

AGENCY: Food and Drug Administration.
ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 16 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of the products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and

Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 16 organizations listed in the table below a variance from the requirements of 21 CFR 1040.11(c) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical designs and by warnings in the user manuals and on the products. Therefore, on the effective dates specified in the table below, FDA approved the request variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date/termination date
80P-0157 (amendment)	Image Engineering Corporation, 10 Beacon Street, Somerville, Massachusetts 02143.	Laser light shows and for the Model Series 300 laser projectors manufactured, assembled, and produced by Image Engineering Corporation. The laser projectors may contain Class IIb or IV argon, krypton, helium-neon, helium-cadmium, or dye lasers.	Mar. 2, 1988 Dec. 11, 1988.
80P-0495 (renewal)	Showlaser, Incorporated, P.O. Box 561206, Dallas, Texas 75356-1206.	Class IV Showlaser Model LPI Laser Effects Projector containing argon, krypton, or dye lasers and for laser light shows assembled and produced by Showlaser, Incorporated.	Feb. 25, 1988 Feb. 26, 1990.
82P-0118 (renewal)	Falk Special Effects, Incorporated, 186 Paul Court, Hillsdale, New Jersey 07642.	Groundstar Series laser projectors, laser light sculpture projectors, and laser light shows manufactured, assembled, and produced by J. Douglas Falk Engineering. The projectors may contain Class IIb HeNe or HeCd lasers and up to Class IV Ar, Kr, Ar/Kr, or copper vapor lasers.	Mar. 31, 1988 Apr. 30, 1990.
83P-0071 (renewal)	Busch Entertainment Corporation, dba Busch Gardens, P.O. Drawer FO, Williamsburg, Virginia 23187.	Laser light shows produced and assembled by Busch Entertainment Corporation dba Busch Gardens at Hastings Theater incorporating a Laser Media LMS Series laser projection system.	Mar. 22, 1988 Mar. 15, 1990.
83V-0175 (renewal)	Laser Rays Art Productions, Incorporated, 67 E. Evelyn Avenue, Suite 10, Mountain View, California 94041.	Laser light shows assembled and produced by Laser Rays Art Productions, Incorporated incorporating the firm's own Class IV ion laser projection systems.	Mar. 2, 1988 Mar. 13, 1990.
83V-0383 (renewal)	Rochester Museum and Science Center, Strassburgh Planetarium, 857 East Avenue, Box 1480, Rochester, New York 14603.	Laser light shows assembled and produced by the Rochester Museum and Science Center incorporating the firm's laser light show projector containing a Class IV ion laser	Mar. 28, 1988 May 16, 1990.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date/termination date
84V-0033 (renewal)	Lone Star Laser Shows, Incorporated, 8285 El Rio, Suite 180, Houston, Texas 77054.	Lone Star Laser Shows, Incorporated, Model 2020 laser projector and shows incorporating the Lone Star 2020 projector and Laser Media Series Projectors.	Mar 2, 1988 Feb. 22, 1990
86V-0050 (renewal)	Tau Beta Pi Association, California Epsilon Chapter, 4800 Boelter Hall, UCLA Campus, Los Angeles, California 90024.	Tau Beta Pi Association, California Epsilon Chapter, Lasarama laser light show incorporating the argon and helium-neon Class IIIb Lasarama laser projector.	Mar 28, 1988 May 7, 1989
87V-0234 (amendment)	Florida Cypress Gardens, P.O. Box 1 Cypress Gardens, Winter Haven, Florida 33894.	Florida Cypress Gardens laser light shows such as "Laser Magic," incorporating Starlaser's Starlight Series 1-FC and Sea World Model SW-1 Class IV ion laser projectors.	Mar 11, 1988 Aug. 16, 1989
87V-0396	Laser Mirage, Incorporated, 13363 42nd Drive, Yuma, Arizona 85365.	Laser Mirage, Incorporated laser light shows incorporating the Precision Projection Systems, Incorporated, Model TL240 laser projector.	Mar 2, 1988 Mar 2, 1990
87V-0420	University of Illinois at Chicago, The Interactive Image, Electrical Engineering & Computer Science Department, Box 4348, Chicago, Illinois 60680.	Laser light display, "The Interactive Image," produced by the University of Illinois at Chicago, Electrical Engineering and Computer Science Departments, incorporating Laser Fantasy's Rainbow 2000 Series laser projector.	Feb. 25, 1988 Feb. 25, 1990
88V-0012	Stars Entertainment Corporation, dba Stars, 4645B West Market Street, Greensboro, North Carolina 27409.	Stars Entertainment Corporation "Stars" laser light show incorporating the Science Fiction Corporation Laser-Chaser 2 laser projector with the Ion Laser Technology 5490A-01 ion laser.	Mar 9, 1988 Mar 9, 1990.
88V-0016	Yeshiva University Museum, 2520 Amsterdam Avenue, New York, New York 10033.	Yeshiva University Museum laser light shows using the Yeshiva University Museum Laser Projection System.	Mar 24, 1988 Mar 24, 1990
88V-0022	Hi-Tech Laser Productions, 1686 New York Avenue, Huntington, New York 11748.	Hi-Tech Laser Productions laser light shows incorporating the Laser Media LM laser projector.	Mar 24, 1988 Feb. 24, 1990
88V-0032	East Coast Leisure Properties, Incorporated, dba The Palace, 1500 Broadway, Saugus, Massachusetts 01906.	East Coast Leisure Properties, Incorporated, dba The Palace, laser light shows incorporating the Laser Media Model LMS 10 laser projection system.	Feb. 25, 1988 Feb. 25, 1990
88V-0041	United States Naval Academy, Annapolis, Maryland 21402.	United States Naval Academy laser light show incorporating the Image Engineering Model 355 ACC laser projector.	Feb. 24, 1988 Feb. 24, 1990

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: June 28, 1988.

John C. Villford,
Director, Center for Devices and Radiological Health.

[FR Doc. 88-15191 Filed 7-6-88; 8:45 am]

BILLING CODE 4180-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. H-88-1823]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the

proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: June 30, 1988.

David S. Cristy,
Deputy Director, Information Policy and Management Division.

Proposal: Public Housing Child Care Demonstration Program (FR-2467).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The Public Housing Child Care Demonstration Program will provide grants to nonprofit organizations to assist them in establishing child care facilities in lower-income housing projects. The grants will also be used to renovate the child care facility and to cover certain operating expenses.

Form Number: None.

Respondents: State or Local Governments, Non-Profit Institutions, and Small Businesses or Organizations.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Child care expenditures	200	1	1	200
Participant's application	300	1	1	300
Reports to HUD	300	1	1	300
Child care facility application	300	1	15	4,500
Annual performance report	300	1	4	1,200
Recordkeeping (PHAs)	200	1	1	200
Recordkeeping (grantees)	300	2	1	600

Total Estimated Burden Hours: 7,600.

Status: New.

Contact: Robert M. Hundley, HUD,
(202) 755-8072, John Allison, OMB, (202)
395-6880.

Date: June 30, 1988.

[FR Doc. 88-15254 Filed 7-6-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-921-08-4121-10]

Fort Union Regional Coal Team; Availability of Proposed Data Adequacy Standards for the Fort Union Coal Region; Montana

SUMMARY: Proposed Data Adequacy Standards for the Fort Union Region are available upon request beginning July 7, 1988. The public is invited to comment on these standards.

DATE: Public comments on the Proposed Data Adequacy Standards are requested by August 22, 1988. Comments should be sent to William Krech at the address shown below.

ADDRESS: Copies of the Proposed Data Adequacy Standards may be obtained upon request from either William Krech, Bureau of Land Management District Manager, Dickinson District, 204 Sims, P.O. Box 1299, Dickinson, North Dakota 58602, phone (701) 225-9148, or James Luptak, Director, Energy Impact Office, State of North Dakota, Capitol Building, Bismark, North Dakota 58505, phone (701) 224-3188, or Bill Frey, Coal Coordinator, Bureau of Land Management State Office, 222 North 32nd Street, P.O. Box 36800, Billings Montana 59107, phone (406) 657-6841.

FOR FURTHER INFORMATION CONTACT: William Krech of the above address or telephone number.

SUPPLEMENTARY INFORMATION: The Proposed Data Adequacy Standards contain recommended levels of data to be acquired prior to the leasing of

delineated federal coal tracts. Data adequacy standards are proposed for geology, paleontology, soils, hydrology, wildlife, air, cultural resources, economics, and social and land-use disciplines within the Fort Union Region. The standards are being prepared by a multidisciplinary task force composed of federal and state resource specialists. The task force was appointed and guided by the Fort Union Regional Coal Team. The data adequacy standards are being prepared, with public input, at the direction of the Department of the Interior as an outcome of the supplemental EIS to the Federal Coal Management Program.

The Regional Coal Team welcomes comments on any aspect of these standards.

Dated: June 21, 1988.

Robert A. Teegarden,

Acting State Director.

[FR Doc. 88-14982 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-04-M

[ID-040-4322-08]

Salmon District, Availability of the Rangeland Program Summary (RPS) Update on the Big Lost-Mackay Grazing Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Interior has prepared an update of the Rangeland Program Summary (RPS) on the Big-Lost Mackay Environmental Statement.

The Rangeland Program Summary (RPS) summarizes the progress made toward implementation of the program set forth in the original RPS document and discusses the future management direction that will be taken by the Bureau of Land Management in this portion of the Salmon District. The RPS also summarizes the future rangeland

monitoring and evaluation efforts that will be conducted.

Copies of the Rangeland Program Summary are available for review at the following location.

FOR FURTHER INFORMATION CONTACT: Robert H. Hale, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467, telephone (208) 756-5400.

Dated: June 27, 1988.

Robert W. Heidemann,
Associate District Manager.

[FR Doc. 88-15188 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-00-M

[MT-070-08-4050-91]

Butte District Grazing Advisory Board, Montana; Meeting

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Board will be held Wednesday, August 10 in the conference room of the Dillon Resource Area Office, Ivey Building, Dillon. The meeting will begin at 9:00 a.m. The agenda will include (1) an overview of range improvement projects projected for FY 89; (2) the Bureau's wild horse and burro adoption program; (3) riparian management efforts in the district; and (4) a discussion of prescribed burning as a tool for vegetation manipulation.

The meeting is open to the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land

Management, Box 3388, Butte, Montana 59702.

June 27, 1988.

Gerald L. Quinn,
Acting District Manager.

[FR Doc. 88-15260 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-CN-M

(MT-030-08-4410-02)

Dickinson District Advisory Council Field Trip; North Dakota

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Field Trip.

SUMMARY: The District Advisory Council for the Bureau of Land Management's Dickinson District will meet July 28, 1988, in Belfield, North Dakota, for a field trip in the western part of the District.

Major objectives of the trip will be to view and discuss: (1) Parcels involved in recent land exchanges in Bowman County, and (2) oil and gas development adjacent to Theodore Roosevelt National Park near Medora.

The public is invited to participate in this field trip but must provide their own transportation.

Location, Date, and Time: July 28, 1988, from 7:00 a.m. to approximately 4:30 p.m. Mountain Daylight Time. Participants will meet at Trapper's Kettle restaurant, Belfield, North Dakota.

FOR FURTHER INFORMATION CONTACT: William F. Krech, District Manager, P.O. Box 1229, Dickinson, North Dakota, 58602; Telephone (701) 225-0146.

William F. Krech,
District Manager.

Dated: June 29, 1988.

[FR Doc. 88-15261 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-DN-M

(NM-940-08-4111-13; NM NM 70410)

Proposed Reinstatement of Termination Oil and Gas Lease by Conoco, Inc.; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Conoco, Inc., petitioned for reinstatement of oil and gas lease NM NM 70410 covering the following described lands located in Chaves County, New Mexico:

T 12 S., R. 30 E., NMPM,
Sec. 13: SW 1/4 NE 1/4, N 1/4 SE 1/4;
Sec. 15: All.

Containing 700.00 acres.

It has been shown to my satisfaction that failure to make timely payments of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of \$500.00 has been paid. Future rentals shall be at the rate of \$5.00 per acre per year and royalties shall be at the rate of 16 2/3 percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, November 1, 1987.

Dated: June 22, 1988.

Thomas D. Golden,

Acting Chief, Adjudication Section.

[FR Doc. 88-15262 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-FB-M

(NM-940-08-4111-13; NM NM 44311)

Proposed Reinstatement of Termination Oil and Gas Lease by Conoco, Inc.; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Conoco, Inc., petitioned for reinstatement of oil and gas lease NM NM 44311 covering the following described lands located in Chaves County, New Mexico:

T 12 S., R. 30 E., NMPM,
Sec. 14: All.

Containing 640.00 acres.

It has been shown to my satisfaction that failure to make timely payments of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of \$500.00 has been paid. Future rentals shall be at the rate of \$5.00 per acre per year and royalties shall be at the rate of 16 2/3 percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, November 1, 1987.

Dated: June 22, 1988.

Thomas D. Golden,

Acting Chief, Adjudication Section.

[FR Doc. 88-15263 Filed 7-6-88; 8:45 am]

BILLING CODE 4310-FB-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-293, -294, and -295 (Preliminary) and 731-TA-412 Through -419 (Preliminary)]

Industrial Belts From Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of the following preliminary countervailing duty investigations under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of industrial belts¹ that are alleged to be subsidized by the Governments of, and imported from—Israel (investigation No. 701-TA-293 (Preliminary)).

Singapore (investigation No. 701-TA-294 (Preliminary)), and South Korea (investigation No. 701-TA-295 (Preliminary)).

The Commission hereby also gives notice of the institution of preliminary antidumping investigations under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of industrial belts that are alleged to be sold in the United States at less than fair value, that are imported from—

¹ For the purposes of these investigations, the term "industrial belts" includes belting and belts for machinery, in part or wholly of rubber or plastics, provided for in items 358.02, 358.05, 358.08, 358.09, 358.11, 358.14, 358.16, 657.25, and 773.35 of the Tariff Schedules of the United States. Specifically excluded from the scope of these investigations are imports of conveyor belts and imports of automotive belts. (Automotive belts include belts for such motor vehicles as cars, buses, on-the-road trucks, etc., and also the front-end engine drive belts for industrial vehicles such as road graders and cranes; automotive belts do not include any belts for agricultural equipment).

Israel (investigation No. 731-TA-412 (Preliminary)).

Italy (investigation No. 731-TA-413 (Preliminary)).

Japan (investigation No. 731-TA-414 (Preliminary)).

Singapore (investigation No. 731-TA-415 (Preliminary)).

South Korea (investigation No. 731-TA-416 (Preliminary)).

Taiwan (investigation No. 731-TA-417 (Preliminary)).

The United Kingdom (investigation No. 731-TA-418 (Preliminary)), and West Germany (investigation No. 731-TA-419 (Preliminary)).

As provided in sections 703(a) and 733(a), respectively, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by August 15, 1988.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-252-1183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 30, 1988, by The Gates Rubber Co., Denver, CO.

Participation in the Investigations

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late

entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 22, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Bonnie Noreen (202-252-1183) not later than July 19, 1988, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission by or before 12:00 noon on July 28, 1988, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential

submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 1, 1988.

[FR Doc. 88-15233 Filed 7-6-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

(Docket No. AB-167 (Sub-No. 1068X))

Consolidated Rail Corp.—Exemption—Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 23.95-mile line of railroad between milepost 66.05 at Cadiz Junction, Harrison County, OH, and milepost 90.0 in Dennison, Tuscarawas County, OH.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 6, 1988, unless stayed pending reconsideration. Petitions to stay

regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 17, 1988 and petitions for reconsideration,³ including environmental, energy, and public use concerns, must be filed by July 27, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles E. Mechem, Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103-2950.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by July 12, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 28, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-18159 Filed 7-6-88; 8:45 am]

BILLING CODE 7535-01-M

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

² See *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164, served December 21, 1967, and final rules published in the *Federal Register* on December 22, 1967 (52 FR 40440-40446).

³ Several comments opposed to the proposed abandonment already have been filed. They and any other comments and petitions for reconsideration or stay filed by the July 17, 1988 and July 27, 1988 due dates will be addressed by the Commission in a subsequent decision(s).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303(a).

DATE: Requests for copies must be received in writing on or before August 22, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or

a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1-AFU-87-24). Expense and Performance Reports from the Air Force medical program.
2. Department of the Air Force (N1-AFU-87-34). Records relating to air terminal configurations, procedures, and obstacles (records are used as input to permanent publications).
3. Department of the Air Force (N1-AFU-88-36). Records relating to the administration of postal accounts.
4. Department of the Air Force (N1-AFU-88-37 and N1-AFU-88-38). Records relating to the proper handling of classified information.
5. Department of the Air Force (N1-AFU-88-40). Health, outpatient, and psychiatric clinic index cards.
6. Department of the Army, Environmental Support Group (N1-AU-88-4). Output data and reports produced from automated Battalion Tracking and Vietnam Experience files (both automated files are permanent).
7. Department of Defense, Office of the Secretary (N1-330-88-3). Uniformed Services University of the Health Sciences student record files.
8. Defense Intelligence Agency (N1-373-88-4). Routine logistics and engineering files relating to the Defense Intelligence Analysis Center.
9. Department of the Navy (N1-NU-88-4). A comprehensive schedule of all aspects of Navy and Marine Corps logistical operations. Included are 40 permanent items.
10. Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement

(N1-436-88-2). Agent cashier fund and informant contracts, electronic surveillance reports and recordings.

11. Department of Commerce, International Trade Administration (N1-151-88-9). Temporary photographic material removed during archival processing from permanent photographic records relating to trade fairs.

12. Department of Commerce, International Trade Administration (N1-151-88-11). Records of the Information Resources Policy and Planning Division.

13. Office of the Comptroller of the Currency (N1-101-88-4). Annual oaths of national bank directors.

14. Federal Emergency Management Agency (N1-311-88-1). Computerized Activities Results Lists submitted by the states.

15. Federal Energy Regulatory Commission (N1-138-88-2). Comprehensive records disposition schedule.

16. Department of Health and Human Services, Family Support Administration, Office of Community Services, Federal Task Force on the Homeless (N1-292-88-1). Routine administrative records.

17. Department of Justice, Drug Enforcement Administration (N1-170-88-1). Special agent career management files.

18. National Archives and Records Administration (N1-64-87-2). Working papers and other documentation of the FBI Appraisal Project Task Force, 1981-87. (The Final Report and other selected records are designated for permanent retention.)

19. National Security Agency (N1-457-88-5). NSA schedules are classified in the interest of national security pursuant to Executive Order 12356 and are further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and Pub. L. 86-36.

20. Panama Canal Commission (N1-185-88-4). Routine administrative correspondence of the Washington Office, 1950-74.

21. Small Business Administration (N1-309-87-2). Comprehensive schedule covering all electronic information systems.

22. Department of State, Bureau for Management, Office of Management Operations (N1-59-88-21). Manpower utilization progress reports.

23. Department of the Treasury, Office of the Secretary (N1-56-88-6). Exchange Stabilization Fund operations and administrative files.

24. Department of the Treasury, Internal Revenue Service (N1-58-88-2). Revisions to RCS 102, Assistant

Commissioner (Examination—National Office).

Dated: June 30, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88-15224 Filed 7-6-88; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Maui, Hawaii Aircraft Accident

In connection with its investigation of the accident involving Aloha Airlines Flight 243, N73711, on April 28, 1988, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on July 12, 1988, in the Grand Ballroom III of the Westin Hotel, 1900 5th Avenue, Seattle, Washington. For more information contact Mike Benson, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382-6607.

Ben Handeisy,

Federal Register Liaison Officer.

July 1, 1988.

[FR Doc. 88-15283 Filed 7-6-88; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

(Docket No. 50-361)

Carolina Power & Light Co. et al., and Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from the requirements of 10 CFR 20.103(c)(2), regarding the administration of physical examinations for users of respiratory equipment, to the Carolina Power & Light Company (CP&L or the licensee), for the Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would permit the licensee to administer physical examinations for users of respiratory equipment at an interval of every 9 to 15 months, as opposed to the 12-month interval required by 10 CFR 20.103(c)(2). These examinations verify the physical capability of individuals to use respiratory protective equipment in an environment containing airborne radioactive material.

The Need for the Proposed Action

Currently, the licensee schedules physical examinations every 8 to 12 months to assure compliance with the 12-month requirement. Consequently, there are calendar years in which two examinations are scheduled. Because of the number of licensee employees requiring examinations, a two-month period (e.g. June 1 to July 31) is set aside for the administration of all physical examinations. To assure compliance with the 12-month requirement, all examinations in the following year must be completed before June 1. Approval of this proposed exemption would provide greater flexibility in scheduling of examinations and preclude the need for administration of two examinations in the same calendar year.

Environmental Impacts of the Proposed Action

We have evaluated the environmental impacts related to granting the requested exemption. The administration of physical examinations for users of emergency respiratory equipment on the schedule proposed by the licensee will not, in any way, reduce the integrity of any safety system. Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed schedule for physical examinations otherwise affect radiological plant effluents, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves the use of systems located entirely within the restricted area, as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the

Robinson Steam Electric Plant, Unit No. 2, operations and would not enhance the protection of the environment.

Alternative Use of Resources

This action would involve no use of resources not previously considered in the Final Environmental Statement (operating license) for the Robinson Steam Electric Plant, Unit No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated January 30, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29353.

Dated at Rockville, Maryland, this 29th day of June, 1988.

For The Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Director II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-15243 Filed 7-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

Georgia Power Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Technical Specification (TS) 3.6.2.2, "Spray Additive System," to the Georgia Power Company, et al. (the licensee) for the Vogtle Electric Generating Plant, Unit 1 located on the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

By letter dated February 4, 1988, the licensee, submitted a request for a change of TS 3.6.2.2 which defines the upper and lower volume limits of the sodium hydroxide solution in the containment spray additive tank. The

proposed change alters the percentage of level span corresponding to the lower limit from 87.7 percent to 89.9 percent and that corresponding to the upper limit from 97.4 percent to 97.2 percent. Also, the bases for TS 3.6.2.2 are revised to specify the limiting volumes of sodium hydroxide delivered to the containment spray pumps in gallons rather than in the percentages of level span of the spray additive tank.

The Need for the Proposed Action

The proposed amendment is required to correct a discrepancy in the Technical Specifications.

Environmental Impacts of the Proposed Action

With respect to the amendment, the volume limits of the spray additive tank correspond to the amount of the sodium hydroxide solution required to be delivered to the containment spray pumps. Also, the specified minimum value of 8.5 pH for the post-accident containment sump water will still be met with this amendment. Accordingly, the amendment will not increase the probability or consequences of any reactor accident sequence and will not otherwise affect any other radiological impact associated with the facility. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative to this amendment will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of the Vogtle Electric

Generating Plant, Units 1 and 2" dated May 1985.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the amendment dated February 4, 1988, which is available for public inspection at the Commission's Document Room, 1717 H Street, NW., Washington, DC, and at the Burke County Library, 412 4th Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 30th day of June 1988.

For The Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Project I/II, Office of the Nuclear Reactor Regulation.

[FR Doc. 88-15244 Filed 7-6-88; 8:45 am]

BILLING CODE 7590-01-M

Intent To Relocate Records for the Millstone Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to relocate the records for the Millstone Nuclear Power Station.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is moving the Local Public Document Room (LPDR) records collection for Northeast Nuclear Energy Company's Millstone Nuclear Power Station from the Waterford Public Library, Waterford, Connecticut, to an as yet undetermined location. The Board of Trustees of the Waterford Public Library has asked that the collection be relocated. The purpose of this notice is to invite public comment on possible LPDR sites.

DATE: Comment period expires August 5, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to Ms. Juanita Beeson, Chief,

Rules Review and Editorial Section, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Ms. Jona L. Souder, Local Public Document Room Program Director, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-7538, or Toll Free 800-638-8081.

SUPPLEMENTARY INFORMATION: Since August 1971, the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut, has served as the NRC Local Public Document Room repository for records relating to the Millstone Nuclear Power Station. The document collection includes essentially all publicly-available records considered by the NRC in the licensing and regulation of the Millstone Nuclear Power Station. At the present time, the collection takes up approximately 150 linear feet of shelf space in addition to some microfiche and microfiche equipment.

Among the factors the NRC will consider in selecting a new location for the collection are the following:

- (1) Whether the institution is an established document repository located within 50 miles of the nuclear facility with a history of impartially serving the public;
- (2) The physical facilities available, including shelf space, patron workspace, and copying equipment;
- (3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;
- (4) The nature and extent of related research resources, such as government documents;
- (5) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours;
- (6) The proximity (within 50 miles) of the library to the Millstone Nuclear Power Station located approximately five miles southwest of New London, Connecticut; and
- (7) The proximity of the library to existing user groups of the collection, if known.

Public comments are requested on libraries in the vicinity of the Millstone Nuclear Power Station that might be considered for selection as the new location for this NRC local public document room collection.

Dated at Bethesda, Maryland, this 30th day of June 1988.

For the Nuclear Regulatory Commission.

Linda Robinson,

Chief, Freedom of Information/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88-15245 Filed 7-6-88; 8:45 am]

BILLING CODE 7590-01-M

All Chemical Isotope Enrichment, Inc.; Setting Time and Place of Special Prehearing Conference

Before Administrative Judges: Morton B. Margulies, Chairman, Dr. Emmeth A. Luebke, Dr. Oscar H. Paris.

In the matters of All Chemical Isotope Enrichment, Inc., (AICHE Facility-1 CPDF), Docket No. 50-603-CP/OL (ASLBP No. 88-570-01-CP/OL), and All Chemical Isotope Enrichment, Inc., (AICHE Facility-2 Oliver Springs), Docket No. 50-604-CP (ASLBP No. 88-571-01-CP).

The special prehearing order scheduled to begin on July 21, 1988, pursuant to 10 CFR 2.751(a), will commence at 9:30 a.m. local time on that date at the University of Tennessee, College of Law Moot Courtroom, 1505 West Cumberland Avenue, Knoxville, Tennessee. Should it be necessary, the conference will continue to the following day, at the same location.

It is so ordered.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 88-15246 Filed 7-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; H. B. Robinson Steam Electric Plant, Unit No. 2; Exemption

I.

The Carolina Power & Light Company (CP&L or the licensee) is the holder of Operating License No. DPR-23 that authorizes operation of the H. B. Robinson Steam Electric Plant, Unit No. 2. The license provides, among other things, that the H. B. Robinson Steam Electric Plant, Unit No. 2, is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is a single-unit pressurized water reactor at the licensee's site

located in Darlington County, South Carolina.

II.

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.J, is the subject of the licensee's exemption request.

Section III.J, of Appendix R to 10 CFR Part 50, Emergency Lighting, requires 8-hour battery powered lighting units in areas needed for operation of safe shutdown equipment and along access and egress routes thereto.

III.

By letters dated June 29, 1984, and January 18, 1985, CP&L requested approval of exemption from the technical requirements of section III.J of Appendix R to 10 CFR Part 50 concerning the need for 8-hour battery powered lighting units in areas needed for operation of safe shutdown equipment and along access routes. The exemption request relates to the access routes to the safety injection pump room and the service water intake structure. The licensee also requested an exemption for the containment and residual heat removal (RHR) pit areas where manual, cold shutdown operations are required and/or where possible repairs may be needed. The staff's evaluation of the licensee's request is provided below.

The reason for requiring 8-hour battery powered emergency lighting is to ensure that at least minimal lighting is available for the performance of manual actions necessary for safe shutdown after a fire. Usually manual actions are required for valve alignment, repairs and pump control operations. A fire at the north end of the auxiliary building hallway on the ground level would prevent access to the SI-864 A and B valves in the safety injection pump room. Also, manual operation of service water valve V6-12D, located at the intake structure, would require emergency lighting. The licensee has stated that due to the numerous alternate access pathways, a large number of fixed emergency lighting units would have to be installed, and the routing of associated cabling to provide

BEST COPY AVAILABLE

the necessary electrical power for redundant lighting is not practicable.

In the areas where lighting units would not be installed, dedicated portable, hand-held lighting would be provided for the operator to perform the necessary functions. The licensee justifies this approach on the basis that the availability of dedicated portable hand-held lighting provides a level of emergency lighting equivalent to that required by section III.J for the above areas.

The technical requirements of section III.J of Appendix R are not expressly met at the intake structure and along the access route to the safety injection pump room because fixed, individual 8-hour battery powered lighting units are not provided for safe shutdown.

At the north end of the auxiliary building, the staff was concerned about the availability of a reliable means of illumination and whether the path of travel would be unobstructed and easily traversed. The alternate access route to the safety injection pump room follows the exterior of the auxiliary building along the east and north sides of the safety injection pump room exterior door. Portable hand-held lighting will be provided for operator access to the safety injection pump room. Permanent emergency lighting is provided inside the safety injection pump room to operate the required equipment. Portable lights will be provided in the control room for performing the required functions at the service water intake structure. These portable lights will provide adequate illumination for the operators to access the intake structure and operate valve V6-12D.

Since the only manual actions required inside the containment and RHR pit are for the operation of valves for cold shutdown, sufficient time is available for the licensee to take appropriate action to re-energize the normal containment lighting or assemble portable lighting units prior to containment entry.

Based on the above evaluation of alternate access routes and provision for portable, hand-held lighting, the staff concludes that adequate lighting will be available in access areas and to perform necessary safe shutdown functions. Therefore, the licensee's request for exemptions from the requirements of section III.J of Appendix R for certain paths to the safety injection pump room is acceptable and should be granted. Furthermore, the staff concludes that the installation of 8-hour battery powered emergency lighting units inside the containment would not significantly improve the level of fire protection for this fire area. The licensee has sufficient

time available to take appropriate action to re-energize the normal containment lighting or to assemble portable lighting units prior to containment entry. Therefore, their omission is an acceptable exemption from section III.J of Appendix R, and application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), that (1) these exemptions as described in section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.J of Appendix R to 10 CFR Part 50:

1. Access and egress routes to the:
 - a. Safety injection pump room; and
 - b. Service water intake structure.
2. Containment and RHR pit areas where manual, cold shutdown operations are required and/or where possible repairs may be needed.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (52 FR 29103).

For further details with respect to this action, see the requests for exemption dated June 29, 1984, and January 16, 1985, and letter dated January 29, 1988 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

This exemption is effect upon issuance.

Dated at Rockville, Maryland, this 30th day of June, 1988.

For the Nuclear Regulatory Commission,
Steven A. Varga,
Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.
[FR Doc. 88-15247 Filed 7-6-88; 8:45 am]
BILLING CODE 7550-01-41

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Office: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

EXTENSION

File No.	Form/regulation
270-51	Form 10
270-58	Form S-1
270-60	Form S-2
270-61	Form S-3
270-63	Form S-8
270-64	Form S-11
270-137	Regulation 13D/G, Schedule 13D/ Schedule 13G.
270-68	Form 8-B.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following regulation/forms: Form 10 effecting 170 respondents at 113 burden hours per form; Form S-1 effecting 1442 respondents at 1284 burden hours each; Form S-2 effecting 334 respondents at 587 burden hours each; Form S-3 effecting 1730 respondents at 419 burden hours each; Form S-8 effecting 2482 respondents at 90 burden hours each; Form S-11 effecting 359 respondents at 860 burden hours per response; Forms 13D and G effecting 6536 respondents at 14.9 hours per response; and Form 8-B effecting 59 respondents at 8 hours per response. All of these forms, except Regulation 13D/G, are registration statements for public offerings. Forms 13D and G disclose beneficial ownership of securities exceeding five percent.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Robert Neal at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-8004, and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228

New Executive Office Building,
Washington, DC 20503.

June 30, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-15266 Filed 7-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25873; File No. SR-Amex-88-19]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of and Order Granting Accelerated Approval to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,¹ the American Stock Exchange, Inc. ("Amex" or "Exchange"), on June 30, 1988, submitted to the Securities and Exchange Commission ("Commission") a proposed rule change to extend until December 31, 1988 the pilot plan for equity (stock) options during emergency or unusual market conditions.

In November 1985, the Amex implemented a pilot program to be used during short periods of extremely high order flow for the execution of options orders automatically routed to the Exchange through the Amex's routing system, AUTOAMOS.² Under the pilot program, the implementation of emergency procedures could be authorized by the concurrence of two Floor Governors when, in their opinion, the Exchange received an extremely large influx of both system and non-system orders, such that the affected specialist(s) could not expose each AUTOAMOS order to the crowd. Under these circumstances, the specialist in the affected option was permitted to execute incoming AUTOAMOS orders either as agent against the book or as principal, without exposing them to the crowd.

In January 1987, the pilot plan for equity options was extended and enhanced by the utilization of AUTO-EX.³ AUTO-EX is an automatic system that permits member firms to route public customer market and marketable limit orders of up to 20 contracts⁴

through AUTOAMOS for automatic execution at the best bid or offer displayed at the time the order is entered into the system. If the best bid or offer is on the specialist's book, the incoming order is routed to the specialist's post, where it is executed against the book order. If the best bid or offer is not on the specialist's book, the contra side of the AUTO-EX trade is assigned to one of the Amex Registered Options Traders ("ROTs") who have signed on the system or to the specialist who participates in the rotation.

AUTO-EX is implemented when two floor officials have determined that an emergency situation involving high order flow is occurring. The AUTO-EX pilot plan for equity options has been highly successful in enhancing execution and operational efficiencies during emergency situations. The Amex believes that it is important to continue to have available the most efficient means of dealing with emergency, high volume situations. Accordingly, the Exchange proposes to extend the AUTO-EX pilot program pending Commission approval of Amex's proposal seeking permanent approval of AUTO-EX's use in all equity options,⁵ so that it can continue to be activated in equity options when emergency situations occur.⁷

The Commission believes that the proposed rule change will benefit public customers, member firms, and Amex floor brokers by ensuring that orders routed to the Exchange through AUTOAMOS will be handled efficiently during periods of peak volume. By utilizing the AUTO-EX system during these periods, AMEX ROTs who elect to participate in the pilot will be able to participate more fully in trading during fast markets. In addition, the proposed procedures should allow Amex specialists more time to handle non-system orders during these periods.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6⁸ and the rules and regulations thereunder. The Commission believes that extending the AUTO-EX pilot plan will enhance the execution of orders during emergency situations and will facilitate

transactions in securities and protect the investing public.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the Federal Register. Accelerated approval of the Exchange's rule change is necessary in order to ensure continuous operation of the pilot program, which is due to expire on June 30, 1988. In addition, the Amex has not proposed any modifications to the pilot program.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change is approved until December 31, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Dated: June 30, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-15267 Filed 7-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25884; File No. SR-DTC-88-8]

Self-Regulatory Organizations; Depository Trust Company; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),

¹ 15 U.S.C. 78b(b)(2) (1982).

¹⁰ 17 CFR 200.30-3(a) (1987).

¹⁵ U.S.C. 78b(b)(1) (1982).

¹⁷ CFR 240.19b-4 (1987).

² This pilot was approved by the Commission in Securities Exchange Act Release No. 22447 (September 24, 1985), 50 FR 40093.

³ See Securities Exchange Act Release No. 24228 (March 18, 1987), 52 FR 9801.

⁴ The Amex's proposal to increase the size of eligible orders in the AUTO-EX system from 10 to 20 contracts was approved in Securities Exchange Act Release No. 24899 (September 10, 1987), 52 FR 35012.

⁵ See Securities Exchange Act Release No. 25056 (October 23, 1987).

⁷ The Commission extended the pilot program through June 30, 1988 in Securities Exchange Act Release No. 25487 (March 18, 1988).

⁸ 15 U.S.C. 78f (1982).

notice is hereby given that on June 8, 1988, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The proposal modifies DTC's Same-Day Funds Settlement ("SDFS") Service procedures regarding the crediting of dividend, interest and periodic principal payments to SDFS participants. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

The proposal modifies SDFS Service practices and procedures to allocate to participants all dividend, interest and periodic principal payments on SDFS securities in next-day funds on payable date. In addition, a separate monthly refund will be made to participants consisting of all investment earnings realized by DTC as a result of receiving same-day funds on payable date from paying agents for SDFS securities.

The SDFS Service currently provides for pass-through of dividends, interest and periodic principal payments to participants in same-day funds on the day received by DTC from the paying agent. However, in order to be passed along to SDFS Participants in same-day funds on the day received, these funds must be sent in a prescribed format to DTC's account at the Federal Reserve Bank of New York by 2:45 p.m. EST. This special requirement has resulted in operating difficulties for paying agents and DTC. Some paying agents have expressed to DTC concerns about exception processing. Many have indicated to DTC that DTC's requirements for the receipt of SDFS payments will be impossible to meet once higher payment volumes are reached, including the 2:45 p.m. EST cutoff time, a requirement DTC views as essential if timely settlement with its Participants is to occur in same-day funds. For reasons ranging from the timing of paying agent funding to geographic location, DTC states that its success in obtaining timely SDFS payments has been marginal.

DTC, to address these problems, has decided to process these payments in the same way they are processed in the Next-Day Funds Settlement ("NDFS") System by automatically allocating all dividend, interest and periodic principal payments on payable date in next-day funds. This arrangement will allow paying agents to make payment to DTC on payable date in same-day funds using existing NDFS arrangements. The funds will be invested by DTC until the following business day with earnings accumulated in a separate refund

account to be distributed monthly to those participants that received dividend, interest and periodic principal credits in SDFS securities. Similar to DTC's NDFS refund policy, refund reductions (haircuts) will be applied to any SDFS Participant who is (or is affiliated with) a paying agent that failed to provide same-day funds to DTC on the payable date. This haircut will be equal to the interest cost incurred by DTC to fund credits to Participants for any payments due from this paying agent which were not received on the payable date.

DTC will apply the next-day funds eligibility standard for dividend, interest and periodic principal payments for same-day funds issues. This standard requires that the agent must pay DTC on payable date in same-day funds in all of the issues for which it acts if it wishes to be certain that DTC will make eligible a new issue for which the agent is to act as paying agent.

The proposal will not affect DTC's existing procedures for paying reorganization, redemption and maturity proceeds on SDFS securities. These payments will continue to be allocated to Participants in same-day funds through the SDFS settlement system when collected.

DTC states that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended ("Act"), in that it promotes the prompt and accurate clearance and settlement of transactions in securities that settle in same-day funds. DTC states that the proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC

20549. Reference should be made to File No. SR-DTC-88-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room 450 Fifth Street NW., Washington, DC. Copies of the filing (SR-DTC-88-8) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: June 30, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-15268 Filed 7-6-88; 8:45 am]

BILLING CODE 8010-27-38

(Release No. 34-25871; File No. SR-NADS-88-12)

**Self-Regulatory Organizations;
Proposed Rule Change by National
Association of Securities Dealers, Inc.
Relating to Government Securities
Activities of Member Firms**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 Act ("Act"), 15 U.S.C. 78s(9b)(1), notice is hereby given that on April 5, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The proposed rule change amends the NADS By-Laws and the Rules of Fair Practice to implement the provisions of the Government Securities Act of 1986 ("GSA"), and provides rules governing the government securities activities of NASD members.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the NASD included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

The proposed amendments to the By-Laws and Rules of Fair Practice and new government securities rules are designed to provide the NASD with the ability to carry out its responsibilities under the Act, as amended by the GAS.

The amendments to the By-Laws incorporate into existing By-Laws provisions appropriate references to government securities brokers and dealers or to the rules promulgated by the Department of the Treasury pursuant to section 15c(b) of the Act.

Substantive changes to the By-Laws include a new section 8 to Article VII that allows the Board of Governors to adopt government securities rules subject to member vote and a new section 6 of Article XVI that applies to limitations of powers. New section 6 states that the By-Laws provisions governing qualifications of members and conferring rulemaking authority upon the NASD shall not be inconsistent with section 15A(f) of the Act. This provision is similar to an existing provision in the By-Laws relating to municipal securities brokers and dealers. The amendments also contain changes to Article II, Section 4 of the By-Laws that defines the term "disqualification" in a manner similar to the definition of "statutory disqualification" set forth in section 3(a)(39) of the Act.¹ These changes are intended to incorporate into the By-Laws language added to section 3(a)(39) of the Act by the GSA.

The proposed amendments to Schedule C to the By-Laws add a new Part X. This section defines government securities principals and

representatives. It also requires registration of government securities principals and representatives and exempts from registration persons serving in an exclusively clerical or ministerial capacity. The definitions of the categories of individuals required to be registered either as principals or representatives track the provisions of § 400.3(c) of the Treasury regulations. Such registration is required to provide the NASD with the information needed to make a determination of potential statutory disqualification and identify a firm's principals for purposes of contact with and examination of the firm.

The amendment to Article I, section 5 of the Rules of Fair Practice is intended to clarify that the applicable Rules of Fair Practice do not apply to members that are registered with the SEC under section 15c as sole government securities brokers or dealers. The provisions of the Rules of Fair Practice will remain fully applicable to members registered under section 15(b) of the Act.

The remaining provisions of the proposed rule change are designated as "Government Securities Rules." These rules are substantially parallel to the NASD Rules of Fair Practice in areas in which the NASD believes that such rules are consistent with NASD obligations under the provisions of section 15A(f) of the Act.

The proposed rules include provisions relating to the maintenance of books and records, supervisory procedures, and regulation of the activities of members that are experiencing financial or operational difficulties or that are changing their exemptive status under the customer protection provisions applicable to government securities brokers and dealers. In addition, these rules contain a government securities advertising rule. The rules also provide the framework for the NASD to bring disciplinary actions pursuant to the NASD Code of Procedure.

The NASD has adopted the proposed rule change pursuant to section 15A(f)(2) of the Act. Section 15A(f)(2) provides the NASD with the authority to implement rules to: (1) Enforce compliance by registered brokers and dealers with applicable provisions of the Act; (2) provide for the disciplining of its members and persons associated with its members; (3) provide for reasonable inspection and examination of books and records of registered brokers and dealers; and (4) prohibit fraudulent, misleading, and deceptive and false advertising. The proposed rule change is designed to enable the NASD to carry out its statutory obligations in a manner consistent with the Act as amended by

the GSA, and the rules and regulations promulgated thereunder.

**B. Self-Regulatory Organization's
Statement on Burden on Competition**

The NASD believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

**C. Self-Regulatory Organization's
Statement on Comments on the
Proposed Rule Change Received from
Members, Participants, or Others**

The NASD solicited comments on the proposed rule change in Notices to Members 87-24 and 87-53. A total of six comments were received in response to Notice 87-24 and five in response to Notice 87-53. Copies of the Notices to Members and comment letters have been submitted to the Commission as Exhibit 2 to this filing. Commentators suggested a number of changes, which they believed would conform the proposed rule change to the purposes of the GSA and suggested that the number of proposed rule changes concerning advertising be reduced. The NASD Board of Governors considered the comments and made several changes to the proposals based upon such review. The NASD responded to the comments in its filing with the Commission.

**III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to

¹ The definition of "disqualification" encompassed in Article II, section 4 of the By-Laws does not fully conform to the definition found in section 3(a)(39) of the Act because it omits the enumerated offenses set forth in section 15(b)(4)(D) and (E) of the Act (See section 3(a)(39)(E)).

the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room at the above address. Copies of the filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-12 and should be submitted by July 28, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 30, 1988.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 88-15289 Filed 7-6-88; 8:45 am]

BILLING CODE 3010-01-M

[Release No. 34-25872; File No. SR-NYSE-88-7]

Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change

On March 24, 1988, the New York Stock Exchange ("NYSE"), filed a proposed rule change (File No. SR-NYSE-88-7) under section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ The proposal would amend the NYSE's *Listed Company Manual* to clarify its practice of listing debt securities represented by a global certificate. The Commission published notice of the proposal in the *Federal Register* on May 16, 1988.² For the reasons discussed below, the Commission is approving the proposal.

I. Description of the Proposal

The proposed rule change clarifies the NYSE's practice of listing debt securities represented by a global certificate. The proposal amends the *Listed Company Manual* to provide that bonds using a single global certificate may be listed if: (1) The certificate is on deposit at a depository registered with the Commission under section 17A of the Act or a depository which is exempt from such registration and which has been designated by the NYSE as acceptable for this purpose, (2) interests in the certificate may be transferred by book-entry on the books of a qualified or full-interfaced clearing agency (as defined by the NYSE in its rules) and (3) exchange trades of interests in the certificate may be compared through a

qualified or fully-interfaced clearing agency. Such global certificates will not be subject to the NYSE's content and engraving requirements normally required for bonds certificated in this manner.³

If the depository at any time is unwilling or unable to continue as depository for the certificate and a new depository is not appointed by the issuer within 90 days, the NYSE *Listed Company Manual* rules will require the issuer to issue certificates to banks and brokers with positions in that issue as well as requesting beneficial holders. Similarly, beneficial owners will be entitled to physical certificates if the issuer determines not to have the bonds represented by a global certificate.

II. NYSE's Rationale

The NYSE states that the proposed rule change is consistent with section 6(b)(5) of the Act in that the rules are designed to remove impediments to and perfect the mechanism of a free and open market. Currently, the *Listed Company Manual* specifications for the textual content and technical requirements of certificates neither prohibits nor provides for a global certificate book-entry system. In addition, NYSE engraving standards have been interpreted by the NYSE to apply only where the issuer intends to create individual certificates for its security holders. However, within the last year, the NYSE has listed a number of debt offerings utilizing global certificates. The NYSE has permitted these offerings to be listed by interpreting rules to encompass an issue represented by a global certificate. The proposal amends the NYSE rules specifically to provide for the listing of debt securities using a global certificate.

III. Discussion

For the reasons discussed below, the Commission is approving the proposal. The Commission believes the proposal is consistent with sections 6(b)(5) and 17A of the Act in that it is designed to remove impediments to and perfect the mechanism of a free and open market and will promote the prompt and accurate clearance and settlement of securities transactions.

³ The proposal, however, requires issuers to make available to bond holders upon request a statement containing certain provisions normally found on the face of the certificate. The statement must include: (1) Terms of payment of principal and interest, (2) a summary of optional and sinking fund redemption provisions, including redemption prices, (3) a summary of conversion provisions, including appropriate dates, initial conversion price and references to subsequent conversion prices, and (4) a summary of the bond holder's rights with respect to registration and interdenominational exchanges.

The Commission believes the proposal provides encouragement for the securities industry to continue to pursue the goal of the immobilization of securities certificates. A single global certificate covering an issue avoids the need for multiple securities certificates, and immobilizing the global certificate in a depository prevents the loss, theft or counterfeiting of those securities, increases clearance and settlement efficiency, and reduces costs associated with handling securities certificates.

IV. Conclusion

For the foregoing reasons, the Commission believes that the NYSE's proposal is consistent with the Act and sections 6(b)(5) and 17A in that it is designed to remove impediments to and perfect the mechanism of a free and open market and should promote the prompt and accurate clearance and settlement of securities transactions.

It is therefore ordered, pursuant to section 19(b) of the Act, the NYSE's proposed rule change (File No. SR-NYSE-88-7) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: June 30, 1988.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 88-15271 Filed 7-6-88; 8:45 am]

BILLING CODE 3010-01-M

[Release No. 34-25867; File No. SR-OCC-88-2]

Self-Regulatory Organizations; Proposed Rule Change by the Options Clearing Corp. Relating to Index Participations; Amendment No. 1

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78a(b)(1) (the "Act"), notice is hereby given that on June 3, 1988, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission an amendment to the proposed rule change described in Items I, II and III below,¹ which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ The Commission published notice of the proposed rule change in Securities Exchange Act Release No. 25529 (March 28, 1988), 53 FR 10960.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SR-OCC-88-2 proposes Rules pursuant to which OCC would issue, clear and settle "Index Participations" or "IPs." The initial SR-OCC-88-2 filing specific a few areas in which OCC was still evaluating amendments to its Rules to accommodate IPs. Those areas include OCC's authority to make adjustments in the terms of IPs, the margin system for IPs, and the close-out rules applicable to IPs in the event that a Clearing Member with open IP positions is suspended by OCC. This amendment to SR-OCC-88-2 supplies OCC's proposed Rules with respect to those areas, and makes certain additional changes as described below.

In the initial SR-OCC-88-2 filing, IPs were referred to as "Cash Index Participations" or "CIPs," these being the names given to the product by the Philadelphia Stock Exchange, Inc. ("PHLX") in its filing, SR-PHLX-88-7. The American Stock Exchange, Inc. ("Amex") has subsequently proposed in SR-Amex-88-10 to trade "Equity Index Participations" pursuant to rules similar to those proposed by PHLX for CIPs. The amendments proposed by OCC to its Rules are intended to permit OCC to issue, clear and settle both CIPs and Equity Index Participations, and OCC has changed the name for the products in its Rules to one that applies to all index participation securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. General

The purpose of this amendment to SR-OCC-88-2 is to supplement the initial SR-OCC-88-2 filing so that it provides a complete set of Rules for the issuance, clearance and settlement by OCC of IPs.

2. Adjustments

OCC has evaluated whether it should have authority to make adjustments in the terms of IPs, and has concluded that, with the one exception of a situation where an Exchange changes the index multiplier for a class of IPs, it should not have such authority. If an Exchange were to change the index multiplier for a class of IPs (as once occurred with a class of index options), OCC would need the authority to adjust the number of outstanding IPs. That authority is contained in Article XVIII, Section 6(c) of OCC's By-Laws.

Except for that one type of adjustment, there is nothing in the terms of IPs which could appropriately be adjusted by OCC (e.g., IPs have no exercise price). Proposed Article XVIII, Section 6 of OCC's By-Laws therefore expressly states that OCC shall not have any other adjustment authority with respect to IPs, and that OCC shall have no responsibility for any adjustment to the terms of IPs or an underlying index group made by an Exchange, reporting authority or index proprietor.

Article VI, Section 11(k) of OCC's By-Laws is amended to make clear that OCC's Securities Committee has the authority to make the type of adjustment described in Article XVIII, section 6(c) of OCC's By-Laws.

3. Margin System for IPs

Margin for IPs would be calculated utilizing OCC's present non-equity margin system. (The non-equity margin system is described in SR-OCC-85-21.) Rule 602A is therefore amended to refer to IPs as well as non-equity options.

As a technical matter, the "series" concept is irrelevant to IPs, because an IP does not have an exercise price or an expiration date. There is therefore no differentiation among IPs based on the same underlying index, and a "class group" as defined in Rule 602A will therefore have, at most, only one class of IPs in it. Rule 602A as amended would permit the net margining of a class group containing both index options and IPs.

Rule 602A as amended also extends the "product group" concept to IPs, so that a class group consisting of a class of IPs may be margined on a combined basis with class groups of index options, where OCC has determined that their respective underlying indexes exhibit sufficient price correlation to warrant such margin treatment.

Pursuant to OCC Rule 611, the filing of an instruction to release a long options position from segregation constitutes a representation by the Clearing Member to OCC that: (1) The customer has

authorized the instruction; (2) the instruction is in compliance with all applicable laws and regulations; and (3) the Clearing Member is carrying, in the same account and for the same customer, a short position for an equal number of option contracts of the same class of options and the margin required to be deposited by the customer with the Clearing Member in respect of the short position has been reduced as a result of the carrying of such long position. The third of these requirements would not apply to IPs since it is anticipated that IPs, unlike options, will have loan value for the purposes of Regulation T of the Federal Reserve Board.² As a result, IPs that constitute customer margin securities will be able to be pledged to secure obligations of the carrying broker to the same extent as common stock.

As with options, OCC will not have a lien on long positions carried in customers' accounts and firm non-lien accounts unless the long positions are unsegregated. As amended, OCC's Rules would provide that IP margin requirements for these accounts would be calculated in the same way that non-equity option margin requirements are calculated. In particular, segregated long IPs positions would not be offset against short positions in the same class of IPs, and would be assigned no value for margin calculation purposes. In addition, in calculating product group margin, a premium margin credit for an IP class group within the product group would be reduced to zero, and, in calculating margin for the account as a whole, margin credits for IP class groups that are not part of product groups would be reduced to zero.

4. Pledge

Rule 614 is amended to extend OCC's Pledge Program to IPs. With one exception, the Pledge Program would work for IPs exactly as it does for options, and allow Clearing Members to finance their positions by pledging long IPs as collateral to support loans from banks or other Clearing Members. The one exception is that IPs held by a Clearing Member in a customers' account that are unsegregated pursuant to Rule 611 as described above and that constitute "margin securities" other than

² PHLX has sought an interpretation to this effect from the Board by letter addressed to Laura Homer, Esq. dated February 3, 1988. It is OCC's understanding the PHLX does not intend to go forward with the introduction of CIPs unless the Board issues such an interpretation, and that Amex intends to seek a similar interpretation from the Board for Equity Index Participations. Without such an interpretation from the Board, representation (2) as set forth in the text above could not be made.

"excess margin securities" within the meaning of Commission Rule 15c3-3 could also be pledged by the Clearing Member.³

An amended form of OCC's existing Pledge Account Agreement is included with the rule filing. The only amendments to the form other than to incorporate references to IPs are to add a reference to Commission Rule 15c3-3, and to reflect OCC's recent change of address.

5. Close-Out Rules

Chapter 11 of OCC's Rules is being further amended to accommodate IPs. The proposed amendments to Rules 1103 and 1104 set forth in the initial SR-OCC-88-2 filing are deleted, because the definition of "IP" in Article I, Section 1(hhhh) of OCC's By-Laws is amended to make clear that the term "contract" refers to IPs as well as options. References to Pledged IPs are added to Rule 1105(f).

Rule 1106(a) is further amended to make language added to the Rule in SR-OCC-88-5 accommodate IPs.

Rule 1106(b) is amended to accommodate uncovered and covered short IP positions of suspended Clearing Member.⁴ The amended Rule provides that uncovered short IP positions, like uncovered short option positions, are to be closed out. The treatment of covered IP short positions in the Rule is similar to that of covered short option positions, in that they are to be maintained subject to the instructions of the suspended Clearing Member or its trustee. However, because IPs by their terms never expire, Rule 1106(b) provides that OCC may close out a covered short IP position, drawing upon the escrow deposit for the funds to do so, if OCC requests instructions from the suspended Clearing Member or its representative as to the disposition of the position and does not receive such instructions within a reasonable period of time, if the escrow deposit ceases to comply with Rule 1909, if the depository defaults (e.g., in the payment of a dividend equivalent), or if OCC deems it necessary for its protection to close out the position without first seeking instructions from the suspended Clearing Member or its representative.

³ The ability to pledge customer IPs would derive from the fact that IPs, unlike options, would have loan value under Regulation T. See footnote 1 above and the text accompanying.

⁴ OCC has designated new Rule 1909 as the Rule that will set out requirements for IP escrow receipts. However, these requirements are not specified in this filing. Until Rule 1909 is submitted to the Commission in a separate filing and becomes effective, there will be no "covered short IP positions," and the portions of Rule 1106(b) that address these positions will have no effect.

Rule 1106(b) is also amended to provide for the treatment of any dividend equivalents that may be owed in respect of short IP positions of a suspended Clearing Member. In the case of an uncovered position, the Rule provides for withdrawal of the dividend equivalent amount from the Liquidating Settlement Account or the Market-Maker's account or specialist's account. In the case of a covered position, the Rule provides that a demand may be made on the depository for the dividend equivalent amount.

The last sentence of Rule 1106(c) (which was amended in SR-OCC-88-5) is further amended because, as noted above in the discussion of the margin rules, the series concept does not apply to IPs.

OCC's close-out authority with respect to IPs as set forth in Chapter XI of its Rules and Rule 1908 is supplemented by its authority to close out all positions in a class of IPs in extraordinary circumstances, which is set forth in Article XVIII, Section 2(c) of its By-Laws. Section 2(c) as set forth in the initial SR-OCC-88-2 filing has been revised to state more precisely the circumstances in which the authority described in the Section would be utilized, and to shorten the time to actual close-out of the class in those circumstances.

6. Other Changes

The definition of "option contract" in Article I, Section 1(n) of OCC's By-Laws is amended to specify that the term "option" as used in Market-Maker's and specialist's account agreements includes IPs. This change obviates the need to amend the account agreements themselves to incorporate references to IPs, since the account agreements contain references to "options" but in all other ways are applicable to IPs without amendment, and the account agreements state that terms used therein have the definitions found in OCC's By-Laws as the same may be amended. The definition of "premium" in section 1(aa) is amended to make clear that the term as used with respect to IPs means the trade price. The definition of "Index Participation" in section 1(hhhh) is amended to make it parallel the definition of "option contract" more closely, and to make clear that an IP is a "contract." (IPs are referred to as contracts in Rules 1103 and 1104, as noted above, and in Rules 602, 605 and 1106.) The definition of "trade price" is moved from new Article XVIII to Article I, Section 1(iiii), and amended to conform to the amended definition of "premium."

The change proposed to Article V, section 1 of OCC's By-Laws in the initial SR-OCC-88-2 filing is deleted because, under Article XI, section 1 of OCC's By-Laws, a change to the second sentence of the Section requires the unanimous approval of the holders of all of OCC's common stock, and OCC has not yet obtained such approval. The effect of the deletion is that a Clearing Member cannot be an IP-only Clearing Member. OCC may refile this proposed change in a separate filing, after obtaining the necessary approval. The proposed amendment to Article VI, section 10(a), of OCC's By-Laws is deleted because it also may be amended only with the unanimous approval of the holders of all of OCC's common stock. A new section 10(c), to the same effect, is proposed instead.

The proposed amendments to Article VII of OCC's By-Laws are deleted because OCC now contemplates entering into a Supplemental Agreement to its Restated Participant Exchange Agreement with any Exchange that wants to trade IPs, rather than amending the Restated Participant Exchange Agreement itself. Amendment to Article VII is therefore unnecessary. OCC will file the form of the Supplemental Agreement with the Commission in the near future.

A definition of the term "minimum trading unit" is added in proposed new paragraph (n) of Article XVIII, Section 1 of OCC's By-Laws. IPs will be traded, at least initially, in minimum units of 100 on both Phlx and Amex, and all IP quantity data submitted to OCC or issued by OCC will be in terms of the number of minimum trading units, not the number of individual IPs. New Interpretations are added to Article XVIII, Section 1 to make these points explicit. Changes to reflect the minimum trading unit concept are made in several of the other proposed definitions and rule provisions applicable to IPs.

A new sentence is added to Article XVIII, Section 4 of OCC's By-Laws to state more precisely a Clearing Member's obligation with respect to a short IP position. The sentence is intended to track the last phrase of the definition of "securities contract" in section 741(7) of the Bankruptcy Code, 11 U.S.C. 741(7), and thereby to reflect OCC's understanding that the special provisions in the Code for securities clearing agencies with respect to securities contracts are available to it with respect to IPs as well as options.

A new paragraph is added to Article XVIII, Section 5 of OCC's By-Laws to describe OCC's rights in the event that a dividend equivalent is not timely paid.

Article XVIII, section 7(a) of OCC's By-Laws states the provision on exercise restrictions imposed by the Exchange contained in Article VI, section 17(a) in the initial SR-OCC-88-2 filing. The amendments to Article VI, section 17(b) proposed in the initial SR-OCC-88-2 are deleted because OCC does not need exercise restriction authority over IPs. OCC does need authority to suspend settlement of IP exercises when the cash-out value is unavailable to it. That authority is set forth in section 7(b) (Section 6(a) in the initial SR-OCC-88-2 filing). As revised, the Section reflects OCC's conclusion that, if the cash-out value is unavailable from the reporting authority, OCC is not going to be able to fix an aggregate cash-out value. (This is also true with respect to the current index value for index options, and OCC may in the future file a proposed rule change to conform Article XVII, section 4(a) of its By-Laws to this Section.)

New paragraphs are added to proposed Rule 1902 to make explicit that the Exchange is responsible for supplying the amount of the dividend equivalent to OCC, that OCC has no responsibilities with respect to the dividend equivalent except as stated in the Rule, and that IP positions established on the business day prior to an IP cash-out day are subject to dividend equivalent rights and obligations.

In new Rule 1903(d), late filing fees for IP exercise notices are specified. OCC has determined that these fees should parallel the fees for option exercise notices.

7. Statutory Basis for the Proposed Rule Change

The proposed changes to OCC's Rules are consistent with the purposes and requirements of section 17A of the Securities and Exchange Act of 1934, as amended (the "Act") because they provide for the prompt and accurate clearance and settlement of transactions in IPs. They do so by applying to IPs rules and procedures substantially similar to those that have been used in the clearance and settlement of transactions in index options. The proposed rule changes provide for the safeguarding of funds and securities in OCC's custody or control for which OCC is responsible, in that they would apply to IPs a system of safeguards which is substantially the same as the system OCC currently uses for options.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 29, 1988.

[FR Doc. 88-15272 Filed 7-6-88; 8:45 am]

BILLING CODE 8010-01-X

(Release No. 34-2588; File No. SR-PHLX-88-22)

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change

On June 27, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to expand and extend the Exchange's Automated Options Market ("AUTOM") system pilot program.

AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Phlx options trading floor, with electronic confirmation or order executions. Because all orders received through AUTOM are exposed to the specialist's limit order book, the trading crowd, and at least one registered options trader ("ROT"),³ the Exchange believes best execution of AUTOM orders is assured.

All orders entered into the system are executed manually by the specialist, who, upon execution of the order, enters the relevant trade information [e.g., the number of contracts executed, the price, and the identity of the contrabroker(s)] into the system. An execution report then is sent automatically to the firm that placed the order.

In its rule filing seeking implementation of the AUTOM system, the Phlx noted that the AUTOM system, including hardware as well as software, is completely separate from and independent of the hardware and software for Phlx's Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system for routing and executing stock orders. The Exchange stated that because the

¹ 15 U.S.C. 78a(b)(1) (1982).

² 17 CFR 240.19b-4 (1987).

³ Phlx Rule 1063(a) requires an Options Floor Broker to ascertain that at least one ROT is present at the trading post prior to representing an order for execution.

systems are independent, one system cannot have an adverse impact on the other during volume surges in terms of volume handling capabilities or queuing.⁴

In Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390, the Commission approved implementation of the AUTOM system on a 90-day pilot basis. The Commission approved the Exchange's request that the pilot include up to 12 equity options, up to five order entry firms, and up to six specialist units. During the pilot phase, only market orders of five or fewer contracts in the near-term expiration month were made eligible for delivery through the system for manual execution. At the same time, the Commission granted the Phlx authority to terminate the program prior to the 90th day and to extend the pilot beyond the 90th day upon notice and approval of the Commission.

The Exchange now seeks a six-month extension of the pilot period, as well as an expansion of the pilot to include an additional 25 equity options, bringing to 37 the total number of equity options eligible for execution through the AUTOM system. In all other respects, the Exchange commits to operating the pilot as represented in its original rule filing. The Phlx also requests authority to terminate the program prior to the end of the six-month pilot extension and to extend the pilot beyond this period upon due notice and approval of the Commission.

To date, contract volume executed through AUTOM has been minimal.⁵ The Exchange asserts that expanding and extending the AUTOM pilot will enable it to gain additional trading experience before making a final determination as to permanent approval of the AUTOM system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6⁶ and section

11A⁷ and the rules and regulations thereunder. The Commission continues to believe that the development and implementation of AUTOM will provide for more efficient handling and reporting of orders in Phlx equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission also believes that the AUTOM system, by offering increased order routing efficiencies, should benefit public customers and Phlx member firms and customers.

Expanding the AUTOM pilot to a total of 37 equity options and extending the pilot period for six months (*i.e.*, through December 31, 1988) should enable the Exchange to assess the effectiveness of the AUTOM system, which it was not able to do during the initial 90-day period. The Phlx believes that the AUTOM system will be able to handle the increased volume that should accompany expansion of the pilot to 37 equity options. As noted above, the AUTOM system is completely independent from the Exchange's PACE system. Therefore, neither AUTOM nor the PACE system should impact on the other during periods of high volume. Moreover, as note in the original order approving implementation of the AUTOM pilot,⁸ the Phlx asserts that the AUTOM system has significant excess order handling and disc capacity.⁹

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the *Federal Register*. The Exchange has not proposed extensive modifications of its pilot program, and needs approval of the pilot period extension prior to the termination of the original 90-day period on June 30, 1988 in order to maintain continuous operation of the AUTOM system pilot.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20540. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1988.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change is approved.¹¹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Dated: June 30, 1988.

Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 88-15273 Filed 7-6-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-18463; 811-4724]

National Balanced Fund; Application for Deregistration

June 30, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: National Balanced Fund ("Applicant").

Relevant 1940 Act Sections: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

¹⁰ 15 U.S.C. 78a(b)(2) (1982).

¹¹ The Commission expects that at the conclusion of the additional six-month pilot period, the Phlx will be able to evaluate the pilot and submit a rule change for final approval with any appropriate modifications, or that the Phlx will submit a rule change extending the pilot beyond the six-month period. The Phlx is authorized to terminate the program prior to the end of the six-month period upon due notice and approval by the Commission.

¹² 17 CFR 200.30-3(a)(12) (1987).

Filing Date: The application on Form N-8F was filed on March 10, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 25, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20540. Applicant, 605 Third Avenue, New York, New York 10158.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton, (202) 272-2856, or Special Counsel H.R. Hallock, Jr., (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Massachusetts Business Trust, is registered as an open-end diversified management investment company under the 1940 Act.

2. On June 27, 1986, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A. On the same date, Applicant filed a registration statement under the 1940 Act on Form N-1A which was declared effective on August 29, 1986.

3. On September 10, 1987, Applicant's Board of Trustees authorized the steps necessary to effect the sale of Applicant's assets upon determining that participation in the transaction was in the best interests of the Applicant's shareholders, and that the interest of the existing shareholders would not be diluted as a result of the transaction.

4. On November 12, 1987, Applicant entered into an Agreement of Sale with National Total Income Fund, under which all Applicant's assets and liabilities were sold and transferred to National Total Income Fund, an open-end fund, in exchange for shares of that fund.

5. As of February 12, 1988, Applicant had total assets of \$2,883,833.59.

6. On February 12, 1988, at a special shareholder meeting, Applicant's shareholders approved the sales of assets and transfer of liabilities to the national Total Income Fund.

7. As of the time of filing the application, Applicant had no shareholders, remaining assets, nor debts or other liabilities outstanding, was not a party to any litigation or administrative proceedings, and was not presently engaged in, nor intended to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file a Certificate of Dissolution as a Massachusetts Business Trust with the appropriate state authorities.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 88-15274 Filed 7-6-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-18462; 811-4408]

The Rokaand Fund, Inc.; Application for Deregistration

June 30, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Rokaand Fund, Inc. ("Applicant").

Relevant 1940 Act Sections: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N-8F was filed on October 13, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 25, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20540. Applicant, 1800 Avenue of the Stars, Suite 1425, Los Angeles, California 90067.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton, (202) 272-2856, or Special Counsel H.R. Hallock, Jr., (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Maryland corporation and open-end diversified, management investment company filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A, and a registration statement under the 1940 Act on Form N-1A on September 17, 1985. Its registration statement has been abandoned, and never became effective.

2. Applicant has never publicly offered any of its securities, never sold any securities of which it was the issuer, and does not propose to make a public offering or engage in business of any kind. Applicant has no shareholders, debts or liabilities as of the time of filing the application.

3. At the time of filing the application, Applicant had not transferred any assets to a separate entity within the previous 18 months, and had no assets.

4. As of the time of filing the application, Applicant was not a party to any litigation or administrative proceedings, and was not engaged in, nor intended to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 88-15275 Filed 7-6-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-18461; 811-4572]

Technical Price-Motion Fund; Application for Deregistration

June 30, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

⁴ Letter from Michael A. Finnegan, Senior Vice President, Phlx, to Howard L. Kramer, Assistant Director, Commission, dated March 22, 1988.

⁵ In this regard, the Exchange does not foresee any significant taxing of the Exchange's computer systems if the Commission approves the expansion of the pilot as proposed herein. In all other respects, the Exchange stands by its representations conveyed in letters to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, from Michael A. Finnegan, Senior Vice President, Phlx, dated March 22 and 30, 1988.

⁶ 15 U.S.C. 78f (1982).

⁷ 15 U.S.C. 78k-1 (1982).

⁸ 53 FR at 11390-91.

⁹ In particular, the Phlx informed the Commission that the AUTOM system's order handling and disc capacity was five times the estimated daily order flow for the original pilot, and that the AUTOM system capacity could be increased up to five times that capacity if needed. See letter from Michael A. Finnegan, Senior Vice President, Phlx, to Howard L. Kramer, Assistant Director, Division of Market Regulation, Commission, dated March 30, 1988. Based on the Exchange's experience to date under the pilot program, the Commission believes that increasing the number of equity options eligible for execution through the system from 12 to 37 should not impact adversely the ability of AUTOM to handle the necessary volume levels.

Applicant: Technical Price-Motion Fund ("Applicant").

Relevant 1940 Act Sections: Deregistration under Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N-8F was filed on May 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested persons may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 25, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 330 East 244th Street, Euclid, Ohio 44132.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton, (202) 272-2856, or Special Counsel H.R. Hallock, Jr., (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is organized as an open-end diversified, management investment company under the 1940 Act.

2. On January 10, 1988, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A, and a registration statement pursuant to section 8(b) on Form N-8B-1. Its registration statement never became effective, and on May 18, 1988, the SEC granted Applicant's request for withdrawal of its registration.

3. Applicant has never publicly offered any of its securities, and does not propose to make a public offering or engage in business of any kind. Applicant has no shareholders, debts or liabilities as of the time of filing the application.

4. Applicant has never transferred any assets to a separate entity and has no assets.

5. As of the time of filing the application, Applicant was not a party to any litigation or administrative proceedings, and was not engaged in, nor intended to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15276 Filed 7-6-88; 8:45 am]
BILLING CODE 8110-01-M

VETERANS ADMINISTRATION

Intent to Prepare Environmental Impact Statement

AGENCY: Veterans Administration.

ACTION: Notice of intent.

SUMMARY: The Veterans Administration (VA) intends to prepare an Environmental Impact Statement (EIS) on the proposed establishment of a new VA Medical Center (VAMC). This proposed VAMC would serve the area of East Central Florida.

ADDRESS: Individuals are invited to submit comments on this notice to: Susan Livingstone, Director of Environmental Affairs (088B4), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Jon E. Baer, Director, Landscape Architectural Service (088B4), at (202) 233-2922.

SUPPLEMENTARY INFORMATION: An EIS is required because the scope of the proposed project exceeds the VA threshold for an EIS established in 38 CFR Part 20, Environmental Effects of VA Actions. Therefore, in accordance with section 102 (2)(C) of the National Environmental Policy Act, the VA publishes this Notice of Intent pursuant to 40 CFR 1501.7.

The proposed VAMC, if ultimately approved as a project by the VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

Possible alternatives for the proposed VAMC have not been firmly identified but will depend upon demographic requirements, available sites, existing facilities if any, acquisition methods.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Participation in the scoping process is invited by individuals, private organization and local, state and Federal Agencies. Comments received will be used by the VA in its efforts to further identify and clarify significant environmental issues. Scoping meetings will be announced in local area newspapers for the project.

Dated: June 29, 1988.

Thomas K. Turnage,
Administrator.

[FR Doc. 88-15252 Filed 7-6-88; 8:45 am]
BILLING CODE 8330-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE & TIME: Tuesday, July 12, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, July 14, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Setting of Dates for Future Meetings.

Correction and Approval of Minutes. Eligibility Report for Candidates to Received Presidential Primary Matching Funds.

Draft AO 1988-27: Leigh Snell on behalf of MediVision, Inc.

Draft AO 1988-29: Joseph A. Rieser, Jr. on behalf of DNC Services Corp./Democratic National Committee ("DNC").

Status of Presidential Audits. Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-15368 Filed 7-5-88; 2:50 pm]

BILLING CODE 5715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 11, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 1, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15285 Filed 7-1-88; 4:51 pm]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION "FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 24399 June 28, 1988).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, June 23, 1988.

CHANGES IN THE MEETING: July 7, 1988 open meeting.

The following items previously scheduled for Thursday, July 7, 1988, at 10:00 a.m., will be discussed at 9:30 a.m.:

1. Consideration of a two-part recommendation from its Division of Market Regulation concerning predispense arbitration clauses in broker-dealers' agreements with their customers. First, the Commission will consider a recommendation that it propose an amendment to the Securities Exchange Act of 1934 that would prohibit a broker-dealer from conditioning investor access to brokerage services on the signing of a predispense arbitration agreement. The Commission will also consider whether to send a letter to each of the securities industry's self-regulatory organizations that currently operates an arbitration system requesting that they consider using their broad rulemaking authority to take independent action to effect the same result. For further information, please contact Robert A. Love at (202) 272-3084.

2. Consideration of whether to adopt proposed Rule 19c-4 which would add to the rules of national securities exchanges and national securities associations, a prohibition on an exchange listing, or an association authorizing for quotation and/or transaction reporting on an inter-dealer quotation system, the common stock or other equity security of a domestic issuer if the issuer issues securities or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of any common stock of such issuer registered under section 12 of the Securities Exchange Act of 1934. For further information, please contact Stephen Luparello at (202) 272-2891 or Sharon Itkin at (202) 272-2451.

In addition, the following items also previously scheduled for Thursday, July 7, 1988, at 10:00 a.m., will be discussed at 2:00 p.m.

1. Consideration of whether to adopt an amendment to Rule 2(e)(7) of the Commission's Rules of Practice to provide that Rule 2(e) proceedings shall be public unless the Commission, on its own motion or after consideration of the request of a party, otherwise directs. For further information, please contact Emily P. Gordy at (202) 272-2422.

2. Consideration of whether to authorize for publication (1) a release adopting amendments to Regulation S-X that would require accountants' reports included in Commission filings to be signed by an independent accountant who within the last three years has undergone a peer review of its accounting and auditing practice, and (2) a release publishing for comment proposals to specify procedures to be used to review an accountant's audit work pending the accountant's compliance with peer review requirements when the accountant first becomes subject to the requirement due to accepting a Commission registrant as a client or a current client becoming a Commission registrant. For further information, please contact John Heyman at (202) 272-2130.

3. Consideration of whether to issue for comment proposed rules to require that registrants include a report by management in Forms 10-K and annual reports to shareholders. The management report would acknowledge management's responsibilities for the financial statements and internal

control, discuss how these responsibilities were fulfilled and provide management's assessment of the effectiveness of the registrant's internal controls. The registrant's independent accountant would be associated with management's assessment of the effectiveness of internal controls through its existing responsibilities under generally accepted auditing standards. For further information, please contact John W. Albert, Office of the Chief Accountant, at (202) 272-2130 or Howard P. Hodges, Division of Corporation Finance at (202) 272-2553.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if

any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272-3195.

Jonathan G. Katz,
Secretary.
July 1, 1988.

[FR Doc. 88-15382 Filed 7-5-88; 2:08 am]
BILLING CODE 8010-01-M

UNITED STATES INSTITUTE OF PEACE
TIME AND DATE: 9:00 a.m.-5:00 p.m.,
Tuesday, July 12, 1988.

PLACE: American Chemical Society, 1155
Sixteenth Street NW., Washington, DC
20036.

STATUS: Open (portions may be closed
pursuant to subsection (c) of section
552(b) of title 5, United States Code, as

provided in subsection 1706(h)(3) of the
United States Institute of Peace Act,
Pub. L. 98-525).

Agenda (Tentative)

Meeting of the Board of Directors
convened. Chairman's Report.
President's Report. Committee Reports.
Consideration of the minutes of the
twenty-fourth meeting. Consideration of
grant application matters.

CONTACT: Mrs. Olympia Diniak.
Telephone: (202) 457-1700.

Dated: July 5, 1988.

Charles E. Nelson,
Vice President, United States Institute of
Peace.

[FR Doc. 88-15291 Filed 7-5-88; 9:50 am]

BILLING CODE 3150-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 18

Underground Mining Equipment; Product Testing By Applicant or Third Party

Correction

In rule document 88-13702 beginning on page 23486 in the issue of Wednesday, June 22, 1988, make the following corrections:

1. On page 23488, in the third column, in the second line from the bottom, insert "and" after "safety".

2. On page 23490, in the third column, under the heading *Section 7.4 Product Testing*, in the 12th line, "appropriated" should read "appropriate".

3. On page 23493, in the second column, in the first complete paragraph, in the 17th line, insert "to" after "added".

4. On page 23494, in the third column, under the heading for Subpart B, in the first paragraph, in the sixth line, "acceptable" should read "acceptance".

5. On the same page, in the same column, under the heading for Subpart B, in the second paragraph, in the second line, "ventilating" was misspelled.

6. On page 23495, in the first column, under the heading *Development of Small-Scale Test and Procedures*, in the second paragraph, in the seventh line, "Certification" was misspelled.

7. On page 23497, in the third column, in the first complete paragraph, in the 11th line, "hydrogen" was misspelled.

8. On page 23499, in the first column, in the fourth line from the bottom, "n" should read "in".

§ 7.2 [Corrected]

9. On page 23501, in the first column, in § 7.2, in the definition for *Technical requirements*, in the first line, "This" should read "The".

§ 7.4 [Corrected]

10. On page 23501, in the third column, in § 7.4(b), in the 10th line, "lease" should read "least".

§ 7.47 [Corrected]

11. On page 23505, in the second column, in § 7.47(a)(5), in the second line, "inch" should read "inches".

BILLING CODE 1505-01-D

Federal Register

Vol. 53, No. 130

Thursday, July 7, 1988

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 25

Multiple-Shot Blasting Units

Correction

In proposed rule document 88-13703 beginning on page 23506 in the issue of Wednesday, June 22, 1988, make the following corrections:

1. On page 23507, in the first column, in the first paragraph, in the eighth line, "have" should read "having".

2. On page 23508, in the third column, in the sixth line, "The" should read "This".

3. On page 23510, in the first column, in the first complete paragraph, in the 12th line, "or" should read "on".

4. On the same page, in the same column, in the fourth line from the bottom, "blasing" should read "blasting".

5. On page 23511, in the first column, in the third complete paragraph, in the third line, "blazing" should read "blasting".

6. On page 13513, in the first column, in the second complete paragraph, in the tenth line, "adopted" should read "adapted".

7. On the same page, in the third column, in the fifth line from the bottom, "undertake nor" should read "undertaken or".

PART 7—[CORRECTED]

8. On page 23514, in the second column, in the table of contents, "7.6" should read "7.61".

BILLING CODE 1505-01-D

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UMI

federal register

Thursday
July 7, 1988

Part II

Department of Defense
General Services
Administration

National Aeronautics and
Space Administration

48 CFR Part 15
Federal Acquisition Regulation (FAR);
Review of Subcontractors' Proposed
Contract Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 15

Federal Acquisition Regulation (FAR);
Review of Subcontractors' Proposed
Contract Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 15.804, 15.805, and 15.806, Table 15-2, concerning subcontract pricing policies and procedures to ensure that the government pay fair and reasonable prices for its needs.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 6, 1988.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 88-28 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering these changes as a result of increased management concern over subcontract pricing and to ensure that the Government pays fair and reasonable prices for its needs. The purpose of the changes is to clarify the roles of the Government and the contractor in this activity, to provide guidance on certain aspects of subcontract pricing, and to consolidate the requirements for ease of use. Subcontracts often account for more than 50 percent of a prime contract price. Therefore, scrutiny of these prices is essential to the proper pricing of Government contracts.

B. Regulatory Flexibility Act

The proposed rule does not appear to have a significant impact on a

substantial number of small entities because most prime contracts, as well as subcontracts, with small entities do not require the submission of cost or pricing data. Most awards to small entities at either level are on a competitive basis obviating the need for cost or pricing data. In those rare cases when a small entity does receive a noncompetitive prime contract or subcontract exceeding \$100,000, the basic requirements for submitting and obtaining cost or pricing data remain essentially unchanged. As noted earlier, the proposed rule simply consolidates existing coverage and amplifies instructions on how to implement the requirements. Comments, particularly from affected small entities, are invited. Comments are also invited concerning impacts on small entities from any other provisions of Subpart 15.8 of the FAR. These latter comments should be submitted under FAR Case 88-610 for identification purposes.

C. Paperwork Reduction Act

This proposed rule, although it impacts on data submission issues, does not change existing requirements. Requirements have been reorganized in the interest of clarity. Instructions have been amplified to ensure understanding with respect to subcontractor cost or pricing data requirements. Consequently, since there are no different paperwork requirements from the existing rule, OMB approval under 44 U.S.C. 3501, et seq. is not required.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: June 27, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 15 be amended as set forth below:

PART 15—CONTRACTING BY
NEGOTIATION

1. The authority citation for Part 15 continues to read as follows:

Authority: 40 U.S.C. 480(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.804-6 is amended by revising in paragraph (b)(2) the basic element of cost, "Material", in paragraph (1) of Table 15-2; by revising paragraph (g); and by removing paragraphs (h) and (i) to read as follows:

15.804-6 Procedural requirements.

TABLE 15-2—INSTRUCTIONS FOR
SUBMISSION OF A CONTRACT PRICING
PROPOSAL

Materials—Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown if priced based on cost. For all items proposed, identify the item and show the source, quantity, and price.

Competitive Methods—For those items/services priced on a competitive basis, also provide data showing degree of competition, and the basis for establishing the source and reasonableness of price. For interorganizational transfers priced at other than cost of the comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see 31.205-28(e)).

Established Catalog or Market Prices/Prices Set by Law or Regulation—When an exemption from the requirement to submit cost or pricing data is claimed, whether the item was produced by others or by the offeror, provide justification for the exemption as required by 15.804-3(e).

Noncompetitive Methods—For those items/services priced on a noncompetitive basis, also provide data showing the basis for establishing source and reasonableness of price. For interorganizational transfers priced at cost, provide a separate breakdown of cost by elements. As required by 15.806-2(a), provide a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order, or interorganizational transfer that is either: (i) \$1,000,000 or more, or (ii) both more than \$100,000 and more than 10 percent of the prime contractor's proposed price. The contracting officer may require submission of cost or pricing data in support of proposals in lower amounts. Submit the results of the analysis of the prospective source's proposal as required by 15.806. When the submission of a prospective source's cost or pricing data is required as described above, it shall be included as part of the offeror's initial pricing proposal, unless postponed by the contracting officer under 15.806-2(e).

(g) The requirements for contractors to obtain cost or pricing data from prospective subcontractors, to analyze these data and to submit the results of the analyses are prescribed in 15.806.

3. Section 15.805-5 is amended by revising paragraph (i) and by removing paragraphs (j) and (k) to read as follows:

15.805-5 Field pricing support.

(i) The requirements for field pricing support reports for subcontracts are prescribed in FAR 15.806.

4. Sections 15.806-1, 15.806-2, and 15.806-3 are added to read as follows:

15.806-1 General

(a)(1) The contracting officer is responsible for the determination of price reasonableness for the prime contract. In order to make this determination, it is required that an analysis be conducted of all the relevant facts and data including subcontractor cost or pricing data required to be submitted, results of the prime or higher tier subcontractor's analyses of subcontractor proposals, the field pricing support (if any), and historical pricing data. The fact that a contractor or higher tier subcontractor has an approved purchasing system or performs an analysis of subcontractor cost or pricing data does not in any way relieve the contracting officer or field pricing support team from the responsibility to analyze the prime contractor's submission, including the subcontractor cost or pricing data. However, the prime contractor or higher tier subcontractor is responsible for conducting appropriate price and cost analysis before awarding any subcontract.

(2) Subcontractors must submit to the contractor or higher tier subcontractor, cost or pricing data or claims for exemption from the requirement to submit them. The contractor and the higher tier subcontractor shall:

(i) Conduct price analyses and, when the subcontractor is required to submit cost or pricing data, or if the contractor or higher tier subcontractor is unable to perform an adequate price analysis, cost analyses for all subcontracts,

(ii) Include the results of these analyses as part of their own cost or pricing data submission, and

(iii) When required, in accordance with 15.806-2(a), submit the subcontractor cost or pricing data as part of their own cost or pricing data submission.

(b) Except when the subcontract prices are based on adequate price competition, on established catalog or market prices of commercial items sold in substantial quantities to the general public, or are set by law or regulation, any contractor required to submit certified cost or pricing data also shall obtain certified cost or pricing data before awarding any subcontract or purchase order expected to exceed \$100,000, or issuing any modification involving a price adjustment expected to exceed \$100,000 (see example of pricing adjustment at 15.804-2(a)(1)(ii)).

(c) The requirements in paragraphs (a) and (b) of this subsection, modified to relate to higher tier subcontractors rather than to the prime contractor, shall apply to lower tier subcontracts for which subcontractor cost or pricing data are required.

(d) If the prime contractor negotiates subcontract prices before negotiating the prime contract, such subcontract prices must nevertheless be reviewed and analyzed by the Government. In no instance should such negotiated subcontract prices be accepted as the sole evidence that these prices are fair and reasonable.

§ 15.806-2 Prospective subcontractor
cost or pricing data.

(a) The contracting officer shall require a contractor that is required to submit certified cost or pricing data also to submit to the Government (or cause the submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is (1) \$1,000,000 or more, (2) both more than \$100,000 and more than 10 percent of the prime contractor's proposed price, or (3) considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet.

(b) The contracting officer shall require the prospective contractor to support subcontract cost estimates below the threshold in 15.806-1(b) with any data or information (including other subcontractor quotations) needed to establish a reasonable price.

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exemptions in 15.804-3, the contracting officer normally shall not require submission of subcontractor cost or pricing data to the Government in that case. If the subcontract estimate is based upon the cost or pricing data of the prospective subcontractor most likely to be awarded the subcontract, the contracting officer shall not require submission to the Government of data from more than one proposed subcontractor for that subcontract.

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of final price agreement given on the contractor's Certificate of Current Cost of Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

(e) In exceptional cases, the contracting officer may, with the approval of the chief of the contracting

office, excuse a prospective contractor from submitting subcontractor cost or pricing data and the required related analyses before award of the prime contract. The prime contractor must, however, obtain this cost or pricing data before award of the subcontract in question. Any request from a prospective contractor to be excused from submitting subcontractor data before award of the prime contract must be supported by an explanation as to why the data and analyses cannot be submitted in a timely manner. If excusing the prospective contractor appears to be appropriate, the contracting officer shall provide the chief of the contracting office with the prospective contractor's explanation, the contracting officer's supporting rationale, and a discussion of how the subcontract price will be determined to be fair and reasonable. Moreover, if the chief of the contracting office approves excusing the prospective contractor from submitting the data and analyses before award of the prime contract, the contracting officer shall do one or more of the following to minimize risks to the Government:

(1) Allow additional time for submission of data up to the date of agreement upon the prime contract price;

(2) Withdraw the requirement for submission of subcontract cost or pricing data if the data already submitted or otherwise readily available are adequate to support the subcontract estimate;

(3) Consider another contract type; or

(4) Include a contract clause that provides for negotiating an adjustment to the prime contract amount after award based on the subcontractor's actual cost of pricing data, and the analysis of such data by the contractor and the contracting officer.

§ 15.806-3 Field pricing reports.

(a) The contracting officer should request audit or field pricing support to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such support is necessary to ensure reasonableness of the total proposed price. This step may be appropriate when, for example—

(1) There is a business relationship between the contractor and subcontractor not conducive to independence and objectivity;

(2) The contractor is a sole source and the subcontract costs represent a substantial part of the contract cost;

(3) The contractor has been denied access to the subcontractor's records; or

(4) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing support for a subcontract or subcontracts at any tier is critical to a fully detailed analysis of the prime contract proposal.

(b) When the contracting officer requests the cognizant ACO or auditor to review a subcontractor's cost

estimates, the request shall include, when available, a copy of any review prepared by the prime contractor or higher tier subcontractor, the subcontractor's proposal, cost or pricing data provided by the subcontractor, and the results of the prime contractor's cost or price analysis.

(c) When the Government performs the subcontract analysis, the Government shall furnish to the prime contractor or higher tier subcontractor,

with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs, by element, included in the subcontract proposal. If the subcontractor withholds consent, the Government shall furnish a range of unacceptable costs for each element in such a way as to prevent disclosure of subcontractor proprietary data.

[FR Doc. 88-15080 Filed 7-6-88; 8:45 am]
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Thursday
July 7, 1988

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair
Housing and Equal Opportunity

24 CFR Part 125

Fair Housing Initiatives Program;
Proposed Rule

Delegation of Authority Under Section
561 of the Housing and Community Act
of 1987; Notice

federal register

BEST COPY AVAILABLE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 125

[Docket No. FR-88-1395; FR-2486]

Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Urban Development, HUD.

ACTION: Proposed rule.

SUMMARY: This rule announces the procedures HUD proposes to use to provide funding to State and local government agencies, to public and private nonprofit organizations and to other public and private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices under the Fair Housing Initiatives Program (FHIP). The rule would establish three categories of funding: (1) The Administrative Enforcement Initiative, (2) The Education and Outreach Initiative and (3) The Private Enforcement Initiative. The rule also contains the guidelines for the conduct of testing funded under FHIP within the Private Enforcement Initiative. The Fair Housing Initiatives program is authorized in section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988).

This program is designed to strengthen and enhance enforcement of and compliance with the Federal Fair Housing Law (Title VIII of the Civil Rights Act of 1968; 42 U.S.C. 3601-3619) and State and local laws recognized by the Secretary as providing substantially equivalent rights and remedies to those provided in the Federal Fair Housing Law. This notice announces the proposed rules to govern the program and seeks public comment on these rules.

DATE: Comments must be received by August 8, 1988.

ADDRESSES: Interested persons are invited to submit comments on the proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. Comments on the information collection requirements contained in the proposal (which should include the docket

number and title) should be submitted to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention, Desk Officer for HUD.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 telephone (202) 755-0455 (V and TDD). (This is not a Toll Free number)

SUPPLEMENTARY INFORMATION: The Federal Fair Housing Law (Title VIII of the Civil Rights Act of 1968; 42 U.S.C. 3601-3619) charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints of discrimination which are based on race, color, religion, sex or national origin in the sale, rental, or financing of most housing. In addition, the Federal Fair Housing Law directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and to render technical assistance to public or private entities carrying out programs to prevent or eliminate discriminatory housing practices.

The Fair Housing Initiatives Program (FHIP) contained in the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) authorizes the Secretary to provide funding to State and local governments or their agencies, public or private nonprofit organizations or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. These funds will enable the recipients to carry out activities designed to obtain enforcement of the rights granted by the Federal Fair Housing Law or by substantially equivalent State or local fair housing laws, and education and outreach activities designed to inform the public concerning rights and obligations under such Federal, State or local laws prohibiting discrimination. Funding for enforcement of fair housing laws includes activities involving use of judicial as well as administrative enforcement procedures.

The Department would provide funding in three distinct categories under the Fair Housing Initiatives Program:

1. The Administrative Enforcement Initiative,
2. The Education and Outreach Initiative, and
3. The Private Enforcement Initiative.

This proposed rule contains four subparts. Subpart A, provides information on the policy and purposes of FHIP and contains specific guidance on application requirements and selection criteria applicable to the program generally. Subparts B, C and D contain eligibility requirements for applicants and describe the types of activities which can be funded under each of the above three categories of FHIP.

Subpart A—General

In addition to describing the policy and purpose of FHIP and including definitions applicable to the regulation, Subpart A describes the method by which the Department will administer FHIP and make awards of funding in the program.

Section 125.104 indicates that the Department will announce the amount of funds available and the types of activities which will be given priority through periodic publication of Notices of Funding Availability.

This section also indicates all recipients of funds must conform to audit, reporting and record maintenance requirements established for FHIP which will be used by HUD to supervise and monitor funded activities. (Specific audit requirements for State and local governments are contained in 24 CFR Part 44). Each funding instrument executed would include provisions for the recapture of funds where the recipient does not comply with applicable reporting, recordkeeping or monitoring requirements.

Applicants seeking funding under the Fair Housing Initiatives Program will submit formal applications to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development.

Section 125.105 sets forth in detail the general requirements for the submission of applications for the three components of FHIP. This section provides that applications must contain information relating to projects proposed for funding and to the geographic area in which activities would be undertaken. In part this section requires a description of the practice or practices adversely affecting fair housing, any existing data on the nature and extent of discriminatory conduct occurring in the general location where the applicant proposes to undertake activities, the applicant's experience in dealing with fair housing enforcement and an estimate of other public and private resources available to assist in the proposed project.

Applications must describe the specific activities to be conducted, the benefits which successful completion of the project will produce and the expected long term viability of project results.

In addition, applications must describe procedures to be used for monitoring conduct and evaluating results of the proposed activities.

Applications also must contain other information which is required by the Department pursuant to a Notice of Funding Availability published under § 125.104(d).

Section 125.106 describes the selection criteria which will be used in reviewing applications for funding. This section also indicates that HUD in issuing a Notice of Funding Availability can identify additional factors for award designed to encourage applications which are most likely to achieve results consistent with the objectives of FHIP. For example, in a given fiscal year HUD may determine that substantial FHIP resources should be allocated to particular activities within an initiative (e.g. testing). Similarly HUD may seek to achieve greater involvement of particular segments of the housing industry in fair housing activities such as education and outreach. In these cases HUD could include in the Notice of Funding Availability additional factors for award designed to provide a priority for funding for such activities or applicants. The relative weight to be assigned to each selection criteria also will be included in the Notice of Funding Availability.

Subpart B—Administrative Enforcement Initiative

Under the Administrative Enforcement Initiative the Department would provide funding to substantially equivalent State and local fair housing agencies in support of initiatives designed to broaden the range of enforcement and compliance activities that they conduct. Section 125.202 indicates that only substantially equivalent agencies which, pursuant to 24 CFR 115.6(c), have been recognized by the Department and have executed agreements with the Department are eligible for funding under this initiative.

Section 125.203 describes the projects for which funds will be available which include activities to implement fair housing testing programs and to conduct investigations of systemic discrimination. Funding in the Administrative Enforcement Initiative will complement the Department's efforts to promote fair housing compliance activities by States and

localities under the HUD Fair Housing Assistance Program (24 CFR Part 111).

Subpart C—The Education and Outreach Initiative

Under the Education and Outreach Initiative, the Department provides funding to develop, implement, carry out, or coordinate education and outreach programs designed to inform the public concerning their rights and obligations under the Federal Fair Housing Act and substantially equivalent State and local fair housing laws.

Currently, HUD provides limited support for outreach and education programs by State and local fair housing agencies under the Fair Housing Assistance Program 24 CFR Part 111 (Type II—Competitive Funding) and by Community Housing Resource Boards (CHRBs) under the Community Housing Resource Board Program 24 CFR Part 120. Funding for these entities can be made available under the Education and Outreach Initiative. Also other governmental and public and private entities as described in § 125.302 would be eligible for funding.

Funding will be provided for educational projects which advise the general public and housing industry groups about fair housing rights and responsibilities and outreach projects which promote specialized support and coordinated methods to provide for fair housing. Section 125.303 provides examples of the types of educational and outreach projects which may be funded under this element of FHIP.

Subpart D—The Private Enforcement Initiative

The Private Enforcement Initiative provides funding for projects designed to enhance efforts to enforce the provisions of the Federal Fair Housing Law and substantially equivalent State and local fair housing laws. Section 125.402 indicates that funding in this initiative will be provided to non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

Section 125.403 states that projects eligible for funding include:

- Conducting investigations to document systemic discrimination in housing,
- Professionally conducting testing or other investigative support for administrative and judicial enforcement,
- Linking fair housing organizations regionally to address broader market discriminatory practices, and

—Establishing effective means of meeting legal expenses related to the litigation of fair housing cases.

Section 125.404 provides that no funding under this initiative may be used for the payment of expenses in connection with litigation against the United States.

Fair Housing Testing

Section 561(c)(2) of the Housing and Community Development Act of 1987 requires that the Secretary of Housing and Urban Development establish, within the Private Enforcement Initiative, requirements for the conduct of testing. The statute provides that testing procedures used be designed to ensure that testing conducted in support of fair housing enforcement efforts develops credible and objective evidence of discriminatory housing practices.

The requirements which the Department proposes to use for testing in the Private Enforcement Initiative are contained in § 125.405. These requirements will apply only to projects using Private Enforcement Initiative funds for the conduct of testing and will not affect the gathering or use of facts secured through testing not funded under this initiative.

Section 125.405 sets forth specific applicant eligibility and performance monitoring requirements applicable to fair housing testing activities proposed for funding during the two year testing demonstration period. This section also provides a detailed description of procedures which must be followed in the conduct of funded testing.

1. Applicants Eligible to Conduct Testing

Section 125.405(d) provides that an applicant must document that it has at least one year of fair housing enforcement experience in carrying out a program to prevent or eliminate discriminatory housing practices. The applicant must also describe its process for recruiting and training testers and include copies of forms used to document allegations of discriminatory conduct and to record testing results. Other forms may be required for monitoring progress and evaluating performance.

This provision also requires the applicant to certify that it will not solicit funds from or seek to provide fair housing educational services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing funded by the applicant under this initiative for a 12 month period following a test. This

requirement is not intended to preclude the provision of training to or the acceptance of funding from any person or organization. It merely prohibits solicitations for the receipt of funding or for the provision of training to assure that testing data would not be compromised based upon the provision of such funds or the acceptance of training.

2. Testing Eligible for Funding

Generally, the regulation provides that, upon receipt of a bona fide allegation, tests eligible for funding must consist of a visit by at least two paired testers. This section also provides for funding of tests in support of systemic discrimination investigations which result from bona fide allegations.

Under the regulation a "bona fide allegation" is an assertion of a discriminatory housing practice. The allegation must state specifically and in detail the facts and circumstances which are believed to constitute a discriminatory housing practice. The bona fide allegation is the basis for the selection of the target of testing and does not limit the scope of any investigation or any ensuing complaint. The allegation need not be a formal complaint; it is simply a source of reasonable belief of a violation. Further, once a foundation for the selection of a target has been established, an investigation using funded tests may be commenced.

While HUD will require documentation of bona fide allegations, this definition is not intended to impose the requirement that all such allegations be reduced to writing by the person making the assertion or include all specific information contained in § 125.405(b)(1) before the initiation of testing.

In addition, under this definition allegations by persons engaged as testers are not bona fide allegations for purposes of initiating testing funded in the Private Enforcement Testing Demonstration. However, this requirement does not prevent an organization or entity participating in the demonstration from using other information which is not the result of testing as a bona fide allegation for the purpose of commencing an investigation and conducting funded testing. In addition, as discussed later, this requirement does not compromise the rights of testers or the entities participating in testing activities in the demonstration to redress grievances under the Federal Fair Housing Act and the Supreme Court decision in *Havens Realty Corp. v. Coleman* 455 U.S. 363 (1982), 3 PHEOH ¶ 15.341.

In connection with the conduct of testing, § 125.405(b)(3) requires "one or more visits by at least two paired testers." This requirement is designed to require that testing eligible for FHIP funding consists of at least one visit by two matched testers. The regulation does not preclude a recipient of funds in the demonstration from conducting additional tests to complete a paired test or conducting further paired tests to obtain additional evidence in support of the investigation of a bona fide allegation. These tests would be eligible for funding.

3. Systemic Testing

Where investigation of a bona fide allegation discloses the existence of a pattern or practice of discriminatory housing practices, the regulation provides for the funding of systemic testing. In such cases the regulation envisions variances in the profiles of testers in order to facilitate the collection of data on policies, practices and procedures which appear to be discriminatory. As in the case of testing in non-systemic matters, there is no limit on the number of tests which can receive funding; the only requirement is that each test involve paired testers who are matched with each other with respect to housing needs (e.g., housing type, number of bedrooms, etc.) and demographic profiles (e.g., income, family size, etc.) which comprise the basis of the allegation.

4. Rights of Testers and Funded Organizations

Section 125.405 is not intended to restrict or limit the rights of testers or participating entities to pursue any right or remedy guaranteed by Federal law. Thus, the rights of testers and organizations including those under the Supreme Court decision in *Havens Realty Co. v. Coleman*, supra, remain available even where the testing activity is funded. Further, participation in the Private Enforcement Testing Demonstration does not effect or limit any other activities relating to the receipt and processing of complaints including testing by the organization using other funding.

Section 125.405(c)(3) provides that neither the tester or the testing organization may have "an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury." This provision is designed to prevent payments to testers based on the outcome of tests or similar arrangements that create or appear to create an inducement to solicit a discriminatory act. Such practices would

have a substantially adverse effect on the credibility and objectivity of the testing data gathered. Recovery of actual damages by an individual or organizational plaintiff in a Fair Housing Act suit is compensation for established injury. The recovery of such damages is not an economic interest in the outcome of the test within the meaning of this provision.

5. Penalties

Section 125.404(e) also provides that applicants failing to comply with requirements in the Private Enforcement Testing Demonstration in addition to making themselves liable to administrative sanctions may also be required to repay improperly used funds. The application of sanctions will be undertaken in accordance with procedural requirements applicable to Federal assistance activities. (See 24 CFR Part 24, 52 FR 37112, October 2, 1987)

Other Matters

Under the provisions in the FHIP authorizing legislation the Secretary, before providing any assistance under this program, is required to issue regulations governing applications for funding. Such regulations cannot be effective prior to the expiration of 90 calendar days from the date those regulations are submitted to the House and Senate Banking Committees.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirement contained in this rule has been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because the Department does not expect that the activities undertaken with funding under FHIP will result in a substantial number of cases involving smaller entities. In addition, this rule would not significantly increase or decrease the administrative burden on persons conducting activities relating to the sale, rental or financing of dwellings.

This rule was listed as item 1011 in the Department's semiannual agenda of regulations published on April 25, 1988, (53 FR 13854, 13888) under Executive Order No. 12991 and the Regulatory Flexibility Act.

The Catalogue of Federal Domestic Assistance Programs title and numbers are:

- 14.408 Fair Housing Initiatives Program—Administrative Enforcement Initiative
- 14.409 Fair Housing Initiatives Program—Education and Outreach Initiative
- 14.410 Fair Housing Initiatives Program—Private Enforcement Initiative

List of Subjects in 24 CFR Part 125

Fair housing, Grant programs, Housing and community development.

For the reasons set forth in the preamble, Title 24 of the Code of Federal Regulations would be amended to add Part 125, to read as follows:

PART 125—FAIR HOUSING INITIATIVES PROGRAM

Subpart A—General

- Sec.
- 125.101 Policy.
- 125.102 Purpose.
- 125.103 Definitions.
- 125.104 Program administration.
- 125.105 Applications requirements.
- 125.106 Selection criteria.

Subpart B—Administrative Enforcement Initiative

- 125.201 Purpose.
- 125.202 Eligible agencies.
- 125.203 Eligible activities.

Subpart C—Education and Outreach Initiative

- 125.301 Purpose.
- 125.302 Eligible applicants.
- 125.303 Eligible activities.

Subpart D—Private Enforcement Initiative

- 125.401 Purpose.
- 125.402 Eligible applicants.
- 125.403 Eligible activities.
- 125.404 Use of funds for litigation.
- 125.405 Guidelines for Private Enforcement testing.

Authority: Sec. 561, Housing and Community Development Act of 1987 (Pub. L. 100-242); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

PART 125—FAIR HOUSING INITIATIVES PROGRAM

Subpart A—General

§ 125.101 Policy.

Section 561 of the Housing and Community Development Act of 1987 established the Fair Housing Initiatives Program to strengthen the Department's effort to enforce Title VIII of the Civil Rights Act of 1968 (Title VIII) and to further fair housing. This program is intended to assist projects and activities designed to enhance compliance with Title VIII and substantially equivalent State and local fair housing laws.

§ 125.102 Purpose.

Under the Fair Housing Initiatives Program, the Department is authorized to make grants to, or enter into contracts or cooperative agreements with, State or local governments or their agencies, public or private non-profit organizations or institutions, or other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

§ 125.103 Definitions.

As used in this part—

(a) "Assistant Secretary" means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

(b) "Department" means Department of Housing and Urban Development.

(c) "Discriminatory housing practice" means an act that is unlawful under sections 804, 805 and 806 of Title VIII.

(d) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

(e) "FHIP" means the Fair Housing Initiatives Program authorized by section 561 of the Housing and Community Development Act of 1987

(Pub. L. 100-242, approved February 5, 1988).

(f) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Title VIII" means Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619, commonly referred to as the Federal Fair Housing Law.

§ 125.104 Program administration.

(a) The Fair Housing Initiatives Program is administered by the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) All funding in the Fair Housing Initiatives Program will be awarded on a competitive basis.

(c) The Department will provide funding in three separate areas:

- (1) The Administrative Enforcement Initiative (Subpart B);
- (2) The Education and Outreach Initiative (Subpart C); and
- (3) The Private Enforcement Initiative (Subpart D).

(d) Notices of Funding Availability under this program will be published periodically in the *Federal Register*. Such notices will announce the amount of funds available, the funding available for any initiative and the maximum amounts to be awarded to applicants and may limit funding to one or more of the initiatives. The Notice of Funding Availability will include specific factors for award in addition to the specific criteria set forth in § 125.106 which the Assistant Secretary will use in selection of recipients to be funded and will indicate the relative weight of all selection criteria. The criteria for selection announced in Notices of Funding Availability will address the specific types of activities and projects to be solicited pursuant to the varied objectives of the three separate components of the FHIP, and will be designed to foster selections which are most likely to achieve results consistent with the objectives of each component of the program.

(e) All recipients of funds under this program must conform to reporting and record maintenance requirements determined appropriate by the Assistant Secretary. Procedures for monitoring program activities and funding will be established by the Assistant Secretary.

Each funding instrument will include provisions under which the Department may suspend, terminate or recapture funds if the recipient does not conform to these requirements.

(f) All recipients of funds under this program which are State or local governments or agencies of State or local governments must conduct audits in accordance with Part 44 of this Title.

§ 125.105 Applications requirements.

Each application for funding under the Fair Housing Initiatives Program must contain:

(a) A description of the practice (or practices) at the community, regional or national level which has affected adversely the achievement of the goal of fair housing. This description must include a discussion and analysis of the housing practice(s) identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of such practices on persons seeking dwellings or services related to the sale, rental and financing of dwellings in the general location where the applicant proposes to undertake activities;

(b) A description of the specific activities to be conducted with funds including the final product(s) and/or reports to be produced; and the cost of each activity proposed and a schedule for completion of the funded activities;

(c) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(d) A statement indicating the need for Federal funding in support of the proposed project; and an estimate of such other public or private resources as may be available to assist the proposed activities;

(e) A description of the procedures to be used for monitoring conduct and evaluating results of the proposed activities;

(f) A description of the benefits which successful completion of the project will produce to enhance fair housing and the concerns identified, and the indicators by which these benefits are to be measured;

(g) A description of the expected long term viability of project results;

(h) Any additional information which may be included in periodic Notices of Funding Availability for the Fair Housing Initiatives Program published in the Federal Register.

Effective Date Note.—Section 125.105 contains information collection requirements. Section 125.105 will become effective upon

OMB approval and publication of notice in the Federal Register.

§ 125.106 Selection criteria.

(a) Projects proposed in applications will be ranked based on the following criteria for selection:

(1) The anticipated impact of the project proposed on the concerns identified in the application;

(2) The extent to which the project utilizes other public or private resources that may be available;

(3) The extent to which the applicant's professional and organizational experience will further the achievement of the project goal(s);

(4) The extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner;

(5) The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.

(b) The relative weight to be assigned to these selection criteria as well as additional factors which will be considered in reviewing applications will be included in the Notice of Funding Availability, together with a stated rationale, justifying the additional factors selected in terms of the specific goals of each initiative for which funds are being made available.

Subpart B—Administrative Enforcement Initiative

§ 125.201 Purpose.

The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws recognized by the Secretary as providing rights and remedies which are substantially equivalent to those provided in Title VIII.

§ 125.202 Eligible agencies.

State or local fair housing agency eligible to participate in the Administrative Enforcement Initiative, must be administering a State or local fair housing law which has been recognized by the Assistant Secretary (and such recognition must continue to be outstanding) under § 115.6 of this subchapter (or § 115.4 of this subchapter, as in effect prior to October 8, 1984) as providing rights and remedies which are substantially equivalent to those provided by Title VIII.

§ 125.203 Eligible activities.

(a) Funding will be available to support activities designed to strengthen and broaden the range of enforcement and compliance activities conducted by eligible State and local agencies. Such

activities may include (but are not limited to) the following:

(1) Providing technical assistance to State and local government agencies administering housing and community development programs concerning applicable fair housing laws and regulations;

(2) Implementing fair housing testing programs; and

(3) Conducting investigations of systemic discrimination for further enforcement processing by State or local agencies, or for referral to HUD and the Department of Justice.

Subpart C—Education and Outreach Initiative

§ 125.301 Purpose.

The Education and Outreach Initiative of the Fair Housing Initiatives Program provides funding for the purpose of developing, implementing, carrying out, or coordinating education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of fair housing laws. Funding is provided under this Initiative for the development of national, regional or local media campaigns (written or audio-visual materials) or other special efforts to educate the general public and housing industry groups about fair housing rights and obligations.

§ 125.302 Eligible applicants.

The following types of organizations are eligible to receive funding under the Education and Outreach Initiative:

(a) State or local governments;

(b) Public or private non-profit organizations or institutions, and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

§ 125.303 Eligible activities.

(a) *Educational projects.* Educational projects that may be funded under the Education and Outreach Initiative may include (but are not limited to) the following:

(1) Developing informative material on fair housing rights and responsibilities;

(2) Developing fair housing and affirmative marketing instructional material for education programs for national, regional and local housing industry groups;

(3) Providing educational seminars and working sessions for civic associations, community-based organizations, and other groups; and

(4) Developing educational material targeted at persons in need of specific or

additional information on their fair housing rights.

(b) *Outreach projects.* Outreach projects that may be funded under the Educational and Outreach Initiative may include (but are not limited to) the following:

(1) Developing national, regional or local media campaigns regarding fair housing;

(2) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(3) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(4) Developing and implementing a response to new or more sophisticated practices that result in discriminatory housing practices; and

(5) Developing mechanisms for the identification of, and quick response to, housing discrimination cases involving the threat of physical harm.

(c) *Classes of competition.* The Notice of Funding Availability for the Educational and Outreach Initiative may be divided funding into classes based on the type of projects (e.g., educational or outreach projects) and the scope of projects (e.g., local, regional or national).

Subpart D—Private Enforcement Initiative

§ 125.401 Purpose.

The Private Enforcement Initiative of the Fair Housing Initiatives Program will provide funding to non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. The purpose of these awards is to assist in the developing, implementing, carrying out, or coordinating programs or activities designed to obtain enforcement of the rights granted by Title VIII or State or local laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to the rights and remedies provided in Title VIII.

§ 125.402 Eligible applicants.

Organizations which are eligible to receive assistance under the Private Enforcement Initiatives are private non-profit organizations and other private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices. Organizations which can be eligible include, for example, private non-profit fair housing and civil rights groups.

§ 125.403 Eligible activities.

Projects that will be funded under the Private Enforcement Initiative may include (but are not limited to) the following:

(a) Conducting investigations of systemic housing discrimination;

(b) Professionally conducting testing or other investigative support for administrative and judicial enforcement;

(c) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices; and

(d) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases.

§ 125.404 Use of funds for litigation.

No recipient of assistance under the Private Enforcement Initiative may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

§ 125.405 Guidelines for Private Enforcement testing.

(a) The guidelines contained in this section apply to testing activities funded under the Private Enforcement Initiative. These guidelines apply only to testing activities funded under this initiative and do not limit or restrict the use of facts secured through other testing activities in any legal proceeding under Federal fair housing laws. Nothing in the section restricts individuals or entities participating in the Fair Housing Initiatives Program from pursuing any right or remedy guaranteed by Federal law, or from the conduct of other testing or other investigative activities not funded under the Private Enforcement Initiative.

(b) *Definitions.* As used in this section:

(1) The term "bona fide allegation" means an assertion of a discriminatory housing practice unlawful under Federal fair housing law. For purposes of these guidelines, an allegation by a person engaged as a tester, whether or not compensated, or by any organization, employee, or agent engaged directly in the initiation, administration, evaluation, or conduct of tests is not a bona fide allegation. The allegation must state specifically and in detail the facts and circumstances which are believed to constitute the discriminatory housing practice, including, but not limited to, the date, time, and place of the alleged discrimination, and the name of each person or firm allegedly engaged in the discriminatory housing practice.

(2) The term "discriminatory housing practices" means any actions made

unlawful by section 804, 805, or 806 of Title VIII (42 U.S.C. 3604, 3605, or 3606).

(3) The term "test" means a method of gathering credible and objective evidence of whether a discriminatory housing practice has occurred. For purposes of tests conducted under these guidelines:

(i) In the case of a test conducted in response to an allegation involving the rental or financing of a home or apartment, a test must include one or more visits by at least two individual testers to the lender, rental agent, management firm or owner alleged to have discriminated.

(ii) In the case of a test conducted in response to an allegation involving the purchase of a home, a test must include one or more visits by at least two individual testers to the individual sales agent or owner alleged to have discriminated; or if a firm is alleged to have engaged in discriminatory housing practices and if no sales agent of the firm has been identified as having discriminated, then the test must include one or more visits by at least two paired testers as defined in paragraph (c)(2)(iv) of this section to any sales agent identified by the testing program. The test requirements specified shall not excuse any employer, broker, firm, or owner from such liability as the law imposes on them for the conduct of their employees or licensees affiliated with them. Nothing here shall limit the number of test visits which can be made or funded.

(4) The term "testers" means individuals, who without an intent to rent, purchase, or finance a home or apartment, pose as renters, purchasers, or borrowers for the purpose of collecting evidence of discriminatory housing practices.

(c) *Eligible activities.* Eligible testing activities must be conducted in accordance with procedures contained in the application for assistance. These procedures shall include the following:

(1) A formal recruitment process designed to obtain a pool of credible and objective persons to serve as testers. Recruits must not have prior felony convictions or convictions of crimes involving fraud or perjury.

(2) A tester training program which will—

(i) Require the careful recordation of all relevant information on standardized forms following completion of the test;

(ii) Prohibit any contact or communication between pairs of testers until all information has been recorded and the testers debriefed by the testing coordinator;

(iii) Require that the same or substantially equivalent type of housing accommodations, financing, or service be requested; and

(iv) Require that testers identify themselves as having the same or substantially equivalent housing needs and demographic profile as the person who made the bona fide allegation, except for the race, creed, religion, sex, nationality, or other attribute which is the basis of the alleged discrimination. In cases of testing for systemic discrimination, demographic profiles may vary from that of the person who made bona fide allegation so long as the test of each agent or owner is a "paired" test. For the purpose of these guidelines, a "paired test" means that the two testers who will conduct the "paired test" shall—

(A) Have the same or substantially similar demographic profiles except for the race, creed, religion, sex, nationality, or other attribute which is the basis of the alleged discrimination;

(B) Have the same or substantially similar housing requirements;

(C) Conduct the test at the same office or in the same or substantially similar transactional conditions and circumstances; and

(D) Conduct the test in a timely manner.

(3) A tester assignment and control system which will assure that neither the tester, nor the organization conducting the test, including its employees and agents—

(i) Has an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury (n.b. *Havens Realty Corp. v. Coleman* 455 U.S. 363 (1982), 3 PHEOH ¶ 15,341); or

(ii) Has a specific bias toward either the person who made the bona fide allegation or the respondent; is a relative of one of the parties in the case; has any prior employment or affiliation with the person or organization to be tested; is a licensed competitor of such person or organization in the listing, rental, sale, or financing of real estate property; or has any other specific bias or conflict of interest which would prevent or limit his or her objectivity or fairness.

(d) *Application requirements.* Applications for funding of testing activities must include, in addition to the requirements set forth in § 125.105:

(1) Documentation that the applicant has at least one year of experience in carrying out a program to prevent or eliminate discriminatory housing practices;

(2) A certification providing that the applicant will not solicit funds from or seek to provide fair housing educational services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant for a 12-month period following a test;

(3) A description of the process to be used to recruit testers;

(4) A description of the tester training program; and

(5) Copies of forms used to document allegations and to record the experience of testers.

(e) *Performance monitoring.* An applicant failing to comply with the testing requirements or the procedures set forth in its application for funding, shall be liable for such sanctions as may be authorized by law. These sanctions include repayment of improperly used funds, termination of further participation in the initiative, reduction or limitation of further funding for investigatory activities, recapture of improperly expended funds, and denial of further participation in programs of the Department or any Federal agency.

Dated: May 21, 1988.

William E. Wynn,
General Deputy Assistant Secretary for Fair Housing and Equal Opportunity
[FR Doc. 88-15045 Filed 7-6-88; 8:45 am]

BILLING CODE 4210-25-3

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-674; FR-2486]

Delegation of Authority Under Section 561 of the Housing and Community Act of 1987

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: The Fair Housing Initiatives Program (FHIP) contained in section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) authorizes the Secretary of Housing and Urban Development to provide funding to State and local governments or their agencies, public or private non-profit

organizations or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. These funds will enable the recipients to carry out activities designed to obtain enforcement of the rights granted by the Federal Fair Housing Law or by substantially equivalent State or local fair housing laws, and education and outreach activities designed to inform the public concerning rights and obligations under such Federal, State or local laws prohibiting discrimination. The Secretary is delegating the authority to administer the Fair Housing Initiatives Program to the Assistant Secretary for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Office of Fair

Housing and Equal Opportunity, Room 5214, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-0455 (This is not a toll free number).

Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to administer the Fair Housing Initiatives Program authorized under section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242).

Dated: May 21, 1988.

Samuel R. Pierce, Jr.,
Secretary, Department of Housing and Urban Development.

[FR Doc. 88-15054 Filed 7-6-88; 8:45 am]
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Part IV

**Environmental
Protection Agency**

**Drinking Water Technical Assistance;
Termination of the Federal Drinking
Water Additives Program; Notice**

ENVIRONMENTAL PROTECTION AGENCY

(OW-FRL-3410-1)

Drinking Water Technical Assistance; Termination of the Federal Drinking Water Additives Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Environmental Protection Agency (EPA), Office of Drinking Water (ODW), has operated an advisory program that gives technical assistance to concerned parties on the use of drinking water additives. On May 17, 1984, EPA proposed to terminate major elements of this Federal program and to assist in the establishment of a private-sector program which would offer assistance in evaluating drinking water additives. 49 FR 21004. EPA solicited proposals from qualified nongovernmental, nonprofit organizations for assistance under a cooperative agreement to establish a credible and efficient program in the private sector.

On September 17, 1985, EPA selected a consortium consisting of the National Sanitation Foundation (NSF), the American Water Works Association Research Foundation (AWWARF), the Conference of State Health and Environmental Managers (COSHEM), and the Association of State Drinking Water Administrators (ASDWA) to receive funds under a cooperative agreement to develop the private-sector program. EPA believes that the NSF-led program has proceeded satisfactorily. NSF Standard 60, covering many direct additives, was adopted on December 7, 1987; and NSF Standard 61, covering indirect additives, was adopted on June 3, 1988. Other standards are forthcoming. The NSF-led program has begun offering testing, certification, and listing services, as described in 49 FR 21004, for certain classes of products covered by these standards. Accordingly, as the NSF-led program becomes operational, EPA will phase out its activities in this area, as described in this notice.

DATE: Any written comments on implementing this notice should be submitted to the address below by September 6, 1988.

ADDRESSES: Submit comments to: Mr. Arthur H. Perler, Chief, Science and Technology Branch, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A copy of all comments will be available for review

during normal business hours at the U.S. Environmental Protection Agency, Criteria and Standards Division, Science and Technology Branch, Room 801ET, 401 M Street, SW., Washington, DC 20460. For further information on the NSF-led private-sector program, including standards development and testing, certification, and listing services, contact: Director, Drinking Water Additives Program, National Sanitation Foundation, P.O. Box 1466, Ann Arbor, MI 48106; or call (313) 768-8010. For information on alternative testing, certification, and listing programs, contact individual State regulatory authorities or the American Water Works Association, Technical and Professional Department, 6600 Quincy Avenue, Denver CO, 80235, or call (303) 794-7711. For information on the directory of products certified as meeting the criteria in a NSF standard, contact the American Water Works Association Research Foundation, 6600 Quincy Avenue, Denver CO, 80235, or call (303) 794-7711.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Perler, Chief, Science and Technology Branch, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or call (202) 382-2022.

I. Introduction

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*) provides for enhancement of the safety of public drinking water supplies through the establishment and enforcement of national drinking water regulations. The Environmental Protection Agency (EPA) has the primary responsibility for establishing the regulations, and the States have the primary responsibility for enforcing such regulations. The regulations control contaminants in drinking water which may have any adverse effect on public health. Section 1412, 42 U.S.C. 300g-1. The regulations include maximum contaminant levels (MCLs) or treatment techniques and monitoring requirements for these contaminants. Sections 1401 and 1412; 42 U.S.C. 300f and 300g-1. EPA also promulgates monitoring requirements for unregulated contaminants. Section 1445; 42 U.S.C. 300j-4. In addition, EPA has broad authorities to provide technical assistance and financial assistance (e.g., grants, cooperative agreements) to States and to conduct research. Sections 1442, 1443, 1444; 42 U.S.C. 300j-1, 300j-2, 300j-3.

The Agency has established MCLs for a number of harmful contaminants that occur naturally or pollute public

drinking water supplies. In addition to such contaminants, there is a possibility that drinking water supplies may be contaminated by compounds "added" to drinking water, either directly or indirectly, in the course of treatment and transport of drinking water. Public water systems use a broad range of chemical products to treat water supplies and to maintain storage and distribution systems. For instance, systems may directly add chemicals such as chlorine, alum, lime, and coagulant aids in the process of treating water to make it suitable for public consumption. These are known as "direct additives." In addition, as a necessary function of maintaining a public water system, storage and distribution systems (including pipes, tanks, and other equipment) may be fabricated from or painted, coated, or treated with products which may leach into or otherwise enter the water. These products are known as "indirect additives." Except to the extent that direct or indirect additives consist of ingredients or contain contaminants for which EPA has promulgated MCLs, EPA does not currently regulate the levels of additives in drinking water.

In 1979, EPA executed a Memorandum of Understanding (MOU) with the U.S. Food and Drug Administration (FDA) to establish and clarify areas of authorities with respect to control of additives in drinking water. 44 FR 42775, July 20, 1979. FDA is authorized to regulate "food additives" pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA). (21 U.S.C. 301 *et seq.*). Both agencies acknowledged in the MOU that "passage of the SDWA in 1974 repealed FDA's authority under the FFDCA over water used for drinking water purposes." The MOU stated that FDA would continue to have authority for taking regulatory action under the FFDCA to control additives in bottled drinking water and in water used in food and for food processing. The MOU went on to say that EPA had authority to control additives in public drinking water supplies.

While the SDWA does not require EPA to control the use of specific additives in drinking water, EPA has provided technical assistance to States and public water systems on the use of additives through the issuance of advisory opinions on the acceptability of many additive products. EPA has provided this technical assistance pursuant to its discretionary authority in section 1442(b)(1) to "collect and make available information pertaining to research, investigations and demonstrations with respect to

providing a dependable safe supply of drinking water together with appropriate recommendations in connection therewith." EPA has additional authorities under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*) that could be used to control additives in drinking water. TSCA authorizes EPA to regulate a new chemical substance before it is manufactured or any existing chemical substance before it is manufactured or processed for a use that EPA has determined to be a "significant new use." Although an additive product might come within the jurisdiction of TSCA, EPA has never invoked this authority. EPA has used its authority under FIFRA to control the use of pesticides, disinfectants, and certain other additives. For a more complete discussion of these authorities, see the MOU. 44 FR 42776.

In 1980, EPA declared a moratorium on the issuance of new advisory opinions on additives pending a review of past advisory opinions and the establishment of uniform test protocols and decision criteria. However, between 1980 and 1984, EPA continued to issue advisory opinions in cases where the new additive products were virtually identical to products previously reviewed. Resource constraints and the need to implement mandatory provisions of the SDWA precluded the Agency from implementing the comprehensive program originally envisioned for the issuance of additives advisory opinions. Thus, the Agency was not able to review the technical data supporting previous submissions (approximately 2,300 products from 525 manufacturers) nor was it able to develop test protocols or decision criteria for the consistent evaluation of new products. The result has been long delays in processing manufacturer petitions, inability to review and accept completely new products, and acceptance of products simply because they were virtually identical to older products. Hence, few products have been thoroughly evaluated for the safety of their formulations based on the latest scientific information.

Recognizing the need for continuing technical assistance in evaluating additive products and for providing advice to States and public water systems on the toxicological aspects of additive products, the Agency proposed to terminate its attempts to institute a formal advisory program, and to solicit proposals from nongovernmental, nonprofit organizations to establish such

a program in the private sector. The Agency believed that the proposal to assist in the establishment of a private-sector program was consistent with, and would best serve the goals of, the SDWA.

On May 17, 1984, EPA formally announced its intention to transfer the program to the private sector, which would function as to many other voluntary product-standard programs. 49 FR 21004. This was accomplished by requesting proposals from qualified organizations or consortia of organizations for the competitive award of a cooperative agreement designed to provide incentive for the establishment of a private-sector program. The 1984 notice stated that:

- EPA expected the activity to be self-supporting.
- EPA would maintain an active interest in the development of the program, without assuming responsibility for or directing its approach.

- EPA would continue to establish regulations under the SDWA, FIFRA, and/or TSCA, as needed, for chemicals in treated, distributed drinking water that may originate as additives.

- Establishment of such a program would be consistent with the Administration's initiatives in the area of regulatory reform and offered an opportunity for an innovative alternative to regulation.

The May 1984 notice requested public comments on the proposal and solicited applications from qualified nongovernmental, nonprofit organizations for partial funding of the developmental phase of the program under a cooperative agreement. The response to the solicitation for comments indicated strong public support for the proposed approach. EPA received 106 public comments on the proposal. All but six supported this "third-party" approach. However, despite the Agency's open competition, EPA received only one application for financial assistance. The applicant was a consortium, led by the National Sanitation Foundation, which included the American Water Works Association Research Foundation, the Conference of State Health and Environmental Managers, and the Association of State Drinking Water Administrators. This single proposal met all of the basic criteria articulated in the May 1984 notice. Furthermore, EPA believed that the single applicant was very likely to succeed, because it represented an organization experienced in private-sector consensus standard-setting, State regulators, and water utilities.

EPA awarded the cooperative agreement to the NSF consortium on September 17, 1985, and committed funding of \$185,000 to NSF over a three-year period. The non-Federal (consortium and participating industry) contribution during the first three years of the program was projected to be approximately \$1.4 million.

The NSF program has the following major objectives:

- To develop systematic, consistent, and comprehensive voluntary consensus standards for public health safety evaluation of all products (previously EPA-accepted as well as new) intended for use in drinking water systems.
- To obtain broad-based participation in the standard-setting program from industry, States, and utilities.
- To provide for regular periodic review, update, and revision of the standards.
- To undertake needed research, testing, evaluation, and inspections and to provide the followup necessary to maintain the program.
- To establish a separate program for testing, evaluation, certification, and listing of additive products.
- To widely disseminate information about the program, and to make information about conforming products available to users.
- To maintain the confidentiality of all proprietary information.
- To fully establish the third-party program on a self-supporting basis.

NSF's established standard-setting process utilizes a tiered structure. Each standard is drafted by a task group and then presented to a Joint Committee, which includes 12 industry, 12 user, and 12 regulatory members. Following successful Joint Committee balloting, standards are reviewed by the Council of Public Health Consultants, which is a high level advisory group consisting of technical and policy experts from regulatory agencies and academia.

NSF has established task groups to develop standards for the product categories listed below. Each task group includes a member representing the regulatory agencies and a member representing the utilities. All manufacturers expressing interest in a particular product task group may participate as members of that group. Therefore, task group membership is predominately manufacturers. In addition, a group of health effects consultants is addressing the toxicological and risk considerations for various product categories. NSF's role in the standard-setting process is administrative, that is, to bring together experts from government, industry,

utilities, users, and other relevant groups so that a standard which reflects a consensus of these interests can be developed. In addition, NSF staff provide technical leadership and laboratory support. Product categories and corresponding task groups are:

- Protective Materials.
- Chemicals for Corrosion and Scale Control, Softening, Precipitation, Sequestering, and pH Adjustment.
- Coagulation and Flocculation Chemicals.
- Miscellaneous Treatment Chemicals.
- Joining and Sealing materials.
- Process Media.
- Pipes and Related Products.
- Disinfection and Oxidation Chemicals.
- Mechanical Devices.

All of the task groups have made satisfactory progress during the term of the cooperative agreement. In addition, the health effects consultants have endorsed the bases of the standards. Standards have been drafted for all product categories, and final standards were published and implemented as follows:

Standard 60, December 1987

- Chemicals for Corrosion and Scale Control, Softening, Precipitation, Sequestering, and pH Adjustment.
- Disinfection and Oxidation Chemicals.
- Miscellaneous Treatment Chemicals (selected).

Standard 61, June 1988

- Process Media.
- Development of the remaining standards is on schedule, and publication and implementation are expected on the following schedule:

Standards 60 and 61, expected October 1988

- Protective Materials.
- Coagulation and Flocculation Chemicals.
- Miscellaneous Treatment Chemicals (additional).
- Joining and Sealing Materials.
- Pipes and Related Products.
- Mechanical Devices.

EPA believes that the NSF program is successfully pursuing all of its objectives. Furthermore, the program is strongly supported by user and regulatory sectors. AWWARF, COSHEM, ASDWA, the Great Lakes Upper Mississippi River Board, the American Water Works Association (AWWA) (including the Utilities and Standards Councils and the Regulatory Agencies Division), and the Association of Metropolitan Water Agencies, among

others, have voiced strong support for the third-party program. The AWWA recently joined the NSF-led consortium and urged EPA to support national uniform accreditation of certifying entities for additive products. To date, more than 60 manufacturers are full participants in the standard-setting program.

The cooperative agreement between EPA and the consortium requires NSF to establish both a standard-setting program and a service for testing, certification, and listing. These are completely separate activities. EPA's intent is to support the development of a widely accepted uniform standard for each category of products while encouraging the development of competing sources for testing, certification, and listing. The cooperative agreement assures that at least one sound and reliable product-evaluation service will be available to manufacturers, i.e., the consortium. However, the consortium's standards will allow for entities other than NSF to be evaluators of products.

EPA recognizes the authority and responsibility of the individual States to determine the acceptability of drinking water additives. Hence, it is up to the States and utilities to determine the suitability of any "third-party" certification. AWWARF will maintain a directory of products approved by all organizations claiming to conduct evaluations under Standards 60 and 61. However, AWWARF will not judge the competence or reliability of these organizations.

II. Announcement of Phase-Down of EPA's Additives Program

During the developmental phase of the NSF consortium's program, EPA has continued to review products and process requests for advisory opinions on a limited basis. The May 1984 notice stated that, "EPA does not intend to develop further interim administrative procedures, testing protocols or decision criteria for future evaluation of additive products. The use of existing informal criteria will continue until a third-party or alternative program is operational." EPA may not be able to process all requests for opinions on additive products before the establishment of a cooperative agreement with a third party. The large volume of currently pending requests makes it unlikely that additional requests will be completely processed by that date. Likewise, EPA, in its acknowledgment letters to manufacturers requesting opinions on new products, explains that the Agency is, "... making a concerted effort to process petitions as quickly as possible.

However, EPA may not be able to process your request for an opinion on an additive product before the establishment of an alternative program as described in the Federal Register, Vol. 49, No. 97, 21003-6, May 17, 1984." Product reviews and issuance of advisory opinions have been limited to:

- Products composed entirely of other products which EPA had previously determined to be acceptable;
- Products composed entirely of ingredients which have been determined to be acceptable by EPA or the FDA, or other Federal agencies, for addition to potable water or aqueous foods;
- Products composed entirely of ingredients listed in the "Water Chemicals Codex," National Academy of Sciences, November 1982, and in the "Water Chemicals Codex: Supplementary Recommendations for Direct Additives," National Academy of Sciences, 1984;
- Certain other products of particular interest to EPA or to other Federal agencies; and
- Products which, if effectively excluded from the marketplace by lack of approval, might jeopardize public health or safety.

Continued processing of petitions during the development of the private-sector program minimized disruption of the marketplace from the viewpoint of manufacturers whose business depended in part on EPA acceptance of products, users who required water treatment products for the production of safe drinking water, and State officials who rely on the advice of EPA.

EPA believes that NSF is moving expeditiously and on schedule toward the full establishment of a third-party program covering products intended for use in drinking water systems. Priorities for standards development and implementation of a testing, certification, and listing program for various product categories have been based upon need, interest, complexity, and availability of information for developing standards. Direct drinking water additives were assigned high priority for the following reasons: (1) Use of direct additives is widespread in drinking water systems, so there are large population exposures to these chemicals; (2) as direct additives to drinking water, they present greater potential for water contamination than indirect mechanisms (e.g., migration from protective paints in pipes and storage tanks); and (3) the National Academy of Sciences' *Water Chemicals Codex* provided a good starting point for development of standards.

As originally planned, EPA is beginning to phase out the Agency's additives evaluation program. Thus, EPA will not accept new petitions or requests for advisory opinions after the date of this notice. While EPA will continue to process requests which are pending and those received on or before July 7, 1988, petition evaluations not completed by October 4, 1988, will be returned to the submitter. After that date, EPA will no longer evaluate additive products.

Petitions which are completely evaluated by October 5, 1988, will be added to the quarterly list of acceptable products published shortly after that date. That quarterly list will be the last such list issued by EPA. On April 7, 1990, EPA will withdraw its list of acceptable products, and the list and the advisories on these additives will expire. This means that: (1) The various lists published by EPA under the titles *Report on Acceptable Drinking Water Additives*, *Report on Coagulant Aids for Water Treatment*, *Report on Concrete Coatings/Admixture for Water Treatment*, *Report on Detergents, Sanitizers and Joint Lubricants for Water Treatment*, *Report on Evaporative Suppressants for Water Treatment*, *Report on Liners/Grouts/Hoses and Tubings for Water Treatment*, *Report on Miscellaneous Chemicals for Water Treatment*, *Report on Protective Paints/Coatings for Water Treatment*, and any and all other lists of drinking water products issued by EPA or its predecessor agencies regarding drinking water additives will be invalid after April 7, 1990; and (2) advisory opinions on drinking water additives issued by EPA and predecessor agencies will be invalid after that date.

EPA believes that, while in the past every effort has been made to provide the best possible evaluations, all products should be evaluated against carefully developed and considered

nationally uniform standards. Many of the currently listed products were evaluated and accepted up to 20 years ago and have not been reevaluated since that time. Numerous products have been accepted because they were virtually identical to or were repackagings of older products. The result is that few products have been completely evaluated for the safety of their original or current formulations vis-a-vis the latest toxicological, chemical, and engineering information. A uniform evaluation of all products, old and new, will result in consistent quality of products, and will assure fair and equitable treatment to all manufacturers and distributors.

Henceforth, parties desiring to have existing or new products evaluated against the NSF standards should contact NSF or other organizations offering such evaluations. To contact NSF about the drinking water additives program write to: David Gregorka, National Sanitation Foundation, P.O. Box 1468, Ann Arbor, MI 48106, or call (313) 769-8010. Information on alternatives to NSF evaluation may be obtained by contacting State regulatory agencies or the AWWA, Technical and Professional Department, 6666 Quincy Avenue, Denver Co, 80235, or call (303) 794-7711, which is addressing certifier accreditation.

EPA believes that the 21 months between today and the expiration date of EPA's last list is sufficient time for manufacturers to submit their products to NSF or other certification entities for evaluation. The first NSF list will be published prior to April 7, 1990, thereby preventing any disruption in the marketplace. Furthermore, NSF had indicated that it will consider current EPA and other regulatory evaluations when evaluating products in order to ensure a smooth transition. States may choose to rely on the last EPA quarterly list of products until their individual

programs for accepting private-sector certification are fully implemented.

Parties desiring to market drinking water additive products are reminded that the individual States have the authority to regulate the sale and/or use of specific products as they see fit. Thus, reliance upon a particular standard or organization to certify that a product complies with a particular standard must be acceptable to the State in which the supplier wishes to do business.

Discontinuation of the additives program at EPA does not relieve the Agency of its statutory responsibilities. If contamination resulting from third-party sanctioned products occurs or seems likely, EPA will address that issue with appropriate drinking water regulations or other actions authorized under the SDWA. EPA is a permanent member of the NSF program Steering Committee, and senior EPA staff and management will continue to participate in this and other programs designed to assure that high-quality products are employed in the treatment of public drinking water. Also, the Agency will continue to sponsor research on contaminants introduced in public water supplies during water treatment, storage, and distribution.

III. Comments

Although this notice does not include a proposed or final regulation, EPA welcomes comments and suggestions that would assist the Agency in implementing the additives program phasedown. Please address all comments and suggestions to: Mr. Arthur H. Perler, Chief, Science and Technology Branch, Office of Drinking Water (WH-550D), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Date: June 16, 1988.

William Whittington,
Acting Assistant Administrator for Water.

[FR Doc. 88-15232 Filed 7-6-88; 8:45 am]

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Federal Register

Vol. 53, No. 131

Friday, July 8, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on Payment of Premiums, 29 CFR Part 2610, that appeared at pages 24906 through 24919 in the Federal Register of Thursday, June 30, 1988 (53 FR 24906). This action is needed to correct an editorial error in that interim rule.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8823. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The following correction is made in FR Doc. 88-14792 appearing on pages 24906 through 24919 in the issue of June 30, 1988:

§ 2610.34 [Corrected]

1. On page 24919, column two, line 28, the text of § 2610.34(b)(6) is corrected by substituting the word "fifteenth" for the word "last".

Note: An additional correction to this document is published elsewhere in the corrections sections of this issue of the Federal Register.

Dated: July 5, 1988.

Kathleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-15414 Filed 7-7-88; 8:45 am]

BILLING CODE 7501-01-01

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6799]

List of Communities Eligible for the Sale of Flood Insurance; Iowa, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: June 3, 1988.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706. Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and

administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 553(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64
Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Iowa	Anita, City of	Cass	190048	June 3, 1988 Suspension withdrawn.
Do	Beford, City of	Taylor	190263	Do.
Do	Charlotte, City of	Clinton	190087	Do.
Do	Cherokee, City of	Cherokee	190063	Do.
Do	Clarksville, City of	Butler	190336	Do.
Do	Clive, City of	Polk	190488	Do.
Do	Corretonville, City of	Woodbury	190298	Do.
Do	Defiance, City of	Shelby	190246	Do.
Do	Fertile, City of	Worth	190301	Do.
Do	Fort Madison, City of	Lee	190184	Do.
Do	Gilbertville, City of	Black Hawk	190021	Do.
Do	Gladbrook, City of	Tama	190516	Do.
Do	Janesville, City of	Black Hawk and Bremer	190023	Do.
Do	Lamoni, City of	Decatur	190110	Do.
Do	Lehigh, City of	Webster	190310	Do.
Do	Lowden, City of	Cedar	190054	Do.
Do	Lucas, City of	Lucas	190196	Do.
Do	Mapleton, City of	Monona	190208	Do.
Do	Maxwell, City of	Story	190257	Do.
Do	Newell, City of	Buena Vista	190324	Do.
Do	Pleasant Hill, City of	Polk	190489	Do.
Do	Roland, City of	Story	190513	Do.
Do	Sageville, City of	Dubuque	190122	Do.
Do	Sioux Center, City of	Sioux	190658	Do.
Do	Smithland, City of	Woodbury	190300	Do.
Do	Spencer, City of	Clay	190071	Do.
Do	Story City, City of	Story	190256	Do.
Do	Sumner, City of	Bremer	190029	Do.
Do	Unionville, Town of	Appanoose	190923	Do.
Do	Victor, City of	Iowa and Poweshiek	190426	Do.
New York	Holland Patent, Village of	Oneida	360530	June 15, 1988 Suspension withdrawn.
Do	Huron, Town of	Wayne	360882	Do.
Do	Jay, Town of	Essex	360266	Do.
Do	Lebanon, Town of	Madison	360403	Do.
Do	Lextrington, Town of	Greene	360284	Do.
Do	Lima, Town of	Livingston	360457	Do.
Do	Lincoln, Town of	Madison	360405	Do.
Do	Lyons, Town of	Wayne	361226	Do.
Do	Marathon, Village of	Cortland	360183	Do.
Do	Middlesex, Town of	Yates	360960	Do.
Do	Newark, Village of	Wayne	360894	Do.
Do	Pelham, Village of	Westchester	360925	Do.
Do	Pulaski, Village of	Oswego	360650	Do.
Do	Rensselaer Falls, Village of	St. Lawrence	361466	Do.
Do	Savona, Village of	Stauben	361049	Do.
Do	Sherburne, Town of	Chenango	360164	Do.
Do	Sherman, Town of	Chautauque	361502	Do.
Do	Smyrna, Town of	Chenango	361306	Do.
Do	Sodus Point, Village of	Wayne	360899	Do.
Do	Speculator, Village of	Hamilton	361527	Do.
Do	Stockport, Town of	Columbia	361322	Do.
Do	Tivoli, Village of	Dutchess	361507	Do.
Do	Valatie, Village of	Columbia	361508	Do.
Do	Valley Falls, Village of	Rensselaer	361469	Do.
Do	Wallkill, Town of	Orange	360634	Do.
Do	Wappingers Falls, Village of	Dutchess	360223	Do.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

Issued: July 1, 1988.

[FR Doc. 88-15329 Filed 7-7-88; 8:45 am]

BILLING CODE 6710-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 31

Referral of Debts to the Internal Revenue Service for Tax Refund Offset; Implementing the Deficit Reduction Act

AGENCY: Department of Health and
Human Services.

ACTION: Final rule.

SUMMARY: Section 2853 of the Deficit
Reduction Act (the Act) authorizes the

Secretary of the Treasury to offset the
income tax refund due an individual
taxpayer who has a delinquent debt
obligation to the Federal Government
when other collection efforts have failed
to recover the amount due. This final
rule implements the provisions of the
Act for reporting an individual debtor to
the Internal Revenue Service (IRS) so
that an offset against an income tax
refund can be effectuated. The
procedure contains safeguards for the
debtor, while enhancing the
Department's ability to collect
delinquent debts.

EFFECTIVE DATE: Effective date of rule
August 8, 1988.

FOR FURTHER INFORMATION CONTACT:
Alan M. Levit, (202) 245-6201.

SUPPLEMENTARY INFORMATION: On
December 17, 1986, the Department
solicited public comment on an interim
rule implementing section 2853 of the
Deficit Reduction Act (DRA) (31 U.S.C.
3720A) and its implementing regulations
issued by the Department of the
Treasury, Internal Revenue Service
(IRS), at 26 CFR 301.6402-6T.

The Department received only one
comment from an interested party, and a
substantive revision was made to the
interim rule upon consideration of the
comment.

Section 31.1—Scope

The commenter was concerned with
the issue of reporting to the IRS a debt
for which the statute of limitations had
lapsed. Such discharged debts are
considered by the IRS to be income to
the debtor. The commenter suggests that
the procedural safeguards afforded
debtors in general by the interim rule
are not provided to those debtors whose
debts are unenforceable solely due to
the lapse of the limitations period for
collecting the debt. However, section
61(a)(12) of the Internal Revenue Code
and its implementing regulations at 26
CFR 1.61-12 provide that income arising
from the discharge in whole or in part of
a debt is to be included in the debtor's
gross income for the year in which the
debt is discharged. Therefore, since the
Department is required to report such
income to the IRS, the Departmental
claims collection regulations, at 45 CFR
30.31(b), provide that the Secretary will
report to the IRS, using Form 1099G, any
amount over \$600 which becomes
uncollectible because the applicable
limitations period expires. We have
revised § 31.1(d) merely to reference this
preexisting requirement.

E.O. 12291

This rule does not constitute a major
rule as that term is defined in section
1(b) of Executive Order 12291 on Federal
Regulation issued on February 17, 1981.
Analysis of the rule indicates that it
does not (1) have an annual effect on the
economy of \$100 million or more; (2)
cause a major increase in costs or prices
for consumers, individual industries,
Federal, State or local government
agencies; or geographic regions; or (3)
have a significant adverse effect on
competition, employment, investment,
productivity, innovation, or on the
ability of United States-based
enterprises to compete with foreign-

based enterprises in domestic or export
markets.

Regulatory Flexibility Act

In accordance with the provisions of
section 605(b) of the Regulatory
Flexibility Act, at 5 U.S.C. 603, the
Undersigned certifies that this rule does
not have a significant economic impact
on a substantial number of small entities
such as would require the development
of a regulatory impact analysis. The
Department recognizes that there may
be increased costs to individuals as a
result of this rule. However, such
increases are imposed only if an
individual is late in making payments to
the Department. In addition, these
procedures are mandated by section
2853 of the Deficit Reduction Act.

Reporting and Recordkeeping Requirements

Under section 3518 of the Paperwork
Reduction Act of 1980 and 5 CFR
1320.3(c), the information collection
provisions contained in these
regulations are not subject to Office of
Management and Budget review and
approval.

List of Subjects in 45 CFR Part 31

Administrative practice and
procedure, Claims.

Otis R. Bowen,
Secretary.

Date: May 11, 1988.

Accordingly, we hereby revise 45 CFR
Part 31 as follows:

PART 31—REFERRAL OF DEBT TO IRS FOR TAX REFUND OFFSET

- Sec.
- 31.1 Scope.
- 31.2 Notice of requirements before offset.
- 31.3 Review within the Department of a
determination that an amount is past due
and legally enforceable.
- 31.4 Determination of the hearing officer.
- 31.5 Review of departmental records related
to the debt.
- 31.6 Stay of offset.
- 31.7 Application of offset funds: single debt.
- 31.8 Application of offset funds: multiple
debts.
- 31.9 Application of offset funds: tax refund
insufficient to cover amount of debt.
- 31.10 Time limitation for notifying the IRS to
request offset of tax refunds due.
- 31.11 Correspondence with the Department.
- Authority: 31 U.S.C. 3711, 3716, 3718;
Section 2853 of the Deficit Reduction Act (31
U.S.C. 3720A); 26 CFR 301.6402-6T; and 45
CFR Part 30.

§ 31.1 Scope.

(a) The standards set forth in §§ 31.1
through 31.11 are the Department's
procedures for requesting the Internal
Revenue Service (IRS) to offset tax
refunds due taxpayers who have a past

due debt obligation to the Department.
These procedures are authorized by the
Deficit Reduction Act of 1984 (31 U.S.C.
3720A), as implemented by regulation at
26 CFR 301.6402-6T, and apply to the
collection of debts as authorized by
common law, by 31 U.S.C. 3716, or under
other statutory authority.

(b) The Secretary will use the IRS tax
refund offset to collect claims which are
liquidated or certain in amount, past due
and legally enforceable, and which are
eligible for tax refund offset under
regulations issued by the Secretary of
the Treasury.

(c) Except as provided in paragraph
(d) of this section, the Secretary will not
report debts to the IRS except for the
purpose of using the offset procedures
described in §§ 31.1 through 31.11. Debts
of less than \$25.00, exclusive of interest
and other charges, will not be reported.

(d) If not legally enforceable because
of the lapse of the statute of limitations
but otherwise valid, a debt amounting to
over \$600 will be reported to the IRS as
a discharged debt on Form 1099G. (Form
1099G is an information return which
Government agencies file with the IRS
to report discharged debt, and the
discharged amount is considered as
income to the taxpayer.) [See § 31.9; 45
CFR 30.31(b).]

§ 31.2 Notice of requirements before offset.

A request for reduction of an IRS tax
refund will be made only after the
Secretary makes a determination that an
amount is owed and past due and
provides the debtor with 60 calendar
days written notice. The Department's
Notice of Intent to Collect by IRS Tax
Refund Offset (Notice of Intent) will
state:

(a) The nature and amount of the debt;
(b) That unless the debt is repaid
within 60 calendar days from the date of
the Department's Notice of Intent, the
Secretary intends to collect the debt by
requesting the IRS to reduce any
amounts payable to the debtor as
refunds of Federal taxes paid by an
amount equal to the amount of the debt
and all accumulated interest and other
charges;

(c) That the debtor has a right to
obtain review, within the Department, of
the Secretary's initial determination that
the debt is past due and legally
enforceable (See § 31.3); and

(d) That the debtor has a right to
inspect and copy departmental records
related to the debt as determined by the
Secretary and will be informed as to
where and when the inspection and
copying can be done after the
Department receives notice from the

debtor that inspection and copying are requested (See § 31.5).

§ 31.3 Review within the Department of a determination that an amount is past due and legally enforceable.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past due or not legally enforceable. To exercise this right, the debtor shall send a letter notifying the applicable delegates of the HHS Departmental Claims Officer specified in § 31.11 that the debtor intends to present evidence to a designated hearing officer. The letter must be received by such designated claims officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in an automatic referral of the debt to the IRS without further action. Evidence submitted by a debtor who has requested prior review of a claim under 45 CFR Part 30 will not be reconsidered unless such evidence raises a new defense not considered in connection with such prior review.

(c) *Review of the record.* After a timely submission of evidence by the debtor, the claims officer will submit such evidence to a designated hearing officer, who will review all material related to the debt which is in possession of the Department. The hearing officer shall make a determination based upon a review of the written record, except that the hearing officer may order an oral hearing if the officer finds that:

- (1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or
- (2) The question of indebtedness cannot be resolved by review of the documentary evidence.

§ 31.4 Determination of the hearing officer.

(a) Following the hearing or the review of the record, the hearing officer shall issue a written decision which includes the supporting rationale for the decision. The decision of the hearing officer concerning whether a debt or part of a debt is past due and legally enforceable in the final agency decision

with respect to the past due status and enforceability of the debt.

(b) Copies of the hearing officer's decision will be distributed to the designated claims officer, the Department's Office of the Assistant Secretary for Management and Budget, the debtor, and the debtor's attorney or other representative, if any.

(c) If the hearing officer's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the IRS after the hearing officer's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Office of the Assistant Secretary for Management and Budget. No referral will be made to the IRS if review of the debt by the hearing officer reverses the initial decision that the debt is past due and legally enforceable.

§ 31.5 Review of departmental records related to the debt.

(a) *Notification by debtor.* A debtor who intends to inspect or copy departmental records related to the debt as determined by the Secretary must send a letter to the designated claims officer stating the debtor's intention. The letter must be received by the designated claims officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Department's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the designated claims officer will notify the debtor of the location and time when the debtor may inspect or copy departmental records related to the debt. At his or her discretion, the designated claims officer may also mail copies of the debt-related records to the debtor.

§ 31.6 Stay of offset.

If the debtor timely notifies the Secretary that the debtor is exercising a right described in § 31.3(a) and timely submits evidence pursuant to § 31.3(b), any notice to the IRS will be stayed until the issuance of a written decision by the hearing officer which determines that a debt or part of a debt is past due and legally enforceable.

§ 31.7 Application of offset funds: single debt.

If the debtor does not timely notify the Secretary that the debtor is exercising a right described in § 31.3, the Secretary will notify the IRS of the debt 60 calendar days from the date of the Department's Notice of Intent, and will request that the amount of the debt be offset against any amount payable by

the IRS as refund of Federal taxes paid. Normally, recovered funds will be applied first to any special charges provided for in HHS regulations or contracts, then to interest, and finally, to the principal owed by the debtor.

§ 31.8 Application of offset funds: multiple debts.

The Secretary will use the procedures set out in § 31.7 for the offset of multiple debts. However, when collecting on multiple debts the Secretary will apply the recovered amounts against the debts in order in which the debts accrued.

§ 31.9 Application of offset funds: tax refund insufficient to cover amount of debt.

If a tax refund is insufficient to satisfy a debt in a given tax year, the Secretary will recertify to the IRS on the following year to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS as a discharged debt in accordance with § 31.1(d) and 45 CFR 30.31(b).

§ 31.10 Time limitation for notifying the IRS to request offset of tax refunds due.

(a) The Secretary may not initiate offset of tax refunds due to collect a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the Secretary's right to collect the debt first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonably have been known by the officials of the Department who were responsible for discovering and collecting such debts.

(b) When the debt first accrued is determined according to existing law regarding the accrual of debts. (See, for example, 28 U.S.C. 2415.)

§ 31.11 Correspondence with the Department.

(a) All correspondence from the debtor to the Secretary concerning the right to review as described in § 31.3 shall be addressed to the appropriate office of the Department at the following locations:

Office of the Secretary: Office of Financial Operations, Room 706D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201
Public Health Service: PHS Claims Office, Room 18-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Social Security Administration: SSA Claims Office, P.O. Box 17042, Baltimore, Maryland 21235
Health Care Financing Administration: HCFA Claims Office, Division of Accounting, P.O. Box 17255, Baltimore, Maryland 21203

Family Support Administration: FSA Claims Office, Switzer Building, Room 2222, 330 C Street SW., Washington, DC 20201

Region I: Office of the General Counsel, John F. Kennedy Federal Building, Room 2047, Boston, Massachusetts 02203

Region II: Office of the General Counsel, Jacob K. Javits Federal Building, Room 3908, New York, New York 10278

Region III: Office of the General Counsel, 3535 Market Street, Room 9100, P.O. Box 13716, Philadelphia, Pennsylvania 19101

Region IV: Office of the General Counsel, 101 Marietta Tower, Room 221, Atlanta, Georgia, 30323

Region V: Office of the General Counsel, 18th Floor, 300 South Wacker Drive, Chicago, Illinois 60606

Region VI: Office of the General Counsel, 1200 Main Tower, Room 1330, Dallas, Texas 75202

Region VII: Office of the General Counsel, 601 East 12th Street, Room 535, Kansas City, Missouri 64106

Region VIII: Office of the General Counsel, 1961 Stout Street, Room 1106, Denver, Colorado 80294

Region IX: Office of the General Counsel, 50 United Nations Plaza, Room 420, San Francisco, California 94102

Region X: Office of the General Counsel, 2901 3rd Avenue, Room 580, Seattle, Washington, 98121.

(b) All other correspondence shall be addressed to the appropriate office as described in paragraph (a) of this section. All requests for review of Departmental records must be marked: *Attention: Records Inspection Request.* [FR Doc. 88-15255 Filed 7-7-88; 8:45 am]

BILLING CODE 4150-04-M

45 CFR Part 85

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services

AGENCY: Department of Health and Human Services.

ACTION: Final regulation.

SUMMARY: This regulation requires that the Department of Health and Human Services (HHS) operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition of individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the

basis of handicap in programs or activities conducted by Federal Executive Agencies.

EFFECTIVE DATE: September 6, 1988.

ADDRESS: Copies of this regulation are available in Spanish, in Braille and on tone-indexed tape. These may be obtained from Marcella Haynes, Director, Policy & Special Projects Staff, Office for Civil Rights, Room 5034, Wilbur J. Cohen Building, 330 Independence Avenue SW., Washington DC, 20201.

FOR FURTHER INFORMATION CONTACT: Frank E G Weil, (202) 245-6700. TDD (202) 472-2818.

SUPPLEMENTARY INFORMATION: On February 10, 1988, the Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by HHS, 53 FR 4425.

By April 18, 1988, close of the comment period, HHS received eight comments. These included comments from the Department of Justice, which has government-wide coordination authority under section 504 and from the Equal Employment Opportunity Commission which has similar authority over allegations of discrimination in employment. In addition, comments were received from one Federal office, and from five organizations concerned with the interests of the handicapped.

HHS read and analyzed each comment; to the extent to which the comments focused on the language of the regulation, a discussion thereof and a decision thereon will be found below. Copies of the written comments will continue to be available for inspection and copying from 9:00 a.m. to 5:00 p.m. on weekdays, except for legal holidays, in Room 5034, Wilbur J. Cohen Building, 330 Independence Avenue SW., Washington, DC, 20201.

Section 504 requires that this regulation be submitted to the appropriate authorizing committees of the Congress, and that the regulations may take effect no earlier than the thirtieth day after they have been so submitted. HHS has today submitted this regulation to the Senate Committee on Labor and Human Resources and to the House Committee on Education and Labor pursuant to the terms of section 504. The regulation will become effective on September 6, 1988.

Background

The purpose of this regulation is to provide for the enforcement of section

504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Health and Human Services. Section 504 states, in pertinent part, that:

No otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794 (1978 amendment italicized).)

The substantive nondiscrimination obligations of the agency as set forth in this regulation are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (See 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs) and 45 CFR Part 84 (section 504 regulations for federally assisted programs funded by HHS).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 36,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this regulation and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*,

718 F.2d 490 (1st Cir. 1983), *Strathie v. Department of Transportation*, 710 F.2d 227 (3rd Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable modifications," *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal government's regulations implementing section 504 for federally assisted programs, as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis* and by the Supreme Court in *Alexander*; therefore, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence, HHS believes that there are no significant differences between this regulation for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

Several commenters took the view that the decision in *Davis* was limited to an academic setting, and should not be applied outside that setting. HHS disagrees. It should be noted that *Alexander*, *APTA*, and *Strathie*, cited above, all deal with non-academic settings, and that *Davis* is cited and interpreted in each of them.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies on April 15, 1983, and of an amended prototype distributed by the Department of Justice on April 13, 1984. It was again reviewed

by the Department of Justice following publication of the Notice of Proposed Rulemaking. At that time, the Department of Justice suggested a number of changes, largely non-substantive. These have been adopted.

This regulation has also been reviewed by the Equal Employment Opportunity Commission (EEOC) under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It was again reviewed by EEOC following publication of the Notice of Proposed Rulemaking. At that time, EEOC suggested a number of non-substantive changes, which have been adopted.

The regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127). No regulatory impact analysis is required if a regulation applies only to the management of Federal agencies. This regulation applies only to the management of HHS. Therefore a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

This regulation contains no collections of information which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980.

One commenter maintained that Executive Order No. 12612 of October 20, 1987, requires all Federal agency rules to consider impact on State governmental programs and procedures, and that because States tend to enact statutes analogous to Federal statutes, a reference to Executive Order 12612 was required. This regulation relates solely to the Federal sector and deals with internal agency management. Such a reference is therefore, not required.

Section-by-Section Analysis of Regulation and Response to Comments

Where no discussion of comments follows the analysis of a section, no comments have been received thereon.

Section 85.1 Purpose.

Section 85.1 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 85.2 Application.

The proposed regulation covers all programs and activities conducted by the Department of Health and Human Services ("HHS" or the "agency").

This includes the following components:

The Office of the Secretary
Office of the Under Secretary
Office of the Deputy Under Secretary
Office of the Assistant Secretary for Public Affairs
Office of the Assistant Secretary for Legislation
Office of the Assistant Secretary for Planning and Evaluation
Office of the Assistant Secretary for Management and Budget
Office of the Assistant Secretary for Personnel Administration
Office of the General Counsel
Office of Inspector General
Office for Civil Rights
Office of Consumer Affairs
Office of Human Development Services
Office of the Assistant Secretary for Human Development Services
Administration on Aging
Administration for Children, Youth and Families
Administration for Native Americans
Administration on Developmental Disabilities
Public Health Service
Office of the Assistant Secretary for Health
Agency for Toxic Substances and Disease Registry
Alcohol, Drug Abuse and Mental Health Administration
Centers for Disease Control
Food and Drug Administration
Health Resources and Services Administration
Indian Health Service
National Institutes of Health
Health Care Financing Administration
Social Security Administration
Family Support Administration.

Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations, and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits.

This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

The major programs subject to this regulation are listed below. Each of the components listed above occupies facilities which the public may have occasion to visit, engages in written and oral communication with the public, and hires Federal employees. In addition, some components operate programs which involve extensive public use, as summarized below:

Office of the Secretary—No major operating programs or activities conducted directly by the Federal government.
Office of Human Development Services—No major operating programs or activities conducted directly by the Federal government.¹
Public Health Service—Directly operated programs include the Indian Health Service, and intramural research conducted by the National Institutes of Health.¹
Health Care Financing Administration—Directly operates the Medicare program.¹
Social Security Administration—Directly operates the Old Age, Survivors, and Disability Insurance, and Supplemental Security Income for the Aged, Blind, and Disabled programs.
Family Support Administration—No major operating programs or activities conducted directly by the Federal government.¹

One commenter urged the inclusion of a program operated by one component of the Office of the Secretary, and for a list of all programs and activities to be appended to the regulation. In light of the fact that all programs and activities are covered, that a comprehensive list of all programs would be very lengthy, and that such a list would have to be amended frequently as new programs are enacted and existing programs expire, the above list appears to be sufficient.

Section 85.3 Definitions.

"Agency." For purposes of this part "agency" means the Department of Health and Human Services or any component part of the Department of Health and Human Services that conducts a program or activity covered

¹ Financial assistance programs conducted through grants to States and other recipients are covered by the section 504 rule for federally assisted programs at 45 CFR Part 84.

by this part. "Component agency" means any such component part.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 85.51(a)(1), they may also be necessary to meet other requirements of this regulation.

Two commenters suggested expanding the definition of "auxiliary aids" and one of them further suggested re-naming "auxiliary aids" to read "aids for reasonable accommodation" and specifically include the services of attendants.

The items set out in § 85.3 are clearly described as examples, and are not intended to constitute an exhaustive list. By giving examples rather than by including a list, other aids can be used, and, in appropriate cases, required, without amending the regulation. In certain instances, the services of attendants may indeed be appropriate; in those instances, they will fall under the definition in § 85.3. Therefore, there is no need to change the text of the regulations.

"Complete complaint." "Complete complaint" is defined to include all of the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (see § 85.61(g)) begins when the agency receives a complete complaint.

Two commenters stated their belief that the definition of "complete complaint" is too restrictive, and urged language which would give the complainant specific information as to what additional information is needed, and a further 30 days to submit such information, failing which the complaint would be dismissed without prejudice, and the complainant would be so informed.

Procedures similar to this suggestion are currently in place, and complainants will be given reasonable opportunities to complete the information submitted. There appears to be no need to spell these procedures out in the regulation.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)), except that the term "rolling stock or

other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this part, refers to structures and not to intangible property rights. It should, however, be noted that this part applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 85.41, 85.42, and 85.61(f).

One commenter proposed not to delete the phrase "or interest in such property." As previously stated, the phrase "or interest in such property" has been deleted because the term "facility," as used in this part, refers to structures and not to intangible property rights.

"Individual with Handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31), and the HHS regulation for federally assisted programs (45 CFR 84.3(j)). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of the amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

One commenter suggested that we add "sensory" to the phrase "physical or mental impairment." Since the definition set out in § 85.3 specifically includes the sense organs among the body systems whose impairment constitutes a handicap, we have not found it necessary to amend the regulation.

"OCR." "OCR" means the Office for Civil Rights of the Department of Health and Human Services.

"OCR Director/Special Assistant" means the Director of the Office for Civil Rights, who serves concurrently as the Special Assistant to the Secretary for Civil Rights, or a designee of the OCR Director/Special Assistant.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32) and the HHS section 504

regulation for federally assisted programs (45 CFR 84.3(k)).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (see, e.g., 45 CFR 84.3(k)(2)). It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the agency, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, an individual with handicaps is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive educational services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs, a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis*.

In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways." *Id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It, therefore, concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program

offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered, not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the purpose of the program.

One commenter proposed inserting the second sentence from the above paragraph into the regulatory text. We believe that the use of this language in the preamble is sufficient.

Another commenter commended HHS for the discussion of *Davis*, and the cases interpreting the *Davis* decision, in order to explain why the language of this part does not precisely track that of the regulations concerning federally assisted recipients (45 CFR Part 84). Two other commenters stated their view that incorporating *Davis* and *Alexander* into the regulation was unduly restrictive, and that the differences between this part and Part 84 would result in holding HHS to a lesser standard than HHS holds recipients of Federal financial assistance.

We believe that the Supreme Court's decision in *Davis* as well as the subsequent lower court decisions following *Davis* interpret section 504 and that it is necessary to reflect those decisions in the Department's regulation. The suggested changes are therefore not being adopted.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 85.42(a) and 85.51(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens to the agency. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources which are legally available to the agency for the purpose, and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a

fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

Two commenters suggested that the total resources of the agency be considered in determining "undue burden." Because many Department funds are earmarked for specific purposes and are therefore unavailable for use elsewhere, the entire agency budget is not an appropriate consideration.

For programs or activities which do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the EEOC regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 85.31. Nothing in this part changes existing regulations pertaining to employment.

One commenter proposed using the general section 504 definition of "qualified handicapped person" in employment cases rather than the definition of the EEOC regulation. The definition has been supplied by the Equal Employment Opportunity Commission which coordinates all employment discrimination matters throughout the government. It is also the Department's view that it is important to have a uniform definition of what constitutes employment discrimination throughout the Federal government.

"Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.

"Section 504." This definition makes clear that, as used in this part, "section 504" applies only to programs or activities conducted by the agency itself and not to programs or activities to which it provides Federal financial assistance.

Section 85.11 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination

regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)) and the HHS regulations for federally assisted programs (45 CFR 84.6(k)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

One commenter stated that a three-year retention period is insufficient, and proposed that self-evaluations be kept indefinitely. The regulation requires the self-evaluation to be kept for a minimum of three years, but does not include a maximum. It is expected that the self-evaluation will be retained for the period provided in current document retention policies.

Another commenter proposed that copies of the self-evaluation be made available for copying as well as for public inspection. This proposal has been adopted.

A further commenter proposed the inclusion of provisions for assurances, transition plans and specific modification requirements. We believe that while assurances are appropriate—and can be specifically enforced—in section 504 regulations for federally assisted programs or activities, all of the entities involved in this part are under the control of the Secretary, who can issue the necessary directives; assurances are therefore not required.

The final rule provides for participation in the self-evaluation process by individuals with handicaps or organizations representing individuals with handicaps by submitting comments, which may include the development of transition plans. It is expected that component agencies will consult with individuals with handicaps among their own staff in the course of preparing self-evaluations.

Because modification requirements are intended to address any potential problems in the agency's programs or activities, they are not specified in the regulation.

Section 85.12 Notice.

Section 85.12 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of the rights and protections afforded by section 504 and this part. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities or in connection with

recruitment; the display of informative posters in service centers and other public places; or the broadcasting of information by television or radio.

One commenter suggested the inclusion of a reference to recruitment materials in the above examples. Such a reference has been included.

Section 85.21 General prohibitions against discrimination.

Section 85.21 is an adaptation of the corresponding section of the section 504 coordination regulation for programs and activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 85.21 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the part. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 85.21. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices could result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or

benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 85.41–43) and communication (§ 85.51) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies, as well as the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 85.21(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement

contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certifications. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 85.3).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case, the agency must ensure that the standards it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities; nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity and thereby indirectly affect limited aspects of their operations.

One commenter suggested pointing out that Federal licensees or certified entities, having received services from Federal employees during the process of licensing or certification, thereby become Federally assisted recipients, and are covered by 45 CFR Part 84. Such an argument is beyond the scope of this part, and is therefore not being included.

Another commenter suggested including language such as that found in 45 CFR 84.4(b)(1) to the effect that agencies may not perpetuate discrimination against qualified individuals with handicaps by providing significant assistance to an agency, organization or person that discriminates on the basis of handicap. Assistance from the agency that would provide significant support to an organization constitutes Federal financial assistance and the

organization, as a recipient of such assistance, would be covered by the section 504 regulation for federally assisted programs.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to individuals those with handicaps.

Paragraph (d) provides that the agency must administer programs and activities in the most integrated setting appropriate to the next of qualified individuals with handicaps, i.e. in a setting that enables individuals with handicaps to interact with nonhandicapped individuals to the fullest extent possible.

Section 85.31 Employment.

Section 85.31 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259-60 (8th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302-04 (5th Cir. 1981). *Contra McGuinness v. United States Postal Service*, 744 F.2d 1318, 1320-21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413-14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan v. United States Postal Service*, 796 F.2d 1162, 1164-65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 85.31 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the EEOC at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

One commenter proposed that the general definition of "qualified individual with handicaps" be used in this section, instead of that used under section 501. We believe that the above paragraphs sufficiently explain the need for using the section 501 definition.

In addition to this section, § 85.61(c) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 85.41 Program accessibility: Discrimination prohibited.

Section 85.41 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 85.42 and 85.43.

Section 85.42 Program accessibility: Existing facilities.

This part adopts the program accessibility concept found in the existing section 504 coordination regulation form programs or activities receiving Federal financial assistance (28 CFR 41.57) with certain modifications. Thus, § 85.42 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The part also makes clear that the agency is not required to make each of its existing facilities accessible (§ 85.42(a)(1)). However, § 85.42, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 85.42(a)(2)).

One commenter stated that the provisions of § 85.42(a)(1) were negatively worded and may reflect a misinterpretation of the decision of the Supreme Court in *Grove City College v. Bell*, 465 U.S. 555 (1984), and argued for deletion of this language.

The language is identical to that in the section 504 regulation for federally assisted programs or activities. We believe that the inclusion of this language is necessary in order to make clear that, while every aspect of every Federal program or activity need not be accessible, each program or activity, when viewed as a whole, must be accessible.

Another commenter recommended adding the language "where other methods are equally effective in achieving compliance" from § 84.42(b) to § 84.42(a)(1). We believe that, because §§ 84.42(a) and (b) treat different aspects of the subject, their language must necessarily differ.

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement, the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity, or in undue financial and administrative

burdens. A similar limitation is provided in § 85.51(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraph (a)(2) and § 85.51(d) are also supported by the Supreme Court's decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits the grantee offers," *id.* at 301, and that "reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* n.21 (emphasis added). However, section 504 does not require "changes," "adjustments," or "modifications" to existing programs that would be "substantial" or that would constitute "fundamental alteration[s]" in the nature of a program." *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the

regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 85.42(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 85.42(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee, and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 85.61. The opportunity to file such a complaint responds to one commenter's suggestion that review by a high level Department official be assured.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The agency

may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

One commenter proposed that methods other than structural changes to ensure accessibility should be "equally effective". The regulations implementing section 504 for federally assisted programs do not contain such language. The addition of the proposed language would impose a regulatory standard on the Department not required of recipients. In view of the fact that the 1978 amendments were intended to apply the same requirements to federally conducted programs as apply to federally assisted programs, the proposed language is not being adopted.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three (3) years after the effective date of this part. Where structural modifications are required and it is not expected that these can be completed within six months, a transition plan should be developed within six months of the effective date of this part. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

One commenter proposes to limit the time allowed for making structural modifications to one year. We note that the basic requirement is that these changes be made "as soon as practicable," and that the three-year limit is the maximum period of time. Furthermore, the three-year maximum for transition plans is identical to that contained in the regulations for federally assisted recipients.

Section 85.43 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 85.43 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR Part 101-19, 101-19.600 to 101-19.607 (GSA regulation which incorporates the Uniform Federal Accessibility Standards). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as

amended (42 U.S.C. 4151-4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standards for existing facilities in § 85.42. To the extent the buildings are newly constructed or altered, they must also meet the new constructions and alteration requirements of § 85.43.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes that same program accessibility standards should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the question of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of this issue. Two commenters urged that leased buildings be required to be accessible at the time of lease. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 85.51 Communications.

Section 85.51 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 85.1(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with

handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 85.51(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 85.51(d). That paragraph limits the obligations of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 85.42(c)(2)). Unless not required by § 85.51(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

One commenter proposed that the choice of auxiliary aid made by the individual with handicaps should govern unless it would constitute an undue hardship on the agency. We believe that the language set out above is adequate to ensure consideration of an individual's preference.

Another commenter proposed that the regulation require all films and videotapes produced by the agency to be captioned for the hearing-impaired. The Department intends to examine all appropriate methods of ensuring effective communication.

The same commenter applauded HHS for the inclusion of the language requiring HHS to inform individuals with handicaps of their section 504 rights.

The discussion of § 85.42(a), Program accessibility, Existing facilities, regarding the determination of what constitutes undue financial and administrative burdens, also applies to § 85.51(d) and should be referred to for a complete understanding of the agency's obligation to comply with § 85.51.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g. a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate.

One commenter proposed changing the language to state that notepads rarely suffice for communication with the hearing-impaired. Considering that a significant number of the hearing-impaired may not be skilled in sign language, we believe that the language used is appropriate.

For vision-impaired persons, effective communication might be achieved by

several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs and activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in proceedings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceedings of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 85.51(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

One commenter proposed that the items which agencies are not required to provide and the circumstances involved be described in more detail. We believe that the description given is sufficient, because the interpretation of this provision will be made on a case-by-case basis.

Paragraph (b) requires the agency to ensure that individuals with handicaps can obtain information concerning accessible services, activities, and facilities.

Paragraph (c) requires the agency to provide signage at inaccessible facilities that direct users to locations with information about accessible facilities.

One commenter suggested specifically mentioning the international symbol for deafness, and placing such signs at the main entrance of buildings equipped to service the hearing-impaired. We believe that the language contained in §§ 85.51 (b) and (c) requires the agency to ensure that individuals with handicaps, including those with impaired hearing, can obtain information regarding accessibility, and that this requirement is sufficient to afford flexibility on the part of the agency regarding use of appropriate signage.

One commenter proposed adding the words "in the most integrated setting

appropriate" to the language in § 85.51(d). This language already appears elsewhere in the regulation, e.g. in § 85.42(b)(2), and it is the Department's intention to act in accordance with that provision.

Section 85.61 Compliance procedures.

Paragraph (a) specifies that paragraphs (b) and (d) through (f) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (c) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (b) designates the official responsible for coordinating implementation of § 85.61. The NPRM stated that responsibility for the implementation and operation of this "part" shall be vested in the OCR Director/Special Assistant. The final rule has been revised by replacing the word "part" with the word "section" to clarify the responsibility for coordinating implementation of § 85.61.

The agency is required to accept and investigate all complete complaints (§ 85.61(d)). Two commenters suggested that a complainant have an opportunity to remedy an incomplete complaint. Current administrative procedures provide for this practice and it need not be included in the text of the regulation.

If the agency determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 85.61(e)). One commenter pointed out that where a reference to another entity of the Federal government is required, the obligation to refer should be absolute, not limited to reasonable efforts. The language "shall make reasonable efforts to refer" is not intended to minimize the Department's obligation.

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board (ATBCB) upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 85.61(g)). One appeal within the

agency shall be provided (§ 85.61(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

Commenters have suggested the following:

Notifying complainants whenever their complaints are referred to another agency. Current administrative procedures provide for this practice and it need not be included in the text of the regulation.

Describing the basic parameters for submitting or obtaining evidence used to decide appeals. Since the grounds for appeal may be extremely varied, it would not be practicable to set out parameters for every appeal.

Including a statement as to complainants' rights to judicial review. These rights are statutory and beyond the scope of this regulation.

Obtaining the expertise of ATBCB in appropriate cases. A provision regarding notification of ATBCB is already included in the regulation.

Including a statement that all other regulations, forms and directives issued by HHS are superseded by the nondiscrimination requirements of this part. The Department views any other issuances falling short of the requirements of this regulation as insufficient to ensure compliance and therefore such a statement is unnecessary.

Provisions for attorneys fees and compensation to the prevailing party. Such provisions are statutory and beyond the scope of this regulation.

Section 85.62 Coordination and compliance responsibilities.

Section 85.62 sets out the respective responsibilities of the components of HHS and of the Director, OCR/Special Assistant in the implementation of section 504 to programs and activities conducted by HHS.

Paragraph (c) specifies the respective roles of OCR and of the HHS component in cases in which noncompliance is found.

In the event that OCR and the HHS component cannot agree on a resolution of any particular matter, such matter will be submitted to the Secretary for resolution.

List of Subjects in 45 CFR Part 85

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Date: June 17, 1988.

Otis R. Bowen,
Secretary.

For the reasons set forth in the preamble, Title 45 of the Code of Federal Regulations is amended by adding a new Part 85, as follows:

PART 85—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec.

85.1 Purpose.

85.2 Application.

85.3 Definitions.

85.4-85.10 [Reserved]

85.11 Self-evaluation.

85.12 Notice.

85.13-85.20 [Reserved]

85.21 General prohibitions against discrimination.

85.22-85.30 [Reserved]

85.31 Employment.

85.32-85.40 [Reserved]

85.41 Program accessibility: Discrimination prohibited.

85.42 Program accessibility: Existing facilities.

85.43 Program accessibility: New construction and alterations.

85.44-85.50 [Reserved]

85.51 Communications.

85.52-85.60 [Reserved]

85.61 Compliance procedures.

85.62 Coordination and compliance responsibilities.

85.63-85.99 [Reserved]

Authority: 29 U.S.C. 704.

§ 85.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 85.2 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

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§ 85.3 Definitions.

For purposes of this part, the term—"Agency" means the Department of Health and Human Services or any component part of the Department of Health and Human Services that conducts a program or activity covered by this part. "Component agency" means such component part.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's) interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with Handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

- (1) "Physical or mental impairment" includes
 - (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

- (ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

- (2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

- (3) "Has a record of such impairment" means has a history of, or is misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

- (4) "Is regarded as having an impairment" means:

- (i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation.

- (ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

- (iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"OCR" means the Office for Civil Rights of the Department of Health and Human Services.

"OCR Director/Special Assistant" means the Director of the Office for Civil Rights, who serves concurrently as the Special Assistant to the Secretary for Civil Rights, or a designee of the Director/Special Assistant.

"Qualified individual with handicaps" means:

- (1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive educational services from the agency;

- (2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a particular level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can

demonstrate would result in a fundamental alteration in its nature; and

- (3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

- (4) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 85.31.

"Secretary" means the Secretary of the Department of Health and Human Services or his/her designee.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1974 (Pub. L. 93-602, 88 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99-566, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 29). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

§ 85.4-85.10 (Reserved)**§ 85.11 Self-evaluation.**

- (a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications. Any new operating or staff divisions established within the agency shall have one year from the date of their establishment to carry out this evaluation.

- (b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation by submitting comments (both oral and written).

- (c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection and copying—

- (1) A description of areas examined and any problems identified; and
 - (2) A description of any modifications made.

§ 85.12 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such a manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§ 85.13-85.20 (Reserved)**§ 85.21 General prohibitions against discrimination.**

- (a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

- (b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

- (i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

- (ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

- (iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

- (iv) Provide different or separate aids, benefits, or services to individuals with handicaps or to any class or individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aids, benefits or services that are as effective as those provided to others;

- (v) Deny a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board; or

- (vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

- (2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or

activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

- (3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

- (i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

- (ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

- (4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

- (i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

- (ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

- (5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

- (6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

- (c) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

- (d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 85.22-85.30 (Reserved)**§ 85.31 Employment.**

No qualified individuals with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (9 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 9 CFR Part 1613, shall apply to employment in federally conducted programs and activities.

§ 85.32-85.40 (Reserved)**§ 85.41 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 85.42, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by such persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 85.42 Program accessibility: Existing facilities.

- (a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

- (1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

- (2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 85.42(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity in question, and must be accompanied by a written statement of reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would

not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* (1) The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1966, as amended (42 U.S.C. 4151-4157), and any regulations implementing it.

(2) In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within 60 days of the effective date of this part except where structural changes in facilities are undertaken; such changes shall be made within three years of the effective date of this part, but, in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities must be undertaken to achieve program accessibility, and it is not expected that such changes can be completed within six months, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for the implementation of the plan.

§ 85.43 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, or on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157) as established in 41 CFR 101-19.600 to 101-19.607 apply to buildings covered by this section.

§ 85.44-85.50 [Reserved]

§ 85.51 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain

information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 85.51 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity in question and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 85.52-85.60 [Reserved]

§ 85.61 Compliance procedures.

(a) Except as provided in paragraph (c) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) Responsibility for the implementation and operation of this section shall be vested in the CCR Director/Special Assistant.

(c) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and HHS Instruction 1613-3. Part 1613 requires complainants to obtain pre-complaint counseling within 30 days of the alleged discriminatory act, and to file complaints within 15 days of the close of counseling. Responsibility for the acceptance, investigation, and the rendering of decisions with respect to employment complaints is vested in the

Assistant Secretary for Personnel Administration.

(d) OCR shall accept the investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. OCR may extend this time for good cause.

(e) If OCR receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Federal government entity.

(f) OCR shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1966, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, OCR shall notify the complainant of the results of the investigations in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 60 days of receipt from the agency of the letter required by § 85.61(g). OCR may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the OCR Director/Special Assistant. Decisions on such appeals shall not be heard by the person who made the initial decision.

(j) OCR shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If OCR determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to a component agency or other Federal agencies, except that the authority for making the final determination may not be delegated.

§ 85.62 Coordination and compliance responsibilities.

(a) Each component agency shall be primarily responsible for compliance

with this part in connection with the programs and activities it conducts.

(b) The OCR Director/Special Assistant shall have the overall responsibility to coordinate implementation of this part. The OCR Director/Special Assistant shall have authority to conduct investigations, to conduct compliance reviews, and to initiate such other actions as may be necessary to facilitate and ensure effective implementation of and compliance with, this part.

(c) If as a result of an investigation or in connection with any other compliance or implementation activity, the OCR Director/Special Assistant determines that a component agency appears to be in noncompliance with its responsibilities under this part, OCR will undertake appropriate action with the component agency to assure compliance. In the event that OCR and the component agency are unable to agree on a resolution of any particular matter, the matter shall be submitted to the Secretary for resolution.

§ 85.63-85.99 [Reserved]

[FR Doc. 88-15362 Filed 7-7-88; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 87-312]

Amendment To Permit Commercial Enterprises To Be Licensed Directly in the Special Emergency Radio Service; Private Land Mobile Services.

AGENCY: Federal Communications Commission.

ACTION: Report and order amending rules in the Private Land Mobile Radio Services.

SUMMARY: In response to a petition for rule making, the Commission adopted a Report and Order to permit private entrepreneurs or "private carriers" to be licensed in the Special Emergency Radio Service (SERS). This action will make a new communications option available to eligible SERS end users. The Report and Order also eliminates secondary uses of eight channels known as "MED" channels 1 through 8 to ensure that these channels will be available for emergency medical communications.

EFFECTIVE DATE: July 25, 1988 for licensing private carriers; July 1, 1990 for

eliminating secondary use of MED channels 1 through 8.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, PR Docket No. 87-312, adopted on May 18, 1988 and released June 13, 1988. The full text of the Order is available for inspection and copying during normal business hours in the FCC Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (Room 5126), 2025 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Report and Order

1. In response to a December 1986 petition for rule making and a September 1987 notice of proposed rule making, the Commission issued a Report and Order amending licensing rules applicable to the Special Emergency Radio Service (SERS). The SERS is a private land mobile radio service available to medical services, rescue squads, disaster relief organizations, and seven additional categories of eligible end users. Under present rules, these eligible SERS users have only limited communications service options. To expand options available to eligible users and promote the efficient and effective use of the SERS frequencies, the Report and Order permits private entrepreneurs or "private carriers" to be licensed in the SERS.

2. Under the private carrier concept, entrepreneurs would apply to the Commission to be licensed in the SERS. Once licensed, the entrepreneurs would build communications systems and offer service only to eligible end users. Private carriers would be required to observe existing restrictions on the permissible use of the SERS frequencies. The private carriers would be responsible for all aspects of system operation including licensing, maintenance and compliance with Commission rules. The Commission will permit private carriers to serve eligible end users on all SERS frequencies below 800 MHz, including those channels reserved for medical service eligibles.

3. In the Notice of Proposed Rule Making, the Commission asked whether it should eliminate secondary use of ten channels known as "MED" channels 1 through 10. On a primary basis these

channels are used for specific emergency medical applications. On a secondary basis, MED channels 1 through 8 may be used for administrative purposes and MED channels 9 and 10 may be used to alert ambulances and rescue crews. In the Report and Order, the Commission decides to eliminate secondary use of MED channels 1 through 8 due to congestion that currently exists on these channels, the resulting incompatibility between current primary and secondary uses, and the important public safety functions of these channels. The Report and Order states that this analysis does not apply to MED channels 9 and 10 because the secondary use of these channels (paging) occurs in short bursts that do not use significant air time.

4. Licensees authorized to use MED channels 1 through 8 prior to July 1, 1988 will have until July 1, 1990 to relocate their secondary communications to other frequencies. In addition, the Commission will consider requests for waiver from new and existing licensees we can show that secondary uses of MED channels 1 through 8 are not harmful to primary communications in their areas.

Ordering Clauses

5. Accordingly, *It Is Ordered* That, pursuant to the authority of sections 4(i), 303(r), and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 332(a), Part 90 of the Commission's Rules, 47 CFR Part 90, is amended as set forth below.

It Is Further Ordered That this proceeding is TERMINATED.

List of Subjects in 47 CFR Part 90

Special Emergency Radio Service, Private carriers, Radio.

Federal Communications Commission, H. Walker Foster III,

Acting Secretary.

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1086, 1082; 47 U.S.C. 154, 303.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. Section 90.33 is revised as follows:

§ 90.33 Scope.

The Special Emergency Radio Service covers the licensing of the radio communications of the following categories of activities: Medical services, rescue organizations,

veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishment in isolated places, communications standby facilities, and emergency repair of public communications facilities.

Private carriers may also be licensed in the Special Emergency Radio Service solely to provide radio communications service below 800 MHz to any other eligible. Rules as to eligibility for licensing, permissible communications and classes and number of stations, and any special requirements as to each of these categories are set forth in the following sections. Frequencies available for these categories of service are shown in a separate frequency table.

2. Section 90.52 is added as follows:

§ 90.52 Private carriers.

(a) *Eligibility.* Private carriers, as defined in § 90.7, may be licensed on frequencies below 800 MHz solely to provide service to any other Special Emergency Radio Service eligible, subject to the requirements and limitations set out for use of the frequencies listed in § 90.53.

3. Section 90.53 is amended by revising paragraphs (b) (19) and (20).

§ 90.53 Frequencies available.

• • • • •

(b) • • •

(19) This frequency is authorized for use under § 90.35(a) only for operations in bio-medical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D, and G3E emissions may be authorized. Licensees authorized prior to July 1, 1988 may use this frequency on a secondary basis for any other permissible communications consistent with § 90.35 provided that such secondary use must cease no later than July 1, 1990.

(20) This frequency is authorized for use under § 90.35(a), only for communications between medical facilities vehicles and personnel related to medical supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E and G3E emissions are authorized. Licensees authorized prior to July 1, 1988 may use this frequency on a secondary basis for any other permissible communications consistent with § 90.35 provided that such secondary use must cease no later than July 1, 1990.

[FR Doc. 88-15204 Filed 7-7-88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Tipton Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Tipton kangaroo rat, a mammal restricted to south-central California. The historical range of this rodent has been substantially reduced by agricultural development. The subspecies is jeopardized by continuing loss of native habitat from agricultural development and other actions that modify and fragment extant occupied habitats. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for the Tipton kangaroo rat.

EFFECTIVE DATE: August 8, 1988.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232, (503) 231-6131 or FTS 429-6131.

SUPPLEMENTARY INFORMATION:

Background

Kangaroo rats (*Dipodomys*) are small mammals that travel rapidly by hopping on their hind legs, and that transport food in their external cheek pouches. They inhabit mainly dry, open country of western North America, where they construct burrows for shelter and often for storage of food. The Tipton kangaroo rat (*Dipodomys nitratoideus nitratoideus*) was distributed historically in the Tulare Lake Basin of the San Joaquin Valley, encompassing portions of Fresno, Kings, Tulare, and Kern Counties, California (Williams 1985). Merriam (1894) originally described it as a subspecies of the widely-distributed species *Dipodomys merriami*. Grinnell (1920, 1921) later separated it as a subspecies of the "Fresno" kangaroo rat (*D. nitratoideus*). Adult weight is 1.2 to 1.3 ounces (35 to 38 grams), combined

head and body length is 3.9 to 4.3 inches (100 to 110 millimeters), and tail length is 4.8 to 5.1 inches (125 to 130 millimeters). Adaptations for bipedal locomotion include elongated hind limbs, a long tail, a short neck, and a large head. Dorsal pelage is a dark, yellowish tan, while ventral coloration is white. A white stripe also extends laterally across each flank and along the sides of the prominently-tufted tail (Williams 1985).

Valley saltbush scrub and valley sink scrub communities provide the habitat for the Tipton kangaroo rat. The characteristic plants in these sparsely-vegetated communities are iodinebush (*Allenrolfea occidentalis*), saltbush (*Atriplex* spp.), Mormon-tea (*Ephedra californica*), red-sage (*Kochia californica*), and sea-blite (*Suaeda* spp.) (Williams 1985, 1986). The Tipton kangaroo rat inhabits the soft, friable soils on the floor of the Tulare Lake Basin that escape seasonal flooding. The subspecies, however, may also occur on surrounding higher sites (Williams 1986). It excavates shallow burrow systems that are often located on slightly-elevated mounds around the base of shrubs where wind-deposited soils have accumulated. This behavior apparently reduces the chances of drowning during seasonal flooding (Williams 1985). The Tipton kangaroo rat feeds primarily on seeds, though it also eats green vegetation and insects (Eisenberg 1963).

The Tipton kangaroo rat plays an integral role in the valley plant communities by distributing seeds and, thus, influencing plant distribution. It also serves as prey for a variety of carnivores, such as the badger (*Taxidea taxus*) and kit fox (*Vulpes macrotis*). Its burrows serve to aerate soils and increase vegetative productivity. Moreover, these burrows are utilized as places of concealment and refuge for a variety of other small wildlife species, including the federally endangered blunt-nosed leopard lizard (*Gambelia silus*).

The geographic range of the Tipton kangaroo rat historically encompassed about 1,716,480 acres (695,174 hectares) within the San Joaquin Valley, extending from Lemoore and Hanford (Kings County) in the north; southeast along State Route 99 from Tipton to Pixley (Tulare County), Delano, Bakersfield, and Arvin (Kern County); westward to the southern, eastern, and northern shores of the former Buena Vista Lake (Kern County); and then northward through the Antelope Plain along a line marked by Buttonwillow, Lost Hills (Kern County), Kettleman City (Kings County), and Westhaven (Fresno

County). As of July 1985, only 63,367 acres (25,665 hectares), encompassing 3.7 percent of its historical range, were still occupied (Williams 1985). Approximately 6,434 acres (2,606 hectares) of this remaining habitat are administered by local, State, and Federal governments. These public lands contain low to moderate density populations of Tipton kangaroo rats, which are relatively secure from habitat loss (Williams 1985). The principal factor resulting in this reduction in habitat has been conversion of native wildlands for agricultural production.

The Tipton kangaroo rat was included in the Service's Review of Vertebrate Wildlife in the Federal Register of September 10, 1985 (50 FR 37958), as a category 2 candidate species. This categorization meant that available information indicated that a proposal for listing as endangered or threatened was possibly appropriate, but that conclusive data on biological vulnerability and threat were not available to support a proposed rule. Completion of a subsequent status report for this rodent (Williams 1985) provided additional information on which to base a proposed rule. The Tipton kangaroo rat was proposed as an endangered species on July 10, 1987 (52 FR 26040-26043).

Summary of Comments and Recommendations

In the July 10, 1987, proposed rule (52 FR 26040-26043) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A notice reopening and extending the comment period to November 8, 1987, was published on September 9, 1987 (52 FR 33979). Appropriate State and Federal agencies, county governments, scientific organizations, biologists, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were inadvertently not published in time for the first comment period. Therefore, the public comment period was reopened. A notice reopening the public comment period was published in the Turlock Journal (September 11, 1987), Daily Midway Driller (September 11, 1987), Los Angeles Times (September 11, 1987), Fresno Bee (September 11, 1987), Bakersfield Californian (September 11, 1987) and Hanford Sentinel (September 11, 1987).

During both comment periods a total of ten written comments were received. Comments were submitted by two Federal agencies, two State agencies, one conservation organization, and five individuals. Six responses supported

listing, one response opposed listing, and three responses expressed no opinion regarding listing. Both responding Federal agencies, the U.S. Bureau of Land Management and U.S. Bureau of Reclamation, stated that Federal endangered status for this rodent would not affect agency activities or plans. Both responding State agencies, the California Department of Fish and Game and California Energy Commission, supported the proposed ruling to list the Tipton kangaroo rat as endangered.

Three of the remaining six comments received were from biologists familiar with this species and strongly supported the listing. A single conservation group also supported listing. None of the respondents, however, provided additional information regarding current status or threats.

A pest control company stated that its rodent control operations had not been undertaken within Tipton kangaroo rat habitat. No information relating to activities of other pest control firms within this area was provided, nor were specific comments regarding Federal listing.

A private individual opposed to the proposed listing questioned whether listing of species, such as "rats" was in the best interest of the public. No additional information regarding the status of the Tipton kangaroo rat was provided by this commentator.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Tipton kangaroo rat should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Tipton kangaroo rat (*Dipodomys nitratoideus nitratoideus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In a recent status survey, Dr. Daniel F. Williams (1985) of California State University, Stanislaus, concluded that habitat loss associated with agricultural development has been the principal factor contributing to the decline of the Tipton kangaroo rat. He attributed other habitat losses to construction of roads, canals, railroads,

and structures. The known historical range of this rodent, that encompassed approximately 1,716,480 acres (695,174 hectares), has been reduced to about 3.7 percent, or roughly 63,367 acres (25,665 hectares). Approximately 6,434 acres (2,606 hectares) of the remaining range harbors relatively secure populations. This area includes federally-administered lands at Pixley National Wildlife Refuge, State of California lands at the Allensworth Ecological Preserve, and privately-owned and managed lands administered by The Nature Conservancy at the Paine Wildflower Preserve. Private individuals or corporations own the remaining habitats. Although these habitats generally appear to be unstable for farming because of seasonal inundation and high soil alkalinity, land conversion of kangaroo rat habitat continues to occur.

Williams (1985) observed instances where remaining habitats were being converted to agricultural production. He also estimated rates of conversion of remaining habitats by comparing extant unmodified habitats within the Tulare Lake Basin. Approximately 110,031 acres (44,562 hectares) out of the total 2,556,288 acres (1,035,296 hectares) on the floor of the Tulare Lake Basin was undeveloped by late 1983; a subsequent comparison in June 1985 showed that 75,430 acres (30,549 hectares) remained undeveloped. The construction of evaporation ponds for diversion of salt-laden waters from adjacent cultivated fields also threatens extant habitat (Williams 1985). Remaining habitat typically consists of small, highly fragmented parcels on private land, where long-term protection is not assured.

Constituent Tipton kangaroo rat populations are small in size, typically surrounded by agriculturally-developed lands, and highly vulnerable to extirpation from single catastrophic events such as flooding, disease, predation, or excessive application of rodenticides.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Neither disease nor predation is known to result in significant population declines.

D. *The inadequacy of existing regulatory mechanisms.* Existing State and Federal regulations do not afford the Tipton kangaroo rat adequate protection. Agencies involved with permitting or funding agricultural development, that continues to reduce the animal's remaining habitat and increase the potential for the extirpation of increasingly isolated populations, are

not presently required to confer with agencies knowledgeable about the distribution of this rodent. State and Federal governments also do not presently require implementation and protective measures for the species and its habitat during application of pesticides.

E. *Other natural and manmade factors affecting its continued existence.* Many of the remaining "pockets" of habitat for this rodent are adjacent to or surrounded by agriculturally-developed land. The small size and highly isolated nature of these remaining pockets could result in their eventual extirpation because of inbreeding or stochastic events. Assuming a population density of about six kangaroo rats per acre, an equal sex ratio, and a population where all individuals contribute to breeding, Williams (1985) estimated that the minimum contiguous block necessary to sustain a viable population on a long-term basis may be between 823 and 2,806 acres (333 to 1,136 hectares). Because the average size of extant contiguous habitat is less than half this size, many remaining tracts are likely too small to ensure the perpetuation of their constituent Tipton kangaroo rat populations. In addition to inbreeding, application of pesticides also may kill Tipton kangaroo rats in areas where control of "target" species, such as the California ground squirrel (*Spermophilus beecheyi*), is required. Williams (1985) provided specific recommendations for control of "pest" species while reducing the potential for inadvertent mortality of non-target species as the Tipton kangaroo rat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list the Tipton kangaroo rat as endangered. Threatened status would not adequately reflect the drastic decline and continued losses associated with conversion of remaining valley floor habitats. Critical habitat is not being designated for this species at this time for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat for the Tipton kangaroo rat is not prudent at this time. As discussed under factors, "A" and "E" in the "Summary of

Factors Affecting the Species," the Tipton kangaroo rat is jeopardized by taking, the prevention of which is difficult to enforce. Publication of precise critical habitat descriptions and maps could make this species even more vulnerable, and increase enforcement problems. Such published descriptions and maps are not necessary to protect the habitat of the Tipton kangaroo rat, as that will be addressed through the recovery process and section 7 consultation (see following section).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Several Federal actions that may affect the Tipton kangaroo rat are issuance of leases for agricultural purposes on U.S. Bureau of Land Management holdings, development of evaporation ponds for salt-laden agricultural run-off by the U.S. Soil Conservation Service and U.S. Bureau of Reclamation, issuance of permits for development of oil and natural gas reserves by the Environmental Protection Agency, and water-development projects for increasing

agricultural conversion of remaining pockets of wildland habitats by the Bureau of Reclamation. Actions that may affect the Tipton kangaroo rat in these areas may also affect the federally-listed endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and blunt-nosed leopard lizard, which are already protected under the provisions of the Act. No major conflicts are known or expected at this time. The involved Federal agencies already are consulting with the Service, and any additional impacts because of this listing are expected to be minimal.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful

activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Williams, D.F. 1985. A review of the population status of the Tipton kangaroo rat, *Dipodomys nitratoides nitratoides*. Final report prepared for the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office.
Williams, D.F. 1986. Mammalian species of special concern in California. Report prepared for the California Dept. of Fish and Game, Nongame Wildlife Investigation. Report No. 86-1.

Author

The primary author of this final rule is Mr. Ted Rado, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (916/978-4866 or FTS 460-4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 98 Stat. 1411 (16 U.S.C. 1531 *et seq.*). Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.
* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS:							
Rat, Tipton, kangaroo	<i>Dipodomys nitratoides nitratoides</i>	U.S.A. (CA)	Entire	E	312	NA	NA

Dated: June 27, 1988.

Susan Rocco,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-15380 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-25-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 86021-8131]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Fishery Conservation and Management

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues a notice of changes in the total allowable catch (TAC), allocations, and quotas for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel and in the bag limits for the Atlantic group of king mackerel and the Gulf group of Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice (1) for the Gulf migratory group of

king mackerel, increases TAC, allocations, and quotas; (2) for the Gulf migratory group of Spanish mackerel, increases TAC, allocations, and bag limits; (3) for the Atlantic migratory group of king mackerel, reduces TAC and allocations and reduces the bag limit applicable to the southern area (the exclusive economic zone (EEZ) off Florida); and (4) for the Atlantic migratory group of Spanish mackerel, increases TAC and allocations. The intended effects are to protect the mackerels while still allowing catch by the important recreational and commercial fisheries that are dependent on these species.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-863-3722.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared and amended jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642.

In accordance with the FMP and its implementing regulations, the Councils recommended and NOAA published a preliminary notice of changes in TACs, allocations, quotas, and bag limits for king and Spanish mackerel (53 FR 22036, June 13, 1988). That notice (1) described the framework procedures of the FMP through which the Councils recommended changes in TACs, allocations, quotas, and bag limits, (2) specified the recommended changes, and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here; the specifications implemented by this final notice are the same as those proposed in the preliminary notice.

Comments and Responses

Four letters commenting on the proposed adjustments were received during the public comment period.

Ten Florida east coast charterboat owner/operators from Port Canaveral expressed support for bag limits as a means to preserve mackerel fisheries. However, they recommended elimination of the recreational allocation as a means of regulating the fishery because they question the credibility of the statistical data used to monitor the recreational catch and determine when the quota has been reached. Furthermore, they wish to

avoid the king mackerel recreational harvest prohibition experienced during the 1987/88 fishing year for the Gulf group, which they contend "devastated" the charterboat industry. As an alternative, they would prefer that bag limits be set, either on a per angler or per boat basis, at a level that would support an uninterrupted year-round fishery.

NOAA agrees that bag limits should ideally maintain harvest throughout the fishing year; during the annual preseason adjustment process the Councils are provided analyses to achieve this. In recent years this goal has been difficult to accomplish because most mackerel groups were considered overfished and are now in the early stages of long-term rebuilding programs. Fishing mortality must be decreased by reducing allocations in order to rebuild the spawning stock biomass.

The Councils may recommend bag limits be adjusted downward to maintain recreational catches within allocations. In consideration of industry recommendations, however, the bag limit has usually been lowered only to a level that would not discourage potential customers and adversely impact charterboat businesses. In some cases, these considerations have prevented the Councils from lowering bag limits to levels that would sustain harvest throughout the fishing year.

As outlined in the FMP, the conditions of the stocks are annually evaluated by the Stock Assessment Panel. The panel provides to the Councils a range of acceptable biological catch (ABC) for each mackerel group. The Councils then propose a TAC for each group, within the range of the ABC for that group, to avoid overfishing. Once TACs are set, recreational and commercial allocations automatically follow from fixed percentages established in Amendment 1 to the FMP. ABCs, TACs, allocations, and quotas are measured in pounds.

Accordingly, monitoring of recreational and commercial allocations/quotas is accomplished by systematically determining the poundage of fish caught both in State and Federal (EEZ) waters. When allocations and quotas are reached or projected to be reached, the Secretary publishes in the Federal Register a notice to close the commercial fishery or, after consulting with the Councils, to reduce the bag limit to zero for the recreational fishery when that group is overfished. Under this management system, both recreational and commercial fisheries

are treated equitably and both share in the responsibility to restrict fishing mortality to levels that reduce the risks of overfishing and promote stock rebuilding. Consequently, NOAA cannot effectively or equitably manage recreational fisheries solely by bag limits when stocks are depleted.

Two respondents opposed the two-fish bag limit for Atlantic group king mackerel in the southern area. One offered no basis for his objection. A southeast Florida recreational fishing club, representing 575 members, strongly opposed the reduction in bag limit from three to two fish per person per trip because they felt Florida anglers are unfairly bearing the burden to reduce the catch while a driftnet fishery for king mackerel in the same area continues to expand.

NOAA supports the bag limit reduction for Atlantic group king mackerel. The reduction was recommended by a Florida Council member to achieve compatibility with Florida's Statewide, two-fish bag limit for king mackerel. The Councils subsequently adopted this measure to promote effective law enforcement and to accommodate a lowered TAC by reducing fishing pressure in the southern area, where king mackerel are considered to be available throughout more of the year, occur closer to shore, and are more accessible to a greater number of fishermen than in the northern area. Commercial and recreational allocations are based on fixed percentages and are monitored separately. Drift gillnet gear competition within the commercial sector does not affect the recreational allocation.

The club also opposed the four-fish bag limit for Atlantic group Spanish mackerel in the southern area while anglers in the northern area (EEZ off Georgia, South Carolina and North Carolina) enjoy a ten-fish bag limit.

NOAA continues its support for the ten-fish/four-fish bag limit for Atlantic group Spanish mackerel for the same reasons as stated in last year's final notice (52 FR 25012; July 2, 1987). Briefly, the ten-fish bag limit in the northern area apportions more of the Spanish mackerel resource to an area where they are seasonally less available and more widely dispersed. In the southern area of Florida, the lower four-fish bag limit was prescribed to proportionately reduce fishing pressure in this region where Spanish mackerel are present year-round and are more accessible to a

greater number of fishermen. NOAA finds these Council decisions consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act).

A minority report on the proposed Spanish mackerel differential bag limit of ten fish in the western Gulf and four fish in the eastern Gulf was submitted by ten members of the Councils. The report challenged the basis for the ten/four bag limit and its potential effects on the magnitude and the temporal and spatial distribution of the harvest. The report further contended that the differential bag limit violates national standards 3 and 4 of the Magnuson Act.

NOAA disagrees on all counts. Available data indicate that Spanish mackerel are less accessible in the western Gulf off Alabama, Mississippi, Louisiana, and Texas, and that during the past 3 fishing years most of the recreational catch occurred in the eastern Gulf off Florida. According to NMFS data, most Spanish mackerel caught off the two highest-producing western Gulf states (Mississippi and Alabama) were taken in the EEZ. Consequently, Council members supported the ten/four bag limit to more equitably apportion the recreational allocation among the States. Further, NMFS data presented at the April 1988 joint Council meeting indicated that little change in harvest was expected under the ten/four bag limit and Councils discussed its possible effect on the duration of the recreational fishing year. In the western area, NMFS projected no reduction in catch under a ten-fish bag limit for Alabama and Mississippi. In the eastern area, an 8 percent decrease in catch is expected, assuming 100 percent angler compliance with the present Florida four-fish bag limit. In addition, one Council member suggested that a full year of fishing may be completed because the TAC proposed for 1988/89 has been doubled. Last year, under a 1.06 million-pound recreational allocation, the bag limit reverted to zero on December 18, 5½ months into the season. If recreational catch characteristics for this year are similar to those experienced last year, NMFS expects the recreational harvest to continue into May or June 1989 under the 2.15 million-pound allocation.

NOAA believes that Gulf group Spanish mackerel are being managed as a unit stock in conformance with national standard 3. Unit stock management objectives are set forth in the FMP and are carried out through the annual stock assessment, preseason adjustments, and monitoring of harvest to ascertain when allocations/quotas

have been reached and closures should be effected. Throughout this process and throughout the defined geographic boundaries, each Spanish mackerel migratory group (Atlantic and Gulf) is treated as a separate unit. Within each management unit, fish in State or Federal waters are undifferentiated. According to the FMP, the management unit shall include the EEZ, the territorial sea, and internal waters of the various States when considering and determining maximum sustainable yield, optimum yield, and TAC for each unit stock.

Councils have previously subdivided management areas to administer different regulations on a geographical basis while still maintaining the national standards set forth in the Magnuson Act. Such regulations are usually designed to mitigate disproportionate resource usages resulting from variable migration patterns, seasonal availability, distance from shore (principally EEZ), and scattered distributions. The regulations also follow Councils' desire to foster State/Federal compatibility for more effective law enforcement. Although the secondary objective may be to more equitably distribute the resource on a geographical basis, the Councils' overriding goal is to manage each stock as a unit. Examples of regional management regulations currently in place or proposed follow; three are from the FMP:

- (1) A ten/four bag limit for Atlantic group Spanish mackerel implemented for the 1987/88 fishing year is again proposed for the 1988/89 fishing year.
- (2) The commercial allocation for Gulf group king mackerel is divided into eastern and western zones to protect the resource and to provide for a commercial catch in each of these two areas.
- (3) A three/two bag limit for Atlantic group king mackerel was adopted for the 1988/89 fishing year.
- (4) Amendment 1 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico established primary and secondary management areas in the Gulf of Mexico.
- (5) Regulations governing the ocean salmon fishery off Washington, Oregon, and California establish a number of management areas subject to differing measures.

Finally, NOAA does not agree that the ten/four bag limit violates national standard 4. Rather NOAA believes that this measure will promote fairness and equitability. National standard 4 should be satisfied in that the necessary allocation and assignment of fishing

privileges among various U.S. fishermen is carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

According to NMFS catch and effort data, during the past 3 fishing years approximately 45 to 66 percent of the effort was in the Gulf eastern area and produced 66 to 88 percent of the recreational catch of Spanish mackerel in the Gulf of Mexico. The Councils considered this catch distribution unfair and proposed differential bag limits for eastern and western areas to redistribute the catch more evenly across the Gulf in both space and time. Differential bag limits are proposed on a regional, and not on a per State, basis.

In summary, the most recently compiled data support the Council's proposed ten/four bag limit. Allocation adjustments and processes are the major responsibility of the Councils. Their decision to more fairly distribute the recreational catch on a regional basis was based on the best available scientific information. NOAA's review of relevant discussions and considerations by the Councils indicates that the actions recommended are in compliance with the Magnuson Act.

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: July 5, 1988.

James W. Brennan,
Assistant Administrator, for Fisheries,
National Marine Fisheries Service.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

For the reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Re- moved	Added
(a)(1), introductory text	0.7	1.09
(a)(1)(i)	0.48	0.75
(a)(1)(ii)	0.22	0.34
(a)(2), First sentence	3.50	2.60
(b)(1)	1.5	2.31
(b)(2)	6.09	4.40
(c)(1)	1.42	2.65

Paragraph	Re- moved	Added
(c)(2)	2.26	3.04
(d)(1)	1.08	2.15
(d)(2)	0.74	0.96

3. In § 642.28, paragraphs (a)(2) and (3) are revised, paragraph (a)(4)(iii) is removed, and a new paragraph (a)(5) is added to read as follows:

§ 642.28 Bag and possession limits.

- (a)
(2) *King mackerel Atlantic migratory group.* (i) Possessing two king mackerel

per person per trip from the southern area.

(ii) Possessing three king mackerel per person per trip from the northern area.

(3) *Spanish mackerel Gulf migratory group.* (i) Possessing four Spanish mackerel per person per trip from the eastern area.

(ii) Possessing ten Spanish mackerel per person per trip from the western area.

(5) *Areas.* (i) For the purposes of paragraphs (a)(2) and (4) of this section, the boundary between the northern and southern areas is a line extending

directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraph (a)(3) of this section, the boundary between the eastern and western areas (identical to the eastern and western zones in the commercial fishery) is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ.

[FR Doc. 88-15308 Filed 7-6-88; 10:29 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 131

Friday, July 8, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 221 and 389

(Docket No. 43343; Notice 88-10)

RN 2105-AD00

Electronic Filing of Tariffs

AGENCY: Office of the Secretary,
Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition for emergency rulemaking filed by the Airline Tariff Publishing Company, the Department is proposing to amend its regulations to allow carriers to file passenger fares tariffs electronically. This proposal is being made because it is becoming increasingly evident that some form of interim relief from the burdens associated with the paper tariff filing system is necessary in the near-term, even while the Department continues the development of a completely automated tariff filing system.

DATE: Comments must be received no later than September 6, 1988.

ADDRESS: Five (5) copies of any comments should be sent to the Documentary Services Division, C-55, U.S. Department of Transportation, 400-7th Street SW., Washington, DC 20590. Comments should refer to Docket 43343. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will time- and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Chief, Tariffs Division, P-44, Department of Transportation, 400-7th Street SW., Washington, DC 20590. Telephone: (202) 365-2414.

SUPPLEMENTARY INFORMATION:

Background

Section 403 of the Federal Aviation Act of 1958, as amended (Act), requires all U.S. and foreign air carriers to file tariffs with the Department of Transportation (the "Department" or "DOT") setting forth passenger fares, cargo rates, other charges, and rules which apply to air transportation between a point or points in the United States, its territories or possessions, on the one hand, and foreign points, on the other. Once approved by the respective government aviation authorities, as required under bilateral agreements and/or the Act, these tariffs become legally binding contracts of carriage for international air transportation.

The airlines currently file tariffs on paper in accordance with the requirements found in 14 CFR Part 221 of the Department's regulations. These requirements have remained essentially the same since their inception in 1938, when the former Civil Aeronautics Board (the "Board") was established. Now, half a century later, carriers and their tariff publishing agents are still submitting all proposed fares, rates, and rules on paper, and DOT analysts are still searching through voluminous paper documents to evaluate all proposed tariffs.

This paper system worked well in a regulatory environment when tariffs were more stable and static. However, the aviation environment has changed dramatically in the last ten years. U.S. domestic air transportation has been completely deregulated and the international aviation marketplace has become increasingly more competitive. Carrier fares, rules, and rates are now subject to frequent, sometimes daily, changes. As a result, the volume of tariff pages filed has increased tremendously, creating a burden on the Department, the industry, and the public that has become virtually unmanageable and unworkable. We expect the tariff volume to continue to increase substantially in future years. In this connection, we note that in 1985 the Department had over 20,000 tariff pages, containing more than one million fares, rates, and rules, in effect and on file on any given day; today, the number of currently effective tariff pages on file exceeds 40,000.

Our ability to handle this growing volume of tariff filings has been severely taxed. In the future, it could become

extremely difficult for the Department to fulfill its statutory and regulatory responsibilities unless major modifications are made in the current paper-based tariff filing system. We have taken steps to handle the ever increasing volume of tariff filings.

Steps Already Taken

The Department has already demonstrated its concern over the increasing burdens that the filing and processing of paper tariffs places on all involved. On August 19, 1985, we issued an Advance Notice of Proposed Rulemaking (ANPRM) (50 FR 33452) indicating that the Department was considering establishing an automated tariff system, one that would allow carriers to file and disseminate tariff information electronically. The ANPRM included information regarding the current tariff system, as well as a preliminary outline for a proposed computerized system, and it requested comment on the feasibility and advisability of such a proposal.

Seventeen commenters responded to the ANPRM. (See Docket 43343). The ANPRM received strong and nearly universal support. The supporting commenters presented some specific suggestions on how we should implement tariff automation, and also raised a number of concerns that could arise depending on the approach we might adopt. We have taken these comments into account in formulating the present interim proposal. (We have summarized and addressed the comments to the ANPRM in the section below labeled "Supplementary Discussion of Comments on the ANPRM".) The only opposition to the ANPRM came from a carrier concerned that the costs of electronic filing would be burdensome. In response to this concern, we are proposing that electronic filing under this rule would not be mandatory but, rather, an alternative to paper filing.

Several of the commenters suggested that we allow the industry and other private sector interests to participate in the design and development of any system. Accordingly, in November 1986, the Department established an Advisory Committee to assist the Department in the development of its proposed Electronic Tariff System (ETS) (51 FR 42327, November 24, 1986). The Committee is made up of

representatives of a variety of interests, including U.S. air carriers, foreign air carriers, tariff publishing agents, airline associations, the information industry, and consumer groups. The Committee met on two occasions during the first half of 1987. The Committee has made two recommendations to the Department. First, the Committee requested that the Department amend the posting regulations for international air transportation to allow carriers and agents to provide notice of, access to, and information concerning, the terms of their contracts of carriage in a manner similar to that applicable to U.S. domestic air transportation. This request is under Department review.

The Advisory Committee also recommended that the Department conduct experiments to determine if there were any existing systems/databases available which could serve as a foundation for the future ETS, or any methods of electronically transmitting Special Tariff Permission Applications (STPAs) that would ease the Department's processing of these applications. A carrier must file an STPA whenever it wishes to file a tariff on less than the required statutory/bilateral notice. The current STPA procedure is a two step process. The carrier must first submit a detailed description of the changes it wishes to implement with and explanation and, when necessary, economic justification. If the Department grants the STPA and the carrier chooses to implement the authorized changes, the carrier must then print a tariff and file it with the Department. Approximately 95-98 percent of all tariff filings are filed pursuant to an approved STPA. In July 1987, we published notices in the *Federal Register* and the *Commerce Business Daily* requesting that interested parties submit their expressions of interest to the Department. (52 FR 27069, 27100, July 17, 1987; *Commerce Business Daily*, Issue No. PSA-8381, July 29, 1987.) The Department is currently reviewing these submissions.

The Need for Interim Relief

Against the background of these developments, it is apparent that the current paper filing regime is antiquated, inefficient and costly, and needs to be replaced with a modern, efficient and cost effective alternative. We believe that some form of automation is a logical alternative.

Department staff, along with our Transportation System Center (TSC) and its on-site contractor, have been working to develop the prerequisites of an electronic tariff system. TSC has

prepared a *Preliminary Electronic Tariff ADP Requirements Study* and a *Draft Staff Study Electronic Tariff System Data Model*. (Copies of these documents are included in Docket 43343.)

These two documents set out many of the functions and data elements, and the basic structure of an ETS. They have provided an excellent launching of our automation effort. As that effort has progressed, however, it has become clear that the automation project is one of major scope that raises a number of complex issues.

We are actively moving forward to resolve the issues related to this effort. However, we recognize that a serious need exists to provide at least some degree of interim relief from the burdens of filing and processing paper tariffs, and that this relief is needed now, even while our longer-term automation efforts continue. We believe that a rule along the lines of that being proposed here and discussed below would provide both the industry and the Department some near-term relief.

We recognize that the rule we are now proposing would provide only a portion of the benefits which would accrue to the Department, the industry, and the public once the efficiencies of a fully automated tariff system are achieved. However, in view of the situation in which we and the industry find ourselves today, we tentatively conclude that some relief is plainly better than no relief at all. We also recognize that, upon completion of the definition and design of a fully automated tariff filing system, this proposed rule may not be a part of any final rule issued pursuant to our outstanding ANPRM on electronic tariff filing. However, we believe that any experience we might gain while operating under this proposal would be invaluable in our development of that system.

We emphasize that we are not departing from our ultimate goal of establishing a fully integrated electronic tariff system, i.e., one where data would be held in one official central database (whether inside or outside Departmental headquarters), and where software would be developed to perform, or facilitate the performance of, various procedures which constitute the functions of the Department (essentially analysis of tariff filings for conformity to statutory and regulatory requirements). Our simple objective here is to provide some measure of interim relief to the Department and the industry from the burdens of filing paper tariffs.

ATPCO Petition

On December 16, 1987, Airline Tariff Publishing Company (ATPCO) petitioned the Department for emergency rulemaking to amend 14 CFR Part 221 to allow carriers to file passenger fares tariffs electronically as an alternative to the current paper requirements. ATPCO is the industry's major tariff filing agent, publishing tariffs on behalf of over 90 percent of all carriers required to file tariffs with the Department. Included with ATPCO's petition was a proposal, including proposed rule language, which it believes would provide immediate relief to the industry and at the same time facilitate the Department's tariff processing responsibilities until such time as the Department is able to complete development of an automated tariff system.

In support of its petition and proposal, ATPCO states that the current international aviation environment, with its constantly changing price structures, and the need for rapid processing of the paper tariffs associated with implementing such changes, has made it extremely difficult for ATPCO to be responsive to the carriers for which it files tariffs, and that some immediate relief is needed. It further states that the industry is currently spending at least \$5,000,000 per year to produce, file, and distribute paper tariff documents; that the ability of its carriers effectively to compete in this environment is diminished by the time lags inherent in producing and processing paper tariffs; that the current situation also impacts negatively on the public's ability to avail itself of the benefits of increased competition; that implementation of an electronic filing system as soon as possible would allow the Department to take advantage of the efficiencies currently available to the airline industry by virtue of its access to a highly developed automated system; that an amendment to Part 221, which would permit tariffs to be filed, reviewed and stored electronically, would be consistent with, and could be a part of, the Department's on-going rulemaking for electronic tariffs; and finally, that because ATPCO is willing to create a fares database for the Department at no charge, an electronic fares filing system could be implemented with a minimal expenditure of government funds.

In general, ATPCO's proposal provides that any carrier or tariff filing agent would be able to file tariffs electronically if it establishes and maintains, on behalf of DOT, a database

of all tariffs filed electronically by such carrier or agent. The Department would have unlimited access to this data at no charge, as well as the ability to input certain information into the database. This would include, but not necessarily be limited to, such information as the approval, rejection, or suspension of any proposed fare change; or the grant or denial of an STPA application. The ATPCO proposal also provides that the filing carrier or agent would provide public access to this information to the extent deemed necessary by the Department. Also, the carrier or agent would maintain tariff data on-line for a period of two (2) years.

Answers to ATPCO's Petition

Six parties have filed answers in support of the ATPCO petition: USAir Group, Inc. (USAir Group), Air Transport Association of America (ATA), American Airlines, Pan American World Airways, Lufthansa German Airlines, and Japan Air Lines.

The answers state that the inefficiencies of the paper tariff system hurt the airline industry's ability to compete in an increasingly competitive environment; that ATPCO and the industry have developed sophisticated electronic systems for handling airline fares; and that the Department should take advantage of those capabilities to enhance the efficiency of its tariff system.

The International Foundation of Airline Passenger Associations (IFAPA) also filed an answer in response to ATPCO's petition. IFAPA states that it has no difficulty with the overall objective behind the ATPCO proposal. However, it voices concern with the issue of public access, the charges to be made for such access, and the format of the information to be made available. It asks that, if we proceed to rulemaking, we include provisions that respond to these issues. It further asks that we not proceed by emergency rulemaking procedures, so that we can give these issues careful attention.

The only answer in opposition to ATPCO's petition came from ABC International (ABC). ABC is a British company specializing in tariff collection and information distribution to the travel industry. Its publications include, among others, the *ABC World Airways Guide* and the *Air Cargo Guide*. ABC urges the Department to deny ATPCO's petition for substantive and procedural reasons. Specifically, ABC alleges that, under the ATPCO proposal, individual carriers, or their agents, will own and control the database; therefore, because ATPCO is owned by most major U.S. and some foreign carriers, the potential

for bias in favor of its carrier owners may render ATPCO an unsuitable entity to control all or a significant part of the ETS database; that under ATPCO's proposal, ABC and other interested parties may not be able to gain on-line access to the ATPCO database, or vice versa; that implementing the ATPCO proposal would raise competitive issues in light of ATPCO's large market share; that issuance of an emergency rule is an improper manner for the Department to proceed, one which could give "short shrift" to the work being done in connection with the Department's on-going rulemaking in this Docket; and that the Department must take certain legal steps, especially in the procurement area, before implementing an electronic tariff.

ATPCO filed a response to ABC's answer stating that ABC misunderstood the underlying premise of ATPCO's proposal, which neither contemplates nor requires procurement action; that ATPCO's proposal in no way favors ATPCO over any other filing agent; that both the public and DOT will have access to the Department's official tariff database, at Departmental headquarters, as soon as fares are submitted, and that others who would like to access ATPCO's (or any other filing agent's) database can still do so by purchasing access such as is done now; and that free unrestricted on-line access to the Department's official tariff database is not necessary to satisfy the Department's public obligations.

ABC International filed a rejoinder to ATPCO's response, which essentially expands upon points previously raised.

Disposition Of Petition

After consideration of the comments received, we have decided to grant the ATPCO petition in part and deny it in part.

We agree that a rule along the lines of that proposed by ATPCO could provide substantial public benefits and would be particularly useful at the present time in light of our need to gain interim relief. We will not, however, issue an emergency interim final rule as proposed by ATPCO. While we are certainly sympathetic to ATPCO's need (as well as our own) for relief from the burden of paper tariffs, we find that no such an emergency exists that would cause us to bypass our normal rulemaking procedures.

Although ATPCO indicates that its current goal is the electronic filing of passenger fares, the ATPCO petition is worded sufficiently broadly to encompass the electronic filing of the entire tariff. We are not prepared at this time to permit the electronic filing of any

data other than passenger fares, including arbitraries, footnotes, routings, fare class explanations, etc., and related STPA's. Therefore, we will not grant the ATPCO petition to the extent that it would permit the filing of electronic tariffs for other than passenger fares.

The Controlling Setting for our Proposal: the Department's Tariff Responsibilities

Any electronic filing system, interim or otherwise, must enable us to continue to perform all of our ongoing tariff functions. Clearly then, an appreciation of these functions is critical to an understanding of the provisions of our proposal. So, before turning to a description of our proposal, we begin by reviewing our tariff responsibilities.

The Department of Transportation is charged with the responsibility for reviewing proposed tariffs to ensure that they comply with U.S. laws and international agreements. The Department must approve or disapprove all U.S. and foreign carrier tariff proposals. In connection with its tariff responsibilities, the Department receives, reviews, approves or disapproves, and maintains a file of all international tariff filings, STPAs, and waivers. (A waiver is filed whenever a carrier, or its agent, wishes to deviate from the tariff filing requirements of 14 CFR Part 221.) In addition, the Department must certify tariff documents for use in court cases and other purposes.

The following tasks are involved in performing our statutory and regulatory responsibilities with respect to tariffs: (For a more in-depth discussion of our tariff responsibilities, see the *Preliminary Electronic Tariff ADP Requirements Study*, at pp. 2-4 thru 2-19.)

- The Department receives, tracks, and stores tariff documents as specified by the governing regulations.
- The Department accepts, rejects or suspends tariff filings, and grants or denies STPA's by:
 - Reviewing the tariff for adherence to regulations and policies; and
 - Analyzing the tariff for adherence to relevant U.S. laws and international agreements.
- The Department informs carriers, and/or their agents, about the status of tariff filings and STPA's.
- The Department maintains public records for open access to published tariffs and to tariff filings.
- The Department maintains reference data files which are used for analyzing tariff filings and STPA's.

• The Department provides certified copies of carrier tariffs for use in legal proceedings.

• The Department responds to *ad hoc* requests from other government bodies, including U.S. Executive Agencies and other U.S. Federal Agencies, the U.S. Congress, and from local and state governments, for data analysis related to international air fares, rates and rules.

As we said above, any proposal to amend the current tariff filing procedures must ensure that the Department can fulfill its statutory and regulatory responsibilities, especially our responsibility for assuring the integrity and accuracy of current and historical tariff data. We believe that our proposal, described below, would meet this test. Moreover, it would provide needed relief to the industry and to the Department by eliminating much of the paperwork now required in filing passenger fares tariffs with the Department.

Description of the Department's Proposed Rule

We are proposing to allow any carrier, or its tariff filing agent (the "filer"), to file its passenger fares electronically by establishing and maintaining a database of all of such fares, subject to certain conditions imposed by the Department. The Department and the public would have unlimited access to this data at Departmental headquarters, and at no charge. The Department would record its decisions regarding these fare filings into this database.

All daily data transactions would be recorded on an electronic storage device at Departmental headquarters. All Departmental actions would also appear in an "on-line tariff database" maintained by the filer.¹ At the end of each day, each filer would submit to the Department an electronic copy of all transactions made during that day for comparison with the daily data transaction record.

Electronic filing would be strictly optional. The paper system would

¹ The term "on-line tariff database" means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the "official DOT tariff database," and (2) the Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals or other actions, that Subpart W of the proposed Part 221 requires the filer to maintain in its database. The term "official DOT tariff database" means those data records (as set forth in § 221.283 and 221.286 of our proposed rule) which would be in the custody of, and maintained by, the Department of Transportation.

remain available to those carriers or filing agents preferring the *status quo*.

We now address the mechanics of how our proposal would work. First, we envision that the Department would be required to complete the installation of a local area network, which would be connected to several personal computers in the Department's offices. Filers desiring to file tariffs and STPA's electronically would be required to install whatever hardware, software, and communications devices would be needed to comply with the provisions of the rule. Whenever the term "tariff" is used in this proposed rule it includes, unless the context otherwise requires, the STPA procedures as well.

Any fare changes that are to be incorporated into a tariff filing would be consolidated by the filer under a "Filing Advice Number." The filer would electronically enter a text justification for the filing into the system, and this justification and the fare changes would be transmitted to a "Government Filing File." Once a fare is entered into the "Government Filing File" DOT would be able to enter control data and approval/disapproval indicators which could apply to the entire filing or to specific records within the filing. Submissions to the "Government Filing File" would be allowed at any time.

When an electronic submission is made to the Department, the filing advice number would also be included in a "Filing Advice Status File." The Filing Advice Status File would be updated automatically as a result of action taken by DOT in the "Government Filing File." The file could be accessed by reference to filing date, by geographic area, by filing advice number and by carrier. Access to this information would be made available to the public at Departmental headquarters.

After DOT acts on any filer's proposal contained in the "Government Filing File", the filer would then incorporate the proposal, including any adverse action by DOT on any particular record, into a "Historical File." The "Historical File" would contain all fares, including inactive fares. The inactive fares would be held on-line for two years after they have become inactive. At the expiration of this two-year period, we would require the filing carrier, or its agent, to provide the Department, free of charge, all such inactive data transactions on machine-readable tape or any other mutually acceptable electronic medium.

The Department would store and maintain these historical/inactive data records for an additional three years. This would effectively satisfy DOT's

retention requirement of storing and maintaining historical/inactive data for the required five-year period.

We are proposing to liberalize our procedures so as to permit the electronic submission of Special Tariff Permission Applications (STPAs). We would propose that when an STPA contains only electronic submissions, a filing advice number would be used, and the STPA would be required to comply with proposed § 221.302. STPA's that contain both electronic material and related paper tariff material would have to comply with Subpart P of 14 CFR Part 221. That is, these STPA's would have to bear a sequential STPA number, as is the case today, and this number would also have to be reflected in the electronic submission to the Department. Under this liberalized electronic STPA procedure, a filer would only be required to submit the proposed changes once. For all practical purposes the STPA would be treated the same as a tariff filing that had been made on either statutory or bilateral tariff notice, as applicable. The only substantive difference would be that if the Department granted the STPA, the filer would be required, if it chose to implement the authorized changes, to reference the Department's action and to comply with any condition imposed by the Department in connection with its approval of the STPA.

We envision that the electronic submission of data from any filer's computer to DOT's computer facilities would be accomplished by the use of a leased dedicated conditioned data circuit. (A dedicated leased conditioned data circuit is a communication line leased from the telephone company over which electronic media may be transmitted without interference and which ensures the integrity of the data being transmitted.) The Department would download all daily data transactions submitted by the filer onto Department computers. Additionally, we would require that the filer furnish the Department, on a daily basis, all transactions made to the on-line tariff database on a machine-readable tape, or any other mutually acceptable electronic medium. We would compare these tapes (or other medium) with the daily transaction record to ensure that they were complete and accurate. If they were not, we would take steps to ensure immediate corrective action. The downloaded daily data transactions, together with the tapes (or other agreed medium) as verified against the daily transactions data would constitute the officially filed tariff with the Department for that portion of the tariff filed

electronically. This approach would effectively remove the basis for ABC's concern that the individual carrier, or its agent, would own the official DOT tariff database.

The official DOT tariff database would be used for certification purposes. Also, it would routinely be employed to verify the on-line tariff database and, as necessary, for audit purposes. We believe that these verification procedures, together with internal database security measures we will implement through a maintenance agreement, and the availability of civil and criminal penalties for tampering with or destroying such data, will provide an adequate degree of accuracy in the on-line tariff database. The on-line tariff database, which would thus effectively duplicate the official DOT tariff database, would be used by the Department in performing various of its functions and access would be made available to the public at Departmental headquarters.

We propose to require the filer (a) to provide the Department the capability to note any action taken on any tariff filed with the Department, as well as the reasons for such action, (b) to provide a designated place (in technical terms, a "field") in the "Government Filing File" for the signature of the approving U.S. Government official, that "signature" to be achieved through the use of Personal Identification Number (PIN), (c) to make designated places (again, "fields") available to the Department in any record filed electronically for inclusion into the on-line tariff database, and (d) to provide a leased dedicated conditioned data circuit to the Department which is capable of operating and handling the electronic data at a sufficient rate. We would expect, at the outset, that a circuit operating at a minimum of a 9.6K baud rate should be sufficient. Further, we propose to require that, in the event of a failure in the primary dedicated circuit, the filer shall have in place a secondary or a redundancy circuit that will handle data at a 4.8K baud rate, or greater. We also propose to require that the primary data circuit provided to access the on-line tariff database must be capable of being restored within four hours after failure.

We propose to require that, in the event that the electronic tariff system is discontinued, or the source of the data is changed (i.e., a carrier chooses to have its fares tariffs filed by an agent, or *vice versa*, or a carrier switches from one agent to another), all tariff records developed prior to such event shall immediately be delivered by the filer to

the Department on machine-readable tapes or any other mutually acceptable electronic medium. Also, should a filer stop filing tariffs electronically, we would require the filer to provide the Department, immediately upon cessation of electronic filing, free of charge, a copy of its on-line tariff database on machine-readable tapes or any other mutually acceptable electronic medium.

In its justification for new or increased fares which are subject to the Standard Foreign Fare Level (SFFL) or the European Civil Aviation Conference (ECAC) Agreement, we proposed that a carrier, or its agent, provide certain fare comparisons as is currently the case in the paper tariff filing environment.

Specifically, we would require that the carrier, or its agent, provide, as to any proposed new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare and, on the other hand, the ceiling fare allowed in that market based on either the pertinent ECAC zone or SFFL.² If, however, the carrier's proposed fare is intended to match that already approved for another direct-service carrier, the proponent carrier may forego the comparison and, instead, simply identify the competitor's fare it claims to match.

We propose to require that fares in direct-service markets be filed as single factor fares. While this may vary from the current practices of some of the filers, i.e. those who prefer to file fares in such markets on a base fare/arbitrary basis, we feel that the single factor approach will provide both us and the public with more useful information and, in the context of an electronic filing system, should represent no significant change in the filer's workload.

In order to facilitate the verification and monitoring of the SFFL regulated fares, we propose to require that all carriers use specified application rule numbers in conjunction with these fares. We believe the use of specified rule numbers would be extremely helpful to the Department in its analysis of fare tariffs and STPA's, thereby enabling the Department of approve some fare changes more rapidly. We invite comments on whether, in an automated environment, complying with this proposed requirement would pose any major hardship on any carrier, or its agent.

² For the purpose of this rulemaking, a direct-service market is an international market where the carrier provides service on a nonstop or single-flight-number basis, including change-of-gauge.

There are times when one carrier adopts the fares of another carrier as its own. This can create problems should it be necessary to research historical tariff information. In order to facilitate such research, we propose to require that the currently effective or prospective fares of the adopted carrier be changed to reflect the name of the adopting carrier as of the effective date of the adoption. Further, such provisions would be annotated with a notice showing the adopted carrier and the effective date of the adoption.

We would also require that, upon institution of the electronic tariff filing under this rule, a carrier, or its agent continue to file tariffs as specified in Subparts A-V of 14 CFR Part 221, i.e., on paper, for a period of 90 days, or until such time as we shall deem paper filing no longer to be necessary to ascertain that all tariffs filed electronically meet our needs.

Last, we re required by regulation to give each tariff filer notice of each action taken under assigned authority, i.e. rejection of tariff, and approval or denial of STPA and waiver applications. We must also give notice of the right to petition for review of such action. See 14 CFR 385.4. In the current paper tariff environment we provide this information with each written determination. In an electronic environment, where we will not be providing written determinations for our actions under assigned authority, we must adopt a different approach. To this end, we propose to incorporate the notice by reference through a provision in our new rule. See the proposed § 221.700.

Central to our proposed rule is the provision that a carrier, or its agent, may file its international passenger fares tariffs, including those provisions relating to the application of such fares such as arbitraries, routing, footnotes, fare class explanations, etc., but *excluding* narrative fare rules, in machine-readable form. Moreover, electronic filing would be an *alternative* to filing such tariffs in the paper format currently prescribed by 14 CFR Part 221.

IFAPA has voiced a concern over the format of electronically filed information as related to the public's ability to identify certain carrier fare rules. The proposed exclusion from our rule of narrative fare rules would effectively remove the basis of IFAPA's concern.

To file electronically, a filer must agree to establish and maintain its filings in such form and manner as required by the Department and shall make its on-line tariff database available to the public, at no charge, at

the Department's headquarters. Further, the Department would have the right to audit the carrier, or its agent; the carrier's, or its agent's database(s); and their applications, including, but not limited to, support functions, environmental security, and any accounting data recorded by the system.

Before we would permit any carrier, or its agent, to file tariffs electronically, we would require the filer to enter into a maintenance agreement with the Department under which the filer would, among other things, (1) agree to establish and maintain an on-line tariff database for use by the Department and the public; and (2) assure the Department any oversight and right to monitor any system (operating, environmental, and application) necessary to our use of the database.

Public Access

We propose that the filer make access to its on-line tariff database available to the public, at DOT headquarters, at no charge, during business hours. We would require that the filer place one or more Computer Video Display Terminals, i.e. in technical terms, a Cathode Ray Tube, (CRT) and one or more printers, connected to the on-line tariff database, in the Tariffs Public Reference Room. The number of CRT's and printers which would be required for public access would be determined by the Department. Further, the filer would be responsible for the maintenance of such equipment and would need to enter into an agreement to indemnify and hold the Department and the U.S. Government harmless from any claims or liabilities which may result from any defects in this equipment. The public would have access to the on-line tariff database, with a query capability that would provide access to those elements listed in §§ 221.263 and 221.286 of our proposed rule. Certified copies of tariffs would be provided by the Department at a reasonable charge.

Regarding remote access to the on-line tariff database, a concern raised by both ABC and IFAPA, we propose steps to ensure that tariff information filed electronically will be reasonably available to the public, including potential competitors. We have proposed in § 221.000 of this notice that any electronic filer must afford remote access to its on-line tariff database to any member of the public, at a charge that does not exceed a reasonable estimate of the added cost of providing the service. This would extend to electronic filings the rule currently in effect for paper filings (14 CFR 221.179). This would not, however, preclude the

offering of machine-readable copies of the on-line tariff database or other value-added services by the filer at such reasonable prices as may be set by it. Comment is solicited on the extent to which the public would seek access to the on-line tariff database, especially in preference to the value-added services already available.

Filing fees and user fees

By law, fees charged for filing tariffs should cover the basic costs of processing the tariff material filed. In our ANPRM, we noted that filing fees for tariffs are currently assessed on a per-page basis, at a rate of \$2.00 per side. There is no fee for pages reprinted without change—for example, the reverse side of a page filed with fare or rate changes on it. We currently charge a flat rate of \$12 for each STPA submitted. See 14 CFR 389.25.

ATPCO suggested that filing fees for the electronic transmission of tariffs should be waived until such time as the Department establishes a fee schedule. We are not prepared to waive filing fees for those carriers that exercise the option to file their fares electronically. This, by its very nature, would be inequitable to those carriers that continue to file their tariffs only in the paper medium. Furthermore, filing fees are intended to cover the actual processing time costs for ensuring technical compliance with the Act. (See OR-204, effective January 10, 1983, Dockets 30586 and 30816; 48 FR 635, January 6, 1983). Therefore, we will not grant ATPCO's request to waive filing fees for electronic tariffs.

In an automated tariff filing system, even one as limited in scope as that proposed in our rule, we would need to adopt a different filing fee approach from that used in the paper system. We propose a filing fee structure providing for the assessment of a fee on a per record basis. We propose to establish an interim filing fee of 5 cents for one or more transactions proposed in any existing record, and 5 cents for any proposed canceled or new record. For ETS purposes, we propose to define record as "that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare."

We based our proposed interim fee on the transaction volume studies conducted in the *Tariffs Computerization Project—Feasibility Study and Cost Analysis Report* (June 1985) and *Preliminary Electronic Tariff ADP Requirements Study* (March 1987), and on estimates derived from the existing direct labor costs we have

experienced in processing the current paper records. Both of the cited studies estimated that there were on average approximately 50 transactions per tariff fare page, and that virtually all these transactions were under the STPA process. Using this average of 50 transactions per tariff fare page, and factoring the STPA filing fee into the cost for processing paper tariff pages, we arrived at a proposed filing fee that we believe is consistent with the costs of providing these services.

In assessing electronic filing fees we would not charge separately for electronic STPAs and fare records. This is because virtually all fare filings (98%) are submitted under the STPA process. Given this fact, we believe that applying a single filing fee is the most efficient and cost effective method of fee assessment.

There are several areas that need to be clarified in the assessment of the proposed filing fees. These are: (a) what fees should be assessed during the 90-day implementation period under proposed § 221.500, (b) what fees should be assessed after the 90-day implementation period, (c) what fees should be assessed when a filer elects to file electronically, and is also required to file paper tariffs under proposed § 221.275, and (d) should foreign air carriers that have been exempted from filing fees under 14 CFR 389.24 be required to pay electronic filing fees.

We propose that during the implementation period no electronic filing fee would apply; however, the filer would continue to pay the required paper filing fee. We propose that once the filer receives authority to cease filing paper fares tariffs and is permitted to file electronic fares tariffs, the electronic filing fee would apply to such fares tariffs. We propose that when a filer is authorized to file both electronic and paper tariffs under § 221.275, the filing fee, as applicable, would apply individually to each medium. We propose that foreign air carriers that have been exempted under § 389.24 of our economic regulations would also be exempt from the electronic filing fees.

We propose to collect the interim filing fees for the electronic filing of passenger fares as specified above, until such time as we revise the electronic filing fee schedule in light of actual experience under electronic filings.

We are specifically seeking public and industry comments on our proposed interim electronic filing fees.

For general, day-to-day, on-line access to electronically filed tariff data, our proposed rule provides that the public would be provided such access, free of

charge, at DOT headquarters. With respect to the cost of providing certified copies or other services involving passenger fares filed electronically, the Department proposes to follow the provisions regarding Freedom of Information Act requests, at 49 CFR Part 7 (also see 14 CFR Part 310). We would not assess a charge for copies made from the printer or printers placed by the filer in the Public Reference Room. The filer may assess such fees, provided they are reasonable and that no administrative burden is placed on the Department to require the collection of fees or provide services.

We welcome comments from the public and the industry on the issue of user fees.

ABC's Competition Argument

We do not share ABC's belief that ATPCO's large market share will have competitive ramifications on ABC or any other interested party. We have carefully drafted our proposal to allow any carrier, or its agent, to file fare tariffs electronically under identical conditions. Moreover, these conditions have been stated in general terms limited only by what we believe to be the Department's minimum needs. We do not wish to create limitations that could allow any party to attain an unfair advantage due to its particular data processing equipment, telecommunications capabilities, etc. Therefore, it is not clear to us what advantage ATPCO would have in an automated environment that it does not already have by virtue of the fact that it currently files printed tariffs on behalf of the majority of carriers that file. Saying this, we appreciate that interested persons may wish to comment on this issue and we invite them to do so.

In response to ABC's concerns about a rule which could operate to ATPCO's competitive advantage, we would note first that ATPCO is not immune from operation of the antitrust laws. See DOT Order 87-5-44, May 18, 1987. As always, our monitoring of the implementation of this rule would be a continuing one. In addition to this Departmental oversight, filers coming in under our proposed rule would, as ABC points out, remain subject to judicial scrutiny under the antitrust laws. See DOT Order 85-9-57, September 26, 1985, at 19. Further, our proposal seeks to be competitively neutral, allowing equal opportunities to all carriers and agents regarding the electronic filing of their fares. We recognize also that, in a sense, we are opening a new market—that of filing, not paper tariffs, but electronic tariffs. By creating that option, it may be that other firms, specializing in ADP and

related fields, may find it advantageous to enter the marketplace. Our proposal should allow them a fair opportunity to do so. Thus, to the extent that this rule would have any effect on the competitive environment, we would perceive such effect to be pro-competitive, not anti-competitive.

ABC's Procurement Argument

We do not accept ABC's assertions that ATPCO's proposal is an improper manner for the Department of proceed in view of our on-going rulemaking in this Docket, or that we are required to procure ETS equipment and services. Under our proposal, the Department would not be acquiring equipment from electronic filers for its own purposes. Terminals and peripheral equipment have already been obtained at DOT for tariff processing purposes via competition. The terminal or terminals provided for public use would remain the property of the filers, and be of use only in connection with the review of data supplied by that filer. We would require the filers to ensure the security, retention, and dissemination of the on-line tariff database. Departmental ETS services (as involved, for example, in the downloading of daily submissions or storage of official data at the Department) would largely be furnished through an on-site contractor, selected via appropriate competition, that supplies computer services to various Departmental elements. Of course, once we progress to a fully integrated system, different considerations will likely exist and a need for formal procurement may arise.

Alternatives

Before choosing the approach set out in our proposed rule, the Department carefully considered several other options which are available to us in this area. In fact, most of these options have been explored in-depth in the document, *Automation of the OIA Tariff System, A Cost Benefit Analysis*, dated March 1987. This document was prepared by the Department's Transportation Computer Center. Because this document is a part of this Docket, we will only briefly discuss these options here.

The first alternative was the possibility of streamlining the current paper tariff filing system in 14 CFR Part 221. However, over the past several years the Department has streamlined its operations and eased the paperwork burden on the carriers in as many ways as possible within the confines of the current paper system without undermining the very integrity of that system.

The second alternative we considered was storing images of tariff pages on an optical disk. An optical disk is a computer-oriented storage device which has the capability of storing up to 2,000 printed pages per disk. Under this system, the Department would transfer printed tariff pages onto an optical disk. (For a more detailed discussion of an optical disk system, see pages 5-13 through 5-20 of our study, *Automation of the OIA Tariff System, A Cost Benefit Analysis*, March 1987.) The optical disk alternative would provide some relief as far as simply accessing tariff information. However, such a system would not allow for the possibility of automating any of the Department's analytical or clerical functions. Consequently, any real relief to the Department would be negligible. Even more important, under this option no relief would accrue to the industry, since it still would be required to publish tariff pages.

A third alternative, tariff deregulation of international air transportation, would certainly eliminate the tariff burden for all concerned, just as it has for domestic air travel. However, such action would require a change in the Act as well as the possible renegotiation of many bilateral agreements between the U.S. and other countries, neither of which we consider a possibility at this time. Even if such changes were foreseeable, the time frame for implementing them would be quite long, thereby not providing the near-term relief needed by the Department and the industry.

We also considered the use of an airline reservation system to satisfy the Department's tariff filing requirements. Under this alternative the carriers would simply place their fares into an airline reservation system and would notify the Department that they had done so. Tariffs would no longer be filed with the Department. While this alternative would certainly eliminate the tariff filing burden on all parties, it would effectively mean the end of the Department's regulatory and statutory responsibilities over such tariffs. For the reasons cited above, we do not regard this as an acceptable alternative.

Any alternative that involved implementing any other type of automated tariff system, whether it be contractor-owned/contractor-operated, or DOT owned/operated, would require the Department to complete its system definition, develop specifications, and meet competitive procurement requirements—steps which would take time and which therefore would mean

that such an alternative could provide no near-term relief.

Finally, since we already have an ANPRM outstanding on the very subject of tariff computerization, we could simply defer any action on ATPCO's petition until final action in this Docket. However, as we have already indicated, complete definition, design and implementation of any ETS will involve complex issues, making it unlikely that this option could provide the interim relief which is central to ATPCO's petition and our proposed rule.

We believe that the proposal set forth in this NPRM offers the best opportunity for the Department and the industry to realize some measure of much-needed relief from the ever-growing burden of publishing and processing paper tariffs. However, we seek comments on any other alternatives that would accomplish this goal.

Supplementary Discussion of Comments on the ANPRM

We received several comments to our tariff automation ANPRM (50 FR 33452, August 19, 1985) indicating that the Department should rely on the private sector for development and operation of any electronic tariff filing system. It was suggested that the Department should develop systems responsive to its own needs and work with private industry to provide service to meet any other needs; the Department should have separate contracts for those aspects of the system which address the internal administration needs of the Department and those which address the receipt and dissemination of tariff information to the public. Several commenters offered their services, or products, for use in conjunction with development of the ETS.

In the notice establishing its Advisory Committee (51 FR 42327, November 24, 1986), the Department set out thirteen specific goals which we hoped to achieve in implementing an electronic tariff filing system. One of those goals was using private sector resources wherever feasible in developing our complete system. We have been mindful of that goal in formulating the present proposed rule. Central to our instant proposal is that the filing airlines or their agents would be establishing and maintaining their own tariff databases for the use by DOT and the public. Further, with respect to DOT's regulatory functions, we will use the resources of either our Transportation Computer Center or Transportation Systems Center, both of which use the services of on-site private industry contractors.

Several commenters stated that any electronic tariff filing system should be compatible with databases and systems in use in the industry; some commenters suggested that the Department should use one or more industry databases as the official tariff database, rather than create a separate database of its own. However, other commenters noted that some interests could possibly gain competitive advantage if the Department's electronic tariff system is run on the computers of a selected carrier or tariff agent. One commenter made it clear that the Department should not create the possibility, or even the appearance, of conflict of interest in connection with tariff automation; that the Department should specifically and publicly make clear all criteria established to maintain propriety. Our proposal here would allow any carrier, or its agent, to establish and maintain an on-line tariff database. The Department and the public would be permitted access to this tariff database for daily use. We believe this course of action will provide no competitive advantage for any party.

Two commenters to the ANPRM suggested that the Department should consult with other governments in order to establish uniform tariff procedures and formats. In this connection, we note that two foreign governments sit on our Advisory Committee as non-voting, ex-officio members.

One commenter was concerned with how carriers would fulfill their responsibilities for filing fares or rates with other governments if the Department changes from a paper tariff environment to an electronic tariff environment, especially in the event that a carrier is required to provide copies of its U.S. tariff to foreign governments. We emphasize that electronic tariff filing under our proposed rule would not be mandatory; any carrier who saw a need to continue filing tariffs on paper would be free to do so. Further, a carrier could make printed copies of any data it might file electronically.

Many comments we received dealt with the level and type of public access which would be provided in conjunction with any proposed ETS. Again, the comments represented widely divergent viewpoints. Some commenters suggested that the Department provide on-line access to electronically-filed tariff data only at Department headquarters. In fact, it was suggested that the Department could be considered to be in competition with the private sector if remote access to tariff data were permitted. Other comments clearly indicated that there was a need for the

Department to provide on-line access to its tariff database to anyone with the necessary computer equipment. It was even suggested that the Department should provide the data for carriers to run their fare/rate quote systems. Another aspect of public access was addressed by two commenters who requested that the Department require the carriers, or their agents, to continue to provide printed copies of tariffs for those entities which do not possess the computer facilities needed to access the electronic tariff data; another commenter stated that carriers, or their agents, should provide electronic access to STPA's/tariffs filed with the Department.

We propose to require public access at Departmental headquarters to any electronically filed tariff-STPA, coupled with a requirement that the carrier, or its agent, make the electronic tariff available to any person on a remote access basis, for a subscription fee. This service may be provided without charge or at a charge which may not exceed a reasonable estimate of the added cost of providing this service.

One issue on which there was near unanimous agreement was that the Department should take steps to amend or eliminate its posting requirement. These requirements provide that each carrier must maintain copies of all tariffs at each of its airport and city offices. We will address this issue in a contemporary rulemaking.

Comments were filed concerning the security of the tariff data (for example, who can access what data, and when). The consensus was that the security of tariff data is very important. One commenter noted that the Department should establish ways of certifying electronic tariff data as the official records of the Department. We have included a number of provisions in our proposal expressly designed to ensure adequate security and certifiability of our records.

With respect to filing fees or user charges in connection with an automated system, one commenter noted that the Department should not expect the public to bear the entire expense of development and operation of such a system. Instead, funding for automated systems should come from a mix of filing fees, user charges, and general appropriations. ATPCO's petition raised the filing fee issue and we have addressed it in the body of our discussion.

There were several comments that expressed the hope that an automated tariff filing system would reduce the number of STPA's needed to be filed

with the Department, while speeding up the approval process on those still necessary. One commenter suggested that we could achieve this result by amending the statutory filing periods. We believe that the efficiencies associated with the ability of carriers to file tariffs electronically would result in a reduction of the many inadvertent errors caused by a paper system. Such a reduction in errors should result in a decrease in the number of STPA's required to correct these errors. With respect to expediting the approval process for STPA's, we note that one commenter suggested that the Department should implement an "automated approval" mechanism—for example, that STPA's would be automatically approved if not acted upon within a specified period of time after filing. This type of proposal is clearly beyond the scope of the relief we are proposing and moreover, would raise significant questions about consistency with our statutory and regulatory obligations. However, we note that, even under our manual tariff filing system, we strive to process an STPA within 48 hours. Further, to the extent that the Department is able to realize increased efficiencies from the proposed rule, we would certainly expect such efficiencies to result in a more rapid response time to the industry and the public.

There were several comments concerning the operation of the electronic tariff system. These included a request that the justifications supplied by a carrier in support of a proposed tariff or STPA would be available to the public; that the Department should provide notice to the carrier or agent of any action taken on a fare filing, along with the reason for the rejection of any fare filing or denial of an STPA; that tariffs filed electronically should be available to the public as soon as they are filed with the Department; and that the Department should maintain a history file as discussed in the ANPRM. Our proposed rule addresses these concerns. With respect to the maintenance of historical data, the rule proposes that a carrier, or its agent, must maintain tariff data on-line for a period of two years after it becomes inactive. After that time, the carrier, or its agent, would provide the Department with this inactive tariff data on machine-readable tapes, or other mutually acceptable electronic medium. Public access to this data can be requested at Departmental headquarters.

One suggestion which we have not adopted is that a DOT automated tariff

system should provide carriers access to the Standard Foreign Fare Level (SFFL) and Standard Foreign Rate Level (SFRL) fare and rate bases. (These "benchmark" fares and rates are one of the standards against which the Department analyzes proposed fares and rates.) This suggestion is beyond the scope of our proposal, which is directed only toward automating the passenger fare filings received from the industry, not the Department's entire tariff system. We will, however, consider such a possibility as we continue development of our automated tariff system. Similarly, since our proposed rule provides only for the electronic filing of passenger fares tariffs, we are not addressing at this time those comments regarding other tariff matters, such as cargo rates or the content and format of rule provisions. We also note that several commenters proposed general outlines of how an automated tariff system could be structured. Again, we will consider all of these comments as the Department moves forward with the tariff automation process.

A commenter suggested that the Department should perform a cost/benefit study on electronic tariff filing. In fact, we have conducted such a study, *Automation of the OIA Tariff System, A Cost Benefit Analysis*, March 1987, a copy of which is included in Docket 43343. We have fully considered the cost/benefit implications of our proposed rule and have discussed them in our Regulatory Evaluation.

A commenter suggested that the Department implement a "pilot" system before final implementation of an automated tariff system. In this connection, in order to provide a smooth transition from paper tariff filing to electronic tariff filing, we propose to require carriers filing electronically to continue filing paper tariffs for a period of 90 days, or until such time as we shall deem paper filing no longer to be necessary.

A commenter noted that tariff automation will be a major undertaking, and that the issues associated with system development should be carefully considered; the commenter urged the Department to proceed very methodically in system development. A commenter stated that the Department should pay careful attention to determining not only its own needs, but also the needs of outside users. We agree that development of a fully automated tariff system such as envisioned in our ANPRM plainly demands thorough consideration and careful attention to methodology and the need of all users. Recognizing this,

however, we are also mindful that we have reached a point where some type of relief, however limited, is absolutely essential if the Department and the industry are to continue to fulfill their tariff responsibilities. We have undertaken the proposed rulemaking to provide such relief while we continue our efforts at developing a fully automated, integrated tariff system.

Finally, a commenter stated that the Department's conversion to an automated tariff environment should not hamper a carrier's ability to compete in the international aviation marketplace. Rather, it should facilitate a carrier's ability to compete. We point out, in this connection, that one of our major goals in establishing an automated tariff system is to make tariff filing more efficient both for the industry and the Department. We believe that this proposal would in no way diminish a carrier's ability to compete; in fact, we believe that it would enable carriers to compete more effectively.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act, Federalism Assessment

The Department certifies that this rule, if adopted as proposed, is not a major rule as defined by Executive Order 12291. It is, however, considered a significant rule under the Department's policies and procedures because it involves important Departmental policies and is a matter of significant interest to the aviation industry. We have prepared a Regulatory Evaluation which is summarized below. Copies of the evaluation have been placed in Docket 43343. (A copy may be obtained by contacting Thomas G. Moore, Chief, Tariffs Division, P-44, Department of Transportation, 400 7th Street SW., Washington, DC 20580, Telephone: (202)368-2414.) Further, I certify that the proposed rule would not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96-354. Virtually all airlines that provide international air transportation are large corporations. This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

With respect to the Paperwork Reduction Act of 1980, Pub. L. 96-511, our proposal would produce a small increase in the carriers' reporting burden because of their need to make formal

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application to file electronically. This new information requirement has been submitted to the Office of Management and Budget for approval.

However, we believe that the net paperwork burden associated with the tariff filing requirements should dramatically decrease. For example, in 1987, the international airlines filed with the Department 241,230 tariff pages applicable to international air transportation. Of this total, 219,503 applied to passenger service, and 21,727 applied to cargo service. Of the 241,230 tariff pages filed, we estimate that 65 percent involved passenger fares only. Assuming all carriers currently filing tariffs in paper form elect to file electronically, we would estimate an actual paperwork reduction of 142,676 pages filed with the Department, which would produce a reduction of approximately 60 percent in the paperwork burden.

As we said above, carriers, or their agents, electing to file tariffs electronically will be subject to a new reporting requirement. Specifically, they will need to make a one-time application under § 221.260 for authorization to file tariffs electronically. However, we expect these applications to be straightforward and short, not exceeding a few pages. Given the thousands of pages of paperwork to be saved by adoption of the electronic filing option, we believe that, on balance, the paperwork involved in the initial application would be a minor burden.

Regulatory Evaluation

The Department received many comments to our ANPRM which indicated that, while electronic filing could be expected to reduce the costs of filing tariffs, the magnitude of any such changes were difficult to quantify absent a specific ETS proposal. This section summarizes the estimated economic impact of our proposed rule. We welcome public and industry comments on these findings.

In our ANPRM, we set out the costs to the government (over \$500,000 a year) and to the industry (at least \$5 million a year) of filing and processing printed tariffs, as well as the potential benefits which could accrue to both if the tariff filing system was automated. Comments to that ANPRM confirmed that automation would be beneficial. Our March 1987 *Cost-Benefit Analysis*, which detailed costs (in excess of \$21 million a year, with 78 percent of such costs being borne by the industry) and benefits that could accrue to both the Government and the industry with automation, further concluded that it was clearly cost-effective to automate the tariff filing function.

In its petition, ATPCO stated that the ability to file fares tariffs electronically would reduce industry tariff costs by over \$2.5 million per year, just for printing costs. ATPCO went on to state that the industry would also benefit financially from the ability to implement new fare packages more quickly in an automated environment than under the paper filing system.

The government would also benefit. Right now, our tariff workload has reached a saturation point and we fully expect this workload to continue to increase substantially. Under these circumstances, we are finding it increasingly difficult to fulfill our statutory and regulatory responsibilities.

A principal feature of our proposed rule is that it would be permissive. That is, it would provide carriers wishing to file fares electronically the option of doing so. It would not, however, eliminate the current, paper-based system. Carriers preferring to file as they have been doing could continue to do so. We believe the rule would reduce economic and paperwork burdens on the industry and on the government. But the key point is that the impact of this rule is within the discretion of the affected parties. To the extent that there is impact, the impact promises to be positive.

We believe that the proposal we have outlined would provide the Department and the industry with some much-needed paperwork relief, even while the Department continues its work on the ETS. We reached our conclusion after considering several other options. These options were discussed earlier in this rulemaking, along with the reasons for their rejection.

List of Subjects

14 CFR Part 221

Air fares and rates; Explosives; Freight; Handicapped; Contracts; Claims; Consumer protection; Travel.

14 CFR Part 389

Archives and records.
This proposed rule is being issued under the authority delegated to the Assistant Secretary for Policy and International Affairs contained in 49 CFR 1.56(j)(2)(ii). For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR Parts 221 and 389 as follows:

PART 221—TARIFFS

1. The Authority citation for Part 221 would continue to read as follows:

Authority: Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-728, as

amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 786; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1451, 1462.

2. Subpart W would be added to the Table of Contents for Part 221 as follows:

Subpart W—Electronically Filed Tariffs

Sec.	
221.251	Applicability of the subpart.
221.260	Requirements for filing.
221.270	Time for filing and computation of time periods.
221.275	Requirements for filing paper tariffs.
221.280	Content and explanation of abbreviations, reference marks and symbols.
221.282	Statement of filing with foreign governments to be shown in air carrier's tariff filing.
221.283	The filing of tariffs and amendments to tariffs.
221.284	Unique rule numbers required.
221.285	Adoption of provisions of one carrier by another carrier.
221.286	Justification and explanation for certain fares.
221.287	Statement of fares.
221.300	Suspension of tariffs.
221.301	Cancellation of suspended matter.
221.302	Special tariff permission.
221.400	Discontinuation of electronic tariff system.
221.500	Filing of paper tariffs required.
221.600	Transmission of electronic tariffs to subscribers.
221.700	Actions under assigned authority and petitions for review of staff action.

3. Section 221.4 would be amended to add the following definitions in alphabetical order:

§ 221.4 Definitions.

"Area No. 1" means all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and the islands of the Caribbean Sea; and the Hawaiian Islands (including Midway and Palmyra).

"Area No. 2" means all of Europe (including that part of the Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; and that part of Asia lying west of and including Iran.

"Area No. 3" means all of Asia and the islands adjacent thereto except that portion included in Area No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; and the islands of the Pacific Ocean except those included in Area No. 1.

"Bundled normal economy fare" means the lowest one-way fare

available for unrestricted, on-demand service in any city-pair market.

"CTR" means a video display terminal that uses a cathode ray tube as the image medium.

"Direct-service market" means an international market where the carrier provides service either on a nonstop or single-flight-number basis, including change-of-gauge.

"ECAC agreement" means the Memorandum of Understanding between the United States and various member nations of the European Civil Aviation Conference, signed on December 17, 1962, as revised and renewed on October 11, 1984, as further revised and renewed on February 13, 1987, and as may be subsequently further revised and renewed.

"Electronic tariff" means an international passenger fares tariff or a special tariff permission application transmitted to the Department by means of an electronic medium, and containing fares for the transportation of persons and their baggage or property, and including such associated data as arbitraries, footnotes, routings, and fare class explanations.

"Field" means a specific area of a record used for a particular category of data.

"Filer" means an air carrier, foreign air carrier, or tariff publishing agent of such a carrier filing electronic tariffs on its behalf in conformity with this subpart.

"Official DOT tariff database" means those data records constituted pursuant to § 221.283 and 221.286 of this subpart, which are in the custody of, and are maintained by, the Department of Transportation.

"On-line tariff database" means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the official DOT tariff database, and (2) the Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that Subpart W of Part 221 requires the filer to maintain in its database.

"SFFL" means the Standard Foreign Fare Level as established by the Department of Transportation under section 1002 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1482).

"Unbundled normal economy fare" means the lowest one-way fare

available for on-demand service in any city-pair market which is restricted in some way, e.g. by limits set and/or charges imposed for enroute stopovers or transfers.

4. Subpart W would be added to Part 221 as follows:

Subpart W—Electronically Filed Tariffs

§ 221.251 Applicability of the subpart.

(a) Any carrier, consistent with the provisions of this subpart, and Part 221 generally, may file its international passenger fares tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in Part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of Subpart W. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with Part 221. Subparts A-V on the same day that the electronic tariff would be deemed received under § 221.270(b).

(b) To the extent that Subpart W is inconsistent with the remainder of Part 221, Subpart W shall govern the filing of electronic tariffs. In all other respects, Part 221 remains in full force and effect.

§ 221.260 Requirements for filing.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database.

(b) No carrier or agent shall file an electronic tariff, unless, prior to filing, it has submitted to the Department's Office of International Aviation, Tariffs Division, and received approval of, an application containing the following commitments:

(1) The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. (The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in § 221.283.)

(2) The filer shall provide, maintain and install in the Public Reference Room at the Department, (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this

equipment and shall agree to identify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

(3) The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

(4) The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week.

(5) The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

(6) The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares filed with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs electronically, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, contemporaneously with the cessation of such business, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall afford any authorized Departmental official full,

free, and uninhibited access to its facilities, databases, documentation, records, and application programs, including support functions, environmental security, and accounting data, for the purpose of ensuring continued effectiveness of safeguards against threats and hazards to the security or integrity of its electronic tariffs, as defined in this subpart.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (initially not less than 9.6K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 4.8K baud rate. The primary data circuit provided to access the on-line tariff database must be capable of being restored within four hours after failure.

§ 221.270 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.260, and anytime thereafter, subject to § 221.500. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this Subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business days, such date shall be the next Federal business day.

§ 221.275 Requirement for filing paper tariffs.

(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under § 221.270(b). Further, such paper tariff, or revision thereto, shall be filed

in accordance with the requirements of Subparts A-V of Part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a), or if the filer fails to submit the information in conformity with paragraph (b), the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.280 Content and explanation of abbreviations, reference marks and symbols.

(a) *Content.* The format to be used for any electronic tariff must be that agreed to in advance as provided for in § 221.280, and must include those data elements set forth in § 221.283. Those portions that are filed in paper form shall comply in all respects with Part 221, Subparts A-V.

(b) *Explanation of Abbreviations, Reference Marks and Symbols.* Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction.

I—Increase.

N—New Matter.

X—Canceled Matter.

C—Change in Footnotes, Routings, Rules or Zones.

E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.282 Statement of filing with foreign governments to be shown in air carrier's tariff filings.

(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into

between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The statement referenced in § 221.282(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the C.A.B./D.O.T. number appearing on the tariff.

§ 221.283 The filing of tariffs and amendments to tariffs.

All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory notice under § 221.302, shall contain the following data elements:

(a) *A Filing Advice Status File*—which shall include:

- (1) Filing date and time;
- (2) Filing advice number;
- (3) Reference to carrier;
- (4) Reference to geographic area and to affected tariff number;
- (5) Effective date of amendment or tariff;

(6) A place for government action to be recorded; and

(7) Reference to the Special Tariff Permission when applicable.

(b) *A Government Filing File*—which shall include:

- (1) Filing advice number;
- (2) Carrier reference;
- (3) Filing date and time;
- (4) Proposed effective date;
- (5) Justification text; reference to geographic area and affected tariff number;
- (6) Reference to the Special Tariff Permission when applicable;
- (7) Government control data, including places for:

(i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;

(ii) Action taken;

(iii) Remarks, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;

(iv) Date action is taken; and

(v) Personal Identification Number; and

(8) Tariff, or proposed changes to the tariffs, including:

- (i) Market;
- (ii) Fare code;
- (iii) One-way/roundtrip (O/R);
- (iv) Fare Amount;

- (v) Currency;
- (vi) Footnote (FN);
- (vii) Rule Number;
- (viii) Routing (RG);
- (ix) Effective date and discontinue date; and
- (x) Percent of change from previous fares.

(c) *A Historical File*—which shall include:

- (1) Market;
- (2) Fare code;
- (3) One-way/roundtrip (O/R);
- (4) Fare amount;
- (5) Currency;
- (6) Footnote (FN);
- (7) Rule Number;
- (8) Routing (RG);
- (9) Effective Date;
- (10) Discontinue Date;
- (11) Government Action;
- (12) Carrier;
- (13) All inactive fares (two years);
- (14) Any other fare data which is essential; and
- (15) Any necessary cross reference to the Government Filing File for research or other purposes.

§ 221.284 Unique Rule Numbers Required.

The following tariff rule numbers shall be used in conjunction with normal economy fares filed pursuant to this Subpart.

(a) The rule number for all "bundled" normal economy fares shall be 1000 for fares between a point, or points, in the United States, its territories and possessions, on the one hand, and a point, or points, in Area 1 (excluding the United States, its territories and/or possessions), on the other hand, and, for "unbundled" normal economy fares, shall be 1005.

(b) Except as otherwise provided, the rule number for all "bundled" normal economy fares shall be 2000 for fares between a point, or points, in the United States, its territories and possessions, and a point, or points, in Area 2 via the Atlantic Ocean; and, for "unbundled" normal economy fares, shall be 2005. *Exception:* when transportation is provided via the Pacific Ocean the rule numbers shall be, respectively, 3000 and 3005.

(c) Except as otherwise provided, the rule number for all "bundled" normal economy fares shall be 3000 for fares between a point, or points in the United States, its territories and possessions, and a point, or points, in Area 3 via the Pacific Ocean; and, for "unbundled" normal economy fares, shall be 3005. *Exception:* when transportation is provided via the Atlantic Ocean the rule numbers shall be, respectively, 2000 and 2005.

§ 221.285 Adoption of provisions of one carrier by another carrier.

When one carrier adopts the tariffs of another carrier, the effective and prospective fares of the adopted carrier shall be changed to reflect the name of the adopting carrier and the effective date of the adoption. Further, the filed tariff shall bear a notation for each each of the fares that were adopted. Such notation shall reflect the name of the adopted carrier and the effective date of the adoption.

§ 221.286 Justification and explanation for certain fares.

Any carrier or its agent, must provide, as to any new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare, and on the other hand, the ceiling fare allowed in that market based on either the pertinent ECAC Zone or SFFL. If, however, the carrier's proposed fare is intended to match that already approved for another direct-service carrier, the proponent carrier may forego the comparison and instead, simply identify the direct competitor's fare it claims to match.

§ 221.287 Statement of fares.

All fares filed electronically in direct-service markets shall be filed as single factor fares.

§ 221.300 Suspension of tariffs.

(a) A rate, fare, charge, change, rule or other tariff provision that is suspended by the Department pursuant to section 1002 of the Act (49 U.S.C. 1462) shall be noted by the Department in the Government Filing File and the Historical File.

(b) When the Department vacates a tariff suspension, in full or in part, and after notification of the carrier by the Department, such event shall be noted by the carrier in the Government Filing File and the Historical File.

(c) When a tariff suspension is vacated or when it becomes effective upon termination of the suspension period, the carrier or its agent shall refile the tariff showing the effective date.

§ 221.301 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules, fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.302 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved. The submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under § 221.275, the submission must bear a sequential filing advice number and a sequential Special Tariff Permission Application number as prescribed by Subpart P of 14 CFR Part 221. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When a Special Tariff Permission has been approved by the Department under this subpart, the filer must (1) use the permission in its entirety as granted, unless the filer chooses not to submit the approved changes, (2) submit all approved changes concurrently, and (3) submit the approved changes on such notice as authorized by the Department.

(e) Special Tariff Permissions which are not implemented within 15 days after approval by the Department shall be null and void.

(f) All submissions under this section shall comply with the requirements of § 221.283.

§ 221.400 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.500 Filing of paper tariffs required.

After approval of any application filed under § 221.200 of this part to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by Subparts A-V of Part 221 for a period of 90 days, or until such time as the Department shall deem such filing no longer to be necessary.

§ 221.600 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by § 221.200. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: *Provided*, that the charge may not exceed a reasonable estimate of the added cost of providing the service.

§ 221.700 Actions under assigned authority and petitions for review of staff action.

When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation's Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

(a) *Applicable to a Record or Records Which is/are Disapproved (rejected):* The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

(b) *Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied:* This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of the action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

1. The authority citation for Part 389 would continue to read as follows:

Authority: Sections 204, 1002, Pub. L. 85-720, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, Ch. 378, 65 Stat. 286; 51 U.S.C. 463a.

2. Section 389.20 would be revised to read as follows:

§ 389.20 Applicability of subpart.

(a) This subpart applies to the filing of certain documents and records at the Department by nongovernment parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under Subpart W of 14 CF Part 221, and contains that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare.

§ 389.21 (Amended)

3. Section 389.21(a) introductory text would be amended by adding "or record" after the word "document".

4. In § 389.22, paragraph (a) would be redesignated as paragraph (a)(1) and a new paragraph (a)(2) would be added as follows:

§ 389.22 Failure to make proper payment.

(a)(1) . . .

(2) Except as provided in § 389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

5. The table in § 389.25 would be designated as paragraph (a) and a heading added reading:

§ 389.25 (Schedule of processing fees.

(a) *Document-filing fees.* . . .

6. Section 385.25(b) would be added reading as follows:

§ 385.25 (Amended)

(b) *Electronic Tariff Filing Fees.* The filing fee for one (1) or more transactions proposed in any existing record, or for any new or canceled record, shall be 5 cents per record.

Issued in Washington, DC on July 1, 1988.

Matthew V. Scocozza,
Assistant Secretary for Policy and
International Affairs.
(FR Doc. 88-15277 Filed 7-7-88; 8:45 am)
BILLING CODE 4910-12-2

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Parts 284 and 385**

(Docket No. RM88-13-000)

Brokering of Interstate Natural Gas Pipeline Capacity; Technical Conference

Issued July 1, 1988.

AGENCY: Federal Energy Regulatory Commission, Energy.
ACTION: Notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission issued a notice of proposed rulemaking (NOPR) in this docket on April 4, 1988 (53 FR 15,061 (Apr. 27, 1988)). In response to various requests, a staff technical conference will be held in this rulemaking to address certain technical issues raised in the NOPR. As provided by the Commission's order issued on July 1, 1988, written comments may be filed on the matters raised at the conference.

DATE: The conference will be held on Thursday, July 28, 1988 at 10:00 a.m. Requests to participate should be directed to the Commission no later than July 20, 1988.

ADDRESS: The technical conference will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Requests to participate and questions regarding participation should be directed to: John Carlson, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8109.

FOR FURTHER INFORMATION CONTACT: John Carlson, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8109.

SUPPLEMENTARY INFORMATION: In response to various requests, a technical conference will be held in this docket to address certain technical issues raised in the NOPR. The sole purpose of this conference is to enable interested persons to obtain further information

concerning the Commission's capacity brokering proposal. This information should assist interested persons in formulating their supplemental comments to the NOPR, as described in the notice requesting supplemental comments issued today.

The technical conference will consist of panels with representatives of the various segments of the natural gas industry, or economic or other interests potentially affected by the proposed rule. Each panel will address one of the four topics listed below.

Persons requesting an opportunity to participate on a panel should indicate the panel or panels, listed in order of priority, on which they wish to be included and the segment of the industry or economic or other interest that they represent. Because of time and space constraints it may be impractical to honor all requests. The Commission's intent is to limit the number of participants on each panel so as to maximize the opportunity for meaningful dialogue among those participants. Therefore, prior to the conference, persons who share a common interest in a particular topic are encouraged to select and propose a representative participant for the panel on that topic.

The transcript of the technical conference will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 during regular business hours.

Topics for the Four Panels**A. What Can Be Brokered**

1. Defining a specific right to firm transportation
2. Use of flexible receipt and delivery points
3. Storage
4. Conditions and terms of service
5. Rights to and obligations of original and ultimate capacity holders

B. Interstate Pipeline Rate and Cost Issues

1. Account No. 858 cost allocation for pipelines holding a blanket broker certificate
2. Adjustment to interruptible volumes for pipelines holding a system brokering certificate
3. Effect of brokering on pipeline rates
4. Contract demand conversion rights
5. Determining appropriate price caps

C. Market Power and Discrimination

1. Need for regulation of broker transactions
2. Defining market power

3. Standards of conduct by brokers
4. Brokering by affiliates of pipelines and local distribution companies
5. Scope and determination of discrimination
6. Additional safeguards to prevent use of market power

D. Certificate Provisions

1. Limitation to Part 284, Subpart G pipelines
2. Three-year time limitation
3. Temporary certificates
4. Local distribution companies and interstate pipelines.

Lois D. Cashell,

Acting Secretary.

(FR Doc. 88-15396 Filed 7-7-88; 8:45 am)
BILLING CODE 4717-07-M

Federal Energy Regulatory Commission**18 CFR Parts 284 and 385**

(Docket No. RM88-13-000)

Brokering of Interstate Natural Gas Pipeline Capacity; Notice Requesting Supplemental Comments

Issued July 1, 1988.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice requesting supplemental comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking in Docket No. RM88-13-000 on April 4, 1988 on brokering of interstate natural gas pipeline capacity. The comment period for this notice ended June 17, 1988. In response to numerous requests during the comment period, Commission staff issued a notice on July 1, 1988, that it would hold a technical conference on July 28, 1988. The Commission is requesting supplemental comments on the issues raised in the conference.

DATES: Comments must be received by September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-8530.

Brokering of Interstate Natural Gas Pipeline Capacity; Notice Requesting Supplemental Comments

The Federal Energy Regulatory Commission issued a notice of proposed rulemaking (NOPR) in this docket on April 4, 1988 (53 FR 15,061, Apr. 27, 1988). The comment period for the NOPR

ended June 17, 1988. In response to numerous requests during the comment period, the Commission issued a notice on July 1, 1988, that it would hold a staff technical conference in this rulemaking on July 28, 1988. The Commission is requesting supplemental comments on the issues raised in the conference.

Comments must be in writing, and an original and 14 copies of the comments must be received by September 2, 1988. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM88-13-000.

The transcript of the technical conference and written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 during regular business hours.

By direction of the Commission,
Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,
Acting Secretary.

Concurring Opinion of Commissioner Charles A. Trabandt

I concur in the decision of the Commission to request supplemental comments in this docket on the issues raised in the staff technical conference to be held on July 28, 1988. I concur with several observations about the Notice of Proposed Rulemaking (NOPR) in this docket.

First, I welcome a technical conference in this docket to explore the many issues associated with the capacity brokering concept proposed in the NOPR. It would have been preferable to have scheduled the technical conference prior to the subcommittee of original comments, in order that those comments and the related analysis could have been more sharpened for our review. For that reason, I supported the requests for the earlier technical conference from all sectors of the industry. Nevertheless, on the theory of "better late than never," I support the decision today to proceed with a technical conference next month.

Second, I want to address two procedural matters. I do want to make clear that my support for the technical conference does not constitute any acquiescence in the failure of the Commission thus far to schedule a public hearing for the Full Commission to receive testimony on the capacity brokering proposal. To the contrary, I believe strongly that capacity brokering

could have major fundamental impact on the operation of the natural gas industry and activity in the natural gas markets. Consequently, I think the Commission is obligated to provide a public hearing for interested parties before taking action on a Final Rule in this docket. The staff technical conference next month will not satisfy in any way that obligation.

I also believe that it is increasingly obvious to all interested parties, including supporters of the capacity brokering concept, that the NOPR was largely a theoretical and broad conceptual proposal, rather than a more concrete proposed rule in the traditional sense. Indeed, the decision to schedule the technical conference, and the format adopted for it, in response to numerous requests from all sectors of the industry demonstrate the broad conceptual nature of the proposal. There are a whole series of largely amorphous and undefined aspects of the current proposal of a legal, operational, ratemaking and technical nature highlighted in the public comments filed earlier this month. The staff technical conference in July and the supplementary comments in September can address and attempt to refine those many issues for subsequent Commission review. Clearly though, the Commission must not attempt to implement the proposed concept in anything like the current amorphous form.

However, I do not believe that the additional public comment can, or should be allowed to, fill in the seemingly endless missing parts of the proposal in a final rule. Rather, I believe that the Commission must review that additional comment and any new staff analysis to develop a traditional proposed rule. That proposed rule should be the subject of a subsequent NOPR in this docket, which will include far more precise and well defined elements for public review and comment prior to any eventual final rule. I would invite comments from all interested parties on this approach to the continued formulation and further consideration of the capacity brokering proposal. Finally, I would re-emphasize again my comments in my concurring opinion, at page 10 on the need for fully adequate public comment and participation in this rulemaking docket.

Third, I want to address a few substantive matters related to the capacity brokering proposal. In my concurring opinion, I emphasized, at page 11 and following, that the threshold issue in the NOPR was the exact need for capacity brokering and the preferred option to satisfy that need. Review of

the initial public comments demonstrates that threshold issue analytically remains perhaps the major fundamental issue. We still must determine (1) whether, (2) how, (3) when and (4) to what extent capacity brokering and allocation by price should replace the existing capacity allocation system. For example, it still does not appear to be at all clear that the industry should move now directly to full blown unregulated capacity brokering. As I stated before, the Commission must bear the burden of analytical persuasion that the NOPR concept should be considered superior to some form of a more limited and simple form of third party capacity re-allocation where the capacity entitlement is held by a second pipeline, who transfers or "brokers" the entitlement to a third party under existing practices.

Any systematic and objective review of the initial comments would conclude that the Commission thus far would be able to satisfy that burden. Consequently, I still believe that the Commission will have to establish more specifically the exact need for direct and immediate action on capacity brokering and the best available alternative for action in the context of the many applicable considerations before we formulate a revised proposal for re-noticing in a new NOPR. I would urge all interested parties to address further this threshold issue in their supplement comments and carefully assess the range of practical, as opposed to conceptual or theoretical, options for action on this issue.

I also would urge the Commission to reconsider its decision to dismiss the numerous proposals to permit pipelines to engage in capacity reallocation to third parties, as requested by INGAA and other parties in the public comments. In that regard, I would note with strong support the Motion of the Public Service Commission of the State of New York for Severance, Reconsideration and Prompt Relief to Correct Gross Discrimination filed June 21, 1988, in this docket and Docket Nos. RP85-177 and RP85-159. While I may not necessarily agree with every aspect of the motion, I generally support the thrust of the arguments and the proposal for immediate Commission action on this issue. The New York Public Service Commission petition highlights the currently critical importance of the discrete issue of the assignment of unused firm capacity of downstream pipeline customers of interstate pipelines and is one example of a

number of such pleadings in those and related dockets.

The understandable necessity for the technical conference, the supplemental comments, a public hearing and a re-noticing of the capacity brokering concept in a new NOPR will significantly delay any final decision on capacity brokering in this docket. As a result, the critical need for third party capacity reallocation will remain unsatisfied as a virtual hostage to the ongoing NOPR process. It is for that reason that I opposed the Commission's original decision to dismiss all such pending proposals in the several dockets.

Additionally, I believe the Commission must make a sustained effort to address the original rate objectives adopted in Order Nos. 436 and 500 for the purpose of encouraging competition. Specifically, the Commission must now require generally that rates for open access transportation reflect any material variation in the costs of providing services based on seasonal or geographic factors, ration capacity at the pipeline's peak, encourage full utilization of the pipeline, and ensure transportation is unbundled and does not differ in sales or transportation services. In that regard, please see my concurring opinion in *Texas Eastern Transmission Corporation* in Docket Nos. RP88-81-000 and RP88-87-000 discussing my views on the rate design issues in that case, including 100 percent load factor for interruptible rates, the absence of an off-peak seasonally-differentiated firm transportation, and the allocation of capacity-related costs to interruptible transportation.

I also would note with general analytical agreement and substantive support the Petition For Issuance of Statement of General Policy applicable to rate design of pipelines transporting natural gas, filed by the Natural Gas Supply Association on June 13, 1988. The NGSA petition emphasizes the need for prompt Commission action on the open access transportation rate design issue. I share completely the NGSA conclusion that the Commission now should act directly on those rate design issues. I do not believe that the capacity brokering NOPR subsumes those issues or otherwise obviates the need for direct and immediate action on the issues. And, I would not agree that action on the rate design issues could or should be deferred sequentially until after final resolution of the capacity brokering proposal.

Here again, the Commission would, in essence, be holding those critical rate design issues as a virtual hostage to

final action on capacity brokering and for no good or valid policy purpose. As my concurring opinion in *Texas Eastern* and the NGSA petition conclude, we must act on the outstanding open-access transportation rate design issues as soon as possible to ensure that the resulting transportation services support a fully competitive and non-discriminatory implementation of our Order No. 436 program. Let's get on with that effort in the summer of 1988 and not let the extended consideration of capacity brokering in this docket frustrate that result.

Finally, thus far there realistically are no answers to the many questions filed by the industry groups seeking a technical conference, including INGAA and NGSA, the issues raised in the public comments, or the several major issues raised in my original concurring opinion. And, the public comments reflect a substantial degree of controversy on the merits and substance of the capacity brokering concept and the implementation details of the concept, with a wide range of recommended modifications and alternatives including outright rejection. Procedurally, commenters have recommended various alternatives including policy statements, re-noticing a modified proposal, and deferring action on a broader capacity proposal at this time, while proceeding with some immediate form of third party capacity re-allocation. As a result, it is fair to conclude that there is a broad consensus of comment from all sectors of the industry and state authorities in strong opposition to any adoption of the current proposal and the broader concept of capacity brokering as it now exists.

I will conclude with a final observation about the capacity brokering NOPR. As discussed in my concurring opinion, at page 3 and following, the original recommendation to the Commission was to issue the proposal as an immediately effective Interim Rule. I strenuously opposed then any immediate effectiveness of the proposed rules prior to public comment on legal and policy grounds. The substance of the initial public comments in this docket and the Commission decision today to schedule a staff technical comments and request supplemental comments, in my judgment, demonstrate the wisdom of the Full Commission's decision to proceed with an NOPR rather than an Interim Rule. It certainly is abundantly clear now that immediate effectiveness of the proposed rules would have been an unmitigated disaster for the

Commission, the industry and natural gas consumers. And, of course, the proposal would not have been susceptible, as a practical matter, to modification or refinement. Consequently, I would like to take this opportunity to commend publicly my colleagues on the Full Commission who tenaciously opposed an Interim Rule. As we proceed now with continued consideration of the capacity brokering concept, I look forward to a similar, common sense approach to our decision making process, in the hope that we will adopt a practical solution to a real problem in capacity re-allocation in the natural gas industry.

It is in that spirit that I concur in this order.

Charles A. Trabandt,
Commissioner.

[FR Doc. 88-15419 Filed 7-7-88; 8:45 am]
BILLING CODE 8717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

Public Health Service Grant Appeals Procedures

AGENCY: Public Health Service, HHS.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) revises 42 CFR Part 50, Subpart D, to substitute new informal procedures for the resolution of certain Public Health Service (PHS) grant disputes. A revision of the informal procedures governing PHS grant disputes is necessary in order to conform with the Department's rules at 45 CFR Part 16 (46 FR 43817, August 31, 1981) establishing requirements and procedures applicable to disputes arising under certain departmental grant and cooperative agreement programs. The major changes concern the addition of an adverse determination to which the procedure is applicable and the deletion of another to eliminate any confusion that currently exists due to different areas of jurisdiction reflected in the two sets of grant regulations.

DATE: To be considered, comments must be received no later than September 8, 1988.
ADDRESS: Written comments should be addressed to the Director, Division of Grants and Contracts, Office of Resource Management, OM/PHS, Room 17A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore J. Roumel, Phone: 301/443-1874.

SUPPLEMENTARY INFORMATION

Background

HHS rules regarding the procedures for the appeal of written final decisions under certain grant programs administered by the Department are codified at 45 CFR Part 16. These rules require that an appellant must have exhausted any preliminary appeal process required by regulation before a formal appeal to the Departmental Grant Appeals Board.

The PHS regulations provide an informal preliminary procedure for the resolution of disputes concerning PHS grants. This procedure gives PHS an opportunity to review decisions of its officials and to settle disputes with grantees before these disputes are formally submitted to the Department's Grant Appeals Board. The PHS rules are codified at 42 CFR Part 50, Subpart D. This document revises the existing PHS informal procedures to conform with the departmentwide rules at 45 CFR Part 16.

Highlights of the Changes

Section 50.404 describes the types of disputes covered by the informal appeal procedure. This action adds a new dispute and deletes one. To be added are final written decisions denying a noncompeting continuation award, where the denial is for failure to comply with the terms of a previous award. To be deleted is the disapproval of a grantee's written request for permission to incur an expenditure during the term of a grant. These disputes are similar to those in the Department's rules with one exception. It is noted that decisions relating to withholding under block grant programs, as provided in 45 CFR 96.52, are not included in the revised PHS procedures.

PHS Discretionary Project Grants and Cooperative Agreements

Adverse determinations to which the amended PHS procedure would be applicable are as follows:

(1) Termination, in whole or in part, or a grant for failure of the grantee to carry out its approved project in accordance with the applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or

that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) A determination that a grant is void.

(4) A denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms of a previous award.

Section 50.406(b), which outlines the procedural steps in the informal appeal process would be revised to require grantees to include in their request for review a copy of the adverse determination and copies of documents supporting their claim. These requirements are similar to those in the departmental rules. When a dispute has been determined to be reviewable by a review committee, any background materials grantees submit to the review committee would have to be organized chronologically and include an indexed listing identifying each document to the committee. See § 50.406(e). This requirement for organizing the materials submitted for review is similar to one in the departmental rules at 45 CFR 16.8 and is intended to facilitate the review process.

The second sentence of § 50.406(c) emphasizes that during the pendency of an appeal, the Department is not obligated to provide continuation funding to a grantee whose noncompeting continuation award has been denied.

In addition to the substantive revisions discussed above, we propose certain editorial revisions.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects. The Secretary certifies that these regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of \$100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch.6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The Secretary has determined that this regulation will not have a significant economic impact on a substantial number of small entities and hereby

certifies that an initial regulatory flexibility analysis is not required. Accordingly, 42 CFR Part 50, Subpart D, is proposed to be revised as set forth below.

Dated: April 20, 1988.

Robert E. Windom,
Assistant Secretary for Health.

Approved: May 18, 1988.

Don M. Newman,
Acting Secretary.

PART 50—(AMENDED)

Subpart D—Public Health Service Grant Appeals Procedure

Sec.

50.401 What is the purpose of this subpart?

50.402 To what programs do these regulations apply?

50.403 What is the policy basis for these procedures?

50.404 What disputes are covered by these procedures?

50.405 What is the structure of review committees?

50.406 What are the steps in the process?

Authority: Sec. 215, Public Health Service Act, 56 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

§ 50.401 What is the purpose of this subpart?

This subpart establishes an informal procedure for resolution of certain postaward grant disputes within PHS.

§ 50.402 To what programs do these regulations apply?

This subpart applies to all grant programs, except block grants, which are administered by the National Institutes of Health, the Health Resources and Services Administration, the Centers for Disease Control, the Alcohol, Drug Abuse, and Mental Health Administration, the Food and Drug Administration, the Indian Health Service, the Office of the Assistant Secretary for Health (OASH), or by the Public Health Service regional offices.

§ 50.403 What is the policy basis for these procedures?

The Secretary of Health and Human Services has established a Departmental Grant Appeals Board for the purpose of providing a fair and flexible process for the appeal of written final decisions involving certain grant programs administered by constituent agencies of the Department. The regulatory provision which establishes when the Board will take an appeal (45 CFR 16.3) provides, among other things, that the appellant must have exhausted any preliminary appeal process required by regulation before a formal appeal to the Departmental Board will be allowed. These regulations provide such an

informal preliminary procedure for resolution of disputes within the Public Health Service in order to preclude submission of cases of the Departmental Grant Appeals Board before the Public Health Service has had an opportunity to review decisions of its officials and to settle disputes with grantees.

§ 50.404 What disputes are covered by these procedures?

(a) These procedures are applicable to the following adverse determinations under Public Health Service discretionary project grants and cooperative agreements:

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project in accordance with the applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) A determination that a grant is void.

(4) A denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms of a previous award. This does not apply to denials that are due to the grantee's poor performance or to the unavailability of funds.

(b) A determination subject to this subpart may not be reviewed by the review committee described in subsection 50.405 unless an officer or employee of the agency, OASH, or the regional office has notified the grantee in writing of the adverse determination. The notification must set forth the reasons for the determination in sufficient detail to enable the grantee to respond and must inform the grantee of the opportunity for review under this subpart.

§ 50.405 What is the structure of review committees?

The head of each agency or his/her designee shall appoint review committees for reviewing appeals of adverse determinations made by headquarters for programs under the jurisdiction of that agency. For adverse determinations made by an OASH program and regional officials, the Assistant Secretary for Health or his/her designee shall appoint review committees. A minimum of three

employees shall be appointed (one of whom shall be designated as chairperson) either on an ad hoc, case-by-case basis, or as regular members of review committees for such terms as may be designated. None of the members of the review committee reviewing any given appeal may be from the office of the responsible official whose determination of the grant involved, e.g. project officer, grants specialist, program manager, grants management officer, etc.

§ 50.406 What are the steps in the process?

(a) A grantee with respect to whom an adverse determination described in § 50.404(a) above has been made and who desires a review of that determination must submit a request for such review to the head of the appropriate agency or his/her designee (or in the case of an OASH program or regional office determination, to the Assistant Secretary for Health or his/her designee) no later than 30 days after the written notification of the determination is received, except that if the grantee shows good cause why an extension of time should be granted, the head of the appropriate agency or his/her designee (or in the case of an OASH program or regional office determination, the Assistant Secretary for Health or his/her designee) may grant an extension of time.

(b) The request for review must include a copy of the adverse determination, must identify the question(s) in dispute, and must contain a full statement of the grantee's position with respect to such question(s) and the pertinent facts and reasons in support of the grantee's position. In addition to this written statement, the grantee shall provide copies of any documents supporting its claim.

(c) When a request for review has been filed under this subpart with respect to a determination, no action may be taken by the awarding agency, OASH, or regional office pursuant to such determination until the request has been disposed of, except that the filing of the request shall not affect the authority which agency, OASH, or regional office may have to suspend assistance or otherwise to withhold this support. In addition, this paragraph does not require the awarding agency, OASH, or regional office to provide continuation funding during the appeal process to a grantee whose noncompeting continuation award has been denied.

(d) Upon receipt of a request for review, the head of the agency or his/

her designee (or, if the adverse determination was made in an OASH program or regional office, the Assistant Secretary for Health or his/her designee) will make a determination as to whether the dispute is a reviewable one under this subpart and will promptly notify the grantee and the office responsible for the adverse determination of this decision. If the head of the agency or his/her designee (or if the adverse determination was made in an OASH program or regional office, the Assistant Secretary for Health or his/her designee) determines that the dispute is reviewable, he/she will forward the matter to the review committee appointed under § 50.405.

(e) The agency, OASH, or regional office involved will provide the review committee appointed under § 50.405 with copies of all background materials (including application, award, summary statements, and correspondence) and any additional information available. These materials must be tabbed and organized chronologically and accompanied by an indexed list identifying each document.

(f) The grantee shall be given an opportunity to provide the review committee with additional statements and documentation not provided in the request for review (paragraph (b) of this section). This additional submission, which must be organized and indexed as indicated under paragraph (e) of this section, should include only material that is important to the review committee's decision on the issues in the case.

(g) The review committee may, at its discretion, invite the grantee or the agency, OASH, or regional office staff, or both, to discuss with the review committee pertinent issues, and to submit such additional information as it deems appropriate.

(h) Based on its review, the review committee will prepare a written decision to be signed by the chairperson and all committee members. The review committee shall send a transmittal letter with the written decision to the grantee, with a copy to the official responsible for the adverse determination. If the decision is adverse to the grantee's position, the correspondence must state the grantee's right to appeal to the Departmental Grant Appeals Board under 45 CFR Part 16.

[FR Doc. 88-15383 Filed 7-7-88; 8:45 am]

BILLING CODE 4160-17-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-388; FCC 88-157]

Amendment of Commission's Rules on Applications To Serve Rural Service Areas; Public Land Mobile Services; Cellular Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: In its Fourth Notice of Proposed Rulemaking in this docket, the FCC is inviting comment on whether it should adopt a fill-in policy for Rural Service Areas similar to the fill-in policy adopted for the Metropolitan Statistical Areas and recommends such action. Such action is needed in order to provide RSA carriers a reasonable opportunity to adjust their business plans to developing demand. The intended effect of the proposed action is to eliminate delays in the processing of applications for unserved portions of the RSAs and to ensure that cellular radiospectrum is used in as efficient a manner as possible.

DATES: Comments are due on or before July 25, 1988, and reply comments by August 2, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anne Moebes, Mobile Services Division, Common Carrier Bureau; tele: 202-632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Order on Reconsideration adopted April 21, 1988, and released June 30, 1988. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Fourth Notice of Proposed Rulemaking

1. This notice invites comment on the Commission's proposal to apply the fill-in policy and procedures adopted for the Metropolitan Statistical Areas (MSAs) to the Rural Service Areas (RSAs) and to amend the current cellular rules for RSAs accordingly. The amended rules

adopting the proposed fill-in policy would govern service to the area within each RSA that is not part of the Cellular Geographic Service Area (CGSA) of the licensee for that RSA. If the proposal is adopted, RSA licensees would be permitted to file applications to serve areas outside of their CGSA, but within the RSA, for a period of five years from the date of the initial authorization in the market without being subject to competing applications. Thereafter, non-licensees could file applications for unserved portions of the RSA.

It is also proposed that if the original licensee transfers its entire authorization for its CGSA within the RSA, the fill-in period and the right of expansion without competing applications would transfer with the authorization. However, if the licensee transfers any other CGSA in the RSA or less than the total original CGSA authorization to another party, such party would have no right to expand the area covered by the transferred authorization without competing applications unless the transferee obtains a statement signed by the transferor agreeing to such an expansion.

This proposal was adopted based on the Commission's tentative conclusion that in order to provide RSA carriers a reasonable opportunity to assess and adjust their business plans to developing demand, a fill-in policy for RSAs, similar to that used for MSAs, is preferable to other alternatives.

2. *Ex Parte*: This is a non-restricted notice and comment rule making proceeding. See §§ 1.1202, 1203, 1206 of the Commission's Rules, 47 CFR 1.1202, parts 1203 and 1206 for rules governing permissible *ex parte* contacts.

3. *Initial Regulatory Flexibility Analysis*: Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603(a), the Commission notes that adoption of this proposal will uniformly affect all entities with a minimal cost associated with the filing of applications, amendments, correspondence, exhibits and attachments in microfiche form. We are considering exempting submissions of two pages or less from this requirement.

4. *Paperwork Reduction*: The collection of information requirement contained in this proposed rule has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for Federal Communications Commission.

5. *Service List*: A copy of this Notice shall be sent to the Chief, Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15302 Filed 7-7-88; 8:45 am]

BILLING CODE 8712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 715, 717, AND 752

[AIDAR Case 88-1]

Training Cost Analysis System

AGENCY: Agency for International Development, IDCA.

ACTION: Proposed rule.

SUMMARY: The Agency for International Development (A.I.D.) proposes to amend the A.I.D. Acquisition Regulation to require prospective contractors proposing to provide participant training services (that is, training of foreign nationals) to A.I.D. to use a specified format for preparation and submission of cost proposals for participants training; and to require contractors providing participant training services to submit a quarterly expenditure report in a specified format for the participants training services being provided.

DATES: Comments on this proposed rule should be submitted in writing to the address specified below. Comments must be received by September 8, 1988 in order to be considered in formulation of the final rule.

ADDRESSES: Comments should be addressed to the Agency for International Development, Washington, DC 20523, Attention: M/SER/PPE, Room 16001, SA-14. Please cite AIDAR Case 88-1 in all correspondence related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: OIT/PP, Ms. Joyce Kaiser, SA-16, Room 201D, Agency for International Development, Washington, DC 20523, (703) 875-4147.

SUPPLEMENTARY INFORMATION: In order to responsibly keep track of the cost of participant training, to permit more accurate cost projections, to provide a reliable data base for reports to Congress and other required or beneficial purposes, and to provide a common basis for evaluation of participant training cost proposals, A.I.D. is in the process of establishing a Training Cost Analysis System (TCA). The TCA will affect the public by

requiring any prospective contractor responding to a request for proposals which contains a requirement for participant training to prepare and submit its cost estimate for participant training in a specified format—the TCA Proposal Worksheet. In addition, contractors providing participant training services under an A.I.D.-direct contract will be required to submit a quarterly report of expenditures for participant training—the TCA Quarterly Report. The TCA Proposal Worksheet and Quarterly Report are shown in the text of this proposed rule.

Both the TCA Proposal Worksheet and Quarterly Report were submitted to OMB for review and approval as required by the Paperwork Reduction Act and the OMB procedures for review and approval of information collections. Both were approved by OMB for use through March 31, 1989, and were assigned control number 0412-0532. A.I.D. estimates that the average reporting burden for the TCA Proposal Worksheet will be approximately 16 hours per response; for the TCA Quarterly Report, 8 hours.

A.I.D. particularly invites comments from small business organizations concerning the degree of impact this proposed rule may have on them. We believe that the proposed system may benefit small businesses by providing a structured system for preparing and presenting cost proposals. This may result in a more equitable competitive environment for small businesses.

List of Subjects in 48 CFR Parts 701, 715, 717, and 752

Government procurement.

For the reasons set out in the Preamble, it is proposed that Chapter 7 of Title 48 of the Code of Federal Regulation be amended as follows:

1. The authority citation for Parts 701, 715, 717, and 752 is unchanged and continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

2. Section 701.105 is revised as follows:

701.105 OMB approval under the Paperwork Reduction Act.

The following information collection and recordkeeping requirements established by A.I.D. have been

approved by OMB, and assigned an OMB control number and approval expiration date as specified below:

AIDAR segment	OMB control No.	Expiration
709.104-3(c)	0412-0520	04/30/90
731.205-6(a)(2)	0412-0520	04/30/90
731.205-6(a)(3)	0412-0520	04/30/90
731.371(c)	0412-0520	04/30/90
731.772(c)	0412-0520	04/30/90
733.7003(c)	0412-0520	12/31/88
737.270(e)	0412-0520	04/30/90
752.209-70	0412-0520	04/30/90
752.219-8	0412-0520	04/30/90
752.228-70(b)	0412-0520	04/30/90
752.245-70	0412-0520	04/30/90
752.245-71	0412-0520	04/30/90
752.7001(a)	0412-0520	04/30/90
752.7001(b)	0412-0520	04/30/90
752.7002(a)	0412-0520	04/30/90
752.7002(b)	0412-0520	04/30/90
752.7003	0412-0520	04/30/90
752.7004	0412-0520	04/30/90
752.7013(a)	0412-0520	04/30/90
752.7016	0412-0520	04/30/90
752.7020	0412-0520	04/30/90
752.7027(a)	0412-0520	04/30/90
752.7027(b)	0412-0520	04/30/90
752.7028	0412-0520	04/30/90
752.7031(b)	0412-0520	04/30/90
752.7032	0412-0532	03/31/89
752.7033	0412-0532	03/31/89

PART 715—CONTRACTING BY NEGOTIATION

3. Part 715 is amended by adding a new Subpart 715.4 as follows:

Subpart 715.4—Solicitation and Receipt of Proposals and Quotations

715.407-70 Solicitation provisions.

The contracting officer shall insert the provisions at 752.7033, Proposal Worksheet and 752.7034, Glossary of Cost Analysis Terms, in all solicitations which call for any participant training as defined in AIDAR 717.7101.

PART 717—SPECIAL CONTRACTING METHODS

4. Part 717 is amended by adding a new Subpart 717.71 as follows:

Subpart 717.71—Participant Training

717.7101 Definitions.

(a) Participant training is the training of any participant.

(b) A Participant is any foreign national being trained outside of his or her home country under A.I.D. sponsorship and using A.I.D. funds.

717.7102 Solicitation provision and contract clause.

The contracting officer shall insert the following clauses in addition to otherwise applicable FAR and AIDAR clauses in solicitations or contracts which call for any participant training as defined in AIDAR 717.7101:

(a) The clause at 752.7018, Health and Accident Insurance for A.I.D. Participant Trainees.

(b) The clause at 752.7019, Participant Training.

(c) The clause at 752.7021, Changes in Tuition and Fees.

(d) The clause at 752.7022, Conflicts Between Contract and Catalog.

(e) The clause at 752.7023, Required Visa Form for A.I.D. Participants.

(f) The clause at 752.7024, Withdrawal of Students.

(g) The clause at 752.7032, Quarterly Reporting Requirement.

(h) The solicitation provisions at 752.7033, Proposal Worksheet.

(i) The solicitation provisions at 752.7034, Glossary of Training Cost Analysis Terms.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of A.I.D. Contract Clauses

5. A new section 752.7032 is added as follows:

752.7032 Quarterly reporting requirement.

The following clause is for use in any A.I.D. contract involving participant training.

Quarterly Reporting Requirement (Date)

(a) The contractor shall prepare and submit 2 copies of a Quarterly report, one to the project officer specified in the contract and one to [specify OIT recipient], the first report being due 3 calendar months after the contract effective date, in the format specified in paragraph (c) of this clause.

(b) Instructions for completing the quarterly report.

(1) The first data column reflects the final negotiated contract amounts—different from the corresponding figures on the proposal worksheets to the extent that contract negotiations altered those numbers.

(2) The second data column shows the amount of each budget line item projected to be spent during the quarter under report; the third data column reports the actual amount spent.

(3) Data column "Expended to Date," presents the cumulative expenditure as of the end of the reporting period. The "Balance Remaining" (data column 5) is the "Budget" figure minus "Expended to Date."

(4) The last data column, "% of Budget," shows the percentage of the budget line item spent at the close of the reporting period. It is computed by dividing the "Expended to Date" figures by their corresponding "Budget" figures.

(5) For a cost item expected to be evenly spread over the contract period, the "% of Budget" figure should correspond to the percentage obtained by dividing the "Contract Quarter" under report by the contract life (in quarters) shown in the "Contract Quarter: \$ ___ of \$ ___" space.

(6) The last two lines provide measures of projected and actual participant months for both the quarter being reported and the project to date.

(7) Any questions regarding completion of the quarterly report should be direct to A.I.D.'s Office of International Training.

(c) The required quarterly report format is illustrated below; the format has been approved by OMB and assigned Control No. 0412-0532, expiration 3/31/89. A.I.D. estimates the reporting burden for this collection of information to be 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Agency for International Development, Office of International Training, Washington, DC 20523; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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QUARTERLY REPORT

Project Title: _____ Project Number: _____ Implementor: _____
 Date: _____ Report Period: _____ Contract Quarter: _____ of _____

*** SEE "Instructions: Quarterly Report" ***

1. PARTICIPANT TRAINING COSTS	Budget	Projected This Qtr	Expended This Qtr	Expended to Date	Balance Remaining	% of Budget
<u>Academic Programs:</u>						
A. Education/Training Costs . . . \$		\$	\$	\$	\$	%
B. Allowances						%
C. Travel						%
D. HAC						%
E. Supplemental Activities . . .						%
Sub-Total, Academic Costs . . . \$		\$	\$	\$	\$	%
<u>Technical Programs:</u>						
A. Education/Training Costs . . \$		\$	\$	\$	\$	%
B. Allowances						%
C. Travel						%
D. HAC						%
E. Supplemental Activities . . .						%
Sub-Total, Technical Costs . . . \$		\$	\$	\$	\$	%
<u>Summary: Academic + Technical:</u>						
A. Education/Training Costs . . \$		\$	\$	\$	\$	%
B. Allowances						%
C. Travel						%
D. HAC						%
E. Supplemental Activities . . .						%
I. TOTAL PARTICIPANT COSTS . . . \$		\$	\$	\$	\$	%

This Quarter: No. Participant Months Projected = _____, No. Participant Months Completed = _____
 Total Project: No. Participant Months Projected = _____, No. Participant Months Completed = _____

QUARTERLY REPORT

Page 2

Project Title: _____ Project Number: _____ Implementor: _____

Date: _____ Report Period: _____ Contract Quarter: _____ of _____

*** SEE "Instructions: Quarterly Report ***

I. PARTICIPANT TRAINING COSTS	Budget	Projected This Qtr	Expended This Qtr	Expended to Date	Balance Remaining	% of Budget
<u>Special Tracking Items:</u>						
E.1. ELT, In-Country	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	%
E.2. ELT, U.S.	_____	_____	_____	_____	_____	%

NOTE: Special tracking items are costs that are included in Participant Costs, page 1,
but are broken out here for special review.

QUARTERLY REPORT

Page 3

Project Title: _____ Project Number: _____ Implementor: _____
 Date: _____ Report Period: _____ Contract Quarter: _____ of _____

II. F. ADMINISTRATIVE COSTS	Budget	Projected This Qtr	Expended This Qtr	Expended to Date	Balance Remaining	% of Budget
1. Salaries	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	%
2. Fringe Benefits	_____	_____	_____	_____	_____	%
3. Travel	_____	_____	_____	_____	_____	%
4. Consultants	_____	_____	_____	_____	_____	%
5. Equipment	_____	_____	_____	_____	_____	%
6. Sub-Contracts	_____	_____	_____	_____	_____	%
7. Indirect Costs	_____	_____	_____	_____	_____	%
8. Other	_____	_____	_____	_____	_____	%
II. F. TOTAL ADMINISTRATIVE COSTS	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	%
GRAND TOTAL, TRAINING COSTS:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	%

NOTE: % of Budget refers to that %age of the total budget (for each line) that has been spent.
 $\% \text{ of Budget} = [\text{Expended to Date}] / [\text{Budget}]$

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6. A new section 752.7033 is added as follows:

752.7033 Proposal worksheet.

The following solicitation provision is to be placed in all solicitations which call for any participant training.

Proposal Worksheet (Data)

(a) The offeror shall use the following proposal worksheet format for the preparation and submission of its cost estimate for participant training in response to this RFP.

(b) General instructions for preparing the proposal worksheet.

(1) Not all activities included in the proposal worksheet format apply to all programs; select only those items that are applicable to the proposed program.

(2) These instructions pertain to the preparation and submission of cost proposals submitted in response to A.I.D. RFPs for the provision of participant training services. Cost proposals in this format are mandatory for prospective offerors being considered to manage A.I.D. sponsored participants. The information will be used by Agency personnel to compare proposed training costs and make contractor selections.

(3) Use Proposal Worksheet for all training programs. Several sets of forms will have to be completed if there are different categories of training to be costed, i.e. academic, short courses, observational tours.

(4) Prepare a separate budget proposal (pages 1-2) for each year of the training. Indicate the project year and contract period (in years) in the "Project Year" space.

(5) Prepare a budget estimate for all training over the life of the project. Indicate "All training" in the "Comments" space.

(6) Estimates to be calculated in U.S. dollars.

(7) Prepare separate sheets for in-country or third-country training.

(8) Specify the measurements used as "units" for entries under "Unit Price" (e.g., \$1150/semester, \$200/year, \$635/month, \$375/week, \$75/participant—for flat rate items such as professional membership or book shipment).

(9) Administrative costs are estimated by categories. The RFP will indicate which functions are required of the contractor. The proposed costs should reflect the level of effort proposed for each function.

(10) Consult the Glossary of Terms provided with the RFP prior to completing the cost proposal.

(c) Specific Line Item Instructions:
(1) Participant Months Proposed: A measure of total participant months for both academic and technical training provides a standard measure of the amount of training

being proposed or provided. Compute this figure for each year of the project and for the project life.

(2) Line I.A. Education/Training Costs: This line must be completed for all training programs. Complete lines I.A.1-I.A.4 first. Then enter the total number of participants for the contract year being reported. (Note: This figure will not always equal the sum of "Number of Participants" proposed in lines I.A.1-I.A.4). Finally enter the sum of the "Subtotal" amounts in the "Total" space.

(3) Lines I.A.1-I.A.4: Optional breakdown. Use the Glossary for definitions for each line item. The "Other (Mission Option)" category allows for special breakouts. For any of these lines, enter: (a) the number of participants to incur the cost, (b) the total number of cost units—see item (8) under "General Instructions—for those participants in the contract year being costed; (c) the unit prices for each cost category, and (d) Education/Training Cost "Subtotals".

(4) Line I.B. Allowances: This line must be completed for all training programs. USE CURRENT A.I.D. APPROVED RATES. As was done for line I.A., complete lines I.B.1 through I.B.10 first, then enter the sum of the "Subtotals" for those lines in the "Total" space for line I.B.

(5) Lines I.B.1-I.B.10: Optional breakdown. Definitions and approved rates for these cost items are contained in Handbook 10 and Participant Training Notices (see "Allowances" in Glossary). The "Other (Mission Option)" category allows for special breakouts (e.g., books used in English Language Training—ELT). For instructions on specific column entries, follow instructions for Lines I.A.1 thru I.A.4.

(6) Line I.C. Travel: This line must be completed for all training programs. Complete the sub-entries and then enter the sum of the "Subtotal" in the "Total" space for line I.C.

(7) Lines I.C.1-I.C.3: Optional breakdown. See Glossary for definitions. Reference instructions for Lines I.A.1 thru I.A.4 for completion.

(8) Line I.D. Insurance: This line must be completed for all training programs. Do sub-entries first and then sum for this line.

(9) Lines I.D.1-I.D.3: Optional breakdown. Definitions and approved rates for these cost items are contained in the Glossary, Handbook 10, and Participant Training Notices (see also "Allowances" in Glossary). Reference instruction for Lines I.A.1 thru I.A.4 for completion.

(10) Line I.E. Supplemental Activities: This line must be completed for all training programs. Complete sub-entries first, sum, and enter the figure in the "Total" space for line I.E.

(11) Lines I.E.1-I.E.12: Optional breakdown. See Glossary for definitions. Reference

instructions for Lines I.A.1 thru I.A.4 for completion.

(12) Upon completion of Section I.A. through I.E., total participant costs for each training program are found by (a) summing the "Subtotal" column and (b) summing the "Total" column. The two figures thus obtained should be equal. If the figures fail to equal, check the column entries and make corrections where necessary.

(13) Lines I.I.F. Administrative Costs: Line I.I.F. is the total of the administrative costs on lines I.I.F.1-I.I.F.8 as was done for line I.A., complete the sub-entries first, then enter the sum of those figures on line I.I.F. This is done for each project year. All project years are then totalled to produce line totals for programs. All project years are then totalled to produce line totals for program administrative costs. Adding the "Total Cost" figures for line I.I.F.1-I.I.F.8 produces the line I.I.F. "Total Cost." This number should equal the line I.I.F. "Total Cost" obtained by adding line I.I.F. "Year 1" + "Year 2" + etc. If the two numbers thus obtained are not equal, figures should be rechecked.

(14) Separate administrative cost sheet must be completed for academic and technical programs. Where requested, separate administrative costs sheets will be provided for different categories of technical programs.

(15) Lines I.I.F.1-I.I.F.8: Information regarding these administrative cost items is contained in the Federal Acquisition Regulations (FAR). While these are standard cost elements, not all elements will be present in all projects. Additional breakouts may be requested.

(16) Total Training Costs: Summing the "total" figures for lines A-F (the six basic cost categories) yields yearly and overall Total Training Costs.

(c) The required proposal worksheet format is illustrated below; the format has been approved by OMB and assigned Control No. 0412-0532, expiration 3/31/89. A.I.D. estimates the reporting burden for this collection of information to be 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Agency for International Development, Office of International Training, Washington, DC 20523; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20523.

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PROPOSAL WORKSHEET

Project Title: _____ RFP Number: _____ Project Year: _____ of _____ years
 Implementor/Contractor: _____ Participant Months Proposed (This Year) * _____
 Date: _____ Comments: _____

*** SEE "Instructions: Proposal Worksheet" ***

Program Categories/ Training Activities	Number of Participants	No. of Units	Unit * Price	Subtotal	Total
I. PARTICIPANT TRAINING COSTS					
A. Education/Training Costs . . .		xxxxxxx	xxxxxxx/xxx	xxxxxxxxxxx	\$
1. Tuition/Fees			\$ /	\$	xxxxxxxxxxxxx
2. Training Costs			/		xxxxxxxxxxxxx
3. Package Program Costs . . .			/		xxxxxxxxxxxxx
4. Other (Mission Option) . . .			/		xxxxxxxxxxxxx
B. Allowances		xxxxxxx	xxxxxxx/xxx	xxxxxxxxxxx	\$
1. Maintenance Advance . . .			\$ /	\$	xxxxxxxxxxxxx
2. Living/Maintenance . . .			/		xxxxxxxxxxxxx
3. Per Diem			/		xxxxxxxxxxxxx
4. Books & Equipment . . .			/		xxxxxxxxxxxxx
5. Book Shipment			\$ /	\$	xxxxxxxxxxxxx
6. Typing (Papers)			/		xxxxxxxxxxxxx
7. Thesis			/		xxxxxxxxxxxxx
8. Doctoral Dissertation . . .			/		xxxxxxxxxxxxx
9. Professional Membership . .			/		xxxxxxxxxxxxx
10. Other (Mission Option) . .			/		xxxxxxxxxxxxx

* Units are standard measures for the cost element (e.g., participants, participant weeks, etc.).

Project Title: _____ RFP Number: _____
 Implementor/Contractor: _____ Comments: _____ Year ____ of ____

Program Categories/ Training Activities	Number of Participants	No. of Units	Unit * Price	Subtotal	Total
C. Travel	_____	xxxxxx	xxxxxxx/xxx	xxxxxxxxxx	\$ _____
1. International	_____	_____	\$ _____ /	\$ _____	xxxxxxxxxx
2. Local	_____	_____	_____ /	_____	xxxxxxxxxx
3. Other (Mission Option)	_____	_____	_____ /	_____	xxxxxxxxxx
D. Insurance	_____	xxxxxx	xxxxxxx/xxx	xxxxxxxxxx	\$ _____
1. HAC for U.S.	_____	_____	\$ _____ /	\$ _____	xxxxxxxxxx
2. Required by Institution	_____	_____	_____ /	_____	xxxxxxxxxx
3. Other (Mission Option)	_____	_____	_____ /	_____	xxxxxxxxxx
E. Supplemental Activities	_____	xxxxxx	xxxxxxx/xxx	xxxxxxxxxx	\$ _____
1. ELT, In-Country	_____	_____	\$ _____ /	\$ _____	xxxxxxxxxx
2. ELT, U.S.	_____	_____	_____ /	_____	xxxxxxxxxx
3. Academic Up-Grade	_____	_____	_____ /	_____	xxxxxxxxxx
4. Reception Services	_____	_____	_____ /	_____	xxxxxxxxxx
5. WIC Orientation	_____	_____	_____ /	_____	xxxxxxxxxx
6. Other Orientation	_____	_____	\$ _____ /	\$ _____	xxxxxxxxxx
7. Interpreters/Escorts	_____	_____	_____ /	_____	xxxxxxxxxx
8. Interpreters/Cooperative	_____	_____	_____ /	_____	xxxxxxxxxx
9. Enrichment Programs	_____	_____	_____ /	_____	xxxxxxxxxx
10. Mid-Winter Community Seminars	_____	_____	_____ /	_____	xxxxxxxxxx
11. Follow-Up/Career Development	_____	_____	_____ /	_____	xxxxxxxxxx
12. Other (Mission Option)	_____	_____	_____ /	_____	xxxxxxxxxx

TOTAL PARTICIPANT COSTS,

Line Totals A + B + C + D + E = \$ _____

* Units are standard measures for the cost element (e.g., participants, participant weeks, etc.).

PROPOSAL WORKSHEET

PAGE 3

Project Title: _____ RFP Number: _____
 Implementor/Contractor: _____ Comments: _____ Year _____ of _____

	Person Months	Total Cost		Person Months	Total Cost
II.F. Administrative Costs:					
1. Salaries (Total)	_____	\$ _____	4. Consultant Fees	_____	\$ _____
a. Professional	_____	_____	a. U.S.	_____	_____
i. U.S.	_____	_____	b. Field	_____	_____
ii. Field	_____	_____	5. Equipment	xxxxxx	_____
b. Support Staff	_____	_____	6. Sub-Contracts	_____	_____
i. U.S.	_____	_____	7. Indirect Costs*	xxxxxx	_____
ii. Field	_____	_____	8. Other	_____	_____
2. Fringe Benefits	_____	_____			
3. Travel	xxxxxx	_____			
a. International	xxxxxx	_____			
b. Local	xxxxxx	_____			
Total Administrative Costs, Item II.F. above:		\$ _____			
TOTAL TRAINING COSTS (Total Participant Costs from prev. page + Line II.F.) =		\$ _____			

* A breakout of these costs should be requested. (See Instructions)

PROPOSAL WORKSHEET

SUMMARY

Project Title: _____ RFP Number: _____

Implementor/Contractor: _____ Comments: _____ Year _____ of _____

*** SEE "Instructions: "Proposal Worksheet, Part C-Summary" ***

Item	Costs		Total
	Academic	Technical	
I. PARTICIPANT COSTS:			
A. Education/Training Costs	\$	\$	\$
B. Allowances			
C. Travel			
D. HAC			
E. Supplement Activities			
Total Participant Costs	\$	+ \$	\$
II. F. ADMINISTRATIVE COSTS:			
1. Salaries	\$	\$	\$
2. Fringe Benefits			
3. Travel			
4. Consultants			
5. Equipment			
6. Sub-Contracts	\$	\$	\$
7. Indirect Costs			
8. Other			
Total Administrative Costs	\$	+ \$	\$
GRAND TOTAL, TRAINING COSTS	= \$	+ \$	\$

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7. A new section 752.7034 is added as follows:

§ 752.7034 Glossary of training cost analysis terms.

The following solicitation provision is to be placed in all solicitations which call for any participant training.

Glossary of Training Cost Analysis Terms (Date)

Academic Training: A program, leading to an academic degree, in an accredited institution of higher education.

Academic Up-grade: Specific training given to overcome academic/technical deficiencies in participant's background in preparation for beginning a full technical or academic program. This training can be given in the host country, a third country or the U.S.

Administrative Costs: Those cost related to the management of participants, not the actual delivery of training. These costs will include:

Salaries
Indirect Costs
Subcontracts (for participant management and related activities)
Consulting Fees (for participant management and related activities)
Equipment (expendable and capital—not used by the participants)
Other Direct Costs (telephone, postage, supplies, equipment, word processing, computer processing)
Overhead/General and Administrative (G&A)
Fixed Fee or Profit

Allowances: Allowances are those rates set by A.I.D.'s Office of International Training which cover maintenance, per diem, and attendant costs of participating in an education program such as books, typing, professional memberships, etc. Information on allowances is contained in A.I.D.'s Handbook 10 which is updated through periodic release of Training Notices. These are provided to Mission personnel and contractors whenever changes are made to allowances.

Participant Training Notices on allowances are available from: The Agency for International Development, OIT, SA-10, Washington, DC 20523.

Career Development: (see Follow-up and Career Development).

Consulting Fees: Consulting fees may be categorized into two parts: (1) fees paid to consultants for providing training; and (2) fees paid to consultants for assisting in some phase of the management of participants, e.g., setting up computer tracking systems.

Cooperative Training: (see Internship/Cooperative Training).

Counseling: Activities involved with assisting participants to identify and resolve personal or training situations/problems which are adversely affecting performance.

Documentation: The process of providing the Mission or A.I.D. office with all relevant forms and information needed to begin participants' programming and placement.

Documentation normally takes place in the host country. The process includes the collection of information needed to develop

the PIO/P (including transcripts/TOEFL scores) and the preliminary identification of training opportunities which best meet the training objectives.

Note: Health clearances, passport photographs, and bio-data should also be collected at this time.

English Language Training (ELT): English language training provided prior to, or in conjunction with, the program of study.

Enrichment Programs: Activities designed to provide participants with cultural/social/educational experiences geared to furthering their understanding of U.S. institutions and mores. These programs are conducted as an adjunct to technical or academic training provided in the U.S.

Equipment, Contractor: (see Federal Acquisition Regulations).

Escort Services: (see Interpreter and Escort Services).

Evaluation: The process of measuring the effectiveness of a participant's training program in achieving the goals and objectives identified by the PIO/P. Tools used to measure program effectiveness both during and after training include post program language testing, on-site training questionnaires and exit interviews and may extend to long term assessments of the impact of the program on the project/country.

Fixed Fee/Profit: (see Federal Acquisition Regulations).

Follow-up and Career Development: Activities which build on the training experience and which are designed to encourage and equip participants to remain professionally involved in their field.

Typical follow-up activities include: Encouraging communication among participants; publication of newsletters; promoting membership in returned participant organizations; promoting professional memberships/meetings; use of host country follow-up in conjunction with a program evaluation.

Fringe Benefits: (see Federal Acquisition Regulations).

General and Administrative (G&A) Costs: (see Federal Acquisition Regulations).

Health and Accident Coverage (HAC): An A.I.D. self-financed health and accident system designed to provide payment for most reasonable, usual, and customary medical costs incurred by participants. All participants studying in the U.S. are to be covered by HAC. All contractors managing participants in the U.S. are responsible for enrolling their participants in this program. Specific guidelines on HAC coverage are provided in Handbook 10. Periodic training notices are provided to Missions and contractors when there are changes to the rate structure or coverage. HAC coverage may not be replaced by any other medical insurance in the U.S. even though there are educational institutions that require enrollment in their plans as well. (see Insurance, Other).

High-Level Teams: Groups of participants who are in executive level positions in business, industry or government in their home country.

Indirect Costs: Costs that are incurred for common or joint objectives and cannot be readily identified with a particular final cost

objective. Typical examples are depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

Insurance, Other: (see also Health and Accident Coverage) Insurance coverage arranged for third country training and insurance payments made to training institutions in the U.S. that have mandatory insurance requirements.

Internship/Cooperative Training: Work experience that is designed to enhance the skill the trainee is acquiring through formal training. Paid work experience must be directly related to the field of study undertaken by the trainee or it is not allowed under the Immigration and Naturalization Service rules.

Interpreter and Escort Services: Provision of interpreters, for short-term training or observation tours, for participants who are not proficient in the language of the country of training; also the provision of field program managers (escorts) to accompany high-level teams (which see) on observation tours.

Mid-Winter Community Seminars (MWCS): Brief, structured exposure to educational, social, and cultural experiences. These activities are considered enrichment programs but because they have base funding from A.I.D. are shown as a line item for identification.

Monitoring/Reporting: Regular tracking and updating of the status of the participant from time of arrival in the U.S. to day of departure. In this case status refers to academic progress, visa status, acculturation, living situation, financial matters, general health of participant, etc.

Needs Assessment: (see Training Needs Assessment).

Observation Tours (also Observational Training): Scheduled visits to facilities in several locations to learn a process, method, or system through observation and discussion. Observation tours should emphasize the acquisition of development ideas, attitudes, and values.

Orientation, Pre-departure: Activities designed to provide participants with current and specific information on what is to be accomplished in their training. Pre-departure orientation may include, depending on individual circumstances: an overview of the social/cultural modes of the U.S. (or other program country) to help reduce culture shock; information regarding financial/living arrangements; information regarding basic airport routines of international travel. This orientation often helps establish how a participant will respond/adjust to a U.S. (or other program country) training/living experience. For purposes of costing this activity, only a formal orientation session of 4 or more hours of direct participant contact should be considered as pre-departure orientation.

Orientation, Re-entry: The formal process whereby participant consider the physical, psychological, and professional return to their country. For the long-term participant,

re-entry orientation should begin 3-6 months before departing the U.S.; for the short-term participant, 1-3 weeks prior to departure. Re-entry activities can also take place upon arrival in-country. In order to consider this a discrete activity, it should be programmed to last a minimum of 4 hours.

Orientation, U.S.: Activities and information designed to acquaint the participant with a broad picture of "life" in the U.S. (macro-view) and to assist the participant in functioning effectively in the specific city/community/campus of the program of study (micro-view). The macro orientation will be most helpful to the participant as a general reference point in understanding life styles in the program's geographical area; it should build on the pre-departure orientation and reinforce the participant's sense of well-being while away from home. The micro orientation typically includes information on housing, shopping, food preparation, check cashing, transportation, correspondence, and communication. Micro orientation also provides an introduction to the training program and the participant's responsibilities. In order to consider this a discrete activity, it should be programmed to last a minimum of 8 hours.

Other Direct Costs: (see Federal Acquisition Regulations).

Overhead/General & Administrative (G&A): (see Federal Acquisition Regulations).

Package Programs: Programs of training or instruction where the payment made to the vendor includes the instructional cost, supplies/equipment, and lodging. Some package programs will also include board (food). Both types of packages are to be included in the line item "Packaged Programs."

Participants: Foreign nationals sponsored by A.I.D. to receive training outside their home countries, under A.I.D. sponsorship. This may include those whose training programs are funded by A.I.D. loans or grants, those under partial A.I.D.-funding and those whose training is paid for by other than U.S. resources but are granted a visa to study in the U.S. by A.I.D. As used herein, the term participant is a shortened title for "United States A.I.D. Participant," used since the early years of United States Technical Assistance denoting a "participant in development." Participants' programs are managed either by OIT, and A.I.D. Mission, an A.I.D. contractor, or a host country.

Note: Foreign nationals on international travel orders or financed under general support grants are not considered participants.

Placement: The process of enrolling participants in the selected training program and negotiating appropriate courses or study programs.

Placement is a companion to Programming and is often done at the same time. It may be necessary to modify the training plan to reflect reality once the placement process has begun. The student with less than adequate preparation may have to begin at a more rudimentary level of study than initially anticipated in the training plan. Because placement determines the participant's training location, housing arrangements—although technically programming—are often made at this time.

Professional Enrichment: (see Enrichment Programs).

Profit: (see Fixed Fee/Profit) (see Federal Acquisition Regulations).

Programming: The process of analyzing participants' training/education credentials against the training goals and objectives of the PIO/P. Programming is a companion to Placement and is often done at the same time. The Mission reviews and approves the program. Programming agents may use a variety of mechanisms to gain Mission concurrence. OIT programming agents provide the Mission with a Training Implementation Plan (TIP), and it is suggested that a similar document be required from all contractors and Missions.

Reception Services: Meeting the participant upon arrival in the country of training. Reception services should be provided at the ultimate destination and may take place at the initial arrival point if it is determined that the participant will need assistance with layover accommodations or travel connections.

Recruitment: The process of identifying candidates for a training program. Recruitment may be done using host country mass media, host agency training announcements, staff available under ongoing USAID projects, in-country or home office consultants/staff or any other means available to attract candidates.

Reporting/Monitoring: (see Monitoring/Reporting).

Salaries: (see Federal Acquisition Regulations).

Screening: The process of reviewing candidate applications, interviewing participants, and making recommendations for final selection. Screening may involve the use of A.I.D.-direct hire staff, contractor staff and/or local committees. The screening process may require that preliminary testing be done to assess the candidates' suitability for training.

Selection: The process of choosing qualified candidates for education, training, or observation tours. Selection activities include: developing selection criteria (e.g., English language test scores); candidate interviews; candidate credential reviews; shared cost negotiation for the proposed

training. Final selection approval is provided by A.I.D.

Short-term Training (also known as Technical Training): Training which is not designed to lead to the awarding of an academic degree.

Social/Professional Enrichment: (see Enrichment Programs).

Subcontracts: Contracts let by the prime contractor to another entity for the performance of a segment of the contract.

Technical Training: All training not classified as academic training. Technical training may take the form of observational visits, on-the-job training (OJT), special seminars or programs, workshops, and non-degree training in academic institutions.

Testing: The process of examining and/or evaluating. In the host country, participants' skills and achievements for the purpose of properly selecting participants and placing them in appropriate programs. Testing may include the SAT, TOEFL, ALIGU, GRE, and/or GMAT, depending on availability within the host country. Testing of individual's English language skills is most frequently required.

Training Cost: Normally training costs refer to the cost of short-term programs. Academic programs may include attendance at short-term seminars, workshops, etc. and those costs would be training costs while the balance of the program cost would be included under tuition/fees.

Training Needs Assessment: Identification of country, sector, or project-level training needed. Training needs assessments are done using country demographic information, interviews with host government officials and special surveys. The Country Development Strategy Statement and Country Training Plan should also be factored into the assessment. A Training Needs Assessment should be completed or consulted prior to developing any training project or training as a part of a technical assistance project.

Travel Costs: Costs associated with international and local travel and with daily expenses while in travel status in support of a participant's program of study. Travel costs do not include food and lodging as those are allowances and are covered in a different line item.

Tuition Fees: Tuition/fees are the costs of academic programs. Tuition/fees are normally provided on a credit hour, quarter, semester, or yearly basis.

(End of proposed rule)

Date: June 24, 1988.

John F. Owens,

Procurement Executive.

[FR Doc. 88-15306 Filed 7-7-88; 8:45 am]

BILLING CODE 6115-21-01

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: August 8-10, 1988.

Time: 8:00 a.m.-5:30 p.m., August 8-9, 1988, 8:00 a.m.-12:00 Noon, August 10, 1988.

Place:

Copley Plaza Hotel, August 8, Boston, Massachusetts.

Human Nutrition Center, August 9, Boston, Massachusetts.

Copley Plaza Hotel, August 10, Boston, Massachusetts.

Type of meeting: Open to the public.

Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be meeting with the Joint Council on Food and Agricultural Sciences to review and discuss the changing U.S. agricultural sector, successful research and marketing programs, and research in human nutrition. The Board will hear separate presentations on agricultural biotechnology and nutrition education and urban gardening programs.

Contact Person for Agenda and More Information: Marshall Taskington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432-A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250-2200; telephone (202) 447-3684. Done in Washington, DC, this 29th day of June 1988.

C.I. Harris,

Associate Administrator.

[FR Doc. 88-15389 Filed 7-7-88; 8:45 am]

BILLING CODE 3410-22-M

Office of International Cooperation and Development

Cooperative Agreements: University of Arkansas

AGENCY: Office of International Cooperation and Development (OICD); Agriculture.

ACTION: OICD intends to award a Grant to the University of Arkansas to support the "1988 Farming System Symposium."

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99-196).

OICD anticipates the availability of funds in fiscal year 1988 (FY1988) to provide funding support to the University of Arkansas for conduct of the "1988 Farming Systems Symposium." This symposium is recognized as the major international forum for the exchange of research experiences and the development of new approaches related to farming systems research and extension.

Assistance will be provided only to the University which will utilize funds to partially support the publication and staff support costs of the symposium. Based on the above, this is not a formal request for application. An estimated \$50,000 will be available in FY1988 as partial support for this symposium. Information on proposed Grant #58-319R-8-033 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Nancy J. Croft,

Contracting Officer.

Dated: June 28, 1988.

[FR Doc. 88-15295 Filed 7-7-88; 8:45 am]

BILLING CODE 3410-07-M

Cooperative Agreements: University of Maryland

AGENCY: Office of International Cooperation and Development (OICD); Agriculture.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into a Cooperative Agreement with the University of Maryland to provide funding for collaborative international assignment in support of international agricultural development in Guatemala.

Federal Register

Vol. 53, No. 131

Friday, July 8, 1988

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99-196).

OICD announces the availability of funds in fiscal year 1988 (FY 1988) to enter into a cooperative agreement with the University of Maryland to collaborate in the Private Enterprise Development (PED) Project in Guatemala. The scope of the effort will include the participation of the University's International Development Management Center, which will be able to enhance its experience and expertise through involvement with this project.

It is anticipated that this project will be funded over a four-year period. Approximately \$112,625 will be available in FY1988 to the University for this collaborative effort.

Assistance will be provided only to the Georgia Tech, which is contributing resources and experience. Funds provided by OICD will be used to supplement costs of supplies, communications, a project management specialist, and travel.

Based on the above, this is not a formal request for application. Funds estimated at \$112,625 will be available in FY1988 to support this work. Funding for FY1989-92 will be based on availability.

Information on proposed Agreement #58-319R-8-035 may be obtained from the undersigned at the following address: USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Date: June 29, 1988.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 88-15396 Filed 7-7-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on July 29, 1988. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place

Presidential Board of Advisors on Private Sector Initiatives

Full Board Meeting

Friday, July 29, 1988, 10:00 a.m., at the Security Pacific Bank, 333 South Hope Street, Los Angeles, California, 90071. All meetings will be held on the 53rd floor.

Committee Meetings

Friday, July 29, 1988, 8:30 a.m., at the Security Pacific Bank, 333 South Hope Street, Los Angeles, California, 90071. All meetings will be held on the 53rd floor. Rooms to be posted.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377-4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377-3942), Main Commerce Building, Washington, DC 20230.

Date: June 30, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88-15336 Filed 7-7-88; 8:45 am]

BILLING CODE 3010-07-M

Foreign-Trade Zones Board

[Docket 24-88]

Foreign-Trade Zone 100—Dayton, OH; Application for Subzones; General Motors Corp., Electric Motors and Auto Parts Plants, Dayton and Kettering, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Dayton Foreign-Trade Zone, Inc., grantee of FTZ 100, on behalf of General Motors Corporation, Delco Products Division (GM), requesting special-purpose subzone status for GM's electric motors plant in Dayton, Ohio, and its auto parts plant in Kettering, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 28, 1988.

The Dayton plant (28 acres) is located at 1619 Kuntz Road. The facility employs 300 persons and is used to produce electric motors for industrial uses. Some 10 percent of the components are dutiable, including velocity controls, armatures, transformers, discharge units, connectors, clamps and bearings. The plant is also used as a distribution

facility for imported AC servo motor systems.

The Kettering plant (286 acres) is located at 2000 Forrer Boulevard. The facility employs 4,000 persons and is used to produce shock absorbers, wiper systems, cooling motors, electronic suspension system levelling controls, and antenna actuators. Some 6 percent of the components used at the plant are dutiable, including circuit boards, shock absorber struts and piston arms, shock absorber parts, magnesium housings, armature assemblies, relays and fasteners.

Zone procedures would exempt GM from Customs duties on the foreign components used in the manufacture of products that are exported. On the motors produced at the Dayton plant and sold in the United States, GM would be able to elect the rate applicable to complete motors. The duty rates on parts for motors range from 2.9 to 11.0 percent, whereas the rates on complete motors range from 0 to 4.2 percent. On the auto components that are produced at the Kettering plant and shipped to U.S. auto assembly subzones, the company would be able to elect the finished product duty rate applicable to passenger automobiles. The duty rates on subcomponents and material used at the plant range from 3.0 to 5.0 percent, whereas the rate on autos is 2.5 percent. GM indicates that the savings will help improve the company's international competitiveness in both product areas.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville Kentucky 40201-0059.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 16, 1988.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Dayton International Airport, International Arrivals Area, Vandalia, Ohio 45377

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1526, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: July 1, 1988.

John J. De Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-15364 Filed 7-7-88; 8:45 am]

BILLING CODE 3010-05-M

International Trade Administration

(C-558-001)

Certain Refrigeration Compressors From the Republic of Singapore; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 10, 1988, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore.

We have now completed that review and determine that Matsushita Refrigeration Industries, Matsushita Electric Trading, and the Government of the Republic of Singapore, the signatories to the suspension agreement, have complied with the terms of the suspension agreement during the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 7778) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167, November 7, 1983). We have now completed that administrative review in accordance

with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Singapore hermetic refrigeration compressors rated not over one-quarter horsepower. Such merchandise is currently classifiable under item number 861.0990 of the Tariff Schedules of the United States Annotated and under item number 8414.30.00—0 of the Harmonized System.

The review covers the period January 1, 1985 through December 31, 1985 and three programs: (1) An income tax exemption on export earnings as provided for in Part IV of the Economic Expansion Incentives Act ("EEIA"); (2) financing provided by the rediscount facility of the Monetary Authority of Singapore; and (3) the payment of technical assistance fees.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the petitioner, Tecumseh Products Company.

Comment 1: Tecumseh claims that the Department should have considered the exemption under Part IV of the EEIA as the benefit from this program.

Department's Position: Tecumseh misinterprets the nature of the benefit received from this program. The benefit is not the amount of the tax exemption claimed by MARIS under Part IV of the EEIA, but rather the resulting reduction in MARIS' tax liability. We correctly calculated the tax savings by multiplying the amount of the tax exemption by the corporate tax rate.

Comment 2: Tecumseh argues that the Department should use the value of MARIS' ex-factory compressor sales rather than the value of METOS' compressor exports to calculate the *ad valorem* benefit because Part IV of the EEIA provides the benefit directly to MARIS. Tecumseh contends that in using METOS' value of compressor exports, which increases the export value by including various freight, mark-up and administrative charges, the Department dilutes the *ad valorem* benefit to MARIS, the recipient. Consequently, the export charge to offset the total bounty or grant is understated.

Department's Position: The agreement suspending the countervailing duty investigation states that the Government of the Republic of Singapore shall offset the amount of the total bounty or grant by collecting an export charge on the subject compressors exported to the United States and that the export charge

on each shipment shall be collected at the time the exporter submits its Outward Declaration to the Import and Export Office of the Singapore Government's Trade Development Board. The amount on the Outward Declaration is METOS' export value. Further, while the Department's use of METOS' exports in calculating the benefit reduces the *ad valorem* rate as compared to using MARIS' ex-factory sales, our allocation of the benefit from this program over METOS' exports fully captures the value of the benefit because the export tax is assessed on the same basis. Conversely, if we allocated the benefit over MARIS' ex-factory sales, the higher *ad valorem* rate would lead to our requiring an excessive collection of the export tax because, according to the terms of the suspension agreement, this rate is to be applied to METOS' export value.

Comment 3: Tecumseh argues that the Department cannot rely solely on the evaluations of Singapore's Internal Revenue Department ("IR") and the Economic Development Board ("EDB") as conclusive evidence that the technical assistance fees paid by MARIS to its parent company were not excessive. Tecumseh further maintains that it is unlikely that the verification team is qualified to determine the true value of technical services under normal commercial considerations and suggests that the technical assistance agreement be scrutinized by an impartial expert in the field of refrigeration compressor manufacturing. Finally, Tecumseh claims that the information relied upon by the Department is insufficient and argues that, in the absence of sufficient information to make a proper determination of the commercial reasonableness of the technical assistance fees, the Department should consider the value of deducting these fees from taxable income to be a countervailable bounty or grant.

Department's Position: The technical assistance fees paid by MARIS are royalties for technical specifications and advice in the manufacture and assembly of products, technical servicing of equipment, and employee training programs. As a general rule, royalties paid for such services are considered allowable business deductions when calculating a firm's tax liability. In the Republic of Singapore, it is the responsibility of the Singapore tax authorities (*i.e.*, the EDB and IR) to determine the kind of assistance being provided and whether the fees paid for such assistance is excessive.

At verification, we examined the process by which the tax authorities reviewed technical assistance

agreements. The documents examined established that the tax authorities rigorously reviewed the agreement to determine the commercial reasonableness of the technical assistance fees. Consequently, Tecumseh's concern regarding the technical expertise of the Department's verification team is misplaced. Rather, what is relevant and what we considered sufficient was the thoroughness of the procedure by which the Singapore tax authorities reviewed the amount of the technical assistance fees and the services provided, and that the fees were paid for services rendered.

Final Results of Review

After considering all of the comments received, we determine that Matsushita Refrigeration Industries, Matsushita Electric Trading and the Government of the Republic of Singapore have complied with the terms of the suspension agreement, including the payment of the provisional export charge of 5.86 percent for the period January 1, 1985 through July 25, 1985 and 4.92 percent for the period July 26, 1985 through December 31, 1985. In addition, we determine the total bounty or grant to be 4.95 percent of the f.o.b. value of the merchandise for the review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the total bounty or grant calculated by the Department.

Following the methodology outlined in section B.4. of the agreement, the Department determines that, for the period January 1, 1985 through July 25, 1985, a negative adjustment may be made to the provisional export charge of 5.86 percent established in the Department's notice of suspension of countervailing duty investigation and that, for the period July 26, 1985 through December 31, 1985, a positive adjustment must be made to the provisional export charge of 4.92 percent established in the notice of final results of the first administrative review of suspension agreement (50 FR 33493, July 26, 1985). For the period January 1, 1985 through July 25, 1985, the Government of Singapore may refund the difference to the companies. For the period July 26, 1985 through December 31, 1985, the Government of Singapore shall collect, in accordance with section B.4.c. of the Agreement, the difference plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department.

The Department will notify the Government of Singapore that the provisional export charge on all exports

to the United States with Outward Declarations filed on or after the date of publication of this notice shall be 4.95 percent of the f.o.b. value of the merchandise.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 55.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: July 1, 1988.

[FR Doc. 88-15385 Filed 7-7-88; 8:45 am]

BILLING CODE 3510-06-01

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The eight chairmen of the Regional Fishery Management Councils will convene a public meeting, July 29-30, 1988, at the Land's End Resort in Homer, Alaska, to review and formalize comments on the Secretary of Commerce's draft uniform standards and proposed revisions to the national standard guidelines for fishery conservation and management. There also will be review and discussion of the 1988-1989 budget for the National Marine Fisheries Service, reauthorization of the Marine Mammal Protection Act, the Magnuson Fishery Conservation and Management Act amendments, ecosystems management, and a habitat policy for fishery management plans.

For more information contact Clarence Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: July 1, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15387 Filed 7-7-88; 8:45 am]

BILLING CODE 3510-22-01

Marine Mammals; Issuance of Permit Dr. Ronald Schusterman (P410)

On February 11, 1988, notice was published in the Federal Register (53 FR 5615) that an application had been filed by Dr. Ronald Schusterman, Research Marine Biologist, Institute of Marine Science, University of California, Santa Cruz, California 95064, to take California sea lions for scientific research.

Notice is hereby given that on July 5, 1988 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: July 1, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-15363 Filed 7-7-88; 8:45 am]

BILLING CODE 3510-32-01

National Technical Information Service

Intent to Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Liposome Company, Inc., having a place of business in Princeton, NJ, an exclusive right in the United States and in certain foreign countries under the rights of the United States of America to manufacture, use, and sell products embodied in the invention entitled "A Synthetic Antigen Evoking Anti-HIV Response", U.S. Patent Application 7-148,692. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the intended licenses must be submitted to Papan Devnani, Office of Federal Patent

Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,
Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-15347 Filed 7-7-88; 8:45 am]

BILLING CODE 3510-04-01

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment, Amendment and Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Polish People's Republic

July 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing, amending and adjusting import limits.

EFFECTIVE DATE: July 11, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended, Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin board of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Textile Agreements, as amended, between the Governments of the United States and the Polish People's Republic is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1908.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 50, published in the Federal Register on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the

implementation of certain of its provisions.

Ronald L. Levin,
Acting Chairman, Committee for the
Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 29, 1987 issued to you by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 11, 1988, you are directed to correct the coverage for sublimit 334pt. also to exclude TSUSA numbers 384.0240 and 384.3007.

Also, the directive of December 29, 1987 should be corrected to indicate that Categories 363, 410 and 620 are sublevels within the aggregate. Charges already made to these categories are to be charged to the aggregate. You are directed to extend coverage of the aggregate limit to include silk blend and other vegetable fiber textile products in Categories 831-859. Coverage of Group II is being extended to include Category 833. Delete the limits established for Categories 333, 340 and 347 in the December 29, 1987 directive.

Also effective on July 11, 1988, you are directed to include the following new, amended and adjusted limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Poland and exported during 1988:

Category	New and amended limits*
Sublevels within the aggregate:	
229	270,270 pounds.
313/315	4,000,000 square yards.
465	3,000,000 square feet.
611	1,300,000 square yards.
617	2,000,000 square yards.
843	204,000 numbers.
Sublevels in Group II:	
333/833	111,269 dozen.
334pt.	21,792 dozen.
337/637	44,000 dozen.
338	835,350 dozen.
339	343,246 dozen.
340/640	105,000 dozen.
341/641	80,000 dozen.
347/348	150,000 dozen.
633	27,624 dozen.
Sublevels in Group III:	
433	8,237 dozen.
434	5,500 dozen.

Category	New and amended limits*
435	7,119 dozen.
438	10,000 dozen.
448	7,500 dozen.
Group IV: 443/643/644, as a group	204,750 numbers.

* The limits have not been adjusted to account for any imports exported after December 31, 1987.
* In Category 334pt., a sublevel of Category 334, all TSUSA numbers except 381.3905, 381.0211, 384.0240 and 384.3007.

All of the foregoing limits are subject to the aggregate limit established in the December 29, 1987 directive.

Textile products in Categories 831-859 which have been exported to the United States prior to January 1, 1988 shall not be subject to this directive.

Textile products in Categories 831-859 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on July 11, 1988, the following sublimits are eliminated: 338pt. (now described as other than jogging, warm-up and similar athletic jackets, not ornamented) *; 634pt. (men's and boys' coats, not knit) *; 634pt. (men's and boys' coats, knit) *; 635pt. (women's and girls' coats, not knit) *; 647pt. (men's and boys' trousers, not knit) *; and 648pt. (women's and girls' trousers, not knit) *.

* In Category 338pt., only TSUSA number 381.4130.

* In Category 634pt. (not knit), only TSUSA numbers 376.5609, 376.5635, 381.3120, 381.3321, 381.3331, 381.3341, 381.6068, 381.6664, 381.9500, 381.9520, 381.9525, 381.9530, 381.9838, 381.9838, 381.9842, 381.9842, 384.2321, 384.9132 and 791.7471.

* In Category 634pt. (knit), only TSUSA numbers 381.2315, 381.2325, 381.2835, 381.2857, 381.3561, 381.3554, 381.6671, 381.6673, 381.6673, 381.6706, 381.6806, 381.6811, 381.9222, 381.9223, 381.9232, 384.1902, 384.1906, 384.1911, 384.8217 and 791.7460.

* In Category 635pt. (not knit), only TSUSA numbers 376.5612, 384.2316, 384.2316, 384.2323, 384.2554, 384.2558, 384.2563, 384.2564, 384.2905, 384.2770, 384.2771, 384.5565, 384.5565, 384.7859, 384.7860, 384.8805, 384.9135, 384.9136, 384.9139, 384.9140, 384.9141, 384.9144, 384.9145, 384.9146, 384.9152, 384.9153, 384.9154, 384.9401, 384.9402, 384.9464, 384.9465, 384.9475, 384.9604, 384.9606 and 791.7473.

* In Category 647pt. (not knit), only TSUSA numbers 376.5618, 381.3180, 381.3180, 381.3335, 381.3548, 381.6064, 381.6072, 381.9310, 381.9573, 381.9580, 381.9585, 381.9648, 381.9674, 384.2341, 384.2351, 384.9108, 384.9174 and 791.7480.

* In Category 648pt. (not knit), only TSUSA numbers 376.5623, 384.2342, 384.2344, 384.2345, 384.2346, 384.2355, 384.2667, 384.2783, 384.8820, 384.5684, 384.7858, 384.9090, 384.9170, 384.9171, 384.9172, 384.9176, 384.9372, 384.9678 and 791.7481.

For the import period January 1, 1988 through April 30, 1988, charge the following

amount to the previously established aggregate limit:

Category and amount to be charged

847—1,455 dozen

All import charges already made to restraint limits previously established for Categories 333, 340 and 347 are to be retained and be charged to the appropriated merged category. Charge the following amounts to the limit established in this directive for Categories 333/833. These charges are for the import period January 1, 1988 through April 30, 1988.

Category and amount to be charged

833—24 dozen

There are no charges to be made to Categories 831, 832, 834, 835, 836, 838, 839, 840, 842, 843, 844, 845, 846, 850, 851, 852, 858 and 859 for the January 1, 1988 through March 31, 1988 import period.

Additional charges will be supplied for the foregoing categories as data become available.

Current charges in Categories 443/643/644 shall be charged to the Group IV limit in square yards equivalent.

The conversion factor for Categories 337/637 is 23.

Imports charged to the category limits for the period January 1, 1987 through December 31, 1987 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald L. Levin,
Acting Chairman, Committee for the
Implementation of Textile Agreements.
[FR Doc. 88-15306 Filed 7-7-88; 8:45 am]
BILLING CODE 3510-DR-M

COMMISSION ON CIVIL RIGHTS

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission previously announced in 53 FR 22188 (June 14, 1988) has been rescheduled. The meeting will convene at 1:30 p.m. and adjourn at 4:30 p.m. on July 22, 1988, at the Holiday Inn Downtown, 175 Piedmont Avenue NE, Atlanta, Georgia 30326. The purpose of the meeting remains as originally published.

Dated at Washington, DC, June 30, 1988.

Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-15304 Filed 7-7-88; 8:45 am]
BILLING CODE 6335-01-M

Idaho Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on July 29, 1988, at the Twin Falls Holiday Inn, 1350 Blue Lakes Boulevard North, Twin Falls, Idaho. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael Orme, or Philip Montez, Director of the Western Regional Division, (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 30, 1988.

Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-15305 Filed 7-7-88; 8:45 am]
BILLING CODE 6335-01-M

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the South Dakota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m. on July 27, 1988, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57102. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Francis Whitebird or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a

sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 30, 1988.

Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-15303 Filed 7-7-88; 8:45 am]
BILLING CODE 6335-01-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 8, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 22, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 13310) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.
b. The action will not have a serious economic impact on any contractors for the service listed.
c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1988: Janitorial/Custodial, Targhee National

Forest Supervisor's Office Building, 420 North Bridge Street, St. Anthony, Idaho.

E.R. Alley, Jr.,
Acting Executive Director.
[FR Doc. 88-15300 Filed 7-7-88; 8:45 am]
BILLING CODE 6335-01-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: August 8, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Buckle, Belt, Yellow Brass
8315-00-275-4513

Services

Janitorial/Custodial
Durward G. Hall Federal Building and Courthouse
302 Joplin Street
Joplin, Missouri
Janitorial/Custodial
Social Security Administration Building
Main and Second
Joplin, Missouri
Janitorial/Custodial
Federal Aviation Administration

Facilities Albany County Airport Albany, New York

E.R. Alley, Jr.,
Acting Executive Director.
[FR Doc. 88-15381 Filed 7-7-88; 8:45 am]
BILLING CODE 6220-35-4

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Department of Defense.
ACTION: Notice of closed meeting.

SUMMARY: Pursuant to provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-408, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATES: 10-20 August 1988, 9:00 a.m. to 5:00 p.m. each day.

ADDRESSES: HQ USEUCOM (10-18 August 1988); London, England (18-20 August 1988).

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatfield, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
July 1, 1988.

[FR Doc. 88-15350 Filed 7-7-88; 8:45 am]
BILLING CODE 3210-01-2

Department of the Navy

Public Hearing and Availability of the Draft Environmental Impact Statement for Philadelphia Naval Shipyard; Philadelphia, PA

The U.S. Navy, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality Regulation (43 CFR Part 1500), has prepared and filed with the U.S. Environmental Protection Agency, a DRAFT Environmental Impact Statement (DEIS) for the

proposed Conveyance of U.S. Navy Land to the Philadelphia Municipal Authority for the Establishment of a Stream Generating Facility that Produces Steam for Purchase by the U.S. Navy at the Philadelphia Naval Shipyard in Philadelphia, Pennsylvania. The DEIS has been distributed to various Federal, state and local agencies, local elected officials, interest groups, the media and local public libraries. Copies of the DEIS may also be reviewed during normal business hours (8:00 a.m. through 4:30 p.m.) at the Municipal Services Building Room 980, 15th and JFK Blvd., Philadelphia, PA.

A public hearing to inform the public of the study's findings and to solicit comments will be held on July 27, 1988 at the Convention Hall/Civic Center, 3400 Civic Center Blvd. Philadelphia, PA. The hearing will begin at 10:00 a.m. and continue until Midnight with regular breaks, including lunch and dinner breaks, 2 sessions—10:00 a.m.-8:00 and 7:00 p.m.-Midnight.

The hearing will be conducted by the U.S. Navy. All interested parties are invited and urged to be present or represented at this hearing. This includes representatives of Federal and non-Federal agencies, commercial, business, industrial, transportation and utilities agencies; civic, ecological and environmental groups, fish and wildlife organizations; interested and concerned citizens and other interests. All parties will be afforded full opportunity to express their views but in order to allow all an opportunity to speak, statements will be limited to five (5) minutes. If longer statements are to be presented, they should be delivered in writing either at the hearing or mailed to the office listed below and summarized at the public hearing: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Building 77-L, U.S. Naval Base, Philadelphia, PA 19112. Attn: Code 09X.

Oral statements will be heard and transcribed by a stenographer but for accuracy of the record all statements should be submitted in writing. All statements both oral and written, will become part of the official record on this study. Equal weight shall be given to both oral and written statements.

The Public Hearing will be reported verbatim. Copies of the transcript of the proceedings may be purchased at the cost of reproduction and will be available three weeks from the date of the hearing. In addition, copies of the transcript will be made available for public review during normal business hours at Northern Division, Naval Facilities Engineering Command, Bldg. 77-L, Naval Base Philadelphia and the

Municipal Services Bldg. 15th and JFK Blvd., Phila., PA. All written statements must be postmarked by 08 Aug 1988 and received by 15 Aug 1988 to become part of the official record.

A summary of the DEIS follows.

The DEIS has been prepared in two volumes. Volume 1 contains the main body of the report. Volume 2 contains the Appendices to the report. The Navy's preferred alternative action in the DEIS involves the sale of approximately 21 acres of excess land at the Philadelphia Naval Shipyard to the Philadelphia Municipal Authority (PMA), who in turn would enter into agreements with Ogden Martin Systems (OMS) of Philadelphia for the design, construction, ownership and operation of a 2250-ton per day (TPD) mass-fired refuse-to-steam waterwall incineration facility. The facility would produce steam for purchase by the Navy, with excess steam being converted to electricity for sale to the Philadelphia Electric Company. The facility would receive waste six days a week and process it seven days a week, 24 hours a day. Of the total 700,000 tons per year guaranteed to be processed by OMS, the City of Philadelphia would assure delivery of 360,000 tons. Refuse trucks would deliver waste to the facility, unloading into a fully enclosed refuse pit. Fourteen trucks would be able to unload simultaneously. A one-way flow of air, drawn over the pit and tipping floor into the combustion chamber, is maintained at all times to prevent odors and dust from escaping the building. The facility would be equipped with dry scrubbers with lime injection for control of acidic components of the exit gases and fabric filter baghouses for particulate control. It is estimated that the facility would yield approximately 450 tpd of residual ash. The residual ash would be tested periodically for hazard classification and to insure proper disposal off-site. All residual ash would be stored within enclosed facilities on site and would be transported off-site in covered vehicles.

The DEIS provides a comprehensive analysis of the primary issues identified during the scoping process, which included air emissions, traffic, odors, health risks and potential or decreased local property values. Modeling results confirm that utilization of the Best Available Control Technology will keep the facility air emissions well within the regulatory limits. A traffic analysis of major arterials, expressways, key intersections and refuse truck routes, indicates that there would be no significant increases in volumes nor any significant decreases in the level of

service at affected intersections. Constant negative pressure during plant operation will prevent odors from escaping from the enclosed refuse pit. Minimum incinerator temperatures of approximately 1800 F will prevent odors from escaping through the stack. An analysis and summarization of a comprehensive health risk analysis completed in November of 1986 by the Public Health Advisory Commission of Philadelphia, indicates an extremely remote and insignificant health risk to the surrounding communities resulting from implementation of the proposed action. Interviews with real estate professionals and an analysis of existing communities with established similar facilities show no indication of reduced property values associated with such refuse handling facilities.

The alternatives analysis in the DEIS provides a thorough review of technological options (i.e. refuse-derived-fuel, other renewable resource fuels), alternatively sized facilities, leasing as an alternative to the sale of the land, alternative Navy sites considered excess and a "no-action" alternative. The DEIS identified and discusses the applicable regulatory reviews and permit requirements that the PMA and/or OMS must comply with prior to the establishment and operation of the facility.

Questions concerning this public notice may be directed to Mr. Kenneth Petrone at (215) 897-8432.

Date: July 5, 1988.

Jane M. Virga,
Lieutenant, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 88-15370 Filed 7-7-88; 8:45 am]

BILLING CODE 3210-AE-2

DEPARTMENT OF EDUCATION

[CFDA NO: 84.202]

Notice Inviting Applications for New Awards for Fiscal Year 1988 Under the Grants to Institutions to Encourage Minority Participation in Graduate Education Program

Purpose of Program: Provide grants to institutions of higher education to identify and recruit talented undergraduate students who demonstrate financial need and are from minority groups that are traditionally underrepresented in graduate education; and provide those students with an opportunity to participate in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. All

funds received under this program must be used for direct fellowship aid.

Deadline for Transmittal of Applications: August 10, 1988.

Available Funds: \$3,351,000.

Estimated Range of Awards: \$99,000-\$111,700.

Estimated Average Size of Awards: \$105,000.

Estimated Number of Awards: 15-30.
Project Period: 6 weeks to 1 year.

Application: Since this is the first year of the program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates. This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application package is necessary. Applicants are directed to the Appendix to this Notice for applications and instructions.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

Description of Program: The Grants to Institutions to Encourage Minority Participation in Graduate Education Program is authorized under Pub. L. 99-498, Part A of Title IX of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986, (20 U.S.C. 1134-1134b) Grants under this program are designed to enable institutions of higher education to make available fellowship aid to talented, undergraduate minority students. The program of study may consist of summer research internships augmented by seminars and other educational experiences. Fellowships should provide an opportunity for fellows to spend six to nine weeks on a grantee's campus participating in research and scholarly activities in an environment that is encountered in graduate and professional programs.

Eligibility: (a) An institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, is eligible to apply for a grant to conduct a fellowship program.

(b) An individual is eligible to apply for a fellowship if the individual—
(1) Is a talented undergraduate student;

(2) Demonstrates financial need;

(3) Is from a minority group that has traditionally been underrepresented in graduate education; and

(4)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) The institution of higher education is responsible for making accurate determinations concerning the criteria in paragraph (b).

(d) Additional eligibility requirements may be established by the institution of higher education.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under the Grants to Institutions to Encourage Minority Participation in Graduate Education Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria—(1) Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statutes that authorize the program, including consideration of—

(i) The objectives of the project; and
(ii) How the objectives of the project further the purpose of the authorizing statute.

Note.—A statement of the authorizing statutes is found in the Purpose of Program section of this notice.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (28 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—
(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures

proper and efficient administration of the project:

(iii) How well the objectives of the project relate to the purpose of the program; and

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Note.—The authorizing statute requires that fellowship awards be made to students from Minority groups traditionally underrepresented in minority education.

(4) Quality of key personnel. (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualification of the project director;

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) Budget and cost effectiveness. (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

Note.—The authorizing statute provides that all funds received under this program must be used for direct fellowship aid.

(6) Evaluation plan. (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and
(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) Adequacy of resources. (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(c)(1) In making awards under this program, the Secretary shall consider the quality of an applicant's plan for recruiting students, and the quality of the program of study and of the research in which the students will be involved.

(2) The Secretary will ensure an equitable geographic distribution among public and private institutions of higher education.

Assessment of Educational Impact

The Secretary requests comments on whether any information collection in this document, would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Instructions for Transmittal of Applications

No grants may be awarded unless a completed application form has been received. An institution may submit only one application, except that those institutions with separate campuses or branches with self-contained faculty and administration may submit an application from each campus.

(a) If an applicant wants a new grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.202, Washington, DC 20202; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education Application Control Center, Attention: CFDA No. 84.202, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes.—(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The applicant must indicate on the envelope CFDA Number 84.202.

(3) An applicant wishing to know that its application has been received by the Department must include with the application, a stamped, self-addressed post card containing the CFDA number and title of this program.

For Further Information Contact: Mr. Walter T. Lewis, or Mrs. Barbara J. Harvey, U.S. Department of Education, Mail Stop 3327, 400 Maryland Ave., SW., Room 3022, ROB-3, Washington, DC 20202. Telephone: (202) 732-4363 or (202) 732-4863.

Program Authority: 20 U.S.C. 1134-1134b.

Dated: June 7, 1988.

William J. Bennett,
Secretary of Education.

Appendix—Application Instructions and Forms

This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Face Sheet (Form SF-424 and Instructions).

Part II: Budget Information.

Part III: Application Narrative.

INSTRUCTIONS FOR PART I

Federal Assistance Face Sheet (SF 424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted under OMB Circular A-102.

The applicant completes only items 1-23. Items 24-33 are completed by Federal agencies. Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A".

Below is a list of instructions to assist you in completing the applicable items on the form.

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option).

4a-h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can

provide further information about this request.

5. If the applicant's organization has been assigned an EDCRS number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

6b. Program title from CFDA. Abbreviate if necessary.

7. Provide the title and a summary description of the project.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county or city.

10. Indicate the estimated number of persons directly benefiting from the project.

12a. Amount request or to be contributed during the first funding/budget period by the Federal Government.

12f. Enter the amount shown in Item 12a.

13. Self-explanatory.

15. Self-explanatory.

16. Indicate the estimated number of months to complete project after Federal funds are available.

21. Self-explanatory.

23. Name and title of authorized representatives of legal applicant and signature.

BILLING CODE 4800-01-0

OMB Approval No. 5048-3006

FEDERAL ASSISTANCE		1. APPLICANT'S APPLICATION IDENTIFIER	2. NUMBER	3. STATE APPLICATION IDENTIFIER	4. NUMBER
1. TYPE OF SUBMISSION (Mark up appropriate box) <input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input checked="" type="checkbox"/> APPLICATION		2. DATE Year month day 19	3. DATE Year month day 19	4. DATE Year month day 19	
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & Telephone No.)		5. EMPLOYER IDENTIFICATION NUMBER (EIN) a. NUMBER 840202 b. MULTIPLE <input type="checkbox"/>		6. TYPE OF APPLICANT/RECIPIENT a. State b. Federal c. Local d. Other e. Other (Specify)	
7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)		8. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)		9. ESTIMATED NUMBER OF PERSONS BENEFITING	
10. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$.00		11. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT		12. TYPE OF ASSISTANCE a. Basic Grant b. Supplemental Grant c. Loan d. Other (Specify)	
13. FEDERAL AGENCY TO RECEIVE REQUEST a. ORGANIZATIONAL UNIT (if appropriate) b. ADDRESS Washington, D.C. 20202		14. ADMINISTRATIVE CONTACT (if known) Charles I. Griffith, Director		15. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER NA	
16. THE APPLICANT CERTIFIES THAT: a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		17. TYPED NAME AND TITLE a. TYPED NAME AND TITLE b. SIGNATURE		18. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	
19. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. RETURNED FOR AMENDMENT <input type="checkbox"/> c. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> d. DEFERRED <input type="checkbox"/> e. WITHDRAWN		20. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		21. ACTION DATE Year month day 19	
22. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number) Mr. Walter T. Lewis (202) 732-4393 Mrs. Barbara Harvey (202) 732-4863		23. STARTING DATE Year month day 19		24. ENDING DATE Year month day 19	
25. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		26. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		27. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	

NSN 7540-01-008-8182
PREVIOUS EDITION
IS NOT USABLE
BILLING CODE 4000-01-C

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular 4-102

Part II—Budget Information

Grants to Institutions to Encourage Minority Participation in Graduate Education

Awards made to institutions under this program must be used exclusively to provide direct fellowship aid. Include below the breakdown of Federal funds requested for student expenses:

	Total costs
Stipends:	
A. Tuition	
B. Room and board	
C. Transportation	
D. Other applicable expenses	
Total Federal request	
Total number of fellowships requested	
Number of weeks of seminar/institute	
Lab academic area or areas	

* Calculate each student's need-based stipend for applicable expenses, including room and board, transportation and tuition for courses for which credit is given, following the procedures used by the applicant's student financial aid office. The student's need should be calculated pursuant to Part F of Title IV of the Higher Education Act of 1965, as amended.

Indicate within the total cost of the stipends the amounts charged for each of the specific categories listed above.

C. Transportation costs may include the cost of one round-trip from the student's residence to campus and return, if applicable, and other travel required as part of the program of study.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the purpose of the program, the description of the program, and the selection criteria the Secretary uses to evaluate applications. This information is included in this application notice.

The narrative should encompass each function or activity for which funds are being requested.

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Include information regarding (a) the program of study, to take the form of summer research, internships, seminars, and other educational experiences; (b) the institution's plan for identifying and recruiting talented minority undergraduates; (c) the participation of faculty in the program and a detailed description of the research in which the students will be involved; and (d) a plan for the evaluation of the effectiveness of the program;

3. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice;

4. Applications should include a description of the financial need analysis system or method to be used in determining the level of each fellow's financial need-based stipends, room and

board costs, transportation costs, and tuition for courses for which credit is given;

5. Include any other pertinent information that might assist the Secretary in reviewing the application. Please limit the Application Narrative to no more than 25 double-spaced typed pages (on one side only).

(Approved under OMB control no. 1040-0003)

[FR Doc. 88-15451 Filed 7-7-88; 8:45 am]

BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88-532-000 et al.]

ANR Pipeline Co. et al; Natural Gas Certificate Filings

July 1, 1988.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP88-531-000]

Take notice that on June 28, ANR Pipeline Company, (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88-532-000 an application for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas pursuant to § 284.221 of the Commission's Regulations and a request for waiver of § 284.7(d)(5)(ii)(B) of the Commission's Regulations, all as more fully set forth in the application which is on file with the commission and open to public inspection.

Applicant states that it would comply with the conditions set forth in paragraph (c) of § 284.221 of the Commission's Regulations.

Applicant also requests that in the event the certificate sought is not granted by July 14, 1988, that the Commission waive § 284.7(d)(5)(ii)(B) of the Commission's Regulations so that ANR can continue its business operations on and after that date without massive disruption and inconvenience to the business operations of its numerous shippers.

Comment date: July 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP88-482-000]

Take notice that on June 20, 1988, Panhandle Eastern Pipe Line Company, (Panhandle), P.O. Box 1642, Houston,

Texas 77001, filed in Docket No. CP88-482-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval authorizing the abandonment in place by Panhandle of seventeen compressor units and related facilities for eight compressor station sites, totaling approximately 9,725 horsepower, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the seventeen compression units and six of the eight compressor stations on the basis that the facilities are surplus to its needs. More specifically, Panhandle would abandon its compressor stations named Lambert, Coal Sean, Midway, Ewing, Oakdale and Little Mule, and five compressor units located at its Sneed and Huber Stations.

Panhandle explains that the abandonment of facilities is required due to a shift in the function of Panhandle's system from that of a supplier of gas for resale to that of a transporter. Further, Panhandle states that the abandonment would reduce operating expenditures for labor and equipment maintenance. Panhandle advises that the compression facilities subsequently would be relocated, sold, or dismantled and used to repair other compressors, as appropriate. Panhandle estimates that the total cost of abandoning the facilities would be \$139,000.

Comment date: July 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Cimarron Transmission Co.

[Docket No. CP88-486-000]

Take notice that on June 21, 1988, Cimarron Transmission Company (Cimarron), 58 Broadlawn Village, Ardmore, OK 73401, filed in Docket No. CP88-486-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of sales of natural gas to National Gas Pipeline Company of America (Natural) and abandonment of Cimarron facilities related to such sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, cimarron proposes to abandon its sales to Natural made pursuant to a Gas Sales Contract dated November 10, 1958, as amended, which contract Cimarron and Natural have mutually agreed to terminate. It is stated that all of the Cimarron's facilities would be abandoned, as a result of the proposed sales abandonment, and thus,

Cimarron is also proposing to cancel its Gas Tariffs and Rate Schedules. Cimarron advises that its facilities consist of 24 miles of pipeline with an associated lease fuel system of approximately 13 miles and one sweetening facility, all located in Love County, Oklahoma.

Comment date: July 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15308 Filed 7-7-88; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. RP88-197-000]

Williston Basin Interstate Pipeline Co.; Filing To Implement Self-Implementing Transportation Under NGPA Section 311

July 1, 1988.

Take notice that on June 24, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing as part of its FERC Gas Tariff an Original Volume No. 1-B to implement "open access" natural gas transportation service under NGPA Section 311.

The Company requests an effective date for the FERC Gas Tariff, Volume No. 1-B of July 25, 1988. The Company states that it will commence a transportation request "open season" during the period June 27, 1988 through July 18, 1988.

Williston Basin states that to enable it to implement its transportation program under NGPA Section 311 authority, the Company included in its filing two new transportation rates—Rate Schedule FT-1 (firm transportation) and Rate Schedule IT-1 (interruptible transportation). These initial rates are based upon the cost of service in the Company's last general rate case in Docket No. RP87-115-000.

Williston Basin also respectfully requests herein permission to make a one-time filing as necessary to revise all of its existing and proposed rates that are based upon the cost of service in Docket No. RP87-115-000 to reflect the first year's conversion of contracted firm sales to firm transportation under the FT-1 rate schedule to be effective on January 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15351 Filed 7-7-88; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. RP88-202-000]

Amoco Production Co. et al.; Complaint and Petition for Emergency Relief

June 30, 1988.

In the matter of Amoco Production Company, ARCO Oil and Gas Company, Chevron U.S.A. Inc., Esso Corporation, Mobil Producing Texas & New Mexico Inc., Shell Western E&P Inc., Sun Exploration and Production Company, Texaco Producing Inc., Union Oil Company of California, Union Pacific Resources Company, Union Texas Petroleum Corporation, Complainants ¹ v. El Paso Natural Gas Company, Respondent.

Take notice that on June 24, 1988, pursuant to Rules 206 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 and 385.207 (1987), Indicated Shippers filed a complaint against El Paso Natural Gas Company (El Paso) for allegedly attempting, as of July 1, 1988, to collect transportation rates, which include increased percentage factors for field fuel and plant fuel and plant shrinkage (processing or treating). The complaint asserts that these factors are not set forth in El Paso's transportation rate schedules filed on December 31, 1987, as part of its new rate case at Docket No. RP88-44-000. Indicated Shippers further requests emergency relief from the Commission, whereby pending review of this complaint, the Commission issue an order that would prevent El Paso from charging rates that have not been filed or found to be just and reasonable as required by Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1982), and the Commission's regulations thereunder.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this

¹ Hereinafter, Complainants will be referred to as "Indicated Shippers."

complaint shall be due on or before July 14, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15352 Filed 7-7-88; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. RP88-188-002]

CNG Transmission Corp.; Filing

July 1, 1988.

Take notice that on June 27, 1988, CNG Transmission Corporation (CNG) filed Second Revised Sheet No. 125 to its FERC Gas Tariff, Volume No. 1.

CNG states that the purpose of this filing is to provide a solution to a conflict that has arisen between the priority of shippers on Texas Gas Transmission Corporation's system and the priority of shippers on CNG's system. CNG states that in accordance with the Commission's order issued June 10, 1988, CNG and its affected local distribution company and end-user shippers agreed to the allocation method proposed in this tariff language.

CNG requests the Commission to waive the usual 30-day notice period and allow the proposed tariff sheet to become effective on June 1, 1988. CNG states that unless the Commission directs otherwise, CNG will implement this new procedure with nominations received in June for TSC service commencing July 1, 1988.

CNG states that copies of this filing are being mailed to its sales, transportation, and storage customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15353 Filed 7-7-88; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. RP88-201-000]

East Tennessee Natural Gas Co.; Filing

July 1, 1988.

Take notice that on June 28, 1988, East Tennessee Natural Gas Company (East Tennessee) filed the following tariff sheets to amend Volume of its FERC Gas Tariff, to be effective July 1, 1988:

Eleventh Revised Sheet No. 5

Original Sheet No. 143

Original Sheet No. 144

Original Sheet Nos. 145 through 189

East Tennessee states that the purpose of the filing is to permit East Tennessee to flow through to its jurisdictional sales customers Tennessee Gas Pipeline Company's (Tennessee) take or pay costs and contracts reformation costs (TOP Costs) that the Commission has allowed Tennessee to recover from East Tennessee in Docket Nos. RP86-119, *et al.*

East Tennessee states that in accord with Order No. 500 and the Commission's policy requiring as-billed flow-through by downstream pipelines, East Tennessee is allocating its share of Tennessee's TOP Costs among East Tennessee's customers using the same cumulative purchase deficiency methodology as Tennessee used in allocating the TOP Costs among Tennessee's customers in Tennessee's demand surcharge tariff filing in Docket No. RP86-191.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15354 Filed 7-7-88; 8:45 am]

BILLING CODE 4717-01-M

[Docket No. RP88-199-000]

Northwest Pipeline Corp.; Petition for Waiver of Amended PGA Regulations

July 1, 1988.

Take notice that on June 24, 1988, Northwest Pipeline Corporation (Northwest) petitioned and requested waiver of a portion of § 154.305(i) of the Commission's amended PGA regulations.

Northwest states that this request for waiver relates only to the requirement to separately identify each adjustment to amounts paid to suppliers in the refund subaccount. Northwest states that the ability to "net" these adjustments would have no effect on other entries to the refund subaccount. All other entries would be separately tracked pursuant to the requirements of Order No. 483.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15355 Filed 7-7-88; 8:45 am]

BILLING CODE 4717-01-M

[Docket Nos. RP84-94-000, RP85-66-000, CP86-720-000, and CP86-720-001 through 003¹ (vacated)]

Trailblazer Pipeline Co.; Informal Settlement Conference

July 1, 1988.

Take notice that a conference will be convened in the above-captioned

¹ The Commission by order issued April 30, 1987 in Docket No. CP86-720-000 authorized Trailblazer Pipeline Company to transport gas under a Part 284 blanket certificate under designated rate schedules. 39 FERC ¶ 61,103 (1987). This blanket certificate was vacated by the order of the Commission issued on April 5, 1988 in Docket Nos. CP86-720-001 through 003. 43 FERC ¶ 61,013 (1988).

proceedings on July 19, 1988,* at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Trailblazer Pipeline Company (Trailblazer) has again manifested an interest in becoming an equal-access transporter under Order No. 436 (FERC Statutes & Regulations, Regulation Preambles 1982-1985 ¶ 30.605 (1985)) and evidently desires to discuss this matter in the context of the settlement conference provided for herein. At the settlement conference consideration will be afforded, *inter alia*, to any proposal by Trailblazer for becoming an equal access transporter under Order No. 436.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact John J. Keating (202) 357-5762, or Marsha Granee (202) 357-5738.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15397 Filed 7-7-88; 8:45 am]
BILLING CODE 4717-01-M

[Docket No. RP86-32-011]

Williams Natural Gas Co.; Filing

July 1, 1988.

Take notice that on June 29, 1988, Williams Natural Gas Company (WNG) filed revised tariff sheets to its FERC Gas Tariff in compliance with the Commission's order of May 5, 1988.

WNG states that at the request of Commission Staff, WNG resubmits tariff sheets identical to those submitted with its January 4, 1988 (as supplemented on January 28, 1988) compliance filing, as further revised by its June 15, 1988 compliance filing, in an integrated package of tariff sheets indicating a proposed effective date on the later of July 1, 1988 or the date of WNG's acceptance of the blanket certificate in WNG's Docket No. CP86-631-001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of

Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15356 Filed 7-7-88; 8:45 am]
BILLING CODE 4717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3411-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Motor Vehicle Emission Certification and Fuel Economy Labeling. (EPA ICR #0783.06).

Abstract: Automobile and engine manufacturers must submit engineering data pertaining to emission control with each new engine type introduced for production. EPA uses this information to verify that manufacturers are meeting federal emission standards. Fuel economy figures are also required for both consumer and government use. Information is required upon the introduction of each new engine "family" or type.

Burden Statement: Public reporting burden for this collection of information is estimated to average 13,670 hours per year per respondent. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Respondents: Motor Vehicle Manufacturers and Importers.

Estimated No. of Respondents: 101.
Estimated Total Annual Burden on Industry: 1,380,600 hours.

Frequency of Collection: Annually.
Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503
(Telephone (202) 395-3064)

Date: June 29, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-15337 Filed 7-7-88; 8:45 am]

BILLING CODE 4900-20-M

[ER-FRL-3411-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 20, 1988 through June 24, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-COE-G36141-OK, Rating LO, Coal Creek Local Flood Protection, Implementation, City of Henryetta, Okmulgee County, OK.

Summary: EPA has no objections to the proposed project.

ERP No. D-FHW-F40297-MN, Rating EC2, Shepard/Warner Road/East CBD Bypass Study Corridor Improvements, Randolph Avenue to I-35E, Funding and COE Permit, City of St. Paul, Ramsey County, MN.

Summary: EPA requested an intersection analysis of carbon monoxide emissions be undertaken for busy intersections. Noise mitigation

should also be considered for those areas most severely affected by traffic noise. EPA also requested to review the strategy for investigation of each potential hazardous waste site involved in the highway project and the results of the testing at each site.

ERP No. D-FHW-L40161-AK, Rating EO2, North Douglas Highway Extension, Outer Point to Point Hilda, Funding, Section 404 Permit and Right-of-Way Acquisition, City and Borough of Juneau, AK.

Summary: EPA's objections are based on the ecological risk from direct effects to over 80 acres of aquatic habitat, including wetlands. More importantly, the degree of indirect effects could be significant, thus multiplying the areal extent of the effects and placing more fish and wildlife resources at risk.

ERP No. D-FHW-L40164-WA, Rating EC2, Riverside Parkway/Bothell Bypass Construction, Funding, Section 10 and 404 Permits, City of Bothell, King County, WA.

Summary: EPA is concerned about the effects of stormwater runoff to wetlands and about significant traffic noise effects. Additional information on stormwater treatment, wetland identification, and mitigation for noise effects is needed for the final EIS.

ERP No. DS-NOA-L64015-AK, Rating LO, Groundfish Fishery of the Bering Sea and Aleutian Islands, Fishery Management Plan, Increase of the Optimum Yield Range, Implementation, AK.

Summary: EPA has no objections to the project as described.

Final EISs

ERP No. F-AFS-J02012-UT, Escalante Known Geological Structure (KGS), Oil and Gas Leasing and Development, Dixie National Forest.

Summary: EPA's concerns on the draft EIS relating to additional leasing in the Known Geological Structure was addressed in this document. EPA requested the opportunity to review when available, air quality analysis based on lessee/operation specific plans of operation.

ERP No. F-FHW-F40276-IN, Keystone-Rural Corridor Improvement, Pleasant Run Parkway North Drive to IN-37/Fall Creek Boulevard, Funding, Marion County, IN.

Summary: EPA requested that the Record of Decision includes the selection of a noise mitigation strategy. In addition EPA recommended that if bottom sediment disturbance will occur at Pogues Run that the sample sediments be tested for possible contamination.

Dated: July 5, 1988.

Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 88-15412 Filed 7-7-88; 8:45am]
BILLING CODE 4900-20-M

[ER-FRL-3411-7]

Environmental Impact Statements; Availability

Responsible Agency:
Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed June 27, 1988 Through July 1, 1988 Pursuant to 40 CFR 1506.9.
EIS No. 880205, Final, BLM, AK, Trans-Alaska Gas System (TAGS) and Associated Facilities Construction and Operation, Prudue Bay to Anderson Bay, Right-of-Way Grants, Section 10 and 404 Permits and Special Use Permits, AK, Due: August 8, 1988, Contact: Jules V. Tileston (907) 287-1268.

Department of the Interior/Bureau of Land Management and the U.S. Army Corps of Engineers are Joint Lead Agencies on this project.

EIS No. 880206, Draft, SCS, IA, Soap Creek Watershed Protection and Flood Reduction Plan, Funding and Implementation, Des Moines River, Appanoose, Davis, Monroe and Wapello Counties, IA, Due: August 22, 1988, Contact: J. Michael Nethery (515) 284-4280.

EIS No. 880207, FSuppl, COE, IA, Red Rock Dam and Lake Red Rock Operation and Maintenance Project, Additional and Updated Information, Lake Red Rock Conservation Pool Elevation Plan, Implementation, Des Moines River, Marion County, IA, Due: August 8, 1988, Contact: Frank D. Holly (309) 788-6361.

EIS No. 880208, Draft, BLM, AK, Minto Flats Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, AK, Due: August 29, 1988, Contact: Richard Dworsky (907) 271-3114.

EIS No. 880209, Draft, UAF, WY, TX, LA, AR, WA, ND, MT, MO, MI,

Peacekeeper Rail Garrison Deployment Program, Implementation, F.E. Warren AFB, WY; Barksdale AFB, LA; Dyess AFB, TX; Fairchild AFB, WA; Minot AFB, ND; Eaker (formerly Blytheville) AFB, AR; Malmstrom AFB, MT; Whiteman AFB, MO; Wurtsmith AFB, MI; Grand Forks AFB, ND and Little Rock AFB, AR, Due: August 30, 1988, Contact: Peter Walsh (714) 382-3804.

EIS No. 880210, Final, CGD, HI, I-H3 Freeway Construction, Windward to Leeward Oahu, U.S. Coast Guard Approval for I-H3 Right-of-Entry, Collocation and Land Transfer, Koolauoko, Island of Oahu, Honolulu County, HI, Due: August 8, 1988, Contact: Jay Silberman (808) 541-2077.

The U.S. Department of Transportation, Coast Guard Department has adopted portions of the

Federal Highway Administration's Final EIS and three Final Supplemental EISs.

EIS No. 880211, Draft, COE, NJ, Sandy Hook to Barnegat Inlet Beach Erosion Control Project, Section I—Sea Bright to Ocean Township, Implementation, Northern End of New Jersey's Atlantic Coast, Monmouth County, NJ, due August 22, 1988, Contact: Karen Sullivan (212) 264-4662.

EIS No. 880212, Final, AFS, OR, Silver Fire Recovery Project Area, August thru November 1987 Silver Complex Fire Land Management Plan, Implementation, Siskiyou National Forest, Josephine and Curry Counties, OR, Due: August 8, 1988, Contact: Richard Stern (503) 476-1425.

EIS No. 880213, Final, COE, CA, Coyote and Berryessa Creeks Flood Control Plan, Implementation, Cities of San Jose and Milpitas, Santa Clara County, CA, Due: August 8, 1988, Contact: Richard Stradford (415) 974-0445.

EIS No. 880214, Final, COE, AZ, Clifton Flood Damage Reduction Plan, Implementation, San Francisco River, Greenlee County, AZ, Due: August 8, 1988, Contact: Byrt Wammack (213) 894-5442.

EIS No. 880215, Draft, SCS, KS, NB, Pony Creek Watershed Protection and Flood Prevention Plan, Funding and 404 Permits, Missouri River Basin, Brown and Nemaha Counties, KS and Richardson County, NB, Due: August 22, 1988, Contact: James N. Habiger (913) 823-4565.

EIS No. 880216, Final, FHW, NC, U.S. 117 Construction, Mt. Olive Bypass to I-40 near Faison, Funding and 404 permit, Wayne, Duplin and Sampson Counties, NC, Due: August 8, 1988, Contact: Kenneth Bellamy (919) 856-4346.

Dated: July 5, 1988.

Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 88-15411 Filed 7-7-88; 8:45 am]
BILLING CODE 4900-20-M

[OPTS-400018; FRL-3410-9]

Public Access to the Toxic Chemical Release Inventory Reading Room

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the requirement of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and its related legislation, the Emergency Planning and Community Right-to-Know Act of 1986, also known as Title III, to make Toxic Chemical Release Inventory (TRI) data available

* If necessary, the settlement conference will be continued through July 20, 1988.

to the public, the Environmental Protection Agency (EPA) has established a TRI Reading Room in the Title III Reporting Center (TRC). Beginning July 18, 1988, the TRI Reading Room is open to the public for the purpose of reviewing TRI forms submitted to the EPA by the regulated industries.

FOR FURTHER INFORMATION CONTACT: Michael Stahl, Acting Director, TSCA Assistance Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, (TDD: 202-554-0551).

SUPPLEMENTARY INFORMATION: Congress has given the Environmental Protection Agency (EPA) the authority to implement SARA and the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499). Under section 313 of the Act, EPA has issued regulations requiring manufacturing industries to report information on the release of certain chemicals to the environment. These regulations were published in the *Federal Register* of February 16, 1988 (53 FR 4500), and codified under 40 CFR Part 372. Industries must submit section 313 reports annually to EPA and the States. The reporting deadline for submitting these reports is July 1, 1988, and annually thereafter. The legislation also requires that EPA make the submitted information available to the public.

The purpose of this reporting requirement is to allow EPA to create a computerized inventory of these chemical releases to the environment. By the Spring of 1989 EPA plans to have created that inventory and made it available to the public through various means including computer telecommunications.

In order to assist members of the public who have a need to examine individual reports submitted by specific facilities, EPA has established a TRI Reading Room at the Title III Reporting Center (TRC).

The TRC Reading Room will open to the public on July 18, 1988. The TRC is located at 470/490 L'Enfant Plaza East, 7th Floor, Suite 7103, Washington, DC. Hours of operation are 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. In order to guarantee seating for all visitors, EPA strongly encourages visitors to call the TRC and schedule an appointment. Appointments may be made beginning July 11, 1988, by calling the TRC at 202-488-1501.

Dated: July 1, 1988.
Charles L. Elkins,
Director, Office of Toxic Substances.
[FR Doc. 88-15343 Filed 7-7-88; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-44512; FRL-3411-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 2-ethylhexanoic acid (CAS No. 149-57-5) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the *Federal Register* reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submission

Test data for 2-ethylhexanoic acid (2-EHA) was submitted by the Chemical Manufacturers Association EHA Program Panel pursuant to a test rule at 40 CFR 709.1650. It was received by EPA on June 20, 1988.

The submission contains four final research reports: (1) A 90-day oral (dietary administration) toxicity study of 2-EHA in the mouse; (2) a 90-day oral (dietary administration) toxicity study of 2-EHA in the rat; (3) a developmental toxicity evaluation of 2-EHA administered by gavage to Fischer 344 rats; and (4) a developmental toxicity evaluation of 2-EHA administered by gavage to New Zealand white rabbits. Subchronic toxicity and developmental toxicity testing are required by this test rule. This chemical is used as a chemical intermediate or reactant in the production of 2-ethylhexanoate metal soaps, peroxy esters, or other derivatives.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44512). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 20, 1988.

Joseph J. Merenda,
Director, Existing Chemical Assessment
Division, Office of Toxic Substances.

[FR Doc. 88-15342 Filed 7-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51708; FRL-3410-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice announces receipt of one hundred sixty-four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1424—August 17, 1988;
P 88-1425—August 21, 1988;
P 88-1426, 88-1427, 88-1428, 88-1429, 88-1430—August 17, 1988;
P 88-1431—August 22, 1988;
P 88-1432—August 17, 1988;
P 88-1433, 88-1434, 88-1435—August 20, 1988;
P 88-1436—August 20, 1988;
P 88-1437, 88-1438, 88-1439, 88-1440, 88-1441, 88-1442, 88-1443, 88-1444, 88-1445, 88-1446—August 21, 1988;
P 88-1447—August 22, 1988;
P 88-1448, 88-1449, 88-1450, 88-1451, 88-1452, 88-1453, 88-1454, 88-1455, 88-1456—August 21, 1988;
P 88-1457—August 23, 1988;
P 88-1458—August 21, 1988;
P 88-1459, 88-1460, 88-1461, 88-1462—August 23, 1988;
P 88-1463, 88-1464, 88-1465, 88-1466—August 22, 1988;
P 88-1467—August 21, 1988;
P 88-1468, 88-1470, 88-1471, 88-1472, 88-1473, 88-1474, 88-1475, 88-1476, 88-1477, 88-1478, 88-1479, 88-1480, 88-1481—August 24, 1988;
P 88-1482, 88-1483, 88-1484, 88-1485—August 28, 1988;
P 88-1486, 88-1487, 88-1488, 88-1489, 88-1490, 88-1491, 88-1492, 88-1493, 88-1494, 88-1495, 88-1496, 88-1497—August 29, 1988;
P 88-1498—August 30, 1988;
P 88-1499, 88-1500, 88-1501, 88-1502, 88-1503, 88-1504, 88-1506—August 29, 1988;
P 88-1508, 88-1510, 88-1511, 88-1512—August 30, 1988;
P 88-1513—August 29, 1988;
P 88-1514—August 31, 1988;
P 88-1515—September 3, 1988;
P 88-1516, 88-1517, 88-1518, 88-1519, 88-1520, 88-1521, 88-1522, 88-1523, 88-1524, 88-1525, 88-1526, 88-1527—September 4, 1988;
P 88-1528, 88-1529, 88-1530—September 5, 1988;
P 88-1531, 88-1532, 88-1533, 88-1534, 88-1535, 88-1536, 88-1537, 88-1538, 88-

1539, 88-1540, 88-1541, 88-1542—September 6, 1988;
P 88-1543—September 7, 1988;
P 88-1544, 88-1545, 88-1546, 88-1547, 88-1548, 88-1549, 88-1550, 88-1551, 88-1552, 88-1553, 88-1554, 88-1555—September 10, 1988;
P 88-1556, 88-1557, 88-1558, 88-1559, 88-1560, 88-1561—September 11, 1988;
P 88-1562—September 10, 1988;
P 88-1563—September 11, 1988;
P 88-1564—September 13, 1988;
P 88-1565, 88-1566, 88-1567, 88-1568—September 11, 1988;
P 88-1569, 88-1570, 88-1571, 88-1572—September 12, 1988;
P 88-1573, 88-1574, 88-1575, 88-1576, 88-1577, 88-1578, 88-1579—September 13, 1988;
P 88-1580, 88-1581, 88-1582, 88-1583, 88-1584, 88-1585—September 14, 1988;
P 88-1586—September 17, 1988;
P 88-1587—September 14, 1988;
P 88-1588, 88-1589, 88-1590, 88-1591—September 17, 1988.

Written comments by:
P 88-1424—July 18, 1988;
P 88-1425—July 22, 1988;
P 88-1426, 88-1427, 88-1428, 88-1429, 88-1430—July 18, 1988;
P 88-1431—July 23, 1988;
P 88-1432—July 18, 1988;
P 88-1433, 88-1434, 88-1435—July 21, 1988;
P 88-1436—July 18, 1988;
P 88-1437, 88-1438, 88-1439, 88-1440, 88-1441, 88-1442, 88-1443, 88-1444, 88-1445, 88-1446—July 22, 1988;
P 88-1447—July 23, 1988;
P 88-1448, 88-1449, 88-1450, 88-1451, 88-1452, 88-1453, 88-1454, 88-1455, 88-1456—July 22, 1988;
P 88-1457—July 24, 1988;
P 88-1458—July 22, 1988;
P 88-1459, 88-1460, 88-1461, 88-1462—July 23, 1988;
P 88-1463, 88-1464, 88-1465, 88-1466—July 24, 1988;
P 88-1467—July 22, 1988;
P 88-1468, 88-1470, 88-1471, 88-1472, 88-1473, 88-1474, 88-1475, 88-1476, 88-1477, 88-1478, 88-1479, 88-1480, 88-1481—July 25, 1988;
P 88-1482, 88-1483, 88-1484, 88-1485—July 29, 1988;
P 88-1486, 88-1487, 88-1488, 88-1489, 88-1490, 88-1491, 88-1492, 88-1493, 88-1494, 88-1495, 88-1496, 88-1497—July 30, 1988;
P 88-1498—July 31, 1988;
P 88-1499, 88-1500, 88-1501, 88-1502, 88-1503, 88-1504, 88-1506—July 30, 1988;
P 88-1508, 88-1510, 88-1511, 88-1512—July 31, 1988;
P 88-1513—July 30, 1988;
P 88-1514—August 1, 1988;

P 88-1515—August 4, 1988;
P 88-1516, 88-1517, 88-1518, 88-1519, 88-1520, 88-1521, 88-1522, 88-1523, 88-1524, 88-1525, 88-1526, 88-1527—August 5, 1988;
P 88-1528, 88-1529, 88-1530—August 6, 1988;
P 88-1531, 88-1532, 88-1533, 88-1534, 88-1535, 88-1536, 88-1537, 88-1538, 88-1539, 88-1540, 88-1541, 88-1542—August 7, 1988;
P 88-1543—August 8, 1988;
P 88-1544, 88-1545, 88-1546, 88-1547, 88-1548, 88-1549, 88-1550, 88-1551, 88-1552, 88-1553, 88-1554, 88-1555—August 11, 1988;
P 88-1556, 88-1557, 88-1558, 88-1559, 88-1560, 88-1561—August 12, 1988;
P 88-1562—August 11, 1988;
P 88-1563—August 12, 1988;
P 88-1564—August 14, 1988;
P 88-1565, 88-1566, 88-1567, 88-1568—August 12, 1988;
P 88-1569, 88-1570, 88-1571, 88-1572—August 13, 1988;
P 88-1573, 88-1574, 88-1575, 88-1576, 88-1577, 88-1578, 88-1579—August 14, 1988;
P 88-1580, 88-1581, 88-1582, 88-1583, 88-1584, 88-1585—August 15, 1988;
P 88-1586—August 16, 1988;
P 88-1587—August 15, 1988;
P 88-1588, 88-1589, 88-1590, 88-1591—August 18, 1988;

ADDRESS: Written comments, identified by the document control number "(OPTS-51708)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-1424

Manufacturer. Confidential.

Chemical. (G) Modified fatty acid diethanolamide.

Use/Production. (S) Lubricant & anticorrosive additive. Prod. range: Confidential.

P 88-1425

Importer. Organic Dyestuffs Corporation.

Chemical. (G) Direct Red 9.
Use/Import. (S) Textile dye. Import range: 4,000-8,000 kg/yr.

P 88-1426

Importer. Confidential.

Chemical. (S) 4-bezoxyl-N,N-dimethyl-N-(1-oxo-2-propenyl)oxy).
Use/Import. (S) Copolymerizable photoinitiator. Import range: Confidential.

P 88-1427

Manufacturer. Confidential.

Chemical. (G) Styrenated alkyd resin.
Use/Production. Confidential. Prod. range: Confidential.

P 88-1428

Importer. Additives Division, Ciba-Geigy Corp.

Chemical. (S) Reaction product of p-nonylphenol phosphite (3:1) and C12-13-alcohol.

Use/Import. (S) Stabilizer for PVC floor. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat).

P 88-1429

Importer. Additives Division, Ciba-Geigy Corp.

Chemical. (S) Phenol, 4-isonyl-, zinc salt.

Use/Import. (S) Stabilizer for PVC floor covering. Import range: 600-8,000 kg/yr.

P 88-1430

Importer. Confidential.

Chemical. (G) Mineral amino carboxylic acid.

Use/Import. (G) Bleaching agent. Import range: Confidential

Toxicity Data. Acute oral toxicity: LD50 > 5 gm/kg species (Rat). Static acute toxicity: time LC50 96H > 1000 mg/l species (Rainbow). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 88-1431

Manufacturer. E. I. du Pont de Nemours & Co., Inc.

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Chemical. (G) Neutralized aryl-alkyl organic phosphate.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1432

Manufacturer. Alcolac, Inc.
Chemical. (S) S-methyl mercaptoethanol.
Use/Production. (S) Chemical intermediate. Prod. range: 1000,000-250,000 kg/yr.

P 88-1433

Manufacturer. Confidential.
Chemical. (G) Acrylic modified vinyl.
Use/Production. (G) Industrial coating. Prod. range: 120,000-600,000 kg/yr.

P 88-1434

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyurea polyacrylate.
Use/Production. (G) Automotive coating component. Prod. range: 20,000-300,000 kg/yr.

P 88-1435

Importer. Confidential.
Chemical. (G) Styrene-N-butylacrylate copolymer.
Use/Import. (G) Open, nondispersive, use. Import range: Confidential.

P 88-1436

Importer. Florasynth, Inc.
Chemical. (S) Bicyclo(2-2-1) heptane-2-methanol, propanoate (endo + exo).
Use/Import. (S) A raw material of fragrance compound. Import range: Confidential.

P 88-1437

Manufacturer. Products Research & Chemical Corp.
Chemical. (G) Polymer of substituted aromatic amine and epoxy resin.
Use/Production. (S) Curing agent for urethane sealants, adhesives, & encapsulants. Prod. range: 300-40,000 kg/yr.

P 88-1438

Manufacturer. Products Research & Chemical Corp.
Chemical. (S) Benzene, 1,3 diisocyanatomethyl ethanol, 2, 2'-thiobis polymer of 2-propanol, 1-[(2-hydroxyethyl)thio]- and 2,2'-thiobis (ethanol) polymer of 2,2'-thiobis (ethanol); 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-; and 1-[(2-hydroxyethyl)thio]-2-propanol.
Use/Production. (S) Polymer for sealants, adhesives & encapsulants. Prod. range: 10,000-50,000 kg/yr.

P 88-1439

Manufacturer. Huls America, Inc.
Chemical. (S) 1,3,5,7-tetramethyl-1,3,5,7-tetravinyltetrasilazane.
Use/Production. (S) Ceramic resin additive. Prod. range: Confidential.

P 88-1440

Manufacturer. Huls America, Inc.
Chemical. (S) 1,3,5-Trimethyl-1,3,5-Trivinyltrisilazane.
Use/Production. (S) Ceramic resin additive. Prod. range: Confidential.

P 88-1441

Manufacturer. Confidential.
Chemical. (G) Aromatic, polyether urethane.
Use/Production. (S) Coating and additive. Prod. range: 20,000-40,000 kg/yr.

P 88-1442

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyether urethane.
Use/Production. (S) Coating and adhesive. Prod. range: 20,000-40,000 kg/yr.

P 88-1443

Importer. Confidential.
Chemical. (G) Terpene phenolic resin.
Use/Import. (G) Terpene phenolic resin. Import range: Confidential.

P 88-1444

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate powder coating curing agent.
Use/Production. (S) Powder coating curing agent. Prod. range: Confidential.

P 88-1445

Manufacturer. Confidential.
Chemical. (G) Cyclo-substituted alkyl prognenoic acid derivative.
Use/Production. (G) Formulation component for open, nondispersive use. Prod. range: Confidential.

P 88-1446

Importer. Confidential.
Chemical. (G) 2-hydroxy-3-(1-methyl-9-Oxo-9H-Thioxanthene-4-Yloxy)-N,N,N-trimethyl propanaminium chloride.
Use/Import. (S) Photo initiator for photo curing of water-based. Import range: Confidential.

P 88-1447

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted carbamic acid ester.
Use/Import. (S) Hardener for powder coating resins. Import range: 1,000-2,000 kg/yr.

P 88-1448

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Hydroxy acrylic polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1449

Importer. E. I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Styrene acrylate acrylamide copolymer.
Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88-1450

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Hydroxy acrylic polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1451

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Aliphatic aromatic sulfonium carboxylate.
Use/Import. (G) Industrial coating resin. Import range: 200,000-3,000,000 kg/yr.

P 88-1452

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic sulfonium carboxylate.
Use/Production. (G) Industrial coating resin. Prod. range: 200,000-3,000,000 kg/yr.

P 88-1453

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic sulfonium carboxylate.
Use/Production. (G) Industrial coating resin. Prod. range: 200,000-3,000,000 kg/yr.

P 88-1454

Manufacturer. Confidential.
Chemical. (G) Aliphatic aromatic sulfonium carboxylate.
Use/Production. (G) Industrial coating resin. Prod. range: 200,000-3,000,000 kg/yr.

P 88-1455

Importer. High Point Chemical Corp.
Chemical. (G) Fatty acid esters of glycerol, alkoxylated.
Use/Import. (G) Surfactant. Import range: Confidential.

P 88-1456

Manufacturer. Confidential.
Chemical. (G) Styrene acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1457

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Disperse yellow 33.
Use/Import. (S) Shading color. Import range: 1,100-2,200 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 3,000 mg/kg species (Rat).

P 88-1458

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Disperse yellow 33.
Use/Import. (S) Shading color. Import range: 1,000-2,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (Rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (Rabbit).

P 88-1459

Manufacturer. Confidential.
Chemical. (G) Bis alkoxylated aluminum ethylacetate.
Use/Production. (G) Additive for polymer solutions. Prod. range: Confidential.

P 88-1460

Manufacturer. R. T. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Antioxidant & antiwear for lubricants. Prod. range: Confidential.

P 88-1461

Manufacturer. R. R. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Antioxidant & antiwear agent for lubricants. Prod. range: Confidential.

P 88-1462

Manufacturer. Reed Lignin Inc.
Chemical. (G) Sodium lignosulfonate copolymer.
Use/Production. (G) Dispersive & binder in a destructive use. Prod. range: 500,000-3,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD 50 > 5.0 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-1463

Manufacturer. Confidential.
Chemical. (G) Copolymer of acrylic and methacrylic esters.
Use/Production. (S) Modifier for coatings, inks, & adhesives. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 350 mg/kg species (Rat).

P 88-1464

Manufacturer. Confidential.
Chemical. (S) Octane, 6-Chloro-2,6-dimethyl-and octane, 2-chloro-2,6-dimethyl-mixture.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88-1465

Manufacturer. Confidential.
Chemical. (G) Blocked polyurethane.
Use/Production. (G) Industrial polymer with open use. Prod. range: 100,000-1,000,000 kg/yr.

P 88-1466

Manufacturer. Confidential.
Chemical. (G) Fatty esters.
Use/Production. (S) Lubricant base. Prod. range: Confidential.

P 88-1467

Manufacturer. Products Research & Chemical Corporation.
Chemical. (G) Resin for adhesion promotion.
Use/Production. (G) Intermediate for adhesive and sealants. Prod. range: 7,500-15,000 kg/yr.

P 88-1468

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1470

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88-1471

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1472

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1473

Manufacturer. Henkel Corporation.
Chemical. (G) 2-propenoic acid, 6-methoxyhexyl ester.
Use/Production. (G) Coatings, inks. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: moderate species (Rabbit).

P 88-1474

Manufacturer. Henkel Corporation.
Chemical. (G) 1,6 hexanediol monoethyl ether.
Use/Production. (G) Coatings, intermediate. Prod. range: Confidential.

P 88-1475

Importer. Hoechst Celanese Corporation.
Chemical. (G) Reaction product of a fluorinated alcohol, epichlorohydrine, a diol and an isocyanate.
Use/Import. (S) Soil/water repellent for fibers & leather. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD 50 > 2,000 mg/kg species (Rat). Static acute toxicity: time LC50 96 hrs 10-100 mg/l species (Zebra fish). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-1476

Importer. Hoechst Celanese Corporation.
Chemical. (G) Reaction product of a fluorinated alcohol, epichlorohydrine, an alkyl glycol and an isocyanate.
Use/Import. (G) Emulsifier for fiber finish leather chemicals. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Static acute toxicity: time LD 50 96 hrs 10-100 mg/l species (Zebra fish). Eye irritation: None species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-1477

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Dye, nondispersive. Prod. range: Confidential.

P 88-1478

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyurethane.
Use/Production. (S) General purpose adhesive; modifier for coating, & inks. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD 50 4,200 mg/kg species (Rat). Acute dermal toxicity: LD50 8,000 mg/kg species (Rabbit).

P 88-1479

Manufacturer. Texaco Chemical Co.
Chemical. (S) 1,3-dioxolan-2-one, 4-ethyl.
Use/Production. (G) Chemical intermediate-destructive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 3 g/kg

species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).
Mutagenicity: negative. Skin sensitization: negative species (Human).

P 88-1480

Importer: Dragoco, Inc.
Chemical. (S) Bicyclo (3.2.1) octan-8-ol, 1,5-dimethyl-8-ethyl.

Use/Import. (S) Fragrance mixture. Import range: 600-1,200 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 2.5 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin sensitization: negative species (guinea pig). Phototoxicity: negative species (guinea pig).

P 88-1481

Manufacturer: Dow Chemical Corporation.

Chemical. (G) Fluoro siloxane polymer.

Use/Production. (S) Pressure sensitive release coating. Prod. range: 100-10,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-1482

Manufacturer: Confidential.

Chemical. (G) Calcium salt of the azo dye.

Use/Production. (G) open, nondispersive. Prod. range: Confidential.

P 88-1483

Manufacturer: Confidential.

Chemical. (G) Silicone polyester copolymer.

Use/Production. (S) Anti-caking agent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88-1484

Importer: Stockhausen Inc.

Chemical. (S) N-Maleoy-N-octadecenyl-amino-propionic acid, partly sodium salt.

Use/Import. (G) Finishing agent to render leather waterproof. Import range: 5,000-10,000 kg/yr.

P 88-1485

Importer: Confidential.

Chemical. (S) Siloxanes and Silicones, di-Me, Me vinyl, vinyl group-terminated.

Use/Import. (S) Devices of electronic appliances and automation machines. Import range: 1,000-10,000 kg/yr.

P 88-1486

Importer: Confidential.

Chemical. (G) Styrene-maleic ester copolymer.

Use/Import. (S) Resin in publication gravure painting. Import range: Confidential.

P 88-1487

Manufacturer: Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Pigment dispersant. Prod. range: Confidential.

P 88-1488

Manufacturer: Confidential.

Chemical. (G) Hycar amine terminated butadiene/acrylonitrile polymer.

Use/Production. (G) Liquid rubber adhesive. Prod. range: Confidential.

P 88-1489

Importer: Henkel Corporation.

Chemical. (G) Alkyl salt of polycarboxylic acid.

Use/Import. (S) Pigment dispersing agent. Import range: Confidential.

P 88-1490

Manufacturer: Dow Corning Corporation.

Chemical. (G) Fluoro alkyl siloxane polymer.

Use/Production. (S) Pressure-sensitive release coating. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88-1491

Manufacturer: Henkel Corporation, Process Chemicals.

Chemical. (G) Alkyl aryl polymercaptan.

Use/Production. (G) Curing agent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 = 2.6-0.3 g/kg species (Rat). Acute dermal toxicity: LD50 > 10.2 g/kg species (Rabbit). Inhalation toxicity: LC50 > 0.1 mg/l species (Rat). Eye irritation: slight (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: positive.

P 88-1492

Importer: Confidential.

Chemical. (G) Hydroxy-alkyl-aryl-polyether with amino groups.

Use/Import. (S) Coating for reactors used in the prod. of polymer. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 10,000 mg/kg species (Rat). Eye

irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: positive species (Guinea pig).

P 88-1493

Importer: Confidential.

Chemical. (G) Copper phthalocyanine based reactive-dye.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1494

Importer: Confidential.

Chemical. (G) Halo triazine azo naphthalenes sulfonic acid alkali salt.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1495

Importer: Confidential.

Chemical. (G) Vinyl sulfone based reactive dye.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1496

Importer: Confidential.

Chemical. (G) Sulfonyl benzene diazo substituted naphthalene alkali salt.

Use/Import. (S) Acid textile dye. Import range: Confidential.

P 88-1497

Manufacturer: E. I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Partially neutralized acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1498

Manufacturer: E. I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Neutralized aryl-alkyl organic phosphate.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88-1499

Manufacturer: Harrell Industries.

Chemical. (S) Monosodium titanate; sodium titanium oxide.

Use/Production. (S) Absorbent for stontium 90. Prod. range: 11,500-34,500 kg/yr.

P 88-1500

Importer: Confidential.

Chemical. (G) Halo triazine, azo naphthalene sulfonic acid alkali salt.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1501

Importer: Confidential.

Chemical. (G) Fluorinated urethane compound.

Use/Import. (S) Antistain agent. Import range: Confidential.

P 88-1502

Importer: Confidential.

Chemical. (G) Halo triazine sulfonic acid alkali salt.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1503

Importer: Confidential.

Chemical. (G) Copper phthalocyanine based reactive dye.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1504

Manufacturer: Confidential.

Chemical. (G) Mercaptan terminated polyethyl polymer.

Use/Production. (S) Polymer for adhesive and sealant. Prod. range: 400,000-1,500,000 kg/yr.

P 88-1508

Importer: Confidential.

Chemical. (G) Halo triazine anthraquinon sulfonic acid alkali salt.

Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88-1509

Manufacturer: Confidential.

Chemical. (G) (Sulfonamidoaromatic alkyl) halosubstituted heterocycle.

Use/Production. (G) Contained use in an article. Prod. range: 1,500-10,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 88-1510

Manufacturer: Confidential.

Chemical. (S) (Aminoaromatic alkyl) halosubstituted heterocycle.

Use/Production. (G) Chemical intermediate. Prod. range: 1,500-12,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Skin irritation: slight species (Guinea pig).

P 88-1511

Manufacturer: Confidential.

Chemical. (G) Alkylphenol sulfonate, metal salt.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1512

Manufacturer: Confidential.

Chemical. (G) Dialkylaminophenyl substituted heteromonocycle, salt.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1513

Manufacturer: Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Pigment dispersant. Prod. range: Confidential.

P 88-1514

Manufacturer: Henkel Corporation.

Chemical. (G) Complex alkyl aryl imide.

Use/Production. (G) Epoxy curing agent. Prod. range: Confidential.

P 88-1515

Manufacturer: Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1516

Manufacturer: Confidential.

Chemical. (G) Polymer of an aromatic diisocyanate, aliphatic polyesters, an aliphatic diol and an aliphatic diamine.

Use/Production. (G) Laminating adhesive. Prod. range: Confidential.

P 88-1517

Manufacturer: Confidential.

Chemical. (G) Prepolymer of an aromatic diisocyanate with a diol and aliphatic polyesters.

Use/Production. (G) Intermediate for a laminating adhesive. Prod. range: Confidential.

P 88-1518

Manufacturer: Lithium Corporation of America.

Chemical. (S) Bis 2-Propanamine, N-(methylethyl)-magnesium salt (diisopropylamide magnesium).

Use/Production. (S) Polymerization reagent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 770 mg/kg species (Rat). Acute dermal toxicity: LD50 > 5 g/kg species (Rabbit). Inhalation toxicity: LC50 4800 mg/m³ species (Rat).

P 88-1519

Manufacturer: Lithium Corporation of America.

Chemical. (S) Dimethylmagnesium.

Use/Production. (S) Magnesium precursor for electric chemicals. Prod. range: 18,000-36,000 kg/yr.

P 88-1520

Importer: Confidential.

Chemical. (G) Substituted naphthalene azo sulfonic acid.

Use/Import. (S) Reactive for textiles. Import range: Confidential.

P 88-1521

Importer: Confidential.

Chemical. (G) Aliphatic urethane acrylate oligomer.

Use/Import. (S) UV/EB Oligomer. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 4,000 mg/kg species (Rat). Skin irritation: moderate species (Rabbit).

P 88-1522

Manufacturer: GE Plastics Group.

Chemical. (G) Aryl tetra carboxylic acid, tetra sodium salt.

Use/Production. (S) Monomer precursor. Prod. range: Confidential.

P 88-1523

Manufacturer: Confidential.

Chemical. (G) Substituted maleic anhydride, styrene, acrylate copolymer.

Use/Production. (G) Contained use. Prod. range: Confidential.

P 88-1524

Manufacturer: Koppers Co., Inc.

Chemical. (G) Phenol formaldehyde resin fural mixture.

Use/Production. (S) Fire-retardant plastic matrix binder resin. Prod. range: Confidential.

P 88-1525

Manufacturer: Koppers Co., Inc.

Chemical. (G) Resorcinol formaldehyde resin acetone mixture.

Use/Production. (S) Pre-retardant reinforced plastic matrix binder res. Prod. range: Confidential.

P 88-1526

Manufacturer: Confidential.

Chemical. (G) Hydroxy functional acrylic resin.

Use/Production. (S) Coatings. Prod. range: Confidential.

P 88-1527

Manufacturer: Hi-Tek Polymers, Inc.

Chemical. (S) Cyanic acid, [2,2,2-trifluoro-1-(trifluoromethyl)ethylidene]di-4, 1-phenylene ester.

Use/Production. (S) Chemical intermediate destructure use. Prod. range: Confidential.

P 88-1528

Manufacturer: Confidential.

Chemical. (G) Polyester with dimethyl isophthalate, dimethyl 5-sodium sulfoisophthalate.

Use/Production. (G) Polymeric binder. Prod. range: Confidential.

P 88-1532

Importer: Hodogaya Chemical (U.S.A.), Inc.

Chemical. (S) Pyridinium,1-ethyl-3-(2-hydroxy-1-naphthalenyl)azo-, (T-4)-tetrachlorozincate(2) (2:1).

Use/Import. (S) Dyestuff: used for dyeing on cationic polyester. Import range: 500-1,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5,800 mg/kg species (Rat). Static acute toxicity: time LC50 96 hrs. 110 ppm. Eye irritation: moderate species (Rabbit). Mutagenicity: negative.

P 88-1533

Importer: Hodogaya Chemical (U.S.A.), Inc.

Chemical. (S) Chromate(1-),bis(3-(4,5-dihydro-4-(hydroxy-5-methyl-3-nitrophenyl)azo)-e-methyl-5-oxo-1H-pyrazol-1-yl)benzenesulfonamido(2-1)-, hydrogen, compd. with 2-ethyl-1-hexanamine(1:)/(Cl).

Use/Import. (S) Colorant for toner (used in the manufacture of toner coloring material. Import range: 1,00-1,500 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (Rat).

P 88-1531

Manufacturer: Confidential.

Chemical. (G) Polyisocyanate based on hexamethylene diisocyanate.

Use/Production. (S) Crosslinker for water-based resins. Prod. range: 50,000-150,000 kg/yr.

P 88-1532

Manufacturer: Confidential.

Chemical. (G) Blocked polyisocyanate based on toluene diisocyanate.

Use/Production. (S) Blocked polyisocyanate prepolymer for industrial. Prod. range: 46,300-226,800 kg/yr.

P 88-1533

Importer: Confidential.

Chemical. (S) Toluene diisocyanate(2,4 isomer); toluene diisocyanate(2,6 isomer); salicylic acid; dipropylene glycol; 2-(2-aminoethyl)amino ethanol; diglycidyl ether of bisphenol Alpha.

Use/Import. (G) Cross-linking agent for open nondispersible use. Import range: 72,576-136,079 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 5 ml/kg species (rat). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88-1534

Importer: Confidential.

Chemical. (S) 4,4-diphenylmethane diisocyanate; dipropylene glycol; A 2000MW polyester diol.

Use/Import. (G) Crosslinked agent for open, nondispersible use. Import range: 36,288-68,040 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 5 ml/kg species (Rat).

P 88-1535

Importer: Confidential.

Chemical. (S) Toluene diisocyanate(2,4 isomer); Toluene diisocyanate(2,6 isomer); 4,4-diphenylmethane diisocyanate; triisopropanolamine; 100MW poly.

Use/Import. (G) Cross-linking agent for open, nondispersible use. Import range: 45,360-130,079 kg/yr.

P 88-1536

Importer: Confidential.

Chemical. (S) 4,4-diphenylmethane diisocyanate; triisopropanolamine; 1000 MW polypropylene glycol; 2000 MW polypropylene glycol.

Use/Import. (G) Cross-linking agent for open, nondispersible use. Import range: 10,896-19,958 kg/yr.

P 88-1537

Importer: Confidential.

Chemical. (S) 4,4-diphenylamine diisocyanate; 1000 MW polypropylene glycol prepolymer.

Use/Import. (G) Cross-linking agent for open, nondispersible use. Import range: 36,288-68,040 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 = 5 ml/kg species (Rat). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88-1538

Manufacturer: Confidential.

Chemical. (G) Polyfunctionalized styrenated acrylate.

Use/Production. (S) Automotive refinish resin. Prod. range: 212,000-250,000 kg/yr.

P 88-1539

Manufacturer: Vista Chemical Company.

Chemical. (G) C1430 alkylbenzenes. Use/Production. (S) Feedstock for manufacture of oil-soluble surfonate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 40 g/kg species (Rat).

P 88-1540

Manufacturer: Confidential.

Chemical. (G) Polyester resin. Use/Production. (G) Paint additive.

Toxicity Data. Acute oral toxicity: LD50 5 g/kg species (Rat).

P 88-1541

Manufacturer: Confidential.

Chemical. (G) Formaldehyde polymer with 1,3,5-triazine-2,4,6-triamine, stearyl

alcohol, C20+ alcohols, ethoxylated oleyl alcohol modified.

Use/Production. (S) Sizing of paper products. Prod. range: Confidential.

P 88-1542

Manufacturer: Confidential.

Chemical. (S) Resin, dicyclopentadiene, dimer fatty acid, soya oil.

Use/Production. (S) Printing ink vehicles. Prod. range: 3,000,000-3,700,000 kg/yr.

P 88-1543

Manufacturer: Confidential.

Chemical. (G) Modified aliphatic alicyclic polyester.

Use/Production. (G) Industrial coating component. Prod. range: 212,000-248,000 kg/yr.

P 88-1544

Importer: Confidential.

Chemical. (G) Mercapto functional silicone resin.

Use/Import. (S) Control release additive for use in silicone form. Import range: Confidential.

P 88-1545

Importer: Confidential.

Chemical. (S) Nitrile substituted polyvinyl alcohol.

Use/Import. (S) Binder for inorganic powder. Import range: Confidential.

P 88-1546

Importer: Confidential.

Chemical. (S) Xylene-formaldehyde polymer, reaction with resin.

Use/Import. (S) Tackifier for rubber. Import range: Confidential.

P 88-1547

Manufacturer: Armstrong World Industries, Inc.

Chemical. (S) Guanidinium vermiculite.

Use/Production. (S) Prepare inorganic papers. Prod. range: 11,880-1,600,00 kg/yr.

P 88-1548

Manufacturer: Confidential.

Chemical. (S) 2,2,4-trimethyl-1,3-pentane diol; trimethylol propane; adipic acid; isophthalic acid rj-100.

Use/Production. (S) Industrial coatings for metal substrate. Prod. range: 2,000-4,000 kg/yr.

P 88-1549

Manufacturer: NL Chemicals.

Chemical. (G) Water dispersible polyamide resin.

Use/Production. (G) Ink additive. Prod. range: Confidential.

P 88-1550

Manufacturer: Confidential.

Chemical. (G) Silicone.

Use/Production. (S) Coatings. Prod. range: 20,000-40,000 kg/yr.

P 88-1551

Manufacturer: Confidential.

Chemical. (G) Aliphatic polyester urethane.

Use/Production. (S) Coatings. Prod. range: 20,000-40,000 kg/yr.

P 88-1552

Manufacturer: Confidential.

Chemical. (G) Aliphatic polyester urethane.

Use/Production. (G) Coatings. Prod. range: 20,000-40,000 kg/yr.

P 88-1553

Manufacturer: Confidential.

Chemical. (G) Alkyl naphthalene sulfonic acid, magnesium salt.

Use/Production. (S) Corrosion inhibitor for lube oils, greases, & coats. Prod. range: Confidential.

Toxicity Data. Eye irritation: strong species (Rabbit). Skin irritation: moderate species (Rabbit).

P 88-1554

Importer: Himont U.S.A. Inc.

Chemical. (S) Melamine bismuth tribromide.

Use/Import. (S) Flame retardant for polypropylene & ethyl copoly. Import range: 1,000-10,080 kg/yr.

P 88-1555

Importer: Himont U.S.A., Inc.

Chemical. (S) Dicyandiamide bismuth tribromide.

Use/Import. (S) Flame retardant for polypropylene & ethyl copolymer. Import range: 1,000-10,080 kg/yr.

P 88-1556

Manufacturer: Eastman Kodak Company.

Chemical. (G) Substituted phenyl (halosubstituted heterocyclic benzamide).

Use/Production. (G) Contained use in an article. Prod. range: 1,000-2,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 3,200 mg/kg species (Rat & mice). Static acute toxicity: time LC50 96 hr 100 mg/1 species (fathead minnows & daphnia). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Guinea pig).

P 88-1557

Manufacturer: Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1558

Manufacturer: Confidential.

Chemical. (G) Aminated epoxy-polypropylene glycol.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1559

Importer: Confidential.

Chemical. (G) Aminated epoxy urethane.

Use/Import. (G) Cathodic electrocoat. Import range: Confidential.

P 88-1560

Manufacturer: Confidential.

Chemical. (G) Cationic acrylic resin.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1561

Manufacturer: Confidential.

Chemical. (G) Aminated epoxy urethane.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1562

Manufacturer: Confidential.

Chemical. (G) Aminated polypropylene glycol.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1563

Manufacturer: Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1564

Manufacturer: Confidential.

Chemical. (G) Aminated epoxy-polybutadiene.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1565

Manufacturer: Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1566

Manufacturer: Confidential.

Chemical. (G) Aminated epoxy.

Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88-1567

Importer: Confidential.

Chemical. (S) Thiazolium, 3-methyl-2-(4-(methylphenylamino)phenyl)azo-, (T-4)-tetrachlorozincate(2) (2:1).

Use/Import. (S) Dyestuff-used for dyeing of cath. polyester fibers. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50=146 mg/kg species (Rat). Acute

dermal toxicity: LD50 > 2.0 g/kg species (Rat). Eye irritation: strong species (Rabbit). Mutagenicity: negative.

P 88-1568

Importer: Hodogaya Chemical (U.S.A.), Inc.

Chemical. (S) 1H-1,2,4-triazolium, 5-(((4-chlorophenyl)methyl)methylamino)phenyl)azo) 1,4-dimethyl-, (T-4)-tetrachloro-zincate(2) (2:1).

Use/Import. (S) Dyestuff-used for dyeing of cationic polyester fibers. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50=3.1 g/kg species (Rat). Eye irritation: strong species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88-1569

Importer: Marubeni America Corporation.

Chemical. (S) Graft copolymer of polyvinylalcohol with acrylamide, acrylic acid and alkyl acetoacetate.

Use-Import. (S) Coating binder for heat-sensitive paper. Import range: 60,000-500,000 kg/yr.

P 88-1570

Importer: Marubeni America Corporation.

Chemical. (S) Copolymer of acrylamide and 2H-hydroxypropyl methacrylate.

Use-Import. (G) Coating binder for heat-sensitive paper. Import range: 60,000-500,000 kg/yr.

P 88-1571

Importer: Marubeni America Corporation.

Chemical. (S) Copolymer of acrylamide and acrylonitrile.

Use-Import. (S) Coating binder for heat-sensitive paper. Import range: 60,000-500,000 kg/yr.

P 88-1572

Importer: Marubeni America Corporation.

Chemical. (S) Graft copolymer of polyvinyl alcohol with acrylonitrile.

Use-Import. (S) Coating binder for heat-sensitive paper. Import range: 120,000-1,000,000 kg/yr.

P 88-1573

Manufacturer: Confidential.

Chemical. (G) Urethane modified alkyd.

Use/Production. (S) Automotive primer. Prod. range: Confidential.

P 88-1574

Manufacturer: American Cyanamid Company.

Chemical. (G) Substituted dicarboxylic acid.

Use/Production. (G) Monomer. Prod. range: Confidential.

P 88-1575

Manufacturer: Confidential.

Chemical. (G) Modified acrylate terpolymer.

Use/Production. (G) Thickener for aqueous systems, nondispersive use. Prod. range: Confidential.

P 88-1576

Manufacturer: Confidential.

Chemical. (G) Copolymer of ethylene, styrene and oxygenated vinyl alkane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1577

Manufacturer: Confidential.

Chemical. (G) Copolymer of ethylene and oxygenated vinyl alkane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1578

Manufacturer: Confidential.

Chemical. (G) Copolymer of propylene, styrene and oxygenated vinyl alkane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1579

Manufacturer: Confidential.

Chemical. (G) Copolymer of propylene, styrene and oxygenated vinyl alkane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1580

Manufacturer: Confidential.

Chemical. (G) High solids polyester resin.

Use/Production. (S) Protective coatings. Prod. range: 65,000-100,000 kg/yr.

P 88-1581

Importer: DSM Resin U.S., Inc.

Chemical. (G) Amine terminated aliphatic polyurethane resin.

Use/Import. (S) Coatings for plastics. Import range: Confidential.

P 88-1582

Importer: DSM Resins U.S., Inc.

Chemical. (G) Phenolic-formaldehyde modified hydrocarbon resin.

Use/Import. (S) Heat-set offset inks. Import range: Confidential.

P 88-1583

Importer: DSM Resins U.S., Inc.

Chemical. (G) Long oil alkyl resin; Based on mixed fatty acids.

Use/Import. (S) Architectural paints. Import range: Confidential.

P 88-1584

Importer: DSM Resins, U.S., Inc.

Chemical. (G) Dibasic acid/glycolester.

P 88-1585

Importer: DSM Resins, U.S., Inc.

Chemical. (G) Dibasic acid/glycolester.

Use/Import. (S) Thermosetting powder paints. Import range: Confidential.

P 88-1586

Importer: DSM Resins, U.S., Inc.

Chemical. (G) Dibasic acid/glycolester.

Use/Import. (S) Thermosetting powder paints. Import range: Confidential.

P 88-1587

Manufacturer: E.I. Du Pont de Nemours & Co., Inc.

Chemical. (G) Acrylic polymer contained quaternary ammonium salts.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88-1588

Manufacturer: Confidential.

Chemical. (G) Styrenated acrylic functional polyol.

Use/Production. (G) Dispersively, used polymeric material. Prod. range: 212,000-250,000 kg/yr.

P 88-1589

Manufacturer: Confidential.

Chemical. (G) Aliphatic alicyclic polyester.

Use/Production. (G) Industrial coating component. Prod. range: 1,500,000 kg/yr.

P 88-1590

Importer: Shin-Etsu Silicone of America, Inc.

Chemical. (S) Trichloromethylsilane; dichlorodimethylsilane; trichlorophenylsilane; dichlorodiphenylsilane.

Use/Import. (S) Varnish for electric insulation.

Import range: 2,000-4,000 kg/yr.

P 88-1591

Importer: Confidential.

Chemical. (G) Cyanated phenolic resin.

Use/Import. (G) Friction materials. Import range: Confidential.

Date: June 30, 1988.

Douglas W. Sellers, Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

[FR Doc. 88-15335 Filed 7-7-88; 9:45 am] BILLING CODE 5560-50-5

(FRL-3416-7)

Buried Valley Aquifer System, Ohio (Southern Portion) Sole Source Aquifer Petition: Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that, under section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the petitioned southern portion of the Buried Valley Aquifer System of the Great Miami/Little Miami River Basins of Southwestern Ohio, hereinafter called the Buried Valley Aquifer System (BVAS-South), is the sole or principal source of drinking water in the petitioned area, and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the BVAS area and its principal recharge zone will be subject to EPA's review to insure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: Because the economic and regulatory impact of this action will be minimal, this determination will be effective as of the date it is signed by the Regional Administrator.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water SWG-TUBA, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V, at 312-353-1435.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h-3(e), Pub. L. 95-523) states:

"(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

Effective March 9, 1987, authority to make a Sole Source Aquifer (SSA) Designation Determination was delegated to the U.S. EPA Regional Administrators.

On March 10, 1988, EPA received a complete SSA petition from the Ohio-Kentucky-Indiana Regional Council of Governments of Cincinnati, Ohio, which petitioned EPA to designate the BVAS-South as a Sole Source Aquifer.

On April 20, 1988, EPA published notice to announce a public comment period regarding the petition. The public was invited to submit comments and information on the petition until June 3, 1988. A public meeting was held on May 18, 1988, at the EPA Research facility in Cincinnati. Comments were accepted for 16 days following the meeting.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under Section 1424(e) are: (1) Whether the BVAS-South is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above:

1. The BVAS-South currently serves as the "sole source" of drinking water for approximately 650,000 residents, of Butler, Warren, Hamilton, Clermont and Clinton Counties.

2. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available, cost-effective potential source capable of replacing the drinking water needs of the communities and

individuals that presently rely on the aquifer.

3. The Buried Valley Aquifer System-South is an unconfined to semiconfined aquifer system that transmits water through unconsolidated glacial sediments. The high porosity and permeability of these deposits, coupled with thin overlying soils and shallow depth of water, make the BVAS-South very vulnerable to contamination. Contamination has already occurred, in Hamilton, Butler, Warren, and Clermont Counties. Sources for contamination include, but are not limited to: (A) Leaking underground storage tanks, (B) stormwater drains that discharge to ground water, (C) accidental release of hazardous materials, (D) use and improper storage of agricultural chemicals, (E) salting of roads for ice control, and (F) poorly functioning on-site waste water disposal systems. Should any of the above sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality, with a consequent adverse effect on public health.

III. Description of the Buried Valley Aquifer System: Hydrogeology; Use; Recharge; Boundaries

The entire BVAS of the Great Miami/Little Miami River Basins was formed when successive glacial events discharged sediment-choked meltwaters through pre-existing bedrock valleys. These meltwaters left behind heterogeneous deposits of gravel, sand, silt, and clay. The gravel and sand deposits form the principal aquifers of the BVAS, and range in thickness from 20 to 400 feet, and in width from 1/2 to 3 miles. The Ohio Department of Natural Resources subdivides the BVAS into Class I and Class II aquifers, based on hydrogeologic characteristics.

Ground water withdrawal from public and private water supply wells in the BVAS-South averages approximately 74 million gallons per day (mg/d) within the proposed area. This resource is so readily available and prolific that few communities and individuals within reach of it have developed alternative sources, with the exception of much of the Cincinnati Metropolitan Area, which relies on water from the Ohio River. In fact, 73 percent of the public water and 100 percent of the private water in the proposed designated area is drawn from the BVAS-South.

The BVAS-South is recharged primarily by precipitation, with a minor amount contributed as inflow from the upland areas. Some of the public supply wellfields produce sufficient drawdown to cause induced recharge from surface

water bodies to be the primary recharge to the wellfield. However, according to a USGS report on the aquifer system, "The flow [in the rivers] that is equalled or exceeded 90 percent of the time . . . is generally considered to come primarily from ground water." In other words, ground water contributes the bulk of water to rivers in the area. So the primary recharge mechanism ultimately remains the infiltration of precipitation over the aquifer, and the recharge area boundaries are coincident with the aquifer system boundaries.

The project review area consists of the area over the Class I and II aquifers south a hydrodynamic boundary which occurs just south of the City of Franklin in Warren County, to the southern boundary of the Great Miami Basin and including that portion of the BVAS in the Little Miami Basin in Warren, Clermont, and Clinton Counties. Included are two small "fingers" of aquifer in western Preble County that connect with the main aquifer in the BVAS-South area.

The designated area does not include the Mill Creek Basin in Butler and Hamilton Counties. This basin contains a Class I aquifer, but the population in the drainage basin depends primarily on surface water for their drinking water supply. Although the communities of Wyoming, Lockland, Glendale, and Reading do use ground water as their water source, they can connect to the Cincinnati water system if the aquifer becomes contaminated beyond levels commensurate with public health. When considered as a separate hydrologic system, the Mill Creek Basin does not meet the criteria established by EPA for sole source eligibility. Also excluded is a portion of the Ohio River in southwest Butler County, just upstream from the confluence of the Ohio with the Great Miami River. This designation includes no part of the Ohio River Aquifer.

IV. Alternative Sources

The Petitioner considered two alternatives to the BVAS-South to supply drinking water: existing surface water systems and bedrock aquifers.

Bedrock aquifers do not have the characteristics necessary to enable them to transmit sufficient water to replace the amount currently supplied by the aquifer. In addition, the water is highly mineralized, requiring additional treatment to bring it up to the quality of the current supply. Thousands of new wells would have to be drilled, and additional piping installed for public water supplies. Private users would have the expense either of hooking up to public water, deepening their existing wells, or redrilling.

The City of Cincinnati public water system draws heavily on Ohio River water, using over 27 million gallons per day. Additional river water, as well as water from two reservoirs in Warren and Clermont Counties, could be supplied to nearby, ground water-dependent systems. However, many water systems, are not within a distance that is normal for the area to transport water. Under the EPA Sole Source Aquifer Guidance, for a potential source to be considered as viable, it must be "near" in terms of what is normal for the area. Also, in many cases where the potential source is near, the infrastructure necessary to transfer to that source must be constructed, which would send annual costs to users over the economic thresholds of the guidance.

The potential alternative water sources considered in the petition could not replace the increment supplied by the BVAS-South if it should become widely contaminated. Therefore, from the standpoint of use, the BVAS-South, excluding the Mill Creek Basin Aquifer, meets the criteria of a sole or principal source aquifer.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, published State and Federal reports on the area, and various technical publications. The petition file is available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 111 W. Jackson, 10th Floor, Chicago, Illinois 60604.

V. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified of proposed commitments of funding by Federal agencies for projects which could contaminate the designated area of the Buried Valley Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to

plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the BVAS. Included in the review of any Federal financially assisted project will be coordination with State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary of Public Comments

The City of Oxford, Ohio, requested that a portion of Class II Aquifer within its boundaries be excluded because there are no wells in it that could be impacted by contamination. Because there is no hydrogeologic reason to exclude this portion, EPA will include it in the designated area. However, the absence of drinking water wells will be a factor to consider in future reviews when determining whether contamination from a project would create a hazard to public health.

During a public meeting on May 18, 1988, the question arose as to whether the Mill Creek Basin (MCB) Aquifer should be included in the designated area. When considered as a separate hydrologic system, the MCB aquifer supplies only about 20 percent of the drinking water, with the majority of the population on surface water from the Cincinnati System. The area is highly industrialized, and a substantial portion of the recharge area is already occluded by development. The Mill Creek itself is heavily channelized and, in many stretches, enclosed in a cement channel which prevents it from gaining flow in those stretches from ground water. Proponents for inclusion of the MCB Aquifer maintained that to exclude it from the designated area would disrupt the integrity of the BVAS Sole Source Aquifer and have adverse impacts on the water supply of those communities that do use the MCB Aquifer for their water supply.

In a written comment, the Greater Cincinnati Chamber of Commerce opposed designation of the entire proposed area on the strength of the amount of surface water used by Cincinnati. However, the entire surface-water dependent area need not be included in the Aquifer Service Area, and the Chamber submitted no data to support its claim. The data supplied in the petition is based on U.S. Census figures and field work, and in the

absence of data to support the Chamber's position, EPA is accepting the demographic and water use data of the petition.

Cincinnati Gas and Electric Company requested that a portion of the proposed designated area that includes the Ohio River Aquifer in southwest Butler County be excluded from the final designation. Analysis of geologic data suggests that the area in question is separate and upgradient from the Great Miami aquifer and, therefore, will not be part of the final designated area.

VII. Economic and Regulatory Impact

Under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the designated area of the Buried Valley Aquifer System-South. The only affected entities will be those area-based businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required under other Federal laws, such as the National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect

of \$100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only provides for an in-depth review of ground water protection measures, incorporating State and local measures whenever possible, for only these projects which request Federal financial assistance.

Dated: June 17, 1988.

Valdes V. Adamkus,
Regional Administrator.

[FR Doc. 88-15344 Filed 7-7-88; 8:45 am]

BILLING CODE 5600-50-01

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Boedker, Rebecca L., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/state	File No.	MM docket No.
A. Rebecca L. Boedker, Northumberland, PA.	BPH-870827ML	88-304
B. William Philip Zurich, Northumberland, PA.	BPH-870827MN	
C. Charles W. Loughery, Northumberland, PA.	BPH-870827NI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue-Heading, and Applicants

1. Air Hazard, B
2. Comparative, A-C
3. Ultimate, A-C

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to

this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone No. (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 88-15299 Filed 7-7-88; 8:45 am]

BILLING CODE 4712-01-01

Applications for Consolidated Hearing; Gamble, Larry W., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/state	File No.	MM docket No.
A. Larry W. Gamble, Madera, CA.	BPH-870825MA	88-302
B. Miguel V. Gutierrez d/b/a Madera FM Radio, Madera, CA.	BPH-870827NL	
C. Madera FM Limited Partnership, Madera, CA.	BPH-870827NM	
D. Cynthia K. Syington, Madera, CA.	BPH-870827NS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A,B,C,D
2. Ultimate, A,B,C,D

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the

Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 88-15300 Filed 7-7-88; 8:45 am]

BILLING CODE 4712-01-01

Applications for Consolidated Hearing; Hill, Ernestine et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/state	File No.	MM docket No.
A. Ernestine Hill, Coeburn, VA.	BPH-870827NE	88-300
B. Preston Lawrence Salyer, Coeburn, VA.	BPH-870827NH	
C. Better Broadcasting, Inc., Coeburn, VA.	BPH-870827NO	
D. MidSouth Communications Corp., Coeburn, VA.	BPH-870827NX	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services,

Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-15298 Filed 7-7-88; 8:45 am]

BILLING CODE 4712-01-M

Applications for Consolidated Hearing; Marchant, Shirley, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/state	File No.	MM docket No.
A. Shirley Marchant, Omega, GA.	BPH-870429MD	88-305
B. James Hardy and Douglas M. Sutton, Jr., d/b/a Radio South Georgia, Omega, GA.	BPH-870430ML	
C. Omega FM Limited Partnership, Omega, GA.	BPH-870430MN	

2. Pursuant to section 309(e) of the Communication Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Air Hazard, C
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-15301 Filed 7-7-88; 8:45 am]

BILLING CODE 4712-01-M

Applications for Consolidated Hearing; Miller, Scott P., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/state	File No.	MM docket No.
A. P. Scott Miller, Marvin H. Halberstein and Donald E. Rice, Newberry, FL.	BPH-861215ME	88-303
B. Newberry Broadcasting Corporation, Newberry, FL.	BPH-861217MF	
C. Roberts Rose Johnson, d/b/a Bama Broadcasting Company, Newberry, FL.	BPH-861217MH	
D. Ridden Partnership, Newberry, FL.	BPH-861217MS	
E. Robert J. Adamson, Newberry, FL.	BPH-861217MW	
F. Newberry Broadcast Partnership, Newberry, FL.	BPH-861217ND	
G. Clarence T. Barinowski, Newberry, FL.	BPH-861217NG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Air Hazard, E, G
2. Comparative, A, B, C, D, E, F, G
3. Ultimate, A, B, C, D, E, F, G

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services,

Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-15297 Filed 7-7-88; 8:45 am]

BILLING CODE 4712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011063-005

Title: U.S./Jamaica Discussion

Agreement

Parties: Crowley Caribbean Transport, Inc., Kirk Lines Ltd., Sea-Land Service, Inc., Zim-American Israeli Shipping Co., Inc., Calypso Container Lines

Synopsis: The proposed amendment would add the Shipping Corporation of Trinidad and Tobago, Ltd. as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 5, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-15365 Filed 7-7-88; 8:45 am]

BILLING CODE 4730-01-M

Cancellation of Inactive Tariffs

By notice served May 16, 1988 and published in the *Federal Register* on May 20, 1988, the Federal Maritime Commission notified 290 carriers of its intent to cancel their individual tariffs 30 days thereafter, in the absence of a showing of good cause why such tariffs should not be cancelled.

The notice was served on the 290 carriers by certified mail on May 16,

1988; and 32 carriers replied to the Notice requesting that their tariffs remain active. Accordingly, the tariffs of the 32 carriers listed in Attachment A that responded to the notice will be retained in the Commission's active files.

It is misleading to the public, potentially unfair to competing carriers, and an unreasonable administrative burden on the Commission's staff for inactive tariffs to remain on file. Accordingly, the tariffs of the 258 carriers listed in Attachment B to this notice that failed to respond to the May 16, 1988 notice will be cancelled. It should be noted that certain information items on the attached lists may not apply to a particular carrier and are, therefore, designated not applicable (NA).

Now, therefore it is ordered, that the tariffs of the 258 carriers listed on Attachment B be cancelled.

It is further ordered, that a copy of this Order be sent by certified mail to the last known address of the carriers listed in the attachments to this Order.

It is further ordered, That this notice be published in the *Federal Register*.

This Order is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Attachment A.—Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariffs, and Service Contract Operations

Carriers That Responded to the Notice of Intent To Cancel Inactive Tariffs

Acronym: AEI Ocean Services Corporation

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 120 Tokeneke Road, P.O. Box 1231

City: Darien

State: CT 06820

Country: United States of America

License No.: NA.

Name Number: 007686

Acronym: American International Forwarding, Inc.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 5177 Campbell Run Road

City: Pittsburgh

State: PA 15205

Country: United States of America

License No.: NA.

Name Number: 000227

Acronym: American Seaway Carriers, Inc.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 899 Market Street, P.O. Box 127

City: Paterson

State: NJ 07513

Country: United States of America

License No.: NA.

Name Number: 005856

Acronym: AVI International, Inc.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: Seven Dey Street, Suite 711

City: New York

State: NY 10007

Country: United States of America

License No.: NA.

Name Number: 000321

Acronym: Bilgrey Cargo, Inc.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 158-10 Rockaway Boulevard

City: Jamaica

State: NY 11434

Country: United States of America

License No.: NA.

Name Number: 006166

Acronym: C D Consolidators

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 4519 Wawona Street

City: Los Angeles

State: CA 90065

Country: United States of America

License No.: NA.

Name Number: 006324

Acronym: Capella Marine Service, S.A.

DBA: NA.

Person Type: Ocean common carrier (vessel operating)

Street: 37-74 Oficina 105, Via Espana, Edificio Rafael

City: Panama City

State:

Country: Republic of Panama

License No.: NA.

Name Number: 006234

Acronym: Cargo Point International Inc.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 45 John Street, Suite 902

City: New York

State: NY 10038

Country: United States of America

License No.: NA.

Name Number: 005995

Acronym: Caribbean American Freight, Inc.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 1561 N.W. 82nd Avenue

City: Miami

State: FL 33126

Country: United States of America

License No.: NA.

Name Number: 007099

Acronym: Caribtran, Inc.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 6800 N.W. 37th Court

City: Miami

State: FL 33147

Country: United States of America

License No.: NA.

Name Number: 005751

Acronym: Concord Express (Shipping) Ltd.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: Flat E1, 3/F, Hoi Bun Industrial Bldg., 6 Wing Yip Street

City: Kwun Tong, Kowloon

State:

Country: Hong Kong

License No.: NA.

Name Number: 000054

Acronym: Cosmo Sea Freight (USA) Inc.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 147-35 163rd Street, Suite 201

City: Jamaica

State: NY 11413

Country: United States of America

License No.: NA.

Name Number: 002239

Acronym: Eur-A-Med Shipping, Ltd.

DBA: NA.

Person Type: Non-vessel-operating common carrier

Street: 2700 Azalea Drive

City: Charleston Heights

State: SC 29045

Country: United States of America

License No.: NA.

Name Number: 001247

Acronym: First Maritime Company, Inc.

DBA: NA.

Person Type: Ocean common carrier (vessel operating)

Street: 7505 Waters Avenue, Suite C-8

City: Savannah

State: GA 31416

Country: United States of America

License No.: NA.

Name Number: 005731

Acronym: Gulf Carib Lines Ltd.

DBA: NA.

Person Type: Ocean common carrier (vessel operating)

Street: P.O. Box 1500

City: Tampa

State: FL 33601

Country: United States of America
License No.: NA.
Name Number: 007710

Acronym: **Hercules Packing, Shipping & Moving Co., Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 23-96 48th Street
City: Astoria

State: NY 11103
Country: United States of America
License No.: NA.

Name Number: 002222

Acronym: **I.M.S., Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 4416 Wheeler Avenue
City: Alexandria

State: VA 22304
Country: United States of America
License No.: NA.

Name Number: 001316

Acronym: **Kreitz Motor Express, Inc.**
DBA: **KMX International**

Person Type: Non-vessel-operating common carrier
Street: 798 Fritztown Road, P.O. Box 2152

City: Sinking Spring
State: PA 19008

Country: United States of America
License No.: NA.

Name Number: 005777

Acronym: **L.K. Overseas Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 555 E. Ocean Blvd. #818
City: Long Beach

State: CA 90802
Country: United States of America
License No.: NA.

Name Number: 005911

Acronym: **Leman of America**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 2920 Wolff Street
City: Racine

State: WI 53404
Country: United States of America
License No.: NA.

Name Number: 007731

Acronym: **Medas Int'l Moving & Shipping Corporation**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 803 Sterling Place
City: Brooklyn

State: NY
Country: United States of America
License No.: NA.

Name Number: 007733

Acronym: **Milam Cargo, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 1364 NW 78th Avenue
City: Miami

State: FL 33126
Country: United States of America
License No.: NA.

Name Number: 005959

Acronym: **Oceangate Container Line**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 11222 La Cinecea Blvd., Suite 470
City: Inglewood

State: CA 90304
Country: United States of America
License No.: NA.

Name Number: 002780

Acronym: **Reefer Express Lines, Ltd.**
DBA: **Great Circle Lines, Ltd.**

Person Type: Ocean common carrier (vessel operating)
Street: 5 Becker Farm Road
City: Roseland

State: NJ 07068
Country: United States of America
License No.: NA.

Name Number: 000884

Acronym: **RJ International Freight Services**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 803 A Linden Avenue
City: San Francisco

State: CA 94080
Country: United States of America
License No.: NA.

Name Number: 006871

Acronym: **Skyway Systems**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 1334 Brommer Street, P.O. Box 1610
City: Santa Cruz

State: CA 95061
Country: United States of America
License No.: NA.

Name Number: 005993

Acronym: **Transamerican Ocean Contractors, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 22 Gate House Road
City: Stamford

State: CT 06902
Country: United States of America
License No.: NA.

Name Number: 006712

Acronym: **Transamerican Steamship Corporation**
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: 22 Gate House Road
City: Stamford

State: CT 06902
Country: United States of America
License No.: NA.

Name Number: 000570

Acronym: **Valley Freight Systems, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 925 Market Street
City: Patterson

State: NJ 07513
Country: United States of America
License No.: NA.

Name Number: 006701

Acronym: **Webster Container Line**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 5420 W. 104th Street
City: Los Angeles

State: CA 90054
Country: United States of America
License No.: NA.

Name Number: 007771

Acronym: **World Cargo Services (WCS)**
DBA: NA.

Person Type: Non-operating common carrier
Street: P.O. Box 68668
City: Seattle

State: WA 98168
Country: United States of America
License No.: NA.

Name Number: 002217

Acronym: **World Express Lines, Inc.**
DBA: NA.

Person Type: Ocean freight forwarder (independent) non-vessel-operating common carrier
Street: 1755 West Walnut Pkwy.
City: Compton

State: CA 90220
Country: United States of America
License No.: 2670

Name Number: 005538

Attachment B.—Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariffs, and Service Contract Operations

Carriers That Failed To Respond to the Notice of Intent To Cancel Inactive Tariffs

Acronym: **Adriatic Container Line**
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: Via L. Einuadi
City: 1-34121 Trieste

State: Italy
Country: Italy

License No.: NA.
Name Number: 000168

Acronym: **Africa Ocean Line (NIG) Ltd.**
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: 346 Herbert Macaulay-Jaba-
City: Lagos

State: Nigeria
Country: Nigeria
License No.: NA.

Name Number: 002845

Acronym: **African Liner Service, Inc.**
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: 39 Broadway
City: New York

State: NY 10004
Country: United States of America
License No.: NA.

Name Number: 007683

Acronym: **Agencija Rudenjak Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 32-08A Broadway
City: Astoria

State: NY 11106
Country: United States of America
License No.: NA.

Name Number: 000175

Acronym: **Agro Marine, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 555 Northeast 15th St. Suite
City: Miami

State: FL 33132
Country: United States of America
License No.: NA.

Name Number: 006618

Acronym: **Agro Steamship Line, Inc.**
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: 3301 Northwest Southriver Drive
City: Miami

State: FL 33132
Country: United States of America
License No.: NA.

Name Number: 006619

Acronym: **AHS International, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 603 Kendall Court
City: Schaumburg

State: IL 60194
Country: United States of America
License No.: NA.

Name Number: 007687

Acronym: **Air Ocean Express, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 65 Springfield Ave.
City: Springfield

State: NY 07081

Street: 9808 Bryn Mawr Ave.
City: Rosemont
State: IL 60018

Country: United States of America
License No.: NA.

Name Number: 006301

Acronym: **Airline Booking Center Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 2311 Lee Avenue—Unit 8
City: South El Monte

State: CA 91733
Country: United States of America
License No.: NA.

Name Number: 007689

Acronym: **Altamirano Shipping, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 239 Elm Street
City: Newark

State: NJ 07105
Country: United States of America
License No.: NA.

Name Number: 000214

Acronym: **Amerasia, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 611 Tonnelle Avenue
City: Jersey City

State: NJ 07307
Country: United States of America
License No.: NA.

Name Number: 006190

Acronym: **America/Middle East Line, The**
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: 17 Battery Place, Suite 1930
City: New York

State: NY 10004
Country: United States of America
License No.: NA.

Name Number: 007679

Acronym: **American Navigation Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: One World Trade Center, Suite 2101
City: New York

State: NY 10048
Country: United States of America
License No.: NA.

Name Number: 007685

Acronym: **American Ocean Freight Carriers Corp.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 65 Springfield Ave.
City: Springfield

State: NY 07081

Country: United States of America
License No.: NA.

Name Number: 007684

Acronym: **American Shipping Lines, Inc.**
DBA: NA.

Person Type: Ocean common carrier (vessel operating) Non-vessel-operating common carrier
Street: 6000 NW. 84th Avenue
City: Miami

State: FL 33166
Country: United States of America
License No.: NA.

Name Number: 007719

Acronym: **American Trader Line**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 7529 Chatham Road
City: Medina

State: OH 44256
Country: United States of America
License No.: NA.

Name Number: 005860

Acronym: **American Transport, Inc.**
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: 307 51st Place
City: Kenosha

State: WI 53140
Country: United States of America
License No.: NA.

Name Number: 007588

Acronym: **American Union Transport**
DBA: NA.

Person Type: Ocean freight forwarder (independent) Non-vessel-operating common carrier
Street: 15 East 26th Street
City: New York

State: NY 10010
Country: United States of America
License No.: 448

Name Number: 004235

Acronym: **Aquarius Intermodal, Inc.**
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: 1932 Lebanon Street
City: Hyattsville

State: MD 20783
Country: United States of America
License No.: NA.

Name Number: 000265

Acronym: **Aramar C.I.F.S.A.**
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: Viamonte 494
City: Buenos Aires

State: Argentina
Country: Argentina
License No.: NA.

Name Number: 006197

Acronym: Armada Central American Lines Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 80 Broad Street
City: Monrovia, Liberia
State:
Country: Liberia
License No.: NA.
Name Number: 005882

Acronym: Arrow Ocean Lines Ltd.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 4896 Pearce St.
City: Huntington Beach
State: CA 92649
Country: United States of America
License No.: NA.
Name Number: 000273

Acronym: Ascot International, U.S.A.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2201 W. Lant Avenue
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.: NA.
Name Number: 006198

Acronym: Astram
DBA: Astratiner
Person Type: Non-vessel-operating common carrier
Street: Noorderlaan, 139
City: 2030 Antwerp
State:
Country: Belgium
License No.: NA.
Name Number: 001766

Acronym: Atlantic Express Lines
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O Terra Marine Logistic 1602 ITM Bldg No. 2 Canal Street
City: New Orleans
State: LA 70130
Country: United States of America
License No.: NA.
Name Number: 007660

Acronym: Azalea Shipping and Chartering, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Brookley Industrial Complex, Bldg. 219
City: Mobile
State: AL 36615
Country: United States of America
License No.: NA.
Name Number: 006346

Acronym: Bahama Adventure Shipping, Ltd.

DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box N-3587
City: Nassau, NP
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000333

Acronym: Balikbayan Cargo Consolidators
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1201 Sixth St.
City: San Francisco
State: CA 94107
Country: United States of America
License No.: NA.
Name Number: 007881

Acronym: Benovi Line S.A.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 3611 N.W. South River Drive
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 007667

Acronym: Bermuda Atlantic Line, Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 1198
City: Hamilton 5
State:
Country: Bermuda
License No.: NA.
Name Number: 000363

Acronym: Bermuda Atlantic Lines, Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 750 N.E. 7th Avenue
City: Dania
State: FL 33004
Country: United States of America
License No.: NA.
Name Number: 007672

Acronym: Bimini Businessmen's Association
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Box 629
City: Alice Town, Bimini Islands
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000376

Acronym: Bimini Conveyors, Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 801

City: Bimini
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000377

Acronym: Boat Shippers, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2505 W. Coast Hwy, Suite 102
City: New Port Beach
State: CA 92663
Country: United States of America
License No.: NA.
Name Number: 007728

Acronym: Box Caribbean Lines, S.A.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007682

Acronym: Brasil-America Container Line
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box N-4465
City: Nassau Bahamas
State:
Country: Bahama Islands
License No.: NA.
Name Number: 006200

Acronym: Broadland Freight Services Co., Ltd.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Unit 1515 World Finance Center, South Tower, Harbor City
City: Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 006201

Acronym: BSK Speditionsgesellschaft
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: OST West Strabe 74
City: 2000 Hamburg 11
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 007665

Acronym: Budget International Transport
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 530 East 8th Street
City: Los Angeles

State: CA 90014
Country: United States of America
License No.: NA.
Name Number: 000394

Acronym: BWI Transworld, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3200 4th Avenue South
City: Seattle
State: WA 98134
Country: United States of America
License No.: NA.
Name Number: 007673

Acronym: C.C. Group Line
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 10920 La Cienega Boulevard
City: Lennox
State: CA 90304
Country: United States of America
License No.: NA.
Name Number: 007683

Acronym: C.M.T. Lines Sa
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 3701 N.W. South River Drive
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 007600

Acronym: C.O.D. Express, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3860 Wilshire Blvd., Suite 326
City: Los Angeles
State: CA 90010
Country: United States of America
License No.: NA.
Name Number: 006335

Acronym: C.P. Container Corp.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 277 Broadway, Suite 1005
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 007061

Acronym: Cargo Line & Services, Inc.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 5360 S.W. 3rd Street
City: Miami
State: FL 33136
Country: United States of America
License No.: NA.
Name Number: 002800

Acronym: Cargo Transport Corporation
DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: C/O Ray Carlisle P.O. Box 55848
City: Houston
State: TX 77255
Country: United States of America
License No.: NA.
Name Number: 007697

Acronym: Cari-Cargo International, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 8341 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 000718

Acronym: Caribbean Atlantic Line
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 90 Broad Street
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 005980

Acronym: Caribbean Bulk Lines, Inc.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 899 South Bayshore Drive Tower 1, Suite 1405
City: Miami
State: FL 33131
Country: United States of America
License No.: NA.
Name Number: 002396

Acronym: Caribbean Container Lines, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: % North Star Airlines, Cargo Bldg 283
City: Jamaica
State: NY 11430
Country: United States of America
License No.: NA.
Name Number: 000706

Acronym: Caribbean Freight Service, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 14068
City: Charlotte
State: NC 28206
Country: United States of America
License No.: NA.
Name Number: 000708

Acronym: Caribbean Freight Systems, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier

Street: 2160 N.W. 66 Avenue
City: Miami
State: FL 33152
Country: United States of America
License No.: NA.
Name Number: 007694

Acronym: Carimar Shipping Line
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 8323 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 007700

Acronym: Caribbean Shipping Services, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 5119 Church Avenue
City: Brooklyn
State: NY 11203
Country: United States of America
License No.: NA.
Name Number: 007698

Acronym: Celadon Shipping, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 888 Seventh Avenue
City: New York
State: NY 10106
Country: United States of America
License No.: NA.
Name Number: 002795

Acronym: Celtic Bulk Carriers
DBA: NA.
Person Type: Foreign Joint Service—Consortium Agreement
Street: Merrion Hall, Strand Road
City: Dublin 4
State:
Country: Ireland
License No.: NA.
Name Number: 000730

Acronym: Central America Transports Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O Sel Madura (Florida) Inc. 1040 Port Boulevard
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 007028

Acronym: Central American Container Line
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 60469 AMF

City: Houston
State: TX 77205
Country: United States of America
License No.: NA.
Name Number: 007675
Acronym: China National Chartering Corporation
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Er Li Gou Xi Jou
City: Beijing
State:
Country: People's Republic of China
License No.: NA.
Name Number: 006019
Acronym: Cht Ltd
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 880 Bergen Avenue
City: New Jersey
State: NJ 07306
Country: United States of America
License No.: NA.
Name Number: 007695
Acronym: Clipper Shipping Inc.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box N-7788
City: Nassau
State:
Country: Bahama Islands
License No.: NA.
Name Number: 007696
Acronym: CMA-USA
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007747
Acronym: Coastal & Overseas Shipping, Inc.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 11911 N.E. 1st Street
City: Bellevue
State: WA 98005
Country: United States of America
License No.: NA.
Name Number: 007662
Acronym: Colombian Maritime Transport, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: C/O Mille Hiller, P.O. Box 623
City: Linden
State: NJ 07036
Country: United States of America

License No.: NA.
Name Number: 007690
Acronym: Colse Line
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Place Du Champ De Mars, 5 Boite 36
City: B-1050 Brussels
State:
Country: Belgium
License No.: NA.
Name Number: 006028
Acronym: Com-Tainer Shipping Line, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 19 Rector Street—Suite 1905
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007668
Acronym: Combitrans (U.S.A.) Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: One World Trade Center—Suite 5347
City: New York
State: NY 10048
Country: United States of America
License No.: NA.
Name Number: 006206
Acronym: Concorde Caribe Lines, Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2150 N.W. 70th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.: NA.
Name Number: 000797
Acronym: Concorde/Nopal Line
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2150 NW 70th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.: NA.
Name Number: 007720
Acronym: Confreight Marine Line Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2700 Coyle Avenue
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.: NA.
Name Number: 007663
Acronym: Container Marine Transport Inc.

DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 50 Oak Street
City: East Rutherford
State: NJ 07073
Country: United States of America
License No.: NA.
Name Number: 000814
Acronym: Container Overseas Agency, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 340 South Stiles Street
City: Linden
State: NJ 07036
Country: United States of America
License No.: NA.
Name Number: 007692
Acronym: Contralink, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 61 Broadway—Suite 500
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007691
Acronym: Contship Co., Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 450998
City: Miami
State: FL 33145
Country: United States of America
License No.: NA.
Name Number: 006228
Acronym: Conveyor Freight Co., Ltd.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: C/O John Y. Lau, 8635 Aviation Boulevard
City: Inglewood
State: CA 90301
Country: United States of America
License No.: NA.
Name Number: 007670
Acronym: Convopal, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1301 N.W. 78th Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 007669
Acronym: Cox Shipping Line, Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)

Street: South Caicos Island
City: Turks & Caicos Island, B.W.I.
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000837
Acronym: Crown Overseas Forwarders
DBA: NA.
Person Type: Non-vessel-operating common carrier, household goods carrier
Street: 2070 Burroughs Avenue
City: San Leandro
State: CA 94577
Country: United States of America
License No.: NA.
Name Number: 007415
Acronym: Cruise Cargo Company
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1376 York Avenue, Suite 4C
City: New York
State: NY 10021
Country: United States of America
License No.: NA.
Name Number: 007725
Acronym: CSL Container Lines Ltd.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1102 Join-In Commercial Center, 33 Lai Chi Kok Road, Monkong, Kowloon
City:
State:
Country: Hong Kong
License No.: NA.
Name Number: 005987
Acronym: Cube Shipping & Warehousing Co. Ltd.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Cunard Building, Water Street
City: Liverpool, L13 1 De Merseyside (England)
State:
Country: Great Britain
License No.: NA.
Name Number: 005974
Acronym: D'Amico Mediterranean Pacific Line
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Corso D'Italia, 35/B
City: Rome
State:
Country: Italy
License No.: NA.
Name Number: 000908
Acronym: D'Leo International Services Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier

Street: 3111 W. Montrose
City: Chicago
State: IL 60618
Country: United States of America
License No.: NA.
Name Number: 006078
Acronym: Damco Internationale Spedition GMBH
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 101340
City: Hamburg 1
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 005802
Acronym: Damco-Baltimore, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 32 South Street
City: Baltimore
State: Md 21202
Country: United States of America
License No.: NA.
Name Number: 007728
Acronym: Dansk Steamship Lines
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1 World Trade Center
City: Port of Sacramento, West Sacramento
State: CA 95691
Country: United States of America
License No.: NA.
Name Number: 000912
Acronym: Davothom Corporation S.A.
DBA: Caribrazil Line
Person Type: Ocean common carrier (vessel operating)
Street: Edificio Tapia Ave. Justo Arusemena Y Calle 31 No. 3-80
City: Panama 5
State:
Country: Republic of Panama
License No.: NA.
Name Number: 006229
Acronym: Delta Steamship Lines, Inc.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Glenpointe Center East
City: Teaneck
State: NJ 07666
Country: United States of America
License No.: NA.
Name Number: 007742
Acronym: Demline Egypt
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 77, Sultan Hussein Street
City: Alexandria

State:
Country: Egypt
License No.: NA.
Name Number: 005831
Acronym: Deutsche Karibik Linie Thien & Heyenga Schiff.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 6, Raboisen
City: 2000 Hamburg 1
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 005741
Acronym: Diamond M. International Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Calle 151 CM No. 37
City: Carolina
State:
Country: United States of America
License No.: NA.
Name Number: 000933
Acronym: Dist. Naviera del Caribe C.A.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 301 Broadway, Suite 138
City: Riviera Beach
State: FL 33404
Country: United States of America
License No.: NA.
Name Number: 007749
Acronym: Domcon Express, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 8849
City: Ponce, Puerto Rico
State:
Country: United States of America
License No.: NA.
Name Number: 006692
Acronym: Dominicana Shipping Company
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1257 St. Nicholas Avenue
City: New York
State: NY 10032
Country: United States of America
License No.: NA.
Name Number: 000950
Acronym: Dynacross Liner Services, Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O Gebr. Van Weelde Scheepvaarkantoor, P.O. Box 1575
City: 3000 BN Rotterdam
State:

Country: The Netherlands, Holland
License No.: NA.
Name Number: 007144
Acronym: EAC Lines
DBA: NA.
Person Type: Ocean common carrier
(vessel operating)
Street: 22 Gate House Road
City: Stamford
State: CT 06902
Country: United States of America
License No.: NA.
Name Number: 007718
Acronym: Eastern Forwarding
International, Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: P.O. Box 161
City: Avenel
State: NJ 07001
Country: United States of America
License No.: NA.
Name Number: 007748
Acronym: ECH Cargo Services
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 645 E. 219th Street, Unit 6
City: Carson
State: CA 90745
Country: United States of America
License No.: NA.
Name Number: 008758
Acronym: Elite Shipping Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 2525 North Loop West
City: Houston
State: TX 77008
Country: United States of America
License No.: NA.
Name Number: 007676
Acronym: Enterprise Shipping
Corporation
DBA: Euro Pac Lines
Person Type: Non-vessel-operating
common carrier
Street: 49 Geary Street
City: San Francisco
State: CA 94102
Country: United States of America
License No.: NA.
Name Number: 006755
Acronym: Euramer Consolidators Corp.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: Piso 7, Ofic. No. 7A
City: Caracas
State:
Country: Venezuela.
License No.: NA.
Name Number: 001248
Acronym: Euro Scan Atlantic Line

DBA: E.S.A.L.
Person Type: Ocean common carrier
(vessel operating)
Street: Box 1533, S-401
City: 50 Goteborg
State:
Country: Sweden
License No.: NA.
Name Number: 006108
Acronym: Euromar
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: Calle Cathedral Nr. 1009, Room
1602
City: Santiago
State:
Country: Chile
License No.: NA.
Name Number: 006591
Acronym: Export-Import Service Co.,
Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 28265 Beverly Road
City: Romulus
State: MI 48174
Country: United States of America
License No.: NA.
Name Number: 004417
Acronym: Faith International Cargo
Services
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 4848 1/2 N. Damen
City: Chicago
State: IL 60625
Country: United States of America
License No.: NA.
Name Number: 006579
Acronym: FAK Container Lines, Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 2-24 Sellers Street
City: Kearny
State: NJ 07032
Country: United States of America
License No.: NA.
Name Number: 007711
Acronym: Far East Express International
Ltd.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 53 Park Place
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 002850
Acronym: Far East Services, Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier

Street: 4214 Beverly Blvd., Suite 206
City: Los Angeles
State: CA 90004
Country: United States of America
License No.: NA.
Name Number: 006687
Acronym: Flotamar Container Line, LTD.
DBA: NA.
Person Type: Ocean common carrier
(vessel operating)
Street: P.O. Box 190
City: Grand Cayman, Cayman Islands
B.W.I.
State:
Country: Bahama Islands
License No.: NA.
Name Number: 006987
Acronym: Four Star Cargo, Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 7640 N.W. 63rd Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 005840
Acronym: Freight Expeditors, Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 6565 Eastland Rd.
City: Cleveland
State: OH 44142
Country: United States of America
License No.: NA.
Name Number: 000435
Acronym: Freight-Base Ocean
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: P.O. Box 66479
City: Chicago
State: IL
Country: United States of America
License No.: NA.
Name Number: 006245
Acronym: G.S.S. Shipping Co., Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 206-16 Hollis Avenue
City: Hollis Queen
State: NY 11428
Country: United States of America
License No.: NA.
Name Number: 006750
Acronym: G.A.A.C. Express Cargo
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 7646 De Moss Street
City: Houston
State: TX 77036
Country: United States of America

License No.: NA.
Name Number: 006258
Acronym: Ganda Overseas Lines
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: P.O. Box 2295
City: Los Angeles
State: CA 90051
Country: United States of America
License No.: NA.
Name Number: 005858
Acronym: Global Cargo and Travel
Services, Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 14539 Blythe Street, Unit B-1
City: Van Nuys
State: CA 91402
Country: United States of America
License No.: NA.
Name Number: 006608
Acronym: Global Marine, S.A.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: Avenida Prolongacion, Mexico 85
City: Santo Domingo
State:
Country: Dominican Republic
License No.: NA.
Name Number: 006175
Acronym: Global Operations Line
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 465 California Street
City: San Francisco
State: CA 94104
Country: United States of America
License No.: NA.
Name Number: 005866
Acronym: Gordon's Shipping Co., Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 137-09 Eastgate Plaza
City: Springfield Garden, Queens
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 000474
Acronym: Great Republic Maritime
Shipping Co., LTD., The
DBA: NA.
Person Type: Ocean common carrier
(vessel operating)
Street: C/O Robert C. McQuigg P.O. Box
11474
City: Washington
State: DC 20008
Country: United States of America
License No.: NA.
Name Number: 007761
Acronym: Gulfmarine, Inc.

DBA: NA.
Person Type: Ocean common carrier
(vessel operating)
Street: 2000 Post Oak Boulevard
City: Houston
State: TX 77956
Country: United States of America
License No.: NA.
Name Number: 006603
Acronym: Hakko Maritime Corporation
DBA: NA.
Person Type: Ocean common carrier
(vessel operating)
Street: 6-13 Nishi-Shinbashi 1-Chome
City: Minatoku, Tokyo
State:
Country: Japan
License No.: NA.
Name Number: 007743
Acronym: Holiday International Services
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 1757 Evangellista St. Bangkal
City: Makati, Metro Manila
State:
Country: Philippines
License No.: NA.
Name Number: 005809
Acronym: Hoshiko Line
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 128-A West Bay St.
City: Savannah
State: GA 31401
Country: United States of America
License No.: NA.
Name Number: 007449
Acronym: Hyonik Express Co., Ltd.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 51 Sogong-Dong Rm 1903 New
Kal Bldg
City: Chung-Ku, Seoul 100
State:
Country: Republic of Korea
License No.: NA.
Name Number: 005818
Acronym: Incan Superior Limited Tariff
DBA: NA.
Person Type: Ocean common carrier
(vessel operating)
Street: Suite 102, 105 South May Street
City: Thunder Bay, ON. (C) P7E 1B1
State:
Country: Canada
License No.: NA.
Name Number: 001328
Acronym: Indonesia Nusantara
Corporation
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 8411 La Cienega Blvd.

City: Inglewood
State: CA 90301
Country: United States of America
License No.: NA.
Name Number: 002782
Acronym: Intercontinental Transport
(ICT) B.V.
DBA: NA.
Person Type: Ocean common carrier
(vessel operating)
Street: Wilhelminkade 39, P.O. Box 545
City: 3000 AM Rotterdam
State:
Country: The Netherlands, Holland
License No.: NA.
Name Number: 002424
Acronym: Interlink Lines
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 90 West Street, Suite #1100
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007723
Acronym: Intermodal S.A.
DBA: NA.
Person Type: Agent—Filing Ocean
common carrier (vessel operating)
Street: 61 Broadway, Suite 2528
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 005931
Acronym: International Distribution
Systems (USA) Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 002657
Acronym: International Export Packers,
Inc.
DBA: NA.
Person Type: Non-vessel-operating
common carrier
Street: 4807 Eisenhower Avenue
City: Alexandria
State: VA 22304
Country: United States of America
License No.: NA.
Name Number: 007426
Acronym: International Shipping
Associates, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating
Common Carrier
Street: 90 Western Avenue
City: Allston

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State: MA 02134
Country: United States of America
License No.: NA.
Name Number: 001371

Acronym: International Shipping Company
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4201 Cathedral Avenue NW., #1202 W
City: Washington
State: DC 20018
Country: United States of America
License No.: NA.
Name Number: 005587

Acronym: Interocean Express Line, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 18383 Susana Road
City: Compton
State: CA 90221
Country: United States of America
License No.: NA.
Name Number: 007717

Acronym: Interocean Marine
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2250 Devon Avenue
City: Des Plaines
State: IL 60018
Country: United States of America
License No.: NA.
Name Number: 007772

Acronym: Interroll S.A.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 2021 Union Avenue
City: Montreal, Quebec H3A 2Y5
State:
Country: Canada
License No.: NA.
Name Number: 005805

Acronym: Intal Sea Transport Consolidators, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 691 85th Avenue
City: Oakland
State: CA 94621
Country: United States of America
License No.: NA.
Name Number: 007716

Acronym: Island Consolidation, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1025 17 St. W.
City: Riviera Beach
State: FL 33404
Country: United States of America
License No.: NA.

Name Number: 001381

Acronym: ITS Consolidators, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 100 Church Street, Suite 320
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 007737

Acronym: Jadranska Slobodna Plovidba
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street:
City: Split
State:
Country: Yugoslavia
License No.: NA.
Name Number: 001401

Acronym: JC Express
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 5300 W. Century Blvd., Suite 409
City: Los Angeles
State: CA 90045
Country: United States of America
License No.: NA.
Name Number: 007746

Acronym: Jetstream Freight Services, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 145 Hook Creek Blvd.
City: Valley Stream
State: NY 11581
Country: United States of America
License No.: NA.
Name Number: 005875

Acronym: Kamtel Express
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2228 Livingston Street
City: Oakland
State: CA 94606
Country: United States of America
License No.: NA.
Name Number: 007729

Acronym: Keen International Cargo, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: One World Trade Center—Suite 1101
City: New York
State: NY 10048
Country: United States of America
License No.: NA.
Name Number: 007722

Acronym: Kelao Shipping, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier

Street: Western Plaza, Suite 70, 10725 S.W. Barbur Blvd.
City: Portland
State: OR 97219
Country: United States of America
License No.: NA.
Name Number: 007730

Acronym: Kien Hung Shipping Co., Ltd.
S.A.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 3rd Floor, No. 127-1, Sung Chiang Road
City: Taipei
State:
Country: People's Republic of China
License No.: NA.
Name Number: 005811

Acronym: Kinford Group, Inc., The
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 253 Chesterfield Road
City: Oakdale
State: CT 06370
Country: United States of America
License No.: NA.
Name Number: 005747

Acronym: Koam Forwarding, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 38 W. 32nd Street—Room 1007
City: New York
State: NY 10001
Country: United States of America
License No.: NA.
Name Number: 007750

Acronym: Landmark Union Limited
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Via Enrico Fermi 28, San Giorgio Di Nogaro
City: Udine
State:
Country: Italy
License No.: NA.
Name Number: 001815

Acronym: Leaseway International Corp.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 61 Broad Avenue
City: Fairview
State: NJ 07022
Country: United States of America
License No.: NA.
Name Number: 001598

Acronym: Liberty Shipping Co., Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 796

City: Lakewood
State: CA 90714
Country: United States of America
License No.: NA.
Name Number: 006357

Acronym: Lignes Centrafricaines
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Krausstrasse 1-A
City: D-4100 Duisburg 13, West Germany
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 001602

Acronym: Load Line, Inc.
DBA: NA.
Person Type: Agent—Filing, Non-Vessel-Operating Common Carrier
Street: Route 4, Box 1
City: Beaumont
State: TX 77705
Country: United States of America
License No.: NA.
Name Number: 005812

Acronym: Loadstar Container Line
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 55 New Montgomery Street
City: San Francisco
State: CA 94105
Country: United States of America
License No.: NA.
Name Number: 007732

Acronym: M.L.S. Maritime Logistic Services SA
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: BD Perolles 1 P.O. Box 587
City: 1600 Fribourg
State:
Country: Switzerland
License No.: NA.
Name Number: 001632

Acronym: Mandarin Transport Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 182-16 149th road
City: Jamaica
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 005954

Acronym: Marine Bulk Carriers Inc.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 615 S.W. 2nd Avenue, Suite 207
City: Miami
State: FL 33130
Country: United States of America

License No.: NA.
Name Number: 001657

Acronym: Maritima Atlantica—Danoluz S.A.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Plaza Independencia 822, Oficina 602
City: Montevideo
State:
Country: Uruguay
License No.: NA.
Name Number: 006359

Acronym: Maritime Export Services, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 21795
City: Baltimore
State: MD 21222
Country: United States of America
License No.: NA.
Name Number: 005976

Acronym: Marx International.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 6150 S.W. 8th Street
City: Miami
State: FL 33128
Country: United States of America
License No.: NA.
Name Number: 007744

Acronym: Matina Lines
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Frankrijkplei 115
City: 2000 Antwerp
State:
Country: Belgium
License No.: NA.
Name Number: 007713

Acronym: Mayaca Container Line
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 3741 NW 25th Street
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 005957

Acronym: Medcon Ser. Schiffahrtsgesellschaft GM BH & Co.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Furbringerstrasse 22
City: 1000 Berlin 61
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 007714

Acronym: Merit Container Express, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 2712
City: Trenton
State: NJ 08607
Country: United States of America
License No.: NA.
Name Number: 001707

Acronym: Modular International Carriers, Inc.
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4761 N.W. 72nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 005900

Acronym: Naviera Riomar, S.A. DE C.V.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Paseo De La Reforma #199 17th Floor
City: Colonia Cuauhtemoc 06500
State:
Country: Mexico
License No.: NA.
Name Number: 007759

Acronym: Navitalica, Societa di Navigazione, S.R.L.
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Via Cearesa No. 3-10
City: Genoa
Country: Italy
License No.: NA.
Name Number: 006362

Acronym: Net Consol Service
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Room 810 Donga Mapo Bldg., 16-7 Dowhadong, Mapogu
City: Seoul, Korea
State:
Country: Republic of Korea
License No.: NA.
Name Number: 006676

Acronym: Ocean Cargo Services
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 5726 La Mirada Avenue
City: Los Angeles
State: CA 90038
Country: United States of America
License No.: NA.
Name Number: 006806

Acronym: Ocean/Air Freight Consolidators

DBA: NA.

Person Type: Non-vessel-operating common carrier
Street: P.O. Box 521180
City: Miami
State: FL 33152
Country: United States of America
License No.: NA.
Name Number: 006577

Acronym: OCS/USA, Inc.
DBA: Orient Consolidation Service
Person Type: Non-vessel-operating common carrier
Street: 74 Trinity Place, Suite 810
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 006696

Acronym: Omega Ocean Line, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1700 South Highland Avenue
City: Baltimore
State: MD 21224
Country: United States of America
License No.: NA.
Name Number: 007724

Acronym: Oniedan Line Corp.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1121 Lincoln Ave.
City: Holbrook
State: NY 11741
Country: United States of America
License No.: NA.
Name Number: 001297

Acronym: OPL Line
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 4th Floor, Takeshin Bldg., 11-10, Ginza 2-Chome
City: Chuo-Ku, Tokyo 104
State:
Country: Japan
License No.: NA.
Name Number: 007712

Acronym: Overocean Transport Corporation
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Outlook Street
City: Stamford
State: CT 06902
Country: United States of America
License No.: NA.
Name Number: 006207

Acronym: Pace Lines
DBA: P.A.C.E. Lines
Person Type: Non-vessel-operating common carrier
Street: 465 California St.

City: San Francisco
State: CA 94101
Country: United States of America
License No.: NA.
Name Number: 002450

Acronym: Pacific Cargo Line
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 7315 NW 79th Terrace
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 007735

Acronym: Pacific Caribbean Shipping (U.S.A.) Inc.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 231 East Millbrae Avenue, Suite 219
City: Millbrae
State: CA 94030
Country: United States of America
License No.: NA.
Name Number: 007751

Acronym: Pacific Marine Transport, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 100 California Street, Suite 1060
City: San Francisco
State: CA 94111
Country: United States of America
License No.: NA.
Name Number: 007745

Acronym: Pacific Star Express Corp.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Room 907, 346, Sec. 3, Nanking East Road
City: Taipei
State:
Country: Taiwan
License No.: NA.
Name Number: 006329

Acronym: Pacline Pacific Shipping Ltd.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Achilles House, 2nd Floor, CNR Customs and Commerce Streets
City: Auckland, New Zealand
State:
Country: New Zealand
License No.: NA.
Name Number: 006731

Acronym: Palm Beach International Shipping Corp.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 251-A Royal Palm Way 3rd Floor
City: Palm Beach

State: FL 33480
Country: United States of America
License No.: NA.
Name Number: 007734

Acronym: Pan Africa Shipping Corporation (USA)
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 4500 Bissonnet, Suite 340
City: Bellaire
State: TX 77401
Country: United States of America
License No.: NA.
Name Number: 007715

Acronym: Pan Caribbean Freightliners, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2780 SW Douglas Road
City: Miami
State: FL 33133
Country: United States of America
License No.: NA.
Name Number: 007700

Acronym: PanAmerCaribe, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 44-1404
City: Miami
State: FL 33144
Country: United States of America
License No.: NA.
Name Number: 007708

Acronym: PanAtlantic CCS, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 74 Broad Street
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007740

Acronym: R.E. Rogers, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place—Suite 1629
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 000678

Acronym: Rahming Shipping, Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Lowe Sound
City: Andros Bahamas
State:
Country: Bahama Islands
License No.: NA.

Name Number: 005619

Acronym: Republic Marine Lines Inc.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 1300 Market Street
City: Wilmington
State: DE 19801
Country: United States of America
License No.: NA.
Name Number: 007739

Acronym: Rical Ocean Forwarding Co., Ltd.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Flat 8, Newport Centre 21F, 116 MA Taukok Rd.
City: Tokwawan, Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 002648

Acronym: S.F. Enterprises
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 265 Cabrillo Avenue
City: Vallejo
State: CA 94591
Country: United States of America
License No.: NA.
Name Number: 007758

Acronym: Salen Dry Cargo AB
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Norrlandsgratan 15
City: S-106 09 Stockholm
State:
Country: Sweden
License No.: NA.
Name Number: 007741

Acronym: Sam Jung Shipping Los Angeles, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1070 East Dominguez St., Suite B
City: Carson
State: CA 90746
Country: United States of America
License No.: NA.
Name Number: 001050

Acronym: Sam Jung Shipping USA Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place Room 1443
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 001057

Acronym: Samba Caribe Line, S.A.
DBA: NA.

Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 6719
City: Panama 5
State:
Country: Republic of Panama
License No.: NA.
Name Number: 006025

Acronym: Scindia Container Line, S.A.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 20 Stone Street
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 005991

Acronym: Sea-Bridge Express, Inc.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: R.W. Murphy, P.O. Box 677
City: Westfield
State: NJ 07091
Country: United States of America
License No.: NA.
Name Number: 007721

Acronym: Sea Trade Shipping
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1401 N.W. 78th Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 000086

Acronym: Sea-Bridge International, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 600 Richmond Terrace
City: Staten Island
State: NY 10301
Country: United States of America
License No.: NA.
Name Number: 006729

Acronym: Seabreeze Steamship Ltd.
DBA: Family Island Line
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 105
City: Georgetown, Grand Cayman
State:
Country: Bahama Islands
License No.: NA.
Name Number: 002805

Acronym: Seacorp Shipping, Ltd.
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 1001 N. America Way, Room 102
City: Miami
State: FL 33132
Country: United States of America

License No.: NA.
Name Number: 007736

Acronym: Seagate Line, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: J.G. Kim, Issuing Officer, 215 Long Beach Blvd., Suite 406
City: Long Beach
State: CA 90802
Country: United States of America
License No.: NA.
Name Number: 007738

Acronym: Sealine Shipping Company
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Medawar Avenue Charles Helou
City: IMM Sehnaoul, Beirut
State:
Country: Lebanon
License No.: NA.
Name Number: 001112

Acronym: Seaoic Mecante Shipping Co.
DBA: NA.
Person Type: Non-Vessel-operating common carrier
Street: 1032 Winthrop Street
City: Brooklyn
State: NY 11211
Country: United States of America
License No.: NA.
Name Number: 006224

Acronym: Seko Ocean Forwarding, Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3839 North Willow
City: Shiller Park
State: IL 60176
Country: United States of America
License No.: NA.
Name Number: 002840

Acronym: Sesko International, Inc.
DBA: NA.
Person Type: Ocean freight forwarder (independent) non-vessel-operating common carrier
Street: 4715 N.W. 72nd Ave.
City: Miami
State: FL 33186
Country: United States of America
License No.: 1171
Name Number: 001132

Acronym: Sino-Piff International Freight Ltd.
DBA: NA.
Person Type: Non-Vessel-operating common carrier
Street: 267-275 Des Voeux Road, Rm. 1201 Loon Kee Bld.
City: Central
State:
Country: Hong Kong
License No.: NA.

Name Number: 006055

Acronym: Smith's Transfer Corporation
DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: P.O. Box 1000

City: Staunton

State: VA 24401

Country: United States of America

License No.: NA.

Name Number: 002784

Acronym: Societe General d'Armement
et de Navigation

DBA: NA.

Person Type: Ocean common carrier
(vessel operating)

Street: 18, Rue Washington

City: Paris

State: 75008

Country: France

License No.: NA.

Name Number: 007755

Acronym: Sontheil International Cargo
Services, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 4553 Santa Monica Blvd.

City: Los Angeles

State: CA 90029

Country: United States of America

License No.: NA.

Name Number: 006221

Acronym: Sonymont Shipping

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 1811 W. Katella, Suite 231

City: Anaheim

State: CA 92804

Country: United States of America

License No.: NA.

Name Number: 006368

Acronym: Square Deal Shippers

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 925 Utica Avenue

City: Brooklyn

State: NY 11203

Country: United States of America

License No.: NA.

Name Number: 007677

Acronym: Stalker Enterprises, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 10320 Little Patuxent Parkway,

Equitable Bank Center

City: Columbia

State: MD 21044

Country: United States of America

License No.: NA.

Name Number: 001177

Acronym: Steebo B.V.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: Rollostraat 55

City: 3084 PL Rotterdam

State:

Country: The Netherlands, Holland

License No.: NA.

Name Number: 001189

Acronym: Sunjin Shipping Company,
Ltd.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 217 Broadway, Suite 412

City: New York

State: NY 10007

Country: United States of America

License No.: NA.

Name Number: 001202

Acronym: Superior B and C, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 55 Dowd Avenue

City: Elizabeth

State: NJ 07201

Country: United States of America

License No.: NA.

Name Number: 006103

Acronym: Tagship Sales International,
Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: P.O. Box 350627

City: Fort Lauderdale

State: FL 33335

Country: United States of America

License No.: NA.

Name Number: 006371

Acronym: Tasman Jobsen New Zealand
Line

DBA: NA.

Person Type: Ocean common carrier
(vessel operating)

Street: 9th Fl., Air New Zealand House, 1

Queen Street, P.O. Box 3917

City: Auckland, New Zealand

State:

Country: New Zealand

License No.: NA.

Name Number: 007058

Acronym: TCI Carriers Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 14 West Main Street

City: Oyster Bay

State: NY 11771

Country: United States of America

License No.: NA.

Name Number: 000510

Acronym: Tem Fresh Express

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 429 Moon Clinton Rd.

City: Corapolis

Street: 655 Montgomery Street

City: San Francisco

State: CA 94111

Country: United States of America

License No.: NA.

Name Number: 005797

Acronym: Texas Antilles Shipping Corp.,
Inc.

DBA: NA.

Person Type: Ocean common carrier
(vessel operating)

Street: P.O. Box 1584

City: La Porte

State: TX 77571

Country: United States of America

License No.: NA.

Name Number: 007754

Acronym: Thermotank, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 2001 San Sebastian

City: Houston

State: TX 77059

Country: United States of America

License No.: NA.

Name Number: 006372

Acronym: Todd Logistics, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 30 Pulaski Street

City: Bayonne

State: NJ 07002

Country: United States of America

License No.: NA.

Name Number: 007753

Acronym: Todman Express Lines, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 14802 N. Dale Mabry, Suite 333

City: Tampa

State: FL 33624

Country: United States of America

License No.: NA.

Name Number: 006714

Acronym: Topman Express Lines, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: Atlantic Shipping Agencies Ltd.,

14802 N. Dale Mabry, Suite 333

City: Tampa

State: FL 33624

Country: United States of America

License No.: NA.

Name Number: 007760

Acronym: Total Transportation
Corporation

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 429 Moon Clinton Rd.

City: Corapolis

State: PA 15108

Country: United States of America

License No.: NA.

Name Number: 005488

Acronym: Trans-Med Lines

DBA: NA.

Person Type: Ocean common carrier
(vessel operating)

Street: C/O OSTE, 1146 Hemoor

City: Beirut

State:

Country: Lebanon

License No.: NA.

Name Number: 007757

Acronym: Trans-Modal, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 1121 North Tower Lane

City: Bensenville

State: IL 60108

Country: United States of America

License No.: NA.

Name Number: 007782

Acronym: Trans-Oceanica Paraguaya
S.R.L.

DBA: NA.

Person Type: Ocean common carrier
(vessel operating)

Street: Calle Tte V. Kanonnikoff 998

City: Asuncion, Paraguay

State:

Country: Paraguay

License No.: NA.

Name Number: 005785

Acronym: Trans-Orient Express, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 149-10, 183 Street

City: Jamaica

State: NY 11413

Country: United States of America

License No.: NA.

Name Number: 000506

Acronym: Transglobal Lines Ltd.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 8 Caledonia Place

City: St. Helier, Jersey

State: NJ

Country: United States of America

License No.: NA.

Name Number: 006171

Acronym: Transhansa Projects, Inc.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 21 West Street—Suite 2306

City: New York

State: NY 10006

Country: United States of America

License No.: NA.

Name Number: 007756

Acronym: Translog, S.A.

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 15 Ave Des Alpes

City: CH-1211 Geneva 1

State:

Country: Switzerland

License No.: NA.

Name Number: 000585

Acronym: Transmar

DBA: Transmar

Person Type: Ocean common carrier
(vessel operating)

Street: Suite 200, 3750 N.W. 28th Street

City: Miami

State: FL 33142

Country: United States of America

License No.: NA.

Name Number: 006819

Acronym: Transportacion Maritima Y
Fluvial, S.A. De Cv

DBA: Mayan Line

Person Type: Ocean common carrier
(vessel operating)

Street: Moras 850, Col. Del Valle

City: C.P. 03100, Mexico, D.F.

State:

Country: Mexico

License No.: NA.

Name Number: 006607

Acronym: Transrose Marine Corporation

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 39 Broadway Room 1801

City: New York

State: NY 10006

Country: United States of America

License No.: NA.

Name Number: 007752

Acronym: Tri-State International

DBA: NA.

Person Type: Non-vessel-operating
common carrier

Street: 3910 E. Coronado Street, #202

City: Anaheim

State: CA 92807

Country: United States of America

License No.: NA.

Name Number: 006237</

City: Los Angeles
State: CA 90010
Country: United States of America
License No.: NA.
Name Number: 006674

Acronym: Ventana Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 36-50 31st Street
City: Long Island City
State: NY 11106
Country: United States of America
License No.: NA.
Name Number: 000011

Acronym: Victory International Transport
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Building No. 62, Office No. 8
City: Port Everglades Station, Ft. Lauderdale
State: FL 33316
Country: United States of America
License No.: NA.
Name Number: 000014

Acronym: VNV Filserv
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 15825 Greenworth Drive
City: La Mirada
State: CA 90638
Country: United States of America
License No.: NA.
Name Number: 006374

Acronym: Weltrans International Corp.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 6F, No. 73, Fu Hsin N. Rd.
City: Taipei, Taiwan
State: Taiwan
Country: Taiwan
License No.: NA.
Name Number: 008293

Acronym: West Gulf Services
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 41173
City: Houston
State: TX 77241
Country: United States of America
License No.: NA.
Name Number: 002842

Acronym: Westchase Transportation Group, Inc.
DBA: Westchase Transportation Group, Inc.
Person Type: Non-vessel-operating common carrier
Street: 9800 Richmond, Suite 366
City: Houston
State: TX 77042

Country: United States of America
License No.: NA.
Name Number: 001763

Acronym: World Trade Shipping Corporation
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 86
City: Oyster Bay
State: NY 11771
Country: United States of America
License No.: NA.
Name Number: 000121

Acronym: World Transportation Services, Inc., Agent
DBA: NA.
Person Type: Agent—Rules Tariff
Street: 1331 H Street, N.W.
City: Washington
State: DC 20005
Country: United States of America
License No.: NA.
Name Number: 001803

Acronym: Worldline Shipping Co. (USA), Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: C/O Barry Brenno, 10777 Northwest Freeway
City: Houston
State: TX 77092
Country: United States of America
License No.: NA.
Name Number: 007678

Acronym: Worldwide Shipping Co. (USA), Inc.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 10777 Northwest Freeway, Suite 500, P.O. Box 53180
City: Houston
State: TX 77052
Country: United States of America
License No.: NA.
Name Number: 006097

Acronym: Wyllie's Worldwide Shipping Corp.
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 431 Rutland Road
City: Brooklyn
State: NY 11203
Country: United States of America
License No.: NA.
Name Number: 000132

Acronym: YSH International
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 5440 Pomona Blvd.
City: Los Angeles
State: CA 90022

Country: United States of America
License No.: NA.
Name Number: 006331

[FR Doc. 88-15367 Filed 7-7-88; 8:45 am]
BILLING CODE 5730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meetings: Vital and Health Statistics National Committee

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Medical Classification Systems established pursuant to 42 USC 242k, section 308(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working session).

NAME: National Committee on Vital and Health Statistics Subcommittee on Medical Classification Systems.

TIME AND DATE: 9:00 am—5:00 pm—July 25, 1988, 9:00 am—3:00 pm—July 26, 1988.

PLACE: Hubert H. Humphrey Building, Room 337A, 200 Independence Avenue, SW., Washington, DC 20201.

STATUS: Open.

PURPOSE: The purpose of this meeting (working session) is for the Subcommittee to develop various possible options for future implementation of morbidity guidelines and/or a clinical modification of ICD-10. Formal public testimony will not be taken at this meeting.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Richard J. Havlik, M.D., Staff, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: July 1, 1988.

Elvin Hilyer,
Associate Director for Policy Coordination,
Centers for Disease Control.
[FR Doc. 88-15358 Filed 7-7-88; 8:45 am]
BILLING CODE 4160-10-M

Food and Drug Administration

[Docket No. 88N-0250]

Drug Export; Ornade-A.F.[®] Spansule[®] Capsules

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Smith Kline & French Laboratories has filed an application requesting approval for the export of the human drug Ornade-A.F.[®] Spansule[®] Capsules to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Smith Kline & French Laboratories, a Smithkline Beckman Co., 1500 Spring Garden ST., P.O. Box 7929, Philadelphia, PA 19101, has filed an application requesting approval for the export of the drug Ornade-A.F.[®] Spansule[®] Capsules, to Canada. This product is indicated for use in the relief of allergy symptoms. The application was received and filed in the Center for Drug Evaluation and

Research on June 21, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 8, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Evaluation and Research (21 CFR 5.44).

Dated: June 22, 1988.

Sammy R. Young,
Deputy Director, Office of Compliance,
Center for Drug Evaluation and Research.
[FR Doc. 88-15334 Filed 7-7-88; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Partition agreement between the Cherokee Nation of Oklahoma, and the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma

June 20, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction of Notice.

DATE: Effective December 1, 1987.

SUMMARY: In 52 FR 45695, published on Tuesday, December 1, 1987, the following correction is hereby made: Appearing on page 45695, column 2, the legal description on line 30 is corrected by deleting "NW 1/4" and inserting in lieu thereof "NE 1/4."

Ross O. Swimmer,
Assistant Secretary—Indian Affairs.
[FR Doc. 88-15401 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-22-M

Bureau of Land Management

[(AK-863-4213-15) AA-50369]

Publication; Alaska Native Claims Selection; Bethel Native Corp.

In accordance with Departmental regulation 43 CFR 2850.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Bethel Native Corporation for approximately 12.91 acres. The lands involved are in the vicinity of Bethel, Alaska:

A parcel of land located within portions of Section 11 and 14, T. 6 N., R. 72 W., Seward Meridian.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 Street, Box 13, Anchorage, Alaska 99513, ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 8, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ann Johnson,
Chief, Branch of Calista Adjudication.
[FR Doc. 88-15307 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-JA-M

Availability of Draft Environmental Impact Statement; Minto Flats Watershed, AK

AGENCY: Bureau of Land Management.
ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM), prepared a Draft Environmental Impact Statement (DEIS) covering placer mining within portions

of the Minto Flats watershed, which drains into the Tanana River.

The Minto Flats watershed is defined as those lands which are drained by the Tolovana River, Chatanika River, and Goldstream Creek. The three drainages are located in the Yukon-Tanana Hills Uplands, which is in East-Central Alaska, bounded by the Yukon and Tanana Rivers. The study area lies within the Circle, Livengood, and Fairbanks quadrangles. At issue are the cumulative impacts of multiple placer mining operations on the environment; in particular, subsistence, water quality, and visual resources.

A Proposed Action and two alternatives incorporating management options ranging from emphasis on regulations under 43 CFR 3809 to a "no action" alternative are presented. The Proposed Action evaluates BLM's conditions of approval of plans of operations for placer mining in the affected watershed. Environmental consequences of the Proposed Action and two alternatives are analyzed and presented.

DATES: The DEIS will be available for review and comments from July 11, 1988 to August 29, 1988. Comments received after August 29 may be too late to be integrated into the Final EIS (FEIS). Public meetings, with ANILCA 610 subsistence hearings immediately following, will be held at the locations below beginning at 7:00 p.m., July 26, 1988, at the Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska; July 27, 1988, at the BLM Anchorage District Office, 6981 Abbott Loop Road, Anchorage, Alaska; August 9, 1988, at the Department of Transportation building, Livengood, Alaska; and August 10, 1988, at Lakeview Lodge, Minto, Alaska. The public meetings in Anchorage and Fairbanks will also provide the opportunity for making comments on the previously released Fortymile River DEIS.

ADDRESSES: Comments on the DEIS should be sent to Richard F. Dworsky, 3809 EIS Project Manager, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Richard Dworsky—Project Manager, or Page Spenser—Technical Coordinator, at (907) 271-3114.

Michael J. Penfold,
State Director.
[FR Doc. 88-14907 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-JA-2

Availability of the Record of Decision for the Lower Gila South Resource Management Plan, Arizona

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of the Record of Decision for the Lower Gila South Resource Management Plan (RMP).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Record of Decision (ROD) for the Lower Gila South (RMP). This Record of Decision documents the approval of the RMP that will guide the Lower Gila South planning area for the next 15 to 20 years. The approved RMP addresses the management of approximately 2,000,000 acres of public lands in southwestern Arizona. The planning area includes portions of La Paz, Maricopa, Pima, Pinal and Yuma Counties, Arizona. **SUPPLEMENTARY INFORMATION:** Copies of the Record of Decision are available from BLM's Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. William T. Childress, Lower Gila Area Manager, may be contacted at (602) 863-4464 for further information. Reading copies may be reviewed at the Phoenix District and BLM's Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona 85011, (602) 241-5504.

Date: June 30, 1988.
Henri R. Blomson,
District Manager.
[FR Doc. 88-15346 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-22-2

[NM-060-08-4220-90]

Roswell District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATE: Thursday, August 11, 1988, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Public Affairs

Specialist, Bureau of Land Management, P. O. Box 1397, Roswell, NM 88201, (505) 622-9042.

SUPPLEMENTARY INFORMATION: The agenda will be limited to discussion of the FY 89 Range Improvement Projects. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by August 4, 1988. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

David L. Mari,
Associate District Manager.
[FR Doc. 88-15402 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-FB-2

[UT-050-08-4410-08]

Richfield District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: The Richfield District Advisory Council will hold a meeting on August 9, 1988 at 9:00 a.m., in the BLM District Office, 150 East 900 North, Richfield, Utah. The agenda for the meeting will be:

1. Review of the National Advisory Council Resolutions.
2. Update on the Deep Creek Exchange.
3. Progress update on Tabernacle Hill.
4. The Wilderness Program.
5. Update on the proposed amendment to the R&PP Act.
6. The ORV Program.
7. Fremont River Project.
8. Clear Spot Rehabilitation.
9. Update on Henry Mountain Coordinated Resource Management Proposal.

The meeting is open to the public and interested persons may make oral statements to the Council between 2:00 p.m. and 3:00 p.m. or file written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 Richfield, Utah 84701.

Date: June 28, 1988.
Larry R. Oldroyd,
District Manager, Richfield District Office.
[FR Doc. 88-15316 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-00-2

[AZ-920-08-4212-24; A-22984]

Donation of Private Lands

June 29, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of donation of private lands in Cochise County, AZ.

SUMMARY: On June 16, 1988, the United States accepted title to 6.06 acres of land pursuant to section 205 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1715). The land designated Lehner Mammoth Kill Site, National Historic Landmark, is located in the NW 1/4 NE 1/4, section 21, T. 23 S., R. 22 E., Gila and Salt River Meridian, Arizona.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: The land acquired by the Federal government is internationally recognized as one of the most important archaeological sites in the New World. It will be managed in a manner consistent with its scientific and educational values.

John T. Mezes,
Chief, Branch of Lands and Minerals
Operations.
[FR Doc. 88-15308 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-22-2

[ID-943-08-4212-13; I-21501]

Issuance of Land Exchange Conveyance Document, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Blaine and Connie Larsen of Hamer, Idaho 83425, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

- T. 8 N., R. 36 E.
Sec. 2, lot 4, SW 1/4 NW 1/4, W 1/2 SW 1/4;
Sec. 3, lot 1, SE 1/4 NE 1/4, E 1/2 SE 1/4;
Sec. 11, NW 1/4 NW 1/4;
Sec. 12, W 1/2 SE 1/4.
T. 9 N., R. 36 E.
Sec. 22, SE 1/4 NW 1/4, NE 1/4 SW 1/4;
Sec. 26, SE 1/4 NW 1/4;
Sec. 27, W 1/2;

- Sec. 28, E 1/2 SE 1/4 NE 1/4, E 1/2 E 1/2 SE 1/4;
Sec. 34, N 1/2 NW 1/4, SE 1/4 SE 1/4;
Sec. 35, SW 1/4 SW 1/4.
T. 9 N., R. 34 E.
Sec. 4, lot 4;
Sec. 5, lots 1, 2, 3, and 4.
T. 9 N., R. 37 E.
Sec. 19, lots 3 and 4;
Sec. 30, lot 1.

Comprising 1,410.37 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

- T. 8 N., R. 35 E.
Sec. 22, E 1/2 NE 1/4, NW 1/4 NE 1/4, N 1/2 NW 1/4;
Sec. 23, S 1/2 NW 1/4, NE 1/4 SW 1/4.
T. 9 N., R. 35 E.
Sec. 1, lots 1, 2, and 3, S 1/2 NE 1/4, SE 1/4 NW 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4;
Sec. 34, S 1/2.
T. 9 N., R. 36 E.
Sec. 6, lots 1 and 2, S 1/2 NE 1/4.
T. 13 N., R. 39 E.
Sec. 15, NE 1/4 SE 1/4;
Sec. 16, W 1/2 NW 1/4 NE 1/4, NW 1/4, SE 1/4 SW 1/4;
Sec. 21, E 1/2 NW 1/4;
Sec. 22, W 1/2 SW 1/4, SE 1/4 SW 1/4, SW 1/4 SE 1/4.
Comprising 1,620.16 acres of private land.

The purpose of the exchange was to acquire non-federal land that has high public value for wildlife. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were appraised at \$211,500 and \$218,500 respectively. The exchange proponents, Blaine and Connie Larsen, waived the \$7,000 difference in values.

Dated: June 30, 1988.
John Davis,
Acting Deputy State Director for Operations.
[FR Doc. 88-15312 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-00-2

[ID-943-08-4212-13; I-22245]

Issuance of Land Exchange Conveyance Document, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to James E. and Lucile H. Campbell, 2019 E. 2950 S., Wendell, Idaho 83355, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

- T. 7 S., R. 16 E.
Sec. 19, lot 2, SE 1/4 NW 1/4, SW 1/4 NE 1/4;
Sec. 20, E 1/2;

Sec. 29, W 1/2 NE 1/4, NW 1/4 SE 1/4.
Comprising 545.01 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

- T. 1 N., R. 16 E.
Sec. 5, SW 1/4 NE 1/4, W 1/2 NW 1/4, SE 1/4 NW 1/4, N 1/2 SW 1/4, NW 1/4 SE 1/4;
Sec. 6, NE 1/4, NE 1/4 NW 1/4, NE 1/4 SE 1/4.
T. 2 N., R. 16 E.
Sec. 34, lots 1 and 2, NE 1/4 NE 1/4, S 1/2 NE 1/4, N 1/2 SE 1/4;
Sec. 35, lots 3 and 4, NW 1/4, N 1/2 SW 1/4.
Comprising 1,130.35 acres of private land.

The purpose of the exchange was to acquire rough and mountainous private lands containing critical wildlife habitat and to improve the manageability of the public lands for both livestock and wildlife habitat. The public lands exchanged adjoin other private lands in a valley bottom setting where irrigated agricultural crop production is the primary land use. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were appraised at \$40,900 and \$39,600, respectively. An equalization payment of \$1,300 was paid to the United States by James Campbell.

Dated: July 1, 1988.
John Davis,
Acting Deputy State Director for Operations.
[FR Doc. 88-15314 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-00-2

[NV-930-08-4212-11; N-34192]

Realty Action; Lease of Public Land for Recreation and Public Purposes; Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action classifying public land.

SUMMARY: The following described 10 acres of public land has been examined and identified as suitable to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 809, et seq.):

Mount Diablo Meridian, Nevada

- T. 12 N., R. 20 E.,
Sec. 13, NE 1/4 NW 1/4 NW 1/4.

The Nevada Department of Transportation has requested this 10 acres as an addition to the Gardnerville Maintenance Site. The land will be fenced and used for equipment storage, a mixing table and stockpiles.

The land is not required for Federal projects. Classification is consistent with Bureau planning for this area and will be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservation to the United States:

1. All mineral deposits in the said land, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this Notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws and location under the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws and material sales. The segregative effect of this notice will terminate as specified in an opening order to be published in the Federal Register.

For a period up to and including August 22, 1988, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89708-0838.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective September 8, 1988.

Dated this 29th day of June 1988.

Norman L. Murray,
Acting District Manager, Carson City District.
[FR Doc. 88-15404 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-NC-M

[OR-843-08-4229-11; GP-08-178; OR-26447]

Conveyance of Public Land; Order Providing for Opening of Land in Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 30 acres of public land out of Federal ownership. This action will also open 160 acres of reconveyed land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-8905.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 30 acres of land in Klamath County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Williamette Meridian

T. 40 S., R. 10 E.,
Sec. 12, E½SW¼;
Sec. 13, E½NW¼.

The area described contains 160 acres in Klamath County.

3. At 8:30 a.m., on August 12, 1988, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on August 12, 1988, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on August 12, 1988, the land described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on August 12, 1988, the land described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Catherine Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 28, 1988.

[FR Doc. 88-15313 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-32-M

(NV-930-08-4410-08)

Resource Management Plans for Nellis Air Force Range, NV

June 30, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a resource plan for the Nellis Air Force Range in accordance with Pub. L. (Pub. L.) 99-606 (Military Lands Withdrawal Act of November 6, 1986); and an invitation for the public to participate in the identification of issues, review of planning criteria, and formulation of alternatives for the plan.

SUMMARY: This notice describes the action to be analyzed for the Nellis Air Force Range Resource Plan, the geographic area affected, the anticipated issues and preliminary planning criteria and alternatives, the disciplines to be used to prepare the plan, the kind and extent of public participation activities and the Bureau of Land Management (BLM) office to contact for further information.

DATES: Public comment and participation are integral parts of the planning process. Written comments on the preliminary issues, planning criteria, and alternatives should be sent to the Area Manager, Bureau of Land Management, Caliente Resource Area, P.O. Box 237, Caliente, Nevada 89008 no later than August 12, 1988. Three informal public workshops are scheduled for Tuesday, July 26, 1988 at 7 p.m. at the Lincoln County Annex, 100 South 1 West, Alamo, Nevada; Wednesday, July 27, 1988 at 7 p.m. at the Tonopah Convention Center, 301 Brougier, Tonopah, Nevada; and Thursday, July 28, 1988 at 7 p.m. at the BLM Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Area Manager, Caliente Resource Area, Bureau of Land Management, P.O. Box 237, Caliente, Nevada 89008, (702) 726-3141.

SUPPLEMENTAL INFORMATION:

1. Description of the Proposed Planning Action

As a result of the Military Lands Withdrawal Act 1986, the Bureau of Land Management (BLM) will prepare a resource plan for the Nellis Air Force Range. This Act states that the Secretary of the Interior, in consultation with the Secretary of the Air Force, will develop a resource plan for the area withdrawn.

This plan shall—(1) be consistent with applicable law; (2) be subject to

conditions and restrictions as may be necessary to permit the military use of such lands for the purpose specified in the withdrawal; (3) include such provisions as may be necessary for proper management and protection of the resources and values of such areas; and (4) be developed not later than three years after the date of enactment of this Act (November 6, 1986).

2. The Geographic Area Covered by the Resource Plan

The Nellis Air Force Range includes lands comprising approximately 2,945,000 acres of land in Clark, Nye, and Lincoln Counties, Nevada. A copy of the legal description and map depicting the involved lands are on file for public inspection in the following offices:

Director (322), Bureau of Land Management, Room 3643, Interior Bldg., 18th and C Streets, NW., Washington, DC 20240.

State Director, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

District Manager, Bureau of Land Management, Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126.

Director, U.S. Fish and Wildlife Service, Room 3256, Interior Bldg., 18th and C Street, NW., Washington, DC 20240.

Director, U.S. Fish & Wildlife Service, Lloyd 500 Bldg., Suite 1602, 500 NE Multnomah Street, Portland, Oregon 97232.

Commander, Nellis Air Force Base, 5547th Range Group/DOX, Nellis Air Force Base, Nevada 89191.

Office of the Secretary, Department of Defense, The Pentagon, Washington, DC 20301-1000.

Area Manager, Bureau of Land Management, Caliente Resource Area, P.O. Box 237 Caliente, Nevada 89008.

3. General Types of Issues Anticipated

The public is invited to participate in the identification of issues related to the Nellis Air Force Range Resource Plan as required by Pub. L. 99-606. The following planning issues are anticipated:

A. Wild Horse and Burro Management

Determine if the current objectives of the wild horse and burro activity plan are adequate.

A consultation and coordination process was undertaken in 1984-85 to prepare a Herd Management Area Plan (HMAP) for the Nellis Range Complex/Nevada Wild Horse Range. An appropriate management level of 2,000 animals was identified.

The resource plan will reference and update, if necessary, existing management direction for the wild horses on the Nellis Range.

B. Vegetation

Determine what vegetative condition is desirable and what management actions are needed to obtain and maintain that condition. Determine what special management actions are needed to protect Threatened or Endangered (T&E) plant species.

C. Wildlife

Determine wildlife habitat objectives for existing wildlife species and what areas require habitat management plans. Determine what special management actions are needed to protect T&E animal species.

D. Cultural Resource

Determine what special management actions are needed for the protection of archeological and historical sites.

4. Preliminary Planning Criteria

The public is invited to participate in the development of planning criteria to guide the data collection, analysis and decision making during planning.

Preliminary planning criteria for the Nellis Range Resource Plan call for the following:

A. Recognize that the lands on the Nellis Range are reserved for use by the Secretary of the Air Force: (1) As an armament and high-hazard testing area; (2) for training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and (3) subject to other defense-related purposes consistent with the purposes specified in the Act.

B. The Nellis Range Resource Plan will not address access per se, but will address the extent to which access restrictions and limitations have a bearing on the resource management issues identified for analysis in this resource plan.

C. A Memorandum of Understanding between the Secretary of the Interior and Secretary of the Air Force shall be prepared to implement the resource plan. Any such memorandum of understanding shall provide that the Director of the Bureau of Land Management will provide assistance in the suppression of fires resulting from the military use of lands withdrawn if requested by the Secretary of the military department concerned.

D. Lands within the Desert National Wildlife Range will be managed in accordance with the National Wildlife Refuge System Administration Act of 1966, and other applicable laws and will

not be changed or modified by this resource plan.

E. Relegate site-specific resource management direction to the existing activity plan (e.g. Nellis Range Complex/Nevada Wild Horse Range Wild Horse Herd Management Area Plan and Environmental Assessment).

F. Apply the principles set forth in the Military Lands Withdrawal Act of November 6, 1986 (Pub. L. 99-606).

G. Use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, social, and environmental aspects of public land management.

H. Rely on available inventories of the lands withdrawn by Pub. L. 99-606 (identified as the Nellis Air Force Range), their resources, and other values to reach sound management decisions.

I. Give consideration to present and potential uses of the lands withdrawn by Pub. L. 99-606, as defined in the Act.

J. Consider impacts of uses on adjacent or nearby non-Federal lands and on non-public land surface over federally-owned minerals.

K. Weigh long-term benefits and detriments against short-term benefits and detriments.

L. Comply fully with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans, consistent with the stated purpose of the Nellis Range withdrawal.

M. Coordinate BLM resource inventory, planning and management activities with the resource planning and management programs of other Federal departments and agencies, State and local governments, and Indian tribes to the extent consistent with the laws governing the administration of the lands withdrawn by Pub. L. 99-606, as defined in the Act.

5. Preliminary Plan Alternatives

The public is invited to participate in the formulation of alternatives to be analyzed in the plan and associated environmental impact statement. The No Action Alternative and a Resource Management Alternative (Alternative A), at a minimum, will be analyzed.

6. Disciplines Represented on the Planning Team

An interdisciplinary team representing the following disciplines will be assigned to this planning effort: planning coordination, wildlife, wild horses and burros, cultural resources, hydrology, and fire management. All documentation will be reviewed by an interdisciplinary team.

7. Public Participation

Public comment is currently solicited in regards to the anticipated issues, preliminary planning criteria and alternatives. Three informal public workshops to address these three items are scheduled for July 28-29, 1988 (see above for locations and times).

Persons interested in participating in the planning process should submit their name and address for inclusion on the Nellis Range Resource Plan mailing list to Bureau of Land Management, Caliente Resource Area, P.O. Box 237, Caliente, Nevada 89008.

An additional opportunity for public comment will be offered after publication of the Draft Resource Plan and Environmental Impact Statement.

8. Location of Planning Documents

Planning documents and other pertinent materials may be examined at the Caliente Resource Area Office located in Caliente, Nevada between 7:30 a.m. and 4:15 p.m. Monday through Friday.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 88-15310 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-MC-M

[AK-080-08-4333-02]

Special Rules and Regulations for the Steese National Conservation Area et al.

These special rules and regulations apply to all lands and water surfaces within the Steese National Conservation Area (Steese NCA), the Pinnell Mountain National Recreation Trail, the Bedrock Creek Campground, and the Ketchum Creek Campground, as shown on the Steese National Conservation Area Off-Road Vehicle Designations Map, and are subject to valid existing rights.

This order is issued pursuant to 43 CFR Subpart 8364.1 and implements provisions of the Steese NCA Resource Management Plan signed on February 2, 1986. This order will remain in effect until rescinded or modified by the District Manager, Steese/White Mountains District.

1. Motorized Equipment

a. The operation of off-road vehicles (ORVs) is restricted in some areas. See the Steese National Conservation Area Off-Road Vehicle Designations Map for information on designated ORV use areas.

b. The use of motorized equipment for

mineral collection for personal use is prohibited. Mineral collection for personal recreation, using a gold pan, shovel, portable sluice box (maximum size is 16" x 5'), rocker box, or other non-motorized means is allowed, without written authorization, in areas where there are no existing mining claims or private lands. The use of motorized equipment permitted under 43 CFR Subpart 3809 may require written authorization from the District Manager, Steese/White Mountains District.

c. The use of hovercraft or airboats is prohibited.

2. Occupancy and Use

a. Camping at one site or campground within the area covered by this order for a period longer than ten (10) days (consecutive days, in the case of a campground) in any one calendar year is prohibited without written authorization from the District Manager, Steese/White Mountains District.

b. The discharging of firearms within one-quarter (1/4) mile of campgrounds and public recreation cabins, as well as across or along roads and trails, is prohibited.

c. Leaving burning or smoldering campfires unattended is prohibited.

d. Subject to valid existing rights, construction of permanent or semi-permanent structures, including cabins, caches, water dams, or diversions without written authorization from the District Manager, Steese/White Mountains District is prohibited.

The foregoing provisions are not applicable to any federal, state, or local law enforcement officer or any member of any organized rescue or fire suppression force in the performance of an official duty.

Maps identifying designated areas are available at the office listed below. Any person convicted of violating this order is subject to the penalties prescribed in 43 CFR Subpart 8340.0-7 and/or 43 CFR 8360.0-7.

Direct questions and responses to: Steese/White Mountains District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, (907) 356-5367.

Date: June 27, 1988.

Donald E. Runberg,

District Manager, Steese/White Mountains District.

[FR Doc. 88-15408 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-JA-M

[AK-080-08-4333-02]

Special Rules and Regulations for the White Mountains National Recreation Area et al.

These special rules and regulations apply to all lands and water surfaces within the White Mountains National Recreation Area (WMNRA), that portion of BLM-managed lands between the WMNRA and the Steese and Elliott Highways, and the Cripple Creek Campground, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designation Map, and are subject to valid existing rights.

The order is issued pursuant to 43 CFR Subpart 8364.1 and implements provisions of the White Mountains NRA Resource Management Plan signed on February 2, 1986. This order will remain in effect until rescinded or modified by the District Manager, Steese/White Mountains District.

1. Motorized Equipment

a. The operation of off-road vehicles (ORVs) is restricted in some areas. See the White Mountains National Recreation Area Off-Road Vehicle Designations Map for information on designated ORV use areas.

b. The use of motorized equipment for mineral collection for personal use is prohibited. Mineral collection for personal recreation, using a gold pan, shovel, portable sluice box (maximum size is 16" x 5'), rocker box, or other non-motorized means is allowed, without written authorization, in areas where there are no existing mining claims or private lands. The use of motorized equipment permitted under 43 CFR Subpart 3809 may require written authorization from the District Manager, Steese/White Mountains District.

c. The use of hovercraft or airboats is prohibited.

2. Occupancy and Use

a. Camping at one site or campground within the area covered by this order for a period longer than ten (10) days (consecutive days, in the case of a campground) in any one calendar year without written authorization from the District Manager, Steese/White Mountains District is prohibited.

b. Under the authorities of 36 CFR 71 and 43 CFR 8372.1, a daily use fee of \$15.00 per party is collected in advance for overnight occupancy of public use recreation cabins located in, and associated with, the White Mountains National Recreation Area. Holders of Golden Age or Golden Access Passports pay at a rate of 50 percent of the daily use fee.

Users must register prior to occupying a public recreation cabin. Reservations may be made up to 30 days in advance, but must be paid for at the time they are made, or within 48 hours if reserving by phone. The original signed permit must accompany the user(s) during their stay at the cabin(s). Maximum stay is three consecutive nights per cabin.

The following cabins located within or near the White Mountains National Recreation Area are specialized sites requiring special recreation use permits and fees:

Colorado Creek Cabin
Windy Gap Cabin
Borealis-LeFevre Cabin
Moose Creek Cabin
Cripple Creek Cabin

c. The discharging of firearms within one-quarter (1/4) mile of campgrounds and public recreation cabins, as well as across or along roads and trails, is prohibited.

d. Leaving burning or smoldering campfires unattended is prohibited.

e. Subject to valid existing rights, construction of permanent or semi-permanent structures, including cabins, caches, water dams, or diversions without written authorization from the District Manager, Steese/White Mountains District is prohibited.

The foregoing provisions are not applicable to any federal, state, or local law enforcement officer or any member of any organized rescue or fire suppression force in the performance of an official duty.

Maps identifying designated areas are available at the office listed below. Any person convicted of violating this order is subject to the penalties prescribed in 43 CFR Subpart 8340.0-7 and/or 43 CFR 8360.0-7.

Direct questions and responses to: Steese/White Mountains District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, (907) 356-5367.

Date: June 27, 1988.

Donald E. Runberg,

District Manager, Steese/White Mountains District.

[FR Doc. 88-15407 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-JA-M

July 1, 1988

[AZ-942-08-4530-12]

Arizona: Filing of Plats of Survey

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:
A supplemental plat showing amended lottings created by the

cancellation of the survey of the unpatented Good Luck No. 1, Good Luck No. 2 and Protection XIII lodes, M.S. 3768 and the segregation of H.E.S. 62 and H.E.S. 76 in section 5, Township 12 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted May 24, 1988, and was officially filed May 31, 1988.

A supplemental plat showing amended lottings created by the segregation of H.E.S. 62, H.E.S. 76, H.E.S. 340, the Trinity lode, M.S. 1597, the Grand Central lode, M.S. 1789, and the Protection XII lode, M.S. in 3768, in section 6, Township 12 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted May 24, 1988, and was officially filed May 31, 1988.

A supplemental plat showing amended lottings created by the cancellation of the survey of the unpatented Grape Vine, West Side 1 and Good Luck No. 2 lodes, M.S. 3768, in sections 7 and 8, Township 12 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted May 24, 1988, and was officially filed May 31, 1988.

These plats were prepared at the request of the U.S. Forest Service, Prescott National Forest.

A plat representing a dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and metes-and-bounds surveys in section 24, Township 2 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted June 15, 1988, and was officially filed June 17, 1988.

This plat was prepared at the request of the Arizona State Land Department.

A plat representing a dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the survey of subdivisions and metes-and-bounds in section 13, Township 20 North, Range 6, East, Gila and Salt River Meridian, Arizona, was accepted June 29, 1988, and was officially filed June 30, 1988.

This plat was prepared at the request of the Federal Land Exchange, Inc.

A plat representing a dependent resurvey of the south, east, west, and north boundaries and the subdivisional lines, and the survey of the subdivision of certain sections in Township 28 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted June 17, 1988, and was officially filed June 20, 1988.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office, Window Rock, Arizona.

A plat (in 3 sheets) representing a dependent resurvey of a portion of the east boundary (Gila and Salt River

Meridian) and a portion of the subdivisional lines, and a survey of subdivisions in section 14, Township 5 North, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A plat (in 3 sheets) representing a dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines in Township 3 North, Range 5 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A plat (in 6 sheets) representing a dependent resurvey of a portion of the subdivisional lines, and metes-and-bounds surveys in certain sections in Township 3 North, Range 6 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A supplemental plat showing amended lotting created by the segregation of the Central Arizona Project Canal in section 6, Township 2 North, Range 7 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A plat (in 4 sheets) representing a dependent resurvey of portions of the south, east and west boundaries and a portion of subdivisional lines, and a metes-and-bounds survey in section 32, Township 3 North, Range 7 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A plat (in 4 sheets) representing a dependent resurvey of portions of the east and north boundaries and a portion of the subdivisional lines, and metes-and-bounds surveys in certain sections in Township 2 North, Range 8 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

These plats were prepared at the request of Bureau of Land Management, Phoenix District Office.

A supplemental plat showing a subdivision of original lots 2 and 3, section 5, Township 1 South, Range 23 West, Gila and Salt River Meridian, Arizona, as accepted April 5, 1988, and was officially filed April 8, 1988.

This plat was prepared at the request of Bureau of Land Management, Yuma District Office.

A plat representing a dependent resurvey of a portion of the east boundary of Township 22 South, Range 22 East, and a portion of the subdivisional lines, and a survey of the subdivisions in section 18 in Township 22 South, Range 23 East, Gila and Salt

River Meridian, Arizona, was accepted May 25, 1988, and was officially filed June 1, 1988.

This plat was prepared at the request of the Bureau of Land Management, Safford District Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open file and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 88-15349 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-08-4520-12]

Filing Plats of Survey; Idaho

AGENCY: Bureau of Land Management, Interior.

The plats of survey of the following lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho on the dates hereinafter stated:

Boise Meridian, Idaho

T. 17 N., R. 2 W., accepted March 15, 1988, officially filed June 3, 1988.

T. 14 N., R. 18 E., accepted March 23, 1988, officially filed April 13, 1988.

T. 9 S., R. 25 E., accepted April 4, 1988, officially filed April 26, 1988.

T. 20 N., R. 22 E., accepted April 29, 1988, officially filed May 19, 1988.

T. 13 S., R. 25 E., accepted April 21, 1988, officially filed June 13, 1988.

T. 45 N., R. 6 W., accepted May 9, 1988, officially filed June 22, 1988.

T. 15 N., R. 25 E., accepted May 12, 1988, officially filed June 29, 1988.

The above plats represent dependent resurveys and subdivisions.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: June 30, 1988.

Anita Mayers,

Acting Chief, Land Services Section.

[FR Doc. 88-15317 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-08-4520-12: GPS-178]

Filing of Plats of Survey; Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 31 S., R. 12 W., accepted May 20, 1988.

T. 30 S., R. 3 W., accepted June 10, 1988.

T. 39 S., R. 11½ E., accepted June 10, 1988.

T. 29 S., R. 10 W., accepted June 17, 1988.

T. 26 S., R. 10 W., accepted June 24, 1988.

T. 8 S., R. 11 E., accepted June 24, 1988.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 30, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-15318 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-08-4520-12: GPS-174]

Filing of Plats of Survey; Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, forty-five (45) calendar days from the date of this publication.

Willamette Meridian

Washington

T. 36 N., R. 19 E.

The plat of T. 36 N., R. 19 E., Willamette Meridian, Washington, represents a dependent resurvey of a portion of Homestead Entry Survey No. 95 and Homestead Entry Survey No. 226, designed to restore the corners in their true original locations according to the best available evidence, and the metes-and-bounds survey of Tract 39, T. 36 N., R. 19 E., Willamette Meridian, Washington. The plat returns areas of unsurveyed land totaling 6.69 acres.

The lands included in the foregoing survey are situated about four and one-half miles northwesterly of the hamlet of Mazama, Washington, and on the northeast side of the Methow River. Access is by Forest Service Road No. 9140, which is on the northeast boundary of Tract 39. There is an abandoned campground at Gate Creek, within Tract 39.

The area is drained by the Methow River and by Gate Creek which drains southwesterly into it. The elevation is approximately 2,300 feet, with less than 50 feet of variation throughout the area.

The soil is composed generally of sandy and gravelly loam. Timber is primarily pine, fir, cedar, and cottonwood. The undergrowth is deerbrush and willow.

No evidence of mineral was noted in the area surveyed.

Willamette Meridian

Washington

T. 33 N., R. 20 E.

The plat of T. 33 N., R. 20 E., Willamette Meridian, Washington, represents a dependent resurvey of a portion of Homestead Entry Survey Nos. 67, 89, and 238, designed to restore the corners in their true original locations according to the best available evidence and the metes-and-bonds survey of Tract 37 and the meanders of a portion of the left bank of the Twisp River, in unsurveyed T. 33 N., R. 20 W., Willamette Meridian, Washington. The plat returns an area of unsurveyed land totaling 49.63 acres.

The land encompassed in this survey is located about 10 miles west of the town of Twisp, Washington. The land is situated on a gentle south slope of the Twisp River Valley. The area is drained

by the Twisp River which grounds southeasterly turning northeasterly and functions as a major portion of the boundary of Tract 37. The elevation of the area is mainly constant at 2,200 feet.

Access is by way of County Road No. 9114, which crosses through the northerly portion of Tract 37. A dirt road leaves the county road near angle point No. 2 and traverses along the Twisp River, dead ending near angle point No. 5.

The timber consists of pine, fir, spruce, cedar, and cottonwood, the predominant species being pine. The area along the Twisp River is covered with heavy undergrowth of willow, wild rose, young alder, and cottonwood.

The principal uses of the area are timber harvesting and livestock grazing. The Forest Service land is used for recreation by hunters, fisherman, and picnickers.

There are many small farms in the vicinity of this survey. The only improvements noted on Tract 37 are a dirt road and an irrigation ditch.

There were no mineral deposits noted during the survey.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys and survey.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 29, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-15309 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-32-M

[WY-930-08-4332-09]

Wilderness Study Areas; Characteristics, Inventories, etc.; Mineral Survey Reports—Wyoming

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of availability of three mineral survey reports produced by the U.S. Bureau of Mines on three Bureau of Land Management Wilderness Study Areas (WSA's) in Wyoming. Announcement of a sixty-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94-579) requires the U.S. Geological Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain BLM WSA's to determine the mineral values, if any, that may be present. The reports are for the Sand Dunes WSA in Sweetwater County, the Honeycomb Buttes WSA in Fremont and Sweetwater Counties, and the Ferris Mountain WSA in Carbon County, Wyoming. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on these three WSA's.

DATES: The public review of the three mineral survey reports named in this notice shall begin on July 15, 1988, and continues for sixty days (September 13, 1988).

ADDRESSES: All data and written comments should be directed to the State Director (WY-910), Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Copies of these reports must be purchased from: Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, Colorado 80255.

FOR FURTHER INFORMATION CONTACT: Wayne Erickson, Wilderness Coordinator, (307) 772-2073, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

SUPPLEMENTAL INFORMATION: The three mineral reports are available for review or purchase from the Geological Survey. When ordering the bulletin number and name should be used. The price listed is that charged by the Books and Open-File Reports Section, U.S. Geological

Survey (303-276-7476) and includes third or fourth class mailing. First class or foreign mailings require an addition of ten percent.

Sand Dunes WSA, Sweetwater County, (U.S.G.S. 1757-A) \$1.50.

Honeycomb Buttes WSA, Fremont and Sweetwater Counties, (U.S.G.S. 1757-B) \$1.75.

Ferris Mountains WSA, Carbon County, (U.S.G.S. 1757-C) \$1.50.

The reports are also available for review in the offices of the BLM in Cheyenne, Rawlins, and Rock Springs, Wyoming. County libraries in Laramie County (Cheyenne), Albany County (Laramie), Carbon County (Rawlins), Sweetwater County (Green River), and Fremont County (Lander). Any new public comment information/data will be screened by the BLM. The Wyoming State Director may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. The Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of the Interior by the BLM. The Secretary shall, in turn, make recommendations to the President who will advise Congress. A recommendation as wilderness shall become effective only if so provided by an Act of Congress.

Hillary A. Odon,

State Director, Wyoming.

July 1, 1988.

[FR Doc. 88-15311 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

[DES 88-371]

Availability of Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Becharof National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared for public review a Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement Wilderness Review for the Becharof National Wildlife Refuge, Alaska, pursuant to section 3(d) of the Wilderness Act of 1964, section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act), and section 102(2)(C) of the National Environmental Policy Act of 1969. The Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement analyzes the impacts of three alternative wilderness proposals for the Becharof National Wildlife Refuge.

DATE: Comments on the draft document must be submitted on or before August 23, 1988, to receive consideration in the preparation of the Final Supplemental Environmental Impact Statement.

ADDRESS: Comments should be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the Draft Statement may be obtained by contacting Mr. Knauer.

Copies of the Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement are also available for review at the Office of the Regional Director, address as listed previously, as well as at the office of the Becharof National Wildlife Refuge, King Salmon, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, Main Interior Bldg., 10th and C Streets, NW., Washington, DC 20240;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street, Suite 1802, Portland, OR 97232;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue, SW., Albuquerque, NM 87103;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, SW., Atlanta, GA 30303;

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225.

The Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Becharof National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, U.S. Department of the Interior, to fulfill and requirements of section 1317(a) of the Alaska Lands Act. This section requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all lands in refuges in Alaska not Congressionally designated as wilderness as to their suitability or nonsuitability for preservation as wilderness and report Department recommendation to the President.

Although large tracts of land in the refuge were found to meet the criteria of the Wilderness Act for designation as wilderness, not all of these lands were proposed for wilderness designation because of management strategies that will be used to meet refuge purposes. As a result, a range of wilderness alternatives were evaluated subsequent to the Service's selection of its proposed management alternative in the Final Becharof Plan. Three wilderness proposals, ranging from recommending all refuge lands that qualify for wilderness designation to recommending no additional lands for wilderness designation, were examined in the Draft Statement. The Record of Decision for the Final Becharof Plan recommended that an additional 347,000 acres be proposed for designation as wilderness as does the proposed action in the Wilderness Review Amendment and Supplemental Environmental Impact Statement.

The wilderness review in the Final Becharof Plan/Environmental Impact Statement/Wilderness Review discussed the wilderness suitability of lands on the refuge, but did not adequately evaluate the environmental impacts of the wilderness proposal. To ensure full compliance with the Wilderness Act and the National Environmental Policy Act, the Fish and Wildlife Service has prepared this Wilderness Review Amendment and Supplemental Environmental Impact Statement, clearly discussing the proposal for and environmental impacts of wilderness designation on the refuge.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the Final Supplemental Environmental Impact Statement.

Date: July 1, 1988.
Bruce Blanchard,
Director, Environmental Project Review
[FR Doc. 88-15202 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico; Leasing Systems, Sale 115

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. Identifying the bidding systems to be used and the reasons for such use; and
2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding systems to be used.* In the Outer Continental Shelf (OCS) Sale 115, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16%-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12%-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16%-Percent Royalty.* This system is authorized by section 8(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12%-Percent Royalty.* This system is authorized by section 8(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 112) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the

minimum economically developable discovery on a block in such high-cost areas under a 12%-percent royalty system would be less than for the same blocks under a 16%-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12%-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 115—Final Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

William D. Bottenberg,
Director, Minerals Management Service.

Approved:

J. Steven Griles,
Assistant Secretary, Land and Minerals Management.

[FR Doc. 88-15346 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the

Bureau clearance office and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Surface Coal Mining and Reclamation Operations; Coal Exploration Operations; Termination of Jurisdiction 30 CFR 700.

Abstract: Information collected in § 700.11(d) is used by OSMRE and States to establish a point where a mine site is no longer a surface coal mining and reclamation operation and regulatory jurisdiction ends. Information collected under § 700.12(b) is used by OSMRE to consider need, costs, and benefits of a proposed regulatory change in order to grant or deny a petition that has been submitted. Information collected in § 700.13 identifies the person and nature of a citizens suit, so that OSMRE or a State can appropriately respond.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Surface Coal Mining Operators.

Annual Responses: 799.

Annual Burden Hours: 1,173.

Bureau Clearance Officer: Nancy Ann Baka (202) 343-5981.

Date: June 15, 1988.

Richard O. Miller,
Chief, Regulatory Development and Issues Management.

[FR Doc. 88-15315 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31280, Sub-No. 1]

Norfolk & Western Railway Co.; Acquisition and Operation Exemption

Norfolk & Western Railway Company (N&W) has filed a notice of exemption to acquire by purchase from CMC Real Estate Corporation (CMC), a noncarrier, and to operate 15.5 miles of rail line in Polk County, IA, consisting of: (1) the Clive Branch, from milepost 0.0 at or near Des Moines to milepost 8.0 at or near Clive; and (2) the Grimes Branch, from milepost 0.0 at or near Clive to milepost 7.5 at or near Grimes. The lines are now operated for CMC by Des Moines Union Railway Company (DMU), a common carrier jointly owned by N&W and CMC.

This notice is related to Finance Docket No. 31280, *Norfolk & Western Ry. Co.—Control Exemption—Des Moines Union Ry. Co.*, in which N&W seeks an exemption to acquire CMC's ownership interest in DMU.

Simultaneous consummation is scheduled. Any comments must be filed with the Commission and served on:

Robert J. Cooney, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

N&W must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. See *Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901, 4 I.C.C. 2d 305 (1988)*.¹ The notice is filed under 49 CFR 1150.31.² If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Railway Labor Executives' Association and United Transportation Union have requested the imposition of labor protective conditions, and N&W indicated that it is willing to accept their imposition. However, under Commission policy, labor protection is imposed in an exemption from 49 U.S.C. 10901 only upon a showing of exceptional circumstances. Because exceptional circumstances have neither been alleged nor demonstrated, no conditions will be imposed. N&W is, of course, free to offer labor protective conditions absent their imposition by this Commission.

Dated: July 5, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 88-15480 Filed 7-7-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on June 28, 1988, a proposed consent decree in *United States v. Industrias La Famosa, Inc.*, Civil Action No. 87-368 CG, was lodged with the United States District

¹ N&W certified that it has identified such sites and structures to the Iowa State Historic Preservation Officer.

² Although N&W is a Class I railroad, no new Class I or II railroad would be created by this transaction. Therefore, it is properly classified under 49 CFR 1150.33(h) and subject to the procedures at 49 CFR 1150.32-1150.34 and not to the procedures of section 1150.35. *Class Exemption—Acq. & Oper. R. Lines under 49 U.S.C. 10901, 4 I.C.C. 2d 309 (1988)*.

Court of the District of Puerto Rico. This consent decree settles a lawsuit filed in March 1987. The lawsuit, based on sections 301 and 302 of the Clean Water Act, 33 U.S.C. 301 and 302, sought injunctive relief and civil penalties of up to \$10,000 per day of violation before February 4, 1987, and \$25,000 per day of violation on or after February 4, 1987. The complaint alleges, among other things, that the defendant discharged pollutants not authorized by its National Pollutant Discharge Elimination System ("NPDES") permit, thus violating Section 301, 33 U.S.C. 1311.

The consent decree requires the defendant to pay a civil penalty of \$435,000 for past violations of the Act, and contains stipulated penalties for failure to comply with the terms of the consent decree.

The consent decree also requires the defendant to design and implement a plan to prevent spillage from the truck loading area from reaching navigable waters. Steps to prevent all other wastestreams from reaching navigable waters have already been implemented by the defendant.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Industrias La Famosa, Inc.*, D.J. Ref. 90-5-1-1-2713.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region II

Contact: David Brook, Esq., Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 25 Federal Plaza, New York, New York 10278 (212) 264-0404.

United States Attorney's Office

Contact: Eduardo Toro Font, Esq., Assistant United States Attorney, District of Puerto Rico, 101 Federal Building, Carlos E. Chandon Street, Hato Rey, Puerto Rico 00910, (800) 753-4056.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be

obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of \$1.20 payable to Treasurer of the United States.

Richard J. Leon,
Deputy Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88-15319 Filed 7-7-88; 8:45 am]
BILLING CODE 4410-01-M

Antitrust Division

United States v. BNS Inc.; and Gifford-Hill & Co., Inc., Civil No. 88-01452 (C.D. Cal.)

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comments it received on the Competitive Impact Statement and proposed Final Judgment in the captioned case, filed in the United States District Court for the Central District of California, together with the response of the United States to these comments.

Copies of the public comments and response are available on request for inspection and copying in Room 3233, Antitrust Division, Department of Justice, Washington, DC, and for inspection at the Office of the Clerk of the United States District Court for the Central District of California in Los Angeles.

Joseph H. Widmar,
Director of Operations, Antitrust Division.

Howard J. Parker, Phillip R. Malone, James E. Figschaw, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36040, 16th Floor, San Francisco, California 94102, Telephone: (415) 558-8300, Attorneys for the United States.

United States District Court for the Central District of California

United States of America, plaintiff, v. BNS Inc.; and Gifford-Hill & Company, Inc., Defendants. Civil No. 88-01452-R.

Memorandum of the United States in Response to Comments on the Proposed Final Judgment

The Department of Justice has received two letters of comment concerning the Proposed Final Judgment ("judgment") in this case. The Department has carefully reviewed and considered the comments. After this review, the Department continues to believe that entry of the judgment is in the public interest.

Summary of Comments

The first comment received by the Department was a letter dated June 9, 1988, from Ira Reiner, District Attorney for the County of Los Angeles ("Reiner letter"). The second comment was a letter dated June 13, 1988, from Bill B. Betz, the president of Monolith Portland Cement Company ("Betz letter"). Both letters are reproduced in an appendix attached hereto.

Both comments expressed concern that the assets required to be divested under the judgment be operated in a competitively viable manner. The Reiner letter, after outlining the observations of three County officials with responsibility for construction activity and/or the purchase of building materials, stated that any "remedial efforts by way of divestiture should take" two factors into account: (1) "the depletion of readily accessible" deposits of aggregate and (2) "the need to insure that any divested entity will be a viable one, possessing all of the factors of production that are needed to effectively compete." Reiner letter 3, 4. The letter did not, however, take the position that any aspect of the judgment was inadequate to address the violation alleged in the Complaint or suggest that any portion of the judgment should be modified. The Betz letter, by contrast, took the position that the assets required to be divested under the judgment "should be placed in the possession and/or control of an independent master or trustee" pending divestiture in order to avoid "practices and relationships (although unwritten and informal) that will effectively circumvent the intended purpose of the" divestiture. Betz letter 1-2.

Both letters also commented briefly on the potential competitive implications of the acquisition in markets other than the market alleged in the government's Complaint. The Reiner letter took the position that any concerns the District Attorney had in this regard were "addressed" and resolved "satisfactorily" by the "letter agreement between the California Attorney General and counsel for BNS." Reiner letter 4-5. The Betz letter expressed concern that the acquisition would lessen competition in the sale of aggregate and ready-mix concrete in the Ventura-Oxnard area. It also expressed the view that ready-mix concrete companies that purchase their aggregate from BNS or Calmat (the other major aggregate producer in the Ventura-Oxnard area) would feel "real or imagined" pressure to purchase their

cement requirements from BNS or Calmat.

Response

The United States agrees with the comment in the Reiner letter that known aggregate reserves in the Irwindale Aggregate District are being steadily depleted and that it is important to preserve competition in the sale of aggregate. In our view, the judgment addresses the aggregate reserves issue in at least four ways.

First, the purchaser of the Assets to be Divested under paragraph IV(A) of the judgment will acquire the very same aggregate reserves that the Irwindale aggregate facility possessed when it was owned by Koppers Company. The competitive status quo with regard to aggregate reserves will therefore be preserved. Second, the purchaser will have the same opportunities as Koppers had to pursue the acquisition of additional aggregate reserves. Third, the purchaser, having made a substantial investment in an aggregate extraction and processing facility, will have the same economic incentives as Koppers had to make acquisitions of new reserves, since new reserves will eventually be needed to continue operation. Finally, because the purchaser will have to be approved by the United States as adequately capitalized, the purchaser will have the financial capability to pursue replacement reserves. Under Paragraph IV(B) of the judgment, the purchaser must have the "financial capacity to compete effectively in the extraction, processing and sale of aggregate."

The United States also agrees that, in order for divestiture to be effective, the purchaser must possess all of the factors of production that are needed to compete effectively in the relevant market. See Reiner letter 4. The United States believes that the judgment fully and adequately ensures that the Assets to be Divested can be operated as an independent, stand-alone, viable competitor in the extraction, processing and sale of aggregate. The judgment contains three provisions that will accomplish this objective.

First, the Assets to be Divested will include all of the assets that were used before the acquisition for the extraction, processing and sale of aggregate at Irwindale. Paragraph IV(A) of the judgment extends to "any and all interest that [defendants] have or shall acquire in all of the real and personal property used in the extraction, processing and sale of aggregate at Blue Diamond's aggregate property located at Irwindale, California." Industry experience demonstrates that a

purchaser could use these assets to compete successfully in the market at issue there without at the same time owning or operating asphalt or ready-mix concrete manufacturing plants. Other stand-alone aggregate operations exist in the industry. Moreover, the demand for aggregate is high and reserves are decreasing in the Irwindale Aggregate District. There is, accordingly, as Blue Diamond personnel have testified, no reason to believe that a firm that produces only aggregate will have difficulty selling that aggregate to third party customers or will be at a competitive disadvantage relative to aggregate competitors who also own concrete facilities.

Second, the Assets to be Divested must be organized, to the complete satisfaction of the United States, as a viable, ongoing business. This will ensure, for example, that there are adequate management and accounting services for the Assets to be Divested. Paragraph IV(B) of the judgment requires that the divestiture "shall be accomplished in such a way as to satisfy plaintiff, in its sole determination, that the Assets to be Divested can and will be operated by the purchaser or purchasers as a viable, ongoing business, engaged in the extraction, processing and sale of aggregate."

Third, pending divestiture, defendants are subject to stringent requirements to preserve the Assets to be Divested. Under the provisions set forth in Paragraph VIII of the judgment, defendants are required to maintain the Irwindale aggregate facility as a fully viable, ongoing business. They must maintain all facilities and assets, including all administrative and support facilities; maintain all necessary operating permits; maintain complete and separate accounting records; provide and maintain working capital and lines and sources of credit; and maintain management and other personnel, among other things. More broadly, the judgment prohibits the defendants from taking any "action that would have the effect of reducing the scope or level of competition between the Assets to be Divested and other producers of aggregate . . . [or] jeopardize the sale of the Assets to be Divested as a viable going concern." These provisions will ensure that the Assets to be Divested are fully viable and capable of being operated as an effective competitor.

Further, the defendants are required under the judgment to hold, manage and operate these assets "separate, distinction and apart from" any other assets they own or control. Paragraph VIII(A). The United States therefore

disagrees with the suggestion in the Betz letter that "BNS should be precluded from gaining possession or control of any of the assets" even for the limited period of time allowed under the judgment for the defendants to effect divestiture. The Betz letter states that, because such possession and control could foster "practices and relationships" that might circumvent the purpose of the judgment, the better course is to place the assets in the hands of an independent master or trustee immediately. Betz letter 2.

Such a course is unnecessary. The judgment does not permit the defendants to engage in anticompetitive "practices" or enter into anticompetitive "relationships" pending divestiture. It does impose stringent limitations on how the assets may be used, how they must be maintained, and grants the defendants only a limited amount of time to find a competitively viable purchaser. Under the judgment, if the defendants have failed to divest the assets by January 1, 1989, a trustee will be selected and appointed to effect divestiture. The government has found that the procedure employed here—allowing the merging parties a short length of time¹ to effect a curative divestiture before turning the assets over to a trustee for disposition—generally results in a prompt but orderly sale of assets at fair market value to a purchaser capable of operating the business as a viable competitor. The merging parties are generally in the best position to dispose of assets quickly and at minimum expense. Accordingly, it is premature to resort to a trustee until it appears that the defendants cannot or will not comply with their obligations under the judgment.

The Betz letter also suggests possible competitive problems outside the market alleged in the Complaint.² The Complaint in this case is limited to the extraction, processing and sale of aggregate in the Irwindale Aggregate District. Because it would be inappropriate to include in this judgment relief aimed at markets other than the

¹ Six months is generally the shortest length of time parties are accorded in Antitrust Division consent decrees to make a divestiture on their own before the responsibility is transferred to a trustee.

² The Reiner letter also mentioned briefly markets other than those alleged in the Complaint but, as noted above, the letter stated that arrangements between defendant BNS and the State of California satisfactorily resolved any concerns the County of Los Angeles had with respect to those markets. As the United States has stated previously, it considers this extra-judicial arrangement between BNS and the State to be irrelevant to this proceeding. The agreement cannot be enforced in this case or otherwise become a prerequisite to entry of the judgment.

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specific market alleged in the Complaint, the evaluation of the adequacy of the judgment under the Tunney Act must be limited to that market. Accordingly, it is unnecessary to address here competitive issues outside the scope of the Complaint.

Nevertheless, while we do not believe that the acquisition violates Section 7 in any market other than that alleged in the Complaint, we would note first that it is not at all clear that after the acquisition the problem raised by Mr. Betz, that BNS may "tie" the sales of aggregate and cement, would arise.³ Further, we emphasize that the acquisition will not increase concentration in either cement or in aggregate in the Ventura-Oxnard area. In any case, if tying practices occur and if they violate the antitrust laws, they can be challenged either by an injured party, under Section 4 of the Clayton Act (15 U.S.C. § 15), or by the government. The mere possibility that conduct in another market might violate some other provision of the antitrust laws or any other law, however, provides no basis for questioning the adequacy of the judgment in this case under the Tunney Act.

Conclusion

For the reasons stated above, after thoroughly reviewing the comments filed in this case with respect to the judgment, the United States continues to believe that entry of the judgment is in the public interest.⁴ Accordingly, the

³ The government's economic expert, Jerry J. Bodily, considered a similar allegation by Koppers, made in connection with its Application for Preliminary Injunction:

"... Koppers argues that, because aggregate is in short supply, Gifford-Hill (BNS) will be in a position to insist that independent ready-mix concrete plants it supplies with aggregate also purchase cement from Gifford-Hill. This argument is without merit. Gifford-Hill's position as an integrated owner of both aggregate and cement will remain unchanged. Even if there existed some highly unlikely incentive for Gifford-Hill to attempt to tie cement sales to aggregate sales, the proposed acquisition will not further the goal. Gifford-Hill will be in no better position to make such a demand of independent ready-mix concrete purchasers of aggregate as a result of the proposed acquisition. No allegation that Gifford-Hill, or any other aggregate supplier, is currently making such demands has been made and there is no reason to believe that such behavior will be any more likely as a result of the proposed acquisition.

Declaration of Jerry J. Bodily in support of Government's Memorandum in Opposition to Koppers' Application for Preliminary Injunction, § 19.

⁴ Simultaneously with this memorandum, the government is filing with the Court a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act ("APPA"). This certificate addresses the requirements of the APPA that had to be met before the Court could appropriately enter the judgment.

government requests that the judgment be entered forthwith.

Dated:

Respectfully submitted,

Howard J. Parker
Phillip R. Malone
James E. Figneshaw

By

Howard J. Parker

Attorneys, U.S. Department of Justice,
Antitrust Division, 450 Golden Gate
Avenue, Box 36046, San Francisco,
California 94102. Telephone: (415) 556-
6300. Attorneys for the United States.
June 9, 1988.

Howard J. Parker, Esq.,
Antitrust Division, Department of Justice, 450
Golden Gate Avenue, Box 36046, 16th
Floor, San Francisco, California 94102

Dear Mr. Parker: Pursuant to the Antitrust
Procedures and Penalties Act ("Tunney
Act") 15 U.S.C. 16(b)-(h), the undersigned
representatives of the Los Angeles County
District Attorney's Office hereby provide the
following written comments in response to
the proposal for entry of a consent judgment
in the matter of *United States of America v.*

BNS, Inc., et al., No. CV 88-1452 R.
District Attorney's Offices in this state
share concurrent jurisdiction with the
Attorney General in enforcing California's
principal antitrust statute, the Cartwright Act.
The undersigned act on behalf of the Los
Angeles County District Attorney in that
antitrust role, and as such we have sought
comments from the Los Angeles County
agencies that purchase or use significant
amounts of aggregate and other construction
materials supplied by the Koppers Company
entities, or by the competitors of those
entities.

Roland E. Etcheverry was contacted by the
undersigned. Mr. Etcheverry is the Assistant
Deputy Director of the Los Angeles County
Department of Public Works (DPW) and is in
charge of the Construction Division of DPW.
Mr. Etcheverry expressed the following
views:

The Construction Division (CD) has had a
long-standing relationship with Sully-Miller
Contracting Company. In his view, Sully-
Miller has been an extremely responsible and
reliable contractor for the CD. All of the CD's
road construction or resurfacing work is
obtained by advertised competitive bids. In
fiscal year 1986-87, Sully-Miller entered into
approximately fifty (50) contracts with the
CD for a total dollar volume of some \$8.3
million. In the first three quarters of fiscal
year 1987-88 (through March 31, 1988), Sully-
Miller had entered into 25 such contracts
worth a total amount of \$6.4 million.

Mr. Etcheverry characterized the aggregate,
asphaltic concrete and ready-mix concrete
materials industry in Southern California as
being, in his view, tight-knit and closely
controlled, which he said raised concerns for
him over the "potential for abuse." On the
other hand, he stated that the CD has not had
any difficulty in obtaining bids from a
number of contracting entities, and further
that materials prices quoted to the CD have
in recent years been generally stable. He was
unable to offer any definitive view on

whether the loss of Sully-Miller as a separate
entity would affect this situation, since it
would entail speculation. However, he said
that as a relatively large user of road
construction services, the CD would prefer to
see the largest number of potential bidders to
be available for proposal requests from the
Division.

The Los Angeles County Department of
Purchasing and Stores purchases
construction materials on behalf of various
County departments that use public
employees to do construction work. Within
the Department of Public Works, the Road
Maintenance Division and the Flood Control
Division perform so-called "force account"
work (utilizing the DPW's own employee
work force) with aggregate and other
construction materials which are purchased
directly by Purchasing and Stores on the
basis of DPW's requisition requests.

Senior Deputy Purchasing Agent Pamela
McKenzie is in charge of handling such
construction material bids for the County of
Los Angeles. She was contacted on May 31,
1988, and stated that Los Angeles County
does direct purchasing for County
Departments in four major categories with a
total dollar volume of approximately
\$900,000-\$1,000,000 annually. These
categories are: 1) asphaltic concrete, 2)
transit mix, 3) rock, sand and gravel, and 4)
crushed aggregate base.

Ms. McKenzie expressed a concern that
these building materials markets are "going
to be closed up" to the detriment of buyers
such as Los Angeles County due to two
factors: the exhaustion of resources within a
reasonable radius of the sites where it is
needed, and the increasing concentration and
consequent market power among those firms
remaining in the industry in Southern
California.

Ms. McKenzie's concern over resource
depletion centers on the fact that the
aggregate supply available from such
locations as Irwindale and San Valley is
diminishing. While other aggregate quarries
exist, such as those in Simi Valley, they are
not always competitive. This is principally
because long-distance hauling entails
transportation costs that can quickly become
greater than the aggregate cost itself. Thus,
for example, Ms. McKenzie has observed that
in her experience it is difficult for a Simi
Valley-based bidder, such as P. W. Gillibrand
Co., to be competitive on bids for delivery to
job sites in the central County area. The
transportation charges are computed largely
on the basis of "Rock Zones" established by
the California Public Utilities Commission.
The County obtains bids at various prices for
the materials themselves, but at greater
distances the cost of the aggregate or other
material is less significant to the overall price
than is the transportation component. For this
reason, the County is particularly interested
in the continued viability of bidders who are
located in areas that can provide coverage to
those communities that include major
population centers. Blue Diamond Materials,
the aggregate division of Sully-Miller
Contracting, is such a firm.

While it has been true that the quoted
prices for aggregate and other construction

materials have been relatively stable in
recent years, McKenzie expects that to
change soon. Moreover, she has seen an
increasing tendency by the largest suppliers
to refuse to accept what was previously
acceptable terms in Los Angeles County bid
proposals. Such contract changes can of
course operate as the functional equivalent of
price increases. For example, a recent bid
included the imposition of certain vendor
terms as part of its proposal: the former price
guarantee language was stricken, the
"freeway time" (or possible delay due to
freeway congestion) cost risk was put on the
County instead of the vendor as had been
done previously, the delivery time was no
longer within 48 hours of County notice, etc.
In the past, the accepted County proposal
requests provided that liability for additional
costs for substitute materials incurred by
reason of non-delivery in emergencies would
be imposed on the vendor; now, McKenzie
reports, at least one major vendor insists on a
provision excluding such liability. She
believes that this increasing insistence on
particular contract terms is an indication of
growing market power by certain aggregate
producers, and she fears that this may soon
be translated into higher prices to Los
Angeles County and other buyers.

Her views were echoed by Supervising
Deputy Purchasing Agent Wayne Nakano,
who claimed that the County had had
increasing difficulty obtaining a desirable
number of bids for construction materials.

While the County would prefer to see the
largest possible number of qualified bidders,
it has been the experience of the Purchasing
Department that there are often fewer
bidders responding to County proposal
requests. For example, in a May 20, 1988, bid
opening for crushed aggregate base, only
three bids were received in response to a
proposal request which had been mailed to
fourteen vendors. Of those three, one
included a large number of unfavorable
contractual language changes of the type
described above. McKenzie contrasted this
situation to that of the aggregate base for the
preceding year, when a total of six bids were
received for the same material.

The concerns expressed by the
representatives of Los Angeles County thus
focus on the issue of increasing market power
on the part of construction materials bidders.
In an industry that appears to be growing
increasingly concentrated, any remedial
efforts by way of divestiture should in our
view take into account both the depletion of
readily accessible resources (and the effects
of such depletion on the issue of potential
barriers to entry), and the need to insure that
any divested entity will be a viable one,
possessing all of the factors of production
that are needed to effectively compete in the
construction materials industry, as well as
the appropriate schedule for structural relief.

In addition to concerns about relief for the
alleged violations in the Complaint in this
matter, the general competitive concerns of
this Office are substantially identical to those
expressed by the California Attorney General
and his staff in their April 4, 1988, submission
to the Hon. Manuel L. Real of the District
Court for the Central District of California. In
particular, the issue raised by the California

Attorney General, concerning the viability of
the newly divested firm in the market for
construction materials other than aggregate,
is reflective of the concerns of the County. In
our view, the proposed additional relief
incorporated in the letter agreement between
the California Attorney General and counsel
for BNS, Inc., addresses those concerns and
resolves them satisfactorily. This Office and
the County of Los Angeles endorse these
remedies, while taking no position on the
precise procedural mechanisms to be used to
implement them.

Thank you for your consideration of our
comments in this regard.

Very truly yours,

Ira Reiner,

District Attorney.

By:

Michael J. Delaney,

Deputy-in-Charge, Antitrust Section.

By:

Thomas A. Papageorge,

Head Deputy District Attorney, Consumer
Protection Division.

June 13, 1988.

Gary R. Spratling,

Chief, San Francisco Office, Antitrust
Division, U.S. Department of Justice, 450
Golden Gate Avenue, Box 36046 San
Francisco, CA 94102

Re: United States of America vs. BNS, Inc.
and Gifford-Hill & Company, Inc. (U.S.
District Court, Central District California;
Civil Case No. 88-01452 R)

Subject: Comments On Proposed Judgement

Dear Mr. Spratling: Monolith Portland
Cement Company ("Monolith") submits these
comments on the proposed final judgement in
the referral to matter with the understanding
that the conditions to BNS, Inc.'s ("BNS")
acquisition of Koppers Company, Inc. include
its disposition of the Sully-Miller Irwindale,
California aggregates reserves and plant and
(pursuant to agreement with the Attorney
General of the State of California) its
disposition of four Sully-Miller ready-mixed
concrete plants located in Los Angeles
County.

1. BNS should be precluded from gaining
possession or control of any of the assets and
facilities that are to be disposed.
Commencing with BNS's acquisition of
Koppers, such assets and facilities should be
placed in the possession and/or control of an
independent master or trustee.

BNS's possession and/or control of the
assets prior to their disposition will give BNS
the opportunity to establish practices and
relationships (although unwritten and
informal) that will effectively circumvent the
intended purpose of the dispositions.
Monolith has observed that in other
transactions involving dispositions, it is not
uncommon for competitive practices and
relationships to continue virtually unchanged
after disposition. While the purpose of a
disposition may be open up a share of the
market for competition, practice and
relationship established prior to disposition
in effect maintain the status quo.

2. The Ventura-Oxnard markets for
aggregates and ready-mixed concrete are

separate from those of Los Angeles,
Irwindale, San Fernando Valley, etc., and the
effect of BNS's acquisition on competition in
the Ventura-Oxnard market should be
considered separately.

3. BNS's acquisition of the aggregate and
ready-mixed concrete plants of Koppers that
are operating in Ventura County, California
as Southern Pacific Milling Company ("S.P.
Milling") will result in the cement, aggregates
and ready-mixed concrete markets in the
Ventura-Oxnard area of California being
dominated by and concentrated in two
cement manufacturers having integrated
cement-aggregates-ready-mixed concrete
operations.

At present, the aggregates and ready-mixed
concrete markets in the Ventura-Oxnard area
are dominated by CalMat and S.P. Milling.
They operate the major aggregates plants in
the area, and their ready-mixed concrete
plants dominate the concrete market. CalMat
is an integrated cement-aggregates-ready-
mixed concrete operator. S.P. Milling
operates both aggregates and ready-mixed
concrete plants, and purchases, or has
purchased, cement from several cement
manufacturers (including Monolith). The
remaining ready-mixed concrete operations
in the Ventura-Oxnard area are relatively
small as compared to S.P. Milling and
CalMat, and usually dependent upon S.P.
Milling and CalMat for aggregates, or they
are located outside the market area and able
to effectively compete only on the fringes
thereof. In other words, the aggregates and
ready-mixed concrete markets are already
fairly concentrated; and if BNS acquires the
Koppers-S.P. Milling aggregates and ready-
mixed concrete plants, competition will be
lessened even further.

BNS's acquisition of the Koppers-S.P.
Milling plants will further compress both the
cement and ready-mixed concrete markets in
the Ventura-Oxnard area. By controlling the
aggregates market, BNS and CalMat will be
in a position to dominate the aggregates and
concrete markets and virtually eliminate
outside competition for cement in the
Ventura-Oxnard area. Non-integrated ready-
mixed concrete companies that must
purchase their aggregates from integrated
cement-aggregates-ready-mixed concrete
companies usually find it is "advisable" or
"prudent" to purchase both their aggregates
and a substantial part of their cement
requirements from the integrated supplier.
The "pressure" to purchase cement (in order
to purchase aggregates) may be real or
imagined. It is nevertheless apparent.

Respectfully submitted,
Monolith Portland Cement Company.

By: Bill B. Betz,

President.

[FR Doc. 88-15294 Filed 7-7-88; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1286-88]

Delegation of Authority

By virtue of the authority vested in me
by 28 U.S.C 509 and 510, and pursuant to

28 U.S.C. 0.5(f), I hereby delegate the authority vested in me by Executive Order No. 12580, 52 FR 2923, January 29, 1987, to the Assistant Attorney General for the Land and Natural Resources Division. In the event that the Assistant Attorney General for the Land and Natural Resources Division determines that an order from the Environmental Protection Agency to a federal agency should not be issued, such determination shall be subject to the approval of the Deputy Attorney General.

Effective enforcement must be timely enforcement. The Assistant Attorney General for the Land and Natural Resources Division will assure that requests for concurrence by the Department of Justice as provided for in Executive Order No. 12580 are reviewed as expeditiously as possible.

Edwin Moese, III,
Attorney General.
June 30, 1988.

[FR Doc. 88-15320 Filed 7-7-88; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

NEW

Employment and Training Administration
Job Training Partnership Act
Compliance Review
New; no forms
Annually; Biennially
State or local governments
54 respondents; 7,920 total hours; 184 hrs per response; no forms
To ensure that States operate Federally funded Training and Employment Programs in accordance with the requirements of the Job Training Partnership Act and its implementing regulations.

Employment and Training Administration
State Employment Security Agency
Compliance Review System
New; no forms
Annually; Biennially
State or local governments
54 respondents; 3,672 total hours; 27 hrs per response; no forms
To ensure that federally funded State Employment Security Agency programs are operated in accordance

with applicable statutory and regulatory regulations.

Extension

Employment and Training Administration
Service Delivery Area Reorganization Plan Appeal
1205-0243
State and local governments
20 respondents; 40 hours; 2 hours per response; no forms
The information collected will be used to determine whether JTPA recipients denial of a reorganization plan for a service delivery area is in conformance with JTPA.

Signed at Washington, DC, this 5th day of July, 1988.

Paul E. Larson,
Departmental Clearance Officer.
[FR Doc. 88-15413 Filed 7-7-88; 8:45 am]
BILLING CODE 4410-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and

federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the

Federal Register are in parentheses following the decisions being modified.

Volume I:

District of Columbia
DC88-1(Jan. 8, 1988)—pp. 78, 80-82, 84
West Virginia
WV88-2(Jan. 8, 1988)—pp. 1182-1186, pp. 1188-1191
West Virginia
WV88-3(Jan. 8, 1988)—p. 1208

Volume II:

Indiana
IN88-2(Jan. 8, 1988)—pp. 249-252, pp. 257, 261
Wisconsin
WI88-8(Jan. 8, 1988)—p. 1116-1117
WI88-10(Jan. 8, 1988)—p. 1137, pp. 1143-1144

Volume III:

California:
CA88-2(Jan. 8, 1988)—pp. 51-64
CA88-4(Jan. 8, 1988)—pp. 77-102b
Idaho:
ID88-1(Jan. 8, 1988)—pp. 142-144
Nevada:
NV88-2(Jan. 8, 1988)—p. 280
Oregon:
OR88-1(Jan. 8, 1988)—p. 305
Washington:
WA88-1(Jan. 8, 1988)—pp. 360, 364
WA88-2(Jan. 8, 1988)—p. 387

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office,
Washington, D.C. 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1 day of July 1988.

Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 88-15237 Filed 7-7-88; 8:45 am]
BILLING CODE 4510-37-M

Employment and Training Administration

[TA-W-20,729]

Owens-Illinois-Nippon Electric Glass Television Products, Columbus, OH; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 13, 1988 in response to a worker petition received on June 13, 1988 which was filed by the Glass, Pottery, Plastics and Allied Workers Union, Local No. 106, on behalf of workers at Owens-Illinois-Nippon Electric Glass, Television Products, Columbus, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of June 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.
[FR Doc. 88-15325 Filed 7-7-88; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge III Cross-Cut Committee to the National Council on the Arts will be held on July 26, 1988, from 9:00 a.m.-5:30 p.m., in room M0-9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be

closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
[FR Doc. 88-15321 Filed 7-7-88; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting Agenda

The Advisory Committee on Nuclear Waste will hold its second meeting on July 21-22, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

Thursday, July 21, 1988

Room 1046, 1717 H Street, NW., Washington, DC

8:30 a.m.-8:45 a.m.: Comments by ACNW Chairman (Open)

The ACNW Chairman will report briefly regarding items of current interest.

8:45 a.m.-10:15 a.m.: Below Regulatory Concern (Open)

The NRC Staff will present their proposed policy statement to the ACNW.

10:30 a.m.-12:00 Noon: Dry Cask Storage Study (Open)

The DOE Staff will brief the ACNW on their Dry Cask Storage Study. This study is required by the Nuclear Waste Policy Amendments Act of 1987 to be submitted to Congress in October 1988.

1:00 p.m.-2:00 p.m.: Rulemaking on Anticipated and Unanticipated Events (Open)

The NRC Staff will discuss the proposed rulemaking on this topic.

2:00 p.m.-3:30 p.m.: Center for Nuclear Waste Regulatory Analyses (Open)

The NRC Staff will brief the ACNW on the status of this program.

3:45 p.m.-5:15 p.m.: Environmental Monitoring of Low-Level Waste Facilities (Open)

The NRC Staff will discuss the NRC Draft Technical Position on this topic.

5:15 p.m.-8:00 p.m.: ACNW Activities and Preparation of ACNW Reports (Open)

The ACNW will discuss ACNW activities, future meeting agendas, and organizational matters.

Friday, July 22, 1988

8:30 a.m.-10:30 a.m.: Consultation Draft Site Characterization Plan (CDSCP) (Open)

The State of Nevada will be invited to brief the ACNW on its review of the DOE Consultation Draft Site Characterization Plan for the Yucca Mountain Nevada Site.

10:45 a.m.-12:15 p.m.: EPA Standards for HLW Geologic Repository

The EPA will provide a briefing on the status of this topic.

1:15 p.m.-3:45 p.m.: Briefing on Barnwell/Savannah River/Chem-Nuclear and LN Technologies (Open)

The NRC Staff and, if possible, representatives of the above organizations and the state of South Carolina will brief the members of the ACNW to prepare them for their proposed visit to these facilities in early August.

4:00 p.m.-4:30 p.m.: NRC Staff Actions on ACNW Recommendations (Open)

The ACNW will discuss the actions that the NRC Staff has taken on ACNW recommendations.

4:30 p.m.-5:30 p.m.: ACNW Activities and Preparation of ACNW Reports (Open)

The ACNW will discuss ACNW activities, future meeting agendas, and organizational matters.

Procedures for the conduct of and participation in ACNW meetings are similar to those used by ACRS and published in the Federal Register on October 2, 1987 (51 FR 32241). The procedures which will be used are as follows:

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste (ACNW), are published in this notice. These procedures are set forth and may be incorporated by reference in future individual meeting notices. The Advisory Committee on Nuclear Waste has been established pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94-463, 86 Stat. 770-776). The Commission has

determined that the establishment of this Committee is necessary and in the public interest in order to obtain input, advice and recommendations on all aspects of the management of radioactive wastes within the purview of NRC regulatory responsibilities. The purpose of the Committee is to provide advice and recommendations on topics, issues, and activities related to the regulation of nuclear wastes. Such activities encompass:

- Regulation of high-level waste, including the licensing of high-level waste repositories;
- Licensing and regulation of low-level waste disposal repositories; and
- Handling, processing, transporting, storing and safeguarding wastes, including but not limited to spent fuel, nuclear wastes mixed with other hazardous substances, and uranium mill tailings.

The Committee's reports will become part of the public record.

Although ACNW meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process.

General Rules Regarding ACNW Meetings

An agenda is published in the Federal Register for each full Committee meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACNW meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a

readily reproducible copy addressed to the Office of the Executive Director, in care of the ACNW, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director (telephone: 202-634-3265) between 7:30 a.m. and 4:15 p.m., Washington, DC time.

(d) Questions may be asked only by ACNW Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions when Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing

matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Date July 5, 1988.

John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 88-15379 Filed 7-7-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-249]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 94 to Facility Operating License No. DPR-25 issued to Commonwealth Edison Company, which revises the Technical Specifications for operation of the Dresden Nuclear Power Station, Unit No. 3, located in Grundy County, Illinois.

The amendment issued revises the Technical Specifications to support: (1) Changes specific to Cycle II reload fuel and analyses; (2) changes resulting from analyses performed to allow equipment out-of-service; and (3) changes provided for clarification or as administrative changes. The amendment also revises the license to delete a condition requiring a safety evaluation for coastdown operation with abnormal feedwater temperature.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this was published in the Federal Register on May 13, 1988 (53 FR 17129). No request for a hearing or petition for leave to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the Federal Register on May 23, 1988 (53 FR 18361).

For further details with respect to the actions see (1) the application for amendment dated March 9, 1988, (2) Amendment No. 94 to License No. DPR-25 and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 20th day of June 1988.

For the Nuclear Regulatory Commission,
Leif J. Norrholm,
Acting Director, Project Directorate III-2,
Division of Reactor Projects—III, IV, V and
Special Projects.

[FR Doc. 88-15371 Filed 7-7-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-373]

Commonwealth Edison Co. Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 58 to Facility Operating License No. NPF-11 issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the LaSalle County Station, Unit 1, located in LaSalle County, Illinois. The amendment was effective as of the date of its issuance.

The amendment modifies the Technical Specifications in support of the second reload (Cycle 3) for LaSalle Unit 1.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act

of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this was published in the Federal Register on January 28, 1988 (53 FR 2553). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the actions see (1) the application for amendment dated January 19, 1988, (2) Amendment No. 50 to License No. DPR-11, and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogleby, Illinois 61428. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated: at Rockville, Maryland, this 23rd day of June 1988.

For the Nuclear Regulatory Commission,
Leif J. Norrholm,
Acting Director, Project Directorate III-2,
Division of Reactor Projects—III, IV, V and
Special Projects

[FR Doc. 88-15372 Filed 7-7-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-454 and STN 50-455]

**Commonwealth Edison Co.;
Consideration of Issuance of
Amendment to Facility Operating
License and Proposed No Significant
Hazards Consideration Determination
and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-37 and NPF-68, issued to Commonwealth Edison Company, for

operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois.

The amendment would revise an action statement concerning the ultimate heat sink to state that the provisions to specification 3.0.4 do not apply in accordance with the licensee's application dated June 22, 1988.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Rock River is one of two makeup sources for the ultimate heat sink at Byron Station. This proposed amendment revises a Technical Specification action requirement concerning Rock River water level and flow. The action requirement is being revised to state that the provisions of Technical Specification 3.0.4 are not applicable. This will have the effect of permitting changes in operations modes while the action requirement is still effective.

Water level and flow in the Rock River have no effect on the probability of previously evaluated accidents. Therefore, the probability of previously evaluated accidents will not be increased.

The affected action requirement permits reactor operation to continue as long as river flow and level stay above minimum requirements. The minimum flow and level limits that assure adequate suction for the essential service water makeup pumps are not being changed by this amendment. As a result, the consequences of previously evaluated accidents will not be increased.

This proposed amendment does not allow any new mode of operation beyond what is already permitted of the action requirement. In addition, this amendment does not allow any modification to the plant. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or

different kind of accident from any accident previously evaluated.

Since the Technical Specification minimum flow and level limits for the Rock River are not being changed, this amendment does not involve a significant reduction in a margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules or Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of

the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held

would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public

Document Room, 1717 H Street NW., Washington, DC, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland, this 1st day of July 1988.

For the Nuclear Regulatory Commission,
Leonard N. Olshan,
Project Manager, Project Directorate III-2,
Division of Reactor Projects—III, IV, V and
Special Projects.
[FR Doc. 88-15373 Filed 7-7-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

**Southern California Edison Co. et al.;
Consideration of Issuance of
Amendments to Facility Operating
Licenses and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the Licensees), for operation of San Onofre Nuclear Generating Station, (SONGS) Units 2 and 3 located in San Diego County, California. The request for amendment was submitted by letter dated June 14, 1988 and identified by the licensee as Proposed Change PCN-263.

The proposed change would revise Technical Specification 3/4.1.3.4 "CEA Drop Time" to increase the allowable drop time from 3.0 to 3.2 seconds. The purpose of Technical Specification (TS) 3/4.1.2.4 to ensure that the actual drop times for full length Control Element Assemblies (CEAs) are consistent with the maximum drop time assumed in the accident and transient analyses.

Prior to SONGS Unit 2 Cycle 4 startup, CEA drop times were measured individually. Beginning with Unit 2 Cycle 4 startup, a new method of measuring CEA drop times was used. This method initiates a Core Protection Calculator (CPC) trip and simultaneously monitors the positions of all 91 CEAs as a function of time. In this method, the reactor trip breakers are the point at which power is interrupted to the CEA gripper coils, rather than the individual breakers as in the previous method.

The CEA drop times measured using the new method during Unit 2 startup were unexpectedly longer than those measured using the previous method. Although no CEAs failed to meet the 3.0 second drop time requirement, some

CEAs were close to the limit. Drop times for the five slowest CEAs were remeasured using the previous method which confirmed that there was no degradation in CEA performance compared with previous tests. Since the new method uses the reactor trip breakers to interrupt power to the CEAs, it more accurately reflects the operation of the reactor protection system as assumed in the safety analysis.

The new test method will be used for CEA drop time measurements during SONGS Unit 3 Cycle 4 startup. A recent review of past Unit 3 CEA drop time measurements revealed that there is the potential for one CEA to fail to meet the 3.0 second requirement. The proposed change would increase the allowable drop time to 3.2 seconds. The effect of the proposed change on the accident and transient analyses is addressed in the licensee's June 14, 1988 submittal.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By August 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-8700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison

Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated June 14, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 29th day of June, 1988.

For the Nuclear Regulatory Commission,

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-15375 Filed 7-7-88; 8:45 am]

BILLING CODE 7590-31-M

[Docket No. 50-206]

Southern California Edison Co. et al.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, et al. (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated May 27, 1987.

The proposed amendment would revise the Technical Specification (TS)

section on Control Room Emergency Air Treatment System to include testing and surveillance requirements of a planned modification. It would also revise the TS to allow for suspension of PORV Block Value surveillance testing during periods when the block valves are being maintained closed in order to satisfy the action requirements of the TS.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in

the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-8700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing

Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 29th day of June 1988.

for the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-15376 Filed 7-7-88; 8:45 am]

BILLING CODE 7590-31-M

[Docket No. 50-206]

Southern California Edison Co. et al.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13 issued to Southern California Edison Company, et al. (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated August 31, 1987.

The proposed amendment would revise (1) Technical Specification (TS) 3.9, "Core Average Burnup" to be a Moderator Temperature Coefficient based specification and would revise this limiting condition for operation to be based directly upon the safety parameter that the core burnup specification was designed to limit (Proposed Change #170), and (2) TS 3.10, "Incore Instrumentation" and TS 3.11, "Continuous Power Distribution Monitoring to incorporate more frequent correlation verification of the excore axial offset monitoring instrumentation and revise the formula for determining incore axial offset. (Proposed Change #171).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be

litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (In Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Boeetto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the technical review and prior to the completion of any required hearing if it

publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 29th day of June 1988.

For the Nuclear Regulatory Commission,

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-15377 Filed 7-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3 (Emergency Planning)]

Atomic Safety and Licensing Board; Long Island Lighting Co.; Hearing

July 1, 1988.

Notice is hereby given that, in accordance with the Licensing Board's Order in a teleconference on June 29, 1988, an evidentiary hearing on discovery relating to emergency plans will commence in Bethesda, Maryland, beginning at 9:30 a.m. on July 11 and continuing through July 13, 1988. The hearing will take place in the Appeal Board Hearing Room on the fifth floor of the East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. Parties to the proceedings are the Long Island Lighting Company, New York State, Suffolk County, the Town of Southampton, Federal Emergency Management Agency, and the Nuclear Regulatory Staff.

For the Atomic Safety and Licensing Board,

James P. Gleason,

Chairman Administrative Judge.

[FR Doc. 88-15376 Filed 7-7-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-66]

Termination Notice; Investigation Concerning Japan's Restrictions on Imports of Fresh Oranges and Orange Juice

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of an investigation under section 302.

SUMMARY: The U.S. Trade Representative has terminated the investigation initiated May 25, 1988 concerning the Government of Japan's policies and practices with respect to the importation of fresh oranges and orange juice. This action responds to the petitioner's withdrawal of its petition, and the recent successful resolution of this issue between the United States Government and the Government of Japan.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs, 395-5008; Amelia Porges, Associate General Counsel, (202) 395-7305; or Glen Fukushima, Deputy Assistant Trade Representative for Japan, (202) 395-5070, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On May 8, 1988, Florida Citrus Mutual, Florida Citrus Packers, the Florida Citrus Processors Association, the Florida Department of Citrus and the Indian River Citrus League filed a petition under section 302(a) of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2412(a). The petition alleged that the Government of Japan engages in acts, policies and practices that violate obligations of Japan under the General Agreement on Tariffs and Trade ("GATT") and are unjustifiable, unreasonable and burden or restrict U.S. commerce.

Specifically, the petition stated that Japan maintains import quotas on fresh oranges and orange juice, and that these trade restrictions contravene Article XI of the GATT. It also stated that Japan requires that importers of orange juice blend such imported juice with domestic orange juice, in contravention of Article III, paragraph 5 of the GATT. The petitioners estimated that elimination of the import quota restrictions and the juice blending requirement could increase United States exports to Japan by \$50 to \$100 million annually.

On May 25, 1988, the U.S. Trade Representative initiated an investigation of the Japanese government's policies and practices restricting imports of oranges and orange juice into Japan.

After initiation of the investigation, we continued to pursue bilateral negotiations with the object of expeditiously resolving this matter. We also continued to pursue proceedings under the dispute settlement procedures of Article XXIII of the GATT concerning

these practices and Japanese governmental restrictions on imports of beef. On June 20, 1988, we reached an *ad referendum* settlement, which was formally completed by an exchange of notes on July 5, 1988. The petitioners withdrew their petition on the same date.

The provisions of the settlement concerning fresh citrus are as follows:

—Quantitative restrictions on imports will be ended effective April 1, 1991 for fresh oranges and April 1, 1992 for orange juice.

—During Japanese fiscal years ("JFY") 1988 through 1990, market access for fresh oranges will be expanded by 22,000 metric tons annually, reaching 192,000 MT in JFY 1990. Market access for orange juice concentrate will be expanded from 8,500 MT in JFY 1987 to 15,000 MT in JFY 1988, 19,000 MT in JFY 1989, 23,000 MT in JFY 1990 and 40,000 MT in JFY 1991.

—The blending requirement will be lifted for 40 percent of concentrated orange juice imports in JFY 1988 and 60 percent in JFY 1989, and it will be completely eliminated effective April 1, 1990.

—Special access, not subject to the blending requirement, will be provided for imports of single-strength orange juice and orange juice mixtures as follows: 15,000 kiloliters in JFY 1988, 21,000 kiloliters in JFY 1989 and 27,000 kiloliters in JFY 1990. As of April 1, 1991, imports of these products will be permitted in unlimited quantities. Imports of single-strength orange juice in small containers for use in hotels will be permitted in unlimited quantities this year.

—In addition, the Government of Japan has agreed to reduce tariffs on fresh grapefruit, lemons, and various other products as a part of the overall settlement.

Accordingly, section 301 investigation number 301-66 has been terminated, as provided for in 15 CFR 2006.6.

Judith Hippler Bello,
General Counsel, Chairman, Section 301 Committee.

[FR Doc. 88-15364 Filed 7-7-88; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 35-24672]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 30, 1988.

Notice is hereby given that the following filing(s) has/have been made

with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 25, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation et al. (70-7202)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, and its subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Reading, Pennsylvania 19605 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By order dated October 6, 1986 (HCR No. 24207), the Commission authorized GPU, JCP&L, Met-Ed and Penelec ("GPU Companies") to enter into a renewal of their Revolving Credit Agreement ("New Credit Agreement") with a group of commercial banks ("Banks") for which Citibank N.A. acts as agent and Chemical Bank acts as co-agent, and to issue, sell and renew to the Banks from time to time, through March 31, 1989, their respective promissory notes maturing not more than six months from the date of issue, under

and pursuant to the terms thereof. Borrowings by the GPU Companies under the New Credit Agreement are limited to an aggregate of \$110 million, with an individual sublimit of \$20 million applicable to GPU only.

By that same number, the GPU Companies were permitted from time to time through March 31, 1989 to issue or renew their respective unsecured promissory notes, maturing not more than nine months after issue, to various commercial banks pursuant to informal lines of credit. In the case of GPU, the total principal amount of such unsecured borrowings outstanding at any one time, when added to its total principal amount of notes then outstanding under the New Credit Agreement, may not exceed \$50 million. At April 30, 1988, GPU had such unsecured borrowings outstanding in the amount of \$23 million.

GPU now believes that it will need to borrow up to a total of \$100 million in connection with the proposed repurchase of up to 8 million shares of its common stock described in Post-Effective Amendment No. 1 to its pending Application-Declaration in S.E.C. File No. 70-7473 and for other corporate purposes. GPU requests authority to issue or renew from time to time during the period ending on March 31, 1989 its unsecured promissory notes, maturing not more than nine months after issue, to various commercial banks pursuant to informal lines of credit. The total principal amount of such increased borrowings outstanding at any one time, when added to the principal amount of GPU's notes then outstanding under the New Credit Agreement, would not exceed \$100 million. In all other respects, the transactions as heretofore authorized by the Commission herein would remain unchanged.

General Public Utilities Corporation (70-7473)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By orders dated December 29, 1987 (HAR No. 24550) and March 30, 1988 (HAR No. 24612), among other things, the Commission authorized GPU to repurchase from time to time through December 31, 1991 up to five million shares of its common stock, par value \$2.50 per share, such repurchases to be made in the open market, through one or more odd-lot tender offers, and/or from shares held under GPU's Tax Reduction Act Employees Stock Ownership Plans

upon termination of those plans. The timing of such repurchases will depend upon existing market conditions and the anticipated capital needs of GPU and its subsidiaries. GPU now proposes (a) to increase to eight million the total number of shares of common stock it may repurchase and (b) to extend the period during which such repurchase may be made to December 31, 1992. In all other respects, the transactions as heretofore authorized by the Commission in this matter would remain unchanged.

The Columbia Gas System, Inc. et al. (70-7529)

The Columbia Gas System, Inc., 20 Montchanin Road, Wilmington, Delaware 19807 ("Columbia"), a registered holding company, and its subsidiary, Columbia Gas Transmission Corporation, P.O. Box 4621, Houston, Texas 77210-4621 ("Transmission"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a) and (10) of the Act.

Columbia proposes to issue up to \$850 million of subordinated unsecured promissory notes to a group of commercial banks under a Subordinated Revolving Credit Agreement ("Agreement") having a term of five years. The Notes will, at the option of Columbia, bear interest at one of the agent bank's fluctuating Prime Rate ("Prime"); Adjusted Certificate of Deposit Rate ("CD") plus ¾% or the Adjusted London Interbank Offered Rate ("LIBOR") plus ¾%, through August 31, 1991, and thereafter these rates, plus ¾%, ¾% and ¾%, respectively. The maturities on the notes will be: up to 30 days for Prime loans; 30, 60, 90 or 180 days for CD loans; and 1, 2, 3 or 6 months on LIBOR loans. No amortization of the notes will be required during the term of the Agreement. In addition, an annual commitment fee of ¼% times the amount of the undrawn portion of the commitment will be paid to the participating banks.

Columbia also proposes to enter into one or more interest rate exchange agreements in national amounts of up to \$550,000,000, in order to fix the rates on new borrowings to reduce exposure to fluctuating interest rates.

Borrowings under the Agreement will be used to restructure its financings Columbia by eliminating three existing financing vehicles, and for other corporate purposes. First, they will be used as a replacement for Transmission's \$350 million Limited Recourse Loan Agreement (HAR No. 23813, August 30, 1985). Second, they will be used to retire a \$300 million

outstanding amount under Columbia's Credit Agreement (HAR Nos. 21546 and 24196, July 31, 1982 and September 23, 1986, respectively). Finally, proceeds will be used to redeem and retire all of Columbia's preferred stock, outstanding in three series and with a combined par value of \$110 million (HAR Nos. 18979, 22886 and 23007, May 12, 1975, March 22, 1983 and July 21, 1983, respectively).

Columbus Southern Power Company (70-7539)

Columbus Southern Power Company ("CSP"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

CSP proposes to sell certain of its utility assets (the "Facilities") to E. I. duPont de Nemours & Co., Inc., ("duPont"). The Facilities are comprised of Substation DuPont No. 182, which is located on land owned by duPont in Circleville, Ohio. The Facilities are dedicated solely to serving duPont's property, are not used to serve any other customer of CSP, and are not adaptable, at that location, for use in serving any customer other than duPont. DuPont will grant an easement to CSP as necessary to allow CSP's transmission lines within the boundary of the substation. According to the declaration, duPont will pay CSP \$1,479,048 in cash, which includes all expenses CSP expects to incur in the sale, for the Facilities.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 88-15361 Filed 7-7-88; 8:45 am]
BILLING CODE 8010-01-2

[Rel. No. 34-25874; File No. SR-NASD-88-24]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. relating to NASDAQ companies providing the NASD with notice of material new releases

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78a(b)(1), notice is hereby given that on June 21, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments to Part II of Schedule D to the NASD By-Laws would require NASDAQ issuers to provide notice to the NASD of material news releases no later than simultaneously with the release of such information to the press and to respond to information requests by the NASD. The proposed amendment to the "Notification to NASD of News Releases," also contained in Part II of Schedule D, would recommend that issuers notify the NASD of such material information at least ten minutes prior to its release to the press. These proposed amendments were approved by the Commission for a period of 60 days on June 9, 1988 in Release No. 34-25792.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

The proposed rule change would make permanent the requirement that NASDAQ companies provide notice to the NASD Market Surveillance section, at least simultaneously with the release of such information to the news media. The current provisions of Schedule D require the public disclosure of material information but only recommend that notification to the NASD take place simultaneously with such release. It is the belief of the NASD Board of Governors that in view of recent market events and of proposals by the NASD to mandate the use of the NASD's Small Order Execution System for transactions in NASDAQ National Market System securities, it will be of critical importance for the NASD to be notified in a timely fashion of material news.

This will be necessary in order to make appropriate determinations with respect to trading halts.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(11) of the Act, which mandates that the rules of the NASD include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, and that such rules shall be designed to produce fair and informative quotations, to prevent fictitious and misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. The NASD believes that requiring issuers to provide the NASD with material information will substantially assist the NASD in carrying out its obligations under this provision of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendments impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,
Assistant Secretary.

Dated: July 1, 1988.
[FR Doc. 88-15360 Filed 7-7-88; 8:45 am]
BILLING CODE 8010-01-2

SMALL BUSINESS ADMINISTRATION
(License No. 03/03-0178)

D.C. Bancorp Venture Capital Co.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to the Regulations governing small business investment companies (13 CFR 107.801 (1988)) for a transfer of ownership and control of D.C. Bancorp Venture Capital Company (DCBVCC), 1801 K Street, NW., Washington, DC 20006, a Federal Licensee under the Small Business Investment Act of 1950 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of DCBVCC, which was licensed July 18, 1985, is subject to the prior written approval of SBA.

The transfer of ownership and control relates to the proposed purchase of Money Management Associates' 33 and 1/3 percent interest of DCBVCC by Sovran Financial Corporation (SFC). SFC, by virtue of its 100 percent ownership of Sovran Bank/DC National, indirectly owns 33 1/3 percent of DCBVCC. Allowing for the consummation of the proposed transfer of ownership and control SFC will own 66 2/3 percent of DCBVCC.

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percentage of outstanding share to be owned	
		Directly	Indirectly
Allen A. Weissburg, 7914 Lysander Court, McLean, VA 22101	President and General Manager	0	0
Thomas D. Walsh, 3224 Juniper Lane, Falls Church, VA 22044	Vice President and Director and holder of 15% interest and partner in JMW Investment Partnership	0	5.0
James C. Brandon, 7003 Braddock Mews Place, Springfield, VA 22151	Vice President	0	0
Albert A. D'Alessandro, 9201 Warfield Road, Gaithersburg, MD 20879	Secretary-Treasurer	0	0
Joanne McDowell, 1529 Farlow Avenue, Crofton, MD 21114	Assistant Secretary	0	0
Jeffrey R. Reider, 4805 Dorset Avenue, Chevy Chase, MD 210915	Director	0	0
DC Bancorp Investment Company, 1801 K Street, NW., Washington, DC 20006	Direct Stockholder	33.3	0
Sovran Bank/DC National, 1801 K Street, NW., Washington, DC 20006	100% owner of DC Bancorp Investment Company	0	33.3
Sovran Financial Corp., One Commercial Place, 8th Floor, Norfolk, VA 23510	100% owner of Sovran Bank/DC National	0	33.3
Sovran Financial Corp., One Commercial Place, 8th Floor, Norfolk, VA 23510	Direct Stockholder	33.3	0
JMW Investment Partnership, Suite 490, 1050 Connecticut Avenue, NW., Washington, DC 20036	Direct Stockholder	33.3	0

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Washington, DC area.

(Catalog of Federal Domestic Assistance Program No. 58.011, Small Business Investment Companies)

Dated: July 1, 1988.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 88-15326 Filed 7-7-88; 8:45 am]

BILLING CODE 8025-01-0

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 1, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for

answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45672

Date Filed: June 27, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 25, 1988.

Description: Application of Trans World Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 147 authorizing it to provide air transportation services between Frankfurt and Vienna with full local rights between such points on a routing New York-Frankfurt-Vienna.

Docket No. 45673

Date Filed: June 27, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 25, 1988.

Description: Application of Airbc Limited pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to carry persons, property and mail between Seattle, Washington, and Pemberton, British Columbia, Canada on a scheduled basis.

Docket No. 44055

Date Filed: June 28, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 28, 1988.

Description: Application of Japan Air Lines Company, Ltd. pursuant to section 402 of the Act and Subpart Q of the Regulations submits an Amendment No.

1 to the Application for amendment of its foreign air carrier permit filed May 23, 1988. The purpose of this amendment is to request that JAL's permit be amended to give JAL authority to coterminize Seattle, Washington and Atlanta, Georgia.

Docket No. 45364

Date Filed: July 28, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 26, 1988.

Date Filed: Amendment No. 1 to the Application of L.L.P.O. Aruba N.V. for a foreign air carrier permit requests authority to provide scheduled services to Miami, Florida, San Juan, Puerto Rico and to the U.S. Virgin Islands. Intermediate points in the Caribbean requested at this time are Curacao and Haiti.

Docket No. 45681

Date Filed: July 1, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 29, 1988.

Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 325 (Houston/Dallas/Ft. Worth-Toronto/Montreal).

Docket No. 45683

Date Filed: July 1, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 29, 1988.

Description: Application of Millon Air, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests amendment of its certificate of public convenience and necessity authorizing it to perform scheduled all-cargo service between the United States

and El Salvador, and between the United States and Guatemala.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-15350 Filed 7-7-88; 8:45 am]

BILLING CODE 4810-22-0

Federal Highway Administration

Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of a notice of intent.

SUMMARY: The FHWA advises the public of the withdrawal of the February 25, 1988 Notice of Intent to prepare an Environmental Impact Statement for the relocation of existing US-27 to a new location generally outside the Chickamauga-Chattanooga National Military Park, Walker-Catoosa Counties, Georgia (project #MLP-813(1)). Current plans are to use alternative funding sources not involving FHWA for this project.

Thomas D. Myers,

District Engineer, Federal Highway Administration, Atlanta, GA.

[FR Doc. 88-15323 Filed 7-7-88; 8:45 am]

BILLING CODE 4910-22-0

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0410

Form Number: IRS Form 6469 and 6468

Type of Review: Revision

Title: Tape Label for Form W4 (6469)

How to Prepare Form 6469, Tape label for Form W4 (6468)

Description: 26 USC 3402 requires all employers making payment of wages

to deduct (withhold) tax upon such payments. Employers are further required under Regulation 31.3402(f)(2)-1(g) to submit certain withholding certificates (W-4) to the IRS. Form 6469 (labels) and 6468 (instructions) are sent to employers who prefer to file this information on magnetic tape.

Respondents: State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

Estimated Number of Respondents: 70

Estimated Burden Hours Per Response: 6 minutes

Frequency of Response: Quarterly

Estimated Total Reporting Burden: 28 hours

Clearance Officer: Garrick Shear (202)

535-4297, Internal Revenue Service,

Room 5571, 1111 Constitution Avenue,

NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202)

395-6880, Office of Management and

Budget, Room 3208, New Executive

Office Building, Washington, DC

20503.

Dale A. Morgan,

Departmental Reports.

[FR Doc. 88-15393 Filed 7-7-88; 8:45 am]

BILLING CODE 4810-25-0

Public Information Collection Requirements Submitted to OMB for Review

Date: June 30, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New

Form Number: IRS Form 9003

Type of Review: New collection

Title: Additional Questions to be

Completed by All Applicants for

Permanent Residence in the United

States

Description: Form 9003 is to be used by

the State Department and the

Immigration and Naturalization

Service to gather certain additional

information of "green card" applicants

for the IRS as required by section

6039E (b) of the Tax Reform Act. The

answers will be transcribed into a database for IRS computer processing.

Respondents: Individuals or households

Estimated Number of Respondents:

050,000

Estimated Burden Hours Per Response:

5 minutes

Frequency of Response: When applying

for green card

Estimated Total Reporting Burden:

54,166 hours

OMB Number: New

Form Number: IRS Form 8644-A

Type of Review: New collection

Title: Annual Return of Shareholder

Information under Section 1295

Description: Form 8644-A is used by

certain foreign investment companies

to report information to its

shareholders who are U.S. persons.

These shareholders use the

information to report amounts in gross

income when filing their income tax

returns. The IRS uses the information

on Form 8644-A to determine if the

correct amount has been included in

income.

Respondents: Businesses or other for-

profit

Estimated Number of Respondents: 100

Estimated Burden Hours Per Response:

14 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 1,530

hours

OMB Number: 1545-0393

Form Number: IRS Form 109C and

109(SC)

Type of Review: Extension

Title: Duplicate of Refund Return

Requested Statement of Nonreceipt of

Refund Shown on Tax Return

Description: The Internal Revenue Code

requires tax returns to be filed. It also

authorizes IRS to refund any

overpayment of tax. If taxpayers

inquire about their non-receipt or

refund or no return is found, this letter

is sent requesting the taxpayer to file

another return.

Respondents: Individuals or households

Estimated Number of Respondents:

18,223

Estimated Burden Hours Per Response:

5 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 1,513

hours

Clearance Officer: Garrick Shear (202)

535-4297, Internal Revenue Service,

Room 5571, 1111 Constitution Avenue,

NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202)

395-6880, Office of Management and

Budget, Room 3208, New Executive

Office Building, Washington, DC
20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 88-15394 Filed 7-7-88; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular; Public
Debt Series No. 16-88]

Treasury Notes; Series AC-1990

The Secretary announced on June 22, 1988, that the interest rate on the notes designated Series AC-1990, described in Department Circular—Public Debt Series—No. 16-88 dated June 16, 1988, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 88-15331 Filed 7-7-88; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Department Circular; Public
Debt Series No. 17-88]

Treasury Notes; Series N-1992

Washington, June 24, 1988.

The Secretary announced on June 23, 1988, that the interest rate on the notes designated Series N-1992, described in Department Circular—Public Debt Series—No. 17-88 dated June 16, 1988, will be 8-1/4 percent. Interest on the notes will be payable at the rate of 8-1/4 percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 88-15332 Filed 7-7-88; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

SUMMARY: The United States Information Agency hereby modifies a notice found at 52 FR 13170 [April 21, 1987] regarding immunity from judicial seizure for the art exhibit "Son of Heaven: Imperial Arts of China" to provide revised dates and venues of its temporary exhibition in the United States.

EFFECTIVE DATE: This modification is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Lorie J. Nierenberg, Office of the General Counsel, United States Information Agency, 301-4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency hereby modifies a notice published at 52 FR 13170 [April 21, 1987]. The notice rendered immune from judicial process certain items to be included in the exhibit entitled "Son of Heaven: Imperial Arts of China." this modification of notice indicates the new locations and dates of exhibition, which are as follows: the Flag Pavilion/Art Pavilion, Seattle Center, Seattle, Washington, beginning on or about July 28, 1988, to on or about December 31, 1988, and the Central High School Building, Columbus, Ohio, beginning on or about March 1, 1988, to on or about August 31, 1988.

Date: July 1, 1988.

R. Wallace Stuart,
Acting General Counsel.
[FR Doc. 88-15323 Filed 7-7-88; 8:45 am]
BILLING CODE 5330-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 131
Friday, July 8, 1988.

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

July 5, 1988.

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW.,
Room 512, Washington, DC 20425.

DATE AND TIME: Friday, July 15, 1988,
9:00 a.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda.
- II. Approval of Minutes of June Meeting.
- III. Staff Director's Report:
 - A. Status of Earmarks.
 - B. Personnel Report.
 - C. Activity Report.
- IV. Resolution: Briefing on Campus Violence.
- V. Incomes of Americans Report: Asian Americans.
- VI. Project Proposal: Hearing on Congressional Exemption from Civil Rights Laws.
- VII. SAC Report: "Minority Political Participation in Selected Alabama Jurisdictions".
- VIII. SAC Report: "Bigotry and Violence in Illinois".
- IX. SAC Report: "Missouri Human Rights Agencies".
- X. SAC Report: "Desegregating Cabrini-Green".

XI. SAC Report: "Reporting on Bias-Related Incidents in New York State."

XII. SAC Recharter:
XIII. Presentations by SAC Chairmen.

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376-8312.

William H. Gillers,
Solicitor, 376-8514.
[FR Doc. 88-15410 Filed 7-5-88; 5:06 pm]
BILLING CODE 5335-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published July 5, 1988.

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time)
Wednesday, July 6, 1988.

CHANGE IN THE MEETING:

Open Session

The time listed below has been taken off the agenda:

"Regulations Implementing section 504 of the Rehabilitation Act in the Commission's Federally Conduct Programs: FINAL RULE: Response to Public Comment on Notice of Proposed Rulemaking"

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart,

Executive Officer, Executive Secretariat,
(202) 634-6748.

Date: July 1, 1988.

Frances M. Hart,
Executive Officer, Executive Secretariat,
[FR Doc. 88-15395 Filed 7-6-88; 9:34 am]
BILLING CODE 4750-06-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—July 13, 1988.

PLACE: Hearing Room One—1100 L
Street, NW., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Proposed Interpretive Rule Regarding Shippers' Associations.

Portion closed to the public:

1. Docket No. 88-7—Secretary of the Army v. Port of Seattle—Petition for Reconsideration.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking,
Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 88-15480 Filed 7-6-88; 3:47 pm]
BILLING CODE 4730-01-M

Corrections

Federal Register
Vol. 53, No. 131
Friday, July 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 8c

[Docket No. 40923-7270]

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Commerce Programs

Correction

In rule document 88-9009 beginning on page 19270 in the issue of Friday, May 27, 1988, make the following corrections:

§ 8c.3 [Corrected]

1. On page 19278, in the first column, in § 8c.3, in the fifth line, "participant" should read "participate".

§ 8c.70 [Corrected]

2. On page 19280, in the third column, in § 8c.70(b), in the sixth line, "Part 613" should read "Part 1613".

BILLING CODE 1505-01-0

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Temporary Child Care for Handicapped Children and Crisis Nurseries

Correction

In notice document 88-14991 beginning on page 25262 in the issue of Tuesday, July 5, 1988, make the following correction:

On page 25265, in the first column, under "D. Closing Date for Receipt of Applications", in the third line, "September 26" should read "September 6".

BILLING CODE 1505-01-0

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-13; A-22971]

Realty Actions; Exchange of Public and Private Lands in Mohave County; Arizona

Correction

In notice document 88-0952 beginning on page 16197 in the issue of Thursday, May 5, 1988, make the following corrections:

1. On page 16197, in the third column, in the land description for Gila and Salt River Meridian, Arizona, under T. 25 N., R. 17 W., immediately following the description for Sec. 33, insert a new line reading "Sec. 35, S½NW¼, N½SW¼."

2. On page 16198, in the first column, in the 19th line, "South 9 degrees" should read "South 89 degrees".

BILLING CODE 1505-01-0

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums

Correction

In rule document 88-14792 beginning on page 24906 in the issue of Thursday, June 30, 1988, make the following corrections:

1. On page 24907, in the third column, in the first complete paragraph, in the seventh line, "414(1)" should read "414(l)".

2. On page 24908, in the first column, in the second complete paragraph, in the 10th line, "interim" was misspelled.

3. On the same page, in the same column, in the third complete paragraph, in the 10th line, "eight" should read "eighth".

4. On the same page, in the second column, in the last line, "new" should read "newly".

5. On page 24909, in the third column, in the second complete paragraph, in the 14th line, after "\$1" insert "of".

6. On page 24910, in the first column, in the second complete paragraph, in the ninth line, after "from" insert "the".

§ 2610.10 [Corrected]

7. On page 24914, in the second column, in § 2610.10(b)(1), in the third line, "414(1)" should read "414(l)".

§ 2610.22 [Corrected]

8. On the same page, in the third column, in § 2610.22(b), in the 12th line, "also" should read "all".

§ 2610.23 [Corrected]

9. On page 24915, in the first column, in § 2610.23(a), in the 44th line, after "plan" insert "that".

10. On page 24916, in the first column, in § 2610.23(d)(3), in the third line, "414(1)" should read "414(l)".

§ 2610.26 [Corrected]

11. On page 24917, in the second column, in § 2610.26(b), in the 12th line, "on" should read "of".

§ 2610.34 [Corrected]

12. On page 24918, in the second column, in § 2610.34(a)(8)(ii), in the fifth line, after "following" insert "the".

13. On the same page, in the third column, in § 2610.34(a)(7)(ii), in the fifth line, after "following" insert "the".

14. In the same column, in § 2610.34(a)(8), in the seventh line, after "before" insert "the".

15. In the same column, in § 2610.34(a)(8)(ii), in the second line, remove "before" and insert "on or after". NOTE: For a Pension Benefit Guaranty Corporation correction to this document see the Rules section of this issue.

BILLING CODE 1505-21-0

Friday
July 8, 1988

Part II

ACTION

Agency Information Collection Activities
Under OMB Review; Notice

federal register

BEST COPY AVAILABLE

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: Action.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Need and Use: Study mandated by Congress (Pub. L. 99-551, Section 416) to evaluate RSVP and SCP Family Caregiver Programs which provide, through volunteers, respite services to families caring for frail or disabled relatives. Findings will provide information useful for technical assistance and program development and monitoring. **Key Words:** Program evaluation, Volunteer services.

To Obtain Information About or To Submit Comments On This Proposed Information Collection, Please Contact Both:

Melvin E. Beetle, Clearance Officer, ACTION, Room M-600, 806 Connecticut Ave., NW., Washington, DC 20525, Tel: (202) 634-9321 and

James Houser, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395-7318.

Office of ACTION issuing the Proposal: Office of the Inspector General, Program Analysis and Evaluation Division.

Title of Form: OAVP Family Caregiver Evaluation.

Type of Request and Respondent's Obligation to Reply: New Response is Voluntary.

General Description of Respondents: RSVP and SCP Project directors, station supervisors, Volunteers, elderly clients and family caregivers.

Estimated Response Burden: Overall Figure in Burden Hours—1,337.8 hrs.

Number of respondents by group	Average burden minutes per response	Frequency of response
170 Project Directors.....	90	One time only.
10 Project Directors.....	90	Do.
590 Station Supervisors.....	90	Do.
30 Station Supervisors.....	66	Do.
90 Volunteers.....	42.6	Do.
90 Family Caregivers.....	39.6	Do.
90 Clients.....	21	Do.

Date: June 23, 1988.

Melvin E. Beetle,

Clearance Officer, ACTION.

Supporting Statement for Request for Approval of OAVP Family Caregiver Evaluation

Introduction

The Family Caregiver Program is one of the activities of ACTION's Retired Senior Volunteer Program (RSVP) and Senior Companion Program (SCP). Legislated under Title II of the Domestic Volunteer Service Act of 1973, as amended, RSVP and SCP enable Americans aged 60 and older to aid in solving community problems.

SCP affords volunteer opportunities for low-income men and women while providing them with a modest stipend for assisting the frail elderly. Their assistance is designed to (1) help to prevent inappropriate institutionalization of elderly homebound persons, and (2) contribute to the deinstitutionalization of other elderly during their readjustments to the community. In addition, Senior Companions serve as advocates, linking their clients to community services and other resources.

SCP volunteers are placed in their assignments through community health and social service agencies and State long-term care networks. Approximately 80 percent of the 5,300 Senior Companions helping some 18,000 clients nationwide in 1986 were assigned to the homebound, both those who live alone and with family.

RSVP offers retirees volunteer opportunities in a variety of settings throughout their communities, e.g., courts, libraries, schools, economic development agencies, hospitals, day care centers, hospices and families. Proffered volunteer services include adult literacy, guardians ad litem, tax aids, guides, home repair, telephone assurance and in-home care.

In the area of in-home care for elderly persons who live alone as well as with

family, RSVP volunteers provide personal care, escorting, shopping and recreation services. RSVP volunteers serve without compensation but may be reimbursed for some volunteer expenses.

During 1986, approximately 365,000 RSVP volunteers were assigned to 51,000 community agencies through 750 projects nationwide, with a substantial number of these volunteers working with the homebound.

Volunteers in the RSVP and SCP Family Caregiver Programs provide relief to family members caring for frail or disabled elderly relatives. This relief might be going to the family home for a few hours a week to groom or feed the older family member so that the family caregiver can have much needed time to do other family chores or just relax. Or it might be accompanying an elderly family member to an adult day care center once or twice a week to provide the caregiver some relief from the 24 hours a day, 7 days a week caregiving. Or it might be sitting with an elderly hospice patient once a week to give the family caregiver a brief respite.

The Family Caregiver Program has generally been accepted as a success across the country as a long-term care activity and an alternative to nursing home placement. Unfortunately, little systematic information exists nationally or within ACTION about the extent of family caregiver assistance provided by RSVP and SCP volunteers. To this end, in 1986 Congress amended ACTION's legislation to include an evaluation of the assistance given to family caregivers by RSVP and SCP.

This evaluation combines both process and goal evaluation. The process aspect of the evaluation directs attention to the target service populations, services delivered, paid and volunteer personnel, uses of resources, training and qualifications of participating personnel, decisionmaking and patterns of interactions. Goal attainment evaluation goes beyond project description and process determination in order to ascertain more in-depth information on whether program objectives and goals are being achieved, perceived effects on people being served, problems encountered/resolved and other insights and issues.

The evaluation was delineated by ACTION as having two aspects. The first aspect is to gather a wide range of information about family caregiver volunteer activities from a sample of RSVP and SCP projects since the Older American Volunteer Project (OAVP) Project Profile does not at present contain any category of assistance to

family caregivers and evaluation information on assistance to family caregivers does not exist. The second aspect is in-depth interviews with just a few projects, the selection of which will be done after 50 percent of the mail questionnaires are analyzed. To adhere to the Congress' mandate that the report of this evaluation be submitted not later than December 31, 1988, this OMB submission includes instruments for both aspects.

A. Justification

1. *Circumstances that Make Information Collection Necessary.* Pub. L. 99-551, section 416 mandates that ACTION conduct an evaluation of the Title II programs that assist families caring for frail and disabled adult family members. Specifically, Congress mandated that the evaluation "shall include information on—

(A) The range and extent of service needs of, and the services provided to, family caregivers assisted by volunteers;

(B) The characteristics of volunteers and the skills, training and the supervision necessary to provide various types of volunteer assistance to family caregivers;

(C) Administrative cost, including recruitment, training and supervision cost associated with volunteer assistance to family caregivers; and

(D) Such other issues as may be relevant to provide services to assist family caregivers."

(See Attachment 1)

2. *Use of the Information.* The results of this evaluation, in addition to informing Congress, will be useful to ACTION, and state and local RSVP and SCP projects for program description, developing monitoring plans, technical assistance and program development.

3. *Consideration of Improved Information Technology to Reduce Burden.* Technical or Legal Obstacles to Reducing Burden. For the mail survey (Aspect 1) descriptive data about the RSVP and SCP projects can be obtained from existing records by project directors and station supervisors. During the pretest it was found that client and volunteer characteristics, financial and other programmatic data are readily available and easily retrieval. For some projects, this information is computerized which further enhances information retrieval and reduces burden. For the face-to-face interviews (Aspect 2), optimal survey methodology is used in data collection to reduce burden. That is, the questionnaires have been designed to reduce respondent burden through the use of "skip patterns." "Skip patterns" ensure that

respondents will not be asked questions that do not apply directly to them.

Through the process of design, pretest and revisions, the length of the instruments has been reduced. In both aspects information is targeted only to the most appropriate respondent. Only factual, demographic and opinion data will be asked of each respondent. These approaches also allow burden to be reduced.

No technical or legal obstacles to reducing burden are applicable.

4. Efforts to Identify Duplication.

Some information has been gathered on caregiver assistance as part of the SCP Homebound Elderly Demonstration Program Evaluation, but the information gathered is a small part of SCP and caregiver assistance was but a part. Within ACTION little information exists on what standard SCP and RSVP projects volunteers are accomplishing in family caregiver assistance. No information on family caregiver assistance is currently collected by OAVP's Project Profile. The Family Caregiver Evaluation is the first evaluation to focus solely on family caregiver services provided by RSVP and SCP volunteers.

5. *Use of Similar Information.* There is no similar information that can be used or modified to meet the purpose of the evaluation.

6. *Efforts to Minimize Burden to Small Organizations.* The seven (7) data collection instruments have been designed to minimize the completion time with both RSVP and SCP project directors, station supervisors, volunteers, elderly clients and their family caregivers. Simplifications were made following the pretest as described in Item 3 above. Exhibit 1 (page 8) of this submission outlines the estimates of burden to collect the data.

The mail questionnaires (Aspect 1) to project directors and station supervisors are restricted to programmatic information—volunteer recruitment, training, supervision and associated costs; volunteer skills and activities; and extent of services provided to the elderly and their family caregivers. To facilitate arranging for interviews (Aspect 2) with the volunteers, clients and caregivers, RSVP and SCP project or station staffs will be asked to provide the contractor with their names, addresses, phone numbers, and some other relevant information (such as client disability). To minimize interruption of interviewees schedules, all appointments will be scheduled in advance and at respondents' convenience.

7. *Consequence to Federal Program If the Collection Conducted Less*

Frequently. This is the first systematic evaluation of the RSVP and SCP Family Caregiver Programs. As mandated by Congress, the results of the evaluation must be submitted no later than December 31, 1988.

8. *Circumstances Requiring Collection Inconsistent with 5 CFR 1320.6.* The proposed data collection will be in compliance with 5 CFR 1320.6.

9. *Consultations with persons outside ACTION.* The following people were consulted during the design of the study and the development of the instruments:

(1) Dr. Michael Kahn, Ph.D. (Contractor Consultant), Montien Corp., 5442 Luckpenny Pl., Columbia, MD 21045, (301) 992-4159

(2) Ms. Winifred Dowling, President, National Association of RSVP Project Directors, 2 Civic Center Plaza, 3rd Floor, El Paso, TX 79901-1196, (915) 541-4374

(3) Ms. Berry Thompson, President, National Association of SCP Project Directors, SCP, P.O. Box 1510, Opelousa, LA 70570, (318) 948-3651

The following people were consulted during the pretest regarding clarity of instructions, recordkeeping, disclosure and reporting format:

(4) Ms. Millie Aven, RSVP and SCP Project Director, SEVAMP, Inc., 7 Koger Executive Center, #100, Norfolk, VA 23502, (804) 461-9461

(5) Ms. Maxine Brown, Project Director, Southern MD SCP, Hartman Bldg., P.O. Box 279, Hughesville, MD 20637

(6) Ms. Greta Armstrong, Project Director, Baltimore City SCP, Baltimore City Health Dept., 620 N. Caroline St., Baltimore, MD 21205, (301) 396-8248

(7) Dr. Robert Cosby, Ph.D., Director, Family and Child Services, 929 L Street, NW., Washington, DC 20001, (202) 289-1510

(8) Ms. Holly Dugan, SCP-Elder Call, Francis Scott Key Medical Center, 4940 Eastern Avenue, Baltimore, MD 21224, (301) 550-1250

(9) Mr. Orville A. Swafford, Director, Special Home Services, 303 E. Fayette Street—Room A-210, Baltimore, MD 21202, (301) 396-4494

(10) Ms. Debbie Luddington, Alexandria Adult Day Care Center, 11108 Jefferson Street, Alexandria, VA 22314, (703) 838-4844

There were no substantive problems that could not be resolved during consultation.

There were no other public contacts. Opportunities for public comment were not appropriate.

10. *Assurance of Confidentiality.* All information collection procedures will

comply with the provisions of the Privacy Act of 1974 and OMB Circular A-108 "Responsibilities for the Maintenance of Records about Individuals by Federal Agencies."

In accordance with the Privacy Act, a statement regarding use and

confidentiality of the information collected will be incorporated into the introduction of the interviews and will be read to each prospective respondent. This statement will be included in the appropriate instruments (see Attachment 2). The interviewer will,

through the use of this introduction, explain that participation in the study is voluntary and that the interviewee may refuse to answer any question or may stop the interview at any time he or she wishes.

EXHIBIT 1.—PROJECTED RESPONDENT BURDEN FOR ACTION FAMILY CAREGIVER PROGRAM SURVEY

	Aspect I (mail survey)			Aspect II (face-to-face interviews)			Both aspects
	Average length (hours)	Number of respondents	Respondent burden (hours)	Average length (hours)	Number of respondents	Respondent burden (hours)	
Project Director	1.5 x	170	255.0	1 x	10 ^a	10.0	265.0
Volunteer Station	1.5 x	590	885.0	1.1 x	30 ^b	33.0	918.0
Volunteer				.71 x	90 ^c	63.9	63.9
Caregiver				.66 x	90 ^c	59.4	59.4
Client				.35 x	90 ^c	31.5	31.5
Total			1,140.0			197.8	1,337.8

^a 10 projects will be included in the face to face interviews.

^b An average of 3 volunteer stations will be selected for each of the 10 projects.

^c An average of 3 clients, 3 caregivers and 3 volunteers will be interviewed for each of the 30 volunteer stations selected.

Before beginning the interview, each potential respondent will be asked to sign a consent form. (Attachment 3) A copy of the form will be left with each respondent and the original signed copy will be sent to the contractor by the interviewers along with the completed questionnaire. Upon receipt, the form will be kept in a locked file.

No permanent records will be maintained that identify individual respondents. Data will be kept in individual identifiable form only long enough to assure access for follow-up of interview verification and until a complete data file can be constructed in a format not allowing individual identification. Completed questionnaires, identified only by anonymous ID numbers, will be stored separately and securely and will be submitted to ACTION for destruction upon completion of the evaluation. Only the ACTION project manager for this evaluation and project personnel authorized by him will have access to the confidential files.

11. *Sensitive Questions.* This evaluation will include no questions deemed to be sensitive in nature. During the pretest no respondent refused to answer any question, including age and household income, because it was considered to be sensitive or private.

12. *Estimates of Cost to the Federal Government.* The contract was awarded under a cost plus-fixed-fee contract. The total cost of this evaluation is \$226,994 in FY '88. There is no separate cost for the two data collection aspects.

13. *Estimates of the Burden of Information Collection.* The estimated respondent burden, by respondent type

and data collection method, is shown in Exhibit 1. These estimates are based on the pretest experience, debriefing meetings following the pretest and subsequent revisions.

Aspect 1 data collection involves mailing questionnaires to projects directors and station supervisors. There is no difference between RSVP and SCP station supervisor questionnaires, and there is no difference between RSVP and SCP project director questionnaires. These two instruments are included as Attachment 4.

The face-to-face questionnaires (Aspect 2) for the project director, station supervisor, elderly client, family caregiver and volunteer are included in Attachment 5. With the exception of three questions on fees directed to RSVP station supervisors, there is no difference between instruments administered to RSVP and SCP respondents.

In order to remain within the budget and rigorous timetable of this evaluation, none of the face-to-face questionnaires will be translated into another language. Hence, sites that are discovered to have significant non-English-speaking populations will not be included in the second aspect of this evaluation.

14. *Reasons for Changes in Burden.* As ACTION has no Information Collection Budget (ICB), there is no change in burden.

15. *Plans for Tabulation, Statistical Analysis and Time Schedule— a. Tabulation and Statistical Analysis*

The analysis plan centers on the following methodological questions:

(1) How will the different levels or units of analysis be linked?

(2) How will data be examined and adjusted, if necessary?

(3) What kind of statistical analysis will be performed?

(4) How will results be inferred?

(1) *Linking Units of Analysis.* The primary units of analysis for this evaluation are the RSVP and SCP projects. (The RSVP and SCP projects are two independent samples.) Each project will be analyzed separately but, where appropriate, comparisons will be made. The evaluation design calls for gathering information using two methods, the mail survey and face-to-face interviews. The mail survey will gather data from the project directors and the station supervisors. The interviews will gather in-depth information from project directors, station supervisors, volunteers, elderly clients and family caregivers. While analysis will be done for each group of respondents, all will be linked to the principal units of analysis, the projects. Linkages will be made in two ways: (1) Using a system of ID numbers that captures project, station, volunteer, elderly client and family caregiver and (2) using aggregate measures, such as measures of central tendency to permit construction of indices.

(2) *Examination and Adjustment of Sample Data.* Frequency distributions and other measures of central tendency and dispersion will be used to study skewness of some critical variables. Should this step reveal unexpected patterns, appropriate adjustments will be made using standard statistical

techniques such as Z-squared before performing other analyses.

(3) *Statistical Analysis.* Univariate, bivariate and multivariate techniques, when appropriate, will be used. Univariate analysis will be used to describe RSVP and SCP projects. Key projects characteristics such as urban-rural distinction, size and auspices will be used to further highlight description. Bivariate analysis will involve the study of the distributions of two variables of interest at a time. Bivariate statistical tests will depend on the level of measurement of the variables (nominal, ordinal, interval). It is anticipated that measures of significance such as Student's *t* and measures of association such as Chi-square will be calculated. Multivariate analysis will be applied only to selected variables and in consultation with ACTION. Multivariate analysis will be used to answer questions that may arise from the first two stages of analysis.

Both statistical and management techniques will be used to handle missing data. The management approach for overcoming incomplete information includes (1) complete editing in the field (Aspect 2) and in the contractors' office and (2) follow-up phone calls to clear up ambiguities and missing information in both Aspect 1 and Aspect 2.

The statistical approach includes generating and displaying frequencies on missing responses to each survey question to determine further how missing data should be handled. That is, depending upon their proportional representation for the responses to a question, missing responses may be presented but excluded from other analysis or presented and treated as available responses with assigned scores. Missing data analysis also involves comparing respondents and nonrespondents. Programmatic data will be used to compare responding and nonresponding projects and stations. Demographic information will be used to compare responding and nonresponding volunteers, elderly clients and caregivers. (Basic information will be gathered by the interviewers on nonresponding volunteers, clients and caregivers. See Item B-3.) Estimation of response bias effects will be done using Chi-square.

(4) *Inferring Results.* When the population standard deviation is known for certain variables Z-squared is an appropriate procedure to infer sample results to the population. But because the population parameters (variance and standard deviation for given variables) are not known in this study, Student's *t* test will be used to infer results. (Cf. T.

Anderson and S. Slovic. *Statistical Analysis of Data*. Palo Alto: Scientific Press, 1986).

b. *Schedule for Data Collection and Analysis.* Our schedule for collecting and analyzing Aspect 1 (mail survey) and Aspect 2 (face-to-face interviews) data is as follows (approximate dates):

Aspect 1 data collection: July 15—

August 19, 1988

Aspect 1 data analysis partial (50 percent): August 3–12, 1988

Aspect 2 data collection: September 19–23, 1988

Aspects 1 and 2 data analysis: October 2–December 16, 1988

B. Collection of Information Employing Statistical Methods

1. *Universe of Projects and Potential Respondents.* This evaluation is concerned with the Family Caregiver Program of RSVP and SCP projects. However, family caregiving is not a separate category in the OAVP's Project Profile. To identify which RSVP and SCP projects should compose the universe, ACTION asked OAVP regional directors and ACTION state RSVP and SCP program directors, in January 1988, to indicate projects that had volunteers who provide family caregiver services to families involved in caring for frail or disabled elderly persons in a home setting. Initial application of this definition to the information provided, excluded projects which offered services in senior day care centers, senior nutrition sites, and home meal programs. However, after subsequent discussion with the ACTION project officer, a decision was made to broaden the original definition. The revised operational definition became:

RSVP and SCP volunteers who provide direct care to a frail or disabled elderly person on a one-to-one basis in a private home, and institutional or day care setting as a single service in such a manner as to relieve the family caregiver. Application of this definition to projects reported on in January, resulted in a universe of 273 RSVP and a universe of 83 SCP projects.

In constructing the final two separate sampling frames or lists (one of RSVP projects and one of SCP projects), several problems were found. These, which could have affected specification of the universes, were:

1. Reporting volunteer stations which were clearly outside the scope of the definition, e.g., adult literacy programs;
2. Reporting a volunteer station when there was not one;
3. Nonreporting by some substate regions and localities;

4. Reporting a project as both RSVP and SCP;

5. Reporting the project site as located in the entire state rather than located in an urban or rural area.

The latter two problems were handled in the sample design. The first three problems were dealt with by calling selected OAVP regional directors or SCP station managers to correct information that appeared incorrect. Information about RSVP is being affirmed with the assistance of the President of the National Association of RSVP Project Directors who is sending letters to each project director. It is expected that this affirmation procedure may reduce burden as the size of the RSVP universe may become smaller.

Exhibits 2 and 3 present data on the potential respondents and the sample size that will be drawn for the mail and interview aspects. For the 83 projects in the SCP universe there are 466 stations involved in providing family caregiver services. For the 273 projects in the RSVP universe there are 429 RSVP stations involved in providing family caregiver services. In the mail survey sample design, 57 SCP projects and 169 of their stations were selected, and 113 RSVP projects and 421 of their stations were selected.

The universe for the face-to-face aspect consists of five (5) different respondents. These are: (1) Project director, (2) station supervisor, (3) volunteer, (4) elderly client and (5) family caregiver. While it is not possible to calculate the number of certain respondents for both RSVP and SCP (Exhibits 2 and 3), pretest data indicate that 31 respondents—1 project director, 3 station supervisors, 9 volunteers, 9 elderly clients and 9 caregivers—can be interviewed per site (10 in all) and still maintain the project's timetable and budget. For SCP, this represents about 1 in 18 projects, 1 in 32 stations and 1 in 45 volunteers, and for RSVP, this represents about 1 in 55 each for projects and stations, and 1 in 139 volunteers.

EXHIBIT 2.—SCP RESPONDENT UNIVERSE

Type of respondent	Universe	Sample size, ¹
Project director	88	57
Volunteer station	466	169
On Site Interviews:		
Project director	88	5
Volunteer station	466	15
Clients	Unknown	45
Family Caregivers	Unknown	45
Volunteers	2,006	45

¹ 5 sites for Aspect 2.

EXHIBIT 3.—RSVP RESPONDENT
UNIVERSE

Type of respondent	Universe	Sample size ¹
Project director.....	273.....	113
Volunteer station.....	829.....	421
On Site Interviews:		
Project director.....	273.....	5
Volunteer station.....	829.....	15
Clients.....	Unknown.....	45
Family Caregivers.....	Unknown.....	45
Volunteers.....	8,263.....	45

¹ 5 sites for Aspect 2.2. Procedures for the Collection of
Information—*a. Site Selection*

The Mail Survey—*Aspect 1*. The following criteria were used in deciding the sampling approach for the mail survey (*Aspect 1*):

(1) Samples have to be representative of their respective RSVP and SCP projects.

(2) Urban and rural projects have to be included in proportion to their appearance in the population.

(3) Measured values have to be within $\pm 10\%$ of the population values with a confidence level of 95%.

The efficacy of each of the four basic types of probability sampling—(1) random sampling, (2) systematic sampling, (3) stratified sampling, and (4) cluster sampling—was considered. In light of the requirements of the project, including the requirement to maintain an urban-rural distinction, all except stratified sampling were rejected. Cluster sampling was rejected because its disadvantage tended to outweigh its advantage for the Family Caregiver mail survey. While cluster sampling is cost effective, particularly for face-to-face interview studies, it extracts other prices. Variance (probable margin of error) is much greater than for stratified random sampling for the same number of cases. Moreover, the costs and problems of statistical analysis are much greater than for the other three types of probability sampling.

Both systemic sampling and simple random sampling were rejected because of the desire to ensure an urban-rural distinction in the samples.

Stratified random sampling was used to select the RSVP sample and the SCP sample. An urban-rural stratum was created for each of the sampling frames to ensure the inclusion of a representative number of both urban and rural projects. (The urban-rural stratum was operationalized as Metropolitan Statistical Area (MSA)—Nonmetropolitan Statistical Area (nonMSA).) Each project in the two strata of the two sampling frames had an equal chance of being selected from

their respective stratum. It should be noted that projects that reported as serving the entire state were placed in the urban stratum. Projects that reported as being both RSVP and SCP, also mentioned above, were included in both the RSVP and SCP sampling frames.

Graphically, the universe of projects by the urban-rural distinction before sampling appeared as:

	RSVP	SCP
Urban.....	126	56
Rural.....	145	25
Total.....	273	83

The following standard formula was used to determine sample size.

$$n = N^{-1} + E^2 [Z^2 \pi (1 - \pi)]^{-1}$$

where:

n = sample size

N = total number of cases in the universe

E = acceptable error, 10%

π = estimate of population value ($= .5$ when value is unknown)

Z = standardized normal deviate associated with the level of confidence ($Z = 1.96$ at 95% confidence level)

Samples for the two projects which met the specified location and statistical criteria are as follows:

	RSVP	SCP
Urban.....	55	37
Rural.....	58	20
Total.....	113	57

These samples were selected using a table of random numbers.

As a provision of achieving a 75% response rate, one-third more cases within each stratum of each sample was selected as replacement cases using the methods described above. Replacement cases were selected because there is the likelihood that some projects will be found during the actual mail survey not to meet the criteria (see operational definition) or will not reply to the questionnaire.

The mail survey sample design (*Aspect 1*) also involved selecting RSVP and SCP volunteer stations. A maximum of ten stations per project were sampled. When a project had more than ten stations, a simple random sample of 10 was drawn.

2. The Face-to-Face Interviews—*Aspect 2*. The locations of projects for *Aspect 2* are predicated on findings from *Aspect 1*, the mail survey. These findings relate to presence of family caregiver services in September 1988 and sufficient numbers of stations, volunteers, clients and caregivers to

ensure 31 completed interviews per site. Ten (10) sites—5 RSVP projects and 5 SCP projects—will be selected. They will be spread over four geographic regions—East, South, Midwest and West.

b. Respondent Selection—1. The Mail Survey—*Aspect 1*. Only RSVP and SCP project directors and station supervisors will be sent questionnaires. There is one questionnaire that will be sent to RSVP and SCP project directors. And another different questionnaire that will be sent to station supervisors.

2. The Face-to-Face Interviews—*Aspect 2*. As mentioned in Item B-2b above, 31 interviews will be conducted at each RSVP and SCP site. The number and type of respondents are:

- 1 Project director
- 3 Station supervisors
- 9 Volunteers (3 per station selected station)
- 9 Elderly clients (1 each assigned to the 9 volunteers)
- 9 Family caregivers (1 relative of the 9 elderly clients)

(A simple random sample of station supervisors, volunteers, elderly clients and family caregivers will be selected when the numbers in each group exceed specified sample size.) In cases where the elderly client is unable to respond, e.g., some dementia and Alzheimer's disease patients, interviewers will randomly select another elderly client. However, interviewers will be instructed to interview at least six (6) elderly client and family caregiver dyads.

c. Special Procedures. This evaluation involves no special procedures.

3. Methods to Maximize Response Rates. It is anticipated that cooperation among project directors and stations supervisors in the mail survey will be sufficient to achieve the desired return rate of 75% or more of acceptable mail questionnaires. Good cooperation was encountered during the pretest, and other ACTION evaluations report response rates of at least 90 percent. Correspondence about the project's worthiness has already been sent by ACTION to OAVP regional directors and ACTION state and local project directors. Additional correspondence will be sent to them just prior to the mail survey. Project directors will also receive a letter about the project—how it came about, its worthiness and cooperation, both theirs and the station supervisors, is important.

Moreover, project directors will be called when either their questionnaire or the station supervisor's questionnaire has not been returned by the "due date" to encourage further participation.

Projects or stations that refuse to participate or that no longer offer family caregiver services will be replaced as described in the Item B-2a above.

Prior to site visits, project directors and station supervisors will be asked to help arrange interviews with volunteers, elderly clients and caregivers. Since advance appointments for interviews will be made and very high cooperation is anticipated, the response rate is estimated to be between 90 and 100 percent. Only illness or absence of potential respondents on site visit days should cause nonresponse.

Interviewers will be required to gather basic demographic information on respondents who refuse or are unable to participate. The form shown in Attachment 6 will be used for this purpose.

4. Test of Procedures or Methods. The data collection instruments were tested May 9-13 and May 23-25, 1988 in Hughesville, Md., Baltimore, Md., Norfolk, Va., Alexandria, Va. and Washington, DC. In all, five (5) project directors, nine (9) station supervisors, and nine (9) each of volunteers, elderly clients and caregivers were interviewed. The instruments were refined following testing. Refinements included deleting items found irrelevant, adding new skip patterns to decrease respondent burden, and re-wording items to increase clarity and enhance administration.

5. Individual Consulted on Statistical Aspects and Design. In addition to the individuals mentioned in Item A-8, the following ACTION staff were consulted in the design of the statistical aspect of this study: Mr. Melvin E. Beetle (202) 634-9321 and Mr. Thomas Bonczar (202) 634-9321.

The evaluation contractor is: Sociometrics, Inc., 6525 Belcrest Rd., Presidential Building, Suite 655, Hyattsville, MD 20782, (301) 277-9319.

Carol J. Godley is project director for the study. Dr. Michael Kahn consulted on the sampling and statistical aspects of the design.

Attachment 2—Introductory Statement

Introduction

Hello (Name of Respondent) my name is (Your Name).

I'm an interviewer with Sociometrics who (Person Who Arranged Interview) told you would be coming to talk with you about the volunteer services provided by (Volunteer Station).

Everything you tell me will be grouped with information we collect from all other respondents into a report we are writing on the family caregiver (respite

care) program. Nothing you tell me personally will be used in any identifiable way and everything you specifically tell me will remain confidential. You may refuse to answer any questions and you may stop the interview at any time.

May I take a few minutes of your time to interview you concerning these services?

(Hand Respondent Consent Form)

Please read and sign this consent form which states that you agree to participate in this study.

Attachment 3—Consent Form

OAVP Family Caregiver Evaluation

Consent Form

"I agree to be interviewed as part of this national study. I understand that my answers will be kept confidential, that anything I say will only be reported anonymously together with opinions from the people, and that I may refuse to answer any or all questions."

Signed: _____

Name (Printed): _____

Date: _____

ACTION Technical Project Manager's Name: Mel Beetle, Program Analysis and Evaluation Division, Telephone: 1-800-424-8867, (or in Washington, D.C. area, 202-634-9321)

Sociometrics Project Director: Carol Godley, Telephone 1-301-277-9319

Attachment 4—Mail Survey
Questionnaires

Project Director, Station Supervisor
ACTION Family Caregiver Program
Survey Project Director Questionnaire

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room M-600, 806 Connecticut Avenue, N.W., Washington, D.C. 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Project: _____

Completed by: _____

Title: _____

Date: _____

PROJQUX

6-23-82

Project # _____

Section 1. Project Characteristics

1. Which one category best describes your organization?

(Circle one number only)

- 1 State agency on aging
- 2 Other state agency
- 3 Local agency on aging
- 4 Other local agency
- 5 Private non-profit social service agency
- 6 Private non-profit community action agency
- 7 Religious organization
- 8 Community or civic organization
- 9 Private non-profit volunteer agency
- 10 Other (please specify) _____

2A. Do you receive funding from sources other than ACTION.

- 1 Yes (go to Q.2B)
- 2 No (skip to Q.3)

2B. (If Yes) Please circle all sources of funding.

- 1 State government
- 2 Local government
- 3 Private institution(s)
- 4 Religious organization(s)
- 5 Business(es)
- 6 Other Federal source(s)
- 7 Other (specify) _____

3. Please circle the number that best describes the area your project serves.

(Circle one number only)

- 1 Totally urban
- 2 Predominantly urban
- 3 Totally rural
- 4 Predominantly rural
- 5 Approximately an equal mix of urban and rural

4. About how many people in the service area are aged 60 and over?

Number

The focus of this survey is on RSVP volunteers and Senior Companions who provide direct care to a frail or disabled elderly person on a one-to-one basis in a private home, an institutional or day care setting in such a manner as to relieve the family caregiver. For short, this volunteer activity is referred to as family caregiver or respite services.

5A. On a scale of 1 to 5, with 1 being very low and 5 being very high, how would you rate the need for family caregiver or respite services in the area served by your project?

Sponsoring organization media (newsletters, brochures, ads, etc.)
Broader coverage media (newspapers, radio, TV, etc.)
Through individual who works with program
Other (please specify) _____
Other (please specify) _____
Other (please specify) _____

34. What areas of training are provided for volunteers or companions? (Please circle all that apply)

- 1 Agency policy and procedures
- 2 How to counsel people with problems
- 3 How to get along with different people
- 4 How aging affects the mind, emotions, and body
- 5 Availability of community resources or services
- 6 How to help people obtain rights and services
- 7 Housekeeping skills
- 8 Health and personal care assistance
- 9 Hands on experience in family caregiver or respite services
- 10 Procedures for handling crisis situations
- 11 Care of Alzheimer's disease or dementia patients
- 12 Other (Please specify) _____

35. What areas of training are provided for station staff? (Please circle all that apply)

- 1 Agency policy and procedures
- 2 How to counsel people with problems
- 3 How to get along with different people
- 4 How aging affects the mind, emotions, and body
- 5 Availability of community resources or services
- 6 How to help people obtain rights and services
- 7 Housekeeping skills
- 8 Health and personal care assistance
- 9 Hands on experience in family caregiver or respite services
- 10 Procedures for handling crisis situations
- 11 Care of Alzheimer's disease or dementia patients
- 12 Other (Please specify) _____

36. Please indicate the 3 greatest problems or frustrations that you have in the administration of family caregiver or respite services by placing a "1", a "2" or a "3" on the appropriate line. Please use a number only once.

Please note:

- 1=The Most Frustrating
- 2=Second Most Frustrating

- 3=Third Most Frustrating
- ___ Inadequate financial resources
 - ___ Inflexible program requirements or regulations
 - ___ Limited scope of possible volunteer or companion services
 - ___ Inadequate benefits to volunteers or companions
 - ___ Difficulties in scheduling volunteers or companions
 - ___ Not enough volunteers or companions to serve demand
 - ___ Unrealistic demands from clients or caregivers
 - Other (please specify) _____
 - Other (please specify) _____
 - Other (please specify) _____

37. Please list the names and types of all other community organizations and/or agencies with which you collaborate in the delivery of services to the elderly? By collaborate we mean that you have a formal or informal working relationship with these agencies or organizations, not just the sharing of public information.

Organization	Type of organization	Type of collaboration
Examples: 1. Amer. Red Cross.	Non-profit health support agency, Senior Nutrition Site.	Helps us with training by providing speakers. Shares cost and use of van and driver.
2. Happy Meals.		

38. Is there an RSVP or SCP counterpart to this agency which provides services to family caregivers in this community?

- 1 Yes (go to Q.39)
- 2 No (skip to Q.40)
- 3 Don't Know (skip to Q.40)

39. To what extent do you coordinate your activities with your RSVP or SCP counterpart?

40. Please describe the type of activities undertaken by your RSVP volunteers or SCP companions on behalf of families caring for frail or disabled elderly?

Thank you!

ACTION Family Caregiver Program
Survey Station Supervisor
Questionnaire

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room M-800, 806 Connecticut Avenue NW., Washington, DC 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Project: _____
Station: _____
Completed by: _____
Title: _____
Date: _____

Statque
6-23-88

Project# _____
Station# _____

Section 1. Station Characteristics

1. Which one category best characterizes your organization? (Please circle one number only)

- 1 Nursing home or convalescent hospital
- 2 Acute care hospital
- 3 Rehabilitation association or center
- 4 Private nonprofit health agency
- 5 Home health care agency
- 6 Public health department
- 7 Nonresidential public or private nonprofit mental health agency or association
- 8 Residential mental health center or hospital or institution
- 9 Residential mental retardation center or hospital or institution
- 10 Adult day care center
- 11 Nutrition site
- 12 Public or private nonprofit Agency on Aging
- 13 Other public or private nonprofit social service agency
- 14 Religious organization
- 15 Military or VA affiliated health care facility
- 16 Other (please specify) _____

2. In what month and year was this volunteer station established?

Month _____ Year _____

3. Circle the number that best describes the area your project serves. (Please circle one number only)

- 1 Totally urban
- 2 Predominantly urban
- 3 Totally rural
- 4 Predominantly rural
- 5 Approximately an equal mix of urban and rural

The focus of this survey is on RSVP volunteers and Senior Companions who provide direct care to a frail or disabled elderly person on a one-to-one basis in a private home, an institutional or day

care setting in such a manner as to relieve the family caregiver. For short, this volunteer activity is referred to as family caregiver or respite services.

4A. On a scale of 1 to 5, with 1 being very low and 5 being very high, how would you rate the need for family caregiver or respite services in the area served by our station?

Very low	Low	Moderate	High	Very high
1	2	3	4	5

4B. Does your station currently have volunteer or companion activities that can be categorized as family caregiver or respite services?

- 1 Yes (skip to Q.5)
- 2 No (Complete Q.4C only. Do not complete the remainder of the questionnaire. Be sure that your name, title and date are recorded on the cover and return the questionnaire in the self-addressed envelope. Thank you.)

4C. Why did your station elect not to establish a family caregiver or respite component or activity?

5. In what month and year did this station begin offering family caregiver or respite services?

Month _____ Year _____

Section 2. Fiscal Characteristics

Questions 6-17B pertain to fiscal year 1987.

6. Was your program in operation for all of FY '87?

- 1 Yes (skip to Q.8)
- 2 No (go to Q.7)

7. (If No) Please indicate the total number of months you were in service in FY '87.

Number of months _____

8. What was the total costs of your RSVP or SCP services for FY '87?

\$ _____

9. Of the total FY '87 costs for RSVP or SCP services, how much was contributed by the RSVP or SCP project?

10. Of the total FY '87 programmatic costs, how much was contributed by non-RSVP or non-SCP project sources?

Non-RSVP or non-SCP project sources	Contribution
a. _____	\$ _____
b. _____	\$ _____
c. _____	\$ _____
d. _____	\$ _____

Please answer the fiscal questions below by separately listing RSVP or SCP expenditures in column 1 and other expenditures in column 2 for operation of your station in FY '87.

	Column 1 RSVP or SCP expenditures	Column 2 Other expenditures
11. Staff salaries (only include portions of salaries covering services provided to RSVP or SCP activities.)	\$ _____	\$ _____
12. Direct volunteer or companion costs (including travel, stipends, physicals, meals, and insurance)	\$ _____	\$ _____
13. Volunteer or companion recruitment	\$ _____	\$ _____
14. Volunteer or companion supervision	\$ _____	\$ _____
15. Training (including speakers, workshops and materials)	\$ _____	\$ _____

	Column 1 RSVP or SCP expenditures	Column 2 Other expenditures
16. Other administrative costs (including supplies, equipment, staff travel, book-keeping, fringe benefits and communications)	\$ _____	\$ _____

17A. What were the total number of RSVP volunteer or SCP companion hours that your station logged for FY '87?

Hours _____

17B. In your estimation, what percent of the total volunteer hours in FY '87 were spent providing family caregiver or respite services? (If you have actual figures for family caregiver or respite services, please use them in your calculation.)

Percent _____

Section 3. Home Settings

18A. Does this station provide family caregiver or respite services in home settings where an elderly person lives with a family member who takes care of him or her?

- 1 Yes
- 2 No (skip to Q.19A)

18B. For each volunteer or companion who provides family caregiver or respite services in a home setting, please complete the following chart.

Volunteer/companion	Client (name)	Client disability	Number of visits per week	Average hours per visit

Section 4. Institutional Settings

19A. Does this station provide family caregiver or respite services in institutional, long-term or adult day care setting outside the client's or caregiver's residence?

- 1 Yes
2 No (skip to Q.20)

19B. For each volunteer or companion providing family caregiver or respite services in institutional, long term, or day care settings, please complete the following chart.

Volunteer/companion	Client (name)	Client disability	Number of visits per week	Average hours per visit

20. Which of the following programmatic activities does this station get involved in?

(Please circle all that apply)

- 1 Program planning and development
- 2 Informal recruiting of volunteers or companions (e.g., talking to individuals, etc.)
- 3 Formal recruiting of volunteers or companions (e.g., placing ads, group presentations, etc.)
- 4 Maintaining or monitoring volunteer program records and reports
- 5 Identifying and obtaining program resources to support volunteer activities
- 6 Serving as liaison with community organizations and other programs
- 7 Conducting volunteer or companion performance appraisals
- 8 Other (specify)

21. Which of the following volunteer or companion support activities does this station get involved in?

(Please circle all that apply)

- 1 Providing volunteer or companion orientation or training
- 2 Assigning volunteers or companions to specific clients
- 3 Serving as clearinghouse for information to volunteers or companions
- 4 Providing consultation to volunteers or companions on personal matters
- 5 Providing one-on-one volunteer or companion support or supervision within specific client placements
- 6 Giving volunteers or companions recognition or awards
- 7 Other (specify)

22. Which of the following direct client activities does this station get involved in?

(Please circle all that apply)

- 1 Recruiting clients for family caregiver or respite services
- 2 Screening clients for family caregiver or respite services
- 3 Creating client care plans
- 4 Periodically evaluating care plans
- 5 Screening clients for appropriate placement of volunteers or companions
- 6 Other (please specify)

Section 5. Range and Extent of Services

23. How many elderly clients have been served by your station within the last twelve months?

Number

24. How many families caring for the elderly got family caregiver or respite services from this station within the last twelve months?

Number

25. During what hours are family caregiver or respite services available?

(Please circle to indicate a.m. or p.m.)
From ___ a.m. to ___ a.m.
From ___ p.m. to ___ p.m.

26. RSVP and SCP volunteers or companions provide a variety of services to elderly clients living with families, some of which are more needed than others. Of the services below, please indicate which are most needed to assist families in taking care of frail or disabled elderly. Place a "1" by the most needed, or a "2" by the second most needed, or a "3" by the third most needed, or "0" if not generally needed.

Please note:

- 1 = The Most Needed
2 = Second Most Needed
3 = Third Most Needed
0 = Not Generally Needed

A. Personal Care

- ___ a. feeding elderly clients
- ___ b. bathing elderly clients
- ___ c. dressing elderly clients
- ___ d. combing or cutting hair, clipping nails, or shaving elderly clients
- ___ e. helping elderly clients with walking
- ___ f. helping elderly clients with getting in and out of bed
- ___ g. helping with medical or physical therapy
- ___ h. reminding elderly clients to take medicine
- ___ i. encouraging elderly clients to exercise
- ___ j. taking walks with elderly clients (going out with elderly clients in the wheelchair)

B. Nutrition

- ___ k. preparing food for elderly clients
- ___ l. planning meals for elderly clients
- ___ m. labeling and organizing foods for elderly clients

C. Social/Recreation

- ___ n. talking or listening to elderly clients
- ___ o. playing games or cards with elderly clients
- ___ p. helping elderly clients get along with family and friends

D. Home Management

- ___ q. going shopping for elderly clients
- ___ r. helping elderly clients with shopping
- ___ s. running errands for elderly clients (e.g. going to post office or bank, getting prescriptions, etc.)
- ___ t. helping elderly clients run errands (e.g. going to post office or bank, getting prescriptions, etc.)
- ___ u. writing letters for elderly clients
- ___ v. reading to elderly clients
- ___ w. helping elderly clients fill out forms
- ___ x. doing light housekeeping for elderly clients
- ___ y. doing light gardening for elderly clients
- ___ z. helping elderly clients with managing or budgeting funds or pay bills
- ___ aa. making minor repairs on elderly clients' homes

E. Information and Advocacy

- ___ bb. providing information about things elderly clients need to get or do
- ___ cc. helping elderly clients get needed service
- ___ dd. driving elderly clients places
- ___ ee. going places with elderly clients

F. Other

- ___ ff. doing anything else for elderly clients (please specify)

27. What types of services are volunteers or companions not allowed to do?

28. For each of the services below, please indicate its availability in your community. Circle "1" if it is available through your station and/or circle "2" if it is available through another agency. Circle "3" if the service is not available at all.

Available through your station	Available through other agency	Not available	
1	2	3	Adult Day Care Centers
1	2	3	Advocacy for seniors
1	2	3	Alzheimer's Disease and Related Disorders Association (ADDA) services
1	2	3	Caregiver support group
1	2	3	Chores services
1	2	3	Emergency alert or screening
1	2	3	Escort services
1	2	3	Family support services
1	2	3	Financial counseling
1	2	3	Homemakers services
1	2	3	Home delivered meals
1	2	3	Home health services (including nursing care, occupational therapy, etc.)
1	2	3	Hospice services
1	2	3	Hospital or medical services
1	2	3	Legal counseling
1	2	3	Mental health center
1	2	3	Nutrition education
1	2	3	Occupational therapy center
1	2	3	Physically handicapped or developmentally disabled services
1	2	3	Recreational services
1	2	3	Shopping assistance
1	2	3	Social work or case management services
1	2	3	Telephone reassurance
1	2	3	Transportation services
1	2	3	Visitation services
1	2	3	Other (specify)

Section 6. Volunteer Characteristics

29. For the last 12 months, please indicate volunteer or companion enrollment and placement for your station.

- ___ Number enrolled in entire station
- ___ Number placed in entire station
- ___ Number placed in private homes in family caregiver or respite services
- ___ Number placed in institutional setting in family caregiver or respite services
- ___ Number placed in adult day care in family caregiver or respite services

30. How many male and female RSVP volunteers or SCP companions provide family caregiver or respite services under the auspices of this station?

- ___ Males
- ___ Females

31. Please indicate the number of volunteers or companions providing

family caregiver or respite services by race.

- ___ American Indian
- ___ Asian, Pacific Islander
- ___ Black
- ___ Oriental
- ___ Spanish Surname
- ___ White
- ___ Other (please specify)

32. What motivates the average volunteer or companion who specifically decides to get involved in family caregiver or respite services?

(Please circle all that apply)

- 1 Sees a genuine need for provision of this type of service
- 2 Desires to feel useful
- 3 Has previous experience in this area
- 4 Has a knack for or really enjoys working with people close to their own age
- 5 Other (specify)

33. On the average, how long does a volunteer or companion stay in the family caregiver or respite program? (Please write number on line and circle month or year)

- ___ Months
___ Years

34. On the average, how long does a volunteer or companion remain in a single family caregiver or respite placement?

(Please write number on line and circle month or year)

- ___ Months
___ Years

35. What reasons to do volunteers or companions give most often for leaving a family caregiver or respite assignment or leaving the family caregiver or respite program altogether?

(Please circle all that apply)

- 1 Too physically demanding
- 2 Too emotionally draining
- 3 Own deteriorating health
- 4 Other volunteer interest
- 5 Other (please specify)

36. On the average, how many miles does a family caregiver or respite volunteer or companion travel to provide services in the course of a week?

Miles traveled per week

Section 7. Administration

37. Please indicate the 3 most effective techniques used to recruit volunteers or companions for family caregiver or respite activities by placing a "1", "2" or "3" on the appropriate line. Please use a number only once.

Please note:

- 1 = The Most Effective
2 = Second Most Effective
3 = Third Most Effective

___ Presentation at an agency or organization frequented by older persons (such as senior center or adult day care center or nutrition site)

___ Presentation at a religious organization

___ Presentation to a citizen or community group

___ Presentation to other family caregiver or respite or social service agency

___ From waiting lists for the Senior Community Service Employment Program

___ Sponsoring organization media (newsletters, brochures, ads, etc.)

___ Broader coverage media (newspapers, radio, TV, etc.)

___ Through individual who works with program

___ Other (please specify)

___ Other (please specify)

___ Other (please specify)

38. What are the three (3) most important things you look for when screening volunteers or companions for family caregiver or respite placements? (Circle only three please)

- 1 Previous experience in caregiving
- 2 Sensitivity
- 3 Interest in this type of placement
- 4 Commitment
- 5 Patience
- 6 Physical stamina
- 7 Good health
- 8 Congeniality or warmth
- 9 Other (specify)

39. What types of training are provided by station staff for volunteers or companions before placing them in family caregiver or respite situation?

(Please circle all that apply)

- 1 Agency policy and procedures
- 2 How to counsel people with problems
- 3 How to get along with different people
- 4 How aging affects the mind, emotions, and body
- 5 Availability of community resources/services
- 6 How to help obtain rights and services
- 7 Housekeeping skills
- 8 Health and personal care assistance
- 9 Hands on experience in family caregiver or respite services
- 10 Procedures for handling crisis situations
- 11 Care of Alzheimer's disease or dementia patients
- 12 Other (please specify)

40. About how many times a quarter do family caregiver or respite volunteers or companions receive on-site supervision from your staff?

Numbers of times

41. Who on your staff provides this supervision?

42. About how many times a quarter are meetings held with family caregiver or respite care volunteers or companions to review activities, problems and progress?

Number of times

43. About how many times a month do you or your staff talk on the phone with volunteers or companions regarding their activities, problems or progress?

Number of times

44. What are most of these calls about?

(Please circle all that apply)

- 1 Personal matters about themselves
- 2 Concerns about elderly clients' condition or progress
- 3 Availability of other services for elderly clients
- 4 Unreasonable demands from elderly clients or their families
- 5 Suspected elder abuse
- 6 Other (please specify)

45. What other types of support or supervision do you provide to family caregiver or respite volunteers or companions?

(Please circle all that apply)

- 1 In-service meetings
- 2 On-site visits
- 3 Telephone support initiated by station
- 4 In-person counseling
- 5 Other (please specify)

46. Does the station have a care plan for each of its elderly clients?

- 1 Yes (go to Q.47A)
- 2 No (skip to Q.51)

47A. (If Yes) Who generally creates these care plans?

47B. Is this a member of the station staff?

- 1 Yes
- 2 No

48. What part does the station play in creating the care plans?

49. How frequently does the station participate in evaluating existing care plans?

50. Who is responsible for overseeing implementation of the care plans?

- 1 Station supervisor
- 2 Station staff
- 3 RSVP or SCP project
- 4 Referring agency other than station
- 5 Other (please specify)

Section 6. Service Needs

51. Please indicate the 3 most effective methods used to assess family caregiver or respite services needs of the community by placing a "1", "2" or "3" on the appropriate line. Please use a number only once.

Please note:

- 1 = The Most Effective
 - 2 = Second Most Effective
 - 3 = Third Most Effective
- Informal meetings with station staff
- In-person interviews with volunteers or clients or caregivers
- Group meetings with volunteers or clients or caregivers
- Community group or coalition meetings
- Networking with other service provider agencies such as hospitals, nursing homes, social service agencies, etc.
- Information gathering surveys
- Other (please specify)
- Other (please specify)
- Other (please specify)

52. What additional services need to be developed by your station or project to better serve family members caring for elderly persons?

(Please circle all that apply)

- 1 Family counseling or therapy or support groups
- 2 Transportation services
- 3 More staff
- 4 Other (please specify)
- 5 Other (please specify)

53. What other services need to be made available to caregivers and frail elderly clients from other sources to make the family caregiver or respite program more effective?

54. How does this station get families caring for elderly relatives for family caregiver or respite assignments?

(Please circle all that apply)

- 1 Accept referrals from agencies
- 2 Get leads from components within parent agency
- 3 Word of mouth from families that use(d) us

4 Other (specify)

55. What criteria are used to select families for family caregiver or respite services?

(Please circle all that apply)

- 1 Financial need
- 2 Indication of stress by caregiver
- 3 Referrals from your parent institution
- 4 First come, first served
- 5 Degree of need
- 6 Location or proximity to available volunteer or companion
- 7 Families in need of special services we provide
- 8 Other (specify)

56. Are there clients for which your station cannot provide family caregiver or respite services?

(Please circle all that apply)

- 1 Those above our income level
- 2 Those who are incontinent
- 3 Those diagnosed as violent
- 4 Elderly older than (age)
- 5 Elderly younger than (age)
- 6 Other (please specify)

7 Other (please specify)

57. Indicate the 3 most frustrating problems in administering the family caregiver or respite activities by placing a "1", "2" or "3" on the appropriate line. Please use a number only once.

Please note:

- 1 = The Most Frustrating
 - 2 = Second Most Frustrating
 - 3 = Third Most Frustrating
- Inadequate financial resources
- Inflexible program requirements or regulations
- Limited scope of possible volunteer or companion services
- Inadequate benefits to volunteers or companions
- Difficulties in scheduling volunteers or companions
- Not enough volunteers or companions to serve demand
- Unrealistic demands from clients or caregivers
- Not enough space to serve all clients needing service (i.e., in institutional settings)
- Other (please specify)
- Other (please specify)
- Other (please specify)

58. How crucial is the availability of RSVP volunteers or SCP companions in allowing this station to provide family caregiver or respite services?

(Please circle the one answer which best describes your situation)

- 1 We could not run a family caregiver or respite program without them.

- 2 We would have to significantly curtail our program without them.
- 3 We have sufficient other avenues for getting family caregiver or respite care volunteers or companions but it would require more staff effort or resources.
- 4 Though we appreciate the efforts of the RSVP or SCP program, we would still have an abundant source of volunteers or other staff to operate the program.

Section 9. Benefits

59. Please indicate the 3 greatest benefits of the family caregiver or respite program to frail or disabled clients by placing a "1", "2" or "3" on the appropriate line. Please use a number only once.

Please note:

- 1 = The Greatest Benefit
 - 2 = Second Greatest Benefit
 - 3 = Third Greatest Benefit
- Companionship with other elderly person(s)
- Ability to remain at home vs. institutionalization
- Improved sense of well-being
- Improved relationship with caregiver
- Improved physical health
- Improved mental health
- Access to other community services
- Decreased family stress
- Client receives better care from family caregiver
- Other (please specify)
- Other (please specify)
- Other (please specify)

60. Please indicate the 3 greatest benefits of the family caregiver or respite program to the family caregivers by placing a "1", "2" or "3" on the appropriate line. Please use a number only once.

Please note:

- 1 = The Greatest Benefit
 - 2 = Second Greatest Benefit
 - 3 = Third Greatest Benefit
- Just being able to take a breather
- Ability to plan activities
- Normalizing effect on family relations
- Decreased stress
- Emotional support from an empathetic individual
- Feeling less overwhelmed by elderly client's care responsibility
- Decreased sense of isolation
- Reduced cost of caring for elderly clients
- Ability to care for elderly clients at home rather than institutionalize them
- Other (please specify)

Other (please specify)

Other (please specify)

61. Please indicate the 3 greatest benefits to RSVP volunteers or SCP companions providing family caregiver or respite services by placing a "1", "2" or "3" on the appropriate line. Please use a number only once.

Please note:

- 1 = The Greatest Benefit
 - 2 = Second Greatest Benefit
 - 3 = Third Greatest Benefit
- Satisfaction of helping someone in need
- Standard of living improved by stipend
- Sense of well-being
- Sense of being needed or useful
- Decreased loneliness, less isolation
- Motivation to get involved
- Increased independence
- Other (please specify)
- Other (please specify)
- Other (please specify)

Thank you!

Attachment 5—Face-to-Face Questionnaires

Project Director, Station Supervisor, Volunteer, Elderly Client, Caregiver

Response Cards (Blue, Yellow, Pink)

Action Family Caregiver Program Survey Project Director Face-to-Face Questionnaire

Public reporting burden for this collection of information is estimated to average 87 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beale, Clearance Officer, ACTION, Room M-800, 806 Connecticut Avenue, NW., Washington, DC 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Date:

Interview time:

Begin:

End:

Project:

Respondent:

Title:

Interviewer:

ID#

PJGUIDE

6-23-88

Section 1. Administration

1. What prompted your agency to develop a family caregiver (respite) component in your (RSVP/SCP) project? (Probe: "Anything else?")

How would you best describe the way the family caregiver (respite) component fits into the overall scheme of your (RSVP volunteer/SCP companion) services to families caring for frail and disabled elderly relatives?

3. What is the minimum number of hours per week that a volunteer or companion, is required to put in when they are assigned to provide family caregiver or respite services?

Number of hours

4. What is your responsibility to the (volunteer/companion) once they have been assigned to a specific station?

5. As project director, what are some of the more difficult problems you face in the administration of the family caregiver (respite) component of your project? (Probe: "Anything else?")

(Circle all that apply)

- 1 Lack of in-kind support or resources
- 2 Transportation
- 3 Not enough funds to adequately serve family caregiver (respite) needs
- 4 Not enough (volunteers/companions) to adequately serve family caregiver (respite) needs
- 5 High degree of (volunteer/companion) burn-out
- 6 Other (specify)

6. Do you generally have sufficient (volunteers/companions) to provide family caregiver (respite) services to all who request it?

- 1 Yes (skip to Q.8)
- 2 Sometimes (go to Q.7)
- 3 No (go to Q.7)

7. To what do you attribute this (fluctuation lack)?

- 1 Not enough funds to pay additional stipends or other volunteer reimbursement
- 2 Unable to recruit sufficient (volunteers/companions) interested in working in respite care
- 3 Unable to recruit sufficient (volunteers/companions) to generally meet the requests of stations

4 Seasonal fluctuations
5 Program schedule or time requirements (probe for explanation)

6 Other (specify)

Section 2. Service Needs

8. Outside of requests for family caregiver (respite) services, what kinds of requests for information do you get most frequently from: (Read each category; record R's exact words.)

A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

9. Other than family caregiver (respite) services, what kinds of other services are most frequently requested

10. What gaps do you see in your community's family caregiver or respite services delivery system? (Circle all that apply)

1 Not enough adult day care centers
2 Lack of affordable programs
3 Limited weekend services
4 Limited after hours services
5 Limited client transportation to institutional settings
6 Limited transportation for volunteers or companions
7 Lack or limited services for incontinent elderly
8 Lack of medicare or medicaid funding for respite services

11. What additional resources are needed to further support (volunteers/companions) working with family caregiver or respite services? (Probe: "Any other resources?")

1 Additional funding
2 Volunteer or companion support groups
3 Additional training
4 Adequate or reliable transportation
5 Other (specify)

12. On a scale of 1 to 5—with 1 being very low and 5 being very high—how would you rate the need for family caregiver or respite services in your community?

Very low	Low	Moderate	High	Very high
1	2	3	4	5

Very low	Low	Moderate	High	Very high
1	2	3	4	5

14. In what ways have your family caregiver (respite) (volunteers/companions) assisted in making you aware of incidences of elder abuse?

15. Are you aware of any cases of suspected elder abuse that were reported to this project and/or any of its stations by (volunteers/companions) during the last twelve month period?

16. How important do you feel that (volunteers/companions) are in affecting decrease in elder abuse? Why?

17. What types of family caregiver (respite) service placements are most beneficial for: (Read each category; record R's exact words.)

A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

18. What types of family caregiver (respite) service placements are less beneficial for: (Read each category; record R's exact words)

A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

19. What are some of the achievements of the family caregiver

Section 3. Benefits

We know that family caregiver (respite) services benefit everyone involved in some way. We also know that for several reasons, some types of placements may be more beneficial than others, either for the volunteer or companion themselves, the caregiver or the client.

Section 4. Accomplishments

19. What are some of the achievements of the family caregiver

(respite) activities that you are proudest of?

20. What type of recognition has the family caregiver (respite) services component received from the community?

Interviewer Observations

1. Rate R's understanding of the question.
 - 1 High
 - 2 Moderate
 - 3 Low
2. Rate R's cooperation
 - 1 Cooperation
 - 2 Evasive, Suspicious
 - 3 Hostile
3. Make your comments here, please.

Action Family Caregiver Program Survey Station Supervisor Face-to-Face Questionnaire

Public reporting burden for this collection of information is estimate to average 66 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room M-600, 806 Connecticut Avenue, N.W., Washington, DC 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Date: _____

Interview time:

Begin: _____

End: _____

Project: _____

Station: _____

Respondent: _____

Title: _____

Interviewer: _____

ID: _____

VSGUIDE

6-23-88

Section 1. Respite Program Background

1. How did this station come to the decision to include a family caregiver (respite) component in its (RSVP/SCP) program?

Section 2. Volunteer/Companion Characteristics

2. Please describe the average (volunteer/companion) providing family caregiver (respite) services under the auspices of (volunteer station).

Section 3. Administration—General

3. Please describe for me the (volunteer/companion) placement process, start from the client referral to the point where the (volunteer/companion) is serving in the home or institutional setting.

4. Please describe for me how (RSVP/SCP) placements are developed? What does this station do and what does (project) do?

Section 4. Administration—Respite Care

5. Please describe for me the average family caregiver (respite) services that (volunteer station) provides.

6. In your experience, what preparation is necessary for creating a successful, satisfying family caregiver (respite) placement for the (volunteer/companion)?

(Probe: "What else?" and circle all that apply.)

- 1 Matching (volunteer/companion) and client personalities or interest
- 2 Adequate training prior to placement
- 3 Informing volunteer of what family caregiver (respite) services entail
- 4 Informing client and family of what family caregiver (respite) services does/does not include
- 5 Other (specify)

7. What support or other factors are necessary for maintaining a successful and satisfying family caregiver (respite) placement for the (volunteer/companion)?

(Probe: "What else?" And circle all that apply)

- 1 Reliable public transportation system
- 2 Maintaining open lines of communications between station and (volunteers/companions)
- 3 Providing adequate (volunteer/companion) supervision
- 4 Other (specify)

8. In what ways are (volunteer/companion) assignments set up to ensure continuity in family caregiver (respite) services for a household?

9. What criteria are used to match (volunteers/companions) with family caregiver (respite) services clients? (Probe: "What else?" and circle all that apply)

- 1 Gender
- 2 Personality
- 3 Race
- 4 Intellectual capacity/interest
- 5 Availability to meet clients' time needs
- 6 Skills
- 7 Physical capability
- 8 Other (specify)

10. Once a (volunteer/companion) is in place, how do you deal with changes in client conditions? (Record R's exact response)

11. During the last twelve months, how many cases have been terminated for each of the following reasons?

- ___ Death of client
- ___ Death of caregiver
- ___ Death of (volunteer/companion)
- ___ Client condition worsened
- ___ Client condition improved
- ___ (Volunteer/companion) became ill or disabled
- ___ Client dissatisfied with (volunteer/companion)
- ___ Caregiver dissatisfied with (volunteer/companion)
- ___ (Volunteer/companion) dissatisfied with placement
- ___ Client/family taking advantage of (volunteer/companion)
- ___ Other (specify)

For RSVP Stations Only

12. Do you ever charge fees for your services?

- 1 Yes (go to Q. 13)
- 2 No (Skip to Q. 15)

13. How are fees generally determined?

- 1 Everyone pays the same fee
- 2 Charge fees on a sliding scale
- 3 Decide fees on a case by case basis
- 4 Other (specify)

14. What arrangements are made for those clients who are unable to pay?

(Circle all that apply)

- 1 Use local funds
- 2 Use State funds
- 3 Use Federal funds from other programs (specify)
- 4 Other (specify)

15. Are you aware of other RSVP or SCP agencies in your locality that provide family caregiver (respite) services? (Probe: "What are they?")

16. What other agencies in your locality provide family caregiver (respite) services? (Probe: "Any others?")

17. How does this station interact with these other agencies to ensure the optimum level of family caregiver (respite) services for this community?

Section 5. Benefits—General

We know that family caregiver (respite) services benefit everyone involved in some way. We also know that for several reasons, some types of placements may be more beneficial than others, either for the volunteer or companion themselves, the caregiver or the client.

18. What types of family caregiver (respite) service placements are most beneficial for:

A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

19. What types of family caregiver (respite) service placements are less beneficial for:

A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

Section 6. Service Needs

20. What additional types of training would be beneficial to station staff to further support delivery of family caregiver (respite) services?

21. What additional types of resources would be beneficial for this station to further support family caregiver (respite) services?

- 1 Transportation
- 2 Additional funds for meals
- 3 Additional funds for training
- 4 Funds for additional stipends
- 5 Other (specify)

22. What kinds of requests for information or services does this station most frequently receive from:

A. (Volunteers/Companions)?

B. Caregivers?

C. Clients?

23. How many additional (volunteers/companions) would this station need to adequately address clients currently in need of family caregiver (respite) services?

(Number of additional volunteers/companions)

24. What are this station's greatest problems or frustrations in using RSVP volunteers/SCP companions to provide family caregiver (respite) services?

- 1 Not enough volunteers/companions to service need
- 2 Lack of adequate transportation system
- 3 Unavailability of medicaid/medicare funding for services
- 4 Lack of training funds
- 5 Other (specify)

Section 7. Other Issues—Elder Abuse

25. In what ways have (volunteers/companions) assisted in making station personnel aware of incidences of elder abuse?

26. Within the last year, how many cases of elder abuse were reported to this station? (formally or informally) by a (volunteer/companion)?

Number or cases reported

27. What is the station's procedure when suspected elder abuse is reported by a (volunteer/companion)?

28. How does training equip family caregiver (respite) (volunteers/companions) to both identify and report incidences of elder abuse?

Section 8. Accomplishments

29. What achievements are your program proudest of in the area of family caregiver (respite) services?

30. What individual achievements by a single (volunteer/companion) working in family caregiver (respite) are you proudest of?

Section 9. Documentation

31. May I have copies of the following materials:

- a. Sample client care plan for family caregiver (respite) services
 - b. Volunteer/companion training schedule
 - c. Family caregiver (respite) activity goal statement
 - d. Volunteer/companion job description
- Thank you

Interviewer Observation

1. Rate R's understanding of the questions.

1 High

2 Moderate

3 Low

2. Rate R's cooperation.

- 1 Cooperative
 - 2 Evasive, Suspicious
 - 3 Hostile
3. Your comments here please.

Action Family Caregiver Program Survey Volunteer Face-To-Face Questionnaire

Public reporting burden for this collection of information is estimated to average 43 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room M-800, 806 Connecticut Avenue, NW., Washington, DC 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Date:

Interview time:

Begin: _____

End: _____

Project: _____

Station: _____

Volunteer: _____

Interviewer: _____

Id# _____

Volinst

6-23-88

Section 1. Family Caregiver or Respite Clients

Please gather the following information from the project or station before you interview the companion or volunteer.

1. Interviewer: How many family caregiver or respite clients does companion or volunteer serve?

(Number)

2. List their names and type of place where service provided. Record names and place of service in Q.6-1 and Q.6-2 right now.

Name	Place of service (home, adult day care, hospice, etc.)
1	
2	

Name

Place of service (home, adult day care, hospice, etc.)

3. _____
4. _____
5. _____
6. _____

Remove This Page After Interview

Project ID# _____

Station ID# _____

Volunteer ID# _____

Section 2. Becoming a Companion/Volunteer

3. How did you first learn about the (SCP/RSVP) project?

(Record R's exact words. Circle the one appropriate response after interview is completed.)

- 01 ACTION brochure
- 02 Agency or organization frequented by older persons (e.g., senior center, adult day care center, nutrition site)
- 03 Broader media coverage (local newspaper, radio, TV, etc.)
- 04 Presentation to citizen's group
- 05 Presentation at religious organization
- 06 Presentation to other community agency
- 07 Recruited from waiting lists for the senior community service employment program
- 08 Recruited directly by individual who works with the project or station

Section 3. Extent of Services

ASK ALL QUESTION 6.3-6.6 READING COMPLETELY DOWN THE COLUMN FOR CLIENT NO. 1, THEN REPEATING THE PROCEDURE FOR ALL REMAINING CLIENTS

	(Client No. 1)	(Client No. 2)	(Client No. 3)	(Client No. 4)	(Client No. 5)	(Client No. 6)
6-1. Clients from Q.2						
6-2. Place of care from Q.2						
6-3. How many hours are you with (client)?						
6-4. What type of illness or handicap does (client) have?						
6-5. How do you help (client)?						
6-6. What problems have you had helping (client)?						
Coding only						

7. Hand R Blue Card.

Next, I'll read some things (companions/volunteers) can get involved in while providing care. For each one, please tell if you usually, sometimes or never do these for the clients we just talked about.

Would you say you sometimes, usually or never get involved in: (Read each item and the response categories. Circle "1" for usually or "2" for sometimes or "3" for never)

Usually	Sometimes	Never	
1	2	3	a. feeding clients
1	2	3	b. bathing clients
1	2	3	c. dressing clients

Usually	Sometimes	Never	
1	2	3	d. combing or cutting client's hair, clipping nails, (shaving) clients
1	2	3	e. helping clients with walking,
1	2	3	f. helping clients getting in and out of bed,
1	2	3	g. helping clients with medical or physical therapy
1	2	3	h. reminding clients to take their medicine
1	2	3	i. encouraging clients to exercise
1	2	3	j. taking walks with clients (going out with clients in the wheelchair)

Usually	Sometimes	Never	
1	2	3	k. preparing food for clients
1	2	3	l. planning meals for clients
1	2	3	m. labeling and organizing foods for clients
1	2	3	n. talking or listening to clients
1	2	3	o. playing games or cards with clients
1	2	3	p. helping clients get along with family and friends

Usually	Sometimes	Never	
D. Home Management			
1	2	3	a. going shopping with clients
1	2	3	r. helping clients with shopping
1	2	3	s. running errands for clients (probe: post office, bank, get prescriptions, etc.)
1	2	3	t. helping clients run errands (probe: post office, bank, get prescriptions, etc.)
1	2	3	u. writing letters for clients
1	2	3	v. reading to clients
1	2	3	w. helping clients fill out forms
1	2	3	x. doing light housekeeping for clients
1	2	3	y. doing light gardening for clients
1	2	3	z. helping clients with managing or budgeting funds or paying bills
1	2	3	aa. making minor repairs clients' (caregivers') home
E. Information and Advocacy			
1	2	3	bb. providing information about things clients need to get or do
1	2	3	cc. helping clients get needed services
1	2	3	dd. driving clients anywhere. (If usually or sometimes) where?
1	2	3	ee. going with clients anywhere. (If usually or sometimes) where?
F. Other			
1	2	3	ff. doing anything else for clients. (If usually or sometimes) What else?

Get Blue Card

Section 4. Training

8. Have you received training from (station) or (project) on: (read response categories).

Yes	No	
1	2	a. Agency policy and procedures.
1	2	b. How to counsel people with problems.
1	2	c. How to get along with different people.
1	2	d. Resources and services available in your community.
1	2	e. How to help people obtain rights and services.
1	2	f. Housekeeping skills.
1	2	g. Health and personal care assistance.

Yes	No	
1	2	h. Other (specify).

9. How often do you get additional training. Would you say: (read response categories).

1. About 4 times a month
2. About 3 times a month
3. About twice a month
4. About once a month
5. Less than once a month
6. Not at all

10. Do you feel the training you got has been adequate in helping you work with the elderly clients and their families that we talked about earlier?

- 1 Yes
- 2 No

11. What other training do you feel you need to help you in providing services to the elderly clients and their families? (Record R's exact words. Circle all that apply after interview is completed.)

- 1 Dealing with dementia or Alzheimer's disease
- 2 Dealing with physically incapacitated persons
- 3 Agency policy and procedures
- 4 How to counsel people with problems
- 5 How to get along with different people
- 6 Resources and services available in your community
- 7 How to help people obtain rights and services
- 8 Housekeeping skills
- 9 Health and personal care assistance
- 10 Other (specify)

Section 5. Support, Supervision

12. How do you usually get to the elderly clients we talked about earlier? (Read response categories).

- 1 Public transportation
- 2 Own personal transportation
- 3 Volunteer station provides transportation

13. Have you had any problems with the family caregiver or respite program? (Record R's exact words) (Probe: Has there been a problem with the project or station * * * the elderly clients * * * or their families)

(If no problem, skip to Q.16)

14. Did you ask for help from (station) or (project) in handling the problem(s)?

- 1 Yes
- 2 No (skip to Q.16)

15. What help did you receive from (station) or (project) with the problem(s)? (Record R's exact words)

16. Is there someone at (station) that you can contact when problems arise at the elderly clients' homes?

- 1 Yes
- 2 No
- 8 Don't know

Section 6. Benefits, Satisfaction

17. What do you feel is the greatest benefit of your services to the elderly clients we talked about earlier? (Record R's exact words)

(Circle all that apply after interview is completed)

- 1 Friendship/companionship
- 2 Keeping client out of institution
- 3 Improved sense of well-being
- 4 Improved relation with caregiver
- 5 Improved physical condition
- 6 Improved mental condition
- 7 Access to community services
- 8 Decreased family stress
- 9 Other (specify)

18. What is the greatest benefit of your services to the family members who care for the elderly clients we talked about earlier?

(Record R's exact words)

(Circle all appropriate responses after interview is completed)

- 1 Freed up to do other things
- 2 Companionship
- 3 Ability to keep working
- 4 Peace of mind
- 5 Decreased stress or tension
- 6 Has time to (himself/herself)
- 7 Improved relation with client
- 8 Reduced cost of caring for client
- 9 Feels less isolated
- 10 Emotional support of another adult in caring for client
- 11 Feels less overwhelmed with client care
- 12 Just being able to take a breather
- 13 Ability to plan activities
- 14 Ability to keep client out of institution
- 15 Other (specify)

19. What do you like about helping elderly clients and their family members who care for them?

(Record R's exact words)

(Circle all that apply after interview is completed)

- 1 Being able to help someone in need
- 2 Having something to do with my time
- 3 Money helps make ends meet
- 4 Having someone to spend time with
- 5 Provides me greater mobility
- 6 Sense of well-being
- 7 Sense of usefulness
- 8 Feel less lonely
- 9 Motivates me to get involved in activities
- 10 Other (specify)

20. In general, how satisfied are you with the elderly clients and the families that you are assigned to? Would you say: (Read response categories).

- 1 Very satisfied
- 2 Satisfied
- 3 Uncertain—do not read
- 4 Dissatisfied
- 5 Very dissatisfied

21. In general, how satisfied are you with the (SCP/RSVP) program? Would you say: (READ RESPONSE CATEGORIES).

- 1 Very satisfied
- 2 Satisfied
- 3 Uncertain—do not read
- 4 Dissatisfied
- 5 Very dissatisfied

Section 7. Demographics

Just a few more questions.

22. How old are you?

(Age)

23. What did you do in the twelve month period before you got involved with the (SCP/RSVP PROGRAM)? Were you * * *:

(Read response categories)

- 1 Retired (go to Q. 24)
- 2 Employed full-time (go to Q. 24)
- 3 Employed part-time (go to Q. 24)
- 4 A homemaker (skip to Q. 25)

24. (If retired or employed) What was your previous occupation? (Record R's exact words).

25. In the twelve month period before you got involved with the (SCP/RSVP Program)? Were you:

(Read response categories)

- 1 A companion/volunteer with another (SCP/RSVP) program
- 2 A volunteer for another agency
- 3 Not involved in volunteering

26. Do you currently live: (Read response categories)

- 1 Alone
- 2 With other family member(s)
- 3 With other family member(s) and non-related individuals
- 4 With other non-related individuals

5 In a group or congregate setting such as a seniors building?

(Hand R Yellow Card)

27. Which letter on this card best describes your total household income during the past 12 months?

Letter

28. R's sex (by observation)

- 1 Male
- 2 Female

29. R's race (by observation)

- 1 American Indian
- 2 Asian, Pacific Islander
- 3 Black
- 4 Oriental
- 5 Spanish surname
- 6 White
- 7 Can not determine

Get Yellow Card

Thank you!

Interview Observation

1. Did you get blue and yellow cards?

- 1 Yes
- 2 No—Get them now, please.

2. Did you remember to code Q.3, Q.17, Q.18 and Q.19?

- 1 Yes
- 2 No—Code them now, please.

3. Rate R's understanding of the questions.

- 1 High
- 2 Moderate
- 3 Low

4. Rate R's cooperation.

- 1 Cooperative
- 2 Evasive, Suspicious
- 3 Hostile

5. Make your comments here, please.

Action Family Caregiver Program Survey Caregiver Face-To-Face Questionnaire

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room M-800, 806 Connecticut Avenue NW., Washington, DC 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

DATE: _____

Interview time:

Begin: _____

End: _____

Project: _____

Station: _____

Caregiver: _____

Client: _____

Interviewer: _____

Id# _____

Careinst _____

6-23-88

Action Family Caregiver Program

Survey Caregiver Face-To-Face

Questionnaire

Based on pretest experience, it should

take about 40 minutes for us to complete

this questionnaire.

DATE: _____

Interview time:

Begin: _____

End: _____

Project: _____

Station: _____

Caregiver: _____

Client: _____

Interviewer: _____

Id# _____

Careinst _____

6.10.88

Section 1. Previous Companions/

Volunteers

The following information should be gathered from the project or station before you interview the caregiver.

1. Interviewer, how many companions/volunteers has this family had, including current one(s)?

(Number) — (record this number in Q.32)

2. List them, beginning with the first one.

Name	Date served
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____

(Remove this page after interview)

Project _____

Station _____

Caregiver _____

Client _____

Section 2. Benefits—General

3. Please tell me what it means to you to have (current companion/volunteer) help you?

(Record R's exact words)

BEST COPY AVAILABLE

Section 3. Before SCP/RSVP Services

4. Including (current companion/volunteer) how many companions (volunteers) have helped you with (client)?

5-1. Helped?		5-2. Paid?	
Yes	No	Yes	No
1	2	1	2
1	2	1	2
1	2	1	2
1	2	1	2
1	2	1	2
1	2	1	2

- a. Family members.
b. Neighbors.
c. Friends.
d. Private duty nurse, sitters, maids.
e. People from other agencies or programs such as homemakers or aides.
f. Anyone else? (specify)

Let's talk for a few minutes about what it was like to care for (client) before (1st companion/volunteer).
5. Before (1st companion/volunteer) began helping you, was there anyone who would take care of (client) so that you could do some other things such as errands, housework, or just relax?

- 1 Yes (go to Q.5-1)
2 No (skip to Q.6)

5-1. Please tell me if any of the following helped you? (If "1" circled in 5-1, only then ask 5-2) 5-2. Did you pay . . . ?

6. Before (1st companion/volunteer) began helping you, had you done or considered doing any of the following for (client)?

(If "1" circled in 6-2 or 6-3, ask 6-4) use codes below to code responses. If

R's response is not on code list write it in)

6-1. Care situation	6-2. Used?		6-3. Considered?		6-4. Reason not using?
	Yes	No	Yes	No	
a. Having (client) live with another relative or friend?	1	2	1	2	
b. Having a relative or friend live in your home to help care for (client)?	1	2	1	2	
c. Hiring someone part-time or full-time to help you care for (client)?	1	2	1	2	
d. Having (client) go to an adult day care center?	1	2	1	2	
e. Placing (client) in hospice care?	1	2	1	2	
f. Having (client) live in a group home or V.A. home	1	2	1	2	

Codes For Reason Not Using

- 1 Unaffordable
2 Prefer (client) at home
3 Guilt
4 (Client) Did not want it
5 Other family member(s) did not want it
6 Condition improved
7 No one to help
8 Got SCP/RSVP help
9 Caregiver will not ask for help
7. Before (1st companion/volunteer) to what degree was nursing home care considered for (client)?
Was it: (Read response categories)
1 Seriously considered

- 3 Considered some
2 Considered a little
4 Never considered (skip to Q.9)
(If "1", "2", or "3" circled):
8. Why did you decide not to use nursing home? (Record R's exact words, circle codes after interview is completed).
1 Unaffordable
2 Prefer (client) at home
3 Guilt
4 (Client) did not want it
5 Other family member(s) did not want it

- 6 Condition improved
7 No one to help
8 Got SCP/RSVP help
9 Caregiver will not ask for help
10 Other (Specify)
9. (Hand R pink card)
Please use this card to answer the next questions about the degree you may have experienced the following before (1st companion/volunteer) came to help you?
(For each condition, say): To what degree did you experience (condition)?
Would you say: (Read response categories)
(circle one number only)

	Always	Usually	Some	Seldom	Never
a. Stress or worry	1	2	3	4	5
b. Feeling that you were all alone in the world without anyone to help you	1	2	3	4	5
c. Misunderstandings between you and (client)	1	2	3	4	5
d. Tension among other family members	1	2	3	4	5
e. Weakening of your own health or feeling very tired or exhausted	1	2	3	4	5
f. The inability to give (client) proper care	1	2	3	4	5
g. The inability to leave home to do other things such as tend to business, go to church or visit friends	1	2	3	4	5
h. The inability to meet the needs of other family members	1	2	3	4	5
i. Financial burden	1	2	3	4	5
k. Other (specify)	1	2	3	4	5

(Get pink card)

10. Once you applied for family caregiver or respite services, how long did it take before (1st companion/volunteer) began helping you?
(Probe: Weeks, months, years. Circle appropriate one below.)
Weeks
Months
Years

11. Did you first talk to the (1st companion/volunteer) on the phone or in person before he (she) began to help you with (client)?
1 Yes, talked to by phone
2 Yes, talked to in person
3 No
8 Don't remember

12. Did someone from the program (agency) interview you about the services you needed?
1 Yes
2 No
8 Don't remember

13. What characteristics were important to you in choosing a companion (volunteer) to help you care for (client)?
(Record R's exact words, circle codes at end of interview.)

(Circle all that apply)

- 1 Empathetic, loving, caring, understanding, patient, calm
2 Age
3 Experience, maturity
4 Dependability
5 Adaptability to client family routines
6 Common sense
7 Physical stamina
8 Cheerfulness, positive attitude
9 Intelligence, stimulating
10 Cleanliness/neatness
11 Other (specify)

14. Did the (project/station) ask you what kind of person you would like to help you or did they assign a (companion/volunteer) to you?

- 1 Asked me what I would like
2 Companion/volunteer assigned
8 Don't remember

15. Were you employed either full-time or part-time outside the home before you began taking care of (client) on a regular basis?

- 1 Employed full-time (go to Q.16)
2 Employed part-time (go to Q.16)
3 Neither (skip to Q.17)

16. Once you started caring for (client) on a regular basis, and before (1st

companion/volunteer) began help you, how did your work schedule change? (Read response categories)

- 1 Schedule did not change
2 Switched from full to part-time
3 Quit working

Section 4. The Client

Let me ask you a few specific questions about (client).

17. What is your relationship to (client)?

Are you: (Read response categories)

- 1 His/her (wife/husband)
2 His/her child
3 His/her (sister/brother)
4 An other family member
5 A non-related individual

18. About how many years have you been taking care of (client) on a regular basis?

Number of years (if less than one year, write 01)

19. What type of illness or handicap does (client) have?
(Record R's exact words. Probe: "Is there anything else?")

20. What is (client)'s current physical health?

Is it: (read response categories)

- 1 Excellent
2 Good
3 Fair
4 Poor
5 Very poor

21. What is (client)'s current mental health?

Is it: (read response categories)

- 1 Excellent
2 Good
3 Fair
4 Poor
5 Very poor

22. Is (client) bedridden?

- 1 Yes
2 No

23. Is (client) confined to a wheelchair?

- 1 Yes
2 No

Section 5. Seeking Services

Now, let's talk about how you first found out about the (SCP/RSVP) program that (1st companion/volunteer) came from and the services it offers.

(Make sure R knows that you are talking the family caregiver station/project.)

24. How did you first learn about the program that (1st companion/volunteer) came from?

(Record R's exact words. Probe for type person/organization circle code at end of interview.)

(Circle the first response mentioned only)

- 1 A companion/volunteer
2 SCP/RSVP project staff
3 SCP/RSVP station staff
4 Doctor/health facility
5 Social worker/social service facility
6 Family member/friend/neighbor
7 Support/advocacy organization
8 Agency/organization frequented by older persons
9 Presentation at religious organization
10 Local media
11 Other (specify)

25. What caused you to seek the services that (1st companion/volunteer)'s program offers?

(Record R's exact words, circle codes at end of interview.)

(Circle all that apply)

- 1 Didn't seek; someone suggested/recommended
2 Internal stress
3 Increased stress between caregiver and client
4 Increased stress from others in family
5 Increased stress from other outside family (e.g., employer, school)
6 Caregiver tired/health deteriorating/ill
7 Needed someone to stay with client while away/or while did household chores
8 To have time for self
9 To keep job/stay in school
10 Client deteriorated (mentally/physically/behaviorally)
11 Other (specify)

Section 6. Extent of Services

26. Next I'll read a list of items that companions (volunteers) might do for (client).

26-1. and 26-2. For each item, please tell me (1) is the (station/project) told you (companion/volunteer) would do it and (2) then tell me if he (she) does it.

26-1. Project, station said?			26-2. Companion, volunteer does?		
Yes	No	Don't know	Yes	No	
A. Personal Care					
1	2	3	1	2	a. feed (client)
1	2	3	1	2	b. bath (client)
1	2	3	1	2	c. dress (client)
1	2	3	1	2	d. comb or cut (client's hair, clip nails, (shave (client))
1	2	3	1	2	e. help (client) with walking
1	2	3	1	2	f. help (client) with getting in and out of bed
1	2	3	1	2	g. help (client) with medical or physical therapy
1	2	3	1	2	h. remind (client) to take medicine
1	2	3	1	2	i. encourage (client) to exercise
1	2	3	1	2	j. take walks with (client) go out with (client) in the wheelchair
B. Nutrition					
1	2	3	1	2	k. prepare food for (client)
1	2	3	1	2	l. plan meals for (client)
1	2	3	1	2	m. label and organize foods for (client)
C. Social/Recreation					
1	2	3	1	2	n. talk or listen to (client)
1	2	3	1	2	o. play games or cards with (client)
1	2	3	1	2	p. help (client) get along with family and friends
D. Home Management					
1	2	3	1	2	q. go shopping for (client)
1	2	3	1	2	r. help (client) with shopping
1	2	3	1	2	s. run errands for (client) (probe: go to post office or bank, get prescriptions, etc.)
1	2	3	1	2	t. help (client) run errands (probe: got to post office or bank, get prescriptions, etc.)
1	2	3	1	2	u. write letters for (client)
1	2	3	1	2	v. read to (client)
1	2	3	1	2	w. help (client) fill out forms
1	2	3	1	2	x. do light housekeeping for (client)
1	2	3	1	2	y. do light gardening for (client)
1	2	3	1	2	z. help (client) with managing or budget (client) funds or pay bills
1	2	3	1	2	aa. make minor repairs to (your/client's) home
E. Information and Advocacy					
1	2	3	1	2	bb. provide information about things (client) needed to get or do
1	2	3	1	2	cc. help (client) get needed service
1	2	3	1	2	dd. drive (client) anywhere. (If Yes) Where?
1	2	3	1	2	ee. go with (client) anywhere. (If Yes) Where?
F. Other					
ff. do anything else for (CLIENT). (If YES) What else does (companion/volunteer) do for (CLIENT)?					

Section 7. Benefits—Specific

27. In general, has having (companion/volunteer) helped (client) to:

Yes	No
1	2
1	2
1	2

Yes	No
1	2
1	2
1	2
1	2
1	2
1	2
1	2

28. (Hand R pink card).

Please use this card to answer the next questions. (for each condition, say): Since (companion/volunteer) has been helping you, to what degree do you experience (condition)? Would you say: Read response categories; Circle one number only for each condition.)

	Always	Usually	Some	Seldom	Never
a. Stress or worry	1	2	3	4	5
b. Feeling that you were all alone in the world without anyone to help you	1	2	3	4	5

	Always	Usually	Some	Seldom	Never
c. Misunderstandings between you and (client)	1	2	3	4	5
d. Tension among other family members	1	2	3	4	5
e. Weakening of your own health or feeling very tired or exhausted	1	2	3	4	5
f. Inability to give (client) proper care	1	2	3	4	5
g. Inability to leave home to do other things such as tend to business, go to church or visit friends	1	2	3	4	5
h. Inability to meet the needs of other family members	1	2	3	4	5
i. Financial burden	1	2	3	4	5
j. Other (specify)	1	2	3	4	5

(Get pink card)

29. Since (companion/volunteer) began helping you, is there anyone who will take care of (client) so that you can

do other things such as errands, housework, or just relax?
1 Yes (go to Q. 29-1)
2 No (skip to Q. 30)

29-1. Please tell me if any of the following helped you? (If "1" circled in 29-1, only then ask 29-2) 29-2. Did you pay * * *?

29-1 Helped?		29-2 Paid?		
Yes	No	Yes	No	
1	2	1	2	a. Family members
1	2	1	2	b. Neighbors
1	2	1	2	c. Friends
1	2	1	2	d. Private duty nurse, attendants, aides
1	2	1	2	e. People from other agencies or programs such as homemakers or aides
1	2	1	2	f. Anyone else? (SPECIFY)

30. What do you generally do when (companion/volunteer) is here? (Record R's exact words, circle codes at end of interview.)

(Circle all that apply)

- 1 Visit friends or relatives
- 2 Run personal errands
- 3 Run errands for client
- 4 Rest/relax at home
- 5 Do other household chores
- 6 Participate in recreational/volunteer activities
- 7 Work
- 8 Other (specify)

Section 8. Satisfaction

31. What specific problems or frustrations have there been with the companion(s) (volunteer(s)) who have helped you with (client)? (Record R's exact words)

32. (Interviewer: Record from Q. 1 number of companions/volunteers R has had, including current one?)

Number

(If only "1," skip to Q. 34)

33. What are some reasons you have had (NUMBER) companions (volunteers)?

(Record R's exact words)

34. In general, how satisfied are you with the services provided by (companion/volunteer)? Would you say * * *?

(Read response categories)

- 1 Very satisfied
- 2 Satisfied
- 3 Uncertain do not read
- 4 Dissatisfied
- 5 Very dissatisfied

Section 9. Other Services

35. Does (client) receive help from: (Read each item).

Yes	No
1	2
1	2
1	2
1	2
1	2
1	2
1	2
1	2
1	2
1	2

36. What additional services would you like to receive to enable you to better care for (CLIENT)? (RECORD R'S EXACT WORDS.)

Section 10. Demographics

Just a few more questions.

37. What is the makeup of your family? Is it: (Read response categories).

- 1 You and (client) only

2 You, (client) and other family members
3 (client) lives alone, but you spend several hours a day/week caring for him (her) in his (her) own home.
38. Do you care for any of the following: * * *?

(Read response categories; circle all that apply)

- 1 Other adult(s) over 65
- 2 Minor child(ren)
- 3 Disabled child(ren)
- 4 Other disabled adult(s)

39. Are you * * *?

(Read response categories; circle only one)

- 1 Employed full time
- 2 Employed part time
- 3 Unemployed
- 4 Retired
- 5 Homemaker (skip to Q. 41)

40. What kind of work do (did) you do?

41. How old were you on your last birthday?

(Age)

(Hand R yellow card)

42. Which letter on this card best describes your total household income during the past 12 months?

Letter

43. R's Sex (by observation)

- 1 Male
2 Female
44. R's race (by observation)
1 American Indian
2 Asian, Pacific Islander
3 Black
4 Oriental
5 Spanish Surname
6 White
7 Can not determine
Thank you!
Get yellow card
Interviewer Observation
1. Did you get pink and yellow cards?
1 Yes
2 No [Get them now, please!]
2. Did you remember to code Q.6, 7,
13, 24, 25 & 30.
1 Yes
2 No [Do it now please!]
3. Rate R's understanding of the
questions.
1 High
2 Moderate
3 Low
4. Rate R's cooperation.
1 Cooperative
2 Evasive, Suspicious
3 Hostile
5. Make your comments here, please.

**ACTION Family Caregiver Program
Survey Client Face-to-Face
Questionnaire**

Public reporting burden for this collection of information is estimated to average 21 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room R-600, 806 Connecticut Avenue, N.W., Washington, D.C. 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Date: _____
Interview time:
Begin: _____
End: _____
Project: _____
Station: _____
Caregiver: _____
Client: _____
Interviewer: _____
ID #: _____

CLIEINST
6.23.88
Client Questionnaire
Project # _____
Station # _____
Caregiver # _____
Client # _____

Section 1. Benefits—General

1. Please tell me what it means to have (Companion/volunteer) help you.

Section 2. Extent of Services

2. Now, I'd like to ask you about some of the things (Companion/volunteer) might do for you when (he/she) is with you.

Does (Companion/volunteer): (Read each item and circle either "1" for Yes or "2" for No)

Yes No

A. Personal care

- | | | |
|---|---|--|
| 1 | 2 | a. feed you |
| 1 | 2 | b. bath you |
| 1 | 2 | c. dress you |
| 1 | 2 | d. comb or cut your hair, clip your nails, (shave you) |
| 1 | 2 | e. help you with walking. |
| 1 | 2 | f. help you with getting in and out of bed. |
| 1 | 2 | g. help with medical or physical therapy |
| 1 | 2 | h. remind you to take your medicine |
| 1 | 2 | i. encourage you to exercise |
| 1 | 2 | j. take walks with you (go out with you in the wheelchair) |

B. Nutrition

- | | | |
|---|---|-------------------------------------|
| 1 | 2 | k. prepare food for you |
| 1 | 2 | l. plan meals for you |
| 1 | 2 | m. label and organize foods for you |

C. Social/Recreation

- | | | |
|---|---|---|
| 1 | 2 | n. talk or listen to you |
| 1 | 2 | o. play games or cards with you |
| 1 | 2 | p. help you get along with family and friends |

D. Home Management

- | | | |
|---|---|--|
| 1 | 2 | q. go shopping for you |
| 1 | 2 | r. help you with shopping |
| 1 | 2 | s. run errands for you (e.g., go to post office or bank, get prescriptions, etc.) |
| 1 | 2 | t. help you run errands (e.g., go to post office or bank, get prescriptions, etc.) |
| 1 | 2 | u. write letters for you |
| 1 | 2 | v. read to you |
| 1 | 2 | w. help you fill out forms |
| 1 | 2 | x. do light housekeeping for you |
| 1 | 2 | y. do light gardening for you |
| 1 | 2 | z. help you with managing or budget your money or pay bills |
| 1 | 2 | aa. make minor repairs to you (caregiver's) home |

E. Information and Advocacy

- | | | |
|---|---|--|
| 1 | 2 | bb. provide information about things you needed to get or do |
| 1 | 2 | cc. help you get needed service |
| 1 | 2 | dd. drive you anywhere. (If Yes) Where? |
| 1 | 2 | ee. go with you anywhere. (If Yes) Where? |

F. Other

- | | | |
|---|---|---|
| 1 | 2 | ff. do anything else for you. (If Yes) What else does (Companion/volunteer) do? |
|---|---|---|

Section 3. Benefits—Specific

3. Let's talk some more about how you think (Companion/volunteer) has helped you.

Do you think that (Companion/volunteer) has: (read each item and circle either "1" for yes or "2" for no)

- | | | |
|-----|----|---|
| Yes | No | |
| 1 | 2 | a. helped you do things you would not usually do? |
| 1 | 2 | b. helped you eat better and more nutritious meals? |
| 1 | 2 | c. helped improve your physical health? |
| 1 | 2 | d. helped you feel better about yourself? |
| 1 | 2 | e. helped you feel less lonely? |
| 1 | 2 | f. helped cheer you up when you feel down? |
| 1 | 2 | g. helped your family understand each other better? |

4. Do you feel that you can confide in (Companion/volunteer)?

- 1 Yes
2 No

5. Do you feel that you can trust (Companion/volunteer) to handle your personal matters?

- 1 Yes
2 No

6. Name three positive qualities which best describe (Companion/volunteer). (Record first three qualities mentioned. Code below at end of interview.)

Rankings

- 1 _____
2 _____
3 _____

Transfer rankings here.

- kind/gentle
— compassionate/caring/comforting
— accepting/tolerant
— ethical/trustworthy
— skillful/resourceful
— accommodating/responsive
— respectful
— prompt/dependable
— patient/calm
— enthusiastic/cheerful/positive
— understanding
— clean/neat
— self-assured/confident
— knowledgeable
— friendly/communicative

7. Name three additional qualities you wish (Companion/volunteer) had more of.

(Record first three qualities mentioned. Code below at end of interview.)

Rankings

- 1 _____
2 _____
3 _____

(Transfer rankings from here.)

- kind/gentle
— compassionate/caring/comforting
— accepting/tolerant
— ethical/trustworthy
— skillful/resourceful
— accommodating/responsive
— respectful
— prompt/dependable
— patient/calm
— enthusiastic/cheerful/positive
— understanding
— clean/neat
— self-assured/confident
— knowledgeable
— friendly/communicative

8. In general, how satisfied are you with the help (Companion/volunteer) provides?

Would you say that you are:

- 1 Very Satisfied
2 Satisfied
3 Uncertain—Do not read!
4 Dissatisfied
5 Very Dissatisfied

Let's talk for a moment about (Caregiver).

9. How is (caregiver) different since (Companion/volunteer) began helping you?

Does (caregiver): (Read each item and circle either "1" for yes or "2" for no)

- | | | | |
|-----|----|------------|---|
| Yes | No | Don't know | |
| 1 | 2 | 3 | a. seem less tense? |
| 1 | 2 | 3 | b. seem happier? |
| 1 | 2 | 3 | c. has more time to do the things that need to be done? |
| 1 | 2 | 3 | d. has more time just for himself (herself)? |
| 1 | 2 | 3 | e. able to take care of your physical needs better? |
| 1 | 2 | 3 | f. have more time to spend with you? |
| 1 | 2 | 3 | g. any other ways (caregiver) is different? (If Yes) How? |

Section 4. Demographics

Just one more question.
10. How old are you?

(Age)

11. R's Sex (by observation).

- 1 Male
2 Female

12. R's Race (by observation).

- 1 American Indian
2 Asian, Pacific Islander
3 Black
4 Oriental
5 Spanish surname
6 White
7 Can not determine
Thank you!

Interviewer Observations

1. Did you remember to transfer ranks in Q.6 and Q.7?

- 1 Yes
2 No [Do it now, please]

2. Rate R's understanding of the questions.

- 1 High
2 Moderate
3 Low

3. Rate R's cooperation.

- 1 Cooperative
2 Evasive, Suspicious
3 Hostile

4. Make your comments here, please.

(Blue Card)

- Usually
Sometimes
Never

(Yellow Card)

Income categories

- A UNDER \$2,000
B \$2,000—\$4,999
C \$5,000—\$9,999
D \$10,000—\$14,999
E \$15,000—\$19,999
F \$20,000—\$24,999
G \$25,000—\$29,999
H \$30,000—\$34,999
I \$35,999—\$39,999
J \$40,000—\$44,999
K \$45,000—\$49,999
L \$50,000 or more

(Pink Card)

- Always
Usually
Some
Seldom
Never

Attachment 6—Non-Response Form

Project _____
Station _____

FIELD SAMPLE AND NONRESPONSE DATA FORM

(For Each Placement in the Field Sample, Record the Following Information)

Volunteer	Caregiver	Client
Name: _____	_____	_____
Age: _____	_____	_____
Sex: _____	_____	_____
Race: _____	_____	_____
Disability: _____	_____	_____
Address: _____	_____	_____
Phone: _____	_____	_____
Interview Site: _____	_____	_____
NR Reason: _____	_____	_____
Name: _____	_____	_____
Age: _____	_____	_____
Sex: _____	_____	_____
Race: _____	_____	_____
Disability: _____	_____	_____
Address: _____	_____	_____
Phone: _____	_____	_____
Interview Site: _____	_____	_____
NR Reason: _____	_____	_____

[FR Doc. 88-14735 Filed 7-7-88; 8:45 am]

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Friday
July 8, 1988

Part III

Department of Health and Human Services

Office of Community Services, Family
Support Administration

Request for Applications Under the
Office of Community Services' Fiscal
Year 1989 Discretionary Grants Program;
Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services, Family Support Administration

(Program Announcement No. OCS-89-1)

Request for Applications Under the Office of Community Services' Fiscal Year 1989 Discretionary Grants Program

AGENCY: Office of Community Services, Family Support Administration, HHS.

ACTION: Request for applications under the Office of Community Services' Discretionary Grants Program.

SUMMARY: The Office of Community Services [OCS] announces that, based on the availability of funds, competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681(a)(2) of the Community Services Block Grant Act of 1981, as amended. This Program Announcement consists of seven parts. Part A covers information on legislative authorities and defines terms used in the Program Announcement. Part B lists the program priority areas under which grants will be made and describes the types of projects that will be considered for funding under each priority area and who is eligible to apply. Part C provides details on application prerequisites, funds available in each priority area, the amount of matching funds applicants are required to commit, limitations on administrative costs, and program beneficiaries. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

CLOSING DATES: The closing date for submission of applications is August 29, 1988 EXCEPT for those proposals submitted under the \$2.5 million set aside under Priority Area 1.0. The closing date for applications submitted under the \$2.5 million set aside under Priority Area 1.0 will be March 15, 1989.

Note.—There will be no other announcement for this set aside program.

FOR FURTHER INFORMATION CONTACT:

Prior to July 28, 1988 contact:

Office of Community Services, Office of State and Project Assistance, 330 C Street SW., Room 2054, Washington,

DC 20201. You may also call (202) 475-0398.

After July 28, 1988 contact:

Office of Community Services, Office of State and Project Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447. You may also call (202) 252-5283.

Part A—Preamble

1. Legislative Authority

Section 681(a)(2) of the Community Services Block Grant Act authorizes the Secretary to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities. Included are special emphasis programs which sponsor enterprises providing employment and business development opportunities for low-income residents of the community, technical assistance and training programs in rural housing and community facilities development, and assistance for migrants and seasonal farmworkers.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—**Displaced worker:** An individual who is in the labor market but has been unemployed for six months or longer.

—**Distressed community:** A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—**Eligible applicant:** (See appropriate Priority Area under Part B.)

—**Indian tribe:** A tribe, band, or other organized group of Indians recognized in the State in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

—**Migrant farmworker:** An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—**Rural:** An area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and the contiguous communities with population density of 100 persons or more per square mile according to the latest decennial census. Such an area may be located entirely within one State or made up of contiguous interstate communities.

—**Seasonal farmworker:** Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her

place of permanent residence while employed.

Part B—Program Priority Areas

The program priority areas of the Office of Community Services' Discretionary Grants Program and their purposes are as follows:

Priority Area 1.0 Urban and Rural Community Economic Development

Priority Area 2.0 Assistance for Rural Housing and Community Facilities Development

2.1 Rural Housing Repairs and Rehabilitation

2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Priority Area 3. Assistance to Migrants and Seasonal Farmworkers

Priority Area 1.0 Urban and Rural Community Economic Development

The purpose of this priority area is to encourage the creation of projects intended to provide employment and business development opportunities and generally improve the quality of the economic and social environment of low-income residents, including displaced workers and at-risk teenagers, of the areas they plan to serve. It is intended to provide resources to eligible applicants but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. The emphases of projects must be self-help and mobilization of the community-at-large and on providing opportunities for employment and/or ownership within the targeted population. To this end, the program seeks (a) to attract additional private capital into distressed communities, including enterprise zones; (b) to build and expand the ability of local institutions to better serve the economic needs of local residents; and (c) to provide new employment and ownership opportunities for low-income people through business, physical or commercial development.

Projects must further agency goals of public-private partnerships, and Federal initiatives such as urban and rural enterprise zones. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applicants located in State-designated enterprise zone, i.e. and area in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are encouraged to submit applications. Such applications must be linked with—and

complement—enterprise zone initiatives, and may be for either a business development project or for a demonstration of innovative ways involving the poverty community in the implementation of enterprise zone concept.

Applications must show that the proposed project: (1) Will create a significant number of new permanent private sector jobs and/or will maintain existing jobs, all of which are targeted towards low-income residents who are either unemployed or underemployed. Emphasis should be on employment of individuals who are on public assistance including at-risk teenagers. While projected employment in future years may be included in the application, it is essential that the focus of employment projections concentrate on those jobs saved or created during the duration of the OCS grant period; and/or (2) will create a significant number of business development opportunities for low-income residents of the community or significantly aid such residents in maintaining economically viable businesses.

Any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to poverty level individuals who have been selected for employment in the grant supported project or who have been selected for training or participation in a project where potential jobs have actually been identified.

Projects which would result in the relocation of a business from one geographic area to another are discouraged.

Of the funds available for supporting projects under this priority area, approximately \$2.5 million will be set aside for grants to be made to those organizations who received grants from OCS in FY 87 under the Pre-Developmental grant program. These organizations will compete only among themselves for the \$2.5 million.

OCS will not consider applications that propose to establish or expand revolving loan funds nor proposals that are geared towards the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS does not anticipate approving grants that subsequently will be subgranted to an unrelated entity.

See Part F, Section 4, for special instructions on developing a work program for this priority area.

Eligible applicants are private, locally initiated, non-profit community development corporations (or affiliates of such corporations) governed by a

board consisting of residents of the community and business and civil leaders. In addition, applicants competing for funds under the \$2.5 million set aside must have received a grant from OCS in FY 87 under the Pre-Developmental grant program.

Priority Area 2.0 Assistance for Rural Housing and Community Facilities Development

2.1 Rural Housing Repairs and Rehabilitation

The purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible applicants to: (a) Provide technical assistance to help low-income families and individuals to more effectively utilize existing local, State and Federal housing assistance programs; and (b) develop innovative ways to meet the housing needs of low-income people, e.g. the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people.

OCS encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These efforts should not be duplicative of programs which can be funded through other existing Federal programs.

OCS is interested in proposals which will result in the following types of tangible improvements and benefits related to housing conditions for rural poor people:

—Interior or exterior structural repairs including weatherization and alternative energy systems;

—Job opportunities for local unskilled residents while assuring quality work;

—Technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Projects should be conducted with maximum use of voluntary services of professional and community personnel); and

—Development of innovative housing strategies to help low-income rural residents acquire housing.

Applicants calling for new construction or 'gut' rehabilitation will only be considered if there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner

or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy, after completion of repairs and rehabilitation, for at least three years by low-income people, as defined by DHHS Poverty Income Guidelines. (Additional information about these Guidelines is set out in Part C, paragraph 7.)

Funds will not be available under this program priority area for establishing or expanding a revolving loan fund.

See Part E, Section 4, for special instruction and developing a work program for this priority area.

Eligible applicant are States, public agencies or private non-profit organizations. OCS is particularly interested in receiving applications from such entities as rural housing development corporations, cooperatives, and other public and private organizations with proven accomplishments in the area or rural housing.

2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Funds will be provided under this priority area to help low-income rural communities develop the capability and expertise to establish and maintain or preserve affordable, adequate and safe water and waste water treatment facilities.

Funds provided under this priority area may not be used for construction of water and waste water treatment systems or for operating subsidies for such systems but matching funds may be used for these activities. Therefore, it is suggested that applicants coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

See Part F, Section 4, for special instructions on developing a work program for this priority area.

Eligible applicants are Regional Technical Resource Centers and public or private non-profit organizations with proven technical expertise and accomplishments in water and waste water treatment programs. In accordance with the authorizing legislation, funding priority will be given to private non-profit organizations that, before the date of the enactment of the Human Services Reauthorization Act of 1986, carried out such programs under the authority found at Section 681(a)(2)(D) of the Community Services Block Grant Act.

Priority Area 3.0 Assistance to Migrants and Seasonal Farmworkers

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

OCS will entertain proposals that directly meet farmworker needs in such areas as: Crisis nutritional relief; the development of self-help systems of food production; emergency health and social services referral and assistance; home repair, rehabilitation, and ownership; direct assistance to low-income farmworkers (including at-risk teenagers) in improving their job skills so as to qualify them for longer term and permanent full-time employment in agriculture; and/or assistance to low-income farmworkers, including at-risk teenagers, who wish to leave agricultural employment and find jobs in other lines of work.

OCS encourages applicants to develop linkages with other public and private sector service providers who also are working with migrant and seasonal farmworkers or with issues affecting this target group. Applicants who mobilize projects support over and above the requirement matching share to directly benefit the proposed project, will receive special consideration under the rating criteria.

OCS will not consider applications proposing to use funds exclusively for classroom instruction. Placement must be an integral activity. Applications submitted under this priority area must not contain requests for OCS funding for projects that would duplicate Community Services Block Grant funding or activities for which funding is available from other Federal agencies such as the Department of Labor, the Department of Agriculture's Food and Women, Infants and Children (WIC) programs, etc.

See Part F, Section 4, for special instructions on developing a work program for this priority area.

Eligible applicants are States, public agencies, and private non-profit organizations.

Part C—Application Prerequisites

1. Eligible Applicants

Priority areas included in this Program Announcement have differing restrictive eligibility requirements. Therefore, eligible applicants are identified in the individual priority area descriptions found in Part B., above.

2. Availability of Funds a. FY 89 Funds

OCS is spreading its administrative review process more evenly across the fiscal year. In order to accomplish this, OCS is publishing this Program Announcement prior to the Congress completing its deliberations on appropriations for this program for FY 89. Grants will only be made based on the availability of funds. The amount of funds available and the expected number of grants that will be made when, and if, such funds become available is not known at the present time.

b. Grant Amounts

Under Priority Area 1.0

General Program: No more than \$500,000 will be provided for real estate projects. (Any project that involves, in part or in whole, the purchase, construction or rehabilitation of property will be considered a real estate project.) Applicants for funding of other activities under this priority area are strongly encouraged to refrain from submitting requests for more than \$500,000.

Set Aside Program (for organizations which received grants under the FY 87 Pre-Development Program): No more than \$250,000 will be provided for projects funded under this set aside.

Under Priority Areas 2.0 and 3.0: Applicants requesting funds under these priority areas should assure that the total project costs are reasonable in light of the activities to be undertaken.

3. Grant Duration

For most projects OCS will grant funds for one year. However, a grant may be made for a longer period of time, i.e. up to two years, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal.

4. Matching Funds

An applicant is required to obtain commitment of at least the following amounts of private or public funds to match each OCS dollar awarded:

For projects submitted under Priority Area 1.0 (including the \$2.5 million set-aside), two public or private sector dollars are required for each OCS dollar awarded for real estate projects and two public sector dollars or one private sector dollar for all other economic development projects.

For projects submitted under Priority Areas 2.1 and 3.0, a match of at least one private or public sector dollar to each dollar of OCS funds awarded is required.

For projects submitted under Priority Area 2.2, one private sector or two public sector dollars are required for each OCS dollar awarded.

Exception: The match for projects submitted under Priority Areas 1.0 and 2.2 which will be carried out on Indian Reservations must be at least one private or public sector dollar for each dollar of OCS funds awarded.

Matching funds must be definitely committed or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant or lines of credit at the current market rate set aside by banks for program participants), will not be counted towards the matching requirement.

Matching fund may be in the form of cash or in-kind fairly converted into their dollar equivalent. Some examples are loans for construction financing; mortgages; grants from States, counties, municipalities; contributions from private individuals or organizations; equity investments that are made to the project supported by the OCS grant; correlated training programs; related water or waste water installations; foundation support; and/or private and charitable contributions. OCS will accept as a match Federal monies from State-administered block grants with compatible purposes when those programs do not prohibit their use as matching funds. Examples of block grant programs which do not have such a prohibition include the Job Training Partnership Act, the Social Services Block Grant, and Low Income Home Energy Assistance Program.

Funds that are eligible to be counted as "matching" funds must be committed for specific project activities within the OCS-approved project and used only for project purposes during the duration of the OCS grant.

A grantee may not claim as matching funds wages earned as a result of training of skill improvements funded by the OCS grant.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds although currently-owned assets which will be used in the OCS project may be applied against the matching requirement.

While the matching requirement outlined in this section must be met for an application to be eligible for consideration, applicants generating support either greater than that required and/or from private sector sources, may be eligible for additional points to be awarded by the reviewers. Except in

unusual circumstances, documentation of any commitment of matching funds must be in the form of letters of commitment from the organizations/individuals from which funds will be received and the commitment must be valid at least through the grant period.

5. Maintenance of Effort

The activities funded under this Program Announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources devoted to activities within a community, area, or state should not be diminished in order to provide the required matching contributions.

6. Administrative Costs

The OCS will accept applications that include administrative costs. However, since grant funds are extremely limited, no awards for only administrative costs will be made and no more than 10% of the OCS discretionary funds awarded under a single grant may be used for administrative purposes.

Administrative costs are defined as costs that are necessary to protect, monitor, properly account for, and apply to the approved project those Federal funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs nor are costs for conducting the final audit.

In all cases where an applicant has negotiated and claims a current indirect cost rate approved by the Department of Health and Human Services, the Defense Contracting Agency, or some other Federal agency, this rate ordinarily will be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant. In most cases, the approved indirect cost rate will include not only administrative costs but also other allowable costs that were negotiated under the applicant's approved indirect cost rate. Therefore, applicants with an applicable indirect cost rate exceeding 10% of the OCS grant may not propose any administrative funds in excess of that rate. Thus, although the approved indirect cost rate may exceed the normal 10% administrative cost restriction which otherwise applies to all OCS discretionary grants, the entire approved indirect cost rate will be accepted.

7. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct

benefits targeted toward low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the guidelines currently in effect (1988). Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication. (These revised guidelines also may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

8. Number of Projects in Application

An application may contain only one project (although activities undertaken may be in a number of communities or impact areas) and this project must be identified as responding to one of the program priority areas stated in this announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

9. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as long as each application contains a proposal for a different project.

10. Sub-Contracting or Delegating Projects

OCS does not anticipate funding any project where the role of the eligible applicant is primarily to serve as a conduit for funds to organizations other than the applicant.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under these OCS programs must be submitted on Standard Form (SF) 424 provided for that purpose. Part F and Appendix B to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed under the section entitled "FOR FURTHER

INFORMATION" at the beginning of this Announcement.

2. Application Submission

The date by which applications must be received varies according to the Priority Area under which funding is being requested. Refer to the section entitled "CLOSING DATES" at the beginning of this document for specific dates.

An application will be considered to be received on time under either one of the following two circumstances:

a. The application was sent via the U.S. Postal Service or by private commercial carrier and postmarked or dated by the carrier not later than midnight of the closing date unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

b. The application is hand delivered on or before the closing date to the Office of Grants Management, FSA, at the address indicated below. Hand delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays), up through the closing date. In establishing the date of receipt of hand-delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

An application with an original signature and four copies is required. Applications, if mailed, should be addressed to: Family Support Administration, Office of Grants Management, 370 L'Enfant Promenade, SW., 6th Floor, Mail Management Operations, Washington, DC 20447, Attn: OCS-89-1.

Applications if hand delivered should be taken to: Family Support Administration, Office of Grants Management, 901 D Street, SW., Washington, DC, Attn: OCS 89-1.

The first page of the SF-424 must contain in the lower right hand corner a designation indicating under which program priority area funds are being requested. The following Program Priority Area designations must be used:

UR—for Priority Area 1.0, Urban and Rural Community Economic Development (General)
ED—for Priority Area 1.0, Urban and Rural Community Economic Development (\$2.5 million set aside)
RH—for Priority Area 2.1, Rural Housing Repairs and Rehabilitation
RF—for Priority Area 2.2, Rural Community Facilities Development
MS—for Priority Area 3.0, Migrants and Seasonal Farmworkers

3. Intergovernmental Review

The OCS Discretionary Grants Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to, or simultaneous with, submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS. When comments become available they should be forwarded to the Family Support Administration office to which applications are submitted. (See address in item 2. above.)

4. Application Consideration

Applications which meet the screening requirements in sections 5.a. and b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant.

The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to,

comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form (SF) 424 with Parts I, II, III, and IV completed according to instructions published in Part F of this Program Announcement.

(2) The SF-424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(3) There must be an original and four copies of each application.

(4) The application is submitted for consideration under only one Priority Area.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in Section c. below and the specific requirements contained under each priority area description in Part B. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) **Eligibility:** Applicant meets the eligibility requirements for the Priority Area under which funds are being requested.

(2) **Number of Projects:** The application contains only one project which responds to one of the priority areas in this announcement.

(3) **Target Populations:** The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries.

(4) **Matching Funds:** The minimum prescribed amounts of private and/or public sector funds have been firmly committed.

(5) **Grant Amount:** The amount of funds requested does not exceed the limits indicated in Part C., Section 2. for the appropriate priority area.

(6) **Program Focus:** The application addresses the purposes described under the relevant program priority area description in Part B of this announcement.

Reviewers and/or OCS staff may recommend that an application be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Acceptable applications will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area as described in Part B.

(Note: The following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0920-0062.)

Criteria for Review and Evaluation of Applications Submitted Under Priority Areas 1.0 (Including the Set Aside), 2.1, 2.2, and 3.0

(a) **Criterion I: Organizational Capability and Capacity (Maximum: 20 points)**

(i) **Organization Experience in Program Area (sub-rating: 0-5 points)**

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization. The applicant has provided information concerning the relevant experiences and

achievements of key personnel including board members, executive staff and project management staff of these organizations.

Applicable to Priority Area 1.0 Only

The applicant has demonstrated:

- The ability to implement major activities in such areas as business development, commercial development, physical development, or financial services;
- The ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals;
- That it has a sound organizational structure and proven organizational capability; and
- An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents.

(ii) **Management History (sub-rating: 0-5 points)**

Applicant has a history of sound and effective management practices and where it has been a recipient of other Federal or other governmental grants, it has also detailed that it has consistently complied with financial and program progress reporting and audit requirements. The applicant's financial management system has been certified by a Certified or Licensed Public Accountant to be sufficient to protect adequately any Federal funds awarded under the application submitted.

(iii) **Staffing and Resources (sub-rating: 0-5 points)**

The application fully describes (e.g. resume) the experience and skills of the project director who is not only well qualified but his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and physical resources to carry out successfully the work plan specified.

(iv) **Staff Responsibilities (sub-rating: 0-5 points)**

The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient

time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(b) Criterion II: Significant and Beneficial Impact (Maximum: 30 points)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. Results are quantifiable in terms of program area expectations, e.g., business or physical development accomplished, number of jobs saved/created, number of units of housing rehabilitated, etc. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated enterprise zones.

(c) **Criterion III: Project Implementation and Evaluation (Maximum: 30 points)**

(i) **Project Implementation Component (sub-rating: 0-25 points)**

The work plan is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be attained notwithstanding any such potential problems.

For proposals submitted under Priority Area 1.0: In those cases where it is appropriate to the project/venture, there is a valid Business Plan that is complete and feasible.

(ii) **Evaluation Component (sub-rating: 0-5 points)**

The application includes a self-evaluation component. The evaluation data collection and analysis procedures are specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation are used to the maximum extent possible. This component indicates the ways in which the applicant would intergrade qualitative and quantitative measures of accomplishment and specific data into its program progress reports required by OCS from all grantees.

(d) **Criterion IV: Public-Private Partnerships (Maximum: 15 points)**

In addition to the required matching funds, the application documents that the applicant will mobilize from public or private sources additional project

support and assistance which will directly benefit the project.

(e) **Criterion V: Budget Appropriateness and Reasonableness (Maximum: 5 points)**

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget breakout for each of the budget categories in Part III, Section B of the SF 424. The estimated cost to the government of the project also is reasonable in relation to the value of the anticipated results.

Part E—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number 0920-0062.)

1. Application Package

Each application submission must include:

a. A signed original and four additional copies of the application.

—Page limitations:

- 10 pages—This limitation covers the following items to be submitted under Part IV of the SF-424: Eligibility Confirmation, Analysis of Need, Project Design, Evaluation Component, Organizational Experience in Program Area, Management History, Staffing and Resources, and Staff Responsibilities.

- 20 pages—This limitation covers the Business Plan, where required.

- 20 pages—This limitation covers the SF-424, Parts I, II, and III (including attachments) and all other materials such as relevant portions of the Articles of Incorporation, Bylaws, resumes or position descriptions, CPA Certifications, clearinghouse comments, etc.

—The original must bear original signatures of the certifying representative of the applicant organization.

—Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

—Applications should be submitted in ringbinders that will allow for easy separation and reassembly.

—While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

b. A self-addressed, stamped postcard so that acknowledgment of receipt can be returned.

(This requirement applies even if the application is accompanied by a "return receipt requested card".) Please note the following:

—All applications will be assigned an identification number which will be noted on the acknowledgment. This number and the program priority area must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify FSA by telephone (202) 252-4583.

2. Contents of Applications

Each copy of the application must contain in the order listed each of the following:

a. A Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. A Standard Form 424 (see Attachment B.) The SF-424 should be completed in accordance with instructions found in Part F of this announcement. As completed, the SF-424 should include: Part I, Federal Assistance including justification for indicating a grant period exceeding 12 months; Part II, Project Approval Information; Part III, Budget Information—Sections A through F with attachments including a detailed budget breakdown for Section B and documentation of required matching funds (if applicable); and Part IV, Project Narrative and, for applications submitted under Priority Area 1.0, a complete Business Plan. (See Part F, Section 4.c, for detailed instructions on completing the Business Plan.)

c. Form HHS 441, Assurance of Compliance with the Department of Health and Human Services Regulation Under Title VI of the Civil Rights Act of 1964. (See Attachment C.)

d. Form HHS 641, Department of Health and Human Services Assurance of Compliance with Section 504 of the

Rehabilitation Act of 1973, as amended. (See Attachment D.)

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970-0062)

The forms attached to this announcement shall be used to apply for funds for all priority areas described in this announcement.

It is suggested that you reproduce the SF 424 and type your application on the copy. If an item on the SF-424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "not applicable." Prepare your application in accordance with the following instructions.

1. SF-424, PART I

Section I of Part I, SF-424

Applicants shall complete all items in Section I. If additional space is needed, insert an asterisk (*) and use the remarks section (Part I, Section IV).

Item

1. Mark "Application" when used as a grant application. (The applicant, unless otherwise advised by the State or area-wide clearinghouse shall use a copy of the SF-424 Part I as a notification of intent to apply for Federal Assistance in accordance with procedures established by these clearinghouses and Executive Order 12372. When used for this purpose, mark "Notice of Intent".)

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. All applicants shall enter the number assigned by State clearinghouses or, if delegated by State, by area-wide clearinghouse(s). Applications submitted to OCS must contain this identifier if provided by the applicable State/area-wide clearinghouse(s). If in doubt, consult your clearinghouse(s).

3b. Date applicant notified of clearinghouse(s) identifier code(s).

4a/4b. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION (SECTION IV OF PART I), UNDER THE HEADING "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND

EMPLOYER IDENTIFICATION NUMBER, AS ASSIGNED BY THE INTERNAL REVENUE SERVICE, OR THE DHHS ENTITY NUMBER, IF KNOWN.

If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number (PIN), enter this PIN in parenthesis () beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to the program under which assistance is requested. The Catalog of Federal Domestic Assistance numbers for the programs under this Program Announcement is 13,793.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate, if necessary.

7. Enter a title and appropriate description of project.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments. Note: Non-profit organizations must submit proof of non-profit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as state, county, or city. If an entire unit is affected, list it rather than sub-units.

10. Identify estimated number of persons directly benefiting from project, as described in the program narrative (SF-424, Part IV).

11. All applicants for grant funds under this Program Announcement should enter the letter "A".

12. Enter amount requested or to be contributed during the funding/budget period by each contributor. Item 12 must include all funding for the proposed project including all non-OCS funds which the applicant plans to mobilize.

NOTE: WHEN COMPLETING item 12a, "FEDERAL" FUNDING IS TO BE TAKEN TO REFER TO THE REQUESTED OCS FUNDING ONLY. ALL OTHER FEDERAL FUNDS ARE TO BE INCLUDED IN ITEM 12e "OTHER."

Section IV of Part I (reverse side of page 1) must include a further two columns detailing item 12 (b through e) in which public funds are distinguished from private funds, and in which total mobilized funds (including 12b, 12c, 12d and 12e) are divided into separate public and private funds components by source. Where allowable the value of in-kind contributions will be included. Item definitions: 12a, amount requested from OCS; 12b, amount applicant will contribute; 12c, amount from State, if applicant is not a State; 12d, amount from local government, if applicant is not a local government; 12e, amount from any other sources INCLUDING NON-OCS FEDERAL FUNDS.

13a. The Congressional District identified by its State and number should correspond with the applicant's address under item 4 above.

13b. Enter the number of the Congressional District(s) and State(s) where most of the actual work of the project will be accomplished. If city-wide or State-wide covering several Districts, write "City-wide" or "State-wide".

14. Enter appropriate letter.

Definitions are:

a. *New*: A submittal for the first time for a new project or project period.

b. *Renewal*: Not applicable to these OCS programs.

c. *Revision*: Not applicable at this time.

d. *Continuation*: Not applicable to these OCS programs.

e. *Augmentation*: Not applicable to these OCS programs.

15. Enter approximate date project is expected to begin. (Most budget periods will be for 12 months but may be as long as 24 months.)

16. Enter estimated number of months to complete project after Federal funds are available. If budget period is other than 12 months, check item 21 and provide justification for such. If the project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate in Part IV of the SF-424 that it will be able to continue project operations with other sources of funding.

17. Not applicable at this time.

18. Estimated date application will be submitted to Federal agency.

19. Indicate Federal agency to which this request is addressed, i.e. HHS/FSA, Washington, D.C., 20201.

20. Write "NA".

21. Check appropriate box as to whether Part I, Section IV of SF-424 contains remarks and/or additional "remarks" sheets are attached.

Section II of Part I SF-424

Applicants shall always complete items 22a or 22b as well as 23a and 23b. An explanation follows for each item.

22a and b. Self explanatory.

23a. Enter name and title of authorized representative of legal applicant.

23b. Self explanatory. Note: Authorized representative must personally execute this document.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II OF PART I. SECTION III IS COMPLETED BY THE FEDERAL AGENCY TO WHOM APPLICATION IS BEING MADE.

2. SF-424, PART II

Negative answers will not require an explanation unless the responsible program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations".)

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace, if any.

Item 9—Show the Catalog of Federal Domestic Assistance number (13.793), the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

Item 9 will generally be answered in the affirmative, particularly for community economic development applications. Whenever it is answered in the affirmative (i.e. whenever items 12c, 12d, or 12e of Part I have non-zero entries), Part II must be accompanied by additional documentation which identifies the source of all of the State, local and other funds listed in item 12 of Part I of the SF 424. This documentation must include assurances of the availability of these funds. Funds previously awarded for this project but yet to be expended must be evidenced by copies of applications to, and award documents or letters of commitment from, the expected source of these funds. OCS reserves the right to contact these sources regarding anticipated funding or previous assistance.

3. SF-424, PART III

IN COMPLETING THESE SECTIONS THE "FEDERAL" FUND/BUDGET ENTRIES WILL RELATE TO THE REQUESTED OCS DISCRETIONARY FUNDS ONLY, AND "NON-FEDERAL" WILL INCLUDE MOBILIZED FUNDS FROM ALL OTHER SOURCES—APPLICANT, STATE, LOCAL AND OTHER. FEDERAL FUNDS OTHER THAN REQUESTED OCS DISCRETIONARY FUNDING SHOULD BE INCLUDED IN "NON-FEDERAL" ENTRIES.

The budget forms in Part III of SF 424 are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of Part III must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Section C contains entries for non-Federal (mobilized) funds only. Clearly identified continuation sheets in SF-424, Part III format should be used as necessary.

Section A—Budget Summary

Lines 1-4

Col. (a): Enter on Line 1 under Column (a) "Administrative, applicant"; enter on Line 2 under Column (a) "Administrative, project"; enter on Line 3 under Column (3) "Working Capital"; enter on Line 4 under Column (a) "Fixed Assets".

Col. (b): Enter on Line 1 under Column (b) the Program Announcement Number OCS-89-1. Enter on Line 2 under Column (b) the appropriate Catalog of Federal Domestic Assistance number (13.793).

Col. (c)-(g): For new applications, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the budget period.

Line 5

Enter the totals for all columns completed, (c) through (g).

Section B—Budget Categories

Columns (1)-(5): In OCS applications, it is only necessary to complete Columns (1) and (5). For the project entered in Column 1, enter the total requirements for OCS Federal funds by the Object Class Categories of this section.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel, or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. An applicant may use its own definition of non-expendable

personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work, Estimated Total are not available or have not been negotiated, include in Line h, "Other".

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation or repair. Provide narrative justification and break-down of costs.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs under a currently

approved agreement are requested enter "none". This line should be used only when the applicant (except local governments) currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Please enclose a copy of current rate agreement. Local governments shall enter the amount of the indirect costs determined in accordance with the Federal agency's requirements. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6i and 6j. For all new applications the total amount shown in Column (5), Line 6k, should be the same as the amount shown in Section A, Column (e), Line 5.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and that generated from matching funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement in Part IV of the SF-424.

Section C—Non-Federal Resources

Line 8-11: Enter amounts of "non-Federal" resources that will be used to support the project. ("Non-Federal" resources mean other than those OCS funds for which the applicant is applying. Therefore, matching funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines.) Provide a brief explanation, on a separate sheet, showing the type of contribution and whether it is in cash or in-kind. The firm commitment of these required funds must be documented and submitted with the application. Also if the applicant is proposing to use any block grant funds other than those provided under the Job Training Partnership Act or the Social Services Block Grant Program, the legality of such use must be documented and a statement made explaining how these funds can be diverted to this project while maintaining previous anti-poverty efforts. Failure to provide the required documentation may make the application ineligible for funding. *Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.*

When the contribution is in the form of in-kind, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space to be used in the project, including the number of square feet and the annual rental value assigned per square foot.

(3) Determination of use allowance for grantee-owned space. (Include statement whether space was purchased or constructed, totally or in part, with federal funds for items (2) and (3));

(4) Type and value of other in-kind contributions expected.

NOTE: SPECULATIVE MATCH, OR MATCH BASED ON INDEPENDENT CONTINGENCIES (SUCH AS RECEIPT OF ANOTHER GRANT) WILL NOT BE COUNTED TOWARDS THE MATCHING REQUIREMENT.

Column (a): Enter the project title.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of Columns (b), (c), and (d).

Line 12—Enter the total of each Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the total of amounts on Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal

agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: Major items or groups of smaller items; and

E. Other: group into major categories, all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Matching funds should also be broken out in the same manner as required for Federal funds in A through E above.

Line 22—Enter the type of HHS or other Federal agency approved indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain any SF-424, Part III entries.

4. SF-424, PART IV

Each narrative should include the following major sections:

- Eligibility Confirmation
- Analysis of Need
- Project Design (Work Program)
- Evaluation Component
- Organizational Experience in Program Area
- Management History
- Staffing and Resources
- Staff Responsibilities

Part IV of the SF-424 (Program Narrative) must address the specific concerns mentioned under the relevant priority area description in Part B. The narrative should provide information on how the application meets the evaluation criteria in Part D, Section 5.c., of this Program Announcement and should follow the format below:

a. *Eligibility Confirmation.* This section must explain how the applicant has complied with each of the basic

requirements listed in Part D, 5.b. (1)-(6), i.e.: (1) That the applicant meets the eligibility requirements for the Priority Area under which funds are being requested; (2) the application contains only one project which responds to one of the priority areas in the announcement; (3) the application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries; (4) the minimum prescribed amounts of private and/or public sector funds have been firmly committed when such match is required; (5) the amount of funds requested does not exceed the limits indicated in Part C., Section 2. for the appropriate priority area; and (6) the application addresses the purposes described in Part B. of the announcement.

b. *Analysis of Need.* The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved.

c. *Project Design (Work Program).* The application must contain a detailed and specific work program that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. (Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion.) It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

Projects funded under this announcement must produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program priority area objectives defined in this Program Announcement.

If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the

National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. (See Attachment E, item 12 for additional guidance.) The applicant should contact OCS early in the development of its application to OCS for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for consideration for funding.

The following are specific items to be addressed for each of the priority areas:

Priority Area 1.0: Urban and Rural Community Economic Development

Following are examples of specific impact measures for this priority area: The number of new permanent direct jobs or ownership opportunities to be created for low-income residents, especially those individuals being served by public assistance programs of the area that the project is intended to serve; the number of such jobs maintained; increase in taxes paid; new technical skills development and associated career opportunities for low-income community residents; development of the community's economic and physical assets; the amount of non-Discretionary Program dollars to be mobilized and the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project.

Each application submitted under Priority Area 1.0 also must include a complete Business Plan as part of its project work plan where such a Business Plan is appropriate to the project/venture. An application that does not include a Business Plan where one is appropriate may be found to be non-responsive and the application may be disqualified and returned to the applicant.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. Therefore, the Business Plan must be well prepared and address all the major issues noted herein.

The following guidelines show the necessary sections of a Business Plan, and what should be included in each section.

Use of these guidelines should result in a complete and professional Business Plan of not more than 20 pages which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

Summary Business Plan: A 1-2 page summary of the Business Plan should be a brief and accurate presentation of the highlights of the project and its opportunities and should include the following:

- **The Project:** Indicate when the company was founded, what is special or unique about it and what it intends to accomplish in this project for which funds are being requested. Also indicate what in the background of the management team makes its members particularly qualified (e.g. unique know-how) to pursue the business opportunity.

- **Market Opportunity:** Identify and briefly explain the market opportunity. This explanation should include information on the size and growth rate of the market for the business' product or service, and a statement indicating the percentage of that market that will be captured. A brief statement about industrywide trends is also useful and any indication of plans for the expansion of the initial product line should be included.

- **Financial Data:** State sales and profit goals for the three years following an OCS award. State clearly the size of the OCS grant request for investment purposes and all other funds already obtained or committed.

The format for the complete Business Plan is as follows:

1. **The Business and its industry:** This section should describe the nature and history of the business and provide some background on its industry.

- A. **The Business:** (legal entity, general business category);

- B. **Description and Discussion of Industry:** (Current status and prospects for the industry);

2. **Products and Services:** This section deals with the following:

- A. **Description:** Describe in detail the products or services to be sold.

- B. **Proprietary Position:** Describe proprietary features if any of product (patents, trade secrets).

- C. **Potential:** Features of the product or service that may give it an advantage over the competition.

3. **Market Research and Evaluation:** (The purpose of this section is to present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition.)

- A. **Customers:** Who are the actual and potential purchasers for the product or service by market segment?

- B. **Market Size and Trends:** What is the size of the current total market for the product or service offered?

- C. **Competition:** An assessment of the strengths and weaknesses of competitive products and services.

- D. **Estimated Market Share and Sales:** What it is about the product or services that will make it saleable in the face of current and potential competition.

4. **Marketing Plan:** The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. **Design and Development Plans:** If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. **Manufacturing and Operations Plan:** A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. **Management Team:** (The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills and experience in doing what is proposed.) This section must include a description of: The key management personnel and their primary duties; compensation and/or ownership; the organizational structure, Board of Directors; management assistance and training needs; and supporting professional services.

8. **Overall Schedule:** A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, production and operations.

Sufficient detail should be included to show the timing of the primary tasks required to accomplish an activity.

9. **Critical Risks and Assumptions:** The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. **Community Benefits:** The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs.

Among the benefits that merit discussion are:

- **Economic**

- number of permanent jobs that will be generated or maintained in each of the first three years of the project;

- number and type of new permanent employment opportunities for previously unemployed or underemployed individuals;

- number of skilled jobs and the number of other higher paying permanent jobs;

- number of these jobs that will be filled by poverty-level project area residents;

- number of jobs that will be filled by individuals on public assistance;

- ownership opportunities created for poverty-level project area residents;

- purchase of goods and services from local suppliers; increases in personal, property and/or business taxes paid.

- **Human Development**

- new technical skills development and associated career opportunities for community residents;

- management development and training.

- **Community Development**

- development of community's physical assets;

- provision of needed, but currently unsupplied, services or products to community;

- improvement in the living environment.

11. **The Financial Plan:** The Financial Plan is basic to the development of a

Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the grant year and for each of the next two years following an OCS grant period:

- a. Profit and Loss Forecasts—Quarterly for each year;
- b. Cash Flow Projections—Quarterly for each year;
- c. Pro Forma Balance Sheets—Quarterly for each year;
- d. Initial Sources of Project Funds; and
- e. Initial Uses of Project Funds; and
- f. Any Future Capital Requirements and Sources.

Priority Area 2.1, Assistance in Rural Housing Repairs and Rehabilitation

Each applicant must include a full discussion of the project including the following information:

- Basic Housing Data for Targeted Area.** Information on the status of housing in the targeted area, including but not limited to vacancy rates, housing deficiencies, characteristics of housing units to be repaired and/or rehabilitated, noting by number those which will be occupied by a low-income owner and/or those which will be rental units; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of low-income people to be employed in such projects; the number of units to be converted or newly constructed; total non-Discretionary Program dollars mobilized; justifications for selecting target communities that are based on the housing needs of low-income local residents and which show the types and amounts of assistance that have been provided in the communities in previous years; documentation, in cases of new construction, that there is insufficient existing housing stock that can be economically rehabilitated; and evidence that rehabilitation projects are not duplicative of programs which can be funded through other existing Federal programs.

- Priorities.** Provide a rationale for the strategies and priorities for which OCS support is requested.

- Participant Application Process.** A description of the participant application process including: (a) verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.

- Types of Work to be Performed.** The quantitative and qualitative measures in the work plan should reflect the types of work to be performed, e.g. (a) technical assistance and training for each proposed organization/community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules. Applications proposing to repair or rehabilitate low-income rental housing (see Part B, Priority Area 2.1, regarding restrictions) must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units.

- Job Creation.** Data regarding the number of direct jobs that will be created in the proposed project, noting the number of low-income residents that will be trained and/or placed in these jobs.

- Public-Private Partnership.** A description of the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project and the amount of dollars which will be mobilized. (These data should cover only those personal and dollar resources which are mobilized in addition to those required to meet the match.

Following are examples of specific impact measures for this priority area: The types of training and technical assistance proposed including specific outcomes of such assistance, e.g. number of organizations and individuals trained, the proposed number of on-site days or training days provided, sample curricula; the number of sub-standard housing units to be repaired and/or rehabilitated, noting by number those which will be occupied by a low-income owner and/or those which will be rental units; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of low-income people to be employed in such projects; the number of units to be converted or newly constructed; total non-Discretionary Program dollars mobilized; justifications for selecting target communities that are based on the housing needs of low-income local residents and which show the types and amounts of assistance that have been provided in the communities in previous years; documentation, in cases of new construction, that there is insufficient existing housing stock that can be economically rehabilitated; and evidence that rehabilitation projects are not duplicative of programs which can be funded through other existing Federal programs.

Priority Area 2.2, Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Each applicant must include a full discussion of how the proposed use of funds will result in preservation of the quality of water and waste water treatment systems for the rural poor and tangible improvements and other benefits such as:

- dissemination of information on water and waste water programs serving rural communities;

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- increased local expertise and capability in water and waste water development and engineering services;
- assistance to rural communities in developing the capability to operate and manage water and waste water facilities; and
- better coordination of Federal, State and local water and waste water program financing and development to assure improved service to rural communities.

Following are examples of specific impact measures for this priority area: The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may be expressed in terms of equivalent connections); the increase in local capacity in engineering and other areas of expertise; and the amount of non-Discretionary Program dollars expected to be mobilized which are in addition to those mobilized for match purposes.

Applicants who define measurable benefits in terms of equivalent connection units (ECUs) should indicate the number of connection units to be completed during the grant program year.

Priority Area 3.0 Assistance to Migrants and Seasonal Farmworkers

Each applicant must include a full discussion of the proposed project and how it will address one or more farmworker needs as described in Part B.

Following are examples of specific impact measures for this priority area: The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers/families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in the development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary Program dollars expected to be mobilized which are in addition to

those mobilized to meet the match requirement; and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this announcement.

d. Evaluation Component

All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

e. Organizational Experience in Program Area

Each applicant must document competence in the specific program priority area under which an application is submitted.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the specific priority area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Applicants with a history of less than two years of prior achievement in the program area should so identify themselves. They must also indicate those activities that they have carried out in the area in question and the reasons why they feel that they can successfully implement the project for which they are requesting funding. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. Applicants should also provide information concerning the relevant experiences and achievements of key personnel including board members, executive staff and project management staff of such organizations.

Applicable to Priority Area 1.0 only

Applicants for funds under Priority Area 1.0 must also follow the special instructions below:

Any applicant applying under this priority area must document previous involvement in substantial economic development activities and a record of successful project implementation which justifies a high degree of confidence that the proposed project will succeed. Therefore, applicants in this priority area must document a firmly established and quantifiable performance record that shows the following:

- the ability to implement major activities such as business development, commercial development, physical development, or financial services;
- the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals;
- successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;
- a sound asset base and organizations structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
- an ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents, and impact on community-wide economic problems and needs;
- sound administrative and fiscal systems and controls; and the ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism, or executives on loan.

f. Management History

Applicants must detail a history of sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Articles of Incorporation, By-Laws, a description of the Governing Board and representational structure (where applicable) are to be included along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

g. Staffing and resources. The application must fully describe (e.g. a

resume or position description) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

h. Staff responsibilities. The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

Part G—Post-Award Requirements

The official award document is the Notice of Grant Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the

award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient financial participation required.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of Office of Management and Budget Circulars A-102 or A-110 and A-122 the last of which, amongst other provisions, prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

Grantees will be required to submit semi-annual progress and financial reports as well as an audit of the project costs. (Costs associated with the completion and submission of the

required grant audit may be chargeable to the grant and will not be considered as part of the up to 10% of the grant that is allowable for administrative costs.)

Grantees who will be charging administrative costs to the OCS grant will have to assure that such costs are identifiable in their records in order that auditors and OCS personnel can verify that the 10% administrative cost limitation is not exceeded.

Mary M. Evert,

Director, Office of Community Services.

July 1, 1988.

Attachment A—1988 Poverty Income Guidelines

Attachment B—SF-424, Federal Assistance

Attachment C—Assurance of Compliance with DHHS Regulation under Title VI of the Civil Rights Act of 1964

Attachment D—Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended

Attachment E—Assurances (General)

BILLING CODE 4150-04-M

ATTACHMENT A

1988 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII)
AND THE DISTRICT OF COLUMBIA

Size of Family Unit	Poverty Guideline
1	\$5,770
2	7,730
3	9,690
4	11,650
5	13,610
6	15,570
7	17,530
8	19,490

For family units with more than 8 members, add \$1,960 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of Family Unit	Poverty Guideline
1	\$7,210
2	9,660
3	12,110
4	14,560
5	17,010
6	19,460
7	21,910
8	24,360

For family units with more than 8 members, add \$2,450 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of Family Unit	Poverty Guideline
1	\$6,650
2	8,900
3	11,150
4	13,400
5	15,650
6	17,900
7	20,150
8	22,400

For family units with more than 8 members, add \$2,250 for each additional member.

ATTACHMENT B

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION IDENTIFIER	3. STATE APPLICATION IDENTIFIER	4. NUMBER	5. DATE ASSIGNED
1. TYPE OF SUBMISSION (Mark appropriate box) <input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION	6. DATE Year month day 19	7. DATE Year month day 19	8. DATE Year month day 19	9. DATE Year month day 19	10. DATE Year month day 19
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & Telephone No.)		5. EMPLOYER IDENTIFICATION NUMBER (EIN) 6. PROGRAM (From CFDA) a. NUMBER b. TITLE		7. TYPE OF APPLICANT/RECIPIENT A-State B-County C-City D-Indian Tribe E-Other (Specify) F-School District G-Special Purpose District H-Community Action Agency I-Higher Educational Institution J-Indian Tribe K-Other (Specify)	
7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project)		8. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)		9. ESTIMATED NUMBER OF PERSONS BENEFITING	
10. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$.00		11. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT		12. TYPE OF ASSISTANCE A-New B-Continuation C-Expansion D-Other (Specify) E-Augmentation	
13. PROJECT START DATE Year month day 19		14. PROJECT DURATION Months		15. TYPE OF CHANGE (For 14c or 14e) A-Increase Duration B-Decrease Duration C-Increase Duration D-Decrease Duration E-Continuation	
16. DATE DUE TO FEDERAL AGENCY 19		17. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER		18. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	
19. FEDERAL AGENCY TO RECEIVE REQUEST a. ORGANIZATIONAL UNIT (IF APPROPRIATE) b. ADMINISTRATIVE CONTACT (IF KNOWN) c. ADDRESS		20. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		21. SIGNATURE	
22. THE APPLICANT CERTIFIES THAT: To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved		23. TYPED NAME AND TITLE		24. SIGNATURE	
25. APPLICATION RECEIVED 19		26. FEDERAL APPLICATION IDENTIFICATION NUMBER		27. FEDERAL GRANT IDENTIFICATION	
28. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> e. DEFERRED <input type="checkbox"/> f. WITHDRAWN		29. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		30. ACTION DATE 19	
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		32. STARTING DATE 19		33. ENDING DATE 19	
34. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		35. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		36. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	

SECTION IV—REMARKS (Please reference the proper item number from Sections I, II or III, if applicable)

OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1	
Does this assistance request require State, local regional, or other priority rating?	Name of Governing Body _____ Priority Rating _____ _____ Yes _____ No
Item 2	
Does this assistance request require State, or local advisory, educational or health clearances?	Name of Agency or Board _____ _____ Yes _____ No (Attach Documentation)
Item 3	
Does this assistance request require State, local, regional or other planning approval?	Name of Approving Agency _____ Date _____ _____ Yes _____ No
Item 4	
Is the proposed project covered by an approved comprehensive plan?	Check one: State <input type="checkbox"/> Local <input type="checkbox"/> Regional <input type="checkbox"/> _____ Yes _____ No Location of Plan _____
Item 5	
Will the assistance requested serve a Federal installation?	Name of Federal Installation _____ Federal Population benefiting from Project _____ _____ Yes _____ No
Item 6	
Will the assistance requested be on Federal land or installation?	Name of Federal Installation _____ Location of Federal Land _____ Percent of Project _____ _____ Yes _____ No
Item 7	
Will the assistance requested have an impact or effect on the environment	See instructions for additional information to be provided. _____ Yes _____ No
Item 8	
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?	Number of: Individuals _____ Families _____ Businesses _____ Farms _____ _____ Yes _____ No
Item 9	
Is there other related assistance on this project previous, pending, or anticipated	See instructions for additional information to be provided. _____ Yes _____ No

OMB NO. 3248-0205

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

OMB NO. 3248-0205

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges

22. Indirect Charges

23. Remarks

PART IV PROGRAM NARRATIVE (Attach per instruction)

ATTACHMENT C

**ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES REGULATION UNDER
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

Name of Applicant (type or print) (hereinafter called the "Applicant")

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and **HEREBY GIVES ASSURANCE THAT** it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____ Applicant (type or print) _____

By _____
Signature and Title of Authorized Official

Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

ATTACHMENT D

DEPARTMENT OF HEALTH AND HUMAN SERVICES
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE
REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

- b. () employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

Name of Designee(s) (Type or Print)

Name of Recipient (Type or Print)	Street Address or P.O. Box
(IRS) Employer Identification Number	City
	State Zip

I certify that the above information is complete and correct to the best of my knowledge.

Date _____ Signature and Title of Authorized Official _____

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

ATTACHMENT E

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.
9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.
14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.
15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.
16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).
17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.
18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding \$10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.
19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds \$2,500.

[FR Doc. 88-15221 Filed 7-7-88; 8:45 am]

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federal register

Friday
July 8, 1988

Part IV

Department of Health and Human Services

Office of Community Services, Family
Support Administration

Request for Applications Under the
Office of Community Services' Fiscal
Year 1989 Community Food and Nutrition
Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Program Announcement No. OCS-88-2]

Request for Applications Under the Office of Community Services' Fiscal Year 1989 Community Food and Nutrition Program

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program.

SUMMARY: The Office of Community Services (OCS) announces that, based on the availability of funds, competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 681A of the Community Services Block Grant Act of 1981. This Program Announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the Program Announcement. Part B describes the types of activities that will be considered for funding and who is eligible to apply. Part C provides details on application prerequisites such as administrative costs and program beneficiaries. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

Closing Dates: The closing date for submission of applications is August 29, 1988.

FOR FURTHER INFORMATION CONTACT:

Prior to July 28, 1988 contact: Office of Community Services, Office of State and Project Assistance, 330 C Street SW., Room 2054, Washington, DC 20201. You may also call (202) 475-0342.

After July 28, 1988 contact: Office of Community Services, Office of State and Project Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447. You may also call (202) 252-5353.

Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act as amended authorizes the Secretary of Health and Human Services to make funds available under several

programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681A, Community Food and Nutrition, which authorizes the Secretary to make funds available for grants to be awarded on a competitive basis to eligible entities for local and statewide programs (1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—**Displaced worker:** An individual who is in the labor market but has been unemployed for six months or longer.

—**Distressed community:** A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—**Indian tribe:** A tribe, band, or other organized group of Indians recognized in the State in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

—**Innovative project:** One that departs from or significantly modifies past program practices and tests a new approach.

—**Migrant farmworker:** An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—**Seasonal farmworker:** Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—**Underserved area** (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

Part B—Purpose

All projects proposed under this program must meet the following basic criteria:

(a) They are designed and intended to provide nutrition benefits, including

those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

(b) they provide outreach or public education designed to inform low-income individuals and displaced workers of the services available to them under the various Federally-assisted nutrition programs; and

(c) they focus on one or more of the legislatively-mandated program activities, i.e. (1) coordination of existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating new programs in underserved (see Part A, Definition of Terms) or unserved areas; and (3) developing innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

OCS also is interested in, and encourages, innovative projects which meet the nutritional needs of the elderly.

Rating preference will be accorded to applicants whose proposals build on existing outreach activity and mobilize or leverage additional resources which increase the potential impact of the program. In addition, preference will be given to projects addressing problems that can be met by one-time OCS funding or which can be continued without future Federal funding.

Any proposal submitted by an applicant requesting funding for the continuation of a project for which it received OCS funds in FY 1988, or for implementation of a project similar to one for which it received OCS funds in FY 1988, will not be eligible for funding in FY 1989.

Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Any films or visual presentations approved for development under the grant must be submitted to the Office of Community Services for clearance by the Department of Health and Human Services prior to dissemination.

In recognition of the special needs of Indian tribes and migrants and seasonal farmworkers, a \$150,000 set-aside will be established to afford priority consideration to proposals submitted by such entities. Applications which are not funded within this limited set-aside will also be considered competitively within the larger pool of eligible applicants.

See Part F, Section 4, for special instructions on developing a work program.

Eligible applicants are States and local public and private non-profit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. In addition, applicants for the \$150,000 set-aside must be Indian tribes or migrant and seasonal farmworker organizations.

Part C—Application Prerequisites

1. Eligible Applicants

Eligible applicants are identified in Part B., above.

2. Available Funds

a. FY 89 Funding

OCS is spreading its administrative review process more evenly across the fiscal year. In order to accomplish this, OCS is publishing this Program Announcement prior to the Congress completing its deliberations on appropriations for this program for FY 89. Grants will only be made based on the availability of funds. The amount of funds available and the expected number of grants that will be made when, and if, such funds become available is not known at the present time.

b. Grant Amounts

No individual grant request will be considered for an amount which is in excess of \$50,000 in OCS funds.

c. Matching Funds

An applicant is required to obtain commitment of at least one public or private sector dollar for each OCS dollar awarded. This commitment will serve as one of the examples that the project has the potential to survive upon completion of the OCS grant.

Matching funds must be definitely committed or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant or lines of credit at the current market rate set aside by banks for program participants), will not be counted towards the matching requirement.

Matching funds may be in the form of cash or in-kind fairly converted into their dollar equivalent. Some examples are grants from States, counties, municipalities; contributions from private individuals or organizations; correlated training programs; foundation support; and/or private and charitable contributions. OCS will accept as a

match Federal monies from State administered block grants with compatible purposes when those programs do not prohibit their use as matching funds. Examples of block grant programs which do not have such a prohibition include the Job Training Partnership Act and the Social Services Block Grant.

Funds that are eligible to be counted as "matching" funds must be committed for specific project activities within the OCS-approved project and used only for project purposes during the duration of the OCS grant.

A grantee may not claim as matching funds wages earned as a result of training or skill improvements funded by the OCS grant.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds although currently-owned assets which will be used in the OCS project may be applied against the matching requirement.

While the matching requirement outlined in this section must be met for an application to be eligible for consideration, applicants generating support either greater than that required and/or from private sector sources, may be eligible for additional points to be awarded by the reviewers. Except in unusual circumstances, documentation of any commitment of matching funds must be in the form of letters of commitment from the organizations/individuals from which funds will be received and the commitment must be valid at least through the grant period.

3. Grant Duration

For most projects OCS will grant funds for one year. However, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal, a grant may be made for a longer period of time, i.e. up to two years.

4. Maintenance of Effort

The activities funded under this Program Announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance.

5. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program. However, applicants who do not propose to charge any administrative costs to the OCS grant will receive rating preference.

Administrative costs are defined as costs that are necessary to protect, monitor, properly account for, and apply to the approved project those Federal

funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs nor are costs for conducting the final audit.

In all cases where an applicant has negotiated and claims a current indirect cost rate approved by the Department of Health and Human Services, the Defense Contracting Agency, or some other Federal agency, this rate ordinarily will be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

6. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Update of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the most recently-published guidelines. Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication. (These revised guidelines may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.)

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs with the following exception: In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to beneficiaries through grants funded under this Program, beneficiaries must fall within the official DHHS poverty income guidelines.

7. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Part B. Applications which are not in compliance with these requirements will be ineligible for funding.

8. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as

long as each application contains a proposal for a different project.

8. Sub-Contracting or Delegating Projects

OCS does not anticipate funding any project where the role of the eligible applicant is *primarily* to serve as a conduit for funds to organizations other than the applicant.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Form (SF) 424, Part F and Appendix B to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled "For Further Information" at the beginning of this Announcement.

2. Application Submission

The date by which applications must be received is August 29, 1988.

An application will be considered to be received on time under either one of the following two circumstances:

- The application was sent via the U.S. Postal Service or by private commercial carrier and postmarked or dated by the carrier not later than midnight of the closing date unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)
- The application is hand delivered on or before the closing date to the Office of Grants Management, FSA, at the address indicated below. Hand delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, (excluding Federal legal holidays) up through the closing date. In establishing the date of receipt of hand-delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

An application with an original signature and four copies is required. Applications, if mailed, should be addressed to: Family Support Administration, Office of Grants Management, 8th Floor Mail Management Operations, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: OCS-88-2.

Applications, if hand delivered, should be taken to: Family Support Administration, Office of Grants Management, 901 D Street, SW., Washington, DC, Attn: OCS-88-2.

The first page of the SF-424 must contain in the lower right hand corner one of the following designations:

- CFN—for general grants.
- SA—for projects where migrant and seasonal farmworker organizations and Indian tribes are applying specifically for set-aside funds described in Part B.

3. Intergovernmental Review

This Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to, or simultaneous with, submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS. When comments become available they should be forwarded to the Family Support Administration office to which applications are submitted. (See address in item 2. above.)

4. Application Consideration

Applications which meet the screening requirements in Section 5.a. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant.

The results of these reviews will assist the Director and OCS program

staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirement will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

- The application must contain a Standard Form (SF) 424 with Parts I, II, III, and IV completed according to instructions published in Part F of this Program Announcement.
- The SF-424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.
- There must be an original and four copies of each application.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in Section c. below and the specific requirements contained in Part B. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

- Eligibility:** Applicant meets the eligibility requirements found in Part B.
- Number of Projects:** The application contains only one project.

(3) **Target Populations:** The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries.

(4) **Grant Amount:** The amount of funds requested does not exceed \$50,000 in OCS funds.

(5) **Program Focus:** The application addresses the purposes described in Part B of this announcement.

(6) **Continuation or Duplication of Projects:** The applicant does not propose the continuation of a project funded by OCS in FY-1988 nor does the applicant propose undertaking a project similar to one for which it received funds in FY 1986.

(7) **Matching Funds:** The minimum prescribed amounts of private and/or public sector funds have been firmly committed.

Reviewers and/or OCS staff may recommend that an application be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Acceptable applications will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B.

(Note: The following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0970-0082.)

CRITERIA FOR REVIEW AND EVALUATION OF APPLICATIONS SUBMITTED UNDER THIS PROGRAM ANNOUNCEMENT

(1) Criterion I: Analysis of Needs/Priorities (Maximum: 20 points).

(a) Target area and population to be served are adequately described (0-5 points).

(b) Nature and extent of problem are adequately described and documented (0-15 points).

(2) Criterion II: Adequacy of Work Program (Maximum: 20 points).

(a) Goals are appropriately related to needs and are specific and measurable (0-10 points).

(b) Activities are adequately described and appropriately related to goals (0-10 points).

(3) Criterion III: Significant and Beneficial Impact (Maximum: 25 points).

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people (0-8 points).

(b) Project incorporates disease prevention activities along with nutritional services (0-2 points).

(c) Project will significantly leverage or mobilize other community resources (0-5 points).

(d) Project builds on an existing outreach activity (0-5 points).

(e) Proposal addresses a problem which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support (0-5 points).

(4) Criterion IV: Coordination (Maximum 10 points)

Other appropriate organizations will be involved in project implementation so as to avoid duplication and to achieve an improved delivery system (0-10 points).

(5) Criterion V: Ability of Applicant to Perform (Maximum: 18 points)

(a) A written self-assessment or third party evaluation of past nutrition-related activities undertaken by applicant indicates good ability to operate proposed project (0-10 points).

(b) Quality of staff is such that applicant will be able to operate the project effectively and efficiently (0-8 points).

(6) Criterion VI: Adequacy of Budget (Maximum: 7 points)

(a) Budget is adequate and administrative costs are appropriate in relation to the services proposed (0-3 points).

(b) Administrative costs are fully assumed by applicant (0-4 points).

Part E—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number 0920-0082.)

1. Application Package

Each application submission must include:

- a. A signed original and four additional copies of the application.

Please note the following:

—Page limitations:

- 10 pages—This limitation covers the following items to be submitted under Part IV of the SF-424: Eligibility Confirmation, Analysis of Need, Project Design, Evaluation Component,

Organizational Experience in Program Area, Management History, Staffing and Resources, and Staff Responsibilities.

- 20 pages—This limitation covers the SF-424, Parts I, II, and III (including attachments) and all other materials such as relevant portions of the Articles of Incorporation, Bylaws, resumes or position descriptions, CPA Certifications, clearinghouse comments, etc.

—The original must bear original signatures of the certifying representative of the applicant organization.

—Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½×11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

—Applications should be submitted in ringbinders that will allow for easy separation and reassembly.

—While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

b. A self-addressed, stamped postcard so that acknowledgment of receipt can be returned. (This requirement applies even if the application is accompanied by a "return receipt requested card".) Please note the following:

—All applications will be assigned an identification number which will be noted on the acknowledgment. This number and the program priority area must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify FSA by telephone (202) 252-4583.

2. Contents of Applications

Each copy of the application must contain in the order listed each of the following:

- a. A Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all

appendices, must be numbered consecutively.

b. An Executive Summary.

c. A Standard Form 424. (See Attachment B.) The SF-424 should be completed in accordance with instructions found in Part F of this announcement. As completed, the SF-424 should include: Part I, Federal Assistance including justification for indicating a grant period exceeding 12 months; Part II, Project Approval Information; Sections A through F with attachments including a detailed budget breakdown for Section B; and Part IV, Project Narrative.

d. Form HHS 441, Assurance of Compliance with the Department of Health and Human Services Regulation Under Title VI of the Civil Rights Act of 1964. (See Attachment C.)

e. Form HHS 641, Department of Health and Human Service Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended. (See Attachment D.)

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0070-0062.)

The forms attached to this announcement shall be used to apply for funds under this announcement.

It is suggested that you reproduce the SF-424 and type your application on the copy. If an item on the SF-424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "not applicable." Prepare your application in accordance with the following instructions.

1. SF-424, PART I.

Section I of Part I, SF-424

Applicants shall complete all items in Section I. If additional space is needed, insert an asterisk (*) and use the remarks section (Part I, Section IV).

Item

1. Mark "Application" when used as a grant application. (The applicant, unless otherwise advised by the State or area-wide clearinghouse shall use a copy of the SF-424 Part I as a notification of intent to apply for Federal Assistance in accordance with procedures established by these clearinghouses and Executive Order 12373. When used for this purpose, mark "Notice of intent".)

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. All applicants shall enter the number assigned by State

clearinghouses or, if delegated by State, by area-wide clearinghouse(s).

Applications submitted to OCS must contain this identifier if provided by the applicable State/area-wide clearinghouse(s). If in doubt, consult your clearinghouse(s).

3b. Date applicant notified of clearinghouse(s) identifier code(s).

4a/4b. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION (SECTION IV OF PART I), UNDER THE HEADING "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER, AS ASSIGNED BY THE INTERNAL REVENUE SERVICE, OR THE DHHS ENTITY NUMBER, IF KNOWN.

If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number (PIN), enter this PIN in parenthesis () beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to the program under which assistance is requested. The Catalog of Federal Domestic Assistance number for this program is 13.795.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate, if necessary.

7. Enter a title and appropriate description of project.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments.

Note: Non-profit organizations must submit proof of non-profit status.

9. Enter Governmental unit where significant and meaningful impact could

be observed. List only largest unit or units affected, such as state, county, or city. If an entire unit is affected, list it rather than sub-units.

10. Identify estimated number of persons directly benefiting from project, as described in the program narrative (SF-424), Part IV).

11. All applicants for grant funds under this Program Announcement should enter the letter "A".

12. Enter amount requested or to be contributed during the funding/budget period by each contributor. Item 12 must include all funding for the proposed project including all non-OCS funds which the applicant plans to mobilize.

Note: WHEN COMPLETING Item 12a, "FEDERAL" FUNDING IS TO BE TAKEN TO REFER TO THE REQUESTED OCS FUNDING ONLY. ALL OTHER FEDERAL FUNDS ARE TO BE INCLUDED IN ITEM 12a "OTHER".

Item definitions:

12a. Amount requested from OCS. If any other funds will be mobilized insert as follows: 12b. Amount applicant will contribute; 12c. Amount from State, if applicant is not a State; 12d. Amount from local government, if applicant is not a local government; 12e. Amount from any other sources INCLUDING NON-OCS FEDERAL FUNDS.

13a. The Congressional District identified by its State and number should correspond with the applicant's address under item 4 above.

13b. Enter the number of the Congressional District(s) and State(s) where most of the actual work of the project will be accomplished. If city-wide or State-wide covering several Districts, write "City-wide" or "State-wide".

14. Enter appropriate letter.

Definitions are:

a. New: A submittal for the first time for a new project or project period.

b. Renewal: Not applicable to this OCS program.

c. Revision: Not applicable at this time.

d. Continuation: Not applicable to this OCS program.

e. Augmentation: Not applicable to this OCS program.

15. Enter approximate date project is expected to begin. (Most budget periods will be for 12 months but may be as long as 24 months.)

16. Enter estimated number of months to complete project after Federal funds are available. If budget period is other than 12 months, check item 21 and provide justification for such. If the project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate in Part IV of

the SF-424 that it will be able to continue project operations with other sources of funding.

17. Not applicable at this time.

18. Estimated date application will be submitted to Federal agency.

19. Indicate Federal agency to which this request is addressed—HHS/FSA, Washington, D.C., 20201.

20. Write "NA".

21. Check appropriate box as to whether Part I, Section IV of SF-424 contains remarks and/or additional "remarks" sheets are attached.

Section II of Part I SF-424

Applicants shall always complete items 22a or 22b as well as 23a and 23b. An explanation follows for each item.

22a and b. Self explanatory.

23a. Enter name and title of authorized representative of legal applicant.

23b. Self explanatory. Note: Authorized representative must personally execute this document.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II OF PART I. SECTION III IS COMPLETED BY THE FEDERAL AGENCY TO WHOM APPLICATION IS BEING MADE.

2. SF-424, PART II

Negative answers will not require an explanation unless the responsible program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4—Show whether the approval comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project.

(Federally recognized Indian reservations are not "Federal Installations".)

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace, if any.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

3. SF-424, PART III

IN COMPLETING THESE SECTIONS THE "FEDERAL" FUND/BUDGET ENTRIES WILL RELATE TO THE REQUESTED COMMUNITY FOOD AND NUTRITION PROGRAM FUNDS ONLY, AND "NON-FEDERAL" WILL INCLUDE MOBILIZED FUNDS FROM ALL OTHER SOURCES—APPLICANT, STATE, LOCAL AND OTHER. FEDERAL FUNDS OTHER THAN REQUESTED COMMUNITY FOOD AND NUTRITION PROGRAM FUNDING SHOULD BE INCLUDED IN "NON-FEDERAL" ENTRIES.

The budget forms in Part III of SF-424 are only to be used to present grant administrative costs and major budget categories.

Sections A and D of Part III must contain entries for Federal (OCS) and for non-Federal funds if any are mobilized. Section B contains entries for Federal (OCS) funds only. Section C contains entries for non-Federal funds if any will be mobilized. Clearly identified continuation sheets in SF-424, Part III format should be used as necessary.

Section A—Budget Summary

Lines 1-4

Col. (a): Enter on Line 1 under Column (a) "Administrative, applicant"; enter on Line 2 under Column (a) "Administrative, project".

Col. (b): Enter on Line 1 under Column (b) the Program Announcement Number OCS-89-2. Enter on Line 2 under Column (b) the Catalog of Federal Domestic Assistance number (13.795).

Col. (c)-(g): Leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f) (if appropriate); and (g)

the amounts needed to support the project for the budget period.

Line 5

Enter the totals for all columns completed, (e) through (g).

Section B—Budget Categories

Columns (1)–(5)

In OCS applications, it is only necessary to complete Columns (1) and (5). For the project entered in Column 1, enter the total requirements for OCS Federal funds by the Object Class Categories of this section.

Allowability of costs are governed by applicable cost principles set forth in Subpart Q of 45 CFR Part 74.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultants' travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions.)

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21 for additional requirements.)

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on Line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of

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technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work, Estimated Total are not available or have not been negotiated, include in Line h, "Other".

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation or repair. Provide narrative justification and breakdown of costs.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs under a currently approved agreement are requested enter "none". This line should be used only when the applicant (except local governments) currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Please enclose a copy of current rate agreement. Local governments shall enter the amount of the indirect costs determined in accordance with the Federal agency's requirements. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount shown in Column (5), Line 6k,

should be the same as the amount shown in Section A, Column (e), Line 5.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement in Part IV of the SF-424.

Section C—Non-Federal Resources (if applicable)

Lines 8-11: Enter amounts of "non-Federal" resources that will be used to support the project. ("Non-Federal" resources mean other than those OCS funds for which the applicant is applying. Therefore, funds from other Federal programs, such as the Job Training Partnership Act Program, should be entered on these lines.) Provide a brief explanation, on a separate sheet, showing the type of contribution and whether it is in cash or in-kind. The firm commitment of these required funds must be documented and submitted with the application. Also if the applicant is proposing to use any block grant funds other than those provided under the Job Training Partnership Act of the Social Services Block Grant Program, the legality of such use must be documented and a statement made explaining how these funds can be diverted to this project while maintaining previous anti-poverty efforts.

Column (a): Enter the project title.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of Columns (b), (c), and (d).

Line 12—Enter total of Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—If applicable, enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: Major items or groups of smaller items; and

E. Other: group into major categories, all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22—Enter the type of HHS or other Federal agency approved indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain any SF-424, Part III entries.

4. SF-424, PART IV

Each narrative should include the following major sections:

- Executive Summary.
- Analysis of Need.
- Project Design (Work Program).
- Evaluation Component.
- Organizational Experience in Program Area.
- Management History.

g. Staffing and Resources.

h. Staff Responsibilities.

Part IV of the SF-424 (Program Narrative) must address the specific purposes mentioned in Part B of this Program Announcement. The narrative should provide information on how the application meets the evaluation criteria in Part D, Section 5.c., of this Program Announcement and should follow the format below:

a. **Executive Summary.** A narrative summary of the project must be included in each application immediately following the table of contents. This summary must directly address the program specifics within this announcement and the evaluation criteria contained in Part D, Section 5.c. This summary must also explain how the applicant has complied with each of the basic requirements listed in Part D, 5.b. (1)-(7), i.e.: (1) That the applicant meets the eligibility requirements found in Part B; (2) the application contains only one project; (3) the application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries; (4) the amount of funds requested does not exceed \$50,000; (5) the application addresses the purposes described in Part B of the announcement; and (6) the applicant does not propose the continuation of a project funded by OCS in FY 1988 nor does the applicant propose undertaking a project similar to one for which it received OCS funding in FY 88. (Applicants are cautioned that OCS will not accept an executive summary as the complete application or as a substitute for a properly detailed Part IV, Program Narrative of the SF-424.)

b. **Analysis of Need.** The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved.

c. **Project Design (Work Program).** The application must contain a detailed and specific work program that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. (Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion.) It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

Projects funded under this announcement must produce permanent

and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program objectives defined in this Program Announcement.

If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. (See Attachment E, item 12 for additional guidance.) The applicant should contact OCS early in the development of its application to OCS for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for consideration for funding.

Each applicant must address the following as they relate to the proposed project. The proposed project must be designed to address the basic criteria and legislatively-mandated activities found in Part B and should include:

- (1) Project priorities and rationale for selecting them;
- (2) goals and objectives; and
- (3) project activities.

Each applicant also must indicate how the project will have a significant and beneficial impact by providing the following information:

- (1) A description of how the project will significantly improve or increase nutrition services, including nutrition services related to disease prevention, for low-income people;
- (2) a statement as to how the project will significantly leverage or mobilize other resources; and
- (3) a description of project outreach and/or public education activity.

Also to be included is a discussion on how the applicant will involve other appropriate organizations in order to avoid duplication of effort and to achieve an improved delivery system. These organizations should be identified.

In addition, if applicant is receiving funds from the State for community food

and nutrition activities, address how the funds are being utilized and, if they will be used in the project for which OCS funds are being requested, specifically describe their usage.

Applicant should indicate whether or not the proposed project is a continuation of a project funded by OCS in FY 1988 or a project similar to that for which the applicant received OCS funding in FY 1988.

d. **Evaluation Component.**

All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

e. **Organizational Experience in Program Area**

Each applicant must document competence in the area in which it is proposing to undertake activities.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Applicants with a history of less than two years of prior achievement in the program area should so identify themselves. They must also indicate those activities that they have carried out in the area in question and the reasons why they feel that they can successfully implement the project for which they are requesting funding. Organizations which propose providing training and technical assistance must detail their competence in the specific program area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. Applicants should also provide information concerning the relevant experiences and achievements of key personnel including board members, executive staff and project management staff of such organizations.

The applicant *also* must include a written self-assessment or third party evaluation of past nutrition-related activities undertaken by applicant.

f. Management History

Applicants must detail a history of sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Articles of Incorporation, By-Laws, a description of the Governing Board and representational structure (where applicable) are to be included along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

g. *Staffing and resources.* The application must fully describe (e.g. a résumé) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

h. *Staff responsibilities.* The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

Part G—Post-Award Requirements

The official award document is the Notice of Grant Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient financial participation required.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of Office of Management and Budget Circulars A-102 or A-110 and A-

122 the last of which, amongst other provisions, prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

Grantees will be required to submit semi-annual financial and progress reports as well as an audit of the project costs. (Costs associated with the completion and submission of the required grant audit may be charged to the grant.)

Any visual or written materials produced under this grant must be furnished to OCS for recordation and possible dissemination to interested parties.

Mary M. Evert,

Director, Office of Community Services.

Attachment A—Annual Update of Poverty Income Guidelines

Attachment B—SF-424, Federal Assistance

Attachment C—Assurance of Compliance with DHHS Regulation under Title VI of the Civil Rights Act of 1964

Attachment D—Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended

Attachment E—Assurances (General)

BILLING CODE 4150-04-M

ATTACHMENT A

1988 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of Family Unit	Poverty Guideline
1	\$5,770
2	7,730
3	9,690
4	11,650
5	13,610
6	15,570
7	17,530
8	19,490

For family units with more than 8 members, add \$1,960 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of Family Unit	Poverty Guideline
1	\$7,210
2	9,660
3	12,110
4	14,560
5	17,010
6	19,460
7	21,910
8	24,360

For family units with more than 8 members, add \$2,450 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of Family Unit	Poverty Guideline
1	\$6,650
2	8,900
3	11,150
4	13,400
5	15,650
6	17,900
7	20,150
8	22,400

For family units with more than 8 members, add \$2,250 for each additional member.

FEDERAL ASSISTANCE		ATTACHMENT B		OMB Approval No. 0348-0008	
1. TYPE OF SUBMISSION (Mark appropriate box) <input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION		2. APPLICANT'S APPLICATION IDENTIFIER		3. STATE APPLICATION IDENTIFIER	
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & Telephone No.)		5. EMPLOYER IDENTIFICATION NUMBER (EIN) a. NUMBER b. TITLE		6. TYPE OF APPLICANT/RECIPIENT A—State B—Intermediate C—Substate D—County E—City F—School District G—Special Purpose District H—Community Action Agency I—Housing & Community Development J—Indian Tribe K—Other (Specify)	
7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)		8. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)		9. ESTIMATED NUMBER OF PERSONS BENEFITING	
10. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$.00		11. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT		12. TYPE OF ASSISTANCE A—Basic Grant B—Supplemental Grant C—Loan D—Insurance E—Other (Specify)	
13. PROJECT START DATE Year month day		14. PROJECT DURATION Months		15. TYPE OF APPLICATION A—New B—Renewal C—Amendment D—Continuation E—Augmentation	
16. DATE DUE TO FEDERAL AGENCY Year month day		17. TYPE OF CHANGE (For 14c or 14e) A—Increase Dollars B—Decrease Dollars C—Increase Duration D—Decrease Duration E—Cancellation		18. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER	
19. FEDERAL AGENCY TO RECEIVE REQUEST a. ORGANIZATIONAL UNIT (IF APPROPRIATE) b. ADMINISTRATIVE CONTACT (IF KNOWN) c. ADDRESS		20. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		21. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	
22. THE APPLICANT CERTIFIES THAT: To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.		23. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		24. TYPED NAME AND TITLE b. SIGNATURE	
25. APPLICATION RECEIVED 18 Year month day		26. FEDERAL APPLICATION IDENTIFICATION NUMBER		27. FEDERAL GRANT IDENTIFICATION	
28. ACTION TAKEN a. AWARDED b. REJECTED c. RETURNED FOR AMENDMENT d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE e. DEFERRED f. WITHDRAWN		29. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		30. ACTION DATE Year month day	
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		32. STARTING DATE Year month day		33. ENDING DATE Year month day	
34. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		35. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		36. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	

SECTION IV—REMARKS (Please reference the proper item number from Sections I, II or III, if applicable)

**PART II
PROJECT APPROVAL INFORMATION**

Item 1.
Does this assistance request require State, local regional, or other priority rating? _____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances? _____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval? _____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan? _____ Yes _____ No
Check one: State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation? _____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation? _____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment? _____ Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms? _____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated? _____ Yes _____ No
See instructions for additional information to be provided.

PART III - BUDGET INFORMATION**SECTION A - BUDGET SUMMARY**

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION (Attach Additional Sheets if Necessary)	
21. Direct Charges:	
22. Indirect Charges:	
23. Remarks:	

PART IV PROGRAM NARRATIVE (Attach per instruction)

ATTACHMENT C

**ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES REGULATION UNDER
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

Name of Applicant (type or print) (hereinafter called the "Applicant")

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____ Applicant (type or print) _____

By _____
Signature and Title of Authorized Official

Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

ATTACHMENT D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE
REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. () employs fewer than fifteen persons;

b. () employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

Name of Designee(s) (Type or Print)

Name of Recipient (Type or Print)	Street Address or P.O. Box
(IRS) Employer Identification Number	City
	State Zip

I certify that the above information is complete and correct to the best of my knowledge.

Date Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

HHS-641 (Rev. 12-82)

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.
9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the spec-

ified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.
15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.
16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).
17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46.42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.
18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding \$10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.
19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds \$2,500.

Friday
July 8, 1988

Part V

Department of Health and Human Services

Office of Community Services, Family
Support Administration

Availability of Funds and Request for
Applications Under the Office of
Community Services' Fiscal Year 1989
Demonstration Partnership Program;
Notice

federal register

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Program Announcement No. OCS-89-3]

Availability of Funds and Request for Applications Under the Office of Community Services' Fiscal Year 1989 Demonstration Partnership Program

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' Demonstration Partnership Program (DPP).

SUMMARY: The Office of Community Services (OCS) announces that, based on availability of funds, applications will be accepted for new grants pursuant to the Secretary's authority under section 408(a)(1) of the Human Services Reauthorization Act of 1986. This program announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the program announcement. Part B describes the purposes of this program, the types of projects that will be considered for funding and who is eligible to apply.

Part C provides details on application prerequisites such as the amount of matching funds applicants are required to commit, limitations on administrative costs, and program beneficiaries. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

Closing dates: The closing date for submission of applications is August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Prior to July 28, 1988, contact: Office of Community Services, Attn: Demonstration Partnership Program, 330 C Street, SW., Room 2033, Washington, DC 20201. You may also call (202) 475-0339. After July 28, 1988, contact: Office of Community Services, Attn: Demonstration Partnership Program, 370 L'Enfant Promenade, SW., Washington, DC 20447.

You may also call (202) 252-5251.

Part A—Preamble

1. Legislative Authority

Section 408(a)(1) of the Human Services Reauthorization Act of 1986 (Demonstration Partnership Agreements Addressing the Needs of the Poor) authorizes the Secretary to make grants for the development and implementation of new and innovative approaches to deal with particularly critical needs or problems of the poor which are common to a number of communities.

2. Definitions of Terms

For purposes of this program announcement, the following definitions apply:

Eligible entity: Any organization which (1) was officially designated as a community action agency or a community action program under the provisions of section 210 of the Economic Opportunity Act of 1964 for fiscal year 1981 and did not lose its designation; or (2) was a limited purpose agency designated under Title II of the Economic Opportunity Act of 1964 for fiscal year 1981 which served the general purposes of a community action agency under Title II of such Act and did not lose its designation; or (3) received financial assistance under section 222(a)(4) of the Economic Opportunity Act of 1964 in fiscal year 1981; or (4) received a grant in fiscal year 1984 under the waiver provision of Pub. L. 98-139; or (5) was created under section 673(1)(C) of the Community Services Block Grant Act to serve a geographic area not previously served; or (6) came into existence during fiscal year 1982 as a direct successor in interest to a community action agency or community action program and meets all the requirements under section 675(c)(3) of the Community Services Block Grant Act. All "eligible entities" are current recipients of Community Services Block Grant funds. The majority of "eligible entities" are community action agencies. In those cases where "eligible entity" status is unclear, final determination will be made by FSA.

Hypothesis: A tentative assumption made in order to draw out and test its consequences, e.g., completing a vocational training program by prisoners leads to a reduction in recidivism.

Innovative project: One that departs from or significantly modifies past program practices and tests a new approach.

Intervention: Any activity within a project that is intended to produce changes in the target population or the environment, and can be formally

evaluated during the project. An example of an intervention is the conduct of vocational training in prison to prepare prisoners for employment following release from prison.

Partnership: A formal negotiated arrangement between an eligible entity and another organization (or organizations) that provides for substantive policy and management roles for each of the partners in the conduct of the project. An arrangement where the applicant serves only as a conduit for the funds is *not* a partnership.

Self-sufficiency: In the ideal sense, a condition where an individual or family, by reason of employment, does not need and is not eligible for, public assistance. Individuals and families may be more or less self-sufficient, or intermittently self-sufficient, with some income from employment but not enough over the long term to become totally independent of public assistance.

Part B—Purpose

The purposes of this program are (1) to stimulate eligible entities to develop new approaches to provide for greater self-sufficiency of the poor; (2) to test and evaluate the new approaches; (3) to disseminate project results and evaluation findings so that the new approaches can be replicated; and (4) to strengthen the ability of eligible entities to integrate, coordinate, and redirect activities to promote maximum self-sufficiency among the poor.

Projects must:

(a) Involve activities which can be incorporated into, or be closely coordinated with, eligible entities' ongoing programs;

(b) Involve significant new combinations of resources or new and innovative approaches involving partnership agreements;

(c) Be structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act as amended.

Partnership(s) between the applicant and one or more other organizations is a requirement for funding. Projects must have a measurable and potentially major impact on the causes of poverty, should be applicable to other localities with similar problems, and should have the potential for widespread replication by eligible entities.

OCS intends that projects funded under this announcement will be conducted on a scale broad enough to permit a valid evaluation.

Although all proposals must focus on developing new ways of promoting individual and family self-sufficiency, OCS will not prescribe specific hypotheses to be tested nor specific population groups or geographic areas to be targeted. However, among the many problems relating to poverty and dependency, there are a number which merit special attention and which OCS encourages applicants to address.

With respect to families, it is clear that families now dependent on such programs as Aid to Families with Dependent Children (AFDC), Low Income Home Energy Assistance, and Food Stamps will be unable to achieve self-sufficiency without stable, sustained and adequate employment income. It is also clear that programs that have focused exclusively on jobs or job training have not always led to self-sufficiency. The challenge to applicants for funds under this program is to test new approaches to a range of problems family members encounter in trying to obtain permanent jobs.

One such major problem is the scarcity of support systems that offer integrated family services covering the whole time period needed to achieve self-sufficiency. OCS welcomes the submission of proposals that test various ways of applying the integration of services concept, including a job training/job creation component, to families who depend on public assistance on a continuing or intermittent basis.

Another pervasive problem is that of teenage pregnancy. Many teenage mothers are on public assistance and fully half of the welfare budget supports families in which the mother had her first child as a teenager. OCS encourages the submission of proposals to test new ways in which the resources of the community can be mobilized to prevent premature family formation. Another serious problem is that of unemployed young men. Many anti poverty programs have concentrated on serving female-headed households as a way of reducing public assistance dependency while too few programs have addressed the needs of young men in the most impoverished urban and rural areas. These programs, if they exist at all, have generally failed to qualify these young men for the jobs that remain in the inner cities and impoverished rural areas. OCS would be interested in testing whether providing these men with the specific skill(s) training and related services necessary to be hired for these jobs will stimulate family reunification and promote economic self-sufficiency.

The problems caused by the lack of integrated support systems for heads of households who are seeking work, unemployed young men and at-risk teenagers do not, of course, exhaust the range of major problems confronting the poor. Applications proposing new approaches to other problems are welcome so long as such problems affect large numbers of urban and/or rural poor and are serious obstacles to the achievement of self-sufficiency.

Whatever problem or problems the applicant chooses to address, the applicant will be expected to propose solutions that depart from or modify conventional approaches and that show promise of being highly effective.

Frequently, efforts by low-income families to achieve self-sufficiency, as well as efforts by service providers to help such families become self-sufficient, are impeded by legislative, administrative, and regulatory requirements at the Federal, State, and local levels. Applicants are encouraged to identify and address these impediments where feasible and appropriate.

The use of funds for the purchase, construction or improvement of real property is prohibited. This prohibition includes expenditures for weatherization and home repairs.

Eligible applicants are those "eligible entities" defined in Part A, Section 2., Definitions of Terms, of this announcement and whose eligibility status and capability have been certified by the State Director of the Community Services Block Grant program. (See Part F, Section 5c for certification requirements.)

Part C—Application Prerequisites

1. Availability of Funds

a. OCS is spreading its administrative review process more evenly across the fiscal year. In order to accomplish this, OCS is publishing this Program Announcement prior to the Congress completing its deliberations on appropriations for this program for FY 1989. Grants will only be made based on the availability of funds. The amount of funds available and the expected number of grants that will be made when, and if, such funds become available is not known at the present time.

b. Grant requests will be considered for an amount up to \$250,000 in OCS funds.

2. Grant Duration

The period of the grant award will be determined by the nature of the individual project and the justification

presented in the application. However, no grant period shall exceed 24 months.

3. Matching Funds

An applicant is required to obtain commitment of at least one private or public sector dollar for each dollar of OCS funds awarded. Thus, if an applicant is requesting \$175,000 in OCS funds, at least \$175,000 in additional funds must be committed to the project from private or public sector sources. Public sector resources that can be counted toward the minimum match include funds from State and local governments, and funds from various block grants allocated to the States by the Federal Government providing the authorizing legislation for these grants does not prohibit such use. Federal funds other than block grant funds may not be used to satisfy the minimum match requirement, although such funds may be applied to the project, if permitted by the Federal statutes governing the use of these funds. There is an exception to the use of block grant funds for a demonstration project under this program. The ninety percent Community Services Block Grant (CSBG) funds that by statute are designated for use by eligible entities may not be used for the minimum match. However, OCS will accept any of the remaining ten percent (CSBG funds) as match, as well as other block grant funds transferred into the Community Services Block Grant.

Funds identified by the applicant as those which will be counted toward the minimum match requirement may be in the form of cash or in-kind fairly converted into its dollar equivalent. Such funds must be definitely committed or contingent only on receipt of an OCS grant, and must be applied to specific project activities within the OCS-approved project and used only for project purposes for the duration of the OCS grant.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds. Documentation of matching funds must be in the form of letters of commitment from the donors.

4. Maintenance of Effort

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced in order to provide the required matching contributions.

This provision will generally allow the use of block grant funds as matching funds for the demonstration project when the applicant shows that it has received a real increase in its block grant allotment or demonstrates that other anti-poverty programs will not be scaled back to provide the match.

5. Administrative and Indirect Costs

OCS will accept applications that include administrative costs. However, no more than 10% of the OCS funds may be used for administrative purposes. Administrative costs are defined as costs that are necessary to protect, monitor and properly account for Federal funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs nor are costs for conducting the final audit or the third-party evaluations.

Grant funds may also be used for indirect costs. In all cases where an applicant has negotiated and claims a current indirect cost rate approved by the Department of Health and Human Services (DHHS), the Defense Contracting Agency, or some other Federal agency, this rate ordinarily will be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant. In most cases, the indirect cost rate approved will include not only administrative costs but also other allowable costs that were negotiated under the applicant's approved indirect cost rate.

Therefore, applicants with an applicable indirect cost rate exceeding 10% of the OCS grant may not propose any administrative funds in excess of that rate. Thus, although the approved indirect cost rate may exceed the normal 10% administrative cost restriction, the entire approved indirect cost rate will be accepted.

6. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits for low-income persons whose incomes are up to 125% of the DHHS poverty income guidelines as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of

publication. (These revised guidelines may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for this OCS program.

7. Multiple Submittals

No applications will be considered for funding which are being submitted under other OCS program announcements.

8. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar subcontracting for specific services needed to conduct the project.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under this program announcement must be submitted on Standard Form (SF) 424 provided for that purpose. Part F contains all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the contact office listed in the section entitled "For Further Information Contact" at the beginning of this Announcement.

2. Application Submission

Applications must be submitted by August 29, 1988. An application will be considered to be received on time under either one of the following two circumstances:

a. The application was sent via the U.S. Postal Service or by private commercial carrier and postmarked or dated by the carrier not later than midnight of the closing date unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

b. The application is hand delivered on or before the closing date to the Office of Grants Management, FSA, at the address indicated below. Hand delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up through the closing date. In establishing the date of receipt of hand-delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

An application with an original signature and four copies is required. Applications if mailed, should be addressed to: Family Support Administration, Office of Grants Management, 370 L'Enfant Promenade, SW., 6th Floor, Mail Management Operations, Washington, DC 20447.

Applications if hand delivered, should be taken to: Family Support Administration, Office of Grants Management, 901 D Street, SW., Washington, DC.

The first page of the SF-424 must contain in the lower right hand corner the following designation: "DP".

3. Intergovernmental Review

The OCS Demonstration Partnership Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments. Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to, or simultaneous with, submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS. When comments become available they should be forwarded to the Family Support Administration office to which applications are submitted. (See address in item 2. above.)

4. Application Consideration

Applications which meet the screening requirements in section 5. below will be reviewed competitively.

Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to the purposes outlined in Part B, the guidelines in Part F, and rating criteria published in this announcement.

Applications will be reviewed and rated by persons outside of the OCS unit which will be directly responsible for management of the grant.

The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other relevant factors including, but not limited to, comments of reviewers and other government officials; program staff quality review; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; findings in audit and investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to determine the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form (SF) 424 with Parts I, II, III, IV and V completed according to instructions published in Part F of this program announcement.

(2) The SF-424 must be signed by an official of the "eligible entity" who has authority to obligate the organization legally.

(3) The applicant must submit an original and four copies of the application.

(4) The application narrative (Part IV of SF-424) must not exceed 10 pages. The entire application package, including Parts I through V of the SF-424

and all attachments must not exceed 30 pages.

(5) The application must contain a letter, signed by the State Director of the Community Services Block Grant program, certifying that the applicant is an "eligible entity" as defined by this program announcement and that it has the capacity to operate the proposed project.

(6) A signed Assurances Affidavit (See Part F, Section 5, Item d).

b. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in Section c. below and the specific requirements contained in Part B. Prior to the programmatic review, OCS staff will verify that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B.

(2) *Target Populations:* The application clearly serves low-income participants and beneficiaries as defined in Part C.

(3) *Matching Funds:* The required private and/or public sector match, in the required amount, has been firmly committed and maintenance of effort demonstrated.

(4) *Grant Amount:* The amount of funds requested does not exceed \$250,000 in OCS funds.

(5) *Research:* A bibliography reflecting research examining previous and current approaches to the problem being addressed is included.

(6) *Project Evaluation:* The evaluation plan must include all of the required elements found in the evaluation component section in Part F, Section 5. Applications which fail to meet all of the above requirements may be returned to the applicant without further consideration.

c. Review Criteria

Acceptable applications will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this program announcement.

The review process will use the following criteria coupled with the specific requirements contained in Part B.

(Note.—The following criteria for use by reviewers parallel the requirements for applicants contained in Part F of this

announcement. These requirements are approved under OMB Control Number 0920-0062).

Criteria for Review and Evaluation of Applications

1. Criterion I: Organizational History and Management Capability (Maximum: 8 points)

(i) Organizational History (0-3 points)

—The applicant has experience in developing and operating innovative projects that utilize a variety of resources;

—The applicant has recent experience in collaborative planning, programming and operations with the proposed partners; and

—The applicant has experience in designing and/or managing staff-conducted or third party (i.e. independent) evaluations.

(ii) Management Capability (0-5 points)

—The applicant's proposed project director, as well as the proposed primary person responsible for conducting the third-party evaluation, are well qualified and their professional experiences are relevant to the successful implementation of this project;

—The position description(s) are relevant to the effective implementation of the project;

—The applicant describes and logically shows that sufficient time of senior staff, including the CAA director, has been budgeted to assure timely implementation and cost effective management of the project; and

—The applicant includes information that shows the ways in which it will incorporate the project into its organizational structure and shows how the new activities will result in changes, if any, to current projects.

2. Criterion II: Problem Definition and Needs Assessment (Maximum: 18 points)

(i) The poverty problem (0-6 points)

The application clearly describes the poverty problem, identifies the factors that contribute to the perpetuation of the poverty problem, documents the extent to which the problem exists in the local community, discusses known examples of this problem in other localities and regions, and analyzes the impact of the problem nationwide.

(ii) The research problem (0-12 points)

The applicant provides a thorough summary of the results of its research conducted in order to identify previous and current attempts to address the

problem, describes the limitations of these attempts, and explains convincingly how the proposed approach constitutes an innovative departure or significant modification of previous and current approaches.

3. Criterion III: Project Design and Methodology (Maximum: 53 points)

(i) The Project Design (0-20 points)

- The hypothesis is significant, relevant, and can be tested to determine validity;
- The application includes demographic characteristics such as income, age, race, ethnic origin, sex and marital status of the target population and shows that the choice of target groups is relevant to the hypothesis;
- The application clearly demonstrates the extent to which the intervention(s) is innovative and appropriate to the hypothesis and to the target population; and
- The applicant describes specific plans for conducting measurable activities and proposes realistic time frames.

(ii) Expected Outcomes (0-14 points)

- The proposed project will have a measurable and potentially major impact upon the causes of poverty and will result in a substantial increase in the self-sufficiency of the poor; and
- The anticipated results are specified and the expected benefits for the target group(s) are delineated.

(iii) The Evaluation Component (0-19 points)

The Evaluation Plan

- Clearly identifies the hypothesis to be tested, the changes to be produced (outcome objectives), the activities (interventions) that will produce the changes, and the methods for measuring the performance (these methods must assure both internal and external validity);
- Addresses in a complete, clear, concise, and logical manner:

- (a) Applicable accuracy standards such as context analysis, defensible information sources, valid and reliable measurement, systematic data control, and analysis of quantitative and qualitative information;
 - (b) Applicable utility standards such as audience identification, evaluator credibility, report dissemination, report timeliness, and report impact;
 - (c) Applicable feasibility standards such as cost effectiveness; and
 - (d) Applicable propriety standards such as conflict of interest and balanced reporting.
- Includes procedures that will be used to compare information about

participants and non-participants and, also, isolates and systematically assesses competing explanations for the observed outcomes;

- Includes a realistic plan for disseminating the project findings to other eligible entities and to States upon request;
- Includes provisions for both summative and process evaluations; and
- Includes a specific working definition (consistent with the broad definition contained in Part A) of "self-sufficiency" for this project that permits the measurement of incremental movement of individuals and families from dependency toward self-sufficiency.

4. Criterion IV: Partnerships and Budget (Maximum: 16 points)

- The application demonstrates that the resources requested for the project are reasonable and adequate;
- The match resources are necessary and logical for the proposed project;
- The partnership arrangements are fully described and clearly relate to the objectives of the proposed project; and
- The total cost is reasonable and consistent with the anticipated results.

5. Criterion V: Federal Budget Impact (Maximum: 5 points)

(i) The project, if successful, will result in either or both of the following:

- Continued provision of services, after completion of the demonstration project, without additional OCS or other Federal funds; and/or
- More efficient use of existing anti-poverty resources.

Part E—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number 0820-0062)

1. Application Package

Each application submission must include:

- a. A signed original and four additional copies of the application. Please note the following:
 - The application narrative (Part IV, SF-424) must not exceed 10 pages and the entire application including attachments must not exceed 30 pages.
 - The original must bear an original signature of the certifying representative of the applicant organization.
 - Applications must be uniform in composition since OCS may find it necessary to duplicate them for

review purposes. Therefore, applications must be submitted on 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

- While applications must be responsive and complete, applicants should be concise and brief in their presentation of materials and should avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

b. A self-addressed, stamped postcard so that acknowledgement of receipt can be returned. (This requirement applies even if the application is accompanied by a "return receipt requested card".) Please note the following:

All applications will be assigned an identification number which will be noted on the acknowledgement. This number must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify Pera Daniels at (202) 252-4583.

2. Contents of Applications

Each copy of the application must contain, in the order listed, each of the following:

a. A Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the attachments. Each page in the application, including those in all attachments, must be numbered consecutively.

b. A Standard Form 424 (see Attachment B). The SF-424 should be completed in accordance with instructions found in Part F of this announcement. As completed, the SF-424 should include: Part I, Federal Assistance; Part II, Project Approval Information; Part III, Budget Information—Sections A through F with attachments including a detailed budget breakdown for Section B and documentation of required matching funds; Part IV, Project Narrative; and Part V, Assurances.

c. Attachments (See Part F, Section 5).

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0820-0062).

The forms attached to this announcement shall be used to apply for funds under this announcement

It is suggested that you reproduce the SF-424 and type your application on the copy. If an item on the SF-424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "not applicable." Prepare your application in accordance with the following instructions.

1. SF-424, PART I.

Section I of Part I, SF-424

Applicants shall complete all items in Section I. If additional space is needed, insert an asterisk (*) and use the remarks section (Part I, Section IV).

Item

1. Mark "Application" when used as a grant application. (The applicant, unless otherwise advised by the State or area-wide clearinghouse shall use a copy of the SF-424 Part I as a notification of intent to apply for Federal Assistance in accordance with procedures established by these clearinghouses and Executive Order 12372. When used for this purpose, mark "Notice of Intent".)

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. All applicants shall enter the number assigned by State clearinghouses or, if delegated by State, by area-wide clearinghouse(s). Applications submitted to OCS must contain this identifier if provided by the applicable State/area-wide clearinghouse(s). If in doubt, consult your clearinghouse(s).

3b. Date applicant notified of clearinghouse(s) identifier code(s).

4a-4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION (SECTION IV OF PART I), UNDER THE HEADING "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER, AS ASSIGNED BY THE INTERNAL REVENUE SERVICE, OR THE DHHS ENTITY NUMBER, IF KNOWN.

If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by

Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number (PIN), enter this PIN in parenthesis () beside Employer Identification Number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to this program (13.797).

6b. Enter the program title from Catalog of Federal Domestic Assistance. The title is: Community Services Block Grant Discretionary Awards—Demonstration Partnership Program.

7. Enter a title and appropriate description of project.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments. Note: Non-profit organizations must submit proof of non-profit status.

9. Enter governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than sub-units.

10. Identify estimated number of persons directly benefiting from project, as described in the program narrative (SF-424, Part IV).

11. All applicants for grant funds under this program announcement should enter the letter "A".

12. Enter amount requested or to be contributed during the funding/budget period by each contributor. Item 12 must include all funding for the proposed project including all non-OCS funds which the applicant plans to mobilize.

NOTE: WHEN COMPLETING Item 12a, "FEDERAL" FUNDING REFERS TO ANY FEDERAL FUNDS EXCEPT THOSE FROM STATE-ADMINISTERED BLOCK GRANT FUNDS BEING PROPOSED AS MATCHING FUNDS. EACH SOURCE OF FEDERAL FUNDS SHOULD BE IDENTIFIED SEPARATELY. ALL OTHER FUNDS ARE TO BE INCLUDED IN Item 12e, "OTHER". Section IV of Part I (REMARKS) must include two additional columns detailing item 12 (b through e) in which public funds are distinguished from private funds, and in which total mobilized funds (including 12b, 12c, 12d and 12e) are divided into separate public and private funds components by source. This information will be used in both the initial screening

and subsequent review of applications. Where allowable, the value of in-kind contributions will be included.

Item definitions: 12a, amount requested from OCS and amounts deriving from other Federal sources (show separately); 12b, amount applicant will contribute; 12c, amount from State (include Block Grant funds); 12d, amount from local government, if applicant is not a local government; 12e, amount from any other sources; any overlap in fund amounts should be avoided, or if this is not possible, explained.

13a. The Congressional District identified by its State and number should correspond with the applicant's address under item 4 above.

13b. Enter the number of the Congressional District(s) and State(s) where most of the actual work of the project will be accomplished. If city-wide or State-wide covering several Districts, write "city-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

a. *New*: A submittal for the first time for a new project or project period.

b. *Renewal*: Not applicable to this OCS program.

c. *Revision*: Not applicable at this time.

d. *Continuation*: Not applicable to this OCS program.

e. *Augmentation*: Not applicable to this OCS program.

15. Enter approximate date project is expected to begin.

16. Enter estimated number of months to complete project after Federal funds are available. If the project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate in Part IV of the SF-424 that it will be able to continue project operations with other sources of funding.

17. Not applicable at this time.

18. Estimated date application will be submitted to Federal agency.

19. Indicate Federal agency to which this request is addressed—HHS/FSA, Washington, DC 20447.

20. Write "NA".

21. Check appropriate box as to whether Part I, Section IV of SF-424 contains remarks and/or additional "remarks" sheets are attached.

Section II of Part I SF-424

Applicants shall always complete items 22a or 22b as well as 23a and 23b. An explanation follows for each item. 22a and 22b. Self explanatory.

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23a. Enter name and title of authorized representative of legal applicant.

23b. Self explanatory. Note: Authorized representative must personally execute this document.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II OF PART I. SECTION III IS COMPLETED BY THE FEDERAL AGENCY TO WHOM APPLICATION IS BEING MADE.

2. SF-424, PART II

Negative answers will not require an explanation unless the responsible program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 3—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal Installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations".)

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal Installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact.

Item 8—State the number of individuals, families, businesses, or farms this project will displace, if any.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project

where there is related previous, pending or anticipated assistance from another funding source. Whenever this item is answered in the affirmative (i.e. whenever items 12c, 12d, or 12e of Part I have non-zero entries), Part II must be accompanied by additional documentation which identifies the source of all of the State, local and other funds listed in item 12 of Part I of the SF-424. This documentation must include assurances of the availability of these funds. Funds already mobilized for this project must be evidenced by copies of applications to, and award documents or letters of commitment from, the expected source of these funds. OCS reserves the right to contact these sources regarding anticipated funding or previous assistance.

3. SF-424, PART III

IN COMPLETING THESE SECTIONS, THE "FEDERAL" FUND/BUDGET ENTRIES WILL RELATE TO ANY FEDERAL FUNDS EXCEPT THOSE FROM STATE ADMINISTERED BLOCK GRANTS BEING PROPOSED AS MATCHING FUNDS. EACH SOURCE OF FEDERAL FUNDS SHOULD BE IDENTIFIED SEPARATELY.

Sections A and D of Part III must contain entries for both Federal and non-Federal (mobilized) funds. Section B contains entries for OCS funds only. Section C contains entries for non-Federal (mobilized) funds only. Clearly identified continuation sheets in SF-424, Part III format should be used as necessary.

Section A—Budget Summary.

Lines 1-4

Col. (a): Enter on Line 1 under Column (a) "Administrative, applicant"; and enter on Line 2 under Column (a) "Administrative, project."

Col. (b): Enter on Line 1 under Column (b) the program announcement Number OCS-88-2. Enter on Line 2 under Column (b) the appropriate Catalog of Federal Domestic Assistance number, 13.797.

Col. (c)-(g): Leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the budget period.

Line 5

Enter the totals for all columns completed, (c) through (g).

Section B—Budget Categories

Columns (1)-(5)

In OCS applications, it is only necessary to complete Columns (1) and (5). For the project entered in Column 1,

enter the total requirements for OCS Federal funds.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line.

If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work, Estimated Total are not available or have not been negotiated, include in Line h, "Other".

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Not Applicable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs under a currently approved agreement are requested enter "none". This line should be used only when the applicant (except local governments) currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Enclose a copy of the current rate agreement with the application. Local governments shall enter the amount of the indirect costs determined in accordance with the Federal agency's requirements. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6i and 6j. For all new applications the total amount shown in Column (5), Line 6k, should be the same as the amount shown in Section A, Column (e), Line 5.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and that generated from matching funds. Do not add or subtract this amount from the budget total. Shown the nature and source of income in the program narrative statement in Part IV of the SF-424.

Section C—Non-Federal Resources

Lines 8-11: Enter amounts of "non-Federal" resources that will be used to support the project. Also enter here funds from State-administered federal block grants which are being proposed as matching funds. Provide a brief explanation, on a separate sheet, showing the type of contribution and whether it is in cash or in-kind. The firm commitment of these required funds must be documented and submitted with the application. Also if the applicant is proposing to use any block grant funds other than those provided under the Job Training Partnership Act, Social Services Block Grant Program, Community Development Block Grant Program, or the Low Income Home Energy Program, the legality of such use must be documented and a statement made explaining how these funds can be diverted to this project while maintaining previous anti-poverty efforts. Applicants are reminded that Community Services Block Grant funds (90%) designated for use by eligible entities may not be used as match. Failure to provide the required documentation for match will make the application ineligible for funding. *Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.*

All material related to the match should be appended to the SF-424. When the contribution is in the form of in-kind, show the basis for computation including:

- (1) Numbers and types of volunteers and rates at which their services are valued;
- (2) Valuation of donated space to be used in the project, including the number of square feet and the annual rental value assigned per square foot;
- (3) Determination of use allowance for grantee-owned space. (Include statement whether space was purchased or constructed, totally or in part, with federal funds for items (2) and (3));
- (4) Type and value of other in-kind contributions expected. NOTE: SPECULATIVE MATCH, OR MATCH BASED ON INDEPENDENT CONTINGENCIES (SUCH AS RECEIPT OF ANOTHER GRANT) WILL NOT BE COUNTED TOWARDS THE MATCHING REQUIREMENT.

Column (a): Enter the project title.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of Columns (b), (c), and (d).

Line 12—Enter total of each Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

- A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;
- B. Any foreign travel;
- C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in the program narrative;
- D. Contractual: Major items or groups of smaller items; and
- E. Other: Group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, travel, etc. Provide a complete breakdown of all costs that make up this category. Matching funds should also be broken out in the same manner as required for Federal funds in A through E above.

Line 22—Enter the type of HH\$ or other Federal agency approved indirect

rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Include a copy of the rate agreement with the application.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain any SF-424, Part III entries.

4. SF-424, PART IV, Program Narrative

The narrative should not exceed 10 pages and should include two components: (a) the Analysis of Need and (b) the Project Design.

a. *Analysis of Need.* The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the poverty problem.

The applicant should also discuss known examples of this problem in other localities and regions and provide an analysis of the impact of the problem nationwide. In addition, applicants should provide a thorough summary of the results of its research conducted in order to identify previous and current attempts to address the poverty problem and describe the limitations of these attempts. A bibliography of all the sources used in its research must be included as an attachment.

b. *Project Design.* Each applicant must include the following in its project design:

(1) A testable hypothesis that permits measurement of the extent to which the target population has achieved greater self-sufficiency;

(2) The rationale for the approach being proposed to overcome this problem, an explanation showing how the approach proposed by the applicant is a departure from or a significant modification of previous and current approaches, and why the applicant believes that testing this approach will lead to positive outcomes;

(3) A description of the target group(s) including the number of participants and beneficiaries and their major characteristics that are relevant to the hypothesis;

(4) A thorough description of the intervention(s) that will be carried out to test the hypothesis with inclusion of target dates, in chronological order, by which the major events will occur;

(5) Inclusion of measurable objectives, intended project outcomes, and intended impact on the problem(s) that are being addressed;

(6) A concise description of all partnership agreements that involve significant combinations of resources,

and/or organizations, and includes the respective responsibilities of the partners and the specific working relationships each will have with the other.

(7) Resources needed to continue project if the demonstration is successful. Explain why one or both of the following applies: (a) This demonstration, if successful, will show how to use existing anti-poverty resources more efficiently, and/or (b) services or activities conducted under this demonstration, if successful, could be continued after completion of the demonstration project with non-Federal funds; and

(8) If appropriate, a plan for identifying impediments to achieving self-sufficiency that are caused by legislative, administrative, and regulatory requirements at the Federal, State, and local levels.

5. Attachments

The entire application package including attachments may not exceed 30 pages. All the attachments described below must be included in the order listed.

a. *Bibliography* (See 4a above.)

b. *Evaluation Component.* A plan for a methodologically sound third-party (i.e. independent) evaluation of the demonstration project must be attached and must:

(1) Clearly identify the hypothesis to be tested, the changes (outcome objectives) to be produced, the activities (interventions) that will produce the changes, and the methods (performance measures) for measuring the performance that will assure both internal and external validity.

(2) Address in a complete, clear, concise, and logical manner:

(a) Applicable accuracy standards such as context analysis, defensible information sources, valid and reliable measurement, systematic data control, and analysis of quantitative and qualitative information;

(b) Applicable utility standards such as audience identification, evaluator credibility, report dissemination, report timeliness and report impact;

(c) Applicable feasibility standards such as cost effectiveness; and

(d) Applicable propriety standards such as conflict of interest and balanced reporting.

(3) Include procedures that will be used to (a) compare information about participants and non-participants—the comparison groups—and, (b) isolate and systematically assess competing explanations for the observed outcomes. Where the use of comparison groups is not practicable, the applicant must

propose an alternative method to validate the hypothesis;

(4) Include a realistic plan for disseminating the project findings, once they have been approved by OCS, to other eligible entities and to States upon request.

(5) Include provisions for both a summative and process evaluation;

(6) Include a specific working definition (consistent with the broad definition found in Part A) of "self-sufficiency" for this project that permits the measurement of incremental movement of individuals and families from dependency toward self-sufficiency. The applicant must include an assurance that the evaluation will be conducted by an independent entity, i.e., an entity organizationally distinct from, and not under the control of, the applicant.

c. Statement on Organizational History and Management Capability.

Each applicant must document its past efforts and current capability to address both the poverty problem and the research problem specified in the application. The applicant should demonstrate that it has (1) experience in developing and operating innovative projects that utilize a variety of resources in a cooperative and problem solving arrangement with other agencies, and (2) experience specifically related to the problem(s) and activities proposed in the application. In addition, the applicant should describe its organizational structure, summarize relevant portions, if any, of its corporate mission, strategy, and multi-year plan, summarize any examples of recent evaluation research it has conducted, and provide a current listing of all sources of funds and projects operated in the applicant's current funding year. The applicant should demonstrate and document that it has experience in designing and/or managing staff-conducted or third party (i.e. independent) evaluations.

The application must fully describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. It must show clearly that sufficient time of the Executive Director and other senior staff will be budgeted to assure timely implementation and oversight of the project. Applications must also fully describe the experience and skills of the primary person responsible for conducting the third-party evaluation. If the project director and/or the person

responsible for conducting the evaluation have not yet been identified, include a position description for each of these persons.

The applicant should submit for each of the partners, any of the above information which is relevant. The applicant must attach a certification from the State Director of the CSBG program stating that the applicant is (1) an eligible entity as defined in Part A and (2) that the applicant has the administrative and programmatic capability to conduct the proposed project.

The applicant should include information that shows how it will incorporate the project into its existing organizational structure and shows how the new activities will result in changes, if any, to current projects.

d. Documentation for Matching Funds

e. Assurances Affidavit

Each applicant must submit an Assurances Affidavit in the form and language presented below (NOTE: Due to the 30-page limitation on the number of pages that can be submitted by an applicant, DHHS Forms 441 and 641 need not be included among the attachments):

Assurances Affidavit

The Applicant (undersigned) hereby assures and certifies that, if selected for a grant award under the Demonstration Partnership Program, it will comply with (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-3521) and with all the requirements imposed by the Department of Health and Human Services (DHHS) regulations issued pursuant to this Title and referenced in Attachment C to this program announcement; (2) section 504 of the Rehabilitation Act of 1973 as amended

(29 U.S.C. 794) and with all requirements imposed by the applicable DHHS regulation (45 CFR 84) referenced in Attachment D to this program announcement, and (3) all the regulations, policies, guidelines and requirements including 45 CFR 74 and OMB Circulars No. A-102, A-110 and applicable cost principles (Circulars A-21, A-87 and A-122) as they relate to the application, acceptance and use of Federal funds for this Federally assisted project.

The applicant further agrees that if it is selected for a grant award under the Demonstration Partnership Program, it will submit to OCS DHHS Forms 441 and 641 described in Attachments C and D to this program announcement.

DATE

APPLICANT (TYPE OR PRINT)

SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL

Part G—Post Award Requirements

The official award document is the Notice of Grant Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient financial participation required.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of appropriate Office of Management and Budget Circulars, for example, A-102 or A-110 and A-122, the last of which, among other provisions,

prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

Grantees will be required to submit semi-annual progress and financial reports and a final audit of the project costs. (Costs associated with the completion and submission of the required grant audit may be chargeable to the grant and will not be considered as part of the up to 10% of the grant that is allowable for administrative costs.)

Grantees who will be charging administrative costs to the OCS grant will have to assure that such costs are identifiable in their records in order that auditors and OCS personnel can verify that the 10% administrative cost limitation is not exceeded where such limitation is applicable.

In addition grantees will be required to submit within sixty days of the termination of the project a final summative evaluation report and a process evaluation report. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for the dissemination effort to be conducted by the Office of Community Services.

Mary M. Evert,
Director, OCS.

Attachment A—Annual Revision of Poverty Income Guidelines.

Attachment B—SF-424, Federal Assistance, Parts I through V.

Attachment C—Assurance of Compliance with DHHS Regulation under Title VI of the Civil Rights Act of 1964.

Attachment D—Assurance of Compliance with section 504 of the Rehabilitation Act of 1973, as amended.

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ATTACHMENT A

1988 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII)
AND THE DISTRICT OF COLUMBIA

Size of Family Unit	Poverty Guideline
1	\$5,770
2	7,730
3	9,690
4	11,650
5	13,610
6	15,570
7	17,530
8	19,490

For family units with more than 8 members, add \$1,960 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of Family Unit	Poverty Guideline
1	\$7,210
2	9,660
3	12,110
4	14,560
5	17,010
6	19,460
7	21,910
8	24,360

For family units with more than 8 members, add \$2,450 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of Family Unit	Poverty Guideline
1	\$6,650
2	8,900
3	11,150
4	13,400
5	15,650
6	17,900
7	20,150
8	22,400

For family units with more than 8 members, add \$2,250 for each additional member.

Attachment B

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION IDENTIFIER	3. STATE APPLICATION IDENTIFIER	4. NUMBER
1. TYPE OF SUBMISSION (Mark appropriate box)	<input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION	b. DATE Year month day 19	NOTE TO BE ASSIGNED BY STATE	b. DATE Year month day 19
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & Telephone No.)		5. EMPLOYER IDENTIFICATION NUMBER (EIN) 6. PRO-GRAM (From CFDA) a. NUMBER b. TITLE		
7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)		8. TYPE OF APPLICANT/RECIPIENT A-State B-County C-City D-Other (Specify) E-Other (Specify) F-School District G-Special Purpose District H-Community Action Agency I-Higher Educational Institution J-Indian Tribe K-Other (Specify) Enter appropriate letter		
9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)		10. ESTIMATED NUMBER OF PERSONS BENEFITING		
11. TYPE OF ASSISTANCE A-Grant B-Loan C-Other (Specify) Enter appropriate letter		12. PROPOSED FUNDING a. FEDERAL \$ b. APPLICANT \$ c. STATE \$ d. LOCAL \$ e. OTHER \$ f. Total \$		
13. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT		14. TYPE OF APPLICATION A-New B-Renewal C-Extension D-Continuation Enter appropriate letter		
15. PROJECT START DATE Year month day 19		16. PROJECT DURATION Months Year month day 19		
17. TYPE OF CHANGE (For 14c or 14d) A-Increase Dollars B-Decrease Dollars C-Increase Duration D-Decrease Duration E-Continuation Enter appropriate letter		18. DATE DUE TO FEDERAL AGENCY Year month day 19		
19. FEDERAL AGENCY TO RECEIVE REQUEST a. ORGANIZATIONAL UNIT (IF APPROPRIATE) b. ADMINISTRATIVE CONTACT (IF KNOWN) c. ADDRESS		20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER		
21. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		22. THE APPLICANT CERTIFIES THAT: a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		
23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE		24. APPLICATION RECEIVED 19 Year month day		
25. FEDERAL APPLICATION IDENTIFICATION NUMBER		26. FEDERAL GRANT IDENTIFICATION		
27. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> e. DEFERRED <input type="checkbox"/> f. WITHDRAWN		28. FUNDING a. FEDERAL \$ b. APPLICANT \$ c. STATE \$ d. LOCAL \$ e. OTHER \$ f. TOTAL \$		
29. ACTION DATE 19 Year month day		30. STARTING DATE 19 Year month day		
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		32. ENDING DATE 19 Year month day		
33. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No				

SECTION IV—REMARKS (Please reference the proper item number from Sections I, II or III, if applicable)

OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1 Does this assistance request require State, local regional, or other priority rating? ____ Yes ____ No		Name of Governing Body _____ Priority Rating _____
Item 2 Does this assistance request require State, or local advisory educational or health clearances? ____ Yes ____ No		Name of Agency or Board _____ (Attach Documentation)
Item 3 Does this assistance request require State, local, regional or other planning approval? ____ Yes ____ No		Name of Approving Agency _____ Date _____
Item 4 Is the proposed project covered by an approved comprehensive plan? ____ Yes ____ No		Check one: State <input type="checkbox"/> Local <input type="checkbox"/> Regional <input type="checkbox"/> Location of Plan _____
Item 5 Will the assistance requested serve a Federal installation? ____ Yes ____ No		Name of Federal Installation _____ Federal Population benefiting from Project _____
Item 6 Will the assistance requested be on Federal land or installation? ____ Yes ____ No		Name of Federal Installation _____ Location of Federal Land _____ Percent of Project _____
Item 7 Will the assistance requested have an impact or effect on the environment ____ Yes ____ No		See instructions for additional information to be provided.
Item 8 Will the assistance requested cause the displacement of individuals, families, businesses, or farms? ____ Yes ____ No		Number of: Individuals _____ Families _____ Businesses _____ Farms _____
Item 9 Is there other related assistance on this project previous, pending, or anticipated ____ Yes ____ No		See instructions for additional information to be provided

OMB NO. 5040-0008

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5 TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

PART V ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant, that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.
9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the speci-

fied activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.
15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.
16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).
17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.
18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding \$10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.
19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds \$2,500.

ATTACHMENT C

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES REGULATION UNDER
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Name of Applicant (type or print) (hereinafter called the "Applicant")

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____ Applicant (type or print) _____

By _____
Signature and Title of Authorized Official

Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

ATTACHMENT D

DEPARTMENT OF HEALTH AND HUMAN SERVICES
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE
REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

- a. () employs fewer than fifteen persons;
- b. () employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

Name of Designee(s) (Type or Print)

Name of Recipient (Type or Print)	Street Address or P.O. Box
(IRS) Employer Identification Number	City
	State Zip

I certify that the above information is complete and correct to the best of my knowledge.

Date _____ Signature and Title of Authorized Official _____

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

HHS-641 (Rev. 12-82)

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Friday
July 8, 1988

Part VI

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs; Final Rule

Executive Office of the President
Office of Administration
3 CFR Part 102
Office of Personnel Management
5 CFR Part 723
Merit Systems Protection Board
5 CFR Part 1207
Office of the Special Counsel
5 CFR Part 1262
Federal Labor Relations Authority
5 CFR Part 2416
National Aeronautics and Space Administration
14 CFR Part 1251
Securities and Exchange Commission
17 CFR Part 200
Overseas Private Investment Corporation
22 CFR Part 711
African Development Foundation
22 CFR Part 1510
National Labor Relations Board
29 CFR Part 100
National Archives and Records Administration
36 CFR Part 1208
Veterans Administration
38 CFR Part 15
Federal Emergency Management Agency
44 CFR Part 16

EXECUTIVE OFFICE OF THE
PRESIDENT

Office of Administration

3 CFR PART 102

OFFICE OF PERSONNEL
MANAGEMENT

5 CFR PART 723

MERIT SYSTEMS PROTECTION
BOARD

5 CFR PART 1207

Office of the Special Counsel

5 CFR PART 1262

FEDERAL LABOR RELATIONS
AUTHORITY

5 CFR PART 2416

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

14 CFR PART 1251

SECURITIES AND EXCHANGE
COMMISSION

17 CFR PART 200

OVERSEAS PRIVATE INVESTMENT
CORPORATION

22 CFR PART 711

AFRICAN DEVELOPMENT
FOUNDATION

22 CFR PART 1510

NATIONAL LABOR RELATIONS
BOARD

29 CFR PART 100

NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION

36 CFR PART 1208

VETERANS ADMINISTRATION

38 CFR PART 13

FEDERAL EMERGENCY
MANAGEMENT AGENCY

44 CFR PART 16

ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN FEDERALLY
CONDUCTED PROGRAMS

AGENCIES: Executive Office of the President, Office of Personnel Management, Merit Systems Protection Board, Office of the Special Counsel (MSPB), Federal Labor Relations Authority, National Aeronautics and Space Administration, Securities and

Exchange Commission, Overseas Private Investment Corporation, African Development Foundation, National Labor Relations Board, National Archives and Records Administration, Veterans Administration, Federal Emergency Management Agency.

ACTION: Final Rule.

SUMMARY: This regulation requires that the agencies listed above operate all of their programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

EFFECTIVE DATE: September 8, 1988.

ADDRESSES: See individual agencies below. Copies of this regulation will be made available on tape for persons with impaired vision who request them. They will be provided by the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530, (202) 724-2222 (voice) or (202) 724-7678 (TDD).

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:**Background**

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the following agencies (hereinafter "the agencies"): Executive Office of the President, Office of Personnel Management, Merit Systems Protection Board, Office of the Special Counsel (MSPB), Federal Labor Relations Authority, National Aeronautics and Space Administration, Securities and Exchange Commission, Overseas Private Investment Corporation, African Development Foundation, National Labor Relations Board, National Archives and Records Administration, Veterans Administration, Federal Emergency Management Agency. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982) and the

Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that

No otherwise qualified individual with handicaps in the United States, "shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794 (1978 amendment italicized).)

On July 2, 1987, thirteen agencies jointly published a Notice of Proposed Rulemaking (NPRM) in the Federal Register, 52 FR 25124. Each agency individually analyzed comments it received. On the basis of their analysis, the agencies participating in this publication decided to adopt this final rule. Because the rule selected is identical for all the participating agencies, they are able to publish it jointly, and are doing so in order to minimize costs and expedite its issuance. The rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations, as indicated in the information provided for the individual agencies below.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Department of Justice, on behalf of the agencies participating in this joint rulemaking, is submitting these regulations to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and to the House Committee on Education and Labor and its Subcommittee on Select Education. Each regulation will become effective on September 8, 1988.

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance.

(See 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13897 (remarks of Rep. Brademas); *id.* at 38552 (remarks of Rep. Sarasin).

A commenter objected to language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. As explained in the preamble to the proposed rule, these changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable modifications," *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in

Alexander; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agencies believe that there are no significant differences between this rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis and Response to Comments**Section 101 Purpose.**

Section 101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 102 Application.

The regulation applies to all programs or activities conducted by the agencies. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agencies for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities

in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 103 Definitions.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 160(a)(1), they may also be necessary to meet other requirements of the regulation.

A commenter suggested that the requirement for auxiliary aids in aspects of the agency's program other than those covered by § 160(a)(1) should be specifically stated in the regulation. The agency believes that such a statement is unnecessary, because the regulation makes the obligation not to discriminate clear and thus requires the provision of auxiliary aids whenever they are necessary to meet that obligation. A commenter also suggested that "attendant services" should be included in the list of examples of auxiliary aids appearing in the definition. The agency believes that attendant services are generally personal in nature and that they are therefore generally not required.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (see § 170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the

facility in which they are conducted is owned, leased, or used on some other basis by the agency.

"Historic preservation programs," "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of § 150(a)(2) and (b)(2), which relate to accessibility of historic preservation programs.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (see, e.g., 45 CFR 34.3(k)(2)). It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the agency if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, an individual with handicaps is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without

modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

A commenter argued that this definition of "qualified individual with handicaps" was unnecessary, because *Davis* was an interpretation of the definition in paragraph (3), which requires only that the individual meet "the essential eligibility requirements" for participation in the program. The agency believes that *Davis* clarifies the meaning of "essential eligibility requirements" with respect to programs, such as the one at issue in that case, in which an individual "is required to perform services or to achieve a level of

accomplishment." In such a program, the Court held in *Davis*, an individual is not qualified if he or she cannot achieve the purpose of the program without modifications that would fundamentally alter its nature. The agency believes that it is appropriate to reflect this clarification in the regulation.

This commenter also recommended that the agency adopt the definitions in the regulation of the Federal Election Commission, which incorporates a requirement for "reasonable accommodation." "Reasonable accommodation," in the context of nondiscrimination on the basis of handicap, is a term of art used to refer to employers' obligations to employees with handicaps. The agency believes that use of that term should be limited to employment. Also, the agency believes that the obligation to make appropriate modifications or adjustments to enable individuals with handicaps to participate in its programs is made sufficiently clear in the substantive provisions of the regulation, so that a reference to it in this definition is unnecessary.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § 150(a) and § 160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this regulation by § 140. Nothing in this regulation changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 111 Notice.

Section 111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

One commenter suggested that the agency add "effectively" to modify "to apprise" in stating the agency's obligation to inform persons of the requirements of this regulation. The agency considers this modification to be unnecessary and has not adopted the suggestion.

Section 130 General prohibitions against discrimination.

Section 130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 149—151) and communications (§ 160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids,

benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs and activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 103).

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In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, i.e., in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 140 Employment.

Section 140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259-260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302-04 (5th Cir. 1981). *Contra McGuiness v. United States Postal Service*, 744 F.2d 1318, 1320-21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413-14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the

Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan v. United States Postal Service*, 798 F.2d 1162, 1164-65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 149 Program accessibility: Discrimination prohibited.

Section 149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 150 and 151.

Section 150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 150(a)(1)). However, § 150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 150(a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration

in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, (APTA), 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(3) and § 160(d) are also supported by the Supreme Court's decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers." *Id.* at 301, and that "reasonable adjustments in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require "changes," "adjustments," or "modifications" to existing programs that would be "substantial" or that would constitute "fundamental alteration[s] in the nature of a program." *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not

discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 170.

One commenter argued that the decision that an action would result in undue burdens should be based on the resources of the agency as a whole. The agency believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the agency's budget may be earmarked for specific purposes and may simply not be available for use in making the agency's programs accessible to individuals with handicaps.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in

the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraph § 150(a)(2) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § 150(a)(2) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § 150(b)(2) requires the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ 130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § 150(b)(2).

The special limitation on program accessibility set forth in § 150(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (see *supra* discussion of definition of "historic preservation program," § 103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic

preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 151 provides that those building that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 151.

Federal practice under section 504 has always treated newly leased buildings

as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section ____160 Communications.

Section ____160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § ____160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ ____160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § ____160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see *supra* preamble discussion of § ____150(a)(3)). Unless not required by § ____160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § ____150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § ____160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need for provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ ____160(a)(1)(ii)). For example, the agency need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

One commenter recommended that the agency add a paragraph to § ____160, Communications, requiring the agency to provide handicapped persons with information about their rights under section 504. Such a paragraph is unnecessary because it would duplicate § ____111, Notice.

Section ____170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (i) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) is amended by each individual agency. It designates the official responsible for coordinating implementation of § ____170 and provides an address to which complaints may be sent.

The agency is required to accept and investigate all complete complaints (§ ____170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ ____170(e)).

One commenter on the compliance procedures suggested that the agency should be required to refer a complaint to the appropriate agency when it does not have jurisdiction over it. The proposed rule merely required the agency to make reasonable efforts to do so. The agency has not adopted this suggestion because of several possible circumstances in which the agency might not be able to successfully refer a complaint. For example, the agency might receive a complaint that no Federal agency would have jurisdiction over or that did not contain sufficient information to identify the appropriate agency.

A commenter suggested that the regulation should include procedures for handling complaints that are incomplete. The agency believes that it is not necessary to include such detailed procedures in the text of the regulation itself. The agency will, of course, develop methods for handling situations for which procedures are not spelled out in the regulation.

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing,

findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ ____170(g)). One appeal within the agency shall be provided (§ ____170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

A commenter suggested that the rule should state that the provision of complaint resolution procedures does not preclude judicial relief and that a complainant is not required to exhaust these administrative remedies before bringing an action in court. It is beyond the agency's jurisdiction to specify the availability or scope of judicial review of agency actions. That issue is for the courts to decide.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

3 CFR Part 102

FOR FURTHER INFORMATION CONTACT: Arnold Intrater, (202) 456-6226 (voice) or (202) 456-6213 (TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: The Executive Office of the President is a designation which encompasses several different agencies, boards and commissions each of which provides analysis and advice and help in developing policy in certain areas, or carries out specific projects in support of the Presidency. The Office of Administration was established to provide common administrative support and services for units within the Executive Office of the President. Because of the uniqueness of the Executive Office of the President, the proposed rule provided that decisions that need to be made by a head of an agency would be made by a three-person board. No comments were received on this provision in the proposed rule, and it has not been changed.

List of Subjects in 3 CFR Part 102

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 3 of the Code of Federal Regulations is amended as follows:

1. Part 102 is added as set forth at the end of this document.

PART 102—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EXECUTIVE OFFICE OF THE PRESIDENT

Sec.	Purpose.
102.101	Application.
102.102	Definitions.
102.103	102.109 [Reserved]
102.104	Self-evaluation.
102.110	Notice.
102.111	102.129 [Reserved]
102.112	General prohibitions against discrimination.
102.130	102.139 [Reserved]
102.131	Employment.
102.140	102.146 [Reserved]
102.141	Program accessibility:
102.149	Discrimination prohibited.
102.150	Program accessibility: Existing facilities.
102.151	Program accessibility: New construction and alterations.
102.152	102.159 [Reserved]
102.160	Communications.
102.161	102.169 [Reserved]
102.170	Compliance procedures.
102.171	102.999 [Reserved]
Authority:	29 U.S.C. 794.

2. Part 102 is further amended by adding the following definitions to § 102.103 thereof, placing them in alphabetical order among the existing definitions of that section:

§ 102.103 Definitions.

"Agency" means, for purposes of this regulation only, the following entities in the Executive Office of the President: the White House Office, the Office of the Vice President, the Office of Management and Budget, the Office of Policy Development, the National Security Council, the Office of Science and Technology Policy, the Office of the United States Trade Representative, the Council on Environmental Quality, the Council of Economic Advisers, the Office of Administration, the Office of Federal Procurement Policy, and any committee, board, commission, or similar group established in the Executive Office of the President.

"Agency head" or "head of the agency"; as used in §§ 102.150(a)(3), 102.160(d) and 102.170 (i) and (j), shall be a three-member board which will include the Director, Office of Administration, the head of the Executive Office of the President, agency in which the issue needing resolution or

decision arises and one other agency head selected by the two other board members. In the event that an issue needing resolution or decision arises within the Office of Administration, one of the board members shall be the Director of the Office of Management and Budget.

3. Part 102 is further amended by revising paragraph (c) in § 102.170 to read as follows:

§ 102.170 Compliance procedures.

(c) The Director, Facilities Management, Office of Administration, Executive Office of the President, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director at the following address: Room 488, Old Executive Office Building, 17th and Pennsylvania Ave. NW., Washington, DC 20500.

Gordon Riggle,
Director, Office of Administration, Executive Office of the President.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 723

FOR FURTHER INFORMATION CONTACT: Ms. Sharrel Keeling, (202) 632-6272 (Voice or TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: The Office of Personnel Management received comments from three organizations representing Government employees. One commenter asked that the application section (§ 723.102) be revised to indicate that Federal employees are excepted from the part unless they are "individuals with handicaps" as that term is defined in the regulation. We believe that the regulation makes clear that the rights established by the regulation apply to individuals who meet that definition, including those who are Federal employees as well as others. Obligations under the regulation, however, are those of the agency and, because the agency necessarily acts through its employees, it would be incorrect to say that the regulation does not apply to Federal employees who do not have handicaps.

This commenter also suggested that the regulation should include the statutory language requiring the agency to promulgate an implementing regulation and submit it to Congress for review prior to its effective date. The agency is carrying out its statutory responsibility to issue a regulation by

participating in this joint publication and, as noted *supra* in the joint preamble, this regulation is being submitted for the required congressional review.

One commenter said that the treatment of employment in the proposed regulation was inadequate and that the EEOC requirements for employment should be included or summarized in this regulation, rather than merely cross-referenced. As explained in the joint preamble, responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, Comp. 1979, p. 206). While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the Government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Another commenter suggested that the self-evaluation required by § 723.110 should be repeated on a periodic basis, rather than being a one-time activity. We do not agree. The self-evaluation is intended as an initial examination of the agency's existing policies and practices to identify and correct any problem areas. Of course, the obligation to comply with the regulation is a continuing one, but it can best be met by maintaining a consistent awareness of the rights of individuals with handicaps, and the potential for agency policy to affect them, so that new problems are not created as agency policies and practices change.

This commenter also asked OPM to inform agencies that a labor union at the "local activity level" should be included among the organizations representing individuals with handicaps to be consulted in the development of the self-evaluation and the transition plan required by §§ 723.110 and 723.150(d). The Department of Justice and, with respect to employment, the EEOC, are the agencies with Government-wide authority to coordinate implementation of section 504. OPM has no authority in

this respect over other agencies. Of course, OPM uniformly encourages Federal agencies to maintain good relations with labor organizations representing their employees by consulting such organizations about matters that concern their members.

Finally, this commenter questioned the meaning of § 723.130(b)(2), which provides that the agency may not exclude a qualified individual with handicaps from a program that is not separate or different, even if the agency operates (pursuant to § 723.130(b)(1)(iv)) a separate or different program that is designed to meet the needs of individuals with handicaps. This means that, if the agency has a separate program modified to meet the needs of a particular class of individuals with handicaps, it cannot, on that basis, refuse to allow an individual with handicaps to participate in the program that is not so modified. Thus, if the agency offers several sections of a particular training course, it could provide a sign language interpreter for only one section in order to accommodate individuals with impaired hearing, but it could not refuse to allow an individual with impaired hearing to attend a section of the course for which an interpreter is not provided. In some cases, the provision of a separate program designed for individuals with handicaps may limit the obligation to accommodate individuals with handicaps in the regular program, but in other cases it might not. The provision of a sign language interpreter for one section of a training course, for example, might eliminate the obligation to provide an interpreter for other sections of the course, but it would not affect the agency's obligation to accommodate persons with impaired vision in other sections of the course.

The other comments received by OPM duplicated those received by other agencies and are discussed in the joint preamble.

List of Subjects in 5 CFR Part 723

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 723 is added as set forth at the end of this document.

PART 723—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF PERSONNEL MANAGEMENT

- Sec.
- 723.101 Purpose.
- 723.102 Application.
- 723.103 Definitions.
- 723.104—723.109 [Reserved]
- 723.110 Self-evaluation.
- 723.111 Notice.
- 723.112—723.129 [Reserved]
- 723.130 General prohibitions against discrimination.
- 723.131—723.139 [Reserved]
- 723.140 Employment.
- 723.141—723.146 [Reserved]
- 723.149 Program accessibility: Discrimination prohibited.
- 723.150 Program accessibility: Existing facilities.
- 723.151 Program accessibility: New construction and alterations.
- 723.152—723.159 [Reserved]
- 723.160 Communications.
- 723.161—723.169 [Reserved]
- 723.170 Compliance procedures.
- 723.171—723.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 723 is further amended by revising paragraph (c) in § 723.170 to read as follows:

§ 723.170 Compliance procedures.

(c) The Assistant Director for Personnel and EEO shall be responsible for coordinating implementation of this section. Complaints may be sent to the Assistant Director for Personnel and EEO, Office of Personnel Management, Room 1479, 1900 E St., NW., Washington, DC 20415.

Constance Horner,
Director.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1207

FOR FURTHER INFORMATION CONTACT: Darrel L. Netherton, (202) 653-5805 (voice) or (202) 653-8898 (TDD).

List of Subjects in 5 CFR Part 1207

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 1207 is added as set forth at the end of this document.

PART 1207—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE MERIT SYSTEMS PROTECTION BOARD

- Sec.
- 1207.101 Purpose.
- 1207.102 Application.
- 1207.103 Definitions.
- 1207.104—1207.109 [Reserved]
- 1207.110 Self-evaluation.
- 1207.111 Notice.
- 1207.112—1207.129 [Reserved]
- 1207.130 General prohibitions against discrimination.
- 1207.131—1207.139 [Reserved]
- 1207.140 Employment.
- 1207.141—1207.146 [Reserved]
- 1207.149 Program accessibility: Discrimination prohibited.
- 1207.150 Program accessibility: Existing facilities.
- 1207.151 Program accessibility: New construction and alterations.
- 1207.152—1207.159 [Reserved]
- 1207.160 Communications.
- 1207.161—1207.169 [Reserved]
- 1207.170 Compliance procedures.
- 1207.171—1207.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1207 is further amended by revising paragraph (c) in § 1207.170 to read as follows:

§ 1207.170 Compliance procedures.

(c) The Equal Employment Officer shall be responsible for coordinating implementation of this section. Complaints may be sent to the Equal Employment Office, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Room 908, Washington, DC 20419.

Daniel R. Levinson,
Chairman of the Board.

OFFICE OF THE SPECIAL COUNSEL

5 CFR Part 1262

FOR FURTHER INFORMATION CONTACT: John Marshall Meisburg, Jr., General Attorney, FTS 653-7307, (202) 653-7307 (voice) or (202) 724-7678 (TTD).

List of Subjects in 5 CFR Part 1262

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 1262 is added as set forth at the end of this document.

PART 1262—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF THE SPECIAL COUNSEL

- Sec.
- 1262.101 Purpose.
- 1262.102 Application.
- 1262.103 Definitions.
- 1262.104—1262.109 [Reserved]
- 1262.110 Self-evaluation.
- 1262.111 Notice.
- 1262.112—1262.129 [Reserved]
- 1262.130 General prohibitions against discrimination.
- 1262.131—1262.139 [Reserved]
- 1262.140 Employment.
- 1262.141—1262.146 [Reserved]
- 1262.149 Program accessibility: Discrimination prohibited.
- 1262.150 Program accessibility: Existing facilities.
- 1262.151 Program accessibility: New construction and alterations.
- 1262.152—1262.159 [Reserved]
- 1262.160 Communications.
- 1262.161—1262.169 [Reserved]
- 1262.170 Compliance procedures.
- 1262.171—1262.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1262 is further amended by revising paragraph (c) in § 1262.170 to read as follows:

§ 1262.170 Compliance procedures.

(c) The Managing Director for Operations shall be responsible for coordinating implementation of this section. Complaints may be sent to the Managing Director for Operations, Office of the Special Counsel, 1120 Vermont Avenue, Suite 1100, Washington, DC 20005.

Mary F. Wieseman,
Special Counsel.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2416

FOR FURTHER INFORMATION CONTACT: Orinda R. Nelson, (202) 382-0992 (voice) or (202) 724-7678 (TDD).

List of Subjects in 5 CFR Part 2416

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 2416 is added as set forth at the end of this document.

PART 2416—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL LABOR RELATIONS AUTHORITY

- Sec.
- 2416.101 Purpose.
- 2416.102 Application.
- 2416.103 Definitions.
- 2416.104—2416.109 [Reserved]
- 2416.110 Self-evaluation.
- 2416.111 Notice.
- 2416.112—2416.129 [Reserved]
- 2416.130 General prohibitions against discrimination.
- 2416.131—2416.139 [Reserved]
- 2416.140 Employment.
- 2416.141—2416.146 [Reserved]
- 2416.149 Program accessibility: Discrimination prohibited.
- 2416.150 Program accessibility: Existing facilities.
- 2416.151 Program accessibility: New construction and alterations.
- 2416.152—2416.159 [Reserved]
- 2416.160 Communications.
- 2416.161—2416.169 [Reserved]
- 2416.170 Compliance procedures.
- 2416.171—2416.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 2416 is further amended by revising paragraph (c) in § 2416.170 to read as follows:

§ 2416.170 Compliance procedures.

(c) The Deputy for EEO and Affirmative Action shall be responsible for coordinating implementation of this section. Complaints may be sent to the Deputy for EEO and Affirmative Action, Federal Labor Relations Authority, 500 C St. SW., Washington, DC 20424.

Jacqueline R. Bradley,
Executive Director.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1251

FOR FURTHER INFORMATION CONTACT: Ms. Lynda Sampson (202) 453-2177 (voice) or (202) 426-1436 (TDD).

List of Subjects in 14 CFR Part 1251.

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 14 of the Code of Federal Regulations is amended as follows:

PART 1251—NONDISCRIMINATION ON THE BASIS OF HANDICAP

1. The authority citation for part 1251 is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Subpart 1251.5 is added to Part 1251 as set forth at the end of this document.

Subpart 1251.5—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Aeronautics and Space Administration

Sec.		
1251.501	(_____.101)	Purpose.
1251.502	(_____.102)	Application.
1251.503	(_____.103)	Definitions.
1251.504—1251.509	(_____.104—_____.109)	[Reserved]
1251.510	(_____.110)	Self-evaluation.
1251.511	(_____.111)	Notice.
1251.512—1251.529	(_____.112—_____.129)	[Reserved]
1251.530	(_____.130)	General prohibitions against discrimination.
1251.531—1251.539	(_____.131—_____.139)	[Reserved]
1251.540	(_____.140)	Employment.
1251.541—1251.548	(_____.141—_____.148)	[Reserved]
1251.549	(_____.149)	Program accessibility: Discrimination prohibited.
1251.550	(_____.150)	Program accessibility: Existing facilities.
1251.551	(_____.151)	Program accessibility: New construction and alterations.
1251.552—1251.559	(_____.152—_____.159)	[Reserved]
1251.560	(_____.160)	Communications.
1251.561—1251.569	(_____.161—_____.169)	[Reserved]
1251.570	(_____.170)	Compliance procedures.
1251.571—1251.599	(_____.171—_____.199)	[Reserved]

3. Part 1251 is further amended by revising paragraph (c) in § 1251.570 to read as follows:

§ 1251.570 Compliance procedures.

(c) The Assistant Administrator for Equal Opportunity Programs shall be responsible for coordinating implementation of this section. Complaints may be sent to the Office of Equal Opportunity Programs, Room 6119, 400 Maryland Avenue, SW., Washington, DC 20546.

Dale D. Myers,
Deputy Administrator.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

FOR FURTHER INFORMATION CONTACT: Nancy A. Wolynetz, Selective Placement Coordinator, 450 Fifth Street NW., Washington, DC, (202) 272-2550 (voice) or (202) 272-2552 (TDD); or Jeanne G. Hartford, Special Counsel, Office of the Executive Director, 450 Fifth Street NW., Washington, DC, (202) 272-3808.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 17 of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

1. The authority citation for Part 200 is revised to read as follows:

Authority: Secs. 19, 23, 46 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, sec. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77e, 76w, 791, 77ses, 86a-37, 80b-11), unless otherwise noted. Subpart L is also issued under 29 U.S.C. 794.

2. Subpart L is added to Part 200 as set forth at the end of this document.

Subpart L—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Securities and Exchange Commission

Sec.		
200.601	(_____.101)	Purpose.
200.602	(_____.102)	Application.
200.603	(_____.103)	Definitions.
200.604—200.609	(_____.104—_____.109)	[Reserved]
200.610	(_____.110)	Self-evaluation.
200.611	(_____.111)	Notice.
200.612—200.629	(_____.112—_____.129)	[Reserved]
200.630	(_____.130)	General prohibitions against discrimination.
200.631—200.639	(_____.131—_____.139)	[Reserved]
200.640	(_____.140)	Employment.
200.641—200.648	(_____.141—_____.148)	[Reserved]
200.649	(_____.149)	Program accessibility: Discrimination prohibited.
200.650	(_____.150)	Program accessibility: Existing facilities.

Sec.		
200.651	(_____.151)	Program accessibility: New construction and alterations.
200.652—200.659	(_____.152—_____.159)	[Reserved]
200.660	(_____.160)	Communications.
200.661—200.669	(_____.161—_____.169)	[Reserved]
200.670	(_____.170)	Compliance procedures.
200.671—200.699	(_____.171—_____.199)	[Reserved]

3. Subpart L is further amended by revising paragraph (c) in § 200.670 to read as follows:

§ 200.670 Compliance procedures.

(c) The Equal Employment Opportunity Manager shall be responsible for coordinating implementation of this section. Complaints may be sent to the EEO Manager, 450 Fifth Street NW., Washington, DC 20548.

George G. Kundahl,
Executive Director.

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 711

FOR FURTHER INFORMATION CONTACT: Jane H. Chalmers (202) 457-7200 (voice) or (202) 724-7678 (TDD).

List of Subjects in 22 CFR Part 711

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 711 is added as set forth at the end of this document.

PART 711—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Sec.		
711.101		Purpose.
711.102		Application.
711.103		Definitions.
711.104—711.109		[Reserved]
711.110		Self-evaluation.
711.111		Notice.
711.112—711.129		[Reserved]
711.130		General prohibitions against discrimination.
711.131—711.139		[Reserved]

Sec.		
711.140		Employment.
711.141—711.148		[Reserved]
711.149		Program accessibility: Discrimination prohibited.
711.150		Program accessibility: Existing facilities.
711.151		Program accessibility: New construction and alterations.
711.152—711.159		[Reserved]
711.160		Communications.
711.161—711.169		[Reserved]
711.170		Compliance procedures.
711.171—711.199		[Reserved]

Authority: 29 U.S.C. 794.

2. Part 711 is further amended by revising paragraph (c) in § 711.170 to read as follows:

§ 711.170 Compliance procedures.

(c) The Director of Personnel shall be responsible for coordinating implementation of this section. Complaints may be sent to Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527, Attention: Director of Personnel.

Richard K. Childress,
Vice President for Personnel and Administration.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1510

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC, 20036, (202) 673-3916 (voice) or (202) 724-7678 (TDD).

List of Subjects in 22 CFR Part 1510

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 1510 is added as set forth at the end of this document.

PART 1510—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE AFRICAN DEVELOPMENT FOUNDATION

Sec.		
1510.101		Purpose.
1510.102		Application.

Sec.		
1510.103		Definitions.
1510.104—1510.109		[Reserved]
1510.110		Self-evaluation.
1510.111		Notice.
1510.112—1510.129		[Reserved]
1510.130		General prohibitions against discrimination.
1510.131—1510.139		[Reserved]
1510.140		Employment.
1510.141—1510.149		[Reserved]
1510.150		Program accessibility: Discrimination prohibited.
1510.151		Program accessibility: Existing facilities.
1510.152—1510.159		[Reserved]
1510.160		Communications.
1510.161—1510.169		[Reserved]
1510.170		Compliance procedures.
1510.171—1510.199		[Reserved]

Authority: 29 U.S.C. 794.

2. Part 1510 is further amended by revising paragraph (c) in § 1510.170 to read as follows:

§ 1510.170 Compliance procedures.

(c) The Personnel Officer, Office of Administration and Finance, shall be responsible for coordinating implementation of this section. Complaints may be sent to Personnel Officer, Office of Administration and Finance, African Development Foundation, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC, 20036.

Leonard H. Robinson, Jr.,
President, African Development Foundation.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 100

FOR FURTHER INFORMATION CONTACT: Ernest Russell, Director of Administration, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, DC (202) 254-9200 or (202) 634-1699 (TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Labor Relations Board is responsible for conducting hearings and elections pursuant to the National Labor Relations Act, as amended (29 U.S.C. sections 141-169). When determining where hearings and elections will be held, the Agency must consider both the convenience of the parties to a proceeding and the public, and the extent to which delay or expense can be minimized. While many hearings are conducted in the Agency's Regional,

Subregional, and Resident Offices, a number of hearings are held in more remote locations where the employer, the union and the employee witnesses are located. Also, in order to maximize participation at Board conducted elections to determine employee desires regarding union representation, these elections are customarily held at the employer's premises.

Hearings held in Agency offices will be subject to the program accessibility and communications requirements of this regulation and will be made accessible in accordance with this regulation. As to hearings held at non-Agency sites, the Agency will attempt to locate accessible local facilities that are both convenient and inexpensive. In these instances, the Agency will include in the notice of hearing served upon the parties a request that the parties provide the Regional, Subregional, or Resident Office with prompt notice in advance of any accessibility features they or their witnesses may require. If the Agency receives, in advance, a request for an accessible hearing site or special accommodation, it will then arrange necessary accommodations for those parties, representatives, witnesses, or members of the public requiring such accommodation. Similarly, with regard to elections, the notice to employees issued in connection with an election will likewise include a request that handicapped persons inform the Agency, in advance, of any auxiliary aids, such as sign language interpreters, that may be necessary in order to facilitate their participation in the election.

Thus, the Agency will, with respect to hearings or elections at non-Agency sites, and subject to the limitations of § 100.650(a)(3) and § 100.660(d) of this regulation, ensure access for any individual with handicaps who gives reasonable advance notice, that the person will attend a hearing as a party, a party's representative, a witness, a member of the public, or will appear as a participant in an election.

List of Subjects in 29 CFR Part 100

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Part 100 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 100—ADMINISTRATIVE REGULATIONS

1. The part heading is revised to read as set forth above.
2. The authority citation for Part 100 is revised to read as follows:

Authority: Sec. 6 of the National Labor Relations Act, as amended, 29 U.S.C. 141, 146. Subpart A is also issued under U.S.C. 7301, 18 U.S.C. 201 et seq., E.O. 11222, 5 CFR 735.104.

Subpart B is also issued under 5 U.S.C. 201 et seq., 18 U.S.C. 202.

Subpart C is also issued under 18 U.S.C. 202, E.O. 11222, 5 CFR 735.104.

Subpart F is also issued under 29 U.S.C. 794.

3. Subparts A, B, C, and D headings are removed.

§§ 100.735-1 through 100.735-6 and §§ 100.735-11 through 100.735-22 are redesignated as §§ 100.101 through 100.106 and §§ 100.111 through 100.122.

4. Sections 100.735-1 through 100.735-6 and §§ 100.735-11 through 100.735-22 are redesignated §§ 100.101 through 100.106 and §§ 100.111 through 100.122 respectively and designated Subpart A. The heading for Subpart A is added to read "Subpart A—Employee Responsibilities and Conduct".

§§ 100.735-31 through 100.735-34 and §§ 100.735-36 through 100.735-39 are redesignated §§ 100.201 through 100.204 and §§ 100.206 through 100.209.

5. Sections 100.735-31 through 100.735-34 and §§ 100.735-36 through 100.735-39 are redesignated §§ 100.201 through 100.204 and §§ 100.206 through 100.209 respectively and designated Subpart B. The heading for Subpart B is added to read "Subpart B—Employee Statements of Employment and Financial Interest".

§§ 100.735-41 through 100.735-47 are redesignated as §§ 100.301 through 100.307.

6. Sections 100.735-41 through 100.735-47 are redesignated §§ 100.301 through 100.307 respectively and designated Subpart C. The heading for Subpart C is added to read "Subpart C—Special Government Employee Conduct and Responsibility".

7. Subparts D and E are added and reserved.

Subpart D—Employee Personal Property Loss Claims (Reserved)

Subpart E—Claims Under the Federal Tort Claims Act (Reserved)

8. Subpart F is added as set forth at the end of this document.

Subpart F—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Labor Relations Board

Sec.	Purpose.
100.601 (____101)	Purpose.
100.602 (____102)	Application.
100.603 (____103)	Definitions.
100.604-100.609 (____104-____129)	[Reserved]
100.610 (____110)	Self-evaluation.
100.611 (____111)	Notice.
100.612-100.629 (____112-____129)	[Reserved]
100.630 (____130)	General prohibitions against discrimination.
100.631-100.639 (____131-____139)	[Reserved]
100.640 (____140)	Employment.
100.641-100.648 (____141-____148)	[Reserved]
100.649 (____149)	Program accessibility: Discrimination prohibited.
100.650 (____150)	Program accessibility: Existing facilities.
100.650 (____151)	Program accessibility: New construction and alterations.
100.652-100.654 (____152-____159)	[Reserved]
100.660 (____160)	Communications.
100.661-100.669 (____161-____169)	[Reserved]
100.670 (____170)	Compliance procedures.
100.671-100.699 (____171-____999)	[Reserved]

9. Part 100 is further amended by revising paragraph (c) in § 100.670 to read as follows:

§ 100.670 Compliance procedures.

(c) The Director of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Administration, National Labor Relations Board, 171 Pennsylvania Avenue NW., Washington, DC 20570.

John C. Truesdale,
Executive Secretary.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**36 CFR Part 1208**

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Y. Allard, TDD: 202/523-0774, Non-TDD: 202/523-3215, Room 409, National Archives Building, 8th & Pennsylvania Avenue, NW., Washington, DC 20408.

List of Subjects in 36 CFR Part 1208.

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government

employees, Handicapped, Historic places, Historic preservation.

Title 36 of the Code of Federal Regulations is amended as follows:

1. Part 1208 is added as set forth at the end of this document.

PART 1208—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sec.	Purpose.
1208.101	Purpose.
1208.102	Application.
1208.103	Definitions.
1208.104-1208.109	[Reserved]
1208.110	Self-evaluation.
1208.111	Notice.
1208.112-1208.129	[Reserved]
1208.130	General prohibitions against discrimination.
1208.131-1208.139	[Reserved]
1208.140	Employment.
1208.141-1208.148	[Reserved]
1208.149	Program accessibility: Discrimination prohibited.
1208.150	Program accessibility: Existing facilities.
1208.151	Program accessibility: New construction and alterations.
1208.152-1208.159	[Reserved]
1208.160	Communications.
1208.161-1208.169	[Reserved]
1208.170	Compliance procedures.
1208.171-1208.999	[Reserved]

Authority: 29 U.S.C. 794.

2. Part 1208 is further amended by revising paragraph (c) in § 1208.170 to read as follows:

1208.170 Compliance procedures.

(c) The Assistant Archivist for Management and Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to National Archives and Records Administration (NA), Washington, DC 20408.

Claudine J. Weiher,
Acting Archivist.

VETERANS ADMINISTRATION**38 CFR Part 15**

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Cash, Office of Equal Opportunity, (202) 233-2150 or (202) 233-3710 (TDD).

List of Subjects in 38 CFR Part 15

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal

buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 38 of the Code of Federal Regulations is amended as follows:

1. Part 15 is added as set forth at the end of this document.

PART 15—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE VETERANS ADMINISTRATION

Sec.	Purpose.
15.101	Purpose.
15.102	Application.
15.103	Definitions.
15.104-15.109	[Reserved]
15.110	Self-evaluation.
15.111	Notice.
15.112-15.129	[Reserved]
15.130	General prohibitions against discrimination.
15.131-15.139	[Reserved]
15.140	Employment.
15.141-15.148	[Reserved]
15.149	Program accessibility: Discrimination prohibited.
15.150	Program accessibility: Existing facilities.
15.151	Program accessibility: New construction and alterations.
15.152-15.159	[Reserved]
15.160	Communications.
15.161-15.169	[Reserved]
15.170	Compliance procedures.
15.171-15.999	[Reserved]

Authority: 29 U.S.C. 794.

2. Part 15 is further amended by revising paragraph (c) in § 15.170 to read as follows:

§ 15.170 Compliance procedures.

(c) The Director, Office of Equal Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Administrator of Veterans Affairs or the Director, Office of Equal Opportunity, at the following address: Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420.

Thomas K. Turnage,
Administrator of Veterans Affairs.

FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 16**

FOR FURTHER INFORMATION CONTACT: Alan Clive, Equal Employment Manager, Room 815, 500 C Street, SW., Washington, DC (202) 646-3957 (voice) or 646-4117 (TDD).

List of Subjects in 44 CFR Part 16

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 44 of the Code of Federal Regulations is amended as follows:

1. Part 16 is added as set forth at the end of this document.

PART 16—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY

Sec.	Purpose.
16.101	Purpose.
16.102	Application.
16.103	Definitions.
16.104-16.109	[Reserved]
16.110	Self-evaluation.
16.111	Notice.
16.112-16.129	[Reserved]
16.130	General prohibitions against discrimination.
16.131-16.139	[Reserved]
16.140	Employment.
16.141-16.148	[Reserved]
16.149	Program accessibility: Discrimination prohibited.
16.150	Program accessibility: Existing facilities.
16.151	Program accessibility: New construction and alterations.
16.152-16.159	[Reserved]
16.160	Communications.
16.161-16.169	[Reserved]
16.170	Compliance procedures.
16.171-16.999	[Reserved]

Authority: 29 U.S.C. 794.

2. Part 16 is further amended by revising paragraph (c) in § 16.170 to read as follows:

§ 16.170 Compliance procedures.

(c) The Director of Personnel shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Personnel, Room 810, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Dated: April 25, 1988.

Julius W. Becton, Jr.,
Director.

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART 16—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY

Sec.	Purpose.
____101	Purpose.
____102	Application.
____103	Definitions.
____104-____109	[Reserved]
____110	Self-evaluation.
____111	Notice.
____112-____129	[Reserved]
____130	General prohibitions against discrimination.
____131-____139	[Reserved]
____140	Employment.
____141-____148	[Reserved]
____149	Program accessibility: Discrimination prohibited.
____150	Program accessibility: Existing facilities.
____151	Program accessibility: New construction and alterations.
____152-____159	[Reserved]
____160	Communications.
____161-____169	[Reserved]
____170	Compliance procedures.
____171-____999	[Reserved]

Authority: 29 U.S.C. 794.

§ ____101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ ____102 Application.

This regulation (§§ ____101-____170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ ____103 Definitions.

For purposes of this regulation, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids

useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase: (1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional

illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and

Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 104—109 [Reserved]

§ 110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A description of areas examined and any problems identified; and
- (2) A description of any modifications made.

§ 111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 112—129 [Reserved]

§ 130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 131—139 [Reserved]

§ 140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 141—149 [Reserved]

§ 149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any

program or activity conducted by the agency.

§ 150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods—(1) General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving

compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 8, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§ 152-155 [Reserved]

§ 160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each

primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 161-163 [Reserved]

§ 170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to

refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of

receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§ 171-999 [Reserved]

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Part VII

Department of Transportation

Research and Special Programs
Administration

49 CFR Parts 192, 193 and 195
Control of Drug Use in Natural Gas,
Liquefied Natural Gas and Hazardous
Liquid Pipeline Operations; Notice of
Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193 and 195

(RSPA Docket No. PS-102)

Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA); DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes rules to require operators of pipeline facilities, other than master meter systems, used for the transportation of natural gas or hazardous liquids, and operators who produce and store liquefied natural gas, to have a drug program for individuals who perform specific sensitive safety and security-related functions. Testing under these proposed rules would be conducted prior to employment after an accident, randomly, or on the basis of reasonable cause. In addition, these proposed rules would require that an operator provide an opportunity for counseling and rehabilitation in specified circumstances under an Employee Assistance Program (EAP) for certain individuals that have a drug problem. However, these proposed rules do not require that the employer run the EAP or pay for it. The proposed rules are intended to prevent the presence of a prohibited drug in an employee's system at any time, thereby ensuring a drug-free pipeline operations environment.

DATES: RSPA is considering holding a public hearing on this proposal at a time and place to be announced shortly in the Federal Register. Any person who wants to make an oral statement at the hearing will be requested to notify the person listed under "For Further Information Contact" at least five working days prior to the date of the hearing by telephone or mail. Written comments must be received on or before September 6, 1988.

ADDRESS: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Cesar DeLeon, Assistant Director for

Regulation, Office of Pipeline Safety, (202) 366-1640.

SUPPLEMENTARY INFORMATION:

Introduction: The Drug Problem in American Society

Background

Drug abuse constitutes a major societal problem. Statistics compiled and reported by the National Institute on Drugs and Abuse (NIDA), and media polls, indicate that the use of drugs is widespread across all age groups.

For instance, data from the 1985 NIDA, "National Survey on Drug Abuse" indicates the following projections based on a survey sample of respondents' reports of their own drug use:

- In the age 18-25 category, of a total population of 32,490,000:
 - 19,670,000 (60%) used marijuana sometime during their life;
 - 7,110,000 (22%) used marijuana within the past month;
 - 8,170,000 (25%) used cocaine sometime during their life;
 - 2,510,000 (8%) used cocaine within the past month.
- In the age 26 and over category, of a total population of 136,800,000:
 - 37,000,000 (27%) used marijuana sometime during their life;
 - 8,000,000 (6%) used marijuana within the past month;
 - 12,950,000 (9%) used cocaine sometime during their life;
 - 2,704,000 (2%) used cocaine within the past month.

Not only do these statistics raise concerns in those agencies charged by Congress to administer transportation safety programs, they raise concerns in the public at large where the reasonable expectation exists that persons in sensitive safety and security-related transportation occupations should not be drug abusers. The following are the results of a May-June 1986 national survey conducted by Populus Incorporated of Greenwich, Connecticut, and Decision/Making/Information of McLean, Virginia, concerning the general public's views on the drug testing of individuals in various occupations. Of those surveyed:

- 88% favored testing of airline pilots and air traffic controllers.
- 85% favored testing of police and other law enforcement agents.
- 81% favored testing of bus drivers.
- 75% favored testing of military personnel.
- 75% favored testing employees of pharmaceutical companies.

Further, the researchers indicated that those responding to the survey felt that "people who are responsible for the

physical safety of others should be tested." Because workers in all modes of transportation are "responsible for the physical safety of others," the testing of transportation workers for drug abuse would be considered by the public as having a positive effect on public safety. A survey conducted by American Viewpoint, Inc., on August 6-19, 1986, found that, "by a margin of 75%—22%, Americans agree that the drug crisis today is serious enough for mandatory testing." The American Viewpoint survey used a "forced choice" list and asked which groups should submit to mandatory drug testing. While employees in the transportation modes were not included in the list (e.g., railroads, aviation, highways, pipelines, etc.), employees in sensitive safety and security-related occupations such as police and fire fighters (84%), members of the armed forces (81%), and doctors and nurses (81%) were at the top of the list of those employees the respondents felt should be tested. Another interesting facet of the study was that 80% of the respondents indicated that they would participate in voluntary testing if asked to do so by their employer.

These surveys suggest that a majority of the public is concerned about drug abuse and favors the mandatory testing of persons in certain sensitive safety and security-related occupations. While statistics indicate that the greatest incidence of drug abuse is found among those age 25 and under, and overall usage may drop as this group grows older, it is still of significance in older population groups.

A recently issued Special Report From the Comptroller General of the United States titled "Controlling Drug Abuse: A Status Report" (1988 GAO Report) states that "Drug abuse in the United States has persisted at a very high level throughout the 1980s. Drug abuse is a serious national problem that adversely affects all parts of our society . . ." The Department of Transportation, acting in accordance with Congressional mandates to ensure safe transportation, must operate under the assumption that the various transportation modes do not differ significantly from the overall population in terms of drug abuse.

The Drug Problem in Pipeline Transportation

Employees of the natural gas, liquefied natural gas (LNG), and hazardous liquid pipeline industries represent a broad and diverse cross-section of American society. It is reasonable to assume that the problem of drug abuse exists in this industry in similar proportion to that existing in

society as a whole. Personnel who use drugs can pose dangers to themselves and co-workers and can cause or exacerbate events that may take human life, destroy property, and seriously harm the environment. The Department of Transportation and the Research and Special Programs Administration (RSPA) are committed to the goal of a drug-free transportation system in all modes of transportation. Implementation of a drug abuse prevention program, including education and awareness, testing, and rehabilitation, is necessary to ensure that pipelines are operated in the safest manner possible.

RSPA believes that the public expects, and is entitled to expect, that transportation systems will be operated safely. The Department's drug abuse prevention initiative in this area was formulated in response to a potential threat to the safe operation of pipelines transporting natural gas, and hazardous liquids, as well as the production and storage of LNG. The potential for accidents caused by pipeline personnel whose skills may be impaired due to drug usage will be greatly decreased by the implementation of a drug testing program.

RSPA does not contend that drug abuse among personnel engaged in pipeline transportation is present in any greater degree than in the general public or that accident statistics demonstrate drug abuse as a major factor in pipeline accidents. No data exist to prove or disprove the presence of a drug abuse problem among pipeline personnel. The number of pipeline incidents is relatively low. We do know that a significant number of pipeline accidents occur because of outside force damage caused by excavators, over whom the Department has no authority. The remainder (65 percent) are due to such causes as operational error, the improper monitoring of corrosion, and equipment failure, all matters which can be adversely affected by the impairment of specific pipeline personnel. Further, many routine construction, operations, and maintenance functions, as well as emergency response activities, demand skilled, competent, alert and unimpaired workers to perform the functions safely. When a pipeline failure occurs, regardless of its cause, critical decisions must be made quickly to abate the risk and return the pipeline to safe operation. The ability of personnel to rapidly respond to such a situation is crucial to the overall safety of pipeline operation.

RSPA invites commenters to identify other indicators of the risks associated with drug use by employees performing

sensitive safety and security-related functions. Commenters are specifically invited to submit data on the incidence of drug use among employees subject to this proposal.

Effects of Drug Use on Safety

Drugs are chemicals that affect the body (physiological and function-altering effects) and often the mind (pharmacological or mind-altering effects). In broad summary, controlled substances are drugs or other substances identified by the government as creating a potential for abuse and/or dependency. In comments before the Federal Railroad Administration, the American Medical Association and other parties have agreed that, as a general matter, controlled substances constitute the primary drugs of interest (other than alcohol) with respect to transportation safety.

Most controlled substances have at least some accepted medical applications. Therapeutic use of certain controlled substances is frequently indicated both from a medical point of view and from the point of view of transportation safety, since proper use of drugs can control disorders that adversely affect performance while permitting the individual to continue productive employment. If therapeutic drugs are used at appropriate levels established by medical practitioners and care is taken to monitor undesired "side effects," safety will not be materially compromised. Indeed, in many cases, control of the underlying disorder will produce net safety benefits.

However, when individuals make non-medical use of controlled substances, they often use illegal ("illicit") drugs that have unacceptable mind-altering and function-altering characteristics. Similarly, when individuals self-administer legal ("licit") drugs for non-medical purposes, or without proper medical supervision, adverse effects may result.

Drugs and Their Effects

Controlled substances are classified by pharmacological properties as—

- Narcotics, such as the opiate-based drugs;
 - Central nervous system (CNS) depressants, such as the barbiturates, tranquilizers, or methaqualone;
 - CNS stimulants, such as cocaine and amphetamines;
 - Hallucinogens, such as LSD and PCP; and
 - Cannabis (marijuana derivatives).
- All controlled substances have a potential for abuse, and many have a high potential for dependence. The effects of these drugs vary to some

extent by dosage, subject, frequency of use, route of ingestion, and pattern of use. An individual drug user may be affected differently by the same dosage on different occasions as a result of degree of fatigue, physical disorders, biorhythms, acquired tolerance, and other factors.

It is important to note that the effects of drugs on human performance are not limited to a perceived "high" or other immediate mind-altering sensation experience by the user. Instead, drug effects are complex and, in many cases, long-lived. They include—

- *Acute* effects, including the often sought-after change of mental state and physiological changes;
- *After-effects*, from individual doses or series of doses;
- *Chronic* effects from prolonged use, which may include profound biochemical changes and changes in cognitive functions; and
- *Withdrawal* effects when a drug-dependent individual ceases use of the drug. All of these potential effects are of concern with respect to transportation safety, yet only the acute effects correlate to some extent in time with body fluid concentrations of the impairing substance; and for most drugs that correlation is imperfect.

Perceived Dangers of Drugs in Transportation

The potential detrimental effects of drugs on performance are not a matter of speculation. There is a broad consensus among transportation companies, employees and related professionals that the use of alcohol and the non-medical use of controlled substances are not consistent with safety. Increasingly, knowledgeable safety professionals in transportation are coming to realize that "off-duty use" and "on-duty use" are not distinct categories warranting entirely separate consideration, but are instead facets of an overall picture—i.e., fitness for duty involving sensitive safety and security-related functions. Although there are differences of opinion among transportation safety experts concerning appropriate countermeasures, the need for effective countermeasures is almost universally acknowledged.

Experimental/Clinical Data

A growing body of information related to drug effects on safety has influenced the opinion held by those in the transportation industry concerning the effects of drug use on the industry. Numerous behavioral studies and extensive clinical experience have established the fact that controlled

substances can powerfully alter the capacity of human beings to respond appropriately to their environment.

The following considers how drugs adversely affect safety. Since each human being is, biologically, a unique and whole organism, any such discussion will suffer from incompleteness, on the one hand, and an absence of total analytical integration, on the other. However, the available literature does offer useful information that can be placed in the appropriate context and that can guide the formulation of public policy. Among other sources, this discussion draws heavily on a draft study prepared by the Transportation Systems Center of the Department of Transportation. A copy of that report (Sussman, Salvatore, Huntley and Hobbs, "Data Available on the Impact of Drug Use on Transportation Safety," April 17, 1987) will be placed in the docket of this rulemaking.

Drug effects can be analyzed in experimental studies from the point of view of their impact on particular human faculties. These faculties are, of course, merely aspects of human performance capabilities, and experimental studies often involve tasks that may call on more than one faculty. "Sensory function" refers to the ability of an individual to detect, feel, identify, discriminate between, and recognize objects and conditions. Visual acuity and perception are the sensory functions whose impairment would be most detrimental to the safe functioning of a transportation employee. "Motor performance" is also important to the safe functioning of an employee. This involves the ability to make timely, accurate, and steady control movements, and includes both simple and complex reaction time, as well as tracking and steadiness.

"Vigilance" describes another ability necessary to safe performance. "Vigilance" is the term used to describe the ability of an individual to detect and respond to extremely infrequent signals provided as a part of a low event or boring task. Maintaining attention and alertness is important for all transportation operators, particularly during night operations. Finally, "cognitive functions" are of importance to safe operation. This refers to the ability to classify, store, integrate and recall information, judgment, memory, proclivity for risk-taking, and the ability to manage multiple tasks are areas of particular concern for transportation.

The available evidence indicates that all controlled substances tend, to a greater or lesser degree, to affect adversely one or more of the faculties critical to safe conduct of transportation

and transportation-related duties. In some cases, acute effects may be of greatest concern, while with other drugs the primary hazards may relate to after effects and chronic effects. Some individuals may be unimpaired by some drugs at some dosages with respect to certain faculties relevant to performance. Indeed, in certain discrete settings CNS stimulants may temporarily enhance the ability of an individual to sustain attention (as an acute effect). However, when the full range of effects is considered, no controlled substance can be eliminated as a source of significant concern.

Narcotics are among the drugs having the highest potential for abuse and dependence, and use of narcotics is therefore unlikely to be limited to off-duty hours. Narcotics dull the perception of external and internal stimuli and tend to induce a feeling of pleasant lethargy. These drugs can adversely affect motor performance, as well as vigilance. Although there is no extensive body of literature on the effects of narcotics on tasks common to transportation, standard therapeutic practice requires warning that narcotics should not be used by transportation or heavy equipment operators except where side effects have been determined and then only under strict medical supervision.

CNS depressants include a variety of compounds that reduce sensitivity to stimuli, slow information processing, and impair the ability of the user to concentrate or focus attention. Behavioral studies of the acute effects of CNS depressants have demonstrated decline of motor performance, including tracking skills, simple reaction time, and choice reaction time. Depressants may adversely affect sensory functions such as signal recognition and cognitive functions such as short-term memory and information processing.

Experimental evidence also shows that after-effects of depressant use (hangovers) can impair performance. Further, most CNS depressants have a high dependency potential, and severe withdrawal symptoms can result if use is discontinued suddenly. Since the timing of withdrawal symptoms is not always predictable, the cessation of use by a depressant-dependent person can result in loss of control over a transportation vehicle or task. Instances of severe withdrawal from alcohol, involving convulsions and loss of control, have been reported in the aviation context; and withdrawal from other CNS depressants presents risks of equal gravity.

CNS stimulants such as cocaine and amphetamines tend to increase mental activity, responsiveness to external

stimuli, and in some cases restore concentration to fatigued individuals. These apparently benign qualities make stimulants (particularly amphetamines) attractive "operational" drugs (taken in an effort to sustain or enhance performance), as well as so-called "recreational drugs." The non-regulated stimulant caffeine is taken for similar purposes.

However, powerful stimulants do not avoid fatigue, but only postpone it and thereby compound its severity. Side effects may include restlessness, increased anxiety, and confusion. Transportation employees may rely upon the drug for periods which go beyond its period of effectiveness, resulting in the sudden onset of deep sleep. Sustained reliance on amphetamines may result in toxic effects such as paranoia and delirium, since increasing doses are needed to offset developing tolerance. While it is widely held that stimulants do not produce true physical dependence, it is also recognized that they can induce a strong psychological dependence.

Recent experience with cocaine has confirmed the dependency-producing character of that drug, its potent psychoactivity, its ability to induce seizures after a single dose, and its ability to produce psychosis after chronic use. See, e.g., *Cocaine: Pharmacology, Effects, and Treatment of Abuse*, Research Monograph Series, No. 50 (National Institute on Drug Abuse 1984). Reports of drug experiences suggest strongly that cocaine use may promote risk-taking and cause the user to over-estimate his degree of control. Cocaine is not an attractive "operational" drug because of its short duration, but use by an employee prior to reporting for work may result in depression or exacerbate fatigue, leaving the employee poorly equipped to undertake a full work day. Because dependency on cocaine may manifest itself abruptly after a long period of apparently successful "occasional" use, the cocaine abuser's private "recreation" may become a matter of public safety concern at any time without warning.

Although no experimental studies reflecting effects of stimulants over an extended time period have been reported, clinical experience suggests that these substances have a significant potential for producing behavioral changes inimical to safety, particularly when used in high concentrations or over a long period of time.

Hallucinogens are ingested for the specific purpose of inducing euphoria and a distortion of time and space.

These drugs generally produce relaxation and a shortened attention span. Hallucinogens have not been the subject of responsible scientific research involving human subjects because of their capacity to produce psychotic reactions. Use of hallucinogens is of particular concern, since they may trigger mental disturbances that can last for extended periods or recur without warning.

Marijuana is sometimes classified as a hallucinogen but has properties that warrant its separate treatment. As the most popular illicit drug of abuse, marijuana was once viewed by many Americans as a mild and relatively harmless substance. However, as the potency of marijuana available on the illicit market increased and a large segment of the population gained experience on its use, it became apparent that marijuana had emerged as a major public health and safety risk.

By 1980, it could be said that marijuana impairs learning ability and interferes with complex psychomotor performance, including driving. *Marijuana Research Findings: 1980*, Research Monograph Series No. 31 (National Institute on Drug Abuse). In addition, marijuana became more widely recognized as a threat to health. Institute of Medicine, National Academy of Sciences, *Marijuana and Health* (National Academy Press 1982).

According to the experimental studies, marijuana affects such sensory functions as visual acuity, signal detection, and balance or standing steadiness. Motor performance on flight simulator tasks was adversely affected, as were tracking tasks and pursuit rotor tracking. Closed-course and city driving tests both indicated reduced driving precision, some of which the Institute on Medicine (*Id.* at 118) assessed as indicating impairment of judgment as well as care handling skills.

Laboratory studies have also demonstrated reduced vigilance in signal detection tasks. Studies evaluating cognitive functions indicate that marijuana may reduce risk taking, but also show that marijuana reduces performance in divided attention situations.

Recent research has suggested the possibility of next-day after effects from marijuana that may reduce performance on complex divided attention tasks. Yesavage, Leirer, Denari and Hollister, "Carry-Over Effects of Marijuana Intoxication on Aircraft Pilot Performance: A Preliminary Report" (*Am. J. Psychiatry* 142: 1325-1329 (1985)). Some experts also believe that the accumulation of cannabinoids in the body through chronic use may produce

adverse effects that do not abate at any time while the marijuana habit is sustained. Since marijuana metabolites have been identified at low levels in the urine for as long as 77 days after cessation of heavy and chronic use, the possibility of significant chronic effects cannot be excluded. See Ellis, Mann, Judson, Schramm and Tashchian, "Excretion Patterns of Cannabinoid Metabolites After Last Use in a Group of Chronic Users" (*Clin. Pharmacol. Ther.* 38:573-578 (1985)).

In summary, drugs in each of the classes of controlled substances have mind and function-altering effects on the human subject. Recent research involving several widely-used drugs vividly illustrates the correlation among clinical data, theoretical pharmacology, and performance on transportation-related tasks. Smiley, Moskowitz, and Ziedman, "Effects of Drugs on Driving", DHHS Publication No. (ADM) 85-1386 (National Institute on Drug Abuse and National Highway Traffic Safety Administration 1985). Smiley, *et al.*, examined the effects of secobarbital and diazepam (CNS depressants), marijuana and alcohol in a complex, blind study using a driving simulator. The study measured performance on a variety of driving tasks, including stop or swerve decisions, tracking, passing, and maintaining distance at two dosage levels for each drug. The results revealed differences in particular effects and performances on individual phases of the study. However, when the data were combined the authors concluded as follows:

Secobarbital, diazepam, marijuana, and alcohol were all found to impair performance of a variety of simulated driving tasks. Drug levels tested for secobarbital and diazepam were therapeutic doses; the marijuana doses were considered moderate to strong by the subject population used; the alcohol effects were reported for levels up to and slightly above the legal limit. No clear-cut differences in the pattern of effects were found among the drugs tested. All drugs impaired perceptual-motor skills (e.g., tracking, speed and headway control), perceptual tasks where response time and detection ability were measured, and decisionmaking tasks. *Id.* at 19 (emphasis supplied). This research suggests that the subtle differences in the way certain drugs affect human functions may be less important than the overall disordering effect of those drugs on the user's ability to respond to the complex challenges posed by the transportation environment.

Finally, as noted above, many of the detrimental effects of drugs relate not so much to the toxic or acute action of the drug when it may be found in high

concentrations in the blood stream, but rather the chronic or cumulative action of the drug on the body and the mind. Much of this long-term impairment of the organism is poorly understood, but what is known is a source of concern.

Epidemiological Studies

The optimal approach to evaluating the effects of drugs on safety would include a program to ascertain the presence of drug use in an adequate sample of accidents and the development of good data on the incidence of drug use in the same population. By this means it would be possible to ascertain the relative risk presented by the drug user in relation to the non-user. Stated differently, it would be possible to ascertain whether the user was over-represented in the relevant population. Over a period of years, analysis of this kind has permitted the Department of Transportation, through its National Highway Traffic Safety Administration, to determine the role of alcohol in highway accidents.

A variety of methodological problems make such an undertaking for other drugs difficult, if not ultimately impossible. Drug abuse incidence is known to vary to a considerable extent by the demographics of the population, and the various regulated transportation modes employ workforces that are not of the same composition. Thus, any study would have to discriminate carefully by transportation mode.

In recent years, a variety of countermeasures have been attempted to address drug abuse in transportation. Some of these have had positive effects, and no doubt some of these effects have waned with the passage of time. This likely volatility in drug abuse incidence creates a moving target, making comparisons of relative risk very difficult.

Further, when focused on a relatively small population within an industry, any attempt to measure drug use incidence among those involved in accidents will itself likely affect drug use incidence, since detection will produce some degree of general deterrence. Until recently, incidence of drug use among those involved in accidents has not been determined on a routine basis, and adequate data is not yet available from the initial efforts to make appropriate comparisons, even if incidence of use in the general population were reliably determined.

Proceeding in the absence of an incidence/over-representation study is difficult, at best. Those most popular illicit drugs, marijuana and cocaine, are

eliminated from the blood very quickly after last use. While alcohol is somewhat readily distinguished as to likely involvement by use of blood alcohol levels, the very complex effects of other drugs make a blood concentration approach less useful. Attempts to obtain good post-accident toxicology are only now beginning to provide data that may, in combination with careful field investigations, provide sufficient anecdotal evidence to evaluate, at least on a qualitative basis, the true involvement of drugs in transportation accidents.

However, the limited epidemiological data that do exist suggest that the inferences drawn from experimental and clinical data are warranted. A study of 440 fatally injured young California drivers detected alcohol in 70 percent of the drivers, marijuana in 37 percent, and cocaine in 11 percent. Each of 24 other drugs was detected in fewer than 5 percent of the fatally injured group. Although only alcohol could be clearly "associated with crash responsibility" within the limitations of the available data, the authors concluded that the role of marijuana in automobile crashes needs further investigation. Williams, Peat, Crouch, Wells, and Finkle, "Drugs in Fatally Injured Young Male Drivers" (*Public Health Reports* 100:19-25 (1985)).

A detailed study of 497 drivers injured in motor vehicle accidents and treated in a Rochester, New York, hospital found that 38 percent of the drivers had alcohol or another drug in their systems. Alcohol was found in 25 percent, marijuana in 9.5 percent, and tranquilizers in 7.5 percent. Culpability was determined for accident causation from police reports and interviews. Alcohol showed the highest culpability rate (74 percent at high BAC), but marijuana users also had a high culpability rate of 53 percent, in contrast to drug-free drivers (34 percent). The culpability rate for tranquilizer users was less than that of drug-free drivers, and the blood levels determined were consistent with therapeutic doses which suggests that the use of prescription medications is not per se hazardous. These results were considered conservative, since drivers were not required to provide blood samples, and many refused. However, the relatively small number of drivers surveyed permitted the authors to determine culpability at a level deemed statistically significant only for alcohol. Terhune and Fell, "The Role of Alcohol, Marijuana, and Other Drugs in the Accidents of Injured Drivers", NHTSA Technical Report DOT-HS-806-161 (Revised-March 1982).

Both of the foregoing studies noted a substantial number of cases in which drug use was combined with alcohol use. The polydrug phenomenon both suggests the hazard of relying on countermeasures directed exclusively to alcohol and complicates the evaluation of drug involvements. This dilemma is particularly critical when it is considered that employed drug abusers may elect to use drugs other than alcohol on the job precisely for the purpose of avoiding detection.

Conclusions

The full extent of drug effects and the dose-response characteristics of individual drugs on particular subjects is the subject of continuing study. Such study could be expected to continue indefinitely, even if the pharmacopeia were a closed class and a steady stream of new compounds were not being introduced into licit and illicit marketplaces on a daily basis. But the fact that continuing study is warranted does not mean that no other action is appropriate. It is important to draw reasonable conclusions from the available data that can help to protect the public safety.

The only responsible conclusion that can be drawn from available evidence is that the non-medical use of controlled substances among transportation employees in sensitive safety and security-related functions constitutes a clear threat to the public safety. The threat flows from the after-effects, chronic effects, and withdrawal effects of these substances, as well as the more heavily-researched acute effects. Any set of countermeasures must therefore encourage drug abusers in the subject populations to abate their habits or seek treatment for their chemical dependencies, as appropriate.

Jurisdiction

The two primary statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended (49 App. U.S.C. 1671 *et seq.*), and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), as amended (49 App. U.S.C. 2001 *et seq.*). Under both statutes, RSPA develops and implements minimum Federal safety standards for operators of natural gas, liquefied natural gas, and hazardous liquid pipelines. RSPA also regulates operators of offshore gas gathering lines under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*). In the case of interstate pipelines, enforcement is performed by the Federal Office of Pipeline Safety (OPS). In the case of intrastate pipelines,

enforcement is performed predominantly by the State enforcement personnel. In the latter case, pursuant to statutory authorization and upon filing an annual certification with the Department, a State enforces the Federal standards adopted by the State under its independent regulatory authority. If adopted, these proposed rules would become part of the Federal pipeline safety regulations, 49 CFR Parts 192, 193, and 195, and would in turn be adopted by and enforced by the States with respect to the intrastate pipelines under their jurisdiction.

Authority to implement drug education, awareness and testing programs is derived from the broad authority granted in the above cited statutes. This authority is applicable to various aspects of pipeline facilities affecting pipeline safety, including "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." 49 App. U.S.C. 1672 and 2002. Under this authority, OPS can set qualifications, such as experience and training, for pipeline personnel. In fact, OPS has set technical qualification requirements for welders.

The proposed rule will take the obvious next step by establishing standards for ensuring that operator personnel directly affecting the safety of pipeline transportation are free of drug induced impairment that may affect the safety of the pipeline.

Goals of Testing

The objective of drug testing is to ensure a drug-free transportation system environment which will enhance overall safety and assure public confidence. A drug-free environment means that an individual covered by these proposals may not have drugs in his or her system at levels above certain test limits at any time. If drugs are discovered in quantities above those limits, individuals may face the possibility of losing their right to perform the specific sensitive safety and security-related functions for which drug testing is required. Thus, even if an individual uses drugs "off duty", if the evidence of the use remains in the system above the established levels during "on-duty" hours, it would require action under this rule. The implementation of drug testing would serve as a deterrent to drug use by inducing employees to seek help based on fear of detection through drug testing. Employees who are voluntarily undergoing rehabilitation would, in all likelihood, be subject to a special testing

schedule contained in their rehabilitation program in place of the random tests which would be applicable to employees in general.

Additionally, implementation of drug testing would enable RSPA to collect data. Currently, very little data exists evidencing the extent of drug abuse in the pipeline transportation industry. A random sampling program would enable the Office of Pipeline Safety to collect statistically valid and representative data on usage and extent of usage in the pipeline industry. RSPA would collect, consider, and evaluate data on such things as age and occupational position of users, and type of drugs used. This data would enable RSPA to assist the industry in more effectively combatting substance abuse through rehabilitation, further education, training, and testing programs. The RSPA is very interested in receiving any additional data on the use of controlled substances by pipeline personnel.

Overview of the Proposed Drug Program

A drug program would be established by pipeline operators for individuals who perform specific sensitive safety and security-related functions. Pipeline operators covered by these proposals would include all operators subject to regulation under either 49 CFR Parts 192, 193, or 195, except for master meter operators. This includes small municipal gas systems. This rule does not propose to cover master meter operators since they do not usually perform the functions traditionally considered as operating or maintaining a pipeline. The gas distribution company is responsible for the operational characteristics of the pipeline system. Therefore, the types of incidents that would arise, such as leaks or explosions, would not be prevented by the drug testing of master meter operators. Comments are requested as to whether this approach is valid. RSPA also invites comments as to what methods might be used to facilitate the inclusion of other small operators in the program and whether all other small operators should be required to develop and implement a drug abatement program. Commenters who believe that the proposed rule should not cover such entities, either in whole or in part, should explain the basis for their views and describe how they would define small operators for this purpose.

The proposed drug program would be composed of two parts: the first part would be testing for drugs to detect users and to deter future drug use; the second part would be an ongoing and active "preventive" program that would offer Employee Assistance Program services including rehabilitation,

education, and training. The two parts of the program are complementary and mutually supportive because the problem of drug abuse must be addressed from several perspectives. Pipeline operators would test, or ensure that the contractors test, individuals who directly or indirectly perform specified sensitive safety and security-related functions for those operators for prohibited drug levels above limits set by the proposed rule. These individuals would generally include a large portion of an operator's operation and maintenance staff (including operator contractor employees). Comments are requested as to whether pipeline inspectors who are employed by the States should be subject to drug testing.

Under the proposed drug program, the operator would be required to conduct the following types of testing: pre-employment testing for all applicants for safety-related jobs; post-accident testing for employees or contractor employees directly involved in an accident; random testing; and testing based on reasonable cause. The test regimen would include an initial test followed by a more specific confirmation test if the initial test were positive. This testing would be required to be carried out according to the HHS guidelines. Each operator would be required to make sure that any testing conformed to these guidelines. Failure by the employer to do so, like any failure by a regulated party to comply with a RSPA safety rule, makes the employer subject to RSPA enforcement action, including civil penalties.

Under the proposed rule, employers would have 120 days from the effective date of the final rule in which to develop a drug plan. Under Parts 192 and 195, the drug plan would be required to be incorporated into the operator's operating and maintenance plan (O&M Plan). Under Part 193, the drug plan would be required to be incorporated into the operator's personnel health plan. The drug plan would be required to be implemented 180 days after the plan is incorporated into the O&M or personnel health plan.

Several Administrations within the Department of Transportation have developed proposed rules that would mandate drug testing, and would require that drug programs formulated in the private sector be submitted to them for approval prior to being implemented. RSPA invites comments on whether it is necessary as well as feasible to require that drug programs mandated by the proposed rule be submitted to RSPA for approval. One possible solution is to require the plans to be submitted and to

have them go into effect a set number of days after their submission unless RSPA determines that they are inadequate and notifies the submitter of the inadequacy. RSPA also invites comments on whether employers should have the flexibility to develop company-specific drug abatement programs and submit such programs to RSPA for approval in lieu of following the RSPA-proposed program. RSPA is also interested in comments on ways in which the policy behind this NPRM can be achieved through procedures or programs without the need for detailed regulatory requirements.

An Employee Assistance Program (EAP) is an important component of the proposed drug program. Minimum requirements for rehabilitation, education, and training have been included in the proposed rule and are discussed below. This proposed rule would not prohibit employers from adopting and enforcing additional or more stringent procedures which are not inconsistent with the proposed rule. However, under certain circumstances and alternatives as discussed *infra*, an employee, other than a temporary employee, may not be disciplined or fired upon receipt of their first positive drug test, if the individual agrees to participate in an EAP.

The issue of testing for alcohol is not included in this rulemaking. Alcohol testing is not being proposed because the two preferred methods of testing an individual for the presence of alcohol are by breath analysis and by drawing blood. It tests were run for alcohol and for drugs, two different types of tests (blood alcohol concentration and urinalysis) would have to be conducted since urinalysis has been chosen as the method by which drugs would be tested for. This would greatly complicate the process as well as increase costs. Also, the blood test method generally is considered to be a more invasive procedure. Finally, it is easier to identify someone who abuses alcohol and reports for work impaired than someone who uses drugs.

Who Would Establish a Drug Program

Both the NGPSA and the HLPSA place the responsibility for compliance with safety regulations on the pipeline operator. In enforcement, RSPA has consistently taken this position and held the operator responsible for compliance even when the operator contracts out part or all of its sensitive safety and security-related functions. Therefore, it is reasonable to place the responsibility for testing on the operator to ensure that all individuals who perform sensitive

safety and security-related functions for the operator are drug-free. Operators would be required to include a drug testing plan conforming to the proposed rule in their operating and maintenance or their personnel health plans. The operator may provide in its contract with a contractor that the testing, training, and rehabilitation required by its drug testing plan be carried out by the contractor. However, the operator would remain responsible for ensuring that the terms of its drug testing plan are complied with. In addition, the operator would remain responsible for ensuring that employees who fail a drug test do not perform sensitive safety and security-related functions until successful rehabilitation has taken place. Finally, the operator would have to ensure that the contractor would allow access by the operator, by RSPA, and by State Pipeline Safety Representatives, to property and records kept by the contractor for the purpose of monitoring the operator's compliance with the proposed rule. This raises privacy questions that are discussed below.

Who Would Be Tested

Under the proposed rule, all employees performing sensitive safety and security-related functions would be tested. These functions might include welding, radiography, dispatching, pressure testing, joining plastic pipeline, security and emergency response. Comments are requested as to how "sensitive safety and security-related" functions should be defined, and which specific functions should trigger the testing requirement. Commenters addressing these issues should provide empirical evidence to support their comments.

What Drugs Would Be Tested For

The proposed rule would require that during each test required by the rule, the presence of marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) be tested for. In reasonable cause or post-accident testing, the employer may test for any substance specified in Schedule I or II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum. P.P.). RSPA invites comments as to which additional drugs, if any, should be included. Commenters should also provide cost and benefit data regarding any additional drug groups.

What Method Would Be Used

RSPA proposes to require chemical testing, urinalysis, to verify that individuals performing sensitive safety and security-related functions in

pipeline transportation are drug free. Urinalysis was chosen on the basis of cost, simplicity in taking samples, and effectiveness of testing equipment and procedures. Specimen collection and testing would be conducted as provided in the Department of Health and Human Services Scientific and Technical Guidelines for Drug Testing Programs (HHS Guidelines).

When Testing Would Be Conducted

RSPA is proposing that operators conduct four types of testing: (1) Before employment, (2) after an accident, (3) at random, and (4) based on reasonable cause. RSPA is not proposing periodic testing because the pipeline industry does not have periodic physical examinations. These types of testing, each specific to certain circumstances, together form a part of a deterrent or preventive drug program. The types of testing are described as follows:

1. *Pre-employment testing* would be required of all applicants for specified sensitive safety and security-related positions. The purpose of testing applicants is two-fold: One, it would convey a clear message that the employer is serious about establishing and maintaining a drug-free environment; and two, it would help identify those who are either addicted to or so dependent upon drugs that they cannot abstain from drug use. All tests that produce positive results for drugs would be confirmed using a method of testing as specified in the HHS guidelines. Applicants would be informed that tests will be conducted to determine the presence of drugs. Although pre-employment testing would not necessarily identify those individuals who temporarily abstain to avoid detection, it would help to ensure that habitual abusers are not selected for sensitive and security-related positions. An applicant would not be hired after receiving a confirmed positive test. Applicants could withdraw an application after a confirmed positive test and the record of the test would be destroyed.

2. *Post-accident testing.* Employees who perform sensitive safety and security-related functions as described in the proposed rule, and whose performance of that function is directly related to an accident, would be required to provide a urine sample for drug testing under the proposed rule. An employee involved in an accident would be selected for testing based on a decision made by the operator or authorized government personnel (e.g., inspectors) that such testing is necessary. The employer or government official must consider the extent of an

individual's involvement in the accident when selecting employees for testing.

3. *Random (or Random Sampling) testing* is expected to be the primary method used in the drug program to deter drug use. Random testing can be an extremely effective method for decreasing drug use because abstinence from continued use is the only way to prepare for an unannounced test. The success of random drug screening has been demonstrated in various programs. The United States Coast Guard implemented a random testing program for its uniformed personnel which led to a 75 percent decrease in drug use over a five-year period. RSPA requests commenters to address whether the experience of uniformed personnel in the Coast Guard program is a valid indicator of how pipeline employees would respond to a similar program.

Random testing avoids potential bias toward, and selective harassment of, an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods such as the use of a random-number table or computer-based, random-number generator. Both methods select individuals by matching these randomly selected numbers against an employee's social security number or payroll account number. With random testing, abstinence is the only alternative to possible detection. Using a true random selection basis, employees selected for each weekly or monthly increment would be returned to the pool of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug abuse because an individual selected early in the testing cycle would still be subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test. One feature of this plan is that some employees might not be selected at all and others could be selected more than once a year. In addition, although surprise is an essential feature of a true random testing program, when an employee is located in a remote location and must be transported some distance to provide a sample, the element of surprise may be lost in many cases. RSPA seeks comment on how to deal with these problems.

Random drug testing requires a specific implementation plan to deter drug use. The proposed rules would require that up to 125 percent of employees performing sensitive safety and security-related functions would be tested each year. This does

not mean that testing would be carried out at the 125% rate, but denotes a cap upon the rate to be chosen. RSPA intends to select an appropriate rate based on effectiveness, deterrence, costs, and benefits. Comments are requested as to what the proper percentage should be and data supporting this view is also requested. How would different sampling rates affect the numbers of drug users who volunteer for rehabilitation under each of the rehabilitation options? Is there any evidence to support alternative assumptions regarding the rates at which drug users would volunteer for rehabilitation? What is the lowest sampling rate for random testing that would be effective in deterring drug abuse? Would higher sampling rates result in sufficiently higher benefits to justify the costs? Do lower sampling rates necessarily result in lower benefits? Is reasonable to assume that benefits are directly proportional to the sampling rate? Would the higher sampling rate add sufficient deterrence to reduce the costs of and need for rehabilitation? Would a lower sampling rate be more effective if the severity of the sanction is increased? RSPA is also considering whether programs should provide for adjustment of the minimum sampling rule based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experiences, the results of random testing would provide the most useful gauge of the need. RSPA is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule or, if an approval process is used, based on individual applications and specifically requests comments on this issue. RSPA also solicits comments on whether companies that develop exemplary records should be relieved at some future time from some or all of the requirements of this proposal. As with other issues, RSPA reserves the right to make appropriate adjustments in the rule in response to public comments. RSPA also requests comments as to whether the rule should contain a provision allowing a company with a

high level of safety with regard to drug use, demonstrated over a designated time period, more latitude in determining the application of its drug program.

RSPA believes that an operator-sponsored program is the most effective form of random testing. The operator has an interest in ensuring that its pipeline operations are conducted by employees who do not use controlled substances. The DOT is mandating that pipeline operators, as well as operators in other transportation modes, be subject to random drug testing. This will assist in achieving a drug-free transportation environment. We realize that there may be difficulties in applying these types of testing to small operators. Comment is requested on the problems inherent in such an application and solutions that would ensure an effective random testing program for small operators. For example, could small operators form consortiums to implement random testing? RSPA invites comments as to what methods might be used to facilitate inclusion of small entities in the program and whether all small entities should be required to develop and implement a drug abatement program. Should the rule permit operators, especially the small ones, to use a third party to set up and maintain their drug testing program? They could choose to comply with the rule through the use of several options, including:

- (1) Form consortiums made up of owner operators that would develop a centrally administered random testing program.
 - (2) Form consortiums, and hire a contractor to develop and implement a random testing program.
 - (3) Contract separately with an outside company that would set-up and provide these services.
 - (4) Have existing industry-related groups (e.g., trade associations) set-up drug programs in which small entities could participate.
 - (5) Arrange to be included as a part of a larger company's drug testing program.
4. *Testing based on reasonable cause* would arise from either of two circumstances. The first is involvement in the commission of serious or repetitive errors in the job environment which fall short of accidents, but could lead to an accident and are reasonably likely to be linked to drug use. Because of the subjectivity of the criteria, at least two of the employee's supervisory personnel would have to concur that there is reasonable cause to believe that an error or errors have been committed,

that drug use is indicated, and that the employee should be tested.

Second, reasonable cause testing could be initiated on the basis of a belief that an individual is using or is under the influence of a prohibited drug while on duty. Changes in character or behavior may be symptomatic of drug use. Such changes are often characterized by mood swings and changes in appearance, attitude, speech, and work habits. Because of the subjectivity of the criteria, at least two of the employee's supervisory personnel would have to concur that there is reasonable cause to believe that drug use exists and that the employee should be tested. RSPA does not seek to have this type of testing used to harass an employee. Therefore, commenters should address how to protect a disfavored employee from potential harassment through drug testing. Should there be a limit to the number of times an employee can be subjected to reasonable cause testing, in order to prevent unwarranted harassment? With respect to this type of reasonable cause for small operators, it may not be possible to require two supervisors. Comment is requested concerning possible exemptions for small operators from part or all of reasonable cause drug testing. Commenters also should present any data on the effectiveness of any existing programs that they are aware of which use reasonable cause or suspicion-type testing.

Employee Assistance Program (EAP)

An employee assistance program under the proposed rule would have three components—rehabilitation, education, and training.

EAP Rehabilitation Program

The proposed rule would require under three of the proposed options, that the responsible party provide access to an EAP Rehabilitation Program for certain employees who are not considered to be temporary employees under the proposed rule.

The operator may establish the EAP as a part of its internal personnel services or the employer may make arrangements with an outside entity to provide EAP services to an employee. The employer is not required to pay for the EAP Rehabilitation Program. Commenters should address: Who should be afforded EAP services and under what circumstances? What is the estimated level of voluntary enrollment in EAP services at sampling rates of 125 percent and at 12.5 percent under each rehabilitation option?

We believe that there may be some employees in the industry whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short-term hire tested positive for drugs, the end of the scheduled employment term might come before the completion of a rehabilitation program. Therefore, we do not propose to require employers to offer an opportunity for rehabilitation to temporary employees who are hired for a period of less than 90 days. That is, if such employees test positive, they could be dismissed immediately.

However, we recognize that some employees hired on a "temporary" basis are actually reemployed. Some of these employees are recurring seasonal hires, others are continually reemployed at the end of each specified term. These persons are regular members of the industry, and thus should not be excluded from the opportunity for rehabilitation and reemployment. Under the proposal, an employee would not be considered temporary for the purposes of rehabilitation, if he or she is eligible for reemployment by the same employer within 90 days following the end of the employment term. We specifically request comments on (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employee.

EAP Education Program

Under the proposed rule an EAP education program would be required to include, at a minimum, the display and distribution of informational material on the nature and effects of drugs, and the operator's policy regarding drugs and drug use in the workplace.

EAP Training Program

Under the proposed rule each operator would be required to conduct an EAP training program annually for all employees. The training program would be required to include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug or alcohol use, and abuse; and documentation of training given to employees and to the operator's supervisory personnel. EAP training programs for employees and supervisory personnel would consist of at least 60 consecutive minutes for each employee and supervisor each year. Is 60 minutes appropriate, or is some other period justified? Should RSPA specify the minimum training time required? Once all employees have received training,

should the annual training requirement apply only to supervisors and to new employees?

Rehabilitation Options

The NPRM proposes four different options concerning the circumstances under which employees would be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Once rehabilitated, the employee could be reinstated into his or her prior position. The second option would give rehabilitation rights to employees who come forward voluntarily or who are identified as drug users during random tests, but would not require that the same opportunity be afforded drug users identified in post-accident or reasonable cause tests; those not afforded the right to rehabilitation could be discharged. In the third option, only volunteers could claim rehabilitation rights. Anyone testing positive for drugs could be fired immediately. Under the fourth option, rehabilitation would not be mandated. The operator would be able to decide what its policy regarding rehabilitation would be. In all cases, of course, employers would be free to offer more rehabilitation options than the minimums we propose. Thus, for example, an employer could voluntarily offer two chances at rehabilitation rather than one. On the other hand, the proposed rule does not require the employer to offer an opportunity for rehabilitation to a repeat offender, to persons not currently employed by the employer who fail a preemployment test, to persons who have been found to use illicit drugs on the job, or to persons who refuse to take a required drug test.

Each of these approaches has its own merits. For example, the broad rehabilitation program that would be provided by the first option is likely to maximize the benefits to society, by ensuring that more drug users will get the help they need. If users are simply fired, they may lose access to, and perhaps incentive to use, rehabilitation services, and they will continue to be drug users. However, it could be argued that employees who are found to be drug users through post-accident or reasonable cause tests are less deserving of an opportunity for rehabilitation. Unlike reasonable cause or post-accident testing, random testing is not triggered by an event that provides a particularized basis for inquiry as to the fitness of a given employee. Further, it is not accompanied by blood testing or a blood test option,

an investigation technique that can yield information more specific to current fitness. Therefore, there may be good reason to offer abatement or rehabilitation only to employees whose drug use is identified by self-referral or random testing. The third alternative is to require no program of rehabilitation and abatement following a positive test. This alternative is likely to be lower in direct costs, because rehabilitation would only be required for employees who seek it voluntarily, but for the same reason this alternative might produce less in societal benefits. Finally, not mandating rehabilitation may provide the most flexibility to labor and management to determine the need for and shape of any rehabilitation program. It also could provide deterrence to drug use and thus may yield large benefits with low costs. Commenters should address whether this alternative would be effective for the pipeline industry. How would this alternative affect the deterrence value of the proposal? What impact would it have on the costs and benefits? Would not requiring rehabilitation foster other approaches to combating drug usage.

What are the estimated costs of individual EAP rehabilitation services under each rehabilitation option? To what extent would each of the four alternatives raise or lower costs and benefits? Is it reasonable to assume that more drug users would self-identify under Options 3 and 4 than under either of the other two options? Are the costs of required rehabilitation programs warranted by the reduction in societal costs resulting from drug abuse? Which of these or other alternatives offers the greatest benefits at the lowest cost? We are especially interested in comments on how to implement opportunities for rehabilitation among smaller operators.

Individuals who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions would be required to, at a minimum, have two unannounced drug tests in the twelve months following the completion of an EAP. The specific time of the test would be left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP and the first post-EAP test would be required to be sufficient to ensure that the post-EAP test was not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing would be cause for termination.

Privacy

We specifically request public comment on what, if any, procedures and safeguards we should prescribe to assure adequate protection of the privacy of the persons being tested. We are particularly concerned with the circumstances under which test results would be given to persons other than the employer and the employee. For example, should test results be submitted to a prospective future employer? If so, there would appear to be several ways in which such data could reach the future employer. The data could be given at the request of the future employer, at the discretion of the employer conducting the test, or at the request of the employee. A subsequent employer could require that an applicant either disclose prior drug test results or give the employer permission to obtain prior drug test results as a condition of employment. Another option we are considering is authorizing the release of test results to future employers only in specified circumstances, such as cases where the employee had been discharged for refusing to undergo rehabilitation or had failed a second test after rehabilitation. In addition to future employers, other individuals may want access to the results of drug tests conducted under this rule. RSPA could prohibit access to test results by the general public, including the news media. Moreover, other government agencies may want the data for statistical, regulatory, or law enforcement purposes. We request comments on whether we can and should prohibit access to the results of the drug program to individuals other than the employer and the employee.

The potential for release of data may also complicate the issue of an employee's right to contest the results of a test. A urine sample that had been subject to tampering could unjustly end an employee's career even with another employer, and it might be necessary to permit the employee to challenge the integrity of the test procedure. We invite comments on what procedures should be adopted and whether the types of procedures afforded an employee should vary, depending upon the consequences of a positive test.

We would also like interested persons to discuss whether any final rule based on those proposals should treat the privacy issue of pre-employment tests differently from random or reasonable cause tests. Should we mandate the destruction of the results of pre-employment tests for persons not hired? If not, what access should be allowed to them?

Recordkeeping

Related to the issue of privacy is the issue of what records should be kept. The proposed rule would require that each operator maintain a record concerning the results of its drug testing program. This record would summarize and coordinate information on the following topics for each type of testing required: 1. The functions performed by the employees tested; 2. the prohibited drugs that were used by employees; 3. the ultimate disposition in each case (e.g., rehabilitation, termination); 4. the age of each employee who tested positive for prohibited drugs; and 5. the number of employees tested. This raises privacy concerns. Should we distinguish between general statistical data (the total number of positive tests at a company in a month or year) and particularized data (name-specific data). Small operators who employ few individuals will have difficulty concealing the identity of individuals tested under the proposed drug program. Since small operators will have fewer individuals to test in any given time period, even seemingly neutral statistical data would result in identification of an individual employee who was dismissed as a result of a confirmed positive test result. This potential problem may be exacerbated if we require that only a small percentage of employees be tested each year.

The proposed rule would require that the operator or an entity contracting with the operator, permit RSPA and State Pipeline Safety Representatives to have access to the record. We request comments on what type of records should be kept, including whether records should be kept of the number of times an employee has been tested and found negative for drugs. This would enable operators to evaluate the

effectiveness of their programs and to make appropriate modifications. Should employers keep records of pre-employment positive tests? If records are to be kept, for how long should they be retained?

Regulatory Impact

Economic Summary

RSPA has prepared a Draft Evaluation of the economic impact of this proposal, which is available for review in the docket. The following is a summary of the preliminary industry cost impact and benefit evaluation for the proposed rules to require pipeline operators to have a drug program for employees who perform sensitive safety and security-related functions. RSPA has analyzed the first three alternatives concerning rehabilitation for costs and benefits using 125 percent and 12.5 percent annual sampling rates for random testing. Under the first option, an employee who comes forward voluntarily or tests positive for illicit drug use for the first time would be eligible for rehabilitation. The second option would afford rehabilitation rights to employees identified as illicit drug users during random tests, but would not require employers to afford the same opportunity to drug users identified in post-accident or reasonable cause tests. Under the third option, only volunteers who self identify would be afforded rehabilitation rights. RSPA has estimated that first year costs associated with the drug program would range from a low of \$3.5 million under the third option at a 12.5 percent sampling rate to a high of \$31.5 million under the third option at a 125 percent sampling rate.

As shown in a June 1984 U.S. Department of Health and Human Services report entitled "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness: 1980", the economic cost to society at large from drug abuse is estimated to be \$66 billion annually.

The 1988 GAO Report cited a Research Triangle Institute study, "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness",

which estimated that the economic cost of drug abuse to the United States during 1983 was \$50.7 billion. This study, prepared for the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), estimated "the costs of drug abuse to society for crime . . . reduced productivity, treatment, and other items. The estimate did not include items such as social costs (e.g., family conflict, suicide) and the value of the illicit drugs consumed." A copy of the GAO report has been placed in the docket. As RSPA obtains other data on drug use, it will place that date in the docket.

The estimated 116,500 employees in the pipeline industry covered by these proposals represent approximately .05 percent of the United States population of 236,000,000. Thus, if these proposals induce current drug users in the pipeline industry to abandon drug use, RSPA estimates that there would be a savings to society of \$33 million.

Furthermore, RSPA has determined that the maximum annual benefit of preventing pipeline accidents due to human error (including drug abuse) would be \$24.9 million. RSPA specifically invites comment on its Draft Evaluation, including its analysis of annual costs and benefits. Commenters should be aware that other operating administrations within the Department of Transportation also are proposing drug testing programs. Elsewhere in today's Federal Register are NPRMs issued by the Urban Mass Transportation Administration and the Coast Guard. In addition, the Federal Aviation Administration published an NPRM in the Federal Register on March 14, 1988 (53 FR 8368); the Federal Railroad Administration's NPRM was published on May 10, 1988 (53 FR 16640); and the Federal Highway Administration published its NPRM on June 14, 1988 (53 FR 22268). Each of these rulemakings addresses the costs and benefits of the proposals and are generally consistent with one another. In some instances, however, and generally as a result of differences in the industries affected, the assumptions differ from those discussed in this proposed rulemaking. Obviously, changes in assumptions could affect the costs and benefits. Because of the nature of some industries, costs for similar elements also may vary or could vary enough to warrant sensitivity analyses. Other changes in assumptions, such as test costs or rehabilitation costs, also can have an effect on the analysis. Commenters may find it helpful to review the notices of proposed rulemaking or the economic analyses

prepared by the other operating administrations. Comparisons may aid commenters in reviewing data on this proposal and in formulating comments. In reviewing the economic analysis and the basic assumptions made, commenters should address specific areas where there agree or disagree with the assumptions and the basis for the comment. Commenters are directed to the other rulemakings and their assumptions as a source of information in submitting comments. A copy of each of the documents has been placed in the docket.

Regulatory Flexibility Determination

These proposed rules would apply to all entities subject to RSPA's jurisdiction under Parts 192, 193 or 195, other than operators of master meter systems. Operators or master meter systems constitute the bulk of small businesses or other small entities that operate gas pipeline systems. There are few, if any, small entities that operate hazardous liquid pipeline subject to Part 195 or liquefied natural gas facilities that are subject to Part 193. Therefore, I certify that pursuant to Section 605 of the Regulatory Flexibility Act, these proposed rules will not, if adopted as final have a "significant economic impact on a substantial number of small entities."

Paperwork Reduction Act

The proposed rules would require, under 49 CFR 192.605, 193.2711, and 195.402 that the operator develop plans and maintain records on its drug testing program, and provide RSPA and State pipeline officials with access to those plans and records. In accordance with the Paperwork Reduction Act of 1980 (P.L. 96-511), these information collection requirements will be submitted to the Office of Management and Budget for approval. Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503; Attention: RSPA Desk Officer. A copy of these comments should also be submitted to the RSPA Docket as indicated above under "ADDRESS."

Federalism Implications

RSPA has reviewed the proposals in this Notice in light of the Federalism considerations set forth in Executive Order 12612. Although the proposals relate to requirements that would have to be adopted by States participating in the Federal-State relationships prescribed in the NGPSA and the

HLPSA, the impact of those requirements based upon currently available information would not be substantial. In addition, RSPA does not expect that those requirements would have a substantial direct effect on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government. Accordingly, preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Significance

These proposed regulations are considered to be non-major under Executive Order 12291. However, they are significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 28, 1979) because they concern a matter on which there is substantial public interest.

List of Subjects

49 CFR Part 192

Pipeline safety, Operation, Maintenance, Reporting and recordkeeping requirements.

49 CFR Part 193

LNG facility, Operation, Maintenance, Reporting and recordkeeping requirements.

49 CFR Part 195

Pipeline safety, Hazardous liquids, Operation, Maintenance, Reporting and recordkeeping requirements.

Request for Public Comment

RSPA proposes to amend Parts 192, 193, and 195 of Title 49, Code of Federal Regulations, as set forth below. RSPA solicits comments on all aspects of the proposed rule and the data and analysis advanced in explanation of the proposed rules, whether through written submissions, or participation at the public hearings, or both. RSPA may make changes in the final rule based on comments received in response to this notice.

Issued in Washington, DC on June 29, 1988.
M. Cynthia Douglass,
Administrator.

PART 192—[AMENDED]

In consideration of the foregoing, RSPA proposes to amend 49 CFR Part 192 as follows:

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1671 and 1604; and 49 CFR 1.53.

2. Section 192.603 would be amended by adding a new paragraph (c) to read as follows:

§ 192.603 General provisions.

(c) No operator may knowingly allow the performance of any function specified in Part II of Appendix E to this part by any individual who:

- (1) Fails a drug test as defined in Appendix E, and fails to successfully complete rehabilitation as defined in Appendix E, Section VII.
- (2) Refuses to take a drug test required under Appendix E by the operator's drug testing program, or
- (3) Has a prohibited drug in his or her system.

3. Section 192.605 would be amended by adding new a paragraph (f) to read as follows:

§ 192.605 Essentials of operating and maintenance plan.

(f) A drug testing program meeting the requirements prescribed in Appendix E to this part, except that an operator of a master meter system, as defined by 49 CFR 191.3 of this subchapter, is not required to have such a program for that system.

4. A new Appendix E would be added at the end of Part 192:

Appendix E—Drug Testing Program

This appendix contains the standards for, and components of, a drug testing program required by this part.

I. Definitions.

For the purposes of this appendix: "Accident" means an incident as defined in 49 CFR 191.3.

"Employee" is a person who performs either directly or by contract, a function listed in section II of this appendix for a pipeline operator.

"Failing a drug test" means that the confirmation test result shows positive evidence of the presence of a prohibited drug in an employee's system.

"HHS Guidelines" Drug testing programs subject to the requirements of this Part shall be operated consistent with the "Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" published by the Department of Health and Human Services (53 FR 11970, April 11, 1988). Drug testing programs governed by the requirements of this Part shall use only drug testing laboratories certified by the Department of Health and Human Services under the guidelines. These guidelines are available for inspection and copying at RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Room 8417.

"Passing a drug test" means that initial testing or confirmation testing does not show

evidence of the presence of a prohibited drug in an employee's system at levels above those prescribed in section III of this appendix.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1961 & 1967 Cum.P.P.), unless the drug is being used as authorized by, and in accordance with, a legal prescription or exemption under Federal, State, or local law.

II. Employees Who Must Be Tested

Employees who performs for an operator sensitive safety and security-related functions must be tested pursuant to the operator's drug testing program.

III. Substances for Which Testing Must be Conducted

Each operator shall test a specimen from each employee who perform a function listed in section II of this appendix for evidence of marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) during each test required by section IV of this appendix in conformity with the HHS Guidelines. An operator may test for any prohibited drug in conformity with the HHS Guidelines in a post-accident or reasonable cause test.

IV. Types of Drug Testing Required

Each operator shall conduct the following types of testing:

A. *Pre-employment testing.* No operator may hire, or, in the case of a person who is hired by a contractor, allow the use of, any person to perform a function listed in section II of this appendix unless the applicant passes an initial test or confirmation test specified in the HHS Guidelines. If an initial test is positive, confirmation testing as specified in the HHS Guidelines must be done. The operator shall advise an applicant that pre-employment testing will be conducted to determine the presence of any prohibited drug in the applicant's system. If the applicant fails the confirmation test, the applicant shall not be hired. The applicant may withdraw his or her application for employment and the operator shall not disclose the failure or the results of a failed test to any person.

B. *Post-accident testing.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and whose performance of that function is directly related to an accident.

C. *Random testing.* Each operator annually shall collect a specimen from, and test randomly, up to 125 percent of all employees who perform a function listed in section II of this appendix. The operator shall select employees for random testing using a random number table or a computer-based number generator which is matched with an employee's social security number, payroll identification number, or other appropriate identification number.

D. *Testing based on reasonable cause.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and who is involved in the commission of serious or repetitive errors which could lead to an accident and which may be linked to drug

use. At least two of the employee's supervisors shall substantiate and concur in the determination that there is reasonable cause to believe that drug use is indicated in the commission of an error or errors, and that the employee should be tested. In addition, if at least two of the employee's supervisors substantiate and concur in the determination that there is reasonable cause to believe that the employee is using prohibited drugs, on the basis of physical indications of probable intoxication (e.g., the employee's speech or physical appearance), the employer should test the employee.

V. Specimen Collection and Testing Procedures

Each operator must conform to the HHS Guidelines during collection, and initial and confirmation testing of specimens.

VI. Employee Assistance Program (EAP)

A. *EAP Rehabilitation Program—Option 1.* 1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee, who is not a temporary employee, who is referred to an EAP Rehabilitation Program as a result of receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. EAP Rehabilitation Program—Option 2.

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee, who is not a temporary employee, who, as a result of a random drug test, is referred to an EAP Rehabilitation Program after receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may

make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 3.* 1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 4.* 1. Each operator shall determine its policy concerning whether rehabilitation will be offered.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. Individuals who are offered an opportunity for rehabilitation provided voluntarily by the operator, who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the

time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test should be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified.

B. *EAP education program.* Each EAP education program must include, at minimum, the display and distribution of informational material on the nature and effects of drugs, and the operator's policy regarding drugs and drug use in the workplace.

C. *EAP training program.* Each EAP training program must be conducted annually for employees. The training program must include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug or alcohol use and abuse; and documentation of training given to employees. EAP training programs for employees must consist of at least 60 consecutive minutes for each employee and supervisor each year.

VII. Action That May Be Taken by an Operator

An operator may not discipline or terminate an employee for drug-related causes, who is not a temporary employee, if the employee successfully completes rehabilitation and receives a recommendation for return to duty by the rehabilitation program director. However, the employee must be temporarily moved from his or her position until rehabilitation is successfully completed, and the required recommendation is obtained from the rehabilitation program director. An operator is not required to offer rehabilitation to an employee who refuses a required drug test or to one who has been found to use a prohibited drug while on the job.

VIII. Operator's Drug Testing Plan

A. Each operator shall include a drug testing plan, which conforms to this Appendix and to the HHS Guidelines, in its operating and maintenance plan by 120 days after the effective date of this rule. The drug testing plan must be implemented within 180 days after the plan is incorporated in the operating and maintenance plan.

B. The plan must provide the name and address of the laboratory which has been selected by the operator for analysis of the specimens collected during the drug testing program.

C. With respect to those employees who are hired by a contractor to perform functions for the operator specified in section II of this appendix pursuant to a contract with the operator, the operator may provide by contract that the testing, training and rehabilitation required by its drug testing plan be carried out by the contractor provided that: (1) The operator remains responsible for ensuring that the terms of its drug testing plan are complied with, (2) the operator remains responsible for ensuring that an employee who fails the testing does not perform any functions specified in section II until successful rehabilitation has taken place, and (3) the contractor shall allow access to property and records by the

operator, by State Pipeline Safety Representatives, and by RSPA for the purpose of monitoring the operator's compliance with the requirements of this appendix.

IX. Recording Results of Drug Testing Program

Each operator shall maintain a record of the results of its drug testing program. Each operator shall permit duly authorized RSPA and State Pipeline Safety Representatives to have access to the record. The record shall include the following information categorized by method of testing:

1. The functions performed by the employees who tested positive for prohibited drug.
2. The prohibited drugs which were used by the employees.
3. The disposition of employees who failed the test (e.g., termination, rehabilitation, leave without pay).
4. The age of each employee who failed a drug test.
5. The number of employees tested.

PART 193—(AMENDED)

In consideration of the foregoing, RSPA proposes to amend 49 CFR Part 193 as follows:

1. The authority citation for Part 193 would be revised to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; and 49 CFR 1.53.

2. Section 193.2707 would be amended by adding a new paragraph (d) to read as follows:

§ 193.2707 Operations and maintenance.

(d) No operator may knowingly allow the performance of any function specified in Part II of Appendix B to this part by any individual who:

- (1) Fails a drug test as defined in Appendix B, and fails to successfully complete rehabilitation as defined in Appendix B Section VII.
- (2) Refuses to take a drug test required under Appendix B by the operator's drug testing program, or
- (3) Has a prohibited drug in his or her system.

3. Section 193.2711 would be revised to read as follows:

§ 193.2711 Personnel health.

Each operator shall follow a written plan to verify that personnel assigned operating, maintenance, security, or fire protection duties at the LNG plant do not have any physical condition that would impair performance of their assigned duties. The plan must be designed to detect both readily observable disorders, such as physical handicaps or injury, and conditions requiring professional examination for discovery. The plan must also include a

drug testing program meeting the requirements prescribed in Appendix B to this part.

4. Appendix B would be added at the end of Part 193:

Appendix B—Drug Testing Program

This appendix contains the standards for, and components of, a drug testing program required by this part.

I. Definitions

For the purposes of this appendix: "Accident" means an incident as defined in 49 CFR 191.3.

"Employee" is a person who performs either directly or by contract, a function listed in section II of this appendix for a pipeline operator.

"Failing a drug test" means that the confirmation test results shows positive evidence of the presence of a prohibited drug in an employee's system.

"HHS Guidelines." Drug testing programs subject to the requirements of this Part shall be operated consistent with the "Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" published by the Department of Health and Human Services (53 FR 11970, April 11, 1988). Drug testing programs governed by the requirements of this Part shall use only drug testing laboratories certified by the Department of Health and Human Services under the guidelines. These guidelines are available for inspection and copying at RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Room 8417.

"Operator" is a pipeline operator who is subject to the NCPSPA or the HLPSPA.

"Passing a drug test" means that initial testing or confirmation testing does not show evidence of the presence of a prohibited drug in an employee's system at levels above those prescribed in the HHS Guidelines.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum.P.P.), unless the drug is being used as authorized by, and in accordance with, a legal prescription or exemption under Federal, state, or local law.

II. Employees Who Must Be Tested.

Employees who perform sensitive safety and security-related functions for an operator involving the operating or maintaining of an LNG facility must be tested pursuant to the operator's drug testing program.

III. Substances for Which Testing Must be Conducted

Each operator shall test a specimen from each employee who performs a function listed in section II of this appendix for evidence of marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) during each test required by section IV of this appendix in conformity with the HHS Guidelines. An operator may also test for any other prohibited drug in conformity with the HHS Guidelines during a post-accident or reasonable cause test.

IV. Types of Drug Testing Required

Each operator shall conduct the following types of testing:

A. *Pre-employment testing.* No operator may hire, or, in the case of a person who is hired by a contractor, allow the use of, any person to perform a function listed in section II of this appendix unless the applicant passes an initial test or confirmation test specified in the HHS guidelines. If an initial test is positive, confirmation testing as specified in the HHS Guidelines must be done. The operator shall advise an applicant that pre-employment testing will be conducted to determine the presence of any prohibited drug in the applicant's system. If the applicant fails the confirmation test, the applicant shall not be hired. The applicant may withdraw his or her application for employment and the operator shall not disclose the failure or the results of a failed test to any person.

B. *Post-accident testing.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and whose performance of that function is directly related to an accident.

C. *Random testing.* Each operator annually shall collect a specimen from, and test randomly, up to 125 percent of all employees who perform a function listed in section II of this appendix. The operator shall select employees for random testing using a random number table or a computer-based number generator which is matched with an employee's social security number, payroll identification number, or other appropriate identification number.

D. *Testing based on reasonable cause.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and who is involved in the commission of serious or repetitive errors which could lead to an accident and which may be linked to drug use. At least two of the employee's supervisors shall substantiate and concur in the determination that there is reasonable cause to believe that drug use is indicated in the commission of an error or errors, and that the employee should be tested. In addition, if at least two of the employee's supervisors substantiate and concur in the determination that there is reasonable cause to believe that the employee is using prohibited drugs, on the basis of physical indications of probable intoxication (e.g., the employee's speech or physical appearance), the employer should test the employee.

V. Specimen Collection and Testing Procedures

Each operator must conform to the HHS Guidelines during collection, and initial and confirmation testing of specimens.

VI. Employee Assistance Program (EAP)

A. *EAP Rehabilitation Program—Option 1.* 1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee who is not a temporary employee and who is referred to an EAP

Rehabilitation Program as a result of receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 2.* 1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee who is not a temporary employee and who, as a result of a random drug test, is referred to an EAP Rehabilitation Program after receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 3.* 1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. EAP Rehabilitation Program—Option 4. 1. Each operator shall determine its policy concerning whether rehabilitation will be offered.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. Individuals who are offered an opportunity for rehabilitation provided voluntarily by the operator, who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test should be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified.

B. EAP education program. Each EAP education program must include at minimum, the display and distribution of informational material on the nature and effects of drugs, and the operator's policy regarding drugs and drug use in the workplace.

C. EAP training program. Each EAP training program must be conducted annually for employees. The training program must include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug or alcohol use and abuse; and documentation of training given to employees. EAP training programs for employees must consist of at least 60 consecutive minutes for each employee each year.

VII. Action That May Be Taken by an Operator

An operator may not discipline or terminate an employee for drug-related

causes, who is not a temporary employee, if the employee successfully completes rehabilitation and receives a recommendation for return to duty by the rehabilitation program director. However, the employee must be temporarily moved from his or her position until rehabilitation is successfully completed, and the required recommendation is obtained from the rehabilitation program director. An operator is not required to offer rehabilitation to an employee who refuses a required drug test or to one who has been found to use a prohibited drug while on the job.

VIII. Operator's Drug Testing Plan

A. Each operator shall develop and implement a drug testing plan, which conforms to this Appendix and the HHS Guidelines, and incorporate it into its Personnel Health Plan by 120 days after the effective date of this rule. The drug testing plan must be implemented within 180 days after the plan is incorporated in its Personnel Health Plan.

B. The plan must provide the name and address of the laboratory which has been selected by the operator for analysis of the specimens collected during the drug testing program.

C. With respect to those employees who are hired by a contractor to perform functions for the operator specified in section II of this appendix pursuant to a contract with the operator, the operator may provide by contract that the testing, training and rehabilitation required by its drug testing plan be carried out by the contractor provided that: (1) The operator remains responsible for ensuring that the terms of its drug testing plan are complied with, (2) the operator remains responsible for ensuring that an employee who fails the testing does not perform any functions specified in section II until successful rehabilitation has taken place, and (3) the contractor shall allow access to property and records by the operator, by State Pipeline Safety Representatives and by RSPA for the purpose of monitoring the operator's compliance with the requirements of this appendix.

IX. Recording Results of Drug Testing Program

Each operator shall maintain a record of the results of its drug testing program. Each operator shall permit duly authorized RSPA and State Pipeline Safety Personnel to have access to the record. The record shall include the following information categorized by method of testing:

1. The functions performed by the employees who tested positive for prohibited drug.
2. The prohibited drugs which were used by the employees.
3. The disposition of employees who failed the test (e.g., termination, rehabilitation, leave without pay).
4. The age of each employee who failed a drug test.
5. The number of employees tested.

PART 195—[AMENDED]

In consideration of the foregoing, RSPA proposes to amend 49 CFR Part 195 as follows:

5. The authority citation for Part 195 would be revised to read as follows:

Authority: 40 App. U.S.C. 2002; and 40 CFR 1.53.

6. Section 195.401 would be amended by adding a new paragraph (d) to read as follows:

§ 195.401 General requirements.

(d) No operator may knowingly allow the performance of any function specified in Part II of Appendix B to this part by any individual who (1) fails a drug test as defined in Appendix B and fails to complete successful rehabilitation as described in Appendix B VII, (2) refuses to take a drug test required pursuant to Appendix B by the operator's drug testing program, or (3) has a prohibited drug in his or her system.

7. Section 195.402 would be amended by adding a new paragraph (c)(14) to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

(c) Maintenance and normal operations.

(14) Establishing and implementing a drug training program that meets the requirements of Appendix B to this part.

8. A new Appendix B would be added at the end of Part 195:

Appendix B—Drug Testing Program

I. Definitions

For the purposes of this appendix, the following definitions apply:

"Accident" means a failure required to be reported in accordance with Subpart B of this part.

"Employee" is a person who performs either directly or by contract, a function listed in section II of this appendix for a pipeline operator.

"Failing a drug test" means that the confirmation test result shows positive evidence of the presence of a prohibited drug in an employee's system.

"HHS Guidelines". Drug testing programs subject to the requirements of this Part shall be operated consistent with the "Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" published by the Department of Health and Human Services (53 FR 11970, April 11, 1988). Drug testing programs governed by the requirements of this Part shall use only drug testing laboratories certified by the

Department of Health and Human Services under the guidelines. These guidelines are available for inspection and copying at RSPA, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590, Room 8417.

"Operator" is a pipeline operator who is subject to the NGPSA or the HLPSSA.

"Passing a drug test" means that initial testing or confirmation testing does not show evidence of the presence of a prohibited drug in an employee's system at levels above those prescribed in the HHS Guidelines.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. § 801.812 (1981 & 1987 Cum. P.P.), unless the drug is being used as authorized by, and in accordance with, a legal prescription or exemption under Federal, state, or local law.

II. Employees Who Must Be Tested

Employees who perform for an operator sensitive safety and security-related functions must be tested pursuant to the operator's drug testing program.

III. Substances for Which Testing Must Be Conducted

Each operator shall test a specimen from each employee who performs a function listed in section II of this appendix for evidence of marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) during each test required by section IV of this appendix in conformity with the HHS Guidelines. An operator may test for any other prohibited drug in conformity with the HHS Guidelines in a post-accident or reasonable cause test.

IV. Types of Drug Testing Required

Each operator shall conduct the following types of testing:

A. Pre-employment testing. No operator may hire, or, in the case of a person who is hired by a contractor, allow the use of, any person to perform a function listed in section II of this appendix unless the applicant passes an initial test or confirmation test specified in the HHS Guidelines. If an initial test is positive, confirmation testing as specified in the HHS Guidelines must be done. The operator shall advise an applicant that pre-employment testing will be conducted to determine the presence of any prohibited drug in the applicant's system. If the applicant fails the confirmation test, the applicant shall not be hired. The applicant may withdraw his or her application for employment and the operator shall not disclose the failure or the results of a failed test to any person.

B. Post-accident testing. Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and whose performance of that function is directly related to an accident.

C. Random testing. Each operator annually shall collect a specimen from, and test randomly, up to 125 percent of all employees who perform a function listed in section II of this appendix. The operator shall select employees for random testing using a random number table or a computer-based number generator which is matched with an

employee's social security number, payroll identification number, or other appropriate identification number.

D. Testing based on reasonable cause. Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and who is involved in the commission of serious or repetitive errors which could lead to an accident and which may be linked to drug use. At least two of the employee's supervisors shall substantiate and concur in the determination that there is reasonable cause to believe that drug use is indicated in the commission of an error or errors, and that the employee should be tested. In addition, if at least two of the employee's supervisors substantiate and concur in the determination that there is reasonable cause to believe that the employee is using drugs, on the basis of physical indications of probable intoxication (e.g., the employee's speech or physical appearance), the employer should test the employee.

V. Specimen Collection and Testing Procedures

Each operator must conform to the HHS Guidelines during collection, and initial and confirmation testing of specimens.

VI. Employee Assistance Program (EAP)

A. EAP Rehabilitation Program—Option 1. 1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

- a. Each employee who is not a temporary employee and who voluntarily enrolls in an EAP Rehabilitation Program.
- b. Each employee who is not a temporary employee and who is referred to an EAP Rehabilitation Program as a result of receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. EAP Rehabilitation Program—Option 2. 1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

- a. Each employee who is not a temporary employee and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee who is not a temporary employee and who, as a result of a random drug test, is referred to an EAP Rehabilitation Program after receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. EAP Rehabilitation Program—Option 3. 1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

- a. Each employee who is not a temporary employee and who voluntarily enrolls in an EAP Rehabilitation Program.
- b. Each employee who is not a temporary employee and who is referred to an EAP Rehabilitation Program as a result of receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. EAP Rehabilitation Program—Option 4. 1. Each operator shall determine its policy concerning whether rehabilitation will be offered.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. Individuals who are offered an opportunity for rehabilitation provided

voluntarily by the operator, who successfully complete and EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test should be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified.

B. EAP education program. Each EAP education program must include, at minimum, the display and distribution of informational material on the nature and effects of drugs, and the operator's policy regarding drugs and drug use in the workplace.

C. EAP training program. Each EAP training program must be conducted annually for employees. The training program must include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug or alcohol use and abuse; and documentation of training given to employees. EAP training programs for employees must consist of at least 60 consecutive minutes for each employee each year.

VII. Action That May Be Taken by an Operator

An operator may not discipline or terminate an employee for drug-related

causes, who is not a temporary employee, if the employee successfully completes rehabilitation and receives a recommendation for return to duty by the rehabilitation program director. However, the employee must be temporarily moved from his or her position until rehabilitation is successfully completed, and the required recommendation is obtained from the rehabilitation program director. An operator is not required to offer rehabilitation to an employee who refuses to take a required drug test or to one who has been found to use a prohibited drug while on the job.

VIII. Operator's Drug Testing Plan

A. Each operator shall include a drug testing plan, which conforms to this Appendix and the HHS Guidelines, in its operating and maintenance plan by 120 days after the effective date of this rule. The drug testing plan must be implemented within 180 days after the incorporation of the plan in the operating and maintenance plan.

B. The plan must provide the name and address of the laboratory which has been selected by the operator for analysis of the specimens collected during the drug testing program.

C. With respect to those employees who are hired by a contractor to perform functions for the operator specified in section II of this appendix pursuant to a contract with the operator, the operator may provide by contract that the testing, training and rehabilitation required by its drug testing plan be carried out by the contractor provided that: (1) The operator remains responsible for ensuring that the terms of its

drug testing plan are complied with, (2) the operator remains responsible for ensuring that an employee who fails the testing does not perform any functions specified in section II until successful rehabilitation has taken place, and (3) the contractor shall allow access to property and records by the operator, by State Pipeline Safety Representatives, and by RSPA for the purpose of monitoring the operator's compliance with the requirements of this appendix.

IX. Recording Results of Drug Testing Program

Each operator shall maintain a record of the results of its drug testing program. Each operator shall permit duly authorized RSPA and State Pipeline Safety Personnel to have access to the record. The record shall include the following information categorized by method of testing:

1. The functions performed by the employees who tested positive for prohibited drug.
2. The prohibited drugs which were used by the employees.
3. The disposition of employees who failed the test (e.g., termination, rehabilitation, leave without pay).
4. The age of each employee who failed a drug test.
5. The number of employees tested.

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Part VIII

Department of Transportation

Urban Mass Transportation
Administration

49 CFR Part 653

Control of Drug Use in Mass
Transportation Operations; Notice of
Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 653

(UMTA Docket No. 88-F)

Control of Drug Use in Mass Transportation Operations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: UMTA is requesting comment on a proposed rule which would require a recipient of Federal transit funding to certify that it has established a comprehensive anti-drug program. The impetus for this action is the safety concern associated with the use of drugs by mass transportation workers in sensitive safety positions. The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in mass transit operations. Among other things, a recipient's anti-drug program would be required to mandate chemical testing for the use of drugs by those in certain sensitive safety positions. In addition, the NPRM sets out four options concerning rehabilitation for certain employees. Finally, a recipient's program would be required to include an employee assistance program.

DATES: Written comments should be received by September 6, 1988. Public hearings will be held in the following cities: Washington, DC, New York, Chicago, and Los Angeles. The dates and locations of the hearings will be published in a notice in the Federal Register soon.

ADDRESS: Written comments should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88-F, 400 7th Street SW., Room 9318, Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday. The dates and locations of the public hearings will be published soon in a Notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Franz K. Gimmler, Deputy Associate Administrator for Safety, or Judy Z. Meade, Drug and Alcohol Program Manager, Urban Mass Transportation Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2896.

SUPPLEMENTARY INFORMATION:

A. Background

Drug Abuse in American Society

Drug abuse constitutes a major societal problem. Statistics have been compiled and reported by the National Institute of Drug Abuse (NIDA) and by media polls. The results indicate that the use of drugs is widespread. Compared with 1979 and 1982 levels, the 18-25 year old group was most likely to have stabilized or decreased their use of most drugs in 1985. In contrast, the 26 plus year old group was most likely to have increased their use of most drugs. For instance, preliminary data from the 1985 NIDA, "National Survey on Drug Abuse," indicate the following:

- In the 18-25 age category:
 - 80.5 percent reported using marijuana sometime during their life;
 - 21.9 percent reported using marijuana within the past month;
 - 25.2 percent reported using cocaine sometime during their life;
 - 7.7 percent reported using cocaine within the past month.
- In the age 26 and over category:
 - 27 percent reported using marijuana sometime during their life;
 - 9.5 percent reported using marijuana within the past month;
 - 9.5 percent reported using cocaine sometime during their life;
 - 2.1 percent reported using cocaine within the past month.

Because of statistics like the above, the public is concerned that an individual who uses drugs may jeopardize the personal safety of others. A recently issued special report from the Comptroller General of the United States titled "Controlling Drug Abuse: A Status Report" (1988 GAO Report) states that "Drug abuse in the United States has persisted at a very high level throughout the 1980's. Drug abuse is a serious national problem that adversely affects all parts of our society . . ."

There is widespread public belief that persons in safety-affecting occupations should not be abusers of drugs. POPULUS, Inc., and Decision/Making/Information conducted a national survey in 1986 on mandatory drug testing in the work place. The following are the results of that survey concerning the general public's views on drug testing of individuals in various occupations. Of those surveyed:

- 88% favored testing of airline pilots and air traffic controllers.
- 85% favored testing of police and other law enforcement agents.
- 81% favored testing of bus drivers.
- 75% favored testing of military personnel.

—75% favored testing employees of pharmaceutical companies.

The researchers concluded that the respondents believed "people who are responsible for the physical safety of others should be tested." Transportation workers affect public safety and the public supports testing these workers for the use of drugs. POPULUS, Inc., and Decision/Making/Information, "Mandatory Drug Testing: A Nation Divided . . . Or Is It?" Final Report, Greenwich, CT (July 1986).

Another 1986 survey examined the public's attitude toward drug testing of certain occupational groups. American Viewpoint, Inc., conducted a national telephone survey of 1,000 respondents. The results indicate, "by a margin of 76 percent to 22 percent, Americans agree that the drug crisis today is serious enough for mandatory drug testing." American Viewpoint, Inc., used a "forced choice" list that did not include the transportation modes when doing the survey. The persons surveyed placed the following occupations at the top of their list for mandatory drug testing:

- Police and firefighters (84%)
- Members of the armed forces (83%)
- Doctors and nurses (81%)

Eighty percent of the respondents indicated they would participate in voluntary testing if asked to do so by their employers. American Viewpoint, Inc., "U.S. National Survey," Alexandria, VA (August 1986).

Based on the above information, UMTA concludes that the public is concerned about drug abuse and supports drug testing of workers affecting public safety. Although drug abuse is more prevalent among the 25 and under age group, younger users are aging, and not stopping. The Department of Transportation in its regulatory role of protecting public safety, assumes that the problem of drug abuse among transportation workers does not differ significantly from that in the overall population.

Effects of Drug Use on Safety

This NPRM proposes to prohibit certain mass transportation workers in sensitive-safety positions from making non-approved uses of controlled substances, whether on duty or off duty. The premise of this proposal is very simple: Use of any controlled substance has the potential to degrade safety performance. In order to understand this premise, it is necessary to review what controlled substances are and what effects they have on individual persons.

Drugs are chemicals that affect the body (physiological or function-altering

effects) and often the mind (psychological or mind-altering effects). In broad summary, controlled substances are certain drugs identified by the government as having mind- or function-altering effects of a kind that create a potential for abuse and/or dependency. In comments before the Department of Transportation, the American Medical Association and other parties have agreed that, as a general matter, controlled substances constitute the primary drugs of interest (other than alcohol) with respect to transportation safety.

The Controlled Substances Act (28 U.S.C. 801 *et seq.*), among other things, establishes five schedules of controlled substances. Most controlled substances have at least some accepted medical applications, but those classified in Schedule I of the controlled substances list do not. Therapeutic use of certain controlled substances is frequently indicated both from a medical point of view and from the point of view of transportation safety, since proper use of drugs can control disorders that adversely affect performance while permitting the individual to continue productive employment. If therapeutic drugs are used at appropriate levels established by medical practitioners and care is taken to monitor undesired "side effects," safety will not be materially compromised. Indeed, in many cases, control of the underlying disorder will produce net safety benefits.

However, when individuals make non-medical use of controlled substances, they often use illegal drugs that have unacceptable mind-altering and function-altering characteristics. Similarly, when individuals self-administer legal drugs for non-medical purposes, or without proper medical supervision, adverse effects may result.

Drugs and Their Effects

Controlled substances are classified as—

- Narcotics, such as the opiate-based drugs;
- Central nervous system (CNS) depressants, such as the barbiturates, tranquilizers, or methaqualone;
- CNS stimulants, such as cocaine and amphetamines;
- Hallucinogens, such as LSD and PCP; and
- Cannabis (marijuana derivatives).

All controlled substances have a potential for abuse, and many have a high potential for dependence. The effects of these drugs vary to some extent by dosage, subject, frequency of use, route of ingestion, and pattern of use. An individual drug user may be affected differently by the same dosage

on different occasions as a result of degree of fatigue, physical disorders, biorhythms, acquired tolerance, and other factors.

It is important to note that the effects of drugs on human performance are not limited to a perceived "high" or other immediate mind-altering sensation experienced by the user. Instead, drug effects are complex and, in many cases, long-lived. The potential effects of drugs include—

- *Acute effects*, immediate physiological or psychological changes including the often sought-after change of mental state;
- *After effects*, delayed or prolonged physiological or psychological changes from individual doses or series of doses;
- *Chronic effects*, physiological or psychological changes, including changes in cognitive functions and biochemistry resulting from prolonged use; and
- *Withdrawal effects*, physiological or psychological changes resulting from termination of use.

All of these potential effects are of concern with respect to transportation safety. Yet only the acute effects correlate to some extent with blood concentrations of the impairing substance. For most drugs the extent of that correlation is unknown.

Perceived Dangers of Drugs in Transportation

The potential detrimental effects of drugs on performance are not a matter of speculation. There is a broad consensus among transportation companies, employees and related professionals that the use of alcohol and the non-medical use of controlled substances are not consistent with safety. Increasingly, knowledgeable safety professionals in transportation are beginning to realize that "off-duty use" and "on-duty use" are not completely distinct categories warranting entirely separate consideration. Instead, such uses are facets of an overall picture—i.e., overall fitness for duty involving "sensitive-safety" functions. Although there are differences of opinion among transportation safety experts concerning appropriate countermeasures, the need for effective countermeasures is almost universally acknowledged.

Experimental/Clinical Data

Developing opinion in the transportation industries is informed by a growing body of information related to drug effects on safety. Numerous behavioral studies and extensive clinical experience have established the fact that controlled substances can

powerfully alter the capacity of human beings to respond to their environment.

The following discussion will explain how drugs can and do adversely affect safety. Since each human being is, from a scientific view, a unique and whole organism, any such discussion will suffer from incompleteness and an absence of total analytical integration. However, available literature does offer useful information that can be placed in appropriate context and can guide the formulation of public policy. Among other sources, this discussion draws heavily on a draft study prepared by the Transportation Systems Center of the Department of Transportation. A copy of that report (Susman, Salvatore, Huntley and Hobbs, "Data Available on the Impact of Drug Use on Transportation Safety," April 17, 1978) will be placed in the docket of this rulemaking.

Drug effects can be analyzed in experimental studies from the point of view of their impact on particular human faculties. These faculties are, of course, merely aspects of human performance capabilities, and experimental studies often involve tasks that may call on more than one faculty. "Sensory function" refers to the ability of an individual to detect, feel, identify, discriminate between, and recognize objects and conditions. Visual acuity and perception are of greatest concern for transportation employees. "Motor performance" concerns that ability to make timely, accurate, and steady control movements. Both simple and complex reaction time, as well as tracking and steadiness, are skills of concern to transportation. "Vigilance" is a term used to describe the ability of an individual to detect and respond to extremely infrequent signals provided as a part of a low event or boring task. Maintaining attention and alertness is important for all transportation operators, particularly during night operations. "Cognitive functions" refers to the ability to classify, store, integrate and recall information. Judgment, memory, proclivity for risk-taking, and ability to manage multiple tasks are areas of particular concern for transportation.

The clear message from available evidence is that all controlled substances tend to affect adversely one or more of the faculties critical to safe conduct of transportation and transportation-related studies. In some cases, acute effects may be of greatest concern. With other drugs the primary hazards may relate to after effects and chronic effects. Some individuals may be unimpaired by some drugs at some dosages with respect to certain faculties

relevant to performance. Indeed, in certain discrete settings CNS stimulants may temporarily enhance the ability of an individual to sustain attention (as an acute effect). However, when the full range of effects is considered, no controlled substance can be eliminated as a source of significant concern.

Narcotics are among the drugs having the highest potential for abuse and dependence, and use of narcotics is therefore unlikely to be limited to off-duty hours. Narcotics dull the perception of external and internal stimuli and tend to induce a feeling of pleasant lethargy. These drugs can adversely affect motor performance, as well as vigilance. Although there is no extensive body of literature on the effects of narcotics on tasks common to transportation, standard therapeutic practice requires warning that narcotics should not be used by transportation or heavy-equipment operators except where side effects have been determined and then only under strict medical supervision.

CNS depressants include a variety of compounds that reduce sensitivity to stimuli, slow information processing, and impair the ability of the user to concentrate or focus attention.

Behavioral studies of the acute effects of CNS depressants have demonstrated decrements to monitor performance, including tracking skills, simple reaction time, and choice reaction time. Depressants may adversely affect sensory functions such as signal recognition and cognitive functions such as short-term memory and information processing.

Experimental evidence also shows that after effects of depressant use (hangovers) can impair performance. Further, most CNS depressants have a high-dependency potential, and severe withdrawal effects can result if use is discontinued suddenly. Since the timing of withdrawal symptoms is not always predictable, the cessation of use by a depressant-dependent person can result in loss of control over a transportation vehicle or task. Instances of severe withdrawal from alcohol, involving convulsions and loss of control, have been reported in the aviation context. Moreover, withdrawal from other CNS depressants present risks of equal gravity.

CNS stimulants such as cocaine and amphetamines tend to increase mental activity, responsiveness to external stimuli, and in some cases restore concentration to fatigued individuals. These apparently benign qualities make stimulants (particularly amphetamine) attractive "operational" drugs (taken in an effort to sustain or enhance performance), as well as so-called

"recreational drugs". The non-regulated stimulant caffeine is taken for similar purposes.

However, powerful stimulants do not avoid fatigue, but only postpone it and thereby compound its severity. Side effects may include restlessness, increased anxiety, and confusion. Transportation employees may rely upon the drug for periods which go beyond its period of effectiveness, resulting in the sudden onset of deep sleep. Sustained reliance on amphetamines may result in toxic effects such as paranoia and delirium, since increasing doses are needed to offset developing tolerance. While it is widely held that stimulants do not produce true physical dependence, it is also recognized that they can induce a strong psychological dependence.

Recent experience with cocaine has confirmed the dependency-producing character of that drug, its potent psychoactivity, its ability to induce seizures and cardiovascular events after a single dose, and its ability to produce psychosis after chronic use. See e.g., *Cocaine: Pharmacology, Effects, and Treatment of Abuse*, Research Monograph Series, No. 50 (National Institute on Drug Abuse 1984). Reports of drug experiences strongly suggest that cocaine use may promote risk-taking and cause the user to over estimate his degree of control. Cocaine is not an attractive "operational" drug because of its short duration, but use by an employee prior to reporting for work may result in depression or exacerbate fatigue, leaving the employee poorly equipped to undertake a full work day. Because dependency on cocaine may manifest itself abruptly after a long period of apparently successful "occasional" use, the cocaine abuser's private "recreation" may become a matter of public safety concern at any time without warning.

Although no experimental studies reflecting the effects of stimulants over an extended period of time have been reported, clinical experience suggests that these substances have a significant potential for producing behavioral changes inimical to safety, particularly when used in high concentrations or over a long period of time.

Hallucinogens are ingested for the specific purpose of inducing euphoria and a distortion of time and space. These drugs generally produce relaxation and shortened attention span. Hallucinogens have not been the subject of responsible scientific research involving human subjects because of their capacity to produce psychotic reactions. Use of hallucinogens is of particular concern, since they may

trigger mental disturbances that can last for extended periods or recur without warning.

Marijuana is sometimes classified as an hallucinogen but has properties that warrant its separate treatment. As the most popular illegal drug of abuse, marijuana was once viewed by many Americans as a mild and relatively harmless substance. However, as the potency of marijuana available increased and a larger segment of the population gained experience in its use, it became apparent that marijuana had emerged as a major public health and safety risk.

By 1980, it could be said that marijuana impairs learning ability and interferes with complex psychomotor performance, including driving. *Marijuana Research Findings: 1980*, Research Monograph Series No. 31 (National Institute on Drug Abuse). In addition, marijuana became more widely recognized as a threat to health. Institute of Medicine, National Academy of Sciences, *Marijuana and Health* (National Academy Press 1982).

According to the experimental studies, marijuana affects such sensory functions as visual acuity, signal detection, and balance or standing steadiness. Closed-course and city driving tests both indicated reduced driving precision, some of which the Institute on Medicine (*Id.* at 118) assessed as indicating impairment of judgment as well as car-handling skills.

Laboratory studies have also demonstrated reduced vigilance in signal-detection tasks. Studies evaluating cognitive functions indicated that marijuana may reduce risk taking, but also show that marijuana reduces performance in divided-attention situations.

Recent research has suggested the possibility of next-day after effects from marijuana that may reduce performance on complex, divided-attention tasks. Yesavage, Leirer, Denari and Hollister, "Carry-Over Effects of Marijuana Intoxication on Aircraft Pilot Performance: A Preliminary Report" (*Am. J. Psychiatry* 142:1325-1329 (1985)). Some experts also believe that the accumulation of marijuana metabolites in the body through chronic use may produce adverse effects that do not abate at any time while the marijuana habit is sustained. Since marijuana metabolites have been identified at low levels in the urine for as long as 77 days after cessation of heavy and chronic use, the possibility of significant chronic effects cannot be excluded. See Ellis, Mann, Judson, Schramm and Tashchian, "Excretion Patterns of Cannabinoid

Metabolites After Last Use in a Group of Chronic Users" (*Clin. Pharmacol. Ther.* 38:572-578 (1985)).

In summary, drugs in each of the classes of controlled substances have mind and function-altering effects on the human subject. Recent research involving several widely-used drugs vividly illustrates the correlation among clinical data, theoretical pharmacology, and performance on transportation-related tasks. Smiley, Moskowitz, and Ziedman, "Effects of Drugs on Driving", DHHS Publication No. (ADM) 85-1386 (National Institute on Drug Abuse and National Highway Traffic Safety Administration 1985). Smiley, *et al.*, examined the effects of secobarbital and diazepam (CNS depressants), marijuana and alcohol in a complex, blind study using a driving simulator. The study measured performance on a variety of driving tasks, including stop or swerve decisions, tracking, passing, and maintaining distance at two dosage levels for each drug. The results revealed differences in particular effects and performances on individual phases of the study. However, when the data were combined the authors concluded as follows:

Secobarbital, diazepam, marijuana, and alcohol were all found to impair performance of a variety of simulated driving tasks. Drug levels tested for secobarbital and diazepam were therapeutic doses. The marijuana doses were considered moderate to strong by the subject population use. The alcohol effects were reported for levels up to and slightly above the legal limit. No clear-cut differences in the pattern of effects were found among the drugs tested. All drugs impaired perceptual-motor skill (e.g., tracking, speed and headway control), perceptual tasks where response time and detection ability were measured, and decision-making tasks. *Id.* 19 (emphasis supplied).

This research suggests that the subtle differences in the way that certain drugs affect human functions may be less important than the overall disordering effect of those drugs on the user's ability to respond to the complex challenges posed by the transportation environment.

Finally, as noted above, many of the detrimental effects of drugs relate not so much to the toxic or acute action of the drug when it may be found in high concentrations in the blood stream, but rather to the chronic or cumulative action of the drug on the body and the mind. Much of this long-term impairment of the organism is poorly understood but what is known is a source of concern.

Epidemiological Studies

An approach to evaluating the effects of drugs on transportation safety would include a program to determine the

presence of drug use in an adequate sample of accidents and the collection of data on the incidence of drug use among all drivers. With this information, it would be possible to determine whether the user was overrepresented in the accident population. Over a period of years, analysis of this kind has permitted the Department of Transportation, through its National Highway Traffic Safety Administration, to determine the role of alcohol in highway accidents. Attempts to obtain post-accident toxicology results are only now beginning to provide data that may, in combination with careful field investigations, provide sufficient evidence to estimate accurately the involvement of drugs in transportation accidents.

A study of 440 fatally-injured, young California drivers detected alcohol in 70 percent of the drivers, marijuana in 37 percent, and cocaine in 11 percent. Each of 24 other drugs was detected in fewer than 5 percent of the fatally-injured group. The authors concluded that only alcohol could be clearly "associated with crash responsibility" within the limitations of the available data, and that the role of marijuana in automobile crashes warrants further investigation. Williams, Peat, Crouch, Wells, and Finkle, "Drugs in Fatally Injured Young Male Drivers," *Public Health Reports* 100:19-25 (1985).

Another study examined the presence of alcohol and drugs among 497 drivers injured in motor vehicle accidents and treated in a Rochester, New York hospital. Thirty-eight percent of the drivers had alcohol and/or another drug in their systems. Alcohol was found in 25 percent of the drivers, marijuana in 9.5 percent of the drivers, and tranquilizers in 7.5 percent of the drivers. These results were considered conservative, because the drivers were not required to provide blood samples and many refused. Terhune and Fell, "The Role of Alcohol, Marijuana, and Other Drugs in the Accidents of Injured Drivers," NHTSA Technical Report DOT-HS-806-181 (Revised—March 1982).

As the foregoing studies indicate, in a number of instances, people may have used both drugs and alcohol. The multiple drug phenomenon suggests the hazard of relying on countermeasures directed exclusively at alcohol and complicates the evaluation of drug involvement. This dilemma is particularly critical when it is considered that workers may use drugs other than alcohol on the job to avoid detection by their employer.

The Problem of Drugs in the Mass Transit Industry

Employees of the mass transit industry represent a broad and diverse cross section of American society. It is reasonable to assume that the problem of drug and alcohol abuse exists in this industry in similar proportion to that existing in society as a whole. Personnel who use drugs and alcohol can pose dangers to themselves and coworkers and can cause or exacerbate events that may take human life, destroy property, and seriously harm the environment. The Department of Transportation (DOT) and the Urban Mass Transportation Administration (UMTA) are committed to the goal of a drug-free transportation system in all modes of transportation.

UMTA does not contend that drug abuse among personnel engaged in mass transportation is present in any greater degree than in the general public or that accident statistics demonstrate drug abuse as a major factor in mass transit accidents. No data exist to prove the presence of a drug or alcohol abuse problem among mass transit personnel. UMTA is very interested in receiving any additional data on the use of controlled substances by sensitive safety personnel in mass transit. However, UMTA believes that the public expects, and is entitled to expect, that transportation systems will be operated safely. The potential for accidents caused by mass transit personnel whose skills may be impaired due to drug usage will be greatly decreased by the implementation of a drug-testing program. Implementation of a drug abuse prevention program, including education and awareness, testing and rehabilitation, is necessary to ensure that mass transportation operates in the safest manner possible.

B. The Statutory Basis for the Rule

The grant programs under both section 3 and section 9 of the Urban Mass Transportation Act of 1964, as amended (The UMT Act) require a recipient of Federal financial assistance to have the inherent capacity to carry out the purposes of the transit grants. Under the section 3 discretionary grants program, section 3(a)(2)(A)(i) provides that "No grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have—(i) the legal, financial, and technical capacity to carry out the proposed project; . . ."

Essentially the same requirement is contained in the formula grant program under section 9, although in the form of

a certification. Section 9(e)(3) provides that each recipient of section 9 funding " * * * should submit to the Secretary annually a certification that such recipient * * * has or will have the legal, financial, and technical capacity to carry out the proposed program of projects * * * ". This provision also requires a certification by the recipient that it has "satisfactory continuing control" over the use of UMTA-assisted facilities and equipment.

The technical capacity to carry out a mass transit project necessarily must include an ability to provide essentially safe mass transportation services, and it is within the scope of this requirement for UMTA to require recipients of sections 3 and 9 funding to undertake measures that would enhance their ability to provide safe operations. "Satisfactory continuing control" also necessarily implies the ability to ensure that the safe operation of UMTA-assisted facilities and equipment is not endangered by drug use by sensitive-safety and security personnel.

Under the section 3 discretionary program, moreover, the Secretary is authorized to make grants " * * * on such terms and conditions as the Secretary may prescribe * * * " providing even broader authority under this program to require a recipient to institute a drug program before a grant will be awarded.

For the section 18 transportation program for non-urbanized areas, subsection 18(f) provides that "grants under this section shall be subject to such terms and conditions (which are appropriate to the special needs of public transportation in areas other than urbanized areas) as the Secretary may prescribe." The requirements proposed here would be among the terms and conditions imposed under the authority of this section.

Section 22 of the UMT Act provides the Secretary (and, by delegation, UMTA) with authority to investigate certain conditions which the Secretary believes creates a serious hazard of death or injury. If the Secretary determines that such conditions do create such a hazard, the Secretary shall require the recipient of UMTA funding to submit a plan for correcting or eliminating such condition. The Secretary is authorized to withhold funding under the UMT Act until the plan is implemented.

Finally, the Department is considering seeking legislation from Congress to clarify this existing authority.

C. Purpose of NPRM

It is the policy of UMTA that workers in sensitive-safety positions of

recipients of Federal transit funds be free of drugs. To detect and deter the use of drugs by such employees, this proposed rule would require recipients to establish a program that would include four types of testing for the use of controlled substances: (1) Pre-employment; (2) post-accident; (3) reasonable cause; (4) and random drug testing. The testing procedures would protect individual privacy, ensure accountability and integrity of specimens, require confirmation of all positive screening tests, mandate the use of laboratories operating within the guidelines to be established by the U.S. Department of Health and Human Services, provide confidentiality for test results and medical histories, and ensure nondiscriminatory testing methods and random drug testing.

Failure of a recipient to certify that it has established a drug program will render it ineligible to receive Federal financial assistance under section 3, 9, or 18 of the UMT Act.

D. The Proposed Rule

The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in mass transit operations. This proposed rule would require recipients of Federal transit funding to establish an effective, comprehensive anti-drug program within 180 days of the effective date of the rule.

Under a comprehensive anti-drug program under this proposed rule, an employee in a sensitive safety position may not use controlled substances on or off duty. (The terms controlled substances and drugs are synonymous in this proposal.) If controlled substance use is detected, an individual shall not perform in a sensitive safety position. An individual may not be hired or continue to work at a sensitive safety position if he or she has a confirmed positive drug test as a result of a pre-employment, post-accident, reasonable cause, or random test.

This NPRM proposes specific requirements for testing procedures and options for rehabilitation programs. As noted later, UMTA realizes that some of these requirements may be difficult to achieve as proposed. This may be especially true for small transit providers. UMTA is interested in comments on ways in which the objectives of this NPRM can be achieved through procedures or programs without the need for detailed regulatory requirements. For example, should UMTA permit programs developed by consortiums of transit authorities or employee organizations to be used to comply with the following

UMTA proposed program? We also seek comment on whether an industry-wide program, developed by industry and/or labor associations may be a viable and expedient mechanism to implement drug abatement programs. If so, UMTA requests detailed comments on how such program would be implemented.

Drug testing and sanctions for use will help discourage substance abuse and reduce absenteeism, accidents, health care costs, and other drug-related problems. It will act as a deterrent to those individuals who might be tempted to try drugs for the first time or who currently use drugs. Finally, drug testing will protect the safety of the employees of mass transit entities, through the early identification and, under some options, rehabilitation of workers with drug abuse problems.

This proposed rule would only affect employees in sensitive safety positions. UMTA specifically requests comment on whether security related positions should be subject to this proposed rule for the same reasons that sensitive safety positions are.

UMTA also requests comment on the practicality of recipients getting a comprehensive anti-drug program in place in the 180 day time period set out in the NPRM. UMTA recognizes that many recipients are State and local governments with their own policies and procedures as well as legislative and regulatory bodies. Specifically, UMTA requests comment on alternative time frames and reasons for them.

Pre-employment Testing

UMTA proposes to require recipients to ensure that employees in sensitive safety positions are chemically tested for evidence of the use of controlled substances. A urine specimen would be used for testing purposes. An applicant who tests positive for the use of a controlled substance or refused to be tested could not be hired to perform sensitive-safety functions.

A recipient would be responsible for ensuring that testing is carried out according to the requirements of the proposed rule, for receiving and maintaining documentation of the results for sensitive safety employees for 3 years, and for notifying applicants of the results and affording them an opportunity to explain the presence of a controlled substance. If the applicant is not hired, no record of the test results will be maintained by the recipient. UMTA specifically requests comment on the proposed requirements that the employer keep no records of an application for employment that has been withdrawn because of a failed

drug test and on the proposed requirement that the recipient not disclose the results of the test to any other person. We have made these proposals because we believe they are appropriate policies for the implementation of an effective and non-punitive anti-drug program. Comments are invited to the extent to which these proposals are necessary or justified.

Post-accident Testing

Post-accident testing is a necessary part of a drug program. UMTA proposes mandatory testing for sensitive-safety employees involved in fatal accidents. The limitation to fatal accidents is purely a practical matter, and this proposed regulation should not be interpreted to prohibit recipients from testing employees involved in other categories of accidents.

A recipient would be responsible for ensuring that testing is done in the prescribed manner after a fatal accident. A fatal accident is defined as one in which a fatality occurs within 24 hours of the accident. Testing would be done as soon as possible, but no later than 12 hours after the fatality. If testing is not done, the recipient would be required to furnish an explanation. In administering a drug test after an accident, UMTA proposes to authorize employers to test sensitive safety employees for any Schedule I or Schedule II drug, even though many of these substances would not be tested for in a pre-employment, random, or periodic test. This is the same practice as would be followed by DOT in testing its employees under the proposed Department of Health and Human Services (HHS) guidelines.

Post-accident testing would require the employee to go to a collection site and provide a urine sample within 12 hours of the fatality. A twelve-hour period was selected because UMTA believes this time frame will capture those individuals who used prohibited drugs prior to the accident. Furthermore, this time frame takes into consideration the myriad of factors (geographic isolation of the accident, late notification of the accident to the recipient, injury, etc.) which could legitimately delay collection of a sample. UMTA requests comments on whether post-accident testing should be limited only to fatal accidents. For example, should it be expanded to include accidents or incidents where hospitalization is required or include all accidents? Should positive post-accident tests be reported to UMTA and, if so, at what intervals?

Reasonable Cause Testing

UMTA proposes to require a recipient to conduct testing when it has reasonable cause that an on-duty sensitive-safety employee has used a controlled substance. Reasonable cause is based on a belief that an individual is using or is under the influence of controlled substances while on duty. Changes in character or behavior may be evidence of the use of controlled substances. These changes are often characterized by mood swings and changes in appearance, attitude, speech, and work habits. In light of the subjectivity of this criteria, two witnesses would be required to substantiate this determination. At least one witness would have to be a person in a supervisory capacity.

Are there practical problems to this approach? Should both of the observers have to be supervisors? What other criteria could be used that would protect a disfavored employee from potential harassment through drug testing? Should there be a limit to the number of times an employee can be subjected to reasonable cause testing in order to prevent unwarranted harassment? Should there be specified circumstances, such as rule violations, under which drug testing would be automatic? If so, what kind of rule violations would suggest a drug problem and should trigger reasonable cause testing? We note in this regard that the Federal Railroad Administration has specified, in its existing anti-drug rule, the types of incidents that could justify requiring an employee to undergo drug testing. Could a similar program work for recipients?

Commenters also should present any data on the effectiveness of existing programs which use reasonable cause-or suspicion-type testing. At least one program that we are aware of provides for rehabilitation similar to that proposed under option 3 below, but which was worked out by labor and management. Sanctions, in terms of salary loss, are potentially quite severe for persons discovered to have drugs in their systems as a result of a test. Commenters should address the benefits, costs and deterrence value of such a program.

UMTA proposes to authorize employers to test sensitive-safety employees for any Schedule I or Schedule II drug when there is reasonable cause to believe a drug was used, even though many of the Schedule I and II substances would not be tested for in a pre-employment or random test. This is the same practice as would be followed by DOT in testing its

employees under the proposed HHS guidelines.

Random Testing

Random testing is expected to be the primary method of deterrence in the anti-drug program. Random testing avoids potential bias toward and selective harassment of an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods such as the use of a random number table or computer-based, random number generator. Both methods select individuals by matching these random numbers against an employee's social security number or payroll account number.

With random testing, abstinence is the only way to avoid the risk of detection of drug use. Random drug testing requires a specific implementation plan to deter drug use. The rule proposes to use a sampling rate of up to 125 percent of employees performing specific sensitive safety functions. The 125 percent sampling rate is based on the Coast Guard testing program. This does not mean that the rate would be set at 125 percent, but this figure serves as a benchmark on which comments about the most appropriate rate can be based. UMTA intends to select an appropriate rate based on effectiveness deterrence, and costs. Commenters are asked to suggest what the rate should be and provide the basis for their views.

A 125 percent rate for random testing would have certain advantages. This testing rate has been shown to be a viable deterrent in the Coast Guard program to future drug use and has been proven effective in reducing the present incidence of drug use. The Coast Guard's random testing program of its uniformed personnel resulted in reducing detected drug use by 75 percent in the five years since the program was implemented. This testing rate currently is the best evidence available to UMTA regarding a successful random testing program. UMTA is proposing 125 percent as a potential maximum testing rate. At the same time, UMTA recognizes that the higher the sampling rate, the higher the costs of the program. UMTA invites comments on how low a sampling percentage could be adopted while still maintaining a credible deterrent. In particular, UMTA is interested in information on documented, effective random testing programs and the sampling rates that were used as measured against the incidence of drug use on a year-to-year basis, and information that would

provide updated estimates of the relative costs and effectiveness associated with various sampling rates. UMTA also requests commenters to address whether the experience of uniformed personnel in the Coast Guard program is a valid indicator of how sensitive safety mass transit employees would respond to a similar program.

A sampling rate of 125 percent would mean that a population of 10,000 would provide 12,500 annual samples. Similarly, a sampling rate of 12.5 percent would provide 1,250 samples from the same population. Using true random selection, employees selected for each weekly or monthly increment would be returned to the pool of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug abuse because an individual selected early in the testing cycle would still be equally subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test. One feature of this plan is that some employees might not be selected at all during the first year and others could be selected more than once. Another issue in this area is the matter of "randomness" among small or isolated populations. What, for example, is the meaning of a random test to an employee population consisting of only one employee, or a few employees? This problem is particularly acute if the owner or manager of the business is also the sole person, or one of only a few persons, subject to testing. Similarly, although surprise is an essential feature of true random selection, how can this be achieved when the employee is located in a remote location and must be transported some distance to provide a sample? This could result in the loss of the element of surprise in many cases. UMTA seeks comments on how to deal with these problems.

Should the rule permit transit providers, especially the small ones, to use a third party to set up and maintain their drug testing program? They could choose to comply with the rule through the use of several options, including:

1. Form consortiums made of small providers that would develop a centrally administered random testing program.
2. Form consortiums, and hire a contractor to develop and implement a random testing program.
3. Contract separately with an outside company that would set-up and provide these services.
4. Have existing industry-related groups (e.g. trade associations) set-up drug programs in which small entities could participate.

5. Arrange to be included as a part of a larger grantee's drug testing program. UMTA invites comments as to what methods might be used to facilitate the inclusion of small entities in the program and whether all small entities should be required to develop and implement a drug abatement program. Commenters who believe that the proposed rule should not cover small entities, either in whole or in part, should explain the basis for their views and describe how they would define small entity for this purpose.

UMTA is considering whether programs should provide for adjustment of the minimum sampling rate based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experiences, the results of random testing would provide the most useful gauge of the need. UMTA is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule based on individual applications and specifically requests comments on this issue. As with other issues, UMTA reserves the right to make appropriate adjustments in the rule in response to public comments. Are there any other ways to reduce costs or improve the effectiveness of the proposed rule? For example, are there any ways to grant employers flexibility without compromising the objectives of the rule? What would be the likely cost savings, if any, in a more flexible approach.

UMTA also requests comments as to whether the rule should contain a provision allowing a company with a high level of safety with regard to drug use, demonstrated over a designated time period, more latitude in determining the application of its anti-drug program.

Applicability to Employees in Safety Sensitive Positions

The NPRM would require a recipient of UMTA funding under section 3, 9, or 18 of the UMT Act, or 23 U.S.C. 103(e)(4), to certify that it had established a drug program that, at a minimum, provided for four types of drug testing and an employee assistance program. The

NPRM would only require that the drug program apply to sensitive safety positions, including vehicle operators, controllers, and mechanics. UMTA seeks particular comment on this definition. Does it adequately cover all employees who have or could have an impact on the operational aspects of a recipient? Is it too broad? Should other specific jobs be included such as other maintenance personnel?

Employee Assistance Programs

UMTA has determined that properly managed Employee Assistance Programs (EAP's) benefit both management and employees and can be a positive factor in controlling drug use.

UMTA recognizes that individually established EAP's may be beyond the fiscal resources of some recipients. However, the recipient of Federal financial transit assistance has a responsibility to employees and the public to provide a drug-free environment to the maximum extent practical. As such, in certain circumstances, under the proposed rule, recipients would provide EAP services or make such services available through one of the following means: company-operated EAP; contractor or consortium arrangement; or arrangements with local community service organizations for voluntary referrals or employer-directed referrals. Other alternatives to the above must be approved by UMTA and would have to provide an equivalent level of EAP service to employees.

The proposed rule would require that an EAP provide education, training for employees and supervisory personnel, and, under three of four proposed options, an opportunity for rehabilitation.

An EAP may include the following components:

- (a) Employee policy and procedures on drug use based on a grantee's unique needs, organizational structure, and goals and resources;
- (b) Employee communications that include ongoing printed educational materials directed at both drivers and family members;
- (c) Service delivery system which may include:
 - (1) Drug screening and confirmation testing and
 - (2) Treatment (rehabilitation) and/or referral to more appropriate or specialized professional facility (usually all testing is on a contract basis);
 - (d) Training of supervisors; and
 - (e) Evaluation of the effectiveness of the EAP.

UMTA has determined that properly managed EAP's benefit both the grantee

and employee. We propose to require that all grantees develop EAP's for their employees. Each EAP would be required to have an educational component which would minimally have display and distribution of informational material; display and distribution of the community-service hot-line telephone number for driver assistance (if one is available); and display and distribution of the grantee policy regarding drug use by drivers. Additionally, each EAP of a grantee would be required to provide annual training for employees and supervisory personnel. The training would minimally require the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral causes that may indicate drug use and abuse; and documentation of training given to employees and supervisory personnel. EAP training programs for employees and supervisory personnel would consist of at least 60 minutes for each driver and supervisor the first year. Is 60 minutes a sufficient time for this training? Finally, each EAP, under three of the four options presented, would provide an opportunity for rehabilitation. How should small grantees establish and manage EAP's?

Employers would be required to appoint or designate a Medical Review Officer (MRO). The MRO would perform several functions, including review of the results of the employer's drug testing program; interpretation of each confirmed positive test result; and evaluation of an individual in conjunction with an EAP rehabilitation program. UMTA also seeks comments on the MRO's appropriate role in determining when an individual might be returned to duty. The proposed rule (by reference to the HHS Guidelines) requires that an MRO be a licensed doctor of medicine or osteopathy. The MRO could be a currently employed company physician or could be a private physician who performs MRO service for the employer on a contractual basis. Comments are requested on the need for an MRO and if the MRO need be a licensed physician or could be another type of medical professional.

An employee must successfully complete a rehabilitation program before being returned to his or her previous duties. UMTA is not proposing to require employers to pay the cost of rehabilitation. At this time, the proposed rule does not impose any limits on the amount of time that an employee may use to complete a rehabilitation program. However, UMTA recognizes that requiring an employer to hold a

position open or adjust operations for an indefinite period, while an employee is enrolled in a rehabilitation, may result in inconvenience and hardship for some employers, especially smaller companies. Therefore, UMTA solicits comments on an equitable and appropriate amount of time for an employee to complete a rehabilitation program to be specified in the rule, and whether the amount of time should be different for smaller companies. UMTA is particularly interested in time frames that have been shown to be appropriate for other documented rehabilitation programs, taking into account how long it may take for an employee to be admitted to a rehabilitation program.

Commenters also should address whether employees involved in EAP programs could be employed in nonsensitive safety positions during the rehabilitation process. The proposed rule does not require the employer to offer these same opportunities to a repeat offender, to persons not currently employed by the employer who fail a pre-employment test, or persons who have been found to use drugs on the job.

UMTA is considering four different options concerning the circumstances under which employees would be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Non-employees given a pre-employment drug test need not be given an opportunity for rehabilitation. Once rehabilitated, the employee would be reinstated into his or her prior position. The second option would provide rehabilitation rights to an employee who comes forward voluntarily or who is identified as a drug user during a random test; but would not require that the same opportunity be afforded to an employee identified as a drug user in a post-accident or reasonable cause test. Under this option, a rehabilitated employee would be reinstated into his or her prior position, but an employee who is not afforded the right to rehabilitation could be discharged. In the third option, only an employee who comes forward voluntarily could claim rehabilitation rights, and anyone testing positive for drugs (regardless of the circumstances, e.g., random, post-accident, reasonable cause) could be fired immediately. Under all three proposed options, recipients would be free to offer more rehabilitation options than proposed. The proposed options only establish minimum rehabilitation requirements for EAP's. Thus for example, a recipient

could voluntarily offer two chances at rehabilitation rather than one.

The fourth option would require the employer to determine, as part of its anti-drug program, what rehabilitation opportunities to provide. This is essentially a "local option" approach. The employer could choose any of the three other options as its approach or some variation of them. It could choose not to provide an opportunity for rehabilitation in any circumstance, in which case an employee who was identified as a drug user could be fired. In any case, however, the employee could not return to a sensitive safety position unless he or she met the conditions established in the option 4 version of § 653.52.

Each of these approaches has its own merits. For example, the broad rehabilitation program anticipated by the first alternative is likely to maximize both the costs and the benefits to society, by ensuring that more drug users will get the help they need. If users are simply fired, they will often lose access to, and perhaps incentive to use rehabilitation services, and they may continue to be drug users. However, it could be argued that employees who are found to be drug users through post-accident or reasonable cause tests are less deserving of an opportunity for rehabilitation, and the second alternative would therefore exclude them. The third alternative is likely to be the lowest in direct costs, because rehabilitation would be required only for employees who seek it voluntarily, but for the same reason, however, this alternative might produce less in societal benefits. Commenters should address whether, and to what extent the third alternative would encourage drug users to identify themselves before they are tested, in contrast to the first and second alternatives, which appear to provide less incentives for drug users to identify themselves before they are discovered through the testing process. The fourth option could permit employees to rid their work forces of drug users more quickly and at a lower cost (if rehabilitation opportunities were not provided). It would also permit greater flexibility at the local level. The benefits of rehabilitation might be lost, however. Commenters should address whether this alternative would be effective for the transit industry. How would this alternative affect the deterrence value of the proposal? What impact would it have on the costs and benefits? Would not requiring rehabilitation foster other approaches to combating drug usage?

UMTA specifically invites comment on which of these or other alternatives offer the greatest benefits at the lowest costs.

Under any of these options, if the individual was successfully rehabilitated, the program would require that he or she be offered the opportunity to return to his or her former position. The NPRM does not specify who makes the decision concerning whether the individual has been successfully rehabilitated, however. UMTA seeks comments on whether the final rule should so specify.

If the final rule does specify who makes this decision, who should the decision-maker be? Should it be the medical review officer, the head of the EAP, the head of the drug rehabilitation program in which the employee participated, an independent physician, or some combination of these persons? Are there other individuals that should be participated or required to make the decision?

UMTA also seeks comments on whether the rule should contain standards for making this determination. If so, what should they be? Should the employer, UMTA, or both have a procedure through which the employee can contest a determination that he or she had not been rehabilitated?

Post-rehabilitation Testing

Once an employee has undergone rehabilitation, there may be a need to conduct tests to ensure continued disassociation from drugs. At the time of the adoption of a final rule in this proceeding, we intend to provide procedures for the conduct of such tests. We invite public comment on what the final rule should contain.

For example, should there be a uniform testing period after rehabilitation, or should this be determined on a case-by-case basis? Who should make such a determination: the medical review officer (whose role is noted in the HHS Guidelines), the EAP counselor, or both together? Should the employee be involved? How could employee involvement be accomplished? If we adopt a uniform post-rehabilitation period, how long should it be? Is six months reasonable? Would longer periods constitute an unacceptable burden on employees and on the employer? Others might argue that a longer follow-up period, such as one year, is called for. Should the length of the follow-up period depend on the kind of drug that was detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? For example, should

someone undergoing inpatient rehabilitation be subject to post-rehabilitation testing for a longer time than someone who needs only abatement counseling?

During the post-rehabilitation period, should we prescribe the minimum and/or maximum number of tests to be administered? We would want to ensure that any necessary tests would be given frequently enough to ensure that the employee is free of drugs. At the same time, however, we do not want drug testing to become an instrument of harassment of the employee or an undue burden on the employer. Here again is the issue of whether the number of tests given should vary with the kind of drug used and the severity of the employee's problem.

One alternative, on which we also invite comments, is a specified post-rehabilitation testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following rehabilitation.

Temporary Employees

Although the rehabilitation for drug users is a cornerstone of this program, we believe that there may be some employees in the industry whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short-term hire seeks rehabilitation, the end of the scheduled employment term might come before the completion of a rehabilitation program. Therefore, we are considering not requiring employers to offer an opportunity for rehabilitation to temporary employees who are hired for a period of less than 90 days. That is, if such employees are found to be drug users, it would be permissible to dismiss these persons immediately.

However, we recognize that some employees hired on a "temporary" basis are actually regularly reemployed. Some of these employees are recurring seasonal hires, others are continually reemployed at the end of each specified term. These persons are regular members of the industry, and thus, should not be excluded from the opportunity for rehabilitation and reemployment. Under the proposal, an employee would not be considered temporary for the purposes of rehabilitation, if he or she is eligible for reemployment by the same employer within 90 days following the end of the employment term. We specifically request comments on (1) the merits of

excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employees. Commenters also should address how the rules should be applied to striking employees or employees scheduled for layoffs. Definitions of these terms also should be addressed.

Reporting Requirements

Semi-annual and annual reports of the results under each program would be required under the proposed rule. The report would contain demographic data of drug abuse by occupational category, drugs detected, and geographic locations.

Those semi-annual and annual progress reports would be sent to UMTA. UMTA is proposing that the reports should provide the following summary information for each type of testing performed: Occupational group of tested employees, the specific drugs detected and the disposition of employees (e.g., termination, rehabilitation, resignation, and other categories as applicable, such as leave without pay). Confidentiality must be afforded to all information regarding drug abuse by employees. This data would be used by UMTA only to summarize trends and determine if additional actions or changes may be required to combat drug use and abuse in aviation. We invite comments on the frequency and content of reports to be filed.

Access to Employee Drug Use Information

The proposed rule would regulate access to information about an employee's drug testing history under the anti-drug program by future employers, including future employers in other transportation modes. UMTA specifically requests public comment on what procedures, if any, should be included in the rule to safeguard the privacy of persons tested under the anti-drug program. As noted above, we are considering a variety of options with respect to pre-employment drug tests, including mandatory destruction of the documents for employees not hired. The results of drug tests performed for other reasons, however, also raise important privacy questions. Therefore, we specifically invite comments about whether there are circumstances under which we should permit the disclosure of drug test data to persons other than the employer and the employee (such as future employers). If, in the final rule, we were to allow such disclosure, there would appear to be a number of options. First, the data could be released only at

the specific request of the future employer, at either the discretion of the employer conducting the test, or only at the request of the employee. Under another option, a subsequent employer could require that an applicant either disclose prior drug test results or give the employer permission to obtain prior drug test results as a condition of employment. A final option under consideration by UMTA is authorizing the release of test results to future employers only in specified circumstances. For example, confirmed positive test results would be released to subsequent employers where an employee had been discharged for a refusal to participate in a rehabilitation program or an employee had failed a drug test after completing rehabilitation. Interested persons also should comment on whether the proposed rules should treat the privacy issues related to pre-employment test differently from random or reasonable cause tests.

The potential release of data highlights the importance of an employee's right to contest the test results. A urine sample that had been subject to tampering could unjustly end an employee's career. An employee should have an opportunity to challenge the integrity of the testing process, for example, by contesting whether the positive test result arose from a tampering incident or other error in the testing process. UMTA, therefore, requests comments on what procedures should be adopted. Commenters also should address whether the types of procedures afforded an employee should vary depending upon the consequences of a positive test and whether the burden of proof on the validity of test results should be borne by the employee or the employer.

In addition to future employers, other individuals may want access to the results of drug tests conducted under the proposed rules. UMTA could prohibit access to test results by the general public, including the news media. Moreover, other government agencies may want the data for statistical, regulatory, or law enforcement purposes. UMTA requests comments on whether the rule can and should prohibit access to the results of the anti-drug program to individuals other than the employer and the employee.

A related issue involves whether UMTA should distinguish between general statistical data (the total number of positive tests at a company in a month or a year) and particularized data (name-specific data). Small operators who employ few individuals will have

difficulty concealing the identity of individuals tested under the proposed anti-drug program. Since small operators will have few individuals to test in any given time period, even seemingly neutral statistical data would result in identification of an individual employee who was dismissed as a result of a confirmed positive test result. This potential problem may be exacerbated if UMTA requires that only a small percentage of employees be tested each year.

HHS Guidelines

On April 11, 1988, the Department of Health and Human Services (HHS) published Mandatory Guidelines for Federal Workplace Drug Testing Programs. These include guidelines for drug testing procedures and standards for certifying drug testing laboratories (53 FR 11970). As drafted, the guidelines apply to drug testing programs conducted by Federal agencies themselves. This NPRM would direct regulated parties to conduct their drug-testing programs according to these guidelines as well.

The HHS guidelines include proposed solutions to concerns such as the integrity of the sample collection process, maintaining a proper chain of custody, and ensuring that laboratories that do drug testing are qualified to do so.

The HHS guidelines would establish what illegal drugs are to be tested for (e.g., marijuana, cocaine, amphetamines, PCP, and opiates) and the levels of drug metabolites in a sample that would result in a positive test being reported. The guidelines specify the types of tests that would be required for initial screening tests (an immunoassay test) and confirmatory tests (a gas chromatography/mass spectrometry test).

The guidelines also specify collection procedures. These include the use of toilet bluing agents, temperature monitoring, and other steps to ensure the integrity of the sample without requiring observation of the individual while he or she is providing the sample. The sample collection procedures also include filling out a chain-of-custody form to accompany the sample as it goes to the laboratory.

The guidelines for laboratory processing of samples cover both technical and procedural steps designed to ensure that a proper chain of custody is maintained and that the test is conducted accurately. Intralaboratory chain-of-custody forms would be used; only authorized personnel would have access to the sample. Records concerning the calibration of testing

instruments would be maintained. Laboratories would report test results to the employer in a timely manner, and statistics on the tests would be retained by the laboratory for 2 years.

In addition to setting forth qualifications for key laboratory personnel and quality control procedures for the laboratories, the guidelines include standards and procedures through which HHS certifies laboratories. Regulated parties would be required to use only those laboratories which HHS has certified pursuant to these standards.

E. Hearings and Request for Written Comment

UMTA intends to hold hearings on today's proposed rulemaking in Washington, DC, New York City, Chicago, and Los Angeles. The exact times and locations of these hearings are not yet available. Once the exact times and locations of these hearings are confirmed, UMTA will publish a notice in the *Federal Register*. Commenters wishing acknowledgment of their written comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with the date and time the comments are received and return the card to the commenter.

F. Regulatory Impacts

1. Executive Order 12291

This action has been reviewed under Executive Order 12291, and UMTA has determined this is not a major rule. If promulgated, this rule will not result in an annual effect on the economy of \$100 million or more.

2. Regulatory Evaluation

The proposed regulation would be a "significant" rule, as defined by the Department's Policies and Procedures on Improving Governmental Regulations, because it involves important departmental policy and will generate substantial public interest. UMTA has prepared a Regulatory Evaluation in support of this rulemaking. The Regulatory Evaluation is on file as part of the docket to this rulemaking. Commenters should be aware that other operating administrations within the Department of Transportation also are proposing drug testing programs. Elsewhere in today's *Federal Register* are NPRMs issued by the Coast Guard & Research & Special Program Administration.

In addition, the Federal Aviation Administration published an NPRM in the *Federal Register* on March 14, 1988

(53 FR 5368); the Federal Railroad Administration's NPRM was published on May 10, 1988 (53 FR 18640); and the Federal Highway Administration (FHWA) published its NPRM on June 14, 1988 (53 FR 22268).

Each of these rulemakings addresses the costs and benefits of the proposal and are generally consistent with one another. In some instances, however, and generally as a result of differences in the industries affected, the assumptions differ from those discussed in this proposed rulemaking. Obviously, changes in assumptions could affect the costs and benefits, because of the nature of some industries, costs for similar elements also may vary or could vary enough to warrant sensitivity analyses. Other changes in assumptions, such as test costs or rehabilitation costs, also can have an effect on the analysis. Commenters may find it helpful to review the notices of proposed rulemakings or the economic analyses prepared by the other operating administrations. Comparisons may aid commenters in reviewing data on this proposal and in formulating comments. In reviewing the economic analysis and the basic assumptions made, commenters should address specific areas where they agree or disagree with the assumptions and the basis for the comment. Commenters are directed to the other rulemakings and their assumptions as a source of information in submitting comments. A copy of each of the documents has been placed in the docket.

3. Executive Order 12612—Federalism Assessment

UMTA has reviewed this proposed rule under Executive Order 12612, concerning Federalism. UMTA has determined that the proposal has sufficient Federalism implications to warrant the preparation of this Federalism assessment.

The Federalism impacts of this rulemaking result from its proposal for new, uniform UMTA requirements that federally-assisted mass transportation providers create and implement the drug programs described in this notice. Historically, transportation safety in the mass transit industry has not been the subject of specific UMTA regulatory requirements. Unlike other DOT organizations (e.g., FAA, FHWA, Coast Guard, FRA), UMTA has never directly licensed or regulated industry employees for safety. These matters have been handled locally by transit authorities.

Congress has shown increasing concern about UMTA's role in transit safety, for example in the enactment of

section 22 of the UMT Act. More importantly, however, the necessity of promoting safe transportation through the use of vigorous anti-drug programs designed to ensure a drug-free mass transit workplace is national in scope and overriding in importance. This safety imperative is the primary basis for UMTA's decision to propose a new Federal requirement which goes beyond the traditional relationship between UMTA, transit grantees, and their employees. The basis for imposing these requirements is the Federal financial assistance provided to the recipients by UMTA. It is also important that UMTA ensure the maximum effectiveness of its financial assistance; i.e., it must ensure that the funds are used in a safe, drug-free environment. From a national perspective, safety is important in its own right but also to ensure Federal funds are not wasted because of drug-related accidents or other misuses.

In considering the Federalism impacts of this proposal, UMTA has focused on several key provisions of Executive Order 12612.

• *Necessity for action.* As noted above, there is an overriding safety necessity to ensure a drug-free transportation workplace. Passengers on bus, rail, and other mass transportation systems must be ensured that vehicle operators and others whose actions are important to passenger safety do not use illegal drugs. In the absence of an UMTA requirement for drug programs, which will identify drug users, deter drug use, and may provide opportunities for rehabilitation, this assurance cannot be made.

• *Consultation with State and local governments.* Unlike other DOT organizations with respect to drug rules, UMTA's regulated parties are primarily State and local government agencies (e.g., State departments of transportation, local transit authorities). This is the peculiarity of the UMTA drug rule which creates a larger Federalism impact than that created by drug rules in other modes. Consequently, the views of affected State and local agencies are particularly crucial to UMTA's consideration of the issues raised in this NPRM. On any significant rulemaking affecting its grantees, UMTA receives numerous and thorough comments from State and local agencies. UMTA will take its normal extra steps, beyond Federal Register publication, to ensure that these State and local governments are made aware of this proposed rule. Between the written comments and the four public hearings UMTA is planning to hold, UMTA expects to learn, in detail, the concerns of State and local governments about this proposal. These

comments will be taken into account as UMTA makes decisions concerning the final rule on this subject.

• *National scope of the problem.* As noted elsewhere, the country has a nationwide, pervasive drug problem. There is no community in the country that is not affected, actually or potentially, by this problem. Mass transit users in every community need the same assurance that their safety will not be compromised by drug use by sensitive safety transit employees. They also need assurance that their tax dollar used in Federal assistance are not wasted because of drug-related accidents.

• *Need for uniform, national standards.* Only with uniform minimum national standards in this area can the safety concerns of passengers and the privacy and reliability concerns of employees be resolved in a way that addresses the national drug problem we face. State and local agencies are free to tailor the basic program requirements to meet their needs. Federal intrusion into local implementation decisions will be minimized through the use of self-certification by grantees of their compliance with UMTA requirements.

• *Authority.* The statutory authority for this proposal is discussed elsewhere in this preamble. As a statutory and constitutional matter, the authority of Federal agencies to impose reasonable and necessary conditions on the receipt of Federal financial assistance is well established.

• *Preemption.* The NPRM does not, as such, preempt State or local laws. However, there may be a few instances in which a State or local agency could face a conflict between compliance with the proposed regulation and State and local requirements. For example, the NPRM would require random testing. Some State or local laws may prohibit or limit random testing. In this situation, the UMTA rule would not preempt the application of the State or local law; if compliance with the State or local law prevented the grantee from complying with the UMTA rule, however, the grantee's UMTA funding could be jeopardized. It is our understanding that most grantees operate under statutes that permit them to take all necessary actions to comply with Federal grant conditions. Such laws, in most cases, could resolve the potential conflict outlined above. UMTA seeks comments on whether conflicts of this sort are likely to arise and, if so, what steps should be taken to avoid or resolve them.

Given these considerations, UMTA has determined that, while the proposed

rule will have Federalism impacts, the justifications for and proposed methods of dealing with the impacts are such that proposing the rule is consistent with the Administration's Federalism policy. UMTA seeks comments on any additional alternatives that would achieve the proposal's objectives while reducing Federalism impacts or that would mitigate these impacts.

4. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, UMTA certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

5. Environmental Impacts

This proposed regulation would not adversely affect the environment.

6. Paperwork Reduction Act

The collection of information requirements contained in this proposed rule are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. These requirements are being submitted to the Office of Management and Budget for review. Comments on the proposed certification requirement must be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Department of Transportation. UMTA requests that the commenter also transmit an information copy of any such comments to UMTA Docket No. 88-F.

List of Subjects in 49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation.

G. NEW 49 CFR PART 653

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI would be amended by adding new Part 653 to read as follows:

PART 653—CONTROL OF DRUG USE IN FEDERALLY FUNDED MASS TRANSPORTATION OPERATIONS

Subpart A—General

- Sec.
653.1 Purpose.
653.2 Scope.
653.3 Definitions.
653.4 Establishment of recipient anti-drug program.
653.5 Recipient's comprehensive anti-drug program.
653.6 Use of prescribed drugs.

Subpart B—Post Accident Toxicological Testing

- 653.10 Testing requirements.

- 653.11 Testing procedures.
653.12 Guidelines for drug testing.
653.13 Fatal accident drug test report.
653.14 Driver fatalities.

Subpart C—Reasonable Cause Testing

- 653.20 Testing requirements.
653.21 Testing procedures.

Subpart D—Pre-Employment Testing

- 653.30 Testing requirements.
653.31 Testing procedures.

Subpart E—Random Testing

- 653.40 Testing requirements.
653.41 Testing procedures.

Subpart F—Employee Assistance Programs and Rehabilitation

- 653.50 Employee assistance program.
653.51 Opportunity for rehabilitation.
653.52 Job security.
653.53 EAP education program.
653.54 EAP training program.

Authority: 49 U.S.C. 1001, 1002, 1007, and 1618, and 23 U.S.C. 103(e)(4).

Subpart A—General

§ 653.1 Purpose.

(a) This part requires a recipient of Federal transit funds to establish a program to detect and deter the use of controlled substances.

(b) This part does not restrict a recipient from adopting and enforcing additional or more stringent requirements consistent with this part.

§ 653.2 Scope.

(a) This part applies to a recipient of Federal financial assistance under sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964, as amended, or 23 U.S.C. 103(e)(4).

(b) The program required by this part applies to employees of the recipient in sensitive-safety positions, including vehicle operators, controllers, and mechanics.

§ 653.3 Definitions.

As used in this part—
“Administrator” means the Administrator of the Urban Mass Transportation Administration or his or her designee.

“Fatal accident” means an accident involving a vehicle of the recipient which leads to the death of a human being within 24 hours after the accident.

“HHS Drug Testing Guidelines” means the Scientific and Technical Guidelines for Drug Testing Programs issued by the Alcohol, Drug Abuse, and Mental Health Administration of the U.S. Department of Health and Human Services. These guidelines are available for review at UMTA headquarters and each UMTA regional office.

“Prohibited drug” means a substance specified in Schedule I or Schedule II of

the Controlled Substances Act, 21 U.S.C. 801.812, unless the drug is being used as authorized by, and in accordance with a legal prescription or exemption under Federal, State, or local law.

“Random selection process” means that tests are unannounced; that every employee in a sensitive-safety position of a given recipient has an equal chance of selection; and the total number of random tests conducted annually shall equal or exceed a specified (up to 125) percent of the total number of sensitive safety employees of a recipient.

“Reasonable cause” means the recipient reasonably believes that the appearance and/or conduct of the employee on duty are indicative of being under the influence of or impaired by a controlled substance based upon specified observations. The questioned conduct must be witnessed and documented by at least two employees, one of whom is in a supervisory capacity.

“Recipient” means a direct recipient of Federal financial assistance under sections 3, 9 or 18 of the UMT Act, or 23 U.S.C. 103(e)(4).

“Sensitive safety position” means any position of a recipient that involves operation of passenger-carrying equipment, including any directly related support activities that control or affect the operation of such equipment.

“UMTA” means the Urban Mass Transportation Administration.

§ 653.4 Establishment of recipient anti-drug program.

(a) No later than 180 days after the effective date of this subpart, each recipient shall certify to UMTA that it has established and implemented a comprehensive anti-drug program meeting the requirements of this part.

(b) Failure to make the certification required under paragraph (a) shall render the recipient ineligible to receive Federal financial assistance under sections 3, 9 or 18 of the Urban Mass Transportation Assistance Act of 1964, as amended.

§ 653.5 Recipient's comprehensive anti-drug program.

(e) Each recipient's comprehensive anti-drug program shall provide that—

(1) No employee of the recipient shall perform sensitive safety functions if the employee uses any controlled substances, except as provided in § 653.6 of this subpart;

(2) No employee shall perform sensitive safety functions if the employee tests positive for the presence of controlled substances, except as provided in § 653.6 of this subpart;

(3) All employees are subject to post-accident, reasonable cause and random testing for drugs under Subparts B, C, and E of this part;

(4) All prospective employees are subject to pre-employment testing for drugs under Subpart D of this part;

(5) Certain employees who use controlled substances are eligible to participate in an employee assistance program under Subpart F of this part; and

(6) An employee who refuses to be tested as prescribed under this part shall not perform sensitive safety functions until the individual tests negative for the use of controlled substances.

§ 653.8 Use of prescribed drugs.

(a) A comprehensive anti-drug program shall provide that any employee of a recipient who tests positive for the use of a controlled substance shall have available as an affirmative defense, to be proven by the employee through clear and convincing evidence, that his or her use of the controlled substance (except for methadone) was as prescribed by a licensed medical practitioner who has considered the employee's medical history and has determined such use to be consistent with the employee's assigned duties and that the level was at the prescribed dosage.

(b) This section does not restrict a recipient from requiring an employee to notify the recipient of therapeutic drug use.

Subpart B—Post-Accident Toxicological Testing

§ 653.10 Testing requirements.

(a) A recipient's drug program shall ensure that post-accident toxicological tests are conducted on an employee in a sensitive-safety position who is involved in a fatal accident.

(b) Such an employee shall submit to controlled substance testing following a fatal accident.

§ 653.11 Testing procedures.

(a) A recipient's drug program shall require an employee of the recipient in a sensitive-safety position to be tested for controlled substance use if the employee is involved in a fatal accident. The sample should be collected as soon as possible, but no later than 12 hours after the fatality.

(b)(1) Such an employee of the recipient shall report or be transported to a collection site and give a urine sample as soon as possible, but not later than 12 hours following a fatality. If a hazard to occupants of the vehicle

would be increased by compliance with this subpart, the employee of the recipient may move the vehicle to the nearest safe place to reduce or eliminate the hazard.

(2) If the employee is incapacitated or unconscious, the recipient shall request the treating medical facility to obtain a body fluid sample as determined appropriate by a medical practitioner.

(c) A recipient shall ensure that a legible copy of instructions for collection, labeling, packaging, and mailing of body fluid samples shall be maintained on each recipient vehicle. The instructions for collection, labeling, and packaging shall conform with the HHS guidelines. Mailing instructions shall include the name, mailing address, and telephone number of the test laboratory used by the recipient.

§ 653.12 Guidelines for drug testing.

The recipient shall ensure that its drug testing program conforms with the HHS Drug Testing Guidelines.

§ 653.13 Fatal accident drug test report.

(a) Within 24 hours of receipt of a drug test result, a recipient shall prepare a report on the results.

(b) Refusal. If a recipient cannot report a drug test result because an employee refuses to give a sample or for other reasons, the recipient's report shall so provide.

§ 653.14 Driver fatalities.

(a) A recipient shall ensure that controlled substance testing is conducted on a deceased employee involved in an accident in accordance with the procedures of this subpart.

(b) If the employee is deceased, the recipient shall request the responsible local authority (e.g., a coroner or medical examiner) to obtain a body fluid or tissue sample as appropriate.

(c)(1) If urine is obtained, the responsible local authority should place 60 milliliters (ml) of urine in a standard 80 ml screw-top container.

(2) If blood is obtained, the responsible local authority should place 20 milliliters of blood in red-top glass tubes.

(3) If tissue is obtained, the responsible local authority should place 50 to 100 grams of liver, kidney, spleen, lung or muscle tissue, as available, or gastric content, up to 100 milliliters, as available, in a red-top glass tube.

(d) Sample handling, packaging, and mailing should follow the instructions prescribed in § 653.11(c) of this subpart.

Subpart C—Reasonable Cause Testing

§ 653.20 Testing requirements.

A recipient's drug program shall require an employee of the recipient in a sensitive-safety position to be tested upon reasonable cause for the use of controlled substances under the conditions specified in this subpart.

§ 653.21 Testing procedures.

(a) The recipient shall ensure that the employee of the recipient in a sensitive-safety position is transported immediately to a collection site for the collection of a urine sample.

(b) The recipient's program shall ensure that its drug-testing program conforms with the HHS Drug Testing Guidelines.

Subpart D—Pre-Employment Testing

§ 653.30 Testing requirements.

(a) A recipient's drug program shall require an applicant for employment for a sensitive-safety position to be tested as a condition to employment for the use of controlled substances as a condition of employment.

(b) Prior to collection of a urine sample an applicant for employment for a sensitive-safety position shall be notified that the sample will be tested for the presence of controlled substances.

(c) The applicant will be notified if the test is positive and be afforded an opportunity to explain the presence of a controlled substance.

(d) If the applicant is not hired, no record of the test results shall be maintained by the recipient.

§ 653.31 Testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A recipient shall ensure its drug-testing program conforms with the HHS Drug Testing Guidelines.

Subpart E—Random Testing

§ 653.40 Testing requirements.

A recipient's drug program shall provide for a random selection process to select and require an employee of the recipient in a sensitive-safety position to be tested for the use of controlled substances.

§ 653.41 Testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A recipient shall ensure its drug-testing program conforms with the HHS Drug Testing Guidelines.

Subpart F—Employee Assistance Programs and Rehabilitation

§ 648.50 Employee Assistance Program.

The employer shall provide an employee assistance program (EAP) for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may enter into a contract with an entity that will provide EAP services to employees. Each EAP must include education and training on drug use for employees and the employer's supervisory personnel and [shall] [may] include an opportunity for rehabilitation as provided in this subpart.

§ 653.51 Opportunity for rehabilitation [Option #1].

Each employer shall provide one rehabilitation opportunity for the following employees:

(a) Each employee who voluntarily enrolls in an EAP.

(b) Each employee who is identified as a drug user through random, periodic, or post-accident testing, or testing based on reasonable cause.

§ 653.52 Job security [Option #1].

(a) Each employer shall retain or rehire an employee who—

(1) Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she failed a drug test;

(2) Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

(3) Has received a recommendation for return to duty as a result of that rehabilitation program.

(b) Employees who are identified as drug users on the job are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

§ 653.51 Opportunity for rehabilitation [Option #2].

Each employer shall provide one rehabilitation opportunity for the following employees:

(a) Each employee who voluntarily enrolls in an EAP.

(b) Each employee who is identified as a drug user through random or periodic testing.

§ 653.52 Job security [Option #2].

(a) Each employer shall retain or rehire an employee who—

(1) Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a random or periodic drug test;

(2) Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

(3) Has received a recommendation for return to duty as a result of the rehabilitation program.

(b) Employees who are identified as drug users on the job or as a result of testing based on reasonable cause or post-accident testing required by this appendix are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

§ 653.51 Opportunity for rehabilitation [Option #3].

Each employer shall provide one rehabilitation opportunity for each employee who voluntarily enrolls in an EAP.

§ 653.52 Job security [Option #3].

(a) Each employer shall retain or rehire an employee who—

(1) Has successfully completed his or her first rehabilitation program after voluntary enrollment;

(2) Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

(3) Has received a recommendation for return to duty as a result of that rehabilitation program.

(b) Employees who are identified as drug users on the job or as a result of testing required by this appendix are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

§ 653.51 Opportunity for rehabilitation [Option #4].

Each employer shall determine, as part of its anti-drug program, whether to provide one rehabilitation opportunity for each employee who is identified as a drug user by one or more types of testing or who voluntarily enrolls in the EAP.

§ 653.52 Job security [Option #4].

(a) An employer may not retain or rehire for a sensitive safety position an employee who has been identified as a

drug user through a drug test or through voluntary enrollment in an EAP unless the employee—

(a) Has successfully completed his or her first rehabilitation opportunity after voluntary enrollment or notification to the employee that he or she has failed a particular type of drug test, if the employer's anti-drug program provides for a rehabilitation opportunity in that circumstance;

(2) Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

(3) Has received a recommendation for return to duty as a result of that rehabilitation program.

(b) Employees who are identified as drug users on the job are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

§ 653.53 EAP education program.

Each EAP must include an education program with the following elements:

- (a) Display and distribution of informational material;
- (b) Display and distribution of a community service hot-line telephone number for employee assistance; and
- (c) Display and distribution of the employer's policy regarding drug use in the workplace.

§ 653.54 EAP training program.

Each EAP must include a training program to be conducted annually for employees and employer's supervisory personnel. During the first year of the program, such training must be conducted for all such personnel. The training program must include at least the following elements: the effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. EAP training programs for employees and supervisory personnel must consist of at least 60 minutes for each employee and supervisor each year.

Dated: June 30, 1988.

Alfred A. Dellibovi,
Administrator.

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Part IX

Department of
Transportation

Coast Guard

46 CFR Parts 4, 5, and 16
Programs for Chemical Drug and Alcohol
Testing of Commercial Vessel
Personnel; Notice of Proposed
Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 5, and 16

(CGD 86-067)

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Due to the safety and health concerns associated with drug abuse by merchant marine personnel, as well as legal restrictions on drug use, the Coast Guard is proposing drug abatement programs which include periodic drug tests (urinalysis) as part of required physical exams, preemployment testing and random sampling programs for all marine employees, and post accident and reasonable cause testing. The post accident and reasonable cause portions of the program will also involve testing for alcohol use. Four options are proposed concerning rehabilitation for those individuals who are detected as drug users for the first time.

The Coast Guard is also proposing an implied consent provision for the chemical testing of license, certificate of registry, and merchant mariners document holders as well as for all individuals accepting employment on board any vessel on which licensed, certificated, or documented personnel are required.

Through chemical testing, the Coast Guard expects to discourage drug and alcohol use by merchant marine personnel, an activity which adversely impacts the users, their shipmates, the marine industry, and the public in general. Chemical testing should also reduce the potential for marine casualties related to drug and alcohol use.

DATE: Comments must be received on or before September 8, 1988.

ADDRESSES: Comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/21) [CGD 86-067], U.S. Coast Guard, Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection or copying between 8:00 a.m. and 3:00 p.m., Monday through Friday, at the Marine Safety Council (G-LRA-2/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Sean T. Connaughton, Project Manager, Merchant Vessel Personnel

Division, Office of Marine Safety, Security and Environmental Protection (C-MVP), Phone (202) 267-0229.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 86-067), give the specific section of the proposal to which the comment applies, and the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before the expiration of the comment period will be considered to the extent practicable before final action is taken on this proposal.

No public hearing has been scheduled, however, the Coast Guard is considering holding a public hearing on this proposal. If a hearing is scheduled, the time and place will be published in a separate notice in the Federal Register.

Background

Drug and Alcohol Abuse in American Society

Drug and alcohol abuse constitutes a major societal problem. Statistics compiled and reported by the National Institute of Drug Abuse (NIDA), and by media polls, indicate the use of drugs such as marijuana to be widespread. While the problem appears to be "youth centered," in that the majority of users are in the younger age categories, the problem also exists in older groups. For instance, based on random sampling and using population projections, data from the 1985 NIDA "National Survey on Drug Abuse," indicates the following:

- In the 18 to 25 age category:
 - Sixty (60) percent reported using marijuana sometime during their life.
 - Twenty-two (22) percent reported using marijuana within the last 30 days.
 - Twenty-five (25) percent reported using cocaine sometime during their life.
 - Eight (8) percent reported using cocaine within the last month.
- In the 26 and over age category:
 - Twenty-seven (27) percent reported using marijuana sometime during their life.

Six (6) percent reported using marijuana within the past month.

Nine (9) percent reported using cocaine sometime during their life.

Two (2) percent reported using cocaine within the last month.

Because of statistics like the above, many members of the public have expressed concern that the use of drugs or alcohol by others may jeopardize

their personal safety. There is widespread public perception that drug or alcohol abusers should not be in safety-related occupations. A May-June 1986 national survey jointly conducted by Populus Incorporated, of Greenwich, Connecticut, and Decision/Making/Information of McLean, Virginia, produced the following results:

—88 percent favored testing airline pilots and air traffic controllers.

—85 percent favored testing police and other law enforcement agents.

—81 percent favored testing bus drivers.

As the researchers indicate, the respondents believed that people who are responsible for the physical safety of others should be tested.

Another survey conducted by American Viewpoint, Inc., on August 6-19, 1986, examined the public's attitude toward drug testing and produced informative results, specifically, "by a margin of 76 percent to 22 percent, Americans agree that the drug crisis today is serious enough for mandatory testing." The American Viewpoint survey used a "forced choice" list and asked which groups should submit to mandatory drug testing. While the transportation modes, e.g., railroad, aviation, highway, marine, etc., were not included in the list, safety and health related occupations such as police and firefighters (84 percent), armed forces (81 percent), and doctors and nurses (81 percent) were at the top of the list. Another interesting fact was that 80 percent of the respondents indicated that they would participate in voluntary testing if asked to do so by their employer.

The surveys suggest that the majority of the public is concerned about drug and alcohol abuse and favors the testing of persons in certain safety-related occupations. While the bulk of drug abuse occurs in the 25 and under category and overall usage may drop as this group grows older, maturation cannot be considered a solution to the problem. The Department of Transportation in its regulatory role must operate under the assumption that the various transportation modes do not significantly differ from the overall population in terms of drug and alcohol abuse.

In February 1987, the Federal Aviation Administration (FAA) began performing drug screens in connection with periodic medical examinations required of certain safety-sensitive agency employees. As of April 22, 1988, the FAA has received reports on 25,000 FAA employees urine specimens pursuant to its periodic testing program. Specimens

for 25 employees have been determined to include one or more illegal drugs. In addition, the Department implemented its employee drug testing program on September 8, 1987. As of April 22, 1988, DOT has received reports on 1651 urinalysis tests pursuant to its random drug testing program for DOT employees occupying critical safety- or security-sensitive positions. 15 employees have tested positive for illegal drugs. These employees are currently in counseling or rehabilitation programs and have been relieved of their critical safety duties pending successful completion of these programs. In addition, since the inception of the DOT program, 6 employees have tested positive for illegal drugs as a result of reasonable cause drug testing.

Drug and Alcohol Problem in the Merchant Marine

It is reasonable to assume that because there is a drug problem in society, there is also a potential drug problem in the merchant marine. However, while the threat posed to society by drug and alcohol use and abuse is diffused, the same cannot be said of the threat drugs and alcohol pose to transportation industries such as the merchant marine. Not only do personnel who use drugs and alcohol pose dangers to themselves and shipmates, they are in the position to cause, or contribute to, vessel casualties that may take human life, destroy property, and/or seriously harm the environment.

The problem in the marine industry is increased by the fact that personnel often live on board their vessels for long periods of time. What in another context might be considered "recreational" or off-duty drug or alcohol use can have a detrimental effect upon vessel safety because the vessel is frequently also where the individual lives. Intoxicated personnel cannot serve their vessel in an emergency, and pose a hazard if they attempt to perform any necessary safety-related functions.

Coast Guard data do not specifically identify the use of drugs or alcohol as a major causal effect in commercial vessel losses or casualty damage. However, the use of alcohol and drugs has had a substantial impact on marine safety. Coast Guard marine casualty records spanning the years 1981 to 1986 reveal 75 deaths, 52 injuries, and \$6.5 million in property damages resulting from casualties attributable to the use of intoxicants. In addition, during the same period, the Coast Guard took suspension or revocation action against 89 seamen for alcohol-related offenses and 134 seamen for drug-related offenses.

It is acknowledged that the above data are sparse and are not conclusive. However, fatal accidents and suspension and revocation proceedings cannot be the only basis on which to judge whether or not there is a problem with substance abuse. There is no way to gauge how many minor or near accidents there have been due to intoxication.

The absence of widespread data may be due to several factors. First, the use of drugs and the abuse of alcohol is something that many people go to great lengths to conceal. Second, detection by employers is not easy. Many merchant mariners never see their employers, or see them only on an infrequent basis, and full-time surveillance by the Coast Guard and others is neither practical nor economically feasible. Third, even when there is supervision or surveillance of individuals, few people (including fellow crewmembers) are trained in how to detect drug or alcohol abuse. As one commenter to the Federal Aviation Administration's Advance Notice of Proposed Rulemaking entitled "Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities," (FAAD 86-20, 51 FR 44432, December 9, 1986), stated, "We have been surprised by the persons who have tested positive. Employees whose personal habits, appearances and lifestyles appear to be above reproach have tested positive for drugs and subsequently admitted their use." Finally, it is possible there are individuals who are "enablers," in that they may tolerate or cover for a person with a drug or alcohol problem, especially if the person might suffer the loss of a job and the associated adverse financial consequences.

The Coast Guard has previously addressed the issue of drug and alcohol abuse in an Advance Notice of Proposed Rulemaking concerning Certification of Seamen (CGD 84-088, 50 FR 4875 February 4, 1985), and in a Final Rule concerning Operating a Vessel While Intoxicated (CGD 84-099, 52 FR 47526, December 14, 1987). A review of the comments submitted on these rulemakings indicates that there is wide support for drug screening among marine companies, industry associations, and marine personnel. A recent Towing Safety Advisory Committee (TSAC) recommendation objected to employer involvement in testing and enforcement, but otherwise endorsed the need to eliminate drug users and those who operate a vessel while intoxicated from the merchant marine. While the Coast Guard does not dispute the professionalism of the vast

majority of those in the marine industry and their commitment to a drug and alcohol abuse-free marine environment, reports from some shipping companies that screen their crews for drug usage indicate that a significant number of their employees were found to be users of drugs.

In light of these factors the Coast Guard is proposing regulations to require effective chemical testing programs for holders of licenses, certificates of registry, and merchant mariners documents and other maritime personnel in order to minimize the drug and alcohol problem in the merchant marine. The Coast Guard is very interested in receiving any additional data on the use of drugs in the maritime industry.

Readers will note that proposals by other modes in the Department of Transportation use the term "Sensitive Safety and Security Related Positions" when classifying personnel subject to testing programs. It is the position of the Coast Guard that all individuals engaged on board a vessel contribute to the function of the vessel or the accomplishment of its service. In addition to regularly assigned duties, each individual has responsibilities which relate to safety and to emergency situations. Non-performance of these duties could pose threats to the safety of the individual seaman, the vessel, other persons on board, and the marine environment. Therefore, the testing programs proposed in these rules do not differentiate between classes of personnel subject to testing. The proposal applies to all individuals engaged aboard any vessel on which licensed, certificated, or documented personnel are required; such individuals perform sensitive safety related duties.

Jurisdiction

Congress has long recognized the danger posed by drug and alcohol use among merchant marine personnel. This is evidenced by certain statutes contained in Title 46, United States Code (U.S.C.), regarding alcohol and drug use by merchant mariners, particularly those who hold licenses, certificates of registry, or merchant mariners documents.

46 U.S.C. 2302 provides for penalties for all marine personnel who operate a vessel in a negligent manner or while intoxicated. The Coast Guard considers "negligent manner" as including the operation of a vessel while under the influence of drugs or alcohol. The standard to be applied in determining intoxication for personnel operating commercial vessels was set out in the

Final Rule concerning Operating a Vessel While Intoxicated (CGD 84-099, 52 FR 47526, December 14, 1987). This Final Rule set both a behavioral standard and a blood alcohol concentration (BAC) standard of 0.04 percent.

For those who hold licenses, certificates of registry, or merchant mariners documents, the laws contain additional provisions regarding drug and alcohol use. 46 U.S.C. Chapter 77, "Suspension and Revocation," contains strict provisions concerning drug and alcohol use. The Secretary, under 46 U.S.C. 7703, can suspend or revoke a license, certificate, or document if an individual has committed an act of misconduct or negligence, or demonstrated incompetence. It is well settled that incompetence, misconduct, and negligence, include acts involving alcohol and drug use. Under 46 U.S.C. 7704, whenever drug use is proved at a suspension and revocation hearing, revocation is mandatory unless cure is shown.

For drug abuse, 46 U.S.C. 7704 states:

(b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be revoked. (c) If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, certificate, or document shall be revoked unless the holder is cured.

In addition, in Chapter 75, "General Procedures for Licensing, Certification, and Documentation," 46 U.S.C. 7503 dictates that:

A license, certificate, or document authorized to be issued under this part may be denied to an individual who: (1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or (2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.

In both chapters, "dangerous drug" is defined as "narcotic drug, controlled substance, and marihuana (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802))."

It is clear that the statutes are intended to exclude drug users and violators of drug statutes from serving on U.S. merchant vessels, as well as preventing the operation of vessels by intoxicated personnel. The Coast Guard currently enforces the statutes through the examination of the criminal

conviction records of license and document applicants and holders, through the prosecution of those operating a vessel negligently or while intoxicated, and through administrative remedies such as civil penalty actions and suspension and revocation proceedings. However, these methods have not been particularly effective since, as a practical matter, an incident typically must occur before the Coast Guard obtains evidence on which to base remedial or punitive action. With advances in the reliability of methods utilized to detect drugs in urine, as well as the increased accessibility of test processing facilities and the relatively simple procedures involved in collecting samples for testing, the Coast Guard is offered the opportunity to propose requirements that will effectively identify drug abusers. The proposed requirements are similar in nature to those in place or proposed in the other regulated transportation industries, and are intended to ensure, to the extent feasible, uniformity within the transportation industries of the United States.

The Coast Guard's authority over commercial vessels is based primarily on the type of vessel. Some commercial vessels, such as fishing and towing vessels, are not required to be inspected and are subject to limited Coast Guard regulation. Although the vessel itself may be subject to limited regulation, some or all of the vessel's crew may, by statute or regulation, be required to hold a license, certificate, or document issued by the Coast Guard. To provide the greatest possible assurance that the commercial fleet has a safe, drug-free, work environment for all personnel, the Coast Guard is proposing that an individual may not be employed, including self employment, on a vessel in a position for which a license, certificate of registry, or merchant mariners document is required, unless the entire crew is covered by the proposed rules. This means that the entire crew of a fishing vessel over 200 gross tons, an uninspected passenger vessel, and a towing vessel, would be covered.

Proposals

Goals of Testing

The overall goal of testing is to foster a drug and alcohol abuse free transportation environment which will continue to merit public confidence. A drug-free environment means that an individual covered by this proposal does not have dangerous drugs in his or her system at any time. If drugs are used, the individual could lose the right to

work in his or her occupation. Thus, even "off-duty" use would be prohibited.

In the case of alcohol, present urine testing technology only permits a rough estimation of alcohol concentration levels in an individual's blood. For this reason, this proposal does not require urine testing for alcohol. The rule could be modified if there are advances in urine testing in the future.

This does not mean the Coast Guard condones abuse of alcohol. The Coast Guard has issued a Final Rule concerning Operating a Vessel While Intoxicated (CGD 84-099, 52 FR 47526, December 14, 1987) that prohibits an individual from consuming alcohol on-duty or performing duties while intoxicated. Off-duty use is limited and subject to the restrictions contained in the final rule. With reasonable cause, testing to determine blood alcohol levels can be directed.

In addition to determining whether drugs have been used, the chemical testing program outlined in this proposal will enable the Coast Guard to collect data as to the extent of substance abuse. This data will in turn enable the Coast Guard to plan future action, such as education and training to combat substance abuse.

This NPRM proposes specific requirements for testing procedures and rehabilitation programs. As noted below, the Coast Guard realizes that some of these requirements may be difficult to achieve as proposed. This may be especially true for small employers. The Coast Guard is interested in comments on ways in which its goals can be achieved through procedures or programs without the need for detailed regulatory requirements. For example, should Coast Guard permit programs developed by consortiums of marine employers that conform with the basic requirements of the following proposed specific program? As noted later in this preamble, the Coast Guard is also interested in obtaining comments on the feasibility and effectiveness of having Coast Guard approve company-specific programs that conform with the basic requirements of the proposed program. If this approach is adopted, an industry-wide program, developed by employers may be a viable and expedient mechanism to implement drug abatement programs. In addition, this type of approval may provide more flexibility to the industry. If so, the Coast Guard requests detailed comments on how such an approval program would be implemented. The Coast Guard believes that any divergence from the proposed specific

program would have to comply with its goals.

Chemical Testing Procedures

On April 11, 1988, the Department of Health and Human Services (HHS) published final guidelines for drug testing procedures and standards for certifying drug testing laboratories (53 FR 11970; April 11, 1988). The guidelines apply to drug testing programs conducted by Federal agencies themselves. This NPRM would direct regulated parties to conduct their drug-testing programs according to these guidelines as well.

The HHS guidelines include solutions to concerns such as the integrity of the sample collection process, maintaining a proper chain of custody, and ensuring that laboratories that do drug testing are qualified to do so.

The HHS guidelines establish what illegal drugs must be tested for (marijuana and cocaine), as well as additional drugs which may be tested (e.g., amphetamines, PCP, and opiates). In addition, the guidelines specify the levels of drug metabolites in a sample that would result in a positive test being reported. The Coast Guard invites comments as to which additional drugs, if any, should be included. Commenters should also provide cost and benefit data regarding any additional drug groups.

The guidelines specify the types of tests that would be required for initial screening tests (an immunoassay test) and confirmatory tests (a gas chromatography/mass spectrometry test). The guidelines also specify collection procedures. These include the use of toilet bluing agents, temperature monitoring, and other steps to ensure the integrity of the sample without requiring observation of the individual while he or she is providing the sample. The sample collection procedures also include filling out a chain-of-custody form to accompany the sample as it goes to the laboratory.

The guidelines for a laboratory processing of samples cover both technical and procedural steps designed to ensure that a proper chain of custody is maintained and that the test is conducted accurately. Intralaboratory chain-of-custody forms would be used; only authorized personnel would have access to the sample. Records concerning the calibration of testing instruments would be maintained. Laboratories would report test results to the employer in a timely manner, and statistics on the tests would be retained by the laboratory for 2 years.

In addition to setting forth qualifications for key laboratory

personnel and quality control procedures for the laboratories, the guidelines include standards and procedures through which HHS certifies laboratories. Regulated parties would be required to use only those laboratories which HHS has certified pursuant to these standards.

The guidelines also mandate the use of Medical Review Officer (MRO) to review test results. The MRO is specifically intended to ensure that drug tests were properly administered and that the test results were accurate.

While the use of any controlled drugs, unless medically prescribed, is not condoned, the Coast Guard recognizes that due to equipment limitations and possible "passive" exposure to drugs, any test results indicating drug or metabolite levels below the cut-offs may not be accurate reflections of whether an individual has used drugs. Therefore, drug or metabolite levels below these cut-offs will be considered a negative test result and will not disqualify a person from service in the merchant marine.

Prescription drug use, used as medically prescribed, would not generally be considered a reason for corrective action; however, partial or total impairment due even to prescribed drug use is nonetheless a threat to safety, and, as is current practice, the Coast Guard may deny or suspend licenses, certificates of registry, and merchant mariners documents for this reason in appropriate circumstances.

Implied Consent

The proposed regulations state that any individual accepting employment on board any vessel on which any individual is required to be licensed, certificated, or documented would be deemed to have consented to submit to chemical testing. This implied consent provision is consistent with the Federal Railroad Administration regulations dealing with substance abuse.

Note.—See 49 CFR Part 219.

The existence of an implied consent provision would facilitate the acquisition of breath, blood, or urine samples in a timely and efficient manner. An individual could still refuse testing since the regulations do not authorize physical coercion; however, refusal would be considered a violation of regulation and could subject an individual to proceedings which may result in suspension or revocation of a license, certificate, or document under 46 U.S.C. 7003 and Part 5 of Title 46, Code of Federal Regulations, or termination or refusal of employment in the case of an individual who does not

possess a license, certificate, or merchant mariners document.

Periodic Testing

The Coast Guard proposes to require urinalysis in connection with required physical examinations which are incident to various license or merchant mariners document transactions. Only those individuals required to receive a physical examination for a license or document transaction, or those required to receive periodic physical examinations, would be required to undergo a periodic urinalysis for drugs. The testing would be part of that physical examination. The results of the physical examination and urinalysis would have to be presented at the Regional Examination Center (REC) and an application would not be considered complete until the chemical test results required by these regulations have been submitted. All test results would be kept by the REC and become part of the individual's file.

Some individuals are required to receive periodic physical examinations, normally on an annual basis. When they renew their license, they would have to present documentation of each urinalysis taken with a physical examination since their last license transaction. This would ensure that the individual received all required drug tests.

An individual who has been subject to a random sampling program, and who has been tested under that program would not be subject to the requirement for periodic testing if the applicant provides satisfactory evidence certifying that he or she has been continuously subject to a random sampling program for not less than six months, has not tested positive for dangerous drugs, has not refused to participate in required chemical tests, and has been tested within the past six months. However, even if the above conditions are met, the periodic testing requirement would continue to be applicable to those individuals whose chemical test is part of a physical examination for issuance of an original license or merchant mariners document.

Because the date of periodic testing is known to the employee, an individual who uses drugs could stop taking them prior to the test in order to avoid detection. However, not all individuals would have sufficient control over their drug use to do so. Periodic testing would have the advantage of being less costly, since it would be performed during an already required exam. Because of the scheduled nature of periodic testing, comment is requested concerning its

effectiveness. Should this type of testing be a part of all future drug programs, or should it be phased out after several years when the other forms of testing are established and working smoothly? Periodic testing would appear more likely to detect dependent drug users as opposed to casual users. After an initial round of periodic tests, most of the dependent users should be detected and, therefore, the benefits of additional periodic testing may decrease. The Coast Guard, therefore, is also considering only requiring periodic testing once for each licensed individual. This alternative would significantly cut down on the costs of testing, and in light of other testing measures such as pre-employment and random testing, commenters should address the costs and benefits associated with this alternative.

Preemployment Testing Programs

The Coast Guard is proposing that preemployment testing be required of all applicants for employment aboard any vessel on which licensed, certificated, or documented personnel are required. The purpose of testing applicants is twofold: One, it would convey a clear message that the employer is serious about establishing and maintaining a drug-free environment; and two, it would help identify those who are either addicted to or so dependent upon drugs that they cannot abstain from drug use. Applicants would be informed that tests will be conducted to determine the presence of drugs. The concept of preemployment testing is flawed to some extent because individuals can avoid detection by abstinence. However, data on preemployment testing in the airline industry reveals some positive test results ranging from 4.2 percent to 20 percent among selected carriers. As such, preemployment testing does provide a valuable service in the selection of employees.

It is intended that the preemployment testing program be employer sponsored, however, the Coast Guard will consider other arrangements that would produce equivalent coverage. The Coast Guard recognizes that, in many instances, employment on commercial vessels is of relatively short duration, such as a single voyage, and that unduly repetitive testing of an individual could result. For pilots, their term of employment on a particular vessel, or for a particular employer, is frequently measured in hours. The Coast Guard specifically invites suggestions by unions, associations, or other organizations for alternative testing programs that would provide adequate assurance to

employers that a prospective employee is not a substance abuser.

The Coast Guard also recognizes that employment of crewmembers frequently takes place on short notice and test results may not be available prior to signing on a new crewmember at the time of vessel sailing. While this could result in some instances where a crewmember could not be readily replaced at the time the results were made available to the employer, the Coast Guard anticipates that the number of such occurrences would not be significant since many experienced mariners will already be subject to random sampling programs from previous employers. However, the Coast Guard may revise the regulations to ensure that preemployment test results are made available before a vessel sails, or make provision for the acceptance of test results from previous periodic or random tests in lieu of the preemployment test. Comments on how to address this issue are specifically invited.

Random Sampling Programs

In addition to the testing programs outlined above, the Coast Guard is proposing the implementation of employer-sponsored random drug sampling programs. The proposed rules delineate the basic requirements for a random sampling program.

Random drug sampling applies the principle of random selection in that individuals are subject to drug testing at any given time. Periodic and preemployment screening on their own may not be sufficient deterrents since they permit individuals to schedule periods of abstinence from drug use. It is believed that random sampling programs are the most effective method currently available to limit potential drug use since they prevent a drug user from preparing for the screening in advance. There are data suggesting that random drug screening can reduce drug use. In the Defense Department's 1985 Worldwide Survey of Drug and Alcohol Abuse, overall drug use was registered to have dropped from 27 percent in 1980, to 19.0 percent in 1982, and then to only 8.9 percent in 1985. This drop in drug use corresponds to the implementation of servicewide random sampling programs. The Coast Guard's own experience with random sampling of its uniformed personnel has resulted in detected drug use falling 75 percent in the five years since the program was implemented. The success of the military's program, as well as those in industry, leads the Coast Guard to believe that random sampling would significantly limit the use of drugs in the marine industry.

It is envisioned that random sampling programs would be mandatory for all employers owning or operating vessels on which crewmembers are required to hold licenses, certificates of registry, or merchant mariners documents. Testing would be required for all personnel on inspected vessels and uninspected vessels on which any one or more personnel are required to be licensed, registered, or certificated. The Coast Guard's regulatory authority over these types of vessels and personnel is generally contained in 46 U.S.C. 2103, 3306, 7101, 7301, and 7701.

Besides employer-sponsored programs, there are alternative approaches that could be used to implement random programs, including Coast Guard or State administered programs. However, both of these alternatives were considered and rejected due to perceived problems with effectiveness, authority, cost, and applicability on both the federal and state level. The Coast Guard believes that employer-sponsored programs are the most effective because employers maintain routine contact with their personnel and have a vested interest in ensuring that their vessels and equipment are used properly.

Random selection means that every member of a given population has an equal chance of selection on a scientifically valid basis. Random selection would be accomplished through the use of a random-number table or computer based, random-number generator. Both methods select individuals by matching random numbers against employees' identification numbers, e.g., social security number of employee, payroll account number, etc.

The Coast Guard desires that the standards utilized for random sampling ensure randomness and selection of a sufficient number of employees to force drug users to modify their behavior. The Coast Guard requests comments on a range of possible annual testing rates up to 125 percent for random selection. This does not mean that the rate will be set at that percentage, but it serves as a cap upon which comment and data are requested. In particular, the Coast Guard invites comments on documented cases or examples of other random sampling programs, the testing rates that were used, and their success. How would different sampling rates affect the numbers of drug users who volunteer for rehabilitation under each of the rehabilitation options appearing elsewhere in this text? Is there any evidence to support alternative assumptions regarding the rates at

which drug users would volunteer for rehabilitation? What is the lowest sampling rate for random testing that would be effective in determining drug abuse? Would a lower rate be more effective if the severity of the penalties increase? Would higher sampling rates result in sufficiently higher benefits to justify the costs? Do lower sampling rates necessarily result in lower benefits? Is it reasonable to assume that benefits are directly proportional to the sampling rate? Would the higher sampling add sufficient deterrence to reduce the costs of and need for rehabilitation? The Coast Guard intends to select an appropriate rate based on effectiveness, deterrence, costs, and benefits. Commenters need to identify what that rate should be and provide the basis for their views.

Random drug testing requires a specific implementation plan to deter drug use. For instance, a 125 percent plan would mean that a population of 1,000 would be targeted to provide 1,250 annual samples. Using a true random selection basis, employees selected for each weekly/monthly increment would be returned to the pool of eligibles and subject to reselection. The possibility of reselection ensures continuous deterrence in that an individual selected early in the testing cycle would still be subject to testing throughout the remainder of the year. One feature of this plan (which could be considered a drawback) is that some employees might not be selected at all during the first year and others could be selected more than once.

The Coast Guard is considering whether the drug programs should provide for adjustment of the minimum sampling rate based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experiences, the results of random testing would provide the most useful gauge of the need. The Coast Guard is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule or, if an approval process is used, based on individual applications, and specially requests comments on this

issue. The Coast Guard also solicits comments on whether companies that develop exemplary records should be relieved at some future time from some or all of the requirements of this proposal. As with other issued rules, the Coast Guard reserves the right to make appropriate adjustments in the rule in response to public comments. Are there any other ways to reduce costs or improve the effectiveness of the proposed rule? For example, are there any ways to grant employers flexibility without compromising the objectives of the rule? What would be the likely cost savings, if any, in a more flexible approach. The Coast Guard also requests comments as to whether the rule should contain a provision allowing a company with a high level of safety with regard to drug use, demonstrated over a designated time period, more latitude in determining the application of its anti-drug program.

The Coast Guard is concerned that the standards developed for random sampling protect an employee from harassment or discrimination. Thus, the Coast Guard is proposing to require employers to adopt a method of selection which ensures randomness (e.g., random number table), and to conduct this portion of its drug testing program at unannounced intervals.

In view of the above, the following questions regarding the standards for random sampling are posed:

1. Should the Coast Guard specify the method to be used by employers to select employees for testing?
2. Should the rule permit employers, especially the small ones, to use a third party to set up and maintain their drug testing program? They could choose to comply with the rule through the use of several options, including: (a) Form consortiums made up of small employers that would develop a centrally administered random testing program; (b) Form consortiums, and hire a contractor to develop and implement a random testing program; (c) Contract separately with an outside company that would set-up and provide these services; (d) Have existing industry-related groups (e.g. trade associations) set-up drug program in which small entities could participate; (e) Arrange to be included as a part of a larger company's drug testing program, who would be responsible for their implementation? Oversee their operation?

3. Another issue in this area is the matter of "randomness" among small or isolated populations. What, for example, is the meaning of a random test to an employee population consisting of only one employee, or a few employees? This

problem is particularly acute if the owner or manager of the business is also the sole person, or one of only a few persons, subject to testing. Similarly, although surprise is an essential feature of a true random sampling program, how can this be achieved when the employee is located in a remote location and must be transported some distance to provide a sample? This could result in the loss of the element of surprise in many cases.

A fundamental issue with a requirement for employer-sponsored random sampling programs is how to implement programs that are effective yet take into consideration the differences in the industry operations. Such problems as high turnover of personnel, vessels operated by only one licensed person, companies with small staffs, and differences in vessel operations and service all combine to make uniform implementation of random programs an extremely difficult proposition. To deal with these problems, the proposal also allows for the random sampling programs to be conducted by an association, union, or other organization with which individuals serving in the marine industry are associated. The Coast Guard encourages small operators to organize for this purpose.

One of the more difficult problems associated with random programs is the implementation of testing for individuals who own and operate their own vessels. These individuals are both employer and employee, and occasionally operate with a small staff to assist them. The same problem exists for pilots, who in most cases operate independently from any "steady" employer and instead work on a contract to contract basis. We recognize that a requirement for random sampling by and for these individuals would be extremely difficult to implement, and the Coast Guard welcomes any comments on how best to include them in the drug testing.

The requirement for random sampling may not only present practical problems, but may also have a disproportionate impact upon the owner or operator of a small vessel. The proposed rule is applicable to all inspected vessels and those uninspected vessels which must be operated by persons holding licenses, certificates or registry, or merchant mariners documents, regardless of the size of a company or number of individuals in a vessel's crew. For small vessels having only two or three affected crew members, the cost of actually conducting the chemical test and verifying the test results should be in the range of \$100 to \$300 per year, assuming

a random test rate of 125%, the use of a Medical Review Officer (MRO) under the HHS Guidelines, and that outside resources are readily available for an employee assistance program. Of more concern is the administrative burden on the owners and operators in establishing and conducting a random test program and arranging for MRO services, employee assistance counseling, and rehabilitation. Because the Coast Guard is concerned with the adverse effect this rule may have upon small entities, comments concerning this issue are requested. Specific comments are requested on whether cut-offs could be used to limit the applicability of the rule, i.e. size of vessel's crew, total number of company seagoing personnel, the gross revenue of the company, etc. It should be kept in mind that many of the unlicensed and undocumented personnel on these vessels later advance to hold a license or merchant mariners document and serve on larger vessels.

While the Coast Guard is currently considering only applying random sampling programs to vessel personnel, there are numerous categories of personnel in other marine related positions who, if intoxicated, can jeopardize the safety of vessel operations. Shipboard personnel today are only a small percentage of the personnel necessary for vessel operation. Shoreside personnel perform many functions that are essential to vessel operations, such as handling lines, loading or unloading cargo, operating ship or shoreside cargo gear and cranes, or transferring fuel. The potential for these shoreside personnel causing a dramatic marine accident is often just as great, and in some cases greater, than for those who actually serve on board the vessels. For this reason, the Coast Guard requests any comments on including shore-based personnel in an employer sponsored program.

The Coast Guard envisions that for any covered individuals who test positive for drug use, remedial action could be taken. If illicit drug use is determined, the individual would be ineligible for seagoing employment in the merchant marine until (1) he or she had been rehabilitated, if the individual did not hold a license, certificate of registry, or merchant mariners document, or (2) he or she was reissued a license, certificate of registry, or merchant mariners document, if the individual originally held one. Reissuance of the license, certificate, or document would be contingent on successful completion of rehabilitation.

Commenters should address whether the types of procedures afforded an employee should vary depending upon the consequences of a positive test, and whether the burden of proof on time validity of test result should be borne by the employer or the employee. The issues of employer rights to terminate or retain an individual and whether employers must reemploy individuals after rehabilitation are discussed below.

It should be noted that it is not envisioned that the Coast Guard will actually review and approve random sampling programs. It is estimated that over 19,000 vessels would be covered by these rules, and most are owned or operated by companies which have only one or two vessels. The size and diversity of this population would create an enormous administrative burden both on the Coast Guard and the marine employers. By permitting program self-certification, this administrative burden would be avoided while permitting program sponsors to more easily implement programs which meet their operational needs. However, in cases where questions arise as to whether a program is meeting the standards proposed in this rule, the Coast Guard will review the program to ensure compliance with the standards. The employer is responsible for carrying out the anti-drug programs, including compliance with the applicable HHS Guidelines. Failure of the employer to do so, like any failure of a regulated party to comply with Coast Guard regulations, makes the employer subject to enforcement action, including civil penalties. This should ensure that employers do not circumvent the rules.

The Coast Guard does not envision that any Government funds will be expended for random sampling, except those costs associated with suspension and revocation proceedings for those holders of licenses, certificates of registry and merchant mariners documents who test positive for drug use. This does not include costs associated with data collection discussed below. Other than these, all costs would be borne by the industry, either the employer, the mariner, or any association or union that represents them. These groups could cut costs by joining together to negotiate volume or large scale testing contracts, since volume orders with laboratories will allow the price per sample to drop significantly. The Coast Guard is considering defining what it considers an "employer" sponsored program to include those innovative cost sharing schemes that may arise and which are legitimate. However, for an alternative

scheme to be acceptable it should not represent a decrease in coverage or effectiveness.

Reasonable Cause Testing

In the Final Rule concerning Operating a Vessel While Intoxicated (CGD 84-098, 52 FR 47526, December 14, 1987), the Coast Guard included a section, 33 CFR 95.035, concerning reasonable cause for testing to determine whether an individual is intoxicated. These proposals would go a step further by requiring testing based on a reasonable and articulable belief that an employee is using drugs, but is not necessarily intoxicated. Even if no mistakes are made at work, the employee may demonstrate a change in character or behavior that is symptomatic of drug use or alcohol abuse. Such changes are normally characterized by mood swings and changes in appearance, attitude, and speech.

Because of the subjectivity of the criteria and the possibility of employee harassment, at least two of the employee's supervisory personnel would have to concur in the decision to test an employee based on a reasonable suspicion of drug or alcohol use. At least one of these supervisors would have to be trained in detecting symptoms of drug use or alcohol abuse. Are there practical problems to this approach? Should the observers have to be supervisors? There will be situations where only one supervisor is available or the only persons in a position to observe an employee are not the employee's supervisors. What other criteria could be used that would protect a disfavored employee from potential harassment through testing? Should there be a limit to the number of times an employee can be subjected to reasonable cause testing, in order to prevent unwarranted harassment.

The Federal Railroad Administration has specified, in its existing chemical testing rule, the types of incidents that could justify requiring an employee to undergo testing. Should there be specified circumstances, such as particular rule violations, under which chemical testing would be automatic? If so, what kinds of rule violations would suggest a drug or alcohol problem and should trigger reasonable cause testing? Could a similar program work in the marine industry? One difficulty lies in identifying which of the many operating rules applicable to vessels are sufficiently related to the mental and physical condition of the person responsible for compliance to permit inference that the violation of the rule

may be due to drug or alcohol use. Should all operating rules so identified be treated equally, with a violation of any rule establishing reasonable cause for testing, or should violation of only the more important or critical rules be treated in this manner? Would the impact of establishing a list of specific rule violations fall disproportionately on masters or persons directing the movement of the vessel and have little or no application to engineering personnel and others performing tasks that may be equally important to the safety of the vessel but not directly related to its navigation? The Coast Guard welcomes comments on whether this provision should be included in the final rule, how this provision might be implemented, and recommendations for specific operating rules which, when violated, would indicate reasonable cause.

We propose to authorize employers to test for any Schedule I or Schedule II drug, if there is reasonable cause to believe that a particular drug was used, even though any Schedule I and Schedule II substances would not be tested for in pre-employment, periodic, and random testing.

Commenters also should present any data on the effectiveness of existing programs which use reasonable cause or suspicion-type testing. At least one program that we are aware of provides for rehabilitation similar to that proposed under option 3, but which was worked out by labor and management. Sanctions, in terms of salary loss, are potentially quite severe for persons discovered to have drugs in their systems as a result of a test. Commenters should address the benefits, costs and deterrence value of such a program.

Post-Accident Testing

A number of toxicological sampling and chemical testing methods are available today for accurately assessing post-accident drug and alcohol levels in the human body:

Breath alcohol testing is a well accepted and instantaneous means of indirectly determining the blood alcohol concentration (BAC) level in a person's system at the time of the sampling if the test is properly administered through the use of a correctly calibrated evidential breath testing (EBT) device. Breath alcohol testing will not detect the presence of drugs in the person's system. BAC standards have been empirically related to functional impairment, and blood alcohol testing is widely accepted as proof of intoxication due to alcohol if conducted in a timely fashion following a serious incident. In

this instance, what constitutes testing in a timely fashion is partially dependent on the sensitivity and operating capabilities of the specific EBT being used. Breath alcohol testing may be conducted by non-medical personnel. However, prior to being considered qualified, an EBT operator must undergo a formalized course of instruction covering such subjects as the effect of alcohol on the human body, scientific concepts related to breath alcohol testing, and proper use, calibration, and maintenance of the specific EBT being used. Data obtained through breath alcohol testing must be properly documented, but is not subject to chain of custody considerations.

Urine testing will detect the presence of alcohol and/or drugs in the urine at the time of the test. However, urine testing is of limited value in determining the recency of drug use because of the wide variances in the time periods over which drug metabolites dissipate, or remain detectable, in the urine (e.g., marijuana is detectable for several weeks or more after use, while cocaine remains for no more than 2-4 days). Collection of urine samples requires no specialized training and can be conducted by non-medical personnel. However, to ensure the validity of sampling and subsequent testing, procedural safeguards are required.

Blood testing provides the most accurate and comprehensive determination of the level of alcohol and drugs in the blood at the time of the test. Also, blood test results are well accepted as a means of specifically identifying impairment due to alcohol if sampling is conducted in a timely fashion following the incident. Impairment standards are not yet available for drugs, but are currently being studied by the National Institute of Drug Abuse, U.S. Department of Health and Human Services. Blood specimens must be taken at a medical facility or by qualified medical personnel, and must be obtained in a timely manner (within a maximum of 8-12 hours after an incident) because of the relatively rapid elimination of drugs and alcohol from the blood. Blood samples must be refrigerated and the chain of custody must be preserved.

In a direct effort to improve the quantity and quality of marine safety data and to implement provisions of the Coast Guard Authorization Act of 1984 (Pub. L. 98-557), the Final Rule concerning Operating a Vessel While Intoxicated (52 FR 47526, December 14, 1987), imposed a requirement for the owner, charterer, managing operator, agent, master, or person in charge (hereinafter designated as the "marine

employer") to determine whether there was any evidence of alcohol or drug use by individuals directly involved in a marine casualty. The rule provides two methods by which the above determination may be made: by personal observation of an individual's demeanor, appearance, etc.; or through optional chemical testing methods including breath analysis, or urine and blood sample testing.

The Coast Guard believes that many marine employers will opt to make a post-casualty intoxication determination through personal observation methods rather than through chemical testing. This belief is based on two reasons. First, some employers will consider the expenses associated with purchasing sampling or testing equipment, training personnel, and arranging chemical analysis of samples, to be too great. Second, since marine casualty reports may be referenced in potential civil litigation proceedings related to the casualty, some marine employers may be reluctant to obtain definitive evidence of the role of alcohol or drugs in the casualty.

While personal observation is a valid qualitative method for determining intoxication, obtaining blood, urine, and breath samples and chemically testing such samples is absolutely necessary to accurately determine blood alcohol concentration (BAC) levels and to detect the presence of specific drugs in the body. Therefore, while the Coast Guard believes that the existing rules will improve marine casualty data to a degree, requiring chemical testing is considered essential for better defining the extent of alcohol and drug involvement as primary or contributing causes of such incidents and for providing more reliable information upon which to base enforcement actions and is proposing mandatory post-accident testing. However, vessel personnel may not be physically compelled to provide samples under this proposal.

Requiring blood, urine, or breath sampling and chemical testing following the occurrence of all categories of reportable marine casualties would provide the most complete picture of the incidence of alcohol/drug-related accidents. However, to do so for all casualties would not be practical nor economically reasonable. The Coast Guard therefore is proposing to require sampling and testing following only those marine incidents which result in death, injury, or significant property or environmental damage. These would be called "serious marine incidents." A "serious marine incident" includes any

marine casualty involving a commercial vessel which results in: One or more deaths; an injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and in the case of a person employed aboard a commercial vessel, which renders the crewmember unfit to perform routine or emergency vessel duties (Note: It is also proposed to revise the definition of reportable injury in the present 46 CFR 4.05 in order to conform with these new requirements.); damage to property in excess of \$100,000; actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 10 GT or more. The term "serious marine incident" also includes a discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty; and a discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, whether or not resulting from a marine casualty.

The Coast Guard recognizes that the extent of injury or damages associated with a marine casualty, or the quantities involved in a pollution incident may be difficult to discern or estimate in the immediate aftermath of such an occurrence. Nevertheless, the marine employer would be required to make a timely, good-faith judgment as to whether or not an incident is, or is likely to become, a serious marine incident.

When reporting marine casualties to which the sampling and testing requirements are applicable, marine employers would be required to submit a Toxicological Sampling Report (Form CG-2692B) directly to the Coast Guard along with the Report of Marine Casualty or Accident (Form CG-2692). The Toxicological Sampling Report (Form CG-2692B) would be required to be submitted whether or not sampling or testing was conducted. (Note: Please refer to § 4.06-1 of the proposed regulations for details concerning Form CG-2692B.) A second copy of the completed form CG-2692B would also be required to be included with any blood and urine samples being shipped to the laboratory. A properly completed Form CG-2692B would constitute appropriate documentation of the chain of custody on the part of the marine employer from the time of sampling until

shipment. The laboratory would then indicate receipt of the samples which will complete the chain of custody.

Following a serious marine incident that is not a reportable marine casualty, such as a pollution incident not resulting from a casualty, submission of a Report of Marine Casualty or Accident (Form CG-2692) would not be required. However, submission of a Toxicological Sampling Report (CG-2692B) would be required in these cases, in the manner specified above.

All marine employers would be required to arrange and pay for blood and urine sampling at an American medical facility or by qualified medical personnel as soon as possible after the occurrence of a serious marine incident, in all cases where it is feasible to obtain samples within 24 hours following the incident. Each employer would be required to have available an appropriate blood and urine sampling and shipping kit for use by medical personnel. Employers would also be required to ensure the chain of custody of samples and prompt shipment of samples to a laboratory for analysis. In some cases, chain of custody and shipment could be handled by the medical facility or medical personnel collecting the samples. These requirements would be applicable to foreign vessels which experience serious marine incidents in U.S. territorial waters. However, operators of such vessels would have the option to have American steamship agents arrange for blood and urine sampling of involved foreign seamen.

Because certain classes of vessels routinely operate beyond 24 hours from American medical facilities, it is recognized that in a substantial number of cases, the obtaining of blood and urine samples at American medical facilities or by medical personnel will not be feasible. For this reason, inspected vessels certificated for unrestricted ocean routes (i.e., tankers, freighters, MODUs, and most offshore supply vessels) and inspected vessels certificated for restricted overseas routes would additionally be required to be equipped with evidential breath testing devices (EBTs) and the means to provide secure storage of urine samples. When a serious marine incident occurs involving vessels of this type, and blood and urine samples of appropriate personnel cannot be obtained at American medical facilities within 24 hours, breath testing and collection of urine samples would be required to be performed on board as soon as possible after the serious marine incident. Marine employers would be required to train

appropriate personnel in proper EBT equipment use, to provide for secure storage of urine samples aboard the vessel, to ensure the chain of custody, and to ensure prompt shipment of urine samples to the designated laboratory.

All marine employers would be required to have available blood and urine sampling and shipping kit(s) for use whether samples are collected aboard the vessel or ashore. Marine employers operating one or more vessels within a local geographic area could satisfy this requirement by maintaining a kit or kits at a central shore-side location. Standardized sampling and shipping kits would be made available for purchase through a designated laboratory, for an estimated cost of \$25 per box.

Evidential breath testing devices (EBTs) would be required aboard inspected vessels certificated for unrestricted ocean routes (i.e., tankers, freighters, MODUs, and most offshore supply vessels) and aboard inspected vessels certificated for restricted overseas routes. They are to be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published periodically by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation. This listing would also be available through Coast Guard Marine Safety Offices and Marine Inspection Offices. Similarly, EBTs would be required to be calibrated by use of a unit listed on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers. Calibration would be required to be performed with sufficient frequency to ensure the accuracy of the device, but not less frequently than provided for in the manufacturer's instructions. Calibration frequency varies from as often as before each breath test to once a year, depending on the sophistication of the device being used.

It should be noted that the proposed regulations specify that a BAC of less than .02 percent is considered to be a negative result. 33 CFR Part 95 presently defines intoxication as .04 BAC and above, however, the Coast Guard desires to know any EBT test results above .02 BAC to determine whether alcohol could have contributed in any way to an accident, as well as whether there was a violation of 33 CFR 95.045 with its rules limiting alcohol use. A BAC of .02 is the present limit for accurate EBT equipment readings, therefore, any BAC level .02 or above should be noted on Form CG-2692B,

even if the intoxication standard of .04 BAC was not violated.

In addition to the good-faith determination previously described concerning whether an incident fits the definition of a serious marine incident, the marine employer would be further required to determine whether obtaining blood and urine samples at a medical facility or by medical personnel within 24 hours is practicable. In this respect, the Coast Guard also recognizes that commercial marine operations are unique when compared to other transportation modes due to the frequent remoteness of vessels from land or medical facilities and personnel, and the inherent need for vessel crew members to provide the initial trained response for indefinite periods of time to a wide variety of emergency situations such as fire, explosion, grounding, flooding, oil or chemical spill, etc. until the arrival of and relief by shore-based or other assistance. Factors to be considered when determining whether samples can be reasonably or safely obtained include, but are not limited to, the vessel's capability to reach port within 24 hours; the feasibility of transporting personnel to a medical facility ashore or transporting medical personnel to the vessel; whether compliance will adversely affect the safety of life, property, or the environment; etc. Cases of serious marine incidents in which sampling is not conducted will be carefully scrutinized on a case by case basis to determine whether compliance could have been reasonably and safely achieved. When it is determined that samples could have been reasonably and safely obtained but were not, the Coast Guard would consider initiating appropriate enforcement action under 46 U.S.C. 6103 or 46 U.S.C. 7703.

A person who needs to be tested after a serious marine casualty is a "person directly involved in a marine casualty or serious marine incident." This is considered to be a person who supervises, performs assigned duties in connection with, or otherwise actively participates in, any commercial vessel operation or any activity occurring aboard a commercial vessel which is a substantial factor in the events leading to the marine casualty or serious marine incident. The term "person directly involved in a marine casualty or serious marine incident" also includes any individual serving aboard a commercial vessel who is fatally injured or who is injured to the degree specified in 46 CFR 4.03-2. The following guidelines are given for determining the persons

typically directly involved in a serious marine incident:

(1) For a vessel casualty such as a collision or grounding: The master, person in charge of the vessel, pilot, deck or engineroom watchstanders, lookouts, and any other person who may have been performing duties related to the operation or navigation of the vessel, as appropriate, may be directly involved.

(2) For a vessel equipment casualty, such as failure of propulsion, steering equipment, or auxiliary machinery: The chief engineer, engineroom watchstanders, and any other person involved in causing the casualty, may be directly involved.

(3) For fires and explosions: The master, chief engineer, and any other person possibly involved in causing the casualty, may be directly involved.

(4) For injuries or deaths: The injured or deceased person(s), the person's supervisor, if the person was performing duties when the injury or death occurred, and any other person involved in the accident, may be directly involved.

(5) For oil or chemical pollution incidents not resulting from a marine casualty: The person supervising the oil or chemical transfer operation, any other individual participating in such an operation, and any person performing any duties or activities who may have caused or contributed to causing the pollution incident, may be directly involved.

The Coast Guard recognizes that situations will undoubtedly arise in which the master or person in charge of a vessel is one of the individuals directly involved in a serious marine incident and is subject to providing blood and urine samples, or breath testing, as appropriate. Such individuals would still be required to ensure that the necessary samples are obtained and tests performed, including their own. However, owners, managing operators, and charterers are equally responsible under 46 U.S.C. 6101 for arranging contingency plans for such eventualities. On a large vessel such as a tank or cargo vessel, for example, the chief mate, chief engineer, or other responsible, licensed personnel could and should be trained to assist the master in ensuring that samples are obtained, as well as to arrange and witness the master's participation when necessary. On a smaller vessel such as a towing vessel with a single licensed operator aboard, the owner could establish contingency plans which involve the assistance or supervision of shoreside personnel.

Similarly, a situation may arise in which the owner, managing operator, master, and person in charge of a vessel are the same person; for example, the owner/operator of an inspected or uninspected small passenger vessel. In that instance, the single owner/operator would also be required to arrange for sampling, including his or her own. If that individual is unwilling or unable to comply with the sampling requirements, due to possible intoxication, injury, or other reason, the Coast Guard may become actively involved in arranging for sampling, if notified of the incident. Limited numbers of Coast Guard personnel will be trained and equipped to respond in such situations.

As previously indicated, the Coast Guard would evaluate any situation in which samples could not be obtained to determine whether or not samples could have been reasonably or safely obtained. When it is determined that samples could have and should have been obtained, but were not, the Coast Guard would consider initiating appropriate enforcement action under 46 U.S.C. 6103 or 46 U.S.C. 7703.

At room temperature, blood samples will deteriorate within a matter of hours following extraction from the body. Blood samples would therefore be required to be kept in cool or refrigerated storage until shipment to a designated laboratory for analysis; to be shipped in a standardized shipping box which is lined with styrofoam and which includes a sealable ice can for cold preservation during shipment; and to be shipped via an overnight freight service to ensure arrival at the laboratory within 24 hours of shipment. These provisions are designed to maintain the integrity of each blood sample to the maximum degree that is reasonable, and to provide the most valid sample for analysis purposes.

At room temperature, drug metabolites and other substances in urine will also dissipate, though much more slowly than blood. For this reason, urine samples need not be refrigerated after collection if expeditious shipment to the laboratory is ensured; however, for practical purposes, urine samples obtained at an American medical facility could be shipped in the same cooled shipping kit along with blood samples. Urine samples obtained on board an inspected vessel to which on-board urine sampling requirements apply would not be required to be shipped to the laboratory by overnight freight service; however, they would be required to be shipped by the next most expeditious means available.

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For analysis, marine employers must provide the samples to a laboratory which meets the HHS Guidelines. This may require increased costs to the marine employer in connection with overnight shipment of samples to the lab, however, this will provide a much higher level of consistency and confidence in analysis results, and would ensure timely, accurate reporting of analysis results to the Coast Guard.

Rehabilitation

The NPRM proposes four different options concerning the circumstances under which employees would or would not be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Non-employees given a preemployment drug test need not be given an opportunity for rehabilitation. Once rehabilitated, the employee could be reinstated into his or her prior position. The second option would give rehabilitation rights to employees who come forward voluntarily or who are identified as drug users during periodic or random tests, but would not require that the same opportunity be afforded to drug users identified in reasonable cause or post-accident tests; those not afforded the right to rehabilitation could be discharged. In the third option, only volunteers could claim rehabilitation rights. Anyone testing positive for drugs could be fired immediately. In the fourth option, employers would not be required to offer an opportunity for rehabilitation. However, the employers could voluntarily offer a rehabilitation program. In all cases, employers would be free to offer more rehabilitation options than the minimum proposed. For example, an employer could voluntarily offer two chances for rehabilitation rather than one, however, drug use following rehabilitation would subject an individual's license, certificate of registry, or merchant mariners document to revocation proceedings. Employees who undergo rehabilitation, whether voluntary or mandatory, and want to retain or regain their position would have to meet the requirements of this rule to complete the program and receive a recommendation for reinstatement.

Each of these approaches has its own merits. For example, the broad rehabilitation program anticipated by the first alternative is likely to maximize the benefits to society by ensuring that more drug users will get the help they need. If users are simply fired, they will often lose access to, and perhaps

incentive to use, rehabilitation services, and they will continue to be drug users. However, it could be argued that employees who are found to be drug users through reasonable cause tests are less deserving of an opportunity for rehabilitation, and the second alternative would therefore exclude them. The third alternative would be lower in direct costs, because rehabilitation would only be required for employees who seek it voluntarily, but for the same reason this alternative might produce less in societal benefits. To what extent would each of the three alternatives raise or lower costs and benefits? Is it reasonable to assume that more drug users would self-identify under option (3) than under either of the other two options? Are the costs of required rehabilitation programs warranted by the reduction in societal costs resulting from drug abuse? The Coast Guard specifically invites comment on which of these or other alternatives offers the greatest benefits at the lowest cost, while remaining consistent with the intent and purpose of 46 U.S.C. 7704.

The fourth option, under which rehabilitation would not be mandated, would be the lowest in costs. This alternative may provide the most flexibility to labor and management to determine the need for and the shape of any rehabilitation program and that it also could provide deterrence to drug use and thus may yield large benefits with low costs. Commenters should address whether this alternative would be effective for the maritime industry. How would this alternative affect the deterrence value of the Coast Guard proposal? What impact would it have on the costs and benefits? Would not requiring rehabilitation foster other approaches to combating drug usage?

Under the first three proposed options, rehabilitation would only be required to be made available to those individuals testing positive for the first time; a second positive, including a positive detected during the monitoring program, would subject the individual's license, certificate of registry, or merchant mariners document to revocation proceedings or termination of employment of an individual who does not possess a license, certificate, or merchant mariners document. In addition, refusal to surrender the license, certificate or registry, or merchant mariners document would initiate revocation proceedings.

Present Coast Guard regulations provide that an individual who voluntarily deposits his or her license, certificate of registry, or merchant

mariners document and subsequently demonstrates a satisfactory rehabilitation or cure and complete non-association with dangerous drugs for a period of six months, can have the documents returned or reissued. A person whose license, certificate of registry, or merchant mariners document was revoked for use or possession of drugs is still subject to the three years waiting period in 46 CFR 5.901; however, the rules permit waiver of the three years upon completion of a rehabilitation program followed by a one year period of complete non-association with dangerous drugs.

The Coast Guard is considering applying similar voluntary deposit provisions to seamen who are detected as having used drugs as the result of an employer-sponsored program. Seamen who are eligible for and choose to undertake rehabilitation would be allowed to deposit their license, certificate of registry, or merchant mariners document with the Coast Guard. After completion of a drug rehabilitation program, the individual would have to enroll in a drug monitoring program, which would include unscheduled drug tests. At the end of this period, the individual would have to present to the Coast Guard evidence of successful completion of the drug rehabilitation and drug monitoring programs.

At the time of the adoption of a final rule in this proceeding, we intend to provide procedures for the conduct of such tests. We invite public comment on what the final rule should contain. For example, should there be a uniform testing period after rehabilitation, or should this be determined on a case-by-case basis? Who should make such a determination: The medical review officer, the EAP counselor, or both together? Should the employee be involved? How could employee involvement be accomplished? If we adopt a uniform post-rehabilitation period, how long should it be? Is six months reasonable? Would longer periods constitute an unacceptable burden on employees and on the employer? Others might argue that a long follow-up period, such as one year, is called for. Should the length of the follow-up period depend on the kind of drug that was detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? For example, should someone undergoing inpatient rehabilitation be subject to post-rehabilitation testing for a longer time

than someone who needs only abatement counseling?

During the post-rehabilitation period, should we prescribe the minimum and/or maximum number of tests to be administered? We would want to ensure that any necessary tests would be given frequently enough to ensure that the employee is free of drugs. At the same time, however, we do not want drug testing to become an instrument of harassment of the employee or an undue burden on the employer. Here again is the issue of whether the number of tests given should vary with the kind of drug used and the severity of the employee's problem.

One alternative, on which we also invite comments, is a specified post-rehabilitation testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following rehabilitation.

Ideally, the seaman would be retained in an employee status, which could include leave without pay while undergoing in-patient or other intensive rehabilitation program, and employment as other than a crewmember while undergoing an out-patient monitoring program. For holders of a license, certificate, or document, upon return of the individual's license, certificate of registry, or merchant mariners document; or for those not holders of a license, certificate, or document, upon successful completion of a rehabilitation program; the individual would be entitled to resume the seagoing position he or she previously held or an equivalent position.

The Coast Guard seeks comment on practical problems that may arise incident to rehabilitation efforts. For example, vessels subject to the inspection and manning requirements of Subtitle II, Title 46 U.S.C., have prescribed minimum manning levels that necessitate the immediate hiring of personnel to replace the seaman undergoing rehabilitation. Even large vessels have few, if any, positions that do not require a license, certificate of registry, or merchant mariners document, and many vessel operators do not have suitable alternate employment available ashore. These problems are intensified for small vessels with limited crew and shoreside employees.

In considering the feasibility of implementing a comprehensive program for assisting and rehabilitating employees, the following questions are applicable:

(1) What is the minimum employment relationship that an owner or operator should be required to maintain while an employee is undergoing rehabilitation and monitoring?

(2) Should an employer be required to pay for rehabilitation and the drug monitoring program? (The NPRM does not propose such a requirement.)

(3) What is the appropriate duration of a monitoring program and the number of random chemical tests that should be conducted during the program?

(4) What should be considered a bona fide rehabilitation and monitoring program?

(5) What are the appropriate roles for the owner or operator and the Coast Guard in overseeing the monitoring program?

(6) Are the costs of required rehabilitation programs warranted by the reduction in the societal costs resulting from drug abuse?

The Coast Guard believes there may be some employees whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short term hire tested positive for drugs, the end of the scheduled employment term might come before completion of the rehabilitation program. Therefore, the Coast Guard does not propose to require employers to offer an opportunity for rehabilitation to temporary employees who are hired for a short period. That is, if such employees test positive, they could be dismissed immediately.

The Coast Guard is considering defining a temporary employee as one hired for a period of 90 days or less. However, there may be a considerable number of vessels that typically hire seasonal employees for periods slightly in excess of 90 days. For example, some small passenger carrying vessels hire additional personnel for the annual summer tourist season that lasts from Memorial Day to Labor Day. Should the temporary employment period be 120 days or some other period? Should the definition of temporary employment provide for different categories, by type of vessel or employee, and, if so, what categories are appropriate? Would it be feasible to define the temporary employment period as not more than 90 days, but provide for individual waivers or extensions?

We recognize that some employees hired on a "temporary" basis are actually regularly reemployed. Some of these employees are recurring seasonal employees, others are continually reemployed at the end of a specified term. These persons are regular members of the industry, and thus

should not be excluded from the opportunity for rehabilitation and reemployment. Comment is requested on how to include these individuals under the rehabilitation and reemployment program.

The Coast Guard specifically requests comments on the (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employee.

The Coast Guard is also considering not requiring employers to provide an opportunity for rehabilitation and rehire under two other situations: employees on strike and employees scheduled for layoff. The Coast Guard specifically requests comments on the merits of excluding striking employees or employees scheduled for layoff, and asks commenters to define "scheduled for layoff."

Another problem concerns new employees. Should a seaman be offered the opportunity of rehabilitation and reemployment even though he or she may have joined a company only recently and might still be on some sort of probation? Should eligibility for rehabilitation and reemployment be based on length of service, hiring status, or some other criteria?

Employee Assistance Programs

One method of preventing, as well as encouraging the voluntary cessation of, drug and alcohol use is the establishment of an Employee Assistance Program (EAP). An EAP, in addition to including any of the rehabilitation options described above, includes education and training components.

An EPA program is multi-faceted and supportive in that it offers education and training as a means of combating and preventing drug or alcohol abuse. It must be recognized that an EPA itself will not seriously deter drug or alcohol abuse unless accompanied by the threat of discovery by drug testing. The Coast Guard had a Drug Exemption Program that was intended to encourage Coast Guard military personnel to seek rehabilitation by voluntary disclosure of past illegal drug use. A Commanding Officer's grant of a one-time exemption, following disclosure, precluded disciplinary action and administrative action other than an honorable discharge. Rehabilitation for members who were retained included counseling, education, and inpatient treatment at U.S. Navy facilities for members diagnosed as drug-dependent. Users detected without voluntary disclosure were subject to disciplinary or other adverse administrative action. The

Coast Guard's experience between 1980 to 1982 disclosed that the Drug Exemption Program failed to convince members using illegal drugs to seek help and cease their misconduct. Very few drug-dependent members were identified or treated and the incidence of drug use did not appear to decline as a result of the program.

Based on the above results, the Coast Guard cancelled the exemption program and initiated a random drug testing program which witnessed a decrease in the number of routine confirmatory urinalysis tests from 103 per 1,000 in 1983 to 29 per 1,000 in 1986. Thus, it is felt that the threat of detection through random sampling is a necessary part of an effective drug program. It should motivate individuals to stop using drugs and may encourage them to seek help through EAPs voluntarily.

The type of EAP services provided should consist of the following:

- (1) Educational materials regarding drug and alcohol abuse and the consequences of such use from an employment, safety, and personal health/welfare perspective.
- (2) Annual and other recurring training in the form of classes, forums, speakers, etc. for supervisory personnel.
- (3) If adopted, rehabilitation, to consist of referral and other services as well as procedures for returning a rehabilitated employee to work, and monitoring their continued drug-free status.

The establishment of an EAP would not require payment of compensation for absence from work to obtain counseling and treatment. Compensation remains a matter between employee and employer.

Who should be afforded EAP services and under what circumstances? What is the estimated level of voluntary enrollment in EAP services at sampling rates of 125 percent and at 12.5 percent under each rehabilitation option? What are the estimated costs of individual EAP rehabilitation services under each rehabilitation option? Should training be mandatory for employees only in the first year and required annually only for supervisors? Should the Coast Guard specify a minimum training period?

It is recognized that not all employers will have the fiscal resources to implement a "company" EAP; however, the employer has a responsibility to both employees and the public to provide for a drug and alcohol abuse free environment to the maximum extent practical. As such, employers could provide or make EAP type services available through one of the following means: (1) A company operated EAP; (2) contractor/consortium arrangement; (3) arrangements with local community

service organizations; or (4) other alternatives justified as being workable and providing an equivalent level of services. Comment is requested on the other possible alternatives.

Oversight of the Chemical Testing Program

Procedures for testing and analysis of tests, as well as the accreditation of laboratories, must follow the HHS Guidelines under this proposal. However, because of the nature of the marine transportation industry, there is always the possibility that testing will be required of employees in remote locations. It is expected that every employer will attempt to ensure that all the requirements of the testing program are met. However, it is realized that in some cases an employer will not be able to supervise testing or even ensure testing is performed; therefore, the Coast Guard intends to establish guidelines on acceptable deviations from the testing requirements and procedures. These guidelines would not exempt employers from the testing requirements, but would outline the instances in which testing deviations may be acceptable to the Coast Guard. Employers would be required to make good faith efforts to ensure that testing is conducted in the most expedient but proper method available; non-compliance may result in administrative penalties.

Employer Flexibility

The Coast Guard recognizes that drug use is a complex problem that requires dynamic responsive solutions. The Coast Guard believes that its proposed program meets the agency's statutory mandate to promote safety and that it responds to the public's need for a safe and drug free marine environment. The Coast Guard is also interested in comments on whether there are ways to increase flexibility in the program or reduce costs without decreasing safety. For example, should the Coast Guard allow covered employers the option of submitting to the Coast Guard a company-specific anti-drug program that conforms with the basic requirements of the Coast Guard proposed rule?

The Coast Guard recognizes the costs and burdens associated with drug abatement in general, and wants to ensure that marine anti-drug programs are as cost-effective as practicable. Would providing for company-specific programs encourage the development of innovative solutions that may be less costly and more effective? How? Could similar innovations be developed under the proposal set forth in this notice? How can the Coast Guard ensure that its

final rule promote the development of efficient and effective solutions?

The proposed Coast Guard program includes a required random sampling rate that could range as high as 125 percent of the tested population. This level has proven to be effective in reducing drug use among Coast Guard personnel, but we have asked for comments on how low a testing percentage could be adopted without undermining the deterrent effect of the testing program. Whatever sampling rate is chosen as the industry-wide norm, would it be possible for a company-specific program to be designed in a way that would allow employers who can justify a need to test at a lower or higher sampling rate to test at this rate. How could this be accomplished?

The Coast Guard also requests comments on whether employers could also limit the size of the population subject to a full range of testing strategies to those sub-groups of employers where an initial round of testing has revealed a more serious drug-use program. In such a case, the employers may be able to rely on a less costly set of requirements to ensure that employees in sub-groups with less serious or more easily determined problems, remain risk-free. In addition, are there ways employers may avail themselves of less costly and less intrusive technologies as such advances are made while ensuring an appropriate level of safety? Are there other types of flexibility that the Coast Guard should consider? Commenters are requested to submit any empirical data that support their views.

Could the current proposal provide similar flexibility by simply providing a waiver for companies that, for example, ask to use a test they establish which achieves an equivalent level of safety? What, if any, fundamental requirements should be present in an acceptable company-specific drug abatement program, and what guidelines would the Coast Guard use in reviewing requests for waivers or amendments if such modifications are allowed? Should, for example, the Coast Guard be required to approve any modifications that are designed to achieve a safe and drug-free marine environment? Should these requirements or review guidelines be different from modifications submitted by small companies? Should the Coast Guard be required to act on an application for approval of a company-specific program, an amendment, or a waiver request, within a set time period? What form should the application take? What impact would allowing these

alternatives for increasing flexibility have on the Coast Guard?

The Coast Guard invites comments as to what methods might be used to facilitate the inclusion of small entities in the program and whether all small entities should be required to develop and implement a drug abatement program. Commenters who believe that the proposed rule should not cover small entities, either in whole or in part, should explain the basis for their views and describe how they would define small entity for this purpose.

Employee Privacy

The Coast Guard specifically requests public comment on what, if any, procedures and safeguards should be prescribed to minimize the invasion of the privacy of the persons being tested. Since the provisions of 46 U.S.C. 7704 require revocation of the license, certificate of registry, or merchant mariners document of an individual convicted of violating a drug law or shown to be a user or addicted to drugs, the proposed rules would require that the Coast Guard be notified of all positive tests of individuals holding licenses, certificates, or documents. A second positive would result in revocation proceedings being initiated against an individual's license, certificate of registry, or merchant mariners document. Are there ways to ensure that an employer is aware of a person's past testing history without denying that person an appropriate level of confidentiality?

The Coast Guard is concerned with the circumstances under which test results would be given to persons other than the employer sponsoring the testing program or the employee. For example, should test results be submitted to a prospective employer? If so, should the data be given at the request of the future employer, at the discretion of the employer conducting the test, or at the request of the employee? Another option is authorizing the release of test results only in specified circumstances, such as cases where the employee had their license, certificate of registry, or merchant mariners document revoked after refusing to undergo rehabilitation or had failed a second test after rehabilitation.

The potential for the release of data may also complicate the issue of an employee's right to contest the results of a test. A urine sample that had been subject to tampering could unjustly end an employee's career even with another employer, and it might be necessary to permit the employee to challenge the integrity of the test procedure.

There are other persons who may wish to know the results of drug tests, and it may be appropriate to develop rules to govern the release of test data to them. For example, should the Coast Guard prohibit providing access to test results to the general public, including the news media? Does the Coast Guard have the authority to do so? What about access by other government agencies which might want data for statistical, regulatory, or law enforcement purposes?

A related issue involves whether to distinguish between releasing general statistical data, such as the total number of positive tests at a company in a month or year, and name-specific data. Small companies and their employees may have an especially difficult problem since small organizations will have fewer people to test at any given time period. It may be that even seemingly neutral statistical data would have the effect of identifying an individual. This potential may be exacerbated if only a small portion of the population is tested in a year.

Should the Coast Guard treat the privacy issue for the various testing programs differently?

The Coast Guard is proposing under some of the rehabilitation options discussed above that employees not be fired on the basis of a single positive drug test. As described elsewhere in this notice, the employee may have an opportunity for rehabilitation following the first positive drug test. If the employee declines to take advantage of this opportunity, or if the employee does not successfully complete rehabilitation, he or she may be fired and their license, certificate of registry, or merchant mariners document subject to suspension and revocation proceedings. If, however, following successful completion of rehabilitation, the employee again tests positive for drug use, the employee may be fired and the employee's license, certificate of registry, or merchant mariners document is subject to suspension and revocation proceedings without further opportunity for rehabilitation. This policy may involve some complications in practice. Implementation of the policy seems straightforward when an employer continuously employs the individual throughout the process, but in some instances employment is more transient, with many employees regularly moving from one employer to another. An employee might test positive with one employer and, with or without having completed rehabilitation successfully, move on to another job. This possibility is great if the individual does not hold a

license, certificate of registry, or merchant mariners document.

In these situations, how is the second employer to know of the first positive test, especially if the individual does not hold a license, certificate of registry, or merchant mariners document? How is a subsequent employer to know of a series of two positive tests with two different employers? What action should each of these parties take upon learning of a positive drug test or tests with a former employer?

One possible way of dealing with these questions is to require employers covered by these rules to require job applicants to disclose, in writing, all instances in which they have tested positive for drugs within a certain period of time. A false response would itself be grounds for firing the worker. Comments on the merits of this disclosure approach are requested. In addition, if this approach was used, to what period of time should the disclosure requirement refer? (e.g., one, two, or three years? Any time in the applicant's work history?) Should the disclosure requirement apply only to positive drug tests under the provisions of this rule, or should any positive drug test (e.g., one conducted in connection with athletics or school activities) have to be disclosed?

Another issue pertains to a situation in which an employer has hired an individual who the employer knows, perhaps through voluntary disclosure, to have had a prior positive drug test, and the employee again tests positive for drugs. Should the employer then be authorized to fire the worker, even though this is the first instance of a positive drug test while the worker has worked for the current employer? Should the employer treat the positive test as a "first positive test" and provide an opportunity for rehabilitation if the last prior positive test was a certain amount of time in the past (e.g., more than three years ago)?

What is the position of an employer confronted with an applicant for employment who tested positive twice within the disclosure period, but who at the time of his application is "clean" or alleges that he or she has been successfully rehabilitated? Should the employer refuse to hire (or, indeed, be barred from hiring) the applicant? (Where they apply, statutes prohibiting nondiscrimination on the basis of handicap, such as section 504 of the Rehabilitation Act of 1973, as amended, may forbid a refusal to hire a drug abuser unless the individual's current drug use poses a danger to persons or property.)

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council (G-CMC/21) (CGD 88-067), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, from 8 a.m. to 3 p.m. Copies may also be obtained by referring to the "FOR FURTHER INFORMATION CONTACT" paragraph.

The proposed regulations would require proof of an individual's drug-free condition through the use of various testing programs. The proposed regulations mandate periodic urinalysis in connection with required physical examinations for licensed and documented personnel, and pre-employment and random sampling of all employees aboard any vessel on which licensed, certificated, or documented personnel are required. The testing programs also contain requirements concerning reasonable cause and post accident testing. Under the options proposed for comment, rehabilitation would be made available to certain personnel testing positive for drug use the first time, or those who volunteer for rehabilitation, with the opportunity to return to their previous position after undergoing a six month drug monitoring program. The Coast Guard does not believe these requirements will impose significant costs on either the private or public sectors, and the costs will normally be proportional to the size of the vessel or operation. There may be a substantial administrative burden on the operators of small vessels and some individuals.

Commenters should be aware that other operating administrations within the Department of Transportation also are proposing drug testing programs. Elsewhere in today's Federal Register are NPRMs issued by Urban Mass Transportation Administration and the Research and Special Programs Administration. In addition, the Federal Aviation Administration published an NPRM in the Federal Register on March 14, 1988 (53 FR 8368); the Federal Railroad Administration's NPRM was published on May 10, 1988 (53 FR 16640); and the Federal Highway Administration (FHWA) published its NPRM on June 14, 1988 (53 FR 22268). Each of these rulemakings addresses the costs and benefits of the proposals and are generally consistent with one

another. In some instances, however, and generally as a result of differences in the industries affected, the assumptions differ from those discussed in this proposed rulemaking. Obviously, changes in assumptions could affect the costs and benefits. Because of the nature of some industries, costs for similar elements also may vary or could vary enough to warrant sensitivity analyses. Other changes in assumptions, such as test costs or rehabilitation costs, also can have an effect on the economic analyses. Commenters may find it helpful to review the notices of proposed rulemakings or the economic analyses prepared by the other operating administrations. Comparisons may aid commenters in reviewing data on this proposal and in formulating comments. In reviewing the economic analysis and the basic assumptions made, commenters should address specific areas where they agree or disagree with the assumptions and the basis for the comment. Commenters are directed to the other rulemakings and their assumptions as a source of information in submitting comments. A copy of each of the documents has been placed in the docket.

There were several alternatives considered. These included: Not addressing the problem in regulation or policy; only requiring periodic drug screens for personnel receiving physical examinations; requiring only pre-employment testing; requiring only random sampling programs; requiring only reasonable cause testing; requiring only post accident testing; having the Coast Guard or States conduct testing; or requiring random sampling programs in combination with periodic, pre-employment, reasonable cause, and post accident testing.

The last alternative was determined to be the most acceptable, since all crewmembers on vessels covered by the rules will be subject to random and pre-employment testing programs administered by employers, associations, and unions as well as providing for periodic testing of individuals holding licenses or merchant mariners documents. Random programs are believed to be the most effective method in deterring drug use because of the increased probability of detection. Concurrently, those personnel not subject to a random screening program for the prescribed period of time or those initially applying for employment in the merchant marine would still be screened for drug use. In addition, the evaluation of the role of drugs and alcohol in marine accidents will be possible. This approach facilitates

program flexibility, increases probabilities of detection, eases the administrative burden, lowers cost, and provides greater effectiveness, while at the same time ensuring that all crewmembers on covered vessels are subject to testing.

Program Costs

The approximate costs (in constant 1986 dollars) of the regulatory proposal associated with the requirement for drug screening are as follows:

Periodic Testing

The estimated number of annual license and merchant mariners document transactions that require physical examinations (39,250), multiplied by the estimated cost of an initial drug screen (\$25), gives the total costs of initial periodic drug test (\$9.8 million). Using that figure, and an assumed percentage of possible positive testings of 25%, gives an estimate of the number of required second, confirmatory testings (9,812). Using a cost of \$60 per confirmatory screen the average annual cost expected for confirmatory tests is \$5.9 million. The total estimated annual cost of the periodic drug screening would be \$1.57 million.

If all the individuals subject to periodic testing are enrolled in employer-sponsored or equivalent testing programs, and therefore eligible for testing at costs comparable for pre-employment and random sampling (\$15 for initial tests, and \$25 for confirmatory tests), the total estimated annual cost of the periodic screening would be reduced to \$.84 million.

It should be noted that these testing costs do not take into consideration those individuals obtaining raises of grade who have had physical examinations for original licenses or renewals within three years nor those individuals holding First Class Pilot licenses but not serving on them and therefore not required to receive an annual physical examination. Actual costs are therefore expected to be less than those shown above.

Preemployment Testing Programs

Due to the career paths of many mariners, the costs of a preemployment testing program are extremely difficult to assess. Computation of the program's estimated cost will be dependent on how preemployment testing is applied and whether or not unions and other organizations are to be considered employers.

It is estimated that 131,700 individuals are employed on vessels on which

licensed, certificated, or documented personnel are required. Until comments are received relative to application of this program, it is assumed, for purposes of the evaluation, that 10 percent of the total individuals are new to the industry each year, and, of the remainder, 20 percent change employers each year. Therefore, an estimated 36,876 mariners would receive preemployment testing annually.

Multiplying the number of mariners tested by the cost of an initial drug screen (\$15), it will cost \$.55 million for initial preemployment drug tests. Assuming a need to confirm a percentage of possible positive testings of 25%, the projected number of required second, confirmatory testing is 9,219. Multiplying this figure times the estimated cost of confirmatory tests (\$25), it is estimated that it will cost \$.23 million for confirmatory testing. With an average annual administrative cost of sample testing of \$.23 million (36,876 + 9,219 x \$.5), the total estimated annual cost of the preemployment testing program is \$1.01 million.

(Note.—Estimated testing cost is lower for preemployer testing than periodic testing due to volume contracts.)

Random Sampling Programs

(Note.—A 125% random selection rate is used for this analysis. This is the same rate used by the Coast Guard for testing its military personnel. If a lower rate is adopted in the final rule, the following costs will be correspondingly less.)

The total annual cost of the random sampling program is estimated to be \$.45 million. This was arrived at by assuming that out of an estimated affected population of 131,700 seamen, 125 percent are to be tested each year. Therefore, 164,825 samples are to be tested annually. Multiplying this figure times the estimated cost of an initial drug screen (\$15), it will cost \$.25 million for initial random drug tests. Assuming a need to confirm a percentage of possible positive testings of 25%, the projected number of required second, confirmatory testing is 41,156. Multiplying this figure times the estimated cost of confirmatory tests (\$25), it is estimated that it will cost \$.1 million for confirmatory testing. With an average annual administrative cost of sample testing of \$.1 million (164,825 + 41,156 x \$.5), the total estimated annual cost of the random testing program is \$.45 million.

(Note.—Estimated testing cost is lower for random sampling than periodic testing due to volume contracts.)

Reasonable Cause Testing

Reasonable cause testing is discretionary, highly subjective, and contingent on the availability of more than one supervisor, as well as the level of training of the supervisor(s). In addition, there is little or no data available concerning the incidence of drug use in the commercial marine industry. For these reasons, it is difficult to estimate the number of instances in which such testing would be potentially necessary or undertaken, nor is it possible to accurately assess the cost/benefit impacts of such testing.

In general, however, it is evident that the primary value of reasonable cause testing is its potential capability for detecting and determining drug use prior to the occurrence of marine casualties or other significant events. It is not possible to estimate how many such incidents could be prevented. As discussed later, if even a small percentage of deaths, injuries, or property/environmental damage is prevented through reasonable cause testing, the benefits will outweigh the associated costs.

As an estimate, it is believed that up to 7.5 percent of the seamen covered by this program could be tested annually. The total annual cost of the reasonable cause testing is therefore estimated to be \$.27 million. This was arrived at by assuming that out of an estimated affected population of 131,700 seamen, and a testing rate of 7.5 percent, 9,876 samples are to be tested annually. Multiplying this figure times the estimated cost of an initial drug screen (\$15), it will cost \$.15 million for initial drug tests. Assuming a need to confirm a percentage of possible positive testings of 25%, the projected number of required second, confirmatory testings is 2,470. Multiplying this figure times the estimated cost of confirmatory tests (\$25), it is estimated that it will cost \$.06 million for confirmatory testing. With an average annual administrative cost of sample testing of \$.06 million (9,876 + 2,470 x \$.5), the total estimated annual cost is \$.27 million.

Post Accident Testing

Based on historical data, there are approximately 4000 marine casualties per year. Of these, approximately 1900 can be considered "serious marine incidents." It is estimated that, for various reasons, only 75 percent of the serious marine incidents will be able to conduct testing in a timely and efficient manner. The following costs are estimated for those 1425 incidents where testing will occur.

Of the estimated 1425 serious marine incidents occurring each year and where testing will be possible, it is estimated 66 percent (950) will occur in locations where blood and urine samples can be collected at American medical facilities within 24 hours. Using an estimate of three (3) persons being tested in each incident, 2850 samples will have to be taken. Multiplying that number by the estimated medical fees for obtaining the samples (\$50 per sample), the cost of transporting personnel to be tested (\$50 per individual), and the cost of shipping the samples to an approved laboratory (\$50 per sample), it is estimated that it will cost \$.43 million to conduct this type of testing. Adding this number to the cost of analyzing the samples (\$100 per sample), it is estimated that it will annually cost \$.72 million to conduct this type of testing.

Of the estimated 1425 serious marine incidents occurring each year and where testing will be possible, it is estimated 33 percent (475) will occur in locations where urine samples can only be collected by ship's crew. Using an estimate of three (3) persons being tested in each incident, 1425 samples will have to be taken. Multiplying that number by the estimated cost of shipping the samples to an approved laboratory (\$50 per sample), it is estimated that it will cost \$.07 million to conduct this testing. Adding this number to the cost of analyzing the samples (\$100 per sample), it is estimated that it will annually cost \$.21 million to conduct this type of testing.

In addition to the testing, the cost of providing shipboard sample kits and EBTs are necessary. It is estimated 35,000 kits will be purchased at a cost of \$.25 apiece for a one time cost of \$.88 million. Each year, due to accidents, 1425 kits would have to be restocked for a cost of \$.04 million. Additionally, there are approximately 1800 vessels certificated for unrestricted ocean routes, or for restricted overseas routes, which will provide an EBT at an approximate cost of \$.440 apiece, for a total cost of \$.7 million. Training for personnel to use EBT (approximately 9600 people) is estimated to be \$.48 million if it costs \$.500 to train each one. The total equipment and training costs will be approximately \$.572 million.

The costs of the post casualty testing requirements is \$.65 million.

Rehabilitation

The costs involved with rehabilitation and drug monitoring are difficult to compute since the type of services available vary with the drug involved. Also, the number of personnel who will

take advantage of the opportunity for rehabilitation are unknown. However, the following are offered as estimates for the total costs of Option 1, the broadest option under consideration.

(Note—The detection rate used for this analysis is based on a 125% random selection rate. If a lower random selection is adopted in the final rule, the detection rate, and the following costs, will be correspondingly less.)

The number of persons employed on vessels required to have individuals holding a license, certificate of registry, or merchant mariners document is estimated to be 131,700. Multiplying that number by .075 (7.5 percent estimated detection rate), the total number of personnel who could be eligible for rehabilitation is 9,878. Multiply that number by .33 (33 percent) to determine the number of personnel who are eligible for, and undergo, rehabilitation (3,280). An estimated 67 percent of detected drug users will not undergo rehabilitation because they: (1) Refuse to be rehabilitated; (2) are not eligible for rehabilitation because they are temporary employees; (3) will decline the opportunity for rehabilitation; or (4) will be subject to termination of employment and/or subject to suspension or revocation proceedings because they tested positive for drug use a second time. This percentage applies to the marine industry and reflects the composition of its workforce.

Multiply that figure by the maximum estimated cost for an in-patient rehabilitation program (\$13,000) to receive the estimated annual cost for in-patient rehabilitation (\$42.4 million). The Coast Guard is proposing that all persons undergo in-patient rehabilitation. 46 U.S.C. 7704 mandates that a person be "cured" in order to forego revocation of their license, certificate of registry, or merchant mariners document. Since many individuals detected for drug use may not require full in-patient care, lowering this 100% requirement to another percentage, e.g. 5% as has been used by the FAA in their NPRM (March 14, 1988, 53 FR 8368), would decrease the costs substantially.

Multiply the number of individuals undergoing rehabilitation by the maximum estimated cost for a six month out-patient monitoring program (\$1,800) to determine the cost of out-patient rehabilitation (\$5.9 million). The total annual estimated cost of rehabilitation is \$48.3 million.

No estimate is offered for the costs of employing an individual during rehabilitation or rehiring them after rehabilitation. There is no requirement that the individual be paid during

rehabilitation, therefore, the costs of paying an employee during rehabilitation will depend totally upon company policy or the labor agreement an employer has with the employee. Costs can range from the price of the rehabilitation solely, to full pay up to six months or more.

Administrative costs will also vary, being dependent upon the type of program an employer adopts. However, for the majority of employers, it is believed the administrative costs will be minimal since most employers will contract out for rehabilitation services and include the administrative costs in the total rehabilitation cost.

Option four, which does not mandate any type of rehabilitation program, would have negligible costs.

Transportation

Periodic, Preemployment, Random and Reasonable Cause Testing: The costs associated with transportation and test taking are difficult to accurately calculate since such numbers are entirely dependent upon whether the merchant mariner will have to go to a laboratory or other facility for testing or whether test samples will be collected incident to employment. Many sample takings will be conducted during an individual's free time, since the requirement for a test is for a personal license, certificate, or document. However, it is assumed that, for the most part, mariners will be within one-half hour of a testing facility when located at their residence, place of employment, or Regional Examination Center, and that it should take fifteen minutes to complete a test. Therefore, it is projected that it will take a typical mariner one and one-quarter hours to complete this requirement, with the majority of testing during an individual's free time. Also many employers currently have some type of testing program in place that, with little or no program alteration, may meet the criteria the Coast Guard is proposing.

Rehabilitation: The costs associated with transportation are difficult to accurately calculate since such numbers are entirely dependent upon whether the merchant mariner will have to visit a rehabilitation or monitoring center or whether the employer will have a program run at the place of employment. However, it is assumed that, for the most part, mariners will be within one-half hour of a rehabilitation or monitoring facility when located at their residence or place of employment. Therefore, it is projected that it will take a typical mariner one hour travel to complete this requirement, with the

majority of this time during an individual's free time.

Option four, which does not mandate any type of rehabilitation program, would have negligible costs unless an employer chose to provide for rehabilitation voluntarily.

Post casualty Testing: For the 1425 serious marine incidents after which toxicological sampling will be feasible, it is estimated that an average of 1 hour will be required to transport individuals to and from medical facilities for blood and urine sampling following approximately 950 incidents, and 1 hour will be required for collecting samples. An estimated 3 persons will be subject to sampling for each incident. This will result in 5700 hours expended by the persons being tested. Also an estimated 2 supervisory personnel will be necessary for witnessing and documentation. These individuals would require 1 hour for the round trip to the medical facility, 1 hour at the medical facility, and 1 hour for completing documentation and for arranging shipment of samples to the designated laboratory. This would result in 5700 hours expended by supervisory personnel. The total hours associated with obtaining blood and urine samples at medical facilities would be 11,400 hours.

It is estimated that toxicological sampling aboard vessels will occur following approximately 475 serious marine incidents. An estimated 3 persons per incident would be subject to sampling, and 0.5 hour would be required for the urine sampling and breath alcohol testing procedure. This would result in 713 hours expended by persons providing samples. An additional 2 supervisory personnel would participate for witnessing and documenting the sampling. Approximately 0.5 hour per person sampled and tested would be expended by the supervisors, as well as 0.5 hour for completing required documentation. This would result in 950 hours expended by supervisory personnel. Finally, delivery of samples to a shipping location upon reaching port would require one person approximately 1.5 hours roundtrip. This would result in 713 hours expended in shipment of samples. The total hours associated with obtaining urine samples and conducting breath alcohol testing aboard vessels would therefore be 2376 hours.

The total hours required to support the proposed requirements for drug and alcohol testing following serious marine incidents would be 11,400 + 2376 = 13,776 hours.

Total Cost

The total first year maximum cost of the drug testing programs, plus the cost of rehabilitation, is estimated to be:

	Million
Periodic testing.....	\$1.57
Preemployment testing.....	1.01
Random testing.....	4.50
Reasonable cause testing.....	0.27
Post casualty testing.....	6.65
Rehabilitation.....	48.30
Total.....	62.30

Based on experience with in place chemical testing programs, such as DOD and the Coast Guard, the percentage of persons testing positive should drop significantly over a period of time. Since the worker population in the marine industry is highly mobile as compared to servicemen in the armed forces, no prediction can be made as to how fast this decrease in positive test results will occur. Therefore, it has been assumed that costs will decrease constantly over the first three years, and thereafter costs for confirmation tests and rehabilitation should decrease to 33% of the amounts calculated above, thereby reducing the costs in subsequent years to approximately \$22 million.

Program Benefits

As shown in a June 1984 U.S. Department of Health and Human Services report entitled *Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness: 1980*, the economic costs to society at large from drug abuse is estimated to be \$66 billion annually. Using this annual figure, the total cost to society from drug abuse over the 10-year period following 1988 would be \$405.5 billion more if corrective measures are not taken. Over 50 percent of the \$66 billion estimate of the cost of drug abuse in society at large is in the form of reduced income of drug users compared with those who do not use drugs. Is it reasonable to assume that a corresponding percentage of benefits would result from increased productivity of the covered marine employers? Are there more accurate estimates and estimating methodologies that should be used in estimating the potential benefits associated with this proposal? The Coast Guard has placed the 1984 report in the public docket, and invites commenters to submit their views on the applicability of the study's conclusion to this notice.

Although revisions to the casualty reporting program have recently been effected, existing data does not readily identify drug-related casualties;

therefore, the Coast Guard will not estimate the total cost benefits of this proposal at this time. However, the following must be kept in mind. In 1984 there were approximately 2300 commercial vessel casualties (excluding fishing vessels), resulting in \$237 million in damages and 68 deaths. Of these, 1133 were directly attributable to personnel-related causes, i.e., carelessness, misjudgment, etc., resulting in \$77 million in damages and 29 deaths. (It should be noted that these statistics do not include personnel deaths or injuries which are not associated with vessel accidents.)

The Coast Guard believes that if drug screening can prevent even a low percentage of these accidents through drug testing and rehabilitation, the program will more than pay for itself. Using the minimum accepted value of a human life of one million dollars, the saving of but a few lives annually, along with reduced property damage, will more than match the cost of the proposed program. This goal is believed achievable, given the success of other drug testing programs.

Regulatory Flexibility Analysis

The costs of the proposed random sampling will be proportional to the number of personnel employed. For small vessels, having only two or three affected crew members, the cost should be in the range of \$100 to \$300 per year. For post-accident testing, the cost would basically be \$25 for a sampling and shipping kit. However, as discussed previously in the preamble, even this seemingly low amount may have an adverse impact on small entities. Since the Coast Guard is considering a number of alternatives to this proposal for small entities, it is not possible to evaluate the economic impact at this time. The Coast Guard has solicited comment on the impact on small entities and will consider those responses and evaluate the impact prior to issuing a final rule.

Federalism Assessment

This regulatory proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rules affect the safety of vessels in interstate and foreign commerce and are directly related to the qualifications of personnel licensed by the U.S. Coast Guard and their working conditions on vessels. These are express statutory

responsibilities of the U.S. Coast Guard and there are no similar State responsibilities or programs in these areas.

Information Collection

This proposed rulemaking contains information collection requirements in the following sections proposed: Proposed subparts B and C, plus proposed sections 46 CFR 4.06-1 and 4.06-8. They are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESS."

Commenters should especially provide their views on the accuracy of Coast Guard's estimates of the burdens associated with these requirements, the practical utility of the information obtained, and less burdensome reporting alternatives to those proposed in this notice.

List Of Subjects

46 CFR Part 4

Administrative practice and procedures, Investigations, Accidents, Marine safety, National Transportation Safety Board, Reporting requirements, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 5

Administrative practice and procedures, Investigations, Administrative law judge, Investigating officer, Seamen, License, Certificate, Document, Rehabilitation, Administrative hearings, Navigation (Water), Suspension and revocation, Marine safety, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 16

Seamen, Marine safety, Navigation (Water), Rehabilitation, Navigation (Water), Alcohol and alcoholic beverages, Drugs.

Proposed Rule

For the reasons set out in the preamble, Title 46, Chapter I, of the Code of Federal Regulations, is proposed to be amended as follows:

PART 4—[AMENDED]

1-2. The authority citation for Part 4 is revised to read as follows:

Authority: 33 U.S.C. 1231, 43 U.S.C. 1333; 46 U.S.C. 103, 2306, 6101, 6301, 6308, 50 U.S.C. 190; 49 CFR 1.46, except subpart 4.40 for which the authority is: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

3. Subpart 4.03 is amended by adding §§ 4.03-2, 4.03-4, 4.03-5, and 4.03-6 to read as follows:

§ 4.03-2 Serious marine incident.

The term "serious marine incident" includes the following events involving a commercial vessel:

(a) Any marine casualty as defined in § 4.03-1 of this part which results in any of the following:

- (1) One or more deaths;
- (2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and in the case of a person employed aboard a commercial vessel, which renders the crewmember unfit to perform routine or emergency vessel duties;

(3) Damage to property, as defined in § 4.05-1(f) of this part, in excess of \$100,000;

(4) Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or

(5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 GT or more.

(b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty.

(c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

§ 4.03-4 Person directly involved in a marine casualty or serious marine incident.

The term "person directly involved in a marine casualty or serious marine incident" is a person who supervises, performs assigned duties in connection with, or otherwise actively participates in, any vessel operation or any activity occurring aboard a vessel which is a significant factor in the events leading to or causing a casualty or serious marine incident. The term "person directly involved in a marine casualty or serious marine incident" also includes any individual serving aboard a commercial vessel who is fatally injured or who is

injured to the degree specified in § 4.03-2 of this part.

§ 4.03-5 Medical facility.

The term "medical facility" means an American hospital, clinic, physician's office, or laboratory, where blood samples can be collected according to recognized professional standards and urine samples can be collected consistent with 46 CFR 16.301.

§ 4.03-6 Qualified medical personnel.

The term "qualified medical personnel" means a physician, physician's assistant, nurse, emergency medical technician, or other person authorized under State or Federal law to collect blood and urine specimens.

4. Section 4.05-1 is amended by revising paragraph (e) to read as follows:

§ 4.05-1 Notice of marine casualty.

(e) Injury which requires professional medical treatment beyond first aid and, in the case of a person employed on board a commercial vessel, which renders the crewmember unfit to perform routine or emergency vessel duties.

5. A new Subpart 4.06 is added to read as follows:

Subpart 4.06—Mandatory Drug and Alcohol Testing Following Serious Marine Incidents Involving Commercial Vessels

Sec.

4.06-1 Responsibilities of the marine employer.

4.06-5 Responsibilities of persons directly involved in serious marine incidents.

4.06-10 Blood and urine sample collection at a medical facility or by qualified medical personnel.

4.06-15 Testing with evidential breath testing devices (EBTs).

4.06-20 Urine sample collection by the marine employer.

4.06-25 Sample collection in incidents involving fatalities.

4.06-30 Sample handling and shipping.

4.06-35 Sample analysis and follow-up procedures.

4.06-40 Reporting and review of results.

4.06-45 Employee Assistance Programs (EAPs).

Subpart 4.06—Mandatory Drug and Alcohol Testing Following Serious Marine Incidents Involving Commercial Vessels**§ 4.06-1 Responsibilities of the marine employer.**

(A) All commercial vessels.

(1) Following the occurrence of a marine casualty, a discharge of oil into the navigable waters of the United States, a discharge of a hazardous

substance into the navigable waters of the United States, or a release of a hazardous substance into the environment of the United States, the marine employer shall make a timely, good faith determination as to whether the occurrence currently is, or is likely to become, a serious marine incident.

(2) When it is determined that a casualty or incident has occurred that meets, or is likely to meet, the criteria in § 4.03-2, the marine employer shall take all practicable steps to assure that any person directly involved in the casualty or incident is transported to a medical facility or to qualified medical personnel for the purpose of obtaining blood and urine samples as soon as possible, or to transport qualified medical personnel to the vessel for the same purpose as soon as possible, when it is feasible to do so within 24 hours after the incident. This requirement shall not be construed to inhibit those vessel personnel required to be tested from performing duties in the aftermath of a serious marine incident, when such performance is necessary for the preservation of life or property, or the protection of the environment.

(3) The marine employer shall ensure that a blood and urine sampling and shipping kit meeting the requirements of § 4.06-30 of this part is readily available for use following serious marine incidents. The sampling and shipping kit need not be maintained aboard each vessel if it can be made available for sampling at a medical facility or by qualified medical personnel within 24 hours from the time of the occurrence of the serious marine incident.

(4) The marine employer shall ensure that all employees serving aboard vessels are fully indoctrinated in the requirements of this subpart, and that appropriate licensed vessel personnel are trained as necessary in the practical applications of these requirements.

(5) The marine employer shall submit the following information on Form CG-2692B (Toxicological Sampling Report) to the Coast Guard after a serious marine incident:

(i) Name of vessel, official number, date and location of serious marine incident.

(ii) Names and other identifying data for each person directly involved in the serious marine incident.

(iii) Exact information concerning location and duties of each person directly involved at the time of the serious marine incident.

(iv) Whether or not sampling or testing was conducted. If not, an explanation concerning why sampling or testing was not conducted.

(v) The names and other identifying data for each person from whom urine or blood samples are obtained or who undergoes breath testing.

(vi) Location of sampling or testing, either aboard vessel or ashore. If ashore at a medical facility, name and address of facility.

(vii) Type of sampling or testing conducted. If breath alcohol test was conducted aboard vessel, specific results of the test.

(viii) Identification of medical or vessel personnel conducting sampling or testing.

(ix) Identification of medical or vessel personnel witnessing sampling or testing.

(x) Exact disposition of all blood or urine samples following sampling (i.e. information concerning shipment to laboratory).

(6) Following a serious marine incident, the Form CG-2692B shall be submitted as soon as possible to the Officer in Charge, Marine Inspection (OCMI), at the port in which the incident occurred or nearest the port of first arrival. When blood or urine sampling is conducted, a copy of the form shall be forwarded to the designated laboratory with the samples.

(b) Inspected vessels certificated for ocean or overseas routes.

(1) When a serious marine incident occurs involving an inspected vessel certificated for unrestricted ocean operations or involving an inspected vessel certificated for a restricted overseas route, and it does not appear feasible to transport involved personnel to a medical facility or to qualified medical personnel within 24 hours, the marine employer shall ensure that urine samples are collected and breath tests administered on board the vessel as soon as possible for any person directly involved in the casualty incident. Breath testing and urine sampling shall be conducted in accordance with the procedures outlined in §§ 4.06-15 and 4.06-20 of this part.

(2) When a person directly involved in a serious marine incident cannot be transported to a medical facility or to qualified medical personnel, and the person is unconscious or otherwise unable to indicate consent in providing urine samples or participate in breath testing, the marine employer is not required to attempt to conduct breath testing or to obtain urine samples on board the vessel.

§ 4.06-5 Responsibilities of persons directly involved in serious marine incidents.

(a) Any individual employed aboard any vessel on which an individual is

required by law or regulation to be licensed, certificated, or documented under Subpart B of this chapter, who is determined to be directly involved in a serious marine incident by their marine employer or a law enforcement officer, shall provide a blood, urine, or breath sample when directed to do so by a marine employer or law enforcement officer.

(b) Under § 16.110 of this chapter, any individual employed aboard any vessel on which an individual is required by law or regulation to be licensed, certificated, or documented, is deemed to have given his or her consent to toxicological sampling following serious marine incidents. No individual may be forcibly compelled to provide blood, urine, or breath samples, however, refusal or failure to submit to sampling is considered a violation of regulation and will subject the individual to suspension and revocation proceedings under Part 5 of this chapter, and/or termination of employment.

§ 4.06-10 Blood and urine sample collection at a medical facility or by qualified medical personnel.

(a) When obtaining blood and urine samples under this subpart, the marine employer shall comply with the requirements of this subpart and shall ensure that the collection process is supervised by either qualified medical personnel from the medical facility, the marine employer, a law enforcement officer, or the marine employer's representative.

(b) When urine samples are collected at a medical facility or by qualified medical personnel, the marine employer shall ensure that the collection procedures specified in 46 CFR 16.301 are followed to the extent practicable. Certification of the sampling process and documentation of the chain of custody shall be accomplished through proper completion of applicable portions of the Form CG-2692B (Toxicological Sampling Report).

(c) When compliance with any procedure specified in 46 CFR 16.301 is not feasible, the marine employer shall provide an explanation of the circumstances on the Form CG-2692B.

(d) Blood samples shall only be drawn by qualified medical personnel. The marine employer shall ensure that the following procedures are observed after collection of blood samples:

(1) The individual providing the sample and the person supervising the process shall keep the blood specimen in view at all times prior to the sample being sealed and labeled. If the specimen is transferred to a second container, the person supervising the

process shall request that the individual providing the sample observe the transfer.

(2) The person supervising the process shall request that the individual witness the sealing of the blood specimen tube with evidence tape placed over the cap and down the sides. The individual shall also be requested to initial the blood specimen tube and to witness the labeling of the tube. The person supervising the process shall label the tube with the time and date, the individual's full name, and specimen number if assigned.

(3) Certification of the sampling process and documentation of the transfer of the chain of custody of blood samples must be accomplished through proper completion of the Form CG-2692B (Toxicological Sampling Report).

(e) The marine employer shall ensure that blood samples are promptly shipped to the designated laboratory following collection in accordance with procedures outlined in 46 CFR 4.06-30, and that urine samples are shipped according to 46 CFR 16.301.

(f) In the case of an injured individual from whom samples are required, the marine employer shall request that the treating medical facility obtain the necessary samples. If an injured employee is unconscious or otherwise unable to indicate consent to the sampling procedure, and the medical facility declines to obtain a blood sample after having been advised of the requirements of this subpart, the marine employer shall immediately notify the nearest Coast Guard Officer in Charge of Marine Inspection (OCMI).

(g) Nothing in this subpart shall be construed as limiting the discretion of qualified medical personnel to determine whether drawing a blood sample is neither medically acceptable or advisable.

§ 4.06-15 Testing with evidential breath testing devices (EBTs).

(a) All inspected vessels certificated for unrestricted ocean routes, and all inspected vessels certificated for restricted overseas routes, are required to have on board at all times an evidential breath testing device (EBT). EBTs must be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published periodically by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

(b) The marine employer shall ensure that evidential breath measurement devices are maintained and calibrated through the use of a unit listed on the

NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers. The marine employer shall ensure that calibration is performed with sufficient frequency to ensure the accuracy of the device, but not less frequently than provided for in the manufacturer's instructions.

(c) The marine employer shall ensure that breath testing is conducted through the use of an approved testing device. Breath testing must only be conducted by a person trained and qualified to operate the breath measurement device. The marine employer shall ensure that appropriate vessel personnel receive formal instruction in the following subject areas prior to being considered qualified operators of breath testing devices:

(1) The effects of alcohol on the body, including absorption, distribution, and elimination phases.

(2) Scientific concepts and technology of breath testing as a means for determining blood alcohol concentration in the human body, as well as theoretical and practical qualities of the particular breath testing device selected by the marine employer.

(3) Practical laboratory exercises involving the operation and calibration of the selected testing device.

(d) The marine employer shall ensure that operators of breath testing devices receive periodic refresher training following their initial qualification.

(e) The marine employer shall ensure that breath testing is conducted in accordance with procedures specified by the manufacturer of the testing device, consistent with sound technical judgment, and shall include appropriate restrictions on ambient air temperature.

(f) If a test indicates a BAC of .02 or more, the individual must be tested again after the expiration of a period of 15 minutes, in order to ensure that the test has properly measured the alcohol content of deep lung air.

(g) Because of the inherent limitations of instrumentation, any indicated breath test result of less than .02 percent is deemed a negative test.

§ 4.06-20 Urine sample collection by the marine employer.

(a) When urine samples are collected by the marine employer, the marine employer shall ensure that the collection procedures specified by 46 CFR 16.301 are followed to the extent practicable. Certification of the sampling process and documentation of the transfer of the chain of custody shall be accomplished through the proper completion of applicable portions of the Form CG-2692B (Toxicological Sampling Report).

(b) When compliance with any procedure specified by 46 CFR 16.301 is not feasible, the marine employer shall provide an explanation of the circumstances on the Form CG-2692B.

(c) The marine employer shall ensure that urine samples are promptly shipped to the designated laboratory as soon as the vessel reaches a location from which the requirements of 46 CFR 16.301 may be satisfied.

§ 4.06-25 Sample collection in incidents involving fatalities.

(a) In the case of a fatality occurring to the covered employee of a marine employer as a result of a marine casualty, body fluid samples must be obtained from the remains of the employee for chemical testing, if practicable to do so at an appropriate medical facility. To ensure that samples are obtained in a timely manner, the marine employer shall notify the appropriate local authority, such as the coroner or medical examiner, as soon as possible, of the fatality and of the requirements of this subpart. The marine employer shall make available the sampling and shipping kit and request that the local authority assist in obtaining the necessary body fluid samples. The marine employer shall also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the marine employer shall immediately notify the nearest Coast Guard Officer in Charge of Marine Inspection (OCMI) with the pertinent information.

§ 4.06-30 Sample handling and shipping.

(a) As a minimum, a toxicological sampling and shipping kit must have:

(1) Six (6) 4 ounce plastic urine specimen bottles with tight fitting screw-type lids.

(2) Twelve (12) 10 milliliter evacuated blood specimen tubes containing potassium oxalate and sodium fluoride for sterile preservation.

(3) A cardboard box suitable for shipping, measuring approximately 11 inches x 8 inches x 11 inches, which contains an inner styrofoam liner.

(4) A sealable quart can for ice.

(5) A roll of evidence tape or other appropriate moisture-resistant, stick-on labels for marking specimen bottles and tubes, and.

(6) A set of Forms CG-2692B in triplicate, and

(7) A sealable plastic bag for protection of forms or documents being placed in the shipping box.

(8) A 3-tube styrofoam blood sample mailer.

(b) The marine employer shall ensure that blood samples collected at a medical facility or by qualified medical personnel are shipped in a cooled condition by pre-paid air freight (or other means adequate to ensure delivery within twenty-four (24) hours) to a designated laboratory.

(c) Urine samples need not be shipped in a cooled condition by overnight delivery. The marine employer shall ensure that urine samples are shipped by the next most expeditious means available.

(d) The marine employer shall ensure that the shipping kit containing blood or urine samples is securely sealed with tape and shall sign and date across the tape.

(e) The marine employer shall ensure that a copy of form CG-2692B, completed in accordance with § 4.06-1(a)(5), if forwarded in the shipping kit along with blood or urine samples.

(f) Samples shall be shipped to a laboratory approved by the Department of Health and Human Services.

§ 4.06-35 Sample analysis and follow-up procedures.

Each laboratory will provide prompt analysis of samples collected under this subpart, consistent with the need to develop all relevant information and to produce a complete analysis report. A urine sample which indicates the presence of a dangerous drug at a level equal to or exceeding the levels established by 46 CFR 16.301 is considered a positive indication of prior drug use by the individual providing the sample. A blood sample indicating any concentration of alcohol is considered a positive indication of prior alcohol use by the individual providing the sample. Analysis results which indicate the presence of alcohol or drugs shall not be construed by themselves as constituting a finding of the probable cause of a serious marine incident.

§ 4.06-40 Reporting and review of results.

The reporting and review of the results of urine tests for drug use shall proceed as provided by 46 CFR 16.301.

§ 4.06-45 Employee Assistance Programs (EAPs)

The marine employer shall follow the requirements of 46 CFR 16.310, which concern employee assistance programs and rehabilitation.

PART 5—(AMENDED)

6. The authority citation for Part 5 continues to read as follows:

Authority: 46 U.S.C. 7101, 7301, and 7701; 50 U.S.C. 196; 46 CFR 1.49(b).

7. In § 5.569 add to Table 5.569 the following new offense after Incompetence:

§ 5.569 Selection of an appropriate order.

Table 5.569—Suggested Range of an Appropriate Order:

Type of offense	Range of order (in months)
Violation of Regulation: Failure to submit to required chemical test	12-24

8. A new Part 16 is added to Subchapter B to read as follows:

PART 16—CHEMICAL TESTING

Subpart A—General

- Sec.
16.101 Purpose of regulations.
16.105 Definitions of terms used in this part.
16.110 Implied consent.

Subpart B—Required Chemical Testing

- Sec.
16.201 Application.
16.205 Events requiring chemical testing.
16.210 Required random sampling programs.

Subpart C—Standards

- Sec.
16.301 HHS guidelines.
16.305 General.
16.310 Employee Assistance Program (EAP).
Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.40(b).

Subpart A—General

§ 16.101 Purpose of regulations.

(a) The intent of the regulations in this part is to provide a means to minimize the use of dangerous drugs by merchant marine personnel and to promote a drug free and safe work environment.

(b) The regulations in this part delineate the minimum standards, procedures, and means necessary to test for the use of dangerous drugs.

(c) Nothing in this part is intended to limit an employer's ability to set lawful standards, procedures or means of testing employees for the use of dangerous drugs in excess of the requirements contained in this Part.

§ 16.105 Definitions of terms used in this part.

"Chemical Test" means a scientifically recognized test which analyzes an individual's breath, blood, urine, and/or saliva for evidence of dangerous drug and/or alcohol use.

"Dangerous Drug" means a narcotic drug, controlled substance, or marijuana (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)).

"Dangerous Drug Level" means the amount of traces of dangerous drugs or their metabolites in an individual's breath, blood, urine, and/or saliva.

"Preemployment Testing Program" means a preemployment testing program which is sponsored and administered by an employer or sponsoring organization. "Random Sampling Program" means a random sampling program which is sponsored and administered by an employer or sponsoring organization, and satisfies the criteria contained in Subpart B of this part.

"Sponsoring Organization" is any company, corporation, association, union, or other organization with which individuals serving in the marine industry, or their employers, are associated.

"Urinalysis" means a chemical test of an individual's urine for dangerous drugs.

"Vessel Owned in the United States" means any vessel documented or numbered under the laws of the United States; and, any vessel owned by a citizen of the United States that is not documented or numbered by any nation.

§ 16.110 Implied consent.

(a) Any individual applying for, or acting under the authority of, a license, a certificate of registry, or a merchant mariners document issued under Subchapter B of this chapter after [the effective date of this rule], is deemed to have given his or her consent to testing as required by this part. Any individual accepting employment on board any vessel owned in the United States on which any individual is required by law or regulation to be the holder of a license, certificate of registry, or merchant mariners document, is also deemed to have given his or her consent to testing under this part.

(b) Each individual subject to paragraph (a) of this section shall participate in testing as required under conditions set forth in this part, in Part 4 of this chapter, and in 33 CFR Part 95. Refusal or failure to participate is considered a violation of regulation and will subject the individual to suspension or revocation of his or her license, certificate, or document under the procedures contained in Part 5 of this chapter and/or termination of employment.

(c) When an individual is required to be tested under Part 4 of this chapter or 33 CFR Part 95, and is taken to a medical facility for observation or

treatment after a marine casualty or incident, that individual shall be deemed to have consented to the release to the Coast Guard of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 24 hours of the accident or incident that is not required for medical purposes, together with the medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests conducted by or for the treating facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) Any individual who is required to be tested under Part 4 of this chapter or 33 CFR Part 95, is deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of the individual, if the individual dies within 12 hours as a result of a marine casualty.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel chemical testing.

Subpart B—Required Chemical Testing

§ 16.201 Application.

The regulations in this Subpart apply to:

(a) All individuals applying for, or acting under the authority of, a license, a certificate of registry, or a merchant mariners document issued under this subchapter;

(b) All other individuals employed or applying for employment aboard any vessel owned in the United States that is required by law or regulation to engage or be operated by an individual holding a license, certificate of registry, or merchant mariners document; and,

(c) All employers (1) owning or operating vessels owned in the United States that are required by law or regulation to engage or be operated by an individual holding a license, certificate of registry, or merchant mariners document, or (2) owning or operating vessels inspected, or subject to inspection, under 46 U.S.C. 3301.

§ 16.205 Events requiring chemical testing.

(a) Whenever a physical examination is required for an individual by this subchapter, a urinalysis must be

included as a part of the physical examination. If a physical examination is required for a license or merchant mariners document application, the applicant shall provide the results of the urinalysis administered as part of the physical examination to the Regional Examination Center. For those individuals required to receive physical examinations on a more frequent basis, the individual shall present to the Regional Examination Center the results of all required urinalyses for the past five years when applying for license renewal.

(b) The prospective employer of an individual applying for employment aboard any vessel owned in the United States that is required by law or regulation to engage or be operated by an individual holding a license, certificate of registry, or merchant mariners document, shall at the time of application require the applicant to undergo a urinalysis.

(c) An individual to whom this subpart applies shall submit to a chemical test when directed to do so under Title 33 CFR Part 95, or when directed to do so under Part 4 of this chapter.

(d) An individual who has been subject to a random sampling program under § 16.210 of this part, and who has been tested under that program is not subject to the provision of paragraphs (a) and (b) of this section provided:

(1) The urinalysis required by paragraph (a) of this section is not part of a physical examination for issuance of an original license or merchant mariners document; and,

(2) The applicant provides satisfactory evidence certifying that he or she has been continuously subject to a random sampling program meeting the criteria of § 16.210 of this part for not less than six months, has not tested positive for unacceptable dangerous drug levels, has not refused to participate in required chemical tests, and has been tested within the past six months.

(e) Each employer shall test each employee to whom this subpart applies when there is reasonable suspicion that the employee has used dangerous drug(s) or alcohol in violation of this part and 33 CFR Part 95. At least two of the employee's supervisors shall substantiate and concur in the decision to test an employee who is reasonably suspected of drug or alcohol use. At least one of these supervisors shall be trained in detecting symptoms of drug and alcohol use. The decision to test must be based on a reasonable and articulable belief that the employee is using a dangerous drug or alcohol on the basis of physical indications of probable

use (e.g., the employee's manner of speech or physical appearance).

§ 16.210 Required random sampling programs.

(a) Employers of personnel to which this subpart applies shall provide for the chemical testing of their personnel on a random basis for dangerous drugs.

(b) Random basis means that every member of a given population has an equal chance of selection on a scientifically valid basis. Random selection is to be accomplished through the use of a random-number table or computer based, random-number generator.

(c) The employer annually shall test on a random basis (a percentage of covered employees to be determined up to 125 percent).

(d) All crewmembers on the following vessels must be subject to testing on a random basis:

(1) Inspected vessels and vessels subject to inspection under 46 U.S.C. 3301;

(2) Uninspected vessels which are required by law or regulation to engage or be operated by an individual holding a license, certificate of registry, or merchant mariners document.

(e) An individual may not be engaged or employed, including self employment, on a vessel in a position for which a license, certificate of registry, or merchant mariners document is required by law or regulation unless all crewmembers are subject to a random sampling program.

(f) The employer shall report the results of positive chemical tests to the cognizant Coast Guard Officer in Charge, Marine Inspection.

(g) Employers of personnel to which this Section applies shall maintain records of the results of their random sampling program sufficient to satisfy the requirements of § 16.205(d). These records shall be maintained for a period of at least 5 years and shall be made available, upon request, to persons tested and Coast Guard officials.

Subpart C—Standards

§ 16.301 HHS guidelines.

Drug testing programs subject to this regulation shall be operated consistent with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970, April 11, 1988). Terms and concepts referenced in this part shall have the same meaning as in those guidelines. Where the guidelines refer to "Federal agencies" or "the agency," this shall mean "the employer" for the

purpose of this regulation. This part contains requirements for drug testing programs in addition to those in the HHS guidelines. Drug testing programs governed by the regulation shall use only drug testing laboratories certified by the Department of Health and Human Services under the guidelines. These guidelines are available for inspection and copying at U.S. Coast Guard Headquarters, Marine Safety Council (G-LRA-2/21), Room 2110, 2100 Second Street SW., Washington, DC 20583-0001.

§ 16.305 General.

(a) If a chemical test required under § 16.205 of this part determines the existence of unacceptable dangerous drug levels as listed in the HHS Guidelines, the individual will be presumed to be a user of dangerous drugs and any license, certificate of registry, or merchant mariners document application will be denied.

(b) If a chemical test required under this part, Part 4 of this chapter, or 33 CFR Part 95 determines the existence of unacceptable dangerous drug levels as listed in the HHS Guidelines, the individual will be presumed to be a user of dangerous drugs. Subject to the rehabilitation options of § 16.310 of this part, an individual who currently holds a license, certificate of registry, or merchant mariners document, will be subject to suspension and revocation of his or her license, certificate, or document under Part 5 of this chapter. An individual who does not hold a license, certificate of registry, or merchant mariners document shall, subject to the rehabilitation options of § 16.310 of this part, be removed from the vessel or denied employment.

(c) If a chemical test required under this part, Part 4 of this chapter, or 33 CFR Part 95 determines the existence of unacceptable dangerous drug levels as listed in the HHS Guidelines, the individual will be presumed to be a user of dangerous drugs and may not serve on a vessel subject to this part, until:

(1) That individual is rehabilitated, if the individual is not a holder of a license, certificate of registry, or merchant mariners document; or

(2) That individual is reissued his or her license, certificate of registry, or merchant mariners document, if the individual is a holder of a license, certificate of registry, or merchant mariners document.

(d) Regardless of the rehabilitation options specified in § 16.310 of this part, if a chemical test required under this part, Part 4 of this chapter, or 33 CFR Part 95 determines the existence of

unacceptable dangerous drug levels as listed in the HHS Guidelines, and this is the individual's second confirmed positive test, the individual will be presumed to be a user of dangerous drugs. An individual who currently holds a license, certificate of registry, or merchant mariners document, shall be subject to suspension and revocation of his or her license, certificate, or document under Part 5 of this chapter. An individual who does not hold a license, certificate of registry, or merchant mariners document shall be removed from the vessel or denied employment.

§ 16.310 Employee Assistance Program (EAP).

The employer shall provide an EAP for all employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and the employer's supervisory personnel and an opportunity for rehabilitation, as provided below:

(a) EAP rehabilitation program (Option 1).

(1) Each employer shall provide one rehabilitation opportunity for the following employees:

(i) Each employee who voluntarily enrolls in an EPA;

(ii) Each employee who is identified as a dangerous drug user through random, periodic, reasonable cause, or post casualty testing.

(2) Each employer shall retain or rehire an employee who:

(i) Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a drug test;

(ii) Has not failed a drug test required by the employer's drug monitoring plan for employees who undergo rehabilitation; and

(iii) Has received a recommendation for return to duty as a result of that rehabilitation program.

(3) Employees who are identified as having used dangerous drugs on the job are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

(b) EAP rehabilitation program (Option 2).

(1) Each employer shall provide one rehabilitation opportunity for the following employees:

(i) Each employee who voluntarily enrolls in an EAP;

(ii) Each employee who is identified as a dangerous drug user through random or periodic testing.

(2) Each employer shall retain or rehire an employee who:

(i) Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a random or periodic drug test;

(ii) Has not failed a drug test required by the employer's drug monitoring plan for employees who undergo rehabilitation; and

(iii) Has received a recommendation for return to duty as a result of that rehabilitation program.

(3) Employees who are identified as having specifically used drugs on the job or through reasonable cause or post casualty testing required by this part are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

(c) EAP rehabilitation program (Option 3).

(1) Each employer shall provide one rehabilitation opportunity for each employee who voluntarily enrolls in an EAP.

(2) Each employer shall retain or rehire an employee who:

(i) Has successfully completed his or her first rehabilitation program after voluntary enrollment; and

(ii) Has received a recommendation for return to duty as a result of that rehabilitation program.

(3) Employees who are identified as having used dangerous drugs on the job or through testing required by this part are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

(d) EAP rehabilitation program (Option 4).

(1) Each employer can decide its policy concerning whether rehabilitation will be offered.

(2) Individuals who are offered an opportunity for rehabilitation provided voluntarily by the employer, and who wish to be retained or rehired to their previous or similar position, should:

(i) Successfully complete his or her first rehabilitation program; and

(ii) Receive a recommendation for return to duty as a result of that rehabilitation program.

(e) EAP education program: Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding drug and alcohol use in the workplace.

(f) EAP training program: Each EAP training program must be conducted annually employer's supervisory personnel. The training program must include at least the following elements: The effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug and alcohol use and abuse; and documentation of training given to employees and employer's supervisory personnel. EAP training programs for employees and supervisory personnel must consist of at least 60 minutes for each employee and supervisor.

Date: June 30, 1988.

P.A. Yost,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 88-15137 Filed 7-7-88; 8:45 am]

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Part X

Department of the
Interior

Bureau of Indian Affairs

25 CFR Part 179
Life Estates and Future Interests; Final
Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 179

Life Estates and Future Interests

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: These are new regulations for the administration of life estates and future interests in Indian land. They cite the authorities and enunciate the policies and procedures which are to be followed in such administration.

EFFECTIVE DATE: August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th and C Streets, NW., Washington, DC; Telephone Number (202) 343-5473.

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the *Federal Register* (52 FR 29701), on August 11, 1987.

Several comments and suggestions were received during the two-month comment period. Before discussing specific comments received in response to the proposed regulations, a common concern needs to be addressed. The concern is that the regulations will limit the ability of Indian people to control the disposition of their land. To reemphasize, these regulations only apply to the disposition of such assets where a testator/testatrix or grantor has not made provisions for their disposition in the will or document (such as an inter vivos conveyance of land) creating a life estate or future interest in the real property. Any Indian making a will or disposing of interest in Indian land can avoid the application of these regulations by specifying how assets are to be distributed in his or her will or in the conveyance document.

The AUTHORITY has been expanded to include 96 Stat. 2515 which pertains to conveyance of land within the Devils Lake Reservation in North Dakota.

One commentor expressed fear that the proposed regulations would interfere with the administration of tribal land assignments. As a matter of clarification, a sentence has been added to § 179.1 expressly stating that these regulations do not apply to any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members.

To avoid any confusion in meanings, the definition of "Contract Bonus" has been added to § 179.2, and a phrase has

been added clarifying the definition of "Principal."

The language of § 179.3 has been changed to emphasize that the rules of life estates and future interests of the State in which the land is located shall apply on Indian land *only* in the absence of Federal law or Federally-approved tribal law to the contrary. Four commentors also expressed fear that any application of State law jeopardizes tribal jurisdiction. Again, in the absence of Federal law or Federally-approved tribal law to the contrary, State laws are frequently employed where Federal Indian property rights are involved. This is supported by court decisions. To reemphasize the language appearing in the preamble to the proposed rulemaking at § 179.3, "The use of State law to the extent provided herein, does not affect, nor does it imply to affect, the sovereignty and/or jurisdiction of Federally-recognized Indian tribes."

Section 179.4 remains the same with only minor editorial changes. Two commentors suggested that section 179.4 may conflict with existing as well as proposed mineral regulations, 25 CFR 211.44(c) and 225.46(c) published in the *Federal Register*, Volume 52, No. 203 at 39332 on October 21, 1987. If these regulations are published as a final rule before the proposed mineral regulations, it has been recommended that the mineral regulations simply reference 25 CFR Part 179. This would eliminate any possible conflict.

It was suggested that the wording "or by application of State law the open mine doctrine does not apply" be eliminated from § 179.4, since all States do not have an open mine law and, where they do, the States have no jurisdiction over Indian lands. Because § 179.4 (a), (b), (c) and (d) may apply to Indian lands in those States where "by application of State law, the open mine doctrine does not apply," it is imperative that specific reference to that doctrine be made in § 179.4. With regard to the jurisdiction question, the use or application of State law does not give rise to State jurisdiction.

Since the definition of "Contract Bonus" has been added to § 179.2, the language of § 179.4(b) has been shortened.

Commenting on the effect of § 179.4, one individual stated that life tenants will be deprived of royalty proceeds and that, unlike non-Indian life tenants, most Indians are needy and should not be deprived of such mineral income for life. In addition, the same commentor suggested that life tenants receive all of any contract bonus below a certain arbitrary monetary limit, with any amount exceeding that limit to be

divided equally with the remainderman. In response, these regulations were drafted with the intent of protecting the property rights of life tenants and remaindermen, either of whom may be Indian, and are promulgated without regard to race, business expertise or economic need of either party.

Concern was expressed by another commentor as to why mineral estates are treated different than all other natural resource estates in § 179.4(c) in terms of income distribution. The sale of minerals generally produce periodic increases in principal, whereas the sale of other types of natural resources comprising the corpus generally result in one-time payments.

It was suggested that "Column 2—Annuity" of Tables A(1) and A(2) in section 179.5 is extraneous to the needs of this regulation. The column has been removed and the language of § 179.5 adjusted accordingly.

Section 179.6 remains unchanged except for a minor editorial change.

In addition to the above, concerns were expressed regarding Bureau of Indian Affairs' accountability for income, principal and investments and the limited availability of estate planning services. Accounting procedures for the investment, management and distribution of proceeds are outside of the scope of 25 CFR Part 179. However, the accountability for proceeds under the supervision and management of the Bureau is undergoing substantial improvement with the development of an enhanced Integrated Records Management System (IRMS). In regard to the status of estate planning services which are recognized as supplemental to these regulations, several new initiatives are underway. A new and comprehensive manual on the drafting of wills has recently been prepared by the Department of the Interior's Office of Hearings and Appeals for use by Bureau of Indian Affairs personnel. In addition, the Bureau has created a Task Force on Estate Planning and Probate in a further effort to enhance its capabilities and expertise in those fields. This will include the preparation of procedural guidelines in life estates and future interests.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Department of the Interior has determined that this rulemaking does not constitute a major Federal action

significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The primary author of this document is Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th and C Streets, NW., Washington, DC 20245; Telephone Number (202) 343-5473.

List of Subjects in 25 CFR Part 179

Future interests, Indians—lands, Life estates.

For the reasons set out in the preamble, Part 179 of Title 25, Chapter I of the Code of Federal Regulations is added as set forth below.

PART 179—LIFE ESTATES AND FUTURE INTERESTS

Sec.

179.1 Purpose, scope, and information collection.

179.2 Definitions.

179.3 Application of State law.

179.4 Distribution of principal and income.

179.5 Value of life estates and remainders.

179.6 Notice of termination of life estate.

Authority: 80 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201-11.

Cross Reference: For regulations pertaining to income, rents, profits, bonuses and principal from Indian lands and the recording of title documents pertaining thereto, see Parts 150, Land Records and Title Documents; 152, Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands; 162, Leasing and Permitting; 163, General Forest Regulations; 168, General Grazing Regulations; 169, Rights-of-Way over Indian Lands; 170, Roads of the Bureau of Indian Affairs; 212, Leasing of Allotted Lands for Mining; 213, Leasing of Restricted Lands of Members of the Five Civilized Tribes, Oklahoma, for Mining; 215, Lead and Zinc Mining Operations and Leases, Quapaw Agency.

§ 179.1 Purpose, scope, and information collection.

(a) These regulations set forth the authorities, policy and procedures governing the administration of life estates and future interests in Indian lands by the Secretary of the Interior. These regulations do not apply to any use rights assigned by tribes, in the

exercise of their jurisdiction over tribal lands, to tribal members.

(b) These regulations do not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

§ 179.2 Definitions.

"Agency" means an Indian Agency or other field unit of the Bureau of Indian Affairs having the Indian land under its immediate jurisdiction.

"Contract Bonus" means cash consideration paid or agreed to be paid as incentive for execution of the contract.

"Income" means the rents and profits of real property and the interest on invested principal.

"Indian Land" means all lands held in trust by the United States for individual Indians or tribes; or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance.

"Principal" means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

"Secretary" means the Secretary of the Interior or authorized representative.

"Superintendent" means the designated officer in charge of an Agency.

§ 179.3 Application of State law.

In the absence of Federal law or Federally-approved tribal law to the contrary, the rules of life estates and future interests in the State in which the land is located shall be applied on Indian land. State procedural laws concerning the appointment and duties of private trustees shall not apply.

§ 179.4 Distribution of principal and income.

In all cases where the document creating the life estate does not specify a distribution of proceeds; or where the vested remainderman and life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or where, by such document or agreement or by the application of State law, the open mine doctrine does not apply; the Secretary shall:

(a) Distribute all rents and profits, as income, to the life tenant.

(b) Distribute any contract bonus one-half each to the life tenant and the remainderman.

(c) In the case of mineral contracts, invest the principal, with interest income to be paid the life tenant during the life estate, except in those instances

where the administrative cost of investment is disproportionately high, in which case § 179.4(d) shall apply. The principal will be distributed to the remainderman upon termination of the life estate.

(d) In all other instances, distribute the principal immediately according to the formulas set forth in § 179.5, investing all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

§ 179.5 Value of life estates and remainders.

(a) The value of a life estate shall be determined by the formula: Value of Life Estate = P × L, where P = Value of principal, and L = Life estate factor for the age and sex of the life tenant, as shown in Column 2 on Tables A(1) and A(2).

(b) The value of a remainder shall be determined by the formula: Value of Remainder = P × R, where P = Value of principal, and R = Remainder factor for the age and sex of the life tenant, as shown in Column 3 on Tables A(1) and A(2).

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Life estate	(3)—Remainder
0	0.9305	0.06295
1	.96217	.03783
2	.98170	.01830
3	.99053	.00947
4	.99805	.00195
5	.99732	.00268
6	.99540	.00460
7	.99331	.00669
8	.99195	.00895
9	.94861	.05139
10	.94586	.05402
11	.94316	.05684
12	.94019	.05981
13	.93708	.06292
14	.93391	.06609
15	.93069	.06931
16	.92746	.07254
17	.92418	.07581
18	.92089	.07911
19	.91751	.08249
20	.91403	.08597
21	.91046	.08954
22	.90678	.09328
23	.90292	.09702
24	.89884	.10116
25	.89445	.10555
26	.88972	.11028
27	.88465	.11535
28	.87925	.12075
29	.87353	.12647
30	.86750	.13250
31	.86117	.13883

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
32	.85451	.14549
33	.84752	.15248
34	.84020	.15980
35	.83252	.16748
36	.82455	.17545
37	.81622	.18378
38	.80755	.19245
39	.79854	.20146
40	.78923	.21077
41	.77960	.22040
42	.76967	.23033
43	.75944	.24056
44	.74891	.25109
45	.73808	.26192
46	.72695	.27305
47	.71552	.28448
48	.70385	.29615
49	.69198	.30802
50	.67997	.32003
51	.66785	.33215
52	.65560	.34440
53	.64320	.35680
54	.63060	.36940
55	.61778	.38224
56	.60469	.39534
57	.59131	.40868
58	.57778	.42222
59	.56417	.43583
60	.55052	.44948
61	.53687	.46313
62	.52321	.47679
63	.50954	.49046
64	.49585	.50415
65	.48212	.51788
66	.46836	.53164
67	.45458	.54542
68	.44077	.55923
69	.42689	.57311
70	.41294	.58708
71	.39889	.60111
72	.38474	.61526
73	.37051	.62949
74	.35624	.64376
75	.34194	.65806
76	.32761	.67239
77	.31327	.68673
78	.29895	.70106
79	.28461	.71510
80	.27026	.72902
81	.25573	.74227
82	.24527	.75473
83	.23354	.76646
84	.22217	.77783
85	.21070	.78930
86	.19955	.80045
87	.18870	.81130
88	.17822	.82178
89	.16831	.83189
90	.15822	.84078
91	.15097	.84903
92	.14350	.85650
93	.13681	.86319
94	.13081	.86919
95	.12535	.87465
96	.11998	.88002
97	.11487	.88513
98	.10999	.89001
99	.10532	.89466

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
100	.10087	.89913
101	.09861	.90139
102	.09650	.90350
103	.09446	.91154
104	.09249	.91581
105	.09050	.92000
106	.08741	.92529
107	.08718	.93282
108	.08426	.94574
109	.08230	.97170

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Life estate	(3)—Remainder
0	.05385	.04615
1	.07370	.02630
2	.07372	.02628
3	.07308	.02692
4	.07217	.02783
5	.07110	.02890
6	.06989	.03011
7	.06853	.03147
8	.06703	.03297
9	.06541	.03459
10	.06365	.03635
11	.06176	.03824
12	.05975	.04025
13	.05764	.04236
14	.05543	.04457
15	.05314	.04686
16	.05078	.04924
17	.04829	.05171
18	.04572	.05428
19	.04300	.05697
20	.04021	.05979
21	.03724	.06276
22	.03412	.06588
23	.03095	.06915
24	.02761	.07261
25	.02375	.07625
26	.01993	.08007
27	.01591	.08409
28	.01168	.08832
29	.00725	.09275
30	.00259	.09741
31	.00773	.10227
32	.00265	.10735
33	.00733	.11267
34	.00176	.11824
35	.00593	.12407
36	.00085	.13015
37	.00349	.13651
38	.00067	.14313
39	.00098	.15002
40	.00261	.15719
41	.00336	.16464
42	.00264	.17236
43	.00162	.18038

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
44	.81131	.18869
45	.80269	.19731
46	.79374	.20626
47	.78448	.21552
48	.77488	.22512
49	.76498	.23502
50	.75476	.24524
51	.74423	.25577
52	.73339	.26661
53	.72220	.27780
54	.71082	.28936
55	.69959	.30141
56	.68812	.31386
57	.67620	.32680
58	.66388	.34012
59	.65222	.35378
60	.64026	.36774
61	.62803	.38197
62	.61562	.39646
63	.60301	.41129
64	.59025	.42645
65	.57735	.44197
66	.56421	.45789
67	.55083	.47417
68	.53724	.49076
69	.52341	.50758
70	.50940	.52460
71	.49523	.54177
72	.48088	.55912
73	.46634	.57659
74	.45167	.59413
75	.43683	.61167
76	.42173	.62927
77	.40637	.64693
78	.39084	.66454
79	.37511	.68210
80	.35917	.69963
81	.34309	.71711
82	.32686	.73465
83	.31049	.75216
84	.29396	.76964
85	.27724	.78709
86	.26030	.80451
87	.24311	.82189
88	.22567	.83923
89	.20809	.85653
90	.19036	.87378
91	.17248	.89099
92	.15447	.90816
93	.13631	.92529
94	.11790	.94238
95	.09935	.95943
96	.08066	.97643
97	.06183	.99337
98	.04286	.10000
99	.02374	.10626
100	.00446	.11204
101	.00461	.11740
102	.00250	.12230
103	.00446	.12684
104	.00438	.13102
105	.00000	.13483
106	.07471	.92529
107	.06718	.93282
108	.05426	.94574
109	.02630	.97170

§ 179.6 Notice of termination of life estate.

Upon receipt of a renunciation of interest or notice of death of an Indian or non-Indian who died possessed of a life estate in Indian land, the Superintendent having jurisdiction shall file a copy of the renunciation or death certificate or other evidence of death with the appropriate Bureau of Indian Affairs' Land Titles and Records Office for recording.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

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Part XI

Department of the
Interior

Minerals Management Service

Outer Continental Shelf; Western Gulf of
Mexico, Oil and Gas Lease Sale 115;
Notice

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 115

1. **Authority.** This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356 (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. **Filing of Bids.** Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., August 30, 1988. All times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, August 31, 1988. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., August 30, 1988. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., August 31, 1988. Bid Opening Time will be 9 a.m., August 31, 1988, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 53 FR 10570, published on April 1, 1988.

3. **Method of Bidding.** A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 115, (map number, map name, and block number(s)), not to be opened until 9 a.m., c.s.t., August 31, 1988," must be submitted for each block or prescribed bidding unit bid upon. For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the

cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico regional office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. **Bidding Systems.** All bids submitted at this sale must provide for a cash bonus in the amount of \$25 or more per acre or fraction thereof. All leases awarded will provide for a yearly rental payment of \$3 per acre or fraction thereof. All leases will provide for a minimum royalty of \$3 per acre or fraction thereof. The bidding systems to be employed for this sale apply to blocks or bidding units as shown on Map 2 (see paragraph 12). The following bidding systems will be used:

(a) **Bonus Bidding with a 12 1/2-Percent Royalty.** Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12 1/2-percent.

(b) **Bonus Bidding with a 16 2/3-Percent Royalty.** Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16 2/3-percent.

5. **Equal Opportunity.** Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See the Affirmative Action paragraph 14(f) under "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of \$25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. Leasing Maps and Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) OCS Leasing Maps--South Texas Set. This set of maps sells for \$5.

Map 1 South Padre Island Area
Map 1A South Padre Island Area, East Addition (revised 12/16/85)
Map 2 North Padre Island Area
Map 2A North Padre Island Area, East Addition
Map 3 Mustang Island Area
Map 3A Mustang Island Area, East Addition
Map 4 Matagorda Island Area

(b) OCS Leasing Maps--East Texas Set. This set of maps sells for \$7.

Map 5 Brazos Area
Map 5B Brazos Area, South Addition
Map 6 Galveston Area
Map 6A Galveston Area, South Addition
Map 7 High Island Area
Map 7A High Island Area, East Addition
Map 7B High Island Area, South Addition
Map 7C High Island Area, East Addition, South Extension
Map 8 Sabine Pass Area

(c) OCS Protraction Diagrams. These diagrams sell for \$2 each.

NG 14-3 Corpus Christi (revised 1/27/76)
NG 14-6 Port Isabel (revised 12/16/85)
NG 15-1 East Breaks (revised 1/27/76)
NG 15-2 Garden Banks (revised 12/2/76)
NG 15-4 Alaminos Canyon (revised 12/16/85)
NG 15-5 Keathley Canyon (revised 03/03/87)
NG 15-8 (No Name) (issued 03/03/87)

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico regional office (see paragraph 14(a)):

(1) Western Gulf of Mexico Lease Sale 115
Unleased Split Blocks.(2) Western Gulf of Mexico Lease Sale 115
Unleased Acreage of Blocks
with Aliquots Under Lease.

(b) References to Maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico regional office:

Map 1 entitled "Western Gulf of Mexico Lease Sale 115. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Western Gulf of Mexico Lease Sale 115. Bidding Systems and Bidding Units," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 115. Detailed Maps of Biologically Sensitive Areas," pertains to areas referenced in Stipulation No. 2.

(c) In several instances, two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraphs 11(a), (b), and (c), except for those blocks or partial blocks described as follows:

(1) Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

S. Padre Island	W. Padre Island (continued)	W. Padre Is., East Addition (continued)	Mustang Island (continued)	Mustang Island (continued)	Mustang Island, East Addition (continued)
1031	915	A-22	762	A-2-	A-99
1032	916	A-27	763	(NE 1/4);	A-100
1039	927	A-30	765	NE 1/4;	A-102
1040	928	A-31	766	NE 1/4;	A-103
1062	936	A-33	768	W 1/4;	A-106
1063	947	A-40	769	W 1/4;	A-107
1070	956	A-41	777	A-5	A-108
1104-	967	A-42	778	A-6	A-110
(Landward of	968	A-43	780	A-7	A-111
8(g) Line)	969	A-45	781	A-10	A-112
1111	976	A-46	784	A-11	A-113
1112	1000-	A-47	785	A-12	A-114
1123	(Landward of	A-56	787	A-13	A-120
1124-	8(g) line)	A-57	788	A-14	A-121
(Portion	1006	A-58	789	A-15	A-122
Seaward of	1007	A-59	791	A-16	A-135
8(g) Line)	1010	A-60	798	A-20	A-138
1125		A-61	803	A-21	A-139
1144	N. Padre	A-65	804	A-22	A-142
1153	Island,	A-72	805	A-23	A-146
1154	E. Addition	A-83	807	A-26	A-164
		A-84	809	A-28	A-167
S. Padre	889		813	A-30	A-170
Island	890	Mustang	814	A-31	A-171
East	892	Island	815	A-33	A-174
Addition	893		822	A-34	A-175
	912	725	823	A-35	
1100	953	726	825		
1115	972	727	828	Mustang Is.,	Matagorda
1116	974	728	829	East	Island
1120	991	729	830	Addition	
	995	739	831		487
W. Padre	996	740	834	735	518
Island	1011	742	835	736	519
	1018	743	836	A-51	520
886	A-1	752	845	A-52	526
887	A-4	753	846	A-62	527
888	A-5	754	847	A-63	528
894	A-9	755	849	A-65	529
895	A-10	756	855	A-85	554
897	A-11	757	868	A-86	555
906	A-14	758	873	A-90	556
908	A-15	759	875	A-94	557
909	A-16	761	876	A-95	558
				A-97	564

Matagorda Island (continued)	Matagorda Island (continued)	Brazos	Brazos (continued)	Brazos, S. Addition	Galveston (continued)	Galveston (continued)	Galveston (continued)	Galveston S. Addition (continued)	High Island (continued)	High Island (continued)	High Island (continued)
545	657	335	494	A-47	239	312	389	A-176	88	160-	236
546	663	342	501	A-50	241 (sh)	313	390	A-177	67	NE; NEON;	260
547	664	344-	504	A-51	242	314-	391	A-192	88	ENE; ENE;	261
548	665	(Landward of	510	A-52	243-	(Portion	392	A-193	89	ENE;	262
549	666	8(g) Line)	511	A-53	(Landward of	seaward of	393	A-194	71	ENE;	A-1
550	667		512	A-54	8(g) Line)	8(g) Line)	418	A-200	72	161-	A-2
551	668	346	513	A-63	254	315	420	A-201	73	(NE; NEON);	A-3
552	669	347	514	A-64	255	316	421	A-205	86	ENE; ENE;	A-4
553	670	375	515	A-65	267	317	422	A-206	87	ENE;	A-5
554	671	376	517	A-66	268	318	424	A-207	88	ENE;	A-6
555	673	378	532	A-67	270	319	427	A-214	105	ENE; ENE;	A-7
556	675	397	534	A-68	272-	320	429	A-217	106	ENE; ENE;	A-9
557	676	398	535	A-70	(Seaward of	321	440	A-218	107	ENE; ENE;	A-10
558	677	399	536	A-73	8(g) Line)	324	443	A-219	109	ENE; ENE;	A-11
559	678	400	548	A-76	273	325	444	A-221	110	162	A-13
560	679	412	550	A-79	274	326	445	A-224	111	163	A-14
561	680	413	551	A-89	275	327	446	A-226	115	164	A-16
562	681	415	552	A-102	281	328	447	A-230	116	169	A-18
563	682	416	578	A-105	282	331	448	A-231	117	170	A-19
564	683	430	583	A-118	283	332	449	A-236	131	171	A-20
565	684	431	585	A-119	284	333	450	A-237	133	172	A-21
566	685	432	586	A-132	285	343	451	A-245	134	174	A-22
567	686	433-	615	A-133	295-	344	452	A-249	135-	175	A-23
568	687	(Seaward of	A-2		(ENE; ENE;	345	453	A-250	(NE; NEON);	176	A-24
569	688	8(g) Line)	A-7	Galveston	ENE; ENE;	346	454	A-252	ENE; ENE;	177	A-25
570	689	436	A-9		ENE; ENE;	347	455	A-253	ENE; ENE;	178	A-26
571	690	437	A-10	144	ENE; ENE;	348	456		ENE; ENE;	179	A-27
572	691	438 (E)	A-16	151	ENE; ENE;	349	457	High	ENE; ENE;	180	A-28
573	692	439	A-17	158	ENE; ENE;	350	458	Island	ENE; ENE;	181	A-29
574	693	440	A-18	165	ENE; ENE;	351	459		ENE; ENE;	182	A-30
575	694	441	A-19	172	ENE; ENE;	352	460		ENE; ENE;	183	A-31
576	695	442	A-20	179	ENE; ENE;	353	461		ENE; ENE;	184	A-32
577	696	443	A-21	186	ENE; ENE;	354	462		ENE; ENE;	185	A-33
578	697	444	A-22	193	ENE; ENE;	355	463		ENE; ENE;	186	A-34
579	698	445	A-23	200	ENE; ENE;	356	464		ENE; ENE;	187	A-35
580	699	446	A-24	207	ENE; ENE;	357	465		ENE; ENE;	188	A-36
581	700	447	A-25	214	ENE; ENE;	358	466		ENE; ENE;	189	A-37
582	701	448	A-26	221	ENE; ENE;	359	467		ENE; ENE;	190	A-38
583	702	449	A-27	228	ENE; ENE;	360	468		ENE; ENE;	191	A-39
584	703	450	A-28	235	ENE; ENE;	361	469		ENE; ENE;	192	A-40
585	704	451	A-29	242	ENE; ENE;	362	470		ENE; ENE;	193	A-41
586	705	452	A-30	249	ENE; ENE;	363	471		ENE; ENE;	194	A-42
587	706	453	A-31	256	ENE; ENE;	364	472		ENE; ENE;	195	A-43
588	707	454	A-32	263	ENE; ENE;	365	473		ENE; ENE;	196	A-44
589	708	455	A-33	270	ENE; ENE;	366	474		ENE; ENE;	197	A-45
590	709	456	A-34	277	ENE; ENE;	367	475		ENE; ENE;	198	A-46
591	710	457	A-35	284	ENE; ENE;	368	476		ENE; ENE;	199	A-47
592	711	458	A-36	291	ENE; ENE;	369	477		ENE; ENE;	200	A-48
593	712	459	A-37	298	ENE; ENE;	370	478		ENE; ENE;	201	A-49
594	713	460	A-38	305	ENE; ENE;	371	479		ENE; ENE;	202	A-50
595	714	461	A-39	312	ENE; ENE;	372	480		ENE; ENE;	203	A-51
596	715	462		319	ENE; ENE;	373	481		ENE; ENE;	204	A-52
597	716	463		326	ENE; ENE;	374	482		ENE; ENE;	205	A-53
598	717	464		333	ENE; ENE;	375	483		ENE; ENE;	206	A-54
599	718	465		340	ENE; ENE;	376	484		ENE; ENE;	207	A-55
600	719	466		347	ENE; ENE;	377	485		ENE; ENE;	208	A-56
601	720	467		354	ENE; ENE;	378	486		ENE; ENE;	209	A-57
602	721	468		361	ENE; ENE;	379	487		ENE; ENE;	210	A-58
603	722	469		368	ENE; ENE;	380	488		ENE; ENE;	211	A-59
604	723	470		375	ENE; ENE;	381	489		ENE; ENE;	212	A-60
605	724	471		382	ENE; ENE;	382	490		ENE; ENE;	213	A-61
606	725	472		389	ENE; ENE;	383	491		ENE; ENE;	214	A-62
607	726	473		396	ENE; ENE;	384	492		ENE; ENE;	215	A-63
608	727	474		403	ENE; ENE;	385	493		ENE; ENE;	216	A-64
609	728	475				386			ENE; ENE;	217	A-65
610	729	476							ENE; ENE;	218	A-66
611	730	477							ENE; ENE;	219	A-67
612	731	478							ENE; ENE;	220	A-68
613	732	479							ENE; ENE;	221	A-69
614	733	480							ENE; ENE;	222	A-70
615	734	481							ENE; ENE;	223	A-71
616	735	482							ENE; ENE;	224	A-72
617	736	483							ENE; ENE;	225	A-73
618	737	484							ENE; ENE;	226	A-74
619	738	485							ENE; ENE;	227	A-75
620	739	486							ENE; ENE;	228	A-76
621	740	487							ENE; ENE;	229	A-77
622	741	488							ENE; ENE;	230	A-78
623	742	489							ENE; ENE;	231	A-79
624	743	490							ENE; ENE;	232	A-80
625	744	491							ENE; ENE;	233	A-81
626	745	492							ENE; ENE;	234	A-82
627	746	493							ENE; ENE;	235	A-83
628	747								ENE; ENE;		
629	748								ENE; ENE;		
630	749								ENE; ENE;		
631	750								ENE; ENE;		
632	751								ENE; ENE;		
633	752								ENE; ENE;		
634	753								ENE; ENE;		
635	754								ENE; ENE;		
636	755								ENE; ENE;		
637	756								ENE; ENE;		
638	757								ENE; ENE;		
639	758								ENE; ENE;		
640	759								ENE; ENE;		
641	760								ENE; ENE;		
642	761								ENE; ENE;		
643	762								ENE; ENE;		
644	763								ENE; ENE;		
645	764								ENE; ENE;		
646	765								ENE; ENE;		
647	766								ENE; ENE;		
648	767								ENE; ENE;		
649	768								ENE; ENE;		
650	769								ENE; ENE;		
651	770								ENE; ENE;		
652	771								ENE; ENE;		
653	772								ENE; ENE;		
654	773								ENE; ENE;		
655	774								ENE; ENE;		
656	775								ENE; ENE;		

High Island, (continued)	High Island, S. Addition (continued)	High Island, S. Addition (continued)	High Island, S. Addition (continued)	High Island, E. Addition (continued)	High Island, E. Addition, S. Extension (continued)	High Island, E. Addition, S. Extension (continued)	High Island, E. Addition, S. Extension (continued)	East Breaks (continued)	East Breaks (continued)	East Breaks (continued)	Garden Banks (continued)
A-82	A-433	A-500	A-561	A-173	A-261	A-330	A-383	112	302	626	84
A-83	A-435	A-501	A-563	A-174	A-264	A-332	A-384	114	304	637	95
A-87	A-437	A-502	A-564	A-176	A-268	A-333	A-386	117	305	638	96
A-88	A-438	A-503	A-566	A-178	A-269	A-334	A-387	118	309	639	97
A-89	A-439	A-505	A-567	A-180	A-270	A-335	A-388	119	340	640	98
A-90	A-440	A-506	A-568	A-183	A-271	A-336	A-389	120	341	641	103
A-100	A-442	A-507	A-570	A-185	A-272	A-337	A-390	122	342	642	104
A-103	A-443	A-510	A-571	A-187	A-276	A-338	A-391	123	376	643	108
A-119	A-444	A-511	A-572	A-192	A-279	A-339	A-392	127	377	644	109
A-120	A-445	A-512	A-573	A-193	A-280	A-340	A-393	128	383	645	110
A-122	A-446	A-513	A-574	A-194	A-281	A-341	A-395	129	384	646	112
A-123	A-447	A-515	A-576	A-196	A-282	A-343	A-396	146	386	644	115
A-124	A-448	A-516	A-577	A-198	A-283	A-344	A-397	147	420	685	117
A-126	A-450	A-517	A-582	A-200	A-285	A-347	A-399	152	421	686	118
A-127	A-451	A-519	A-584	A-205	A-288	A-348	A-400	154	425	688	119
A-129	A-440	A-520	A-585	A-206	A-289	A-349	A-401	158	428	689	124
A-130	A-461	A-521	A-587	A-207	A-290	A-350	A-402	159	430	728	125
A-131	A-462	A-522	A-591	A-214	A-292	A-351	A-403	160	431	732	126
A-132	A-463	A-523	A-594	A-215	A-295	A-352		161	439	943	127
A-139	A-465	A-525	A-595	A-224	A-298	A-353	Sabine Pass	164	475	945	128
A-141	A-466	A-527	A-596	A-231	A-299	A-354		165	481	946	129
A-142	A-467	A-528		A-234	A-302	A-355	17	166	512	988	134
A-149	A-468	A-529	High Island, East	A-236	A-303	A-356	18	167	525	989	139
A-152	A-469	A-530	Addition	A-237	A-304	A-358	20	168	555		140
A-155	A-471	A-531		A-239	A-305	A-360		170	556	Garden Banks	141
A-156	A-472	A-532		A-240	A-306	A-361	Corpus Christi	171	557		142
A-161	A-474	A-536	39	A-241	A-307	A-362		172	558		143
A-162	A-475	A-537	45*	A-244	A-308	A-363		173	562	21	147
A-165	A-476	A-539	46	A-245	A-309	A-364	921	190	563	22	148
	A-477	A-540	74	A-246	A-310	A-365	565	206	564	23	149
High Island, South	A-479	A-542	75	A-250	A-311	A-366	566	207	577	25	153
Addition	A-480	A-544	76	A-253	A-312	A-367	569	208	578	26	154
	A-481	A-545	81	A-254	A-313	A-368	610	209	579	27	156
A-411	A-484	A-546	119	A-255	A-314	A-369	872	211	580	28	161
A-412	A-486	A-547	120	A-256	A-315	A-370	916	213	593	29	171
A-414	A-487	A-548	128	A-257	A-317	A-371		214	598	35	172
A-416	A-488	A-550	129	A-258	A-319	A-372	East Breaks	217	599	68	173
A-416	A-489	A-551	130	A-259	A-320	A-373		250	600	69	177
A-417	A-490	A-552	188		A-321	A-376		251	602	70	178
A-418	A-492	A-553	167	High Island	A-322	A-377	73	252	607	71	180
A-419	A-494	A-554	168	East	A-323	A-378	74	257	621	72	181
A-424	A-495	A-555	A-169	Addition,	A-324	A-379	108	258	622	73	182
A-425	A-496	A-556	A-170	S. Extension	A-325	A-380	109	282	623	81	186
A-426	A-497	A-557	A-171		A-326	A-381	110	283	624	82	187
A-432	A-499	A-560	A-172	A-260	A-327	A-382	111	296	625	83	189

*Omitted in error from Proposed List

Garden Banks (continued)	Garden Banks (continued)	Garden Banks (continued)	Garden Banks (continued)	Port Isabel (continued)	Alamitas Canyon (continued)
191	274	416	506	597	765
192	275	417	507	598	767
193	279	423	525	576	770
197	285	424	533		774
199	287	425	534	Alamitas Canyon	775
200	295	426	550		776
202	296	427	551		778
203	297	441	553	20	779
204	298	451	595	65	780
205	300	452	597	133	781
208	302	453	741	192	796
212	304	456	754	236	797
213	305	457	782	237	810
215	314	458	785	280	811
216	315	459	803	336	813
217	334	840	804	337	814
221	335	461	826	380	818
222	339	462		390	822
223	341	465	Port Isabel	398	827
224	343	470		441	854
225	344	471		442	856
226	345	485	130	475	857
229	348	494	131	518	865
230	349	498	166	557	900
231	359	499	167	558	901
232	360	500	174	578	903
234	367	501	175	595	904
235	368	505	214	600	908
236	369	515	217	601	947
237	370	516	218	602	951
239	371	517	258	622	954
240	372	525	298	645	955
251	373	529	481	647	956
252	378	535	482	648	959
255	379	536	525	691	
256	380	537	526	719	Keathley Canyon
257	382	538	562	720	
259	387	543	563	726	
260	388	544	564	728	156
265	390	545	568	730	157
267	405	562	570	731	191
268	406	563	571	734	192
269	411	579	607	736	236
271	412	585	653	763	583
273	413	586	654	764	584

(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks: # A-375 and A-398.

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1-- Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Protection of Topographic Features.

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.)

The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

No Activity Zone Defined by Isobath		No Activity Zone Defined by Isobath	
Bank Name	(meters)	Bank Name	(meters)
Shelf Edge Banks		Low Relief Banks**	
West Flower		Mysterious Bank	74, 76, 78, 80, 84 (see leasing map)
Garden Bank*	100		
(defined by 1/4 1/4 1/4 system)		Coffee Lump	Various (see leasing map)
East Flower		Blackfish Ridge	70
Garden Bank*	100	Big Dunn Bar	65
(defined by 1/4 1/4 1/4 system)		Small Dunn Bar	65
MacNeil Bank	82	32 Fathom Bank	52
29 Fathom Bank	64	Claypile Bank***	50
Rankin Bank	85		
Geyer Bank	85	South Texas Banks****	
Elvers Bank	85	Dream Bank	78, 82
Bright Bank*****	85	Southern Bank	80
McGrail Bank*****	85	Hospital Bank	70
Rezak Bank*****	85	North Hospital Bank	68
Sidner Bank	85	Aransas Bank	70
Parker Bank	85	South Baker Bank	70
Stetson Bank	62	Baker Bank	70
Applebaum Bank	85		

- * Flower Garden Banks--In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.
- ** Low Relief Banks--Only paragraph (a) applies.
- *** Claypile Bank--Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.
- **** South Texas Banks--Only paragraphs (a) and (b) apply.
- ***** Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3--Military Warning Areas.

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any Agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the

United States, its contractors or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Areas' Command Headquarters
Western Planning Area

Warning Areas

Command Headquarters

W-228

Chief, Naval Air Training
Naval Air Station
ATTN: Lt. Col. T. M. Aiton
or Lt. J. L. Keith
Corpus Christi, Texas 78419-5100
ATTN: N33
Telephone: (512) 939-3927/3902

W-502

Director of Air Space Management
Deputy Chief of Staff
Operations Headquarters
Strategic Air Command
ATTN: Lieutenant Colonel Rose
Offutt AFB, Nebraska 68113-5001
Telephone: (402) 294-3103/3450
or (Scheduling)
(402) 294-2334/4649

14. Information to Lessees.

(a) Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2755.

(b) Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. The U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

A final rulemaking to establish a shipping/safety fairway was published in the Federal Register on May 14, 1987, at 52 FR 18231.

For additional information, prospective bidders should contact Lt. Commander F. V. Newman, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589-6901.

(c) Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) 8-Year Leases. Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37(a)(2).

(e) Affirmative Action. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).

Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development

activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency (EPA) dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) Gulf Ocean Incineration Site. Bidders are advised of the existence of the Gulf Ocean Incineration Site located in the East Breaks, Garden Banks, Alaminos Canyon, and Keathley Canyon leasing areas, as shown on Map 1. This site is designated for the incineration of organohalogen wastes including polychlorinated biphenyls and ethylene dichloride. Lessees are advised to contact the EPA, Washington, D.C. office, when formulating plans for undertaking oil and gas activity in the designated incineration site area so that potential conflicts can be mitigated through coordination of activities. The following blocks are affected by the Gulf Ocean Incineration Site:

East Breaks			Garden Banks	
1008			969-980	
1009				
Alaminos Canyon			Keathley Canyon	
40	260	480	1-12	353-364
41	261	481	45-56	397-408
84	304	524	89-100	441-452
85	305	525	133-144	485-496
128	348	568	177-188	529-540
129	349	569	221-232	573-584
172	392	612	265-276	617-628
216	436	656	309-320	
217	437	657		

[FR Doc. 88-15345 Filed 7-7-88; 8:45 am]
BILLING CODE 4310-MR-C

15. New Regulatory Provisions. The regulatory reference to provisions in 30 CFR Part 250 cited in this document refer to the new MMS regulations, "Oil and Gas and Sulphur Operations in the Outer Continental Shelf." They were published in the Federal Register at 53 FR 10595 on April 1, 1988, and became effective on May 31, 1988. This Notice is provided to bidders since any leases issued as a result of this sale will be subject to the April 1, 1988, regulations (not those existing in the 30 CFR Part 250, revised as of July 1, 1987, which may be in conflict with the new regulations).

William D. Bettenberg
Director, Minerals Management Service
William D. Bettenberg

Approved:

J. Steven Griles
Assistant Secretary - Land and Minerals Management
J. Steven Griles
JUL 1 1988

Date

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Part XII

Environmental Protection Agency

40 CFR Parts 156 and 170
Worker Protection Standards for
Agricultural Pesticides; Public Meetings
and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 155 and 170

(Docket No. OPP-300164A; FRL 3412-4)

Worker Protection Standards for Agricultural Pesticides; Public Meetings on Proposed Revision of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meetings.

SUMMARY: Notice is hereby given that public meetings will be held in Washington, DC, and in each EPA Region on the topic of EPA's proposal, which is published elsewhere in this issue of the Federal Register, to revise its regulations governing worker protection from agricultural pesticides. At these meetings, EPA will explain the proposed rule and answer questions concerning the proposal. EPA believes that these meetings will assist potential commenters in understanding the proposal, leading to more useful public comments which the Agency will use in developing the final rule.

DATES: The first public meeting will be held at 9 a.m. on July 18, 1988. Dates of the regional meetings will be announced in a subsequent Federal Register notice. Written comments on the proposal must be submitted on or before October 6, 1988.

ADDRESSES: The first public meeting will be held at the Office of Pesticide Programs, Environmental Protection Agency, Rm. 1112, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Locations of the regional meetings will be announced in a subsequent Federal Register notice. Written comments on the proposal may be submitted to the Document Control Officer (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20008. Comments should be in triplicate and bear the document control number, OPP-300164.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Breslin, Director, Pesticide Farm Safety Staff (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20008, (703)-557-7666.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the Federal Register, EPA is proposing under authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136w(a)), to revise its regulations governing worker protection from

agricultural pesticides (40 CFR Part 170). The proposed rule (Docket No. 300164) would enlarge the scope of the standards, expand existing requirements for warnings about application, personal protective equipment, and reentry restrictions, and add new provisions for decontamination, emergency medical duties, contact with handlers of highly toxic pesticides, cholinesterase monitoring of commercial pesticide handlers, and training. The proposal also includes a number of regulatory options on which EPA has specifically solicited public comment.

As part of its effort to obtain useful public comments on its proposal, EPA will hold a series of public meetings for persons and groups affected by or interested in the proposed regulations. At these meetings EPA will explain the content of proposed and associated regulatory options and answer any questions. The first meeting will be held in Washington, DC, on the date and at the location indicated above. At this time, the Agency is also planning to hold at least one meeting in each EPA Region shortly after the first meeting. Dates and locations for the regional meetings will be announced in a future Federal Register notice.

The Agency's proposed rule appears elsewhere in this issue of the Federal Register, and a copy of the proposal may also be obtained by writing or calling the contact person identified above. Written comments on the proposal may be submitted to the Document Control Officer identified above within the 90-day public comment period.

Dated: July 1, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

(FR Doc. 88-15417 Filed 7-7-88; 8:45 am)

BILLING CODE 1550-35-24

40 CFR Parts 155 and 170

(Docket No. OPP-300164; FRL 3314-4)

Worker Protection Standards for Agricultural Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its regulations governing worker protection from agricultural pesticides. These revisions would expand the scope of the standards to include not only workers performing hand labor operations in fields treated with pesticides, but workers in forests, nurseries, and greenhouses, and workers who handle

(mix, load, apply, etc.) pesticides in these locations. The proposal would expand requirements for warnings about applications, personal protective equipment, and reentry restrictions, and would add new provisions for decontamination, emergency medical duties, contact with handlers of highly toxic pesticides, cholinesterase monitoring, and training. EPA also proposes to revise its labeling regulations to require statements pertaining to general worker protection, reentry intervals, personal protective equipment, and posting of treated areas. EPA is concerned about the adequacy of the present regulations to protect agricultural workers from occupational exposure to pesticides. The proposal is intended to provide interim protection to workers until the pesticide reregistration process can be completed, without creating undue burdens on agricultural producers.

DATE: Written comments, data, and other evidence concerning the proposal should be submitted on or before October 6, 1988.

ADDRESSES: Comments should be submitted in triplicate and addressed to the Document Control Officer (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. All comments should bear the document control number OPP-300164 and will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, at the OPP Document Control Office, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Breslin, Director, Pesticide Farm Safety Staff, Office of Pesticide Programs, Environmental Protection Agency, Room 1008, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7666.

SUPPLEMENTARY INFORMATION: This Federal Register notice discusses the background and events leading to this proposal, the new health and safety data and other concerns giving rise to the proposal, the rationale underlying its specific provisions, the relationship of the proposal to State regulations, implementation of the proposal, and the applicable statutory and regulatory review requirements. References are identified in the text by the author's last name and the reference number while full bibliographic information is found in the References section near the end of this notice.

Public reporting burden for this collection of information is estimated to average 6.5 hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

As an aid to the reader, the following is an outline of the contents of this notice:

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I. Background

A. Statutory Authority

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) was

originally enacted in 1947 (7 U.S.C. 135 *et seq.*). Since that time, pesticide products have been subject to Federal regulation under FIFRA and are required to be registered with EPA. In 1972, FIFRA was amended by the Federal Environmental Pesticide Control Act (7 U.S.C. 136 *et seq.*). Among other things, the amendments broadened Federal pesticide regulatory authority by making it "unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling" (7 U.S.C. 136(a)(2)(C)). The amendments provided civil and criminal penalties for violations of the Act (7 U.S.C. 136i) and authorized the Administrator to provide regulations to carry out the Act (7 U.S.C. 136w(a)). The legislative history of the 1972 amendments indicates an expressed intent on the part of Congress that farmers, farm workers, and others be afforded protection under FIFRA.

B. Promulgation of 40 CFR Part 170

In 1974, EPA promulgated the regulations found at 40 CFR Part 170 pursuant to its authority under FIFRA (7 U.S.C. 136w(a)). These regulations deal with pesticide-related occupational safety and health of workers performing hand labor operations in fields during or after application of pesticides. They contain four basic requirements: (1) A prohibition against spraying workers; (2) specific reentry intervals for 12 pesticides and a general reentry interval for all agricultural pesticides prohibiting reentry into treated fields until the sprays had dried or dusts had settled; (3) a requirement for protective clothing for any worker who had to reenter treated fields before the specific reentry period had expired; and (4) a requirement for "appropriate and timely" warnings. Specifically exempted from coverage were soil-incorporated pesticides, mosquito abatement treatments and related public pest control programs, greenhouse treatments, livestock and other animal treatments, and treatments of golf courses and similar nonagricultural areas. EPA's authority to promulgate such requirements is well established. *Organized Migrants in Community Action (OMICA) v. Brennan*, 520 F.2d 1161 (D.C. Cir. 1975). See also *Public Citizen Health Research Group et al. v. Aucter*, 702 F.2d 1150 (D.C. Cir. 1983). In 1983, EPA issued PR Notice 83-2 requiring the basic provisions of 40 CFR Part 170 to be placed on labels of "all outdoor agricultural use products which are applied to crops whose culture requires hand labor."

C. Advance Notice of Proposed Rulemaking

A review of 40 CFR Part 170 was conducted during 1983. The Agency concluded that the current Part 170 was inadequate to protect workers occupationally exposed to pesticides, and decided to revise the Part. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) in 1984 (49 FR 32605 *et seq.*; August 15, 1984). The ANPRM noted that while "the Agency has set additional reentry intervals for specific pesticide products through the registration and reregistration process," nevertheless "a more comprehensive revision of Part 170 is necessary" (49 FR 32606).

The ANPRM requested public comment on six specific issues: (1) Expansion of the scope of Part 170 to include other categories of workers, work activities, and pesticide uses; (2) revision of the reentry intervals; (3) revision of the protective clothing provisions; (4) revisions of the requirements for warning workers; (5) imposition of other types of safety requirements; and (6) enforcement mechanisms.

Almost all commenters agreed that Part 170 should be revised. As to possible expansion of the scope, the largest number of comments concerned expanding the scope to include mixers, loaders, and applicators. The majority of these comments favored this expansion, citing the dangers involved with application-related tasks. Other comments discussed expanding coverage to include greenhouses, nurseries, and forests.

Many commenters supported having more pesticides covered by reentry intervals, saying that the current intervals were not adequate. There was considerable support for the concept of generic reentry intervals as an interim measure until each pesticide product could be evaluated on its own. These commenters also pointed out that (1) some products are already known to require longer intervals, (2) provisions should be made for increasing intervals as new data warrant, and (3) individual reentry intervals for all specific pesticides should be established as soon as possible.

A few commenters took the position that the current definition of protective clothing was adequate, at least for certain occupational groups. Some commenters stated that increased requirements would prove to be unnecessary and lead to discomfort in some situations, such as working in hot weather or enclosed spaces. Others said

that all protective clothing requirements should be determined on a chemical-by-chemical basis and included on the label. Others, however, felt that protective clothing under the current definition of Part 170 does not protect workers. Some proposed minimal additions to the requirements in order to avoid encumbering workers, especially hand harvesters; others suggested stronger requirements.

There was support for requiring protective clothing for reentry before the expiration of the reentry interval, but the majority of comments stated that the reentry interval should be made long enough to protect workers and that protective clothing should not be required after that time. A few comments, however, favored continuing protective clothing requirements beyond the reentry interval.

There was no consensus among the commenters about whether warning requirements should be strengthened and, if so, what stronger requirements should be imposed. A significant number of commenters supported keeping the existing requirement, i.e., oral or posted warnings at treated areas. Some commenters wanted a requirement for only oral warnings, believing them to be most effective, at least in their occupational situation. Some thought both oral and posted warnings should be required, and pointed out that treated area posting should not be considered a substitute for oral warnings.

All commenters responding to the issue of bilingual warnings favored requiring them where necessary. It was also suggested that accepted international signs and symbols be added to posted warnings at treated areas.

As to training, medical surveillance, and changing areas, several commenters expressed opinions about the broad issue of whether Part 170 should include any occupational safety and health provisions similar to those promulgated by OSHA for other classifications of workers. There was confusion about whether existing OSHA rules currently apply to agricultural workers. A few comments stated that without these OSHA-type provisions, Part 170 would be largely ineffective and unenforceable. One comment proposed that the applicable OSHA regulations be included in Part 170, with the two agencies cooperating to enforce them. Several others, however, either urged caution to ensure that EPA regulations will not duplicate or conflict with OSHA's, or totally opposed inclusion of any OSHA-type provision in Part 170.

Several comments requested EPA to strengthen the enforceability of the worker safety regulations and stressed the need to ensure that all of the regulations are enforceable requirements. Some comments stated either that there is no evidence of inadequate enforcement of the existing regulation, or that their State laws are sufficient. Others, however, cited specific examples of enforcement failures in their States, stemming from such causes as understaffing and the lack of bilingual enforcement officials.

Most commenters agreed that the owner or lessee must have the primary legal responsibility for compliance with worker safety regulations. Some wanted the responsibility to extend to crew leaders, applicators, and/or field supervisors.

Comments were divided on the issue of whether chronic health effects should be dealt with by Part 170. Some were opposed to reentry intervals, warnings, and other measures directed toward chronic effects, and said that chronic effects should be considered on a case-by-case basis through the registration/reregistration process. Another group of comments, however, stated that chronic effects are likely to be the most serious threat to worker health and recommended extending Part 170 to consider such effects in the setting of generic interim standards. It was noted that the FIFRA requirements for protection of humans and the environment included both acute and chronic effects. Most comments that addressed this topic argued that chronic effects should be considered when determining toxicity levels and when setting reentry intervals and protective clothing requirements.

D. Regulatory Negotiation

In addition to the use of the ANPRM to encourage the widest possible public participation, EPA initiated a process called "regulatory negotiation" to develop this proposal. This process allows parties interested in or affected by the outcome of the proposed rule an opportunity to participate in the rule's development through face-to-face negotiation. Parties with different interests work to resolve issues by meeting, discussing facts and questions, and attempting to reach solutions.

The Agency held an organizational meeting on October 9, 1985. After a preliminary discussion of issues, committee representation, subcommittees, operational ground rules, and other basic protocols, it was decided that an advisory committee should be established. EPA announced in the Federal Register of October 18,

1985 (50 FR 42223) its intent to establish such a committee under the Federal Advisory Committee Act (Pub. L. 92-463). The Advisory Committee on Worker Protection Standards for Agricultural Pesticides held its first official meeting November 4, 1985, in Arlington, Virginia. The initial meeting and all subsequent meetings of the full Committee were announced in the Federal Register and were open to the general public.

Representatives of the following parties were members of the Committee:

1. American Association of Nurserymen.
2. American Farm Bureau.
3. American Seed Trade Association.
4. Arizona Farm Workers Union.
5. Association of Pesticide Control Officials.
6. Association of State and Territorial Health Officials.
7. California Rural Legal Assistance.
8. East Coast Farm Worker Support Network.
9. Farm Labor Organizing Committee-Florida.
10. Farm Labor Organizing Committee-Ohio.
11. National Agricultural Aviation Association.
12. National Agricultural Chemicals Association.
13. National Association of State Departments of Agriculture.
14. National Cotton Council; National Association of Wheat Growers.
15. National Council of Agricultural Employees.
16. National Farm Workers Health Group (UFW).
17. National Forest Products Association.
18. Society of American Florists.
19. State FIFRA Issues Research and Evaluation Group.
20. Texas Department of Agriculture.
21. United Farm Workers of America (AFL-CIO)—Texas.
22. United Fruit and Vegetable Association.
23. U.S. Environmental Protection Agency.
24. U.S. Department of Agriculture.
25. Florida Cooperative Extension Service.

At the first full Committee meeting on November 4, 1985, the group adopted operating protocols and divided into five working groups (Reentry, Training, Medical Monitoring and Greenhouses, Protective Clothing, Notification), deferring a sixth group on enforcement issues to a later time.

Initially, thirty-one major issues were identified and presented to the working groups for deliberation. Several key

issues overlapped working groups because of the interrelationship of the concerns. Discussions and recommendations of the working groups were considered at plenary sessions of the full Committee meetings, and working drafts of the proposed revisions were prepared and distributed on January 21 and February 18, 1986.

After the meeting on February 3 and 4, 1986, representatives from the Arizona Farm Workers Union, the Farm Labor Organizing Committee, California Rural Legal Assistance, the East Coast Farm Worker Support Network, and the National Farm Workers Health Group (UFW) decided to discontinue participation in the Regulatory Negotiation process. Meetings on March 6 and 7, 1986, and May 5 and 6, 1986, were held in order to discuss drafts of the proposed rule and receive comments from the remaining members of the Advisory Committee concerning subsequent drafts of the regulatory language prepared by the Agency. However, a regulatory negotiation consensus could not be reached without the full Committee's participation. All work on the regulation was performed by EPA alone after June 10, 1986.

Although a consensus on this rule was not achieved, Committee members representing the broad interests affected by this proposal discussed issues and regulatory language and helped shape the proposed regulation. EPA appreciates the commitment made by each member of the Committee and firmly believes that the Committee's deliberations sharpened the issues and will enhance future public discussions generated by this proposal.

II. Reasons for This Proposal

Agency concern about the adequacy of the present Part 170 has grown over the years for a number of reasons. New data on agricultural worker exposure that have been developed and assessed demonstrate the need for more worker protection features. The enforcement experiences of EPA and the States over the years have led the Agency to conclude that a clearer exposition of liability and responsibility provisions would lead to improved worker protection. The Agency has determined that since the reregistration program will not be completed for a number of pesticides within the near future, interim measures are necessary to adequately protect workers. EPA also believes that protection should be provided to certain types of workers by expanding coverage to workers not covered by the present Part 170. Finally, since 1974 there has been greatly increased use of certain chemical classes of pesticides, primarily

the organophosphates and carbamates, which contain pesticides which are more acutely toxic to humans than previous pesticides in common use in agriculture. The present Part 170, however, does not account for this shift in classes of agricultural pesticides used.

A. Pesticide Poisoning Data

Pesticide illnesses in agricultural workers can result from excessive exposure to pesticides, which in turn can result from inadequate safety precautions. An estimated 2.3 million persons are exposed directly or indirectly to agricultural pesticide products or their residues as a result of occupational activities.

Accurate estimates of pesticide poisonings among agricultural workers are difficult to obtain for a variety of reasons: (1) The migratory nature of much of agricultural labor is an obstacle hampering collection of such data; (2) the geographic and seasonal heterogeneity of the population under scrutiny makes assessments of the number of workers at risk elusive; (3) many agricultural workers adversely affected by pesticides may not seek medical attention from United States health care providers; and (4) pesticide poisoning incidents often are treated symptomatically without being specifically diagnosed as pesticide-related or reported as such. EPA contracted with Research Triangle Institute (RTI) to review and analyze the 10 main sources of data relating to pesticide poisoning incidents in the United States. These sources are:

1. The 1971-73 and 1974-76 National Studies of Hospital-Admitted Pesticide Poisonings.
2. Pesticide Incident Monitoring System (PIMS) Data.
3. The Atlantic Coast Migrant Stream Pesticide Study.
4. EPA Report 540/9-80-003 Chronic Neurological Sequelae of Acute Organophosphate Pesticide Poisoning: A Case-Control Study.
5. Consumer Product Safety Commission Emergency Room Survey.
6. California Reports on the Incidence of Pesticide Poisonings.
7. Chemical Exposure Data from Bureau of Labor Statistics and Worker's Compensation Programs in Oregon and Ohio.
8. The Federal Government and the Incidence of Pesticide Poisonings: Survey of Migrant and Rural Health Clinics.
9. Washington: Occupational Mortality in Washington State.
10. EPA Report, National Monitoring Study: Citrus.

These reports indicate that there continue to be significant numbers of pesticide poisonings among agricultural workers every year, and in some cases a trend toward increasing numbers of poisonings. (Stuart et al., 86). For example, RTI noted an increase of 35 percent in annual pesticide poisonings in California between 1976 and 1983. RTI concluded that only a small fraction of occupational poisonings are reported or even identified. Thus, all studies probably understate the problem, for various reasons which are fully discussed in the RTI reports.

The Agency has also examined information on health effects in reentry situations gathered since 1974 from various sources. At that time it appeared that episodes of reentry worker poisonings were limited to the harvesting of tree fruit in California soon after the application of organophosphate pesticides. However, subsequent reports of reentry worker poisoning and injury episodes indicate that: (1) The problem exists throughout the country, although it appears to be greatest in California; (2) pesticides other than organophosphates can present significant hazards to workers; (3) residues on crops other than tree fruit can present significant hazards to workers; (4) tasks other than harvesting can present significant hazard to workers; and (5) activities taking place after the "minimum" reentry interval can present significant hazards to workers.

A review of pesticide poisonings and injuries in California, reported by physicians during the period from 1976-1985, shows 460 reported systemic poisonings among field workers exposed to residues after application of pesticides, and 1955 skin and eye injuries (Blondell, 8). The relative infrequency of reported reentry incidents does not reflect the degree of concern held by many occupational health specialists, who believe that occupationally related illnesses and injuries are underreported among the agricultural workforce. Only 7 States have mandatory reporting systems, while 16 other States have limited forms of data collection (McNeil, 57). Some workers are reluctant to seek medical attention, especially those of illegal or uncertain residency status and those not covered by worker compensation programs—only 16 States have mandatory worker compensation programs for agricultural workers. Misdiagnosis also may be a problem: when large groups of workers are involved the pattern of illness often suggests food poisoning or water-borne

gastroenteritis, and when small groups are involved, heatstroke is sometimes suggested (Quinby and Lemmon, 79).

The pesticide active ingredients involved in the reported California reentry incidents belong to all toxicity categories and many chemical classes (Blondell, 8). The poisoning episodes include incidents occurring up to 5 weeks after pesticide sprays have dried and dusts have settled. They also include incidents involving non-harvesting tasks. For example, workers thinning and detasseling seed corn have experienced severe dermatitis and symptoms of cholinesterase poisoning after application of carbofuran, and workers have experienced conjunctivitis while pruning grapes on the same day as application of elemental sulfur.

Large doses of acutely toxic pesticides may lead to death, but reentry workers are extremely unlikely to accumulate such doses as a result of exposure to residues. Rather, the Agency is concerned with the potentially debilitating effects of repeated exposures of reentry workers to lower levels of pesticides from field residues and the added burden of medical expenses and loss of income during illnesses that may result (Gunther et al., 33).

In addition to the effects of acutely toxic pesticides on reentry workers, the Agency is concerned about the chronic, subchronic, and cumulative effects of repeated low-level exposures to pesticides. A single exposure period might not trigger a poisoning incident, whereas repeated exposures on a frequent or regular basis may lead to an acute poisoning (e.g., cumulative cholinesterase inhibition) or to chronic or subchronic effects such as cancer.

B. Enforcement

A major impetus for revision of Part 170 is the problem of enforceability of its provisions. The Agency has identified four major enforcement concerns.

1. *Part 170 and pesticide labeling.* When the present Part 170 was developed and promulgated, little attention was given to the incorporation of its requirements on pesticide labeling, necessary for enforcement of violations under FIFRA section 12(a)(2)(G). The Agency believes that close attention should be given to this matter, to ensure user understanding of and compliance with the regulations as well as enforceability under FIFRA in the event of noncompliance.

2. *Assigning responsibility.* EPA believes that the present Part 170 needs to be improved by more clearly stating which persons have duties, and by broadening the group of persons who

have duties. Complex arrangements have developed among owners, operators, lessees, commercial applicators, labor contractors, supervisors, and crew leaders for managing agricultural establishments and farm worker activities. The current regulations establish duties only for "owners" and "lessees" and do not define these terms. Many persons who are not owners or lessees are in positions to improve farm worker safety by taking care to use pesticides properly and by taking steps to see that workers under their supervision receive the necessary protections. In one enforcement case, a commercial aerial applicator who negligently sprayed a crew of workers could not be cited for violation of Part 170, since the applicator had no responsibility for farm worker protection under the present Part 170. Likewise, a labor contractor who orders a crew into an area under a reentry interval likely could not be charged with violating the current Part 170.

3. *Recordkeeping.* The present Part 170 lacks any requirement for keeping of records by responsible persons, which increases the difficulty of proving noncompliance. Monitoring of compliance with Part 170 duties would in most cases be facilitated by written documentation of required measures and actions. Records can provide both proof of compliance and evidence of noncompliance. However, recordkeeping may impose a significant economic burden on responsible parties. Any recordkeeping requirement must be closely assessed for need and expected benefits relative to cost. In addition, FIFRA section 11 prohibits the Agency from issuing regulations requiring private applicators to keep any records. Any general recordkeeping requirement would be subject to this exemption and its efficacy would be limited.

4. *Clarity and specificity.* The wording of certain requirements in the present Part 170 leaves room for broad interpretation due to lack of specificity. Under these circumstances, enforcement is difficult for the Agency and potentially unfair to those with Part 170 duties. One example is the requirement for "appropriate and timely" warnings (§ 170.5). Such vague language may contribute to noncompliance because the user may not be able to determine what to do to comply with the requirements. Careful drafting can assure clarity of language and achievement of intended regulatory purpose.

C. Registration and Reregistration

EPA has found that with present resources, only 20 to 30 Registration Standards for active ingredients can be completed each year. Currently there are several hundred standards for active ingredients used in agriculture yet to be completed. Even if the Agency is able to accelerate the reregistration effort, the individual review and reregistration of agricultural pesticides may not be completed until early in the 21st century.

Some kinds of requirements, such as reentry intervals and personal protective equipment, ideally should be tailored to individual products in a reregistration process. Revising Part 170 and implementing it through label changes will, however, provide workers better interim protection until each active ingredient receives closer scrutiny during reregistration. Other requirements are generic to all agricultural pesticides and, for these, rulemaking is clearly an efficient approach to regulation. This approach would also be fairer to registrants and users (restrictions on use would be implemented simultaneously for all products).

III. Proposed Worker Protection Standards

A. Organization of Regulation

This proposal is divided between two Parts. Proposed Part 170 contains detailed provisions designed to protect pesticide handlers and other persons who work on farms, forests, nurseries and greenhouses. This Part is divided into six subparts. Subpart A contains the general provisions, definitions and duties applicable to all types of workers. Subpart B contains provisions for pesticide handlers and early reentry workers working on farms, forests, nurseries and greenhouses. Subpart C contains provisions common to all workers on farms, forests, nurseries and greenhouses. Subpart D contains special provisions for workers on farms and forests. Subpart E contains special provisions for workers in nurseries. Subpart F contains special provisions for workers in greenhouses. Within Subparts B through F, regulatory provisions appear in the order of the chronological occurrence of activities associated with the use of pesticides, e.g., training, then notification, then reentry.

Proposed Part 156, Subpart K, addresses the labeling requirements with which registrants must comply. Persons who use products labeled in accordance with this Subpart must comply with the labeling statements.

Subpart K is structured first to provide the more general statements required on labeling, followed by specific required statements for reentry, posting and personal protective equipment.

B. Applicability

In 1974, EPA limited the scope of Part 170 to farm workers engaged in hand labor in fields during and after pesticide application (§ 170.1). The current Part 170 explicitly does not apply to (1) soil-incorporation of pesticides, (2) mosquito abatement treatments and related public pest control programs, (3) greenhouse treatments, (4) livestock and other animal treatments, (5) treatment of golf courses and similar nonagricultural areas, and (6) activities other than hand labor tasks, including pesticide handling (§ 170.4(c)). The applicability of Part 170 to nurseries and forests is unclear. After a careful review of these exclusions, EPA believes that certain revisions to the applicability of Part 170 are warranted.

1. *Pesticide Use Sites* (§ 170.3(c)). In addition to farms, the Agency has examined 4 specific application sites for possible inclusion in this Part—greenhouses, nurseries, forests, and small farms.

The Agency proposes to discontinue the exclusion for greenhouses. It is estimated that there are between 11,000 and 15,000 commercial greenhouse operations in the United States, with an average size of 1 acre, employing an estimated 175,000 workers. Use of pesticides in these greenhouses involves many of the same hazards as those encountered in outdoor field conditions. In addition, greenhouse applications can present hazards for workers greater than those found outdoors. For example, due to lack of wind, pesticides may dissipate more slowly in confined areas than in open fields. Also, reentry into enclosed areas following fumigation can result in a much greater inhalation hazard because the concentration of airborne residues may be extremely high.

The Agency also proposes to explicitly include nurseries within the scope of this Part. Nurseries employ an estimated 125,000 workers. They vary in size and types of agricultural activities they perform. Some nurseries are very much like farm in that they grow plants outdoors in the ground. Many different trees, flowers, shrubs, and vegetable- and fruit-bearing plants are cultivated. Other nurseries are much like greenhouses since they grow plants on benches, although the benches are not in an enclosed structure. Many nurseries conduct both farm-like and greenhouse-like activities.

The Agency proposes to specifically include forest areas used for the commercial production of wood fiber and timber products within the scope of this regulation. While pesticide use in the commercial management of forests is similar to pesticide use in traditional agricultural settings, including seasonal labor and high-intensity crop management practices involving pesticides, the use of pesticides in forest areas intended primarily for recreation, such as parks and picnic areas, is essentially dissimilar to use in agricultural settings. Moreover, requirements for reentry intervals and worker notification in such public areas would be impractical. Thus, the Agency proposes to include only areas being used commercially.

The Agency has received comments that the use of pesticides in forestry is less extensive than in traditional row crop agriculture, and that different pesticide use practices are employed. The Agency seeks comment on whether the proposed standards may be inapplicable or only partially applicable to commercial forestry.

The Agency has carefully considered the need for and impact of this proposal on small agricultural establishments which use pesticides. The Agency believes that the practices described in these standards should be employed on any farm, forest, nursery or greenhouse where pesticides are used, because the risks of adverse effects are similar among establishments without regard to the size of the establishment, both in terms of the degree of risk to individual workers and in terms of the total number of workers at risk.

As a practical matter, most agricultural establishments are small businesses. While accurate estimates of size and distribution of agricultural labor are difficult to substantiate, the Agency estimates that 88% of establishments which have hired labor have less than 10 workers. On the other hand, these smaller establishments (less than 10 workers) employ only an estimated 64% of all agricultural workers. These estimates agree with the regulatory impact analysis recently performed by OSHA for the Field Sanitation Standard (DOL, 113).

Thus, many small businesses would be affected by this proposal. A number of the proposed requirements are designed to allow flexibility of compliance method so long as the intent of the requirement is met (performance-type standards). This approach would serve to limit costs for all affected entities, including smaller entities which have limited resources for compliance. However, some of the costs associated

with the proposed requirements are fixed (per establishment) capital costs, which would be more burdensome on smaller establishments. The Agency has identified as fixed the costs of posting the basic safety information at a central location, posting warning signs in fields (in part), decontamination water containers (only for establishments without accessible running water), and responding to medical emergencies (in part). All other costs are incurred on a per worker basis, and would not impact small agricultural entities in any disproportionately adverse way with respect to agribusiness as a whole.

The Agency is aware that OSHA has exempted farms where 10 or fewer workers are employed in hand labor activities on a given day from its Field Sanitation Standard (29 CFR 1910.110(a)). OSHA stated at the time that it did so because an annual amendment to the House Appropriations Bill prohibited OSHA from regulating farms with fewer than 11 employees (DOL, 113). In addition, Texas has exempted small farms from its 1987 Agricultural Hazard Communication Act (governing worker right-to-know for agricultural pesticides) using different criteria: the Act does not apply to farms with less than a certain gross annual payroll. EPA has not been subject to this type of regulatory limitation by Congress, either through its appropriations or through FIFRA, nor has the Agency previously implemented an exemption from pesticide use restrictions for small agricultural establishments through labeling provisions.

The Agency has also considered the relationship between the applicability of this proposal to small agricultural establishments and its enforcement policy in this sector. The Agency does not believe that routine inspections by federal or State enforcement authorities on small agricultural establishments would be cost-effective with regard to these proposed standards. As a matter of policy, the Agency does not plan to carry out a program of routine inspections for the purpose of determining compliance with this rule on such small agricultural establishments, or to require the States to do so as a condition of cooperative enforcement agreements. Most States, however, have primary responsibility for use enforcement and may establish their own compliance policies. If on the other hand EPA or a State had reason to believe that significant infractions were occurring on a particular small establishment, the Agency and/or the State would inspect and, if appropriate,

take enforcement action. The Agency believes this proposal policy is in keeping with the general approach of OSHA in enforcement of all its agricultural worker protection standards other than the Field Sanitation Standard, with the Congressional guidance to OSHA is the area of which the Agency is aware, and with EPA's current enforcement priorities and resources.

The Agency believes that Part 170 should govern work performed under typical employment or contractual relationships, and should not intrude into family relationships even if the latter may in some cases have business aspects. The Agency therefore proposes to exclude from the Part's coverage those small agricultural establishments where all work related to the production of agricultural plants is performed by the owner and the owner's immediate family, as defined, even if family members receive some form of compensation. Also, immediate family members are not included in the definition of "worker" or "handler" and are therefore excluded from coverage by this Part, even if covered workers are also employed on the same establishment and must receive the required protections. However, all pesticide users, including family members, must comply with instructions on pesticide labeling. In particular, family members must comply with personal protective equipment and reentry interval requirements, which will specifically appear on pesticide labeling (§ 170.3(d)).

The Agency has considered whether an OSHA-type exemption for smaller establishments (using either the same or a different number of workers to define establishment size); a Texas-type exemption for smaller establishments (using gross annual payroll to define establishment size); some other type of exemption (e.g., an exemption for smaller establishments, using one of the above size definitions, from some but not all of the proposed requirements, for example those involving fixed costs); or no exemption for smaller establishments, would be appropriate to this proposal. Comment is solicited on the issues discussed above and any others regarding the need for and impacts of this proposal on small agricultural establishments, including whether any specific threshold of establishment size, in terms of number of workers or size of payroll, is appropriate, and for which requirements this would be appropriate.

2. *Worker activities.* The scope of this Part was also reviewed in terms of work activities to be addressed. The existing

Part 170 is directed exclusively to workers performing hand labor tasks in reentry situations. However, agricultural workers may also be exposed to pesticides and pesticide residues while mixing, loading, transferring, applying, or disposing of pesticides, transporting pesticides in open or previously opened containers, acting as flaggers, and cleaning, adjusting, or repairing contaminated parts of mixing, loading, or application equipment. A large number of existing pesticide labels do not adequately specify personal protective equipment or other safe work practices for these pesticide handlers, and there is little consistency among labels that do have requirements. Therefore, the Agency proposes to expand Part 170 to include agricultural pesticide handling activities. The Agency believes there are sufficient data on many aspects of pesticide handler exposure at these sites to support worker protection standards for this category of worker; the rationale for the particular handler standards proposed is discussed later in this preamble.

In considering what standards would be appropriate to protect workers during handling activities on agricultural sites, the Agency also considered whether it would be appropriate to apply such standards to workers at nonagricultural sites where pesticides may be occupationally handled. Nonagricultural sites include some that could be viewed as similar to agricultural sites, such as pasture and rangeland, rights-of-way, turf management (golf courses, home lawn care), ornamental tree and shrub management (grounds-keeping), and aquatic sites. Nonagricultural sites also include categories of usage such as household and institutional indoor treatments (structural, crack and crevice, fumigation), public health, demonstration and research, and food handling, and miscellaneous other occupational uses of pesticides.

The Agency considered four alternatives with respect to inclusion of nonagricultural pesticide handling within the scope of the proposed Subpart B standards: (1) Limit coverage to handling activities at agricultural sites; (2) include handling activities on other sites that are similar to agricultural sites; (3) include handling activities on all sites performed by fulltime, commercial handlers; and (4) include all occupational handling activities on all sites.

The handler standards in this proposal—training, personal protective equipment, access to labeling, decontamination water, and

cholinesterase monitoring, found in Subpart B—present a generic scheme of protection for persons who mix, load, and apply concentrated or diluted pesticides. In general, handling activities at nonagricultural sites resemble one or another of the handling techniques used in agriculture; consequently, exposure scenarios and risks would be expected to be similar. For example, boom applications along highway rights-of-way resemble such applications in crop fields, and many methods of home fumigation by pest control operators approximate fumigation methods used in greenhouses. On the other hand, many differences can be discerned in the nature and degree of reentry-type exposures that may follow such applications. For this reason the Agency has only considered including nonagricultural handlers (as opposed to other workers) within the scope of this option.

The Agency recognizes that the extent of pesticide handling by particular individuals at any use site may vary. Some persons may handle pesticides on an essentially full-time basis, for instance commercial aerial applicators or pest control operators, while others may handle pesticides only occasionally. In general, the more extensive handling activities create greater exposure risks and more need for the protections afforded by these standards. The option of covering only full-time nonagricultural handlers of pesticides was therefore considered. One difficulty, however, would be defining the extent of handling that would qualify as "full-time" in a manner that did not appear arbitrary. A similar problem of nonarbitrary definition arises with respect to identification of use sites that are sufficiently similar to agricultural sites to justify application of these rules to those sites.

The economic impact of including nonagricultural pesticide handlers is difficult to predict, and has not been estimated for purposes of the Regulatory Impact Analysis. In addition to private costs, some impact on State certification and training programs can be anticipated from the extension of training requirements to additional pesticide handlers.

At this time the Agency proposes to limit coverage to agricultural handling. However, EPA invites comment on the four options enumerated above, and wishes to emphasize that the final rule may provide for extended coverage of nonagricultural sites.

3. *Other pesticide uses (§ 170.3(b)).* The Agency reviewed the exclusions for certain uses of pesticides found in the

current Part 170 and considered the explicit inclusion or exclusion of certain other uses of pesticides which may result in worker exposure.

The Agency proposes to discontinue the exclusion for soil-incorporated applications. Soil incorporation involves either injecting pesticides into the soil or covering them with a layer of soil. These applications may avoid the foliar exposure hazards for workers, but the Agency is concerned about workers who are performing tasks which require direct soil contact such as weeding, suckering, and cultivating, and about workers who may encounter inhalation hazards from volatile soil-incorporated chemicals.

The Agency proposes to continue to exempt livestock and other animal treatments, public mosquito abatement and similar public pest control programs, and uses on golf courses and similar nonagricultural turf areas. Animal treatments involve exposure situations that are dissimilar from other forms of agriculture and therefore tend to require case-by-case regulation through product labels. Other uses proposed for exemption are outside the traditional definition of agriculture.

The Agency proposes to exclude pesticide use on agricultural plants that are noncommercial in nature, such as treatments in malls, atriums and office buildings and uses in and around homes, e.g., on lawns and in home gardens and greenhouses. Such uses do not lead to exposure of agricultural workers as ordinarily defined.

The Agency proposes to exclude uses where pesticides are injected directly into agricultural plants. Since these pesticides are not broadcast over an area but are confined to the interior of the plant, there is no anticipated exposure to workers reentering the area to perform hand labor or other tasks. "Hack and squirt," "frill and spray" and other such application techniques that do not result in actual injection into the plant are not covered by this exclusion because the Agency considers that workers and applicators can receive significant exposure when these techniques are used (Lavy, 47).

The Agency proposes to exclude pesticide uses on agricultural establishments which are not directly related to the production of agricultural plants. Such uses may include structural pest control, control of vegetation along rights-of-way and in other noncrop areas, control of vertebrate pests, and the use of attractants and repellents in containers. Such uses do not pose hazards to workers during agricultural production-related activities.

Pest control after harvest includes fumigation of grain and other commodities, treatments to mitigate disease introduction and spread on vulnerable commodities such as fruits and some vegetables, and postharvest insect and mite control on crops during storage, packing, and shipping. The risks involved in fumigation of grain and other commodities are substantially different from the risks associated with the pesticide uses included in the scope of this regulation. These pesticide uses warrant separate attention as to protective requirements for pesticide handlers. On the other hand, postharvest uses of pesticides on the portion of the agricultural plant which remains at the production site after harvest are included in the scope of the proposed Part 170. These uses include postharvest applications for insect, mite, disease, and weed pests to reduce any carryover to the next crop, soil sterilization in nurseries and greenhouses, and pesticide applications to trees and other perennial plants to maintain those plants during the nonproductive portions of the cycle.

The Agency proposes to exclude pesticide uses for the purpose of research on the properties and effects of the pesticides. The Agency believes that researchers will be familiar with pesticide practices and hazards and will therefore be able to ensure safe pesticide practices, since they will be conducting research on pesticides themselves. However, such research will only be exempt from the requirements of this Part if all pesticide handling and other tasks associated with the research involving potential exposure to pesticides are performed by the researchers or by persons under their direct supervision. This proposal would not exclude research taking place on agricultural sites where the emphasis of the research is primarily on the various aspects of production of the agricultural plants or on the properties of the plants themselves, and where the use of pesticides during the research is incidental to the experiment.

C. Definitions

The proposed regulation contains a number of definitions (§ 170.5). Those discussed here are ones that merit further explanation.

Chemical-resistant. The terms "chemical-resistant," "impervious," "impermeable," "nonporous," "liquidproof," "water-resistant," and "waterproof" all have been used on pesticide product labeling and in applicator training manuals for describing the type of glove, boot, hat, hood, or apron material that is desirable

for pesticide protection. The Chemical Manufacturers Association's ad hoc work group on standard phraseology has recommended the term "chemical-resistant," now used by numerous Government agencies, chemical companies, industrial groups, and trade associations (CMA, 13). The American Society for Testing Materials also uses the term "resistance" to describe the necessary level of performance of protective clothing materials against penetration by liquids (ASTM, 5). The Agency agrees that adopting a universal term would be appropriate and useful.

Forest. This term does not include trees and associated vegetation used solely for parks, recreation, or wilderness preservation. However, any part of a forest that is managed for commercial use as well as for recreational use would be subject to this regulation to the extent of such commercial use. The term includes forests owned and managed by the Federal government and other governmental entities, but does not include forest nurseries, which are treated as nurseries for purposes of this regulation.

Handler. This term covers those workers who may have direct contact with concentrated or dilute pesticides during the enumerated work activities. Workers exposed to residues of pesticides while performing tasks in previously treated areas are not considered to be handling pesticides.

Nursery. For purposes of this Part, nurseries are distinguished from farms by the subsequent use of the agricultural plant in its entirety in another location, and distinguished from greenhouses by the lack of a nonporous enclosure around production areas, although there may be a semi-enclosed area of a nursery, such as a shadehouse.

Owner. This term is intended to include any person who has the legal right to exclude entry to or eject persons from a farm, forest, nursery, or greenhouse. The term includes any fee owner of land on which the production of agricultural plants takes place, as well as any lessee of such land, but does not include any lessor of such land who retains no possessory interest. The term includes both sole and joint owners and lessees.

Personal protective equipment. This term is being adopted by the Agency in the place of other similar terms used in the past such as "protective clothing" or "protective clothing and equipment." The phrase encompasses all clothing and equipment which is worn over, in place of, or in addition to normal work attire for the express purpose of

protecting the wearer from pesticide exposure.

Worker. The term includes persons employed for any type of compensation, e.g., wage, salary, commission, sharecrop arrangement, piece work rate, or as part of an exchange of services. As discussed in Section IV.B.1 of this Preamble, the Agency does not intend the proposed rule to regulate to protect the immediate family of the owner of a farm, forest, nursery or greenhouse. Therefore, any person having any of the specified familial relationships with an owner is not considered to be a "worker" for purposes of this Part, even though the person might receive some form of compensation for work performed. The Agency has adopted the definition of immediate family found in the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and the Department of Labor regulations promulgated under MSPA (29 CFR Part 500) for this purpose.

D. Duties

The Agency believes that the clear identification and assignment of responsibility for implementing these standards will be extremely critical to the successful implementation of this proposal. Proposed § 170.7 attempts to meet the following goals: (1) Ease of understanding by persons who have duties; (2) a clear basis for enforcement action by the Agency and the States if duties are not performed; (3) fairness with respect to enforcement; and (4) consistency with Federal laws and regulations and applicable case law.

EPA considered a broad range of possible approaches to responsibility before deciding upon this proposed approach. Initially, EPA examined the relationship of the owner of the property to the activities which take place upon the property, including general State-law concepts of an owner's responsibility. EPA considered the relationship of owners (including absentee owners), lessees, and operators of property to activities occurring on their land in terms of their exercise or position of control over, their economic interest in, and their proximity to such activities. Furthermore, the Agency considered the relationships of others, including applicators, contractors, supervisors, other employees, and family members, to activities occurring on and off the property.

While specificity in assignment of duties is in general desirable, the requirements of this Part will typically be undertaken by a range of persons. Duties of pesticide users are therefore expressed in terms of general responsibility provisions applicable to

classes of persons. Under the proposal, the Agency has assigned responsibilities to the following major classes of pesticide users involved in the production of agricultural plants on agricultural establishments: owners of agricultural establishments, supervisors of workers, workers, persons who contract with owners, and employers of commercial pesticide handlers. If activities of persons in these classes of responsible parties constitute use of a pesticide as defined in the regulation, these persons would be subject to enforcement action for any violation of this Part. In addition, responsibility for the acts of others may be imputed to such persons, depending on the situation, under FIFRA's vicarious liability provision found in section 14(b)(4). Each pesticide user is responsible for meeting certain requirements because of his or her activities, status, or the actions of others involved in the chain of responsibility.

1. Duties of owners. The owner of a farm, forest, nursery or greenhouse covered by Part 170 is one person who will virtually always be considered responsible for seeing that the Part's requirements are followed. With only one exception (discussed below), the owner has primary and continuous responsibility for compliance with the requirements of Part 170 governing activities that occur on the property.

The term "owner" is defined in this Part to include not only an owner in fee simple of agricultural property but also a lessee of such property with a current possessory interest. The term excludes a lessor of such property who has no current possessory interest. The broad responsibility of an owner under this proposal is based on the legal control that the owner possesses over activities that occur on the property. The Agency considered whether the person in charge of the day-to-day management of the property (operator) should be ultimately responsible for compliance with this Part, rather than the owner. The operator often is the owner; however, where the operator is not the owner, the operator is usually the agent or employee of an owner or lessee and receives direction from such person as to management of the property, including directions on employee relations and safety. The Agency believes that operators who are not owners or lessees are in actuality senior supervisors and should be viewed as agents of the owner or lessee, who retains ultimate responsibility.

Section 170.7(a) identifies the general duties of the owner—to assure that pesticides are used on the property in accordance with their labeling and with

all applicable requirements of this Part, and to assure that all workers, including handlers and supervisors, are protected from pesticide exposure in accordance with this Part. To accomplish this end, the owner, in person or through agents, employees, or contractors, is specifically required to give any necessary information and directions to workers and supervisors concerning pesticide use and safety. This includes notifying workers and supervisors that certain actions are required by law and that violations by workers and supervisors may subject them to enforcement action. It also includes requiring supervisors to assure compliance by workers and to assure that Part 170 projections have been provided.

Workers on the property whose protection must be assured by the owner include not only employees of the owner but workers under contract—for example, those who have contracted (or whose employer has contracted) to apply pesticides or perform fieldwork. An owner under this proposal may hire contractors to take steps required by this regulation; however, he may not escape liability for failure of such contractors to meet the requirements of this Part if the violation occurs on his property.

2. Duties of supervisors. Persons who supervise work on agricultural establishments are generally in the best position to be aware of pesticide hazards and to prevent worker exposure. This proposal imposes duties on such persons parallel to those imposed on owners, but limited to the scope of their supervisory responsibility (§ 170.7(b)). Supervisors are required to comply with all directions they receive from owners and more senior supervisors (§ 170.7(b)(1)), assure that workers under their supervision receive all protections afforded them by this Part (§ 170.7(b)(2)), and assure that pesticides used by them or under their supervision are used in accordance with the product labeling and this Part (§ 170.7(b)(3)). Persons who employ workers and contract with owners or their agents to provide the services of these workers on an agricultural establishment (labor contractors) stand in a supervisory position toward the workers and are treated by this Part as supervisors, responsible to the same extent as supervisors directly employed by the owner (foremen).

3. Duties of workers. In order to protect agricultural workers from exposure to pesticides, workers themselves must perform or refrain from certain activities for their own protection and the protection of others.

For example, a handler who misapplies a pesticide may expose field workers to direct spray or drift, and a worker instructed to inspect a respirator or put up a warning sign who fails to do so may put other workers at risk of poisoning. The Agency therefore proposes that workers be required to assume responsibility for conforming their actions to the requirements of this Part, and be subject to enforcement action for violation (§ 170.7(b)). To ensure that workers have knowledge of their duties under this Part, they must be informed by their supervisors of the existence of this Part and the types of actions it requires of them.

4. Duties of contractors. This Part imposes responsibility upon any applicator contractor, labor contractor, or other type of contractor, as well as any worker, handler, or supervisor employed by such contractor, who supervises or performs any work related to the production of agricultural plants on a farm, forest, nursery or greenhouse. Such persons will in general be "acting for" the owner of the property or his agent within the meaning of FIFRA section 14(b)(4). Their duties are those of supervisors and workers in general (§ 170.7(b)), with the exception of employers of commercial pesticide handlers, who have additional specific duties under § 170.22 related to cholinesterase monitoring.

There may be instances in which the employment agreements engaging the work of such contractors do not specifically refer to Part 170 responsibilities. The Agency does not consider absence of such a contractual provision to be grounds for defense by a contractor to an enforcement action based upon a violation of Part 170 requirements pertaining to any service which he or his employee was engaged to provide.

5. Prohibited actions. Under this proposal, no owner, employer or supervisor may allow or direct a worker to violate this Part or take any action intended to prevent or discourage any worker from complying or attempting to comply with this Part (§ 170.7(c)). This section is necessary to protect workers from direct interference with compliance, tacit encouragement of noncompliance, and reprisals due to worker insistence on compliance. Retaliation against workers in the form of threats of dismissal, actual dismissal, on-the-job discrimination or discipline, or other adverse employment actions based on compliance or attempted compliance would constitute a violation of this Part and be subject to enforcement action. With such

protection, workers will be more likely to insist that these requirements be met, increasing both actual compliance and the Agency's ability to identify and enforce against situations of noncompliance. It should be noted, however, that this section is not intended to create a civil cause of action for any worker or to change any existing common law remedy.

Retaliatory dismissals must be distinguished from dismissals and other adverse employment actions against noncomplying workers. This Part does not prohibit an owner, employer or supervisor from discharging or otherwise disciplining any worker for failure to comply with any requirement of this Part (§ 170.7(c)). An owner, employer or supervisor can take steps to avoid or limit further liability by excluding workers from activities in which they fail to or refuse to comply with applicable worker protection requirements, including, if necessary, dismissal.

E. Enforcement

1. Use of a pesticide. As relates to requirements such as those included in this proposal, enforcement under FIFRA is dependent upon language which appears on the label or labeling of pesticide products. FIFRA section 12(a)(2)(G) makes it unlawful to use a registered pesticide in a manner inconsistent with its labeling. These proposed revisions would require the placement of specific use instructions and references to Part 170 on the label (Part 156, Subpart K). By specific inclusion of certain Part 170 requirements and incorporation by reference of the remainder of Part 170, the requirements of this regulation would become an enforceable part of the labeling, and thus failure to comply with such requirements would be a violation of FIFRA section 12(a)(2)(G) as a use inconsistent with the label.

The regulation incorporates a definition of "use" which covers numerous activities in addition to application of pesticides, all of which the Agency has determined are necessary steps to assure the safe use of pesticides and the prevention of unreasonable adverse effects on workers (§ 170.9(a)). These activities occur prior to application, during application, and after application. This definition of "use" includes, but is not limited to, application, allowing or arranging for application, making necessary preparations for application, supervising application, and taking any required post-application actions.

This interpretation of "use" is not new in pesticide regulation. In the areas of

pre-harvest intervals and rotational cropping restrictions, pesticide labels routinely require persons to take actions (or abstain from certain activities) for long periods following pesticide application (See 40 CFR 162.10(i)(2)(x)). Under FIFRA section 2(q)(1) (F) and (G), pesticide labeling must include "directions for use", "warnings" and "caution statements" which are "adequate to protect health."

2. Joint responsibility. In considering approaches to liability for violation of the requirements of this Part the Agency considered to what extent liability should be assigned when several potentially responsible persons are involved in the violation.

The Agency proposal is based on the idea that more than one person may be legally chargeable with the same offense. The liability scheme involves each person in the chain of management beginning with, for example, the person who is employed by an owner and who is directed to take an action to comply with this Part, including any supervisors involved in directing that employee's actions or allowing such employee to violate this Part, and ending with the owner of the agricultural establishment on which the violation took place. Under this approach, as an illustration, a failure to comply with a requirement of this Part by a hired applicator contractor occurring on the property of the owner may result in liability for a number of persons, including but not limited to, the applicator contractor, the owner, any persons employed to take actions involved in the violation whether employed by the applicator contractor or the owner, and any supervisory personnel involved in the activities. The Agency believes this liability scheme provides incentives for persons to hire employees and engage contractors who are careful and conscientious and who are likely to comply with the requirements of this Part.

This approach to liability (§ 170.9(c)) is consistent with the statutory provision on vicarious liability which appears in FIFRA section 14(b)(4). The proposed approach is also consistent with the one case of which the Agency is aware in this area, *United States v. Corbin Farm Service* (444 F.Supp. 510 (1978)). This case involved alleged misuse of a pesticide resulting in the death of waterfowl. Defendants in the case included a pesticide dealer, an employee of the pesticide dealer (a pesticide advisor), the owner of the treated fields, and an aerial applicator. While the case did not involve farm worker protection issues, it illustrates the broad view of liability which the

court was willing to take through construction of the term "acting for or employed by" in FIFRA section 14.

3. *Contractor violations off the property.* The Agency is concerned about instances in which an owner might hire a contractor to perform certain services on the property and thereby attempt to avoid, by contract, responsibilities assigned to the owner by this regulation. EPA proposes that such transfer of responsibilities should not be allowed to occur, except under the following circumstances.

Under the proposal, an owner who contracts with a commercial pesticide handler, contractor, labor contractor, or other contractor to perform any actions which give rise to the need to comply with requirements of this Part would not be subject to an enforcement action for any failure by such contractor to meet such requirements solely on account of actions by the contractors which occur off the property of the owner (§ 170.9(d)). Although activities occurring off of the owner's property relate to applications which occur on the owner's property, these "off-property" actions are outside of the control of the owner. The persons in the best position to assure that the requirements of this Part pertaining to such "off property" activities are met are the contractor and his or her employees and supervisory personnel.

4. *Worker noncompliance.* The proposal includes a provision which may offer potentially liable persons some relief from enforcement action in the event of worker noncompliance with the requirements of this Part (e.g., worker failure to wear protective equipment, or to stay out of a posted field while a reentry interval is in effect and reentry is not authorized).

The proposal provides that responsible persons shall ensure that workers comply with the provisions of this Part and that worker noncompliance shall not preclude enforcement action (§ 170.9(e)). However, the proposal also provides that enforcement officials will, as appropriate, consider such worker noncompliance in deciding whether to initiate enforcement actions and in determining what penalty should be imposed. In practice, this would result in the gravity of the worker noncompliance being weighed against the efforts of the responsible person to comply with the requirements of this Part. If a responsible person had taken every reasonable step to comply and workers violated the provisions of the Part despite the responsible person's efforts, the enforcement official would be able to consider this in deciding the nature of

the enforcement action, if any, to be taken.

5. *Enforcement discretion.* EPA and other enforcement authorities will review alleged, reported, or observed violations and determine on a case-by-case basis whether enforcement action and penalties are warranted and, if so, against which responsible persons. The enforcement authority will, as appropriate, take into consideration, in reaching enforcement decisions, the role of each potentially liable person in the activities which gave rise to the alleged violation, and efforts undertaken by that individual to comply.

This approach to enforcement may be especially relevant in the case of owners not actively involved in the management of the property. Under § 170.7(a), an absentee owner would be responsible for all violations which occur on his property. The enforcement authority would have the discretion to examine the relationship of the absentee owner to the activities occurring on his property and, in an appropriate case, to elect not to proceed against an absentee owner because of his remote relationship to the activities on his land, or to propose only a small penalty.

Likewise, the enforcement authority may consider, as appropriate, the degree of worker noncompliance, in a situation where workers have been warned, trained, and equipped as required and the noncompliance giving rise to the violation is isolated. Before deciding whether to seek an enforcement action or whether to assess a particular penalty, the enforcement authority may, as appropriate, consider the actions taken by the responsible persons to comply in the case under consideration as well as other factors such as the history of such responsible person's compliance with this Part.

F. Training and Information

1. *General pesticide safety information for workers.* The Agency proposes to require that general pesticide safety information be displayed in a prominent location on or in each farm, forest, nursery and greenhouse during the growing season (§ 170.32). Such information would enable workers to understand the basic safety measures needed for their protection while working in areas where pesticides are being used, providing workers with important knowledge to prevent serious acute poisonings and reduce long-term exposure.

The 18 items of information required to be displayed include: the location of emergency medical care facilities; a facsimile of the warning sign used for posting treated areas; statements

concerning pesticide hazards and recommended safety practices derived from pesticide safety training programs in current use around the country (USDA and USEPA, 94; USEPA, 99; USEPA, 100; NRPC, 65); and statements concerning the rights and duties of employers, supervisors, and workers under this Part. The Agency solicits comment on whether it would be appropriate and practical to include information about the signs and symptoms of pesticide poisoning with the general pesticide safety information. EPA has recently developed and printed a poster featuring general pesticide safety information for farmworkers which could be used to fulfill this proposed requirement.

All information would be required to be in English. However, in order to communicate with workers who can only read another language, the information must either be put into that language, or a note must be added in that language recommending that the worker have someone explain the information. Employers and supervisors thus would be required to ascertain whether such a translation should be posted and, if required, to do so. Additional proposed conditions concerning the information display include requirements to inform workers of the location of the information, to allow them reasonable access to it (that is, the information should not be displayed where workers may be unable or reluctant to make use of it), and to maintain the information in a legible state.

The Agency considered whether other methods of communicating this information, such as oral instructions or a training program given either by employers or by other providers, would be more appropriate. However, the Agency believes that oral communication methods would likely prove less reliable and less convenient. The Agency solicits comments on the most appropriate method of conveying basic pesticide safety information to workers.

2. *Training of handlers and early reentry workers—a. Proposal.* The Agency proposes to require pesticide safety training for all persons who handle agricultural pesticides or who engage in early reentry activities (§ 170.12). The Agency believes that because of the significant opportunities for exposure, these persons need to know about basic safe use practices in order to reduce accidents and unnecessary exposures, and encourage more careful adherence to specific labeling instructions. The goal of this

training would be to provide information which would assist in understanding the requirements for safe pesticide use, the need for the requirements, and responsibilities of these workers to protect themselves and others from harm due to failure to handle a pesticide product safely. The Agency proposes that this requirement would be met either by certification as a private or commercial applicator or by undergoing a training program meeting certain minimum standards.

b. *Content.* In § 170.12(b)(2) the Agency proposes minimum standards for the content of training programs. The Agency has determined that training materials adequate to train noncertified handlers and other workers in the basic safety precautions and requirements of pesticide use are already developed and are accessible nationally. In particular, a training program utilizing the slide-tape presentation and bilingual training manual developed at the University of Florida under a grant from EPA would meet this proposed requirement. To date over 500 slide/tape sets and over 75,000 copies of the manual have been distributed around the country. Training programs utilizing these materials can be accomplished easily and inexpensively for groups of varying sizes.

c. *Trainers.* The Agency has determined that the presence of a trainer at each training session is a necessity. Merely showing a slide/tape program and handing out a manual is not sufficient to meet the requirements. A trainer must be present who is capable of answering questions which may arise and who is knowledgeable about the techniques and practices being taught.

The Agency proposes that the minimum qualifications for a trainer be either (1) certification under 40 CFR Part 171 as a private or commercial applicator, or (2) designation by any State or Federal agency as a trainer of certified applicators (§ 170.12(b)(1)). The Cooperative Extension Service and the other public and private groups now training certified applicators are a natural source of trainers. However, the participation of any certified applicator in a training program will be sufficient to meet the Agency's minimum requirement. The Agency believes that certified applicators are likely to be the most appropriate trainers available, in the event a State declines to specify trainer requirements and to implement its own programs to meet these requirements.

d. *Verification.* FIFRA section 11 prohibits the Agency from issuing regulations requiring recordkeeping by

private applicators. This section may prohibit a recordkeeping requirement on trainers who are private applicators. Since much of the proposed training would be conducted by private applicators, EPA is not proposing a recordkeeping requirement for trainers. This does not preclude a State from instituting a recordkeeping requirement as part of its oversight of a training program. Without records indicating who has received training and who performed the training, the Agency believes enforcement of the requirement may be difficult.

e. *Emergency handling and early reentry.* Under emergency circumstances, trained workers might not be available when needed to handle pesticides or work in treated areas under a reentry interval. The Agency considered allowing untrained workers to substitute for such persons under these circumstances if they were given instructions specific to the pesticide to which they would be exposed. However, such emergency training, to be adequately protective, would not be significantly less burdensome than regular handler training. Moreover, the Agency believes that an exception to the training requirement would not be necessary under ordinary crop management conditions, and might be subject to abuse.

f. *Development of training programs.* The Agency is committed to aiding in the development of training materials which meet these minimum requirements. EPA, the States, and the State Cooperative Extension Services will support training efforts in varying ways and degrees, by making available model training materials at cost or for free and reviewing or otherwise cooperating in the development by the private sector of training materials. The Agency does not propose to limit the training programs designed to meet the requirements of this Part to those programs pre-approved by EPA. However, individuals or groups who design such programs may submit them to EPA or to the appropriate State agency for review and comment on how well they comply with the requirements of this Part.

g. *State training requirements.* Certain States currently require training of pesticide handlers. The Agency does not wish to disrupt such programs if they provide adequate handler training. Therefore, the Agency proposes to allow a State to create or continue to use different standards for trainers and training programs (§ 170.12(d)). While additional requirements consistent with those of this Part may be freely imposed, if such State standards are inconsistent

with the training requirements of § 170.12, the State must petition the Agency for review and approval of the modifications. In those States choosing not to involve themselves in handler training, the Agency's proposed minimum standards would apply.

3. *Access to labeling information.* The Agency proposes that any person who handles a pesticide be provided, upon request, any information from the labeling of the pesticide being handled (§ 170.14). The Agency considers this requirement to be complementary to the training of handlers in general pesticide safety. Handlers may need access to the particular safety requirements of pesticides being used in order to protect themselves and others. The labeling itself, if available, may be provided in lieu of requested information from labeling. The Agency proposes that such information be available before any scheduled handling or during the handling itself.

G. Notification

The existing Part 170 requires warnings to be given when workers are expected to be working in a field that has been treated or that is scheduled to be treated with a pesticide. The Agency has determined that the existing Part 170 does not adequately specify how these warnings shall be given, when the warnings shall be given, and of what the warnings shall consist. The Agency proposes to revise these notification requirements to ensure that workers are clearly and adequately notified of all pesticide applications and resulting reentry intervals. The methods of notification in this proposal vary according to use site.

1. *Farms and forests.* This proposal would require two different types of information about any pesticide application on a farm or forest to be provided to workers—daily oral warnings and further information available on request (§ 170.42). In addition, posting of treated areas would be required for some pesticides (§ 170.44). The Agency considers oral warnings to be the most effective means of communication. Oral warnings would be supplemented by specific pesticide application information available on request. Treated area posting would directly warn workers of the most toxic applications. These notification methods together would help avoid gaps in communication leading to workers accidentally entering a recently treated area or an area that is about to be treated.

a. *When notification is required.* This proposal would in general require

notification to workers, through one or more notification methods, of all pesticide applications to agricultural plants on farms and in forests. However, pesticides may be applied at times when workers are not present, or may be applied to distant areas of the establishment where no work activities are occurring, in which case the possibility of accidental or intentional reentry during reentry intervals is remote. The proposal therefore includes an exception to the notification requirements in the case of workers who will not have access to the pesticide-treated area or any "neighboring areas" during application and through the subsequent reentry interval. Any such worker need not be orally warned or be given the additional information available on request. If no worker will have access to the treated area during this time, posting of the area would not be required.

The Agency has limited the notification exception to cases where the least potential for accidental exposure exists and where notification would thus prove least useful. The duty to notify extends to notification of workers in "neighboring areas" such as adjacent fields or labor camps, and specifically includes workers in nearby fields or labor camps separated only by a roadway or other narrow right-of-way from the treated area. It also includes workers passing by the treated area on footpaths or in open vehicles, as when workers are traveling to other work sites. If not notified of the pesticide application, such workers who are present in "neighboring areas" may, for example, casually enter the treated area to have lunch, or be exposed to spray drift.

b. *Information to be provided orally* (§ 170.42(b)). The Agency is proposing that daily oral warnings be required for all pesticide-treated areas subject to notification. Oral warnings would consist of the specific location and description of the area and the time during which entrance into such area is restricted. The Agency considered whether to continue to require oral warnings to be given in an "appropriate language" as in the existing Part 170 or to allow warnings in English only. Since no information available indicates that this requirement has been burdensome, EPA proposes to retain the requirement while clarifying the conditions under which warnings in other languages are "appropriate", i.e., if the worker does not understand spoken English. The person responsible for notification need not be bilingual, but he or she must find someone who can effectively

communicate warnings in the language of the worker.

c. *Information to be provided upon request* (§ 170.42(c)). The following information would be required to be provided upon request for all areas subject to notification, beginning on the day the pesticide is to be applied and continuing at least until the expiration of the reentry interval: The specific location and description of the area treated or to be treated, the brand name, active ingredients and EPA registration number of the pesticide used, and the reentry interval. Making this information available upon request would give workers the right to receive specific information about pesticides to which they may be or have been exposed during work activities. The Agency considered requiring this information to be displayed at a central location such as a notice board, or to be written on warning signs, but concluded that such a requirement would be more burdensome without providing any additional protection.

d. *Treated area posting* (§ 170.44). The Agency proposes to require posting of warning signs for areas treated with pesticides which have a reentry interval greater than 48 hours. The Agency believes that when oral warnings about specific pesticide applications are used, the potential for miscommunication and memory problems, and therefore the risk of accidental early reentry, increases with the length of the reentry interval. Therefore, it is important to reinforce the oral warnings with posted warnings when a longer reentry interval is used.

Another option would be to require posting for pesticides with reentry intervals of 24 hours or greater in place of oral warnings for those products under this option a greater number of the more acutely toxic pesticides would receive posting, which may be a more reliable method than oral warnings. Given the reentry interval provisions of this proposal, this option would require posting of all products with organophosphate and N-methyl carbamate active ingredients in Toxicity Categories I and II, and all products with active ingredients in Toxicity Category I, in addition to any other products with reentry intervals of greater than 24 hours based on case-by-case registration decisions. The economic cost of notification would thus increase under this option because of the greater number of products requiring posting, although this would be offset somewhat by the reduction in oral warnings.

A third option would be to require posting for pesticides with reentry

intervals of 24 hours or greater in addition to oral warnings for all pesticides applications. Under this option, workers would have more extensive direct warnings of applications through posting, supplementing the daily oral warnings. However, the economic cost of this notification option would be greater than for the other two options.

The Agency concluded that requiring posting only for areas treated with pesticides with reentry intervals of greater than 48 hours would assist in reducing accidental poisoning by reinforcing oral warnings without a significant increase in economic cost. The Agency solicits comment on this proposal and on the other options considered.

The Agency is proposing that the warning sign contain the words "DANGER-PESTICIDES-KEEP OUT". The proposal states that the letters on the signs must be at least 20 inches high—a height that would be visible at 25 feet by a person with normal vision. The Agency is also proposing that the sign contain an upheld hand symbol and a stern-looking face. The upheld hand is an international symbol for "do not enter" and is also used as a "do not cross" pedestrian sign. The stern-looking face reinforces the seriousness of the warning to keep out. A symbol is important in addition to the written words since many field workers do not read at all or do not read English.

The skull and crossbones sign, used in California, was also considered because it is a universally recognized symbol of poison. However, the Agency believes that since the skull and crossbones is the symbol used on the label for the most highly toxic pesticides, field workers might confuse a skull and crossbones reentry symbol, where the exposure risk would be much less, with the symbol on the label of a concentrate, where a very small amount could kill a person. In addition, since the Agency is requiring posting in greenhouses and nurseries for all pesticides, not just the most highly toxic pesticides, use of the skull and crossbones could lead to the assumption that all pesticides are highly toxic, which would detract from its usefulness to farmworkers who associate that symbol with the most highly toxic pesticides. The symbol required by Texas (a slash mark across the figure of two people walking through a field) was also considered, but the Agency felt that it did not adequately convey the message of the proposed sign. The Agency believes that pilot testing under field conditions of any proposed warning sign symbol would

help to establish its relative effectiveness, and invites comment on how this could best be accomplished.

The Agency considered whether or not to require the name of the pesticide and the dates of the reentry period on the posted sign for use in case of an emergency. A generic sign would be easier to put up and take down, thus saving labor and material expenses. The Agency proposes to require generic signs for posting on farms and forests. However, the brand name, the active ingredients and the registration number of the pesticides, the dates of the reentry interval, and the field location would be provided to any worker upon request (§ 170.42).

The Agency is proposing that the signs be placed so as to be visible from the usual points of entry to the treated area. Posting at locations where farmworkers would most likely enter would achieve maximum visibility and protection. The proposal does not require labor-intensive posting at specific intervals along boundaries of fields.

In order for posting to be effective the signs must not be put up too far in advance of the pesticide treatment and must come down within a reasonable time after the reentry interval has expired. The proposed language permits posting no sooner than 24 hours before the scheduled application, and requires signs to be removed within 3 days of the end of the reentry interval. In no case may treatment begin before signs are posted, nor may workers enter without appropriate personal protective equipment until signs are removed. These time frames and conditions would assure that presence of signs correlates with pesticide hazards, while allowing some flexibility to farm managers.

Posting of a larger area than the treated area would be permitted where a continuous spraying operation treats alternate rows or areas, rather than the whole area, on a sequential basis (§ 170.44(b)(5)). Since posting of individual rows in this case would be difficult and expensive, the Agency is proposing that the entire area may be designated the treated area and be posted. However, no part of this entire area may be entered while signs are posted, except under the conditions specified in the regulation for early reentry.

2. *Greenhouses*. Requirements for notification for greenhouse workers (§§ 170.62 and 170.64) are different in many respects from those for outdoor agricultural workers. Since greenhouses, even large greenhouses, are well-defined and relatively limited spaces, the Agency did not attempt to limit

notification to areas to which workers would have access, as in the case of farms, forests, and nurseries. Any area in the greenhouse which is treated with pesticides would be subject to notification if at least one worker is present during application or during the subsequent reentry interval.

Due to generally smaller space and the aisle/bench format of greenhouses, reliance on posting is easier, less labor-intensive, and less expensive than for larger agricultural establishments. Therefore, the Agency proposes that all reentry-restricted areas in greenhouses be posted with warning signs, not only areas treated with pesticides having a greater than 48-hour reentry interval (§ 170.64(a)). The Agency believes that this provision will be relatively easy to implement because of the nature of enclosed structures and greenhouse practices. Since the point of access to the treated area is either the door—in case of treatment of the entire structure—or individual benches, rows, or even plants, signs would be posted at the entrances to the greenhouse, at each corner or end of a treated bench, at each end of a row, or in front of a treated plant. In addition, the Agency believes that greenhouses utilize a high proportion of low-toxicity pesticides which have relatively short reentry intervals, i.e., possibly just until sprays have dried, dusts have settled or vapors have dispersed. If treatment occurs at night, these intervals would no longer be in effect by the time workers start the next day, in which case no posting would be required. Mechanical ventilation systems can be used to shorten the reentry time for fumigation by reducing vapor dispersal time.

The Agency proposes that signs be posted immediately (instead of 24 hours) before the actual application of the pesticide and removed within 1 day after the reentry interval has expired, for the reason that this practice would not be burdensome and posting would thereby be tailored to the presence of the reentry hazard. The Agency does not propose a size requirement for warning signs; signs may be small, as long as the lettering and symbol are clearly visible from all points of access.

The Agency proposes that no oral warnings be required for greenhouse workers since all treated areas would be clearly posted. As in the case of farms and forests, pesticide-specific information would be available on request (§ 170.62).

3. *Nurseries*. The Agency believes that the generally smaller growing areas, including presence of benches and even individual ornamental plants, make nurseries on the whole more similar to

greenhouses for purposes of notification of workers. The Agency therefore proposes to require posting of all reentry-restricted areas under the same conditions as greenhouse posting (§ 170.54) and not require oral warnings. Pesticide-specific information would be available on request (§ 170.52). As in the case of greenhouses, no size requirement for warning signs is proposed. However, warning signs must be clearly visible from points of access to the area, which in the case of large nursery growing areas may necessitate relatively larger signs in an elevated position, which would not be necessary for nursery benches.

H. Personal Protective Equipment

1. *Proposal and rationale*. The Agency proposes minimum personal protective equipment (PPE) requirements for the protection of pesticide handlers and early reentry workers exposed to agricultural pesticides (§§ 156.215, 156.216, and 156.217), as well as duties related to provision, use, and maintenance of required PPE (§ 170.16).

Any barrier that can be placed between a worker and a pesticide to reduce exposure can reduce the risk of pesticide poisoning. With the exception of enclosed cabs of vehicles with positive-pressure ventilation systems and enclosed cockpits of aircraft, the only significant barrier available to applicators is personal protective equipment (Lunchick et al., 50). For mixers and loaders, closed mixing/loading systems and new types of containers and packaging (such as water soluble bags) have potential, but more work needs to be done to perfect these approaches (Jacobs, 41). Mechanical harvesters and other mechanical techniques are sometimes substituted for hand labor operations in early reentry situations, but their availability and utility are limited. PPE remains the most viable method of reducing occupational exposure to agricultural pesticides.

Under current regulations (§ 170.2(d)), the term "protective clothing" is defined as "at least a hat or other suitable head covering, a long-sleeved shirt and long-legged trousers or a coverall-type garment (all of closely woven fabric covering the body, including arms and legs), shoes and socks." The Agency deems this definition inadequate to protect either handlers or workers reentering treated areas before the expiration of the reentry interval. The Agency has determined that such clothing offers adequate protection for workers only for the lowest toxicity pesticides. In addition, the Agency

believes that this definition of protective clothing has been widely misperceived as the Agency's official definition of protective clothing for all persons occupationally exposed to pesticides and their residues, including not only fieldworkers but also mixers, loaders, and applicators.

The Agency has determined that different types of PPE will be needed to provide adequate protection for workers in different exposure situations. The toxicity of the pesticide, the type of formulation, and the route and degree of anticipated exposure all affect the appropriate level of PPE which should be used to maximize worker protection. In the future, each individual pesticide product label may list specific PPE requirements reflecting the formulation, anticipated exposure route and level, and all forms of toxicity of that product. In the interim, the Agency proposes minimum PPE requirements for all agricultural pesticides based on the acute toxicity either of the formulated product (for handlers) or the active ingredient (for early reentry workers); type of worker activity; time since application; route of worker exposure; and handling technique.

The Agency considered whether to take chronic toxicity into account in establishing PPE requirements. For many of the same reasons cited in the discussion of reentry intervals (see unit III.2. below), EPA proposes to continue to assess chronic toxicity in registering and reregistering individual agricultural pesticides and make decisions on appropriate PPE on a case-by-case basis. Consequently, the proposed minimum PPE requirements are based on acute toxicity considerations, although the requirement for normal work attire for handlers exposed to Toxicity III and IV pesticides is in part a reflection of the Agency's concern over routine worker exposure to pesticides with unknown chronic effects.

2. Minimum PPE requirements—*a.* PPE for pesticide handlers. Persons mixing, loading, transferring, transporting, applying and disposing of pesticides, as well as individuals involved in repairing, adjusting, or cleaning of mixing, loading, and application equipment, face exposures to potentially dangerous levels of pesticides unless adequate protection is used. This exposure potential is especially high for handlers who perform these tasks on a regular basis.

Research into the dermal and respiratory pesticide exposure of applicators, mixers, and loaders has demonstrated the degree and nature of this exposure (Durham and Wolfe, 23; Wolfe et al., 108; Wolfe, 107; Durham et

al., 25; Wolfe et al., 108; Davis, 17). For example, over 97 percent of pesticide exposure during most handling situations, especially spray application, is dermal exposure (Wolfe, 106). While exposure of the various body areas can vary significantly depending on the type of application or mixing and loading task, there is general consensus that hands and forearms usually receive the highest exposure in terms of percentage of total dermal exposure. In one study 87 percent of total dermal exposure to applicators was to the hands and forearms (Leavitt et al., 48). In another study, an average of 78 percent of the total dermal exposure for mixers/loaders handling wettable powders and liquid formulations was to the hands (Maitlen et al., 58).

For both outdoor ground applicators and mixers/loaders, respiratory exposure outdoors is usually less than 3 percent, and sometimes less than 0.1 percent, of an individual's total exposure. However, respiratory hazards cannot be ignored, since almost 100 percent of the material to which the lungs and gastro-intestinal tract are exposed is absorbed into the body (Durham and Wolfe, 23). When fumigants or highly volatile pesticides are handled, respiratory exposure may be significant (Wolfe et al., 109). In greenhouses and in similar enclosed structures, respiratory exposure to pesticides can be even more severe than outdoors (Waldron, 102). The limited volume of air available for dilution of vapors and the lack of air movement during most applications make protection of the respiratory system essential in some greenhouse exposure situations.

Exposure of persons who clean and repair contaminated mixing, loading and application equipment can be similar to exposure of mixer/loaders handling liquid formulations. Dermal exposure to concentrated or dilute pesticides may occur from spills, splashes, and leaning on contaminated equipment. Cleaning of equipment often involves hosing down the equipment, resulting in potential contamination from splashing and runoff water (Russell, 80). Respiratory exposure is generally not significant during these activities due to the absence of airborne mists or dusts.

The Agency therefore proposes that pesticide handlers be required to wear minimum PPE based on the acute dermal toxicity or skin irritation potential (whichever is higher), the inhalation toxicity, and the eye irritation potential of the formulated product being handled. These proposed minimum requirements are set forth in the table found at § 156.216(b).

The Agency proposes that these PPE requirements be based on the toxicity of the formulated product. The toxicological characteristics of the formulated product are clearly relevant to handler exposure when the product is sold as "ready to use." The relationship is less firm when the product is sold as a concentrate and diluted by the user, because the resulting diluted product will often have a different toxicity than the concentrate. Because toxicity data on such diluted products are generally not available, the Agency proposes to base handler PPE requirements on formulated product toxicity, while allowing registrants and others to submit data on dilute product toxicity which would enable the Agency to establish product-specific PPE requirements.

b. PPE for early reentry workers. Agricultural workers can be exposed to pesticide residues during routine work activities upon reentry into sites previously treated with pesticides. These airborne and surface residues can be gases or particulates suspended in air. The surface residues can be on plants, plant parts, duff, or planting media or in or on water or soil. Some studies indicate that agricultural laborers exposed to dislodgeable foliar residues during a normal work day can receive exposure similar to that of a ground applicator of the pesticide (Zweig et al., 112).

The greatest exposure of agricultural laborers during early reentry activities is before sprays have dried, dusts have settled, or vapors have dispersed. Levels of airborne residues in the form of dusts and vapors are highest immediately following application. Because lung surfaces are highly permeable, the potential for adverse effects from inhalation exposure is significant, especially if the pesticide is highly volatile (Durham and Wolfe, 23). Dermal and ocular exposure to wet sprays can also be significant (Gunther et al., 33). The Agency therefore proposes that workers reentering treated areas during this time be required to wear the same minimum PPE as handlers of the pesticide. These proposed minimum requirements are set forth in the table at § 156.216(b).

For early reentry after sprays have dried, dusts have settled, or vapors have dispersed, the major routes of worker exposure are dermal and ocular (Gunther et al., 33). The greatest exposure hazard is generally to the hands and lower arms. Most of the dermal exposure during reentry activities results from transfer of foliar residues to the workers (Popendorf, 74).

Ocular exposure may result from transfer of foliar residues to the eye via the hands and lower arms. Dermal exposure of hands to residues in soil may be significant during those tasks that require frequent contact with the soil, such as harvesting potatoes, weeding, and thinning. Dermal exposure of feet to residues in soil is likely when workers are on foot rather than in vehicles. Airborne residues at this time will generally be less than 0.2 percent of the total exposure (Popendorf et al., 77). The Agency therefore proposes that workers reentering treated areas after sprays have dried, dusts have settled, or vapors have dispersed be required to wear minimum PPE based on the acute dermal toxicity or skin irritation potential (whichever is higher) and on the eye irritation potential, but not on the inhalation toxicity, of the active ingredient(s) of the pesticide product which was applied. These proposed minimum requirements are set forth in the table at § 156.217(b).

The Agency proposes that the PPE requirements for early reentry workers entering before sprays have dried, dust have settled or vapors have dispersed, as for handlers, be based on the toxicity of the formulated product, and for workers entering after this time on the toxicity of the active ingredients in the product. Workers entering soon after spraying occurs are exposed to pesticide residues most resembling the product applied. However, after sprays have dried the remaining residue is toxicologically most similar to the active ingredients.

c. Types of protective requirements—

(i) Hands. Dermal exposure of the hands and forearms represents the most significant route of exposure of hand laborers, applicators, mixers/loaders, and other persons who are occupationally exposed to agricultural pesticides and their residues (see, e.g., Franklin, 29). This is true except for fumigation and use of airborne pesticides in enclosed areas, where inhalation exposure predominates. Studies have shown that wearing gloves may reduce hand and forearm exposure by 97 percent for mixers/loaders (Maitlen et al., 56) and by 98 percent for applicators (Gold et al., 31). Since gloves made of chemical-resistant material can be the single most important barrier to pesticide exposure for agricultural workers, the Agency proposes to require chemical-resistant gloves for all early reentry and pesticide handling situations, with the exception of early reentry workers exposed to Tox III or IV pesticides and handlers exposed to Tox IV pesticides.

Technological advances in recent years have led to the development of a wider variety of chemical-resistant materials suitable for protective gloves. Many of these materials allow great dexterity and comfort; the Agency cites the dexterity that surgical gloves allow. In addition, many gloves are being made of cotton or other fibrous materials which are coated with a chemical resistant outer layer. These coated gloves are sturdy, flexible, and can be washed and reused. While the cloth lining inside coated cloth gloves may be difficult to clean, the Agency believes that if gloves are used, maintained, and decontaminated properly, they are effective in significantly reducing hand exposure.

Leather gloves, uncoated cloth gloves and fingerless gloves are considered unacceptable by the Agency for use as protective gloves. Liquid and particulate pesticides can rapidly penetrate materials that are not chemical-resistant and increase dermal exposure by trapping the residues close to the skin. In addition, once contaminated with pesticide residues, such gloves cannot be adequately cleaned and are too costly to be considered disposable. The Agency considered an exception in the case of early reentry workers pruning roses, because sturdy, yet flexible, glove materials such as leather and cotton are frequently used by such workers to withstand the wear and tear from the thorns while providing sufficient dexterity. However, upon review of the many chemical-resistant glove materials now available, the Agency has determined that chemical-resistant gloves appropriate for use in the pruning of roses, including coated cloth gloves, are available, and that leather and uncoated cloth gloves would be unacceptable.

(ii) Body. The Agency has determined that long-sleeved shirts and long-legged pants are insufficient protective barriers to moderately and highly toxic pesticides and their residues, and that protective suits offer substantially more protection. Therefore, the Agency proposes to require that all handlers and early reentry workers exposed to pesticides in Toxicity Category I or II for either dermal toxicity or skin irritation potential wear protective suits, such as fabric coveralls, that at a minimum cover the entire body except for the head, hands, and feet.

Appropriate protective suits can reduce the exposure to workers' trunk area, arms, and legs by 99 percent (Davies et al., 19; Hickey, 38). In one study, 100 percent cotton coveralls reduced the penetration of ethion by 72

percent for mixers and 97 percent for applicators as compared to workers wearing only normal work attire (pants and short-sleeved shirts) (Davies et al., 19). More importantly, no heat stress complaints were mentioned by the workers while wearing full-length cotton coveralls, although the weather was very hot and humid during the study.

A protective suit is more effective as a barrier if worn over another set of clothing (Davies et al., 19). Both the additional set of clothing and the additional air layer are important in resisting the movement of a pesticide through the layers to the skin. However, there are drawbacks to this method of protection. The resulting outfit is somewhat warmer and less comfortable than a single layer of clothing. In addition, if a spill or saturation of the protective suit caused the pesticide to reach the inside clothing, the worker would be left with only contaminated clothing to wear or take home or to work in for the remainder of the shift. Despite these objections, the Agency proposes to require that the protective suit be worn over normal work attire, and seeks comment concerning this proposal.

Protection without comfort is of little value to workers; if workers get too hot, PPE will not be used (Davies et al., 19). The term "protective suit" is therefore not intended to refer to impervious, chemical-resistant, or waterproof suits. A protective suit will most often be a set of coveralls or a lightweight disposable suit. If the toxicity or formulation characteristics of a particular pesticide require the use of a chemical-resistant suit, it will be required on a product-specific basis.

A chemical-resistant apron can significantly reduce exposure due to pesticide spills and splashes and leaning against contaminated equipment during mixing and loading (Russell, 80). If worn over a protective suit, these aprons can also prevent extreme contamination of the suit and prevent the pesticide from penetrating to the skin, where it would be trapped by the shirt or pants, increasing dermal absorption (Wester and Maibach, 104). A suitable apron is most effective when liquid formulations are being handled, but is also useful when handling dry formulations such as wettable powders. The Agency therefore proposes that mixers and loaders of Tox I and II (by dermal exposure) formulations be required to wear a chemical resistant apron, unless a chemical-resistant suit is otherwise required by the labeling (§ 156.216(c)(1)).

While protective suits offer significant protection for mixer/loaders handling dry formulations and applicators

exposed to spray mist, they do not offer much protection against spills and splashes, the most common exposure risk for persons who clean and repair contaminated equipment. The Agency therefore proposes to require a chemical-resistant apron for body protection in these handling situations, but not to require a protective suit (§ 156.216(c)(7)).

The Agency proposes to require that handlers and early reentry workers entering before sprays have dried who are exposed to Tox III and IV pesticides wear normal work attire (defined as long-legged pants and long-sleeved shirt, shoes, and socks) for bodily protection, in effect continuing the present PPE requirements for these pesticides. Such a requirement would afford some protection for workers from pesticide splashes and spills and exposure to wet foliage, while representing little cost to pesticide users.

(iii) *Head.* Pesticide absorption through the skin is not uniform for all areas of the body. Two of the areas which absorb pesticides more readily than other areas are the back of the neck and the temple areas. The Agency proposes to require headgear for handlers in situations where exposure from overhead dusts or sprays is possible, such as in aircraft spraying operations and flagging. Plastic hard hats with nonabsorbing liners, hoods, wide-brimmed hats and sou'wester-style hats are considered to afford adequate protection to the head and neck area.

(iv) *Respiratory tract.* The Agency proposes to require handlers and workers entering treated areas before sprays have dried to wear respiratory protection devices approved by the National Institute of Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) for the intended circumstances of use, if the pesticide is in Toxicity Category I or II for inhalation toxicity. The Agency does not propose to require a respiratory protection device to be used by early reentry workers entering after pesticide vapors have dispersed, or where the pesticide to which any worker is exposed is in Tox III or IV for inhalation toxicity, due to the low inhalation hazard in these situations.

(v) *Face and eyes.* The eyes and face may be exposed to pesticides whenever there is danger of chemical splash or high levels of fumes, vapors, or dusts during mixing, loading and application (Russell, 80). Workers may wipe their eyes and face with hands and forearms during harvesting and other agricultural activities, thus transferring residues to these parts of the body. The face and eyes may also receive pesticide residues

when they are dislodged from foliar surfaces above the head of the worker, such as during harvesting of tree fruits.

The Agency therefore proposes to require the use of goggles or a face shield by all handlers and early reentry workers exposed to pesticides with Toxicity Category I and II eye irritation potential. Use of goggles or a face shield would be required during mixing and loading using closed systems only if such systems are pressurized, due to the risk of system failure and subsequent exposure hazard.

(vi) *Feet.* Exposure of feet to pesticides may occur from spills and splashes, from downward spraying of mists, and when walking through ground cover of weeds, grasses and agricultural plants after spray application while sprays are still wet (Russell, 80). The Agency has determined that chemical-resistant footwear (shoes, boots or shoe coverings) provides sufficient protection for feet from pesticide exposure under these circumstances, while leather and canvas footwear (boots or shoes) provides inadequate protection.

The Agency proposes to require chemical-resistant footwear for handlers and early reentry workers exposed to pesticides in Toxicity Category I or II for dermal toxicity or skin irritation potential. The Agency recognizes, however, that some workers, particularly forestry workers, have traditionally used leather boots for durability and breathability in rough terrain, and seeks comment on the impact of such a requirement on these workers.

d. *Modification of minimum requirements.*—(i) *Data submission.* Any registrant or other person will be permitted to seek modification of these minimum PPE requirements by submission of appropriate data (§§ 156.216(f) and 156.217(d)). Rebuttals favoring different minimum PPE requirements may be by submission of data such as that required by Subdivision U of the Pesticide Assessment Guidelines, or other medical, epidemiological, or other health effects data, which demonstrate to the Agency's satisfaction that different PPE requirements will sufficiently protect pesticide handlers or early reentry workers from pesticide exposure.

The Agency would specifically allow registrants and other persons to submit acute toxicity data on an end-use product as diluted for use for one or more routes of exposure (§ 156.216(d)). Such data may enable the Agency to modify the PPE requirements for handlers other than mixers and loaders and for early reentry workers entering before sprays have dried, if the data

indicate that the toxicity of the end-product as diluted for use is significantly different from that of the formulated product sold to the user.

(ii) *Exposure pattern.* The Agency proposes to modify the minimum PPE requirements for handlers of pesticides in Toxicity Category I or II by dermal toxicity or skin irritation potential, under certain exposure-related circumstances (§ 156.216(c)). Three of these modifications—the chemical-resistant apron requirement, the head protection requirement, and the PPE requirements for cleaning of mixing, loading, and application equipment—have been discussed under types of protection. The other modifications relate to enclosed pesticide handling methods.

The Agency welcomes technological advances which would eliminate or substantially reduce exposure of pesticide handlers, and desires to encourage such advances by reducing the minimum PPE requirements in these situations. The Agency has identified three technologies which can substantially reduce handler exposure: (1) Closed system mixing and loading; (2) application from within an enclosed aircraft cockpit; and (3) application from within an enclosed cab with a positive-pressure ventilation system.

The Agency proposes to allow pesticide handlers using closed mixing/loading systems to wear normal work attire, plus chemical-resistant gloves and an apron. The gloves and apron requirement protects against spills and leaks that may occur in the system. If a closed system is used for handling highly toxic pesticides or large quantities of pesticides, an accidental exposure result in a serious poisoning or injury. In addition, as discussed above, a face shield or goggles would be required if the product is being transferred out of its container through the use of pressure. Without such eye protection, a leak could result in highly toxic concentrated pesticide being squirted into the face and eyes under pressure.

The Agency proposes to allow pesticide applicators in enclosed cockpits of aircraft to wear their normal work attire. However, the Agency is concerned about dermal contamination of the hands and forearms while the pilot is entering or leaving the cockpit where the outside surface of the aircraft contains pesticide residues. Contaminated hands and forearms in the cockpit could contaminate the air and surfaces in the cockpit and negate the benefit of the enclosed cockpit. Therefore, chemical-resistant gloves

would be required for use during such entrances or exits.

The Agency proposes to allow pesticide handlers in enclosed cabs of ground vehicles with positive-pressure ventilation systems to wear their normal work attire. Positive-pressure, charcoal-filtered ventilation systems on enclosed cabs can remove over 99 percent of pesticide vapors and sprays during air intake (Taschenberg et al., 90). While fully enclosed cabs without air filtration have been shown to substantially reduce dermal (but not respiratory) exposure to airblast applicators (Carmen et al., 12), the Agency believes the heat buildup in unventilated enclosed cabs may in practice lead applicators to open windows to maintain comfort, resulting in increased exposure. The Agency seeks comment on this issue. The Agency is also concerned about the possibility of handlers leaving the enclosed cab while still in the area being treated, becoming contaminated and returning to the enclosed cab. In addition to direct exposure of the handler, upon reentry to the vehicle the resultant surface and air contamination could negate the benefits of the enclosed cab and filtration system. Therefore, all PPE required for a ground applicator of the pesticide must be available for use any time the handler leaves the cab while in the treated area.

(iii) *Existing PPE requirements.* In those cases where current pesticide labeling already contains PPE requirements, the Agency proposes to require the interim PPE requirements of Part 156 to supersede the existing requirements for an area of the body if the interim PPE is more protective of that area of the body (§ 156.215(a)). These PPE requirements would be minimum requirements. The one exception proposed is where the label currently prohibits an item of PPE which would be required under this proposal, in which case the existing prohibition will continue in effect.

The following are examples of comparisons of degree of protection between PE items in this proposal and PPE items now on pesticide product labeling:

1. A protective suit is more protective than a long-sleeved shirt and long-legged pants.
2. A chemical-resistant (or liquidproof, waterproof, rubber, etc.) protective suit, rain gear or rain suit is more protective than a protective suit.
3. Chemical-resistant gloves are more protective than cotton, fabric, cloth, paper, or leather gloves.
4. Chemical-resistant gloves are equal in protective capability to liquidproof,

waterproof, impermeable, impervious, neoprene, natural rubber, synthetic rubber, rubber, vinyl, plastic, water-resistant, or non-porous gloves. The term "chemical-resistant gloves" would nevertheless be substituted to standardize terminology, unless a particular material or materials has (have) been identified as being chemical-resistant to a particular pesticide product or to a particular pesticide family, in which case that specific material would be listed.

5. Chemical-resistant shoes, shoe coverings, or boots are more protective than shoes and socks.

6. A NIOSH- and MSHA-approved respiratory protection device is more protective than a non-approved, MESA-approved, or U.S. Bureau of Mines-approved respiratory protection device.

7. An air-supplied or self-contained respiratory protection device is more protective than a NIOSH- or MSHA-approved respiratory protection device. However, NIOSH and MSHA approval would be added to the labeling statement.

3. *Duties relating to PPE—e.*

Provision. Under the proposal all PPE required by the pesticide product labeling for a particular use situation would be provided and maintained for workers (§ 170.16(a)). Surveys of pesticide users, especially agricultural workers, indicate that a significant percentage do not follow any precautionary procedures for the cleanup and maintenance of their contaminated clothing and equipment. If PPE is not cleaned and maintained properly, exposure may be increased by its use over time. Normal work attire (long-sleeved shirt, long-legged pants, shoes, and socks) is not considered to be PPE and would not have to be provided or maintained for the handler or early reentry worker.

b. *Use.* The Agency is requiring that the appropriate PPE be used correctly for its intended purpose and in accordance with any manufacturer's instructions (§ 170.16(b)(1)). Handlers and early reentry workers who choose or are allowed to remove PPE which should be worn would be subject to enforcement action. Studies have shown that not wearing PPE during even a brief portion of the exposure period can result in significantly higher dermal exposure (Maddy et al., 55). Respirator effectiveness can be reduced a full 10 percent when the respirator is removed for only 1 minute during an hour of exposure (U.S. Congress, 93).

c. *Change areas.* Workers who are provided PPE need a place outside of treated areas where they can put on PPE before being exposed to pesticides or

their residues, store personal clothing, and change into personal clothing after being exposed. Such a place must be clean enough that personal clothing, PPE, and the worker are not unnecessarily contaminated by pesticides or their residues in the environment. The Agency proposes to require that such a clean place for changing into and out of PPE be provided before and after any exposure period (§ 170.16(b)(3)).

The Agency proposes to require soap, water, and towels to be available at the end of any exposure period so handlers and early-reentry workers can wash themselves. Failure to wash adequately may lead to delayed acute poisoning or to chronic or subchronic poisoning, or may result in exposing others through secondary contact with contaminated skin, especially the hands (Hayes, 35). The water available for washing must be of sufficient quantity to allow thorough washing of the entire body if necessary.

d. *Heat prostration.* While chemical-resistant protective suits are not proposed by this regulation as minimum PPE, they are currently required by the labeling of a few highly toxic pesticides, generally in those use situations where a high level of exposure to a drenching spray or liquid formulation is possible. The Agency believes that under hot and humid environmental conditions, the wearing of such nonbreathable clothing can lead to a rapid buildup of body heat and sudden heat-induced illness, such as heat stroke or heat prostration, which can be fatal. In addition, when workers wearing protective suits get too hot during tasks, the protective suits may not be used, leading to greater exposure (Davies et al., 19).

The Agency proposes to prohibit handling and early reentry activities when a chemical-resistant suit is required by the product labeling and the environmental conditions are such that the activity might lead to heat-induced illness (§ 170.16(b)(2)). Although the onset of these illnesses depends on a variety of factors such as temperature, humidity, length of exposure, individual heat tolerance, and type of work, EPA believes that users can reasonably be expected to anticipate conditions under which work activities might prove dangerous in this way.

e. *Cleaning and maintenance.* Significant levels of some pesticides can remain in clothing or on equipment if they are not correctly laundered or if prescribed maintenance procedures are not followed (Orlando et al., 67; DeJong, 20). Studies have shown the hazards of secondary poisoning through exposure

to contaminated clothing and equipment, including a pesticide fatality in a worker who died after putting on a pair of coveralls later found to be contaminated with parathion (Southwick et al., 81).

Pesticides and their residues can ordinarily be removed from both fabric and nonfabric items of PPE by washing thoroughly—either manually or by machine—with a heavy-duty detergent and hot water, unless some other method of cleaning is specified by the manufacturer's instructions. The proposal would require that all PPE be thoroughly washed with detergent and hot water, or cleaned according to the manufacturer's instructions, after any day when the handler or early-reentry worker wears such equipment and contacts pesticides or their residues (§ 170.16(c)(1)).

After washing, PPE should be dried and stored appropriately to minimize deterioration and mechanical damage. Excessive moisture, heat, cold, or chemical exposure can damage personal protective equipment during storage. Some items may stiffen, crack, or deteriorate during extended storage periods such as over winter or from one season to the next (CMA, 13). The Agency is proposing that PPE be thoroughly dried before being stored or be placed in a well-ventilated place to dry (§ 170.16(c)(1)). Furthermore, the Agency proposes that PPE be stored away from pesticide-contaminated places and separately from personal clothing to avoid contamination of either clean PPE or clean personal clothing (§ 170.16(c)(6)).

f. Hazards during cleaning of PPE. Unprotected persons cleaning PPE can be exposed to high levels of pesticide residues remaining on the clothing and equipment (Laughlin et al., 46; Finley, 28). Laundering studies demonstrate that significant cross-contamination may occur when residues removed from the contaminated garment adhere to other garments being laundered in the same batch (Laughlin et al., 46). Pesticide residues may also remain behind in the automatic washer and dryer and cross-contaminate future batches of laundry.

The Agency proposes that workers be required to remove at the work place all PPE that was provided and that they not be allowed to take or wear the clothing or equipment home (§ 170.16(c)(7)). The Agency also proposes that persons responsible for cleaning and decontaminating of PPE be instructed in the appropriate procedures and hazards involved, both to ensure appropriate cleaning and decontamination of the items and to minimize risk to the person performing the job (§ 170.16(c)(2)).

g. PPE that cannot be cleaned. Fabric saturated with certain concentrated pesticides cannot be adequately cleaned. Even after being laundered three times, fabrics contaminated with concentrated highly toxic pesticides may still contain significant residues (Laughlin et al., 46). The Agency proposes that any PPE that becomes drenched or heavily contaminated with Tox I or II concentrated pesticides be discarded using procedures approved by Federal, State and local governments (§ 170.16(c)(3)).

h. Respirator maintenance. Respirators rely on various types of filtration systems—pads, cartridges, canisters—to remove the contaminants from the air being breathed. These filters must be replaced on a regular basis or the usefulness of the respirator is reduced and finally negated. The Agency proposes that respirator filters be replaced at least as often as recommended by the manufacturer (§ 170.16(c)(4)).

i. Inspection. PPE may deteriorate with age, use, or exposure to other factors such as heat, cold, moisture, and chemical contaminants. Any breach in the physical barrier of PPE reduces its effectiveness greatly (CMA, 13). The Agency proposes to require inspection of all PPE before each day's use and repair or replacement of damaged PPE (§ 170.16(c)(5)).

1. Application and Reentry Restrictions

1. Application restrictions. Present § 170.3 prohibits the application of any pesticide in such a manner as to directly or through drift expose workers or other persons, except those persons who are knowingly involved in the pesticide application, and requires unprotected persons to vacate the area. The Agency proposes to continue this provision, with some changes (§ 170.36).

The Agency proposes to clarify the requirement of workers to vacate the treated area during application by stating "no worker shall be allowed or directed to enter or remain in a pesticide treated area." The exception for "persons knowingly involved in application" has been changed to "handlers". The reference to "unprotected persons" has been deleted to make clear that only handlers appropriately trained and equipped as required by this Part are permitted during application; other workers, even if protected, are not permitted. Since these regulations apply only to workers, all references to "other persons" have been deleted. The term "contact" has been substituted for the less precise term "expose."

This proposal continues the general prohibition on exposure of workers through drift of pesticides from the site of application. Application may not take place if weather or other conditions are such that pesticides may drift beyond the treated area and contact nearby workers. The Agency is aware of the problems that may result from drift exposure of workers, especially during aerial and airblast applications. Since drift potential is affected by many situational factors—wind speed and direction; nozzle size, type, angle and pressure; release pattern; aircraft type, height and speed; topography; particle size—the Agency considers development of specific regulatory requirements pertaining to drift to be infeasible at this time. One exception is the case of nurseries and greenhouses, where "reentry restricted areas" based in part on drift and overspray potential are proposed. For farms and forests, the Agency will continue to rely on applicator training programs, the encouragement of State regulation of localized drift problems, and pesticide-specific labeling statements where appropriate.

2. Interim reentry intervals—a. Proposal and rationale. The Agency proposes to establish interim reentry intervals for all pesticide products that are used on agricultural sites (§ 156.210). Such interim intervals would be based on the acute toxicity and chemical class of the active ingredient(s), and would be reevaluated by the Agency upon submission of appropriate data or upon commencement of any Special Review.

The Agency has established approximately sixty reentry intervals to date for pesticide active ingredients. Twelve of these were established by the present Part 170 (§ 170.3(b)(2)), while others have been established upon registration, by Registration Standards, during Special Review, in response to medical or epidemiological data indicating a special problem, or upon review of Part 156 reentry data submitted by registrants. In addition to these intervals, the present Part 170 established a generic "minimum" reentry interval ("until sprays have dried or dusts have settled," § 170.3(b)(1)) for pesticides used on agricultural sites covered by that Part.

Each of the existing intervals is considered interim by the Agency, except for those established for specific products after submission and evaluation of adequate Part 156 data. The most appropriate method for setting reentry intervals is by calculation from test data. The Agency considers these "product-specific" intervals to represent

an accurate assessment of reentry hazards to farmworkers of the particular pesticide. The Agency does not propose to alter product-specific intervals or the process used to determine them.

However, the length of time necessary to generate appropriate reentry data and review that data may be considerable. The vast majority of the approximately 400 active ingredients covered by this Part have neither product-specific nor interim reentry intervals. Until the reregistration process can be completed, the Agency proposal would provide interim protection for workers from hazardous residue levels of all pesticides used on agricultural sites. For this reason, the Agency has determined that it is necessary to establish interim reentry intervals for all pesticides used on agricultural sites.

b. Minimum reentry interval. The Agency proposes to retain the generic minimum reentry interval in the present Part 170, while modifying it in one respect (§ 156.210(c)(1)). The Agency proposes to add the phrase "or vapors have dispersed" to cover two major situations of concern. Fumigant applications involve neither sprays nor dusts; the pesticide is applied as a gas or vapor. The minimum reentry interval thus would apply to fumigants under this proposal. Also, during and immediately following certain applications there is an inhalation hazard to workers in the treated area due to the presence of pesticides with a high vapor pressure, which are particularly hazardous by the inhalation route of exposure. After vapors have dispersed, the hazard via the inhalation route is very low.

c. Specific reentry intervals. The Agency proposes to establish specific interim reentry intervals for certain pesticide products (§ 156.210(e)). A 48-hour interval would be established for those products containing any organophosphate or N-methyl carbamate active ingredient in Toxicity Category I for acute dermal toxicity or skin or eye irritation potential, while a 24-hour interval would be established for products containing any other Tox I active ingredient. A 24-hour interval would be established for products containing any Tox II active ingredient that is an organophosphate or N-methyl carbamate. Products containing more than one active ingredient would use the longest of the applicable intervals. Existing reentry intervals would be retained to the extent they are based on adequate Part 156 reentry data, currently subject to an Agency requirement to submit such data which is flagged for expedited review, or are

longer than the proposed interim intervals. The interim intervals would be modified if necessary upon submission of reentry data, and would be reevaluated at the beginning of any Special Review.

(i) Toxicity basis. In the absence of adequate reentry data on pesticide products, the Agency proposes to establish interim intervals based on available toxicity data. In defining such a toxicity basis for reentry intervals the Agency has examined several aspects of toxicity, including acute versus chronic toxicity, active ingredient versus formulated product, and route of entry.

The Agency currently establishes interim reentry intervals based on chronic toxicity when such data are available and indicate a known or potential chronic toxicity hazard to workers. However, a full set of chronic toxicity data is currently available on only a minority of the many pesticides used in agriculture, whereas acute toxicity data are available on most of these pesticides. The Agency will continue to use available chronic data to set chemical-specific intervals during Registration Standards development and Special Review, and will specifically evaluate chronic toxicity reentry risk at the beginning of Special Review (§ 156.210(f)), but proposes to base generic intervals in Part 170 on acute data only.

If data indicating chronic toxicity concerns are not present, the Agency establishes interim reentry intervals based on the acute toxicity of the technical grade of the active ingredient. Components of the formulated product other than the active ingredient are not usually present in the residue after the sprays have dried (Gunther et al., 33). Some formulated products are designated Toxicity Category I due to the skin and eye irritation potential of a solvent or other inert which would vaporize after application and thus would not be hazardous to reentering workers. In addition, some products are sold in a more diluted form than others. This could render the formulated product less hazardous to the handler of the product, but would not alter the hazard to reentry workers because the total amount of active ingredient applied per acre treated tends to be constant for the same crop and conditions.

Although the dose or amount of active ingredient actually applied per acre (or to another defined surface area) for a given crop or situation is currently considered in determining product-specific reentry intervals, the Agency has determined that such dosages cannot practicably be considered when

establishing generic reentry intervals through Part 170. The dosage of active ingredient varies widely depending on the crop, the pest to be controlled, and on other factors such as the timing of the application, the severity of the pest problem, weather conditions, soil types, crop varieties, etc. Therefore, the Agency proposes to base interim reentry intervals solely on the toxicity of the active ingredient rather than on the toxicity of the formulated product or the use rate per acre.

Acute toxicity is usually measured in terms of a particular route of exposure. Dermal, oral, and inhalation toxicity and skin and eye irritation potential data are all currently considered in determining the toxicity category of an active ingredient (§ 162.10(h)(1)). The principal routes of exposure of workers in reentry situations are dermal, inhalation and eye, with dermal the predominant route (Wolfe, 106). The Agency considered using dermal toxicity alone to establish reentry intervals; however, inhalation and ocular exposure may also be significant in reentry situations. Inhalation exposure is generally only significant before vapors have dispersed; since the proposed minimum reentry interval includes this period, the Agency would not consider inhalation toxicity in setting specific reentry intervals. Eye exposure to dislodgeable residues in reentry situations may be significant; in California between 1970 and 1985, there were more than four times as many skin and eye injuries as systemic poisonings among reentry workers (Blondell, 6). Oral exposure in agricultural work is usually related to the worker's personal habits such as not washing hands and face before eating, drinking or smoking (Bolmont, 9), and the Agency has no evidence of the extent of such habits among field workers. However, oral toxicity data are the most widely available data on pesticides, and the Agency would consider oral toxicity data an adequate surrogate for data on other routes of exposure.

The Agency proposes to set interim intervals based on the highest toxicity category indicated by available data on acute dermal toxicity and skin and eye irritation potential, as determined by the criteria of § 162.10(h)(1). If no dermal toxicity data are available, any available oral toxicity data would be used along with other nondermal data in making this determination.

(ii) Chemical classes of concern. Of the many chemical classes of pesticides, the organophosphate (OP) insecticides are the most frequent cause of systemic poisonings. During the period 1970–85,

80 percent of all reported systemic poisonings in California that were caused by Toxicity Category I active ingredients involved OP's (Blondell, 8). N-methyl carbamate pesticides, whose primary mechanism of action—inhibition of enzyme cholinesterase—is the same as that of the OP's, were involved in another 10 percent of Tox I poisonings. In addition, these classes accounted for 70 percent of the Tox II poisonings in that State. Based on such poisoning reports, as well as the typically high acute toxicity of OP's and some N-methyl carbamates, the Agency has already established interim reentry intervals for certain pesticides in these two classes. California, Texas, and New Jersey have also established specific intervals for certain pesticides in these classes. EPA estimates that these classes include about half of the Toxicity Category I active ingredients used on agricultural sites and about one-third of the Toxicity Category II active ingredients used on those sites.

While the Agency is aware of poisoning incidents involving pesticides in other chemical classes, it has insufficient evidence on which to extrapolate to all members of those classes. The Agency therefore proposes to establish higher interim reentry intervals for active ingredients belonging to the OP and N-methyl carbamate classes than for other pesticides of similar acute toxicity.

(iii) *Interval options.* The Agency considered a number of time intervals for interim reentry requirements, generally in relation to the various toxicity categories.

An option to establish an interim reentry interval of 24 hours for all Tox I pesticides was not adopted because EPA is convinced that a 24-hour reentry time is not sufficient protection for many Tox I pesticides. Studies indicate that a 40-hour or longer interval is almost always necessary to protect workers from hazardous levels of Tox I organophosphate pesticides (Popendorf, 76).

Other more protective options were considered by the Agency as well. These included a 24-hour interim reentry interval floor for all toxicity categories. At least 40 percent and possibly 50 percent of reported skin and eye injuries to California reentry workers between 1976 and 1985 were caused by pesticides with Tox III or IV active ingredients (Blondell, 8). A minimum reentry interval of 24 hours would reduce the incidence of injuries from these lower acute toxicity pesticides, as well as providing a margin of safety for field workers from unknown chronic effects. It would also be a relatively simple

policy for users to understand and EPA to apply. However, the option would result in unwarranted reentry intervals for some pesticides, requiring data generation for rebuttal. Also, the Agency believes that chronic effects are best regulated through the existing pesticide-specific procedures of Registration Standards and Special Review.

The Agency also considered establishing longer reentry intervals for all products in the more toxic toxicity categories, e.g., 72-hour/48-hour/24-hour reentry intervals for, respectively, Tox I, II, and III pesticides, or 48 hours for Tox I and 24 hours for Tox II. These options would reflect the varying acute toxicities of each category and promote the use of less toxic chemicals by establishing a shorter time period before unprotected workers could reenter areas treated with those chemicals. However, a preliminary economic impact assessment indicated that the 72/48/24 option would result in a significant disruption of agricultural production. While less disruptive of production, the 48/24 approach would not reflect the actual poisoning incident data that implicates two classes of chemicals with most serious poisonings, the organophosphates and the N-methyl carbamates.

The Agency has some information indicating that 48-hour reentry intervals would have a significant economic impact on greenhouse sites, whereas 24-hour reentry intervals would have very minor economic impact. The first-year, nonincremental cost (including costs already incurred) of the reentry provisions in the Agency's proposal for greenhouse sites is estimated to be \$27.5 million (\$157 per worker, \$2,115 per establishment). While significant impact from generic reentry intervals is more likely in greenhouses than on farms, due to the indoor, closely spaced nature of growing areas and frequent pesticide use, the Agency seeks more particular information on greenhouse pesticide use which would bear on the question of the impact of the proposed reentry intervals. Specifically, such information would concern which pesticides with specific reentry intervals either existing or established by this proposal are needed for management of which pests on which crops at the same time that hand labor activities (weeding, harvesting, etc.) are required on that crop or in nearby areas of the greenhouse; the type and frequency of the necessary reentry to the treated areas; whether alternative pesticides without reentry intervals are available; and in what ways production practices would have to be altered. Comment is specifically requested on the cost of the proposed reentry

intervals for greenhouse establishment, including the cost of any alternative production practices that may be necessary.

The Agency invites comments on the proposed approach and the options described above.

(iv) *Whether reentry intervals should apply only to crops requiring hand labor tasks.* Under present Agency reentry policy, the establishment of interim reentry intervals has generally been limited to those crops which require workers to perform "hand labor operations," defined in PR Notice 83-2 as tasks involving "substantial contact with treated surfaces." However, contact with treated surfaces may result from tasks which are not traditionally considered hand labor practices and yet which are common to virtually all forms of agricultural production. The Agency has considered whether such tasks merit reentry protection.

Agricultural workers may contact treated surfaces through such common practices as IPM scouting, walking through a crop production area to reach work sites, and using areas near work sites for meals, rest breaks, and using the toilet. Children accompanying the workers may contact treated surfaces when using treated areas as play areas. Depending on the pesticide applied, time of entry, nature of the activity and other conditions, adverse effects on workers or their children may result from such activities. Contact with small amounts of highly toxic pesticides can result in worker poisoning. Environmental conditions may significantly increase exposure and rate of absorption into the body. Residues wet from their diluent or from dew or rain may penetrate nonchemical resistant clothing and be deposited on the skin. Wet, clinging clothing may increase dermal penetration by increasing surface area contact with residues.

The Agency has determined that contact with treated surfaces from early reentry activities, other than hand labor tasks, may result in adverse effects on workers, and proposes that interim reentry intervals apply to all reentry activities on all agricultural plants, regardless of the nature of traditional worker activities associated with particular agricultural plants.

(v) *Existing reentry intervals.* Reentry intervals currently exist for 51 active ingredients, including twelve intervals established by the present Part 170. Some of these intervals are "permanent" (based on adequate Part 158 reentry data or a waiver of data submission), while others are interim (not based on adequate data; data submission

generally required). While the Agency does not propose any change to the Part 158 process for establishing "permanent" reentry intervals, this proposal represents a change in current Agency policy for setting interim intervals. Hence, certain of the existing interim intervals would no longer provide adequate interim protection for agricultural workers.

The Agency proposes that the interim reentry intervals in this proposal supersede existing reentry intervals established by the Agency, except in the following cases: (1) Where the existing interval was established on the basis of adequate Part 158 data (§ 156.210(d)); (2) where the existing interval is longer than the interval calculated according to the criteria of this Part (§ 156.210(e)(1)); or (3) where Part 158 reentry data have been required by the Agency and flagged for expedited review (§ 156.210(e)(1)). This proposal would retain all "permanent" intervals, as well as those longer interim intervals generally established on the basis of chronic toxicity or other unique exposure hazards. It would also allow those registrants currently generating reentry data for which the Agency intends to expedite its review to continue to rely on the existing interval.

(vi) *Toxicity data.* The acute toxicity data necessary to ascertain the toxicity category of the technical grade of the active ingredient(s), which would in turn be used to determine as interim reentry interval for an individual product, are readily available for many agricultural pesticides covered by this Part. The Agency has many of these data on file, and registrants or registered technicals should also possess such data.

The Agency considered merely providing acute toxicity criteria in Part 158 and allowing registrants to determine the interval applicable to their products. However, data on active ingredient toxicity may be accessible only with difficulty to those end-use product formulators who are not registrants of the technical products they use. The Agency also considered basing reentry intervals on formulated product toxicity in order to facilitate determination of intervals by registrants, but rejected this approach as inconsistent with its own toxicological assessment of reentry hazards.

The Agency proposes instead to attempt to develop a list of active ingredients used on agricultural sites and their corresponding interim reentry intervals, determined according to the criteria enumerated in this proposal. Such a list would be made available to registrants to serve as a guide in determining applicable reentry intervals.

Availability of a list would greatly facilitate consistent reentry interval determination by registrants and the Agency. The list would also include those active ingredients with existing intervals and any revision to the existing interval.

(vii) *Modification.* The Agency proposes to consider modification of the interim reentry intervals in this proposal on a case-by-case basis under certain circumstances.

The Agency recognizes that certain products which are highly toxic in concentrated form, but which are used with very low application rates, may not present a reentry hazard because their exposure potential for workers is very low. Certain formulations are designed to be applied at rates of a few ounces per acre. Other aspects of the pesticide product and its use may also affect the appropriate interval length or even the need for a specific interval. These aspects may include use patterns which make penetration into the human system unlikely, and properties which bind the residue to the treated surface or otherwise prevent the residue from transferring to humans.

The Agency also recognizes that particular reentry intervals may not be sufficiently protective of workers for specific pesticide products, pesticide uses, or worker exposure scenarios. Established reentry intervals may not be long enough, for example, when skin sensitivity and other nonquantifiable effects are observed.

Under proposed § 156.210(g), registrants and other persons could submit data demonstrating that exposure levels resulting from the application of a pesticide product warrant a shorter or longer reentry interval. Data may be in accordance with Part 158 requirements and Subpart K of the Pesticide Assessment Guidelines, or may be other data enabling the Agency to make a determination of potential risk to workers from use of the product. Such data would be used to evaluate a proposal to modify a specific reentry interval, but it is unlikely that the Agency would eliminate the "minimum" reentry interval for a product.

The Agency would also consider modification of interim reentry intervals under proposed § 156.210(f), whereby the Agency would reevaluate the reentry interval established for any pesticide entering Special Review for human health effects. The Agency will evaluate the reentry interval at the beginning of any Special Review in light of all available data, which will enable a more pesticide-specific reentry interval to be set.

3. *Other reentry restrictions—*a. *Basic requirement.* EPA proposes to clarify the language of the present Part 170 concerning reentry restrictions, but does not intend to alter the basic requirements it sets forth. No worker may reenter a treated area during a reentry interval, unless the worker is wearing appropriate PPE and has received other appropriate protections, or unless the worker is performing tasks that do not involve contact with pesticide-treated surfaces. EPA proposes similar language for farm, forest, nursery and greenhouse reentry in this regard (§§ 170.46, 170.56, 170.66).

b. *Early reentry without contact with treated surfaces.* The present Part 170 allows workers to reenter a treated area without protective clothing before the expiration of the reentry interval if they are performing tasks which are not hand labor tasks. PR Notice 83-2, implementing the present Part 170, listed those food and feed crops which were determined by the Agency to use hand labor tasks, including: Recognized crop production activities as harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, and roguing. California, Texas and North Carolina regulations permit reentry without protective clothing if there is no "substantial and prolonged contact" with treated surfaces.

The Agency believes that tasks such as scouting and working with irrigation equipment, which are not ordinarily considered to be "hand labor tasks" but which are common to virtually all types of agricultural production, may result in substantial contact with treated surfaces and adverse effects on workers. Therefore, the Agency proposes to allow early reentry into pesticide-treated areas without appropriate protective measures only when there will be no contact with pesticide-treated surfaces (§ 170.46(a)(1)).

Immediately after application and until pesticide sprays and dusts have settled, pesticide residues would be in the air and would contact entering workers under most circumstances. An example of permissible reentry at this time without protective measures would be activities performed while in enclosed vehicles. After sprays and dusts have settled, early reentry activities would be permitted without the use of PPE depending on where the pesticide residues were located. If soil incorporation were the application technique, any activity which did not involve worker contact with the soil subsurface would be allowed, whereas hand hoeing, planting, transplanting,

weeding, thinning, and harvesting of root crops would not be permissible. When the application is to the soil or planting media surface, or if the agricultural plant is very short (less than a few inches tall), workers walking through the area or performing activities which do not involve hand contact with the soil, planting media, or plant can avoid contact with the residue by wearing chemical-resistant boots, shoe coverings, or shoes.

Workers in vehicles such as tractors, which place them away from the pesticide residues, would be allowed unprotected reentry after sprays and dusts have settled. However, if the crop is tall and dense and could brush against the vehicle operator, or if trees or other tall plants might drop pesticide residues on the operator from overhead, then protective measures would be required.

In greenhouses and nurseries, unprotected reentry to walk between benches and to perform tasks at adjoining benches or even on adjoining plants would be permissible as soon as pesticide sprays and dusts have settled or pesticide vapors have dispersed. At that time the specific reentry interval (prohibiting unprotected contact for a period of hours or days) would apply to the plant(s) or planting media to which the pesticide application was directed.

c. Early reentry with contact with treated surfaces. California considers that wearing PPE for long periods of time in conditions which are commonly hot and humid is impractical and often results in the workers removing the PPE. California therefore prohibits reentry to perform tasks involving substantial and prolonged contact with treated surfaces until the reentry interval has expired. EPA has concluded that many situations arise during the production of agricultural plants which require worker reentry into pesticide-treated areas before the expiration of the reentry interval, particularly when the reentry interval extends longer than 24 hours, and therefore proposes to permit such early reentry (§ 170.46(a)(2)). However, the Agency proposes to impose certain conditions on early reentry to ensure that early reentry workers are adequately protected.

Before sprays have dried, dusts have settled, or vapors have dispersed, conditions are essentially similar to application conditions. Even when wearing PPE, hand laborers reentering during this time for a typical 8 to 10 hour work day will encounter prolonged and substantial contact with pesticides that may constitute an unacceptable level of exposure. Therefore, the Agency is proposing to prohibit entirely reentry to

perform hand labor tasks such as weeding or harvesting before sprays have dried, dusts have settled, or vapors have dispersed (§ 170.46(b)). Short-term application, irrigation, or emergency crop management practices are allowable because these activities involve less contact with treated surfaces. These may include: Traversing the area; IPM scouting; minor adjustments to, repairing of, or turning on and off irrigation or application equipment; actions to prevent crop loss from frost, wind, or other weather damage; and checking for appropriate pesticide dispersal and distribution patterns. These short-term tasks are permitted only if certain protective measures are taken (§ 170.46(a)(2) (i) through (v)), discussed below.

After sprays have dried, dusts have settled, or vapors have dispersed, worker reentry to perform any tasks (hand labor or other) in an area that is still under a specific interval would be permissible if the same protective measures are taken (§ 170.46(a)(2) (i) through (v)).

The Agency considers the risk of exposure for early reentry workers, whether entering before or after expiration of the minimum reentry interval, to be comparable to the risk for pesticide handlers. In some instances, early reentry workers may receive greater exposure than that encountered by an applicator of the pesticide, e.g., where foliage is drenched or where a diluent has evaporated. The Agency proposes to require that early reentry workers receive protections similar to those required for handlers (§ 170.46(a)(2) (i) through (v)). They must be provided with the same PPE, training, and decontamination facilities, with the exception of workers entering after the minimum reentry interval, for whom different PPE requirements apply (see unit III.H.2.b. above for further discussion).

The Agency anticipates that agricultural producers will seldom require workers to reenter treated areas before the reentry interval has expired, because of the increased risk to the workers; the cost of providing personal protective equipment, decontamination water, and training; and the problems related to heat-induced illnesses. Since most agricultural management practices can be carried out after the reentry interval expires, few workers will need these protective measures.

d. Reentry after the expiration of the reentry interval. When product-specific reentry intervals are established by the Agency after review of Part 156 reentry data, those reentry intervals are usually based on a no-observable-effect level

(NOEL), such that PPE and other protective measures are not necessary after the reentry interval has lapsed. Similarly, EPA believes the proposed interim reentry intervals are of sufficient length to allow workers to reenter the pesticide-treated area without protective clothing after the interval has expired. No PPE requirements or other protective measures are proposed for workers reentering after expiration of the reentry interval, other than the availability of water for routine decontamination (§ 170.38).

e. Multiple reentry intervals. If two or more pesticide products are applied in combination the Agency proposes to require that the longest of the applicable reentry intervals be observed (§ 170.46(c)). The Agency considered a requirement such as is found in California, whereby in case of multiple applications the reentry interval is increased by 50 percent of the longest of the applicable intervals. This requirement is apparently based on the possibility of increased toxicity due to synergistic effects. The Agency is not aware of synergistic effects of pesticide combinations that would justify such a requirement and does not propose a similar requirement.

Under normal circumstances, sprays will have dried, dusts will have settled, or vapors will have dispersed long before any additional specific reentry interval has expired. However, in special circumstances of high humidity, extremely dense crop stands, or oil formulations, the pesticide sprays may not have dried before the specific reentry interval expires. The Agency intends that the reentry-restricted period extend until both the specific (period listed in the product label) and the minimum (until sprays have dried, dusts have settled, and vapors have dispersed) reentry intervals have expired, and has made this explicit in this proposal (§ 170.46(c)).

f. Greenhouses. Greenhouses present an exposure scenario where activities of many workers may occur in quite close proximity. At the same time, the volume and direction of air movement can usually be controlled by means of ventilation during and after application of pesticides, unlike in outdoor exposure situations. The Agency has attempted to provide for access to nontreated areas in greenhouses as soon as can be safely accomplished following application. EPA proposes to accomplish this by defining "reentry-restricted areas" on the basis of particular application techniques and pesticide formulations used in greenhouses (§ 170.66(b)). The Agency is proposing three types of

"reentry restricted areas": (1) Where fumigants are used; (2) when applications are "bench-directed"; or (3) when applications are "plant-directed".

The use of fumigants (pesticides in a gaseous state) in greenhouses is widespread because they offer a method of controlling virtually all of the insect and mite pests in one application. Fumigants are applied so as to totally fill the enclosed space. The Agency proposes to restrict reentry to the entire greenhouse, regardless of where the fumigant is released within the structure, until all fumigant vapors have dispersed (§ 170.66(b)(1)), and has defined ventilation criteria for determining safe dispersal times based on the few data that exist in this area (Waldron, 1972). While the Agency is aware that such structures vary widely in ventilation capacity and techniques, the Agency has defined dispersal times in terms of two principal methods of ventilation, mechanical (fans) and passive (windows and doors). The Agency has also taken into account the common greenhouse practice of fumigation at the end of the work day followed by slow vapor dispersal overnight; in this case less ventilation is required the following day, whether mechanical or passive. If no mechanical or passive ventilation is used, as would be the case, for example, when cold outside air would injure plants inside the greenhouse, then a minimum vapor dispersal period of 24 hours following fumigation must be observed before unprotected reentry is allowed. Finally, if the fumigant product label indicates a Permissible Exposure Level (PEL), compliance with the PEL by measuring pesticide vapor levels would meet the vapor dispersal requirement.

Airborne pesticides other than fumigants, such as aerosols, fogs, smoke bombs, and thermal fogs are used in greenhouses. These products move through the air and disperse evenly throughout an enclosed area. However, unlike fumigants, which dissipate entirely in the air, these applications leave residues on plant and soil surfaces which may be a reentry hazard to workers. Therefore, as with fumigants, the Agency proposes that the reentry-restricted area be the entire enclosed area (§ 170.66(b)(2)). Unlike fumigants, if these pesticides have a reentry interval listed on the pesticide label requiring a longer reentry restriction than "until vapors have dispersed", it must be observed.

Other applications in greenhouses may involve soil-incorporation or application to the soil or base of plants, using low pressure and coarse spray

droplets. These applications tend to remain in the area to which they are directed and usually present a low hazard to workers at nearby benches or walkways. The Agency proposes a reentry-restricted area for such "soil-directed" application limited to the bench or area to which the pesticide is directed (§ 170.66(b)(3)). However, if the pesticide labeling requires the use of a respirator for ground applicators of the pesticide, then the pesticide is toxic by the inhalation route of entry and often highly volatile. Workers nearby may be at risk if the vapors move off the target area. Therefore, these pesticides, even if they meet the other criteria for "soil-directed" applications, must meet reentry requirements for the "plant-directed" category.

All other applications in greenhouses are categorized as "plant-directed" applications. These are usually spray or dust applications. These pesticide applications tend to move off-target during application and may pose a hazard to workers at nearby benches or walkways; however, they do not necessitate vacating unprotected workers from an entire greenhouse, which may cover an area of an acre or more. The Agency proposes two options by which unprotected workers can be protected without vacating the entire greenhouse: (1) A nonporous subenclosure, such as a curtain system, can be formed around the area to be treated and left in place until the sprays or dusts have settled; or (2) the ventilation can be turned off during application and until the pesticide sprays or dusts have settled (§ 170.66(b)(4)). In the first case the reentry-restricted area is the pesticide-treated area; in the second case it is an area 25 feet in all directions from the border of the treated area. With little air movement, airborne spray and particulate matter will not drift far from the application site.

When "plant-directed" application techniques are used, the reentry-restricted area would be larger than the treated area due to concern over airborne particulates and spray drift posing an inhalation hazard to nearby workers. After sprays or dusts have settled, the inhalation hazard from drift is removed. Between the time when the pesticide sprays or dusts have settled and the end of the specific reentry interval (if any exists for that pesticide), the reentry-restricted area would consist of the treated area only. Unprotected workers can resume work at nearby benches or use walkways between benches.

g. Nurseries. The Agency proposes that reentry in nurseries be governed in a manner similar to reentry in greenhouses, with certain exceptions (§ 170.56(b)). Nurseries generally are not able to control drift hazards through control of ventilation and partitioning. While adequate data on pesticide drift during application in nurseries are lacking, the Agency believes that pesticide drift during application represents a significant hazard to nearby nursery workers. This is due to production areas which are closely spaced, and often of small, even single-plant, size.

The Agency therefore proposes to establish reentry-restricted areas in nurseries as in greenhouses, determined by the method of application. For soil-directed applications the reentry-restricted area would be the pesticide-treated area, except for inhalation hazard pesticides. For "downward-directed" (as defined) applications the restricted area would extend 10 feet on all sides and 25 feet downwind. For all other applications, including aerial, high-pressure, and "upward-directed" application, the restricted area would include any areas outside the treated area that are moistened or dusted under the particular conditions of application. The Agency believes such reentry-restricted areas are a reasonable approach to reducing drift hazards in nurseries.

J. Decontamination

1. Proposal and rationale. The Agency proposes that workers be provided with water, soap, and single-use towels for purposes of decontamination after exposure to pesticides or pesticide residues (§§ 170.18 and 170.38). The Agency believes that the proposed decontamination provisions would reduce the incidence of eye injuries and skin irritation in workers, as well as reducing the risk of chronic effects from routine exposure to pesticides.

Workers entering pesticide-treated areas after reentry intervals have expired may be routinely exposed to pesticide residues. Exposure is primarily dermal, but may be oral or ocular through hand-to-mouth and hand-to-eye transfer. Acute pesticide poisoning risk under these circumstances is generally expected to be low; however, routine occupational exposure to low levels of dislodgeable residues may present significant chronic risks to workers.

Handling and early reentry activities present a much higher risk of accidental exposure and acute injury than does entry into treated areas only after the reentry interval has expired. The

Agency has identified two types of emergency exposure scenarios which are applicable during handling and early reentry tasks: Eye contamination and whole-body contamination. Accidental eye contact with a pesticide with high eye irritation potential may result in eye damage. Large spills of the pesticide being mixed or loaded may contaminate much of the body, and flaggers may be directly sprayed during application. There is also potential for "hot spots" in fields following application which would expose early reentry workers to higher concentrations of residues than would otherwise be expected.

Washing is a generally accepted practice for reducing dermal exposure to pesticides and pesticide residues. Washing before eating, drinking, or using tobacco can reduce oral exposure as well, which can occur if pesticide residues are transferred from hands to mouth. Washing before using the toilet is also important, since the scrotal skin absorbs pesticides approximately 12 times more efficiently than the skin of the forearm.

Immediate flushing with water is the commonly accepted emergency response for direct eye and dermal exposure to pesticides. If significant delay occurs, permanent eye damage, severe skin irritation, or significant dermal absorption can result. The Agency is aware of at least one instance in which washing appeared to be lifesaving (Hayes, 35). Two workers were splashed with parathion. One worker, who bathed and changed clothes, showed no symptoms. The other worker, who did not bathe or change clothes, died in less than 24 hours.

2. *When required.* Water, soap, and single-use towels would be made available during any work activity where there is potential worker contact with concentrated or diluted pesticides or with surfaces that have been treated with pesticides, including duff, soil, other planting media, standing water, or agricultural plants themselves. For pesticide handlers and early reentry workers, decontamination provisions would be required at all times since these activities harbor the greatest potential for adverse effects. For persons working in treated areas after the reentry interval has expired, the Agency proposes to limit the requirement to activities in areas that have been treated during the current growing season. While reentry intervals are established by the Agency in an attempt to limit entry when adverse effects are most likely, residues of concern have been known to persist long after such intervals under certain

climatic conditions. For example, a recently reported poisoning incident in California occurred following worker reentry at least 90 days after application. These provisions will ensure that field workers may routinely wash when pesticides are being used where they work, yet not impose a decontamination requirement where pesticides are never used or have only been used in previous years or growing seasons. This proposal appears to strike a reasonable balance between the concern for dissipation of residues and avoiding needless costs.

3. *Water quality.* The Agency proposes to require potable water for decontamination. The Occupational Safety and Health Administration's Field Sanitation Standard (29 CFR 1928.110) requires potable water in the fields for hand laborers, intended not only for washing but also for drinking purposes. Even though EPA's proposed requirement is intended to provide water only for washing, in practice the water may be used by workers for drinking as well. In addition, only "potable" water can be defined in such a way that noncompliance can be clearly ascertained. Potability can be determined when necessary by testing of concentrations of specific contaminants. Either State or local drinking water standards or the Federal Interim standards (40 CFR Part 141) would be acceptable measures of potability.

4. *Water temperature.* The Agency proposes that water be provided at a temperature that will not injure the eyes. Extreme temperatures may injure the eyes, and would in any case discourage worker use, rendering the provision ineffective. The Agency also considered two other options: First, no temperature requirement, which would be consistent with the OSHA Field Sanitation Standard; second, requiring the water to be within a specific temperature range, such as not greater than 100 or less than 40 degrees F. Comment is solicited on this water temperature proposal.

5. *Exception for short-term exposure.* The Agency considered the option of an exception from the decontamination requirements for workers who are exposed to pesticides for less than three hours, or some other time interval. Contamination levels may increase with time of exposure; in addition, the use of a three hour exception would be consistent with the OSHA Field Sanitation Standard. Comment is solicited on this option.

6. *Water quantity.* Water must be made available in sufficient quantities for normal hand and face washing by all

workers using the water, and for emergency whole-body decontamination when such accidental exposure is possible, as in the case of handlers and early reentry workers. The Agency considered requiring minimum starting volumes of water based on the type of work activity along with a replenishment requirement. While such specification standards may be easier to enforce, actual water needs are expected to vary widely with circumstances such as weather and number of workers. The Agency proposes to require "an adequate supply" of water, allowing flexibility according to the particular circumstances. Any available supply of potable running water will meet the quantity requirement. It is anticipated that most greenhouses, many nurseries, and some farms and forests will have running water available. The Agency solicits comment on this water quantity proposal.

7. *Water storage.* Water tanks can be contaminated due to backflow from mix containers and application equipment during mixing/loading. Therefore, this proposal requires separate water sources for mixing of pesticides and for decontamination, unless the water source is equipped with valves to prevent backflow during mixing operations, or unless a source of running water is used.

8. *Water location.* The Agency proposes that the water be reasonably accessible from each worker's place of work. The Agency considered requiring a specific maximum distance from each worker within which the water must be located. Such an approach is taken by the OSHA Field Sanitation Standard. However, the Agency believes that "accessibility" will vary widely with the particular establishment, depending on the location of access roads by which water supplies must be transported and the movement of workers through the fields. The Agency intends that water be located as near to workers as is practicable under the circumstances, so that workers would not be discouraged from routine washing by the distance they must travel to the facilities. The water may not be located within a pesticide-treated area before expiration of its reentry interval. The Agency solicits comment on this water location proposal.

9. *Eye flushing.* The Agency proposes that an eye flush dispenser be provided during handling and early reentry situations involving a product which is a potentially significant eye irritant, i.e., Toxicity Category I or II for eye irritation, signified to the user by a

goggles or face shield requirement on the labeling (§ 170.18(c)). The dispenser would be immediately available for emergency use, e.g., it would be carried by the handler on his person or vehicle. Since such dispensers deliver a slow, constant stream of water, the quantity of water need not be large to achieve adequate flushing; a minimum of 1 pint is proposed. The United States Forest Service has a similar dispenser requirement for pesticide applicators in the Southeastern U.S. The Agency solicits comment on whether the dispenser needs to be available during all activities or only certain ones, whether each worker should carry a dispenser, and whether carrying a one pint dispenser on one's person represents a health hazard from possible heat stress due to the extra weight.

10. *Other requirements.* For efficient pesticide removal, the surfactant qualities of soap are necessary during washing. The agency therefore proposes to require that soap be made available. The Agency also proposes to require single-use drying materials, such as paper towels, which would lessen the likelihood of washed hands being recontaminated by workers wiping them on their clothing. However, the Agency has received comments that workers may tend to incompletely wipe off residues with the towels rather than washing, and that vigorous rubbing could cause an abrasion of the skin and actually increase absorption of pesticide residues.

In addition, a change of clean clothing, such as a "one size fits all" overall, would be available at each decontamination location for handlers and early reentry workers for use if clothing becomes saturated by a large spill or direct spraying. This would encourage workers whose clothing has been penetrated by a pesticide to remove it immediately to avoid or limit dermal absorption.

11. *Other Federal and state regulation related to the proposed decontamination requirements.* The OSHA Field Sanitation Standard includes requirements for water for handwashing, and some States have created requirements of this type which differ slightly from the OSHA standard. While such general sanitation requirements would provide for adequate pesticide decontamination under many circumstances, they do not cover many workers the Agency proposes to protect nor provide for adequate protection from certain hazards.

For example, coverage of the Field Sanitation Standard is limited to agricultural establishments where

eleven or more employees are engaged on any given day in hand-labor operations in the field. However, the Agency believes that persons who handle pesticides, as well as workers in greenhouses, nurseries, and forests, and on small farms, may face an unreasonable risk of pesticide exposure which a decontamination water requirement would help to reduce. EPA also proposes a backflow valve requirement to address the problem of backsiphoning, a water temperature requirement to preclude eye injuries, and a prohibition on locating the water within a pesticide treated area. These requirements are not found in OSHA's standard, yet the Agency believes they are necessary to reduce the risk of specific pesticide hazards. OSHA exempts workers who are in the field less than three hours from its requirements, whereas the Agency believes that significant pesticide exposures requiring decontamination could occur during this time. Finally, OSHA specifies a maximum distance of the facilities from the worker's place of work. EPA believes that accessibility will vary by geography and layout of establishment and cannot be universally defined; however, a location within the one quarter mile OSHA standard would be considered reasonably accessible by EPA.

Beyond these differences, EPA has employed the regulatory wording in OSHA's standard whenever possible to avoid any inference on the part of responsible parties of the need for duplicative facilities. While interpretation of the Field Sanitation Standard clearly rests with OSHA and the courts, the Agency believes that an employer in compliance with EPA's decontamination requirements would to a great extent be assured of compliance with OSHA's handwashing requirements, such that more than one facility would not be necessary.

For the foregoing reasons, the Agency believes it is necessary to include decontamination requirements in this proposal despite some overlap with OSHA and state regulations. However, the Agency does not intend to preempt these other general sanitation requirements for agricultural workers whose purpose and provisions may be similar to those in this proposal. Toilet and drinking water facilities for agricultural workers, such as are contained in the OSHA standard, are entirely outside of the purview of this proposal. EPA solicits comment on any of the issues raised here.

K. Emergency Duties

1. *General.* Although the Agency believes that precautions such as reentry restrictions, PPE, decontamination procedures, and training will decrease the frequency of acute pesticide poisoning or injury incidents, medical emergencies involving agricultural workers and handlers may still arise. In such cases prompt medical treatment is a necessity to mitigate the extent and intensity of the injury or poisoning. Many agricultural laborers migrate throughout the year and may not be familiar with a physician or treatment center in each place they work. EPA proposes that all workers be informed of the name, address, and telephone number of the nearest physician, clinic, or hospital equipped to provide medical care in a pesticide poisoning or injury emergency. This information would be required to be displayed in a prominent location on the agricultural establishment at all times (§ 170.32(f)(1)).

2. *Emergency transportation.* In a pesticide poisoning or injury emergency, the victims may be unable to transport themselves to the nearest medical facility with private or public transportation. EPA proposes that prompt transportation to an appropriate medical facility be made available to workers and handlers who have grounds to suspect pesticide poisoning or injury, or when a pesticide exposure has occurred which might reasonably be expected to result in pesticide poisoning or injury (§ 170.34(a)).

3. *Emergency information.* In a suspected pesticide poisoning or injury, effective medical care can be provided only through a correct diagnosis and prompt administration of the appropriate antidote or treatment. A doctor must know the name of the product or active ingredient to which the worker or handler has been exposed. Information can then be located about the common signs and symptoms of pesticide poisoning or injury specific to that pesticide, diagnostic procedures, and appropriate treatment programs, including the antidote if one exists. EPA proposes that in an emergency, workers and handlers be provided, if available, the product name, registration number, active ingredient(s), and first aid or antidote information for any agricultural pesticide product which has been used on the property (§ 170.34(b)). Pesticide users must likewise provide any other available information relating to pesticide use which may be useful for treatment. This information would be required to be provided to workers who

have grounds for suspecting pesticide poisoning or injury to themselves or to another worker, and to medical treatment personnel, upon the request of those persons. EPA believes that this information normally is available to pesticide users from the label of the product, although the requirement to provide information would not specifically require that the user maintain records or keep pesticide labels or containers.

L. Cholinesterase Monitoring

1. *Proposal and rationale.* EPA proposes testing of cholinesterase levels in commercial pesticide handlers who are exposed to Toxicity Category I or II organophosphate pesticides for 3 consecutive days or for any 8 days in a 21-year period (§ 170.20).

Significant or prolonged exposure of workers to organophosphate pesticides can result in significant cholinesterase inhibition, leading to systemic illness and other adverse health effects (Maddy and Edmiston, 54; Coyle, 14; Morgan, 61; Hayes, 36). A worker's cholinesterase level may drop below a safe level because of excessive exposure due to poor work practices or the occurrence of an accident (Coyle et al., 15). A variety of biological tests, including blood and urinary metabolite testing, can be used to detect an individual's pesticide exposure. However, many of these tests are relatively difficult and expensive to perform. Measurement of the level of the enzyme cholinesterase in the blood has been demonstrated to be a satisfactory biological index of excessive organophosphate exposure (Coyle, 14) and is widely and inexpensively used for this purpose. Cholinesterase monitoring would accomplish a twofold purpose: (1) It would detect significant organophosphate pesticide exposure that would warrant worker removal from exposure, and (2) it would serve as a surveillance mechanism to identify workplace situations which require modification to minimize exposure to organophosphate pesticides.

California, at least one national lawn-care company, and at least two major Florida agricultural producers have had cholinesterase monitoring programs in operation for 8 to 12 years. Experts associated with these programs believe that cholinesterase monitoring has been successful in reducing worker exposure to pesticides and identifying workplace situations which require modification (Yeary, 110; Maddy, 52; Ames, 114). Some commercial applicator firms find cholinesterase monitoring an effective means for improved supervision and education of employees who handle pesticides and as a result employees are

less likely to experience adverse effects from exposure (Yeary, 110; Mingle, 58).

Major agricultural producers with cholinesterase monitoring programs have reported that monitoring of their field workers and handlers has been significant from a profit and loss standpoint. They claim that the cost of their liability insurance premiums (purchasing high deductible policies), plus the cost of their payouts for accidents not covered by insurance (deductible not reached), plus the cost of cholinesterase monitoring, is less than the cost of the liability insurance with low deductible policies.

The deficiencies of cholinesterase monitoring as a regulatory tool include: (1) Cholinesterase depression and the symptoms associated with it can also be caused by illness other than organophosphate poisoning, and by excessive consumption of alcohol (Morgan, 61); (2) there is variability in the plasma cholinesterase tests results; (3) normal cholinesterase levels vary markedly among individuals; and (4) there is variability in quality control among laboratories. The Agency believes that these drawbacks can be overcome if appropriate guidelines are followed.

2. *Workers to be monitored.* The Agency considered whether to include in the cholinesterase monitoring provisions: (1) All workers, including field workers, (2) pesticide handlers only, or (3) commercial pesticide handlers only. The Agency proposes to require monitoring of commercial pesticide handlers. Pesticide handlers are at greatest risk from acute effects of organophosphate pesticides because they are exposed to cholinesterase-inhibiting pesticides themselves rather than their residues. Commercial handlers tend to be at greater risk than private handlers due to greater frequency of handling activities; in addition, cholinesterase monitoring would impose significant costs on private handlers. EPA anticipates that reentry intervals will significantly reduce the exposure of field workers to organophosphate pesticides. The Agency solicits comment on the proposed types of workers to be monitored, including whether the requirement should be extended to private handlers.

3. *Pesticides to be monitored.* The Agency proposes to require cholinesterase monitoring based on a handler's frequency of exposure to Toxicity Category I or II organophosphate pesticides. While it is recognized that N-methyl carbamate pesticides can also depress

cholinesterase levels, the cholinesterase test is not a useful indicator in this case because it generally shows normal levels within a few minutes or hours after carbamate exposure (Morgan, 61). This is due to the relatively rapid regeneration of cholinesterase after N-methyl carbamate exposure. However, the Agency proposes that both classes of cholinesterase inhibiting pesticides be labeled so that users would be aware of possible cholinesterase inhibition from their use. Such labeling could be especially important if the worker's cholinesterase levels are already depressed from earlier exposure.

The Agency is aware that California has undertaken an evaluation of its cholinesterase monitoring program (Ames et al., 114). It indicated among other things that certain pesticides, primarily organophosphates in Toxicity Category I, may cause more poisoning incidents in that State than other pesticides. The Agency considered whether the proposed monitoring requirement should therefore be limited to a smaller subset of pesticides. It would be possible based on this data to identify a "top 5" or "top 10" incident-causing pesticides. Alternatively, the Agency could limit the exposure trigger for monitoring to organophosphates in Toxicity Category I. The Agency solicits comment on these monitoring options, and any available data on incidents of cholinesterase inhibition among pesticide handlers.

4. *Exposure trigger.* States and companies have set different exposure triggers for when a worker must receive cholinesterase monitoring. California requires any worker exposed for 30 hours in a 30-day period to receive such monitoring. The concern with this hour-based trigger is the complexity of determining which workers need to receive cholinesterase monitoring. The Agency selected a day-based exposure trigger (3 consecutive days or any 8 days in a 21-day period) because it would be relatively easy to identify workers who meet the trigger. Exposure on a given day is intended to mean exposure for any part of the work day. This trigger excludes handlers receiving less frequent organophosphate exposure because cholinesterase levels regenerate at a rate of approximately 1 percent per day and are less likely to reach dangerously low levels with less frequent exposure (Coyle, 14). The Agency seeks comment on whether a more sensitive trigger (with fewer days of exposure) would be more appropriate in identifying persons for whom monitoring would be useful.

The Agency considered the option that early symptoms of exposure should trigger the monitoring requirements instead of a day-based trigger. As another option, a symptom-based trigger may be useful to bring individuals into a monitoring program who are not covered by the day-based trigger, yet who may be more sensitive to cholinesterase inhibition than the average person. The Agency believes that the usefulness of monitoring is as a preventative requirement. A symptom-based trigger would necessarily allow the first cholinesterase inhibition effects to occur in the hope of preventing future, more severe effects. Initial cholinesterase inhibition symptoms are often difficult to distinguish from some other common illnesses. The Agency solicits comment on the difficulty, costs, and advantages of both day-based and symptom-based approaches.

5. *Employer responsibilities and benefits.* Responsibility for cholinesterase monitoring of pesticide handlers rests specifically with the employer of the handler. The Agency proposes to require the employer to contract with a licensed physician to provide cholinesterase monitoring services. This agreement must provide that the physician use Agency guidelines or other equivalent standardized procedures. The agreement must also require the physician to notify the employer under three circumstances: When the handler's cholinesterase has decreased to a level of concern, so that improvements in work practices are needed to reduce organophosphate exposure and raise cholinesterase levels; when dangerous levels have been reached that warrant immediate removal from exposure; and when cholinesterase has regenerated enough to allow the handler to return to work involving cholinesterase inhibitor exposure. This proposal would require the employer to follow all recommendations of the physician concerning handler monitoring, including frequency of testing and recommendations for removal from and return to work involving cholinesterase inhibitor exposure.

In order for the persons being monitored to understand that they may have been over-exposed to cholinesterase inhibitors and that they should reduce or eliminate exposure in order to protect themselves, the Agency proposes that the employer assure that handlers being monitored be informed when a physician has recommended either modifications to work practices or removal from exposure due to excessive cholinesterase inhibition. This

information would permit such handlers to protect themselves from further exposure, both on the job at which they are monitored and at other times.

The Agency proposes that employers of commercial pesticide handlers maintain a record of any monitoring agreement, as well as exposure records for all employees who handle organophosphate pesticides with the signal word DANGER or WARNING on the label, including the date of handling and name of the pesticide handled (§ 170.20(c)). These records would be used for enforcement purposes to determine if the employer has a mechanism for cholinesterase monitoring of employees in place, and if employees handle organophosphate pesticides frequently enough to require monitoring.

Based on information provided by state enforcement officials, EPA expects that most commercial handler employers can readily identify their workers who frequently handle pesticides and who would be covered by this provision, so that extensive recordkeeping requirements should not be necessary to enforce this provision. Employers generally maintain similar records for the day-to-day operation of their businesses. Basing the trigger on the number of days exposed rather than the number of hours exposed would further minimize the recordkeeping requirements.

The employer of the pesticide handler most likely would bear the cost of cholinesterase monitoring as part of the cost of doing business. Cholinesterase monitoring indicates to workers there is a concern about their health and safety, improves employer supervision of work practices, and educates the worker and the supervisor about the toxic effects of pesticides. These factors may reduce the extent and severity of accidents at the workplace which can lead to reduced insurance costs and reduced medical expenses.

6. *Monitoring personnel.* California requires the employer to contract with a physician for monitoring services. Some companies use computerized laboratory equipment under the supervision of a technician for the same purpose. The Agency proposes that employers be required to employ or contract with a licensed physician to supervise monitoring. A physician is necessary to interpret cholinesterase test results and recommend appropriate action in accordance with guidelines for cholinesterase monitoring.

7. *State activities.* Some States and companies currently have adequate cholinesterase monitoring programs in

place. In order to minimize disruptions to these programs, the Agency proposes that States have discretionary authority to approve cholinesterase monitoring programs that are substantially equivalent to this proposal. Employers in States not exercising this oversight of monitoring must meet the minimum requirements in this proposal.

States may assist in implementing these provisions in other ways. They may reproduce and make the guidelines for cholinesterase monitoring produced by EPA available upon request to pesticide handlers, employers of pesticide handlers, and physicians. They may also require physicians to report removals, such as California does, and recommend modifications of agricultural pesticide handling practices to avoid excessive exposure.

8. *Guidelines from EPA.* The Agency considered including requirements for specific cholinesterase monitoring procedures, such as frequency of testing and removal levels, in this proposal. While some data are available on which to base such requirements, the Agency believes this would intrude into the area of professional medical judgment, as well as be difficult to enforce against persons who are so indirectly connected with actual pesticide use. The Agency proposes instead to furnish States with guidelines for the cholinesterase monitoring program. These guidelines will cover areas such as: (1) Appropriate test methods for performing cholinesterase determinations, (2) establishing baseline levels, (3) considerations in determining the frequency of testing, (4) recommendations that the same laboratory and method be used for repeated testing, (5) laboratory quality control procedures, and (6) recommendations for when a worker should be removed from organophosphate pesticides based on the cholinesterase measurements.

9. *Availability and certification of laboratories.* Presently, very few laboratories are performing cholinesterase testing. However, the Agency believes that an adequate number of laboratories have the technical capacity to perform the tests, and that the clinical laboratory market is very competitive and would respond to the need. The California State Department of Health approves the laboratories performing cholinesterase testing in that State. While the Agency does not propose to require certification at the Federal level or through the States, States may undertake to certify the laboratories.

10. *Reevaluation of cholinesterase monitoring.* The Agency proposes to reevaluate the proposed cholinesterase monitoring requirements after three years to determine the effectiveness of the program. Over this time period sufficient experience would be gained to enable a well-designed study to determine whether cholinesterase monitoring on a nationwide basis should be continued, perhaps with modifications, or eliminated.

M. Juvenile Workers

The present Part 170 contains no requirements uniquely applicable to juvenile workers or handlers. The Agency has considered the risk of pesticide exposure to such workers and has concluded that the information available at this time does not provide an adequate basis for proposing special requirements based on age. Therefore, juvenile and adult workers are treated alike under this proposal.

IV. Proposed Labeling Requirements

A. Background

It is a violation of FIFRA section 12(a)(2)(C) to use a pesticide in a manner inconsistent with its labeling. This provision of FIFRA requiring users to abide by the pesticide label is the primary (but not the sole) means of conveying and enforcing use restrictions designed to protect human health and the environment. Although EPA has authority under FIFRA section 3(d)(1)(C)(ii) to promulgate regulations governing pesticide use, it has not chosen to do so here because of the practical difficulties of disseminating the regulatory requirements without reliance on the pesticide label. The pesticide labeling system, popularly recognized as the definitive source of regulatory requirements, has been used almost exclusively for this purpose. The Agency thus believes that the requirements of Part 170 should be incorporated into the labeling of pesticide products.

Moreover, FIFRA section 2(q)(1) provides that pesticide labeling must contain both necessary directions for use and warnings or caution statements which, if complied with, are adequate to protect health and the environment. The Agency proposes to find that worker protection standards are necessary to protect health of agricultural workers and pesticide handlers, and therefore should be required to be placed on pesticide labeling.

In 1984 the Agency issued a proposal (49 FR 37967) to revise and consolidate pesticide labeling requirements, now found in 40 CFR Part 162, in a separate

Part 156 for each reference. The Agency proposed to require essentially the same labeling statements as had been imposed by PR Notice 83-2. In the preamble to the proposal, EPA stated that the Agency was in the process of reevaluating Part 170, and that it intended to propose new worker protection standards in the future. EPA stated that if this reevaluation resulted in new or different labeling requirements than proposed, the regulation would be revised. In May, 1988, the Agency issued the final rule creating Part 156 (53 FR 15952).

B. Proposed Approach

Part 170 will be implemented and enforced through the inclusion of its provisions as part of product labeling. Therefore, the Agency proposes to create a new Subpart K of Part 156 to contain required worker protection labeling statements (§§ 156.200 through 156.217). The distinction between label and labeling in FIFRA section 2(p) allows the Agency some flexibility in implementation. EPA could elect to make the provisions part of the "label," which would require that they appear on the material actually attached to the container. Alternatively, EPA could impose the requirements as part of "labeling," in one of two ways: by requiring that material actually accompany the product during distribution and sale, or by requiring that it be referenced on the label but not accompany the product. Each of these alternatives is legally sufficient to bring the requirements under the FIFRA misuse provisions for enforcement purposes.

In deciding among three principal options for implementing the requirements, EPA therefore considered the type and extent of information being required by Part 170, and the need for such information to actually accompany the product in commerce.

The Agency considered and rejected the option of requiring that the entire text of Part 170 accompany each product in sale and distribution, on the label or in supplemental labeling. Although this would convey the requirements legally, and in the most direct manner inform users of their obligations, the Agency believes it to be a cumbersome, expensive, and unnecessary implementation approach. Not only is the regulatory language long and relatively complex, the regulation includes a number of pesticide-specific provisions that are not applicable to all products.

EPA also considered and rejected an approach at the opposite end of the spectrum, that of simply referencing Part

170 on the label and not requiring that it accompany the product in sale and distribution. This would accomplish the necessary legal connection between the pesticide label and the worker protection standards, while not burdening registrants with the expense of preparing and distributing large volumes of supplemental labeling. On the other hand, this approach would place the burden on the pesticide user to obtain a copy of Part 170 himself, and translate its provisions to each specific pesticide product used.

Obtaining Part 170 would not generally be difficult. The Agency would make copies widely available through a variety of user sources, such as the USDA Cooperative Extension Service, State pesticide and agricultural agencies, user associations and farmworker groups. However, application of its provisions to individual pesticides could be complicated for a user, particularly one who uses pesticides infrequently.

The proposed approach is a compromise between these two extremes. The Agency proposes to incorporate by reference on the label the majority of Part 170 requirements. However, some requirements that are product-specific, such as reentry intervals and PPE, will be required to be on the labeling of each individual product. In this way, EPA hopes to gain the best tradeoff among the needs of registrants, the cost of extensive new labeling materials, the problems of label clutter, complexity and readability, and the needs of users to have essential information available.

C. Applicability

Because the proposed Subpart K labeling requirements are intended to implement the worker protection standards of proposed Part 170, their applicability (§ 156.200) is defined by the applicability requirements of that Part (§ 170.3). The registrant must determine whether the labeling requirements of Subpart K apply to a particular product. The difficulty facing registrants is that product labels often do not make the fine distinctions as to intended use or user so that the Agency can clearly determine that the labeling requirements do not apply. The result is that all products which are intended generally for agricultural use on plants would be required to be labeled with worker protection statements. Similarly, the requirements will apply to products bearing multiple uses, some of which may be exempt from worker protection statements.

Some products will clearly fall within the exceptions given in § 170.3. Products applied solely by injection methods, attractants, repellents, disinfectants, and vertebrate control products are by their very nature product types that can be determined to be exempt. Registrants of products labeled only for such uses should not be required to modify their labeling in any way to comply with the requirements of Subpart K.

On the other hand, the Agency's experience is that registrants do not always register separate products in order to distinguish, for example, public mosquito control and private mosquito control uses; commercial and noncommercial uses in greenhouses and forests; weed control in agricultural fields and the same weed control on rights-of-way; or golf course turf use and other turf use. More likely is the registration of a single product for the entire spectrum of turf use or weed control.

In order to determine that a product is clearly exempt from the requirements of Subpart K, a registrant may be required to obtain a new registration by "splitting" his registration administratively to segregate the exempted uses. Under § 152.130(b), the Agency permits a registrant to market a single product bearing differing subsets of registered uses without requiring separate registration, provided that in splitting the uses, the precautionary labeling and use directions would not vary. Because splitting the uses for Subpart K purposes would result in labeling variations between the products, the split cannot be accomplished under single registration. The Agency would accept applications for amended registration for this purpose.

D. Reference Statement

Section 156.205 proposes that a statement referring to Part 170 appear on the label of each product to which Part 170 applies. The statement in § 156.205, the wording of which would be used exactly, briefly identifies the subject matter and scope of Part 170, draws the reader's attention to the fact that the regulations are considered to be labeling, and notes that State requirements may be more restrictive than Part 170.

The reference statement would be required to appear on the label of the pesticide, that is, attached to or printed on the immediate container of the pesticide. It could not be placed solely in supplemental labeling that accompanies the product, although it may also appear there at the registrant's discretion.

E. General Statements

Section 156.206 proposes a number of general labeling requirements, which are identical or similar to those contained in PR Notice 83-2, including the following: (1) The general statement that a pesticide not be applied so as to contact unprotected workers (minor wording changes in the statement required by the PR Notice are proposed); (2) the requirement that the signal word appear in Spanish as well as English for products in Toxicity Categories I and II; and (3) the Spanish language statement warning non-English-speaking workers to obtain assistance in understanding the pesticide label before handling the product.

The Agency is further proposing in § 156.206(c) that the label of a product specifically identify products that are organophosphates, N-methyl carbamates, or fumigants.

Organophosphates and N-methyl carbamates can cause cholinesterase inhibition. Identification on the label of these chemical classes is necessary so that users who are employers of pesticide handlers will be aware that (1) use of the product if it is an organophosphate may trigger a requirement for cholinesterase monitoring, and (2) a monitored worker who has been removed from exposure to cholinesterase inhibitors, including N-methyl carbamates, should not be exposed to the product.

Similarly, greenhouse users must be aware that a product is a fumigant in order to comply with the reentry restrictions applicable to fumigants (§ 170.66(b)(1)). Also, because of the intensive hand labor work in greenhouse cultivation, the fact that reentry is restricted for a certain period of time may be critical to a decision about whether or when to use a fumigant. Under this proposal, a product would be identified clearly as a fumigant, providing the user with the means to make an informed decision.

Statements identifying a product as an organophosphate, N-methyl carbamate or fumigant would be permitted to appear in any of several ways, but would be required to be placed on the label itself, not just in supplemental labeling. The statement is directed to pesticide handlers and supervisors of workers, who are responsible for the reentry or monitoring requirements arising from use of the pesticide. For this reason it is important that the statement be placed where such persons will readily observe it. Currently, pesticides that inhibit cholinesterase are identified on the label in a "Note to Physician," generally located on a side or back

panel, and may be overlooked by users. Because the statement relates to requirements for which the user can be held responsible, greater prominence than the "Note to Physician" is needed.

The Agency also proposes that the labeling of highly toxic pesticides bear statements requiring frequent contact with handlers of those products (§ 156.206(d) and (e)). Most pesticide poisonings and injuries result from handling the most highly toxic pesticides, which under certain circumstances can cause loss of consciousness in a short period of time. Thus, a person working alone might not be able to summon help in a poisoning emergency. Frequent contact with other persons would increase the chances that a worker would receive prompt medical treatment in case of an accident and would thereby lessen the chance of a fatality.

The Agency proposes to require contact only for those pesticides with the signal word DANGER and the word POISON printed in red and the skull and crossbones symbol on the front panel of the pesticide label (those in Toxicity Category I for oral, dermal, or inhalation toxicity). Pesticides in Toxicity Category I for skin and eye irritation, while causing severe effects, are seldom life-threatening. However, fumigant pesticides are of such high toxicity when used in greenhouses, that all fumigant formulations for use in such enclosed structures would have these requirements for contact.

The Agency proposes that the handler of a fumigant in an enclosed structure remain in the direct line of vision of an observer at all times during the handling operation. In addition, the observer must have available all of the PPE required on the fumigant product labeling for handling the fumigant in an enclosed area. The observer must be able to immediately rescue a handler who has been overcome by the fumigant because the emergency response time is very short for these hazardous pesticides. There have been cases reported where rescue workers who were not adequately protected have also been poisoned.

Highly toxic pesticides being handled outdoors require fast, but not necessarily immediate, emergency response time. The Agency has determined that maintaining verbal or visual contact at intervals not exceeding 2 hours is sufficient contact for such uses.

F. Reentry Statements

The Agency is proposing generic interim reentry intervals that would

offer substantial protection to workers until the Agency is able to prescribe product-specific intervals based on actual data. The Agency proposes to incorporate a phased approach to reentry, with decreasing requirements for personal protective equipment (PPE) at longer intervals after application, coupled with increasing types of permitted work in treated fields. At the shortest time after application, hand labor tasks would be prohibited altogether, and other tasks permitted only when wearing the most protective PPE. Later, all types of tasks could be performed by workers wearing certain PPE. Finally, after a further period, no PPE would be required.

In translating these requirements into pesticide labeling statements, the Agency proposes in § 156.210 to include statements of three types covering the three time periods after application: before a minimum reentry interval (sprays have dried, etc.); between the minimum reentry interval and the numerical reentry interval for the product; and after the reentry interval, after which task restrictions and PPE are no longer necessary. This proposal does not attempt to address the "no contact" situation (see, e.g., § 170.46(a)(1)) through a labeling statement, because a decision about whether a worker will have "no contact" is not product-dependent but relates to particular circumstances of use.

In order to determine which reentry labeling statements are required, the registrant of a typical product would first determine whether the product is subject to a numerical reentry interval under § 156.210(d) (product-specific) or § 156.210(e) (interim). If the product is not subject to a numerical interval, only the statement pertaining to the minimum reentry interval (§ 156.210(c)(1)) would be required, which would appear in the use directions. If on the other hand a numerical interval is applicable to the product, the statement pertaining to the time between the minimum and the numerical intervals (§ 156.210(c)(2)) would be required as well on labeling. This is needed to determine the PPE for early reentry workers, since the PPE may differ for these two reentry periods (§ 156.217).

In order to determine whether or not a product has a numerical reentry interval, the registrant would consult a list of active ingredients and corresponding reentry intervals which the Agency proposes to prepare to facilitate this process. The list would be based on an assessment of available toxicity data on these active ingredients as applied to the interim and product-

specific reentry interval criteria proposed in § 156.210 (d) and (e). The list would be maintained by the Agency as a reference for registrants and others.

Section 156.210(f) proposes to allow registrants and others to propose to modify numerical reentry intervals established by this regulation by submission of appropriate data, including Part 156 data or other medical, epidemiological or health effects studies. Based on such submitted data, the Agency would review the reentry interval of the product in question and would establish a shorter or longer interval if appropriate. The Agency would also reevaluate the reentry interval of a pesticide product upon entry into Special Review (§ 156.210(e)), taking account any available data, including indication of chronic effects, relevant to assessing reentry hazards.

G. Posting Statement

The Agency is proposing in Part 170 that some treated areas be posted. For farms and forests, posting would be required only if the pesticide has a reentry interval greater than 48 hours. On the other hand, all applications in nurseries and greenhouses would require posting, regardless of the length of the reentry interval. The Agency proposes in § 156.212 to require that affected product bear a statement instructing the user to post the treated area.

Since product labeling does not generally distinguish between nursery, greenhouse, and non-greenhouse/nursery uses, and the Agency does not expect registrants to amend their registrations to do so, the wording of the alternate posting statements in proposed § 156.212 has been crafted to make the necessary distinctions between farm/forest use and nursery/greenhouse use and between reentry intervals.

H. Personal Protective Equipment Statements

Section 156.215 proposes that all products to which Subpart K applies bear appropriate minimum personal protective equipment (PPE) statements. These statements would apply to all handling (mixing, loading, application etc.) activities (§ 156.216) and early reentry activities (§ 156.217) by workers involving the product.

In order to determine minimum PPE requirements to be placed on labeling, registrants would consult the tables found at § 156.216(b) for required PPE for handlers and § 156.217(b) for required PPE for early reentry workers. Registrants would use toxicity data on the formulated product (in the case of handler PPE) or active ingredients (in

the case of early reentry worker PPE) by route of exposure. If toxicity data by a route of exposure were lacking, the overall toxicity of the formulated product or active ingredients, as appropriate, would be used. Where a product has existing PPE requirements on labeling, the most protective of the requirements for each area of the body would be used (see unit III.H.2.d for further discussion).

Section 156.216(c) proposes certain modifications to the minimum handler PPE based on exposure pattern; registrants would also consult this section for applicable modifications to PPE wording. Section 156.216(d) proposes to allow registrants of products which will be diluted by the user to submit data on the product as diluted for use in order to have the handler PPE requirements modified for handlers other than mixer/loaders, since such handlers will be exposed only to the diluted product.

Section 156.216(f) and 156.217(d) would allow registrants and others to propose to modify the minimum PPE requirements established by this regulation by submission of appropriate data, including Part 156 data or other medical, epidemiological or health effects studies. Based on such submitted data, the Agency would review PPE requirements for the product in question and could establish different PPE if appropriate. The Agency would also reevaluate PPE for a product upon entry into Special Review (§§ 156.210(e) and 156.217(c)), taking account any available data, including indication of chronic effects, relevant to assessing reentry hazards.

I. Implementation of Labeling Changes

Implementation and enforcement of this Part depend upon the misuse provision of FIFRA section 12(a)(2)(C), which in turn depends upon the labeling of the pesticide. The Agency believes it essential to make the standards effective as soon as possible after promulgation of a final rule and will implement the labeling requirements of Subpart K rapidly, recognizing that a large number of products will be affected by the new requirements. To balance the needs of the Agency to rapidly implement the protective measures contained in Part 170, and the needs of registrants for an orderly labeling process, the Agency proposes the following labeling compliance policy.

1. *New products.* As of the effective date of the final rule, labels submitted with applications for new registration must be in compliance with Subpart K at

the time of registration. The Agency will review and approve labeling for new products under normal Agency procedures.

2. *Existing products.* Registrants of products that are currently registered as of the effective date of Subpart K will be required to amend product labeling to bring it into compliance with the new requirements. Because of the large number of products affected, and the Agency's limited resources for review, EPA proposes to require a certification statement for existing products rather than applications for amended registration. This will save resources in the Agency review time, and will permit faster introduction of properly labeled products into commerce since registrants will not have to await Agency approval of the amended language. Mindful of the scheduling of registrants' labeling operations, of the variable number of products for individual registrants and the large number of total products affected, the Agency proposes to develop a schedule for submission of certification statements. To assist in determining the most equitable and efficient implementation schedule, EPA requests comments and relevant information on the number of products potentially affected, details of labeling operations and critical path elements for accomplishing relabeling, both for products released for shipment and products in channels of trade, and any other factors that EPA should consider in developing a suitable and expeditious compliance schedule.

3. *Certification statement.* For each affected product, the registrant must submit to the Agency, by a date to be announced in the preamble to the final rule, a certification statement that all products being released for shipment after the date of the certification statement are in compliance with the labeling requirements of Subpart K. The certification statement would be similar to that used for other regulatory purposes, such as the PR Notice, would acknowledge the registrant's knowledge of the requirements, and would require certification by an authorized representative of the company that all products being released for shipment meet those requirements. The wording of an acceptable or required certification statement will be set out in the preamble to the final rule.

4. *Submission of labeling.* The Agency proposes to require the registrant to attach to his certification a copy of the product's final printed labeling bearing the revised labeling statements. The Agency may choose to review this

labeling as a check on the correctness of the registrant's compliance with Subpart K, but such reviews would be selective, and the Agency does not expect to routinely approve or disapprove the submitted labeling or notify the registrant.

5. *Time frames.* The Agency will announce in the final rule the time frames by which certification statements must be submitted to the Agency. EPA will also set time frames, after the certification submission date for compliance by products in channels of trade. EPA will consider permitting the use of interim measures such as stickering to meet the channels of trade compliance date.

6. *Failure to comply.* If a certification statement is not submitted by the date specified in the final rule, the Agency may issue a "Notice of Intent to Cancel" under FIFRA section 6(b). If, after certification to the Agency of compliance with Subpart K, the Agency determines that the product is not in compliance, or that the registrant has incorrectly labeled the product, the product may be deemed to be misbranded in violation of FIFRA section 12(a)(1)(E) or the Agency may issue a "Notice of Intent to Cancel" under FIFRA section 6(b).

7. *Amended registration.* Applications for amended registration for the purpose of modifying the required statements would be permitted. However, the Agency notes that it is specifying precise wording or exact requirements so that registrants will be able to comply more easily within the time frames to be established. EPA cannot assure that amendments for minor wording changes would be approved with sufficient time to incorporate the revised language. As stated previously, the Agency intends that the standards and implementing label statements be put in place as quickly as possible, and therefore EPA is unlikely to grant an extension of time merely because a label amendment has been proposed. This policy would not preclude registrants from submitting amendments to registration; registrants would, however, be required to meet applicable deadlines for label changes regardless of the status of any amendment to registration.

V. Relationship to States

Existing Part 170 includes a provision which authorizes the States to set and enforce "more restrictive standards for workers in fields treated with pesticides" (§ 170.4(a)). This approach is consistent with FIFRA section 24(a), which authorizes the States to regulate the sale or use of pesticides, but only to the extent their regulations do not

permit any sale or use prohibited by FIFRA.

The Agency considered relying upon the States to establish their own regulations on farmworkers pesticide protection. Despite recent initiatives in certain States, including California, Texas, New Jersey, Ohio, Arizona, Oregon and Washington, farmworker protection has been uneven among States and nonexistent in many States. The Agency acknowledges that there are advantages to relying upon State governments to regulate certain farmworker protection matters stemming from particular local conditions. However, under the existing national minimum standard approach, States are able to address such local needs as long as State requirements are not less stringent than the Federal standards.

The Agency proposes to retain the national minimum standards approach. Under this approach, EPA would set national minimum standards in Part 170 which could be made more stringent by EPA or the States on a State, regional or product-specific basis. The Agency is aware that such minimum standards might not provide the full measure of needed protection for some workers. However, it views as important the establishment of minimum protection for all workers and considers the proposed approach to be capable of accomplishing that goal effectively and efficiently.

The Agency believes that the reference to more restrictive state standards found in the current Part is unnecessary, in view of the specific authorization in FIFRA section 24(a) of more stringent State regulation of pesticide use. The proposed rule therefore omits any general statement concerning more stringent State regulation, although the agency intends the revised Part 170 to be a national minimum standard, as indicated above.

VI. Implementation of Regulation

In order for the workers protection standards proposed in this Part to be maximally effective, the Agency believes they must be communicated to the regulated community in a clear and concise manner. The rule proposes a number of requirements that have not been required of pesticide users before. Also, the rule requires training to be provided to handlers, which is less common among protection measures required by the Agency than, for example, protective clothing. The Agency therefore requests comment on various methods of communicating the rule to the regulated community.

At this time the Agency believes that the preparation of a user guide explaining the rule in an easy-to-follow manner will be the most effective approach. There may be more than one version of the user guide prepared in order to tailor the guide to each of the major user groups served. The user guides could be distributed through the Cooperative Extension Service to pesticide users.

VII. Statutory Review

A. U.S. Department of Agriculture

As required by FIFRA section 25(a), a copy of this proposal was provided to the Secretary of Agriculture. On March 7, 1988, the Secretary provided written comments on this proposal. Following is a summary of each comment by the Secretary, together with the Agency's response.

Comment #1: Appropriate reentry intervals for pesticides will vary by crop and by geographic region. National reentry intervals, based on a worst case exposure level, would be inappropriate and burdensome to growers in many situations.

Response: The Agency acknowledges that the interval following application of a pesticide during which unprotected worker reentry is "unsafe" will vary by geographic region and crop, and also by climate, presence or absence of rainfall, stage of crop development, application rate, and worker activity. Information on all or even some of these variables is rarely available. When full Subpart K reentry and exposure data are not available, the Agency has traditionally established interim reentry intervals using an analysis that may involve acute toxicity data, surrogate reentry data on pesticides similar in chemical structure or use pattern, or poisoning incident reports, usually resulting in a single national reentry interval for a pesticide active ingredient. As a stopgap measure until reregistration is completed, this proposal continues the general national minimum approach based on the rough surrogate criterion of acute toxicity data. At the same time, this proposal allows registrants and user groups to submit data that would enable the Agency to modify interim reentry intervals as appropriate, for example on a geographic or crop basis.

Comment #2: The use of pesticides in the commercial production of wood fiber and timber products should be exempt from worker protection standards. Commercial forests are unlike traditional agricultural settings in that pesticide use is less frequent.

Response: The Agency has been unable to identify any fundamental

differences between forestry and other agricultural settings meriting exemption from these proposed standards. While frequency of pesticide use in a particular forest area may be low compared to the average farm, nursery, or greenhouse operation, this may not be true of frequency of use by particular crew members. Forestry mixing, loading, and application techniques appear to be substantially similar to other agricultural handling techniques, with similar risks of exposure to forestry handlers and corresponding risk reduction measures. While worker reentry to treated areas appears to be very rare in forestry, when it occurs the worker protection measures in this proposal—notification, decontamination water, emergency provisions, etc.—appears appropriate. The Agency is seeking comment on the applicability of this proposal to forestry.

Comment #3: Wide-area spray programs sponsored by the USDA, such as the Mediterranean Fruit Fly eradication program, create difficulties in that both agricultural and non-agricultural areas may be covered by such programs.

Response: The Agency agrees with this comment. In addition, the governmental entity usually has no employment or contractual relationship with owners of treated areas, making observation of reentry and notification requirements impractical. The Agency proposes to exempt public pest control programs sponsored by governmental entities, such as the Mediterranean Fruit Fly eradication program, from the worker protection standards. However, this would not include pest control programs sponsored by governmental entities which take place on property owned or leased by such entities, such as routine use of pesticides in National Forests by the U.S. Forest Service.

Comment #4: Applicators certified under Federal certification programs should be qualified to be trainers of handlers.

Response: The Agency agrees that applicators who become certified under a federally sponsored certification program in accordance with 40 CFR Part 171 would be qualified to be trainers of handlers, and has amended the proposed trainer qualifications to include such persons.

Comment #5: The decontamination water quantity and location requirements are satisfactory.

Response: None.

Comment #6: Eye wash dispensers need not be immediately available to each applicator and could be dispersed throughout the crew, one for every two or three workers, because carrying

excessive weight can cause heat and health problems.

Response: The Agency believes that in the case of application equipment failure where the applicator is sprayed or splashed in the face, the eye wash dispenser would need to be immediately available to be of any value. The Agency does not believe that carrying a cone pint dispenser (the proposed minimum volume) would present a heat or health problem. The Agency is soliciting further comment on this issue in the preamble to this Notice.

Comment #7: Chemical resistant footwear should not be required for forestry workers, because workers will not walk through treated vegetation under typical forestry application conditions, and because chemical resistant boots do not breathe, creating foot problems.

Response: In the case of higher toxicity pesticides, forestry workers would require foot protection from spills during mixing and loading of liquid formulations. While walking through treated vegetation may be uncommon, foot protection during application would be necessary, for example, in the case of spills due to equipment failure. The Agency believes that breathability should not be a problem since use of chemical resistant shoe covers, which may be worn over breathable boots, is permitted under this proposal. The Agency is soliciting further comment on this issue in the preamble to this Notice.

B. Congressional Committees

As required by FIFRA section 25(a), a copy of this proposal was provided to the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate and the Committee on Agriculture of the U.S. House of Representatives. Comments were provided by Representative George E. Brown, Jr. and Senator Patrick J. Leahy. Following is a summary of each comment by Representative Brown and Senator Leahy, together with the Agency's response.

1. Comments of Representative Brown

Comment #1: Supports expanding coverage of the standards to greenhouse, nursery, and forestry workers.

Response: None.

Comment #2: Supports the increased availability of emergency health services.

Response: None.

Comment #3: Supports the availability of washing facilities.

Response: None.

Comment #4: Personal protective equipment (PPE) requirements should be

subject to monitoring of actual field use for effectiveness, with formal reevaluation after one or two seasons.

Response: As discussed in unit III.H. of this Notice, considerable exposure monitoring data is available on the effectiveness of PPE during various types of outdoor mixing, loading, and application activities for various pesticides, whereas somewhat less data is available for PPE effectiveness under indoor (e.g. greenhouse) exposure and outdoor early reentry exposure conditions. This data is being compiled from various sources, including registrant responses to data call-ins and studies funded by research and development efforts, through the Agency's exposure assessment data base. The Agency proposes to continue compilation of exposure monitoring data with special emphasis on PPE effectiveness under indoor and early reentry conditions. This data base will be reexamined after sufficient new data are available from the point of view of the adequacy of PPE in protecting workers under these conditions.

Comment #5: Supports the increased stringency of reentry standards.

Response: None.

Comment #6: The toxicity basis for interim reentry intervals should not be limited to acute toxicity, but should include chronic and subchronic effects and the effects of metabolites.

Response: The Agency agrees that reentry intervals should consider chronic and subchronic effects of pesticides and the effects of metabolites when sufficient toxicity, exposure, and benefits data are available to make such determinations. The Agency believes that intervals to control risks due to chronic or subchronic toxicity should be determined on a case-by-case rather than a generic basis, due to the difficulty of assessing the nature and level of chronic risks. The Agency proposes to continue its policy of case-by-case evaluation of reentry exposure, and in particular proposes to formally reevaluate reentry exposure, and set intervals as needed, if a pesticide enters Special Review (see § 156.210(f)). The interim reentry intervals in this proposal, based on acute toxicity, are intended to serve as a stop-gap measure until the Agency's reregistration program can cause the generation of more complete toxicity data and evaluate the need for reentry intervals for each agricultural pesticide.

Comment #7: The proposed notification requirements should be reexamined in light of "real world conditions in the fields," such as proximity of labor camps to treated areas.

Response: The Agency agrees that if a labor camp is located in proximity to a treated area of an agricultural establishment, notification of workers who live at the camp would be effective in preventing accidental reentry. The Agency has clarified its intent in this Notice to propose that treated areas adjacent to any labor camps be posted with warning signs at the boundary of such camps when posting is required, and that workers who live in adjacent labor camps be orally warned of applications, whether or not they will actually work in or near the treated area. Public comment is being solicited on this issue.

Comment #8: The cholinesterase monitoring requirements are a "good first step," but the comments of the Scientific Advisory Panel on this topic should be addressed.

Response: The Agency refers to its response to SAP comments #11-13.

Comment #9: A comprehensive survey and health monitoring effort for the agricultural sector is needed, in cooperation with other state and Federal agencies.

Response: The Agency believes that such a comprehensive effort is beyond the scope of this proposal. The Agency notes that one such farmworker health monitoring project is being undertaken based on a recent Congressional appropriation to EPA.

Comment #10: EPA should take steps to deal with possible conflict between EPA and OSHA in enforcement actions.

Response: The Agency acknowledges that concurrent jurisdiction exists over the agricultural sector with regard to responsibility for health and safety. The Agency has consulted with OSHA in an attempt to ensure that no duplication or conflict among regulations will occur, especially with regard to EPA's proposed decontamination requirements and the OSHA Field Sanitation Standard. The Agency agrees that coordination of the agencies' enforcement efforts in the agricultural sector would be desirable. EPA plans to continue its consultations with OSHA to clarify these matters.

Comment #11: The Subcommittee on Departmental Operations, Research, and Foreign Agriculture should be provided with information on the costs of implementation and enforcement of the proposal, to be used for Congressional funding deliberations.

Response: The Agency notes that while the proposed regulations would elaborate on previous definitions of pesticide misuse, it does not increase the number of establishments subject to misuse enforcement. Any farm, forest, nursery or greenhouse using registered

pesticides is already within the scope of state and Federal enforcement activities. In that sense, implementation of the proposal may not require additional resources for enforcement. On the other hand, the Agency recognizes that it will be necessary to mount an effort to disseminate information on the new requirements to the agricultural community, and has already begun the preparations for this effort, in cooperation with several other organizations. As the proposal moves toward a final rule, the Agency will examine resource issues associated with implementation and consider those in preparation of the President's budget.

Comment #12: The Agency should address the concern of the SAP regarding EPA's philosophy of establishing only minimum standards, since health and safety requirements of workers do not vary geographically or by economic sector.

Response: The Agency refers to its response to SAP comment #1.

2. Comments of Senator Leahy

Comment #1: Supports extending protections to pesticide applicators as well as to nursery, greenhouse, and forestry workers.

Response: None.

Comment #2: Supports emergency transportation requirement in the case of suspected pesticide poisoning or injury.

Response: None.

Comment #3: Interim reentry intervals should take into account potential chronic and subchronic effects and effects of inert ingredients.

Response: Currently, available chronic and subchronic data are in fact used in setting reentry intervals on a case by case basis. The Agency proposes to continue this policy and refers to its response to Representative Brown's comment #6 for further discussion. Concerning inerts, the Agency believes that it will be rare for significant residues of toxic inerts to remain in fields after sprays have dried. Reentry concerns are principally due to residues of active ingredients or their metabolites or degradation products.

Comment #4: No data is provided to support the Agency's contention that the 72/48/24 hour interim reentry interval option is not economically feasible.

Response: More detailed economic impact projections are found in the Regulatory Impact Assessment (RIA) for this proposal. The RIA concluded that the total first-year non-incremental cost of the 72/48/24 hour reentry option would be \$222.2 million, attributable largely to fruit, vegetable, and

greenhouse sector impacts, compared to an estimated \$33.7 million under this proposal.

Comment #5: Displaying a pesticide safety information poster is inadequate training for non-handler workers, who should be given the same training as handlers.

Response: The Agency considered whether handler-type training, or some other form of training, would be appropriate and practicable for all fieldworkers. The Agency believes that adequate delivery mechanisms would not be available if handler training (similar to certification) were required for all fieldworkers. In addition, this level of training is not necessary for workers whose primary need is to protect themselves from pesticide exposure and who are generally not in a position to cause exposure to others. The Agency seeks comment on these issues.

Comment #6: Workers should be given the name and the common signs and symptoms of pesticides to which they are exposed, without the need for a request.

Response: The Agency carefully considered which pesticide-specific information would be most useful to workers and what methods of communication of that information would be most effective. While the Agency proposes that the worker be provided with the brand name, the registration number, and the name of all active ingredients of any product to which the worker is exposed, the common signs and symptoms of poisoning for the product would not be available to the employer because this information is only rarely required on pesticide labeling. The Agency is soliciting comment on whether information about the general (rather than product-specific) signs and symptoms of pesticide poisoning should be required as part of the pesticide safety information display. As to communication method, the Agency believes that information such as chemical names would be ignored or not recalled by workers if given during an oral warning, and it would be burdensome on employers for it to be routinely marked on warning signs or displayed at a central location such as a notice board. In addition, not all workers would want this more detailed information. While there may be some inhibition among some workers in making a request, this appears to be the most reasonable and effective method of making the information available to those workers who want it. The Agency notes that it is concerned more generally with how toxicity and safety

information about pesticides should best be communicated to the public, and is pursuing this as a separate matter.

Comment #7: Treated areas should be posted for pesticides with reentry intervals of 24 hours or longer, because too many highly toxic pesticides would otherwise not be included and oral warnings are not adequate.

Response: The Agency refers to its response to SAP comment #5.

Comment #8: Warning signs should be posted at labor camps when they are located in or near treated areas.

Response: The Agency refers to its response to Representative Brown's comment #7.

Comment #9: Any symbol for use on warning signs other than the skull and crossbones should be pilot tested for worker understandability.

Response: The Agency agrees that pilot testing under field conditions of any proposed warning sign symbol would help to establish its relative effectiveness, and has invited comment on how this could best be accomplished.

Comment #10: More emphasis should be given to mechanical controls (closed systems) as opposed to personal protective equipment (PPE) in view of uncertainties about the effectiveness of PPE.

Response: While some uncertainties about the efficacy of PPE remain, considerable data is in fact available. The Agency refers to its response to Representative Brown's comment #4 for its proposal to address weaknesses in this data base. The Agency proposes to prohibit work activities altogether when weather conditions are such that the required PPE might cause heat stress. The proposal also includes incentives for the use of closed mixing/loading and application systems in terms of reduced PPE requirements.

C. FIFRA Scientific Advisory Panel

Pursuant to FIFRA section 25(d), a copy of this proposal was provided to the FIFRA Scientific Advisory Panel (SAP). On March 2, 1988, the SAP held an open meeting to review this proposal and submitted written comments to the Agency. Following is a summary of each written comment by the SAP, together with the Agency's response.

Comment #1: Establishing only minimum standards seems inappropriate when more stringent standards have already been proven and accepted in California and Texas without detriment to the agricultural economy.

Response: The Agency believes that this proposal represents the most stringent worker protection standards that are applicable nationwide; the standards are "minimum" only in the

sense that no state may have less stringent requirements. This proposal follows FIFRA in allowing any state to develop more stringent regulations if they are warranted by conditions in that state. Moreover, the Agency routinely sets product-specific protective measures on a case-by-case basis, such as personal protective equipment and reentry intervals, that can be more stringent than those required by the proposal. Such measures would be unaffected by the proposal.

Comment #2: The proposal contains ambiguous wording.

Response: One of the primary reasons for revising the existing worker protection regulations was ambiguous wording. The Agency welcomes specific comments as to such wording in this proposal.

Comment #3: All workers applying pesticides should be required to take a training program.

Response: The Agency agrees. The Agency is proposing to require that all pesticide handlers, including applicators, be trained as described in that section or be certified under Part 171.

Comment #4: Names of pesticides used and the common symptoms of toxic exposure to these pesticides should be provided to workers on a routine basis.

Response: The Agency agrees that workers exposed to pesticides should receive information about pesticides to which they are exposed and signs of exposure. The Agency is proposing that handlers be provided labeling information on request, while other workers be given oral or posted warnings before pesticide applications and provided certain other information about the pesticide on request. In addition, the proposed handler training must include common signs and symptoms of pesticide poisoning. The Agency is soliciting comment on whether similar information about poisoning symptoms should be included in the pesticide safety information that must be displayed in a prominent location.

Comment #5: Posting of treated areas on farms should be required following application of pesticides having reentry intervals of 24 hours or greater (instead of greater than 48 hours).

Response: While the option of additional posting would probably decrease the risk of accidental early reentry poisonings, it would also increase the economic cost to growers. The Agency believes that the increased benefits under this option would probably not outweigh the increased costs, especially considering that under

this proposal daily oral warnings would be required for all pesticide applications. The Agency is soliciting comment on this issue.

Comment #6: All communications should be in the language the workers understand.

Response: The Agency agrees that providing information is of little value if the information cannot be understood. The Agency is proposing that oral warnings be given in a language the worker can understand; that treated area warning signs display a standard symbol clearly indicating that entry is forbidden; and that the pesticide safety information that must be displayed contain a statement in the language of each non-English speaking worker that the information on the poster is important and should be explained to him.

Comment #7: Acute toxicity data should be used for establishing interim reentry intervals, in addition to other indications of toxicity where appropriate, especially dermal and respiratory toxicity.

Response: The Agency proposes to use acute dermal, skin irritation, and eye irritation toxicity in establishing interim reentry intervals. The Agency proposes not to consider either acute oral toxicity, since the oral route is not a major route of reentry exposure, or inhalation toxicity, since the inhalation route is not a major route of exposure after sprays have dried. Before sprays have dried inhalation toxicity would be considered in determining personal protective equipment for early reentry workers.

Comment #8: Longer interim reentry intervals should be established which take account of potential chronic and subchronic effects in addition to acute effects.

Response: The Agency considered the option of requiring longer intervals (i.e. 72/48/24 hours by Toxicity Category) but believes that such intervals are not supported on a generic basis by the limited reentry data available on certain pesticides. The Agency agrees that reentry intervals should reflect chronic and subchronic effects of pesticides when data is available, but that appropriate intervals should be determined on a case-by-case basis. The Agency is soliciting comment on these issues.

Comment #9: Meaningful reentry intervals should be established for Toxicity Category III and IV pesticides.

Response: The Agency considered the option of establishing a minimum 24-hour reentry interval for all pesticides. In the case of Toxicity Category III and IV pesticides, this would provide some interim protection for pesticides which

are later discovered to have chronic effects, and would probably reduce the incidence of skin and eye poisonings now occurring from pesticides in these categories. However, the Agency rejected this option because it would result in unwarranted reentry intervals for some pesticides, and because chronic effects are best addressed on a pesticide-specific, rather than generic, basis. The Agency is soliciting comment on this issue.

Comment #10: The Agency should provide a list of all agricultural pesticides identifying their toxicity categorization and reentry interval.

Response: Such a list is currently being developed by the Agency and will be made available to registrants and other interested parties.

Comment #11: The Agency should consider a broader range of cholinesterase monitoring, including: A shorter exposure trigger; monitoring of private applicators; and triggering based on early symptoms of exposure.

Response: The Agency believes that a more sensitive exposure trigger (fewer days of exposure) would not extend monitoring to an appreciable number of handlers with routine exposure to organophosphates, but would instead include persons with very short-term or spread-out exposure for which monitoring would not be necessary. Extending monitoring to private handlers would probably not significantly reduce overall risk, because the number of non-commercial handlers meeting the exposure trigger is anticipated to be small. While monitoring handlers with early symptoms of exposure could prevent future poisonings, monitoring could not begin before a considerable period of removal from exposure, in order to establish a baseline. The Agency is soliciting comment on these issues.

Comment #12: A pre-exposure baseline should be required of workers meeting the cholinesterase monitoring trigger.

Response: The Agency believes baseline testing will ordinarily be a necessary part of a cholinesterase monitoring program, and that the timing and methodology of baseline testing would best be addressed in the guidelines for supervising physicians which the Agency plans to develop.

Comment #13: Recognition of cholinesterase inhibitor exposure symptoms should be made a part of a training program.

Response: The Agency agrees that handlers routinely exposed to cholinesterase inhibiting pesticides should be made aware of the symptoms of over-exposure and when it is

necessary to reduce or avoid exposure in order to protect themselves. The Agency has modified the proposal to require that the general training of pesticide handlers include information about the signs and symptoms of cholinesterase inhibition. In addition, the employer must notify the commercial handler, at the time the employer is notified by the supervising physician, that changes to work practices may be necessary or that removal from exposure is necessary, in order for the handler to take steps to reduce or avoid exposure. Comment is solicited on this proposal.

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IX Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and must submit its analysis supporting its findings to the Office of Management and Budget (OMB) for review. The Agency has determined that this proposed revision of Part 170 is a major regulation as defined by E.O. 12291. A regulatory impact analysis has been developed and submitted to OMB as required. This document is available for public inspection at the address given at the beginning of this Federal Register notice. A summary follows.

EPA proposes to revise 40 CFR Part 170 to specify requirements that would mitigate the risks from exposure to pesticides and their residues by pesticide handlers and agricultural workers. EPA has developed, considered and analyzed many approaches to mitigating these risks and proposes to issue regulations covering reentry intervals, personal protective equipment, training, notification, decontamination, emergency medical duties and cholinesterase monitoring.

The proposed regulations would serve to protect the hired labor force of 2.3 million persons exposed either directly or indirectly to pesticides as a result of their occupations on farms, in forests, in nurseries, or in greenhouses. This workforce includes 1.5 million hired farmworkers, 150 thousand commercial pesticide applicator personnel, 7.2 thousand workers in forestry, 125 thousand workers in nurseries and 175 thousand workers in greenhouses.

The total incremental cost (not including costs already incurred) in the first year of this proposed regulation, given existing regulations at the State and Federal level, is an estimated \$170.0 million, representing an average cost per worker protected of \$74. Total incremental costs attributable to specific requirements ranged from \$6.0 million for emergency medical duties (an average of \$2.22 per worker) to \$35.4 million for cholinesterase monitoring (an average of \$15.39 per worker). These costs would affect sectors of the agricultural economy according to their intensity of pesticide use and types of pesticides used. The estimated first year nonincremental cost by sector ranges from \$167 for an average feed/grain farm to \$611 for an average vegetable farm to \$3,515 for an average greenhouse to \$8,910 for an average commercial pesticide application firm.

The benefits that would accrue to pesticide handlers and field workers from the proposed regulation would include reduction in lost time from the workforce, reduced medical expenses and overall increased productivity from having a workforce less affected by pesticide exposure. While these benefits cannot be quantified, the Agency believes that these types of benefits would be substantial.

B. Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1104; 5 U.S.C. 601-612). The results of that review have been incorporated into the regulatory impact analysis. The proposed regulation was found to affect farms in all size categories. The vast

majority of farms are small businesses. The Agency is seeking further information on the impact of this proposal on small agricultural establishments.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070-A326.

Public reporting burden for this collection of information is estimated to average 6.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 156 and 170

Environmental protection, Labeling. Pesticides and pests, Intergovernmental relations, Occupational safety and health.

Dated: June 28, 1988.

A. James Barnes,
Acting Administrator.

Therefore, it is proposed that Chapter I of Title 40 be amended as follows:

PART 156—LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES

1. In Part 156:

a. The authority citation continues to read as follows:

Authority: 7 U.S.C. 136-136y.

b. By adding new Subpart K, to read as follows:

Subpart K—Agricultural Worker Protection Statements

Sec.
156.200 Scope and applicability.
156.202 Authority of the Agency.
156.206 Reference statement.
156.208 General statements.

Sec.

156.210 Reentry statements.

156.212 Posting statements.

156.215 General personal protective equipment statements.

156.216 Personal protective equipment for handlers.

156.217 Personal protective equipment for early reentry workers.

Subpart K—Agricultural Worker Protection Statements

§ 156.200 Scope and applicability.

(a) *Scope*. This subpart prescribes labeling requirements for the protection of agricultural pesticide handlers and workers in pesticide-treated areas. The statements incorporate by reference the worker protection standards of Part 170 of this chapter. This subpart also prescribes reentry interval and personal protective equipment statements which must be placed on labeling.

(b) *Applicability*. (1) The requirements of this subpart apply to each pesticide product that bears directions for use or whose labeling reasonably permits use in the production of any agricultural plant on or in any farm, forest, nursery, or greenhouse.

(2) The requirements of this subpart do not apply to a product that bears directions solely for uses exempted by § 170.3(b)(2) of this chapter.

§ 156.202 Authority of the Agency.

The Agency, upon its own initiative or upon application by a registrant or other person in accordance with §§ 156.210, 156.216 or 156.217, may modify or waive the requirements of this subpart, or may permit alternative labeling statements to be used.

§ 156.206 Reference statement.

The label of each product shall bear the reference statement: "On or in farms, forests, nurseries, or greenhouses, use only in accordance with Part 170 of Title 40, Code of Federal Regulations, EPA regulations for the protection of agricultural workers and pesticide handlers. These regulations are part of the labeling of this product and should be obtained by the user. Some States have more restrictive worker protection requirements; consult your State agency responsible for pesticide regulation for information on your State's requirements."

§ 156.208 General statements.

(a) The labeling of each product shall bear the statement: "Do not apply this product in a way that will contact unprotected workers, either directly or through drift. Only protected handlers may be in the area during application."

(b) If the product is assigned to Toxicity Category I or II in accordance with § 162.10(h)(1) of this chapter:

(1) The signal word shall appear in Spanish as well as English.

(2) The statement, "Si usted no lee ingles, no use este producto hasta que el etiqueta haya sido explicado ampliamente," shall appear on the label in close proximity to the Spanish signal word. [Translation: If you cannot read English, do not use this product until the label has been fully explained to you.]

(c) If the product contains an organophosphate or N-methyl carbamate, or is a fumigant, the label shall so state. The identification may appear as part of the product name, as part of the product type identification or as a separate statement. It may not appear only within the ingredients statement.

(d) If the product is required to bear the skull and crossbones on the label, the product labeling shall also bear the statement: "Visual or voice contact must be made at least every two hours with any person who is mixing, loading, or applying this product."

(e) If the product is a fumigant, the product labeling shall bear the statement: "Visual contact must be maintained by an observer at all times with any person who is applying this product in a greenhouse or similar structure, or who enters the greenhouse before the reentry interval has expired. The observer must have immediate access to the same personal protective equipment required for an applicator of this product."

§ 156.210 Reentry statements.

(a) *Requirement*. Each product shall bear reentry statements as prescribed by this section. The statements consist of:

(1) The prohibition against immediate reentry specified in paragraph (c)(1) of this section.

(2) The reentry statement specified in paragraph (c)(2) of this section, if applicable.

(3) The interim or product-specific reentry interval in accordance with paragraph (d) or (e) of this section, if applicable.

(b) *Location of reentry statements*. The statements required by paragraph (a) (1) and (2) of this section shall be located in the use directions of the product labeling under the heading "REENTRY." If the statements are not located on the label of the product but are in supplemental labeling accompanying the product during distribution or sale, the human hazard precautionary section of the label shall contain a reference statement to the

reentry statements elsewhere. The required statements may be combined to avoid redundancy as long as the requirements and conditions under which they apply are clearly identified. The interim or product specific reentry interval required by paragraph (a)(3) of this section shall be associated on the labeling with each crop or use to which it applies, immediately preceded or followed by the words "Reentry Interval" (or the letters "REI" if previously defined in the labeling). If the same reentry interval applies to all crops and uses, the reentry interval may be listed once together with other statements under the heading "REENTRY."

(c) *General reentry statements*. (1) Each product shall bear the statement, "Do not enter or allow entry into treated areas until [sprays have dried/dusts have settled/vapors have dispersed, as applicable] to perform hand labor tasks. A person may enter the area to perform other tasks only if the person is wearing the personal protective equipment listed on the label for a pesticide handler."

(2) Each product for which an interim or product-specific reentry interval has been established shall bear the statement, "After [sprays have dried/dusts have settled/vapors have dispersed, as applicable] do not enter or allow entry into the treated area until the reentry interval has expired, unless the person entering the treated area is wearing the personal protective equipment listed on the label for early reentry."

(d) *Product specific reentry intervals*. A product-specific reentry interval is established based on reentry protection data submitted in accordance with § 158.140 of this chapter and Subdivision K of the Pesticide Assessment Guidelines. A product specific reentry interval shall supersede any interim reentry interval applicable to the product.

(e) *Interim reentry intervals*—(1) *Existing interval*. An interim reentry interval established by the Agency prior to the effective date of this subpart will continue to apply unless a longer interim reentry interval is required by paragraph (e)(2) of this section. However, if reentry protection data were required at the time of the establishment of the existing interval and flagged for expedited review, the existing interval will continue to apply even if a longer interim reentry interval is required by paragraph (e)(2) of this section.

(2) *Interval based on acute toxicity of the active ingredient*. (i) If there is no existing reentry interval, or if an existing reentry interval is superseded under

paragraph (e)(1) of this section, an interim interval shall be established, based upon the acute toxicity of the active ingredient(s) in the product. The Toxicity Category of each active ingredient in the product shall be determined based upon a comparison of data on the acute dermal toxicity, eye irritation effects, or skin irritation effects of the ingredient to the criteria of § 162.10(h)(1) of this chapter. If no dermal toxicity data are available, data on oral toxicity shall also be considered in this comparison.

(ii) If the product contains a sole active ingredient which is in Toxicity Category I and which belongs to the organophosphate or N-methyl carbamate chemical class, the interim reentry interval shall be 48 hours.

(iii) If the product contains any other sole active ingredient which is in Toxicity Category I, the interim reentry interval shall be 24 hours.

(iv) If the product contains a sole active ingredient which is in Toxicity Category II and which belongs to the organophosphate or N-methyl carbamate chemical class, the interim reentry interval shall be 24 hours.

(v) If the product contains any other sole active ingredient which is in Toxicity Category II, there shall be no interim reentry interval.

(vi) If the product contains only active ingredients which are in Toxicity Category III or IV, there shall be no interim reentry interval.

(vii) If the product contains more than one active ingredient, the interim reentry interval shall be the longest interval among the active ingredients determined by the criteria in paragraphs (e)(2) (ii) through (vi) of this section.

(f) *Modification based upon Special Review.* If the Agency concludes, in accordance with § 154.25(c) of this chapter, that a pesticide should be placed in Special Review because of a determination that it meets or exceeds the criteria of § 154.7(a) (1) or (2) of the

chapter for human health effects, the Agency will at that time also determine an appropriate interim reentry interval.

(g) *Modification based upon submission of data.* The Agency may, based upon data submitted by any person demonstrating that exposure levels resulting from the application of a pesticide product warrant a shorter or longer reentry interval than that required by this section, modify the reentry interval on a case-by-case basis. Supporting data may be in accordance with Part 158 of this chapter and Subdivision K of the Pesticide Assessment Guidelines, or other medical, epidemiological, or health effects studies.

§ 156.212 Posting statements.

(a) *Requirement.*—(1) Each product that has a reentry interval of greater than 48 hours for any crop or use site shall bear the statement: "Areas treated with this product are subject to posting."

(2) Each product that has a reentry interval of 48 hours or less, and that either bears directions for use in greenhouses or nurseries or whose labeling reasonably permits use in greenhouses or nurseries shall bear the statement: "If this product is used in nurseries or greenhouses, treated areas must be posted before application and must remain posted until the reentry interval has expired."

(b) *Location.* The posting statement required by paragraph (a) (1) or (2) of this section may be located on the product labeling with the specific crops or sites to which it applies or, if it applies to more than one crop or site, may be located in the general use directions.

§ 156.215 General personal protection equipment statements.

(a) *Requirement.* Each product shall bear the personal protective equipment (PPE) statements prescribed by

§§ 156.216 and 156.217. PPE requirements for a product established prior to the effective date of this subpart shall use the more protective of the requirements for each area of the body. However, any existing label prohibition on the use of gloves or boots overrides the corresponding requirement of this subpart.

(b) *Location of PPE statements.* PPE statements shall be located in the use directions of the product labeling under the heading "PERSONAL PROTECTIVE EQUIPMENT." If the statements are not located on the label of the product but are in supplemental labeling accompanying the product during distribution or sale, the human hazard precautionary section of the label shall contain a reference statement to the PPE statements elsewhere. The required statements may be combined to avoid redundancy as long as the requirements and conditions under which they apply are clearly identified.

§ 156.216 Personal protective equipment for handlers.

(a) *Minimum PPE requirements.* The table in paragraph (b) of this section sets out the minimum PPE requirements for pesticide handlers and early reentry workers entering treated areas before sprays have dried, dusts have settled, or vapors have dispersed, based upon the acute toxicity of the formulated product by route of exposure. The labeling shall specify the PPE for each route of exposure, based upon data on the acute toxicity of the product by that route of exposure. If data to determine the acute toxicity of the product by an applicable route of exposure are lacking, the Toxicity Category of the formulated product as a whole shall be used to determine PPE required for that route of exposure.

(b) *Table.*

MINIMUM PERSONAL PROTECTIVE EQUIPMENT AND NORMAL WORK ATTIRE FOR PESTICIDE HANDLERS AND WORKERS REENTERING TREATED AREAS BEFORE SPRAYS HAVE DRIED

Route of exposure	Formulated product toxicity category			
	I	II	III	IV
Dermal or skin irritation potential ¹	Protective suit ² ; Chemical-resistant gloves ³ ; Chemical-resistant shoes, shoe covers, or boots.	Protective suit; Chemical-resistant gloves; Chemical-resistant shoes, shoe covers, or boots.	Normal work attire ⁴ ; Chemical-resistant gloves.	Normal work attire.
Inhalation	Respiratory protection device ⁵ .	Respiratory protection device.	No minimum ⁶ .	No minimum.
Eye irritation potential	Goggles or face shield.	Goggles or face shield.	No minimum.	Do.

¹ If dermal toxicity and skin irritation potential are known to be in different Toxicity Categories, the more toxic of the two shall be used.

² A protective suit is a loose-fitting one- or two-piece garment, such as a fabric coverall, that is worn over normal work attire and covers at a minimum the entire body except for the head, hands and feet.

³ "Chemical-resistant" material allows no measurable movement of pesticide through the material during use.

⁴ Normal work attire consists of a minimum of long pants and long sleeved shirt, shoes and socks.

⁵ Respiratory protection device approved by the National Institute of Occupational Health and Safety (NIOSH) and the Mine Safety and Health Administration (MSHA) for the intended pesticide use.

⁶ Although no minimum PPE is required by this Section for this Toxicity Category and route of exposure, PPE may be required by the Agency under these circumstances on a product-specific basis.

(c) *Modifications based upon exposure pattern.* In addition to the minimum requirements given in paragraph (b) of this section, the following PPE instructions (or substitutions, as applicable) shall be included on the labeling of each product that is in Toxicity Category I or II by dermal toxicity or skin irritation potential.

(1) *Mixing/loading.* Unless a chemical-resistant protective suit is otherwise required, the labeling shall specify that during mixing and loading a chemical-resistant apron shall be worn in addition to other PPE.

(2) *Closed system mixing/loading.* If the product may be mixed or loaded by a closed system that eliminates open atmospheric contact with the pesticide and its rinsate during transfer from the original container to the application equipment, the labeling may specify that under these circumstances:

(i) Normal work attire, chemical-resistant apron and chemical-resistant gloves may be worn in lieu of other PPE;

(ii) If pressure is used during closed system mixing or loading, goggles or a face shield shall be worn in addition to other PPE; and

(iii) All other PPE for a handler shall be available nearby for the mixer/loader's use in case of equipment failure or other emergency.

(3) *Overhead exposure.* If the product may be applied in a manner such that overhead exposure to the pesticide may occur, the labeling shall specify that a chemical-resistant hat with a wide brim or a hood shall be worn in addition to other PPE.

(4) *Enclosed cab application.* If the product may be applied using an enclosed cab with positive pressure ventilation, the labeling may specify that

under these conditions normal work attire may be worn in lieu of PPE, which shall be available in the cab for the applicator's use when leaving the cab while still in the treated area.

(5) *Aerial application.* If the product may be aerially applied, the labeling may specify that:

(i) If an enclosed cockpit is used, normal work attire may be worn in lieu of other PPE, and chemical-resistant gloves shall be available in the cockpit for the applicator's use when leaving an aircraft that is contaminated with pesticide residues.

(ii) If a nonenclosed cockpit is used, chemical-resistant shoes, shoe coverings or boots may be omitted and a helmet with a visor may be worn in lieu of a hat and goggles or face shield.

(6) *Equipment cleaning and repair.* The labeling shall specify that during cleaning and repair of mixing, loading and application equipment, a chemical-resistant apron, chemical-resistant gloves and chemical-resistant shoes, shoe coverings or boots shall be worn.

(d) *Modification based upon the toxicity of the product as diluted for use.* If the labeling requires the product to be diluted by the user before application, the registrant may propose to modify the PPE requirements of paragraph (b) or (c) of this section for all handlers except mixer/loaders. In support of such proposal, the registrant shall submit or cite data on the toxicity of the product as diluted for use by the routes of exposure for which modification of PPE is sought. The PPE requirements for all handlers except mixer/loaders may then be based upon the data submitted for the product as diluted for use.

(e) *Modification based upon Special Review.* If the agency concludes in accordance with § 154.25(c) of this

chapter that a pesticide should be placed in Special Review because of a determination that the pesticide meets or exceeds the criteria of § 154.7(a)(1) or (2) of this chapter for human health effects, the Agency will at that time also determine appropriate interim PPE for handlers.

(f) *Modification based upon data submission.* The Agency may, based upon data submitted by any person demonstrating that exposure levels resulting from handler activities warrant different minimum PPE requirements than required by this section, modify the minimum PPE requirements on a case-by-case basis. Supporting data may be either data required by Subdivisions U or K of the Pesticide Assessment Guidelines or other medical, epidemiological, or health effects data.

§ 156.217 Personal protective equipment for early reentry workers.

(a) *Minimum PPE requirements.* The table in paragraph (b) of this section sets out the minimum PPE requirements for early reentry workers entering treated areas after sprays have dried, dusts have settled or vapors have dispersed and before the expiration of the reentry interval, based upon the acute toxicity of the active ingredient by route of exposure. The labeling shall specify the PPE for each route of exposure, based upon data on the acute toxicity of the active ingredient by that route of exposure. If data to determine the acute toxicity of the active ingredient by any route of exposure are lacking, the Toxicity Category of the active ingredient as a whole shall be used to determine PPE required for that route of exposure.

(b) *Table.*

MINIMUM PERSONAL PROTECTIVE EQUIPMENT FOR WORKERS REENTERING TREATED AREAS AFTER SPRAYS HAVE DRIED AND BEFORE THE EXPIRATION OF THE REENTRY INTERVAL

Route of exposure	Active ingredient toxicity category			
	I	II	III	IV
Dermal or skin irritation potential ¹	Protective suit ² ; Chemical-resistant gloves ³ ; Chemical-resistant shoes, shoe covers, or boots.	Protective suit; Chemical-resistant gloves; Chemical-resistant shoes, shoe covers, or boots.	No minimum ⁴ .	No minimum.
Eye irritation potential	Goggles or face shield.	Goggles or face shield.	No minimum.	Do.

¹ If dermal toxicity and skin irritation potential are known to be in different Toxicity Categories, the more toxic of the two shall be used.

² A protective suit is a loose-fitting one- or two-piece garment, such as a fabric coverall, that is worn over normal work attire and covers at a minimum the entire body except for the head, hands and feet.

³ "Chemical-resistant" material allows no measurable movement of pesticide through the material during exposure.

⁴ Although no minimum PPE is required by this section for this Toxicity Category and route of exposure, PPE may be required by the Agency under these circumstances on a product-specific basis.

(c) *Modification based upon Special Review.* If the Agency concludes, in accordance with § 154.25(c) of this chapter, that a pesticide should be placed in Special Review because of a determination that the pesticide meets or exceeds the criteria of § 154.7(a)(1) or (2) of this chapter, for human health effects, the Agency will at that time also determine appropriate interim PPE for early reentry workers.

(d) *Modification based upon data submission.* The Agency may, based upon data submitted by any person demonstrating that exposure levels resulting from the early reentry activities warrant different minimum PPE requirements than required by this section, modify the minimum PPE requirements on a case-by-case basis. Supporting data may be either data required by Subdivisions U or K of the Pesticide Assessment Guidelines or other medical, epidemiological or health effects data.

2. By revising Part 170 to read as follows:

PART 170—WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES

Subpart A—General

Sec.

- 170.1 Purpose and overview.
- 170.3 Applicability.
- 170.5 Definitions.
- 170.7 Duties of persons covered under this part.
- 170.9 Violations of this part.

Subpart B—Standards for Pesticide Handlers and Early Reentry Workers

- 170.10 Applicability.
- 170.12 Training.
- 170.14 Access to labeling information.
- 170.16 Duties related to personal protective equipment.
- 170.18 Decontamination.
- 170.20 Cholinesterase monitoring.

Subpart C—Common Standards for Workers on or in Farms, Forests, Nurseries and Greenhouses

- 170.30 Applicability.
- 170.32 General pesticide safety information.
- 170.34 Emergency duties.
- 170.36 Precautions during application of pesticides.
- 170.38 Decontamination.

Subpart D—Special Standards for Workers on Farms and in Forests

- 170.40 Applicability.
- 170.42 Information about pesticide applications.
- 170.44 Posting.
- 170.46 Reentry.

Subpart E—Special Standards for Workers in Nurseries

- 170.50 Applicability.

- 170.52 Information about pesticide applications.
- 170.54 Posting.
- 170.56 Reentry.

Subpart F—Special Standards for Workers in Greenhouses

- 170.60 Applicability.
- 170.62 Information about pesticide applications.
- 170.64 Posting.
- 170.66 Reentry.

Authority: 7 U.S.C. 136w.

Subpart A—General

§ 170.1 Purpose and overview.

(a) *Purpose.* The purpose of this part is to set standards, to be incorporated into pesticide labeling, designed to help protect persons who work on or in farms, forests, nurseries, or greenhouses from injury or disease that might result from occupational exposure to pesticides or pesticide residues. This part requires workplace practices designed to lessen the risk of exposure and to deal with exposures that may occur.

(b) *Overview of the organization of this part.* This part consists of six subparts:

(1) Subpart A describes the coverage of this part, defines terms used throughout this part, and describes generally the duties of persons and the conditions under which these persons are subject to penalties for failure to perform the duties.

(2) Subpart B contains standards for the protection of handlers and early reentry workers on all use sites.

(3) Subpart C contains standards for the protection of all workers on all use sites.

(4) Subpart D contains standards for the protection of all workers on farms and in forests.

(5) Subpart E contains standards for the protection of all workers in nurseries.

(6) Subpart F contains standards for the protection of all workers in greenhouses.

Pesticide labeling requirements that are related to this part are contained in Subpart K of Part 156 of this chapter.

§ 170.3 Applicability.

(a) *General.* The requirements of this part apply if any pesticide to which this part applies (see paragraph (b) of this section) is used on or in any farm, forest, nursery, or greenhouse to which this part applies (see paragraph (c) of this section).

(b) *Pesticides to which this part applies.* (1) *General rule.* This part applies to any pesticide product whose label bears directions for use in the

production of any agricultural plant and contains either the reference statement set forth in § 156.205 of this chapter or any other reference to this part.

(2) *Exceptions.* This part does not apply to any pesticide to the extent that it is used or applied only:

- (i) For public mosquito abatement or similar public pest control programs sponsored by government entities, not including such programs that take place entirely on property owned or leased by the sponsoring governmental entity;
- (ii) On livestock or other animals;
- (iii) On golf courses or on turf areas that are not located on turf or sod farms or in greenhouses;
- (iv) In such structures as malls, atriums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modifications;
- (v) In and around habitations, including, but not limited to, on noncommercial crop or ornamental gardens, in non-commercial greenhouses, or on lawns, shrubs, or trees;
- (vi) By injection directly into agricultural plants (however, this part does apply to "hack and squirt", "frill and spray" and other techniques that do not involve direct injection);
- (vii) In a manner which is not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, control of vertebrate pests, and attractants and repellents in containers;
- (viii) After harvest on the harvested portions of agricultural plants; or
- (ix) For research purposes by any person, if the purpose of the research is primarily to determine the properties or effects of pesticides and if all handling activities and hand labor tasks associated with such research are performed by or under the direct supervision of the person conducting the research.

(c) *Sites to which this part applies.* This part applies to any farm, forest, nursery, or greenhouse on or in which:

- (1) Any worker performs any work related to the production of agricultural plants; and
- (2) Any pesticide to which this part applies is used in the production of agricultural plants.

(d) *Effect of this part on compliance with pesticide labeling statements by certain persons.* Although an owner of a farm, forest, nursery or greenhouse and immediate family members of an owner are not considered to be workers for purposes of this part, such persons are required to comply with pesticide

labeling statements pertaining to reentry and personal protective equipment.

§ 170.5 Definitions.

Terms used in this part have the same meanings as they do in the Federal Insecticide, Fungicide and Rodenticide Act, as amended. In addition, as used in this part, the following terms shall have the meanings stated below:

"Agricultural plant" means any agricultural, ornamental, or forestry plant, or part thereof. Agricultural plants include, but are not limited to, food, feed and fiber plants, trees, turf, flowers, shrubs, and seedlings.

"Chemical-resistant," when applied to any material, means that there will be no measurable movement of the pesticide product through the material during the period of use.

"Early reentry worker" means any worker who is directed to enter a reentry-restricted area prior to the expiration of any reentry interval that applies to that area.

"Employer" means any person who employs any worker or handler, for any type of compensation, to perform tasks relating to the production of agricultural plants.

"Farm" means any area that is used, in whole or in part, for the production of agricultural plants, that is not a forest, nursery or greenhouse.

"Forest" means any area containing trees and associated vegetation used, in whole or in part, for the commercial production of wood fiber or timber products. The term does not include trees located in any nursery.

"Greenhouse" means any structure or space that is enclosed with nonporous covering, that is of sufficient size to permit worker entry, and that is used, in whole or in part, for the production of agricultural plants. Such structures include greenhouses, polyhouses, mushroom houses, rhubarb houses and similar structures.

"Hand labor tasks" means harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, or any other task that causes any worker to come into substantial contact with surfaces (such as plants, plant parts or soil) that may contain pesticide residues.

"Handler" or "pesticide handler" means any worker who: mixes, loads, transfers, transports, applies or disposes of pesticides; acts as a flagger; or cleans, adjusts, or repairs contaminated parts of mixing, loading, or application equipment. The term does not include any worker who transports pesticides in containers that have never been opened.

"Normal work attire" means, at a minimum, long pants, long-sleeved shirt, shoes, and socks.

"Nursery" means any property that is not enclosed with nonporous covering and that is used, in whole or in part, for the production of agricultural plants which will be used in their entirety in another location.

"Owner" means any person who has a present possessory interest (fee, leasehold, or other) in land on which a farm, forest, greenhouse or nursery covered by this part is located, by virtue of which interest the person has the legal right to prevent other persons from entering the land or to require them to leave it.

"Person" means any individual, partnership, association, or corporation, or any organized group of persons, whether incorporated or not.

"Personal protective equipment" means devices and clothing that are worn over, in place of, or in addition to normal work attire for the purpose of protecting the human body from contact with pesticides or pesticide residues.

"Pesticide-treated area" means any area to which a pesticide has been directed.

"Potable water" means water that meets the standards for drinking purposes established by State or local authority having jurisdiction or water that meets the National Interim Primary Drinking Water Standards, set forth in Part 141 of this chapter.

"Protective suit" means any loose-fitting, one- or two-piece garment that is worn over normal work attire and covers at a minimum the entire body except for the feet, hands, and head.

"Reentry interval" means the period of time after the end of a pesticide application on, in, or near an area during which entry into the area is restricted, including at a minimum the period of time required for sprays to dry, dusts to settle and vapors to disperse.

"Reentry-restricted area" means the pesticide-treated area and any additional area into which entry is restricted during the reentry interval because of drift or overspray of pesticides beyond the pesticide-treated area.

"Supervisor" means any person who directly or indirectly exercises control and direction over any worker.

"Worker" means any person employed for any type of compensation to perform tasks relating to the production of agricultural plants. The term does not include an owner of a farm, forest, nursery or greenhouse or the immediate family of an owner, the immediate family including only an owner's spouse, children, stepchildren,

foster children, parents, stepparents, foster parents, brothers, and sisters.

§ 170.7 Duties of persons covered under this part.

(a) *Duties of owner.* The owner of any farm, forest, nursery or greenhouse shall:

(1) Assure that any pesticide that is used on such property is used in a manner that is consistent with the labeling of the pesticide including the requirements of this part.

(2) Assure that any worker who works on such property receives the protections required by this part.

(3) Provide, to each person who performs or supervises any work on such property, information and directions sufficient to assure that each worker on such property receives the protections required by this part. Such information and directions shall include where and when pesticides will be or have been applied, which areas have restrictions on reentry, and which persons are responsible for actions required to comply with this part.

(4) Require each supervisor of any worker on such property to assure compliance by the worker with the provisions of this part and to assure that the worker receives the protections required by this part.

(b) *Duties of other persons.* Each person who performs or supervises any work related to the production of agricultural plants or the use of any pesticide on or in any farm, forest, nursery or greenhouse shall:

(1) Comply with all instructions and directions given by the owner or other persons acting for the owner, or by the person's employer, that are intended to assure compliance with this part.

(2) Assure that any worker the person supervises receives the protections required by this part.

(3) Assure that any pesticide the person uses or supervises the use of is used in a manner that is consistent with the labeling of the pesticide, including the requirements of this part.

(c) *Prohibited actions.* No owner, employer, or supervisor shall allow or direct a worker to violate any requirement of this part, or take any action intended to prevent or discourage any worker from complying or attempting to comply with any requirement of this part. However, this part does not prohibit an owner, employer, or supervisor from discharging or otherwise disciplining any worker for failure to comply with instructions to take an action required by this part or to refrain from an action prohibited by this part.

§ 170.9 Violations of this part.

(a) Under FIFRA section 12(a)(2)(G) it is unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." EPA interprets the term "to use any registered pesticide" as referring to, among other things, application, arranging for or allowing application, making necessary preparations for application, or supervising application of a pesticide, or taking any required postapplication actions. Each person who uses a pesticide must not use it in a manner inconsistent with its labeling, including the requirements of this part.

(b) A person who has a duty under this part (see § 170.7) and who fails to perform that duty violates FIFRA section 12(a)(2)(G) and is subject to a civil or criminal penalty under FIFRA section 14.

(c) FIFRA section 14(b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for him violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships.

(d) Notwithstanding paragraphs (a) through (c) of this section, if a person who is under contract to perform services on the property of an owner, or who is the employee of such a contractor, violates any requirement of this part, the owner of the property shall not be considered to have committed an unlawful act solely because of such violation if the violation did not occur on the property of the owner.

(e) The fact that a person covered under this part failed to obey instructions to take an action required by this part (or instructions to refrain from an action prohibited by this part) shall not preclude enforcement action against other persons who have duties under this part. However, any such non-compliance that is directly related to a violation of this part shall be taken into account in administrative decisions concerning initiation of enforcement action and determination of penalties with regard to such violation.

Subpart B—Standards for Pesticide Handlers and Early Reentry Workers**§ 170.10 Applicability.**

This subpart contains standards to protect pesticide handlers and early reentry workers for pesticides used on or in farms, forests, nurseries and greenhouses. In this subpart, the word "worker" refers only to pesticide handlers and early reentry workers.

§ 170.12 Training.

(a) *General.* Each worker shall be trained under the provisions of this section, unless such person is a certified commercial or private applicator under Part 171 of this chapter.

(b) *Training programs.* (1) A trainer shall present general information on pesticides to workers orally or audiovisually and shall answer questions that arise. The trainer shall be a certified commercial or private applicator under Part 171 of this chapter or otherwise designated by a State or Federal agency as a trainer of certified applicators.

(2) General information on pesticides shall include at a minimum the following:

(i) Format and meaning of information contained on pesticide labels and in supplementary labeling, including safety information such as human hazard precautionary statements;

(ii) Acute and chronic hazards of pesticides;

(iii) Common signs and symptoms of pesticide poisoning, including signs and symptoms of cholinesterase inhibition;

(iv) Routes through which pesticides can enter the body;

(v) Appropriate use of personal protective equipment;

(vi) Emergency first aid for pesticide injuries or poisonings;

(vii) How to find emergency medical care;

(viii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including procedures for spill cleanup;

(ix) Safety requirements for routine washing of face and hands before eating, drinking, using the toilet, or using gum or tobacco;

(x) Safety requirements for whole body decontamination in an emergency exposure situation and at the end of the handling activities, including instructions not to wear home or take home contaminated personal protective equipment;

(xi) (If applicable) Information that pesticides are applied in irrigation water in some areas. Warnings not to enter such areas when the irrigation system is operating and until foliage has dried and soil surface water has disappeared. Instructions not to drink, bathe in, use, play in, or enter the water in furrows, puddles, ponds, canals, or ditches associated with an irrigation system used to apply pesticides;

(xii) Basic information on the safe and appropriate operation of mixing, loading, and application equipment;

(xiii) Environmental concerns such as drift, runoff, and wildlife hazards.

(c) *State requirements.* (1) A State may impose additional requirements for training consistent with those set forth in this section.

(2) A State shall petition the Agency for approval of any training requirement inconsistent with those set forth in this section.

§ 170.14 Access to labeling information.

Any information from the labeling of any pesticide that is being or is scheduled to be handled, or the labeling itself, shall be provided upon request to any handler of that pesticide.

§ 170.16 Duties related to personal protective equipment.

(a) *Provision.* When personal protective equipment (PPE) is required by the labeling of any pesticide for any worker, such PPE shall be provided in clean and operating condition to such worker.

(b) *Use.* (1) All required PPE shall be used correctly for its intended purpose and in accordance with any manufacturer's instructions.

(2) No worker shall be allowed or directed to perform any task requiring the use of a chemical-resistant protective suit when conditions such as temperature, humidity and length of time required to complete the task might be expected to cause heat prostration or other heat-induced illness.

(3) A clean place away from pesticide storage and pesticide use areas shall be provided where workers may put on PPE at the start of any exposure period, store any personal clothing not in use, and change out of PPE at the end of any exposure period. Soap, towels, and a sufficient amount of potable water for workers to wash after removing PPE shall be available at the end of any exposure period.

(4) When not in use, PPE shall be stored away from pesticide-contaminated areas and separately from personal clothing.

(5) No worker shall be allowed or directed to wear home or take home pesticide-contaminated PPE.

(c) *Cleaning and maintenance.* (1) All PPE shall be thoroughly washed with detergent and hot water, or cleaned according to manufacturer's instructions, after any day on which it is used and before it may be reused. All PPE shall be thoroughly dried before being stored or shall be put in a well ventilated place to dry.

(2) Any person responsible for cleaning the PPE shall be informed that such equipment may be contaminated with pesticides and that it should be

kept and washed separately from any other clothing or laundry.

(3) Any PPE that cannot be properly cleaned shall be disposed of in accordance with any applicable Federal, State, and local regulations. Any nonchemical-resistant protective suit which becomes drenched or heavily contaminated with an undiluted pesticide which has the signal word DANGER or WARNING on the label shall always be disposed of rather than being used.

(4) Respirator filter pads, cartridges, and canisters shall be replaced at least as often as recommended by the manufacturer.

(5) Before each day's use, all PPE shall be inspected for leaks, holes, tears, or worn places and any damaged equipment shall be repaired or discarded.

§ 170.18 Decontamination.

(a) *Requirement.* Water for washing off pesticides and pesticide residues shall be made available to each worker.

(b) *General conditions.* (1) The water shall be potable.

(2) The water shall be at a temperature that will not injure the eyes.

(3) If the water is stored in a tank, the water shall not also be used for mixing of pesticides, unless the tank is equipped with properly functioning valves or other mechanisms which prevent movement of pesticides into the tank.

(4) The water shall be reasonably accessible from each worker's place of work.

(5) The water shall not be located within a reentry-restricted area.

(6) The water shall be made available in adequate supply for routine washing of hands and face by workers as well as for emergency whole-body decontamination.

(7) Soap and single-use towels, in quantities sufficient to meet workers' needs, and a clean change of clothing, such as coveralls, shall be available at each decontamination water location.

(c) *Emergency eye flushing.* An eye flush dispenser containing at least one pint of water shall be made available to each worker who is required by the pesticide labeling to wear goggles or a face shield for the activity being performed. The dispenser shall be either carried by the worker, located on the vehicle which the worker is using, or otherwise immediately accessible.

§ 170.20 Cholinesterase monitoring.

(a) *Requirement.* Any worker who handles, for compensation on property not owned or rented by him or his employer, any pesticide product with

the signal word "DANGER" or "WARNING" on the label containing any organophosphate active ingredient, on each of 3 consecutive days, or on any 6 days in a 21-day period, shall be monitored for cholinesterase inhibition.

(b) *Employer duties.* The employer of any commercial pesticide handler covered under paragraph (a) of this section shall:

(1) Engage the services of a licensed physician to supervise the cholinesterase monitoring of the handler. The agreement shall provide that the physician:

(i) Use the guidelines for cholinesterase monitoring provided by the Agency or other equivalent guidelines;

(ii) Advise the employer when changes to work practices may be warranted due to decreased cholinesterase levels;

(iii) Advise the employer when the handler should be removed from further exposure due to significantly decreased cholinesterase levels; and

(iv) Advise the employer when cholinesterase levels have regenerated to a level permitting return to exposure.

(2) Follow all recommendations of the physician concerning matters of cholinesterase monitoring, including frequency of testing and removal from exposure.

(3) Inform the handler that changes to work practices or removal from exposure due to excessive cholinesterase inhibition has been recommended by the physician, upon any such recommendation by the physician to the employer.

(c) *Recordkeeping.* The employer of any commercial pesticide handler, whether or not such handler is covered under paragraph (a) of this section, shall maintain a record for at least 2 years, to be made available upon request to State and Federal enforcement officials, of:

(1) All handling activities involving pesticide products with the signal word DANGER or WARNING on the label containing any organophosphate active ingredient, including date of handling and name of the pesticide product handled, for all handlers in his employ; and

(2) Any agreement made pursuant to paragraph (b)(1) of this section.

(d) *State requirements.* A State shall have the authority to modify the requirements of this section so long as cholinesterase monitoring of commercial pesticide handlers is required under conditions substantially equivalent to those described in this section.

(e) *Guidelines.* The Agency will develop and furnish on request to any individual, organization or State,

guidelines for cholinesterase monitoring which will cover as a minimum: appropriate test methods, baseline testing, frequency of testing after exposure begins, and decreases in plasma and red blood cell levels for which work practices should be investigated and those for which medical removal of a worker from exposure should be made.

(Approved by the Office of Management and Budget under Control Number 2070-A328)

Subpart C—Common Standards for Workers on or in Farms, Forests, Nurseries and Greenhouses**§ 170.30 Applicability.**

This subpart applies to, and contains standards to protect all workers from, pesticides used on or in farms, forests, nurseries and greenhouses.

§ 170.32 General pesticide safety information.

(a) *Requirement.* The general pesticide safety information specified in paragraph (f) of this section shall be displayed in a prominent location on or in each farm, forest, nursery or greenhouse during the growing season.

(b) *Access.* Each worker shall be informed of the location of the information and allowed reasonable access to it.

(c) *Language.* All information displayed shall be in English. If any worker cannot read English but can read another language, then a translation into that language shall be displayed, either of each item of information or else of the words "THIS INFORMATION IS ABOUT PESTICIDES AND YOUR HEALTH. IF YOU DO NOT UNDERSTAND THE INFORMATION, HAVE SOMEONE EXPLAIN IT TO YOU".

(d) *Legibility.* The information shall be displayed in such a manner that it remains legible for the duration of use.

(e) *Updating.* Each worker shall promptly be informed of any change to the information.

(f) *Content.* The information shall include:

(1) The name, address and telephone number of the nearest physician's office, clinic, or hospital that is equipped to provide emergency medical care in case of a pesticide-related poisoning or injury.

(2) A facsimile of the pesticide warning sign used for posting on the property and where the warning signs will be placed.

(3) The following statements concerning pesticide hazards, recommended safety practices, and

duties of persons covered under this part:

- (i) Some pesticides can cause death, injury, or disease.
- (ii) Some pesticides that get on the skin can cause rashes or sores, and some pesticides that get in the eyes can cause eye injury or irritation.
- (iii) Pesticides may enter the body through the mouth, skin, eyes, and lungs.
- (iv) Pesticides may remain on surfaces, such as crops or soil, even though they cannot be seen or tasted.
- (v) By taking steps to avoid or reduce exposure, you can help protect yourself from pesticide injury.
- (vi) If you may have pesticides on your hands or face, you should wash before eating, drinking, using the toilet, or using gum or tobacco.
- (vii) You should wash thoroughly and change into clean clothing at the end of each workday if you may have come into contact with pesticides.
- (viii) Pesticides can accumulate on work clothing, so clothing worn on a workday involving contact with pesticides should be washed separately from other clothing before being worn again.
- (ix) You should not pick, eat, or take home plants or food, without the supervisor's permission, because the food may be unsafe because of pesticides.
- (x) You should not take home empty pesticide containers because they are not for home use and could injure you or your family.
- (xi) Whether pesticides are applied in irrigation or watering systems on the property, and (if so) the kind of system used, that the worker should not drink, touch, or use water associated with the system, and that the worker should not enter these areas except at the direction of the supervisor.
- (xii) Unless you are directed by a supervisor, you should not enter any area that has been treated with a pesticide if the pesticide sprays have not dried, the dusts have not settled, or the vapors have not dispersed, or if a reentry interval is in effect, or if a warning sign is posted.
- (xiii) If you are accidentally sprayed directly or through drift, you should wash immediately in the nearest available water and then as soon as possible shower, shampoo and change into clean clothing.
- (xiv) You should promptly seek medical attention and inform the supervisor, if you notice signs or symptoms of pesticide poisoning or pesticide injury.
- (xv) The following information about pesticide applications will be provided to you upon request: location of the

treated area, date or time of application, reentry interval, product name, registration number and active ingredients.

(xvi) Federal law establishes other safety rules for protecting workers from pesticide hazards, and requires workers, supervisors, employers, and owners to comply with those rules.

§ 170.34 Emergency duties.

(a) *Duty to provide transportation to emergency medical care.* When there is reason to believe that a worker has been poisoned or injured by a pesticide, or when an exposure to a pesticide has occurred that might be expected to lead to the poisoning or injury of any worker, prompt transportation to an appropriate medical facility shall be provided to the worker.

(b) *Duty to provide emergency information.* Upon request, the following information shall be provided if available to any worker or treating medical personnel who have grounds to suspect that a worker has been poisoned or injured by a pesticide:

- (1) The product name, EPA registration number, and active ingredient(s) of the pesticide.
- (2) Antidote or first aid information.
- (3) Information about the circumstances of application or use of the pesticide on the property, or about the exposure of the worker to the pesticide.

§ 170.36 Precautions during application of pesticides.

(a) *Presence of workers.* No worker shall be allowed or directed to enter or remain in an area during application of any pesticide to that area, unless the worker is a handler involved in the application of the pesticide.

(b) *Contact with workers.* No pesticide shall be applied so as to contact any worker directly or through drift.

§ 170.38 Decontamination.

(a) *Requirement.* Water for washing off pesticides and pesticide residues shall be provided for any worker during any task which causes the worker to come into contact with any surface that has been treated with a pesticide during the agricultural production cycle in which the task occurs.

(b) *General conditions.* (1) The water shall be potable.

(2) The water shall be at a temperature that will not injure the eyes.

(3) If the water is stored in a tank, the water shall not also be used for mixing of pesticides, unless the tank is equipped with properly functioning valves or other mechanisms which

prevent movement of pesticides into the tank.

(4) The water shall be reasonably accessible from each worker's place of work.

(5) The water shall not be located within a reentry-restricted area.

(6) The water shall be made available in adequate supply for routine washing of hands and face by workers.

(7) Soap and single-use towels shall be available at each water location, in quantities sufficient to meet workers' needs.

Subpart D—Special Standards for Workers on Farms and in Forests

§ 170.40 Applicability.

This subpart applies to, and contains standards to protect all workers from, pesticides used on farms and in forests.

§ 170.42 Information about pesticide applications.

(a) *Requirement and exception—(1) Requirement.* Information about the application of any pesticide to an area of a farm or forest shall be provided orally to each worker in accordance with paragraph (b) of this section and upon request in accordance with paragraph (c) of this section.

(2) *Exception.* Information need not be provided to a worker if, from the start of application until the end of the reentry interval, the worker will not enter, work in, remain in, or pass through, on foot or in an open vehicle, the pesticide-treated area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area.

(b) *Information to be provided orally.* Whenever required by paragraph (a) of this section, information about the application of a pesticide shall be provided orally to each worker, in a language the worker can understand. The information shall be provided to each worker on the day of application at the beginning of the work day, and on each subsequent day that any reentry interval for that application is in effect. The information shall include:

(1) The specific location and description of the pesticide-treated area or area to be treated.

(2) The period of the work day during which workers may not enter without direction.

(c) *Information to be provided upon request.* Whenever required by paragraph (a) of this section, any of the following information about the application of a pesticide shall be provided to any worker if requested during the period beginning with the day

of application and ending with the expiration of the reentry interval:

(1) The specific location and description of the pesticide-treated area.

(2) The product name, EPA registration number and active ingredient(s) of the pesticide.

(3) The time or date the pesticide was applied (or the scheduled time or date of application).

(4) The reentry interval for the pesticide.

§ 170.44 Posting.

(a) *Requirement and exception—(1) Requirement.* If a pesticide having a reentry interval of greater than 48 hours is applied to an area of a farm or forest, the pesticide-treated area shall be

posted with warning signs in accordance with paragraph (b) of this section.

(2) *Exception.* Posting is not required if, from the start of application until the end of the reentry interval, no worker (other than a pesticide handler applying the pesticide) will enter, work in, remain in, or pass through, on foot or in an open vehicle, the pesticide-treated area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area.

(b) *Warning signs.* The posting of warning signs shall be in accordance with the following criteria:

(1) The warning signs shall contain the words "DANGER" and

"PESTICIDES" at the top and "KEEP OUT" at the bottom. Near the center of the sign shall be a circle containing an upraised hand on the left and a stern face on the right. Letters for all the words shall be red and at least 2½ inches high and clearly legible. The background outside the circle shall be white. The hand and a large portion of the face shall be white. The length of the hand shall be at least twice the height of the letters and the length of the face shall be only slightly smaller than the hand. The remainder of the inside of the circle shall be red. A small black-and-white facsimile of a warning sign meeting these requirements follows.

BILLING CODE 5050-50-M

DANGER PESTICIDES



KEEP OUT

BILLING CODE 5550-50-C

(2) The signs shall be visible from all usual points of worker entry to the pesticide-treated area, including each access road, each border with any labor camp adjacent to the pesticide-treated area, and each footpath and other walking route that enters the pesticide-treated area. When there are no usual points of worker entry, signs shall be posted in the corners of the pesticide-treated area or in any other location affording maximum visibility.

(3) The signs shall:

(i) Be posted no sooner than 24 hours before the scheduled application of the pesticide.

(ii) Remain posted during application and throughout the reentry interval.

(iii) Be removed within 3 days after the expiration of the reentry interval and before worker reentry is permitted, other than reentry authorized by § 170.46.

(4) The signs shall remain legible for the duration of use.

(5) When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker reentry, other than reentry authorized by § 170.46, is prohibited for the entire area while the signs are posted.

§ 170.46 Reentry.

(a) *General restriction and exceptions.* No worker shall be allowed or directed to enter or remain in a pesticide-treated area before the reentry interval specified on the pesticide labeling has expired unless either:

(1) The worker will have no contact with pesticide residues on treated surfaces or in soil, water or air; for example:

(i) Before sprays and dusts have settled and vapors have dispersed, the worker is operating in a closed vehicle with a positive pressure filtration system;

(ii) After sprays and dusts have settled and vapors have dispersed,

(A) The worker is performing activities that do not involve contact with soil subsurface, following a soil incorporated pesticide application,

(B) The worker is wearing chemical resistant shoes, shoe coverings or boots and is performing activities that do not involve hand contact with the soil, planting media or plant, following a soil-directed or basal-directed application,

(C) The worker is operating in an open vehicle such as a tractor, the crop is not tall and dense (would not brush against the worker) and the worker is not in a position where trees and other plants could drop pesticide residues on the worker; or

(2) The following requirements for early reentry workers are met:

(i) Personal protective equipment specified on the pesticide labeling is worn.

(ii) Duties related to personal protective equipment specified in § 170.16 are met.

(iii) Decontamination provisions specified in § 170.18 are available.

(iv) Training specified in § 170.12(b) is given.

(v) Any other requirement regarding early reentry specified on the pesticide labeling is met.

(b) *Prohibited activities.* No worker may enter a pesticide-treated area to perform any hand labor task until all sprays have dried, dusts have settled, or vapors have dispersed.

(c) *Multiple reentry intervals.* When two or more pesticides are applied at the same time, the reentry interval shall be the longest of the applicable intervals. When a pesticide has a reentry interval in addition to the "sprays have dried" interval, both shall be observed.

Subpart E—Special Standards for Workers in Nurseries

§ 170.50 Applicability.

This subpart applies to, and contains standards to protect all workers from, pesticides used in nurseries.

§ 170.52 Information about pesticide applications.

(a) *Requirement.* The following information about the application of any pesticide to an area of a nursery shall be provided to any worker if requested during the period beginning with the day of application and ending with the expiration of the reentry interval:

(1) The specific location and description of the reentry-restricted area.

(2) The product name, EPA registration number and active ingredient(s) of the pesticide.

(3) The time or date the pesticide was applied (or the scheduled time or date of application).

(4) The reentry interval for the pesticide.

(b) *Exception.* Information need not be provided to a worker if, from the start of application until the end of the reentry interval, the worker will not enter, work in, remain in, or pass through, on foot or in an open vehicle, the treated area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area.

§ 170.54 Posting.

(a) *Requirement.* If a pesticide is applied to an area of a nursery, the reentry-restricted area shall be posted with warning signs in accordance with § 170.64(b). A sign must be of the appropriate size and be placed in a suitable location to meet the requirement of § 170.64(b)(2) for each type of nursery growing area, e.g., benches, pots on the ground and fields of plants growing in the ground.

(b) *Exception.* Posting is not required if, from the start of application until the end of the reentry interval, no worker (other than a pesticide handler applying the pesticide) will enter, work in, remain in, or pass through, on foot or in an open vehicle, the reentry-restricted area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area.

§ 170.56 Reentry.

(a) *General restriction and exceptions.* No worker shall be allowed or directed to enter or remain in a reentry-restricted area before the reentry interval specified in paragraph (b) of this section has expired, unless:

(1) The worker will have no contact with pesticide residues on treated surfaces or in soil, water, or air; or

(2) The following requirements for early reentry workers are met:

(i) Personal protective equipment specified on the pesticide labeling for early reentry activities is worn.

(ii) Duties related to personal protective equipment specified in § 170.16 are met.

(iii) Decontamination provisions specified in § 170.18 are available.

(iv) Training specified in § 170.12(b) is given.

(v) Any other requirement regarding early reentry specified on the pesticide labeling is met.

(b) *Reentry-restricted areas and intervals—(1) Soil-directed applications.* For any pesticide applied from a maximum height of 12 inches from the soil, either using a dry formulation or using coarse spray droplets and pressure less than 40 p.s.i., the reentry-restricted area shall be the pesticide-treated area until the reentry interval specified on the product labeling has expired. However, if the labeling of the pesticide requires the use of a respirator during application, the reentry-restricted area shall be as defined in paragraph (b)(2) of this section.

(2) *Downward-directed applications.* When any pesticide is applied from a height of greater than 12 inches from the soil, applied using fine spray droplets, or

applied using pressure greater than 40 p.s.i. but less than 150 p.s.i., and is directed downward, not including aerial applications, the reentry-restricted area shall be an area extending at least 25 feet beyond the perimeter on the downwind side of the pesticide-treated area and at least 10 feet beyond the perimeter of the pesticide-treated area in all other directions until sprays or dusts have settled. After sprays or dusts have settled and until the reentry interval specified on the pesticide labeling has expired, the reentry-restricted area shall be the pesticide-treated area.

(3) *Other applications.* For any pesticide applied aerially, directed upwards, or applied using pressure greater than 150 p.s.i., the reentry-restricted area shall be the pesticide-treated area and any moistened or dusted areas outside the pesticide-treated area, until spray or dusts have settled. After spray or dusts have settled and until the reentry interval specified on the pesticide labeling has expired, the reentry-restricted area shall be the pesticide-treated area.

(c) *Prohibited activities.* No worker may enter a reentry-restricted area to perform any hand labor task until all sprays have dried, dusts have settled, or vapors have dispersed.

(d) *Multiple reentry intervals.* When two or more pesticides are applied at the same time, the reentry interval shall be the longest of the applicable intervals. When a pesticide has a reentry interval in addition to the "sprays have dried" interval, both shall be observed.

Subpart F—Special Standards for Workers in Greenhouses

§ 170.60 Applicability.

This subpart applies to, and contains standards to protect all workers from, pesticides used in greenhouses.

§ 170.62 Information about pesticide applications.

(a) *Requirement.* The following information about the application of any pesticide to an area of a greenhouse shall be provided to any worker if requested during the period beginning with the day of application and ending with the expiration of the reentry interval:

(1) The specific location and description of the reentry-restricted area.

(2) The product name, EPA registration number and active ingredient(s) of the pesticide.

(3) The time or date the pesticide was applied (or the scheduled time or date of application).

(4) The reentry interval for the pesticide.

(b) *Exception.* Information need not be provided to a worker if, from the start of the application until the end of the reentry interval, the worker will not enter, work in, remain in, or pass through the greenhouse.

§ 170.64 Posting.

(a) *Requirement and exception—(1) Requirement.* If a pesticide is applied in a greenhouse, the reentry-restricted area shall be posted with warning signs in accordance with paragraph (b) of this section.

(2) *Exception.* Posting is not required if, from the start of application until the end of the reentry interval, no worker (other than a pesticide handler applying the pesticide) will enter, work in, remain in, or pass through the greenhouse.

(b) *Warning signs.* The posting of warning signs shall be in accordance with the following criteria:

(1) The warning signs shall contain the words "DANGER" and "PESTICIDES" at the top and "KEEP OUT" at the bottom. Near the center of the sign shall be a circle containing the upraised hand on the left and a stern face on the right. Letters for all the words shall be red and legible. The background outside the circle shall be white. The hand and a large portion of the face shall be white. The remainder of the inside of the circle shall be red. The length of the hand shall be at least twice the height of the letters and the length of the face shall be only slightly smaller than the hand. A black-and-white facsimile of a warning sign meeting these requirements is provided in § 170.44.

(2) The warning signs shall be visible from all points of access to the reentry-restricted area.

(3) The warning signs shall:

(i) Be posted immediately before the application of the pesticide.

(ii) Remain posted during application and throughout the reentry interval.

(iii) Be removed within 1 day after the expiration of the reentry interval and before worker reentry other than reentry authorized by § 170.66 is permitted.

(4) The warning signs shall remain legible for the duration of use.

(5) When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire areas may be posted. Worker reentry other than reentry authorized by § 170.66 is prohibited from the entire area while the signs are posted.

§ 170.66 Reentry.

(a) *General restrictions and exceptions.* No worker shall be allowed or directed to enter or remain in a reentry-restricted area before the reentry interval specified in paragraph (b) of this section has expired, unless:

(1) The worker will have no contact with pesticide residues on treated surfaces or in soil, water, or air; or

(2) The following requirements for early reentry workers are met:

(i) Personal protective equipment specified on the pesticide labeling for early reentry activities is worn.

(ii) Duties related to personal protective equipment specified in § 170.16 are met.

(iii) Decontamination provisions specified in § 170.18 are available.

(iv) Training specified in § 170.12(b) is given.

(v) Any other requirement regarding early reentry specified on the pesticide labeling is met.

(b) *Reentry-restricted areas and intervals—(1) Fumigant applications.* For any pesticide identified on the pesticide labeling as a fumigant, the reentry-restricted areas shall be the entire nonporous enclosed area within which the pesticide is applied. The reentry interval shall extend until all vapors have dispersed, as defined by one of the following criteria:

(i) Two hours of ventilation using fans or other mechanical ventilation systems.

(ii) Four hours of ventilation using vents, windows, or other passive ventilation systems.

(iii) Eleven hours with no ventilation, followed by 1 hour of mechanical ventilation.

(iv) Eleven hours with no ventilation, followed by 2 hours of passive ventilation.

(v) Twenty-four hours with no ventilation.

(vi) The air concentration of the fumigant is measured to be less than or equal to the permissible exposure level specified on the product labeling.

(2) *Smoke, mist, fog and aerosol applications.* For any pesticide applied in the form of a smoke, mist, fog, or aerosol, the reentry-restricted area shall be the entire nonporous enclosed areas within which the pesticide is applied, until the reentry interval specified on the pesticide labeling has expired.

(3) *Soil-directed applications.* For any pesticide applied from a maximum height of 12 inches from the soil, either using a dry formulation or using coarse spray droplets and pressure less than 40 p.s.i., not including fumigant, smoke, mist, fog or aerosol applications, the reentry-restricted area shall be the

pesticide-treated area until the reentry interval specified on the product labeling has expired. However, if the labeling of the pesticide requires the use of a respirator during application, the reentry-restricted areas shall be as defined in paragraph (b)(4) of this section.

(4) *Plant-directed applications.* For any pesticide applied from the height of more than 12 inches from the soil, applied using fine spray droplets or applied using pressure greater than 40 p.s.i., not including fumigant, smoke, mist, fog or aerosol applications, and ventilation occurs during application or

before sprays and dusts have settled, the reentry-restricted area shall be the entire nonporous enclosed areas within which the pesticide is applied until sprays and dusts have settled. However, if no ventilation occurs during this period, the reentry-restricted area shall include an area within the greenhouse extending 25 feet beyond the perimeter of the pesticide-treated area. After sprays and dusts have settled, the reentry-restricted area shall be the pesticide-treated area until any reentry interval specified on the pesticide labeling has expired.

(c) *Prohibited activities.* No worker may enter a reentry-restricted area to perform any hand labor task until all sprays have dried, dusts have settled, or vapors have dispersed.

(d) *Multiple reentry intervals.* When two or more pesticides are applied at the same time, the reentry interval shall be the longest of the applicable intervals. When a pesticide has a reentry interval in addition to the "sprays have dried" interval, both shall be observed.

[FR Doc. 88-15416 Filed 7-7-88; 8:45 am]
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Title 3—

The President

Memorandum of May 23, 1988

Designations of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as "Agencies" Under 5 U.S.C. 7531(9)

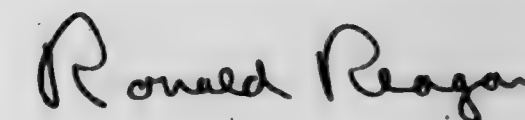
Memorandum for the Secretary of Defense

I have reviewed the personnel security requirements of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency and the termination provisions of 5 U.S.C. Section 7532. I have determined that these Agencies are sensitive agencies and that it is in the best interests of national security that they be designated "agencies" within the meaning of that section.

Therefore, pursuant to the authority set forth in 5 U.S.C. Section 7531(9), I hereby designate the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as "agencies" within the meaning of 5 U.S.C. Section 7532.

You are hereby authorized and directed to report these designations to the Committees on Armed Services of the Congress and to publish this memorandum in the Federal Register.

THE WHITE HOUSE,
Washington, May 23, 1988.



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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statement of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations and statement.

SUMMARY: The Administrative Conference of the United States, at its Thirty-sixth Plenary Session, adopted five recommendations and one statement.

Recommendation 88-1, Presidential Transition Workers' Code of Ethical Conduct, urges the President to issue an executive order that requires presidential transition team members to agree to abide by a code of ethical conduct, as a condition of their access to federal facilities and nonpublic information. The code of conduct covers use of inside information, financial self-dealing, concurrent representation in agency matters during the transition, use of government property, and post-transition activities.

Recommendation 88-2, Federal Government Indemnification of Government Contractors, identifies several factors that agencies should consider when they determine whether to indemnify a particular contractor. The Conference recommends interagency cooperation in situations where an agency is considering indemnification of a contractor but has insufficient technical expertise to assess the hazard or the degree of risk. The recommendation also calls for compilation of information on existing indemnity clauses and any claims under them.

Recommendation 88-3, the Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act, urges the Federal Reserve Board to provide by regulation that its 91-day rule governing action on applications under the Bank Holding Company Act will be delayed only if highly significant information is received that warrants reopening an applicant's file. The Conference also seeks to equalize the bargaining process between applicants and the Board with regard to voluntary commitments and regulatory conditions imposed on applicants, all of which would be made part of final Board orders.

Recommendation 88-4, Deferred Taxation for Conflict-of-Interest Divestitures, calls on Congress to amend the Internal Revenue Code to permit deferred taxation of gains when appointees to high-level government positions are required to divest property to satisfy federal conflict-of-interest requirements. These persons would be permitted to sell property presenting a conflict of interest, reinvest the proceeds in an approved neutral investment fund and maintain their original basis in the divested property. The Conference also recommends that Congress consider, at an appropriate time, extending similar tax treatment to other individuals serving in the executive branch.

Recommendation 88-5, Agency Use of Settlement Judges, focuses on agency adjudicatory processes and calls for agencies to use a separate settlement judge—not the presiding judge in the case—to assist the parties in some cases to reach agreement. The Recommendation is based on the view that, in many cases, a separate settlement judge can exercise greater settlement-inducing authority than the presiding judge. The settlement judge assists by lending structure to the negotiations, controlling their pace, reducing the adversarial nature of the process, and helping the parties to assess objectively both the strengths and weaknesses of the case and to find a reasoned, legally defensible settlement. Recommendation 88-5 suggests procedures for using the settlement judge technique and guidelines that seek to balance potential gains in efficiency against possible abuses that may result from an increasing reliance on settlement in administrative proceedings.

The Conference's Statement, Dispute Resolution Procedure in Reparations and Similar Cases, is based on research into the "reparations" procedures at the Commodity Futures Trading Commission. The Statement offers general advice on approaches to reparations and similar programs that are designed to safeguard consumers. It briefly describes the innovative processes developed by the CFTC and expresses the Conference's view that programs that offer complainants procedural options, like the CFTC's optional three-tiered process, have important benefits. The Statement suggests that agencies administering statutes that recognize a private right of action consider seeking authority to establish a reparations program offering such creative procedures. The Statement also sets forth several factors for agencies to take into account as to management of reparations programs, involving discovery, identity of decisionmakers, hearings, and case tracking.

Recommendations and statements of the Administrative Conference are published in full text in the Federal Register upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations were adopted June 9-10, 1988, and issued July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Lubbers, Research Director (202-254-7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Thirty-sixth Plenary Session, held June 9-10, 1988, the Assembly of the Administrative Conference of the United States adopted five recommendations and one statement,

the texts of which are set out below. These texts will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference of the United States has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 I Street NW., Washington, DC.

List of Subjects in 1 CFR Parts 305 and 310

Administrative practice and procedure, Ethics in Government, Indemnification of contractors, Alternative dispute resolution, Banking regulation.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571-576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

- Sec.
- 305.88-1 Presidential Transition Workers' Code of Ethical Conduct (Recommendation No. 88-1).
- 305.88-2 Federal Government Indemnification of Government Contractors (Recommendation No. 88-2).
- 305.88-3 The Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act (Recommendation No. 88-3).
- 305.88-4 Deferred Taxation for Conflict-of-Interest Divestitures (Recommendation No. 88-4).
- 305.88-5 Agency Use of Settlement Judges (Recommendation No. 88-5).

PART 310—MISCELLANEOUS STATEMENTS

3. The authority citation for Part 310 continues to read as follows:

Authority: 5 U.S.C. 571-576.

4. The table of contents to Part 310 of Title 1 CFR is amended to add the following new section:

- Sec.
- 310.13 Dispute Resolution Procedure in Reparations and Similar Cases.

5. New §§ 305.88-1 through 305.88-5 are added to Part 305, to read as follows:

§ 305.88-1 Presidential Transition Workers' Code of Ethical Conduct (Recommendation No. 88-1).

The orderly and peaceful transfer of governmental authority following presidential elections is a hallmark of American government. The Presidential Transition Act of 1963 recognizes that a smooth transition is necessary to "assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign," and it directs all officers of the government to take steps to promote the orderly transition of power between the outgoing and incoming administrations.¹

Since 1933, when Inauguration Day was moved forward from March 4 to January 20, the length of presidential transitions has been moved between 71 and 79 days. However, the size and complexity of the transition task has grown steadily over time, corresponding to the tremendous growth in federal responsibilities. Each new President-elect has required a larger and more sophisticated transition organization than his predecessor.

The President-elect's transition organization must, in this brief period, prepare to provide the new leadership with comprehensive information on the organization and responsibilities of each federal agency; on the resources within each agency, including the budget, legislative initiatives, personnel and grants or contracts; and on the policy questions that will require decision by the new administration. This information is the basis for the President-elect's personnel, budgetary and policy decisions during the critical initial period of the new administration.

A large number of private citizens must be relied upon to accomplish these important tasks. During the 1980-81 presidential transition, over six hundred persons, most serving as volunteers, had active assignments on agency transition teams. Many of these persons were selected because of their substantive knowledge of the agency's mission, acquired either through past service in the government or in private sector jobs that brought them in contact with the agency. The magnitude and importance of the transition tasks, and the limited time available to complete them, suggest that future Presidents-elect will continue to rely upon large numbers of private citizens, some of whom later will be offered government appointments but many of whom will return to their private sector jobs.

The Administrative Conference wishes to encourage the participation of well qualified individuals in presidential transitions, but it recognizes that the presence of large numbers of private transition workers dealing with federal agencies offers the potential for conflicts of interest or abuse of the public trust that accompanies their special access to government information and facilities. The Conference is not acting upon knowledge of serious problems in this regard in recent transitions, but rather upon the need to prevent such problems from occurring in the future.

¹ 78 Stat. 153, section 2; 5 U.S.C. 102 note.

In this recommendation the Conference urges the President to issue an executive order to the heads of all federal agencies (including independent regulatory agencies), conditioning special access to federal agency records and facilities by members of the President-elect's transition team upon their agreement in writing to the standards of conduct set forth in the Appendix to this recommendation. The recommended executive order would cover the activities only of "special transition team members," i.e., transition workers, who are not existing government employees, who serve with or without compensation, and who are authorized by the President-elect's transition organization to seek or obtain access to non-public government information. The Conference believes that private citizens are not, and should not be considered, special government employees and thereby subject to federal conflict-of-interest laws, solely because of their activities as special transition team members.

Two concerns are addressed by this recommendation. First, federal agency officials need to know who actually represents the President-elect before granting special access to information. Second, the public needs assurance that authorized transition workers will not use such information to further their own financial interests or the interests of their present or future employers or other private persons.

The Conference believes that the recommended executive order and transition standards of conduct will alleviate these concerns without reducing the flexibility of the President-elect's transition effort. By urging the President to direct federal agencies affirmatively to cooperate with authorized transition personnel to the extent permitted by law and consistent with their official duties, the recommendation should facilitate the President-elect's transition efforts.

The Conference's recommendation includes requirements contained in pending legislation to amend the Presidential Transition Act of 1963 for minimal disclosure of personal or financial information by transition team workers.² The Conference believes that transition team members should supply this limited information to agencies, whether or not the pending legislation is enacted. The Conference also recommends that special transition team members agree not to use non-public government information, or to take any action as transition team members which could further their own financial interests.

Recommendation

1. The Conference recommends that the President issue an executive order that conditions access by special transition team members to government

² H.R. 3932, passed by the House of Representatives on March 31, 1988, and S. 2037, passed by the Senate on April 26, 1988, would require disclosure of the names of transition team workers, their most recent employment and the source of funding of their transition activities as a condition of receipt of public funds for transition activities.

facilities or non-public information upon their agreement in writing to the standards of conduct set forth in the Appendix to this recommendation. The term "special transition team member" is used herein to mean a person who is not a government employee, who serves with or without compensation as a member of a transition team, and who is authorized by the President-elect to seek or obtain access to non-public government information or facilities.

2. The executive order should direct the heads of all federal agencies to require the President-elect's transition organization to provide each agency with a list of the special transition team members for that agency, copies of their written agreements to comply with the standards of conduct and copies of information disclosure statements, as a condition of access by such members. The agencies should be required to maintain and make those documents available to the public upon request.

3. The executive order should direct all agency heads, subject to the above conditions, to cooperate with persons named by the President-elect or his designees as special transition team members to the extent permitted by law and consistent with the performance of official duties.

4. The executive order should direct all agency heads to take appropriate action against any person found to have violated the standards of conduct agreement, including, where authorized and in accordance with applicable procedures, barring the person from employment, receipt of contracts, representation of others before the agency, or referral of the matter to appropriate professional disciplinary bodies.

Appendix—Transition Code of Ethical Conduct

Each person who is not an employee or special government employee of the federal government and who assists in the presidential transition, with or without compensation, and who is designated by the President-elect to seek or obtain access to non-public government information or facilities during the transition period (herein referred to as a "special transition team member"), shall agree to comply with the following standards of conduct as a condition of such access.

1. Disclosure of Information

A special transition team member shall supply the agency with a statement as to his or her present employment and the sources of funding which support his or her transition activities.

2. Misuse of Inside Information

A special transition team member shall not use, permit others to use, or disclose

nonpublic information except for the public purposes of the transition.

3. Financial Self-Dealing

During the transition period, a special transition team member shall not knowingly take any action on a particular matter involving the federal agency which could have a direct effect upon a financial interest of the transition team member, his or her spouse, a family member, or any individual with whom the transition team member has a business, professional or close personal relationship.

4. Concurrent Representation in Agency Proceedings

During the transition period, a special transition team member shall not advise or represent, with or without compensation, anyone in any particular matter involving a federal agency to which he or she has had access to non-public information. This restriction does not extend to the special transition team member's firm or organization, but the team member should advise his or her firm or organization to establish procedures to assure that the team member does not participate in any way in any such agency proceeding.

5. Misuse of Government Property

A special transition team member shall conserve and protect federal property entrusted to him or her, and shall not use federal property, including equipment and supplies, other than for purposes directly related to transition activities.

6. Post-Transition Activities

For two years after the transition, a former special transition team member shall not represent, with or without compensation, any person before an agency in any particular matter involving a specific party or parties as to which he or she obtained government information not then available to the public and not made public prior to the request for advice or representation.

7. Definitions

As used in this Appendix [Order], the terms "employee," "special government employee," "particular matter" and "particular matter involving a specific party or parties" shall have the same meaning as in Title 18, United States Code 202-209. The term "transition period" shall extend from the date of the general election in which the identity of the President-elect is established until Inauguration Day, or if the transition organization continues to operate after the inauguration, such later date through which the special transition team member continues to serve in that capacity.

§ 305.88-2 Federal Government Indemnification of Government Contractors (Recommendation No. 88-2).

Indemnification of government contractors for third-party liability involves this issue:

¹ It is noted that the term "particular matter" has been interpreted to include rulemaking and general policy matters, and extends to all discrete matters that are the subject of agency action, no matter how general the effect.

Who should bear the risk of liability for injury or damage to a third party caused by products and services supplied by government contractors? This issue is especially significant when the products and services involve high-risk or hazardous governmental activities.

The liability of the government is limited by the doctrine of sovereign immunity, which has been waived only in certain situations, such as the Federal Tort Claims Act. Some courts have recognized a common law immunity for government contractors who have complied with pertinent government specifications and have disclosed all known defects or hazards to the government.² In the absence of insurance or indemnity, government contractors may be exposed to claims based, for example, on alleged failure to follow specifications or adequately warn the government or others about product design defects.

No government-wide legislation provides generally for indemnification of government contractors for third-party liability, although a number of individual departments and agencies are authorized to indemnify contractors.³ All of the laws authorizing government indemnification of contractors state conditions that must be met before contractual indemnity been met. Thus some statutes restrict indemnification to unusually hazardous governmental activities or activities that may result in catastrophic losses and further require the contractor to obtain such insurance as is available. Indemnification clauses included in contracts usually contain further conditions, some of which are required by agency rule. A common restriction is that the indemnity does not cover claims resulting from the contractor's willful misconduct.

Indemnification clauses are reserved for unusual circumstances, and few contractors are actually provided with indemnity. The Department of Defense, for example, included indemnification clauses in an average of about 70 contracts per year in the five-year period 1980-1984; by way of comparison, during fiscal year 1984 alone, the Department entered into over 14.8 million contract actions.

² Subsequent to adoption of the recommendation, in a case involving military equipment, the Supreme Court accepted this view. See *Boyle v. United Technologies*, 58 U.S.L.W. 4792 (U.S. June 27, 1988).

³ Examples are the National Defense Contracts Act, 50 U.S.C. 1431, as implemented by Executive Order 10709 (providing for indemnification under national defense contracts for unusually hazardous or nuclear risks); section 2354 of title 10 of the United States Code (providing for indemnification for unusually hazardous defense research and development activities); section 170 of the Atomic Energy Act, as amended by the Price-Anderson Act of 1957, 42 U.S.C. 2210(d) (providing indemnification for activities involving the risk of a substantial nuclear incident); the Federal Aviation Act, as amended, 49 U.S.C. 1531 et seq. (providing for indemnification for risks where aircraft operations are necessary to carry out U.S. foreign policy); and the National Aeronautics and Space Act, as amended, 42 U.S.C. 2450b (providing for indemnification for damages related to the launch, operation or recovery of space vehicles).

The Conference's study of contractual indemnification found virtually no evidence of claims made on the basis of indemnification clauses or litigation over such claims. Although there is no indication that the government has incurred significant costs under contractual indemnity provisions in the 30 years that have passed since enactment of the National Defense Contracts Act in 1958 and the Price-Anderson Act in 1957, the space shuttle disaster and the Three Mile Island nuclear incident suggest that contingent liabilities under indemnity agreements are potentially costly.²

The Conference's study found that agencies generally do not believe that current practices and limits on indemnities discourage potential contractors from bidding. Federal agencies, with few exceptions, see little need for greater indemnification authority or for broad legislation that would extend indemnities to government contractors generally. However, this view is not shared by many federal contractors. They take the position that the decreasing availability of private insurance for a broad range of hazardous activities is greatly reducing the pool of bidders for contracts involving those activities in the absence of government indemnification. This legislative debate is beyond the scope of the present recommendation.

While the Conference takes no position on the current debate over proposals to expand agency authority to indemnify contractors for hazardous activities, mass injuries, or other special circumstances, the Conference does recommend the compilation of certain information that would provide a better basis in the future for ascertaining the need for and risks associated with broader indemnification.

This recommendation identifies several factors that agencies should consider when they determine whether to grant an indemnity clause to a particular contractor. It is appropriate for agencies to consider the scope of the indemnity proposed to be granted, including the proper mix of self-insurance, private insurance, and government indemnity. The factors listed should also be considered by Congress in deciding whether to grant new authority to an agency to indemnify its contractors.

Decisions to indemnify ordinarily require an assessment of whether the activity in question involves an unacceptable hazard or degree of risk. Sometimes the degree of risk is defined in terms of availability of insurance. Agencies regularly engaged in high-risk activities and able to grant indemnity clauses, such as the Department of Energy, Nuclear Regulatory Commission, or National

² In 1962, the Comptroller General issued an opinion (B-301072, May 2, 1962; reconsidered, 63 Comp. Gen. 361 (1963)) stating that to comply with the Federal Anti-Deficiency Act, 31 U.S.C. 1341, indemnity clauses in government contracts must specify that the indemnity is available only to the extent of available authorized appropriations. This limitation, however, has limited impact where Congress has set maximum indemnity limits by statute, as in the Price-Anderson Act, or where no ceiling is set, as in the National Defense Contracts Act. The Price-Anderson Act reauthorization is pending as of the date of this recommendation.

Aeronautics and Space Administration, would normally have the resources to perform risk assessments. However, other agencies that confront these issues less frequently may not have adequate technical expertise to decide. It has been asserted that there is often great uncertainty, and such decisions may be made inconsistently. The recommendation suggests referral and interagency cooperation as a way of meeting this problem.

Recommendation

1. *Identification of Agency Authority to Indemnify.* Each agency that has, and intends to exercise, the authority to indemnify any of its contractors against liability to third parties should set forth, in a policy statement or regulation, the agency's understanding of the extent and source of its authority to indemnify contractors. The agency should consult with the Department of Justice and the Office of Federal Procurement Policy in drafting the statement or regulation.

2. *Agency Decision Whether to Grant an Indemnity Clause.* Before deciding to grant an indemnity clause to a contractor, an agency should identify the public benefits expected to be gained by such a grant and should take into account:

(a) The nature and magnitude of the risks involved in the covered activities, including the danger inherent in the work to be performed, the adequacy of the state of the art to assess the inherent danger, the aggregate liability that could be incurred, when the liabilities might be incurred, and how current insurance policies would apply to such liabilities;

(b) The scope of the indemnity proposed to be granted;

(c) The source of funds that would be used to pay an award under the indemnity clause, including the possible application of the Federal Anti-Deficiency Act, and the impact, if any, that such an award will have on the programs of the agency or other units of the government;

(d) The incentives that either providing or denying an indemnification clause would give the agency for supervising contractual performance, so as to provide for maximum protection of the public from injury and to protect the government from unwarranted liability in light of the identifiable risks;

(e) The incentives that the contractor would have, assuming indemnification were granted, for performing under the contract in a safe and prudent manner;

(f) The incentives that the contractor would have, assuming indemnification were granted, to defend itself or to help defend the government in any subsequent litigation; and

(g) Any effects, assuming indemnification were granted, on the

ability or the willingness of the insurance industry to make available private insurance for the kinds of activities to which the indemnification would apply.

3. *The Need for More Information.* Each agency that has paid out any sum of money or received any claims for payment under a contractual obligation to indemnify a contractor, or on whose behalf such sums have been paid by the federal government, should report all such payments and claims to the Office of Federal Procurement Policy (OFPP) on an annual basis. The OFPP should periodically issue a report summarizing the information received. All such reports should be made available to the public except to the extent that release of any information included is prohibited by law. The OFPP should also obtain from each affected agency a list, updated periodically, of all existing contracts containing indemnity clauses.

4. *Contracting Office Expertise.* Where an agency is considering whether to grant an indemnity clause, but does not have sufficient technical expertise to assess the degree of risk, the extent of the hazard, or the availability of insurance, these questions should be referred to an office of the agency that does have the requisite expertise to assist the contracting office in making such decisions. If the contracting agency as a whole lacks the expertise required to assess these matters adequately (for example, where unusual or newly emerging technological risks are involved), the agency should seek the assistance and cooperation of other agencies. Agencies with pertinent experience or knowledge should cooperate to make available to requesting agencies staff members whose experience in risk assessment may be helpful. It may be appropriate to create a small, highly-qualified risk assessment office to furnish or coordinate such assistance.

§ 305.88-3 The Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act (Recommendation 88-3).

Among the Federal Reserve Board's (FED's) responsibilities is implementation of the Bank Holding Company Act (BHCA) (12 U.S.C. 1841 *et seq.*). The BHCA's principal purposes are to ensure the safe and sound operation of bank holding companies (BHCs), to promote competition within the banking industry, and to separate banking from commerce.

Under the BHCA, the FED has also been authorized to determine the extent to which BHCs may engage in "non-banking" activities in the parent BHC and in non-bank subsidiaries. Because the banking industry has undergone rapid changes in the face of new technologies, the line between banking

and other financial activities has been blurred.

Under section 3 of the BHCA, the FED receives applications for the formation of or acquisition of banks by BHCs. The statutory factors which the Board must apply in acting on section 3 applications include an evaluation of the competitive impact of the transaction, the convenience and needs of the community to be served, and the financial and managerial resources of the applicant.

Under section 4(c)(8) of the Act, the FED receives applications by BHCs to acquire non-banking interests. Such applications are to be approved only when the activities involved are "closely related" to and a "proper incident" to banking. These questions have become of particular significance most recently in applications involving proposed securities and insurance activities of BHCs.

Applications under both sections are generally resolved without the need for an evidentiary hearing, although informal hearings and meetings are sometimes held. Both sections do, however, provide for an overall 91-day time limit on the FED's action on individual applications "beginning on the date of submission to the Board of the complete record on the application." The FED routinely processes well over 90 percent of the applications received by the FED within 60 days of "acceptance" of the application by the Reserve Bank (the Bank is permitted to request information, but otherwise must adhere to a short deadline in accepting the application and forwarding it to the FED). The FED's regulations specifically provide that, in every case in which an application has not been considered by the FED within 60 days of acceptance, the applicant will be notified and provided a written explanation for the delay.

In its regulations, the FED defines when the record on a particular application is complete for purposes of determining when the statutory 91-day period has begun. Under the FED's regulations, the 91-day period begins on the latest of four dates: (1) The date of acceptance of the application; (2) the last day of the public comment period (which is usually after acceptance of the application, and is the date upon which the 91-day period begins in the majority of cases); (3) the date of receipt of any relevant material information regarding the application; and (4) the date of completion of any hearing or other proceeding regarding the application.

Because the statute provides that the 91-day period does not begin until the complete record has been submitted to the FED, the courts have determined that the 91-day period may be tolled or retrigged after the close of the public comment period if new material information is submitted during the processing of the application. Examples of this type of information include comments or protests from interested parties, changes in the financial condition of the applicant, proposed efforts by the applicant to raise additional capital, or proposed divestiture plans to accommodate competitive problems.

Because there is always the possibility that submission of additional material information may toll or retrigger the 91-day period, the 91-day period is rendered rather uncertain in practice. Therefore, the Conference suggests

that the FED's regulations on this issue ensure that there is a point in the application process at which the FED will declare that the applicant's file is deemed to be informationally complete, thus triggering the 91-day rule, unless additional information of a highly significant nature relating to the application is received.

The nature of the regulatory process established under the BHCA encourages a participatory approach to decisionmaking on the part of applicants and the FED. Various kinds of conditional order are used by the FED to tailor its regulatory decisions to the specific applicant before it. These regulatory conditions appear or are referenced in the FED's final order, and such conditions are subject to judicial review. Other decisions, however, reflect voluntary commitments made by the applicant. Such commitments often are the result of a decision by the applicant to expedite processing of a particular application by committing to resolve questions that might otherwise result in denial of the application. These commitments usually do not appear in the FED's order and, while reviewed by the Board in every case, are not subject to judicial review at the instance of the applicant.

The Conference believes that conditions and commitments are important regulatory tools used by the FED that, for the most part, add flexibility to and encourage efficiency in the consideration of applications to individual cases, providing a wide range of regulatory choices between unconditional approval and complete denial of an application.

Recommendation

The Board of Governors of the Federal Reserve System should take the following actions with respect to the FED's handling of applications under the Bank Holding Company Act.

1. *Clarification of the 91-day rule.* When acting on such applications, the Federal Reserve Board should by regulation provide that only receipt of information of a highly significant nature pertaining to the application will be deemed to warrant reopening an applicant's file, thereby deferring the date by which the Fed must act finally on the application.

2. *Conditions and Voluntary Commitments.* Conditions established by the FED regarding applications and voluntary commitments offered by applicants should be unambiguous and reasonably related to an articulated policy of the Federal Reserve Board. Voluntary commitments, when offered by applicants, should, consistent with the Freedom of Information Act, ordinarily be made part of final orders of the Board. Moreover, the Board should, from time to time, summarize the thrust of these commitments and publish and disseminate these summaries.

§ 305.88-4 Deferred Taxation for Conflict-of-Interest Divestitures (Recommendation 88-4).

Individuals appointed to government positions are sometimes required to divest themselves of property to satisfy conflict-of-interest requirements, such as the prohibition in 18 U.S.C. 208 on participation in matters affecting one's financial interest. In other instances, divestiture of property by such appointees would be simpler and serve conflict-of-interest purposes better than the establishment of qualified blind trusts or subsequent and sometimes frequent recusals by an official from participation in particular decisions. In addition, persons serving in the government occasionally are required to divest themselves of property before accepting a new position or as a condition to participating in a particular matter.

Divestiture of property to avoid conflicts of interest will often result, under current law, in financial losses in the form of taxation of the gains realized as a result of divestiture. The Administrative Conference believes that this tax burden is a disincentive to individuals who would otherwise accept a federal appointment, and in the case of present officials, an unnecessary burden resulting from their performance of official responsibilities. The adverse effects of this disincentive to government service are most acute with respect to the most senior positions involving major policymaking roles. Failure to obtain the best people for those positions, or the frequent recusals of people in those positions, may have serious adverse consequences on both the individuals involved and the government.

The Conference accordingly recommends that Congress amend the Internal Revenue Code to permit deferred taxation of gains for presidential appointees subject to Senate confirmation and other individuals entering the government to accept high level executive branch positions, whenever they are requested or ordered by an appropriate authority to divest themselves of property to avoid actual or potential conflicts of interests. The Conference also recommends that Congress consider amending the Code to extend similar tax treatment to persons serving in the executive branch.¹

The Conference proposes that this defined class of persons be permitted to sell such property and to place the proceeds in a neutral investment vehicle and maintain their original basis in the divested property. Taxation would not be eliminated by this proposal, but only postponed until the individual ultimately disposes of the proceeds of a reinvestment vehicle. The Conference also suggests specific factors and other matters to be taken into account in amending the Code to accomplish these purposes.

¹ This recommendation is limited to executive branch appointees and employees because the Conference by statute is limited to studying and recommending improvements to administrative procedure, 5 U.S.C. 571-576. The Conference, therefore, takes no position on whether or not similar tax treatment should be accorded to officials of the judicial branch.

The Conference believes that revenue impact of the recommendation will be minimal considering the narrow class of persons that would be eligible for tax deferral.

Recommendation

1. Congress should amend the Internal Revenue Code to permit presidential appointees who are subject to Senate confirmation and other officials entering the government to accept high level executive branch appointments, to divest property, such as securities, and reinvest the proceeds in a neutral investment vehicle and thereby defer realization of taxable gains.

2. Such amendment should take into account the following factors:

(a) The need to assure that the divestiture is undertaken to avoid actual or potential conflicts of interests, by conditioning the deferral on an order or request of the President (or his delegate such as the White House Counsel or the Director of the Office of Government Ethics);

(b) The need for divestiture by spouses, dependent children, and others whose assets may be imputed to the federal official for conflict-of-interest purposes, by making deferral available to them also; and

(c) The need to assure that the reinvestment vehicle avoids conflicts of interests with respect to the position to be held, by having the person ordering or requesting divestiture approve the vehicle.

3. Congress should consider whether the amendment should contain provisions dealing with the following matters:

(a) A minimum period of required government service after divestiture to qualify for deferral;

(b) Requiring the appointee to defer gains or losses for all property within the class of divested property (e.g., all energy stock), in order to prohibit the appointee from recognizing losses and deferring gains;

(c) Permitting the appointee a second deferral on leaving government service (or within a brief period of time thereafter) if the appointee chooses to dispose of the neutral investment held during government service in order to make another investment.

4. The Conference recognizes that other persons serving in the executive branch may be ordered or requested to divest specific property in order for them to perform their duties free of actual or potential conflicts of interest, and believes that Congress should also consider, at the appropriate time, whether to extend similar tax treatment to them.

§ 305.88-5 Agency Use of Settlement Judges (Recommendation 84-5).

Many cases over which administrative law judges, administrative judges, and other agency hearing officers preside do not involve broad regulatory issues and are often appropriately resolved by settlement. Following in the footsteps of several innovative federal judges,¹ some administrative agencies have begun to provide additional mechanisms for resolving these cases. The Federal Energy Regulatory Commission and the Occupational Safety and Health Review Commission have used a "settlement judge"—not the presiding judge in the case—to work with parties to explore possibilities for consensual resolution. Other alternatives that agencies have used include prehearing conferences and summary procedures,² and more recently, minitrials, mediation and binding and nonbinding arbitrations.³

Agency prehearing conferences have historically been utilized as a means for either settling an entire case or narrowing the issues. Today, some presiding judges are exceptionally effective at using these conferences to promote settlement without overstepping bounds of propriety. Still, while the presiding judge may be the ideal person to suggest that the parties talk settlement in a reasonable manner, he or she often cannot help the parties' explorations in any comprehensive way without risking the appearance of impropriety. In broad classes of cases, a separate settlement judge, not so limited, can exercise greater settlement-inducing authority than the presiding judge.

The Conference does not intend to suggest that use of settlement judges is a dispute resolution method that is necessarily better or worse than adjudication, arbitration, minitrials, mediation by staff personnel or nongovernment mediators, or settlement by the presiding judge; parties should retain maximum flexibility to use the best procedure for their case. The best solution of all is to settle before an action has been instituted, and agencies should also do far more to instill consensual methods of dispute resolution into investigatory, preenforcement, and other stages. The settlement judge technique, nonetheless, is a useful means of

¹ In addition to settlement conferences, courts have engaged in broad and growing use of other means for facilitating an early disposition of a case including arbitration, special masters, mediators, and the use of summary jury trials. Rule 16(c) of the Federal Rules of Civil Procedure was amended in 1983 to provide that settlement and "extrajudicial procedures" for resolving disputes are desirable and may be a subject at pretrial conferences, while subsection (f) of the rule provides for sanctions for failure to appear at, to be prepared for, and "to participate in good faith" at such conferences.

² See ACUS Recommendation 70-4(1) (urging presiding officers to hold prehearing conferences on own motion or at the request of the parties) and Recommendation 70-3 (summary decision).

³ See ACUS Recommendation 86-3 (alternative means of dispute resolution) and Recommendation 87-11 (alternative means of dispute resolution in government contract disputes). In both recommendations, use of settlement judges is specifically recommended. 86-3(D), 87-11(d). See also Recommendation 72-4(D) (settlement of ratemaking cases).

facilitating settlements that, in appropriate adjudications, may be of greater value.

The settlement judge can command a degree of deference similar to that of the presiding judge without the need to observe all of the commands that establish and maintain impartiality. A separate settlement judge, once appointed, can engage in ex parte and off-the-record conversations, frank assessments of the merits, and other techniques to aid settlement that the presiding judge is less free to use. The settlement judge is generally knowledgeable about the kind of case and the parties' interests, and is in a position to lend structure to the negotiations, control their pace, reduce the adversarial nature of the process, and help the parties to assess objectively both the strengths and weaknesses of the case and to find reasoned solutions. The settlement judge is familiar with how the presiding judge is likely to handle such cases, how much time and effort they take, how evidence is weighed, and what kind of a reception the legal and factual issues will be given in light of agency precedent and policy. The settlement judge, who carries a judge's power and authority, may greatly reduce the scope of parties' disagreements over likely outcomes. Parties also are less likely to be skeptical about the informal settlement judge process and more likely to view this device as a legitimate and potentially valuable means of reaching an enforceable, legally defensible settlement.

Several other advantages may accrue. Initiating the settlement judge technique may be an excellent way for agencies to introduce the idea of settlement in proceedings in which it is not now frequently pursued but which the presence of other factors seems to make apt candidates. In such circumstances, an agency could make special efforts to make the technique available in the interest of breaking the adversarial mold, perhaps preceded by seminars or other devices to permit its presiding judges to study mediation, negotiation and other settlement-inducing techniques. In individual cases, use of a settlement judge might lead the parties to turn to mediation or other non-adjudicatory means of pursuing a settlement agreement. Presiding judges' experiences as settlement judges, and possible enhanced expertise as mediators, should help them in resolving later cases.

Settlement judges are not a panacea, and their use must take into account caseloads, possible abuses in extreme cases, and likelihood of success. The very potency of the judicial office means that it must be carefully employed to avoid abuse. Even so, the Conference sees great merit in the settlement judge technique and urges that it receive much wider consideration and application as a means of actually settling matters, or convincing the parties to undertake other consensual dispute resolution methods.

These recommendations suggest procedures for using the settlement judge as a final effort to obviate formal proceedings, as well as guidelines that seek to increase potential gains in efficiency while minimizing possible abuses that may result from a

greater reliance on settlement in agencies' adjudicatory proceedings.

Recommendation

A. *Encouraging Use of Settlement Judges.* 1. As part of efforts to encourage use of consensual means of dispute resolution, federal agencies that decide cases presided over by administrative law judges, administrative judges, or other hearing officers should encourage and facilitate settlement of adjudicatory proceedings by the voluntary use of settlement judges and other consensual methods.

2. Agency offices of administrative law judges, boards of contract appeals, and other hearing offices should adopt rules for appropriate use of settlement judges.

3. In urging regularized and amplified utilization of settlement judges, the Administrative Conference has no intention of discouraging reliance on other methods of dispute resolution without recourse to formal procedures. In many instances, cases of the types deemed suitable for reference to a settlement judge (paragraph B, below) can and should be settled at preliminary stages of disagreement. At times, moreover, early recourse to mediation or arbitration (where authorized) may be appropriate.⁴ The Administrative Conference urges constant attention to settlement possibilities long before a controversy has reached the docket of a trial judge.

B. *Appropriate Cases.* In general, the agency use of settlement judges may be appropriate where one, and particularly more than one, of the following factors appear.

1. Crowded dockets with relatively few cases being settled.

2. Presence of a large proportion of factual issues that are not of major precedential importance and do not raise broad policy or legal issues, particularly where the facts are undisputed and the primary issues concern the interpretation or characterization of such facts.

3. Remedies susceptible to gradation and, thus, to compromise. Examples are money claims, rates,⁵ and degrees of restrictions or activity.

C. *Administrative Issues.* 1. The chief judge should retain discretion in assigning settlement judges on the basis of the situations, issues, judges' aptitudes and personalities, and so forth. He should also remain free to refuse to appoint a settlement judge.

2. The agency head should ordinarily not suggest use of a settlement judge.

⁴ See Recommendation 86-3 and 87-11, *id.*

⁵ See Recommendation 72-4, *supra*, note 3.

since he is much less likely to know when a particular case is suitable for settlement and much more likely to desire a case to be settled to avoid having to decide it.

3. Given the workload of presiding judges and possible limited availability for appointment as a settlement judge, agencies should use, as an alternative source of settlement judges, currently retired ALJs who have notified the Office of Personnel Management that they would accept temporary appointment (pursuant to 5 U.S.C. 3323(b), enacted in 1984), retired administrative judges or hearing officers, or active hearing officers from another agency.

4. Agency presiding judges, and especially chief judges, should regularly review their dockets to identify cases where use of settlement judges may be useful, and consult regularly with experienced mediators to locate cases ripe for settlement.

5. Agencies should give attention to offering training in negotiation, mediation, and other consensual dispute resolution skills to administrative law judges, administrative judges, and other hearing officers. Training courses or seminars should be developed by agencies jointly or in cooperation with the Administrative Conference, Federal Mediation and Conciliation Service, Board of Contract Appeals Judges Association, American Bar Association, or other professional organizations. Agencies should also work with other interested groups to sponsor similar programs or outreach sessions for representatives who regularly appear in agency proceedings.

D. *Procedures.* Agency regulations or guidelines implementing the use of settlement judges should consider the following:

1. *Suggesting use of a settlement judge.* (a) The suggestion that a settlement judge be consulted may be made to the agency's chief judge by any party or by the presiding judge (although the agency head's invocation of the technique should be restrained (see C.2, above)). Because it will usually be difficult to predict at what points in the prehearing process settlement will be possible, the presiding judge and the parties should be free to request appointment of a settlement judge at any time. Any party or the presiding judge may veto such a suggestion.

(b) The chief judge should seek to ensure that all parties who appear *pro se* consent knowingly and voluntarily before he decides to invoke the aid of a settlement judge.

2. *Appointment.* (a) When appointing a settlement judge, the chief judge

should issue an order specifying the length of time for such negotiations and confining the scope of any settlement negotiations to specified issues.

(b) When a settlement judge is appointed, the presiding judge may suspend discovery or other proceedings during the time the matter is assigned to the settlement judge.

(c) If settlement negotiations are terminated, the chief judge may subsequently appoint a settlement judge in the same proceeding to conduct further negotiations.

(d) To ensure that proceedings are not unnecessarily interrupted, agency regulations or guidelines should provide that any decision concerning the appointment of a settlement judge or termination of settlement negotiations is not subject to review or rehearing.

3. *Conduct of negotiations.* (a) The regulations should afford the settlement judge broad authority to:

(1) Confer with the parties on the subject of whole or partial settlement.

(2) Suggest privately to a party's representative what concessions be considered by the party.

(3) Assess privately with each representative the reasonableness of the party's case or settlement position.

(4) Facilitate communications between the parties.

(5) Mediate.

(6) Seek resolution of as many issues in the case as is feasible, and

(7) Recommend use of minitrials, mediation, factfinding, or other consensual resolution means, and, if the parties genuinely wish some method of presenting evidence in a settlement context or having the dispute mediated, the settlement judge should be free to refer them to a separate minitrial or mediation process.

(b) To increase the likelihood of settlement, the regulations should:

(1) Provide that the settlement judge may recommend that the representative who is expected to try the case be present at a settlement conference and that the parties, or their agents having full settlement authority, be present.

(2) Set forth specific guidelines for conducting settlement conferences (including by telephone) where appropriate.

(3) Exhort all parties and their representatives to be candid with the settlement judge so that he may properly guide settlement discussions.

(4) Provide the settlement judge with flexibility to impose any additional requirements proper to expedite resolution of the case.

(c) The settlement judge should, within days after appointment, meet or

talk with the parties together and (usually) separately to determine what obstructs settlement. Proceedings before a settlement judge should not ordinarily be lengthy or elaborate.

4. **Confidentiality.** (a) To encourage the candor often necessary to achieve a settlement, the regulations should provide that no evidence of statements or conduct by parties, counsel or settlement judge in the settlement proceedings shall be admissible in any subsequent hearing, except by stipulation of the parties. The regulations should further provide that documents disclosed in a settlement process may not be used in litigation unless obtained by appropriate discovery or subpoena. Agencies should provide sanctions against any violators.

(b) The regulations should prohibit the settlement judge from discussing the merits of the case with the presiding judge or any other person* and preclude the settlement judge from being called as a witness in any hearing of the case.

5. **Settlement and reports.** (a) At the conclusion of the settlement procedures, either the parties should tell the presiding judge that they have settled, or the settlement judge should advise the trial judge, without elaboration, that settlement has not been reached. The report should not attribute any view to any party or assess any positions taken. The agency's regulations should describe the method by which the presiding judge is advised that settlement has not been reached.

(b) To protect against unnecessary delay, the settlement judge's first report should be made within a specified period after appointment. The agency head or chief judge should be authorized to order additional reports at any time.

(c) In reporting, the settlement judge may recommend the termination or continuation of settlement negotiations.

(d) A settlement arrived at with the help of a settlement judge should be treated like any other settlement.

6. New § 310.13 is added to Part 310, to read as follows:

§ 310.13 Statement on Dispute Resolution Procedure in Reparations and Similar Cases.

Where Congress has established private rights, effective means of protecting them are crucial. Congress has used a variety of procedures to protect consumers, workers and certain others. In many cases, it has established formal adjudicatory process (e.g., within

regulatory agencies like the Federal Trade Commission or review agencies like the Occupational Safety and Health Review Commission). Congress has also recognized that, in many cases, formal agency hearings or court litigation may be unnecessary or too costly. Thus, alternative or supplementary agency procedures or even private-sector procedures have been established to resolve disputes that formerly would have been left to the formal adjudication process.

Agencies' use and oversight of these dispute processes has become even more important in light of recent congressional developments and Supreme Court decisions. The Supreme Court recognized in *Shearson/Ames/Smith, Inc. v. McMahon*, 107 Sup. Ct. 2332 (1987), for example, that arbitration processes are often adequate to protect statutory rights, particularly where an agency can oversee their operation to ensure their adequacy. Indeed, that case enforced an arbitration agreement even for a treble damage case brought under the Racketeer Influenced and Corrupt Organizations Act by a plaintiff acting much like a "private attorney general."

Agencies' approaches to "reparations" and similar programs to safeguard consumers reflect the diversity of approaches that are available. The Securities and Exchange Commission, so far at least, has relied on a purely private resolution mechanism—exchange-based arbitration. The Commodity Futures Trading Commission ("CFTC"), has developed, pursuant to statutory mandate, its own distinctive dispute resolution program. Since it was formed in 1974, the CFTC has administered a "reparations" program that adjudicates between commodity futures salespersons (known as "futures commission merchants") and aggrieved customers.¹

The CFTC's program provides an interesting alternative to civil litigation, formal hearings under the Administrative Procedure Act, and commercial arbitration.² Like arbitration (which is also an option available to aggrieved customers), the reparations program uses decisionmakers familiar with the industry from which the disputes arise. But these decisionmakers are CFTC employees, rather than arbitrators drawn from industry—either

agency administrative law judges or other specially-designated agency employees known as "judgment officers".

The CFTC has been creative in fashioning procedures for the reparations program. The "formal" procedure, for claims of more than \$10,000, is akin to the adjudicatory procedure provided in section 554 of the APA. The "summary" procedure for claims under \$10,000 dispenses with several formalities, including the right to an oral hearing. It does permit a telephonic hearing. A third, "voluntary" procedure, is available for claims of any size and must be elected by both parties. It dispenses with a written opinion by the presiding judgment officer and appeal rights. While the CFTC's program had a troubled early history, characterized at times by crippling case backlogs and severe budgetary constraints, recent years have seen enhanced resources and a considerable improvement in case management.

The Administrative Conference has begun exploring these processes with its research into the CFTC's innovative approach to consumer protection. The Conference sees important benefit in programs, like the CFTC's, that offer complainants procedural options. Creation of an agency review process for consumer complaints benefits the regulatory agency because the process provides a valuable pipeline into the problems of the industry; resolving these complaints serves as a constant challenge and impetus to the agency to interpret its statutory mandate. A three-tiered approach like the CFTC's permits added opportunities for procedural tailoring. On the other hand, the parallel private decisional process may be less expensive, faster, and more responsive. Parties benefit from having both a choice of forums and an opportunity to select a dispute resolution procedure that suits their needs.

Much remains to be done in considering the best approach for particular agencies, and this statement is intended as an initial foray. The Administrative Conference suggests that continued experimentation with alternative types of procedures for resolving issues arising in consumer protection programs is justified. Agencies administering statutes that recognize a private right of action should consider establishing, or seeking authority to establish, a reparations program offering creative procedures for "formal," "summary" and "voluntary" dispute resolution, along the lines of the CFTC's where:

(1) An agency statute provides for and engenders substantial private litigation and/or arbitration; or

(2) An agency regulatory program centers on a single industry or group of similar industries, such as would permit creation of "expert" decisionmakers.

An agency with both of the characteristics listed above would be a prime candidate for a reparations program. Each program of course would be crafted to meet the special needs of the agency's particular regulatory jurisdiction.

Management of reparations programs should take into account these factors:

(1) Where complaints are to be resolved by summary or voluntary procedures, the discovery process should be streamlined to comport with the goals of less formal procedures. For example, the number of interrogatories and requests for admissions may be substantially limited; and summary information rather than facsimiles could be deemed responsive to requests for the production of documents.

(2) The judgment officers used in summary and voluntary procedures need not always be administrative law judges or even attorneys, so long as they demonstrate sufficient experience in, or knowledge of, the regulated industry or applicable law.

(3) While summary procedures by their nature may not require an in-person hearing, telephone hearings may provide a useful and inexpensive way of allowing the judgment officer to question parties and witnesses. Telephone hearings should be available whenever a judgment officer believes such a hearing is appropriate to the resolution of a dispute.

(4) Since complainants in reparations proceedings frequently appear without a lawyer, agencies should make the dispute resolution process understandable to the lay person. Toward that end, notices and descriptions of the process should avoid whenever possible the use of legal terms (e.g., "pleadings" or "discovery") where a colloquial term will suffice. Where use of a lay term would mislead, or where no appropriate term is available, agencies should make every effort to assure that the legal term of art has been translated for the lay party or even provide a glossary of such terms for the benefit of the lay reader.

(5) Managers should assure that a sufficient number of judgment officers are employed to reduce the overall processing time for summary and voluntary proceedings, and thus to permit those forms of procedure to fulfill their promise.

(6) Case tracking systems for reparations cases should be used, or modernized, so that the location and progress of any case can be quickly identified and bottlenecks eliminated.

Jeffrey S. Lubbers,
Research Director.

Dated: July 8, 1988.

[FR Doc. 88-15458 Filed 7-8-88; 8:45 am]
BILLING CODE 3110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

(Lemon Regulation 621)

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 621 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 415,000 cartons during the period July 10 through July 16, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 621 (§ 910.921) is effective for the period July 10 through July 16, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5887.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities

acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on July 8, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8-5 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is very good in both domestic and export markets.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

* This should not prevent judges within the same office from engaging in discussions of settlement or mediation techniques that may aid the settlement judge in resolving particular cases and assist in a judge's professional development.

¹ Other agencies, like the Federal Maritime Commission and the U.S. Department of Agriculture, have reparations programs that differ in significant respects.

² Persons with reparations claims may pursue several other avenues of redress (National Futures Association arbitration, private suits), so the entire CFTC program is in essence voluntary.

2. Section 910.921 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.921 Lemon Regulation 621.

The quantity of lemons grown in California and Arizona which may be handled during the period July 10, 1988, through July 16, 1988, is established at 415,000 cartons.

Dated: July 7, 1988.

Charles R. Brader,
Director, Fruit and Vegetable Division.
[FR Doc. 88-15671 Filed 7-8-88; 8:45 am]
BILLING CODE 3410-02-0

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS Number: 1116-68]

Powers and Duties of Service Officers; Availability of Service Records; Immigration: Adjudication of Application or Petition

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises 8 CFR 103.2(b) to authorize a district director to withhold adjudication of a visa petition or application where it is determined that an investigation is pending and the disclosure of evidence supporting the adjudication would prejudice the investigation. The provisions relating to disclosure of classified material are also revised to require authorization of disclosure by the classifying agency.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Joanna London, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone: (202) 633-2895.

SUPPLEMENTARY INFORMATION: This rule revises § 103.2(b) to allow a district director of the Immigration and Naturalization Service to authorize withholding adjudication of a visa petition or application when a pending investigation would be prejudiced by the disclosure of the evidence on which the adjudication would be based. On May 30, 1988, the Service published a notice of proposed rulemaking in the Federal Register (51 FR 19559). A few commenters were concerned that the proposed regulation permitted adjudication of applications and petitions to be held in abeyance pending

investigations into matters not affecting eligibility for the benefit sought. In response to these concerns the Service has modified the rule to permit holding the adjudication in abeyance only when the matter being investigated might affect eligibility or the exercise of discretion, where applicable, in connection with the particular application or petition. Commenters were also concerned that there were no limits to the length of time the adjudication could be held in abeyance pending investigation. In response to this concern the Service has modified the rule to provide for case review at six-month intervals after initial review and for review by higher authority for periods over two years.

When an investigation has been pending for one year, the district director shall review the matter and determine whether adjudication should continue to be held in abeyance for another six months while the investigation continues. If the investigation has not been completed after six months, the matter shall be reviewed again by the district director. The adjudication may, at the discretion of the district director, be withheld for a second six-month period. If the investigation has not been completed by the end of that six-month period the matter shall be referred to the regional commissioner for further review. The regional commissioner may authorize an additional six-month period. Only the Associate Commissioner for Examinations, with the concurrence of the Associate Commissioner for Enforcement, may authorize additional time for the investigation to be completed prior to adjudication.

By this rule, the disclosure of information which would prejudice an ongoing investigation will be avoided and, because the decision on the petition or application will be held in abeyance, the petitioner or applicant will not be prejudiced by a denial based on information not disclosed to him or her (as he/she would have been under the proposed rule published at 50 FR 27289 on July 2, 1985, which would have allowed a district director to deny a visa petition or application and then not disclose the grounds for the denial if a civil or criminal investigation had been undertaken). The purpose of this rule is to prevent the use of visa petition regulations to obtain information regarding criminal investigations which would not be discoverable in the normal course of an ongoing criminal investigation and to protect confidential informants, witnesses, and undercover agents connected with civil and criminal investigations.

Some commenters objected to holding adjudication in abeyance if a determination is made that an investigation "should be" undertaken. In response to this concern the final rule provides for holding adjudication in abeyance only when an investigation has actually been undertaken.

Some commenters objected to allowing the district director to base discretionary decisions on confidential evidence not of record. District directors have this authority under the current regulations. Moreover, the only evidence that the Service will withhold from review in connection with a discretionary decision is information classified in order to protect the national security, which is privileged information. Therefore, despite these objections, the Service has determined that the rule as proposed will not be modified in this regard.

In the proposed rule, language in the current regulation requiring the regional commissioner to make a determination that information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) was omitted. The language of the current regulation will be retained.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse impact on a substantial number of small entities.

This is not a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Immigration, Authority delegation, Archives and records.

For the reasons set out in the preamble, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 8 U.S.C. 1101, 1103, 1201, 1303-1306, 1456; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 106.

2. In § 103.2, paragraph (b)(2) is redesignated as (b)(3) and revised and a new paragraph (b)(2) is added, so that the paragraphs read as follows:

§ 103.2 Applications, petitions, and other documents.

(b) . . .

(2) *Adjudication of application or petition.* A district director may authorize withholding adjudication of a visa petition or other application if the district director determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the application or petition would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, the district director shall review the matter and determine whether adjudication of the petition or application should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of the district director's determination, the investigation has not been completed, the matter shall be reviewed again by the district director and, if he/she concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, the matter shall be referred to the regional commissioner, who may authorize that adjudication be held in abeyance for another six months. Thereafter, if the Associate Commissioner, Examinations, with the concurrence of the Associate Commissioner, Enforcement, determines it is necessary to continue to withhold adjudication pending completion of the investigation, he/she shall review that determination every six months.

(3) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(3) (iii) and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner.

(iii) *Discretionary determination.* Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the regional commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) *Classified information.* An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the regional commissioner should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The regional commissioner's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

Alan C. Nelson,
Commissioner, Immigration and Naturalization Service.

Dated: May 25, 1988.

[FR Doc. 88-15461 Filed 7-8-88; 8:45 am]
BILLING CODE 4410-10-0

8 CFR Part 271

[INS Number: 1019-88]

Prevention of Unauthorized Landing of Aliens by Owners and Operators of Railroad Lines, International Bridges, or Toll Roads

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: It has long been the contention of owners of international bridges that sufficient safeguards for fine proceedings were lacking in the statutory language of section 271 (8 U.S.C. 1321) of the Immigration and Nationality Act, as amended. The Immigration Reform and Control Act of 1986, Pub. L. 99-603, Part B at section 114 provides amelioration to some degree of this contention. This regulation provides for an inspection by the Attorney General, at the request of owners and operators, of facilities which provide a means for the unlawful entry of aliens into the United States. If the Attorney General determines that adequate measures have been taken by the owners to prevent such unlawful entry, the owners shall not be liable for the penalty described in section 271(a), so long as the facility remains in the condition in which approved.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Juan Campos, Assistant Chief Inspector, Immigration & Naturalization Service, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633-2725.

SUPPLEMENTARY INFORMATION: Section 271 of the Immigration and Nationality Act, as amended (8 U.S.C. 1321) provides that the owners, masters, officers and agents of vessels, aircraft, transportation lines, or international bridges or toll roads who fail to prevent the landing of aliens in the United States at a port of entry other than as designated by the Attorney General or at any time or place other than as designated by the immigration officers—shall be liable for a penalty to be imposed by the Attorney General of \$1,000 for each such violation. The proposed regulation provided for an inspection by the Attorney General, at the request of owners and operators of facilities which provide a means for the unlawful entry of aliens into the United States. After the Attorney General inspects a facility, or method utilized, and determines that owners or operators or railroad lines, international bridges or toll roads have taken acceptable measures to prevent the unlawful entry of aliens into the United States, such owners or operators shall not be liable for a penalty for a period of one year.

Notice of proposed rulemaking was published in the Federal Register on January 16, 1987, at 52 FR 1920 and 1921, with a 30-day comment period ending February 17, 1987. The Service received two comments. One comment dealt with the proposed requirement that bridge owners or operators request an inspection of the facility or method

utilized on an annual basis. The commenter believed that subsequent to the initial inspection conducted by the district director, further requests for inspection need not be made. The Service agrees with this change. This commenter also objected to the proposal that security guards may be required by the district director. Due to the deterrent effect of the presence of security guards, if for no other reason, such requirement will remain if deemed necessary by the district director.

The other commenter was concerned that no appellate process was provided in the proposal. In cases where the owners or operators believe the requirements of the district director to be excessive or unnecessary, the district director's decision may be reviewed, at the request of the owner or operator, by the Regional Commissioner of the Service in whose jurisdiction the facility in question is located.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 271

Aliens, Transportation, Unauthorized landing.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended by adding a new part to read as follows:

PART 271—DILIGENT AND REASONABLE EFFORTS TO PREVENT THE UNAUTHORIZED ENTRY OF ALIENS BY THE OWNERS OF RAILROAD LINES, INTERNATIONAL BRIDGES OR TOLL ROADS

Authority: 8 U.S.C. 1103 and 1321.

§ 271.1 Procedures for inspections.

(a) *Applicability.* The following terms and conditions apply to those owners or operators of railroad lines, international bridges, or toll roads, which provide a means for an alien to come to the United States.

(b) *Inspection of facility.* Based upon a written request by the owners or operators, the INS district director or his designee shall inspect the facility or method utilized in order to ensure that owners and operators have acted diligently in taking adequate steps to prevent the unlawful entry of aliens into the United States. Such measures may include but are not necessarily limited to fencing, barricades, lighting, or security guards. If the district director determines that preventive measures are

inadequate, he or she shall advise the owners or operators in writing, citing the reasons for such determination. If the owners or operators believe the requirements of the district director to be excessive or unnecessary, they may request that the Regional Commissioner having jurisdiction over the location where the facility is located, review the district director's requirements. The Regional Commissioner shall advise the owners or operators in writing of the results of his or her review.

(c) *Preventive measures and certification.* Upon a determination by the district director that reasonable and adequate preventive measures have been taken by the owners and operators, he or she shall certify that the owners and operators shall not be liable for the penalty described in section 271(a), so long as the facility or method utilized is maintained in the condition in which approved and certified.

(d) *Revocation of certification.* The District Director having jurisdiction over the location where the facility is located, in his or her discretion, may at any time, conduct an inspection of said facility to determine if any violation is occurring. If the facility is found to be not in compliance, said certification will be revoked.

Dated: May 10, 1988.

Richard E. Norton,
Associate Commissioner, Examinations,
Immigration and Naturalization Service.
[FR Doc. 88-15459 Filed 7-8-88; 8:45 am]
BILLING CODE 4410-01-01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-29; Special Conditions No. 25-ANM-19]

Special Conditions; Gates Learjet Model 31

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101 of the Federal Aviation Regulations (FAR) for the Gates Learjet Model 31 airplanes. The airplanes will have novel or unusual design features associated with the installation of the electronic engine control systems for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning. These special conditions contain the safety standards which the

Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical or essential, are maintained.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-88986, Seattle, Washington, 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1987, Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas, 67277, made an application to the Federal Aviation Administration for an amended type certificate for the Model 31 airplanes.

Model 31 Design Features

General

The Gates Learjet Model 31 airplane is a twin engine business jet with maximum seating of 13. It has the Model 35 fuselage and horizontal tail, Model 55 wing, Model 28 vertical tail, addition of delta fins on the lower rear fuselage, deletion of stick pusher/puller and Mach trim systems, and as an option, a Model 28 forward fuselage fuel tank. The wing span is 42.18 feet, winglet span is 3.74 feet, fuselage length is 48.58 feet and the cabin and cockpit length is 21.7 feet. It is powered by two Garrett TPE 731-2-3B engines, also used on the Lear 35 and 36. These engines have electronic controls with conventional manual backup. Total thrust of these engines is 7,000 pounds. Fuel capacity is 4,188 pounds with an optional capacity of 4,598 pounds. Maximum takeoff weight is 15,500 pounds (16,500 optional). Maximum ram weight is 15,750 pounds (16,750 optional). The maximum operating altitude will be 51,000 feet. V_{MO}/M_0 is 300 KIAS/.78 M_0 , and V_{DF}/M_{DF} is 375 KCAS/.86 M_0 .

The regulations incorporated by reference on the type certificate for these airplanes do not include adequate airworthiness standards for lightning protection of the electronic engine controls and, as a result, these special conditions are proposed.

Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.581). These standards do not, however, provide the level of safety for

the electronic engine control system that is inherently provided by traditional designs which utilize mechanical means to connect the engine to the flight deck.

The Model 31 is being designed with electrical interfaces for critical and essential engine functions such as the start schedule, governing schedule, acceleration schedule, surge schedule and minimum fuel schedule inputs to the engines. These systems, which are designed to perform critical and essential functions, can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in dual engine shutdown due to opening of the engine ultimate overspeed fuel cutoff solenoids. To ensure that a level of safety is achieved equivalent to that of existing operating aircraft, special conditions are being proposed which require that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Discussion

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition. It is based on SAE report AE4L-87-3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests

(including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. First Return Stroke (Severe Strike—Component A, or Restrike—Component D)

This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. Multiple Stroke Flash (½ Component D)

A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test

needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. Multiple Burst (Component H)

In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynomial equations:

$$i(t) = I_0 (e^{-t/\tau_1} - e^{-t/\tau_2})$$
 where:
 t = time in seconds,
 i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_0 , amp	218,810	109,405	54,703	10,572
a, sec ⁻¹	11,354	22,708	22,708	187,191
b, sec ⁻¹	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics:				
peak	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/sec)	1.4×10^{11}	1.4×10^{11}	0.7×10^{11}	2.0×10^{11}
	@t = 0+sec	@t = 0+sec	@t = 0+sec	@t = 0+sec
di/dt , (amp/sec)	1.0×10^{11}	1.0×10^{11}	0.5×10^{11}	
	@t = .5 us	@t = .25 us	@t = .25 us	
Action Integral (amp ² sec)	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

BEST COPY AVAILABLE

Discussion of Comments

Notice of proposed special conditions No. SC-88-3-NM for the Gates Learjet Model 31 airplane was published in the Federal Register on May 20, 1988, (53 FR 16097). No comments were received.

Type Certification Basis

The type certification basis for the Gates Learjet Model 31 is as follows: Part 25 of the FAR effective February 1, 1965, as amended by Amendments 25-2 and 25-4. Amendments 25-3, 25-7, 25-10, 25-12, 25-18, 25-21, and 25-30, plus Section 25.955(b)(2) of Amendment 25-11. Section 25.954 of Amendment 25-14. Sections 25.803(e), 25.811(f), 25.853(a), 25.853(b), and 25.855(a) of Amendment 25-15. Section 25.1359 of Amendment 25-17. Section 25.785(c) of Amendment 25-20. Sections 25.25, 25.113, 25.145, 25.251, 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331 and 25.1585(c) of Amendment 25-23. Sections 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25-30. Sections 25.45 thru 25.75 *deleted*, 25.101, 25.161, 25.815, 25.1322 and 25.1403 of Amendment 25-38. Sections 25.903(e), 25.939, and 25.943 of Amendment 25-40. Sections 25.29, 25.143, 25.147, 25.149, 25.177, 25.181, 25.201, 25.207, 25.233, 25.237, 25.255 and 25.703 of Amendment 25-42. Section 25.1326 of Amendment 25-43. Section 25.253 of Amendment 25-54. Sections 25.33 and 25.961 of Amendment 25-57. Part 36 of the FAR effective December 1, 1969, as amended by Amendment 36-12. SFAR 27 effective February 1, 1974, as amended through Amendment SFAR 27-5. Special Conditions for operations to 51,000 ft.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.101.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the Federal Register. As the intended type certification date for the Gates Learjet Model 31 is July 11, 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Gates Learjet Model 31 airplane.

PARTS 21 AND 25—(AMENDED)

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. **Lightning Protection.** (a) Each digital electronic engine control system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not affected when the aircraft is exposed to lightning.

(b) Each essential function of the digital electronic engine control system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning. Manual mode reversion is considered an acceptable method of retaining the essential functions.

(c) For the purposes of the above, the following definitions apply:

(1) **Critical Functions.** Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

(2) **Essential Functions.** Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Seattle, Washington, on June 22, 1988.

Frederick M. Isaac,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-15437 Filed 7-8-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-07-AD; Amdt. 39-5965]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which requires repetitive inspections of the trim system, and repair or parts replacement, if necessary; a preflight procedure check of the trim system; a modification of the crew warning system; installation of a spike suppression modification in the air conditioning system; and installation of an elevator monitoring and alarm system. This amendment is prompted by reports of several cases of pitch trim motor failures and a re-evaluation of the flight control system. This condition, if not corrected, could result in excessive loads in the fixed vertical stabilizer from dual hidden failures in the elevator trim system, which could jeopardize safe flight and landing of the airplane.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 310 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-89866, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, applicable to Model ATR-42 series airplanes, to require repetitive inspection of the trim system, and repair or parts replacement, if necessary; a preflight procedure check of the trim system; a modification of the crew warning system; installation of a spike suppression modification in the air conditioning system; and installation of an elevator monitoring and alarm system, was published in the Federal Register on March 30, 1988 (53 FR 10252).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the one comment received.

The commenter supported adoption of the AD as proposed. However, this commenter did ask if there could be a connection between the trim tab failures and an elevator disconnect. The manufacturer has indicated to FAA that all possible problems were considered when the control system was reviewed and re-evaluated; there is no evidence to indicate any association between elevator disconnect occurrences and the trim tab system problems.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$103,040.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model ATR-42 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—(AMENDED)

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 (Amended)

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, certificated in any category, as listed in the following Aerospatiale Service Bulletins: ATR42-27-0010, dated March 20, 1987; Operational Engineering Bulletin Number 17, dated January 26, 1987; ATR42-27-0015, Revision 3, dated February 29, 1988; ATR42-30-0010, Revision 2, dated July 7, 1987; and ATR42-21-0009, Revision 4, dated February 22, 1988. Compliance is required as indicated, unless previously accomplished.

To prevent excessive loads on the vertical stabilizer in the event of dual hidden failures in the elevator trim system, accomplish the following:

A. For airplanes listed in Aerospatiale Service Bulletin ATR42-27-0010, dated March 20, 1987, within 100 hours time-in-service after the effective date of this AD, accomplish the following:

1. Inspect the trim system in accordance with Aerospatiale Service Bulletin ATR42-27-0010, dated March 20, 1987. Repeat this inspection thereafter at intervals not to exceed 200 hours time-in-service. If defective parts are identified during this inspection, repair or replace with airworthy parts prior to further flight, in accordance with the service bulletin.

2. Insert the following in the Model ATR-42 Airplane Flight Manual, Limitations Section: "Prior to each taxi, perform the following procedure check: Prior to setting takeoff trim adjustment, run elevator trim to full up stop and full down stop to detect trim malfunction described in Operations Engineering Bulletin Number 17, dated January 26, 1987."

B. Within 1,500 hours time-in-service after the effective date of this AD:

1. For airplanes listed in Service Bulletin ATR42-21-0009, Revision 4, dated February 22, 1988: Install spike suppression circuits in the air conditioning system, in accordance with this service bulletin.

2. For airplanes listed in Aerospatiale Service Bulletin ATR42-27-0015, Revision 3, dated February 29, 1988: Subsequent to the installation of the spike suppression circuits required by paragraph B.1., above, install an elevator trim dissymmetry monitoring system and associated alarm, in accordance with this service bulletin.

3. For airplanes listed in Aerospatiale Service Bulletin ATR42-30-0010, Revision 2, dated July 7, 1987: Modify the crew warning system, in accordance with this service bulletin.

C. The accomplishment of the requirements of paragraph B., above, constitutes terminating action for the requirements of paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-15426 Filed 7-8-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-33-AD; Amdt. 39-5966]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which currently requires replacement of the power quadrant cover with a cover incorporating slot protection. That action was prompted by reports that additional protection was needed to prevent foreign objects from dropping in to the pedestal which could jam or interfere with the power or trim control system, and cause partial loss of controllability of the airplane. This amendment expands the applicability of the existing AD to include additional U.S.-registered airplanes.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information may be obtained from

Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1987. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-00808, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 87-05-05-R1, Amendment 39-5738 (52 FR 38745; October 19, 1987), applicable to certain CASA Model C-212 series airplanes, to expand the applicability of the existing AD to include additional U.S.-registered airplanes, was published in the Federal Register on May 6, 1988 (53 FR 10289).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Modification parts are estimated at \$553 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$5,384.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small

entities, because of the minimal cost of compliance per airplane (\$673). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—(AMENDED)

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By revising AD 87-05-05-R1, Amendment 39-5738 (52 FR 38745; October 19, 1987), by revising the applicability statement and paragraph A., as follows:

CASA: Applies to all Model C-212 series airplanes, certificated in any category. Compliance is required within 3 months after the effective date of this AD, unless previously accomplished.

To prevent the entry of foreign objects into the power and trim controls in the pedestal, accomplish the following:

A. Replace the power quadrant cover with a cover incorporating slot protection, in accordance with CASA Service Bulletin 212-76-08, Revision 1A, dated August 7, 1983, or Revision 1, dated July 20, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft

Certification Office, 9010 East Marginal Way South, Seattle, Washington.

The Amendment amends AD 87-05-05-R1, Amendment 39-5738.

This Amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,
Acting Director, Northwest Mountain Region.
[FR Doc. 88-15439 Filed 7-8-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

(Docket No. 87-NM-126-AD; Amdt. 39-5949)

Airworthiness Directive: The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to de Havilland Model DHC-8 series airplanes, which currently requires deactivation of the ground spoilers and roll control spoilers in the ground mode. That action was necessary to prevent an uncommanded deployment of ground spoilers and roll control spoilers in the ground mode, and to preclude a hazardous loss of lift in a critical phase of flight. This action requires the installation of certain modifications which will permit removal of the operational limitations established by the existing AD and re-establish normal use of all spoilers in the ground mode.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y3, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Systems Branch, ANE-173, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 86-14-51, Amendment 39-5423 (51 FR 33031; September 18, 1986), applicable to certain de Havilland Model DHC-8-101 series airplanes, to require installation of certain modifications that will permit removal of the operational limitations established by the existing AD, and re-establish normal use of all spoilers in the ground mode, was published in the Federal Register on February 8, 1988 (53 FR 3604).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters stated that the proposed compliance time of 20 days for installation of the modifications was unreasonable and would create a hardship on, and possible grounding of, their fleets, since the modified parts required for compliance would not be available within that time period. A third commenter, de Havilland, stated that "the modification of the parts can be performed only at a limited rate and is not expected to start before August 1988." All three commenters requested that paragraph C. of the proposal be revised either to expand the compliance period to a time when parts would be available, or to make the modification an optional terminating action for the operational requirements of the existing AD.

In light of this information, the FAA concurs that a revision of the final rule is necessary. The FAA disagrees with the suggestion that the modifications be made optional terminating action. Although the airplane flight manual (AFM) procedures currently required by AD 86-14-51 may adequately address the unsafe condition, the FAA has determined that installation of the subject modifications will eliminate the potential for the unsafe condition and will bring these model airplanes into their original operating configuration. Both de Havilland and Eldec (the manufacturer of the Proximity Switch Electronic Unit (PSEU) and the PSEU Built-In Test Equipment (BITE) Power Circuit) have confirmed that there is presently limited availability of parts and a limited return rate schedule for the modified fleet units; under these circumstances, fleet retrofit could not begin until August 1988 at the earliest. Therefore, the FAA has determined that the compliance time for installation of the modifications may be extended to 6 months after the effective date of the final rule, and paragraph C. has been

revised accordingly. This time period is considered to be adequate so as to accomplish modification of the U.S. fleet in a timely manner. The FAA has determined that this revision will not increase the economic burden on any operator, nor will it adversely affect the safety of flight.

Additionally, paragraph C. of the final rule has been revised to reflect the latest revision of the applicable service bulletins.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously discussed.

It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required modifications, and that the average labor cost will be \$40 per manhour. Modification kits will be available from the manufacturer at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$800 per airplane.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane (\$800). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—(AMENDED)

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By amending AD 86-14-51, Amendment 39-5423 (51 FR 33031; September 18, 1986), by revising paragraph A. and B. to include the specific compliance time in each paragraph, adding a new paragraph C., and redesignating the existing paragraph C. as paragraph D., as follows:

The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to the Model DHC-8-101 series airplanes, Serial Number 003 and subsequent, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To preclude the uncommanded deployment of ground spoilers and roll control spoilers in the ground mode, accomplish the following:

A. Prior to further flight, lockout circuit breaker ROLL SPLRS CONT, location F8, right essential bus, and circuit breaker GND SPLRS CONT, location C7, left main bus, in accordance with Section A of de Havilland Alert Service Bulletin AB-27-25, dated July 3, 1986. Install a placard in the flight compartment, on the glare shield under the flight/taxi switch, to state the following: "GROUND SPOILERS AND ROLL CONTROL SPOILERS IN GROUND MODE ARE INOPERATIVE."

B. Prior to further flight, insert a copy of this AD in the Airplane Flight Manual (AFM) Limitations Section. The elimination of all spoiler functions in ground mode increases landing distance and landing field length required by 15 percent when using flaps at 35 degrees (AFM, Figure 5.8.4.), and 10 percent when using flaps at 15 degrees (AFM Supplement #9, Figure 5.8.7.). With all spoiler functions in ground mode inoperative, there is negligible increase in the takeoff distance required and the takeoff run required.

C. Within 6 months after the effective date of this amendment, re-establish normal use of all spoilers in the ground mode configuration and remove the operating limitations of paragraphs A. and B. above, by accomplishing the following:

1. Modify the Landing Gear Proximity Switch Electronic Unit (PSEU) in accordance with de Havilland Service Bulletin 8-32-54, Revision B, dated November 20, 1987.

2. Modify the electrical power phase supply for the PSEU BITE Power Circuit, in accordance with de Havilland Service Bulletin 8-32-55, Revision A, dated November 20, 1987.

3. Remove the placard required by paragraph A. above, and reinstate the equipment required to be deactivated by paragraphs A. and B. above, in accordance with the instructions of de Havilland Service Bulletin 8-27-34, Revision C, dated January 8, 1988.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amends AD 86-14-51, Amendment 39-5423.

This amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-15427 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-29, Amdt. 39-5974]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIA) Model SA 330 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes a service life for Part Numbers (P/N) 330A31-1122-09 and -10 and 220A31-1782-00 and -01 main rotor head spindles on Aerospatiale Model SA 330 series helicopters. The AD is needed to prevent failure of a main rotor head spindle which could result in loss of control of the helicopter.

EFFECTIVE DATE: July 21, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service documents may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support.

A copy of each of the service documents is contained in the Rules Docket, Office of the Regional Counsel,

FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT:

Mr. John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium. APO NY 09667, telephone 513.38.30 or Mr. R.T. Weaver, Rotorcraft Standards Staff, ASW-110, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: The Direction Generale l'Aviation Civile (DGAC), in accordance with existing provisions of the bilateral airworthiness agreement, has notified the FAA of an unsafe condition on certain Aerospatiale Model SA 330 helicopters. It has been determined that a service life must be established for main rotor head spindles.

Aerospatiale has issued Service Bulletin No. 01.41, dated March 25, 1988, which establishes a service life of 4,500 hours for main rotor head spindles, P/N's 330A31-1122-09 and -10 and 330A31-1782-00 and -01. The DGAC has classified this bulletin as mandatory.

The main rotor spindles, P/N's 330A31-1122-03, -06, -07, and -08, have previously been limited to a service life of 2,400 hours when installed on Models SA 330F, G, and J (the only U.S. certificated SA 330 series helicopters.) This AD does not change the service life of spindles with dash number -03, -06, -07, and -08.

The Model SA 330 series helicopter is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (FAR).

Since this condition is likely to exit or develop on other helicopters of the same type design registered in the United States, and airworthiness directive is being issued which requires establishment of a service life for the main rotor spindles on Aerospatiale Model SA 330 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the

preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, and evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIA): Applies to all Aerospatiale Model SA 330 series helicopters certificated in any category.

Compliance is required as indicated (unless already accomplished).

To prevent failure of the main rotor head spindles, accomplish the following:

(a) Replace main rotor head spindles (P/N's 330A31-1122-09 and -10 and 330A31-1782-00 and -01) as follows—

(1) For spindles which have 4,400 or more hours' time in service on the effective date of this AD, replace the spindles within the next 100 hours' time in service; and

(2) For spindles which have less than 4,400 hours' time in service on the effective date of this AD, replace the spindles before they reach 4,500 hours' time in service.

(b) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Standards Staff,

Federal Aviation Administration, Fort Worth, Texas 76193-0110, or by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

Note: Aerospatiale Service Bulletin No. 01.41 pertains to this subject.

Issued in Fort Worth, Texas, on June 23, 1988.

This amendment becomes effective July 21, 1988.

Don. P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88-15438 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket Number 88-ANE-02; Amdt. 39-5957]

Airworthiness Directives; Pratt & Whitney (PW) PW2037 and PW2040 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of PW2037 and PW2040 turbofan engines installed in Boeing 757 aircraft by individual telegrams. The AD requires replacement or modification of certain fuel tube assemblies on the engines. The compliance schedules are dependent upon the Boeing 757 aircraft status under the Master Minimum Equipment List (MMEL) and aircraft operational constraints. The AD is needed to prevent cracking of the fuel tubes that can result in fuel leaks with substantial fuel quantity loss and possible engine fire.

DATES: Effective July 13, 1988, as to all persons except those to whom it was made immediately effective by individual Telegraphic AD (TAD) T88-03-52, issued January 29, 1988, which contained this amendment.

Compliance Schedule: As prescribed in the body of the AD.

Incorporation by Reference: Approved by the Director of the Federal Register as of July 13, 1988.

ADDRESSES: The applicable engine manufacturer's alert service bulletins (ASB's) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the ASB's is contained in Rules Docket Number 88-ANE-02, in the Office of the Regional Counsel, Federal Aviation Administration, New England

Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung Hsieh, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7091.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been thirty-four fuel leak events involving the 2.5 bleed valve actuator tubes, and the compressor and turbine case cooling air valve tubes. In one of those events, a substantial fuel loss occurred in flight. Three of the events resulted in fires. The fuel leaks occurred as a result of fatigue cracking caused by a vibratory excitation which initiates cracks in stress concentration areas on the tubes. Excitation occurs due to wear between the clamp and the tube, resulting in inadequate tube support. The manufacturer has redesigned the 2.5 bleed valve actuator tubes to eliminate a stress concentration area and has incorporated an additional bracket for proper support of the assembly. As an alternate to the above mentioned redesign, an additional bracket may be installed on the bleed supply tube which connects to the original design 2.5 bleed valve actuator tube to reduce the vibration level and prevent tube fracture. The manufacturer also has identified a compressor and turbine case cooling air valve tube clamping arrangement which reduces the vibratory stress to an acceptable level.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make TAD T88-03-52 effective 24 hours after receipt by individual telegrams issued January 29, 1988, to all known owners and operators of PW2037 and PW2040 series engines installed in Boeing 757 aircraft. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with

Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The AD requires replacement of the support hardware for the 2.5 bleed valve actuator tubes and manifold, with redesigned support hardware including an additional bracket to support the adjacent bleed supply tube; or installation of an additional bracket to support the adjacent bleed supply tube on the original design 2.5 bleed valve actuator tubes and manifold assembly. The AD also requires removal of a loop clamp bracket assembly from the compressor and turbine case cooling air valve tubes, and clamping of the tubes to a bracket spanning the pressure and return tubes.

The compliance schedules are dependent upon the aircraft status under the Boeing 757 aircraft MMEL and aircraft operational constraints which impact the flight crew's ability to identify fuel losses due to leaks in the fuel system.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) PW2037 and PW2040 turbofan engines.

Compliance is required as indicated, unless already accomplished. To prevent compressor and turbine case cooling air valve tube and 2.5 bleed valve actuator tube cracking that can lead to fuel leaks, substantial fuel quantity loss and possible engine fire, accomplish the following:

(a) For the engines operated in any of the following configurations: (1) with the Fuel Quantity Indication System (FQIS) inoperative under the provisions specified in the Boeing 757 aircraft Master Minimum Equipment List (MMEL), Item 28-41-1; (2) with one of the Fuel Quantity Processor (FQP) Channels inoperative under the provisions specified in the MMEL, Item 28-41-2; (3) with both Flight Management Computer (FMC) Systems inoperative under the provisions specified in the MMEL, Item 34-61-1; or (4) with the FQIS functional, both FQP Channels functional, and at least one FMC System functional, but operating without the provisions of Boeing Operations Manual Bulletin (OMB) Number 87-7, Revision 1, dated October 28, 1987, accomplish the following prior to further flight:

(a)(i) Compressor and turbine case cooling air valve tube clamping configuration:

Remove loop clamp bracket assembly Part Number (P/N) 1B2224-01 from compressor and turbine case cooling air valve tubes, and install a clamping configuration that clamps the tubes to a bracket spanning the pressure and return tubes in accordance with Accomplishment Instructions contained in PW Alert Service Bulletin (ASB) Number PW2000 A75-36, dated October 28, 1987.

(a)(ii) 2.5 bleed valve actuator tubes and manifold assembly clamping configuration: Install a new bracket and clamp configuration in accordance with the applicable part of the Accomplishment Instructions contained in PW ASB Number PW2000 A75-36, dated December 21, 1987.

(b) For engines operated with the FQIS functional, both FQP Channels functional, at least one FMC System functional, and in accordance with the provisions of Boeing OMB Number 87-7, Revision 1, dated October 28, 1987, accomplish items (a)(i) and (a)(ii) above within 250 hours in service from the effective date of this AD.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration,

New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(e) Upon submission of substantiating data by an owner or operator through an FAA airworthiness inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Pratt & Whitney ASB's No. PW2000 A75-36, dated October 28, 1987, and NO. PW2000 A75-38, dated December 21, 1987, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received the engine manufacturer's ASB's may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 88-ANE-02, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on July 13, 1988, as to all persons except those persons to whom it was made effective 24 hours after receipt by individual Telegraphic AD T88-03-52, issued January 29, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on June 7, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-15431 Filed 7-9-88; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Part 39

[Docket No. 87-ANE-15; Amdt. 39-5959]

Airworthiness Directives; Pratt & Whitney Canada (PWC) JT15D-1, -1A, -1B, -4, -4B, and -4D Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain PWC JT15D-1, -1A, -1B, -4, -4B, and -4D turbofan engines by individual priority letter AD Number 87-10-01. The AD requires visual inspection of the fan blade root fillet radius for surface finish

and removal from service of those fan blades which exhibit machining striations. The AD is needed to prevent failure of certain fan blades.

DATES: Effective July 15, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87-10-01, issued May 7, 1987, which contained this amendment.

Compliance Schedule: As prescribed in the body of the AD.

Incorporation by Reference: Approved by the Director of the Federal Register as of July 15, 1988.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Pratt & Whitney Canada, Box 10 Longueuil, Quebec, Canada J4K 4X9.

A copy of the SB is contained in the Rules Docket Number 87-ANE-15, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: On May 7, 1987, Priority Letter AD 87-10-01, was issued and made effective immediately as to all known U.S. owners and operators of PWC JT15D-1, -1A, -1B, -4, -4B, and -4D turbofan engines. The priority letter AD requires visual inspection of the fan blade root fillet for surface finish and removal from service of fan blades which exhibit machining striations. The FAA has determined that certain fan blades may be non-conforming in fan blade root fillet radius surface finish. One fan blade has failed near the fan blade root fillet radius where machining striations were found in the area of the failure.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by priority letter issued May 7, 1987, to all known U.S. owners and operators of PWC JT15D-1, -1A, -1B, -4, -4B, and -4D turbofan engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal

Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39
Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) JT15D-1, -1A, -1B, -4, -4B, and -4D turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of certain fan blades, accomplish the following within the next 15

calendar days or within the next 25 hours time in service from the effective date of this AD, whichever occurs first, and thereafter prior to the installation of any non-inspected fan blades:

(a) Visually inspect the fan blade root fillet radius, including the area on the airfoil one-half inch above the radius runout, for surface finish in accordance with the accomplishment instructions of PWC Service Bulletin (SB) Number 7257, Revision Number 2, dated July 2, 1987.

Note: Prior compliance with the accomplishment instructions of PWC SB Number 7257, dated April 23, 1987, is an equivalent means of compliance.

(b) Remove from service, fan blades which exhibit machining striations and replace with a serviceable part, prior to further flight.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(e) Upon submission of substantiating data by an owner or operator, through an FAA airworthiness inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

PWC SB Number 7257, Revision Number 2, dated July 2, 1987, identified and described in this document is incorporated herein and made part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9. This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 87-ANE-15, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective July 15, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD Number 87-10-01, issued May 7, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on June 9, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-15432 Filed 7-9-88; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Part 39

[Docket No. 88-ANE-26; Amdt. 39-5958]

Airworthiness Directives; Valentin GmbH Model Taifun 17E Powered Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires installation of a stall warning system on Valentin GmbH Model Taifun 17E powered sailplanes. This AD is needed to provide clear and distinctive warning of impending stall conditions, which, if not corrected, could result in an unsafe stall/spin of the aircraft.

DATES: Effective—July 14, 1988.

Compliance required within the next 30 hours time-in-service, after the effective date of this AD, or by September 15, 1988, whichever comes first, unless already accomplished.

Incorporation by Reference: Approved by the Director of the Federal Register as of July 14, 1988.

ADDRESSES: The applicable Technical Note (TN), instructions, and drawings may be obtained from either: Valentin-Flugzeugbau GmbH, Flugplatzstrasse 18, D-8728 Hassfurt, Federal Republic of Germany, telephone 0 95 21/47 30; or Morris Aviation, Ltd., P.O. Box 718, Statesboro, Georgia, 30458; telephone (912) 489-8181.

A copy of the TN is contained in the Rules Docket, Docket Number 88-ANE-26, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays between the hours of 8:00 a.m. and 4:30 p.m., except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040, Brussels, Belgium; telephone 513.38.30 ext. 2710; or Mr. Peter Cuneo, ANE-173, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: Valentin GmbH, the Taifun 17E manufacturer, determined that some of the Taifun 17E powered sailplanes do not provide clear and distinctive warning of an impending stall through inherent aerodynamic

qualities, and issued TN No. 8/818, dated December 10, 1985, providing instructions for installation of a stall warning kit (lift detector and horn). Clear and distinctive warning of impending stall is necessary to prevent an unsafe stall/spin. Subsequently, the Luftfahrt-Bundesamt (LBA) issued an AD dated December 12, 1985, requiring compliance with TN No. 8/818.

The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of these German manufactured aircraft with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Valentin GmbH Technical Note No. 8/818 and the issuance of Valentin AD No. 85-283 by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by the LBA AD is an unsafe condition that may exist on other products of the same type design certificated for operations in the United States. Therefore, an AD is being issued to require installation of a stall warning system on Valentin GmbH Model Taifun 17E powered sailplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a

final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Valentin GmbH: Applies to Model Taifun 17E powered sailplanes (all serial numbers) certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent the possibility of inadequate warning of an impending stall which could result in the loss of control of the powered sailplane, accomplish the following:

(a) Within the next 30 hours time-in-service after the effective date of this AD or by September 15, 1988, whichever occurs first, install a stall warning system in accordance with the installation instructions of Valentin Technical Note (TN) No. 8/818, dated December 10, 1985.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone 513.38.30 Ext. 2710; or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6680.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Valentin-Flugzeugbau GmbH TN No. 8/818, dated December 10, 1985, and associated installation instructions, identified and described in this

document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents may obtain copies upon request from Valentin-Flugzeugbau GmbH, Flugplatzstrasse 18, D-8728 Hassfurt, Federal Republic of Germany; telephone 0 95 21/47 30; or Morris Aviation, Ltd., P.O. Box 718, Statesboro, Georgia, 30458; telephone (912) 489-8161. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311. Rules Docket 88-ANE-26, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on July 14, 1988.

Issued in Burlington, Massachusetts, on June 8, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88-15430 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-26

14 CFR Part 71

[Airspace Docket No. 87-ACE-1]

Alteration of VOR Federal Airways and Establishment of the Columbia Low Altitude Reporting Point; Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-12 and V-44; revokes V-504; and establishes the Columbia, MO, Low Altitude Reporting Point located in the vicinity of Jefferson City, MO. The Jefferson City very high frequency omnidirectional radio range and distance measuring equipment (VOR/DME) has been decommissioned and the Tiger, MO, VOR/DME has been relocated to the Columbia Regional Airport, MO. This action alters the descriptions of all airways affected by the decommissioning and relocation of these navigational aids (NAVAID).

EFFECTIVE DATE: 0901 U.T.C., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20501; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION: History

On May 20, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of V-12 and V-44; to revoke V-504; and to establish the Columbia, MO, Low Altitude Reporting Point located in the vicinity of Jefferson City, MO, (52 FR 18920). The Jefferson City VOR/DME has been decommissioned and the Tiger, MO, VOR/DME has been relocated to the Columbia Regional Airport, MO (lat. 38°48'38" N., long. 92°13'05" W.) due to nonrenewal of the lease. The notice proposed to alter the descriptions of all airways affected by the decommissioning and relocation of these NAVAID's. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of Federal Airways V-12 and V-44; revokes V-504; and establishes the Columbia, MO, Low Altitude Reporting Point located in the vicinity of Jefferson City, MO. The Jefferson City VOR/DME has been decommissioned and the Tiger, MO, VOR/DME has been relocated to the Columbia Regional Airport, MO. This action alters the descriptions of all airways affected by the decommissioning and relocation of these NAVAID's.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, Low altitude reporting point.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-12 [Amended]

By removing the words "TIGER, MO;" Foristell, MO; and by substituting the words "INT Napoleon 095" and Columbia, MO, 292° radials; Columbia; Foristell, MO;"

V-44 [Amended]

By removing the words "From Jefferson City, MO, via Foristell, MO;" and by substituting the words "From Columbia, MO; INT Columbia 131" and Foristell, MO, 262° radials; Foristell;"

V-504 [Removed]

§ 71.203 [Amended]

3. Section 71.203 is amended as follows: Columbia, MO [Added].

Issued in Washington, DC, on June 29, 1988.

Temple H. Johnson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-15435 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-26

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 399

[Docket No. 80502-8102]

Clarifications to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations, makes the following clarifications:

1. The definition of "net value for (general license) GLV shipments" is amended for the sake of clarity;

2. Other entries on the CCL are amended to clarify that special controls on exports to South Africa may apply.

EFFECTIVE DATE: This rule is effective July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION: Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule does not impose a new control, it is not subject to the requirements of 13(b) of the EAA. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been cleared under OMB control number 0625-0001.

5. The rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 371 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 366-399) are amended as follows:

PART 371—[AMENDED]

1. The authority citation for 15 CFR Parts 371 and 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*) E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 USC 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The heading and first sentence of § 371.5(b)(1) are revised to read as follows:

§ 371.5 General License GLV; Shipments of Limited Value.

(a) * * *

(b) *Definitions.*

(1) "Net Value for GLV Shipments." The actual selling price of the commodity included in a single entry on the Commodity Control List, less shipping charges, or the current market price of the commodity to the same type of purchaser in the United States, whichever is larger. * * *

PART 399—[AMENDED]

§ 399.1 [Amended]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List) the entries listed below are amended by revising the *Validated License Required* paragraph to read: "Country Groups SZ and as required by Special South Africa policy below."

Commodity Group 0 (Metal-Working Machinery), ECCN 8099G;
Commodity Group 1 (Chemical and Petroleum Equipment), ECCN 8199G;
Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 8299G;

Commodity Group 3 (General Industrial Equipment), ECCN 8399G and ECCN 8399G;
Commodity Group 4 (Transportation Equipment), ECCN 8499G and ECCN 8499G;
Commodity Group 5 (Electronics and Precision Instruments), ECCN 8599G and 8599G;

Commodity Group 6 (Metals, Minerals and their Manufacturers) ECCN 4699G and ECCN 6699G;

Commodity Group 8 (Rubber and Rubber Products), ECCN 6899G; and
Commodity Group 9 (Miscellaneous), ECCN 6999G.

4. In Supplement No. 1 to § 399.1 (the Commodity Control List) the entries below are amended by revising the *Validated License Required* paragraph to read: "Country Groups QSWYZ, Afghanistan, the People's Republic of China and as required by Special South Africa policy below."

Commodity Group 3 (General Industrial Equipment), ECCN 5399G;

Commodity Group 4 (Transportation Equipment), ECCN 5431C; and
Commodity Group 5 (Electronics and Precision Instruments), ECCN 5510C, ECCN 5568C, ECCN 5585C, ECCN 5595 and ECCN 5596C.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5799C is amended by revising the first sentence only of the *Validated License Required* paragraph to read: "Country Groups QSWYZ, Afghanistan, the People's Republic of China and as required by Special South Africa policy below."

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 6799G is amended by revising the first sentence only of the *Validated License Required* paragraph to read: "Country Groups SZ, and as required by Special South Africa policy below, except that a validated license is not required for exports to Libya (Country Group S) of medicines and medical products."

Dated: June 21, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-15475 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Commissioner of Food and Drugs, et al.

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new delegation to the Commissioner of Food and Drugs from the Assistant Secretary for Health and by adding new authorities for the Associate Commissioner for Regulatory Affairs and for Center Directors. The authorities pertain to technology transfer functions, including entering into cooperative research and development agreements and licensing agreements, under the Stevenson-Wylder Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986.
EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 19, 1988 (53 FR 5046), the Public Health Service published a notice of a delegation of authority, effective February 4, 1988, from the Assistant Secretary for Health to Public Health Service agency heads, including the Commissioner of Food and Drugs, under the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3701 *et seq.*) (the Act), as amended by the Federal Technology Transfer Act of 1986 (Pub. L. 99-502), and under Executive Order No. 12591 of April 10, 1987, as amended hereafter. The Secretary and the Assistant Secretary for Health retained certain authorities under the Act and limited redelegation of certain other authorities. The authorities were delegated to the Public Health Service agency heads in their dual capacity under the Act as heads of Federal agencies and heads of Federal laboratories. FDA is amending § 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* (21 CFR 5.10) to add to FDA's regulations a new paragraph (a)(29) concerning these authorities delegated to the

Commissioner of Food and Drugs. Paragraphs (a)(29)(i) and (ii) of § 5.10 describe the limits on the authority of the Commissioner of Food and Drugs to redelegate the authorities under the Act.

FDA is adding a new § 5.24 *Authority relating to technology transfer* (21 CFR 5.24) to redelegate certain of these new authorities of the Commissioner of Food and Drugs. This new section delegates in § 5.24(a) authority as requested by the Commissioner to the Associate Commissioner for Regulatory Affairs to disapprove or require modification of cooperative research and development agreements and licensing agreements and to transmit written explanation of such disapproval or modification to the head of the laboratory concerned. It also delegates in § 5.24(b) to the Associate Commissioner for Regulatory Affairs and to the Directors of the Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, the Center for Drug Evaluation and Research, the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and the National Center for Toxicological Research, the authority as requested by the Commissioner to perform the functions of the Commissioner under the Act as they pertain to the functions of their respective organizations. This includes the authority to perform the functions of laboratory directors under the Act subject to the limitations in § 5.10(a)(29) on redelegation of the Commissioner's authority and subject to the discretion of the Commissioner to require, under section 11(c)(5)(A) of the Act (15 U.S.C. 3710a(c)(5)(A)), an opportunity to disapprove or require modification of cooperative research and development agreements and licensing agreements.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies). Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3701 *et seq.*), Executive Order No. 12591 of April 10, 1987, and the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*, 3701 *et seq.*; 21 U.S.C. 41 *et seq.*, 61-63, 141 *et seq.*, 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242i, 242n, 243, 262, 263, 263b through 263m, 264, 265, 300a *et seq.*, 1395y and 1396y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1408); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921, 12591.

2. Section 5.10 is amended by adding a new paragraph (a)(29) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(29) Functions vested in the Secretary under the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3701 *et seq.*) (the Act), as amended, and under Executive Order No. 12591 of April 10, 1987, as they pertain to the functions of the Food and Drug Administration. The delegation excludes the authority to promulgate regulations and submit reports to Congress; under section 11(a)(2) of the Act (15 U.S.C. 3710a(a)(2)) to approve agreements and contracts with invention management organizations; and under section 11(c)(3)(B) of the Act (15 U.S.C. 3710a(c)(3)(B)) to propose necessary statutory changes regarding conflict of interest.

(i) The authorities under sections 11(c)(5)(A) and (B) of the Act (15 U.S.C. 3710a(c)(5)(A) and (B)) to disapprove or require the modification of cooperative research and development agreements and licensing agreements after the agreement is presented to the Commissioner of Food and Drugs by the head of the laboratory concerned, and to transmit written explanation of such disapproval or modification to the head of the laboratory concerned, may be redelegated only to a senior official in the immediate office of the Commissioner.

(ii) The following authorities may not be redelegated: authority under section 11(b)(3) of the Act (15 U.S.C. 3710a(b)(3)) to waive a right of ownership which the Federal Government may have to on an invention made under a cooperative research and development agreement; the authority under section 11(b)(4) of the Act (15 U.S.C. 3710a(b)(4)) to permit employees or former employees to participate in efforts to commercialize inventions they made while in the

service of the United States; the authority under section 11(c)(3)(A) of the Act (15 U.S.C. 3710a(c)(3)(A)) to review employee standards of conduct for resolving potential conflicts of interest; the authority under section 13(a)(1) of the Act (15 U.S.C. 3710c(a)(1)) to retain any royalties or other income, except as provided in section 13(a)(2) of the Act (15 U.S.C. 3710c(a)(2)); and the authority under section 13(a)(1)(A)(i) of the Act (15 U.S.C. 3710c(a)(1)(A)(i)) to pay royalties or other income the agency receives on account of an invention to the inventor if the inventor was an employee of the agency at the time the invention was made.

(iii) Any authorities under paragraph (a)(29) of this section delegated by the Commissioner of Food and Drugs may not be further redelegated.

3. Part 5 is amended by adding a new § 5.24 to read as follows:

§ 5.24 Authority relating to technology transfer.

(a) The Associate Commissioner for Regulatory Affairs is authorized to perform the functions of the Commissioner of Food and Drugs as requested by the Commissioner regarding the authority to disapprove or require modification of cooperative research and development agreements and licensing agreements and transmit written explanation of such approval or disapproval to the head of the laboratory concerned under sections 11(c)(5)(A) and (B) of the Stevenson-Wylder Technology Innovation Act of 1980 (the Act) (15 U.S.C. 3710a(c)(5)(A) and (B)), as amended.

(b) The following officials are authorized to perform the functions of the Commissioner of Food and Drugs as requested by the Commissioner under the Stevenson-Wylder Technology Innovation Act of 1980 (15 U.S.C. 3701 *et seq.*), as amended, and Executive Order 12591 of April 10, 1987, except to the extent that redelegation of those functions is specifically limited in § 5.10(a)(29) of this part, as they pertain to the functions of their respective organizations, including the authority to perform the functions of laboratory directors under the Act as the heads of their respective Federal laboratories, subject to the discretion of the Commissioner of Food and Drugs to require that agreements entered into under section 11(a) of the Act (15 U.S.C. 3710a(a)) include provisions in accordance with section 11(c)(5)(A) of the Act (15 U.S.C. 3710a(c)(5)(A)).

(1) The Director, Center for Biologics Evaluation and Research.

- (2) The Director, Center for Devices and Radiological Health.
 (3) The Director, Center for Drug Evaluation and Research.
 (4) The Director, Center for Food Safety and Applied Nutrition.
 (5) The Director, Center for Veterinary Medicine.
 (6) The Director, National Center for Toxicological Research.
 (7) The Associate Commissioner for Regulatory Affairs.

Dated: June 29, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-15481 Filed 7-9-88; 8:45 am]

BILLING CODE 4190-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

(T.D. 8212)

Limitations on Availability of Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to certain restrictions on an employee's right to receive forms of benefit protected by section 411(d)(6) of the Internal Revenue Code under qualified plans and to nondiscrimination requirements with respect to the availability of optional forms of benefit. They generally reflect changes made by the Retirement Equity Act of 1984 (REA). The regulations will generally affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and they provide plan sponsors with guidance necessary to comply with the law.

DATES: These regulations generally would apply July 11, 1988, except as otherwise specified in these regulations.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1986, the Federal Register (51 FR 3798) published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401 and 411 of the Internal Revenue Code of 1954 (Code). Generally,

these proposed regulations under section 401(a)(4) clarified existing law. In addition, the proposed regulations under sections 401 and 411 conformed the regulations to section 301 of the Retirement Equity Act of 1984 (REA). A public hearing on the proposed regulations was announced in 51 FR 12341 and held on May 22, 1986. After consideration of all comments regarding the proposed regulations, such proposed regulations are adopted as revised by this Treasury Decision.

Nondiscrimination Requirements

Section 401(a)(4) of the Code provides that a qualified plan must provide either contributions or benefits that do not discriminate in favor of employees who are officers, shareholders or highly compensated (the prohibited group). The regulations provide that the availability of an optional form of benefit (as defined in these regulations) under a pension, profit-sharing or stock bonus plan may not discriminate in form or operation in favor of the prohibited group or, generally for plan years after December 31, 1988, highly compensated employees. This position affirms the position taken in Rev. Rul. 85-50, 1985-1 CB 135, which was discussed in the preamble to the proposed regulations. These regulations provide guidance on the applicability of section 401(a)(4) to the availability of optional forms of benefits.

The final regulations provide that an optional form of benefit is discriminatory under section 401(a)(4) if such optional form is not currently available to a group of employees that satisfies the minimum coverage requirement of section 410(b) and effectively available to a group of employees that, based on all the facts and circumstances, does not substantially favor employees in the highly compensated group. Generally, an optional form of benefit under a plan is discriminatory if the group of employees to whom the benefit is currently available fails to satisfy one or more of the applicable section 410(b) tests enumerated in § 1.401(a)-4 Q&A-2. Finally, the final regulations reflect the amendment to section 401(a)(4) incorporating the new section 414(q) definition of highly compensated employees in whose favor discrimination is prohibited as of the applicable effective date under the Tax Reform Act of 1986 (section 1114(a) of the Tax Reform Act of 1986, 100 Stat. 2448 (TRA '86)).

With respect to an optional form of benefit that is contingent on satisfaction of specified eligibility conditions, the fact that an employee may subsequently

satisfy the conditions is generally not sufficient to demonstrate nondiscrimination. For example, if a plan provides that a single sum distribution option is available only to an employee with a net worth of at least \$100,000, the fact that an employee may, in the future, have a net worth of at least \$100,000 does not support treating this optional form of benefit as currently available to such employee. However, in making a determination of current availability, the regulations provide that an employer may disregard certain enumerated conditions such as conditions requiring termination of employment, disability or hardship. In addition, in making this determination, the employer generally may disregard conditions based on years of service and/or age.

The final regulations further provide that in determining whether an optional form of benefit under a plan is discriminatory under section 401(a)(4), the term "plan" has the meaning that such term has for other purposes under section 401(a)(4). Future regulations under section 401(a)(4) will amplify this definition of "plan".

The final regulations also provide that the Commissioner may provide such additional tests and safe harbors as may be necessary or appropriate for determining whether an optional form of benefit is discriminatory under section 401(a)(4). The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability, rather than on an individual basis. This limitation on the Commissioner's authority, and similar limitation on the Commissioner's authority, and similar limitations set forth elsewhere in this regulation, should not be read as raising any inferences with respect to the Commissioner's exercise of authority where there is a delegation of authority without similar limiting language in this regulation or in other regulations pursuant to sections of the Internal Revenue Code.

The final regulations make revisions to § 1.401(a)-4 to reflect changes made to section 401(a)(4) by TRA '86. Other changes in style and organization have been made in order to improve clarity and resolve areas that commentators have noted as being ambiguous.

REA and TRA '86 Requirements

Section 401(a)(25) of the Code, added by section 301 of REA, affirms the positions taken by the Service in Rev. Rul. 79-90, 1979-1 CB 155, and Rev. Rul. 81-12, 1981-1 CB 226, and provides that

a defined benefit plan shall not be treated as providing definitely determinable benefits unless the actuarial assumptions used to determine the amount of any benefit are specified in the plan in a way that precludes employer discretion. Rev. Ruls. 79-90 and 81-12 are discussed in greater length in the preamble to the proposed regulations.

Section 411(d)(6) of the Code, as amended by section 301(a)(1) of REA, provides that, in general, a plan will not satisfy the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8) or section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA). Section 411(d)(6) also provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit, a retirement-type subsidy or an optional form of benefit, with respect to benefits accrued before the later of the amendment's adoption date or effective date (including benefits accrued prior to such date during the year in which such date occurs), shall be treated as impermissibly reducing accrued benefits. An exception is provided to the extent that such amendments are permitted under regulations promulgated by the Secretary. Also, section 411(d)(6)(C) contains an exception applicable to certain employee stock ownership plans added by section 1898(f)(1)(A) of TRA '86.

Many commentators requested guidance as to which benefits, rights and features are protected under section 411(d)(6). In response, the final regulations provide general guidance with respect to those benefits that are protected under section 411(d)(6) ("section 411(d)(6) protected benefits" as defined in these regulations). With one exception, the regulations do not provide specific guidance with respect to the benefits described in section 411(d)(6)(A), early retirement benefits, or retirement-type subsidies. Thus, for example, the regulations do not address the extent to which a plant closing or shutdown benefit under a plan constitutes an early retirement benefit or a retirement-type subsidy. The exception is contained in Q&A-3 of § 1.411(d)-4 and provides that the defined benefit feature of a benefit under a defined benefit plan and the separate account feature of a benefit under a defined contribution plan are protected under section 411(d)(6)(A). Also, the regulations clarify that some benefits may be covered by more than one category of section 411(d)(6)

protected benefits. Thus, the same benefit may be a benefit described in section 411(d)(6)(A) and an early retirement benefit or retirement-type subsidy described in section 411(d)(6)(B)(i).

The final regulations provide detailed guidance describing "optional forms of benefit." (The term "alternative forms of benefit", which was used in the proposed regulation, has been replaced, as appropriate, by the terms "optional forms of benefit" and "section 411(d)(6) protected benefit.") Generally, each separate benefit distribution form under a plan is treated as a separate optional form of benefit protected under section 411(d)(6). Accordingly, any differences with respect to the timing, payment schedule, medium of benefit distribution, and election rights with respect to such distributions are generally treated as creating separate optional forms of benefit.

This regulation creates no inference with respect to whether, before an employee has satisfied the applicable eligibility conditions, a contingent benefit (e.g. subsidized early retirement benefit) is or is not taken into account for purposes of determining the Pension Benefit Guarantee Corporation variable rate premium imposed by the Omnibus Budget Reconciliation Act of 1987.

Several commentators requested clarification regarding the application of section 411(d)(6) to certain plan amendments providing a particular optional form of benefit, e.g., a single sum distribution form for limited periods of time. Q&A-1 of § 1.411(d)-4 is revised to address an issue raised by such amendments under section 411(d)(6). In particular, Q&A-1 notes that certain patterns of such plan amendments may result in section 411(d)(6) protected benefits.

In addition, in response to several commentators, new Q&As-2 and 3 are included to provide guidance for situations in which certain section 411(d)(6) protected benefits may be eliminated outside the scope of the transitional rule provided in these regulations. Q&A-2 provides general guidance on the elimination or reduction of such benefits and specifically addresses certain situations, including mergers, transfers, benefit annuitization and similar situations; distribution options in cash or employer stock; amendments to conform to statutory requirements; amendments to eliminate certain optional survivor payment percentages provided in joint and survivor annuity distribution options; and certain other amendments eliminating or reducing particular

optional forms of benefit in specific circumstances. Q&A-2 also addresses the effect of the selection of a particular optional form of benefit and provides an example of this concept in the context of a terminating plan in paragraph (a)(2). It is anticipated that similar concepts will be applied in interpreting the requirements of section 401(a)(2). In addition, Q&A-2 addresses the extent to which employee stock ownership plans (ESOPs) and non-ESOP stock bonus plans are excepted from the section 411(d)(6) prohibitions against the elimination or reduction of protected benefits. In this context, to assure that the ESOP exception cannot be used to eliminate optional forms of benefit with respect to non-ESOP benefits, Q&A-2 requires, in general, that the benefits to which this exception is applied be held in an ESOP for a five year period prior to any amendment with respect to such benefits pursuant to this exception. It further provides that the Commissioner may provide additional rules and exceptions with respect to this ESOP continuity requirement. The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability, rather than on an individual basis. Comments are solicited with respect to necessary or appropriate rules and exceptions. In particular, comments are solicited with respect to the appropriateness of applying the rules and exceptions provided in Q&A-18 of Notice 88-56 (with respect to the continuity of investment requirement for purposes of section 72(t)(2)(C)) for purposes of the ESOP continuity requirement for the ESOP exception in § 1.411(d)-6 Q&A-2.

Q&A-3 provides guidance on situations involving the transfer (or any other transaction having a similar effect, such as the amendment of a defined benefit plan into a defined contribution plan) of benefits between and among defined benefit plans and defined contribution plans. This Q&A clarifies that the defined benefit feature of an employee's benefit under a defined benefit plan and the separate account feature of an employee's benefit under a defined contribution plan are section 411(d)(6) protected benefits. Thus, such features may not be eliminated with respect to benefits already accrued. However, the Q&A clarifies that a plan may permit an employee to elect to have his benefit transferred if the plan is permitted at such time to make benefits available for distribution to such individual. Of course, in such case, the employer may not require a transfer, but

must permit an employee to reject the transfer option and to preserve all of his section 411(d)(6) protected benefits accrued under the plan. This regulation does not address the transition rule requirements of section 1112 of TRA '86 which provisions may restrict the amount of benefits that may be transferred from a plan that would fail to satisfy the requirements of section 401(a)(26).

With the publication of these regulations, the suspension imposed in determination and examination cases which involve transfers from defined benefit plans to defined contribution plans will be lifted to the extent such transfers involve transactions addressed by these regulations that do not include a transfer of excess assets. These cases will be processed in accordance with the relevant positions of these regulations and plan sponsors will be provided the opportunity, if applicable, to make timely plan amendments. No inference is intended as to the implications of these transactions under Title I or IV of ERISA. Plan administrators who have a ruling request in suspension due to the study of transfer issues but believe that their request should now be released from suspense should contact the appropriate Key District Office.

Both Q&A-2 and Q&A-3 include a delegation of authority to the Commissioner to permit the elimination of certain optional forms of benefit without the plan being treated as violating section 411(d)(6). The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability, rather than on an individual basis.

The final regulations continue to provide that a pension plan does not satisfy the definitely determinable requirement of section 401(a), including section 401(a)(25), if any section 411(d)(6) protected benefit is conditioned on employer discretion. (The term "discretion" refers to both consent and other forms of discretion.) Of course, the definitely determinable requirement is not limited to section 411(d)(6) protected benefits under pension plans. The final regulations also continue to provide that section 411(d)(6) prohibits any qualified plan, including any profit-sharing or stock bonus plan that is not subject to the definitely determinable benefit requirement, from containing such employer discretion provisions with respect to section 411(d)(6) protected benefits. Not only do such provisions raise concerns about discrimination

under section 401(a)(4), but these provisions effectively enable an employer to eliminate or reduce a section 411(d)(6) protected benefit. Of course, a one-time increase in the normal retirement benefit, that is contingent on an event with independent and substantial business significance (for example, the cessation of operations at a particular facility), is not treated as violative of section 411(d)(6) merely because the event is within the control of the employer.

The final regulations clarify that a qualified plan may condition the availability of a section 411(d)(6) protected benefit on satisfaction of objective, nondiscriminatory, and clearly ascertainable criteria specifically set forth in the plan. For example, a plan may limit the availability of a particular section 411(d)(6) protected benefit to those employees who meet objective standards, consistently applied, with respect to the insurability of the employee or the existence of extreme financial need. The prohibition against the exercise of employer discretion is not violated where the employer reasonably and consistently applies such objective and clearly ascertainable criteria.

Q&A-6 (formerly Q&A-5) of § 1.411(d)-4 is revised to state affirmatively that any objective criteria imposed upon the availability of an optional form of benefit must not be discriminatory in form or operation.

Other changes in style and organization have been made in order to improve clarity and resolve areas that commentators have noted as being ambiguous.

Plan Amendments

Employers with plans that condition the availability of section 411(d)(6) protected benefits on employer discretion or on a discriminatory condition must eliminate (a) employer discretion provisions applicable to the availability of section 411(d)(6) protected benefits, and (b) other conditions that discriminate impermissibly with respect to optional forms of benefit. Alternatively, prior to the transitional period effective date with respect to such plan, and employer may eliminate optional forms of benefit (including early or late retirement benefits) and retirement-type subsidies that are subject to discretion provisions or other conditions that discriminate. In addition, existing plans that contain conditions applicable to an optional form of benefit that may reasonably be expected to discriminate may be amended to eliminate either such conditions or the optional form of

benefit subject to such conditions. For purposes of these regulations, a condition may reasonably be expected to discriminate if it results in a significant possibility that discrimination will result in operation. Thus, this rule does not require a determination that the condition does or is more likely than not to result in discrimination. The determination of whether a condition may reasonably be expected to discriminate for purposes of these plan amendment rules must be made on the basis of the seventy percent test of section 410(b)(1)(A) or the nondiscriminatory classification test of section 410(b)(1)(B) as such tests exist prior to the effective date of the amendments made to section 410(b) by section 1112(a) of TRA '86. Thus, a condition may not reasonably be expected to discriminate for purposes of these rules merely because it results in a significant possibility that discrimination will result because of the amendments made to section 410(b) by section 1112(a) of TRA '86. A condition that may be disregarded in determining the availability of optional forms of benefit, such as a condition requiring termination of employment or disability, may not reasonably be expected to discriminate. Similarly, conditions imposing age or service requirements may not reasonably be expected to discriminate. Plans may not be amended to add conditions that result in a restriction of the availability of an optional form of benefit provided under the plan with respect to benefits accrued prior to such amendment.

In response to comments, the final regulations also provide that, in lieu of eliminating the particular optional form of benefit or retirement-type subsidy, the employer may substitute nondiscriminatory objective criteria meeting the standards set forth in Q&A-6 of § 1.411(d)-4 for employer discretion or a discriminatory condition to which such benefit is subject.

Effective Dates of This Regulation

Many commentators requested that the effective dates for compliance with these regulations be extended and, in particular, that the time period for making any necessary amendment to plans affected by these regulations be amended to conform to the dates for making plan amendments required by section 1140 of TRA '86. In response to these comments, the effective date provisions of these regulations have been amended in four primary respects.

First, the effective dates for compliance with these regulations have been revised. The revised effective date

rules applicable to section 401(a)(4) are set forth in § 1.401(a)-4 Q&A-6 and those applicable to section 411(d)(6) are set forth in § 1.411(d)-4 Q&A-8. With respect to existing plans (as defined in these regulations), the revised effective dates include an extension providing that the applicable effective date is the first day of the first plan year commencing on or after January 1, 1989.

Second, the effective date is extended for new plans (as defined in these regulations) that contain provisions with respect to the availability of benefits that violate the requirements of these regulations, which plans receive a favorable determination letter pursuant to an application filed before July 11, 1988. Such new plans are treated as existing plans in determining the applicable effective date.

Third, these regulations have been amended to provide that, subject to certain conditions, existing plans and certain new plans that are treated as existing plans may defer plan amendments until the date for amending plans to comply with the requirements of section 410(b) as amended by TRA '86 (in general the first plan year commencing on or after January 1, 1989). The availability of this delayed amendment date is conditioned on compliance with the following requirements: (1) selection by the plan sponsor of one of the amendment alternatives permitted under the transitional rules set forth in these regulations by no later than the effective date for the plan as set forth in these regulations; (2) operational compliance with such selected amendment alternatives commencing as of such effective date; and (3) amendment by the delayed amendment date that, when made, is both consistent with the selected amendment as evidenced by plan practice and retroactive to the date by which the plan is required to comply with these regulations in operation.

The provisions of Notice 87-57, 1987-35 I.R.B. 10, with respect to the application of the section 1140 effective date for TRA '86 amendments to certain terminated plans are applicable to plans otherwise eligible for a deferred effective date for amendments under these sections. Thus, a plan terminating on or after the first day of the first plan year beginning after December 31, 1988, which plan is an existing plan or a new plan treated as an existing plan, and which plan is eligible to defer amendments required by this regulation to the date for making amendments required by TRA '86, must be amended

no later than plan termination to comply with the provisions of these sections. However, such a plan is not required to be amended to comply with the provisions of these sections in the event that termination occurs on or before the first day of the 1989 plan year.

Finally, the effective dates have been extended for certain plans that are adoptions of master and prototype plans.

Title I of ERISA

The regulations under section 411 are also applicable to provisions of Title I. Thus, these requirements also apply to employee plans subject to Title I of ERISA. Under section 101 of Reorganization Plan No. 4 of 1978 [43 FR 47713], the Secretary of the Treasury has jurisdiction over the subject matter addressed in these regulations. Therefore, under section 104 of the Reorganization Plan, these regulations apply when the Secretary of Labor exercises authority under Title I of ERISA.

Special Analyses

The Commissioner of Internal Revenue has determined that this is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking was issued, the Internal Revenue Service concluded that the notice and public procedure requirements of 5 U.S.C. 553 did not apply because the rules provided herein are interpretative. Accordingly, these final regulations do not constitute regulation's subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Nancy J. Marks of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

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List of Subjects in 26 CFR 1.401-1-1.425-1

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.411(d)-4 also issued under 26 U.S.C. 411(d)(6).

Par. 2. A new § 1.401(a)-4 is added immediately after § 1.401(a)-2 to read as follows:

§ 1.401(a)-4 Optional forms of benefit.

Q-1: How does section 401(a)(4) apply to optional forms of benefits?

A-1: (a) *In general.*—(1) *Scope.* The nondiscrimination requirements of section 401(a)(4) apply to the amount of contributions or benefits, optional forms of benefit, and other benefits, rights and features (e.g., actuarial assumptions, methods of benefit calculation, loans, social security supplements, and disability benefits) under a plan. This section addresses the application of section 401(a)(4) only to optional forms of benefit under a plan. Generally, the determination of whether an optional form is nondiscriminatory under section 401(a)(4) is made by reference to the availability of such optional form, and not by reference to the utilization or actual receipt of such optional form. See Q&A-2 of this section. Even though an optional form of benefit under a plan may be nondiscriminatory under section 401(a)(4) and this § 1.401(a)-4 because the availability of such optional form does not impermissibly favor employees in the highly compensated group, such plan may fail to satisfy section 401(a)(4) with respect to the amount of contributions or benefits or with respect to other benefits, rights and features if, for example, the method of calculation or the amount or value of benefits payable under such optional form impermissibly favors the highly compensated group. See § 1.411(d)-4, Q&A-1 for the definition of "optional form of benefit."

(2) *Nondiscrimination requirements.* Each optional form of benefit provided under a plan is subject to the nondiscrimination requirement of section 401(a)(4) and thus the availability of each optional form of benefit must not discriminate in favor of the employees described in section 401(a)(4) in whose favor discrimination is prohibited (the "highly compensated group"). See paragraph (b) of this Q&A-1 for a description of the employees included in such group. This is true without regard to whether a particular optional form of benefit is the actuarial equivalent of any other optional form of

benefit under the plan. Thus, for example, a plan may not condition, or otherwise limit, the availability of a single sum distribution of an employee's benefit in a manner that impermissibly favors the highly compensated group.

(b) *Highly compensated group.* For plan years commencing prior to the applicable effective date for the amendment made to section 401(a)(4) by section 1114 of the Tax Reform Act of 1986 (TRA '86), the highly compensated group consists of those employees who are officers, shareholders, or highly compensated. For plan years beginning on or after the applicable effective date of the amendments to section 401(a)(4) made by TRA '86, the highly compensated group consists of those employees who are highly compensated within the meaning of section 414(q). The amendment to section 401(a)(4) made by section 1114 of TRA '86 is generally effective for plan years commencing after December 31, 1986. See section 1114(a) of TRA '86.

Q-2: How is it determined whether an optional form of benefit satisfies the nondiscrimination requirements of section 401(a)(4)?

A-2: (a) *Nondiscrimination requirement.*—(1) *In general.* An optional form of benefit under a plan is nondiscriminatory under section 401(a)(4) only if the requirements of paragraphs (a)(2) and (a)(3) of this Q&A-2 are satisfied with respect to such optional form. The determination of whether an optional form of benefit satisfies these requirements is made by reference to the availability of the optional form, and not by reference to the utilization or actual receipt of such optional form. Thus, an optional form of benefit that satisfies the requirements of paragraphs (a)(2) and (a)(3) of this Q&A-2 is nondiscriminatory under section 401(a)(2) even though the highly compensated group disproportionately utilizes such optional form. However, the composition of the group of employees who actually receive benefits in an optional form may be relevant in determining whether such optional form satisfies the requirement of paragraph (a)(3) of this Q&A-2 with respect to effective availability.

(2) *Current availability.*—(i) *Plan years prior to TRA '86 effective date.* Except as provided in paragraph (a)(2)(iii) of this Q&A-2, for plan years prior to the effective date of the amendments made to section 401(b) by section 1112(a) of TRA '86, the requirement of this paragraph (a)(2) is satisfied only if the group of employees to whom the optional form is currently available satisfies either the seventy percent test of section 410(b)(1)(A) or

the nondiscriminatory classification test of section 410(b)(1)(B).

(ii) *Plan years commencing on or after TRA '86 effective date.*—(A) *In general.* Except as provided in paragraph (a)(2)(iii) of this Q&A-2, for plan years commencing on or after the effective date for the amendments made to section 410(b) by section 1112(a) of TRA '86, the requirement of this paragraph (a)(2) is satisfied only if the group of employees to whom the optional form is currently available satisfies either the percentage test set forth in section 410(b)(1)(A), the ratio test set forth in section 410(b)(1)(B), or the nondiscriminatory classification test set forth in section 410(b)(2)(A)(i) (and, in such case, the average benefit percentage test in section 410(b)(2)(A)(ii) is satisfied with respect to the employer).

(B) *Example.* In 1980, employer X maintains a defined benefit plan and a profit-sharing plan that is a qualified cash or deferred arrangement under section 401(k). Both plans satisfy the percentage test in section 410(b)(1)(A) with respect to coverage. The defined benefit plan provides for a single sum distribution available only to employees in the headquarters office. This group of employees fails the percentage and ratio tests of section 410(b), but satisfies the nondiscriminatory classification test set forth in section 410(b)(2)(A)(i). However, the employer does not satisfy the average benefit percentage test in section 401(b)(2)(A)(ii). Therefore, the current availability of the optional form of benefit does not satisfy the requirement of this paragraph (a)(2).

(iii) *Special rule for certain governmental or church plans.* Plans described in section 410(c) will be treated as satisfying the current availability test of this paragraph (a)(2) if the group of employees with respect to whom the optional form is currently available satisfies the requirements of section 401(a)(3) as in effect on September 1, 1974.

(iv) *Effective date for TRA '86 amendments to section 410(b).* The amendments to section 410(b) made by section 1112(a) of TRA '86 are generally effective for plan years commencing after December 31, 1986. See section 1112(e)(1) of TRA '86.

(v) *Elimination of optional forms.*—(A) *In general.* Notwithstanding paragraphs (a)(2)(i) and (a)(2)(ii) of this Q&A-2, in the case of an optional form of benefit that has been eliminated under a plan with respect to specified employees for benefits accrued after the later of the eliminating amendment's adoption date or effective date, the determination of whether such optional form satisfies this paragraph (a)(2) with respect to such employees is to be made immediately

prior to the elimination. Accordingly, if, as of the later of the adoption date or effective date of an amendment eliminating an optional form with respect to future benefit accruals, the current availability of such optional form immediately prior to such amendment satisfies this paragraph (a)(2), then the optional form will be treated as satisfying this paragraph (a)(2) for all subsequent years.

(B) *Example.* A profit-sharing plan that provides for a single sum distribution available to all employees on termination of employment is amended January 1, 1990, to eliminate such single sum optional form of benefit with respect to benefits accrued after January 1, 1991. As of January 1, 1991, the single sum optional form of benefit is available to a group of employees that satisfies the percentage test of section 410(b)(1)(A). As of January 1, 1995, all nonhighly compensated employees who were entitled to the single sum optional form of benefit have terminated from employment with the employer and taken a distribution of their benefits. The only remaining employees who have a right to take a portion of their benefits in the form of a single sum distribution on termination of employment are highly compensated employees. Because the availability of the single sum optional form of benefit satisfied the current availability test as of January 1, 1991, the availability of such optional form of benefit is deemed to continue to satisfy the current availability test of this paragraph (a)(2).

(3) *Effective availability.*—(i) *In general.* The requirement of this paragraph (a)(3) is satisfied only if, based on the facts and circumstances, the group of employees to whom the optional form is effectively available does not substantially favor the highly compensated group. This is the case even if the optional form is, or has been, currently available to a group of employees that satisfies the applicable requirements in paragraph (a)(2) (i) or (ii) of this Q&A-2.

(ii) *Examples.* The provisions of paragraph (a)(3)(i) of this Q&A-2 can be illustrated by the following examples:

Example 1. Employer X maintains a defined benefit plan that covers both of the 2 highly compensated employees of the employer and 8 of the twelve nonhighly compensated employees of the employer. Plan X provides for a normal retirement benefit payable as an annuity and based on a normal retirement age of 65, and an early retirement benefit payable upon termination in the form of an annuity to employees who terminate from service with the employer on or after age 55 with 30 or more years of service. Each of the 2 employees of employer X who are in the highly compensated group currently meet the age and service requirement, or will have 30 years of service by the time they reach age 55. All but 2 of the 8 nonhighly compensated employees of employer X who are covered by the plan

were hired on or after age 35 and thus, cannot qualify for the early retirement benefit provision. Even though the group of employees to whom the early retirement benefit is currently available does not impermissibly favor the highly compensated group by reason of disregarding age and service, these facts and circumstances indicate that the effective availability of the early retirement benefit in plan X substantially favors the highly compensated group.

Example 2. Assume the same facts as in Example 1 except that the early retirement benefit is added by a plan amendment first adopted, announced and effective December 1, 1991, and is available only to employees who terminate from employment with the employer prior to December 15, 1991. Further assume that all employees were hired prior to attaining age 25, and that the group of employees who have, or will have attained age 55 with 30 years of service, by December 15, 1991, satisfies the ratio test of section 410(b)(1)(B). Finally, assume that the only employees who terminate from employment with the employer during the two week period in which the early retirement benefit is available are employees in the highly compensated group. These facts and circumstances indicate that the effective availability of the early retirement benefit substantially favors the highly compensated group. This is the case even though the limitation of the early retirement benefit to a specified period satisfies section 411(d)(6).

Example 3. Employer Y amends plan Y on June 30, 1990, to provide for a single sum distribution for employees who terminate from employment with the employer after June 30, 1990, and prior to January 1, 1991. The availability of this single sum distribution is conditioned on the employee having a particular disability at the time of termination of employment. The only employee of the employer who meets this disability requirement at the time of the amendment and thereafter through December 31, 1990, is a highly compensated employee. Generally, a disability condition with respect to the availability of a single sum distribution may be disregarded in determining whether the current availability of such optional form of benefit is discriminatory. However, these facts and circumstances indicate that the effective availability of the optional form of benefit substantially favors the highly compensated group.

Example 4. Employer Z maintains a money purchase pension plan that covers all employees of the employer. The plan provides for distribution in the form of a joint and survivor annuity, a life annuity, or equal installments over 10 years. During the 1992 calendar year the employer winds up his business. In December of 1992, only two employees remain in the employment of the employer, both of whom are highly compensated. Employer Z then amends the plan to provide for a single sum distribution to employees who terminate from employment on or after the date of the amendment. Both highly compensated employees terminate from employment on December 31, 1992, taking a single sum distribution of their benefits. These facts and

circumstances indicate that the effective availability of the single sum optional form of benefit substantially favors the highly compensated group.

(b) *Application of tests.*—(1) *Current availability.*—(i) *In general.* Except as otherwise provided in this paragraph (b), in determining whether an optional form of benefit that is subject to specified eligibility conditions is currently available to an employee for purposes of paragraph (a) of this Q&A-2, the determination of current availability generally is to be based on the current facts and circumstances with respect to the employee (e.g., the employee's current compensation or the employee's current net worth). Thus, for example, the fact that an employee may, in the future, satisfy an eligibility condition generally does not cause an optional form of benefit to be treated as currently available to such employee.

(ii) *Exceptions for age, service, employment termination and certain other conditions.*—(A) *Age and service conditions.* For purposes of applying paragraph (a)(2) of this Q&A-2, except as provided in paragraph (b)(1)(ii)(B) of this Q&A-2, an age condition, a service condition, or both are to be disregarded. For example, an employer that maintains a plan that provides for an early retirement benefit payable as an annuity for employees in division A, subject to a requirement that the employee has attained his or her 55th birthday and has at least twenty years of service with the employer, is to disregard the age and service conditions in determining the group of employees to whom the early retirement annuity benefit is currently available. Thus, the early retirement annuity benefit is treated as currently available to all employees of division A, without regard to their ages or years of service and without regard to whether they could potentially meet the age and service conditions prior to attaining the plan's normal retirement age.

(B) *Exception for certain age and service conditions.* Age and service conditions that must be satisfied within a specified period of time may not be disregarded pursuant to paragraph (b)(1)(ii)(A) of this Q&A-2. However, in determining the current availability of an optional form of benefit subject to such an age condition, service condition, or both, an employer may project the age and service of employees to the last date on which the optional form of benefit subject to the age condition or service condition (or both) is available under the plan. An employer's ability to protect age and service to the last date on which the optional form of benefit is

available under the plan is not cut off by a plan termination occurring prior to that date. Thus, for example, assume that an employer maintaining a plan that permits employees terminating from employment on or after age 55 between June 1, 1991 to May 31, 1992, to elect a single sum distribution, decides to terminate the plan on December 31, 1991. In determining the group of employees to whom the single sum optional form of benefit is currently available, this employer may project employees' ages through May 31, 1992.

(C) *Certain other conditions disregarded.* Conditions on the availability of optional forms of benefit requiring termination of employment, death, satisfaction of a specified health condition (or failure to meet such condition), disability, hardship, marital status, default on a plan loan secured by a participant's account balance, or execution of a covenant not to compete may be disregarded in determining the group of employees to whom an optional form of benefit is currently available.

(2) *Employees taken into account.* For purposes of applying paragraph (a) of this Q&A-2, the tests are to be applied on the basis of the employer's nonexcludable employees (whether or not they are participants in the plan) in the same manner as such tests would be applied in determining whether the plan providing the optional form of benefit satisfies the tests under section 410(b).

(3) *Definition of "plan".* For purposes of applying paragraph (a) of this Q&A-2, the term "plan" has the meaning that such term has for purposes of determining whether the amount of contributions or benefits and whether other benefits, rights, and features are nondiscriminatory under section 401(a)(4).

(4) *Restructuring optional forms of benefit—(i) In general.* For purposes of applying paragraph (a) of this Q&A-2, the availability of two or more optional forms of benefit under a plan may be tested by restructuring such benefits into two or more restructured optional forms of benefit and testing the availability of such restructured optional forms of benefit. If two or more optional forms of benefit under a plan contain both common and distinct components, such optional forms of benefit may be restructured as a single optional form of benefit comprising the common component, and one or more optional forms of benefit comprising each distinct component. Components of optional forms of benefit may be treated as common only if they are identical with respect to all characteristics taken into account under Q&A-1(b) of § 1.411(d)-4. The availability of each restructured

optional form of benefit must satisfy the applicable nondiscrimination requirements of paragraph (a) of this Q&A-2.

(ii) *Example.* A profit-sharing plan covering all the employees of an employer provides a single sum distribution option upon termination from employment for all employees earning less than \$50,000 and a single sum distribution option upon termination from employment after the attainment of age 55 for all employees earning \$50,000 or more. These distribution options are identical in all other respects. For purposes of applying section 401(a)(4), such optional forms of benefit may be restructured into two different optional forms of benefit: (A) a single sum distribution option upon termination from employment after the attainment of age 55 for all employees (i.e., the common component), and (B) a single sum distribution option upon termination from employment before the attainment of age 55 for all employees earning less than \$50,000. The availability of each of these restructured optional forms of benefit must satisfy section 401(a)(4).

(c) *Commissioner may provide additional tests.* The Commissioner may provide such additional factors, tests, and safe harbors as are necessary or appropriate for purposes of determining whether the availability of an optional form of benefit is discriminatory under section 401(a)(4). In addition, the Commissioner may provide that additional eligibility conditions not related directly or indirectly to compensation or wealth may be disregarded under paragraph (b)(1)(ii)(C) of this Q&A-2 in determining the current availability of an optional form of benefit. The Commissioner may provide such additional guidance only through the publication of revenue rulings, notices or other documents of general applicability.

Q-3: May a plan condition the availability of an optional form of benefit on employer discretion?

A-3: No. Even if the availability of an optional form of benefit that is conditioned on employer discretion satisfies the nondiscrimination requirements of section 401(a)(4), the plan providing the optional form of benefit will fail to satisfy certain other requirements of section 401(a), including, in applicable circumstances, the definitely determinable requirement of section 401(a) and the requirements of section 401(a)(25) and section 411(d)(6). See § 1.411(d)-4.

Q-4: Will a plan provision violate section 401(a)(4) merely because it requires that an employee who terminates from service with the employer receive a single sum distribution in the event that the present

value of the employee's benefit is not more than \$3,500, as permitted by sections 411(a)(11) and 417(e)?

A-4: No. A plan will not be treated as discriminatory under section 401(a)(4) merely because the plan mandates a single sum distribution when the present value of an employee's benefit is not more than \$3,500, as permitted by sections 411(a)(11) and 417(e). This is an exception to the general principles of this section. (No similar provision exists excepting such single sum distributions from the limits on employer discretion under section 411(d)(6). See § 1.411(d)-4 Q&A-4.)

Q-5: If the availability of an optional form of benefit discriminates, or may reasonably be expected to discriminate, in favor of the highly compensated group, what acceptable alternatives exist for amending the plan without violating section 411(d)(6)?

A-5: (a) *Transitional rules—(1) In general.* The following rules apply for purposes of making necessary amendments to existing plans (as defined in Q&A-6 of this section) under which the availability of an optional form of benefit violates the nondiscrimination requirements of section 401(a)(4) or may reasonably be expected to violate such requirements. These transitional rules are provided under the authority of section 411(d)(6), which allows the elimination of certain optional forms of benefit if permitted by regulations, and section 7805(b).

(2) *Nondiscrimination—(i) In general.* The determination of whether the availability of an optional form of benefit violates section 401(a)(4) is to be made in accordance with Q&A-2 of this section. In addition, the availability of a particular optional form of benefit may reasonably be expected to violate the nondiscrimination requirements of section 401(a)(4) if, under the applicable facts and circumstances, there is a significant possibility that the current availability of such optional form of benefit will impermissibly favor the highly compensated group. This determination must be made on the basis of the seventy percent test of section 410(b)(1)(A) or the nondiscriminatory classification test of section 410(b)(1)(B) as such tests existed prior to the effective date of the amendments made to section 410(b) by section 1112(a) of TRA '86. Thus, a condition may not reasonably be expected to discriminate for purposes of these rules merely because it results in a significant possibility that discrimination will result because of the amendments made to section 410(b) by section 1112(a) of TRA '86. In addition,

the availability of an optional form of benefit may not reasonably be expected to discriminate merely because of an age or service condition that may be disregarded in determining the current availability of such optional form of benefit under paragraph (b)(1)(ii)(A) of Q&A-2 of this section. Similarly, the availability of an optional form of benefit may not reasonably be expected to discriminate merely because of an age or service condition that, after permitted projection, does not cause such optional form to fail to satisfy the requirement of this paragraph (a)(2).

(ii) *Examples.* The provisions of paragraph (a)(2)(i) of this Q&A-5 can be illustrated by the following examples:

Example (1). A plan provides that a single sum distribution option is available only to (A) employees earning \$50,000 or more in the final year of employment, (B) employees who furnish evidence that they have a net worth above a certain specified amount, and (C) employees who present a letter from an accountant or attorney declaring that it is in the employee's best interest to receive a single sum distribution. Whether the availability of such optional form of benefit discriminates depends on whether it meets the requirements of Q&A-2 of this § 1.401(a)-4. However, each of the specified conditions limiting the availability of the optional form of benefit may reasonably be expected to discriminate in favor of the highly compensated group in operation because of the likelihood of a significant positive correlation between the ability to meet any of the specified conditions and membership in the highly compensated group.

Example (2). A plan limits the availability of a single sum distribution option to employees employed in one particular division of the employer's company. All the employees of the company are participants in the plan. During the 1988 plan year, the division employs individuals who represent a nondiscriminatory classification of that company's employees (under section 410(b)(1)(B) prior to the effective date of the amendments made to section 410(b) by section 1112(a) of TRA '86) and is unlikely to cease employing such a nondiscriminatory classification in the future. The availability of a single sum distribution under this plan does not result in discrimination during the 1988 plan year and may not reasonably be expected to do so.

(b) *Transitional alternatives.* If the availability of an optional form of benefit under an existing plan is discriminatory under section 401(a)(4), the plan must be amended either to eliminate the optional form of benefit or to make the availability of the optional form of benefit nondiscriminatory. For example, the availability of an optional form of benefit may be made nondiscriminatory by making such benefit available to sufficient additional employees who are not in the highly compensated group or by imposing

nondiscriminatory objective criteria on its availability such that the group of employees to whom the benefit is available is nondiscriminatory. See Q&A-6 of § 1.411(d)-4 for requirements with respect to such objective criteria. If, under an existing plan, the availability of an optional form of benefit may reasonably be expected to discriminate, the plan may be amended in the same manner permitted where the availability of an optional form of benefit is discriminatory. See paragraph (d) of this Q&A-5 for rules limiting the period during which the availability of optional forms of benefit may be eliminated or reduced under this paragraph.

(c) *Compliance and amendment date provisions—(1) Operational compliance requirement.* On or before the applicable effective date for the plan (see Q&A-6 of this section), the plan sponsor must select one of the alternatives permitted under paragraph (b) of this Q&A-5 with respect to each affected optional form of benefit and the plan must be operated in accordance with this selection. This is an operational requirement and does not require a plan amendment prior to the period set forth in paragraph (c)(2) of this Q&A-5. There is no special reporting requirement under the Code or this section with respect to this selection.

(2) *Deferred amendment date.* If paragraph (c)(1) of this Q&A-5 is satisfied, a plan amendment conforming the plan to the particular alternative selected under paragraph (b) of this Q&A-5 must be adopted within the time period permitted for amending plans in order to meet the requirements of section 410(b) as amended by TRA '86. Such conforming amendment must be consistent with the sponsor's selection as reflected by plan practice during the period from the effective date to the date the amendment is adopted. Thus, for example, if an existing calendar year noncollectively bargained defined benefit plan has a single sum distribution form subject to a discriminatory condition, that was available as of January 30, 1986 (subject to such condition), and such employer makes one or more single sum distributions available on or after the first day of the first plan year commencing on or after January 1, 1989, and before the plan amendment, then such employer may not adopt a plan amendment eliminating the single sum distribution form. Instead, such employer must adopt an amendment making the distribution form available to a nondiscriminatory group of employees while retaining the

availability of such distribution form with respect to the group of employees to whom the benefit is already available. Similarly, any objective criteria that are adopted as part of such amendment must be consistent with the plan practice for the applicable period prior to the amendment. A conforming amendment under this paragraph (c)(2) must be made with respect to each optional form of benefit for which such amendment is required and must be retroactive to the applicable effective date.

(d) *Limitation on transitional alternatives.* The transitional alternatives permitting the elimination or reduction of optional forms of benefit will not violate section 411(d)(6) during the period prior to the applicable effective date for the plan (see Q&A-6 of this section). After the applicable effective date, any amendment (other than one described in paragraph (c)(2) of this Q&A-5) that eliminates or reduces an optional form of benefit or imposes new objective criteria restricting the availability of such optional form of benefit will fail to qualify for the exception to section 411(d)(6) provided in this Q&A-5. This is the case without regard to whether the availability of the optional form of benefit is discriminatory or may reasonably be expected to be discriminatory.

Q-6: What are the effective dates for the rules in this section?

A-6: (a) *General effective date.* Except as otherwise provided in this section, the provisions of this section are effective January 30, 1986.

(b) *New plans—(1) In general.* Unless otherwise provided in paragraph (b)(2) of this Q&A-6, plans that are either adopted or made effective on or after January 30, 1986, are "new plans". With respect to such new plans, this section is effective January 30, 1986. This effective date is applicable to such plans whether or not they are collectively bargained.

(2) *Exception with respect to certain new plans.* Plans that are new plans as defined in paragraph (b)(1) of this Q&A-6, under which the availability of an optional form of benefit is discriminatory or may reasonably be expected to be discriminatory, and that receive a favorable determination letter that covered such plan provisions with respect to an application submitted prior to July 11, 1988, will be treated as existing plans with respect to such optional form of benefit for purposes of the transitional rules of this section. Thus, such plans are eligible for the compliance and amendment alternatives set forth in the transitional rule in Q&A-5 of this section.

(c) *Existing plans*—(1) *In general.* Plans that are both adopted and in effect prior to January 30, 1988, are "existing plans". In addition, new plans described in paragraph (b)(2) of this Q&A-6 are treated as existing plans with respect to certain forms of benefit. Subject to the limitations in paragraph (d) of this Q&A-6, the effective dates set forth in paragraphs (c)(2) and (c)(3) of this Q&A-6 apply to these existing plans for purposes of this section.

(2) *Existing noncollectively bargained plans.* With respect to existing noncollectively bargained plans, this section is effective for the first day of the first plan year commencing on or after January 1, 1989.

(3) *Existing collectively bargained plans.* With respect to existing collectively bargained plans, this section is effective for the later of the first day of the first plan year commencing on or after January 1, 1989, or the first day of the first plan year that the requirements of section 410(b) as amended by TRA '86 apply to such plan.

(d) *Delayed effective dates not applicable to new optional forms of benefit or conditions*—(1) *In general.* The delayed effective dates in paragraph (c) (2) and (3) of this Q&A-6 for existing plans are applicable with respect to an optional form of benefit only if both the optional form of benefit and any applicable condition either causing the availability of such optional form of benefit to be discriminatory or making it reasonable to expect that the availability of such optional form will be discriminatory were both adopted and in effect prior to January 30, 1988. If the preceding sentence is not satisfied with respect to an optional form of benefit, this section is effective with respect to such optional form of benefit as if the plan were a new plan.

(2) *Exception for certain amendments covered by a favorable determination letter.* If a condition causing the availability of an optional form of benefit to be discriminatory, or to be reasonably expected to discriminate, was adopted or made effective on or after January 30, 1988, and a favorable determination letter that covered such plan provision is or was received with respect to an application submitted before July 11, 1988, the effective date of this section with respect to such provision is the applicable effective date determined under the rules with respect to existing plans, as though such provision had been adopted and in effect prior to January 30, 1988.

(e) *Transitional rule effective date.* The transitional rule provided in Q&A-5 of this section is effective January 30, 1988.

Par. 2. A new § 1.411(d)-4 is added immediately after § 1.411(d)-3T to read as follows:

§ 1.411(d)-4 Section 411(d)(6) protected benefits.

Q-1: What are "section 411(d)(6) protected benefits"?

A-1: (a) *In general.* The term "section 411(d)(6) protected benefit" includes any benefit that is described in one or more of the following categories:

(1) Benefits described in section 411(d)(6)(A).

(2) Early retirement benefits and retirement-type subsidies described in section 411(d)(6)(B)(i), and

(3) Optional forms of benefit described in section 411(d)(6)(B)(ii).

Such benefits, to the extent they have accrued, are subject to the protection of section 411(d)(6) and, where applicable, the definitely determinable requirement of section 401(a) (including section 401(a)(25)) and cannot, therefore, be reduced, eliminated or made subject to employer discretion except to the extent permitted by regulations.

(b) *Optional forms of benefit*—(1) *In general.* An "optional form of benefit" is a distribution form with respect to an employee's benefit (described in paragraph (a)(1) and/or (a)(2) of this Q&A-1) that is available under the plan and is identical with respect to all features relating to the distribution form, including the payment schedule, timing, commencement, medium of distribution (e.g., in cash or in-kind), the portion of the benefit to which such distribution features apply and the election rights with respect to such optional forms. To the extent there are any differences in such features, the plan provides separate optional forms of benefit. Differences in amounts of benefits, methods of calculation, or values of distribution forms do not result in optional forms of benefit for purposes of this rule. However, such amounts, methods of calculation, or values may be protected benefits within section 411(d)(6)(A) and/or section 411(d)(6)(B)(i). See § 1.401(a)-4 for further discussion and examples relating to optional forms of benefits.

(2) *Examples.* The following examples illustrate the meaning of the term "optional form of benefit." Other issues, such as the requirement that the optional forms satisfy section 401(a)(4), are not addressed in these examples and no inferences are intended with respect to such requirements. Assume that the distribution forms, including those not described in these examples, provided under the plan in each of the following examples are identical in all respects not described.

Example 1. A plan permits each participant to receive his benefit under the plan as a single sum distribution; a level monthly distribution schedule over 15 years; a single life annuity; a joint and 99 percent survivor annuity; a joint and 75 percent survivor annuity; a joint and 50 percent survivor annuity with a benefit increase for the participant if the beneficiary dies before a specified date; and joint and 30 percent survivor annuity with a 10 year certain feature. Each of these benefit distribution options is an optional form of benefit (without regard to whether the values of these options are actuarially equivalent).

Example 2. A plan permits each participant to receive his benefit under the plan as a single life annuity commencing at termination from employment; a joint and 50 percent survivor annuity commencing at termination from employment; a single sum distribution that is actuarially equivalent to the single life annuity determined by using a specified interest rate (X percent) for the employees of Division A; and a single sum distribution that is actuarially equivalent to the single life annuity determined by using an interest rate that is 60 percent of X percent for employees of Division B. This plan provides three optional forms of benefit. While the interest rates used to determine the single sum distributions available to the employees of Divisions A and the employees of Division B respectively differ, this difference does not result in two single sum optional forms of benefit.

Example 3. A plan permits each participant who is employed by division A to receive his benefit in a single sum distribution payable upon termination from employment and each participant who is employed by division B in a single sum distribution payable upon termination from employment on or after the attainment of age 50. This plan provides two single sum optional forms of benefit.

Example 4. A plan permits each participant to receive his benefit in a single life annuity that commences in the month after the participant's termination from employment or in a single life annuity that commences upon the completion of five consecutive one year breaks in service. These are two optional forms of benefit.

Example 5. A profit-sharing plan permits each participant who is employed by division A to receive an in-service distribution upon the satisfaction of objective criteria set forth in the plan designed to determine whether the participant has a heavy and immediate financial need, and each participant who is employed by division B to receive an in-service distribution upon the satisfaction of objective criteria set forth in the plan designed to determine whether the participant has a heavy and immediate financial need attributable to extraordinary medical expenses. These in-service distribution options are two optional forms of benefits.

Example 6. A profit-sharing plan permits each participant who is employed by division A to receive an in-service distribution up to \$5,000 and each participant who is employed by division B to receive an in-service distribution of up to his total benefit. These

in-service distribution options differ as to the portion of the accrued benefit that may be distributed in a particular form and are, therefore, two optional forms of benefit.

Example 7. A profit-sharing plan provides for a single sum distribution on termination of employment. The plan is amended in 1991 to eliminate the single sum optional form of benefit with respect to benefits accrued after the date of amendment. This single sum optional form of benefit continues to be a single optional form of benefit although, over time, the percentage of various employees' accrued benefits that are potentially payable under this single sum may vary because the form is only available with respect to benefits accrued up to and including the date of the amendment.

Example 8. A profit-sharing plan permits each participant to receive a single sum distribution of his benefit in cash or in the form of a specified class of employer stock. This plan provides two single sum distribution optional forms of benefit.

Example 9. A stock bonus plan permits each participant to receive a single sum distribution of his benefit in cash or in the form of the property in which such participant's benefit was invested prior to the distribution. This plan's single sum distribution option provides two optional forms of benefit.

Example 10. A defined benefit plan provides for an early retirement benefit payable upon termination of employment after attainment of age 55 and either after ten years of service or, if earlier, upon plan termination to employees of Division A and provides for an identical early retirement benefit payable on the same terms with the exception of payment on plan termination to employees of Division B. The plan provides for two optional forms of benefit.

Example 11. A profit-sharing plan provides for loans secured by an employee's account balance. In the event of default on such a loan, there is an execution on such account balances. Such execution is a distribution of the employee's accrued benefits under the plan. A distribution of an accrued benefit contingent on default under a plan loan secured by such accrued benefits is an optional form of benefit under the plan.

(c) *Plan terms*—(1) *General rule.* Generally, benefits described in section 411(d)(6)(A), early retirement benefits, retirement-type subsidies, and optional forms of benefit are section 411(d)(6) protected benefits only if they are provided under the terms of a plan. However, if an employer establishes a pattern of repeated plan amendments providing for similar benefits in similar situations for substantially consecutive, limited periods of time, such benefits will be treated as provided under the terms of the plan, without regard to the limited periods of time, to the extent necessary to carry out the purposes of section 411(d)(6) and, where applicable, the definitely determinable requirement of section 401(a), including section 401(a)(25). A pattern of repeated plan amendments providing that a particular

optional form of benefit is available to certain named employees for a limited period of time is within the scope of this rule and may result in such optional form of benefit being treated as provided under the terms of the plan to all employees covered under the plan without regard to the limited period of time and the limited group of named employees.

(2) *Effective date.* The provisions of paragraph (c)(1) of this Q&A-1 are effective as of July 11, 1988. Thus, patterns or repeated plan amendments adopted and effective before July 11, 1988 will be disregarded in determining whether such amendments have created an ongoing optional form of benefit under the plan.

(d) *Benefits that are not section 411(d)(6) protected benefits.* The following benefits are examples of items that are not section 411(d)(6) protected benefits: (1) ancillary life insurance protection; (2) accident or health insurance benefits; (3) social security supplements described in section 411(a)(9); (4) the availability of loans (other than the distribution of an employee's accrued benefit upon default under a loan); (5) the right to make after-tax employee contributions or elective deferrals described in section 402(g)(3); (6) the right to direct investments; (7) the right to a particular form of investment (e.g., investment in employer stock or securities or investment in certain types of securities, commercial paper, or other investment media); (8) the allocation dates for contributions, forfeitures and earnings, the time for making contributions (but not the conditions for receiving an allocation of contributions or forfeitures for a plan year after such conditions have been satisfied), and the valuation dates for account balances; (9) administrative procedures for distributing benefits, such as provisions relating to the particular dates on which notices are given and by which election must be made; and (10) rights that derive from administrative and operational provisions, such as mechanical procedures for allocating investment experience among accounts in defined contribution plans.

Q-2: To what extent may section 411(d)(6) protected benefits under a plan be reduced or eliminated?

A-2: (a) *Reduction or elimination of section 411(d)(6) protected benefits*—(1) *In general.* A plan may not be amended to eliminate or reduce a section 411(d)(6) protected benefit that has already accrued, except as provided in sections 412(c)(8) and 4281, and in paragraph (b) of this Q&A-2. This is generally the case even if such elimination or reduction is contingent upon the employee's consent.

However, a plan may be amended to eliminate or reduce section 411(d)(6) protected benefits with respect to benefits not yet accrued as of the later of the amendment's adoption date or effective date without violating section 411(d)(6).

(2) *Selection of optional forms of benefit*—(i) *General rule.* A plan may treat a participant as receiving his entire nonforfeitable accrued benefit under the plan if the participant receives his benefit in an optional form of benefit in an amount determined under the plan that is at least the actuarial equivalent of the employee's nonforfeitable accrued benefit payable at normal retirement age under the plan. This is true even though the participant could have elected to receive an optional form of benefit with a greater actuarial value than the value of the optional form received, such as an optional form including retirement-type subsidies, and without regard to whether such other, more valuable optional form could have commenced immediately or could have become available only upon the employee's future satisfaction of specified eligibility conditions.

(ii) *Election of an optional form.* Except as provided in paragraph (a)(2)(iii) of this Q&A-2, a plan does not violate section 411(d)(6) merely because an employee's election to receive a portion of his nonforfeitable accrued benefit in one optional form of benefit precludes the employee from receiving that portion of his benefit in another optional form of benefit. Such employee retains all 411(d)(6) protected rights with respect to the entire portion of such employee's nonforfeitable accrued benefit for which no distribution election was made. For purposes of this rule, an elective transfer of an otherwise distributable benefit is treated as the selection of an optional form of benefit. See Q&A-3 of this section.

(iii) *Buy-back rule.* Notwithstanding paragraph (a)(2)(ii) of this Q&A-2, an employee who received a distribution of his nonforfeitable benefit from a plan that is required to provide a repayment opportunity to such employee if he returns to service within the applicable period pursuant to the requirements of section 411(a)(7) and who, upon subsequent reemployment, repays the full amount of such distribution in accordance with section 411(a)(7)(C) must be reinstated in the full array of section 411(d)(6) protected benefits that existed with respect to such benefit prior to distribution.

(iv) *Examples.* The rules in this paragraph (a)(2) can be illustrated by the following examples:

Example 1. Defined benefit plan X provides, among its optional forms of benefit, for a subsidized early retirement benefit payable in the form of an annuity and available to employees who terminate from employment on or after their 55th birthdays. In addition plan X provides for a single sum distribution available on termination from employment or termination of the plan. The single sum distribution is determined on the basis of the present value of the accrued normal retirement benefit and does not take the early retirement subsidy into account. Plan X is terminated December 31, 1991. Employees U, age 47, V, age 55, and W, age 47, all continue in the service of the employer. Employees X, age 47, Y, age 55 and Z, age 47, terminate from employment with the employer during 1991. Employees U and V elect to take the single sum optional form of distribution at the time of plan termination. Employees X and Y elect to take the single sum distribution on termination from employment with the employer. The elimination of the subsidized early retirement benefit with respect to employees U, V, X and Y does not result in a violation of section 411(d)(6). This is the result even though employees U and X had not yet satisfied the conditions for the subsidized early retirement benefit. Because employees W and Z have not selected an optional form of benefit, they continue to have a 411(d)(6) protected right to the full array of section 411(d)(6) protected benefits provided under the plan, including the single sum distribution form and the subsidized early retirement benefit.

Example 2. A partially vested employee receives a single sum distribution of the present value of his entire nonforfeitable benefit on account of separation from service under a defined benefit plan providing for a repayment provision. Upon reemployment with the employer such employee makes repayment in the required amount in accordance with section 411(a)(7). Such employee may, upon subsequent termination of employment, elect to take such repaid benefits in any optional form provided under the plan as of the time of the employee's initial separation from service. If the plan was amended prior to such repayment, to eliminate the single sum optional form of benefit with respect to benefits accrued after the date of the amendment, such participant has a 411(d)(6) protected right to take distribution of the repaid benefit in the form of a single sum distribution.

(3) **Certain transactions.**—(i) **Plan mergers and benefit transfers.** The prohibition against the reduction or elimination of section 411(d)(6) protected benefits already accrued applies to plan mergers, spinoffs, transfers, and transactions amending or having the effect of amending a plan or plans to transfer plan benefits. Thus, for example, if plan A, a profit-sharing plan that provides for distribution of plan benefits in annual installments over ten or twenty years, is merged with plan B, a profit-sharing plan that provides for distribution of plan benefits in annual installments over life expectancy at time

of retirement, the merged plan must retain the ten or twenty year installment option for participants with respect to benefits already accrued under plan A as of the merger and the installments over life expectancy for participants with benefits already accrued under plan B. Similarly, for example, if an employee's benefit under a defined contribution plan is transferred to another defined contribution plan (whether or not of the same employer), the optional forms of benefit available with respect to the employee's benefit accrued under the transferor plan may not be eliminated or reduced except as otherwise permitted under this regulation. See Q&A-3 of this section with respect to the transfer of benefits between and among defined benefit and defined contribution plans.

(ii) **Annuity contracts.**—(A) **General rule.** The protection provided by section 411(d)(6) may not be avoided by the use of annuity contracts. Thus, section 411(d)(6) protected benefits already accrued may not be eliminated or reduced merely because a plan uses annuity contracts to provide such benefits, without regard to whether the plan, a participant, or a beneficiary of a participant holds the contract or whether such annuity contracts are purchased as a result of the termination of the plan. However, to the extent that an annuity contract constitutes payment of benefits in a particular optional form elected by the participant, the plan does not violate section 411(d)(6) merely because it provides that other optional forms are no longer available with respect to such participant. See paragraph (a)(2) of this Q&A-2.

(B) **Examples.** The provisions of this paragraph (a)(3)(ii) can be illustrated by the following examples:

Example 1. A profit-sharing plan that is being terminated satisfies section 411(d)(6) only if the plan makes available to participants annuity contracts that provide for all section 411(d)(6) protected benefits under the plan that may not otherwise be reduced or eliminated pursuant to this Q&A-2. Thus, if such a plan provided for a single sum distribution upon attainment of early retirement age, and a provision for payment in the form of 10 equal annual installments, the plan would satisfy section 411(d)(6) only if the participants had the opportunity to elect to have their benefits provided under an annuity contract that provided for the same single sum distribution upon the attainment of the participant's early retirement age and the same 10 year installment optional form of benefit.

Example 2. A defined benefit plan permits each participant who separates from service on or after age 62 to receive a qualified joint and survivor annuity or a single life annuity commencing 45 days after termination from employment. For a participant who separates

from service before age 62, payments under these optional forms of benefit commence 45 days after the participant's 62nd birthday. Under the plan, a participant is to elect among these optional forms of benefit during the 90-day period preceding the annuity starting date. However, during such period, a participant may defer both benefit commencement and the election of a particular benefit form to any later date, subject to section 401(a)(9). In January 1990, the employer decides to terminate the plan as of July 1, 1990. The plan will fail to satisfy section 411(d)(6) unless the optional forms of benefit provided under the plan are preserved under the annuity contract purchased on plan termination. Thus, such annuity contract must provide a participant the same optional benefit commencement rights that the plan provided. In addition, such contract must provide the same election rights with respect to such benefit options. This is the case even if, for example, in conjunction with the termination, the employer amended the plan to permit participants to elect a qualified joint and survivor annuity, single life annuity, or single sum distribution commencing on July 1, 1990.

(4) **Benefits payable to a spouse or beneficiary.** Section 411(d)(6) protected benefits may not be eliminated merely because they are payable with respect to a spouse or other beneficiary.

(b) **Section 411(d)(6) protected benefits that may be eliminated or reduced only as permitted by the Commissioner.**—(1) **In general.** The Commissioner may, consistent with the provisions of this section, provide for the elimination or reduction of section 411(d)(6) protected benefits that have already accrued only to the extent that such elimination or reduction does not result in the loss to plan participants of either a valuable right or an employer-subsidized optional form of benefit where a similar optional form of benefit with a comparable subsidy is not provided or to the extent such elimination or reduction is necessary to permit compliance with other requirements of section 401(a) (e.g., sections 401(a)(4), 401(a)(9) and 415). The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability.

(2) **Section 411(d)(6) protected benefits that may be eliminated or reduced.** The elimination or reduction of certain section 411(d)(6) protected benefits that have already accrued in the following situations does not violate section 411(d)(6). The rules with respect to permissible eliminations and reductions provided in this paragraph (b)(2) are effective January 30, 1990. These exceptions create no inference with respect to whether any other applicable requirements are satisfied

(for example, requirements imposed by section 401(a)(9) and section 401(a)(14)).

(i) **Change in statutory requirement.** A plan may be amended to eliminate or reduce a section 411(d)(6) protected benefit if the following three requirements are met: the amendment constitutes timely compliance with a change in law affecting plan qualification; there is an exercise of section 7805(b) relief by the Commissioner; and the elimination or reduction is made only to the extent necessary to enable the plan to continue to satisfy the requirements for qualified plans. In general, the elimination or reduction of a section 411(d)(6) protected benefit will not be treated as necessary if it is possible through other modifications to the plan (e.g., by expanding the availability of an optional form of benefit to additional employees) to satisfy the applicable qualification requirement.

(ii) **Joint and survivor annuity.** A plan that provides a range of three or more actuarially equivalent joint and survivor annuity options may be amended to eliminate any of such options, other than the options with the largest and smallest optional survivor payment percentages, even if the effect of such amendment is to change which of the options is the qualified joint and survivor annuity under section 417. Thus, for example, if a money purchase pension plan provides three joint and survivor annuity options with survivor payments of 50%, 75% and 100%, respectively, that are uniform with respect to age and are actuarially equivalent, then the employer may eliminate the option with the 75% survivor payment, even if this option had been the qualified joint and survivor annuity under the plan.

(iii) **In-kind distributions after plan termination.**—(A) **In general.** If a plan includes an optional form of benefit under which benefits are distributed in specified property (other than cash), such optional form of benefit may be modified for distributions after plan termination by substituting cash for the specified property to the extent that, on plan termination, an employee has the opportunity to receive the optional form of benefit in the specified property. This exception is not available, however, if the employer that maintains the terminating plan also maintains another plan that provides an optional form of benefit in the specified property.

(B) **Example.** This paragraph (b)(2)(iii) can be illustrated by the following example:

Example. An employer maintains a stock bonus plan under which a participant, upon termination from employment, may elect to receive his benefits in a single sum

distribution in employer stock. This is the only plan maintained by the employer under which distributions in employer stock are available. The employer decides to terminate the stock bonus plan. If such plan is amended to make available a single sum distribution in employer stock on plan termination, the plan will not fail section 411(d)(6) solely because the optional form of benefit providing a single sum distribution in employer stock on termination from employment is modified to provide that such distribution is available only in cash.

(iv) **Coordination with diversification requirement.** A tax credit employee stock ownership plan (as defined in section 409(a)) or an employee stock ownership plan (as defined in section 4975(e)(7)) may be amended to provide that a distribution is not available in employer securities to the extent that an employee elects to diversify benefits pursuant to section 401(a)(28).

(v) **Involuntary distributions.** A plan may be amended to provide for the involuntary distribution of an employee's benefit to the extent such involuntary distribution is permitted under sections 411(a)(11) and 417(e). Thus, for example, an involuntary distribution provision may be amended to require that an employee who terminates from employment with the employer receive a single sum distribution in the event that the present value of the employee's benefit is not more than \$1,750, by substituting \$3,500 for \$1,750, without violating section 411(d)(6). In addition, for example, the employer may amend the plan to reduce the involuntary distribution threshold from \$3,500 to any lower amount and to eliminate the involuntary single sum option for employees with benefits between \$3,500 and such lower amount without violating section 411(d)(6). This rule does not permit a plan provision permitting employer discretion with respect to optional forms of benefit for employees the present value of whose benefit is less than \$3,500.

(vi) **Distribution exception for certain profit-sharing plans.**—(A) **In general.** If a defined contribution plan that is not subject to section 412 and does not provide for an annuity option is terminated, the plan may be amended to provide for the distribution of a participant's accrued benefit upon termination in a single sum optional form without the participant's consent. The preceding sentence does not apply if the employer maintains any other defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) **Examples.** The provisions of this paragraph (b)(2)(vi) can be illustrated by the following examples:

Example 1. Employer X maintains a defined contribution plan that is not subject to section 412. The plan provides for distribution in the form of equal installments over five years or equal installments over twenty years. X maintains no other defined contribution plans. X terminates its defined contribution plan after amending the plan to provide for the distribution of all participants' accrued benefits in the form of single sum distributions, without obtaining participant consent. Pursuant to the rule in this paragraph (b)(2)(iv), this amendment does not violate the requirements of section 411(d)(6).

Example 2. Corporations X and Y are members of controlled group employer XY. Both X and Y maintain defined contribution plans. X's plan, which is not subject to section 412, covers only employees working for X. Y's plan, which is subject to section 412, covers only employees working for Y. X terminates its defined contribution plan. Because employer XY maintains another defined contribution plan, plan X may not provide for the distribution of participants' accrued benefits upon termination without a participants' consent.

(vii) **Distribution of benefits on default of loans.** Notwithstanding that the distribution of benefits arising from an execution on an account balance used to secure a loan on which there has been a default is an optional form of benefit, a plan may be amended to eliminate or change a provision for loans, even if such loans would be secured by an employee's account balance.

(viii) **Provisions for transfer of benefits between and among defined contribution plans and defined benefit plans of the employer.** A plan may be amended to eliminate provisions permitting the transfer of benefits between and among defined contribution plans and defined benefit plans of the employer.

(ix) **De minimis change in the timing of an optional form of benefit.** A plan may be amended to modify an optional form of benefit by changing the timing of the availability of such optional form if, after the change, the optional form is available at a time that is within two months of the time such optional form was available before the amendment. To the extent the optional form of benefit is available prior to termination of employment, six months may be substituted for two months in the prior sentence. Thus, for example, a plan that makes in-service distributions available to employees once every month may be amended to make such in-service distributions available only once every six months. This exception to section 411(d)(6) relates only to the timing of the availability of the optional form of benefit. Other aspects of an optional form of benefit may not be modified and

the value of such optional form may not be reduced merely because of an amendment permitted by this exception.

(c) *Serial amendments.* A plan amendment that modifies an optional form of benefit with respect to benefits already accrued will be evaluated in light of previous amendments. Thus, for example, amendments made at different times that, when taken together, constitute the elimination or reduction of a valuable right, will be treated as the impermissible elimination or reduction of an optional form of benefit even though each amendment, considered alone, may otherwise be permissible.

(d) *ESOP and stock bonus plan exception—(1) In general.* Subject to the limitations in paragraph (d)(2) of this Q&A-5, a tax credit employee stock ownership plan (as defined in section 409(a)) or an employee stock ownership plan (as defined in section 4975(e)(7)) will not be treated as violating the requirements of section 411(d)(6) merely because of any of the circumstances described in paragraphs (d)(1)(i) through (d)(1)(iv) of this Q&A-2. In addition, a stock bonus plan that is not an employee stock ownership plan will not be treated as violating the requirements of section 411(d)(6) merely because of any of the circumstances described in paragraphs (d)(1)(ii) and (d)(1)(iv) of this Q&A-2.

(i) *Single sum or installment optional forms of benefit.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, a single sum optional form or installment optional form with respect to benefits that are subject to section 409(h)(1)(B), provided such elimination or retention of discretion is consistent with the distribution and payment requirements otherwise applicable to such plans (e.g., those required by section 409).

(ii) *Employer becomes substantially employee-owned.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, in cases in which the employer becomes substantially employee-owned, optional forms of benefit by substituting cash distributions for distributions in the form of employer stock with respect to benefits subject to section 409(h). This exception is available only if the employer otherwise meets the requirements of section 409(h)(2) with respect to restrictions on the ownership of outstanding employer stock.

(iii) *Employer securities become readily tradable.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, in cases in which the

employer securities become readily tradable, optional forms of benefit by substituting distributions in the form of employer securities for distributions in cash with respect to benefits that are subject to section 409(h).

(iv) *Employer securities cease to be readily tradable or certain sales.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, optional forms of benefit by substituting cash distributions for distributions in the form of employer stock with respect to benefits that are subject to section 409(h) in the following circumstances:

(A) The employer stock ceases to be readily tradable;

(B) The employer stock continues to be readily tradable but there is a sale of substantially all of the stock of the employer or a sale of substantially all of the assets of a trade or business of the employer and, in either situation, the purchasing employer continues to maintain the plan.

In the situation described in paragraph (d)(1)(iv)(B) of this Q&A-2, the employer may also substitute distributions in the purchasing employer's stock for distributions in the form of employer stock of the predecessor employer.

(2) *Limitations on ESOP and stock bonus plan exceptions—(i) Nondiscrimination requirement.* Plan amendments and the retention and exercise of discretion permitted under the exceptions in paragraph (d)(1) must meet the nondiscrimination requirements of section 401(a)(4).

(ii) *ESOP investment requirement.* Except as provided in paragraph (d)(2)(iii) of this Q&A-2, benefits provided by employee stock ownership plans will not be eligible for the exceptions in paragraph (d)(1) of this Q&A-2 unless the benefits have been held in a tax credit employee stock ownership plan (as defined in section 409(a)) or an employee stock ownership plan (as defined in section 4975(e)(7)) subject to section 409(h) for the five-year period prior to the exercise of employer discretion or any amendment affecting such benefits and permitted under paragraph (d)(1) of this Q&A-2. For purposes of the preceding sentence, if benefits held under an employee stock ownership plan are transferred to a plan that is an employee stock ownership plan at the time of the transfer, then the consecutive periods under the transferor and transferee employee stock ownership plans may be aggregated for purposes of meeting the five-year requirement. If the benefits are held in an employer stock ownership plan throughout the entire period of their

existence, and such total period of existence is less than five years, then such lesser period may be substituted for the five year requirement.

(3) *Effective date.* The provisions of this paragraph (d) are effective beginning with the first day of the first plan year commencing on or after January 1, 1989. Prior to this effective date the reduction or elimination of a section 411(d)(6) protected benefit by a tax credit employee stock ownership plan (as defined in section 409(a)) or an employee stock ownership plan (as defined in section 4975(e)(7)) will not be treated as violating the requirements of section 411(d)(6) if such reduction or elimination reflects a reasonable interpretation of the statutory language of section 411(d)(6)(C).

(4) *Additional exceptions and requirements.* The Commissioner may, in revenue rulings, notices or other documents of general applicability, prescribe such additional rules and exceptions, consistent with the purposes of this section, as may be necessary or appropriate.

Q-3 Does the transfer of benefits between and among defined benefit plans and defined contribution plans (or similar transactions) violate the requirements of section 411(d)(6)?

A-3 (a) *Transfers and similar transactions—(1) General rule.* Section 411(d)(6) protected benefits may not be eliminated by reason of transfer or any transaction amending or having the effect of amending a plan or plans to transfer benefits. Thus, for example, except as otherwise provided in this section, an employer who maintains a money purchase pension plan that provides for a single sum optional form of benefit may not establish another plan that does not provide for this optional form of benefit and transfer participants' account balances to such new plan.

(2) *Defined benefit feature and separate account feature.* The defined benefit feature of an employee's benefit under a defined benefit plan and the separate account feature of an employee's benefit under a defined contribution plan are section 411(d)(6) protected benefits. Thus, for example, the elimination of the defined benefit feature of an employee's benefit under a defined benefit plan, through transfer of benefits from a defined benefit plan to a defined contribution plan or plans, will violate section 411(d)(6).

(3) *Waiver prohibition.* In general, an employee may not elect to waive section 411(d)(6) protected benefits. Thus, for example, the elimination of the defined benefit feature of an employee's benefit

under a defined plan by reason of a transfer of such benefits to a defined contribution plan pursuant to an employee election, at a time when the benefit is not distributable to the employee, violates section 411(d)(6).

(b) *Elective transfers of benefits between plans—(1) Elective transfer.* A transfer of a participant's benefits between qualified plans that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if the transfer meets the requirements of section 411(l) and the following requirements are met:

(i) *Voluntary election—(A) Participant election.* The plan from which the benefits are transferred must provide that the transfer is conditioned upon a voluntary, fully informed election by the participant to transfer such participant's benefit to another plan maintained by the employer.

(B) *Benefit retention alternative.* In making the voluntary election provided for in paragraph (b)(1)(i)(A) of this Q&A-3, the participant must have an alternative that retains such employee's section 411(d)(6) protected benefits (including all optional forms of benefit) under the plan. Thus, either of the following two requirements must be met:

(1) If the plan from which the benefits are transferred is terminating, the terminating plan must satisfy the requirements of section 401(a)(2) and section 411(d)(6), or

(2) If the plan from which the benefits are transferred is not terminating, the participant must be given the option of leaving his benefit in the ongoing plan to the extent required by section 411(a)(11) and section 417(e);

(C) *Spousal election.* If sections 401(a)(11) and 417 apply to the plan from which the benefits are transferred, the spousal consent requirements of such section must be met with respect to the transfer of benefits.

(D) *Notice requirement.* The notice requirements under section 417, requiring a written explanation with respect to an election not to receive benefits in the form of a qualified joint and survivor annuity, must be met with respect to the participant and spousal transfer election.

(ii) *Distributability of benefits.* The participant whose benefits are transferred must be eligible, under the terms of the plan from which the benefits are transferred, to receive an immediate distribution from such plan under provisions in the plan not inconsistent with section 401(a).

(iii) *Amount of benefit transferred.* The amount of the benefit transferred must equal the entire nonforfeitable accrued benefit under the plan of the

participant whose benefit is being transferred, calculated to be at least the greater of the single sum distribution provided for under the plan for which the participant is eligible (if any) or the present value of the participant's accrued payable at normal retirement age and calculated by using an interest rate subject to the restrictions of section 417(e) and subject to the overall limitations imposed by section 415.

(iv) *Benefit under the transferee plan.* The participant must be fully vested in the transferred benefit in the transferee plan. In a transfer from a defined contribution plan to a defined benefit plan, the defined benefit plan must provide a minimum benefit, for each participant whose benefits are transferred, equal to the benefit, expressed as an annuity payable at normal retirement age, that is derived solely on the basis of the amount transferred with respect to such participant.

(2) *Status of elective transfer as distribution.* The transfer of benefits pursuant to the elective transfer rules of this paragraph (b) generally is to be treated as a distribution of a participant's accrued benefit under a plan for purposes of section 401(a). For example, a transfer option is an optional form of benefit under section 411(d)(6); the availability of such optional form of benefit is subject to the nondiscrimination requirements of section 401(a)(4); and the transfer is treated as a distribution subject to the cash-out rules in section 411(a)(7), the early termination requirements of section 411(d)(2) and the requirements of sections 401(a)(11) and 417. However, the transfer is not treated as a distribution for purposes of the minimum distribution requirements of section 401(a)(9).

(3) *Effective date.* The rules with respect to transfers are generally effective January 30, 1988. However, with respect to transfers from defined benefit plans to defined contribution plans and from defined contribution plans to defined benefit plans, the rules of this paragraph (b) are effective beginning August 10, 1988. On or after January 30, 1988, and prior to August 10, 1988 the transitional rules provided in paragraph (c) of this Q&A-3 are effective with respect to such transfers.

(c) *Transitional rule.* Prior to the effective date in paragraph (b)(3) of this Q&A-3, the transfer of benefits from a defined contribution plan to a defined benefit plan, or a defined benefit plan to a defined contribution plan, does not violate section 411(d)(6) solely by reason of the elimination of section 411(d)(6) protected benefits, if the benefits

transferred were distributable under the plan or could have been distributable under section 401(a) and either of the following requirements are met:

(1) *Transfer exception.* The transfer satisfies the rules in paragraph (b) of this Q&A-3, or

(2) *Direct transfer.* The plan to which the benefits are to be transferred provides, or is amended to provide, for all section 411(d)(6) protected benefits provided under the transferor plan with respect to the benefits transferred (with the sole exception of the defined benefit feature of the benefit under a defined benefit plan and the defined contribution feature under a defined contribution plan); the transferred benefits are treated as held under a transferee plan for purposes of the requirements of sections 401(a)(11) and 417; the transferred amounts meet the requirements of section 414(l) with respect to the transfer of assets and liabilities, and the benefits transferred do not exceed the limitations imposed by section 415. Amendments required for purposes of satisfying this rule must be made by the date for making any amendments required for purposes of conforming the plan to the requirements of section 410(b) as amended by TRA '86. However, plans covered by this rule must comply with these requirements in operation and any required amendments must be retroactive to the date on which the benefits were transferred.

(d) *Examples.* If a transfer complying with the elective transfer rules of paragraph (b) of this Q&A-3 is made from a defined benefit plan to a profit-sharing plan that does not provide for a life annuity distribution form, the profit-sharing plan to which the benefits are transferred would not be required to provide for a qualified joint and survivor annuity with respect to the transferred benefits. If the same transfer is made under the direct transfer transitional rule of paragraph (c)(2) of this Q&A-3, the defined contribution plan is treated as a transferee plan with respect to the transferred benefits for purposes of the requirements of section 401(a)(11) and section 417. Thus, for example, if such benefits are transferred without spousal consent to a profit-sharing plan that did not previously provide for a life annuity distribution form, such plan would be required to provide for a qualified joint and survivor annuity for the participants whose benefits were transferred with respect to the transferred benefits.

Q-4: May a plan provide that the employer may, through the exercise of discretion, deny a participant a section 411(d)(6) protected benefit for which the participant is otherwise eligible?

A-4: (a) In general. Except as provided in paragraph (d) of Q&A-2 of this section with respect to certain employee stock ownership plans, a plan that permits the employer, either directly or indirectly, through the exercise of discretion, to deny a participant a section 411(d)(6) protected benefit provided under the plan for which the participant is otherwise eligible (but for the employer's exercise of discretion) violates the requirements of section 411(d)(6). A plan provision that makes a section 411(d)(6) protected benefit available only to those employees as the employer may designate is within the scope of this prohibition. Thus, for example, a plan provision under which only employees who are designated by the employer are eligible to receive a subsidized early retirement benefit constitutes an impermissible provision under section 411(d)(6). In addition, a pension plan that permits employer discretion to deny the availability of a section 411(d)(6) protected benefit violates the definitely determinable requirement of section 401(a), including section 401(a)(25). See § 1.401-1(b)(1)(i). This is the result even if the plan specifically limits the employer's discretion to choosing among section 411(d)(6) protected benefits, including optional forms of benefit, that are actuarially equivalent. In addition, the provisions of sections 411(a)(11) and 417(e) that allow a plan to make involuntary distributions of certain amounts are not excepted from this limitation on employer discretion. Thus, for example, a plan may not permit employer discretion with respect to whether benefits will be distributed involuntarily in the event that the present value of the employee's benefit is not more than \$3,500 within the meaning of sections 411(a)(11) and 417(e). (An exception is provided for such provisions with respect to the nondiscrimination requirements of section 401(a)(4). See § 1.401(a)-4 Q&A-4.)

(b) Exception for administrative discretion. A plan may permit limited discretion with respect to the ministerial or mechanical administration of the plan, including the application of objective plan criteria specifically set forth in the plan. Such plan provisions do not violate the requirements of section 411(d)(6) or the definitely determinable requirement of section 401(a), including section 401(a)(25). For example, these requirements are not violated by the following provisions that permit limited administrative discretion:

(1) Commencement of benefit payments as soon as administratively feasible after a stated date or event;

(2) Employer authority to determine whether objective criteria specified in the plan (e.g., objective criteria designed to identify those employees with a heavy and immediate financial need or objective criteria designed to determine whether an employee has a permanent and total disability) have been satisfied; and

(3) Employer authority to determine, pursuant to specific guidelines set forth in the plan, whether the participant or spouse is dead or cannot be located.

Q-5: When will the exercise of discretion by some person or persons, other than the employer, be treated as employer discretion?

A-5: For purposes of applying the rules of this section and § 1.401(a)-4, the term "employer" includes plan administrator, fiduciary, trustee, actuary, independent third party, and other persons. Thus, if a plan permits any person, other than the participant (and other than the participant's spouse), the discretion to deny or limit the availability of a section 411(d)(6) protected benefit for which the employee is otherwise eligible under the plan (but for the exercise of such discretion), such plan violates the requirements of sections 401(a), including section 411(d)(6) and, where applicable, the definitely determinable requirement of section 401(a), including section 401(a)(25).

Q-6: May a plan condition the availability of a section 411(d)(6) protected benefit on the satisfaction of objective conditions that are specifically set forth in the plan?

A-6: (a) Certain objective conditions permissible—(1) In general. The availability of a section 411(d)(6) protected benefit may be limited to employees who satisfy certain objective conditions provided the conditions are ascertainable, clearly set forth in the plan and not subject to the employer's discretion except to the extent reasonably necessary to determine whether the objective conditions have been met. Also, the availability of the section 411(d)(6) protected benefit must meet the nondiscrimination requirements of section 401(a)(4). See § 1.401(a)-4.

(2) Examples of permissible conditions. The following examples illustrate of permissible objective conditions: a plan may deny a single sum distribution form to employees for whom life insurance is not available at standard rates as defined under the terms of the plan at the time the single

sum distribution would otherwise be payable; a plan may provide that a single sum distribution is available only if the employee is in extreme financial need as defined under the terms of the plan at the time the single sum distribution would otherwise be payable; a plan may condition the availability of a single sum distribution on the execution of a covenant not to compete, provided that objective conditions with respect to the terms of such covenant and the employees and circumstances requiring execution of such covenant are set forth in the plan.

(b) Conditions based on factors within employer's discretion generally impermissible. A plan may not limit the availability of section 411(d)(6) protected benefits permitted under the plan on objective conditions that are within the employer's discretion. For example, the availability of section 411(d)(6) protected benefits in a plan may not be conditioned on a determination with respect to the level of the plan's funded status, because the amount of plan funding is within the employer's discretion. However, for example, although conditions based on the plan's funded status are impermissible, a plan may limit the availability of a section 411(d)(6) protected benefit (e.g., a single sum distribution) in an objective manner, such as the following:

(1) Single sum distributions of \$25,000 and less are available without limit; and

(2) Single sum distributions in excess of \$25,000 are available for a year only to the extent that the total amount of such single sum distributions for the year is not greater than \$5,000,000; and

(3) An objective and nondiscriminatory method for determining which particular single sum distributions will not be available during a year in order for the \$5,000,000 limit to be satisfied is set forth in the plan.

Q-7: May a plan be amended to add employer discretion or conditions restricting the availability of a section 411(d)(6) protected benefit?

A-7: No. The addition of employer discretion or objective conditions with respect to a section 411(d)(6) protected benefit that has already accrued violates section 411(d)(6). Also, the addition of conditions (whether or not objective) or any change to existing conditions with respect to section 411(d)(6) protected benefits that results in any further restriction violates section 411(d)(6). However, the addition of objective conditions to a section 411(d)(6) protected benefit may be made with respect to benefits accrued after the later of the adoption or effective

date of the amendment. In addition, objective conditions may be imposed on section 411(d)(6) protected benefits accrued as of the date of an amendment where permitted under the transitional rules of § 1.401(a)-4 Q&A-5 and Q&A-8 of this section. Finally, objective conditions may be imposed on section 411(d)(6) protected benefits to the extent permitted by the permissible benefit cutback provisions of Q&A-2 of this section.

Q-8: If a plan contains an impermissible employer discretion provision with respect to a section 411(d)(6) protected benefit, what acceptable alternative exist for amending the plan without violating the requirements of section 411(d)(6)?

A-8: (a) In general. The following rules apply for purposes of making necessary amendments to existing plans (as defined in Q&A-9 of this section) that contain discretion provisions with respect to the availability of section 411(d)(6) protected benefits that violate the requirements of section 401(a), including sections 401(a)(25) and 411(d)(6), and this section. These transitional rules are provided under the authority of section 411(d)(6) and section 7805(b).

(b) Transitional alternatives. If the availability of an optional form of benefit, early or late retirement benefit, or retirement-type subsidy under an existing plan is conditioned on the exercise of employer discretion, the plan must be amended either to eliminate the optional form of benefit, early or late retirement benefit, or retirement-type subsidy to make such benefit available to all participants without limitation, or to apply objective and nondiscriminatory conditions to the availability of the optional form of benefit, early or late retirement benefit, or retirement-type subsidy. See paragraph (d) of this Q&A-8 for rules limiting the period during which section 411(d)(6) protected benefits may be eliminated or reduced under this paragraph.

(c) Compliance and amendment date provisions—(1) Operational compliance requirement. On or before the applicable effective date for the plan (as determined under Q&A-9 of this section), the plan sponsor must select one of the alternatives permitted under paragraph (b) of the Q&A-8 with respect to each affected section 411(d)(6) protected benefit and the plan must be operated in accordance with this selection. This is an operational requirement and does not require a plan amendment prior to the period set forth in paragraph (c)(2) of this Q&A-8. There are no special reporting requirements

under the Code or this section with respect to this selection.

(2) Deferred amendment date. If paragraph (c)(1) of this Q&A-8 is satisfied, a plan amendment conforming the plan to the particular alternative selected under paragraph (b) of this Q&A-8 must be adopted within the time period permitted for amending plans in order to meet the requirements of section 410(b) as amended by TRA '86. The plan amendment to conform the plan to these regulations may be made at an earlier date. Such conforming amendment must be consistent with the sponsor's selection as reflected by plan practice during the period from the effective date to the date the amendment is adopted. Thus, for example, if any existing calendar year noncollectively bargained defined benefit plan has a single sum distribution option that is subject to employer discretion as of August 1, 1986, and such employer makes one or more single sum distributions available on or after January 1, 1989 and before the effective date by which plan amendment is required pursuant to this section, then such employer may not adopt a plan amendment eliminating the single sum distribution, but rather must adopt an amendment eliminating the discretion provision. Any objective conditions that are adopted as part of such amendment must not be inconsistent with the plan practice for the applicable period prior to the amendment. A conforming amendment under this paragraph (c)(2) must be made with respect to each section 411(d)(6) protected benefit for which such amendment is required and must be retroactive to the applicable effective date.

(d) Limitation on transitional alternatives. The transitional alternatives permitting the elimination or reduction of section 411(d)(6) protected benefits are only permissible until the applicable effective date for the plan (see Q&A-9 of this section). After the applicable effective date, any amendment (other than one permitted under paragraph (c)(2) of this Q&A-8) that eliminates or reduces a section 411(d)(6) protected benefit or imposes new objective conditions on the availability of such benefit will fail to qualify for the exception to section 411(d)(6) provided in this Q&A-8. This is the case without regard to whether the section 411(d)(6) protected benefit is subject to employer discretion.

Q-9: What are the applicable effective date rules for purposes of this section?

A-9: (a) General effective date. Except as otherwise provided in this section, the provisions of this section are effective January 30, 1986.

(b) New plans—(1) In general. Unless otherwise provided in paragraph (b)(2) of this Q&A-9, plans that are either adopted or made effective on or after August 1, 1986, are "new plans". With respect to such new plans, this section is effective August 1, 1986. This effective date is applicable to such plans whether or not they are collectively bargained.

(2) Exception with respect to certain new plans. Plans that are new plans as defined in paragraph (b)(1) of this Q&A-9; under which the availability of a section 411(d)(6) protected benefit is subject to employer discretion; and that receive a favorable determination letter that covered such plan provisions with respect to an application submitted prior to July 11, 1988, will be treated as existing plans with respect to such section 411(d)(6) protected benefit for purposes of the transitional rules of this section. Thus, such plans are eligible for the compliance and amendment alternatives set forth in the transitional rule in Q&A-8 of this section.

(c) Existing plans—(1) In general. Plans, including plans that are adoptions of master or prototype plans, that are both adopted and in effect prior to August 1, 1986, are "existing plans" for purposes of this section. In addition, a plan that is established after July 31, 1986, but before January 1, 1989, as an initial adoption of a master or prototype plan for which a favorable opinion letter was issued by the Service after July 18, 1985 and before January 1, 1989, will be deemed to be an existing plan for purposes of this section. See sections 4.01 and 4.02 of Rev. Proc. 84-23, 1984-1 C.B. 457, 459, for the definitions of master prototype plans. However, if such plan ceases to be covered under an opinion letter of the type described above, as a result of amendment of the plan or adoption of a new plan, prior to the first day of the first plan year beginning on or after January 1, 1989, then the effective date for such plan will be determined as though the plan were a new plan initially adopted as of the date of such amendment or adoption of a new plan. Finally, new plans described in paragraph (b)(2) of this Q&A-9 are treated as existing plans with respect to certain section 411(d)(6) protected benefits. Subject to the limitations in paragraph (c) of this Q&A-9, the effective dates set forth in paragraphs (c)(2), (c)(3), and (c)(4) of this Q&A-9 apply to these existing plans for purposes of this section.

(2) Existing noncollectively bargained plans. With respect to existing plans other than collectively bargained plans this section is effective for the first day

of the first plan year commencing on or after January 1, 1989.

(3) *Existing collectively bargained plans.* With respect to existing collectively bargained plans this section is effective for the later of the first day of the first plan year commencing on or after January 1, 1989, or the first day of the first plan year that the requirements of section 410(b) as amended by TRA '86 apply to such plan.

(4) *Existing master and prototype plans.* With respect to existing plans that are adoptions of master or prototype plans the effective date will be the first day of the first plan year commencing on or after January 1, 1989.

(d) *Delayed effective date not applicable to new alternatives or conditions.*—(1) *In general.* The delayed effective dates in paragraphs (c)(2) and (c)(3) of this Q&A-9 for existing plans are only applicable with respect to a section 411(d)(6) protected benefit if both the section 411(d)(6) protected benefit and the condition providing employer discretion as to the availability of such benefit are both adopted and in effect prior to August 1, 1986. If the preceding sentence is not satisfied with respect to a particular section 411(d)(6) protected benefit, this section is effective with respect to such section 411(d)(6) protected benefit as if the plan were a new plan.

(2) *Addition of discretion on or after January 30, 1986.* The delayed effective dates in paragraphs (c)(2) and (c)(3) of this Q&A-9 are not available with respect to any section 411(d)(6) protected benefit if the section 411(d)(6) protected benefit was provided for in the plan prior to January 30, 1986, and the availability of such benefit was made subject to the exercise of employer discretion on or after January 30, 1986. If the conditions set forth in this paragraph are not satisfied with respect to a particular section 411(d)(6) protected benefit, this section is effective with respect to such section 411(d)(6) protected benefit as if the plan were a new plan. A limited exception is provided with respect to existing plans that provided a particular section 411(d)(6) protected benefit prior to January 30, 1986, and then amended the plan after January 30, 1986, and before August 1, 1986, to add a provision for employer discretion with respect to the availability of such benefit. Such plans are required to have been amended retroactively by December 31, 1987, to remove such provision for employer discretion, and, if the benefit made subject to such discretion was

subsequently eliminated, the plan is required to have been further amended, by the same date, to retroactively reinstate the benefit.

(3) *Exception for certain amendments covered by a favorable determination letter.* If an amendment adding a section 411(d)(6) protected benefit subject to employer discretion was adopted or made effective after August 1, 1986, and the plan receives a favorable determination letter covering such provision with respect to an application for such letter made prior to July 11, 1988, then the effective date for purposes of amending such provision under the transitional rules is the applicable effective date determined under the rules with respect to existing plans.

(e) *Transitional rule effective date.* The transitional rule provided in Q&A-8 of this section is effective January 30, 1986.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.
Approved: June 14, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 88-15482 Filed 7-8-88; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule; correction.

SUMMARY: This Notice is being published to correct inadvertent omissions of part of § 250.135 and several erroneous cross-references in 30 CFR Part 250, the Consolidated Offshore Operating Rules, as published on April 1, 1988 (53 FR 10596).

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; telephone (703) 648-7816, (FTS) 959-7816.

SUPPLEMENTARY INFORMATION: The Minerals Management Service (MMS) inadvertently omitted a portion of paragraph (d)(2)(iv) and several portions of paragraph (d)(3) of 30 CFR 250.135 from the Consolidated Offshore Operating Rules (COOR) published in

the Federal Register on April 1, 1988. As a consequence of this inadvertent omission, paragraphs (d)(4) and (d)(5) of § 250.135 were erroneously numbered (d)(3) and (d)(4), respectively. In addition, MMS has identified several erroneous cross-references in the COOR as published. That happened as a result of the reorganization and renumbering of some provisions in the proposed rulemaking as published in the Federal Register on March 18, 1988 (51 FR 9316).

The MMS is issuing this corrective amendment of 30 CFR Part 250 as a final rule effective upon publication under the authority of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) for the following reasons:

(1) The changes in the rules (revisions § 250.135 (d)(2)(iv) and (d)(3) and renumbering of paragraphs (d)(3) and (d)(4)) are determined to be "corrections" to the rules published on April 1, 1988.

(2) The revised and added final rules in 30 CFR 250.135 will read the same as they did in the proposed rulemaking (51 FR 9316), and they have already been subject to public review and comment.

(3) There was no intention to change § 250.135(d) in the final version from how it appeared in the proposed rulemaking.

(4) Renumbering paragraphs (d)(3) and (d)(4) to read (d)(4) and (d)(5), respectively, does not change the substance of the regulations.

(5) The correction of cross-references does not change the substance of the regulations in their final version from how it appeared in the proposed rulemaking.

This amendment is not a major rule for the purposes of Executive Order 12291; therefore, a regulatory impact analysis is not required. The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by big enterprises that are not considered small entities.

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

The information collection contained in this correction was approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Author: This document was prepared by Mario Rivero, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Date: June 24, 1988.

William D. Bettenberg,
Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR Part 250 is amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

§ 250.30 [Amended]

2. Section 250.30 is amended by replacing "§ 250.34(c)" in the last line with "§ 250.34(d)".

§ 250.33 [Amended]

3. In § 250.33, paragraph (b)(19)(i)(A)(5) is amended by replacing "paragraph (b)(18)(iv)" in the last line with "paragraph (b)(19)(iv)".

§ 250.34 [Amended]

4. In § 250.34, paragraph (b)(12)(i)(A)(5) is amended by replacing "paragraph (b)(9)(iv)(A)" in the last line with "paragraph (b)(12)(iv)(A)".

§ 250.45 [Amended]

5. In § 250.45, paragraph (b)(2) is amended by replacing "§§ 250.33(a)(22) or 250.34(a)(14)" in the fifth and sixth lines with "§§ 250.33(b)(19) or 250.34(b)(12)".

6. In § 250.45, paragraph (d) is amended by replacing "§§ 250.33(a)(22)(i)(A) or 250.34(a)(14)(i)(A)" in the 9th and 10th lines with "§§ 250.33(b)(19)(i)(A) or 250.34(b)(12)(i)(A)".

§ 250.46 [Amended]

7. In § 250.46, paragraph (a)(6) is amended by replacing "§ 250.33(a)(22) or 250.34(a)(14)" in the 9th and 10th lines with "§§ 250.33(b)(19) or 250.34(b)(12)".

8. In § 250.46, paragraph (b) is amended by replacing "§§ 250.33(a)(22)(i)(A) or 250.34(a)(14)(i)(A)" in the seventh line with "§§ 250.33(b)(19)(i)(A) or 250.34(b)(12)(i)(A)".

§ 250.134 [Amended]

9. In § 250.134, paragraph (d)(4)(ii) is amended by replacing "§ 250.138(c)(5)" in the last line with "§ 250.136(c)(5)".

§ 250.135 [Amended]

10. In § 250.135, paragraph (d)(2)(iv) is correctly revised to read:

(iv) Where appropriate, the dynamic effects due to the cyclic nature of gust wind and cyclic loads due to vortex shedding shall be taken into account. Both the drag and lift components of loads due to vortex shedding shall be taken into account.

§ 250.135 [Amended]

11. In § 250.135, the numbering of paragraphs (d)(3) and (d)(4) is corrected to redesignate those paragraphs as (d)(4) and (d)(5), respectively.

12. In § 250.135, paragraph (d)(3) is correctly added to read:

(3) Current load information including the following:

(i) Current-induced loads on immersed members of the platform shall be accounted for by defensible methods or the results of model test or site-specific data.

(ii) The lift and drag coefficients used in the determination of current loads shall be appropriate to the current velocity and structural configuration.

(iii) Current velocity profiles used in design shall be appropriate to the installation site.

(iv) For determination of loads induced by the simultaneous occurrence of wave and current fields, the total velocity field shall be computed by defensible methods before computing the total force, and

(v) Where appropriate, flutter and load amplification due to vortex shedding shall be addressed.

§ 250.136 [Amended]

13. In § 250.136, paragraph (b)(3)(i) is amended by replacing "§ 250.134" in the second sentence with "§ 250.135".

§ 250.137 [Amended]

14. In § 250.137, paragraph (c)(3)(iv) is amended by replacing "§ 250.139(d)(1)(iv)" in the last line with "§ 250.139(d)(1)(ii)".

§ 250.141 [Amended]

15. In § 250.141, paragraph (b)(7)(iii)(D) is amended by replacing "§ 250.139(d)(1)(v)" in the first line with "§ 250.139(d)(1)(iv)".

[FR Doc. 88-15478 Filed 7-8-88; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-349-F]

Medicare Program; Reasonable Charge Limitations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule sets forth the circumstances under which HCFA will consider establishing special reasonable charge payment limits for physicians' services reimbursed under Part B of the Medicare program. The rule describes the factors that HCFA will consider and the procedures it will follow in establishing the limits.

The purpose of this rule is to bring the regulations into conformance with the provisions of section 9333 of the Omnibus Budget Reconciliation Act of 1986. As amended, the law stipulates the specific circumstances under which the Secretary may establish special reasonable charge limits for physicians' services. The rule also responds to the public comments received on the final rule with comment period that set forth the general principles for establishing special reasonable charge limits.

EFFECTIVE DATE: These regulations are effective September 9, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald Wren, (301) 966-4506.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act (the Act) requires that all payments under Part B of the Medicare program must be reasonable.

Reasonable charge determinations under Part B generally are based on customary and prevailing charges derived from historic charge data. The reasonable charge for a service is generally the lowest of (1) the actual charge, (2) the customary charge made by a particular supplier, or (3) the prevailing charge, which is set at the 75th percentile in the range of customary charges for similar services in the locality. For nonphysician medical services, the reasonable charge is the lowest of four factors. These include the three factors cited above and an inflation-indexed charge. An economic index limits the annual increases in prevailing charges for physicians' services.

This standard method of determining the reasonable charge for a service can, in some instances, result in payments that may not be reasonable. This may occur, for example when (1) the marketplace is not truly competitive because of a limited number of suppliers; (2) the Medicare and Medicaid programs are the primary source of payment for a service; (3) the charge involves the use of new, expensive technology for which there is not an extensive charge history; (4) the charges do not reflect changing technology or increased facility with that technology (for example, when first done, a medical procedure may require considerable skill and entail substantial risk, but becomes more routine with additional experience); (5) prevailing charges in a locality are clearly out-of-line with prevailing charges in other localities; or (6) charges are grossly in excess of acquisition or production costs.

In recognition of these circumstances, a new section 1842(b)(8) was added to the Act through the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272, enacted April 7, 1986). Section 1842(b)(8) requires that the Secretary describe in regulations the factors to be used in determining the cases in which the application of the reasonable charge methodology results in a charge that is grossly excessive or grossly deficient. It also requires the Secretary to provide in regulations the factors to be considered in those cases in establishing a reasonable charge that is realistic and equitable.

To implement the statute, we published, on August 11, 1986, a final rule with a 60-day public comment period (51 FR 28710). The final rule amended 42 CFR 405.502 that sets forth the criteria to be used in determining reasonable charges. In accordance with section 1842(b)(8) of the Act, we specified in the final rule the circumstances under which HCFA or its Medicare Part B carriers will consider establishing special reasonable charge payment limits for services (including supplies and equipment) reimbursed under Part B of the Medicare program. The rule also described the factors that HCFA or a carrier will consider and the procedures it will follow in establishing the limits. The limits would be either an upper limit to correct a grossly excessive charge or a lower limit to correct a grossly deficient charge. In either case, the limit would be either a specific dollar amount or a special method to be used in determining the

reasonable charges allowed for a particular service or category of service.

Subsequent to the publication of the final rule, section 9333 of the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99-509) was enacted (October 21, 1986). Section 9333 amended section 1842(b)(8) of the Act and added new paragraphs (9) and (10). As amended, the law specifies the distinct procedures under which the Secretary may establish special reasonable charge limits for physicians' services. It also provides for a limitation to the amount that nonparticipating physicians may charge for a service if a special reasonable charge limit is established for that physician service. This charge limitation is scheduled to expire for services furnished after the earlier of December 31, 1990 or one year after the date that the Secretary reports to Congress on the development of a relative scale for physicians' services.

We believe that the provision concerning special reasonable charge limits for physicians' services requires conforming changes to the regulations and, therefore, we are setting forth these changes below. However, because the regulations follow the law very closely, and we have not exercised our discretion in interpreting the law, we are not publishing a prior notice with opportunity to comment. This is consistent with the Administrative Procedure Act (5 U.S.C. 553(b)) which does not require notice and opportunity for public comment for "interpretative rules". We believe that these rules are interpretative because they merely reiterate the explicit statutory obligations and are grounded firmly in statutory language.

We are not developing implementing regulations on the provision concerning the limitation to the amount that nonparticipating physicians may charge for a service if a special reasonable charge limit is established for that physician service in view of the fact that the provision is time limited, and we consider it to be self-implementing. The methodology for establishing the limitation on nonparticipating physicians' charges set forth in the statute is very precise, and we believe that no regulations are required to interpret the provision.

The provisions of the August 11, 1986, final rule, the comments we received, our responses to those comments, and the changes we are making to conform the regulations to the new provisions of sections 1842(b)(9) and (10) of the Act are discussed below.

II. Provisions of the August 11, 1986, Final Rule

In the August 11, 1986 final rule, we revised § 405.502(a)(7) that describes the use of "other factors", rather than the standard methodology, in making a determination of inherent reasonableness. We clarified that the other factors which may be considered include the special reasonable charge limits that we described in a new paragraph (g) of § 405.502.

Under § 405.502(g), we specified that HCFA or its Medicare Part B carriers may establish reasonable charge limits for a category of service if it determines that the standard procedures for calculating reasonable charges result in grossly deficient or excessive charges.

(Note.—A category of service might contain only one particular service.)

We specified that the special limit on the reasonable charge is an upper limit to correct a grossly excessive charge or a lower limit to correct a grossly deficient charge.

Under paragraph (g), we described examples of the circumstances in which the application of the reasonable charge methodology results in either grossly excessive or deficient charges and under which HCFA or a carrier may determine the need for a special limit. We also specified the factors that HCFA or a carrier will consider in establishing the special limit.

The final rule specified that we will publish any proposed national limit as a notice in the Federal Register and provide an opportunity for public comments. Then, we will publish our response to those comments and our final determination in the Federal Register. The rule provided that each notice published in the Federal Register also will set forth the criteria and circumstances, if any, under which a carrier may grant an exception to the specific limit. Thus, beneficiaries and suppliers may request an exception to the limit if the criteria and circumstances for an exception, issued with the notice of the limit, are met.

We also specified that when carriers propose to use their authority to make inherent reasonableness determinations, they must inform the affected suppliers or physicians of the factors considered in establishing the limit and solicit comments. The rule provided that after evaluating the comments received, the carrier must inform the affected suppliers or physicians of any final limit established. We stated that the limit will be effective for services furnished no fewer than 30 days after the date of the carrier's notification.

III. Discussion of Comments

The August 11 final rule invited comments only on the material that concerns reasonable charge amounts that are deficient and special limits set by carriers. We received 11 timely items of correspondence. The comments were from one individual physician, one national association representing beneficiaries, one Medicare carrier, one State Medicaid agency, and State and national associations representing health care professionals. The specific comments and our responses to these comments follow:

Comment: Several commenters suggested that it was not the intent of Congress to give the Secretary or HCFA legislative authority to set national reasonable charge limits.

Response: As we explained in detail in the August 11, 1986, final rule, we believe that the regulations are completely consistent with HCFA's statutory authority.

Comment: Several commenters expressed concern that the regulation will ultimately reduce the level of care to Medicare beneficiaries.

Response: We do not believe that this regulation, which reflects congressional intent to establish a framework for setting special reasonable charge limits for health care, will constitute a lesser commitment to quality health services. The purpose of this regulation is to assure reasonable charges for physicians' services. We believe the industry will continue to provide needed care as long as Medicare charge screens are reasonable.

Comment: Several commenters expressed concern that the section of the final rule on "grossly deficient charges" is too restrictive and prejudices any determination relative to raising a deficient charge level. Specific concern was expressed about the statement in the preamble to the February 18, 1986, proposed rule (51 FR 5726) that situations in which charges are grossly deficient are virtually nonexistent.

Response: This comment has been overcome by subsequent events. Section 9333 of OBRA of 1986 added section 1842(b)(9)(B) to the Act. That section sets forth specific factors to be used in determining cases in which a reasonable charge amount for a physician service is not inherently reasonable by reason of its grossly excessive or grossly deficient amount. In view of the statutory change, which applies the list of factors for grossly excessive and deficient charges, we have modified the August 11, 1986, final rule to provide identical criteria and factors to be considered in

determining whether a charge is grossly excessive or grossly deficient and in establishing a limit. We have made this change for physician and nonphysician services, although the statute prescribes these factors only for physician services.

Comment: One commenter recommended that we consider the following additional circumstances in determining whether a charge is grossly deficient:

- Cases in which payment levels do not appropriately reflect the resource requirements (time, complexity, risk, overhead and production costs) required to provide the service.

- Cases in which Medicare's approved amount is at a level that is below, equal to, or nominally above the overhead costs associated with providing a service.

In reference to the first circumstance, the commenter indicated that, unlike most procedural services, time and complexity often are the most important factors in evaluating the appropriateness of payment levels for office and home visits.

The commenter also recommended that the factors to be used in establishing lower limits for grossly deficient charges should be expanded to include:

- Differences in resource requirements—HCFA or a carrier should consider differences between services in resource requirements in establishing lower and upper limits.

- Overhead data—HCFA or a carrier should establish lower prevailing charge limits for services to bring reimbursement up to a level that provides a fair return for services currently priced at a level that is below, equal to, or only nominally above average overhead costs required to perform the service.

Response: This rule implements a provision of the statute that requires consideration of resource requirements and cost data in determining whether a charge is either grossly excessive or grossly deficient and in establishing an actual limit. Furthermore, we have specifically added a "catch-all" category for other relevant factors that would encompass those enumerated by the commenter. Both of these provisions are located in this final rule at § 405.502(h)(4)(ii). Additionally, we are revising this rule at § 405.502(g)(2)(iii) to clarify that in considering costs for the purpose of establishing a limit, HCFA or a carrier may consider resource costs as well as acquisition and production costs.

While we have essentially accepted the comments offered, we want to make it clear that we do not believe that the

underlying law was intended to alter any historical imbalance in charging practices that may exist between "cognitive" and "procedural" services, nor do we intend to use these regulations as a means to do so.

Achieving this would probably require a major legislative overhaul of payment levels for physician services and would require development of a relative value scale (RVS) reflecting the time, complexity, risk, etc., for various services. We believe that Congress intended for the Secretary to use this authority to establish limits or grossly excessive or grossly deficient charges in a much more selective manner and not as a means of making sweeping and fundamental changes in the reasonable charge payment system. This view is supported by section 1845(e)(3) of the Act that expressly requires the Secretary to develop a resource-cost-based RVS and to report to the Congress on recommendations for the application of the scale by July 1, 1989.

In addition, we have received correspondence indicating that the nature and contents of some services (as described by HCFA's Common Procedure Coding System) has changed over time by the introduction and inclusion of new and/or additional services that previously were billed, coded and reimbursed as separate services or not provided at all. Because of these changes, it was suggested that physicians and other interested individuals be able to produce evidence that a service is paid at a grossly deficient level because it is no longer the same service upon which the historical reasonable charges are based. It is our judgment that this situation is covered by the following circumstances and factors enumerated in these final regulations:

- In making a determination that excessive or deficient charges exist, HCFA or a carrier may consider circumstances in which the charges do not reflect changing technology, increased facility with that technology, or changes in acquisition, production or supplier costs (§ 405.502(g)(1)(iv)).

- In establishing a special limit, HCFA or a carrier may consider resources (overhead, time, acquisition or production costs, complexity) required to produce a service or product (§ 405.502(g)(2)(iii)).

- In making a determination that excessive or deficient charges exist or in establishing a special limit, HCFA may make a comparison between the charges for a service and the resource costs of the service over a period of time (§ 405.502(h)(4)(ii)(B)).

Comment: Another commenter suggested that ambulance services should be excluded from inherent reasonableness determinations because some ambulance companies receive government subsidies that enable them to set charges so low that nonsubsidized companies cannot compete with them.

Response: We believe that the concept of inherent reasonableness is applicable to all services. How special limits are to be applied in a given circumstance can be addressed only in the context of a specific proposal. This is why we structured the regulations to include a notice and comment process for each proposed special limit.

Comment: One State Medicaid agency expressed concern that when Medicare carriers propose special limits, 30 days advance notice and comment period would be provided to affected physicians and suppliers but not to Medicaid agencies or their agents. Since some States use the Medicare reasonable charge in their Medicaid programs, it was suggested that any State Medicaid agency in a carrier's service area be given 30 days advance notice when special reasonable charge limits are proposed.

Response: We are revising the regulations to provide State Medicaid agencies with advance notice and the opportunity to comment on any special limit proposed by a carrier. The regulations also will require the carriers to provide the agencies with advance notice of any final limit established. These changes are found at § 405.502(g)(3) of this final rule.

IV. Provisions of this Final Rule

In order to respond to the public comments received, and to make the August 11, 1988 final rule conform to sections 1842(b) (8) and (9) of the Act, we are making the following additional changes as well as revising the paragraph headings within § 405.502 to more accurately reflect the contents of those paragraphs.

We are revising the regulations so that the list of circumstances that may result in grossly excessive charges will apply to grossly deficient charges as well. Thus, we are deleting the list of circumstances relating to grossly deficient charges at § 405.502(g)(1)(ii) and are setting forth one list at § 405.502(g)(1) that pertains to both grossly deficient and excessive charges.

We are revising § 405.502(g)(1) to specify that HCFA's determination may apply to the services of any suppliers; however, a carrier's determination may apply only to nonphysician services. This is because section 1842(b)(9)(A)(ii) of the Act requires the Secretary to

publish in the Federal Register a notice of any proposed limit on reasonable charges for physicians' services. Since our Medicare carriers have little experience in this area and there is no procedure in place by which the carriers can publish notices in the Federal Register, it would be administratively burdensome for the Department to handle all the proposals for reasonable charge limits from all of Medicare's carriers. Thus, we have decided that HCFA, not the carriers, will be responsible for establishing the limits on reasonable charges for physicians' services. This means that any limit on reasonable charges for physicians' services will be national in scope.

We are revising § 405.502(g)(1) further to incorporate the provisions of section 1842(b)(8)(B)(ii) of the Act, added by OBRA. Section 1842(b)(8)(B)(ii) of the Act specifies factors that the Secretary will use in determining cases in which the standard rules for calculating reasonable charges for physicians' services result in grossly excessive or deficient charges. Although the statute specifies that these factors are to be used in determinations involving physicians' services, the factors are essentially the same as the examples currently listed at § 405.502(g)(1) that could result in a determination of a grossly excessive charge for any supplier. Thus, we decided to continue to apply the factors at paragraph (g)(1) to all suppliers, including physicians. In order to conform the regulations more closely to the statute, we are revising the language of some of the current factors and adding two additional factors specified in the statute. The two new factors that we are adding follow:

- There have been increases in charges for a service that cannot be explained by inflation or technology.
- The prevailing charges for a service are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

We are revising the regulations at § 405.502(g)(2)(iii) to clarify that in considering costs for the purpose of establishing a limit, HCFA or a carrier may consider the resource costs (overhead, time, complexity, etc.) required to produce a service or a supply.

We are redesignating § 405.502(g) (3) and (4), which concern giving public notice for both the national limits set by HCFA and the carrier level limits, as § 405.502(g)(3) (i) and (ii) respectively. We are adding a new § 405.502(h)(5) concerning HCFA's public notice for limits applying to physicians' services.

Carriers will not be establishing limits on the reasonable charges for

physicians' services. Thus, we are revising the current § 405.502(g)(4) (which we are redesignating as § 405.502(g)(3)) to delete the references to physicians in the provisions that require the carrier to: (1) Inform any affected suppliers or physicians of the factor considered in establishing a limit and solicit comments; and (2) inform the affected suppliers or physicians of any limit established. Also, we are revising the regulations at § 405.502(g)(4) (§ 405.502(g)(3) of this final rule) to specify that in addition to the affected suppliers, the carrier must inform State Medicaid agencies of any proposed or final special reasonable charge limits. Carriers also will be required to solicit comments from the State agencies on proposed limits.

We also are adding a new § 405.502(h) to set forth special rules that apply to physician services. In accordance with section 1842(b)(8)(C) of the Act, we are including language at § 405.502(h)(1) to specify that in determining whether to set a special reasonable charge limit for a category of physician service, HCFA also will consider the potential impact of the limit. This rule states, as does the statute, that HCFA will consider the potential impact on quality, access, beneficiary liability, assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians.

At § 405.502(h)(2), we are adding provisions that reflect section 1842(b)(9)(A) of the Act concerning physician consultation. Under these provisions, HCFA will consult with representatives of the physicians likely to be affected by any change in the reasonable charge before making a determination that a charge is not inherently reasonable by reason of its grossly excessive or deficient amount.

At § 405.502(h)(3), we are adding provisions that reflect section 1842(b)(8)(B)(v) of the Act that requires that if special limits are established based on a comparison of prevailing charges in other localities, an adjustment may be made only if differences in practice costs have been taken into account.

At § 405.502(h)(4), we are including additional factors that must be considered when establishing a limit on physicians' services. Specifically, we are including at § 405.502(h)(4)(i) a paragraph to incorporate the provisions of section 1842(b)(8)(B)(iv) of the Act. As specified in the statute, these revised regulations state that regional differences in fees will be taken into account in establishing a special limit unless there is substantial economic

justification for a uniform fee or a uniform payment limit.

We are adding a new § 405.502(h)(4)(ii) to reflect the provisions of section 1842(b)(8)(B)(iii) of the Act that permit the Secretary to compare certain factors when establishing a limit. Thus, these final regulations provide that, in establishing the specific dollar amount or special method of the limit to be applied, HCFA may compare the charges for a category of service to the—

- Resource costs (for instance, in cases concerning physician services, factors such as the time required to provide a procedure, including pre-procedure evaluation and post-procedure follow-up; the complexity of the procedure; the training required to perform the procedure; and the risk involved in the procedure) for related services;
- Resource costs for the service over a period of time;
- Charges for the service in different geographic areas;
- Payments for the service allowed under Medicare Part B and by other payors; and
- Other relevant factors.

We are adding a new § 405.502(h)(5) and giving it the title, "Publication of national limits", and are incorporating into that paragraph the provisions of sections 1842(b)(9)(A)(ii), (B), (C), and (E) of the Act that concern giving notice when setting a special limit on the reasonable charge for a physician service. Section 1842(b)(9)(A)(ii) of the Act specifically requires the Secretary to publish a notice in the Federal Register of any proposal to set a limit on the reasonable charges for physicians' services. Sections 1842(b)(9) (B), (C), and (E) of the Act set forth the procedures for giving that notice.

In accordance with the statute at sections 1842(b)(9)(B) and (C) of the Act, these revised regulations state that the proposed notice that HCFA will publish in the Federal Register will—

- Specify the proposed charge or method to be used to determine the charge with respect to a service;
- Explain the factors and data that HCFA took into account in determining the charge or method to be used;
- Explain the potential impacts; and
- Allow no less than 60 days for public comment on the proposal.

The proposed notice, as well as the final notice, also will include the economic justification for a uniform fee or payment limit if it is proposed or established. The requirement that the proposal contain this information is found in the Act at section 1842(b)(8)(B)(iv) and the requirement

concerning the final notice is found in section 1842(b)(9)(E) of the Act.

In accordance with section 1842(b)(9)(E) of the Act, these regulations require that the final notice will—

- Explain the factors and data that HCFA took into consideration; and
- Respond to the public comments and any comments made by the Physician Payment Review Commission described in section 1842 of the Act.

V. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all physicians and other suppliers of medical services as small entities.

Since these regulations are required by sections 1842(b) (8) and (9) of the Act, and since the regulations merely establish the framework for determining reasonable charge limits, this rule itself will not have a direct impact on the overall economy or on small entities. As noted in the previously published proposed and final rules (51 FR 5726 and 51 FR 28710 respectively), we will include initial and final impact analyses of the specific effects on the economy and on small entities that we believe would result when we publish any limits under these rules.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities. We, therefore, have not prepared a regulatory flexibility analysis.

VI. Paperwork Requirements

This rule contains no information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart E is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395www and 1395xxx).

2. In § 405.502, the introductory text for paragraph (a) is republished, paragraphs (a)(7) and (g) are revised, and a new paragraph (h) is added to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are furnished and charged for. The criteria for determining what charges are reasonable include:

-
- (7) Other factors that may be found necessary and appropriate with respect to a category of service to use in judging whether the charge is inherently reasonable. This includes special reasonable charge limits (which may be either upper or lower limits) established by HCFA or a carrier if it determines that the standard rules for calculating reasonable charges set forth in this subpart result in the grossly deficient or excessive charges. The determination of these limits is described in paragraphs (g) and (h) of this section.

(g) *Determination of reasonable charges in special circumstances:* General. HCFA or a carrier may establish special reasonable charge limits for a category of service if it determines that the standard rules for calculating reasonable charges set forth in this subpart result in grossly deficient or excessive charges. The limit on the reasonable charge is an upper limit to correct a grossly excessive charge or a lower limit to correct a grossly deficient charge. The limit is either a specific dollar amount, or is based on a special method to be used in determining the reasonable charge.

(1) *Determination of excessive or deficient charges.* HCFA or a carrier may make a determination that the standard rules for calculating reasonable charges set forth in this subpart result in grossly deficient or excessive charges. HCFA's determination may apply to the services of any supplier; however, a carrier's determination may apply only to nonphysician services. Examples of the circumstances which may result in grossly deficient or excessive charges include, but are not limited to the following:

(i) The marketplace is not competitive. This includes circumstances in which the marketplace for a service is not truly competitive because a limited number of physicians perform the service.

(ii) Medicare and Medicaid are the sole or primary sources of payment for a service.

(iii) The charges involve the use of new technology for which an extensive charge history does not exist.

(iv) The charges do not reflect changing technology, increased facility with that technology, or changes in acquisition, production or supplier costs.

(v) The prevailing charges for a service in a particular locality are significantly in excess of or below prevailing charges in other comparable localities, taking into account the relative costs of furnishing the services in the different localities.

(vi) Charges are grossly lower than or in excess of acquisition or production costs.

(vii) There have been increases in charges for a service that cannot be explained by inflation or technology.

(viii) The prevailing charges for a service are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

(2) *Establishing a limit.* In establishing a limit, HCFA or a carrier considers the available information that is relevant to the category of service and establishes a reasonable charge that is realistic and equitable. The factors to be considered

in establishing a specific dollar amount or special method may include the following:

(i) *Price markup.* This is the relationship between the retail and wholesale prices or manufacturer's costs of a category of service. If information on a particular category of service is not available, HCFA or a carrier may consider the markup on similar services and information on general industry pricing trends.

(ii) *Differences in charges.* HCFA or a carrier may consider the differences in charges to non-Medicare and Medicare patients or to institutions and other large volume purchasers.

(iii) *Costs.* HCFA or a carrier may consider resources (overhead, time, acquisition costs, production costs, complexity, etc.) required to produce a service or a product.

(iv) *Utilization.* HCFA or a carrier may impute a reasonable rate of use for a category of service and consider unit costs based on efficient utilization.

(v) *Charges in other localities.*

(vi) *Other relevant factors.*

(3) *Notification of limits—(i) National limits.* When HCFA makes a determination regarding nonphysicians' services under this section, it publishes in the Federal Register proposed and final notices of a special reasonable charge limit before the limit is adopted. The notice sets forth in the Federal Register the criteria and circumstances, if any, under which a carrier may grant an exception to the limit.

(ii) *Carrier level limits.* After September 9, 1988, a carrier proposing to establish a generally applicable special reasonable charge limit must inform the affected suppliers and State Medicaid agencies of the factors considered in establishing the limit as described in paragraphs (g) (1) and (2) of this section and solicit comments. After evaluating the comments received, the carrier must inform the affected suppliers and State Medicaid agencies of any final limit established. The limit is effective for services furnished no fewer than 30 days after the date of the carrier's notification.

(h) *Determination of reasonable charges in special circumstances: Physician services.* In establishing special reasonable charge limits for a category of physician services, HCFA applies the general rules under paragraphs (g) (1) and (2) of this section and the following special rules:

(1) *Potential impact of special limit.* In determining whether to set a special reasonable charge limit for a category of physician services, HCFA considers the potential impact on quality, access, beneficiary liability, assignment rates,

reasonable charge reductions on unassigned claims, and participation rates of physicians.

(2) *Physician consultation.* Before making a determination that a charge is not inherently reasonable by reason of its grossly excessive or deficient amount, HCFA consults with representatives of the physicians likely to be affected by any change in the reasonable charge.

(3) *Special limits based on comparison of charges in different localities.* HCFA takes into account differences in practice costs before basing a special limit on the comparison of prevailing charges in different localities.

(4) *Factors considered in establishing a special limit.* (i) In establishing the specific dollar amount or special method under paragraph (g)(2) of this section, HCFA takes into account regional differences in fees unless there is substantial economic justification, as described in the proposed and final notices required under paragraphs (h)(5) (i) and (ii) of this section, for a uniform fee or a uniform payment limit.

(ii) In determining that a charge is not inherently reasonable by reason of its grossly excessive or deficient amount, and in establishing the specific dollar amount or special method under paragraphs (g) (1) and (2) of this section, HCFA may compare the charge to the—
(A) Resource costs (that is, factors such as the time required to provide a procedure, including pre-procedure evaluation and post-procedure follow-up; the complexity of the procedure; the training required to perform the procedure; and the risk involved in the procedure) for related services;
(B) Resource costs for the service over a period of time;

(C) Charges for the service in different geographic areas after accounting for differences in practice costs;

(D) Payments for a service allowed under Medicare Part B and by other payors; and
(E) Other relevant factors.

(5) *Publication of national limits.* When HCFA makes a determination under this section, it publishes in the Federal Register proposed and final notices of a special reasonable charge limit before the limit is adopted. The notice sets forth in the Federal Register the criteria and circumstances, if any, under which a carrier may grant an exception to the limit.

(i) *Proposed notice.* The proposed notice—

(A) Specifies the proposed charge or methodology to be established with respect to a service;

(B) Explains the factors and data that HCFA took into account in determining the charge or methodology, including the economic justification for a uniform fee or payment limit if it is proposed;

(C) Explains the potential impacts of a limit on physicians' services as described in paragraph (h)(1) of this section; and

(D) Allows no less than 60 days for public comment on the proposal.

(ii) *Final notice.* The final notice—

(A) Explains the factors and data that HCFA took into consideration, including the economic justification for any uniform fee or payment limit established; and

(B) Responds to the public comments and any comments made by the Physician Payment Review Commission.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: May 13, 1988.

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: June 8, 1988.

Otis E. Bowen,

Secretary.

[FR Doc. 88-15450 Filed 7-8-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-388; FCC 88-227]

Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: In a *Third Order on Reconsideration*, adopted July 6, 1988, the FCC amends Part 22 of its rules to permit certain 39 dBu contour extensions over the coastline which were previously prohibited. 39 dBu contour extensions into adjacent Rural Service Areas (RSAs), or into adjacent Metropolitan Statistical Areas (MSAs), or into New England County Metropolitan Areas (NECMAs), or into the Gulf of Mexico except to provide cellular service to the Florida Keys, are still prohibited. This action is taken on the Commission's own motion and in response to several formal and informal petitions for reconsideration and/or clarification which have shown that certain coastal areas will be extremely difficult or impossible to cover in compliance with the previous

prohibition of all 39 dBu contour extensions beyond the RSA boundaries.

EFFECTIVE DATE: July 11, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sari E. Greenberg, Mobile Services Division, Common Carrier Bureau; (202) 632-8450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration* adopted July 6, 1988, and released July 6, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-8300, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Third Order on Reconsideration

1. On May 18, 1988, the Commission released a *Further Order on Reconsideration*, FCC 88-156, in this proceeding ("Further Order"), which amended Part 22 of the Commission's Rules governing the filing of Rural Service Area (RSA) applications. In the *Further Order*, the Commission concluded, *inter alia*, that extensions of 39 dBu contours beyond RSA boundaries would not be permitted at the application stage. The Commission concluded that this prohibition would extend to coastal areas, including the Gulf of Mexico. After the issuance of the *Further Order*, several parties filed formal and informal petitions for reconsideration and/or clarification of the Commission's policy barring 39 dBu contour extensions over the coastline. Several petitioners submitted specific engineering evidence that demonstrates that coverage of certain coastal areas in compliance with the existing rules is virtually impossible without either significantly impairing the quality of cellular service to be provided to coastal communities by moving transmitters inland, or increasing capital outlays for construction by millions of dollars. The petitioners demonstrated that certain RSAs, such as the Florida Keys, will be impossible to cover in compliance with the prohibition, even by taking the actions described above. The Commission, after consideration of the facts before it, adopted the *Third Order on Reconsideration*, which amended § 22.903(a)(1) to permit 39 dBu contour extensions over the coastline in order to

alleviate unnecessary burdens imposed upon applicants by the previous rules and at the same time to contribute to the increased likelihood of improved service to the public.

2. 39 dBu contour extensions over the coastline boundaries of an RSA are now permitted, except that such extensions will not be permitted into other RSAs, or any MSA, or any NECMA; or into the Gulf of Mexico, except to provide service to the Florida Keys.

3. The Commission addressed this issue on an expedited basis to clarify it for rural cellular applicants preparing their applications for the July 13 filing date. Based on its experience in this proceeding, the Commission does not anticipate any opposition to this action. There were no pleadings opposing the petitions for reconsideration which addressed this issue prior to the *Further Order*, and none in opposition to the petitions now at hand. The absence of opposition and the persuasive evidence before the Commission has led the Commission to conclude that this amendment will eliminate a restriction which placed an undue burden on applicants.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio, Rural areas.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Rules Section

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303)

2. Section 22.903 is amended by revising paragraph (a)(1) to read as follows:

§ 22.903 Cellular System Service Areas.

(a) * * *
(1) *Rural Service Areas.* At the time of initial application filing, no CGSA or 39 dBu contour may extend beyond the boundaries of the Rural Service Area (RSA) into another RSA or any MSA or NECMA, or beyond the coastline of the Gulf of Mexico except to provide service to the Florida Keys. Any such initial application that has a CGSA or 39 dBu contour that extends into another RSA or MSA or NECMA, or beyond the coastline of the Gulf of Mexico will be returned as defective. An applicant may

propose multiple CGSAs within the RSA. The 75% coverage of either the land area or the population of the MSA or NECMA does not apply to RSAs. The CGSA must be drawn on one or more U.S. Geological Survey map(s) with a scale of 1:250,000. For RSAs the CGSA map need only depict the area(s) encompassed by any CGSA(s) within the RSA (and that portion of the RSA visible on the map) and must clearly depict on the face of the map the longitude, latitude and scale pursuant to § 22.2. Within the CGSA, the applicant must depict each base station site and its respective 39 dBu contour as determined by the methods described in paragraph (c) of this section. An applicant must state that the combined 39 dBu contours of all base stations will cover at least 75% of the total CGSA.

[FR Doc. 88-15557 Filed 7-6-88; 8:45 am]
BILLING CODE 6712-01-M

[CC Docket No. 86-497; DA 88-582]

47 CFR Part 65

Common Carrier Services; Amendment of Part 65 To Prescribe Components of the Rate Base and Net Income of Dominant Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the codification and some language in § 65.820 of the Commission's final rule document in this proceeding concerning that rate base components of the dominant carriers.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Chief, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: The Report and Order in this proceeding was published on January 15, 1988, 53 FR 1027.

PART 65—[CORRECTED]

The Report and Order in the above entitled proceeding (FCC 87-391, mimeo 37242) adopted December 17, 1987, released December 24, 1987, contained an error in Appendix B. The phrases "net of accumulated depreciation and amortization" and "net of accumulated amortization" should be inserted in paragraph (a) as follows (paragraph (a) is correctly added):

§ 65.820 Included items.

(a) *Telecommunications Plant.* The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service), Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization and Account 2003 (Telecommunication Plant Under Construction—Short Term), and to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 88-13247 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-13; DA 88-712]

FM Radio, Television; Amendment to the Commission's Rules Concerning FM Booster Stations and Television Booster Stations

AGENCY: Federal Communication Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error associated with the *Report and Order* in MM Docket No. 87-13 (52 FR 31398, August 20, 1987) as described below.

EFFECTIVE DATE: July 11, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rita S. McDonald, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Erratum* in Docket 87-13, released May 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street NW., Room 246, Washington, DC.

Summary of Erratum

1. The Commission amends the regulatory text of its decision in Docket 87-13, to add paragraph (a)(6) to 47 CFR 73.3522, and to add paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) to 47 CFR 73.3580 as described below.

PART 73—[AMENDED]

2. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

3. 47 CFR 73.3522 is amended by adding paragraph (a)(6) to read as follows:

§ 73.3522 Amendment of applications.

(a) * * *

(6) Subject to the provisions of §§ 73.3525, 73.3573, and 73.3580, applications for non-reserved band FM stations (other than Class D stations) may be amended as a matter of right during the appropriate window filing period pursuant to § 73.3584(d). For a period of 30 days following the FCC's issuance of a Public Notice announcing the acceptance of the application for tender, minor amendments may be filed as a matter of right; provided, however, that such amendments may not correct deficiencies in the tenderability of the underlying application. Subsequent amendments prior to designation for hearing or grant will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the Commission without consideration. However, an amendment to a non-reserved band application will not be accepted after the close of the appropriate filing window if the effect of such amendment is to alter the proposed facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment application. Similarly, an applicant subject to "first come/first serve" processing will not be permitted to amend its application and retain filing priority if the result of such amendment is to alter the facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment.

4. 47 CFR 73.3580 is amended by adding paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

(c) * * *

(1) *Notice requirements for these applicants are as follows.* (i) In a daily newspaper of general circulation published in the community in which the station is located, or proposed to be located, at least twice a week for two consecutive weeks in a three-week period; or,

(ii) If there is no such daily newspaper, in a weekly newspaper of general circulation published in that community, once a week for 3 consecutive weeks in a 4-week period; or,

(iii) If there is no daily or weekly newspaper published in that community, in the daily newspaper from wherever published, which has the greatest general circulation in that community, twice a week for 2 consecutive weeks within a 3-week period.

(2) *Notice requirements for applicants for a permit pursuant to section 325(b) of the Communications Act (" * * Studios of Foreign Stations") are as follows.* In a daily newspaper of general circulation in the largest city in the principal area to be served in the U.S.A. by the foreign broadcast station, at least twice a week for 2 consecutive weeks within a three-week period.

(3) *Notice requirements for applicants for a change in station location are as follows.* In the community in which the station is located and the one in which it is proposed to be located, in a newspaper with publishing requirements as in paragraphs (c)(1)(i), (ii) or (iii) of this section.

(4) The notice required in paragraphs (c)(1), (2) and (3) of this section shall contain the information described in paragraph (f) of this section

* * * * *

Federal Communication Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-13248 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-521; RM-6006]

Radio Broadcasting Services; Ocean Springs, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 223A to Ocean Springs, Mississippi, in response to a petition filed by Wes Yeager. In response to comments filed by Charles H. Cooper, licensee of Station WOSM(FM), Ocean Springs, we shall impose a site restriction 4.4 kilometers (2.7 miles) west on Channel 223A. The site restriction will allow Station WOSM(FM) the opportunity to upgrade its facilities from Channel 276A to Channel 276C2. The coordinates for Channel 223A are 30-24-34 and 88-52-22. With this action, this proceeding is terminated.

DATES: Effective August 12, 1988; the window period for filing applications will open on August 15, 1988, and close on September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-521, adopted June 10, 1988, and released June 27, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Channel 223A at Ocean Springs.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division,

Mass Media Bureau.

[FR Doc. 88-15442 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act of 1986

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: Section 302 of the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (hereinafter referred to as "the Act"), established the Special Agricultural Workers program. This program provides for the adjustment in status of certain aliens who have resided in the United States and performed seasonal agricultural services for at least 90 man-days during the 12-month period ending on May 1, 1986, to that of an alien lawfully admitted for temporary residence. Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." This subsection requires the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing and harvesting will be considered "seasonal agricultural services" for purposes of the Act. The regulations were published in the Federal Register on June 1, 1987, at 52 FR 20372-20376 (codified at 7 CFR Part 1d). This notice proposes to redefine the term "vegetables" and reexamines whether the commodity sugar cane meets the definition of "other perishable commodities" promulgated at 7 CFR 1d.7, in light of the decision and remand of these issues to the Secretary of Agriculture from the United States District Court for the District of

Columbia in *Northwest Forest Workers Association et al. v. Richard E. Lyng et al.*, Civil Action No. 87-1487 (D.D.C. April 25, 1988).

DATE: Comments must be received no later than July 26, 1988.

ADDRESS: Send comments to Room 227-E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250. Written comments received may be inspected in Room 227-E of the Administration Building, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227-E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250; telephone (202) 447-4737.

SUPPLEMENTARY INFORMATION:

Background

Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." This subsection requires the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing and harvesting will be considered "seasonal agricultural services" for purposes of the Act.

On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule defining the terms "fruits," "vegetables," and "other perishable commodities," as well as several other terms that were necessary to an understanding of the definition of "fruits," "vegetables," and "other perishable commodities."

In the final rule, USDA defined the term "fruits" as "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." 7 CFR 1d.5. The term "vegetables" was defined as "the human edible leaves, stems, roots, or tubers of herbaceous plants." 7 CFR 1d.10. The

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term "other perishable commodities" was defined as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." 7 CFR 1d.7. "Critical and unpredictable labor demands" was defined to mean "that the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." 7 CFR 1d.3. An exclusive list of those commodities that were determined to be subject to critical and unpredictable labor demands was provided within the definition of "other perishable commodities," as well as a list of examples of commodities that were determined not to be subject to critical and unpredictable labor demands. 7 CFR 1d.7. Sugar cane was listed as an example of a commodity that was not a fruit or vegetable and was determined to not be subject to critical and unpredictable labor demands. *Id.*

In the explanation to the proposed rule, the Secretary of stated that the terms "fruits" and "vegetables" were "defined in general botanical terms." 52 FR 13247 (April 22, 1987). The Secretary stated that the "[a]doption of a botanical definition is reasonable because of its clear scientific basis." *Id.* The Secretary noted the popular misconceptions regarding the use of the terms fruits and vegetables, quoting a discussion of these misconceptions from a botanical text, C. Wilson and W. Loomis, *Botany* (5th ed. 1971):

Confusion beclouds the use of the terms fruit and vegetable. Many fruits, such as the tomato, squash, cucumber, corn, and eggplant are popular called vegetables. From a botanical standpoint these are fruits, and they may be distinguished from vegetables if the definition of fruits is kept in mind. A fruit always develops from a flower and is always composed of at least one ripened and mature ovary with which may be fused other parts of structures associated with the flower. Any edible part of the plant that does not conform to this definition of a fruit should be classified as a vegetable.

Id. Then, the Secretary explained that the term "human edible" was incorporated expressly within the definition of "fruits" and "vegetables" because it is clear from the context in which these definitions are discussed in the scientific literature that the reference to their being edible refers to

consumption by humans. *Id.* In addition, the Secretary explained that the human edibility requirement "comports with congressional intent, especially given the distinction drawn by Congress between fruits and vegetables as opposed to other perishable commodities." *Id.*

With respect to sugar cane, the Secretary stated in the explanation to the final rule that:

Sugar cane is a perennial grass, not a fruit or vegetable, which is normally harvested between one to two years of growth. It is mature during most of this period. The timing of the harvest is not critical, but is scheduled over a period of several months for the efficient operation of the processing mill. On occasion, sugar cane has not been harvested during the current season and has been carried over to be harvested the following year. Harvest dates are quite predictable and may be scheduled several months in advance. Within the context of the Act, from planting to harvesting, sugar cane does not have the critical and unpredictable labor demand concerning its production as do fruits and vegetables, and other perishable commodities.

52 FR 20375 (June 1, 1987). In response to comments concerning the perishability of sugar cane after it is harvested, the Secretary distinguished the perishability of sugar cane after being harvested, noting that Congress intended the perishability of the commodities to be considered up to the point of harvesting only. *Id.* In response to comments that argued that the inclusion of sugar cane as an "other perishable commodity" is required by the legislative history of the Act, the Secretary noted that the only reference to sugar cane in the legislative history indicates that Congress did not consider sugar cane to be a perishable commodity. *Id.*

In *Northwest Forest Workers Association, et al. v. Richard E. Lyng, et al.*, Civil Action No. 87-1487 (D.D.C. April 25, 1988) (hereinafter "NFWFA v. Lyng"), the original plaintiffs, representing certain United States citizen workers, challenged the regulations as overly broad in that they include commodities that Congress did not intend to include in the Special Agricultural Workers program. Plaintiffs challenged the broad scientific definitions of fruits and vegetables, the Secretary's definition of "other perishable commodities" in terms of "critical and unpredictable labor demands," and the Secretary's definition of "field work."

The intervenors in this case, the sugar cane workers, challenged the regulations as being too narrow in their exclusion of sugar cane from the definition of "vegetables" and from "other perishable commodities." The

intervenors challenged the inclusion of the "herbaceous" requirement within the definition of "vegetables." In the alternative, the intervenors asserted that sugar cane is herbaceous and, thus, fits within the definition of "vegetables." In addition, the intervenors maintained that sugar cane fits within the definition of "other perishable commodities," asserting that sugar cane has "critical and unpredictable labor demands," as that term is defined in the regulations.

On April 25, 1988, the United States District Court for the District of Columbia denied plaintiffs' motion for summary judgment and entered summary judgment for the defendant Lyng upon a finding that the Secretary did not arbitrarily and capriciously define "other perishable commodities." Specifically, the court found that the Secretary's definition of "other perishable commodities" in terms of "critical and unpredictable labor demands" and his choice of the 60-day bright line rule was reasonable and not arbitrary and capricious. *NFWFA v. Lyng*, C.A. No. 87-487, slip op. at 14 (D.D.C. April 25, 1988). The court found also that "the Secretary acted reasonably in defining 'field work'." *Id.* at 28.

The court specifically found that the Secretary was reasonable in defining fruits and vegetables in scientific terms. *Id.* at 19. The court noted that the Secretary incorporated two limiting factors to the broad scientific definition of vegetables—"human edible" and "herbaceous." The court found that the limiting factor of "human edible" was "explained adequately and extensively" in the notice of proposed rulemaking. *Id.* at 16 & n.8. The court, however, did not take note that the USDA definition of vegetables was limited also by the exclusion of fruits from the scope of the definition of "vegetables."

Thus, the court determined that while it was reasonable to adopt broad scientific definitions of fruits and vegetables, it was reasonable to apply reasonable limiting factors to those broad scientific definitions. The court, however, found that the Secretary acted arbitrarily and capriciously in failing to explain adequately the incorporation of the herbaceous requirement in the definition of "vegetables." *Id.* at 18. Therefore, the court remanded the definition of "vegetables" to USDA to conduct further proceedings in accordance with the court's memorandum opinion.

While the court upheld the USDA definition of "other perishable commodities," the court found that the Secretary arbitrarily and capriciously excluded sugar cane from the definition

of "other perishable commodities," and remanded the issue to the agency for further proceedings. The court came to this conclusion based on the fact that while the administrative record contained a number of comments advocating the inclusion of sugar cane as an "other perishable commodity," the official delegated primary responsibility by the Secretary for formulating the regulations apparently relied upon his own personal knowledge and a telephone conversation with a sugar cane specialist and cost accountant with the Economic Research Service, USDA, none of which was in the administrative record. *Id.* at 24-25. The court apparently did not take into consideration the role that the USDA inter-agency Task Force played in the formulation of the regulations. The Task Force concluded that sugar cane was not a vegetable and was not an "other perishable commodity" within the meaning of the regulations.

The court has approved explicitly of a limited definition of vegetables with its holding that it was reasonable to define fruits and vegetables in scientific terms and to limit the applicability of those terms by the human edibility criterion. Since it is clear from the court's opinion that the definition of vegetables may be limited, the issue then in formulating a definition is how should it be limited consistently with congressional intent and the direction of the court.

As evident from the discussion below, there is a wide difference of opinion regarding the definition of vegetables. Accordingly, USDA has determined that it is appropriate to propose to redefine the term "vegetables" in order to provide a more established definition of the term and in order to comport with congressional intent.

Given the approval by the court of the USDA definition of "other perishable commodities," USDA will not propose to change the definition. USDA has reexamined the factors that affect labor demands in the production of sugar cane and evaluated whether or not sugar cane falls within the definition of "other perishable commodities."

Vegetable

The USDA review of the scientific literature reveals that there is little clarity regarding the definition of the term "vegetables." This review indicates that USDA erred in describing its previous definition of "vegetables" as a botanical definition. The term "fruits" is clearly a botanical term and can be found defined in virtually identical terms in all scientific literature reviewed by USDA. Likewise, the terms "leaves,"

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"stems," "roots," and "tubers," are all true botanical terms. However, the term "vegetables" is not defined in a significant number of botany texts, botanical dictionaries, scientific dictionaries, and other relevant scientific sources, which indicates that the term is not accepted universally as a botanical term such as the term "fruits." See, for example, S. Blackmore, *The Facts on File Dictionary of Botany* (1984); K. Beckett, *Illustrated Dictionary of Botany* (1977); G. Usher, *A Dictionary of Botany* (1986); Gray's *Manual of Botany* (8th ed. 1950); P. Kaufman, T. Mellicamp, J. Glimm-Lacy & J. LaCroix, *Practical Botany* (1983); T. Weier, C. Stocking, M. Barbour & T. Rost, *Botany: An Introduction to Plant Biology* (6th ed. 1982); P. Raven & R. Everett, *Biology of Plants* (2d ed. 1970); V. Greulich & J. Adams, *Plants: An Introduction to Modern Botany* (1978); O. Tippe & W. Stern, *Humanistic Botany* (1977); H. Fuller, Z. Carothers, W. Payne & M. Balbach, *The Plant World* (5th ed. 1972); E. Uvarov & A. Isaacs, *The Facts on File Dictionary of Science* (6th ed. 1986); Oxford Press *Concise Science Dictionary* (1984); A. Hechtlinger, *Modern Science Dictionary* (1975); T. Collocott & A. Dobson, *Dictionary of Science and Technology* (1974); I. Henderson & W. Henderson, *A Dictionary of Biological Terms* (1964).

Where botany texts and other scientific sources discuss the definition of the term "vegetables," the term may be used as either a noun or an adjective. Some botanical and other scientific sources define vegetables broadly as "any plant" or "any plant part," either as a noun, an adjective, or both:

Of or pertaining to a plant or plant part. R. Little & C. Jones, *A Dictionary of Botany* (1980). Belonging to or consisting of plant parts. D. Schwartz, *Collegiate Dictionary of Botany* (1971).

Adj., Botany . . . of plants; having to do with plants: vegetable substances, vegetable life. R. Bernhardt, *Hammond Bernhardt Dictionary of Science* (1st ed. 1986). Used as an adjective, for the plant kingdom; as a noun, any plant or plant organ that is edible (colloquial). J. Langenheim & K. Thimann, *Botany: Plant Biology and its Relation to Human Affairs* (1982).

[Bot] Resembling or relating to plants. S. Parker, *McGraw-Hill Dictionary of Science and Engineering* (1984); S. Parker, *McGraw-Hill Dictionary of Scientific and Technical Terms* (3d ed. 1984); D. Lapedes, *McGraw-Hill Dictionary of Life Sciences* (1976).

Of, pertaining to, or of the nature of a plant. E. Steen, *Everyday Handbooks Dictionary of Biology* (1971).

[Belonging to or consisting of plants. B. Jackson, *A Glossary of Botanic Terms With Their Derivation and Accent* (4th ed. 1928).

USDA has determined that defining vegetables as "any plant" would be

overinclusive and contrary to congressional intent. Since "perishable commodities" necessarily includes fruits and vegetables, the distinction drawn in the Act by Congress between fruits and vegetables as opposed to perishable commodities evidences that Congress did not favor an overinclusive approach; otherwise, Congress could have employed simply the term "perishable commodities." USDA attempted to define fruits and vegetables in scientific terms to be more precise. USDA determined also that the scientific definitions of fruits and vegetables must be qualified by the term "human edible" in order to be more precise and to limit the scope of those terms consistently with congressional intent. The court in *NWFWA v. Lyng* has upheld the use of the limiting factor of "human edible" even though it is not contained expressly in the botanical definition of fruits. Therefore, it is reasonable to apply other limiting factors to a broad scientific definition of vegetables when such limiting factors have a reasonable basis in the literature, common sense, and comport with congressional intent.

The Wilson and Loomis text quoted in the explanation to the proposed rule describes a vegetable as any edible plant part that is not a fruit:

[Botanically, any edible part of a plant not formed from a mature ovary or from an ovary and associated parts. C. Wilson & W. Loomis, *Botany* (5th ed. 1971).

It is not clear from the discussion in the Wilson and Loomis text whether the term "vegetables" is described as a botanical term or merely discussed in the context of distinguishing botanical fruits from other edible plant parts. Some scientific sources state that the term "vegetables" is not a meaningful term in botany:

In botany, the word vegetable is accepted only as a descriptive adjective, not as a noun. In popular usage, such parts of plants as heads of lettuce, spinach, potatoes, corn, tomatoes, and string beans are called vegetables. In botany, lettuce and spinach are leaves, potatoes are tubers, and corn, tomatoes, and string beans are fruits (ripened ovaries). R. Bernhardt, *Hammond Bernhardt Dictionary of Science* (1st ed. 1986).

[Many] fruits are referred to as "vegetables," a meaningless term botanically because it is used to describe any plant part that is eaten. These include roots, stems, leaves, flowers, fruits, and seeds. J. Haynes, *Botany: An Introductory Survey of the Plant Kingdom* (1975).

The term "vegetable" has only popular significance and is used in this sense to designate plant parts, regardless of their structural nature, which are not sweet and which are usually flavored before they are eaten with salt, pepper and other condiments.

H. Fuller & O. Tippe, *College Botany* at 475 (Revised ed. 1957).

Thus, some scientists do not consider "vegetables," when used as a noun, to be a meaningful botanical term. This is reflected in dictionary sources which define "vegetable" as "any plant," but note that the term is not used as a noun in a technical sense:

"[N]oun: Plant—not used technically." Webster's *Third International Dictionary of the English Language Unabridged*.

As noted above, USDA determined to use scientific terms in order to be precise. The term "fruits" is a precise term that has a botanical definition that is accepted universally in the scientific literature. However, the term "vegetables" is not defined precisely in botany. In fact, it is not clear that the term has any significance in botany. Based on the above-referenced discussion of the relevant scientific literature, USDA has concluded that the term "vegetables" is not a botanical term. The term "vegetables," however, is significant in the science of horticulture.

USDA has determined to continue to define fruits in botanical terms in order to be more precise as to fruits and to resolve the confusion between the classification of fruits and vegetables. However, since vegetables is not a botanical term, USDA has determined that the term should be defined based on a horticultural definition of that term which does not lead to confusion and which does not result in absurdities. This is appropriate for purposes of this rule since horticulture is the science of growing fruits, vegetables, and other plant crops.

A review of various sources indicates that there does appear to be a consensus that the term "vegetables" is a horticultural term:

In horticultural usage a vegetable is an edible herbaceous plant or part thereof that is commonly used for culinary purposes. L. Bailey, *The Standard Cyclopaedia of Horticulture* (new ed. 1930) (emphasis added).

[ACR] The edible portion of a usually herbaceous plant; customarily served with the main course of a meal. S. Parker, *McGraw-Hill Dictionary of Science and Engineering* (1984); S. Parker, *McGraw-Hill Dictionary of Scientific and Technical Terms* (3d ed. 1984); D. Lapedes, *McGraw-Hill Dictionary of Life Sciences* (1976) (emphasis added).

[A]n edible plant or plant part eaten cooked or raw as a main part of a meal, side dish, or appetizer; includes herbaceous garden plants and herbaceous parts of some woody perennials (e.g., tender shoots or young leaves, inflorescences, or fruits). J. Soule, *Glossary for Horticultural Crops* (1985) (emphasis added).

Generally considered as vegetables are those herbaceous plants of which some portion is eaten, either cooked or raw, during the principal part of the meal. J. Janick, *Horticultural Science* (2d ed. 1972) (emphasis added).

Any plant part that is eaten either cooked or raw during the principal part of a meal rather than as a dessert. J. Winburne, *A Dictionary of Agricultural and Allied Terminology* (1962) (emphasis added).

In horticultural usage a vegetable is an edible herbaceous plant or part thereof that is commonly used for culinary purposes. The product may or may not be directly associated, in its development with the flower: the root, stem, leaf, flowerbud, partially developed seed receptacle, or seeds (either immature or mature), may constitute the edible part. Some vegetables are edible only after being cooked, others (such as cabbage), are eaten either cooked or raw, while others, as melons, are used only in the fresh state, and they are really dessert articles. In some countries, melons and tomatoes are regarded as fruits, though American usage classifies them as vegetables. Although it is difficult to make a general definition that will include all vegetables and exclude none, the use of the term "vegetable" is so well understood that there is little difficulty in making the proper application of it in common speech." L. Bailey, *The Standard Cyclopaedia of Horticulture* (1930) (emphasis added).

This horticultural definition is reflected also in dictionary sources:

The edible part of any herbaceous plant, raw or cooked, chiefly when served with an entrée, or before dessert. Funk & Wagnall's *Standard Dictionary of the English Language International Edition Combined With Britannica World Language Dictionary* (emphasis added).

A usually herbaceous plant (as the cabbage, potato, bean, or turnip) that is cultivated for the edible part which is used as a table vegetable. (2) An edible part of a plant (as seeds, leaves, or roots) that is used for human food and usually eaten cooked or raw during the principal part of a meal rather than as a dessert. Webster's *Third New International Dictionary of the English Language Unabridged* (emphasis added).

A part or the whole of a (sic) herb used chiefly for culinary purposes, but also frequently for feeding domestic animals. In a comprehensive sense, any living organism not possessed of animal life; a plant of any kind. There is no well-drawn distinction between vegetables and fruits in the popular sense; but it has been held by the courts that all those which, like potatoes, carrots, peas, celery, lettuce, tomatoes, etc., are eaten (whether cooked or raw) during the principal part of a meal are to be regarded as "vegetables," which those used for dessert are fruits. *State v. Hurst*, 140 Or. 519, 41 P.2d 1079, 1080. *Black's Law Dictionary* (4th ed. 1968) (emphasis added).

USDA notes that in *State v. Hurst*, the court was faced with the issue of what was the proper definition of a vegetable. In that case, the court discerned a

definition by looking at various scientific and dictionary definitions and distilling a consensus definition.

USDA has determined that a horticultural definition of the term "vegetables" is the most appropriate because it is apparent from a review of the relevant scientific sources that the term is a horticultural term. Also, a horticultural definition is most appropriate because it has been recognized judicially as the proper definition of the term, and because it comports with congressional intent and common sense. A review of the above quotations evidences that there is no precise, single horticultural definition of vegetables. In view of this, USDA has determined that it is reasonable to distill a consensus definition from the various scientific sources instead of adopting the particular wording of a horticultural definition from any one particular source.

Given that USDA has determined to propose to adopt a horticultural definition of vegetables, the definition, as would any definition, must be modified in order to comport with congressional intent and on the basis of common sense. The court in *NWFWA v. Lyng* has approved of the use of the "human edible" limitation on the definition of vegetables, and implicitly has approved of limiting the definition further by the exclusion of fruits from the definition.

USDA has determined that the botanical definition of "fruits" must be kept intact in order to be precise in distinguishing fruits from vegetables. Thus, the definition of vegetables must be modified in order to exclude fruits from the definition of vegetables. USDA has determined that the most precise approach is to describe vegetables in terms of botanical terms of the plant parts, thereby excluding fruits. As with the previous definition of vegetables, the human edibility requirement must be incorporated within the definition. The human edibility requirement is based on the context of the discussion of edibility in the scientific literature, and congressional intent, given the distinction drawn between fruits and vegetables and other perishable commodities.

As indicated above, the "herbaceous" requirement is incorporated in many of the horticultural definitions of the term "vegetables." Although some scientists do not find it necessary to use the term herbaceous in defining vegetables, USDA has found no authority who contends that vegetables are not herbaceous. Thus, USDA has determined that "vegetables" should be limited to herbaceous parts of plants.

The term "herbaceous" is an adjective derived from the noun "herb," which is defined as a non-woody plant. Various definitions of herbaceous include:

Plants that do not produce hard, woody tissue. P. Kaufman, T. Mellicamp, J. Glimm-Lacy & J. LaCroix, *Practical Botany* (1983). [Soft and green, containing little woody tissue. C. Usher, *A Dictionary of Botany* (1986).

Pertaining to a stem with little or no woody tissue. S. Parker, *McGraw-Hill Dictionary of Science and Engineering* (1984); D. Lapedes, *McGraw-Hill Dictionary of The Life Sciences* (1986).

The distinction between a woody and a non-woody plant is not clear. While some sources define wood as "the xylem," other sources define wood as "the secondary xylem." All vascular plants contain xylem cells, but not all vascular plants are regarded as "woody." However, there are plants that do not produce secondary xylem, but are regarded by scientists as "woody." Also, there are some vegetables that are not "woody," but which are produced by plants that have other woody organs, such as bamboo shoots. However, no vegetables are themselves "woody." Thus, USDA has determined that the term herbaceous should be applied to the specific plant organ that constitutes the commodity.

Therefore, USDA has determined to propose to adopt the following definition of vegetables:

"Vegetables" means the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert.

It is evident that the horticultural definition lacks complete precision. At the same time, USDA has interpreted the congressional intent as to preclude an overinclusive definition of vegetables, and the court did not object to this interpretation. USDA proposes to adopt the qualifier of "chiefly" not only because such a concept is reflected in some of the horticultural definitions of "vegetables," but also because of this interpretation.

This approach also is dictated by common sense. Otherwise, anything that is derived from herbaceous plants that found its way into the principal course of a meal would be considered a vegetable. Such a broad interpretation of the definition would be overinclusive and would lead to a number of anomalies that clearly would exceed congressional intent. Coffee, condiments, flavorings, honey, hops, molasses, oils, spices, sugar, syrup, and teas are all commodities that may be consumed during the main course of a

meal, but are not considered to be vegetables. However, such is the result if common sense is not applied to the application of the definition of the term "vegetables."

It is clear from the context of the discussion in the scientific literature that the discussion of vegetables being eaten primarily as the principal course of the meal indicates that vegetables are eaten as a principal component in a main dish or side dish, not merely as a condiment or flavoring. This does not mean that a vegetable ceases to be a vegetable when used as a condiment or flavoring. It simply means that a commodity does not become a vegetable merely because it may be added to a dish that is eaten during the principal part of a meal.

Sugar Cane

The court in *NWFWA v. Lyng* did not address the issue of whether or not sugar cane falls within the scope of the term "vegetables" because the definition of that term was remanded to USDA. Thus, USDA must examine whether sugar cane falls within the scope of the definition of "vegetables" as set forth in this proposed rule. USDA has determined to propose that sugar cane does not fit this definition and, thus, is not a vegetable within the scope of the regulation.

Sugar cane is not eaten (cooked or raw) during the main course of a meal, either as a principal dish or as a side dish.

USDA notes that some people chew on the stems of sugar cane and one commenter during the previous rulemaking noted that sugar cane may be found in the produce section of some food stores. Ad. Rec. Doc. No. 615 (Farmworker Justice Fund, Inc.). Sugar cane marketed by a produce distributor in California and available in some East Coast supermarkets labels its packages of sugar cane with the cautionary notices: "Do not swallow"; "Not recommended for children under 5 or persons with braces." Recipes printed on the packaging suggest the use of sugar cane as a garnish only. While the juice of the sugar cane is digestible, the cane itself is not digestible by humans. USDA is unaware of the use of sugar cane as a vegetable as that term is defined in horticultural science and in this proposed regulation.

At least one court has held that Congress has indicated that sugar cane is not a "fruit or vegetable" for purposes of the Fair Labor Standards Act. See *Wirtz v. Osceola Farms Company*, 372 F.2d 584 (5th Cir. 1967). The legislative history of IRCA suggests no congressional intent to the contrary. Thus, USDA believes that Congress did

not intend sugar cane to be considered a vegetable for purposes of the IRCA.

Sugar cane is not clearly herbaceous, but falls somewhere between a herbaceous and a woody plant. Some scientific sources describe sugar cane as "woody." See J. Langeheim & K. Thimann, *Plant Biology and its Relation to Human Affairs* (1982) (describing sugar cane stalks as "thick and woody"). Other Perishable Commodities:

USDA determined that sugar cane did not meet the definition of "other perishable commodities" because the production of sugar cane does not involve critical and unpredictable labor demands.

Several of the commenters on the previous rulemaking, as well as the intervenors in the context of the litigation, discussed the effects of weather on the maturity of the sugar cane and the need to harvest sugar cane at its optimum maturity to avoid loss of sucrose content. USDA notes that the sucrose level of the sugar cane does not determine the timing of the harvesting operations, except with respect to the months of the year that the processing mills will operate and, thus, the harvesting is scheduled during the optimum period of the year. However, particular fields of sugar cane rarely are harvested at optimum maturity and sucrose content because the delivery must be coordinated with the operation of the mill.

In the explanation to the final rule, USDA stated:

The timing of the harvest is not critical, but is scheduled over a period of several months for the efficient operation of the processing mill. On occasion, sugar cane has not been harvested during the current season and has been carried over to be harvested the following year. Harvest dates are quite predictable and may be scheduled several months in advance. 52 FR 20375.

USDA has determined that the timing of the harvest may be scheduled generally more than 60 days in advance and that the level of sucrose in the sugar cane does not determine the timing of the harvest. The processing mills determine generally months in advance when the harvest will be and the individual growers cannot select the date of the harvest based on the level of sucrose in the cane. Thus, the labor demand for the harvesting of the sugar cane is not determined generally by the sucrose level in the sugar cane.

In the processing mill, the sugar canes are crushed and a thick, brown syrup is extracted. That extract is concentrated; impurities are precipitated out; the liquid is filtered, evaporated and crystals of raw sugar are formed and

centrifuged off; the crystals are washed, redissolved in hot water, filtered, and evaporated to yield white sugar crystals:

The whole process must be kept moving rapidly, for if the warm sugar solution has been held for more than 24 hours or more in a tank, the polymer-forming bacterium *Leuconostoc dextranicus* grows very rapidly and can convert a large tank of sucrose solution into useless jelly, called dextran, almost overnight. For this reason, once the harvesting has begun the mill is kept running continuously night and day for the three to five months necessary to deal with all the cane in the area. J. Langeheim & K. Thimann, *Botany: Plant Biology and its Relation to Human Affairs* (1982).

Thus, sugar processing mills are run at full capacity during the processing period. The schedule generally cannot be adjusted for variations in the sucrose level of the individual sugar cane fields. Nor can the processing be increased due to a natural disaster, such as a severe storm or an unusual freeze. While the sucrose level in sugar cane deteriorates after a severe freeze, a freeze will not result in a demand for additional workers above the need originally projected because the mills simply cannot grind significantly more cane and the cane cannot be stored. A severe freeze may result in the loss of much of a sugar cane crop, but the loss will not be due to the inability of the producer to obtain additional workers. The harvesting of sugar cane is quite predictable and is scheduled normally months in advance. The demand for labor for harvesting is necessarily quite predictable and is not determined by the effects of weather on the sugar cane.

The court in *NWFWA v. Lyng* noted comments received during the previous rulemaking that stated that "sugar cane has long been thought of as a perishable commodity in the context of the H-2 program." "empirical research suggests that sugar cane is a perishable commodity," and that "sugar cane traditionally is considered a perishable commodity." Despite thorough review, USDA has been unable to determine any relevance of perishability to the H-2 program, the suggested empirical research, or tradition. While it is true that it is well documented, and traditionally considered, that sugar cane is a perishable commodity after it is harvested, USDA has been unable to determine any evidence that sugar cane is subject to critical and unpredictable labor demands during the production of sugar cane up to and including harvesting.

USDA defined "critical and unpredictable labor demands" in terms of the 60-day bright line rule based on

the legislative history of the IRCA which indicated that the SAW program was intended to be a supplement to the H-2A program. The court in *NWFWA v. Lyng* recognized that this interface between the SAW program and the H-2A program was supported by the legislative history. *NWFWA v. Lyng*, C.A. No. 87-487, slip op. at 13 (D.D.C. April 25, 1988). Thus, the court found the 60-day bright line rule was reasonable. *Id.* Sugar cane producers have successfully utilized the H-2 program for decades under certification procedures which required employers to forecast their labor needs 60 days in advance. USDA determined that the use of the H-2 program by sugar cane producers demonstrated that sugar cane did not experience "critical and unpredictable labor demands." The ability of sugar cane producers to forecast their labor requirements 60 days in advance under the current H-2A program demonstrates that sugar cane is not within the scope of "other perishable commodities."

Regulatory Impact

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the Immigration and Naturalization Service (INS) will use this proposed rule to assist it in determining which special agricultural workers will be admitted into the United States for temporary residence. Thus, the primary benefits of this proposed rule are internal to the operation of the United States government.

This action, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This proposed rule redefines the term "vegetables," and reexamines whether sugar cane meets the definition of "other perishable commodities" for purposes of clarifying the term "seasonal agricultural services" as it relates to sugar cane. The proposed rule does not contain any compliance or reporting requirements, or any timetables. The proposed rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the proposed rule, in

and of itself, will have no significant effect upon small entities.

Paperwork Reduction Act

This proposed rule does not require additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502, *et seq.*) are inapplicable.

National Environmental Policy Act

This proposed rule will not have an impact upon the environment.

List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, it is proposed to amend Part 1d—*Rural Labor—Immigration Reform and Control Act of 1986—Definitions*, as follows:

PART 1d—[AMENDED]

1. The authority citation for part 1d continues to read as follows:

Authority: 8 U.S.C. 1160.

2. Section 1d.10 is revised to read as follows:

§ 1d.10 Vegetables.

"Vegetables" means the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert.

Done at Washington, DC, this 6th day of July 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-15511 Filed 7-8-88; 8:45 am]

BILLING CODE 3420-01-M

Commodity Credit Corporation

7 CFR Part 1408

Setoff, Withholding and Stop Payment Policies

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends 7 CFR Part 1408, which sets forth the policies of Commodity Credit Corporation (CCC) regarding the setoff of debts owing to CCC or other government agencies against amounts payable by CCC. The intent of this proposed rule is to extend the regulatory period of time allowed for setoff and withholding to ten years. This regulation would then allow a period of time similar to that allowed by regulations issued under the Federal Claims Collection Act of 1966, as amended by

the Debt Collection Act of 1982 (31 U.S.C. 3716).

DATES: Comments must be received by August 10, 1988.

ADDRESSES: Comments concerning this proposed regulation should be addressed to: Director, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All comments submitted in response to this proposed rule will be available for public inspection, in Room 6094, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC, between 8:30 am and 4:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Specialist, (202) 475-4499.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs and prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512-1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the federal paperwork burden for individuals, small businesses, and others. Furthermore, CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking for this action. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

This proposed regulation amends 7 CFR Part 1408 to extend the period of time CCC may exercise its regulatory right to administrative offset against amounts otherwise payable.

Currently, regulations provide that setoff under 7 CFR Part 1408 against a debt owed the Government is barred when no suit has been filed and the applicable statute of limitation for enforcing payment of such a debt expires prior to the date the amount becomes payable to the debtor, except for certain debts due to an overcharge or loss or damage by a carrier. The statutory period for bringing a civil action on a CCC claim is six years.

The Debt Collection Act of 1982 amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3716) to provide a ten-year period of limitation on a federal agency to collect a claim by administrative offset. This ten-year period begins to run from the date the claim becomes outstanding. The Federal Claims Collection Act of 1986 and the Federal Claims Collection Standards (4 CFR Parts 101-105) promulgated thereunder by the Comptroller General and the Attorney General provide standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. CCC has authority under section 4(k) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714) to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount of issue. CCC is, therefore, not bound by the Federal Claims Collection Act. However, it is CCC policy that any action by CCC to collect a debt by administrative offset should agree, to the extent feasible, with the Federal Claims Collection Standards.

This regulation is necessary to protect the financial integrity of many federal agricultural programs by ensuring the Government will be able to collect debts owed to it, including many on which a civil action to enforce would be ineffectual, not sufficiently cost effective for the Government to pursue, or legally barred.

List of Subjects in 7 CFR Part 1408

Setoff, Withholding and stop payment policies.

Accordingly it is proposed that the regulations at 7 CFR Part 1408 be amended as follows:

PART 1408—[AMENDED]

1. The authority citation is amended to read as follows:

Authority: Sec. 4(b), Pub. L. 80-89, 82 Stat. 1070 as amended, (15 U.S.C. 714b).

2. 7 CFR 1408.4 is amended by revising paragraph (b)(3) to read as follows (b) introductory text is republished):

§ 1408.4 Setoff.

(b) In all other cases, debts due CCC shall be set off, in whole or in part, against amounts payable to debtors by CCC, where the following conditions apply:

(3) The claim has not been outstanding for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later. For purposes of this section, a claim is not outstanding until the debt underlying the claim became due and payable and was not paid.

3. 7 CFR 1408.11 is amended by revising paragraph (a) to read as follows (introductory text is republished):

§ 1408.11 Conditions under which setoff, withholding, or stop payment actions will not be taken.

Setoff, withholding, or stop payment actions will be taken in the following cases:

(a) If the claim has been outstanding for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later. For purposes of this section, a claim is not outstanding until the debt underlying the claim became due and payable and was not paid.

Signed at Washington, DC, on July 1, 1988.
Milt Hertz,
Executive Vice President, Commodity Credit Corporation.
[FR Doc. 88-15330 Filed 7-8-88; 8:45 am]
BILLING CODE 3410-05-M

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Poultry Regulations and Policy Statements

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend certain existing regulations relative to poultry to conform to the Poultry Producers Financial Protection Act of 1987 (Pub. L. 100-173), amending the Packers and Stockyards Act. These proposals will add live poultry dealers

to existing payment and accounting, reporting and trust notification regulations, and remove references to "handler(s)" made obsolete by the legislation. It would also remove reference to jurisdiction over dressed poultry trade practices as provided by the legislation. Also proposed for amendment is a regulation pertaining to the weighing of live poultry. No new regulations or policy statements are being proposed.

DATE: Comments must be received on or before September 9, 1988.

ADDRESS: Comments may be mailed to the Administrator, Packers and Stockyards Administration, Room 3039-South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the Office of the Administrator.

FOR FURTHER INFORMATION CONTACT: Kenneth Stricklin, Director, Packer and Poultry Division, Packers and Stockyards Administration, Room 3422-South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7383.

SUPPLEMENTARY INFORMATION: This proposal would amend existing regulations and policy statements as follows:

Regulations	Effect of change
§ 201.43 (9 CFR 201.43)...	Add live poultry dealer to (b)(4) and revoke (d).
§ 201.49(b) (9 CFR 201.49(b))...	Remove "or handler" and "packer or"
§ 201.53 (9 CFR 201.53)...	Remove "or handler" and "or dressed poultry"
§ 201.71 (9 CFR 201.71)...	Remove "or handler"
§ 201.72 (9 CFR 201.72)...	Remove "or handler"
§ 201.73 (9 CFR 201.73)...	Remove "or handlers"
§ 201.76 (9 CFR 201.76)...	Remove "or handlers"
§ 201.82 (9 CFR 201.82)...	Remove "or handler"; revise paragraph (b).
§ 201.94 (9 CFR 201.94)...	Add "live poultry dealer"
§ 201.95 (9 CFR 201.95)...	Remove "or handler"
§ 201.96 (9 CFR 201.96)...	Remove "or handler"
§ 201.97 (9 CFR 201.97)...	Add "live poultry dealer"
§ 201.100 (9 CFR 201.100)...	Remove references to "handlers" and "packers," and revoke (a)(3).

Policy statements	Effect of change.
§ 203.4 (9 CFR 203.4)...	Remove "or handlers"
§ 203.15 (9 CFR 203.15)...	Add poultry sellers and growers.

Payment and Accounting.

Regulation 201.43(b)(4) prohibits firms subject to the Packers and Stockyards Act from exercising undue market power in negotiating the terms of a

purchase contract. Paragraph (d) pertains to payment for live poultry. Accordingly, it is proposed to revise (b)(4) to apply to live poultry dealers with respect to live poultry purchases, and to revoke (d) as obsolete since payment requirements for poultry are now specified in the Act.

Regulation 201.100 refers to poultry growout (feeding) contracts and requires at (a)(3) that they shall clearly specify "The time at which final payment to the grower is to be made." Since the amended Packers and Stockyards Act specifies the time in which payment is to be made in Section 410, it is proposed to revoke (a)(3) as obsolete.

Definitions

Section 2 of the act, as amended, defines persons engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for slaughter purposes as a live poultry dealer. Therefore, it is proposed that the terms "or handler" and "or handlers" be removed from regulations 201.49, 201.53, 201.71, 201.72, 201.73, 201.76, 201.82, 201.95, 201.96, 201.100, and policy statement 203.4. Also that the term "packer or" be removed from regulations 201.49 and 201.100.

Section 202 of the Act was amended to eliminate jurisdiction as to poultry products. Accordingly, it is also proposed to remove the term "or dressed poultry" from regulation 201.53.

Furnishing Business Information and Annual Reports

Under the Act, as amended, live poultry dealers, as defined, are made subject to various requirements. Thus, live poultry dealers, are clearly within the language of section 402, 7 U.S.C. 222, "any person subject to this Act, whether or not a corporation." Section 402 makes sections 8, 9, and 10 of the Federal Trade Commission Act applicable to any such person. Therefore, it is proposed that regulation 201.97, by virtue of section 6 of the Federal Trade Commission Act, and that regulation 201.94, by virtue of section 9 of the Federal Trade Commission Act, be amended to include "live poultry dealer." This change will require that live poultry dealers file annual reports and furnish business information to the Secretary, as required, to carry out the prompt pay provisions of the 1987 amendments.

Statutory Trust

Statement of general policy 203.15 outlines the recommended format for a seller to use in preserving its interest in the statutory trust. Since unpaid live poultry growers and sellers have the

same written notice requirement, it is proposed that policy statement 203.15 be amended to include live poultry growers and sellers.

Weighing

Regulation 201.82 currently requires that every live poultry dealer or handler use reasonable care and promptness with respect to loading, transporting, holding, yarding, feeding, watering, weighing or otherwise handling live poultry to prevent waste of feed, shrinkage, injury, death or other avoidable loss. This regulation also requires that when live poultry is weighed on a vehicle by a packer or live poultry dealer or handler, the gross weight shall be determined on the scale normally used for such purpose as promptly as possible after the poultry is loaded on the vehicle.

The Packers and Stockyards Administration interpreted this regulation to mean that after loading, live poultry is to be transported without undue delay to the plant, holding area or other acceptable scale location and promptly weighed upon arrival.

Based on the results of a recent civil action filed in a United States District Court concerning the time of weighing for poultry obtained by a growout contract, the agency proposes to amend regulation 201.82 to conform with the court's decision.

The court's final judgment ordered defendants, "with regard to any truckload of poultry as to which processing does not begin within 12 hours after the poultry thereon has been taken off feed, to pay the grower based on a net weight taken within 12 hours after said poultry has been taken off feed."

Based on this decision, the Packers and Stockyards Administration proposes to amend and clarify regulation 201.82 by revising paragraph (b) to require that poultry obtained by growout contract be weighed for payment purposes immediately upon arrival at the processing plant or holding yard; *Provided*, That the poultry must be weighed no later than 12 hours from the time the poultry is taken off feed.

Executive Order

Regulatory impact analysis is not required for these amendments because it has been determined that they are not "major" rules as defined by section 1(b) of E.O. 12291. They will not have an annual effect on the economy of \$100 million or more, and they will not result in major increases in costs or prices for consumers, individual industries, government agencies or geographic regions. They will not have significant

adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that these amendments will not have significant impact on family formation, maintenance and general well-being, per E.O. of September 2, 1987, and will not have substantial direct effects on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, per E.O. of October 23, 1987.

Regulatory Flexibility Act

It has been determined that these amendments will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

The amended information collection requirements contained in this proposal have been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Packers and Stockyards Administration, USDA, Washington, DC 20503.

List of Subjects in 9 CFR Parts 201 and 203

Stockyards, Market agencies, Dealers, Packers, Live poultry dealers.

Done at Washington, DC, this 5th day of July, 1988.

B.H. (Bill) Jones,
Administrator, Packers and Stockyards Administration.

Accordingly, it is proposed that 9 CFR 201.43(d) be removed; § 201.43(b)(4) and the heading for paragraph (b), 201.49(b), 201.53, 201.71(a), (b), and (d), 201.72(a) and (b), 201.73, 201.76, 201.82, 201.94, 201.95, 201.96, 201.97, 201.100, 203.4(a), (b), (c), and the section heading, and 203.15 be revised to read as set forth below. The authority citation for Part 201 and §§ 203.4 and 203.15 continues to read as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

Authority: Sec. 202, 407, 407(a), 42 Stat. 160, 169, as amended, 7 U.S.C. 222, 228, 228(a).

§ 201.43 Payment and accounting for livestock and live poultry.

(b) *Prompt payment for livestock and live poultry—terms and conditions.* . . .

(4) No packer, live poultry dealer, market agency, or livestock dealer shall as a condition to its purchase of livestock or poultry, impose, demand, compel or dictate the terms or manner of payment, or attempt to obtain a payment agreement from a seller through any threat of retaliation or other form of intimidation.

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock and live poultry.

(b) *Poultry.* When live poultry is weighed for the purpose of purchase, sale, acquisition, or settlement by a live poultry dealer, a scale ticket shall be issued which shall show: (1) The name of the agency performing the weighing service; (2) the name of the live poultry dealer; (3) the name and address of the grower, purchaser, or seller; (4) the name or initials of the person who weighed the poultry; (5) the location of the scale; (6) the gross weight, tare weight, and net weight; (7) the date and time gross weight and tare weight are determined; (8) the number of poultry weighed; (9) the weather conditions; (10) whether the driver was on or off the truck at the time of weighing; and (11) the license number of the truck or the truck number; *Provided*, That when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in paragraphs (b)(9), (10), and (11) of this section. Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the live poultry dealer.

§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.

No packer, live poultry dealer, stockyard owner, market agency, or dealer shall knowingly make, issue, or circulate any false or misleading reports, records, or representation concerning the market conditions or the prices or sale of any livestock, meat, or live poultry.

§ 201.71 Scales; accurate weights, repairs, adjustment or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers and live poultry dealers to weigh livestock, livestock carcasses or live poultry for the purpose of purchase,

sale, acquisition or settlement shall be installed, maintained and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code and Weights Code of the 1983 Edition of National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices", which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on October 24, 1984. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Handbook 44 is subject to change annually. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408.

(b) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock or live poultry for the purpose of purchase, sale, acquisition or settlement shall be equipped with a printing device which shall be used for recording weight values on a scale ticket or other document used for this purpose.

(d) No scales shall be operated or used by any stockyard owner, market agency, dealer, packer, or live poultry dealer to weigh livestock, livestock carcasses or live poultry for purposes of purchase, sale, acquisition or settlement unless it has been found upon test and inspection, as specified in § 201.72 of the regulations, to be in a condition to give accurate weight. If a scale is inspected or tested and found incorrect or inaccurate or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and met all accuracy requirements specified in the regulations.

§ 201.72 Scales: testing of.

(a) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock or live poultry for purposes of purchase, sale, acquisition or settlement, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations at least twice during each calendar year at intervals of

approximately six months. More frequent test will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer or live poultry dealer who weighs livestock, livestock carcasses or live poultry for purposes of purchase, sale, acquisition or settlement shall furnish reports of such tests and inspections on forms prescribed by the Administrator. The stockyard owner, market agency, dealer, packer or live poultry dealer shall retain one copy of the test and inspection report and shall file one copy with the regional office for the region in which the scale is located.

§ 201.73 Scale operators to be qualified.

Stockyard owner, market agencies, dealers, packers and live poultry dealers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses or live poultry for the purpose of purchase, sale, acquisition or settlement, and they shall require such employees to operate the scales in accordance with the regulations.

§ 201.76 Reweighing.

Stockyard owners, market agencies, dealers, packers and live poultry dealers shall reweigh livestock, livestock carcasses or live poultry on request of an authorized representative of the Secretary.

§ 201.82 Care and promptness in weighing and handling livestock and live poultry.

(a) Each stockyard owner, market agency, dealer, packer or live poultry dealer shall exercise reasonable care and promptness with respect to loading, transporting, holding, yarding, feeding, watering, weighing or otherwise handling livestock or live poultry to prevent waste of feed, shrinkage, injury, death or other avoidable loss.

(b) Poultry obtained by growout contract must be weighed for payment purposes immediately upon arrival at the processing plant or holding yard; *Provided*, That the poultry must be weighed no later than 12 hours from the time the poultry is taken off feed.

§ 201.94 Information as to business, furnishing of by packers, live poultry dealers, stockyard owners, market agencies, and dealers.

Each packer, live poultry dealer, stockyard owner, market agency, and dealer, upon proper request, shall give to the Secretary or his duly authorized representatives in writing or otherwise, and under oath or affirmation if requested by such representatives, any

information concerning the business of the packer, live poultry dealer, stockyard owner, market agency, or dealer which may be required in order to carry out the provisions of the Act and regulations in this part within such reasonable time as may be specified in the request for such information.

§ 201.95 Inspection of business records and facilities.

Each stockyard owner, market agency, dealer, packer or live poultry dealer upon proper request, shall permit authorized representatives of the Secretary to enter its place of business during normal business hours and to examine records pertaining to its business subject to the Act, to make copies thereof and to inspect the facilities of such persons subject to the Act. Reasonable accommodations shall be made available to authorized representatives of the Secretary by the stockyard owner, market agency, dealer, packer or live poultry dealer for such examination of records and inspection of facilities.

§ 201.96 Unauthorized disclosure of business information prohibited.

No agent or employee of the United States shall, without the consent of the stockyard owner, market agency, dealer, packer or live poultry dealer concerned, divulge or make known in any manner, any facts or information regarding the business of such person acquired through any examination or inspection of the business or records of the stockyard owner, market agency, dealer, packer or live poultry dealer, or through any information given by the stockyard owner, market agency, dealer, packer or live poultry dealer pursuant to the Act and regulations, except to such other agents or employees of the United States as may be required to have such knowledge in the regular course of their official duties or except insofar as they may be directed by the Administrator or by a court of competent jurisdiction, or except as they may be otherwise required by law.

§ 201.97 Annual reports.

Each packer, live poultry dealer, stockyard owner, market agency, and dealer (except a packer buyer registered to purchase livestock for slaughter only) shall file annually with the

Administration a report on prescribed forms not later than April 15 following the calendar year end or, if the records are kept on a fiscal year basis, not later than 90 days after the close of his fiscal year. The Administrator on good cause shown, or on his own motion, may grant a reasonable extension of the filing date

or may waive the filing of such reports in particular cases.

§ 201.100 Records to be furnished poultry growers and sellers.

(a) *Contracts; contents.* Each live poultry dealer who enters into a growout (feeding) contract with a poultry grower shall furnish the grower a true written copy of the contract, which shall clearly specify:

(1) The duration of the contract and conditions for the termination of the contract by each of the parties; and

(2) All terms relating to the payment to be made to the poultry grower, including among others, where applicable, the following:

(i) The party liable for condemnations, including those resulting from plant errors;

(ii) The method for figuring feed conversion ratios;

(iii) The formula or method used to convert condemnations to live weight;

(iv) The per unit charges for feed and other inputs furnished by each party; and

(v) The factors to be used when grouping or ranking poultry growers.

(b) *Settlement sheets; contents; supporting documents.* Each live poultry dealer, who acquires poultry pursuant to a contract with a poultry grower, shall prepare a true and accurate settlement sheet (final accounting) and furnish a copy thereof to the poultry grower at the time of settlement. The settlement sheet shall contain all information necessary to compute the payment due the poultry grower. For all such arrangements in which the weight of birds affects payment, the settlement sheet shall show, among other things, the number of live birds marketed, the total weight and the average weight of the birds, and the payment per pound.

(c) *Condemnation and grading certificates.* Each live poultry dealer, who acquires poultry pursuant to a contract with a poultry grower which provides that official U.S. Department of Agriculture condemnations or grades, or both, are a consideration affecting payment to the grower, shall obtain an official U.S. Department of Agriculture condemnation or grading certificate, or both, for the poultry and furnish a copy thereof to the poultry grower prior to or at the time of settlement.

(d) *Grouping or ranking sheets.* Where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon the grouping or ranking of poultry growers delivering poultry during a specified period, the live poultry dealer shall furnish the poultry grower, at the time of settlement, a copy of the

grouping or ranking sheet which shows the grower's precise position in the grouping or ranking sheet for that period. The grouping or ranking sheet need not show the names of other growers, but shall show the actual figures upon which the grouping or ranking is based for each grower grouped or ranked during the specified period.

(e) *Live poultry purchases.* Each live poultry dealer who purchases live poultry shall prepare and deliver a purchase invoice to the seller at time of settlement. The purchase invoice shall contain all information necessary to compute payment due the seller. When U.S. Department of Agriculture condemnations or U.S. Department of Agriculture grades, or both, of poultry purchased affect final payment, copies of official U.S. Department of Agriculture condemnation certificates or grading certificates, or both, shall be furnished to the seller at or prior to the time of settlement.

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

Authority: 7 U.S.C. 220, 7 U.S.C. 222, and 15 U.S.C. 46

§ 203.4 Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers.

(a) *Records to be kept.* Section 401 of the Packers and Stockyards Act (7 U.S.C. 221) provides, in part, that every packer, live poultry dealer, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. In order to properly administer the P&S Act, it is necessary that records be retained for such periods of time as may be required to permit the Packers and Stockyards Administration a reasonable opportunity to examine such records. Section 401 of the Act does not, however, provide for the destruction or disposal of records. Therefore, the Packers and Stockyards Administration has formulated this policy statement to provide guidance as to the periods of time after which records may be disposed of or destroyed.

(b) *Records may be disposed of after two years except as otherwise provided.* Except as provided in paragraph (c) of this section, each packer, live poultry dealer, stockyard owner, market agency, and dealer may destroy or dispose of

accounts, records, and memoranda which contain, explain, or modify transactions in its business subject to the Act after such accounts, records, and memoranda have been retained for a period of two full years; *Provided*, That the following records made or kept by a packer may be disposed of after one year: cutting tests; departmental transfers; buyers' estimates; drive sheets; scale tickets received from others; inventory and products in storage; receiving records; trial balances; departmental overhead or expense recapitulations; bank statements, reconciliations and deposit slips; production or sale tonnage reports (including recapitulations and summaries of routes, branches, plants etc.); buying or selling pricing instructions and price lists; correspondence; telegrams; teletype communications and memoranda relating to matters other than contracts, agreements, purchase or sales invoices, or claims or credit memoranda; and *Provided further*, That microfilm copies of records may be substituted for and retained in lieu of the actual records.

(c) *Retention for longer periods may be required.* The periods specified in paragraph (b) of this section shall be extended if the packer, live poultry dealer, stockyard owner, market agency, or dealer is notified in writing by the Administrator that specified records should be retained for a longer period pending the completion of any investigations or proceedings under this Act.

Authority: Sec. 401, 42 Stat. 168 (7 U.S.C. 221); sec. 407, 42 Stat. 169 (7 U.S.C. 228); sec. 409, as added by sec. 7, 90 Stat. 1250 (7 U.S.C. 228b); 7 CFR 2.17, 2.54; 42 FR 35825; Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.); 7 U.S.C. 222 and 226 and 15 U.S.C. 46)

§ 203.15 Trust benefits under sections 206 and 207 of the Act.

(a) Within the times specified under sections 206(b) and 207(d) of the Act, any livestock seller, live poultry seller or grower, to preserve his interest in the statutory trust, must give written notice to the appropriate packer or live poultry dealer and file such notice with the Secretary. One of the ways to satisfy the notification requirement under these provisions is to make certain that notice is given to the packer or live poultry dealer within the prescribed time by letter, mailgram, or telegram stating:

- (1) Notification to preserve trust benefits;
- (2) Identification of packer or live poultry dealer;
- (3) Identification of seller or poultry grower;

(4) Date of the transaction;
(5) Date of seller's or poultry grower's receipt of notice that payment instrument has been dishonored (if applicable); and

(6) Amount of money due; and to make certain that a copy of such letter, mailgram, or telegram is filed with a P&SA Regional Office or with P&SA, USDA, Washington, DC 20250, within the prescribed time.

(b) While the above information is desirable, any written notice which informs the packer or live poultry dealer and the Secretary that the packer or live poultry dealer has failed to pay is sufficient to meet the above-mentioned statutory requirement if it is given within the prescribed time.

[FR Doc. 88-15400 Filed 7-8-88; 8:45 am]
BILLING CODE 3410-30-4

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-30; Notice No. 30-88-4-NM]

Special Conditions: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for Boeing Model 767 series airplanes which incorporate a longitudinal partition in the passenger cabin. The longitudinal partition installation is a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This special condition contains the safety standards which the Administrator finds necessary, because of the novel design feature, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before August 1, 1988.

ADDRESSES: Comments on this proposal may be mailed in duplicate to Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-30, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-30. Comments may be inspected in the Rules Docket weekdays, except

Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsoing, Regulations Branch, ANM-114, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2127.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before further rulemaking action is taken on this proposal. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Rules Docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-30." The postcard will be date/time stamped and returned to the commenter.

Background

On November 3, 1987, The Boeing Company applied for a change to their Type Certificate No. A1NM for installation of a longitudinal partition in their Model 767 series airplanes. The model 767 currently approved under Type Certificate No. A1NM is a pressurized, low wing, transport category airplane powered by two turbofan engines.

Under the provisions of § 21.101(a) of the Federal Aviation Regulations (FAR), The Boeing Company must show that the Model 767, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM, or the applicable regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations

(i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model 767 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

In addition to the applicable airworthiness regulations and special conditions, the Model 767 must comply with the noise certification requirements of Part 36 and the engine emission requirements of Special Federal Aviation Regulations (SFAR) 27.

Novel or Unusual Design Features

The Model 767-300 will incorporate a novel or unusual design feature associated with the installation of an opaque, longitudinal partition installed in the forward cabin separating two small passenger cabin sections.

The partition is installed near the centerline of the airplane, starting at a lavatory and extending aft for five rows of seats. The partition is the full height of the cabin, and will prevent passenger crossover from one aisle to the other throughout its length. Additionally, there will be some obscuration of visibility of the cabin in the vicinity of the partition.

The 767-300 is currently approved for a maximum capacity of 290 passengers, and The Boeing Company has proposed a passenger capacity of 235 with the longitudinal partition installed.

Due to the novel or unusual design feature associated with the installation of a longitudinal partition, a special condition is considered necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference in the type certificate. Although the initial installation will be in 767-300 series airplanes, the partition may be installed in any series of the Model 767. The special condition proposed would therefore be applicable to any Model 767 series airplane in which this feature is installed.

As the intended type certification date for approval of the 767 with the installation of a longitudinal partition is approximately August 15, 1988, the public comment period is shortened to 20 days in order to make the final special condition effective prior to that date.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for Boeing Model 767 series airplanes with longitudinal partitions installed:

In addition to applicable Part 25 requirements, the applicant must show that the longitudinal partition does not have a significant adverse effect on emergency evacuation of the airplane. Evaluation of the installation must specifically consider the degree to which the partition creates a physical obstruction to movement, or impairs the ability of occupants to visually identify and evaluate the availability of exits and escape paths.

Issued in Seattle, Washington on June 30, 1988.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 88-15429 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

(Airspace Docket No. 88-ASW-20)

Proposed Alteration of VOR Federal Airway V-583; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-583 located in the vicinity of Leona, TX. The FAA proposes to extend V-583 from Leona very high frequency omnidirectional radio range and tactical air navigational air (VORTAC) to Austin, TX, VORTAC via College Station, TX. This action would improve the flow of traffic to/from the Austin terminal area, improve flight planning and reduce controller workload.

DATE: Comments must be received on or before August 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASW-20, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 88-ASW-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-583 by extending that airway from Leona VORTAC via College Station VORTAC to Austin VORTAC. Houston ARTCC request this extension be considered for implementation. Currently aircraft inbound to Austin must be given a very detailed and lengthy clearance. This action would provide controlled airspace routing to/from the Austin terminal in an area where radar vectors are now utilized, thereby reducing controller workload and improving flight planning. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 40 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-583 [Revised]

From Austin, TX; College Station, TX; Leona, TX; Frankston, TX; to Quitman, TX. Issued in Washington, DC, on June 21, 1988.

Shelomo Wugallier,

Acting Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 88-15426 Filed 7-9-88; 8:45 am]

BILLING CODE 4910-12-02

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 71

[Notice No. 661]

Requests or Demands for Disclosure of Information in Testimony and in Related Matters

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering an amendment to the regulation governing requests and demands for disclosure of information in court testimony and related matters. The amendment would require an affidavit to be filed whenever the testimony of an ATF officer or employee is sought on behalf of a party other than the Federal Government or a State. The affidavit would indicate the matters about which the officer or employee would testify. The Director or his delegate would use the affidavit to determine whether to allow the officer or employee to testify. In addition, the amendment would require any request or demand for testimony or production of records to be served at least 5 working days before the scheduled date of disclosure, to

insure that there will be enough time to properly consider whether to grant the request or demand. Finally, the amendment would specify some of the considerations to be used in determining whether to grant requests or demands for disclosure in testimony and related matters. Due to an increase in requests for ATF officers and employees to testify and/or disclose records, the regulations need to be amended to provide additional guidelines regarding the necessary prior authorizations.

COMMENT DATE: Written comments must be received by September 9, 1988.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 386, Washington, DC 20044-0386 (Notice No. 661). Copies of the proposed regulations and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566-7626.

SUPPLEMENTARY INFORMATION: ATF regulations provide that Bureau officers and employees shall not testify or disclose official records, in criminal or civil court cases, without prior authorization from the Director or his delegate (27 CFR 71.27). Due to an increase in requests for ATF officers and employees to testify and/or disclose records, the regulations need to be amended to provide additional guidelines regarding the necessary prior authorization. The amendment would set forth uniform and expeditious procedures for obtaining the prescribed authorization.

The Director is often requested to authorize a court appearance of an ATF official, without an adequate explanation of the nature of the testimony being sought, and without adequate time to determine the ramifications of the testimony from the Government's standpoint. It is important for the Director to have sufficient time and data to ascertain whether the requested testimony would disclose the identity of confidential informants, jeopardize a pending criminal case or investigation by prematurely revealing information about it, or disclose information prohibited by law from disclosure.

The proposed amendment would add three new subparagraphs under

paragraph (e) of § 71.27. Paragraph (e), titled "Procedure in the event of a request or demand for ATF records or information," currently gives procedures for processing and responding to such requests or demands, but not for submitting them or deciding whether to grant them. New subparagraphs (e)(3), (e)(4), and (e)(5) would provide the necessary procedures.

The proposed new subparagraph (e)(3) would require an affidavit to be prepared by the party (or his attorney) who makes a request or demand (including a subpoena *duces tecum*) for the testimony of an ATF officer or employee. This new requirement would not apply to a request or demand from the Federal Government or a State, because § 71.27(e) generally does not apply to such requests or demands. The affidavit would be required to specify the information about which the testimony of the ATF officer or employee is desired. The affidavit would enable the Director or his delegate to make an informed decision whether to authorize the officer or employee to testify. No affidavit is needed in the case of a request or demand for ATF records only (as opposed to testimony), since the request or demand itself would specify the matters sought to be disclosed.

Proposed new subparagraph (e)(4) sets a time limit within which any request or demand for testimony or disclosure of records would have to be served. Service would be required at least 5 working days before the date scheduled for the disclosure of information. This would give ATF time in which to evaluate the request or demand and to decide whether it may be granted. This time requirement, as well as the affidavit requirement of new subparagraph (e)(3), may be waived upon a demonstration that emergency circumstances or other good cause reasons make compliance infeasible or impractical.

Proposed new subparagraph (e)(5) contains a brief discussion of the factors to be considered in determining whether to grant requests or demands made under § 71.27. This new subparagraph would apply both to testimony and to the disclosure of records in testimony-related matters. No attempt is made to present an exhaustive catalog of the determining factors to be considered, since that would be impossible, due to the many variations from case to case. Rather, the proposed subparagraph presents the general principle to be followed, and then a list of the most common reasons for denial of requests or demands for disclosure under § 71.27.

Because some of the authorities of the Director under Part 71 (including the authorities under § 71.27) have been redelegated to subordinate officials, it is proposed to amend the definition of "Director" in § 71.11 to add the words "or his delegate." The Director's zip code is added also.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal, because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 36, and its implementing regulations, 5 CFR Part 1320, do not apply to this Notice, because no requirement to collect information is proposed. An affidavit is excluded from the definition of "information" under regulations of the Office of Management and Budget, 5 CFR 1320.7(j)(1) (revised, May 10, 1988).

Public Participation—Written Comments

ATF requests comments concerning this proposed amendment from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after the date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public.

Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director, within the 60-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Mr. Steven Simon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 71

Administrative practice and procedure. Authority delegations. Freedom of information, Privacy.

Insuance

Accordingly, the Director proposes the amendment of 27 CFR Part 71 as follows:

PART 71—STATEMENT OF PROCEDURAL RULES

Paragraph 1. The authority citation for Part 71 continues to read as follows:

Authority: 5 U.S.C. 301, 552.

Par. 2. The definition of "Director" in § 71.11 is revised to read as follows:

§ 71.11 Meaning of terms.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226, or his delegate.

Par. 3. Section 71.27 is amended to add paragraphs (e)(3), (e)(4), and (e)(5) as follows:

§ 71.27 Requests or demands for disclosure in testimony and in related matters.

(e) . . .

(3) *Affidavit required for testimony.* Whenever a request of demand is made for the testimony of an ATF officer or employee, on behalf of a party other than the Federal Government or a State, the party making the request, or his attorney, shall submit an affidavit. The affidavit shall set forth the information with respect to which the testimony of the officer or employee is desired. The affidavit must be submitted before permission to testify may be granted. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand.* The request or demand, together with the affidavit (if required by paragraph (e)(3) of this section), shall be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to insure that the Director has adequate time to consider whether to grant the request or demand. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted.* The Director shall consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in—

(i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;

(ii) The revealing of classified information;

(iii) The revealing of a confidential source or informant, unless the ATF officer or employee and the source or informant have no objection;

(iv) The revealing of investigative records compiled for law enforcement purposes, or investigative techniques and procedures, the effectiveness of which would thereby be impaired;

(v) The revealing of information that may jeopardize or conflict with any criminal investigation or pending criminal case; or

(vi) The revealing of trade secrets without the owner's consent.

Signed: May 26, 1988.

Stephen E. Higgins,
Director.

Approved: June 23, 1988.

John P. Simpson,
Acting Assistant Secretary (Enforcement),
[FR Doc. 88-15369 Filed 7-6-88; 8:45 am]

BILLING CODE 4910-15-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-3406-1]

National Oil and Hazardous Substances Contingency Plan; The National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). This action is being taken by EPA, because it has been determined that all Fund-financed response under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete a site from the NPL.

DATE: Comments concerning the site may be submitted up to and including August 10, 1988.

ADDRESSES: Comments may be mailed to Richard D. Stonebraker, Chief, Superfund Branch, Waste Management Division, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. Comprehensive information on this site is available through the EPA Region IV Docket clerk.

Requests for comprehensive copies of documents should be directed formally to the EPA Region IV Docket Office. Address for the Regional Docket Office is:

Gayle Alston, Region IV, USEPA Library, Room C-8, 345 Courtland

Street, NE., Atlanta, Georgia 30365, 404/347-4218.

FOR FURTHER INFORMATION CONTACT: Patrick M. Tobin, Director, Waste Management Division, c/o Nancy Dean, Remedial Project Manager, 345 Courtland Street NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The site EPA intends to delete from the NPL is A.L. Taylor Site, Brooks, Kentucky.

The EPA will accept comments on this site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the Federal Register on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) on the NCP Provides that sites:

... may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with

the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment. In addition section 121(c) requires State concurrence for deleting a site from the National Priorities List.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the Federal Register on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the Federal Register on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region IV recommended deletion and prepared relevant documents.

2. EPA Region IV is providing a 30-day public comment period on the deletion package. The notification is being provided to local residents through local and community newspapers. The Region made all relevant documents available

in the Region IV office and local site information repositories.

3. The comments received during the notice and comment period will be evaluated before the tentative decision to delete was made.

4. Comments received during the notice and comment period will be evaluated before the final decision to delete. Region IV will prepare a responsiveness summary that will address the comments given in the public comment period.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the Federal Register. The NPL will reflect any deletion. Public notices and copies of the responsiveness summary will be made available to the local residents by Region IV.

IV. Basis for Intended Site Deletions

The following summary provides the Agency's rationale for intending to delete this site from the NPL.

A.L. Taylor Site, Brooks, Kentucky

The A.L. Taylor Site (Valley of the Drums) in Brooks, Kentucky was an uncontrolled industrial waste dump covering 13 acres near Brooks, Kentucky. The paints and coating industries of the Louisville area were the primary waste generators using the A.L. Taylor site. Some drums were emptied into open pits, cleaned and recycled. Other drums were buried on site, and during the later years of operation many drums were stored on the surface.

The A.L. Taylor site was a top priority site in Kentucky and was on the Interim Priority List of 160 sites. The site was ranked based on releases to surface water and to groundwater. In January 1979, the EPA responded to releases of oil and hazardous substances at the site to prevent further releases into nearby Wilson Creek by constructing interceptor trenches and a temporary water treatment system, securing leaking drums and segregating and organizing drums onsite. In 1981 EPA again inspected the site and discovered deteriorating and leaking drums and discharges of pollutants into Wilson Creek. The existing treatment system was upgraded and the remaining drums were removed offsite for disposal.

EPA completed a Feasibility Study of Remedial Alternatives (1982) a Feasibility Study Addendum and Endangerment Assessment Report (1984). The latter report determined that migration of hazardous substances from their original disposal area is minimal and EPA selected a remedy that provides adequate protection of public health, welfare and the environment by

onsite containment of waste and control of offsite migration of surface water runoff.

A Record of Decision (ROD) was signed on June 18, 1986. The remedy selected and implemented at the site included removal of ponded water, securing pond sludge from low-lying areas beneath the cap, installing a final cap for containment of the remaining buried waste, instituting a surface water monitoring on Wilson Creek, monitoring groundwater quality, fencing and thirty years of operation and maintenance. An action memorandum dated April 14, 1987 initiated the Remedial Action at the site by Region IV's Emergency Response and Removal Branch. All Remedial Action activities were completed by August 1987.

EPA, with the concurrence of the Commonwealth of Kentucky, has determined that all appropriate Fund-financed response under CERCLA at the A.L. Taylor site has been completed, and has determined that no further clean-up is appropriate. Operation and Maintenance have been assured by the Commonwealth of Kentucky.

Date: June 13, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88-14596 Filed 7-6-88; 8:45 am]

BILLING CODE 6550-30-50

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 88-16]

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; enlargement of time to comment.

SUMMARY: The Commission instituted this proposed rulemaking regarding service contracts by Federal Register notice of June 24, 1988, 53 FR 23776, and established July 25, 1988, as the date comments were due. Counsel for the North Europe-U.S. Gulf Freight Association, Gulf-European Freight Association, North Europe-U.S. Atlantic Conference and the U.S. Atlantic-North Europe Conference (collectively, "NEC") has filed a request to extend the time for comments 30 days, i.e. until August 24, 1988. NEC indicates that the additional time is needed to distribute comments and recommendations pertaining to the proposed rule between NEC members in the U.S. and Europe. Therefore, for good cause shown, the request for an

enlargement of time to comment will be granted.

DATE: Comments due on or before August 24, 1988.

ADDRESS: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796. Joseph C. Polking, Secretary.

[FR Doc. 88-15506 Filed 7-8-88; 8:45 am]
BILLING CODE 4730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Petition for Rule Making RM 5836, General Docket 88-261, FCC 88-185]

Advisory Labeling of Radio Receivers Communications Receivers in light of the Electronic Communications Privacy Act of 1986

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action responds to a petition by Regency Electronics requesting that the Commission's Rules be amended to require that communications scanning receivers be labeled with an advisory notice informing users that it may be a Federal criminal violation to intercept certain communications protected by the Electronic Communications Privacy Act.

DATES: Interested persons may file comments on or before August 5, 1988 and reply comments on or before August 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Marrangoni, telephone (202) 653-8107.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making adopted May 27, 1988, released June 14, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International

Transcription Service. (202) 857-3800, 2100 M Street NW., Suite 140, Washington DC 20037.

Summary of Notice

1. On March 31, 1987 Regency Electronics (Regency) submitted a petition for rule making requesting that the Commission amend Part 15 of its rules to require advisory labeling of communications scanning receivers (scanners). Regency's petition stated that the purpose of a rule requiring labeling would be to help educate the public that certain uses of communication scanning receiver could be illegal in light of the passage of the Electronic Communications Privacy Act of 1986 (ECPA). Regency proposed the following wording:

Improper use of this device may violate the provisions of the Electronic Communications Act of 1986 through intentional unauthorized interception of protected communications.

2. Our review of the comments leads us to conclude that the existence of the ECPA should be brought to the attention of the users of receivers capable of intercepting protected communications. Scanner manufacturers and user groups who commented generally support the use of labeling to alert users that unrestricted reception of all radio communications is no longer permitted. Some commenters suggested that certain frequencies be "blocked" or filtered out. We feel that to do so would go beyond the intent of the law. Although the ECPA prohibits interception of certain classes of communications, the frequencies on which these communications are transmitted can be used for unprotected transmissions as well.

Proposal

3. A label appears to the simplest and least burdensome method of advising scanner users of the ECPA. Comments on the label proposed by the Petitioner or a label with alternative language is requested. A label would be required by all scanning radio receivers and manually tuned radio receivers intended for use by the general public. Excluded from this action are radio receivers which are marketed primarily for use in the licensed radio services, e.g., Industrial Radio Services and receivers used for the reception of broadcast transmissions, e.g., television, FM, AM receivers. We are also seeking comments on the possibility of requiring not only a label but some accompanying instructive material pointing more specifically to communications intended to be protected under the ECPA. The labeling requirement would apply to equipment manufactured some number

of months after the effective dates of a Report and Order this Docket. We request comments on an appropriate time interval.

H. Walker Feaster, III,
Secretary.

[FR Doc. 88-15443 Filed 7-8-88; 8:45 am]
BILLING CODE 4712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 542

[GSA Notice 5-284]

Acquisition Regulation; Novation Agreements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration invites public comments on a proposal to revise the General Services Administration Acquisition Regulation (GSAR) to add section 542.1203 to establish a policy for processing novation agreements for contracts set-aside for small business. The intended effect is to ensure uniform handling of requests to recognize third party successors in interest to GSA contracts.

DATE: Comments should be submitted to the Office of GSA Acquisition Policy and Regulations at the address shown below on or before August 10, 1988 to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Room 4028, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566-1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The proposed rule may have an economic effect on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis has been prepared and submitted to the Chief, Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available for public comment from the

office identified above. The initial regulatory flexibility analysis indicates that when a request to process a novation agreement is processed under FAR 42.12 the rule may effect small business firms that have been awarded contracts under the small business set-aside program and large business firms who are successors in interest to such small businesses. During FY 87, GSA awarded 3,598 contracts valued at \$197,004,000 to small businesses under the small business set-aside program. Historical data is not maintained that would identify how many requests to process novation agreements involve a transfer from a small business to a large business. The proposed rule may have a beneficial impact in that it will preserve the integrity of the small business set-aside program. However, the rule may also have a detrimental impact from the perspective of individual small business firms because it would adversely impact them by reducing the value of their assets in the event of a sale of all or part of their assets to a large business concern. The proposed rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Part 542
Government procurement.

PART 542—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 542 continues to read as follows:

Authority: 40 U.S.C. 480(c).

2. The table of contents for part 542 is amended by adding Subpart 542.12 to read as follows:

Subpart 542.12—Novation and Change-of-Name Agreements

Sec. 542.1203 Processing agreements.

3. Subpart 542.12 is added to read as follows:

Subpart 542.12—Novation and Change-of-Name Agreements

542.1203 Processing agreements.

In determining whether it is in the Government's interest to recognize a successor in interest under FAR 42.12 the contracting officer may consider, in addition to information provided by affected contracting and contract administration offices, information provided by the agency small business

technical advisor where the contract was awarded to a small business under a small business set-aside and the third party successor is a large business. This circumstance alone does not require the contracting officer to refuse to recognize the successor and nonconcur in the transfer of the contract(s), where it is otherwise in the Government's interest to do so, except where: (a) there is adequate reason to believe that the transaction is intended to circumvent the requirements and objectives of the small business program, or (b) the contract involved is a multiple award schedule (MAS) contract and other MAS contracts exist for the same special item number(s). If the MAS contract involves both set-aside and non-set-aside special item number, the contracting officer shall cancel the contract in part, and then process the novation request for the non-set-aside items under FAR 42.12.

Dated: July 5, 1988.

Ida M. Ustad,
Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 88-15386 Filed 7-8-88; 8:45 am]
BILLING CODE 4830-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee, Working Groups on Definitions, Biocontainment, and Research Guidelines; Meetings

In accordance with the Federal Advisory Committee Act of October, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meetings of three working groups of the Agricultural Biotechnology Research Advisory Committee (ABRAC).

The Working Group on Definitions will meet at the U.S. Department of Agriculture, Conference Room 338-C, Aerospace Building, 901 D Street SW., Washington, DC, 20024 on July 28, 1988, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss definitions to be included in the USDA guidelines for agricultural biotechnology research.

The Working Group on Research Guidelines will meet at the U.S. Department of Agriculture in Room 3109, South Building, 14th Street and Independence Avenue SW., Washington, DC, 20250 on July 28-29, 1988 from approximately 1:00 p.m. to 5:00 p.m. on July 28 and from approximately 9:00 a.m. to adjournment at approximately 3:00 p.m. on July 29 to discuss guidelines for agricultural biotechnology research.

The Working Group on Biocontainment will meet at the U.S. Department of Agriculture, Room 104-A (the Williamsburg Room), Administration Building, 14th Street and Independence Avenue SW., Washington, DC, 20250 on August 11-12, 1988, from approximately 9:00 a.m. to 5:00 p.m. on August 11 and approximately 9:00 a.m. to adjournment at approximately 3:00 p.m. on August 12 to discuss biological containment and

confinement in agricultural biotechnology research.

These three working group meetings are open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, Office of Agricultural Biotechnology, Room 321-A, Administration Building, 14th Street and Independence Avenue SW., Washington, DC, 20250, telephone (202) 447-9165.

Date: July 5, 1988.

Robert W. Long,
Deputy Assistant Secretary, Science and Education.

[FR Doc. 88-15455 Filed 7-8-88; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 378]

Resolution and Order Approving the Application of the Foreign-Trade Zone of Southeastern Pennsylvania for a Foreign-Trade Zone in Berks County, PA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, a Pennsylvania non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on October 20, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Berks County, Pennsylvania, adjacent to the Philadelphia Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary

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to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Berks County, PA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Foreign-Trade Zone Corporation of Southeastern Pennsylvania (the Grantee), a Pennsylvania non-profit corporation, has made application (filed October 20, 1988, Docket 33-86, 51 FR 40239) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Berks County, Pennsylvania, adjacent to the Philadelphia Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 147 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the

provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of June, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,
Chairman and Executive Officer.

Attest:

John J. DePonte, Jr.,
Executive Secretary.

[FR Doc. 88-15493 Filed 7-8-88; 8:45 am]
BILLING CODE 3510-05-M

[Order No. 384]

Resolution and Order Approving the Application of the Industrial Development Board of Blount County, Tennessee, for a Foreign-Trade Zone in the Knoxville Customs Port of Entry Area

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u),

the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Industrial Development Board of Blount County, Tennessee, a Tennessee public corporation, filed with the Foreign-Trade Zones Board (the Board) on May 12, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in Knox, Blount, and Anderson Counties, Tennessee, adjacent to the Knoxville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Knox, Blount, and Anderson Counties, Tennessee, Adjacent to the Knoxville Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Industrial Development Board of Blount County, Tennessee (the Grantee), a Tennessee public corporation, has made application (filed May 12, 1987, FTZ Docket 4-87, 52 FR 19547) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Knox, Blount, and Anderson Counties, Tennessee, adjacent to the Knoxville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 148, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of June, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.
C. William Verity,
Chairman and Executive Officer.

Attest:
John J. De Ponte, Jr.,
Executive Secretary.
[FR Doc. 88-15494 Filed 7-8-88; 8:45 am]
BILLING CODE 3510-05-M

[Order No. 385]

Resolution and Order Approving the Application of the Brazos River Harbor Navigation District for a Foreign-Trade Zone in the Freeport, Texas, Area

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 10, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Brazos River Harbor Navigation District, filed with the Foreign-Trade Zones Board (the Board) on October 22, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Brazoria County, Texas, within the Freeport Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation, including blending, within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Brazoria County, Texas, Within the Freeport Customs Port of Entry

Whereas, by an Act of Congress approved June 10, 1934, and Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to

grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Brazos River Harbor Navigation District (the Grantee) has made application (filed October 22, 1987, FTZ Docket 24-67, 52 FR 42025) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Brazoria County, Texas, within the Freeport Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 149, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, including blending, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United

States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of June, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.
C. William Verity,
Chairman and Executive Officer.

Attest:
John J. De Ponte, Jr.,
Executive Secretary.
[FR Doc. 88-15495 Filed 7-8-88; 8:45 am]
BILLING CODE 3510-05-M

International Trade Administration

[A-475-703]

Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin From Italy

AGENCY: Import Administration,
International Trade Administration,
Commerce.

ACTION: Notice.

SUMMARY: We have determined that granular polytetrafluoroethylene (PTFE) resin from Italy is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Brian H. Nilsson or Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-5332 or 377-2613.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that granular PTFE resin from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our notice of an affirmative preliminary determination (53 FR 12987, April 20, 1988) the following events have occurred. On April 27-29 and May 11-12, 1988, we conducted verification at the Montefluos S.p.A. ("Montefluos") and Ausimont U.S.A. ("Ausimont") offices, respectively.

In accordance with § 353.47 of our regulations (19 CFR 353.47), interested parties were provided an opportunity to comment on our preliminary determination by requesting a public hearing. Interested parties waived their rights to a hearing and submitted comments for the record in briefs dated June 8, 12, and 21, 1988.

Scope of Investigation

In its petition, Du Pont asked the Department to investigate both filled and unfilled granular polytetrafluoroethylene (PTFE) resin as provided for in item 445.54 of the *Tariff Schedules of the United States* (TSUS) and currently classified under Harmonized System (HS) item 3904.61.00. Although Du Pont does not produce filled PTFE, Du Pont asked that filled PTFE be included in the investigation to prevent the possible circumvention of any order on unfilled PTFE. Du Pont did not request that PTFE dispersions in water and fine powders be covered by this investigation; we accordingly have not included these products in our investigation.

The issue of whether filled resin should be included in this investigation depends on whether it is within the same "class or kind" of merchandise as unfilled resins. In our preliminary determination, the Department found that both filled and unfilled resins are within the same class or kind of merchandise. After carefully reviewing this issue, we have found no reasons to alter this decision.

The product under investigation, granular PTFE resin, consists of three types: Pelletized, fine cut, and presintered. Of these three types only fine cut can be filled. In order to understand the class or kind of merchandise analysis which follows, it is necessary to understand that the various types of granular PTFE share the same production process and that filled granular fine cut PTFE arises from a continuation of this processing.

All three types are produced by the conversion of the tetrafluoroethylene (TFE) monomer into granular resin by suspension polymerization, a process unique to the production of granular, as opposed to other PTFE. This process is designed to enhance the handleability,

moldability, physical and electrical properties of all types of granular PTFE resin.

Subsequent to the polymerization process, granular PTFE resin consists of stringy, raw polymers which are wet cut to achieve the desired size, are pelletized (agglomerized), and are dried. If granular fine cut or presintered resin is desired, the pelletized granular PTFE resin can be ground to form fine cut resin or ground and baked to form presintered resin. Once fine cut granular PTFE resin is formed, a producer may mix certain fillers or extenders, such as glass, bronze, carbon, or graphite, with the fine cut resin to strengthen the resin or enhance its mechanical properties. Filler can also be used merely to color the intermediate product in order to identify the product's source or dimension, where the fabricator is unable to mark the product because of the consistency of the granular PTFE.

In deciding that both filled and unfilled granular PTFE resin constitute one class or kind of merchandise, we have considered the following factors: (1) General physical characteristics; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the merchandise in question; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed.

First, filled and unfilled granular fine cut PTFE have the same general physical characteristics. Filled is simply unfilled fine cut PTFE with filler added. The filler is added to strengthen, color, or extend the unfilled fine cut resin. Adding filler is generally a simple process involving the mechanical mixing or stirring of the unfilled fine cut granular PTFE resin with the filler. According to the ITC preliminary determination report, filled PTFE is comprised on average of 20 percent filler material and 80 percent unfilled PTFE. See USITC Publication 2043 at A-3 (December 1987). Therefore, within this subdivision of the product under investigation, the base product, granular fine cut PTFE resin, generally constitutes the major portion of the product in question.

Second, with respect to ultimate use and customer expectations, the filling process produces a filled fine cut granular PTFE resin, similar in processability to unfilled fine cut granular PTFE resin. Most granular PTFE resin (filled and unfilled) is sold to fabricators. Fabricators expect to further process all granular PTFE resin by molding or extruding the resin in order to produce a variety of intermediate molded shapes and mechanical parts.

Third, the vast majority of granular PTFE resin is sold directly to fabricators who use the resin to produce a wide range of intermediate mechanical, chemical, and electrical products.

Finally, we have no evidence that the manner in which the product was advertised and displayed is not the same.

On balance, we concluded that filled and unfilled granular PTFE resins comprise a single class or kind of merchandise. To exclude filled granular fine cut PTFE resin, which is merely a sub-category of granular fine cut PTFE resin, from this investigation would result in an unduly narrow definition of the product subject to this investigation.

Standing

We preliminarily determined that the petitioner, Du Pont, had standing with respect to both filled and unfilled granular PTFE resins, based on the facts that (1) Du Pont filed its petition on behalf of the granular PTFE resin industry; (2) no producer eligible for inclusion under section 771(4)(B) of the Act has objected to the inclusion of filled granular PTFE resin within the scope of the investigation; (3) the ITC preliminarily found that there is one industry producing one like product in the United States; and (4) Du Pont manufactures the product under investigation, granular PTFE resin. Therefore, in accordance with section 771(9)(C) of the Act (19 U.S.C. 1677(9)(C)), we preliminarily found that the petition was brought on behalf of the U.S. industry and that Du Pont is an interested party with respect to the "like" product, granular PTFE resin.

In their June 13, 1988, brief, counsel for respondent Montefluos S.p.A./Ausimont U.S.A. alleged that producers accounting for 87 percent of the domestic production of filled PTFE oppose an investigation of that product, citing only to a March 3, 1988, submission by Asahi Fluoropolymers Co., Ltd. ("Asahi") and ICI-Americas, Inc. ("ICI"), respondents in the companion case involving granular PTFE resin from Japan. However, one week earlier, counsel for Asahi and ICI formally withdrew the March 30, 1988 submission. Therefore, since the only evidence which respondent filed to support the alleged opposition to Du Pont's standing with regard to filled granular PTFE has been withdrawn, we have no basis to find that the petition was not filed on behalf of the U.S. granular PTFE industry.

Moreover, we have continued to find that Du Pont is an interested party with respect to the "like" product, granular PTFE resin, and has standing to bring a

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case with respect to filled granular PTFE resin. Although the parties have submitted various arguments on this issue, we have not received sufficient evidence to reach a decision contrary to that in our preliminary determination. Nevertheless, because of the importance we placed in our preliminary determination on the ITC's finding of one "like" product and one industry, we will not consider Du Pont to have standing with respect to filled granular PTFE resins (since, as noted above, Du Pont does not produce the filled product), if the ITC finds in their final determination that filled and unfilled are separate like products. As a result, if the ITC finds separate like products, we will rescind the initiation of this investigation as it pertains to filled granular PTFE resin.

Period of Investigation

The period of investigation is June 1, 1987, through November 30, 1987.

Such or Similar Comparisons

We determined that Montefluos had sufficient home market sales of such or similar merchandise to form the basis for calculating foreign market value. Where possible, we compared sales of identical merchandise in the two markets. Where identical merchandise was not sold in both markets, we based our comparisons on the most similar merchandise within each product category, basing our matches on basic properties, average particle size, bulk density, radial shrinkage, and transforming conditions. Montefluos has claimed, and we verified, that there is no difference in costs between the grades within each of the three types. Therefore, where comparisons of similar merchandise were made, they were done between grades within a given type and no adjustments for differences in merchandise were required.

Fair Value Comparisons

To determine whether sales of granular PTFE resin from Italy to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Montefluos failed to report data on sales of filled granular PTFE resins. For purposes of our final determination, the dumping margin for sales of filled resins was based on best information available, to compensate for that percentage of sales not reported, in accordance with section 776(b) of the Act. This statutory provision requires the Department to use best information available "whenever a party or any other person refuses or is unable to produce information requested in a

timely manner or in the form required, or otherwise significantly impedes an investigation." Therefore, we have assigned Montefluos, as best information available for its filled granular PTFE sales, the margin provided in the petition. This margin has been factored into Montefluos' weighted-average margin.

United States Price

For all sales by Montefluos of unfilled granular PTFE resin, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation. We calculated exporter's sales price based on packed c.i.f. duty paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for brokerage and handling, ocean freight, insurance charges, U.S. duty, U.S. inland freight, credit expenses, and other U.S. selling expenses pursuant to section 772(e) (1) and (2) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for sales of unfilled granular PTFE resin by Montefluos based on packed, c.i.f. delivered prices to unrelated purchasers. We made deductions, where appropriate, for inland freight and insurance, credit, rebates, and warranty expenses. We deducted indirect selling expenses incurred on home market sales up to the amount of such selling expenses incurred on sales in the United States, in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from the foreign market value and added U.S. packing costs.

Currency Conversion

Since all U.S. sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: The respondent has argued that the Department should not include filled PTFE resins within the scope of the investigation because (1) Du Pont, the sole petitioner and the only company supporting the petition, does not produce filled resins and, therefore, does not have the requisite standing to warrant an investigation of filled PTFE; (2) Du Pont's fear of circumvention, its sole reason for including filled PTFE in the petition, is unfounded, since (a) filled PTFE cannot be reprocessed or converted into unfilled PTFE or marketed as a substitute for unfilled PTFE and (b) the U.S. producers that account for about 90 percent of the U.S. production of filled PTFE make their own unfilled PTFE which is used as an input for the filled product; (3) filled PTFE cannot be substituted for unfilled PTFE since it is a different product in use and composition; and (4) two of the four producers of filled resins in the United States, who hold the vast majority of the U.S. market share for filled resins, oppose the inclusion of filled PTFE within the scope of the investigation.

The petitioner argues that the Department should maintain filled resins within the scope of the investigation because (1) filled resins fall within the same class or kind of merchandise as unfilled resins, according to the criteria normally used by the Department; (2) the possibility of circumvention remains an issue; (3) the ITC found that filled and unfilled resins are within one "like" product category; and (4) one of the two major U.S. producers of filled resins formally withdrew its opposition to the inclusion of filled PTFE within the scope of the investigation.

DOC Position: We agree with the petitioner. We have found that filled and unfilled granular PTFE resins are within the same class or kind of merchandise, as discussed in the "Scope of Investigation" section of this notice. We all conclude that petitioner does have the requisite standing at this time, as discussed in the "Standing" section above.

Comment 2: Respondent contends that in the preliminary determination the Department erroneously adjusted exporter sales prices in the United States for indirect selling expenses relative to U.S. sales that were incurred by Montefluos S.p.A. in Italy. They request that these expenses be deleted from the Department's final determination.

DOC Position: We disagree on two points. First, at the preliminary determination the Department did not make such an adjustment to the U.S. sales prices for these direct selling expenses. Secondly, we reviewed our adjustments to U.S. prices for indirect selling expenses after the preliminary determination and found that this additional adjustment was indeed necessary. When adjusting exporter sales price transactions, the Department deducts all indirect selling expenses related to U.S. sales, regardless of the geographical location where the expenses were incurred. This practice is consistent with 19 U.S.C. 1677a(e)(2) and has been upheld by the Court of International Trade. See *Silver Reed America v. United States*, CIT, Slip Op. 88-5 (January 12, 1988), rev'd, Slip Op. 88-37 (March 18, 1988). Accordingly, we have adjusted U.S. sales prices for both the indirect selling expenses incurred by Ausimont U.S.A. and those incurred by Montefluos S.p.A. for sales destined to the United States.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of granular PTFE resin from Italy, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse, for consumption, on or after April 20, 1988, the date of publication of the preliminary determination notice in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of granular PTFE resin from Italy exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Montefluos S.p.A./Ausimont U.S.A.	46.46
All others	46.46

ITC Notification

The accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or

cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on granular PTFE resin from Italy entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after final determination, if affirmative.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,
Assistant Secretary for Import
Administration.

July 5, 1988.

[FR Doc. 88-15406 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-05-M

[A-588-020]

Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers two manufacturers and their exporters of this merchandise to the United States, and the period November 1, 1985 through October 31, 1986. The review indicates the existence of no dumping margins for one manufacturer/exporter combination and *de minimis* dumping margins for the second manufacturer/exporter combination during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results. **EFFECTIVE DATE:** July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department

of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 4797) the final results of its last administrative review of the antidumping duty order on titanium sponge from Japan (49 FR 47053, November 30, 1984). Two respondents, Toho Titanium Co., Ltd. and Osaka Titanium Co., Ltd., and the petitioner, RMI Corporation, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on December 18, 1986 (51 FR 45384). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

On May 28, 1987, the Department received a request for revocation of the antidumping duty order from Osaka Titanium.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item number with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-

to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates and sheets. Titanium sponge is currently classifiable under item 829.1420 of the TSUSA and under item number 8180.10.50 of the Harmonized System.

The review covers two manufacturers and their exporters of Japanese titanium sponge to the United States, and the period November 1, 1985 through October 31, 1986.

United States Price

In calculating United States price the Department used purchase price or exporter's sale price ("ESP"), as defined in section 772 of the Tariff Act, as appropriate.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price when the following criteria were met:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling function of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

We used ESP as the basis of U.S. price in instances where the merchandise is ordinarily diverted into inventory by the related U.S. selling agent. The Department regards this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to the Department's questionnaires in a short

period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

Shipments by Toho to the U.S. during the review period were made pursuant to a long-term contract that predates the review period. Toho contends that, for purposes of comparison to foreign market value as of the date of the U.S. sale, the contract date should be used as date of sale for those shipments. RMI maintains that the dates of sale should be the shipment dates or, at the earliest, the date of the delivery instructions. RMI reasons that the contract is only an options contract, i.e., an open offer by Toho, accepted by the buyer upon scheduling shipment. In order to resolve date of sale issues, the Department is guided primarily by the date when the essential terms of the sale are established, quantity and price in particular, such that the parties have nothing left to negotiate. In this instance, the essential terms were set when the parties entered into the contract. Toho was committed to a price, as well as a total volume, at the contract date. We have evaluated the arguments that the contract constitutes an option and have preliminarily determined that it does not. In addition, since the parties performed in accordance with the contract, we preliminarily determine that the date of sale for these shipments is the contract date.

Purchase price was based on the packed f.o.b. (U.S. port) or delivered price to unrelated purchasers in the United States. Exporter's sales price was based on the packed delivered price to the first unrelated purchaser in the United States.

Where applicable, we made deductions for ocean freight, marine insurance, U.S. and foreign brokerage/handling fees, U.S. and foreign inland freight, foreign inland insurance, and U.S. customs duties. For exporter's sales price, we made further adjustments for the parent's and U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient home market sales of such or similar merchandise at or above the cost of production to provide a basis for comparison.

Home market price was based on the delivered packed price with adjustments, where applicable, for inland freight and insurance, rebates, post-sale warehousing, credit, and

differences in the cost of packing. We made further adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and, in the case where U.S. price was exporter's sales price, for U.S. indirect selling expenses.

Revocation

The Department has decided not to grant Osaka Titanium a tentative revocation due to inadequate evidence that dumping is unlikely to be resumed. Contributing factors in reaching this decision are Osaka's large surplus titanium sponge inventories, the decline in purchasing power of the dollar against the yen, and the minimal pricing differential currently existing between the U.S. and domestic markets.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period November 1, 1985 through October 31, 1986:

Manufacturer/exporter	Margin (percent)
Toho Titanium/Mitsui	.00
Osaka Titanium/Sumitomo	.03

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions directly to the Customs Service.

Further, as provided for by 19 CFR 353.48(b), because no dumping margin exists for Toho Titanium/Mitsui and the

margin for Osaka Titanium/Sumitomo is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties for these firms. For any shipments from Nippon Soda, the cash deposit will continue to be at the rate published in the antidumping duty order for this firm (49 FR 47053, November 30, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after October 31, 1986 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements and waivers are effective for all shipments of Japanese titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,
Assistant Secretary for Import
Administration.

Date: July 1, 1988.

[FR Doc. 88-15497 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-05-M

[C-357-002]

Wool From Argentina: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on wool from Argentina. We preliminarily determine the total bounty or grant to be 6.23 percent *ad valorem* during the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Background

On June 18, 1987, the Department of Commerce ("the Department") published in the Federal Register (52 FR 23196) the final results of its last administrative review of the countervailing duty order on wool from Argentina (48 FR 14423), April 4, 1983). On April 28, 1987, an importer, Hart Incorporated, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on May 20, 1987 (52 FR 18937). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Center Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the TSUSA. These products are currently classifiable under HS item numbers 510.111.50, 510.121.35 and 510.121.40. We invite comments from all interested parties on these HS classifications.

The review covers the period January 1, 1986 through December 31, 1986 and six programs.

Analysis of Programs

(1) *Incentives for Exports from Southern Ports.* This program provides a

payment upon export for goods shipped from the southern ports of Argentina. The payment is an incentive to promote economic development in the regions south of the Rio Colorado and to develop the southern ports as the primary means of transportation from the southern regions of the country.

Law 23.018/83, effective December 21, 1983, provided for payments ranging from 8 to 13 percent, depending on the port, of the f.o.b. price of the exported merchandise. The law also provided for a reduction of one percentage point for each port as of January 1, 1984, and for the rates to remain at the resulting level for a period of eleven years.

The Argentine government did not respond to our questionnaire. Therefore, as the best information available, we preliminarily determine the benefit from this program to be the rate determined in our last review, which was 6.23 percent *ad valorem*.

(2) *Reembolso.* The reembolso is a cash rebate of taxes paid upon exportation and calculated as a percentage of the f.o.b. invoice price. On May 5, 1982, Resolution 437 abolished the 5 percent reembolso for washed wool. It has not been reinstated. There is no reembolso for wool in the grease, the only other merchandise included in the order. Therefore, we preliminarily determine that there is no benefit from this program.

(3) *Preferential Pre-export Financing.* Because exporters of wool are ineligible for this program, we preliminarily determine that there is no benefit from this program.

(4) *Other programs.* In the original investigation, we found that the following programs had been terminated or suspended:

A. Multiple exchange rates;
B. Government assistance to wool growers in Patagonia; and
C. Financial reorganization aids.
We therefore preliminarily determine that there is no benefit from these programs.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 6.23 percent *ad valorem* for the period January 1, 1986 to December 31, 1986. The Department intends to instruct the Customs Service to assess countervailing duties of 6.23 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1986 and on or before December 31, 1986.

The Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing

duties, as provided by section 751(a)(1) of the Tariff Act, of 0.23 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held within 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,
Acting Assistant Secretary, Import Administration.

Date: July 5, 1988.

[FR Doc. 88-15498 Filed 7-5-88; 8:45 am]

BILLING CODE 3510-DS-M

Brown University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-161. Applicant: Brown University, Providence, RI 02912. Instrument: Thermal Ionization Isotope Ratio Mass Spectrometer, 261V. Manufacturer: Finnigan-MAT, West Germany. Intended Use: See notice at 53 FR 17095, May 13, 1988.

Comments: None received. Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used,

and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (December 20, 1987). Reasons: The foreign instrument provides precise automated variable multicollector thermal ionization of isotopic ratios on small samples (10⁻⁶ to 10⁻⁴ grams). This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the only known domestic manufacturer it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88-15499 Filed 7-5-88; 8:45 am]
BILLING CODE 3510-DS-M

Rutgers University et al., Consolidated Decision On Applications for Duty-Free Entry of Scientific Accessories

This is a decision consolidated pursuant to section 6(c) of the

Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-151. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Scanning Auger System and Accessories for Surface Analysis Instrument. Manufacturer: KRATOS, United Kingdom. Intended Use: See notice at 53 FR 17093, May 13, 1988.

Docket Number: 88-156. Applicant: University of California, Santa Barbara, CA 93106. Instrument: Electron Backscatter Pattern Imaging and Analysis System. Manufacturer: Custom Camera Designs Ltd., United Kingdom. Intended Use: See notice at 53 FR 17094, May 13, 1988.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88-15500 Filed 7-5-88; 8:45 am]
BILLING CODE 3510-DS-M

University of Oklahoma et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-064. Applicant: University of Oklahoma, Norman, OK 73019. Instrument: Temperature-jump and Stopped-flow Instrument. Manufacturer: Hi-Tech Scientific, Ltd., United Kingdom. Intended Use: See notice at 53 FR 0483, March 15, 1988. Reasons for this Decision: The foreign instrument is capable of conducting

temperature-jump (temperature rise of 6 °C within 2 μs) on an irreversible reaction or a short lived intermediate and stopped-flow with an 8 millisecond dead time over a 3 mm absorbance pathlength.

Docket Number: 88-153. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Imaging, Magnetic Sector Secondary Ion Mass Spectrometer, Model IX70S. Manufacturer: VG Ionex, United Kingdom. Intended Use: See notice at 53 FR 17094, May 13, 1988. Reasons for this Decision: The foreign instrument provides a mass resolution in positive and negative SIMS mode of 10,000 with a mass resolution stability within 30 ppm in 10 min.

Docket Number: 88-156. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: Infrared Charged Sweep Device Camera System, Model IR-5120A. Manufacturer: Mitsubishi Electric Corporation, Japan. Intended Use: See notice at 53 FR 17094, May 13, 1988. Reasons for this Decision: The foreign article provides an infrared charge sweep device allowing a high IR sensitivity resolution (512 x 512 pixels).

Docket Number: 88-159. Applicant: University of California, Santa Cruz, CA 95064. Instrument: Dilution Refrigerator Unit with Accessories, Model MINIFRIDGE. Manufacturer: CryoVac, West Germany. Intended Use: See notice at 53 FR 17094, May 13, 1988. Reasons for this Decision: The foreign article allows studies of materials at temperatures <1°K.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88-15501 Filed 7-5-88; 8:45 am]
BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Bio-Rad Laboratories

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bio-Rad

Laboratories, having a place of business at 1414 Harbor Way, Richmond, CA 94804, an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Applications Serial Number 7-142, 878 and Serial Number 7-159,847, "Polyacrylamide Gels for Improved Detection of Proteins". The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,
Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.
[FR Doc. 88-15499 Filed 7-5-88; 8:45 am]
BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Bronx, NY

AGENCY: Minority Business Development Agency, Commerce.
ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at \$280,000 in Federal funds and a minimum of \$45,000 in non-Federal contributions for the budget period December 1, 1988 to November 30, 1989. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Bronx, New York SMSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement.

Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of \$50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of \$500,000 or less and 35% of the total cost for firms with gross sales of over \$500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is August 15, 1988. Applications must be postmarked on or before August 15, 1988.

ADDRESS: New York Regional Office Minority Business Development Agency,

Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office, (212) 264-3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance) William E. Fuller, Deputy Regional Director, New York Regional Office.

Date: July 1, 1988.

[FR Doc. 88-15449 Filed 7-8-88; 8:45 am]
BILLING CODE 3510-01-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Notice of Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1988. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Date and Time: Thursday, July 14, 1988; Beginning 10:00 a.m.

Place: Room 801, Federal Building, 400 West Bay Street, Jacksonville, Florida 32202.

Type of Meeting: Open.
Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0266, Telephone (202) 756-0411.

Purpose of Meeting: The Commission's Chairman, Senator Denton, will receive and consider statements of individuals and groups in Florida and neighboring states about the

problems and prospects of the nation's maritime industries, particularly the merchant marine and shipbuilding industries. In particular, the Chairman desires reactions to the Commission's first two reports and its recommendations, views about the contributions of the maritime industries to the national security, and suggestions for actions that would help to address current and projected shortages of merchant marine and shipyard capability to meet defense requirements. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing or by telephone by July 8, 1988, and are requested to provide two copies of their written statements to the Commission and to have copies available for the press. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions. Questions about the nature and content of testimony, scheduling, and related matters should be directed to Colonel Norman A. Mingle, USAF, of the Commission's staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be delivered to the Chairman at the public hearing or received at the Commission's office by the close of business on July 15, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. Submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-15490 Filed 7-8-88; 8:45 am]
BILLING CODE 3520-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, and 12586. The proposed changes are part of the annual review required by the Manual for Courts-

Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following Rules for Courts-Martial: R.C.M. 405(g)(1)(A), Pretrial Investigation—Production of Witnesses; R.C.M. 405(g)(4)(B), Pretrial Investigation—Alternatives to Testimony; R.C.M. 802, Conferences—Rights of Parties; R.C.M. 908(b)(4), Appeals by the United States—Effect on the Court-Martial; R.C.M. 1004(c)(8), Capital Cases—Aggravating Circumstances; R.C.M. 1010, Advice Concerning Post-Trial and Appellate Rights; R.C.M. 1103(b)(2)(D), Preparation of Record of Trial—Contents; R.C.M. 1107(f)(1), Action by Convening Authority—Contents; R.C.M. 1110, Waiver or Withdrawal of Appellate Review—Time Limit; and, R.C.M. 1113, Execution of Sentences—Dishonorable or Bad-Conduct Discharge. The proposed changes would also amend Paragraph 19, Part IV (Punitive Articles) regarding Article 95—Escape from Confinement.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1984, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Court-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Office of the Judge Advocate General (DAJA-CL), Department of the Army, Pentagon (Room 2D434), Washington, DC 20310-2213. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATTN: Major Charles E. Trant.

DATE: Comments on the proposed changes must be received not later than September 26, 1988 for consideration by the Joint-Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major Charles E. Trant, (202) 695-2193. L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.
July 6, 1988.

[FR Doc. 88-15491 Filed 7-8-88; 8:45 am]
BILLING CODE 3510-01-M

Defense Logistics Agency.

Privacy Act of 1974; Record System Notice

AGENCY: Defense Logistics Agency (DoD), DOD.

SUMMARY: Notice for any public comment on a system of records, subject to the Privacy Act of 1974, being transferred from under the control of the General Services Administration (GSA) to the Defense Logistics Agency (DLA).

DATES: This action is effective July 11, 1988. Nevertheless, any public comments will be considered, provided comments are received on or before August 10, 1988.

ADDRESS: Comments may be submitted to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, Administrative Management Branch, Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304-6130. Telephone: (202) 274-9234.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 12626 dated February 25, 1988, the management of the National Defense Stockpile Program (NDSP) is transferred from the General Services Administration (GSA) and Federal Emergency Management Agency (FEMA) to the Department of Defense (DoD), with further delegation to the Defense Logistics Agency (DLA). This requires the transfer of an existing Privacy Act System Notice: GSA/FPRS-2 "Hazardous materials exposure history system." (Privacy Act Issuances, 1986 Comp., Volume V, p. 32), from GSA to DLA. GSA/FPRS references have been deleted and replaced by the appropriate DLA activity designations within the system notice. The record system notice is not a new one, but basically being transferred from one agency to another that has assumed the responsibility for its continued operation.

The Defense Logistics Agency system of records notices, subject to the Privacy Act of 1974 (5 U.S.C. 552a), have been published in the *Federal Register* as follows:

FR Doc. 85-10237 (50 FR 22897) May 29, 1985 (DoD Compilation)
FR Doc. 85-30123 (50 FR 51898) December 20, 1985
FR Doc. 86-17259 (51 FR 27443) July 31, 1986
FR Doc. 86-19035 (51 FR 30104) August 22, 1986
FR Doc. 87-21654 (52 FR 35304) September 18, 1987
FR Doc. 87-22481 (52 FR 37495) October 7, 1987
FR Doc. 88-03220 (53 FR 04442) February 16, 1988
FR Doc. 88-06658 (53 FR 09965) March 28, 1988
FR Doc. 88-12883 (53 FR 21511) June 8, 1988

This notice is not within the purview of Subsection (c) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report.

L.M. Bynum, Alternate OSD Federal Register Liaison Officer, Department of Defense.
July 5, 1988.

SS35.50 DLA-N

SYSTEM NAME:

Hazardous Materials Exposure History System.

SYSTEM LOCATION:

Records are maintained at the DLA/DNSC stockpile depots following locations:

Zone Offices:

Zone 1 Management Office, Room 19-118, 26 Federal Plaza, New York, NY 10278.
Zone 2 Management Office, 3200 Sheffield, Hammond, IN 46327.
Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102.

Stockpile Depots:

Binghamton Depot, Hoyt Avenue Binghamton, NY 13901.
Sommerville Depot, State Highway #206, Sommerville, NJ 08876.
Curtis Bay Depot, Ordance Road, Rt. 710, Baltimore, MD 21226.
Scotia Depot, Scotia, NY 12302.
Point Pleasant Depot, 2601 Madison Avenue, Point Pleasant, WV 25550.
Hammond Depot, 3200 Sheffield Avenue, Hammond, IN 46327.
Casad Depot, New Haven, ID 48774.
Sharonville Depot, P.O. Box 41131, Cincinnati, OH 45241.
Warren Depot, Pine Street Extension, Warren, OH 44482.
Fort Worth Depot, Fort Worth, TX 76102.
Gadsden Depot, P.O. Box 918, Gadsden, AL 35902.
Baton Rouge Depot, 2695 N. Sherwood Forest Drive, Baton Rouge, LA 70814.
Clearfield Depot, P.O. Box 1279, Freeport Station, Clearfield, UT 84016.

Stockton Depot, P.O. Box 6039, Stockton, CA 95206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel working in or visiting storage areas containing hazardous materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the daily dosage of radiation received and hourly exposure to dangerous levels of asbestos. The records are primarily used by officers and employees of the agency who have a need for the records in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act of 1970, as amended: 5 U.S.C. 5108, 5314, 5315, 7902; 15 U.S.C. 633, 636; 18 U.S.C. 1114; 29 U.S.C. 553, 651-678; 42 U.S.C. 3142-1; 49 U.S.C. App., 1421; Executive Order 9397 (SSAN).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information on exposure readings is provided to the regulatory agencies charged with the responsibilities for regulating the handling of hazardous materials. The blanket routine use statements set forth at the beginning of the DLA listings of systems of records are also applicable to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms.

RETRIEVABILITY:

Filed alphabetically by individual's name.

SAFEGUARDS:

Buildings employ security guards and records are maintained in areas accessible only to authorized personnel of DLA.

RETENTION AND DISPOSAL:

Records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Directorate of Stockpile Management (DLA-N), Defense Logistics Agency, 18th and F Streets, NW., Washington, D.C. 20405.

NOTIFICATION PROCEDURE:

Individuals may obtain information about whether they are part of this system of records from the director of the applicable activity that the

individual is or was employed with. If not known, general inquiries should be made to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals to access records should be addressed to the official cited above. In person requests may also be made during normal business hours at each location listed. For written requests, the individual should provide full name, address, telephone number, period of employment, and the position held to assist the office in locating the record. For personal visits, the individual should be able to provide some acceptable identification such as driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

DLA rules for access to records and for contesting contents are contained in DLA Regulation 5400.21, 32 CFR Part 1286.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from film badges, dosimeters, other instrumentation, work logs, and medical examinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-15473 Filed 7-8-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments of the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 10, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland

Avenue SW., Room 5024, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Wester at the address specified above.

Dated: July 6, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Planning, Budget and Evaluation

Type of Review: New

Title: Neglected or Delinquent Program Study

Frequency: One time only

Affected Public: Individuals or households; State or local governments

Reporting Burden:

Responses: 772

Burden Hours: 1,909

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

Abstract: This study will collect information from State and facility program administrators, instructional staff, and eligible youth in adult and juvenile correctional facilities under Chapter I of the Education Consolidation and Improvement Act, as amended. The Department will use the information for purposes of program improvement and policy development.

Office of Postsecondary Education

Type of Review: Reinstatement

Title: Performance Report for the Talent Search, Upward Bound, and Educational Opportunity Centers Programs

Frequency: Annually

Affected Public: State or local governments, non-profit institutions, small businesses or organizations

Reporting Burden:

Responses: 620

Burden Hours: 3,100

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

Abstract: Grantees that have participated in the Talent Search, Upward Bound and Educational Opportunity Centers Programs submit this report to the Department. The Department uses the information to determine the program's compliance with regulatory requirements.

Type of Review: New

Title: State Participation Agreement for the Robert C. Byrd Scholarship Program

Frequency: One time only

Affected Public: State or local governments

Reporting Burden:

Responses: 52

Burden Hours: 52

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

Abstract: States must submit this agreement to participate in the Robert C. Byrd Honors Scholarship Program. The Department of Education will use the information to determine State participation in the program.

[FR Doc. 88-15457 Filed 7-8-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant Agreement to American Council on Energy Efficient Economy

AGENCY: U.S. Department of Energy (DOE).

ACTION: The U.S. DOE announces pursuant to 10 CFR 600.7(b), it is restricting eligibility for award of Grant number DE-FG01-88CE27489 to the American Council on Energy Efficient Economy (ACEEE) for the biennial Summer Study on Energy Efficient Buildings.

SUMMARY: The U.S. DOE Office of Office Buildings and Community Systems, Conservation and Renewable Energy

Branch is preparing a request to cost share an application submitted by ACEEE. The work to be performed is a week-long summer study organized to facilitate the exchange of research results. The conference aims to bring together the foremost researchers, practitioners and policymakers involved in research on energy efficiency in buildings. The 1988 conference has three primary objectives: (1) To facilitate the exchange of research and implementation results and encourage the advancement of knowledge; (2) to publish and distribute the research papers presented at the conference; and (3) to edit and publish follow-up reports on conference topics of special interest.

Eligibility: Award of this effort is restricted to ACEEE, a nonprofit organization because no one else is capable of conducting this study and this cannot be done with any organization except ACEEE. The proposed Grantee has organized a summer study on energy efficiency in buildings biennially since 1980.

FOR FURTHER INFORMATION CONTACT: Lisa G. Tillman, MA-453.2, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20484.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-15502 Filed 7-8-88; 8:45 am]

BILLING CODE 9450-01-M

Economic Regulatory Administration

[Docket No. PP-87]

Application for a Presidential Permit; Bradfield Electric Inc. and Alaska Power Authority

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application by Bradfield Electric, Inc., and the Alaska Power Authority for a Presidential Permit.

SUMMARY: Bradfield Electric, Inc. (Bradfield), and the Alaska Power Authority (APA) have applied to the Economic Regulatory Administration (ERA) for a Presidential permit to construct, connect, operate, and maintain electric transmission facilities at the international border between the U.S. and Canada. The proposed 69-kilovolt (kV) transmission line would extend from the APA's Tyee Lake Hydroelectric Power Project located near Wrangell, Alaska, to the U.S.-Canadian international border just east of the South Craig River.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Department of Energy, Economic Regulatory Administration (RG-22), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5935.

Lise Courtney M. Howe, Department of Energy, Office of General Counsel (GC-41), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2900.

SUPPLEMENTARY INFORMATION: On June 3, 1988, Bradfield and the APA applied to the ERA for a Presidential permit to construct, connect, operate, and maintain electric transmission facilities at the international border between the U.S. and Canada. This application was made pursuant to the provisions of Executive Order 10485, as amended by Executive Order 12038.

Specifically, Bradfield and APA have proposed to construct a 69-kV transmission line extending approximately 24.5 miles from the APA's Tyee Lake Hydroelectric Power Project, along the North Fork Bradfield and Craig River drainages, to the U.S.-Canadian border. The proposed project also would require expansion of the existing substation at the Tyee Lake project.

The proposed facilities will be used to deliver surplus hydroelectric power from the APA's Tyee Lake project to the Johnny Mountain mine, which is owned by Skyline Exploration, Ltd., of Vancouver, British Columbia. Cominco, another Canadian firm, also is planning the development of a gold mine in the vicinity of Johnny Mountain and is considered an additional potential purchaser of electric power. The combined maximum level of electrical power to be purchased by both mines is projected to be 5 megawatts.

Any person desiring to be heard or to protest this application for a Presidential permit should file a petition to intervene or protest with the ERA, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with Sections 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed on or before August 10, 1988. Protests will be considered by ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of

Information Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Issued in Washington, DC, on July 1, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-15503 Filed 7-8-88; 8:45 am]

BILLING CODE 9450-01-M

[ERA Docket No. 88-21-NG]

Amagas Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada and Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting AMAGAS Resources, Inc. (AMAGAS), blanket authorization to import natural gas from Canada and Mexico. The order issued in ERA Docket No. 88-21-NG authorizes AMAGAS to import up to an aggregate of 100 Bcf of Canadian or Mexican natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, June 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-15504 Filed 7-8-88; 8:45 am]

BILLING CODE 9450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-486-000, et al.]

Pennsylvania Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power Company

[Docket No. ER88-486-000]

Take notice that on June 27, 1988, Pennsylvania Power Company (Penn Power) tendered for filing, pursuant to 18 CFR 35.13, proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The filing proposes changes in base rates, fuel adjustment clause and tax adjustment surcharge and seeks to implement two new tariff riders relating to a long-term off-system sale and a base rate phase-in plan. The net revenue effect of the proposed changes would increase revenues from jurisdictional sales and service by \$1,374,444 or approximately 27.7% based on the 12-month period ended March 31, 1988. The increase is composed of an increase in base rates of \$1,517,457.47 to be phased-in over a 4-year period consisting of increases of \$614,558; \$725,598; \$811,744 and \$965,642 on May 4, 1988; May 1, 1989; May 1, 1990 and May 1, 1991, respectively, and a decrease of \$1,378,343 on May 1, 1992. The fuel adjustment clause is proposed to be decreased effective May 4, 1988 from .3579¢/kwh to .2399¢/kwh or \$143,103.96 on an annual revenue basis. The state tax adjustment surcharge is proposed to be decreased effective May 4, 1988 from 4.04% to 0% with no change in annual revenue because these surcharge revenues are being rolled into base rates. The first new tariff rider is proposed to credit to customers the reduction in revenue requirements due to a long-term sale to another utility. This rider serves to reduce annual revenues by a total of \$221,739 (\$90,516 on January 1, 1989 and \$131,223 on June 1, 1989) coincident with the dates the off-system sales will occur. The second rider implements the four-year phase-in plan and provides for the deferral of revenues in the early years of the phase-in and for the collection of the deferred revenues in later years with interest accruing at a 6% rate. In addition, the late payment charge on bills paid after the due date is proposed to be changed from 1.35%/month to 2%/month.

The five municipal resale customers served by Penny Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission. These

settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-277-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. William E. Casebier

[Docket No. ID-2361-000]

Take notice that on June 20, 1988, William E. Casebier tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position and Corporation

Vice President: Kentucky Utilities Company
Vice President: Old Dominion Power Company

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Jackson H. Randolph

[Docket No. ID-2362-000]

Take notice that on June 13, 1988, Jackson H. Randolph tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position and Corporation

Director, President and Chief Executive Officer: The Cincinnati Gas & Electric Company

Director, President and Chief Executive Officer: The Union Light, Heat & Power Company

Director, President and Chief Executive Officer: Miami Power Corporation

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. James W. Tipton

[Docket No. ID-2360-000]

Take notice that on June 20, 1988, James W. Tipton tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission

to hold the following interlocking positions:

Position	Corporation	Classification
Senior Vice President	Kentucky Utilities Co.	Public utility.
Senior Vice President and Director	Old Dominion Power Co.	Do.
Director	Electric Energy, Inc.	Do.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER88-485-000]

Take notice that on June 24, 1988, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a rate schedule for transmission service to the Vermont Electric Generation and Transmission Cooperative, Inc. and an Actual Cost Report for 1987 Service Year Billings. Central Vermont has included the following in its filing:

Exhibit 1 Revenue Comparison setting forth the forecast and actual revenue for 1987.

Exhibit 2 Cost Report computing the forecast costs for 1987.

Exhibit 3 Cost Report computing the actual costs for 1987.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this document.

6. Nevada Power Company

[Docket No. EL88-32-000]

Take notice that on June 27, 1988, Nevada Power Company (Company) tendered for filing, in accordance with 18 CFR 385.207(1) and (c) (Rule 207), a petition for relief from CFR 35.14(10), Fuel cost and purchased economic power adjustment clauses, for authority to include in the Fuel cost and purchased economic power adjustment clause certain costs for coal contract analysis, litigation and coal contract buyout. The Company states that it is seeking legal relief to reduce its coal costs from certain of its suppliers and is monitoring the price adjustment clauses in its contracts with all of its suppliers in an effort to keep coal costs as low as possible for the benefit of its customers. The Company also states that it has incurred \$1,141,065 of coal contracts analysis and litigation costs from March 1987 through February 1988 and is continuing to incur such costs on an "as required" basis.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER88-484-000]

Take notice that on June 24, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing an initial rate schedule consisting of three jurisdictional agreements, which jointly control the operation of, and transmission service from, the Central California Power Agency's (CCPA) Coldwater Creek Geothermal Power Plant (Plant), to the CCPA Member Utilities. These Member Utilities are the Sacramento Municipal Utility District (SMUD), Modesto Irrigation District (MID), and the City of Santa Clara (Santa Clara).

CCPA has constructed, and will operate in parallel with PG&E's system, a 140 mw power plant in Sonoma County, California, in order to sell and provide the output to its Member Utilities. Transmission service from the Plant to the Member Utilities' loads is provided by PG&E. The Member Utilities all have interconnection and transmission agreements with PG&E, and the rates for transmission are the rates provided in those agreements.

PG&E has requested waivers to allow this rate schedule to become effective as soon as possible, notwithstanding the usual requirements for filing.

Copies of this filing have been served upon the Member Utilities and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E's General Office in San Francisco.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER84-705-010 and ER87-581-000]

Take notice that on June 24, 1988, Boston Edison Company (Boston Edison) tendered for filing in accordance with Opinion No. 299, issued March 25, 1988, as modified by the Notice of Extension of time issued June 7, 1988, revisions to rate schedules FPC Nos. 47, 48 and 51 for service to the Towns of Concord, Norwood and Wellesley, Massachusetts. Boston Edison states that the rate schedule revisions reflect the findings and conclusions of Opinion No. 299 and that the rate schedules are to be effective for the period November

28, 1984 through June 30, 1985 for Concord and Wellesley and for the period November 28, 1984 through November 1, 1985 for Norwood. Boston Edison also states that it has filed revised cost-of-service studies for the period November 28, 1984 through June 30, 1987; the period July 1, 1987 through March 25, 1988; and the period beginning March 26, 1988 in accord with the Commission's Opinion.

Boston Edison also states that it has provided copies of the revised rate filings to the affected customers and to the Massachusetts Department of Public Utilities.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Androscoggin Energy Recovery Company

[Docket No. QF88-419-000]

On June 14, 1988, Androscoggin Energy Recovery company, c/o KTI Energy of Maine, Inc., Four City Center, Portland, Maine 04101 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lewiston, Maine. The facility will consist of two waterwall steam generators and a single condensing turbine generator. The net electric power production capacity will be approximately 33 megawatts. The primary energy source will be biomass in the form of municipal solid waste, whole tree chips and waste woodchips. Natural gas and/or oil will be used for ignition, start-up, testing and other uses specified in section 3(17)(B) of the Federal Power Act, as amended by section 201 of PURPA, however, such fossil fuel uses will not exceed 25% of the total energy input to the facility during any calendar year period.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15418 Filed 7-8-88; 8:45am]

BILLING CODE 8717-31-81

[Docket No. G-2979-001, et al.]

Sun Exploration and Production Co. et al.; Applications for Certificate, Abandonment Of Service and Amendment Of Certificates

July 6, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-2979-001, D, June 26, 1988.	Sun Exploration and Production Company, P.O. Box 2680, Dallas, TX 75221-2680.	Phillips Petroleum Company, Hugoton Field, Sherman County, Texas.	(¹)
G-10739-003, D, June 10, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2619, Dallas, TX 75221.	Texas Eastern Transmission Corporation, Chicoite Creek, et al. Fields, LaVaca, et al. Counties, Texas.	(²)
G-14890-001, D, June 15, 1988.	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	El Paso Natural Gas Company, Aneth Field, San Juan County, Utah.	(³)
CS61-636-000, D, June 9, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Texas Gas Transmission Corporation, N. Rousseau Field, LaFourche Parish, Louisiana.	(⁴)
CS65-718-000, D, June 9, 1988.	do	do	(⁵)
CS67-209-002, D, May 20, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2619, Dallas, TX 75221.	Arkla Energy Resources, a division of Arkla, Inc., Hartshome Area, LaFlore and Pittsburg Counties, Oklahoma.	(⁶)
CS86-434-000 (CS80-99), B, April 29, 1988.	GEO Oil and Gas Company, P.O. Box 2511, Houston, TX 77252.	Arkla Energy Resources, a division of Arkla, Inc., Pine Hollow S. Field, Pittsburg County, Oklahoma.	(⁷)
CS86-436-000 (CS80-87), B, April 29, 1988.	do	Panhandle Eastern Pipe Line Company, Keyes Field, Cimmeron County, Oklahoma.	(⁸)
CS86-482-000 (CS80-720), B, June 10, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Azalea Field, Midland County, Texas.	(⁹)
CS86-486-000 (CS86-1234), B, June 6, 1988.	do	Panhandle Eastern Pipe Line Company, Bishop & Peak Fields, South Area, Ellis County, Oklahoma.	(¹⁰)
CS86-488-000, F, June 13, 1988.	Union Pacific Resources Company, P.O. Box 7, M.S. 3202, Fort Worth, TX 76101.	Tennessee Gas Pipeline Company, La Reforma Field, Starr & Hidalgo Counties, Texas.	(¹¹)
CS86-491-000 (CS86-718), (CS61-636), B, June 16, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Texas Gas Transmission Corporation, N. Rousseau Field, LaFourche Parish, Louisiana.	(¹²)
CS86-492-000 (G-4684), B, June 3, 1988.	Sun Exploration and Production Company, P.O. Box 2680, Dallas, TX 75221-2680.	Colorado Interstate Gas Company, Keyes Field, Cimmeron County, Oklahoma.	(¹³)
CS86-493-000 (CS76-220), B, June 13, 1988.	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102.	Tennessee Gas Pipeline Company, Grand Isle Block 45 OCSG-1582, Offshore Louisiana.	(¹⁴)
CS86-494-000 (CS83-335), B, June 14, 1988.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	Phillips 66 Natural Gas Company, Panhandle West Field, Hutchinson County, Texas.	(¹⁵)
CS86-495-000 (CS76-206), B, June 14, 1988.	Tenneco Oil Company.	Northern Natural Gas Company, Division of Enron Corp., Vici, North Field, Woodward County, Oklahoma.	(¹⁶)
CS86-497-000 (CS84-126-000), B, June 20, 1988.	Pogo Producing Company, P.O. Box 61286, Houston, TX 77206-1286.	United Gas Pipe Line Company, Vermilion Block 228, Offshore Louisiana.	(¹⁷)
CS86-498-000 (CS86-163-000), B, June 20, 1988.	TXO Production Corp., First City Center, 1700 Pacific Avenue, Dallas, TX 75201.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	(¹⁸)

FOOTNOTES

- ¹ Effective 6-1-86, Sun assigned its interest in Property No. 626313, Ellison Gas Unit, from the surface down to a depth of 3,252 feet, to TXO Production Corp.
- ² Effective 5-1-86, ARCO assigned certain interests in lease TX-13200, which are included in the D.W. Rhode Lease, to Petrus Oil Company.
- ³ Effective 6-1-87, Tenneco Oil Company assigned certain acreage to Chertan International Inc.
- ⁴ Effective 2-1-88, Sohio assigned certain acreage to Southampton Mineral Corporation.
- ⁵ Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil & Gas Company.
- ⁶ Effective 1-1-84, GEO Oil and Gas Company and Tenneco Oil Company assigned certain acreage to Quinoco Oil and Gas Income Program 1983-2, a Texas limited partnership, Quinoco Oil and Gas Income Program 1983-3, a Texas limited partnership, and Quinoco Oil and Gas Income Program 1983-4, a Texas limited partnership.
- ⁷ By Assignment dated 9-28-87, effective 10-1-87, Sohio Petroleum Company conveyed to UPRC 100% of Sohio's right, title and interest in certain oil and gas leases in La Reforma Field, Starr and Hidalgo Counties, Texas, dedicated under the contract dated 3-1-78.
- ⁸ Effective 5-25-86, Sohio Petroleum Company assigned certain acreage to Mosbacher Energy Company. All remaining wells covered by Rate Schedule Nos. 115 and 57 have been plugged and abandoned or the land leases have expired.
- ⁹ Effective 5-1-87, Sun sold the last remaining property to Sandollar Oil & Gas, Inc.
- ¹⁰ The lease covering Grand Isle Block 45 (OCSG-1582) expired on 4-30-88.
- ¹¹ Effective 9-1-87, Multistate Oil Properties, N.V., assigned certain acreage to VITA Oil Company.
- ¹² Effective 12-1-88, Tenneco assigned acreage to Bell & Kinley Company and the Weaver 1-28 well was plugged and abandoned on 1-18-85.
- ¹³ Reserves are depleted, production from Vermilion Block 228, OCSG-2078, has ceased and the lease has terminated.
- ¹⁴ Production from the only well under this contract, dated 2-22-67, the Nellie Scott #1 well, became depleted and on 5-7-87, the well was plugged.
- Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-15470 Filed 7-8-88; 8:45 am]
BILLING CODE 6717-01-34

[Docket No. CS73-229-000, et al.]

Dwight S. Ramsay, Ramco, Inc., and Ramsay Corp., et al.; Applications for Small Producer Certificates

July 6, 1988.

Take notice that each of the Applicants listed herein has filed an

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 19, 1988, file with the Federal Energy Regulatory Commission, Washington,

DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

Docket No.	Date filed	Applicant
CS73-229-000	6-20-88	Dwight S. Ramsay, Ramco, Inc., and Ramsay Corporation (Dwight S. Ramsay) P.O. Box 52027, Lafayette, LA 70505.
CS77-450	6-9-88	Robertson-Finley Operating Company (Finley Company), P.O. Box 2249, Houston, TX 77252-2249.
CS79-546	6-20-88	Lenexco, Inc. (Alpha Twenty-One Production Company), P.O. Box 2730, Midland, TX 79702.
CS83-102-008	6-17-88	Graham Energy, Ltd., et al., P.O. Box 3134, Covington, LA 70434-3134.
CS86-69-000	5-26-88	Patricia Love Stephens, c/o Roberts & Hammack, Inc., 5645 Milton Street, Suite 333, Dallas, TX 75206-3907.
CS86-71-000	6-10-88	Northampton/DASA Joint Venture, 4301 Westside Drive, Suite 2000, Dallas, TX 75209.
CS86-72-000	6-13-88	Sierra Pacific Corporation, P.O. Box 162585, Austin, TX 78716.
CS86-74-000	6-16-88	Bledsoe Petro Corp. and Bledsoe Energy Corp., 3908 North Peniel, Bethany, OK 73008.

FOOTNOTES

- ¹ Application received June 1, 1988. Filing date is date of receipt of filing fee.
- ² By letter dated May 19, 1988, Applicant requests that the small producer certificate in Docket NO. CS73-229 be amended to include Ramco, Inc., and Ramsay Corporation.
- ³ Finley Company has changed its name to Robertson-Finley Operating Company pursuant to amendment to its Articles of Incorporation dated December 31, 1986.
- ⁴ By letter dated June 14, 1988, Applicant advised that pursuant to amendments to its Articles of Incorporation adopted January 15, 1988, Alpha Twenty-One Production Company has changed its name to Lenexco, Inc.
- ⁵ By letter dated June 15, 1988, Applicant requests that the small producer certificate in Docket

No. CS83-102-007 be amended to cover the following entities as certificate co-holders: Graham Resources, Inc. Graham Royalty, Ltd. Energy Institutional Investors 1980 Ltd. Prudential-Bache Energy Income Production Partnership VIP-23. Prudential-Bache Energy Income Production Partnership VIP-24. Prudential-Bache Energy Income Production Partnership VIP-25. Prudential-Bache Energy Income Production Partnership IIP-15. Prudential-Bache Energy Income Production Partnership IVP-16. Prudential-Bache Energy Income Production Partnership IVP-17. Prudential-Bache Energy Income Production Partnership VP-18. Prudential-Bache Energy Income Production Partnership VP-19. Prudential-Bache Energy Income Production Partnership VP-20. Prudential-Bache Energy Income Production Partnership VP-21. Prudential-Bache Energy Income Production Partnership VP-22. Prudential-Bache Energy Production, Inc.

⁶ Additional material received June 2, 1988.

[FR Doc. 88-15467 Filed 7-8-88; 8:45 am]
BILLING CODE 6717-01-34

[Docket No. CS87-394-001, et al.]

ARCO Oil and Gas Co. et al.; Applications for Blanket Certificates With Pregranted Abandonment or for Extension of Blanket Certificates With Pregranted Abandonment

July 6, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization or for extension of a blanket certificate with pregranted abandonment authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

Docket No. and date filed	Applicant	Requested term of authorization
CS87-394-001: 6/20/88 ¹	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2619, Dallas, Texas 75221-2619.	Unlimited.
CS87-475-001: 6/20/88 ¹	Texaco Inc. and Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Do.
CS86-496-000: 6/17/88 ⁴	O&R Energy Development Inc., 28 West Grand Avenue, Montvale, New Jersey 07645.	Do.
CS88-511-000: 6/29/88 ⁴	Mock Resources, Inc., 4 Executive Circle, Suite 200, Irvine, California 92714.	Do.

¹ Application for extension of a blanket certificate with pregranted abandonment authorization for uncommitted gas.

² Applicant also requests authorization to include interests of other co-owners which have interests in the same wells to the extent co-owners have similar undedicated interests and agree to the sale.

³ Applicant also requests annual reporting requirements in place of quarterly reporting requirements and that the Commission consider waiver of the reporting requirements.

⁴ Application by a natural gas marketer for a blanket certificate with pregranted abandonment authorization.

[FR Doc. 88-15468 Filed 7-8-88; 8:45 am]
BILLING CODE 6717-01-34

[Docket Nos. CS87-451-000, et al.]

Northeast U.S. Pipeline Projects; Settlement Discussions

July 5, 1988.

On June 3 and June 30, 1988, the parties met to discuss settlement and consider joint venture proposals to provide new gas service to the Northeast United States. At the end of these discussions, there was consensus that further Settlement Discussions should be scheduled. Accordingly, there will be an additional opportunity to discuss settlement on July 14, 1988, at 10:00 a.m., in a room to be announced at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Parties are again encouraged to develop proposals that simplify and

consolidate various projects and eliminate any unnecessary or duplicative projects. In order to ensure that the discussions are productive, parties are requested to submit a copy of any settlement proposal that will be addressed to other project sponsors and interested parties and the designated staff contact by July 7. This will enable parties to review settlement proposals prior to the discussions and will result in meaningful comment and possibly in counterproposals. Parties may also submit comments on previously submitted settlement proposals.

FOR FURTHER INFORMATION CONTACT: Lee A. Alexander, Office of the General Counsel, GC-11.3, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, (202) 357-9170.

Lola D. Cashell,

Acting Secretary.

[FR Doc. 88-15469 Filed 7-8-88; 8:45 am]

BILLING CODE 6717-01-0

ENVIRONMENTAL PROTECTION AGENCY

(AAA-FRL-3411-9)

Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the Federal Register each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals

on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Branch, Grants Administration Division, at (202) 475-8025.

Dated: June 29, 1988.

Harvey G. Pippes, Jr.,

Director, Grants Administration Division (PM-216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and Jurisdiction	File No.	Status	From	To	Grounds
Alle-Catt Asphalt, Inc. (Allegany, NY)	85-0072-02	D	07-29-87	07-28-90	§ 32.200(a)(3).
AES Engineers, Inc. (Willow Springs, IL)	85-0001-00	S	12-15-87	Open	§ 32.200(b).
Alfman, Larry L. (Charleston, SC)	85-0053-03	S	07-29-85	Open	§ 32.200(b).
American Recovery Co., Inc. (Glen Burnie, MD)	85-0011-00	D	08-20-86	08-19-89	§ 32.200(a)(i).
Applied Science Distributors (Pensacola, FL)	87-0013-00	D	02-05-87	04-02-90	§ 32.200(a)(i).
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-08	D	12-02-85	10-25-88	§ 32.200(b).
Azzil Trucking Co., Inc. (Roslyn, NY)	85-0008-02	D	09-11-86	09-10-89	§ 32.200(a)(b).
Barnum, James Charles (Utica, MI)	86-0010-01	D	12-10-85	12-09-88	§ 32.200(a).
Batzler Construction Co., Inc. (St. Cloud, MN)	85-0052-00	D	03-07-86	08-05-90	§ 32.200(a).
Batzler, Bruce (St. Cloud, MN)	85-0052-01	D	03-07-86	08-05-90	§ 32.200(a).
Batzler, Robert (St. Cloud, MN)	85-0052-02	D	03-07-86	08-05-90	§ 32.200(a).
Beale, Gordon (Salt Lake City, UT)	86-0024-03	VE	06-05-88	06-04-89	§ 32.200.
Beckham, Charles (Detroit, MI)	84-0030-02	D	02-24-86	07-30-89	§ 32.200(a)(b).
BECCO, Inc. (High Point, NC)	85-0017-01	VE	12-10-85	12-09-88	§ 32.200(a)(3).
Bell, Bobby (Sulphur, LA)	85-0071-01	D	03-06-86	03-05-89	§ 32.200(a)(b).
Bell, Edwin (Sulphur, LA)	85-0071-02	D	03-06-86	03-05-89	§ 32.200(a)(b).
Benjamin F. Shaw Company, Inc. (Montgomery, AL)	87-0025-00	D	05-23-88	06-22-91	§ 32.200(a)(1).
Bortugno, Frank (Bronx, NY)	86-0082-30	D	11-09-87	11-08-90	§ 32.200(a).
Bortugno, Ralph (Bronx, NY)	86-0082-29	D	11-13-87	11-12-90	§ 32.200(a).
Bowens, Darrellyn (Detroit, MI)	84-0030-01	D	02-24-86	05-11-89	§ 32.200(a)(b).
Bridges, William D., Jr. (Wilmington, NC)	85-0068-01	D	04-09-86	04-08-89	§ 32.200(a).
Bryan, Charles B. (Tempe, AZ)	87-0010-03	D	07-25-87	07-27-90	§ 32.200(a)(c)(i).
Cannady, Nathaniel Ellis (Asheville, NC)	86-0047-01	D	03-18-86	07-15-89	§ 32.200(a)(i).
Carescia, Vincent (Farmingdale, NY)	86-0082-26	D	11-09-87	11-08-90	§ 32.200(a).
Carl I. Schaeffer Electric Co. (St. Louis, MO)	86-0009-00	D	05-14-88	05-13-91	§ 32.200(a).
Carson, Charles (Gross Point Woods, MI)	85-0096-00	D	03-18-86	04-25-89	§ 32.200(b).
Carson, E. Eugene (Statesville, NC)	85-0004-01	D	01-06-86	01-05-89	§ 32.200(a).
Chatterjee, Samir (Willow Springs, IL)	83-0086-00	S	12-15-87	Open	§ 32.300(b).
City Chemicals Company, Inc. (Orlando, FL)	86-0038-02	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Environmental Services, Inc. (Orlando, FL)	86-0038-03	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Fuel Oil Company (Orlando, FL)	86-0038-05	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Industries, Inc. (Orlando, FL)	86-0038-01	D	10-02-86	11-23-89	§ 32.200(a)(1).
Commonwealth Companies Incorporated (Lincoln, NE)	86-0100-01	S	11-12-86	Open	§ 32.200(a)(1).
Commonwealth Electric Company, Inc. (Lincoln, NE)	86-0100-00	S	09-09-86	Open	§ 32.300(b).
Crolich, Peter V. (Mobile, AL)	87-0017-02	D	06-18-87	06-17-90	§ 32.200(a)(i).
Crossgrove, Richard (Pensacola, FL)	87-0013-01	D	02-05-87	04-02-90	§ 32.200(a)(i).
Cryer, John P. (Baton Rouge, LA)	85-0055-03	S	07-29-85	Open	§ 32.300(b).
Cusenza, Sam (Ypsilanti, MI)	85-0024-02	D	02-24-86	04-02-89	§ 32.200(a)(b).
DeLuca, Nick (Staten Island, NY)	86-0082-25	D	11-09-87	11-08-90	§ 32.200(a).
DiBerto, Joseph L. (Fairless Hills, PA)	86-107-01	D	12-12-87	07-15-89	§ 32.200(a)(1).
DiMiceli, Thomas (Brooklyn, NY)	87-0052-00	D	05-25-88	05-24-91	§ 32.200(a).
Domanski, Gary Henry (Utica, MI)	86-0010-02	D	12-10-85	12-09-88	§ 32.200(a).
Driscoll, John William (Dundale, MD)	86-0011-02	D	10-15-86	10-14-89	§ 32.200(a)(i).
Duisen, Darrell A. (San Diego, CA)	86-0105-01	D	10-16-87	10-15-90	§ 32.200(a)(i).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and Jurisdiction	File No.	Status	From	To	Grounds
Dykes, Lamar D. (Nederland, TX)	85-0071-03	D	03-06-86	03-05-89	§ 32.200(a)(b).
Enmanco (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Environmental Management Corporation (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Environmental Technology of America, Inc. (Woburn, MA)	86-0071-00	D	02-05-87	02-04-90	§ 32.200(a).
Federal Chandros, Inc. (Brooklyn, NY)	87-0040-00	S	07-02-87	Open	§ 32.300(b).
Fields, Leroy (Pensacola, FL)	87-0013-02	D	02-05-87	04-02-90	§ 32.200(a).
Fox, William M. (Salt Lake City, UT)	86-0024-01	VE	06-05-88	06-04-89	§ 32.200.
Floyd D. Stuckey & Associate (Winfield, KS)	84-0026-00	D	06-26-85	06-25-88	§ 32.200(a).
Foley, Bancroft T. (Washington, DC)	86-0004-03	D	03-07-86	03-06-89	§ 32.200(a).
Franklin Wiring Co. (Youngstown, OH)	85-0044-00	D	03-04-85	03-03-88	§ 32.200(a)(3).
FSA Engineering Consultants (Winfield, KS)	84-0026-00	D	06-26-85	06-25-88	§ 32.200(a).
Fussaro, Robert (Philadelphia, PA)	86-0022-01	D	06-23-86	06-22-89	§ 32.200(a)(1).
Futia, Joseph M., Jr. (Albany, NY)	86-0018-01	D	03-11-88	06-05-89	§ 32.200(b).
Futia, Joseph M., Sr. (Albany, NY)	86-0018-02	VE	06-07-88	06-05-89	§ 32.200.
G. B. Industries (Atlanta, GA)	87-0082-05	D	11-02-87	Open	§ 32.200.
Gametrionics Corp. (Atlanta, GA)	87-0082-06	D	11-02-87	Open	§ 32.200.
Gates and Fox, Ltd. (Tempe, AZ)	87-0010-00	VE	07-28-87	12-01-88	§ 32.200(a)(c)(i).
Gelb, Michael (Brooklyn, NY)	87-0040-01	S	07-02-87	Open	§ 32.300(b).
Gelb, Thomas (Brooklyn, NY)	87-0040-02	S	07-02-87	Open	§ 32.300(b).
Geuther, Herbert G. (Philadelphia, PA)	86-0004-04	D	03-07-86	03-06-89	§ 32.200(a).
Goodloe, George M. (Jacksonville, FL)	86-0098-01	D	06-05-87	02-04-89	§ 32.200(a)(3)(i).
Grant, Alan Blane (Atlanta, GA)	87-0082-06	D	11-02-87	Open	§ 32.200.
Graves, George William (Wilmington, NC)	85-0068-02	D	03-05-86	03-04-89	§ 32.200(a).
Gridig Industries Inc. (Atlanta, GA)	87-0082-04	D	11-02-87	Open	§ 32.200.
Greer, Arthur (Maitland, FL)	86-0038-00	D	10-02-86	11-23-89	§ 32.200.
Gross, William R. (Big Springs, TX)	86-0002-01	D	10-06-86	10-05-89	§ 32.200(a).
Hansen, Leonard A. (St. Peter, MN)	85-0018-02	D	08-28-85	08-25-88	§ 32.200(a)(3).
Herbst Electric Co. (Cleveland, OH)	87-0081-00	D	02-24-88	02-23-91	§ 32.200(a).
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	12-17-85	12-16-88	§ 32.200(a)(3).
Hochstetler, Herbert (Roslyn, NY)	85-0008-01	D	09-11-86	09-10-89	§ 32.200(a)(b).
Hodges Electric Company (Wilmington, NC)	85-0070-00	D	04-04-86	04-03-89	§ 32.200(a).
Howard P. Foley, Company (Washington, DC)	86-0004-00	D	03-07-86	03-06-89	§ 32.200(a).
Hugo Schutz, Inc. (Lakewood, MN)	85-0047-00	D	05-01-86	04-30-89	§ 32.200(a).
Hummel Engineering Corporation (Philadelphia, PA)	86-0006-02	D	03-31-88	03-30-91	§ 32.200(a).
Inghar, Brian (S. Fallsburg, NY)	86-0006-01	D	04-24-87	02-29-90	§ 32.200(a).
J. A. LaPorte, Inc. (Arlington, VA)	86-0037-00	D	08-29-86	06-28-89	§ 32.200(a)(3).
James Electric Co., Inc. (Huntington, WV)	87-0046-00	D	12-12-87	12-11-90	§ 32.200(a)(3).
Jarlow, John A. (Lakewood, MN)	85-0047-02	D	05-01-86	04-30-89	§ 32.200(a).
Jerpak, Daniel R. (Owensboro, MN)	86-0024-01	D	09-25-86	09-24-89	§ 32.200(a).
Jethani, Mandel (William Park, NY)	86-0082-27	D	11-09-87	11-08-90	§ 32.200(a).
J. N. Futia Co., Inc. (Albany, NY)	86-0018-00	D	03-11-88	06-07-91	§ 32.200.
Johnson, C. Theodore (Indianapolis, IN)	84-0023-04	D	03-04-86	03-03-89	§ 32.200(a)(i).
Jordan, William F. (Tempe, AZ)	87-0010-02	D	07-29-87	07-27-90	§ 32.200(a)(c)(i).
Kolb, Hans (Houston, TX)	88-0004-00	VE	05-27-88	08-26-89	§ 32.200(a)(i).
Kornatz Construction Co., Inc. (St. Peter, MN)	85-0018-00	D	09-26-85	09-25-88	§ 32.200(a)(3).
Kornatz, Thomas P. (St. Peter, MN)	85-0019-01	D	09-26-85	09-25-88	§ 32.200(a)(3).
Kruse, Lloyd C. (Lakewood, MN)	85-0047-01	D	05-01-86	04-30-89	§ 32.200(a).
Kruse, William B. (Tempe, AZ)	87-0010-01	VE	07-28-87	10-31-88	§ 32.200.
L&J Waste Service, Inc. (Hialeah, FL)	85-0079-02	D	12-18-86	12-18-89	§ 32.200(a)(i).
Law, David P. (Greenwell Springs, LA)	85-0004-00	S	07-29-85	Open	§ 32.300(b).
Law, Theresa McBeth (Greenwell Springs, LA)	85-0004-01	S	07-29-85	Open	§ 32.300(b).
Lench, Frank P. (Lafayette, CA)	86-0004-01	D	03-07-86	03-06-89	§ 32.200(a).
Lizza Industries, Inc. (Roslyn, NY)	85-0006-00	D	09-11-86	09-10-89	§ 32.200(a)(b).
Lofgren, Sven (Lincoln, NE)	87-0014-01	VE	11-12-86	11-12-89	§ 32.200(b).
Martien Electric Company (Cleveland, OH)	86-0013-00	D	05-09-86	05-08-91	§ 32.200(a).
Martien, Harry L., Jr. (Cleveland, OH)	86-0013-01	D	05-10-86	05-09-91	§ 32.200(a).
Mastriano, Julius (New York, NY)	87-0056-90	D	05-20-88	05-19-91	§ 32.200(a).
McDowell Contractors, Inc. (Nashville, TN)	84-0014-00	VE	12-23-85	12-22-88	§ 32.200(a).
Meyer-Rohlin, Inc. (Buffalo, MN)	86-0081-00	VE	04-01-87	10-01-89	§ 32.200(a)(i).
Meyer, Thore P. (Buffalo, MN)	86-0081-01	VE	04-01-87	10-01-89	§ 32.200(a)(i).
Midhampton Asphalt (Roslyn, NY)	85-0006-03	D	09-11-86	09-10-89	§ 32.200(a)(b).
Millsap, Michael J. (Mobile, AL)	86-0107-02	D	06-18-87	06-17-90	§ 32.200(a).
Modern Electric Co. (Statesville, NC)	85-0004-00	D	01-06-86	01-05-89	§ 32.200(a).
Moore, Gray E. (Jr.) (Greenwood, SC)	86-0108-00	D	06-19-86	06-18-89	§ 32.200.
Moore, Lawrence (Marshall, MN)	85-0053-01	D	12-17-85	12-16-88	§ 32.200(a)(3).
Morales, Rene (Bronx, NY)	86-0082-32	D	11-09-87	11-08-90	§ 32.200(a).
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	10-10-85	10-09-88	§ 32.200(a)(i).
O'Mara, Lawrence (Chicksville, NY)	86-0082-24	D	11-09-87	11-08-90	§ 32.200(a).
Owens, Jerry B. (Southfield, MI)	85-0065-00	D	02-24-86	03-26-89	§ 32.200(b).
Parkhill-Goodloe Co., Inc. (Jacksonville, FL)	86-0098-00	VE	04-16-87	10-15-88	§ 32.200(a).
Payne, James (Enid, OK)	86-0005-01	D	12-02-87	10-14-88	§ 32.200.
Philadelphia Northwest Constructors and Builders, Inc. (Philadelphia, PA)	86-0022-00	D	06-23-86	06-22-91	§ 32.200(a)(1).
Piccinonna, Julio (Hollywood, FL)	85-0079-01	D	05-10-87	05-10-90	§ 32.200(a).
Pinney, J.A. Bruce (Bala Cynwyd, PA)	84-0023-06	D	01-15-86	03-03-89	§ 32.200(a)(i).
Pipeline Renovation Service, Inc. (Tacoma, WA)	86-0078-00	D	07-02-86	06-07-89	§ 32.200(a)(i).
Pinos, Wayne (Woodbridge, NY)	86-0096-03	D	04-24-87	04-23-90	§ 32.200(a).
Polymer Chemicals, Inc. (Atlanta, GA)	87-0082-00	D	11-02-87	Open	§ 32.200.
Polymer Group, Ltd. (Atlanta, GA)	87-0082-03	D	11-02-87	Open	§ 32.200.
Polymer Industries, Inc. (Atlanta, GA)	87-0082-02	D	11-02-87	Open	§ 32.200.

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and Jurisdiction	File No.	Status	From	To	Grounds
Proffitt, Gerald D. (Montgomery, AL)	87-0025-01	D	06-23-88	06-22-91	§ 32.200(a)(1).
Resource Conservation & Recovery of America, Inc. (Orlando, FL)	86-0038-04	D	10-02-86	11-23-89	§ 32.200(a)(1).
Riccardelli, Eugene (Brooklyn, NY)	87-0049-001	D	05-25-88	05-24-91	§ 32.200(a).
Rio Grande Construction Company (Bunkie, LA)	85-0083-00	D	07-29-85	10-13-89	§ 32.200(a)(1).
Rogers, Joseph J. (Pittsburgh, PA)	86-0004-02	D	03-07-86	03-06-89	§ 32.200(a).
Rot-Away Systems, Inc. (Hollywood, FL)	85-0078-00	D	12-19-86	12-16-89	§ 32.200(a)(1).
Rupp Construction Company, Inc. (Slayton, MN)	85-0048-00	D	07-17-86	07-16-89	§ 32.200(a).
Rupp, Douglas (Slayton, MN)	85-0048-01	D	07-17-86	07-16-89	§ 32.200(a).
Sarandos, Constantino (Gus) (Tacoma, WA)	86-0078-02	D	07-02-86	08-07-89	§ 32.200(c)(1).
Sarandos, Dolores K. (Tacoma, WA)	86-0078-01	D	07-02-86	08-07-89	§ 32.200(c)(1).
Sarandos, George (Tacoma, WA)	86-0078-03	D	07-02-86	08-07-89	§ 32.200(c)(1).
Saunders, George F. (High Point, NC)	85-0017-02	VE	12-10-85	12-08-88	§ 32.200(a)(3).
Sauseda, Roy (Bunkie, LA)	85-0083-02	D	07-29-85	10-13-89	§ 32.200(a)(1).
Schillizzi, Jack (Bronx, NY)	86-0083-32	D	11-09-87	11-08-90	§ 32.200(a).
Schorr, Paul C. (III) (Lincoln, NE)	87-0014-00	S	11-12-86	Open	§ 32.200(i).
Service Scaffold, Inc. (S. Fallsburg, NY)	86-0096-00	D	04-24-87	04-23-90	§ 32.200(a).
Sheldon, Cynthia A. (Atlanta, GA)	87-0082-08	D	11-02-87	Open	§ 32.200.
Short, Robert W. (Montgomery, AL)	87-0025-02	D	06-23-88	06-22-91	§ 32.200(a)(1).
Smith, Norman F. (Wilbraham, FL)	86-0071-01	D	02-05-87	02-04-90	§ 32.200(a).
Smith, Paul F. (Lakefield, MN)	85-0047-03	D	05-01-86	04-30-89	§ 32.200(a).
Solomon, Newt (Nashville, TN)	85-0058-01	D	10-07-85	10-06-88	§ 32.200(e)(1).
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	08-26-85	08-26-88	§ 32.200(a).
Tow Brothers Const., Company (Fairmont, MN)	85-0054-00	D	01-22-86	01-21-89	§ 32.200(a).
Tow, James (Fairmont, MN)	85-0054-01	D	01-22-86	01-21-89	§ 32.200(a).
Toy, Daniel Lee (Utica, MI)	86-0010-03	D	12-10-85	12-09-88	§ 32.200(a).
Tubre Enterprises (Bunkie, LA)	85-0062-01	S	07-29-85	Open	§ 32.200(b).
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	S	07-29-85	Open	§ 32.200(b).
Tubre, Charles (Baton Rouge, LA)	85-0062-02	S	07-29-85	Open	§ 32.200(b).
Tubre, Thomas (Bunkie, LA)	85-0062-01	S	07-29-85	Open	§ 32.200(b).
Universal Engineering & Supply, Inc. (Sulphur, LA)	85-0071-00	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Engineering (Sulphur, LA)	85-0071-05	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Engineering Service, Inc. (Willow Springs, IL)	86-0002-05	S	12-15-87	Open	§ 32.200(b).
Universal Wheels, Inc. (Sulphur, LA)	85-0071-06	D	03-06-86	03-05-89	§ 32.200(a)(b).
Valentini, Joseph (Ypsilanti, MI)	85-0024-01	D	02-24-86	04-02-89	§ 32.200(a)(b).
Watson Electrical Construction Co. (Wilson, NC)	86-0109-00	D	12-19-86	12-18-89	§ 32.200(a).
Williams, G. Marvin (Asheville, NC)	86-0047-02	D	03-18-85	07-15-89	§ 32.200(a).
Williams, Leo (Salt Lake City, UT)	86-0024-02	VE	06-05-88	06-04-89	§ 32.200.
Wolverine Disposal, Inc. (Ypsilanti, MI)	85-0024-00	D	02-24-86	04-02-89	§ 32.200(a)(b).
X Chem, Inc. (Atlanta, GA)	87-0082-01	D	11-02-87	Open	§ 32.200.
Young, Frank Paul (Sr.) (Glen Burnie, MD)	86-0011-01-01	D	08-20-86	08-19-89	§ 32.200(f)(1).

¹ D = Debarred; S = Suspended; VE = Voluntarily Excluded.

[FR Doc. 88-15462 Filed 7-8-88; 8:45 am]
BILLING CODE 8350-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service Implementation Subcommittee

July 5, 1988.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on: July 20, 1988, 1:00 p.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Report of Working Part 1, Policy and Regulation

4. Report of Working Party 2, Transition Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Steering Committee Meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (809) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15445 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

Technical and Allocations Subgroups of Radio Advisory Committee; Joint Meeting

The Technical and Allocations Subgroup of the Advisory Committee on Radio Broadcasting will hold a joint meeting at 1:30 p.m. on Wednesday, July 20, 1988 at the Headquarters of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The agenda will be:

- Report on the Region 2 AM Expanded Band Conference (RARC-88);
- Use of the expanded AM band (1605-1705 kHz) in the United States;
- Methods for improving the AM radio broadcast service;
- FM Translators; and
- Other business.

The Subgroups' meetings are continuing ones, and may be resumed after each session at times and places

decided by the participants. Meetings of the Radio Advisory Committee and its Subgroups are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824-5880, or Louis Stephens, Chairman of the Allocations Subgroup, at (202) 254-3394.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15444 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200136.

Title: Port of Oakland Terminal Lease Agreement.

Parties:

City of Oakland
Mitsui O.S.K. Lines, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The agreement is a license of 3.70/acre parcel of land together with Port Building No. C-516, to be used for establishing and maintaining a truck and rail terminal for distributing goods to and from trucks, rail cars and containers and for other uses related thereto.

Agreement No.: 224-011080-003.

Title: Philadelphia Port Corporation Terminal Agreement.

Parties:

Philadelphia Port Corporation (PPC)
I.T.O. Corporation

Synopsis: The agreement provides for a further 60-day extension of the basic agreement to September 1, 1988.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: July 6, 1988.

[FR Doc. 88-15477 Filed 7-8-88; 8:45 am]

BILLING CODE 6730-01-M

Issuance of Certificate for Indemnification of Passengers for Nonperformance of Transportation; Society Expeditions Cruises, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 80-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Society Expeditions Cruises, Inc./Discoverer Reederei GmbH, c/o Graham and James, 1050 17th Street NW., Washington, DC 20036.

Date: July 5, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-15440 Filed 7-8-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Alta Vista Bancshares, Inc. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each applicant is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to

produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 27, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60680:

1. Alta Vista Bancshares, Inc., Alta Vista, Iowa; to acquire Alta Vista Insurance and Services Corporation, Alta Vista, Iowa, and thereby engage in general insurance activities in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that has a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Alta Vista, Iowa, and the surrounding area.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lena Spitzer Limited Partnership, Streeter, North Dakota; to acquire Streeter Insurance Agency, Inc., Streeter, North Dakota, and thereby engage in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that has a population not exceeding 5,000 pursuant to § 225(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Streeter, North Dakota.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-15423 Filed 7-8-88; 8:45 am]

BILLING CODE 6210-01-M

Claire Dell Hoffman Trust; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Claire Dell Hoffman Trust*; to acquire an additional 7.82 percent of the voting shares of NBA Bancshares, Inc., Salina, Kansas, and thereby indirectly acquire The National Bank of America at Salina, Salina, Kansas.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15420 Filed 7-8-88; 8:45 am]

BILLING CODE 3210-01-M

Alan S. Fellheimer, et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Alan S. Fellheimer* and Judith E. Fellheimer of Sewickley Heights, Pennsylvania; Claire W. Gargalli of Pittsburgh, Pennsylvania; Henry Posner of Pittsburgh, Pennsylvania; David A. Gardner of New York, New York; James H. McLaughlin of Pittsburgh, Pennsylvania; Charles G. Cheledan of Horsham, Pennsylvania; George F. Eichleay of Pittsburgh, Pennsylvania; David J. East of Pittsburgh, Pennsylvania; S. Raymond Rackoff of Pittsburgh, Pennsylvania; Judith E. Yankovic of Robinson Township, Pennsylvania; Howard W. Hanna, III, of Pittsburgh, Pennsylvania; J. Bruce Johnston of McMurray, Pennsylvania; William F. Jones, Jr., of Wexford, Pennsylvania; Patricia A. Muldoon of Pittsburgh, Pennsylvania; Dennis F. Kennedy of Sewickley, Pennsylvania; Robert C. Payment of Butler, Pennsylvania; Dennis Pitocco of Pittsburgh, Pennsylvania; Emerson M. Wickwire of Sewickley, Pennsylvania; and Nicholas J. Zennario of Wexford, Pennsylvania; to acquire, collectively, up to 25 percent of the voting shares of Equimark Corporation, Pittsburgh, Pennsylvania; and thereby indirectly acquire Equibank, Pittsburgh, Pennsylvania; Equibank (Delaware), N.A., Wilmington, Delaware; Liberty Savings Bank, Dresher, Pennsylvania; Heritage National Bank, Pittsburgh, Pennsylvania.

2. *Alan S. Fellheimer* and Judith E. Fellheimer of Sewickley Heights, Pennsylvania; to acquire up to 18 percent of the voting shares of Equimark Corporation, Pittsburgh, Pennsylvania, and thereby indirectly acquire Equibank, Pittsburgh, Pennsylvania; Equibank (Delaware), N.A., Wilmington, Delaware; Liberty Savings Bank, Dresher, Pennsylvania; Heritage National Bank, Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *John L. Olson*, and Marilyn J. Olson, Sidney, Montana; to acquire 28.28 percent of the voting shares of 1st United Bancorporation, Inc., Sidney, Montana, and thereby indirectly acquire First United Bank of Sidney, Sidney, Montana.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company Employee Stock Ownership Plan*, Lakewood, Colorado; to acquire an additional 3.4 percent of the voting

shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of West Arvada, N.A., Arvada, Colorado, FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; Breckenridge FirstBank, N.A., Breckenridge, Colorado; FirstBank of Castle Rock, N.A., Castle Rock, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Cherry Creek, N.A., Denver, Colorado; FirstBank of Englewood, N.A., Englewood, Colorado; FirstBank of Erie, Erie, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A., Littleton, Colorado; FirstBank of Lakewood, N.A., Lakewood, Colorado; FirstBank of Westland, N.A., Lakewood, Colorado; FirstBank of Academy Park, Lakewood, Colorado; FirstBank of Villa Italia, N.A., Lakewood, Colorado; FirstBank of Littleton, N.A., Littleton, Colorado; FirstBank of Wadsworth/Coal Mine, N.A., Littleton, Colorado; FirstBank of Arapahoe County, N.A., Littleton, Colorado; FirstBank of North Longmont, N.A., Longmont, Colorado; FirstBank of South Longmont, N.A., Longmont, Colorado; FirstBank of Minturn, Minturn, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; Vail FirstBank Industrial Bank, Vail, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank at 88th/Wadsworth, N.A., Westminster, Colorado; FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado; and FirstBank of Republic Plaza, N.A., Denver, Colorado.

2. *FirstBank Holding Company of Colorado*; Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of Green Mountain, N.A., Lakewood, Colorado, and FirstBank at Arapahoe/Holly, N.A., located in an unincorporated part of Arapahoe County, Colorado.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15424 Filed 7-8-88; 8:45 am]

BILLING CODE 3210-01-M

Jackson County Bancorp, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding

company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jackson County Bancorp, Inc.*, Gainesboro, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Jackson County Bank, Gainesboro, Tennessee. Comments on this application must be received by July 27, 1988.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Edgewood Bancshares, Inc.*, Countryside, Illinois; to merge with Cosmopolitan Financial Services, Inc., Countryside, Illinois, and thereby indirectly acquire First National Bank of Lockport, Lockport, Illinois, and with Edgemark Financial Corporation, Countryside, Illinois, and thereby indirectly acquire Edgemark Bank-Lombard, Lombard, Illinois. Comments on this application must be received by July 22, 1988.

2. *Edgewood Bancshares, Inc.*, Countryside, Illinois; to acquire 100 percent of the voting shares of Edgemark Bank-Rosemont, Rosemont, Illinois, a *de novo* bank. Comments on this application must be received by July 22, 1988.

3. *Edgewood Bancshares, Inc.*, Countryside, Illinois; to acquire 100 percent of the voting shares of Merchandise National Bank of Chicago, Chicago, Illinois. Comments on this application must be received by July 22, 1988.

4. *Iroquois Bancorp, Inc.*, Gilman, Illinois; to acquire 10 percent of the

voting shares of Terrapin Bancorp, Inc., Elizabeth, Illinois, and thereby indirectly acquire The Elizabeth State Bank, Elizabeth, Illinois.

5. *Peotone Bancorp, Inc.*, Peotone, Illinois; to acquire 12 percent of the voting shares of Terrapin Bancorp, Inc., Elizabeth, Illinois, and thereby indirectly acquire The Elizabeth State Bank, Elizabeth, Illinois.

6. *Terrapin Bancorp, Inc.*, Elizabeth, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of The Elizabeth State Bank, Elizabeth, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *IV Corporate Woods Acquisition, Inc.*, Wichita, Kansas; to merge with Fourth Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Corporate Bankshares, Inc., Overland Park, Kansas, and Corporate Woods State Bank, Overland Park, Kansas. In connection with this application, IV Corporate Woods Acquisition, Inc. has applied to become a bank holding company.

2. *Steamboat Springs Holding Company*, Steamboat Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Steamboat Springs, Steamboat Springs, Colorado.

3. *The Weld State Company*, Fort Lupton, Colorado; to acquire 100 percent of the voting shares of Central Bank of Craig, N.A., Craig, Colorado. Comments on this application must be received by July 18, 1988.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15425 Filed 7-8-88; 8:45 am]

BILLING CODE 3210-01-M

Michigan National Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Michigan National Corporation*, Farmington Hills, Michigan; to acquire Second Commercial Fund, Inc., Bala Cynwyd, Pennsylvania, and thereby engage in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15421 Filed 7-8-88; 8:45 am]

BILLING CODE 3210-01-M

Public Bank Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

BEST COPY AVAILABLE

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Public Bank Holding Company, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The First Women's Bank, New York, New York.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23281:

1. *Southeastern Bancorp, Inc.*, Greeleyville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Greeleyville, Greeleyville, South Carolina.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60600:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to acquire 18.3 percent of the voting shares of SBV Bancshares, Inc., Virden, Illinois, and thereby indirectly acquire State Bank of Virden, Virden, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63160:

1. *Bancshares of Dyer, Inc.*, Dyer, Tennessee; to become a bank holding company by acquiring at least 98.09 percent of the voting shares of Bank of Dyer, Dyer, Tennessee.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *ANB Bankcorp, Inc.*, Bristow, Oklahoma; to acquire 100 percent of the voting shares of Citizens Bank, N.A., Sapulpa, Oklahoma.

2. *BBOK Bancshares, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the

voting shares of Bankers Bank of Kansas, N.A., Wichita, Kansas.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp.*, Los Angeles, California; to acquire 100 percent of the voting shares of Jefferson State Bank, Medford, Oregon.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15422 Filed 7-8-88; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Closure Order; Piedra Rock Quarry, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Prohibition of shooting on public lands in and around the Piedra Rock Quarry within Fresno County in the Hollister Resource Area, Bakersfield District, California.

SUMMARY: Certain described public lands within the Hollister Resource Area in and around the Piedra Rock Quarry in Fresno County, California are hereby closed to the shooting or discharge of any firearm, air or gas gun, sling, elastic or spring gun, slingshot, bow, crossbow, dart or any implement or mechanical appliance by which any bullet, shot, stone, dart or other projectile may be propelled, sprung or thrown from one place to another for any reason. The closure will be in effect on all of the below described public land:

Section 8, Lots 17 and 18, T. 13 S., R. 24 E., MDM.

SUPPLEMENTARY INFORMATION: This order is necessary for public safety and for the protection of public and private property, lands and resources within and adjacent to the closed area. Unregulated gunfire has damaged adjacent private property and has endangered the lives of adjacent residents. This closure is issued under the authority of 43 CFR 8364.1. Any person who fails to comply with this closure order shall be subject to the penalties provided in 43 CFR 8360.0-7. Only delegated Federal Law Enforcement Officers, or any California State Peace Officer as defined in California Penal Code Section 830, while

engaged in the execution of their official duties shall be exempt from this order.

DATES: This order is effective June 22, 1988 and is in effect until the order is cancelled, amended or replaced.

FOR FURTHER INFORMATION CONTACT: J. Steven Addington, Acting Area Manager, Hollister Resource Area, Bureau of Land Management, P.O. Box 365, Hollister, CA 95024; (408) 637-6183.

Dated: June 22, 1988.

J. Steven Addington,

Acting Area Manager.

[FR Doc. 88-15403 Filed 7-8-88; 8:45 am]

BILLING CODE 4310-01-M

(AZ-020-08-4212-13; AZA-22792-9)

Realty Action; Exchange of Public Land in Pinal and Yavapai Counties, AZ

The following described federal lands have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1710:

Gila and Salt River Base and Meridian, Pinal County, Arizona

T. 5 S., R. 5 E.,
Sec. 13, lots 1 to 7, incl., SW¼NE¼,
S½NW¼, SW¼, W½SE¼;
Sec. 14, lots 1 to 4, incl., S½NW¼, S¼;
Sec. 15, lots 1 to 4, incl., S½NW¼, S¼;
Sec. 16, lots 1 to 4, incl., S½NW¼, N½SE¼;
Sec. 17, NE¼;
Sec. 21, NE¼, S¼;
Sec. 22, lots 1 to 4, incl., NW¼;
Sec. 23, lots 1 to 4, incl., S½NW¼;
Sec. 24, lots 1 to 5, incl., S½NE¼,
SE¼NW¼, SW¼.

T. 5 S., R. 6 E.,
Sec. 17, W¼;
Sec. 18, lots 1 to 5, incl., SE¼NW¼,
E½SW¼, SE¼.

Comprising 4,916.93 acres

In exchange for the above-described public land, the United States will acquire all or part of the below-described private land from M&B Investments, An Arizona General Partnership, or their nominee.

T. 9 N., R. 3 E.,
Sec. 4, lot 3;
Sec. 20, SE¼NE¼.

T. 10 N., R. 3 E.,
Sec. 4, lots 1 to 4, incl., S½NW¼, S¼;
Sec. 8, all;
Sec. 9, all;
Sec. 11, N½SE¼;
Sec. 12, N½SW¼;
Sec. 25, all.

T. 10 N., R. 4 E.,
Sec. 34, exchange survey 667.

Comprising 2,620 acres, more or less, commonly referred to as the Horseshoe Ranch.

T. 9 N., R. 1 E.,

Sec. 24, all.
T. 9¼ N., R. 2 E.,
Sec. 21, lot 1, SE¼;
Sec. 22, lots 1 and 2, S½, except metes and bounds description 1;
Sec. 27, lots 1 to 4, incl., S½NW¼, except metes and bounds description 1.
T. 10 N., R. 2 E.,
Sec. 8, W¼;
Sec. 14, SW¼SW¼, W½SE¼SW¼;
Sec. 16, W½SW¼;
Sec. 21, NE¼;
Sec. 22, all;
Sec. 23, W½W¼, W½E½W¼;
Sec. 26, NW¼, N½SW¼, SW¼SW¼;
Sec. 27, all;
Sec. 28, E½, E½W¼, except metes and bounds description 1;
Sec. 33, E½, E½W¼, except metes and bounds description 1;
Sec. 34, all, except metes and bounds description 1.

Comprising 5,280 acres, more or less, commonly referred to as the Bumble Bee Ranch.

The exchange proposal involves all of the exchange proponent's interest in the surface and subsurface of the private lands and the surface and subsurface estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. Rights-of-way AZA-9034, AZA-21393, AZAR-005190, AZA-8839, AZA-18929, AZA-18979 and AZA-23377.
3. Restrictions which may be imposed by Pinal County Board of Supervisors in accordance with Pinal County floodplain regulations.
4. All valid existing rights.

Lands to be transferred out of federal ownership will affect the following livestock allotment: Sacaton Mountains 5194.

The lands to be acquired by the United States from M&B Investments shall be subject to certain easements, permits and other encumbrances detailed in Schedule B of Tigor Title Insurance Company preliminary title report number 88060240 and Transamerica Title Insurance Company preliminary title report 88005257-C.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public from appropriation under the public land laws, including the mining laws, and from any subsequent land exchange

¹ Metes and bounds description from Exhibit A of Tigor Preliminary Title Report 88060240

proposals filed by any proponent other than M&B Investments or their nominee.

The segregation of the described selected lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the Federal Register of a notice of termination of the segregation, or the expiration of two years from the date of initial publication (June 25, 1987), whichever occurs first.

Upon completion of the official appraisal, acreage adjustments will be made to equalize the values of the offered and selected lands.

For a period of forty-five (45) days from the date of publication of this Notice in the Federal Register, interested persons may submit comments to the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director, who may modify, vacate or sustain this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,
District Manager.

Date: July 5, 1988.

[FR Doc. 88-15449 Filed 7-8-88; 8:45 am]

BILLING CODE 4310-32-M

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as national natural landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to § 62.4(d)(1) of 36 CFR Part 62, written comments concerning the potential designation of these areas as national natural landmarks may be forwarded to the Director, National Park Service (490), U.S. Department of the Interior, Washington, DC 20240. Written comments should be received no later than 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney, Natural Landmarks Branch, Wildlife and Vegetation Division, (202) 343-9525.

Dated: June 29, 1988.

Denis P. Galvin,
Acting Director.

ARKANSAS

Newton County

Fitton Cave—This 1,050-acre site is located 6 miles northwest of Jasper within the Buffalo National River complex, administered by the National Park Service. It is the longest known cave (8.1 miles) in Arkansas and remains largely unexplored. Fitton Cave is also the largest known cave in the Interior Highlands Natural Region and exhibits several distinct levels of passage development in a relatively unspoiled state. It also contains the best display of secondary gypsum and mirabilite deposits, as well as some of the largest cavern rooms, within the entire physiographic province.

MISSISSIPPI

Montgomery County

Kilmichael Meteor Crater—This 1,460-acre surface crater site is located 9 miles east of Winona. It is a privately-owned recent impact crater, 6 miles in diameter, created by a meteorite approximately 520 feet in diameter, falling in soft unconsolidated Eocene sediments. Discovered in 1931, Kilmichael Meteor Crater has been outlined by a series of detailed magnetic, gravity, and seismic surveys, followed by bore holes and a deep well test. No volcanics, salt uplifts, sink-hole cavities, regional tectonics or basement uplift is observed at this site. This is the only meteor impact area where weak shock-wave patterns preserved in rock fragments have been observed. This unique and fragile feature is one of the very few recognized craters in North America illustrating the more dramatic geological processes that influenced the development of the Earth's crust. The entire area is widely known for its scenic beauty and high density deer population.

MISSOURI

Greene County

Fantastic Caverns—This 300-acre privately-owned site is located 3 miles north of Springfield. A very spacious cave, Fantastic Caverns is extremely well-decorated with speleothems, soda straws, and stalactites. The cave contains beautiful draperies, columns and large stalagmites. The cave also contains excellent calcite resolution crystals. Two underground streams flow within Fantastic Caverns, discharging on the Sac River. Most significantly, Fantastic Caverns provides a pristine habitat for endangered aquatic species. This cave contains the Ozark cavefish (*Amblyopsis rosae*), the most highly

cave-adapted cavefish in the United States. It is on the national and state lists of rare and endangered species. The only other known concentration of this cavefish is located near Fayetteville, Arkansas. In addition, other fauna include cave crayfish, the Ozark blind salamander, and the eastern Pipistrelle bat. *Cambarus setosus*, a white crayfish endemic to subterranean waters in southwestern Missouri, is also present and appears on the state rare and endangered species list.

OREGON

Umatilla County

McKay Creek Paleontological Site—This 320-acre site is located 8 miles south of Pendleton within the McKay Creek National Wildlife Refuge, and administered by the U.S. Fish and Wildlife Service. It is well-known in the earth sciences community for its extremely fossiliferous mammalian bone beds exposed at shoreline along the edge of the reservoir. Upper Miocene in age (5-10 million years old), the McKay site is one of the best exposures of mammalian fossil bearing rocks of Miocene age anywhere in the world. This "type locality" is recognized as classical by paleontologists worldwide. The variety of fossils is striking. In addition to a wide array of small mammals such as rats, mice, gophers, shrews, beaver and rabbits, the rocks yield a host of larger mammals such as rhinoceros, pigs, camels, antelope, horses, elephants (mastodon), etc. There is also a diversified assemblage of fossil mammalian predators found here including various canids and several felids. The McKay site has produced thousands of fossil specimens. Many new species of mammalian taxa were first described here. Many of the new mammal species described from this site are found nowhere else. These fossil beds also yield fossil leaves, wood, and pollen traces making it possible to assemble a complete composite picture of an upper Miocene environment. The richness of these fossil beds prompted some of the earliest pioneering research on prehistorical animal communities.

TENNESSEE

Stewart County

Bear Creek—This 257-acre site, administered by the Tennessee Valley Authority and located approximately 5 miles west of Dover, is the best known example of western mesophytic forest remaining in the Interior Low Plateaus Natural Region. No comparable forest exists on the Western Highland Rim.

Ridgelines forming the southern border average 500-600 feet in elevation and floodplains are between 370-400 feet. These mesic forests are attenuated outliers of the mixed mesophytic forest, generally dominated by beech and sugar maple. The forest also contains basswood, Ohio buckeye, shagbark hickory, blackgum and white oak.

WASHINGTON

Franklin County

Kahlotus Ridgetop—This 240-acre state-owned site is located 6 miles north of Kahlotus and is considered the best representative example of the central Palouse grassland in the Columbia Plateau. It illustrates a climax community of bluebunch wheatgrass-Idaho fescue. The site occupies rolling hills with elevations varying from 1,360 to 1,558 feet. The site is carpeted with bunchgrasses and patches of annual grasses.

Whitman County

Kramer Palouse Prairie—This 27-acre site, 6 miles north of Colton, is considered the best representative example of northern Palouse grassland in the Columbia Plateau. The site occurs on rolling, deep loess hills typical of the Palouse region. Elevations range from 2,851 to 2,680 feet at this state-owned site.

[FR Doc. 88-15441 Filed 7-8-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

(No. MC-F-19157)

Raynald R. Dupuis; Continuance in Control of Arrow Leasing, Inc.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Raynald R. Dupuis has filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for his continuance in control of Arrow Leasing, Inc. (Arrow Leasing). Mr. Dupuis is the president and principal stockholder of Arrow Leasing, which is presently seeking an initial grant of operating authority in No. MC-208730 which would allow it to operate as a motor common carrier of passengers, in charter and special operations, between points in the United States. Mr. Dupuis seeks the exemption in contemplation of Arrow Leasing's obtaining this operating

authority. The continuance in control of the Arrow Line, Inc. (Arrow) (MC-1934) and R and D Leasing (R and D) (MC-196275) by Mr. Dupuis was previously exempted from the requirement of our prior review and approval in No. MC-F-18864, served May 5, 1988.

DATE: Comments must be received by August 10, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC-F-19157, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioners' representative: Charles A. Webb, 606 London House, 1001 Wilson Boulevard, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: David Berger, (202) 275-7980. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in Procedures—Handling Exemptions Filed by Motor Carriers, 367 I.C.C. 113 (1982).

Arrow holds motor common carrier authority (1) to transport passengers, in charter and special operations, between points in the United States, and in regular-route operations, between points in Connecticut, Massachusetts, and New York, and (2) to transport automobiles, in secondary movements, between specified points in Connecticut, Massachusetts, New Jersey, and New York, on the one hand, and, on the other, points in Florida. R and D holds motor common carrier authority to transport passengers, in special and charter operations, between points in the United States. Mr. Dupuis owns 51 percent of Arrow's stock; he serves as its director and president; and the remaining 49 percent of Arrow's stock is owned by Mr. Dupuis' mother, Bertha T. Dupuis. Mr. Dupuis is the sole owner of R and D.

Accordingly, upon issuance of authority to Arrow Leasing, Mr. Dupuis will control three regulated motor carriers (i.e., Arrow Leasing, Arrow, an 49 U.S.C. 11343(a)(5), the Commission's prior approval is required for the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. Thus, the involved transaction is subject to our jurisdiction and can be carried out only under our regulation or an exemption from regulation. Mr. Dupuis contends that approval of the transaction will be consistent with the national transportation policy in that it

will promote competitive and efficient transportation services to: (a) Meet the needs of shippers, passengers, and consumers; (b) allow a variety and quality of price options; (c) allow the most productive use of equipment; (d) enable efficient and well-managed carriers to earn adequate profits; and (e) provide and maintain commuter bus operations. Mr. Dupuis asserts that the involved transaction is of limited scope because Arrow and R and D are relatively small entities, with 1987 gross operating revenues of approximately \$4.4 million and \$206,000, respectively, and Arrow Leasing, which will be a new carrier, is an entity that currently has no operating revenues. Should Arrow Leasing obtain the passenger authority it seeks, the only area of service overlap between Arrow Leasing, Arrow, and R and D would be in special and charter operations. Approval of the involved transaction assertedly should not result in an adverse impact on competition in the charter market, since the carriers are small, and the market is highly competitive.

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business hours (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: July 1, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.
Noreta R. McGee,
Secretary.

[FR Doc. 88-15392 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-M

(Finance Docket No. 31287)

Southern Railway Co., Trackage Rights Exemption; Southrail Corp.

Southrail Corporation has agreed to grant approximately 1.4 miles of overhead trackage rights to Southern Railway Company (SR) between milepost 329.0 and milepost 330.4 in Corinth and Alcorn Counties, MS. The trackage rights will be effective on or after June 15, 1988.¹

¹ SR indicates that consummation of this transaction is to coincide with the effective date of its acquisition of the Illinois Central Railroad Company line between Fulton, KY, and Haleyville, AL, approved by the Commission in Finance Docket No. 31086. In a decision served June 21, 1988, Chairman Gradison issued a 10-day administrative

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 5, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.
Noreta R. McGee,
Secretary.

[FR Doc. 88-15391 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-M

(Docket No. AB-55 (Sub-254X))

CSX Transportation, Inc.; Abandonment Exemption; Letcher County, KY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.7-mile of railroad between milepost 28.2 near Jenkins and milepost 30.9 at the end of applicant's Sandy Valley & Elkhorn Subdivision near Beefhide in Letcher County, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

stay of the effectiveness of that approval to permit more thorough consideration of petitions for stay filed by United Transportation Union. By decision served June 27, 1988, the Commission denied those petitions, making June 27, 1988, the effective date of the approval.

Provided no formal expression of intent to file an offer of financial assistance has been received, the exemption will be effective August 10, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 21, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 31, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by July 16, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 30, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-15327 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-M

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

² See *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164, served December 21, 1987, and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

[Docket No. AB-55 (Sub-250X)]

**CSX Transportation, Inc.;
Abandonment Exemption; Fayette and
Nicholas Counties, WV**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 8.57-mile line of railroad between milepost 0.0 at Rich Creek Jct., WV, and milepost 8.57 at the end of its Rich Creek Subdivision, in Fayette and Nicholas Counties, WV.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days before the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 10, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 21, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 31, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

² See *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 194, served December 21, 1987, and final rules published in the Federal Register on December 22, 1987 (52 FR 49440-49449).

A copy of any petition filed with the Commission should be sent to applicant's representatives: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by July 16, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 30, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Kathleen M. King,
Acting Secretary.

[FR Doc. 88-15328 Filed 7-8-88; 8:45 am]
BILLING CODE 7035-01-8

[Docket No. AB-3 (Sub-72)]

**Missouri Pacific Railroad Co.;
Abandonment and Findings**

The Commission has found that the public convenience and necessity permit Missouri Pacific Railroad Company to abandon its 182.7-mile line of railroad between milepost 406.9 near McGehee in Desha County, AR, and milepost 651.8 near Vidalia in Concordia Parish, LA.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this notice. The following notification must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be made within this 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10605 and 49 CFR 1152.27.

Decided: June 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley dissented with a separate expression. Commissioner Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88-15390 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-8

**NUCLEAR REGULATORY
COMMISSION**

[Docket Nos. 72-4, 50-269/270/267]

**Duke Power Co.; Consideration of
Issuance of a Materials License for the
Storage of Spent Fuel and of
Amendments to Facility Operating
Licenses and Opportunity for a
Hearing**

The Nuclear Regulatory Commission (the Commission) is considering an application dated March 31, 1988, for a materials license, under the provisions of 10 CFR Part 72, from Duke Power Company (the applicant) to possess spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) located in Oconee County, South Carolina. If granted, the license will authorize the applicant to store spent fuel in a dry storage concrete module system at the applicant's Oconee Nuclear Station site for Units 1, 2, 3 (Operating Licenses DPR-38, 47, and 55). Pursuant to the provision of 10 CFR Part 72, the term of the license for the ISFSI would be twenty (20) years.

The Commission is also considering issuance of amendments to Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55 that would revise the Station's common Technical Specifications (TS) to allow the use of multi-element spent fuel dry shielded canisters (DSC). The DSC situated within a transfer cask would be loaded with spent fuel underwater in the spent fuel pools. The loaded DSC would then be transferred by the transfer cask from the spent fuel building to a reinforced concrete module, the independent spent fuel storage installation (ISFSI). The proposed TS revisions address the movement and handling of the transfer cask and DSC in the existing facility.

To mitigate the consequences of potential cask drop events, the current TS 3.8.13 limits movement of spent fuel

casks in the Oconee spent fuel pools. To allow the use of the heavier DSC/transfer cask, the licensee proposes to add TS 3.18.13, c and d. The amendments also propose revision to TS 5.4.2.3 to identify the ISFSI as a storage location for spent fuel.

Revised radiological consequence calculations for a hypothetical worst-case cask drop of the loaded DSC and transfer cask show that for the Oconee Units 1 and 2 spent fuel pool the spent fuel stored in the first 64 rows of the storage racks closest to the cask handling area must have decayed for 65 days for the radiation dose resulting from the incidental cask drop event to be below the limits set forth in 10 CFR Part 100. For Oconee Unit 3 spent fuel pool, all of the spent fuel must have decayed a minimum of 57 days.

Prior to issuance of the requested license and the proposed reactor operating license amendments, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The issuance of the materials license and the proposed reactor operating license amendments will not be approved until the Commission has reviewed the proposal and has concluded that approval of the license and the amendments will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the *Federal Register*.

Pursuant to 10 CFR 2.105 and 2.1107, by August 9, 1988, the licensee may file a request for a hearing; and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the subject materials license and/or with respect to the proposed reactor operating license amendments in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic

Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the Commission may, upon satisfactory completion of all evaluations, issue the materials license and the reactor license amendments without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene and should identify whether such aspect relates to the requested materials license or to the proposed reactor license amendments. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without prior approval of the presiding officer at any time up to 15 days prior to the holding of the first prehearing conference, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW.

Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, or if the hearing is sought on the reactor amendments to David B. Matthews, Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to A. V. Carr, Esq., Duke Power Company, 422 South Church Street, Charlotte, North Carolina, 28242, attorney for the applicant.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that the materials licensing aspects of this proceeding concern an application for a license falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of NWPA, the Commission, at the request of any petitioner or any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NHPA are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors," (published at 50 FR 41682, October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, subpart G continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, subpart G apply.

If a request for a hearing is received on the proposed reactor operating license amendments, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application dated March 31, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room at the Oconee County Library, 501 West South Board Street, Walhalla, South Carolina 29691. The Commission's License and Safety Evaluation Report, when issued, may be inspected at the above locations.

Dated at Rockville, Maryland, this 30th day of June.

For the Nuclear Regulatory Commission.
Leland C. Rouse,
Chief Fuel Cycle Safety Branch, Division of
Industrial and Medical Nuclear Safety.

David B. Matthews,
Director, Project Directorate II-3, Division of
Reactor Projects-1/II.
[FR 88-15476 Filed 7-8-88; 8:45 am]
BILLING CODE 7530-01-M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-25870; File No. SR-DTC-
88-9)

Self-Regulatory Organizations; Depository Trust Co.; Order Extending Approval of Proposed Rule Change on a Temporary Basis

On May 3, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-88-9) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change would approve on a permanent basis DTC's Same-Day Funds Settlement ("SDFS") Service. Pilot operation of the SDFS Service began on June 26, 1987, when the Commission approved the SDFS Service on a temporary basis until January 31, 1988.¹ In January 1988, the Commission extended temporary approval until June 30, 1988.² As discussed below, the Commission is extending its approval of the SDFS Service on a temporary basis, through August 31, 1988.

The Commission has requested certain information from DTC regarding SDFS Service operation experience. The Commission believes that before granting final approval of the proposed rule change that it needs to analyze fully the information DTC is providing. Therefore, the Commission believes that it is appropriate to extend the temporary approval of the SDFS Service for two months.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the approval of the proposed rule change (File No. SR-DTC-88-9) be, and hereby is, approved on a temporary basis through August 31, 1988.

For the Commission, by the Division of
Market Regulation pursuant to delegated
authority.

¹ See Securities Exchange Act Release No. 26080
(July 9, 1987) 52 FR 28613.

² See Securities Exchange Act Release No. 25306
(February 4, 1988) 53 FR 6800.

Dated: June 30, 1988.
Shirley E. Hollis,
Assistant Secretary.
[FR Doc. 88-15270 Filed 7-8-88; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

(License No. 09/12-0145)

Filing of Application for Transfer of Control of a Licensed Small Business Investment Company; Union Venture Corp.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing Small Business Investment Companies (SBIC) (13 CFR 107.601 (1988)) for the transfer of Control of Union Venture Corporation (the Licensee), License No. 09/12-0145, 445 South Figueroa Street, Los Angeles, California 90071, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act).

The SBIC was licensed on September 30, 1967, with paid-in capital and paid-in surplus of \$705,000. As of December 31, 1987, the Licensee had private capital of 23,550,000. Standard Charter Bank of England owns 100 percent of the outstanding stock of the Licensee's parent, Union Bank.

Union Bank and its parent corporation Standard Chartered Bank (SCB), entered into an agreement (the Agreement) pursuant to which SCB will sell its interest in Union Bank (parent) to California First Bank (CFB). CFB is majority owned by Bank of Tokyo, and also operates CFB Venture Capital Corporation a licensed SBIC located in San Diego, California. At the present time, no changes in the management or operating policies of Union Venture are contemplated.

Matters involved in the SBA's consideration of the application include the general business reputation and character of the proposed transferees and the probability of successful operation of the Licensee under their control and management in accordance with the Act and Regulations.

Notice is further given that any interested person may, not later than August 10, 1988 submit their comments, in writing, on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20418.

A similar Notice shall be published by the Licensee in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance
Program No. 59.011, Small Business
Investment Companies)
Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

Dated: July 5, 1988.
[FR Doc. 88-15454 Filed 7-8-88; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Advisory Circular 25-14]

High Lift and Drag Devices

AGENCY: Federal Aviation
Administration, DOT.
ACTION: Notice of issuance of advisory
circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25-14, High Lift and Drag Devices. This AC sets forth an acceptable means of compliance with the provisions of Part 25 of the Federal Aviation Regulations dealing with the certification requirements for high lift and drag devices. Guidance information is provided for showing compliance with structural and functional safety standards for high lift and drag devices and their operating systems.

DATE: Advisory Circular 25-14 was issued by the Acting Manager, Aircraft Certification Division, Northwest Mountain Region on May 4, 1988.

How to Obtain Copies: A copy of AC 25-14 may be obtained by writing to the U.S. Department of Transportation, M-443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on June 29, 1988.

Leroy A. Keith,
Manager, Aircraft Certification Division,
Northwest Mountain Region.
[FR Doc. 88-15434 Filed 7-8-88; 8:45 am]
BILLING CODE 4910-33-M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on August 2 and 3, 1988 of the following debt management advisory committee:

Public Securities Association, U.S.
Government and Federal Agencies
Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on August 2 and the preparation of a written report to the Secretary of the Treasury on August 3, 1988.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c) (4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of

section 552b of Title 5 of the United States Code.

Charles O. Seltman,
Assistant Secretary (Domestic Finance).
Date: July 5, 1988.
[FR Doc. 88-15439 Filed 7-8-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 1, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0075.
Form Number: IRS Form 1040EZ.
Type of Review: Extension.
Title: Income Tax Return for Single
Filers with No Dependents.

Description: This form is used by certain single individuals to report their income subject to income tax and to compute their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistics use.

Respondents: Individuals or households.

Estimated Number of Respondents: 17,980,270.

Estimated Burden Hours Per Response: 29 minutes.

Frequency of Response: Annually.
Estimated Total Reporting Burden: 8,684,337 hours.

OMB Number: 1545-0085.
Form Number: IRS Form 1040A.
Type of Review: Revision.
Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form are correct and are also for statistics use.

Respondents: Individuals or households.

Estimated Number of Respondents:
21,447,413.
Estimated Burden Hours Per Response: 2 hours and 23 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden:
21,745,403 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-15492 Filed 7-8-88; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 88-39]

Revocation of Customs Broker's Permits by Action of Law; Express Service International, et al.

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: Notice is hereby given that on April 28, 1988, pursuant to section 641(c)(3), Tariff Act of 1930, as amended (19 U.S.C. 1641(c)(3)), and § 111.45 of the Customs Regulations, as amended (19 CFR 111.45), the permits for the Customs brokers listed below were revoked in the districts indicated.

Baltimore
Express Service International
Floarea Florescu
Michael McLean
Movers Port Service
Nathan Wein

Boston
Compass Forwarding Co., Inc.
Charleston
Burlington Northern Customs Brokerage
C.F. Export-Import Services, Inc.

Chicago
Janet K. Lutton

Detroit
Air Express International
C.F. Export-Import Services, Inc.
Compagnie d'Affrètement et de Transport U.S.A., Inc.

Dallas/Fort Worth
Dorf International Ltd.

Duluth
Associated Customs Brokers, Inc.
Honolulu
Arthur J. Fritz & Co.

Houston
I.C.E. Co., Inc.
McLean Cargo Specialists

Western Overseas Corp.
Laredo
Dynamic Ocean Services International
Miami
Almac Shipping Co., Inc.
C.F. Export-Import Services
Lusk Shipping Co., Inc.
McLean Cargo Specialists, Inc.

New Orleans
Emery Customs Brokers
New York
Janet K. Lutton

Lusk Shipping Co., Inc.
Norfolk

BDP International, Inc.

Philadelphia
N.J. DeForte

Portland, Me.
J.F. Moran Co., Inc.

San Francisco
Brinkley and Associates

Duty Drawback Service, Inc.

Frank Cadenhead

Geo. S. Bush & Co., Inc. (Portland)

Howard Hartry

Mohawk Customs & Shipping Co.

P.S. Clearance

S.H. Brogan Consulting, Inc.

Seattle
Seaport International

Savannah
Four Winds

Louis-Ferdinand and Co., Inc.

Lusk Shipping Co., Inc.

Tampa
Lund & Pullara, Inc.

Lusk Shipping Co., Inc.

Marvin Madden Co.

M.G. Maher & Co., Inc.

Dated: July 1, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 88-15447 Filed 7-8-88; 8:45 am]

BILLING CODE 4820-32-M

Fiscal Service

[Dept. Circular 570; 1988 Rev.]

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Publication of Annual List; Correction

In notice document 88-14278, Part II, beginning on Page 25052, in the issue of Friday, July 1, 1988, make the following correction:

Page 25059 and 25060 are transposed; therefore, the order of these two pages should be reversed.

Dated: July 8, 1988.

Terry L. Boyer,
Manager, Surety Bond Branch.

[FR Doc. 88-15474 Filed 7-8-88; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

(Delegation Order No. 231)

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Repayment of erroneous refunds without interest under certain circumstances.

New Delegation Order provides delegation of authority to District and Service Center Directors to administratively determine that interest is not due on erroneous refunds under certain circumstances. Authority may be redelegated to the division chief level. The text of the delegation order appears below.

EFFECTIVE DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT:
Sandra F. McAree TR-L, Room 3611,
1111 Constitution Ave., NW.,
Washington, DC 20224. 202-506-7575
(not a toll-free telephone number).

Edward J. Martin,
Director, Office of Legislative and Management Support.

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10 and section 6404(e)(2) of the Internal Revenue Code of 1986, authority to make administrative determinations that interest is not due on erroneous refunds is hereby delegated to District Directors and Service Center Directors. This authority may be redelegated to the division chief level.

In all instances, the following conditions apply:

1. Documentation is present which leaves no doubt that a Service error caused the erroneous refund to be issued.

2. Documentation is present which substantiates that repayment of the refund has been made in full.

3. The official is satisfied, after considering the relative size of the erroneous refund and the amount of interest involved, the circumstances surrounding any delay in the repayment of the erroneous refund and the handling and collection costs which would be entailed, that a waiver would be fair

and equitable to the Government and the taxpayer.

The authority delegated herein may not be further redelegated.

Date: June 14, 1988.

Approved:

Charles H. Brennan,

Deputy Commissioner, Operations.

[FR Doc. 88-15483 Filed 7-8-88; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1985 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Umberto Boccioni: A Retrospective" (see list ¹) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about September 15, 1988, to on or about January 8, 1989, is in the national interest.

¹ A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7988, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Public notice of this determination is ordered to be published in the Federal Register.

Date: June 8, 1988.

R. Wallace Stuart,
Acting General Counsel.

[FR Doc. 88-15479 Filed 7-8-88; 8:45 am]

BILLING CODE 5030-01-M

Grants Program for Private, Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announce a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the Federal Register, June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Office of Private Sector Programs will assist in supporting and exchange that will focus on the United States and Africa: Petroleum Issues in the 1990s. USIA representatives abroad will select the participants from both African oil exporting and oil importing nations. The project scheduled for November 1988 will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of energy and/or African affairs. The project design will

include discussion of U.S. trade in petroleum with Africa, the petroleum sector and its relationship to economic development, and energy conservation. U.S. national oil policy and energy prospects in the 1990s for Africa and the United States will also be covered.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. Please refer to this specific program by name in your letter of interest. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiatives—Africa: Petroleum Exchange), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: July 1, 1988.

Roger C. Rasco,
Deputy Director, Office of Private Sector Programs.

[FR Doc. 88-15472 Filed 7-8-88; 8:45 am]

BILLING CODE 5030-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 132

Monday, July 11, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting was held at the offices of the Farm Credit Administration in McLean, Virginia, on July 6, 1988, from 4:00 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:

Closed Session¹

1. The Federal Land Bank of Jackson, in receivership, and the Federal Land Bank Association of Jackson, in receivership.

Dated: July 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.
[FR Doc. 88-15508 Filed 7-7-88; 4:02 pm]

BILLING CODE 5705-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 12, 1988 from 10:00 a.m.

¹ Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (b), (6) and (9).

until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, McLean, Virginia 22102-5090, (703) 883-4003, (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Final Regulations Governing Civil Money Penalties, 12 CFR Parts 662 and 663;
2. Final Regulations Governing FCA's Examination Process, 12 CFR Parts 611 and 617;
3. Reaffirmation of Final Rule Relating to the Book-Entry Procedure Applicable to the Farm Credit System Financial Assistance Corporation, 12 CFR Part 615, new Subpart R; and

Closed Session¹

4. Examination and Enforcement Matters.

Dated: July 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.
[FR Doc. 88-15509 Filed 7-7-88; 4:02 pm]

BILLING CODE 5705-01-M

FEDERAL DEPOSIT INSURANCE

CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Wednesday, July 6, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting to be held at 2:30 p.m. the same day, on less than seven days' notice to

¹ Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (b) and (9).

the public, of the request of Sumitomo Trust and Banking Co. (U.S.A.), New York City (Manhattan), New York, for modification of Order granting Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter moved from open session to closed session in a meeting open to public observation; and that the matter moved from open session to closed session could be considered in a closed meeting by authority of subsections (c)(8), (c)(9), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9), and (c)(9)(A)(ii)).

Dated: July 7, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15550 Filed 7-7-88; 12:41 pm]

BILLING CODE 5714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

July 9, 1988.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., July 13, 1988.

PLACE: 825 North Capitol Street NE, Room 9300, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 881st Meeting—July 13, 1988, Regular Meeting (10:00 a.m.)

CAP-1.

Docket No. HB20-85-1-000, Public Service Company of Indiana, Louisville Gas and Electric Company, Ohio Power Company, City of Vanceburg, Kentucky, City of Hamilton, Ohio, Kane /ha Valley Power

Company, Elkem Metals Company and Kentucky Utilities Company

CAP-2.

Project No. 8864-006, Weyerhaeuser Company

CAP-3.

Project No. 7488-004, Commonwealth Hydroelectric, Inc.

CAP-4.

Project No. 8662-008, Nockamixon Hydro Associates

CAP-5.

Project No. 10585-001, Meldahl Hydropower Development Corporation

CAP-6.

Project No. 2088-017, Oroville-Wyandotte Irrigation District

CAP-7.

Project Nos. 8245-001 and -002, Bellows-Tower Hydro, Inc.

CAP-8.

Project Nos. 8820-002, 8822-002 and 8823-002, City of New York, New York

CAP-9.

Project No. 7318-004, Consolidated Power Company

CAP-10.

Project No. 1417-008, The Central Nebraska Public Power and Irrigation District

CAP-11.

Project No. 1835-019, Nebraska Public Power District

CAP-12.

Project No. 9711-060, Inghams Corporation

CAP-13.

Project No. 9712-000, Beardslee Corporation

CAP-14.

Project No. 8142-007, Henwood Associates, Inc.

CAP-15.

Docket Nos. ER88-398-000 and FA88-063-000, Louisiana Power & Light Company

CAP-16.

Docket No. ER88-411-000, Vermont Electric Power Company

CAP-17.

Docket Nos. ER85-646-003 and ER85-647-008 (Phase I), ER85-646-006 and ER85-647-003 (Phase II), New England Power Company

CAP-18.

Docket No. QF88-64-001, Lajet Energy Company

CAP-19.

Docket No. QF88-555-000, York Canyon Cogeneration Associates

CAP-20.

Docket No. ER88-278-000, Potomac Electric Power Company

CAP-21.

Docket No. ER88-25-001, Pacific Power & Light Company

CAP-22.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-23.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-24.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-25.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-26.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-27.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-28.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-29.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-30.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-31.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAP-32.

Docket No. EL88-19-000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

CAM-3.

Docket No. RM88-10-000, Revision of Definition For Natural Gas Produced From Devonian Shale

CAM-4.

Docket No. GP88-2-001, Forest Oil Corporation

CAM-5.

Docket No. GP88-44-001, Zilkha Energy Company

Consent Gas Agenda

CAG-1.

Docket No. RP88-192-000, Texas Eastern Transmission Corporation

CAG-2.

Docket No. RP88-80-004, Texas Eastern Transmission Corporation

CAG-3.

Docket No. RP88-193-000, Midwestern Gas Transmission Company

CAG-4.

Docket No. RP88-195-000, Northern Border Pipeline Company

CAG-5.

Omitted

CAG-6.

Docket No. RP88-135-000, Caprock Pipeline Company

CAG-7.

Docket Nos. RP88-94-002 and RP88-94-005, Natural Gas Pipeline Company of America

CAG-8.

Docket No. RP88-47-004, Northwest Pipeline Corporation

CAG-9.

Docket Nos. RP85-169-030 and RP85-169-039, Consolidated Gas Transmission Corporation

CAG-10.

Docket No. RP88-131-002, Carnegie Natural Gas Company

CAG-11.

Docket Nos. RP88-45-001, and RP88-45-003, Arkla Energy Resources, a division of Arkla, Inc.

CAG-12.

Docket No. RP88-27-007, United Gas Pipeline Company

CAG-13.

Docket No. RP88-47-007, Northwest Pipeline Corporation

CAG-14.

Docket No. TA85-1-33-000, El Paso Natural Gas Company

CAG-15.

Docket No. TA88-2-25-004, Mississippi River Transmission Corporation

CAG-16.

Docket No. TA88-1-51-003, Great Lakes Gas Transmission Company

CAG-17.

Docket Nos. TA87-5-21-003 (PGA 87-4a) and TA82-2-21-008, Columbia Gas Transmission Corporation

CAG-18.

Docket No. RP83-58-014, Southern Natural Gas Company

CAG-19.

Docket No. RP87-43-001, MIGC, Inc.

CAG-20.

Docket No. RP88-98-002, Southern Natural Gas Company

CAG-21.

Docket No. RP88-98-002, Southern Natural Gas Company

CAG-22.

Docket No. RP88-98-002, Southern Natural Gas Company

CAG-23.

Docket No. RP88-98-002, Southern Natural Gas Company

CAG-24.

Docket No. RP88-98-002, Southern Natural Gas Company

CAG-25.

Docket No. RP88-98-002, Southern Natural Gas Company

CAG-26.

Docket No. RP88-98-002, Southern Natural Gas Company

CAG-27.

Docket No. RP88-98-002, Southern Natural Gas Company

CAG-28.

Docket No. RP88-98-002, Southern Natural Gas Company

Docket Nos. RP88-119-007, TA84-2-9-000 and TA85-1-9-006, Tennessee Gas Pipeline Company

CAG-29.

Docket No. RP87-55-000, Columbia Gas Transmission Corporation

CAG-30.

Docket No. TA85-1-29-805 (Sulpetro Issue), Transcontinental Gas Pipe Line Corporation

CAG-31.

Docket No. RP87-74-000, Colorado Interstate Gas Company

CAG-32.

Docket No. RP87-7-003, Transcontinental Gas Pipe Line Corporation

CAG-33.

Docket No. R188-30-002, Phillips 66 Natural Gas Company

CAG-34.

Docket No. G-4579-044, The George R. Brown Partnership

CAG-35.

Docket No. G-4579-045, Mobile Exploration and Producing North America, Inc.

CAG-36.

Docket Nos. G-4579-046 and G-2758-001, Texaco Inc. and Texaco Producing Inc.

CAG-37.

Docket Nos. G-4579-047, G-3244-001 and C163-1045-001, Cities Service Oil and Gas Corporation (Operator)

CAG-38.

Docket No. G-6606-004, Union Texas Petroleum Corporation (Operator)

CAG-39.

Docket No. C188-326-001, Belco Development Corporation

CAG-40.

Docket No. C187-226-001, Enstar Corporation

CAG-41.

Docket Nos. C187-1-002 and C187-261-001, American Royalty Producing Company

CAG-42.

CAG-36.
Docket No. CP83-254-312, Williston Basin Interstate Pipeline Company

CAG-37.
Docket No. CP88-8-002, Great Lakes Gas Transmission Company

CAG-38.
Docket Nos. CP83-254-311 and CP83-335-227, Williston Basin Interstate Pipeline Company

CAG-39.
Docket No. CP88-18-002, Florida Gas Transmission Company

CAG-40.
Docket No. CP88-328-001, Transcontinental Gas Pipe Line Corporation

CAG-41.
Docket Nos. CP81-482-005, CP84-49-002, CP85-586-001, CP86-386-002, CP86-536-001, CP86-537-001, CP86-647-002, CP86-662-001, CP86-736-001, CP86-741-001, CP87-47-001, CP87-71-001, CP87-81-001 and CP87-87-001, Tennessee Gas Pipeline Company

Docket No. CP83-364-003, Columbia Gas Transmission Corporation

CAG-42.
Docket No. CP87-407-001, National Fuel Gas Supply Corporation

Docket No. RP86-136-004, National Fuel Gas Supply Corporation

CAG-43.
Docket No. CP88-12-001, Columbia Gas Transmission Corporation

CAG-44.
Docket Nos. CP87-460-000, 001 and 002, El Paso Natural Gas Company

CAG-45.
Docket No. CP87-442-001, ANR Pipeline Company

CAG-46.
Docket No. TC88-6-004, United Gas Pipe Line Company

CAG-47.
Docket No. CP87-8-003, Tennessee Gas Pipeline Company

CAG-48.
Docket No. CP87-19-000, Pacific Gas Transmission Company

CAG-49.
Docket Nos. CP86-215-000, CP86-245-000, CP86-280-000, CP86-286-000 and CP86-606-000, Questar Pipeline Company *et al.*

CAG-50.
Docket No. CP87-165-000, Overthrust Pipeline Company

CAG-51.
Docket Nos. CP85-106-000 and CP85-106-001, Tennessee Gas Pipeline Company

CAG-52.
Docket No. CP88-278-000, Shenandoah Gas Company

CAG-53.
Docket No. CP84-760-003, Trunkline Gas Company

Docket Nos. CP87-257-000 CP87-512-000 and CP88-54-000, Southern Natural Gas Company

CAG-54.
Docket No. CP87-534-000, Bayou Interstate Pipeline System and Pelican Interstate Gas System

CAG-55.
Docket Nos. CP87-335-000 and CP87-335-001, Northwest Pipeline Corporation

CAG-56.

Docket No. CP88-134-000, East Tennessee Natural Gas Company

CAG-57.
Docket No. CP87-519-000, Colorado Interstate Gas Company

CAG-58.
Docket No. CP88-126-000, Tennessee Gas Pipeline Company

CAG-59.
Docket No. CP88-156-000, Transcontinental Gas Pipe Line Corporation

CAG-60.
Docket No. CP84-336-004, Transcontinental Gas Pipe Line Corporation

CAG-61.
Docket No. CP88-131-001, Carnegie Natural Gas Company

I. Licensed Project Matters

P-1.
Discussion of Issues Related to Cumulative Impact Assessments

II. Electric Rate Matters

ER-1.
Docket Nos. ER87-72-001 and ER87-73-001, Orange and Rockland Utilities, Inc. Opinion on initial decision concerning rate of return.

Miscellaneous Agenda

M-1.
Docket No. RM88-17-000, Regulations Governing the Public Utility Regulatory Policies Act of 1978. Notice of Proposed Rulemaking.

M-2.
Reserved

M-3.
Reserved

M-4.
Docket No. GP86-54-000, ANR Pipeline Company v. Wagner & Brown

Docket No. GP83-48-000, Producer's Gas Company v. Southport Exploration, *et al.* & Kaiser-Francis

Docket No. RM83-49-000, Natural Gas Pipeline Company of America v. John A. Masek, *et al.*

Docket No. GP83-55-000, Associated Gas Distributors

Docket No. GP84-57-000, Transcontinental Gas Pipe Line Corporation v. Koch Industries

Docket No. GP85-1-000, Transcontinental Gas Pipe Line Corporation v. Belmont Oil Corporation and Case-Pomeroy Oil Corporation

Docket No. GP85-10-000, Southern Natural Gas Company v. Pogo Producing Company

Docket No. GP85-11-000, Sea Robin Pipeline Company v. Pogo Producing Company

Docket No. GP85-33-000, KN Energy Inc. v. Joe Gray, *et al.*

Docket No. GP86-30-000, ANR Pipeline Company v. Northwestern Life Insurance Company

Docket No. GP88-55-000, ANR Pipeline Company v. Hamilton Brothers, *et al.*

Docket No. GP86-56-000, Cabot Pipeline Corporation

Docket No. GP87-13-000, ANR Pipeline Company v. Helmerich & Payne, Inc.

Docket No. GP87-21-000, ANR Pipeline Company v. Plains Resources, Inc.

Docket No. GP87-54-000, Transcontinental Gas Pipe Line Corporation

Docket No. GP88-12-000, Colorado Interstate Gas Company v. RJB Gas Pipeline Company

Docket No. GP88-15-000, ANR Pipeline Company v. Maguire Oil Company, *et al.*

Docket No. GP88-16-000, Colorado Interstate Gas Company v. Chemco, *et al.* Complaint raising NGPA Title I issues.

M-5.
Docket No. RM88-20-000, Five-Year Take-Or-Pay Make-Up Provisions In Natural Gas Producer-Pipelines Contracts. Notice of Proposed Rulemaking.

M-6.
Docket Nos. RI88-281-000 through RI88-284-000 and RI88-963-000 through RI88-962-000, Exxon Corporation

Docket No. RI88-1114-000 through RI88-1154-000, Arco Oil and Gas Company

Docket No. Docket Nos. RI88-1207-000 through RI88-1213-000, Samedan Oil Corporation. Order concerning requirement for five-year make up rights.

I. Pipeline Rate Matters

RP-1.
Docket No. IS87-14-000, *et al.*, Buckeye Pipe Line Company. Interlocutory appeal concerning disclosure of certain cost data.

RP-2.
Docket Nos. RP87-73-000 and RP87-73-002 through -004, Algonquin Gas Transmission Company. Contested settlement regarding Part 284 transportation.

RP-3.
(A) Docket No. GP88-11-000, Hadson Gas Systems, Inc. Declaratory order concerning "on behalf of" requirement in NGPA section 311.

(B) Docket No. CP88-286-000, Cascade Natural Gas Company v. Northwest Pipeline Corporation, Chevron Chemical Company, Intermountain Gas Company, Hadson Gas Systems, Inc., Llano, Inc., Corpus Christi Industrial Pipeline Company and Transco Energy Marketing Company. Complaint concerning transportation under NGPA section 311.

(C) Docket Nos. RP88-51-002, RP88-67-002 and RP88-175-000, Texas Eastern Transmission Corporation. Order concerning section 311 and interruptible transportation rates.

(D) Docket Nos. RP88-17-010 and -011, Southern Natural Gas Company. Order concerning priority of section 311 shippers who switch to blanket certificate service.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Reserved

Lois D. Cashell,
Acting Secretary.
(FR Doc. 88-15506 Filed 7-7-88; 9:49am)

BILLING CODE 8717-01-0

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370 and 386

(Docket No. 80350-8050)

Export of Commodities on Board Country Group Q, W, Y, or Z Vessels and Aircraft

Correction

In proposed rule document 88-13946 originally appearing on page 23228 in the issue of Tuesday, June 21, 1988, and corrected on page 24551 in the issue of Wednesday, June 29, 1988, make the following correction:

On page 24551, in the first column, the CFR line was incorrect and should appear as set forth above.

BILLING CODE 1505-01-0

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

(OPP-00264; FRL 3407-5)

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations

Correction

In rule document 88-14718 beginning on page 24666 in the issue of Wednesday, June 29, 1988, make the following corrections:

1. On page 24666, in the third column, in the right-hand side of the table, "185.3350" should read "185.3550".
2. On page 24667, in the third column, under Part 185, Subpart B, in section 185.800, the second line "1-[1H-1,2,4-triazol-1-yl]-2-butanone" should read "[1H-1,2,4-triazol-1-yl]-2-butanone".
3. On page 24668, in the first column, under Part 185, Subpart B, in section 185.5450, the second line "Tetrabromoethyl]-2,2-" should read "Tetrabromoethyl]-2,2-".
4. On page 24669, in the first column, under Part 186, Subpart B, in section 186.3400, the second line "alpha-cyano-3-phenoxybenzyl(R)-2-[2]" should read "alpha-cyano-3-phenoxybenzyl(R)-2-[2]".

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ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

(OPP-00263; FRL 3407-4)

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations

Correction

In rule document 88-14717 beginning on page 24666 in the issue of Wednesday, June 29, 1988, make the following correction:

On page 24666, in the second column, the bold faced heading should read as follows:

**"PARTS 193 AND 561
[REDESIGNATED AS 40 CFR PARTS
185 and 186]"**

BILLING CODE 1505-01-0

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AZ-940-06-4212-13; A-22677)

Arizona; Exchange of Public and Private Lands in La Paz and Mohave Counties

Correction

In notice document 88-8130 beginning on page 12474 in the issue of Thursday, April 14, 1988, make the following correction:

On page 12474, in the first column, in the land description, under T. 15 N., R. 19 W., under Sec. 23, "E½W½" should read "E½W½"

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federal register

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23 etc.
Cockpit Voice Recorders (CVR) and
Flight Recorders; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, 29, 91, 121, 125, and 135

[Docket No. 25530; Amdt. Nos. 23-35, 25-65, 27-22, 29-25, 91-204, 121-197, 125-10, 135-26]

[RIN 2120-AC48]

Cockpit Voice Recorders (CVR) and Flight Recorders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for additional comments (Part 91 requirements).

SUMMARY: The FAA amends its regulations to require digital flight data recorders and cockpit voice recorders (CVRs) to be installed in a broad category of airplanes and rotorcraft operated by air carriers and commuters, as well as in selected aircraft operated in general aviation. The amendments are in response to legislation which mandates the FAA to amend its flight recorder and CVR requirements in accordance with recommendations from the National Transportation Safety Board (NTSB). The intent of this rulemaking is to provide more information to accident investigators in determining the causes of accidents and the measures needed to correct the causes. In addition, the FAA also requests additional comments regarding the general aviation requirements.

DATES: Effective date: October 11, 1988. Comments on the Part 91 requirements must be submitted on or before October 11, 1988. Compliance Date: October 11, 1991.

ADDRESSES: Comments on the Part 91 requirements should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25530, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25530. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Technical Analysis Branch [AWS-120], Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 287-9567.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking on flight recorder and CVR requirements on February 12, 1988 [Notice No. 88-1, 53 FR 4314]. The proposed rule was primarily based on recommendations from the NTSB issued on June 19, 1987. FAA rulemaking on these requirements was mandated by legislation on December 22, 1987, in the Appropriations Act, 1988, [Pub. L. 100-202] and on December 30, 1987, under the Airport and Airway Safety and Capacity Expansion Act of 1987, Title III, Section 303(c) [Pub. L. 100-223]. The Appropriations Act required the FAA to expand existing CVR and flight recorder requirements "to smaller sizes of commuter air carrier aircraft" and to require CVR and flight recorder "retrofits on certain types of existing commuter air carrier aircraft. . . ."

The Airport and Airway Safety and Capacity Expansion Act required the FAA to initiate rulemaking "to consider the use of cockpit voice recorders and flight data recorders on commuter aircraft and other aircraft, commensurate with the recommendations of the National Transportation Safety Board."

The NTSB issued its safety recommendations in response to a number of significant events which had occurred since its previous recommendations issued in August 1982. These events were FAA's flight recorder and CVR rule changes issued March 25, 1987; the technological development of solid-state flight data recorders (SFDR); the continued growth of the commuter air carrier industry; revisions to Part 23 of the Federal Aviation Regulations (FAR) (14 CFR Part 23) which defined a commuter category airplane and established certification requirements for commuter category airplanes; and the adoption by the International Civil Aviation Organization (ICAO) of revised flight recorder and CVR standards.

The FAA used the NTSB recommendations of June 19, 1987, as an appropriate background to discuss extending and updating its flight recorder and CVR rules. The rules on CVR and flight recorders had been last amended March 25, 1987 [Amendment Nos. 91-199, 121-191, 125-6, 135-23; 52 FR 9622]. In simplified terms, the 1987 amendments required that FAR Part 121 operators update certain of their airplanes over a specified time period with digital flight recorders that have 6, 11, or 17 data parameters depending on the date of type certification or manufacture. Parts 91 and 125 were also

amended by requiring that any operator who has installed approved flight recorders and approved CVRs shall keep the recorded information for at least 60 days after an accident or occurrence requiring immediate notification to the NTSB. The 1987 amendments extended Part 135 voice recorder requirements which applied to any turbojet airplane having a passenger seating configuration of 10 seats or more to any newly manufactured multiengine, turbine-powered airplane that was certificated to carry six or more passengers and required to have two pilots. The 1987 amendments did not require flight recorders for operations conducted under Part 135. They did not require voice recorders or flight recorders for operations conducted under Parts 91 and 125. They did not require flight recorders for helicopters.

The NTSB wanted broader application of the requirements than those established in the 1987 amendments, and the NTSB recommended that the requirements, including parameter requirements, be updated to cover technological improvements in CVR and flight recorder equipment. Through the aforementioned legislation, Congress agreed.

As stated in the preamble to the proposed rule and in the NTSB recommendations, the need for updated and expanded regulations on the installation and use of flight recorders and voice recorders is twofold. First, technological advances in cockpit equipment have greatly increased the potential for accumulating information on the flight characteristics of an aircraft at the time of an incident or accident. However, unless aircraft equipped with new electronic display systems (i.e., "glass cockpits") are also equipped with flight recorders that can capture the flight information and from which investigators can retrieve that information, the information is lost. Therefore, a major objective of this rulemaking is to upgrade the parameters and flight recorder and voice recorder standards to accommodate the most sophisticated systems now being installed in aircraft. Secondly, previous flight recorder and voice recorder requirements have not been applied to significant sectors of air transportation operations.

In recent years the commuter air carrier fleet has grown substantially and its growth is expected to continue. The 1987 annual report of the Regional Airline Association (whose membership consists primarily of commuter air carriers) estimates that more than 61 million passengers will be carried by

members of that association in 1987. The growth in commuter air transportation has resulted in newly manufactured aircraft designed specifically for the commuter market. While these new airplanes have a take-off weight in excess of 12,500 pounds, they often have a seating configuration of less than 30 passenger seats and payloads of 7,500 pounds or less, which means they are operated under Part 135. Until now Part 135 has had no flight recorder requirements. Therefore, vital accident data from commuter airline accidents has not been available.

The NTSB safety recommendation cites several recent commuter air carrier accidents in which investigations revealed a lack of information that would have been pertinent to determining the causes. Although the investigations produced a number of safety recommendations based on evidence of potentially hazardous conditions and practices, the specific flight crew actions or inactions, environmental conditions or equipment failures that may have caused the accidents could not be positively determined. Therefore, the NTSB's safety recommendations towards preventing recurrence could not be as definitive as possible. The NTSB has indicated that in these accidents if flight recorder information had been available, specific deficiencies in flight crewmembers' performance or mechanical failures or malfunctions could have been determined. Without flight recorder information, accident investigators are severely limited in definitively assessing causes. Therefore, the FAA has added flight recorder requirements to Part 135 and extended the voice recorder requirements in Part 135 to specific types of airplanes and rotorcraft.

Part 91 and Part 125 operations have had neither flight nor voice recorder requirements. The lack of information poses the same problem to investigators as in commuter operations. Therefore, this rulemaking extends flight recorder and voice recorder requirements to specific types of airplanes and rotorcraft being operated under Part 91 and specific types of airplanes operated under Part 125.

In addition to the above, the NTSB recommended that all newly manufactured aircraft and new cockpit voice recorder installations be designed to allow for uninterrupted recording from boom or mask microphones and headphones for each flight crewmember station and from an area microphone on dedicated channels of the CVR. The performance of CVR installations of this

kind where the audio signal of each crewmember station is continuously recorded on a dedicated channel provides much clearer recorded information for investigators than the standard cockpit area microphone (CAM). Therefore, this rulemaking includes amendments to Parts 23, 25, 121, 125, and 135, to require the NTSB recommended capability on newly manufactured aircraft and on aircraft on which new cockpit voice recorders are installed and to require the use of that capacity where it already exists.

In the interest of safety and in accordance with the Congressional mandate and NTSB recommendations, the FAA is extending and updating its regulations in flight recorders and voice recorders. This action is consistent with the requirements of section 601(b) of the FA Act that the FAA perform its powers and duties " . . . in such manner as will best tend to reduce or eliminate the possibility of, or recurrence of, accidents"

Overall this rulemaking accomplishes the following significant changes:

(1) It establishes flight recorder requirements for certain aircraft operated under Parts 91, 125, and 135.

(2) It establishes cockpit voice recorder requirements for certain aircraft operated under Parts 91 and 125, and extends and revises voice recorder requirements under Part 135.

(3) It upgrades the requirements and parameters for flight recorders to the level of the most sophisticated systems installed in aircraft. The new parameters and requirements affect certain aircraft operated under Parts 121, 125, and 135.

(4) It requires uninterrupted sound recording capability in cockpit voice recorders under Parts 23 and 25 and specifies use of this capacity under the operating rules of Parts 121, 125, and 135.

(5) It revises CVR and flight recorder airworthiness standards in Part 25; establishes flight recorder installation requirements in Parts 23, 27, and 29; and establishes CVR requirements in Parts 23 and 27.

Comment Discussion

The FAA received 52 comments on the NPRM. Thirty-one comments opposed the proposed rule; nine supported it; two supported it with reservations. The rest of the comments did not express opposition or support. At least 19 comments addressed specific issues raised by the proposed rule. The categories of commenters included airport authorities, state governments, operators of airplanes and helicopters, manufacturers, and foreign air

transportation companies. Of the associations representing air transportation interest groups, comments were received from the Air Line Pilots Association (ALPA), the Air Transport Association (ATA), General Aviation Manufacturers Association (GAMA), Airport Operators Council International, the National Air Transportation Association (NATA), and the Regional Airlines Association (RAA). Commenters who opposed the rule were primarily operators conducting operations under Part 135 (or Part 91), particularly operators of helicopters, as well as ATA and NATA. Categories of commenters supporting the rule were manufacturers, state governments, and airport authorities, the National Transportation Safety Board (NTSB), and the RAA.

Several commenters presented recommendations and raised concerns over specific requirements in the rule. The following categories of issues were raised and are discussed separately below:

- (1) Part 121 requirements
- (2) Part 91 and Part 135 requirements
- (3) Specific technical requirements
- (4) Comments beyond the Scope of the Notice.

Part 121 Requirements

The Air Transport Association (ATA) on behalf of its member airlines submitted a number of objections to the proposed changes in Part 121 and in some cases to the proposed parallel changes in Part 25. Several of ATA's objections were also raised by other commenters. Overall opposition to the proposed changes was based on two general arguments. First, the ATA argued that the Congressional language cited in the NPRM as a primary basis for the proposed changes did not identify Part 121 air carriers. Second, they argued that "the NTSB and FAA have not adequately justified the Part 121 proposals for further expansion of flight recorder requirements beyond those in Amendment 121-91." ATA also stated that the 45-day comment period was too short for its member airlines to "provide the type of technical and economic impact information needed to develop final credible technical and cost analyses," and recommended that the FAA withdraw and reconsider the proposed amendments to Parts 25 and 121.

ATA and others specifically commented on technical concerns with Part 121 proposals. Comments of a purely technical nature are dealt with elsewhere in this preamble. The

remaining Part 121 comments (mostly from ATA) are summarized as follows:

- Of the six new developments cited by FAA in Notice 88-1 as justification for the proposed additional requirements, none justify the proposed Part 121 changes.

- Notice 88-1 did not include any discussion on "major rule", "significant rule" requirements under Executive Order 12291 and DOT policy, respectively.

- There are significant differences between the FAA/NTSB proposed flight recorder parameters and the ICAO standards which ATA says are "recommended standards only" which are "in the process of being revised."

- Adoption of 32 parameter flight recorder requirements for newly manufactured airplanes rather than last year's requirement for 17 parameter flight recorder for newly manufactured airplanes will create an unnecessary administrative and logistics burden.

- The proposed additional parameters could exceed the capacity of digital flight data acquisition units "denying airline use of flight recorder information for routine maintenance and operations analyses, some of which are required by the FAA."

- The relationship of the proposed requirements to the rules adopted in Amendment 121-191 is confusing and potentially disruptive and costly to airline operations especially when considered with other FAA requirements already adopted or under consideration (e.g., windshear, TCAS requirements). Related to this ATA comment was a comment by McDonnell Douglas Aircraft Co. which indicated that changing "regulatory requirements on systems such as flight recorders on an annual basis . . . makes planning very difficult and expensive."

ATA offered an alternative to the FAA proposal. ATA suggests that for a retrofit, additional parameters be required only when the airplane is already equipped with "an ARINC 717 digital flight data acquisition unit (DFDAU) with the ARINC buses containing the (a number to be later determined) additional parameters already converted to it." For newly manufactured airplanes ATA would follow the same pattern except that additional parameters above the 17 parameters of Amendment 121-191 would be recorded "on a space availability basis without impacting existing airline recording programs . . ."

The FAA's Response: The FAA does not agree with ATA's interpretation of the Congressional mandate. Given the overall legislative history of Public Law

100-223, FAA believes that the Congressional intent is to ensure safety by making available to the NTSB whatever data is necessary for accident investigation if acquiring that data is technologically feasible. Congress stated this intent by ordering the FAA "to initiate a rulemaking proceeding to consider the use of cockpit voice recorders and flight data recorders on commuter aircraft and other aircraft, commensurate with the

recommendations of the National Transportation Safety Board." [Emphasis supplied.] In its June 19, 1987, letter to the FAA, the NTSB stated its requirements which covered 14 CFR Parts 23, 25, 91, 121, and 135. FAA proposed to meet those requirements in Notice 88-1, as directed by Congress. Comments submitted by the Board did not indicate that the proposed Part 121 requirements exceeded the bounds of what the Board determines as necessary information for conducting accurate accident investigations.

ATA is correct that the normal paragraph addressing "major rule" under Executive Order 12291 and "significant rule" under DOT policy was omitted—inadvertently—from the NPRM. Nonetheless, the potential costs were fully discussed in the preamble (and in a full economic evaluation in the docket) and the substance of that discussion indicated that the proposed rule would not be considered major under the Executive Order. Further, the overall preamble discussion made it clear that the proposals were significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures.

The 1987 Amendments to Part 121 did not increase the parameters listed in Appendix B of that part. NTSB has stated in its recent recommendations that Appendix B should be updated to expand the parameters list and define new parameters, improved accuracies, ranges, and sampling intervals so that flight recorder standards are consistent with the capabilities of the most advanced electronic display systems. As stated by NTSB, "The introduction of the Airbus A320 with its fly-by-wire technology will present new challenges in accident investigation that will require post accident information of the quantity and quality that goes far beyond the current minimum standards of Appendix B."

In response to the NTSB recommendations, this rulemaking updates the parameter list to meet the requirements of the most advanced cockpit systems if installed and to require the best available flight recorder technology for newly manufactured

airplanes operated under Part 121. The requirement for flight recorder parameters in addition to the 17 required by the 1987 amendments applies only to aircraft manufactured after October 11, 1991, or those already equipped with specific ARINC equipment. This allows adequate time for the required installation of the latest flight recorder equipment as part of the manufacturing process which should cause no manufacturing delay and only minimal cost.

While ATA describes the proposed tie-in with existing ARINC 429 equipment (or an equivalent) as a retrofit requirement, it is not the normal mandatory type retrofit requirement applicable to all or certain specified airplanes operated under Part 121 or Part 135. The final rule clarifies the FAA intent in this regard (discussed under Technical Comments portion of this preamble) and as adopted the rule will apply only where stated equipment is already installed in an airplane and where data is readily available so that it can be accessed with virtually no burden on Part 121 operators, either in lost airplane time or other costs.

In consideration of other objections raised by ATA, that extending the parameters from 17 to 32 (or higher, by ATA's count) is too great a change too soon, that Part 121 operators are being required to make other equipment changes at the same time, and that the proposed parameters were not consistent with those recommended by ICAO, and in consideration of the comments submitted by the NTSB, the FAA has done the following: (1) Extended the effective date of the requirements to 3 years instead of the proposed 2 years; and (2) reduced the number of mandatory parameters to 28 and made the other highly desired parameters optional where feasible.

Parts 91 and 135 Requirements

Except for the Regional Airline Association's agreement with most of the proposed Part 135 amendments, virtually all of the operators who commented on these requirements opposed them. Specific technical comments are discussed below. Typical of the more general opposing comments was the comment of the North Dakota Aviation Council which stated that the FAA had "expanded the intent of Congress" in proposing CVR and flight recorder requirements for certain general aviation operations under Part 91 and on-demand operations under Part 135. The National Air Transportation Association (NATA) also accused the FAA of expanding the Congressional

mandate and further stated that nowhere in the proposal "can a case be made for a quantitative increase in safety benefit for requiring CVR's in the types of aircraft typically operated in the Part 135 charter fleet."

One commenter pointed out that a 2-year compliance period for the installation of CVR's is inadequate. From the commenter's viewpoint, most of the affected aircraft require a "heavy" inspection only every 5 to 6 years. It is during this inspection that it would be most appropriate to install the CVR.

Several commenters asserted that where an aircraft is newly manufactured to a type design of long standing, the attributes and operational history are already well known and it is unlikely that the NTSB will obtain the kind of information it seeks from accident investigations. These commenters also asserted that the past safety record did not justify the new requirements and that because of the nature of on-demand and general aviation operations the costs are disproportionate since they cannot be spread out over thousands of flight hours or hundreds of thousands of passengers boarded each year.

Some of the most vigorous comments adverse to the proposed requirements were received from helicopter operators. They, too, thought that the FAA had exceeded the Congressional mandate, that none of the cited accidents or other justification involved helicopters, and that the potential costs for helicopter operators far exceeded any potential benefits to the overall aviation industry.

The Regional Airlines Association stated that there is no justification for requiring retrofit of the 32-parameter flight data recorder on 20-30 seat airplanes under Part 135 when no such retrofit requirement was proposed for Part 121. RAA indicated that while the costs would be substantial, it could not provide specific estimates because they would vary from airplane to airplane depending on the amount of wiring already installed in the airplane.

The FAA's Response: As discussed previously, the FAA does not agree that it has exceeded the Congressional mandate or that the new CVR and flight recorder requirements for Part 91 operators and for non-scheduled Part 135 operators cannot be justified. Accident investigators face the same problems in determining the causes of accidents, whether the accidents involve scheduled commuter operations, nonscheduled operations, or general aviation operations. New airplanes used in all of these operations employ state-of-the-art avionics and control systems; yet operators have not been required under Parts 91 and 135 to install flight

recorders which would provide data to accident investigators. Post accident documentation, such as switch and instrument positions, that have proven vital in past investigations is not available with the new systems, thus increasing the difficulty in determining the cause of an accident.

Furthermore, many airplanes of the same type are used in Part 91 operations and in Part 135 operations. Therefore, any accident data collected from an accident of one of these airplane types has application for operations conducted under both parts. Also, an individual airplane may be used in operations conducted under both parts. If an airplane is used in operations under both parts, the Part 91 requirements would not be as burdensome as suggested by some commenters since in many cases the airplane would already be subject to Part 135 requirements. Also, because of the potential for use of an airplane type under both Parts 91 and 135, the used aircraft market ultimately benefits when airplanes are equipped so that they can move back and forth between different operating rules.

Accidents cited in the NPRM (which included operations conducted under Parts 91 and 135) illustrate the problems accident investigators encounter when aircraft are not equipped with flight or voice recorders. In such cases, investigators rely on interviews with fellow crewmembers, training records, FAA surveillance, cockpit standardization, and additional operational factors. Although the cause of an accident may be determined through these investigative efforts, the process may be long and costly in terms of lives and property. Time may be critical, particularly if the cause of an accident is an airworthiness factor.

The rule does recognize differences in accordance with the seating capacity of the aircraft. In Part 91, flight recorders are required for aircraft (both fixed-wing and rotorcraft) having a passenger seating configuration of 10 or more manufactured after October 11, 1991. The flight recorders must have 17 required parameters for airplanes and 22 for rotorcraft. In Part 135, flight recorders are required for aircraft (both fixed-wing and rotorcraft) having a passenger seating configuration of 10-19 seats that are brought onto the U.S. register after October 11, 1991. The flight recorders must have 17 parameters for airplanes and 22 for rotorcraft. In effect, Part 91 and Part 135 flight recorder requirements for these size aircraft apply only to newly manufactured aircraft. No retrofit of existing U.S.

registered aircraft of this size is required for flight recorders.

In Part 135, airplanes having a passenger seating configuration of 20 to 30 seats and rotorcraft having a passenger seating configuration of 20 or more seats must be equipped with flight recorders after October 11, 1991. This is a retrofit as well as a requirement for newly manufactured aircraft. The NTSB in its comment agreed that it might be impractical to require 20-30 passenger airplanes to be retrofitted with 32 parameter flight data recorders, as proposed. In light of all the information received, the FAA has changed § 135.152(b) to require that affected aircraft be retrofitted with either 11-parameter or 17-parameter flight recorders (depending on the type certification date), except that those airplanes manufactured after October 11, 1991, must be upgraded to 28 parameters.

Clearly the flight recorder requirements for the larger aircraft being operated under Part 135 are more stringent than those for the smaller aircraft. Most, if not all, nonscheduled operations conducted under Part 135 use aircraft with a passenger seating configuration of less than 20 seats. Such aircraft are not required to be retrofitted with flight recorders. However, they are required to be equipped with voice recorders. Since the cost of installing voice recorders is substantially less than that of flight recorders, the FAA does not expect the voice recorder requirements to impose a significant burden on small operators.

With regard to comments about the inadequacy of a 2-year period to reasonably accomplish the Part 91 retrofit of CVR's, the FAA concurs. Accordingly, the FAA has provided a 3-year period to effect this retrofit, recognizing, however, that some operators may not conduct a "heavy" inspection or overhaul in this period, the regulatory language provides that the Administrator, for good cause, may authorize extension of the compliance time to accommodate such maintenance schedules. A request for extension of the compliance time must be accompanied by a demonstration of good cause and must specify a date for the operator's completion of the retrofit of the CVR.

Technical Comments

A number of commenters provided detailed comments on the technical aspects of the new rules. Any such comments that address the substance of the rule are discussed below. Comments that point out printing errors, suggest non-substantive minor language

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changes, or suggest changes to make the rules internally consistent were considered and the appropriate changes were made. However those changes are not discussed in detail.

A number of commenters pointed out that, although the preamble to Notice 88-1 specifically discusses a new requirement for "hot mic" recording, the rule language specifies types of microphones but does not contain a "hot mic" requirement. Suggestions for appropriate rule language were provided. To correct this omission in the final rule, §§ 23.1457(c)(5) and 25.1457(c)(5) have been added to make it clear that all sounds received by the microphone must be recorded without interruption. In addition, §§ 121.359(e), 125.227(e), and 135.151(c) have been changed to clarify that §§ 23.1457(c)(5) and 25.1457(c)(5) apply to airplanes manufactured after October 11, 1991, and to airplanes on which a new cockpit voice recorder has been installed after October 11, 1991. One commenter stated that proposed § 25.1459(e) is unnecessary. This new paragraph requires evaluation of novel or unique design or operational characteristics of new aircraft to determine if additional parameters should be recorded on the flight recorder for that aircraft. The commenter is correct that additional parameters could be proposed as Special Conditions for that aircraft. However, the language is being inserted into § 25.1459 as a rule of general applicability so that as part of a review of airworthiness requirements for initial certification, a review to assess the need for additional parameters will be conducted.

A commenter pointed out that, while proposed § 91.35(b)(1) requires aircraft manufactured after one year after the effective date to be prewired to accept any appropriate flight recorder, the proposed language does not specify the date by which such aircraft must be equipped with flight recorders. The FAA has reviewed proposed § 91.35(b)(1) and a parallel requirement proposed in § 135.152(a) and has concluded that, even though the requirement might provide an economic incentive to manufacturers to begin equipping airplanes to accept flight recorders, the safety benefit comes from the installation of the recorders. Therefore proposed §§ 91.35(b)(1) and 135.152(a) have not been included in the final rule.

One commenter questioned the justification for applying the proposed rules to helicopters. This commenter proposed that if CVR and flight recorder requirements are applied to any helicopters, they should be applied only

to large helicopters. The FAA does not agree that the large/small dividing line (small—12,500 pounds or less maximum certificated takeoff weight) is the appropriate determining factor for requiring or not requiring CVR and flight recorder equipment. As with airplanes, the FAA considers passenger seating configuration a more meaningful measure of the need for requiring safety information collection devices such as CVR and flight recorders.

A number of commenters stated that the language of proposed §§ 121.343(e) and 125.225(c) does not accomplish the objective stated in the preamble to Notice 88-1. Some commenters stated that the proposed rule language "equipped with an ARINC 429 digital data bus" is itself inaccurate. Others stated that even if an airplane does have the ARINC 429 equipment, that equipment may be used in such a way that it would not, without a major retrofit, provide access to the information in the additional parameters as suggested in the NPRM. The FAA's intent in following through on this NTSB recommendation was to take advantage of the full capability of more advanced technology equipment when that equipment is already installed. There is no intent to require any retrofitting costs beyond the minimal cost of accessing readily available data. The final rule has been redrafted so that it clearly carries out the original intent. It now states that when a large airplane is equipped with a digital data bus and ARINC digital flight data acquisition unit or equivalent the airplane must be "equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium." The rule, as adopted, also clarifies that only those parameters "available on the digital data bus" must be recorded.

As mentioned previously, the ATA and several other commenters questioned the number of new parameters that would be required under Appendix B to Part 121 for newly manufactured aircraft. Commenters suggested that there were inconsistencies between the FAA's proposed parameters, NTSB's recommended parameters, and ICAO recommended standards. Commenters also indicated that to meet the FAA proposed requirement would in many cases overload the system so that operators would have to sacrifice present usage of flight recorder systems to provide them with important safety-related, day-to-day operating information. At the same time some

commenters suggested additional parameters, not proposed, that normally would be considered beyond the scope of this rulemaking. In order to establish standards that most effectively use flight recorder capability, the FAA has decided to require 28 mandatory parameters under Part 121, Appendix B, Part 125, Appendix D, and Part 135, Appendix D for newly manufactured aircraft. The remaining parameters will be optional, to be accessed if the operator's system has adequate capacity. The non-mandatory parameters include additional parameters that were not proposed, such as TCAS, which were added at the recommendation of the NTSB.

The NTSB and other commenters raised questions concerning the adequacy of existing Technical Standard Orders (TSOs) for both cockpit noise recorders and flight recorders. While TSOs are necessarily relevant, they have not been made a part of this rulemaking. As part of its ongoing TSO program, the FAA will revise TSOs when changes are needed to upgrade the specifications for equipment required by this final rule. These efforts are already underway and are being coordinated with the Society of Automotive Engineers (SAE) and European Organization for Civil Aviation Electronics (EUROCAE).

Some commenters pointed out that the minimum 15-minute duration period for cockpit voice recorders proposed by § 91.35(e) is not consistent with the standard agreed to in Europe (EUROCAE). Others noted that proposed §§ 91.35(b)(2) and 135.152(b) would allow a flight data recorder with an 8-hour duration while the international community is considering a 10-hour minimum to be consistent with the current ICAO recommended practice. While the FAA recognizes that both proposed limits are less stringent than those mentioned by commenters (and less stringent than FAA's own minimums under Part 121), the FAA's intent is to apply CVR and flight recorder solid state technology and CVR and flight recorder requirements to general aviation operations at minimal cost. Since the technology is already available, the FAA anticipates that reasonably priced CVR and flight recorder equipment for general aviation aircraft will be available for installation well within the 3-year compliance period allowed in this rule.

One commenter objected to the requirement in proposed Appendix E to Part 135 that a rotorcraft with over 20 passengers have flight recorders with a 24-hour recording capacity. The

commenter stated that most rotorcraft operate essentially short-haul journeys and that, therefore, an 8 to 10-hour capacity should be adequate. The FAA agrees, but no change is needed since Appendix E does not require a 24-hour recording capacity. In Appendix E, the recorded time is not related to the time of individual flights, but to a 24-hour clock.

Several commenters objected to the requirements in §§ 121.359(e), 125.227(e), and 135.151(c) that when operating aircraft equipped to record uninterrupted audio signals received by a boom or mask microphone, flight crewmembers must use the boom microphone below 18,000 feet. Specific objections were as follows:

(1) The requirement would make better sense elsewhere in Part 121 where it would clarify that the boom microphone rather than the handheld microphone should be used when cockpit workload is high.

(2) Flight crewmembers might not be able to determine whether the CVR in a particular aircraft has a "hot mic" feature.

(3) It requires the boom microphone even though the smoke/oxygen mask microphone might be more appropriate.

(4) It would have an impact on those aircraft which have a separate hand microphone for the public address/cabin interphone systems.

(5) Hot boom microphones are needed since acceptable recordings are provided by directional fixed mikes and high quality area mikes.

(6) The requirement could affect flight safety by causing fatigue on flight schedules with successive short stops.

The FAA does not agree that area microphones provide recordings that are equal to boom microphones. Boom or mask microphones with uninterrupted signals produce the most audible recordings. The purpose of the requirement is to require boom microphones (or smoke/oxygen mask microphones if needed) at times when the continual recorded information would be most useful if an accident or incident occurred. Flight crewmembers should be able to tell whether CVR in a particular aircraft has a "hot mic" feature. The use of the boom microphone is not likely to be a cause of flight crewmember fatigue in short hop schedules. The causes of such fatigue are well documented—airport congestion, low altitude weather, the number of arrivals and takeoffs—factors which create a need for the use of hot mics. The requirement should not affect public address/cabin interphone communications which have a dedicated channel.

GAMA stated that except for the longitudinal acceleration and stabilizer trim position or pitch central position parameters, proposed Appendix D of Part 91 and Appendix B of Part 135 are consistent with Aerospace Standard AS 8039 which was produced by a Society of Automotive Engineers (SAE) committee formed at the suggestion of the FAA and other government agencies. The committee had concluded that the value of the potential information from the two excepted parameters would not justify the cost. GAMA also pointed out that the recommendation of the SAE committee had been unanimous except for the NTSB representative. The FAA has determined that these two parameters are justified, since the NTSB in its June 19, 1987, letter stated a need for the information that would be provided by these additional parameters.

One commenter objected to the requirement in § 91.35(d)(2) that the CVR be operating during the checklist action. The requirement would pose a problem for small aircraft that have no external source of power and that would have to rely on battery power to operate the CVR. The commenter stated that for some aircraft this would be impractical. The FAA does not agree that the requirement would be impractical. It is essential that checklist actions be recorded since in the event of an accident, investigators must determine if the checklist action was properly conducted. Determining the adequacy of the power source is a certification procedure and thus the manufacturer or operator would have to show during the certification process that CVR operation would not interfere with emergency or other power needs. This showing should not impose any significant additional burden since airplanes of the size to which this requirement applies would either operate off of an auxiliary power source or have adequate backup power available.

One commenter objected to the "Resolution Readout" column which was added to Appendix B—Airplane Flight Recorder Specifications. According to the commenter, these specifications increase resolution requirements beyond the capability of equipment currently being used. The commenter states that "Compliance with the higher orders of resolution will require more complicated software in the recorder system and in the readout equipment, effectively making all current equipment obsolete."

The resolution readout column is included to make the FAA flight recorder appendices consistent with the proposed ICAO recommended standard.

However, the resolution readout requirement is intended only for flight recorder equipment installed on newly manufactured airplanes. The final rule has been changed to make this clear by including a footnote to this column in each flight recorder appendix. Also, the new TSO for flight recorder standards will contain resolution requirements.

Comments Beyond the Scope of the Notice

The FAA received several comments which were recommendations or suggestions for considering alternatives or additions to the proposal. Some of these were requests that are beyond the scope of the notice while others appeared to be primarily informational. These types of comments are summarized below and responded to.

Two commenters requested that the rulemaking update maintenance requirements to cover flight recorders and cockpit voice recorders. The FAA does not consider that a specific amendment is needed in this regard because an air carrier's continued airworthiness maintenance program will automatically cover such equipment.

One commenter requested that the cockpit voice recorder requirements under Parts 91 and 135 include a requirement for underwater locator beacons to aid retrieval of the recorders from lakes and rivers. This requirement already exists for aircraft certification requirements.

One commenter requested that the rule include relief for continued aircraft operation if a flight recorder or CVR becomes inoperative. The commenter was concerned that a time lapse may occur between the revisions to the Master Minimum Equipment List (M MEL) and the compliance date, also that M MEL lists may vary depending on who has responsibility for the particular aircraft M MEL. This rulemaking does not deal with minimum equipment lists and the problem suggested by the commenter, if necessary, would be handled under normal M MEL procedures.

A comment from a manufacturer stated that the NPRM implied "different sets of data between engine manufacturers." The commenter suggested additional engine information to be recorded for each engine:

N2—High Rotor Speed
EGT—Exhaust Gas Temperature
TLA—Throttle Lever Position
N1—Low Rotor Speed
WF—Fuel Low
CLA—Fuel Cutoff Lever Position

The commenter also suggested recording maintenance and status words from the electronic engine controls.

The FAA encourages including these additional parameters, as appropriate, but is not mandating them.

Construcciones Aeronauticas, S.A. (CASA) objected to the reference in the NPRM to two CASA C-212 accidents that occurred in 1987. CASA stated that some facts about the accident were incorrect in the NPRM and that the FAA should publish a correction. The FAA has checked the NTSB June 1988 recommendation letter and has determined that the NPRM accurately reflected the facts as they were stated by the NTSB in that letter.

A manufacturer of recorder equipment requested that the FAA consider the manufacturer's new type of cockpit recorder. Information on the recorder was submitted with the comment. The comment does not require an FAA response.

The Air Line Pilots Association (ALPA) comment, which was generally supportive of the proposal, requested a change in § 121.343(e) which requires that required flight recorders "must be operated continually from the instant the airplane begins to takeoff roll until it has completed the landing roll at an airport." ALPA stated that this provision "hampers the collection of valuable data which can be used in evaluating the DFDR data." ALPA requested that the language be changed to require recorder operation to begin at the time of engine start to the time of engine shutdown at the end of the flight in order to provide "steady state" information. Two other commenters also requested that recording cover the ground operation phase.

No revisions to § 121.343(e) were requested by NTSB or included in the proposed rule. The present Part 121 requirement was simply carried over to Part 91 and Part 135 requirements. A revision of the requirement is beyond the scope of this rulemaking action and would necessitate additional rulemaking proposals. However, most operators presently activate flight recorders at engine start and other operators who wish to record "steady state" data are encouraged to consider the ALPA comment.

ALPA also strongly opposes the "use of CVR recordings for any purpose other than pure accident investigation activities" and the "premature release" of CVR information during accident investigations.

One commenter stated a belief that "in recent years, because of the rapid growth of the airlines industry, training and experience levels have dropped

...". The commenter stated that the FAA should require additional training and safety measures rather than additional equipment. The FAA does not believe the situation is an either/or; FAA has taken action on training and other safety measures, for example, its windshear training proposal [52 FR 20560, June 1, 1987]. In any event, consideration of additional pilot training and safety measures outside the area of recording equipment is beyond the scope of this rulemaking action.

Summary of Rule Changes

Significant changes between the proposed rule and the final rule are summarized below. These changes were determined in the appropriate sections of the Comment Discussion above:

- (1) The compliance dates have been extended from 2 years to 3 years.
- (2) Pre-wiring requirements in § 91.35 and § 135.52 have been deleted.
- (3) The requirements for airplanes currently equipped with a digital data bus are clarified in §§ 121.343(e) and 125.225(c).
- (4) Certain of the parameters in Appendix B of Part 121 have been made optional.
- (5) Aircraft required to be upgraded under § 135.152(b) must meet the 11-parameter or 17-parameter flight recorder requirements (currently required of certain airplanes used under Part 121) except those manufactured after October 11, 1991.
- (6) Requirements pertaining to the use of boom microphones have been clarified.
- (7) The resolution readout column in each of the appendices has been made applicable only to aircraft manufactured after October 11, 1991.

The changes above were coordinated with the NTSB staff who have indicated agreement that this final rule meets the intent of the NTSB recommendations in its letter of June 19, 1987.

In addition to the above changes, Parts 23 and 27 have been revised to include airworthiness requirements for flight and voice recorders. In the proposal such airworthiness requirements were only in Parts 25 and 29, and all operators subject to flight and voice recorder requirements were referred to those parts. In the interest of consistency, the final rule includes airworthiness requirements for flight and voice recorders in Parts 23, 25, 27, and 29. References in the operating rule have been revised accordingly.

Request for Additional Comments on Part 91 Requirements

Notwithstanding that the Part 91 requirements have been incorporated in

this final rule, the FAA is still interested in receiving comments with respect to issues raised in Notice 88-1. The FAA is particularly interested in comments regarding the questions asked on page 4315 of the Federal Register publication of the notice (53 FR 4315). Therefore, a comment period of 90 days is being provided to allow the public to comment accordingly. The FAA will review all additional comments submitted and, within 1 year after the publication of this amendment in the Federal Register, will publish a document discussing all comments, presenting FAA findings based upon the comments, and proposing any revisions to the requirements contained herein, if necessary.

Regulatory Evaluation Summary

The complete regulatory evaluation of the final rule is available in the regulatory docket. A discussion of those comments addressing the regulatory evaluation of the notice and a summary of the final regulatory evaluation are presented below.

Comments addressing the regulatory evaluation generally expressed concern about the costs of the proposed regulations, but provided very little detail in support of their conclusions. This was true with respect to both direct acquisition and installation costs, and indirect costs from factors such as reduced payload or aircraft range.

Some commenters stated that the amendments would impose a severe economic burden on small companies operating small aircraft for hire. The FAA is aware that the amendments will result in economic impacts. However, the Department of Transportation has been directed by the Congress to take these actions.

Some commenters misinterpreted the significance of the 10-year analysis period to mean that the FAA expected operators to spread their retrofit costs over 10 years. FAA's cost estimates were for total program costs over 10 years. In developing these estimates, retrofit costs were concentrated in the first two years of the analysis period. However, the FAA has extended the compliance period from the proposed 2-year period to three years in the final rule, which should provide relief to many operators.

Some commenters expressed concern about the high cost of retrofitting their aircraft. However, it appears they misunderstood that certain proposed flight recorder requirements would apply to newly manufactured aircraft only. Further, concerns were expressed that a 32 parameter retrofit requirement

for 20 to 30 passenger seat aircraft operated under Part 135 would impose requirements that are more stringent than those requirements applicable to existing Part 121 aircraft. This issue has been resolved in the final rule by adopting requirements for existing 20 to 30 passenger Part 135 aircraft that are similar to the current Part 121 requirements.

One commenter stated that the FAA did not consider initial development and certification costs in its regulatory evaluation. However, the FAA did attempt to account for this by adding 10 percent to its equipment and installation cost estimates to provide for certification, start-up, and support equipment costs for proposals affecting aircraft operated under Parts 91, 125, and 135. This was not done for Part 121 because aircraft exist that meet the proposed requirements, and support equipment already is in service because of existing recorder requirements.

The regulatory evaluation of the final rule is very similar to the regulatory evaluation of the notice. Appropriate revisions have been made to reflect the extension of the compliance period from 2 years to 3 years, the easing of the flight recorder retrofit requirements originally proposed for larger Part 135 aircraft, and other minor clarifying changes.

Briefly, the costs of these rules result from the need to acquire, install, and maintain recorder equipment, as well as the cost of additional fuel consumption attributable to the additional weight of this equipment, and miscellaneous costs related to engineering and certification requirements, support equipment, and administrative start-up costs. The FAA estimates that the cost for all categories of aircraft affected by these rules will be approximately \$297±million (1987 dollars), or a present value of \$207±million when discounted back to the start of the ten-year analysis period using the 10 percent discount rate prescribed by the Office of Management and Budget. Other potential costs of this rule that have not been quantified include diminished payload carrying capability and/or reduced range that may affect some smaller aircraft as a result of the weight and volume of these recorders, as well as possible safety tradeoffs with other equipment, such as traffic alert and collision avoidance systems, ground proximity warning systems, weather radar, etc. Solid state technology potentially could avoid or reduce many of these costs and tradeoffs.

Flight recorders and cockpit voice recorders provide information only, which does not directly save lives or prevent accidents. Accidents and

casualties are prevented by other actions, such as improvements in aircraft design or operating procedures, which may result from information gained by recorders. Because the benefits of recorders are indirect, they have only been discussed qualitatively in this analysis.

Flight recorders have proven effective in determinations of aircraft structural, mechanical, and systems failures that have led to corrective actions such as aircraft modifications or changes in operating procedures. Flight recorders are extremely useful in identifying the responses of flight crews to hazardous situations, and they contribute substantially to human factors analysis. Flight recorders also help define more precisely those operational problems that need to be addressed through research and development programs, such as windshear encounters. Further, many lessons learned from flight recorders, especially those concerning human factors and operational problems, are not limited to the particular aircraft type involved in an accident. Rather, they provide safety insights that are beneficial to all pilots operating many different types of aircraft under various operating rules. Additionally, recorders will aid significantly in the analysis of those accidents that will inevitably be experienced by aircraft utilizing new technologies, such as fly-by-wire control systems, canards, and extensive use of composite materials in aircraft structures.

International Trade Impact Assessment

These amendments will have little or no impact on trade for either U.S. firms doing business in foreign countries or foreign firms doing business in the United States. The amendments will affect only U.S. air carriers and operators. Foreign air carriers are prohibited from operating between points within the United States; therefore, they would not gain any competitive advantage over the domestic operations of U.S. carriers. In international operations, foreign air carriers are not expected to realize any cost advantages over U.S. air carriers because many foreign countries have recorder requirements that are as stringent as those adopted in this final rule. Further, general aviation operations conducted in the United States are not in any direct competition with foreign enterprises. For these reasons, the FAA does not expect that these amendments will result in any trade impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Any small entity that operates any aircraft in the categories that are included in the amendments to Parts 91, 121, 125, and 135 would be affected by this rule. Some of these amendments could result in "a significant economic impact on a substantial number" of small entity operators and air carriers. Most manufacturers that certify aircraft under Parts 25 and 29 are not small entities and therefore are not subject to the RFA.

The following analysis explains the reasons for this determination concerning operators and air carriers. In developing estimates of annualized net compliance costs, uniform annualized costs for capital investments have been determined by multiplying the amount of the investment by a capital recovery factor appropriate for the discount rate and period of the analysis. A capital recovery factor of .155, based upon a 10 percent discount rate over a 10-year period, has been used in this analysis. Threshold cost values and small entity size standards are those stated in FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*. Values have been adjusted to 1987 dollars.

The threshold values defining a significant economic impact for scheduled carriers are \$96,200 if the entire fleet has a seating capacity of over 60 seats, and \$53,800 for other scheduled carriers. The threshold value for an unscheduled operator is only \$3,800. Further, a small entity operator of aircraft for hire is defined as one which owns 9 or fewer aircraft.

The annualized cost for the least expensive requirement adopted in this final rule, a CVR retrofit, is approximately \$3,500 per aircraft. Therefore, an operator owning only one aircraft is very close to the \$3,800 threshold for unscheduled operators, and any operator owning more than one aircraft is well over the threshold. This would apply to virtually all small Part 135 operators affected by the rule. A similar argument can be made for Part 125 operators owning only one aircraft because they would be required to retrofit the far more expensive flight recorders as well as CVR's. It is possible that a substantial number of small

entities (defined as one-third of the small entities affected by the particular proposal) could incur significant economic impacts, particularly scheduled Part 135 operators (commuters) if they obtain between 6 and 9 new aircraft with 19 or fewer seats, or retrofit between about 4 and 9 aircraft with 20 to 30 seats. Further, any small unscheduled Part 121 operator purchasing one or more new aircraft not equipped with a digital data bus and digital flight data acquisition unit (DFDAU) will exceed the threshold for nonscheduled operators.

Part 91 operators of aircraft affected by these proposals generally are not small entities, however, and therefore would not be subject to the RFA. For these reasons, the FAA has determined that these amendments may have a significant economic impact on a substantial number of those small entities operating under Parts 121, 125, and 135, and a regulatory flexibility analysis is required under the terms of the RFA. The final regulatory flexibility analysis follows below.

Final Regulatory Flexibility Analysis

As required by Section 604 of the RFA, the following analysis deals with the proposed flight recorder requirements as they relate to small operators.

A. Why Agency Action Is Taken

This rulemaking is in response to Congressional action and to several recommendations made by the NTSB. The reasons for agency action are detailed in the preamble and the regulatory evaluation.

Briefly, the advantages of additional recorded information has been demonstrated by those aircraft so equipped, and it is desirable that more specific information be obtained following an accident involving additional categories of aircraft than is possible under current regulations.

B. Summary of Issues Raised by Public Comments

Comments addressing those issues identified in the initial regulatory flexibility analysis as potentially affecting small entities primarily concerned the impact of the proposals on Part 135 operators. These commenters generally expressed concern that the proposals would impose unreasonable costs on operators in comparison to any safety benefits that might result. (Similar comments were received concerning Part 91

operations. However, those entities that conduct Part 91 operations in aircraft that will be affected by this rule generally are not small entities.)

In view of the data submitted, the final rule has been modified to extend the compliance period from 2 years to 3 years; and the flight recorder retrofit requirements for 20 to 30 passenger seat Part 135 aircraft have been reduced from the 32 parameters proposed, to only 11 or 17 parameters, depending upon the date of type certification (essentially, the same requirements as those currently in Part 121).

C. Alternatives to the Proposal

Other than those revisions discussed above, no alternatives to these proposals have been considered. The Secretary of Transportation has been directed by Congress to initiate a rulemaking that considers the recommendations of the National Transportation Safety Board to the Federal Aviation Administration concerning the use of cockpit voice recorders and flight data recorders on commuter and other aircraft. The FAA has concluded that Congress intended the NTSB to have available whatever data it needs for accident investigation purposes if acquiring that data is technologically feasible.

Federalism Implications

The regulations set forth in this notice are proposed under the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.). The FA Act has been interpreted to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that this proposed regulation does not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291 but that it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 28, 1979). For the reasons discussed above, it also has been determined that the rule may have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Parts 23, 25, 27, and 29

Aircraft, Aviation safety, Safety.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Pilots.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Aircraft, Aircraft pilots, Airplanes, Transportation, Common carriers.

14 CFR Part 125

Aircraft, Airplanes, Airworthiness

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air taxi, Aircraft, Airplanes, Rotorcraft.

The Rule

Accordingly, the Federal Aviation Administration amends Parts 23, 25, 27, 29, 91, 121, 125, and 135 of the Federal Aviation Regulations as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for Part 23 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97-448, January 12, 1983).

2. By adding new § 23.1457 to read as follows:

§ 23.1457 Cockpit voice recorders.

(a) Each cockpit voice recorder required by the operating rules of this chapter must be approved and must be installed so that it will record the following:

(1) Voice communications transmitted from or received in the airplane by radio.

(2) Voice communications of flight crewmembers on the flight deck.

(3) Voice communications of flight crewmembers on the flight deck, using the airplane's interphone system.

(4) Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker.

(5) Voice communications of flight crewmembers using the passenger loudspeaker system, if there is such a system and if the fourth channel is available in accordance with the requirements of paragraph (c)(4)(ii) of this section.

(b) The recording requirements of paragraph (a)(2) of this section must be met by installing a cockpit-mounted area microphone, located in the best position for recording voice

communications originating at the first and second pilot stations and voice communications of other crewmembers on the flight deck when directed to those stations. The microphone must be so located and, if necessary, the preamplifiers and filters of the recorder must be so adjusted or supplemented, so that the intelligibility of the recorded communications is as high as practicable when recorded under flight cockpit noise conditions and played back. Repeated aural or visual playback of the record may be used in evaluating intelligibility.

(c) Each cockpit voice recorder must be installed so that the part of the communication or audio signals specified in paragraph (a) of this section obtained from each of the following sources is recorded on a separate channel:

(1) For the first channel, from each boom, mask, or handheld microphone, headset, or speaker used at the first pilot station.

(2) For the second channel from each boom, mask, or handheld microphone, headset, or speaker used at the second pilot station.

(3) For the third channel—from the cockpit-mounted area microphone.

(4) For the fourth channel from:

(i) Each boom, mask, or handheld microphone, headset, or speaker used at the station for the third and fourth crewmembers.

(ii) If the stations specified in paragraph (c)(4)(i) of this section are not required or if the signal at such a station is picked up by another channel, each microphone on the flight deck that is used with the passenger loudspeaker system, if its signals are not picked up by another channel.

(5) And that as far as is practicable all sounds received by the microphone listed in paragraphs (c) (1), (2), and (4) of this section must be recorded without interruption irrespective of the position of the interphone-transmitter key switch. The design shall ensure that sidetone for the flight crew is produced only when the interphone, public address system, or radio transmitters are in use.

(d) Each cockpit voice recorder must be installed so that:

(1) It receives its electric power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads.

(2) There is an automatic means to simultaneously stop the recorder and prevent each erasure feature from functioning, within 10 minutes after crash impact; and

(3) There is an aural or visual means for preflight checking of the recorder for proper operation.

(e) The record container must be located and mounted to minimize the probability of rupture of the container as a result of crash impact and consequent heat damage to the record from fire. In meeting this requirement, the record container must be as far aft as practicable, but may not be where aft-mounted engines may crush the container during impact. However, it need not be outside of the pressurized compartment.

(f) If the cockpit voice recorder has a bulk erasure device, the installation must be designed to minimize the probability of inadvertent operation and actuation of the device during crash impact.

(g) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such manner that they are not likely to be separated during crash impact.

3. By adding § 23.1459 to read as follows:

§ 23.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 23.1323, 23.1325, and 23.1327, as appropriate;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally either within the approved center of gravity limits of the airplane, or at a distance forward or aft of these limits that does not exceed 25 percent of the airplane's mean aerodynamic chord;

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium.

(5) Except for recorders powered solely by the engine-driven electrical generator system, there is an automatic means to simultaneously stop a recorder that has a data erasure feature and prevent each erasure feature from

functioning, within 10 minutes after crash impact; and

(b) Each nonejectable record container must be located and mounted so as to minimize the probability of container rupture resulting from crash impact and subsequent damage to the record from fire. In meeting this requirement the record container must be located as far aft as practicable, but need not be aft of the pressurized compartment, and may not be where aft-mounted engines may crush the container upon impact.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. The correlation must cover the airspeed range over which the airplane is to be operated, the range of altitude to which the airplane is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact.

(e) Any novel or unique design or operational characteristics of the aircraft shall be evaluated to determine if any dedicated parameters must be recorded on flight recorders in addition to or in place of existing requirements.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-448, January 12, 1983).

2. By revising § 25.1457 (c) (1), (2), (3), and (4)(i) and adding a new paragraph (c)(5) to read as follows:

§ 25.1457 Cockpit voice recorders.

(c) . . .

(1) For the first channel, from each boom, mask, or hand-held microphone, headset, or speaker used at the first pilot station.

(2) For the second channel from each boom, mask, or hand-held microphone,

headset, or speaker used at the second pilot station.

(3) For the third channel—from the cockpit-mounted area microphone.

(4)
(i) Each boom, mask, or hand-held microphone, headset, or speaker used at the station for the third and fourth crew members; or

(5) As far as is practicable all sounds received by the microphone listed in paragraphs (c) (1), (2), and (4) of this section must be recorded without interruption irrespective of the position of the interphone-transmitter key switch. The design shall ensure that sidetone for the flight crew is produced only when the interphone, public address system, or radio transmitters are in use.

3. By revising § 25.1459 (a)(4) and adding a new paragraph (e) to read as follows:

§ 25.1459 Flight recorders.

(a)

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium.

(e) Any novel or unique design or operational characteristics of the aircraft shall be evaluated to determine if any dedicated parameters must be recorded on flight recorders in addition to or in place of existing requirements.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for Part 27 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By adding new § 27.1457 to read as follows:

§ 27.1457 Cockpit voice recorders.

(a) Each cockpit voice recorder required by the operating rules of this chapter must be approved, and must be installed so that it will record the following:

(1) Voice communications transmitted from or received in the rotorcraft by radio.

(2) Voice communications of flight crewmembers on the flight deck.

(3) Voice communications of flight crewmembers on the flight deck, using the rotorcraft's interphone system.

(4) Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker.

(5) Voice communications of flight crewmembers using the passenger loudspeaker system, if there is such a system, and if the fourth channel is available in accordance with the requirements of paragraph (c)(4)(ii) of this section.

(b) The recording requirements of paragraph (a)(2) of this section may be met:

(1) By installing a cockpit-mounted area microphone located in the best position for recording voice communications originating at the first and second pilot stations and voice communications of other crewmembers on the flight deck when directed to those stations; or

(2) By installing a continually energized or voice-actuated lip microphone at the first and second pilot stations.

The microphone specified in this paragraph must be so located and, if necessary, the preamplifiers and filters of the recorder must be adjusted or supplemented so that the recorded communications are intelligible when recorded under flight cockpit noise conditions and played back. The level of intelligibility must be approved by the Administrator. Repeated aural or visual playback of the record may be used in evaluating intelligibility.

(c) Each cockpit voice recorder must be installed so that the part of the communication or audio signals specified in paragraph (a) of this section obtained from each of the following sources is recorded on a separate channel:

(1) For the first channel, from each microphone, headset, or speaker used at the first pilot station.

(2) For the second channel, from each microphone, headset, or speaker used at the second pilot station.

(3) For the third channel, from the cockpit-mounted area microphone, or the continually energized or voice-actuated lip microphone at the first and second pilot stations.

(4) For the fourth channel, from:

(i) Each microphone, headset, or speaker used at the stations for the third and fourth crewmembers; or

(ii) If the stations specified in paragraph (c)(4)(i) of this section are not required or if the signal at such a station is picked up by another channel, each microphone on the flight deck that is used with the passenger loudspeaker system if its signals are not picked up by another channel.

(iii) Each microphone on the flight deck that is used with the rotorcraft's

loudspeaker system if its signals are not picked up by another channel.

(d) Each cockpit voice recorder must be installed so that:

(1) It receives its electric power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads;

(2) There is an automatic means to simultaneously stop the recorder and prevent each erasure feature from functioning, within 10 minutes after crash impact; and

(3) There is an aural or visual means for preflight checking of the recorder for proper operation.

(e) The record container must be located and mounted to minimize the probability of rupture of the container as a result of crash impact and consequent heat damage to the record from fire.

(f) If the cockpit voice recorder has a bulk erasure device, the installation must be designed to minimize the probability of inadvertent operation and actuation of the device during crash impact.

(g) Each recorder container must be either bright orange or bright yellow.

3. By adding new § 27.1459 to read as follows:

§ 27.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of Subchapter G of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 27.1323, 27.1325, and 27.1327 of this part, as applicable;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally within the approved center of gravity limits of the rotorcraft;

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium;

(5) Except for recorders powered solely by the engine-driven electrical generator system, there is an automatic means to simultaneously stop a recorder that has a data erasure feature and prevent each erasure feature from functioning, within 10 minutes after any crash impact; and

(b) Each nonjectable recorder container must be located and mounted so as to minimize the probability of container rupture resulting from crash

impact and subsequent damage to the record from fire.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. This correlation must cover the airspeed range over which the aircraft is to be operated, the range of altitude to which the aircraft is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have a reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for Part 29 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By adding new § 29.1459 to read as follows:

§ 29.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of Subchapter G of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 29.1323, 29.1325, and 29.1327 of this part, as applicable;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally within the approved center of gravity limits of the rotorcraft;

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for preflight checking of the recorder for

proper recording of data in the storage medium; and

(5) Except for recorders powered solely by the engine-drive electrical generator system, there is an automatic means to simultaneously stop a recorder that has a data erasure feature and prevent each erasure feature from functioning, within 10 minutes after any crash impact.

(b) Each nonjectable recorder container must be located and mounted so as to minimize the probability of container rupture resulting from crash impact and subsequent damage to the record from fire.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. This correlation must cover the airspeed range over which the aircraft is to be operated, the range of altitude to which the aircraft is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have a reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that it is not likely to be separated during crash impact.

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 91.35 by redesignating paragraph (b) as (f) and adding new paragraphs (b), (c), (d), and (e), to read as follows:

§ 91.35 Flight recorders and cockpit voice recorders.

(b) No person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seats, or 10 or more that has been manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium, that are capable of recording the data specified in Appendix E, for an airplane, or Appendix F, for a rotorcraft, of this part within the range, accuracy, and recording interval specified, and that are capable of retaining no less than 8 hours of aircraft operation.

(c) Whenever a flight recorder, required by this section, is installed, it must be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Unless otherwise authorized by the Administrator, after October 11, 1991, no person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six passengers or more and for which two pilots are required by type certification or operating rule unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight; and

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that at any time during the operation of the recorder, information recorded more than 15 minutes earlier may be erased or otherwise obliterated.

3. By adding Appendices E and F to read as follows:

APPENDIX E—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system ¹ minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution ² read out
Relative Time (From Recorded on Prior to Takeoff)	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	V _{so} to V _D (KIAS)	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1% ³
Altitude	—1,000 ft. to max cert. alt. of A/C	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°
Vertical Acceleration	—3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch Attitude	100% of usable	±2°	1	0.8°
Roll Attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Stabilizer Trim Position, or Pitch Control Position	Full Range	±3% unless higher uniquely required.	1	1% ³
Engine Power, Each Engine	Full Range	±3% unless higher uniquely required.	1	1% ³
Fan or N ₁ Speed or EPR or Cockpit Indications Used for Aircraft Certification OR	Maximum Range	±5%	1	1% ³
Prop. speed and Torque (Sample Once/Sec as Close together as Practicable)			1 (prop Speed)	1% ³
Altitude Rate ² (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1 (torque)	1% ³
Angle of Attack ² (need depends on altitude resolution).	—20° to 40° or of usable range	±2°	1	250 fpm. below 12,000. 0.8% ³
Radio Transmitter Keying (Discrete)	On/Off		1	
TE Flaps (Discrete or Analog)	Each discrete position (U, D, T/O, AAP) OR		1	
LE Flaps (Discrete or Analog)	Analog 0–100% range. Each discrete position (U, D, T/O, AAP) OR	±3°	1	1% ³
Thrust Reverser, Each Engine (Discrete)	Analog 0–100% range.	±3°	1	1% ³
Spoiler-Speedbrake (Discrete)	Stowed or full reverse.		1	
Autopilot Engaged (Discrete)	Stowed or out.		1	
	Engaged or Disengaged.		1	

¹ When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

² If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.

³ Per cent of full range.

⁴ This column applies to aircraft manufactured after October 11, 1991.

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATION

Parameters	Range	Installed system ¹ minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution ² read out
Relative Time (From Recorded on Prior to Takeoff)	4 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	V _{so} in to V _D (KIAS) (minimum airspeed signal attainable with installed pilot-static system)	±5% or ±10 kts., whichever is greater.	1	1 kt.
Altitude	—1,000 ft. to 20,000 ft. pressure altitude	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic Heading	350°	±5°	1	1°
Vertical Acceleration	—3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.03g.
Pitch Attitude	100% of usable range	±2°	1	0.8°
Roll Attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Altitude Rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine	Maximum Range	±5%	1	1% ³
Main Rotor Speed	Maximum Range	±5%	1	1% ³
Free or Power Turbine	Maximum Range	±5%	1	1% ³
Engine Torque	Maximum Range	±5%	1	1% ³

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Installed system ¹ minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution ² read out
Flight Control Hydraulic Pressure				
Primary (Discrete)	High/Low		1	
Secondary-if applicable (Discrete)	High/Low		1	
Radio Transmitter Keying (Discrete)	On/Off		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	
SAS Status-Engaged (Discrete)	Engaged or Disengaged		1	
SAS Fault Status (Discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1% ³
Pedal Position	Full range	±3%	2	1% ³
Lat. Cyclic	Full range	±3%	2	1% ³
Long. Cyclic	Full range	±3%	2	1% ³
Controllable Stabilizer Position	Full range	±3%	2	1% ³

¹ When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

² Per cent of full range.

³ This column applies to aircraft manufactured after October 11, 1991.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–448, January 12, 1983).

2. By amending § 121.343 by redesignating existing paragraphs (e), (f), (g), (h), and (i) as (g), (h), (i), (j), and (k), and by revising the introductory clause of paragraph (a) and by adding two new paragraphs, (e) and (f), to read as follows:

§ 121.343 Flight recorders.

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f) of this section,

(e) After October 11, 1991, no person may operate a large airplane equipped

with a digital data bus and ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Any parameters specified in Appendix B of this part that are available on the digital data bus must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified.

(f) After October 11, 1991, no person may operate an airplane specified in paragraph (b) of this section that is manufactured after October 11, 1991, nor an airplane specified in paragraph (a) of this section that has been type certificated after September 30, 1969, and manufactured after October 11, 1991, unless it is equipped with one or more flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix B of this part must be recorded within the

ranges, accuracies, resolutions, and sampling intervals specified.

3. Section 121.359 is amended by redesignating existing paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 121.359 Cockpit voice recorders.

(e) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone, the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines manufactured after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

4. By revising Appendix B of Part 121 to read as follows:

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution ² readout
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	—1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 35'!
Airspeed	50 KIAS to V _{so} and V _{so} to 1.2 V _{so}	±5%, ±3%	1	1 kt.
Heading	360°	±2°	1	0.5°
Normal Acceleration (Vertical)	—3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g.
Pitch Attitude	—75°	±2°	1	0.5°
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full Range Forward	±2°	1 (per engine)	0.2% ³
Trailing Edge Flap or Cockpit Control Selection	Full Range or Each Discrete Position	±3° or as Pilot's Indicator.	0.5	0.5% ³

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution * readout
Leading Edge Flap or Cockpit Control Selection	Full Range or Each Discrete Position	±3" or as Pilot's Indicator	0.5	0.5 %
Thrust Reverser Position	Stowed, In Transit, and Reverse (Discrete)		1 (per 4 seconds per engine)	
Ground Spoiler Position/Speed Brake Selection	Full Range or Each Discrete Position	±2% Unless Higher Accuracy Uniquely Required	1	0.2 %
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%	4	0.01g
Pilot Input and/or Surface Position—Primary Controls (Pitch, Roll, Yaw)	Full Range	±2" Unless Higher Accuracy Uniquely Required	1	0.2 %
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%	4	0.01g
Pitch Trim Position	Full Range	±3% Unless Higher Accuracy Uniquely Required	1	0.3 %
Glideslope Deviation	±400 Microamps	±3%	1	0.3 %
Localizer Deviation	±400 Microamps	±3%	1	0.3 %
AFCSS Mode and Engagement Status	Discrete		1	
Radio Altitude	-20 ft to 2,500 ft	±2 Ft or ±3% Whichever is Greater Below 500 Ft and ±5% Above 500 Ft	1	1 ft + 5 % above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3 %
Outside Air Temperature or Total Air Temperature	-50°C to +90°C	±2°C	0.5	0.3°C
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5 %
Groundspeed	As installed	Most Accurate Systems Installed (IMS Equipped Aircraft Only)	1	0.2 %

If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:

Drift Angle	When available, As installed	As installed	4	
Wind Speed and Direction	When available, As installed	As installed	4	
Latitude and Longitude	When available, As installed	As installed	4	
Brake pressure/Brake pedal position	As installed	As installed	1	
Additional engine parameters:				
EPR	As installed	As installed	1 (per engine)	
N1	As installed	As installed	1 (per engine)	
N2	As installed	As installed	1 (per engine)	
EGT	As installed	As installed	1 (per engine)	
Throttle Lever Position	As installed	As installed	1 (per engine)	
Fuel Flow	As installed	As installed	1 (per engine)	
TCAS:				
TA	As installed	As installed	1	
RA	As installed	As installed	1	
Sensitivity level (as selected by crew)	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds)	
DME 1 and 2 Distance	0-200 NM	As installed	0.25	1 mi.
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	

* When altitude rate is recorded, Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.

* Per cent of full range.

* For airplanes that can demonstrate the capability of deriving either the control input on control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.

* This column applies to aircraft manufactured after October 11, 1991

PART 125—CERTIFICATION AND OPERATION: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MINIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

1. The authority citation for Part 125 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 125.202 (Removed)

2. By removing existing § 125.202.

3. By adding a new § 125.225, to read as follows:

§ 125.225 Flight recorders.

(a) Except as provided in paragraph (d) of this section, after October 11, 1991, no person may operate a large airplane type certificated before October 1, 1980, for operations above 25,000 feet altitude, nor a multiengine, turbine powered

airplane type certificated before October 1, 1980, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The following information must be able to be determined within the ranges, accuracies, resolution, and recording intervals specified in Appendix D of this part:

- (1) Time;
- (2) Altitude;
- (3) Airspeed;
- (4) Vertical acceleration;
- (5) Heading;
- (6) Time of each radio transmission to or from air traffic control;
- (7) Pitch attitude;
- (8) Roll attitude;
- (9) Longitudinal acceleration;
- (10) Control column or pitch control surface position; and
- (11) Thrust of each engine.

(b) Except as provided in paragraph (d) of this section, after October 11, 1991, no person may operate a large airplane type certificated after September 30, 1980, for operations above 25,000 feet altitude, nor a multiengine, turbine powered airplane type certificated after September 30, 1980, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The following information must be able to be determined with the ranges, accuracies, resolutions, and recording intervals specified in Appendix D of this part:

- (1) Time;
- (2) Altitude;
- (3) Airspeed;
- (4) Vertical acceleration;
- (5) Heading;
- (6) Time of each radio transmission either to or from air traffic control;
- (7) Pitch attitude;
- (8) Roll attitude;
- (9) Longitudinal acceleration;
- (10) Pitch trim position;
- (11) Control column or pitch control surface position;
- (12) Control wheel or lateral control surface position;
- (13) Rudder pedal or yaw control surface position;
- (14) Thrust of each engine;
- (15) Position of each thrust reverser;
- (16) Trailing edge flap or cockpit flap control position; and
- (17) Leading edge flap or cockpit flap control position.

(c) After October 11, 1991, no person may operate a large airplane equipped with a digital data bus and ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Any parameters specified in Appendix D of this part that are available on the digital data bus must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified.

(d) No person may operate under this part an airplane that is manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix D of this part must be recorded within the ranges, accuracies, resolutions and sampling intervals specified. For the purpose of this section, "manufactured" means the point in time at which the airplane inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data.

(e) Whenever a flight recorder required by this section is installed, it must be operated continuously from the instant the airplane begins the takeoff roll until it has completed the landing roll at an airport.

(f) Except as provided in paragraph (g) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed in paragraph (a), (b), (c), or (d) of this section, as applicable, until the airplane has been operated for at least 25 hours of the operating time specified in § 125.227(a) of this chapter. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (g) of this section, no record need be kept more than 60 days.

(g) In the event of an accident or occurrence that requires immediate notification of the National Transportation Safety Board under 49 CFR Part 830 and that results in termination of the flight, the certificate holder shall remove the recording media from the airplane and keep the recorded data required by paragraph (a), (b), (c), or (d) of this section, as applicable, for at least 60 days or for a longer period upon the request of the Board or the Administrator.

(h) Each flight recorder required by this section must be installed in accordance with the requirements of § 25.1459 of this chapter in effect on August 31, 1977. The correlation required by § 25.1459(c) of this chapter need be established only on one airplane of any group of airplanes.

- (1) That are of the same type;
- (2) On which the flight recorder models and their installations are the same; and

(3) On which there are no differences in the type design with respect to the installation of the first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation must be retained by the certificate holder.

(i) Each flight recorder required by this section that records the data specified in paragraph (a), (b), (c), or (d) of this section must have an approved device to assist in locating that recorder under water.

4. By adding a new § 125.227, to read as follows:

§ 125.227 Cockpit voice recorders.

(a) No certificate holder may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines unless an approved cockpit voice recorder is installed in that airplane and is operated continuously from the start of the use of the checklist (before starting engines for the purpose of flight) to completion of the final checklist at the termination of the flight.

(b) Each certificate holder shall establish a schedule for completion, before the prescribed dates, of the cockpit voice recorder installations required by paragraph (a) of this section. In addition, the certificate holder shall identify any airplane specified in paragraph (a) of this section he intends to discontinue using before the prescribed dates.

(c) The cockpit voice recorder required by this section must also meet the following standards:

(1) The requirements of Part 25 of this chapter in effect after October 11, 1991.

(2) After September 1, 1980, each recorder container must—

(i) Be either bright orange or bright yellow;

(ii) Have reflective tape affixed to the external surface to facilitate its location under water; and

(iii) Have an approved underwater locating device on or adjacent to the container which is secured in such a manner that it is not likely to be separated during crash impact, unless the cockpit voice recorder and the flight recorder, required by § 125.225 of this chapter, are installed adjacent to each other in such a manner that they are not likely to be separated during crash impact.

(d) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used so that, at any time during the operation of the

recorder, information recorded more than 30 minutes earlier may be erased or otherwise obliterated.

(e) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines manufactured

after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

(f) In the event of an accident or occurrence requiring immediate notification of the National Transportation Safety Board under 49 CFR Part 830 of its regulations, which results in the termination of the flight,

the certificate holder shall keep the recorded information for at least 60 days or, if requested by the Administrator or the Board, for a longer period. Information obtained from the record is used to assist in determining the cause of accidents or occurrences in connection with investigations under 49 CFR Part 830. The Administrator does not use the record in any civil penalty or certificate action.

5. By adding a new Appendix D, to read as follows:

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution * read out
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	-1,000 ft to max certificated altitude of aircraft	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 35' ¹
Airspeed	50 KIAS to V_{MO} and V_{NO} to 1.2 V_{NO}	±5%, ±3%	1	1 kt.
Heading	360°	±2°	1	0.5°
Normal Acceleration (Vertical)	-3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g.
Pitch Attitude	±75°	±2°	1	0.5°
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full range forward	±2%	1	0.2% ²
Trailing Edge Flap or Cockpit Control Selection	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% ²
Leading Edge Flap or Cockpit Control Selection	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% ²
Thrust Reverser Position	Stowed, in transit, and reverse (Discrete)		1 (per 4 seconds per engine).	
Ground Spoiler Position/Speed Brake Selection	Full range or each discrete position	±2% unless higher accuracy uniquely required.	1	0.2% ²
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pilot Input and/or Surface Position-Primary Controls (Pitch, Roll, Yaw) ³	Full range	±2° unless higher accuracy uniquely required.	1	0.2° ²
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pitch Trim Position	Full range	±3% unless higher accuracy uniquely required.	1	0.3% ²
Glideslope Deviation	±400 Microamps	±3%	1	0.3% ²
Localizer Deviation	±400 Microamps	±3%	1	0.3% ²
AFCs Mode and Engagement Status	Discrete		1	
Radio Altitude	-20 ft to 2,500 ft	±2 Ft or ±3% Whichever is Greater Below 500 Ft and ±5% Above 500 Ft.	1	1 ft + 5% ² above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3° ²
Outside Air Temperature or Total Air Temperature	-50°C to +90°C	±2°C	0.5	0.3°C
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5% ²
Groundspeed	As installed	Most Accurate Systems Installed (IMS Equipped Aircraft Only).	1	0.2% ²

If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:

Drift Angle	When available. As installed	As installed	4	
Wind Speed and Direction	When available. As installed	As installed	4	
Latitude and Longitude	When available. As installed	As installed	4	
Brake pressure/Brake pedal position	As installed	As installed	1	
Additional engine parameters:				
EPR	As installed	As installed	1 (per engine)	
N1	As installed	As installed	1 (per engine)	
N2	As installed	As installed	1 (per engine)	
EGT	As installed	As installed	1 (per engine)	
Throttle Lever Position	As installed	As installed	1 (per engine)	
Fuel Flow	As installed	As installed	1 (per engine)	
TCAS	As installed	As installed	1	

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution * read out
RA	As installed	As installed	1	
Sensitivity level (as selected by crew).	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds).	
DME 1 and 2 Distance	0-200 NM	As installed	0.25	1 mi.
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	

¹ When altitude rate is recorded. Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.

² Percent of full range.

³ For airplanes that can demonstrate the capability of deriving either the control input or control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.

⁴ This column applies to aircraft manufactured after October 11, 1991.

PART 135—AIR TAXI OPERATIONS AND COMMERCIAL OPERATORS

1. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-448, January 12, 1983).

2. By amending § 135.151 by revising paragraphs (a) and (b), and by adding new paragraphs (d) and (e) to read as follows:

§ 135.151 Cockpit voice recorders.

(a) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six or more and for which two pilots are required by certification or operating rules unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight.

(b) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of 20 or more seats unless it is equipped with an approved cockpit voice recorder that—

(1) Is installed in compliance with § 23.1457, § 25.1457, § 27.1457 or § 29.1457 of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight.

(d) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane manufactured after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that during the operation of the recorder, information:

(1) Recorded in accordance with paragraph (a) of this section and recorded more than 15 minutes earlier; or

(2) Recorded in accordance with paragraph (b) of this section and recorded more than 30 minutes earlier; may be erased or otherwise obliterated.

3. By adding a new § 135.152 to read as follows:

§ 135.152 Flight recorders.

(a) No person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seat, of 10 to 19 seats, that is brought onto the U.S. register after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data, and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix B or C, as applicable, of this part must be recorded within the range accuracy, resolution, and recording intervals as specified. The recorder shall retain no less than 8 hours of aircraft operation.

(b) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane having a passenger seating configuration of 20 to 30 seats or a multiengine, turbine-powered rotorcraft having a passenger seating configuration of 20 or more seats unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data, and a method of readily retrieving that data from the storage medium. The parameters in Appendix D or E of this part, as applicable, that are set forth below, must be recorded within the ranges, accuracies, resolutions, and sampling intervals as specified.

(1) Except as provided in paragraph (b)(3) of this section for aircraft type certificated before October 1, 1969, the following parameters must be recorded:

- (i) Time;
- (ii) Altitude;
- (iii) Airspeed;
- (iv) Vertical acceleration;
- (v) Heading;
- (vi) Time of each radio transmission to or from air traffic control;
- (vii) Pitch attitude;
- (viii) Roll attitude;
- (ix) Longitudinal acceleration;
- (x) Control column or pitch control surface position; and
- (xi) Thrust of each engine.

(2) Except as provided in paragraph (b)(3) of this section for aircraft type certificated after September 30, 1969, the following parameters must be recorded:

- (i) Time;
- (ii) Altitude;
- (iii) Airspeed;
- (iv) Vertical acceleration;
- (v) Heading;
- (vi) Time of each radio transmission either to or from air traffic control;
- (vii) Pitch attitude;
- (viii) Roll attitude;
- (ix) Longitudinal acceleration;

- (x) Pitch trim position;
 (xi) Control column or pitch control surface position;
 (xii) Control wheel or lateral control surface position;
 (xiii) Rudder pedal or yaw control surface position;
 (xiv) Thrust of each engine;
 (xv) Position of each thrust reverser;
 (xvi) Trailing edge flap or cockpit flap control position; and
 (xvii) Leading edge flap or cockpit flap control position.

(3) For aircraft manufactured after October 11, 1991, all of the parameters listed in Appendix D or E of this part, as applicable, must be recorded.

(c) Whenever a flight recorder required by this section is installed, it must be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins the lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Except as provided in paragraph (c) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed in paragraph (a) of this section until the aircraft has been operating for at least 8

hours of the operating time specified in paragraph (c) of this section. In addition, each certificate holder shall keep the recorded data prescribed in paragraph (b) of this section for an airplane until the airplane has been operating for at least 25 hours, and for a rotorcraft until the rotorcraft has been operating for at least 10 hours, of the operating time specified in paragraph (c) of this section. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (c) of this section, no record need be kept more than 60 days.

(e) In the event of an accident or occurrence that requires the immediate notification of the National Transportation Safety Board under 49 CFR Part 830 of its regulations and that results in termination of the flight, the certificate holder shall remove the recording media from the aircraft and keep the recorded data required by paragraphs (a) and (b) of this section for at least 60 days or for a longer period upon request of the Board or the Administrator.

(f) Each flight recorder required by this section must be installed in accordance with the requirements of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter. The correlation required by paragraph (c) of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter need be established only on one aircraft of a group of aircraft:

- (1) That are of the same type;
- (2) On which the flight recorder models and their installations are the same; and
- (3) On which there are no differences in the type design with respect to the installation of the first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation must be retained by the certificate holder.

(g) Each flight recorder required by this section that records the data specified in paragraphs (a) and (b) of this section must have an approved device to assist in locating that recorder under water.

4. By adding new Appendices B, C, D, and E, to read as follows:

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system ¹ minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution ⁴ read out
Relative time (from recorded on prior to takeoff)	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated airspeed	V _∞ to V _D (KIAS)	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1% ²
Altitude	—1,000 ft. to max cert. alt. of A/C	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150.
Magnetic heading	360°	±5°	1	1°
Vertical acceleration	—3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch attitude	100% of usable	±2°	1	0.8°
Roll attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Stabilizer trim position	Full range	±3% unless higher uniquely required.	1	1% ³
Pitch control position	Full range	±3% unless higher uniquely required.	1	1% ³
Engine Power, Each Engine				
Fan or N ₁ speed or EPR or cockpit indications used for aircraft certification.	Maximum range	±5%	1	1% ³
Prop. speed and torque (sample once/sec as close together as practicable).			1 (prop speed), 1 (torque).	
Altitude rate ³ (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm. Below 12,000.
Angle of attack ³ (need depends on altitude resolution).	—20° to 40° or of usable range	±2°	1	0.8° ¹
Radio transmitter keying (discrete).	On/off		1	
TE flaps (discrete or analog)	Each discrete position (U, D, T/O, AAP)		1	
LE flaps (discrete or analog)	Or Analog 0–100% range	±3°	1	1% ³
	Each discrete position (U, D, T/O, AAP)		1	

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system ¹ minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution ⁴ read out
Thrust reverser, each engine (Discrete)	Or Analog 0–100% range	±3°	1	1% ²
Spoiler/speedbrake (discrete)	Slowed or full reverse		1	
Autopilot engaged (discrete)	Slowed or out		1	
	Engaged or disengaged		1	

¹ When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

² If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.

³ Per cent of full range.

⁴ This column applies to aircraft manufacturing after October 11, 1991.

APPENDIX C—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system ¹ minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution ⁴ read out
Relative time (from recorded on prior to takeoff)	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated airspeed	V _∞ to V _D (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater	1	1 kt.
Altitude	—1,000 ft. to 20,000 ft. pressure altitude	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic heading	360°	±5°	1	1°
Vertical acceleration	—3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch attitude	100% of usable range	±2°	1	0.8°
Roll attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Altitude rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine				
Main rotor speed	Maximum range	±5%	1	1% ²
Free or power turbine	Maximum range	±5%	1	1% ²
Engine torque	Maximum range	±5%	1	1% ²
Flight Control—Hydraulic Pressure				
Primary (discrete)	High/low		1	
Secondary—if applicable (discrete)	High/low		1	
Radio transmitter keying (discrete)	On/off		1	
Autopilot engaged (discrete)	Engaged or disengaged		1	
SAS status—engaged (discrete)	Engaged/disengaged		1	
SAS fault status (discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1% ²
Pedal position	Full range	±3%	2	1% ²
Lat. cyclic	Full range	±3%	2	1% ²
Long. cyclic	Full range	±3%	2	1% ²
Controllable stabilator position	Full range	±3%	2	1% ²

¹ When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

² Per cent of full range.

³ This column applies to aircraft manufactured after October 11, 1991.

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution ⁴ read out
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	—1,000 ft. to max. certificated altitude of aircraft	±100 to ±700 ft. (See Table 1, TSO-C51a).	1	5' to 35' ¹
Airspeed	50 KIAS to V _∞ and V _∞ to 1.2 V _D	±5%, ±3%	1	1kt.
Heading	360°	±2°	1	0.5°

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution ¹ read out
Normal Acceleration (Vertical)	-3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g
Pitch Attitude	±75°	±2°	1	0.5°
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full range forward	±2%	1 (per engine)	0.2% ²
Trailing Edge Flap or Cockpit Control Selection	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% ²
Leading Edge Flap on or Cockpit Control Selection	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% ²
Thrust Reverser Position	Stowed, in transit, and reverse (discrete)		1 (per 4 seconds per engine)	
Ground Spoiler Position/Speed Brake Selection	Full range or each discrete position	±2% unless higher accuracy uniquely required	1	0.22 ²
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g
Pilot Input And/or Surface Position—Primary Controls (Pitch, Roll, Yaw) ³	Full range	±2° unless higher accuracy uniquely required	1	0.2% ²
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g
Pitch Trim Position	Full range	±3% unless higher accuracy uniquely required	1	0.3% ²
Glide Slope Deviation	±400 Microamps	±3%	1	0.3% ²
Localizer Deviation	±400 Microamps	±3%	1	0.3% ²
AFCS Mode And Engagement Status	Discrete		1	
Radio Altitude	-20 ft to 2,500 ft	±2 ft or ±3% whichever is greater below 500 ft and ±5% above 500 ft	1	1 ft + 5% ² above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3% ²
Outside Air Temperature or Total Air Temperature	-50°C to +90°C	±2°C	0.5	0.3°C/ ²
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5% ²
Groundspeed	As installed	Most accurate systems installed (IMS equipped aircraft only).	1	0.2% ²

If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:

Drift Angle	When available. As installed	As installed	4	
Wind Speed and Direction	When available. As installed	As installed	4	
Latitude and Longitude	When available. As installed	As installed	4	
Brake pressure/Brake pedal position	As installed	As installed	1	
Additional engine parameters:				
EPR	As installed	As installed	1 (per engine)	
N1	As installed	As installed	1 (per engine)	
N2	As installed	As installed	1 (per engine)	
EGT	As installed	As installed	1 (per engine)	
Throttle Lever Position	As installed	As installed	1 (per engine)	
Fuel Flow	As installed	As installed	1 (per engine)	
TCAS:				
TA	As installed	As installed	1	
RA	As installed	As installed	1	
Sensitivity level (as selected by crew)	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds)	
DME 1 and 2 Distance	0-200 NM	As installed	0.25	1mi.
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	

¹ When altitude rate is recorded. Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.

² Per cent of full range.

³ For airplanes that can demonstrate the capability of deriving either the control input or control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.

⁴ This column applies to aircraft manufactured after October 11, 1991.

APPENDIX E—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution ¹ read out
Time (GMT)	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds)	1 sec

APPENDIX E—HELICOPTER FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution ¹ read out
Altitude	-1,000 ft to max certificated altitude of aircraft	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 30'
Airspeed	As the installed measuring system	±3%	1	1 kt.
Heading	360°	±2°	1	0.5°
Normal Acceleration (Vertical)	-3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g
Pitch Attitude	±75°	±2°	2	0.5°
Roll Attitude	±180°	±2°	2	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	0.25 sec.
Power in Each Engine: Free Power Turbine Speed and Engine Torque	0-130% (power Turbine Speed) Full range (Torque).	±2%	1 speed 1 torque (per engine)	0.2% ¹ to 0.4% ¹
Main Rotor Speed	0-130%	±2%	2	0.3% ¹
Altitude Rate	±6,000 ft/min	As installed	2	0.2% ¹
Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal)	Full range	±3%	2	0.5% ¹
Flight Control Hydraulic Pressure Low	Discrete, each circuit		1	
Flight Control Hydraulic Pressure Selector Switch Position, 1st and 2nd stage	Discrete		1	
AFCS Mode and Engagement Status	Discrete (5 bits necessary)		1	
Stability Augmentation System Engage	Discrete		0.25	
SAS Fault Status	Discrete		0.25	0.5% ¹
Main Gearbox Temperature Low	As installed	As installed	0.5	0.5% ¹
Main Gearbox Temperature High	As installed	As installed	0.5	0.5% ¹
Controllable Stabilator Position	Full Range	±3%	2	0.4% ¹
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g
Lateral Acceleration	±1g	±1.5% max range excluding datum of ±5%.	4	0.01g
Master Warning	Discrete		1	
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	
Outside Air Temperature	-50°C to +90°C	±2°C	0.5	0.3°C

¹ Per cent of full range.

² This column applies to aircraft manufactured after October 11, 1991.

Issued in Washington, DC, on June 30, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-15179 Filed 7-1-88; 4:07 pm]

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July 11, 1988

Part III

Department of State

48 CFR Ch. 6
Acquisition Regulation; Establishment;
Final Rule and Interim Rule With Request
For Comments

BEST COPY AVAILABLE

DEPARTMENT OF STATE

48 CFR Ch. 6

[108.966]

Acquisition Regulation; Establishment

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Final rule and interim final rule with request for comment.

SUMMARY: The Department of State Acquisition Regulation (DOSAR) is established as part of the Federal Acquisition Regulations System, which consists of the Federal Acquisition Regulation (FAR) and agency acquisition regulations that implement or supplement the FAR. This rule is necessary to provide regulatory coverage not otherwise found in the FAR for Department of State acquisitions.

DATES: This final rule and interim final rule are effective on July 11, 1988. Comments on the interim rule should be submitted on or before August 10, 1988. The interim final rule portions of the regulation are discussed in

SUPPLEMENTARY INFORMATION, section I.C. below.

ADDRESS: Interested parties should submit written comments to the Office of the Procurement Executive, Room 227, SA-6, U.S. Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive, telephone (703) 875-7044.

SUPPLEMENTARY INFORMATION:

- I. Background
 - A. Comments on Proposed Rule
 - B. Final Rule
 - C. Interim Final Rule
 - D. Standardization
- II. Procedural Requirements
 - A. Executive Order 12291
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act

I. Background**A. Comments on Proposed Rule**

On May 28, 1987, the Department published in the *Federal Register* (52 FR 19990) the DOSAR, a proposed rule that would implement and supplement the FAR. One public entity commented on the DOSAR; the Department responded directly to that entity.

The DOSAR was rewritten in consideration of comments received from the Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget, comments received from Department of State offices, or to provide a more accurate

and readable document. Except as provided in Supplementary Information sections C and D below, those changes have been incorporated into the final rule.

B. Final Rule

This final rule includes updates to the DOSAR resulting from changes made to the FAR since the DOSAR was published as a proposed rule; therefore, the original DOSAR coverage could not be published as written in the proposed rule. The changes are as follows.

1. DOSAR 601.602-3, Ratification of Unauthorized Contractual Commitments, rewritten pursuant to Federal Acquisition Circular (FAC) 84-33.
2. DOSAR 630.201-5, Waiver, added pursuant to FAC 84-30.
3. DOSAR 630.303, CAS Program Requirements, retitled to conform with FAC 84-30.
4. DOSAR 630.304, Waiver, deleted pursuant to FAC 84-30.
5. DOSAR 632.111-70(a), prescription for prompt payment, rewritten as part of DOSAR 632.111-70, and the clause at DOSAR 652.232-70, Prompt Payment, deleted pursuant to FAC 84-33.

C. Interim Final Rule

As a result of OFPP's review, the Department has agreed to issue the following DOSAR coverage as an interim final rule. The Department has determined that compelling reasons exist to promulgate an interim final rule because the coverage is required and it was previously published in the DOSAR proposed rule.

1. OFPP recommended that the Department submit for inclusion in the FAR several items covered in the proposed rule that may not be unique to the Department of State. Those items were identified in the preamble to the proposed rule and included:

- (a) DOSAR 604.404-70, prescription for contracts involving classified information and security clearances for contractor personnel, and the clauses at DOSAR 652.204-70, Security Requirements, and DOSAR 652.204-71, Security Requirements—Personnel;
- (b) DOSAR 614.201-7-70(a), prescription for use of English language solicitations and contracts awarded or performed overseas, and the clause at DOSAR 652.214-70, Language Version; and
- (c) DOSAR 619.201(d), responsibilities of the Small and Disadvantaged Business Utilization Specialist.

The Department received no public comments or comments from other Federal agencies on these items. Nevertheless, the Department has

submitted these items to the FAR Council for consideration of FAR coverage.

2. In reviewing the DOSAR for publication as a final rule, OFPP recommended the following additional items as appropriate for coverage in the FAR:

- (a) DOSAR 614.201-7-70(c), prescription for contractor's authorization to perform, and the clause at DOSAR 652.214-72, Authorization to Perform;
 - (b) DOSAR 628.7001, prescription for the Government's indemnity by the contractor, and the clause at DOSAR 652.228-70, Indemnification; and
 - (c) DOSAR 633.104 and 633.105, which implement FAR 33.104 and 33.105 concerning protests to the General Accounting Office and the General Services Administration Board of Contract Appeals;
 - (d) DOSAR 642.270 and 642.271, prescription for the contracting officer's representative, and the clause at DOSAR 652.242-70, Contracting Officer's Representative (COR).
- The Department has submitted the above items to the FAR Council for consideration of FAR coverage.

As the material identified in paragraphs 1 and 2 above is added to the FAR, the DOSAR will be amended accordingly. Public comments received in response to this interim rule shall be considered in formulating a final rule.

D. Standardization

In consideration of OFPP's substantive problems with the coverage at DOSAR Subpart 617.70, Standardization, the Department agreed not to issue that coverage as either a final rule or an interim final rule. Therefore, DOSAR Subpart 617.70 has been removed from this rule.

II. Procedural Requirements**A. Review Under Executive Order 12291**

This rule was reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12291.

B. Review Under the Regulatory Flexibility Act

Consistent with the provisions of the Regulatory Flexibility Act, Pub. L. 96-354, and as required under 5 U.S.C. 605(b), the undersigned hereby certifies that these interim and final rules will not have a significant economic impact on a substantial number of small entities because the rule serves only to implement or supplement the Federal Acquisition Regulation.

C. Review Under the Paperwork Reduction Act

These interim and final rules do not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 et seq.). The rules do not impose additional recordkeeping or reporting requirements beyond those contained in the FAR, for which OMB control numbers have already been assigned.

List of Subjects in 48 CFR Ch. 6

Government procurement.

For the reasons set out in the preamble, Chapter 6 of Title 48 of the Code of Federal Regulations is established as follows.

John J. Conway,

Procurement Executive.

June 24, 1988.

CHAPTER 6—DEPARTMENT OF STATE**SUBCHAPTER A—GENERAL****PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM****PART 602—DEFINITIONS OF WORDS AND TERMS****PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST****PART 604—ADMINISTRATIVE MATTERS****SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING****PART 605—PUBLICIZING CONTRACT ACTIONS****PART 606—COMPETITION REQUIREMENTS****PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES****PART 609—CONTRACTOR QUALIFICATIONS****SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES****PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES****PART 614—SEALED BIDDING****PART 615—CONTRACTING BY NEGOTIATION****PART 616—TYPES OF CONTRACTS****PART 617—SPECIAL CONTRACTING METHODS****SUBCHAPTER D—SOCIOECONOMIC PROGRAMS****PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS****PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS****PART 623—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY****PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION****PART 625—FOREIGN ACQUISITION****SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS****PART 628—BONDS AND INSURANCE****PART 629—TAXES****PART 630—COST ACCOUNTING STANDARDS****PART 632—CONTRACT FINANCING****PART 633—PROTESTS, DISPUTES AND APPEALS****SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING****PART 634—MAJOR SYSTEM ACQUISITION****PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS****PART 637—SERVICE CONTRACTING****SUBCHAPTER G—CONTRACT MANAGEMENT****PART 642—CONTRACT ADMINISTRATION****PART 643—CONTRACT MODIFICATIONS****PART 645—GOVERNMENT PROPERTY****PART 646—QUALITY ASSURANCE****PART 648—VALUE ENGINEERING****SUBCHAPTER H—CLAUSES AND FORMS****PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****PART 653—FORMS****SUBCHAPTER I—DOS SUPPLEMENTATIONS****PART 670—SPECIAL CONTRACTING PROGRAMS****SUBCHAPTER A—GENERAL****PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM**

Sec. 601.000 Scope of part.

Subpart 601.2—Administration
601.201 Maintenance of the FAR.
601.201-1 The two councils.

Subpart 601.3—Agency Acquisition Regulations
601.301 Policy.
601.302 Limitations.
601.303 Publication and codification.

Subpart 601.4—Deviations from the FAR
601.403 Individual deviations.
601.404 Class deviations.
601.405 Deviations pertaining to treaties and executive agreements.
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601.471 Procedures.

Subpart 601.5—Agency and Public Participation
601.570 Rule making.

Subpart 601.6—Contracting Authority and Responsibilities
601.601 General.
601.602 Contracting officers.
601.602-1 Authority.
601.602-3 Ratification of unauthorized commitments.

601.602-3-70 Procedures.
601.603 Selection, appointment, and termination of appointment.
601.603-3 Appointment.
601.603-70 Delegations of authority.

Authority: 22 U.S.C. 2856; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

601.000 Scope of part.

This part describes the Department of State Acquisition Regulation (DOSAR) in terms of establishment, relationship to the Federal Acquisition Regulation (FAR), arrangement, applicability, and

deviation procedures. Acquisition procedures are integrated so as to provide a complete, logical, and comprehensive publication.

Subpart 601.2—Administration

601.201 Maintenance of the FAR.

601.201-1 The two councils.

The Office of the Procurement Executive represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint said representative for this purpose. The Office of the Procurement Executive is responsible for coordinating with all interested DOS elements proposed FAR revisions and for advocating FAR revisions sought by the Department.

Subpart 601.3—Agency Acquisition Regulations

601.301 Policy.

(a) The Assistant Secretary for Administration is the agency head for the purposes of FAR 1.301. Under Delegation of Authority No. 120-3 (51 FR 16768, May 6, 1986), the Assistant Secretary for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2656 and 40 U.S.C. 486(c) (Title II, Chapter 288, section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended).

(c) The DOSAR implements and supplements the FAR. Deviations, as defined in FAR 1.401, are processed in accordance with FAR Subpart 1.4 and Subpart 601.4.

601.302 Limitations.

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(7)), or undertaken pursuant to Section 208 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308).

(b) At posts where Joint Administrative Offices have been formed, the FAR and the DOSAR apply to all Agency for International Development (AID) administrative and technical support acquisitions, except in

those areas which have been exempted by the cognizant administrative office.

601.303 Publication and codification.

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR is divided into the same parts, subparts, section, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself there will be no corresponding DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101-70.

(b) The DOSAR and its revisions are published in the Federal Register and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c)(1) The DOSAR shall be referenced in the same manner as described at FAR 1.104-2(c). Using the DOSAR coverage at 609.407-3(a) as a typical illustration, reference to the—

(i) Part would be "DOSAR Part 609" outside the DOSAR and "Part 609" within the DOSAR.

(ii) Subpart would be "DOSAR Subpart 609.4" outside the DOSAR and "Subpart 609.4" within the DOSAR.

(iii) Section would be "DOSAR 609.407" outside the DOSAR and "609.407" within the DOSAR.

(iv) Subsection would be "DOSAR 609.407-3" outside the DOSAR and "609.407-3" within the DOSAR.

(v) Paragraph would be "DOSAR 609.407-3(a)" outside the DOSAR and "609.407-3(a)" within the DOSAR.

(2) When any part, subpart, section, subsection, or paragraph of the DOSAR is referenced formally in official documents such as legal briefs, it shall be prefaced by "48 CFR."

Subpart 601.4—Deviations from the FAR

601.403 Individual deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a). The Office of the Procurement Executive is the DOS central agency control point for furnishing to the FAR Secretariat a copy of each approved deviation.

601.404 Class deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a). The Office of the Procurement Executive is the DOS central agency control point for furnishing to the FAR Secretariat a copy of each approved class deviation.

601.405 Deviations pertaining to treaties and executive agreements.

The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e). The Office of the Procurement Executive is the DOS central agency control point for deviations pertaining to treaties and executive agreements; that office shall provide to the FAR Secretariat a copy of each approved deviation.

601.470 Deviations from the DOSAR

The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive. The Office of the Procurement Executive is the DOS central agency control point for all DOSAR deviations.

601.471 Procedures.

(a) The head of the contracting activity (see 601.603-70) shall submit to the Procurement Executive a written request for each deviation from the FAR or the DOSAR, whether for individual cases, classes of cases, or deviations pertaining to treaties and executive agreements. Each request for a deviation shall state—

(1) The nature of the deviation requested, including whether an individual or class deviation is requested;

(2) The FAR or DOSAR regulation from which the deviation is requested;

(3) The circumstances under which the deviation would be used;

(4) The effect intended by the deviation; and

(5) The expiration date recommended for the deviation.

(b) With the request for a deviation, the head of the contracting activity shall

submit all pertinent documentation supporting the request.

(c) The contracting officer shall include in the contract file a copy of each authorized deviation that pertains to the acquisition.

Subpart 601.5—Agency and Public Participation

601.570 Rule making.

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with section 22 of the Office of Federal Procurement Policy Act, Pub. L. 93-400, as amended (41 U.S.C. 418b).

(b) The Procurement Executive shall either accomplish or concur in all DOS acquisition rule making.

Subpart 601.6—Contracting Authority and Responsibilities

601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601.

601.602 Contracting officers.

601.602-1 Authority.

(a) DOS contracts are let pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS regulations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including interagency agreements, for the expenditure of funds involved in the acquisition of personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.603-70.

(c) The contracting officer shall not award, modify, or terminate unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have been obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

601.602-3 Ratification of unauthorized commitments.

(b) Policy. (1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the

DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that usually necessitate disciplinary action against the transgressor.

(2) The authority to ratify an unauthorized contractual commitment is reserved to the Procurement Executive.

(3) Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR Subpart 33.2 and Subpart 633.2.

(c) Limitations. The contracting officer is not required to obtain concurrence of legal counsel when recommending payment of an unauthorized commitment.

601.602-3-70 Procedures.

(a) The person who made the unauthorized commitment shall submit to the contracting officer assigned the ratification action all records and documents concerning the unauthorized commitment. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed, why and how the vendor was selected, a list of other sources considered, a description of work or products, a statement regarding the status of performance, an estimated or agreed price, and certified funding citations. When the person who made the unauthorized contractual commitment is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized contractual commitment.

(b) The contracting officer assigned the ratification action, after determining that the requirements of paragraph (a) above have been met, shall prepare and execute a recommendation to ratify an unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602-3(c)(1) and (c)(3) through (c)(6); and a recommendation to the ratifying official that the unauthorized commitment be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the Procurement Executive could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the Procurement Executive hereby ratifies the unauthorized

commitment in the amount specified; and a date and signature block for the Procurement Executive.

(c) The information required in paragraph (b)(1) above shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit, through the head of the contracting activity (see 601.603-70), to the Procurement Executive the complete file for ratification of the unauthorized commitment.

(e) Upon receipt and review of the complete file, if the Procurement Executive ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the Procurement Executive shall return the request to the head of the contracting activity with a written explanation for the decision and a recommendation for disposition of the action.

601.603 Selection, appointment, and termination of appointment.

601.603-3 Appointment.

(a) The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603-3. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive.

(b) The Procurement Executive appoints DOS contracting officers for overseas posts by specific positions, not by individual, because Foreign Service personnel assignments are rotational.

601.603-70 Delegations of authority.

(a) Policy. Pursuant to 601.602-1(b), the Procurement Executive has delegated procurement authority to the following contracting activities. These authorities are not redelegable. Where more than one official is listed, the abbreviation "HCA" is used to designate each head of the contracting activity, as defined in FAR 2.101.

(b) Delegations—(1) Overseas posts. The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services and to sell personal property is delegated to the Principal Officer, the Administrative Officer, and the Principal General Services Officer (HCA).

(i) Direct transactions with vendors within the United States shall be \$25,000 or less per transaction unless such transaction is under a contract executed

by the Department of State, the General Services Administration, or other U.S. Government Agency. Such transactions with U.S. vendors shall be in accordance with small purchase procedures described in FAR Part 13 and Part 613.

(ii) No authority is delegated to enter into cost-reimbursement or fixed-price incentive contracts.

(iii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named above in this subparagraph may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is requested to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act, 1928, as amended (22 U.S.C. 292 et seq.), including the authority to make all determinations required or permitted by Section 11 of said Act but not otherwise restricted therein, is delegated to the Deputy Assistant Secretary for Foreign Buildings and to the Assistant Director for Acquisitions (HCA).

(3) *Office of Supply, Transportation and Procurement.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of services and personal property, and for the sale of personal property, is delegated to the Chief of the Procurement Division.

(4) *Office of Language Services.* The authority to enter into and administer contracts for interpreting, translating, conference reporting, and related language support and escort services is delegated to the Director.

(5) *Office of Overseas Schools.* The authority to enter into and administer contracts pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2701), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(6) *Library.* The authority to enter into and administer contracts for the direct purchase of printing, binding, and blank-book work, when authorized by the Public Printer pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended (44 U.S.C. 504), and for the acquisition of newspapers, books, maps, and periodicals is delegated to the Chief Librarian.

(7) *Office of Communications.* The authority to enter and administer contracts for leasing communications circuits is delegated to the Chief, Networks Staff.

(8) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 et seq.), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director of the Foreign Service Institute, the Executive Director, and the Supervisory General Services Officer (HCA).

(9) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 et seq.), including all determinations required or permitted by section 208 of said Act but not otherwise restricted therein, is delegated to the Director, Office of Foreign Missions, and the Administrative Officer (HCA).

(10) *Office of International Conferences.* The authority to enter into and administer contracts pursuant to Section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended (22 U.S.C. 2672), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(11) *Bureau for Refugee Programs.* The authority to enter into and administer contracts pursuant to the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 et seq.), and Executive Order 11077, dated January 22, 1963, including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director, Bureau for Refugee Programs, and the Comptroller (HCA).

(12) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Counselor for Administration.

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

Sec.

602.101 Definitions.

602.101-70 DOSAR definitions.

Subpart 602.2—Definitions Clause

602.201 Contract clause.

602.201-70 DOSAR contract clause.

Authority: 22 U.S.C. 2056; 40 U.S.C. 406(c); 48 CFR Subpart 1.3

Subpart 602.1—Definitions

602.101 Definitions.

602.101-70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

"Consolidated Receiving Point" or "CRP"; means the packing firm employed by a Despatch Agency to receive and prepare items for shipment to a post. The CRP acts as agent for the government, and goods that are delivered to the CRP are constructively received by the government. The CRP receives, records, consolidates and packs items for shipment overseas under the direction of the Despatch Agency.

"Department" or "DOS" means the Department of State, including all of its activities wherever located.

"Despatch Agency" means the office responsible for the transportation of goods between the U.S. and posts within its specific geographic area as assigned by the Transportation Division, Office of Supply, Transportation and Procurement. There are four Despatch Agencies, one each in New York City; Baltimore, Maryland; Miami, Florida; and San Francisco, California.

"Government" means the Government of the United States of America unless specifically stated otherwise.

"Local procurement" means acquisition by a post in the country in which the post is located.

"Overseas post" means a "post" located outside the United States of America.

"Post" means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

"Third country procurement" means acquisition by a post in a country other than the country in which the post is located and other than the United States.

Subpart 602.2—Definitions Clause

602.201 Contract clause.

602.201-70 DOSAR contract clause.

The contracting officer shall insert the clause at 602.202-70, Definitions, in solicitations and contracts when the acquisition may be made from a source outside the United States or when the work may be performed outside the United States.

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 603.2—Contractor Gratuities to Government Personnel

Sec.

603.203 Reporting suspected violations of the Gratuities clause.

603.204 Treatment of violations.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

Subpart 603.4—Contingent Fees

603.406 Evaluation of the SF 119.

603.406-1 Responsibilities.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.602 Exceptions.

Authority: 22 U.S.C. 2056; 40 U.S.C. 406(c); 48 CFR Subpart 1.3

Subpart 603.2—Contractor Gratuities to Government Personnel

603.203 Reporting suspected violations of the Gratuities clause.

DOS personnel shall report immediately and in writing any apparent or suspected violation of the clause at FAR 52.203-3, Gratuities, in connection with any DOS operation. The report shall be made to the contracting officer and the Assistant Inspector General for Investigations. The report shall identify the individuals involved, outline the events, acts, or conditions which indicate the apparent violation occurred, and include all pertinent documents. The Assistant Inspector General for Investigations shall review the report for completeness and accuracy and shall make a preliminary decision whether to proceed with a full investigation. The Assistant Inspector General for Investigations shall provide the written decision to the individual who made the report and the contracting officer. If the decision is to proceed with an investigation, copies of the decision shall also be provided to the head of the contracting activity (see

601.603-70), the Procurement Executive, and the Office of the Legal Adviser.

603.204 Treatment of violations.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 3.204.

(b) *Procedures.* Upon a decision to proceed with an investigation of an alleged violation of the Gratuities clause, the Assistant Inspector General for Investigations shall provide to the contractor a written notice by certified mail, return receipt requested. The notice shall present the findings of the decision and shall establish a schedule, including location, for an investigative hearing for the purposes prescribed in FAR 3.204(b). As determined necessary by the Assistant Inspector General for Investigations, follow-up hearings may be scheduled. Upon completion of the investigation, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a report and recommendation, together with all pertinent documentation.

(c) In addition to the requirements of FAR 3.204(c), when the Procurement Executive determines that a violation has occurred, the Procurement Executive shall so notify the Assistant Inspector General for Investigations. The Assistant Inspector General for Investigations shall then notify the individual who made the report, the Office of the Legal Adviser, and, if appropriate, the Department of Justice.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

(a) DOS employees are obligated to report immediately and in writing any apparent or suspected antitrust violation, as described in FAR 3.303.

(b) The report shall outline the events, acts, or conditions which indicate the apparent violation and shall include all pertinent documents.

(c) The report shall be made to or by the contracting officer, who shall review it for completeness and accuracy and forward it through the head of the contracting activity (see 601.603-70), to the Office of the Legal Adviser, with a copy to the Procurement Executive. The Office of the Legal Adviser shall provide to the U.S. Attorney General a report on each suspected violation, with singles copies to the head of the contracting activity and the Procurement Executive.

Subpart 603.4—Contingent Fees

603.406 Evaluation of the SF 119.

603.406-1 Responsibilities.

In carrying out responsibilities prescribed in FAR 3.406-1, the contracting officer shall obtain advice from the Office of the Legal Adviser as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient for a proper decision. After reviewing and evaluating all the information obtained, the contracting officer shall render a written decision that shall be included in the contract file, and shall provide a copy of the decision to the Procurement Executive.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.602 Exceptions.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.602.

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—Contract Distribution

Sec.

604.202 Agency distribution requirements.

Subpart 604.4—Safeguarding Classified Information Within Industry

604.404 Contract clause.

604.404-70 DOSAR contract clauses.

Subpart 604.70—Contract Review

604.7001 Policy.

604.7002 Procedures.

Authority: 22 U.S.C. 2056; 40 U.S.C. 406(c); 48 CFR Subpart 1.3

Subpart 604.2—Contract Distribution

604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute reproduced copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, e.g., the Contracting Officer's Representative; the requirements office; the Despatch Office or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; and each post or office where the contract will be performed. Where required by the laws of a foreign country, the original copy of the contract or modification shall be retained at the overseas post.

Subpart 604.4—Safeguarding Classified Information Within Industry**604.404 Contract clause.****604.404-70 DOSAR contract clauses.**

(a) The contracting officer shall insert the clause at 652.204-70, Security Requirements, in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contracting officer shall insert the clause at 652.204-71, Security Requirements—Personnel, in solicitations and contracts performed outside the United States.

Subpart 604.70—Contract Review**604.7001 Policy.**

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract fill shall contain all pertinent information applicable to the proposed action. Each contract file should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

604.7002 Procedures.

(a) Prior to issuance of a solicitation or a solicitation amendment, award of a contract, or execution of a contract modification, any of which is estimated to exceed \$100,000, the contracting officer shall forward the proposed contractual action to Office of the Procurement Executive for review. For contract modifications, the contracting officer shall submit such actions in accordance with 643.102-70(b).

(b) The Office of the Procurement Executive shall document the scope and extent of the review and shall submit written recommendations to the contracting officer on each proposed contract action reviewed. In the event the contracting officer and the reviewer cannot reach agreement on the recommendation(s), the contracting officer shall document the contract file to show the rationale for not adopting any recommendations, and shall forward the file to the officer one level above the contracting officer for resolution or approval, as appropriate. For purposes of this section, the officer who has resolution/approval authority

shall not be the same individual who will sign the contractual document. In instances where the contracting officer is the head of the contracting activity, as identified at 601.603-70(b), that officer shall be the Procurement Executive for domestic acquisitions and the Principal Officer at post for overseas acquisitions.

(c) For postaward reviews, the Office of the Procurement Executive shall document the scope and extent of the review and shall submit the results of its findings to the contracting officer for appropriate action.

(d) The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**PART 605—PUBLICIZING CONTRACT ACTIONS****Subpart 605.2—Synopsis of Proposed Contract Actions****Sec.**

605.202 Exceptions.

605.202-70 Foreign acquisitions.

605.207 Preparation and transmittal of synopsis.

605.207-70 Acquisitions available from only one responsible source.

Subpart 605.5—Paid Advertisements

605.502 Authority.

Authority: 22 U.S.C. 2656; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 605.2—Synopsis of Proposed Contract Actions**605.202 Exceptions.****605.202-70 Foreign acquisitions.**

(a) *Purpose.* This subsection provides policy and procedures necessary to waive the requirement to synopses proposed contracts in the *Commerce Business Daily* (CBD). The policy and procedures apply only to acquisitions by overseas posts when the acquisitions are made from sources outside the United States, its possessions, and Puerto Rico.

(b) *Policy.* Under certain conditions, waiver of the requirement to publish in the CBD notices of proposed contract actions is necessary for acquisitions by overseas posts when these acquisitions are made from sources outside the United States, its possessions, and Puerto Rico. This policy was processed in compliance with and as authorized by Section 18(c)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and Section 8(g)(3) of the Small

Business Act (15 U.S.C. 637 et seq.). This policy applies only to acquisitions funded under DOS appropriations.

(c) *Procedures.* (1) When a DOS contracting activity at post receives a request for supplies or services, the requirements office shall provide with the request a memorandum identifying all established sources of supply known to the requirements office, critical dates for delivery, installation and operational dates, an estimate of the total time lapse between the date of order and final contractor performance, the urgency of the requirement, and any other factors that may be unique or mandatory to the acquisition.

(2) The head of the contracting activity (see 601.603-70) shall review the information provided by the requirements office to determine whether publication of a CBD notice is required.

(i) If the head of the contracting activity determines that publication of CBD notice will not delay or otherwise adversely impact the post's ability to satisfy the acquisition, the notice shall be published in accordance with FAR Subpart 5.2.

(ii) If the head of the contracting activity determines that publication of a CBD notice will delay or otherwise adversely impact the post's ability to satisfy the acquisition, that official may waive the CBD notice requirements of FAR Subpart 5.1. This determination must be in writing and made in consideration of such factors as overseas delivery, installation, maintenance or replacement requirements, special product or performance specifications, and security clearance requirements. The contracting activity shall conduct a negotiated acquisition with qualified local sources. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition. Competition in such acquisitions, including the use of written solicitations, shall be obtained in all cases to the extent feasible and consistent with FAR Part 6 and Part 606.

(iii) The authority to make the determinations prescribed in this paragraph is not redelegable.

(d) *Documentation.* (1) Whenever the head of the contracting activity determines that use of this waiver authority is required, the following documentation shall be prepared and placed in the contract file:

(i) A determination and findings as to the existence of an overseas acquisition

where it is unreasonable or inappropriate to publish in the CBD a notice for the proposed contract action; and

(ii) A memorandum stating what efforts have been made to identify known and qualified sources and to obtain competition, detailing what negotiation procedures were followed, and justifying the selection and award.

(2) The head of the contracting activity shall sign all documents prescribed in this section. That official's signature on the documents constitutes approval of the determination to apply the waiver policy and certification of the completeness and accuracy of the information upon which the waiver is based.

605.207 Preparation and transmittal of synopsis.

605.207-70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each synopsis of a proposed acquisition from only one responsible source shall include descriptions of the specific qualifications or capabilities required to perform the work and the information a potential source must submit.

Subpart 605.5—Paid Advertisements**605.502 Authority.**

(a) For paid advertisements in newspapers within the United States, the Procurement Executive is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in the newspapers outside the United States, the Principal General Services Officer is the agency head's designee for the purposes of FAR 5.502(a). When the Principal General Services Officer is the contracting officer for the acquisition, the officer approving the paid advertisement shall be either the Administrative Officer or the Principal Officer, as appropriate.

(b) The Procurement Executive is the agency head for the purposes of FAR 5.502(b). Advance written authorization, in accordance with and from the official designated in paragraph (a) above, is required to place paid advertisements in media other than newspapers.

PART 606—COMPETITION REQUIREMENTS**Subpart 606.1—Full and Open Competition****Sec.**

606.101 Policy.

606.101-70 Foreign acquisitions not synopsized.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-7 Public interest.

606.303-1 Requirements.

606.304 Approval of the justification.

606.304-70 Acquisitions by overseas posts.

Subpart 606.5—Competition Advocates

606.501 Requirement.

606.501-70 Overseas posts.

Authority: 22 U.S.C. 2656; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 606.1—Full and Open Competition**606.101 Policy.**

606.101-70 Foreign acquisitions not synopsized.

As provided in 605.202-70, overseas posts exempt certain acquisitions from the requirement to synopses in the *Commerce Business Daily*. Full and open competition for such acquisitions is met when the competitive procedures prescribed in FAR 6.102 are used.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

The Procurement Executive is the agency head for the purposes of FAR 6.202.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-7 Public interest.

The authority to approve the determination prescribed in FAR 6.302-7(c) is reserved to the Secretary of State.

606.303-1 Requirements.

Justifications for contract actions prescribed in FAR 6.303-1(d) shall be forwarded by the contracting officer to the Office of the Procurement Executive for transmittal to the Office of the United States Trade Representative.

606.304 Approval of the justification.

606.304-70 Acquisitions by overseas posts.

The Principal Officer at each overseas post is the approval authority for the purposes of FAR 6.304(a)(3).

This authority is not redelegable.

Subpart 606.5—Competition Advocates**606.501 Requirement.**

The Procurement Executive is the head of the agency for the purposes of FAR 6.501.

606.501-70 Overseas posts.

The Administrative Officer at each overseas post is the competition advocate for that post.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES**Subpart 608.4—Ordering from Federal Supply Schedules**

608.402 Applicability.

608.402-70 Overseas posts.

Authority: 22 U.S.C. 2656; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 608.4—Ordering from Federal Supply Schedules**608.402 Applicability.****608.402-70 Overseas posts.**

Use of the Federal Supply Schedules is not mandatory for overseas posts nor is it required for any acquisitions inside the United States for use outside the United States.

PART 609—CONTRACTOR QUALIFICATIONS**Subpart 609.2—Qualifications Requirements****Sec.**

609.202 Policy.

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.

609.403-70 DOSAR definitions.

609.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

609.405 Effect of listing.

609.405-1 Continuation of current contracts.

609.405-2 Restrictions on subcontracting.

609.405-70 Termination action decision.

609.406 Debarment.

609.406-1 General.

609.406-3 Procedures.

609.407 Suspension.

609.407-1 General.

609.407-3 Procedures.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

Authority: 22 U.S.C. 2656; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 609.2—Qualifications Requirements**609.202 Policy.**

The authority prescribed in FAR 9.202(a)(1) is delegated, without power

of redelegation, to the head of the contracting activity (see 601.603-70).

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.

"Debarment official" means the Procurement Executive.
"Suspending official" means the Procurement Executive.

609.403-70 DOSAR definitions.

"Fact-finding official" means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

"Notice" means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406-3 and FAR 9.407-3.

609.40 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

The Office of the Procurement Executive shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without power of redelegation, to the head of the contracting activity.

609.405 Effect of listing.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

609.405-1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405-70.

609.405-2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-2.

609.405-70 Termination action decision.

Prior to making a decision to terminate, based on the considerations

listed below, the contracting officer shall have the proposed action reviewed by agency contracting and technical personnel and by the Office of the Legal Adviser.

(a) Termination for default.

Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(b) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

- (1) Seriousness of the cause for debarment or suspension;
- (2) Extent of contract performance;
- (3) Potential costs to the Government;
- (4) Urgency of the requirement and the impact of the delay; and/or
- (5) Availability of other safeguards to protect the Government's interests.

(c) *Concurrence and approval.* The contracting officer's decision to terminate an existing contract with a debarred or suspended contractor must have—

- (1) Written concurrence from the Office of the Legal Adviser, and
- (2) Approval one level above the contracting officer.

609.406 Debarment.

609.406-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406-1(c).

609.406-3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarment official. The debarment official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include—

- (i) The cause for debarment (see FAR 9.406-2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list if all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarment official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarment official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarment official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406-3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarment official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406-3(b)(2), the hearing is intended to provide the debarment official with findings of fact

based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarment official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406-3(b). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarment official within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarment official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarment official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406-3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational element affected by the determination.

(3) When a determination is made not to initiate action, the debarment official shall so advise the DOS officer who made the referral.

(d) *Debarment official's decision.* In addition to complying with FAR 9.406-3(d) and FAR 9.406-3(e), the debarment official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

609.407 Suspension.

609.407-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407-1(d).

609.407-2 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406-3(a), except that referrals made to the suspending official shall cite causes

pertinent to a suspension action (see FAR 9.407-2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407-3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407-3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406-3(a), except that the suspending official shall process the notice in accordance with FAR 9.407-3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407-3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 613.1—General

Sec.
613.103 Policy.
613.103-70 Acquisition by overseas posts.

Subpart 613.4—Imprest Fund

613.404 Conditions for use.

Subpart 613.5—Purchase Orders

613.501 General.
613.505 Purchase order and related forms.
613.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

613.507 Clauses.
613.507-70 DOSAR clauses.
Authority: 22 U.S.C. 2658; 40 U.S.C. 480(c); 48 CFR Subpart 1.3.

Subpart 613.1—General

613.103 Policy.

613.103-70 Acquisition by overseas posts.

(a) Overseas posts are authorized to use small purchase and other simplified purchase procedures to make purchases

directly from sources within or outside the United States, in accordance with FAR Part 13, this Part 613, and 601.603-70(b)(1).

(b) Overseas posts shall ensure that the terms and conditions prescribed in FAR Part 13 are added or incorporated by reference on the documents used for small purchases from U.S. vendors.

Subpart 613.4—Imprest Fund

613.404 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.404(a).

Subpart 613.5—Purchase Orders

613.501 General.

The contracting officer shall distribute copies of each purchase order in conformance with Subpart 604.2.

613.505 Purchase order and related forms.

613.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) In lieu of Optional Forms 347 and 348, DOS contracting activities may use either—

- (1) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (illustrated at 653.302-206 and 653.302-206A, respectively); or
- (2) Department of State Form (DST) 1089, Order—Supplies or Services (illustrated in 653.303-DST-1089).

(b) Both OF 206 and form DST 1089 provide the requisite space for purchase data and budgetary, accounting and voucher payment data. Either form may be used as—

- (1) A purchase order for small purchases;
- (2) A delivery order under an established contract;
- (3) Documentation in connection with a blanket purchase agreement; and/or
- (4) A voucher.

(c) (1) When using OF 206, contracting activities may use Optional Form (OF) 127, Receiving and Inspection Report (illustrated in 653.302-127), for that purpose.

(2) When using form DST 1089 as a purchase order and until such time as the form is revised, contracting activities shall replace the "Terms and Conditions Applicable to Purchase Orders" (located on the reverse of the original copy) with the appropriate FAR and DOSAR clauses, in accordance with 613.507-70.

615.507 Clauses.**615.507-70 DOSAR clauses.**

In addition to the clauses listed on OP 347 or as otherwise prescribed in FAR 15.507, each DOS purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. All such clauses may be listed on a separate document and attached to each copy of the purchase order, in which case the document shall be identified by the purchase order number and the name and address of the contracting activity.

PART 614—SEALED BIDDING**Subpart 614.2—Solicitation of Bids****Sec.**

614.201 Preparation of Invitation for Bids (IFB).

614.201-7 Contract clauses.

614.201-7-20 DOSAR contract clauses.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of Bids.

614.402-1 Unclassified bids.

614.402-70 Waiver of public opening of bids.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

614.406 Mistakes of bids.

614.406-3 Other mistakes disclosed before award.

614.406-4 Mistakes after award.

Authority: 22 U.S.C. 2858; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201-7 Contract clauses.

614.201-7-70 DOSAR contract clauses.

((a) (1) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-70, Language Version, in all solicitations and contracts awarded or performed overseas.

(2) Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

(b) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-71, Notices, in all solicitations and contracts awarded or performed overseas.

(c) When contracting by sealed bidding, the contracting officer shall

insert the clause at 652.214-72, Authorization to Perform, in all solicitations and contracts awarded or performed overseas.

(d) See 615.106-70 regarding use of the clauses prescribed in this subsection when contracting by negotiation.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402-1 Unclassified bids.

After the unclassified bids have been opened pursuant to FAR 14.402-1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

614.402-70 Waiver of public opening of bids.

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For that purpose, the Procurement Executive must approve a deviation in accordance with 601.470.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

The authority to make the determination prescribed in FAR 14.404-1(c) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

614.406 Mistakes in bids.

614.406-3 Other mistakes disclosed before award.

The authority to make the determinations prescribed in FAR 14.406 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-3(f), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making any determinations pursuant to this subsection.

614.406-4 Mistakes after award.

The authority to make all determinations prescribed in FAR 14.406-4 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser before

making any determinations pursuant to this subsection.

PART 615—CONTRACTING BY NEGOTIATION**Subpart 615.1—General Requirements for Negotiations****Sec.**

615.106 Contract clauses.

615.106-1 Examination of Records clause.

615.106-70 DOSAR contract clauses.

Subpart 615.5—Source Selection

615.607 Disclosure of mistakes before award.

615.608 Proposal evaluation.

615.612 Formal source selection.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.

615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

Authority: 22 U.S.C. 2858; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 615.1—General Requirements for Negotiation

615.106 Contract clauses.

615.106-1 Examination of Records clause.

See Subpart 625.9 for conditions for omission of the Examination of Records clause.

615.106-70 DOSAR contract clauses.

When contracting by negotiation, the contracting officer shall insert the clauses at 652.214-70, Language Version, 652.214-71, Notices, and 652.214-72, Authorization to Perform, in all solicitations and contracts, under the same conditions prescribed in 614.201-7-70.

Subpart 615.6—Source Selection

615.607 Disclosure of mistakes before award.

The authority to make the determination prescribed in FAR 15.607(c)(3) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). In conformance with FAR 15.607(c)(3)(ii), the head of the contracting activity shall obtain a legal review from the Office of the Legal Adviser before making a determination pursuant to this subsection.

615.608 Proposal evaluation.

The authority to make the determination prescribed in FAR 15.608(b) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The head of the contracting activity shall obtain the concurrence of the Office of

the Legal Adviser before making a determination pursuant to this section.

615.612 Formal source selection.

The authority prescribed in FAR 15.612(b), including the authority to designate a source selection authority, is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.

615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The waiver authority prescribed in FAR 15.804-3(i) is delegated, without power of redelegation, to the head of the contracting activity.

PART 616—TYPES OF CONTRACTS**Subpart 616.1—Selecting Contract Types****Sec.**

616.102 Policies.

616.102-70 Overseas posts.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-price contracts with economic price adjustment.

616.203-4 Contract clauses.

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.

616.306 Cost-plus-fixed-fee contracts.

616.306-3 Limitations.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.

616.505-70 DOSAR contract clause.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.

616.603-2 Application.

Authority: 22 U.S.C. 2858; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 616.1—Selecting Contract Types

616.102 Policies.

616.102-70 Overseas posts.

Pursuant to 601.603-70(b)(12)(ii), no authority is delegated to overseas posts to enter into cost-reimbursement or fixed-price incentive contracts. When the head of the contracting activity (see 601.603-70) at post determines that no other type contract will suffice to obtain needed supplies or services, that officer shall request the Procurement Executive to delegate authority to enter into a cost-reimbursement or fixed-price incentive contract, as appropriate. Such requests shall be submitted on a case-by-case basis.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203-4 Contract clauses.

The contracting officer may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203-4(d) and after obtaining the approval of the head of the contracting activity.

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207-3.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.

The determination and findings prescribed in FAR 16.301-3(c) shall be executed by the contracting officer and approved at a level above the contracting officer.

616.306 Cost-plus-fixed-fee contracts.

The authority to make the determination prescribed in FAR 16.306(c)(2) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.

616.505-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.216-70, Ordering—Indefinite-Delivery Contract, whenever the clause at FAR 52.216-20, Definite Quantity, or the clause at FAR 52.216-21, Requirements, or the clause at FAR 52.216-22, Indefinite Quantity, is used.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.

616.603-2 Application.

The contracting officer, after obtaining approval of the head of the contracting activity, is authorized to extend the period for definitization of a letter contract in accordance with FAR 16.603-2(c) and when such action is in the best interest of the Government. For this purpose, the contracting officer shall execute a written determination and findings, and submit it to the head of the contracting activity for approval.

PART 617—SPECIAL CONTRACTING METHODS**Subpart 617.1—Multiyear Contracting****Sec.**

617.102 Policy.

617.102-2 General.

Subpart 617.2—Options.

617.201 Definitions.

617.201-70 DOSAR Definitions.

617.207 Exercise of options.

617.207-70 Synopsis and competition requirements.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

Authority: 22 U.S.C. 2858; 40 U.S.C. 486 (c); 48 CFR Subpart 1.3.

Subpart 617.1—Multiyear Contracting

617.102 Policy.

617.102-2 General.

(a) Pursuant to Section 14 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2679a), any DOS acquisition for property or services, or both, by any contract funded on the basis of annual appropriations may nevertheless be made for periods not in excess of 5 years when—

(1) Appropriations are available and adequate for payment for the first fiscal year and for all potential cancellation costs; and

(2) The Procurement Executive determines that—

(i) The need of the Government for the property or services being acquired over the period of the contract is reasonably firm and continuing;

(ii) Such a contract will serve the best interests of the Government by encouraging effective competition or promoting economies in performance and operation; and

(iii) Such a method of contracting will not inhibit small business participation.

(b) For overseas posts, the Procurement Executive may delegate to the Principal Officer, on an individual contract or class of contracts basis, the authority to make the determination required by paragraph (a)(2) above. The Principal Officer may not redelegate this authority.

(c) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall be paid from appropriations originally

available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

(d) Any multiyear contract awarded pursuant to this subsection shall not exceed 5 years, including options, in accordance with FAR Subpart 17.2

Subpart 617.2—Options

617.201 Definitions.

617.201-70 DOSAR Definitions.

"Evaluated option" means an option that is evaluated for award purposes by adding the total price for the option(s) to the total price for the basic requirement.

"Priced option" means an option where the prices for the option quantities or performance periods are specified in the contract at the time of award and the option prices are not subject to renegotiation or adjustment at the time the option is exercised unless an economic price adjustment clause is included in the contract.

"Unevaluated option" means an option that is not included in the evaluation for award purposes.

"Unpriced option" means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

617.207 Exercise of options.

617.207-70 Synopsis and competition requirements.

(a) If the synopsis for the original contract action described the option provisions in sufficient detail to comply with the requirements of FAR 5.207 and the option was evaluated, a synopsis of the option before it is exercised is not required. An evaluated and priced option that was properly synopsisized as provided at FAR 5.207 meets the full and open competition requirements of FAR Subpart 6.1 or the requirements of FAR Subpart 6.2 for full and open competition after exclusion of sources.

(b) If the synopsis for the original contract action did not describe the option provisions, or the original contract action was synopsisized on a sole source basis, or in those instances where an unevaluated option was included in the contract, the option must be synopsisized in accordance with FAR 5.207 before the option can be exercised. Any such unpriced option, option included in a contract awarded on a sole source basis, or unevaluated option is considered a new acquisition and the

justification requirements of FAR Subpart 6.3 must be met before the option is exercised.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

The authority to make the determination prescribed in FAR 17.502 is delegated to the head of the contracting activity (see 601.603-70).

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 619.2—Policies

Sec.

619.201 General policy.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

Subpart 619.5—Set-Asides for Small Business

619.505 Rejecting set-aside recommendations.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.

619.705-3 Preparing the solicitation.

619.705-4 Reviewing the subcontracting plan.

619.705-6 Postaward responsibilities of the contracting officer.

619.705-6-70 Reporting responsibilities.

Subpart 619.8—Contracting with the Small Business Administration (the 8(a) Program)

619.801 General.

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU).

619.870 Acquisition of technical requirements.

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 619.2—Policies

619.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603-70), or designee, is responsible for establishing in coordination with the OSDBU director annual goals for the DOS small and disadvantaged business program.

(c) The Under Secretary for Management is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, and women-owned business sources on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business, small disadvantaged business, or women-owned business policies, regulations, procedures, and other related information;

(4) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of \$25,000 to assure that small business, small disadvantaged business, and women-owned business sources will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business or small disadvantaged business set-asides;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making

determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business, small disadvantaged business, and women-owned business concerns are fully considered;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small business, small disadvantaged business, and labor

surplus area matters as authorized by the OSDBU director.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the OSDBU director shall perform the action so required.

Subpart 619.5—Set-Asides for Small Business

619.505 Rejecting set-aside recommendations.

The Procurement Executive is the agency head for the purposes of FAR 19.505.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

The contracting officer shall transmit to the OSDBU director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a).

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.

619.705-3 Preparing the solicitation.

Whenever the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Program, is used in a solicitation for a negotiated acquisition, a notification also must be included in the solicitation. This notification shall advise prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

619.705-4 Reviewing the subcontracting plan.

OSDBU shall review subcontracting plans to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer changes needed to

subcontracting plans found to be deficient.

619.705-5 Postaward responsibilities of contracting officer.

619.705-6-70 Reporting responsibilities.

(a) The contracting officer shall forward to the OSDBU director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. This data shall be collected quarterly and semiannually, using Standard Form 295, Summary Subcontracting Report, for the quarterly submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semiannual submissions. The head of the contracting activity shall forward these reports to the OSDBU director, not later than the 30th day of the month following the close of the reporting period.

Subpart 619.8—Contracting with the Small Business Administration (the 8(a) Program)

619.801 General.

The Procurement Executive is the agency head for the purpose of FAR 19.801(b)(2).

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU).

OSDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, OSDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.870 Acquisition of technical requirements.

(a) *Offering Letter.* When a decision has been made by the OSDBU and contracting officer to process an acquisition through the SBA under the 8(a) program, the contracting activity shall promptly send to the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the SDBUS. The offering letter should transmit the statement of work, purchase description, technical data package, or specifications

and such other information deemed necessary by the contracting officer.

(b) The contracting officer has greater latitude in holding discussions with the concerns solicited under an 8(a) program acquisition than under a non-8(a) program acquisition. The technical evaluation must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 622.6—Walsh-Healey Public Contracts Act

Sec.
622.604 Exemptions.
622.604-2 Regulatory exemptions.

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 622.6—Walsh-Healey Public Contracts Act

622.604 Exemptions

622.604-2 Regulatory exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.604-2(c)(1).

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1303.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1403.

PART 623—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 623.1—Pollution Control and Clean Air and Water

Sec.
623.104 Exemptions.
623.107 Compliance responsibilities.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 623.1—Pollution Control and Clean Air and Water

623.104 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 23.104(c).

623.107 Compliance responsibilities

The Procurement Executive is the agency head's designee for the purposes of FAR 23.107.

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 624.2—Freedom of Information Act

624.202 Policy.

DOS regulations implementing the Freedom of Information Act (5 U.S.C. 552), as amended, are codified in Chapter 1, Department of State, Subchapter R, Access to Information, Part 171. Availability of information and records to the public, of Title 22 of the Code of Federal Regulations (22 CFR Part 171).

PART 625—FOREIGN ACQUISITION

Subpart 625.1—Buy American Act—Supplies

Sec.
625.102 Policy.
625.105 Evaluating offers.
625.106 Excepted articles, materials, and supplies.

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.
625.204 Violations.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.
625.300-70 Overseas acquisitions.
625.302 Policy.
625.304 Excess and near-excess foreign currencies.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omissions.
Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 625.1—Buy American Act—Supplies

625.102 Policy.

The authority to make the determination prescribed in FAR 25.102(a)(3) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The authority to make the determination prescribed in FAR 25.102(b) is reserved to the Procurement Executive.

625.105 Evaluating offers.

The authority to make the determinations prescribed in FAR 25.105 is delegated, without power of redelegation, to the head of the contracting activity.

625.106 Excepted articles, materials, and supplies.

The Office of the Procurement Executive is the DOS central agency control point for furnishing to the appropriate FAR Council the documentation prescribed in FAR 15.108(b) and (c).

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.

The authority to make the determination prescribed in FAR 25.202(a)(2) is delegated, without power of redelegation, to the head of the contracting activity. The authority to make the determination prescribed in FAR 25.202(b) is reserved to the Procurement Executive.

625.204 Violations.

The Procurement Executive is the agency head for the purposes of FAR 25.204.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.

625.300-70 Overseas acquisitions.

This program applies to acquisitions of supplies and services for use outside the United States regardless of the contractor's location.

625.302 Policy.

The authority to make the determination prescribed in FAR 25.302(b)(3) is delegated, without power of redelegation, to the head of the contracting activity. The authority

prescribed in FAR 25.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

625.304 Excess and near-excess foreign currencies.

The authority to make the determination prescribed in FAR 25.304(c) is delegated to the head of the contracting activity.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

The authority to approve exceptions for other contracts, as prescribed in FAR 25.703(b), is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omission.

The Procurement Executive is the agency head for the purposes of FAR 25.903.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 626—BONDS AND INSURANCE

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 626-70—Indemnification

626.7001 DOSAR contract clause.

(a) Contractors should not ordinarily be required to assume risks which a private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government. The clause in paragraph (b) below is authorized for use on those occasions. In the determination of its use, the contracting officer should weigh the advantages it provides against the likelihood of a resultant increase in the contract price.

(b) The contracting officer shall insert the clause at 652.228-70, Indemnification, in solicitations and contracts when it is determined that the contractor's assumption of risk is in the best interest of the Government.

PART 629—TAXES

Subpart 629.1—General

Sec.
629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.
629.202-70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.
629.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.
629.401-70 DOSAR contract clause.
Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 629.1—General

629.101 Resolving tax problems.

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202-70 Exemptions from other Federal taxes.

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

629.303 Application of State and local taxes to Government contractors and subcontractors.

The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.228-71, Excise Tax Exemption Statement for Contractors Within the United States, in solicitations and contracts if the prospective contractor is located inside the United

States and the acquisition involves export of supplies to an overseas post.

PART 630—COST ACCOUNTING STANDARDS

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 630.3—CAS Program Requirements

630.201-5 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 30.201-5(c).

PART 632—CONTRACT FINANCING

Subpart 632.1—General

Sec.
632.111 Contract clauses.
632.111-70 DOSAR contract clauses

Subpart 632.4—Advance Payments

632.402 General.
Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 632.1—General

632.111 Contract clauses.

632.111-70 DOSAR contract clauses.

As prescribed in FAR 32.901, the policies, procedures, and contract clause implementing Office of Management and Budget Circular A-125, Prompt Payment, do not apply to purchases made outside the United States from foreign vendors. In those instances, the contracting officer at the overseas post shall insert the clauses at 652.232-70, Invoice Requirements, in solicitations and contracts. If payments are to be made by electronic funds transfer, the contracting officer also shall insert the clause at 652.232-71, Method of Payment (Electronic Funds Transfer).

Subpart 632.4—Advance Payments

632.402 General.

The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). For acquisitions by overseas posts, the head of the contracting activity shall obtain the concurrence of the Procurement Executive before making a determination pursuant to this section.

PART 633—PROTESTS, DISPUTES, AND APPEALS

Subpart 633.1—Protests

Sec.
633.102 General.
633.103 Protests to the agency.

Subpart 633.1—Protests

Sec.
633.104 Protests to GAO.
633.105 Protests to GSBICA.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.
633.211 Contracting officer's decision.
633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.
633.270-1 Scope of section.
633.270-2 Designation.
633.270-3 DOS support.

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 633.1—Protests**633.102 General.**

All communications relative to protests filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated with the Office of the Legal Adviser.

633.103 Protests to the agency.

For protests filed with the Department and received before award, the contracting officer shall obtain the advice of the Office of the Legal Adviser before making the determination prescribed in FAR 33.103(a).

633.104 Protests to GAO.

The following procedures implement the corresponding paragraphs of FAR 33.104.

(a) *General.* (1) Upon being telephonically advised by the GAO of the receipt of a protest, before or after award, the Office of the Legal Adviser shall inform the appropriate head of the contracting activity (see 601.603-70), who shall immediately notify the contracting officer. For protests concerning ADP acquisitions, the Office of the Legal Adviser shall also inform the Deputy Assistant Secretary for Information Systems. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Legal Adviser shall promptly provide the same to the head of the contracting activity involved, who shall promptly provide a copy to the contracting officer and request a written report in conformance with FAR 33.104(a)(2).

(2) In addition to the requirements in FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, and shall be prepared and signed by the contracting officer. The contracting officer shall prepare the report with the assistance of the Office of the Legal Adviser. If appropriate, the

report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, the report shall include an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The head of the contracting activity shall submit to the Office of the Legal Adviser an original and two complete copies of the contracting officer's report. The contracting officer shall provide one complete copy to each interested party who responded to GAO, to the contracting officer, or to the Office of the Legal Adviser pursuant to the notification prescribed in paragraph (a)(3) below. In submitting the report to GAO, the Office of the Legal Adviser shall identify all parties to whom the report has been furnished.

(3) As prescribed in FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. The contracting officer shall place a written record of such notifications in the contract file. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. The contracting officer shall send copies of such cover letters concurrently to the Office of the Legal Adviser. Cover letters shall contain a specified period of time for submission of comments, in accordance with FAR 33.104(a)(3), and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Office of the Legal Adviser. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(4) All DOS personnel shall handle protests on a priority basis. If the specific circumstances of the protest require a longer period than allowed under FAR 33.104(a)(3), the head of the contracting activity shall immediately notify the Office of the Legal Adviser, which shall prepare a written request for extension of the period in accordance with 4 CFR 21.3(d). The head of the contracting activity shall deliver the protest report to the Office of the Legal Adviser within 15 work days from the date of telephonic notification by the Office of the Legal Adviser. For

reports involving use of the 10 work day express option provided at FAR 33.104(a)(4), the Office of the Legal Adviser shall establish the report delivery date after consultation with the head of the contracting activity.

(b) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances prescribed in FAR 33.104(b)(1), the contracting officer shall first obtain advice from the Office of the Legal Adviser. The contracting officer shall submit the written determination to the head of the contracting activity for approval.

(f) *Notice to GAO.* The authority to submit the report prescribed in FAR 33.104(f) is delegated, without power of redelegation, to the head of the contracting activity. The report shall be submitted to the Comptroller General through the Office of the Legal Adviser.

633.105 Protests to GSBICA.

The following procedures implement FAR 33.105.

(a) Upon receipt of a copy of a protest to GSBICA, the contracting officer or the official designated in the solicitation shall immediately notify the Office of the Legal Adviser and the Deputy Assistant Secretary for Information Systems. The contracting officer is responsible for compliance with the requirements in FAR 33.105(a)(2). The contracting officer shall include in the contract file a record of such notifications to all parties and related correspondence with GSBICA. The contracting officer shall provide to the Office of the Legal Adviser a copy of the list of interested parties notified, simultaneously with submission of the list to the GSBICA.

(b) The contracting officer shall submit to the Office of the Legal Adviser an original and two copies of the protest file, documented in conformance with FAR 33.105(b), within 8 work days after the filing of a protest. The contracting officer also shall provide a complete copy of the file to the protester and all other interested parties within 10 work days after filing of the protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBICA Rules of Procedure (48 CFR Part 61). The Office of the Legal Adviser shall then submit the file to the GSBICA within 10 work days after filing of the protest.

(c) The Office of the Legal Adviser shall represent the contracting officer at any hearing on suspension of the agency's delegation of procurement

authority or at any hearing on the merits of the protest. The Office of the Legal Adviser shall notify the contracting officer and the Deputy Assistant Secretary for Information Systems of the results of any hearing.

(d) The authority to execute the determination and findings (D&F) prescribed in FAR 33.105-(d)(2) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 633.2—Disputes and Appeals**633.203 Applicability.**

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.211 Contracting officer's decision.

(a) In the second sentence of FAR 33.211(a)(4)(v), contracting officers shall replace "the Board of Contract Appeals" with "Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Falls Church, VA 22041."

(b) Prior to issuing a contracting officer's final decision, the contracting officer shall obtain assistance, as appropriate, from the Office of the Legal Adviser.

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.**633.270-1 Scope of section.**

This section concerns disputes relating to DOS contracts and the transfer of certain appellate and review functions from the Department of State to the Armed Services Board of Contract Appeals.

633.270-2 Designation.

The Armed Services Board of Contract Appeals (ASBCA) is the authorized representative of the Secretary of State and the Procurement Executive for the purposes of hearing and resolving disputes relating to DOS contracts subject to the Contract Disputes Act of 1978. The ASBCA shall hear and determine appeals by contractors from contracting officers' final decisions on disputed issues relating to DOS contracts subject to the Contract Disputes Act of 1978.

633.270-3 DOS support.

The Procurement Executive shall ensure the support of all DOS personnel in processing appeals before the ASBCA. The Procurement Executive is authorized to require such DOS officers and employees to cooperate for this purpose.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING**PART 634—MAJOR SYSTEM ACQUISITION**

Sec.
634.001 Definitions.
634.001-70 Supplemental definitions.
634.002 Policy.
634.003 Responsibilities.

Authority: 22 U.S.C. 2058, 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

634.001 Definitions.

"Major system":

(a) The definition of "major system" in OMB Circular No. A-109, Major System Acquisitions (A-109), provides no exclusions; however, FAR 34.001 excludes from the definition of "major system" construction or other improvements to real property. Acquisition of capital project systems by the Office of Foreign Buildings, which would otherwise be subject to the requirements of A-109 are thus exempted from these requirements. Under separate authority, the DOS has other existing controls that provide the necessary review, approval, and monitoring procedures to manage capital project systems acquisitions by the Office of Foreign Buildings.

(b) Pursuant to A-109 and paragraph (b) of the definition of "major system" prescribed in FAR 34.001, any DOS system shall be considered a major system if total acquisition costs with private industry are expected to equal or exceed \$10,000,000.

(c) The acquisition executive is the agency head for the purposes of paragraph (c) of the definition of "major system" prescribed in FAR 34.001. The acquisition executive is authorized to designate as a major system acquisition any DOS system not expected to meet or exceed the \$10,000,000 threshold identified in paragraph (b) above; provided, that the determination shall be made in accordance with the requirements of A-109, FAR Part 34, and this Part 634.

(d) Classification as a major system acquisition is independent of the number of component DOS contracting activities involved in the process. A major system acquisition may occur entirely within the jurisdiction of a single contracting activity or it may involve more than one DOS contracting activity.

(e) Each major system acquisition shall be in response to a need of one of the DOS major missions, which are identified in volume 1 of the Foreign Affairs Manual System.

634.001-70 Supplemental definitions.

Section five of A-109 defines several terms in addition to those defined in FAR 34.002.

634.002 Policy.

The objective of A-109 is to assure effectiveness and efficiency in acquiring major systems. Section six of A-109 provides general policy guidelines in addition to those prescribed in FAR 34.002.

634.003 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 34.003(a).

(b) The Deputy Assistant Secretary for Operations is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A-109.

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**Subpart 636.1—General**

Sec.
636.101 Applicability.
636.101-70 Exception.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 636.1—General**636.101 Applicability.****636.101-70 Exception.**

Contracts for overseas construction, including capital improvements, alterations, and major repairs, are excepted from the provisions of the FAR (48 CFR Ch. 1) under the authority of the Foreign Service Buildings Act, 1926, as amended, 22 U.S.C. 292 et seq., as further codified at Section 474 of Title 40, Public Buildings, Property, and Works, of the U.S. Code.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

The Procurement Executive is the head of the agency for the purposes of FAR 36.602.

PART 637—SERVICE CONTRACTING**Subpart 637.1—Service Contracts—General**

Sec.
637.103 Contracting officer responsibility.
637.104 Personal services contracts.
637.104-70 DOS personal services contracts.

Subpart 637.2—Consulting Services

637.204 Policy.
637.204-70 Supplemental policy.
637.270 DOSAR contract clause.
Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR 1.3

Subpart 637.1—Service Contracts—General

637.103 Contracting officer responsibility.
The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104-70 DOS personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2059);

(b) For the Bureau for Refugee Programs, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2805);

(c) For the Bureau for International Narcotics Matters, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Office of Foreign Buildings, section 5 of the Foreign Service Buildings Act, 1920, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e); and
(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts.

Subpart 637.2—Consulting Services

637.204 Policy.

637.204-70 Supplemental policy.

In addition to the policy prescribed in FAR 37.204(c), consulting services will normally be obtained on an intermittent or temporary basis; repeated or extended contracts are not to be effected except under extraordinary circumstances and with the prior approval of the head of the contracting activity (see 601.603-70). Also, grants and cooperative agreements may not be used as legal instruments for consulting services arrangements.

637.270 DOSAR contract clause.

The contracting officer shall include the clause at 652.237-70, Reports (Consulting Services), in solicitations and contracts for consulting services that require submission of written reports.

SUBCHAPTER G—CONTRACT MANAGEMENT**PART 642—CONTRACT ADMINISTRATION****Subpart 642.2—Assignment of Contract Administration**

Sec.
642.270 Contracting Officer's Representative (COR)

642.271 DOSAR contract clause.

Subpart 642.6—Corporate Administrative Contracting Officer

642.602 Assignment and location.

Subpart 642.14—Traffic and Transportation Management

642.1408-2 Contract clause.

642.1408-2-70 DOSAR contract clauses.

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 642.2—Assignment of Contract Administration**642.270 Contracting Officer's Representative (COR)**

(a) Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. The COR must be a U.S. Government employee. The contracting officer shall designate the COR in writing; the designation shall define the scope and

limitations of the COR's authority. The contracting officer shall provide a copy of the COR's designation to the contractor and, as necessary, copies to the requirements and payments offices. The COR does not have the authority to make any commitments or changes that will affect the price, quality, quantity, or delivery terms of a contract; in order to do so, or to otherwise commit or bind the Government, a valid contracting officer warrant is required.

(b) Contracting officers also may designate technically qualified personnel as their authorized representatives to assist in the administration of small purchases and other simplified purchase procedures. The authorities delegated under such designations shall not exceed those provided in paragraph (a) above.

642.271 DOSAR contract clause.

The contracting officer shall insert the clause at 652.242-70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

The Procurement Executive is the agency head's designee for the purposes of FAR 42.602(a).

Subpart 642.14—Traffic and Transportation Management

642.1408-2 Contract clause.

642.1408-2-70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.242-71, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

(b) The contracting officer shall insert the clause at 652.242-72, Shipping Instructions, in solicitations and contracts with a source in the United States and overseas shipment of supplies is required.

PART 643—CONTRACT MODIFICATIONS**Subpart 643.1—General**

Sec.

643.102 Policy.

643.102-70 Contract compliance and review.

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 643.1—General

643.102 Policy.

643.102-70 Contract compliance and review.

(a) When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

(b) Subpart 604.70 prescribes the review requirements for modifying contracts for supplies and services, including construction. The contracting officer shall submit such contract modifications to the Office of Procurement Executive when the modification itself exceeds \$100,000, when the modification will cause the contract to exceed \$100,000, or when any proposed change under the modification results in an increase or decrease exceeding \$100,000 in any of the individual cost elements of the existing contract.

PART 645—GOVERNMENT PROPERTY**Subpart 645.3—Providing Government Property to Contractors**

Sec.

645.302 Providing facilities.

645.302-1 Policy.

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608-6 Waiver of screening requirements.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 645.3—Providing Government Property to Contractors

645.302 Providing facilities.

645.302-1 Policy.

The authority to make the determination prescribed in FAR 45.302-1(a)(4) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608-6 Waiver of screening requirements.

The Procurement Executive is the agency head's designee for the purposes of FAR 45.608-6.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

The Procurement Executive is the agency head for the purposes of FAR 45.610-2(a).

PART 646—QUALITY ASSURANCE**Subpart 646.7—Warranties**

Sec.

646.710 Contract clauses.

646.710-70 DOSAR contract clause.

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 646.7—Warranties

646.710 Contract clauses.

646.710-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.246-70, Commercial Warranty, in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

PART 648—VALUE ENGINEERING

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR 1.3.

Subpart 648.1—Policies and Procedures

648.102 Policies.

The Procurement Executive is the agency head for the purposes of FAR 48.102(a). The Procurement Executive is the agency head's designee for the purposes of FAR 48.102(e). The authority to extend the sharing base to include the entire contracting activity or any part of it, as prescribed in FAR 45.102(e), is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

SUBCHAPTER H—CLAUSES AND FORMS**PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

Sec.

652.000 Scope of part.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

652.102 Incorporating provisions and clauses.

652.102-1 Incorporation by reference.

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

652.202-70 Definitions.

652.204-70 Security Requirements.

652.204-71 Security Requirements—Personnel.

652.214-70 Language Version.

652.214-71 Notices.

652.214-72 Authorization to Perform.

652.216-70 Ordering—Indefinite-Delivery

Contract.

652.228-70 Indemnification.

652.228-70 Excise Tax Exemption Statement

for Contractors Within the United States.

652.232-70 Invoice Requirements.

652.232-71 Method of Payment (Electronic

Funds Transfer).

652.237-70 Reports (Consulting Services).

652.242-70 Contracting Officer's

Representative (COR).

652.242-71 Notice of Shipments.

652.242-72 Shipping Instructions.

652.246-70 Commercial Warranty.

Authority: 22 U.S.C. 2058; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

652.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOS acquisitions.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

(a) The solicitation provisions and contract clauses in FAR Subpart 52.2 or this Subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR Subpart 1.4 and 601.470.

652.102 Incorporating provisions and clauses.

652.102-1 Incorporation by reference.

The Procurement Executive is the agency head for the purposes of FAR 52.102-1(a)(2)(ii).

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

652.202-70 Definitions.

As prescribed in 604.201-70, insert the following clause in solicitations and contracts if the contract will be performed outside the United States.

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Definitions (July 1988)

"American Embassy" and "Embassy" means the diplomatic or consular mission of the United States of America for which all supplies or services are provided under the contract.

"Department" means the Department of State, including all of its activities wherever located.

"Government" means the Government of the United States of America, unless specifically stated otherwise.
(End of clause)

652.204-70 Security Requirements.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

Security Requirements (July 1988)

(a) This clause applies to the extent that this contract involves information the Government has determined to be classified ("Confidential," "Secret," or "Top Secret," hereinafter referred to as "classified") or administratively controlled ("Limited Official Use," hereinafter referred to as "administratively controlled").

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with paragraph (d) below and shall not supply, disclose, or otherwise permit any unauthorized person access to classified or administratively controlled information; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information, except with the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any non-U.S. citizen access to classified or administratively controlled information. The Contractor shall not permit any individual access to classified information without the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storage, and destroying official materials in accordance with the Uniform Regulations (Foreign Affairs Manual, Volume 8, Chapter 900, "Policy and Procedural Security"). The Contracting

Officer, Post Security Officer, or Regional Security Officer shall provide a copy of this document to the Contractor. The Contracting Officer shall provide any supplements to these regulations to the Contractor in writing.

(e) The Contractor agrees to submit immediately to the Contracting Officer, Post Security Officer, a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(f) The Government agrees that when necessary it shall indicate by security classification or administratively controlled designation the degree of importance to the national security of information to be furnished by the Contractor to the Government or by the Government to the Contractor. The Government shall give written notice to the Contractor of such security classification or administratively controlled designation and of any subsequent changes thereof. The Contractor shall rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of this contract that it has surrendered or disposed of all classified or administratively controlled information in its custody in accordance with applicable security regulations or instructions.
(End of clause)

652.204-71 Security Requirements—Personnel.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States.

Security Requirements—Personnel (July 1988)

The Contractor agrees, if directed by the Contracting Officer, to furnish the Government with the name, date and place of birth, current address, and such other biographical information as is readily available to the Contractor, concerning any individual before permitting said individual to perform under this contract. The Contractor further agrees to permit only those individuals approved by the Government to be used in the performance of this contract.
(End of clause)

652.214-70 Language Version.

As prescribed in 614.201-7-70(a), insert the following clause in solicitations and contracts effected and performed outside the United States, except when the Procurement Executive has approved a waiver of this clause.

Language Version (July 1988)

The English language version of this contract is the official version and binding on both parties.

(End of clause)

652.214-71 Notices.

As prescribed in 614.201-7-70(b), insert the following clause in

solicitations and contracts entered into and performed outside the United States.

Notices (July 1988)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the Contracting Officer.

(End of Clause)

652.214-72 Authorization to Perform.

As prescribed in 614.201-7-70(c), insert the following clause in solicitations and contracts performed outside the United States.

Authorization to Perform (July 1988)

The Contractor warrants that (a) it has obtained authorization to operate and do business in the country or countries in which this contract will be performed; (b) it has obtained all necessary licenses and permits required to perform this contract; and (c) it shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(End of clause)

652.216-70 Ordering—Indefinite-Delivery Contract.

As prescribed in 610.505-70, insert the following clause in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

Ordering—Indefinite-Delivery Contract (July 1988)

The Government shall use one of the following forms to issue orders under this contract:

- (a) Optional Form (OF) 347, Order for Supplies or Services;
- (b) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher; or
- (c) Department of State Form (DST) 1089, Order—Supplies or Services.

(End of Clause)

652.226-70 Indemnification.

As prescribed in 628.7001(b), insert the following clause in solicitations and contracts when the contractor's assumption of risk is in the best interest of the Government.

Indemnification (July 1988)

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, any negligence or alleged

negligence of the Government, its officers, agents, servants, or employees, shall not bar a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, or employees is the sole competent, and producing cause of such claim, loss, damages, injury, or liability.
(End of clause)

652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.

As prescribed in 629.401-70, insert the following clause in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

Excise Tax Exemption Statement for Contractors Within the United States (July 1988)

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(End of clause)

652.232-70 Invoice Requirements.

As prescribed in 632.111-70, insert the following clause in solicitations and contracts awarded to foreign vendors.

Invoice Requirements (July 1988)

(a) The Contractor shall submit its invoices to the Government official responsible for inspection and acceptance of the property or services. A proper invoice must include the following information:

- (1) Contractor's name and mailing address (for payments by checks) or Contractor's name and bank account information (for payments by wire transfers);
- (2) Invoice date;
- (3) Contract number or other authorization for property delivered or services performed (including order number and contract line number);
- (4) Description, quantity, unit of measure, unit price, and extended price of property delivered or services performed;
- (5) Shipping and payment terms, e.g., shipment number and date of shipment, payment discount terms. Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading;
- (6) Name, signature, title, and telephone number of the Contractor's officer certifying the invoice;
- (7) Name and address of the Contractor's officer to whom payment is to be sent (must be the same as that in the contract or on a proper notice of assignment);
- (8) Name (where practicable), title, telephone number, and mailing address of the person to be notified in the event of a defective invoice; and

(9) Any other information or documentation required by the contract (such as evidence of shipment).

(b) If an invoice does not comply with the above requirements, the Government official receiving the invoice pursuant to paragraph (a) of this clause shall notify the Contractor of the defect(s). After correcting the defect(s), the Contractor must then resubmit the invoice.
(End of clause)

652.232-71 Method of Payment (Electronic Funds Transfer).

As prescribed in 632.111-70, insert the following clause in solicitations and contracts effected outside the United States from foreign vendors when payments are to be made by electronic funds transfer.

Method of Payment (Electronic Funds Transfer) (July 1988)

(a) The Government shall make payments under this contract by electronic funds transfer through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this designation to the Contracting Officer or designee.

(b) For payment through TFCS, the Contractor shall provide the following information:

- (1) Name, address, and telegraphic abbreviation of the receiving financial institution receiving payment;
- (2) The American Bankers Association 9-digit identifying number of the financial institution receiving payment if the institution has access to the Federal Reserve Communications system;
- (3) Payee's account number at the financial institution where funds are to be transferred; and
- (4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(c) For payment through ACH, the Contractor shall provide the following information:

- (1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS);
- (2) Number of account to which funds are to be deposited;
- (3) Type of depositor account ("C" for checking, "S" for savings);
- (4) If the Contractor is a new enrollee to the ACH system, a TFS 3881, "Payment Information Form," must be completed before payment can be processed.

(d) In the event the Contractor during the performance of this contract elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official (Contracting Officer or designee) 30 days prior to the date such change is to become effective.

(e) The documents furnishing the information required in this clause must be dated and contain the signature, title, telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(f) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.
(End of clause)

652.237-70 Reports (Consulting Services).

As prescribed in 637.270, insert the following clause in solicitations and contracts for consulting services.

Reports (Consulting Services) (July 1988)

The Contractor shall submit all reports with covers that display the following information:

- (1) Name and business address of the Contractor;
- (2) Contract number;
- (3) Contract dollar amount (including modifications);
- (4) Type of award, i.e., full and open competition or statutory authority for other than full and open competition;
- (5) Name of the individual who requested the consulting services, and the name and telephone number of the requesting individual's office; and
- (6) The following statement: Any report prepared by the Department of State that is substantially derived from or substantially includes the contents of this report shall cite the contract number and contractor for this report.

(End of clause)

652.242-70 Contracting Officer's Representative (COR).

As prescribed in 642.271, insert the following clause in solicitations and contracts when one or more contracting officer representatives are required.

Contracting Officer's Representative (COR) (July 1988)

The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee shall not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer

and this authority is delegated in the designation.
(End of clause)

652.242-71 Notice of Shipments.

As prescribed in 642.1406-2-70(a), insert the following clause in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

Notice of Shipments (July 1988)

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.
(End of clause)

652.242-72 Shipping Instructions.

As prescribed in 642.1406-2-70(b), insert the following clause in solicitations and contracts with a source in the United States and requiring overseas shipment of supplies.

Shipping Instructions (July 1988)

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than 1/4 of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 100 lbs.....	3/4" x 2 1/4".
101 to 250 lbs.....	3/4" x 2 1/4".
251 to 400 lbs.....	3/4" x 3 1/4".
401 to 600 lbs.....	3/4" x 4 1/4" or 1" x 3 1/4".

(b) Each box shall be lined with waterproof paper and shall be bound with 3/4" steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 1,000 pounds and more must be equipped with skids. Each skid shall consist of two end sections of 2 x 6-inch lumber placed flat and a center section of 2 x 4-inch lumber placed flat and then

arranged in line to provide 10-inch forklift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in pounds and kilograms; and outside dimensions, including all clears, of each shipping container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent as specified in the contract or order. The Contractor shall place the fourth copy of the packing list in the packing case number one, which shall be marked as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in pounds and kilograms shall be stenciled on the same side. (One kilogram equals 2.2046 pounds avoirdupois.) However, if the size of the box is too small to accommodate all stenciling on one side, the contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.
(End of clause)

652.246-70 Commercial Warranty.

As prescribed in 646.710-70, insert the following clause in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

Commercial Warranty (July 1988)

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services. The rights and remedies provided herein are in addition to and to not limit any rights afforded to the Government by any other clause of this contract.
(End of clause)

PART 653—FORMS

Sec.
653.000 Scope of part.

Subpart 653.1—General

653.101 Requirements for use of forms.
653.101-70 Policy.
653.107 Obtaining forms.
653.110 Continuation sheets.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.
653.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.213-70 DOSAR forms (OF's 206, 206A, DST 1089, OF 127).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.
653.302 Optional forms.
653.303 Agency forms.
653.302.127 Optional Form 127, Receiving and Inspection Report.
653.302.206 Optional Form 206, Purchase Order, Receiving Report and Voucher.
653.302.206A Optional Form 206A, Purchase Order, Receiving Report and Voucher—Continuation Sheet.
653.303-DST-1089 Department of State Form 1089, Order—Supplies or Services. Authority: 22 U.S.C. 2658; 40 U.S.C. 400(c); 46 CFR Subpart 1.3.

653.000 Scope of part.

This part prescribes DOSAR forms in addition to those provided in FAR Part 53.

Subpart 653.1—General

653.101 Requirements for use of forms.

653.101-70 Policy.

The forms in FAR Subpart 53.2 or in Subpart 653.2 shall be used as prescribed therein, except when the use of any form is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the form were used. The contracting officer shall justify the exclusion of any form in accordance with FAR Subpart 1.4 and 601.470.

653.110 Continuation sheets.

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

653.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.213-70 DOSAR forms (OF's 206, 206A, DST 1089, OF 127).

As provided in FAR 53.213(e), the following forms are approved for use in lieu of Optional Forms 347 and 348.

(a) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (see 613.505-2(a)(1)).

(b) Department of State Form (DST) 1089, Order—Supplies or Services (see 613.505-2(a)(2); also see 613.505-2(c)(2)

regarding replacement of the "Terms and Conditions Applicable to Purchase Orders," which are located on the reverse of the original copy of the DST 1089).

(c) When using OF 206, contracting activities may use Optional Form 127, Receiving and Inspection Report, for that purpose (see 613.505-2(c)(1)).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.

This subpart contains illustrations of forms prescribed in the DOSAR but not illustrated in FAR Subpart 53.3.

653.302 Optional forms.

This section illustrates the optional forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the optional form numbers.

653.303 Agency forms.

This section illustrates the DOS forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DOS form numbers.

BILLING CODE 4710-34-M

653.302.127 OPTIONAL FORM 127,
RECEIVING AND INSPECTION REPORT

RECEIVING AND INSPECTION REPORT		METHOD OF ACQUISITION		DOCUMENT NUMBERS	
		<input type="checkbox"/> PURCHASED	<input type="checkbox"/> RENTED	REPORT NO.	
		<input type="checkbox"/> CONSTRUCTED	<input type="checkbox"/> LOANED	P.O. NO.	
		<input type="checkbox"/> DONATED	<input type="checkbox"/> INVENTORY OVERAGE	REQUISITION NO.	
		<input type="checkbox"/> (OTHER)		TRANSFER AUTHORITY NO.	
RECEIVED FROM NAME AND ADDRESS		APPROPRIATION		CONTRACT NO.	
		ALLOTMENT		JOB NO.	
		OBJECTIVE CLASS			
POINT OF SHIPMENT		GBL NO.			
ITEM NO.	DESCRIPTION (Include Terms of Acceptance on Loans, Donations, Etc.)	QUANTITY	UNIT	UNIT PRICE	AMOUNT
CERTIFICATE OF RECEIPT			INSPECTOR'S CERTIFICATE		
I HEREBY CERTIFY THAT ALL ITEMS LISTED ABOVE WERE RECEIVED, INSPECTED AND ACCEPTED			<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL <input type="checkbox"/> OVER <input type="checkbox"/> SHORT <input type="checkbox"/> DEFECTIVE MATERIAL		
NAME (Type or Print)		OFFICE SYMBOL	(USE REVERSE FOR COMMENTS)		
SIGNATURE		DATE			

60127-102 NSN 7540-00-138-9185

OPTIONAL FORM 127
REV. JANUARY 1982
STATE - AID - USICA653.302.206 OPTIONAL FORM 206, PURCHASE ORDER,
RECEIVING REPORT AND VOUCHER

Form approved by Comptroller General, U.S. March 19, 1953		PURCHASE ORDER, RECEIVING REPORT AND VOUCHER (For use in foreign countries only)		D.O. Vou. No.	
Department or Establishment U.S.				Bu. Vou. No.	
Prepared at (place)		(date)		Purchase Order No.	
Purchaser THE UNITED STATES GOVERNMENT, DR.				PAID BY	
Seller (Payee)					
Address of seller					
Contract No. (dated)					
Order is hereby placed with the above-named seller for the articles or services described below, to be furnished:					
to	at				
ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE Cost Per		AMOUNT
Use continuation sheet(s) if necessary.					
Ordering Officer (Signature)		Approp.	Funds Available:		
		Allot.			
Name:		Obl. No.	Name:		
Title:		Amt.	Title:		
I certify that the ordered items listed were received on (date) except as follows:		PAYMENT:		Amount billed, as per attached bill(s)	
		<input type="checkbox"/> Complete		Differences	
Signature		<input type="checkbox"/> Partial		Amount verified correct for	
Name:		<input type="checkbox"/> Final		Prepayment Audit (Signature or initials)	
Title:					
Approved for \$		Pursuant to authority vested in me, I certify this voucher correct and proper for payment. Signature of Authorized Certifying Officer			
Exchange rate to \$		Name:			
		Title:			
ACCOUNTING CLASSIFICATION					
Fund	Allotment	Oblig. No.	Paying Office	Date Paid	Object
P Check No. dated . 19 . for \$ on Treasurer of United States.					
A Check No. dated . 19 . for \$ on					
D Cash on 19 Payee					
B Title of Payee:					

OPTIONAL FORM 206
(FORMERLY PS-455)
MARCH 1973
GSA GEN. REG. NO. 27

50206-101

1. The entering office is exempt from taxes.
2. The invoices must be submitted in two copies. Carriers' invoices covering transportation and/or accessorial services shall show on the original the following certification statement, manually signed by the vendor or his authorized representative and dated: "I certify that the above bill is correct and just and that payment therefor has not been received."
3. The order number shown in the upper right hand corner of this purchase order must be shown on your invoices.
4. All communications concerning this order must refer to order number and be addressed to the originating office.
5. Discount terms, if any, must be shown on all bills.

Form approved by
Comptroller General, U. S.
March 19, 1944.

Continuation Sheet

U. S. _____ of Bureau Vou. No. _____
(Department or establishment) Purchase Order No. _____

ITEM NO.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
			Cost	Per	

OPTIONAL FORM 206A
(FORMERLY FS-456A)
MARCH 1975
DEPT. OF STATE

U.S. GOVERNMENT PRINTING OFFICE 1975 O-579-102

50206-201

**SUBCHAPTER I—DOS
SUPPLEMENTATIONS****PART 670—SPECIAL CONTRACTING
PROGRAMS****Subpart 670.1—International Narcotics
Control Program Acquisitions**

Sec.

670.101 Scope of subpart.

670.102 Policy.

670.103 Applicability.

Authority: 22 U.S.C. 2656; 40 U.S.C. 400(c);
48 CFR Subpart 1.3**Subpart 670.1—International Narcotics
Control Program Acquisitions****670.101 Scope of subpart.**

This subpart prescribes policies for acquisitions under the International Narcotics Control (INC) Program, which is authorized by section 481 of the

Foreign Assistance Act of 1961, as amended (22 U.S.C. 2291).

670.102 Policy.

(a) The Procurement Executive is responsible for INC Program acquisitions. In this capacity, the Procurement Executive has the specific authority to enter into and administer INC funded contracts. Unless otherwise directed by the Secretary of State or provided in DOS regulations, the Procurement Executive shall also provide policy direction and prescribe or approve standards, procedures, and internal instructions for the award and administration of INC funded contracts, including contracts with individuals for personal services abroad.

(b) To accomplish the purposes of the INC Program, the following implementing authorities and

regulations may be utilized to the extent the Procurement Executive deems necessary or appropriate in the performance of the acquisition function.

(1) The Foreign Assistance Act of 1961, as amended.

(2) Sections 1, 2, and 3 of Executive Order No. 11223 of May 12, 1965.

(3) Chapter 7 of this Title, Agency for International Development Acquisition Regulation, 48 CFR Ch. 7, including any amendments thereto.

(c) Authority to perform functions prescribed in this subpart may be redelegated.

670.103 Applicability.

The provisions of this subpart apply to acquisitions for the INC Program both within and outside the United States.

[FR Doc. 88-15466 Filed 7-8-88; 8:45 am]

BILLING CODE 4710-24-M

Monday
July 11, 1988

Part IV**Department of
Education**

Office of Special Education and
Rehabilitative Services

34 CFR Parts 316 and 318

Training Personnel for the Education of
the Handicapped; Proposed Rulemaking

federal register

VOL

53

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DEPARTMENT OF EDUCATION

Office of Special Education and
Rehabilitative Services

34 CFR Parts 316 and 318

Training Personnel for the Education
of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Training Personnel for the Education of the Handicapped Program under Part D of the Education of the Handicapped Act (EHA). These amendments are needed to implement changes made by the Education of the Handicapped Act Amendments of 1986. The intended effect of these proposed regulations is to clarify the statutory requirements and improve the operation of the program.

DATE: Comments must be received on or before August 10, 1988.

ADDRESS: Comments concerning the proposed regulations should be addressed to Dr. Norman Howe, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dr. Norman Howe, Telephone: (202) 732-1068.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped Program is authorized by sections 631 and 632 of the EHA. Section 631 creates three specific programs, providing grants to (1) nonprofit organizations for parent training and information, (2) institutions of higher education (IHEs) and nonprofit organizations training personnel for careers in special education and nearly intervention, and (3) IHEs and nonprofit organizations for special projects. Section 632 provides for grants to State educational agencies (SEAs) and IHEs for preservice and inservice personnel training.

In the past, the regulations implementing all four programs were included under 34 CFR Part 318, and the same selection criteria were used in reviewing applications submitted under that part. However, in order to clarify the separate requirements for the programs, and to propose separate

selection criteria, 34 CFR Part 318 will be divided into three separate parts.

The final regulations for the program authorized by section 632 were published July 8, 1987 as Part 319.

The new proposed Part 316 and Part 318 would contain the regulations for Parent Training and Information Centers, and Training Personnel for Careers in Special Education and Early Intervention authorized by section 631. Three separate components are addressed in the proposed regulations: Parent training and information centers; training personnel for careers in special education and early intervention; and special projects.

Under the parent training and information centers program, eligible parent organization may submit applications that proposed training and dissemination of information to parents of children and youth with handicaps, and to professionals and paraprofessionals who work with parents, to enable parents to participate more fully and effectively with professionals in meeting the educational needs of children and youth with handicaps. The Secretary would select applications for funding based on the selection criteria established in the regulations.

Under the training personnel for careers in special education and early intervention program, eligible applicants may propose preservice training of personnel for careers in special education and early intervention. In the special projects program, applicants may propose preservice and inservice training activities.

Executive Order 12606

Regulations governing the Parent Training and Information Centers program will have a positive impact on the family and are consistent with Executive Order 12606—The Family. The regulations strengthen the authority and participation of parents in the education of their children by providing appropriate training and disseminating information.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have significant economic impact on a substantial number of small entities because the regulations would not

impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 316.20, 316.21, 316.31, 316.20, 316.21, and 316.35, contain information collection requirements. As required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3504 (h)), the Department of Education will submit a copy of these proposed regulations to the Office of Management Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4628, Switzer Building, 330 "C" Street, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

In addition, the Secretary invites comments on the new selection criteria which expand the previous focus on extent of needs to include the capacity of the institution to make an impact on need. This addresses not only the applicant's ability to define the present and projected need addressed in the application, but also allows the application to be evaluated in terms of whether or not the identified need is significant and the extent to which the result, i.e., the graduates of the training program can be expected to have an impact on that need.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require

transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 316

Education, Education of handicapped, Education-training, Grant programs—education, Nonprofit organizations, Teachers.

34 CFR Part 318

Education, Education of handicapped, Education-training, Grant programs—education, Student aid, Teachers.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: May 17, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding new Part 316 and by revising Part 318 to read as follows:

Part 316—TRAINING PERSONNEL FOR
THE EDUCATION OF THE
HANDICAPPED—PARENT TRAINING
AND INFORMATION CENTERS

Subpart A—General

Sec.

- 316.1 What is the purpose of this program?
- 316.2 Who is eligible for an award?
- 316.3 What activities may the Secretary fund?
- 316.4 What regulations apply to this program?
- 316.5 What definitions apply to this program?
- 316.6 What are the application requirements for a continuation award?

Subpart B—(Reserved)

Subpart C—How Does the Secretary Make
an Award?

- 316.20 How does the Secretary evaluate an application?
- 316.21 What selection criteria does the Secretary use?
- 316.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must a
Grantee Meet?

- 316.30 What types of services are required?
- 316.31 What types of reports are required?
- 316.32 What are the duties of the board of directors or special governing committee of a parent organization?

Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.

Subpart A—General

§ 316.1 What is the purpose of this
program?

(a) This program supports grants to parent organizations for the purpose of

providing training and information to parents of children and youth with handicaps and to persons who work with parents, to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children and youth.

(b) Parent training and information programs may, at a grantee's discretion, include State or local educational personnel if that participation will further an objective of the program assisted by the grant.

(Authority: 20 U.S.C. 1431(c))

§ 316.2 Who is eligible for an award?

(a) Parent organizations are eligible to receive grants under this program. A parent organization is a private nonprofit organization that meets the following requirements.

(1) The organization is governed by a board of directors on which a majority of the members are parents of children and youth with handicaps and that includes professionals in the field of special education and related services who serve children and youth with handicaps; or

(2) Has—

(i) A membership representing the interests of individuals with handicaps; and

(ii) A special governing committee, a majority of the members of which are parents of children and youth with handicaps, and which includes professionals in the fields of special education and related services.

(b) The organization, in providing training and information under this part must serve the parents of children and youth representing a full range of handicapping conditions.

(c) The organization must demonstrate the capacity and expertise to conduct the authorized training and information activities effectively.

(Authority: 20 U.S.C. 1431(c))

§ 316.3 What activities may the Secretary
fund?

Parent training and information programs assisted under this program must be designed to assist parents to—

(a) Understand the nature and needs of the handicapping conditions of their children and youth;

(b) Provide follow-up support for their children and youth's educational programs;

(c) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(d) Participate fully in the educational decisionmaking processes, including the

development of a child's individualized education program;

(e) Obtain information about the programs, services, and resources available to their children, and the degree to which the programs, services, and resources are appropriate; and

(f) Understand the provisions for educating children and youth with handicaps under Part B of the Act.

(Authority: 20 U.S.C. 1431(c))

§ 316.4 What regulations apply to this
program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 316.

(Authority: 20 U.S.C. 1431(c))

§ 316.5 What definitions apply to this
program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Individualized education program (§ 300.30)
Parent (§ 300.10)
Related services (§ 300.13)
Special education (§ 300.14)

(c) *Other definitions specific to 34 CFR Part 316.* The following terms used in this part are defined as follows:

(1) "Act" means the Education of the Handicapped Act (EHA).
(2) "Children and youth with handicaps" means children and youth who are mentally retarded, hard of hearing, deaf, speech or language

impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or who have specific learning disabilities and who by reason thereof need special education and related services.

(Authority: 20 U.S.C. 1431(c))

§ 316.6 What are the application requirements for a continuation award?

In addition to meeting the requirements of 34 CFR 75.118, an application for a continuation award under this program must include a copy of a written review, by the recipient's board of directors or special governing committee, of the parent and training information program conducted by the recipient during the preceding fiscal year.

(Authority: 20 U.S.C. 1431(c)(3))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 316.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 316.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431(c))

§ 316.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of present and projected needs.* (15 points) The Secretary reviews each application to determine the extent to which the project makes an impact on parent training and information needs, consistent with the purposes of the Act, including consideration of the impact on—

(1) The present and projected needs in the applicant's geographic area for trained parents; and

(2) The present and projected training and information needs for personnel to work with parents of children and youth with handicaps.

(b) *Anticipated project results.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist parents to—

(1) Understand the nature and needs of the handicapping conditions of their children;

(2) Provide follow-up support for their children and youth's educational programs;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decisionmaking processes, including the development of their child's individualized educational program;

(5) Obtain information about the programs, services, and resources available to their children and the degree to which the programs, services, and resources are appropriate to meet the needs of their children; and

(6) Understand the provisions of Part B of the Act.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective management plan that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(f) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each

application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431(c))

§ 316.22 What additional factors does the Secretary consider?

In addition to the criteria in § 316.21, the Secretary considers the following factors in making an award:

(a) *Geographic distribution.* In selecting projects for award, the Secretary ensures that, to the greatest extent possible, awards are distributed geographically, on a State or regional basis, throughout all the States and serve parents of children and youth with handicaps in both urban and rural areas.

(b) *Unserved areas.* In selecting projects for award, the Secretary gives priority to applications that propose to serve unserved areas.

(Authority: 20 U.S.C. 1431(c))

Subpart D—What Conditions Must A Grantee Meet?

§ 316.30 What types of services are required?

(a) Projects must be designed to meet the unique training and information needs of parents of children and youth with handicaps who live in the area to be served by the project, particularly those who are members of groups that have been traditionally underrepresented.

(b) A grantee shall consult with appropriate agencies which serve or assist children and youth with handicaps in the geographic areas served by the project.

(Authority: 20 U.S.C. 1431(c))

§ 316.31 What types of reports are required?

Not more than sixty days after the end of the fiscal year, a grantee shall submit a report to the Secretary, in such form and detail as the Secretary determines to be appropriate, that includes—

(a) The number of individuals trained under the grant by category of training and level of training, i.e., introductory, elementary, or advanced; and

(b) The types of training and information provided.

(Authority: 20 U.S.C. 1434)

§ 316.32 What are the duties of the board of directors or special governing committee of a parent organization?

The recipient's board of directors or special governing committee as described in § 316.2 must meet at least

once in each calendar quarter to review the parent training and information activities for the grant.

(Authority: 20 U.S.C. 1431(c))

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—CAREERS IN SPECIAL EDUCATION AND EARLY INTERVENTION

Subpart A—General

Sec.

318.1 What is the purpose of this program?

318.2 Who is eligible for an award?

318.3 What activities may the Secretary fund?

318.4 What priorities may the Secretary establish?

318.5 What regulations apply to this program?

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Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

318.20 How does the Secretary evaluate an application?

318.21 What selection criteria does the Secretary use?

318.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must A Grantee Meet?

318.30 Is student financial assistance authorized?

318.31 What are the student financial assistance criteria?

318.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

318.33 What types of reports are required? Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.

Subpart A—General

§ 318.1 What is the purpose of this program?

This program serves to increase the quantity and improve the quality of personnel available to serve children and youth with handicaps through—

(a) The provision of awards to support the preservice training of personnel for careers in special education and early intervention in—

(1) Special education teaching, including speech-language pathology, audiology, and adaptive physical education;

(2) Related services to children and youth with handicaps in educational settings;

(3) Special education supervision and administration;

(4) Special education research; and

(5) Training of special education personnel and other personnel providing special services and preschool and early

intervention services for children with handicaps; and

(b) Special projects designed to develop and demonstrate new approaches for the preservice and inservice training described in § 318.3(a).

(Authority: 20 U.S.C. 1431 (a) and (b) and 1434)

§ 318.2 Who is eligible for an award?

(a) The following agencies are eligible for assistance under this part:

(1) Institutions of higher education; and

(2) Other appropriate nonprofit agencies.

(b) In order to receive a preservice training grant under § 318.3 an institution or agency must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless the grant is for the purpose of assisting the applicant agency or institution to meet those standards.

(Authority: 20 U.S.C. 1431(a)(2))

§ 318.3 What activities may the Secretary fund?

The Secretary supports three types of projects under this program:

(a) Special projects designed to include—

(1) Development, evaluation, and distribution of innovative approaches to personnel preparation;

(2) Development of materials to prepare personnel to educate children and youth with handicaps; and

(3) Other preservice and inservice projects of national significance.

(b) Development of new programs designed to establish and increase the capacity and quality of preservice training.

(c) Improvement of existing programs designed to maintain and upgrade the capacity and quality of preservice training.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.4 What priorities may the Secretary establish?

(a) Projects supported under this program that meet a priority as described in paragraph (b) or (c) of this section may provide training to degree, nondegree, certified, and noncertified personnel, except that doctoral and post-doctoral preparation may be supported only under the priorities described in paragraphs (b)(3) and (b)(8) of this section.

(b) The Secretary may select annually one or more of the following priority areas for funding:

(1) *Preparation of special educators.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice training of personnel for careers in special education of children and youth with handicaps, or supervisors of those personnel. The priority includes the preparation of special teachers of children and youth with handicaps, special education administrators and supervisors, speech-language pathologists, audiologists, adaptive physical educators, vocational educators, and infant intervention specialists.

(2) *Preparation of related services personnel.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice preparation of individuals who provide developmental, corrective, and other supportive services that assist children and youth with handicaps to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, health service providers, physical therapists, occupational therapists, and other related services personnel.

(3) *Preparation of leadership personnel.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice doctoral and post-doctoral preparation of professional personnel such as administrators and supervisors, researchers, and teacher trainers.

(4) *Transition of youth with handicaps to adult and working life.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice preparation of individuals who assist youth with handicaps in their transition from school to adult roles. Personnel may be prepared to provide short-term transitional services, long-term structured employment services, or instruction in community and school settings with secondary school students.

(5) *Preparation of personnel to provide services to newborn and infant handicapped children.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice preparation of individuals who serve newborns and infants with handicaps or those who are at high risk of being handicapped. Personnel may be prepared to provide short-term services or long-term services that extend into a child's preschool program.

(6) *Preparation of personnel for special populations of children with handicaps.* This priority supports the preservice preparation of special education and related services personnel under § 318.3 (b) and (c) who will serve special populations of

children with handicaps who, because of special characteristics, require professional competencies in addition to those needed for other children with similar disabilities. Projects funded under this priority must define a specific special population, describe the additional competencies that are needed by professionals serving that population, and show how the project's training program will result in the attainment of those competencies.

(7) *Preparation of personnel to work in rural areas.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice training of personnel who will serve children and youth with handicaps in rural areas. Projects must also be designed to provide training to assist personnel working with parents, teachers, and administrators.

(8) *Special Projects.* This priority supports projects with preservice and inservice activities specified in § 318.3(a).

(c) In addition to the priority areas described in paragraph (b) of this section, the Secretary may select annually as a priority the support of preservice preparation of special educators and early intervention personnel who serve infants, toddlers, children, and youth with low-incidence handicaps in a designated State or geographic area. Specifically, the Secretary may select one or more of the following low-incidence categories:

- (1) Severe and profound mental handicaps, including multiple handicaps;
- (2) Severe and profound hearing impairments;
- (3) Severe and profound visual impairments;
- (4) Severe emotional disturbance; and
- (5) Other serious health impairments, including neurological deficiencies, traumatic brain injuries, and autism.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.5 What regulations apply to this program?

The following regulations apply to assistance under the Training Personnel for the Education of the Handicapped program:

- (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).
- (b) The regulations in this Part 318.

(Authority: 20 U.S.C. 1431 (a) and (b) and 1434)

§ 318.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal Year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Related services (§ 300.13)
Special education (§ 300.14)

(c) *Other definitions specific to 34 CFR Part 318.* The following terms used in this part are defined as follows:

- (1) "Act" means the Education of the Handicapped Act (EHA).
- (2) "Children and youth with handicaps" means children and youth who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or who have specific learning disabilities, and who by reason thereof need special education and related services.
- (3) "Early intervention" is used in this part as it has been defined in 34 CFR 303.10.

Note.—34 CFR 303.10 is part of the proposed regulations for the Early Intervention Program for Infants and Toddlers with Handicaps, 52 FR 44352-44363, published in the Federal Register on November 18, 1987.

(Authority: 20 U.S.C. 1431 (a) and (b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 318.20 How does the Secretary evaluate an application?

- (a) The Secretary evaluates an application on the basis of the criteria in § 318.21.
- (b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.21 What selection criteria does the Secretary use?

(a) The Secretary uses the following criteria to evaluate all applications other than applications for special projects, as described in § 318.3(a).

(1) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children and youth with handicaps. The Secretary considers—

- (i) The significance of the personnel needs to be addressed to the provision of special education and related services. Significance of the need identified by the applicant may be shown by—

(A) Evidence of critical personnel shortages in targeted specialty or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with handicaps; or other indicators of need that the applicants demonstrate are relevant and reliable; or

(B) Evidence showing significant need for improvement in the quality of personnel providing special education and related services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

- (ii) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted need may include:

(A) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(B) For ongoing programs, the extent of which applicants' projections are supported by the number of previous program graduates that have entered the field for which they received training, the professional contributions of those graduates, and data on the need for graduates in paragraph (a)(1)(ii)(A) of this section; and

(C) For new programs, the extent to which program features support the projections in paragraph (a)(1)(ii)(A) of this section, and the applicant's plan for helping graduates locate appropriate

employment in the area of need or the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(2) *Capacity of the institution.* (25 points) The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(i) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, positive performance evaluations, and publications.

(ii) The amount of time each key person plans to commit to the project;

(iii) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(iv) The quality of the practicum training settings, including evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interaction between students with handicaps and their non-handicapped peers;

(v) The capacity of the applicant to recruit well-qualified students;

(vi) The experience and capacity of the applicant to assist local public schools in providing training to these personnel, including the development of model practicum sites; and

(vii) The extent to which the applicant cooperates with SEAs, other IHEs, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs;

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national

origin, gender, age, or handicapping condition;

(vi) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(vii) The extent to which substantive content and organization of the program—

(A) Are appropriate to the student's attainment of professional knowledge and competencies deemed necessary for the provision of quality educational services for children and youth with handicaps; and

(B) Demonstrate an awareness of methods, procedures, techniques, and instructional media or materials that are relevant to the preparation of personnel who serve children with handicaps; and

(viii) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational needs of children and youth with handicaps.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project;

(ii) To the extent possible, are objective and produce data that are quantifiable including, but not limited, to, the number of trainees graduated and hired;

(iii) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relating to the objectives of the project; and

(iii) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

(b) The Secretary uses the following criteria to evaluate a Special Projects application described in § 318.3(a):

(1) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under Parts B and H of the Act in special education, related

services, and early intervention services personnel development.

(2) *Program content.* (20 points) The Secretary reviews each application to determine—

(i) The project's potential for national significance, its potential for replication as an effective training program, and the quality of its plan for dissemination of the results of the project;

(ii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational early intervention services to infants, toddlers, children, and youth with handicaps; and

(B) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the development of a model to prepare personnel to serve children and youth with handicaps; and

(iii) The extent to which program philosophy, objectives, and activities are related to the educational and early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(5) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each of the key personnel plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.22 What additional factors does the Secretary consider?

The Secretary makes awards for a one- to five-year period based on the nature of projected needs addressed by the project and the quality of the plan for meeting those needs.

(Authority: 20 U.S.C. 1431 (a) and (b))

Subpart D—What Conditions Must a Grantee Meet?

§ 318.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student shall not exceed the cost of attendance. Cost of attendance is defined as—

(a) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a

half-time basis, as determined by the institution;

(c) An allowance (as determined by the institution) for room and board costs incurred by the student which—

(1) Shall be an allowance of not less than \$1,500 for a student without dependents residing at home with parents;

(2) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(3) For all other students shall be allowance based on the expenses reasonably incurred by such students for room and board, except that the amount may not be less than \$2,500;

(d) For less than half-time students (as determined by the institution) tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with such study (as determined by the institution);

(g) For a student with one or more dependents, an allowance (as determined by the institution) based on the expenses reasonably incurred for dependent care based on the number and age of such dependents;

(h) For a handicapped student, an allowance (as determined by the institution) for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining

costs, but his paragraph shall not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.31 What are the student financial assistance criteria?

Direct financial assistance may only be paid to students in preservice programs and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study as defined in 34 CFR 688.16(e);

(c) The student certifies that he or she is not in default of a student loan provided under Title IV of the HEA, as amended; and

(d) The student is—

(1) A citizen or a national of the United States; or

(2) A lawful permanent resident in the United States, or is in the United States for other than a temporary purpose and intends to become a citizen or permanent resident.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for award to other students during the grant period.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.33 What types of reports are required?

Not more than sixty days after the end of any fiscal year, each grantee shall submit a report to the Secretary, in such form and detail as the Secretary determines to be appropriate, that includes—

(a) The number of individuals trained under the grant by category of training and level of training; and

(b) The number of individuals trained under the grant receiving degrees and certification, by category and level of training.

(Authority: 20 U.S.C. 1434)

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Monday
July 11, 1988

Part V

**Department of the
Interior**

Fish and Wildlife Service

50 CFR Part 20

**Migratory Bird Hunting; Proposed
Frameworks for Early Season Migratory
Bird Hunting Regulations; Supplemental
Proposed Rule**

federal register

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rules published on March 9, 1988 (53 FR 7702), and June 7, 1988 (53 FR 20874), which notified the public that the U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1988-89, and provided information on certain proposed regulations.

This proposed rulemaking provides frameworks or outer limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed in early seasons for migratory bird hunting. These are hunting seasons that open prior to October 1 and relate to mourning, white-winged and white-tipped doves; band-tailed pigeons; woodcock; common snipe; rails; common moorhens; purple gallinules; sea ducks; experimental September duck seasons in Florida, Kentucky, and Tennessee; experimental September Canada goose seasons in Illinois, Michigan, and Minnesota; a special Canada goose season in southwestern Wyoming; sandhill cranes; extended falconry seasons; and migratory game birds in Alaska, Puerto Rico and the Virgin Islands.

The Service annually prescribes hunting regulations frameworks to the States for season selection purposes. The primary purpose of this proposed rule is to facilitate establishment of early-season migratory bird hunting regulations for 1988-89. Additional information relevant to the outlook for duck production this year is becoming available almost daily. If this additional information indicates substantially greater adverse impacts of the drought, it may be necessary to further restrict those waterfowl seasons proposed herein.

DATES: The comment period for the proposed early-season frameworks will end on July 20, 1988, except for Hawaii where the comment period closed on June 22, 1988. The comment period for the proposed frameworks for Alaska, Puerto Rico, and the Virgin Islands, which was identified in previous Federal Register documents mentioned above as

ending on June 22, 1988, is reopened and extended to July 20, 1988. The comment period for late-season proposals will close on August 29, 1988.

A Public Hearing on Late-Season Regulations will be held August 3, 1988, starting at 9 a.m.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. The August 3 Public Hearing will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, DC. Notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, (202) 254-3207.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons, and regulations for Alaska, Hawaii, Puerto Rico and the Virgin Islands. Early seasons are those that open before October 1; late seasons open about October 1 or later. Regulations are developed independently for the early and late seasons, and Alaska and insular areas. The early-season regulations relate to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; common moorhens; purple gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; experimental duck seasons opening in September in Florida, Kentucky and Tennessee; experimental Canada goose seasons opening in September in Illinois, Michigan and Minnesota; sandhill cranes in the Central Flyway and Arizona and Utah; a special Canada goose season in southwestern Wyoming; and some extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; coots; and other extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial

regulatory proposals are announced in a Federal Register document published in March and opened to public comment. The proposals are supplemented as necessary with additional Federal Register documents. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the Federal Register. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the Federal Register, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. On March 9, 1988, the Service published for public comment in the Federal Register (53 FR 7702) a proposal to amend 50 CFR Part 20, with comment periods ending as noted earlier.

On June 7, 1988, the Service published for public comment a second document (53 FR 20875) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks, with comment periods ending June 22, 1988, for Alaska, Hawaii, Puerto Rico and the Virgin Islands, July 18, 1988, for remaining early-season proposals, and August 29, 1988, for late-season proposals. This document reopens and extends the comment period for Alaska, Puerto Rico and the Virgin Islands through July 20, 1988.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1988-89 season. All pertinent comments on the March 9 proposal received through June 22, 1988, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods on this third document are specified above under **DATES**. Final regulatory

frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands, and early seasons in other areas of the United States are scheduled for publication in the Federal Register on or about August 10, 1988.

On June 22, 1988, a public hearing was held in Washington, DC, as announced in the Federal Register of March 9 (53 FR 7702), June 7 (53 FR 20874), and June 10 (53 FR 21924), 1988, to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, common moorhens, purple gallinules, common snipe, sandhill cranes, and preliminary waterfowl information. Proposed hunting regulations were discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; experimental duck seasons in September in Florida, Kentucky and Tennessee; experimental September Canada goose hunting seasons in Illinois, Michigan and Minnesota; a special Canada goose season in southwest Wyoming; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published on March 9, 1988, in the Federal Register (53 FR 7702).

The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available at this time about the status of waterfowl populations and habitat conditions on the breeding grounds. The drought that has plagued the prairies and parklands of Canada and the United States through most of the 1980s has reached its most severe and widespread level in 1988. It is affecting not only breeding areas but also migration and wintering areas.

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These are briefly reviewed as a matter of public information, and to facilitate the Service's response to public comments from the public hearing on June 22 and in correspondence. Unless otherwise noted, persons making the presentations are Service employees.

Mr. Brad Bortner, Woodcock Specialist, reported on the 1988 status of American woodcock. The report included harvest information gathered over the last 23 years and breeding population information collected since 1968. The two surveys are cooperatively run by the U.S. Fish and Wildlife

Service, Canadian Wildlife Service, and 39 State and Provincial wildlife agencies. The most significant findings were from the recently conducted singing-ground survey. This survey of woodcock breeding populations in the United States and Canada indicated minor increases in woodcock in both the Eastern Region (Atlantic Flyway) and the Central Region (Mississippi Flyway and a portion of the Central Flyway) since 1987. These changes were not statistically significant. The Eastern Region population has declined 35.7 percent since 1988 and remains below the long-term average. The Central Region breeding population has been increasing at the rate of 1.0 percent per year since 1988; however, current populations are just slightly above the long-term average. A new method of analysis with superior statistical properties was initiated during 1988.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1988 mourning dove population. The report included information gathered over the last 23 years. Trends were calculated for the most recent 2- and 10-year intervals and for the entire 23-year period. Between 1987 and 1988, the number of doves heard per route showed a significant increase in all three management units as follows: Eastern, 11.8 percent; Central, 6.5 percent; and Western, 14.6 percent. Estimates indicated significant downward trends in the Western Unit for the 10- and 23-year periods. No significant trend was found in the Eastern Unit for either timeframe. In the Central Unit, a downward trend was indicated for the most recent 10 years, but no long-term trend was found. Trends for doves seen at the unit level over the 23-year period agreed with trends for doves heard in all management units.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, reported on the status of white-winged and white-tipped doves in Texas. White-winged populations in 1988 declined 2 percent for 1987 and are still 14 percent below the long-term average. White-tipped doves decreased 29 percent from the record high in 1986, but all indications are that this population is healthy. He stated that populations are adequate to support relaxed hunting regulations for 1988. Specifically, the Texas Parks and Wildlife Department recommends a season with an aggregated daily bag limit of 12 white-winged, mourning, and white-tipped doves, no more than 2 of which could be white-tipped doves.

Mr. Roy Tomlinson, Southwest Dove Coordinator, conveyed information received from the Arizona Game and

Fish Department about white-winged dove status in Arizona. The 1987 harvest of 112,838 whitewings declined 41 percent from 1986 and 26 percent from the 7-year mean. The decrease in the 1987 harvest is, in part, due to the reduced mourning dove season regulations (10 doves, no more than 6 whitewings during a 13 day season). Preliminary 1988 call-count data indicated a small population decline from 1987.

Mr. Tomlinson also summarized status and harvests of the two populations of band-tailed pigeons. Harvest of the Four-Corners Population remain at low levels and all indications are that this population is stable. The Pacific Coast population of bandtails has experienced a precipitous decline in status and harvest during the past 3 years. In February and March, 1988, the California Department of Fish and Game reported a die-off of bandtails in northern California. Subsequent laboratory examination confirmed a positive diagnosis of trichomoniasis, a protozoan disease. The California Department of Fish and Game estimated that a minimum of 15,000 bandtails died of trichomoniasis in Mendocino, Monterey, and Sonoma counties during February-March. Because of the low productive potential of this species, the continued declines in population and harvest of bandtails in Washington, Oregon, and California are cause for concern.

Mr. Skip Ladd, Central Flyway Representative, reported on the status of sandhill cranes. The mid-continent Population may still be increasing. Preliminary estimates for 1988, uncorrected for visibility, indicated nearly 400,000 cranes, the highest count since the current technique was initiated in 1978. Approximately 5,200 hunters harvested about 12,700 cranes in the Central Flyway in the 1987-88 season, which is nearly the same as the previous year. The Canadian harvest was about 5,200 and harvests in other areas (Alaska and Mexico) are believed to be less than 4,000. Collectively, total harvests of mid-continent sandhill cranes are within guidelines established for this population.

The Rocky Mountain Population of greater sandhill cranes was estimated to number about 19,100 birds in March 1988. This is not significantly different from that during the last adequate survey, completed in 1985, and is within the objective range of 18,000-22,000. Special limited hunting seasons were held in 1987 in Arizona, Wyoming, and New Mexico where, collectively, the harvest of Rocky Mountain sandhill

cranes was approximately 1,200, which is within harvest guidelines established for this population. Hunts conducted in 1987 are proposed to be continued in 1988 and new experimental hunts are proposed in southwest New Mexico and Utah. All hunts will be in conformance with the Rocky Mountain Sandhill Crane Management Plan.

Mr. James Bartonek, Pacific Flyway Representative, reported on the status of certain Alaska-nesting geese that have been under special scrutiny because of their declined status. The fall population of cackling Canada geese was 7 percent above that for 1986; however, birds were both in Alaska and enroute at the time of the survey, the index of 54,800 underestimates their true status. The 1987 fall index of the Pacific Flyway population of white-fronted geese was 130,600 geese, a 22 percent increase over the 1986 index. The winter index of 138,600 Pacific brant was 8 percent above that of 1986 when the last complete count was taken. The combined U.S. sport harvest on these brant was estimated to be 1,729 birds and well below the predicted harvest. The 1988 spring survey of staging areas along the Alaska Peninsula tallied 53,800 emperor geese which was 4 percent above the 1987 index. The January 1988 index of dusky Canada geese was 12,200 and unchanged from the previous count in 1986. Harvest strategy continues to redirect harvest away from dusky Canada geese towards more plentiful races, and during the past hunting season only 163 dusksies were taken in a harvest of 4,320 geese in western Oregon and southwestern Washington. The Aleutian Canada goose, classified as an endangered species, has dramatically increased from about 800 in 1975 to more than 5,000 birds in 1988. Preliminary information on habitat conditions in areas where these six populations nest suggest that this will be the second consecutive year of favorable conditions. There is no open season on Aleutian Canada geese.

Comments Received at Public Hearing

Thirteen individuals presented statements at the public hearing on proposed early-season regulations. The comments are summarized below, and where appropriate, the Service has provided a response.

Mr. Leon Kirkland, representing the Atlantic Flyway Council, provided comment in support of Service action regarding migratory shore and upland game birds. He expressed concern over harvest of woodcock in February based on preliminary data and asked the Service to begin evaluating possible impacts of February hunting on

woodcock and advise the flyway councils of the findings of the evaluation. He concurred with the action taken to continue the September duck season in Florida. He also expressed support for the Service action to protect blue-winged teal and reduce harvest but disagreed with the means by which the Service proposes to accomplish these reductions. He stated that teal seasons have been in effect for many years and to close the season would be too extreme an action. He suggested we could accomplish a similar goal by reducing the season length and bag limits rather than suspending the season.

Response. The Service notes the request to evaluate impacts of February hunting of woodcock and will examine available data and report back to the Flyway Council. The Service appreciates the support given the proposed action to protect blue-winged teal during the September duck seasons. Bluewings have been permitted in the harvest during these special seasons in Florida, Kentucky, and Tennessee, since their initiation in 1981. However, due to their low population status throughout most of the 1980s, the Service believes it unwise to continue providing additional harvest opportunities on bluewings with these special seasons. Thus, the Service proposes to continue these September seasons with existing bag limits on wood ducks but restrict the daily harvest of bluewings and other species to only 1 bird. **Response to Mr. Kirkland's comments about the September teal season included in the response to Mr. Bateman's comments.**

Mr. Lauren Schaaf, representing the Kentucky Department of Fish and Wildlife Resources, commented on the proposals regarding September hunting seasons. He stated that Kentucky's experimental 5-day September duck season, which has been held since 1981, has been very popular there. The September harvest is comprised mainly of wood ducks. Although blue-winged teal are harvested, the Kentucky harvest is only a small part of the Mississippi Flyway blue-winged teal harvest and has negligible impact on the population. He concurred with the Service's proposal to continue the experimental season with primary emphasis on wood ducks. He recognized the need for action to provide added protection for blue-winged teal, but felt that closure of the September teal season should be used only as a last option, and that adequate harvest reduction could be accomplished by retaining the season and manipulating season length and bag limit.

Response. The Service notes the concurrence with the proposed action to continue Kentucky's experimental September duck season but limit the blue-winged teal component of the harvest. The Service response to Mr. Schaaf's comments about the September teal season is included in the response to Mr. Bateman's comments.

Mr. Gary Norman, representing the Virginia Department of Wildlife and Inland Fisheries, requested that the Service allow Virginia to zone the State into East-West zones for woodcock. The State has reviewed season timing, woodcock migration, and the literature and feels that woodcock hunters across the State do not have equal opportunity to hunt woodcock. Mr. Norman stated that zoning would allow optimum woodcock hunting opportunity within the State without significantly increasing harvest. The State offered to accept a 10-day penalty in each zone and to work with the Service to establish information needs to evaluate the impacts of the proposed zoning experiment. The Virginia Department also commended the Service for its initiative in releasing the draft North American Woodcock Management Plan and also indicated that the Department has recently approved a research study to investigate the habitat needs of woodcock on Virginia's Eastern Shore.

Response. The Service recognizes Virginia's desire to provide more hunting opportunity for woodcock hunters across the State. However, in view of the significant long-term decline in Eastern Region woodcock, the Service believes that harvest opportunity should not be increased. Further, the Service notes the present option to split the hunting season dates provides the State some opportunity to respond to differing season needs in different parts of the State. Little is known about the impacts of zoning on woodcock, and the Service reiterates its concern about offering this option to Eastern Region States (see June 6, 1988, Federal Register, at 51 FR 20681). During 1988 the zoning issue will be reviewed and discussed with the Atlantic Flyway Council's Technical Section. The Service appreciates the comment on the woodcock management plan and looks forward to working with the State on implementing the plan.

Mr. John Anderson, representing the National Audubon Society, was encouraged by recent increases in mourning dove populations but was concerned about the long-term decline in the Western Management Unit where he recommended continued restrictive frameworks. He supported the recommended frameworks on mourning

doves, band-tailed pigeons, and white-winged doves, with the exception of the special white-winged dove season in south Texas for which he recommended daily bag limits of 12 white-winged doves and mourning doves, either singly or in the aggregate, citing past evidence that such a season would not result in excessive harvests of either species. He said that consideration must be given to the effect that restrictions would have on Texas' efforts to restore nesting habitat. He supported both the regular and special sandhill crane seasons, noting that he personally had viewed such hunts and believed that adequate protection was provided whooping cranes and the overall harvests of sandhill cranes were within population guidelines. He was supportive of the proposed experimental season in the Hatch-Deming area in New Mexico, since it would occur when whooping cranes would not be expected. Mr. Anderson recommended that because the woodcock populations were still depressed that no new zoning be allowed and that the February season be discontinued until its impacts are better known. Because of poor habitat conditions and prospects for decreased populations of ducks he recommended that there be no relaxation of special duck seasons and that there be significant reductions but not elimination of the September teal season, suggesting that that season be reduced from 9 to 3 days. Lastly, he recommended that the restrictive seasons on certain Alaska-nesting geese be continued.

Response. The Service notes Mr. Anderson's support for both the regular and special sandhill crane seasons in the Central Flyway, New Mexico, Arizona, Utah and Wyoming, including the proposed experimental season in the Hatch-Deming area of New Mexico. The Service proposes to approve all of these hunts. With regard to Mr. Anderson's comments concerning the need for continued restrictive frameworks for mourning doves in the Western Management Unit, refer to the response to Mr. Hunt that follows. Comments concerning recommendations to increase bag limits on white-winged doves and mourning doves in the Texas special white-winged dove hunt are addressed in response to comments by Mr. Ron George. The Service notes Mr. Anderson's support for Service-recommended frameworks on mourning doves, band-tailed pigeons, and white-winged doves. The Service has addressed issues concerning zoning and February hunting for woodcock in the responses to Messrs. Norman and S-021999 0013(00)(08-JUL-88-13:53:40)

Kirkland. We note Mr. Anderson's concern about the poor status of waterfowl and expected poor production and his recommendation for significant reductions in, but not elimination of, the September teal season. This is addressed in the response to Mr. Bateman. The Service notes commentor's support for continued restrictive seasons on certain Alaska-nesting geese, which is consistent with recommendations made in this proposed framework.

Mr. Eldridge Hunt, representing the Pacific Flyway Council, said that the Council's written request for seasons had been sent to the Director earlier. He thanked the Service for the opportunity to observe the proceedings of the Service Regulations Committee on regulatory matters pertaining to species of migratory gamebirds other than waterfowl and participate as a consultant on matters pertaining to waterfowl. He urges the Service to provide opportunity in the future to consult on all regulatory issues pertaining to the early seasons. He asked the Service to reconsider its recommended frameworks on mourning dove seasons in Arizona and California. He stated the Council's recommendation was more responsive in that it required the two States to select the split season, thereby protecting most doves migrating from more northern States. The Council recommendation would provide additional recreational days with likely no increase in harvest over that which would occur during a 30-day season opening on September 1. While agreeing with the Service's intent to eliminate the canvasback harvest, he requested an exception for Alaska that would permit one "mistake" canvasback in the bag, reasoning that (1) there was a precedence for not restricting the first year when the population was below threshold level, (2) the moult development of ducks during this early season in Alaska is such that most species would still be "brown" or "gray", making identification difficult, (3) the harvest of about 300 birds annually is small and relatively unimportant in the total harvest, and (4) it would help prevent violations and improve hunter compliance with the changes in basic limits also being proposed.

Response. The Service notes that the Pacific Flyway Council, the Central Flyway Council and others have repeatedly requested participation in the early-season process by providing consultants to the Service Regulations Committee on matters pertaining to all migratory game birds, including waterfowl, shorebirds, and upland birds.

While there is agreement among States within those 2 Councils that Flyway Councils are the appropriate bodies for providing consultants, there is not similar agreement among eastern States where it has been suggested consultants come from three Regional Fish and Game Associations. Until these differences are resolved consultation in most years will remain limited to matters pertaining to waterfowl during the late-season process.

The Service notes that the mourning dove population in the Western Management Unit has experienced a substantial long-term downward trend. In 1987, restrictive hunting regulations were initiated, to be continued for a 3-year period (1987-89). Incomplete harvest information (no data from California or Oregon) indicates the restrictions partially achieved harvest objectives. A relaxation in hunting by increasing the split-season option from 45 days to the requested 60 days is considered unwarranted until the 3-year period has concluded and results evaluated. Further, the Service's proposed frameworks would not preclude either Arizona or California taking the 45-day split season option which would probably result in a greater reduction in harvest of more northern-nesting doves than would occur with the 30-day option.

While information on breeding duck populations is preliminary and data are still being edited, indices for canvasback nonetheless will be significantly below those for which hunting would be allowed. The Service had previously noted that the decline in the Western Population and the likelihood of a season closure this year. Admittedly, Alaska's harvest of canvasbacks is small and occurs at a time when identification of sex (but not species) is more difficult than during later seasons; however, there are other States that shoot fewer canvasbacks than Alaska that have had season closures. It is also noted that hunters elsewhere must identify duck species, including such less distinctively colored ducks as hen canvasbacks, before shooting. The Service will work with Alaska to provide visual material to hunters that will help them in identifying canvasback.

Mr. Gary Myers, representing the Tennessee Wildlife Resources Agency, stated that exciting opportunities exist with regard to new waterfowl management programs through the North American Waterfowl Management Plan. Concentrated international and interagency programs will provide a basis for preserving key

waterfowl habitats and rebuilding waterfowl populations in both Canada and the United States. Unfortunately, funds are limited, waterfowl breeding habitat is in very poor condition and duck populations are low. There is little likelihood of significant production this year. He noted the need to maintain strong support from hunters and to give adequate protection to existing breeding stocks. Mr. Myers supported the Service recommendation to reduce the harvest of blue-winged teal during the early September duck season in Tennessee. He indicated further that now is the time when the resource must come first and he urged the various States and Flyway Councils to join with the Service in achieving this objective.

Response. The Service notes Mr. Myers' support of the North American Waterfowl Management Plan and the Service proposal to reduce the harvest of blue-winged teal during the September duck season in Tennessee.

Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, expressed support and endorsement of the following recommendations:

1. Modification of the aggregate daily bag limit for the special 4-day white-winged dove season in Texas to include 12 white-winged, mourning, and white-tipped doves, no more than 2 of which could be white-tipped doves.

2. Continuation of the experimental sandhill crane seasons in the Middle Rio Grande Valley of New Mexico in accordance with the Pacific and Central Flyway Management Plans for the Rocky Mountain Population of greater sandhill cranes. This would be the third and final year of the experimental hunt.

3. Revision of framework dates in the Pacific and Central Flyway plans for Rocky Mountain Sandhill Cranes to read: "between September 1 and November 30, except that in Sierra, Luna and Dona Ana Counties of New Mexico, the season framework dates will be between September 1 and January 31."

4. Adoption of operational status for the sandhill crane season in the Hatch-Deming area of New Mexico to reduce depredations and allow increased hunting opportunity.

5. Expansion of the framework dates for hunting American coot so that they would coincide with all other duck seasons, including teal and other special duck seasons.

6. Adoption of the proposed basic framework for webless and waterfowl species not addressed in recommendation numbers 1 through 5.

Mr. George then presented a series of slides to support the Texas Parks and Wildlife Department's request for a

change in the special 4-day white-winged dove season bag limits. Texas believes that the present frameworks are too restrictive, that harvest of whitewings and mourning doves has been unduly restricted, that such restrictions encourage hunters to hunt in Mexico (where regulations are more liberal), which has reduced income from the Texas white-winged dove stamp and threatens such habitat acquisition programs. Further, Mr. George notes that September hunting of mourning doves has recently been shown not to be detrimental to mourning dove populations and that call-count data indicate that dove populations in Texas were not adversely affected during years of more liberal regulations. He pointed out that prior to 1984, the limits had been 12 mourning doves and 10 whitewings, and that its current proposal is far more restrictive than the pre-1984 limits. Mr. George also commented that the absence of the Flyway Council Consultants for the early-seasons regulations process prevented Texas from adequately presenting and explaining their data to the Service Regulations Committee.

Response. The white-winged dove population in Texas declined substantially after the 1983 freeze that affected nesting habitat, and that populations have not fully recovered. In addition, during the early 1980's when more liberal regulations were permitted, the harvest of mourning doves increased markedly during the early whitewing season (when a substantial segment of the mourning dove population is still nesting in south Texas). For these reasons, the Service feels that relaxation of the special white-winged dove hunting regulations is not warranted at this time. The Service has concern also, with permitting a season designed primarily for one species, whitewings in this case, that results in a large proportion of the harvest being a different species.

Mr. George's comments on consultants to the early-seasons regulations process are addressed previously in the response to Mr. Hunt.

The Service concurs with recommendations to continue the experimental sandhill crane hunt in the Middle Rio Grande Valley of New Mexico and extension of the framework to January 31 for sandhill crane hunting in Sierra, Luna, and Dona Ana Counties of New Mexico. We also concur with a sandhill crane hunt in those counties but the Service proposes this hunt to be considered experimental for 3 years. Although a 3-year experimental hunt was held during 1982-85 in this area, that experiment involved hunting only

one weekend per month in November, December and January, whereas the proposed operational hunt would involve 30 days, all of which would be during January. The substantial differences in the previous experimental hunt and the proposed hunt warrant experimental status.

The Service disagrees with extending coot frameworks to include all duck seasons, rather than only regular seasons, because it believes that, in most cases, special seasons are established to target specific species or populations and not as general duck seasons. In light of the direction reflected by the Service's recently published Supplemental Environmental Impact Statement (Statement) on Issuance of Annual Regulations for Sport Hunting of Migratory Birds (June 1988), it is the intent of the Service to control extension and proliferation of special seasons and bag limits due to difficulties in evaluating the impact of such on target and non-target populations. Thus, allowing coot hunting during all duck seasons, including special seasons, would not be in keeping with the direction of the Statement. Further, with the suspension of September teal seasons proposed in these frameworks, an extended framework would not be applicable in the Central Flyway at this time since there are no other special seasons.

The Service notes the Central Flyway Council's support for retention of other previous frameworks for the early season regulations.

Mr. Raymond Lee, representing the Arizona Game and Fish Department, commented on the mourning dove status and hunting regulations in the Western Management Unit in relation to Arizona. Prior to 1987, Arizona traditionally set a 70-day split dove season with about 21-28 days in September, with the balance (42-49 days) in November through December. The proportion of the dove harvest that occurred during the late segment averaged 17.5 percent. In 1987, with restrictive regulations, Arizona selected a season with 13 days in September and 32 days in the late segment. The proportion of the harvest during the late segment was 17.1 percent. The 1987 restricted season resulted in a reduction of harvest of about 25 percent.

The Arizona Game and Fish Department supports the Pacific Flyway Council recommendation of a 60-day season in Arizona and California to be split between two periods, September 1-15 and November 1-January 15. The Council's recommendation would result in 33 percent more hunting opportunity

during the late segment but the maximum increase in harvest is estimated to be less than 5 percent in Arizona.

Response. The request for a relaxation in mourning dove hunting season frameworks for Arizona and California in the Western Management Unit is addressed in the response to comments by Mr. Hunt.

Mr. Hugh Bateman, representing the Lower Region Regulations Committee of the Mississippi Flyway Council, commented in opposition to suspension of the September teal season. He indicated that the season has been operational for many years and is utilized by 8 Mississippi Flyway States. Additionally, 2 more States harvest teal in September duck seasons which they close in lieu of the teal season. Overall, the September harvest of blue-winged teal accounts for about one-third of the Flyway's total season harvest of bluewings. He stated that the Lower Region recognizes the potential impact on duck production of the existing severe drought affecting most northern breeding grounds, but stressed that such drastic action as is proposed is ill-advised at this time because the regulations process has, in this instance, failed to allow for proper consideration of alternatives and the action is in conflict with the spirit of the North American Waterfowl Management Plan. He urged the Service to reconsider its proposal, and recommended as an alternative that the September teal season be retained and reduced from 9 to 3 days with a daily bag limit of 4 birds. He further recommended that the 5-day experimental September duck seasons in Kentucky and Tennessee continue with a 4-bird daily bag limit to include not more than 2 wood ducks and 2 blue-winged teal. These actions would substantially reduce the September harvest of blue-winged teal. The proposed 3-day teal season would provide only token hunting opportunity but would maintain hunter interest, whereas suspending the season would erode public support for wetlands conservation programs now being developed under the North American Waterfowl Management Plan. He indicated that the Lower Region would also support developing a continentwide management plan for blue-winged teal, which would provide a more deliberate approach for addressing all factors affecting population declines in this species, not only hunting regulations.

Response. The Service's proposed action to suspend the September teal season and severely restrict the harvest of blue-winged teal during experimental

September duck seasons is in response to the diminished status of the species. Breeding populations have been substantially below the long-term average since 1981. Production has been poor during that period, and the prospects for production in 1988 the worst yet due to severe drought conditions in traditional nesting areas. Although the September teal season has been in effect for many years, it and the inclusion of blue-winged teal in other September seasons represent an additional harvest opportunity over and above the regular duck season. Declining age ratios in the kill indicate that proportionately more adult birds have been taken in recent years. While the reduced status of blue-winged teal is primarily a result of the continuing drought and attendant habitat degradation on the breeding grounds, the Service nevertheless believes the proposed action is necessary to provide adequate protection to the species until populations can recover. Overall, the continuing poor conditions and little production are not a circumstance under which a separate harvest opportunity can be offered. The Service appreciates the Council's support for development of a management plan for blue-winged teal and intends to work closely with the flyway councils toward this end.

Mr. Ken Babcock, representing the Upper Region Regulations Committee of the Mississippi Flyway Council, recognized the precarious status of North American waterfowl and commended the Service for its leadership in addressing this current problem. He indicated that the timing for these early-seasons regulations deliberations precludes full input by the Mississippi Flyway Council and expressed concern for this lack of opportunity. He supported statements by other flyway councils in opposition to complete closure of September teal seasons. He asked the Service to take immediate action to initiate discussions with Mexico concerning high harvest of waterfowl such as teal and pintails, particularly at a time when their populations are extremely low.

Response. The Service appreciates Mr. Babcock's support for its efforts to address the current problems with waterfowl population status and notes his concern for the lack of opportunity for full input from the Mississippi Flyway Council in the development of early-season hunting regulations. Unfortunately, the timing of decisions about early hunting seasons, some of which open as early as September 1, is dictated on one hand by the need to establish the regulations and make them

available to the public before the hunting seasons open, and on the other hand by the need for as much information as possible about population status before decisions about appropriate hunting regulations are made. Because of these limitations, regulations for early hunting seasons must be established prior to the regular summer meetings of the flyway councils.

With reference to Mexico, the Service has an ongoing cooperative program with the Mexican Government, and will discuss the status of various waterfowl species with Mexican authorities in the near future.

Mr. Dale Witt, representing the Central Flyway Council, expressed the Council's concern for the status of blue-winged teal but noted that the poor status is due mainly to drought and habitat degradation and not to overharvest. He also noted that, although the blue-winged teal population is low, it has been fairly stable during the past several years. He expressed the Council's opposition to a complete suspension of the September teal season in that such drastic action is not warranted. He recommended that, instead of a complete closure, a 3-day season be allowed and that a realistic management strategy be developed in cooperation with the Flyway Councils prior to the 1989 regulations process.

Response. The Service notes the Central Flyway's concern about the Service's proposed suspension of the September teal season, recommendations for a restricted rather than a closed season and the need to develop a management strategy for teal. Our response to these issues is addressed in the response for Mr. Bateman.

Mr. Jim Phillips, a journalist, expressed his strong support to discontinue September teal seasons. He presented his views of the political nature by which these seasons were first established and the illegal harvest associated with the very early years of teal seasons.

Response. The Service notes Mr. Phillips' support for discontinuance of the September teal season.

Mr. Charles Kelley, first speaking as Chairman of the Migratory Bird Committee of the Southeastern Association of Fish and Wildlife Agencies, complimented the Service on regulatory actions affecting southeastern States pertaining to migratory upland gamebirds and shorebirds. Then, speaking as Director of the Alabama Division of Fish and Game, he recommended that there not be a closure of the September teal

seasons, noting the importance of this season to hunters and legislators in furthering waterfowl management and habitat programs. He said that the Service Regulations Committee had not concluded that hunting was a factor affecting the population of ducks, but should the Service not allow September teal seasons the message he would take back to his duck hunters is that somebody in Washington, DC, believed the gun was the cause. Mr. Kelley called for reconsideration of the action to suspend the teal season and suggested a 3-day September teal season as an alternative.

Response. The Service notes Mr. Kelley's support for migratory shore and upland game bird regulations. The response to Mr. Kelley's comments about the September teal season is included in the response to Mr. Bateman.

Written Comments Received

The supplemental proposed rulemaking which appeared in the *Federal Register* dated June 7, 1988 (53 FR 20874), summarized 48 comments which had been received by May 9, 1988. Since then 36 comments on early-season proposals and 1,686 comments on swan hunting have been received. They are summarized below and numbered in the order used in the March 9, 1988, *Federal Register*.

6. September Teal Seasons

The Wisconsin Department of Natural Resources, the Illinois Department of Conservation, and four individuals recommended that the September teal seasons be closed in 1988. All cited the poor population status of teal and related information.

Response. The Service proposes to not offer the September teal season in 1988 due to the low populations of blue-winged teal and very poor outlook for production this year. Thus, the comments received are in support of the Service's proposal.

11. Mergansers

In a letter to the Service, the Concerned Coastal Sportsmen's Association requested that red-breasted and common mergansers be included in the sea duck season. They cite that mergansers are detrimental to recreational and commercial fisheries activities and that numbers are sufficient to justify this longer 107-day season and larger 7-bird limit.

Response. Currently, States in the Atlantic and Mississippi Flyways may select a separate 5-day bag limit of mergansers. However, little information is available to support the contention

that mergansers are harming coastal fisheries. Further available population status and production information does not warrant a relaxation in bag limit regulations on these species.

15. Tundra Swans

As of June 22, 1988, the date of the Public Hearing, the Service had received 1,686 postcards and letters, primarily from individuals urging that swans not be hunted. Most requested "Not to lift Federal restrictions on swan hunting" following the wording in a flyer distributed by the National Humane Education Society (no address or date given).

Response. The Service proposes to offer Alaska frameworks for an experimental swan season in Game Management Unit 22. This season was initially proposed in June 1986 by Kawerak, Inc. (a Native regional corporation) (see 51 FR 28713), approved by the Alaska Game Board and presented by the Alaska Department of Fish and Game for consideration by the Pacific Flyway Council, which in turn recommended it to the Service. Swans that would be hunted belong to the Western Population of tundra swans which is experiencing a long-term increase in numbers. During the past 10 years (1979-88), the winter population index averaged 63,000 swans, well above the population objective. The proposed hunt is within guidelines in the Western Population of Tundra Swan Management Plan. Existing and proposed swan seasons in other States will be addressed in the late-season regulations cycle.

17. Coots

The Kansas Department of Wildlife and Parks favors an extension of the frameworks to allow coot hunting during all duck seasons rather than only during regular duck seasons. Kansas cites as reasons the additional hunting opportunity afforded at a time when such opportunities for ducks are being restricted and the fact that no biological rationale can be given for not allowing an expanded framework. Additionally, in Kansas, the coot harvest has decreased to a point of being insignificant due to the shifting of regular duck seasons to later periods to take advantage of late-arriving mallards that utilize recently developed reservoir habitats.

Response. The Service disagrees with extending coot frameworks to include any duck season, rather than only regular seasons, because it believes that, in most cases, special seasons are established to target specific species or populations and not as general

waterfowl seasons. In light of the direction reflected by the Service's recently published Supplemental Environmental Impact Statement (Statement) on Issuance of Annual Regulations for Sport Hunting of Migratory Birds (June 1988), it is the intent of the Service to control extension and proliferation of special seasons and bag limits due to difficulties in evaluating the impact of such on target and non-target populations. Thus, allowing coot hunting during all duck seasons, including special seasons, would not be in keeping with the direction of the Statement. Further, with the suspension of September teal seasons proposed in these frameworks, an extended framework would not be applicable in the Central Flyway at this time since there are no other special duck seasons.

21. Woodcock

The Pennsylvania Game Commission requested that the Service continue the Eastern Region restrictive harvest regulations adopted during the 1985-86 hunting seasons and discontinue February hunting of woodcock throughout the range of the woodcock.

Response. The Service proposes to continue the Eastern Region restrictive regulations. The Service is aware of the concern about February woodcock hunting. Since no documentation was presented concerning February hunting of woodcock, the Service will review available data and discuss the issue with States and Flyway Councils.

22. Band-tailed Pigeons

Two letters were received from Washington State residents, one from a private citizen and the other from the Western Region, Washington State office of the National Audubon Society. Both urged that hunting season frameworks on band-tailed pigeons be restricted in 1988 to reduce impacts on a declining pigeon population and to initiate studies to investigate the factors contributing to the decline. The individual also recommended that mineral spring sites be closed to hunting and season length be reduced in California.

Response. The Service concurs that bandtail populations have declined and the situation is serious. In 1987 hunting restrictions, to continue for a 3-year period, were imposed. Considering the continued population decline, the Service proposes to further restrict hunting season frameworks in 1988 by delaying the opening date from September 7 to September 15. This measure will provide further protection

of band-tailed pigeons prior to and during migration. The delayed opening will result in significantly fewer pigeons using mineral springs and, thereby, reduce harvests there. In California seasons occur later, when birds from all subpopulations have mixed and current season frameworks in California are considered appropriate at this time.

23. Mourning Doves

An unsigned letter was received from the Humane Society of the United States and the World Society for the Protection of Animals expressing opposition to the practice of permitting hunting of mourning doves in September, during a time when this species is still nesting. The letter also urged the closure of the hunting season on all migratory birds in Puerto Rico to relieve pressure on these species while studies are being conducted. The letter recommended (1) that studies be expanded to determine if Category 2 species of waterfowl should be listed pursuant to the Endangered Species Act of 1973, and (2) increased law enforcement effort in Puerto Rico to stem illegal shooting, particularly in relation to white-cheeked pintails. The letter supported the Service's habitat acquisition efforts in Puerto Rico.

Response. The Service's position concerning September hunting of mourning doves has been discussed in earlier *Federal Register* documents (51 FR 24418, July 3, 1986 and 52 FR 25173, July 2, 1987). Continued September hunting of mourning doves in most areas of the United States is viewed as a valid use of the resource under the Migratory Bird Treaty Act of 1918. The Puerto Rico Department of Natural Resources, with assistance from the Service, continues to evaluate breeding activities of waterfowl in Puerto Rico and believes this can be accomplished under present hunting season frameworks. The Service continues to support a strong law enforcement program to control illegal shooting and continues to promote habitat acquisition of key waterfowl areas.

24. White-winged Doves

A letter from the Texas Parks and Wildlife Department requested a liberalization in the regulations frameworks for the special 4-day white-winged dove hunting season. Specifically, Texas requested a change from a 10-dove aggregate bag limit, no more than 2 of which could be mourning doves and 2 of which could be white-tipped doves, to a 12-dove aggregate bag limit, no more than 2 of which could be white-tipped doves. Under the proposed 12-dove limit, there would be no restrictions on mourning doves.

Response. The Service notes that the white-winged dove population in Texas declined substantially after the 1983 freeze that affected nesting habitat, and that populations have not fully recovered. In addition, during the early 1980s when more liberal regulations were permitted, the harvest of mourning doves increased markedly during the early whitewing season (when a substantial segment of the mourning dove population is still nesting in south Texas). For these reasons, the Service feels that relaxation of the special white-winged dove hunting regulations is not warranted at this time. The Service has concern, also, with permitting a season designed primarily for one species, whitewings in this case, that results in a large proportion of the harvest being a different species.

25. Migratory Bird Hunting in Alaska

The Alaska Department of Fish and Game in letters dated June 16 and 17, 1988, recommended changes in brant seasons and continuation of duck season frameworks. Alaska requested that the season on brant be reinstated by increasing it from 50 to 107 days and, thereby, eliminate an unnecessary and complicating restriction without increasing the harvest. Alaska noted in detail the nature of the U.S. sport harvest, that it was well within harvest objectives, that cooperative efforts with Native groups have been effective in reducing all harvests of brant, and there is support from Native groups for continuation of the sport seasons on brant. Acknowledging the probability of a depressed population of ducks, Alaska requested retention of frameworks offered in the past because: (1) Their harvests of about 400 canvasbacks and 14,000 pintails are relatively inconsequential in comparison to the continental harvests of these species, (2) because the effective hunting season in much of Alaska is from 15 to 40 days, and (3) because the average seasonal harvest by Alaska hunters is about 5 compared to 8 among hunters in the Pacific Flyway. If retention of existing frameworks were not possible and numbers of canvasbacks dropped below threshold levels for hunting, Alaska offered as an alternative that the daily bag limits on ducks include no more than 3 pintails and 3 canvasbacks, statewide. They note that the usual species-specific restrictions required in other States are largely precluded in Alaska because most ducks are in drab eclipse plumages during the season and hunter identification of species and sexes is difficult at best. Restrictive regulations in areas of light harvest are largely tokenism, create public

resentment, and undermine credibility of waterfowl managers.

Response. The Service appreciates Alaska's willingness and leadership role in taking restrictive measures to protect those populations of Alaska-nesting geese that have undergone declines. What was perceived to be a potential problem by an expansion of areas in which brant would be hunted did not materialize. The combined U.S. sport harvest of Pacific brant was estimated at 1,729, less than forecasted, and about 1.2 percent of the wintering population. The Service concurs with Alaska and proposes to reinstate the brant season length to 107 days.

Only preliminary information on duck populations was available to Alaska when they made their proposal. Since then, additional information on ducks, but particularly about pintails and canvasback, which are of considerable importance in the Alaska breeding population, indicate major declines. The Service believes that restrictive measures are warranted and should be more restrictive than those proposed by Alaska. Therefore, the Service proposes that the basic daily bag limits be reduced by 2 ducks, include not more than 2 pintails and the season on canvasback not be opened.

27. Migratory Game Birds Seasons for Falconers

Eight individuals and two falconers associations submitted comments in support of the proposal to extend the falconry season frameworks.

Response. The Service notes these comments and proposes to extend the falconry season frameworks.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl, and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

All relevant comments on these early-season proposals received no later than July 20, 1988, and on late-season proposals received by August 29, 1988, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-54)" was filed with the Council on Environmental Quality (CEQ) on June 6, 1975, and notice of availability was published in the *Federal Register* on June 13, 1975 (40 FR 25241). A supplement to the FES, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", was filed with CEQ on June 9, 1988, and Notice of Availability was published in the *Federal Register* of June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727).

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and shall) "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat . . ." The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 17, 1988, the Office of Endangered Species gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. Examples of such consideration include areas in Alaska and the Pacific Flyway closed to Canada goose hunting for protection of the endangered Aleutian Canada goose, and closed areas in Puerto Rico for protection of the Plain pigeon and Puerto Rican parrot.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the *Federal Register* dated March 9, 1988 (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management,

U.S. Fish and Wildlife Service, Matomic Building—Room 536, Department of the Interior, Washington, DC 20240. As noted in the early *Federal Register* publication, the Service plans to issue its memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988-89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701-708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103-04).

Proposed Regulations Frameworks for 1988-89 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of Interior has approved proposed frameworks which prescribe season lengths, bag limits, shooting hours and outside dates within which States may select seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, moorhens and gallinules; experimental September duck seasons in Florida, Tennessee and Kentucky; sea ducks (scoter, eider, and oldsquaw) in certain defined areas of the Atlantic Flyway; experimental September Canada goose seasons in Michigan, Minnesota, and Illinois; sandhill cranes; special Canada Goose season in Wyoming; and extended falconry seasons.

NOTICE

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than August 10, 1988. States desiring these seasons to open after September 30 may

make their selections at the time they select regular waterfowl seasons. Season selections for the six States offered experimental September waterfowl seasons and Wyoming's special Canada goose season must also be made by August 10, 1988.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than August 10, 1988. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between 1/2 hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1988, and January 15, 1989, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively; or not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option. Shooting Hours: Between 1/2 hour before sunrise and sunset daily.

Zoning: *Alabama, Georgia, Illinois, Louisiana and Mississippi*, may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines: *Alabama*—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the

Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line. *Illinois*—U.S. Highway 38.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1988.

D. Regulations for bag and possession limits, season length and shooting hours must be uniform within specific hunting zones.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively; or not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning—As an alternative to the basic frameworks, Texas may select hunting seasons for each of 3 zones described below.

North Zone—The portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate

Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1988 and January 25, 1989; the South zone between September 20, 1988 and January 25, 1989.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 30 consecutive days between September 1, 1988 and January 15, 1989; or not more than 45 days to be split between two periods, September 1-15, 1988, and November 1, 1988-January 15, 1989.

In all States, the bag and possession limits are 10 and 20, respectively.

White-winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico, and Texas (except as shown below) may select hunting seasons between September 1 and December 31, 1988. Florida may select its hunting season between September 1, 1988 and January 15, 1989.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and run concurrently with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than 2 mourning doves and 2 white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than 4 mourning doves and four white-tipped doves in possession.

and

In addition, Texas may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1988, and January 25, 1989, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1988, and January 15, 1989, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 15, 1988, and January 1, 1989.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 16 consecutive days, with a bag and possession limit of 4.

Zoning: California may select hunting seasons of 16 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah. Outside Dates: Between September 1 and November 30, 1988.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 80 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1988, in the North Zone and October 1 and November 30, 1988, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1988, and January 20, 1989, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10 and 20 respectively, singly or in the aggregate of these two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway, 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1988, and January 31, 1989. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1988, and February 28, 1989.

¹ The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

² The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1988, and February 28, 1989. In Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland and Virginia the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1988, through January 20, 1989, in the Atlantic and Mississippi Flyways and September 1, 1988, through January 22, 1989, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons must be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Seasons not to exceed 58 days between September 1, 1988, and February 28, 1989, may be selected in the following States: Colorado (the

Central Flyway portion except the San Luis Valley); Kansas; Montana (the Central Flyway portion except that area south of I-90 and west of the Bighorn River); North Dakota (west of U.S. 281); South Dakota; and Wyoming (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1988 and February 28, 1989, may be selected in the following States: New Mexico (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); Oklahoma (that portion west of I-35); and Texas (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting a valid Federal sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 (revised July 28, 1987), by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1-November 30, 1988 except September 1, 1988-January 31, 1989, in the Hatch-Deming Area (Zone) in New New Mexico (Sierra, Luna, and Dona Ana Counties).

2. Season(s) in any State or zone may not exceed 30 days.

3. Daily bag limits may not exceed 3 and season limits may not exceed 9.

4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

6. Seasons in the Middle Rio Grande Valley zone and the Hatch-Deming Zone in New Mexico and in Utah will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1988, and January 20, 1989.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

Deferred Selection: Any State desiring its sea duck season to open in September must make its selection no later than August 10, 1988. Any State desiring its sea duck season to open after September may make its selection at the time it selects its waterfowl season.

Special September Duck Seasons

Florida September Duck Season: An experimental 5-consecutive-day duck season may be selected in September. The daily bag limit will be 4 ducks, no more than one of which may be a species other than wood duck, and the possession limit will be double the daily bag limit.

Tennessee and Kentucky September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by Tennessee and Kentucky. The daily bag limit will be 2 ducks, no more than 1 of which may be a species other than wood duck. The possession limit will be double the daily bag limit.

Special Early-September Canada Goose Seasons

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by Michigan, Illinois, and Minnesota subject to the following conditions:

1. Outside dates for the season are September 1-10, 1988.
2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively.
3. Areas open to the hunting of Canada geese are as follows:

Michigan:

Lower Peninsula—all areas except the Shiawassee River, Allegan, Lapeer and Muskegon State Game Areas (SGA), the Shiawassee National Wildlife Refuge, that portion of the Maple River SGA east of State Road, that portion of the Pointe Mouillee SGA south of the Huron River, Muskegon County Wastewater Area, and the Fish Point and Nayanquing Point Wildlife Areas.

Upper Peninsula—that area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate Highway 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

Illinois: McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

Minnesota: All or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

4. Areas open to hunting must be described, delineated and designated as such in each State's hunting regulations.

Wyoming may select a September season for Canada geese subject to the following conditions:

1. The season must be concurrent with the September Sandhill crane season.
2. Outside dates for the season(s) are September 1-22, 1988.
3. Hunting will be by State permit.
4. No more than 60 permits may be issued for the Salt River (Star Valley)

area in Lincoln County. Each permittee may take 2 Canada geese per season.

5. No more than 75 permits may be issued in the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties, each permittee may take no more than 1 goose per season, and the season may not exceed 14 days.

Special Falconry Regulations

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season not exceeding 107 days for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall between September 1, 1988 and March 10, 1989.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special sculp season, special sculp and goldeneye season or falconry season) exceed 107 days for a species in one geographical area. The extension of this framework to include the period September 1, 1988-March 10, 1989, is considered tentative, and will be evaluated in cooperation with States offering such extensions after a period of several years.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1988-1989

Outside Dates: Between September 1, 1988, and January 26, 1989, Alaska may select seasons on waterfowl, snipe, cranes, and tundra swans subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting seasons:

Ducks, geese and brant—107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11-13 and 17-26); Gulf Coast Zone (State Game Management Units 5-7, 9, 14-16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1-

4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exceptions: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 8 and 18, respectively. The basic limits may not include more than 2 pintails daily and 6 pintails in possession. There is no open season on canvasback. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swans—In Game Management Unit 22 an experimental open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.
2. The season must be concurrent with the duck season.
3. The appropriate State agency must issue permits, obtain harvest and hunter participation data, and report the results of this hunt to the Service by June 1, 1989.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1988-89

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons:

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1988, and January 15, 1989, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas:

Municipality of Culebra and

Desecheo Island—closed under

Commonwealth regulations.

Mona Island—closed in order to

protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as

"Paloma cabeciblanca."

El Verde Closure Area—consisting of

those areas of the municipalities of Rio

Grande and Loiza delineated as follows:

(1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of routes 186 and 956 south to KM 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent

Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on

Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between November 5, 1988, and February 28, 1989, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrio martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1988-89

Shooting Hours: Between one-half hour before sunrise and sunset daily. Doves and Pigeons.

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1988, and January 15, 1989, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No Open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground dove (*Columba passerina*)—stone dove, tobacco dove, rola, tortolita (protected). Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks.

Outside Dates: Between December 1, 1988, and January 31, 1989, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Date: July 6, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-15453 Filed 7-7-88; 8:45 am]

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Monday
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Part VI

Department of Education

Office of Elementary and Secondary
Education

34 CFR Part 200

Financial Assistance to Meet Special
Needs of Children; Notice of Meeting to
Conduct a Modified Negotiated
Rulemaking Process

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 200

Financial Assistance To Meet Special Educational Needs of Children

AGENCY: Department of Education.

ACTION: Notice of meeting to conduct a modified negotiated rulemaking process.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education of the U.S. Department of Education (Department) will convene a negotiating group—including Federal, State, and local education administrators, parents, teachers, and members of local boards of education—to participate in a modified negotiated rulemaking process. This group will review draft proposed regulations developed following recent regional meetings on selected issues related to the content of proposed regulations to be issued under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended. The Department has arranged with the Federal Mediation and Conciliation Services (FMCS) and the Environmental Protection Agency (EPA) to obtain the services of facilitators. See the Section on Facilitators and Record of Meeting for a description of the role of the facilitators. The meeting is open to the public for individuals who wish to observe the process.

DATES: The meeting of the negotiating group is scheduled for July 19 and 20 in the Park Hyatt Hotel, 1201 24th Street, NW., Washington, DC from 9:00 a.m. on July 19 to 4:30 p.m. on July 20. Other meetings may be recommended and called by the Department, if necessary.

FOR FURTHER INFORMATION CONTACT: Persons wanting additional information about the results of regional meetings and the issues to be discussed in the July 19-20 meeting should contact Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education at (202) 732-4682. Persons desiring additional information about the negotiated rulemaking process should contact Daniel P. Dozier of the FMCS at (202) 653-5305. Louis Manchise of FMCS and Chris Kirtz and Deborah S. Dalton of EPA will assist in the facilitation of the meeting.

SUPPLEMENTARY INFORMATION:**Background**

On April 28, 1988, the President signed into law Pub. L. 100-297, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement

Amendments of 1988. Title I of that Act reauthorizes, for a five-year period, the program currently known as Chapter 1 of the Education Consolidation and Improvement Act. The program is now authorized in Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by Pub. L. 100-297. Section 1431 of the ESEA, concerning Federal regulations, contains procedural requirements the Department is to follow in developing and issuing regulations to govern the Chapter 1 program. In particular, section 1431(b)(2) requires the Secretary to "prepare draft regulations and submit regulations on a minimum of 4 key issues to a modified negotiated rulemaking process as a demonstration of such process." Section 1431(b)(1) also requires that, prior to publishing proposed regulations, the Secretary shall convene regional meetings "on the content of proposed regulations," and that these meetings shall include "representatives of Federal, State, and local administrators, parents, teachers, and members of local boards of education involved with implementation of programs under this chapter." The statute requires that participants in the modified negotiated rulemaking process be selected from among those attending the regional meetings. Prior to convening the regional meetings, the Secretary solicited nominations for attendees from organizations representing the people described in section 1431(b)(1). All persons nominated by these organizations were invited to attend a regional meeting. The following organizations were requested to submit nominations:

American Association of School Administrators
American Federation of Teachers
Center for Law and Education, Inc.
Children's Defense Fund
Council of American Private Education
Council of Chief State School Officers
Council of Great City Schools
International Reading Association
Lawyer's Committee for Civil Rights Under Law
National Association of Elementary School Principals
National Association of Federal Education Program Administrators
National Association of State Boards of Education
National Center for Neighborhood Enterprise
National Coalition of Title I/Chapter 1 Parents
National Council of Teachers of Mathematics
National Governors' Association
National Education Association

National Parent Teachers Association
National School Boards Association
Rural Education Association

The Department announced that it would conduct regional meetings in 53 FR 16292-93 (May 6, 1988) and convened those meetings in Atlanta, Georgia; Philadelphia, Pennsylvania; Indianapolis, Indiana; Denver, Colorado; and San Francisco, California. Persons attending each regional meeting will be provided a summary of the meeting they attended. Participants in the negotiating rulemaking will be provided summaries of all meetings.

Items Selected for Negotiation

The following items related to the Chapter 1 program in local educational agencies have been selected for the modified negotiated rulemaking process. They were chosen because they seemed to be issues on which there is most likely to be diversity of opinion on the contents of the proposed rules and/or because they contain major changes in the Chapter 1 program.

1. Targeting of schools and students
2. National evaluation standards
3. State administration
4. Program improvement
5. Schoolwide projects
6. Parental involvement

These same items (as well as others) were discussed in the regional meetings. Discussions at the negotiated rulemaking sessions may cover other subjects as necessary or as raised by participants.

Participants

The following is a list of the participants who have been invited by the Department to participate in the modified negotiated rulemaking process. The participants are all representatives of those groups specified in the statute (section 1431(b)(1)). The Department has attempted to invite from among the attendees at the regional meetings a range of individuals who will represent the interest groups mandated by section 1431(b)(1).

If, in response to this notice, an additional individual or representative of an interest group requests representation in the modified negotiated rulemaking process, the Department, in consultation with the facilitators, will determine whether that individual or representative should be added to the group. The Department will make that decision based on whether the individual or representative:

- (1) Would be substantially affected by the rule;

- (2) Is not already adequately represented by the group; and
- (3) Meets the requirements of section 1431(b)(1) of the Act.

Federal Administrator—Mary Jean LeTendre, Director, Compensatory Education Programs

State Administrators—

Thomas Gilhool, Secretary of Education, PA

Thomas Anderson, Deputy Commissioner for Finance and Compliance, TX

Oliver Himley, Chief, Bureau of Compensatory and Equity Education, IA

JoLeta Reynolds, Associate Assistant Commissioner, Special Education Programs, TN

Mitchell Akers, Department of Federal Programs Liaison, PA

Local Administrators—

Carley Ochoa, Director, Special Programs, Riverside, CA

Ambrosio Melendrez, Administrator,

Chapter 1, Austin, TX

Lynn Beckwith, Executive Director, State and Local Programs, St. Louis, MO

Joseph Marinelli, Associate

Superintendent, Orange County, FL
Charles Weber, Principal, Langhorne, PA

Local School Board Members—

Judith Fischer, Buffalo, NY
Paul Leuker, Wichita, KS

Teachers—

Wanda Beauman, Denver, CO
Fran Gouze, Atlanta, GA

Parents—

Barbara Alexander, Richmond, CA
Jane Boyer, Prospect, KY

Private School Representatives—

Morton Avigdor, Associate General Counsel, Agudath Israel, New York, NY

Michael McCarron, Education Coordinator, Florida Catholic Conference, Tallahassee, FL

Facilitators and Record of Meeting**Facilitators**

The Department will use facilitators. The facilitators will not be involved with the substantive development of the regulations. The facilitators' role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define issues and reach consensus.

Record of Meeting

The Department will keep a record of the meeting. This record will be placed in the public record for this rulemaking.

Dated: July 7, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Number 84.010)

[FR Doc. 88-15904 Filed 7-8-88; 9:17 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 4162/Pub. L. 100-362
To make the International Organizations Immunities Act applicable to the Organization of Eastern Caribbean States. (July 6, 1988; 102 Stat. 819; 1 page) Price: \$1.00

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegation of Authority; Corrections

AGENCY: Department of Agriculture.
ACTION: Final rule; correction.

SUMMARY: On May 23, 1988, at 53 FR 18253, the Secretary of Agriculture issued a final rule delegating authority to the Assistant Secretary for Special Services and the Deputy Assistant Secretary for Special Services and revising the delegations of authority to the Chiefs of the Forest Service and Soil Conservation Service. The document inadvertently used inconsistent terms in referring to the authority to approve acquisitions of land under the Weeks Act of March 1, 1911, as amended and related acts and contained a typographical error in the delegation of authority to divide and designate lands into national forests. This document corrects these errors.

FOR FURTHER INFORMATION CONTACT: Jerry Sutherland, Acting Director, Lands Staff, Forest Service, USDA, P.O. Box 98080, Washington, DC 20080-8080, (703) 235-8212.

SUPPLEMENTARY INFORMATION: In the delegation of authority to the Chief of the Forest Service published May 23, 1988, (53 FR 18253), the Chief was granted additional land acquisition approval authority under the Weeks Act of March 1, 1911, as amended, and related acts for acquisitions up to \$250,000 in value (7 CFR 2.42(b)). However, in the reservation of land acquisition authority by the Secretary (7 CFR 2.43(f)), the rule did not use language parallel to that used in the delegation to the Chief. The effect of this inconsistency in terminology was to limit the authority of the Chief to

approve other land acquisitions. This document corrects that error and a typesetting error made in paragraph (b) of § 2.43 when the rule was published.

PART 2—[AMENDED]

The following corrections are made to the final rule published on May 23, 1988, at 53 FR 18253-18258:

§ 2.42 [Amended]

1. In the second sentence of paragraph (b) of § 2.42, appearing on page 18255, column 1, line 13, change the phrase "and related acts" to read as follows: "and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 886, as amended by Pub. L. No. 310, 76th Cong., 58 Stat. 227; Pub. L. 595, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 76th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 76th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 76th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 48; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 298; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632)."

§ 2.43 [Amended]

2. In paragraph (b) of § 2.43, appearing on page 18256, column 3, line 13, remove the first "the" and add the word "or" so that the line reads as follows: "acres acquired under or subject to the".

3. In paragraph (f) of § 2.43, appearing on page 18256, column 3, lines 42 and 43, change the phrase "and under other authorities," to read as follows: "and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 886, as amended by Pub. L. 310, 76th Cong., 58 Stat. 227; Pub. L. 595, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 76th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 76th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 76th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 48; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 298; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632)."

Date: July 5, 1988.
Richard E. Lyng,
Secretary.

[FR Doc. 88-15546 Filed 7-11-88; 6:45 am]
BILLING CODE 3410-11-8

Food and Nutrition Service

7 CFR Part 250

Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction; Eligibility of Nonprogram Schools

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Regulations (7 CFR Part 250) to clarify the circumstances under which donated foods may be made available to schools which do not participate in the National School Lunch or School Breakfast Programs and are not "commodity" schools. This final regulation also specifies the types of commodities that such schools are eligible to receive. This amendment will improve the program by ensuring a consistent policy for dealing with these schools.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3890.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal agencies, State or local government agencies or geographic regions; and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this proposed

rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this rule are subject to approval by the Office of Management and Budget (OMB) before becoming effective.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

Background

Section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) authorizes the Department to donate commodities for use by various recipients in the United States including "nonprofit school lunch programs". Traditionally, these commodities, as well as donated foods distributed under other legislative authorities, have been made available primarily to schools which participate in the National School Lunch Program (NSLP) or School Breakfast Program (SBP) or which participate as "commodity" schools under section 14(f) of the National School Lunch Act.

There are, however, some nonprofit school lunch programs which do not participate in any of the above programs, and these schools are not addressed specifically in the regulations governing donation of food. Despite this omission, these "nonprogram schools" are eligible to receive certain types of commodities. Section 416 refers generally to nonprofit school lunch programs. The Department has concluded, therefore, that surplus commodity items distributed under the authority of section 416 may be made available to nonprogram schools. For these reasons, on June 15, 1987, the Department proposed at 52 FR 22660 to amend § 250.8(a) of the regulations governing donation of food to clarify that nonprogram schools are eligible to receive certain types of commodities provided they satisfy specified eligibility criteria established for schools which participate in the NSLP or SBP or which are "commodity" schools. We would like to note, however, that nonprogram schools are not a new entity. Rather, these schools already receive food and this rule is being published to codify current practices. Nonprogram schools will receive only the Section 416 commodities that are bonus and in sufficient supply to warrant distribution. First, the proposal stipulated that the

school must either be public or have nonprofit status as determined by the Internal Revenue Service. Secondly, the school food service had to be operated on a nonprofit basis. Finally, under the proposal, a private school could not charge tuition in excess of the limit established for the NSLP. Once approved, nonprogram schools would qualify to receive commodities designated by the Department, provided that they complied with all provisions of 7 CFR Part 250.

Since publication of the proposed rule, Part 250 has been restructured through an amendment which was published in the Federal Register on June 3, 1988 (53 FR 20416). As a result of the restructuring, Section 250.8, as referenced under the proposed rule, has become Section 250.48. This rule amends the recently issued Part 250.

Analysis of Comments

The Department received seven comments on this proposal, all from State distribution agencies. Only one commenter unequivocally disapproved of the proposed rule. Other commenters, however, either expressed practical concerns with implementation or recommended technical modifications while generally approving of the proposal. The Department considered all comments and is adopting the proposed rule with some minor changes. The remainder of this preamble discusses the principal concerns raised by commenters.

Three commenters expressed concern about the possible staffing/budgetary implications of the proposal, noting that they might have to serve a large number of additional recipient agencies without an increase in administrative funding. The Department realizes that some State agencies may experience some increase in responsibilities. For the most part, however, we expect these increases to be relatively small. The information available to the Department indicates that less than one percent of all public schools and only about one-third of all private schools nationwide are not already participating in the National School Lunch Program (NSLP).

Moreover, a substantial number of nonparticipating private schools were ineligible for the NSLP because their tuitions exceeded the statutory limit imposed by Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981. This limit was rescinded by Pub. L. 100-71, the Supplemental Appropriations Act, 1987, enacted on July 11, 1987, which amended section 5(d) of the National School Lunch Act (42 U.S.C. 1760(d)) and Section 15(c) of the Child Nutrition Act (42 U.S.C. 1784(c)). Consequently, many

formerly ineligible private schools can be expected to participate in the NSLP, leaving even fewer nonprogram schools to be served. Finally, the Department emphasizes that this regulation is being promulgated to conform the program regulations to section 416, which makes any school eligible for designated commodities if it operates a nonprofit school lunch program.

One commenter was concerned about the potential for abuse, since nonprogram schools are not subject to regular reviews conducted by the State, as are schools participating in the NSLP. The Department acknowledges the need to monitor all recipient agencies to ensure proper use of donated foods. The Department is in the process of reviewing the current monitoring requirements for schools and will be publishing a proposed rule to clearly define these requirements. The monitoring provisions contained in that regulation will be applicable to nonprogram schools.

Another concern involved the quality of meals served in nonprogram schools. This commenter noted that those meals are not subject to nutritional standards; therefore, commodities donated by the Department could be used to prepare nonnutritious meals. The Department believes there is some assurance that commodities will be used to enhance the quality of meals in these schools. For example under current policy, flour is made available to nonprogram schools only to the extent that there is no reduction in the schools' normal commercial flour purchases. Since USDA's donations supplement flour already being acquired by the school, the overall quality of the meals can be expected to improve, regardless of the specific meal standards observed by the school. Similar enhancement should result from the donation of other commodities to these schools.

One commenter suggested that the proposed regulations be revised to state that only section 416 foods which do not count toward a State's guaranteed amount of commodities under section 6 of the National School Lunch Act be designated as available to nonprogram schools. In fact, nonprogram schools are not provided with commodities under Section 6—only those foods designated as "bonus" commodities would be made available to nonprogram schools, and none of these commodities will count against a State's Section 6 commodity allotment.

The Department has made a nonsubstantive modification to the proposed regulation. The phrase "nonprofit school food service" has been

substituted for "nonprofit lunch service" in § 250.48(a)(2)(ii). The revised language parallels the terms used in § 250.48(a)(1).

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, the Department is amending 7 CFR Part 250 as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 is revised to read as follows:

Authority: Sec. 32, Pub. L. 74-320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79-396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1756); sec. 416, Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 81-865, 66 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85-631, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 88-321, 79 Stat. 1212 (7 U.S.C. 1448a-1); sec. 3, Pub. L. 90-302, 62 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-288, 66 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93-326, 66 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94-105, 66 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10 Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 1114(a), Pub. L. 97-98, 95 Stat. 1289 (7 U.S.C. 1431(e)); Title II, Pub. L. 96-8, 97 Stat. 35 (7 U.S.C. 612c note); 5 U.S.C. 301.

2. Section 250.48 is amended by redesignating the text of paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2), to read as follows:

§ 250.48 School food authorities and commodity schools.

(a)
(2) School food authorities which do not participate in the National School Lunch Program or as commodity schools under Part 210 of this chapter or in the School Breakfast Program under Part 220 of this chapter may receive such commodities as the Secretary may designate, provided the schools are public schools or private schools determined by the Internal Revenue Service to be exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954 or, in the Commonwealth of Puerto Rico, certified

as nonprofit by the Governor; and operate a nonprofit school food service. Such schools shall be eligible to receive only those commodities acquired under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) to the extent that such commodities become available and the Secretary has determined that surpluses of such commodities exist and surplus quantities are sufficient to distribute to nonprogram schools.

Date: July 5, 1988.
Anna Kondratas,
Administrator.
[FR Doc. 88-15539 Filed 7-11-88; 8:45 am]
BILLING CODE 3410-30-M

7 CFR Parts 272 and 273

(Amdt. No. 289)

Food Stamp Program; Simplified Application and Standardized Benefit Projects

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for conducting projects using simplified food stamp application and benefit determination procedures for recipients of certain types of categorical aid. These projects, which are operational alternatives to normal procedures, are authorized by Subsection 8(e) of the Food Stamp Act of 1977, as amended by section 1520 Pub. L. 98-198, the Food Security Act of 1985 (7 U.S.C. 2017(e)). The projects' goals are improved administrative efficiency and reduced error rates.

DATE: This action is effective August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Russ Gardiner, Supervisor, Research, Demonstration and Evaluation Projects Section, Administration and Design Branch, Program Development Division, 3101 Park Center Drive, Alexandria, Va. 22302, Telephone: (703) 756-3367.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final rule has been reviewed under the Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been classified not major because the provisions will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical

regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These provisions will not significantly raise the Food Stamp Program's total benefit and administrative expenses. It is expected that the operation of these projects will result in administrative cost savings and error reduction in the Food Stamp Program (FSP). The projects will be operated in a maximum of five States and five political subdivisions. Because these provisions will deal only with the administration of the FSP in these sites, they will not affect industry or trade in any substantive manner.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator, Food and Nutrition Service (FNS), has certified that the action will not have a significant economic impact on a substantial number of small entities. The rule establishes procedures under which State and local agencies will operate Simplified Application and Standardized Benefit Projects. As participation is voluntary and some administrative cost savings should result, there should be no significant adverse impact on the workload, staffing needs, or paperwork of participating State or county agencies.

Reporting and Recordkeeping

The reporting and recordkeeping requirements contained in § 273.23(1) of this regulation which come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) will be submitted to OMB for their review and approval. They will not be enforced until such time as OMB approval is received.

Background

On April 23, 1987, a proposed rule for the Simplified Application/Standardized

Benefit (SA/SB) Projects was published at 52 FR 13450. Interested parties were given 60 days to provide comments. A total of 15 comment letters were received from State and local agencies and public interest groups during the comment period; all of the letters contained more than one comment. The major concerns raised are discussed below. Commentors on the proposed regulations were also provided with a draft copy of the SA/SB Work Plan Guide (WPG). (The WPG will be used by potential operators in developing proposals for operating SA/SB Projects.) Comments received on the WPG have also been considered in developing this final rule.

An explanation of the rationale for the rule is contained in the preamble of the proposed rule. While part of it is reprinted below for the sake of clarity, the reader should refer to that preamble for a full understanding of the provisions of this rulemaking.

Section 17(d) of the Food Stamp Act, as amended by Pub. L. 97-98 (December 21, 1981) authorized the Secretary to conduct a Simplified Application Demonstration Project. The Simplified Application Demonstration Project was an attempt to reduce the administrative burden of food stamp benefit calculations by simplifying program rules. The demonstration project tested how different approaches to standardizing and simplifying policy affect benefits, administrative costs, and errors in the FSP. Four sites—the State of Illinois, the State of Oklahoma, and San Diego and Fresno Counties, California—participated in the demonstration. Although each developed and implemented its own version of policy simplification, all four focused on simplifying the process of determining food stamp benefit levels for households that are already eligible for other programs, particularly Aid to Families with Dependent Children (AFDC). The legislation allowed the participating sponsors to decide which categories of households would be project eligible—households all of whose members received AFDC, Supplemental Security Income (SSI) and/or Medicaid (pure households); or households only some of whose members received AFDC, SSI and/or Medicaid (mixed households). In Illinois, program simplification entailed assigning food stamp benefits to pure AFDC households based on standard-benefit tables under which all households within certain categories received the same food stamp allotment. In Oklahoma, income equal to the maximum State AFDC payment (plus

any applicable AFDC "\$30 and 1/2" earned income disregard) was used as the food stamp gross-income standard for AFDC households. Income equal to countable SSI income plus the State-supplemental payment was used as the food stamp gross-income standard for SSI/Medicaid households. The California sites used AFDC income definitions to establish FSP eligibility and benefit levels. The San Diego project involved both pure and mixed AFDC households; only pure AFDC households were project eligible in Fresno. The evaluation of the demonstration showed that simplified procedures could, depending upon the type of benefit standardization implemented, significantly reduce administrative costs and error rates.

The 1985 Food Security Act (Pub. L. 99-198, December 23, 1985) established the use of simplified application and standardized benefit procedures as an operational alternative. By-and-large, the operational guidelines contained in the legislation authorizing the Simplified Application Demonstration (Pub. L. 97-98) were repeated in the new legislation (Pub. L. 99-198). Rather than establish simplified application and standardized benefit procedures as operational alternatives available to all States, the 1985 legislation specifically limits operation to a maximum of five States and five political subdivisions. Because of this limitation, FNS will competitively select operational sites.

General Project Related Concerns

The majority of the commentors expressed strong support for the project. They believed that the project's goals—administrative cost savings through simplification, error reduction, and protection of the poorest households—represented a needed "new direction" in program administration. Not unexpectedly, particular support was expressed by State agency commentors for the project's potential for reducing error rates. Three commentors expressed concern regarding the ability of State agencies to meet those goals while maintaining program costs at current levels. FNS acknowledges that simultaneous achievement of these outcomes will be difficult but not impossible.

Several of the commentors supported the objective of administrative cost savings. Of those commentors, one favored options which also increase program benefits and another cautioned against cutting benefits to achieve program simplification. The statute requires that average allotments by household size not decrease from current levels; Congressional direction

requires that the poorest of the poor households not be harmed as a result of standardization. Due to fiscal constraints, a significant increase in program costs cannot be permitted. An amount equal to the Federal savings realized in administrative funds can be added to current benefit costs; however, additional benefit increases should be kept to a minimum. Household protection is achieved by establishing a goal for benefit losses—no household would lose benefits of more than \$10 or 20 percent, whichever is less. This goal is contained in the Work Plan Guide and will be used in evaluating project proposals.

One commentor suggested that the project's parameters be expanded to allow benefits to be provided in cash rather than coupons. We wish to emphasize that these projects are operational alternatives and not demonstrations. The authorizing legislation does not permit cash benefits, therefore regulations issued pursuant to 8(e) cannot authorize cash benefits.

Several commentors acknowledged that the legislation itself places restrictions on the level of allowable simplification, but expressed concern that FNS not add to those restrictions. In finalizing these regulations, we have attempted to provide State agencies as much flexibility as possible to tailor their SA/SB systems to existing conditions. We have combined this operational flexibility with specific limitations on the level of benefit changes which will be permissible. Taken in combination, State and local project operators will be allowed to take whatever path they feel is most administratively advantageous as long as recipient benefits and rights are properly protected.

Program Administration—§ 273.23(b)

Two commentors expressed dissatisfaction that operation of the project is limited to a maximum of five States and five political subdivisions. Congress has clearly established this limitation in legislation and, therefore, we are unable to change this provision.

Although not specifically stated in the proposed regulations, the preamble stated that potential project operators would have 90 days to prepare and submit their SA/SB Work Plans. Two commentors objected to this timeframe; stating that it was insufficient time in which to develop benefit methodologies, assess their impact, and clear the submission through the appropriate internal channels. Six months was suggested as an alternative. Since the

draft of the Work Plan Guide has been available since late July 1987, we believe six months is unnecessarily long for Work Plan development. Since 90 days may, in some instances, prove to be inadequate time, the regulations have been revised to provide 120 days for Work Plan submission. Political subdivisions have been provided an additional 30 days since these proposals must clear through the State agency.

One commentor asked whether State agencies could submit a single application which could be evaluated as either a State or project area proposal. Because FNS is expecting to receive a large number of proposals, various panels will review the State and project area proposals. Hence, separate applications for each proposed project will be necessary. If a project area within a State and the State agency both win their categories, the State agency will be given the option of deciding which type of project they wish to operate.

Many of the commentors had strong opinions regarding the selection criteria set forth in the proposed regulation. They were particularly concerned about the weight assigned to "net Federal costs." Following the general concerns discussed above, the commentors stated that achievement of the "zero-net Federal cost" requirement would be difficult, if not impossible. Suggestions for additional selection criteria included: not harming the poorest of the poor; simplifying the application and the application process; household impacts; project management plans and staffing; organizational capability; site population; administrative savings; error reduction; variety of household types and benefit methodologies; and monitoring and evaluation planning. The draft of the Work Plan Guide (WPG) expanded on the evaluation criteria contained in the proposed regulations, specifically including many of these criteria. In particular, the WPG criteria addressed the project's effect on benefits, from a total cost standpoint and an individual household standpoint; the impact of the project's design on processing procedures and demands made of applicants; creativity of design; administrative savings; technical quality; and operational potential. Dispersion of the sites among the FNS Regional Offices was added as a final criteria to serve as a delineator should more than 10 proposals of similar quality exist.

While the selection criteria contained in the draft Work Plan Guide incorporated the majority of comments received on the proposed regulations,

two areas deserve additional consideration. The first is administrative cost savings. Several commentors believed that the emphasis placed on administrative cost savings would make it very difficult for State agencies with low per-case costs to compete. They believed that because their costs are so low, it would be difficult to achieve high administrative savings from either a percentage or absolute standpoint. Further, they believed that holding benefit increases to such small amounts would be difficult. One commentor offered a solution to the first problem by suggesting that administrative cost savings be weighted to produce a factor accounting for differences in States' current administrative costs. To accomplish this, the ratio between a State agency's current administrative cost to project cost savings would be multiplied by the ratio between a State agency's administrative cost to the National average administrative cost. It was never FNS' intention that State agencies with low administrative costs be penalized in the selection process. In fact, percentage changes rather than absolute cost changes were used as evaluation factors in the draft Work Plan Guide. We agree that this commentor's approach strengthens the criteria and have incorporated this suggestion. However, we do not see any options with regard to limiting program cost increases, particularly given current Federal budget constraints.

The second area needing further discussion concerns the use of error reduction as a selection criteria. Several commentors believed that since error reduction was a project goal, its achievement should be considered in site selection. As we discussed in the preamble to the proposed regulations, we do not want to reward States with high error rates by making error reduction a selection criteria. A natural effect of simplified procedures will be the reduction of error. This error reduction will not, however, have an impact on program costs since error is reduced by eliminating rather than correcting errors in eligibility and benefit determination.

Contents of the Work Plan—§ 273.23(c)

Substantive comments on the Work Plan have been addressed in other areas of this preamble. However, several commentors suggested that a more complete description of the Work Plan contents be included. This has been done; the final regulations provide an outline of what will be required in the Work Plan. The Simplified Application/Standardized Benefit Notice provides further information and the Work Plan

Guide is incorporated herein by this reference and is available by contacting Mr. Gardiner at the above cited address.

The final regulation establishes a requirement to update the Work Plan, as circumstances dictate, to modify the benefit determination methodology. Such changes would have to be approved in advance by FNS.

Project Eligible Households—§ 273.23(d)

Comments concerning households eligible for inclusion in this project generally favored expansion of eligible categories; however, one commentor expressed reservations about including "mixed" households, i.e., a household which contains some members receiving neither AFDC, SSI nor Medicaid, due to anticipated complications in evaluating project effects. Three commentors suggested that State agencies be allowed to designate households receiving State Assistance as project eligible. Another commentor recommended that Non-Public Assistance households be allowed to participate in the project, but only to the extent of allowing a standardized shelter deduction. The legislation specifically identifies those categories of households which may be project eligible. Eligibility is limited to households which include one or more members who are recipients of AFDC, SSI, or Medicaid. Consequently, participants in State programs are eligible for inclusion in this project only if they are part of such households. FNS recognizes that inclusion of "mixed" households will require special procedures; State agencies are free to exclude them if they wish. However, if a State agency includes mixed households in the eligible household universe, it accepts responsibility for designing adequate procedures regarding income and benefits to meet project requirements.

Determining Food Stamp Program Eligibility—§ 273.23(e)

Three commentors addressed themselves to the income definitions established in the proposed regulations and discussed in the preamble. One commentor was concerned the SSI income exclusions were not allowed in determining a household's income; this was considered particularly puzzling since AFDC income exclusions were allowed. Upon further reflection, we believe that an error was made in not excluding such income and the regulations are revised accordingly to achieve consistency. Further, to ensure the integrity of income calculation procedures, each potential sponsor will

be required to document in the Work Plan how gross and net income calculations will be handled. Another commentor pointed out that deemed income should be specifically excluded when the unit having the deemed income is part of the food stamp household supplying the deemed income, e.g., shelter. This was our intention and, in fact, this was the policy followed during the demonstration. The regulations have been rewritten to so specify. A third commentor asked that we allow the disregard of the \$50 child support pass-through without additional cost to the State agency. State agencies may develop their benefit methodologies so as to disregard such income, i.e., using the maximum aid payable as a surrogate figure for gross income. However, since there is a need to keep program cost increases to a minimum, the impact of this policy must be closely evaluated and consideration must be given to how such a benefit increase could be offset without harming other households. States choosing to do this need to be concerned about the impact it will have on total program costs and the project's limitation on program cost increases. Further discussion of this issue is found below in § 273.23(f).

Benefit Determination Methodologies. The last comment was directed toward categorically-eligible project-eligible households. The commentor felt that such households should be exempt from the gross and net income requirements. That was, in fact, our intention in drafting the regulation and this point has been clarified.

Three comments were received on the non-financial eligibility criteria. Two commentors suggested that each AFDC unit be considered a separate food stamp household. This, they believed, would result in even greater simplification and coordination of program rules. The new provisions of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, enacted July 22, 1987), may address these comments. Under this law, a parent, with his/her minor children, may live together with the parent's sibling and yet be considered a separate household if the parent with minor children purchases food and prepares meals separately from the parent's siblings. Similarly, three generations living together may form two separate households if the parent with minor children purchases and prepares meals separately from the children's grandparent(s). Further changes to "household definition" cannot be made for project purposes since the major provisions which define "household

concept" are governed by statute. A final commentor requested further clarification on the applicability of non-financial eligibility criteria to categorically-eligible, project-eligible households. This has been clarified to reflect the fact that all categorically-eligible, households must meet the non-financial eligibility criteria contained in other parts of the regulations.

Benefit Levels—§ 273.23(f)

Almost all of the commentors addressed this section of the regulations. The general theme of most State agency commentors was that FNS should decrease the level of specificity established in the proposed regulations. They believed that State agencies should be given flexibility in determining specific project features such as subcategories, who is the poorest of the poor, and how to establish specific deduction amounts. The advocate group which commented expressed concern about the potential impact of the project on participant benefits, stating correctly that the projects' purpose was to simplify administration, not to make significant changes in household benefit levels. FNS concurs with both of these positions; the final regulations have been rewritten to reflect these concerns. State and local operators will be given flexibility to make specific determinations on subcategories and households needing special protection. Given the familiarity State and local agencies have with the characteristics of their caseload, they are in the best position to make such determinations. However, to ensure that Congressional direction on household protection is met, FNS will retain approval rights on benefit determination methodologies. A maximum benefit reduction of \$10 or 20 percent, whichever is less, has been established as a goal for benefit changes and has been included in the regulatory language. While FNS may consider waivers to slightly modify this provision, adherence to the goal is important to project selection. One commentor felt that this goal (which was included in the draft Work Plan Guide) was unrealistic and unnecessary, suggesting instead that an average dollar amount, by household size, be used. FNS does not concur in this recommendation, believing it necessary to clearly establish parameters for State agencies to use as they develop their benefit methodologies, particularly given the above-stated flexibility. FNS recognizes that it will be difficult to maintain costs at current levels while adhering to the caveats that (1) average benefits be no less than averages would have been and

(2) the poorest of the poor not be harmed as a result of standardization. While FNS will not mandate a preferred solution to this dilemma, State agencies are encouraged to use information known to them, e.g., households with a \$50 child support pass-through, households having AFDC benefits recouped, in developing their benefit methodologies and/or household categories. By using available AFDC information, the need for additional food stamp information can be minimized.

One commentor requested that 100 households be established as a base number below which the use of averages in determining benefit levels is impractical. Rather than establishing such a hard and fast number, the Department believes that it is best to allow State agencies discretion in this area.

One commentor suggested that State agencies be allowed to "grandfather" existing cases which have allotments outside of "normal" benefit levels. State agencies are welcome to propose such grandfathering in their Work Plans, but they must be able to describe why such cases are anomalies.

The final regulations note the various parameters which must be considered in developing benefit methodologies. FNS believes that State agency ingenuity in developing benefit methodologies and household subcategories will allow their simultaneous achievement.

Household Notification—§ 273.23(g)

Three comments were received concerning household notification. One commentor suggested waiving the requirement for a timely notice of adverse action when a benefit decrease results from an increased AFDC payment. The commentor believed that since the overall effect was an increase in the total amount of funds available to the household, advance notification was not necessary. A second comment, which was similar, asked that a State agency be allowed to terminate food stamp benefits when AFDC benefits are terminated. Recipient households are entitled to timely notice of adverse action, and this right will not be abrogated by this rule. Therefore, these comments have not been accepted. The third comment suggested that States be allowed to phase-in SA/SB provisions if a point-in-time conversion is impractical. This is acceptable to FNS; potential project operators are free to provide for this in their Work Plans.

Application Processing Procedures—§ 273.23(h)

Several commentors addressed themselves to the application procedures discussed in the proposed regulations. One felt that households should not be asked to formally indicate a desire to receive food stamps, but should be asked orally at the time of the initial interview. This same commentor suggested that the AFDC, SSI, or Medicaid applications contain a tear-off sheet which would allow a household to establish its date of application. FNS continues to believe it is important that households indicate in writing their desire to receive food stamps, both to prevent their receipt by households not desiring to receive them and to establish a clear requirement for action on the part of the State agency. Therefore, as under current regulations, project-eligible households will be required to "file" a food stamp application by indicating in writing their desire to receive food stamps. While we do not believe it is necessary to incorporate the tear-off sheet concept in the regulations, it will be included as a suggestion in the Work Plan Guide.

One commentor did not believe the proposed regulations made it clear that non-assistance household members would have to provide the information needed to determine eligibility. Changes have been made, as necessary, to clarify this point.

A final issue involves the processing of SSI households. One comment specifically addressed the processing of mixed-SSI households by the Social Security Administration (SSA). We have had various conversations with SSA staff regarding SSA's possible role in the project; however, we have been unable to offer any specificity regarding State agency proposals. Based on the three circumstances discussed below, interface with SSA may be difficult. First, households jointly applying for SSI and food stamps will not be project eligible because their SSI eligibility will not have been determined and it is unlikely that it will be determined within the food stamp processing period. As under current joint processing procedures, SSA will take food stamp applications from "pure" households but will refer "mixed" households to the State agency. Second, since SSI redeterminations are generally made less frequently than food stamp recertifications, they do not seem to be a vehicle which could be used for food stamp recertifications. Third, SSI applications are generally stored in central locations within a year of approval. It would be difficult, if not

impossible, to access such applications if a currently eligible SSI household indicates a desire to receive food stamps. Thus, although SSI application information could be used, the information will generally be drawn from the State Data Exchange (SDX) tape rather than being taken directly from the application itself. The regulations have been reworded to reflect the use of the information on the SDX tape rather than the application itself.

If, as in Oklahoma, the State agency is administering a State SSI supplementation program, the State agency would have maximum flexibility in determining how applications and recertifications for the SSI population, whether pure or mixed, would be handled. Although it appears that there may be problems in attempting SSI/FS simplification, SSA has indicated that they are willing to work toward accomplishing this end.

Regulatory Requirements—§ 273.23(i)

A number of commentors addressed the regulatory requirements section. One State agency commentor recommended allowing State agencies to require recipient cooperation in verifying all information normally required, whether or not it is needed to determine food stamp eligibility and/or allotments under their simplified application procedures. (An example would be to require verification of shelter expenses when a standardized excess shelter deduction is assigned to all households.) We do not believe it appropriate that State agencies require recipients to verify information not needed to determine eligibility and/or allotments. These factors are no longer pertinent for food stamp purposes. Verification of such factors would only serve to unnecessarily increase administrative costs. The program simplification achieved through SA/SB Projects should benefit both State agencies and applicants/recipients.

Three commentors suggested that Monthly Reporting/change reporting requirements be allowed to vary based on project designs. FNS concurs. Changes in reporting requirements should correspond with changes associated with SA/SB procedures. Project operators should incorporate adjustments to these requirements in their Work Plans, specifying any needed waivers to current requirements.

Quality Control—§ 273.23(j)

Several commentors expressed support for using the error rate attributable to project-eligible

households in calculating a State's error rate for quality control purposes. However, one commentor doubted that SA/SB procedures would reduce the error rate as much as predicted. A final commentor expressed concern that State agencies would be held fiscally responsible (through the error rate sanction system) for erroneous information collected on SSI households by the SSA. Based on the results from the Simplified Application Demonstration, FNS continues to believe that the project has the potential for having a significant positive impact on a State agency's error rate. With regard to errors made by SSA, an interim regulation (52 FR 29657) is pertinent. This regulation states, at 7 CFR 275.12(d)(2)(v), that errors made as a result of information obtained through the Federal Information Exchange (FIEX), specifically BENDEX and SDX systems information, are excluded from liability determinations if the State agency correctly processed the information.

Evaluation—§ 273.23(l)

One commentor expressed concern regarding the lack of emphasis on project evaluation. They believed that a rigorous evaluation was necessary to build a strong case for project expansion. They suggested that State agencies be required to include an evaluation component in their Work Plan and that the evaluation component be fairly heavily weighted in selection criteria. FNS continues to believe that an evaluation of the scope conducted during the demonstration is unnecessary. Current plans are for each site to perform a self-evaluation, verifying the projected impact information provided in their Work Plans. This self-evaluation would be conducted during the three-month period following project implementation, thus allowing the impact date to be relatively free from the influence of other changes. The evaluation would assess the project's actual impact on administrative costs, benefits, and participation and confirm the project's estimated impact on error rates. Information on the actual error rate impact will be collected annually in accordance with the schedule established at § 275.21(d), entitled *Quality control review report, Annual results*.

FNS will select an independent evaluation contractor who will assist in project evaluation. The contractor will be responsible for coordinating project sites' data and assisting FNS in the overall evaluation of the projects.

Reporting Requirements—§ 273.23(m)

Two commenters addressed project reporting requirements. Legislation specifically requires USDA to evaluate the impact of the projects on recipient households, administrative costs, and error rates. One commentator felt it would be difficult, if not impossible, to report the project's actual impact on error rates, administrative costs and participants, particularly in future years. No control group will exist against which to compare project outcomes. No suggestions were made, however, on how to collect the impact data. Given the potential for the "erosion" of the data over time, FNS is in agreement with the commentator. Thus, the reporting requirement for the project is being revised. As stated earlier, there will be an initial self-evaluation of the project's impact on benefit levels, administrative costs and participation. Ongoing reporting will address only error rate impacts. This will be a minimal reporting burden, requiring that States identify project-eligible households during the quality control review process. Project sites would be required to submit a separate report on the error rates attributable to project-eligible households on the same reporting schedule established in § 275.21(d).

State Agency Monitoring—§ 273.23(n)

This section has been rewritten to clarify that project operations will be monitored in accordance with the monitoring requirements established in Part 275.

Termination—§ 273.23(o)

Two comments were received concerning the project's timeframes and project termination. One commentator requested clarification of timeframes. Legislation makes the SA/SB Project an ongoing program alternative; consequently, there are no timeframes. States and political subdivisions selected by FNS will be encouraged to implement this policy provision in a timely fashion and implementation timeframes will be specified in project proposals. Regarding termination, one commentator agreed that FNS should be able to terminate a project, but suggested that a State or political subdivision should also be given the right to terminate. FNS agrees and language has been added to provide States and political subdivisions the right to terminate their participation.

A further provision has been added to clarify what will happen should a project be terminated or choose to

terminate. In such instances, FNS reserves the right to select another project site based either on the initial application or a subsequent solicitation.

Implementation

State agencies wishing to conduct a Simplified Application/Standardized Benefit (SA/SB) Project must submit an application to FNS by November 9, 1988. Local agencies shall be given an additional 30 days to allow for clearance through the State agency. The application shall take the form of a Work Plan, the contents of which are discussed in the SA/SB Notice published simultaneously with this rulemaking.

SA/SB Projects have no mandatory implementation date. Rather, FNS is authorized to conduct such projects. The actual project implementation dates depend upon the timetables developed by State and local agencies chosen to operate the projects. The rule's effective date is established as 30 days subsequent to publication.

List of Subjects**7 CFR Part 272**

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Allens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—(AMENDED)

2. In § 272.1, a new paragraph (g)(100) is added to read as follows:

§ 272.1 General terms and conditions.

(g) Implementation. . . .

(100) Amendment 289.

(i) This rule is effective August 11, 1988.

(ii) State agency Work Plans setting forth proposals for conducting Simplified Application/Standardized Benefit Projects must be postmarked no later than November 9, 1988. Local agency Work Plans must be postmarked no later than December 9, 1988.

3. In § 272.2, a new sentence is added at the end of paragraph (a)(2) to read as follows:

§ 272.2 Plan of operation.

(a) General Purpose and Content. . . .

(2) Content. . . . State agencies and/or political subdivisions selected to operate a Simplified Application/Standardized Benefit Project shall include that Project's Work Plan in the State Plan of Operation.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. Section 273.23 is added to read as follows.

§ 273.23 Simplified application and standardized benefit projects.

(a) General. This subpart establishes rules under which Simplified Application and Standardized Benefit Projects shall operate. State agencies and political subdivisions chosen as project operators may designate households containing members receiving AFDC, SSI, or Medicaid benefits as project eligible. Project eligible households shall have their food stamp eligibility determined using simplified application procedures. Food stamp eligibility shall be determined using information contained in their AFDC, or Medicaid application, or, in the case of SSI, on the State Data Exchange (SDX) tape, and any appropriate addendum. Project-eligible households shall be considered categorically food stamp resource eligible based on their eligibility for these other programs and shall be required to meet food stamp income eligibility standards. However, income definitions appropriate to the AFDC, SSI or Medicaid programs shall be used instead of food stamp income definitions in determining eligibility. In addition, such households shall, as a condition of program eligibility, meet and/or fulfill all food stamp nonfinancial eligibility requirements. (Project-eligible households defined as categorically eligible in § 273.2 (j) and (k) of these regulations are not required to meet the income eligibility standards.) To further simplify program administration, benefits provided to such households may be standardized by category of assistance and household size.

(b) Program administration. (1) Simplified application and standardized benefit procedures are applicable in five States and five political subdivisions. For the purpose of this section, a political subdivision is a project area as defined in § 271.2 of these regulations.

(2) State agencies and political subdivisions seeking to operate a

Simplified Application and Standardized Benefit Project shall submit Work Plans to FNS in accordance with the requirements of this section.

(3) FNS shall evaluate Work Plans according to the criteria set forth in the Simplified Application/Standardized Benefit Notice of Intent.

(4) Political subdivisions shall submit their Work Plans to FNS through their respective State agencies for review and approval.

(5) A State agency selected by FNS to operate a Simplified Application and Standardized Benefit Project shall include the Work Plan in its State Plan of Operations. A political subdivision chosen to operate a Simplified Application and Standardized Benefit Project shall assure that the responsible State agency include that political subdivision's project Work Plan in its own State Plan of Operations. The Work Plan shall be updated, as needed, to reflect changes in the benefit methodology, subject to prior FNS approval.

(c) Contents of the work plan. The Work Plan submitted by each applicant shall contain the following information:

(1) Background information on the proposed site's characteristics, current operating procedures, and a general description of the proposed procedures;

(2) A description of the proposed project design, including the benefit methodology, households which will be project eligible, operational procedures, and the need for waivers;

(3) An implementation and monitoring plan describing tasks, staffing and a timetable for implementation;

(4) An estimate of project impacts including implementation costs and, on an annual basis, operating costs, administrative costs, error reduction, and benefit changes; and

(5) A statement signed by the State official with authority to commit the State or political subdivisions to the project's operation.

(d) Project-eligible households. Each operating agency shall decide which of the following categories of household shall be eligible to participate in the project.

(1) Households all of whose members receive AFDC benefits under part A of title IV of the Social Security Act;

(2) Households all of whose members receive SSI benefits under title XVI of the Social Security Act;

(3) Households all of whose members receive Medicaid benefits under title XIX of the Social Security Act;

(4) Households each of whose members receive one or more of the following: AFDC, SSI, or Medicaid

benefits (multiple-benefit households); and

(5) Households only some of whose members receive AFDC, SSI, and/or Medicaid benefits (mixed households).

(e) Determining Food Stamp Program eligibility. Under the Simplified Application and Standardized Benefit Project, project eligible households shall have their food stamp eligibility determined using the following criteria.

(1) Certain households, at the operating agency's option, which contain members receiving AFDC, SSI, or Medicaid benefits, shall be designated project eligible and need not make separate application for food stamp benefits. Once such households indicate in writing a desire to receive food stamps, their eligibility will be determined based on information contained in their application for AFDC or Medicaid benefits or, in the case of SSI, on the State Data Exchange (SDX) tape. AFDC or Medicaid applications may need to be modified, or be subject to an addendum in order to accommodate any additional information required by the operating agency.

(2) The income definitions and resource requirements prescribed under § 273.9 (b) and (c) and § 273.8 are inapplicable to project-eligible households. Project-eligible households which have met the resource requirements of the AFDC, SSI, and/or Medicaid programs shall be considered to have satisfied the food stamp resource requirements. Gross income less any allowed exclusions, as defined by the appropriate categorical aid program, shall be used to determine food stamp income eligibility (unless the project household is categorically income eligible as defined in § 273.2 (j) and (k)) and benefit levels. Deemed income, as defined under AFDC, SSI or Medicaid rules, shall be excluded to the extent that households with such income are part of the food stamp household providing the deemed income.

(3) Project-eligible households which are not categorically income eligible shall meet the gross and net income standards prescribed in § 273.9(a). Net income shall be determined by subtracting from gross income either actual or standardized deduction amounts. If standardized deduction amounts are used, they may be initially determined using recent historical data on deductions claimed by such households. Such deductions must be updated, as necessary, on at least an annual basis. Such deductions shall include:

(i) The current standard deduction for all households;

(ii) An excess shelter deduction and a dependent care deduction for households not containing an elderly or disabled member;

(iii) A dependent care deduction, an uncapped excess shelter deduction and a medical deduction for households containing a qualified elderly or disabled member; and

(iv) A standardized or actual earned income deduction for households containing members with earned income.

(4) All non-financial food stamp eligibility requirements shall be applicable to project-eligible households.

(f) Benefit levels. (1) In establishing benefits for project eligible households, either the appropriate State standard of need (maximum aid payment) or gross income as determined for the appropriate categorical aid program plus the value of any monetary categorical benefits received, if any, may be used as the gross income amount. If mixed households are designated project eligible, procedures shall be developed to include as household income the income of those household members not receiving categorical aid.

(2) If allotments are standardized, the average allotment for each category of household, by household size, shall be no less than average allotments would have been were the project not in operation.

(3) Benefit methodologies shall be constructed to ensure that benefits received by households having higher than average allotments under normal program rules are not significantly reduced as a result of standardization.

(4) Benefit methodologies shall be structured to ensure that decreases in household benefits are not reduced by more than \$10 or 20%, whichever is less.

(5) The methodology to be used in developing benefit levels shall be determined by the operating agency but shall be subject to FNS approval.

(6) With FNS approval, operating agencies may develop an alternate methodology for standardizing allotments/deductions for specific sizes and categories of households where such size and category is so small as to make the use of average deductions and/or allotments impractical.

(7) FNS may require operating agencies to revise their standardized allotments during the course of the project to reflect changes in items such as household characteristics, the Thrifty Food Plan, deduction amounts, the benefit reduction rate, or benefit levels

in AFDC or SSI. Such changes will be documented by revising the Work Plan amendment to the State Plan of Operations.

(g) **Household notification.** All certified project-eligible households residing in the selected project sites shall be provided with a notice, prior to project commencement, informing them of the revised procedures and household requirements under the project. If household allotments are to be standardized, the notice shall also provide specific information on the value of the newly computed benefit and the formula used to calculate the benefit. The notice shall meet the requirements of a notice of adverse action as set forth in § 273.13(a)(2).

(h) **Application processing procedures.** (1) The operating agency shall allow project-eligible households to indicate in writing their desire to receive food stamps. Such households shall be notified in writing, at the time such indication is made, that information contained in their AFDC, SSI, or Medicaid application will be the basis of their food stamp eligibility determination. If mixed households are included in the project-eligible universe, the project operator shall develop a procedure to collect the necessary information on household members not receiving categorical aid.

(2) The operating agency may use simplified application and standardized benefit procedures only for those households containing at least one member certified to receive either AFDC, SSI, or Medicaid benefits. If simplified procedures are to be used, the State agency shall make all eligibility determinations for households jointly applying for food stamps and AFDC, SSI, or Medicaid benefits within the 30-day food stamp processing period. If a household's eligibility for AFDC, SSI, or Medicaid cannot be established within the 30-day period, normal food stamp application, certification, and benefit determination procedures shall be used and benefits shall be issued within 30 days if the household is eligible.

Households which are jointly applying for AFDC, SSI, or Medicaid, and which qualify for expedited service, shall be certified for food stamps using procedures prescribed at § 273.2(i). However, if the State agency can process the application of an expedited service household for categorical assistance within the expedited period prescribed at § 273.2(i), it may use simplified application and standardized benefit procedures to certify the household for food stamp benefits.

(i) **Regulatory requirements.** (1) All Food Stamp Program regulations shall

remain in effect unless they are expressly altered by the provisions of this section or the provisions contained within the approved SA/SB Work Plan.

(2) **Certification periods for mixed households.** At the option of the operating agency, mixed households may be assigned certification periods of up to one year. Such households, if circumstances warrant, may be required to attend a face-to-face interview on a schedule which would conform to certification periods normally assigned such households as specified in § 273.10(f). At the time of the interview, the household shall be required to complete a modified application and provide additional information in accordance with § 273.2(f). If the household fails to comply with the interview review requirement or if information obtained indicates a revision in household eligibility or benefits, action will be taken in accordance with § 273.13, Notice of Adverse Action.

(j) **Quality control.** (1) Project eligible households selected for quality control review shall be reviewed by the State agency using special procedures, based on project requirements, which have been developed by the State agency and approved by FNS.

(2) The error rate(s) determined using the special quality control review procedures shall be included when determining the State agency's overall error rate.

(k) **Funding.** Operating agencies shall be reimbursed for project costs at the rates prescribed in § 277.4.

(l) **Evaluation.** Each project site shall conduct a self-evaluation of the project's impact on benefits, administrative costs and participation. Such evaluation shall be conducted within three months of project implementation. The results of the self-evaluation shall be sent to FNS within six months of project implementation. The impact of the project on project-eligible households' error rates shall be reported on an annual basis in accordance with § 273.23(m).

(m) **Reporting requirements.** Operating agencies shall be required to prepare and submit to FNS an annual report on the error rate attributable to project-eligible households. The timing of such reports shall coincide with the due date for the annual quality control report prescribed in § 275.21(d).

(n) **State agency monitoring.** Monitoring shall be undertaken to ensure compliance with these regulations and the Work Plan submitted to and approved by FNS. Project monitoring shall be conducted in accordance with the appropriate

sections of Part 275, Performance Reporting System, of these regulations. At a minimum, onsite reviews of the Simplified Application and Standardized Benefit Project shall be conducted once within six months of the project's implementation and then in accordance with the Management Evaluation review schedule for the project area.

(o) **Termination.** (1) FNS may terminate project operations for any reason and at any time on 60 days written notice to the administering State agency or political subdivision. State or local agencies may also choose to terminate their participation with 60 days written notice to FNS. In either such event, operating agencies shall be given sufficient time to return to normal operations in an orderly fashion.

(2) If termination occurs, FNS may select another site for project operations. Such selection shall be based on either previously received project proposals or proposals received under a new solicitation.

Anna Kondratas,
Administrator, Food and Nutrition Service.

Date: July 5, 1988.

[FR Doc. 88-15540 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-35-M

Agricultural Marketing Service

7 CFR Part 1126

[Docket No. AO-231-A55; DA-88-109]

Milk in the Texas Marketing Area; Interim Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This action provides, on an interim basis, transportation credits to handlers for hauling excess producer milk to nonpool plants located outside the State of Texas. The credits would represent a partial reimbursement of hauling costs from the order's marketwide pool. Such credits would apply during the months of March-June and the last half of December and would be limited to milk going into Class II and Class III uses. The credits would be computed at a rate of 2.4 cents per 10 miles. Credits would be limited to handlers who transfer milk from plants located in Zone 1 of the marketing area while credits on milk that is moved directly from farms to nonpool plants would be limited to milk produced in northern Texas and southern Oklahoma. Handlers would also receive a credit to recognize costs associated with hauling

milk from higher- to lower-priced areas. The amount of milk to which transportation credits apply would be reduced to the extent that a handler or affiliate of the handler caused milk from outside the State of Texas to be received at plants in the marketing area.

The interim changes to the order, which are based on proposals considered at a public hearing held on February 2-3, 1988, in Irving, Texas, are necessary to partially compensate handlers for transportation costs incurred in clearing the market of surplus milk production that exceeds local manufacturing capacity.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 98458, Washington, DC 20090-8458, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued December 30, 1987; published January 6, 1988 (53 FR 256).

Tentative Decision: Issued June 6, 1988; published June 13, 1988 (53 FR 22003).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) **Findings upon the basis of the hearing record.** Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and

the minimum prices specified in the order as hereby amended on an interim basis, are such prices as well reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) **Additional findings.** It is in accordance with the Food Security Improvements Act of 1986 (Section 9 of Pub. L. 99-280, 100 Stat. 51, March 20, 1986) to make this interim order amending the order effective not later than July 13, 1988.

The provisions of this order are known to handlers. The tentative decision of the Assistant Secretary containing all amendment provisions of this order was issued June 6, 1988 (53 FR 22003). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim amendments to the order effective upon publication in the Federal Register, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register. (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) **Determinations.** It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of these interim amendments to the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of these interim amendments to the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 1126.55 is added to read as follows:

§ 1126.55 Credits to handlers for transporting surplus milk.

For each of the months of March through June and December 18-31, a transportation credit shall be computed for each handler on the amount of producer milk that is classified as Class II or Class III pursuant to § 1126.42(b)(3) or (d)(2) that such handler transfers or diverts to nonpool plants located outside the State of Texas. Credits established pursuant to paragraphs (a) and (b) of this section shall be computed at the rate of 2.4 cents per hundredweight for each 10 miles, or fraction thereof, for the shortest hard-surfaced highway distance, as determined by the market administrator. The amount of milk eligible for a transportation credit and the amount of such credit shall be established in accordance with paragraphs (a), (b), and (c) of this section subject to the limitations specified in paragraph (d) of this section.

(a) A transfer credit shall apply to bulk fluid milk products transferred by a handler from a pool plant located in Zone 1 of the marketing area for the distance between the transferor pool plant and the transferee nonpool plant.

(b) A credit for diverted milk shall apply to milk produced in Zone 1, 1-A, or 3 of the marketing area or the Oklahoma counties of Atoka, Bryan, Carter, Choctaw, Comanche, Cotton, Greer, Harmon, Jackson, Jefferson, Johnston, Kiowa, Love, Marshall, McCurtain, Murray, Pushmataha, Stephens, or Tillman that is diverted to a nonpool plant for the distance in excess of 100 miles between the nonpool plant and the nearer of the city hall in Dallas, Texas, the pool plant of last receipt for the major portion of the milk on the route, or the courthouse of the county where the major portion of the milk on the load was produced.

(c) A credit for diverted milk produced in the area specified in paragraph (b) of this section shall also include an amount per hundredweight equal to the difference between the location adjustment (excluding any plus adjustment) applicable in the area where the milk was produced and any greater minus location adjustment applicable at the location of the nonpool plant where the milk was received.

(d) No credit shall apply to the total quantity of milk moved to a given nonpool plant by a handler during each of the credit periods if any portion of the milk is assigned to Class I. Also, the amount of milk to which a credit would be applicable during each of the credit periods pursuant to paragraphs (a), (b), and (c) of this section shall be offset by the amount of milk that a handler or any affiliate of the handler causes to be received at plants located in the marketing area from outside the State of Texas during each of the credit periods, with such offset to be applied in sequence beginning with the nonpool plant at which the greatest credit would apply.

3. In § 1126.60, paragraph (h) is revised to read as follows:

§ 1126.60 Handler's value of milk for computing uniform price.

(h) Deduct any credit applicable pursuant to § 1126.55.

Signed at Washington, DC, on: July 6, 1988.
Kenneth A. Gilles,
Assistant Secretary of Agriculture, Marketing
and Inspection Service.

[FR Doc. 88-15544 Filed 7-11-88; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the allocation of loan and grant program funds to field offices to conform with changes in FmHA activities prompted by the Agricultural Credit Act of 1987, the Housing and Community Development Act of 1987, and the House Joint Resolution # 395, entitled "Makes Further Continuing Appropriations for the Fiscal Year Ending September 30,

1988." The intended effect on this action is to share with the public the methodology and formulas used to allocate FmHA loan and grant program funds to the field offices.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Glendon D. Deal, Deputy Director, Program Support Staff, FmHA, Room 6309, South Agriculture Building, Washington, DC 20250, telephone (202) 382-9619.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because these rules relate to the agency's internal administrative practice of allocating program funds to the field offices and are published for informational purposes only. The majority of the changes involve the timely implementation of the Agricultural Credit Act of 1987 and the Housing and Community Development Act of 1987.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart C, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this rule are subject to intergovernmental consultation in the manner delineated in 7 CFR Part 3015. The Catalog of Federal Domestic Assistance programs affected are: 10.405, Farm Labor Housing Loans and Grants; 10.407, Farm Ownership Loans; 10.415, Rural Rental Housing Loans; 10.423, Community Facility Loans; 10.427, Rural Rental Assistance Payments; and 10.433, Housing Preservation Grants.

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), Mr. Vance L. Clark, Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities

because, in terms of the Agency's grant programs, less than 30 grants will be affected annually.

The majority of these amendments to FmHA's methodology and formulas for allocation of loan and grant program funds to field offices result from the recent changes in the legislative directions for administering the affected programs. The remaining amendments are an effort to eliminate unnecessary verbiage and to correct certain references. The following is a summary of the changes made by this action:

Section 1940.551(a) is revised to change the reference to the Western Pacific Territories to Western Pacific Areas to reflect the recent independence of some of these entities.

Section 1940.552(a) is amended to provide for those occasions when funds in a particular program will not be allocated to the field offices due to funding levels or administrative constraints.

Section 1940.552(g) is amended to provide for those occasions when the Administrator must increase the National Office reserve for an individual loan or grant program to accommodate an authorized demonstration program. Many times authorized demonstration programs are of short duration and very limited funding. These conditions do not provide sufficient time to modify regulations or sufficient funds to make an orderly allocation to field offices.

Section 1940.557(i) is revised to provide for targeting of Farm Ownership funds to socially disadvantaged groups in accordance with new legislative direction.

Section 1940.559(c) is deleted to remove the references to Indian Land Acquisition Funds from the Farmer Programs sections. These funds are now being administered by the Community Facilities Division.

Section 1940.575 and 1940.576 are revised to eliminate redundant wording and to correct references.

Section 1940.577(i) is revised to correct a reference.

Section 1940.576 is revised to eliminate redundant wording and to correct references.

A new § 1940.589 is added to include Industrial Development Grants. Although FmHA has maintained authority to administer this program since its inception in the early 1970's, it has not been funded since 1981. This section is added to set forth the methodology and formulas for allocating these funds to the field offices.

Current § 1940.589 is redesignated as § 1940.590 and is further amended to provide information on the Indian Land

Acquisition Funds, Nonprofit National Corporation Guaranteed Loans and Grants, the Intermediary Relending Program, and Technical Assistance and Training Grants.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Community facilities, Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Rural housing, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for Part 1940 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§ 1940.551 [Amended]

2. Section 1940.551(a) is amended by changing the last word in the paragraph from "Territories" to "Areas."

3. In § 1940.552, paragraphs (a) and (g) are amended by adding at the end of the paragraphs the following language to read as follows:

§ 1940.552 Definitions.

(a) *Amount available for allocation.* . . . On occasion, the allocation of funds to States may not be practical for a particular program due to funding or administrative constraints. In these cases, funds will be controlled by the National Office.

(g) *Reserve.* . . . The Administrator may retain additional amounts to fund authorized demonstration programs. When such demonstration programs exist, the information is outlined in Exhibit A of this subpart (available in any FmHA State Office).

4. Section 1940.557 is amended by revising paragraph (i) to read as follows:

§ 1940.557 Insured Farm Ownership loan funds.

(i) *Availability of the allocation.* A portion of the allocation will be targeted to the State's rural socially disadvantaged population. The amount of the targeted funds for each state is equal to the State's rural socially disadvantaged population divided by

the State's total rural population multiplied by the State's total fiscal year Insured Farm Ownership allocation. Source of data is U.S. Census 1980.

§ 1940.559 [Amended]

5. Section 1940.559 is amended by removing paragraph (c) in its entirety.

6. Section 1940.575 is revised to read as follows:

§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

The criteria used in the basic formula area:

- (1) State's percentage of National rural population,
- (2) State's percentage of National number of rural occupied substandard units, and
- (3) State's percentage of National rural families with incomes below the poverty level.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

$$SF = (\text{criterion No. 1} \times \text{weight of } 33\frac{1}{3}\%) + (\text{criterion No. 2} \times \text{weight of } 33\frac{1}{3}\%) + (\text{criterion No. 3} \times \text{weight of } 33\frac{1}{3}\%)$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

7. Section 1940.576 is revised to read as follows:

§ 1940.576 Rental Assistance (RA) for new construction.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart.

Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

8. Section 1940.577 is amended by revising paragraph (i) to read as follows:

§ 1940.577 Rental Assistance (RA) for existing projects.

(i) *Obligation of the allocation.* See § 1940.552(i) of this subpart.

9. Section 1940.578 is revised to read as follows:

§ 1940.578 Housing Preservation Grant (HPG) program.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds may be pooled after all HPG applications have been received and HPG fund demand by State has been determined. Pooled funds will be combined with the National Office reserve to fund eligible projects. Remaining HPG funds will be available for distribution for use under the Section 504 program.

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(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Funds for the HPG program will be available for a limited period each fiscal year. Due to the requirements by law to allocate funds on a formula basis to all States and to have a competitive selection process for HPG project selection, FmHA will announce opening and closing dates for receipt of HPG applications. After the closing date, FmHA will review and evaluate the

proposals, adjust State allocations as necessary to comply with the law and program demand, and redistribute remaining unused HPG resources for use under Section 504 (as required by statute).

10. Section 1940.589 is revised and redesignated as § 1940.590 and a new § 1940.589 is added to read as follows:

§ 1940.589 *Industrial Development Grants.*

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of

this subpart. The criteria used in the basic formula are:

(1) State's percentage of National Nonmetro population—50 percent.

(2) State's inverse percentage of nonmetro per capita income—50 percent.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

$$SF = \left(\frac{\text{Criterion \#1}}{\text{Sum of criterion \#1}} \right) \times .5 + \left(\frac{1/\text{criterion \#2}}{\text{Sum of 1/criterion \#2}} \right) \times .5$$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocation.* Not used.

(g) *Reserve.* See § 1940.552(g) of this subpart. States may request funds by written request to the Director, Community Facilities Loan Division. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate from the State's allocation.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions funds to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

§ 1940.590 *Community and Business programs appropriations not allocated by State.*

(a) *Watershed Protection Loans, Resource Conservation and Development Loans, and Flood Protection Loans.* State allocations will not be made for these type loans. Instead, obligating documents may be submitted to the Finance Office when a loan is approved. Only States that are authorized to process Pub. L. 534 loans may submit obligating documents to the Finance Office for that type loan. Resource Conservation and

Development (RC&D) Loan funds will be used in preference to Community Facility loan funds in designated RC&D areas for loan purposes included in Subpart A of Part 1942 of this chapter.

(b) *Indian Land Acquisition.* Control of funds will be retained in the National Office and allocated on an individual case basis. Requests for funds will be made to the Director, Community Facilities Division, when it is determined the loan can be approved.

(c) *Nonprofit National Corporation Guaranteed Loans and Grants.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

(d) *Intermediary Relending Program.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

(e) *Technical Assistance and Training Grants.* Control of funds will be retained in the National Office. These funds are not available for obligation by States.

Date: June 8, 1988.

Vance L. Clark,
Administrator, Farmers Home
Administration.

[FR Doc. 88-15546 Filed 7-11-88; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1006-88]

Admission of Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements Pub. L. 99-603, by adding a new category of

special immigrants covering certain officers and employees of international organizations and their immediate relatives. This new nonimmigrant classification is added to minimize any family separations caused by ineligibility for special immigrant status on behalf of certain parents and children of persons accorded status under section 101(a)(27)(I).

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone (202) 633-3320.

SUPPLEMENTARY INFORMATION: On February 5, 1988, at 53 FR 3331, the Immigration and Naturalization Service published an interim rule amending Service regulations at 8 CFR 214.2 to implement section 312 of Pub. L. 99-603, Immigration Reform and Control Act of 1986 (IRCA), which created a new nonimmigrant classification at section 101(a)(15)(N) (8 U.S.C. 1101) of the Immigration and Nationality Act (INA). Interested parties were invited to submit written comments on the rule by March 7, 1988. The Service received only one comment proposing the use of blanket employment authorization for persons granted nonimmigrant status under section 101(a)(15)(N) of the INA. The stated justification was the perceived intent of Congress that such nonimmigrants should be accorded employment authorization. The Service concurs that Congress did intend for the new classification to receive employment authorization. However, Congress did not provide specific work authorization language as part of section 101(a)(15)(N) of the INA. Currently, work authorization granted by the Service, not specifically provided in the statute, is administered pursuant to

section 274A of the INA (8 U.S.C. 1324). Accordingly, the interim rule will be revised to reflect that employment authorization is incident to status pursuant to 8 CFR 274a.12(a)(7), and no request to the Service is required.

In compliance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The rule is not a major rule within the definition of section 1(b) of E.O. 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, under control number 1115-0053.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended to read as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187.

2. Section 214.2 is amended by revising paragraph (n) to read as follows:

§ 214.2 *Special requirements for admission, extension, and maintenance of status.*

(n) *Certain parents and children of section 101(a)(27)(I) special immigrants.*—(1) *Parent of special immigrant.* Upon application, a parent of a child accorded special immigrant status under section 101(a)(27)(I)(i) of the Act may be granted status under section 101(a)(15)(N)(i) of the Act as long as the permanent resident child through whom eligibility is derived remains a child as defined in section 101(b)(1) of the Act.

(2) *Child of section 101(a)(27)(I) special immigrants and section 101(a)(15)(N)(i) nonimmigrants.* Children of parents granted nonimmigrant status under section 101(a)(15)(N)(i) of the Act, or of parents who have been granted special immigrant status under section 101(a)(27)(I)(ii), (iii) or (iv) of the Act may be granted status under section 101(a)(15)(N)(ii) of the Act for such time as each remains a child as defined in section 101(b)(1) of the Act.

(3) *Admission and extension of stay.* A nonimmigrant granted (N) status shall

be admitted for not to exceed three years with extensions in increments up to but not to exceed three years. Status as an (N) nonimmigrant shall terminate on the date the child described in paragraph (n)(1) or (n)(2) of this section no longer qualifies as a child as defined in section 101(b)(1) of the Act.

(4) *Employment.* A nonimmigrant admitted in or granted (N) status is authorized employment incident to (N) status without restrictions as to location or type of employment, and such authorization need not be requested.

Dated: June 10, 1988.

Richard E. Norton,
Associate Commissioner, Examinations,
Immigration and Naturalization Service.
[FR Doc. 88-15460 Filed 7-11-88; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88-104]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Washington from Class A to Class Free.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5965.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A,

Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become increasingly less stringent as a state approaches or achieves Class Free status.

In an interim rule published in the Federal Register on March 31, 1988 (53 FR 10358-10360, Docket Number 88-035), and effective March 25, 1988, we added Washington to the list of Class Free states in § 78.41(a) and removed Washington from the list of Class A states in § 78.41(b). Comments on the interim rule were required to be postmarked or received on or before May 31, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Washington from Class A to Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Washington. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by

this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Washington, as well as buyers and importers of Washington cattle. Approximately 68,500 cattle are tested for brucellosis in Washington each year, at an average cost to the seller of \$7 per test. Therefore, Glass Free status could result in a potential savings of \$465,500 for Washington's livestock industry. Since Washington has 23,000 herds, the annual savings to each herd owner will be approximately \$20 per herd. We have therefore determined that changing Washington's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small cattle operations affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 78 and that was published at 53 FR 10358-10360 on March 31, 1988.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-128, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 1st day of July 1988.

James W. Glosier,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-15466 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Criminal Referral Form

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final amendment.

SUMMARY: Section 748.1(c) requires federally-insured credit unions to report any crimes or suspected crimes utilizing NCUA Form 2362. This is inconsistent with the instructions on the Criminal Referral Form itself which requires reporting only if certain thresholds are met. This revision deletes the word "any", instructs credit unions to follow reporting instructions on the Criminal Referral Form itself, and makes minor grammatical corrections. Approval of these revisions has been done without notice and public comment in accordance with 5 U.S.C. 553(b)(3)(B). Given the minor nature of the revisions, the Board finds public comment and notice to be unnecessary.

EFFECTIVE DATE: July 12, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20450.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Staff Attorney NCUA, Office of General Counsel, at the above address, or telephone: (302) 357-1830.

SUPPLEMENTARY INFORMATION:

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This revision imposes no change in the collection requirements as they currently exist. Accordingly, the rule need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

This rule applies to all Federally-insured credit unions. However, it makes no substantive changes and imposes no additional burden on Federally-insured credit unions than those under the present rule.

List of Subjects in 12 CFR Part 748

Security programs, Filing of reports, Bank Secrecy Act compliance programs and procedure.

By the National Credit Union Administration Board on June 28, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations (12 CFR Part 748) as follows:

PART 748—[AMENDED]

1. The authority citation for Part 748 continues to read as follows:

Authority: 12 U.S.C. 1786 (a); 12 U.S.C. 1786 (q); 31 U.S.C. 5311.

2. Section 748.1(c) is revised to read as follows:

§ 748.1 Filing reports.

(c) *Criminal Referral Form.* Each federally-insured credit union will notify the NCUA Regional Director, the U.S. Attorney, and the Federal Bureau of Investigation within 7 business days of crimes or suspected crimes that occur at its office(s), utilizing NCUA form 2362, Criminal Referral Form. The federally-insured credit union should follow the instructions and reporting requirements set forth on the Criminal Referral Form. Copies of this form have been distributed to all federally-insured credit unions. Additional copies may be obtained by contacting the appropriate NCUA Regional Office.

[FR Doc. 88-15540 Filed 7-11-88; 8:45 am]

BILLING CODE 7525-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASO-9]

Amendment To Control Zone and Transition Area, Tallahassee, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Control Zone and Transition Area, Tallahassee, FL, is to reflect the name change from Tallahassee Municipal to Tallahassee Regional Airport, to correct the latitude/longitude coordinates for the geographic position of the Tallahassee Airport and the Quincy Municipal Airport, and to eliminate an arrival area extension to the control zone. The arrival area extension was to afford airspace protection for IFR aircraft executing a localizer (backcourse) approach to Runway 18. The standard instrument approach procedure has been cancelled.

EFFECTIVE DATE: 0901 UTC, September 22, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20836, Atlanta, Georgia 30320; telephone: (404) 763-7846.

The Rule

This amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the official name of the airport from Tallahassee Municipal to Tallahassee Regional Airport; to correct the latitude/longitude coordinates for the geographic position of the Tallahassee and Quincy Municipal Airports, and to eliminate a control zone arrival area extension for Tallahassee Regional Airport Runway 18.

Because these changes are technical in nature, reduce the burden on the public and are so minor, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.8D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71.

Aviation safety, Transition areas, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1343(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.09.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Tallahassee, FL [Revised]

By deleting the existing description and substituting the following: "Within a 5-mile radius of Tallahassee Regional Airport. (Lat. 30°23'45"N., Long. 84°21'02"W.); within 1.5 miles each side of the Tallahassee VORTAC 175° radial, extending from the five-mile radius area to 1.5 miles south of the VORTAC."

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Tallahassee, FL [Revised]

By deleting the existing description and substituting the following: "That airspace extending upward from 700' above the surface within a 10-mile radius of Tallahassee Regional Airport (Lat. 30°23'45"N., Long. 84°21'02"W.); within three miles each side of the ILS localizer south course, extending from the 10-mile radius area to nine miles south of the OM; within a 6.5-mile radius of Tallahassee Commercial Airport (Lat. 30°33'02"N., Long. 84°22'31"W.); within a 6.5-mile radius of Quincy Municipal Airport (Lat. 30°35'52"N., Long. 84°33'26"W.)."

Issued in East Point, Georgia, on June 24, 1988.

William D. Wood,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 88-15526 Filed 7-11-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25641; Amdt. No. 1377]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National

Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are

identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued In Washington, DC on June 24, 1988.

Robert L. Goodrich,
Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective August 25, 1988

Dothan, AL—Dothan, VOR RWY 13, Amdt. 3

Dothan, AL—Dothan, VOR RWY 18, Amdt. 3

Dothan, AL—Dothan, VOR-A or TACAN, Amdt. 11

Dothan, AL—Dothan, LOC BC RWY 13, Amdt. 6

Dothan, AL—Dothan, ILS RWY 31, Amdt. 7

Eufaula, AL—Weedon Field, VOR/DME RWY 36, Amdt. 2

Sand Point, AK—Sand Point, NDB RWY 15, Orig.

Sand Point, AK—Sand Point, NDB/DME-A, Amdt. 3

Sand Point, AK—Sand Point, NDB-B, Amdt. 1, CANCELLED

Sand Point, AK—Sand Point, NDB/DME RWY 33, Amdt. 2

Ontario, CA—Ontario Intl, VOR or TACAN RWY 26R, Amdt. 10

Ontario, CA—Ontario Intl, NDB RWY 20L, Amdt. 2

Ontario, CA—Ontario Intl, ILS RWY 8L, Amdt. 5

Ontario, CA—Ontario Intl, ILS RWY 26L, Amdt. 6

Ontario, CA—Ontario Intl, ILS RWY 26R, Amdt. 1

Eagle, CO—Eagle County, LDA-B, Orig.

Louisville, KY—Standiford Field, ILS RWY 28, Amdt. 10

Mayfield, KY—Mayfield Graves County, VOR/DME-A, Amdt. 4

Mayfield, KY—Mayfield Graves County, RNAV RWY 18, Orig.

Brookhaven, MS—Brookhaven-Lincoln County, NDB RWY 22, Amdt. 3

Okolona, MS—Okolona Muni-Richard Stovall Field, VOR/DME RWY 18, Amdt. 4

Tupelo, MS—C. D. Lemons Muni, ILS RWY 36, Amdt. 6

Roxboro, NC—Person County, LOC RWY 6, Orig.

Astoria, OR—Port of Astoria, ILS RWY 20, Amdt. 2

Astoria, OR—Port of Astoria, COPTER VOR/DME 006, Amdt. 1

Astoria, OR—Port of Astoria, COPTER LOC/DME 257, Amdt. 1

Buffalo, WY—Johnson County, VOR/DME RWY 30, Amdt. 4

... Effective July 28, 1988

Window Rock, AZ—Window Rock, RNAV RWY 2, Orig.

Chicago/Waukegan, IL—Waukegan Regional, NDB RWY 23, Orig.

Waukegan, IL—Waukegan Regional, NDB RWY 23, Amdt. 7, CANCELLED

Chicago/Waukegan, IL—Waukegan Regional, ILS RWY 23, Orig.

Waukegan, IL—Waukegan Regional, ILS RWY 23, Orig., CANCELLED

Columbus, IN—Columbus Muni, NDB RWY 23, Amdt. 9

Columbus, IN—Columbus Muni, ILS RWY 23, Amdt. 6

Winamac, IN—Arens Field, VOR/DME-A, Amdt. 4

Pottstown, PA—Pottstown Limerick, LOC RWY 26, Orig.

Culpeper, VA—Culpeper County, NDB RWY 23, Orig.

Culpeper, VA—Culpeper County, NDB-A, Orig.

The FAA published an Amendment in Docket No. 25600, Amdt. No. 1373 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 80 Page 16390; dated Monday, May 9, 1988) under Section 97, effective June 24, 1988, which is hereby amended as follows:

Charlotte, NC—Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 7

Charlotte, NC—Charlotte/Douglas Intl, NDB RWY 5, Amdt. 31

Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 5, Amdt. 33

Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36L, Amdt. 11

Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 3

Gastonia, NC—Gastonia Muni, NDB RWY 3, Amdt. 6

Southern Pines, NC—Moore County, VOR-A, Amdt. 2

Effective Dates changed to 20 OCT 88.

[FR Doc. 88-15525 Filed 7-11-88; 8:45 am]

BILLING CODE 4910-12-3

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

Tracking and Data Relay Satellite System (TDRSS)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1215, "Tracking and Data Relay Satellite System (TDRSS)," by revising Appendix A to reflect the estimated service rates in 1989 dollars for TDRSS standard services, based on NASA escalation estimates. 14 CFR Part 1215 sets forth the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users.

EFFECTIVE DATE: July 12, 1988.

ADDRESS: Office of Space Operations, Code T, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Eugene Ferrick, 202-453-2030.

SUPPLEMENTARY INFORMATION: The existing regulation was published in the Federal Register on March 9, 1983 (48 FR 9845). Each year since that time, 14 CFR Part 1215 has been amended by revising Appendix A to reflect the rate changes for the appropriate calendar years (CY). Since this revision of Appendix A to 14 CFR Part 1215 reflects the rate changes for CY 1989 and involves NASA management procedures and decisions, no public comment is required.

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities, and it is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1215

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

For reasons set out in the Preamble, 14 CFR Part 1215 is amended to read as follows:

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

1. The authority citation for 14 CFR Part 1215 continues to read as follows:

Authority: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Appendix A is revised to read as follows:

Appendix A—Estimated Service Rates in 1989 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY-89 based on current projections in 1989 dollars are as follows:

Single Access Service—Forward command, return telemetry, or tracking, or any combination of these, the base rate is \$154.00 per minute for non-U.S. Government users.

Multiple Access Forward Service—Base rate is \$33.00 per minute for non-U.S. Government users.

Multiple Access Return Service—Base rate is \$11.00 per minute for non-U.S. Government users.

Robert O. Aller,
Associate Administrator for Space Operations.

June 24, 1988.

[FR Doc. 88-15561 Filed 7-11-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4b

(Docket No. 80348-9094)

Privacy Act of 1974

AGENCY: U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending 15 CFR Part 4b titled, Privacy Act, which implements the Privacy Act of 1974 (5 U.S.C. 552a) (1982 & Supp. II 1984) within Commerce. The amendment will centralize the appeals process into the Office of the General Counsel in order to provide maximum efficiency, uniformity in decisions, and continuity to Privacy Act appeals.

EFFECTIVE DATE: These amendments are effective August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Geraldine P. LeBoo, (202) 377-3271.

SUPPLEMENTARY INFORMATION: The Commerce Department's policies and procedures for handling requests for information under the Privacy Act appear in 15 CFR Part 4b. The Department is amending the regulation which was promulgated at 40 FR 45619,

Oct. 2, 1975; 40 FR 50662, Oct. 30, 1975; 40 FR 51168, Nov. 3, 1975. The Department's proposed rule was published for comment on March 30, 1988 (53 FR 10256). No comments were received. The Department is therefore amending the regulation as proposed, except for some minor editorial modifications.

Under the original regulation, Appendix A designated the "Privacy Officer" who was authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment. Appendix B designated the "Privacy Appeals Officer" authorized to receive and act upon appeals from an initial denial of a request. The amended regulations end the handling of appeals by the "Privacy Appeals Officer" in the various Departmental units and centralize the appeals process into the Office of the General Counsel.

Other changes throughout the regulations are editorial and/or reflect necessary organizational designations.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in:

(1) An annual effect on the economy of \$100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 4b

Administrative practice and procedure, Privacy.

For the reasons set forth in the preamble, 15 CFR Part 4b is amended as follows:

PART 4b—PRIVACY ACT

1. The authority citation for 15 CFR 4b continues to read as follows:

Authority: 5 U.S.C. 552a; 5 U.S.C. 553; 5 U.S.C. 552; 5 U.S.C. 301; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

2. Section 4b.1 is amended by revising paragraph (d)(1) and (e)(3) as follows:

§ 4b.1 Purpose and scope.

(d) * * *

(1) Requests solely under the Freedom of Information Act (5 U.S.C. 552) and Part 4 of this title;

(e) * * *

(3) Requester is the individual to whom the record pertains and the requester expressly states that the request is under both the Act and the Freedom of Information Act—The request will be processed concurrently under both statutes and the Department's respective implementing regulations. For such dual requests the Department will follow the fee provisions under the Act and this part, and follow the time limits under the Freedom of Information Act and Part 4 of this title;

§ 4b.2 [Amended]

3. Section 4b.2 is amended by removing paragraph (b)(6) which defined the term "Privacy Appeals Officer." Paragraphs (b)(7) through (10) should be renumbered as paragraphs (b)(6) through (9).

4. In the list below, for each section and paragraph indicated remove the language set forth from wherever it appears, and add in its place the language indicated.

§§ 4b.3 and 4b.4 [Amended]

Section/ Paragraph	Remove	Add
§ 4b.3(c).....	Appendix D.....	Appendix C.....
§ 4b.3(h).....	Appendix C.....	Appendix B.....
§ 4b.4(b).....	Appendix D.....	Appendix C.....

5. Section 4b.3(f)(2) is amended by removing the words "Privacy Appeals

Officer, identified in Appendix B to this part," and adding the words "General Counsel" in their place.

§§ 4b.5 and 4b.8 [Amended]

6. The following sections are amended by removing the words "responsible Privacy Appeals Officer, identified in Appendix B to this part," wherever they appear, and adding the words "General Counsel" in their place: § 4b.5(a)(2) and § 4b.8(a)(1)(ii). Section 4b.5 (g)(3)(ii) is amended by removing the words "responsible Privacy Appeals Officer, identified in Appendix B to this part" and adding the words "General Counsel" in their place.

7. Section 4b.8(a)(2)(ii)(D) is amended by removing the words "responsible Privacy Appeals Officer, identified in Appendix C to this part" and adding the words "General Counsel" in their place.

§ 4b.9 [Amended]

8. Section 4b.9(b) is amended by removing the words "Privacy Appeals Officer identified in the initial denial (that official is authorized to make final determinations)" and adding the words "General Counsel, Department of Commerce, Room 5882, Washington, DC 20230" in their place. The words "responsible Privacy Appeals Officer" should also be removed, and the words "General Counsel" added in their place. Finally, wherever the words "Privacy Appeals Officer" appear in § 4b.9(b) or the rest of § 4b.9, they should be removed and the words "General Counsel" should be added in their place. The paragraphs of § 4b.9 affected are as follows: (b), (c), (e), (g)(1), (h), and (i).

Appendix A—[Amended]

9. Appendix A is amended by adding the following to the list of officials authorized to receive inquiries, requests for access and requests for correction or amendment: Bureau of Export Administration, Privacy Act Officer, Office of Security and Management Support, Bureau of Export Administration, Room 3889, Herbert C. Hoover Building, Washington, DC 20230.

Appendix B—[Removed]

Appendices C and D [Redesignated as Appendices B and C]

10. Appendix B is removed. Appendix C and Appendix D are redesignated as Appendix B and Appendix C.

Dated: May 20, 1988.

Key Bulow,

Assistant Secretary for Administration.

[FR Doc. 88-15538 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-CW-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3231]

Medical Staff of Memorial Medical Center; Prohibited Trade Practices, and Affirmative Corrective Actions; Correction

AGENCY: Federal Trade Commission.

ACTION: Consent Order; Correction.

SUMMARY: This document corrects a Commission document previously published in the Federal Register on Wednesday, June 29, 1988, 53 FR 24439. The previous document contained an incorrect address for the contact person. The correct information is reflected in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

DATE: The correction is effective July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Harold Kirtz, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-14586, appearing in the Federal Register issue for Wednesday, June 29, 1988, 53 FR 24439, an incorrect address was submitted for the contact person. The correct name and address is as it appears in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

List of Subjects in 16 CFR Part 13

Medical staff, Nurse-midwife, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

C. Landis Plummer,

Acting Secretary.

[FR Doc. 88-15554 Filed 7-11-88; 6:45 am]

BILLING CODE 4750-01-M

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Water Heaters

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for water heaters.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under Sections 305.10, 305.11 and 305.14 of the rule, must be used on labels on water heaters manufactured on and after October 11, 1988, and in advertising of water heaters in catalogs printed after October 11, 1988. Properly labeled water heaters manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATE: October 11, 1988.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, or Ruth Sacks, Research Analyst, 202-326-3033, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)¹ requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Water heaters are included as one of the

categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule² covering seven of the thirteen appliance categories, including water heaters.

The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all water heaters presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a water heater is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.³ The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to § 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the

data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for water heaters, which were calculated using the 1988 representative average energy costs published by DOE on December 23, 1987,⁴ have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends Appendix D of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of water heaters beginning October 11, 1988.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163)(1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619)(1978), and as amended by the National Appliance Energy Conservation Act (Pub. L. 100-12)(1987), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In Part 305, Appendix D1, paragraph 1 and the introductory text in paragraph 2 are revised to read as follows:

¹ 44 FR 66406, 16 CFR 305 (Nov. 19, 1979).

² Reports for water heaters are due by May 1.

⁴ 52 FR 40563.

Appendix D1—Water Heater—Gas

1. Range Information:

RANGES OF ESTIMATED YEARLY ENERGY COST

First hour rating	Natural gas		Propane	
	Low	High	Low	High
Less than 21	(¹)	(¹)	(¹)	(¹)
21 to 24	(¹)	(¹)	(¹)	(¹)
25 to 29	(¹)	(¹)	(¹)	(¹)
30 to 34	(¹)	(¹)	(¹)	(¹)
35 to 40	\$163.00	\$192.00	\$223.00	\$263.00
41 to 47	163.00	186.00	223.00	263.00
48 to 55	155.00	222.00	213.00	305.00
56 to 64	153.00	244.00	213.00	335.00
65 to 74	150.00	227.00	206.00	312.00
75 to 86	137.00	227.00	187.00	312.00
87 to 99	171.00	232.00	248.00	319.00
100 to 114	181.00	218.00	258.00	305.00
115 to 131	227.00	232.00	312.00	319.00
Over 131	227.00	238.00	312.00	327.00

¹ No data submitted.

2. Yearly Cost Information—Natural Gas and Propane: Estimates on the scale are based on a national average natural gas rate of \$6.24 per therm and a national average propane rate of 70.0¢ per gallon.

3. In Part 305, Appendix D2, Paragraph 1 and the introductory text in paragraph 2 are revised to read as follows:

Appendix D2—Water Heater—Electric

1. Range Information:

RANGES OF ESTIMATED YEARLY ENERGY COST

First hour rating	Low		High	
	Low	High	Low	High
Less than 21	(¹)	(¹)	(¹)	(¹)
21 to 24	\$432.00	\$520.00		
25 to 29	437.00	495.00		
30 to 34	437.00	520.00		
35 to 40	423.00	540.00		
41 to 47	419.00	547.00		
48 to 55	428.00	562.00		
56 to 64	428.00	547.00		
65 to 74	432.00	570.00		
75 to 86	432.00	604.00		
87 to 99	437.00	595.00		
100 to 114	437.00	662.00		
115 to 131	472.00	673.00		
Over 131	(¹)	(¹)		

¹ No data submitted.

2. Yearly Cost Information—Electricity: Estimates on the scale are based on a national average electric rate of 8.04¢ per kilowatt hour.

4. In Part 305, Appendix D3, paragraph 1 and the introductory text in paragraph 2 are revised to read as follows:

Appendix D3—Water Heater—Oil

1. Range Information:

First hour rating	Low		High	
	Low	High	Low	High
Less than 65	(¹)	(¹)	(¹)	(¹)
65 to 74	(¹)	(¹)	(¹)	(¹)
75 to 86	(¹)	(¹)	(¹)	(¹)
87 to 99	(¹)	(¹)	(¹)	(¹)
100 to 114	\$181.00	\$208.00		
115 to 131	171.00	210.00		
Over 131	(¹)	(¹)		

¹ No data submitted.

2. Yearly Cost Information—Oil:

Estimates on the scale are based on a national average oil rate of \$0.83 per gallon.

C. Laodis Plummer,
Acting Secretary.

(FR Doc. 88-15555 Filed 7-11-88; 8:45 am)

BILLING CODE 4750-01-2

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

(T.D. 88-40)

Customs Regulations Amendments
Relating to Importation of Motor
Vehicles and Motor Vehicle Engines
Under the Clean Air Act

AGENCY: U.S. Customs Service,
Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document sets forth amendments to the Customs Regulations regarding the compliance of imported motor vehicles and engines with applicable emission requirements of the Environmental Protection Agency (EPA) under the Clean Air Act. These changes conform the Customs Regulations to changes made in the applicable EPA regulations in a final rule of that agency on September 25, 1987, 52 FR 36136, effective July 1, 1988. Under these changes, subject to certain exceptions, individuals and businesses will no longer be permitted to enter vehicles not in conformity with applicable emission requirements subject to bringing the vehicles into compliance within a 90-day period. Only independent commercial importers (ICI's) who hold currently valid certificates of conformity from EPA will be permitted to enter nonconforming vehicles, and they may import vehicles for individuals or businesses not otherwise permitted to import them. An ICI, subject to the more specific definition in EPA regulations, is independent of any manufacturer and

does not represent a manufacturer for the distribution of products in the United States. An ICI certificate holder will be responsible for bringing vehicles into compliance with applicable emission requirements, warranting the work, furnishing maintenance instructions, issuing recall notices, testing where required and record keeping. Subject to a few narrow exceptions, importations of ICI certificate holders will not be subject to a bond charge for EPA conformity, but a 15-working day storage period will be required after completion of the work for confirmatory EPA reviews of vehicles and records.

The changes also will eliminate the exception to emission requirements for vehicles which are at least five model years old and imported by a first-time individual importer for personal use. Further, declarations will no longer be required for importations of most vehicles manufactured abroad to meet applicable United States emission requirements and labeled to show their compliance.

These limitations on the importation of nonconforming vehicles are due to various problems that have developed such as difficulties in reviewing and keeping records on a diverse group of importers, problems with enforcing emission standards on improperly modified vehicles and engines, and abuse of the five-model-year-old exception. Further details concerning the changes, the reasons for them, and the expected efficiencies and improved program effectiveness which will result are set forth in the cited EPA notice.

EFFECTIVE DATE: These amendments are effective with respect to merchandise entered, or withdrawn from warehouse for consumption, on or after July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Louis Alfano, Other Agency Enforcement Branch, Office of Trade Operations, U.S. Customs Service, (202) 566-8651.

SUPPLEMENTARY INFORMATION:**Background**

Regulations comprising the joint program under which the Environmental Protection Agency (EPA) and the Customs Service provide for the conditions and circumstances under which vehicles and engines of foreign origin and motor vehicles not in compliance with Federal emission requirements may be imported were published by EPA and the Customs Service on February 1, 1972 (37 FR 2432). Subsequently, a need for changes in the joint program was identified which

would improve emissions compliance of nonconforming vehicles and engines as well as improve the overall efficiency of the program. Notices of proposed rulemaking were published by EPA and the Customs Service on July 21, 1980 (45 FR 48612 and 48617). A further EPA notice was published in the Federal Register on November 4, 1983 (48 FR 5092), and a supplemental notice of proposed rulemaking was published on September 5, 1985 (50 FR 36838). EPA's final notice of rulemaking on this subject, with which the changes made by this document will conform, was published on September 25, 1987 (52 FR 36136), and will be effective July 1, 1988.

That document contains an extensive discussion of the EPA rulemaking process, all of the considerations, options and comments taken into account, and the various problems with present procedures which the changes are intended to resolve. The comments received in response to each of the EPA notices have been summarized and analyzed in a document entitled "Summary and Analysis of Comments Pertaining to the Proposed Rulemaking Entitled 'Importation of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act,'" which is available for review in EPA's Public Docket EN-79-9, U.S. EPA, Central Docket Section, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street, SW., Washington, DC 20460. That summary and analysis should be consulted for a complete understanding of EPA's nonconforming import program.

Section 203 of the Clean Air Act, as amended (42 U.S.C. 7521), prohibits the importation of any new motor vehicle or motor vehicle engine, as defined in section 218(1) of the Act, not covered by an EPA certificate of conformity unless it is exempted by EPA or is imported under the EPA and Customs joint regulations. The regulations currently in effect generally permit the conditional importation of a nonconforming vehicle or engine by any person or business, provided that the Customs entry bond is charged with the condition that the vehicle or engine will be brought into conformity with EPA emission requirements within 90 days. An exception to EPA's modification and/or testing requirements permits a first-time individual importer to import a nonconforming vehicle or engine at least five model years old for personal use without demonstrating emissions compliance.

Under the changes made by EPA, and with which the instant changes in the Customs Regulations will conform, the "five model year old personal use"

exception is eliminated. With respect to other nonconforming vehicles, the new regulations substantially change both the manner in which vehicles and engines can be imported and the manner in which emissions compliance can be demonstrated. Subject to certain specified exceptions, only independent commercial importers (ICI's) who hold valid certificates of conformity issued by EPA will be permitted to import nonconforming vehicles or engines. An ICI, subject to the more specific definition in EPA regulations, is an importer who does not have a contractual agreement with a manufacturer to act as its authorized representative for the distribution of motor vehicles or engines in the United States market. Individuals who previously could import a nonconforming vehicle or engine directly will now be required to arrange for importations through ICI certificate holders.

EPA's new provisions also substantially change the manner in which emissions compliance may be demonstrated. Except during an initial five-year phase-in period, all vehicles or engines which are less than six years old, as determined by the date of production, must be covered by an EPA certificate of conformity. Moreover, an ICI may import a vehicle or engine six or more years old and not otherwise exempt from emission standards because of age, subject to a modification/test program which is more stringent than that now in effect. During the five-year phase-in period, some vehicles or engines less than six years old may also be imported subject to the more stringent modification/test program, rather than the new certification-based program. The new regulatory scheme also establishes an exemption from emissions compliance for vehicles or engines more than 20 years old.

For vehicles or engines imported by ICI certificate holders, the bond charge requirement currently found in § 12.73(c), Customs Regulations (19 CFR 12.73(c)), will be largely eliminated. However, conditional admission under bond will still be required in some instances. Importations under exemptions requiring a bond charge include importations for repairs or alterations, testing, or for display, and importations of prototype vehicles or engines prior to certification. In many of these cases, individuals, and not just ICI certificate holders, may continue to import eligible vehicles or engines directly under bond.

These amendments to the Customs Regulations also end the requirement for written declarations for vehicles and engines manufactured to comply with applicable emission requirements and imported by or on behalf of manufacturers (other than ICI's) holding an EPA certificate of conformity. Compliance in these circumstances is usually evidenced by the manufacturer's label. To the extent the declaration requirement is eliminated, the paperwork burden on both importers and the Government is reduced.

Special Analyses

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared. However, an analysis was submitted by EPA to the Office of Management and Budget (OMB) for review with respect to the EPA regulations with which these changes are merely in conformity with no further substantive changes. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Public Docket EN-79-9 located at EPA's Central Docket Section (LE-131A), 401 M Street SW., Washington, DC 20460.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the regulation, as amended, will not have significant impact on a substantial number of small entities beyond the impact of the regulations of EPA which have already been promulgated and with which this regulation merely conforms without further substantive change. Accordingly, this regulation is not subject to the regulatory analysis and other requirements of 5 U.S.C. 603 and 604. However, EPA prepared a regulatory flexibility analysis for their correlative regulations. That document is also available in the public docket for EPA's rulemaking as identified above.

The collections of information contained in this rule conform to those in the EPA regulations, which were reviewed and approved by the Office of Management and Budget under OMB control number 2060-0095.

Drafting Information

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Inapplicability of Public Notice and Delayed Effective Date Requirements

The changes in the EPA regulations, to which the changes in this document merely conform without further substantive changes, were promulgated previously by EPA with full opportunity for public comment and consideration of the comments submitted. The availability for review of those comments is explained in EPA's final notice published in 52 FR 36136, and as more fully explained above. Therefore, the further solicitation of comments by the Customs Service would serve no useful purpose.

Accordingly, it has been determined that good cause exists for dispensing with the procedures for notice and the opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(B). For the same reasons, good cause exists for dispensing with an effective date delayed beyond the specified effective date of July 1, 1988, pursuant to 5 U.S.C. 553(d)(3).

List of Subjects in 19 CFR Part 12

Air pollution control, Customs duties and inspection, Imports, Motor vehicle pollution, Motor vehicles.

Amendments to the Regulations**PART 12—SPECIAL CLASSES OF MERCHANDISE**

1. The general authority citation for Part 12 and the specific authority citation for § 12.73 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 96, 1202 (Gen. Headnote, 11, Tariff Schedules of the United States), 1624.

Section 12.73 also issued under 19 U.S.C. 1484; 42 U.S.C. 7522, 7601.

2. Section 12.73 is revised to read as follows:

§ 12.73 Motor vehicle and engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 85 and 86. Those regulations should be consulted for more detailed information concerning EPA emission requirements. The requirements apply to imported motor vehicles, but do not apply to separately imported non-chassis mounted engines to be used in light-duty trucks or other light-duty vehicles. Other separately imported engines for heavy-duty motor vehicles are covered, and all references in this

section to motor vehicles should be deemed to include motor vehicles as well these heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Importation of complying vehicles.*—(1) *Labeled vehicles.* Vehicles which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer's label showing such conformity and other EPA-required information shall be deemed in compliance with applicable emission requirements for the purpose of Customs admissibility and entry liquidation determinations. This paragraph does not apply to importations of ICI's covered by paragraph (d) of this section.

(2) *Pending certification.* Vehicles otherwise covered by paragraph (b)(1) of this section which were manufactured for compliance with applicable emission requirements, but for which an application for a certificate of conformity is pending with the EPA may be conditionally released from Customs custody pending production of the certificate of conformity within 120 days of release.

(c) *Importation of vehicles previously in compliance.*—(1) *Vehicles of returning residents.* Vehicles of residents returning from Canada, Mexico or other countries as EPA may designate are not covered by this section.

(2) *Vehicles of commuting nonresidents and tourists.* A district director through the issuance of an appropriate means of identification to be affixed to a vehicle may waive all of the requirements of this section for a nonresident regularly crossing the Canadian or Mexican border, or waive the requirements for Mexico or Canadian-registered vehicles of tourists or other travelers.

(3) *Participants in EPA-approved catalytic converter or oxygen sensor control programs.* Further evidence of emissions compliance will not be required for catalytic converter or oxygen sensor-equipped vehicles imported for participating in EPA-approved catalytic converter or oxygen sensor control programs and subject to the requirements of those programs.

(4) *Previously labeled, modified or imported vehicles.* Any other vehicle of United States or foreign origin manufactured with a catalytic converter or oxygen sensor, or any previously imported vehicle subsequently modified with a catalytic converter or oxygen sensor, will not be deemed in compliance with applicable emission requirements if used outside of the United States, Canada, Mexico, or other

countries as EPA may designate, until the catalytic converter and/or oxygen sensor is replaced. Conditional release from Customs custody for the purpose of the modification is subject to a 120-day period for completion. Subject to special documentation at the time of export from the United States and approval and other requirements of EPA, replacement of a catalytic converter or oxygen sensor may be avoided if the equipment is disconnected before export from the United States and reconnected after subsequent importation.

(d) *Importation of vehicles by ICI's.* Except for motor vehicles imported in the applicable circumstances covered by paragraphs (c), (e), (f), (g) or (h) of this section, an individual or business other than an independent commercial importer (ICI) holding a currently valid EPA certificate of conformity may not enter a motor vehicle to which EPA emission requirements apply. An ICI, subject to the more specific definition in EPA regulations, is an importer which does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market. However, a motor vehicle may not be conditionally admitted unless it falls within one of the categories provided for in 40 CFR 85.1505 or 85.1508. Before the vehicle is deemed to be in compliance with applicable emission requirements and, therefore, finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-working day period. This period follows notice to EPA of completion of the compliance work to give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-working day period is part of the 120-day period in which an ICI must bring the vehicle into emissions compliance. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for Customs transaction purposes unless otherwise licensed or authorized to do so.

(e) *Exemptions and exclusions from emission requirements based on age of vehicle.* The following motor vehicles, except as shown, may be imported by any person and do not have to be shown to be in compliance with emission requirements or modified before entitled to admissibility:

(1) Gasoline-fueled light-duty trucks and light-duty motor vehicles manufactured before January 1, 1968;

(2) Diesel-fueled light-duty motor vehicles manufactured before January 1, 1975;

(3) Diesel-fueled light-duty trucks manufactured before January 1, 1976;

(4) Motorcycles manufactured before January 1, 1976;

(5) Gasoline-fueled and diesel-fueled heavy-duty engines manufactured before January 1, 1970; and

(6) Motor vehicles not otherwise exempt from EPA emission requirements and more than 20 years old. Age is determined by subtracting the year of production (as opposed to model year) from the year of importation. The exemption under this subparagraph is available only if the vehicle is imported by an ICI.

(f) *Exemption for exports.* A motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States, and both the vehicle and its container bear a label or tag indicating that it is intended solely for export, is exempt from applicable United States emission requirements. 40 CFR 85.1709.

(g) *Exemptions for diplomats, foreign military personnel and nonresidents.* Subject to the condition that they are not resold in the United States, the following motor vehicles are exempt from applicable emission requirements:

(1) A motor vehicle imported solely for the personal use of a nonresident importer or consignee and the use will be for a period not to exceed one year; and

(2) A motor vehicle of a member of the armed forces of a foreign country on assignment in the United States, or of a member of the personnel of a foreign government on assignment in the United States or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law. For special documentation requirements see paragraph (i)(4) of this section.

(h) *Exemptions and exclusions based on prior EPA authorization.* The following motor vehicles are exempt or excluded from applicable emission requirements if prior approval has been obtained in writing from EPA:

(1) *Importations for repairs.* Any motor vehicle which is imported solely for repairs or alterations and which is not sold, leased, registered or licensed for use or operated on public roads or highways in the United States. 40 CFR 85.1511(b)(1);

(2) *Importations for testing.* Any motor vehicle imported solely for testing. Test vehicles may be operated on and registered for use on public

roads or highways provided that the operation is an integral part of the test. 40 CFR 85.1511(b)(2). This exemption is limited to a period not exceeding one year from the date of importation unless a request is made under 40 CFR 85.1705(f) for a one-year extension;

(3) *Prototype vehicles.* Any motor vehicle imported for use as a prototype in applying for EPA certification. 40 CFR 85.1511(b)(3) and 85.1706. In the case of an ICI, unless the vehicle is brought into conformity within 180 days from the date of entry it shall be exported or otherwise disposed of subject to paragraph (1) of this section;

(4) *Display vehicles.* Any motor vehicle which is imported solely for display and which will not be sold, leased, registered or licensed for use on or operated on the public roads or highways in the United States. 40 CFR 85.1511(b)(4);

(5) *Racing cars.* Any motor vehicle which qualifies as a racing vehicle meeting one or more of the criteria found at 40 CFR 85.1703(a), and which will not be registered or licensed for use on or operated on public roads or highways in the United States. See also 40 CFR 85.1511(c)(1);

(6) *National security importations.* Any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(2), 85.1702(a)(2) and 85.1708; and

(7) *Hardship exemption.* Any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(3).

(i) *Documentation requirements.*—(1) *Exception for manufacturers.* The special documentation requirements of this paragraph do not apply to the entry of any motor vehicles shown to be in compliance with applicable emission requirements under paragraph (b)(1) of this section relating to labeling.

(2) *Declarations of other importers.* Release from Customs custody shall be refused with respect to all other entries unless there is filed with the entry in duplicate a declaration in which the importer or consignee declares or affirms its status as an original equipment manufacturer, an ICI holding an applicable certificate of conformity, or other status, and further declares or affirms the status or condition of the imported vehicles and the circumstances concerning importation including a citation to the specific paragraph or subparagraph in this section upon which application for conditional or final release from Customs custody is applied for.

(3) *Other documentation and information.* An importer's declaration shall include or be submitted with the

following further information and documentation:

(A) The importer's name and address and telephone number;

(B) Identification of the vehicle or engine number, the vehicle owner's taxpayer identification number, and his or her current address and telephone number in the United States if different than as provided for in paragraph (3)(A) of this paragraph;

(C) Identification, where applicable, of the place where the vehicle will be stored until EPA approval of the importer's application to EPA for final admission as required for vehicles imported under 40 CFR 85.1505, 85.1509, or 85.1512 having reference to certain importations under paragraphs (c)(4) or (d)(1) of this section;

(D) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Clean Air Act and regulations promulgated thereunder;

(E) Identification, where applicable, of the certificate of conformity by means of which the vehicle is being imported;

(F) The date of manufacture of the vehicle;

(G) The date of entry;

(H) Identification of the vessel or carrier on which the merchandise was shipped;

(I) The entry number where applicable;

(J) Where prior EPA authorization is required for an exemption or exclusion, a copy of that authorization; and

(K) Such other further information as may be required by the EPA or the Customs Service.

(4) *Documentation from diplomats and foreign military personnel.* For entries for which an exemption is claimed under paragraph (g)(2) of this section, there must also be attached to the declaration required under paragraph (i)(2) of this section a copy of the motor vehicle importer's official orders, if any, or if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which the importer is accredited.

(j) *Release under bond.* If a declaration filed in accordance with paragraph (i)(2) of this section states that the entry is being filed under circumstances described in either paragraph (c)(4), (h)(1), (h)(2), (h)(3) or (h)(4) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond condition set forth in § 113.62 of this chapter for the production of an EPA statement that the vehicle or engine is in conformity

with Federal emission requirements. Within the period in paragraph (h)(2), (h)(3) or (c)(4) of this section, or in the case of paragraph (h)(1) or (h)(4) of this section, the period specified by EPA in its authorization for an exemption, or such additional period as the district director of Customs may allow for good cause shown, the importer or consignee shall deliver to the district director the prescribed statement. If the statement is not delivered to the district director for the port of entry within the specified period, the importer or consignee shall deliver or cause to be delivered to the district director those vehicles which were released under a bond required by this paragraph. In the event that the vehicle or engine is not redelivered within five days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(k) *Notices of inadmissibility or detention.* If a motor vehicle is determined to be inadmissible before release from Customs custody, or inadmissible after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if a motor vehicle cannot be released from Customs custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle shall be held in detention by the district director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-day extension may be granted by the district director upon application for good cause shown. If at the expiration of a period not over 60 days the documentation has not been filed, a notice of inadmissibility will be issued.

(l) *Disposal of vehicles not entitled to admission.* A motor vehicle denied admission under any provision of this section shall be disposed of in accordance with applicable Customs laws and regulations. However, a motor vehicle or engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(m) *Prohibited importations.* The importation of motor vehicles otherwise than in accordance with this section and

the regulations of EPA in 40 CFR parts 80, 85, 88 and 800 is prohibited.

Michael H. Lane,

Acting Commissioner of Customs.

Approved:

John P. Simpson,

Acting Assistant Secretary, Enforcement.

[FR Doc. 88-15572 Filed 7-11-88; 9:45 am]

BILLING CODE 4820-01-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Miconazole Nitrate Cream; Miconazole Nitrate Lotion; Miconazole Nitrate Spray

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pitman-Moore, Inc. The supplement provides for technical changes in the regulation for miconazole nitrate cream; miconazole nitrate lotion (21 CFR 524.1443).

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Washington Crossing, NJ 08560, is the sponsor of approved NADA 95-184 which provides for use of a lotion containing 1.15 percent of miconazole nitrate (equivalent to 1 percent miconazole base) as an antifungal agent for topical treatment of infections in dogs and cats. The drug is currently administered by manually rubbing it into the infected area. The sponsor has submitted a supplemental NADA requesting approval of another means of administering the same lotion—a 60 milliliter plastic bottle with spray pump assembly and dust cap. The new dispensing unit will spray a light covering of the lotion on the infected site. The supplemental NADA is approved and 21 CFR 524.1443(a) and (c)(2) are revised to reflect the approval.

Approval of this supplement is an administrative action that does not require generation of new safety or effectiveness data or a reevaluation of

the existing safety and effectiveness data in the original application. Therefore, a freedom of information summary is not required for this action.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:
Authority: Sec. 512(i), 42 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 524.1443 is amended by revising the section heading, by revising paragraph (a), and by revising the first sentence in paragraph (c)(2) to read as follows:

§ 524.1443 Miconazole nitrate cream; miconazole nitrate lotion; miconazole nitrate spray.

(a) *Specifications.* (1) The cream contains 23 milligrams of miconazole nitrate (equivalent to 20 milligrams of miconazole base) per gram.

(2) The lotion contains 1.15 percent of miconazole nitrate (equivalent to 1 percent miconazole base).

(3) The spray product consists of a dispensing container, sprayer pump assembly, and lotion which contains 1.15 percent of miconazole nitrate (equivalent to 1-percent miconazole base).

(c)

(2) Apply once daily by rubbing into or spraying a light covering on the infected site and the immediate surrounding vicinity.

Dated: July 5, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-15528 Filed 7-11-88; 9:45 am]

BILLING CODE 4160-01-01

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

(T.D. 8213)

Income Tax; Transitional Rule Relating to Certain Installment Sales by Manufacturers to Dealers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to an exception from the requirement that indebtedness be treated as payment on installment obligations and an exception from the repeal of the installment method of accounting for taxpayers who sell personal property in the ordinary course of business. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register. The Tax Reform Act of 1986 and the Revenue Act of 1987 made changes to the applicable tax law. These regulations affect manufacturers who sell personal property in the ordinary course of their trade or business to dealers and provide them with guidance needed to comply with the changes to the law.

DATES: The regulations contained in this document are effective for, and are applicable to, taxable years ending after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202) 566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules under section 811(c)(2) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085) (the 1986 Act). Section 811(c)(2) relates to section 453C of the Internal Revenue Code of 1986, as enacted by the 1986 Act and amended by section 10202 of the Revenue Act of 1987 (Pub. L. 100-203, 101 Stat. 1330) (the 1987 Act). Therefore, these regulations are added under section 453C.

Explanation of Provisions

Section 811(a) of the Tax Reform Act of 1986 enacted the proportionate

disallowance rule of section 453C. The proportionate disallowance rule limits a taxpayer's use of the installment method of accounting for certain sales of property based on the taxpayer's outstanding indebtedness. In general, the rule applies to dealer sales of real and personal property and to nondealer sales of real property used in a trade or business or held for the production of income if the sales price is greater than \$150,000. Section 811(c)(2) of the 1986 Act provides transitional relief from the proportionate disallowance rule for certain sales by manufacturers. Section 811(c)(2) applies only if a taxpayer satisfies the requirements of that section for the taxpayer's first taxable year beginning after October 22, 1986.

Section 10202 of the 1987 Act repeals section 453C for dealer dispositions effective for dispositions of property after December 31, 1987. In addition, the section amends section 453(b)(2)(A) and section 453A to repeal the installment method of accounting for dealer dispositions effective for dispositions after December 31, 1987. The section, moreover, provides transitional relief from the repeal of the installment method for dealer dispositions giving rise to installment obligations that satisfy the requirements of section 811(c)(2) of the 1986 Act.

In explaining the transitional relief from both the proportionate disallowance rule and the repeal of the installment method, the Conference Committee Report accompanying the 1987 Act clarifies that the provisions of section 811(c)(2) apply to any taxpayer who satisfies the requirements of section 811(c)(2), H.R. Rep. No. 100-495, 100th Cong., 1st Sess. 928 (1987). This Treasury decision provides guidance on the application of section 811(c)(2).

An obligation satisfies the requirements of section 811(c)(2) if the obligation (1) arises from a sale by a manufacturer (or an affiliate thereof) to a dealer, (2) obligates the dealer (and only the dealer) to make payments of principal, but not until the dealer resells (or rents) the property, (3) grants the manufacturer the right to repurchase the property at a fixed (or ascertainable) price, with such right to repurchase exercisable by the manufacturer beginning on any day within the first 9 months after the date of sale to the dealer, and (4) arises from a disposition made during a taxable year for which the taxpayer is eligible for section 811(c)(2) treatment. A taxpayer becomes eligible for section 811(c)(2) treatment only if it satisfies a "50% test" for both its first taxable year beginning after October 22, 1986, and its preceding taxable year (i.e., its first taxable year

ending on or after October 22, 1986). Thereafter, such a taxpayer does not cease to be eligible for section 811(c)(2) treatment until the second consecutive taxable year it fails the 50% test. To satisfy the 50% test, the face amount of the manufacturer's obligations that would otherwise satisfy the requirements of section 811(c)(2) must be at least 50% of its total sales to dealers giving rise to such obligations.

The regulations provide that an installment obligation that initially satisfies the requirements of section 811(c)(2) must continue to satisfy the requirements of that section at all times. For example, if an installment obligation satisfies the requirements of section 811(c)(2) when issued, but the terms of the obligation are subsequently amended to provide that the dealer's customer (rather than the dealer) is obligated to make payments on the obligation, section 811(c)(2) will cease to apply to that obligation. The regulations further provide that failure to satisfy the requirements of section 811(c)(2) at any time subjects the obligation to the general rules applicable to installment sales by dealers (i.e., the proportionate disallowance rule or the repeal of the installment method for dealers) as if the obligation arose from a disposition occurring on the first day of the month of failure.

The regulations clarify the application of the 50% test in several respects. First, the regulations provide that principal payments reduce the face amount of an obligation for purposes of the 50% test. Second, the regulations clarify that a manufacturer can initially become eligible for section 811(c)(2) treatment only if it meets the 50% test for its first taxable year beginning after October 22, 1986, and for the preceding taxable year. Third, the regulations provide that for purposes of the test, the aggregate face amount of the taxpayer's obligations is computed by using the average monthly balance of the otherwise qualifying obligations.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these temporary regulations is William L. Blagg of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.441-1-1.453-3

Income taxes, Accounting, Deferred compensation plans.

Amendments to the Regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter A, Part 1 of the Code of Federal Regulations is amended as set forth below:

Income Tax Regulations**PART 1—[AMENDED]**

Paragraph 1. The authority for Part 1 continues to read as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.453(c)-10T is added following § 1.453-10.

§ 1.453(c)-10T Questions and answers relating to section 811(c)(2) of the Tax Reform Act of 1986 (temporary).

The following questions and answers relate to section 811(c)(2) of the Tax Reform Act of 1986:

Q-1. Are installment obligations that satisfy the requirements of section 811(c)(2) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085) (the 1986 Act) subject to either: (a) section 453C of the Code as enacted by section 811(a) of the 1986 Act (the proportionate disallowance rule); or (b) the repeal of the installment method for dealers under section 10202 of the Revenue Act of 1987 (Pub. L. 100-203, 101 Stat. 1330) (the 1987 Act)?

A-1. Installment obligations that satisfy the requirements of section 811(c)(2) are exempt from the proportionate disallowance rule of section 453C, which applies to certain obligations arising from dispositions of property after February 28, 1986, and before January 1, 1988. Installment obligations that satisfy the requirements of section 811(c)(2) are also exempt from the repeal of the installment method for dealers under section 10202 of the 1987 Act (section 453(b)(2)(A)), effective for obligations arising from dispositions of property after December 31, 1987. Thus, income from such obligations may be taken into account under the installment

method of accounting allowed under the Code as in effect prior to the 1986 Act if the method is otherwise available to the taxpayer.

Q-2. What are the requirements of section 811(c)(2)?

A-2. Section 811(c)(2) applies only to obligations that satisfy the following requirements: One, the installment obligations must arise from the disposition of tangible personal property by a manufacturer or any affiliate thereof (collectively, the manufacturer) to a dealer (i.e., the sale of the property must be intended for resale or leasing by the dealer). Two, the obligation must include eligible terms, as defined below. (Obligations that satisfy these two requirements are hereinafter referred to as "eligible obligations"). Three, the obligation must arise from a disposition made in a taxable year for which the taxpayer is eligible for section 811(c)(2) treatment. In order to initially become eligible for section 811(c)(2) treatment, the aggregate outstanding face amount of the eligible obligations must be at least 50% of the total sales giving rise to eligible obligations (the 50% test) both for the taxpayer's first taxable year beginning after October 22, 1986, and for the preceding taxable year. See A-7 of this section for rules relating to the satisfaction of the 50% test for subsequent taxable years.

Q-3. What do the eligible terms require?

A-3. Eligible terms require that the dealer (and only the dealer) must be obligated to make payments on the principal of the obligation. Moreover, the dealer must not be obligated to make these payments until the dealer resells (or rents) the property. In addition, the manufacturer must have the right to repurchase the property at a fixed or ascertainable price, with such right to repurchase exercisable by the manufacturer beginning on any day within the first 9 months after the date of sale.

Q-4. If an installment obligation includes the eligible terms when issued and an eligible term is later eliminated, does section 811(c)(2) continue to apply? If not, on what date does section 811(c)(2) cease to apply to the obligation?

A-4. Section 811(c)(2) applies to an installment obligation only if the obligation includes the eligible terms at the time the obligation is issued and at all times thereafter. If an eligible term is eliminated, the general rules applicable to installment sales by dealers apply to the installment obligation as if the obligation arose from a disposition occurring on the first day of the month in which an eligible term is eliminated.

Therefore, any gain on the obligation that remains to be recognized is included in income for the taxable year during which an eligible term is eliminated. (See section 10202(e)(2)(B)(ii) of the Revenue Act of 1987 for a special rule with respect to an obligation from which an eligible term is eliminated before January 1, 1988). The following examples illustrate the provisions of this A-4:

Example 1. Manufacturer A sells tangible personal property to Dealer B on January 1, 1987. B makes a 25% down payment and gives A an installment obligation for the remaining 75% of the purchase price. The obligation requires B to pay the remaining 75% of the purchase price when B resells the property. The obligation also grants A the right to repurchase the property at a fixed price beginning on or after July 1, 1987. Because of changed business conditions, A and B modify the installment obligation on June 5, 1987, to grant A the right to repurchase the property beginning on or after November 1, 1987. On June 1, 1987, section 811(c)(2) ceases to apply to the obligation because on June 5, 1987 A does not have the right to repurchase the property at a fixed or ascertainable price beginning on any day within the first 9 months after the date of the sale. On June 1, 1987, the obligation is subject to the proportionate disallowance rule of section 453C as amended by section 10202 of the 1987 Act as if the obligation arose from a disposition occurring on June 1, 1987.

Example 2. (i) Manufacturer A, a calendar year taxpayer, sells tangible personal property to Dealer B on January 1, 1988. For each item, B makes a 20% down payment and gives A an installment obligation for the remaining 80% of the purchase price. The obligation requires B to pay 50% of the remaining balance on the date B sells the property. The remaining 50% of the balance is due 60 days after the resale date. The obligation further grants A the right to repurchase the property at a fixed price beginning September 15, 1988.

(ii) Pursuant to a separate agreement between A and B existing on January 1, 1988, a customer who ultimately purchases the property from B may assume B's installment obligation to A. To effect the assumption, A must consider the retail customer credit worthy, and the retail customer must execute a promissory note to A for the unpaid principal. When A accepts the retail customer's promissory note in place of B's installment obligation, A releases B from liability on B's installment obligation except to the extent of the retail customer's failure to pay on its note. The financing agreement also provides that the maturity date and interest rate of the retail customer's promissory note may differ from that of the dealer's installment obligation.

(iii) B sells one piece of property to customer C on March 20, 1988. On that date, C assumes B's installment obligation to A. On March 1, 1988, section 811(c)(2) ceases to apply to A's installment obligation from B because on March 20, 1988, an eligible term was eliminated (i.e., a person other than the

dealer became obligated to make payments on the principal of the obligation). Section 811(c)(2) ceases to apply whether or not the substitution of C for B as the obligor on the installment obligation constitutes a disposition of that obligation. Because of this substitution, the installment obligation must be accounted for under the general rules applicable to an obligation arising from a disposition occurring on March 1, 1988. Therefore, as required by section 453(b)(2)(A), the installment obligation cannot be accounted for under the installment method of accounting for A's 1988 taxable year. See, however, A-5(a) of this section for rules relating to the treatment of the obligation as an eligible obligation during January and February for purposes of the 50% test.

Q-5. How is the 50% test calculated?

A-5. (a) To determine whether a taxpayer satisfies the 50% test for a taxable year, the taxpayer calculates a fraction (the testing fraction), the numerator of which is the average balance of outstanding eligible obligations, calculated on a monthly basis and including eligible obligations arising from sales in prior years, and the denominator of which is the sales for that year giving rise to eligible obligations. The testing fraction must be at least 50% to satisfy the requirements of section 811(c)(2). An obligation that ceases to be an eligible obligation because an eligible term is eliminated nonetheless remains, for purposes of calculating the 50% test, an eligible obligation for the period preceding the month in which the eligible term is eliminated. A sale giving rise to an obligation that ceases to be an eligible obligation because an eligible term is eliminated continues to be included in the denominator of the testing fraction.

(b) To determine the numerator of the testing fraction, the taxpayer first determines the monthly balance of eligible obligations (monthly eligible balance). The monthly eligible balance consists of the face amount of eligible obligations (including eligible obligations arising from sales in previous taxable years) outstanding at the end of the month. Payments of principal on an eligible obligation reduce the amount included in the monthly eligible balance. The sum of the monthly eligible balances is divided by the number of months in the taxable year (counting fractions of a month as whole months in the case of a short taxable year) to determine the numerator of the testing fraction. (In determining the number of months in a taxable year for purposes of this calculation, a month is counted even

though no eligible obligations were outstanding at the end of that month.) The denominator of the testing fraction is a number equal to the total amount of all sales arising during the taxable year giving rise to eligible obligations. If a sale giving rise to an eligible obligation includes a down payment, the amount of the sale includes the amount of the down payment. The denominator includes only sales occurring in the taxable year of the determination. Sales occurring in a previous year are not included in the denominator, even though eligible obligations arising from those sales remain outstanding.

(c) The following example illustrates the provisions of this A-5:

Example. On January 1, 1987, Manufacturer A, a calendar year taxpayer, has five outstanding eligible obligations (1986 obligations). On January 1, 1987, the outstanding face amount of each 1986 obligation is \$80,000. On January 15, 1987, A sells to Dealer B 15 pieces of tangible personal property for \$75,000 each. For each sale, B makes a down payment of \$25,000 and gives A an installment obligation with eligible terms for the remaining \$50,000. Each obligation provides for adequate stated interest under sections 483 and 1274. On April 15, 1987, A sells to Dealer C 10 pieces of tangible personal property, each for \$85,000, with no down payment. For each sale, C issues an installment obligation with the eligible terms for \$85,000. Each obligation provides for adequate stated interest under sections 483 and 1274. During 1987, A makes no other dispositions of property giving rise to eligible obligations. During 1987 A receives no payments from B or C on their obligations. With respect to 1986 obligations, A receives \$80,000 plus interest on each of the following dates: April 15, 1987; May 15, 1987; June 15, 1987; July 15, 1987 and August 15, 1987. A calculates the 50% test as follows:

Month	Monthly eligible balance
January	\$400,000 (5 × \$80,000) 750,000 (15 × \$50,000)
February	1,150,000
March	1,150,000
April	1,150,000 (80,000) 650,000 (10 × \$65,000)
May	1,720,000 1,720,000 (80,000)
June	1,640,000 1,640,000 (80,000)
July	1,560,000 1,560,000 (80,000)
	1,480,000

Month	Monthly eligible balance
August	1,480,000 (80,000)
September	1,400,000
October	1,400,000
November	1,400,000
December	1,400,000
Total	16,850,000

The average balance of eligible obligations is \$1,404,167 (\$16,850,000/12). Total sales giving rise to eligible obligations equal \$1,775,000 ((15 × \$75,000) + (10 × \$85,000)). The testing fraction is 79% (\$1,404,167/\$1,775,000). Because 79% is greater than 50%, A satisfies the 50% test for 1987. In order to become eligible for section 811(c)(2) treatment, A must also satisfy the 50% test for 1986. See A-6 of this section.

Q-6. For what taxable year must a taxpayer first satisfy the requirements of section 811(c)(2)?

A-6. (a) A taxpayer must meet the requirements of section 811(c)(2) for its first taxable year beginning after October 22, 1986. One of these requirements is that a taxpayer must satisfy the 50% test both for its first taxable year beginning after October 22, 1986, and for the preceding taxable year (i.e., its first taxable year ending on or after October 22, 1986). For example, section 811(c)(2) applies to a calendar year taxpayer only if the taxpayer satisfies the 50% test for both 1986 and 1987. If the taxpayer fails to satisfy the 50% test for either 1986 or 1987, section 811(c)(2) can never apply to any obligation arising from sales by the taxpayer.

(b) Section 811(c)(2)(C) treats obligations issued before October 22, 1986, as containing the eligible terms if the obligations were modified to contain the eligible terms within sixty days after October 22, 1986. Sales giving rise to modified obligations are taken into account in calculating the denominator, and the modified obligations themselves are taken into account in calculating the numerator, of the testing fraction as if the obligations were modified on the date of their original issuance. See A-5 of this section.

Q-7. Must a taxpayer always satisfy the 50% test for both the taxable year and the preceding taxable year?

A-7. (a) If a taxpayer satisfies the 50% test for both its first taxable year beginning after October 22, 1986, and its preceding taxable year (i.e., its first taxable year ending on or after October 22, 1986), such a taxpayer will not cease to be eligible for section 811(c)(2) treatment until the second consecutive

taxable year for which it fails to satisfy the 50% test. A taxpayer that ceases to be eligible for section 811(c)(2) treatment because it fails the 50% test for two consecutive years can again become eligible for section 811(c)(2) treatment by subsequently satisfying the 50% test for two consecutive taxable years. The obligations of a taxpayer that arise from dispositions made in a taxable year for which the taxpayer is not eligible for section 811(c)(2) treatment, however, can never become eligible for section 811(c)(2) treatment. Likewise, eligible obligations arising from dispositions made in a taxable year for which the taxpayer is eligible for section 811(c)(2) treatment do not cease to be subject to section 811(c)(2) treatment if the taxpayer subsequently fails the 50% test for two consecutive taxable years.

(b) The following examples illustrate the provisions of this A-7:

Example (1). A calendar year taxpayer fails the 50% test in 1986, but satisfies the 50% test in 1987 and 1988. Section 811(c)(2) does not apply for 1987 or for any year thereafter. See A-6 of this section.

Example (2). A calendar year taxpayer satisfies the 50% test in 1986 and 1987, fails the 50% test in 1988, and satisfies the 50% test in 1989. Section 811(c)(2) applies to the taxpayer's eligible obligations arising from dispositions made in 1987, 1988, and 1989.

Example (3). A calendar year taxpayer satisfies the 50% test in 1986 and 1987, but fails the 50% test in both 1988 and 1989. Section 811(c)(2) applies to the taxpayer's eligible obligations arising from dispositions made in 1987 and 1988 but does not apply to obligations arising from dispositions made in 1989 and 1990. If the taxpayer satisfies the 50% test for 1990 and 1991, section 811(c)(2) applies to eligible obligations arising from dispositions made in 1991.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is impracticable to issue the Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: June 14, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-15579 Filed 7-11-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

Amendment to the North Dakota Abandoned Mine Land Reclamation Plan; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule, correction.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is correcting an error on the final rule approving the North Dakota Abandoned Mine Land Reclamation (AMLR) plan amendment, which was published on Thursday, June 16, 1988 (53 FR 22478-22479). The correction will add the title of the new § 934.25 which was omitted.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918; Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION: The following correction is made to the North Dakota Abandoned Mine Land Reclamation (AMLR) plan amendment, which was published on Thursday, June 16, 1988 (53 FR 22478-22479): On page 22479, third column, after line 14, and under amendatory instruction number 3, the section heading for 934.25 is added as follows:

§ 934.25 Amendment to approve North Dakota abandoned mine reclamation plan.

Arthur W. Abbe,

Acting Assistant Director, Program Policy, Office of Surface Mining Reclamation and Enforcement.

Date: July 5, 1988.

[FR Doc. 88-15536 Filed 7-11-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 266

[DoD Directive 7600.10]

Audits of State and Local Governments

AGENCY: Department of Defense.

ACTION: Final rule amendment.

SUMMARY: This amendment is issued to correct administrative errors previously printed in the Federal Register on Monday, June 27, 1988.

EFFECTIVE DATE: February 12, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. V. Stone, Office of the Assistant Inspector General for Audit Policy, Department of Defense, 400 Army Navy Drive, Room 1076, Arlington, VA 22202, telephone (202) 693-0017.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 266

State and local governments.

Accordingly, 32 CFR Part 266 is amended as follows:

PART 266—AUDITS OF STATE AND LOCAL GOVERNMENTS

1. The authority citation continues to read as follows:

Authority: Single Audit Act of 1994, Pub. L. 90-502, 96 Stat. 2327; 31 U.S.C. 7501 note.

2. Renumber each section heading from "§ 266.1-7" to "§ 266.1-7."

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 7, 1988.

[FR Doc. 88-15551 Filed 7-11-88; 8:45 am]

BILLING CODE 5010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-88-02]

Special Local Regulations; Champion Offshore Pro Series, Buffalo Harbor, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Champion Offshore Pro Series to be held on Buffalo Harbor. This event will be held on July 30, 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective and terminate on July 30, 1988. Comments on this regulation must be received on or before July 15, 1988.

ADDRESS: Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: MST2 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable since, under 33 CFR 100.35(a), regulations may be issued only after event approval, which did not occur until June 26, 1988. See 33 CFR 100.25 (concerning event approval). Interested parties have, however, been previously notified of, and some have commented on, this event. Those comments were considered in preparing this regulation.

An opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed. Comments must be received on or before July 15, 1988.

Economic Assessment and Certification

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are MST2 Scott E. Befus, project officer, Office of Search and Rescue, and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Champion Offshore Pro Series will be conducted on Buffalo Harbor on July 30, 1988. This event will have an estimated 36 offshore power boats

which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Buffalo, NY).

List of Subject in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0902 to read as follows:

§ 100.35-0902 Champion Offshore Pro Series—Buffalo Harbor.

(a) **Regulated Area:** That portion of Lake Erie, Outer Buffalo Harbor and Buffalo River Entrance enclosed by a line running from the South Pier Light (LLN 2840) west to a point at 42 degrees 50 minutes 23 seconds North 78 degrees 54 minutes 56 seconds west then north to the Crib Light (LLN 2815) then east to the North Breadwater South End Light (LLN 2860) then east to shore.

(b) **Special Local Regulations:** (1) The above area will be closed to navigation or anchorage from 10:00 a.m. (local time) until 3:00 p.m. on July 30, 1988.

(2) Vessel traffic will periodically be permitted to transit through the regulated area but only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Buffalo, NY) and when so directed by that officer. Commercial vessels over 1000 gross tons will receive priority passage through the regulated area during non-race hours. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result

in expulsion from the area, citation for failure to comply, or both.

(c) **Effective Dates:** These regulations will become effective and terminate on July 30, 1988.

Dated: June 26, 1988.

R.A. Appelbaum,
RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 88-15521 Filed 7-11-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-88-19]

Special Local Regulations; Sohio Riverfest, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Sohio Riverfest. This event will be held on 29, 30 and 31 July 1988 on the Cuyahoga River, Cleveland, Ohio. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 29 July 1988 and terminate on 31 July 1988.

FOR FURTHER INFORMATION CONTACT: MST2 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 13 May, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are MST2 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Sohio Riverfest will be conducted on the Cuyahoga River on 29, 30 and 31 July 1988. Due to the nature of shoreside businesses and planned entertainment activities, it is anticipated that much vessel congestion will remain in the area even during times when specific marine events are not scheduled. The size of large vessels trying to transit the area and the effects of navigational equipment of large vessels such as prop wash or turbulence cause by operation of main propulsion and bow thruster units would pose a threat to small craft by vessels of 100 gross tons or more during times of planned water-related events. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, Coast Guard Station Cleveland Harbor, OH).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0919 to read as follows:

§ 100.35-0919 *Sohio Riverfest, Cuyahoga River, Cleveland, Ohio*

(a) *Regulated Area:* (1) The following area will be closed to vessel navigation or anchorage for vessels of more than 100 gross tons: That portion of the Cuyahoga River from the Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge.

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation or anchorage by vessels of more than 100 gross tons from 7:00 pm

(Local Time) until 12:00 pm on 29 July 1988; 12:00 am until 3:00 pm and 7:00 pm until 12:00 pm on 30 July 1988; and 1:00 pm until 4:00 pm on 31 July 1988.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol in the performance of their assigned duties.

(3) When vessels are moored in this area, they shall be securely moored at bow and stern. Rafting of moored vessels to the extent of impeding another vessel's navigation is prohibited.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) This section is effective from 7:00 pm (EDT) 29 July 1988 until 4:00 p.m. on 31 July 1988.

Dated: June 24, 1988.

R.A. Appelbaum

RAADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 88-15520 Filed 7-11-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-88-043]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Sunset Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation and the Town of Sunset Beach, North Carolina, the Coast Guard is changing the regulations governing the operation of the drawbridge across the Atlantic Intracoastal Waterway (AICWW) at mile 337.9, at Sunset Beach, North Carolina, by restricting the number of bridge openings during the boating season. This change is being made to alleviate vehicular traffic congestion

caused by the steady increase in recreational boats on the AICWW during the boating season, and the resulting increase in bridge openings. This action will accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804) 368-8222.

SUPPLEMENTARY INFORMATION: On April 14, 1988, the Coast Guard published a notice of proposed rulemaking in the *Federal Register* (53 FR 12434) concerning the bridge at Sunset Beach, North Carolina. Interested persons were given until May 31, 1988, to submit comments on the proposed rule. The Commander, Fifth Coast Guard District also published the proposal as a Public Notice on April 14, 1988, which gave interested persons until May 31, 1988 to submit comments.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and LT Robin K. Kutz, Project Attorney.

Discussion of Rule and Comments

The North Carolina Department of Transportation and the Town of Sunset Beach, North Carolina, have requested that the drawbridge only be required to open on the hour, daily, between 7:00 a.m. and 7:00 p.m., from April 1 to October 31. This request was made to alleviate highway congestion at the ocean front and beyond the town limits on Highway 179. Because of the traffic congestion caused by excessive bridge openings, a notice of proposed rulemaking was issued.

Two comments were received as a result of the public notice. D.C. Loveland Co., Inc., Philadelphia, PA, in a letter dated May 19, 1988, expressed objection to restricting commercial vessels' on-demand passage through the bridge. The notice of proposed rulemaking did not omit the provision in section 117.821 that requires bridges on the Atlantic Intracoastal Waterway in North Carolina to open on signal from commercial vessels. This section had consolidated all of the regulations governing drawbridges over the Atlantic Intracoastal Waterway in North Carolina into one section. For this final rule, only subparagraph (b)(6) will be added. The other response was received from a private citizen offering no objection to the proposed rule.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of the proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the regulation will have no effect on commercial navigation or on any industries that depend on waterborne transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05 (g).

2. Section 117.821 (b)(6) is added as follows:

§ 117.821 *Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach, North Carolina.*

(b) * * *

(6) NC 50 bridge, mile 337.9, at Sunset Beach, NC, from April 1 to October 31, between 7:00 a.m. and 7:00 p.m., must open if signaled on the hour.

Dated: June 24, 1988.

Alan D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-15523 Filed 7-11-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-88-03]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Tierra Verde Community Association and the

Florida Department of Transportation, the Coast Guard is adding regulations governing the Pinellas Bayway, Structure "E" (SR 679) drawbridge at mile 113, St. Petersburg Beach by permitting the number of openings to be limited during certain periods. This change is being made because a significant increase in highway traffic and bridge openings occurs on weekends due to increased recreational activity. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on August 11, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerald Fleming, at (305) 536-4103.

SUPPLEMENTARY INFORMATION: On April 18, 1988, the Coast Guard published proposed rule (53 FR 12708) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated April 29, 1988. In each notice, interested persons were given until June 2, 1988, to submit comments.

Drafting Information

The drafters of these regulations are Lieutenant Commander Gerald Fleming, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Seven comments were received. Four supported the proposal, including two which suggested that a radio be installed on the bridge for easier communication. Installation of a radiotelephone is not deemed necessary for navigation in this instance, however, the bridge owner will be encouraged to install and monitor a radiotelephone. Two opposed the proposal and suggested the bridge continue to open on signal. Another supported regulations but suggested a different schedule. The information available indicates that the 15 minute schedule will allow enough time for vehicular traffic to disperse while providing approximately the same number of openings as now occurs while opening "on demand". Spreading the scheduled openings at equally spaced intervals over the heaviest periods of vehicular traffic should facilitate the movement of land traffic while meeting the reasonable needs of navigation. After carefully reviewing all comments, the Coast Guard has determined that no information has been presented which justifies changing the proposed regulation. The final rule is, therefore,

unchanged from the proposed rule published on April 18, 1988.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.267(d)(3) is added to read as follows:

§ 117.267 *Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.*

(d) * * *

(3) The draw of the Pinellas Bayway, Structure "E" (SR 679) bridge, mile 113, at St. Petersburg Beach shall open on signal; except that from 9 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays, the draw need be opened only on the hour, quarter-hour, half-hour, and three quarter-hour.

Dated: June 28, 1988.

M.J. O'Brien,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District, Acting.

[FR Doc. 88-15522 Filed 7-11-88; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Mail Disputes; Domestic Mail Manual

AGENCY: Postal Service.

BEST COPY AVAILABLE

ACTION: Final rule.

SUMMARY: This final rule would remove an ambiguity in postal regulations concerning the disposition of mail while claimed by two or more parties. During proceedings to resolve the dispute, the mail is to be held by the postmaster.

EFFECTIVE DATE: August 11, 1988.

FOR FURTHER INFORMATION CONTACT: William P. Bennett, (202) 268-2966.

SUPPLEMENTARY INFORMATION: On April 8, 1988, the Postal Service published in the Federal Register (53 FR 11685) a proposed rule amending the Domestic Mail Manual, section 153.72, to provide an explicit direction to postmasters as to the disposition of disputed mail while the matter is pending before the Judicial Officer Department. This lack of direction has led to uncertainty among postmasters. The Postal Service accordingly proposed to amend 153.72 of the Domestic Mail Manual to state that the disputed mail would be held by the postmaster until such time as notice of final disposition was received from the Judicial Officer Department. Interested persons were invited to submit comments on the proposed change by May 9, 1988. No comments were received.

List of Subjects in 39 CFR Part 111

Administrative practices and procedure, reporting and recordkeeping requirements.

Accordingly, the Postal Service hereby adopts the proposal without change and makes the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 153—CONDITIONS OF DELIVERY

2. In 153.7, revise .72 to read as follows:

153.7 Conflicting Orders by Two or More Parties for Delivery of Same Mail.

.72 Reference to Regional Counsel or Judicial Officer Department. Where the disputing parties are unable to select a receiver, they shall furnish to the postmaster all available evidence on which they rely to exercise control over the disputed mail. If after receipt of such

evidence, the postmaster is still in doubt as to who should receive the mail, the postmaster will submit the case to the regional counsel for informal resolution. If after five working days, or such additional time as may be agreed to by all parties, no informal resolution is achieved and no order has been made by regional counsel to return the mail to sender, then regional counsel shall forward the case file to the Judicial Officer Department for decision in accordance with the rules of procedure of that department. If a dispute is referred to the Judicial Officer Department, the postmaster shall hold the disputed mail until such time as notice of final disposition is received from the Judicial Officer.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the Federal Register as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88-15570 Filed 7-11-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[FRL 3412-2; GA-016]

Approval and Promulgation of Implementation Plans; Georgia; Revision to Visibility Protection Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision to the Georgia Statement Implementation Plan (SIP) which was submitted on August 31, 1987. This submittal, a revision to Georgia's plan for visibility protection in Class I areas, satisfies EPA's requirements as set forth in 40 CFR 51.300 through 51.304 and 51.308. These visibility provisions were submitted to EPA in order to satisfy the second part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 49 FR 20847 on May 10, 1984. The schedule for submittal and promulgation of these visibility provisions was renegotiated and subsequently extended by a court order on September 9, 1988.

The second part of the settlement agreement required EPA to propose and

promulgate Federal Visibility SIP's henceforth called Federal Implementation Plans (FIP's), addressing the general visibility plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.308) for those states whose SIP's EPA had determined to be inadequate with respect to the above provisions (see January 23, 1988, notice of deficiency (51 FR 3046) and March 12, 1987, notice proposing FIP's for deficient State SIP's (52 FR 7803)). However, as provided in the renegotiated settlement agreement, a state could avoid the promulgation of said provisions if they submitted a visibility SIP by August 31, 1987. The State of Georgia submitted such an approvable plan revision. The principal effect of the Georgia visibility plan revision is to assure that the State is making and continues to make progress towards the national goal of "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."

DATE: This action will become effective on September 12, 1988, unless notice is received by August 11, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Stuart Perry at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency,
Region IV Air Programs Branch, 345
Courtland Street, NE., Atlanta,
Georgia 30365
Georgia Department of Natural
Resources, Environmental Protection
Division, Air Protection Branch, Floyd
Towers East, 205 Butler Street, SE.,
Atlanta, Georgia 30334
Public Information Reference Unit,
Environmental Protection Agency, 401
M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch, at the address given above, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On August 31, 1987, the Georgia Environmental Protection Division (GEPD) submitted to EPA for approval a revision to the Georgia SIP, and EPA is today approving the revision. This submittal contained certification that

the revision was preceded by adequate notice and a public hearing. A discussion of the revision now follows.

Background

On December 2, 1980, EPA promulgated visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et seq. The visibility regulations required that the 36 states listed in § 51.300(b)(2): (1) Develop a program to assess and remedy visibility impairment from new and existing sources, (2) develop a long-term (10 to 15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area and considered by the Federal Land Managers (FLM's) to be critical to the visitor's enjoyment of the Class I areas) in all aspects of visibility protection. These regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment or "plume blight." The EPA deferred action on the regulation of widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3).

In December 1982, environmental groups filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 states that had failed to submit SIP's to EPA (EDF vs Gorsuch, Number C82-6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and the plaintiffs negotiated a settlement agreement for the remaining states which the court approved by order on April 20, 1984. EPA announced the details of the settlement agreement at 49 FR 20847 (May 10, 1984).

The settlement agreement required EPA to promulgate federal visibility SIP's, henceforth called Federal Implementation Plans (FIP's) on a specified schedule for those states that had not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to propose and promulgate FIP's which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307 provided the states did

not submit SIP's by certain dates specified in the agreement.

On May 22, 1985, and October 31, 1985, Georgia submitted Part 1 visibility provisions to EPA for approval. On May 22, 1985, the State submitted its "Plan for Visibility Protection in Class I Areas." The plan contained a narrative discussion of the scope and intent of Georgia visibility program, and described the State's visibility monitoring strategy. It also contained revisions to the State's new source review and Prevention of Significant Deterioration (PSD) regulations. On October 31, 1985, the State submitted a schedule for finalizing the details of their monitoring strategy. Together, these submittals satisfied the requirements of 40 CFR 51.305 and 51.307. EPA subsequently approved the revisions on January 28, 1986. (51 FR 3466).

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307) and long-term strategies (§ 51.308). The settlement agreement required EPA to propose and promulgate FIP's on a specified schedule to remedy any deficiencies. The original deadlines for promulgating the FIP's were extended by a court order on September 9, 1988. The order provided that a state could avoid federal promulgation if it submitted a SIP to address the Part 2 (remaining visibility provisions) requirements by August 31, 1987.

The remaining visibility provisions are spelled out in § 51.302(c) (General Plan Requirements) and require that the SIP's include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal.
2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources.
3. Provisions to protect integral vistas identified pursuant to § 51.304.
4. Provisions to address any existing impairment certified by the FLM, and
5. A long-term (10-15) year strategy for making progress toward the national goal pursuant to § 51.308.

On January 23, 1988, at 51 FR 3046, EPA preliminarily determined that the SIP's of 32 states (including Georgia) were deficient with respect to the remaining visibility provisions. In that

same notice, based on information received from the Department of the Interior (DOI) and the Roosevelt Campobello International Park Commission, 10 Class I areas in 7 states were identified as experiencing visibility impairment within the park boundaries which may be traceable to specific sources (reasonably attributable impairment (RAI)). However, the DOI stated in its certification of impairment that the results from the National Park Service (NPS) visibility monitoring program indicate that scenic views are affected by uniform haze at all NPS monitoring locations within the lower 48 states. Georgia was not identified as experiencing RAI. Also, no integral vista has been identified for any Class I area in Georgia. Since Georgia's Class I areas are not experiencing reasonably attributable impairment of visibility, and since no integral vistas have been identified, items 2, 3, and 4 of the above list do not apply (this is so stated in the Georgia plan). The Georgia plan revolves solely about the State's long-term strategy.

Plan Requirements—Long-Term Strategy

EPA's regulations require that the long-term strategy be a 10 to 15 year plan for making reasonable progress towards the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLM's have declared at least six months before plan submission. A long-term strategy must be developed which covers each Class I area within the state and each Class I area in another state that may be affected by sources within the state. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLM's. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal and include provisions for the review of the impact of new sources as required by § 51.307. The state must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;
5. Smoke management techniques for agricultural and forestry management purposes, including such plans as currently exist within the state for these purposes; and

6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The state must commit to periodic review, and revision if appropriate, of the SIP on a schedule not less frequent than every three years. At the time of the periodic review, a report must be developed in consultation with the FLM's and submitted to the Administrator and to the public. The report must contain an assessment of the following:

1. The progress achieved in remedying existing impairment of visibility in any mandatory Class I federal area;
2. The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I federal area;
3. Any change in visibility since the last such report, or in the case of the first report, since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;
5. The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy;
6. The impact of any exemption granted under § 51.303; and
7. The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report, or, in the case of the first report, since plan approval.

Revision to Georgia's Plan for Visibility Protection in Class I Areas

The revision to Georgia's plan for visibility protection in Class I areas, entitled "Visibility SIP", is divided into 3 main sections as follows:

- I. Background
- II. Additional Visibility SIP Requirements
- III. General Plan Requirements

Section (Background) describes the scope and intent of Georgia's visibility program. It identified that in May 1985 the GEPA adopted its original plan for visibility protection in Class I areas in Georgia. It restates from the May 1985 plan the three mandatory class I areas in Georgia—the Okefenokee, Cohutta, and Wolf Island Wilderness Areas. It identifies the nearby Class I areas located in North Carolina which may be affected by sources in Georgia—the Joyce Kilmer—Slick Rock and Shining Rock Wilderness Areas. It restates the pollutants which are most involved in visibility impairment—fine particulates, nitrogen dioxide and sulfur dioxide. It

points out that in the original plan, Georgia provided its preliminary assessment of visibility impairment in each of the Class I areas, that Georgia coordinated its plan development with the affected FLM's, and that the original plan outlines the State's notification and review procedures for evaluating new sources and describes the State's visibility monitoring plan.

Section II (Additional Visibility SIP Requirements) states that the original plan addressed visibility monitoring and new source review, and the remaining portion of the visibility SIP requirements are being addressed by this revision.

Section III (General Plan Requirements) addresses each of the general plan requirements pursuant to 40 CFR 51.302(c) as previously identified. In March 1985, the GEPA contacted the FLM's for the Class I areas and requested their assistance in characterizing the visibility needs for each area. None of the FLM's identified any integral vistas nor any existing manmade visibility impairment attributable to a source or small group of sources. In June and July 1987, the FLM's were notified and provided the opportunity to participate in the further development of the visibility protection program (copies of correspondence included with plan). This notification meets the Federal Land Manager Coordination requirements as specified in 40 CFR 51.302.

Since reasonably attributable impairment has not been identified for any of the Class I areas covered by the Georgia plan, and no integral vistas have been identified, the State need not address the general plan requirements for BART, Integral Vistas, or provisions to address existing visibility impairment. However, the State has provided that Federal Land Managers may in the future identify visibility impairment due to individual sources, and at such time the State will review its plan and the need for BART. A BART analysis will be performed and the source or sources will be required to implement a BART decision.

The final provision of the general plan requirements is the State's long-term (10-15 year) strategy for making reasonable progress towards the national goal. In developing the long-term strategy, the GEPA addressed each of the six factors required by § 51.306(e) as follows:

1. Emission reductions due to ongoing air pollution control programs—Georgia stated that it presently operates an air pollution control program which addresses control of existing as well as new sources for emissions of particulate matter, nitrogen oxides and sulfur

dioxide. They feel these programs are adequate for preventing any future visibility impairment.

2. Additional emission limitations and schedules for compliance—The State is not considering any additional emission regulations since reasonably attributable impairment has not been identified.

3. Measures to mitigate the impact of construction activities—The State points out that the Class I areas in Georgia are located in areas which construction activities are at a minimum. They also state that a fugitive dust regulation is in place to provide for reasonable control of construction activities. They feel that construction activities have little or no impact on visibility in any of the Class I areas in Georgia.

4. Source retirement and replacement schedules—The State does not feel that a specific retirement or replacement program is needed at this time.

5. Smoke management techniques for agriculture and forest management purposes—The State does not have regulations which limit forest or agricultural burning. Prescribed burning on forest and agricultural lands does occur under the supervision of the Georgia Forestry Commission using established prescribed burning procedures which are used to minimize the impacts on visibility of the burns. The State does have a regulation which addresses open burning of land clearing materials and yard trash. The State feels that these procedures are adequate for making progress towards the national goal.

6. Enforcement of emission limitations and control measures—Georgia states that it has an ongoing and effective enforcement program that is adequate for making progress towards the national goal.

The final portion of Georgia's long-term strategy involves the State's requirement to periodically review and revise (as appropriate) the long-term strategy, and to prepare a report to the Administrator and to the public pursuant to § 51.306(c). The State of Georgia has fully met this requirement.

Final Action

After reviewing Georgia's plan for the protection of visibility in federal Class I areas, EPA finds that the plan satisfies all of the remaining requirements of the visibility regulations specified in the second part of the settlement agreement. EPA is therefore approving the visibility plan submitted by the State of Georgia on August 31, 1987.

EPA is publishing this action without prior proposal because the Agency

views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 12, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 12, 1988.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See § 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Georgia was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 5, 1988.

Lee M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart L—Georgia

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7402.

2. Section 52.570 is amended by adding paragraph (c)(34) to read as follows:

§ 52.570 Identification of plan.

(c) . . .

(34) Revision to Georgia's plan for visibility protection in Class I areas

entitled "Visibility SIP" submitted to EPA on August 31, 1987, by the Georgia Environmental Protection Division (GEPA) to satisfy the Part 2 visibility requirements.

(i) Incorporation by reference.

(A) June 10, 1988, letter from the Georgia Department of Natural Resources, and page 5 of the section entitled "Visibility SIP" which is part of the Georgia plan for visibility protection in Class I areas. This page contains the periodic review requirements satisfying 40 CFR 51.306(c), and was adopted by the Georgia Department of Natural Resources on August 31, 1987.

(ii) Additional material

(A) Narrative entitled "Visibility SIP", a revision to Georgia's plan for visibility protection in Class I areas.

[FR Doc. 88-15464 Filed 7-11-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3412-1; KY-048]

Approval and Promulgation of Implementation Plans; Kentucky; Protection of Visibility in Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving a revision to the Kentucky State Implementation Plan (SIP) which was submitted on August 31, 1987. This submittal, Kentucky's plan for the protection of visibility in Class I areas, satisfies EPA's requirements as set forth in 40 CFR 51.300 through 51.304 and 51.306. These visibility provisions were submitted to EPA in order to satisfy the second part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 49 FR 20847 on May 16, 1984. The schedule for submittal and promulgation of these visibility provisions was renegotiated and subsequently extended by a court order on September 9, 1986.

The second part of the settlement agreement required EPA to propose and promulgate Federal Visibility SIP's, henceforth called Federal Implementation Plans (FIP's), addressing the general visibility plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307), and long-term strategies (§ 51.306) for those states whose SIP's EPA had determined to be inadequate with respect to the above provisions (see January 23, 1986, notice of deficiency (52 FR 3046) and March 12, 1987, notice

proposing FIP's for deficient State SIP's (51 FR 7803)). However, as provided in the renegotiated settlement agreement, a state could avoid the promulgation of said provisions if they submitted a visibility SIP by August 31, 1987. The Commonwealth of Kentucky submitted such an approvable plan. The principal effect of the Kentucky visibility plan is to assure that the State is making and continues to make progress towards the national goal of "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."

DATES: This action will become effective on September 12, 1988, unless notice is received by August 11, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Stuart Perry at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency,
Region IV Air Programs Branch, 345
Courtland Street, NE, Atlanta,
Georgia 30365
Kentucky Natural Resources and
Environmental Protection Cabinet,
Department for Environmental
Protection, Division for Air Quality,
Frankfort Office Park, 18 Reilly Road,
Frankfort, Kentucky 40601
Public Information Reference Unit,
Environmental Protection Agency, 401
M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
Stuart Perry of the EPA Region IV Air
Programs Branch, at the address given
above, telephone (404) 347-2864 or FTS
257-2864.

SUPPLEMENTARY INFORMATION: On August 31, 1987, the Kentucky Department for Environmental Protection (KDEP) submitted to EPA for approval a revision to the Kentucky SIP, and EPA is today approving the revision. This submittal contained certification that the revision was preceded by adequate notice and a public hearing. A discussion of the revision now follows.

Background

On December 2, 1980, EPA promulgated visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et seq. The visibility regulations required that the 36 states listed in § 51.300(b)(2): (1) Develop a program to assess and

remedy visibility impairment from new and existing sources, (2) develop a long-term (10 to 15 years) strategy to assure progress toward the national goal, (3) develop a visibility monitoring strategy to collect information on visibility conditions, and (4) consider any "integral vistas" (important views of landmarks or panoramas that extend outside of the boundaries of the Class I area and considered by the Federal Land Managers (FLM's) to be critical to the visitor's enjoyment of the Class I areas) in all aspects of visibility protection. These regulations only address a type of visibility impairment which can be traced to a single source or small group of sources known as reasonably attributable impairment or "plume blight." The EPA deferred action on the regulation of widespread homogeneous haze (referred to as regional haze) and urban plumes due to scientific and technical limitations in visibility monitoring techniques and modeling methods (see 45 FR 80085 col. 3).

In December 1982, environmental groups filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility SIP's for the 35 states that had failed to submit SIP's to EPA (EDF vs Gorsuch, Number C82-6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and the plaintiffs negotiated a settlement agreement for the remaining states which the court approved by order on April 20, 1984. EPA announced the details of the settlement agreement at 49 FR 20647 (May 16, 1984).

The settlement agreement required EPA to promulgate federal visibility SIP's, henceforth called Federal Implementation Plans (FIP's), on a specified schedule for those states that have not submitted visibility SIP revisions to EPA. Specifically, the first part of the agreement required EPA to propose and promulgate FIP's which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307 provided the states did not submit SIP's by May 6, 1985.

On May 3, 1985, Kentucky submitted a draft visibility SIP to address the requirements of 40 CFR 51.305 and 51.307. EPA was required to approve the State submittal or to promulgate federal programs by January 6, 1986. On February 13, 1986, EPA promulgated a federal program to meet the requirements of §§ 51.305 and 51.307 for Kentucky since the State had not yet

submitted a final plan. The federal program which is covered by the federal visibility monitoring strategy (§ 52.26) and visibility NSR program (§ 52.27 and 52.28), was promulgated as part of the Kentucky SIP. On February 20, 1986, Kentucky submitted a final SIP revision to satisfy the requirements of 40 CFR 51.305 and 51.307. The submittal consisted of revisions to Regulations 401 KAR 51.017 (Prevention of Significant Deterioration (PSD)) and 401 KAR 51.062 (New Source Review in Nonattainment Areas) to satisfy the requirements of 40 CFR 51.037. EPA proposed approval of the PSD regulation on March 17, 1987 (52 FR 8311). However, since EPA has not yet approved the PSD or nonattainment NSR rules, EPA has not removed the provisions which were promulgated on February 13, 1986, to meet the requirements of 40 CFR 51.307. Also, included with the submittal was a visibility monitoring plan to satisfy the 40 CFR 51.305 requirements. EPA has not yet acted to approve the monitoring plan which would replace the federally promulgated provisions.

The second part of the settlement agreement required EPA to determine the adequacy of the SIP's to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (§ 51.302), integral vista protection (§§ 51.302 through 51.307) and long-term strategies (§ 51.308). The settlement agreement required EPA to propose and promulgate FIP's on a specified schedule to remedy any deficiencies. The original deadlines for promulgating the FIP's were extended by a court order on September 9, 1986. The order provided that a state could avoid federal promulgation if it submitted a SIP to address the Part 2 (remaining visibility provisions) requirements by August 31, 1987.

The remaining visibility provisions are spelled out in § 51.302(c) (General Plan Requirements) and require that the SIP's include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal;
2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources;
3. Provisions to protect integral vistas identified pursuant to § 51.304;
4. Provisions to address any existing impairment certified by the FLM, and
5. A long-term (10-15) year strategy for making progress toward the national goal pursuant to § 51.308.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined that the SIP's of 32 states (including Kentucky) were deficient with respect to the remaining visibility provisions. In that same notice, based on information received from the Department of the Interior (DOI) and the Roosevelt Campobello International Park Commission, 10 Class I areas in 7 states were identified as experiencing visibility impairment within the park boundaries which may be traceable to specific sources (reasonably attributable impairment (RAI)). However, the DOI stated in its certification of impairment that the results from the National Park Service (NPS) visibility monitoring program indicate that scenic views are affected by uniform haze at all NPS monitoring locations within the lower 48 states. Kentucky was not identified as experiencing RAI. Also, no integral vista has been identified for any Class I area in Kentucky. Since Kentucky's Class I areas are not experiencing reasonably attributable impairment of visibility, and since no integral vistas have been identified, items 2, 3, and 4 of the above list do not apply (this is so stated in the Kentucky plan). The Kentucky plan revolves solely about the State's long-term strategy.

Plan Requirements—Long-Term Strategy

EPA's regulations require that the long-term strategy be a 10 to 15 year plan for making reasonable progress towards the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLM's have declared at least six months before plan submission. A long-term strategy must be developed which covers each Class I area within the state and each Class I area in another state that may be affected by sources within the state. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLM's. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal and include provisions for the review of the impact of new sources as required by § 51.307. The state must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;
2. Additional emission limitations and schedules for compliance;
3. Measures to mitigate the impacts of construction activities;
4. Source retirement and replacement schedules;

5. Smoke management techniques for agricultural and forestry management purposes, including such plans as currently exist within the state for these purposes; and

6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The state must commit to periodic review, and revision if appropriate, of the SIP on a schedule not less frequent than every three years. At the time of the periodic review, a report must be developed in consultation with the FLM's and submitted to the Administrator and to the public. The report must contain an assessment of the following:

1. The progress achieved in remedying existing impairment of visibility in any mandatory Class I federal area;
2. The ability of the long-term strategy to prevent future impairment of visibility in any mandatory Class I federal area;
3. Any change in visibility since the last such report, or in the case of the first report, since plan approval;
4. Additional measures, including the need for SIP revisions, that may be necessary to assure reasonable progress toward the national visibility goal;
5. The progress achieved in implementing BART and meeting other schedules set forth in the long-term strategy;
6. The impact of any exemption granted under section 51.303; and
7. The need for BART to remedy existing visibility impairment of any integral vista listed in the plan since the last such report, or, in the case of the first report, since plan approval.

Kentucky's Plan for Protection of Visibility in Class I Areas (Part II)

The Kentucky Plan is divided into four main sections as follows:

1. Necessity for Plan
2. General Plan Requirements
3. Periodic Review
4. Conclusion

Section 1 (Necessity for Plan) identifies the purpose and goal of the visibility plan. It identifies the mandatory Class I area located in the State (Mammoth Cave National Park), as well as the Class I area located in Missouri (Mingo Wilderness Refuge) that may be affected by sources in Kentucky. Kentucky's plan also identifies the pollutants most involved in visibility impairment—sulfur dioxide, oxides, particulate matter, and ozone.

Section 2 (General Plan Requirements) is divided into four parts as follows: Part

(a) (Consultation with Federal Land Managers) provides that Kentucky has met all of the Federal Land Manager coordination requirements as required in 40 CFR 51.302. Kentucky notified the appropriate FLM's for the affected Class I areas via correspondence dated July 13, 1987 (copies included in Appendix A of the plan). The FLM's were also contacted by phone on June 23, 1987, to notify them that Kentucky was developing a visibility SIP and to afford them an opportunity to identify any visibility impairment. Kentucky further states that the FLM's can certify the source-specific impairment(s) of Class I areas at any time.

Part (b) (Assessment of Visibility Impairments) provides that no sources in the Commonwealth have been identified as causing source-specific visibility impairment in either the Mammoth Cave or the Mingo Wilderness area. Also, the National Park Service has not identified any integral vistas for any of the Class I areas in Kentucky or Missouri.

Part (c) (Emission Controls Representing Best Available Retrofit Technology) provides that since no existing sources have been identified to negatively impact visibility, the implementation of BART is not required at this time. Also, if any source-specific impairment is identified, then Kentucky's plan will be adjusted to develop necessary regulatory authority to implement BART, and to set emission limitations and compliance schedules representing BART.

Part (d) (Long-term Emission Control Strategy)—Kentucky lists the six (6) SIP factors required by 40 CFR 51.306(e). Kentucky then states that since there is no identified impairment due to "plume blight" in either Class I area potentially affected by Kentucky sources, the Cabinet feels that the long-term strategy need not address the following topics:

1. Additional emission limitations and schedules for compliance;
2. Source retirement and replacement schedules; and
3. Enforceability of emission limitations and control measures.

Kentucky has provided discussions regarding the three remaining SIP factors required by 40 CFR 51.306(e). These are as follows:

1. Emission reduction due to ongoing air pollution control programs—Kentucky has a number of regulations to control emissions from major industrial sources to achieve, to maintain, and to enhance the quality of the ambient air in the Commonwealth, including its PSD, Nonattainment NSR, and its regulations for existing and new process operations. Kentucky feels that these regulations are

adequate for the control of emissions from new and existing sources to achieve the national goal.

2. Measures to mitigate the impacts of construction activities—Kentucky states that no construction activity or practice in the Commonwealth has been identified to negatively impact the air quality of any Class I area. However, the State regulation for the control of fugitive particulate matter (dust) emissions (401 KAR 63.010) prohibits fugitive emissions of particulates from activities such as material handling operations and construction. Kentucky feels that this State regulation is adequate to achieve the national goal.

3. Smoke Management Techniques—Kentucky regulates open burning (401 KAR 63.005). Kentucky states that "Although the provisions of this regulation exempt fires set for recognized agricultural, silvicultural, range, and wild life management practices, there is no present indication that open burning in Kentucky for those purposes are impairing visibility in either of the potentially affected Class I areas." Kentucky feels that the State regulation on open burning is adequate to achieve the national goal.

Section 3 (Periodic Review)—The final portion of Kentucky's long-term strategy involves the State's requirement to periodically review and revise (as appropriate) the long-term strategy, and to prepare a report to the Administrator and to the public. EPA commented to the State that the plan did not state with sufficient clarity Kentucky's intentions with respect to the reporting requirements. In response, Kentucky on October 9, 1987, submitted to EPA a letter of clarification regarding its intentions with respect to the periodic reporting requirements of 40 CFR 51.306(c). This letter cleared up any ambiguity that might have existed in the visibility plan. Therefore, Kentucky has fully met the requirements for a long-term strategy, including those pursuant to § 51.306(c).

Section 4 (Conclusion) presents the State's overall view regarding their visibility plan and states that "since no source-specific impairment(s) has been identified in any designated Class I areas, the Cabinet feels that this plan is adequate to protect visibility in Class I areas."

Final Action

After reviewing Kentucky's plan for the protection of visibility in Class I areas (Part II), EPA finds that the plan satisfies all of the remaining requirements of the visibility regulations specified in the second part of the

settlement agreement. EPA is therefore approving the visibility plan submitted by the Commonwealth of Kentucky on August 31, 1987.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 12, 1988, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 12, 1988.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 48 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 12, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Date: July 5, 1988.

Leo M. Thomas,
Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.920 is amended by adding paragraph (c)(52) to read as follows:

§ 52.920 Identification of plan.

(c) * * *

(52) Kentucky Plan for the "Protection of Visibility in Class I Areas (PART II)" submitted to EPA on August 31, 1987, by the Kentucky Department for Environmental Protection (KDEP) to satisfy the Part 2 visibility requirements.

(i) Incorporation by reference.

(A) June 8, 1988, letter from the Kentucky Natural Resources and Environmental Protection Cabinet, October 9, 1987, clarification letter from the Kentucky Natural Resources and Environmental Protection Cabinet, and page 8 of the Kentucky plan for the protection of visibility in Class I areas (PART II) containing the periodic review requirements satisfying 40 CFR 51.308(c), adopted on August 31, 1987.

(ii) Additional material.

(A) Narrative entitled "The Kentucky Plan for the Protection of Visibility in Class I Areas (PART II)."

* * * * *

[FR Doc. 88-15403 Filed 7-11-88; 8:45 am]

BILLING CODE 5600-50-0

40 CFR Part 52

(A-1-FRL-3412-3)

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Spongex International Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from Spongex International, LTD. (Spongex) in Shelton, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective August 11, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection

Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On March 22, 1988 (53 FR 9334), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8008 as a revision to the Connecticut SIP. The final State Order was submitted by Connecticut as a formal SIP revision on August 31, 1987. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Spongex as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under Subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

A detailed description of Spongex's manufacturing process was provided in the NPR referenced above and will not be restated here. No public comments were received on the NPR.

State Order No. 8008 requires Spongex to either implement a reformulation program which reduces VOC emissions by a minimum of sixty-five percent on a solids-equivalent basis (i.e., a sixty-five percent reduction is required from the historical Pre-RACT baseline specified in terms of pounds VOC per pound of compound mix or per pound of polyvinyl chloride (PVC) utilized), or to install fume incineration control equipment which achieves an overall reduction in VOC emissions from the total process of at least sixty-five percent. Under this latter option, the overall reduction of sixty-five percent can be accomplished by maintaining the normalizing ovens such that they emit a minimum of eighty

percent of the total VOC emissions from the process, and utilizing add-on control equipment which meets a minimum ninety percent capture efficiency and a minimum ninety percent destruction efficiency. If Spongex cannot maintain the normalizing ovens such that they emit a minimum of eighty percent of the total VOC emissions from the process, then it will be required to increase the capture efficiency and destruction efficiency of the add-on control equipment to the appropriate levels necessary to maintain the overall sixty-five percent reduction.

Spongex has indicated to the DEP that it intends to comply with the State Order by reformulating every one of its product formulations such that a sixty-five percent reduction is achieved for each product from the historical Pre-RACT level. Spongex has submitted a table to the DEP which lists the Pre-RACT and Post-RACT emissions rates for each product formulation. The emissions rates are specified in terms of pounds VOC per pound of PVC. The Post-RACT emissions rate for each formulation represents a sixty-five percent reduction from the historical Pre-RACT level for that formulation. The Connecticut DEP has incorporated the table into the State Order as Appendix A and states that the Post-RACT emission rates in that table are enforceable RACT limitations that Spongex must adhere to.

Compliance with these limitations will be verified with recordkeeping of each batch formulation that is made by Spongex. For each batch formulation made at the mixer location, Spongex will record the produce identification, the batch quantity or PVC resin utilized, and the quantity of pounds VOC contained in the batch. Spongex is required to keep these records on site for at least three years.

EPA has reviewed State Order No. 8008 and has determined that the level of control required by this Order represents RACT for Spongex.

Final Action

EPA is approving Connecticut State Order No. 8008 as a revision to the Connecticut SIP. The provisions of State Order No. 8008 define and impose RACT on Spongex to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the

appropriate circuit by September 12, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note:—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Date: July 5, 1988.

Leo M. Thomas,
Administrator.

Subpart H, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(44) to read as follows:

§ 52.370 Identification of plan.

(c) * * *

(44) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on August 31, 1987.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated August 31, 1987 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8008 and attached Compliance Timetable and Appendix A (allowable limits by product classification) for Spongex International, Ltd. in Shelton, Connecticut. State Order No. 8008 was effective on August 21, 1987.

(ii) Additional materials.

(A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 88-15405 Filed 7-11-88; 8:45 am]

BILLING CODE 5600-50-0

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 501, 510 and 511

Organization and Delegation of Powers and Duties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This Notice incorporates a delegation of authority to the Deputy Administrator and, in the absence of the Administrator and the Deputy Administrator, to the Managing Director to exercise all authority lawfully vested in the Administrator and reserved to him or her, except where specifically limited by law, order, regulation or instruction. This Notice also makes technical revisions to the agency's organization and delegation rules, including the correction of legal citations, updating to reflect recent statutory enactments, and inclusion of materials which had been inadvertently omitted in previous printings of the Code of Federal Regulations.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Hasse, Management and Data Systems, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4818).

SUPPLEMENTARY INFORMATION: Due to internal reorganization, the National Highway Traffic Safety Administration is amending its delegation of authority to allow the Deputy Administrator to exercise, in the Administrator's absence, those authorities previously reserved to the Administrator and to allow the Managing Director to exercise those authorities previously reserved to the Administrator in the absence of both the Administrator and the Deputy Administrator.

Additionally, because of internal agency reorganization, the position of Executive Secretary is retitled the Director of the Executive Secretariat and is assigned the functions previously delegated to the Executive Secretary, with the exception of subpoena authority. This authority is transferred from the Director of the Executive Secretariat to the Chief Counsel.

The amendment set forth below relates solely to the organization and assignment of duties within the agency, and has no substantive regulatory effect. Thus, it is not covered by the notice and

comment and effective date requirements of the Administrative Procedure Act or the requirements of Executive Order 12291 or the Department of Transportation's regulatory policies and procedures. Notice and public procedure are, therefore, not required, and the amendment may be made effective in less than thirty days after publication.

List of Subjects in 49 CFR Parts 501, 510 and 511

Authority, Delegations, Organization, Functions, Subpoenas.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations, is amended as set forth below:

1. 49 CFR Part 501 is revised to read as follows:

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

- Sec.
501.1 Purpose.
501.2 General.
501.3 Organization and general responsibilities.
501.4 Succession to Administrator.
501.5 Exercise of authority.
501.6 Secretary's reservations of authority.
501.7 Administrator's reservations of authority.
501.8 Delegations.
Authority: 49 U.S.C. Sections 105 and 322, delegation of authority at 49 CFR 1.50.

§ 501.1 Purpose.

This part describes the organization of the National Highway Traffic Safety Administration (NHTSA) through Associate Administrator, Regional Administrator and Staff Office Director levels and provides for the performance of duties imposed on, and the exercise of powers vested in, the Administrator of the NHTSA (hereafter referred to as the "Administrator").

§ 501.2 General.

The Administrator is delegated authority by the Secretary of Transportation (49 CFR 1.50) to:

- Carry out the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.).
- Carry out the Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.), except for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.
- Exercise the authority vested in the Secretary by Section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7544(2)).

- Exercise the authority vested in the Secretary by Section 204(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 433(b)) with respect to the laws administered by the National Highway Traffic Safety Administrator pertaining to highway, traffic and motor vehicle safety.

- Carry out the Act of July 14, 1960, as amended (23 U.S.C. 313 note) and the National Driver Register Act of 1962 (23 U.S.C. 401 note).

- Carry out the functions vested in the Secretary by the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), except section 512.

- Administer the following sections of Title 23, United States Code, with the concurrence of the Federal Highway Administrator:

- 141, as it relates to certification of the enforcement of speed limits;
- 154 (a), (b), (d), (e), (f), (g) and (h); and
- 158.

- Carry out the consultation functions vested in the Secretary by Executive Order 11912, as amended.

- Carry out section 209 of the Surface Transportation Assistance Act of 1978, as amended (23 U.S.C. 401 note), and section 165 of the Surface Transportation Assistance Act of 1982, as amended (23 U.S.C. 101 note), with respect to matters within the primary responsibility of the National Highway Traffic Safety Administrator.

- Administer section 414(b)(1) of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. App. 2314) with concurrence of the Federal Highway Administrator, and section 414(b)(2).

- Carry out section 2(c) of the Truth in Mileage Act of 1986 (15 U.S.C. 1986 note).

- Carry out section 204(b) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (23 U.S.C. 402 note) with the coordination of the Federal Highway Administrator.

§ 501.3 Organization and general responsibilities.

The National Highway Traffic Safety Administration consists of a headquarters organization located in Washington, DC, and a unified field organization consisting of ten geographic regions.

The organization of, and general spheres of responsibility within, the NHTSA are as follows:

- Office of the Administrator—(1) Administrator.** (i) Represents the Department and is the principal advisor to the Secretary in all matters relating to the National Traffic and Motor Vehicle

Safety Act of 1966, as amended; the Highway Safety Act of 1966, as amended; the Motor Vehicle Information and Cost Savings Act, as amended; and such other authorities as are delegated by the Secretary of Transportation (49 CFR 1.50);

- Establishes NHTSA program policies, objectives, and priorities and directs development of action plans to accomplish the NHTSA mission;

- Directs, controls, and evaluates the organization, program activities, performance of NHTSA staff, program and field offices;

- Approves broad legislative, budgetary, fiscal and program proposals and plans; and

- Takes management actions of major significance, such as those relating to changes in basic organization pattern, appointment of key personnel, allocation of resources, and matters of special political or public interest or sensitivity.

- Deputy Administrator.** Assists the Administrator in the discharge of his/her responsibilities and is responsible for: directing and coordinating the Administration's management and operational programs as well as the related policies and procedures at headquarters and in the field; and policy direction and supervision of the Regional Administrators.

- Managing Director.** As the principal advisor to the Administrator and Deputy Administrator, provides direction on internal management and mission support programs. Provides executive direction and supervision to the Associate Administrators for Plans and Policy, Research and Development, and Administration.

- Director of International Harmonization.** Coordinates and develops strategies for the international harmonization of U.S. motor vehicle safety standards and regulations with those of foreign countries.

- Director, Executive Secretariat.** Provides a central facilitative staff that administers an executive correspondence program and maintains policy files for the Administrator and Deputy Administrator, and services and support to committees as designated by the Administrator.

- Director, Office of Public and Consumer Affairs.** As the principal staff advisor to the Administrator on public affairs and consumer programs, provides comprehensive programs for public information and public affairs covering all NHTSA activities.

- Director, Office of Civil Rights.** As principal staff advisor to the Administrator and Deputy

Administrator on all matters pertaining to civil rights, acts as Director of Equal Employment Opportunity, Contracts Compliance Officer and Title VI (Civil Rights Act of 1964) Coordinator; assures Administration-wide compliance with related laws, Executive Orders, regulations and policies; and provides assistance to the Office of the Secretary in investigating and adjudicating formal complaints of discrimination.

- Chief Counsel.** As chief legal officer, provides legal services for the Administrator and the Administration; prepares litigation for the Administration; effects rulemaking actions; issues subpoenas; and serves as coordinator on legislative affairs.

- Associate Administrators—(1) Associate Administrator for Rulemaking.** As the principal advisor to the Administrator on the setting of motor vehicle standards and regulations, administers the programs of the Administration to develop and issue Federal standards and regulations dealing with motor vehicle safety, fuel economy, theft prevention, and consumer information and regulations dealing with the following characteristics of motor vehicles: damage susceptibility, crashworthiness, and ease of diagnosis and repair.

- Associate Administrator for Enforcement.** As the principal advisor to the Administrator on the enforcement of motor vehicle standards and regulations, directs and administers programs to ensure compliance with Federal laws, standards and regulations relating to motor vehicle safety, fuel economy, theft prevention, damageability, consumer information and odometer fraud.

- Associate Administrator for Traffic Safety Programs.** As the principal advisor to the Administrator on State and community highway safety programs, develops national traffic safety programs, including the reduction of alcohol and drug use among drivers, the encouragement of safety belt and child safety seat use, and the enforcement of traffic laws; provides technical assistance and liaison to States (in cooperation with Regional Administrators) and other organizations in support of highway safety programs.

- Associate Administrator for Research and Development.** As the principal advisor to the Administrator on motor vehicle and highway safety research and development, directs and administers programs related to accident investigation and information collection, analysis and dissemination, and facilities requirements to support NHTSA research and development efforts.

- Associate Administrator for Plans and Policy.** Acts as the principal advisor to the Administrator on all matters involving NHTSA policies, objectives, budget, programs, and plans and their effectiveness in carrying out the goals and missions of the Administrator.

- Associate Administrator for Administration.** Acts as the principal advisor to the Administrator on all administrative and managerial matters as they relate to NHTSA missions, programs, and objectives; organization and delegations of authority; management studies; personnel management; training; logistics and procurement; financial management; accounting and data systems design; paperwork management; investigations and security; audits; defense readiness; and administrative support services.

- Regional Administrators.** Provide leadership, technical guidance and assistance to the States in their development and implementation of comprehensive Highway Safety Plans; oversee the administration of the national highway safety program within their geographic areas; monitor and evaluate State programs; provide interpretation of information on technical traffic safety and motor vehicle research to the States; and provide feedback to headquarters personnel, as appropriate, on identified needs, problems, and findings.

§ 501.4 Succession to Administrator.

The following officials in the order indicated, shall act in accordance with the requirements of 5 U.S.C. 3346-3349 as Administrator of the National Highway Traffic Safety Administration, in the case of the absence or disability or in the case of a vacancy in the office of the Administrator, until a successor is appointed:

- Deputy Administrator,
- Managing Director,
- Chief Counsel,
- Associate Administrator for Rulemaking,
- Associate Administrator for Enforcement,
- Associate Administrator for Traffic Safety Programs,
- Associate Administrator for Plans and Policy,
- Associate Administrator for Research and Development, and
- Associate Administrator for Administration.

§ 501.5 Exercise of authority.

- All authorities lawfully vested in the Administrator and reserved to him/her in this Regulation or other NHTSA directives may be exercised by the Deputy Administrator and, in the

absence of both Officials, by the Managing Director, unless specifically prohibited.

- In exercising the powers and performing the duties delegated by this part, officers of the NHTSA and their delegates are governed by applicable laws, executive orders, regulations, and other directives, and by policies, objectives, plans, standards, procedures, and limitations as may be issued from time to time by or on behalf of the Secretary of Transportation, the Administrator, Deputy Administrator and Managing Director or, with respect to matters under their jurisdictions, by or on behalf of the Associate Administrators, Regional Administrators, and Directors of Staff Offices.

- Each officer to whom authority is delegated by this part may redelegate and authorize successive redelegations of that authority subject to any conditions the officer prescribes. Redelegations of authority shall be in written form and shall be published in the Federal Register when they affect the public.

- Each officer to whom authority is delegated will administer and perform the functions described in the officer's respective functional statements.

§ 501.6 Secretary's reservations of authority.

The authorities reserved to the Secretary of Transportation are set forth in Subpart 1.44 of Part 1 and in Part 95 of the regulations of the Office of the Secretary of Transportation in subtitle A of this Title (49 CFR Parts 1 and 95).

§ 501.7 Administrator's reservations of authority.

The delegations of authority in this part do not extend to the following authority which is reserved to the Administrator and, in those instances when the office of the Administrator is vacant due to death or resignation, or when the Administrator is absent as provided by Subpart 501.5(a), to the Deputy Administrator or Managing Director:

- The authority under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, to:

- Issue, amend, or revoke final federal motor vehicle safety standards and regulations;
- Make final determinations concerning violations of the Act and regulations issued thereunder; and
- Grant or renew temporary exemptions from federal motor vehicle safety standards.

(b) The authority under the Highway Safety Act of 1966, as amended, to:

(1) Apportion authorization amounts and distribute obligation limitations for State and community highway safety programs;

(2) Approve the initial awarding of alcohol incentive grants to the States authorized under 23 U.S.C. 408;

(3) Issue, amend, or revoke uniform State and community highway safety guidelines, and with the concurrence of the Federal Highway Administrator, designate priority highway safety programs, under 23 U.S.C. 402;

(4) Fix the rate of compensation for non-government members of agency sponsored committees which are entitled to compensation.

(c) The authority under the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), to:

(1) Issue, amend, or revoke final rules and regulations developed under the Act;

(2) Grant exemptions from final motor vehicle theft prevention and fuel economy standards issued under the Act;

(3) Make final determinations concerning violations of the Act and regulations thereunder;

(4) Assess civil penalties and approve manufacturer fuel economy credit plans under section 502(e).

(d) The authority under section 141, 154 and 158 of Title 23 of the United States Code, with the concurrence of the Federal Highway Administrator, to disapprove any State certification or to impose any sanction on a State for violations of the National Maximum Speed Limit or the National Minimum Drinking Age.

§ 501.8 Delegations.

(a) *Deputy Administrator.* The Deputy Administrator is delegated authority to act for the Administrator, except where specifically limited by law, order, regulation, or instructions of the Administrator. Provide supervision to the Regional Administrators and executive direction to the Director of International Harmonization; and assist the Administrator in providing executive direction to all organizational elements of NHTSA.

(b) *Managing Director.* The Managing Director is delegated line authority for executive direction over the Associate Administrators for Plans and Policy, Research and Development, and Administration.

(c) *Director, Office of Civil Rights.* The Director, Office of Civil Rights is delegated authority to:

(1) Act as the NHTSA Director of Equal Employment Opportunity.

(2) Act as NHTSA Contracts Compliance Officer.

(3) Act as NHTSA coordinator for matters under Title VI of the Civil Rights Act of 1964, Executive Order 11247, and regulations of the Department of Justice.

(d) *Chief Counsel.* The Chief Counsel is delegated authority to:

(1) Exercise the powers and perform the duties of the Administrator with respect to the setting of odometer regulations authorized under Title IV of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), and with respect to providing technical assistance and granting extensions of time to the States under section 2(c) of the Truth in Mileage Act of 1986 (15 U.S.C. 1988 note) as provided for in Subpart 501.2(k).

(2) Establish the legal sufficiency of all investigations conducted under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and under the authority of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), and to compromise any civil penalty or monetary settlement in an amount of \$5,000 or less resulting from a violation of either of those Acts.

(3) Exercise the powers of the Administrator under subsection 112(c) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1401(c)).

(4) Issue subpoenas, after notice to the Administrator, for the attendance of witnesses and production of documents pursuant to the National Traffic and Motor Vehicle Safety Act and the Motor Vehicle Information and Cost Savings Act.

(e) *Associate Administrator for Plans and Policy.* The Associate Administrator for Plans and Policy is delegated authority to direct the NHTSA planning and evaluation system in conjunction with Departmental requirement and planning goals; coordinate the development of the Administrator's plans, policies, budget, and programs, the analyses of their expected impact, and their evaluation in terms of the degree of goal achievement; and perform independent analyses of proposed Administration regulatory, grant, legislative, and program activities.

(f) *Associate Administrator for Rulemaking.* Except for those portions that have been reserved to the Administrator, the Associate Administrator for Rulemaking is delegated authority to exercise the powers and perform the duties of the Administrator with respect to the setting

of motor vehicle safety and theft prevention standards, average fuel economy standards, procedural regulations, and the development of consumer information and regulations authorized under:

(1) The National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and

(2) Title I, II, V and VI of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.).

(g) *Associate Administrator for Enforcement.* Except for those portions that have been reserved to the Administrator or delegated to the Chief Counsel, the Associate Administrator for Enforcement is delegated authority to exercise the powers and perform the duties of the Administrator with respect to administering the NHTSA enforcement program for all laws, standards, and regulations pertinent to vehicle safety, fuel economy, theft prevention, damageability, consumer information and odometer fraud, authorized under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.), and the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.).

(h) *Associate Administrator for Traffic Safety Programs.* Except for those portions that have been reserved to the Administrator or delegated to the Regional Administrators, the Associate Administrator for Traffic Safety Programs is delegated authority to exercise the powers and perform the duties of the Administrator with respect to: The Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.); the authority vested by section 210(2) of the Clean Air Act, as amended (42 U.S.C. 7544(2)); the authority vested by section 204(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 433(b)), with respect to the laws administered by the Administrator pertaining to highway, traffic, and motor vehicle safety; the Act of July 14, 1960, as amended (23 U.S.C. 313 note) and the National Driver Register Act of 1982 (23 U.S.C. 401 note); the authority vested by section 141, as it relates to certification of the enforcement of speed limits, and sections 154 (a), (b), (d), (e), (f), (g) and (h) and 158 of Title 23 of the United States Code, with the concurrence of the Federal Highway Administrator; and section 209 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 401 note) as delegated by the Secretary in Subpart 501.2(i).

(i) *Associate Administrator for Research and Development.* The Associate Administrator for Research

and Development is delegated authority to: develop and conduct research and development programs and projects necessary to support the purposes of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Highway Safety Act of 1966, as amended, and the Motor Vehicle Information and Cost Savings Act, as amended, in coordination with the appropriate Associate Administrators, and the Chief Counsel.

(j) *Associate Administrator for Administration.* The Associate Administrator for Administration is delegated authority to:

(1) Exercise procurement authority with respect to requirements of the NHTSA;

(2) Administer and conduct personnel management activities of the NHTSA;

(3) Administer NHTSA fiscal management programs, including systems of funds control and accounts of all financial transactions; and

(4) Conduct administrative management services in support of NHTSA missions and programs.

(k) *Regional Administrators.* Each Regional Administrator is delegated authority to:

(1) Approve or disapprove, jointly with the delegate of the Federal Highway Administrator, State Highway Safety Plans under 23 U.S.C. 402, including the initial agreement, any changes thereto, and approval of final vouchers, in accordance with the procedural requirements of the Administration, except for highway safety programs administered on Indian Reservations by the Secretary of the Interior under 23 U.S.C. 402(i), which will be approved or disapproved by the Region VI Regional Administrator, jointly with the delegate of the Federal Highway Administrator;

(2) Administer the operational phases as the Contracting Officer's Technical Representative for any projects that have been or may be delegated for regional administration; and

(3) Approve the awarding of alcohol incentive grants to the States under 23 U.S.C. 408, for years subsequent to the initial awarding of such grants by the Administrator.

PART 510—[AMENDED]

2. The authority citation for Part 510 continues to read as follows:

Authority: Secs. 112 and 119, National Traffic and Motor Vehicle Act 1966, as amended (15 U.S.C. 1401 and 1407); secs. 104, 204, 414, and 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1914, 1944, 1960d, and 2005); delegation of authority (49 CFR 1.51).

3. Section 510.4 is revised to read as follows:

§ 510.4 Subpoenas, generally.

NHTSA may issue to any person, sole proprietorship, partnership, corporation, or other entity a subpoena requiring the production of documents or things (subpoena duces tecum) and testimony of witnesses (subpoena ad testificandum), or both, relating to any matter under investigation or the subject of any inquiry. Subpoenas are issued by the Chief Counsel. When a person, sole proprietorship, partnership, corporation, or other entity is served with a subpoena ad testificandum under this part, the subpoena will describe with reasonable particularity the matters on which the testimony is required. In response to a subpoena ad testificandum, the sole proprietorship, partnership, corporation, or other entity so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and set forth, for each person designated, the matters on which he or she will testify. The persons so designated shall testify as to matters known or reasonably available to the entity.

PART 511—[AMENDED]

4. The authority citation for Part 511 continues to read as follows:

Authority: 15 U.S.C. 2002; delegations of authority at 49 CFR 1.50.

5. In § 511.38, paragraphs (b), (d) and (f) are revised to read as follows:

§ 511.38 Subpoenas.

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the Chief Counsel, or by the Presiding Officer. A subpoena duces tecum shall specify the books, papers, documents, or other materials or data-compilations to be produced.

(d) *Issuance of a subpoena.* The Presiding Officer shall issue a subpoena by signing and dating, or ordering the Chief Counsel to sign and date, each copy in the lower right-hand corner of the document. The "duplicate" and "triplicate" copies of the subpoena shall be transmitted to the applicant for service in accordance with these Rules; the "original" copy shall be retained by or forwarded to the Chief Counsel for retention in the docket of the proceeding.

(f) *Return of service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time, and manner of service. If service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The "triplicate" of the subpoena, bearing or accompanied by the return of service, shall be returned forthwith to the Chief Counsel after service has been completed.

Issued on: May 27, 1988.

Diane K. Steed,
Administrator.

[FR Doc. 88-15415 Filed 7-7-88; 11:53 am]

BILLING CODE 4910-58-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 51, 77, 78, and 92

(Docket No. 88-098)

Brucellosis and Tuberculosis Regulations That Require or Allow Hot-Iron Branding of Animals on the Jaw; Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comment.

SUMMARY: We are asking for public comment on our current regulations that require or allow animals to be hot-iron branded on the jaw. We are requesting these comments because we have received a petition asking that we initiate rulemaking proceedings with regard to all brucellosis and tuberculosis regulations that require or allow hot-iron branding. The comments we receive will provide us with information we need to decide whether the regulations should be changed, and, if so, how they should be changed.

DATE: Consideration will be given to comments postmarked or received September 12, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Please state that your comments refer to Docket Number 88-098. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The petition requesting us to initiate rulemaking is available for public inspection at Room 728 of the Federal Building, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782, and at Room 1141 of the South Building, 14th and Independence Avenue SW.,

Washington, DC 20090-6464. Hours for inspection are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnett Matchett, Senior Staff Veterinarian, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8565.

SUPPLEMENTARY INFORMATION:

Background

In accordance with regulations in 9 CFR Parts 50, 51, 77, 78, and 92, the Animal and Plant Health Inspection Service administers programs designed to control and eradicate brucellosis and tuberculosis in cattle and bison. Brucellosis, also called Bang's disease, is a contagious bacterial disease affecting cattle, bison, and other animals. It can cause sterility, slow breeding, abortion, and loss of milk production. It can also affect humans, and is known as undulant fever in humans. Bovine tuberculosis is a contagious, infectious, and communicable disease of cattle, bison, and other species, including humans. Tuberculosis in affected animals causes weight loss and general debilitation.

In both the Brucellosis and the Bovine Tuberculosis Eradication Programs, hot-iron branding on the jaw is used to identify animals that have been exposed to or contracted the disease. In the Brucellosis Eradication Program, hot-iron branding on the jaw is also used to identify certain cattle and bison that have been vaccinated against the disease. In addition, as part of surveillance for bovine tuberculosis, hot-iron branding on the jaw is required as a means of permanently identifying steers imported into the United States from Mexico.

Petition

We received a petition requesting that we initiate rulemaking regarding all regulations that now require or allow animals to be hot-iron branded on the jaw under the Brucellosis and the Bovine Tuberculosis Eradication Programs. The petition was filed on behalf of the American Society for Prevention of Cruelty to Animals, the Animal Protection Institute, the Humane Society of the United States, the Fund for Animals, and the Massachusetts

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Society for Prevention of Cruelty to Animals. These petitioners suggested that freeze-branding, or a marking method comparable to freeze-branding, be substituted for hot-iron branding as the exclusive method of branding animals under the brucellosis and tuberculosis programs. In the alternative, the petitioners suggested that the regulations be amended to allow animal owners the option of having animals marked by freeze-branding or a marking method comparable to freeze-branding.

On February 12, 1988, we published a notice in the Federal Register (53 FR 4179, Docket Number 88-007) advising the public that we had received the petition, and that we were studying the suggestions contained in it.

We are now seeking input from the public order to gain as much information on this subject as possible, and to help us decide whether to propose changes in the regulations. We invite comments and suggestions on the current regulations, on the petition and suggestions contained in it, and on alternatives to hot-iron branding.

List of Subjects in 9 CFR Parts 50, 51, 77, 78, and 92

Animal diseases, Bison, Brucellosis, Canada, Cattle, Hogs, Imports, Indemnity payments, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Tuberculosis, Wildlife.

Done in Washington, DC, this 9th day of July 1988.

Larry B. Slagle,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-15505 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 336

Employee Responsibilities and Conduct

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is issuing for public comment a revision of

Part 336 of its rules and regulations, 12 CFR Part 336, which governs the standards of ethical and other conduct of FDIC employees. Significant changes include identifying certain employees subject to reporting requirements and credit restrictions by position description series codes; clarifying the permissible conditions of acceptance of food, refreshments, entertainment, and mementos; modifying existing credit restrictions with regard to credit cards; permitting renegotiation of existing debt on the same terms and conditions as are offered to the general public, conditioned upon disqualification from participation in matters affecting the creditor; shortening the term of some credit prohibitions; clarifying the prohibitions on purchase of liquidation assets, FDIC property, and property of insured banks; reporting of family member employment by firms which do business with the FDIC; decentralizing of reporting to the regional or consolidated office level; eliminating semiannual reports of indebtedness; and adding a new subpart to address post-employment representational restrictions.

DATE: Comments must be submitted by September 12, 1988.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street, NW., Washington, DC 20429, or hand-delivered to Room 6108 at the same address, Monday through Friday, between the hours of 9 a.m. and 5 p.m. **FOR FURTHER INFORMATION CONTACT:** Katherine A. Corigliano, Ethics Program Manager, at (202) 898-7272 or Donald L. Rosholt, Deputy Ethics Counselor, at (202) 898-7271.

SUPPLEMENTARY INFORMATION: As stated, Part 336 sets out FDIC rules relating to the ethical and other standards of conduct expected of FDIC employees, former employees, and special government employees. As revised, the regulation would be composed of six subparts and an appendix, each of which is discussed below.

Subpart A

This subpart sets out the definitions and administrative provisions which control throughout the regulation. Generally, the administrative provisions are the same as in the present regulation. Under these provisions, each employee is responsible for compliance with the regulation; the Ethics Counselor is responsible for the FDIC's ethics program; the Executive Secretary is designated as the Ethics Counselor; and

remedial actions for violations can be appealed to the Chairman.

A number of new definitions are established, many of which are self-explanatory. Noteworthy changes include the following: The terms "appear personally," "official responsibility," and "senior employee" reflect the inclusion of post-employment provisions in Part 336. The definitions duplicate statutory language found at 18 U.S.C. 207. The terms "assisted entity" and "assuming entity" would replace the current definitions of "assisted bank" and "assuming bank." The new definitions are necessary in order to cover the complex arrangements arising out of transactions under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)). "Covered employee" would mean a person required to file Confidential Statements of Employment and Financial Interests or Financial Disclosure Reports. The incumbents of the positions referenced have duties and responsibilities that empower them to participate personally and substantially in significant discretionary actions affecting the government or government decision-making. "Reviewing official" would mean the Deputy Ethics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests of covered employees.

Subpart B

This subpart mostly incorporates the provisions of 5 CFR Part 735, the U.S. Office of Personnel Management regulation which establishes government-wide standards of conduct for federal employees. Because 5 CFR 735.101 requires the FDIC to incorporate the provisions, they will not be discussed in great detail.

Proposed changes include the following: Section 336.8, which relates to the acceptance of gifts, entertainment, favors, and loans from persons affected by an FDIC decision, has been clarified in several ways. First, existing provisions relating to the acceptance of things of monetary value from friends and relatives have been revised to clarify that (i) the thing of monetary value must come from the individual and (ii) any relationship between that individual and a regulated entity or firm with which the agency does business must be coincidental. Second, a separate provision has been added to allow the acceptance of mementos of nominal extrinsic value given in commemoration of a special event or activity. Third, the exception for the acceptance of food and refreshments in the ordinary course of a meeting or conference has been revised and is now incorporated into §§ 336.8(b)

(5) and (6). Section 336.8(b)(5) is unchanged from the current provision. Section 336.8(b)(6) allows attendance at widely attended group functions when a prior determination has been made that attendance is in the best interest of the FDIC. Section 336.9 has been amended to provide for the FDIC's and an employee's acceptance of travel, lodging, or subsistence from charitable, tax-exempt organizations. Existing provisions of § 336.11 have been amended to make it clear that no honorarium may be accepted in conjunction with any appearance, speech, or article related to FDIC matters.

Subpart C

This subpart sets out the FDIC's rules relating to financial interests and outside activities of employees. As in the present regulation, employees generally are prohibited from having financial interests or obligations that conflict or appear to conflict with the employees' FDIC duties and responsibilities. The proposed regulation (§ 336.15) also prohibits the negotiation by an employee of, or arrangement for, future employment with a person whose financial interests may be affected by the employee's official duties while the employee is personally engaged in a matter affecting such person.

The subpart also addresses the following specific areas: permissible extensions of credit; ownership of bank securities; purchase of liquidation assets; purchase of FDIC property and providing services to FDIC; purchase of assets of insured banks; outside employment or activity; and employment of family members by persons other than the FDIC.

The rules relating to extensions of credit in § 336.16 have been revised and the prohibited and permissible sources of credit for various categories of employees are identified in a matrix form for ready reference (Appendix A). The revisions recognize changes in the way in which banks and financial services companies conduct their business and in the scope and intensity of the FDIC's supervisory and receivership activities. First, a disqualification has been added (§ 336.16(c)) that generally precludes covered employees from participating in matters affecting their creditors. Second, covered employees who participate personally and substantially in matters involving the rendering of financial assistance to an institution are precluded from borrowing from the institution until it is no longer classified as an assisted or assuming entity

(§ 336.16(b)(5)). Third, credit restrictions imposed upon liquidation employees and closed bank attorneys would be modified so that such employees would no longer be automatically required to cancel existing credit card accounts with assisted or assuming banks headquartered outside their region of official assignment (§ 336.16(b)(3)). Fourth, examiners and certain other covered employees of the Division of Bank Supervision would be permitted under certain circumstances to obtain credit cards from insured state nonmember banks located outside their region of official assignment (§ 336.16(a)). The Ethics Counselor in consultation with the appropriate director may require disqualification whenever an employee's credit relationship presents a conflict of interest or the appearance thereof. Fifth, the proposed regulation (§ 336.16(d)(1)) would permit an employee to renegotiate a loan from a prohibited creditor if: the employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor, the terms and conditions of the renegotiated loan are on the same terms and conditions as those offered to the general public, and the prior written approval of the Ethics Counselor is obtained. This provision is proposed because of the hardships certain employees have experienced in refinancing debt contracted prior to FDIC employment. Because an employee is disqualified from participating in any action relating to his or her creditor, there should be no conflict of interest or appearance thereof nor any violation of 18 U.S.C. 213 in the case of an examiner.

The current § 336.18 has been amended to apply solely to the purchase of liquidation assets. Additionally, it has been expanded to require self-disqualification from a sales transaction involving a relative or any organization or partnership with which the employee, employee's spouse, or dependent child is associated and adds a prohibition regarding disclosure of inside information with regard to a proposed sale of liquidation assets. Section 336.19 has been retitled "Purchase of FDIC property." The proposed section now enumerates prohibitions heretofore included by reference to an outstanding directive. The new section provides all employees with guidelines without the necessity of obtaining supporting directives. A new § 336.20 has been added which sets out the conditions under which employees may purchase insured bank assets.

Proposed § 336.23, previously numbered § 336.20, has been expanded

to require disclosure of employment of family members by firms having business with the FDIC. The change reflects the expanded sphere of possible conflicts arising from liquidation activities.

Subpart D

This subpart sets out FDIC rules relating to the filing of required reports by FDIC employees. Significant changes are proposed with regard to reports of indebtedness and of financial interests. No significant changes would be made to reports of interest in FDIC decision or those required under the Ethics in Government Act of 1978.

The proposed revision eliminates, because the information called for by the report is incorporated into the statement of employment and financial interests, the filing of a separate Confidential Report of Indebtedness, now required to be filed on a semiannual basis, except for employees covered by § 336.26. The reporting date for the statement of employment and financial interests, now filed as of June 30, will be changed to December 31.

As to statements of employment and financial interests, several changes will be made. First, employees of the Divisions of Bank Supervision and Liquidation who are required to file such statements will be identified by grade level and job series. Second, statements will be submitted to the reviewing official, who is the Deputy Ethics Counselor for an employee's place of assignment. Third, statements will be retained in the office of the reviewing official. The reviewing official will submit a copy of the statement to the Ethics Counselor certifying his or her review. All reports will be held in confidence by the Deputy Ethics Counselors and the Ethics Counselor.

Subpart E

This subpart has been retitled and now sets out FDIC rules relating to limitations on former employees, including special government employees, with respect to participation in matters connected with their former duties and responsibilities while serving with the FDIC.

The proposed addition paraphrases certain of the limitations on representation found at 18 U.S.C. 207 as applied to all former employees generally and senior employees specifically. Secondly, the proposal establishes the right of former employees to consult with the Ethics Counselor as to the propriety of an appearance before the agency. Last, the regulation sets out the FDIC's right to suspend appearance privileges when a

person has knowingly failed to comply with the provisions of this subpart.

Subpart F

This subpart relates to the standards of conduct applicable to special government employees. No substantive changes have been made other than to redesignate the subpart.

Appendix

This appendix sets out the provisions of § 336.16 in a table format. The agency attaches great significance to employees' compliance with the credit restrictions enumerated in the applicable subsection. The appendix will provide a ready reference for each class of employee subject to such restrictions.

List of Subjects in 12 CFR Part 336

Conflicts of interest; Credit; Disclosure requirements; Government employees; Former government employees.

Accordingly, Part 336 is proposed to be revised to read as follows:

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

- Sec.
- 336.1 Purpose and scope.
 - 336.2 Definitions.
 - 336.3 Employee responsibility, counseling, and distribution of regulation.
 - 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.
 - 336.5 Sanctions and remedial actions.
 - 336.6 Review of remedial actions.
- Subpart B—Ethical and Other Conduct and Responsibilities of Employees**
- 336.7 General rules.
 - 336.8 Gifts, entertainment, favors, and loans.
 - 336.9 Travel expenses.
 - 336.10 Use of official information.
 - 336.11 Lectures, speeches, and manuscripts.
 - 336.12 Employment by FDIC of relatives.
 - 336.13 Use of FDIC property.
 - 336.14 Indebtedness, gambling, and other conduct.

Subpart C—Financial Interests and Obligations; Outside Employment

- 336.15 General rules.
- 336.16 Extensions of credit.
- 336.17 Bank securities.
- 336.18 Purchase of liquidation assets.
- 336.19 Purchase of FDIC property.
- 336.20 Purchase of assets of insured banks.
- 336.21 Providing goods or services to the FDIC.
- 336.22 Outside employment and other activity.
- 336.23 Employment of family members by persons other than the FDIC.

Subpart D—Reports of Interest in Bank Securities, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

- 336.24 Report of interest in bank securities.
- 336.25 Report of interest in FDIC decision.
- 336.26 Report of employment upon resignation.
- 336.27 Statement of employment and financial interests.
- 336.28 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Subpart E—Limitations on Activities of Former Employees

- 336.29 Limitations on representation.
- 336.30 Consultation as to propriety of appearance before the FDIC.
- 336.31 Suspension of appearance privilege.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

- 336.32 Use of FDIC employment.
- 336.33 Use of inside information.
- 336.34 Coercion.
- 336.35 Gifts, entertainment, favors, and loans.
- 336.36 Miscellaneous statutory provisions.
- 336.37 Statements of employment and financial interests.

Appendix to Part 336—Matrix of Credit Prohibitions

Authority: E.O. 11222, 3 CFR 1964-1965 Comp.; 5 CFR 735.104; 5 CFR 737.1(a); E.O. 12565.

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

§ 336.1 Purpose and scope.

In order to assure the proper performance of FDIC business and to maintain public confidence in government, FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. This part establishes the policies and procedures of the FDIC with regard to the ethical and other standards of conduct and responsibilities for employees and special government employees. Permissible financial interests, obligations, and outside employment are set forth. This part further sets out the policies and procedures for employee reporting of financial interests and obligations.

§ 336.2 Definitions.

For the purposes of this part:

(a) "Affiliate" means any holding company of which a bank is a subsidiary and any other subsidiary of such holding company. Any other entity which would be defined as an affiliate of an insured state nonmember bank

under 12 U.S.C. 221a, if such bank were a member bank, shall be deemed to be an affiliate of such insured state nonmember bank.

(b) "Appear personally" means knowingly representing, aiding, counseling, advising, consulting, or assisting in representing another person by personal presence in any formal or informal appearance in connection with any application or interpretation arising under the statutes or regulations administered by the FDIC, except that a request for general information or explanation of FDIC policy or interpretation shall not be construed to be a personal appearance.

(c) "Appropriate director" means the director of the Washington division or office or the regional director or regional counsel for the division to which an employee is assigned.

(d) "Assessment auditor" means any individual employed as an auditor of insured banks for deposit insurance assessment purposes, whether assigned to a field office or the Washington office, and includes Washington office personnel having oversight and review responsibility for the collection of assessments.

(e) "Assisted entity" means (1) any bank which has received financial assistance from the FDIC to prevent its failure, (2) any bank resulting from a merger or consolidation with any bank described in paragraph (e)(1) of this section, or (3) any parent bank holding company of a bank described in paragraph (e)(1) or (2) of this section; *Provided*, that an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such bank or bank holding company and the FDIC.

(f) "Assuming entity" means any bank or bank holding company which has entered into a transaction with the FDIC to purchase some or all of the assets and assume some or all of the liabilities of a failed bank for a period of one year following the closing of such failed bank.

(g) "Attorney" means any individual employed by the FDIC as an attorney, whether or not assigned to the Legal Division. The term does not include outside attorneys engaged in the private practice of law and retained by the FDIC.

(h) "Chairman" means the Chairman of the Board of Directors of the FDIC.

(i) "Covered employee" means any employee required to file a statement of employment and financial interests or a Financial Disclosure Report pursuant to §§ 336.27(a) or 336.38.

(j) "Dependent child" means a son, daughter, stepson, or stepdaughter who either (1) is unmarried, under 21, and living in the employee's household, or (2) has received over half of his or her support from the employee in the preceding calendar year.

(k) "Employee" means any individual member of the Board of Directors, officer or employee, including a liquidation graded employee, of the FDIC, but does not include a special government employee, the Comptroller of the Currency, or any person employed by the Office of the Comptroller of the Currency.

(l) "Examiner" means any commissioned bank examiner and any employee assigned to the Division of Bank Supervision in a position of the 570 series.

(m) "Honorarium" means a payment, usually for services on which custom or propriety forbids a price to be set.

(n) "Insured bank subject to audit for deposit insurance assessment purposes" means any one of the 500 largest insured banks with demand deposits in excess of \$100 million, which are routinely audited by the FDIC for assessment purposes.

(o) "Member of the employee's immediate household" means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(p) "Official responsibility" means the direct administrative, supervisory, or decisional authority, whether intermediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, or recommend official action or to express staff opinions in dealings with the public.

(q) "Person" means an individual, bank, corporation, company, association, partnership, firm, society, or any other organization or institution.

(r) "Reviewing official" means the Deputy Ethics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests filed by covered employees assigned to his or her division, office, or consolidated office.

(s) "Security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(t) "Senior employee" means any individual member of the Board of

Directors of the FDIC and any employee named or designated by the Director of the U.S. Office of Government Ethics pursuant to 18 U.S.C. 207(d)(1).

(u) "Special government employee" means any employee serving the FDIC with or without compensation for up to 130 days during any 365-day period on a full-time or intermittent basis.

(v) "Subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

§ 336.3 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new employee and special government employee within 30 days of commencement of employment, and each such employee or special government employee shall complete and file the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation in accordance with its instructions. The Ethics Counselor shall annually distribute a reminder of the basic provisions of this part to each employee and each special government employee.

(c) An employee who believes that his or her assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her appropriate director.

§ 336.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.

(a) The FDIC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the FDIC's Ethics Counselor.

(b) The Ethics Program Manager, Office of the Executive Secretary, shall act as the FDIC's Alternate Ethics Counselor and shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors, to whom the Ethics Counselor may delegate duties and responsibilities under this part. Duties and responsibilities so delegated may not be redelegated.

§ 336.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee or special government employee may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order, and regulation.

(c) Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless an employee or special government employee requests review, pursuant to § 336.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 336.6 shall take effect immediately upon receipt of notice of the determination of the Chairman or his or her designee.

§ 336.6 Review of remedial actions.

When remedial action is ordered pursuant to § 336.5, the affected employee or special government employee may request the Chairman to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The Chairman, or his or her designee, will promptly review the matter and will provide written notice of his or her determination to the employee, which determination shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 336.7 General rules.

FDIC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding the FDIC's efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making an FDIC decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of the FDIC.

§ 336.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the FDIC;

(2) Is or may be regulated or examined by the FDIC; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationships rather than the business of the persons concerned are the sole motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) To the acceptance of unsolicited mementos of nominal extrinsic value, given in commemoration of an event, special project, or special activity;

(4) Except as otherwise provided in § 336.16, to the acceptance of loans from banks or other financial institutions on the customary terms and conditions offered to the general public;

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(6) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering of mutual interest to the government and the private sector, such as receptions and informational programs sponsored or hosted by universities, educational associations, the financial services industry, technical and professional associations, firms doing business with

the FDIC, international organizations, or government entities where it has been determined that attendance is in the interest of the FDIC and is related to its mission, in accordance with written guidelines issued by the Ethics Counselor, consistent with guidelines established by the U.S. Office of Government Ethics.

(c) No examiner shall accept any gratuity from any insured state nonmember bank, from any insured bank examined by the examiner, or from any person connected therewith. (See 18 U.S.C. 213)

(d) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) or (c) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) or (c) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the Ethics Counselor within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the Ethics Counselor. The cost of returning such gift or item shall be borne by the FDIC. (See 18 U.S.C. 209)

(e) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself of herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement. (See 5 U.S.C. 7351)

(f) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law. (See 5 U.S.C. 7342)

(g) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law. (See 5 U.S.C. 7342)

§ 336.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the FDIC (in accordance with the FDIC's General Travel Regulations), and an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to the appropriate director and the Ethics Counselor within 30 days of such acceptance. When appropriate, the FDIC will reimburse the

private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 336.8 (b)(5) and (b)(6).

(d) Notwithstanding the provisions of 5 U.S.C. 4111, the FDIC may, and an employee may not (without the approval of the appropriate director, who shall have consulted with the Ethics Counselor), accept travel, lodging, or subsistence when the donor is an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), and acceptance does not result in, or create the appearance of, a conflict of interest.

(e) When an employee is not on official duty and there is no payment or reimbursement by the FDIC for expenses of travel, lodging, or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this part and does not present a conflict of interest or the appearance thereof.

(f) The provisions of this section do not prohibit, or require a report of, the acceptance of travel, lodging, or subsistence provided by family members or personal friends.

§ 336.10 Use of official information.

(a) Except as permitted in § 336.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her FDIC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use personal information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a, or Part 310 of the FDIC's regulations.

(c) An examiner may not disclose information from a bank examination report except as authorized by law. (See 18 U.S.C. 1906)

(d) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905)

§ 336.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before banking or public organizations on matters involving the FDIC unless the employee receives prior approval, and prior clearance of material to be published, by the appropriate director.

(b) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her FDIC employment unless the information is available to the general public or the appropriate director gives authorization for such use, upon the determination that the use of the information is the public interest.

(c) Except as provided in § 336.8(b)(3), no employee may receive any compensation or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates substantially to matters involving the FDIC or contains information that is not otherwise available to the general public.

(d) No employee may accept an honorarium of more than \$2,000 for any appearance, speech, or article in connection with non-FDIC related activities. No employee may accept an honorarium in connection with any appearance, speech, or article in connection with FDIC-related matters. (See 2 U.S.C. 441i)

§ 336.12 Employment by FDIC of relatives.

(a) For the purposes of this section:

(1) A "relative" is any person related to an FDIC official as parent, step-parent, child, step-child, brother, sister, step-brother, step-sister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An "official" is any employee who has authority to appoint, employ, promote, or advance employees or to recommend anyone for appointment, employment, promotion, or advancement at the FDIC.

(3) A "supervisor" is any employee whose position requires independent judgement to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) An FDIC official may not—

(1) Appoint, employ, promote, or advance any relative to a position at the FDIC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another FDIC official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee

shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the Director of the FDIC's Office of Personnel Management and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration of the nature of the supervisor's position, the operational needs of the division, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Director of the FDIC's Office of Personnel Management, and the Ethics Counselor shall determine whether the relative may be assigned to another position at the FDIC which is outside the scope of the supervisor's authority.

§ 336.13 Use of FDIC property.

An employee shall not, directly or indirectly, use or allow the use of any kind of FDIC property, including, but not limited to, property which the FDIC holds in its corporate capacity, leased property, or property which the FDIC holds in its capacity as receiver, liquidator, or liquidating agency of the assets of a bank, for other than officially approved activities. An employee has a positive duty to protect and conserve FDIC property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 336.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgement by a court or one imposed by law such as federal, state, or local taxes. An employee who has difficulty in meeting his or her financial obligations may seek counseling with the FDIC's Office of Personnel Management. This does not require the FDIC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the FDIC or while on duty for the FDIC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal,

dishonest, or other conduct prejudicial to the FDIC.

(d) *Miscellaneous.* Other provisions with which an employee would be familiar include:

(1) The "Code of Ethics of Government Service," which prescribes general standards of conduct (Pub. L. No. 90-303, 94 Stat. 855-856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201-209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibition against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285);

(13) Prohibition against political activities in 5 U.S.C. § 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607;

(14) Prohibition against an employee's acting as the agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219);

(15) Prohibition against the use of manipulative or deceptive devices in connection with the purchase or sale of any security (17 CFR 240.10b-5).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 336.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's FDIC duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning

prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her FDIC duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit). (See 18 U.S.C. 208)

(d) No partner of any employee or a special government employee may act as agent or attorney for any person other than the United States before the FDIC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying the appropriate director and the Ethics Counselor in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee, other than the Chairman or the Director (Appointive)¹ receives the prior written determination of the Ethics Counselor, who shall consult with the appropriate director, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the FDIC. (See 18 U.S.C. 208)

§ 336.16 Extensions of credit.

(a) An examiner, and any other covered employee of the Division of Bank Supervision at or above the grade 11 level (except those employees covered under paragraph (b)(1) of this section), may not, directly or indirectly,

¹ The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply to the Chairman if he or she receives the prior written determination of the President (or the Director (Appointive) if he or she receives the prior written determination of the Chairman) that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the FDIC. (See 18 U.S.C. 208)

accept or become obligated on any extension of credit, including credit extended through the use of a credit card, from an insured state nonmember bank, except, in the case of an obligation or extension of credit evidenced by a credit card, credit may be obtained from an insured state nonmember bank located outside the employee's region of official

assignment.² Any such credit card must be issued under the same terms and conditions as are offered to the general public, the total line of credit from any one institution must not exceed \$10,000, and the employee must file with the appropriate director a Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification.

(b) Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed \$10,000—

(1) An individual member of the Board of Directors (except the Comptroller of the Currency), any assistant or deputy to the Board of Directors or to an individual Board member (except the Comptroller of the Currency), any assistant thereto, any director of a division or office, the holder of any position immediately subordinate thereto, and any covered employee of the Office of Consumer Affairs may not, directly or indirectly, accept or become obligated on any extension of credit from an insured state nonmember bank.

(2) A regional counsel or attorney (Bank Supervision) assigned to a regional office may not, directly or indirectly, accept or become obligated on any extension of credit from an insured state nonmember bank headquartered in the employee's region of official assignment.

(3) A regional director, deputy regional director, and any other covered employee of the Division of Liquidation assigned to a regional or consolidated office; a supervisory account or supervisory field accountant of the Division of Accounting and Corporate Services assigned to a regional or consolidated office; and a regional counsel or attorney (Bank Liquidation) assigned to a regional or consolidated office may not, directly or indirectly, accept or become obligated on any

² An examiner and any other covered employee of the Division of Bank Supervision at or above the grade 11 level assigned to the Washington office may obtain credit extended through the use of a credit card from any insured state nonmember bank, subject to the restrictions of paragraph (a) of this section.

extension of credit from an assisted or assuming entity, for so long as such entity remains an assisted or assuming entity, located in the employee's region of official assignment which, for the purposes of this subparagraph, shall be deemed to include—

(i) The bank resulting from a failed bank if the assuming entity is a bank holding company;

(ii) The assuming entity and all of its branches if the assuming entity is a bank located in the employee's region of official assignment; and

(iii) The branches of the assuming entity located in the employee's region of official assignment if the assuming entity is a bank located outside the employee's region of official assignment;

(4) An assessment auditor may not, directly or indirectly, accept or become obligated on any extension of credit from an insured bank subject to audit for deposit insurance assessment purposes except that, with the prior written permission of the appropriate director, an assessment auditor may accept or become obligated on an extension of credit from one such bank and shall be disqualified from participating in any audit of or otherwise taking any action on behalf of the FDIC with regard to such bank.

(5) An individual member of the Board of Directors (except the Comptroller of the Currency), and any other covered employee assigned to the Washington office, who has participated personally and substantially on behalf of the FDIC in any matter involving an assisted or assuming entity, or a covered employee of the Division of Liquidation assigned to the Washington office whose official duties bring him or her into contact with any matter involving an assisted or assuming entity, may not, directly or indirectly, accept or become obligated on any extension of credit from such entity for so long as it remains an assisted or assuming entity.

(c) The Director of the Division of Bank Supervision, the holder of any position immediately subordinate thereto, an examiner, or any other covered employee of the Division of Bank Supervision is disqualified from participating in any examination, audit, visitation, or investigation of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee. An assessment auditor is disqualified from participating in any audit of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that

has, either directly or indirectly, extended credit to such employee unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from such bank, financial institution, or other person does not exceed \$10,000. Every other covered employee is disqualified from taking any action on behalf of the FDIC with regard to any bank, financial institution, or other person that has, either directly or indirectly, extended credit to such employee in an amount in excess of \$10,000. The appropriate director, in consultation with the Ethics Counselor, may also extend such disqualification to affiliates of such creditors.

(d) If the adoption of this regulation, change in marital status, commencement of employment, reassignment to another division or location, or action affecting the status of the creditor³ results in an extension of credit prohibited by paragraphs (a) and (b) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor and report his or her retention in writing to the appropriate director and Ethics Counselor.

(1) An employee, other than an employee described in paragraph (b)(1) of this section, otherwise required to liquidate a nonconforming extension of credit under its original terms may request permission to renegotiate the loan. An employee described in paragraph (b)(1) of this section otherwise required to liquidate a nonconforming extension of credit under its original terms may request review and concurrence by the Ethics Counselor to renegotiate such a loan. Any such request shall be made, in writing, to the appropriate director and Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, to the Ethics Counselor, stating—

- (i) The purpose of the renegotiation;
- (ii) The terms and conditions of the original loan;
- (iii) The terms and conditions now available to the general public;

³ Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

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(iv) The terms and conditions now offered the employee;

(v) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(vi) The financial hardship, if any, denial of the request will cause.

(2) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the appropriate director and the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, without the prior review and concurrence by the Ethics Counselor.

(e) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances—

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate director, who shall have consulted with the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, he or she receives the prior concurrence of the Ethics Counselor; and

(5) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the creditor.

(f)(1) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless—

(i) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as co-maker, endorser, or guarantor;

(ii) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse nor dependent child will look to the employee, to his or her income, or to his or her property for the payment thereof; and

(iii) The spouse or dependent child has, or in the case of student loans will have, the income, the ability, and the means to meet the loan obligation at maturity.

(2) Even though an extension of credit to a spouse or dependent child is, by virtue of paragraph (f)(1) of this section, not deemed to be an extension of credit or an employee, as a matter of policy the employee will be disqualified from

participating in any decision, examination, audit, or other action having an impact on the creditor to the same extent as if the employee were obligated on the extension of credit.

§ 336.17 Bank securities.

(a) While employed by the FDIC an employee may not purchase, own, or control, directly or indirectly, any securities of an insured bank or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board of Directors) may own or control securities of an insured bank or affiliate thereof whenever—

(i) Ownership or control was acquired prior to commencement of FDIC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor, pursuant to § 336.24, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the bank or affiliate; Provided, that the Ethics Counselor, in consultation with the appropriate director, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the FDIC.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of preemptive rights arising out of the ownership of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might result in a substantial impairment of the employee's ability to perform his or her FDIC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured bank or affiliate thereof which arises through ownership of shares (or other investment units) or publicly held holding companies, mutual funds, or investment trusts but only if (1) the assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities and (2) the employee does not own or control 5 percent or more of the shares (or other investment units) of the

holding company, mutual fund, or investment trust. Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the FDIC.

(d)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless—

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (d)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 336.18 Purchase of liquidation assets.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank, regardless of how the property is sold.

(b) An employee who is involved in the disposition of liquidation assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such liquidation assets. The employee shall advise his or her immediate supervisor and the Ethics Counselor in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the FDIC confidential information regarding the sale or disposition of liquidation assets except as mandated by the employee's official responsibility to liquidate such assets and only as prescribed in Division of Liquidation guidelines applicable to such sale or disposition.

§ 336.19 Purchase of FDIC property.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the FDIC holds in its corporate capacity unless—

(1) The property has been declared excess property by, and is sold in accordance with standards and procedures prescribed by, the Director of the Division of Accounting and Corporate Services; and

(2) The property is sold by means, determined by the Director of the Division of Accounting and Corporate Services, which assure that the selling price is the property's fair market value.

(b) In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or indirectly purchase any property from the FDIC if—

(1) The employee is employed in the Facilities Management and Operations Section of the Division of Accounting and Corporate Services or is directly involved in the disposition of excess property;

(2) The property was last under the control or supervisory responsibility of the employee (except in the case of property sold by sealed bid or at public auction);

(3) He or she relied upon information regarding the property obtained by the employee in the course of his or her employment with the FDIC (other than knowledge of the proposed sale of the property), which is not available to the general public; or

(4) The employee is the head of the last known office using the property (except in the case of property sold by sealed bid or at public auction).

§ 336.20 Purchase of assets of insured banks.

An employee, the employee's spouse or dependent child, or a member of the employee's immediate household shall not, directly or indirectly, purchase an asset (for example, real property, automobiles, trucks, mobile homes, or repossessed goods) of an insured bank unless such asset is sold at public auction, is offered to the general public at the same price, or is sold by other means that assure that the selling price is the asset's fair market value. In no event shall an employee, an employee's spouse or dependent child, or a member of the employee's immediate household purchase an asset from any bank in reliance on information obtained in the course of the employee's performance of his or her official duties or from any other source not available to the general

public. Employees have a responsibility to consult with the Ethics Counselor as to the propriety of the proposed purchase.

§ 336.21 Providing goods or services to the FDIC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the FDIC either in its corporate capacity or in its capacity as receiver, liquidator, or liquidating agent of the assets of a bank unless the Director of the Division of Accounting and Corporate Services or the Director of the Division of Liquidation determines, in accordance with standards and procedures approved by the Board of Directors, that it is in the best interest of the FDIC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the FDIC.

§ 336.22 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her FDIC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the FDIC. Employment or activity which is not compatible with the employee's duties and responsibilities to the FDIC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the FDIC. Such employment or activity may involve—

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any financial institution, including a bank, a savings and loan association, or a credit union, except the FDIC Employees' Federal Credit Union; or

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services.

Any employee who engages in, or intends to engage in, outside employment or activity has the responsibility to consult with the Ethics Counselor as to whether such employment or activity is compatible

with the employee's FDIC duties and responsibilities.

(b) An examiner shall not perform any service for compensation for any bank, for any officer, director, or employee thereof, or for any person connected therewith. (See 18 U.S.C. 1909)

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the FDIC (See 18 U.S.C. 209)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205)

(f) An employee must obtain the prior written approval of the Ethics Counselor in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205)

(g) This section does not preclude an employee from participating in the activities of (1) charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 336.16 or 18 U.S.C. 203 or 205 or (2) if not prohibited by law, national or state political parties.

§ 336.23 Employment of family members by persons other than the FDIC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the appropriate director the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household by—

(1) An insured bank or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the FDIC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the FDIC; within 30 days of the

commencement of employment of the family member.

(b) Generally, a covered employee will not be assigned to any examination, investigation, application, or other matter involving the family member's employer unless the appropriate director, in consultation with the Ethics Counselor, makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the FDIC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

Subpart D—Report of Interest in Bank Securities, Interest in FDIC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

§ 336.24 Report of interest in bank securities.

All covered employees must report, on the prescribed form, direct or indirect ownership of securities of insured banks within 30 days of commencement of employment, within 30 days of acquiring the interest if acquired subsequent to employment in accordance with § 336.17, or, if the interest was previously acquired, within 30 days of the entity's becoming an insured bank.

§ 336.25 Report of interest in FDIC decision.

Except for interests reported in accordance with §§ 336.17 and 336.24, an employee with a financial interest (other than a deposit or indebtedness) in a bank or other entity that may be affected by his or her participation in an FDIC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be made within 30 days of commencement of employment, or, if the interest was previously acquired, within 30 days of the bank's or other entity's becoming subject to an FDIC decision. Reports filed under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the Chairman may determine for good cause shown.

§ 336.26 Report of employment upon resignation.

Each covered employee shall report to the Ethics Counselor or a prescribed

form his or her resignation to accept employment in the private sector. Such report shall disclose pertinent information regarding the prospective employment and shall be made at least two weeks prior to the effective date of resignation.

§ 336.27 Statement of employment and financial interests.

(a) *Employees required to file.* Unless they file statements pursuant to § 336.28, the following employees shall be deemed covered employees for the purpose of filing statements of employment and financial interests pursuant to this section:

(1) Assistants to assistants or deputies to the Board of Directors or to individual Board members (except persons employed by the Office of the Comptroller of the Currency);

(2) Holder(s) of the position(s) immediately subordinate to the director of a division of office;

(3) Branch or comparable office heads;

(4) Division of Bank Supervision employees at or above the grade 5 level in job series 570, 1160, 301 and 341;

(5) Division of Liquidation employees at or above the grade 5 level in job series 1160, 301, and 341;

(6) Office of Research and Strategic Planning employees serving as financial economists in job series 110.

(7) Assessment auditors at or above the grade 5 level;

(8) Employees of the Division of Accounting and Corporate Services at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials, and services;

(9) Persons employed by the FDIC as attorneys;

(10) Corporate auditors at or above the grade 5 level;

(11) Consumer Affairs Specialists at or above the grade 11 level;

(12) Voting members and designees appointed to any FDIC standing committee;

(13) The Alternate Ethics Counselor and Deputy Ethics Counselors; and

(14) The holders of any other positions determined by the Ethics Counselor to require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part, or other FDIC regulation; Provided, that reporting by holders of such positions below the grade 13 level will be subject to the prior concurrence of the U.S. Office of Government Ethics. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement, administering or monitoring grants or

subsidies, regulating or auditing a private or non-federal enterprise, or other activities where the decision or action has an economic impact on any bank or other enterprise.

(b) *Submission of Statements.* (1) Covered employees shall annually file statements of employment and financial interests with information as of December 31. Covered employees who have commenced employment within 90 days of December 31 need not submit another statement for such reporting period.

(2) The Ethics Counselor shall notify covered employees of the obligation to file annual statements and provide a copy of the prescribed reporting form no later than January 30 of each year, with instructions that statements are to be submitted in accordance with paragraph (b)(5) of this section not later than February 28.

(3) Covered employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statement within 30 days after commencement of employment, reassignment, or promotion.

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment in, or reassignment or promotion to, executive level positions and certain other senior positions.

(5) Statements required under this section shall be submitted to the appropriate reviewing as follows—

(i) Assistants to assistants or deputies to the Board of Directors or to individual Board members, holder(s) of the position(s) immediately subordinate to a director of a division or office, voting members and designees appointed to any FDIC standing committee, branch or comparable office heads, and assessment auditors and corporate auditors to the Alternate Ethics Counselor, Office of the Executive Secretary;

(ii) Division of Bank Supervision covered employees assigned to a regional office, to the designated Deputy Ethics Counselor for the region to which assigned;

(iii) Division of Bank Supervision covered employees assigned to the Washington Office or detailed to another division, to the designated Deputy Ethics Counselor for the Division of Bank Supervision;

(iv) Division of Liquidation covered employees assigned to regional or consolidated offices, to the designated Deputy Ethics Counselor for the region or consolidated office to which assigned;

(v) Division of Liquidation covered employees assigned to the Washington Office or detailed to another division, to the designated Deputy Ethics Counselor for the Division of Liquidation;

(vi) Division of Accounting and Corporate Services covered employees assigned to the Washington Office, a regional office, or consolidated office, to the designated Deputy Ethics Counselor for the branch to which assigned;

(vii) Legal Division covered employees assigned to a regional or consolidated office, to the appropriate regional counsel (Supervision or Liquidation) or, if applicable, to the designated Deputy Ethics Counselor for the consolidated office to which assigned;

(viii) Legal Division covered employees assigned to the Washington Office, to the appropriate Assistant General Counsel;

(ix) Deputy Ethics Counselors and Alternate Ethics Counselors, to the Ethics Counselor, Office of the Executive Secretary; and

(x) All other covered employees required to file, to the Alternate Ethics Counselor, Office of the Executive Secretary.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the covered employee's spouse or dependent child is considered an interest of the covered employee unless—

(1) The interest is solely the financial interest and responsibility of the spouse or the dependent child, and the covered employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets, or activities of the covered employee; and

(3) The covered employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not known by covered employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to a covered employee but is known to another person, the covered employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require a covered employee to submit on a statement of employment and financial interests any information relating to the covered employee's connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political

organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the government are deemed business enterprises and are required to be included in a covered employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the reviewing official, who shall be responsible for maintaining the statements in confidence. The secretary of the reviewing official shall have such access as necessary and then only to carry out the purposes of the review. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information in a statement will not otherwise be disclosed except as the Chairman or the Director of the U.S. Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the appropriate reviewing official no later than two months following the filing of the statements.

(2) Whenever a statement or other information indicates a possible conflict between the interest of a covered employee and the performance of his or her service to the FDIC—

(i) The reviewing official shall investigate the matter and allow the covered employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of a conflict exists; and

(ii) The Ethics counselor shall attempt to resolve the matter. If the matter cannot be resolved within 60 days, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairman for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of covered employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 336.28 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Individual Board members (except the Comptroller of the Currency), employees

at or above Executive Level I, and employees whose positions are excepted from competition service by reason of being of a confidential or policy-making character (unless otherwise excluded by the U.S. Office of Government Ethics) must file—

(a) Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR part 734; and

(b) Confidential Reports of Indebtedness reporting all indebtedness to insured banks and any affiliates thereof, not otherwise reportable in accordance with the requirements of the Ethics in Government Act of 1978. Such statements shall be filed with the Ethics Counselor on or before May 15 for the preceding calendar year ended December 31.

Subpart E—Limitations on Activities of Former Employees

Note: This subpart relates to limitations of former employees, including special government employees, with respect to participation in matters connected with their former official duties and responsibilities with the FDIC.*

§ 336.29 Limitations on representation.

(a) No former employee or special government employee shall represent any other person, except the United States, in an appearance or by oral or written communication or personal representation before the FDIC on behalf of any person other than the United States, or an agency thereof, in connection with any judicial or other proceeding, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, the District of Columbia, or an agency thereof is also a party or has a direct and substantial interest, and in which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise. (See 18 U.S.C. 207(a))

(b) No former employee or special government employee, within two years after termination of employment with

* While the FDIC has not adopted rules with regard to the disclosure of unpublished information by former FDIC employees, it advises such persons not to disclose unpublished information of the FDIC obtained in the course of their work. Questions in this regard may be addressed to the FDIC's Ethics Counselor.

the FDIC, shall represent any other person, except the United States, in an appearance or by oral or written communication or personal representation before the FDIC on behalf of any person other than the United States, or any agency thereof, in connection with any judicial or other proceeding, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, the District of Columbia, or an agency thereof is also a party or has a direct and substantial interest, and which was in process during his or her period of employment, and under his or her official responsibility, at any time within a period of one year prior to the termination of such responsibility. (See 18 U.S.C. 207(b)(i))

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives.

(d) No former senior employee, within two years after termination of employment with the FDIC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance, before the FDIC in connection with any judicial or other proceeding, application, request for ruling or determination, or other particular matter involving a specific party or parties in which the United States, the District of Columbia, or an agency thereof is also a party or has a direct and substantial interest, and in which he or she participated personally and substantially while an employee. (See 18 U.S.C. 207(b)(iii))

(e) No former senior employee (other than a special government employee who serves for less than sixty (60) days in a calendar year), within one year after termination of employment with the FDIC, shall represent any other person, except the United States, in an appearance or by oral or written communication on behalf of any person other than the United States to the FDIC in connection with any judicial, rulemaking, or other proceeding, application, request for ruling or determination, or other particular matter, pending before the FDIC or in which the FDIC has a direct and substantial interest. (See 18 U.S.C. 207(c))

§ 336.30 Consultation as to propriety of appearance before the FDIC.

Any former employee who wishes to appear before the FDIC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the FDIC, may consult the Ethics Counselor as to the propriety of such appearance.

§ 336.31 Suspension of appearance privilege.

Subject to the provisions of 18 U.S.C. 207(j), if any former employee or special government employee knowingly fails to comply with the provisions of this subpart, the Chairman may prohibit such person from making an appearance before or an oral or written communication with the FDIC for such period of time as he or she determines, not to exceed five years, or may impose such other sanctions as he or she deems just and proper.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 336.32 Use of FDIC employment.

A special government employee shall not use his or her FDIC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 336.33 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her FDIC employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under FDIC authority which has not become part of the body of public information.

(b) The provisions of § 336.11 (a) through (d) with regard to employees shall be applicable to special government employees.

§ 336.34 Coercion.

A special government employee shall not use his or her FDIC employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 336.35 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, a special government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the FDIC anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(b) The exemptions of § 336.8(b) with regard to employees shall be applicable to special government employees.

§ 336.36 Miscellaneous statutory provisions.

Each special government employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as a special government employee of the FDIC and of the Government. In addition to the statutes cited in the body of the regulations in this part, the attention of each special government employee is directed to the statutory provisions listed in § 336.14(d).

§ 336.37 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special government employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports—

- (1) All other employment; and
- (2) The financial interests of the special government employee which the FDIC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special government employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the FDIC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or medical specialist whose services are procured to provide care and service to patients. Special government employees who are relieved of the requirement of filing a statement include, but are not limited to:

summer personnel, student interns, and individuals paid out of "Imprest Funds" to assist in bank liquidations.

(c) Special government employees at or above Executive Level I shall file Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and

regulations of the U.S. Office of Government Ethics, 5 CFR Part 734.

(d) A statement of employment and financial interests required to be filed under this section shall be filed not later than the time of employment of the special government employee. Each special government employee shall keep

his or her statement current throughout his or her employment with the FDIC by the submission of amended or annual statements as required.

(e) The provisions of §§ 336.27 (c) through (h) shall apply to statements filed under this section.

APPENDIX TO PART 336—MATRIX OF CREDIT PROHIBITIONS

Covered Employees	Credit Prohibitions	Exceptions to Credit Prohibitions
Members of the Board of Directors (except the Comptroller of the Currency), an assistant or deputy to the Board of Directors or to an individual Board member (except the Comptroller of the Currency), and any assistant thereto, directors of divisions or offices, holder(s) of position(s) immediately subordinate thereto, except as provided below.	Insured state nonmember banks.	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Assumption of mortgage or renegotiation of pre-existing debt when prior review and concurrence by the Ethics Counselor is obtained.
The Director of the Division of Bank Supervision, holder(s) of position(s) immediately subordinate thereto, examiners, or any other covered employee of DBS at or above grade 11 assigned to the Washington Office or any region.	Insured state nonmember banks.	(1) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained. (2) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000, the issuing bank is located outside the employee's official region of assignment, and notice is given on a prescribed form.
Division of Liquidation employees in job series 301, 1160, or 341 at or above grade 5 assigned to a regional or consolidated office; Closed bank attorneys assigned to a regional or consolidated office; and, Supervisory accountants and supervisory field accountants assigned to a regional or consolidated office.	New extensions of credit from an assisted or assuming entity for so long as it remains an assisted or assuming entity. Prohibition extends to all branches within employee's region of assignment.	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained.
Open bank attorneys assigned to a regional office.	Insured state nonmember banks headquartered in region of assignment.	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained.
Assessment auditors.	Insured banks subject to audit for deposit insurance assessment purposes.	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Credit extended by one particular insured bank subject to audit when prior written approval is received. (3) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained.
Consumer Affairs Specialists at or above grade 11.	Insured state nonmember banks.	(1) Credit cards issued under the same terms and conditions as offered to the general public when the total line of credit from one institution does not exceed \$10,000. (2) Assumption of mortgage or renegotiation of pre-existing debt when prior written approval is obtained.

General: All covered employees are disqualified from matters affecting any provider of credit unless amount of credit extended to employee is \$10,000 or less. Covered employees of the Division of Bank Supervision are disqualified regardless of the amount of credit extended. All covered employees who participated personally and substantially in any matter involving an assisted or assuming entity may not accept any extension of credit from that institution.

Note: See section 336.16 (b)(5) and (d) for prohibitions applicable to all covered employees generally.

By order of the Board of Directors.
Dated at Washington, D.C., this sixth day of July 1988.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-15591 Filed 7-11-88; 8:45 am]
BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

(Airspace Docket No. 88-ASO-6)

Proposed Designation of Transition Area; Jasper, GA

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Jasper, Georgia, transition

area to accommodate instrument flight rule (IFR) operations at the Pickens County Airport. This action will lower the base of controlled airspace from 1,200' to 700' above the surface in the vicinity of the airport. An instrument approach procedure is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical operations. Due to mountainous terrain north, east, and southwest of the airport, the proposed transition area is enlarged to accommodate departing IFR aircraft.
DATE: Comments must be received on or before: August 11, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-6, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box

20636, Atlanta, Georgia 30320. Communications must identify the list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Jasper, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Pickens County Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Jasper, Georgia [New]

That airspace extending upward from 700' above the surface within an 18.5-mile radius of the Pickens County Airport (Lat. 34°27'00" N., Long. 84°27'25" W), excluding those portions that coincide with the Dalton and Rome, Georgia, transition areas.

Issued in East Point, Georgia, on June 21, 1988.

William D. Wood,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 88-15519 Filed 7-11-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-23]

Proposed Removal of Transition Area; Welch, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Welch, OK. The cancellation of the standard instrument approach procedure (SIAP) serving the Patch Airport has made this proposal necessary. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft executing the SIAP to the Patch Airport. Coincident with this proposal would be the changing of the status of the Patch Airport from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before August 8, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-23, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The office docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 524-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views,

or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Welch, OK. The cancellation of the SIAP serving the Patch Airport has negated the need for a 700-foot transition area, thus necessitating the proposal. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft to execute the SIAP to the airport. Coincident with this proposal would be the changing of the Patch Airport from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was

republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Welch, OK [Removed]

Issued in Fort Worth, TX on June 10, 1988.

Larry L. Graig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-15518 Filed 7-11-88; 8:45am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-12]

Proposed Revision of Transition Area; Anahuac, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Anahuac, TX. A review of the types of aircraft using the Chambers County Airport

revealed a change in the category and size of aircraft using the airport, making this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedure (SIAP) serving the Chambers County Airport. A positive side effect of this proposal is that it will also provide adequate controlled airspace for aircraft executing a new SIAP to the R.W.J. Airpark. The status of both airports will remain unchanged.

DATES: Comments must be received on or before August 8, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-12, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All

comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Anahuac, TX. A review of the existing transition area revealed a change in the types of aircraft using the Chambers County Airport, Anahuac, TX, thus necessitating the proposal. The intended effect of this proposal is to increase the existing Anahuac, TX, Transition Area to provide adequate controlled airspace for all aircraft executing the SIAP serving the Chambers County Airport. In addition to this, a new SIAP has been developed for the R.W.J. Airpark. The R.W.J. Airpark is located just west of the Chambers County Airport and is included in the Houston, TX, Transition Area. By increasing the existing Anahuac, TX, Transition Area, it will provide adequate controlled airspace for aircraft executing this new SIAP to the R.W.J. Airpark without having to amend the Houston, TX, Transition Area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 (Amended)

2. Section 71.181 is amended as follows:

Anahuac, TX (Revised)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Chambers County Airport (latitude 29°46'12" N, longitude 94°39'51" W.), and within 3 miles each side of the 137° bearing from the Anahuac NDB (latitude 29°46'23" N, longitude 94°39'47" W.), extending from the 7-mile radius area to 8.5 miles southeast of the Anahuac NDB.

Issued in Fort Worth, TX on June 10, 1988.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-15516 Filed 7-11-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-67]

Proposed Establishment of Transition Area; Wheeler, TX

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Wheeler, TX. The development of a new standard instrument approach procedure (SIAP) to the Wheeler Municipal Airport, utilizing the Sayre Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this proposal necessary. The intended effect of this proposal is to provide

adequate controlled airspace for aircraft executing the new SIAP. Coincident with this proposal would be the changing of the status of Wheeler Municipal Airport from visual flight rules (VFR) to instrument flight rules (IFR).

DATE: Comments must be received on or before August 8, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 87-ASW-67, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5061.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-67." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive

public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Wheeler, TX. The development of a new SIAP to the Wheeler Municipal Airport, utilizing the Sayre VORTAC, has necessitated this proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this proposal would be the changing of the status of Wheeler Municipal Airport for VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 (Amended)

2. Sections 71.181 is amended as follows:

Wheeler, TX (New)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Wheeler Municipal Airport (latitude 35°27'07" N, longitude 100°11'58" W.).

Issued in Fort Worth, TX, on June 10, 1988.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-15517 Filed 7-11-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

(LR-51-88)

Transitional Rule Relating to Certain Installment Sales by Manufacturers to Dealers; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations relating to certain installment sales by manufacturers to dealers. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 12, 1988. The regulations are proposed to be effective for, and are applicable to, taxable years ending after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-51-88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington,

DC 20224 (Attention CC:LR:T), (202) 566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the Federal Register amend Part 1 of Title 26 of the Code of Federal Regulations to provide rules relating to section 811(c)(2) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085) (the 1986 Act). Section 811(c)(2) relates to section 453C of the Internal Revenue Code of 1986, as enacted by the 1986 Act and amended by section 10202 of the Revenue Act of 1987 (Pub. L. 100-203, 101 Stat. 1330). Therefore, these regulations are added under section 453C.

For the text of the temporary regulations, see FR Doc. 88-15579 (T.D. 8213) published in the Rules and Regulations section of this issue of the Federal Register.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who submitted comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is William L. Blagg of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service and Treasury Department participated in developing

the regulations, on matters of both style and substance.

List of Subjects in 25 CFR 1.441-1—1.443-2

Income taxes; accounting; deferred compensation plans.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-15580 Filed 7-11-88; 8:45 am]

BILLING CODE 4930-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to standards for evaluation of revegetation success and recommended procedures for pre- and postmining vegetation assessments.

This notice sets forth the times and locations that the North Dakota program and proposed amendments to that program are available for public inspection, the comment period during which interested person may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 5:00 p.m., m.s.t. August 11, 1988. If requested, a public hearing on the proposed amendments will be held on August 8, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., m.s.t. on July 27, 1988.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis at the address listed below. Copies of the North Dakota program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday

through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 E. B Street, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 265-5776

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5486

Edward J. Englerth, Director, Reclamation Division, North Dakota Public Service Commission, Bismarck, North Dakota 58505-0165, Telephone: (701) 224-4095

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 Federal Register (45 FR 82246). Subsequent actions taken with regard to North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, and 934.15.

II. Proposed Amendments

By letter dated June 1, 1988, North Dakota submitted proposed amendments to its permanent regulatory program under SMCRA. The following are the State regulations that North Dakota proposes to amend: North Dakota Century Code (NDCC) Section 38-14.1-24.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by North Dakota satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in

this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.s.t. on July 27, 1988. Location and time of day of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare the adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: June 30, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88-15537 Filed 7-11-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

(CGD1 88-035)

Head of the Connecticut Regatta, Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal that would establish permanent special local regulations for the Head of the Connecticut Regatta. The Head of the Connecticut Regatta is an annual event on the Connecticut River that attracts some 2500 participants each year. The congestion on the river is such that each year, in the interest of safety of life on the navigable waters of the United States, the Coast Guard district commander has issued special local regulations governing the conduct of the regatta. By adopting permanent regulations, the Coast Guard will continue to provide the same level of public safety at reduced administrative cost. Public notice of the exact dates of the regatta will be published each year in the local Coast Guard Notice to Mariners and in a Federal Register notice.

DATE: Comments must be received on or before August 28, 1988.

ADDRESS: Comments should be mailed to Commander (bb), First Coast Guard District, Captain John Foster Williams Building, 408 Atlantic Avenue, Boston, MA 02210-2209. The comments and other materials referenced in this notice will be available for inspection and copying in Room 428 at the same address. Normal office hours are between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 88-035) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be

considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of these regulations are LT L. BROWN, project officer, First Coast Guard District Boating Affairs Branch and CDR M. A. LEONE, project attorney, First Coast Guard District Legal Office.

Discussion of Regulations

The Head of the Connecticut regatta consists of approximately 550 racing shells and 2500 participants racing in heats throughout the day. During each heat, the shells will race against the clock and start in staggered intervals of 15 seconds. The purpose of the regulation is to close the portion of the Connecticut River off the towns of Cromwell, Portland, and Middletown to all traffic except participants, official regatta vessels, and patrol craft. Vessels under 20 meters will be allowed to transit the regulated area between each heat (approximately 15 to 18 times during the effective period of regulation); and vessels over 20 meters in length will be allowed to transit the regulated area during the lunch break between 12:30 p.m. and 1:45 p.m., or as directed by the Coast Guard patrol commander. The regulations are needed to provide for the safety of participants and spectators due to the traffic density and the swamping hazards inherent to the low freeboard racing shells. The regulated area and immediately adjacent waters will be patrolled by Coast Guard vessels and state and local law enforcement authorities. The Coast Guard Auxiliary may be patrolling to advise nearby traffic of the content of these regulations.

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a large number of spectators into the area that will easily compensate area merchants for the slight inconvenience of having navigation restricted. Larger

commercial traffic will be given the opportunity to transit the area during the afternoon break (12:30 p.m. to 1:45 p.m.). There is minimal commercial traffic at this point in the Connecticut River, and as in past years, advance coordination between the Coast Guard and the oil facilities upriver of the regulated area will minimize or eliminate any potential inconvenience to the commercial users of the waterway. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.105 is added to read as follows:

§ 100.105 Head of the Connecticut Regatta

(a) Regulated Area. The regulated area is that section of the Connecticut River between the southern tip of Gildersleeve Island and Light Number 87.

(b) Special Local Regulations.

(1) The regulated area is closed to all transiting vessel traffic between 9:00 a.m. and 6:00 p.m. except for escorted passages as described in (2) and (3) below. All transiting vessel movement will be done at the direction of the Coast Guard patrol commander.

(2) Vessels less than 20 meters in length will be allowed to transit the regulated area, under escort, between each of the approximately 18 heats.

(3) Vessel over 20 meters in length will be allowed to transit the regulated area, under escort, from 12:30 p.m. to 1:45 p.m. or as directed by the Coast Guard patrol commander.

(4) All transiting vessels shall operate at "No Wake" speed or five (5) knots whichever is slower.

(5) Southbound vessels awaiting escort through the regulated area will be held in the vicinity of the southern tip of Gildersleeve Island. Northbound vessels awaiting escort will be held at Light Number 87.

(6) All vessels shall immediately follow any specific instructions given by Coast Guard patrol craft and exercise extreme caution while operating in or near the regulated area.

(7) No person shall enter or remain in the regulated area unless participating in the event or authorized by the event sponsor or Coast Guard patrol commander.

(8) The sponsor shall ensure that the event is concluded by 6:00 p.m. on the day of the event.

(c) **Effective Dates.** These regulations are effective from 8:00 a.m. to 6:00 p.m. on October 9, 1988 and each year thereafter during the same time period on the second Saturday of October or as published in the local Coast Guard Notice to Mariners and in a Federal Register notice.

Dated: June 20, 1988.

R.I. Rybecki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 88-15073 Filed 7-11-88; 8:45 am]

BILLING CODE 4810-14-M

33 CFR Part 165

[CGD 88-041]

Port Access Routes; Approaches to Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of study.

SUMMARY: The Coast Guard is conducting a port access route study to evaluate the need for vessel routing measures in the approaches to Chesapeake Bay, VA. A U.S. Army Corps of Engineers (COE) channel deepening project at Hampton Roads will permit deeper draft vessels to call the port. The Coast Guard will, therefore, temporarily adjust the traffic separation scheme (TSS) by suspending the southern approach lanes on October 15, 1988, and will use a system of buoys to direct vessels to naturally occurring deeper waters in that area. The port access route study will determine what, if any, vessel routing measures are needed in the approaches to Chesapeake Bay. As a result of the study, a new or modified TSS may be proposed in the Federal Register.

DATE: Comments must be received on or before October 11, 1988.

ADDRESS: Comments should be mailed or delivered to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Room 509, Portsmouth, VA 23704-5004. Comments received will be available for examination or copying at this address between the hours of 8:00

a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John Walters, (804) 398-6230.

SUPPLEMENTARY INFORMATION:

Study Area

The study area is bounded by a line connecting the following geographic positions:

Latitude	Longitude
37°07' N	76°06' W
37°07' N	75°35' W
36°45' N	75°35' W
36°45' N	75°06' W

The study area encompasses the existing TSS which was implemented on December 1, 1989, and adopted by the International Maritime Organization (IMO) on October 12, 1971. The TSS consists of three parts as described below:

Part I, Precautionary Area—a two mile radius circle centered at 36°56'07.8" N, 75°57'27" W;

Part II, Eastern Approach to Chesapeake Bay—a traffic lane, ½ mile wide on either side of a line drawn between 36°58'40.3" N, 75°48'39" W and 36°56'48" N, 75°55'06" W; and,

Part III, Southern Approach to Chesapeake Bay—a traffic lane, ½ mile wide on either side of a line drawn between 36°51'21" N, 75°50'55.8" W and 36°54'46.8" N, 75°55'37.2" W.

A TSS is an internationally recognized routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. Vessel use of a TSS is voluntary; however, vessels operating in or near an IMO approved TSS are subject to Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

Background

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study be conducted prior to establishing or adjusting a TSS. The Coast Guard is undertaking a port access route study to determine the need for a TSS to increase vessel traffic safety in the study area.

The TSS in the Approaches to Chesapeake Bay was studied in 1979, and the results of the study were published on July 22, 1982, (47 FR 31766). The study concluded that the existing TSS was adequate for the foreseeable future.

The Water Resources Development Act of 1986, Pub. L. 99-662 dated November 17, 1986, authorized the deepening of the Thimble Shoals, Newport News, Craney Island Reach,

Norfolk Harbor Reach and the Entrance Reach Channels in the port of Hampton Roads to a depth of 55 feet below mean low water (MLW). These channels are located west of the study area.

Completion of Phase I (deepening of the outbound lanes of these channels to 50 feet) on October 15, 1988, will allow deeper draft vessels to call at Hampton Roads. The water depths of 48 feet in the existing southern approach of the TSS however, will not accommodate vessels drawing over 46 feet of water.

The Coast Guard has notified IMO that the TSS in the approaches to Chesapeake Bay will be adjusted temporarily by suspending Part III, the Southern Approach. A COE survey of the southern approach to Chesapeake Bay indicates that there is naturally occurring deeper water to the northeast of the current TSS. The Coast Guard will use a system of buoys to direct vessels to these deeper waters.

The COE is authorized to dredge in inbound/outbound channel, to be known as the Atlantic Ocean Channel, 1,300 feet wide by 60 feet deep in the vicinity of the present TSS southern approach. The first phase, scheduled to occur between 1990 and 1992, will dredge an outbound channel 650 feet wide by 60 feet deep from position 36°55'02.5" N, 75°55'19.8" W to 36°52'16.0" N, 75°52'12.1" W to 36°49'38.5" N, 75°46'58.1" W. The second phase which will complete the other 650 feet of the channel, is not currently scheduled.

Request for Comments

The Coast Guard is interested in receiving information and opinion from persons who have an interest in safe routing of ships in the study area. Vessel owners and operators are specifically invited to comment on any positive or negative impacts that they foresee, and to identify and support with documentation any costs or benefits which could result from the reconfiguration or elimination of the existing TSS.

Commenters should include their name and address, identify this notice (CGD 88-041), and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. In addition to the specific questions asked herein, comments from the maritime community, offshore development concerns, environmental groups and any other interested parties are requested. All comments received during the comment period will be considered in the study and in

development of any regulatory proposals.

The Fifth Coast Guard District will conduct the study and develop recommendations. Mr. John Walters, Chief, Planning and Waterways Management Section, Aids to Navigation Branch, (804) 398-6230, is the project officer responsible for this study.

Issues

Preliminary discussions with members of the Association of Maryland Pilots and the Virginia Pilot Association indicate there are numerous issues to be discussed by the time the Atlantic Channel outbound lane is dredged. The Coast Guard will study these issues to determine if a TSS is still required, or if the existing TSS needs to be adjusted.

Particular issues to be examined during the study are:

a. Should the Atlantic Ocean Channel, when dredged to 65 feet wide and 60 feet deep, be used by both inbound and outbound vessels?

b. Will the proximity of the U.S. Navy Firing Range off Dam Neck, VA, to the Atlantic Ocean Channel affect navigation safety?

c. Is there a continuing need for the eastern approach of the Chesapeake Bay TSS? If so, is the present configuration adequate?

In addition, the Coast Guard is also interested in comments concerning the color and configuration of buoys to be used to direct deep draft vessels to deeper water when the southern approach of the TSS is suspended. The following options are under consideration:

a. Center marking only with red and white striped buoys;

b. Red and green lateral markings; and

c. Centerline marking only with yellow buoys.

Procedural Requirements

In order to provide safe access routes for movement of vessel traffic proceeding to and from U.S. ports, the PWSA directs that the Secretary designate necessary fairways and traffic separation schemes in which the paramount right of navigation over all other uses shall be recognized. Before a designation can be made, the Coast Guard is required to undertake a study of the potential traffic density and the need for safe access routes.

During the study, the Coast Guard is directed to consult with federal and state agencies and to consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action.

In accordance with 33 U.S.C. 1223(c), the Coast Guard will, to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved. The Coast Guard will also consider its experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions.

The results of this study will be published in the Federal Register. If the Coast Guard determines that new routing measures are needed, a notice of proposed rulemaking will be published. It is anticipated that the study will be concluded by October 1988.

Dated: July 6, 1988.

Signed:

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety Waterways Services.

[FR Doc. 88-15524 Filed 7-11-88; 8:45 am]

BILLING CODE 4810-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3412-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by North American Philips Consumer Electronics Corporation, Greeneville, Tennessee, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate

and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until August 26, 1988. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Bruce Weddle, whose address appears below, by July 27, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-NAEP-FTFFF."

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Robert Kaysa, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32,

residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach used to evaluate this petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of North American Philips Consumer Electronics Corporation's petitioned waste on human health and the environment. Specifically, the models will be used to predict a compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that these models represent a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because

a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill, and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because North American Philips Consumer Electronics Corporation utilizes off-site disposal of the petitioned waste, ground-water monitoring data collected from the petitioner's facility would not characterize the effects of the petitioned waste on the underlying aquifer at the off-site disposal facility. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

North American Philips Consumer Electronics Corporation, Greenville, Tennessee

1. Petition for Exclusion

North American Philips Consumer Electronics Corporation (NAPCEC), located in Greenville, Tennessee, etches circuits on fiberglass composition board. NAPCEC petitioned the Agency

to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006— "Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents of concern for F006 waste are cadmium, hexavalent chromium, nickel, and cyanide (complexed). NAPCEC petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. NAPCEC also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. NAPCEC further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of NAPCEC's petition.

2. Background

NAPCEC petitioned the Agency to exclude its wastewater treatment sludge on July 6, 1987. Additional information was submitted to the Agency on October 21, 1987 and December 21, 1987. In support of its petition, NAPCEC submitted (1) detailed descriptions of its manufacturing and wastewater treatment processes; (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent and EP toxicity analyses for all the EP toxic metals and nickel from representative samples of the wastewater treatment sludge; (4) results from total constituent analyses for total sulfide and total cyanide; and (5) results from total oil and grease analyses on representative samples.

The manufacturing processes contributing to the generation of the petitioned waste are the printing and etching of copper from fiberglass circuit boards, soldering, legend printing, punching or roll soldering, sealbrite coating, and deslugging. The

wastewaters from the above operations flow to the wastewater treatment plant for neutralization. The wastewater then is sent to a series of electrochemical cells where iron and an electrical current are added in order to generate hydroxyl ions (ferrous ion) and hydrogen gas. Hydrogen gas (generated from the electrolysis of water) is vented from the electrolytic cell, and any remaining hydrogen gas is removed by degassing in a separate tank. The wastewater (containing metal hydroxides) then is sent to a clarifier where an anionic polymer is added to promote the precipitation of metal hydroxides. The effluent from the clarifier is sent to a publicly owned treatment works (POTW). The resulting underflow sludge (from the clarifier) is pumped to a sludge thickening tank for liquids removal using a filter press. Filtrate from the filter press is recycled back to the wastewater collection tank. The filter-pressed sludge is collected in 55-gallon drums and is currently disposed of off-site in a hazardous waste landfill.

To collect representative samples from 55-gallon drums like NAPCEC's, petitioners are normally requested to collect a minimum of four composite samples, each comprised of an independent full-depth core sample collected from one or more of the 55-gallon drums containing waste generated over a specific time period (*e.g.*, collect a full-depth core sample from each drum generated during the week and composite the samples weekly, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

NAPCEC collected a total of four composite samples from twelve drums containing all of the filter-pressed sludge generated during a seven week period. Each drum, when full, was sealed and dated. One full-depth core sample was collected from three consecutively dated drums, and the three core samples were mixed to produce one composite sample. This procedure was repeated three times to produce the other three composite samples. The four composite samples were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of all the EP toxic metals, nickel, cyanide, sulfide, and total oil and grease content. The four composite samples also were

analyzed for the EP leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals and nickel. NAPCEC claims that, due to a consistent manufacturing and treatment process, the analyses from samples collected over the seven-week period are representative of any variation in the wastewater treatment sludge constituent concentrations.

3. Agency Analysis

NAPCEC used SW-846 method numbers 9010 and 9030 to quantify the total constituent concentrations of cyanide and sulfide, respectively. NAPCEC used EPA method numbers 206.2-272.1 to quantify the total constituent concentrations of the EP toxic metals and nickel. See "Methods for Chemical Analysis of Wastewater," U.S. EPA (EPA/600/4-79-020), March 1983. Additionally, NAPCEC used SW-846 method number 1310 (standard EP toxicity procedure) to quantify the leachable concentrations of the EP toxic metals and nickel in their waste. (Analysis for EP leachable concentrations of sulfide or reactive sulfide are not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide). Table 1 presents the maximum total constituent concentrations of the EP toxic metals, nickel, cyanide, and sulfide. Table 2 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide. These detection limits represent the lowest concentrations quantifiable by NAPCEC, when using the appropriate SW-846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (FILTER CAKE)

Constituents	Total constituents concentration (mg/kg)
Arsenic	6.4
Barium	29
Cadmium	ND (detection limit of <0.1)
Chromium	85
Lead	55
Mercury	1.4
Selenium	ND (detection limit of <2)
Silver	70
Nickel	23
Cyanide	ND (detection limit of <0.5)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (FILTER CAKE)—Continued

Constituents	Total constituent concentration (mg/kg)
Total Sulfide	ND (detection limit of <20)

ND: Not Detected. Denotes concentrations below the detection limit.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (MG/L) (FILTER CAKE)

Constituents	Maximum EP leachate concentrations (mg/l)
Arsenic	0.07
Barium	1.7
Cadmium	0.008
Chromium	0.06
Lead	0.1
Mercury	ND (detection limit of <0.001)
Selenium	ND (detection limit of <0.006)
Silver	ND (detection limit of <0.005)
Nickel	0.17
Cyanide	0.025 ¹

ND: Not Detected. Denotes concentrations below the detection limit.

¹ Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution with 2000 ml of water) and a theoretical worst-case leaching of 100 percent.

Using EPA method number 413.1, NAPCEC determined that its waste had a maximum oil and grease content of 0.05 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (i.e., waste having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase which may be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of metals from the sample). See SW-846 method number 1330. None of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, 261.23.

NAPCEC also submitted a list of all raw materials used in its manufacturing and wastewater treatment processes. This list indicated that no hazardous constituents (other than those tested for) are used in NAPCEC's processes and that the formation of any hazardous constituents (e.g., as reaction by-products) is highly unlikely.

NAPCEC submitted a signed certification stating that, based on current annual waste generation, their maximum annual generation rate of wastewater treatment sludge is 108

cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts NAPCEC's certified estimate of 108 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions and, as part of this program, conducted a spot-sampling visit a NAPCEC's facility. The results of this visit, including chemical analyses of waste samples from NAPCEC, are discussed later in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter cake wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48996 (November 7, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (i.e., the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of NAPCEC's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except mercury, selenium, and silver—see explanation below) from NAPCEC's waste. The Agency's evaluation, using the waste volume of 108 cubic yards and the maximum EP leachate concentrations of all the inorganic constituents of concern in the VHS model, has generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate

the mobility of the remaining inorganic constituents (i.e., mercury, selenium, silver, and cyanide) from NAPCEC's waste because they were not detected in the EP extract using the appropriate SW-846 analytical test methods (See Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS WASTEWATER TREATMENT SLUDGE FILTER CAKE

Constituents	Compliance-point concentrations (mg/l)	Regulatory standards (mg/l)
Arsenic	0.0022	0.05
Barium	0.0526	1.0
Cadmium	0.0002	0.01
Chromium	0.0025	0.05
Lead	0.0031	0.05
Nickel	0.0053	0.50
Cyanide	0.00077	0.7

The sludge exhibited arsenic, barium, cadmium, chromium, and lead levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). See 40 CFR 141. The concentration of nickel at the compliance point is below the Agency's health-based level of 0.50 mg/l. See Hazardous Waste Management System; Land Disposal Restrictions; Notice of Availability and Request for Comment, 52 FR 29994, Proposed Health-Based Levels for Nickel and Cyanide, August 12, 1987. The concentration of cyanide at the compliance point is below the Agency's health-based level of 0.7 mg/l. See Verified Reference Doses of the U.S. EPA, Office of Health and Environmental Assessment (OHEA), Environmental Criteria and Assessment Office, Cincinnati, Ohio, 1988.

Additionally, because the total concentration of cyanide in NAPCEC's waste is less than 0.5 ppm, the Agency believes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985,

internal Agency memorandum is the RCRA public docket. Last, because the total constituent concentration of sulfide is less than 20 ppm, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency concluded, after reviewing NAPCEC's processes and raw materials list, that no other hazardous constituents of concern are being used by NAPCEC and that no other constituents of concern are likely to be present or formed as reaction products or by-products of NAPCEC's waste. On the basis of test results submitted by the petitioner, pursuant to 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

On November 18, 1987, staff under contract to the Agency conducted a site visit to NAPCEC as part of the Agency's spot-sampling and analysis program. The staff collected one grab sample directly from NAPCEC's filter press. The staff also randomly selected three drums from a group of six and withdrew a single full-depth core sample from each drum. A fourth full-depth core sample of newly generated material was collected from a drum located next to NAPCEC's filter press. All five samples were analyzed for the total constituent concentrations and EP leachate concentrations of all the EP toxic metals, nickel, and cyanide. The five samples also were analyzed for the total constituent concentrations of all the priority pollutants.

The evaluation of the spot-sampling samples for the total constituent concentrations of all the EP toxic metals, nickel, and cyanide are reported in Table 4. The evaluation of the spot-sampling samples for the EP leachate concentrations of all the EP toxic metals and nickel are reported in Table 5. (EP leachate analysis for cyanide was not performed due to the non-detectable total constituent concentrations of cyanide—see Table 5.)

TABLE 4.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS SPOT-SAMPLING VISIT SAMPLES

Constituents	Total constituent concentrations (mg/kg)
Arsenic	21
Barium	210

TABLE 4.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS SPOT-SAMPLING VISIT SAMPLES—Continued

Constituents	Total constituent concentrations (mg/kg)
Cadmium	ND (detection limit of <0.5)
Chromium	310
Lead	330
Mercury	ND (detection limit of <0.1)
Selenium	ND (detection limit of <0.5)
Silver	ND (detection limit of <5)
Cyanide	ND (detection limit of <1.84)
Nickel	89

ND: Not Detected. Denotes concentrations below the detection limit.

TABLE 5.—MAXIMUM EP LEACHATE CONCENTRATIONS SPOT-SAMPLING VISIT SAMPLES

Constituents	Maximum EP leachate concentrations (mg/l)
Arsenic	ND (detection limit of <0.25)
Barium	ND (detection limit of <2)
Cadmium	ND (detection limit of <0.05)
Chromium	ND (detection limit of <0.2)
Lead	ND (detection limit of <0.25)
Mercury	ND (detection limit of <0.001)
Selenium	ND (detection limit of <0.02)
Silver	ND (detection limit of <0.005)
Nickel	0.27
Cyanide	NA

ND: Not Detected. Denotes concentrations below the detection limit.
NA: Not Analyzed.

Comparison of NAPCEC's data with the Agency's spot-sampling data indicates some variation in the constituent concentrations reported. The Agency, however, is not concerned with the variation between the NAPCEC's and the Agency's analytical data because: (1) NAPCEC's samples were collected over the course of seven weeks, while the Agency's samples consisted of waste generated over the course of only three weeks; (2) NAPCEC's samples were composite samples comprised of three full-depth core samples and the Agency's samples were not composited; and (3) the analyses were conducted by different laboratories using different analytical detection limits. Variation between NAPCEC's samples and the Agency's samples is, therefore, expected. Additionally, the Agency is not concerned with the small variation between the two sample sets because NAPCEC's compositing procedure would tend to average any particular daily peak in constituent concentrations observed in the Agency's non-composited samples.

Leachable concentrations of nickel, when evaluated using the VHS model,

produced a compliance-point concentration of 0.084, which is below the regulatory standard for nickel of 0.5 mg/l. The Agency did not evaluate the mobility of any of the EP toxic metals from NAPCEC's waste because they were not detected in the EP extract (see Table 5). The Agency also did not evaluate the mobility of cyanide from NAPCEC's waste because an EP extraction for cyanide was not performed (see above).

Although no other Appendix VIII hazardous constituents were expected to be present in NAPCEC's waste, the Agency's spot-sampling visit samples are routinely analyzed for the presence of the priority pollutants (which account for most of the analytically feasible Appendix VIII constituents). Results of the Agency's spot-sampling visit data indicated that no priority pollutant volatile or semi-volatile organic constituent, priority pollutant pesticide, or polychlorinated biphenyls were detected at or above their respective detection limits, using SW-846 method numbers 8240, 8270, and 8080, respectively, except for bis(2-ethylhexyl) phthalate, which is a common plasticizer. Bis(2-ethylhexyl) phthalate was detected at a maximum total constituent concentration of 28 mg/kg. Since NAPCEC does not use bis(2-ethylhexyl) phthalate in its manufacturing or treatment processes, the Agency believes that the presence of this constituent may be caused by laboratory contamination from plastic containers.

The Agency evaluated the mobility of bis(2-ethylhexyl) phthalate using the VHS model. The Agency used the organic leachate model (OLM) to predict the leachable concentration of bis(2-ethylhexyl) phthalate in NAPCEC's wastewater treatment filter cake. The resulting leachable concentration and the estimated annual waste volume of 108 cubic yards were then used as inputs in the VHS model in order to assess the potential impacts of bis(2-ethylhexyl) phthalate upon the ground water. The Agency requests comments on the use of the OLM as applied to the evaluation of NAPCEC's waste.

The OLM/VHS analysis calculated a compliance-point concentration of 0.00044 mg/l for bis(2-ethylhexyl). This compliance-point concentration is below the regulatory standard of 0.0042 mg/l set for bis(2-ethylhexyl) phthalate. See Carcinogenic Risk Assessment Verification Endeavor (CRAVE), Risk Estimate for Carcinogenicity, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, Ohio, 1988.

5. Conclusion

The Agency believes that NAPCEC's wastewater treatment system renders the F006 wastes non-hazardous. NAPCEC's manufacturing and wastewater treatment processes are believed to be uniform and consistent because the facility does not perform as a job shop or have seasonal product variations. The Agency believes that the analyzed samples of treated waste reflect the day-to-day variations in manufacturing and treatment processes intended to be used thereafter. The Agency, therefore, is proposing that NAPCEC's wastewater treatment filter cake be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to North American Philips Consumer Electronics Corporation, located in Greeneville, Tennessee, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the wastewater treatment sludge would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site treatment, storage, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to

come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date six months after promulgation, and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Section 3001 RCRA, 42 U.S.C. 6921.

Date: June 30, 1988.

Jeffrey D. Dunitz,
Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order:
Appendix IX—Wastes Excluded Under 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
North American Philips Consumer Electronics Corp.	Greeneville, Tennessee.	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after (insert date of final rule's publication).

[FR Doc. 88-15569 Filed 7-11-88; 8:45 am]

BILLING CODE 4310-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[ICC Docket No. 85-388]

Amendment of the Commission's Rules for Rural Cellular Service

ACTION: Proposed rule; correction.

SUMMARY: This document makes certain corrections to the proposed rule in this proceeding concerning the Rural Cellular Service. Although the comment/reply comment periods have long since passed, the Commission is publishing this correction to clarify pertinent identifying numbers associated with this action for reference purposes.

FOR FURTHER INFORMATION CONTACT: Ronald Jackson, (202) 632-4178.

SUPPLEMENTARY INFORMATION: In the Preamble of this action, published at 53 FR 5020 on February 19, 1988, in the heading of the document, "General Docket No. 85-388" should read "CC Docket No. 85-388" and "FCC 88-449", should read "FCC 88-57". In addition, in the second paragraph following "FOR FURTHER INFORMATION CONTACT", the adopted and release dates should read February 17, 1988 and February 19, 1988, respectively.

H. Walker Feaster, III,
Acting Secretary.

[FR Doc. 88-15446 Filed 7-11-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 653

[Docket No. 88-F]

Control of Drug Use in Mass Transit Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of public hearings.

SUMMARY: On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking in the Federal Register entitled "Control of Drug Use in Mass Transit Operations" [53 FR 25910]. In that notice, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times, and locations were not yet available. This notice provides that information.

DATES: Public hearings are scheduled as follows (local time):

1. July 22, 1988, 9:30 a.m., Washington, DC.
2. July 25, 1988, 10:00 a.m., New York City.
3. August 1, 1988, 9:30 a.m., Chicago, Illinois.
4. August 31, 1988, 10:30 a.m., Los Angeles, California.

ADDRESSES: Written comments should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88-F, 400 7th Street, SW., Room 9316, Washington, DC 20590. The locations for the public hearings are as follows:

1. Washington, DC, U.S. Department of Transportation, Room 2230, 400 7th St., SW.
2. New York City: U.S. Court of International Trade, Ceremonial Court Room (2nd Floor), One Federal Plaza.
3. Chicago, Illinois: Dirksen Federal Building, Room 2541, 219 South Dearborn Street.

4. Los Angeles, California: Exact location to be announced in later Federal Register notice.

FOR FURTHER INFORMATION CONTACT: Holly Vandervort, Office of the Chief Counsel, (202) 366-1936 to register to make a statement at a hearing or to inquire about the logistics.

SUPPLEMENTARY INFORMATION: On July 8, 1988, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) entitled "Control of Drug Use in Mass Transit Operation". The proposed rule would require a recipient of Federal transit funding to certify that it has established a comprehensive anti-drug program. The impetus for this action is the safety concern associated with the use of drugs by mass transportation workers in sensitive safety positions. The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in mass transit operations. Among other things, a recipient's anti-drug program would be required to mandate chemical testing for the use of drugs by those in certain sensitive safety positions. The testing would apply in four situations: pre-employment, post-accident, reasonable cause, and on a random basis. In addition, the NPRM sets out four options concerning rehabilitation for certain employees. Finally, a recipient's program would be required to include an employee assistance program.

At the time the NPRM was published, UMTA announced that it would hold public hearings on the rulemaking, but that dates, times and locations were not yet available. This notice provides that information. Statements made at the public hearings will be included in UMTA Docket No. 88-F and will be reviewed and evaluated by UMTA in conjunction with the rulemaking proceeding.

It is not necessary to make a statement at a public hearing in order to participate in this rulemaking proceeding. Any individual or organization may submit written comments regarding the NPRM to

UMTA Docket No. 88-F instead of, or in addition to, making a statement at a public hearing. Additionally, individuals or organizations do not need to make a statement at more than one public hearing.

Written comments must be received by September 6, 1988. Written comments should be sent to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Room 9316, Docket No. 88-F, 400 7th Street, SW., Washington, DC 20590. All comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

The following procedures are established by UMTA to facilitate the hearings:

Individuals interested in making a statement at a hearing should contact Holly Vandervort at (202) 366-1936, at least 3 days before the hearing is to be held. Individuals will testify in the order their registration is received. UMTA encourages pre-registration; however, witnesses may register to testify on the date of the hearing, at each location during the hour before the hearing is scheduled to begin.

An individual, whether speaking in a personal or private capacity or speaking in a representative capacity on behalf of an organization, is limited to a 10-minute statement at a hearing. The amount of time for testimony may be further limited, in order to accommodate all witnesses wishing to testify.

Hearings will begin at the time specified for each location. Hearings may be extended in order to accommodate the number of witnesses.

UMTA requests that individuals testifying at a hearing provide 3 copies of their prepared written statement to UMTA officials at the hearing. Individuals testifying are welcome to submit additional material as well. All statements and material received at a hearing will become part of the official rulemaking Docket No. 88-F.

The hearings officer may make statements to clarify issues or facilitate discussion during the hearing. Any statements the hearing officer makes during a hearing are not intended to be, and should not be construed as, a position of UMTA with respect to the rulemaking proceeding.

The hearings will be recorded by a court reporter. A transcript of the hearings will be included in the official rulemaking Docket 88-F. Any person

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interested in purchasing a copy of a transcript of a hearing should contact the court reporter directly.

The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual making a statement at a hearing will not be subject to cross-examination by any other participant. However, the hearing officer may ask questions in order to clarify statements made at the hearing.

Issued on: July 8, 1988.
Edward J. Gill, Jr.,
Deputy Chief Counsel.
[FR Doc. 88-15704 Filed 7-8-88; 4:32 pm]
BILLING CODE 4810-57-M

Notices

Federal Register

Vol. 53, No. 133

Tuesday, July 12, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

(Docket No. 88-085)

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test a Genetically Engineered Plant-Associated Microorganism

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Crop Genetics International to allow the field testing in the State of Maryland of a genetically engineered plant-associated microorganism, designed to act as an insecticide to lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of this genetically engineered plant-associated microorganism does not present a risk of introduction or dissemination of a new plant pest and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Payne, Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7908. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 87-355-01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the Federal Register (52 FR 22892-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906 June 16, 1987).

Crop Genetics International of Hanover, Maryland (Crop Genetics), has submitted an application for a permit for release into the environment of a genetically engineered plant-associated microorganism (recombinant bacterium). The permit would allow Crop Genetics to conduct a limited field test of a recombinant bacterium, *Clavibacter xyli* subsp. *cynodontis* genetically engineered to express the delta-

endotoxin gene of *Bacillus thuringiensis* var. *kurstaki*. The field test is to be carried out in two small test plots on agricultural land in Queen Annes and Prince Georges Counties, Maryland. The delta-endotoxin gene has been inserted into *C. xyli* subsp. *cynodontis* to enable the recombinant bacterium to act as an insecticide against the larval stages (caterpillars) of lepidopteran insects.

In the course of reviewing the permit application, APHIS concluded that the field testing will not present a risk of introduction or dissemination of a new plant pest and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by Crop Genetics, as well as review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The inserted delta-endotoxin gene is lost rapidly from *C. xyli* subsp. *cynodontis*. Both the revertant (which has lost the delta-endotoxin gene) and the naturally occurring *C. xyli* subsp. *cynodontis* strains grow faster than the recombinant bacterium. This information shows that the delta-endotoxin gene will eventually be lost from the recombinant bacterium.

2. The genetic alterations are not expected to enhance any plant pathogenic property of the recombinant as compared to the parental strain of *C. xyli* subsp. *cynodontis* that occurs naturally in Maryland where this test is to take place.

3. Transfer to other plants of the recombinant bacterium by mechanical transfer, e.g., by cutting tools, will be minimized in the field test design and field test protocol which include buffer zones and tool disinfection. In addition, regular monitoring for the recombinant bacterium will ensure that if it spreads to plants at the edge of the test plot it will be detected.

4. Dissemination of *C. xyli* subsp. *cynodontis* can occur in seed, so all seed not used for research purposes (in containment) will be destroyed, preventing transfer by this mechanism.

5. Data have been provided by the company to demonstrate that the probability of transfer of the delta-endotoxin gene from the recombinant bacterium to other microorganisms is extremely remote.

6. The recombinant bacterium has a relatively low order of toxicity to susceptible insects. The field test plots are very small. Therefore, the introduction of the recombinant bacterium poses no significant impact on insect populations.

7. No threatened or endangered insect species are present in Maryland, so the introduction of the recombinant bacterium poses no threat to these insects.

8. The inherent properties of *C. lyali* subsp. *cynodontis* and the recombinant bacterium indicate that there are no human health risks. The recombinant bacterium does not grow at human body temperature. This bacterium has been demonstrated not to be pathogenic or toxic in mammalian tests. In addition, all crops will be used for research purposes or destroyed so there will be no dietary exposure to humans.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500-1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384 and 44 FR 51272-51274).

Done at Washington, DC, this 6th day of July 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-15507 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

Food Stamp Program; Electronic Benefit Transfer Alternative Issuance Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Amended General Notice.

SUMMARY: The Department is hereby amending its General Notice for the Electronic Benefit Transfer (EBT) Alternative Issuance Demonstration Project in Reading, Pennsylvania to extend project operations for two years. During this extension, the State may

seek the Department's approval to expand the EBT service population to include all Berks County Food Stamp Program (FSP) participants.

The continuing project is being conducted under the research, demonstration and evaluation authority of section 17 of the 1977 Food Stamp Act, as amended. FNS is continuing to evaluate the project's impact on the program.

EFFECTIVE DATE: Upon Publication.

FOR FURTHER INFORMATION CONTACT: Art Foley, Acting Chief, Administration and Design Branch, Program Development Division; Food Stamp Program; Food and Nutrition Service, USDA; Alexandria, Virginia 22302, telephone (703) 756-3383.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This Notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521-1, and has been classified "not major". The Notice will not have an annual effect on the economy of \$100 million or more, nor is it likely to result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Because this Notice will not have a major effect on the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10551. For the reasons set forth in the final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This Notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96-354. Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities because it will be conducted in a limited area. The State and local welfare agencies will be affected to the extent that they are involved in administering

this alternative system. Food retailers and banks will be affected to the extent that they agree to participate.

Individuals participating in the Food Stamp Program and living within the Reading, Pennsylvania demonstration project area in Berks County will be affected to the extent that they will continue using an alternative benefit issuance instrument and continue to be subject to the alternative issuance procedures. Individuals participating in the Food Stamp Program and living in Berks County outside the existing demonstration project area who have been receiving their benefits in the form of food coupons, may be introduced to the new benefit issuance procedures if the decision is made and approved to expand the project. At that time, additional food retailers may participate in this alternative system.

Paperwork Reduction Act

This Notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Comments

This Notice provides for a further extension of two years and a potential modest expansion of a current operating system without any significant changes to the demonstration's operating procedures. (The enhancements and the potential expansion beyond the Reading, Pennsylvania, pilot area throughout Berks County, are described later in this Notice.) Consequently, comments are not being requested and the provisions of this Notice will be effective upon publication.

Background

On July 8, 1983, the Department of Agriculture published a General Notice in the *Federal Register* (48 FR 31431) which, in accordance with 7 CFR 282.5, established the specific operational procedures and explained the basis and purpose for the Alternative Issuance Demonstration Projects, including the EBT demonstration. On August 21, 1984, the Department published an Amended General Notice in the *Federal Register* (48 FR 33152) which provided additional details on the operational procedures of the project.

The Original Demonstration Project

Implementation of the EBT system began in October 1984. Following the phase-in of participating recipients, the system became fully operational in February 1985. USDA contracted with Planning Research Corporation (PRC) of

McLean, Virginia for the administration of EBT system operations through December 1985.

Reaction to the system by the different groups participating in the demonstration has been favorable. Recipients have had few problems using the system. Retailers and banks have expressed their pleasure regarding the time and effort saved by not having to process coupons. While there were some system problems during early stages of the test which raised concern by all parties, system improvements were implemented to minimize the chance for problem recurrence and to satisfy the retailers and recipients. Further enhancements were not viewed as appropriate by the Department during this initial phase because of the limited time available. The extension of the project provided the opportunity to examine issues relating to long term EBT project operation.

The final evaluation report for the initial period of EBT operations was published in May 1987, and is available for inspection at FNS Headquarters in Alexandria, Virginia.

The Extended Demonstration Project

In consultation with the State of Pennsylvania, the Department decided to extend demonstration project operations. An evaluation of the EBT demonstration is continuing through the extension period. The purpose of the extended EBT demonstration project evaluation is to obtain data that will provide recommendations for management of the EBT system, and guide other State or Federal EBT initiatives. Included in the more specific objectives are collection and assessment of data on administrative costs, system security, and impact on EBT users.

On December 30, 1985, the Department published an Amended General Notice in the *Federal Register* (50 FR 53170) to extend the project for 15 additional months. During this phase, the operating procedures remained as published in the August 1984 Amended General Notice except that the EBT Center was operational 24 hours per day instead of the 18 hours stated in the Notice.

For the first three months of the extended demonstration, PRC continued to operate the EBT system under contract with the Pennsylvania State agency. Subsequent to this period, Pennsylvania assumed responsibility for operating the EBT system and moved the EBT equipment and EBT Center operations to their own offices in Harrisburg, Pennsylvania. During the second phase, all operations were coordinated by State personnel in

Harrisburg. The State's operation of the EBT Demonstration Project is governed by an amendment to the State Plan of Operation. In this amendment the State agreed to maintain the EBT system performance at a level which met or exceeded the pre-existing acceptable levels of performance, with no degradation of system operations or performance, and to include a back-up system which provided continuous processing to minimize system down time and manual processing.

System enhancements which accompanied the extension were for the most part transparent to users. (The changes improved internal systems accountability and cost performance.) One exception for recipients was the additional ability to make a voice and data call for an account balance inquiry by touch tone phone. This Sperry Voice Information Processing System is also used by retailers for daily deposit inquiries, and internal systems reporting. The account information in the computer is translated to voice communication heard on the phone.

The Department has also allowed expansion of the EBT service population to occur with the addition of 500-800 FSP households who were customers of retailers already participating in the demonstration.

Current Action

If further expansion is approved, the base of retailer participation may be broadened to include all of Berks County and approximately 1,500 additional FSP households. The Department's approval of this expansion shall require the State to submit an acceptable Advance Planning Document (APD) to FNS. Procedures for the submission and approval of an APD shall be consistent with Appendix A of 7 CFR Part 277. The APD's implementation plan must include the State's provisions to notify retailers of the impact of EBT on their operations and to invite retailer comments. The State shall report on these comments to the Department. The plan must also include provision for notices to recipients and for training to familiarize new users with the EBT system operating procedures. In any system expansion, the current hotline for information must be maintained so as to allow the State to respond to retailer and recipient questions. Retailers must be able to obtain balances for individual cash registers at various times during the day in addition to "end-of-day" deposit figures. The back-up system for continuous processing must also be maintained.

Performance standards for this extension will be the same as those previously negotiated by the Department with the State of reflect expected improvements in performance. These standards are in the areas of: transaction time at check-out counters; processing time and timelines for batch jobs; system accessibility/reliability; completeness and accuracy of accounts maintained; accuracy and timeliness of operating information reported; and system security and accuracy of executing system operations.

FNS liability shall be limited to that prescribed under the Food Stamp Act and program regulations and procedures. The State remains strictly liable for losses sustained by the Federal Government, in connection with benefits issued through this project, in excess of amounts authorized to be issued through the certification process and as set forth in 7 CFR Part 276.

This extension will allow the extended EBT demonstration to continue to operate under demonstration project authority, provided that the assurances made to this Department by the State in its FSP Plan of Operation are met and that the project continues to produce valuable information in the judgment of the Department. The Department may, with reasonable notice, suspend or terminate the project if it determines that continued operation of the project is no longer in the interest of the government. Suspension or termination, if undertaken by the Department, would be accomplished consistent with Attachment L of OMB Circular A-102 as applicable.

The success of this demonstration, among others, may lead to the widespread use by EBT systems. As an outgrowth of the EBT demonstration in Reading, the Department has issued a request for applications to sponsor additional EBT demonstration projects, to gain further knowledge of the impact of on-line electronic issuance technologies on the Food Stamp Program.

Date: July 5, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88-15542 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-30-M

Food Stamp Program: Simplified Application and Standardized Benefit Projects

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of intent.

SUMMARY: This Notice announces the Department of Agriculture's intention to conduct Simplified Application/Standardized Benefit Projects for recipients of certain types of categorical aid, and solicits Work Plans from prospective project operators. These projects are intended to reduce administrative costs and error rates through a streamlining of procedures used to determine household eligibility and benefit levels. A Work Plan Guide is available from FNS to assist in preparation of Work Plan submissions. Legislation limits operation to a maximum of ten projects, distributed among five States and five political subdivisions; selection will be competitive. Final rulemaking to implement the authorizing legislation (Pub. L. 99-198, December 23, 1986) is being published simultaneously with this notice and can be found elsewhere in this Federal Register under 7 CFR 272.1, 272.2 and 273.23. Proposed rulemaking was published in the Federal Register on April 23, 1987, at 52 FR 13450.

DATE: Work Plans must be postmarked November 9, 1988 or earlier for States and December 9, 1988 or earlier for local areas/political subdivisions.

ADDRESS: Work Plans should be submitted to Director, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to Russ Gardiner, Supervisor, Research and Demonstration Projects Section, Administration and Design Branch, Program Development Division, Family Nutrition Programs, at the above address, or by telephone at (703) 756-3387.

Classification

Executive Order 12291. This notice has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1, and has been classified not major because the provisions will not result in: 1) An annual effect on the economy of \$100 million or more; 2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical regions; or 3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Executive Order 12372. The Food Stamp Program is listed in the Catalog

of Federal Domestic Assistance under No. 10.551. For reasons set forth in the final rule and related notice to 7 CFR 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. This notice also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant impact on a substantial number of small entities.

Reporting and Recordkeeping. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget. The reporting and recordkeeping requirements contained in the regulations which come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) will be submitted to OMB for their review and approval. Such reporting requirements will not be put into effect until OMB approval is received.

Background. Legislative requirements governing the Food Stamp Program have led to the development of a complex set of regulations governing eligibility and benefit determinations. Eligibility and benefit determinations are based on a wide variety of household circumstances including income, assets, and work status. Although these regulations provide extensive guidelines for eligibility staff, they also create a lengthy eligibility determination process that is expensive to perform and is often subject to error.

The Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97-98) authorized the Simplified Application Demonstration Project. The Simplified Application Demonstration was an attempt to reduce the administrative burden of food stamp benefit calculations by simplifying program rules while still maintaining the efficient "targeting" of benefits to households which need them the most. The demonstration tested how different approaches to standardizing and simplifying policy affect benefits, administrative costs, and errors in the Food Stamp Program. The States of Oklahoma and Illinois, and San Diego and Fresno Counties, California participated in the demonstration. Results were sufficiently positive for Congress to authorize follow-up projects in a limited number of locations.

Section 1520 of the Food Security Act of 1985 (Pub. L. 99-198) added a new

section 8(c) to the Food Stamp Act (7 U.S.C. 2017(e)) which authorized the operation of Simplified Application/Standardized Benefit (SA/SB) Projects. As with the demonstration, these projects are intended to reduce administrative costs through a streamlining of procedures used to determine household eligibility and benefits. There are no time limitations on their operation. The legislation permits the use of SA/SB procedures as an alternative to regular Food Stamp Program (FSP) procedures, but limits operation of these projects to a maximum of five States and five political subdivisions. Given the potential outcomes of these projects, i.e., reduced administrative costs and reduced error rates, FNS expects that many sites will want to take part in the project and that, as a result, a competitive selection will be necessary. To accomplish this selection, prospective project operators will be required to submit Work Plans containing detailed information on implementation and operational procedures, and expected project outcomes.

Notice of Intent

This notice solicits Work Plans from States and local political subdivisions wishing to operate SA/SB Projects. The Work Plan Guide noted earlier presents basic information which will aid potential operators in preparing their Work Plans. Its focus is on helping applicants respond to the evaluation criteria, assisting particularly in simulating the effects of the SA/SB procedures. FNS' selection of project sites will be based on the Work Plan's responsiveness to the published evaluation criteria. Accepted sites' Work Plans will be included in the State Plan of Operations and will serve as the basis for operation of the project.

Selection of Project Operators

The legislation limits the operation of the project to a maximum of five States and five political subdivisions. For the purposes of these projects, eligible applicants are Food Stamp Program "State agencies" and local "project areas" as defined in program regulations at 7 CFR 271.2, which reads, in part, as follows:

"State agency" means: (1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the

counterpart local agencies which administer such assistance programs for the State agency . . .

"Project area" means the county or similar political subdivision designated by a State as the administrative unit for program operations . . .

A State with a centralized, State-run food stamp system may, under certain circumstances, make overlapping Work Plan submissions. For example, if a State-run system is divided into administrative units which are themselves political subdivisions, such as counties, then the State could file a separate Work Plan for the entire State as well as one for a specific administrative unit/political subdivision.

Application Process

Application is made by submitting a Work Plan which provides complete information on how the State and/or political subdivision intends to implement and operate the project. The Work Plan must be signed by the representative of the State government with authority to commit the State or political subdivision to project operations. This will generally be the person who signs the State Plan of Operations. The Work Plans of successful applicants will become amendments to the State Plan of Operations for their respective States. If you would like to have notice that your Work Plan has been received by FNS, we ask you to mail the application "Return Receipt Requested." The Work Plans will be reviewed by FNS staff against the technical evaluation criteria, and rated and ranked by the technical panel.

Guidelines for the development and presentation of the information requested in this notice are more fully presented in a published guide for preparing the Work Plan. Due to the level of complexity, accuracy, and comparability required in the information, applicants are advised to read the Work Plan Guide carefully. The availability of the draft guide was announced in the Preamble of the proposed rulemaking published April 23, 1987. Persons who previously requested a copy of the draft guide or the final version of the guide have been placed on a mailing list and will be automatically receiving a copy of the final guide. New requests for the guide can be made to the office of Mr. Gardiner at the address and phone number given earlier in this notice.

Work Plans for Statwide projects must be submitted in 10 copies to the FNS National Office no later than 120 days from publication of final

regulations. Because local agency Work Plans will have to have the approval of their governing State agencies, local applications will not be due until 150 days from publication of final regulations.

All offerors will be notified of the results of the selection process and negotiations will be conducted as necessary.

Notification

Selection is expected to occur on or before (210 days from date of publication) and it is planned that project operations will commence as quickly as possible after that date. Applicants will be notified when selected, or scheduled as a potential replacement site, or evaluated as not competitive for the purposes of this project. While five States and five local political jurisdictions will be selected to operate projects, a list of additional acceptable qualified sites will be established and replacement projects selected from this list in the event that any of the ten originally selected operators are unable either to implement or continue operations.

Duration and Performance

These projects are not demonstration projects, and do not have durational limits except as established by law and regulation. At this time, there are no prescribed durational limits to project site operations that are operating in compliance with the law, regulations, the State Plan and the project Work Plan. However, FNS reserves the right to terminate any project at the convenience of the government. If this should occur, adequate advance notice will be given to project operators to effect a smooth transition to normal processing for project eligible households under routine benefit administration procedures. Operators, of course, will have the right of withdrawal.

Funding

No special fiscal incentives relative to administrative cost-sharing are being offered. Administrative cost-sharing for this project will conform to usual program rules.

Reporting

Ongoing project reporting requirements will be limited to reporting on the project's error rate impact. This data will be due to FNS on the annual quality control reporting schedule established at § 275.21(d).

Evaluation

Each selected project site will be required to perform a self-evaluation shortly after project implementation. The evaluation will verify the projected project impacts provided in the Work Plan submission. Actual information on the project's impact on administrative costs, benefits and participation will be collected. This data will be due to FNS within six months of implementation. Actual error rate impacts will be separately reported due to the necessity of collecting this information over a long time period.

Work Plan Contents

The outline is to be followed in developing your proposed Work Plan. The information requested below must be presented in as clear and complete a manner as possible to assure maximum competitive status. It is particularly important that all offerors present data on project effects in a manner which will facilitate comparative analysis. The last part of this discussion suggests how to analyze project effects and describes how to present the results of that analysis.

A. Background

1. Overview of Proposed Project and Expected Effects of Operating the Projects.

a. What types of populations of households will be covered by the project (i.e., pure AFDC, pure SSL, mixed AFDC, mixed SSL, etc.)? How many households of each type are there? What proportion of the total number of food stamp households do they represent?

b. How is the project different from current procedures applied to these households?

c. What effects are expected from operating the project and why are these desirable from local, State and Federal perspectives?

2. **Site Description.** a. At what location(s) with the project operate?

b. How would you describe these sites from a demographic standpoint and what is your rationale for selecting them?

c. What are the demographic characteristics of all other households compared to project eligible households served at the project site(s)? (If Statewide implementation is proposed, the caseload may be described in aggregate terms rather than by individual sites.)

3. **Current Operating Procedures and the Level of Automation.** a. How are project eligible cause currently processed (i.e., forms required, flow of

work, types of staff, degree to which process is automated, characteristics of automated systems, etc.) If more than one type of household, AFDC, SSI, etc., will be included in the project, describe each type separately or specifically note that procedures are the same.

b. What regularly produced data are available through automated systems? (Include record layouts if possible.)

c. To whom are these data available and with what frequency?

4. *Current Requirements of Other Programs.* a. What requirements or procedures of other programs have you considered in designing the project?

b. How will these contribute to or constrain project design?

B. Project Design

1. *Method for Establishing Project Allotments.* a. Provide a clear explanation of the benefit calculation methodology which you plan to use. This would include a clear explanation of the formula which will be used, how the formula was developed, and what was considered in developing the formula.

(1) By what criteria will project households be grouped?

(2) What special procedures, requirements, and/or formulas will be applied to these groups? (Carefully and completely explain all elements of proposed changes.)

(3) How have you designed your project procedures to ensure that they will not unduly affect households with lowest incomes?

b. Describe how benefits will be updated over the life of the project to reflect changes in the FSP, household characteristics, or applicable categorical-aid programs.

c. How will you ensure that average benefits for each household size and type, i.e., pure AFDC, pure SSI, etc., are no less than average benefits would have been without the project? How will you continue to ensure this over the life of the project?

2. *Operational Procedures.* a. Describe what administrative controls will be used to ensure the disposition of food stamp applications within the time requirements.

b. What will the new application procedures be and how will they differ from the current system?

c. Through what process will determinations of eligibility and allotments be made and how does this differ from the current system?

d. What changes will project procedures make in the type of actions taken or documentation provided by applicants and participants?

e. Describe how your current ADP system will be adapted to handle project procedures.

3. *Need for Waivers.* a. Will any aspects of the planned project require waivers beyond the scope of treatments allowed by 273.23?

b. Describe the need for such waivers and their impact.

C. Implementation and Monitoring Plan

1. *Implementation Requirements.* a. To what extent will project procedures be implemented through a centralized automated system?

b. How will the issuance of project policy and procedures be accomplished?

c. How will project eligible and potentially-project eligible households be notified of project requirements? (For example, how will AFDC households be notified?)

d. What additional or changed staffing will be required during implementation and during project operations?

e. What staffing provisions will be made for monitoring the progress of implementation and later project operations?

f. What staff training will be required during implementation and during project operations?

g. Will contracted services be required for any part of implementation and/or continuing operation?

2. *Implementation Plan.* a. Display in a Gantt Chart the key activities that must take place in order to meet the implementation requirements discussed above.

b. What is your projected start-up date?

c. If the implementation date is not met, what difficulties, if any, do you anticipate?

3. *Staffing and Management Plan.* a. What organizational unit will be responsible for implementing and operating the project?

b. Will staff responsible for operating the project be different than staff generally responsible for operating the Food Stamp Program?

c. If so, in what ways will project staff be different and for what period of time? (Chart project positions and their organizations relationships.)

d. What are the qualifications and experience of the type of individuals required to run this project?

e. How do you feel you are uniquely qualified to operate this project based on prior experience and current abilities?

D. Estimate of Project Impacts

1. *Implementation Costs.* a. What are total anticipated costs for project implementation?

b. What are the major components of these costs and when are they expected to be incurred in relation to the planned implementation schedule?

2. *Ongoing Operating Costs.* a. What new, ongoing operating costs will be generated by project procedures? (Provide these on an average monthly per case basis.)

b. Are these expected to be offset by savings generated by the project in other areas? (For example, if ADP costs will increase, will staffing requirements decrease?)

3. Administrative Cost Impacts.

Note 1.—For the Simplified Application Demonstration Project, estimates of case-processing time were based on staff interviews. However, other means of documenting current and changed costs are acceptable as long as they are clearly explained and reasonable for the operating system.

Note 2.—FNS will be weighting each proposer's administrative cost savings by a factor which compares a State's current administrative case-month cost to the National average.

a. For each population of project eligible household, what is the current average monthly case-processing cost on a per-case basis? What is the total monthly case processing cost for each population? For the total project-eligible population?

b. How have you developed the cost estimates described in (a)?

Note.—It is recognized that many different systems may be used for documenting case-processing costs and the expected effects of the project in this area. Offerors are free to develop their estimates of case-processing cost effects in any way appropriate to their data systems. However, these estimates should be fully documented and reproducible. They should provide the sources of the data; the time period from which they are drawn; assumptions which have been applied; and an explanation of computations in an easily followed manner.

c. Once the project is implemented, for each type of project-eligible household, what will be the average monthly case-processing cost on a per-case basis? The total monthly case-processing cost?

d. How have you developed the cost estimate described in (c)? To show this, you need to provide separate tables which show the following:

(1) Estimated average difference in the time required to process an AFDC/Food Stamp case due to the changes induced by the demonstration for intakes, recertifications, and interim changes.

(2) Potential monthly cost savings from reduce staff time for intake, ongoing case processing, and supervision.

(3) Estimated change in staff time induced by the demonstration for intake, recertification, interim changes, and total ongoing case processing time.

(4) Potential hours saved per month in case-processing time, for intake and ongoing case processing.

(5) Potential monthly time savings by supervisory staff for intakes and ongoing case processing.

(6) Potential monthly cost saving from reduced staff time for case processing and supervision.

e. What is the total projected annual savings in case-processing costs for all proposed project populations?

f. What percentage of total case-processing costs for the project populations does this (e) represent?

g. What were total FS administrative costs for FY 87? What percentage of total food stamp administrative costs do your projected case-processing cost savings (e) equate to?

h. Are there any planned reallocations or shifts of resources associated with the project? (For example, will some time saving attributable to the project be shifted to error reduction strategies, such as moving staff over to non-project food stamp caseloads, or computer matching, etc.?) Will positions be dropped?

4. *Effects on Measured Error (This information is needed for planning and evaluation purposes. A State or political subdivision's current QC error rate and the effect of the project on that error rate will not be a selection factor.)*

Note.—The amount of error reduction which sites can expect to achieve is highly dependent upon the benefit methodology which has been chosen. For every benefit component that has been standardized and as a result eliminated as a potential source of error, the error attributable to that factor will likewise be eliminated. Indirect error rate effects can also occur if time freed up through simplification is devoted to other activities designed to reduce error. By analyzing current error sources from the most recent annual IQCS sample, conclusions can be drawn about potential error reduction. Site are not expected to make predictions on indirect error rate effects.

a. As categorized by the Integrated Quality Control System (IQCS) or other available data sources, what errors exist for project eligible households and what is the dollar value of such errors?

b. Based on new project procedures, what change is expected in the overall dollar error rate and in errors by source for project-eligible households? (Discuss both payment error and underissuance in a format which breaks out error by source including, at least, earned income, unearned income, household composition, shelter deduction,

application of demonstration policies, and other.)

c. What assumptions apply to the estimated changes in error sources?

5. Impacts on Food Stamp Benefits.

Note.—Once sites have developed a benefit methodology, they must test its effects on the existing caseload to satisfy this portion of the Work Plan. How this test is completed will depend on the benefit methodology chosen, the current level of program automation, and the amount of data which is contained in the master file. Some sites may be able to directly simulate effects for all households. Others may have to select a statistically valid sample of households and use hard copy caseload information. This Work Plan must describe in detail how the simulation was done and what, if any, limitations exist on the data presented. The more serious the caveats, the less confidence we will have in the presented effects. Congress requires that average benefits for each category of household must not be less than the average would have been under the conventional Food Stamp Program. It is also essential to minimize monthly losses experienced by individual households. As a guide, offerors should keep monthly losses to no more than \$10 per household or 20 percent of the original benefit, whichever is less.

a. What is the current average monthly benefit issued to each type of project-eligible household? What are the total monthly food stamp benefits issued to each type of project-eligible household? What is the sum of monthly benefits issued to all project-eligible households?

b. Describe how project participants are distributed based upon the following characteristics: Net food stamp income, food stamp benefit amount, earned income, gross income by poverty level, shelter deduction, dependent care cost, presence of elderly/disabled, receipt of recoupment and whether household is a regular AFDC case or an AFDC-UP.

c. How will current benefits change as result of the project? Develop tables for all project-eligible households which show, by household size and increments of \$5, monthly benefit changes in dollars and percentages. Then, using a similar table, show what pattern of household gains and losses is expected for each project-eligible population and for each sub-category of households, as applicable, within project populations. (Prior experience has shown that households experiencing significant gains and losses (outliers) are most probably incorrectly certified.)

d. What will be the average change in benefits, if any, among all project households, and among these households according to their poverty status, i.e., gross food stamp income as a percentage of the current poverty standard. Show the distribution of

expected monthly benefit gains and losses for all project-eligible households and for each category of project-eligible household. Include mean dollar changes in benefits, number of households, and percent of households.

Selection Criteria

1. Benefits—40 points

- Average benefits are no less than averages would have been for the project populations affected by the new procedures, i.e., AFDC, SSI, etc.
- Poorest households are protected from excessive loss so that households in the lowest twenty percent of gross income do not receive greatest percentage decreases in benefits.
- No household experiences benefit losses greater than \$10 or 20 percent, whichever is less. (Failure to achieve this goal will not necessarily result in elimination from competition, however its competitive impact is high.)
- Net additional program costs are no more than administrative cost savings. (Failure to achieve this goal will not necessarily result in elimination from competition. However, again, its competitive impact is high.)

2. Program Design—15 points

- Simplification is considered for—Processing procedures, and—Demands made on applicants
- Creativity

3. Administrative Savings—15 points

- Maximum percentage change in case processing costs
- Maximum percentage administrative cost savings

4. Technical Quality—15 points

- Responsiveness to project requirements.
- Clarity and completeness of proposal.

5. Operational Potential—15 points

- Prior successful experience is designing and implementing program changes and/or
- Expected ability to carry out project as proposed.
- Capability of automated system to handle or be adapted to proposed project procedures.

6. Dispersion within the seven FNS Regions—This factor will serve as a final delineator in the event of tied proposals.

Date: June 5, 1988.

Anna Kondratas,
Administrator, Food and Nutrition Service.
[FR Doc. 88-15541 Filed 7-11-88; 8:45 am]
BILLING CODE 3410-35-B

Forest Service**Outfitter Caches in Frank Church-River of No Return Wilderness, Idaho****AGENCY:** Forest Service, USDA.**ACTION:** Request for comment.

SUMMARY: The Forest Service gives notice that a task force has been established to study the issue of outfitter and guide caches in the Frank Church-River of No Return Wilderness in Idaho. The agency invites organizations and individuals to submit comments and suggestions for the Task Force's consideration.

DATE: Comments must be received in writing by September 15, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2320), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

The public may inspect comments received on this proposed policy in the Office of the Director, Recreation Management Staff, Room 4231, South Building, 14th and Independence SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Anne S. Fege, Recreation Management Staff, (202) 447-2422.

SUPPLEMENTARY INFORMATION: The Management Plan for the Frank Church-River of No Return Wilderness (adopted February 1985) specified that outfitters and guides must remove permanent camps and caches over a 10-year period, and that no new caches will be allowed. Under the plan, caches of "dismantled structure frames and poles made of native materials" may remain. This policy was challenged by the Idaho Outfitter and Guides Association in U.S. District Court in Boise, Idaho (IOGA vs. U.S. Attorney, No. N-87-0426). The lawsuit was dismissed after the Forest Service and the Association reached an out-of-court settlement on January 28, 1988.

As part of the settlement agreement, the Forest Service agreed to establish a task force to study and address the issue of outfitter and guide caches in the Frank Church-River of No Return Wilderness. Under terms of the agreement, the task force was selected by the Chief and will report its results directly to him. The Chief will take what action he deems appropriate in response to the task force's recommendations.

The charter of the Task Force is to:

1. Study and address the issue of outfitter and guide caches in the Frank Church-River of No Return designated wilderness area.

2. Solicit and consider input from the Idaho Outfitters and Guides Association

and its individual members as well as from other interested organizations and individuals.

3. Make on-site visits to selected cache locations in the Frank Church-River of No Return Wilderness as part of their study.

4. Report the results of its study and recommendations directly to the Chief by December 31, 1988.

A cache is defined as "the storage of anything transported into the wilderness, and any unauthorized native material structures."

The Agency invites comments and suggestions on the requirement that outfitters and guides in the Frank Church-River of No Return Wilderness remove permanent camps and caches over a 10-year period, and that new caches are not allowed. This is not a review of national cache policy, nor a review of cache policy in any other wildernesses. No public hearings will be held.

Date: June 30, 1988.

George M. Leonard,
Associate Chief.

[FR Doc. 88-15547 Filed 7-11-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE**Export Now Advisory Committee; Open Meeting**

A meeting of the Export Now Advisory Committee will be held on July 19, 1988, 1:30 p.m.-4:30 p.m., at the U.S. Chamber of Commerce, Briefing Center, 1615 H Street NW., Washington, DC 20062. This meeting will be in lieu of the July 12, 1988 meeting previously announced in the Federal Register (53 FR 16177, May 5, 1988). The meeting will be open to the public with a limited number of seats available. Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting.

The Committee was established by the Secretary of Commerce on February 25, 1988 to advise Department officials on the objectives and conduct of the Export Now Program, including methods of increasing public awareness of the advantages of exporting, improving Federal coordination with state, local and private sector export activities, and implementing programs of education and training to increase the export effectiveness of all segments of the U.S. economy.

The purpose of the meeting is to report on the status of the Export Now Program and to receive advice from the public on the conduct and future

implementation of the program. A more specific agenda will be available to the public at the beginning of the meeting.

For further information or copies of the minutes, contact Lew W. Cramer or Don Forest, Export Now Program, Herbert C. Hoover Building, Room 5835, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-2073.

Date: July 7, 1988.

Robert H. Brumley,
General Counsel.

[FR Doc. 88-15584 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review**

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than July 31, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceeding:	
Canada: Certain Dried Heavy Salted Codfish (A-122-402)	07/01/87-06/30/88
Canada: Pig Iron (A-122-020)	07/01/87-06/30/88
German Democratic Republic: Solid Urea (A-429-801)	01/02/87-06/30/88

	Period
Iran: Certain In-shell Pistachios Nuts (A-507-502)	07/01/87-06/30/88
Japan: Fabric Expanded Neoprene Laminate (A-588-404)	07/01/87-06/30/88
Japan: High-Power Microwave Amplifiers and Components Thereof (A-588-005)	07/01/87-06/30/88
Japan: Malleable Cast Iron Pipe Fittings (A-588-605)	02/13/87-06/30/88
Japan: Synthetic Methionine (A-588-041)	07/01/87-06/30/88
Socialist Republic of Romania: Solid Urea (A-485-801)	01/02/87-06/30/88
Union of Soviet Socialist Republics: Solid Urea (A-461-801)	01/02/87-06/30/88
Requests for review of the following June cases will be accepted during this opportunity period.	
Taiwan: Fireplace Mesh Panels (A-583-003)	06/01/87-05/31/88
Taiwan: Oil Country Tubular Goods (A-583-505)	06/01/87-05/31/88
Taiwan: Polyvinyl Chloride Sheet and Film (A-583-081)	06/01/87-05/31/88
Countervailing Duty Proceeding:	
European Communities: Sugar (C-408-046)	01/01/87-12/31/87
India: Industrial Fasteners (C-533-066)	01/01/87-12/31/87
Uruguay: Leather Wearing Apparel (C-355-001)	01/01/87-12/31/87
Suspended Investigation:	
Brazil: Certain Forged Steel Crankshafts (C-351-609)	07/28/87-12/31/87

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by July 31, 1988.

If the Department does not receive by July 31, 1988 a request for review of entries covered by an order of finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute,

but is published as a service to the international trading community.

Jan W. Mares,
Assistant Secretary for Import Administration.

Date: July 6, 1988.

[FR Doc. 88-15583 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-DS-M

(A-602-801)

Initiation of Antidumping Duty Investigation; Calcined Bauxite Proppants From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of calcined bauxite proppants from Australia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of CBP materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 29, 1988. If that determination is affirmative, we will make a preliminary determination on or before November 21, 1988.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:**The Petition**

On June 14, 1988, we received a petition filed in proper form by Carbo Ceramics, Inc. on behalf of the domestic CBP industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of CBP from Australia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

The petitioner has alleged that they have standing to file the petition. Specifically, petitioner has alleged that

they are an interested party as defined under section 771(9)(C) of the Act, and that they have filed the petition on behalf of the U.S. industry manufacturing the product that is subject to this investigation.

If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with Commerce official cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

United States Price and Foreign Market Value

Petitioner's estimate of United States price was based on prices for CBP produced in Australia and sold in the United States, less foreign inland freight, ocean freight, marine insurance, and U.S. brokerage and handling.

Petitioner's estimate of foreign market value was based on Australia home market prices.

Based on a comparison of United States prices and foreign market value, petitioner alleges dumping margins of approximately 64 to 86 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on CBP from Australia and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of CBP from Australia are being, or are likely to be, sold in the United States at less than fair value. As part of this investigation, we will determine whether the products under investigation are being sold in the home market at less than the costs of production. If our investigation proceeds normally, we will make our preliminary determination by November 21, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff Schedules of the

United States Annotated (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is calcined bauxite proppants from Australia currently provided for under TSUSA item number 521.1720 and currently classifiable under HS item number 2606.00.00.60. The subject merchandise is used in oil and gas wells to cause hydraulic fracturing to promote product extraction.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 29, 1988, whether there is a reasonable indication that imports of CBP from Australia materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,
Assistant Secretary for Import
Administration.

July 5, 1988.

[FR Doc. 88-15582 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-06-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Kenneth S. Norris and Dr. William T. Doyle

On June 2, 1988, notice was published in the Federal Register (53 FR 20156) that an application had been filed by Dr. Kenneth S. Norris, and Dr. William T. Doyle, Long Marine Laboratory, University of California, Santa Cruz, California 95060 for a permit to take two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) for cognitive research at the Long Marine Laboratory.

Notice is hereby given that on July 6, 1988, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC 20009;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: July 6, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-15515 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Civilian Validation of ASVAB-14; Supplemental Information Form, Behaviorally-Anchored Rating Scales (BARS), Importance of Occupational

Dimensions; and No OMB Control Number.

Type of Request: New.

Annual Burden Hours: 1,634.

Annual Responses: 6,535.

Needs and Uses: Three types of instruments will be used to determine the validity of ASVAB 14 for predicting performance in 12 civilian occupations. The Supplemental Information Form will ask employees who take the ASVAB certain background information about themselves. The Behaviorally-anchored Rating Scales will ask supervisors their employees' performance, and the third instrument, Importance of Occupational Dimensions, will ask supervisors to indicate importance of the occupational dimensions covered in the scales.

Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; and Non-profit institutions.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposed may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 7, 1988.

[FR Doc. 88-15553 Filed 7-11-88; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Applications Submitted Under Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice for Individuals Interested in Reviewing Applications Submitted Under Direct Grant Programs Administered by the Office of Bilingual Education and Minority Languages Affairs.

SUMMARY: The Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), Department of Education (ED), invites interested individuals to apply to serve as Field Readers for programs administered by OBEMLA. OBEMLA administers programs authorized by the Bilingual Education Act 20, U.S.C. 3221-3262 as amended by Pub. L. 100-297 (April 28, 1988) and 34 CFR Parts 500, 501, 524, 525, 526, 561, 573, and 574.

Each year the Secretary selects Field Readers to evaluate grant applications based upon criteria published in program regulations and, where applicable, additional criteria published in the application notices in the Federal Register.

Expertise is desirable in areas including evaluation, curriculum and materials development, personnel and parent training, education administration, research, Bilingual Education, English as a second language, teaching English to speakers of other languages (TESOL), second language acquisition, adult education, special education, and vocational education. This list is not intended to be all inclusive and individuals with expertise in related fields are encouraged to apply. Individuals selected as reviewers will be compensated for their services as needed. Individuals interested in serving as Field Readers for the fiscal year 1989-1990 funding cycle should mail or hand-deliver their resumes to OBEMLA no later than August 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Rudy Munis, Director, Division of State and Local Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW. (Rm. 5086, Switzer Bldg.), Washington, DC 20202-2518. Telephone: (202) 732-5700.

Dated: July 7, 1988

Alicia Coro,

Director, Office of Bilingual Education and Minority Languages Affairs.

Catalog of Federal Domestic Assistance Program No. 84.003, Bilingual Education:

Part A—

I. Transitional Bilingual Education
II. Developmental Bilingual Education
III. Special Alternative Instructional Program
IV. Academic Excellence
V. Family English Literacy
VI. Special Populations Program

Part C—

I. Training Programs

II. Training Development and Improvement Program

III. Short-Term Training Program

[FR Doc. 88-15605 Filed 7-11-88; 8:45 am]

BILLING CODE 4000-01-M

Pell Grant et. al.; Revision of the Need Analysis Systems for the 1989-90 Academic Year

AGENCY: Department of Education.

ACTION: Notice of revision to the Congressional Methodology and the Family Contribution Schedule Methodology for the 1989-90 award year; correction.

On May 31, 1988, the Secretary of Education published in the Federal Register (53 FR 19876-78) a notice of revision to the Congressional Methodology and the Family Contribution Schedule Methodology for the 1989-90 award year. This document corrects two typographical errors that were made in that notice. The corrections are as follows:

1. In the heading, "1988-89" is corrected to read "1989-90."
2. In the summary, "1988-89" is corrected to read "1989-90."

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Leibovitz, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, ROB-3), Washington, DC 20202. Telephone (202) 732-4888.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.033 College Work-Study Program; 84.036 Perkins Loan Program; 84.063 Pell Grant Program)

Dated: July 6, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-15578 Filed 7-11-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Award Grant to Electric Power Research Institute (EPRI)

AGENCY: Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it plans a noncompetitive award under Grant number DE-FG01-88FE61544 to Electric Power Research

Institute (EPRI) for co-funding the conduct of a seminar on fuel cells.

Scope: The grant will co-fund a 4-day seminar on fuel cell technologies which will highlight U.S. and international research and development activities in this field. The goals of the seminar are to identify new, viable applications for fuel cells, discuss opportunities or barriers to commercialization of fuel cells and review advancements in fuel cell technologies.

Eligibility for award of this grant is being limited to Electric Power Research Institute (EPRI). Since 1977, EPRI has been a member of the National Fuel Cell Coordinating Group which sponsors the fuel cell seminars. These seminars, occurring every 18 months, are the only U.S. seminars or conferences held to review all aspects of U.S. and international fuel cell activities. The aim of the conference is to disseminate research information and stimulate further research activity. Only EPRI has the experience necessary to coordinate the activities of the seminar and bring together the key electric power generation personnel from throughout the world as it has done this several times before, in prior fuel cell seminars. Because of the importance of this seminar, which is only held every year and a half and is the only one of its kind, it is necessary that an experienced organization manage coordination of the event.

The seminar would be conducted by the applicant (EPRI) and an EPRI contractor using EPRI resources as well as those provided by the Gas Research Institute. DOE support of the seminar will enhance the public benefits by increasing the cooperative information exchange among the fuel cell development programs being funded by DOE, EPRI and GRI. The participation by DOE will also greatly increase the participation and information obtained from other government programs, particularly in Europe and Japan.

The term of this grant shall be from approximately August 1, 1988, through October 26, 1988. The project cost is estimated at \$14,215.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Gretchen Hukill, MA-452.1, 1000 Independence Avenue SW., Washington, DC 20585, Telephone No. (202) 586-6753.

Edward Lovett,

Director, Contract Operations Division "A", Office of Procurement Operations.

[FR Doc. 88-15596 Filed 7-11-88; 8:45 am]

BILLING CODE 5450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-23-NG]

Mobil Gas Co. Inc., Order Granting Blanket Authorization To Export Natural Gas**AGENCY:** Economic Regulatory Administration, DOE.**ACTION:** Notice of order granting blanket authorization to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Mobil Gas Company Inc. (MOGASCO) blanket authorization to export natural gas. The order issued in ERA Docket No. 88-23-NG authorizes MOGASCO to export up to 100 Bcf of natural gas to Canada over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 596-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, July 6, 1988.
Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.
[FR Doc. 88-15595 Filed 7-11-88; 8:45 am]
BILLING CODE 4302-01-M

Federal Energy Regulatory Commission

[Project No. 10016-001]

Perkinsville Hydro Associates; Surrender of Preliminary Permit

July 7, 1988.

Take notice that the Perkinsville Hydro Associates, permittee for the Perkinsville Project No. 10016, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 10016 was issued on October 7, 1986, and would have expired on September 30, 1989. The project would have been located on the Black River, in Windsor County, Vermont.

The permittee filed the request on June 7, 1988, and the preliminary permit for Project No. 10016 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following

that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois Cashell,
Acting Secretary.

[FR Doc. 88-15509 Filed 7-11-88; 8:45 am]
BILLING CODE 4717-01-M

[Docket No. C188-473-000]

Southland Royalty Co.; Petition for Declaratory Order or in the Alternative, Application for Blanket Certificate Authority with Pregranted Abandonment and Abandonment Authorization

July 6, 1988.

Take notice that on May 23, 1988, Southland Royalty Company (Southland) filed with the Commission a petition for declaratory order and application for blanket certification authority with pregranted abandonment and abandonment authorization if necessary, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA). Southland states that it and its predecessors have made sales to Sunterra Gas Gathering Company (Sunterra) and its predecessors-in-interest in and around San Juan County, New Mexico. Southland states that the sales were initially for intrastate use but that ultimately Sunterra sold some of the gas in interstate commerce to El Paso Natural Gas Company (El Paso). Southland asserts that Southland's and Sunterra's interstate service obligation was measured by the amount of gas El Paso was ready, willing, and able to purchase from Sunterra in excess of the level of Sunterra's intrastate sales which would allow Sunterra to meet purchase requirements under New Mexico's ratable take regulations.

Southland states that since El Paso has not taken any gas from Sunterra since 1985 and since Southland's dedication obligation was measured by that amount which El Paso was willing to purchase to maintain Sunterra's ratable takes, Southland does not require abandonment authorization. Southland requests that the Commission issue a declaratory order to clarify the scope and effect of any abandonment authorization that may be granted to Sunterra in Docket Nos. GP84-55-000, C188-119-000, and C188-140-000.¹

¹ Southland also filed a motion to intervene in these proceedings. An order dismissing the petition and applications in these proceedings in view of the automatic abandonment provisions of Order No. 490

Southland also seeks an order declaring that Southland's sales of gas to Sunterra in excess of El Paso's needs and in excess of the ratable take yardstick of dedication were not dedicated to interstate commerce and that the termination of purchases by El Paso from Sunterra resulted in the termination of Southland's interstate sales obligation to Sunterra. Southland submits that absent such clarification, the Commission should specify that abandonment authorization of Sunterra's downstream sales to El Paso in Docket No. C188-119 effectively confers abandonment authorization upon the upstream sales by Southland to Sunterra.

In the alternative, if the Commission determines that the gas is dedicated and that abandonment authorization is necessary, Southland requests authority to (i) abandon sales for resale of the subject NGA gas and (ii) make sales for resale in interstate commerce, without supply or market limitations, of the subject NGA gas with pregranted abandonment. Southland also requests cancellation of Rate Schedule Nos. 47 and 48, and waiver of the regulations contained in 18 CFR 154 and 271 concerning the maintenance of rate schedules and filing obligations. In addition, Southland seeks a waiver of any applicable orders, rules, regulations, or reporting requirements, to the extent inconsistent with the authority requested. If the Commission fails to grant either the petition for declaratory order or abandonment authorization, Southland requests a hearing.

Any person desiring to be heard or to protest this petition and/or application should file a motion to intervene or protest in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All motions to intervene or protest should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, not later than 30 days after publication of this notice in the *Federal Register*. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15510 Filed 7-11-88; 8:45am]

BILLING CODE 4717-01-M

was issued by the Commission on June 2, 1988. 43
FERC ¶ 61,434.

Office of Hearings and Appeals**Implementation of Special Refund Procedures****AGENCY:** Office of Hearings and Appeals, DOE.**ACTION:** Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for the disbursement of \$60,000 (plus accrued interest) obtained as a result of a Consent Order that the DOE entered into with Evett Oil Company (Case No. KEF-0020), a reseller-retailer of petroleum products located in Comanche, Texas. The fund will be available to firms that purchased Evett product during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed in duplicate no later than February 1, 1989 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0020.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wicker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a July 1, 1985 consent order between the DOE and Evett Oil Company (Evett). That consent order settled certain disputes between the firm and the DOE concerning Evett's possible violations of DOE regulations in its sales of refined petroleum products. The consent order covers the period March 1, 1979 through March 31, 1980 (the consent order period).

The Decision sets forth the procedures and standards that the DOE has formulated to distribute the contents of an escrow account in the amount of \$60,000 funded by Evett pursuant to the consent order. Under the procedures adopted, purchasers of Evett refined products during the consent order period may file claims for refunds from the escrow fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the Evett consent order fund. In order to receive a refund, a claimant must furnish the DOE with evidence that it was injured by the alleged overcharges.

However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms that file refund claims in amounts of \$5,000 or less. The specific requirements for proving injury are set forth in the Decision and Order.

Applications for Refund must be postmarked no later than February 1, 1989. Refund applicants must file two copies of their submission. All applications will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: July 6, 1988.

George B. Breznan,
Director, Office of Hearings and Appeals.

Name of Firm: Evett Oil Company
Date of Filing: March 25, 1986
Case Number: KEF-0020

On March 25, 1986, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA) requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving Evett Oil Company (Evett). 10 CFR Part 205, Subpart V. This Decision and Order sets forth the procedures that the OHA has formulated to govern the distribution of the Evett settlement fund.

1. Background

Evett was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firm's pricing practices during the period March 1, 1979 through March 31, 1980 (the consent order period), the ERA alleged in a Proposed Remedial Order (PRO) that Evett committed pricing violations with respect to its sales of motor gasoline.¹ In order to settle all claims and disputes between Evett and the DOE, the two parties entered into a consent order that became final on July 1, 1985. The Consent Order covers Evett's sales of refined petroleum products during the consent order period.

This Decision and Order concerns the distribution of \$60,000, plus accrued interest, that Evett remitted to the DOE pursuant to the Consent Order. The

¹ The ERA issued a PRO to Evett on September 20, 1982. See *Evett Oil Company*, No. HRO-0006 (dismissed on November 28, 1985).

consent order monies were paid in full on July 16, 1985. On April 20, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Evett settlement fund. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the *Federal Register* and comments regarding the proposed refund procedures were solicited. 53 FR 15127 (April 27, 1988). We received no comments concerning the proposed procedures for the distribution of the Evett settlement fund. Consequently, they will be adopted as proposed.

II. Refund Procedures

As we indicated in the PD&O, firms and individuals that purchased Evett refined products during the consent order period may file claims in this proceeding. From our experience with Subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, i.e., consumers that used Evett refined products; (2) regulated non-petroleum industry entities that used Evett products in their businesses, or cooperatives that purchased product; and (3) resellers, retailers or refiners that resold Evett products.

As in many prior special refund cases, we are adopting certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable to OHA to consider refund applications in the most efficient manner possible. See 10 CFR 205.282(e), Subpart V; American Pacific International, 14 DOE ¶85,158 at 88,293 (1986) (*API*). First, we are adopting a presumption that the alleged overcharges were dispersed equally among all sales of refined petroleum products made by Evett during the consent order period and that refunds should therefore be made on a volumetric basis. In the absence of better information, a volumetric refund presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.²

² Nevertheless, we recognize that the impact of Evett's pricing practices on an individual purchaser may have been greater than the apportioned amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharge that it incurred in order to be eligible for a larger refund. See, e.g., *Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶85,015 (1984).

Under the volumetric refund approach, a claimant will be eligible to receive a refund equal to the number of gallons it purchased times the per gallon refund amount, plus accrued interest. Allocating the alleged violations on a volumetric basis results in a maximum refund amount of \$.0133 per gallon (hereinafter referred to as the volumetric refund amount).³

We are also adopting a number of injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by Evett's alleged overcharges. We will discuss these presumptions and the showing that each type of applicant must make in Section II(A) below.

(A) Specific Application Requirements for Each Category of Refund Applicants

(1) Refund Applications of End-Users

End-users, i.e., ultimate consumers of Evett refined products, will be presumed to have been injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See, e.g., *Dorchester Gas Corp.*, 14 DOE ¶85,240 at 88,450 (1986). Consequently, end-user applicants need only document their purchase volumes of Evett products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications of Cooperatives and Regulated Firms

Firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement will not be required to submit detailed proof of injury. Although such firms, e.g., public utilities and

agricultural cooperatives, generally would pass through any overcharges to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a detailed explanation of how they plan to accomplish this restitution to their customers, and to explain how they will notify the appropriate regulatory body or membership group of the receipt of refund money. See Office of Special Counsel, 9 DOE ¶82,538 at 85,203 (1982). We note, however, that a cooperative's sales of Evett products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners

We are adopting a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by Evett's pricing practices. See, e.g., *Urban Oil Co.*, 9 DOE ¶82,541 at 85,244-25 (1982). We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a refund of \$5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of Evett products it purchased during the consent order period. See *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 at 88,210 (1984).

A reseller, retailer or refiner whose claim exceeds \$5,000 will be required to document its injury. Such a claimant is generally required to provide a monthly schedule of its "banks" of unrecouped increased product costs for each product that it purchased from Evett during the consent order period.⁴ In addition, the claimant must show that market conditions forced it to absorb the alleged overcharges. Such a showing might be made through a demonstration of lowered profit margins, decreased market share or depressed sales volume during the period of purchases from Evett. *API*, 14 DOE at 88,295. If a claimant elects not to submit a detailed demonstration of injury, it may still apply for a small claims refund of \$5,000, plus accrued interest.

³ A "bank" must be equal to the amount of the refund claimed beginning with the first month of the period for which a refund is claimed through the date on which either that product was decontrolled or the banking regulations expired.

(4) Refund Applications of Spot Purchasers

If a claimant made only sporadic purchases of significant volumes of Evett product, we will consider that claimant to be a spot purchaser. We are adopting a rebuttable presumption that claimants who made only spot purchases from Evett were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases. Therefore, they generally would not have made spot purchases from Evett unless they were able to pass through the full amount of any price increases to their own customers. See Office of Enforcement, 8 DOE ¶82,597 at 85,396-97 (1981). Therefore, a firm that made only spot purchases from Evett will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured.

(5) Refund Applications of Consignees

Finally, as in previous cases, we are adopting a rebuttable presumption that consignees of Evett refined products were not injured by Evett's alleged pricing violations. See, e.g., *Jay Oil Co.*, 16 DOE ¶85,147 at 88,286 (1987). A consignee agent is an entity that distributed products pursuant to an agreement with its supplier, under which the supplier retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). A consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's pricing] practices. See *Gulf Oil Corp./C.F. Cantor Oil Co.*, 13 DOE ¶85,388 at 88,982 (1986).

(B) General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased refined petroleum products sold by Evett during the consent order period. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

- (1) The name of the consent order firm, Evett Oil Company, the case number, KEF-0020 and the applicant's name should be prominently displayed on the first page.
- (2) The name, title, address and telephone number of a person who may

be contacted for additional information concerning the Application.

(3) The manner in which the applicant used the Evett product, i.e. whether it was a reseller, retailer, refiner, end-user or consignee.

(4) The volume of Evett refined products that the applicant purchased during each month of the consent order period (March 1, 1979 through March 31, 1980) in which it claims that it was injured by the alleged overcharges. If the applicant is an end-user or a reseller, retailer or refiner claiming \$5,000 or less, it may instead submit a certification that it purchased Evett products on a regular basis during the consent order period.

(5) If the applicant is a reseller, retailer or refiner claiming a refund in excess of \$5,000, it should also:

(a) State whether it maintained banks of unrecouped increased product costs and furnish the OHA with monthly bank calculations, and

(b) Submit evidence to establish that it did not pass through the alleged overcharges to its customers. For example, a firm may compare the prices it paid for Evett products with average prices in the firm's market area for each month in which it seeks a refund. (In the absence of an accurate market survey provided by the applicant, the OHA will use the market price information contained in Platt's Oil Price Handbook and Oilmanac).

(6) A statement of whether the applicant was in any way affiliated with Evett. If so, the applicant should explain the nature of the affiliation.

(7) A statement of whether there has been any change in ownership of the entity that purchased the Evett product. If so, the name and address of the current (or former) owner should be provided.

(8) A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. See 10 CFR 205.9(d).

(9) The following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All applications for Refund must be filed in duplicate and must be filed no later than February 1, 1989. A copy of each Application will be available for

public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is privileged or confidential. All Applications should be sent to: Evett Oil Company Refund Proceeding, Case No. KEF-0020, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(C) Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been paid, those funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1980, H.R. 5400, Title III, 96th Cong. 2d Session., Cong. Rec. H11319-21, (Daily E. October 17, 1986).

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Evett Oil Company pursuant to the Consent Order finalized on July 1, 1985, may now be filed.

(2) All Applications must be filed no later than February 1, 1989.

George B. Breznay,
Director, Office of Hearings and Appeals.

Date: July 6, 1988.

[FR Doc. 88-15597 Filed 7-11-88; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Sam Rayburn Dam Power Rate; Order Confirming, Approving and Placing Increased Sam Rayburn Dam Power Rate in Effect on an Interim Basis

AGENCY: Department of Energy, Southwestern Power Administration.
ACTION: Notice of power rate order.

SUMMARY: The Under Secretary of Energy, acting under Delegation Order No. 0204-108, as amended May 30, 1988 (51 FR 19744), has confirmed, approved and placed in effect on an interim basis, an increased annual power rate of \$1,810,368 for the sale of power and energy by the Southwestern Power Administration from Sam Rayburn Dam to Sam Rayburn Dam Electric

Cooperative, Inc. The rate supersedes the annual rate of \$1,715,040 that was placed in effect by the Under Secretary of Energy on October 1, 1986, and approved on a final basis by the Federal Energy Regulatory Commission (FERC) March 13, 1987, and will produce additional annual revenue of \$95,328, or 5.6 percent beginning July 1, 1988, to recover increased annual operating costs of the project.

EFFECTIVE DATES: Rate Order No. SWPA-20 specifies July 1, 1988, through September 30, 1991, as the effective period for the annual rate of \$1,810,368 for the sale of power and energy from Sam Rayburn Dam.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

SUPPLEMENTARY INFORMATION: The SWPA Administrator has prepared the 1988 Sam Rayburn Dam Current Power Repayment Study based on the annual power rate of \$1,715,040, that has been in effect since October 1, 1986. The study indicates that the power rate is no longer adequate to satisfy cost recovery criteria for the sale of power and energy from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. 14-02-0001-1124. The administrator prepared a 1987 Revised Sam Rayburn Dam Power Repayment Study which indicates that additional annual revenue of \$95,328, or 5.6 percent, is required and will begin July 1, 1988, to satisfy the provisions of section 5 of the Flood Control Act of 1944 and Department of Energy Order No. RA 6120.2. In this regard, the Administrator has determined that the annual rate of \$1,810,368 is the lowest possible rate to the customer consistent with sound business principles. The rate has been approved on an interim basis through September 30, 1991, or until confirmed and approved on a final basis by the FERC.

Issued in Washington, DC, this 24th day of June, 1988.

Joseph F. Salgado,
Under Secretary.

[Rate Order No. SWPA-20]

In the matter of Southwestern Power Administration—Sam Rayburn Dam Rate; Order Confirming, Approving and Placing Increased Power Rate in Effect on an Interim Basis.
June 24, 1988.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the

functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested and the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place into effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204-33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. By Delegation Order No. 0204-108, effective December 14, 1983, 48 FR 55664 (December 14, 1983) the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This rate order is issued pursuant to the delegation to the Under Secretary of Energy.

Background

The existing annual Sam Rayburn Dam power rate of \$1,715,040 has been in effect since confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) for the period October 1, 1986, through September 30, 1990. The 1987 Sam Rayburn Dam Current Power Repayment Study indicates that the rate is no longer adequate to satisfy cost recovery criteria for the isolated project. The 1987 Sam Rayburn Dam Revised Power Repayment Study indicates that an annual rate of \$1,810,368 will be

required to repay the project's investment and annual costs in accordance with Department of Energy Order No. RA 6120.2 and section 5 of the Flood Control Act of 1944. The proposed increase in revenue amounts to \$95,328, or 5.6 percent annually and will begin July 1, 1988, in accordance with Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR 903). "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" (50 FR 37837). SWPA published notice in the Federal Register November 18, 1987, (52 FR 44217) announcing a 90-day period for public review and comment concerning the proposed rate adjustment as required by 10 CFR 903. By letter dated November 17, 1987, SWPA mailed a preliminary copy of the Federal Register notice and supporting data for the 1987 Power Repayment Studies to the customer for information and review. A public information forum was held on December 15, 1987, followed by a public comment forum on January 12, 1988. Oral comments were received on behalf of the Sam Rayburn Dam Electric Cooperative and were supported by written comments received by letter dated February 8, 1988. Based on the date of publication, written comments from the customer and interested parties were accepted through February 16, 1988, and are contained along with SWPA's responses in the Comments and Responses Section of this Rate Order.

Discussion

The 1987 Current Power Repayment Study tests the adequacy of the existing rate based on the latest cost evaluation period extending from FY 1988 through FY 1991. The 1987 Repayment Study that was made available for public comment was based on a cost evaluation period extending from FY 1987 through FY 1991. Since that time, actual data for FY 1987 has been incorporated in the 1987 Repayment Study; which has had some effect on future estimates. With actual data for FY 1987, the cost evaluation period now extends from FY 1988 through FY 1991. This study is an update of the 1986 Power Repayment Study which was based on a cost evaluation period of FY 1986 through FY 1990. The most significant difference in the two studies results from extending the cost evaluation period the additional year and updating costs to current levels. The Schedule of Significant Changes and Comparison of Previous Forecast with Actual Results and Present Forecast of the 1987 Power Repayment Study compares the 1986 and 1987 Studies.

SWPA continues to make significant progress toward repayment of the Federal investment in the Sam Rayburn Dam. Through FY 1987, repayment status for the Sam Rayburn Dam Project is \$5,540,871, which represents approximately 23 percent of the \$23,822,361 Federal investment in the project. The status of repayment has increased almost 18 percent above the \$4,537,000 noted by the FERC in their Order issued March 13, 1987.

The FERC also previously indicated an interest in SWPA's progress toward repayment as compared to various amortization methods which assume scheduled payments without ever falling behind. SWPA has prepared an analysis which indicates that under such a scheduled compound interest amortization method SWPA would have repaid approximately 23 percent of the Federal investment through FY 1987. The 1987 Power Repayment Study shows that Sam Rayburn Dam repayment status will reach the level of the scheduled compound interest amortization method by the end of FY 1988. As an additional matter of interest, SWPA's financial records indicate that through FY 1987, amortization for the project exceeds accumulated depreciation of \$2,215,434 (based on compound interest depreciation and an average service life exceeding 80 years) by \$3,325,437.

Comments & Responses

The Southwestern Power Administration received one written reply concerning the notice published in the Federal Register, November 18, 1987, announcing the proposed Sam Rayburn Dam power rate increase.

Comment:

By letter dated February 8, 1988, Sam Rayburn Dam Electric Cooperative, Inc., (SRDEC) expressed no opposition or objection to the implementation of the proposed annual rate of \$1,810,368 for the sale of power and energy from Sam Rayburn Dam. SRDEC expressed their concern that the Corps O&M expenses comprise a major portion of the rate increase and there is little supporting detail on how the Corps of Engineers arrive at their estimate.

Response:

The Southwestern Power Administration continues to work closely with the Corps of Engineers in preparing estimates of O&M expenses. The O&M estimates prepared by the Corps of Engineers appear to have been relatively consistent with actual expenses incurred.

The Sam Rayburn Dam Electric Cooperative has proposed that a working group, comprised of the Corps of Engineers, Sam Rayburn Dam Electric Cooperative and Southwestern Power Administration, meet to discuss issues of mutual interest related to the Sam Rayburn Dam. SWPA fully supports this proposal and will be scheduling a meeting in the near future.

Availability of Information

Information regarding this rate proposal including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, 333 West 4th, Tulsa, Oklahoma 74103.

Administrator's Certification

The 1987 Revised Sam Rayburn Dam Power Repayment Study indicates that the increased annual Sam Rayburn Dam power rate of \$1,810,368 will repay all costs of the project including amortization of the power investment consistent with provisions of Department of Energy Order No. RA 6120.2. In accordance with section 1 of Delegation Order No. 0204-108, as amended May 30, 1986 (51 FR 19744), the Administrator has determined that the proposed Sam Rayburn Dam power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles in accordance with section 5 of the Flood Control Act of 1944.

Environment

The environmental impact of the proposed Sam Rayburn Dam power rate has been analyzed in consideration of the Department of Energy "Environmental Compliance Guide". The amount of the proposed increase does not warrant an Environmental Assessment or an Environmental Impact Statement in accordance with these regulations.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective July 1, 1988, the proposed annual rate of \$1,810,368 for the sale of power and energy from Sam Rayburn Dam to Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. 14-02-0001-1124, as amended November 1, 1980. The rate shall remain in effect on an interim basis through September 30, 1991, or until the FERC confirms and approves the rate on a final basis.

Issued at Washington, DC, this 24th day of June 1988.

Joseph F. Salgado,
Under Secretary.

[FR Doc. 88-15594 Filed 7-11-88; 8:45 am]
BILLING CODE 4450-01-M

ENVIRONMENTAL PROTECTION AGENCY

(OPTS-59261A; FRL-3413-1)

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-88-13. The test marketing conditions are described below.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202-328-7800).

SUPPLEMENTARY INFORMATION: Section 5 (h)(1) TSCA authorizes EPA to exempt persons from premanufacture notification (PMM) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-88-13. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and

restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-88-13. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T-88-13

Date of Receipt: May 11, 1988.

Notice of Receipt: June 13, 1988 (53 FR 22044).

Applicant: Confidential.

Chemical: (G) Organic dye.

Use: (G) Electrostatic imaging toner additive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Thirty days, commencing on first day of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 23, 1988.

Wendy Cleland-Hamnett,
Deputy Director, Chemical Control Division,
Office of Toxic Substances.

[FR Doc. 88-15567 Filed 7-11-88; 8:45 am]

BILLING CODE 4550-50-M

(OPTS-59260A; FRL-3413-2)

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-88-12. The test marketing conditions are described below.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Wright, III, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M St. SW., Washington, DC 20460, (202-382-7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-88-12. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-88-12.

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. The applicant must ensure that all persons who may be dermally exposed to the TME substance during manufacturing and processing are provided with and required to wear gloves determined by the applicant to be impervious to the TME substance under the conditions of exposure, including duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions

of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential dermal and mechanical degradation by the TME substance and associated chemical substances.

3. The Applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

A. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

D. Any determination by the applicant that gloves used by persons who may be dermally exposed to the TME substance are impervious to the TME substance.

T-88-12

Date of Receipt: May 2, 1988.

Notice of Receipt: May 23, 1988 (53 FR 18341).

Applicant: Confidential.

Chemical: (G) Acidified epoxy resin.

Use: (G) Coatings.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: One year, commencing on first day of manufacture.

Risk Assessment: EPA identified concerns for mutagenicity on oncogenicity based on analogous chemical substances. However, because persons who may be dermally exposed to the TME substance will be required to wear impervious gloves and no exposures via routes other than the dermal route are expected, EPA does not believe the substance will present an unreasonable risk to human health. EPA also identified ecotoxicity concerns based on acute aquatic test data.

However, EPA does not believe the TME substance will present a significant risk to the environment because it will not be released to water during manufacturing, processing, or use.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 15, 1988.

Wendy Cleland-Hammett,
Deputy Director, Chemical Control Division,
Office of Toxic Substances.

[FR Doc. 88-15586 Filed 7-11-88; 8:45 am]

BILLING CODE 6950-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Withdrawal of Statement of Policy Regarding Loans to Corporation Examiners by National Banks, District Banks and State Member Banks of Federal Reserve System

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Withdrawal of policy statement.

SUMMARY: The Federal Deposit Insurance Corporation (the "FDIC") is withdrawing its July 31, 1973 statement of policy (published at 38 FR 21210, Aug. 6, 1973) which provides that no loan to an FDIC examiner should be made by a national bank, district bank, or state member bank which is affiliated in a holding company system or otherwise with an insured state nonmember bank (i.e., the only category of insured banks which the FDIC routinely examines and supervises), and no such loan should be accepted by an FDIC examiner. Concurrent with the withdrawal of this policy statement, the Board of Directors of the FDIC approved a proposed revision of Part 336 of the FDIC's regulations, entitled "Employee Responsibilities and Conduct," published elsewhere in this issue of the Federal Register, which, in pertinent part, would prohibit an FDIC examiner from becoming obligated on an extension of credit, including credit extended through the use of a credit card, only from an insured state nonmember bank but would disqualify an examiner from participating in any examination, audit, visitation, or investigation of, or from otherwise taking any action on behalf of the FDIC with regard to, any bank, financial institution, or other person that has, either directly or indirectly, extended credit to the examiner.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, (202) 898-7272.

By order of the Board of Directors.
Dated at Washington, D.C., this sixth day of July, 1988.

Federal Deposit Insurance Corporation,
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 88-15582 Filed 7-11-88; 8:45 am]
BILLING CODE 6714-01-M

Privacy Act of 1974; Amendment to Existing System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed changes to system of records: "Employee Financial Disclosure Statements."

SUMMARY: The FDIC is issuing for public comment a revision of its system of records for Employee Financial Disclosure Statements. This change is being proposed to (1) reflect the addition of the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation to the system; (2) reflect the addition of the Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification; (3) delete Financial Disclosure Reports submitted pursuant to title II of the Ethics in Government Act of 1978 from the FDIC system because they are already included in Office of Personnel Management government-wide system OPM/Govt-4; (4) reflect a change in system location from one location in Washington, D.C., to designated divisional, regional, and consolidated offices of the FDIC; and (5) generally clarify and update the system.

DATES: Comments must be submitted by September 12, 1988.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or hand-delivered to Room 6108 at the same address, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Ethics Program Manager, 550 17th Street, NW., Washington, DC 20429, (202) 898-7272, or Donald L. Rosholt, Deputy Ethics Counselor, 550 17th Street, NW., Washington, DC 20429, (202) 898-7271.

SUPPLEMENTARY INFORMATION: The FDIC is publishing elsewhere in this issue of the Federal Register, concurrent with this proposed revision to its Privacy Act system of records entitled "Employee Financial Disclosure Statements," a proposed revision to Part 336 of its regulations (12 CFR Part 336) entitled "Employee Responsibilities and Conduct." That proposed revision to Part 336 would, among other things,

eliminate one semiannual filing of the Confidential Report of Indebtedness required to be filed by certain FDIC employees and decentralize the collection and retention of the records in the system to designated divisional, regional, and consolidated offices of the FDIC. The latter change necessitates a companion change in the system of records. Another change is being brought about by the existence of an Office of Personnel Management government-wide system, found at 49 FR 36949, 36962 (Sept. 20, 1984), which covers Financial Disclosure Reports (Standard Form 278). Those reports are currently listed as a covered record category in the existing FDIC system. The FDIC therefore intends to delete this category from its system and follow the government-wide system with respect to such reports. The system will be amended to include within the categories of covered records the Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation, that is designed to identify compliance with Part 336, which requires that all employees receive a copy of the standards of conduct within 30 days of commencement of employment. It will also be amended to include within the categories of covered records the Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification, that is designed for the purpose of providing a system for examiners and other covered employees of the Division of Bank Supervision to report compliance with credit card restrictions and self-disqualification from the examination and supervision processes.

Finally, the proposed changes reflect a general clarification and update of the language in the system. Accordingly, the Board of Directors of the FDIC proposes to revise the Employee Financial Disclosure Statements system to read as follows:

FDIC 30-64-0006

SYSTEM NAME:

Employee Financial Disclosure Statements System.

SYSTEM LOCATION:

Confidential Statements of Employment and Financial Interests, Reports of Interest in Bank Securities and Interest in FDIC Decision, Confidential Reports of Employment Upon Resignation, Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation, Statement of Credit Card Obligation in

Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification, and related records are located in designated divisional, regional, or consolidated offices to which individuals covered by the system are assigned. Duplicate copies of the above records are maintained in the Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, for the purpose of certification of review and resolution of conflicts of interest disclosed therein. Confidential Reports of Indebtedness and related records are located in the Office of the Executive Secretary. A list of the FDIC's divisional and regional offices is available from the Office of Corporate Communications, FDIC, 550 17th Street, NW., Washington, DC 20429, (202) 898-6996. A list of the FDIC's consolidated offices is available from the Operations Branch, Division of Liquidation, FDIC, 550 17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FDIC officers, employees, and special government employees required to file any of the following forms: (1) Confidential Statement of Employment and Financial Interests; (2) Confidential Report of Indebtedness; (3) Report of Interest in Bank Securities and Interest in FDIC Decision; (4) Confidential Report of Employment Upon Resignation; (5) Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation; (6) Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes data directly furnished by the individual on the following six forms or related records that may be generated in the course of the FDIC's administration of Executive Orders 11222 and 12565 and/or 12 CFR Part 336:

(1) Confidential Statement of Employment and Financial Interests—Contains statements of personnel and family holdings, interests in business enterprises and real property, creditors, and outside employment.

(2) Confidential Report of Indebtedness—Contains information on extensions of credit (loans and credit cards) by FDIC-insured banks and affiliates of FDIC-insured banks and non-insured banks; may also contain memoranda and correspondence

BEST COPY AVAILABLE

relating to requests for approval of certain loans extended by insured banks or affiliates thereof.

(3) Report of Interest in Bank Securities and Interests in FDIC Decision—Contains information on whether or not an employee owns or controls, directly or indirectly, any securities of insured banks or affiliates thereof, and if so, lists specific securities, the nature and extent of such interests and the manner of acquisition, contains information on other outside interests which may have an impact on an employee's official duties, and may contain memoranda and correspondence relating to requests for approval of retention of bank securities by employees.

(4) Confidential Report of Employment Upon Resignation—Contains information as to the employee's prospective employer, the nature of the business or organization activities of the prospective employer, the position the employee will occupy, dates of negotiation for such employment, and the employee's official involvement, if any, with the prospective employer.

(5) Employee Certification and Acknowledgement of FDIC Standards of Conduct Regulation—Contains employee's certification and acknowledgment that he or she has received a copy of the standards of conduct, has viewed the FDIC Orientation Ethics Video, and has a positive responsibility to comply with the standards of conduct.

(6) Standards of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention—Notice of Disqualification—Contains a Division of Bank Supervision employee's disclosure of credit extended through the use of a credit card by a bank headquartered outside of the employee's region of assignment and acknowledgement of disqualification from participating in any manner affecting the creditor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of E.O. 11222, 3 CFR Part 306 (1964-1965), as amended by E.O. 12565, 3 CFR Part 229 (1987); section 9 of the Federal Deposit Insurance and Act (12 U.S.C. 1819).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed, where the Director of the U.S. Office of Government Ethics or the Chairman of the FDIC's Board of Directors determines that good cause has been shown for such use:

(1) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order when the information indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by regulation, rule, or order issued pursuant thereto.

(2) To a congressional office in response to an inquiry made at the request of the individual.

(3) To any source where necessary to obtain information relevant to a conflict-of-interest investigation or determination.

(4) To a court, magistrate, or administrative tribunal in the course or presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, or in connection with the criminal proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name and, in the Office of the Executive Secretary, on an automated system also indexed by name.

SAFEGUARDS:

Maintained in lockable metal file cabinets in lockable offices and, in the Office of Executive Secretary, on a password-protected automated index system.

RETENTION AND DISPOSAL:

Retained for six years and then destroyed by shredding except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Ethics Counselor, Federal Deposit Insurance Corporation, 550-17th Street NW., Washington, D.C. 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street N.W., Washington, DC 20429. The request must contain the name and office of the individual covered by the system.

RECORD ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

The information is obtained from the individual on whom the record is maintained or a person designated by him or her and from the FDIC's Ethics Counselor and support personnel. Information may also be obtained from other parties to whom the FDIC has supplied information in connection with evaluating the records maintained in the Employee Financial Disclosure Statements system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT: None.

By order of the Board of Directors.

Dated at Washington, DC this sixth day of July, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15593 Filed 7-11-88; 8:45 am]

BILLING CODE 6714-01-M

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed new system of records: "Fitness Center Records System."

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Deposit Insurance Corporation (FDIC) gives notice of the establishment of a new system of records entitled "Fitness Center Records System."

DATE: Comments on the establishment of the system must be submitted by August 11, 1988. The system will become effective on September 28, 1988, unless a superseding notice to the contrary is published before that date.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, or hand-delivered to the same address between 9:00 a.m. and 5:00 p.m., Monday through Friday. Comments are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Deputy Executive Secretary, tel: (202) 898-3811, or Nancy Beth Spence, Attorney, tel: (202) 898-3504, FDIC, 550 17 Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is establishing a new system of records, the Fitness Center Records System, as part of its opening of an

employee Fitness Center. The system consists of the following documents for each employee Fitness Center member: a medical history questionnaire, a fitness evaluation form and subsequent reevaluation forms, an index card showing the dates of fitness evaluations, a prescribed program of exercise, a copy of the payroll deduction form authorizing payment of Fitness Center membership fees, and, where applicable, an exit questionnaire, completed upon termination of membership and a form to stop payroll deduction. The purpose of the system is to assure the safety and appropriateness of any program of exercise undertaken by the member and to measure the success of the program.

Information in the system will be furnished primarily by the Fitness Center member and includes the member's name, gender, age and history of certain medical conditions; the name of his or her physician and of any prescription or over-the-counter medicines taken on a regular basis; the name and address of a person to be notified in case of emergency. Also included is information on the member's degree of physical fitness and his or her fitness activities and goals. Information in the system will be available to the individual member.

Accordingly, the Board of Directors proposes the establishment of the following system of records:

FDIC 30-64-0021

SYSTEM NAME:

Fitness Center Records System.

SYSTEM LOCATION:

Fitness Center, Division of Accounting and Corporate Services, FDIC, 550 17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FDIC employees who apply for membership in the Fitness Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Principally contains the individual's name, gender, age, history of certain medical conditions; the name of the individual's personal physician and of any prescription or over-the-counter drugs taken on a regular basis; the name and address of a person to be notified in case of emergency. Also contains information on the individual's degree of physical fitness and his or her fitness activities and goals. Also contains forms, memoranda, or correspondence, as appropriate, related to the employee's membership in Fitness Center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1819.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed:

(1) To the FDIC's staff nurse for inclusion in Health Unit files.

(2) To a physician retained by the FDIC in order to determine whether a physical examination is necessary before a program of exercise is undertaken by a member.

(3) To a member's personal physician where it is determined that a physical examination is necessary before commencement of a program of exercise.

(4) To the individual listed as an emergency contact, in the event of an emergency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Information recorded on paper forms is stored in folders in file cabinets. Information recorded on index cards is stored in a card file box.

RETRIEVABILITY:

Indexed by name of Fitness Center member.

SAFEGUARDS:

Completed forms will be stored in lockable file cabinets. Only authorized personnel will have access to areas in which information is stored.

RETENTION AND DISPOSAL:

All records are updated when necessary to reflect changes and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Fitness Director, Division of Accounting and Corporate Services, FDIC, 550 17th Street, NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550 17 Street, NW., Washington, DC 20429. Individuals requesting their own records must provide their names and addresses.

RECORD ACCESS PROCEDURES:

Same as "NOTIFICATION" above.

CONTESTING RECORD PROCEDURES:

Same as "NOTIFICATION" above.

RECORD SOURCE CATEGORIES:

Information is principally obtained from the individual upon whom the record is maintained. Some information will be provided by the Fitness Director and, in certain cases, by a physician retained by the FDIC and by the individual's personal physician.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By direction of the Board of Directors.

Dated at Washington, DC, this 6th day of July 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15596 Filed 7-11-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-724]

The Lincoln Savings Bank, F.S.B., New York, NY; Final Action Approval of Conversion Application

Date: July 6, 1988.

Notice is hereby given that on December 30, 1987, the General Counsel and the Director of the Office of Regulatory Policy, Oversight and Supervision (or their respective designees), acting pursuant to delegated authority, approved the application of The Lincoln Savings Bank, F.S.B., New York, New York ("Lincoln"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the Application H-(e)1 filed by Lincorp, Inc., Unicorp American Corporation, Unicorp Canada Corporation, and Townsview Properties Limited, to acquire control of Lincoln.

By the Federal Home Loan Bank Board:

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-15602 Filed 7-11-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-725]

Riverhead Savings Bank, F.S.B., Riverhead, NY; Final Action Approval of Conversion Application

Date: July 6, 1988.

Notice is hereby given that on April 26, 1988, the General Counsel and the Director of the Office of Regulatory Policy, Oversight and Supervision (or their respective designees), acting pursuant to delegated authority,

approved the application of Riverhead Savings Bank, F.S.B., Riverhead, New York ("Riverhead"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the Application H-(e)1 filed by American Savings Bank, F.S.B., New York, New York, to acquire control of Riverhead.

By the Federal Home Loan Bank Board,
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-15603 Filed 7-11-88; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 6, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Bank Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Proposal to Approve Under OMB Delegated Authority the Revision of the Following Report

Report title: Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of \$150 Million or More or with More than One Subsidiary Bank.

Agency form number: FR Y-9C.

OMB Docket Number: 7100-0128. (This OMB docket number includes the FR Y-9C, Y-9LP and Y-9SP. The revision relates only to the FR Y-9C).

Reporters: Bank holding companies.
Annual reporting hours: 144,260.

Report	Number of respondents	Frequency	Avg. hours per response
FR Y-9C and Y-9LP: For bank holding companies with total consolidated assets of \$150 million or more.	847	Quarterly	25.25
For bank holding companies with consolidated assets of less than \$150 million in total assets but which have more than one subsidiary bank.	431	Quarterly	14.25
FR Y-9SP	5,121	Semiannually	3

Significant effect on small businesses is not expected.

General description of report: This report is required by law (12 U.S.C. 1844). Certain portions may occasionally be given confidential treatment (5 U.S.C. 552 (b)(4) and (b)(6)).

This report is the primary source of information for the Federal Reserve System's bank holding company surveillance function in its ongoing monitoring of the financial conditions of these institutions. One revision is proposed, to collect separate data on federal funds and securities repurchase transactions.

Board of Governors of the Federal Reserve System, July 6, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15530 Filed 7-11-88; 8:45 am]
BILLING CODE 6210-01-M

Correction; Business Bancorp

This notice corrects a previous **Federal Register** notice (FR Doc. 88-14817) published at page 25010 of the issue for Friday, July 1, 1988.

Under the Federal Reserve Bank of San Francisco, the comment period for

Business Bancorp is changed to close on July 21, 1988.

Board of Governors of the Federal Reserve System, July 6, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-15534 Filed 7-11-88; 8:45 am]
BILLING CODE 6210-01-M

Community Bank System, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. **Community Bank System, Inc.**, Dewitt, New York; to merge with Communicorp, Inc., Addison, New York, and thereby indirectly acquire Community National Bank, Addison, New York.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Mechanicsville Trust & Savings Bank**, Trustee of The Mechanicsville Trust & Savings Bank Employee Stock

Ownership Plan & Trust, Mechanicsville, Iowa; to become a bank holding company by acquiring 75 percent of the voting shares of Mechanicsville Bancshares, Inc., Mechanicsville, Iowa, and thereby indirectly acquire The Mechanicsville Trust & Savings Bank, Mechanicsville, Iowa.

2. **Merchants National Corporation**, Indianapolis, Indiana; to merge with BSB Bancorp, Batesville, Indiana, and thereby indirectly acquire Batesville State Bank, Batesville, Indiana.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **M.O. Packard Investment Company**, Springville, Utah; to merge with Kolob Investment Company, Springville, Utah, and thereby indirectly acquire Central Bank and Trust Company, Springville, Utah.

2. **U.S. Bancorp**, Portland, Oregon; to acquire 100 percent of the voting shares of Northwestern Commercial Bank, Bellingham, Washington. Comments on this application must be received by August 4, 1988.

Board of Governors of the Federal Reserve System, July 6, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-15531 Filed 7-11-88; 8:45 am]
BILLING CODE 6210-01-M

Firstshares of Texas, Inc., Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under sections of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under section 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1988.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **FirstShares of Texas, Inc.**, Marshall, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Marshall, Marshall, Texas.

In connection with this application, Applicant also proposes to acquire The First National Company of Marshall, Marshall, Texas, and thereby engage in making, acquiring and/or servicing loans for itself or for others pursuant to section 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-15532 Filed 7-11-88; 8:45 am]
BILLING CODE 6210-01-M

Texas Commerce Bancshares, Inc. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. **Texas Commerce Bancshares, Inc.**, Houston, Texas; to engage de novo through its subsidiary, Texas Commerce Information Systems, Inc., Houston, Texas, in the provision to others of data processing and data transmission services, facilities, data bases, or access to such services, facilities, or data bases by any technological means in connection with any financial, banking or economic data pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. **Westpac Banking Corporation**, Sydney, Australia; to engage de novo through its subsidiary, Mase Westpac, Inc., New York, New York, in bullion industry financing pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted on a worldwide basis.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **United Community Corporation**, Oklahoma City, Oklahoma; to engage de novo in providing tax planning and tax preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y. Comments on this application must be received by July 29, 1988.

Board of Governors of the Federal Reserve System, July 8, 1988.
James McAfee,
Associate Secretary of the Board.
 [FR Doc. 88-15533 Filed 7-11-88; 8:45 am]
 BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:
Name: Employee Thrift Advisory Council.

Time and date: 10:00 a.m., July 28, 1988.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, N.W., Washington, D.C.

Status: Open.

Matters to be considered: Approval of the minutes of the April 19, 1988 meeting; report of Executive Director on Thrift Savings Plan status; interfund transfers; selection of asset managers—process and status; frequency of Employee Thrift Advisory Council meetings; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara on (202) 523-6367.

Francis X. Cavanaugh,
Executive Director.
 [FR Doc. 88-15006 Filed 7-11-88; 8:45 am]
 BILLING CODE 9710-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0256]

Animal Drug Export; Erythromycin Thiocyanate Bulk

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ANGUS Biotech, Inc., has filed an application requesting approval for the export of the animal drug Erythromycin Thiocyanate Bulk to Italy.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD

20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act)) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that ANGUS Biotech, Inc., 700 Henry Ford Ave., P.O. Box 787, Wilmington, CA 90748-0787, has filed an application requesting approval for the export of the animal drug Erythromycin Thiocyanate Bulk to Italy. The drug is intended for further manufacture as an active ingredient in medicated feeds for animals. The application was received and filed in the Center for Veterinary Medicine on July 5, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 22, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: July 8, 1988.
Richard A. Carnevale,
Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
 [FR Doc. 88-15527 Filed 7-11-88; 8:45 am]
 BILLING CODE 9105-01-M

[Docket No. 88N-0220]

Paragon Optical, Inc.; Premarket Approval of FluoroPerm™ (Pafufocon A) Rigid Gas-Permeable Contact Lens (Clear and Tinted) for Extended Wear

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Paragon Optical, Inc., Mesa, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the spherical FluoroPerm™ (pafufocon A) Rigid Gas-Permeable Contact Lens for extended wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 31, 1988, of the approval of the application.

DATE: Petitions for administrative review by August 11, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7040.

SUPPLEMENTARY INFORMATION: On March 9, 1988, Paragon Optical Inc., Mesa, AZ 85201-0171, submitted to CDRH a supplemental application for premarket approval of the FluoroPerm™ (pafufocon A) Rigid Gas-Permeable Contact Lens. The lens is indicated for daily and extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye care practitioner, and for the correction of visual acuity in not-aphakic persons

with nondiseased eyes that are myopic or hyperopic and may correct corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The spherical lens ranges in powers from -20.00 D to +8.00 D and is to be disinfected using the chemical lens care system specified in the approved labeling. The blue-tinted lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On April 22, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On May 31, 1988, CDRH approved the supplemental application by letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the Federal Register of approval of a new solution for use with an approved soft contact lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for

administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 U.S.C. 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 U.S.C. 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 11, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1988.
John C. Villforth,
Director, Center for Devices and Radiological Health.
 [FR Doc. 88-15529 Filed 7-11-88; 8:45 am]
 BILLING CODE 9105-01-M

Health Care Financing Administration Privacy Act of 1974

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new

system of records, "Common Working File (CWF)", HHS/HCFA/BPO NO. 09-70-0528. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB), on July 1, 1988. The new system of records, including routine uses, will become effective September 12, 1988, unless HCFA receives comments which would warrant modification of the notice.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-M-1, East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: John Van Walker, Task Force for Standard Systems, Office of Program Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, Room G-C-7 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 966-6965.

SUPPLEMENTARY INFORMATION: This system of records contains beneficiary specific Medicare entitlement, utilization and claims history information and is designed to house this data in one location. This will allow HCFA to properly and expeditiously pay Medicare benefits to or on behalf of the beneficiary in question. Claims would be processed to this file prior to payment. This concept, at the least, provides work simplification for Medicare contractors. In addition, it is expected that several other benefits will accrue, such as, enhancing the ability to apply uniform program safeguards and providing for a quicker and more uniform response to changes in Medicare policy. This system also has a high potential for saving benefit dollars.

The Privacy Act permits us to disclose information without consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information. We anticipate that disclosure under the routine uses will not result in any

unwarranted adverse effects on personal privacy.

Dated: June 30, 1988.

William L. Roper,
Administrator, Health Care Financing
Administration.

09-70-0526

SYSTEM NAME:

Common Working File (CWF).

SECURITY CLEARANCE:

None.

SYSTEM LOCATION:

Contact system manager for location of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all information on Medicare Part A and Part B beneficiary enrollment, entitlement, utilization, query and reply activity, worker's compensation, Veterans Administration (VA) entitlement, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment. The categories of records are Health Insurance Master Record, Part A Intermediary Medicare Claims Record, Part B Carrier Claims Record, Medicare Secondary Payer Record, Third Party Liability Record, Medicaid Entitlement Record, Health Maintenance Organizations Record, and Hospice Record.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

Sections 1816 and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395h and 1395kk).

PURPOSE OF THE SYSTEM:

To properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made to:

(1) Claimants, their authorized representatives or representatives payees to the extent necessary to pursue claims made under Title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or eligibility

for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officer or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Peer Review Organizations in connection with their review of claims, or in connection with studies of other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Board for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the

prevention of disease or disability; or the restoration or maintenance of health, if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except for:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law: Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of

assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicare eligibility considerations. Disclosures of physicians' customary charge data are made to State audit agencies in order to ascertain the correctness of title XIX charges and payments.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Peer review groups, consisting of members of State, County, or local medical societies or medical care foundations (physicians), appointed by the medical society or foundation at the request of the carrier to assist in the resolution of questions of medical necessity, utilization of particular procedures or practices, or overutilization of services with respect to Medicare claims submitted to the carrier.

(17) Physicians and other suppliers of services who are attempting to validate individual items on which the amounts included in the annual Physician/Supplier Payment List or similar publications are based.

(18) Senior citizen volunteers working in intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries' requests for assistance.

(19) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare

payments for which workers' compensation programs are liable.

(20) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to coordinate benefits payable under the Medicare program with benefits payable under workers' compensation programs.

(21) Insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

(a) To certify that the individual on whom the information is being provided is one of its insureds;

(b) To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

(c) To safeguard the confidentiality of the data and to prevent unauthorized access to it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media (Magnetic Tape, Disks, Microfiche).

RETRIEVABILITY:

Records are retrieved by the Health Insurance Claim Number.

SAFEGUARDS:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation Guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services (HHS). Safeguards for automated records have been established in accordance with the HHS' Automated Data Processing Manual, Part 6, "ADP System Security".

RETENTION AND DISPOSAL:

Records are retained for an indefinite period of time dependent on individual beneficiary coverage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, Room 300, Meadows East Building, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the Health Insurance Claim Number.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current). (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORY:

The data contained in these records is furnished by the individual. In most cases, the identifying information is provided to the physician by the individual. The record source categories are the Health Insurance Master Record, Part A Intermediary Medical Claims Record, Part B Carrier Medicare Claims Record, Medicare Secondary Payer Record, Third Party Liability Record, Medicaid Entitlement Record, Health Maintenance Organizations Record, and Hospice Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-15573 Filed 7-11-88; 8:45 am]

BILLING CODE 4120-05-9

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-88-1824; FR-2484]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of recognition of substantially equivalent law.

SUMMARY: This notice states that the Department recognizes the fair housing law of Hazel Crest, Illinois as one which provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968).

FOR FURTHER INFORMATION CONTACT: Wagner D. Jackson, Acting Director, Office of Fair Housing Enforcement and Section 3 Compliance, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 426-3500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 7, 1988, the Department published a notice in the Federal Register (51 FR 595) seeking public comment on the fair housing law of Hazel Crest, Illinois pursuant to 24 CFR Part 115. The notice invited comments on the Department's determination that the fair housing law of Hazel Crest, Illinois "on its face" provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided under the Federal Fair Housing Act (Act). Comment was also invited on the present and past performance of the agency (or agencies) administering the law.

Several comments were received supporting substantial equivalency recognition. The Chicago Far South Suburban Branch of the National Association for the Advancement of Colored People (Branch) and the National Association of Realtors (NAR) submitted comments opposing recognition.

The objections centered on language in the Hazel Crest Fair Housing Ordinance. That Ordinance provides at Sec. 14-24:

Declaration of Policy.
(a) It is hereby declared to be the policy of the village to provide, within constitutional

limitations, for fair housing throughout the village, to assure that all persons have full and equal opportunity to consider all available housing and obtain fair and adequate housing for themselves and their families within the village without discrimination because of race, color, religion, sex or national origin, and to promote a stable, racially integrated community.

NAR and the Branch object to the final clause. While some may not consider the promotion of racial integration a laudable goal, such a policy may not properly be said to conflict with Title VIII. Indeed, residential integration is one of the goals of Title VIII. (See *U.S. v. Starrett City*, No. 1483, slip op. at 10 (2d Circuit, Mar. 1, 1988)).

The Branch and NAR also object to language in the Ordinance which reads:

Provided that nothing in this section shall be construed to prohibit special outreach efforts conducted by or under the authority of units of local government (including agencies, departments and commissions thereof) or nonprofit fair housing agencies to ensure that persons of minority groups are fully informed of available dwelling opportunities in areas of present or prospective majority group concentration, or to ensure that persons of the majority group are fully informed of available dwelling opportunities in areas of present or prospective minority group concentration. (Ord. Sec. 14-28, final paragraph (Ord. No. 9-1983, § 1, 5-24-83)).

The objecting organizations argue that the provision gives approval for groups to steer blacks away from Hazel Crest and to steer whites to Hazel Crest. We do not so read the provision. The provision ensures that blacks may be fully informed of housing opportunities in those sections of the city where blacks are least concentrated, and whites may be fully informed of housing opportunities in those sections of the city where whites are least concentrated. To provide such information is patently neither discriminatory nor a violation to Title VIII and there is not the slightest implication that any information regarding housing opportunities may be denied. (See *Stephoe v. Beverly Area Planning Association* (No. 84C 10926, N.D. Ill., November 23, 1987)). Further, the Hazel Crest Fair Housing Ordinance specifically prohibits steering (Sec. 14-29g) and the section complained of exempts only special outreach efforts that provide information.

The Affirmative Marketing Plan language of the ordinance is set forth in Division 5 thereof. The objections to the affirmative marketing plans seem premised on the perceived stigma associated with keeping records based on race. We see no such stigma and

recognize that such data may be useful in furthering the purposes of Title VIII.

Finally, NAR suggests that HUD defer recognition until a lawsuit questioning the propriety of "Hazel Crest's overall program of integration maintenance" is decided: *South Suburban Housing Center v. Greater South Suburban Board of Realtors, et al.*, No. 83 C 8149 (N.D. Ill., filed November 7, 1983). While the court's opinion may prove instructive when given, we are not persuaded that the ruling of the court will adversely affect the substantial equivalency recognition of the Village of Hazel Crest.

The ordinance, at Sec. 14-28, provides that if any court finds any section or provision of Article III, Fair Housing, to be unconstitutional, void or ineffective, such judgment will not affect any other section or provision not specifically included in said judgment. Further, Section 815 of Title VIII provides that any law that purports to require or permit any action that would be a discriminatory housing practice under Title VIII shall to that extent be invalid. While we remain convinced that the provisions causing NAR and the Branch concern are compatible with Title VIII, the severability provision of the Ordinance and Section 815 of Title VIII provide safeguards against determinations or procedures which are found not so compatible.

To assure that the Hazel Crest Fair Housing Ordinance was being administered in a manner consonant with Title VIII, the Department conducted two on-site reviews. Further, two meetings were held with a representative of the Branch. The Department determined that the current practices and past performance of Human Relations Commission of the Village of Hazel Crest met the performance standards of Sec. 115.4 and that in operation the Hazel Crest Fair Housing law does in fact provide substantially equivalent rights and remedies. Neither the Branch nor NAR has cited occasions where the Hazel Crest Ordinance was interpreted or administered in a way which was violative of Title VIII. Nor has either organization cited incidents in which the Hazel Crest Human Relations Commission's practices and procedures were not consonant with Title VIII. The Department has found no basis for a conclusion that the fair housing law of the Village of Hazel Crest is administered in a manner which is in conflict with Title VIII.

Accordingly, this publication gives notice of the Department's recognition of the fair housing law of Hazel Crest,

Illinois in accordance with 24 CFR 115.6(c).

Date: June 28, 1988.

William E. Wynn,
General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88-15584 Filed 7-11-88; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-88-1826; FR-2527]

Office of Lender Activities and Land Sales Registration Interstate Land Sales Registration Division; Order of Suspension

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Lender Activities and Land Sales Registration Interstate Land Sales Registration Division, HUD.

ACTION: Order of suspension.

SUMMARY: The Department is issuing an Order of Suspension to each developer listed on the attached Appendix. Each listed developer has failed to file amendments to its registration, or to file documents establishing that no amendment is necessary.

The Order of Suspension is issued under the Interstate Land Sales Full Disclosure Act

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Branch Chief, Land Sales Enforcement Branch, Interstate Land Sales Registration Division, Department of Housing and Urban Development, Room 6278, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-0502. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The HUD Interstate Land Sales Registration Division gives public notice of its attempt to serve upon the listed Developers at their last known address a notice requiring that each Developer make revisions to its Statement of Record. Although service of notice by certified mail was attempted in accordance with 24 CFR 1720.170, the notice was undeliverable. Consequently, on April 14, 1988 the Department of Housing and Urban Development, in accordance with 44 U.S.C. 1508, published in the Federal Register a Notice of Proceedings and Opportunity for Hearing (53 FR 12489) effecting constructive notice on the listed Developer respondents. The Notice informed these Developers of omissions,

in their Statements of Record and Property Reports, of material provisions required by law, and advised each Developer of its right to request a hearing within 15 days of publication of the Notice. More than 15 days have now elapsed since the publication of the Notice, and the entities listed in the attached Appendix and referred to in the Order of Suspension as "Developer" have not requested a hearing; therefore, the Department is issuing this Order of Suspension.

Order of Suspension

1. Each Developer listed in the Appendix is subject to the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701-1720) and to HUD regulations promulgated under 15 U.S.C. 1718. Each Developer has filed for its subdivision a Statement of Record and Property Report which became effective in accordance with 24 CFR 1710.21. The Statement remains in effect.

2. As authorized by 15 U.S.C. 1715, the authority and responsibility for administration of the Interstate Land Sales Full Disclosure Act has been vested in the Secretary or the Secretary's designee.

3. Under 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), if it appears to the Secretary or the Secretary's designee that a Statement of Record includes any untrue statement of a material fact, or omits to state any material fact required to be stated or necessary to prevent the Statement of Record from being misleading, the Secretary or designee, after notice and opportunity for a hearing requested within 15 days of receipt of the notice, may issue an order suspending the Statement of Record.

4. A Notice of Proceedings and Opportunity for Hearing was published in the Federal Register on August 18, 1987, informing each listed Developer of information obtained by the Interstate Land Sales Registration Division indicating that the Developer's Statement of Record contained an untrue statement of material fact or an omission of a material fact required to be stated or necessary to prevent the Statement of Record from being misleading. The Notice stated that failure to request a hearing would be treated as a default and that the allegations contained in the Notice would be taken to be true. Each listed Developer has failed to answer or to request a hearing under 24 CFR 1720.220 within 15 days of publication of HUD's Notice of Proceedings and Opportunity for Hearing.

Therefore, in accordance with 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), the Statement of Record filed by the

Developer covering its subdivision is suspended, effective July 12, 1988. This Order of Suspension shall remain in effect until the Statement of Record has been properly amended as required by the Interstate Land Sales Full Disclosure Act and HUD's implementing Regulations.

Publication of this Order in the Federal Register constitutes constructive notice to each respondent developer. Unless otherwise exempt, any sales or offers to sell made by a listed Developer or by its agents, successors, or assigns while this Order of Suspension is in effect will be in violation of the provisions of the Interstate Land Sales Full Disclosure Act.

Date: June 29, 1988.

James E. Schoenberger,
General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix

The captioned matters in this Appendix are listed alphabetically by subdivision in each State. The list contains the name of the subdivision, developer, representative and title, OILSR number and Land Sales Enforcement Division Docket number.

Arizona

Desert Vista Place, Richard G. Davis and Carolyn E. Davis, sole proprietors; C 0-06385-02-1130; M-87-037.

Colorado

Douglas Mountain Ranch, Donald McClure, sole proprietor, 0-05104-05-0528; M-88-034.

Illinois

Valley of the Pines Sections 1 and 2, Meister Development Corporation, Robert L. Meister, President, 0-04673-15-76, M-88-029.

[FR Doc. 88-15583 Filed 7-11-88; 8:45 am]

BILLING CODE 4210-27-M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D-88-881]

Acting Manager, Region IV (Atlanta); Designation for Knoxville Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Knoxville Office.

EFFECTIVE DATE: April 12, 1988.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Manager for Knoxville Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Director, Housing Development Division
3. Director, Housing Management Division
4. Director, Community Planning and Development Division
5. Chief Counsel
6. Director, Fair Housing and Equal Opportunity Division
7. Director, Administration Division

This designation supersedes the designation effective February 25, 1987, (52 FR 17481, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of April 12, 1988.

Richard B. Barnwell,
Manager, Knoxville Office.

Kenneth E. Williams,
Acting Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 88-15565 Filed 7-11-88; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Ranking of Applications for Juvenile Detention Facilities for Indian Youth

AGENCY: Office of Construction Management, Interior.

ACTION: Notice of ranking.

This notice is published to inform all Tribal applicants of the ranking for renovation and/or construction for Juvenile Detention Facilities for Indian

Youth pursuant to Pub. L. 90-570, section 4220(a) the Anti-Drug Abuse Act of 1980.

Forty-six (46) applications were received and evaluated by a five member committee with representation from Bureau of Indian Affairs, Division of Law Enforcement Services, The Facility Management Construction Center, Office of Construction Management, Indian Health Service, and National Indian Justice Center.

None of the applications were disqualified, although two different applications were submitted on behalf of one consolidated tribal entity.

The forty-six (46) applications were scored by each of the five committee members based upon established criteria and point values. The individual criteria scores were then accumulated, averaged and totaled. The results of this evaluation process are as follows:

Ranking and Applicant's Name:

1. Cheyenne River Sioux Tribe
2. Navajo Tribe—Tuba City
3. Navajo Tribe—Chinle
4. Oglala Sioux Tribe
5. Ute Mountain Ute Tribe
6. Navajo Tribe—Crowpoint
7. Tohono O'odham Nation
8. Navajo Tribe—Kayenta
9. Navajo Tribe—Shiprock
10. Mississippi Band of Choctaw Indians
11. Zuni Pueblo
12. Confederated Salish & Kootenai Tribes
13. Lower Brule Sioux Tribe
14. Southern Ute Tribe
15. Three Affiliated Tribes
16. Quileute Tribe
17. Mescalero Apache Tribe
18. Navajo Tribe—Navajo
19. Navajo Tribe—Tohatchi
20. Ute Tribe
21. Makah Tribe
22. Chippewa Cree Tribe
23. Shoshone—Bannock Tribes
24. Gros Ventre & Assiniboina Tribe
25. Confederated Tribes & Bands of the Yakima Indian Nation
26. Shoshone & Arapahoe Tribes
27. Chemawa Indian School
28. Spokane Tribe of Indians
29. Standing Rock Sioux Tribe
30. Rosebud Sioux Tribe
31. San Carlos Apache Tribe
32. Sisseton—Wahpeton Sioux Tribe
33. Otoe—Missouria Tribe
34. Crow Creek Sioux Tribe
35. Tonkawa Tribe
36. Fort Mojave Tribe
37. Albuquerque Area Tribal Coordinating Committee
38. Colville Confederated Tribes
39. Pascua Yaqui Tribe
40. Picuris Tribe
41. Eight Northern Indian Pueblos
42. Northern Cheyenne Tribe

43. Cheyenne—Arapahoe Tribes

44. Devil's Lake Sioux Tribe

45. Juneau

46. Kaw Tribe.

FOR FURTHER INFORMATION CONTACT: Arthur M. Love, Jr., Director, Office of Construction Management, Department of the Interior, 18th & C Streets, NW., Mail Stop 2415, Washington, DC 20240, (202) 343-3404.

Rick Ventura,
Assistant Secretary Policy, Budget & Administration.

July 6, 1988.

[FR Doc. 88-15590 Filed 7-11-88; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Proposed Contractual Actions Pending Through September 1988.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the *Federal Register* December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish a notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the *Federal Register* February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1988. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the *Federal Register* for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) *Federal Register*
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, telephone (208) 334-1160.

1. *Cascade Reservoir water users, Boise Project, Idaho:* Repayment contracts for irrigation and M&I; 58,721 acre-feet of stored water in Cascade Reservoir.

2. *Brewster Flat ID, Chief Joseph Dam Project, Washington:* Amendatory repayment contract; land reclassification of approximately 360

acres to irrigable; repayment obligation to increase accordingly.

3. *Individual Irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington:* Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. *Rogue River Basin water users, Rogue River Basin Project, Oregon:* Water service contracts; \$5 per acre-foot or \$50 minimum per annum, terms up to 40 years.

5. *Willamette Basin water users, Willamette Basin Project, Oregon:* Water service contracts; \$1.50 per acre-foot or \$50 minimum per annum, terms up to 40 years.

6. *IDs and similar water user entities:* Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

7. *Fifty-nine Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming:* Contract amendments to extend term for which contract water may be subleased to other parties.

8. *South Columbia Basin ID, Columbia Basin Project, Washington:* Supplemental repayment contract for Irrigation Block 24; 1,832 irrigable acres.

9. *City of Cle Elum, Yakima Project, Washington:* Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

10. *Three IDs, Flathead Indian Irrigation Project:* Repayment of costs associated with rehabilitation of irrigation facilities.

11. *Baker Valley ID, Baker Project, Oregon:* Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

12. *Crooked River Project, Oregon:* Repayment of water service contracts with several individuals for a total of approximately 1,100 acre-feet of project water; contract terms of up to 40 years for the purpose of supplying water under the project water right held by the United States.

13. *Various Projects, Pacific Northwest Region:* R&B contracts for replacement of needle valves at storage dams.

14. *Palisades Water Users Inc., Minidoka-Palisades Project:* Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

15. *Willow Creek Project, Oregon:* Repayment of water service contracts

for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

16. *State of Wyoming, Minidoka-Palisades Project:* Repayment contract for 33,000 acre-feet of storage space in Palisades Reservoir reserved under the Snake River Compact.

17. *Roa ID, Yakima Project, Washington:* Proposed supplementary deferment contract. Defer 1 year (2 installments) of construction payments because of cost incurred by the district to obtain additional water supplies in anticipation of drought.

Mid-Pacific Region

Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978-5030.

1. *Colusa Drain Mutual Water Company, CVP, California:* Water right settlement contract; FR notice published July 25, 1979, Vol. 44, page 43535.

2. *Tuolumne Regional Water District, CVP, California:* Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

3. *Calaveras County Water District, CVP, California:* Water service contract; 1,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. *Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada:* Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

Note.—Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

5. *Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California:* Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1989-1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

6. *South San Joaquin ID and Oakdale ID, CVP, California:* Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. *San Luis Water District, CVP, California*: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. *ID's and similar water user entities*: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

9. *State of California, CVP, California*: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operations Agreement.

10. *Madera ID, Madera Canal, CVP, California*: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

11. *County of Tulare, CVP, California*: Amendatory water service contract, to provide an additional 1,906 acre-feet and reallocate 400 acre-feet of water from the Ductor ID for a total increase of 2,306 acre-feet.

12. *Panoche Water District, CVP, California*: Amendatory water service contract providing for change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

13. *Shasta Dam Area Public Utilities District, CVP, California*: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

14. *U.S. Fish and Wildlife Service, CVP, California*: Long-term contract for water supply for Federal refuge in Grasslands area of California.

15. *City of Redding, CVP, California*: Amendatory M&I water supply contract.

16. *Washoe County Water Conservation District, Truckee Storage Project, Nevada*: Repayment contract for the replacement of two needle valves at Boca Dam.

17. *Glide Water District, CVP, California*: Amendatory Public Law 84-130 repayment contract.

18. *Kanawha Water District—Improvement District No. 2 and 3, CVP, California*: Amendatory Public Law 84-130 repayment contracts.

19. *Union Public Utility District, CVP, California*: Water service contract, up to 1,000 acre-feet annually for M&I water from New Melones Reservoir for up to 15 years.

20. *Kern County Water Agency, CVP, California*: Temporary agricultural water supplies of up to 100,000 acre-feet for 1 year.

21. *City of Dos Palos, CVP, California*: Contract for the use of surplus capacity in the San Luis Canal pursuant to the Warren Act. The contract will allow the

exchange of water with Central California Irrigation District and transportation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

22. *North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California*: Amendatory contract to provide storage space for M&I water.

23. *Contra Costa Water District, CVP, California*: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Low Vaqueros project. Amendment will also conform contract to current water ratesetting policies.

24. *East Bay Municipal Utility District, CVP, California*: Temporary M&I water service contract for 75,000 acre-feet of water for up to one year.

25. *East Bay Municipal Utility District, CVP, California*: Amend Contract No. 14-06-200-5128A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99-546.

26. *San Juan Suburban Water District, CVP, California*: Amend Contract No. 14-06-200-152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99-546.

27. *El Dorado Irrigation District, CVP, California*: Amend Contract No. 14-06-200-1357A to provide for additional points of delivery under the contract and to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99-546, if requested by the district.

28. *Placer County Water Agency, CVP, California*: Amend existing water right and water service contract to include current water rates, standard contract language and deliveries of Project water at other than the Auburn Dam site.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524-5435.

1. *Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico*: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) *The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico*: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

(b) *The Morrison, Knudsen-Ferguson Company*: Water service contract for 104 acre-feet of San Juan River water to be diverted in Utah downstream from Navajo Reservoir. The contract is for 2 years.

2. *Revised Hydrological Determination*: A hydrologic determination was last made for the Upper Colorado River in December 1984 with the principal conclusion that the Upper Basin could support a depletion level of at least 5.8 million acre-feet. Upon the request of the Secretary of the New Mexico Interstate Stream Commission, a review of water availability in the Upper Basin has been undertaken with regard to the water supply available for use in New Mexico.

3. *La Plata Conservancy District, Animas-La Plata Project, New Mexico*: Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

4. *San Juan Water Commission, Animas-La Plata Project, New Mexico*: M&I repayment contract; 30,000 acre-feet per year. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

5. *Southern Ute Indian Tribe, Animas-La Plata Project, Colorado*: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement, in principle.

6. *Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico*: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 28,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

7. *Navajo Indian Tribe, Animas-La Plata Project, New Mexico*: Repayment contract; 7,600 acre-feet per year for M&I use.

8. *Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado*: Contract to continue O&M of Grand Valley powerplant.

9. *Ute Mountain Ute Indian Tribe, Dolores Project, Colorado*: Agreement

for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

10. *Moon Lake Water Users Association, Moon Lake Project, Utah*: Repayment contract for R&B of facilities including replacement of needle valve.

11. *Central Utah Water Conservancy District, Bonneville Unit, CUP, Utah*: D&MC contract; Advancement of \$65.7 million for construction of laterals and drains of the irrigation and drainage system.

12. *Uintah Water Conservancy District, Jensen Unit, CUP, Utah*: Amendatory repayment contract to reduce M&I Water supply and corresponding repayment obligation.

13. *Florida Water Conservancy District, Florida Project, Colorado*: Lease of power privileges to develop the hydroelectric power potential of the Florida Project.

14. *Vermejo Conservancy District, Vermejo Project, New Mexico*: Amendatory contract to relieve the district of further repayment obligation, presently exceeding \$2 million, pursuant to Pub. L. 96-550.

15. *Rio Grande Water Conservation District, Alamosa, Colorado*: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

16. *Conejos Water Conservancy District, San Luis Valley Project, Colorado*: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

17. *Carlsbad ID, Carlsbad Project, New Mexico*: Repayment contract for the costs incurred by the United States for replacing the needle valves at Fort Sumner Dam.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293-8536.

1. Amendment to Contract No. 176r-696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. *Agricultural and M&I water users, CAP, Arizona*: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. *Southern Arizona Water Rights Settlement Act*: sale of up to 28,200 acre-

feet per year of municipal effluent to the city of Tucson, Arizona.

4. *Contracts with five agricultural entities located near the Colorado River, BCP, Arizona*: Water service contracts for up to 1,920 acre-feet per year total.

5. *Gila River Indian Community, CAP, Arizona*: Water service contract for delivery of up to 173,000 acre-feet per year.

6. *ID's and similar water user entities*: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

7. *Indian and non-Indian agricultural and M&I water users, CAP, Arizona*: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. *Water delivery contracts, BCP, Arizona*: For a yet undetermined amount of Colorado River water for M&I use on State-owned land.

9. *Contract with the State of Arizona, BCP*: For a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. *Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 4.5 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in Arizona v. California (439 U.S. 419).*

11. *AK-Chin Farm, Maricopa, Arizona*: Repayment contract for \$6.1 million SRPA escalation loan.

12. *Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.*

13. *Central Arizona Water Conservation District, CAP, Arizona*: Amendatory contract to increase the district's CAP repayment ceiling and to update other provisions of the contract.

14. *Maricopa-Stanfield and Central Arizona IDs, CAP, Arizona*: Contract to transfer O&M of the Santa Rosa Canal to Maricopa-Stanfield.

15. *Imperial ID and/or the Coachella Valley Water District, BCP, California*: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

16. *Lower Colorado Water Supply Project, California*: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in

exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

17. *Golden Shores Water Conservation District, BCP, Arizona*: M&I water service for lands within the district and adjacent areas for delivery of up to 2,000 acre-feet of Colorado River water per year pursuant to the recommendation of the Arizona Department of Water Resources.

18. *Hutchison Present Perfected Rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in Arizona vs. California and BCP.*

19. *Winterhaven Present Perfected Rights contract for portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in Arizona v. California and BCP.*

20. *County of San Bernardino, San Bernardino, California*: Repayment contract for \$28.6 million SRPA loan.

21. *Yuma County and Yuma County Water Users' Association, Yuma Project, Arizona*: Contract for O&M of 18 drainage wells in Yuma County, Colorado River Front Work and Levee System, Arizona.

22. *Maricopa-Stanfield Irrigation and Drainage District, CAP, Arizona*: D&MC contract for \$5 million to complete the district's distribution system.

23. *Central Arizona Irrigation and Drainage District, CAP, Arizona*: D&MC contract for \$20 million to complete the district's distribution system.

Missouri Basin Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107-6900, telephone (406) 585-6413.

1. *Individual irrigators, M&I, and miscellaneous water users, Missouri Basin Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, and Nebraska*: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. *Nokota Company, Lake Sakakawea, P-SMBP, North Dakota*: Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. *Fort Shaw ID, Sun River Project, Montana*: R&B loan repayment contract; up to \$1.5 million.

4. *ID's and similar water user entities:* Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

5. *Oahe Unit, P-SMBP, South Dakota:* Cancellation of master contract and participating and security contracts in accordance with Public Law 97-293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

6. *Owl Creek ID, Owl Creek Unit, P-SMBP, Wyoming:* Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

7. *Green Mountain Reservoir, Colorado-Big Thompson Project:* Water service contract; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

8. *Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado:* Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

9. *Fryingpan-Arkansas Project, Colorado:* East Slope Storage system consisting of Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

10. *Cedar Bluff ID No. 8 and the State of Kansas, Cedar Bluff Unit, P-SMBP, Kansas:* Repayment contract; Negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservoir for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation. Amend the Cedar Bluff ID's contract to relieve it of all contract obligations.

11. *Department of Natural Resources and Conservation, SRPA, Montana:* Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

12. *Garrison Diversion Unit, P-SMBP, North Dakota:* Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

13. *Gray Goose ID, Gray Goose Unit, P-SMBP, South Dakota:* Contract negotiations to integrate Gray Goose ID into the P-SMBP as authorized pursuant to section 1120 of the Water Resource

Development Act of January 21, 1986 (Pub. L. 99-682).

14. *Pacific Power and Light Company, Glendo Unit, P-SMBP, Wyoming:* Contract negotiations for renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

15. *Corn Creek ID, Glendo Unit, P-SMBP, Wyoming:* Repayment contract for 10,100 acre-feet of supplemental irrigation water from Glendo Reservoir.

16. *City of Dickinson, North Dakota:* Cancellation of Contract No. 9-07-60-WR052 pursuant to the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100-202. The contract will be replaced with a new contract for the repayment of \$1,625,000 over a period of 40 years at 7.21 percent and payment of operation, maintenance, and replacement costs.

17. *West Bench ID, SRPA:* Amendatory contract to extend the repayment period by 12 years by giving the district the maximum repayment term of 40 years allowed under the contract.

18. *Lavaca-Navidad River Authority, Palmetto Bend Project, Texas:* Amendatory contract to increase repayment ceiling to cover repairs to a drop structure.

19. *Hidalgo County ID No. 1, Lower Rio Grande Valley, Texas:* Supplemental SRPA loan contract for approximately \$13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

20. *Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma:* Amendatory repayment contract for remedial work.

21. *Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma:* Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of

the Freedom of Information Act (50 Stat. 363), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Date: July 6, 1988.

C. Dale Duvall,
Commissioner of Reclamation.
[FR Doc. 88-15514 Filed 7-11-88; 8:45 am]
BILLING CODE 4310-05-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Elwood O'Dell, Pinetop, AZ—PRT-727598.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damalisca dorcas dorcas*) culled from the captive herd of F. Bowker, Thornkloof, Grahamstown, Republic of South Africa for enhancement of survival of the species.

Applicant: E.G. & G. Energy Measurements, Goleta, CA—PRT-683011.

The applicant requests an amendment to their permit to conduct the following

activities: (1) Live-trap, ear-tag, weigh, handle and release giant kangaroo rats (*Dipodomys ingens*) in developed and undeveloped areas in California to collect information on population size as part of applicant's study on San Joaquin kit fox (*Vulpes mutica*) food habits and how they are affected by availability of prey. Kangaroo rats found dead will be salvaged for scientific analysis; (2) Applicant also proposes to live-trap San Joaquin kit foxes on property within sections in T28 and 29N, and R27 and 28E Mt Diablo Meridian that is proposed for development. The foxes will be measured, fitted with ear tags, weighed and sampled for ectoparasites and the overall condition of each animal will be determined by a veterinarian. Blood samples will be taken and sent to a laboratory for analysis. The animals will be transported to Naval Petroleum Reserve #1 where they will be confined in fenced kennels and radio-controlled prior to release.

Applicant: Cincinnati Zoo, Cincinnati, OH—PRT-728935.

The applicant requests a permit to import one pair of babirusa (*Babirusa babirusa*) and one pair of anoa (*Bubalus depressicornis*), captive born in Holland, from the Blijdorp Zoo, Rotterdam, Holland, for purposes of captive propagation and public display.

Applicant: Regional Director, Region 2, U.S. Fish and Wildlife Service, Albuquerque, NM—PRT-729031.

The applicant requests a permit to take (conduct management studies, anesthetize, capture, recapture, mark, radio-tag, track, translocate and salvage) Mt. Graham red squirrels (*Tamiasciurus hudsonicus grahamensis*) for purposes of scientific research and enhancement of propagation or survival of the species.

Applicant: Paul Dennington, Duncanville, TX—PRT-728663.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damalisca dorcas dorcas*) culled from the captive herd of F.M. Bowker, Grahamstown, South Africa, for enhancement of survival of the species.

Applicant: Wilma Lea McQueen, Livingston, TX—PRT-728661.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damalisca dorcas dorcas*) culled from the captive herd of Theo Erasmus, Orange Free State, South Africa, for enhancement of the survival of the species.

Applicant: William Karesh, Seattle, WA 98103—PRT-721552.

The applicant requests a permit to import nineteen skin biopsies taken with a projectile dart from both wild and captive orangutans (*Pongo pygmaeus*) in

Indonesia for the purpose of enhancement of propagation and survival of the species. This would be in addition to a previous import of 45 skin biopsies imported for the same purpose.

Applicant: John Klauss, San Antonio, TX 78217—PRT-728768.

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damalisca dorcas dorcas*) culled from the captive herd of V.L. Pringle, Huntley Glen, Bedford Cape Province, Republic of South Africa for enhancement of survival of the species.

Applicant: Riverbanks Zoo, Columbia, SC—PRT-728978.

The applicant requests a permit to import ten golden-headed lion tamarins (*Leontopithecus rosalia*) (includes *chrysomelas*) from French Guiana or Brazil. One male and one female were taken from the wild in Brazil and eight offspring were born in captivity. The animals will remain property of the Brazilian government. The import is for the purpose of enhancement of propagation and survival of the species.

Applicant: National Zoo, Washington, DC—PRT-728824.

The applicant requests a permit to import one male and two female maned wolves (*Chrysocyon brachyurus*) from Curitiba Zoo, Sao Paulo, Brazil. Male was captive born, two females were wild caught now held in captivity. One female will be sent to Little Rock Zoo, Arkansas. The wolves remain property of I.B.D.F. (government of Brazil), but offspring will belong to zoo where animals are born. These animals would be part of a cooperative breeding program; therefore, import is for enhancement of propagation and survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: July 5, 1988.

E.M. Lawrence,
Acting Chief, Branch of Permits, U.S. Office of Management Authority.
[FR Doc. 88-15008 Filed 7-11-88; 8:45 am]
BILLING CODE 4310-AN-M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Landmark Services Tourmobile, Inc., authorizing it to continue to provide interpretive transportation facilities and services for the public in the National Capital Region for a period of approximately seventeen (17) years through December 31, 2005.

This proposed contract requires/authorizes a construction and improvement program. The improvement program required/authorized was previously addressed in the National Environmental Policy Act document, Record of Decision, that was prepared in conjunction with the management objectives for the areas.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Regional Office located at 1100 Ohio Drive SW., Room 339, Washington, DC 20242.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1989, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposals, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242, for information

as to the requirements of the proposed contract.

Manus J. Fish,
Regional Director, National Capital Region.
Date: March 1, 1988.

[FR Doc. 88-15509 Filed 7-11-88; 8:45am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 2, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 27, 1988.

Carol D. Shull,
Chief of Registration, National Register.

DELAWARE

New Castle County

Newark, *Chambers House*, Hopkins and Creek Rds.
Wilmington vicinity, *Montgomery House*, 2900 Old Limestone Rd.

FLORIDA

Sarasota County

Englewood, *Lemon Bay Woman's Club*, 51 N. Maple St.

LOUISIANA

DeSoto County

Keachi vicinity, *Allen House*, Smyrna Rd. and LA 5

MISSISSIPPI

Hancock County

Three Sisters Shell Midden (22-Ho-596)
Williams Site (22-Ho-585)

Madison County

Ridgeland vicinity, *Old Agency Road*, Between I-55 and Livingston Rd.

Panola County

Fredrickson No. 2

Sherkey County

Savory Site (22-Sh-518)

Yazoo County

Dump Lake Site (22-Yz-622)
Mabin Site (22-Yz-587)
Waller Site (22-Yz-585)

NEW JERSEY

Hunterdon County

Little York, *Little York Historic District*, CR 614 and Sweet Hollow Rd.

OKLAHOMA

Osage County

Hominy, *Hominy School*, 200 blk., S. Pettit St.

OREGON

Douglas County

Roseburg, *First Presbyterian Church of Roseburg*, 823 SE Lane St.
Roseburg, *Howell-Kohlhagen House*, 648 SE Jackson St.

Hood River County

Hood River, *Oregon-Washington Railroad & Navigation Company Passenger Station*, Foot of First St.

Yamhill County

Amity vicinity, *Briedwell School*, 11935 SW Bellevue Hwy.

PENNSYLVANIA

Allegheny County

Crafton, *Campbell Building*, Three Crafton Sq.

Pittsburgh, *Firstside Historic District*, 211-249 Fort Pitt Blvd; 1-7 Wood St.

Chester County

West Whiteland, *Pickwick (West Whiteland Township MRA)*, N side of Swedesford Rd.
West Whiteland, *Williams Deluxe Cabins (West Whiteland Township MRA)*, Lincoln Hwy.

West Whiteland, *Woodledge (West Whiteland Township MRA)*, 525 W. Lincoln Hwy.

Fayette County

Uniontown, Conn. John P., House, 84 Ben Lomond St.

Franklin County

Scotland, *Corker Hill*, 1237 Garver La.

Jefferson County

Punxsutawney, Kurtz, T.M., House, 312 W. Mahoning St.

Northampton County

Nazareth, *Nazareth Historic District*, Centered on Center and Main Sts.

Philadelphia County

Philadelphia, *Dobson Mills*, 4001-4041 Ridge Ave.; 3503-3530 Scott's La.

PUERTO RICO

San Lorenzo County

San Lorenzo, *Residencia Machin*, Calle Eugenio Sanchez Lopez

TENNESSEE

Decatur County

Brownport I Furnace (40DR85) (Iron Industry on the Western Highland Rim 1790s-1920s MPS)

Decatur Furnace (40DR84) (Iron Industry on the Western Highland Rim 1790s-1920s MPS)

Humphreys County

Fairchance Furnace (40DR168) (Iron Industry on the Western Highland Rim 1790s-1920s MPS)

TEXAS

Bexar County

San Antonio, *Barnes-Laird House*, 103 W. Ashby Pl.

Midland County

Midland, *Turner, Fred and Juliette, House*, 1705 W. Missouri

UTAH

Wasatch County

Midway vicinity, *Huber, John, House and Creamery*, Off Snake Creek Rd.

VIRGINIA

Pulaski County

Pulaski, *Pulaski Historic Residential District*, Roughly bounded by Eleventh St., Prospect, Madison and Washington Aves., Second St., and Henry Ave.

WISCONSIN

La Crosse County

Midway, *Archaeological District*

Outagamie County

Greenville, *Kronser, Joseph, Hotel and Saloon*, 246 Municipal Dr.

Portage County

Stevens Point, *Jensen, J.L., House*, 1100 Brawley St.

Sheboygan County

Sheboygan, *Windway*, CTH Y, N of CTH O

[FR Doc. 88-15577 Filed 7-11-88; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Initial Regulatory Program; 30 CFR Part 710

Abstract: Information collected in § 710.4(b) is used to ensure States are conducting mine site inspections under

the initial regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Information collected under 710.11(d)(2)(ii) is used to bring pre-existing, nonconforming structures into compliance during the phase-in of the initial regulatory program under SMCRA. Information collected under § 710.12(e) is used to grant small operators exemptions from some of the initial regulatory program requirements.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: State Regulatory authorities and Surface Coal Mining Operators

Annual Responses: One

Annual Burden Hours: One

Average Burden Hours Per Response: One

Bureau Clearance Officer: Nancy Ann Baka (202) 343-5981.

Date: June 28, 1988.

Andrew F. DeVito,
Acting Chief, Regulatory Development and Issues Management.

[FR Doc. 88-15512 Filed 7-11-88; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-106 (Sub-No. 1X)]

The Colorado & Wyoming Railway Co. Exemption for Abandonment in Platte County, WY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its Northern Division Line, a 6-mile line of railroad between milepost 1.0 at or near Guernsey and milepost 7.0 near Sunrise in Platte County, WY.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected

pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 10, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 21, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 31, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

F. J. Villa, Jr. President, The Colorado & Wyoming Railway Company, P.O. Box 316, Pueblo, CO 81002.

and
Randall J. Feuerstein, 1700 Broadway, Suite 1100, Denver, CO 80290-1199.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by July 16, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

² See *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

upon environmental or public use conditions.

Decided: June 30, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-15657 Filed 7-11-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 22, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 22, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 5th day of July 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/worker/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
American Felt & Filter Co. (workers/firm)	Staffordville, CT	7/5/88	6/22/88	20,750	Felt parts.
Avery Label Co. (Company)	North Brunswick, NJ	7/5/88	6/15/88	20,751	Pressure sensitive.
Brevet Motors (IUE)	Carlstadt, NJ	7/5/88	6/21/88	20,752	Electrical motors.
Consolidation Coal Co. (UMW)	Osage, W. VA	7/5/88	6/23/88	20,753	Bluminous coal.
Dynamit Nobel of America (company)	Rockleigh, NJ	7/5/88	6/17/88	20,754	Extruded plastics and chemicals.
Franklyn Veal Co. (workers)	Pateron, NJ	7/5/88	5/13/88	20,755	Meat cutters.
General Electric Co., Motor Mfg. Dept. (IUE)	Decatur, IN	7/5/88	6/13/88	20,756	Fractional horsepower motors.
Kason Merchandising Fixtures, Inc. (workers)	Binghamton, NY	7/5/88	6/16/88	20,757	Clothing racks and fixtures.
Lockwood Product, Inc. (workers)	Leominster, MA	7/5/88	6/21/88	20,758	Plastic flower pots.
Material Things, Inc. (ILGWU)	Braintree, MA	7/5/88	6/23/88	20,759	Ladies' sportswear.
Merrill and Ring, Inc. (IWA)	Port Angeles, WA	7/5/88	6/20/88	20,760	Lumber.
Patterson Gear Motor (company)	Patterson, NJ	7/5/88	6/20/88	20,761	Gear motors and speed reducers.
Pioneer Parachute Co. (ACTWU)	Manchester, CT	7/5/88	6/22/88	20,762	Parachutes.
R.G. Lawrence Co., Inc. (company)	Tenafly, NJ	7/5/88	6/21/88	20,763	Custom-built valves.
Safeway Stores, Inc. (UFCW)	Alamogordo, NM	7/5/88	6/23/88	20,764	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Albuquerque, NM	7/5/88	6/23/88	20,765	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Artesia, NM	7/5/88	6/23/88	20,766	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Belen, NM	7/5/88	6/23/88	20,767	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Carlsbad, NM	7/5/88	6/23/88	20,768	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Clovis, NM	7/5/88	6/23/88	20,769	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Deming, NM	7/5/88	6/23/88	20,770	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Espanola, NM	7/5/88	6/23/88	20,771	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Hobbs, NM	7/5/88	6/23/88	20,772	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Las Cruces, NM	7/5/88	6/23/88	20,773	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Las Vegas, NM	7/5/88	6/23/88	20,774	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Los Alamos, NM	7/5/88	6/23/88	20,775	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Lovington, NM	7/5/88	6/23/88	20,776	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Portales, NM	7/5/88	6/23/88	20,777	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Roswell, NM	7/5/88	6/23/88	20,778	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Ruidoso, NM	7/5/88	6/23/88	20,779	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Santa Fe, NM	7/5/88	6/23/88	20,780	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Silver City, NM	7/5/88	6/23/88	20,781	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Socorro, NM	7/5/88	6/23/88	20,782	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Taos, NM	7/5/88	6/23/88	20,783	Grocery stores—production plants.
Safeway Stores, Inc. (UFCW)	Tucuman, NM	7/5/88	6/23/88	20,784	Grocery stores—production plants.
Simmons-Rand Co. (workers)	Charlton, PA	7/5/88	6/24/88	20,785	Mining equipment.
U.S. Electrical Motors Division of Elec. Co. (UAW)	Milford, CT	7/5/88	6/9/88	20,786	Electric motors parts.
Universal Foods, Inc.	Carlstadt, NJ	7/5/88	6/20/88	20,787	Cheese.
Winjack, Inc. (ACTWU)	Milwaukee, WI	7/5/88	6/23/88	20,788	Women's sports wear.

FR Doc. 88-15601 Filed 7-7-88; 8:45 am)
BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 27, 1988-July 1, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate

subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,645; MKS Company, Inc., Elizabethton, TN

TA-W-20,634; American Silk Mills Corp., Orange, VA

TA-W-20,637; Durex, Inc., Union, NJ

TA-W-20,643; Jacobson Manufacturing Co., Kenilworth, NJ

TA-W-20,644; Jacobson Manufacturing Co., Union, NJ

TA-W-20,655; Capri Textile Processors, Fall River, MA

TA-W-20,663; P & E Woodworking, Inc., Newport, WA

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,679; Robes, Inc., Newark, NJ

U.S. imports of choir robes are negligible.

Affirmative Determinations

TA-W-20,654; Bilt-Rite Juvenile, Orangeburg, NY

A certification was issued covering all workers separated on or after April 26, 1987.

TA-W-20,664; Lee-Mar Shirt Co., Inc., Pulaaki, TN

A certification was issued covering all workers separated on or after March 29, 1988.

TA-W-20,703; Health-Tex, Inc. (Diamond Hill Plant), Cumberland, RI

A certification was issued covering all workers separated on or after May 16, 1987.

TA-W-20,662; New England Mackintosh Co., Inc., Brockston, MA

A certification was issued covering all workers separated on or after April 29, 1987 and before January 31, 1988.

TA-W-20,649; Pathfinder Mines Corp., Luck McMine & Mill, Riverton, WY

A certification was issued covering all workers separated on or after April 17, 1987.

TA-W-20,650; Pathfinder Mines Corp., Shirley Basin Mine & Mill, Shirley Basin, WY

A certification was issued covering all workers separated on or after May 1, 1987.

TA-W-20,651; Pathfinder Mines Corp., Big Eagle Mine, Jeffrey City, WY

A certification was issued covering all workers separated on or after April 17, 1987.

I hereby certify that the aforementioned determinations were issued during the period June 27, 1988-July 1, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

(FR Doc. 88-15600 Filed 7-11-88; 8:45 am)
BILLING CODE 4510-30-M

Job Training Partnership Act Advisory Committee; Meeting

The Job Training Partnership Act (JTPA) Advisory Committee was established by Notice dated June 16, 1988, and published June 28, 1988, 53 FR 24379, to advise the Department of Labor on a comprehensive review of the JTPA program.

Notice is hereby given of the first meeting of the Advisory Committee on July 27 and 28.

Time and Place: Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC. The meeting will begin at 8:30 a.m. on July 27 and adjourn at 12:00 p.m. on July 28.

For further information, contact: Dolores Battle, Administrator, Office of Job Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N-4459, Washington, DC 20210. Telephone: 202-535-0236.

Signed at Washington, DC, the 30th day of June 1988.

Roberts T. Jones,
Acting Assistant Secretary of Labor.
(FR Doc. 88-15324 Filed 7-11-88; 8:45 am)
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Occupational Exposure to Formaldehyde; Resubmission of Hazard Communication Provisions for Clearance Under the Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Notice.

SUMMARY: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35; 5 CFR Part 1320 (53 FR 16610 to 16632, May 10, 1988)), is resubmitting the recordkeeping/reporting requirements of paragraphs (m)(1)(i) through (m)(4)(ii) of the recently published standard on occupational exposure to formaldehyde (29 CFR 1910.1048) to the Office of Management and Budget (OMB) for the Agency's reconsideration of its previous rejection of these requirements. The affected paragraphs pertain to hazard warning labels and Material Safety Data Sheets (MSDs). Because of existing requirements under OSHA's Hazard Communication Standard (29 CFR 1910.1200), OSHA estimates that there are no new recordkeeping burdens attributable to these provisions (average burden hours per response is zero). **DATE:** OSHA has requested an expedited review of this resubmission

under the Paperwork Reduction Act to be completed within 45 days of the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Comments and questions about the recordkeeping/reporting requirements for paragraphs (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard (29 CFR 1910.1048) should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210 (telephone (202) 523-6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

SUPPLEMENTARY INFORMATION: On December 4, 1987, OSHA published a final rule on occupational exposure to formaldehyde (52 FR 46168 to 46312). The recordkeeping and reporting requirements of this standard (29 CFR 1910.1048) were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (53 FR 1529, January 20, 1988). On February 2, 1988, OMB approved all of the requirements except for those contained in paragraphs (m)(1)(i) through (m)(4)(ii) under OMB clearance number 1218-0145.

OSHA is submitting the following clearance package to OMB in a request for reconsideration of OMB's decision to deny information collection approval for paragraphs m(1)(i) through m(4)(ii) which pertain to labeling and preparation of Material Safety Data Sheets (MSDSs) under the Formaldehyde Standard. Because similar requirements already exist under OSHA's generic standard, Hazard Communication (29 CFR 1910.1200), OSHA estimates that there are no additional burdens attributable to these provisions and that no further recordkeeping burden would be incurred.

BILLING CODE 4510-26-M

BEST COPY AVAILABLE

Standard Form 83
Rev. September 1983

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

U.S. Department of Labor, Occupational Safety and Health
Administration, Directorate of Health Standards Programs

2. Agency code

1 2 1 8

3. Name of person who can best answer questions regarding this request

Quentelle Barton

Telephone number

(202) 523-7075

4. Title of information collection or rulemaking

FORMALDEHYDE STANDARD: paragraphs (m)(1)(i) - (m)(4)(ii)

5. Legal authority for information collection or rule (cite United States Code, Public Law, or Executive Order)

29 USC 651, et seq or PL 91-596

6. Affected public (check all that apply)

1 ☐ Individuals or households
2 ☐ State or local governments

3 ☐ Farms4 ☒ Businesses or other for-profit5 ☒ Federal agencies or employees6 ☐ Non-profit institutions7 ☒ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)

or, None assigned ☐

8. Type of submission (check one in each category)

Classification

1 ☐ Major
2 ☐ Nonmajor

Stage of development

1 ☐ Proposed or draft2 ☐ Final or interim final, with prior proposal3 ☐ Final or interim final, without prior proposal

Type of review requested

1 ☐ Standard2 ☐ Pending3 ☐ Emergency4 ☐ Statutory or judicial deadline

9. CFR section affected

CFR

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320?

☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached?

1 ☐ Yes 2 ☐ No

If "No," did OMB waive the analysis?

3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official

Date

Signature of authorized regulatory contact

Date

12. (OMB use only)

Previous editions obsolete
NIN 7540 00 634-4034

-3-08

Standard Form 83 (Rev. 9-83)
Prescribed by OMB
5 CFR 1320 and E.O. 12291

PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less 'Occupational health standards, health hazards toxic substances, carcinogens' This regulation requires employers to train employees about the hazards of formaldehyde, affix warning labels on containers as required and also develop and maintain Material Safety Data Sheets as specified in provisions (m)(1)(i) - (m)(4)(ii) of the standard.

14. Type of information collection (check only one)

Information collections not contained in rules

1 ☐ Regular submission2 ☐ Emergency submission (certification attached)

Information collections contained in rules

3 ☐ Existing regulation (no change proposed)4 ☐ Notice of proposed rulemaking (NPRM)5 ☒ Final, NPRM was previously published

6 Final or interim final without prior NPRM

A ☐ Regular submissionB ☐ Emergency submission (certification attached)

7 Enter date of expected or actual Federal Register publication at this stage of rulemaking (month, day, year) 12/04/87

15. Type of review requested (check only one)

1 ☐ New collection2 ☐ Revision of a currently approved collection3 ☒ Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection4 ☐ Reinstatement of a previously approved collection for which approval has expired5 ☐ Existing collection in use without an OMB control number

16. Agency report form number(s) (include standard/optional form number(s))

None

17. Annual reporting or disclosure burden

1 Number of respondents

112,217

2 Number of responses per respondent

0

3 Total annual responses (line 1 times line 2)

0

4 Hours per response

0

5 Total hours (line 3 times line 4)

0

18. Annual recordkeeping burden

1 Number of recordkeepers

0

2 Annual hours per recordkeeper

0

3 Total recordkeeping hours (line 1 times line 2)

0

4 Recordkeeping retention period

0 years

19. Total annual burden

1 Requested (line 17-5 plus line 18-3)

955,043

2 In current OMB inventory

955,043

3 Difference (line 1 less line 2)

0

Explanation of difference

4 Program change

0

5 Adjustment

0

20. Current (most recent) OMB control number or comment number

1218-0145

21. Requested expiration date

June 1988 - February 1991

22. Purpose of information collection (check as many as apply)

1 ☐ Application for benefits2 ☐ Program evaluation3 ☐ General purpose statistics4 ☒ Regulatory or compliance5 ☐ Program planning or management6 ☐ Research7 ☐ Audit

23. Frequency of recordkeeping or reporting (check all that apply)

1 ☒ Recordkeeping

Reporting

2 ☐ On occasion3 ☐ Weekly4 ☐ Monthly5 ☐ Quarterly6 ☐ Semi-annually7 ☐ Annually8 ☐ Biennially9 ☒ Other (describe) None

24. Respondents' obligation to comply (check the strongest obligation that applies)

1 ☐ Voluntary2 ☐ Required to obtain or retain a benefit3 ☒ Mandatory25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? ☐ Yes ☒ No26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? ☐ Yes ☒ No

27. Regulatory authority for the information collection

29 CFR 1910.1048

or FR

or Other (specify)

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official

Date

Maureen K. Edick
Signature of agency head, the senior official or an authorized representative

July 5, 1988
Date

Maureen E. Malley for Paul E. Larson
Signature of agency head, the senior official or an authorized representative

July 7, 1988
Date

BILLING CODE 4910-26-C

U.S. GOVERNMENT PRINTING OFFICE: 1984-6-433-469

Supporting Statement for Information Collection Requirements of the Formaldehyde Standard Concerning the Hazard Communication Provisions—Justification

1. Circumstances Requiring the Collection of Information

The Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 651 et seq.) authorizes the promulgation of such health and safety standards that will reduce significant risk of material impairment of health. The statute specifically authorizes information collection by employers as "necessary or appropriate for the enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational accidents and illnesses." Moreover, in regard to areas in which employees are exposed to toxic substances or harmful physical agents, the OSH Act provides that the Secretary of Labor shall issue regulations requiring employers to keep records of employee exposures (29 U.S.C. 657(c)).

The Occupational Safety and Health Administration's primary responsibility is to assure employees safe and healthful places of employment. As one means of achieving this objective, the OSH Act authorizes the promulgation of mandatory safety and health standards that provide control measures for particular hazards. For toxic substances and harmful physical agents, the OSH Act contains an explicit mandate that the standard promulgated be expressed in terms of objective criteria and of the performance desired whenever practicable (29 U.S.C. 655(b)(5)). Health standards must include provisions for monitoring and measuring employee exposure, suitable protective equipment and control of technological procedures, and type and frequency of medical examinations or other tests, as appropriate. The statute also mandates the inclusion of appropriate warning labels (29 U.S.C. 655(b)(7)). According to section 6(b)(7) of the OSH Act:

Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

The Act and its legislative history recognize that recordkeeping and reporting by employers are necessary both for enforcement of the Act and for developing information regarding the causes and prevention of occupational accidents and illnesses (29 U.S.C.

651(b)(12); 657(c)(1)). In addition, the Act specifically states that:

The Secretary . . . shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards. (29 U.S.C. 657(c)(1)).

The Occupational Safety and Health Administration (OSHA) recently adopted a health standard governing employee exposure to formaldehyde (29 CFR 1910.1048). Pursuant to the Paperwork Reduction Act, OSHA also submitted a request for approval of information collection requirements to the Office of Management and Budget (OMB). Information collection requirements for this standard were approved by OMB under Control Number 1218-0145 on February 2, 1988, except for paragraphs (m)(1)(i) through (m)(4)(ii). These disapproved paragraphs provide objective criteria for determining when the presence of formaldehyde constitutes a health hazard. They also prescribe the information that must be included on labels to be placed on containers of formaldehyde, certain formaldehyde-treated products and products containing formaldehyde, and information to be included in the accompanying Material Safety Data Sheets (MSDSs).

In its letter of February 2, 1988, OMB disapproved any requirements for labels and MSDSs in the Formaldehyde Standard (FS) that went beyond those already approved in the OSHA Hazard Communication Standard (HCS). OMB believed that their record did not contain sufficient information at that time to make a determination that the information collection requirements at issue were consistent with the Paperwork Reduction Act.

OSHA is resubmitting a request for information collection approval for these disapproved provisions with a more detailed justification. A copy of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is attached to this document as Appendix I. OSHA requests expedited consideration of this request.

The new standard requires employers to monitor formaldehyde exposure and employee health under certain conditions, to reduce formaldehyde exposure below the revised permissible exposure limits (PELs), and to train employees to recognize formaldehyde's health effects and how to deal with workplace formaldehyde hazards. The hazard communication provisions are inextricably intertwined with the other provisions of the Formaldehyde

Standard to eliminate significant cancer risk. The information collection and disclosure activities for the hazard communication provision of this standard is listed below.

Under the hazard communication provision of the Formaldehyde Standard (§ 1910.1048 (m)(1)(i) through (m)(4)(ii)), formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air under normal conditions of use at concentrations reaching or exceeding 0.1 ppm must be considered a health hazard. At a minimum, specific health hazards that the employer shall address are: cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

The employer must assure that hazard warning labels complying with the requirements of 29 CFR 1910.1200(f) are affixed to all containers where the presence of formaldehyde constitutes a "health hazard" as defined. At a minimum, labels must identify the hazardous chemical; list the name and address of the responsible party; contain the information "Potential Cancer Hazard"; and appropriately warn of all other hazards as defined in 29 CFR 1910.1200, Appendices A and B.

In addition, the Formaldehyde Standard states: "any employer who uses formaldehyde-containing materials that constitute a health hazard as defined in this standard shall comply with the requirements of 29 CFR 1910.1200(g) with regard to the development and updating of Material Safety Data Sheets." See 29 CFR 1910.1048(m)(4)(i).

Manufacturers, importers, and distributors of formaldehyde-containing materials that constitute a health hazard as defined in this standard must assure that Material Safety Data Sheets (MSDSs) and updated information are provided to all employers purchasing such materials at the time of initial shipment and at the time of the first shipment after a Material Safety Data Sheet is updated.

2. Use of Information and Consequence to Federal Program

The information collected pursuant to with this standard is used to ensure that information concerning the health hazards of formaldehyde is conveyed to affected employers and employees. Compliance with this aspect of the standard is required in order to maintain a safe and healthful work environment. Failure to transmit this information will significantly impair OSHA efforts to

protect the health of employees exposed to formaldehyde in the workplace.

3. Use of Improved Information Technology

OSHA did not mandate detailed procedures for satisfying the hazard communication provisions of the Formaldehyde Standard. OSHA included performance-oriented exemptions which permit employers to use a wide array of techniques to demonstrate that their employees are exposed to formaldehyde only at concentrations below those triggering the hazard communication requirements. OSHA did not mandate specific forms for the MSDSs nor specifications for the label, but required only the minimal information necessary to convey the hazard.

The information collection requirements of these provisions are intended to ensure that information concerning the health hazards of formaldehyde is transmitted to affected employers and employees. Thus this regulation minimizes burdens on industry to the extent practical and consistent with the purposes of the Act.

4. Efforts to Identify Duplication

These provisions are complementary to the Hazard Communication Standard, 29 CFR 1910.1200, which has the explicitly stated purpose to eliminate duplication of efforts through preemption of state law. No other federal agency requires the reporting or collection of information regarding formaldehyde in the workplace.

5. Use of Similar Information

The information required by this standard is specific to, and available only from manufacturers, distributors, importers, and employers. Product-specific data are not available elsewhere in the Federal Government, nor are published reports of a similar nature available in the Federal Government. Further, the public record of this rulemaking does not indicate any alternate source for this information.

6. Consideration of Small Businesses

The burden of these requirements is an equal obligation for all employers with employees exposed to formaldehyde in the workplace. Because of the manner in which the standard is written, employers can choose to respond to these information collection requirements in the way that is best suited to their work environments. The requirements are based on performance, and compliance is judged accordingly. There are no set requirements for the format or manner in which the

information collected is to be documented or maintained. In addition, these provisions minimize burdens to employers producing formaldehyde or formaldehyde containing products because the hazard determination required by the Hazard Communication Standard, 29 CFR 1910.1200(d), has been made by OSHA in the Formaldehyde Standard.

7. Consequence of Less Frequent Information Collection

The information collection frequencies specified in these provisions are the minimum amount necessary to assure that employees are adequately informed of the hazards associated with formaldehyde.

8. Special Circumstances

There are no special circumstances applicable to paragraphs (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard.

9. Consultation Outside the Agency

Consultation with persons and organizations outside of OSHA concerning the Formaldehyde Standard, including paragraphs (m)(1)(i) through (m)(4)(ii), has been extensive (as outlined below):

A. On January 11, 1985, OSHA announced that public meetings would be held in Washington, DC on February 13-15, 1985 (50 FR 1547), to generate information which would help OSHA to decide whether or not permanent rulemaking should be initiated under section 6(b) of the Act. New information on formaldehyde's health effects and quantitative risk assessments for formaldehyde was introduced at the meetings and in post-hearing comments [Docket Numbers H-225 and H-225A, Exhibits 68-1 to 68-23; 69-1A to 69-34; 70-1 to 70-58, and 76-1 to 76-8].

B. On April 15, 1985, OSHA announced that it would proceed with permanent rulemaking to reduce formaldehyde exposure, basing its decision on the determination that the existing standard did not adequately address the adverse health effects associated with occupational exposure to formaldehyde. OSHA published an Advance Notice of Proposed Rulemaking (ANPR) (50 FR 15179, April 17, 1985). Forty-three submissions, many of them containing comments relating to hazard communication, were received in response to the ANPR [Exhibits 77-1 to 77-43].

C. Based on a review of the existing record, new references identified by OSHA [Exhibits 73-1 to 73-189], and Health Hazard Evaluations provided by NIOSH [Exhibits 78-1 to 78-91], OSHA

completed a Preliminary Regulatory Impact Analysis [Exhibit 81] and published a proposed rule (50 FR 50412 to 50499) on December 10, 1985. An informal hearing which provided the public with an opportunity to comment was held from May 5 to 16, 1986 in Washington, DC. The public was afforded further opportunity to comment on the proposal during the post hearing comment period and later, during a limited one-month re-opening of the record beginning on December 12, 1986 (51 FR 44796). Many of the comments received addressed labels, MSDSs and other aspects of hazard communication in relation to formaldehyde, particularly the need for a cut-off or a level below which the requirements would not apply. More than 1400 exhibits containing approximately 30,000 pages of testimony and comments were received into the record of this rulemaking.

D. On December 2, 1987 OSHA received an Application for an Administrative Stay for the hazard communication provisions of the Formaldehyde Standard from several parties, including the Formaldehyde Institute, the American Textile Manufacturers Institute and the National Particleboard Association [Exhibits 251-4, 251-8]. Subsequently, OSHA received over 90 letters apparently resulting from an organized campaign that supported the petition [Exhibits 252-1 to 252-91].

E. On February 2, 1988, OMB disapproved the collection of information requirements of the Formaldehyde Standard regarding any hazard communication requirements that go beyond those already approved in the Hazard Communication Standard and conditionally approved other collection of information requirements of the Formaldehyde Standard.

OSHA has based its final standard on occupational exposure to formaldehyde on all of the evidence accumulated until the close of the record in January 1987. The above referenced Exhibits and others are available in the public record, Docket H-225, 225A, 225B, and 225C, which is available for inspection in the OSHA Docket Office, Room N-3670, U.S. Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. For this paperwork approval submission, OSHA has also reviewed and evaluated the recent information provided by the petitioners and by OMB in its letter of February 2, 1988.

10. Assurance of Confidentiality

There are no issues regarding confidentiality for these provisions of the standard.

11. Questions of a Sensitive Nature

This question is not applicable as questions of this nature are not asked of the respondents as a requirement of this standard.

12. Estimate of Annual Costs

A. Cost to the Federal Government

Paragraphs (m)(1)(i) through (m)(4)(ii) pertain to hazard communication programs implemented by employers subject to the standard and do not require expenditures by the Federal Government. Therefore, OSHA estimates that the annual cost to the Federal Government over the period to be covered by this paperwork clearance request is \$0.

B. Method Used to Estimate Cost of Burden to Respondents

The source for the data used to estimate the paperwork burden for the information collection requirements contained in paragraphs (m)(1)(i) through (m)(4)(ii) is OSHA's Regulatory Impact Analysis (RIA). OSHA estimated that 112,217 facilities will be required to comply with the requirements of the Formaldehyde Standard. Based upon an analysis of the record, OSHA has determined that there will be three classes of industries affected by the revised standard (Tables A and B).

Tier 1, which covers 35,998 establishments employing 412,168 workers, consists of the industries where some firms have workers who are currently exposed above either the 1 ppm TWA or 2 ppm STEL. This group consists of foundries, laboratories, funeral homes, and industry sectors engaged in the manufacture of the following five products: 1) hardwood plywood; 2) particleboard; 3) fiberboard; 4) furniture; and, 5) formaldehyde resins.

Tier 2, which covers 28,682 establishments employing 1,074,604 workers who are currently exposed between the 0.5 ppm action level and the 1 ppm TWA and where no firms have employees exposed above either the 1 ppm TWA or 2 ppm STEL. This group is comprised of textile finishing and industry sectors engaged in the manufacture of the following three products: 1) apparel; 2) formaldehyde; and, 3) molded plastics.

Tier 3 consists of 24 sectors (Table A) where some firms have workers who are currently exposed above 0.1 ppm and where no firms have employees exposed above the 0.5 ppm action level. This

group covers 47,537 establishments employing 796,292 workers. The summary of this data follows:

TABLE A*

Tier 1	Tier 2
List of Industries That Comprise Tier 1 and 2	
Hardwood Plywood.....	Textile Finishing
Particleboard.....	Apparel
Fiberboard.....	Formaldehyde
Furniture.....	Production
Resins.....	Molded Plastics
Foundries.....	
Laboratories.....	
Funeral Services.....	

List of Industries That Comprise Tier 3	
Softwood Plywood.....	Adhesive Products,
Pulp Mills.....	Gaskets, Packaging &
	Sealing Devices,
Paper Mills.....	Mineral Wool Insulation,
Paperboard Mills.....	Electric Housewares &
	Fans,
Envelopes.....	Current-Carrying Wiring
	Devices,
Corrugated & Solid Fiber	Noncurrent-Carrying
Boxes.....	Wiring Devices,
Cyclic Crudes, Dyes &	Elect. Equip. for
Pigments.....	Combustion Engines,
Paints, Pigments.....	Mobile Homes
	Manufacturing,
Nitrogenous Fertilizers.....	Photofinishing Labs,
Agricultural Chemicals.....	Hemodialysis,
Adhesives & Sealants.....	Biology Instruction,
Chemicals & Chemical	Veterinary Anatomist,
Prep.....	

* Office of Regulatory Analysis's RIA, Table I-1.

TABLE B—NUMBER OF AFFECTED ESTABLISHMENTS*

Industry	Above 1 ppm	Between 0.5-1 ppm	Between 0.1-0.5 ppm	Total establishments
Tier 1.....	3,474	5,105	26,420	35,998
Tier 2.....	0	7,438	21,244	28,682
Tier 3.....	0	0	47,537	47,537
Total.....	3,474	13,543	95,201	112,217

NUMBER OF AFFECTED EMPLOYEES*

Industry	Above 1 ppm	Between 0.5-1 ppm	Between 0.1-0.5 ppm	Total employees
Tier 1.....	13,271	48,058	352,839	412,168
Tier 2.....	0	147,268	927,336	1,074,604
Tier 3.....	0	0	796,292	796,292
Total.....	13,271	193,326	2,076,467	2,283,064

* Adapted from Table IV-1, Office of Regulatory Analysis's RIA.

C. Summary of Estimated Annual Cost of Information Collection

a. *Introduction.* OSHA estimated that the burdens of complying with the hazard communication provisions of the Formaldehyde Standard (FS) were

subsumed by the Hazard Communication Standard (HCS). OSHA therefore concluded that no paperwork burden would result from imposition of paragraphs (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard. OSHA believes, however, that these provisions enhance the effectiveness of both the Formaldehyde Standard and the Hazard Communication Standard. For example, the preamble states:

OSHA believes that the record evidence provides ample testimony of the difficulties in precisely determining the circumstances under which the generic standard would apply for substances that do not exactly fit the definition of an article yet also do not have very much exposure potential. Without the benefit of a complete standard, which requires employers to determine their employee's exposures, OSHA could define such trivial amounts [in the HCS] only within the context of a percent composition. For resins which decompose to release formaldehyde, this approach is meaningless. However, a workable approach can be derived within the context of this substance-specific standard and this is the approach that OSHA has taken in the final rule. In addition, as noted above, the final rule's paragraph (m) requirements are entirely consistent with the Agency's generic Hazard Communication standard.

(52 FR at 46283). OSHA has concluded that the Formaldehyde Standard improves the Hazard Communication Standard's effectiveness and efficiency, and that these findings are supported by the formaldehyde rulemaking record.

On February 2, 1988, OMB disapproved paragraphs (m)(1)(i) through (m)(4)(ii) of the Formaldehyde Standard, explaining that it did not have sufficient information about the relative burdens imposed on industry by the Formaldehyde Standard and the Hazard Communication Standard, and that OSHA had not given it sufficient time to perform an adequate assessment of the paperwork burdens imposed by those sections. OSHA therefore submits this revised paperwork justification to provide that information.

OSHA continues to believe that the Formaldehyde Standard's hazard communication requirements to not impose paperwork burdens beyond those imposed by the Hazard Communication Standard. In fact, in some situations the Formaldehyde Standard's hazard communication requirements may actually decrease the existing burden. The rulemaking record for formaldehyde indicated that employers and employees would both benefit from explicit guidance regarding the application of the generic HCS requirements to this particular substance. This is especially appropriate

due to the ubiquitous nature of formaldehyde usage and the physical characteristics of the chemical.

b. Relationship of the hazard communication provision of the Formaldehyde Standard to the Hazard Communication Standard

Because the provisions of the Formaldehyde Standard are specifically tailored to the properties and uses of formaldehyde, they provide a level of guidance and enforcement certainty which would not be available to formaldehyde manufacturers under the Hazard Communication Standard. However, these provisions serve the same function as those of the Hazard Communication Standard and are intended to result in the same information being provided to employees. Therefore, OSHA believes that the paperwork burden imposed by the hazard communication portion of the Formaldehyde Standard is virtually identical to, and in any event no greater than, that imposed by the Hazard Communication Standard.

i. *The Requirements of the Hazard Communication Standard.* The Hazard Communication Standard is a generic standard broadly scoped to ensure that the toxic effects of all chemicals are evaluated, and that information concerning health and safety hazards is transmitted to affected employers and employees. The standard defines a chemical as posing a "health hazard" if it can cause an acute or chronic health effect. Health hazards include, inter alia, carcinogens, irritants, and sensitizers. The determination of whether a chemical constitutes a health hazard is based on the intrinsic characteristics of the chemical, and not upon any form of risk assessment which takes into account the level of exposure which may be expected. Formaldehyde is a health hazard under this definition because substantial evidence exists that it is a carcinogen, an irritant, and a sensitizer.

Because many chemicals that constitute health hazards are ultimately incorporated into materials or products in such a manner that individuals working with or using them will not be exposed to the chemical itself, the HCS does not apply to "articles." An article is defined in the HCS as "a manufactured item (i) which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which does not release, or otherwise result in exposure to, a hazardous chemical under normal

conditions of use."¹ Because of formaldehyde's unusual characteristic of "offgassing" from solids and resins used in apparel and wood products, many formaldehyde-containing products would not be considered "articles" for purposes of the HCS.

ii. The Requirements of the Formaldehyde Standard

During the Formaldehyde Standard rulemaking, a number of comments requested that products that release small amounts of formaldehyde be granted a de minimis exemption from the labeling requirements of the standard. In fact, this issue received more comment than any other provision in the proposed standard. OSHA agreed with these commenters that a de minimis exemption was appropriate, and in the final rule, OSHA included a low-level cutoff below which the labeling provisions of the FS do not apply. Labeling of containers is required only for materials capable of releasing formaldehyde into the air at concentrations reaching or exceeding 0.1 ppm under normal conditions of use, or when mixtures or solutions contain more than 0.1 percent formaldehyde.²

The 0.1 percent composition requirement is analogous to the treatment of other carcinogens in the HCS. However, the 0.1 ppm aspect of the de minimis exemption in the Formaldehyde Standard is a departure from the HCS, which does not base labeling requirements on exposure levels. The different approach in the FS was chosen because formaldehyde is unusual in its ability to "offgas" from finished products, its widespread presence in a broad range of materials, its background presence in air, and the difficulty of measuring concentrations below 0.1 ppm. OSHA determined that, in light of these factors, a de minimis labeling exemption based on exposure levels is appropriate, and serves some of

¹ OSHA explained that materials which release only very small quantities of a hazardous chemical may still be considered "articles" under this definition. 52 FR 31865 (1987). The definition itself is the subject of a new rulemaking proceeding in accord with a separate OMB decision under the Paperwork Reduction Act. However, pending completion of that rulemaking, OMB has approved OSHA's current application of the articles exemption.

² OMB stated in its February 2 letter that the "F.S." also introduces uncertainty about whether for purposes of Hazard Communication, a solid object is a "container," a "mixture," neither or both." OSHA believes that the obligation to label containers, and not products, is clearly stated in the preamble. However, in light of OMB's letter, OSHA intends to publish a clarification that all statements pertaining to the placement of hazard warning labels which are made in the preamble apply to containers. It is containers, not the solid products, which must bear a warning label.

the same functions as the articles exemption serves for the generic HCS.

iii. *The relative paperwork burdens under the Formaldehyde Standard and the Hazard Communication Standard.* Because of the de minimis exemption to the labeling requirements in the FS, the paperwork burden imposed by the FS is no greater, and may even be lesser, than that imposed on manufacturers of formaldehyde-containing materials by the HCS. With the exception of the de minimis exemption, the scope and application of the hazard communication provisions of the FS are identical to those of the HCS. Thus, because of the de minimis provision, the FS actually requires that labels be provided on far fewer materials than is required under the HCS. It is for this reason that OSHA has explained that no additional burden hours are imposed by the FS.

The arguments of some industry groups that the FS imposes additional paperwork burdens on manufacturers of formaldehyde-containing products are based on a plainly erroneous reading of the HCS. According to these groups, the requirement in the HCS that "appropriate" labels be provided allows the employer discretion to determine when the risk level justifies a label and additionally to choose which health hazards the label will address. To the contrary, as we have explained, the HCS requires labels whenever a hazardous chemical is present in the workplace in such a manner that employers may be exposed to it at any level under normal conditions of use or in a foreseeable emergency. The plain language of the HCS, the preamble discussion of the relevant provisions, and OSHA's enforcement instructions and other post-promulgation statements are consistent. All make clear that risk assessment whereby a manufacturer makes an assessment of the magnitude of risk or the likelihood of disease as a criterion for deciding whether to provide an MSDS or a label is not permissible under the standard. There is simply no merit whatsoever to the industry argument that the unilateral opinion of manufacturers that a 0.1 ppm concentration of formaldehyde does not pose a risk excuses them from labeling. In fact, for almost two years, OSHA has had in effect a field memorandum interpreting the HCS as requiring a cancer warning on containers of formaldehyde and formaldehyde products. (See memo to the field, Appendix II).

Similarly, OMB stated in its February 2 letter that comments to that Agency's record, primarily from manufacturers of

wood products, show that many wood products which OSHA has said are now covered under the HCS are not, in fact, currently being labeled in accordance with what the Formaldehyde Standard requires because employers believe that the HCS does not require such labels. There are no reasonable grounds for this belief and OMB wrongly uses that as a factor in denying paperwork clearance. In the preamble to the formaldehyde proposal as well as in the final rule, the Agency set forth a detailed clarification of the Hazard Communication Standard's labeling requirements for wood and wood products (See 50 FR at 50484; 52 FR at 46284). Those documents explained that the Hazard Communication Standard's exemption for wood and wood products does not apply when wood and wood products are treated with a chemical, such as formaldehyde, that is itself not excluded from coverage under the Hazard Communication Standard. In light of this clear coverage, any alleged noncompliance with the existing labeling provisions of the Hazard Communication Standard cannot logically be used to "prove" that the provisions of the Formaldehyde Standard and the HCS do not impose substantively similar requirements for the labeling of containers of wood products emitting formaldehyde.

Objections to the 0.1 ppm cutoff level arise in part from the contention that manufacturers will have difficulty in determining the extent to which one of their products will offgas sufficient formaldehyde in its downstream applications to trigger the labeling requirement. In this context, it is significant that the FS rulemaking record reflects overwhelming support for the concept of a de minimis exemption from the labeling requirement. OSHA decided to accede to the comments on this issue and fashion a de minimis exemption from the hazard communication provisions for formaldehyde. Regardless of the precise cutoff that is utilized, determinations as to whether to label containers of specific products that approach that point will be necessary.

Furthermore, OSHA believes that this argument greatly exaggerates the difficulty of determining whether the labeling provision applies. The vast majority of formaldehyde-containing products either offgas so little formaldehyde that the 0.1 ppm exemption clearly applies, or offgas so much that it clearly does not. In OSHA's experience under other standards, even the borderline situations are not generally that difficult to decide. For example, the Asbestos Standard, which

requires labeling when potential employee exposure exceeds 0.1 f/cc, and the Ethylene Oxide Standard, which requires labeling when potential exposure exceeds 0.5 ppm, are two recent standards where manufacturers' obligations depend on downstream worker exposure. In true borderline cases, OSHA advises manufacturers to act in a manner consistent with the intent of the hazard communication provisions to encourage free exchange of information. Exactly the same advice is given under the HCS.

Finally, we note that many of the industry objections to the labeling requirement of the Formaldehyde Standard focus on the content of the required label, the fact that it must contain the information "Potential Cancer Hazard". These objections are not relevant to this proceeding, of course, since the content of a label is not a factor in the paperwork burden imposed by a labeling requirement.³ In any event, the scientific evidence in the rulemaking record abundantly supports OSHA's conclusion that formaldehyde is a potential occupational carcinogen. Formaldehyde causes cancers in two species of laboratory animals as shown in a number of studies (Preamble, 52 FR at 46204 to 46210). Formaldehyde causes nasal cancer in humans (Preamble, 52 FR at 46183 to 46785). These conclusions were shared by many commenters in the rulemaking record, and OSHA is confident that they are correct.

In summary, OSHA believes that the hazard communication provisions of the FS impose a paperwork burden no greater than that imposed on manufacturers of formaldehyde-containing products by the HCS. The differences between the requirements of the two standards are based on the particular characteristics of

³ OSHA agrees with OMB that the carcinogenicity of a toxic substance is not reviewable under the Paperwork Reduction Act. As OMB explained at its hearing on the paperwork burden of the Hazard Communication Standard: "This is a paperwork meeting and while the Hazard Communication Standard is indeed mostly paperwork and therefore the issues will be very broad-ranging, I would like to point out that the specific regulatory issues are really not the scope of this meeting. For an example, it would not be appropriate to discuss whether a particular chemical was or was not a carcinogen under this Hazard Communication Standard. It would, perhaps be appropriate to discuss the difficulty in ascertaining whether a chemical is a carcinogen and in some generic information collection issue arising from that." (Transcript from the OMB hearing on the Hazard Communication Standard, page 13.) In this context we note that any difficulty or burden on an employer in determining whether formaldehyde is a carcinogen under the Hazard Communication Standard or whether the cancer risks from formaldehyde exposure may be considered de minimis are eliminated by the Formaldehyde Standard.

formaldehyde, and the FS requires fewer labels on formaldehyde-containing products than required by the HCS. As we explain below, the remaining hazard communication requirements of the FS make determinations appropriate for a substance-specific standard, and reduce manufacturers' assessment and analysis burdens without adding to their paperwork burden. These provisions contribute to a more stable, predictable, and efficient enforcement environment for the regulated community.

c. *The hazard communication provisions of the Formaldehyde Standard are consistent with longstanding OSHA policy.* OSHA has required cancer warnings on labels for regulated carcinogens throughout its history. Since the promulgation of the HCS, OSHA has adopted toxic substance standards for ethylene oxide, asbestos, benzene, and formaldehyde. All of these substances cause cancer, and OSHA has required cancer warnings in each instance. Differences in approach from standard to standard are justified by individual rulemaking records. Thus, the absence of an enforceable cancer warning requirement from the Formaldehyde Standard could be viewed as a departure from a longstanding OSHA policy. As recent decisions of the Supreme Court and the courts of appeals emphasize, good reasons for such a departure are necessary.

For the Benzene Standard (29 CFR 1910.1028) OSHA provided a complete exemption from the standard for containers and pipelines carrying mixtures with less than 0.1 percent benzene. This provision was justified by extensive comment, data, and discussion (see 52 FR 34524 to 34526), and was based upon known properties of benzene. Similarly, the Formaldehyde Standard's labeling provision applies to mixtures and solutions if they contain greater than 0.1 percent formaldehyde. However, a similar content-triggered provision is not appropriate for other formaldehyde products. Unlike benzene, formaldehyde is known to offgas from solid materials. Formaldehyde is generated from resins used to manufacture wood products and permanent press cloth. Therefore, the use of an across-the-board percent exclusion for all formaldehyde products (as used in the Benzene Standard) is not appropriate for the Formaldehyde Standard (see 52 FR 46282 to 46285), and the Formaldehyde Standard uses a different approach, that is, determining when to label "materials" capable of releasing formaldehyde.

In a like manner, the differences in the labeling provisions of the Asbestos Standard, 29 CFR 1910.1001, reflect the differences between asbestos and formaldehyde. Asbestos is a solid material that will not become airborne unless the asbestos-containing material is disturbed or otherwise processed. In contrast, formaldehyde-containing materials may spontaneously offgas formaldehyde without disturbing the material. In addition, the Asbestos Standard covered mined products where asbestos may be a trace contaminant in the product but asbestos is not intentionally added to the product. The Asbestos Standard covered products that have bonded materials containing asbestos (see 51 FR 22698 to 22699). However, both formaldehyde and asbestos share the common feature that the labeling provisions are set at levels that approach the lowest measurable level using current analytical techniques.

OSHA completed the bulk of the ethylene oxide rulemaking prior to adoption of the HCS. The hazard communication provision in that standard, which is triggered at the 0.5 ppm action level, was adopted on the basis of that rulemaking record, and reflects the difficulty of accurately measuring ethylene oxide concentrations below 0.5 ppm.

d. *Enforcement of the specific hazard communication provisions of the Formaldehyde Standard is the most effective method of achieving the goals of both the Formaldehyde and the Hazard Communication Standards.* OSHA adopted the Formaldehyde Standard to address formaldehyde's health hazards in numerous ways. Thus, the standard contains a lowered permissible exposure limit, but also features such provisions as a medical surveillance requirement and worker-awareness provisions such as the cancer warning label requirement. These provisions are designed to work together; no single provision achieves OSHA's goal of worker protection in isolation from the others. Thus, OSHA made a judgment that inclusion of a cancer warning label was a necessary part of this complete toxic substance standard which, taken as a whole, will eliminate significant risk of cancer. In adopting the standard, the Agency stated, "OSHA believes that the entire standard for formaldehyde with a 1 ppm TWA and a 2 ppm STEL, and industrial hygiene and medical provisions will likely decrease the risk of exposure to levels more representative of the lower end of the range of risks, and possibly to even lower values. Under such

circumstances, OSHA believes that residual risk can be considered 'insignificant.' " ⁴ Preamble, 52 FR at 46224. However, OSHA has consistently and repeatedly stressed the integrated nature of the Formaldehyde Standard and the importance of complying with all of the standard's provisions to reduce risk. The OSH Act instructs the Agency to prescribe appropriate warning labels in section 6(b) standards. The effect of the disapproval of these paragraphs under the Paperwork Reduction Act is effect keeps OSHA from complying with its mandate. Without the cancer warning label, the standard's effectiveness would be diminished, since the risks to workers will be at the high end of OSHA's quantitative risk assessment and significant residual risks will remain.

The Formaldehyde Standard hazard communication requirements are tailored to fit the particular characteristics of formaldehyde and to give guidance as to what action is necessary and when to comply with the labeling provisions. Therefore, these provisions are very useful for the employer and should be approved by OMB. While a careful reading of the HCS should lead an employer to realize that the same requirements apply, it is possible that some employers, even though acting in good faith, might not interpret the HCS requirements correctly for formaldehyde. To leave this HCS provision in place in lieu of the more clear and concise formaldehyde provision would not only do a disservice to employers who want to comply, it might also adversely affect employees who would not have the benefit of the appropriate label. Moreover, such a policy might lead to citations that would be avoidable if the clearer Formaldehyde Standard provisions were allowed to stand.

While using the labeling provisions of the HCS as a basis for those in the Formaldehyde Standard, OSHA made certain minor modifications to allow for the peculiarities of formaldehyde. As shown above, these changes clearly define a formaldehyde-releasing

⁴ Contrary to some industry assertions, however, OSHA has never taken the position that exposure to 0.1 ppm of formaldehyde poses no risk. For example, in the preamble to the Formaldehyde Standard, OSHA states "The figures . . . which were derived from the analysis of the CIIT rat data and the 5-stage multistage model conducted in the ORA Report (Ex. 43) remain relevant to OSHA's final assessment of extra risk from exposure to formaldehyde." Preamble, 52 FR at 46220. These figures unequivocally show that some cancer risk exists at 0.1 ppm. Specifically, Table 3 states that the lifetime risk of cancer per 100,000 workers exposed to 0.1 ppm is between 0.001 (maximum likelihood estimate) and 28 (upper confidence limit).

material may be described as nonhazardous; this may result in slightly less labeling of formaldehyde-bearing products than under the HCS since manufacturers can have greater confidence that they are complying with the standard. OSHA believes that the record contains ample evidence to support this approach and that it is not appropriate to invite extensive litigation to "establish" that these requirements are enforceable for formaldehyde under the HCS by disapproving paragraphs (m)(1)(i) through (m)(4)(ii).

OSHA believes that the Formaldehyde Standard promulgation process, using the rulemaking authority of Section 6(b) of the OSH Act with administrative rulemaking procedures including publication of proposed rules, public comment, and hearings, has addressed the relevant issues regarding formaldehyde labeling.⁵ One of the purposes of a substance-specific rulemaking proceeding is to let employers know exactly what actions are necessary to comply with the final rule. In the Formaldehyde Standard, OSHA has clearly articulated what actions are necessary to provide appropriate hazard communication for formaldehyde.

OSHA's inability to enforce paragraphs (m)(1)(i) through (m)(4)(ii) of the FS will lead to extensive, complex, costly, and possibly wasteful litigation. Generally courts give great weight to the interpretation of the drafter of a regulation. On the other hand, agencies are encouraged to promulgate clear and enforceable rules that give plain notice of their requirements to the regulated parties. To invite repeated litigation under the HCS instead of enforcing the FS is counterproductive to these policies and is contrary to the spirit of the Paperwork Reduction Act.

OSHA does not believe that disagreements regarding the details of appropriate hazard communication for formaldehyde should be resolved in enforcement disputes before the Occupational Safety and Health Review

⁵ Based upon the comments received by OSHA, some members of the regulated community continue to argue that, under the Hazard Communication Standard, "appropriate hazard warnings" do not include a cancer warning in the case of formaldehyde. A longstanding Agency interpretation of the HCS is that formaldehyde labels must contain a cancer warning. (See memo to the field, Sept. 1986, Appendix II.) The Formaldehyde Institute raised this issue during the formaldehyde hearings. The Formaldehyde Institute does not agree with the Agency's resolution of the issue, as shown by its comments to OMB. However, as OMB and OSHA recognized, see fn. 2 supra, substantive disputes of this type are not proper subjects for Paperwork Reduction Act consideration.

Commission. First, this approach is not an efficient use of resources. Litigating multiple contested cases before an Administrative Law Judge of the Occupational Safety and Health Review Commission would require spending extensive resources by both the Agency and industry. Each case would require extensive evidentiary development and use of witnesses. Upon appeal, each case could be reviewed by the three member panel of the Review Commission (which at this point contains only one member and would be unable to overrule and ALJ decision), and further appeals would be heard by the U.S. Court of Appeals.

Second, OSHA's administrative rulemaking process has resulted in an evaluation of the toxicity of formaldehyde that is far more extensive than could be prepared by individual OSHA field offices, an employer who is contesting a citation, or an Administrative Law Judge. OSHA's public meeting and rulemaking hearing records contain considerable testimony of experts in the field, including presentations by scientists who performed the primary research. It would not be feasible or practical to have this type of open hearing and detailed analysis occur in various contested citation cases. As a result of this rulemaking, OSHA has decided how to address this issue in the formaldehyde rule. OSHA does not believe that the industry's disagreement with OSHA's conclusion regarding the toxicity of formaldehyde is sufficient reason to revoke the labeling provisions of the Formaldehyde Standard.

e. *Conclusion.* OSHA believes that a number of factors should be taken into consideration to mitigate its failure to comply with the precise letter of the Paperwork Reduction Act. The public had notice of the Agency's intended course of action early in the formaldehyde rulemaking process and had extensive opportunity to comment on this issue among others. In addition, the regulation underwent extensive OMB review under Executive Order 12291 before promulgation and certain changes were made pursuant to that review. Therefore it would have been possible to submit the Paperwork Clearance package until this review was complete.

Moreover, the standard was promulgated under intense time pressure, in compliance with a judicially-imposed deadline. In fact, the petitioners in the case had requested that the Agency be held in contempt of court if the date was not met. The Agency's failure to give 60 days advance

notice to OMB under the Paperwork Reduction Act, when under this extreme judicial pressure to nullify the extensive opportunity the public has already had to comment on and discuss the issue. Yet this would be the result if the Agency is forced to initiate a new rulemaking proceeding on this issue so that the letter of the Paperwork Act may be followed. We believe that this unnecessarily inflexible course is inconsistent with the objectives of both the Paperwork Reduction Act and the Occupational Safety and Health Act.

13. Estimate of Annual Burden Hours

The burden hour estimates are based on the information contained in the Regulatory Impact Analysis (RIA) prepared by OSHA in November 1987. OSHA has estimated that there are no burden hours for the hazard communication provisions of the Formaldehyde Standard. The other paperwork provisions of the Formaldehyde Standard have a burden of 955,043 hours which were approved until February 29, 1991. Approval of the hazard communication provisions would not change the overall burden hours of the Standard.

	1st year, initial	2d & 3d years, recurring
Hazard communication.....	0	0

II. Explanation of Method of Estimating Annual Burden

Hazard Communication

There are no burden hours for this provision, since OSHA has assumed that the costs that would be incurred in affixing precautionary labels as well as developing or revising Material Safety Data Sheets are not unique to the Formaldehyde Standard but are directly attributable to the Hazard Communication Standard, 29 CFR 1910.1200.

III. Explanation of Difference Between SF 83 and 1988 ICB

There is no difference between the SF 83 and the 1988 ICB for the hazard communication provisions of the Formaldehyde Standard.

14. Reasons for Changes in Burden

There are no changes in burden for the hazard communication provisions of the Formaldehyde Standard.

15. Collection of Information for Statistical Use

This question is not applicable as the information to be collected will not be published for statistical use.

15-B. Collection of Information Employing Statistical Methods

The information collection requirements of the Formaldehyde Standard do not employ statistical methods. Therefore, this section is not applicable.

Appendix I: Formaldehyde Standard's Hazard Communication Provisions (29 CFR 1910.1045 (m)(1)(i) Through (m)(4)(ii))

(m) Hazard communication—(1) General.

(i) For purposes of hazard communication, formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air under any normal condition of use at concentrations reaching or exceeding 0.1 ppm shall be considered a health hazard.

(ii) As a minimum, specific health hazards that the employer shall address are: cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

(2) Manufacturers and importers who produce or import formaldehyde or formaldehyde containing products shall provide downstream employers using or handling these products with an objective determination through the required labels and MSDSs if these items may constitute a health hazard within the meaning of 29 CFR 1910.1200(d) under normal conditions of use.

(3) *Labels.* (i) The employer shall assure that hazard warning labels complying with the requirements of 29 CFR 1910.1200(f) are affixed to all containers where the presence of formaldehyde constitutes a health hazard.

(ii) *Information on labels.* As a minimum, labels shall identify the hazardous chemical; list the name and address of the responsible party; contain the information "Potential Cancer Hazard"; and appropriately warn of all other hazards as defined in 29 CFR 1910.1200, Appendices A and B.

(iii) *Substitute warning labels.* The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same

information as the warning statements required by this paragraph.

(4) *Material safety data sheets.* (i) Any employer who uses formaldehyde-containing materials that constitute a health hazard as defined in this standard shall comply with the requirements of 29 CFR 1910.1200(g) with regard to the development and updating of Material Safety Data Sheets. (ii) Manufacturers, importers, and distributors of formaldehyde containing materials that constitute a health hazard as defined in this standard shall assure that Material Safety Data Sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a Material Safety Data Sheet is updated.

Signed at Washington, DC, this 6th day of July, 1988.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.

Appendix II: Memo to the Field—Labeling of Formaldehyde-Containing Products Under the Hazard Communication Standard

September 9, 1986.

MEMORANDUM FOR ALL REGIONAL ADMINISTRATORS

FROM: JOHN B. MILES, JR., Director,
Directorate of Field Operations.

SUBJECT: Labeling of Formaldehyde-Containing Products Under the Hazard Communication Standard.

Several parties have asked for guidance on the subject issue. The Hazard Communication Standard (HCS) does not establish a clear threshold for the inclusion of hazard warnings on product labels. The term "appropriate hazard warning" found under 29 CFR 1910.1200(f) is the determining factor in the standard's labeling requirements.

While it is not the Agency's intent to provide specifications that might erode the standard's inherent flexibility, it is necessary to establish guidelines to ensure uniformity in our enforcement evaluations of employer programs. Guidelines were published originally on May 10, 1986 and further refined recently on July 18 in OSHA Instruction CPL 2-2.38A and CPL 2-2.38A CH-1 (pages A-12 through A-18). The guidelines provide criteria that are summarized in Table 1 of the directive on page A-18. These guidelines establish the presence of a single valid, positive study showing human evidence of carcinogenicity as a sufficient basis for the inclusion of a carcinogen warning on product labels.

In a recent formaldehyde rulemaking proposal (50 FR 50412), the Agency considered the epidemiological evidence as suggestive based on a consideration of all available evidence. There are, however, several valid, positive studies showing human carcinogenicity. The following are examples (all exhibit numbers refer to the formaldehyde docket, number H225 and H225A):

1. Stroup, Exhibit 73-42
2. Acheson et al., Exhibit 42-1
3. Blair et al., (recent NCI report)
4. Olsen et al., Exhibit 73-30

In addition, formaldehyde has been tested and shown to cause cancer in three separate animal studies by CIIT (Exhibit 42-131), New York University (Exhibits 42-3, 42-4) and (Exhibit 73-146). Genotoxicity has also been documented through several short term assays.

Health professionals must employ a large measure of judgment when making decisions about the appropriateness of a label warning. They must keep in mind that the HCS is primarily an information standard and as such expresses an intent to disclose information rather than to withhold information. Accordingly label warnings stating the carcinogenic potential for formaldehyde will generally be required under the HCS.

The specific words or phrases used to warn of formaldehyde carcinogenicity will vary. Compliance officers should expect to see warnings such as "CARCINOGEN," "POTENTIAL CARCINOGEN," and "ANIMAL CARCINOGEN." Others will incorporate modifying statements such as "INCONCLUSIVE EVIDENCE OF HUMAN CARCINOGENICITY." Wide latitude should be permitted as long as the label being evaluated warns of the potential cancer risk.

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BILLING CODE 4510-25-M

Voluntary Protection Programs To Supplement Enforcement and To Provide Safe and Healthful Working Conditions; Changes

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Clarifications to the voluntary protection programs (VPP) regarding injury rates and referrals.

SUMMARY: Documentation retention duration, applicability of the requirements to small businesses, Star construction and Merit injury rates, frequency on consultation safety committee inspections and areas of generic employee participation requirements are clarified, and OSHA's policy on referral for enforcement is specified. Other program requirements and OSHA responsibilities remain unchanged.

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Room N3647, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA on July 2, 1982, have established the credibility of cooperative action among government, industry and labor to address worker safety and health issues and expand worker protection. Requirements for VPP participation are based on comprehensive management systems with active employee involvement to prevent and control the potential safety and health hazards of the site. Companies which qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

From the beginning, OSHA has reserved the right to use its enforcement authority in specified instances such as the investigation of employee complaints, significant accidents, and chemical leaks or spills. On the other hand, OSHA has been careful to keep separate from enforcement any information submitted through the VPP application process, because applicants have voluntarily requested OSHA review and have voluntarily presented to OSHA safety and health program information not required by law. A 1984 study of private sector attitudes about the VPP indicated that the risk that most non-participating employers associated with VPP application was the possibility that a VPP review could lead to enforcement action. That has not ever been and is not now OSHA's intent.

The question has arisen as to what action OSHA would take in the event that, during the course of VPP interaction, it was determined that employees were endangered and the cooperative approach was not effective in resolving the situation. In the first place, OSHA believes that such a situation would be rare, if it ever were to occur. During the more than five-year history of the VPP, cooperation has always resolved any identified problems. Since it is conceivable, however, that a situation could arise where management would refuse to address a condition which poses a serious threat to the safety and health of employees, the agency wants to clarify how an unresolved situation of that nature would be handled.

The need for a variety of minor clarifications has been determined. For example, an organizational change is needed to that an assurance implied elsewhere in the document is specified in the assurance section.

VPP participants have requested clarification on the length of time program documentation must be maintained.

Questions have arisen requiring a clarification of the time requirements for prior site experience at construction sites which are applying for Star participation, necessitating a clarification. In addition, a previous change inadvertently eliminated an option for Merit construction participation, thereby warranting a reinstatement of earlier language.

A discrepancy between two sections addressing frequency of construction safety committee inspections has been noted and requires correction.

Language intended to permit waivers of some requirements for written procedures and documentation for small businesses has not been clearly understood.

Finally, where employee participation has been implied in the generic sense, that term has been used instead of the reference to safety committees which was previously used. Where the intent was to refer specifically to safety committees, there has been no change.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C 651 et seq. (the "Act" and the "OSH Act"), was enacted "to ensure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions which establish the legislative mandate for the Voluntary Protection Programs.

"* * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safer and healthful working conditions;"

"* * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;"

"* * * (5) by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;"

"* * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment."

C. Structure of Notice

Section II deals with the rationale for the changes.

Section III incorporates the change of the name of the Try Program to the

Merit Program as announced in 53FR2101 with the clarifications in the program requirements and OSHA responsibilities.

II. Rationale for Change

The first change in section III.D.2. involves a specification in the assurances section of management's commitment to optimum occupational safety and health protection and to meeting and maintaining the requirements for program participation. This has been required as a part of management commitment in III.E.5.a. Instructions for VPP application and review tools used by OSHA staff, however, have addressed this issue primarily in the assurances area. So that VPP materials will reflect the order of requirements listed in the Federal Register, this assurance has been added to the assurances section as Section III.S.2.a. The concept continues to be addressed in the management commitment section as well.

The second change is in section III.D.2.g. That section specifies the kind of program documentation which must be maintained for OSHA review. Implied in previous Federal Register language was the idea that such documentation must be kept for the duration of VPP participation. In fact, records required for VPP alone, such as documentation of self-inspection or safety committee activities must be retained for a minimum of twelve months or until OSHA has communicated its decision regarding program participation based on the results of its pre-approval review or regularly scheduled evaluation. This means that, initially, documentation of program activities for the previous twelve months is required to demonstrate whether or not the VPP requirements have been operational for the minimum amount of time. This documentation should be retained until OSHA has communicated its decision regarding VPP participation in case any questions arise about any aspects of the site program. The same type of safety and health program documentation must then be maintained throughout the period of participation to be covered by the OSHA evaluation, again until notification of OSHA's decision regarding continued approval is received, for the reason previously noted.

This time period is now specified to clear up any uncertainty for participants. Some of the items listed, such as the OSHA log and industrial hygiene records, must also be maintained for periods of time specified by other regulations.

The change in section III.E.4. clarifies the point that the length of time that rates for all employees at a construction site must have been kept together is the most recent twelve months. The previous language requiring site rates for "the last full year" could be misconstrued as referring to the preceding complete calendar year.

Section III.E.5.a(4) has been changed to clarify the ability of OSHA to waive formal requirements such as written procedures or documentation for small business where, due to the size of the worksite and numbers of employees, such formalities are unnecessary for the effective functioning of safety and health management systems. It is intended that OSHA will make the determination on a case-by-case basis after thorough review of the effectiveness of the system in question.

Section III.E.5.e. (2)(d) has been changed to coincide with the requirement in section III.E.5.b. (3)(c) that construction safety committee inspections cover the entire worksite at least monthly. Because of the constantly changing conditions at a construction site, more frequent coverage of the entire worksite is required to ensure prompt hazards correction than is required as a minimum for a static general industry site. Most general industry Star sites provide more frequent inspection coverage than is required.

In Section III.E.5.f. (2), N.1.c. (5), and N.2.c. (6) the term "safety committee" had been used as a generic term to indicate some type of "employee participation." In order to reflect this generic connotation more accurately, the term "employee participation" is used instead. When the VPP was adopted in 1982, the preponderance of information regarding employee involvement in safety and health programs focused on joint committees. During the agency's more than five years' experience with reviewing site programs, however, many different kinds of effective employee participation have been seen. Where options are allowed, OSHA does not want to limit, by its use of language, the type of employee participation a company may choose. The second and third changes, regarding employee participation in the evaluation measures, clarify that the effectiveness of whatever type of participation the site uses will be a major determining factor in continued VPP participation.

The change in section III.3.b. (2) involves an injury rate clarification. In a previous revision to the Voluntary Protection Programs, 52 FR 7337, the language regarding injury rates for the

Try Program (now known as Merit) inadvertently omitted the fact that both the three-year average lost workday case rate and the total recordable incidence rate could be above the industry average for a general industry applicant if OSHA were convinced that the applicant's planned program improvements could be expected to bring the rates down to a level at or below the industry average in a reasonable time. The language has been changed to reflect "either or both," in accord with original program design.

In response to questions from agency personnel, Section I. has been revised to indicate how OSHA would handle enforcement referrals in unlikely event that a company would refuse to resolve a safety and health issue that had been identified during the course of VPP interaction. To date, no enforcement referral has been needed to protect workers at potential or participating VPP sites.

There is always the potential for differences of opinion among reasonable people regarding the appropriate way to prevent and control hazards. The spirit of cooperation engendered by VPP facilitates open discussion of options and supports joint efforts for determining solutions to any safety and health problem that may arise. When joint efforts are successful and employees are protected, a referral is unnecessary and would not be made. Given the cooperative spirit of the program, the need for referral is unlikely. On the other hand, one can imagine a scenario where workers could be seriously endangered, and for one reason or another, management refused to make changes necessary to protect them. If that situation were to occur, it is clear that OSHA would be obligated to ensure the safety and health of those employees, and a referral to appropriate enforcement officials would be made because OSHA cannot ignore its responsibility to employee safety and health.

A referral to enforcement would never be made lightly. OSHA, in line with the cooperative spirit on which the VPP are based, would first make every effort to find a mutually satisfactory solution among government, management and labor. Since the companies that apply for VPP participation commit themselves to providing superior worker protection that goes beyond the minimum requirements of OSHA standards and since companies that are willing to work with OSHA on a cooperative basis are unlikely to take a negative approach to the resolution of any occupational safety and health concern, as indicated above,

it is not anticipated that a situation of this nature will arise.

It is not OSHA's intent to jeopardize the cooperative relationship between volunteer companies and OSHA staff nor to squander enforcement resources in pursuing trivial concerns. It is, however, OSHA's intention that no safety and health problem which would seriously endanger employees, and which anyone acting in good faith would expect to see corrected, go unresolved. The careful balance between these important needs requires an approach which emphasizes the gravity of the question and the need for consistency in selecting the best way to assure that the employees in question are protected. The agency has, therefore, determined that any referral to appropriate enforcement officials shall be decided by the Assistant Secretary.

Current participants in the VPP have expressed their recognition of the need for enforcement referrals in deplorable situations that remain unresolved and have indicated their trust in OSHA to make the determination of that need appropriately.

Other program requirements and OSHA responsibilities remain unchanged.

III. The Voluntary Protection Programs

A. Purpose of the Voluntary Protection Programs

OSHA has long recognized that compliance with its standards cannot be itself accomplish all the goals established by the Act. The standards, no matter how carefully conceived and properly developed, will never cover all unsafe activities and conditions. Furthermore, limited resources will never permit regular or exhaustive inspections of all of the Nation's workplaces. In addition, employers and employees, because of their day-to-day experience in the workplace, acquire a special knowledge of the processes, materials and hazards involved with the job. This knowledge, combined with the ability to evaluate and address unique hazards quickly and to provide rewards for positive action, can be used by employers to improve workplace safety and health in ways simply not available to OSHA.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in employer-provided, site-specific occupational safety and health programs. These programs are comprised of management systems for preventing or controlling occupational hazards. The systems not only ensure

that OSHA's standards are met, but go beyond the standards to provide the best feasible protection at that site.

When employers apply for and achieve approval for participation in the VPP, they are removed from programmed inspection lists. This frees OSHA's inspection resources for visits to establishments that are less likely to meet the requirements of the OSHA standards. VPP participants enter into a new relationship with OSHA in which safety and health problems can be approached cooperatively, when and if they arise.

Participation in any of the programs does not diminish existing employer and employee rights and responsibilities under the Act. In particular, OSHA does not intend to increase the liability of any party at an approved VPP site. Employees or any representatives of employees taking part in an OSHA-approved VPP safety and health program are not assuming the employer's statutory or common law responsibilities for providing safe and healthful workplaces or undertaking in any way to guarantee a safe and healthful work environment.

The programs included in the VPP are voluntary in the sense that no employer is required to participate and that any employer may volunteer for application to one of the VPP. Compliance with OSHA standards and applicable laws remains mandatory.

Approval for participation is determined by the Assistant Secretary for Occupational Safety and Health.

B. Purpose of this Notice

This notice describes the qualifications criteria for approval of participation in the Voluntary Protection Programs (VPP), and the conditions of participation, termination of or withdrawal from participation and means of reinstatement.

C. Program Description

1. General

The VPP are voluntary programs which provide recognition to qualified employers and removes those "recognized employers" from programmed inspection lists. They emphasize the importance of worksite safety and health programs in meeting the goal of the Act "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions . . ." through official recognition of excellent safety and health programs, assistance to employers in the efforts to reach a level of excellence and the use of the

cooperative approach to resolve safety and health problems.

The VPP consist of two major programs, Star and Merit, plus a Demonstration Program to permit demonstration and/or testing of experimental approaches which differ from the two established programs. In addition, within the Star and Merit Programs there are some variations between general industry and construction industry requirements.

2. Recognition

By approving an applicant for participation in the VPP, OSHA recognizes that the applicant is providing, at a minimum, the basic elements of ongoing systematic protection of workers at the site which makes routine Federal enforcement efforts unnecessary. The symbols of this recognition are certificates of approval and the right to use flags showing the program in which the site is participating. The participant may also choose to use program logos in such items as letter-head or award items for employee contests.

In addition to removing approved worksites from programmed inspection lists (but not from valid, formal employee safety and health complaint, inspections, investigations of significant chemicals spills/leaks, nor fatality/catastrophe investigations), OSHA will provide the opportunity for a company to work cooperatively with the agency both in the resolution of safety and health problems and in the promotion of effective safety and health problems through such means as presentations before meetings of safety and health organizations such as the National Safety Congress. Each approved site will have a designated OSHA Contact Person to handle information and assistance requests.

D. Aspects Common to All VPP

1. The Eligible Applicant

a. *Site Management.* Management at a site which is either independent or part of a corporation can make application to the VPP for that site.

b. *Corporate Management.* The management of a corporation may apply to the VPP on behalf of one or more sites in the corporation. This staff provide one or more aspects of the site safety and health program.

c. *General Contractors and Organizations Providing Overall Management at Multi-Employer Sites.* At multi-employer sites, such as in the construction industry, the only eligible applicant is the one which can control safety and health conditions of all

employees at the site, such as the general contractor or the owner.

d. *Organizations Representing Groups of Small Business in the Same Industry.* OSHA will consider, for Demonstration Programs, applications from organizations providing health and safety program services to groups of small businesses of the same industry (at the three or four digit SIC level) in a limited geographical area. All sites must meet requirements and will be subject to onsite review.

2. Assurances

Applications for all VPP must be accompanied by certain assurances describing what the applicant will do if the application is approved for participation in one of the VPP. The applicant must assure that:

a. All the requirements for the VPP will be met and maintained.

b. All employees, including newly hired employees when they reach the site, will have the VPP explained to them, specifically including employee rights under the program and under the Act.

c. All hazards discovered through self-inspections, accident investigations or employee notification will be corrected in a timely manner.

d. If employees are given health and safety duties as part of the applicant's safety and health program, the applicant will assure that those employees will be protected from discriminatory actions resulting from the duties, just as section 11(c) of the Act protects employees for the exercise of rights under the Act.

e. Employees shall have access to the results of self-inspections and accident investigations upon request (in construction, this requirement may be met through the joint labor-management committee).

f. For construction, injury records for all work done at the site will be recorded together and the injury rates for that site will be maintained at or below the national average for that type of construction.

g. The information listed below will be maintained and available for OSHA review. It will be retained until OSHA communicates its decision approving VPP participation. The same information will be retained during participation for evaluation purposes for the time period covered by the evaluation until OSHA communicates its decision regarding continued approval for VPP participation.

(1) Written safety and health program;

(2) Copies of the log of injuries and illnesses and the OSHA 101 or its equivalent;

(3) Monitoring and sampling records if applicable;

(4) Agreement between management and the collective bargaining agent(s) concerning the functions of the safety committee and its organization where applicable;

(5) Minutes of each committee meeting where applicable;

(6) Committee inspection records where applicable;

(7) Management inspection and accident investigation records;

(8) Records of notifications of unsafe or unhealthful conditions received from employees and action taken, taking into account appropriate privacy interests; and,

(9) Annual internal safety and health program evaluation reports (described below in E.5.f.).

h. Applicants for the Merit or Demonstration Programs must provide assurance that any data necessary to evaluate achievement of individual goals not listed above will be made available to OSHA for evaluation purposes.

i. Each year by February 15, the participating site will send notification to the designated OSHA Contact Person, described under Section III.M., of the site's injury incidence and lost work day case rates, hours worked and estimated average employment for the past full calendar year.

3. Unionized Sites

When a site covered by an application for any of the VPP has a significant portion of its employees organized by one or more collective bargaining units, the authorized agent must either sign the application or submit a signed statement indicating that the collective bargaining agent(s) do(es) not object to participation in the program. Without such concurrence, OSHA will not approve program participation.

4. Inspection/Interaction History

If the applicant has been inspected in the last three years, the inspection, abatement and/or any other history of interaction with OSHA must indicate good faith attempts to improve safety and health and include no upheld willful violations during those last three years.

E. The Star Program

1. Purpose

The Star Program is based on the characteristics of the most comprehensive safety and health programs used by American industry. It aims to recognize leaders in injury and illness prevention programs who have been successful in reducing workplace

hazards and to encourage others to work toward such success.

2. Term of Participation

The term for participation in an approved Star Program is unlimited, contingent upon continued favorable triennial evaluation. In the construction industry, participation is ended with the completion of construction work at the site.

3. Experience

All elements of the safety and health program must be in place and have been implemented for a period of not less than twelve months before Star approval at both general industry and construction sites. Adequate written guidance must be available prior to Star approval.

4. Results

The general industry applicant must have an average of both lost workday injury case rates and injury incidence rates for the most recent three-year period at or below the most recent specific industry (at the three or four digit level) national average published by BLS. For the construction application, the average injury incidence rate and lost workday injury case rate for at least the most recent twelve months at the site applied for, including all workers of all subcontractors of the site, must be at or below the national average for that type of construction according to the most precise SIC code. The SIC for the site is based on the type of construction project, not individual trades.

5. Safety and Health Program Qualifications for the Star Program

a. *Management Commitment and Planning.* Each applicant must be able to demonstrate top-level management commitment to occupational safety and health in general and to meeting the requirements of VPP. Management systems for comprehensive planning must address safety and health.

(1) *Commitment to Safety and Health Protection.* As with any other management system, authority and responsibility for employee safety and health must be integrated with the management system of the organization and must involve employees. This commitment includes:

(a) *Policy.* Clearly established policies and results-oriented objectives for worker safety and health protection which have been communicated to all employees;

(b) *Line Accountability.* Authority and responsibility for safety and health protection clearly defined and implemented; accountability through

evaluation of supervisors; and a system for rewarding good and correcting deficient performance;

(i) The general industry applicant must have a documented system for holding all line managers and supervisors accountable for safety and health.

(ii) The construction applicant must demonstrate that, at a minimum, the project manager and contractor superintendents are held accountable for safety and health conditions within their areas of responsibility.

(c) *Resources.* Commitment of adequate resources to workplace safety and health, in staff, equipment, promotion, etc.;

(d) *Management Involvement.* Top management involvement in worker safety and health concerns, including clear lines of communication with employees and setting an example of safe and healthful behavior; and

(e) *Contract Worker Coverage.* All contractors and subcontractors are required, whether in general industry, construction or other specialized industry, to follow worksite safety and health rules and procedures applicable to their activities while at the site, including special precautions necessary as a result of their activities.

(i) Except where precluded by government regulations, participants should be able to demonstrate that they have considered the safety and health programs and performance of major contractors during the evaluation and selection process, especially in operations such as construction where contractors and sub-contractors are a routine aspect of business arrangements.

(ii) In general industry, when the contractor's activities are not part of the overall operation and include special skills and hazards beyond the participant's expertise, the participant's responsibility is not expected to extend beyond proper diligence and prudence in both the selection and the oversight of the contractor.

(2) *Commitment to VPP Participation.* Management must also clearly commit itself to meeting and maintaining the requirements of the VPP for which application is made.

(3) *Planning.* Planning for safety and health must be a part of the overall management planning process. In construction, this includes pre-job planning and preparation for different phases of construction as the project progresses.

(4) *Written Safety and Health Program.* All critical elements of a basic safety and health program, which includes hazard assessment, hazard correction and control, safety and health

training, employee participation and safety and health program evaluation, must be part of the written program. All aspects of the safety and health program must be appropriate to the size of the worksite and the type of industry. Some formal requirements such as written procedures or documentation may be waived for small businesses where the effectiveness of the systems has been evaluated and verified. Waivers will be decided on a case-by-case.

b. *Hazard Assessment.* Management of safety and health programs must begin with a thorough understanding of all potentially hazardous situations and the ability to recognize and correct all existing hazards as they arise. This requires:

(1) Analysis of all new processes, materials or equipment before use begins to determine potential hazards and plan for prevention or control.

(2) Comprehensive safety and health surveys at intervals appropriate for the nature of workplace operations, and regular reviews (by a person(s) qualified to recognize existing hazards and potentially significant risks) to ensure the employer's awareness and control of those risks.

(a) A baseline survey of health hazards accomplished through initial comprehensive industrial hygiene surveying or other comprehensive means of assessment, such as complete industrial hygiene engineering studies, before equipment or process installation in general industry or in the pre-job planning for construction; and

(b) The use of nationally recognized procedures for all sampling, testing, and analysis with written records of results.

(3) A system for conducting, as appropriate, routine self-inspections which follow written procedures or guidance and which result in written reports of findings and tracking of hazard correction.

(a) In general industry, these inspections must occur no less frequently than monthly and cover the whole worksite at least quarterly;

(b) In construction, this must include management inspections which cover the entire worksite at least weekly; and

(c) Also in construction, inspections by members of the safety and health committee which cover the entire worksite as appropriate, but no less frequently than once per month, are required.

(4) Routine examination and analysis of hazards associated with individual jobs, processes, or phases and inclusion of the results in training and hazard control programs. This includes, e.g., job safety analysis and process hazard

review. In construction, the emphasis should be on special safety and health hazards of each craft and each phase of construction.

(5) A reliable system for employees, without fear of reprisal, to notify appropriate management personnel in writing about conditions that appear hazardous and to receive timely and appropriate responses. The system must include tracking of responses and hazard corrections.

(6) An accident/incident investigation system which includes written procedures or guidance, with written reports of findings and hazard correction tracking; and review of injury/illness experience identifying causes and providing for preventive or corrective actions.

(7) A medical program which includes the availability of physician services and personnel trained in first-aid.

c. Hazard Correction and Control. Based on the results of hazard assessment, identified hazards and potential hazards must be addressed by the implementation of engineering controls; equipment maintenance; personal protective equipment; disciplinary action, when needed; and emergency preparedness. Safety rules and work procedures must be developed, thoroughly understood by supervisors and employees, and followed by everyone in the workplace, to prevent and control potential hazards. These include the following provisions:

(1) Reasonable site access to Certified Industrial Hygienists and Certified Safety Professionals or Certified Safety Engineers must be available, as needed, based on the potentially significant risks of the site.

(2) Means for eliminating or controlling hazards. These include the following:

- (a) Engineering controls.
- (b) Personal protective equipment.
- (c) Safety and health rules, including safe and healthful work procedures for specific operations.

(i) Appropriate to the potential hazards of the site.

(ii) Written, implemented and updated by management as needed and used by employees.

(3) Procedures for disciplinary action or reorientation of employees and supervisors who break or disregard safety rules, safe work, materials handling or emergency procedures must be written, communicated to employees, and enforced.

(4) Procedures for response to emergencies listing requirements for personal protective equipment, first aid, medical care, or emergency egress must be written and communicated to all

employees. Procedures should include provisions for emergency telephone numbers, exit routes, and training drills.

(5) Ongoing monitoring and maintenance of workplace equipment to prevent it from becoming hazardous.

(6) A system for initiating and tracking hazard correction in a timely manner.

d. Safety and Health Training. Training is necessary to implement management's commitment to prevent exposure to hazards. Supervisors and employees must know and understand the policies, rules and procedures established to prevent exposure. Training for safety and health must ensure that:

(1) Supervisors understand the hazards associated with a job, their potential effects on employees, and the supervisor's role, through teaching and enforcement, in ensuring that employees follow the rules, procedures and work practices for avoiding or controlling exposure to the hazards.

(2) Employees are made aware of hazards, and the safe work procedures to follow in order to protect themselves from the hazards, through training at the same time they are taught to do a job and through reinforcement.

(3) Supervisors and all employees understand what to do in emergency situations.

(4) Where personal protective equipment is required, employees understand that it is required, why it is required, its limitations, how to use it, and how to maintain it; and employees use it properly.

e. Employee Participation. (1) For general industry, the requirement for employee participation may be met in any one of a variety of ways, as long as employees have an active and meaningful way to participate in safety and health problem identification and resolution.

(a) This is in addition to the individual right to notify appropriate managers of hazardous conditions and practices.

(b) Examples of acceptable means of providing for employee impact on decision-making include the following:

- (i) Safety committees,
- (ii) Safety observers,
- (iii) Ad hoc safety and health problem-solving groups,
- (iv) Safety and health training of other employees,
- (v) Analysis of hazards of jobs, and
- (vi) Committees which plan and conduct safety and health awareness programs.

(2) Construction sites must utilize the labor-management safety committee approach to involve employees in the identification and correction of

hazardous activities and conditions. This is required because of the seriousness of the hazards, the changing worksite conditions, the expanding and contracting work force and the high turnover in the construction industry. The applicant must be able to demonstrate that the site has a joint labor-management committee for safety and health which has the following characteristics:

(a) Has a minimum of one year's experience providing safety and health advice and making periodic site inspections.

(b) Has at least equal representation by bona fide worker representatives who work at the site and who are selected, elected, or approved by a duly authorized collective bargaining organization.

(c) Meets regularly, keeps minutes of the meetings, and follows quorum requirements consisting of at least half of the members of the committee, with representatives of both employees and management.

(d) Makes regular workplace inspections (with at least one worker representative) at least monthly and more frequently as needed, and has provided for at least monthly coverage of the whole worksite.

(e) In addition, the joint committee must be allowed to:

- Observe or assist in the investigation and documentation of major accidents;
- Have access to all relevant safety and health information; and,
- Have adequate training so that the committee can recognize hazards, with continued training as needed.

(3) If a construction applicant chooses to use a joint committee that differs either in the membership composition or in the functional duties specified in (b) above, the applicant must:

(a) Meet operational requirements for quorum, meeting minutes, etc.

(b) Demonstrate that the alternative practices achieve the objectives of the practices they replace. For example, bona fide employee representation in the joint committee is intended to ensure that all site employees participate fully in matters of safety and health and that they are fully informed of decisions affecting safety and health. In the absence of bona fide employee representation on the joint committee, means which are equally effective in achieving these objectives must be provided.

(c) Contractually bind all contractors and subcontractors operating at the applicant's site to maintain effective safety and health programs and to

comply with applicable safety and health rules and regulations:

(i) Such contract provisions must specify authority for the oversight, coordination and enforcement of those programs by the applicant and there must be documentary evidence of the exercise of this authority by the applicant;

(ii) Such contract provisions must provide for the prompt correction and control of hazards, however detected, by the applicant in the event that contractors or individuals fail to correct or control such hazards; and

(iii) Such contract provisions must specify penalties, including dismissal from the worksite, for willful or repeated non-compliance by contractors, subcontractors, or individuals.

f. Safety and Health Program Evaluation. The applicant must have a system for evaluating the operation of the safety and health program annually to determine what changes are needed to improve worker safety and health protection.

(1) The system must provide for written narrative reports with recommendations for improvements and documentation of followup action.

(2) In particular, the effectiveness of the operation of the self-inspection system, the employee hazard notification system, accident investigations, employee participation, safety and health training, the enforcement of safety and health rules, and the coverage of health aspects, including personal protective equipment and routine monitoring and sampling, should be determined and the findings should be used to improve the implementation of the company's written safety and health program.

(3) The evaluation may be conducted by corporate or site officials or by a private sector third-party.

(4) In construction, the evaluation should be conducted annually and immediately prior to completion of construction to determine what has been learned about safety and health activities that can be used to improve the contractor's safety and health program at other sites.

F. The Merit Program

1. Purpose

The Merit Program is aimed at employers in any industry who do not yet meet the qualifications for the Star Program but who wish to work toward Star Program participation. If OSHA determines that the employer has demonstrated the commitment and the potential to achieve the Star requirements, Merit is used to set goals

that, when achieved, will qualify the site for Star participation.

2. Term of Participation

Merit Programs will be approved for a period of time agreed upon in advance of approval. The term will be dependent upon how long it is expected to take the applicant to accomplish the goals for Star participation. Participation is canceled at the end of the term.

3. Qualifications for Merit

a. Safety and Health Program Requirements. An eligible applicant to the Merit Program must have a written safety and health program which covers the essential elements of a safety and health program as described in Section III.E.5 for Star.

(1) The basic elements (management commitment and planning; hazard assessment; hazard correction and control; safety and health training; employee participation and safety and health program evaluation) should all be operational or, at a minimum, in place and ready for implementation by the date of approval. For the construction industry, the joint labor-management committee must have had a minimum of three months experience in providing safety and health inspections before approval.

(2) The elements are not expected to be at Star quality of completeness. The Merit applicant is not expected to meet each of the specific Star requirements in each element. Participation in Merit is an opportunity for employers to work with OSHA to improve the quality of their safety and health programs and reduce their injury rates to meet the requirements for Star.

b. Injury Rates. (1) For the Merit Program in construction, if the injury rates for the site applied for are not at or below the industry averages for the preceding twelve months as required for Star, the applicant company must be able to demonstrate that the company's three-year average injury rates are at or below the most recently published BLS national average for the industry (at the three digit level). The injury incidence rate and the lost workday case rate must each be averaged over the last three complete calendar years. The rate must include all of the applicant's employees who are actually employed at construction sites in that SIC. The applicant may use nationwide employment or may designate an appropriate geographical area which include the site for which application is made.

(2) For general industry, if either the three-year average rate for all recordable injuries, or for injury lost

workday cases, or both for the last three calendar years is above the national average for the specific industry average (at the three or four digit level) as most recently published by BLS, the applicant must indicate goals for the reduction of either or both of those rates and demonstrate that the methods planned to reduce them are feasible.

c. Goals. Any system required for Star participation that is not in place or is not yet of Star quality at the time of approval must be set as a goal along with any rate reduction goals.

G. The Voluntary Protection Demonstration Program

1. Purpose

This program provides the opportunity for companies to demonstrate the effectiveness of alternative methods which, if proven successful (usually at more than one site), could be substituted as alternative qualifications for the Star Program for certain situations; to explore the use of VPP in industries other than construction and those classified as general industries, such as maritime or agriculture; and to test methods of overcoming problems which have kept certain employers, such as small business employers and many contractors in the construction industry, from taking part in the VPP.

2. Qualifications

a. Like all VPP participants, those in the demonstration program must have a site safety and health program that addresses a minimum of the basic elements (management commitment and planning, hazard assessment, hazard correction and control, safety and health training, employee participation, and safety and health program evaluation) described for Star in Section III.E. above. How the applicant implements those elements may be the subject of demonstration so long as Star quality protection is afforded all employees. The applicant is not expected to meet each of the specifics in each element.

b. Applicants for this program must demonstrate to the Assistant Secretary's satisfaction that the alternative approach shows reasonable promise of being successful enough to serve as an alternative basis for inclusion in the Star Program. This includes having average injury incidence and lost workday case rates for the previous three years at or below the specific industry average. Injury rates for mobile workites such as in the construction industry must be at or below the specific industry average for the life of the worksite.

3. Term of Participation

Demonstration programs will be approved, subject to annual evaluation, for the period of time agreed upon in advance of approval but not to exceed five years.

4. Approval to Star

a. Approval to Star is contingent upon:
(1) Successful demonstration of the alternative aspects; and,
(2) A decision by the Assistant Secretary that changing the requirements of the Star Program to allow inclusion of these alternative aspects is desirable.

b. Once a decision has been made by the Assistant Secretary to change Star, those changes must be published in the Federal Register to provide public notice of the change.

c. When the published change has become effective, the demonstration site may be approved to Star without submitting a new application or undergoing further onsite review provided that the approval occurs no later than one year following the last evaluation under the Demonstration Program.

H. Application Requirements for All VPP**1. The Application Instructions**

OSHA will prepare, keep current and make available to all interested parties, application guidelines which explain the type of information to be submitted for OSHA review.

2. Application Content

Eligible applicants will be required to provide all relevant information described in the most current version of the *Application Instructions* which apply to the program for which application is made.

Amendments to submitted applications will be requested when the application information is insufficient to determine eligibility for onsite review.

Materials needed to document the safety and health program which the applicant feels may involve invasion of privacy or a trade secret should not be included in the application. Instead, such materials should be described in the application and provided for viewing only at the site, if an onsite Pre-Approval Review is conducted as part of the application review.

3. Application Submission

Applications may be submitted to OSHA Regional Offices or, in the case of multi-regional applications, to OSHA's Directorate of Federal-State Operations in Washington, DC.

4. Application Withdrawal

Any applicant may withdraw a submitted application at any time after formal submission and before approval or denial. When the applicant notifies OSHA of its withdrawal, the original application will be returned to the applicant.

OSHA may keep the assigned Program Officer's marked working copy of the application for a year before discarding it, in case the applicant should raise questions concerning the handling of the application. Once an application has been withdrawn, a new submission of a formal application is required to begin application review again.

5. Public Access

The following documents will be maintained in OSHA's National and applicable Regional Offices for public access beginning on the day the applicant is approved and for so long as VPP participation is active:

- VPP application and amendments;
- Pre-Approval report and subsequent evaluation reports;
- Transmittal memoranda to Assistant Secretary;
- Assistant Secretary's approval letter; and,
- Notification memoranda to Regional Administrator.

I. Qualification Verification**1. Initial Review**

The initial review of the application is made to ascertain whether those qualifications which can be documented by paper submission have been met. The applicant will be given the opportunity to amend the application with additional or substitute materials for the purpose of improving the application. Where resources allow, OSHA staff will assist with application preparation, particularly for the Demonstration Program.

2. Pre-Approval Onsite Reviews

a. *Purpose.* The Pre-Approval Review, which is conducted by a team of non-enforcement OSHA staff, on the site for which participation has been requested is a management review of the site safety and health program. It is conducted to:

- Verify the information supplied in the application concerning qualification for the VPP for which application made;
- Identify the strengths and weaknesses of the site safety and health program;
- Determine the adequacy of the safety and health program to address the potential hazards of the site; and

(4) Obtain information to assist the Assistant Secretary in making the approval decision.

b. *Preparation.* The review will be arranged at the mutual convenience of OSHA and the applicant. The review team will consist of a team leader with a back-up along with health and safety specialists as required by the size of the site and the complexity of the safety and health program.

c. *Duration of the Review.* The time required for the Pre-Approval Review will depend upon the size of the site and the program applied for. Reviews will usually average one-and-a-half to two days onsite, unless the site has more than 1,000 workers or has other complicating factors.

d. *Content.* All Pre-Approval Reviews will include a review of injury records, recalculation of the rates submitted with the application, verification that the safety and health program described in the application has been implemented and a general assessment of safety and health conditions to determine if the safety and health program is adequate for the hazards of the site.

The review will also include interviews with relevant individuals (such as members of joint safety committees, management personnel and randomly selected non-supervisory personnel).

Onsite document review will include the following records (or samples of them) if they exist and are relevant to the application or the safety and health program:

- Management statement of commitment to safety and health;
- The OSHA 200 log;
- Safety and health manual(s);
- Employee notifications of safety and health problems;
- Safety rules, emergency procedures and examples of safe work procedures;
- The system for enforcing safety rules;
- Self-inspection procedures, reports and correction tracking;
- Accident investigations;
- Safety committee minutes;
- Employee orientation and safety training programs and attendance records;
- Industrial hygiene monitoring records; and,
- Other records which provide documentation of the qualifications for these programs.

J. Application Approval**1. Deferred Approval**

If, at the conclusion of the Pre-Approval Review, the applicant needs to take actions to meet the qualifications for approval, reasonable time—up to 90 days—will be allowed for those actions to be taken before a recommendation is made to the Assistant Secretary. Where necessary, an onsite visit will be made to verify the actions taken after the Pre-Approval Review visit.

2. Application Withdrawal

If the applicant cannot meet the requirements for participation in one of the VPP or for any reason does not wish to continue the approval process, reasonable time shall be allowed for application withdrawal as provided for in III.H.4., before recommendation is made to the Assistant Secretary.

3. Application Approval

If, in the opinion of the Pre-Approval Review team, the applicant has met the qualifications requirements of the VPP applied for or an alternative VPP acceptable to the applicant, the team's recommendation will be made to the Regional Administrator, who, on concurrence, will recommend approval to the Director of Federal-State Operations. The Director of Federal-State Operations shall review the report for consistent application of the qualification requirements and, on concurrence, will forward the recommendation to the Assistant Secretary to approve participation. Approval will occur on the day that the Assistant Secretary signs a letter informing the applicant of approval.

K. Application Denial

1. Should the Assistant Secretary, for any reason, reject the FSO and/or Regional recommendation to approve, a letter from the Assistant Secretary denying approval will be sent to the applicant. The denial will occur as of the date of the letter.

2. Should an applicant appeal to the Assistant Secretary a finding by the team that qualifications are not met, the Director of Federal-State Operations will forward the appeal to the Assistant Secretary, along with the team's recommendation of denial.

If the Assistant Secretary accepts the recommendation to deny approval, the denial will occur as of the date the Assistant Secretary signs a letter informing the applicant of the decision.

L. Inspection Requirements**1. Programmed Inspections**

Participating work sites will be removed from OSHA's programmed inspection lists.

2. Workplace Complaints

Employee complaints to OSHA will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

3. Chemical Leaks/Spills

Any significant chemical leaks spills will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

4. Fatalities and Catastrophes

All fatalities and catastrophes will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

5. Referrals

Although the history of the VPP indicates that safety and health problems discovered during contact with worksites for VPP purposes are resolved cooperatively, OSHA must reserve the right, where the safety and health of employees is seriously endangered and site management refuses to correct the situation, to refer the situation to the Assistant Secretary for review and enforcement action if warranted.

a. The employer will be informed in advance that a referral will be made to the Assistant Secretary and that enforcement action may result.

b. Because companies with excellent safety and health programs that are interested in participating in the VPP are not likely to refuse to address a serious problem in a cooperative spirit, a situation of this type is unlikely to occur. It is important, however, for interested employers and employees to be aware of and understand OSHA's obligation in the event that such a situation should occur.

c. Where a cooperative spirit does not exist between OSHA and a company, VPP participation is not appropriate. Therefore, if a company in this situation does not choose to withdraw from VPP consideration, VPP participation shall be denied or terminated.

M. Post-Approval Assistance**1. OSHA Contact Person**

An OSHA official will be assigned to each VPP participating worksite as Contact Person. This person will be available to assist the participant, as needed, to assure smooth interface with

OSHA and to provide expertise as required.

2. Problem Solving

If a problem comes to the attention of the OSHA Contact Person, either through evaluation efforts, review of injury rates, records of OSHA complaint inspections, chemical leaks/spills or accident investigations, or by request of the VPP participant, the Contact Person will attempt to assist the participant in resolving the problem, including, if necessary, arranging with the participant for an onsite visit to assess the problem and its possible causes.

3. Scheduled Onsite Assistance

In some cases, such as in the Demonstration Program, in the construction program or when needed for the Merit Program, a schedule of onsite assistance visits shall be agreed upon before approval.

4. Significant Organizational or Ownership Changes

Whenever significant changes are made in ownership or organizational structure at a VPP site, the Contact Person should make an onsite assistance visit to determine the impact of the changes on VPP participation.

N. Evaluation**1. The Star Program**

a. *Purpose.* (1) To determine continued qualification for the Star Program.

(2) To document results of program participation in terms of the evaluation criteria and other striking aspects of the site program or its results.

(3) To identify any problems which have the potential of adversely affecting continued Star Program qualifications and to determine if those problems require additional evaluations.

b. *Frequency.* Star Programs shall be evaluated every three years (except when serious problems have been identified which require an earlier evaluation) with an annual review of injury incidence and lost workday injury case rates which shall include a recalculation of the latest three-year averages.

c. *Measures of Effectiveness.* The following factors will be used in the evaluation of Star Program participants:

- Continued compliance with the program requirements;
- Satisfaction of the participants;
- Nature and validity of any complaints received by OSHA;
- Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and

(5) The effectiveness of employee participation programs.

d. *Description of Evaluation.* OSHA's evaluation of Star Program participants will consist mainly of an onsite visit of similar duration and scope of the Pre-Approval Program Review described in III.1.2. Documentation of program implementation from pre-approval review or the previous evaluation will be reviewed.

2. The Merit Program

a. *Purpose.* (1) To determine continued qualification for the Merit Program, or to determine whether the applicant may be approved for the Star Program.

(2) To determine whether adequate progress has been made toward the agreed-upon goals.

(3) To identify any problems in the safety and health program or its implementation which need resolution in order to continue qualification or meet agreed-upon goals.

(4) To document program improvements and/or improved results.

(5) To provide advice and suggestions for improvements that might be made.

b. *Frequency.* All merit programs will be evaluated annually for the duration of the period of approval, except where the participant requests an evaluation before the annual evaluation for the purpose of determining whether the Star qualifications have been met.

c. *Measure of Effectiveness.* The following factors will be used in the evaluation of Merit Programs:

(1) Continued adequacy of the safety and health program to address the potential hazards of the workplace;

(2) Comparison of rates to the industry average;

(3) Satisfaction of the participants;

(4) Nature and validity of any complaints received by OSHA;

(5) Nature resolution of problems that have come to OSHA's attention;

(6) Effectiveness of the employee participation program; and,

(7) Progress made toward goals specified in the pre-approval or previous evaluation report.

d. *Description of Evaluation.* OSHA's evaluation will consist mainly of an onsite visit of duration and content similar to the Pre-Approval Review described in III.1.2.

O. Termination or Post-Approval Withdrawal

1. Reason for Termination

a. Completion of covered construction work at the site will terminate a construction industry approval.

b. Sale of the approved site to another company or any management change

that eradicates or significantly weakens the safety and health program may terminate the approval.

c. The participating site management, or the duly authorized collective bargaining agent where applicable, may terminate participation for any reason.

d. OSHA may terminate participation for cause.

2. Cause for OSHA Termination

a. *Star Program.* Termination by OSHA will occur when a significant failure to maintain the safety and health program in accordance with the program requirements has been identified.

b. *Merit Program.* Termination by OSHA will occur when:

(1) A significant failure to maintain the safety and health program in accordance with the program requirements has been identified; or,

(2) No significant progress has been made toward the goals; or

(3) The term of approval has expired.

c. *The Voluntary Protection Demonstration Program.* Termination by OSHA will occur when:

(1) OSHA determines that continuation of the experiment will:

(a) Endanger workers at the covered site(s); and/or,

(b) Be unlikely to result in inclusion into the Star Program; or,

(2) The period of approval has expired.

3. Notification

OSHA will provide the participant and other relevant parties 30 days notice of intent to terminate participation unless:

(a) Other terms for termination were agreed-upon before approval; or

(b) A set period for approval is expiring or construction has been completed.

4. Post-approval Withdrawal

Upon receipt of notice of intent to terminate, or for any other reason, a participant may withdraw from the VPP by submitting written notification to the assigned Contract Person.

P. Reinstatement

Reinstatement requires reapplication.

Signed at Washington, DC, this 29th day of June.

John A. Pendergrass,
Assistant Secretary.

[FR Doc. 88-15513 Filed 7-11-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL LABOR RELATIONS BOARD

Experimental Modification of Procedures Governing the Rescheduling of Unfair Labor Practice Hearings

AGENCY: National Labor Relations Board.

ACTION: Notice of experimental modification of procedures governing the rescheduling of unfair labor practice hearings.

SUMMARY: Notice is hereby given that the National Labor Relations Board will commence a one-year experiment on August 1, 1988, transferring, under certain circumstances, the authority to reschedule unfair labor practice hearings from the Regional Directors to the administrative law judges. This experiment modifies the procedure set forth in § 102.16 of the Board's Rules and Regulations.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Ave., NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Section 102.16 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, currently permits the Agency's Regional Directors to extend the date of a scheduled unfair labor practice hearing either upon his/her own motion or upon proper cause shown by any other party. It appears that there is a public perception that this procedure is unfair insofar as the Regional Directors are also the persons responsible for prosecuting the unfair labor practice cases. Recognizing the detrimental effect such adverse public perceptions may have on the Agency's continued credibility and stature, the National Labor Relations Board will implement a one-year experiment in all of its Regional Offices whereby the authority currently granted the Regional Directors under Section 102.16 will be transferred, under certain circumstances, to the administrative law judges.

With respect to all unfair labor practice complaints issued between August 1, 1988 and July 31, 1989, the authority to extend the date of a scheduled hearing shall reside with the administrative law judges, except that the Regional Directors shall retain the authority to extend the date of a scheduled hearing in the following limited circumstances:

(1) Where all parties agree to extension of the date of hearing;

(2) Where a new charge or charges have been filed which if meritorious might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or

(5) Where more than 21 days remain before the scheduled date of hearing.

Except in these limited circumstances, all motions to extend the date of the hearing during the one-year experimental period should be filed with the Division of Judges in accordance with the procedures set forth in § 102.24 of the Rules and Regulations. Where a motion to extend the date of a scheduled hearing has been granted by an administrative law judge, the authority to set a new date for the hearing shall be retained by the Regional Director.

This Notice will be forwarded to appropriate parties along with each unfair labor practice complaint that issues during the experimental period. Parties are invited to submit comments on or before the thirtieth day following the conclusion of the experiment (i.e. on or before August 30, 1989). Comments should be sent to: Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, July 7, 1988.

By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 88-15576 Filed 7-11-88; 8:45 am]

BILLING CODE 7545-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form

but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 "M" Street NW., Washington, DC 20527; Telephone (202) 457-7151.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395-7340.

Summary of Form Under Review

Type of Request: Extension.

Title: Application for Political Risk Insurance for Hydrocarbon Projects.

Form Number: OPIC-77.

Frequency of Use: Other—once per investor per project.

Type of Respondent: Business or other institutions (except farms).

Standard Industrial Classification

Codes: All.

Description of Affected Public: U.S. companies investing overseas.

Number of Responses: 15.

Reporting Hours: 12.

Federal Cost: \$3,750.00.

Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The hydrocarbon application is used to collect from eligible international petroleum companies data on proposed oil and gas projects, which is used in drafting political risk insurance contracts.

Date: June 28, 1988.

Mildred A. Callear,
Office of the General Counsel.

[FR Doc. 88-15543 Filed 7-11-88; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-25684; File No. SR-MCC-88-2]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Midwest Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1988, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article III, Rule 3 of the Rules of the Midwest Clearing Corporation is hereby amended as follows:

[Deletions Bracketed]

Rule 3. Participants (whether or not they have a position under CNS) may request withdrawal of Securities from the Corporation under the following procedures:

(a) A Participant requesting withdrawal of Securities from the offices of the Corporation in Chicago, Illinois, will specify, on the Security Withdrawal Request form (or on such other form as the Corporation may from time to time prescribe), whether the Participant is requesting delivery of the Security in street (during the morning ("Demand Street Request")), whether the Participant is requesting delivery in street form during the afternoon ("Street Request"), whether the Participant is requesting that the Corporation instruct MSTC to submit the Security to a transfer agent for registration in the name of a customer ("Customer Transfer Request") or in the name of the Participant ("Firm Name Transfer Request") or whether the request is pursuant to the Securities Today Program . . .

(b) No change in text.

(c) The Participant will specify on each [Demand Street Request and] Street Request whether the Participant will accept withdrawal of a partial amount. Requests will not be filled in partial amounts unless the Participant so specifies on the request form. Without the consent of the Corporation, Customer Transfer Requests and Firm Name Requests will not be filled in

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partial amounts, [and Demand Street Requests] and Street Requests will not be filled in a partial amount that is not a multiple of 100.

(d) Subject to subparagraph (b), a Regular Request of a Participant having a Clearing Free Position in the Security requested and a Loan Request of a Participant having a Loan Free Position in the Security requested shall be filled that Business Day; provided, with respect to Street Requests [and Demand Street Requests,] that if certificates in the denominations requested are not then available to the Corporation for delivery at the place where delivery is requested, the amount of the request for which certificates are available shall be filled, if the request has been designated, in accordance with subparagraph (c), as a request which may be partially filled, and the remainder of the request shall be filled as promptly as practicable after such certificates become so available.

(e) In the event that there are Security Withdrawal Requests that cannot be filled pursuant to subparagraph (d), Securities will be deemed to be available to the Corporation for the purpose of filling Security Withdrawal Requests where Securities have been delivered by the prescribed cut-off time on that day to the Corporation against their Participants' Short Value Position in such security, or to the extent such Securities are available in Loan Free Positions; provided, however, that certificates shall be deemed to be available for the purpose of filling Street Requests [and Demand Street Requests] only if certificates in the denominations requested are available to the Corporation for delivery at the place where delivery is requested.

Within each such priority category, Security Withdrawal Requests shall have priority by type of request in the following order: Depository Delivery Instructions first, [demand Street Requests second,] Street Requests second [third], Customer Transfer Requests third [fourth], Firm Name Transfer Requests fourth [fifth], and Securities Today Program ("STP") Requests fifth [sixth]. Within each type of request, priority shall be given by position date, with the oldest position date having the highest priority in the case of Long Value and Loan Value Positions and the newest position date having the highest priority in the case of Short Value Positions.

(f) [Demand Street Requests will be processed at least once in the morning of each Business Day, and other forms of] Security Withdrawal Request will be processed on each Business Day at such times as the Corporation may from time

to time prescribe. Security Withdrawal Requests may be filled out of Securities available as a result of deliveries against Short Value Positions before they are filled out of Securities available in Loan Free Positions.

(g) Not applicable.
(h) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to terminate MCC's services for Demand Street Withdrawal Requests. Demand Street Withdrawal Requests are currently processed ahead of Street Withdrawal Requests (but at a higher cost to a Participant). Demand Street Withdrawal Requests are being terminated because of planned improvements in MCC's operating systems and a lower volume of such Requests in 1987.

Participants may use Street Withdrawal Requests to have securities removed from MCC's System for physical delivery or pick-up. Upon implementation of the proposed rule change, Street Withdrawal Requests will be processed on a first come, first served basis only. Accordingly, Participants who submit early Street Withdrawal Requests will be able to receive their securities on a priority basis.

The proposed rule change is consistent with section 17A of the Securities and Exchange Act of 1934 in that it is designed to assure the safeguarding of securities which are in the custody or control of MCC and for which it is responsible by providing uniform and cost effective security withdrawal procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will

be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Some Participants requested clarification on the proposed rule change and expressed a desire to be able to request early withdrawal of securities, if necessary. Participants were advised that early security withdrawal Requests will be processed in the order received by MCC. Accordingly, those submitting early withdrawal requests will have such requests processed on a timely basis.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or
(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 2, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

July 5, 1988.

[FR Doc. 88-15558 Filed 7-11-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25832; File No. SR-OCC-88-07]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

The Options Clearing Corporation ("OCC") on June 16, 1988, filed a proposed rule change with the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal provides for the adjustment of option contracts in event of certain distributions by issuers of the stocks underlying the options. The Commission is publishing this notice to solicit public comment on the proposal.

The proposal would add Interpretation and Policy .07 ("Interpretation .07") to Article VI, Section 11 (Adjustments) of OCC's By-Laws.¹ Interpretation .07 would provide that where a change in the corporation structure of an issuer of common stock underlying an option includes the conversion of such common stock, in whole or in part, into a debt security or preferred stock and where interest or dividends on such security are payable in the form of additional units thereof (i.e., interest or dividends in like-kind), the outstanding options, which shall have been adjusted in respect to the conversion of the common stock into debt security or preferred stock, shall be adjusted again with respect to the like-kind interest or dividends thereon.² The adjustment would be effective as of the ex-date for the like-kind distribution.

OCC states in its filing that, as a general matter, when an issuer of common stock, which underlies a listed option, is re-structured as, for example, by merger, consolidation, or recapitalization, such re-structuring may necessitate an adjustment to the terms of the outstanding option as provided by Article VI, section 11 of

OCC's By-Laws. OCC states that more recently, however, such re-structurings have included new issues of debentures and/or preferred stock that thereafter make periodic interest or dividend payments in kind rather than in cash.³

OCC further indicates that its existing rules and interpretations governing adjustments do not contemplate this situation, meaning that in such instances the OCC's Securities Committee must determine, on a case-by-case basis, whether an adjustment is appropriate. Accordingly, OCC states that in order to foster consistency and efficiency in its option adjustment policies, it is adopting an interpretation that will cover adjustments for such like-kind distributions.

OCC states that the proposal is consistent with the purposes and requirements of the Act, particularly the purposes and requirements of Section 17A of the Act, in that it would further the public interest by ensuring consistency in the overall application of OCC's By-Laws that govern adjustments.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of the Act.

Interested persons are invited to submit written comments. Persons desiring to make submit written comments should file six copies should be comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All submissions should refer to File No. SR-OCC-88-07. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the

¹ OCC has cited as examples: (1) a June 1987 acquisition of Viacom International by its parent and successor company, Viacom Inc., which included the conversion of Viacom International stock into the right to receive, among other things, shares of a new 15.5% Viacom Inc. Cumulative Convertible Exchangeable Preferred Stock whose dividends through September 1988, are payable in additional 15.5% preferred shares in lieu of cash; and (2) a December 1987 acquisition of Southland Corporation which included the conversion of its publicly-held common stock into the right to receive, among other things, shares of a new 15% Southland Corp. Exchangeable Junior Preferred whose dividends through December 1992 are payable in additional preferred shares in lieu of cash; See Standard & Poor's Corp., *Standard Corporation Reports*, Vol. T-Z, 2242 (December 1987); Vol. P-S, 7551 (March 1988).

Commission's Public Reference Room 450 Fifth Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of the OCC. All submissions should refer to File No. SR-OCC-88-07 and should be submitted by August 2, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-15559 Filed 7-11-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16469; 811-5005]

National Securities New York Tax Exempt Bond Fund; Notice of Application

July 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: National Securities New York Tax Exempt Bond Fund ("Applicant").

Relevant 1940 Act Sections: Order requesting deregistration under Section 8(f) and Rule 8f-1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N-8f was filed November 9, 1987, and an amendment thereto filed on May 31, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof or service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 605 Third Avenue, New York, New York 10158.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney (202)

272-3024 or Karen L. Skidmore, Special Counsel (202) 272-3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Massachusetts Business Trust and registered as an open-end, diversified, management investment company under the 1940 Act.

2. As of October 27, 1987, Applicant had one class of 35,676,596 shares of beneficial interest outstanding with a net asset value of \$10.57 per share and total assets of 377,101,6197.

3. On October 27, 1987 Applicant's Board of Trustees adopted a resolution by unanimous consent authorizing the liquidation and dissolution of the Applicant. National Securities and Research Corporation ("National"), as the Investment Adviser, contacted each shareholder directly by telephone. Each shareholder agreed to redeem his shares and received the full amount which he had invested in the Fund, including applicable sales charges. This amount was more than the then current value of their shares, the difference being made up by National.

4. On May 3, 1988 Applicant submitted for filing an Instrument of Termination with the Secretary of State of the Commonwealth of Massachusetts. Applicant is currently waiting for confirmation of filing from the Commonwealth of Massachusetts.

5. Applicant has not transferred any of its assets to a separate trust within the last eighteen months.

6. Applicant is not now engaged and does not intend to engage in any business activities other than those necessary for the winding up of its affairs.

7. The Applicant is current on all filings required by the Commission. In addition, National will pay all expenses in connection with any and all future filings.

8. There were no expenses incurred by the Applicant in connection with the liquidation; all expenses incurred were paid by National. Applicant has no other outstanding liabilities and is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15581 Filed 7-11-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16470/812-7046]

Pilgrim Adjustable Rate Fund et al.; Notice of Application

July 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Pilgrim Adjustable Rate Fund, Pilgrim Corporate Cash Fund, Pilgrim Discovery Funds, Inc., Pilgrim GNMA Fund, Pilgrim Government Securities Fund, Pilgrim High Income Fund, Pilgrim High Yield Trust, Pilgrim International Bond Fund, Pilgrim Investment Trust, Pilgrim MagnaCap Fund, Inc., Pilgrim Money Market Fund, Pilgrim Preferred Fund, and Pilgrim Variable Investment Fund, on behalf of themselves and any series, class or portfolio thereof, (all of the above being hereinafter referred to collectively, in whole or in part, as the "Funds"), on behalf of each open-end management investment company and any series, class or portfolio thereof that are advised or managed in the future by Pilgrim Management Corporation or by its affiliates, and are not required by law to hold annual meetings of shareholders (all of the foregoing being referred to hereinafter as the "Applicants").

Relevant 1940 Act Sections: Exemptions requested under Section 6(c) from Section 32(a)(1).

Summary of Application: Applicants seek an order for an exemption to the extent necessary to permit each of the Applicants to file financial statements signed or certified by an independent public accountant selected at a Board of Directors/Trustees meeting held within 90 days before or after the beginning of such Applicant's fiscal year.

Filing Date: The application was filed on June 6, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 28, 1988. Request a hearing in writing, giving the nature of your

interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC 450 Fifth Street NW., Washington, DC 20549. Applicants, Robert A. Grunburg, Pilgrim Management Corporation, 10100 Santa Monica Boulevard, Los Angeles, California 90087.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

FOR FURTHER INFORMATION CONTACT: Staff Attorney, Fran Pollack-Matz (202) 272-3024, or Karen L. Skidmore, Special Counsel (202) 272-3023 (Division of Investment Management).

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the 1940 Act. Each of the Funds is organized as a corporation under the laws of the State of Maryland or California or as business trust under the laws of the Commonwealth of Massachusetts except Pilgrim High Yield Trust which is a New York common law trust. Each existing Fund has entered into an investment advisory or management agreement with Pilgrim Management Corporation.

2. Recently, both Maryland law and California law have been changed to no longer require annual meetings if the charter or by-laws of the corporation provide that such corporation need not hold annual meetings except when required in certain specified circumstances. On February 3, 1988, the boards of Directors/Trustees of the Funds incorporated in Maryland and California took such action as was necessary so that such Funds need no longer hold annual meetings. The Massachusetts business trusts are not required to hold annual shareholder meetings.

3. The fiscal year-ends of the Funds range from June 30 to December 31. Therefore, under the provisions of Section 32(a)(1) of the 1940 Act, the Boards of the Funds would have to meet almost monthly from June to December.

4. Typically, the Boards of all of the Funds meet on the same day which results in substantial savings to the

Funds in meeting costs. In order to select independent public accountants, the Funds' three disinterested Directors/Trustees, acting as each Fund's Audit Committee, and the Chairman of the Board meet with the independent public accountants at least twice a year. First, the Board members meet to discuss the scope of the audits, the significant audit procedures and the estimated costs. Second, following the completion of audits on all of the Funds for a year, the Board members meet to review the results of the annual audits. Based on the accountant's work, the respective Boards of the Funds make a determination regarding the selection of the independent public accountants for the next fiscal year.

Applicants' Legal Conclusions

1. By permitting the scheduling of the selection of the independent public accountants twice a year on a complex-wide basis through expanding the interval of section 32(a)(1) from 30 to 90 days, the Directors/Trustees will be able to select an accountant on a systematic basis. The review procedures will (a) provide for a detailed review of the services furnished by the independent public accountant to each Fund and (b) result in the Directors'/Trustees' consideration of all relevant information regarding the independent public accountants on a complex-wide basis.

2. The accountant's audit programs are designed so that test work is often done for all Funds at the same time. Expanding the interval will permit a regular and structural consideration of the independent public accountant for complexes at a meaningful interval of time.

3. The process will more accurately reflect the reality of doing business in complexes having a substantial number of funds which is different from the time the 1940 Act was passed when funds were operated on an individual basis or in small fund groups.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15582 Filed 7-11-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16466; 812-6617]

Van Kampen Merritt U.S. Government Fund, et al.; Notice of Application

July 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Van Kampen Merritt U.S. Government Fund, a Government Fund, a subtrust of the Van Kampen Merritt U.S. Government Trust, Van Kampen Merritt Insured Tax Free Income Fund, Van Kampen Merritt Tax Free High Income Fund and Van Kampen Merritt California Insured Tax Free Fund, subtrusts of Van Kampen Merritt Tax Free Fund, Van Kampen Merritt High Yield Fund, a subtrust of Van Kampen Merritt Trust, Van Kampen Merritt Growth and Income Fund, and Van Kampen Merritt Pennsylvania Tax Free Income Fund (the "Load Funds"), Van Kampen Merritt Money Market Fund, a series of Van Kampen Merritt Money Market Trust, and Van Kampen Merritt Tax Free Money Fund (the "No Load Funds"), Van Kampen Merritt Inc. ("Underwriter" or "VKM") and any additional open-end funds in the same family of investment companies for which VKM or one of its wholly-owned subsidiaries or a subsidiary under common control as defined in section 2(a)(9) of the 1940 Act may serve as principal underwriter or investment adviser in the future ("Additional Funds") (the Load Funds, No Load Funds and collectively referred to as the "Funds," and the Funds and VKM collectively referred to as "Applicants").

Relevant 1940 Act Sections: Approval requested pursuant to section 6(c) and section 11(a), permitting certain offers of exchange.

Summary of Application: Applicants seek an order approving certain offers of exchange to be made between the Funds.

Filing Date: The application was filed on February 5, 1987, and was amended on August 14 and October 20, 1987, and January 7, March 23, May 3, May 31, and June 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC, 20549; Applicants, c/o Richard T. Prins, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Regina N. Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Funds are all open-end management investment companies registered under the 1940 Act, and belong to the same family of investment companies; i.e., they are all registered open-end investment companies for which VKM or one of its wholly-owned subsidiaries or a subsidiary under common control as defined in section 2(a)(9) of the 1940 Act serves as principal underwriter or investment adviser, and hold themselves out to investors as related companies for purposes of investment and investor services. Except for Van Kampen Merritt Growth and Income Fund, they all are advised and managed by Van Kampen Merritt Investment Advisory Corporation (the "Adviser"), a subsidiary of VKM; the principal underwriter and sponsor of the Funds and, in turn, a subsidiary of Xerox Financial Services. Van Kampen Merritt Growth and Income Fund is advised by the Adviser and subadvised by First Quadrant Corp., a subsidiary of Crum and Forster, Inc., which is also a subsidiary of Xerox Financial Services, Inc.

2. Applicants have requested that any order issued by the Commission pursuant to this application also extend to any Additional Funds which may issue shares offered by the Underwriter and subject to substantially similar exchange and sales charge provisions.

3. Shares of the Funds have been registered for sale under the Securities Act of 1933 and the 1940 Act for sale to the public in continuous offerings. No redemption charges, contingent deferred sales charges or other back-end charges are imposed on their shares. VKM proposes to maintain a continuous public offering of shares of the Load Funds at their respective net asset values per share plus a sales charge.

which is currently a maximum of 4.90% of the offering price. The maximum sales charge is subject to reductions based on the amount being invested, and to certain special programs described in the application.

4. VKM intends to maintain a continuous public offering of shares of the No Load Funds at net asset value per share without a sales charge. VKM may, however, modify its sales load schedules from time to time in accordance with Rule 22d-1 under the Act. The shares of the Additional Funds may be issued either with or without a sales charge.

5. Shareholders will not be charged any administrative or other transaction fees for exchanging shares, nor will sales charges be assessed against reinvested dividends and distributions. In any exchange, dividends on the exchanged shares will cease accruing on the date of the exchange and will begin accruing on the new shares at the time of the exchange, which in the ordinary course of business is the next business day.

6. All Funds have identical distribution plans approved pursuant to Rule 12b-1 under the 1940 Act (12b-1 "Plans") which they believe comply with the requirements of Rule 12b-1 and applicable precedent. Under all the 12b-1 Plans, up to .30% of the average daily net assets of each Fund may be expended for activity connected with the distribution of shares. With respect to the Load Funds, whose 12b-1 Plans went into effect July 1, 1987, all shares purchased after July 1, 1987, are "New Shares" used to calculate 12b-1 charges, and all assets added after such date are used to calculate 12b-1 Plan charges. With respect to the No Load Funds, all shares are used to calculate 12b-1 Plan charges because these funds had implemented 12b-1 Plans prior to such date. Any exchange between Funds will result in the purchase of New Shares, and be used to calculate 12b-1 Plan charges. In effect, the Load Funds will start at a zero amount of assets used to calculate these charges and may eventually reach the maximum permissible charge (.30%) under the 12b-1 Plan if and when all shares have been purchased after July 1, 1987.

For example, if only 50% of the shares outstanding are New Shares at a given time, the maximum 12b-1 fee expense to the Fund could be 50% of .30%, or .15%. Each Applicant represents that no disparate treatment of shareholders or a "senior security" as defined in Section 18 of the 1940 Act exists by virtue of the existence or implementation of the 12b-1 Plans. Applicants do not seek relief under section 12(b) or Rule 12b-1 and

have not requested approval of their 12b-1 Plans by the SEC or its staff.

7. Shares of any Fund held in a shareholder's name for at least 15 days may be exchanged for shares in any other of the Funds distributed by the Underwriter. Exchanges for shares with a value in excess of \$1 million will require prior Fund approval. An investor must invest a minimum of \$1500 to open a new account. Under the proposed exchange offer, a minimum of \$1000 must be exchanged unless prior approval is obtained from the Fund into which the exchange is being made. In addition, if the total investment in a Fund falls below \$750 (other than because of market fluctuation) the Fund may, after notice, redeem the shares. If a shareholder has an account with another Fund the shareholder will be given an opportunity to aggregate the assets. Shares will be exchanged on the basis of net asset value per share, plus an applicable sales charge differential if the exchange is from a No Load Fund to a Load Fund and no previous sales charges has been paid. However, if these shares are subsequently exchanged for No Load shares and then again exchanged for Load shares, no further charge will be assessed except insofar as the new purchase of load shares exceeds the applicable amount of sales charges already paid for existing purchases. In exchanges between Load Funds, any applicable load differential will be assessed. If fewer than all of a shareholder's shares are exchanged, whether to or from a Load or No Load Fund, those for which no additional sales charge would be assessed will be considered to be exchanged first; i.e., in all cases accumulated sales charges will be applied before new sales charges are imposed, and only purchases in excess of the amount as to which sales charges have already been paid will be subject to sales charges.

8. Applicants reserve the right to modify or terminate the exchange privilege upon 60 days' written notice to shareholders, subject to Conditions 2 and 3 below. Applicants have communicated and will communicate the availability of the exchange privilege to their shareholders in each Fund's current prospectus, annual or semi-annual report to shareholders, and in various other informational materials.

9. Under the exchange program, the commissions received by sales representatives will be the same as those received when shareholders invest directly in the Funds. Applicants acknowledge, however, that the payment of a sales charge to brokers or dealers in connection with exchanges may provide sufficient incentive for

brokers or dealers to initiate such exchanges for their own benefit. Therefore, upon issuance of the requested exemptive order, Applicants will mail to each broker or dealer firm a letter announcing the exchange program, stating the concerns of the Applicants, and reminding each participant and its representatives of their responsibilities under their contract with the Underwriter, under federal securities laws, and under the National Association of Securities Dealers' Rules of Fair Practice. In conjunction with the transfer agent of the Load and No Load Funds, Applicants are also currently developing a method of identifying exchanges in which a commission was paid to a registered representative. Applicants shall monitor the information resulting from such identification to determine if exchange activity by any particular representative appears excessive, and if such a determination is made, Applicants will notify the representative's compliance officers.

Applicants' Legal Conclusions

1. The purpose of the exchange offers is to permit a shareholder of any one of the Funds to transfer such investment to another Fund in the event that the shareholder's investment objectives change, without his losing the benefit of any sales charge previously paid. The proposed exchange offers are fair and equitable to the Funds' shareholders, while at the same time giving them necessary flexibility in their financial planning. The program provides an equitable basis for an exchange of shares, does not discriminate unjustly against any class of shareholders and prevents disruption of the distribution system.

2. Sufficient internal monitoring controls and measures to prevent churning have been established to provide protection to shareholders from abuses in the use of the exchange privilege and to insure compliance with securities laws and NASD rules.

3. The order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Proposed Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 12b-1 (and any amendments thereto). Applicants will also comply with proposed Rule 11a-3 (as adopted or amended by the Commission) under the Act except that

the Funds may share a wholly-owned subsidiary of VKM, or a subsidiary under common control with VKM, instead of VKM, as principal underwriter or investment adviser.

2. Applicants shall provide shareholders at least 60 days' written notice prior to any termination or modification of the exchange privilege, but will not restrict the exchange privilege without first obtaining an order from the Commission permitting such modification of the exchange privilege.

3. The right to modify or terminate the exchange privilege offered by any Fund will be disclosed in the applicable prospectus as well as in any sales literature or advertising materials referring to the exchange privilege.

4. Any offers of exchange in the future by or on behalf of the Funds will be made in compliance with the terms and conditions of the order as modified from time to time by the SEC upon further application.

5. Any variations in, or elimination of, the sales load charged upon purchases of shares of the Funds will be made in compliance with Rule 22d-1 under the Act as such rule may be amended or modified from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15580 Filed 7-11-88; 8:45 am]

BILLING CODE 8010-01-8

SMALL BUSINESS ADMINISTRATION

SBA Form 1086, Secondary Participation Guaranty and Certification Agreement

AGENCY: Small Business Administration.
ACTION: Final Revision of SBA Form 1086.

SUMMARY: On March 9, 1988 (53 FR 7618), the public was asked to comment on a proposed revision of Small Business Administration (SBA) Form 1086, Secondary Participation Guaranty and Certification Agreement. Over 130 comments were received. These have been analyzed and SBA has made certain changes based thereon. SBA is hereby publishing the final revision of Form 1086.

EFFECTIVE DATE: The revised Form 1086 must be used on any Guaranteed Interest received by the Fiscal and Transfer Agent on and after September 1, 1988.

FOR ADDITIONAL INFORMATION CONTACT: James W. Hammersley (202-653-5954) or Allan S. Mandel (202-653-6896), Room

800, Small Business Administration, 1441 L Street NW., Washington, DC 20418.

SUPPLEMENTARY INFORMATION: The Small Business Administration has prepared a final revision of the document (SBA Form 1086) used to execute a sale of the Guaranteed Interest portion of a 7(a) loan into the secondary market. The revision reflects changes based on the experience SBA has gathered in administering the secondary market since the President signed into law the Small Business Secondary Market Improvements Act in 1984 (Pub. L. 98-352; 98 Stat. 329). It incorporates several changes that have been suggested by lenders, investors and broker/dealers.

On March 9, 1988 (53 FR 7618), the public was asked to provide comments on the proposed revision. Over 130 comments were received. These have been analyzed and SBA has made certain changes to the revision that had been proposed.

The major resulting changes to Form 1086 are these:

1. A servicing fee of no less than 1.0 percent per annum will be required on any Guaranteed Interest sold at a price greater than par (paragraph 6(e)). SBA had originally proposed a servicing fee of no less than 2.0%. This recommendation was based upon the observation that while Federal Reserve Board data show the average operating expense of banks to be about two percent of "Commercial and Other" loan volume, almost 30 percent of the loans entering the secondary market in FY 1987 carried a servicing fee of 0.5 percent or less.

The comments focussed on the proposal. While most commenters supported a required minimum servicing fee, they unanimously argued that the cost of servicing an SBA loan was less than 2.0%. Some commenters submitted data on their own servicing costs as a percent of loan volume. Some pointed out that the Federal Reserve Board data covered all operating expenses, not only servicing costs.

SBA has reduced the minimum servicing fee from 2.0% to 1.0% per annum. This action is based upon the cost data submitted, other information put forward in the comments, and SBA's need to find an alternative Lender to service the loan if the original Lender fails. This provision will apply to loans sold at a price greater than par.

SBA has also clarified that the minimum servicing fee of 1.0% shall be transferable only to an entity to which servicing is transferred under the provisions of SBA Form 750 (Loan Guaranty Agreement), SBA Regulations

and SBA's Standard Operating Procedures. This limitation comports with the statutory mandate for SBA to develop procedures as necessary to facilitate, administer and promote secondary market operations. [See Title 15, United States Code, Section 634(f)]. To permit the servicing fee to be sold by the servicing Lender would negate its purpose: to provide the Lender with both the continuing income and the incentive to service loans properly and keep them on their books.

2. The secondary market is a closely connected system that functions best if the interests of each of the major participants—the small business Borrower, the Lender, the Broker/Dealer and the Investor—are properly balanced. In order to provide a better balance, a new authority for emergency repurchase by the Lender is being implemented (paragraph 20). SBA is confronted with the need to establish a policy for the situation in which a Borrower's business will probably fail unless a modification, such as a rate reduction, is granted. Every year a few such cases arise in which the Lender is willing to grant a rate reduction or other modification but cannot do so because either the Investor is not willing or the loan is in a pool, in which case it is infeasible to request Investor approval because of multiple Investors. SBA proposes to permit a Lender to repurchase if the SBA field office, after careful analysis, concludes that an emergency exists in which the Borrower's business will probably fail if the change is not approved and will probably survive if the change is approved. SBA intends that this authority be used only in carefully selected cases. This is not to be construed as general or wholesale authority for unilateral repurchase by Lenders. Such an interpretation would be extremely damaging to the secondary market.

No changes have been made from the earlier proposal in paragraph 20. Seven commenters addressed this proposal; six supported it and one was opposed.

3. Timely action is essential to an efficient secondary market. SBA is providing a more precise definition of the time parameters of secondary market operations, particularly with regard to such time-sensitive activities as remittance by Lender of Borrower payment, the furnishing by Lender of transcripts on loans that are in default and must be purchased, and the required advance notice from Lender to the fiscal and transfer agent (FTA) of Borrower's intent to prepay (paragraphs 6, 10, 11, 12, 13, 15, 16, and

19). Remittance information (SBA Form 1502) and remittance(s) shall be due at the FTA on the third of every month (paragraph 6(c)). SBA shall levy a late payment penalty of 5% of the amount remitted on \$100, whichever is greater (subject to a maximum of \$5,000 on lender's total monthly remittance), on any remittance or remittance information not received by the fiscal and transfer agent by the fifth of the month. Lender's FTA's failure to comply with a request for transcript within ten business days shall result in a \$100 penalty payable to the SBA (paragraph 10(a)). Lender's failure to provide to FTA the required ten days advance notice of Borrower's intent to prepay will result in a \$100 penalty (paragraph 15).

If any fees or penalties are not remitted on a timely basis by lender, the SBA and the FTA reserve the right to withhold them from the settlement of any future guaranteed interest sale or payment on any defaulted guaranteed loan in the Lender's portfolio. This is analogous to the offset practice of private sector lenders.

Three commenters supported this proposal.

Other, while not opposing the penalties in principle, questioned certain specifics. One commenter believed that the fine for FTA's non-receipt of remittance was restrictive and placed an unfair administrative burden on participating lenders. Another requested that the three and five calendar days be changed to three and five business days. SBA believes that the deadline and penalty are necessary because a small but significant percentage of Lenders have consistently failed to remit in accordance with the former requirement that remittances be sent on the last business day of the month. In response, SBA has re-defined the deadline as date of receipt by FTA and has imposed a penalty for noncompliance. SBA does not believe the deadline to be unreasonable. Most Borrower payments are due early in the month. In a typical case the Lender will be able to earn interest income for almost a full month on each Borrower payment.

Another commenter pointed out that in many cases Lenders do not themselves receive ten days advance notice of a prepayment and that it is therefore unfair for SBA to require lenders to furnish such notice to the FTA. The SBA requirement is based upon the need to provide the FTA with sufficient warning that it can recover the certificate from the Investor prior to the payoff. The FTA cannot transmit the payoff to the Investor without first retrieving the certificate. Time is of the essence. Without sufficient notice,

Investors would lose interest days whenever a payoff occurs. Lenders can protect themselves by requiring, as part of the loan agreement, that Borrowers provide sufficient advance notice of a prepayment.

A commenter suggested that penalties be imposed on the FTA as well as on Lenders. Both the draft and this final revision impose penalties on the FTA for lack of timely performance of duties [see paragraph 7(d) and 11].

SBA has made one technical change in paragraph 6(a) to clarify its intent that the dates for FTA receipt of remittance information and remittance(s) apply to all the Guaranteed Interests in the Lender's portfolio that are registered with the FTA.

4. In the March draft revision, if the Borrower failed to make the first three payments in full due after the loan is sold into the secondary market, the Lender would be required to repurchase it from the Registered Holder at a price equal to the sum of the outstanding balance, accrued interest and premium, if any, received by the Lender (paragraph 3). The Lender has always been required to certify that it has no knowledge of any likely default or prepayment by Borrower. However, some cases have occurred in which the loan defaults or prepays immediately upon sale. SBA proposed this change at the request of broker-dealers in order to provide increased investor protection in such cases.

Ten writers commented on this proposal: seven in opposition and three in support. Opponents had the following comments:

- The market will take care of the problem, because if a Lender's loans default in the first three months, demand for that Lender's product will decline.
- Let the parties handle it as arm's-length transactions.

SBA does not publish default rates or defaults during the first three months by individual lenders. Therefore the method proposed by these writers is not available. SBA anticipates that there would be considerable lender opposition to publishing such information.

It is SBA's understanding that some broker-dealers are protecting themselves against early prepayment by making their purchase of a Guaranteed Interest from a Lender contingent upon non-default by Borrower for the first three or four months. This provides protection to the party buying from the Lender, but if the Certificate is resold or if interest is stripped, subsequent purchasers have no such protection.

Supporters of the proposal had the following recommendations:

- Monies should be distributed equitably to all holders of interest, including holders of individual loans, pool portions and originator fees.
- SBA should specify that the premium refund applies if the Lender exercises its right to a deferment within the first three months.
- The FTA should monitor to detect whether a situation of nonpayment meets the parameters of the proposed revision, to demand from Lender the appropriate sum and to notify SBA of its action. SBA should then enforce compliance through its field offices.

SBA has revised the language of the original proposal. In the final revision published herein, paragraph 3 provides that if the Borrower fails to make the first three payments in full due after the Warranty Date and if the Guaranteed Interest is repurchased pursuant to paragraph 10, the Lender shall purchase the Guaranteed Interest from the Registered Holder at a price equal to the outstanding balance plus accrued interest plus the premium, if any, received by the Lender. If, in the alternative, SBA purchases the Guaranteed Interest pursuant to paragraph 11, the SBA shall pay a price equal to the outstanding balance plus accrued interest and the Lender shall refund the premium. Liability of the Lender for refund of the premium shall not be affected by any deferment that may be granted under paragraph 2. SBA shall bear no liability for refund of the premium if the Lender fails to repay it. Lender's failure to reimburse the Registered Holder for the premium may, as determined by SBA, constitute a significant violation of the Rules and Regulations of the Secondary Market. If the Lender has repurchased the Guaranteed Interest and if the Borrower subsequently makes installment payments in full for a period of twelve consecutive months, the Lender may resell the Guaranteed Interest in the Secondary Market. The holding period has been changed from six months in the previous draft to make it consistent with that of paragraph 20.

The FTA will notify the Lender and request a refund of premium whenever a purchase falls into this category. The Lender will remit the premium refund to the FTA, which will distribute it equitably to the Registered Holder(s) of Guaranteed Interest Certificates or Pool Certificates and to the owners, if any, of Originator Fees.

All distributions to Certificate Holders will be made on a pro rata basis.

Any case in which the lender has not remitted the refund within 30 days of a

request from the FTA will be referred to the SBA for further action.

An Originator Fee is an increment of interest stripped from the interest flow on a Guaranteed Portion, primarily to facilitate pooling. Pooling rules permit a 2.0% variation (i.e. 200 basis points) in the net interest rates (Borrower rate—Lender servicing fee—FTA fee) on loans in a given pool. The pool interest rate must equal the lowest net interest rate on any loan in the pool. For example, a pool might contain loans with net interest rates of prime and prime + 1.5%. The pool rate on such a pool must equal prime. In this case originator fees of 1.5% would be stripped from the prime + 1.5% loans.

On a loan with Originator Fees SBA will prescribe a formula that divides the refund of premium according to the proportion of the premium purchased by each of the two parties of interest: the Registered Holder(s) of the Guaranteed Interest certificate or Pool certificate(s) and the owner of the Originator Fee. The Registered Holder(s) will receive a proportion equal to the premium paid by the Registered Holder(s) after the loan is stripped divided by the original premium received by the lender. The owner of the Originator Fee will receive the remainder of the premium refund.

The premium received by the Lender is recorded on the records of the FTA. The premium paid by the Registered Holder after the Originator Fee is created may not be known, so a "shadow price" will have to be estimated.

Consider the following example. Assume a Guaranteed Interest certificate with an 11% net coupon, an FTA fee of 1/4%, a 75 day payment delay, a 6% constant prepayment rate (CPR), and a maturity of 120 months. Assume that the lender receives a price of 105.8 as a percent of par. The purchaser strips 2.0% as an originator fee. What figure should be used as the price paid by the Registered Holder after the loan is stripped? If the Guaranteed Interest were sold by the lender, stripped, and resold simultaneously, there would be a market price to refer to. In reality, most loans will probably not be resold immediately but will be held in inventory to be pooled after some passage of time. Over time, supply and demand conditions change. In addition, the creation of a pool itself produces an increment of value due to the timely payment guaranty, the ameliorating effect of a pool on prepayment and loss of premium, and ease of recordkeeping. Indeed, if the Originator Fee is small, 1/4% for example, the price paid for the pool certificate may exceed the price paid to the lender. The use of such a price in the preceding formula would

result in the entire refund going to the Registered Holder and none to the Originator Fee owner. But that cannot be correct, as the Originator Fee owner paid a portion of the premium and is obviously entitled to something.

There is information available to provide a determination and more accurate result, however. The yield on the original transaction can be computed and, employing the assumption of constant yield, used to calculate a shadow price or premium that can be incorporated into the formula. In the previous example, the mortgage yield on the security at the point it is purchased from the Lender is 9.08%. An originator fee of 2.0% is then stripped from this Guaranteed Interest with its 11.0% coupon, for a net coupon of 9.0%. We then calculate the price at which a 9% loan with a 1/4% FTA fee, a 75 day delay, a 6% CPR and a 120 month maturity would have to sell in order to yield 9.08%. The answer is 98.6. The loan would have to sell at a discount. The entire premium would have been purchased by the owner of the originator fee, who is entitled to all of the refund.

If a 1.0% originator fee is stripped, the resulting 10% net coupon loan would have to sell at 102.2 in order to yield 9.08%. Dividing 2.2 by 5.8 (the premium received by the Lender) gives 0.38. Thus 38% of the refund would be distributed to the Registered Holder(s) and 62% to the owner of the Originator Fee.

This plan will be followed in implementing the new provision in paragraph 3.

5. SBA is modifying its procedures in order to encourage more timely action by SBA and Lender when a borrower encounters problems that threaten the repayment of the loan (paragraphs 10 and 11). The goal is to encourage proper servicing action as soon as possible. The FTA will provide to each SBA field office a monthly list of its loans that are past due according to the records of the FTA. The field office will contact the Lender to determine the status of the loan. The Lender will verify whether (1) the interest-paid-to date is more than sixty days in arrears or (2) default by borrower has continued uncured for more than 60 days in making payment, when due, of any installment of principal or interest due on the note. If the loan is in either category, SBA, after consultation with the Lender, will within ten days determine whether SBA or the Lender is to purchase the Guaranteed Interest or decide upon appropriate remedial servicing action pursuant to paragraph 2.

Four commenters addressed this proposal, three in support and one in opposition. Two commenters voiced

concern over the additional workload the new procedures would place on District Offices. SBA will carefully monitor field office performance in implementing the new system.

Technical corrections were made from the earlier proposals in paragraphs 10 and 11.

In addition, miscellaneous technical corrections have been made in various other portions of the previous draft.

James Abdnor,
Administrator.

SBA Loan Number _____

Secondary Participation Guaranty and Certification Agreement

Important Information

This form is to be used for the initial transfer only. All subsequent transfers must use the detached assignment form 1088. Loans sold using SBA Form 1084 must be certificated prior to resale: Use SBA Form 1085.

A. Lender Certifications. By signing this document, Lender certifies, among other items, that (see paragraph 3 of the Terms and Conditions herein):

(1) Lender, including its officers, directors, and employees, has no knowledge of a default by the Borrower and has no knowledge or information that would indicate the likelihood of default. (2) Lender acknowledges that it has no authority to unilaterally repurchase the Guaranteed Interest from Registered Holder without written permission from the SBA.

B. Borrower payments. Lender shall send to the FTA the FTA share of all Borrower payments received after settlement of the loan sale. Do not send any payments directly to the investor or the broker/dealer. Retain a copy of this form. The wire transfer receipt from settlement through the FTA will be Lender's notification that the sale is complete. Lender will not receive a return copy of this form.

C. Lender payment and late payment penalty. Lender payment and remittance information (SBA Form 1502) shall be due at the FTA on the third of every month or the next business day thereafter if the third is not a business day. SBA shall levy a late payment penalty of 5% of the amount remitted or \$100, whichever is greater, (subject to a maximum of \$5,000) on any payment and lender remittance statement (Form 1502) not received in the offices of the FTA by the fifth of the month or next business day thereafter if the fifth is not a business day. This penalty will be paid through the FTA along with the late penalty identified in paragraph 6(c) due

to the FTA (see paragraph 6 of the Terms and Conditions for specific details.)

D. Payment modifications. Lender may approve one deferral of payment for up to three monthly payments without obtaining prior permission from the Registered Holder. Lender shall immediately notify the FTA and SBA. Any other payment modification must receive prior approval by the Registered Holder. Requests for payment modification must be forwarded to the FTA who will forward the proposed modification to the Registered Holder or provide the name of such Registered Holder (at Registered Holder's discretion) to the Lender for direct negotiation (see paragraph 2 of the Terms and Conditions).

E. Borrower prepayments. For loans approved by or on behalf of SBA after February 14, 1985, Lender must give 10 days advance notice to the FTA in order to give the FTA time to request that the Registered Holder return the certificate. On the date of prepayment, Lender will wire funds consisting of principal and accrued interest to the date immediately preceding the date funds are wired plus any penalty or fees to the FTA (see paragraph 15 of the Terms and Conditions).

SBA Form 1086 (6-88) Previous editions are obsolete.

The Small Business Administration, an Agency of the United States Government ("SBA") and the Lender named below ("Lender") entered into a guaranty agreement on SBA Form 750 ("750 Agreement") applicable to a loan ("Loan") made by Lender in participation with SBA to the Borrower ("Borrower") named below evidenced by Borrower's Note and any modifications thereto ("Note") a copy of which is attached hereto and incorporated by reference. Lender is the beneficiary under the 750 Agreement of SBA's guarantee of the specified percentage of the outstanding balance of the Loan ("Guaranteed Interest").

Lender _____
Address _____
Zip _____
Borrower _____
Address _____
Zip _____
Contact Person _____
Telephone Number _____

Lender certifies the following as of the date of Lender's signature:

Date of 750 Agreement _____
Percent of SBA's Guarantee _____
Date of Note _____
Original Face Amount of Note \$ _____
SBA Loan Authorization Date _____ (date of SBA form 529B)
Outstanding principal amount of Loan \$ _____

Outstanding principal amount of Guaranteed Interest \$ _____

Guaranteed portion has a ☐ fixed rate or ☐ variable rate (check one)
Unguaranteed portion has a ☐ fixed rate or ☐ variable rate (check one)

Interest is paid to but not including: _____ (Date)

Interest is calculated on:
(Check one): ☐ 30/360 ☐ Actual Days/365 (Other methods prohibited.)

This interest accrual method shall be maintained for the life of the loan.

Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall be: _____ % per annum, and shall remain at this rate for the life of the Loan. Such servicing fee shall be no less than 1.0% per annum on any Guaranteed Interest sold at a price greater than par. See examples of principal, interest and service fee calculations attached to this document.

Price paid for the Guaranteed Interest (Net of accrued interest. Otherwise include all money and other items of value exchanged.)

Part A. Use this part only for split wire settlement—when the FTA is directed to split the funds received from the purchaser between the selling institution and a broker/dealer.

Price paid by purchaser: \$ _____ % of Par

Price received by seller: \$ _____ % of Par

Price received by broker: \$ _____ % of Par

Part B. Use this part for all other settlements.

Price paid by purchaser: \$ _____ % of Par

Cash flow yield based upon constant prepayment rate. (Enter both mortgage and bond equivalent yield. For a variable rate loan, the yield should be based upon the current coupon rate and should be entered as a spread against prime. Example: Prime +1.0% based upon 10% Prime.)

Constant Annual Prepayment Rate assumption _____ % per year. (Printed each month in the Pool Factor Table produced by the FTA.)

Certificate interest rate (Borrower's note rate—Lender's servicing fee—FTA fee (1/4% per year)) _____ % per year.

Mortgage yield:

[Fixed rate loans] _____ %
[Var. rate loans] Prime (+/-) _____ % based upon _____ %

Bond equivalent yield:

[Fixed rate loans] _____ %
[Var. rate loans] Prime (+/-) _____ % based upon _____ %

prime

Lender hereby assigns the guaranteed interest to Purchaser/Registered Holder as follows:

Name _____
Address _____
Zip _____
Contact Person _____
Telephone Number () _____

Under the penalties of perjury, Purchaser/Registered Holder certifies that its Taxpayer Identification Number is _____

If a Taxpayer Identification Number is not provided, interest earned will be subject to withholdings.

Registered Holder requests SBA to issue through the Fiscal and Transfer Agent (FTA) a Guaranteed Interest Certificate ("Certificate") evidencing ownership of the Guaranteed Interest in the name of Registered Holder (such person or entity, or any subsequent transferee, during its respective period of ownership of the Certificate, to be called "Registered Holder"). SBA, Lender and Registered Holder (for itself and each subsequent Registered Holder) agree to the appointment by SBA of FTA to serve as the agent to transfer Certificates and to receive from Lender loan repayments made by Borrower and to transmit such payments to Registered Holder.

A written notification to or demand upon SBA pursuant to this Agreement shall be made through the FTA to:

SBA Servicing Office _____
Address _____
Zip _____

SBA Servicing Office Code (Please see attached list of Office Codes at end of document) _____

Terms and Conditions

1. Lender's Sale of Guaranteed Interest. Lender has sold the Guaranteed Interest and acknowledges that it has received value for the Guaranteed Interest. Lender was given notice and acknowledgment of the transfer of the Guaranteed Interest by completing the following legend on the Note:

The guaranteed portion of this Note has been transferred to a Registered Holder for value.

Dated: _____

(Lender)

Lender has delivered or hereby delivers to the FTA, a photocopy of the Note and any modifications thereto with the legend, and such photocopy shall be incorporated into this Agreement. This legend shall also serve as notification

for any future transfer of the Guaranteed Interest.

2. Loan Servicing. Lender shall remain obligated under the terms and conditions of the 750 Agreement, and shall continue to service the Loan in the manner set forth in the 750 Agreement. Modifications in the 750 Agreement or to the Note not affecting repayment terms of the Note may be effected by Lender or SBA without the consent of Registered Holder (for itself and each subsequent Registered Holder). To aid the orderly repayment of Borrower's indebtedness, Lender, at the request of the Borrower, may grant one deferral of Borrower's scheduled payments for a continuous period not to exceed three (3) months of past or future installments. Lender shall immediately notify FTA and the relevant SBA field office in writing of any deferral approval, including the GP number, the borrower's name, the term of such deferral, the date Borrower is to resume repayment of its obligation, and reconfirmation of the basis of the interest calculation (e.g. 30/360, etc.) Interest is not waived, but deferred. Subsequent to the deferral period, payments received from Borrower will first be applied to accrued interest until such time as interest is paid to a current status and then to principal and interest. Registered Holder may not demand repurchase of the Guaranteed Interest during the deferral period, or before Borrower's failure to pay the first scheduled installment following the deferral period. Lender shall not authorize any additional deferral or an extension of Loan maturity without the prior written consent of the Registered Holder. No change in the terms and conditions of repayment of the Note other than the deferral authorized in this paragraph shall be made by Lender or SBA without the prior written consent of Registered Holder. A request for such payment modification must be forwarded to the FTA, which will forward the proposed modification to the Registered Holder or provide the name of such Registered Holder (at Registered Holder's discretion) to the Lender for direct negotiation.

3. Representations and Acknowledgment of Lender. Lender hereby certifies that the Loan has been made and fully disbursed and that the full amount of the guaranty fee has been paid to SBA. The outstanding principal amount of the Guaranteed Interest and date to which interest is paid as certified by Lender are accepted by SBA and have been warranted by SBA to the Registered Holder as of the SBA Warranty Date (date this Agreement is

executed and settled by the FTA); provided, however, that Lender shall be liable to SBA for any damage to SBA resulting from any error in the certified principal amount, percentage of the Guaranteed Interest, or date to which interest is paid. Lender represents that as of the Warranty Date neither it nor any of its directors, officers, employees, or agents has or should have, through the exercise of reasonable diligence, any actual or constructive knowledge of any default by Borrower or has any information indicating the likelihood of a default by Borrower or the likelihood of prepayment of the Loan (by refinancing or otherwise).

If the Borrower fails to make the first three payments in full due after the Warranty Date and if the Guaranteed Interest is repurchased pursuant to paragraph 10, the Lender shall purchase the Guaranteed Interest from the Registered Holder at a price equal to the outstanding balance plus accrued interest plus the premium, if any, received by the Lender. If, in the alternative, SBA purchases such Guaranteed Interest pursuant to paragraph 11, the SBA shall pay to the Registered Holder and amount equal to the outstanding balance plus accrued interest and the Lender shall pay to the Registered Holder an amount equal to the premium, if any, received by the Lender. Liability of Lender for refund of premium shall not be affected by any deferral that may be granted under paragraph 2. SBA shall bear no liability for refund of premium if Lender fails to refund premium. Lender's failure to refund such premium to Registered Holder may, as determined by SBA, constitute a significant violation of the Rules and Regulations of the Secondary Market. If Lender has repurchased pursuant to this paragraph and if Borrower subsequently makes installment payments in full for a period of twelve consecutive months, Lender may re-sell the Guaranteed Interest it had so re-purchased.

Lender hereby acknowledges that it has no authority pursuant to this Agreement unilaterally repurchase the Guaranteed Interest from Registered Holder without written permission from the SBA.

4. Obligations and Representations of Registered Holder. Pursuant to this Agreement, SBA shall purchase the Guaranteed Interest from Registered Holder regardless of whether SBA has any knowledge of possible negligence, fraud or misrepresentation by the Lender or Borrower, provided neither Registered Holder nor any person or entity having the beneficial interest in

the Guaranteed Interest participated in, or at the time it purchased the Guaranteed Interest had knowledge of, such negligence, fraud or misrepresentation. Subject to the provisions of 18 U.S.C. § 1001 (relating, among other things, to false claims), Registered Holder and any person or entity having the beneficial interest therein hereby warrants that it was not the Borrower, Lender, or an "Associate" of the Lender (as defined in Title 13, Code of Federal Regulations, Part 120), and anyone standing in the same relationship to the Borrower, and had neither participated in nor been aware of any negligence, fraud or misrepresentation by Lender or Borrower with respect to the underlying Note or related Loan documentation. Neither execution hereof by SBA, or purchase by SBA from Registered Holder shall constitute any waiver by SBA of any right of recovery against Lender, Registered Holder, or any other person or entity. Registered Holder (for itself and each subsequent Registered Holder) hereby acknowledges that the Loan may be terminated on a date other than its maturity date, in which case the Certificate will be called for redemption at par and will cease to accrue interest as of the date of such termination.

5. Issuance of Guaranteed Interest Certificates. SBA, Lender, and Registered Holder (for itself and each subsequent Registered Holder) agree that ownership of the Guaranteed Interest shall be evidenced by a Certificate to be issued by SBA. SBA shall issue such Certificate, either through its own facilities or by designating and authorizing such issuance by FTA.

FTA shall be the custodian of the executed original of this Agreement. The Agreement shall be delivered to FTA immediately after execution by the Lender and the Registered Holder. Each Registered Holder shall receive the Certificate described herein. Upon request therefor and payment of a reproduction fee, a Registered Holder may obtain from FTA a copy of the executed SBA Form 1086 pertaining to the Guaranteed Interest represented by the Certificate.

Upon completion of execution of this Agreement, SBA, through FTA, shall issue to Registered Holder (or, if FTA is timely so notified in writing by Registered Holder, to Registered Holder's assignee) a Certificate evidencing the ownership of the Guaranteed Interest of the Loan. If Registered Holder is not the person or entity having the beneficial interest in the Certificate, Registered Holder

hereby represents that it has obtained from the person or entity having the beneficial interest in the Certificate, authorization appointing Registered Holder as the agent of such person or entity with respect to all transactions arising out of the performance of their respective obligations under SBA Form 1086. The Certificate shall identify the Loan and shall state, among other things: (i) the name of the Registered Holder, (ii) the Principal Amount of Guaranteed Interest as of the SBA Warranty Date, (iii) the Certificate Interest Rate, and (iv) the Borrower's Payment Date. Transfer of the Guaranteed Interest by Registered Holder may be effected by the transferee (i) obtaining from the transferor the execution of the detached Assignment and Disclosure Form (SBA Form 1086), (ii) presenting the Certificate and executed Assignment and Disclosure Form to FTA for registration of transfer and issuance of a new Certificate to the transferee, (iii) paying to FTA a Certificate issue fee to be set from time to time by SBA, and (iv) presenting the following information: Certificate number; original principal amount of the Certificate; exact spelling of the name in which the new Certificate is to be issued; complete address and tax identification number of the new Registered Holder; name and telephone number of the person handling the transfer; and complete instructions for the delivery of the new Certificate.

6. Obligations of Lender.

(a) FTA must receive from Lender by the third day of every month or the next business day thereafter if the third is not a business day, the FTA's share of all sums which Lender received from Borrower as regularly scheduled payments during the preceding month on each loan which is registered with the FTA. By the same date, Lender shall provide the following information on SBA Form 1502 (or an exact facsimile format) with respect to each Loan which the Lender has sold and which is registered with the FTA regardless of whether the Borrower made a payment in the preceding month:

See Payment Calculation Example Attached to This Document

1. The SBA loan number
2. The alpha abbreviation for the originating SBA field office
3. The Note interest rate or rates if the interest rate on a variable rate loan changed during the payment period
4. The interest amount due the FTA
5. The principal amount due the FTA
6. The total amount due the FTA for the particular loan

7. The time period covered by the interest rate(s) listed in item 3
8. The number of days in the interest period
9. The calendar basis (30/360 or actual days/365 only)
10. The closing principal balance for the loan
11. A grand total figure for items 4, 5, and 6
12. A late payment penalty (if applicable)

(b) With the exception of borrower prepayments or payoffs (see paragraph 15), payments received other than as regularly scheduled in the previous month, must be remitted to the FTA within two business days of receipt of collected funds and shall include the information described in items 1-12 above.

(c) Lender remittance is due at the office of the FTA by the third of the month following a regularly scheduled payment. If Lender remittance, including complete payment information, is not received by the fifth of the month or the next business day thereafter if the fifth is not a business day, Lender shall pay (i) to SBA a late penalty of the greater of \$100.00 or 5% of the payment amount remitted (subject to a \$5,000 maximum on Lender's total monthly remittance) plus (ii) a penalty to the FTA equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee), plus (iii) a late penalty charge calculated at a rate of 12% per annum on the unremitted amount. See example of late payment calculation attached to this document. The total amount, including any penalties, will be paid to the FTA when the late payment is remitted. If these penalties are not included in the remittance, FTA and SBA reserve the right to withhold these penalties from the settlement of any future guaranteed interest sale or payment on any defaulted guarantee loan in the Lender's portfolio. The FTA will forward any penalties due SBA at the end of each month.

(d) Lender agrees to work with the SBA and/or the FTA to reconcile immediately any loan in which the paid to date on the Lender's books differs from the books of the FTA. Lender agrees to provide a transcript within 10 business days of receipt of a request from the SBA or the FTA. Failure to provide a transcript after a request from the FTA shall cause the Lender to be fined \$100 by the SBA.

(e) Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender

shall be no less than 1.0 per cent per annum on any Guaranteed Interest sold at a price greater than par. Such servicing fee shall be transferable only to an entity to which servicing of the loan is assigned under the provisions of SBA Form 750, SBA Regulations and Standard Operating Procedures.

7. Obligations of FTA.

(a) FTA shall have the obligation, with respect to payments received from Lender pursuant to Paragraph 6 above, to remit to Registered Holder any such payment (less applicable fees, and any late payment charges due FTA or SBA if such charge has been collected from Lender) as follows:

(i) Any payment (other than a prepayment of principal) received by FTA before the thirteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder on the fifteenth day of such following month. Any additional interest and late payment charge paid by Lender pursuant to paragraph 6(c) (ii) and (iii) hereof shall be retained by and shall become the property of FTA.

(ii) Any payment (other than a prepayment of principal) received by FTA on or after the thirteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder within two (2) business days of receipt of immediately available funds by FTA. In such case, any late charge received by FTA pursuant to paragraph 6(c)(ii) and 6(c)(iii) hereof and allocated to the period after the fifteenth day of such following month shall be remitted to Registered Holder. The balance of any such late penalty charge identified in paragraph 6(c)(ii) and 6(c)(iii) received by FTA shall be retained by and shall become the property of FTA.

(iii) Other amounts received by FTA from Lender which are not prepayments subject to Paragraph 15, may be held by FTA and applied as required herein.

(b) Upon presentation by Registered Holder of the Certificate, amounts received by FTA from Lender or SBA which would constitute a full redemption of the Certificate, or a prepayment subject to Paragraph 15, shall be remitted by FTA to Registered Holder by wire transfer within two (2) business days of receipt of immediately available funds by the FTA in accordance with Registered Holder's instructions. FTA shall retain a final transfer fee equal to a regular transfer fee.

(c) Each remittance by FTA to Registered Holder shall be accompanied by a statement of the amount allocable to interest, the amount allocable to

principal, and the remaining principal balance as of the date on which such allocations were calculated.

(d) If FTA fails to make timely remittance to Registered Holder in accordance with the above provisions, FTA shall pay to Registered Holder (i) interest on the unremitted amount at the rate provided in the Note less the rate of Lender's servicing fee and any other applicable fees, plus (ii) a late payment penalty calculated at a rate of 12% per annum on the amount of such payment.

(e) FTA agrees to identify monthly to lenders any loan in which the paid-to-date on its books differs by three days or more from the paid-to-date on the books of the Lender, provided that this data is submitted to the FTA via SBA form 1502. Such identified differences will be reconciled on a timely basis.

(f) FTA agrees to issue certificates within two business days of settlement or acceptable written notification of transfer.

(g) FTA agrees to acknowledge any Registered Holder request for late payment claims within ten days of receipt.

(h) FTA agrees to forward to Registered Holder within five business days of receipt any servicing request requiring concurrence of the investor. Furthermore, FTA agrees to forward to Lender within five business days of receipt any investor response.

8. *Transferability of Guaranteed Interest.* Each Registered Holder maintains under this Agreement the right to assign the Guaranteed Interest. Each Registered Holder of the Guaranteed Interest shall be deemed to have represented that, to the best of its knowledge, it has, and so long as it is a Registered Holder it will have no interest in the Borrower, in the Note, or in the collateral hypothecated to the Loan, other than the Guaranteed Interest held under this Agreement, and that it will not service or attempt to service the Loan or secure or attempt to secure additional collateral from Borrower.

Registered Holder, without the prior consent of SBA, Lender or FTA, may transfer the ownership of the Guaranteed Interest to a subsequent transferee, (other than Borrower, or Lender, or an "Associate" of the Lender as defined in Title 13, Code of Federal Regulations, Part 120 or anyone standing in the same relationship to the Borrower). The effective date of any such transfer of the Guaranteed Interest shall be the date on which such transfer is registered on the books of FTA. If Lender, FTA or SBA shall have made any payment to, or taken any action with respect to, the transferor Registered Holder prior to the effective

date of the transfer of the Guaranteed Interest, such payment or action shall be final and fully effective. Neither SBA, FTA nor Lender shall have any further obligation to the transferee Registered Holder with respect to such payment or action; and any adjustment between the transferor and the transferee resulting from any such payment or action by Lender, SBA or FTA shall be the responsibility and obligation solely of the transferor and the transferee. On payment date, FTA will remit payments to the person or entity which, on the books of FTA, is the Registered Holder as of the close of business on the record date, which is the last day of the prior month. Any other adjustment by and between the transferor and transferee shall be solely their responsibility and obligation. At any given time there shall be only one Registered Holder entitled to the benefits of ownership of the Guaranteed Interest, and each transferor, upon the transfer of the Guaranteed Interest, shall cease to have any right in the Guaranteed Interest or any obligation or commitment under this Agreement, except as to any appropriate adjustment of funds between the transferor and the transferee. FTA shall serve as the central registry of Certificate ownership.

9. *Certificates Lost, Destroyed, Stolen, Mutilated or Defaced.* Procedures for claim on account of loss, theft, destruction, mutilation or defacement of a Certificate are found in Title 13, Code of Federal Regulations, Part 120. The FTA, upon written request, shall provide such procedures.

10. Repurchase by Lender.

(a) As directed by the SBA, the FTA will provide to each SBA field office a monthly list of its loans that are past due according to the records of the FTA. The field office will contact the Lender to determine the status of the loan. If the Lender's records indicate that the interest-paid-to date is more than sixty days in arrears or default by borrower has continued uncured for more than 60 days in making payment, when due, of any installment of principal or interest due on the note, SBA, after consultation with the Lender, will within ten business days determine which entity—SBA or the Lender—is to purchase the Guaranteed Interest or decide upon an appropriate remedial servicing action pursuant to paragraph 2. SBA field offices will transmit the decision in writing to the FTA within five days of the decision. Lender agrees to provide a transcript of account to the SBA or the FTA within 10 business days of the request for the transcript. Lender's failure to comply with a request for transcript shall result in a \$100 penalty

payable to the SBA. If Lender is to purchase, the FTA and the Lender will reconcile the transcripts. If Lender and FTA cannot agree on the balance and paid-to-date within twenty-five business days from SBA's notification to FTA, the FTA will send the Lender's and the FTA's transcripts to the appropriate SBA field office for reconciliation by SBA. Lender shall immediately (within 5 business days from the date the transcripts are reconciled) provide 10 days advance written notice of the date of purchase to the FTA. Upon such notification, FTA shall within two business days notify the Registered Holder of the pending repurchase and request that the Registered Holder forward the certificate to the FTA. On the purchase date, Lender will (without additional notification from FTA) forward by wire transfer a payment to the FTA which includes the principal balance outstanding plus interest through and including the date of the wire transfer of funds.

(b) Written demand by FTA upon SBA for the purchase of the Guaranteed Interest shall be made not later than one hundred fifty (150) calendar days after the first date of an uncured default by Borrower on any Guaranteed Interest which for any reason was not purchased under Sections 10(a) or 11. If FTA does not make such demand by such 150th day, FTA shall be responsible for accrued interest from the 151st day of accrued interest through the period ending 30 days after the appropriate SBA field office receives the purchase documentation. For the purposes of this subparagraph, the written demand shall include a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA.

(c) Upon receipt of the purchase amount from Lender or SBA, FTA shall remit in accordance with paragraph 7 to Registered Holder such amount less applicable fees owed by the Registered Holder to the FTA or SBA, and any additional interest or late payment charges due FTA pursuant to Paragraphs 6 or 7 hereof. FTA may also deduct from such amount a final transfer charge for the final transfer and redemption of the Certificate, the amount of such final transfer charge not to exceed the normal transfer charge. Upon repurchase of the Guaranteed Interest by Lender, the rights and obligations of Lender, FTA and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement (as applicable).

11. *Purchase by SBA.* If SBA is to purchase the Guaranteed Interest under the procedure described in paragraph

10(a) hereof, the Lender and the FTA will transmit to SBA a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA within five business days of the request, and SBA will reconcile the transcripts. Lender's or FTA's failure to comply with a request for transcript within ten business days shall result in a \$100 penalty payable to the SBA by the party failing to comply. SBA shall within five business days of reconciliation provide at least ten days written notice to the FTA of the date of purchase. Upon such notification, FTA shall within two business days notify the Registered Holder of the pending repurchase and request that the Registered Holder forward the certificate to the FTA. The SBA field office will arrange to have funds wired to the FTA. The FTA shall forward such funds to the Registered Holder within two business days of receipt. The payment of accrued interest to the date of purchase on a fixed rate note shall be at the rate provided in the Note less the Lender's servicing fee. On those loans with a fluctuating interest rate, SBA's payment of accrued interest shall be at that rate in effect on the date of the earliest uncured Borrower default if the loan is in default or at that rate in effect at the time of purchase if the loan is not in default, less the Lender's servicing fee. If Lender fails to furnish a current transcript statement as required by paragraph 13(i)-(iii) within ten business days after SBA's request therefore, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible. Under no circumstances shall SBA be liable for any amount attributable to any late payment charges which may be due FTA or Registered Holder. Upon written demand by SBA, Lender shall immediately repay to SBA the amount, if any, by which the amount paid by SBA exceeds the amount of SBA's obligation to Lender under the 750 Agreement, and the amount paid by SBA for any payments by Borrower which were not remitted by Lender to FTA (including accrued interest thereon), plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest from the date of said purchase by SBA to the date of repayment by Lender. Upon purchase of the Guaranteed Interest by SBA, the rights and obligations of Lender and SBA shall be governed by the 750 Agreement and any continuing

provisions of this Agreement, and SBA shall be deemed a transferee of the Guaranteed Interest and the final Registered Holder thereof with all the rights and privileges of such Registered Holder under this Agreement.

12. *Default by Lender.* In the event Lender fails for any reason to remit to FTA the pro rata share with respect to the Guaranteed Interest of any payment made by Borrower, pursuant to Paragraph 6 hereof, for a period of seventy-five (75) calendar days or more from the date such payment was due at the FTA, SBA, within thirty (30) business days or as soon thereafter as possible after receipt by SBA of written notice from FTA of Lender's failure to forward payments as provided in Paragraph 6 and verification by SBA of uncured Lender default, shall purchase (through FTA) the Guaranteed Interest from Registered Holder pursuant to Paragraph 11 hereof, provided however, that under no circumstances shall SBA be liable for any amount attributable to any late payment charge. If SBA purchases from Registered Holder pursuant to this Paragraph, and if Borrower has not been in uncured default on any payment due under the Note for more than sixty (60) calendar days, SBA shall have the option (i) to require Lender to purchase the Guaranteed Interest from SBA for an amount equal to the amount paid by SBA to Registered Holder plus accrued interest (at the interest rate provided in the Note) from the date of the SBA purchase to the date of Lender's repurchase plus a penalty equal to 20% of the amount paid by SBA; or (ii) to require Lender to pay to SBA a penalty equal to 20% of the amount paid by SBA to Registered Holder. If, on the date SBA purchases the Guaranteed Interest from Registered Holder pursuant to this Paragraph, Borrower shall be in uncured default on any payment due on the Note for more than sixty (60) calendar days, then the provisions of Paragraph 11 hereof shall become applicable, including the obligation of Lender to repay to SBA (i) the amounts paid by SBA to Registered Holder in excess of the amount of SBA's obligation to Lender under the 750 Agreement, and (ii) any payments by Borrower which were not remitted by Lender to FTA, plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest plus the 20% penalty described above. If Lender fails to furnish a current transcript statement as required by Paragraph 13(i)-(iii) within ten business days after SBA's request therefore, then SBA may rely on the

certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment and settlement will be made as expeditiously as possible.

13. *Other Obligations of Lender.* Lender hereby consents to the purchase of the Guaranteed Interest by SBA in accordance with Paragraphs 11 and 12 hereof, and shall, within ten business days of a request therefor and without charge, furnish to SBA and to FTA: (i) A transcript of account, (ii) a current certified statement of the unpaid principal and interest then owed by Borrower on the Note, and (iii) a statement covering any payments by Borrower not remitted by Lender to FTA. Upon request by FTA at any time, Lender shall issue at no charge a certified statement of the outstanding principal amount of the Guaranteed Interest and the effective interest rate on the Note as of the date of such certified statement. Failure to provide such information shall result in a \$100 penalty payable to SBA. Lender agrees that purchase of the Guaranteed Interest by SBA does not release or otherwise modify any of Lender's obligations to SBA arising from the Loan or the 750 Agreement, and that such purchase does not waive any of SBA's rights against Lender. Lender also agrees that SBA, as the final owner of the Guaranteed Interest under this Agreement, in addition to all its rights under the 750 Agreement with Lender, shall also have the right to set-off against Lender all rights inuring to SBA under this Agreement against SBA's obligation to Lender under the 750 Agreement. After any purchase of the Guaranteed Interest by SBA, Lender shall assign, transfer and deliver the Note and related loan documents to SBA upon the written request of SBA.

14. *Default by Fiscal and Transfer Agent.* In the event FTA receives any payment from Lender or SBA which FTA fails to remit to Registered Holder pursuant to this Agreement, Registered Holder shall have the right to make written demand upon FTA for any payment unremitted by FTA. If FTA fails to remit any such payment within ten (10) business days of such demand, Registered Holder shall have the right to make written demand upon SBA therefor. SBA shall make such payment to Registered Holder within thirty (30) business days or as soon thereafter as possible of receipt of such written demand, provided SBA can verify the non-payment by FTA. SBA shall make such payment directly to Registered

Holder in the amount of the unremitted payment plus interest at the Certificate rate to the date of payment by SBA. FTA shall repay SBA for such payment by SBA to Registered Holder within ten (10) business days after receipt of written demand by SBA in an amount equal to the payment by SBA to Registered Holder plus interest (at the interest rate provided in the Certificate) computed on the unpaid balance of the Guaranteed Interest, from the date of SBA's payment to Registered Holder to the date of FTA's repayment to SBA. Such payment will not affect FTA's liability for a late payment charge under paragraph 7(d).

15. *Prepayment or Refinancing by Borrower.* For loans approved by or on behalf of SBA after February 14, 1985, Lender shall transmit written notice to FTA of Borrower's intent to make (by refinancing or otherwise and pursuant to the terms of the Note) a partial prepayment of principal subject to this paragraph, or a total prepayment of principal. Such written notice shall be received by FTA at least ten (10) business days prior to prepayment date. The "prepayment date" is the date prior to maturity that Lender has established with the FTA on which immediately available funds shall be delivered to the FTA. Lender's notice to FTA shall contain the following: (a) the prepayment date, (b) the principal amount being prepaid, (c) the accrued interest due the FTA as of prepayment date (interest shall accrue through and including the calendar day immediately prior to the date funds are wired to the FTA), and (d) a certification by Lender that to the best of its knowledge and belief the prepayment funds are either Borrower's own funds, or funds borrowed by Borrower (whether or not guaranteed by SBA) pursuant to a separate transaction, and the prepayment is in accordance with the terms of this paragraph and the Note, and applicable law. This certification is intended to guard against Lender's unilateral repurchase of the Guaranteed Interest from the Registered Holder without prior written permission from SBA. Lender's failure to provide such timely certification shall result in a \$100 penalty against Lender payable to the SBA through the FTA. Lender is obligated to wire payment on the 10th day without notification from the FTA. If the FTA is not paid by the 10th day, interest continues to accrue to the day immediately prior to the date payment is received by the FTA.

A partial prepayment of principal subject to this Paragraph is any payment which is greater than 20% of the

principal balance outstanding at the time of prepayment. FTA is not required to accept any prepayment except as described herein. FTA shall upon receipt of notice pursuant to this Paragraph advise Lender of the outstanding principal amount and the accrued interest due FTA as of prepayment date, plus any additional interest and late payment charges pursuant to paragraph 6 or 7 hereof. On prepayment date, Lender shall remit to FTA the total amount to be paid to FTA by wire transfer. For loans approved prior to February 15, 1985, Lender shall forward any prepayment to the FTA by wire transfer within three business days of receipt of the prepayment from the Borrower.

16. *Option to Purchase by SBA.* Pursuant to the 750 Agreement, SBA shall at any time have the option to purchase the outstanding balance of the Guaranteed Interest plus interest at the Note rate less the Lender's servicing fee. Failure by Registered Holder to submit the Certificate to FTA for redemption by the date specified by SBA or FTA will not entitle Registered Holder to accrued interest beyond such date.

17. *Separate or Side Agreements.* Separate or side agreements between Lender and Registered Holder, between a Registered Holder and a subsequent transferee, between FTA and Lender, or between FTA and any Registered Holder, shall not in any way obligate SBA to make any payment except as provided herein, nor shall it modify the nature or extent of SBA's rights or obligations under the terms of this Agreement or of the 750 Agreement. Furthermore, any such side agreement which has the effect of distorting the information supplied to SBA is prohibited.

18. *Indemnity and Force Majeure.* Each party to this Agreement (including FTA), for itself and its successors and assigns, agrees to indemnify and hold harmless any other party (including FTA) against any liability or expense arising under this Agreement which is due to its negligence and/or breach of contractual obligation, except that no party hereto (including FTA) shall be liable to any other party or to Registered Holder for any action it takes, suffers or omits that is (i) authorized by this Agreement or (ii) pursuant to a communication received by such party (including FTA) from any other party or from Registered Holder which is not contrary to this Agreement and which a prudent person in like circumstances would reasonably believe to be genuine, lawful and duly authorized by the sender. If any party hereto (including

FTA) is in doubt as to the applicability of this Agreement to a communication it has received, it may refer the matter to SBA for an opinion as to whether it may take, suffer or omit any action pursuant to such communication. Under no circumstances, however, shall any party hereto (including FTA) be held liable to an person or entity for special or consequential damages or for attorneys' fees or expenses in connection with its performance under this Agreement. If any party hereto (including FTA) shall be delayed in its performance hereunder or prevented entirely or in part from completing such performance due to causes or events beyond its control (including and without limitation, Act of God; postal malfunction or delay; interruption of power or other utility, transportation or communication services; act of civil or military authority; sabotage; national emergency; war; explosion, flood, accident, earthquake or other catastrophe; fire; strike or other labor problem; legal action; present or future law, governmental order, rule or regulation; or shortage of suitable parts, materials, labor or transportation) such delay or non-performance shall be excused and the reasonable time for performance in connection with this Agreement shall be extended to include the period of such delay or non-performance.

19. *Fees and Penalties.* Lender and Registered Holder shall be responsible for payment of fees and penalties required of them by this Agreement which are in effect on the date of this transaction and as published from time to time in the Federal Register. If any fees or penalties called for in this document, including but not limited to those described in sections 6, 10, 11, 12, 13, or 15, are not remitted on a timely basis by Lender, FTA and SBA reserve the right to withhold same from the settlement of any future guaranteed interest sale or payment on any defaulted guarantee loan in the Lender's portfolio. The FTA will forward any penalties due SBA at the end of each month.

20. *Emergency Repurchase Authority by Lender.* In a critical situation in which the Borrower's ability to remain in business is directly dependent upon a change in the provisions relating to Borrower's installment payments, SBA may permit Lender to repurchase the Guaranteed Interest from the Registered Holder if all the following conditions exist: (i) Lender has submitted a written request to the relevant SBA field office servicing the loan, which includes the current financial statements from the Borrower, and either a written decline to

a specific request for a change in the terms and conditions from the Registered Holder either directly or through the FTA, or a written statement from the FTA that the Registered Holder did not respond to a servicing request or that the loan is part of a pool; (ii) the proposed change in the terms and conditions is solely for the benefit of the Borrower; (iii) the Lender has certified that it will make the requested change in the terms and conditions if repurchase is approved by SBA; and (iv) the SBA field office has reviewed the financial statements of the Borrower and whatever additional information is necessary, and has concluded that an emergency exists in which the Borrower's business will probably fail if the change is not approved and that the business will probably survive if the change is approved.

If all conditions are met, the field office may approve the purchase by the Lender of the Guaranteed Interest. Guaranteed Interests purchased using this procedure may not be resold until the Borrower has made all payments as scheduled on the Note for a period of twelve consecutive months.

21. *Inconsistent Provisions and Caption Headings.* Any inconsistency between this Agreement and the 750 Agreement shall be resolved in favor of this Agreement. Any inconsistency between this Agreement and Title 13, Code of Federal Regulations, shall be resolved in favor of title 13. The provisions of the Secondary Market Regulations (Title 13, Code of Federal Regulations, Part 120) in effect on the date of this transaction and as may be amended from time to time in the Federal Register, apply to this agreement unless explicitly stated to be inapplicable. The caption headings for the various paragraphs herein are for ease of reference only and are not to be deemed part of these Terms and Conditions.

In consideration of the mutual promises herein contained, the parties agree to all the provisions of this Agreement. IN WITNESS WHEREOF, the parties have executed this multi-page Agreement this ____ day of _____, 19____, (SBA Warranty Date, supplied by SBA) in New York State.

(Registered Holder)

By: _____
Title: _____
Date: _____

(Lender)

By: _____
Title: _____
Date: _____

Small Business Administration

By: Administrator, Small Business Administration

Examined and accepted by Fiscal and Transfer Agent by: _____

Colson Services Corp., P.O. Box 54, Bowling Green Station, New York, New York 10274

Note.—The guarantee of SBA relates to the unpaid principal balance of the guaranteed portion and the interest due thereon. Any premium paid by the registered holder for the guaranteed interest is not covered by SBA's guarantee and is subject to loss in the event of prepayment or default.

This form is required to obtain a benefit.

Attachment 1—Form 1086—Sample Calculation of Lender's & Investor's Shares of a Borrower's Payment

Total borrower:	
payment received by lender...	\$3,450.05
Total interest payment:	
Borrower's balance.....	\$288,857.10
Multiplied by borrower's interest rate (percent).....	11.250
Multiplied by number of paid interest days.....	31
Divided by interest calendar basis.....	365

Total interest payment.....	\$2,759.97
Investor's share of interest payment:	
Borrower's balance.....	\$288,857.10
Multiplied by percent of loan sold to investor.....	90.000
Multiplied by interest rate sold (percent).....	9.250
Multiplied by number of paid interest days.....	31
Divided by interest calendar basis.....	365

Investor's share of interest payment to be remitted to the FTA.....	\$2,042.38
Lender's share of interest payment:	
Borrower's balance multiplied by.....	\$288,857.10
Percent of loan retained by lender.....	10.000
Multiplied by borrower's interest rate (percent).....	11.250
Multiplied by number of paid interest days.....	31
Divided by interest calendar basis.....	365

Lender's share of interest payment to be retained by lender.....	\$276.00
Lender's service fee:	
Total interest.....	\$2,759.97
Minus investor's interest.....	\$2,042.38
Minus lender's interest.....	\$276.00

Lender's service fee to be retained by lender.....	\$441.58
Total borrower:	
Payment received by lender.....	\$3,450.05

Attachment 1—Form 1086—Sample Calculation of Lender's & Investor's Shares of a Borrower's Payment—Continued

Total principal payment:	
Borrower's total payment.....	\$3,450.05
Minus total interest.....	\$2,759.97

Total principal payment.....	\$690.08
Investor's share of principal payment:	
Total principal payment.....	\$690.08
Multiplied by percent of loan sold to investor.....	90.000

Investor's share of principal payment to be remitted to the FTA.....	\$621.07
Lender's share of principal payment:	
Total principal payment.....	\$690.08
Minus investor's principal payment.....	\$621.07

Lender's share of principal payment to be retained by lender.....	\$69.01
Total to be remitted to the FTA:	
Investor's share of interest payment.....	\$2,042.38
Plus investor's share of principal payment.....	\$621.07

Total to be retained by the lender.....	\$766.00
Payment distribution proof:	
Borrower's total payment.....	\$3,450.05
Minus total to be remitted to the FTA.....	\$2,663.45
Minus total to be retained by the lender.....	\$766.00

Payment distribution proof.....	(\$0.00)
Note.—Figures shown are for illustrative purposes only.	
¹ This example utilizes an actual number of days in each month with a 365 days per year basis.	
² This same procedure may also be utilized for a constant 30 days in each month with a 360 days per year basis.	

Total to be retained by the lender.....	\$766.00
Payment distribution proof:	
Borrower's total payment.....	\$3,450.05
Minus total to be remitted to the FTA.....	\$2,663.45
Minus total to be retained by the lender.....	\$766.00
Payment distribution proof.....	(\$0.00)

Note.—Figures shown are for illustrative purposes only.

¹ This example utilizes an actual number of days in each month with a 365 days per year basis.

² This same procedure may also be utilized for a constant 30 days in each month with a 360 days per year basis.

Attachment 2—Form 1086 SBA Field Office Codes

Office Code and City

Region 1

0172 Augusta, ME
0101 Boston, MA
0180 Concord, NH

0156 Hartford, CT
0150 Montpelier, VT
0165 Providence, RI
0130 Springfield, MA

Region 2

0296 Buffalo, NY
0208 Elmira, NY
0252 Hato, Rey, PR
0235 Melville, NY
0299 Newark, NJ
0202 New York, NY
0248 Syracuse, NY

Region 3

0373 Baltimore, MD
0325 Charleston, WV
0390 Clarksburg, WV
0316 Harrisburg, PA
0303 Philadelphia, PA
0358 Pittsburgh, PA
0304 Richmond, VA
0353 Washington, DC
0318 Wilkes-Barre, PA
0341 Wilmington, DE

Region 4

0405 Atlanta, GA
0459 Birmingham, AL
0460 Charlotte, NC
0464 Columbia, SC
0438 Gulfport, MS
0470 Jackson, MS
0491 Jacksonville, FL
0457 Louisville, KY
0455 Miami, FL
0474 Nashville, TN

Region 5

0507 Chicago, IL
0549 Cleveland, OH
0545 Cincinnati, OH
0593 Columbus, OH
0515 Detroit, MI
0562 Indianapolis, IN
0563 Madison, WI
0547 Marquette, MI
0543 Milwaukee, WI
0508 Minneapolis, MN
0517 Springfield, IL

Region 6

0682 Albuquerque, NM
0637 Corpus Christi, TX
0610 Dallas, TX
0677 El Paso, TX
0623 Fort Worth, TX
0639 Harlingen, TX
0671 Houston, TX
0689 Little Rock, AR
0678 Lubbock, TX
0679 New Orleans, LA
0680 Oklahoma City, OK
0681 San Antonio, TX

Region 7

0736 Cedar Rapids, IA
0761 Des Moines, IA
0709 Kansas City, MO

0766 Omaha, NE
0721 Springfield, MO
0768 St. Louis, MO
0767 Wichita, KS

Region 8

0897 Casper, WY
0811 Denver, CO
0875 Fargo, ND
0885 Helena, MT
0883 Salt Lake City, UT
0876 Sioux Falls, SD

Region 9

0995 Agana, GU
0942 Fresno, CA
0951 Honolulu, HI
0944 Las Vegas, NV
0914 Los Angeles, CA
0988 Phoenix, AZ
0931 Sacramento, CA
0954 San Diego, CA
0912 San Francisco, CA
0920 Santa Ana, CA

Region 10

1084 Anchorage, AK
1087 Boise, ID
1086 Portland, OR
1013 Seattle, WA
1094 Spokane, WA

Attachment 3—Form 1086

Example of Penalty Calculation for Late Lender Remittance of Borrower Payment

(Paragraph 6(c))

Example 1. Assume (a) that a \$1,000 payment received by Lender as a regularly scheduled Borrower payment is received by the FTA on the tenth (a business day) of the month following receipt by Lender; (b) that the interest rate on the note less the Lender's servicing fee is 9.25%; and (c) that interest is calculated on a 30/360 basis.

(a) The late penalty is the greater of \$100 or 5% of the payment amount, subject to a \$5,000 maximum on Lender's total monthly remittance.

\$1,000 × 5% = \$50. The penalty is \$100.	\$100
(b) A penalty equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee).	
Unremitted amount.....	\$1,000
Multiplied by note rate minus Lender's servicing fee (percent).....	9.25
Multiplied by number of late days.....	5
Divided by interest calendar basis.....	360

Total penalty.....	\$16.92
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(c) A late penalty charge calculated at a rate of 12% per annum on the unremitted amount.	\$1.28
Unremitted amount.....	\$1,000
Multiplied by 12%.....	12
Multiplied by number of late days.....	5
Divided by interest calendar basis.....	360
Total penalty.....	\$1.67
	\$102.95

Attachment 3—Form 1086

Example of Penalty Calculation for Late Lender Remittance of Borrower Payment

(Paragraph 6(c))

Example 2. Assume (a) that a \$5,145.96 payment received by Lender as a regularly scheduled Borrower payment is received by the FTA on the fifteenth of the month (a business day) following receipt by Lender; (b) that the interest rate on the note less the Lender's servicing fee is 8.75%; and (c) that interest is calculated on an actual/365 basis.

(a) The late penalty is the greater of \$100 or 5% of the payment amount, subject to a \$5,000 maximum on Lender's total monthly remittance.

\$5,145.96 × 5% = \$257.30. The penalty is \$257.30.	\$257.30
(b) A penalty equal to the interest on the unremitted amount at the rate provided in the Note (less the rate of the Lender's servicing fee).	
Unremitted amount.....	\$5,145.96
Multiplied by note rate minus Lender's servicing fee (percent).....	8.75
Multiplied by number of late days.....	10
Divided by interest calendar basis.....	365

Total penalty.....	\$12.34
(c) A late penalty charge calculated at a rate of 12% per annum on the unremitted amount.	
Unremitted amount.....	\$5,145.96
Multiplied by 12% (percent).....	12
Multiplied by number of late days.....	10
Divided by interest calendar basis.....	365
Total penalty.....	\$16.92
	\$266.56

Attachment 4—Form 1086

Please Note: Public reporting burden for this collection of information is

estimated to average 3 hours and 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Administrative Information Branch, Room 200, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[FR Doc. 88-15587 Filed 7-11-88; 8:45 am]
BILLING CODE 8025-01-M

[License No. 01/01-5343]

The Argonauts MESBIC Corp.; Issuance of a Small Business Investment Company License

On March 18, 1988, a notice was published in the Federal Register (53 FR 9018) stating that an application had been filed by The Argonauts MESBIC Corporation, 155 North Beacon Street, Brighton, Massachusetts 02135, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license to operate as a small business investment company.

Interested parties were given until the close of business on April 17, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1986, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-5343 on June 17, 1988, to The Argonauts MESBIC

Corporation, to operate as a small business investment company.
(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)
Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: July 5, 1988.

[FR Doc. 88-15585 Filed 7-11-88; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular on Detonation Testing in Reciprocating Aircraft Engines

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of availability of
advisory circular (AC).

SUMMARY: This notice is to notify the aviation public of the issuance of AC No. 33.47-1, Detonation Testing in Reciprocating Aircraft Engines, which provides guidance material for acceptable means of demonstrating compliance with § 33.47 of Part 33 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: George Mulcahy, Engine and Propeller Standards Staff, ANE-110, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7077.

SUPPLEMENTARY INFORMATION: Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. The notice to announce the availability of and request comments to the draft AC was published in the Federal Register on

November 5, 1986. All comments were considered and appropriate comments were incorporated in the AC.

AC No. 33.47-1 was issued by the Engine and Propeller Certification Directorate in Burlington, Massachusetts, on June 22, 1988.

A copy of AC No. 33.47-1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Section, M-494.3, 400 Seventh Street SW., Washington, DC 20590.

Issued in Burlington, Massachusetts, on June 27, 1988.

Timothy P. Forté,
Acting Director, New England Region.
[FR Doc. 88-15433 Filed 7-11-88; 8:45 am]
BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held July 20, 1988, in Room 800, 301 4th Street SW., Washington, DC, from 11:00 a.m. to 12:30 p.m.

The Commission will meet with USIA Comptroller Stanley Silverman for a briefing on TV Marti and Mr. Peter Galbraith, Professional Staff Member, Committee on Foreign Relations, for a discussion of USIA reorganization.

Please call Gloria Kalameta, (202) 486-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: July 6, 1988.

Charles N. Canestro,
Management Analyst, Federal Register
Liaison.
[FR Doc. 88-15562 Filed 7-11-88; 8:45 am]
BILLING CODE 5230-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 13, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Preliminary 1990 Budget

The staff will brief the Commission on issues related to the budget for fiscal year 1990.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800. Sheldon D. Butts, Deputy Secretary.
July 8, 1988.

[FR Doc. 88-15082 Filed 7-8-88; 3:52 pm]
BILLING CODE 6355-01-M

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Wednesday, July 20, 1988, 10:00 a.m.

PLACE: 1111 20th Street, NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken July 7, 1988.

MATTERS TO BE CONSIDERED: Adjudication of the 1986 jukebox royalty fund distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, 202-653-5175.

Dated: July 8, 1988.

Edward W. Ray,
Acting Chairman.
[FR Doc. 88-15691 Filed 7-8-88; 3:52 pm]
BILLING CODE 1410-25-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 24398, Tuesday, June 28, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Wednesday, July 6, 1988.

CHANGE IN THE MEETING: The Closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Date: July 7, 1988.

Frances M. Hart,
Executive Officer, Executive Secretariat.
This Notice Issued July 7, 1988.

[FR Doc. 88-15647 Filed 7-8-88; 3:14 pm]
BILLING CODE 5750-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, July 19, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat on (202) 634-6748

Federal Register

Vol. 53, No. 133

Tuesday, July 12, 1988

Date: July 7, 1988.

Frances M. Hart,
Executive Officer, Executive Secretariat.

This Notice issued July 7, 1988.

[FR Doc. 88-15648 Filed 7-8-88; 3:14 pm]
BILLING CODE 5750-06-M

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 18, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Policy proposals regarding a drug testing program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 8, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-15695 Filed 7-8-88; 3:56 pm]
BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 11, 18, 25, and August 1, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 11

Tuesday, July 12

10:00 a.m.

Annual Briefing by INPO (Public Meeting). 2:00 p.m.

Briefing on Policy Paper for Plant Life Extension (Public Meeting).

Wednesday, July 13

1:00 p.m.

Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting).

Thursday, July 14

10:00 a.m.

Briefing on Final Rule on 10 CFR Part 50.46—ECSS Acceptance Criteria (Appendix K) (Public Meeting).

2:00 p.m.

Periodic Briefing by the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting).

a. Final Rule for Revision to 10 CFR Part 72 Entitled, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste" and Conforming Amendments (Tentative).

b. Shoreham—Intervenors' Motion for Reconsideration of Commission Decision (Tentative).

c. Licensing Board Decision on Operator License Examination (In the Matter of Alfred J. Morabito) (Tentative).

Friday, July 15

10:00 a.m.

Briefing on Matters of Common Interest Between NRC and EPA in the Regulation of Radiological Hazards (Public Meeting).

Week of July 18—Tentative

Thursday, July 21

10:00 a.m.

Briefing on Current Status of Nuclear Materials Transportation (Public Meeting).

2:00 p.m.

Briefing on Individual Plant Examinations Generic Letter (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Friday, July 22

10:00 a.m.

Briefing on Interim Report on BWR Mark I Containment Issues (Public Meeting).

Week of July 25—Tentative

No Commission meetings scheduled for Week of July 25.

Week of August 1—Tentative

Tuesday, August 2

2:00 p.m.

Briefing on Status, Results, and Implementation of B&W Reassessment (Public Meeting).

Wednesday, August 3

2:00 p.m.

Annual Briefing by NUMARC (Public Meeting).

Thursday, August 4

2:00 p.m.

Briefing on the Status of Sequoyah I (Public Meeting).

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) If needed).

Friday, August 5

10:00 a.m.

Briefing on Status of Efforts to Enhance Safety of Users of By-Product Materials (Public Meeting).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary.

July 7, 1988.

(FR Doc. 88-15084 Filed 7-8-88; 3:52 pm)

BILLING CODE 7580-01-0

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A25; DA-88-101]

Milk in the Chicago Regional Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Correction

In proposed rule document 88-14500 beginning on page 24298 in the issue of Tuesday, June 28, 1988, make the following corrections:

§ 1030.7 [Corrected]

1. On page 24313, in the first column, in § 1030.7(b)(2)(iv), in the fourth line, "quality" should read "quantity", and in

the seventh line, "many" should read "any".

2. On the same page, in the same column, in § 1030.7(b)(2), paragraph (v), should read:

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

3. On the same page, in the second column, in § 1030.7(b)(4), in the fifth line, "quality" should read "quantity".

BILLING CODE 1505-01-0

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Arenaria cumberlandensis*

Correction

In rule document 88-14247 beginning on page 23745 in the issue of Thursday,

Federal Register

Vol. 53, No. 133

Tuesday, July 12, 1988

June 23, 1988, make the following correction:

On page 23745, in the second column, the "EFFECTIVE DATE" should read "July 25, 1988".

BILLING CODE 1505-01-0

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Hymenoxys acaulis* var. *glabra* (Lakeside daisy)

Correction

In rule document 88-14246 beginning on page 23742 in the issue of Thursday, June 23, 1988, make the following correction:

On page 23742, in the second column, the "EFFECTIVE DATE" should read "July 25, 1988".

BILLING CODE 1505-01-0

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federal register

Tuesday
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Part II

Department of Justice

Office of Juvenile Justice and
Delinquency Prevention

Grants and Cooperative Agreements;
Private Nonprofit Missing Children's
Agencies Service Activities; Notice of
Applications

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and
Delinquency PreventionGrants and Cooperative Agreements;
Private Nonprofit Missing Children's
Agencies Service Activities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of a solicitation of applications for a grant program to provide support for private nonprofit missing children's agencies service activities.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) invites applications by private nonprofit voluntary organizations (PVOs) currently serving missing and exploited children to establish or expand specific missing and exploited children service components.

Eligible private nonprofit voluntary organizations are invited to request the Program Application Kit which contains detailed forms and instructions.

DATES: All applications will be reviewed and acceptable applications processed in the order that they are received, to the extent that funds remain available, or until August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Sutton, Program Specialist, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Rm. 700, Washington, DC 20531. (202) 724-7573.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Pursuant to Section 406(a) (1-4) of the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, funds to provide support to private nonprofit missing children's service agencies in the amount of \$325,000 have been reserved for award to qualified PVOs in grants ranging from a minimum of \$5,000 to a maximum of \$25,000 during Fiscal Year 1988. Grants will be awarded for service programs designed to accomplish one or more of the following: (1) Educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children; (2) provide information to assist in the location and return of missing children who have been abducted; (3) aid communities in the collection of materials that would be useful to parents in assisting others in the identification of such missing children; and (4) provide treatment for parents and for children that deals with

the psychological consequences of the abduction of a child or the sexual exploitation of a missing child. No other program purposes will be considered for funding.

II. Program Goals and Objectives

The goal of the program is to enhance the capacity of private non-profit missing children's agencies, that utilize volunteers, to provide direct support and services to individuals, families and communities impacted by the missing children problem and thus to assist them to become more effective direct service provider organizations.

The objective of the program is to assist PVOs to establish or expand critical missing and exploited children services by providing supplemental funding to support putting into place the administrative, operation and program costs associated with the provision of such services.

III. Eligibility Criteria

Eligible applicants are tax exempt private nonprofit voluntary service organizations whose primary organizational mission is directly related to the problem of missing and exploited children. Applicants (PVOs) who received a grant under OJJDP's two previous Federal Register announcements are ineligible to apply and will not be considered for funding under this announcement. In order to receive assistance, applicants will be required to give an assurance that they will expend, to the greatest extent practicable, the same amount of funds in the current year that they had expended in the preceding year from State, local and private sources. *This means that the Federal grant funds must supplement or be in addition to the applicant's operating budget level of the previous year.*

IV. Dollar Amount and Duration

Up to \$325,000 is available in Fiscal Year 1988 for awards to qualified projects. Awards will range in amount from a minimum of \$5,000 to a maximum of \$25,000. No consideration will be given to an application that exceeds the maximum amount.

Completed applications will be reviewed in the order that applications are received. Once the completed application is determined to be: (1) Eligible; and (2) qualified for funding through the submission of an acceptable proposal, OJJDP will enter into negotiations with the applicant to address issues that may be present in program or budget and, if these can be satisfactorily resolved, will process the application for final review, approval

and award by the OJJDP Administrator. *Applications will be funded for a single budget period, not to exceed one year. No additional supplement or continuation funding will be granted.*

V. Application Requirements

Eligible PVOs are required to submit:

1. A completed application (Short Form SF 424) from the Program Application Kit.

2. The PVO must be incorporated as a nonprofit organization, be in good standing in the State of incorporation, and be recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization. A copy of the IRS letter of tax-exempt status must be provided.

3. Brief description of proposed tasks or activities to be funded that address an identified problem or need and provide services in the area of missing and exploited children. The proposal should be designed to accomplish one or more of the following service objectives:

- (a) To educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

- (b) To provide information to assist in the location and return of missing children who have been abducted;

- (c) To aid communities in the collection of materials that would be useful to parents in assisting others in the identification of missing children; and/or

- (d) To provide treatment for parents and for children that deals with the psychological consequences of the abduction of a child or the sexual exploitation of a missing child. *Funds will not be awarded to provide shelter, food and other basic living expenses for runaway children.*

4. A brief history of the organization, including the date of incorporation, the organizational goals and objectives, and examples of accomplishments that demonstrate competence in carrying out missing children activities, with emphasis upon those described under 3 above, and a brief description of how the activities proposed to be funded will contribute to the achievement of the goals and objectives.

5. A letter of endorsement from the District Attorney or a sitting judge of the jurisdiction to be served who exercises jurisdiction over juvenile or family court matters.

6. A statement supporting the need for and the feasibility of carrying out the proposed activity in the community served.

7. The extent to which the applicant has obtained a commitment for the

contribution of money or services from other sources to assist in carrying out the proposed activities will be viewed as additional evidence supporting the need for the project activity.

8. A roster of the applicant organization's Board of Directors, listing their occupations, telephone numbers, mailing addresses, and affiliations, as appropriate.

9. A statement of the principal objectives of the project and a plan of action to accomplish those objectives, including the following:

- (a) A brief description of the qualifications of the individuals who will be primarily responsible for carrying out project activities;

- (b) A schedule of proposed activities and an estimated timetable to complete each activity of the project; and

- (c) A budget by specific elements and a brief narrative justifying the proposed expenditures.

10. A brief proposed plan for obtaining financial support to continue funded activities following the period of Federal support under this grant.

11. A description of the extent to which volunteer assistance will be utilized in carrying out funded activities.

12. The most recent financial statement or, if available, audit.

13. A description of how the success of funded activities will be determined and reported.

VI. Funding Criteria

Applications will be screened and rated by a panel of reviewers. Individuals who screen the applications will give consideration to the factors listed below:

1. Appropriateness of project tasks or activities in furthering the eligible services specified under V. 3. above, which are taken from Section 406(a) (1-4) of the Missing Children's Assistance Act. Clarity of the proposal and establishment of need are important considerations.

2. Feasibility of the proposal and clear objectives.

3. Qualifications of proposed project staff.

4. Extent to which the applicant organization has demonstrated a track record of success, or has designed a project that demonstrates a clear likelihood of success in locating and reuniting missing children with their legal guardian, or providing other eligible program services to missing children or their families.

5. The extent to which the applicant has and will substantially utilize volunteer services in carrying out project activities.

6. Cost effectiveness of the budget and adequacy of the plan for obtaining financial support to continue the funded activity following the period of Federal support.

7. Procedures established to determine and report project success.

VII. Submission of Applications

Applicants who are interested in responding to this solicitation are requested to apply to: Sylvia Sutton, Program Specialist, OJJDP/NIJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Room 700, Washington, DC 20531, (202) 724-7573, for a Program Application Kit. The Kit contains all required forms and instructions to complete an application.

VIII. Definitions

Tax Exempt Organization—A PVO that has only incorporated as a nonprofit in a state will not qualify as a tax exempt organization. Eligible PVOs must be recognized by the Internal Revenue Service as a 501(c)(3) organization at the time of application for a grant. PVOs that have not received this formal exemption may wish to consider applying for a grant jointly with an eligible 501(c)(3) PVO organization.

Dated: July 5, 1988.

Approved.

Vern L. Speirs,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88-15607 Filed 7-11-88; 8:45 am]

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Tuesday
July 12, 1988

Part III

Securities and Exchange Commission

17 CFR Part 240
Voting Rights Listing Standards;
Disenfranchisement; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25891; File Nos. S7-22-87, 4-308, SR-NYSE-86-17, and SR-PSE-84-23]

Voting Rights Listing Standards; Disenfranchisement Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of Rule 19c-4 under the Securities Exchange Act of 1934, which has the effect of amending the rules of national securities exchanges ("exchanges") and national securities associations ("associations") (collectively "self-regulatory organizations" or "SROs") regarding listing and authorization requirements concerning shareholders voting rights. Rule 19c-4 amends exchange and association rules to prohibit the common stock or other equity securities of a company from being or remaining listed on an exchange or from being or remaining authorized for quotation and/or transaction reporting through an automated inter-dealer quotation system operated by an association (such as the National Association of Securities Dealers Automated Quotation ["NASDAQ"] System), if such company issues securities or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of existing common stock shareholders of the company.

EFFECTIVE DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Stephen Luparello, Attorney, or Sharon Itkin, Attorney, Branch of Exchange Regulation, Division of Market Regulation, Stop 5-1, 450 Fifth St. NW., Washington, DC 20549, at 202/272-2451.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Securities and Exchange Commission ("Commission" or "SEC") announces the adoption of Rule 19c-4 under the Securities Exchange Act of 1934 ("Act"), which adds to the rules of national securities exchanges that make transaction reports available pursuant to Rule 11Aa3-1 under the Act.¹

¹ 17 CFR 240.11Aa3-1 (1988). By limiting the scope of Rule 19c-4 to those exchanges that make transaction reports available pursuant to Rule 11Aa3-1 under the Act, the Commission excludes the Intermountain ("ISE") and Spokane ("SSE") Stock Exchanges from coverage under the Rule. The

prohibition on an exchange listing or continuing to list the common stock or other equity securities of a domestic issuer if the issuer issues securities, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of any common stock of such issuer registered under Section 12 of the Act.² Rule 19c-4 also contains a similar addition to the rules of a national securities association³ to prohibit an association from authorizing, or continuing to authorize, for quotation and/or transaction reporting on an automated inter-dealer quotation system,⁴ the common stock or other equity securities of a domestic issuer if the issuer issues securities, or takes over corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of any common stock of such issuer registered under Section 12 of the Act.

On June 22, 1987, the Commission issued a release announcing the commencement of a proceeding pursuant to section 19(c) of the Act to consider whether to adopt a rule pertaining to the disenfranchisement of shareholder voting rights.⁵ In connection with this proceeding, the Commission solicited public comment on proposed Rule 19c-4 and held public hearings on July 22, 1987 ("July hearings").⁶

Commission believes this is appropriate because the ISE is dormant, and the securities listed on the SSE do not have a widespread national investor interest. In addition, the Commission notes that, while Rule 19c-4 would not apply to the Chicago Board Options Exchange ("CBOE") because it currently does not trade stocks, if, and when, the CBOE's proposed rule change (SR-CBOE-85-50) to trade stocks is approved, Rule 19c-4 would apply to issues traded on the CBOE.

² 15 U.S.C. 78i.

³ Currently, the National Association of Securities Dealers is the only national securities association registered under Section 15A of the Act. 15 U.S.C. 78o-3(a).

⁴ Currently, NASDAQ is the only such inter-dealer quotation system. The so-called "pink sheets" and other local inter-dealer quotation sheets do not constitute at present an automated inter-dealer quotation system under the Act.

⁵ See Securities Exchange Act Release No. 24623 (June 22, 1987), 52 FR 23065 (June 24, 1987) ("Proposing Release").

⁶ Seventeen commentators testified at this public hearing, and the Commission received over 1100 written comments. See text accompanying notes 23 to 26 *infra* (summarizing the significant comments received). The Commission staff also has prepared a separate document, summarizing all comments in more detail, which is available in the Commission's Public Reference Section, 450 Fifth St. NW., Washington, DC 20549, under File No. 87-22-87.

The decision by the Commission to propose Rule 19c-4 followed attempts by the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), and the National Association of Securities Dealers ("NASD") to resolve the issue of voting rights listing standards. In September 1986, the NYSE filed with the Commission a proposed rule change⁷ pursuant to section 19(b) of the Act⁸ and Rule 19b-4 thereunder⁹ to modify its long-standing rule mandating a one share, one vote standard for all common stocks listed on the NYSE.¹⁰ The NYSE filing represented the culmination of a two year deliberative process, begun in 1984 when General Motors Corporation ("GM") announced its intention to issue a second class of stock with one-half vote per share to finance its acquisition of Electronic Data Systems. As a result of the GM issuance and the subsequent proposal by a number of other NYSE companies to issue disparate voting rights stock, the NYSE declared a moratorium on compliance with its one share, one vote rule, and appointed a Subcommittee on Shareholder Participation and Qualitative Listing Standards ("Subcommittee").¹¹ As of June 1, 1988, the NYSE had 55 listed companies that had either issued disparate voting rights stock or amended their charters to limit the voting power of large shareholders (capped voting rights plans) or holders of recently purchased shares (tenured or time phased voting plans). These various departures from the one share, one vote rule are collectively called "disparate voting rights plans."¹²

⁷ SR-NYSE-86-17. The filing was published for comment in Securities Exchange Act Release No. 23724 (October 17, 1986), 51 FR 37529.

⁸ 15 U.S.C. 78a(b).

⁹ 17 CFR 240.19b-4.

¹⁰ See NYSE Listed Company Manual, Section 313.00. Generally, the Listed Company Manual provides standards that an issuer must meet to be listed on the NYSE. Currently, the NYSE standards prohibit the listing of an issuer that has a class of stock having unusual voting provisions that tend to nullify or restrict the voting rights of the class, or that has voting rights not in proportion to the equity interests of the class.

¹¹ Shortly after the NYSE initiated its study of its one share, one vote rule, the Pacific Stock Exchange ("PSE") filed a proposed rule change to permit its listed companies to issue dual classes of stock. See File No. SR-PSE-84-23. The proposal was published for comment in Securities Exchange Act Release No. 23970 (January 6, 1987), 52 FR 1986. With the consent of the PSE, action on its proposal was deferred so that it could be considered in conjunction with any NYSE action.

¹² An additional 5 NYSE listed companies have adopted, but not yet implemented, disparate voting rights plans. As of June 1, 1988 the Amex had 117 and NASDAQ had 182 companies with disparate voting rights plans. In December 1986, the Amex

Continued

Following the recommendation of the Subcommittee that the NYSE should permit the listing of classes of stock having disparate voting rights, subject to certain conditions, the NYSE proposed an amendment to Section 313 of its Listed Company Manual.¹³ The NYSE cited a number of factors that it believed necessitated modification of its rule, including the growing competition for listings with the Amex and NASD, the desire of NYSE-listed companies to adopt disparate voting rights plans as takeover defenses, the belief that corporate issuers should have flexibility in raising capital and adopting corporate structures, and the belief that regulatory changes, such as improvements in corporate disclosure, had made the shareholder protection provided by the one share, one vote rule less important.¹⁴

The proposed amendment to section 313 would permit the listing of a class or classes of common stock with disparate voting rights if a majority of the issuer's independent directors and "public" shareholders approved the creation of the class or classes of stock.¹⁵ Under the proposal, listed companies that created disparate voting rights stock during the NYSE moratorium would have two years from approval of the NYSE proposal to comply with the rule. Companies with disparate voting classes applying for NYSE listing would have to comply with the rule prior to listing. Finally, no approval would be necessary if the disparate voting class was outstanding when the company first went public, or was distributed pro rata among the distributor's common shareholders in a spin-off transaction in which the distributor was not the issuer.¹⁶

filed a proposed rule change, subsequently withdrawn, to eliminate its restrictions on the issuance of disparate voting rights stock. See Securities Exchange Act Release No. 23951 (January 2, 1987), 52 FR 1574.

¹³ See Proposing Release, *supra* note 5, at 23665-66. As discussed in the Proposing Release, the NYSE proposal submitted to the Commission differed significantly from the original Subcommittee recommendations. *Id.* at n. 16. The NYSE proposal has not been withdrawn. See note 82 *infra*.

¹⁴ See SR-NYSE-86-17.

¹⁵ *Id.*

¹⁶ In addition to the NYSE actions, there have been a number of legislative proposals concerning shareholder voting rights. In 1985, H.R. 2783, the Shareholder Democracy Protection Act, was introduced by Representative Dingell. H.R. 2783 would have established a uniform one share, one vote rule. Identical legislation, S. 1314, was introduced by Senators Cranston, Metzenbaum, and D'Amato. Neither proposal was reported out of committee. In 1987, two bills were introduced that would have established a uniform one share, one vote rule. See H.R. 2172, the Tender Offer Reform Act of 1987, introduced by Representative Dingell, and H.R. 2668, the Securities Trading Reform Act,

In recognition of the significant concerns raised by the NYSE proposal, the Commission issued a release soliciting comment,¹⁷ and held hearings on the issue on December 16 and 17, 1986 ("December hearings"). Over 40 commentators testified at the December hearings and 185 written comments were submitted to the Commission.¹⁸

In December 1986, following the public hearings, the Amex filed a rule proposal to eliminate entirely its partial restrictions on the issuance of disparate voting rights stock.¹⁹ On March 13, 1987, the NASD submitted a letter to the Commission, supporting the concept of a minimum voting rights rule with certain exceptions.²⁰ A series of meetings were held between the NASD, Amex, and NYSE, attended by Commission staff, to explore the possibility of a minimum rule. Despite these efforts, the three self-regulatory organizations ("SROs") were unable to reach a consensus on a minimum rule.²¹ As a result of the

introduced by Representatives Lent and Rinaldo. Both bills have been referred to the House Committee on Energy and Commerce, but have not been reported out of Committee. Finally, the Tender Offer Disclosure and Fairness Act of 1987, S. 1323, would direct the Commission to review rules of the SROs concerning shareholder voting rights and report the results of this review to Congress by October 1, 1988. S. 1323 was reported out of the Senate Banking Committee on December 17, 1987. On June 17, 20, and 21, 1988 the Senate debated S. 1323, but no action has been taken on the bill.

¹⁷ Securities Exchange Act Release No. 23803 (November 13, 1986), 51 FR 41713. The release solicited comment on the potential effect of the NYSE proposal, and whether a minimum policy concerning voting rights listing standards should be developed.

¹⁸ The Commission staff prepared a separate document containing a detailed summary of all written comments and testimony. This document, along with the comment letters and transcripts of the December hearings, is available in File Nos. SR-NYSE-86-17 and 4-308 in the Commission's Public Reference Section. Many of these comments focused generally on the voting rights issue and the development of a minimum standard. The Commission has incorporated the comments in response to the NYSE proposal in its record on Rule 19c-4. See Proposing Release, *supra* note 5, at 52 FR 23667.

¹⁹ See Securities Exchange Act Release No. 23051, *supra* note 12. The Amex withdrew the filing in April 1987. Currently, Section 122 of the Amex Listed Company Guide prohibits the listing of non-voting common stock, but permits the listing of limited voting common stock under certain conditions. See Proposing Release, *supra* note 5, at note 21.

²⁰ See letter from Gordon S. Macklin, President, NASD, to John S.R. Shad, Chairman, SEC, dated March 13, 1987.

²¹ The staffs of the NASD and NYSE agreed on general terms of a rule that would have prohibited issuers from issuing securities or taking other corporate action that would nullify, restrict, or disparately reduce the voting rights of existing shareholders. The NASD submitted to its members for comment a shareholder voting rights proposal for NASDAQ companies containing this standard. See NASD Notice to Members 87-32, dated May 28, 1987. Further, the NYSE Board of Directors

failure of the SROs to reach an accord, the Commission proposed Rule 19c-4, the Shareholder Disenfranchisement Rule, pursuant to its section 19(c) authority.²²

II. Summary of Comments

As noted, the Commission received over 1,100 comment letters and heard testimony from 17 people in response to its request for comments on proposed Rule 19c-4.

A. Comments in Support of Rule 19c-4

Approximately 1,000 commentators indicated support for adoption of the Rule.²³ The primary reasons cited in support of the Rule are that: (1) The adoption of a minimum voting rights standard is necessary to ensure management accountability;²⁴ (2) the Rule will protect shareholder interests in connection with contests for corporate control;²⁵ (3) the Rule will protect shareholders from being disenfranchised, while permitting companies to utilize disparate voting rights plans for capital raising purposes;²⁶ and (4) the Rule would

endorsed, in principal, a similar approach at its June 4, 1987 Board meeting. See Proposing Release, *supra* note 5, at note 24 and accompanying text.

²² See 15 U.S.C. 78a(c). Section 19(c) of the Act states, in pertinent part, "[t]he Commission, by rule, may abrogate, add to, and delete from . . . the rules of a self-regulatory organization . . . as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title[.]" See also text accompanying notes 145 to 180 *infra* (discussing Commission authority to promulgate Rule 19c-4).

²³ Approximately 800 of the comments in support of the Rule were submitted by individual members of the United Shareholders Association, who advocated a one share, one vote standard with no exceptions.

²⁴ See, e.g., letter from Donald K. Smith, Senior Vice President, Geico Corp., to Jonathan G. Katz, Secretary, SEC, dated July 17, 1987 ("Geico comment"); letter from Glenn R. Simmons, Chairman, Keystone Consolidated Industries, to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987 ("Keystone comment"); letter from David B. Weinberger, Co-Managing Partner, O'Connor and Associates, to Jonathan G. Katz, dated August 5, 1987 ("O'Connor comment"); letter from Harold Simmons, Chairman, Valhi Inc. to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987 ("Valhi comment"); letter from Manning G. Warren, Professor of Law, University of Alabama, to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987.

²⁵ See, e.g., letter from Ronald J. Gilson, Professor of Law, Stanford University, to Jonathan G. Katz, Secretary, SEC, dated July 18, 1987 ("Gilson comment"); Gilson, *Evaluating Dual Class Common Stock: The Relevance of Substitutes*, 73 Va. L. Rev. 807 (1987).

²⁶ See, e.g., letter from Thomas D. Maher, Senior Legal Counsel, Fidelity Investments, to Jonathan G. Katz, Secretary, SEC, dated July 31, 1987 ("Fidelity

Continued

prevent a "race to the bottom" for listing standards among SROs.²⁷ Many of the comments in support of the rule mirrored arguments raised by commentators against adoption of the original NYSE proposal.²⁸

A majority of commentators that supported the adoption of Rule 19c-4 stressed the importance of maintaining management accountability to shareholders. According to these commentators, corporate managements have used disparate voting rights plans to insulate themselves from shareholders and the market for corporate control. They testified that such insulation leads to entrenched, inefficient corporate managements acting in their own best interest instead of the best interest of the company and its shareholders.²⁹ Some commentators noted that such management behavior seriously would undermine investor confidence in the nation's equity markets, which would lead eventually to investors removing their capital from those markets.³⁰

Other commentators stated that Rule 19c-4 would protect the interests of shareholders in connection with contests for corporate control.³¹ They indicated that the Rule would prevent the disenfranchisement of common stockholders, thereby preserving their opportunity to share in any control premium.³² In this connection, Professor

comment³³; letter from Alan T. Rains, President, National Association of OTC Companies, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987 ("NAOTC comment").

²⁷ See, e.g., oral testimony of Richard Chase, Vice President, Philadelphia Stock Exchange, July hearings ("Phlx comment").

²⁸ See Proposing Release, *supra* note 5, at notes 37 to 50 and accompanying text (discussing comments advocating disapproval of the original NYSE proposal).

²⁹ See, e.g., letter from James S. Martin, Executive Vice President, College Retirement Equities Fund, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987 ("CREF comment"); Valhi comment, *supra* note 24, at 1. CREF argued that equal voting rights are essential to help ensure that management is responsive to shareholder concerns, because the vote allows shareholders not only to elect a board of directors, but also to protect their investment by influencing corporate policy. When shareholders' ability to influence corporate policy is reduced, management is more free to act in its own best interests at the expense of the efficient operation of the company.

³⁰ See CREF comment, *supra* note 29, at 2-3; Valhi comment, *supra* note 24, at 1.

³¹ See, e.g., Gilson comment, *supra* note 25, at 1-2; letter from Jeffrey N. Gordon, Associate Professor of Law, New York University, to Jonathan G. Katz, Secretary, SEC, dated July 31, 1987 ("Gordon comment"); Gordon, *Ties That Bind: Dual Class Common Stock and The Problem of Shareholder Choice*, 75 Calif. L. Rev. — (forthcoming).

³² See Gilson comment, *supra* note 25, at 1. In his comment, Professor Gilson noted that the empirical evidence demonstrates that when voting control of a corporation is purchased, shareholders are likely

Gilson stated that empirical evidence indicates there are significant differences in the wealth effects for public shareholders in a leveraged buyout versus an adoption of a disparate voting rights plan, with shareholders benefiting substantially from buyouts but not from a shift in voting rights through the implementation of disparate voting rights plans. Gilson further noted that the Rule is appropriate because it does not prevent management or an existing large shareholder from acquiring control of a company, but instead simply requires that shareholders be paid adequately for transfer of control.³³ Other commentators argued that the Rule would prevent management from using its proxy agenda-setting power to disenfranchise shareholders.³⁴

A number of commentators supporting the Rule testified that a shareholder approval standard for adoption of disparate voting rights plans would be insufficient to prevent abusive disparate voting rights plans.³⁵ These commentators cited the coercive influence management can exert on shareholder voting by setting the proxy agenda and placing corporate pension plan managers under substantial pressure to vote in favor of the recapitalization.³⁶ Further, one commentator noted that in an exchange offer of super voting stock with low dividends for lower voting stock with high dividends, shareholders feel compelled to exchange their shares for lower voting stock to avoid holding higher voting stock that has become ineffective.³⁷

A number of commentators supported the Rule because it struck an appropriate balance between investor protection and the need for flexibility when raising capital or restructuring for legitimate business purposes.³⁸ Some

to earn substantial abnormal returns. In contrast, when voting control is shifted away from shareholders by means of a disparate voting rights plan, shareholders at best earn no abnormal returns at all. *Id.*

³³ *Id.* at 2.

³⁴ See, e.g., written statement of Richard S. Ruback, Professor, Massachusetts Institute of Technology, July hearings ("Ruback comment").

³⁵ See, e.g., Ruback comment, *supra* note 34, at 1-2; written testimony of Elliot J. Weiss, Professor of Law, Yeshiva University, December hearings ("Weiss comment").

³⁶ See Weiss comment, *supra* note 35, at 6-7.

³⁷ For example, if management holds 15% of the voting rights before an exchange offer and 90% afterwards, the higher voting stock of the remaining independent shareholders would have little actual value. See Ruback comment, *supra* note 34.

³⁸ See, e.g., Fidelity comment, *supra* note 26, at 2; letter from W. Cordon Blinn, Financial Executives Institute, to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987; written statement by Robert A.G.

commentators cited the provision in the Rule permitting initial public offerings and subsequent offerings of lower voting stock, noting that such offerings are useful financial tools that do not disenfranchise existing shareholders.³⁹ One commentator noted that the proposed Rule properly focused on "the process by which disparate voting rights stock is created, rather than on the issuer's capital structure *per se*." ⁴⁰

The Commission notes that all commentators that could be characterized as institutional investors supported adoption of a minimum voting rights standard whether a one share, one vote standard or some lesser standard.⁴¹ In general, these commentators cited the same factors as other groups in support of the Rule. Some expressed the opinion that disparate voting rights plans lead to entrenched, inefficient corporate managements, which result in a loss of investor confidence in the marketplace and a decrease in equity values.⁴² CREF suggested that corporate management becomes less efficient and less responsive to competitive pressure without the discipline of meaningful shareholder control. The FAF testified that the shareholders' right to vote is necessary to ensure that corporate management focuses its resources on the corporation's development for the benefit of the shareholders rather than for its own particular interests. Several institutional investor commentators stressed that the right to vote is one of

Monks, Institutional Shareholder Services, July hearings ("ISS comment"); NAOTC comment, *supra* note 28, at 3; written statement of Joseph R. Hardiman, Chairman, NASD, July hearings ("NASD comment").

³⁹ See, e.g., letter from Mildred M. Hermann, Policy Coordinator, Financial Analysts Federation, to Jonathan G. Katz, Secretary, SEC, dated July 27, 1987 ("FAF comment"); NAOTC comment, *supra* note 28, at 1. See also, Fidelity comment, *supra* note 26, at 2. Fidelity stressed that subsequent issuances were appropriate only if they contain no conditions that affect the rights of existing shareholders. But see Gordon comment, *supra* note 31, at 3 (arguing that subsequent issuances of limited voting stock eventually dilute the voting rights of existing holders).

⁴⁰ Fidelity comment, *supra* note 26, at 2.

⁴¹ See, e.g., letter from Peter M. DeAuer, Chairman, Canadian Council of Financial Analysts, to Jonathan G. Katz, Secretary, SEC, dated July 30, 1987; CREF comment, *supra* note 29, at 1; FAF comment, *supra* note 39, at 1; ISS comment, *supra* note 38, at 1; oral testimony of Harrison J. Goldin, Comptroller, City of New York, (representing the Council of Institutional Investors) July hearings ("Goldin comment").

⁴² See, e.g., CREF comment, *supra* note 29, at 2-5; FAF comment, *supra* note 39, at 2; O'Connor comment, *supra* note 24, at 1-2. See also notes 29 to 33, *supra*.

the primary means by which shareholders protect their interests.⁴³

Many supporters of the Rule criticized it for not going far enough. As noted, many commentators objected to any rule other than a one share, one vote standard that would apply to all markets without exception. Most of these commentators argued that the exceptions to the Rule eventually would undermine its intent and effectiveness.⁴⁴ Some commentators urged elimination or restriction of the grandfathering provision ⁴⁵ or the adoption of a requirement mandating minority shareholder approval of existing disparate voting rights plans.⁴⁶ Some commentators suggested that NYSE-listed companies that instituted disparate voting rights plans during the NYSE moratorium should not be grandfathered under the Rule because these companies took such action in clear violation of existing NYSE rules.⁴⁷ Specifically, ISS argued that the grandfather provision should apply only to those companies whose disparate voting rights plans were permissible under the listing standards of their SRO. Other commentators opined that the exceptions for initial public offerings and bona fide business purposes were vague, and would allow for capitalizations that should be prohibited by the Rule.⁴⁸ Finally, a number of commentators objected to the limitation of the scope of the Rule to domestic issuers.⁴⁹

B. Comments Opposed to Rule 19c-4

Ninety-one commentators either expressed opposition to the adoption of Rule 19c-4, or concern about the scope of the Rule's grandfather clause. An overwhelming majority of the 91 commentators in this group were public companies, associations or groups of

⁴³ See, e.g., CREF comment, *supra* note 29, at 2; Goldin comment, *supra* note 41, at 175-76; O'Connor comment, *supra* note 24, at 1.

⁴⁴ See, e.g., CREF comment, *supra* note 29, at 3; Keystone comment, *supra* note 24, at 2; Valhi comment, *supra* note 24, at 2.

⁴⁵ See, e.g., Fidelity comment, *supra* note 26, at 2; letter from Ronald Langley, President, Industrial Equity (Pacific) Ltd., to Jonathan G. Katz, Secretary, SEC, dated July 11, 1987; letter from Roberts S. Karmel, Professor of Law, Brooklyn Law School, to Jonathan G. Katz, Secretary, SEC, dated July 9, 1987.

⁴⁶ See, e.g., Weiss comment, *supra* note 35, at 11-12.

⁴⁷ See, e.g., Fidelity comment, *supra* note 26, at 2; ISS comment, *supra* note 38, at 4.

⁴⁸ See Gordon comment, *supra* note 31, at 1; Keystone comment, *supra* note 24, at 1.

⁴⁹ See, e.g., FAF comment, *supra* note 39, at 2; ISS comment, *supra* note 38, at 4; Valhi comment, *supra* note 24, at 2. The ISS warned that a foreign issuer exception would lead to the unfortunate result of American companies reincorporating in foreign countries to avoid compliance with the Rule. But see NASD comment, *supra* note 38, at 8.

public companies, or law firms representing public companies. Five major themes were represented in the negative comments: (1) Lack of Commission authority to promulgate Rule 19c-4; (2) potential conflict between the Rule and state laws concerning corporate governance; (3) inadequacy of the grandfathering provision, either generally or relating to the commentator's specific factual situation; (4) concerns regarding the breadth and workability of the Rule; and (5) assertions that disparate voting rights plans approved by shareholders should be permitted.

Thirty-two commentators questioned the Commission's authority to adopt a rule in the area of qualitative listing or authorization standards.⁵⁰ The ABA, reiterating an argument made during the initial NYSE proceeding, testified that "the language and legislative history of the Act, especially that of the Securities Acts Amendments of 1975, clearly establish that the Commission does not have authority to impose substantive corporate law standards on listed companies through its oversight authority over the rules of the exchanges and the NASD under sections 19 (b), (c) and (h) of the Act."⁵¹ The Business Roundtable agreed with the ABA, noting that Commission authority to promulgate Rule 19c-4 "cannot be found either in the language of Section 19(c) or in the legislative history of that provision."⁵²

The ABA also argued that the Commission cannot find authority to promulgate a uniform voting rights listing standard in sections 8, 11A, or 14 of the Act.⁵³ The ABA stated that section 14 authorizes the Commission to ensure fair corporate suffrage by regulation of the proxy solicitation

⁵⁰ See, e.g., letter from Robert Todd Lang, Chairman, Task Force on Disparate Voting Rights, Section of Corporation, Banking and Business Law, American Bar Association, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987 ("ABA comment"); letter from Clifford L. Whitehill, Chairman, Lawyers Steering Committee of the Task Force on Corporate Responsibility, Business Roundtable, to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987 ("Business Roundtable comment"); letter from Arthur Fleischer, Jr. and Harvey L. Pitt, Fried, Frank, Harris, Shriver and Jacobson, to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987 ("Fried Frank comment").

⁵¹ ABA comment, *supra* note 50, at 12. See also Proposing Release, *supra* note 5, at nn. 80 to 78, 100 to 121 (summarizing original comments on Commission authority, and Commission responses); notes 145 to 160 and accompanying text, *infra* (discussing Commission authority to promulgate Rule 19c-4).

⁵² Business Roundtable comment, *supra* note 50, at 2.

⁵³ 15 U.S.C. 70(b)(5), 78k-1(a), and 78n.

process but not by establishing voting rights standards.⁵⁴ The Business Roundtable also argued that support for the Rule could not be found in sections 11A, 8(b)(5), or 15A(b)(6), the other sections upon which the Commission relied for authority when proposing Rule 19c-4.⁵⁵

The Commission also has received Congressional correspondence and testimony on the authority issue. The Congressional comments were mixed on the issue.⁵⁶

Some commentators stated that Commission intervention into corporate governance issues constituted a federal intrusion into areas traditionally left to state regulation.⁵⁷ A number of these

⁵⁴ ABA comment, *supra* note 50, at 15-18.

⁵⁵ See Business Roundtable comment, *supra* note 50, at 15-19.

⁵⁶ See letter from Senator Jake Garn, Ranking Republican Member, Senate Committee on Banking, Housing, and Urban Affairs, to Davis S. Ruder, Chairman, SEC, dated May 10, 1988; letter from Senator William Proxmire, Chairman, Senate Committee on Banking, Housing, and Urban Affairs, to Davis S. Ruder, dated April 28, 1988. Both Senator Garn and Senator Proxmire believe the Commission lacks authority to adopt a minimum voting rights standard, and that the Commission should defer to Congress in this area. Senator Garn also commented that both the Rule's preemption of the traditional role of the states in governing shareholder voting rights, and its retroactive effect, are inappropriate. But see letter from Senator Howard M. Metzenbaum to Jonathan G. Katz, Secretary, SEC, dated December 4, 1988; statement of Rep. John Dingell accompanying the proposed Tender Offer Reform Act of 1987, H.R. 2172, April 27, 1987; letter from Rep. Dingell to David S. Ruder, Chairman, SEC, dated May 19, 1988; letter from Senator William L. Armstrong to David S. Ruder, Chairman, SEC, dated May 12, 1988; and letter from Rep. Barton to Davis S. Ruder, Chairman, SEC, dated June 10, 1988. Senator Metzenbaum urged the Commission to mandate a uniform one share, one vote listing standard, asserting that the Commission has clear authority to do so. Similarly, the proposed Tender Offer Reform Act of 1987, introduced by Congressmen Dingell and Markey, included this statement in support of a one share, one vote standard: "In view of the long standing role of listing standards in sections 12(d), 12(f) and 19 of the Exchange Act . . . coupled with the 'investor protection and the public interest' and other Exchange Act standards applicable to self-regulatory organizations rules by reference to the standards implicit in and the objectives of sections 11A, 14(a), 14(d) and 14(e), the Exchange Act clearly authorizes the SEC to prescribe shareholder voting rights in the context of self-regulatory organization listing and eligibility rules by Commission action under section 19(c) and enforced under section 19(h)." Rep. Dingell's May 19th letter reiterates his view that the Commission has clear authority to mandate a shareholder voting rights rule. Both Rep. Dingell and Senator Armstrong have urged the Commission to promulgate a minimum rule in this area. Finally, see, One Share, One Vote Hearing Before the Committee on Banking, Housing, and Urban Affairs, United States Senate, 100th Cong., 2nd Sess. (March 17, 1988).

⁵⁷ See, e.g., letter from Richard H. Troy, Chairman, Securities Law Committee, American Society of Corporate Secretaries, to Jonathan G. Katz, Secretary, SEC, dated August 2, 1987.

commentators expressed concern regarding the effect of the proposed Rule on state control share acquisition statutes, such as the Indiana statute⁶⁰ upheld by the Supreme Court in *CTS Corp. v. Dynamics Corp. of America*.⁶¹ A number of commentators testified that preemption of CTS-type statutes would be an inappropriate intrusion into state law.⁶² Other commentators requested clarification concerning interaction between the proposed Rule and existing state control share acquisition statutes. For example, commentators questioned whether opting in or failing to opt out of a non-mandatory state control share acquisition statute would constitute a disenfranchising corporate action under the Rule.⁶³ Additional commentators questioned the effect, and opposed any application, of the proposed Rule on a variety of corporate provisions and actions, such as the adoption of poison pills, fair price provisions, lock-ups, limited partnerships, and "going private" transactions.⁶⁴

Approximately forty commentators were concerned only about the effect of the Rule's grandfathering provision. A majority of these commentators were public companies with existing or anticipated disparate voting rights plans. Generally, companies that had such plans in place prior to May 15, 1987, the announced grandfather date, sought assurance that their plan would be unaffected by the Rule.⁶⁵ Other

commentators were more specific, requesting clarification of the scope of the grandfather clause. The inclusion of a grandfather clause in the Rule raised a number of specific interpretative questions, generally concerning subsequent activities by grandfathered companies. Specifically, commentators addressed the legitimacy of continued issuances of disparate voting rights stock, issuances of authorized but previously unissued disparate voting rights stock, and the effect of the Rule on options for or securities convertible to super voting stock.⁶⁶

Seven commentators specifically objected to any rule with other than a prospective effect.⁶⁷ For example, Carter-Wallace argued that the grandfather date was, in reality, the effective date of the Rule. Therefore, the May 15th date violated the notice requirement of section 553(d) of the Administrative Procedure Act ("APA"). Times Mirror argued that the grandfather clause made the application of Rule 19c-4 retroactive, that retroactive rules must meet a separate, more stringent standard, and that the Commission had failed to meet this standard. Times Mirror further argued that the application of a May 15 grandfather date is unconstitutional because it would not afford due process to those companies that adopted plans at a time when Rule 19c-4 was not in effect.

Commentators also argued that the Rule as proposed is too broad and will be difficult for the SROs to administer.⁶⁸ General Binding Corporation recommended that the Commission provide the SROs with "clear guidelines and minimum standards" and that the SROs implement a prior review

mechanism to allow issuers to receive assurances by an SRO prior to taking any corporate action that could come under the Rule.⁶⁹ Another commentator argued that, because the goal of the Commission is to ensure fair corporate suffrage, it should do no more than require expanded disclosure of possible disenfranchisement in the proxy statement or require that the proxy be mailed a specified number of days prior to a shareholders meeting.⁷⁰

III. Discussion

After a careful review of the record, including all comment letters received and testimony of witnesses, the Commission believes a minimum standard concerning voting rights listing standards is necessary, and has decided to adopt Rule 19c-4. In addition to providing the rationale, justification, and authority for the Commission's decision to adopt Rule 19c-4, the discussion below clarifies certain interpretations of the Rule as adopted and modifications made to the Rule as initially proposed.

A. Need for Rule 19c-4

In proposing Rule 19c-4, the Commission recognized that regulation of shareholder voting rights under the Federal securities laws raises difficult and complex issues. The Commission noted that the initial NYSE proposal to abandon its one share, one vote standard had important ramifications for management accountability, tender offers and changes in corporate control, the rights of majority and minority shareholders, competition among SROs, and the integrity of the nation's securities markets. The Commission continues to believe that the issue of shareholder voting rights has far-reaching implications, and that a rule ensuring a minimum level of shareholder protection from disenfranchising actions is appropriate and consistent with the purposes of the Act. Further, the Rule, which will operate through the listing standards of SROs, has been crafted to be consistent with federalism objectives by seeking to minimize intrusion into traditional state regulation.⁷¹

Until relatively recently, disparate voting rights plans were used primarily by smaller companies with significant insider ownership. Traditionally, these companies had gone public with a weighted voting scheme designed to

allow the founders to maintain control as the company grew. In the 1980s, however, corporate bidders began targeting increasingly large companies, and disparate voting rights plans became an important defensive tactic in response to the possibility of a hostile tender offer. As the use of these plans evolved, the Commission became concerned that, in many instances, the methods of issuing disparate voting rights stock were structured to disenfranchise existing shareholders and had consequences far beyond management desires to deter hostile takeover bids.

While certain disparate voting rights plans serve to disenfranchise existing shareholders, the Commission does not believe that the issuance of less than full voting rights stock is *per se* inappropriate. The Commission agrees that there may be valid business or economic reasons for issuing disparate voting rights stock, the effect of which is not disenfranchising to existing shareholders.⁷² The Commission believes, however, that disparate voting rights plans that disenfranchise existing shareholders are inconsistent with the requirements of the Act. Shareholders who purchase voting shares in a company do so with the understanding that the shares will be accompanied by the voting rights attendant to the stock at the time of purchase. The diminution or limitation of these rights is inconsistent with the investor protection and fair corporate suffrage policies embodied in sections 6(b)(5), 15A(b)(6), and 14 of the Act.⁷³ In addition, in the year prior to the Proposing Release an increasing number of companies recapitalized in a manner that disenfranchised shareholders of their voting rights. Many of these issuers were more established companies with extensive public ownership. A continuation of these disenfranchisements would reduce investor confidence in the securities markets in the United States.

The Commission recognizes that under state law, disparate voting rights plans generally are permitted subject to shareholder approval.⁷⁴ The Commission also recognizes, however, that collective action problems may make defeating an issuer recapitalization proposal extremely difficult.⁷⁵ Many commentators in both

the December and July hearings, including institutional investors, individual investors, and law professors, testified extensively about the difficulties involved in shareholders acting together in their collective best interest.⁷⁶ Frequently, a disparate voting rights plan is presented to shareholders in a form, such as an offer to exchange higher vote stock for lower vote stock with a dividend sweetener, that provides shareholders with an incentive to accept less than full voting rights stock rather than oppose the recapitalization, although, acting collectively, shareholders as a group might prefer to retain their voting rights and reject the sweetener offered by management. The coercive nature of some disparate voting rights plans may also be exacerbated by management's ability to set the proxy agenda and use corporate funds to lobby shareholders in favor of its proposal. The Commission also has heard testimony from institutional investors describing the pressure placed on managers of corporate pension plans during the shareholder voting process.⁷⁷

Although the Commission does not believe that shareholders invariably are powerless to defeat an issuer-sponsored proposal to recapitalize, the Commission does believe that, because of the forces cited above, the shareholder voting process is not fully effective in preventing the adoption of disparate voting rights plans that disenfranchise

Research Center, December hearings. Professor Weiss referred to the "substantial body of literature" explaining why the shareholder vote is not always an accurate representation of shareholder preference. For example, Professor Weiss cited the "rational apathy" problem, which leads shareholders to support management proposals because the expected cost to any one shareholder of carefully evaluating these proposals will greatly exceed any potential benefit to the shareholder. Second, Professor Weiss outlined the "free rider" problem, which acknowledged that the typical shareholder will not make the effort to evaluate a management-sponsored proposal, but will rely on other shareholders to do that and "free ride" on their efforts.

⁷⁴ See Proposing Release, *supra* note 5, at 23660.

⁷⁵ See oral testimony of James E. Heard, Deputy Director, Investor Responsibility Research Center, December hearings; and oral testimony of Nell Minow, General Counsel, Institutional Shareholders Services, Inc., July hearings. See also, Weiss comment, *supra* note 35, at 106 (stating that institutional shareholders also may be susceptible to collective action problems). The Commission again notes that the comments by pension fund favored adoption of a minimum voting rights rule. These comments lead the Commission to believe that the collective action limitations noted above can result in the disenfranchisement of institutional shareholders, and also dispute claims that increased institutional holdings in the markets makes defeating a recapitalization more likely. See, also, the Labor Department Letter on Proxy Voting by Plan Fiduciaries, BNA Pension Reporter, February 29, 1988, Vol. 15 p. 391.

shareholders. The Commission believes that it is preferable for a company's insiders wishing to gain voting control to do so through a repurchase of shares in which such repurchase is subject to market discipline and judicial review regarding state corporate fiduciary requirements.

Moreover, the Commission is concerned about the rights of minority shareholders, who are permanently disenfranchised by a proposal against which they voted. While the shareholder voting mechanism may be of limited effectiveness in protecting against disenfranchisement by management, it nonetheless has value in ensuring management accountability. For example, shareholders have occasionally elected dissidents in proxy contests for control of a company's Board of Directors. Moreover, the potential that shareholders will vote against management or at least amass a sufficient opposition vote to embarrass the company contributes to ongoing accountability.

The Commission has reviewed the empirical evidence regarding the wealth impact of disparate voting rights plans on common stock price. In the Proposing Release, the Commission stated its belief that the empirical evidence regarding the price effect of disparate voting rights plans required further consideration and investigation.⁷⁸ The Commission noted that although existing economic studies generally had not demonstrated statistically significant wealth reductions as a result of disparate voting rights plans, further empirical study would be useful to examine the extent to which such voting structures are beneficial, or at least not harmful, to shareholders.⁷⁹

The Commission's Office of Chief Economist ("OCE"), now the Office of Economic Analysis, in an update to its initial study of the wealth effects of disparate voting rights plans,⁸⁰ did find significant negative wealth effect in connection with such recapitalizations. In particular, the OCE update found that negative price effects were concentrated in companies that had recapitalized after the NYSE announced its moratorium on enforcing its one share, one vote rule. Importantly, the OCE Update also noted that the post-moratorium firms were characterized by

⁷⁸ Proposing Release, *supra* note 5, at 23672.

⁷⁹ *Id.* at nn. 34-35, 84 (citing studies evaluating wealth effects of disparate voting rights recapitalizations).

⁸⁰ See OCE, Update—"The Effects of Dual Class Recapitalization on the Wealth of Shareholders: Including Evidence from 1986 and 1987," July 16, 1987 ("OCE Update").

⁶⁰ Ind. Code section 23-1-42-1 *et seq.* (1986).

⁶¹ U.S. 107 S. Ct. 1637 (1987). The CTS decision upheld the constitutionality of an Indiana anti-takeover statute that allows disinterested shareholders to limit the voting rights of a purchaser of specified percentage of an Indiana issuer's stock. See text accompanying notes 121 to 125 *infra* (discussing interaction of state control share acquisition statutes and Rule 19c-4).

⁶² See, e.g., letter from Howard A. Vine, Alliance for Corporate Growth, to Jonathan G. Katz, Secretary, SEC, dated August 6, 1987 ("ACG comment"); Fried Frank comment, *supra* note 50, at 29-30.

⁶³ See e.g., letter from James W. Guedry, Assistant General Counsel, International Paper Company, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987 ("International Paper comment"); letter from Powell McHenry, Senior Vice President, Procter and Gamble Company, to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987 ("Procter and Gamble comment"); letter from Robert S. Banks, Vice President, Xerox Corporation, to Jonathan G. Katz, Secretary, SEC, dated July 30, 1987 ("Xerox comment").

⁶⁴ See, e.g., ABA comment, *supra* note 50, at 27-29; Fried Frank comment, *supra* note 50, at 7-20; Xerox comment, *supra* note 61, at 3.

⁶⁵ See, e.g., written testimony of Henry Lowenthal, Senior Vice President, American Greetings Corp., July hearings; letter from James A. Linen, Vice President, Media General Corp., to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987; letter from Paul Smucker, Chairman of the Executive Committee, J.M. Smucker Co., to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987.

⁶⁶ See text accompanying notes 109 to 118 *infra* (discussing grandfathering issues).

⁶⁷ See ABA comment, *supra* note 50, at 24, n.10; letter from Theodore E. Somerville, Vice President and General Counsel, Alleghany Corp., to Jonathan G. Katz, Secretary, SEC, dated July 15, 1987 ("Alleghany comment"); letter from Robert Decherd, Chairman of the Board and Chief Executive Officer, A.H. Belo Corp., to Jonathan G. Katz, Secretary, SEC, dated April 7, 1988 ("A.H. Belo comment"); letter from Ralph Levin, Vice President, Carter-Wallace, Inc., to Jonathan G. Katz, Secretary, SEC, August 5, 1987 ("Carter-Wallace comment"); letter from David J. McDonald, President, Curtice-Burns, to Jonathan G. Katz, Secretary, SEC, dated July 20, 1987 ("Curtice-Burns comment"); letter from Gibson, Dunn and Crutcher (Counsel to Times Mirror) to Jonathan G. Katz, Secretary, SEC dated February 23, 1988 ("Times Mirror comment"); letter from Mark C. Pope IV, Vice President, Graphic Industries, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 15, 1987 ("Graphic comment").

⁶⁸ See, e.g., letter from William G. Paul, Senior Vice President and General Counsel, Phillips Petroleum Company, to Jonathan G. Katz, Secretary, SEC, dated July 10, 1987. See also ABA comment *supra* note 50, at 35-36; Business Roundtable comment, *supra* note 50, at 21-22.

⁶⁹ See letter from Steve Rubin, Vice President, General Binding Corp., to Jonathan G. Katz, Secretary, SEC, dated August 5, 1987.

⁷⁰ See letter from Robert B. Lamm, Chief Securities Counsel, W.R. Grace & Co., to Jonathan G. Katz, Secretary, SEC, dated July 31, 1987.

⁷¹ See note 84 *infra*.

⁷² See text accompanying notes 86 to 97 *infra* (discussing permitted actions under the Rule).

⁷³ 15 U.S.C. 78f(b)(5), 78o-3(b)(6), 78n.

⁷⁴ See, e.g., 6 Del. Code Ann. section 151(a).

⁷⁵ See, e.g., Weiss comment, *supra* note 35, at 3-6; Ruback comment, *supra* note 34, at 1-3; oral testimony of James Heard, Investor Responsibility

substantially lower insider holdings and substantially higher institutional holdings, as compared to companies that had recapitalized prior to the NYSE moratorium.⁹⁰

Although the OCE Update is useful evidence of the negative effects of disenfranchisement, the measurement of immediate change in securities price is not a complete indicator of the negative effects of disenfranchising actions. As several commentators have suggested, the negative effects of a permanent deprivation of shareholder voting rights may not appear until some time after the disenfranchising action is announced or occurs, and may be impossible to measure precisely at the time of enactment.⁹¹ For example, loss of independent shareholder control in a company may not manifest itself until sometime in the future through a lower takeover premium offered for the company's shares, or through management actions undertaken without the discipline of accountability to shareholders.⁹² Accordingly, the Commission does not consider evidence on shareholder wealth effects to be critical to its conclusions. The Commission has relied in its analysis and decision on the coercive (and for minority shareholders involuntary)

⁹⁰ The OCE also noted the increased use of the exchange offer method of creating separate voting rights stock since 1984.

⁹¹ See Proposing Release, *supra* note 5, at nn. 63-65.

⁹² Recent transactions involving Resorts International illustrate this point. In 1986, there were 5.7 million shares of Class A stock outstanding, having one vote each, and 750,000 shares of Class B stock outstanding with 109 votes each. The Class B stock represented less than 12% of the outstanding shares but had 93% of the voting power. In early 1986, the Class B stock generally traded at a 2-3 point premium (5-7.5%) above the Class A stock, within the \$0 dollar range. After the death of Resorts' Chairman in April 1986, negotiations for the Class B holdings of the estate, which constituted approximately 72% of the outstanding shares of the class, culminated with the sale of the Class B stock to Donald Trump at \$135 per share in July 1987. Although the price of the Class A rose to the \$60 range during July and August 1987, following the purchase of the Class B block, it declined steadily to the point where it was trading at the \$20 level during February 1988 and currently trades in the \$30 range. See also letter from the Toronto Society of Financial Analysts, to John S.R. Shad, Chairman, SEC, dated November 14, 1986 (discussing trading in Class A&B stock of Canadian Tire Corporation). In that case, holders of voting stock sought to obtain control by purchasing blocks of voting stock that had been put up for sale. This attempt to change control avoided triggering a protective provision that would have required non-voting stock to be converted to voting stock if an offer was made to substantially all holders of common stock. As a result of this situation, in October 1986, the Class B voting stock was trading at over double the price of the Class A non-voting stock, despite the non-voting to voting conversion provision and that there were only 3.45 million voting shares as opposed to 61.8 million non-voting shares outstanding.

disenfranchisement resulting from issuer imposition of disparate voting rights structures, which can have long term negative effects on shareholders.

Moreover, the Commission believes that the investor protection and shareholder suffrage policies of the Act compel action in this area, rather than simple disapproval of the original NYSE proposal. The Commission recognizes the competitive pressures that initially led the NYSE to propose to abandon its one share, one vote standard. By facilitating the development of a national market system, the Commission has been a strong supporter of competition among the markets. Without suggesting that competition necessarily would result in the markets removing all voting rights standards, the Commission continues to note that many major corporations expressed concern in the initial proceeding about the potential of a hostile takeover bid and that such concern might lead corporations to adopt disparate voting rights plans as takeover defenses. It is therefore likely that companies may choose to move to a particular SRO primarily to implement disparate voting rights plans for defensive purposes.

The Commission finds significant that in both the December and July hearings, and in the written comments, almost all shareholders and shareholder groups testified that the Commission should protect voting rights by adopting the Rule or a more stringent version of the Rule, such as a one share, one vote standard. Both individual and institutional shareholders argued that unless the Commission acted in this area, more issuers eventually would institute disenfranchising voting rights plans. Moreover, the large majority of academics commenting or testifying argued that the Commission has both the authority and the responsibility to stop voting rights disenfranchisement. Further, the major securities marketplaces, as well as the representative organization for state securities administrators, testified that they look to the Commission for leadership in establishing a minimum marketplace standard to protect shareholder voting rights.

Finally, in adopting Rule 19c-4, the Commission intends to prohibit disparate voting rights plans that disenfranchise existing shareholders, while continuing to allow corporations flexibility in devising their capital structures.⁹³ In addition, the

⁹³ The Commission, in adopting Rule 19c-4, is not commencing disapproval proceedings for the NYSE and PSE proposed rule changes to eliminate their one share, one vote listing standards (SR-NYSE-88-

Commission does not seek to prohibit issuers from issuing stock with restricted or no voting rights, as those restrictions are a consideration the investor will take into account when deciding to purchase a security. Rather, the Commission seeks to prevent the deprivation of voting rights that occurs after a security has been purchased. Accordingly, as discussed in more detail below, the Commission's Rule 19c-4 focuses on the process by which certain disparate voting rights structures are created, not the issuer's capital structure *per se*. We believe this approach is consistent with the role of the Commission in regulating the public securities markets for the protection of investors.⁹⁴ Rule 19c-4 identifies those situations in which shareholders are disenfranchised and prohibit companies from continued access to the national securities marketplace if they take such action. In doing so, Rule 19c-4 is consistent with the federalism objective of minimal intrusion into areas of traditional state regulation.⁹⁵

B. Description of Rule 19c-4

Rule 19c-4, as adopted, adds to the rules of national securities exchanges that make transaction reports available pursuant to Rule 11Aa3-1 under the Act

17 and SR-PSE-84-23). The NYSE proposed rule change may act as an appropriate supplement to the minimum protections accorded by Rule 19c-4. For example, even though Rule 19c-4 presumes to permit issuances of lower voting stock under certain circumstances, the SRO could still require a majority of independent shareholders to vote to approve such an issuance. The NYSE and PSE should consider how they want to treat their proposed rule changes in light of the adoption of Rule 19c-4.

⁹⁴ See text accompanying notes 100 to 100 *infra* (discussing Commission authority to promulgate Rule 19c-4 to further investor protection).

⁹⁵ The Commission has received a written request by the Business Roundtable to comply voluntarily with Executive Order 12612 ("Federalism") and 12291 ("Federal Regulation") in its rulemaking. Executive Order 12612, 52 FR 41685 (1987); E.O. 12290, 3 CFR 127 (1982). See letter from Jim J. Tozzi, Director, Multinational Business Services, Inc., to David S. Ruder, Chairman, SEC, dated January 15, 1988. The Commission notes that it is expressly excluded from the coverage of the executive orders. Executive Order 12612 is directed to "executive departments and agencies," not independent agencies. Executive Order 12291 excludes the Commission by defining "agency" as "any authority of the United States that is an agency under 44 U.S.C. 3502(1)." The Commission is an independent agency specified in 44 U.S.C. 3502(10). Although the Commission is excluded from Executive Order 12291, and is not required to comply with Executive Order 12612, the Commission has been sensitive to the underlying objectives of the two orders. In drafting Rule 19c-4, the Commission has approached the issue of shareholder voting rights in a manner consistent with the doctrine of federalism. The Commission has attempted to limit its impact on state regulation of corporate structures by targeting only those corporate transactions that disenfranchise existing shareholders.

a prohibition on an exchange listing or continuing to list the common stock or other equity security of a domestic issuer⁹⁶ registered under section 12 of the Act, if the issuer issues any class of securities, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of any outstanding common stock of such issuer. Rule 19c-4 also adds to the rules of national securities associations a prohibition on an association from authorizing, or continuing to authorize, for quotation and/or transaction reporting on an automated inter-dealer quotation system⁹⁷ the common stock or other equity security of a domestic issuer registered under section 12 of the Act, if the issuer issues any class of securities, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of any outstanding common stock of such issuer.

Rule 19c-4 also provides a certain degree of flexibility by permitting an exchange or association to issue rules, policies, practices, or interpretations, subject to Commission review pursuant to section 19(b) of the Act, that would specify the types of securities issuances or corporate actions covered by, or excluded from, the prohibitions contained in Rule 19c-4.⁹⁸

As discussed in more detail below, commentators suggested that the Rule include in its text those items previously described in detail in the Proposing Release regarding issuances of stock and other corporate action that would be either permitted or prohibited under the Rule. Accordingly, in response to commentators' suggestions and in order to clarify the operation and effect of the Rule, the Rule contains a non-exclusive list of issuances of stock and other corporate actions presumed to be permitted or prohibited under the Rule. In addition, the grandfather date has

⁹⁶ A definition of "domestic issuer" has been added to the Rule. Paragraph (e)(4) of the Rule defines "domestic issuer" as any issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Act. This definition is identical to the definition of "domestic issuer" discussed in the Proposing Release. See Proposing Release, *supra* note 5, at n.98.

⁹⁷ As noted above, NASDAQ is currently the only such inter-dealer quotation system. The rule would apply, of course to any other inter-dealer quotation systems that are formed in the future.

⁹⁸ Under section 19(b), if an exchange or association submits such a rule, policy, practice or interpretation to the Commission for review, in order to approve it the Commission must find that such rule, policy, practice or interpretation is consistent with the protection of investors and the public interest, and, generally, in furtherance of the purposes of the Act. See 15 U.S.C. 78b(b).

been changed from the proposed date of May 15, 1987, to the effective date of the Rule. Finally, the discussion below clarifies the interaction between the Rule and state control share acquisition statutes and corporate defensive takeover tactics, such as poison pills and lock-up options, and other interpretive issues that have been raised by commentators. Although modified slightly in form, the Rule as adopted is identical substantively to the Rule as proposed.

1. Permitted Actions Under Rule 19c-4

As adopted, the Rule contains a non-exclusive list of actions presumed to be permitted under the Rule.⁹⁹ The list of permitted actions reflects the belief by the Commission that there are valid business and economic purposes for the issuance or purchase of common stock with limited voting rights in certain situations.¹⁰⁰ The listing of certain actions that, standing alone, are presumed to be permitted is not intended to provide an exemption for a plan or scheme, involving such an action in conjunction with others, that disenfranchise existing shareholders.

a. *Initial Public Offerings.* First, the Commission presumes that the issuance of disparate voting rights stock pursuant to an initial registered public offering ("IPO") is not a disenfranchising action.¹⁰¹ The purchase of limited voting rights stock in an IPO does not disenfranchise shareholders who purchase shares with the full knowledge, through adequate disclosure, of the limits on their individual and collective voting power. In such a situation, there is no existing class of public shareholders that is deprived of actual or potential voting control by the

⁹⁹ See Rule 19c-4(d). The SROs may choose, subject to Commission review, to identify, by rule, other transactions involving disparate voting stock which do not raise disenfranchisement concerns.

¹⁰⁰ The Commission always has recognized that there exist legitimate uses for disparate voting rights stock for bona fide business purposes. See Proposing Release, *supra* note 5, at 23671. For example, Paragraph (c)(4) of the original Rule (now paragraph (e)(5)) exempted from the scope of the Rule ordinary preferred stock or nonconvertible debt, i.e., securities that had preference over the issuer's common stock as a dividends, interest payments, redemption, or payment in liquidation whose voting rights only became effective as the result of specific events, not related to an acquisition, which reasonably could be expected to relate to the issuer's financial ability to meet its obligations to that senior class of securities.

¹⁰¹ See Proposing Release, *supra* note 5, at 23671, 23673. The term "initial public offering" is intended to mean the offering of securities by a company by which it goes public. For example, if a company offers Class A stock to the public and a year later offers Class B super voting stock, only the Class A stock offering is an "initial public offering."

issuance of a class of disparate voting rights stock.

b. *Subsequent Issuances of Lower Voting Stock.* Second, a public corporation that wishes to raise capital and desires neither to burden the company with additional debt nor dilute present ownership may choose to raise that capital through the issuance of lower voting rights stock.¹⁰² As with the IPO example, shareholders purchasing a new issue of lower voting stock are fully aware of the limits on their voting power, both individually and collectively, at the time of purchase. By restricting subsequent offerings to equal or lesser voting stock, no existing individual or class of shareholder is disenfranchised by this form of capitalization.¹⁰³ Although the Rule speaks in terms of public offerings, a private offering of lower voting stock would be subject to the same analysis, inasmuch as such issuance does not disenfranchise existing shareholders.

The simplest case under this section of the Rule involves a company that has one class of stock with one vote per share. The company could make a public offering of additional shares of this class or offer a new class with less than one vote per share. Once the company issues lower voting stock, a question arises as to whether it can issue subsequent offerings of regular voting stock, for such stock would have voting rights greater than an outstanding class of common stock of the issuer. While in many circumstances the subsequent issuance would not be disenfranchising, this type of interpretive question is best left to the SROs to determine when implementing the Rule.

c. *Bona fide Mergers and Acquisitions.* Third, the Commission believes that the issuance of lower

¹⁰² *Id.* If the lower voting stock has features, such as convertibility from the full voting stock, that would in effect constitute an exchange offer or otherwise potentially affect or diminish the voting rights of existing shareholders, the presumption would be rebutted and the SRO would have to apply the Rule.

¹⁰³ Professor Gordon, in his comment letter, suggested that a subsequent offering of lower voting stock also could dilute the economic value of existing shareholders' stock. Gordon argues that a company will have to sell a larger number of limited voting shares than ordinary common or provide limited voting shares with greater than pro-rata dividends in order to raise a given amount of capital. See, Gordon comment, *supra* note 31. While such issuances may affect the economic value of existing shares as compared to an issuance of fully voting shares, they may be preferable to other methods of raising capital without diluting the voting power of existing shareholders. In any event, these occurrences by themselves would not nullify, restrict, or disparately reduce the voting rights of the ordinary common shares.

voting rights stock in connection with a business combination to effect a bona fide merger or acquisition, in which the voting rights of the securities issued would not be greater than the voting rights of any existing class of common stock, is presumed to be appropriate under the Rule.⁹³ For example, when the lower voting rights stock is structured so that dividends or other substantive rights (e.g., election of directors) are based on the assets or performance of the acquired company, such a recapitalization generally should be considered bona fide and consistent with the purposes of the Rule.⁹⁴

d. *Stock Dividends.* Finally, the Commission believes that, in many instances, a straight issuance of a stock dividend to all holders of an outstanding class of common stock, in which the voting rights of the stock are equal to or less than the per share voting rights of the existing class, would be consistent with the rule.⁹⁵ The Rule generally is not meant to restrict additional issuances of stock with the same voting rights as existing common stock, even though such issuances may dilute the percentage voting power of shareholders.⁹⁶ An issuance of low vote

⁹³ See Proposing Release, *supra* note 5, at 23671, 23673. The Commission has decided to exclude from the final rule the phrase "accompanied by proxy material" when describing such permitted issuances in connection with a business combination or a stock dividend. Although, aside from short-form mergers, most mergers and acquisitions are accompanied by proxy material, the Commission notes that most issuances of stock dividends do not require shareholder approval. Therefore the inclusion of the phrase "accompanied by proxy material" in this section of the final rule would be unduly restrictive. See also text accompanying notes 95 to 97 *infra* (discussing the issuance of stock dividends).

⁹⁴ The Commission emphasizes that a merger or combination between a company with a disparate voting rights plan and a company with a one share, one vote capitalization must be scrutinized to ensure that it is being effected for a bona fide purpose. In particular, an attempt to merge a larger company with a single class or stock into a substantially smaller company or shell company with a disparate voting rights plan, or any merger other than at arm's length, could be considered disenfranchising under the Rule because it might disparately reduce the voting rights of existing shareholders. Such mergers would not, however, be presumed prohibited where the proportionality of voting rights between the two companies is maintained. Again, this would be consistent with the Rule's objective to avoid the disenfranchisement of existing shareholders, by permitting shareholders to retain their current voting power.

⁹⁵ See Proposing Release, *supra* note 5, at 23673.

⁹⁶ Five commentators suggested that the Rule should permit spinoffs of a company's operations where the spun off subsidiary has the same dual class structure as the parent company. See, e.g., Carter-Wallace comment, *supra* note 85. Due to the varied forms that these spinoffs could take, the Commission believes that spinoffs should be analyzed by the SROs on a case-by-case basis under the Rule.

stock as a dividend, however, also could be constructed in a manner to disenfranchise shareholders. For example, the low vote stock could contain transferability restrictions or other conditions that would cause the issuance to be, in effect, an exchange offer. In addition, the issuance could be part of a two-step transaction whereby voting control of a corporation is acquired by an inside group without purchasing a proportionate percentage of the issuer's equity.⁹⁷ Accordingly, the Commission has not placed a dividend of low vote stock in either the category of presumptively permitted or prohibited transactions. Instead, the SROs should review these transactions to determine if they are consistent with the purposes of the Rule.

2. Prohibited Actions Under the Rule

As adopted, the Rule also contains a non-exclusive list of issuances or other corporate actions presumed to be prohibited under the Rule. This list reflects the Commission's belief that the Rule should focus on the process by which disparate voting rights plans are created and their effect on existing shareholders.

a. *"Time Phased" Voting.* The Rule presumes to prohibit corporate action to impose any restriction on voting power of shares based on the length of time the shareholder has held the stock.⁹⁸ The Commission continues to find troubling the effect of these tenured or time phased voting plans, to the extent that shares subject to time phased voting were not sold as such in the company's initial public offering. Those plans usually involve a recapitalization in which all shareholders at the time of the recapitalization receive multiple votes per share for their holdings. Any investor that purchases stock subsequent to the commencement of the plan receives one vote per share unless and until that investor holds the stock for a stated period of time (usually three or four years). In these cases, shareholders generally have purchased stock in the company at a time when, in the aggregate, outside public shareholders enjoy voting control, or at least, have the potential to obtain voting control if and when insiders sell their shares. As outside shareholders sell their high vote shares which converts them to low vote shares, insiders, by holding their shares, gain voting control from the outside shareholders. As a result, public shareholders at the time of

⁹⁷ See text accompanying note 103 *infra*.

⁹⁸ See Proposing Release, *supra* note 5, at 23671-73.

the recapitalization will, as a group, be disenfranchised, and the ability of an acquirer of the company's shares to obtain voting control will be restricted.

b. *"Capped" Voting Plans.* The Rule also presumes to prohibit, with one exception,⁹⁹ corporate action to impose any limitation on the voting power of shares based on the number of shares owned.¹⁰⁰ So-called capped voting plans generally are designed to insulate management from the threat of a hostile takeover by restricting the ability of the potential acquirer to obtain voting control. This type of recapitalization clearly restricts the per share voting power of the large shareholder, and, therefore is presumed to be violative of the Rule. As with tenured voting plans, capped voting plans frequently are implemented in companies in which public shareholders have voting control of the company. By instituting a capped voting plan, shareholders who purchase shares in excess of the triggering amount are disenfranchised of the voting rights for the excess shares.

c. *Super Voting Stock Distributions.* The Rule also presumes to prohibit the issuance of securities pursuant to a stock dividend or otherwise with voting rights greater than the per share voting rights of an outstanding class or classes of common stock.¹⁰¹ The Rule then essentially presumes to prohibit all issuances of super voting stock. The Commission finds such issuances to be coercive and disenfranchising. Super voting stock usually is employed in recapitalizations in the following manner: super voting stock is issued as a stock dividend with transfer restrictions¹⁰² that require the stock to

⁹⁹ See text accompanying notes 123-124, *infra*.
¹⁰⁰ See Proposing Release, *supra* note 5, at 23671-73. Disparate voting rights plans that limit the voting power of a shareholder based on the number of shares owned are commonly referred to as "capped voting" plans. These plans simply nullify or significantly restrict the voting rights of a shareholder after that shareholder acquires a certain percentage of equity ownership in the company (usually 10 or 20%). Generally, these plans provide that a shareholder may not vote in excess of the threshold, or only may exercise a minimal percentage of his or her voting rights over that threshold.

¹⁰¹ See Proposing Release, *supra* note 5, at 23671-73.

¹⁰² Transfer restrictions placed on super voting stock pursuant to a dividend or other distribution-type recapitalization are designed to make holding super voting stock more attractive to insiders and other long term holders and less attractive to the outside investor. Generally, these provisions drastically limit the ability of holders to sell their stock by narrowly prescribing the people or entities to whom the stock can be transferred. Further, these plans usually provide that when the holder does decide to sell, the holder must either sell the super voting stock back to the company, or convert it to

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be converted into lower voting stock if sold. As a result, insiders will be able to gain voting control of the company by holding the super voting stock received as a dividend, while outside shareholders are forced by the transfer restriction to convert their super voting stock to limited voting stock when they want to sell. The Commission further believes that, even in situations where no restrictions on transferability are imposed, super voting shares could be issued as part of a two step transaction whereby voting control of the corporation is acquired without purchasing a proportionate percentage of the issuer's equity.¹⁰³

d. *Exchange Offers.* The Commission believes that the issuance of disparate voting rights stock pursuant to an exchange offer should be presumed to be prohibited under the Rule.¹⁰⁴ These recapitalizations can be structured as a one-time opportunity to receive less than full voting rights stock in exchange for shares of the existing class of common stock. For example, a company will issue a new class of lower voting stock with a higher dividend, and make the existing voting stock convertible into the lower voting, higher dividend stock. In these situations, outside shareholders may be coerced to act in a manner contrary to their collective economic self-interest.

In these transactions, shareholders will face the choice of surrendering their voting control and receiving a small economic benefit (the dividend sweetener), or bypassing the exchange offer and maintaining the greater voting stock. The exchange offer is coercive because those shareholders wishing to hold the greater voting stock to defeat the plan would be taking a substantial risk that an insufficient number of outside shareholders will do likewise and majority voting control will shift to insiders. Accordingly, such shareholders may be "coerced" individually to opt for lower voting stock with a dividend sweetener to avoid holding ineffective full voting stock, without any dividend

lower voting stock. Accordingly, as with tenured voting plans, as outside shareholders sell their shares, insiders accrue increasingly greater control at the expense of the other shareholders.

¹⁰³ For example, a corporation could first issue nonrestrictive super voting stock to all shareholders. Insiders could then systematically increase their percentage of control over the company by buying up additional shares of outstanding super voting stock, using the proceeds from the sale of lower voting stock to effect their purchase. By buying super voting stock to effect their purchase, the insiders could obtain control through a purchase of far fewer shares than if they bought the lower voting stock.

¹⁰⁴ See Proposing Release, *supra* note 5, at 23671-73.

benefit. Given the prospect that the shareholders will be left with neither the increased dividend nor an effective vote if they decide not to participate in the exchange offer, the Commission believes that such offers coerce shareholders into a disenfranchising decision.

Even in situations in which shareholders are permitted to convert to lower voting stock for an extended period, or at any time after a recapitalization is approved, the collective action limitation still makes it unlikely that such a plan would be defeated. Shareholders in the minority, voting against a disparate voting rights plan, in this case, also eventually would be "coerced" by the dividend sweetener to exchange shares and would be disenfranchised unwillingly.¹⁰⁵

3. Foreign Issuers

The Commission has decided not to extend Rule 19c-4 to foreign issuers. As noted above, Rule 19c-4 as proposed applied only to domestic issuers and, in the Proposing Release, the Commission solicited comment on whether the Rule should be applied to foreign issuers.¹⁰⁶ Although the majority of commentators indicated that the Rule should apply to foreign issuers, the Commission believes there are valid reasons for not requiring U.S. markets to apply the rule to foreign companies.

First, the Commission cannot reasonably expect foreign issuers to act in connection with voting rights so that they would be permitted to facilitate the development of a secondary market for their securities in the United States, especially when U.S. investors already can acquire the securities of foreign issuers overseas and the U.S. is not the primary market for the corporation's shares. This is especially true if the laws, customs, or practices of the home country permit disparate voting rights structures. If the Rule were mandatory for all issuers trading on U.S. markets, it might have the effect of keeping foreign issuers out of U.S. markets and forcing U.S. investors to trade such securities overseas. Because foreign markets may offer less protection to the investor than U.S. markets, U.S. investors could be

¹⁰⁵ The ABA requested clarification as to whether an exchange by the shareholders of common stock for new non-voting debt securities or preferred stock, whether not accepted or underaccepted by a controlling group of shareholders, would be disenfranchising. The Commission does not believe that the form of such a transaction is determinative of whether the transaction would be disenfranchising. Rather, each such transaction should be examined to determine whether it is consistent with the Rule and, also whether it would fall under one of the actions expressly prohibited by the Rule.

¹⁰⁶ See text accompanying note 49, *supra*.

harmed because they would not be provided the increased protection of the U.S. securities laws.¹⁰⁷ At a minimum, U.S. investors would incur additional transaction costs in purchasing foreign issuer securities overseas. Finally, because the Rule provides only a minimum voting rights standard, the U.S. SROs will be able to apply the Rule (or other appropriate standards) to foreign issuers if, in the SRO's judgment, it is appropriate to extend the Rule to cover these issuers.¹⁰⁸ The Commission concludes that investor protection and the public interest do not mandate that the Commission require application of Rule 19c-4 to all foreign issuers trading in U.S. SROs and that the SROs should be able to make a determination whether an extension of the Rule to foreign issuers is appropriate for their market individually.

4. Grandfather Provision

a. *Effective Date.* As noted above, the Commission is changing the grandfather date to July 7, 1988, the date of Commission approval of the Rule. Rule 19c-4, as proposed, provided that voting rights plans adopted prior to May 15, 1987, would be unaffected by the Rule. The grandfather provision also protected proposed voting rights plans for companies that submitted proxy materials to the Commission prior to May 15, 1987, so long as the issuer moved forward in a reasonable period of time to implement its recapitalization.

The Commission initially selected May 15, 1987 as the grandfather date for several reasons. First, the securities markets and corporate community had been aware that the Commission was considering action to restrict the issuance of dual class stock at least since December, 1986.¹⁰⁹ Second, the

¹⁰⁷ This position is consistent with the Commission's approval of a proposal by the Amex and NYSE that permits them to waive or modify certain listing standards for foreign issuers when it can be shown that the foreign company's procedure is based on the laws, customs or practices of its home country. See Securities Exchange Act Release No. 24634 (June 23, 1987), 52 FR 24230. In that Release, the Commission weighed the potential competitive disadvantage to domestic issuers of allowing certain listing and reporting requirements to be waived for foreign issuers and concluded that the proposed rules would remove obstacles which have made foreign companies reluctant to list on either the Amex or the NYSE and could result in increased protection for U.S. investors. We also note that the rule changes allowed waiver or modification of voting rights listing standards. See *Id.* at n.21 (discussing foreign issuer rule's relation to proposed Rule 19c-4).

¹⁰⁸ Of course, any such listing standard would have to be approved by the Commission.

¹⁰⁹ In December, 1986, the Commission held public hearings on the NYSE's proposal to modify

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Amex, NASD, and NYSE had notified their listed companies during the period following the December hearings that May 15, 1987 would be the grandfather date used in any uniform approach adopted by the SROs. Accordingly, in selecting May 15, 1987 the Commission was satisfied that issuers had sufficient notice concerning a possible restriction on voting rights plans. Further, the Commission believed that a later date would, in the interim, induce a rush of companies implementing voting rights plans that would disenfranchise shareholders primarily to avoid the deadline imposed by the Rule.¹¹⁰

As noted above, the Commission received numerous comments specifically addressing the grandfather issue, ranging from arguments that there should be no grandfathering of existing dual class plans,¹¹¹ to comments urging that the grandfather date be later than May 15.¹¹² Further, many of the corporate commentators argued that the Rule should be applied prospectively only, and that to do otherwise would constitute a violation of the notice requirement of the Administrative Procedure Act ("APA").¹¹³

The Commission believes that companies were on notice of potential Commission action concerning disparate voting rights plans as of May 15, 1987. Due to the length of time since the issuance of the Proposing Release, however, the Commission has concluded not to apply the Rule to those companies that adopted disparate voting rights plans prior to the Rule's effective date.

Second, the Commission estimates that since May 15 only 17 companies have recapitalized or filed plans to recapitalize with the Commission. Accordingly, not many classes of shareholders should be affected by the change in the Rule's application date.¹¹⁴

its one share, one vote rule. At that meeting, then Chairman Shad and several Commissioners raised questions concerning the development of a uniform approach similar to what was subsequently proposed as Rule 19c-4.

¹¹⁰ The concern was substantiated by the fact that in the first four months of 1987, when there were indications that the SROs or the Commission might restrict disparate voting rights plans, approximately 25 major domestic corporations initiated a disparate voting rights plan.

¹¹¹ See text accompanying notes 45 to 48, *supra*.

¹¹² See text accompanying notes 65 to 68, *supra*.

¹¹³ See ABA comment, *supra* note 50, at 24, n.10; Carter-Wallace comment, *supra* note 65, at 10-24; Times Mirror comment, *supra* note 65, at 18.

¹¹⁴ This does not mean that the Commission is not concerned about those shareholders that were, in fact, disenfranchised between May 15, 1987 and the adoption of the Rule. Nevertheless, we believe the concerns noted below dictate applying the Rule as of the Rule's effective date.

We do, however, specifically reject any further delay past the effective date in requiring companies to comply with the Rule.¹¹⁵ Such a delay would create an inappropriate "window of opportunity" for companies to rush to disenfranchise shareholders.

Additionally, we note that the SROs would still retain the right, consistent with section 9(g) of the Act, to enforce compliance with their rules by delisting or requiring a shareholder ratification vote with respect to any issuer that recapitalized in violation of SRO listing standards before Rule 19c-4 was approved (e.g., NYSE companies that recapitalized during the moratorium). Indeed, the Commission requests that SROs address whether a requirement for public shareholder ratification for recent recapitalizations, similar to that contained in the NYSE's proposed rule, would be an appropriate supplement to Rule 19c-4.

The Commission finds good cause for establishing an effective date prior to 30 days after publication of the approval order in the Federal Register. As mentioned above, setting an effective date after the date of adoption would allow additional companies to disenfranchise shareholders in an effort to recapitalize before the Rule's effectiveness. Moreover, immediate implementation of the Rule would place no burden on companies without such plans.

b. Effect on Existing Disparate Voting Rights Plans. The application of the Rule raises a number of interpretive questions for companies that have disparate voting rights plans subject to the Rule's grandfather provision. The Commission has determined to apply the grandfather provision in a manner that permits grandfathered plans to operate as adopted, but does not permit existing holders of an outstanding class or classes of common stock to be further disenfranchised through subsequent issuances or recapitalizations.

First, the Commission has determined that the tenured or capped voting features of disparate voting rights plans should be allowed to continue, provided that the structure was implemented as of the effective date of the Rule, despite the fact that the aggregation by management of super voting shares or the limitation of voting rights of a large holder might not occur for a number of years. The Commission believes that any grandfathering of these types of

long range disparate voting rights plans would be meaningless if limited to a period immediately following the promulgation of the Rule.

A related issue is whether disparate classes of stock or disparate voting rights plans authorized but unissued or not implemented prior to the Rule's effective date should be permitted to be implemented after the effective date of the Rule. In the Proposing Release, the Commission stated that a company filing proxy materials by May 15, 1987 to adopt a disparate voting rights plan would be grandfathered, provided the company moved forward in a reasonable period of time to implement the plan.¹¹⁶ In structuring the grandfathering provision as such, the Commission was attempting to exclude two groups: (1) Companies that sought shareholder authorization after the publication of the Proposing Release and knew or should have known that such an issuance likely would be prohibited; and (2) companies that have had blank check preferred or other unissued securities on the shelf as a protective measure and had demonstrated no indication, until the commencement of the section 19(c) proceedings, that they intended to issue disparate classes of stock.

Despite the fact that the Commission is essentially grandfathering all issuers who issued disparate voting stock prior to the Rule's effective date, the Commission's concern about authorized but unissued dual class stocks remains valid. The Commission is sensitive to the needs of those companies that received specific shareholder approval for disparate voting rights plans prior to the Rule's effective date, but chose not to implement them because of concern that the plan would have to be dismantled if it were prohibited by the Commission's Rule.¹¹⁷ Therefore, the Commission has determined that companies that filed proxy materials between January 1, 1987 and the Rule's effective date to issue disparate voting rights stock, but have yet to issue the disparate class or classes of stock, should have 90 days following publication of the Rule, as adopted, in the Federal Register, to issue their disparate voting rights stock. The Commission believes that this interpretation is consistent with its view

¹¹⁶ The Commission believed that it would be inappropriate to extend the grandfather exception to companies that had not at least taken the step of proposing the stock issuance for a shareholder vote. See Proposing Release, *supra* note 5, n.58.

¹¹⁷ See, e.g., letter from J. Spratt White, Senior Vice President, Springs Industries, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 14, 1987.

that only those companies that have proceeded within a "reasonable period of time" to adopt a dual class plan should be permitted to issue authorized dual class stock after the Rule's effective date.

With respect to the subsequent issuance of additional authorized stock as dividends or stock splits, such an issuance may be permitted if it does not exacerbate the disparity in voting rights between classes or groups of shareholders. For example, super voting stock may be issued to existing super voting holders in a grandfathered disparate plan only if there are no transferability restrictions and all holders, both super and limited, receive a proportionate amount of securities such that the relative voting power of the lower voting stock toward the super voting stock is not reduced. Similarly, a reverse stock split could occur in a grandfathered disparate voting rights plan, but only if the split was applied to all classes of voting stock in a proportionate manner. The Commission believes that this analysis is consistent with the Rule because the voting power of the existing shareholders is not disparately reduced by the additional issuance.

Consistent with this position, the Commission believes that the subsequent issuance of options or convertible rights to purchase super voting stock is inconsistent with the Rule.¹¹⁸ The Commission believes that such issuances could be used to deteriorate further the voting rights of the holders of limited voting stock, and therefore such options and convertible rights to purchase super voting shares should be changed to rights to purchase non-super voting shares.

5. Application of Rule 19c-4 to Control Share Acquisition Statutes and Other Takeover Defenses

As noted above, commentators expressed concern regarding the potential impact of the proposed Rule on state anti-takeover statutes and other corporate tactics designed to discourage hostile takeovers.¹¹⁹ In particular, these commentators questioned the application of the Rule to state control share acquisition statutes, such as the Indiana statute upheld by the Supreme Court in the CTS decision, and other prevalent defensive tactics, such as

¹¹⁸ Stock options or convertible rights to purchase super voting stock that were issued before the effective date of the Rule, however, would be "grandfathered" and thus could be exercised at any time.

¹¹⁹ See text accompanying notes 38 to 62, *supra*.

poison pills. The Commission, when proposing the Rule, did not view it as a means to prohibit corporate defensive tactics in general, but merely as a prohibition against the disenfranchisement of existing shareholders' voting rights.¹²⁰

a. Control Share Acquisition Statutes. Specifically, commentators have questioned whether corporate action pursuant to control share acquisition statutes would constitute an issuance of securities or other corporate action that disenfranchises shareholders.¹²¹ In light of the CTS decision and the purposes of the Rule, the Commission has revised the Rule to clarify that it would not interfere with these statutes.

The Commission believes that deference to state-legislated control share acquisition statutes designed to specifically regulate changes in control is appropriate. We note that the SROs, in setting and enforcing their listing standards, historically have attempted to distinguish between areas in which generalized threshold standards have been set by the states and those areas in which the states have chosen specifically to regulate. For example, the NYSE traditionally has placed limitations on the listing of non-voting or lower voting stock, despite the presence of general state enabling legislation that permit corporations to have disparate voting stock. The NYSE, however, has deferred to state law in other areas of corporate governance, such as the rights of preferred shareholders to vote on mergers and acquisitions, when the states have chosen specifically to regulate or limit corporate activity.¹²²

¹²⁰ In this regard, the Commission does not agree with several commentators that the Rule would violate the Williams Act's principle of neutrality in the regulation of tender offers. See, e.g., International Paper comments, *supra* note 61. The Rule is not intended to address defensive tactics, but to protect shareholder voting rights. Moreover, companies would retain the full panoply of defensive tactics, as long as a particular tactic did not disenfranchise shareholders.

¹²¹ Ind. Code section 23-1-42-1 et seq. (1986). The Indiana Control Share Acquisitions Chapter is the forerunner of a number of state statutes designed to protect domestic corporations from hostile takeovers. Briefly, the statute provides that if a shareholder acquires 20% or more of the voting stock needed to elect directors of an Indiana corporation, the shareholder loses its right to vote the shares unless the disinterested shareholders vote to grant the "control" shareholder voting rights within 50 days of the commencement of the offer to purchase the shares. All Indiana corporations are covered by the statute, unless the corporation amends its articles of incorporation or by-laws to opt out of the statute.

¹²² See NYSE listed Company Manual section 305.00.

Accordingly, the Commission has determined that the Rule should not apply to corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.¹²³ Consistent with this change, the Commission believes that the definition of the phrase "corporate action" in paragraph (d)(4) of the Rule should be read so as to include compliance with control share acquisition statutes by: (1) Reincorporating in a state that has such a statute; or (2) failing to opt-out of such a statute.¹²⁴ Outside of the state statutes permitted in paragraph (d)(4) of the Rule, it is possible that states will enact other types of statutes that limit shareholder voting rights in certain situations. The Commission believes that determinations as to whether corporate action pursuant to any such statute is consistent with the purposes of the Rule is best left to the SROs.

The Commission does not believe, however, that corporate voting structures required by a state or Federal statute, with no opportunity provided for the corporation to opt out of such requirement, involve corporate action which would be covered by the Rule.¹²⁵ Moreover, reincorporation into a state with such a statute would not constitute corporate action under the Rule.

b. Shareholder Rights Plans. Commentators also have questioned the effect of Rule 19c-4 on tender offer defensive shareholder rights plans.¹²⁶

¹²³ E.g., Ind. Code section 23-1-42-1 et seq. (1986); Del. Code, Title 8, section 203; and N.Y. Bus. Corp. Law section 912 (McKinney 1986).

¹²⁴ The Commission's position is limited to the applicability of Rule 19c-4 to control share acquisition statutes. Accordingly, nothing discussed herein should be construed to indicate that the Commission believes such statutes are appropriate or that the Commission will not participate as amicus curiae opposing such statutes on Federal pre-emption and Commerce Clause constitutional grounds in the future. See Briefs of the Securities and Exchange Commission, *Amicus Curiae*, *Salient Acquisition Corp. v. Manhattan Industries, Inc.*, 88 Civ. 686, (S.D.N.Y., March 18, 1988); *RTE Corporation v. Mark IV Industries, Inc. and MIV Holdings, Inc. v. Lorne D. Barre*, Civil Action No. 88-C-378 (E.D. Wisc., May 8, 1988); *RP Acquisition Corp. v. Staley Continental, Inc.*, Civil Action No. 88-190 (D. Del., May 6, 1988).

¹²⁵ See text accompanying notes 134 to 135 *infra*.

¹²⁶ See, e.g., Fried, Frank comment, *supra* note 50, at 7-30. Predominantly, these inquiries questioned the applicability of the Rule to so-called flip-in plans, shareholder rights plans. Under certain flip-in plans, rights or warrants are attached to the common stock of a company, entitling the holder, upon the right being triggered, to buy additional shares of common stock at a price substantially below market value.

Continued

Because some of these so-called "poison pills" can be viewed as diluting the voting rights of a potential acquirer or large shareholder by allowing stock to be sold below market value to a specific shareholder or shareholders, some commentators expressed concern that the implementation of a poison pill would be considered disenfranchising under the Rule.

The Commission has determined that such plans generally should not be covered by the Rule. As with any recapitalization or disparate voting rights plan, the focus should be placed upon the effect of the plan on the voting rights of existing shareholders. It is important, therefore, to note that unlike transactions prohibited by the Rule, shareholder rights plans are not adopted to restructure a corporation by disenfranchising an existing class or classes of shareholders in order to solidify the voting power of management or a control group. Rather, these plans are adopted by corporations to discourage tender offers, or to encourage the development of an auction for the company resulting in shareholders receiving a higher price for their stock.¹²⁷ In fact such plans are adopted with the intent that they will never be implemented.¹²⁸

These rights generally are redeemable at any time by the Board of Directors of the company prior to being triggered and exercised. The rights, however, are not exercisable until the occurrence of a so-called triggering event, usually the acquisition of a specified percentage of the company's stock by a hostile bidder or the commencement of a tender offer. Upon the occurrence of the triggering event, all shareholders except the potential acquirer may then purchase shares at below market value, crippling the takeover effort by the acquirer.

¹²⁷ Further, it is important to note that although the NYSE has prohibited disparate voting rights stock for over 60 years, it has differentiated between disparate voting rights plans in general and shareholder rights plans that are adopted to discourage hostile takeovers.

¹²⁸ The Commission emphasizes, however, that its position on anti-takeover shareholder rights plans should not be misconstrued as a blanket exception for all restructurings adopted under the guise of a "poison pill." If a corporation develops an anti-takeover device designed specifically to transfer voting control from existing shareholders to insiders, or a group favored by insiders, it may violate Rule 19c-4 irrespective of the fact that it is termed a "poison pill." The Commission notes that several firms have adopted "poison pills" which would affect voting rights of a large purchaser of the company's stock. See, e.g., *Asarco, Inc. v. MRH Holmes A Court*, 611 F. Supp. 468 (D.N.J. 1985). Moreover, the Commission also emphasizes that its decision to exclude poison pills from coverage of Rule 19c-4 should not be construed as implying either acceptance or rejection of the argument that poison pills can, in some circumstances, have discriminatory or disenfranchising effects.

c. *Lock-Ups*. Commentators also questioned the effect Rule 19c-4 would have on the use of lock-ups, in which newly issued shares or options to buy additional shares, often at a discount, are issued to another party. Several commentators have questioned whether the purchase of additional shares, through a lock-up, at below market cost would disparately reduce the voting rights of existing shareholders. The Commission believes that lock-ups generally would not be prohibited by Rule 19c-4.¹²⁹ The Commission believes that the fairness of the compensation paid for voting stock generally should be determined by state law, with the addition of possible shareholder voting requirements imposed by SRO rules.¹³⁰ Moreover, the Commission notes that a substantial body of state judicial decisions, applying general fiduciary and duty of loyalty principles, have accorded greater scrutiny to lock-up transactions, especially in regard to contests for corporate control.¹³¹ Nevertheless, lock-ups effected by the sale of super voting preferred would be presumed to be prohibited under the Rule because they would involve an issuance of a new class of super voting stock, which presumably is prohibited under the Rule.¹³²

6. Other Interpretative Issues

In the Proposing Release, the Commission requested comment on a variety of issues. These issues included whether certain issuers or securities should be exempted explicitly from the Rule; the applicability of the Rule to so-called two-step transactions in which a company goes private and subsequently goes public with an issuance of disparate voting stock; the effect of the Rule on companies in financial distress; whether a company should be barred from listing for violating Rule 19c-4, or

¹²⁹ This is consistent with the views discussed above concerning flip-in plans. See text accompanying notes 126-128 *supra*.

¹³⁰ For example, Section 312 of the NYSE's Listed Company Manual requires shareholder approval where additional issuances of stock in an acquisition would increase the outstanding common stock by 10% or more. See also section 712 of the Amex Company Guide. The Commission believes that the NASD should consider adopting a similar rule when implementing Rule 19c-4.

¹³¹ See Terrell, "The Delaware Business Judgment Rule in a High Risk Environment" *Representing Publicly Traded Corporations: Advising Corporate Management in a High Risk Environment* 526 P.L.L. May-June 1987, at 458.

¹³² The Commission also notes that fair pricing provisions that require approval of a tender offer by a majority or super majority of disinterested shareholders are not covered by the Rule's prohibitions because no corporate action is being taken to disenfranchise shareholders.

should be able to take some curative action; and the effect of the Rule upon certain board and voting structures.¹³³ These and other interpretive issues are discussed below.

a. *Statutory Restrictions*. In response to the Proposing Release, several commenters noted that the voting rights of companies in certain industries might be subject to certain mandatory restrictions by applicable state and federal law.¹³⁴ The Commission recognizes the potential conflict between Rule 19c-4 and these statutes, and has concluded that the Rule should not cover action taken pursuant to such specific state or federal statutory requirements. The Commission notes that in such circumstances the issuer would not be required to obtain a waiver from compliance with the Rule because the alleged disenfranchising action is state or federal action, not corporate action.¹³⁵

b. *Going Private Transactions*. In the Proposing Release, the Commission expressed concern that the process by which a company is taken private and subsequently goes public within a brief period could have a disenfranchising effect on existing shareholders.¹³⁶ In response to the Commission's solicitation of comments, certain commentators objected to the labelling of such a two-step transaction as disenfranchising.¹³⁷ The Commission notes that, when a company is taken private, existing shareholders are required to be paid fair value for their stock and therefore are not disenfranchised. Indeed, in such a transaction, shareholders are not just relinquishing voting rights, but are

¹³³ See Proposing Release *supra* note 5, at 23673-74.

¹³⁴ See, e.g., ABA comment, *supra* note 50, at 27-28 (concerning Federal Home Loan Bank Board ("FHLBB") regulation that limits voting rights of a potential acquirer to 10% in certain circumstances); letter from Royce N. Sanner, Senior Vice President, Northwestern National Life Insurance Company, to Jonathan G. Katz, Secretary, SEC, dated August 4, 1987 (Minnesota statute that caps voting rights of shareholders and provides certain voting rights to policyholders); letter from James T. Lloyd, Vice President, U.S. Air Group, to Jonathan G. Katz, Secretary, SEC, dated July 16, 1987 (Federal Aviation Authority limits on voting rights of foreign stockholders).

¹³⁵ We note that such companies complying with a state or federal regulation would not obtain a blanket exemption from all aspects of the Rule, but simply those aspects necessary to comply with the mandatory requirement. For example, although the FHLBB rule permits banks to approve a charter provision to extend the mandatory voting restriction described in note 134 *supra* for 3 to 5 years, such voluntary action by an issuer would be considered corporate action prohibited by the Rule.

¹³⁶ Proposing Release, *supra* note 5, at n.98.

¹³⁷ See Gilson comment, *supra* note 25, at 3-4; International Paper comment, *supra* note 61, at 11.

selling their entire interest in a security. When the company subsequently goes public, regardless of the elapsed period of time since being taken private, purchasers, through proper disclosure, will be aware of the lack of voting control in the stock being purchased, just as with any IPO.¹³⁸ In both the going private transaction and subsequent initial public offering, the transactions are subject to market discipline. In light of these arguments, the Commission agrees that the above-cited transaction is not disenfranchising.¹³⁹

c. *Distress Situations*. Several commenters urged the Commission to consider the effect of the Rule on companies in financial distress.¹⁴⁰ These commenters questioned whether an arrangement by which a party infuses capital into a company in financial distress in exchange for voting control or super voting stock would be considered disenfranchising under the Rule. After considering the arguments of the commenters, the Commission concludes that the financial distress situation should be resolved by the individual SROs pursuant to their authority to adopt exemptive rules under paragraph (f) of the Rule. The SROs, among other factors, should evaluate whether the proposed recapitalization is part of a plan to rescue the company.

d. *Working Control*. Another related comment questions whether the Rule should apply to companies that already have substantial insider voting control (e.g., over 50%). The Commission recognizes two conflicting concerns. First, in a company where insiders have substantial control (so-called "working control") minority shareholders still should have a right to be protected from further disenfranchisement. On the other hand, if minority shareholders have little or no existing control vis-a-vis a majority control group, the Rule's protection will not necessarily benefit the minority shareholders. Nevertheless, the Commission believes it would be difficult and arbitrary, prior to the Rule's promulgation, to set a specific exception under the Rule based on the percentage of insider control.

e. *Board Composition*. Some commentators have raised questions

¹³⁸ See Gilson comment, *supra* note 25, at 3-4.

¹³⁹ The same analysis would apply to a partial tender offer for cash, which, by itself, would not be disenfranchising under the Rule.

¹⁴⁰ See letter from D.N. Maytum, Secretary, Chevron Corporation, to Jonathan G. Katz, Secretary, SEC, dated August 3, 1987; letter from Mudge, Rose, Guthrie, Alexander and Ferdon (counsel to Western Union) to Jonathan G. Katz, Secretary, SEC, dated August 7, 1987.

concerning specific voting provisions in regard to board elections. The Commission notes that these provisions will be considered disenfranchising only if they restrict the voting rights of a class or classes of stock. For example, a recapitalization that creates two classes of stock, each having one vote per share, in which one class elects a percentage of the board disproportionate to its equity interest, would be violative of the Rule. In contrast, staggered board elections or cumulative voting provisions would not disenfranchise holders of a class or classes of stock and therefore would not violate the Rule.

f. *Limited Partnerships*. Commentators also have raised concerns over whether the reorganization of a company to a limited partnership form would be considered a transaction that disparately reduces the voting rights of the holders of the common stock in violation of Rule 19c-4.¹⁴¹ There are fundamental tax reasons for a corporation to choose to recapitalize to a limited partnership form. According to applicable Treasury Regulations, however, a limited partnership will be taxed as a corporation if it possesses more corporate than non-corporate characteristics.¹⁴² Accordingly, most limited partnerships do not provide the limited partners with the right to vote except in very limited circumstances. Thus, a switch from corporate to partnership form necessarily would reduce voting rights of existing shareholders. Such a switch, however, goes far beyond voting rights and substantially changes the nature of the investment, as opposed to the mere adoption of a disparate voting rights structure. Accordingly, the Commission believes that so long as a corporation has a bona fide business reason for transferring to a limited partnership form, other than to reduce the voting rights of existing shareholders, it should be a permitted transaction under Rule 19c-4.¹⁴³

g. *Cure*. Finally, in the Proposing Release the Commission specifically solicited comment on whether companies delisted due to Rule 19c-4 should be permitted to "cure" the disenfranchisement and re-establish a trading market in a national securities exchange or association after a certain period of time. Commentators

addressing this question indicated that a cure should be anywhere from one year to at least seven years after the prohibited action.¹⁴⁴ The Commission has decided not to place a specific "cure" period in the Rule. Instead, the Commission will consider proposed rule changes by the SROs that would permit issuers to "cure" the defect and re-establish a public trading market. Factors the SROs should consider in deciding whether to propose such a rule change would include the length of time since the disenfranchising action, the proposed cure, the purpose and use of the recapitalization while it was in place, and any other circumstances that would be relevant to permit a company to relist on an exchange or be reauthorized by an association.

h. *Other Situations*. Aside from the situations discussed above, there are likely to be further requests for clarification or interpretation of the Rule's coverage. For example, the Rule is drafted expressly to permit certain disparate stock issuances in registered public offerings. Some public offerings need not be registered with the Commission (e.g., offerings of securities exempt under sections 3(a)(10) and 3(a)(11) of the Securities Act of 1933). Rather than address this situation in this Release, the Commission will rely upon the SROs' implementation of the Rule to provide further guidance.

C. Commission Authority to Adopt Rule 19c-4

The Commission believes that, in adopting Rule 19c-4, it has met the statutory standards necessary to add to the rules of an SRO as set forth under section 19(c) of the Act. Although commentators continue to question the authority of the Commission to amend SRO listing standards pursuant to its 19(c) authority,¹⁴⁵ the Commission has

¹⁴⁴ See letter from Alice E. Hennessey, Senior Vice President, Boise Cascade Corporation, to Jonathan G. Katz, Secretary, SEC, dated July 14, 1987 (no more than 1 or 2 years); FAF comment, *supra* note 39, at 2 (7 years at least).

¹⁴⁵ The commentators critical of the Commission's authority to promulgate Rule 19c-4 generally fall within two main categories. First, they argue that Congress never intended the Commission to have rulemaking authority under Section 19(c) of the Act to modify exchange listing standards to impose corporate governance requirements on issuers. Second, they argue that, even if the Commission does have 19(c) authority to promulgate listing standards, Rule 19c-4 cannot be justified as necessary or appropriate in furtherance of the Act, as required to adopt a rule under section 19(c). See text accompanying notes 23 to 68 *supra* (summarizing comments) and 145 to 180 *infra* (discussing Commission authority).

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concluded that Rule 19c-4 is consistent with the Act and in furtherance of the objectives of sections 6, 11A, 14, 15A, and 19 of the Act, in that it will protect against shareholder disenfranchisement and increase investor confidence in the securities markets in the United States. Moreover, the Commission, in crafting the Rule, sought to minimize the Rule's impact on areas traditionally subject to state regulation.¹⁴⁶

1. Listing Standards Are Rules Subject to the Commission's Section 19(c) Authority

Section 19(c) of the Act grants the Commission authority to amend "the rules of a self-regulatory organization . . . as the Commission deems necessary or appropriate . . . in furtherance of the purposes of (the Act)." ¹⁴⁷ The term "rule" is defined in section 3(a)(27) to include "stated policies, practices, and interpretations of such (exchanges or associations) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such (exchange or association)." ¹⁴⁸ The Commission has defined the terms "stated policies, practices or interpretations" to include "any statement . . . that establishes or changes any standard, limit or guideline with respect to (i) the rights, obligations or privileges of specified persons, or . . . persons associated with specified persons." ¹⁴⁹ "Specified persons" has been defined to include "all participants in or persons having or seeking access to facilities of (exchanges or associations)." ¹⁵⁰ Listing standards and eligibility criteria are statements establishing standards or guidelines regarding the obligations and privileges of issuers seeking access to the exchanges and NASDAQ markets. Thus, the listing requirements of the exchanges and NASDAQ eligibility criteria clearly are "rules" that the Commission may amend under section 19(c) of the Act.¹⁵¹

Although listing standards are SRO rules, one commentator argued that they operate not pursuant to self-regulatory authority derived "by virtue of any authority conferred by (the Act)," but as a private contract between the SRO and the listed company.¹⁵² That commentator argued that the scope of Commission review and amendment authority over SRO listing standards under section 19 is limited to the standard of unfair discrimination against issuers in section 6(b)(5), and for impact upon the SROs and their markets not in accordance with the standards concerning these markets, such as unfair competition between markets. The Commission disagrees with this analysis. The language of section 19(c) does not suggest that the scope of Commission jurisdiction over SRO rules varies depending on the type or content of the SRO rule involved.¹⁵³ Rather, the rulemaking authority over SRO rules provided in section 19(c) explicitly extends to all purposes of the Exchange Act without limitation.

The legislative history of section 19(c) further supports the Commission's authority to amend any listing standard or eligibility criterion of the SROs if it furthers the objectives of the Act. Prior to the 1975 Amendments to the Act, section 19(b) identified specified types of exchange rules as illustrative of the type of rules that the Commission was authorized to alter or supplement. Exchange listing and delisting standards were among the types of rules so identified. In the 1975 Amendments, however, Congress did not follow the pattern established in original section 19(b). Instead, the Committee Report accompanying the Senate version of the 1975 Amendments indicated that the broad language of section 19(c) was intended to provide the Commission with "authority to amend [SRO] rules in any manner in furtherance of the objectives of the Exchange Act."¹⁵⁴

(March 9, 1976) (approving NYSE audit committee listing requirements); Securities Exchange Act Release No. 22894 (February 11, 1976) 51 FR 6036 (amending Schedule D of the NASD's By-Laws to conform maintenance criteria for those companies in NASDAQ/NMS Designation Plans).

¹⁴⁸ See ABA comment, *supra* note 50, at 12-13. ¹⁴⁹ See *Aaron v. SEC*, 446 U.S. 680, 700 (1980) ("in the absence of a reasonably plain meaning and legislative history, the words of the statute must prevail"); *Ernst and Ernst v. Hochfelder*, 425 U.S. 185, 201 (1976) ("the language of a statute controls when sufficiently clear in its context").

¹⁵⁰ Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S. 248: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 131 (1975) ("Senate Report"). We note that, by providing the Commission with such broad authority over exchange rules in both sections 19(b) and 19(c), Congress can be viewed as having confirmed the Commission's practice of reviewing

Accordingly, because listing standards are rules of an SRO, as defined under the Act, and because such listing standards were recognized SRO rules when Congress conferred upon the Commission authority to amend such rules, Congress presumably intended the Commission to have the authority under section 19(c) to amend such rules if such an amendment is necessary or appropriate in furtherance of the purposes of the Act.

Other commentators argued that the SROs' lack of enforcement authority over issuers negates any Commission authority to require the SROs to impose rules affecting issuers.¹⁵⁵ These commentators suggested that SROs are not obligated to enforce listing standards against issuers because section 19(g) of the Act ¹⁵⁶ requires that an SRO enforce compliance with its rules only by its members or their associated persons, and section 19(h) of the Act does not authorize the Commission to discipline an SRO for failing to enforce compliance with its rules by issuers.¹⁵⁷ These commentators argued that it would be meaningless for the Commission to impose upon SROs a rule that they were not required to enforce.

This argument ignores two basic points. First, exchanges do not require specific enforcement authority against issuers to enforce their listing standards;

exchange listing standards, both qualitative and quantitative. Both prior and subsequent to the 1975 Amendments, the Commission has reviewed listing standards concerning shareholder suffrage and other so-called "corporate governance" matters in proposed rule filings submitted by the SROs.

For example, in 1974 the Amex filed a proposed change in its listing standards for foreign companies that would have reduced public share distribution requirements and eliminated the requirements of annual reports, voting common stock, and outside directors for these issuers. The Commission decided to grant a hearing to determine whether to disapprove the rule change under Section 19(b) in part in response to concerns regarding the changes in voting rights. The Amex ultimately withdrew its proposal. See letter from Bernard Maza, Vice President, Amex, to Sheldon Rappaport, Associate Director, Division of Market Regulation, SEC, dated January 2, 1974. Senator Harrison Williams, a principal architect of the 1975 Amendments, clearly was aware of the Commission's activity in the listing standards area. In March 1974, he submitted a letter to the Commission arguing that the Commission should "disapprove" the Amex rule filing. Letter from Harrison Williams, U.S. Senator, to Ray Garrett, Jr., Chairman, SEC, dated March 22, 1974.

See also, letter from Paul Kolton, Chairman, Amex, to Ronald Hunt, Secretary, SEC, dated July 20, 1973 (requesting the Commission to review, pursuant to Sections 6 and 19 of the Act, an NYSE listing standard rule change).

¹⁵⁵ See, e.g., Carter-Wallace comment, *supra* note 85, at 33-35.

¹⁵⁶ 15 U.S.C. 78e(g).

¹⁵⁷ 15 U.S.C. 78e(h).

they need only deny listing to securities not meeting those standards. Moreover, section 19(h) of the Act authorizes the Commission to bring an enforcement action against any SRO that fails to comply with its own rules. Therefore, failure by an SRO to apply its listing standards, or action by an SRO to enforce them in a manner inconsistent with its rules, would subject the SRO to discipline by the Commission. Further, notwithstanding the enforcement responsibilities of SROs vis-a-vis issuers, the SROs, as a condition of their registration, must have the "capacity to be able to carry out the purposes of [the Act]." ¹⁵⁸ Accordingly, the Commission continues to believe that sections 19 (g) and (h) provide no basis for ignoring the clear language of section 19(c).¹⁵⁹

2. Rule 19c-4 is Necessary or Appropriate in Furtherance of the Purpose of the Act

The Commission's concerns regarding the adoption of certain disparate voting rights plans arise because such plans can deprive existing shareholders of their voting rights in a coercive or involuntary manner. If the removal or limitation of voting rights or the creation of dual class stock is not subject to the discipline of the marketplace (e.g., in the case of a public offering), existing shareholders can be disenfranchised of their right to have an impact on any future corporate decisions, as well as potentially their right to receive a control premium from a tender offer. When shareholders purchase a security, they do so with the reasonable expectation that they and their successors will retain their voting rights until they choose to relinquish them in a transaction subject to market discipline.

¹⁵⁸ 15 U.S.C. 78f(b)(1), 78o-3(b)(2). See text accompanying notes 100 to 109 *infra* (discussing purposes furthered by promulgation of Rule 19c-4). We also note that Congress added the requirement that SROs comply with their own rules when it deleted the issuer enforcement requirement. The inference from this action is that Congress sought to ensure that SRO's own rules regarding issuers would be followed even absent a direct obligation.

¹⁵⁹ As a practical matter, the different treatment of issuers can be easily explained. SROs can fine, censure or expel from membership their members and the associated persons of such members. In contrast, SROs, as a practical matter, only may delist their issuers; they may not fine or censure issuers listed on their markets. Accordingly, the statute recognizes that, apart from following their listing standards, SROs are not expected, under Section 19(g) of the Act, "to enforce compliance" (i.e., issue fines or censures) against their issuers. Compare sections 6(b)(6) and 15A(b)(7) of the Act (15 U.S.C. 78f(b)(6), 78o-3(b)(7)) (authorizing expulsion, suspension, limitations on activities, fines and censure of members and persons associated with members) with section 12(d) of the Act (authorizing a security to "be withdrawn or stricken from listing and registration in accordance with the rules of the exchange").

The Commission is concerned that disenfranchisement, by overturning these expectations, may result in diminishing investor confidence in the securities markets.

Based on the above, as well as the analysis contained in this order, the Commission believes that it is necessary in furtherance of the purposes of sections 6, 11A, 14, 15A and 23 of the Act, to protect investors and the public interest from disparate voting rights plans that disenfranchise existing shareholders. Even, however, if the Commission could not make the determination that the Rule is necessary in furtherance of the Act, based upon the analysis contained in this order, we clearly find the Rule appropriate in furtherance of the purposes of the Act.¹⁶⁰

The Commission believes that Rule 19c-4 furthers the purposes of sections 14 (a) and (b) of the Act, which are intended to ensure fair shareholder suffrage.¹⁶¹ Certain commentators argued that the Commission can protect fair shareholder suffrage only through regulation of the proxy process. Under this view, when enacting section 14, Congress' sole concern was the solicitation of proxies and not shareholder voting rights.¹⁶² The Commission believes that the concerns of Congress in enacting Section 14 were broader. The 1934 House Report on the proposed Securities Exchange Bill describes the broad purpose of section 14(a):

Inasmuch as only the exchanges make it possible for securities to be widely distributed among the investing public, it follows as a corollary that the use of the exchanges should involve a corresponding duty of according shareholders fair suffrage.¹⁶³

The widespread implementation of disparate corporate voting structures would render meaningless the purposes underlying Section 14(a). Moreover, it is not surprising that Congress did not attempt to regulate shareholder voting rights directly. Congress' assumption that securities holders possessed effective voting power was based on the NYSE's existing and widely publicized

¹⁶⁰ Section 19(c) of the Act allows the Commission to amend SRO rules as it deems necessary or appropriate.

¹⁶¹ 15 U.S.C. 78n (a), (b).

¹⁶² See ABA comment, *supra* note 50, at 16-18.

¹⁶³ H.R. Rep. 1363, 73d Cong. 2d Sess. 14 (1934). See also L. Loss, *Fundamentals of Securities Regulation*, 452-453 (2d ed. 1968). Professor Loss noted that the Commission's power under section 14(a) is not limited to requiring disclosure, and that the statutory language of the Section is more general than the language under the specific disclosure philosophy of the Securities Act of 1933.

policy against listing non-voting and lower voting common stock. In light of the NYSE's position as the principal national securities market, Congress was able to base its statutory scheme on existing protections against disparate voting structures.

Section 14(a) contains an implicit assumption that shareholders will be able to make use of the information provided in proxy solicitations in order to vote in corporate elections. This is supported by the legislative history of section 14(a), which states, "[f]air corporate suffrage is an important right that should attach to every equity security bought on a public exchange." ¹⁶⁴ Accordingly, with Rule 19c-4, the rules of the SROs will further the shareholder suffrage policy reflected in the section 14(a) proxy requirements by preventing the disenfranchisement of existing shareholders through transactions that are not fully subject to market discipline. Indeed, the disenfranchisement of shareholders could render ineffective the proxy protections embodied in section 14.¹⁶⁵

Other commentators argued that any assumption by the Commission that the scope of section 14(a) extends beyond the proxy process is undercut by the failure of the 1964 amendments to the Act to extend voting rights standards to over-the-counter ("OTC") securities and by the existence of listing standards on the Amex that permitted disparate voting rights plans at the time of the 1975 Amendments.¹⁶⁶

The Commission is not persuaded that Congress was unconcerned with shareholder suffrage when it applied section 14 to the OTC market without specifically addressing the absence of voting rights standards in that market. The Senate Report in the 1964 amendments noted that "[t]he purpose of the section (Section 14) and the Commission rules thereunder is to provide shareholders with an opportunity to exercise their corporate franchise on the basis of accurate and adequate information." ¹⁶⁷ Although the

¹⁶⁴ H.R. Rep. No. 1363, *supra* note 163, at 13.

¹⁶⁵ Moreover, in adopting section 14(b) of the Act, Congress sought to facilitate effective voting by beneficial shareholders in corporate elections, in part to reduce management dominance of elections through obtaining blank proxies from brokers and other custodial holders of securities. Section 14(b) provided the Commission with extensive rulemaking authority with respect to proxies on securities carried for customers. See *Stock Exchange Practices: Hearings before the Senate Comm. on Banking & Currency*, 73rd Cong., 1st Sess., 6677, 7711-12 (1934).

¹⁶⁶ See, e.g., ACG comment, *supra* note 60, at 3.

¹⁶⁷ See S. Rep. No. 379, 88th Cong., 1st Sess. 7 (1963).

legislative history to the 1964 amendments is not more explicit regarding shareholder suffrage, we believe that the commentators' argument assumes too much from congressional silence.¹⁶⁶ Until recent concerns over tender offer defensive tactics, relatively few companies had disparate voting stock. Moreover, those companies that did have such structures generally were family controlled and had maintained their voting structure for some time. It would be wrong to construe Congressional inattentiveness to this issue in 1964 as a determination that the Commission did not have authority to address, through a section 19(c) proceeding, the dramatic increase in disenfranchising recapitalizations. The Commission also notes that initially the Act focused on exchange-listed securities because, as noted above, Congress believed that only the exchanges made it possible for securities to be widely distributed among the investing public. Not until the 1970s and 1980s, with the emergence of NASDAQ, coupled with the increased incidence of hostile takeovers, did the question of NASDAQ eligibility criteria concerning voting rights take on significance. In light of the foregoing, the Commission views proposed Rule 19c-4 as furthering the regulatory framework which underlies the enactment of section 14.

This conclusion is still valid despite the enactment of the 1975 Amendments at a time when the Amex had a policy permitting disparate voting rights stock. Unlike the Act, which was meant to create a new system "for the regulation of securities exchanges and of over-the-counter markets, (and) to prevent inequitable and unfair practices on such exchanges and markets,"¹⁶⁹ the 1975 Amendments were intended primarily to address trading market problems that had developed in the 1960s and 1970s.¹⁷⁰ Without more concrete

evidence in the legislative history, and in light of the continued absence of any dramatic expansion of the number of issuers with disparate voting stock by 1975, it is not credible to imply from Congressional silence the approval of the disparate voting policy of the Amex. Again, in contrast, the legislative history of the original enactment of the Act provides ample evidence of Congressional interest in corporate suffrage issues.

In addition to furthering the purposes of Section 14, Rule 19c-4 will enhance the ability of the exchanges and the NASD to fulfill their responsibility under sections 6(b)(5) and 15A(b)(6) of the Act to ensure that their rules protect investors and the public interest.¹⁷¹ The Commission believes the term "public interest" should be interpreted in a manner which reinforces the policies implicit in the Act. Accordingly, it is appropriate for the Commission to amend exchange rules to address disenfranchising transactions, as such transactions make hollow the substantive proxy protections contained in Section 14 and frustrate the reasonable expectations of investors as to their voting rights.

Rule 19c-4 has been drafted carefully to identify only those situations in which shareholders would be disenfranchised.¹⁷² As discussed above, the Rule protects investors from disparate voting rights plans that result in disenfranchisement, thereby eliminating a shareholder's right to have any effect on future corporate decisions through transactions that are not fully subject to market discipline. At the same time, however, the Rule is crafted to permit disparate voting rights plans that do not disenfranchise existing shareholders and assure that the creation of shares with lesser voting rights is subject to market discipline.

Finally, the Commission notes that the 1975 Amendments added Section 11A to the Act to "facilitate the establishment of a national market system for securities."¹⁷³ Section 11A of the Act directs the Commission to "use its authority . . . to carry out the objectives (of Section 11A and) by rule . . . designate the securities or classes of securities qualified for trading in the national market system."¹⁷⁴

¹⁷¹ 15 U.S.C. 78f(6)(5), 78o-3(b)(6).

¹⁷² We note that the SROs will be able to exclude from the Rule's coverage any non-disenfranchising transactions. Accordingly, the Rule's focus is related directly to the protection of investors and the public interest.

¹⁷³ See S. Rep. No. 75, *supra* note 154, at 101.

¹⁷⁴ 15 U.S.C. 78k-1(a)(2).

Section 11A(a)(1) enumerates several statutory objectives including the maintenance of "fair competition among brokers and dealers, among exchange markets, and between exchange markets and [other] markets . . ."¹⁷⁵

Congress intended that the rules promulgated under Section 11A ensure that "equal regulation" would be achieved within a national market system regarding the markets for securities qualified for national market system trading, as well as dealers, exchange members and brokers.¹⁷⁶ Congress has stated that "equal regulation" means "persons enjoying similar privileges, performing similar functions and having the potential for similar market impact are treated equally."¹⁷⁷ While that statement was made in the context of a discussion of market makers, the concept ultimately was "intended to guide the Commission in its oversight and regulation of the trading markets and the conduct of the securities industry."¹⁷⁸ Further, Congress viewed the Commission's power to designate securities qualified for trading in the national market system as an important tool in achieving, among other things, a market characterized by "fair competition." In discussing the concept of equal regulation, Congress stated that if the Commission decides that "any disparity in regulation . . . permits an unfair competitive advantage," it is authorized to modify such regulation.¹⁷⁹ This passage clearly refers to unequal SRO regulation, because the Commission already had general authority to modify its own regulations in this manner.

The objectives set forth under section 11A are relevant to all SRO rules. Although the 1975 Amendments did not specifically focus on voting rights, as did the original promulgation of the Act, there is no evidence that Congress in 1975 intended to limit the Commission's authority to ensure equal regulation and fair competition among markets. The Commission believes that a minimum standard regarding disparate voting rights plans for all markets furthers the equal regulation and fair competition requirements embodied in section 11A. Over the past several years, issuer recapitalizations have resulted in SROs attempting to compete for listings by lowering listing standards concerning shareholder voting rights. It is clear that

¹⁷⁵ 15 U.S.C. 78k-1(a)(1)(C)(ii).

¹⁷⁶ House Report No. 228, *supra* note 170, at 93-99.

¹⁷⁷ S. Rep. No. 75, *supra* note 154, at 15.

¹⁷⁸ *Id.* at 94.

¹⁷⁹ *Id.*

despite substantial efforts, the SROs are incapable of agreeing on minimum protections for shareholder voting rights for their listed or NASDAQ eligible companies. The Commission believes a minimum rule would further the section 11A objective of fair competition among SROs.¹⁸⁰

IV. Conclusion

In consideration of the above, the Commission has decided to adopt Rule 19c-4. The Commission's public proceedings in connection with its consideration of proposed Rule 19c-4 have been extensive. As noted above, the Commission has received and reviewed over 1,100 comment letters in response to proposed Rule 19c-4. In addition, the Commission has held two public hearings on the voting rights issue, one directly related to Rule 19c-4 and the other related to the NYSE's proposal to amend its one share, one vote standard. After careful review of the record, the Commission believes Rule 19c-4 is necessary and appropriate in furtherance of the Act, and specifically sections 6, 11A, 14, 15A and 19 of the Act. These sections, among other things, embody the principles of fair corporate suffrage, equal regulation, fair competition, and the protection of investors and the public interest.

When the shareholder voting rights issue began to attract attention in 1984, the overwhelming majority of issuers listed on the NYSE and Amex or quoted over NASDAQ did not have a disparate voting rights structure.¹⁸¹ Most of those

¹⁸⁰ The Commission also disagrees with the ABA argument that the Commission can only consider a rule's impact on markets and the competition among markets for listing securities in reviewing proposed rule changes of the SROs under section 19(b), and may only commence 19(c) proceedings to amend the rules of other SROs if the rule would result in unequal regulation and unfair competition. It appears anomalous to claim that the Commission can use its section 19(b) authority to prevent shareholder disenfranchisement if an SRO submits a rule that would result in unfair competition and unequal regulation, but that it does not have the same section 19(c) authority to protect directly investors and the public interest. The Commission also disagrees with the Business Roundtable argument that Congress' "delegation" of authority under section 19(c) to regulate matters of corporate governance would be unconstitutional under the "nondelegation" doctrine. Rule 19c-4 is not intended to regulate corporate governance, but to protect the voting rights of shareholders. This is consistent with the Commission's mandate, going back to its creation in 1934, to protect investors in the nation's securities markets.

¹⁸¹ See Seligman, *Equal Protection in Shareholder Voting Rights: The One Share, One Vote Controversy*, 54 G.W.L. Rev. at 703-07. In his article, Professor Seligman stressed that the number of corporations contemplating dual class structures had been insignificant prior to 1984 and 1986. Professor Seligman noted that through 1976, there were 37 corporations listed on the Amex with multiple classes of stock. By 1985, this number had

that did were growth companies with substantial family or insider holdings. In the year prior to the Proposing Release an increasing number of companies recapitalized to a dual class structure. These companies, which disenfranchised shareholders to convert to a dual structure, often were more established companies with extensive public ownership.¹⁸² If Rule 19c-4 is not adopted, additional companies will disenfranchise shareholders in order to restructure themselves for defensive purposes. Such disenfranchisement of the shareholders of American companies would injure public investors and diminish investor confidence in the U.S. securities markets. Rule 19c-4 will ensure that the U.S. securities markets are not so harmed.

Rule 19c-4 prohibits the listing on a national securities exchange or the authorization by a national securities association of equity securities issued by companies that issue securities or take corporate action with the effect of nullifying, restricting, or disparately reducing the voting rights of existing shareholders. At the same time, Rule 19c-4 permits the listing and trading of securities that adopt disparate voting rights plans that do not have such a disenfranchising effect on the voting rights of existing shareholders. This avoids unduly burdening issuers and allows for flexibility in devising a corporation's capital structure.

The Commission believes that the Rule provides an appropriate balance between the concerns of those commentators that feared Rule 19c-4 would infringe on corporate capital structures and governance, and those commentators that support a rule that would prohibit corporations from adopting disparate voting rights plans that diminish or eliminate the voting rights of existing shareholders.

Further, the Commission is convinced it has authority to adopt Rule 19c-4.

increased to approximately 60, or 7% of the 785 companies listed on the Amex. In addition, there were approximately 10 firms listed on the NYSE, and 110 of the 4,101 companies traded on NASDAQ (2.7%), which had two classes of stock in 1985. Accordingly, Professor Seligman noted that there were relatively few corporations (170 of the 4,886 corporations traded on the Amex and NASDAQ) with disproportionate voting rights structures listed on the exchanges or traded on NASDAQ prior to and during 1985. In contrast, the Commission notes that, as of June 1, 1988, 55 companies listed on the NYSE, 117 companies listed on the Amex, and 182 companies traded on NASDAQ have dual class voting structures.

¹⁸² See, e.g., OCE Update, which found more NYSE companies recapitalizing with less insider holders after the NYSE imposed its moratorium on its one share, one vote rule.

Concerns by issuers that the Rule would infringe unduly on state law because it could be interpreted to affect state anti-takeover statutes and defensive tactics such as poison pills are ill-founded. As discussed above, the Commission has made clear that Rule 19c-4 is not, as a general matter, designed to address specific tender offer defensive tactics that may be adopted by issuers but instead is intended to prevent disenfranchising corporate actions. Moreover, the Rule would exempt corporate action taken pursuant to mandatory state control share acquisition statutes. Adoption of Rule 19c-4 clearly falls within the Commission's mandate to protect investors and the public interest and ensure fair corporate suffrage.

Finally, we note that in this Release, the Commission has attempted to describe the Rule's coverage and address the interpretive issues raised by commentators. We believe that the Rule's standard of preventing issuances or actions that nullify, restrict or disparately reduce voting rights of existing shareholders, in addition to the list of transactions presumed to be permitted or prohibited, should provide sufficient guidance to issuers. To the extent new structures develop that raise questions on the Rule's applicability, we believe the SROs, with Commission oversight, should be able to determine whether a given transaction is disenfranchising.

V. Availability of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding Rule 19c-4 has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Sharon Itkin in the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, securities.

Text of the Rule

Title 17, Chapter II of the *Code of Federal Regulations* is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * § 240.19c-4 also issued under secs. 8, 11A, 14, 15A, 19 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3, and 78e).

2. By adding § 240.19c-4 as follows:

§ 240.19c-4 Governing certain listing or authorization determinations by national securities exchanges and associations.

(a) The rules of each exchange shall provide as follows: No rule, stated policy, practice, or interpretation of this exchange shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer, if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to section 12 of the Act.

(b) The rules of each association shall provide as follows: No rule, stated policy, practice, or interpretation of this association shall permit the authorization for quotation and/or transaction reporting through an automated inter-dealer quotation system ("authorization"), or the continuance of authorization, of any common stock or other equity security of a domestic issuer, if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to section 12 of the Act.

(c) For the purposes of paragraphs (a) and (b) of this section, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

(1) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

(2) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have

been held by such beneficial or record holder;

(3) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer.

(4) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(d) For the purpose of paragraphs (a) and (b) of this section, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

(1) The issuance of securities pursuant to an initial registered public offering;

(2) The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

(3) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(4) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

(e) *Definitions.* The following terms shall have the following meanings for purposes of this section, and the rules of each exchange and association shall include such definitions for the purposes of the prohibition in paragraphs (a) and (b), respectively, of this section:

(1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

(3) The term "equity security" shall include any equity security defined as

such pursuant to Rule 3a11-1 under the Act (17 CFR 240.3a11-1).

(4) The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Act (17 CFR 240.3b-4).

(5) The term "security" shall include any security defined as such pursuant to section 3(a)(10) of the Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

(6) The term "exchange" shall mean a national securities exchange, registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act, which makes transaction reports available pursuant to Rule 11Aa3-1 under the Act (17 CFR 240.11Aa3-1); and

(7) The term "association" shall mean a national securities association registered as such with the Securities and Exchange Commission pursuant to section 15A of the Act.

(f) An exchange or association may adopt a rule, stated policy, practice, or interpretation, subject to the procedures specified by section 19(b) of the Act, specifying what types of securities issuances and other corporate actions are covered by, or excluded from, the prohibition in paragraphs (a) and (b) of this section, respectively, if such rule, stated policy, practice, or interpretation is consistent with the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act and this section.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: July 7, 1988.

Commissioner Grundfest, Concurring

Section 19(c) of the Securities Act of 1934 (the "Act") grants the Commission authority to amend "the rules of a self-regulatory organization * * * as the Commission deems necessary or appropriate * * * in furtherance of the purposes of [the Act]."¹ The

¹ 15 U.S.C. 78c(c).

Commission today finds that Rule 19c-4 is both necessary and appropriate.² Our decision is based on review of a voluminous record describing recent trends in disenfranchisement transactions, combined with careful consideration of the language, structure, and history of the Act.³

Adoption of Rule 19c-4 may, to some, raise concerns about potential encroachment by the Commission into areas of corporate governance traditionally subject to state control. While understandable, these concerns are easily overstated. The Act reflects a particular Congressional solicitude toward the exercise of voting rights and subjects few, if any, other incidents of share ownership to the degree of regulation and oversight directed at corporate suffrage.

The reasoning supporting Rule 19c-4 would therefore not necessarily support future Commission rulemakings imposing uniform listing standards regulating other aspects of corporate governance. Put another way, Section 19(c) does not provide the Commission *carte blanche* to adopt federal corporate governance standards through the back door by mandating uniform listing standards. The disenfranchisement problem addressed by Rule 19c-4 presents a narrow and special case that does not easily extend to other corporate governance standards that may be referenced by listing criteria.

Rule 19c-4 also does not prohibit any corporation from adopting any capital structure. Corporations can continue to issue any number of classes of stock, some with little or no voting power and others with substantial or even dominant control.⁴ The rule is, instead,

carefully crafted to address concerns about the process by which disenfranchisement occurs. The transactions that most consistently cause concern involve exchange offers, dividends, or other distributions that dramatically increase the voting power of a relatively small, well defined group of stockholders at the expense of a larger group of public stockholders.

The Supreme Court has recently relied on the potential for collective action problems as a basis for unholding Indiana's control share acquisition statute.⁵ As the Court noted, collective action problems can cause shareholders to vote in favor of propositions that they might oppose if given an opportunity to act together as a group.⁶ Such collective action problems are hardly unique to shareholders—they appear in many voting contexts and have long been subject to careful analysis.⁷ Here, the evidence of record suggests that collective action problems are associated with the process governing corporate disenfranchisement decisions.

The operation of collective action problems in disenfranchising decisions is most fully developed and explained by Professors Gilson,⁸ Gordon,⁹ and Ruback.¹⁰ Rule 19c-4 addresses these concerns not by prohibiting a broad class of capital structures, as proposed by some commentators, but by channeling transactions most likely to suffer from collective action problems into a market mechanism less susceptible to those difficulties. The rule is thus narrowly crafted to address transactions that possess the greatest potential for the sort of coercion that motivates the Commission's concern over disenfranchisement.

While every electoral process is potentially subject to a collective action

that raise disenfranchisement concerns, thus acts as a filter allowing beneficial recapitalizations and financings to continue while deterring transactions that tend primarily to disenfranchise and transfer wealth from public to inside shareholders without competitive compensation. See, R. Gilson, *Evaluating Dual Class Common Stock: The Relevance of Substitution*, 73 Va. L. Rev. 807 (1987).

⁸ *CTS Corp. v. Dynamics Corp. of America*, 107 S.Ct. 1637 (1987).

⁹ *Id.* at 1646.

¹⁰ See, e.g., P.C. Ordeshook, *Game Theory and Political Theory* (1987), Ch. 5 (Discussing non-zero-sum games, political economy, and the prisoners' dilemma, and noting that collective action problems were recognized and discussed by Hume in *A Treatise of Human Nature*, Rousseau in his *Discourse on the Origin and Basis of Inequality among Men*, and Hobbes in *Leviathan*.)

¹¹ Gilson, *supra* note 4, at 832-40.

¹² J. Gordon, *Ties that Bind: Dual Class Common Stock and the Problems of Stockholder Choice*, 75 Calif. L. Rev. — (1988) (forthcoming).

¹³ R. Ruback, *Coercive Dual Class Recapitalization*, (MIT, Sloan School of Management, Working Paper) (Dec. 1986).

problem, there are sound reasons for the Commission to focus its concern on decisions that can lead to disenfranchisement. All voting choices fall into one of two categories: they are either "constitutional" or "parliamentary."¹¹ A constitutional choice involves a decision about how other decisions will be made. A parliamentary choice involves the application to a particular problem of a decision rule previously determined by a constitutional choice. An election that proposes to disenfranchise certain shareholders is a constitutional choice because it permanently alters the process by which later corporate decisions are made.

Constitutional choices are legitimately subject to greater scrutiny than parliamentary choices and are rationally subject to more stringent safeguards.¹² These safeguards can include supermajority requirements or absolute prohibitions on disenfranchisements.¹³ They can also include requirements such as Rule 19c-4 that channel constitutional decisions through mechanisms less susceptible to collective choice problems. Indeed, the greater scrutiny rationally accorded to constitutional choices provides a sound and consistent rationale for the Commission's decision at least initially to focus its attention on the disenfranchisement process.

Finally, it is worthwhile to observe that Rule 19c-4 may, in the future, be criticized for generating alleged inconsistencies in its application and result. Some of these inconsistencies may be real while others will only be apparent. Some inconsistencies may be due to the Commission's effort to craft a rule that has a primarily prospective effect and that therefore provides some latitude for "grandfathered" transactions that might otherwise have been prohibited.¹⁴ Moreover, some

¹¹ See, e.g., C. Mueller, *Social Choice* (1979); J. M. Buchanan & G. Tullock, *The Calculus of Consent* (1962); J. A. Rawls, *A Theory of Justice* (1971).

¹² Mueller, *supra* note 11; Rawls, *supra* note 11.

¹³ Compare, e.g., Securities Exchange Act Release No. 23724 (Oct. 17, 1986), 51 FR 37529 (proposed rule change filed with the Commission by the New York Stock Exchange that would establish a supermajority requirement for disenfranchising transactions) with NYSE, *New York Stock Exchange Listed Company Manual* section 313.00(c) (Unusual Voting Provisions), 313.00(d) (Proportionate Voting Power) (1933 & Supp. 1986).

¹⁴ See, e.g., discussion in adopting release of shareholder rights plans at Section III, B.5.b. and note that flip-in poison pill plans have been found to be discriminatory. See, e.g., *Amalgamated Sugar Co. v. NL Industries, Inc.*, 644 F. Supp. 1229 (S.D.N.Y. 1986) (applying New Jersey law); *R.D. Smith & Co. v. Preway, Inc.*, 644 F. Supp. 686 (W.D. Wis. 1986) (applying Wisconsin law); *Spinner Corp. v. Princeville Development Corp.*, Civ. No. 86-0701 (D. Haw. Oct. 31, 1986) (applying Colorado law).

inconsistencies may be due to interpretations of Rule 19c-4 as applied by the self regulatory organizations. Here, I join in Commissioner Fleischman's exhortation to the SROs that they display meaningful backbone and apply Rule 19c-4 consistently according to its terms and intent.

More fundamentally, however, it should be recognized that Rule 19c-4 deals with one of the more intricate and difficult areas in all the social sciences: the problems of social choice. The entire field is rife with paradoxes, contradictions, and impossibility theorems.¹⁵ Indeed, when subject to close scrutiny, even the simple majority voting procedure that we often take for granted as a fair and generally accepted method of social decisionmaking is revealed to be full of potential contradictions that can make it appear arbitrary and capricious.¹⁶ Accordingly, it is neither reasonable nor possible to hold Rule 19c-4 to a standard that requires perfect logical consistency in all circumstances and all applications. No voting rule or rule regulating voting behavior can achieve that result, and Rule 19c-4 should not be held to such an unattainable standard. The rule should, instead, be understood for what it is: an effort to craft a carefully targeted standard that operates prospectively to substitute market mechanisms for voting processes in situations that involve a substantial danger of collective action problems and that raise disenfranchisement concerns of constitutional magnitude.

Commissioner Fleischman, Concurring

Adoption by the Commission of Rule 19c-4 initiates a new phase in the process, summarized in the Release, that began with the 1984 "moratorium" on enforcement by the NYSE of compliance with sections 313 (D) and (E) of its *Listed Company Manual*.¹ After four

years the focus will now shift back to the NYSE Department of Stock List and its confreres on Trinity Place and on K Street NW. That will happen because the Commission's actions today not only expand the Code of Federal Regulations but also "add to" the codex of rules of each affected national securities exchange and of the NASD. In my view, so it should be.

For most of this century, exchange (and, more recently, NASD) listing standards have interacted with the mandatory and permissive provisions of the corporate laws of the several states, subject to Commission rules of specific application, to provide an accepted framework for the safeguarding of public shareholder rights and the inhibition of corporate managers' overreaching.² For example, the corporate decision to grant stock options to employees was shaped by corporate law requirements such as Section 505 of the New York Business Corporation Law,³ listing standards such as section 312 of the *Company Manual*,⁴ and Commission rules such as Item 10 of Schedule 14A,⁵ and paragraph (a) of Rule 16b-3⁶ (plus, of course, the ever-changing provisions of the Internal Revenue Code). Over the years no small part in the process was played by exchange staff members who (returning to my example above) quietly insisted that, while it was nowhere in the canon to be found, an exchange "interpretation" would mandate the undertaking by the listed company not to replace out-of-the-money instruments with new at-the-market options in the absence of further shareholder action. As a result of that interaction, there was achieved a merger of substantive protections and procedural requirements, illuminated by Commission-mandated disclosure, that did somehow raise the level of generally accepted corporate practice among American public business enterprises.

Today the Commission deliberately challenges the exchanges and the NASD, and their respective "stock list" staffs, to demonstrate the resiliency and insight of which that interactive process

is capable. A brief review of the rule added to each of their manuals demonstrates why this is so.

Pursuant to Rule 19c-4, a rule of each affected exchange and of the NASD will forbid that exchange or the NASD from listing, or continuing to list,⁷ equity securities of a domestic company if the company takes corporate action "with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding (publicly-held) class or classes of common stock".⁸ Recognizing that application, i.e., interpretation, of its own rule will as always fall in the first instance to the exchanges and the NASD, paragraph (f) of Rule 19c-4 admonishes those organizations to adhere to interpretive policies "consistent with" and "otherwise in furtherance of" the broad purposes of the Exchange Act to which Rule 19c-4 is directed. In addition, in order that the exchanges and the NASD may harbor no illusions about its views on key issues raised during the comment process, the Commission has listed in Rule 19c-4 four types of corporate action that will be "presumed to have the (prohibited) effect" and four types of corporate action that, "standing alone", will be "presumed not to have the (prohibited) effect".⁹ The lengthy discussion of such matters serves to alert company officials and their counsel, as well as the stock list staffs, not only to the applications and exclusions specifically covered but also to the approaches the Commission expects to be taken to interpretation and application questions generally.

Since Rule 19c-4 prescribes an "effects" test, it is clear to me that the corporate action to be scrutinized by the stock list staffs will, in many instances, include any action taken by the listed or applicant company as a second or subsequent step reasonably soon after an action that benefited from the presumption of permissibility. Since Rule 19c-4 describes both impermissible and permissible corporate actions in terms of a presumption, actions that on their face appear to fall in one category or the other may nevertheless qualify, or fail to qualify, the company for listing or

continuance in the list. I believe the key admonitions are the following:

(1) The focus should be on the process by which the voting rights structure in issue is created (not on the company's capital structure *per se*) and its effect on existing holders of publicly-held stock.¹⁰

(2) Corporate action that, standing alone, is presumed to be permissible does not exempt a scheme that involves such action in conjunction with other action if, when taken as a whole, the combined action has the effect of disenfranchising existing public shareholders.¹¹

(3) It is the Commission's intent to minimize the impact of Rule 19c-4 on state regulation of corporate structures and to defer to state law when states have chosen specifically to regulate or limit corporate action.¹²

(4) Analytical and interpretive issues are best left to the stock list staffs of the exchanges and the NASD to determine, in light of the Commission's statements in the Release, when applying the rule.¹³

¹⁰ *Id.* at 34, 43.

¹¹ *Id.* at 38.

¹² *Id.* at 35 n.54 (last two sentences), 58.

¹³ *E.g., id.* at 39 n.31, 40, 60, 66.

Fundamental to the implementation of Rule 19c-4 in my view, however, is reliance on the respective stock list staffs of the exchanges and the NASD to abandon the vestiges of past practice in interpreting and applying listed company rules without notice of the substance of their actions to the Commission or to the listed companies and their counsel generally. Policies, practices and interpretations of the exchanges and the NASD are "rules" of those organizations by virtue of Rule 19b-4 under the Exchange Act¹⁷ and must be treated as such under Section 19(b). Of course, not every stock list staff application of any rule qualifies as a "policy", but multiple application begins to resemble a "practice" and general application certainly rises to an "interpretation". If it is true that "historically the Commission has permitted the exchanges to interpret, and develop practices to implement, their listing standards in order to deal with the huge variety of circumstances to which they must be applied, without following the procedures required by section 19(b)",¹⁸ it seems to me that

¹⁷ 17 CFR 240.19b-4(b).
¹⁸ Letter from Robert Todd Lang, Chairman, Task Force on Disparate Voting Rights, Section of

modification of that practice is required to assure greater public understanding of exchange and NASD proceedings in the implementation of Rule 19c-4.

Requiring publicity and evenhandedness is not a demand for homogeneity. I still think as I thought a year ago: The responsiveness of each exchange and of the NASD may be expected to differ, and, given some parameters of consistency in view of Rule 19c-4 itself, their several resolutions will be consonant but needn't be uniform. That is as it should be.

It is the responsibility and care that the implementation of this rule should elicit from the stock list staffs—precisely the sort of responsibility and care that they have traditionally brought to the performance of their professional function. The Commission, I am sure, will demand and receive no less in this signal and challenging endeavor.

[FR Doc. 15809 Filed 7-8-88; 10:34 am]

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Corporation, Banking and Business Law, American Bar Association, to Jonathan G. Katz, Secretary, SEC 37 n.13 (Aug. 5, 1987).

¹⁵ The most famous of these is Arrow's impossibility theorem which demonstrates, among other things, that no voting rule satisfies a set of four seemingly innocuous and desirable conditions. See K. J. Arrow, *Social Choice and Individual Values* (1953); A. K. Sen, *Social Choice and Justice: A Review Article*, 23 J. Econ. Lit. 1764 (1985). For other discussions of the difficulties encountered in this area see, e.g., Ordeshook, *supra* note 7, at 65-71 (the paradoxes of voting) and A. K. Sen, *Collective Choice and Social Welfare* (1970).

¹⁶ See, e.g., Sen, *Collective Choice and Social Welfare*, *supra* note 15, at ch. 10 (majority choice and related systems); A. K. Sen and P. Pattanaik, *Necessary and Sufficient Conditions for Rational Choice under Majority Decision*, 1 J. Econ. Theory 178 (1980); P.C. Fishburn, *Paradoxes of Voting*, 68 Amer. Polit. Sci. Rev. 537 (1974); T. Schwartz, *The Logic of Collective Choice* (1986).

¹⁷ NYSE, *New York Stock Exchange Listed Company Manual* sections 313.06(G) (Unusual Voting Provisions), 313.00(D) (Proportionate Voting

Power) (1983 & Supp. 1986) [hereinafter *Company Manual*].

¹⁸ 15 U.S.C. 78n(c): "The Commission, by rule, may abrogate, add to, and delete from . . . the rules of a self-regulatory organization . . ."

¹⁹ I am indebted to Professor Louis Lowenstein of the Columbia Law School for re-focusing my attention on this near-uninvented tripartite structure.

²⁰ N.Y. Bus. Corp. Law section 505.

²¹ *Company Manual*, *supra* note 1, section 312.00 (Shareholder Approval Policy).

²² 17 CFR 240.14a-101 Item 10.

²³ 17 CFR 240.16b-3(a).

²⁴ In the case of the NASD, the correct term is "authorizing" for quotation and transaction reporting through an automated quotation system."

²⁵ Rule 19c-4(a), (b) (emphasis added).

²⁶ Rule 19c-4(f).

²⁷ Rule 19c-4(c), (d) (emphasis added).

²⁸ See Exchange Act Release No. 25,001, at 37-80 (July 7, 1986).

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Part IV

Department of
Agriculture

Farmers Home Administration

7 CFR Parts 1900 and 1980
Adverse Decisions and Administrative
Appeals; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1900 and 1980

Adverse Decisions and Administrative Appeals

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to: (1) Establish a national appeals staff to hear and review all appeals of FmHA adverse decisions; (2) remove reference to an obsolete unfunded program; (3) require inclusion of the Equal Credit Opportunity Act Statement in all denial letters; (4) remove obsolete material and make other necessary clarifications and editorial changes; (5) reduce the frequency of financial statements required on new businesses from monthly to quarterly to reduce paperwork for Business and Industrial loan borrowers. The need for this action is to implement the applicable provisions of the "Agricultural Credit Act of 1987" (Pub. L. 100-233) and make other editorial changes. The major effect will be to establish an independent national appeals staff to hear and review formal appeals for FmHA and reduce the amount of time in which an appeal decision is rendered.

EFFECTIVE DATE: July 12, 1988.

FOR FURTHER INFORMATION CONTACT: John Gleason, Deputy Director, National Appeals Staff, Farmers Home Administration, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, telephone (703) 756-7008.

SUPPLEMENTARY INFORMATION:
Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of \$100 million or

more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program." It is the determination of FmHA that this action, consisting only of changes in functions of Agency personnel, does not constitute a major Federal action significantly affecting the quality of human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

This activity affects all FmHA financial assistance programs. The activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultations with State and local officials. Those FmHA financial assistance programs subject to intergovernmental consultation are delineated in Subpart J of 7 CFR Part 1940.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, has determined this action will not have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Programs Affected

These changes affect the following FmHA Programs as listed in the catalog of Federal Domestic Assistance:

- 10.404 Emergency Loans
- 10.405 Farm Labor Housing Loans and Grants
- 10.406 Farm Operating Loans
- 10.407 Farm Ownership Loans

- 10.410 Low Income Housing Loans
- 10.411 Rural Housing Site Loans
- 10.414 Resource Conservation and Development Loans
- 10.415 Rural Rental Housing Loans
- 10.416 Soil and Water Loans
- 10.417 Very Low-Income Housing Repair Loans and Grants
- 10.418 Water and Waste Disposal Systems for Rural Communities
- 10.419 Watershed Protection and Flood Prevention Loans
- 10.420 Rural Self-Help Housing Technical Assistance
- 10.421 Indian Tribes and Tribal Corporation Loans
- 10.422 Business and Industrial Loans
- 10.423 Community Facility Loans
- 10.427 Rural Rental Assistance Payments
- 10.428 Economic Emergency Loans
- 10.433 Housing Preservation Grants
- 10.434 Nonprofit National Corporation Loan and Grant Program

Discussion of Final Rule

1. On April 18, 1988, FmHA published a proposed rule in the *Federal Register* (53 FR 12695-12704) with a comment period ending May 18, 1988. A correction to that proposed rule was published in the *Federal Register* (53 FR 16615) on May 10, 1988. The purpose of this final rule is to amend Subpart B of Part 1900 to implement provisions of the "Agricultural Credit Act of 1987" (Pub. L. 100-233) which establishes a national appeals "staff." The Act establishes a national appeals staff to hear and review appeals of FmHA adverse decisions. Additionally, the Act requires appeal decisions involving farmer program loan restructuring to be made within 45 days of request for appeal and provide for submission of an independent appraisal for appeals of farmer program restructuring denials. The Act allows for an appeal review by the State Director and/or the national Director of Appeals and requires a transcript of this appeal hearing be made available to the appellant upon request.

2. Although the appeal provisions of the Agricultural Credit Act of 1987 only affect CONACT applicants and borrowers, FmHA has administratively chosen to provide these appeal rights for

all FmHA applicants and borrowers, and for lenders and holders of loans guaranteed by FmHA, because FmHA believes that review of adverse decisions by an independent staff will make it clear that appellants' rights are fully protected in all cases. Section 534 of the Housing Act of 1949, as amended, provides that rules and regulations affecting housing programs must be published in final form for at least 30 days unless the rule is published on an emergency basis. Due to the time constraints imposed by the Agricultural Credit Act of 1987, and in accordance with section 534(c) of the Housing Act of 1949, as amended, there will be no waiting period between the date this final rule is published and the effective date of the regulation.

3. On February 16, 1988, FmHA published a proposed rule in the *Federal Register* (53 FR 4414) with a comment period ending March 17, 1988. The purpose of that proposed rule was to amend Subpart B of Part 1900 to implement provisions of section 1313 of the Food Security Act of 1985 (Pub. L. 99-198) pertaining to the Business and Industrial (B & I) Loan Program. The intent of that proposed rule is to amend Subpart B of Part 1900 to include appeals of B & I loan decisions. That proposed rule also amends Subpart E of Part 1980 to reduce the frequency of financial statements required on new businesses from monthly to quarterly for B & I loans, reducing paperwork. All changes from this action are also made a part of this final rule.

4. On September 30, 1986, FmHA published an interim rule in the *Federal Register* (51 FR 34926) with a comment period ending October 30, 1986, regarding the Nonprofit National Corporations Loan and Grant Program, 7 CFR Part 1980, Subpart G. On July 8, 1987, FmHA published an amendment to that same interim rule in the *Federal Register* (52 FR 25586-25589) with a comment period ending August 7, 1987. The final rules have not yet been promulgated. To ensure consistency and fairness in the handling of FmHA appeals, an administrative decision was made to include appeals of all loan and grant programs under Subpart B of Part 1900. Accordingly, only Part 1980, Subpart G, § 1980.690 is affected by this final rule as it relates to appeals. The rest of both interim rules remains in effect.

Discussion of Comments

Forty-four comment letters were received. One respondent was a U.S. Congressman, 6 were FmHA employees, 27 were legal aid groups, one was a State Deputy Commissioner of

Agriculture, 3 were from religious groups and 6 respondents were private citizens.

Most respondents made extensive comments and their comments are addressed by section number.

Section 1900.51. Three respondents felt the National Appeals Staff should report directly to the Secretary of Agriculture to ensure impartiality and independence. The Act provides for a national appeals division within FmHA and the Agency is in compliance with the law under the proposed organizational structure, which is administratively sound and provides for an efficient use of existing resources. Five respondents claim that Internal Revenue Service (IRS) offsets should cease. One respondent said that IRS offset regulations are not in final form and should be included under this Subpart. As set forth in the proposed rule, the stated purpose of this rulemaking action was to implement the requirements of the "Agricultural Credit Act of 1987." The collection of IRS offsets by the Agency is an unrelated issue and will not be discussed in this final rule. One respondent claims suspension and debarment procedures for all loan and grant programs should be handled in a special procedure. One respondent claims suspension and debarment regulations are not in final form and should be included in this procedure. Again, these are issues unrelated to the stated intent of the proposed rule and are not discussed or implemented here. One respondent requested clarification of Freedom of Information Act appeals, distinguishing between "public" and FmHA "borrowers." Public requests for information are handled as Freedom of Information requests, appealable under 7 CFR Part 1. Borrower requests for information from their case files are handled as Privacy Act Requests and are further clarified in section 1900(a)(2) of the subpart.

Ten respondents claim the Equal Access to Justice Act (EAJA) and the Administrative Procedure Act (APA) should be applicable to this subpart. One respondent claimed no reference to these Acts should appear, as applicability is decided by the courts.

The rule will not be changed either to delete the references to the Administrative Procedure Act or to the Equal Access to Justice Act. While it is true that, in the ultimate sense, all questions of statutory construction are for the courts, the case law is well settled with respect to both of these issues. Section 554 of the Administrative Procedure Act and the Equal Access to Justice Act apply only to formal

adjudications conducted by administrative law judges (and, in the case of the Equal Access to Justice Act, to adjudications in which both the appellant and the agency are represented by counsel), not to informal appeals conducted by agency personnel as is set out in the statutory provisions that these regulations implement. Deleting the statement in the proposed rule would thus make the regulations less informative to members of the public.

Eight respondents objected to the statement that "releases for certain family living and farm operating expenses will not be terminated until the borrower has received an opportunity for administrative appeal." The respondents claim FmHA does not have the authority to terminate any expenses. FmHA is amending this section to conform with the statutory language requiring the release of essential family living and farm operating expenses.

Section 1900.52. One respondent suggested that the definition of appellant be expanded to include rural rental housing tenants when FmHA makes a decision directly affecting an individual tenant. Individual tenant grievance procedures are covered in Subpart L of Part 1944 of this chapter. The borrower may appeal this action under Subpart B of Part 1900 of this chapter. The Agency finds the existing procedures adequate and will not adopt this comment.

One respondent suggested that a farmer applying for a guaranteed loan be allowed to request an appeal without the lender participating in the appeal. This is impractical since the lender is the real applicant for the guarantee, and any complaint on this subject therefore must be made by the lender. Therefore, the Agency will not adopt this suggestion.

One respondent stated that hearings held under this subpart are not informal while another respondent suggested a definition of "informal" be written. These regulations set forth an administrative appeals procedure and are not intended to be formal judicial proceedings. Also, defining what "informal" means would have the opposite effect and add needless regulatory complications. The Agency will not adopt these suggestions.

One respondent suggested that the definition of hearing officer be revised to conform with the definition of review officer in regards to the authority to uphold, modify or reverse decisions. The Agency will amend the regulations to include this change.

One respondent suggested a revision to the definition of "directly and adversely affected" to include all decisions regarding processing, servicing and collection of loans which have a direct effect on the appellant or the appellant's property. The Agency believes the proposed definition is sufficient and the suggested change could conflict with other Agency regulations regarding the collection of debts.

One respondent said that if an appellant's representative must be authorized in writing, the appellant should be so informed. The Agency adopts this comment and Exhibit B-3 of this subpart is revised accordingly.

Section 1900.53. One respondent suggested that copies of all documentation necessary to initiate an adverse decision be provided to the appellant when notified of the adverse decision. Accessibility of information in the appellant's case file is covered under § 1900.56(a)(2) and is sufficient to afford the appellant the opportunity to prepare for the appeal hearing. The Agency will not adopt this comment.

One respondent endorsed the need for the denial letter to include specific reasons for the adverse action and suggested further clarification with examples. The Agency finds the present wording sufficient.

One respondent wrote that appellants applying for assistance under the Housing Act of 1949 be given the rights to skip the informal meeting with the decision maker and request a hearing directly. The suggestion makes a valid point and provides for more consistency in the regulations. The Agency has adopted this comment and has amended the regulations accordingly.

Seven respondents raised questions concerning the appeal of appraisals and the State Director's role in review of the appraisal, requesting clarification of this paragraph. The regulations have been amended to clarify this paragraph. Appeals for farmer program primary loan servicing are exempted from this requirement. The appeals process is suspended while this review is undertaken and the paragraph is revised to require appeal rights at the completion of the review. The State Director may opt not to review the appraisal and may inform the appellant of their appeal rights at the outset of he/she chooses. A review of the appraisal by the State Director does not preclude the State Director from acting as a review officer in the appeal process on the same case, since the appellant may also choose the Director of Appeals to review the case.

One appellant suggested that farmer program writedown request be changed to "any primary loan servicing program." The Agency is in agreement and amends the regulations accordingly.

One respondent suggested that multi-family housing appraisals be exempt from prior review by the State Director due to complexity and the costs invested by the appellant at that point. The Agency believes that many appraisal problems can be resolved by the method set out in the proposed rule without necessitating an appeal and, therefore, will not revise the paragraph as suggested.

One respondent suggested that single family housing appraisals not be included in this paragraph. The Agency believes for consistency and fairness that all programs be included, and the comment is not adopted.

Four respondents felt that an appellant should be given 15 days from the receipt of the denial letter to request an appeal. Four respondents suggested that a 30-day response time was necessary. The Agency amends its final rule to require a 30-day response time with an appellant's letter postmarked on or before the 30th day.

Section 1900.54. Two respondents suggested that appellants not be required to travel more than 100 miles to a hearing site, or to the nearest FmHA office. While this comment has merit, the Agency does not foresee a problem in this area and is not aware of any in the past. Hearings will be arranged at a mutually convenient time and place for all parties involved. Since the decision maker and the appellant are typically in the same geographic area, the hearing officer will do all that he or she can to arrange for a hearing site convenient to all. This is an operational matter of the National Appeals Staff and additional regulatory language is unnecessary.

Thirty-two respondents were opposed to telephone conference calls unless specifically requested by the appellant for the appellant's convenience. One respondent, while opposed to conference calls, recognized the need for such in remote areas of Samoa, Guam, the Western Pacific areas and Alaska. The Agency amends its final rule to provide that conference calls cannot be used against the wishes of the appellant. The Agency also amends its final rule to retain language of the proposed rule concerning the use of conference calls for appeals in remote areas.

One respondent requested a clarification that the area supervisor is a member of the National Appeals Staff. This is covered sufficiently in § 1900.54(a) and no further clarification is necessary.

Section 1900.55. One respondent claims that all decisions are appealable and each appellant has the right to appeal and lose. Two respondents claim the National Appeals Staff should have the authority to overrule decisions based on regulations that do not meet applicable law. One respondent suggests that an appellant be allowed to appeal if the underlying facts are in dispute. Another respondent suggested wording that if the grounds for denial is fully dispositive, the decision is not appealable. The Agency recognizes that this is a sensitive issue and does not intend to delay or obstruct an appellant's rights. However, contrary to the respondent, the National Appeals Staff does not have the authority to overrule decisions based on regulations, even if they do not satisfy applicable law in the opinion of the hearing/review officer. Such interpretation is reserved for the courts. Accordingly, the Agency will advise appellants that certain decisions cannot be reversed in an appeal because they are based on clear and objective statutory or regulatory requirements. Appeals of these decisions are unproductive for the appellant and FmHA. Exhibit C is used to inform appellants of this decision. The exhibit letter does afford the appellant the opportunity to request the National Appeals Staff to review the accuracy of the finding that the decision is not appealable. The Agency believes this is sufficient to protect the appellant's rights in the event the underlying facts do not support the conclusion that the decision is unappealable. The suggested wording for Exhibit C is cumbersome and not readily understood by the average appellant. The Agency finds Exhibit C sufficient as proposed in this matter.

One respondent questioned the authority to deny a Section 514 grant to an applicant less than 62 years of age. This statutory mandate is set out in the annual appropriations act funding this program. One respondent requests further clarification of when an application is considered filed. Applications are considered filed when they are received in the FmHA office responsible for processing of the requests. Receiving and processing applications are covered in Subpart A of Part 1910 of this chapter and are not further discussed or clarified in this final rule.

One respondent stated that a borrower with a non-program (NP) loan would lose all administrative appeal rights in a non-judicial foreclosure state, under this section. NP loans are not made pursuant to the Acts administered

by FmHA and the Agency is not required to extend program benefits to NP borrowers.

Four respondents suggested that an appellant be given the right to appeal the use of an incorrect interest rate. The Agency is not aware that the use of interest rates different from those published in FmHA Instructions is a frequent problem. Agency procedures for processing and loan closing are designed to detect such an error before a loan is closed. However, the Agency has modified the final rule to allow an appeal if such an instance occurs.

One respondent claims that denial of loan assistance because an appellant has been convicted of planting, growing, cultivating, producing or harvesting a controlled substance, does not apply to those appellants seeking assistance under the Housing Act of 1949. Section 1764 of the Food Security Act of 1985 provides for denial of assistance when convicted of the aforementioned for all applicants seeking assistance under the Consolidated Farm and Rural Development Act and any other provision of law administered by FmHA. The Agency will not adopt this suggestion.

One respondent suggested a clarification to include chattel appraisals. The Agency amends the final rule accordingly.

One respondent questioned if the use of "reversible" and "non-reversible" equated to "appealable" and "non-appealable". The Agency amends the final rule of this section to use the terms "appealable" and "non-appealable" consistently.

Eleven respondents commented that hearing officers should be able to overturn in appeal an unfavorable recommendation by the County Committee on a debt settlement offer. The agency amends its final rule to adopt this suggestion. A decision by the hearing officer to overrule the County Committee will not constitute approval of the debt settlement offer, and does not preclude a later denial of the offer by the approval official or subsequent appeal rights as a result of that denial.

Ten respondents suggested that denial of assistance because of confirmed income should be appealable, since the term "confirmed income" could be open to degrees of interpretation. Since confirmed income is that income agreed to by the appellant and the employer, the Agency sees no need to exempt this type of decision. As discussed earlier, the use of Exhibit C to inform the appellant of the denial affords the opportunity to request further interpretation.

Section 1900.56. Ten respondents suggested that a delay of an appeal should be based on whether the reasons for delay were beyond the control of the appellant. The Agency adopts this comment and revises the final rule accordingly.

Twelve respondents stated that the availability of information from the case file should not exempt cases of real estate acceleration. This was the result of an error in the proposed rule and the Agency amends its final rule to remove the exception.

Four respondents stated that more than 10 days is necessary to review the case file, with one respondent suggesting unlimited access to the case file. One respondent suggested the case file remain with the decision maker. The intent of the Agency is not to deny access to the case file, but to solve a logistical problem of allowing file access to the appellant, yet still provide the file to the hearing officer in time to prepare for the hearing. This paragraph has been clarified to address the concerns of the respondents.

Nine respondents made further comments under this section suggesting a 150 mile limit for hearings. These issues were discussed previously and the Agency will not adopt the comments. One respondent suggested a definite time frame to schedule a hearing. The Agency does not wish to remove the flexibility of hearing officers in scheduling hearings. This is an operational issue and will not be the subject of a rule unless experience suggests a need for a regulatory standard.

One respondent stated that since the Area Supervisor could grant exceptions to appeal request deadlines, the regulations should specify how an appellant may request an exception. One respondent requested verification on how a continuance may be granted. The Agency does not wish to overburden these regulations with formalized procedures for every specific circumstance that may arise. The Agency believes the regulations presently provide enough guidance to appellants without restricting flexibility to National Appeal Staff officials to grant extensions for good reasons without further regulatory language.

One respondent suggested that the regulation be amended to specifically prohibit FmHA officials from destroying material in the case file. The proposed language already prohibits destruction of case file material and no further clarification is necessary. One respondent requested a written waiver form be developed so an appellant could waive a hearing. The Agency believes

this is unnecessary and the appellant's request for waiver as part of their written request for appeal is sufficient.

Fourteen respondents commented on the submission of new reasons for denial after the initial decision has been made. The responses ranged from submission of new reasons only if the appellant has adequate time for preparation and rebuttal to no new submissions in any case. The Agency partially amends and clarifies the final rule to allow the hearing officer some discretion in these cases as to how to proceed.

Section 1900.57. One respondent claimed that placing the burden of proof on the appellant is a violation of the Administrative Procedure Act (APA). One respondent stated that FmHA should bear the burden of proof in real estate foreclosure cases. In all appellate review systems, whether informal administrative appeals, or before administrative law judges, or conducted by judges in the Federal or State courts, the person who appeals a decision has the burden of explaining why the decision appealed from is incorrect, and this provision of the regulation was designed to make this fact clear to applicants and borrowers using these rules. While "burden of proof", it is true, can be distinguished legally from the "burden of persuasion", or the "burden of presenting evidence", depending on the facts and legal issues presented by a particular case, it would be counterproductive to use arcane terms and hence to make these rules so complex that they would be confusing to some of those who will use them. The term "burden of proof" is well known, and will convey to appellants their responsibility to open the hearing with an explanation to the hearing officer of why they think they should have been given the relief they were denied by the decisional officer. The proposed language therefore will be retained in the final rule, for all type of appeals.

One respondent suggested that the appellant should be able to prove why a decision should be modified as well as reversed. The Agency adopts this comment in the final rule.

One respondent suggested the appellant be given the right to request a hearing to be held open for 15 days to submit new information. Another respondent suggested new information could be submitted at any time. The Agency believes the proposed language regarding a continuance is sufficient and flexible enough to give the hearing officer sufficient flexibility to meet the needs of appellants.

One respondent suggested that information from unidentified third parties should not be admissible in the hearing. While the agency agrees that the use of evidence from unidentified third parties should usually be entitled to little or no weight, the regulations will not be amended to provide for a blanket exclusion of all information that could be so categorized. The hearing officer should have the discretion to decide when evidence lacks reliability, and the agency sees no need to provide for a blanket prohibition directed against any particular kind of evidence in these informal proceedings.

Two respondents requested written notice in advance of all FmHA witnesses to be present. Two respondents claimed that all FmHA witnesses should always be made available. Four respondents said information presented by witnesses should be limited to denial issues only. One respondent said that non-government witnesses should be compensated for their time. One respondent claimed a necessity to subpoena reluctant witnesses, and one respondent said the hearing officer had too much discretion.

The Agency has stated that this administrative appeals process is informal in nature and does not wish to overjudicialize the process with regulations concerning the admissibility of evidence and use of witnesses. The intent is to give the hearing officer enough flexibility to determine what information is needed to reach a conclusion of the matter. FmHA employees will be made available whenever possible and the Agency is committed to cooperate with the appellant in this regard. However, scheduling, travel and other expenses may preclude FmHA witnesses being available at a hearing. Furthermore, the Agency is not empowered to subpoena witnesses or to compensate them for their time. The Agency does agree that information by witnesses should be limited to denial issues only and the final rule is amended to incorporate this suggestion.

Four respondents stated that the decision maker should always be an FmHA official. One respondent said an appointed delegate must be an FmHA official and one respondent stated that FmHA officials should not represent the County Committee as decision maker at hearings. The Agency is not aware of any instances where a decision maker or delegate would not be an FmHA official and believes no further clarification is necessary. County Committee members are not full-time

FmHA employees and mandatory attendance at hearings would be difficult and unnecessary. The appellant may request a meeting with the County Committee prior to the hearing.

Five respondents suggested the hearing be tape recorded in all instances. One respondent suggested the appellant pay for a copy of the tape. One respondent claimed hearing tapes should be available to the public. The cost of duplicating the tape is nominal and the Agency will not charge for the tape. The hearing tape is part of the appeal record and the appellant's case file and, therefore, protected under the Privacy Act. The Agency amends its final rule to require a tape recording of all hearings.

Twenty-eight respondents stated that the Act requires a transcript be prepared for all appeals and the cost of a transcript to the appellant should be limited to the cost of reproduction only. The Agency's interpretation of the Act is that a transcript will be provided to the appellant upon request. No transcript is required if the appellant does not request one. In fiscal year 1987 only 20 percent of the appeal requests resulted in a further request for appeal review. The Agency expects, under the new appeal procedures, that more appeals will be resolved at the hearing level. It is reasonable to project that 20 percent of future appeal hearings may result in a request for further review by the State Director or Director, National Appeals Staff. If the Agency chose to order transcripts in all cases it would result in a delay of all appeal decisions while transcripts were being prepared. In addition, there would be an unnecessary cost to the taxpayer since a transcript is only useful in those cases where an appellant seeks further review. Appellants who have had an adverse decision reversed in appeal have no need for a transcript, yet the decision to reverse the adverse action would be delayed until the transcript was prepared and made part of the record.

The Agency will provide all appellants with a free copy of the hearing tape. In most cases the tape will be sufficient for an appellant to decide if an appeal review is needed. The Agency will provide the appellant a transcript of the hearing upon request as required by the Act, but will not arrange for a transcript unless there is a request.

One respondent suggested arrangements be made for hearing and sight impaired appellants. The Agency adopts this comment in the final rule.

One respondent requested information on how to request a copy of the hearing record. This information is

provided in the decision letter from the hearing and/or review officer and can also be requested by the appellant at the hearing itself.

One respondent suggested clarification on what constitutes good cause for a continuance. The Agency believes the proposed rule language is sufficiently flexible to allow the hearing officer discretion on this issue and further clarification would become, instead, too restrictive.

One respondent stated that the regulations should define the hearing officer's general knowledge of FmHA programs. Another respondent suggested the hearing officer state background, experience and general knowledge at the outset of the hearing. The Agency believes these suggestions are unnecessary and run contrary to the intent that these appeal proceedings are informal in nature.

One respondent suggested an appellant be given no less than seven days to review additional information. One respondent suggested the appellant be given copies of additional information. The Agency finds the present wording sufficient for time to review the information (no more than 15 days) and the right to review additional information already exists in the proposed rule language.

One respondent stated that appeal decisions on housing and farmer programs should both be rendered within 45 days. One respondent suggested a hearing in 30 days and a decision in 45 days. While the Agency desires to render appeal decisions in the shortest time possible, the logistics of travel and scheduling for all parties involved will always be an obstacle to this end. Delays in scheduling an appeal hearing are as often a result of an appellant's time conflicts, as they are with FmHA. Accordingly, the Agency does not wish to impose an arbitrary deadline for an appeal decision except for appeals involving primary loan servicing programs as required by the Act. The Agency will not adopt these suggestions.

Three respondents requested that Guide Letter 1900-B-1 be published for comment. Since this is a guide letter and may require an individual alteration with each appeal decision reached, it is not published as part of this regulation. Guide Letter 1900-B-1 will be available in any FmHA office upon publication of this final rule.

One respondent stated that all reasons for denial be stated in the denial letter and no new reasons are admissible. The proposed rule language already requires all reasons for denial

be listed and the submission of new reasons has already been addressed in this final rule.

Seven respondents suggested that the list of appraisers for appeals involving primary loan servicing of farmer program loans be limited to individuals who have not worked for FmHA in the past. One respondent suggested the independent appraisal be used as the new basis for valuation. Five respondents suggested a minimum of three appraisers but allow as many as available. One respondent asked how the appraisers would be selected. One respondent suggested the appellant be notified of the appraisal right in the denial letter.

The Agency will promulgate regulations similar to those found in § 1980.113 (d)(9)(c)(ii) of Subpart B of Part 1980 of this chapter to determine the appraisers used. The Agency believes that in some areas it would be impractical to limit appraisers to those who have not worked for FmHA in the past. The Agency does amend its final rule to require a minimum of 3 appraisers and to notify appellants of their appraisal rights. The Act does not require the new appraisal to become the basis of valuation, but only that it be considered in the appeal decision.

Section 1900.58. Five respondents suggested all review decisions be rendered in 45 days. As previously discussed, the Agency desires that all appeal decisions will be rendered as soon as possible but will not arbitrarily set deadlines not imposed by law since exceptions will occur.

Three respondents recommended that an appeal review by the State Director is unnecessary and should be eliminated. This requirement is statutory and not within the discretion of the Agency to change.

Section 1900.59. Eight respondents suggested that all dates and deadlines should be put on hold pending the outcome of an appeal. The Agency believes the only deadline of consequence here relates to an acceleration notice and the final rule is amended to suspend foreclosure action until an appeal is resolved. One respondent suggested language to cover cases where statutory or case law has changed while the appeal is in process. The final rule is amended to use regulations in effect at the time the initial adverse decision was taken.

Two respondents suggested that rural housing loan application processing be resumed within 15 days after a decision is overturned on appeal. This applies to loans made under the Consolidated Farm and Rural Development Act (7 U.S.C.) only as amended, as required by

section 1312 of the Food Security Act of 1985 (Pub. L. 99-196).

Three respondents suggested the word "loan" be substituted for application in this section. The Agency does not adopt this comment since a reversal of an unfavorable eligibility determination does not necessarily mean a loan is approved. An application may be denied by a loan approval official after further processing.

Four respondents suggested the regulations address recordkeeping requirements and accessibility of those records to the public. Recordkeeping requirements on appeals will become the responsibility of the National Appeals Staff and an automated system of tracking appeal workload is under development. This is an administrative function of the NAS and not necessary to address in this rule. Accessibility of records is covered under Freedom of Information request in FmHA Instruction 2018-F (available in any FmHA office).

Four respondents, all FmHA employees, suggested amendments to allow a decision maker to appeal a hearing officer's decision to over rule or modify a denial of assistance. The Agency will address this issue as a separate proposed rule at a later date.

Exhibit A—Six respondents suggested that no government attorney be allowed at a hearing to question the appellant or witnesses. The presence of government attorneys at appeal hearings is extremely rare and the Agency has no reason to believe this situation will change. However, circumstances may arise in a complex appeal case where the Agency may wish legal counsel to be present as a resource. The Agency does not wish to preclude this option and will not adopt the comment.

Four respondents claimed that hearings should not be conducted in FmHA offices or adjoining offices. One respondent requested the physical comfort of the hearing room be considered. One respondent suggested each State have designated areas for hearings. One respondent suggested that an appellant could also arrange a hearing location. The scheduling of hearing locations is an administrative function of the hearing officer and it is not the intent of this rule to provide operational regulations. The hearing officer needs flexibility in scheduling hearings and it is impractical to set out restrictions for hearing locations.

Situations may arise where an FmHA office is the only area available convenient to all parties, particularly in rural areas. The proposed language that the hearing officer will attempt to hold a

hearing in a neutral place is sufficient and allows necessary flexibility.

One respondent suggested wording that the hearing officer will not fraternize with the decision maker. This comment is adopted in the final rule. One respondent suggested that contact between the hearing officer and the decision maker be limited to scheduling only. The Agency believes this is unnecessarily restrictive and will not adopt the comment. One respondent suggested a hearing officer may postpone a hearing as well as terminate it, if an appellant becomes unruly. Another respondent questions if a terminated hearing results in forfeited appeal rights. The Agency does not foresee termination of a hearing as a common occurrence. Instances of severe disruption of a hearing are possible, however, and it will be at the discretion of the hearing officer to reschedule the hearing or notify the appellant that appeal rights have been forfeited.

One respondent stated that the decision maker inform all parties of the reason for denial. One respondent suggested clarification that further review rights are to the State Director and/or Director, National Appeals Staff. Again, this rule does not set out complete operational procedure for the NAS and the Agency believes further clarification is unnecessary. Further appeal rights will be discussed at the hearing as well as reasons for denial.

One respondent claimed that the phrase "unduly setting the tone" is vague, could be abused by the hearing officer, and should be removed. The Agency believes the hearing officer must control the hearing to limit discussion to relevant issues only. Frequently hearings have taken considerable time discussing unrelated issues surfaced by both the appellant and the decision maker. Other hearings have become too formalized with swearing in of witnesses, submission of exhibits testimony, etc. The Agency retains the language in the final rule as necessary for the hearing officer to perform his/her duties.

Exhibits B-1, B-2, B-3, B-5. One respondent stated that these exhibits should inform the appellant of all available farmer program loan servicing and debt restructuring options as well as a business reply card to respond. The intent of this rule and these exhibits is to inform the appellant of appeal rights after denial of assistance. The availability of and notice of loan servicing options were addressed in a separate proposed rule on May 23, 1988, set out in the Federal Register at Vol. 53, No. 99, pages 18392-18523.

Three respondents suggested clarification or changes on the number of days to report a meeting and/or appeal. The Agency has amended these exhibits to conform with other changes and to address these concerns. Exhibit B-1, B-2, B-3 and B-5 have been consolidated and revised into just two exhibits. Exhibit B-1 advises appellants of the adverse decision and the right to a meeting and/or a hearing. Exhibit B-2 notifies appellants of the results of the meeting and also of their further appeal rights. Both exhibits and Exhibit B-4 are revised to require an appeal request be postmarked within 30 days.

The exhibits are also revised to specify the actual date of postmark and to allow an appellant to write as well as call the decision maker, as requested by two respondents.

Exhibit B-4. One respondent suggested items in the case file that are considered confidential should be identified in this Exhibit. The Agency does not adopt this comment and refers to the discussion of section 1900(a)(2) of this rule for access to the case file material.

Exhibit C. Two respondents suggested revised language to this exhibit as part of their comments under § 1900.55 of this rule. The Agency will not adopt these comments for the reasons set out in the discussion of that section as a part of this rule. One respondent suggested the appellant be informed that if a decision of denial is based on non-appealable and appealable reasons and the appealable reasons are used in a separate denial action, they may be appealed at that time. The Agency believes this is unnecessary since the appellant would be informed of their appeal rights at the time of the subsequent denial action.

One respondent stated that non-appealable decisions could only be based on those specific reasons set out in § 1900.55. The Agency did not intend for this section to be an all inclusive list and will not adopt this comment.

Exhibit D. One respondent stated that copies of recommended decisions being transmitted internally from a designated hearing/review officer to the National Director of Appeals should be provided to the appellant. The Agency's intent is that a designee will recommend a decision based on their review of the case. The recommendation serves only as a basis for discussion as an internal document and it would not be appropriate to send it to the appellant.

One respondent stated that Note 4 was unclear and implied a different appeal process for non-farmer program appellants. The Agency amends the final

rule to delete Note 4 as well as Note 6 since both are no longer relevant.

General Comments. Three respondents requested the Agency not delay the inclusion of rural housing appeals in this procedure. One respondent suggested the NAS only conduct appeals for farmer programs and single family housing. One respondent suggested the Agency delay implementation of all but farmer program appeals. The Agency has determined that all appeals of adverse actions will be handled by NAS beginning on the effective date of this final rule.

One respondent said that a 30 day comment period was insufficient time to comment on the issues relating to housing programs. The 30 day comment period was discussed and authorized in the proposed rule, pursuant to 42 U.S.C. 1485.

One respondent stated that hearing/review officers not be assigned to cases where they have worked for the past two years. The Agency will implement this to the extent practical but does not recognize a need to address this issue in the final rule.

One respondent suggested that hearings involving multifamily housing late fee waivers be conducted entirely in writing. The Agency finds this suggestion inequitable and impractical and will not adopt in the final rule. Four respondents stated that all hearing officers be thoroughly trained and that training agenda be published for comment. While the Agency recognizes the need and statutory requirement for training, it is an operational issue and not needed as a part of this final rule. One respondent stated that a list of reimbursable administrative expenses for NAS be published for comment. The Agency sees no need to publish for comment the internal budgetary expenditures and accounting methods of the NAS. One respondent said the final rule should contain a statement that the Secretary will commit adequate resources to NAS to insure a timely appeals process. The Agency believes this responsibility is implied in the Act and inherent duties of the Secretary. Publication of such a statement in this rule adds no more authority or validity to this responsibility.

Section 1980.680 of Subpart G of Part 1980. One respondent suggested this section be revised so that any adverse decision may be appealed by the National Nonprofit Corporation (NNC) or the lender.

Applicants for assistance under the Nonprofit Corporations loan and grant program and borrowers and lenders under the program may appeal certain

FmHA decisions. Appeal rights are not extended beyond those entities to others, such as ultimate recipients under the program. Those entities have no direct relationship with FmHA under the program and FmHA decisions do not directly affect these entities. The Agency adopts this comment in the final rule.

The Agency received no comments on the proposed rule change for Subpart A, part 1980 and Subpart E, Part 1980.

Discussion of Changes. Upon further review of the Agricultural Credit Act of 1987 (Act), a change was made that differs from the proposed rule. Section 615 of the Act requires FmHA to give borrowers 45 days to purchase the security property at net recovery value, after receipt of notification of ineligibility for primary servicing actions. The final rule is amended to require the hearing/review officer to send the decision letter, certified mail, return receipt requested, to the initial decision maker in those cases.

On June 16, 1987 the Agency suspended all appeal conferences, hearings and reviews for borrowers who were sent forms FmHA 1924-25 "Notice of Intent to Take Adverse Action" and Form FmHA 1924-35 "Borrower Acknowledgement of Notice of Intent to Take Adverse Action". This action was taken as a result of pending litigation in *Coleman vs. Block*. Those appeals and appeal requests that were suspended by this action are superseded by new servicing procedures required by the Agricultural Credit Act of 1987. Therefore, all hearing requests and hearing procedures then in process that were suspended by that action are hereby terminated.

Section 1980.67 of Subpart A of Part 1980 is also revised with minor editorial and punctuation changes.

List of Subjects

7 CFR Part 1980

Appeals, Credit, Loan programs—Housing and Community Development.

7 CFR Part 1980

Loan programs—Business and Industry—rural development assistance, rural areas—Nonprofit Corporates, Grant programs—Nonprofit Corporations

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C. 1988; 42 U.S.C. 1480; 5 U.S.C. 301; CFR 2.23; 7 CFR 2.70.

2. Subpart B of Part 1900 is revised to read as follows:

Subpart B—Adverse Decisions and Administrative Appeals

Sec.

- 1900.51 General.
- 1900.52 Definitions.
- 1900.53 Adverse action procedures.
- 1900.54 National Appeals Staff.
- 1900.55 Appealable and non-appealable decisions.
- 1900.56 Appeal requests.
- 1900.57 Hearing rules.
- 1900.58 Review rules.
- 1900.59 Effect of appeal decision.
- 1900.60 Records.
- 1900.61-1900.99 [Reserved]
- 1900.100 OMB control number.
- Exhibit A—Guide to Conducting a Hearing.
- Exhibit B-1—Letter for Notifying Applicants, Lenders, Holders and Borrowers of Adverse Decisions Where the Decision is Appealable.
- Exhibit B-2—Letter for Notifying Applicants, Lenders, Holders and Borrowers of Unfavorable Decision Reached at the Meeting.
- Exhibit B-3—Appeals of Adverse Action.
- Exhibit C—Letter for Notifying Applicants, Lenders and Holders and Borrowers of Adverse Decisions When Part or All of the Decision is not Appealable.
- Exhibit D—Hearing/Review Officers Designations.

Subpart B—Adverse Decisions and Administrative Appeals

§ 1900.51 General.

(a) This subpart contains operating instructions to be used by the Farmers Home Administration ("FmHA") personnel to ensure that full and complete consideration is given to affected members of the public when certain adverse program administrative decisions are being made. It also sets out the authority and procedures of the National Appeals Staff, which gives administrative appeals and further review of these decisions. The National Appeals Staff is an organization within FmHA which is independent from FmHA State and local officials, and from all other agency officials making program administrative decisions. The FmHA official heading the National Appeals Staff, the Director of Appeals, reports directly to the Administrator of FmHA.

(b) The provisions of this subpart apply to program administrative decisions concerning all loans and grants made by FmHA. These include farmer program loans, housing loans (both single- and multi-family), community and business program loans, and all grant programs administered by FmHA.

(c) The provisions of this subpart do not apply to any decisions made by

FmHA other than those referred to in paragraph (b) of this section, nor to decisions made by organizations outside FmHA even when those decisions are used as a basis for decisions falling within paragraph (b) of this section. Examples of the first kind of decision are Freedom of Information Act decisions to release or deny the release of information sought by members of the public (appealable under 7 CFR Part 1), decisions to purchase or not to purchase goods and services from members of the public under the Federal contracting laws and regulations (which decisions are appealable to the Department's Board of Contract Appeals under 7 CFR Part 24), FmHA multi-family housing tenant appeals covered by the appeals provisions of 7 CFR Part 1944, suspension and debarment disputes falling within the scope of 7 CFR Part 1944 and offsets against tax refunds. Examples of the second kind of decision are decisions of the Federal Crop Insurance Corporation concerning claimed crop losses (which may determine whether the producer of the crop can or cannot qualify for an FmHA Emergency loan), decisions of the Soil Conservation Service on whether particular farmland is or is not "highly erodible" (which may determine whether an applicant is eligible for participation in FmHA loan programs), and decisions by State governmental construction standards-setting agencies (which may determine whether FmHA will finance certain houses).

(d) The provisions of the Administrative Procedure Act, 5 U.S.C. 551-559, as amended, are not applicable to proceedings under this subpart except for the requirements concerning public information. The Equal Access to Justice Act, 5 U.S.C. 504, as amended, does not apply to these proceedings.

(e) Assistance will not be discontinued pending the outcome of an administrative appeal of a complete or partial adverse action. For borrowers with farmer program loans, as defined in § 1900.52(d) of this subpart, releases for essential family living and farm operating expenses will not be terminated until the borrower has received an opportunity for administrative appeal and, if the borrower elects such an appeal, until the appeal and any further review is complete.

§ 1900.52 Definitions.

(a) **Appellant** means an applicant for FmHA assistance or an FmHA borrower holder (only as to decisions involving the repurchase of the holder's interest), or grantee, either individual or organizational, that is directly and

adversely affected by an administrative decision by FmHA. The appellant may also be an applicant for or a recipient of a loan guarantee.

(b) **Hearing**, as used in this subpart, is an informal proceeding at which an administrative appeal from an adverse decision is heard.

(c) **Decision maker** is the FmHA official who actually makes the specific decision but not the official who serves in an advisory capacity in interpreting instructions, policies, or technical items, or who performs routine supervision. For example, if an FmHA official reviews a preapplication from an organization and directs a subordinate to include specific items in Form AD-622, "Notice of Preapplication Review Action," the official is the decision maker. However, when the official or designee serves only in an advisory capacity and is not significantly involved in the decision, the subordinate will be considered the decision maker.

(d) **Farm program loans** means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Individual Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST) loans and/or Rural housing loans for farms service buildings (RHF).

(e) **Hearing officer** is the member of the National Appeals Staff who conducts the administrative appeal hearing and has the authority to uphold, reverse or modify the decisions of the decision maker. See Exhibit D of this subpart for the designations of hearing officers.

(f) **Review officer** is the member of the National Appeals Staff who has the authority to uphold, reverse, or modify decisions of the hearing officer. See Exhibit D of this subpart for the designations of review officers.

(g) **Record** means the FmHA file, papers filed by an appellant, tapes, written version of the transcript (if any) of a hearing, and decisions made by FmHA.

(h) **Official positions.** The terms County Supervisor and District Director may vary in a few geographical areas. These terms will also mean Assistant Area Loan Specialist and Area Loan Specialist, respectively.

(i) **"Directly and adversely affected"** means having a request for FmHA assistance denied in whole or in part or having FmHA assistance reduced, cancelled, or not renewed.

(j) **"Representative"** means an attorney or other person authorized in writing by an appellant to act for that person in an administrative appeal. Representatives will be presumed to

retain their authority to act for an appellant until the written authorization is revoked in writing.

§ 1900.53 Adverse action procedures.

(a) The following actions must take place before adverse program administrative decisions are made. These steps are the responsibility of FmHA program decision makers.

(1) All documentation and calculations necessary to the determination to initiate an adverse action must be accurate, complete, and included within the administrative file.

(2) The specific reason or reasons for an intended adverse action should be clearly explained to the applicant or borrower. Vague reasons should be avoided. For example, avoid "you lack repayment ability." Calculations and documentation which demonstrate the lack of repayment will be provided and explained to the borrower or applicant.

(3) All appellants are entitled to an opportunity for a separate informal meeting with a decision maker before the appeal process is begun. The decision maker must give the applicant or borrower notice of his or her right to this meeting at a time no later than 10 days after the decision to deny the application or to accelerate a borrower's loan or loans or otherwise to terminate assistance.

(4) When the person or organization officials attend a meeting with the decision maker and the meeting results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting, setting forth the conclusions reached. If the meeting does not result in a resolution of the matter, Exhibit B-2 with attachment Exhibit B-3 of this subpart will be sent within 7 calendar days of the meeting to notify the person or organization of their rights to an administrative appeal. If an applicant or borrower who requests a meeting fails to agree to a time and place or to attend, the appellant is still entitled to a hearing.

(b) When an applicant or borrower wishes to contest an appraisal of property value (except for appraisals made in connection with farmer program loan write-down requests), the applicant must be advised that he or she must request review of the appraisal by the State Director of FmHA before the appeal. If an applicant or borrower seeks such a review, the time for seeking administrative review will be extended until after the State Director has acted on the request. The State Director will review each such request and, when in his or her sole discretion it is deemed appropriate, may send a representative

to make an on-site review. If this does not result in a resolution of the matter, Exhibit B-2 with attachment B-3 of this subpart will be sent to the appellant to notify them of their appeal rights. Appraisals involving farmer program primary loan servicing may be appealed directly to the Area Supervisor, National Appeals Staff without prior review by the State Director. The appellant bears the burden of showing why the appraisal is in error. The appellant may submit an independent appraisal, at their cost, from a qualified appraiser, who is a designated member of a National appraisal society or organization. The appraisal must conform to Agency appraisal regulations applicable to the loan program. If the two appraisal values vary by no more than five percent, the FmHA appraisal will be considered as the basis of valuation.

(c) If an applicant, guaranteed lender, a holder, borrower or grantee is directly and adversely affected by a decision covered by this subpart, the decision maker will inform that person or organization by letter of the decision within 10 calendar days of the decision.

(1) Letters, as indicated in Exhibits B-1 and B-2, and Exhibit C of this subpart, as appropriate, will be used to notify the applicant, borrower or grantee. The notice will advise how to request an administrative appeal and to obtain the record. All such letters shall contain the statement: "The request for an administrative appeal must be sent to the National Appeals Staff, Area Supervisor, (show complete mailing address), no later than (give date 30 days after the date of mailing the letter). Requests which are postmarked by the U.S. Postal Service on or before that date will be considered as timely received."

(2) When a program administrative decision is required by a clear and objective statutory or regulatory reason listed in § 1900.55 of this subpart as being non-appealable, the decision maker will notify the applicant or borrower of such reason and that the decision is not appealable by notice to the applicant or borrower given with Exhibit C of this subpart.

§ 1900.54 National Appeals Staff.

(a) The National Appeals Staff consists of a Director of Appeals, Area Supervisors, Hearing Officers, Review Officers, and such other subordinate officers as may from time to time be necessary to hear and determine administrative appeals from decisions made appealable under this subpart.

(b) Appeal hearings will ordinarily be face-to-face hearings, held in the State

of the appellant's residence, except in the following circumstances.

(1) With the consent of the appellant, hearings may be held in a place outside his or her State of residence when more convenient to the appellant, the hearing officer and the program officials who must attend the hearing.

(2) Appeals originating in Samoa, Guam, remote areas of Alaska, and the Western Pacific areas may be acted upon without a hearing when, in the discretion of the Area Supervisor, travel time and expense make such a hearing impracticable. In such cases, the Hearing Officer will allow a reasonable period of time for the appellant to examine or obtain copies of relevant documents and will make such other arrangements as are necessary to determine the appeal expeditiously and fairly. A telephone conference call may also be used as set forth in paragraph (b)(3) of this section.

(3) At the request of the appellant, the Hearing Officer, or the program officials who must appear at a hearing, the Area Supervisor may authorize use of a telephone conference call or calls to conduct a hearing. The Area Supervisor will solicit and consider the views of all parties before using this authority, and will not use it when any party other than the appellant shows that a face-to-face hearing is necessary to resolve issues of credibility or for other good reasons, or when the appellant, for any reason, prefers a face-to-face hearing.

§ 1900.55 Appealable and non-appealable decisions.

(a) Program administrative decisions of the Farmers Home Administration that directly and adversely affect a person are appealable by that person to the National Appeals Staff under the provisions of this Subpart. All matters concerning the application of the law and applicable regulations to the facts of the matter may be considered. The National Appeals Staff and its officers do not, however, have the authority to change or waive applicable laws or regulations. Program administrative decisions based on such clear and objective statutory or regulatory requirements are therefore not appealable. Exhibit C of this subpart will be used in these cases. Examples include:

(1) Denial of a Section 504 grant to an applicant less than 62 years of age.

(2) Denial of a loan and/or grant to an individual or organization in an ineligible area.

(3) Denial of a loan and/or grant to a type of organization not identified as an eligible applicant by the regulations.

(4) Denial of a loan because an application for an Emergency loan was not filed before a prescribed termination date.

(5) Denial of loan because of confirmed income that is above FmHA published limits.

(6) Interest credit reduction that is the result of a confirmed income increase.

(7) A determination of ineligibility for Emergency loans based on confirmation or verification by the Agricultural Stabilization and Conservation Service (ASCS) or the Federal Crop Insurance Corporation (FCIC) that the applicant did not have the required production losses of 30 percent or more.

(8) Denial of compensation for construction defects when it has been determined that the contractor is willing and able to correct the deficiencies.

(9) Requirements and conditions designated by law to be developed by agencies other than FmHA. They include, but are not limited to: Davis-Bacon wage rates; flood plain determination; archaeological and historical areas preservation requirements, and designation of areas that have been determined to be inhabited by endangered species.

(10) Applicable State development standards for construction and other development. An appeal may only be made when the appellant claims FmHA is misapplying the written standards.

(11) Interest rates as set forth in FmHA procedure, except denial of limited resource rates, or an application of an incorrect interest rate.

(12) A rent increase rejection when the borrower fails or refused to apply for rental assistance according to Exhibit C of Subpart C of Part 1930 of this chapter.

(13) Decisions involving non-program loans.

(14) Denial of assistance (including a subordination request or transfer and assumption) because of a conviction under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance. "Controlled substance" is defined in Exhibit C of Subpart A of Part 1941 of this chapter (available in any FmHA office).

(b) Appraisals of property value including chattels, may be appealed through the hearing and review process provided for in this subpart only after review by the State Director as provided in § 1900.53(b) of this subpart. Appraisals involving farmer program primary loan servicing may be appealed without prior review by the State Director.

(c) In cases where denial of assistance is based upon both appealable and nonappealable actions, the denial of

assistance is not appealable. Exhibit C of this subpart will be used in these cases and will include all reasons for the decision.

(d) Appeals from applicants for, or borrowers of, Farmer Programs loans or loans to Indian Tribes and Tribal Corporations who are denied assistance based on reasons relating to highly erodible land, wetland, or converted wetland (see Exhibit M of Subpart C of Part 1940 of this chapter for applicable FmHA requirements) will be handled as follows: Appeals questioning either the presence of a wetland, converted wetland, or highly erodible land on a particular property or application to a property of the exemptions identified in paragraph 11 b and c of Exhibit M of Subpart C of Part 1940 of this chapter must be filed directly with the USDA Agency making the determination in accordance with its administrative appeal procedures. If the denial of assistance involves an adverse decision based on determinations made both by FmHA and another USDA Agency, the appeal will be handled by both agencies in two separate appeals which as much as possible should be handled concurrently. See § 12.12 of Subpart A of Part 12 of Subtitle A (Attachment 1 of Exhibit M of Subpart C of Part 1940 of this chapter which is available in any FmHA office).

§ 1900.56 Appeal requests.

(a) When an applicant appeals a decision and requests a hearing, the appeal will be handled as follows:

(1) Upon receipt of the request, the Area Supervisor, National Appeals Staff will verify whether the appeal was submitted within the authorized period. If the appeal was not submitted within the authorized time period, appeal rights are terminated unless the delay of the appeal was beyond the appellant's control or for other good reasons as determined by the Area Supervisor.

(2) The appellant's case file will be made available to the appellant or his representative at the FmHA decision maker's office for 10 working days following the receipt of a request for appeal. If the appellant has made a request to inspect or to receive copies of FmHA material concerning the case, the material will be made available to the appellant or the appellant's representative at the FmHA decision maker's office as soon as possible, but no later than 10 working days following the receipt of the request for the material. A written request from the appellant will not be required. Requests for information of a confidential nature exempt from disclosure under § 2015.204 of FmHA Instruction 2015-E, (available

in any FmHA office), will be handled in accordance with that instruction. An FmHA employee will insure that no material is destroyed or removed from the file.

(3) If, upon review of the file, the hearing officer determines that the decision will be reversed, he or she will notify all parties of the determination and of the actions to be taken. Otherwise, the hearing officer will arrange for a hearing to be held as soon as possible, but normally within 45 calendar days of the receipt of the request for a hearing.

(4) An appeal hearing as a result of a denial of a borrower's request for release of normal income security must be held within 20 days of such request unless the borrower agrees to a longer time.

(5) The hearing will be held at a location convenient to the appellant, decision maker and hearing officer. The hearing must be held in the state of residence of the appellant unless the appellant agrees to another location. If no place can be agreed on, the hearing officer will select the location within the appellant's state of residence.

(6) When the appellant or appellant's representative or counsel, without reasonable cause, fails to appear at the hearing, the appellant's appeal will be considered concluded. If the appellant's failure to appear is for reasons beyond the control of the appellant or a request for postponement is with reasonable cause, the hearing officer will reschedule the hearing at a time convenient to all interested parties, but usually not later than 15 calendar days after the initially scheduled date.

(7) At any time before the scheduled hearing, the appellant may waive the opportunity for a hearing and, instead, request that the hearing officer make a decision based on the file, any written statements or evidence the appellant may submit and any other information the hearing officer deems necessary.

(8) The hearing will ordinarily be based on the material before the decision maker at the time the decision was made and on the reasons for the adverse decision set out in the decision letter. If any changes of circumstances or other occurrences material to the decision arise after the appeal has been requested, the decision maker must immediately advise the hearing officer (or, if one has not been assigned, the area supervisor) and the appellant. The hearing officer or area supervisor will, in such event, delay the hearing, return the decisional file to the decision maker for reconsideration, or take such other action as is appropriate.

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§ 1900.57 Hearing rules.

(a) The hearing will be an informal proceeding at which the appellant has the responsibility of showing why the initial decision should be modified or reversed. To do so the appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses (when appropriate, FmHA witnesses requested by the appellant will be made available at the hearing) and arguments in support of appellant's appeal, controvert evidence relied on by FmHA, and may question all witnesses. Any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings. A suggested guide for the order of presentation at a hearing is included in Exhibit A of this subpart.

(b) The decision maker (or successor) or informed delegate (who must be one who participated in the decision making process) will be at the hearing and will present information if necessary. Any other witnesses or FmHA personnel the decision maker thinks necessary to support the initial decision will be at the hearing to present evidence.

(c) During the hearing, the hearing officer may request additional witnesses to appear or request further information if the hearing officer considers this necessary to reach a proper decision. Information presented by witnesses will be limited to denial issues only.

(d) Recording the hearing:
(1) The hearing officer will tape record hearings. With prior permission of the Area Supervisor, the hearing officer may arrange to also have the hearing recorded by some other means.

(i) Appellants may tape record the proceedings at their own expense. Appellants must state when the taping begins.

(ii) At the time the decision is rendered and upon request, the record will be made available to the appellant as set out in the hearing officer's decision letter. Also upon request, a transcript of the hearing will be provided for a fee approximately equal to the government's cost of having the transcript made. The appellant may request and receive a copy of the hearing tape at no cost. The appellant may also make their own arrangements, independent of FmHA, for a transcript of the hearing.

(2) File documents and other written materials used in the hearing will be included as part of the record.

(e) For good cause, the hearing officer will, at the request of either the appellant or an FmHA official, continue

the hearing to a future time. The length of the continuance will be in the hearing officer's discretion.

(f) The decision of the hearing officer shall be based on facts presented at the hearing or in writing, rebuttal by appellant and decision maker of new evidence, additional information requested by the hearing officer, appropriate FmHA files, applicable statutes and regulations, and the hearing officer's general knowledge of FmHA program functions.

(g) If an appellant waives the opportunity for a hearing and the hearing officer reviews any information the appellant or decision maker has not previously reviewed, the appellant and decision maker will be advised by the hearing officer of the additional information and be allowed an opportunity to review it and respond accordingly. Usually, the total time given the appellant or decision maker to review and respond to this additional information will not exceed 15 calendar days.

(h) The hearing officer will render a decision within 30 calendar days of the date set for the hearing, unless this would not allow sufficient time to consider the appellant's response to any additional information. For appeals involving farmer program primary loan servicing programs, a decision will be made within 45 days after the receipt of the appeal request.

(i) If the initial decision is reversed, the hearing officer will inform the appellant, original decision maker, and any other official servicing the account, by letter, of the decision, the reason for it, and what action will be taken.

(j) If the initial decision is upheld or modified but not reversed, the hearing officer will inform the appellant by letter of the decision giving specific reasons, with a copy to the decision maker and any other official servicing the account. Normally the hearing officer's decision letter will be similar to FmHA Guide Letter 1900-B-1. For appeals involving the denial of farmer program primary loan servicing programs, the hearing officer's decision letter will be sent by certified mail with a return receipt to the initial decision maker.

(k) If the appellant does not request in writing a review of the hearing officer's decision within the 30 calendar day period provided in the letter, the appeal will be considered concluded.

(l) For farmer program loans, an appeal may include a request by the borrower for an independent appraisal of any property involved in the decision. On such request the hearing officer shall present the borrower with a list of at least three appraisers approved by the

county supervisor, from which the borrower shall select an appraiser to conduct the appraisal, the cost of which shall be borne by the borrower. The results of such appraisal shall be considered in any final determination concerning the loan. A copy of any appraisal shall be provided to the borrower. If an independent appraisal is requested, the 45-day decision deadline referred to in paragraph (h) of this section is extended as necessary to allow completion of the appraisal.

§ 1900.58 Review rules.

If the appellant requests a review:

(a) The review officer may obtain a copy of the transcript of the hearing if one was arranged for by the appellant.

(b) The review officer will review the certified record, applicable law and regulations, any additional written information furnished by the appellant including appellant's comments on the transcript, and any additional information as the review officer deems necessary. However, if the review officer reviews any information the appellant has not previously reviewed, the appellant will be advised by the review officer of the additional information and be allowed an opportunity to review it and respond accordingly. Usually, the total time given the appellant to review and respond to this additional information will not exceed 15 calendar days. Normally, the review officer will render a decision within 45 calendar days of receipt of a review request from the appellant.

(c) The review officer's decision will be based on written facts presented for the review, the certified record, additional information requested by the review officer, appellant's or decision maker's written response to the additional information reviewed by the review officer, applicable statutes and regulations, and the review officer's general knowledge of FmHA program functions.

(d) The appellant will be informed of the final decision by letter. A copy will be sent to the decision maker, the hearing officer and any other official servicing the account. If the decision is upheld, the letter must contain the following statement:

"This review concludes the administrative appeal of your case."

If the State Director is the review officer, the appellant will be given further review rights to the Director of Appeals. The appellant will be notified as set forth in § 1900.57(j) of this subpart. For appeals involving farmer program primary loan servicing the

review officer's decision letter will be sent by certified mail with a return receipt to the initial decision maker.

§ 1900.59 Effect of appeal decision.

(a) **Effective date.** When an appeal is concluded, the effective date of the action to be taken will be the date of the initial decision from which the appeal was taken. Foreclosure action will not be pursued until time for appeal has expired or the appeal is terminated or resolved. Regulations in effect on the effective date will govern the action. Any loan made as the result of an appeal will bear interest at the lower of the interest rates in effect for that type of loan on the date of actual loan approval or loan closing.

(b) **Finality.** A decision made when an appeal is concluded will be administratively final.

(c) **Timeliness.** Whenever an adverse decision concerning a loan or loan guarantee (except for RH, RRH, RCH, RHS, and LH loans and grants) is appealed and the hearing officer or review officer reverses or modifies the initial decision, the decision maker shall resume processing of the application and notify the applicant of this within 15 days after the decision maker is notified of the decision of the hearing or review officer. The decision maker will inform the applicant of any further information needed.

§ 1900.60 Records.

Appeal records will be maintained in the applicant's or borrower's case folder.

§ 1900.61-1900.69 [Reserved]**§ 1900.100 OMB control number.**

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0129.

Exhibit A—Guide to Conducting a Hearing

A. Upon receipt of the file, the hearing officer will become familiar with the case to be sure that pertinent information is presented at the hearing.

B. The hearing officer personnel will arrange a hearing at a place convenient to the appellant, decision making official, and hearing officer in the state of residence of the appellant, unless the appellant consents to holding the hearing in another state. The hearing officer should make arrangements when necessary for the hearing and/or sight impaired.

C. The hearing officer must be an unbiased presiding officer.

1. The hearing officer should have no preconceived opinions concerning the issues.

2. To preserve this unbiased atmosphere—
a. It is preferable that the hearing not be held in an FmHA office. Places such as Conference Room-Agricultural Service Center, SCS, ASCS, Extension Service, etc. should be first considered. This may not be possible, but an attempt should be made to hold the hearing at a neutral place.

b. The hearing officer should not fraternize with the decision maker or other FmHA personnel before, during, or after the hearing. The hearing officer should be seated separate from the others at the hearing.

D. The hearing proceedings should be conducted informally.

1. The appellant has the responsibility of showing why the initial decision should be reversed.

2. The hearing officer may receive evidence without regard to whether that evidence could be employed in judicial proceedings, but evidence clearly unrelated to the issues being appealed need not be accepted.

3. The hearing must be conducted in a manner to get facts on the record. Therefore, the hearing must deal in facts and professional opinions.

4. The hearing officer should keep control over the hearing and not allow any of the participants, including counsel for the appellant or the decision maker, to unduly attempt to set the tone of the hearing. If any person(s) become uncontrollable, they may be requested to leave. If they refuse to leave, the hearing may be terminated or postponed.

5. As a fact-finder, the hearing officer may question any witness, request additional witnesses to appear, and/or request further information if this information is necessary to reach a proper decision. If the hearing officer is going to request additional witnesses, these witnesses should be given adequate notice of the time and place of the hearing.

E. Order of presentation. The order listed below should be followed:

1. The opening statement by appellant setting forth why original decision was erroneous. This is an outline of how appellant plans to proceed.

2. The opening statement by decision maker to show why the decision is correct.

3. The appellant presents evidence including documents, witnesses, and arguments supporting the appellant's position. The decision maker can be questioned at this time by the appellant. Any witnesses presented by the appellant can be questioned by the decision maker or other Government representative.

4. The decision maker or other Government representative then has an opportunity to rebut appellant's arguments and/or evidence by presenting evidence including witnesses. Any witnesses may be questioned by appellant.

5. The hearing should be concluded with a summary by both sides.

6. The appellant may arrange to have a transcript of the hearing made at the appellant's expense.

7. The appellant may request a copy of the hearing tape.

F. The hearing officer will make a decision based on the following:

1. Facts and materials presented at the hearing.

2. Appropriate FmHA files.
3. Applicable statutes and regulations.
4. The hearing officer's general knowledge of FmHA program functions.

G. After reaching a decision, the hearing officer must prepare the appropriate letter setting out the decision and forward it to the appellant, with a copy to the decision maker or any other official servicing the account.

1. This letter must set out specific reasons for the decision, and the facts on which the decision is based.

2. The decision will be normally communicated by letter to the appellant within 30 calendar days of the hearing.

a. If the initial decision is reversed, the letter will so inform the appellant and the decision maker, giving the reasons and action to be taken.

b. If the initial decision is upheld or modified, the letter will contain a statement set out in the regulations that the appellant may have the decision reviewed further if the appellant files a request for review within 30 calendar days of the date of the letter.

Exhibit B-1—Letter for Notifying Applicants, Lenders, Holders and Borrowers of Adverse Decisions Where the Decision is Appealable

United States Department of Agriculture

Farmer's Home Administration

(Insert address)

—Date —

Dear —:

After careful consideration, we [were unable to take favorable action on your application/request for Farmer's Home Administration services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) [The County Committee] within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative [or legal counsel] with you. You also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with [this office] [the County Committee]. See attachment for your appeal rights.

If you do not wish a meeting, as outlined above, a request for a hearing should be sent to the Area Supervisor, National Appeals Staff

(address)
postmarked no later than

(month) (date)
(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

Exhibit B-2—Letter for Notifying Applicants, Lenders and Holders and Borrowers of Unfavorable Decision Reached at the Meeting

United States Department of Agriculture

Farmers Home Administration

(Insert Address)

—Date

Dear _____:

We appreciated the opportunity to review the fact relative to [your application/request for FmHA services] [the assistance you are presently receiving]. We regret that our [meeting] [conference] with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action).

See attachment for your appeal rights.

A request for a hearing should be sent to the Area Supervisor, National Appeals Staff

(address)

postmarked no later than

(month)

(date)

(insert date 30 days from date of letter)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

Exhibit B-3—Appeals of Adverse Actions

(Use as an attachment to Exhibits B-1 and B-2)

The decision described in the attached letter did not grant you the FmHA assistance you requested or will terminate the assistance you are presently receiving. You have the right to appeal this decision and to have a hearing or a review in lieu of a hearing. In order for this decision to be changed, you will have to show why the decision should be reversed. If you wish to appeal the decision, the request for a hearing must be received in the office of the Area Supervisor, National Appeals Staff at the address shown in the letter to you informing you of the adverse decision and your appeal rights postmarked within 30 days after the date of that letter. If you wish to meet with the decision maker first, you will be informed of your further appeal rights at the conclusion of that meeting and given 30 days to request a hearing.

The hearing will generally be held within 45 days of the receipt of your request.

You or your representative or counsel may contact to this office anytime during regular office hours in the 10 days following the receipt of your request for a hearing to examine or copy relevant non-confidential material in your file. Photostatic copies will be provided in accordance with the Freedom of Information Act. Your representative or counsel should have your written authorization to represent you and review your file.

No earlier than 11 days after the Area Supervisor receives your request for appeal, we will forward the file, and any additional documents to the Hearing Officer designated by the Area Supervisor to conduct your hearing.

The Hearing Officer will contact you regarding a time and place for the hearing. You may have a representative or counsel with you and may present your own witnesses. The FmHA decision maker or representative will be there and available for you to question, as will all other witnesses presented by FmHA. If you wish to have other FmHA employees present as your witnesses, let the Hearing Officer know and, if possible, they will be there.

You may also request a teleconference hearing in lieu of a face to face hearing.

FmHA will record the hearing. You may request a copy of the tape. You may also tape record the hearing. You may request FmHA to have a transcript of the tape made at your expense.

At any time before the scheduled hearing you may request that the Hearing Officer make a decision without a hearing. If you do, the Hearing Officer's decision will be based on the FmHA file, any written statements or evidence you may provide and any additional information the Hearing Officer thinks necessary.

The Hearing Officer will advise you by letter of the decision made, the reasons for it, and, if your request for assistance is not granted, what further administrative appeals may be available to you.

A more complete description of the hearing

(A Guide to Conducting an Appeals Hearing) may be obtained from any FmHA office.

If your denial involves an appraisal related to former program primary loan servicing programs you may request an independent appraisal as part of your appeal from a list of appraisers provided by your county supervisor. The cost of the appraisal is your expense.

Exhibit C—Letter for Notifying Applicants, Lenders and Holders and Borrowers of Adverse Decisions When Part or All of the Decision is Not Appealable

United States Department of Agriculture

Farmers Home Administration

(Insert address)

(date)

Dear _____:

After careful consideration we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are canceling/reducing the assistance you are presently receiving].

(Insert and number all of the specific reasons for the adverse action. Examples of nonappealable reasons are listed in § 1900.55(a).

If you have any questions about this action, we would like the opportunity to explain in detail why your request has not been approved, explain any possible alternative, or provide any other information you would like. You may bring any additional information you may have and you may bring a representative or counsel if you wish. Please call (telephone number) for an appointment.

Applicants and borrowers generally have a right to appeal adverse decisions, but FmHA decisions based on certain reasons are not appealable. We have determined that the reason(s) numbered _____ for the decision in this case make(s) the decision not appealable under FmHA regulations. You may, however, write the Area Supervisor, National Appeals Staff (insert address) for a review of the accuracy of our finding that the decision is not appealable.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

Exhibit D—Hearings/Review Officer Designations

Decision maker or decision	Hearing officer	Review officer
County Supervisor	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
County Committee	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
District Director	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
State Director	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.
Division Director or Assistant Administrator	As appointed by National Appeals Staff.	Director, National Appeals Staff.
Assistant Administrator	As appointed by National Appeals Staff.	Director, National Appeals Staff.
Deputy or Associate Administrator	As appointed by National Appeals Staff.	Director, National Appeals Staff.

Notes

1. District Director also means Assistant District Director or District Loan Specialist.
2. County Supervisor also means Assistant County Supervisor with loan approval authority.
3. The Director of Appeals may designate a member of the National Appeals Staff to conduct a hearing or review. When the hearing/review is completed, the designee will send the complete case file, hearing notes, tape recordings, and a recommended decision to the Director of Appeals for final decision. The Director of Appeals may for individual cases delegate final decision authority to a designee.
4. For decisions not directly covered above, advice should be sought from the Director of Appeals.
5. An appellant may elect to have an appeal reviewed by the State Director, or the Director of Appeals. The decision of the State Director will be subject to further review by the Director of Appeals upon requested by the appellant.

PART 1900—GENERAL

3. The authority citation for Part 1900 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1490; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

4. Section 1900.67 is revised to read as follows:

§ 1900.67 Lender's request to terminate Loan Note Guarantee or Contract of Guarantee.

If the Loan Note Guarantee has not automatically terminated the lender may request FmHA to terminate the Loan Note Guarantee(s) or Contract(s) of Guarantee, for any reason, provided the lender holds all the guaranteed portions of the loan. (See paragraph 12 of Form FmHA 449-34, or paragraph 5 of Form FmHA 1980-27.) The lender will provide the County Supervisor (State Director for B&I) with a written notice that the loan(s) or Line(s) of credit is (or are) paid in full and/or termination of the Loan Note Guarantee(s) or Contract(s) of Guarantee, enclosing the original Form(s) FmHA 449-34 or Form FmHA 1980-27 for cancellation. Within 30 days, the County Supervisor (State Director for B&I) will forward a memorandum to the Finance Office through the State Director. The memorandum will indicate that: "the loan(s) or line(s) of credit is (or are) paid in full," and/or "the Loan

Note Guarantee or Contract of Guarantee has been cancelled at the request of the lender."

5. Section 1900.80 is revised to read as follows:

§ 1900.80 Appeals.

Only the borrower, lender and/or holder can appeal an FmHA decision. The borrower must jointly execute in the written request by either party for review of an alleged adverse decision made by FmHA and both must participate in the appeal. In cases where FmHA has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. A decision by a lender adverse to the borrower is not a decision by FmHA, whether or not concurred in by FmHA. Appeals will be handled in accordance with directions set out in Subpart B of Part 1900 of this chapter.

Subpart E—Business and Industrial Loan Program

6. In § 1900.454, under the heading "Administrative," paragraph A.1 is revised to read as follows:

§ 1900.454 Conditions precedent to issuance of the Loan Note Guarantee.

Administrative

A. . . .

1. The loan agreement between the borrower and lender which provides for the frequency of submission of financial statements to the State Director. Quarterly financial statements should be required on new business enterprises or those needing close monitoring. However, the annual audit report will always be required. In cases of loans determined by the lender to require especially close monitoring, nothing herein shall be considered an impediment to the lender's requiring financial statements more frequently than quarterly.

Subpart G—Nonprofit National Corporations Loan and Grant Program

7. Section 1900.680 is revised to read as follows:

§ 1900.680 Appeals.

Any adverse decision made by FmHA relative to the loan guarantee and/or grant may be appealed by the NNC or lender under Subpart B of Part 1900 of this chapter.

Dated: June 22, 1988.

Neal Sox Johnson,
Acting Administrator, Farmers Home Administration.

[FR Doc. 88-15611 Filed 7-11-88; 8:45 am]

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federal register

Tuesday
July 12, 1988

Part V

The President

Executive Order 12644—Establishing an
Emergency Board To Investigate a
Dispute Between the Port Authority
Trans-Hudson Corporation and Certain of
Its Employees Represented by the
Transportation Communications Union-
Carmen Division

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Presidential Documents

Title 3—

The President

Executive Order 12644 of July 9, 1988

Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the Transportation Communications Union-Carmen Division

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Transportation Communications Union-Carmen Division.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

Parties empowered by the Act have requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. Section 159a).

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. Establishment of Board. There is established, effective July 10, 1988, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

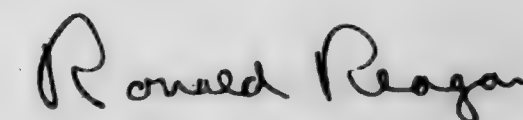
Sec. 2. Report. The Board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. Maintaining Conditions. As provided by Section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. Expiration. The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

THE WHITE HOUSE,

July 9, 1988.



[FR Doc. 88-15793

Filed 7-11-88; 11:42 am]

Billing code 3195-01-M

Editorial note: For the President's remarks on signing Executive Order 12644, and an announcement of the appointment of three board members, both dated July 9, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 28).

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Title 3—

The President

Presidential Determination No. 88-19 of June 7, 1988

Determination Under Section 2(b)(2) of the Export-Import Bank Act of 1945, as Amended: Benin, Congo, Guyana, Suriname

Memorandum for the Secretary of State

Noting that, pursuant to Section 2(b)(2) of the Export-Import Bank Act of 1945, restrictions were placed against the Export-Import Bank guaranteeing, insuring, extending credit, or participating in the extension of credit in connection with the purchase or lease of any product by a number of countries, and noting further that these restrictions may be lifted for specific countries by a Presidential determination pursuant to Section 2(b)(2)(C), I hereby determine that the conditions of Section 2(b)(2)(C) have been met with respect to Benin, Congo, Guyana, and Suriname.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, June 7, 1988.

[FR Doc. 88-18852

Filed 7-11-88; 2:30 pm]

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GENERAL ACCOUNTING OFFICE

4 CFR Part 7

Political Activities

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: The general language in § 7.3 is amended to provide specific language which describes permitted and prohibited political activities. The agency has determined that the guidance now offered in § 7.3 is too general to be of use to employees who want to engage in political activities. Publication of specific guidance will clarify prohibitions and permitted activities.

EFFECTIVE DATE: July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Steve Schmal or Frances McCoy, (202) 275-3889.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Act (Pub. L. 96-191, Feb. 15, 1980), codified at 31 U.S.C. 731 *et seq.*, authorizes the Comptroller General to establish a personnel system for the General Accounting Office. Section 732(b)(3) requires that the personnel system must prohibit the political activities prohibited under Subchapter III of Chapter 73 of Title 5, United States Code.

Accordingly, the agency issued regulations, codified at 4 CFR 7.3 (1988), which are not as specific as the regulations pertaining to executive branch employees, set forth at 5 CFR Part 733. As a result the regulations may be too vague to provide useful guidance.

In order to provide specific guidance to employees consistent with that applicable to the majority of federal employees, the agency decided to adopt the language in 5 CFR Part 733, Subpart A. Changes were made to render the

language agency-specific to meet GAO's needs.

The proposed rule was published in 53 FR 15043, April 27, 1988, for a 30-day comment period. No comments were received, and the language of the proposed rule is adopted as final.

List of Subjects in 4 CFR Part 7

Political activities (Government employees).

For the reasons set out in the preamble, Title 4, Chapter I, Subchapter A, Part 7, is amended as follows.

PART 7—PERSONNEL RELATIONS AND SERVICES

1. The authority citation for Part 7 continues to read as follows:

Authority: 31 U.S.C. 732.

2. Section 7.3 is revised to read as follows:

§ 7.3 Political activities.

(a) In this section:

(1) "Contribution" means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(2) "Election" includes a primary, special, and general election.

(3) "Employee" means an individual who occupies a position in the General Accounting Office.

(4) "Employer" or "employing authority" means the Comptroller General, his principles, or an employee's supervisor.

(5) "Federal workplace" means any place, site, installation, building, room, or facility in which any department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.

(6) "Nonpartisan election" means—

(i) An election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

(ii) An election involving a question or issue which is not specifically identified with a political party, such as a

constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

(7) "Partisan" when used as an adjective refers to a political party.

(8) "Political fund" means any fund, organization, political action committee, or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee, or other entity.

(9) "Political party" means a national political party, a state political party, and an affiliated organization.

(b) All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this section. Each employee retains the right to—

(1) Register and vote in any election;

(2) Express his opinion as an individual privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge, or button;

(4) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend a political convention, rally, fund-raising function, or other political gathering;

(7) Sign a political petition as an individual;

(8) Make a financial contribution to a political fund, political party, or organization;

(9) Take an active part, as an independent candidate, or in support of an independent candidate in a partisan election covered by paragraphs (h), (i), and (j) of this section;

(10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

(11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character.

(12) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law; and

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his/her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency.

(c) Paragraph (b) of this section does not authorize an employee to engage in political activity in violation of law, while on duty. The Comptroller General may prohibit or limit the participation of an employee or class of employees in an activity permitted by paragraph (b) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interests.

(d) An employee may not use his/her official authority or influence for the purpose of interfering with or affecting the result of an election.

(e) An employee may not take an active part in political management or in a political campaign, except as permitted by this section.

(f) Activities prohibited by paragraph (e) of this section include but are not limited to—

(1) Serving as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(2) Organizing or reorganizing a political party organization or political club;

(3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

(4) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;

(5) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(6) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

(7) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;

(8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(10) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;

(11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, collecting, or receiving a contribution at or in the federal workplace from any employee for any political party, political fund, or other partisan recipient;

(15) Paying a contribution at or in the federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and

(16) Soliciting, paying, collecting, or receiving a contribution at or in the federal workplace from any employee for any political party, political fund, or other partisan recipient.

(g) Paragraph (f) of this section does not apply to—

(1) The Comptroller General or the Deputy Comptroller General;

(2) An employee who resides in a municipality or other political subdivision designated under paragraph (i), subject to the conditions of paragraphs (i) and (j) of this section; or

(3) An employee who works on an irregular or occasional basis, on the days that he/she performs no services.

(h) Paragraph (f) of this section does not prohibit activity in political management or in a political campaign by an employee in connection with—

(1) A nonpartisan election, or

(2) Subject to the conditions and limitations established by the Comptroller General, an election held in a municipality or political subdivision designated under paragraph (i) of this section.

(i) For the purpose of paragraph (h)(2) of this section, the Comptroller General may designate a municipality or political subdivision in Maryland or Virginia in the immediate vicinity of the District of Columbia or a municipality in which the majority of voters are employed by the Government of the United States, when the Comptroller General determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in

local elections. The following municipalities and political subdivisions have been designated:

In Maryland

Annapolis
Anne Arundel County
Berwyn Heights
Bethesda
Bladensburg
Bowie
Brentwood
Capitol Heights
Cheverly
Chevy Chase, sections 1, 2, 3, and 4
Martin's Additions 1, 2, 3, and 4 to Chevy Chase

Chevy Chase View
College Park
Cottage City
District Heights
Edmonston
Fairmont Heights
Forest Heights
Garrett Park
Glendarden
Glen Echo
Greenbelt
Howard County
Hyattsville
Kensington
Landover Hills
Montgomery County
Morningside
Mount Rainier
New Carrollton
North Beach
North Brentwood
North Chevy Chase
Northwest Park
Prince Georges County
Riverdale
Rockville
Seat Pleasant
Somerset
Takoma Park
University Park
Washington Grove

In Virginia

Alexandria
Arlington County
Clifton
Fairfax County
Town of Fairfax
Falls Church
Herndon
Loudoun County
Manassas
Manassas Park
Portsmouth
Prince William County
Stafford County
Vienna

Other Municipalities

Anchorage, AK
Benicia, CA

Bremerton, WA
Centerville, GA
Crane, IN
District of Columbia
Elmer City, WA
Huachuca City, AZ
New Johnsonville, TN
Norris, TN
Port Orchard, WA
Sierra Vista, AZ
Warner Robins, GA

(j) An employee who resides in a municipality or political subdivision listed in paragraph (i) of this section may take an active part in political management and political campaigns in connection with partisan elections for local offices of the municipality or political subdivision, subject to the following limitations:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, an elective office shall not result in neglect of or interference with the performance of the duties of the employee or create a conflict, or apparent conflict, of interests.

Felix R. Brandon II,
Director of Personnel.

[FR Doc. 88-15860 Filed 7-12-88; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

(AMS-FV-88-011FR)

Almonds Grown in California; Administrative Rules and Regulations Concerning Quality Control Requirements

AGENCY: Agricultural Marketing Service,
USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations concerning quality control requirements established under the Federal marketing order for California almonds to require accepted users of almonds to: (1) Obtain a public weighmaster weight certificate for each lot of almonds received from handlers; (2) submit a business data sheet to the Almond Board of California (Board); and (3) complete an application with the Board for accepted user status. The Board is the agency responsible for local administration of the almond marketing order. These changes are needed to improve compliance under the almond marketing order.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 105 handlers of almonds subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. There are 54 accepted users currently registered with the Board, of which 50 are feeders of almonds to livestock and four are crushers of almonds for the purpose of manufacturing almond oil. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. Small livestock producers have been defined as those having average gross annual revenues for the last three years of less than \$100,000, except for small beef cattle feedlots and small egg producers, for which the standard is less than \$1,000,000. Small vegetable oil manufacturers have been defined as those employing an average of less than 100 persons during the preceding 12

months. The majority of handlers, producers, and accepted users of California almonds may be classified as small entities.

This action amends the rules and regulations established under the marketing order for California almonds to specify requirements for accepted users. Accepted users are almond crushers, feeders, feed manufacturers, or other dealers in nut wastes who receive low quality almonds from handlers and dispose of those almonds in low value outlets.

This action will require potential accepted users to complete an application and a business data sheet in order to qualify for accepted user status. It is estimated that the application will take less than two minutes to complete and that the business data sheet will take less than five minutes to complete. This action will also require accepted users to obtain a public weighmaster certificate for each lot of almonds received from handlers and to submit this certificate to the Board along with the Board's Form 8. It is expected that it will cost accepted users \$3.00 to \$5.00 to have each lot weighed and certified and that about 300 lots will require certification each year, divided among about 54 accepted users. It is estimated that it will take accepted users less than two minutes to submit each certificate to the Board.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

Information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0071.

Notice of this action was published in the Federal Register on April 27, 1988 (53 FR 15048). Written comments were invited from interested persons until May 27, 1988. Comments were received from Peggy M. Leong, manager of the Board, and Steven W. Easter, vice president for Member and Government Relations for Blue Diamond Growers.

This final rule revises § 981.442 of "Subpart—Administrative Rules and Regulations." The final rule is based on a unanimous recommendation of the Board, the two comments, and upon other available information.

Section 981.42 of the order provides that handlers shall deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board accepted crushers, feed manufacturers, or feeders. A handler's

inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service (inspection agency), less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Paragraph 981.442(a)(1) of such rules and regulations provides that handlers shall meet their disposition obligations by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders, or other dealers in nut wastes on record with the Board as accepted users. This action adds a new paragraph (a)(7) to § 981.442 to specify requirements for becoming an accepted user of record with the Board.

One of these requirements will require potential accepted users to file an application with the Board, as is current practice. This application will be in the form of an agreement whereby accepted users agree not to dispose of any almonds in human consumption outlets and to allow Board employees to enter applicants' premises at any reasonable time to observe the storage or disposition of almond material and examine and audit applicants' records of almond transactions. Accepted users will also agree to obtain Form 8 from handlers for each lot of material received and, upon crushing, mixing, or feeding the almonds, to execute Part B of the form and mail it promptly to the Board. Handlers currently complete Part A of Form 8 for each lot, providing information such as the net kernel weight of the lot as obtained from the inspection agency pursuant to § 981.442(a)(5) of the regulations and the total weight of the lot. As is current practice, the accepted user will certify on Part B of Form 8 that the material has been crushed into oil, mixed into feed, or fed directly to livestock. Accepted users will also acknowledge that their status as an accepted user could be revoked at any time if the accepted user violates the terms of the agreement.

This final rule will also require accepted users to submit a business data sheet to the Board. The sheet will include such information as the accepted user's name, mailing address, telephone numbers, type of business, location of the accepted user's facility, and the names of the principals involved in the business. This information is necessary so that the Board knows where disposition is to take place and how to contact those officials

responsible for disposition in order for the Board to monitor proper disposal of inedible almonds. Finally, this action will require accepted users to obtain a public weighmaster weight certificate for each lot of almonds received from handlers and attach a copy of the certificate to the corresponding Form 8 submitted to the Board. Public weighmasters are officials of the State of California, who will weigh each almond lot on scales certified as accurate by the State of California to within 0.2 percent. Customarily, lots are also weighed at the handler's facility on public scales which are also certified as accurate to within 0.2 percent. This requirement will allow the Board to compare the weight of a lot at the handler's facility with the weight of the same lot upon receipt by the accepted user.

The proposed rule stated that in cases where the two weights differ by more than 0.4 percent, it would appear that the integrity of the lot is subject to question. Therefore, it was proposed that handlers not receive credit against their inedible disposition obligations for such lots. However, Commenter Easter, who supported the proposal in general, objected to the 0.4 percent tolerance. This commenter stated that the 0.4 percent tolerance was too restrictive and that the two weights could vary by more than 0.4 percent due to factors such as variation between scales, gain or loss of moisture content, and spillage. The commenter stated that for the period July 1987 through February 1988, Blue Diamond Growers shipped 60 lots which had a weight difference of between 0.54 percent and 1.40 percent. The commenter requested that the weight tolerance be increased from 0.4 percent to 2.0 percent. Since in our view a 2.0 percent tolerance would be restrictive enough to still deter the disposition of almonds intended for shipment to inedible outlets in lesser quantities than determined by the inspection agency, this change has been adopted. Therefore, under this action handlers will not receive credit against their inedible disposition obligations for lots where the difference between the weights on the handler's and the accepted user's public weighmaster weight certificates is more than 2.0 percent.

A provision in the proposal would have allowed the inspection agency rather than a public weighmaster to issue a weight certificate in cases where lots are inspected at the accepted user's facility by the inspection agency in order to determine their kernel weight content. Section 981.442(a)(5) of the

order provides that this inspection may take place at either the handler's facility or the accepted user's facility. Commenter Leong stated, however, that the inspection agency is not authorized to issue weight certificates and that such certificates should be issued by a public weighmaster. The inspection agency has verified that the commenter is correct. Therefore, the change is adopted and all weight certificates required pursuant to this action must be issued by a public weighmaster.

In addition, a change for clarity is made in this final rule to reflect that the accepted user eligibility is subject only to the criteria as specified in the new provision in the regulations.

The new requirements established by this rule are intended to improve marketing order compliance by helping to ensure that inedible disposition almonds are disposed of properly. This action provides necessary safeguards to prevent handlers from diverting inedible disposition almonds after inspection, and then shipping those almonds into edible channels. Accepted users may be intentionally or unintentionally disposing of lesser quantities of almonds than determined by the inspection agency as reported by handlers on Form 8. This action should help prevent such practices.

After consideration of all relevant matter presented, including the Board's recommendation, the comments received, and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is amended as follows:

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Amend § 981.442 by adding a new paragraph (a)(7) to read as follows:

Note.—This section will be published in the annual Code of the Federal Regulations.

§ 981.442 Quality control.

(a) . . .

(7) *Accepted Users.* An accepted user's eligibility shall be subject to the following criteria:

(i) Completion of an application with the Board for accepted user status;

(ii) Submission of a business data sheet to the Board; and

(iii) The accurate and prompt submission of ABC Form 8 Part B to the Board for each lot of almonds received, supported by a public weighmaster weight certificate issued at the request of the accepted user at the time of receipt.

The eligibility of accepted users shall be reviewed annually by the Board. Handlers will not receive credit towards their disposition obligations pursuant to paragraph (a)(4) of this section for lots where the difference between the weight of the lot reported by the inspection agency on ABC Form 8 and the weight of the lot reported on the public weighmaster weight certificate exceeds 2.0 percent.

Dated: July 8, 1988.

Charles R. Brader,
Director, Fruit and Vegetable Division.
[FR Doc. 88-15715 Filed 7-12-88; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

(Docket No. 87-169)

Vaccinating Birds in Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are permitting birds in privately operated commercial bird quarantine facilities to be vaccinated against certain diseases by use of certain licensed vaccines. Only licensed veterinarians under the supervision of a veterinarian employed by the Animal and Plant Health Inspection Service (APHIS) will be authorized to vaccinate the birds in question. Available evidence indicates that vaccinations will increase the survival rate of imported birds without interfering with procedures used to isolate Newcastle disease, avian influenza, and other hemagglutinating viruses of poultry.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Harvey A. Kryder, Jr., Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the

Federal Register on September 18, 1987 (52 FR 35271-35272, Docket No. 86-089), we proposed to amend the regulations in 9 CFR Part 92 (referred to below as the regulations) to permit birds in privately operated commercial bird quarantine facilities to be vaccinated against certain diseases by use of vaccines licensed by Veterinary Services (VS).

We received 258 comments on the proposal during the public comment period, which ended November 17, 1987. All of the comments were favorable; supplementary issues raised by commenters are discussed below.

Based on the rationale set forth in the proposal and in this document, and except for miscellaneous changes described below, we are adopting the proposal as a final rule.

Miscellaneous

In our proposed rule we proposed to redesignate, for the purpose of clarity, certain footnotes in § 92.11. This redesignation is being made in another document. We are therefore leaving it out of our final rule.

Comments

We received one comment which noted that a proposed requirement—that birds in quarantine be vaccinated only by licensed veterinarians under the direct supervision of an APHIS veterinarian—would be impractical if strictly interpreted. We are making no change in the final rule based on this comment. We did not mean to imply that licensed veterinarians must be physically observed by APHIS veterinarians while they administer vaccines. Instead, the term "direct supervision" is intended to mean that the approval of an APHIS veterinarian is required concerning which birds are to be vaccinated, the types of vaccines to be used, when the vaccinations are to occur, and any other vaccine-related procedures the APHIS veterinarian determines to be necessary to his or her effective supervision of the vaccination process.

We also received a number of comments advising that dead viruses should be used in the vaccines. We are making no changes in the final rule based on these comments. Using a live but attenuated virus in a vaccine is sometimes necessary in those instances where a dead virus would not produce the necessary immunogenic response in the animal being vaccinated. The commenters, however, appear to be concerned that the use of a live virus in a vaccine could cause an outbreak of the very disease the vaccine was meant to prevent. The possibility of this

happening is remote, because the USDA has set up very strict vaccine testing procedures, as described in 9 CFR Part 113, which ensure that vaccines are safe, yet effective.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Only 50 to 60 importers—approximately 5 of them large entities and the remainder small entities—may be affected by this rule. Under this rule, the use of vaccines will be optional; importers will be affected by this rule only if they choose to use vaccines.

We estimate that the amount of vaccine needed to vaccinate one bird will cost 1 or 2 cents, at the most. Other costs associated with the vaccination process, such as the cost of syringes, will bring the total cost of vaccinating one bird to approximately 10 cents. We estimate that the largest bird importer will vaccinate roughly 100,000 birds per year, with other, smaller importers vaccinating considerably fewer birds. This would bring the largest importer's total vaccination costs to approximately \$10,000 per year. However, using vaccines should increase the survival rate of birds, resulting in greater profits. These increased profits should more than offset the costs involved in vaccinating the birds.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44

U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579-0040.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 is revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.11 is amended by revising paragraph (f)(3)(ii)(B) to read as follows:

§ 92.11 Quarantine requirements.

- (f)
- (3)
- (ii)

(B) The birds may be vaccinated during quarantine only with a vaccine that has been approved by the Administrator, and is administered by a licensed veterinarian under the direct supervision of a veterinarian employed by the Animal and Plant Health Inspection Service. The Administrator will approve a vaccine if:

(1) The vaccine is licensed by the Animal and Plant Health Inspection Service in accordance with § 102.5 of this chapter; and

(2) The vaccine is not one that is used to prevent Newcastle disease, avian influenza, or any other hemagglutinating virus of poultry.⁴

⁴ A list of approved vaccines is available from the Import-Export Operations Staff, Veterinary Services, APHIS, USDA, Room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Done in Washington, DC, this 8th day of July 1988.

James W. Glosier,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-15717 Filed 7-12-88; 8:45 am]

BILLING CODE 3410-34-28

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Corrections in Modification of Size Standards to Make Existing Size Standards Compatible With 1987 Standard Industrial Classification System; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; corrections.

SUMMARY: This document corrects a Final Rule published on May 25, 1988, in the Federal Register (53 FR 18821) by which the Small Business Administration (SBA) modified its size standards to conform with the revision of the Standard Industrial Classification (SIC) System which became effective on January 1, 1987. The most important correction amends the effective date of the rule to July 1, 1988 from July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Alan Odendahl, Size Standards Staff, U.S. Small Business Administration, 1441 "L" Street NW., Rm-601, Washington, DC 20416, (202) 653-6373.

SUPPLEMENTARY INFORMATION: On May 25, 1988, the SBA published a Final Rule which modified SBA's size standards as codified in 13 CFR 121.2 to conform with the revised SIC system. The changes set forth below correct errors which appeared in the May 25, 1988 publication.

Accordingly, the following corrections are made to the final rule appearing in the May 25, 1988, issue of the Federal Register (53 FR 18821).

Page 18821

(1) The effective date is changed from "July 1, 1987" to "July 1, 1988."

Page 18828

(1) The description for SIC code 3728 reads "Aircraft Parts and Auxiliary Equipment, N.E.C." with no following footnote. It should read "Aircraft Parts and Auxiliary Equipment, N.E.C."¹

(20) The description for SIC code 3842 reads "Orthopedic, Prosthetic, and Surgical Appliances and Supplies." It should read "Orthopedic, Prosthetic, and Surgical Appliances and Supplies."

Page 18829

(1) The SIC for descriptive title "Deep Sea Foreign Transportation of Freight" reads "4412." It should read "4412."

Page 18830

(1) The description for SIC code 5169² reads "Chemical and Allied Products, N.E.C." It should read "Chemicals and Allied Products, N.E.C."

Page 18834

(1) The period is omitted in footnote 17, second paragraph, third sentence. It should read "As services, these activities must each be in a separate industry."

(2) The period is omitted in footnote 18, fourth paragraph, second line. It should read " * * * of 1,500 employees shall apply."

(3) The period is omitted in footnote 19, fifth paragraph, end of first sentence. It should read " * * * a size standard of 1,000 employees shall apply."

Dated: June 27, 1988.

James Abdoor,

Administrator, U.S. Small Business Administration.

[FR Doc. 88-15506 Filed 7-12-88; 8:45 am]

BILLING CODE 8025-01-48

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

(Airspace Docket No. 88-ASO-4)

Revision of Transition Area, Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Lawrenceville, Georgia, Transition Area by correcting the geographic position coordinates of the airport, changing the airport name from Gwinnett County to Gwinnett County-Briscoe Field Airport, deleting the extension either side of the Norcross VORTAC 077° radial and adding a new arrival area extension to provide controlled airspace for aircraft executing a new VOR/DME standard instrument approach procedure utilizing the Peachtree VOR/DME.

EFFECTIVE DATE: 0001 u.t.c., September 22, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedure Branch, Air Traffic Division, Federal Aviation

Administration, P.O. Box 20638, Atlanta, Georgia 30320; telephone: (404) 763-7846.

SUPPLEMENTARY INFORMATION:

History

On April 26, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Lawrenceville, Georgia, Transition Area (53 FR 14817). This action will correct the geographic position coordinates of the airport, change the airport name from Gwinnett County to Gwinnett County-Briscoe Field Airport, delete an arrival area extension either side of the Norcross VORTAC 077° radial and add a new extension to provide controlled airspace for aircraft executing a new VOR/DME standard instrument approach procedure utilizing the Peachtree VOR/DME. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Lawrenceville, Georgia, Transition Area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequency and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lawrenceville, GA [Revised]

By deleting the existing description and substituting the following: "That airspace extending upward from 700' above the surface within a 6-mile radius of the Gwinnett County-Briscoe Field Airport (Lat. 33°58'47" N., Long. 83°57'50" W.; within 2 miles either side of the Peachtree VOR/DME (Lat. 33°52'32" N., Long. 84°17'56" W.) 069° radial, extending from the 6-mile radius area to 9 miles west of the airport."

Issued in East Point, Georgia, July 1, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

July 1, 1988.

[FR Doc. 88-15615 Filed 7-12-88; 8:45 am]

BILLING CODE 4910-13-787

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33-6783; 34-25893; 35-24676; 39-2175; IC-16476; IA-1127; File No. 87-26-85]

Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Securities and Exchange Commission is adopting an amendment to Rule 2(e)(7) of its Rules of Practice, the provision governing whether hearings in proceedings against professionals under that Rule are public or nonpublic. Prior to the adoption of this amendment, Rule 2(e)(7) provided that such administrative proceedings would be nonpublic unless the Commission otherwise ordered. The Commission has determined that the benefits of public proceedings outweigh the potential harms identified by the commentators. The amendment provides that Rule 2(e) proceedings shall be public unless the Commission otherwise orders.

EFFECTIVE DATE: August 12, 1988. The amendment to Rule 2(e) will apply to proceedings that are authorized and instituted by the Commission subsequent to the effective date of the amendment. Rule 2(e) proceedings authorized prior to the effective date of the amendment, but not instituted by that date, will not be subject to the amended provision.

FOR FURTHER INFORMATION CONTACT: Emily P. Gordy, Esq., (202) 272-2422, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6-6, Washington, DC 20540.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission is amending Rule 2(e)(7) of its Rules of Practice, 17 CFR 201.2(e)(7). Rule 2(e) governs Commission administrative disciplinary proceedings against professionals, such as attorneys and accountants, who practice before it.¹ Since 1971, Rule 2(e)(7) has provided

¹ Rule 2(e)(1) generally governs suspensions and bars from practice before the Commission, and provides that:

(1) The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter (i) not to possess the requisite qualifications to represent others, or (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct, or (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws (15 U.S.C. 77a to 80a-20), or the rules and regulations thereunder.

17 CFR 201.2(e)(1).

Rule 2(e)(2) governs suspensions from appearing before the Commission for attorneys who are suspended or disbarred by any federal or state court, for accountants, engineers or other experts whose licenses have been revoked, or for persons convicted of a felony or misdemeanor involving moral turpitude. 17 CFR 201.2(e)(2).

Rule 2(e)(3)(i) governs temporary suspensions and provides that:

(3)(i) The Commission, with due regard to the public interest and without preliminary hearing, may by order temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who, on or after July 1, 1971, has been by name:

(a) Permanently enjoined by any court of competent jurisdiction by reason of his misconduct in an action brought by the Commission from violation or aiding and abetting the violation of any provision of the Federal securities laws (15 U.S.C. 77a to 80a-20) or of the rules and regulations thereunder; or

(b) Found by any court of competent jurisdiction in an action brought by the Commission to which he is a party or found by this Commission in any administrative proceeding to which he is a party to have violated or aided and abetted the violation of any provision of the Federal securities laws (15 U.S.C. 77a to 80a-20) or the rules and regulations thereunder (unless the violation was found not to have been willful).

17 CFR 201.2(e)(3)(i).

that Rule 2(e) proceedings "shall be non-public unless the Commission on its own motion or the request of a party otherwise directs."² Those proceedings become public once an administrative law judge finds a basis for imposing a sanction against a respondent.

On September 29, 1986, the Commission proposed alternative amendments to Rule 2(e)(7).³ The Proposing Release identified and sought comment on three alternative approaches to amending Rule 2(e)(7):

(1) Amending the Rule to provide that Rule 2(e) hearings shall be public unless the Commission, at any time during the proceedings, on its own motion or at the request of a party, otherwise directs;

(2) Amending the Rule to provide that hearings in specified classes of proceedings shall be public; or

(3) Amending the Rule to provide that the Commission will determine whether to hold public hearings on a case-by-case basis.

The Commission also sought comments on other possible approaches, including comments on whether Rule 2(e)(7) should remain in its present form.⁴

The Commission believes that the benefits of public proceedings outweigh the potential harms identified by the commentators and has determined to amend Rule 2(e)(7) to provide for public proceedings. The Commission has determined to adopt the first alternative amendment, which contains a presumption in favor of public proceedings while allowing flexibility for nonpublic proceedings under appropriate circumstances.

II. Discussion

As discussed below, there are a number of reasons supporting public Rule 2(e) proceedings. Public proceedings will avoid the appearance that the Commission favors Rule 2(e) respondents over respondents in proceedings conducted against securities professionals and others, and

will also remove the incentive Rule 2(e) respondents have to delay proceedings for reasons unrelated to the merits of the case at issue. In addition, public proceedings will provide professionals and the public with knowledge of conduct that the Commission has determined warrants the institution of a proceeding and reduce the risk of misperceptions concerning the culpability of possible Rule 2(e) respondents when the professional's client is charged, but to the public's knowledge, no action is taken against the professional. Public proceedings will also provide increased public and Congressional oversight of the Commission's application of Rule 2(e). Such oversight will then be comparable to that applied to other administrative proceedings conducted by the Commission.

Commentators raised concerns about reputational damage, due process, the lack of specific professional standards of conduct, and whether policy considerations favor public access to this type of governmental process and to professional discipline. The Commission has concluded that the concerns raised by the commentators are outweighed by the benefits of public proceedings.

A. Benefits of Public Proceedings

Four reasons support public Rule 2(e) disciplinary proceedings. First, virtually all other administrative proceedings brought by the Commission (including those against brokers, dealers, investment advisers, and public companies)⁵ and all Commission injunctive actions are public. The Commission believes that conducting private proceedings against accountants and attorneys, while at the same time providing for public proceedings against other persons such as securities professionals, creates the appearance that the Commission is according favored treatment to respondents in Rule 2(e) proceedings. This appearance of favoritism detracts from the integrity of the Commission's processes. With respect to the issue of whether the proceeding should be public, commentators were unable to identify any compelling reason to distinguish between Rule 2(e) proceedings and proceedings against brokers, dealers, investment advisers, and others.

Second, the Commission believes that private Rule 2(e) proceedings create an incentive for delay. Respondents have an incentive to delay private proceedings more than public ones because, in the event respondents are

sanctioned in a Rule 2(e) proceeding, the long lapse of time between the time of the violation and the time the sanction is imposed, which is the first public notice of the proceeding, helps create the impression that the matter is stale and irrelevant to the professional's current practice. This incentive to delay can, for reasons unrelated to the complexity of a proceeding, add substantially to the costs of litigating a matter and does not promote the prompt and fair resolution of Commission administrative proceedings. Moreover, since other Commission administrative proceedings are, as noted above, public, this change will put Rule 2(e) respondents on an equal footing with other respondents with respect to whether delay is advantageous.

Third, there is considerable public and professional interest in the standards applied by the Commission in determining to commence disciplinary proceedings. The decision to commence a disciplinary proceeding most certainly does not imply that the allegations stated in the order instituting proceedings will be upheld by the administrative law judge, the Commission on appeal, or upon judicial review.⁶ Professionals and members of the public have a legitimate interest in learning, on a timely basis, the facts and circumstances that may lead to the institution of disciplinary proceedings. Private proceedings may create misperceptions concerning the Commission's treatment of professionals, particularly if the professional's client has been publicly charged and, to the public's knowledge, no action has been taken against the professional.

Finally, as a general matter, open or public adjudicatory proceedings are more favored in the law than are closed proceedings. As discussed in more detail, *infra*, judicial precedent and the governing procedures of many organizations, while they do not mandate public Rule 2(e) proceedings, provide support for public proceedings. At bottom, such determinations rest on the proposition that open proceedings, with attendant public scrutiny, have the effect of protecting against abuse of

² See, e.g., *Kivitz v. Securities and Exchange Commission*, 475 F.2d 956 (D.C. Cir. 1973) (Commission order suspending attorney reversed by the court of appeals and remanded with directions to vacate order and dismiss proceeding on grounds that supporting evidence was not substantial); *In the Matter of Carter and Johnson*, Securities Exchange Act Release No. 17597 (Feb. 28, 1981), 22 SEC Docket 282 (March 17, 1981) (Administrative law judge decision reversed by the Commission on basis that record did not adequately support findings of violative conduct).

³ See Rule 11(b) of the Commission's Rules of Practice, 17 CFR 201.11(b).

power by governmental entities.⁷ Thus, public scrutiny of Commission actions resulting from open proceedings would provide added public and Congressional oversight of the Commission's use of Rule 2(e).

B. Views of Commentators

The Commission received twenty-six letters of comment in response to the Proposing Release.⁸ Twenty-four of these letters were from accountants, attorneys or professional associations of accountants and attorneys. As discussed more fully below, these twenty-four commentators generally oppose amending the Rule. One commentator, an academic, favors amending the Rule to provide for public proceedings, and the then General Counsel of the Commodity Futures Trading Commission ("CFTC"), expresses no position on the advisability of public or private proceedings.

As an initial matter, the Commission notes that many of the arguments raised by commentators do not address the issue of whether Rule 2(e) proceedings should be public or private, but instead question the authority of the Commission to initiate such proceedings. The courts have upheld an agency's authority to discipline professionals who practice before it as a necessary adjunct to the agency's power to protect the public and the integrity of its own processes.⁹ The Commission's

authority to institute Rule 2(e) proceedings, public or private, is not, however, the issue posed in this rulemaking.

With respect to the proposed public disciplinary proceedings under Rule 2(e), the comments generally address the potential harm to professional reputations, due process considerations, the lack of specific professional standards of conduct, and whether there is a preference for public access to governmental processes and professional discipline.

1. Harm to Professional Reputation

The reason cited most frequently by commentators opposing public Rule 2(e) proceedings concerns the potential that initiation of public proceedings might cause irreparable damage to a professional's reputation, regardless of whether the charges are ultimately sustained.¹⁰ Those commentators argue that publicity at the institution of a proceeding is as damaging to a professional's reputation as the imposition of a sanction after adjudication and, thus, damage from a public proceeding occurs irrespective of the outcome of that proceeding.¹¹

The Commission recognizes that any public proceeding may involve reputational damage to the respondent.¹² At the same time, the

Commission believes its process for the authorization of proceedings contains procedural safeguards designed to provide assurance that Commission decisions to institute proceedings against a professional are based on sufficient grounds.¹³ Moreover, it is important to note that virtually all other commission administrative proceedings and all Commission injunctive actions (even if they involve attorneys and accountants) are publicly instituted. The commission routinely institutes public proceedings against securities professionals, such as brokers, dealers, and investment advisers, whose business also depends upon their reputations.¹⁴ Thus, it is not clear that there is a greater need to protect the reputations of respondents in Rule 2(e) proceedings than the reputations of such other professionals.

Finally, the Commission notes that the identity of a potential Rule 2(e) respondent, and the allegations concerning the potential respondent's conduct, may become known during an enforcement action against a public company that is a client or former client of the Rule 2(e) respondent.

Consequently, the commencement of a public Rule 2(e) proceeding may not have substantial additional impact on the professional's reputation.

Commentators further assert that public Rule 2(e) proceedings can invite private litigation against the named professionals, before any wrongdoing or unprofessional conduct is found.¹⁵ As

parties and their counsel, such as witnesses and potential witnesses, may legitimately be informed of the allegations, facts, and circumstances involved in the case.

¹⁰ See, e.g., letter dated December 16, 1986 from the American Institute of Certified Public Accountants ("AICPA comment"); letter dated December 22, 1986 from Arthur Andersen & Co. ("Arthur Andersen comment"); letter dated December 24, 1986 from Jack G. Wahlig of McGladrey, Hendrickson & Pullen ("McGladrey comment"); letter dated December 31, 1986 from John D. Abernathy of Seidman & Seidman ("Seidman & Seidman comment"); letter dated January 2, 1987 from Peat, Marwick, Mitchell & Co. ("Peat Marwick comment"); letter dated January 2, 1987 from Ernst & Whinney ("Ernst & Whinney comment"); letter dated January 2, 1987 from Miller, Canfield, Paddock and Stone ("Miller Canfield comment"); letter dated January 5, 1987 from Harris J. Amhowitz and James J. Quinn of Coopers & Lybrand ("Coopers & Lybrand comment"); letter dated January 7, 1987 from Arthur Young & Co. ("Arthur Young comment"); letter dated January 26, 1987 from Richard B. Smith and George W. Bermant of the American Bar Association and letter dated January 28, 1987 from Lewis S. Black, Jr. and Harvey L. Pitt on behalf of the American Bar Association (since the two letters received from the ABA express substantially similar views they will hereinafter be referred to collectively as the "ABA comments" in instances when they express similar views, otherwise the letter from Lewis S. Black, Jr. and Harvey L. Pitt shall be referred to as the "Black/Pitt comment").

¹¹ See letter dated December 23, 1986 from the Association of the Bar of the City of New York; letter dated December 29, 1986 from John F. Fixmer of Wipfli, Ulrich & Co. as well as Ernst & Whinney and McGladrey comments.

¹² The status of a Rule 2(e) proceeding as a private proceeding does not mean that it is undisclosed outside the agency. During private Rule 2(e) proceedings, various persons in addition to

¹³ See *infra* text accompanying notes 25-26.

¹⁴ Investors often base their decisions to invest on the reputation of the securities professionals. Cf. *Gartenberg v. Merrill Lynch Asset Management, Inc.*, 894 F.2d 923, 928 n. 2 (2d Cir. 1982) (court stated "many shareholders may have invested in the fund on the strength of the adviser's reputation"); *Kaufman v. Merrill Lynch Pierce, Fenner & Smith, Inc.*, 464 F. Supp. 528, 535 (D. Md. 1978) (court stated that certain investors, believing that an investment adviser worked with the brokerage firm of Merrill Lynch, relied "to a certain extent on the reputation" of the firm); *The Anderson Co. v. John P. Chase, Inc.*, [1974-1975] Fed. Sec. L. Rep. (CCH) ¶ 95,009 (March 12, 1975) (the court stated that "Anderson's interest in Chase, Inc. stemmed from the reputation of that firm for the successful management of the two funds whose investments it then supervised"); see also Comment, *Financial Columnists as Investment Advisers: After Lowe and Carpenter*, 74 Calif. L. Rev. 2061, 2073 n. 96 (December 1986) ("investment adviser's success largely dependent upon reputation for honesty") (citing Note, *Investment Advisers and Disclosure of an Intent to Trade*, 71 Yale L. J. 1342, 1346 (June 1962)).

¹⁵ See letter dated January 5, 1987 from Jake L. Netterville of Postlethwaite & Netterville, as well as AICPA, McGladrey and Arthur Andersen comments.

⁷ See, e.g., *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569-573 (1980); *United States v. Criden*, 675 F.2d 550, 556 (3d Cir. 1982). See also 3 K. Davis, *Administrative Law Treatise* Section 14:13 (1980); Brandeis, *Other People's Money*, 92 (1932) ("Sunlight is said to be the best of disinfectants; electric light the most efficient policeman").

⁸ The letters of comment and Commission staff's Summary of Comments are available for public inspection and copying at the Commission's Public Reference Room. See File No. 57-26-86. Seventeen letters were received from public accountants; two letters were received from attorneys; five letters were received from professional associations; one letter was received from a federal agency; and one letter was received from an associate professor of management.

⁹ See, e.g., *Davy v. Securities and Exchange Commission*, 792 F.2d 1418 (9th Cir. 1986) (upholding the Commission's authority under Rule 2(e) finding that Davy, an accountant, had engaged in improper professional conduct and had willfully violated the federal securities laws); *Polydoroff v. Interstate Commerce Commission*, 773 F.2d 372 (D.C. Cir. 1985) (upholding the ICC's authority to police the behavior of attorneys appearing before it, and citing *Touche Ross* with approval); *Touche Ross & Co. v. Securities and Exchange Commission*, 609 F.2d 570 (2d Cir. 1979) (sustaining the validity of Rule 2(e) as a necessary adjunct to the Commission's power to protect the integrity of its administrative procedures and the public in general); and cases and authorities cited in *In the Matter of Carter and Johnson*, Securities Exchange Act Release No. 17597 (Feb. 28, 1981), 22 SEC Docket 292, 293-294 (March 17, 1981).

² Securities Act Release No. 5147 (May 10, 1971). Prior to 1971, Rule 2(e) did not indicate whether proceedings would be public or nonpublic, although proceedings during that time generally were nonpublic.

³ Securities Act Release No. 9062 (Sept. 29, 1986), 36 SEC Docket 1161 (Oct. 14, 1986) ("Proposing Release"). The Commission also published proposed amendments to Rule 2(e)(7) in 1974. At that time, the Commission solicited comments on a proposal to make Rule 2(e) proceedings public unless the Commission ordered otherwise. Securities Act Release No. 5477 (April 6, 1974), 4 SEC Docket 34 (April 16, 1974). On March 4, 1975, the Commission withdrew that proposal to amend the rule. Securities Act Release No. 5872 (March 4, 1975), 8 SEC Docket 374 (March 19, 1975).

⁴ See Securities Act Release No. 9062 (Sept. 29, 1986).

noted previously and discussed in more detail, *infra*, the Commission's processes are designed to determine that there are sufficient grounds upon which to base commission proceedings. In addition, many private Rule 2(e) proceedings follow, or are brought simultaneously with, public administrative or injunctive proceedings against other parties, and the identity of any attorney or accountant involved in the underlying conduct can usually be ascertained from the facts disclosed in those public proceedings. Thus, the decisions to initiate litigation made by private parties who believe themselves aggrieved by conduct underlying a public enforcement action are often independent of whether a Rule 2(e) proceeding is private or public.¹⁶

2. Due Process Considerations

Commentators also express certain due process concerns. At bottom, these concerns appear to rest largely on general skepticism with respect to the propriety of independent agency adjudication. Thus commentators argue that it is unfair for the Commission, in Rule 2(e) proceedings, to act as both complainant and adjudicator.¹⁷ Commentators also argue that it is unfair that the decision to make a disciplinary proceeding public rests solely with the Commission acting upon an ex-parte staff recommendation.¹⁸ Commentators assert that the Commission's staff may use the threat of public proceedings as a tactical weapon in negotiations in order to coerce settlements and thereby avoid extensive litigation.¹⁹ Commentators also contend

¹⁶ Courts have consistently held that private rights of action are important and a necessary adjunct to commission action in the enforcement of the securities laws. *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310, (1985) (the court stated "we repeatedly have emphasized that implied private actions provide a 'most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to commission action'") (quoting *J.I. Case Co. v. Borak*, 377 U.S. 436, 432 (1964)); *In re Warner Communications Securities Litigation*, 618 F. Supp. 735, 750 (S.D.N.Y. 1985), *aff'd on other grounds*, 796 F.2d 35 (2d Cir. 1986) (the court stated: "The federal securities laws are remedial in nature and, in order to effectuate their statutory purpose of protecting investors and consumers, private law suits should be encouraged."); *See also Friedrich v. Bradford*, 542 F.2d 307 (6th Cir. 1976), *cert. denied* 429 U.S. 1053 (1977).

¹⁷ *See ABA and AICPA comments.*

¹⁸ *See Arthur Andersen, McGladrey, Mann Judd, Miller Canfield, AICPA, Ernst & Whinney, Seidman & Seidman, Coopers & Lybrand and ABA comments.*

¹⁹ *See ABA, Ernst & Whinney, Peat Marwick, Arthur Young and Seidman & Seidman comments.*

that the staff may use Rule 2(e) proceedings to vindicate its position in disputes arising out of legitimate factual or legal differences.²⁰ Finally, commentators argue that public proceedings may adversely affect an attorney's capacity to serve his clients by chilling effective advocacy.²¹

These arguments question generally the integrity of the agency process and the ability of that process to render fair decisions. These arguments are not unique to the Commission's process and apply to any administrative agency that has the power to discipline professionals that practice before it. However, contrary to these arguments, courts have consistently held that a combination of investigative and adjudicative functions in one administrative body is not, without more, a denial of due process.²² Commission procedures in authorizing the institution of a Rule 2(e) proceeding and its role as ultimate adjudicator are fully consistent with this body of law. The investigative/prosecutorial functions and the adjudicative function must of necessity be combined in the administrative agency as an entity or in the members comprising the agency.²³ The requirement that such functions be performed by different and separate branches within an agency, however, tends to alleviate any potential unfairness or bias resulting from this combination of functions.²⁴

²⁰ *See Black/Pitt comment. See also Mann Judd, Ernst & Whinney, AICPA, DICKP, Postlethwaite & Netterville and Philip Rootberg comments.*

²¹ *See ABA comments.*

²² *See Withrow v. Larkin*, 421 U.S. 35 (1975) (Court held that it was not a violation of due process for members of state board of medical examiners who voted to initiate disciplinary proceedings to make the final decision on revocation of a license). The Court stated:

The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators.

Id. at 47. The Court also stated: It is also very typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings. This mode of procedure does not violate the Administrative Procedure Act, and it does not violate due process of law.

Id. at 56. *See also Richardson v. Perales*, 402 U.S. 309 (1971); *FTC v. Cement Institute*, 333 U.S. 683 (1948); *Hastings v. Judicial Conference of the U.S.*, 829 F.2d 91 (D.C. Cir. 1987), *appeal pending*; *Myrick v. City of Dallas*, 810 F.2d 1382 (5th Cir. 1987); *Boston v. Webb*, 783 F.2d 1163 (4th Cir. 1986); *United States v. Batson*, 782 F.2d 1307 (5th Cir.), *cert. denied*, 477 U.S. 906 (1986).

²³ *See 1 Koch, Administrative Law and Practice* Sections 1-27, 6-6 (1985).

²⁴ 5 U.S.C. 554(d)(C) provides:

All Commission administrative proceedings, including Rule 2(e) proceedings, require express Commission authorization; thus, staff recommendations are evaluated by the Commission before a proceeding is instituted. Prior to Commission authorization of proceedings, respondents generally are given the opportunity to submit a statement that is furnished to the Commission presenting the respondent's position with respect to the staff's recommendation.²⁵ In addition, with respect to Rule 2(e) proceedings, the Commission has further separated its investigative and litigation functions. The private investigations preceding the institution of Rule 2(e) proceedings are conducted by the Division of Enforcement; the Office of the General Counsel independently reviews any recommendation to initiate Rule 2(e) proceedings,²⁶ and such proceedings, if litigated, generally are handled by the Office of the General Counsel.

Finally, the Commission is sensitive to the potential for the appearance of abuse when an administrative agency with prosecutorial responsibilities has the authority to discipline attorneys who appear before it as advocates for their clients' positions. Nevertheless, the Commission believes, as it has stated before, that the potential for abuse is "neither so great nor so unique to this agency that the Commission should decline to exercise its authority in this area."²⁷ Furthermore, the Commission

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to Section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(C) To the agency or a member or members of the body comprising the agency.

²⁵ Securities Act section 20(a), Securities Exchange Act Section 21(a) and 17 CFR 202.5(c). *See also Securities Act Release No. 5310 (1972-1973) Fed. Sec. L. Rep. (CCH) ¶ 79,010 (Sept. 27, 1972) (Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations).*

²⁶ In addition, further procedural protection exists because recommendations from the Division of Enforcement may be reviewed by other Divisions and Offices. In the case of proceedings against accountants, the Office of the Chief Accountant reviews the recommendations.

²⁷ *In the Matter of Carter and Johnson*, Securities Exchange Act Release No. 17597 (Feb. 23, 1981), 22 SEC Docket 262, 295 (March 17, 1981), quoting *In the Matter of Keating, Muething & Klekamp*, Securities Exchange Act Release No. 15082 (July 2, 1979), 17 SEC Docket 1149, 1185 (concurring opinion of Chairman Williams). Further quoting from Chairman Williams' opinion in *Keating, Muething & Klekamp*, the Commission stated:

Continued

believes, as discussed, that the required separation of functions and other procedural safeguards protect against the risk that any potential animus toward the attorney as a result of vigorous professional representation of the client would lead to a vindictive or nonmeritorious action against the attorney.

3. Lack of Professional Standards

Some commentators reject the parallel between other administrative proceedings brought by the Commission and Rule 2(e) proceedings.²⁸ They argue that, while the Commission has express statutory authority to bring administrative proceedings against securities professionals and has developed particular expertise with respect to the activities of those professionals, it has neither the express authority nor the requisite expertise to bring Rule 2(e) proceedings against non-securities professionals. They also note that such professionals are subject to regulation and discipline by state authorities.

For purposes of determining whether its proceedings should be public or private, the Commission is not persuaded that it should distinguish Rule 2(e) proceedings from other administrative proceedings. To the extent that the commentators cite the absence of express statutory authority to conduct Rule 2(e) proceedings as a basis for the distinction, they merely rephrase their argument that Rule 2(e) proceedings, whether public or private, are beyond the scope of the Commission's authority. However, if the Commission lacked authority to conduct Rule 2(e) proceedings, conducting them

"These concerns do not mean, however, that the Commission should ignore or refuse to exercise an effective professional disciplinary tool under the appropriate circumstances. The important role which professionals, particularly attorneys and accountants, play in assuring adherence to the federal securities laws has long been recognized

Clearly, the Commission would be unable to administer effectively those laws in an environment in which issuers, underwriters, and others involved in the capital raising process were not routinely served by professionals of the highest integrity and competence well-versed in the requirements of the statutory scheme Congress has created. An incompetent or unethical practitioner has the ability to inflict substantial damage to the Commission's processes, and thus the investing public, and to the level of trust and confidence in our capital markets. [We believe] that Rule 2(e) should not be utilized as an enforcement tool against those who violate the federal securities laws and happen coincidentally also to be lawyers or accountants. But where such individuals engage in professional misconduct which impairs the integrity of the Commission's processes, the Commission has an obligation to respond through the application of Rule 2(e)."

Carter and Johnson at 295-296.

²⁸ *See AICPA, ABA, Miller Canfield, Ernst & Whinney and Coopers & Lybrand comments.*

in private would be no more permissible than conducting them in public.

Arguments based upon purported lack of expertise also do not justify nonpublic proceedings. First, most Rule 2(e) proceedings entail charges that the respondent violated the federal securities laws. The Commission's ability to adjudicate such cases—like the ability of the courts—depends upon its ability to apply the federal securities laws to specific facts. The Commission is the administrative agency with responsibility for interpreting and enforcing the federal securities laws;²⁹ it has adequate expertise to adjudicate issues relating to whether the federal securities laws have been violated, regardless of the profession of the respondent.

Second, even in those cases that depend upon a determination of improper professional conduct, the Commission's exercise of its authority is within the scope of its expertise. With respect to accounts, in Rule 2(e) proceedings based on improper professional conduct, the Commission applies specific professional accounting and auditing standards (*i.e.*, Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS)) to determine whether improper professional conduct has occurred. GAAP and GAAS constitute a body of standards and principles which govern the accounting and auditing practices of accountants who appear before the Commission. The Commission has express statutory authority under the federal securities laws to prescribe the requirements for financial statements filed with the Commission.³⁰ Expertise to determine whether these standards have been properly applied is a corollary of that power.

With respect to attorneys, the Commission generally has not sought to develop or apply independent standards of professional conduct. The great majority of Rule 2(e) proceedings against attorneys involve allegations of violations of the law (not of professional standards); thus, the Commission, as a matter of policy, generally refrains from using its administrative forum to conduct *de novo* determinations of the professional obligations of attorneys.³¹

²⁹ *See, e.g., Hughes v. Dempsey-Tegeler & Co.*, 534 F.2d 158, 170 (9th Cir.), *cert. denied*, 429 U.S. 896 (1976); *Carr v. New York Stock Exchange, Inc.*, 414 F. Supp. 1282, 1290 (N.D. Cal. 1976).

³⁰ Securities Act Section 10(a) and Schedule A.

³¹ *In the Matter of Carter and Johnson*, Securities Exchange Act Release No. 17597 (Feb. 23, 1981), the Commission announced a standard of professional conduct to be applied prospectively. In addition, the Commission solicited public comment

Indeed, the Commission has generally utilized Rule 2(e) proceedings against attorneys only where the attorney's conduct has already provided the basis for a judicial or administrative order finding a securities law violation in a non-Rule 2(e) proceeding. Accordingly, Rule 2(e) proceedings rarely entail the adjudication of questions concerning professional standards that govern the conduct of attorneys.³² On the contrary, with respect to attorneys, such proceedings serve primarily as a vehicle for protecting the Commission against further practice by attorneys who have been the subject of other judicial or administrative proceedings involving securities law violations.³³

4. Preference for Public Access to Governmental Processes and Professional Discipline

a. *Governmental processes.* In its Proposing Release, the Commission stated that there have been a number of changes since 1975 that reflect an increased sensitivity to the benefits of public decisionmaking, citing as support judicial holidays evidencing common

on whether the standard should be expanded or modified. The Commission has not formally addressed the expansion or modification of the standard enunciated in *Carter and Johnson* and intends to take no further action in that regard. Since *Carter and Johnson*, the Commission has not attempted to set professional standards of conduct in Rule 2(e) proceedings, but has relied on a showing of violations of the securities laws.

Rule 2(e) proceedings brought by the Commission against attorneys since *Carter and Johnson* involved attorneys enjoined from violations of the securities laws. *In the Matter of Gary C. Granai*, Securities Exchange Act Release No. 6762 (March 24, 1988); *In the Matter of Tommy B. Duke*, Securities Exchange Act Release No. 25165 (Nov. 30, 1987); *In the Matter of William D. Sowers*, Securities Exchange Act Release No. 24331 (April 13, 1987); *In the Matter of Robert D. Schulman*, Securities Exchange Act Release No. 23668 (Sept. 30, 1986); *In the Matter of Thomas W. Tierney*, Securities Exchange Act Release No. 23169 (April 23, 1986); *In the Matter of Richard Hirschfeld*, Securities Exchange Act Release No. 22766 (Jan. 15, 1986); *In the Matter of Carl Leibowitz*, Securities Exchange Act Release No. 9539 (May 1, 1984); *In the Matter of Martin E. Hecht*, Securities Exchange Act Release No. 6490 (Sept. 27, 1983); *In the Matter of Robert V. Gibson*, Securities Exchange Act Release No. 16314 (Dec. 7, 1981). The one exception has been a Rule 2(e) proceeding based on a criminal conviction for violations of the securities laws. *In the Matter of James F. McGovern*, Securities Exchange Act Release No. 25379 (Feb. 22, 1986).

³² The Commission's practice of premising attorney Rule 2(e) proceedings on judicial orders minimizes the risk, cited by some commentators, that public disciplinary proceedings may have a chilling effect on zealous representation of a client, particularly when the attorney appears before the Commission as an advocate in an enforcement matter.

³³ Even in instances where the Commission brings a Rule 2(e) proceeding against an attorney who previously has been the subject of such a judicial or administrative finding, the attorney may contest the need for a bar or a suspension in the Rule 2(e) action.

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law and constitutional presumptions of increased public access to proceedings and the Government in the Sunshine Act of 1976, Pub. L. No. 94-409, 90 Stat. 1241 (1976) ("Sunshine Act").³⁴

Commentators argue that the authority cited by the Commission in the Proposing Release in support of public access to certain proceedings is inapposite to Rule 2(e) proceedings because the issue in the cited cases is the extent to which access to traditionally public proceedings may be restricted.³⁵ In contrast, the commentators argue, Rule 2(e) proceedings have been nonpublic since their inception.³⁶ Commentators also argue that the cases cited in the Proposing Release do not support the Commission's proposal because the cases arose out of proceedings in which a judge or magistrate, who was independent of the person prosecuting the action, adjudicated the claim.³⁷

While the authorities cited in the Proposing Release discussing the common law and constitutional presumptions of public access do not require public Rule 2(e) proceedings, they reflect the courts' recognition of the importance of public access to certain decisionmaking processes. Although the distinction between historically private and historically public proceedings in an important factor in a court's evaluation of the availability of public access, it is not dispositive.³⁸ The fact that the

proceedings in the cases cited in the Proposing Release involved independent judges or magistrates does not reduce the relevance of those cases as support for public access to Rule 2(e) proceedings.³⁹

Commentators also argue that the passage of the Sunshine Act did not demonstrate an increased sensitivity to public decisionmaking because Congress specifically provided exceptions that allow agency meetings, including those involving particular formal agency adjudications, to be closed.⁴⁰ The Commission does not believe that the existence of exceptions to the Sunshine Act, which are specific and circumscribed, evidences a lack of support for the benefits of public adversarial proceedings. Further, the Commission continues to believe that Congress, by enacting the Sunshine Act, expressed support for the public's right of access to the decisionmaking processes of the Federal government.⁴¹

b. *Professional Discipline.* The Commission sought comment in the Proposing Release on whether modification of the Rule 2(e) provision would be consistent with the administrative practice of other federal and state regulatory agencies and professional organizations.⁴² Commentators responded that the Commission's proposal is inconsistent with the administrative practices of other agencies and organizations.⁴³ They assert that the regulations promulgated by the federal banking agencies and the Internal Revenue Service provide for private disciplinary proceedings.⁴⁴ They also contend that, according to a survey conducted by the ABA in 1983,⁴⁵ a majority of state bar associations do not make their disciplinary proceedings public at the

hearing stage.⁴⁶ One commentator argues that a substantial portion of state board disciplinary proceedings against accountants remain private until the board determines to impose sanctions, and that disciplinary proceedings by the AICPA and state societies of CPAs are private until a final adverse decision is made.⁴⁷

While some agencies that have specified disciplinary procedures for professionals have private proceedings,⁴⁸ the Commission would not be unique in its adoption of a rule favoring public disciplinary proceedings. For example, the CFTC rules provide, with narrow exceptions, for public disciplinary proceedings.⁴⁹

Although a majority of state bar associations do not currently provide for public proceedings at the hearing stage, a substantial proportion of states, acknowledging the benefits of public proceedings, have provided for earlier public access.⁵⁰ Those states that provide for public fact finding proceedings do so after a confidential initial investigation has been completed. Similarly, the investigation conducted prior to Commission authorization of an action is almost invariably private.⁵¹ In

³⁴ See ABA, Coopers & Lybrand and AICPA comments.

³⁵ See Coopers & Lybrand comment.

³⁶ Some agencies, while not providing for disciplinary proceedings against such professionals, provide in their regulations that adjudicative hearings shall be public. See, e.g., Federal Trade Commission Regulations, 16 CFR 3.41 (1986); National Labor Relations Board Regulations, 29 CFR 102.34 (1987).

³⁷ The CFTC rule governing proceedings against professionals provides:

All hearings shall be public, except that upon application of a respondent or affected witness the Administrative Law Judge may direct that specific documents or testimony be received and retained nonpublicly in order to prevent unwarranted disclosure of trade secrets or sensitive commercial or financial information or an unwarranted invasion of personal privacy.

17 CFR 10.64. See letter dated December 10, 1986 from Kenneth M. Reiser, General Counsel, Commodity Futures Trading Commission.

³⁸ See, e.g., Michigan's attorney discipline procedures provide that, while the initial investigation is confidential, factfinding hearings are open. Rule 9.111, Mich. Stat. Ann. Rule 2 (Callaghan 1986); West Virginia's disciplinary procedures also provide for public proceedings after a confidential investigation has been completed.

West Virginia State Bar By-Laws, W. Va. Code Ann. Vol. 1A, Art. VI, Section 30 (Michie 1986 Supp.). See also *Daily Gazette Co. v. Committee on Legal Ethics of the West Virginia State Bar*, 328 S.E.2d 705 (W. Va. 1984) (in holding that public has right of access to attorney disciplinary proceedings, the court recognized that attorneys are accountable to the public for their conduct and that closed hearings contradict fundamental concepts of accountability). In addition, according to the ABA survey, there are an additional fifteen states that provide for public access in their attorney disciplinary procedures. See ABA Center for Professional Responsibility, *supra*.

³⁹ See 17 CFR 202.5(a).

⁴⁰ See ABA, Coopers & Lybrand, AICPA and Ernst & Whinney comments.

⁴¹ See ABA and Coopers & Lybrand comments.

⁴² See ABA Center for Professional Responsibility, Survey of Lawyer Discipline and Disability Proceedings in the United States (1984).

response to the Commission's citation to the American Bar Association Standards for Lawyer Discipline and Disability Proceedings ("ABA Standards"), the commentators argue that the ABA Standards do not constitute support for public proceedings by the Commission. They contend that the ABA Standards contemplate a system of procedural and substantive due process that separates the adjudicative and prosecutorial functions, whereas in Rule 2(e) proceedings, the Commission acts as both complainant and ultimate adjudicatory tribunal.⁵² As discussed, the Commission believes that appropriate procedural safeguards exist for agency adjudication and that the procedural distinctions between the proceedings contemplated by the ABA Standards and Rule 2(e) proceedings do not argue for more restrictive public access in Rule 2(e) proceedings.⁵³

While many state board disciplinary proceedings against accountants remain private until there is a determination to impose sanctions, some states have disciplinary procedures that provide for public proceedings.⁵⁴ The Commission recognizes that voluntary private proceedings unless the Commission, at any time during the proceedings, on its own motion or at the request of a party, otherwise directs, would create a burden for the Commission. The commentator argues that the Commission would be routinely faced with requests by respondents that proceedings remain private and this would necessitate difficult determinations regarding, among other things, the merits of the staff's case.⁵⁵ The Commission does not expect to be overly burdened by requests from respondents that the proceedings be private. The Commission has not been burdened by requests from brokers, dealers and investment advisers that proceedings be private.⁵⁶ If such

⁵² See ABA and AICPA comments.

⁵³ See *supra* text accompanying notes 25-26.

⁵⁴ See, e.g., Ohio Rev. Code Ann. Sections 119.01 to 119.13, 4701.16 (Page 1987); Fla. Stat. Ann. Sections 206.011, 485.225(3) and 473.303 (West 1986 Supp.); *Dept. of Professional Responsibility v. Wardlaw*, No. 0046882,0034801 and DOAH No. 84-2830 and *Dept. of Professional Responsibility v. Euse*, No. 0046881 and DOAH No. 84-2833 (Recommended Order issued by Fla. Div. of Administrative Hearings on May 28, 1986; Final Order issued by State of Florida Board of Accountancy on January 15, 1987); Okla. Stat. Ann. tit. 50, Section 15.1 *et seq.* and tit. 25, Section 301 *et seq.* (West 1987) and Rule XV of the Rules of General Application promulgated pursuant to Section 15.5; Okla. Op. Att'y Gen. 83-290 (March 20, 1984); Mo. An. Stat. Sections 326.130, 621.045 and 621.135 (Vernon 1986 Supp.); Missouri State Board of Accountancy News Release (April 11, 1986) announcing the filing of disciplinary complaints with the Administrative Hearing Commission against the firm of Wright, Herford and Sanders and various individuals to determine whether there exists "sufficient grounds to discipline".

While some states have procedures for public proceedings, most of the proceedings are, in fact, settled prior to the stage at which the public has access.

⁵⁵ Furthermore, many states, in their disciplinary proceedings against judges, provide that confidentiality ends at the post-investigative stage.

III. Response to Alternative Proposals

A. Adoption of First Alternative

In its Proposing Release, the Commission sought comment on three alternative approaches to amending Rule 2(e). After consideration of the relevant arguments raised in response to its Proposing Release, the Commission has determined to adopt the first alternative which provides that Rule 2(e) proceedings shall be public unless the Commission otherwise orders. This alternative contains a presumption in favor of public proceedings and, thus, is consistent with the Commission's belief that the benefits of public proceedings outweigh the harms identified by the commentators. This alternative also allows the Commission flexibility to bring nonpublic proceedings when appropriate.

B. Views of the Commentators

1. First Alternative

Several of the commentators address the specific alternative proposals. One commentator argues that the first alternative, which provides for public proceedings unless the Commission, at any time during the proceedings, on its own motion or at the request of a party, otherwise directs, would create a burden for the Commission. The commentator argues that the Commission would be routinely faced with requests by respondents that proceedings remain private and this would necessitate difficult determinations regarding, among other things, the merits of the staff's case.⁵⁶ The Commission does not expect to be overly burdened by requests from respondents that the proceedings be private. The Commission has not been burdened by requests from brokers, dealers and investment advisers that proceedings be private.⁵⁷ If such

which would evidence processes similar to those of the Commission. One study finds that nineteen states provide for public access after a confidential investigation has been completed. Shuman and Begue, *Silence isn't Always Golden: Reassessing Confidentiality in the Judicial Disciplinary Process*, 58 Temp. L. Q. 755, 797-798 (Appendix A) (Winter 1985). The Commission believes that this is not an insignificant number and, thus, the study illustrates that many states recognize the benefits of public disciplinary proceedings.

⁵⁶ See Coopers & Lybrand comment.

⁵⁷ See Securities Exchange Act Sections 22 and 17 CFR 201.11(b). The Commission, in the past, has received and ruled on requests by respondents in administrative proceedings that such proceedings be private. See, e.g., *In the Matter of R.A. Holman & Co.*, 42 S.E.C. 866 (1965); *In the Matter of Axe Securities Corp.*, 42 S.E.C. 381 (1964).

requests are made, the respondents would normally be able to set forth their arguments for a private Rule 2(e) proceeding in submissions to the Commission prior to institution of the proceeding, thus assisting the Commission in determining at that stage whether the proceedings should be private.⁵⁸ Requests for private proceedings should not burden the Commission unduly. Prior to the institution of any Commission proceeding, consideration is afforded to the merits of the staff's proposed allegations. Thus, the Commission's burden as to the evaluation of a case before instituting an action would not change materially if it were considering whether the proceedings should be private.

2. Second Alternative

Several commentators object to the adoption of the second alternative proposal, which provided for public proceedings in four specified classes of proceedings. The commentators argue that the first class, where "[f]acts or allegations related to those supporting the charges are already public or will become public prior to or concurrent with the institution of the hearing," is defined in an overly broad manner and would thus encompass virtually all Rule 2(e) proceedings; the second class, where "[t]he nonpublic nature of the hearing may be a cause of unreasonable delay," it is unnecessary because the Commission has adequate means to avoid delay; the third class, where "[t]he professional's conduct was such that it seems appropriate to inform the public of the immediate risk or harm," is unnecessary since the Commission could seek a temporary restraining order in federal court or expeditious relief from a state licensing board; and the fourth class, where "[t]he Commission, on its own motion or after considering the request of a party, otherwise directs," provided no standards and could prejudice a proposed respondent since any number of possible parties

⁵⁸ Rule 2(e), as adopted, gives the Commission the flexibility to order Rule 2(e) proceedings, or some limited portion of those proceedings, to be closed when the public's substantial interest in open proceedings is outweighed by a demonstrated unfairness to the respondent or to the respondent's client. The public's interest in open proceedings could be found to be outweighed only in instances when such proceedings resulted in some unique or unusual harm to the respondent or the respondent's client. For example, such harm may be found to exist when public proceedings would involve the release of highly sensitive information posing a threat of physical harm, a threat of unique or unusual harm to a client's property, or a threat to national security.

could request a public hearing.⁹⁹ The Commission believes that this alternative could be subject to different interpretations by the Commission and respondents and would be more difficult to administer. Thus, the Commission has determined not to adopt this alternative proposal.

3. Third Alternative

Several commentators also object to the third alternative proposal, which provided for the Commission to decide on a case-by-case basis whether hearings should be public or private. The commentators argue that this alternative creates the greatest uncertainty, the most work for the Commission and the most risk for subjective, inconsistent and discriminatory results.¹⁰⁰ The Commission believes that this alternative, while allowing for maximum flexibility, would not reflect the Commission's belief that public proceedings are appropriate in most cases. Since the Commission believes that the benefits of public proceedings outweigh the burdens created by such proceedings, the Commission has determined not to adopt this alternative.

IV. Conclusion

For the reasons set forth above, the Commission believes that the benefits of public Rule 2(e) proceedings outweigh the potential harms identified by commentators. Therefore, the Commission has determined to adopt the first alternative amendment to Rule 2(e)(7) to provide for public proceedings. This amendment contains a presumption in favor of public proceedings, but allows flexibility to bring non-public proceedings under appropriate circumstances.

The amendment to Rule 2(e) will apply to proceedings that are authorized and instituted by the Commission subsequent to the effective date of the amendment. Thus, Rule 2(e) proceedings authorized prior to the effective date of the amendment but not instituted by that date will not be subject to the amended provision.

V. Competition Findings

Section 23(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") requires the Commission, when adopting rules under the Exchange Act, to consider the impact, if any, of such rules on competition and to balance any competitive impact against the

regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendment in light of the standard in section 23(a)(2) and believes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission believes that, because the amendment affects only matters of Commission practice and procedure, there will not be an unnecessary or inappropriate burden placed on competition. Furthermore, any impact on the Commission's Rules of Practice would have on competition would not be affected by the public or private nature of the proceedings.

VI. Regulatory Flexibility Act Status

Former Chairman John Shad certified in the Proposing Release that the proposed Rule amendment, if adopted, would not have a significant impact on any entity and thus should not have any such impact on a substantial number of small entities.¹⁰¹ None of the comments addressed the certification.

VII. Statutory Basis

The Commission is adopting the amendment to the Rule pursuant to its authority under section 19(a) of the Securities Act of 1933, section 23(a) of the Securities Exchange Act of 1934, section 20(a) of the Public Utility Holding Company Act of 1935, section 319(a) of the Trust Indenture Act of 1939, section 211(a) of the Investment Advisers Act of 1940 and section 38(a) of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

VIII. Text of the Amendment

In accordance with the foregoing—Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 19, 48 Stat. 85, as amended, 15 U.S.C. 77e; Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w; Sec. 20, 49 Stat. 833, 15 U.S.C. 79t; Sec. 319, 53 Stat. 1173, 15 U.S.C. 77ss; Sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b-11; Sec. 38, 54 Stat. 841, 15 U.S.C. 80a-37.

2. By revising paragraph (e)(7) of § 201.2 as follows:

¹⁰¹ Securities Act Release No. 6002 (Sept. 28, 1980).

§ 201.2 Appearance and practice before the Commission.

(e)
(7) All hearings held under this paragraph (e) shall be public unless the Commission, at any time, on its own motion or after considering the request of a party, otherwise directs.

By the Commission,
Jonathan G. Katz,
Secretary.
July 7, 1988.
[FR Doc. 88-15705 Filed 7-12-88; 8:45 am]
BILLING CODE 9010-31-2

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

(Docket No. RM88-23-000; Order No. 498)

Deletion of Sections 2.51, 2.100, 2.101; Natural Gas Exploration, Policy and Interpretations

July 8, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.
ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is deleting §§ 2.51, 2.100 and 2.101 from Part 2 of its regulations that are no longer pertinent. Section 2.51 is deleted because the Commission does not have jurisdiction over the exportation of natural gas. Section 2.100 is deleted because the procedures authorized and described therein have been fully implemented and are no longer required. Section 2.101 is deleted because it has been superseded and rendered moot by subsequent legislation and Commission orders.

EFFECTIVE DATE: This final rule is effective July 8, 1988.

FOR FURTHER INFORMATION CONTACT:

Barry M. Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-5597

Sandra S. Vincent, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the

Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), and electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this final rule is available on CIPS for 10 days the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is deleting §§ 2.51, 2.100 and 2.101 from Part 2 of its regulations. Section 2.51 is deleted because the Commission no longer has jurisdiction over the exportation of natural gas. Section 2.100 is deleted because the procedures authorized and described therein have been fully implemented and are no longer required. Section 2.101 is deleted because it has been superseded and rendered moot by subsequent legislation and Commission orders.

II. Background and Discussion

A. Section 2.51

Section 2.51¹ is a statement of Commission policy with respect to authorization of the export of natural gas pursuant to section 3 of the Natural Gas Act.² It was adopted in 1976 by the Commission's predecessor, the Federal Power Commission (FPC). Subsequently, on October 1, 1977, the Department of Energy Organization Act (DOE Act) became effective. Pursuant to sections 301(b) and 402(a) of the DOE Act, the FPC's functions under section 3 of the Natural Gas Act were transferred to the Secretary of Energy.³ Accordingly, the

¹ 18 CFR 2.51 (1987).

² 15 U.S.C. 727b (1982).

³ While the Secretary of Energy has on occasion delegated and assigned to the Commission certain functions under section 3 of the Natural Gas Act, these delegations and assignments do not include the functions underlying the statement of policy in § 2.51 of the Commission's regulations.

Commission is deleting § 2.51 for lack of jurisdiction.

B. Section 2.100

Section 2.100⁴ of the Commission's regulations was adopted by the FPC in 1976 to implement section 5 of the Alaska Natural Gas Transportation Act of 1976 (ANGTA).⁵ At that time, the FPC had pending before it, in an evidentiary hearing before an administrative law judge, three competing applications for certificate authority to construct and operate pipeline facilities to transport natural gas from the North Slope of Alaska to the lower 48 states. Section 5 of ANGTA mandated that the FPC suspend that proceeding, review the pending applications, and submit a report and recommendation to the President with respect to the selection of an appropriate transportation system. Section 5(b)(2) of ANGTA authorized the FPC, by rule, to establish procedures for this purpose, including designation of a "delegate" to coordinate the process.

Section 2.100⁶ of the Commission's regulations suspended the evidentiary hearings before the administrative law judge; authorized the FPC's Chairman to appoint a "delegate" to coordinate the compilation of data for the preparation of the FPC's report and recommendation to the President; and established procedures for that process.

On May 1, 1977, the FPC issued its *Recommendation to the President, Alaska Natural Gas Transportation System*. Pursuant to section 7 of ANGTA, in September 1977, President Carter submitted his *Decision and Report to Congress on the Alaska Natural Gas Transportation System* (President's *Decision*). By Joint Resolution that became law on November 8, 1977, the Congress approved the President's *Decision*.⁷

The Commission, therefore, is deleting § 2.100 from its regulations because the procedures set forth in § 2.100 of the regulations have been fully implemented and no longer serve a useful purpose.

C. Section 2.101

Section 2.101⁸ of the Commission's regulations is a statement of the Commission's policy with respect to tariffs for the transportation of natural gas through the Alaskan Natural Gas Transportation System (ANGTS). The statement of policy was adopted in

⁴ 18 CFR 2.100 (1987).

⁵ 15 U.S.C. 719c (1982).

⁶ 18 CFR 2.100 (1987).

⁷ H.R.J. Res. 821, Pub. L. 95-158, 91 Stat. 1288 (1977).

⁸ 18 CFR 2.101 (1987).

Order No. 45 on August 24, 1979.⁹ It pertains to costs incurred by transporters or shippers to condition natural gas for transportation through the ANGTS, and the relationship of these costs to the maximum lawful price of that gas. At that time, the ANGTS did not include a gas conditioning plant as part of the approved transportation system.

Order No. 45 also adopted amended regulations denominated as §§ 271.1105(b) and 271.1105(d), with respect to production-related costs for the Alaskan gas to be transported through the ANGTS. The policy statement in § 2.101 was integrally related to those amended regulations. Order No. 45 was stayed pending rehearing; no order on rehearing was ever issued; and the amended regulations never went into effect.¹⁰

In October 1981, pursuant to section 8 of ANGTA, President Reagan submitted to Congress his *Findings and Proposed Waiver of Law* (President's *Waiver*).¹¹ Congress approved the President's *Waiver* by Joint Resolution that became law on December 15, 1981.¹² The President's *Waiver*, among other things, revised the definition of the ANGTS so as to include the proposed gas conditioning plant on the North Slope as part of the approved transportation system.

On January 4, 1982, the Commission issued an order vacating Order No. 45, and closing Docket No. RM79-19, because Order No. 45 had been rendered moot by the President's *Waiver*.¹³ The validity of the President's *Waiver* was confirmed in *Metzenbaum v. FERC*.¹⁴ The court also construed the January 4, 1982, order vacating Order No. 45 (along with two companion orders of that date) as "nondiscretionary acts required by the waiver" such that "Notice and comment was 'unnecessary'"¹⁵

In light of the above, the Commission is deleting the statement of policy in § 2.101.

⁹ 44 FR 51554 (Sept. 4, 1979), FERC Stats. & Regs. [Regulations Preambles 1977-1981] § 30,080 (1979); order staying effective date, 44 FR 61327 (Oct. 25, 1979), FERC Stats. & Regs. [Regulations Preambles 1977-1981] § 30,090 (Oct. 19, 1979).

¹⁰ 44 FR 76482 (Dec. 27, 1979), FERC Stats. & Regs. [Regulations Preambles 1977-1981] § 30,112 (Dec. 20, 1979).

¹¹ Reprinted in H.R. Rep. No. 97-350, 97th Cong., 1st Sess. 25.

¹² S.J. Res. 115, Pub. L. 97-83, 95 Stat. 1204 (1981).

¹³ Order Vacating Prior Order and Closing Docket, 18 FERC ¶ 61,003 (1982).

¹⁴ 675 F.2d 1282 (D.C. Cir. 1982).

¹⁵ 675 F.2d at 1291.

III. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act¹⁶ generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. The Commission certifies that promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

IV. Paperwork Reduction Act

The Paperwork Reduction Act¹⁷ and the Office of Management and Budget's (OMB) regulations¹⁸ require that OMB approve certain information collection requirements imposed by agency rule. This rule does not contain any information collection and recordkeeping requirements requiring OMB's approval. Therefore, this rule will not be submitted to OMB.

V. The National Environmental Policy Act Statement

The Commission concludes that promulgating this rule does not represent a major Federal action having significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.¹⁹ The Commission believes this rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations.²⁰ Consequently, neither an environmental impact statement nor an environmental assessment are required.

VI. Effective Date

This final rule is a matter of general policy and interpretation of the Commission's regulations. Since this rule does not itself alter the substantive rights or interests of any interested persons, prior notice and comment are unnecessary under section 4 of the Administrative Procedure Act (APA).²¹ Since the purpose of this final rule is to delete certain sections from Part 2 of the Commission's regulations that are no longer pertinent, the Commission finds good cause to make this rule effective immediately upon issuance.

¹⁶ 5 U.S.C. 601-612 (1982).

¹⁷ 44 U.S.C. 3501-3520 (1982).

¹⁸ 5 CFR Part 1320 (1987).

¹⁹ 52 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

²⁰ 18 CFR 380.4(a)(2)(ii) (1987).

²¹ 5 U.S.C. 553(b) (1982).

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

Accordingly, the Commission is amending Part 2, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission,
Lois D. Cashell,
Acting Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. No. 12009, 3 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 792-825r (1982) as amended by Electric Consumers Act of 1986, Pub. L. No. 99-495; Natural Gas Act, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); and National Environmental Policy Act, 42 U.S.C. 4321-4361 (1982).

§§ 2.51, 2.100 and 2.101 [Removed]

2. Sections 2.51, 2.100 and 2.101 are removed.

[FR Doc. 88-15700 Filed 7-12-88; 8:45 am]

BILLING CODE 6717-21-M

18 CFR Part 380

[Docket No. RM87-15-000; Order No. 486-B]

Regulations Implementing the National Environmental Policy Act of 1969; Order Making Technical Correction

Issued July 8, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order making technical correction.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is making a technical correction to its rule that adopted and supplemented the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act of 1969 (Order No. 486, 53 FR 47897 (Dec. 17, 1987), Order No. 486-A, 53 FR 6176 (Mar. 14, 1988)).

EFFECTIVE DATE: This order is effective July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street

NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8897. The full text of this document is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Heshe, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabant.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is making a technical correction to its final rule¹ that adopted and supplemented the regulations of the Council on Environmental Quality implementing the National Environmental Policy Act of 1969.²

II. Background and Discussion

On rehearing of the final rule the Commission addressed the type of environmental review necessary for Commission approval of natural gas import or export sites. The order on rehearing, however, contained an incorrect legal citation. The Commission approves natural gas import/export sites pursuant only to DOE Delegation Order No. 0204-112,³ not both DOE Delegation Order Nos. 0204-26⁴ and 0204-112 as stated in the order on rehearing. The Commission, therefore, is amending those regulations promulgated in the rehearing order that relate to

¹ Order No. 486, 52 FR 47897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (1988), Order No. 486-A, 53 FR 6176 (Mar. 14, 1988), III FERC Stats. & Regs. ¶ 30,799 (Mar. 9, 1988).

² 42 U.S.C. 4321-4370a (1982).

³ 49 FR 6894 (Feb. 22, 1984), I FERC Stats. & Regs. ¶ 9913 (1988).

⁴ 43 FR 47789 (Oct. 17, 1978), I FERC Stats. & Regs. ¶ 9906 (1988).

Commission approval of gas import/export sites to delete the references to DOE Delegation Order No. 0204-26.

The Commission is also deleting § 380.4(a)(31) of its regulations as added in the order on rehearing. That paragraph categorizes Commission approval of a natural gas import or export site as a type of action that does not require an environmental impact statement if the site does not involve the construction of facilities. Under DOE Delegation Order Nos. 0204-111 and 0204-112,⁵ however, the Economic Regulatory Administration, not the Commission, approves import/export sites that require no construction.

III. Effective Date

The changes to the Commission's regulations contained in this order are effective immediately.

List of Subjects in 18 CFR Part 380

Environment, National Environmental Policy Act, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 380 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission,
Lois D. Cashell,
Acting Secretary.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

1. The authority citation for Part 380 continues to read as follows:

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370a (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 380.4 [Amended]

2. In § 380.4, paragraph (a)(31) is removed.

3. In § 380.5, paragraph (b)(1) is revised to read as follows:

§ 380.5 Actions that require an environmental assessment.

(b) * * *

(1) Except as identified in §§ 380.4, 380.6 and 2.55 of this chapter, authorization for the site of new gas import/export facilities under DOE Delegation No. 0204-112 and authorization under section 7 of the Natural Gas Act for the construction,

⁵ DOE Delegation Order No. 0204-26 was superseded by DOE Delegation Order No. 0204-55, which in turn was superseded by DOE Delegation Order NO. 0204-112.

replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

4. In § 380.6, paragraph (a)(1) is revised to read as follows:

§ 380.6 Actions that require an environmental impact statement.

(a) * * *

(1) Authorization under sections 3 or 7 of the Natural Gas Act and DOE Delegation Order No. 0204-112 for the siting, construction, and operation of jurisdictional liquefied natural gas import/export facilities used wholly or in part to liquefy, store, or regasify liquefied natural gas transported by water;

[FR Doc. 88-15699 Filed 7-12-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-011F]

Occupational Noise Exposure Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Notice.

SUMMARY: Notice is hereby given that OSHA has reviewed the comments received in response to the Federal Register request for information on the paperwork burden associated with the occupational noise exposure standard. On the basis of the comments received, OSHA intends to maintain the present requirements of the standard. OMB has renewed the information collection clearance for the standard for three years.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: Background

The Office of Management and Budget (OMB) reviewed and approved the information collection requirements of the occupational noise exposure

standard (29 CFR 1910.95) when the hearing conservation amendment was issued in March 1983 (OMB Control No. 1218-0048). When OSHA sought renewal of its clearance for this standard in July 1986, however, OMB suggested that the Agency "reexamine, in conjunction with OMB, potential alternatives for reducing the [standard's] information collection burden." As a result of OMB's suggestion, OSHA agreed to seek public comment on the possibility of reducing the information collection burdens resulting from the noise standard.

On November 4, 1987, OSHA published a notice in the Federal Register (52 FR 42321) requesting comments concerning the current information collection burden of the OSHA noise standard. Comments were sought on whether and to what extent information collection requirements could be reduced without reducing the effectiveness of the standard in preventing employee hearing loss. Specifically, OSHA requested information on the practical utility of the information required to be collected by the existing regulation; on the appropriate frequency for collecting the information; and on possible alternatives for reducing the information collection burden.

In response to the Federal Register notice, 31 comments representing 29 organizations were received. With the exception of NIOSH, the respondents fell into two fairly well-defined categories:

1. Professional noise and audiologic consultants and related professional associations (21 comments).
2. Representatives of industrial and public utility organizations (9 comments).

Summary of Submitted Comments

1. Professional Noise and Audiologic Consultants and Related Professional Associations

Of the 21 comments received, 20 stated emphatically that no changes should be made in the present requirements of the standard. In 11 of these comments, it was pointed out that most consultants (who service smaller employers) and most large companies who perform their own audiometric testing make extensive use of computerized systems which keeps paperwork burden to a minimum. Sixteen of the 21 commenters in this group maintained that any changes, particularly in the frequency of audiometric testing, would diminish the effectiveness of the standard. Eight pointed out explicitly that they had

received no complaints from any of their clients on any recordkeeping requirements of the standard and no commenter in this group suggested that any client had raised any complaints about any provisions of the standard.

With regard to the frequency of audiometric testing, one commenter (Ex. 513-12) pointed out that, in one case, when audiometric testing was postponed for one year, upon resumption of testing, an STS was found in 24% of the 204 employees involved. The rate of STS fell to 3% when testing was resumed on an annual basis. Another commenter (Ex. 513-27) cited an Air Force study indicating that if audiometric tests were not performed annually, hearing loss due to noise exposure would not be discovered in time to avoid hearing impairment. The same commenter also cited an International Standards Organization standard (ISO-1999.2) which predicted that changes in hearing basis necessitates annual audiograms.

One commenter (Ex. 513-21) suggested that, under certain conditions and after 6 to 8 audiograms have been done annually, it might be possible to allow audiometric testing to be performed at two year intervals. However, all others opposed such a practice.

The subject of monitoring frequency was raised in one comment (Ex. 513-2) in which the commenter stated that noise monitoring need not be repeated annually. However, OSHA does not require annual monitoring and does, in fact, require exactly the provisions which the commenter recommends.

Overall, the comments from this group denied that there was any undue paperwork burden in the noise standard, maintained that none of their clients had any difficulties in complying with the standard, and stated that any changes in the provisions would weaken the standard's ability to provide adequate protection to employees.

2. Representatives of Industrial and Public Utility Organizations

Of the 9 comments in this group, two perceived problems with the present standard. Another (Ex. 513-24) submitted a detailed comment requiring the OSHA Form 200 issue of recordable hearing loss. However, the recordability of hearing loss on OSHA Form 200 is not a requirement of the noise standard. (It is required under 29 CFR Part 1904). Thus the comment is irrelevant to the issues addressed here. The remaining six comments expressed no knowledge of any reason why the paperwork requirements of the standard are too

burdensome and urged that they not be changed.

The first of the two commenters who perceived problems with the standard (Ex. 513-14) raised only one point. He felt the provision requiring the posting of the standard in an accessible location to be unnecessary. Since OSHA does not regard this requirement to be "paperwork" or "information collection", it is not considered relevant to the issue.

The second commenter (Ex. 513-15) who expressed problems with the requirements of the standard did not provide any explicit information. He felt that the scope of information collection was too broad. However, the only specifics mentioned related to schedules, bulletins, telephonic or telegraphic requests, etc. None of these are required by the noise standard. It seems apparent from the wording of the comment that the commenter was looking at the OMB definition of "Information Collection" which was included in the Federal Register notice, and assumed that these elements were part of the noise standard.

The other six commenters in this category opposed making any changes. Most of them explicitly stated that there was nothing excessively burdensome in the present requirements.

On the basis of the 9 comments in this category, no information has been presented which justifies making any change in the present noise standard.

3. NIOSH

NIOSH was the only government agency to submit a comment. They stated that present requirements are necessary to ensure the effectiveness of the standard and that any reduction in the present information collection requirements may result in a significant increase in the risk of hearing impairment among exposed workers.

Action To Be Taken

In the Federal Register notice of November 4, 1987, OSHA requested information "on the practical utility of the information required to be collected by the existing regulation, on the appropriate frequency for collecting the information and on possible alternatives for reducing the burden without reducing the effectiveness of the standard in protecting employee hearing." OSHA believes that, based on the comments received, no case has been made that would support any action to change any provision of the existing noise standard. OSHA therefore has prepared this Federal Register notice to announce that, as a result, no further action will be taken.

OMB has cleared the information collection requirements of the Occupational Noise Exposure Standard for three years until June 30, 1991, the maximum period allowed under the Paperwork Reduction Act.

List of Subjects in 29 CFR Part 1910

Occupational health standards, Noise.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) and 6(d) of the Occupational Safety and Health Act (29 U.S.C. 655, 659).

Signed at Washington, DC, this 8th day of July, 1988.

John A. Pendergrass,
Assistant Secretary of Labor.
[FR Doc. 88-15713 Filed 7-12-88; 8:45 am]
BILLING CODE 4510-35-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300188A; FRL 3412-8]

Definitions and Interpretations; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adds a commodity definition for marjoram that defines marjoram for tolerance purposes and clarifies and updates the relationship between the general commodity term "marjoram" and the specific raw agricultural commodities classified as "*Origanum* spp." This regulation was requested by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: July 13, 1988.

ADDRESS: Written objections, identified by the document control number, [OPP-300188A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:
Hoyt Jamerson, Emergency Response and Minor Use Section (TS-787C), Registration Division (TS-787C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis

Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of May 4, 1988 (53 FR 15854), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a request on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, Technical Committee.

IR-4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by adding "marjoram" to the general category of commodities listed in column A and defining the general commodity term for tolerance purposes by inserting the corresponding raw agricultural commodities "*Origanum* spp. (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram)" in the specific commodities listing in column B. Additionally, it was proposed that 40 CFR 180.34(f)(9)(xix) (A) and (B), a listing of the herbs and spices crop group and its representative commodities, be revised to make it consistent with the general commodity definition for marjoram.

The IR-4 requested these amendments in order to clarify and update the relationship between the general commodity term "marjoram" and the specific raw agricultural commodities classified as "*Origanum* spp."

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the rule will protect the public health. Therefore, the rule is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 1988.

Douglas D. Camp,
Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1(h) is amended by adding a definition for marjoram, to read as follows:

§ 180.1 Definitions and Interpretations.

(h) . . .

A	B
Marjoram	<i>Origanum</i> spp. (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram).

3. Section 180.34 is amended by revising paragraph (f)(9)(xix), to read as follows:

§ 180.34 Tests on the amount of residue remaining.

(f) . . .
(9) . . .

(xix) *Herbs and spices group*—(A) *Commodities.* Anise (aniseed) (*Pimpinella asisum*); balm (*Melissa officinalis*); basil (*Ocimum basilicum*); borage (*Borago officinalis*); burnet (*Sanguisorba minor*); camomile (*Anthemis nobilis*); caraway (*Carum carvi*); catnip (*Nepeta cataria*); chives (*Allium schoenoprasum*); clary (*Salvia sclarea*); coriander (*Coriandrum sativum*); costmary (*Chrysanthemum*

balsamita); cumin (*Cuminum cyminum*); curry leaf (*Murraya koenigii*); dill (*Anethum graveolens*); fennel (Italian and sweet); (*Foeniculum vulgare*); fenugreek (*Trigonella foenumgraecum*); horehound (*Marrubium vulgare*); hyssop (*Hyssopus officinalis*); marigold (*Calendula officinalis*); marjoram (*Origanum* spp.) (including sweet or annual marjoram, wild marjoram or oregano, and pot marjoram); nasturtium (*Tropaeolum majus*); pennyroyal (*Mentha pulegium*); rosemary (*Rosmarinus officinalis*); rue (*Ruta graeolens*); sage (*Salvia officinalis*); savory, summer and winter (*Satureja* spp.); sweet bay (bay leaf) (*Laurus nobilis*); tansy (*Tanacetum vulgare*); tarragon (*Artemisia dracuncululus*); thyme (*Thymus* spp.); wintergreen (*Gaultheria procumbens*); woodruff (*Galium odorata*); wormwood (*Artemisia absinthium*).

(B) *Representative commodities.* Basil, chives, dill, marjoram or other *Origanum* spp., and sage.

[FR Doc. 88-15484 Filed 7-12-88; 8:45 am]
BILLING CODE 4510-35-M

40 CFR Part 180

[OPP-00265; FRL-3411-4]

Pesticide Tolerance for Metolachlor; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in the tolerance designation in 40 CFR 180.368(a) for residues of the herbicide metolachlor in or on safflower seed.

DATE: Effective on July 13, 1988.

FOR FURTHER INFORMATION CONTACT:

Richard Mountfort, Product Manager (PM) 23, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 11, 1982 (47 FR 10537), EPA established a tolerance of 0.1 part per million (ppm) for residues of the herbicide metolachlor in or on safflower seed. In the Federal Register of July 16, 1986 (51 FR 25697), EPA reissued the table in § 180.368(a) and through a typographical error the tolerance entry for safflower seed was inadvertently listed as 0.01 ppm. This

document corrects that typographical error by changing the entry to read "0.1."

List of Subjects in 40 CFR Part 180

Pesticides, Pests.

Accordingly, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.368 [Amended]

2. In § 180.368(a), the tolerance entry for safflower seed is revised to read "0.1".

Dated: June 28, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-15339 Filed 7-12-88; 8:45 am]

BILLING CODE 5540-50-M

40 CFR Part 180

[PP OF2389/R973; FRL-3411-3]

Pesticide Tolerances for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide permethrin and its metabolites in or on the raw agricultural commodities alfalfa (fresh) and alfalfa hay; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; milk; poultry; and eggs. This rule to establish maximum permissible levels for the combined residues of permethrin was requested pursuant to petitions by the FMC Corp.

EFFECTIVE DATE: July 13, 1988.

ADDRESS: Written objections, identified by the document control number [PP OF2389/R973], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460
Office location and telephone number: Rm. 718, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-3210.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of June 7, 1988 (53 FR

20872), in which it was announced that the FMC Corp. Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, had submitted pesticide petition OF2389 to the Agency proposing to establish new tolerances and amend existing tolerances for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites *cis* and *trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, 3-phenoxybenzyl alcohol and 3-phenoxybenzoic acid in or on the following raw agricultural commodities: Alfalfa, fresh at 25.0 parts per million; alfalfa, hay at 55 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.25 ppm; meat byproducts of cattle, goats, hogs, horses, and sheep at 2.0 ppm; fat of cattle, hogs, and horses at 2.5 ppm; fat of goats and sheep at 3.0 ppm; fat of poultry at 1.0 ppm; eggs at 1.0 ppm; and milk fat (reflecting 0.25 ppm in whole milk) at 6.25 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1104, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:
Authority: 21 U.S.C. 346a.

2. Section 180.378 is amended in paragraph (b) by adding and alphabetically inserting the commodities alfalfa, fresh and alfalfa, hay and in paragraph (c) by revising the entries for eggs; fat, meat, and meat byproducts (mbyp) of cattle, goats, hogs, horses, poultry and sheep; and milk, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(b) * * *

Commodity	Parts per million
Alfalfa, fresh	25.0
Alfalfa, hay	55.0

(c) * * *

Commodities	Parts per million
Cattle, fat	3.0
Cattle, meat	0.25
Cattle, mbyp	2.0
Eggs	1.0
Goats, fat	3.0
Goats, meat	0.25
Goats, mbyp	2.0
Hogs, fat	3.0
Hogs, meat	0.25
Hogs, mbyp	3.0
Horses, fat	3.0
Horses, meat	0.25
Horses, mbyp	2.0
Milk fat (reflecting 0.25 ppm in whole milk)	6.25
Poultry, fat	0.15
Poultry, meat	0.05
Poultry, mbyp	0.25
Sheep, fat	3.0
Sheep, meat	0.25
Sheep, mbyp	2.0

[FR Doc. 88-15340 Filed 7-12-88; 8:45 am]

BILLING CODE 5540-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 71146-8001]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) for the "other rockfish" category in the Central Regulatory Area of the Gulf of Alaska will be taken by July 9, 1988. Fishing for and retention of "other rockfish" is therefore prohibited in the Central Regulatory Area from July 9, 1988, through December 31, 1988. This action is necessary to limit the harvest of "other rockfish" to the amount permissible under Federal regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective at noon, July 9, 1988, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time (AST), December 31, 1988. Comments on this notice may be submitted to the Regional Director until July 25, 1988.

ADDRESS: Address comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett (Resource Management Specialist, NMFS) 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone (EEZ) in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.2 of the regulations defines the Western, Central, and Eastern Regulatory Areas in the Gulf of Alaska. Under the procedures set forth at § 672.20(a), 1988 TACs were established for each groundfish target species or species group and apportioned among the regulatory areas or districts (53 FR 890, January 14, 1988).

One of the groups of groundfish species for which TAC was established is the "other rockfish" category, which in the Central Regulatory Area consists of members of the genus *Sebastes*, as described in Table 1, § 672.20. The 1988 TAC for "other rockfish" in the Central Regulatory Area is 7,100 mt and is

apportioned entirely to domestic annual processing (DAP).

The estimated catch through June 23, 1988, in the Central Regulatory Area is 5,100 mt. At current harvest rates, the TAC will be reached on July 9, 1988. Under § 672.20(c)(2)(i), if the Regional Director determines that the TAC for any target species or the "other species" category in any regulatory area or district has been or will be reached, directed fishing for that species will be prohibited and that species will be declared a prohibited species. Therefore, beginning at 12:00 noon on July 9, 1988, fishing for, and retention of, "other rockfish" in the Central Regulatory Area is prohibited. Fishing for other groundfish species for which a quota is available in the Central Regulatory Area is permitted, but any catches of "other rockfish" must be treated as a prohibited species and discarded at sea in accordance with § 672.20(e).

In making this decision, the Regional Director concluded that: (1) There will be no threat of overfishing "other rockfish" stocks because bycatches of "other rockfish" in other groundfish fisheries are expected to be negligible, (2) the long-term economic interests of authorized users of the "other rockfish" fishery are protected because the stocks are protected from additional decline, and (3) a continued closure will have no significant impact on the socioeconomic well-being of other domestic fisheries, since other species of fish and shellfish will not be significantly affected.

Classification

At current harvest rates, the "other rockfish" TAC will be fully harvested by July 9, 1988. Therefore, the health of stocks of "other rockfish" could be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed. This action is taken under § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 8, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15679 Filed 7-8-88; 2:27 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 71146-8001]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska will be reached by July 8, 1988. Fishermen are prohibited from retaining sablefish during directed hook-and-line fishing for sablefish and while fishing for other groundfish species with hook-and-line gear in this area after 12:00 noon, Alaska Daylight Time (ADT), on July 8, 1988. This closure is necessary to limit the share of sablefish assigned to hook-and-line gear to that amount specified in the regulations. It is intended as a management measure that complies with objectives of the FMP.

DATES: This notice is effective from 12:00 noon on July 8, 1988, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time, December 31, 1988.

ADDRESS: Comments should be addressed to James W. Brooks, Acting Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT:

Ronald J. Berg, Fishery Management

Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. TACs for each target groundfish species and species group are specified annually. For 1988, TACs were established for each of the target groundfish species and species groups and apportioned among the regulatory areas and districts.

Section 672.2 of the regulations defines the Western Regulatory Area in the Gulf of Alaska. The TAC for sablefish is 4,060 mt in this area. Under § 672.24(b)(2) of current regulations,

persons fishing with hook-and-line gear may take up to 55 percent of the TAC in this area, or 2,230 mt.

NMFS estimated as many as 72 hook-and-line vessels registered to fish in the Western Regulatory Area. Landings through July 4, 1988 total about 2,193 mt of sablefish caught by hook-and-line gear. At present catch rates, the Regional Director has determined that the remainder of the amount of sablefish assigned to hook-and-line gear (37 mt) in the Western Regulatory Area will be taken by July 8, 1988.

Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district will be reached, further catches of sablefish must be treated as prohibited species for the remainder of the year by persons using that type of gear. Since the share of the TAC assigned to hook-and-line gear will be reached, further sablefish

catches must be treated as prohibited species after 12:00 noon, ADT, on July 8, 1988.

The specified allocation of the sablefish resource between hook-and-line, trawl, and pot gear in the Western Regulatory Area will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until July 25, 1988. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon

as practicable after that reconsideration, will either publish in the Federal Register a notice of continued effectiveness of the adjustment, responding to comments received, or modify or rescind the adjustment.

Classification

This action is taken under § 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 8, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15729 Filed 7-8-88; 5:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 134

Wednesday, July 13, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 13

Setoffs and Withholdings Against Debt.

AGENCY: Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule amends 7 CFR Part 13, the provisions stating the conditions under which amounts approved by Agricultural Stabilization and Conservation county committees for disbursement to persons under programs administered by the Department of Agriculture, or any agency thereof, will be withheld or set off against debts of such persons owing to any department or agency of the United States. The intent of this proposed rule is to extend the regulatory period of time allowed for setoff and withholding to ten years. This regulation would then allow a period of time similar to that allowed by the regulations issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716). This proposed rule also permits all agencies of the United States to submit administrative offset requests directly to the appropriate Agricultural Stabilization and Conservation Service state office.

DATE: Comments must be received by August 12, 1988.

ADDRESSES: Comments concerning this proposed regulation should be addressed to: Director, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All comments submitted in response to this proposed rule will be available for public inspection, in Room 6094, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC, between 8:30 am and 4:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Specialist, (202) 382-0185.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs and prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512-1. No sunset review date has been set for this regulation because review is ongoing.

Richard Lyng, Secretary of Agriculture, certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and others. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

The titles and numbers of the Federal Domestic Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases, 10.051; Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Storage Facilities and Equipment loans, 10.056; Wheat Production Stabilization, 10.058; Rice Production Stabilization, 10.065; Grain Reserve Program, 10.067; as listed in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

This action is not expected to have any significant impact on the quality of the human environment, health and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This proposed rule makes two changes in existing regulations:

First, it amends 7 CFR Part 13 to extend the period of time in which the Government may exercise its right to administrative offset against amounts approved by Agricultural Stabilization and Conservation county committees for disbursement to persons under programs administered by the Department of Agriculture, or any agency thereof.

Currently, regulations provide that setoff under 7 CFR Part 13 against a debt owed the Government is barred when no suit has been filed and the applicable statute of limitation for enforcing payment of such a debt expires prior to the date the amount becomes payable to the debtor. Although the period may vary, the statutory period for bringing a civil action on a claim is usually six years. The Debt Collection Act of 1982 amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3716) to allow a ten-year period during which a federal agency may collect a claim by administrative offset under setoff regulations. This ten-year period begins to run from the date a claim becomes due and payable and is not paid. This proposed action allows a similar period for withholding and setoff under these regulations.

This regulation is necessary to protect the financial integrity of many federal farm programs by ensuring the government will be able to collect debts incurred by program participants, including many on which a civil action to enforce would be ineffectual, not sufficiently cost effective for the Government to pursue, or legally barred.

Secondly, it amends 7 CFR Part 13 to permit all agencies of the United States to submit to the appropriate ASCS State office all requests for administrative offset against amounts approved by Agricultural Stabilization and Conservation county committees for disbursement to persons under programs administered by the Department of Agriculture, or any agency thereof.

Currently most federal agencies are required to submit requests for offset directly to the Administrator of the Agricultural Stabilization and Conservation Service (ASCS). The proposed regulation permits such requests to be made directly to the appropriate ASCS state office. This proposed change will streamline the

offset process and promote better cooperation between federal agencies.

List of Subjects in 7 CFR Part 13

Setoffs and Withholdings.

Accordingly, it is proposed that the regulations at 7 CFR Part 13 be amended to read as follows:

PART 13—[AMENDED]

1. The authority citation for Part 13 is revised to read as follows:

Authority: Sec. 5(a)-(d), Pub. L. 99-500, 80 Stat. 308, as amended by sec. 10(2), Pub. L. 97-305, 96 Stat. 1754, and Sec. 1(16)(a), Pub. L. 97-452, 96 Stat. 2471 (31 U.S.C. 3716).

2. 7 CFR 13.5 is amended by revising paragraph (b) to read as follows:

§ 13.5 Conditions under which setoff or withholding shall not be made.

Setoff or withholding shall not be made:

(b) If the claim has been outstanding for more than ten years, or legal action to enforce the debt is barred by an applicable statutory period of limitation, whichever is later. For purposes of this section, a claim is not outstanding until the debt underlying the claim became due and payable and was not paid.

3. 7 CFR 13.6 is amended by revising paragraph (c), removing paragraph (d), redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively and adding a new paragraph (e)(5) to read as follows:

§ 13.6 Requests for setoff.

(c) All requests for setoff and Notices of Levy from agencies, of the United States other than those set out in paragraph (a) of this section shall be mailed or delivered to the appropriate ASCS State office.

(e) * * *

(5) Each request shall include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with.

Signed at Washington, DC, on July 6, 1988.
Richard E. Lyng,
Secretary.

[FR Doc. 88-15602 Filed 7-12-88; 8:45 am]

BILLING CODE 3410-25-4

Agricultural Marketing Service

7 CFR Part 920

[AMS-FV-88-064PR]

Kiwifruit Grown in California; Proposed Amendment No. 3 to the Continuing Handling Regulation and Revision of Administrative Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a subsection to the handling regulation for kiwifruit grown in California specifying the types of uses which would exempt such handling from the requirements of that regulation. The proposal would also revise the regulation which exempts kiwifruit handlers from certain regulations based on the sale of a small quantity of fruit sold for home use. These actions are needed to clarify provisions relative to the quantity and types of shipments that are not subject to the quality, maturity, size, pack, and inspection requirements imposed under the marketing order.

DATE: Comments must be received by August 12, 1988.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Todd A. Delella, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 3525-S, Washington, DC 20090-6456, telephone (202) 475-5610.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 920 (7 CFR Part 920), as amended, regulating the handling of kiwifruit grown in the State of California. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 1,225 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

The 1987 California kiwifruit harvest totaled 7.8 million trays and tray equivalents, 21 percent larger than the 1986 harvest. For the past ten years, kiwifruit production has increased in California and is expected to increase again in 1988 to a total of 8.7 million trays. Most of the crop is shipped to fresh markets, with only a small volume of fruit utilized by processors. Exports increased 31 percent over last year and are expected to account for 55 percent of the 1987 production. Domestic shipments also grew by about 20 percent. It has been estimated that 20 to 25 percent of domestic shipments is utilized in foodservice markets (e.g., restaurants).

The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 (52 FR 37130, October 5, 1987). The section requires that at least 85% of the kiwifruit in each shipment handled under the marketing order must be U.S. No. 2 grade as defined in the United States Standard for Grades of Kiwifruit, with not more than 8 percent allowed for defects other than shape causing damage, not more than 4 percent allowed for defects other than shape causing serious damage, and not more than 1 percent allowed for fruit affected by internal breakdown or decay. Kiwifruit also must meet a minimum size of 49 and contain a minimum of 6.5 percent soluble solids at the time of inspection. Pack and

container requirements are also specified.

This proposed rule would add a new paragraph (c) to the handling regulation (§ 920.302) listing the types of shipments that are exempt from its requirements and revise the administrative rule pertaining to the minimum quantity exemption. These changes were recommended by the Kiwifruit Administrative Committee on April 6.

The marketing order specifies in paragraph (a) of § 920.54 that kiwifruit handled for certain uses are exempt from the handling regulations imposed under the order as well as inspection and assessment requirements. Such uses are consumption by charitable institutions, distribution by relief agencies, and commercial processing into products. There currently exists some misunderstanding among kiwifruit handlers as to what activities "commercial processing into products" includes. This proposed rule would list those exemptions in the handling regulation and define the meaning of "commercial processing into products" consistent with the intent of this order provision.

As previously indicated, the foodservice industry is an important market for California kiwifruit in terms of the volume of fruit utilized in such outlets. Additionally, consumers are often introduced to this fruit while dining outside the home. The committee therefore believes it is necessary that a quality product reach these markets.

Fresh kiwifruit used by foodservice operators is generally peeled and sliced before serving. Some shippers have mistakenly interpreted this to mean the fruit is being processed and therefore such shipments fall within the exemption provision.

The record evidence supporting this exemption provision in the order, however, indicates that "commercial processing into products" is intended to cover such uses as production into wine, jams and jellies because kiwifruit so utilized does not affect the marketing of kiwifruit in commercial fresh fruit market channels, and therefore no use would be served by requiring such kiwifruit to meet quality standards imposed under the order.

While the acts of peeling and slicing prior to serving do not qualify as "commercial processing into products" under paragraph (a) of § 920.54, the committee considered recommending that shipments to foodservice outlets be exempt from handling regulations under paragraph (b) of that section. The majority of the committee members believed, however, that such shipments

should continue to meet the established grade, size and maturity standards because they account for a significant share of total fresh shipments. Allowing such a large volume of potentially substandard fruit to be shipped would depress the market for all kiwifruit. In addition, it would be difficult to monitor the movement of fruit shipped to foodservice outlets to ascertain whether the fruit was, in fact, utilized for exempt purposes.

It is therefore proposed that the term "commercial processing into products" be clearly defined to mean that kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating. This proposed clarification would ensure that fresh kiwifruit served in foodservice outlets meet the minimum quality standards imposed under the order.

The marketing order also provides another exemption from the handling regulation for kiwifruit directly marketed by growers under certain conditions. Such kiwifruit must be sold for home use, and not for resale. The maximum quantity that can be sold to any one person on any one day is currently limited to 200 pounds. Using this current poundage limit, a handler can sell three separate family members in one vehicle up to 600 pounds of kiwifruit free from all regulations. The committee believes that this amount is excessive in view of the basic intent of this exemption provision, i.e. that the fruit is for home use, not resale. The committee recommended that the 200 pound limit be applied to all persons collectively in any one vehicle and believes that this change would further the fulfillment of this provision's objective. With current annual per capita consumption of kiwifruit in the United States being approximately 0.2 pounds, a 200 pound-per-vehicle exemption amount should be adequate to meet the needs for home use. Therefore, paragraph (b)(2) of § 920.110 is proposed to be revised accordingly.

Finally, the Department is proposing a change in paragraph (a) of the handling regulation (§ 920.302) to remove obsolete language.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received will

be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1-10, 40 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 920.110 is amended by revising paragraph (b)(2) to read as follows:

§ 920.110 Exemptions.

(b) * * *

(2) The total weight of such kiwifruit sold to all persons collectively in any one vehicle during any one day does not exceed 200 pounds.

3. Section 920.302 is amended by revising paragraph (a) introductory text and adding a new paragraph (c) to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) No handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

(c) Exemptions. Any person may handle kiwifruit without regard to the provisions of this section provided that such kiwifruit is handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; or (3) commercial processing into products. For the purposes of this section, "commercial processing into products" means that the kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating of the product. The act of slicing, dicing, or peeling shall not be considered commercial processing into products.

Dated: July 8, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-15710 Filed 7-12-88; 6:45 am]

BILLING CODE 3410-22-4

7 CFR Part 1079

[Docket No. AO-295-A38; DA-88-111]

Milk in the Iowa Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider a proposal to expand the marketing area to include unregulated territory in Illinois, Iowa and Missouri, and two counties in Wisconsin that currently are in the marketing area of the Chicago Regional marketing order. Other proposals would provide a two-month lock-in for plants pooled under the Iowa order, and would amend the location adjustment provisions to recognize an expanded marketing area.

Swiss Valley Farms, Co., a dairy farmer cooperative that operates milk plants, requested an emergency hearing to consider expanding the marketing area to recognize current distribution patterns of fluid milk by handlers regulated under the Iowa order.

DATE: The hearing will convene at 9:00 a.m., local time, on July 26, 1988.

ADDRESS: The hearing will be held at Jumers Castle Lodge, I-74 at Sprucehill Drive, Bettendorf, Iowa 52722 (319) 359-7141.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at Jumers Castle Lodge, I-74 at Sprucehill Drive, Bettendorf, Iowa 52722, 319/359-7141, beginning at 9:00 a.m., local time, on July 26, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Iowa marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to proposal No. 2.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Proposal No. 1, which would redefine the marketing area, raises the issue of whether the provisions of the present order would tend to effectuate the declared policy of the Act, if they are applied to the marketing area as proposed to be redefined and, if not, what modifications of the provisions of the order would be appropriate.

Proposal No. 1 would add to the Iowa order marketing area the following territory: The Iowa counties of Des Moines, Henry, Lee and Van Buren; the Illinois counties of Hancock, Henderson, and the townships named in Whiteside County; and the counties in Missouri and Wisconsin indicated in the proposed amendment. Crawford and Grant Counties in Wisconsin, are now part of the marketing area defined by the Chicago Regional Federal milk marketing order. Therefore, evidence may be received relative to whether these two counties in Wisconsin should be terminated from the Chicago Regional order.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

PART 1079—[AMENDED]

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Swiss Valley Farms, Co.**Proposal No. 1****§ 1079.2 [Amended]**

Amend § 1079.2 by revising paragraphs (a) and (b), and adding paragraphs (c) and (d) to read as follows:

(a) The Iowa counties of:

Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Calhoun, Carroll, Cedar, Cerro Gordo, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Henry, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Muscatine, Pocahontas, Polk, Poweshiek, Ringgold, Scott, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Wright.

and the city of Osage in Mitchell County.

(b) The Illinois counties of:

Hancock, Henderson, Henry, Mercer, Rock Island.

and the city of East Dubuque in Jo Daviess County, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland and Erie in Whiteside County.

(c) The Missouri counties of: Clark, Harrison, Lewis, Mercer, Putnam, Schuyler and Scotland.

(d) The Wisconsin counties of: Crawford and Grant.

Proposal No. 2**§ 1079.7 [Amended]**

In § 1079.7, revise paragraph (d) to read as follows:

(d) The term "pool plant" shall not apply to the following plants:

- (1) A producer-handler plant;
- (2) A governmental agency plant;
- (3) A plant qualified as a pool plant pursuant to this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition, in such other marketing area and to pool

plants qualified on the basis of route disposition in such other marketing area than was so disposed of from such plant in the Iowa marketing area as route disposition, or to pool plants qualified on the basis of route disposition, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid milk products disposition, except filled milk, is made in the above described manner in such other marketing area;

(4) A plant qualified as a pool plant pursuant to this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area, and to pool plants qualified on the basis of route disposition in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

Proposal No. 3**§ 1079.52 [Amended]**

In § 1079.52, revise paragraph (a)(2)(ii) to read as follows:

(ii) The Illinois counties of Henry, Mercer, Rock Island, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland and Erie in Whiteside County.

Proposed by the Dairy Division, Agricultural Marketing Service:**Proposal No. 4**

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, James H. Williamson, P.O. Box 4806, Overland Park, Kansas 66204, 913/648-1050 or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Iowa Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on July 11, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88-15687 Filed 7-12-88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION**10 CFR Part 50****Leak-Before-Break Technology; Public Comment Period Extended**

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Nuclear Regulatory Commission is proposing to investigate the safety benefits associated with using leak-before-break technology to modify functional and performance requirements for emergency core cooling systems and environmental qualifications of safety related electrical and mechanical equipment.

DATE: On April 6, 1988, the Nuclear Regulatory Commission published a notice soliciting public comments on additional applications of leak-before-break technology (53 FR 11311). The original closing date for public comment of July 5, 1988, is now extended to August 5, 1988.

ADDRESSES: Send written comments to the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of

comments received by the Commission may be examined at the NRC Public Docket Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John A. O'Brien, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3928.

Dated at Rockville, Maryland, this 6th day of July 1988.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88-15689 Filed 7-12-88; 8:45 am]

BILLING CODE 7590-01-M

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 1****Exchange Recordkeeping Regarding Clearing Organizations' Trade Registers**

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 8, 1988 the Commodity Futures Trading Commission ("Commission") published in the Federal Register a notice of proposed rulemaking concerning its proposal to expand the required reporting of customer-type indicators to include two specified categories of trades in stock index futures and options on such futures contracts, specifically index-arbitrage and substitution transactions. The proposed rulemaking provided a thirty-day period for public comment which ends on July 8, 1988.

The Commission has been requested by the Chicago Mercantile Exchange, and others, to extend the comment period on the Commission's proposed rulemaking for an additional thirty days. Such additional time has been requested in order to permit commenter organizations to consult their memberships, where necessary. The Commission agrees that a thirty-day extension of the public comment period is appropriate to enhance the opportunity for interested parties to comment on the issues raised in the proposed rulemaking.

DATE: All comments on the Commission's proposed rules concerning exchange recordkeeping regarding clearing organizations' trade registers

(53 FR 21490 (June 8, 1988)) must be received by August 12, 1988.
ADDRESS: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should make reference to "Customer-Type Indicator".

FOR FURTHER INFORMATION CONTACT: John Mielke, Associate Director or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254-3310 or 254-6890, respectively.

Issued in Washington, DC, this 7th day of July, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88-15650 Filed 7-12-88; 8:45 am]

BILLING CODE 8351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-184-86]

Income Taxes; Continued Accruals Beyond Normal Retirement Age; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to requirements for continued accruals beyond normal retirement age under employee pension benefits plans. Changes to the applicable tax law were made by the Omnibus Budget Reconciliation Act of 1986.

DATES: The public hearing will be held on Monday, August 22, 1988, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, August 8, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-184-86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Legislation and Regulations Division, Office of Chief

Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 410 and 411 of the Internal Revenue Code of 1986. The proposed regulations appeared in the Federal Register for Monday, April 11, 1988 (51 FR 11876).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than August 8, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88-15681 Filed 7-12-88; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 12

[Notice No. 662, Ref. Notice No. 657]

Nongeneric Designations of Grape Wine Having Geographic Significance; Extension of Comment Period

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 657, an advance notice of proposed rulemaking regarding nongeneric designations of grape wine having geographic significance, published in the Federal Register on April 12, 1988 (53 FR 12024). ATF has received requests from the National Association of Beverage Importers, the Embassies of Portugal and Germany, and Coudert Brothers of Washington, DC, for an extension of the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the advanced notice.

DATE: Written comments must be received on or before October 11, 1988.

ADDRESS: Please submit all comments to the Chief, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 662).

FOR FURTHER INFORMATION CONTACT: John Colozzi, Specialist, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Ave., NW., Washington, DC 20226 (202-535-6245).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1988, The Bureau of Alcohol, Tobacco and Firearms published a Notice of Proposed Rulemaking, Number 657, Nongeneric Designations of Grape Wine Having Geographic Significance. It details a proposed regulatory change to Title 27, Code of Federal Regulations, Part 4, "Labeling and Advertising of Wine." Names of geographic significance may be used only to designate wine of the origin indicated by that name.

The purpose of this change is to expand the list of foreign names of geographic significance for the purpose of labeling and advertising wine. Numerous foreign countries, including members of the European Economic Community, have petitioned ATF to recognize names of geographic significance used in connection with foreign wines. ATF plans to list these names in a new Part 12, entitled "Foreign Names of Geographic Significance."

Furthermore, § 4.24 provides that certain nongeneric names may be used as "distinctive" designations of wines, if approved by ATF, and certain of these names have been found by the Director to be "distinctive" designations of specific grape wines when they are

known to the consumer and to the trade as the designation of a specific wine of a particular place, or region, distinguishable from all other wines. Examples of this distinctive type are "Liebfaumlilch" and "Lacryma Christi."

Originally, the date for closing of comments was July 11, 1988. Several comments have been received to date. A written request from the National Association of Beverage Importers asked for an extension of the closing date to December 31, 1988. The Embassies of Portugal and Germany have asked for a ninety day extension to October 11, 1988, as did Coudert Brothers of Washington, DC, acting on behalf of the Stabilisierungsfonds fuer Wein, a quasi-government authority in the Federal Republic of Germany whose mandate includes the protection of German geographic designations of origin throughout the world.

After a review of all materials submitted by thirteen countries on a previous survey, ATF believes that a ninety day extension to October 11, 1988, is adequate. Respondents are already familiar with the issues and questions involved, and extension beyond the October 11th date will only delay unnecessarily further discussions to resolve this matter.

Respondents should take note of a typographical error that appears in the April 12, 1988, Notice of proposed rulemaking. In the first paragraph of Subpart C—Foreign Names of Geographic Significance, on page 12028, the phrase "27 CFR 4.24(c)(2)" should have read "27 CFR 4.24(c)(1)".

Drafting Information

The principal author of this document was John Colozzi, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Imports, Labeling, Packing and Containers, Wine.

27 CFR Part 12

Administrative practice and procedures, Imports, Labeling, Wine.

Dated: July 6, 1988.

Stephen E. Higgins,
 Director.

[FR Doc. 88-15649 Filed 7-9-88; 2:02 pm]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Safety Standards for Underground Coal Mines; Extension of Commit Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rules for ventilation for underground coal mines in 30 CFR Part 75.

DATE: Written comments on the proposed rule for ventilation standards must be received on or before August 19, 1988.

ADDRESS: Send comments to the Office of Standards, Regulations, and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia Silvey, Director Office of Standards, Regulations, and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published in the Federal Register (53 FR 2382) a proposed rule to revise existing ventilation standards for underground coal mines. On March 29, 1988, (53 FR 10104) MSHA extended the comment period to April 28, 1988 in response to requests from the mining community. Due to further requests from the public, MSHA extended the comment period for the proposed rule to May 27, 1988; (53 FR 15416, April 29, 1988).

On May 12, 1988, MSHA published in the Federal Register (53 FR 16872) a Notice of Public Hearings which stated that the record would remain open until July 22, 1988, for the submission of post-hearing comments. Due to requests from the mining community at the public hearings, MSHA is extending the comment period to August 19, 1988. All interested parties are encouraged to submit comments prior to that date.

Dated: July 7, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88-15661 Filed 7-12-88; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-32]

Special Local Regulations; Hampton Bay Days, Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal that would establish permanent special local regulations for the Hampton Bay Days Festival, an annual event held in September. Notice of the precise dates and times of the festival will be published annually in the Fifth Coast Guard District Local Notice to Mariners and in the Federal Register. The special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and the expected congestion at the time of the event.

DATE: Comments should be received on or before August 29, 1988.

ADDRESSES: Comments should be mailed or hand delivered to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of that address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-88-32) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the

rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulation

The area covered by this proposal is the same as that covered by the special local regulations for the 1987 Hampton Bay Days Festival. The Hampton Bay Days Festival is an annual weekend event consisting of a parade of boats, water ski shows, various type boat races, and a fireworks display. The special local regulations provide safety for the persons participating in the various events, and control spectator craft congestion during these events.

Special anchorage areas also are established for use by vessels during the event. Vessels less than 20 meters long may anchor in these areas without displaying the anchor lights and shapes required by Inland Navigation Rule 30, 33 U.S.C. 2030.

If adopted, this proposal will apply to the 1988 Hampton Bay Days Festival scheduled as follows:

- a. 3:30 p.m. to 8:00 p.m., September 9, 1988
- b. 9:30 a.m. to 10:30 p.m., September 10, 1988
- c. 12:30 p.m. to 2:30 p.m., September 11, 1988

This proposal also will apply to future Hampton Bay Days Festivals, and annual notice of the precise dates and times of the festival events would be published in the Local Notice to Mariners and in the Federal Register.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

- 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

- 2. A new § 100.508 is added to read as follows:

§ 100.508 Hampton River, Hampton, Virginia.

(a) *Definitions.*—(1) *Regulated area.* The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C&O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37° 01' 03.0" North, longitude 76° 20' 26.0" West, to the finger pier across the river at Fisherman's Wharf, located at latitude 37° 01' 01.5" North, longitude 76° 20' 32.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Hampton Roads.

(3) *Special anchorage areas.*—(i) *Area A.* Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37° 01' 48.0" North, longitude 76° 20' 22.0" West, across the river to the eastern shore at latitude 37° 01' 44.0" North, longitude 76° 20' 13.0" West, and to the north by the C&O Railroad Bridge. The anchorage area is marked by orange buoys.

(ii) *Area B.* Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Bayberry Psychiatric Hospital. Bounded by the shoreline and a line drawn between the following points: Latitude 37° 01' 28.0" North, longitude 76° 20' 24.0" West, latitude 37° 01' 22.0" North, longitude 76° 20' 28.0" West, and latitude 37° 01' 22.0" North, longitude 76° 20' 23.0" West.

(b) *Special local regulations.* (1) Except for vessels operated by Bay Days Inc., participants in the Hampton Bay Days Festival, and as provided in paragraph (b)(2) of this section; no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Spectator vessels may enter and anchor in the special anchorage areas described in paragraph (a)(3) of this section without the permission of the Patrol Commander, if they proceed at a slow, no wake speed while in the regulated area.

(3) Vessels less than 20 meters long may anchor in the special anchorage areas described in paragraph (a)(3) of this section without exhibiting the anchor lights and shapes required by Inland Navigation Rule 30, 33 U.S.C. 2030.

(4) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant, or petty officer.

(c) *Effective period.* This section is effective during Hampton Bay Days Festival events, and for one hour before each event starts and one hour after each event ends. The Commander, Fifth Coast Guard District publishes notices in the Federal Register and the Fifth Coast Guard District Local Notice to Mariners that announce the times and dates this section is in effect.

Dated: July 5, 1988.

A.D. Breed,
Rear Admiral, U.S. Coast Guard, Commander,
Fifth Coast Guard District.

[FR Doc. 88-15619 Filed 7-12-88; 8:45 am]

BILLING CODE 4910-14-30

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300190; FRL-3412-6]

Aluminum Isopropoxide and Aluminum Secondary Butoxide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes establishing an exemption from the requirement of a tolerance for the pesticide chemicals aluminum isopropoxide (CAS Reg. No. 555-31-7) and aluminum secondary butoxide (CAS Reg. No. 2269-22-9) when used as stabilizers in formulations of the insecticide amitraz applied to growing crops or animals. This proposed

regulation was requested by Nor-Am Chemical Co.

DATE: Written comments, identified by the document control number [OPP-300190], must be received on or before July 28, 1988.

ADDRESS:

By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7700.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Kerry B. Leifer, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7700.

SUPPLEMENTARY INFORMATION: At the request of Nor-Am Chemical Co., the Administrator proposes to amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for aluminum isopropoxide (CAS Reg. No. 555-31-7) and aluminum secondary butoxide (CAS Reg. No. 2269-22-9) when used in formulations of the insecticide amitraz [N-(2,4-dimethylphenyl)-N-[[[2,4-dimethylphenyl]imino]methyl]-N-methylmethanimidamide] applied to growing crops or animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 182.3(c), and include,

but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredients. Aluminum isopropoxide (CAS Reg. No. 555-31-7) and aluminum secondary butoxide (CAS Reg. No. 2269-22-9).

Name and address of requestor. Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803.

Bases for approval of aluminum isopropoxide and aluminum secondary butoxide. 1. The data submitted in the request and other relevant material have been evaluated. The environmental fate data considered in support of the proposed exemption from the requirement of a tolerance include a hydrolysis study of a mixture of aluminum isopropoxide and aluminum secondary butoxide. This study determined that the mixture is completely hydrolyzed. The hydrolysis products were determined to be isopropanol, secondary butanol, and aluminum hydroxide. Hydrolysis was judged to be complete after 25 seconds.

2. Each of the three hydrolysis products noted above are cleared as pesticide inert ingredients and food additives under the following sections of 40 CFR and 21 CFR.

Isopropanol

a. Isopropanol is cleared under 40 CFR 180.1001 (c), (d), and (e) for use as an inert ingredient in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals.

b. Isopropanol is cleared under 21 CFR 172.515 as a synthetic flavoring substance.

c. Isopropanol is cleared under 21 CFR 175.105 as a component of adhesives intended to contact food and as a substance used in the formulation of defoaming agents for food-contact

coatings, paper, and paperboard under 21 CFR 176.200 and 21 CFR 176.210.

Secondary butanol (Isobutanol)

a. Isobutanol is cleared under 40 CFR 180.1001(d) for use as an inert ingredient in pesticide formulations applied to growing crops only.

b. Isobutanol is cleared under 21 CFR 73.1 and 21 CFR 73.1001 as a color additive diluent for food and drug use.

c. Isobutanol is cleared under 21 CFR 172.515 as a synthetic flavoring substance.

d. Isobutanol is cleared under 21 CFR 175.105 as a component of adhesives intended to contact food and as a substance used in the formulation of defoaming agents for food-contact coatings, paper, and paperboard under 21 CFR 176.200 and 21 CFR 176.210.

3. Isobutanol is cleared as an adjuvant to textile and textile fibers intended to contact food under 21 CFR 177.2800.

Aluminum Hydroxide

a. Aluminum hydroxide is cleared under 40 CFR 180.1001(c) for use as an inert ingredient in pesticide formulations applied to growing crops or raw agricultural commodities after harvest.

b. Aluminum hydroxide is cleared under 21 CFR 176.210 as a substance used in the formulation of defoaming agents used in the manufacture of paper and paperboard articles intended to contact food.

c. Aluminum hydroxide is cleared under 21 CFR 177.2800 as a component of rubber articles intended to contact food.

d. Aluminum hydroxide migrating to food from paper and paperboard products used in food packaging is a substance that is generally recognized as safe under 21 CFR 182.90.

e. Aluminum hydroxide is cleared under 21 CFR 331.11 as an active ingredient in antacid produce for over the counter human use.

f. Aluminum hydroxide (as part of a streptomycin-dihydrostreptomycin-kaolin-pectin-aluminum hydroxide gel powder) is certified as an oral dosage antibiotic drug for animal use under 21 CFR 544.173e.

g. Aluminum hydroxide is present as an ingredient in exempted prescription products under 21 CFR 1308.32.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no

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additional test data will be required to support this regulation. Based on the above information and review of the ingredients' use, it has been found that when used in accordance with good agricultural practices these ingredients are useful and do not pose a hazard to humans or the environment.

In conclusion, the Agency has determined that the exemptions from the requirement of a tolerance for aluminum isopropoxide and aluminum secondary butoxide will protect the public health. Therefore, the exemptions are proposed as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains this inert ingredient may request within 30 days after publication of this document in the *Federal Register* that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number [OPP-300190]. All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 29, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 340a.

2. In Subpart D, new § 180.1091 is added, to read as follows:

§ 180.1091 Aluminum isopropoxide and aluminum secondary butoxide; exemption from the requirement of a tolerance.

Aluminum isopropoxide (CAS Reg. No. 555-31-7) and aluminum secondary butoxide (CAS Reg. No. 2289-22-9) are exempted from the requirement of a tolerance when used in accordance with good agricultural practices as stabilizers in formulations of the insecticide amitraz [N-(2,4-dimethylphenyl)-N-[[[2,4-dimethylphenyl]imino]methyl]-N-methylmethanimidamide] applied to growing crops or animals.

[FR Doc. 88-15485 Filed 7-12-88; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 180

[PP 6E3424/P454; FRL 3412.7]

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the herbicide glyphosate and its metabolite in or on the raw agricultural commodities atemoya, carambola, and sugar apple. The proposed regulation to establish maximum permissible levels for residues of the herbicide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3424/P454], must be received on or before August 12, 1988.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 6E3424 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Florida.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide glyphosate (N-(phosphonomethyl)glycine), and its metabolite aminomethylphosphonic acid (AMPA) in or on the raw agricultural commodities atemoya, carambola, and sugar apple at 0.2 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 10 milligrams (mg) per kilogram (kg) per day.

2. A chronic feeding/oncogenicity study in rats with a systemic NOEL greater than 31 mg/kg/day, which was negative for oncogenic potential under the conditions of the study at all feeding levels tested (0, 3, 10, and 31 mg/kg/day). Although the rat study meets the requirement for a chronic feeding study, it does not satisfy guideline requirements for an oncogenicity study. There is no evidence that the maximum

dose tested (31 mg/kg/day) was a toxic or maximum tolerated dose (MTD).

3. A 1-year dog feeding study with a systemic NOEL greater than 500 mg/kg/day (highest dose tested).

4. A rat teratology study, negative for teratogenic effects at 3,500 mg/kg/day, with maternal and fetotoxic NOELs of 1,000 mg/kg/day.

5. A rabbit teratology study, negative for teratogenic effects at 350 mg/kg/day, with a maternal NOEL of 175 mg/kg/day and a fetotoxic NOEL of 350 mg/kg/day.

6. Mutagenicity studies as follows: chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with or without S-9 activation); DNA repair in rat hepatocytes (negative); *in vivo* bone marrow cytogenic in rats (negative); recessive assay with *B. subtilis* (negative up to 2,000 micrograms of test material per disk); reverse mutation with *S. typhimurium* (negative); Ames test with *S. typhimurium* (negative); and a dominant lethal test in mice (negative).

Additionally, a 2-year oncogenicity study in CD-1 mice has been completed and reviewed by the Agency. Feeding levels in this study were 1,000, 5,000 and 30,000 ppm (equivalent to 50, 250 and 1,500 mg/kg, respectively). The NOEL for nonneoplastic chronic effects has been established at 5,000 ppm. Glyphosate produced an equivocal oncogenic response in the mouse, causing a slight increase in the incidence of renal tubular adenomas (a benign tumor of the kidney) in male mice at the highest test dose (30,000 ppm) in this study. Because of the equivocal nature of the oncogenic response in mice, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" classification.

After reviewing all available evidence, the SAP concluded that the oncogenic potential of glyphosate could not be determined and recommended that the mouse study be repeated to clarify unresolved questions. Subsequently, the Agency decided to classify glyphosate as a "Class D Oncogen" (inadequate evidence of oncogenicity) and also to request repeat oncogenicity studies in the mouse and rat. The pesticide manufacturer, Monsanto Co., was notified of these requirements by the Glyphosate Registration Standard dated June 30, 1988. The mouse and rat oncogenicity studies are due in 1990.

Agency policy, as stated in the Registration Standard, is to issue registrations for significant new uses of glyphosate on a case-by-case basis. Tolerances which change the theoretical maximum residue contribution (TMRC) for glyphosate by 1 percent or less are not considered toxicologically significant. The TMRC from existing tolerances for a 1.5-kg daily diet is calculated to be 0.008339 mg/kg/day. The tolerances for atemoya, carambola, and sugar apple will result in a combined increase in the TMRC of less than 0.001 percent.

The acceptable daily intake (ADI), based on the rat reproduction study NOEL of 10 mg/kg/day and using a 100-fold safety factor, is calculated to be 0.1 mg/kg of body weight (bw)/day. Published tolerances utilize 8.3 percent of the ADI; the current action represents an insignificant increase in the ADI. No secondary residues in meat, milk, poultry, or eggs are anticipated since atemoya, carambola, and sugar apples are not considered livestock feed commodities. The nature of the residues is adequately understood and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. An analytical enforcement method is currently available in the *Pesticide Analytical Manual* (PAM), Vol. II. There are currently no actions pending against the continued registration of this chemical.

Based on the data and information considered, the Agency concludes that the tolerances proposed would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the *Federal Register* that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3424/P454]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the

Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: June 30, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of
Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 340a.

2. Section 180.364 is amended by adding, and alphabetically inserting, the following commodities to paragraph (a) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
Atemoya	0.2
Carambola	0.2
Sugar apple	0.2

[FR Doc. 88-15486 Filed 7-12-88; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 180

[PP 4E3143, 4E3144/P455; FRL 3413-4]

Pesticide Tolerances for Methomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide methomyl in or on the raw agricultural commodities of the crop group *Brassica* (cole) leafy vegetables and leeks. The proposed regulation to establish maximum permissible levels

for residues of the insecticide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 4E3143, 4E3144/P455], must be received on or before August 12, 1988.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-787C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the insecticide methomyl ([S-methyl-N-[(methylcarbamoyl)oxy]thioacetimidate]) in or on certain raw agricultural commodities as follows:

1. PP 4E3143 on behalf of the Agricultural Experiment Stations of California and Florida in or on the commodities in the *Brassica* (cole) leafy vegetables crop group at 6 parts per million (ppm).

2. PP 4E3144 on behalf of the Agricultural Experiment Station of Florida in or on leeks at 3 ppm.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year chronic feeding/ oncogenicity study in rats, which is negative for oncogenic effects under the conditions of the study, with a no-observed-effect level (NOEL) for systemic effects of 100 ppm (equivalent to 5.0 milligrams (mg)/kilogram (kg)/day).

2. A 2-year chronic feeding/ oncogenicity study in mice, which is negative for oncogenic effects under the conditions of the study, with a NOEL for systemic effects at 50 ppm (equivalent to 7.5 mg/kg/day).

3. A 2-year dog feeding study with a NOEL of 100 ppm (equivalent to 2.5 mg/kg/day).

4. A rat teratology study with no teratogenic effects observed at 400 ppm (the highest dose tested), and a maternal NOEL of 100 ppm.

5. A rabbit teratology study with no teratogenic or fetotoxic effects at 16 mg/kg/day (highest dose tested) and a NOEL for maternal toxicity at 2 mg/kg/day.

6. A three-generation reproduction study in rats with no reproductive effects observed at 100 ppm (highest dose tested).

7. Mutagenicity testing including an Ames test (negative), a rat cytogenetic study (negative), and an *in-vitro* transformation assay (negative).

The acceptable daily intake (ADI), based on the 2-year feeding study in dogs (NOEL of 2.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.025 mg/kg or body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.016766 mg/kg/day; the current action will increase the TMRC by 0.0003361 mg/kg/day (a 2-percent increase).

The metabolism of methomyl in animals has not been fully characterized. Thiodicarb, a structurally similar pesticide, has been shown to form a minor animal metabolite,

acetamide, which has been demonstrated to induce cancer in rats. A metabolism study in animals is currently underway, and the results will be addressed in the final registration standard for methomyl, which is scheduled for completion in 1988.

The nature of the residues in plants is adequately understood, and available metabolism data demonstrate that acetamide is not likely to occur in plants following treatment with methomyl. Since the proposed tolerances are for commodities that are not recognized as livestock feed items, there is no reason to believe that the tolerances will result in methomyl residues in meat, milk, poultry, or eggs.

An adequate analytical method, gas chromatography, using a sulfur-sensitive photometric detector, is available for enforcement purposes in the Food and Drug Administration Pesticide Analytical Manual, Vol. II (PAM II).

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.253 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3143, 4E3144/P455]. All written comments filed in response to this document will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial

number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 1, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.253 is amended by adding and alphabetically inserting the raw agricultural commodities *Brassica* (cole) leafy vegetables and leeks, to read as follows:

§ 180.253 Methomyl; tolerances for residues.

Commodities	Parts per million
<i>Brassica</i> (cole) leafy vegetables	5.0
Leeks	3.0

[FR Doc. 88-15506 Filed 7-12-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3413-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by the Goodyear Tire and Rubber Company, Randleman, North Carolina, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person

to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until August 29, 1988. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Bruce R. Weddle, whose address appears below, by July 28, 1988. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-88-CYEP-FFFFF."

Requests for a hearing should be addressed to Bruce R. Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy

material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 18, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amendment list of hazardous wastes from non-specific and specific sources. This list has been amended several times and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine

whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Goodyear's petitioned waste on human health and

the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that these models represent a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate for the Delisting Program to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because Goodyear utilizes off-site disposal of the petitioned waste, ground-water monitoring data collected from the petitioner's facility would not characterize the effect of the petitioned waste on the underlying ground water at the off-site disposal facility. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on the petition proposed today until all public comments (including those at

requested hearings, if any) are addressed.

II. Disposition of Petition

Goodyear Tire and Rubber Company, Asheville Wire Plant, Randleman, North Carolina.

1. Petition for Exclusion

The Goodyear Tire and Rubber Company's (Goodyear), Asheville Wire Plant, located in Randleman, North Carolina, is involved in the reduction and electroplating of steel rods. Goodyear petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Goodyear petitioned to exclude its waste because it does not believe that the waste meets the criteria for which it was listed. Goodyear also believes that its wastewater treatment process generates a non-hazardous filter cake because the constituents of concern, although present in the waste, are in an essentially immobile form. Goodyear also believes that the filter cake is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Goodyear's petition.

2. Background

On September 22, 1986, Goodyear petitioned the Agency to exclude its wastewater treatment sludge filter cake. Additional information was submitted to the Agency on December 28, 1986. In support of its petition, Goodyear submitted (1) detailed descriptions of its manufacturing and wastewater treatment processes; (2) results from

total constituent and EP toxicity analyses for the EP toxic metals, and nickel; (3) results from total constituent analyses for cyanide, reactive cyanide, and reactive sulfide; (4) results from total oil and grease analyses on representative waste samples; and (5) a list of raw materials used in both its manufacturing and treatment processes.

The manufacturing processes at Goodyear which generate the waste are copper and zinc electroplating operations, ultrasonic cleaning operations, acid pickling operations, water rinse and quenching operations, and electrolytic pickling operations. The wastewaters from the above operations flow to an equalization tank at the wastewater treatment plant for mixing. The wastewater is then aerated and neutralized, and sent to two flash mixers where polymers are added to promote metals precipitation in the clarifiers. The clarified effluent flows to a publicly owned treatment works (POTW), and the resulting clarifier sludge is pumped to a sludge holding tank. Sludge from the holding tank is then pumped to a frame filter press for dewatering. The dewatered sludge is collected in a 20 cubic yard hopper and is currently disposed of off-site in a hazardous waste landfill.

To collect representative samples from filter presses like Goodyear's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time or area (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

Goodyear collected a total of four composite samples from their filter press over a period of three weeks. Each composite sample consisted of a total of six grab samples. Three grab samples were taken from the the plate and frame filter press (one each from the middle and both ends of the filter press plates) each day for two consecutive days. The four composite samples were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituents per mass of waste) of all the EP toxic metals, nickel, cyanide, reactive sulfide, and total oil and grease content, and for EP leachable concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EDPO toxic

metals and nickel. Goodyear claims that during the three week period, when the four composite samples were collected, no significant changes were made in the chemicals used, the plating process, water usage, or the wastewater treatment process. Goodyear further claims that both its manufacturing and waste treatment processes are consistent, and that the facility does not have any seasonal variations in either its manufacturing or waste treatment processes. Goodyear, therefore, believes that, due to a consistent manufacturing and treatment process, the analyses presented are representative of any variation in filter cake constituent concentrations.

3. Agency Analysis

Goodyear used SW-846 method numbers 7060-7760 to quantify the total constituent concentrations of the EP toxic metals and nickel. Goodyear used SW-846 method number 9010 to quantify the total constituent concentrations of cyanide and reactive cyanide. Goodyear used SW-846 method number 9030 to quantify the total constituent concentration of reactive sulfide. Goodyear used SW-846 method number 1310 to quantify the EP leachable concentrations of the EP toxic metals and nickel. (Goodyear did not perform EP leachate analysis for cyanide. Analysis for EP leachable concentrations of reactive sulfide is not necessary since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) The total constituent and EP leachate analyses of the filter cake revealed the maximum concentration presented in Table 1 and Table 2, respectively.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS FILTER CAKE

Constituents	Total constituent analyses (mg/kg)
Arsenic	ND (below detection limit of 5).
Barium	3.2
Cadmium	4.3
Chromium	33
Lead	8.7
Mercury	ND (below detection limit of 2).
Nickel	27
Selenium	ND (below detection limit of 0.5).
Silver	ND (below detection limit of 1).
Cyanide	0.25
Reactive sulfide	ND (below detection limit of 1).
Reactive cyanide	ND (below detection limit of 1).

ND: Not Detected. Denotes concentrations below the detection limits.

TABLE 2.—EP LEACHATE CONCENTRATIONS FILTER CAKE

Constituents	EP leachate analyses (mg/l)
Arsenic	ND (below detection limit of 0.03).
Barium	0.03
Cadmium	ND (below detection limit of 0.01).
Chromium	ND (below detection limit of 0.01).
Lead	0.02
Mercury	ND (below detection limit of 0.01).
Nickel	0.25
Selenium	ND (below detection limit of 0.04).
Silver	ND (below detection limit of 0.01).
Cyanide	0.12 ¹
Reactive sulfide	Not applicable.
Reactive cyanide	Not applicable.

ND: Not detected. Denotes concentrations below the detection limits.

¹ Leachable cyanide tests were not performed. However, leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

The detection limits presented in Table 1 and Table 2 represent the lowest concentrations quantifiable by Goodyear, when using the appropriate SW-846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limit.) Using SW-846 method number 3540, Goodyear determined that its waste had a maximum oil and grease content of 0.48 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching out of metals from the sample). See SW-846 method number 1330. None of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

Goodyear also submitted a list of all raw materials used in its manufacturing and wastewater treatment processes. This list indicated that no hazardous constituents (other than those tested for) are used in Goodyear's processes and that formation of any hazardous constituents (*e.g.*, as reaction by-products) is highly unlikely. To verify

that the filter cake did not contain any Appendix VIII constituents, Goodyear analyzed one composite sample for all the priority pollutants. Goodyear submitted these data to support its claim that none of the more common Appendix VIII constituents are used in any of its processes. The Agency reviewed Goodyear's material safety data sheets and did not identify any Appendix VIII constituents as components of any process materials used by Goodyear; therefore, the Agency did not request Goodyear to submit an additional three samples (the Agency normally requires a minimum of four representative samples to be collected and analyzed for all Appendix VIII constituents likely to be present in the wastestream when characterizing the petitioned wastestream) of the waste, nor did the Agency use the priority pollutant data to evaluate the petitioned wastestream since no Appendix VIII constituents (other than those tested for) were expected to be present in the petitioned wastestream.

Goodyear submitted a signed certification stating that based on current annual waste generation, their maximum annual generation rate of wastewater treatment sludge is 1,944 tons per year. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Goodyear's certified estimate of 1,944 tons per year (approximately 1,920 cubic yards per year).

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions and, as a part of this program, conducted a spot-sampling visit at Goodyear's facility. The results of this visit, including chemical analyses of waste samples from Goodyear, are discussed in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter cake wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS)

landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 20, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters, to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (i.e., the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). In addition, the Agency used its organic leachate model (OLM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the ground water. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of Goodyear's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except arsenic, cadmium, chromium, silver, and mercury—see explanation below) from Goodyear's wastewater treatment sludge filter cake. The Agency's evaluation, using the waste volume of 1,920 cubic yards (per year) and the maximum reported EP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 2. The Agency did not evaluate the mobility of the remaining inorganic constituents (i.e., arsenic, cadmium, chromium, mercury, selenium, and silver) from Goodyear's waste because they were not detected in the EP extract using the appropriate analytical method (see Table 3). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS FILTER CAKE

Constituents	Compliance-point concentrations (mg/l)	Regulatory standards (mg/l)
Barium	0.003	1.0
Cyanide	0.0013	0.7
Lead	0.0022	0.05
Nickel	0.027	0.5

The filter cake exhibited barium and lead levels at the compliance point below the levels prescribed by the National Primary Drinking Water Regulations (NPDWR). See 40 CFR Part 141. The concentration of cyanide (at the compliance point) is below the Agency's health-based standard of 0.7 mg/l. See Verified Reference Doses of the U.S. EPA, Office of Health and Environmental Assessment (OHEA), Environmental Criteria and Assessment Office, Cincinnati, Ohio, 1988. The concentration of nickel (at the compliance point) is below the Agency's health-based standard of 0.5 mg/l. See Hazardous Waste Management System; Land Disposal Restrictions: Notice of Availability and Request for Comment, 52 FR 28994, Proposed Health-Based Levels for Nickel and Cyanide, August 12, 1987.

Additionally, the total concentration of reactive cyanide is below the Agency's interim standard of 250 ppm and the total concentration of reactive sulfide is below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA Public Docket.

The Agency concluded, after reviewing Goodyear's processes and raw materials list, that no other hazardous constituents of concern are being used by Goodyear, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of Goodyear's waste. On the basis of test results submitted by the petitioner, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, 261.23.

On March 9, 1987, staff under contract to the Agency conducted a site visit to Goodyear as part of the Agency's spot-sampling and analysis program. The staff collected one composite sample comprised of four full depth core

samples taken from Goodyear's roll-off dumpster and one composite sample comprised of a grab sample taken from four randomly selected filter press plates. The two composite samples were analyzed for total constituent concentrations and EP leachate concentrations of the EP toxic metals, nickel, and cyanide. The samples were also analyzed for total constituent concentrations of the priority pollutants.

The evaluation of the spot-sampling samples for the EP toxic metals, nickel, and cyanide produced the maximum concentrations reported in Tables 4 and 5.

TABLE 4.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS SPOT-SAMPLING VISIT SAMPLES FILTER CAKE

Constituents	Total constituent analyses (mg/1a)
Arsenic	13
Barium	26
Cadmium	ND (below detection limit of 0.5)
Chromium	130
Lead	ND (below detection limit of 5)
Mercury	ND (below detection limit of 0.05)
Selenium	ND (below detection limit of 0.5)
Silver	16
Cyanide	ND (below detection limit of 0.25)
Nickel	90

ND: Not Detected. Denotes concentrations below the detection limit.

TABLE 5.—Maximum EP Leachate Concentrations Filter Cake

Constituents	EP leachate analyses (mg/l)
Arsenic	ND (below detection limit of 0.25)
Barium	ND (below detection limit of 2)
Cadmium	ND (below detection limit of 0.05)
Chromium	ND (below detection limit of 0.2)
Lead	ND (below detection limit of 0.25)
Mercury	ND (below detection limit of 0.001)
Nickel	0.58
Selenium	ND (below detection limit of 0.02)
Silver	ND (below detection limit of 0.025)
Cyanide	ND (below detection limit of 0.0125 ¹)

ND: Not Detected. Denotes concentrations below the detection limit.

¹ Leachable cyanide tests were not performed. However, leachable cyanide was determined by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Although comparison of Goodyear's data with the Agency's spot-sampling data indicates some variation in the constituent concentrations reported, the Agency is not concerned with the variation between the Agency's and Goodyear's analytical data because: (1) Goodyear's samples were collected over the course of three weeks while the Agency's samples were collected on one day; (2) Goodyear's samples were composite samples comprised of six grab samples collected over two days and the Agency's samples were composites of filter cake generated on one day; and (3) the analyses were conducted by different laboratories using different detection limits. Variation between Goodyear's samples and the Agency's samples is, therefore, expected and is not of concern because Goodyear's compositing procedure would tend (more so than the Agency's compositing procedure) to average any particular daily peak in constituent concentrations.

Leachable concentrations of nickel, when evaluated using the VHS model, produced a compliance-point concentration below the regulatory standard for nickel, as seen in Table 6.

TABLE 6.—COMPLIANCE-POINT CONCENTRATION SPOT-CHECK SAMPLES FILTER CAKE

Constituent	Compliance-point concentration (mg/l)	Regulatory standard (mg/l)
Nickel	0.063	0.5

The Agency did not evaluate the mobility of the remaining inorganic constituents (i.e., the EP toxic metals and cyanide) from Goodyear's waste because they were not detected in the EP extract (see Table 5).

Although no other Appendix VIII hazardous constituents were expected to be present in Goodyear's waste, when the Agency conducts a spot-sampling visit, the samples are routinely analyzed for the presence of the priority pollutants (which account for most of the analytically feasible Appendix VIII constituents). Results of the Agency's spot-sampling visit analyses indicated that no priority pollutant volatile or semi-volatile organic constituent, priority pollutant pesticide, or polychlorinated biphenyls were detected at or above their respective detection limits, using SW-846 method numbers 8240, 8270, and 8080, respectively, except for toluene and

bis(2-ethylhexyl) phthalate. Toluene and bis(2-ethylhexyl) phthalate were detected at 1.0 mg/kg and 1.4 mg/kg, respectively, in the one composite sample collected by the Agency from Goodyear's roll-off dumpster. Goodyear does not use toluene or bis(2-ethylhexyl) phthalate in its manufacturing or treatment processes, therefore, the Agency believes that the presence of these constituents may be caused by laboratory contamination since toluene is used as a laboratory solvent and bis(2-ethylhexyl) phthalate is used as a plasticizer in laboratory containers.

The Agency evaluated the mobility of the detected organic constituents using the VHS model. The Agency used the OLM to predict leachable concentrations of the detected organic constituents in Goodyear's filter cake. The resulting leachable concentration and the estimated volume of waste (i.e., 1,920 cubic yards) were then used as inputs in the VHS model in order to assess the potential impacts of the constituents upon the ground water. The OLM/VHS model analysis calculated compliance-point concentrations of 2.3×10^{-3} mg/l and 2×10^{-4} mg/l for toluene¹ and bis(2-ethylhexyl) phthalate,² respectively. These compliance-point concentrations are well below the regulatory standards of 10 mg/l and 4.2×10^{-3} mg/l set for toluene and bis(2-ethylhexyl) phthalate, respectively.

5. Conclusion

The Agency believes that Goodyear's wastewater treatment system renders the F006 wastes non-hazardous. Because Goodyear's manufacturing and waste treatment processes operate 24 hours a day, seven days a week, and there are no significant production/process variations (i.e., the production rate of their single product, wire tire cord, does not vary, and the facility is not a job shop or subject to seasonal variations), the Agency believes that the sampling procedures used by Goodyear were adequate and that the samples are representative of the day-to-day variation in constituent concentrations found in the filter cake.

The Agency is generally concerned that sampling periods less than one month in duration may not be long

¹ See Verified Reference Doses of the U.S. EPA, Office of Health and Environmental Assessment (OHEA), Environmental Criteria and Assessment Office, Cincinnati, Ohio, 1988.

² See Carcinogenic Risk Assessment Verification Endeavor (CRAVE) Risk Estimate for Carcinogenicity, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, Cincinnati, Ohio, 1988.

enough to characterize the variability of an electroplating filter cake. The key factors that could cause toxicant concentrations in a waste to vary would be: the use of different raw materials due to changes in the product line being manufactured; the periodic disposal of plating bath solutions in the waste treatment system; or increased carry-over due to an increase in production rate or variation in the shape and size of products manufactured. Additionally, variation in the raw materials can be expected either when the facility performs as a job-shop or when the product line changes seasonally. In Goodyear's case, however, because the manufacturing and waste treatment processes do not vary or change seasonally, the Agency believes that Goodyear's three-week sampling period was sufficient to characterize the day-to-day variation in manufacturing and treatment processes intended to be used thereafter.

The Agency, therefore, is proposing that Goodyear's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to the Goodyear Tire and Rubber Company's Asheboro Wire Plant, located in Randleman, North Carolina, for its filter cake described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the wastewater treatment sludge filter cake should no longer be subject to regulation under 40 CFR Parts 262 through 268 or the permitting standards of 40 CFR Part 270.

If made final, the exclusion will only apply to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are altered, and accordingly would need to file a new petition. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either store, treat, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which must be permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste; or treats the waste prior to such

beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation, and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, we believe that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding a waste generated at one facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact

on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921. Date: July 6, 1988.

Jeffery D. Denit.

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
Goodyear Tire and Rubber Company.	Randleman, North Carolina.	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after (insert date of final rule's publication).

(FR Doc. 88-15673 Filed 7-12-88; 8:45 am)

BILLING CODE 6340-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge—Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This Fish and Wildlife Service (Service) proposes to amend certain regulations in 50 CFR Part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

DATE: Comments must be received on or before August 12, 1988.

ADDRESS: Address comments to: Assistant Director—Refuges and Wildlife, U. S. Fish and Wildlife Service, 18th and C Streets, NW, Room 3252, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David E. Heffernan, Division of Refuges, U.S. Fish and Wildlife Service, 18th and C Streets, NW, Room 2343, Washington, DC 20240; Telephone (202) 343-1014.

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the Federal Register.

These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Many of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations. Again this year, regulations for nontoxic shot are required on more refuges and consequently new regulations are being added.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Accordingly, interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (address above) by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities The National Wildlife Refuge System Administration Act (NWRSA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial

compliance with the NWRSA and Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of \$100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) These requirements are presently approved by OMB under #1018-0014 Economic and Public Use Permits. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the

Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 706-1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell, Federal Building, 75 Spring Street, SW, Atlanta, Georgia 30303; Telephone (404) 221-3538.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965-9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver, Colorado 80225; Telephone (303) 236-8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges).

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3538.

David E. Heffernan, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC. 20240, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

Accordingly, it is proposed to amend Part 32 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for Part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.12 would be amended by redesignating (e)(1) through (4) as (2) through (5); adding a new (e)(1); removing the newly redesignated (e)(3); redesignating (e)(4) and (5) as (e)(3) and (4); adding (f)(1)(vii); revising (i)(2) introductory text; removing (i)(2)(i) through (vi); revising (i)(2)(i) and (m)(1)(ii); removing (m)(1)(iii); redesignating (m)(1)(iv) as (iii); revising (m)(2) and (n)(1); adding (n)(1)(i); revising (n)(2); adding (n)(2)(i) and (q)(7)(iv); revising (i)(2) introductory text; removing (i)(2)(i) and (ii), (u)(1)(iii) and (u)(2)(iv); redesignating (u)(2)(v) as (iv); removing (u)(3)(iii); revising (w)(1) introductory text; removing (w)(1)(i) and (ii); revising (aa)(1), (cc)(2) introductory text and (cc)(2)(i); removing (cc)(2)(ii) through (vi); redesignating (gg)(2) through (4) as (3) through (5); adding a new (gg)(2) introductory text, (i) and (ii); revising (hh)(4)(i), (hh)(10)(ii) and (hh)(11)(ii) and (iv); removing (ll)(2); redesignating (ll)(3) and (4) as (2) and (3); revising (mm)(5)(vi) and (mm)(7)(i) and (v); adding (pp)(6); revising (qq)(1)(i) and (4)(ii); adding (gg)(4)(v) and (vi), and (qq)(5)(vi); revising (qq)(6) and (qq)(7)(i), (iii) and (iv); adding (qq)(7)(vi); removing (rr)(1)(iii); revising (rr)(2) introductory text; removing (rr)(2)(i) and (ii); revising (rr)(3) introductory text; and removing (rr)(3)(i) and (ii).

§ 32.12 Refuge-specific regulations; migratory game birds.

(e) *Arkansas—(1) Cache River National Wildlife Refuge.* Hunting of ducks, snow geese, coots, woodcock, snipe, and mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(f) *California—*

(11) *San Francisco Bay National Wildlife Refuge.*

(vii) Waterfowl and coot hunters, in that portion of the refuge contained in Alameda County, shall possess and use, while in the field, only nontoxic shot.

(i) *Florida—*

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(l) *Illinois—*

(2) *Crab Orchard National Wildlife Refuge.*

(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbair land areas, plus Orchard, Turkey, Sawmill and Grassy Islands, from sunrise to 12:00 noon each day during the goose season. Goose hunting on these areas, including lake shorelines, is permitted only from existing refuge blinds. Only selected hunters are allowed on these islands or are allowed to occupy any existing refuge blinds during the goose season. Controlled blind hunters may use or possess only ten (10) shells per hunter, except that water blind hunters may possess fifteen (15) shells during the duck season only.

(m) *Iowa—(1) Desoto National Wildlife Refuge.*

(ii) Hunting is permitted until noon each day from November 1 through the end of the State waterfowl season within the zones.

(2) *Union Slough National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: State regulations regarding the use of decoys, and governing the construction and use of blinds on game management areas shall apply.

(n) *Iowa, Illinois, and Missouri—Mark Twain National Wildlife Refuge.*

(1) Hunting is permitted on the Big Timber Division including Turkey and Otter Islands.

(i) only temporary wood or brush blinds are permitted.

(2) Hunting is permitted on the Gardner Division.

(i) Blinds may only be constructed on blind sites posted by the Illinois Department of Conservation.

(q) *Louisiana—*

(7) *Tensas River National Wildlife Refuge.*

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

(t) *Michigan—*

(2) *Shiawassee National Wildlife Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(w) *Missouri—(1) Mingo National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(aa) *New Jersey—Edwin B. Forsythe National Wildlife Refuge.*

(1) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

(cc) *New York—*

(2) *Montezuma National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition: (i) Permits/reservations are required in advance.

(gg) *Oklahoma—*

(2) *Salt Plains National Wildlife Refuge.* Hunting of ducks, geese, sandhill cranes and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

(ii) Hunters are required to check in and out of the refuge.

(hh) *Oregon—*

(4) *Cold Springs National Wildlife Refuge.*

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

(10) *McKay Creek National Wildlife Refuge.*

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

(11) *Umatilla National Wildlife Refuge.*

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, and

New Year's Day on the McCormack Unit.

(iv) Decoys, boats and other personal property must be removed from the refuge following each days hunt.

(mm) *Texas—*

(5) *McFaddin National Wildlife Refuge.*

(vi) Use of airboats is permitted only in accordance with specific guidelines as provided in 50 CFR 25.31.

(7) *Texas Point National Wildlife Refuge.*

(i) Hunting is permitted only on designated days. Notice of actual hunting days will be issued as provided in 50 CFR 25.31.

(v) Use of airboats is permitted only in accordance with guidelines as provided in 50 CFR 25.31.

(pp) *Virginia—Chincoteague National Wildlife Refuge.*

(6) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

(qq) *Washington—(1) Columbia National Wildlife Refuge.*

(i) Permits are required for hunting in Farm Unit 226-227.

(4) *McNary National Wildlife Refuge.*

(ii) In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

(v) No decoys or other personal property may be placed on the refuge earlier than one hour before State shooting time or opening of the State waterfowl season, and must be removed from the refuge within one hour following the close of State shooting time.

(vi) Hunters in marked hunt site area must hunt within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

(5) *Ridgefield National Wildlife Refuge.*

(vi) Hunting is permitted only from assigned blinds except when shooting to retrieve crippled birds.

(6) *Toppensish National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only within fifty (50) feet of

designated blind sites except when shooting to retrieve crippled birds.

(7) *Umatilla National Wildlife Refuge.*

(i) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

(iii) No decoys or other personal property may be placed on the refuge earlier than one hour before State shooting time or opening of the waterfowl season, and must be removed within one hour following the close of State shooting time.

(iv) Hunters may not use or possess more than twenty-five (25) shells per day in the Paterson Unit.

(vi) Digging or hunting from pit blinds is prohibited.

(rr) *Wisconsin—*

(2) *Necedah National Wildlife Refuge.* Hunting of migratory game birds is permitted only on designated areas of the refuge.

(3) *Trempealeau National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

3. Section 32.22 would be amended by revising (a)(4) introductory text; removing (a)(4) (i) through (vi); revising (b) (1) introductory text; redesignating (d) (2) through (6) as (3) through (7); adding a new (d) (2); revising (h) (2) introductory text; removing (h) (2) (i) through (v); revising (h) (3) introductory text; removing (h) (3) (i) through (iii); revising (l), (1) and (l)(2); revising (bb) (2) introductory text, (bb) (2) (i), (ii) and (iii), redesignating (ee) 91) through (4) as (2) through (5); adding a new (ee) (1); redesignating the newly redesignated (ee) (3) through (5) as (4) through (6); adding a new (ee) (3); removing (ff) (1), (2) and (11); redesignating (ff) (3) through (10) as (1) through (8); revising the newly redesignated (ff) (1) (i), (6) (ii) and (8) (ii); revising (hh) (3) introductory text; removing (hh) (3) (i) through (iv); revising (nn) (3) (i) and (5) 9ii).

§ 32.22 Refuge-specific regulations; upland game.

(a) *Alabama—*

(4) *Wheeler National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the

following special conditions: Permits are required.

(b) *Arizona*—(1) *Buenos Aires National Wildlife Refuge*. Hunting of cottontail rabbit, jackrabbit, coyote, fox, bobcat, ringtail, skunk, coati mundi, badger, raccoon and weasel is permitted on designated areas of the refuge.

(d) *Arkansas*—
(2) *Cache River National Wildlife Refuge*. Hunting of quail, rabbit, squirrel, raccoon, opossum, and beaver is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

(h) *Florida*—
(2) *Lower Suwannee National Wildlife Refuge*. Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(3) *St. Marks National Wildlife Refuge*. Hunting of squirrel, rabbit, raccoon and armadillo is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(i) *Illinois, Iowa and Missouri*—*Mark Twain National Wildlife Refuge*.
(1) Hunting is permitted on the Big Timber Division including Turkey and Otter Islands, and on the Gardner Division.
(2) Hunting of squirrel is permitted on the Keithsburg Division from the opening of the Illinois squirrel season until the start of the Illinois waterfowl season.

(bb) *New York*—
(2) *Montezuma National Wildlife Refuge*. Hunting of small game mammals and legally hunted furbearers is permitted on designated areas of the refuge subject to the following conditions:
(i) Permits are required for night hunting of furbearers.
(ii) Hunting is permitted from the close of the refuge deer hunting season through the close of the respective State small game season.
(iii) Shotguns only are permitted, except .22 caliber rimfire firearms may be used to take furbearers at night consistent with State law.

(ee) *Oklahoma*—(1) *Little River National Wildlife Refuge*. Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Access is limited to designated roads and trails.

(3) *Salt Plains National Wildlife Refuge*. Hunting of quail and pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters must check in and out of the refuge.

(ff) *Oregon*—(1) *Cold Springs National Wildlife Refuge*.

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

(6) *McKay Creek National Wildlife Refuge*.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

(8) *Umatilla National Wildlife Refuge*.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day on the McCormack Unit.

(hh) *South Carolina*—
(3) *Santee National Wildlife Refuge*. Hunting is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(nn) *Washington*—
(3) *McNary National Wildlife Refuge*.

(i) Hunting is permitted by shotgun or bow and flu-flu arrow, only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

(5) *Umatilla National Wildlife Refuge*.

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day on the Paterson Unit.

4. Section 32.32 would be amended by revising (a)(3) introductory text; removing (a)(3) (i) through (iv); revising (b)(1); redesignating (d)(2) through (5) as (3) through (6); adding a new (d)(2); revising (h)(3) introductory text; removing (h)(3) (i) through (vii); revising (h)(4) introductory text; removing (h)(4) (i) through (viii); revising (i)(4) introductory text; removing (i)(4) (i) through (vii); revising (i)(5) introductory text; removing (i)(5) (i) through (x); revising (l)(3); removing (n)(1); redesignating (n) (2) and (3) as (1) and

(2); revising newly redesignated (n) (1) and (2); revising (p)(2) introductory text; adding (p)(2) (i) and (ii); revising (r)(3) introductory text; removing (r)(3) (i) through (vii); revising (v) (2) and (5); adding (v)(8) and (x)(4)(iii); revising (bb)(2)(iii); redesignating (dd) introductory text, (1) through (4) as (dd)(2) introductory text, (i) through (iv); adding (dd)(1) introductory text, (i) through (iii); adding (dd)(3) introductory text, (i) through (iii); revising (ff)(2) introductory text; removing (ff)(2) (i) and (ii); adding (gg)(2) (v) through (vii); revising (gg)(4)(ii); removing (gg)(4)(iii); redesignating (gg)(4) (iv) through (vi) as (iii) through (v); revising (ll)(4) introductory text; removing (ll)(4)(i) through (vi); and adding (rr)(3) (vi) and (vii).

§ 32.32 Refuge-specific regulations; big game.

(a) *Alabama*—
(3) *Wheeler National Wildlife Refuge*. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(b) *Arizona*—(1) *Buenos Aires National Wildlife Refuge*. Hunting of mule and white-tailed deer, javelina, feral hogs and mountain lions is permitted on designated areas of the refuge.

(d) *Arkansas*—
(2) *Cache River National Wildlife Refuge*. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(h) *Florida*—
(3) *Lower Suwannee National Wildlife Refuge*. Hunting of big game is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *St. Marks National Wildlife Refuge*. Hunting of white-tailed deer, turkeys and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(i) *Georgia*—
(4) *Okefenokee National Wildlife Refuge*. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(5) *Piedmont National Wildlife Refuge*. Hunting of white-tailed deer is permitted on designated areas of the

refuge subject to the following condition: Permits are required.

(l) *Illinois*—*Crab Orchard National Wildlife Refuge*.

(3) Hunters using Area II are required to check in at the refuge visitor contact center prior to hunting.

(n) *Illinois, Iowa and Missouri*—*Mark Twain National Wildlife Refuge*.

(1) Firearms hunting is permitted on the Bear Creek Unit of the Gardner Division. Firearms hunting is permitted on the remainder of the Gardner Division only during part of the November firearms season, from one-half hour before sunrise to 3:00 p.m. Permits are required.

(2) Archery hunting is permitted on the Gardner Division.

(p) *Iowa*—
(2) *Union Slough National Wildlife Refuge*. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, stands or ladders is prohibited.
(ii) All stands must be removed from the refuge by the end of the season.

(r) *Louisiana*—
(3) *Catahoula National Wildlife Refuge*. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

(v) *Massachusetts*—*Parker River National Wildlife Refuge*.

(2) Hunting is permitted from one-half hour before sunrise until 2:00 p.m.

(5) Hunting is permitted on six days within the framework of the State shotgun deer season.

(8) Only antlerless deer may be harvested, under appropriate State permits, on days one and two of the refuge hunt.

(x) *Minnesota*—
(4) *Rice Lake National Wildlife Refuge*.

(iii) Permits are required.

(bb) *Nebraska*—
(2) *DeSoto National Wildlife Refuge*.

(iii) Muzzleloader hunting of deer is permitted only on designated areas of the refuge and only during the special State season. Hunters must check in and out of the refuge.

(dd) *New Jersey*—(1) *Edwin B. Forsythe National Wildlife Refuge*. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A State permit for the appropriate New Jersey Deer Management Zone is required.
(ii) Refuge hunting hours are consistent with State hunting hours. Hunters may enter the refuge no earlier than two hours before shooting time and leave no later than one hour after the end of shooting hours.
(iii) Use or possession of alcoholic beverages while hunting is prohibited.

(3) *Supawna Meadows National Wildlife Refuge*. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A State permit for the appropriate New Jersey Deer Management Zone is required.
(ii) In addition to the State permit, a Special Use Deer Hunting Permit issued by the refuge is required.

(iii) All hunters must attend a refuge hunter orientation session.

(ff) *New York*—
(2) *Montezuma National Wildlife Refuge*. Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(gg) *North Carolina*—
(2) *Great Dismal Swamp National Wildlife Refuge*.

(v) Hunters are required to sign in and out on each hunt day.
(vi) The daily bag limit is two (2) deer, either sex.

(vii) Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

(4) *Pee Dee National Wildlife Refuge*.

(ii) Muzzleloader hunting is permitted on Tuesday and Wednesday following the first Saturday in November.

(ll) *South Carolina*—
(4) *Santee National Wildlife Refuge*. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(rr) *Virginia*—
(3) *Great Dismal Swamp National Wildlife Refuge*.

(vi) Hunters are required to sign in and out on each hunt day.
(vii) Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

Date: June 27, 1988.

Susan Recco,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-15677 Filed 7-12-88; 8:45 am]

BILLING CODE 4310-95-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 8, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

Tokay Grapes Grown in San Joaquin County, California—Marketing, Order No. 926.

No agency report forms.

Recordkeeping: On occasion; Annually.

Farms; Businesses or other for-profit; Small businesses or organizations; 484 responses; 41 hours; not applicable under 3504(h).

Virginia Olson (202) 447-5057.

- Agricultural Stabilization and Conservation Service

7 CFR, Part 700—Conservation and Environmental Programs Regulations. Form ACP-245, Request for cost-sharing. ACP-245.

On occasion.

Individuals or households; Farms; 216,400 responses; 90,167 hours; not applicable under 3504(h).

Charles W. Sims (202) 447-7334.

- Agricultural Stabilization and Conservation Service

Request for Farm Reconstitution. ASCS-155.

On occasion.

Individuals or households; Farms; 900,000 responses; 375,000 hours; not applicable under 3504(h).

Jane Salem, (202) 447-7635.

- Federal Grain Inspection Service

Report of Grain Inspected and Weighed for Export.

FGIS-836.

Recordkeeping: Weekly.

State or local governments; Businesses or other for-profit; Federal agencies or employees; 2,375 responses; 784 hours; not applicable under 3504(h).

Michael Gavron, (202) 382-1741.

Revision

- Rural Electrification Administration

Preloan Procedures and Requirements for Telephone Program.

REA-480, -494, -495, -507 and -509.

On occasion.

Small businesses or organizations; 865 responses; 5,178 hours; not applicable under 3504(h).

F. Lamont Heppe, Jr., (202) 382-8530.

Larry K. Robertson.

Acting Departmental Clearance Officer

[FR Doc. 88-15714 Filed 7-12-88; 8:45 am]

BILLING CODE 3410-01-M

Federal Register

Vol. 53, No. 134

Wednesday, July 13, 1988

Federal Grain Inspection Service

Invitation To Serve on Federal Grain Inspection Service Advisory Committee

Congress is currently considering legislation to extend section 20 of the United States Grain Standards Act (Act), which directs the Secretary of Agriculture to establish an advisory committee to provide advice to the Administrator of the Federal Grain Inspection Service with respect to the efficient and economical implementation of the Act. The Federal Grain Inspection Service Advisory Committee (Advisory Committee) was established by the Secretary on September 29, 1981. The Advisory Committee presently consists of 12 members, appointed by the Secretary, representing the interests of all segments of the grain industry, including grain inspection and weighing agencies. Members of the committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of Title 5, United States Code.

The authority in section 20 of the Act for the establishment of the Advisory Committee terminates on September 30, 1988. Congress is currently considering extending the authority through September 30, 1993, and expanding the Advisory Committee to 15 members including scientists.

With the assumption that the authority will be extended and the Advisory Committee expanded, nominations are needed for persons to serve on the Advisory Committee. Persons interested in serving on the Advisory Committee should contact, in writing, W. Kirk Miller, Administrator, FGIS, Room 1094, P.O. Box 96454, Washington, DC 20090-8454, not later than August 15, 1988, and furnish the following information: Name, home address, social security number, business address, employer, occupation and title, statement of reason for nomination, and major source of income. Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status.

The final selection of committee members and alternates will be made by the Secretary. It is the Secretary's policy that membership on USDA boards and committees reflect, to the extent practicable, the diversity of individuals served by the programs.

Dated: July 8, 1988.

Kenneth A. Gilles,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-15663 Filed 7-12-88; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Silver Fire Recovery Project, Siskiyou National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of a record of decision.

SUMMARY: The Forest Supervisor for the Siskiyou National Forest in Grants Pass, Oregon, has decided to implement Alternative I-Modified to guide the Silver Fire Recovery Project. The project area was extensively damaged by severe wildfires in the summer of 1987. Under the selected alternative (one of 9 considered in detail), the Forest Service will seek to recover the burned timber while giving strong emphasis to resources protection, especially protection of streams. Implementation of this alternative calls for salvaging approximately 157 million board feet from about 9,500 acres, constructing an estimated 20 miles of new roads, and physically reforesting approximately 5,720 acres. A copy of the record of decision, as signed on July 8, 1988, appears at the end of this notice.

DATE: Implementation of the decision will begin July 9, 1988.

ADDRESS: The final environmental impact statement and record of decision, as well as the planning and analysis records, may be reviewed at the Siskiyou National Forest Supervisor's Office, 200 NE Greenfield Road, Grants Pass, Oregon.

Sale implementation records may be reviewed at the Galice Ranger Station in Grants Pass and the Gold Beach Ranger Station in Gold Beach, as well as at the Supervisor's Office.

FOR FURTHER INFORMATION CONTACT: Warren B. Olney, Public Affairs Officer, Siskiyou National Forest, Grants Pass, Oregon 97526, (503) 479-5301.

Dated: July 8, 1988.

Ronald J. McCormick,
Forest Supervisor.

Record of Decision

Silver Fire Recovery Project, Final Environmental Impact Statement

Siskiyou National Forest

Galice and Gold Beach Ranger Districts
Josephine and Curry Counties, Oregon

July 8, 1988.

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I. Introduction

On August 30, 1987, the Silver Fire was started by lightning and burned through approximately 96,500 acres of the Siskiyou National Forest. In the aftermath of the Silver Fire, the Forest Service had to decide if it should leave the burned area to recover naturally, rehabilitate the burned area, and/or provide the opportunity to salvage some or all of the burned trees.

In determining whether to rehabilitate the burned area, additional decisions included how to do so, and which parts of the burned area to rehabilitate. In determining whether to provide the opportunity for salvage, additional decisions included how much timber to salvage, where to salvage, and what type of logging systems to use. In determining whether to implement any action in the burned area, decisions

included whether roads should be built, and if so, where.

Development of mitigation measures and a monitoring plan is also important. Mitigation measures eliminate, avoid or minimize potential impacts of the selected alternative. Monitoring will evaluate the effectiveness of the mitigation measures, as well as the effects of project activities and how well objectives are being met.

In order to assist the Forest Service in making this difficult decision, an Environmental Impact Statement (EIS) has been prepared. This EIS fully discloses the environmental consequences of implementing project options available to the Forest Service. The Draft Environmental Impact Statement (DEIS) was released March 21, 1988. After a public review period lasting until May 8, 1988, a Final Environmental Impact Statement (FEIS) has been prepared. The FEIS describes and analyzes nine alternatives. The FEIS fully discloses information used to decide the type and extent of recovery activities for the area.

Approximately 42,900 acres of the burned area are included in the Silver Fire Recovery Project. Approximately 53,000 acres are in the Kalmiopsis Wilderness and will be left to recover through natural processes. The Forest Service will not undertake any activities within the Kalmiopsis Wilderness. None of the decisions on salvage or rehabilitation apply to the Wilderness.

Land in the Silver Fire Recovery Area is currently managed according to direction in the Rogue-Ilinois Land Management Plan (FEIS, 1979). That direction will be superseded upon approval of the Siskiyou National Forest Land and Resource Management Plan (Forest Plan), which was published in draft form in August 1987. Preparation of the Forest Plan was required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA).

The NFMA allows the Forest Service to continue the management of units of the National Forest System under existing land and resource management plans pending completion of Forest Plans. This decision on the Silver Fire Recovery Project EIS is being made prior to final approval of the Forest Plan. The expected deterioration of the burned timber and its resultant loss in value, as well as the need to accomplish rehabilitation work for soils, watersheds, and fish and wildlife habitat as quickly as possible, make the Silver Fire Recovery Project decision an urgent one that cannot logically be

delayed until the Forest Plan becomes final. The information learned in compiling the Silver Fire Recovery Project EIS will be used in further development of the Forest Plan and FEIS.

An examination of the Rogue-Illinois Land Management Plan and field reconnaissance conducted after the fire disclosed no inconsistencies between land allocations in that plan and activities of the selected alternative. These activities are based on new data gathered after fire dramatically altered the area. This FEIS, therefore, tiers to the Rogue-Illinois Land Management Plan solely for its land allocations. (Refer to FEIS, Chapter I, Section "Need and Purpose.")

The FEIS discloses the environmental effects of all alternatives considered. Some environmental effects are probable with the implementation of any of the action alternatives. These effects are to cultural resources, existing improvements, wilderness, water, vegetation, fire, air quality, wildlife, visuals, recreation, old growth, and roadless values. (For a more detailed discussion of environmental effects of each of the alternatives, see Chapter IV, FEIS.)

II. Decision

Based on the Silver Fire Recovery FEIS, it is my decision to select Alternative I-Modified as the project alternative for the Silver Fire Recovery Project. This Record of Decision documents my selection of the alternative and my rationale for the selection.

The selected alternative is a modification of the preferred alternative, Alternative I, as described in the DEIS. The interdisciplinary team (IDT) modified Alternative I to better reflect public response to the DEIS and management concerns with the issues of water quality and fisheries, recreation/visuals, economics, timber recovery, and road access.

The objectives of Alternative I-Modified is to rehabilitate the burned area outside of the Wilderness. The selected alternative will accomplish this through recovery of burned timber while emphasizing resource protection, especially protection of streams. Project activities are designed to maintain water temperatures and minimize sedimentation in perennial streams.

The selected alternative recovers approximately 157 million board feet (MMBF) of burned timber from approximately 9,500 acres. It constructs approximately 20 miles of new roads. Trees will be planted on approximately

5,720 acres, both in harvested units and in unharvested areas.

The project area is divided into four transportation areas, based on transportation systems. Twelve fire salvage timber sales are located within the transportation area. (For a complete description of Alternative I-Modified, see Chapter II, FEIS.)

Where additional tree mortality occurs as a result of the fire, it is my intent to salvage this material. Incidental and insignificant numbers of fire-killed trees within units would be removed under the timber sale contracts, if still in force. Since site analysis of these stands has been accomplished with the Silver Fire Recovery Project FEIS, the removal of additional mortality will be carried out under that document. This material will only be harvested where site conditions, harvest prescriptions, and environmental standards and mitigations are within the parameters specified in the FEIS.

This decision includes a monitoring plan that will provide information to evaluate project objectives and effects. Information gathered through monitoring will also be used to evaluate the appropriateness and timing of future entries into the recovery area. This plan will also provide the basis for determining the necessity of follow-up rehabilitation measures.

The selected alternative complies with all applicable State and Federal laws and regulations. If preliminary data from monitoring indicates that laws, regulations, or stated objectives are not being met, the project will be modified immediately. Certain measures in the monitoring plan are specifically designed to provide this feedback during on-going operations.

The Silver Fire Recovery Project FEIS is a site specific document. The recovery project includes twelve salvage timber sales and associated roads. Environmental analysis of these sales is complete with this FEIS.

III. Rationale for the Decision

The Forest Service has an obligation to rehabilitate National Forest lands and resources damaged in burned areas outside of designated Wilderness. With full consideration to be given to environmental values, specific management objectives for resource recovery and rehabilitation are to:

- (1) Reforest burned-over areas to ensure watershed and soil quality and to provide for future timber needs.
- (2) Restore watershed and soil values damaged as a result of the fires.
- (3) Restore wildlife and fisheries habitat.

(4) Salvage as much of the burned timber as possible. Salvage is the removal of recently-dead or dying trees to minimize the loss of wood products.

(5) Reduce the potential for insect infestation in adjacent unburned areas.

(6) Reduce accumulation of fuel in the burned areas to reduce future fire hazard.

I am fully aware of the environmental consequences of the alternatives as described in the Silver Fire Recovery Project FEIS. Specific factors which weighed heavily in my selection of Alternative I-Modified as a final recovery plan are discussed below. No single factor determined my choice of alternatives. Alternative I-Modified best addresses a combination of the issues.

One factor is timely salvage of fire-killed timber so the value of this resource will not be lost to the economy, including local counties and the federal government. Fire-killed timber can be expected to deteriorate rapidly after two years (see Appendix A, FEIS). The selected alternative recovers about 60 percent of the fire-killed timber in the project area, with all salvage complete in two years. An accelerated implementation schedule makes this possible. While some alternatives salvage more timber or have shorter timelines, they do not adequately address other issues such as water quality. Some road construction is necessary to recover the timber and carry out other rehabilitation work.

The selected alternative strikes a reasonable balance between the need to reforest unstocked areas and the high cost of planting trees in areas that are not easily accessed. Some lands that are unsuitable for timber management will be reforested to benefit soil stability, improve wildlife habitat, and protect streams from sedimentation. Roads improve the efficiency of reforestation operations.

Equally important is the restoration of the area's capacity to provide fisheries habitat and produce steelhead and salmon in Silver and Indigo Creeks and their tributaries. The selected alternative emphasizes stream protection. Recovery activities have been designed with the objectives of minimizing physical disturbance of streams and leaving as much forest canopy cover as possible.

Based on our analysis, recovery activities will not cause a measureable increase in stream temperatures or measureable impact to beneficial uses through sedimentation. Best Management Practices (BMPs), measure to protect beneficial water uses, were described in detail in developing the I-

Modified alternative. (See Appendix F, FEIS).

In selecting Alternative I-Modified, I also considered the issue of wildlife. The selected alternative provides a mid-range of big game habitat and mature and old-growth habitat. The Bald Mountain Road system will be closed to the public by gate after recovery activities to prevent disturbance of wildlife, as well as to maintain solitude in certain areas and prevent erosion.

There will be no adverse impacts to any Federally listed threatened and/or endangered species or critical habitat as a result of this project. One pair of peregrine falcons was discovered in the project area during field reconnaissance, and after publication of the DEIS. The Forest Service, in consultation with the USDI Fish and Wildlife Service, has established measures to ensure protection of the falcons. These measures are defined in the completed Peregrine Falcon Kalmiopsis Site Management Plan.

Another factor I considered is future site productivity in the project area. Productivity of the forest ecosystem is tied to organic matter and nutrient content of soils. (Refer to Chapter IV, section "Soils," FEIS.) The selected alternative includes measures to protect site productivity from the potential effects of fire and recovery activities. An average of at least 20 pieces per acre of large woody material will be left in harvest areas to protect site productivity. The selected alternative falls in a mid-range of acres harvested. The amount of harvest on higher risk soils was decreased between Alternative I and the selected Alternative I-Modified. Also, use of helicopter logging systems protects site productivity.

The question of the North Kalmiopsis Roadless Area (NKRA) is very important and frequently raised on the Siskiyou National Forest. I have considered the roadless character and controversial history of the entire NKRA by reviewing Appendix C, "Roadless Areas," of the Forest Plan DEIS. This appendix analyzes all roadless areas on the Siskiyou National Forest in a site-specific manner, and is incorporated by reference into the Silver Fire Recovery Project FEIS. I have also reviewed a summary and analysis of the public responses to both the Forest Plan DEIS and the Silver Fire Recovery Project DEIS. I have determined that the need for recovery efforts as described in Alternative I-Modified outweighs the value of maintaining the entire project area in a roadless state.

Ninety-eight percent of the Silver Recovery Project area is included in the

NKRA. The Silver Recovery Project area makes up 38 percent of the NKRA. After the selected alternative is implemented, 83 percent of the NKRA will remain in a roadless state.

A primary attribute of the area is its proximity to the Kalmiopsis Wilderness and the Wild and Scenic Illinois River. The area is largely roadless and, for backcountry users, provides solitude and the feeling of remoteness. This special, remote area of the Siskiyou National Forest holds spiritual and cultural values for some of the individuals who commented on the DEIS. Alternative I-Modified allows for preserving some of the areas important to these individuals.

Primitive and semi-primitive recreation opportunities will be reduced, but motorized recreation opportunities will be created. Trail buffers will be left on the higher use trails. Part of the Silver Peak Trail will be moved to a ridgetop location. One administrative trail to be used in recovery activities has potential as a recreation trail, through connecting the Bald Mountain Trail with Hobson Horn Ridge. A trail will be built along Silver Creek from Old Glory Mine to the confluence of the Illinois River for recreation and rehabilitation work. The west side of Bald Mountain in the lower reach of Silver Creek will remain roadless and largely undisturbed, preserving land allocation options in the Forest planning process.

I determined it necessary to find an optimum combination of helicopter logging and road construction. The helicopter can provide an advantage in speed of salvage, the roads in long-term recovery operations and efficiency of operations. Helicopters, coupled with long-span Skyline logging systems, are an excellent tool in terms of economic returns and reduced environmental impacts. They also allow a lower road density. Helicopters will be used to recover approximately 105 MMBF, or 67 percent of the burned timber to be salvaged.

Increased access into the project area is necessary for reforestation, watershed rehabilitation work, salvage harvest, and fire fighting. While increased access reduces primitive recreation opportunities and changes the roadless character of the project area, it allows for development of new types of roaded recreation, such as hunting and sightseeing. A portion of the roads constructed in the selected alternative will remain available for recreation use. Alternative I-Modified provides a balance between leaving some roads open for recreation and closing some roads to benefit other forest uses.

Another factor in my decision was the visual quality of the project area. The selected alternative includes several features that are favorable for management of the visual resource. The alternative meets the Visual Quality Objectives in the Wild and Scenic Illinois River watershed, retaining visual qualities of the Illinois River canyon as seen from the river.

Current direction in the Rogue-Illinois Land Management Plan classifies this watershed as Management Area 2, with one objective being to "protect and essentially retain the existing natural qualities, including retention of visual qualities of the Illinois River Canyon." In the draft Forest Plan, this area is allocated as a Custodial (Roadless) area, an area in which no timber harvest or road construction activities will occur. The selected alternative meets all current direction (the Rogue-Illinois Land Management Plan) and does not preclude future visual management options in this sensitive watershed as described in the draft Forest Plan.

The cumulative effects for the visual resource do not meet the objectives for visual management in some parts of the project area. However, in areas classified as Retention, (a very restraining Visual Quality Objective), the selected alternative fully meets this visual objective in all watersheds. (Refer to Appendix E, FEIS.) This is an improvement on Alternative I, preferred in the DEIS, which would have resulted in cumulative effects exceeding Retention thresholds in two watersheds. Further measures which will mitigate the impact on the visual resource include selective cutting, leaving of wildlife trees, buffering trails, harvesting by helicopter, and grass seeding of the burned areas.

Another factor that I considered important is conducting recovery activities in an efficient, cost-effective manner. While Alternative I-Modified does not have the highest monetary return, it is among the more economically feasible of the alternatives. And, the attributes necessary to protect the environment are incorporated in its design.

The return on the timber is expected to offset the cost of salvage harvest, road construction, and rehabilitation activities. Some harvest units of low economic return will be made optional for the purchaser. This use of optional units makes the selected alternative more economically attractive, and focuses salvage harvest on units of higher value. The selected alternative provides a reasonable economic return

while meeting the resource objectives of the project.

Alternatives D, H and G have higher present net values (PNVs) than Alternative I-Modified. The PNV is the sum of all costs and benefits of activities in the project area for the next 60 years, discounted back to present time. Alternatives D and G are unacceptable relative to the issues of water quality and fisheries, recreation and visuals, and wildlife. Alternative H rates low under the issue of reforestation, and rates lower than Alternative I-Modified in the important issue of water quality and fisheries. Again, Alternative I-Modified provides a better response to a combination of the issues.

Alternative J is the "environmentally preferable alternative." Environmentally preferable alternative is defined by Council on Environmental Quality (CEQ) regulations as that causing the least damage to the biological and physical environment. Alternative J concentrates on rehabilitation and enhancement of the project area. Alternative J would cause no additional impacts to streams or fish, and reforestation would occur more quickly in selected areas than with a fully natural recovery. I did not select Alternative J because, while this alternative rates high for some issues such as water quality and fisheries, it is unacceptable for other issues such as rapid timber recovery and reforestation. The selected alternative provides a more beneficial blending of all of the issues.

A major on-the-ground effort was made at the beginning of the project to verify existing resource inventories and to determine what changes have occurred because of the fire within the Silver Fire Recovery area. This effort involved a variety of resource disciplines. This updated inventory is the basis of the site specific analysis in the EIS.

I intend to use this updated inventory during the completion of the Forest Plan. An overview of this information indicates that a hard look is needed at the preferred alternative in the Forest Plan DEIS, with specific reference to the lands within the project area. It will be with this in mind that management of the remaining roadless areas will be addressed in the FEIS of the Forest Plan.

The cumulative effects analysis established that the fire caused some damage to streams, watersheds, and fish habitat. (Refer to Appendix B, FEIS.) It is my intention to defer future green timber harvest in the project area fire perimeter until it has recovered from the combined effects of the fire and timber salvage operations. Information

collected during monitoring will be the basis for decisions about future harvesting of green timber.

Responses from the public and from other government agencies weighed heavily in my decision. Opinions were wide-ranging, from "no action" to "salvage as much timber and build as much road as possible." We modified the preferred alternative in several areas because of specific resource information and ideas from individuals, groups, and other agencies. The overall message from the public was to recover the values of the fire-killed timber, but to do so carefully, with full consideration for both the long-term health of the forest environment and economic efficiency.

Alternative I-Modified does the best job of combining all these factors into a plan that makes sense environmentally and economically, and will ultimately speed the Silver Fire area to recovery.

IV. Alternatives

Following the public scoping of issues, field reconnaissance and data collection by the IDT, and the study of existing resource inventories, the process of alternative development began.

Based on available data and direct public involvement, a full range of reasonable alternatives for the Silver Fire Recovery Project area was developed and analyzed in the EIS. Six of the nine alternatives proposed in this FEIS are the outcome of public workshops in which the public and the Forest Service worked together to develop alternatives. Two were developed by the IDT to provide a range of responses to the issues and concerns. Alternative I-Modified was developed between the draft and final stages of the EIS in response to public comment and management concerns. The nine alternatives are briefly described below. (For a more complete discussion of alternative development, see FEIS, chapter II, Section "Alternative Development Process.")

Alternative A—No Action

The No Action Alternative is required by the National Environmental Policy Act and serves as a baseline for comparing other alternatives. There would be no road construction, salvage of fire-killed timber, or rehabilitation activities. The area within the fire perimeter would recover naturally.

Alternative D

The objective of Alternative D is to harvest as much fire-killed timber as quickly as possible. More timber would be logged by helicopter than by skyline cable to eliminate delays created by

extensive road construction. Nearly all of the merchantable dead timber would be harvested with little emphasis on economic efficiencies. About 38 miles of new road would be constructed and an estimated 241 million board feet (MMBF) of timber produced.

Alternative E

Alternative E emphasizes the protection of existing fisheries and water quality. Fire-killed timber would be harvested in a manner consistent with this emphasis. No harvest adjacent to streams on land with high potential for soil movement would occur. Dead and dying trees in high watershed sensitivity areas would not be harvested. Organic matter would be left and reforestation would occur on all lands suitable for timber production and some sites which are not. About nine miles of new roads would be constructed and an estimated 86 MMBF of timber recovered.

Alternative F

The aesthetic and roadless character of the project area and maintenance and enhancement of wildlife habitat capability are emphasized. Visual Quality Objectives of the area would be maintained by precluding timber harvest in certain visually sensitive areas. Cumulative effects would be very low. All understocked lands suitable for timber production would be reforested. Timber harvest near streams would be restricted to maintain streamside habitat. About a half mile of new road would be constructed and an estimated 60 MMBF of timber recovered.

Alternative G

Development of road access for timber management is emphasized. All understocked lands suitable for timber production would be reforested. Unsuitable lands would be replanted where reforestation success is likely. Timber would be logged helicopter during road construction but primarily by skyline cable systems when roads are completed. About 80 miles of new road would be constructed and approximately 212 MMBF of timber recovered.

Alternative H

Economic considerations for maximizing net revenues are emphasized. Only burned timber stands that produce an economic benefit after subtracting the costs of harvesting and road construction would be harvested. About 22 miles of new road would be constructed and an estimated 130 MMBF of timber recovered.

Alternative I

Harvesting timber while emphasizing resource protection is the objective. No timber would be harvested along perennial streams. Moderate amounts of wildlife habitat would be retained on harvested lands. All land suitable for timber production within two miles of roads would be reforested. The Visual Quality Objectives would be maintained on land seen from certain visually sensitive viewpoints. About 21 miles of new road would be constructed and 146 MMBF of timber recovered.

Alternative I-Modified (the Selected Alternative)

This alternative is based on the same objectives as Alternative I, harvesting timber while emphasizing resource protection, but with increased emphasis on protection of streams. Timber volume recovered will be 157 MMBF and approximately 20 miles of new road will be built.

Alternative J

There would be no road construction and no salvage of fire-killed timber. Resource rehabilitation and enhancement projects would be undertaken and much of the area would be reforested.

(For a more complete discussion of the alternatives, see FEIS, Chapter II.)

Other Alternatives Considered

In addition to the alternatives listed above, the IDT evaluated other approaches to managing the project area, but did not consider them in detail. Alternatives B and C were used to provide a range of choices to facilitate public participation. They were dropped from detailed study after suggestions from the public resulted in both being merged with other alternatives. An alternative based on natural regeneration of the project area and one based on "natural selection forest management" were also proposed, but dropped from detailed study.

In developing the I-Modified Alternative, the IDT worked with several variations of Alternative I based on different levels of resource protection and use. These variations are not separate alternatives, but were used as a tool for evaluating responses to public comments and management concern with the issues of water quality, recreation/visuals, economics, timber recovery, and road access.

V. Issues and Resolution

Forest Service scoping of issues included review of the draft Forest Plan, the Rogue-Illinois Land Management

Plan, and the environmental documents and contracts of pertinent timber sales in the area.

In addition, the Forest Service actively solicited public opinion in development of this project. From the thousands of opinions and comments received, eight issues emerged.

The major issues derived during the scoping sessions form the basis for evaluating alternatives for the Silver Fire recovery area. Considerable effort was expended by both the public and the Forest Service to generate a wide range of alternatives. As a result, the response of each alternative to each issue will vary from negligible to the maximum possible.

This section briefly describes the eight issues and summarizes the effects of all alternatives on each major issue. (Refer to Chapter I, FEIS for more discussion of the issues. Refer to Chapter II, FEIS for comparison of the alternatives.)

Issue No. 1—Rapid Timber Recovery

Issue. Because of the deterioration of wood and the potential for insect and disease damage, the volume and quality of burned timber will decline rapidly. Depending on tree size, the loss in volume could range from 35 to 90 percent of the pre-fire merchantable volume and value. Data show that a majority of loss in volume can be expected to occur within two to five years. Figures given depend on the timelines and activities of each alternative.

Resolution: Alternatives G and D provide the largest timber volume recovery. Of the potential salvage volume of 262 MMBF, 81 percent would be recovered under Alternative G, 92 percent under Alternative D. Alternative D recovers more volume than Alternative G because of the greater harvest acreage and early harvesting by helicopter. The additional miles of road and the time required for construction in Alternative G would allow timber to deteriorate, thereby reducing the actual amount of sound salvage volume.

Half of the potential volume, 130 MMBF, is harvested under Alternative H. Alternative I would harvest approximately 6 percent more volume, 146 MMBF, on 36 percent more acreage than Alternative H, with the additional harvest consisting primarily of scattered dead trees. Alternative I-Modified would harvest approximately 8 percent more volume, 157 MMBF, on 21 percent less acreage than Alternative I. Some of the harvest units in Alternative I have lower volumes per acre than some units that were added to Alternative I-Modified, allowing for more volume harvested from fewer acres. Harvesting

more trees from a given area under Alternatives H, I, and I-Modified would recover more timber than Alternatives E or F. Alternative F would recover the least timber volume, 60 MMBF, of the harvest alternatives because of the low number of harvested acres. The "No-action" Alternative A and "rehabilitation only" Alternative J would recover no salvage volume.

Deterioration of fire-killed timber would increase markedly during the second and successive year after the fire. Wood fiber deterioration over time would be influenced by factors such as weather, insects, and disease. The predicted deteriorated net volume is the current net volume shown above minus the volume of deteriorated wood expected at time of harvest.

Issue No. 2—Water Quality and Fisheries

Issue: Fish are considered the primary beneficial use of streams in the project area. In the lower Rogue and Illinois River systems, the primary fish species are Chinook salmon and steelhead. Salmonid habitat is highly sensitive to both natural and human-caused sediment and stream temperature changes. Sediment entering these streams is expected to increase because of the fire. Higher summer temperatures are predicted because of the loss of shading due to the fire. Road building and timber salvage could potentially increase the fire-caused stresses to fish habitat.

Resolution: Alternatives D and G would have the greatest effects on water quality and fisheries. Harvest along Class IV drainages, within areas of high watershed sensitivity, and many miles of road construction would generate considerable sediment, result in decreased pool volume in streams. Use of helicopter logging under Alternatives D and G would avoid some of the adverse effects from cable logging. Alternatives D, G, and H would have identical harvest prescriptions along streamcourses. However, the economic constraints under Alternative H that limit the number of acres harvested would considerably reduce effects on water quality compared to those of Alternatives D and G.

Alternatives A, E, F, and J would retain the most habitat along nonharvested Class III and IV streams. Increased openings along Class III streams and more acres harvested under Alternative I would slightly decrease the quantity and quality of stream-related habitat. Alternative I-Modified will retain more habitat along streams than Alternative I, but less than Alternatives

A, E, F, and J. Based on our analysis, Alternative I-Modified will not increase water temperatures or cause any significant impact on fish.

Issue No. 3—Site Productivity

Issue: Soil erosion, mass wasting, and nutrient cycling affect productivity of the forest environment. Organic matter in wood material contributes to site productivity. There is concern that site productivity may be adversely affected by salvage harvest activities.

Resolution: Alternatives D and G would allow the greatest reduction of total organic matter and therefore could have the greatest effect on site productivity. Minimum numbers of wildlife trees and pieces of large woody debris would remain on the area. Organic matter levels would be 35 percent of pre-fire levels.

Alternative H would result in reduction of total organic matter similar to D and G, but over fewer acres, making its effects less than Alternatives D and G and greater than Alternatives I and I-Modified.

Alternatives I and I-Modified would moderately reduce total organic matter, but would leave enough organic matter to ensure maintenance of site productivity. Organic matter levels would be 45 percent of pre-fire levels under both alternatives.

Of the action alternatives, Alternatives E and F would have the least effect on total organic matter and therefore potential site productivity. Large numbers of trees would be removed in relatively small areas, and losses of organic matter after fuel treatment (slash burning) would be minimal. Organic matter levels would be 60 and 65 percent of pre-fire levels, respectively.

Issue No. 4—Wildlife

Issue: Wildlife populations within the Silver Fire area have been affected to differing degrees by the various fire intensities. There is concern that the alterations of wildlife habitat produced by the fire may be compounded by recovery activities.

Resolution: Alternatives A, F, and J would maintain most of the existing contiguous mature and old-growth stands which meet the needs of species requiring this habitat. Openings created by the fire have improved habitat for big game.

Alternatives E, H, I, and I-Modified would moderately reduce the quality of mature and old-growth stands for wildlife. Big game habitat would be more suitable than before the fire, due to openings created by the fire and by salvage harvest.

Alternatives D and G would considerably reduce the quality of mature and old-growth stands for wildlife because many lightly burned stands would be partially harvested. Big game habitat would be less suitable during the first two years of harvest than before the fire because of the miles of new roads and high levels of logging activity on much of the area.

Other Effects of the Alternatives

Alternatives A, E, F, I, I-Modified, and J would retain many pieces of large woody debris for wildlife species that use this habitat. Alternatives D, G, and H would retain very little large woody debris.

Forest habitat along streams would not be affected by harvest activities under Alternatives A, E, F, and J. Alternatives D and G would impact a large amount of this habitat; Alternative H includes the same prescriptions, but over fewer acres for somewhat less impact. Alternatives I would have a moderate impact. Alternative I-Modified will have a low impact on streamside habitat. As more acres of streamside areas are affected or harvested, protective habitat would be lost, reducing wildlife use in those areas.

All alternatives except D and G are expected to retain enough standing dead trees (snags) to provide high quality snag habitat over time. Alternative D would retain very few dead trees per acre, resulting in a shortage of snags as many fall before replacement snags are available.

Issue No. 5—Reforestation

Issue: NFMA states that all forested lands within the National Forest System are required to maintain a prescribed level of appropriate forest cover, whether conifers or hardwoods. The objective is to secure the maximum benefits of multiple-use sustained yield management in accordance with land management plans. There is concern that the burned area may not be returned to optimum stocking levels because of economic or physical constraints.

Resolution: Alternatives D, E, and G would plant all 7,700 acres "suitable" for timber production. Alternative F would plant 7,280 acres; the conversion of 490 acres of hardwood stands would be foregone to enhance long-term wildlife habitat diversity and visual variety. Suitable lands under Alternatives I, I-Modified, and J that are more than two miles from the nearest road would not be planted, unless harvested, because of the high costs. Alternative J, unlike Alternative I, would not convert hardwood stands to conifers.

Alternative H restricts planting to harvested suitable lands to minimize costs and generate maximum economic returns. Alternative A relies solely on natural regeneration of conifers, and an estimated 1,800 acres would reforest naturally to conifer-dominated stands.

Issue No. 6—Acres Accessed By Road Development

Issue: A developed road system provides access for reforestation, control of competing vegetation, fire protection, and wildlife habitat enhancement. Roaded recreation, hunting, fish and wildlife habitat enhancement, woodcutting, and sightseeing are accommodated by roads.

Resolution: No roads would be constructed in Alternatives A and J. Access would be limited to the existing road network located on the periphery of the Silver Fire Area. Alternative F slightly increases the amount of suitable lands accessible by ground-based logging systems, compared to Alternatives A and J.

Alternative E would construct 9.5 miles of new road, increasing to 21 percent the area within ¼ mile of a road. Ten percent of the suitable lands would be accessible by ground-based logging systems.

Alternatives H and I would construct 22 and 20.5 miles of new road, respectively. Alternative I-Modified would construct 20 miles of new road. The additional road construction in Alternative H does not increase the percentage of road access compared to Alternatives I or I-Modified. All three alternatives access 30 percent of the area within ¼ mile of a road and 15 percent of the suitable lands capable of being logged by ground-based systems.

Alternatives D and G would construct 37.7 and 80.2 miles of new road, respectively. Alternative D would provide more general access to the area, particularly along the east half of the Silver Peak-Hobson Horn ridgeline. Alternative G increases road access to nearly three-quarters of the area (nearly the maximum feasible for timber harvest). Increased access over that provided in Alternative D would include construction of a tie-through road from Hobson Horn to Indigo Prairie along Silver Peak ridge, and completion of roading west across Bald Mountain.

Issue No. 7—Recreation and Visual Resources

Issue: Remoteness and solitude found in the Bald Mountain area and other portions of the Recovery Project area are highly valued by some people. There is concern that increased development

would destroy these qualities and the scenic value of the area.

Resolution: The Recreation Opportunity Spectrum (ROS) identifies possible combinations of recreation activity, setting, and experience ranging from Primitive to Urban. Alternatives A and J do not change the pre-fire ROS inventory; both preserve the existing ROS opportunities. The rehabilitation projects in Alternative J do not change the ROS.

Alternatives D and G would have so many harvest units that the minimum size criterion for the non-roaded classifications would not be met. The entire project area would be classified as Roaded Natural. These alternatives would retain the least amount of acreage classified as non-roaded of all the action alternatives presented.

Alternatives I, E, I-Modified, H, and F would retain increasing amounts of non-roaded acreages, depending on the dispersion of harvest units and the number of roads proposed for construction. Of the alternatives prescribing timber harvest, Alternative F would retain the most non-roaded ROS acres, followed by Alternative H down to the minimum in this group with Alternative I.

For visual resources, the alternatives are compared on the basis of the number of viewsheds exceeding the "Maximum Disturbance Thresholds" for Retention, Partial Retention, and Modification Visual Quality Objectives (VQO). "Maximum Disturbance Threshold" is the visual sum of acreage harvested and roaded, calculated as a percentage for each VQO in each viewshed.

The nine alternatives can be grouped into three broad ranges for comparison. Alternatives D and G would create the greatest visual disturbance; six of the viewsheds would exceed the Retention and Modification threshold; and all nine would exceed the Partial Retention threshold.

In the midrange, Alternative E would exceed the Retention threshold in two viewsheds, and three viewsheds would exceed the Partial Retention and Modification thresholds. Under Alternative H, three viewsheds would exceed the Retention and Modification thresholds, and five would exceed the Partial Retention threshold. Under Alternative I, two viewsheds would exceed the Retention threshold, four would exceed the Partial Retention threshold, and five would exceed the modification threshold. Under Alternative I-Modified, no viewsheds would exceed the Retention threshold, three would exceed the Partial Retention

threshold, and five would exceed the Modification threshold.

Alternative F has one viewshed exceeding the Modification threshold, and Alternatives A and J have no viewsheds that exceed a maximum disturbance threshold.

Issue No. 8—Economics

Issue: The sale of National Forest timber can generate revenues to the U.S. Treasury and county governments. The monetary return from salvage operations is affected by the cost of road construction, the selection of logging systems (i.e. cable logging, helicopter logging), and the rate of deterioration of the burned timber over time. There is concern about whether timber salvaging and land rehabilitation will benefit the Federal, State, and local economies.

Resolution: The three separate analyses for the Economic Issue include net cash value of the project, payments made to counties, and Present Net Value.

Net cash value of the project is the net balance of all the costs of activities and revenues generated from the recovery project. The expected net cash value from a salvage operation ranges from \$6.3 million in Alternative H to—\$3.9 million in Alternative E. The net cash value of the selected alternative is \$1.7 million. Alternative H would generate the most revenue, even though only 118 MMBF of deteriorated net volume would be salvaged, because timber harvest is limited to stands where revenues exceed costs. Net cash value depends primarily on four factors: The amount of volume recovered, the mix of logging systems used to recover the volume, the amount of access provided by roads and the amount of rehabilitation scheduled outside the harvest units. In Alternatives E, F and G, the Federal government would lose money on salvage because timber sale costs are expected to exceed revenues.

The amount of money that the Federal government would share with Oregon counties from the sale of salvaged timber is estimated to range from \$4.6 million in Alternative D to \$0 in Alternatives A and J. This amount will be \$3.3 million with Alternative I-Modified. These revenues will be offset by reductions in timber harvesting on the rest of the Forest.

Of the nine alternatives, Alternative H is expected to produce the highest (\$34) payment per thousand board feet (MBF) to the counties because only those timber stands that produce an economic benefit would be harvested. With the selected alternative, payments will be \$24 per MBF. Under all other

alternatives that harvest timber, payments to the counties are expected to average between \$20 and \$24 per MBF. The difference in payment amount per MBF would be somewhat offset by the higher harvest volumes produced under Alternatives D, G, I, and I-Modified.

The Present Net Value (PNV) is the sum of all costs and benefits of activities in the project area for the next 60 years, discounted back to present time. The PNV would range from around \$35 million in Alternatives E, F, and J to \$45 million in Alternative H. The PNV of the selected alternative is \$41 million. Most of the PNV is attributed to the estimated net value of harvesting the 450 MMBF of live, mature timber on lands suitable for timber production. Harvesting of green (live) timber was assumed to begin in the next decade, and continue over the next 40 to 50 years. The difference in PNV between two groups of alternatives (Alternatives D, G, H, I, and I-Modified versus Alternatives E, F, and J) would be the varying net value of the salvage/rehabilitation project and the amount of roads constructed.

The value assigned to future timber management varies among the alternatives primarily because of the amount of additional future road construction. In alternatives which build roads and salvage timber, the cost of the road system constructed would be partially offset by the value of salvaged timber. Alternative H has the highest PNV because the road construction costs are offset by profitable salvage harvests.

VI. Public Involvement and Response to Public Comment

Because of the history of this area, the Forest Service recognized that fire in the area would intensify debate about its best and most appropriate use. A priority of the Silver Fire Recovery Project has been to involve the public in the decision making process to an unprecedented degree. The Forest Service encouraged public involvement through tours of the fire area; open house informational gathering in Gold Beach, Eugene, Grants, Pass, and Coos Bay; meetings with the forest products industry, environmental groups, and local, State, and Federal government personnel; and workshops at which alternatives were constructed by the public. A full page display ad inviting mail-in comments was placed in newspapers in Medford, Grants Pass, Ashland, Gold Beach, and Brookings. Special efforts were made to contact area industry and environmental groups. Coverage by local television and radio

stations and newspapers provided additional information sharing opportunities. (For more discussion of public involvement in the project planning process, see FEIS, Chapter II, Section "Alternative Development Process.")

The Silver Fire Recovery Project DEIS was released March 21, 1988. The public review period lasted until May 9, 1988. The Siskiyou National Forest received almost 28,000 responses to the DEIS. Responses are individual pieces of mail. Each response contained one or more comments dealing with specific topics.

Public response analysis described what the public had said, as completely and directly as possible. It did not assign any weights or policy recommendations. Decisionmakers need to be aware of all values and opinions expressed. An analysis summary report which states whether public opinion generally favors, does not favor, or is divided on an issue is valuable, because it gives an overall view of the public response. However, public response to the DEIS was not a voting process, and the number of "votes" alone did not prescribe agency decisions.

Responses included original letters and cards, form letters, coupons, petitions, and resolutions. They came from 47 States, the District of Columbia, and the Virgin Islands. The bulk of replies came from Oregon (22,736), followed by California (1,809), and Washington (916).

Form letters and printed post cards made up the majority of responses. A form letter released by Southern Oregon Timber Industries Association (SOTIA), promoting salvage of burned timber, made up the largest group of a single type of form letter. Form letters in support of a Siskiyou National Park also made up a large group.

Numerous comments requested that the EIS analyze an alternative which included a National Park containing part or all of the fire area. Some respondents requested that the selected alternative not preclude the option of designating a park in this area in the future. The establishment of a National Park is a land allocation issue which is outside the scope of this project EIS. The maintenance of present conditions was considered and fully analyzed in Alternatives A and J. The selected alternative does not preclude the establishment of a park, by Congressional action, on the Siskiyou National Forest at a future time.

Many respondents expressed the conviction that the volume of fire-killed timber salvaged in this project should be offset by a reduction of green timber volume harvested on the Forest. Existing

resource management plans do not make a distinction between fire-killed and green timber in calculating the maximum amount that can be sold during a period of time. Consequently, the salvage timber will be included in the calculations. The sell volume in Alternative I-Modified is consistent with current resource plans.

About 36,000 comments were made about the alternatives described in the DEIS. Each of the alternatives drew some comments. The largest group expressing support for a particular alternative favored Alternative J (7,593). Comments in support of the DEIS preferred alternative, Alternative I, totalled 125; those against totalled 1,259. Comments totalling 19,049 were made in support of "Operation Silver Forest," a maximum-salvage proposal promoted by SOTIA and included in their form letter.

Reforestation was the issue which elicited the largest number of comments (34,918). About 97% of these were on SOTIA form letters and favored planting and managing the area for timber production.

Comments totalling 24,120 addressed the issue of recreation. About 79% of these were on SOTIA form letters and supported development of the area's recreation potential. About 19% favored maintaining the area's primitive character.

The question of salvage harvest drew 22,756 comments. Of these, 15,167 were on SOTIA form letters and read, "Maximize salvage of fire-killed timber." Comments totalling 4,459 voiced disapproval of any salvage of fire-killed timber.

Comments about the issue of water quality/fisheries totalled 20,494. Concerns ranged from a general consideration of the resource to specific concerns with things such as anadromous fisheries and water temperature.

A total of 15,121 comments, on SOTIA form letters, indicated support for road construction in the project area. Reasons given included access for salvage harvest, future fire protection, and recreation opportunities. A total of 4,800 comments opposed road construction for salvage harvest; a total of 437 opposed road construction for various other reasons.

The Oregon State Department of Environmental Quality (DEQ) expressed several concerns about streams and watersheds. These concerns dealt specifically with stream sedimentation, the difference between resource impacts caused by the fire and those caused by post-fire recovery activities, stream turbidity, and temperature changes.

In developing Alternative I-Modified, the IDT considered the State's comments, as well as concerns expressed by members of the public and Forest Service management personnel. The IDT consulted both the State and the Federal Environmental Protection Agency (EPA) on watershed management questions.

The EIS was revised to reflect the comments received from the public and other agencies. Changes made between the draft and final stages of the EIS include those discussed below.

Illinois Wild and Scenic River. Many comments expressed concern about potential impacts of recovery activities of the Illinois River. As a result, the FEIS contains expanded discussion about this. Recovery activities will not be injurious to beneficial uses, such as recreation or fisheries.

Antidegradation Policy. The antidegradation policy is part of EPA regulations for implementing the Clean Water Act. The FEIS includes a discussion of how this policy relates to the project.

Turbidity. The FEIS addresses turbidity directly as a water quality parameter and standard separate from sedimentation.

Water Temperature Increases. Based on our analysis, the selected alternative will not cause any measurable water temperature increases. The FEIS contains expanded discussion on this question.

Best Management Practices. BMPs are measures to protect beneficial uses of water. The FEIS includes Appendix F which specifies BMPs for this project.

Monitoring. The FEIS includes Appendix G which describes the monitoring plan that will be used to evaluate effectiveness of mitigation measures and how well project objectives are met.

Public Participation. Chapter V, Public Participation, which discusses public involvement after publication of the DEIS, has been added.

(For more information on public comments on the DEIS and Forest Service response to these comments, see FEIS, Chapter V.)

VII. Mitigation and Monitoring Mitigation Measures

Mitigation measures are defined as actions taken to avoid, minimize, reduce, eliminate, or rectify the impacts of recovery activities. The measures described in the FEIS, Chapter II are adopted as part of my decision. All practicable means to avoid or minimize environmental harm from the selected

alternative have been adopted. Important measures are summarized below. For a more complete overview of the project mitigation measures, see the accompanying table, "Summary of Mitigation Effectiveness."

—**Streams.** Several mitigation measures will be used to minimize physical disturbance of streams and to retain as much forest canopy cover as possible. "No cut" buffer zones varying from approximately 150 to 200 feet will be left on each side of larger streams (Class I, II, and III). Class IV seasonal streams, which are dry during the summer, will be protected by leaving some trees in and around the stream banks and slopes. Fire downed trees would be anchored in some larger streams to retain instream logs and maintain existing pool cover. To maintain large woody debris in streams, contract provisions will be used to allow for evaluation of logs in creeks rather than require their removal. Check dams will be constructed across some smaller streams to maintain channel stability and reduce sediment transport. Seedlings will be planted in some riparian areas to improve stream shading, bank stability, and erosion control.

—**Wildlife.** Habitat for snag and cavity dependent wildlife will be managed according to the current "Forest Snag (Wildlife Tree) Guidelines." An average of at least five standing live or dead trees per acre will be left. In areas that have low amounts of large woody material, an average of seven trees per acre will be left. All trees will be left within meadow complexes. Tree topping or girdling and bird boxes will be used to improve cavity nester habitat. Special wildlife sites will have site specific timber marking

to reduce the impact of timber salvage on wildlife. Selected roads will be closed after initial activities to prevent disturbance to wildlife.

—**Supplemental Fisheries/Watershed Areas.** These areas extend ½ mile on each side of the main stem of Indigo and Silver Creeks. Most of these lands maintain mature and old-growth forest characteristics and are important for various resource values. There will be no harvest in any of these areas; however, some areas left in an unstocked condition due to the fire will be planted.

—**Site Productivity.** An average of at least 20 pieces per acre of large woody material will be left in harvest areas.

—**Reforestation.** All salvage harvest areas on suitable ground will be planted. Unstocked lands which are suitable for the production of timber and within two miles of a road will be planted, whether harvested or not. Natural regeneration of conifers is expected to occur in some unplanted areas. Regeneration of hardwood trees and shrubs is expected on most forested lands within the project area.

—**Erosion Control.** Erosion control measures, such as seeding with grasses and water channeling, will be used to reduce soil movement from road cut and fill slopes and in timber harvest areas where necessary. Rock will be used on roads to minimize surface erosion during storms and winter haul. Some trees will be contour felled to control erosion in selected areas which were intensely burned.

—**Trails.** Roads and trails will be closed when necessary for public safety. Trails scheduled to remain open after activities will be protected with clauses in the timber sale contracts. Trail maintenance will remove hazard

trees and rehabilitate fire-related damage.

—**Visuals.** Exterior boundaries of salvage harvest units will be adjusted to create irregular, natural appearing forms. Road cut and fill slopes will be revegetated to reduce visual contrasts. A "no-cut" buffer varying in width from 100 to 300 feet will be left adjacent to the Hobson Horn-Silver Peak Trail and a 300 foot wide buffer will be left adjacent to the Illinois River Trail to minimize impacts to visual quality. Slash will be hand piled within 100 feet of the Hardscrabble and Lazy Creek Trails.

—**Port-Orford Cedar Root Disease (*Phytophthora lateralis*).** The objective is to prevent the import of the disease into uninfected areas containing Port-Orford cedar. Due to the accelerated schedule of this project, log trucks will be hauling outside of the normal operating season, during wet weather. At these times, log trucks and other equipment using Road 2512 will be washed to prevent spores from being transported when moving into uninfected areas containing Port-Orford cedar. In one stand along Road 2800.065, Port-Orford cedar will be removed from areas adjacent to the road to reduce the chance of introducing the disease.

Standard Contract Provisions. Standard provisions will be used in timber sale and road construction contracts to protect mining claim improvements; important cultural resources; threatened, endangered, and sensitive plant and wildlife species; and survey monuments and corner locations. (For a more complete discussion of mitigation measures, see FEIS, Chapter II, Chapter IV.)

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Summary of Mitigation Effectiveness

Mitigation /1	Environmental Factor /2	Ability to Implement Action /3	Effectiveness of Mitigation on Site Specific Treatment Areas/4	Estimated Area /5	Effectiveness of Mitigation on Project Area /6
Reforest Suitable Lands	1,3,4,5,6	H	H	7110 Acres	H
SMU Prescriptions (water temperature) Class I & II & III & IV	3,4,5,6	H	H	870 Acres	H
Unsuitable Lands Prescription TML	1,3,4,5	M	M	430 Acres	M
Designated Old Growth Habitat Prescription	2,3,6	H	H	3,000 Acres	H
Meadow, Outcrop, Cliff Prescription	2,3,6	H	H	Approximately 30 Acres	H
Peregrine Falcon Protection	1,2,3,6,7	H	H	4,400 Acres	H
Wildlife Trees Retained	1,3,4,6,7	H	H	5/7 per Acre on 5,319 Acres	H
Large Woody Material Retained	1,3,4,7	H	M	Approximately 5,319 Acres 20 pieces/acre	M
Recreation Trails A Buffer B Relocation	3,6,7 3,6,7	M H	M H	20 Miles 2 Miles	M H
SMU Replanting (Class I-IV)	1,3,4,5,6	H	H	243 Acres	M
SRA Planting	3,4,5,6	M	M	48 Acres	L
TMU Planting	3,4,5	M	M	500 Acres	L
Class IV Checkdams	4,5	M	M	160 Check dams	L
Erosion Control (roads)	3,4,5,6	H	H	Cutbank Approximately 18 Acres, 20 Miles Road	M
Contour Felling in High Sensitivity Watersheds	4,5,6	M	M	10 Acres	L
Road Closure After Salvage	1,2,3,4,5,6,7	H	H	15 barriers (close 14 of 20 miles)	H
Road and Trail Closure During Salvage	3,6	H	M	Road=20 Miles Trail=20 Miles	M
Trail Protection and Maintenance	6,7	H	M	20 Miles	M
Cavity Nester Enhancement	3	H	H	Approximately 200 Struct	H
POC Root Rot Disease Prevention	1	H	H	42,910 Acres	H
Irregular Harvest Boundaries	1,5,6	H	H	5,319 Acres	M
Slash Piled Away From Trails	6,7	H	M	20 Miles	M
Cultural Resource/Geographic Inventory	1,3,6,7	M	H	42,910 Acres	H
Sensitive Plant Protection	2	M	H	42,910 Acres	H
Road Construction a) Surfacing & Flipping b) Culverts & Drainage Systems	4,5 4,5	H H	H H	20.0 Miles 50% Larger Structures	H H
c) Embankments d) Stream Crossings e) Debris Disposal	4,5,6 4,5 4,5,6	H H H	H H H	Planting 11 Crossings Burn	M M M
Fish Habitat Structure	5	H	H	Approximately 440 Structures	H

Road/Landing Location Geology/Geotech Review	2,4,5,6	H	H	20.0 Miles	H
New Trail (Administrative) Construction	1,3,6,7	H	M	40 Miles	M
Site Productivity a) LWM Prescription with YLM b) Prescribed Burn	1,3,4,5,7 1,4,5,6,7	M M	M M	Approximately 700 Acres	M M
Operating Periods a) Pioneer Roads and Road Construction c) Timber Harvest	4,5 1,3,4,5	H H	H M	20 Miles 9,474 Acres	M M
Servicing and Refueling of Equipment	5,7	H	H	Sites by Site	H
Water Source Development	3,7	H	H	Two Sources	L
Road Maintenance	1,4,5,7	H	H	20.0 Miles	H
Timber Sale Planning	1,2,3,6,7	H	H	42,910 Acres	H
Emergency Watershed Rehabilitation	3,4,5,6	M	M	6,700 Acres	M
Cumulative Off-Site Watershed Effects	1,4,5	H	M	42,910	M
Timber Sale Unit Design a) Erosion Potential Evaluation b) Sale Area Maps for Water Quality c) Logging System Design	1,4,5 1,2,3,4,5,6,7 3,4,5,6,7	H H M	H H H	9,474 Acres 9,474 Acres 9,474 Acres	M H H

1/ Mitigation technique to be implemented

2/ Environmental factors that would be benefited by the mitigation.

Environmental Factors

1. Vegetation
2. T, E & S
3. Wildlife
4. Soil and Geology
5. Water Quality and Fisheries
6. Visuals and Recreation
7. Fuels

3/ Ability to implement the mitigation as planned. High (H) represents an "almost certain" ability to be implemented. Moderate (M) denotes a "greater than 75% certainty" that the mitigation will be implemented as planned. Low (L) denotes a "less than 75%" ability to implement the mitigation as planned.

4/ Effectiveness of the mitigation on the local area where the mitigation is implemented.

Effectiveness

- H - High
M - Moderate
L - Low
U - Undetermined

5/ Degree to which the mitigation will be implemented described in acres or miles.

6/ The effectiveness of the mitigation to impact the analysis on a project level.

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Monitoring Plan

Monitoring is the evaluation of project implementation to determine how well objectives are being met, as well as determine the effects of project implementation on the environment. The Forest Service will monitor this project during and after its implementation to ensure that objectives are being met and to gather research data. Information gathered in the monitoring plan will also be used to gauge appropriateness and timing of any future entires and necessity of follow-up rehabilitation measures. Monitoring methods include surveillance, sampling, and measurement.

If preliminary data from monitoring indicates that laws, regulations, or stated objectives are not being met, the project will be modified immediately. Certain measures in the monitoring plan are specifically designed to provide this feedback during on-going operations.

The monitoring plan addresses five basic topics:

Implementation: Was the project completed according to plans?

Effectiveness: Did the mitigation measures accomplish what was expected?

Validation: Were assumptions about resource effects accurate?

Research: Is there something special about this project that could add to our general knowledge?

Inventory: Is there an opportunity to expand or update our resource database?

Following is a summary of the monitoring and research plan. (For a more complete discussion of the monitoring plan, see FEIS, Appendix G.)

Rapid Timber Recovery

Inventory timber in fire areas to gather data on deterioration and felling breakage in fire-killed timber. Inventory break beetle damage in fire areas to gather data on post-fire insect mortality.

Water Quality and Fisheries

Measure changes in stream temperatures, flow and turbidity. Examine stream channels for structural changes. Determine changes in fish populations and habitat. Check width of stream buffers and evaluate their effectiveness.

Measure changes in landslide rates. Check landing, road building, and logging practices to ensure that streams are protected as described in prescriptions.

Site Productivity

Evaluate changes in vegetation, soil, and woody material in burned areas both with and without recovery

activities. Gather information to use in managing the burned ecosystem and determine whether we have maintained site productivity in harvest units.

Wildlife

Evaluate occupancy and suitability of designated old-growth habitat areas to ensure that they are adequate. Verify that prescriptions were followed in leaving special wildlife site buffers and wildlife trees.

Monitor peregrine falcon pair in area to ensure they are not disturbed by harvest activity.

Reforestation

Pre-planting stand exams are in progress. Post-salvage planting will begin in spring of 1989. Establish new stands within five years of harvest.

Recreation and Visuals

Evaluate changes in viewsheds over time. Verify that trail buffer prescriptions were followed. Evaluate whether or not the prescriptions met objectives.

VIII. Implementation

The project is divided into four transportation areas, based on transportation systems, and includes twelve separate timber sales. Specific locations and details are available in the sale implementation records at the Galice and Gold Beach Ranger Districts and at the Siskiyou National Forest Supervisor's Office.

Some salvage harvest units, totaling approximately 3000 acres, are being offered as optional units. These are units of low economic return. All would be helicopter yarded and generally have long flight distances and low volumes. They can be included in harvest activities by agreement with the Forest Service if the sale purchaser so wishes. The optional units would be paid for at current contract rates and would be subject to the same contract provisions as other units.

The analysis of all environmental effects includes the effects of harvesting these optional units. Two economic analysis were completed, one with the optional units, and one without. The estimated total volume of all sales is 157 MMBF with the optional units and 145 MMBF without. Estimated acres and volume to be harvested are listed in the accompanying table. All figures have been rounded and are approximate.

The Forest Service has continued survey, design, and field layout work on the Silver Fire Recovery Project while making the choice of a selected alternative. No permanent, on-the-ground changes were made during this

period. Most of the work consisted of such tasks as flagging boundaries and surveying road locations.

This work was done with the full knowledge that some or all of it might not be used. Due to the urgency of recovery operations, it was not feasible to interrupt field work until selection of the alternative documented in this Record of Decision was made.

As actual field layout of salvage sales progressed, there was some additional refinement of resource data. Layout of some units and roads was adjusted where needed, in order to reduce the environmental effects of activities. Although there may be slight discrepancies between actual unit boundaries and the selected alternative maps, all of the actual layout on the ground is within the area for which site specific analysis was done in the FEIS.

The extension of the Bald Mountain Road is essential to this project. This extension provides access to portions of the Chinaman Hat and North Silver transportation areas, in addition to the Bald Mountain transportation area, for rehabilitation and salvage harvest. In the selected alternative, several roads feed into the Bald Mountain Road. Only a portion of the Bald Mountain Road itself is part of an individual salvage sale. Completion of this road is critical if Alternative I-Modified is to be implemented as planned. For these reasons, a public works contract will be awarded for construction of this road. All other roads will be built as part of individual timber sale contracts.

The public works contract has already been advertised in trade journals, and bids will be opened June 28, 1988. The Forest Service expected to award the contract by July 11, 1988. Due to the urgency of completing this road, preparation of contract documents was begun before the final selection of an alternative. Again, this was with the full knowledge that some or all of the contracts preparation work might not be used.

The Forest Service expects construction to begin in the Bald Mountain Road in July, 1988. The required completion date is October, 1988.

Due to the urgency of the Silver Fire Recovery Project, implementation will begin in July, 1988 and continue as follows:

Auction for public works contract: June, 1988

Award of public works contract:

Estimated July, 1988

Start Bald Mountain Road construction: Estimated July, 1988.

Auction of the 12 timber sales included in the project: July 11, 12, 13, 14; 1988
Timber sale contract award: Estimated August, 1988

Start timber sale road construction: Estimated August, 1988

Begin cutting of timber: Estimated August, 1988

Finish all project road construction: By October, 1988

Finish hauling logs: By December, 1988

Planting: Spring, 1988 through spring, 1991.

Some planting was done in spring of 1988 within the burn. The remaining

planting schedule depends on the progress of recovery activities and the availability of seedlings.

All dates in the implementation schedule are subject to change.

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Salvage Harvest Acres and Volumes

Bald Mountain Transportation Area:

FIRE SALVAGE SALE NAME	INCLUDED ACRES	OPTIONAL ACRES	INCLUDED VOLUME (MBF)	OPTIONAL VOLUME (MBF)
North Face	600	200	19,100	2,500
Silver Fork	800	200	16,900	3,600
Silver Spoon	400	0	14,500	0
Top	100	0	7,300	0
Total	1,900	400	57,800	6,100
Grand Total	Acres: 2,300		Volume: 63,900	

Chinaman Hat Transportation Area:

FIRE SALVAGE SALE NAME	INCLUDED ACRES	OPTIONAL ACRES	INCLUDED VOLUME (MBF)	OPTIONAL VOLUME (MBF)
Black Hat	600	100	9,500	100
Old Glory	100	400	1,000	300
Total	700	500	10,500	400
Grand Total	Acres: 1,200		Volume: 10,900	

Indigo Transportation Area:

FIRE SALVAGE SALE NAME	INCLUDED ACRES	OPTIONAL ACRES	INCLUDED VOLUME (MBF)	OPTIONAL VOLUME (MBF)
Blue Indigo	200	200	5,700	2,000
Deep Purple	300	700	19,700	700
Hardscrabble	200	0	10,200	0
Total	700	900	35,600	2,700
Grand Total	Acres: 1,600		Volume: 38,300	

North Silver Transportation Area:

FIRE SALVAGE SALE NAME	INCLUDED ACRES	OPTIONAL ACRES	INCLUDED VOLUME (MBF)	OPTIONAL VOLUME (MBF)
Lazy	900	100	18,600	500
Silver Hog	1,500	1,000	14,100	1,500
Sugar Mountain	600	300	8,500	500
Total	3,000	1,400	41,200	2,500
Grand Total	Acres: 4,400		Volume: 43,700	
PROJECT TOTAL	ACRES: 9,500		VOLUME: 157,000	

All figures have been rounded and are approximate.

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IX. Appeal Rights

This decision is subject to appeal pursuant to 36 CFR 211.16 (published in 53 FR 17029, Friday, May 13, 1988). Notice of appeal must be in writing and submitted to the reviewing officer: James F. Torrence, Regional Forester, UDSA Forest Service, Pacific Northwest Region, 319 SW Pine, PO Box 3623, Portland, OR 97204-3623.

The notice of appeal must be filed within 30 days of the date of this decision. An appeal will not automatically stop implementation. A stay, if granted, stops initial implementation of the decision while appeal is considered on its merits. A request for stay must accompany the notice of appeal, and a copy must be simultaneously provided to the Forest Supervisor.

Under 40 CFR 1506.10, a 30 day review period is required after publication of the FEIS before a decision can be made on the proposed action. The EPA has granted a waiver of this 30 day requirement under § 1506.10, which states "an exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal." Richard E. Sanderson of the EPA, in explaining his decision to grant the waiver, states, "Based upon the outstanding job that your agency has done to encourage public participation in your decision-making process, and the existence of a formal Forest Service appeal process, I believe that a 30 day wait period is unnecessary in this case and that adequate safeguards for the public to participate in the full NEPA process are in place."

Date: July 8, 1988.
Ronald J. McCormick,
Forest Supervisor, Siskiyou National Forest.
[FR Doc. 88-15612 Filed 7-12-88; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

(C-614-501)

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Preliminary Results of Countervailing Duty Administration Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand. We preliminarily determine the total bounty or grant to be 2.42 percent *ad valorem* for the period August 1, 1986 through July 31, 1987.

EFFECTIVE DATE: July 13, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 46637) the final results of its last administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 31638, August 5, 1985). On August 20, 1987, the respondent, McKechnie Bros. (N.Z.) Ltd., requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on September 21, 1987 (52 FR 35486). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we are providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may

contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments on New Zealand low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. The chemical composition of the products under investigation is defined by Copper Development Association standards 680 and 681. Such merchandise is currently classifiable under items 612.6205, 612.7220 and 653.1500 of the TSUSA. These products are currently classifiable under HS item numbers 7407.2150, 7408.2100, 8311.3080 and 8311.9000.

The review covers the period August 1, 1986 through July 31, 1987 and 17 programs. McKechnie Metal Products Limited ("MMP") was the only known exporter of low-fuming brazing copper rod and wire ("LFB") to the United States during the period of review.

Analysis of Programs

(1) EMDTI

Under the Export Market Development Taxation Incentive ("EMDTI"), established in the 1970 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets, and obtaining market information. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because this tax credit is limited to exporters, we preliminarily determine that it confers a bounty or grant. MMP claimed a 67.5 percent EMDTI tax credit on LFB exports to the United States on its tax return filed in the review period.

To calculate the benefit, we compared the difference in the tax liability between claiming 67.5 percent of the expenditures as a tax credit and deducting those expenditures as ordinary business expenses. The normal corporate tax rate in New Zealand in the period covered by the tax return filed during the review period was 45 percent. Since exporters may claim a tax credit of 67.5 percent but may not deduct the expenditures in calculating taxable income, the net benefit to the exporters is 22.5 percent of the qualifying expenditures.

Therefore, we took 22.5 percent of MMP's qualifying expenditures relating to LFB exports to the United States and allocated that amount over the f.o.b. value of exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.14 percent *ad valorem* for the period August 1, 1986 through July 31, 1987.

(2) EPTI

Under the Export Performance Taxation Incentive ("EPTI"), exporters are entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under section 156A of the Income Tax Act of 1976. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the taxpayer receives the difference in cash.

The rate of the tax credit depends on the predetermined value-added category into which the product falls. LFB falls under category C, for which the corresponding rate was 2.275 percent in the period of review. The amount of the tax credit is calculated by multiplying that rate by the f.o.b. value of exports. Because this tax credit is limited to exporters, we preliminarily determine that it confers a bounty or grant. MMP claimed EPTI tax credits on LFB exports to the United States in the review period.

EPTI tax benefits are earned on a sale-by-sale basis at uniform tax credit rates established for specific years. Because a firm can precisely calculate its EPTI benefit for each export sale at the moment the sale is made and because this credit is not subject to change depending on the firm's ultimate tax liability, we calculate the benefit from this program on a credit-as-earned basis. Using the EPTI rate applicable to LFB exports made during the period of review, we preliminarily determine the benefit from this program to be 2.275 percent *ad valorem* for the period August 1, 1986 through July 31, 1987.

Because the New Zealand government reduced the EPTI tax credit rate to zero in the tax year ending March 31, 1986, we preliminarily determine, for purposes of cash deposits of estimated countervailing duties, the benefit from this program to be zero.

(3) Other Programs

We also examined the following programs and preliminarily determine that MMP did not use them during the review period:

- (a) Increased Exports Taxation Incentive;
- (b) Regional Investment Allowance;

- (c) Export Investment Allowance;
- (d) Industrial Development Plan Investment Allowance;
- (e) Export Programme Grant Scheme;
- (f) Export Programme Suspensory Loan Scheme;
- (g) Export Credits from the Development Finance Corporation;
- (h) Export Suspensory Loans;
- (i) Regional Development Investment Incentives;
- (j) Research and Development Assistance;
- (k) Exemption from Import Duties and Sales Taxes;
- (l) Export Production Assistance Scheme;
- (m) Export Promotion from the Export-Import Corporation;
- (n) Flexible Incentives Under the Investment Unit of the Department of Trade and Industry; and
- (o) Regional Development Investment Grant Scheme.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 2.42 percent *ad valorem* for the period August 1, 1986 through July 31, 1987.

The Department intends to instruct the Customs Service to assess countervailing duties of 2.42 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after August 1, 1986 and on or before July 31, 1987.

The termination of the EPTI tax program reduces the total estimated bounty or grant to 0.14 percent *ad valorem*, a rate we consider to be *de minimis*. Therefore, the Department will instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in

any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,
Assistant Secretary, Import Administration.
Date: July 7, 1988.
[FR Doc. 88-15698 Filed 7-12-88; 8:45 am]
BILLING CODE 3510-05-3

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.
The Western Pacific Fishery Management Council's Pelagics Fishery Plan Monitoring Team will convene a public meeting on July 18, 1988, at 1:30 p.m., at the Council's office (address below), to focus on the fishery management plan for pelagic species in the Western Pacific Region. Agenda items include review of the modules for the first Annual Report of the Western Pacific Pelagics Fishery for 1987, data and research needs, and discussion of other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Date: July 7, 1988.
Ann D. TerBush,
Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 88-15690 Filed 7-12-88; 8:45 am]
BILLING CODE 3510-22-3

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Committee on Fishery Rights of Indigenous People and the External Affairs Committee of the Office of Hawaiian Affairs will convene a joint public meeting on July 15, 1988, at 10 a.m., at the Western Pacific Council's office (address below). The Chairmen of the joint committees will review proposals for the native fishing rights project for Hawaii.

The proposals are for studies to develop evidence for the examination of legal bases to grant preferential treatment to native Hawaiian fishermen under a limited entry management regime for the bottomfish fishery in the Northwest Hawaiian Islands and for other Exclusive Economic Zone fisheries. It is anticipated that the Chairman will make a recommendation at this meeting to the Western Pacific Council for awarding a contract.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Date: July 11, 1988.
Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 88-15908 Filed 7-11-88; 5:05 pm]
BILLING CODE 3510-22-3

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the Federal Register a proposal of the Coffee, Sugar & Cocoa Exchange ("CSCE") for designation as a futures contract market in the International Market Index. The Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before July 28, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CSCE International Market Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading

Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: On October 22, 1987, the Commission published in the Federal Register, for a 60-day comment period, a notice of availability of the CSCE's proposed terms and conditions for the International Market Index futures contract (52 FR 39555). On February 5 and April 22, 1988, the Commission republished in the Federal Register, for 30-day comment periods, notices of the availability of the terms and conditions of this proposed contract (53 FR 3420 and 53 FR 13310). In a July 6, 1988 letter to the Commission, the CSCE requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have the opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CSCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CSCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on July 7 1988.
Paula A. Tosini,
Director, Division of Economic Analysis.
[FR Doc. 88-15951 Filed 7-12-88; 8:45 am]
BILLING CODE 3351-01-3

DEPARTMENT OF DEFENSE

Advisory Council on Dependents' Education; Meeting

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary, DOD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education. It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the DoDDS coordinator.

DATE: August 5, 1988, 9:30 a.m. to 5 p.m.; August 6, 1988, 9 a.m. to 4:30 p.m.

ADDRESS:
August 5, 1988, The Pentagon, Room 3E369, Washington, DC
August 6, 1988, Embassy Suites, Adams Morgan Room, 1402 South Eads Street, Arlington, VA.

FOR FURTHER INFORMATION, CONTACT: Ms. Marilyn Witcher, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331-1100 (202/325-0867).

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under Title XIV, section 1411, of Pub. L. 95-561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)-(5), of Pub. L. 98-145, Department of Defense Authorization Act of 1986 (20 U.S.C., Chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employees organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes information on weighted grades

in relationship to honors and advance placement courses; grouping of DoDDS students for National Merit Scholarship judging; school bus safety; staff development; programs to combat teenage alcohol abuse; Talented and Gifted program; and responses to the recommendations made by the Council in its April meeting.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 8, 1988.

[FR Doc. 88-15735 Filed 7-12-88; 8:45 am]

BILLING CODE 5010-01-M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee, Correction

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Correction to publication of changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing a correction to the Civilian Personnel Per Diem Bulletin Number 143, previously published in the Federal Register, Vol. 53, No. 63, pages 10555 and 10556, effective 1 April 1988. The corrected bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 143 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: April 1, 1988.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the corrected Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 143 to the Heads of the Executive Departments and Establishments.

Subject: Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico

and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 142 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak *	\$25
Anaktuvuk Pass	140
Anchorage	125
Aqtasuk	215
*Barrow	145
*Bethel	127
Bettles	110
Cold Bay	120
Coldfoot	122
*College	114
*Cordova	130
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
*Eielson AFB	114
Elmendorf	125
*Fairbanks	114
Fl. Richardson	125
*Fl. Wainwright	114
Homer	115
*Juneau	114
Katmai National Park	148
*Kenai	119
*Ketchikan	111
King Salmon *	134
Kodiak	118
*Kotzebue *	143
Kuparuk Offield	127
*Murphy Dome *	114
*Nostak	143
Nome	125
*Noorvik	143
*Petersburg	111
Point Hope	180
Point Lay	175
Prudhoe Bay	113
St. Paul Island	115
Sand Point	103
*Seward	122
Shemya AFB *	30
*Sitka	143
*Sitka-Mt. Edgecombe	111

Locality	Maximum rate
*Skagway	111
Spence Cape	118
St. Mary's	100
Tanana	129
*Tok	109
Umiat	160
Unalakleet	105
Valdez	147
Wainwright	165
Walker Lake	136
*Wrangell	111
Yatutut	110
All Other Localities *	91
American Samoa	81
Guam M. I.	96
Hawaii:	
Hawaii, Island of	
Hilo	86
Other	88
Kauai, Island of	
12-20-3-31	127
4-1-12-19	91
Oahu, Island of	102
All Other Islands	88
Johnston Atoll *	23
Midway Islands *	13
Northern Mariana Islands:	
Rota	76
Saipan	92
Tinian	68
All Other Islands	20
Puerto Rico:	
Bayamon	
12-16-5-15	134
5-16-12-15	107
Carolina	
12-16-5-15	134
5-16-12-15	107
Fajardo (Including Luquillo):	
12-16-5-15	134
5-16-12-15	107
Fl. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16-5-15	134
5-16-12-15	107
Roosevelt Roads:	
12-16-5-15	134
5-16-12-15	107
Sabana Seca:	
12-16-5-15	134
5-16-12-15	107
San Juan (Including San Juan Coast Guard Units):	
12-16-5-15	134
5-16-12-15	107
All Other Localities	107
Virgin Islands of U.S.:	
12-1-4-30	180
5-1-11-30	144
Wake Island *	20
All Other Localities	20

* Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of \$60 is prescribed to cover the costs of lodging, meals and incidental expenses.

* Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

* On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of \$13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof,

Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatiana and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by \$4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

* On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of \$34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by \$10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 29, 1988.

[FR Doc. 88-15630 Filed 7-12-88; 8:45 am]

BILLING CODE 5010-01-M

Department of the Army

Availability of the Draft Environmental Impact Statement for Army Family Housing Construction at Helemano Military Reservation, City & County of Honolulu, HI

July 8, 1988.

AGENCY: Department of the Army, DoD.

BACKGROUND: Operating under the U.S. Army Support Command, Hawaii (USASCH), the Directorate of Oahu Consolidated Family Housing (OCFHO) is responsible for the management, operation, and maintenance of all 18,968 military (Army, Air Force, Marine, and Navy) family housing units on the Island of Oahu (City & County of Honolulu), Hawaii. In the middle 1980s, OCFHO determined there was a need to provide additional family housing units due to housing costs which were among the highest in the U.S. and vacancy rates which were far below the U.S. norm. In 1987, OCFHO determined a long range (thru FY 1992) need for 2,287 dwelling units (DU), most of which were needed by the E-2 to E-5 junior enlisted personnel and junior non-commissioned officers (NCO). Nearly half of those housing needs were for enlisted personnel assigned to Army, Navy or Air Force installations in the vicinity of Schofield Barracks in Central Oahu, Hawaii. The income levels of low ranking (E-2 to E-4) enlisted personnel make the housing problem particularly onerous because of the continuing need to retain those personnel in active service.

Due to the short period available for planning this project, informal scoping began in the Fall 1988. The Army published a Notice of Intent to prepare a

Draft Environmental Impact Statement in the June 23, 1987 issue of the Federal Register.

ACTION: The Department of the Army announces that the Draft Environmental Impact Statement for Army Family Housing Construction at Helemano Military Reservation, City & County of Honolulu, Hawaii is available for public review and comment.

Three principal alternatives are addressed in the DEIS:

- (1) Construction of new military housing at the Helemano Military Reservation (1,000 and 600 DU subalternatives);
- (2) Construction of new military housing at alternative sites in the Schofield Barracks region of Oahu; and
- (3) No Action, which is no construction of any military housing on or off post on Oahu.

Based on a comparative analysis of housing requirements, radio-frequency interference, utility, environmental, and social impacts, the 600 DU alternative at Helemano Military Reservation was identified as the recommended plan. Current plans and proposed budgeting calls for construction of 200 DU starting in Fiscal Year 1988, 140 DU in Fiscal Year 1989, 150 DU in Fiscal Year 1990, and the remaining 110 DU in Fiscal Year 1991. Each increment of housing will be accompanied by an infrastructure development.

The selection of the recommended alternative in the DEIS does not constitute a final decision. The Final EIS, as well as comments submitted on DEIS, will be used by the Army in reaching a final decision. The final Record of Decision will be made at least 30 days after publication of the Final EIS to allow public review and comment.

Given the "turn-key" design-construction contracting process, supplemental NEPA documents may be prepared after contract award to address specific design details of the project affecting water quality or other significant environmental resources.

Comments on the DEIS should be submitted to: Dr. James E. Maragos, Chief, Environmental Resources Section (CEPOD-ED-PV), U.S. Army Engineer District, Honolulu, Building T-1, Fort Shafter, HI 96858-5440.

These comments can be received no later than August 1, 1988, for consideration in the Final EIS. Copies of the document may be obtained by writing to the above address or by calling (808) 438-2263-8878.

A notice of Availability of this Draft Environmental Impact Statement will also be published by the U.S. Environmental Protection Agency (EPA)

in the Federal Register and by the local Army command in newspapers or other publicly circulated newsletters in the State of Hawaii.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (1&L).

[FR Doc. 88-15652 Filed 7-12-88; 8:45 am]

BILLING CODE 3710-08-M

Defense Mapping Agency

Membership; Defense Mapping Agency; Performance Review Board

AGENCY: Defense Mapping Agency (DMA), DoD.

ACTION: Notice of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

SUMMARY: This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Board provides fair and impartial review of Senior Executive Service (SES) performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DMA.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald F. Pittman, Defense Mapping Agency, Civilian Personnel Division, Bldg. 56, U.S. Naval Observatory, Washington, DC 20305-3000, telephone (202) 653-1561.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following is a standing register of executives appointed to the DMA PRB; specific PRB panels will be constituted from this standing register. Executive listed will serve a one-year renewable term, effective 1 August 1988.

Berg, Richard A., Chief, Advanced Technology Division, Headquarters, DMA

Brown, William J., Deputy Director for Programs, Production and Operations, DMA Hydrographic/Topographic Center

Daugherty, Kenneth L., Director, DMA Systems Center

Dierdorff, Curtis L., Director, Personnel Office, Headquarters, DMA

Finnegan, Edward W., Deputy Director for Research and Engineering, Headquarters, DMA

Gilliam, Penman R., Deputy Director, Management and Technology, Headquarters, DMA

Hall Charles D., Deputy Director for Programs, Production and Operations, Headquarters, DMA

Hall, Robert H., Chief, Scientific Data Department, DMA Hydrographic/Topographic Center
 Hogan, William N., Deputy Director for Programs, Production and Operations, DMA Aerospace Center
 Jackson, Mikel F., Assistant Deputy Director for Production and Operations, Headquarters, DMA
 Krygiel, Annette J., Director, Telecommunications Services Center
 Labovitz, Mordecai Z., Director of Acquisition, Headquarters, DMA
 Mendez, John M., Deputy Director for Program Integration and Operations, DMA Systems Center
 Muncy, Larry N., Chief, Scientific Data Department, DMA Aerospace Center
 Peeler, Paul L. Jr., Technical Director, DMA Reston Center
 Phillips, Earl W., Deputy Director for Programs, Production and Operations, DMA Reston Center
 Robinson, Billy E., Assistant Deputy Director for Programming, Headquarters, DMA
 Skidmore, James R., Technical Director, DMA Aerospace Center
 Smith, Lon M., Technical Director, DMA Hydrographic/Topographic Center
 Smith, Robert N., Assistant Deputy Director for Plans and Requirements, Headquarters, DMA
 Smith, William D., Chief, Program/Budget Division (Deputy Comptroller), Headquarters, DMA
 Stuckey, Maurice S., Technical Director/Deputy Director, DMA, Combat Support Center
 Vaughn, John R., Comptroller, Headquarters, DMA
 Ward, Curtis B., Deputy Director for Systems Development, DMA Systems Center
 L.M. Bynum,
 Alternate OSD Federal Register Liaison Officer, Department of Defense,
 July 7, 1988.
 [FR Doc. 88-15085 Filed 7-12-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Student Financial Assistance Advisory Committee; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the committee. Notice of this meeting is required under section

10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

DATES: July 20, 1988 beginning at 1:00 p.m. and ending at 4:30 p.m.; July 21, 1988 beginning at 9:00 a.m. and ending at 5:00 p.m.; and July 22, 1988 beginning at 8:00 a.m. and ending at 1:30 p.m.

ADDRESS: Radisson Hotel, 1550 Court Place, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Room 4600, ROB-3, 7th & D Streets, SW., Washington, DC 20202 (202) 732-3439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.

The proposed agenda includes: Delivery System Issues Committee Research Agenda and a Report on Committee Organization and Administration

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Room 4600, 7th and D Streets, SW., Washington, DC from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal holidays.

Dated: July 7, 1988.

Kenneth D. Whitehead,
 Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-15633 Filed 7-12-88; 8:45 am]
 BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EF88-4021-000 et al.]

Southwestern Power Administration, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Southwestern Power Administration
 [Docket No. EF88-4021-000]

July 5, 1988.

Take notice that on June 27, 1988, the Under Secretary, U.S. Department of Energy, submitted to the Commission for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204-106, as amended May 30, 1986 (51 FR 19744), an annual power rate of \$1,810,368 for Section 3, Article II, of Contract No. 14-02-0001-1124 between the Southwestern Power Administration and Sam Rayburn Dam Electric Cooperative, Inc. The rate was confirmed and approved on an interim basis by the Under Secretary of Energy in Rate Order No. SWPA-20 for the period July 1, 1988, through September 30, 1991, and has been submitted to the Commission for confirmation and approval on a final basis for the same period. The rate supersedes the annual power rate of \$1,715,040 which the Commission approved effective March 13, 1987, under Docket No. EF 88-4021-000. The annual rate of \$1,810,368 is based on the 1987 Revised Power Repayment Study for Sam Rayburn Dam and represents an annual increase in revenue of \$95,328, or 5.6 percent to recover increased operating expenses.

Comment date: July 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER88-491-000]

July 5, 1988.

Take notice that on June 29, 1988, Florida Power & Light Company (FPL) tendered for filing: (1) A Contract for Interchange Service Between Florida Power & Light Company and City of Tallahassee, Florida (Contract); and (2) Cost Support Schedules, C, F, and G (together with Cost Support Schedule F Supplements) which support the daily capacity charges for sales under Service Schedule B (Short-Term Firm Interchange Service) of the Contract. The Contract has been executed by both parties.

FPL respectfully waives of the Commission's notice requirements so that the proposed Contract and Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) may become effective on July 1, 1988. According to FPL, a copy of this filing was served upon the City of Tallahassee, Florida and the Florida Public Service Commission.

Comment date: July 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Union Electric Company

[Docket No. ER88-489-000]

July 5, 1988.

Take notice that on June 27, 1988, Union Electric Company tendered for filing a Wholesale Electric Service Agreement and Transmission Service Agreement both dated June 1, 1988 and Transmission Service Transaction 1, dated May 27, 1988, with the City of Jackson, Mo., providing for the sale of electric service and the transmission of power and energy from other sources.

Comment date: July 19, 1988, in accordance with Standard Paragraph E at the end of this document.

4. Southwestern Public Service Company

[Docket No. ER88-490-000]

July 5, 1988.

Take notice that on June 28, 1988, Southwestern Public Service Company (Southwestern) tendered for filing an Experimental Interruptible Irrigation Rider applicable to its full requirements electric service tariff for Roosevelt County Electric Cooperative, Incorporated (Rate Schedule No. 95).

Copies of the filing were served upon Roosevelt County Electric Cooperative, Incorporated and the New Mexico Public Service Commission.

Comment date: July 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER-88-487-000]

July 5, 1988.

Take notice that on June 27, 1988, Portland General Electric Company (PGE) tendered for filing a Sales Agreement with the Northern California Power Agency (NCPA) for the sale during a five-month period beginning on January 1, 1988, of up to 91,175 MWh of firm energy deliverable at rates not in excess of 25 MW per hour. Upon mutual agreement of all parties, NCPA may assign a portion of their energy delivery to Sacramento Municipal Utility District.

The contract rates for energy to be sold are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of January 1, 1988 and therefore requests a

waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Northern California Power Agency, the Sacramento Municipal Utility District, and the Oregon Public Utility Commission.

Comment date: July 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Company Service, Inc.

[Docket No. ER88-488-000]

July 5, 1988.

Take notice that on June 27, 1988, Southern Company Service, Inc. tendered for filing a Notice of Suspension, effective the 1st day of July, 1988, for the following rates schedules and that all performance of Southern Companies (Alabama Power Company, Georgian Power Company, Gulf Power Company, Mississippi Power company and Southern Company Service, Inc.) shall cease:

1. The Unit Power Sales Agreement dated February 25, 1982, as amended, between Gulf States Utilities Company and Southern Companies, Rate Schedule FERC No. 60, effective February 25, 1982 and filed with the Federal Energy Regulatory Commission by Southern Company Services, Inc.

2. Service Schedule E (Long Term Power) to the Interchange Contract dated February 25, 1982, as amended, between Gulf States Utilities Company and Southern Companies, Rate Schedule FERC No. 59, Supp. 5, effective December 6, 1983 and filed with the Federal Energy Regulatory Commission by Southern Company Service, Inc.

3. Service Schedule R (UPS Replacement Energy) to the Interchange Contract dated February 25, 1982, as amended, between Gulf States Utilities Company and Southern Companies, Rate Schedule FERC No. 59, Supp. 10, effective August 26, 1985 and filed with the Federal Energy Regulatory Commission by Southern Company Service, Inc.

Notice of Suspension and of Southern Companies' Cessation of Performance has been served upon the Gulf States Utilities Company.

Comment date: July 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER88-492-000]

July 5, 1988.

Take notice that on June 29, 1988, Montaup Electric Company (Montaup) tendered for filing a contract (Canal contract) which extends an existing 25 megawatt unit sale to Braintree Electric

Light Department (Braintree) from the Canal No. 2 generating unit under a 1983 agreement due to expire on October 31, 1988 (Rate Schedule FERC No. 60).

Under the Canal contract the Company agreed to convert the existing sale into a life-of-unit sale commencing November 1, 1988 in exchange for Braintree's agreement to make a life-of-unit sale of larger amounts of capacity from Braintree's Potter No. 2 combined cycle unit (Potter No. 2) to Montaup under another, simultaneously executed contract (Potter contract). The Potter contract, which is not under the Commission's jurisdiction, has been in effect since May 1, 1987. The Company requests that the Canal contract be allowed to become effective according to its terms on November 1, 1988.

The Canal No. 2 unit is a base load oil-fired unit with a current net capability of 584 megawatts. Montaup has a 50% ownership interest in the unit. The Potter No. 2 unit is a cycling unit which presently burns oil. Current plans call for its conversion to gas-fired operation in 1989. It has a net capability of 87 megawatts and it is 100% owned by Braintree. The exchange of capacity in these two units as embodied in the Canal and Potter contracts evolved over the course of negotiations which commenced in early 1987.

The energy charges in the Canal and Potter contracts are designed to recover fuel costs as actually incurred. The demand charges are negotiated. The exchange is expected to improve the generation mix of each party to the exchange and to result in net savings to its ratepayers.

Comment date: July 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Golden Spread Electric Cooperative, Inc.

[Docket No. ES88-45-000]

July 6, 1988.

Take notice that on June 24, 1988, the Golden Spread Electric Cooperative, Inc. ("Golden Spread") filed an application seeking an order under section 204 of the Federal Power Act granting Golden Spread authorization to issue securities maturing one year or less after the date of insurance, in an aggregate amount not exceeding \$30 million at any time, to be issued from time to time prior to July 31, 1990.

Comment date: July 22, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Gaston County, North Carolina

[Docket No. QF88-420-000]

July 6, 1988.

On June 20, 1988, Gaston County, North Carolina (Applicant), of 212 West Main Street, Gastonia, North Carolina 28053 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Gastonia, North Carolina. The facility will consist of 400 ton-per-day municipal solid waste-fired steam generators and a single steam turbine-generator set. The net electric power production capacity will be 8.5 megawatt. The primary energy source will be biomass in the form of municipal solid waste. Oil may be used periodically for start-up purposes.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ES88-46-000]

July 7, 1988.

Take notice that on June 29, 1988, UtiliCorp United Inc. ("Applicant") filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to and including 2,000,000 shares of common stock, par value \$1.00, and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: July 28, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,*Acting Secretary.*

[FR Doc. 88-15031 Filed 7-12-88; 8:45 am]

BILLING CODE 5717-01-M

[Project No. 4636-001]

Hydro-Development Group, Inc.; Availability of Environmental Assessment and Finding of No Significant Impact

July 7, 1988.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for exemption from license listed below and has assessed the environmental impacts of the proposed development.

would have limited adverse environmental impact. The FEIS evaluates alternatives to the proposals.

The proposed action involves construction and operation of a new natural gas-fired, combined-cycle power plant which would be located on a 40.6-acre parcel in the town of Burrillville, Rhode Island. The proposal includes construction of a 10-mile pipeline to transport process and cooling water to the plant from the Blackstone River, and a 7.5-mile pipeline to deliver No. 2 fuel oil to the site for emergency use when natural gas may not be available.

The natural gas pipeline facilities covered in the FEIS include a total of 25.5 miles of 30-inch diameter looping in 5 separate segments located adjacent to existing gas transmission pipelines in New York and Massachusetts, and approximately 11 miles of new 20-inch-diameter pipeline in Massachusetts and Rhode Island. The FEIS includes analysis of an additional 7,700 horsepower of compression at 3 existing compressor stations in New York and Massachusetts, and a new 4,500

LICENSE

Project No.	Project name	State	Water body	Nearest town or county	Applicant
4636-001	Long Falls Project	NY	Black River	Village of West Carthage	Hydro-Development Group, Inc.

An Environmental Assessment (EA) was prepared for the above proposed project. Based on independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement for this project will not be prepared. Copies of the EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,*Acting Secretary.*

[FR Doc. 88-15041 Filed 7-12-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket Nos. CP87-131-001 and CP87-132-001]

Tennessee Gas Pipeline Co.; Ocean State Power Project; Availability of Final Environmental Impact Statement

July 8, 1988.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC), in cooperation with the State of Rhode Island Office of Intergovernmental Relations (OIR), has made available a final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets, and a related proposal to construct a 500-megawatt power plant in northwestern Rhode Island.

The FEIS was prepared under the direction of the FERC and OIR staffs to satisfy the requirements of the National Environmental Policy Act and the Rhode Island Energy Facility Siting Act. The staff has determined that approval of the proposed project, with appropriate mitigating measures including receipt of all necessary permits and approvals,

horsepower compressor station in New York.

The FEIS will be used in the regulatory decision-making process at the FERC and may be presented as evidentiary material in formal hearings at the FERC. While the period for filing motions to intervene in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and the OIR, and is available for public inspection in the FERC's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, and at the OIR, 275 Westminster Mail, Providence, Rhode Island 02903. Copies have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding.

Additional copies of the FEIS, in limited quantities, are available from the FERC's Division of Public Information or from Mr. Lonnie Lister, Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426, telephone (202) 357-8874 or FTS 357-8874.

Lois D. Cashell,*Acting Secretary.*

[FR Doc. 88-15701 Filed 7-12-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket No. RP88-205-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 7, 1988.

Take notice that on June 30, 1988 Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Original Sheet No. 4A
Third Revised Sheet No. 7
First Revised Sheet No. 7A
Third Revised Sheet No. 8
Fourth Revised Sheet No. 11
Fifth Revised Sheet No. 12
Second Revised Sheet No. 14
Third Revised Sheet No. 17
Second Revised Sheet No. 18
Second Revised Sheet No. 62
Second Revised Sheet No. 63

All of the above tariff sheets are proposed to become effective on July 1, 1988.

Alabama-Tennessee states that the foregoing tariff sheets are being filed pursuant to § 2.104(e) of the Commission's Regulations, to permit it to recover take-or-pay fixed charges which are billed by its upstream pipeline supplier(s) pursuant to Order No. 500. Alabama-Tennessee asserts that it is seeking to recover these costs on an as-billed basis. Original Sheet No. 4A is said to contain the Allocated Take-or-Pay Charges attributable to the firm jurisdictional sales customs which Alabama-Tennessee is billed by Tennessee Gas Pipeline Company (Tennessee). According to Alabama-Tennessee, it has utilized the same base and deficiency periods used by Tennessee in allocating the take-or-pay charges and all interruptible sales have been excluded in calculating such charges.

Alabama-Tennessee proposed that the Allocated Take-or-Pay charges be collected over the six month period ending December 31, 1988. However, Alabama-Tennessee further states that to the extent Tennessee's proposal is modified, it will revise its tariff sheets to reflect such changes.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,*Acting Secretary.*

[FR Doc. 88-15034 Filed 7-12-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket Nos. RP88-207-000 and RP87-55-003]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 1, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

One Hundred and Twenty-Seventh Revised Sheet No. 16
Sixteenth Revised Sheet No. 16A2
Original Sheet No. 16B3
Original Sheet No. 16B4
Original Sheet No. 16B5
Tenth Revised Sheet No. 18
Third Revised Sheet No. 22C
Fourth Revised Sheet No. 22D
Sixth Revised Sheet No. 27
Twelfth Revised Sheet No. 30
Tenth Revised Sheet No. 31
Fourth Revised Sheet No. 46E
Original Sheet No. 68C
Original Sheet No. 68D
Original Sheet No. 68E

Columbia states that the foregoing tariff sheets are being filed pursuant to Order No. 500 to enable Columbia to recover, through a combination of fixed monthly demand surcharges and a volumetric surcharge, 75 percent of approximately \$375.2 million of costs it has incurred to reform certain of its Southwest Producer contracts. Columbia states that it is also submitting its instant tariff filing, along with a separate compliance filing, in Docket No. RP87-55 as full compliance with certain directives in the Commission's June 16, 1988, Order on Rehearing issued in Docket Nos. TA81-1-21-028, et al., and RP87-55-002.

In its tariff filing, Columbia proposes to recover 25 percent of the subject contract reformation costs through fixed monthly demand surcharges, to absorb the same amount, and to institute a volumetric surcharge designed to provide it the opportunity to recover the remaining 50 percent of the subject costs. Columbia proposes to amortize the principal amounts underlying both the fixed demand surcharges and the volumetric surcharge over a five-year period and to apply interest to the unamortized balances in accordance with 18 CFR 154.67. Columbia states that in its filing it does not seek recovery of any reformation costs that are attributable to section 107 gas supplies under contracts that fit the Commission's imprudence and abuse findings in Docket Nos. TA81-1-21, et al., or that are attributable to periods prior to April 1, 1987.

For purposes of the fixed monthly demand surcharge, Columbia under the proposed tariff sheets would allocate costs based on a comparison of its customers' average annual firm purchase levels for the period 1983 through 1986 with their average annual firm purchase levels in base period years 1981 and 1982. As support for its cost of service, exclusive of the contract reformation costs, Columbia incorporates by reference its September 30, 1986 section 4(e) filing in Docket No. RP86-168, *et al.*, as revised by filings dated February 27, 1987, and July 31, 1987, as well as Columbia Gulf Transmission Company's initial and revised filings in Docket No. RP86-167.

Columbia states that the proposed 25/25/50 cost-sharing and recovery mechanism would be applicable to the total of approximately \$375.2 million of contract reformation costs specified in the filing, as well as to costs in any future Columbia filings, through December 31, 1988, for recovery of additional contract reformation costs, or take-or-pay buyout costs, designated for recovery thereunder. Columbia requests that the proposed tariff sheets be permitted to become effective August 1, 1988.

Columbia also states that, in its tariff filing and separate compliance filing, it has complied with the Commission's directives in the June 16 Order. Columbia explains that, in accordance with the June 16 Order, it has identified the one Columbia contract, in addition to those listed in an Appendix to the June 16 Order, that fits the Commission's imprudence and abuse findings, and that it has identified the reformation costs attributable to NGPA section 107 gas under all contracts that fit those findings. In accordance with Ordering Paragraph (C) of the Commission's June 16 Order, the instant tariff sheets, upon becoming effective, would result in the cessation of recovery of contract reformation costs under Columbia's tariff filing in Docket No. RP87-55. Columbia also states that all contract reformation cost collections under the Docket No. RP87-55 filing, plus interest through July 31, 1988, would be credited, on a customer-by-customer basis, against such customer's share of the costs to be recovered by the fixed monthly demand surcharges. In the event these credits exceed a customer's allocated share of such costs, Columbia would refund the excess to the customer.

Pursuant to § 388.110 of the Commission's Regulations, Columbia has requested that the Commission treat certain contract reformation information

and data as commercially sensitive and confidential data, the disclosure of which would be harmful to Columbia. Due to the highly confidential and proprietary nature of the information contained in "Confidential Binder A," Columbia submits that access to the contents thereof be limited to parties other than producers, royalty owners, and interstate pipelines to this proceeding. Columbia will maintain copies of Confidential Binder A at its Charleston, West Virginia, and Washington, DC, offices for parties other than producers, royalty owners, and interstate pipelines to review, subject to appropriate protective conditions. Columbia submits that a protective order of the nature of the one issued by the Presiding Judge in Columbia's Docket No. RP87-55 would be appropriate.

Copies of the filing, except Confidential Binder A, were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15635 Filed 7-12-88; 8:45 am]
BILLING CODE 8717-01-0

[Docket No. TQ88-2-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff
July 7, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 30, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective August 1, 1988:
One hundred and twenty-sixth Revised Sheet No. 16
Fifteenth Revised Sheet No. 18A2
Thirty-fourth Revised Sheet No. 64A

Columbia states that the sales rates set forth on One hundred and twenty-sixth Revised Sheet No. 16 reflect an overall decrease of 18.81¢ per Dth in the Commodity rate, and overall increases of \$.109 per Dth in the Demand-1 rate and .05¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Fifteenth Revised Sheet No. 18A2 reflect a decrease in the Fuel Charge component of .51¢ per Dth.

The purposes of the revised tariff sheets are to reflect:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) The continuation of certain surcharges which were accepted by the Commission to be effective during the 12-month period of March 1, 1988 through February 28, 1989; and

(3) A Transportation Fuel Charge Adjustment.

Columbia's non-gas sales commodity rates, set forth on the tariff sheets submitted herewith, include 15.74 cents per Dth attributable to certain gas purchase contract reformation costs incurred by Columbia. On June 16, 1988, the Commission issued an order on rehearing of its January 19, 1987 orders in Docket Nos. TA81-1-21-028, *et al.* and RP87-55-002 which, among other things, directs Columbia to file revised tariff sheets in Docket No. RP87-55 to eliminate the amortization of reformation costs attributable to NGPA section 107 gas under certain contracts within 30 days. Columbia notes that it intends to make a filing on July 1, 1988 to recover a portion of its eligible contract reformation costs under the procedures of Order No. 500, commencing August 1, 1988. The tariff sheets submitted therewith will reflect the elimination of all reformation costs required by the June 16, 1988 order.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing

are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15636 Filed 7-12-88; 8:45 am]
BILLING CODE 8717-01-0

[Docket No. RP88-211-000]

CNG Transmission Corp.; Proposed Changes in Rates and Charges

July 7, 1988.

Take notice that CNG Transmission Corporation ("CNG") pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations, filed on July 1, 1988, proposed changes to its FERC Gas Tariff, Original Volume No. 1 to become effective on August 1, 1988.

The proposed rate changes would increase CNG's revenues by \$75.8 million annually based on a test period cost of service for the twelve months ended March 31, 1988, as adjusted for known and measurable changes through December 31, 1988.

CNG states that increased rates are necessary to reflect decreased throughput and other billing determinants and to recover increased operation and maintenance expenses, the increased cost of money and take-or-pay costs allowable under Order No. 500. The filed rate of return is based on a capitalization of 34.5 percent debt and 65.5 percent equity, with an equity return of 15.2%.

CNG projects take-or-pay buyout and buydown costs of \$20.2 million which it expects to incur by December 31, 1988. CNG seeks to amortize this amount over three years through volumetric rates.

As part of the filing, CNG also makes various proposals to currently recover the cost of transportation under converted gas purchase agreements or under new transportation agreements for system supply, standby charges and gas supply inventory charges billed by its pipeline suppliers and changes in the Federal Income Tax rate. CNG also proposes to transport gas using its capacity on third party pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.24 and 385.211). All motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15702 Filed 7-12-88; 8:45 am]
BILLING CODE 8717-01-0

[Docket No. TQ88-2-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC's Gas Tariff Purchased Gas Adjustment Clause Provisions

July 8, 1988.

Take notice that Great Lakes Transmission Corporation ("Great Lakes"), on July 1, 1988, tendered for filing Fifteenth Revised Sheet Nos. 57(i) and 57(ii), and Second Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1 to be effective August 1, 1988.

The above tariff sheets reflect PGA rates for the months of August, September, and October 1988 as required by Commission Order No. 483, dated November 10, 1987, and Great Lakes' FERC Gas Tariff. As permitted under the transitional rules, Great Lakes will continue to reflect the surcharge rate filed on March 31, 1988, in Docket No. TA88-5-51-000 to be effective for the period May 1, 1988 through October 31, 1988 on Fifteenth Revised Sheet Nos. 57(i) and 57(ii).

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15721 Filed 7-12-88; 8:45 am]
BILLING CODE 8717-01-0

[Docket No. TQ88-2-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

July 7, 1988.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on July 1, 1988, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective August 1, 1988.

First Revised Sheet No. 23
Fourth Revised Sheet No. 41

Kentucky West states that there is no change in rates and that this quarterly filing is made to conform to the Commission requirements included in FERC Orders No. 483 issued November 10, 1987, and No. 483-A issued March 2, 1988.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket No. RP88-52.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15722 Filed 7-12-88; 8:45 am]
BILLING CODE 8717-01-0

[Docket No. TQ88-2-47-000]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

July 8, 1988.

Take notice that on July 1, 1988, MIGC, Inc. (MIGC) tendered for filing revised Tariff Sheet No. 32 to its FERC Gas Tariff Volume No. 1. MIGC states that the purpose of this proposed tariff change is to submit its first quarterly PGA filing pursuant to revised tariff provisions and regulations as filed in Docket No. RP88-143-000 pursuant to

BEST COPY AVAILABLE

Order No. 463, effective June 1, 1988. The revised tariff sheet is proposed to become effective August 1, 1988.

Forty-Eighth Revised Sheet No. 32 included in the filing reflects both a revised format in MISC's "Statement of Rates" to conform with the Commission's new PGA rules, and a quarterly PGA increase of \$0.0038 per MMBtu. MISC states that, in accordance with § 154.310(c)(4) of the Commission's regulations, the surcharge adjustment included on Revised Sheet No. 32 reflects a continuation of the surcharge proposed by MISC to become effective May 1, 1988, in its last semi-annual PGA filing at Docket No. TA88-2-47-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before July 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for the public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15723 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA88-2-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

July 7, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 1, 1988, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective September 1, 1988:

	Superseding
Sixty-Fourth Revised Sheet No. 3a	Sixty-Third Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Sixty-Fourth Revised Sheet No. 3a is to reflect a 19.88c per Mcf decrease in its current gas cost and a Purchased Gas Cost Surcharge of 17.38c per Mcf. Mid Louisiana has requested a waiver of § 154.310(c) of the Commission's Regulations to allow the

amortization of the surcharge over a twelve-month period.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rule of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15637 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ88-3-5-000]

Midwestern Gas Transmission Co.; Rate Filing

July 7, 1988.

Take notice that on July 1, 1988, Midwestern Gas Transmission Company (Midwestern) tendered for filing five copies of Thirty-First Revised Sheet No. 6 of its FERC Gas Tariff, to be effective August 1, 1988. Midwestern states that this filing implement a Purchased Gas Cost Adjustment in the rates for Midwestern's Northern System Rate Schedules CR-2, CRL-2, SR-2 and I-2.

Midwestern states that the Current Purchased Gas Cost Adjustment reflected on Thirty-First Revised Sheet No. 6 consists of Unit Demand Rate Changes of negative \$1.43 per Dkt for Rate Schedules CR-2 and CRL-2, negative \$0.1175 per Dkt for Rate Schedule SR-2, and negative \$0.0470 per Dkt for Rate Schedule I-2 and a Unit Gas Rate Change of (\$0.0211) per Dkt. Midwestern states further that the unit rate changes are based upon the demand and commodity gas rates under Midwestern's gas contract with TransCanada allocated in accordance with Midwestern's modified fixed variable rate design.

Midwestern states that copies of the filing have been mailed to all of its

jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15638 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-209-000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

July 7, 1988.

Take notice that on July 1, 1988, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff to become effective August 1, 1988.

Natural states that the purpose of the filing is to provide for the changed level of rates and charges required for Natural to recover its increased operating costs. When compared to the rates currently in effect at Docket No. RP85-150, adjusted to show the same purchased gas cost, the proposed change in rates shows a revenue increase of approximately \$153 million. A revenue decrease of \$84 million results if present rates were compared to the last base tariff rates approved in Docket No. RP85-150 (both comparisons exclude GRI, ACA and PGA surcharges).

In addition to reflecting the variations in operating costs, the proposed rates reflect the implementation of seasonal rates, modifications to zone boundaries, a revision to the Rate Schedule G-1 rate structure, and continuation of the Modified Fixed Variable rate design methodology. Natural is also proposing an additional set of rates to become effective on a prospective basis only, after resolution of this proceeding, which reflects implementation of a Fixed Variable rate design.

Also included are tariff sheets to incorporate a leased storage cost adjustment mechanism.

A copy of this filing was mailed to each of Natural's jurisdictional sales and transportation customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211. All such motions or protests must be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15639 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM88-1-16-000]

National Fuel Gas Supply Corp.; Proposed Change in FERC Gas Tariff

July 7, 1988.

Take notice that National Fuel Gas Supply Corporation ("National") on June 30, 1988, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, six copies of Fifteenth Revised Sheet No. 4.

National states that the purpose of its filing is to reflect the removal of the negative surcharge adjustment currently contained in its Purchased Gas Adjustment, effective as of the close of the current amortization period (July 31, 1988). National further states that the removal of the negative surcharge adjustment is required by the transitional provisions of the Regulations adopted in Order Nos. 483 and 483-A.¹

Fifteenth Revised Sheet No. 4 reflects an overall increase in National's gas sales rates equal to 24.74 cents per dekatherm, it is stated, solely attributable to removal of the negative surcharge adjustment. No change in National's current purchased gas costs is proposed.

¹ Revisions to the Purchased Gas Adjustment Regulations, Final Rule ("Order No. 483"). III FERC Stats. & Regs. ¶ 30,778 (November 10, 1987); Revisions to the Purchased Gas Adjustment Regulations, Order on Rehearing ("Order No. 483-A"). III FERC Stats. & Regs. ¶ 30,798 (March 2, 1988).

The proposed effective date of Fifteenth Revised Sheet No. 4 is August 1, 1988.

Copies of National's filing were served on National's jurisdictional customers and on interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions to intervene or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15640 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP87-309-002 and RP88-208-000]

Paiute Pipeline Co. and Southwest Gas Corp.; Proposed Tariff Filings

July 7, 1988.

Take notice that on July 1, 1988, Paiute Pipeline Company (Paiute), pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act, tendered for filing the following FERC Gas Tariff in accordance with the Commission's Order Issuing Certificates, Approving Abandonments, and Deferring Request for Blanket Certificate issued May 17, 1988 in Docket No. CP87-309-000:

Original Volume No. 1
Original Sheet Nos. 1 through 99

Paiute states that, pursuant to the above referenced order, Paiute was authorized to, *inter alia*, (1) acquire and operate the certificated interstate natural gas facilities now owned and operated by Southwest Gas Corporation (Southwest), (2) make sales for resale of natural gas in interstate commerce to Sierra Pacific Power Company (Sierra Pacific) and CP National Corporation (CP National) in accordance with outstanding certificates of public convenience and necessity previously issued to Southwest, and (3) make sales for resale of natural gas in interstate commerce to Southwest-Northern

Nevada and Southwest-Northern California. Paiute and Southwest state that they have agreed that the effective date of the acquisition, and the date of Paiute's commencement of operations, will be August 1, 1988. Paiute states that it is adopting Original Volume No. 1 of Southwest's FERC Gas Tariff, except with certain modifications as directed or authorized by the Commission in its May 17, 1988 order, and certain other modifications arising from the Commission's new PGA regulations and the change in the status of the regulated company from a dual jurisdictional entity to a pure interstate pipeline company. Paiute requests that its proposed tariff become effective on August 1, 1988.

Paiute and Southwest state that since Paiute will commence operations and adopt Original Volume No. 1 of Southwest's FERC Gas Tariff (as modified) effective August 1, 1988, Southwest will cancel that portion of its FERC Gas Tariff effective as of August 1, 1988. Southwest therefore tendered as part of the filing in these dockets the following revised tariff sheet to be made a part of Southwest's FERC Gas Tariff:

Original Volume No. 1
First Revised Sheet No. 1

Southwest states that this revised tariff sheet reflects the cancellation of Original Volume No. 1 of its FERC Gas Tariff. Southwest requests that this tariff sheet become effective on August 1, 1988.

As part of the instant filing, Paiute and Southwest also tendered a certificate of adoption by Paiute of Original Volume No. 1 of Southwest's FERC Gas Tariff, and copies of two executed service agreements which provide for the sale of natural gas by Paiute to Southwest under Paiute's Rate Schedule G-1 for use in Southwest's northern Nevada and northern California service areas. Paiute requests that the service agreements be accepted for filing and approved to become effective on August 1, 1988.

In addition, Paiute and Southwest state that in their joint application filed in Docket No. CP87-309-000 on April 28, 1987, Southwest proposed to eliminate the surcharge in effect in its rates to amortize its Account No. 191 balance and to clear any balance remaining in its Account No. 191 as of the date of the transfer of its jurisdictional facilities and operations to Paiute, by either remitting a credit balance to Sierra Pacific and CP National in lump sum payments or by billing a debit balance to Sierra Pacific and CP National in equal installments over a six-month

period. It is stated that the purpose of this proposal was to permit Paiute to commence operations with a zero balance in its Account No. 191, and to avoid any inequities in distributing credits or assigning costs in view of the fact that Paiute will be serving two additional jurisdictional sales customers, Southwest-Northern Nevada and Southwest-Northern California. Paiute and Southwest further state that in light of the Commission's approval of the joint application, Paiute and Southwest will implement this procedure, and, accordingly, the rates set forth on Original Sheet No. 10 contained in the proposed Paiute tariff reflect no Account No. 191 surcharge amounts.

Further, Paiute states that in its June 16, 1988 notice of acceptance of the certificate issued by the Commission's May 17, 1988 order, Paiute declared that at the time of its filing of its FERC Gas Tariff, it would make an announcement regarding the commencement of an "open season" period for receiving requests for transportation service, as described in Article 3, Section 1 of the settlement offer submitted by Paiute and Southwest in Docket No. CP87-309-000 on February 10, 1988. Paiute states that in view of the fact that it will submit a general rate change filing on August 1, 1988 that will include certain proposed transportation rate schedules, Paiute will provide the "open season" period from August 1, 1988 through August 31, 1988. According to Paiute, all completed requests for transportation service that conform to the requirements set forth in the proposed transportation rate schedules to be filed on August 1, 1988 and that are received by Paiute during the "open season" period will be treated as having been received at the same time for purposes of determining priority of service status.

Paiute and Southwest state that copies of the instant filing have been served upon all affected customers and interested state regulatory commissions, and upon all parties on the service list in Docket No. CP87-309-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15642 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-203-000]

**Panhandle Eastern Pipe Line Co.;
Petition for Authority To Institute a
Direct Billing Procedure for Order No.
473 Payments**

July 7, 1988.

Take notice that on June 30, 1988, Panhandle Eastern Pipe Line Company (Panhandle) filed Nineteenth Revised Sheet Nos. 3-C.1, 3-C.2 and 3-C.3 which reflect a Petition for Authority to Institute a Direct Billing Procedure for Order No. 473 Payments. Panhandle states that it seeks authorization to bill its jurisdictional customers directly for Order No. 473 costs, which have been paid by Panhandle to one of its producer-suppliers, to avoid inequitable cost allocations and incorrect market signals that would otherwise result from recovering such costs through purchased gas adjustment (PGA) filings. As is more fully explained in the filing, Panhandle proposes to allocate such costs based upon each customer's share of Panhandle's total sales for the December 1979-December 1984 period in which such costs were incurred and to directly bill the resulting amounts, including paid and accrued interest. Panhandle proposes to bill customers on August 10, 1988 with Panhandle's regular monthly sales invoices.

Panhandle requests an effective date of August 1, 1988 for the above-referenced tariff sheets.

Panhandle requests any waiver of the Commission the terms of its tariff necessary to effect the proposed direct billing procedure.

Panhandle states that it has served a copy of the Petition on its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211, 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15643 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-210-000]

**Southern Natural Gas Co.; Proposed
Changes in FERC Gas Tariff**

July 7, 1988.

Take notice that on July 1, 1988, Southern Natural Gas Company (Southern) tendered for filing the tariff sheets listed on the appendix hereto to be effective August 1, 1988.

Southern states that the proposed tariff sheets are being filed to effect recovery of a portion of Southern's previously incurred buy-out and buy-down costs together with such costs as Southern projects it will incur through December 31, 1988 pursuant to the cost sharing procedures adopted in the Commission's Order No. 500.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as to all parties listed on the Commission's official service list compiled in RP88-08-000.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

APPENDIX—SIXTH REVISED VOLUME NO. 1

Tariff sheets	Description
Seventy-Ninth Sheet No. 4A.	Sales Rates.
Eighth Revised Sheet No. 4B.	Sales Rates.

APPENDIX—SIXTH REVISED VOLUME NO.
1—Continued

Tariff sheets	Description
First Revised Sheet No. 48.1.	Fixed TOP Charge.
First Revised Sheet No. 48.2.	Fixed TOP Charge.
First Revised Sheet No. 48.3.	Fixed TOP Charge.
Fourth Revised Sheet No. 450.	Section 22.
Second Revised Sheet No. 45P.	Section 22.
First Revised Sheet No. 45Q.	Section 22.

[FR Doc. 88-15724 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ88-2-17-000]

**Texas Eastern Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

July 7, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1988 tendered for filing as a part of its FERC Gas Tariff, six copies each of the following tariff sheets:

Fifth Revised Volume No. 1

Fifth Revised Sheet No. 50
Fifth Revised Sheet No. 50A
Fifth Revised Sheet No. 50B
Fifth Revised Sheet No. 50C
Fifth Revised Sheet No. 50D
Fifth Revised Sheet No. 51
Third Revised Sheet No. 51A
Third Revised Sheet No. 51B
Third Revised Sheet No. 51C
Third Revised Sheet No. 51D

Original Volume No. 2

Thirty-first Revised Sheet No. 235
Twenty-third Revised Sheet No. 241
Thirty-first Revised Sheet No. 322
Fifth Revised Sheet No. 1274

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, and section 27, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. The changes proposed consist of:

(1) PGA decreases of \$.118/dth in the Demand-1 component of Texas Eastern's sales rates and \$.0058/dth in the Demand-2 component and an increase of \$.0535/dth in the commodity component pursuant to section 23 of Texas Eastern's tariff, based upon an increased projected cost of gas purchased from producers and pipeline suppliers and removal of the existing

PGA Surcharge Adjustment, which was effective as of February 1, 1988, pursuant to the PGA transition rules in § 154.310 of the Commission's Regulations.

(2) Changes in rates for sales and transportation services pursuant to section 27 of Texas Eastern's tariff to reflect the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning August 1, 1988 and to reflect the EPC surcharge which is designed to clear the latest balance in the Deferred EPC account as of April 30, 1988, as adjusted to reflect the reduction of the Base Electric Power Cost Units for the period September, 1985 through January, 1988, necessitated by the Settlement of Texas Eastern's rate case in Docket No. RP85-177.

Texas Eastern states that this filing constitutes its regular quarterly filing to be effective August 1, 1988 pursuant to the Commission's recently revised regulations governing PGA filings as promulgated by its Order No. 483. In compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations which clearly show the derivation of the current adjustment to be applied to Texas Eastern's effective rates is included with the filing.

Texas Eastern states that this filing also constitutes its semiannual tracking of changes in electric power costs pursuant to section 27 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. Texas Eastern proposes to flow through to its customers with this filing an adjustment to its Deferred EPC account balance as of April 30, 1988. The Settlement refund under Docket No. RP85-177 included amounts representing a reduction in the Base Electric Power Cost Units per the settlement. Hence, an adjustment to the Deferred EPC amount is required to reflect Texas Eastern's reduction in Electric Power Cost recoveries for the refund period September 1, 1985 through January 31, 1988. Texas Eastern has requested that the Commission waive the requirements of section 27 of its FERC Gas Tariff to permit the amortization of this settlement adjustment beginning on August 1, 1988 and ending on January 31, 1989, with this semiannual EPC tracker.

The proposed effective date of the above tariff sheets is August 1, 1988. Texas Eastern requests waiver of any regulations that the Commission may deem necessary to accept the above tariff sheets to be effective on August 1, 1988.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15725 Filed 7-12-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ88-2-18-000]

**Texas Gas Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

July 8, 1988.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on July 1, 1988, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Third Substitute Eleventh Revised Sheet No. 10
Third Substitute Eleventh Revised Sheet No. 10A

These tariff sheets reflect an increase of purchased gas costs pursuant to the Purchased Gas Adjustment clause of Texas Gas's FERC Gas Tariff and are proposed to be effective August 1, 1988.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15726 Filed 7-12-88; 8:45 am]
BILLING CODE 5717-01-M

[Docket No. RP88-205-000]

Tarpon Transmission Co.; Tariff Filing
July 7, 1988.

Take notice that on June 30, 1988, Tarpon Transmission Company ("Tarpon") tendered for filing with the Commission tariff sheets which reflect the following revisions to its FERC Gas Tariff, Original Volume No. 1: (1) Certain nonsubstantive corrective and clarifying changes; (2) the inclusion of a tariff provision which allows Tarpon to assess the current FERC-prescribed annual charge adjustment (ACA) of 0.21 cents per Mcf; (3) conforming changes to Tarpon's ITS and FTS *pro forma* transportation agreements; and (4) the implementation of a reservation charge for Part 284 firm transportation service.

Tarpon has requested the Commission to waive any and all provisions of Part 154 necessary in order to permit these tariff sheets to become effective on July 1, 1988.

Copies of the filing were served upon all of Tarpon's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1988.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15644 Filed 7-12-88; 8:45 am]
BILLING CODE 5717-01-M

[Docket No. TQ88-2-58-000]

Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1988.

Take notice that on July 1, 1988, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective August 1, 1988.

Twenty-first Revised Sheet No. 4a

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to section 12 of the General Terms and Conditions to TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Twenty-first Revised Sheet No. 4a reflects a net increase in the rate after cumulative adjustment to 155.39¢/Mcf with a rate Surcharge Adjustment of 3.49¢/Mcf yielding a proposed total rate of 188.35¢/Mcf (at 14.85 psia) to be effective August 1, 1988.

Copies of the filing were served upon TGPL's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15645 Filed 7-12-88; 8:45 am]
BILLING CODE 5717-01-M

[Docket No. RP88-204-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

July 7, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 30, 1988 certain tariff sheets in Appendix A attached to the filing. Such sheets are proposed to be effective August 1, 1988.

Transco states that the purpose of its tariff filing is to establish initial rate schedules and rates for firm (FT-MB)

and interruptible (IT-MB) transportation service on Transco's Mobile Bay Pipeline System. Such transportation will be performed pursuant to authority under section 311 of the Natural Gas Policy Act of 1978 and Part 284 of the Commission's regulations thereunder.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15646 Filed 7-12-88; 8:45 am]
BILLING CODE 5717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180781; FRL-34111-5]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 15 States listed below and two crisis exemptions initiated by the Florida Department of Agriculture and the New York Department of Environmental Conservation. Also listed are denials of requests for specific exemptions from the Michigan Department of Agriculture, the Puerto Rico Commonwealth Department of Agriculture, and the Washington Department of Agriculture and a withdrawal of a request for a specific exemption from the North Dakota Department of Agriculture. These exemptions, issued during the month of April, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent

possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, denial, and withdrawal for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 1, 1988, to July 1, 1988. (Gene Asbury)

2. California Department of Food and Agriculture for the use of iprodione on sweet cherries to control fruit decay; April 6, 1988, to June 30, 1988. (Libby Pemberton)

3. California Department of Food and Agriculture for the use of methiocarb on globe artichokes to control snails and slugs; April 20, 1988, to March 1, 1989. (Jim Tompkins)

4. California Department of Food and Agriculture for the use of hexakis (Vendex) on marigolds grown for xanthophyll to control two-spotted spider mites; April 7, 1988, to October 1, 1988. (Gene Asbury)

5. Colorado Department of Agriculture for the use of permethrin on small grains to control pale western cutworms and army cutworms; April 21, 1988, to June 15, 1988. (Gene Asbury)

6. Florida Department of Agriculture and Consumer Services for the use of iprodione on cabbage to control white mold; April 13, 1988, to April 30, 1988. Florida had initiated a crisis exemption for this use. (Libby Pemberton)

7. Maryland Department of Agriculture for the use of imazethapyr (Pursuit) on lima beans, snap beans, and green peas to control weeds; April 18, 1988, to May 31, 1988. (Robert Forrest)

8. Massachusetts Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; April 15, 1988, to September 30, 1988. (Gene Asbury)

9. Michigan Department of Agriculture for the use of metolachlor on dry bulb onions to control prostrate spurge and yellow nutsedge; April 18, 1988, to September 15, 1988. (Jim Tompkins)

10. Minnesota Department of Agriculture for the use of clopyralid on sugar beets to control Canada thistle and common cocklebur; April 22, 1988, to July 1, 1988. (Donald Stubbs)

11. Minnesota Department of Agriculture for the use of imazethapyr (Pursuit) on soybeans to control Jerusalem artichokes; April 1, 1988, to June 30, 1988. (Robert Forrest)

12. Missouri Department of Agriculture for the use of metalaxyl on blueberries to control root rot (*Phytophthora cinnamomica*); April 1, 1988, to October 31, 1988. (Robert Forrest)

13. New Mexico Department of Agriculture for the use of cypermethrin on dry bulb onions to control western flower thrips; April 18, 1988, to September 1, 1988. (Gene Asbury)

14. New York Department of Environmental Conservation for the use of permethrin on onions to control thrips; April 15, 1988, to November 30, 1988. (Libby Pemberton)

15. North Dakota Department of Agriculture for the use of clopyralid on sugar beets to control Canada thistle and common cocklebur; April 22, 1988, to July 1, 1988. (Donald Stubbs)

16. South Dakota Department of Agriculture for the use of fenvalerate on winter wheat to control pale western cutworms and army cutworms; April 15, 1988, to June 30, 1988. (Gene Asbury)

17. Washington Department of Agriculture for the use of glyphosate on wheat to control volunteer rye; April 5, 1988, to July 1, 1988. (Libby Pemberton)

18. Wisconsin Department of Agriculture, Trade, and Consumer Service for the use of metolachlor on transplanted cabbage to control yellow nutsedge and certain broadleaf weeds; April 13, 1988, to October 31, 1988. (Jim Tompkins)

19. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of metolachlor on dry bulb onions to control prostrate spurge and yellow nutsedge; April 18, 1988, to September 15, 1988. Solicitation of public comment was published in the Federal Register of March 23, 1988 (53 FR 9485), no comments were received. The exemption was granted on the basis that there are no registered alternative herbicides which provide effective control of prostrate spurge and yellow nutsedge in organic soils and a significant economic loss is expected if these weeds cannot be controlled or hand-weeding must be employed. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Florida Department of Agriculture on April 25, 1988, for the use of Tilt (1-(2-(2,4-dichlorophenyl)-4-propyl-1,3-

dioxolan-2-yl)methyl)-1-H-1,2,4-triazole on sweet corn to control corn rust. This program is expected to end in December 1988. (Jim Tompkins)

2. New York Department of Environmental Conservation on April 29, 1988, for the use of propachlor on dry bulb onions to control certain broadleaf weeds. The program ended June 1, 1988, unless extended by the specific exemption. (Jim Tompkins)

EPA has denied requests from the:

1. Michigan Department of Agriculture for the use of chlorothalonil on tart cherries to control cherry leaf spot and brown rot. The Agency has denied this request on the basis that the dietary toxicological concerns from currently registered uses are already high and the Final Registration and Tolerance Reassessment (FRSTR) due for completion in June of 1988 may place chlorothalonil in Special Review. (Gene Asbury)

2. Puerto Rico, Commonwealth Department of Agriculture for the use of fenvalerate on pineapples to control pineapple moths. The Agency has denied this request because the absence of residue data prevents a determination of residue levels in pineapple. Additionally, there are ecological concerns that have initiated a section 7 consultation in regard to an endangered species. (Gene Asbury)

3. Washington Department of Agriculture for the use of sethoxydim on cannery (green) peas to control annual ryegrass and barnyard grass. The Agency has denied the request because a continuing chronic situation will exist and continued use would represent an abuse of the emergency exemption program and an unwarranted circumvention of the section 3 registration process because of the lack of progress toward registration. (Gene Asbury)

EPA has withdrawn a request from the North Dakota Department of Agriculture for the use of Assent on sunflowers to control wild mustard. A notice of receipt was published in the Federal Register of March 30, 1988 (53 FR 10288). The Agency has withdrawn this request on the basis that the use was registered under section 3 of FIFRA on April 11, 1988. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: June 28, 1988.

Douglas D. Camp,
Director, Office of Pesticide Programs.

[FR Doc. 88-15336 Filed 7-12-88; 8:45 am]
BILLING CODE 5560-50-M

(OPP-42064; FRL-3410-5)

Intent To Approve Department of Energy Plan for Certification of Applicators of Restricted Use Pesticides**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of intent to approve Department of Energy plan for certification of pesticide applicators.

SUMMARY: In accordance with terms of the Federal Register notice of August 19, 1977 (42 FR 41907), the U.S. Department of Energy (DOE) has submitted a Federal Agency Plan for the Certification of its employees to apply restricted use pesticides in the performance of their duties. The Administrator has reviewed this plan and finds that it complies with the terms of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended and the August 19, 1977, Federal Register notice. Accordingly, notice is hereby given of the intention of the Administrator to approve the DOE Plan. Interested persons are invited to submit written comments on the proposed plan.

DATE: Comments should be submitted on or before August 12, 1988.

ADDRESSES: Address comments, identified by the docket control number OPP-42064, to: Environmental Protection Agency, Information Service Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

See **SUPPLEMENTARY INFORMATION** for addresses where the plan is available for public inspection.

FOR FURTHER INFORMATION CONTACT: John MacDonald (202-475-9580).

SUPPLEMENTARY INFORMATION: The DOE Certification Plan at present only applies to employees of the Bonneville Power Administration (BPA). BPA operates and maintains a regional electrical system covering five States: Idaho, Montana, Oregon, Washington, and Wyoming. If the DOE should at a later date wish to include employees other than those employed by BPA under the DOE certification plan, the submission and approval of a new certification plan, an amendment to this certification plan would be required.

Federal employees are considered to be commercial applicators. The DOE has proposed certification in only Right-of-Way Pest Control as defined at 40 CFR 171.3(b)(6). Certification is based upon participation in training and the

taking and passing of a written examination. The DOE plan requires recertification every 3 years. However, DOE may initially issue a DOE certification to a BPA employee holding a valid State certification and retain the expiration date on the State certification. Since States in the BPA service area certify for 5 years some of the grandfathered certifications could be in effect for up to 5 years. However, all of the grandfathered applicators will be issued a certification valid for 3 years, when they are recertified. Also new applicators certified under the DOE plan will be issued certificates valid for 3 years. Therefore, after a transition period not to exceed 5 years from the date of plan approval, all DOE certified applicators will be recertified on a 3-year cycle.

DOE will require certification of all applicators using or supervising the use of all pesticides with the exception of general use pesticides applied by non-motorized equipment. DOE anticipates that 150 applicators will be certified under the proposed plan. The DOE plan adopts the direct supervision requirement contained at 40 CFR 171.6 and in addition requires the physical presence of the certified applicator within line of sight or hearing distance of the supervised applicator.

The plan provides for the hiring of non-DOE employees for pest control operations. Such persons must be certified commercial applicators, or under the direct supervision of a certified commercial applicator, holding certification valid in the State where the services are performed. Incidents of misuse of a pesticide or falsification of records by applicators under contract to DOE will be reported to the appropriate State or EPA authority.

Authority for denying, suspending, and revoking DOE certification rests with the officials responsible for carrying out the plan. Any applicator who falsifies records or who violates any provision of FIFRA, including the prohibition against the misuse of pesticides, may have the applicator's certificate suspended or revoked.

Records regarding the kinds, amounts, uses, dates, and places of use of restricted use pesticides will be maintained for 2 years from the date of application of the restricted use pesticides. Such records will be available for inspection and copying by Federal and State pesticide officials. EPA and State enforcement personnel will have access to DOE property at reasonable times for sampling, inspection, and observation.

The DOE Plan requires personnel to comply with substantive State

standards for pesticide regulation which are more stringent than, or are in addition to, standards established in the plan, as required by E.O. 12088. In cases where the State decides its substantive standards are more stringent than those of the DOE, it may notify the Secretary of Energy and request compliance. In any case where the Secretary and the State disagree as to the need for employees to comply with a State standard, the Administrator of EPA will arbitrate the dispute.

Annual reports will be submitted by DOE to the Administrator of EPA. The report will contain information as outlined in 40 CFR 171.7(d)(1), such as, numbers of applicators certified, changes in commercial subcategories, summary of enforcement actions, and significant proposed changes in standards of competency. Other reports will be submitted as required by 40 CFR 171.7(d)(2).

Copies of the proposed plan are available for review at the following locations during normal business hours:

1. Environmental Protection Agency, Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Telephone: 202-557-3282.
2. Environmental Protection Agency, 900 18th Street, Suite 500, Denver, CO 80202-2405. Telephone: 303-293-1803.
3. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101. Telephone: 206-442-5810.
4. Public Information Center, Bonneville Power Administration, 905 Northeast Eleventh Avenue, Portland, OR 97232.
5. Selected DOE facilities in the Bonneville Service area. For information telephone the Public Information Center at 503-230-3478.

Interested persons are invited to submit written comments on the proposed DOE Certification Plan.

Dated: June 28, 1988.

A. James Barnes,
Acting Administrator.

[FR Doc. 88-15230 Filed 7-12-88; 8:45 am]
BILLING CODE 5590-50-3

(OPP-30277A; FRL-3411-2)

Penick-Bio Corp.; Approval of Pesticide Product Registration**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: This notice announces Agency approval of an application

submitted by Penick-Bio Corp., to register the pesticide product Dethmor, involving a changed use pattern pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington DC 20460.

Office location and telephone number: Rm. 204 TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of March 25, 1987 (52 FR 9537), which announced that Penick-Bio UCLAF Corp., 1050 Wall St., West, PO Box 9059, Lyndhurst, NJ 07071, had submitted an application to register the pesticide product D-End, containing the active ingredient (1R,3S) 3[(1'RS)(1,2',2'-tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester at 3.75 percent (equivalent to 0.3 lbs. active ingredient per gallon); involving a changed use pattern of the product.

The application was approved on May 27, 1988, as Dethmor for general use to include in its presently registered use, a new indoor use in non-food areas of food handling establishments. The product was assigned EPA Registration No. 432-729.

The Agency has considered all required data on the risks associated with the proposed use of (1R,3S) 3[(1'RS)(1,2',2'-tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of ground (1R,3S) 3[(1'RS)(1,2',2'-tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on (1R,3S) 3[(1'RS)(1,2',2'-

tetrabromoethyl))-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703-557-4460). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.**Dated:** June 28, 1988.

Douglas D. Camp,
Director, Office of Pesticide Programs.
[FR Doc. 88-15341 Filed 7-12-88; 8:45 am]
BILLING CODE 5590-50-3

(OPP-100056; FRL-3413-6)

American Management Systems, Inc.; Transfer of Data**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). American Management Systems, Inc. (AMS) will perform work specified under a Task Order of an EPA contract. This work will be done for the EPA Office of Pesticide Programs (OPP), and will require access to certain information submitted to EPA under FIFRA and

FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to AMS as authorized by 40 CFR 2.307(h)(3) and 40 CFR 2.306(i)(2), respectively. This action will enable AMS to fulfill the terms of this contract, and serves to notify affected persons.

DATE: AMS will be given access to this information no sooner than July 20, 1988.

FOR FURTHER INFORMATION CONTACT: By mail: Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under a Task Order of Contract No. 68-01-7281, AMS will assist OPP in analyzing chemistry review procedures, interview review personnel, study management information materials and systems, and develop plans for organization/reorganization of the Certified Statement Formula (CSF) review. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by AMS to information on all pesticide chemicals is necessary for the performance of this contract.

This information is entitled to confidential treatment, having been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), AMS shall not use the information for any purpose other than purpose(s) specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, AMS is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to AMS until the above requirements have been fully satisfied. Records of information provided to AMS will be maintained by the Task Officer for this contract in the EPA Office of Pesticides Programs. All information supplied to AMS by EPA for use in connection with this contract will be returned to EPA when AMS has completed its work.

Dated: July 5, 1988.

Susan H. Wayland,
Acting Director, Office of Pesticide Programs.
[FR Doc. 88-15675 Filed 7-12-88; 8:45 am]
BILLING CODE 6560-50-M

[PP 6G3438/T567; FRL-3413-7]

Thiodicarb; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the insecticide thiodicarb and its metabolite methomyl in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire June 8, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 205, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557-2386.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the *Federal Register* of September 9, 1987 (52 FR 33989), announcing the establishment of temporary tolerances for residues of the insecticide thiodicarb [dimethyl-N,N'-[thiobis[[[methylimino]carbonyl]oxy]]bis[ethanimidothioate] and its metabolite methomyl (S-methyl-N-[(methylcarbonyl)oxy]thioacetimidate) in or on the following raw agricultural commodities: broccoli, cabbage, and cauliflower at 7.0 parts per million (ppm) and head lettuce at 25.0 ppm. These tolerances were issued in response to pesticide petition (PP) 6G3438, submitted by Rhone Poulenc Agricultural Co., T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 284-EUP-73, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-388, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been

extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active insecticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone Poulenc Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

The tolerances expire June 8, 1989. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).
Dated: July 1, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of Pesticide Programs.
[FR Doc. 88-15676 Filed 7-12-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

Filing Dates for Tennessee Special Elections

AGENCY: Federal Election Commission.
ACTION: Notice of filing dates for Tennessee Special Elections.

SUMMARY: Committees required to file reports in connection with only the Special Primary Election to be held in the Second Congressional District of Tennessee on August 25, 1988, should file a 12-day Pre-Primary Report by August 13, 1988. Committees required to file reports in connection with both the Special Primary and Special General Election to be held on November 8, 1988, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report by October 27, 1988, and a 30-day Post-General Report by December 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463. Telephone: (202) 376-3120; Toll Free (800) 424-9530.

Notice of Filing Dates for Special Elections; Second Congressional District Tennessee

All principal campaign committees of candidates in the Special Primary Election and all other political committees not filing monthly, which support candidates in the Special Primary must file a 12-day Pre-Primary Report by August 13, 1988, which coverage dates from the last report filed through August 5, 1988. Committees must also file an October Quarterly Report, with coverage dates from August 6, 1988, through September 30, 1988, due October 15, 1988.

All principal campaign committees of candidates in the Special General Election and all other political committees which support candidates in the election shall file a 12-day Pre-General Report due on October 27, 1988, with coverage dates from October 1, 1988, through October 19, 1988, and a 30-day Post-General Report due on December 8, 1988, with coverage dates from October 20, 1988, through November 28, 1988. Committees must also file a Year-End Report due January 31, 1989.

Thomas J. Josefak,
Chairman, Federal Election Commission.
Dated: July 8, 1988.

[FR Doc. 88-15694 Filed 7-12-88; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011201.

Title: Puerto Rico and U.S. Virgin Islands Carriers Discussion Agreement.
Parties: Zim Israel Navigation Co., Ltd., Nedlloyd Lines Trade Directorate Far East.

Synopsis: The proposed agreement would authorize the parties to discuss, consult and develop consensus to foster commerce, service and stability in the trade from ports and points in Hong Kong, Macao, Korea, Taiwan, Japan, Siberia USSR, the People's Republic of China, Thailand, Vietnam, Democratic Kampuchea (Cambodia), Laos, Burma, the Republic of the Philippines, the Republic of Singapore, the Federation of Malaysia, the Sultanate of Brunei, and the Republic of Indonesia to ports and points in Puerto Rico and the U.S. Virgin Islands.

By order of the Federal Maritime Commission.

Dated: July 7, 1988.

Joseph C. Polking,
Secretary.
[FR Doc. 88-15610 Filed 7-12-88; 8:45 am]
BILLING CODE 4720-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200137.

Title: Georgia Ports Authority Lease Agreement.

Parties: Georgia Ports Authority, Jugolinija.

Synopsis: The agreement provides for the lease of paved premises to be used only for the storage and handling of containers, trailers and chassis located within Containerport at the Garden City Terminal, Port of Savannah.

Agreement No.: 224-003690-002.

Title: Matson Terminals, Inc. Terminal Agreement.

Parties: Matson Terminals, Inc., Polynesia Line, Ltd.

Synopsis: The agreement amendment provides reference to schedules which may be revised to reflect increases or decreases in ship rates for the maintenance of chassis and the repair of containers.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: July 6, 1988.

[FR Doc. 88-15682 Filed 7-12-88; 8:45 am]
BILLING CODE 4720-01-M

FEDERAL RESERVE SYSTEM

First Sioux Bancshares, LTD., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 4, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Sioux Bancshares, Ltd.*, Sioux Center, Iowa; to engage de novo through its subsidiary, First Sioux Insurance Company, Sioux Center, Iowa, in the sale of insurance to area farmers and to certain consumer loan customers, which will include hail insurance and multi-peril insurance, credit life and mortgage insurance pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Sioux County, Iowa, and any contiguous counties with Sioux County, whether in or out of the State of Iowa, but not to include any other State than South Dakota.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Mission-Valley Bancorp.*, Pleasanton, California; to engage de novo in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 8, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-15686 Filed 7-12-88; 8:45 am]
BILLING CODE 6210-01-M

Integra Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR

225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Integra Financial Corporation*, Mt. Lebanon, Pennsylvania; to become a bank holding company by the consolidation of Pennbancorp, Titusville, Pennsylvania, and Union National Corporation, Mt. Lebanon, Pennsylvania, and thereby indirectly acquire First National Bank & Trust Co., Washington, Pennsylvania; Keystone National Bank, Punxsutawney, Pennsylvania; McDowell National Bank, Sharon, Pennsylvania; The Union National Bank of Pittsburgh, Pittsburgh, Pennsylvania; Valley National Bank, Freeport, Pennsylvania; First Seneca Bank, Oil City, Pennsylvania; Gallatin National Bank, Uniontown, Pennsylvania; Pennbank, Titusville, Pennsylvania; and more than 5 percent but less than 7 percent of the

outstanding voting shares of Producers Bank and Trust Company, Bradford, Pennsylvania, and Independence Bancorp, Inc., Perkasee, Pennsylvania, and thereby indirectly acquire Bucks County Bank and Trust Company, Union Bank and Trust Company, and The Cheltenham Bank.

In connection with this application, Applicant also proposes to acquire Pennbancorp Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting credit life and credit accident/disability insurance directly related to extensions of credit by Pennbancorp subsidiary banks pursuant to § 225.25(b)(8); Pennbancorp Brokerage Services Company, Erie, Pennsylvania, and thereby engage in providing securities brokerage services and incidental activities, such as offering individual retirement accounts, pursuant to § 225.25(b)(15); and Union National Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting, as reinsurer, credit life and credit disability insurance directly related to extensions of credit and non-operating fully payout lease transactions by Union National Corporation's bank subsidiaries pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15079 Filed 7-12-88; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0118, Statement of Witness (SF 94), which is used by all Federal agencies in reporting accident information involving U.S. Government vehicles.

AGENCY: Fleet Management Division (FBF), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 955; responses, 1 per year; average hours per response, 1/2; burden hours, 318.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses 703-557-1273.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: July 5, 1988.

Emily C. Karam,
Director, Information Management Division (CAI).

[FR Doc. 88-15060 Filed 7-12-88; 8:45 am]

BILLING CODE 6820-24-M

Agency Information Collection Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0121, Contractor's Report of Orders Received (GSA 72-A), which is for the use of contracting officers to estimate requirements for new contracts, evaluate the effectiveness of a schedule, or negotiate for better prices based on volumes.

AGENCY: Operations Management Division (FCO), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 4,300; responses, 28 per year; average hours per response, 17; burden hours, 19,040.

FOR FURTHER INFORMATION CONTACT: Rosa McCullough, 703-557-7950.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: July 5, 1988.

Emily C. Karam,
Director, Information Management Division (CAI).

[FR Doc. 88-15067 Filed 7-12-88; 8:45 am]

BILLING CODE 6820-24-M

Agency Information Collection Activities Under Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to

renew expiring information collection 3090-0104, Report of Employment Under Commercial Activity Contracts. The Report of Employment under Commercial Activities Contracts clause was developed to collect information required by OMB Circular A-78 and information needed by the Office of Personnel Management to comply with 5 CFR 550.701(b)(6) severance pay eligibility requirements.

AGENCY: Office of GSA Acquisition Policy and Regulations (VP), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 150; responses, 1 per year; average hours per response, .5; burden hours, 75.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, 202-523-4765.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: July 5, 1988.

Emily C. Karam,
Director, Information Management Division (CAI).

[FR Doc. 88-15066 Filed 7-12-88; 8:45 am]

BILLING CODE 6820-21-M

Federal Supply Service Consortium of Federal, Academic, and Industry Logistics Experts; Meeting

Meeting Notice: Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet August 10, 1988 from 10:00 am to 12:00 noon in Crystal Mall Building 3, Room C-43, Arlington, Virginia. The purpose of the meeting is to provide a forum for exchange on logistics issues, among member civilian agencies.

The agenda will include discussions of initiatives on systems, freight transportation, and professionalism relating to Federal Civilian agency logistics operations.

The meeting will be open to the public. For further information, contact William B. Foote, Assistant Commissioner for Customer Service and Marketing GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: July 7, 1988.

Donald C.J. Gray,
Commissioner, Federal Supply Service, GSA.
[FR Doc. 88-15063 Filed 7-12-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix II), the Health Resources and Service Administration announces the renewal of the Secretary, HHS, with concurrence by the General Services Administration, of the following advisory committee.

Council	Termination date
Maternal and Child Health Research Grants Review Committee	June 30, 1990.

Dated: July 7, 1988.

Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.

[FR Doc. 88-15063 Filed 7-12-88; 8:45 am]

BILLING CODE 4150-15-M

Office of Human Development Services

National Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Solicitation of nominations for appointment to the National Advisory Board on Child Abuse and Neglect.

SUMMARY: Section 3 of the Child Abuse Prevention and Treatment Act, newly reauthorized by Pub. L. 100-294, provides that the Secretary shall appoint an Advisory Board on Child Abuse and Neglect. This notice solicits nominations for appointment to the Board, sets, procedures for the submission and receipt of nominations, and provides information concerning the membership, duties, and responsibilities of the Board.

DATES: Nominations must be received by August 29, 1988.

ADDRESS: Nominations must be in writing and submitted as follows.

- 1—Nominations sent via the U.S. Postal Service should be addressed to: Commissioner, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013
- 2—Nominations delivered by hand or via a commercial delivery service should be addressed to: Commissioner, Administration for Children, Youth and Families, Room 5030, Donohoe Building, 400 6th Street, SW., Washington, DC 20024, (202) 755-7762.

FOR FURTHER INFORMATION CONTACT: Josephine Reifsnnyder, Chief, Program Policy and Planning Branch, National Center on Child Abuse and Neglect, (202) 245-2860.

SUPPLEMENTARY INFORMATION:

A. Background

The Child Abuse Prevention, Adoption, and Family Services Act of 1988 (Pub. L. 100-294) was enacted April 25, 1988. It reauthorized several services programs including the Child Abuse Prevention and Treatment Act (the Act). Section 3 of the Act requires the Secretary to appoint an Advisory Board on Child Abuse and Neglect and publish a notice in the Federal Register soliciting nominations for the appointment of members from the general public to the Board.

The Act specifies the composition of the Board, the number of members, professional and other areas of representation, terms of office, meetings, duties, and compensation of members. This information is provided below in order to solicit the nomination of highly qualified persons to the Board.

B. Composition of the Board

The Board must consist of 13 members from the general public and two Federal employees who are representatives of the Inter-Agency Task Force on Child Abuse and Neglect established under section 4 of the Act. Each member of the Board must be a person who is recognized for expertise in an aspect of the area of child abuse.

C. Representation on the Board

The public members must be individuals knowledgeable in child abuse and neglect prevention, intervention, treatment, or research; appointed by the Secretary with due consideration to representation of ethnic or racial minorities and diverse geographic areas; and representatives of:

- (1) Law (including the judiciary);

- (2) Psychology (including child development);
 (3) Social services (including child protective services);
 (4) Medicine (including pediatrics);
 (5) State and local government;
 (6) Organizations providing services to disabled persons;
 (7) Organizations providing services to adolescents;
 (8) Teachers;
 (9) Parent self-help organizations;
 (10) Parents' groups; and
 (11) Voluntary groups.

D. Terms of Office

Members must be appointed for terms of four years. However, of the members from the general public first appointed to the Board:

- (1) Four shall be appointed for terms of 2 years;
 (2) Four shall be appointed for terms of 3 years; and
 (3) Five shall be appointed for terms of 4 years.

The terms of office shall be determined by the members from the general public during the first meeting of the Board.

E. Meetings

The Board shall meet not less than twice a year at the call of the chairperson.

F. Duties of Board Members

1. The Board must annually submit to the Secretary and the appropriate Committees of the Congress a report containing:

- (a) Recommendations on coordinating Federal child abuse and neglect activities to prevent duplication and ensure efficient allocations of resources and program effectiveness; and
 (b) Recommendations for carrying out the purposes of the Act.

2. The Board must annually submit to the Secretary and the Director of the National Center on Child Abuse and Neglect a report containing long-term and short-term recommendations on:

- (a) Programs;
 (b) Research;
 (c) Grant and contract needs;
 (d) Areas of unmet needs; and
 (e) Areas to which the Secretary should provide grant and contract priorities under the Act.

3. The Board must annually review the budget of the National Center on Child Abuse and Neglect and submit to the Director a report concerning such review.

G. Compensation

1. Members of the Board, other than those regularly employed by the Federal

government, while serving on business of the Board, may receive compensation at the rate not in excess of the daily equivalent payable to a GS-18 employee under section 5332 of title 5, United States Code, including travel time.

2. Members of the Board, while serving on business of the Board away from their homes or regular places of business, may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

3. The Director may not compensate a member of the Board under this section if the member is receiving compensation or travel expenses from another source while serving on business of the Board.

H. Nominations

Nominations must be in writing and must include biographical information, vitae, the address and the telephone number of the nominee, as well as a brief description of relevant information to fulfill the requirements stated under sections B and C of this notice.

Dated: July 1, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Dated: July 1, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 88-15654 Filed 7-12-88; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting

Notice of Meeting of the Fogarty International Center Advisory Board Pursuant to Pub. L. 92-463, notice is hereby given of the tenth meeting of the Fogarty International Center (FIC) Advisory Board, September 8, 1988, in the Stone House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 3:30 p.m. The morning agenda will include a Report by the Director of the FIC; a report on the meeting of the Advisory Committee to the Director, NIH, on the Health of Universities; a report on a meeting of the Latin American Network of Biological Sciences (LANBIO); a scientific presentation on international activities of one of the NIH research institutes; and a discussion of science policy studies of NIH's Office of Science and Policy and Legislation. The afternoon

session will discuss recommendations of the FIC Program Planning Working Group and will include discussion of implementation plans and priorities.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 3:30 p.m. to adjournment for the review, discussion, and evaluation of research fellowship and training grant applications. These applications contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center (Executive Secretary) Building 38A, Room 609, telephone 301-496-1491, will provide substantive program information.

Dated: June 29, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-15718 Filed 7-12-88; 8:45 am]

BILLING CODE 4140-01-M

Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), July 21-22, 1988, Building 31, Conference Room 9, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on July 22, from 8:30 a.m. to adjournment to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 21, from 8:30 a.m. to 5 p.m. for the review,

discussion, and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request. **Dr. Lawrence J. Alfred,** Executive Secretary, (301) 496-4390, will provide substantive program information upon request.

This notice is being published less than 15 days prior to the meeting date because of difficulty of coordinating attendance in order to assure a quorum.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support, National Institutes of Health).

Dated: July 8, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88-15719 Filed 7-12-88; 8:45 am]

BILLING CODE 4140-01-M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), on September 15-16, 1988, at the National Institutes of Health, Conference Room 6, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on September 15 from 9 a.m. until recess and from 8:30 a.m. until approximately 12:00 p.m. on September 16 during which time there will be discussions on administrative matters such as previous meeting minutes; the Report of the Director, DRR; and review of budget and legislative updates. There will be a presentation on the Biomedical Research Technology Program, led by Dr. Suzanne Stimler, Director, which will include several guest speakers. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 16

from approximately 12 p.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496-5545, will provide a summary of the meeting and a roster of the Council members upon request. **Dr. James F. O'Donnell,** Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496-8023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support; 13.389 Research Centers in Minority Institutions, National Institutes of Health.)

Dated: June 29, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-15720 Filed 7-12-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Interagency Committee on Nutrition Monitoring; Announcement of Committee Formation

AGENCY: Office of the Assistant Secretary for Health, United States Department of Health and Human Services and Office of the Assistant Secretary for Food and Consumer Services, United States Department of Agriculture.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (DHHS) and the U.S. Department of Agriculture (USDA) announce the establishment of the Interagency Committee on Nutrition Monitoring on June 29, 1988. The committee, chaired by the Assistant Secretary for Health, DHHS, and the Assistant Secretary for Food and Consumer Services, USDA, has responsibility for increasing the overall

effectiveness and productivity of national nutrition monitoring efforts.

FOR FURTHER INFORMATION CONTACT: Interagency Committee on Nutrition Monitoring Secretariat: Dr. Catherine Woteki, Division of Health Examination Statistics, National Center for Health Statistics, Centers for Disease Control, Federal Center Building 2, 3700 East-West Highway, Hyattsville, MD 20782, (301) 436-7068.

SUPPLEMENTARY INFORMATION: The Interagency Committee on Nutrition Monitoring (ICNM) is concerned with the operation of the National Nutrition Monitoring System (NNMS) as stated in the 1987 *Operational Plan for the National Nutrition Monitoring System*, and hence with: (1) All federally supported or conducted surveys on human nutrition and food consumption; (2) all federally supported or conducted surveillance of the food supply; and (3) professional personnel needs in nutrition monitoring. This includes nutritional status and related health measurements, food consumption measurements, dietary knowledge and attitudes assessment, food composition measurements, food supply determinations, and training professional personnel necessary to carry out nutrition monitoring. The activities of the Committee will be closely coordinated with those of the Interagency Committee on Human Nutrition Research to ensure complementarity in areas of mutual responsibility and interest, for example food composition data bases.

Purpose. The purpose of the ICNM is to increase the overall effectiveness and productivity of nutrition monitoring efforts, by working to achieve the goals stated in the 1987 *Operational Plan for the National Nutrition Monitoring System*. In fulfilling this purpose, the Committee will:

- (a) Improve planning, coordination, and communication among Federal agencies engaged in nutrition monitoring;
 (b) Facilitate the development and updating of plans for Federal programs to meet current and future domestic and international needs for nutrition monitoring information, including development of procedures for improving communication with users of nutrition monitoring data and responsibilities to their needs;
 (c) Coordinate the collection, compilation, dissemination, and quality assurance of information on nutrition monitoring; and
 (d) Prepare reports and make recommendations to the relevant

officials on special topics identified by the Committee.

Organization. The Co-Chairpersons of the ICNM are the Assistant Secretary for Health of the U.S. Department of Health and Human Services and the Assistant Secretary for Food and Consumer Services of the U.S. Department of Agriculture or the designees. The Secretariat will be provided by the Co-Chairpersons on a rotating basis, with the DHHS National Center for Health Statistics taking the first rotation.

In addition to the Co-Chairpersons, the Committee includes one representative each from the following agencies: National Center for Health Statistics, Centers for Disease Control (CDC), DHHS; Center for Health Promotion and Education, CDC, DHHS; Food and Drug Administration, DHHS; National Institutes of Health, DHHS; Human Nutrition Information Service, USDA; Agricultural Research Service, USDA; Food and Nutrition Service, USDA; Economic Research Service, USDA; Agency for International Development; Bureau of Labor Statistics, Department of Labor; Bureau of the Census, Department of Commerce; Department of Defense; and Veterans' Administration. Other Federal agencies may be invited to participate by the ICNM Co-Chairpersons. The Committee will meet at least three times a year.

Dated: July 7, 1988.

J.M. McGinnis,

Deputy Assistant Secretary for Health
(Disease Prevention and Health Promotion),
Department of Health and Human Services.
[FR Doc. 88-15653 Filed 7-12-88; 8:45 am]
BILLING CODE 4180-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-88-1830]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information

collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requesting that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of responses, and hour of response; (8) whether the proposal is new, an extension,

reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 7, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Assessment of State and Regional PHA Delivery of Section 8 Assistance of Rural Areas.

Office: Housing.

Description of the Need for the Information and its Proposed Use:

The purpose of the survey is to provide HUD with information about: (1) The range of rural delivery systems adopted by state and regional PHAs administering Section 8 assistance; (2) their effectiveness in reaching the eligible population of rural areas; (3) the benefits accruing from various delivery systems and administrative structures; and (4) any problems, including regulatory obstacles, encountered in rural delivery. The information will be used as the basis of a report on findings, including identification of any particularly effective delivery models. The report will be used by HUD in planning rural voucher and certificate program activity.

Form Number: None

Respondents: State and Local Governments

Frequency of Submission: One-time Reporting Burden:

Number of respondents	Frequency of response	Hours per response	Burden hours
100 (PHAs).....	1	.5	75

Total Estimated Burden Hours: 75

Status: New

Contact: Lark Stevens, HUD, (202) 755-6454; John Allison, OMB, (202) 395-6800

Date: July 7, 1988.

Supporting Statement—Assessment of State and Regional PHA Delivery of Section 8 Assistance of Rural Areas

A. Circumstances That Makes Collection of Information Necessary

Section 8 rental assistance, including vouchers and certificates, has recently become the prominent low-income rental resource administered by HUD. Little is known, however, about the methods by which this resource is delivered at the local level by multicounty or state housing authorities.

Recent collaborative work by HUD and the Housing Assistance Council has revealed that rural coverage by state and regional PHAs is quite extensive. Further, it appears that a variety of administrative structures and evolved to serve rural areas. These administrative structures include branch offices and subcontracts with local housing authorities, community action agencies, and for-profit management entities, among other arrangements.

This type of information is potentially useful to policy and program planners at the federal, state, and local levels who are attempting to promote the use of Section 8 vouchers and certificates in rural areas and to improve delivery efficiency. However, much more needs to be known. What are the options in delivery systems? Which systems are used most by agencies with extensive rural participation? What problems in rural delivery have regional and state agencies encountered, and do these vary by type of administrative structure? What regulatory impediments to rural delivery have they encountered?

The instrument submitted for clearance would permit development of a comprehensive data base designed to systematically address these questions. As the only such data base to date, it would greatly advance assessments of the potential participation of rural areas in the Section 8 voucher and certificate programs and offer guidance regarding effective approaches to rural resource delivery.

B. How, by Whom, and for What Purpose the Information is to be Used

The purpose of the research, and hence of the instrument for which clearance is requested, is to provide information about: (1) The range of rural delivery systems adopted by state and regional PHAs administering Section 8

assistance; (2) their effectiveness in reaching the eligible population of rural areas; (3) the benefits accruing from various delivery systems and administrative structures; and (4) any problems, including regulatory obstacles, encountered in rural delivery. The information will be used as the basis of a report on findings, including identification of any particularly effective delivery models. The report will be used by HUD in planning rural voucher and certificate program activity.

C. Use of Improved Information Technology to Reduce Burden

Improved information technology will be used to eliminate the need to include detailed questions on the degree to which jurisdictions served are rural, the demographic and housing characteristics of those jurisdictions, and the distribution of certificates and vouchers. Data on these fundamental variables have already been stored on computerized files within HUD's Office of Policy Development and Research, and will be used in analysis of survey responses.

In general, the remaining information sought through the instrument concerned cannot be obtained through improved information technology. It will, however, be electronically filed at HUD, and thus available for other program and policy analysis and research.

There are no situations in which legal or technical obstacles prevent the reduction of burden through use of improved information technology.

D. Efforts to Identify Duplication

Efforts were made to identify duplicatory activities. Staff of the Office of Policy Development and Research have met with those of the Office of Housing to compare planned survey activities. The instrument concerned here does not duplicate information sought in the survey instrument proposed by the Office of Housing or in any other instrument employed by HUD.

E. Why Similar Already Available Data Cannot be Used

There are no similar or already available data on rural Section 8 delivery approaches.

F. Efforts to Minimize Burden for Small Entities

Because they are more likely to be directly involved in direct (as opposed to subcontracted) resource delivery, and because they cover fewer and more homogeneous jurisdictions, smaller agencies should have relatively little difficulty in completing their responses.

This assumption is supported by results from a pretest involving one state and one regional agency. The regional housing authority director took "only a few minutes" to complete the questionnaire, in contrast with the hour taken by the state agency employee. The regional housing authority directly provides assistance to a cluster of counties with similar needs; the state housing authority channels its assistance through three types of subcontractors to jurisdictions with a variety of needs.

The instrument was designed to adapt to such differences in response capability, by directing respondents along different question paths as the complexity of the administrative structure demands. Small, centralized authorities are thus directed to skip questions which enabled other agencies to explain complex delivery structures.

G. Consequences of Less Frequent Data Collection

The survey has not been conducted before, and is intended for one-time use. Deletion of any components would result in the lack of information needed to address the issues summarized in Section A.

H. Circumstances Requiring Deviation From Guidelines in 5 CFR 1320.6

The proposed data collection plan is consistent with the guidelines set forth in 5 CFR 1320.6 (Controlling Paperwork Burdens on the Public—General Information Collection Guidelines). There are no circumstances which require deviation from the guidelines.

I. Consultation Outside the Agency

The research design, data collection instruments, and data collection plan were developed in 1987 and 1988 by HUD's Office of Policy Development and Research. It was assisted by the Housing Assistance Council, a subcontractor to the Office of Housing which provides rural housing predevelopment loans, technical assistance, and research services.

J. Arrangements and Assurances Regarding Confidentiality

To ensure respondent privacy, agency contacts will not be identified by name or position in any report made available to the public.

K. Sensitive Questions

There are no questions of a sensitive nature on the instrument proposed for use in this research.

L. Estimated Cost to the Federal Government and Respondents

The costs of conducting the survey and recording the responses will be covered by HUD's current contract with the Housing Assistance Council (providing for HAC to carry out some research and technical assistance tasks on request from HUD) and will not require new federal expenditures.

M. Estimated Respondent Burden

Estimates of respondent burden have been derived from a pretest and after consultation with data collection staff at the Housing Assistance Council. Over a six-week data collection period, it is anticipated that approximately 30 state and 70 regional housing authorities will complete the survey. (All state and regional PHAs providing certificate or voucher assistance in rural areas would be surveyed. A mailing list of such PHAs, with homes and phone numbers of contact persons has already been established.) A pretest suggests that the required response time will range from ten minutes to an hour, depending upon the size and complexity of the respondent agency. Only one response will be required from each respondent. Assuming that each state agency will take an hour and each regional agency as much as 15 minutes, the total annual respondent burden would be 47.5 hours, which we rounded to an estimated 50 hours (an average of half an hour per respondent).

N. Tabulation Plans, Statistical Analysis and Study Schedule

Data collected in this study will be computerized by HUD and provided to the Housing Assistance Council, which will cross-tabulate the data by type of agency, type of delivery structure, degree of ruralness (using 10 breakdowns along a rural/urban continuum established by the Economic Research Service of the U.S. Department of Agriculture), and demographic and housing characteristics, including number of income-eligible households.

No statistical technique more complex than cross-tabulation is planned for analysis.

The survey is proposed to be conducted over a six-week period after receipt of OMB approval; response filing would take about two weeks; analysis and preparation of a draft report would take about two months. Given no unforeseen problems, a final report is planned for completion in October 1988.

Appendix—Proposed Survey Instrument

Agency Name: _____
Contact Person: _____
Telephone: () _____

1. How does your agency deliver Certificate and Housing Voucher assistance? (Check one.)
☐ Assistance is provided using subcontracts with other agencies, such as local housing authorities or community action agencies.
☐ Assistance is provided directly by the PHA, with no subcontracts. IF YOU CHECKED THIS BOX, GO DIRECTLY TO QUESTION 5 ON PAGE 2.
2. What types of agencies do you subcontract with? (Check as many as are applicable.)
☐ Local housing authorities
☐ Community action agencies
☐ Other non-profit corporations (please explain) _____
☐ Other (please explain) _____

3. Do you subcontract with more than one agency? Yes ___ No ___
IF YES:
a. How many agencies do you subcontract with? ___
b. Do the types of activities carried out by subcontractor agencies vary? Yes ___ No ___

4. Typically, what types of activities does a subcontractor agency perform? (Check as many boxes as are applicable.)
☐ Taking applications
☐ Selecting families off waiting list
☐ Certifying/verifying family income
☐ Briefing families/issuing Certificates or Vouchers
☐ Counseling/support as families look for housing
☐ Inspecting housing
☐ Negotiating rents/rent reasonableness
☐ Reviewing the lease
☐ Processing assistance payments
☐ Counseling/support for families receiving payments
☐ Handling complaints (e.g., lease violations, damage claims)
☐ Processing annual recertifications of family eligibility
☐ Terminating assistance payments
GO DIRECTLY TO QUESTION 8 ON PAGE 3.

5. Which best describes your delivery method? (Check one)
☐ Centralized, with one location (office) for administering Certificates and Housing Vouchers
IF YOU CHECKED THIS BOX, GO DIRECTLY TO QUESTION 8 ON PAGE 3.
☐ Central office and branch offices maintained at the expense of the PHA (number of branch offices: _____).
☐ Central office and out-stationed

employees, but no branch offices maintained at the expense of the PHA.

☐ Other (please explain) _____

6. If you maintain branch offices:
a. What types of activities are performed by the branch offices? (Check as many boxes as are applicable.)
☐ Taking applications
☐ Selecting families off waiting list
☐ Certifying/verifying family income
☐ Briefing families/issuing Certificates or Vouchers
☐ Counseling/support as families look for housing
☐ Inspecting housing
☐ Negotiating rents/rent reasonableness
☐ Reviewing the lease
☐ Processing assistance payments
☐ Counseling/support for families receiving payments
☐ Handling complaints (e.g., lease violations, damage claims)
☐ Processing annual recertifications of family eligibility
☐ Terminating assistance payments
b. Do the branch offices perform other functions, besides administering Certificates and Housing Vouchers? Yes ___ No ___
If yes, please explain: _____

7. Do you have out-stationed staff (not in branch offices) who perform Certificate and Housing Voucher functions? Yes ___ No ___
IF NO, GO DIRECTLY TO QUESTION 8 ON THIS PAGE.

- IF YES:
a. What types of activity are performed by out-stationed staff? (Check as many boxes as are applicable.)
☐ Taking applications
☐ Selecting families off waiting list
☐ Certifying/verifying family income
☐ Briefing families/issuing Certificates or Vouchers
☐ Inspecting housing
☐ Counseling/support as families look for housing
☐ Rent reasonableness/negotiating rents
☐ Reviewing the lease
☐ Expiration of Certificate or Voucher
☐ Processing assistance payments
☐ Counseling/support for families receiving payments
☐ Complaint handling
☐ Terminating assistance payments
b. Do the out-stationed staff perform other functions besides

administering Certificates and Housing Vouchers? Yes ___ No ___
If yes, please explain: _____

8. Regardless of the type of staff (i.e., whether PHA or subcontractor) who are performing housing quality inspections, what is the *minimum* and the *maximum* distance (one-way) that staff would normally travel to inspect housing? (Check one in each column.)

Minimum one-way distance	Maximum one-way distance
<input type="checkbox"/> Under 10 miles	<input type="checkbox"/> Under 10 miles
<input type="checkbox"/> 10-25 miles	<input type="checkbox"/> 10-25 miles
<input type="checkbox"/> 26-50 miles	<input type="checkbox"/> 26-50 miles
<input type="checkbox"/> 51-100 miles	<input type="checkbox"/> 51-100 miles
<input type="checkbox"/> more than 100 miles	<input type="checkbox"/> more than 100 miles
<input type="checkbox"/> don't know	<input type="checkbox"/> don't know

9. Attachment A provides an alphabetical list of non-metropolitan or rural counties that are served by your Certificate/Housing Voucher program. (The information is from HUD's files, and from a HAC survey performed last year.) On Attachment A, please:

a. Add any rural/non-metro counties that you serve with Certificates or Housing Vouchers but are not listed.

b. Draw a line through any counties that you are *not* serving (i.e., no Certificates or Housing Vouchers under lease.)

c. If your PHA jurisdiction covers only part of a county, please draw a circle around the name of that county.

d. Under the column headed "Unusual Family Difficulty" please indicate whether *families* have unusual difficulty finding housing and receiving assistance under the Certificate or Housing Voucher program. (Indicate yes or no.)

e. Under the column headed "Unusual Administrative Difficulty" please indicate whether *your agency* (including any subcontractors, branch offices, etc.) has unusual difficulty administering Certificates or Housing Vouchers in terms of time, complexity, or cost. (Indicate yes or no.)

f. Under the column headed "Average Travel Time," enter the *one-way travel time* (hours and minutes) that would normally be required for staff to perform a housing quality inspection in each county listed. In making the estimates, try to reflect the way that inspectors would normally travel (e.g., leaving from

their home or office versus travelling from county to county).

10. Now please examine the counties for which you indicated in Attachment A that *families* have unusual difficulty. What kinds of difficulties affect families in these counties? Please place numbers in the boxes to indicate rank order, with [1] for the most serious problem [2] for the next most serious problem, etc. (Leave blank if not a problem.)

- ☐ Quality of available housing
- ☐ Willingness of landlords to participate
- ☐ Fair Market Rents or Payment Standard not high enough
- ☐ Discrimination against families based on race, size of household, sex of head of household or source of income
- ☐ Families that need help are over-income or otherwise ineligible to apply
- ☐ Other (please explain) _____

☐ Other (please explain) _____

11. Now please examine the counties for which you indicated that *your agency* has unusual difficulty administering Certificates and Housing Vouchers.

ATTACHMENT A				
HUD Code	County name	Unusual family difficulty? (Y or N)	Unusual agency difficulty? (Y or N)	Average travel time
		<input type="checkbox"/> _____	<input type="checkbox"/> _____	____ hr ____ min
		<input type="checkbox"/> _____	<input type="checkbox"/> _____	____ hr ____ min
		<input type="checkbox"/> _____	<input type="checkbox"/> _____	____ hr ____ min
		<input type="checkbox"/> _____	<input type="checkbox"/> _____	____ hr ____ min

[FR Doc. 88-15736 Filed 7-12-88; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-88-1029]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New

What kinds of difficulties occur?

Please place numbers in the boxes to indicate rank order, with [1] for the most serious problem, [2] for the next serious problem, etc. (Leave blank if not a problem).

- ☐ Travel cost to inspect housing or otherwise run the programs
- ☐ Reaching landlords or convincing them to participate in the programs
- ☐ Repairing housing units to pass housing quality inspections
- ☐ High turnover rate for families participating in the program
- ☐ Administrative fee not sufficient to cover costs
- ☐ Other (please explain) _____

☐ Other (please explain) _____

12. How could HUD rules or regulations be changed to make it easier to provide Certificate or Housing Voucher assistance in hard-to-serve counties?

Overview

All in all, what do you think would be the most effective administrative approach to rural delivery of Certificate and Housing Voucher assistance? (This is an open-ended question, so please feel free to be creative.)

of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 7, 1988.

David S. Cristy,
Deputy Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Certification Pages for Settlement Statement

Office: Housing

Description of the Need for the Information and Its Proposed Use:

HUD needs this information to verify the accuracy of the information included in the closing package and to eliminate errors commonly found in closing packages. HUD uses this information to ensure that the FHA insurance fund is properly credited and to ensure that the Department receives the correct information to maintain their records properly.

Form Number: HUD-9589

Respondents: Individuals or Households and Businesses or Other For-Profit

Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	Frequency of response	Hours per response	Estimated burden hours
Transmittal of closing information.....	70,000	1	.17	11,900

Total Estimated Burden Hours: 11,900

Status: Revision

Contact: David H. Patton, HUD, (202) 755-5832; John Allison, OMB, (202) 395-6880.

Date: July 7, 1988.

Proposal: Application for Multifamily Housing Projects and for Equity Loans (FR-2450)

Office: Housing

Description of the Need for the Information and Its Proposed Use:

This information collection is comprised of basic application packages for HUD insurance of multifamily projects, hospitals, nursing homes, etc., under a variety of programs. HUD needs and use this information to insure equity loans to owners of certain low income projects.

Form Number: HUD-92013, 92013HOSP, and 92013NH-ICF

Respondents: Individuals or Households, State of Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees

Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	Frequency of response	Hours per response	Estimated burden hours
Multifamily Mortgage Insurance.....	850	1	26	22,400
Hospital Mortgage Insurance.....	1,300	1	2	2,600
Section N.....	1	1	1	1
Nursing Home Mortgage Insurance.....	150	1	64	9,600
Affirmative Marketing Plan.....	500	1	2	1,000
Application for Equity Loan.....	100	2	2	400

Total Estimated Burden Hours: 36,001

Status: Reinstatement

Contact: C. Edward Lewis, Jr., HUD, (202) 755-6223; John Allison, OMB, (202) 395-6880.

Date: July 6, 1988.

[FR Doc. 88-15737 Filed 7-12-88; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. N-88-1831]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records: HUD/DEPT-34, Pay and Leave Records of Employees.

EFFECTIVE DATE: This amendment shall become effective without further notice in 30 calendar days August 12, 1988, unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy

Act Officer, Telephone (202) 755-6374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/DEPT-34 contains information about the pay and leave records the Department maintains on its employees. The Department is amending the system of records to reflect two additional routine uses and the deletion of an existing routine use. The first additional routine use is for disclosure to the Department of Labor to assist in processing workers compensation injury claims under the Federal Employee's Compensation Act, 5 U.S.C. 8101 et seq. The other additional routine use is for disclosure to State governments, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands to assist in processing unemployment claims under the Unemployment Compensation for

Federal Employees Program, 5 U.S.C. 8501-8509. The routine use that is being deleted is for disclosure to the General Accounting Office. That routine use was made unnecessary by the addition of subsection (b)(10) of the Privacy Act in the 1982 amendments. The amended portion of the system notice is set forth below. Previously, a prefatory statement containing the general routine uses applicable to most of the Department's systems of records was published by the Federal Register in the Privacy Act Issuances, 1986 Compilation, Volume II. HUD/DEPT-34 was published for comment on March 7, 1988, at 53 FR 7242. A report of the Department's intention to amend this system was filed with the Speaker of the House, the President of the Senate, and the Office of Management of Budget on June 20, 1988.

Authority: 5 U.S.C. 552a, 86 Stat. 1898; Section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Issued At: Washington, DC, July 8, 1988.

Judith L. Hofmann,
Assistant Secretary for Administration.

HUD/DEPT-34

SYSTEM NAME:

Pay and Leave Records of Employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other Routine Uses: Transmittal of data to U.S. Treasury to effect issuance of paychecks to employees and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes. Annual reporting of W-2 statements to Internal Revenue Service, Social Security Administration, the individual, and taxing authorities of the States, the District of Columbia, territories, possessions, and local governments, except Social Security Numbers shall be reported only to such authorities that have satisfied the requirements set forth in Section 7(a)(2)(B) of the Privacy Act of 1974. To the Office of Personnel Management concerning pay, benefits, retirement deductions, and other information necessary for the office to carry on its Governmentwide personnel functions; to other Federal agencies to facilitate employee transfers; to the Department of Labor to process workers compensation injury claims; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary

offset; to the Federal Retirement Thrift Investment Board to administer the Thrift Savings Plan; to the Department of Agriculture's National Finance Center for payroll/personnel action, receipt account, time and attendance, and administrative overpayment processing; to the Department of Agriculture, Office of Inspector General, for audits of the payroll personnel system; to Federal, State, and local agencies to assist in the enforcement of child and spousal support obligations; to State governments, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands to assist in processing unemployment claims under the Unemployment Compensation for Federal Employees Program.

[FR Doc. 88-15738 Filed 7-12-88; 8:45 am]

BILLING CODE 4210-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR120-6310-02: GP8-177]

Coos Bay District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Tuesday, August 9, 1988, beginning at 8:00 a.m. The meeting will be held as a tour of a small portion of the Coos Bay District, departing from the BLM Coos Bay District Office.

Agenda: The agenda for the meeting will include:

1. A tour of certain BLM lands to show Council members various classifications of lands under the Timber Production Capability classification (TPCC) system.
2. Arrangements for the next meeting.

The meeting is open to the public and news media, but not transportation will be provided for either public or news media representatives. Interested persons may make oral statements to the council at 8:00 a.m. on Tuesday, August 9, before the tour departs, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Tuesday, August 2, 1988 (Telephone 503-269-5880).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 97420.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Date: June 27, 1988.

Melvin E. Chase,
District Manager.

[FR Doc. 88-15728 Filed 7-12-88; 8:45 am]

BILLING CODE 4210-33-M

[UT 050-06-4322-14]

Grazing Advisory Board Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board Meeting & Tour.

SUMMARY: The Richfield District Grazing Board will hold a meeting and tour August 3, 1988. The meeting will start at 9:00 a.m. at the Area Office, 15 East 500 North, Fillmore, Utah. The tour will take place in the afternoon. The agenda will be:

1. Discussion of the New Grazing Regulations.
2. The District's Weed Program.
3. Range Improvement Update.
4. Grasshopper/Cricket Control Program.

5. Update on Henry Mountain Coordinated Resource Management Proposal.

6. Status of Wildhorse Program.

7. Proposed Grazing Decisions.

8. Management of Riparian Areas.

The field tour, scheduled for the afternoon upon completion of agenda items will be to review the clear spot range rehabilitation. Individuals wishing to go on the tour need to furnish their own transportation.

Interested persons may make oral statements to the Board between 1:15 p.m. and 2:15 p.m. or file written comments from the Board's consideration. Anyone wishing to make an oral statement or participate on the tour must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801-896-8221). For further information contact: Bert Hart, District Public Affairs Specialist at the above address.

Nell Thomas,

Acting District Manager, Richfield District Office.

[FR Doc. 88-15627 Filed 7-12-88; 9:45 am]

BILLING CODE 4210-00-M

BEST COPY AVAILABLE

IOR-943-08-4220-11; GP-08-180; OR-213151

Proposed Continuation of Withdrawal, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that an existing withdrawal continue for 20 years and requests that the land remain closed to mining and be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the withdrawal made by the Secretarial Order of December 20, 1907 continue for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land involved is located in the Rogue River National Forest and contains 83 acres in T. 37 S., R. 4 E., W.M., Jackson County, Oregon.

The purpose of the withdrawal is to protect the Big Elk Administrative Site. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal except that the land be opened to operation of the public land laws generally.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: July 5, 1988.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-15628 Filed 7-12-88; 8:45 am]

BILLING CODE 4310-32-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Twentieth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on August 3rd and 4th, 1988.

Among the most important agenda items are the forthcoming charges from the BIFAD to JCARD regarding: (1) The BIFAD Task Force on Environment and Natural Resources: Strategies for Sustainable Agriculture and (2) the forthcoming CRSP Triennial Reviews on Bean/Cowpeas, Soil Management, Aquaculture (Pond Dynamics and Fisheries and Stock Assessment).

JCARD will hold the August 3rd portion of the meeting, 1:30-5:00 pm in Room 1107, Department of State, 21st and C Street, Washington, DC 20523 and the August 4th, 9:00-11:30 am, portion of the Meeting also in the Department of State in Room 3637. Any interested person may attend, may file written statements with the Committee before or after the meetings, or may present oral statements in accordance with the procedures established by the Committee, and to the extent the time available for the meeting permits.

It is suggested that those desiring further information write to Dr. Lynn Passon, Executive Director, BIFAD Staff if desiring further information, in care of the Agency for International Development, BIFAD/S, Washington, DC 20523, or telephone him at (202) 647-79048.

Dated: June 30, 1988.

Lynn Passon,

Executive Director, BIFAD/Staff.

[FR Doc. 88-15628 Filed 7-12-88; 8:45 am]

BILLING CODE 5116-01-M

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty-Ninth Meeting of the Board for International Food and Agricultural Development (BIFAD) on August 5, 1988.

The purposes of the Meeting are: (a) To discuss the BIFAD Charter, (b) to discuss Women in Development, (c) to hear a Report of the Task Force on Participant Training, (d) to hear a report on the proposed project evaluation procedure and (e) to take action on the recommendations of the budget panel.

The August 5, 1988 Meeting will be held in the Pan American Health Organization building, 525 Twenty-Third Street, NW Washington, DC 20037. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA-18, Washington, DC 20523, or telephone him on (703) 235-8929.

Dated: July 5, 1988.

Lynn Passon,

Executive Director, BIFAD.

[FR Doc. 88-15629 Filed 7-12-88; 8:45 am]

BILLING CODE 5116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-267]

Certain Minoxidil Power, Salts and Compositions for Use in Hair Treatment; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Deborah D. Sorkin, Esq., of the Office of Unfair Import Investigations 500 E St. SW, Washington, DC 20436, will be the Commission investigative attorney in the above-cited investigation instead of Jeffrey L. Gertler, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

Dated: July 5, 1988.

[FR Doc. 88-15733 Filed 7-12-88; 8:45 am]

BILLING CODE 7025-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 240X)]

CSX Transportation, Inc., Abandonment Between Big Pool and Tonoloway in Washington County, MD

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 20.35 miles of track in Washington County, MD, subject to standard labor protection and certain environmental conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 12, 1988. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) and petitions to stay must be filed by July 25, 1988, and petitions for reconsideration must be filed by August 2, 1988. Requests for a public use condition must be filed by July 25, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 240X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201 and Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission

¹ See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance, 4 I.C.C. 2d 164, (1967), and final rules published in the Federal Register on December 22, 1967 (32 FR 48440-48441).

Building, Washington, DC 20423, or call (202) 289-4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 6, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-15655 Filed 7-12-88; 8:45 am]

BILLING CODE 7025-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Sandidge, Inc. et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 24, 1988, a proposed consent decree in *United States v. Sandidge, Inc. et al.*, Civil Action No. 87-2386, was lodged with the United States District Court for the District of Columbia. The proposed consent decree resolves a judicial enforcement action brought by the United States against Sandidge, Inc., Unity Construction, Inc., and Martin O. Sandidge for violations of the Clean Air Act.

The proposed consent decree requires the three defendants to comply with the notification provisions of the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 CFR Part 61, Subpart M. The consent decree also requires the defendants to provide their employees with training, approved by the United States Environmental Protection Agency, in asbestos demolition and removal practices. Finally, the consent decree requires the defendants to pay a total penalty of \$30,000 in several installments within one year of entry of the Decree by the Court.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Sandidge, Inc. et al.*, D.J. Ref. 90-5-2-1-1128.

The proposed consent decree may be examined at the office of the United States Attorney, Judiciary Center Building, 555 Fourth Street, NW, Washington, DC 20001, and at the Region III office of the United States

Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

James L. Byrnes,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-15625 Filed 7-12-88; 8:45 am]

BILLING CODE 4110-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Companies Section) to the National Council on the Arts which was to have been held on July 18-22, 1988, from 9:00 a.m.-8:00 p.m., and on July 23, 1988, from 9:00 a.m.-5:00 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 has been changed. It will be held on July 18-21, 1988 from 9:00 a.m.-9:00 p.m. and on July 22, 1988 from 9:00 a.m.-7:00 p.m.

If time permits, a portion of the meeting will be open to the public on July 22, 1988, from 3:00 a.m.-7:00 p.m. for a guidelines and policy issues discussion.

The remaining sessions of this meeting on July 18-21, 1988, from 9:00 a.m.-9:00 p.m., and on July 22, 1988, from 9:00 a.m.-3:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(b) of

section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts,
July 8, 1988.

[FR Doc. 88-15734 Filed 7-12-88; 8:45 am]
BILLING CODE 7537-01-01

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be

closed to the public pursuant to subsections (c) (4), (6) and (9) (B) of section 552 of Title 5, United States Code.

1. Date: August 1, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in American History and American Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

2. Date: August 2, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in Comparative Literatures; Germanic, Slavic and Non-Western Literatures; and Literacy Theory and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

3. Date: August 2-3, 1988.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.

Program: This meeting will review applications for Research, Scholarship and Graduate Education, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1988.

4. Date: August 3, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in Political Science, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

5. Date: August 4, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Art History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

6. Date: August 4, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

7. Date: August 4-5, 1988.
Time: 8:00 a.m. to 5:00 p.m.
Room: 415.

Program: This meeting will review applications submitted for Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after January 1, 1989.

8. Date: August 5, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

9. Date: August 5, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in Anthropology, Sociology, Psychology and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

10. Date: August 8, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College Teachers applications in Political Science, Law and Economics, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

11. Date: August 8, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in Romance and Classical Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

12. Date: August 9, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

13. Date: August 9, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

14. Date: August 15, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships and Independent Scholars applications in Philosophy, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

15. Date: August 15, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

16. Date: August 16, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars applications in Latin American and Non-Western History, submitted to the Division of Fellowships and Seminars.

17. Date: August 16, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

18. Date: August 17, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

19. Date: August 17, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in American Literature and Studies; Literary Theory and Criticism; and Film Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

20. Date: August 17, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American Literature and Studies, Communications, Speech, and Media, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

21. Date: August 18, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers applications in Art History and Criticism, submitted to the Division of Fellowships and Seminars, for projects in January 1989.

22. Date: August 18, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College and Independent Scholars applications in Classical and Romance Languages, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

23. Date: August 19, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.

Program: This meeting will review Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars applications in Music and Dance History and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

24. Date: August 22, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Sociology, Anthropology, Psychology and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

25. Date: August 23, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in German, Slavic, and Oriental Languages and Literatures; Theater and Film; Linguistics, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

26. Date: August 24, 1988.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316-2.

Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in English Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1989.

Stephen J. McCleary,
Advisory Committee Management Officer,
[FR Doc. 88-15658 Filed 7-12-88; 8:45 am]
BILLING CODE 7534-01-01

NUCLEAR REGULATORY COMMISSION

(Docket Nos. 50-237 and 50-249)

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to the Licenses and Technical Specifications in support of refueling and startup to the Commonwealth Edison Company (CECo, the licensee) for the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend the Technical Specifications to correct the discrepancy between the Table 3.2.2 value for the 4KV emergency bus undervoltage trip (3092V) and the current trip value (2930V). It has been determined that the value in Table 3.2.2 is not consistent with the engineering and design basis upon which the actual trip value is based.

This amendment request is consistent with the NRC letter dated March 25, 1988 granting a temporary waiver of compliance.

The Need for the Proposed Action

By letter dated March 28, 1988, the licensee requested review and approval of a change to the Technical Specifications to correct a discrepancy in Table 3.2.2. Should this approval not be granted, the Technical Specification would not be consistent with the design basis and existing relays and could possibly lead to a misinterpretation in the future.

Environmental Impacts of the Proposed Action

The proposed action corrects a number in Table 3.2.2 of the Technical Specification which is related to the degraded voltage on the 4KV emergency buses. Based on the staff's evaluation, the level of safety in the operation of the plant is equivalent to that anticipated when the license was granted. There is no significant change in probability or consequence of a serious accident. Radiological releases will not differ from those determined previously and the proposed amendments do not otherwise affect facility radiological effluents or occupational exposures. The proposed amendments do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental

impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to deny the amendment. Such action would not enhance the protection of the environment and would result in unjustifiable costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden, Units 2 and 3 dated November 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the Environmental Assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the NRC letter dated March 25, 1988 confirming a temporary waiver of compliance and the licensee's letter dated March 28, 1988. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Morris Public Library, 804 Liberty Street, Morris, Illinois 60451.

Dated at Rockville, Maryland this 6th day of July 1988.

For the Nuclear Regulatory Commission,
Daniel R. Muller,
Director, Project Directorate III-2, Division of
Reactor Projects—III, IV, V, and Special
Projects.

[FR Doc. 88-15686 Filed 7-12-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-66 issued to Duquesne Light Company, et al. (the licensee), for operation of the Beaver Valley Power Station, Unit 1, located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendment changes Technical Specifications (TS) Section 4.2.1.4 to require determination of the flux difference by interpolating to the design end-of-life value, instead of interpolating to 0% at the end-of-life.

The proposed amendment is in accordance with Duquesne Light Company's application dated December 7, 1987.

The Need for the Proposed Action

The proposed change to the TS is needed since the revised method will provide a target flux difference that reflects actual core conditions more closely, and will aid the operators in maintaining reactor operation within allowable limits.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. The proposed revision would only improve calculation of the target flux difference, and would have no other effect on plant design or operation. Therefore, the proposed change does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves the reactor system which is located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on February 2, 1988 (53 FR 2896). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the

proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would only continue to yield an operational parameter in a less accurate way than is actually possible.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Beaver Valley Power Station, Unit 1, dated July 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding Of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 7, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this sixth day of July, 1988.

For the Nuclear Regulatory Commission,
John F. Stolz,
Director, Project Directorate I-4, Division of
Reactor Projects I/II, Office of Nuclear
Reactor Regulation.

[FR Doc. 88-15686 Filed 7-12-88; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Decay Heat Removal Systems; Revised Meeting

The ACRS Subcommittee on Decay Heat Removal Systems scheduled for July 20, 1988, has been rescheduled for Wednesday, July 27, 1988, 8:30 a.m., Room 1046, 1717 H Street, NW., Washington, DC. All other items pertaining to this meeting remain the same as published on Tuesday, July 5, 1988 (53 FR 25220).

Date: July 6, 1988.

Morton W. Libarkin,
Assistant Executive Director for Project
Review.
[FR Doc. 88-15685 Filed 7-12-88; 8:45 am]
BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 18, 1988 through June 30, 1988. The last biweekly notice was published on June 29, 1988 (53 FR 22396).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final

determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 12, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the

Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-8000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al.,
Docket Nos. STN 50-525, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: May 27, 1988

Description of amendment request: The proposed amendment consists of changes to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for PVNGS Units 1, 2 and 3 respectively).

The proposed change will modify Technical Specification 3.2.3 to require that the measured Azimuthal power tilt be less than the allowance used in the Core Protection Calculators (CPCs) at all times. A wording change is also proposed for Surveillance Requirement 4.2.3.2 to refer to the Core Operating Limits Supervisory System (COLSS) as being "in service" or "out of service," as opposed to operable or inoperable.

In addition, the azimuthal power tilt limits with COLSS in service are increased for Unit 2 only. This would allow the operators to better mitigate the consequences of Xenon transients occurring below 40 percent power.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee provided the following discussion of the proposed changes as they relate to these standards:

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated since the results of the Unit 2 Cycle 2 analysis incorporate the higher tilt values (with COLSS in service). This assures that there is sufficient margin in the safety analysis for the most limiting Design Basis Event.

The analyses performed included physics calculations for all reactivity insertion events for which the azimuthal power tilt is an explicit input. These analyses include Control Element Assembly (CEA) Ejection, Single Full-Length CEA Withdrawal, and Single Part-Length CEA Drop events.

For the remaining Design Basis Events there is sufficient conservatism in the increased azimuthal power tilt allowed below 40% power. At greater than 40% power the proposed limits are identical to the reference cycle (cycle 1) and are bounded by that analysis.

The generic change that requires that the measured azimuthal power tilt be less than the CPC allowance provides

an additional restriction, therefore, the probability or consequences of an accident previously evaluated will not be increased.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed T.S. Amendment only changes the azimuthal power tilt limits, and does not modify any plant equipment or operating procedures. The generic change that requires the measured azimuthal power tilt to be less than the azimuthal power tilt allowance used in the CPCs is more restrictive than the present T.S. requirement. The relaxation of the azimuthal power tilt limit for Unit 2 allows the operators to better mitigate xenon transients below 40% power.

Therefore, the possibility of a new or different kind of accident from any previously evaluated will not be created.

Standard 3 - Involve a Significant Reduction in a Margin of Safety

The proposed change will not involve a significant reduction in a margin of safety since additional restrictions are being imposed to ensure that the azimuthal power tilt is less than or equal to the allowance used in the CPCs at all times. The results of the analyses assuming the higher tilt values assure that there is sufficient margin for the most limiting Design Basis Event. Therefore, the margin of safety will not be reduced.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: Mr. George W. Knighton

Arkansas Power & Light Company,
Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: June 10, 1988

Description of amendment request: The amendment would delete Figure 6.2-1, "Management Organization Chart"

(offsite), and Figure 6.2-2, "Functional Organization For Plant Operations."

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The Arkansas Power & Light Company (AP&L) reviewed the proposed change and determined, and the NRC staff agrees, that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i) the applicant's organizational structure is required to be included in the Final Safety Analysis Report. Chapter 12 of the Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), AP&L submits annual updates to the FSAR. Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to organization described in the Quality Assurance Program. Some of these organizational changes require prior NRC approval. Also, it is AP&L's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because AP&L, through its Quality Assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a

high level of competence. Therefore, removal of the organization chart from the Technical Specifications will not affect the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo
Arkansas Power & Light Company,
Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: June 10, 1988

Description of amendment request: The amendment would delete Figure 6.2-1, "Management Organization Chart" (offsite), and Figure 6.2-2, "Functional Organization For Plant Operations."

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The Arkansas Power & Light Company (AP&L) reviewed the proposed change and determined, and the NRC staff agrees, that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i) the applicant's organizational structure is required to be included in the Final Safety Analysis Report. Chapter 13 of the Final Safety Analysis Report provides a description of the organization and detailed

organization charts. As required by 10 CFR 50.71(e), AP&L submits annual updates to the FSAR. Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to organization described in the Quality Assurance Program. Some of these organizational changes require prior NRC approval. Also, it is AP&L's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because AP&L, through its Quality Assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization chart from the Technical Specifications will not affect the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Carolina Power & Light Company, et al.,
Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: March 13, 1987, as supplemented January 6, 1988 and March 10, 1988

Description of amendments request: The proposed amendments would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2, with respect to the Jet Pump Surveillance Requirement 4.4.1.2.

Two cases of BWR/3 jet pump hold down beam failures during plant operation have occurred which have caused jet pump mixer displacement. In

both cases, significant recirculation system performance degradation occurred prior to beam failure (no failures involved BWR/4 beams). In response to these failures, General Electric (GE) investigated the occurrences and performed structural tests of both BWR/3 and BWR/4 beams. GE released its findings in Service Information Letter No. 330, Supplement 1 (SIL 330). The letter recommends that licensees with BWR/4 jet pump beam designs modify their surveillance requirements which when implemented would provide more reliable indications of jet pump performance. Thus, the proposed change to Surveillance Requirement 4.4.1.2, Jet Pumps, would revise the surveillance requirements to provide more reliable indications of jet pump performance, following the applicable guidance as discussed in SIL 330. This will be accomplished by providing new test criteria and by using deviations from established pump relationships, as an indication of potential problems, as opposed to using deviations from analytical evaluations, which is the current practice. Also, Surveillance Requirement Section 4.4.1.2 will be renumbered to 4.4.1.2.1 and Surveillance Requirement Section 4.4.1.2.2 is being added. Bases sections 3/4.4.2 and 3/4.4.3 which were inadvertently deleted in an earlier amendment and are now being reinserted.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and the licensee's findings are summarized below:

1. The proposed change does not increase the probability or consequences of an accident previously evaluated. The changes are enhancements to surveillance requirements to provide more reliable indications of jet pump operability. This

change does not involve a design change or affect design basis accidents.

2. The proposed change would not create a possibility of a new or different kind of accident for an accident previously evaluated because it does not require a physical modification to the plant, nor a change in operation of the facility. Only surveillance requirements would be changed to be more restrictive, conforming to guidance provided in SIL 330.

3. The proposed change does not involve a significant reduction in the margin of safety, because the change in the surveillance program provides a more reliable indication of jet pump operability and thereby enhances the ability to detect degradation of jet pump performance. Based on this reasoning, the margin of safety would not be reduced.

Therefore, the licensee has determined that the proposed amendment meets the criteria of 10 CFR 50.92(c) and, thus, does not involve a significant hazards consideration.

The NRC Staff has reviewed the licensee's no significant hazards consideration and agrees with the licensee's analysis. Based on this review, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. STN 50-237 and STN 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of amendment request: April 28, 1988

Description of amendment request: The amendment would make the following three revisions to the existing Sections 3.1 and 4.1 of the Dresden Nuclear Power Station Units 2 and 3 Technical Specifications (TS):

1. Eliminate from Tables 3.1.1 and 4.1.1 and notes to Table 3.1.1 requirements associated with the Average Power Range Monitor (APRM) downscale scram (also referred to as the "APRM/IRM companion scram"). This also eliminates the IRM scram which occurs in the Run Mode with the simultaneous APRMs downscale scram.

2. Eliminate from Table 3.1.1, the bypass permissive in the main steam line high radiation scram which was inadvertently added in a previous amendment.

3. Reinsert in Table 3.1.1 the bypass permissive on the turbine control-loss of control oil pressure scram, when the first stage turbine pressure is less than that which corresponds to 45% rated steam flow, which was inadvertently deleted in a previous amendment. In addition, a typographical error in these sections has been corrected.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application as follows:

(1) The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. The accidents of concern with respect to the APRM/IRM companion scram (APRM downscale/IRM "high high" or inoperable trip) are the Rod Drop Accident (RDA) and the low power Rod Withdrawal Error (RWE). FSAR and reload safety analyses do not credit this scram function in the termination of either of these accidents. Since this scram function is not credited in the termination of these accidents, the elimination of this scram function in Tables 3.1.1 and 4.1.1 has no adverse effect on previously evaluated accidents.

The elimination from Table 3.1.1 of the Main Steam Line High Radiation (MSLHR) bypass permissive is conservative in that it will ensure that the original plant design requirements are met. This permissive was erroneously incorporated into the Technical Specifications but does not exist.

The reinsertion in Table 3.1.1 of the bypass permissive for loss of turbine control oil pressure is consistent with original plant design and construction. This change corrects an error in that the

bypass permissive was erroneously excluded from the Technical Specifications in previous amendments.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The limiting accidents (i.e., RDA and RWE) in the operating region of transition between the Startup and Run Modes are well understood and are evaluated in FSAR and/or relpad safety analyses. Elimination of the APRM Technical Specification requirement in Tables 3.1.1 and 4.1.1 for the downscale/IRM "high high" or inoperable trip does not introduce any new accident scenario since it is not credited in the termination of these limiting events. Other control rod initiated events which are less limiting in this region, such as fast period events (either due to operator error or control rod drive malfunction), are subsets of the low power RWE event and are bounded by both it and the Design Basis RDA. General Electric has indicated that, for reactivity insertion mechanisms at very low power (if postulated to occur coincident with an inappropriate mode switch position), the only effect of the deletion of the APRM downscale scram would be that the initial power level could be a few percent lower which would not have a significant effect on the severity of the event. In addition, proper overlap between the IRMs and APRMs is not affected since the calibration requirements are not being changed.

The elimination from Table 3.1.1 of the MSLHR bypass permissive is consistent with original plant design and FSAR requirements. This change is conservative and will ensure that the level of reactor protection is maintained at original design levels.

The reinsertion in Table 3.1.1 of the loss of turbine control oil pressure bypass permissive does not create any new accident scenario. This change is consistent with original plant design and was erroneously omitted from the Technical Specifications.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The APRM downscale/IRM "high high" or inoperable trip function in Tables 3.1.1 and 4.1.1 is not credited in the termination of any FSAR or reload safety analysis event. As such, the elimination of this scram function has no effect on any Technical Specification defined safety margin.

The elimination of the MSLHR bypass permissive in Table 3.1.1 is conservative and will ensure that original plant design requirements are met. Since this

change is conservative, it will provide an increase rather than a decrease in Technical Specification safety margins.

The loss of turbine control oil pressure bypass permissive in Table 3.1.1 was part of the original plant design. It was erroneously omitted from the Technical Specifications. As such, inclusion of this permissive does not decrease any Technical Specification defined safety margin.

The staff has reviewed the licensee's no significant hazards analysis given above. Based on this review, the staff proposes to determine that the proposed amendments meet the three 10 CFR 50.92(c) standards and do not involve a significant hazards consideration.

Local Public Document Room locations: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Leif J. Norrholm
Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: May 9, 1988

Description of amendment request: Pursuant to 10 CFR 50.90, Commonwealth Edison Company (CECO) proposed to amend Appendix A, Technical Specifications (TS), to Facility Operating Licenses DPR-29 and DPR-30. The proposed changes would clarify the applicability of containment oxygen concentration and drywell torus differential pressure Limiting Conditions for Operation (LCO) and Surveillance Requirements. Additionally, the proposed changes would provide clearer action statements if the oxygen concentration or torus drywell differential pressure LCO's are exceeded. Similar changes were submitted for Dresden Station Units 2 and 3 on March 18, 1988. These changes have been patterned after the BWR Standardized TS.

Administrative and editorial changes to the TS LCOs and Bases were also proposed to enhance clarity, renumber and reformat for textual continuity, and maintain consistency between revised action statements and existing TS.

The intended purpose of an inerted containment (i.e., oxygen less than 4%) is to provide protection from the possibility of hydrogen combustion following a loss-of-coolant accident (LOCA). And, by maintaining the drywell suppression chamber differential pressure (DP) at 1.2 psid, integrity of the suppression chamber

when subjected to post-LOCA hydrodynamic forces is assured.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists. As stated in 10 CFR 50.92(c), a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Pursuant to 10 CFR 50.91(a) the licensee has provided the following evaluation of their amendment application addressing these three standards.

CECO has evaluated the proposed Technical Specifications changes, and determined that they do not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of QCNP in accordance with the proposed changes:

(1) Will not involve a significant increase in the probability or consequences of an accident previously evaluated because the effects of short-term containment degrading have been analyzed in the Final Safety Analysis Report (FSAR). Also, the torus has been analyzed for less than the TS required 1.2 psid as part of the QCNP, Units 1 and 2, Plant Unique Analysis Report (Volume 2, "Suppression Chamber Analysis", Revision 0, May 1983) and was found to meet acceptance criteria. Power operation is presently permitted with containment oxygen concentration greater than 4% and/or drywell-suppression chamber DP less than 1.2 psid, only during the 24 hours after going to the RUN mode, and 24 hours prior to a scheduled reactor shutdown. The proposed change would permit 24 hours of power operation with the primary containment deperterted, and/or lack of drywell suppression chamber DP, independent of whether the reactor is in startup or shutdown. Personnel drywell entries at power are necessary to identify water leakage, effect minor repairs, and enable equipment lubrication. In general, drywell entries other than during startup are quite rare. Permitting time restricted personnel access into the deperterted drywell is judged prudent in terms of ensuring critical plant systems are maintained in optimum condition, without significantly

increasing the probability of a LOCA occurring during deinerted conditions. Similarly, LOCA probabilities have not been significantly changed for the restricted time allowed for reduced drywell-suppression chamber DP.

(2) Will not create the possibility of a new or different kind of accident from any accident previously evaluated because the effects of short-term deinerting have already been analyzed and described in the FSAR. Additionally, the torus was analyzed for 0.0 psid drywell to torus differential pressure as part of the Mark I containment Short Term Program and was found to meet acceptance criteria.

(3) Will not involve a significant reduction in the margin of safety because FSAR analyses have shown that for design basis accidents, the long term combustible gas control system (ACAD/CAM) can prevent a combustible gas mixture of 4% hydrogen even with a deinerted containment. Therefore, peak containment pressure is bounded by the FSAR LOCA analysis. The margin of safety for the torus drywell differential pressure is not degraded as a result of this change because analysis of the 0.0 psid drywell to torus differential pressure concludes that acceptable criteria were met. Therefore, the pressure suppression is maintained. Hence, the changes do not reduce the margin of safety.

The NRC staff, after going to the RUN mode, and 24 hours prior to a scheduled reactor shutdown. The proposed change would permit 24 hours of power operation with the primary containment deinerted, and/or lack of drywell suppression chamber DP, independent of whether the reactor is in startup or shutdown. Personnel drywell entries at power are necessary to identify water leakage, effect minor repairs, and enable equipment lubrication. In general, drywell entries other than during startup are quite rare. Permitting time restricted personnel access into the deinerted drywell is judged prudent in terms of ensuring critical plant systems are maintained in optimum condition, without significantly increasing the probability of a LOCA occurring during deinerted conditions. Similarly, LOCA probabilities have not been significantly changed for the restricted time allowed for reduced drywell-suppression chamber DP.

(2) Will not create the possibility of a new or different kind of accident from any accident previously evaluated because the effects of short-term deinerting have already been analyzed and described in the FSAR. Additionally, the torus was analyzed for 0.0 psid drywell to torus differential

pressure as part of the Mark I containment Short Term Program and was found to meet acceptance criteria.

(3) Will not involve a significant reduction in the margin of safety because FSAR analyses have shown that for design basis accidents, the long term combustible gas control system (ACAD/CAM) can prevent a combustible gas mixture of 4% hydrogen even with a deinerted containment. Therefore, peak containment pressure is bounded by the FSAR LOCA analysis. The margin of safety for the torus drywell differential pressure is not degraded as a result of this change because analysis of the 0.0 psid drywell to torus differential pressure concludes that acceptable criteria were met. Therefore, the pressure suppression is maintained. Hence, the changes do not reduce the margin of safety.

The NRC staff has reviewed the licensee's evaluation related to the proposed changes and concurs with their conclusions.

In addition to the aforementioned administrative and editorial TS changes described above are considered representative of example (i) in the Commission's guidance (51 FR 7751) for examples of no significant hazards, which is defined as "a purely administrative change to TS; for example a change to achieve consistency throughout the Technical Specifications, correction of an error, or change in nomenclature."

Therefore the NRC staff proposes to determine that these amendment requests do not involve significant hazards considerations based upon a preliminary review of the application, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room
location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Suite 5200, Chicago, Illinois 60602.

NRC Project Director: Daniel R. Muller, Director

Duke Power Company, Docket Nos. 50-289, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: December 2, 1986, as supplemented on November 9, 1987, and January 15, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted amendments to the Physical Security Plan for the Oconee Nuclear Station, Units 1, 2, and 3 to reflect recent changes to that regulation. The proposed

amendments would modify paragraph 3F. of the Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan to satisfy the requirements of the amended regulations. The Commission proposes to amend the licenses to reference the revised Plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room
location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: June 7, 1988

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.8.4.2, "Safety-Related Motor-Operated Valves Thermal Overload Protection and Bypass Devices." The revision would change the surveillance requirement to verify that required thermal overload protection bypass devices are operable from "At least once per 18 months during shutdown" to "At least once per 18 months."

Basis for proposed no significant hazards consideration determination: The requested change allows verification of safety-related valve motor operator thermal overload protection bypass devices to be performed during any mode of plant operation. The nature of the surveillance activity does not require that it be limited to shutdown modes.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

(1) The proposed change does not significantly increase the probability or consequences of previously evaluated accidents. Performance of the subject surveillance requirement during modes other than shutdown does not affect operation of the applicable valves since no manipulation of the bypass devices is involved. Operation or mitigation of previously evaluated accidents is, therefore, not adversely affected by the change. The probability and consequences of such accidents are therefore not increased.

(2) The proposed change does not create the possibility of a new or different kind of accident than any

accident previously evaluated. The change affects only the operating mode in which a surveillance requirement may be performed. Performance of the surveillance during power operation does not introduce a new failure mode since the surveillance consists of a visual inspection only. The change does not introduce any new equipment into the plant or require any existing equipment to be operated in a different manner from which it was designed to operate. Since no new mode of failure is created, a new or different kind of accident could not result.

(3) The proposed change does not significantly reduce a margin of safety. The change does not reduce the frequency of the subject surveillance activity or decrease the effectiveness of the surveillance test. The change does not affect operation of the thermal overload protection bypass devices. The change does not affect any safety limit or limiting safety system setting. Margins of safety are therefore not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards considerations.

Local Public Document Room
location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Dombey, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: June 14, 1988

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 6.3, "Training." The revision would include changing a training requirement from 10 CFR 55 Appendix A to 10 CFR 55.59 in accordance with a recent revision to 10 CFR 55. The revision would also allow an accredited program endorsed by the NRC to satisfy training requirements in lieu of the training requirements specified in TS 6.3.

Basis for proposed no significant hazards consideration determination: The Commission has provided

standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

(1) The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. This change allows recognition of a training program that has received an NRC endorsement or approval. Since the plant operating staff will be "approved," the probability of any previously evaluated accident is not affected. The consequences of previously analyzed accidents are not significantly increased.

(2) The proposed change does not create the possibility of a new or different kind of accident than any accident previously evaluated. The plant operating staff is still subject to an NRC approved program. A new or different failure mode should not result from the training given to the operating staff.

(3) The proposed change does not involve a significant reduction in the margin of safety. Plant operations personnel, both before and after the change, operated the plant subject to NRC review and approval of their training. In this case, the NRC is approving or endorsing a performance based training program. Safety margins are therefore not reduced since the operation training program is still subject to NRC review and approval.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards considerations.

Local Public Document Room
location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Dombey, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: February 5, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Section 3.3.2 (Tables 3.3.2-1 and 4.3.2.1-1). Technical Specification 3.3.2 requires the Containment Building Fuel Transfer Pool Ventilation Plenum Radiation Monitors (1RIX-PRO08A-D) to be operable when handling irradiated fuel in primary or secondary containment, during core alterations and operations with a potential for draining the reactor vessel (note "v"), and during operational conditions 1, 2, and 3 (Power Operation, Startup and Hot Standby, respectively). Illinois Power Company has requested that this Technical Specification be changed to be consistent with the intended purpose of these monitors by only requiring operability when handling irradiated fuel in the primary containment (building) during core alterations and operations with the potential for draining the reactor vessel. Action 29 associated with operational conditions 1, 2, 3 should also be deleted.

Illinois Power Company has stated that the function of monitoring containment exhaust air under all normal operating conditions is adequately performed by two fully redundant safety-grade radiation monitoring systems. Thus, the radiation monitors (1RIX-PRO08A-D) are not required for the purpose of monitoring containment exhaust air during conditions other than when fuel handling is in progress. Maintaining these instruments operable is relatively labor intensive; requiring these monitors to be operable when no fuel handling is in progress takes resources away from other tasks.

Basis for proposed no significant hazards consideration determination: The staff has evaluated the proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated nor does it alter the intent or implementation of the applicable Technical Specifications since the affected radiation monitor will supply the necessary containment isolation signals following a fuel handling accident inside the containment building. Other designated radiation monitors are the primary instruments for initiating a containment isolation during operating conditions 1, 2, and 3. Operability of these instruments is not affected by this change.

This proposed change does not create the possibility of a new or different kind of accident from any previously evaluated, nor does it affect plant design or operation. This proposed change involves changing the operability requirements only for the noted monitor. The monitor will be required to be operable only when it is needed to perform its design function consistent with the accident (fuel handling accident inside the primary containment building) for which its response is required. No other changes in plant operation are required. This change will make the Technical Specifications reflect the actual plant design and will not change the plant's physical configuration.

The proposed change does not involve a significant reduction in a margin of safety because while in operating conditions 1, 2 and 3, sufficient redundant process radiation instrumentation is available to initiate a containment isolation when a high radiation condition exists. The proposed change does not impact the operability or trip setpoints for these instruments.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Leif J. Norrholm

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: February 5, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Sections 6.2.2 and 6.5.3. The proposed change is an administrative change which would

replace the position title of "Power Plant Manager" with "Manager-Clinton Power Station." On pages 6-2, 6-13 and 6-14 the position title of "Power Plant Manager" is used several times. The correct title as used in the rest of the Technical Specifications and in Chapter 13 of the Final Safety Analysis Report (FSAR) is "Manager-Clinton Power Station." These pages should be revised to incorporate the correct title and achieve consistency throughout the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because this change does not affect any previous analyses nor does it alter the intent or implementation of the applicable Technical Specifications. The purpose of this administrative change is to achieve textual consistency between the FSAR and the Technical Specifications.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change is administrative in nature and thus does not affect the plant design or operation.

The proposed change does not involve a significant reduction in a margin of safety. The proposed change is administrative in nature and thus does not alter the intent of the existing Technical Specification requirements. The proposed change does not impact plant design and therefore does not affect a margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200

Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Leif J. Norrholm

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: February 5, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Tables 3.3.2-1 and 3.3.3-1. The proposed change is an administrative type of change to add clarifying information to the existing Clinton Power Station instrumentation Technical Specifications.

One proposed change is requested to clarify the divisional assignment for the reactor vessel water level and drywell pressure instruments listed on Technical Specification Table 3.3.2-1, items 1.c and 1.f, and Table 3.3.3-1, items C.1.a, C.1.b and C.1.c. This is consistent with other instrumentation for which the divisional assignment was specified (items 1.b and 1.e of Table 3.3.2-1) and helps to emphasize that some of the instrumentation for High Pressure Core Spray System (HPCS) is associated with two divisions. Another proposed change would provide clarification of the combinational logic scheme for the Reactor Vessel Water Level-Low, Low Level 2 and Drywell Pressure-High channels (Table 3.3.2-1, items 1.c and 1.f, and Table 3.3.3-1, items C.1.a and C.1.b.). This enhancement is requested to ensure that the corresponding action statements are properly followed if one or more of the affected channels is declared inoperable.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect any previous analyses nor do they alter the intent or implementation of the applicable Technical Specifications.

The proposed changes to Tables 3.3.2-1 and 3.3.3-1 are administrative changes that clarify but do not change the intent of the Specifications. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes to Tables 3.3.2-1 and 3.3.3-1 are limited to the clarification of existing requirements and thus do not involve any design changes, new requirements, or new modes of operation.

The proposed changes do not involve a significant reduction in a margin of safety. The intent of the existing Technical Specification requirements would remain unchanged.

The proposed changes to Tables 3.3.2-1 and 3.3.3-1 are administrative changes that do not affect a margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin & Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Acting Project Director: Leif Norrholm

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 31, 1988 as supplemented by letter dated June 2, 1988.

Description of amendment request: The proposed amendment would change the Technical Specifications for hydrogen analyzers to replace the 31 day Channel Functional Test and the 92 day Channel Calibration with a Channel Calibration Test at least once per 31 days.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751) of amendments that are not likely to involve a significant hazards consideration. One of these examples, (ii), involves a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The proposed amendment, as supplemented by the licensee's June 2, 1988 letter, is directly related to this example in that the proposed 31 day Channel Calibration encompasses the 31 day Channel Functional Test; is performed on an

increased frequency (31 days) than the previous requirement of every 92 days, and is, therefore, more restrictive. On this basis, the staff proposes to determine that the changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 4, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications on Engineered Safety Features Actuation System Instrumentation as it relates to actions required for loss of one and loss of two relays that protect against loss of voltage and/or degraded voltage on the 4.16 kv Emergency Bus and 480 v Emergency Bus undervoltage circuits. With the loss of a relay, operation may continue for 48 hours if the relay is placed in a tripped condition. Surveillance requirements are for daily testing of the circuits; however, under the current design and technical specifications this cannot be done and the full 48-hour action time would not be available for repair. The change would continue to allow the 48-hour action time and subsequently the declaration of that associated diesel generator as being inoperable. The appropriate action on the diesel generator would be followed which would lead to the desired action and protection as if the relay circuits were lost.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The undervoltage circuitry is designed to start the emergency diesel generators (EDG's) on bus undervoltage. Failure of the direct current (DC) relays to perform their intended function would prevent the associated EDG from starting on undervoltage. The proposed change would revise Action 17 of Table 3.3-3 such that the affected EDG would be declared inoperable at the end of the 48-hour period. The actions for an inoperable diesel generator would then apply. Action 18 will be added for those conditions in which the relay in Action 17 cannot be placed in the trip condition within 1 hour, and for conditions in which more than one DC relay is inoperable.

The proposed change would also waive the daily surveillance requirements for the DC relays specified in Table 4.3-2 while operating within the revised Action 17. The intent is to allow, as before, 48 hours to return the inoperable relay to service. The 24-hour surveillance frequency being waived would inappropriately, if not changed, place Waterford 3 in Tech Spec 3.0.3 before the end of the 48 hours allotted because of system design and test mode. This change would result in the waiver of one or at most, two Channel Functional Tests and would apply only when one relay is placed in the trip condition. This delay in the Functional Tests would be insignificant during the period when efforts are underway to return the relays to operable. Should a problem result in which the operability of more than one DC relay is in question, the EDG is immediately declared inoperable and the daily surveillance waiver does not apply. Thus the change would not significantly increase the probability or consequences of any accident previously evaluated.

The proposed changes are consistent with system design and Tech Spec philosophy. No component changes are being made as a result of the proposed change. Since the ability of the EDG's to start on bus undervoltage continues to be assured, the proposed change does not create the possibility of a new or different kind of accident.

The undervoltage circuitry is designed to start the EDG on bus undervoltage. The proposed change will relate the operability of the DC relays to the operability of the EDG's. The proposed change is consistent with system design and the intent of the current technical specification and, therefore, will preserve the safety function of the EDG's. The request to waive the daily surveillance requirements while complying with proposed Action 17 will

not affect operability of the remaining DC relays and is equivalent to the intent of the present requirements. Therefore, the proposed change does not involve a significant reduction in a safety margin.

Based on the above, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room
Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Louisiana Power and Light Company,
Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 27, 1988

Description of amendment request: The proposed amendment would change the Technical Specification requirements for control element assembly drop times from 3.0 seconds to 3.2 seconds. The facility passed the tests, all rods dropped within 3.0 seconds, at the conclusion of the refueling outage and the emergency request was not implemented.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed change to increase the control element assembly (CEA) drop time from 3.0 to 3.2 seconds is a change in the acceptance criteria only and does not involve any change in plant configuration. All accidents previously analyzed were evaluated for significance of the impact and were determined to be either unrelated to CEA drop time consideration or not significantly impacted. The conclusions were based largely on the demonstration of significant conservatism within the analytical inputs such that the effects of the increased CEA drop time were shown to

be offset. Several cases required an increase in the Core Protection Calculator departure from nucleate boiling ratio (DNBR) power uncertainty multiplier which effectively provides for a quicker reactor trip in response to this event, thus offsetting the larger CEA drop times. Since the increase in the allowable CEA drop time does not involve a change in plant configuration and the evaluation of the affected analyses demonstrated that the consequences remain unchanged or are bounded, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change does not involve any new or modified structure, systems, or components; rather it affects only an acceptance criteria for confirming the required performance of the existing CEA hardware. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The margins of safety related to CEA drop times are defined in the analyzed events which credit their insertion time. The evaluation of each affected analysis confirmed the previously accepted results were either preserved or not significantly affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the Commission proposed to determine that the proposed change does not involve a significant hazards consideration.

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Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Louisiana Power and Light Company,
Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 7, 1988

Description of amendment request: The proposed amendment would change the Technical Specifications for the Reactor Coolant Flow-Low trip to allow the operator to bypass the trip below 10% of Rated Thermal Power.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed

amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The proposed amendment to allow the operator to bypass the Reactor Coolant Flow-Low trip below 10% of Rated Thermal Power involves consideration of the reactor coolant pump sheared shaft accident at very low power. The trip is required in Modes 1 and 2 to minimize possible fuel failures should the power level be sufficient to exceed the Departure from Nucleate Boiling Ratio (DNBR) limits. Below 10% of Rated Thermal Power, the potential for exceeding the DNBR in the sheared shaft accident is not a concern and the licensee proposed to install a bypass which would also automatically reinstate the trip if power exceeded the 10% level. The accident previously analyzed would still be applicable and analyzed at power levels of concern, therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The low flow trip is to minimize the amount of fuel failure in the event of a sheared shaft where DNBR is a concern. Below the 10% of Rated Thermal Power, exceeding DNBR limits is not a concern and the trip is no longer required to protect for the sheared shaft event. The trip will be automatically reinstated but by bypassing the trip at the low power levels, the proposed change will not create the possibility of a new or different accident than previously analyzed.

The safety margin for the sheared shaft accident below the 10% Rated Thermal Power does not depend on the low flow trip to protect against fuel failures or exceeding the DNBR limits. The proposed change, therefore, does not involve a significant reduction in a margin of safety.

Based on the above, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room
Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo
Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: April 22, 1988

Description of amendment request: The proposed amendment to the Technical Specifications will remove the requirement to monitor temperatures at the reactor vessel bottom head drain during heat-up/cooldown and during operation with the core critical. It is also proposed to add a provision to Technical Specification 4.6.B.3 to allow for up to 48 hours without recording the temperatures of the vessel shell or fluid, as specified in Technical Specification 4.6.A.1, to conduct maintenance on the monitoring equipment, provided that no heat-up or cooldown evolution is in progress.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated.

The monitoring of temperatures at the vessel bottom head and the other locations stated in Specification 4.6.A.1 assures the necessary monitoring of the temperatures at all the critical locations of the reactor vessel is being provided. Therefore, temperature at the bottom head drain need not be monitored. The monitored locations provide the temperature measurement necessary to assure operation at or to the right of the operating limit curves on Figures 3.6.2 and 3.6.3 of the Technical Specifications. The deletion of the requirement to monitor the bottom head drain and the proposed provision to allow for up to 48 hours without temperature measurement recording capability do not involve an increase in the probability of reactor vessel failure.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

This change, which involves a change in reactor vessel shell temperature monitoring location requirements, does not modify the plant response for any transient, accident or operational event. There are no failure modes associated with this proposed change which could represent a new unanalyzed accident. Reactor vessel/primary system boundary integrity with respect to nil

ductility transition temperature (NDT) concerns is assured by monitoring the locations specified in Technical Specification 4.6.A.1.

3. Involve a significant reduction in a margin of safety.

This change does not impact the basis of the Technical Specifications (i.e., does not impact the margin of safety) since the monitored points provide sufficient temperature measurement to assure operation with the entire reactor vessel/primary system boundary at or to the right of the operating limit curves in Figures 3.6.2 and 3.6.3.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room
Location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 29, 1988

Description of amendment request: By application for license amendment dated April 29, 1988, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2. The proposed change to the TS would allow a decrease in the boron concentration of the water contained in the Boric Acid Storage Tanks (BASTs). The following TS would be changed:

Specification 3/4.1.2.1 Boration Systems Flow Paths - Shutdown

The requirement for operability of heat tracing would be deleted from the LCO.

The seven-day surveillance to verify that heat traced portions of the boric acid system are at an acceptable temperature would be replaced with a 24-hour surveillance to ensure that each BAST and piping contents are above 55° F.

Specification 3/4.1.2.2 Boration Systems Flow Paths - Operating

Existing Specification 3.1.2.2.1 (Modes 1 and 2) and 3.1.2.2.2 (Modes 3 and 4) and their associated surveillance requirements would be incorporated into one new specification. The LCO for this specification requires that sufficient boric acid redundant flow paths are available to perform boration of the

reactor coolant system (RCS) from the BAST(s) and the refueling water storage tank (RWST).

Redundant flow paths from the BAST to the charging pump suction would be assured by the requirement to have an operable boric acid pump and gravity feed valve available for each tank which is used as a source. The flow path from the RWST to the charging pumps is required to be operable in Modes 1, 2, 3, and 4. The surveillance requirement to demonstrate operability of the heat tracing would be deleted. A surveillance requirement to verify at least once per 24 hours that the temperature of the BASTs and piping is above 55° F would be added.

Specification 3/4.1.2.7 Borated Water Sources - Shutdown

In Specification 3.1.2.7.b, the volume of water required in the RWST would be increased by 300 gallons.

Specification 4.1.2.7 would increase the frequency of the solution temperature verification for the BASTs from once per seven days to once per 24 hours.

Specification 3/4.1.2.8 Borated Water Source - Operating

Technical Specification 3.1.2.8.a would be modified to permit operations with a variety of BAST volume, tank selections, and BAST boron concentration and would require that the RWST be operable with a minimum contained volume of 370,000 gallons of water and a minimum boron concentration of 1720 ppm.

Specification 4.1.2.8 would be modified to change the surveillance requirement for the BAST concentration from once per seven days to once per 24 hours.

Basis for proposed no significant hazards consideration determination: Millstone Unit 2 utilizes a concentrated boric acid system to control reactor core reactivity, independently of the control rods. A concentrated boric acid solution (approximately 6.25 weight percent boric acid) is stored in two 870 ft³ boric acid storage tanks (BASTs). Each BAST is equipped with a pump, and an alternate gravity feed system, to supply concentrated boric acid to the charging pumps and then into the reactor via the charging system. Since the solubility of boric acid is temperature sensitive, all piping that contains concentrated boric acid must be heated, via "heat tracing", to prevent the temperature of the pipe from decreasing to a point where boric acid precipitation and subsequent flow blockage would result. The concentrated boric acid system is not credited for reactivity control during any analyzed accident. Concentrated boric acid is required, however, to maintain

shutdown margin. Shutdown margin is the degree to which the reactor is subcritical with all control rods inserted except the most reactive control rod which is assumed to be fully withdrawn.

The boric acid heat tracing at Millstone Unit 2 has been found to be troublesome and the need to keep it operable has contributed to the radiation exposure to operating personnel. Accordingly, the licensee has proposed an operational system which would allow a reduction in the boric acid concentration in the BASTs to the extent that precipitation would not occur under expected ambient conditions (above 55° F). Under these conditions, the heat tracing on the concentrated boric acid piping would no longer be needed. Borated water from the refueling water storage tank (RWST) would supplement the contents of the BASTs in order to maintain the required shutdown margin when cooling down the plant from post-power production to refueling conditions (RCS temperature is less than or equal to 140° F). During plant cooldown, positive reactivity is introduced as a result of a negative isothermal temperature coefficient and the decay of Xenon which was produced during power operation. The only safety function credited to the boric acid in the BASTs is the above described maintenance of post-operation shutdown margin.

The proposed changes to the TS will not involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed TS would allow the reduction in the boric acid concentration in the BASTs. The shutdown (negative reactivity) contribution of the boric acid in the BASTs was never credited in the accident analyses and thus does not impact the probability or consequences of accidents previously considered. In addition, the proposed change to the TS would not create the possibility of a new and different type of accident. The boric acid in the BASTs and the RWST are credited with maintenance of the shutdown margins when cooling down the RCS from post-power production to refueling conditions. These shutdown margins, or safety margins, (2.0 percent delta K/K above 200° F and 2.0 percent delta K/K below 200° F) are substantial and it is unlikely that any combination of operational or equipment failures would result in a return to critical conditions during RCS cooldown. Moreover, the redundancy and diversity inherent in the borated water sources (BASTs and RWST) and flow paths assures that sufficient quantities and concentrations of boric acid will be available to the RCS during cooldown.

Thus, shutdown margins will be maintained preventing a return to critical conditions. Accordingly, the proposed change to the TS does not involve the possibility of a new or different type of accident and does not involve a reduction in safety margins.

Based upon the above, the Commission proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-330, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: June 14, 1988

Description of amendment request: By application for licensee amendment dated June 14, 1988, Northeast Nuclear Energy Company et al. (the licensee), requested a change to Technical Specifications (TS) 4.8.1.1.2b, "A.C. Sources", for Millstone Unit 2. The proposed change to the TS would change the industry standard for acceptability of emergency diesel generator (EDG) fuel oil, referenced in the TS, from ASTM D975-74 to ASTM D975-78.

Basis for proposed no significant hazards consideration determination: At the present time, TS 4.8.1.1.2b requires that EDG fuel oil, tested every 92 days, be within the acceptability limits specified in ASTM D975-74 when tested for viscosity, water and sediment. The licensee has proposed that the specified standard ASTM D975-74 be replaced by ASTM D975-78 for determining the periodic acceptability of fuel oil.

The Millstone Unit 2 EDGs utilize Grade No. 2-D Diesel Fuel Oil. A comparison between the acceptability standards for Grade No. 2-D Diesel Fuel Oil, between ASTM D975-74 and ASTM D975-78, indicates minor differences in kinematic viscosity. The 1974 edition presents an acceptable range of 2.0 to 4.3 and the 1978 edition requires 1.9 to 4.1. The upper end of the range is limited by the engine and injection system design and the minimum limit is specified to minimize power loss caused by injector pump and injector leakage. The reduction in Cloud Pt is greater than 10° F from 1.8 to 1.7 in a conservative direction in that it increases the

temperature at which cloudiness would be detected in diesel fuel oil.

The reduction from 4.3 to 4.1 is conservative in that it reduces the maximum allowable viscosity, thus ensuring that the engine or injection system limitations are not exceeded. The reduction from 2.0 to 1.9 is in the direction which would tend to increase system leakage, but the change is within the recommended range of the EDG manufacturer. In summary, the proposed change in the referenced standard for diesel fuel oil acceptability represents a minor change in fuel oil properties that are well within the acceptable range for reliable operation of the EDGs.

The proposed change to the TS will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed standard for diesel fuel oil acceptability will assure that, so far as the fuel is concerned, the EDGs will continue to function reliably and can continue to be credited for operation in those instances presently required in the safety analysis. No new or different type of accident will be created since no change in EDG operation or reliability will result from the proposed change in allowable fuel oil properties. Finally, since the EDGs will continue to start and run reliably, no safety margins will be reduced for those accidents where EDG operation is credited.

Based upon the above, the Commission proposes to determine that the proposed change to TS 4.8.1.1.2b involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz
Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 19, 1985

Description of amendment request: The proposed amendment would change Technical Specification Section (TSS) 4.6.1.3.a. to permit three alternative surveillance methods for demonstrating the containment air lock operable: (1) pressure decay of pressurized volume between the door seals, (2) precision measurement of flow from pressurized volume between the door seals, and (3) overall air lock leakage test per TSS 4.6.1.3.b. Alternative (1) and (3) above

are permitted in the existing TS.

Alternative (2), which is permitted in the Westinghouse Standard Technical Specifications, Revision 5, is to be added in the proposed amendment.

Basis for proposed no significant hazards consideration determination: NNECO has reviewed the proposed change in accordance with 10 CFR 50.92 and has concluded that it does not involve a significant hazards consideration in that the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed change adds two methods of surveillance for the containment air lock. Both methods provide assurance that containment leakage is within the limits assumed in the radiological consequences of the design basis events. Therefore, previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no changes in the way the plant is operated, and no new failure modes are introduced. Therefore, the potential for an unanalyzed accident is not created.

3. Involve a significant reduction in a margin of safety. The revised surveillance requirements do not have any impact on the containment integrity. The proposed change does not affect the consequences of any accident previously analyzed. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the NNECO's no significant hazards consideration determination and agrees with the analyses. Based on this review, the NRC staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of amendment request: April 18, 1988 (Reference LAR 88-04)

Description of amendment request: The proposed amendment would revise the Diablo Canyon Power Plant (DCPP) combined Technical Specifications for Units 1 and 2 to allow a turbine trip

without a reactor trip below 50 percent thermal power. Specifically, the proposed change would amend Technical Specification (TS) 2.2.1, "Reactor Trip System Instrumentation Trip Setpoints," and TS 3.3.1 "Reactor Trip System Instrumentation," to change the current reactor trip on turbine trip when thermal power is greater than 10 percent to a reactor trip on turbine trip when thermal power is greater than 50 percent. TS 2.2.1 and 3.3.1 are proposed to incorporate the Power Range Neutron Flux reactor trip system interlock P-9 having a trip setpoint of no greater than 50 percent of rated thermal power with 2 out of 4 logic and to require a minimum of 3 channels operable in Mode 1. The associated bases are proposed to be revised to indicate that with a setpoint of 50 percent of rated thermal power, on power below the setpoint interlock P-9 automatically blocks reactor trip on turbine trip and on power above the setpoint interlock P-9 automatically enables reactor trip on turbine trip. TS 4.3.1 "Reactor Trip System Instrumentation Surveillance Requirements" is proposed to be amended to include the applicable surveillance requirements for power range neutron flux reactor trip system interlock P-9.

Basis for proposed no significant hazards consideration determination: The Commission proposes to determine that this amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92 a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revision would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the Westinghouse evaluation provided in the letter dated October 30, 1987 from J. C. Hobel, Westinghouse to J. D. Shiffer, PG&E, demonstrates that the consequences of a loss of load (turbine trip) below 50 percent power without a subsequent reactor trip are bounded by the analyses presented in the FSAR Update. Specifically, calculated peak pressure is within the FSAR Update value for the Loss of Load/Turbine Trip event and calculated minimum DNBR is

within the FSAR Update value for the Complete Loss of Flow event. Westinghouse also performed a best estimate analysis to determine if the PORVs would be challenged to relieve pressure following a turbine trip without a direct reactor trip at 50 percent power. Analysis results show that RCS pressure will not reach the pressurizer or steam generator PORV setpoints, even with a single failure in the control system. Actuation of RCS PORVs would therefore not be expected, eliminating the possibility of a stuck-open PORV.

The reactor trip upon turbine trip is an anticipatory trip and no credit is taken for this trip in the FSAR Update Chapter 15 accident analysis. The loss of load (turbine trip) accident analysis assumes that a reactor trip would be initiated from the reactor protection system. As a result, revising the setpoint for enabling this anticipatory trip will have no impact on the accident analysis. Therefore, this proposed license amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because increasing the power level at which a reactor trip is actuated on turbine trip does not introduce a significant change to the plant design bases. Pressurizer and steam generator safety valves are designed to prevent the steam system and reactor coolant system from exceeding 100 percent of design pressure in the event that a control grade system should fail during a load rejection. As discussed in Item 1 above, the reactor trip on turbine trip is an anticipatory trip for which no credit is taken in the accident analysis for the plant. Therefore, the proposed license amendment request does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in the margin of safety because load rejection from 50 percent power without a direct reactor trip is within the design and operating limits of the plant and has been shown to be bounded by the present FSAR Update safety analysis. Margins of safety with respect to peak pressure and minimum DNBR are preserved by the reactor protection system, pressurizer safety valves, and steam generator safety valves, none of which are affected by the proposed changes. Therefore, the changes do not involve a significant reduction in the margin of safety.

Accordingly, the licensee has determined that the proposed changes to

the Technical Specifications involve no significant hazards consideration.

The NRC Staff has reviewed the proposed amendments and the licensee's determination and find them acceptable. Therefore, the Staff proposes to determine that the amendment requests do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 17, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to clarify and eliminate inconsistencies within the TS related to spiral core off-load/on-load refueling, refueling interlocks, and control rod drive maintenance. These revisions represent administrative changes to the TS. Specifications to permit spiral core off-load/on-load refueling were originally incorporated into the TS by issuance of Amendment No. 59.

Additionally, one proposed revision would provide the option to begin spiral on-loading around a Source Range Monitor (SRM) as well as around a centrally installed dunking chamber. This revision would represent a minor procedural change. Another proposed revision would permit up to four fuel assemblies to be loaded around each SRM for use as a neutron source to verify SRM operability. The current TS permit only two fuel assemblies to be used for this purpose.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously

evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Those proposed revisions which are intended to clarify and eliminate inconsistencies within the current TS are administrative in nature and involve no physical modifications or changes in plant operating procedures. All of these revisions are consistent with the changes previously approved by Amendment No. 59. Therefore, operation of the plant in accordance with those revisions will satisfy the three above criteria.

The proposed revision to permit spiral on-loading to start around an SRM will not result in conditions significantly different than for on-loading around a centrally installed dunking chamber. The possibility of an inadvertent critically is unchanged, core flux levels are monitored by the SRMs, and the required margin to criticality is not reduced. Therefore, operation of the plant in accordance with this proposed revision will satisfy the three above criteria.

The proposed revision which permits up to four assemblies to be loaded around each SRM (instead of the current limit of two assemblies) for use as a neutron source to verify SRM operability, has no significant effect on the spiral on-loading process. There is no increase in an inadvertent criticality occurring as a result of this change. Four adjacent fuel assemblies are subcritical, even with no rods inserted, and the SRM groups are sufficiently separated to preclude interaction. Because the TS require control rods to be inserted before fuel is on-loaded, subcriticality is further assured. Therefore, operation of the plant in accordance with the proposed revision will satisfy the three above criteria.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 27, 1988

Description of amendment request: The proposed amendment contains revisions to the Technical Specifications (TS) which fall into three categories (A, B, C). The Category A changes would revise the TS to reflect modifications made to the reactor water level instrumentation to comply with the requirements of Regulatory Guide 1.97, Revision 2 and Generic Letter 84-23. These modifications are intended to reduce instrument errors resulting from post-accident containment heat-up and to increase the redundancy and reliability of control room indication.

The Category B revisions are administrative changes and include the removal of obsolete reactor vessel water level instrument setpoints from the TS. In accordance with the guidance of NUREG-0737 Item ILK.3.27, a common instrument zero corresponding to the top of active fuel (TAF) has been implemented in the TS and is to be fully integrated into plant instrumentation, procedures, and training. The original setpoints, referenced to the bottom of the steam separator skirts (the original instrument zero), have been rendered obsolete. Several miscellaneous changes have also been proposed to correct errors and clarify the TS.

The Category C revisions reflect a plant modification performed to meet the requirements of NUREG-0737 Item ILK.3.13. The modification to the RCIC system replaced the turbine trip at high reactor water level with a recoverable steam line isolation. This modification was previously approved by the NRC and allows auto-restart of the RCIC system upon receipt of a low water level signal.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Category A changes support modifications which improve the reliability and availability of reactor water level signals which are used to initiate ECCS systems and provide control room indication. The modifications are not accident initiators. The Category B changes are administrative in nature and do not involve a physical change to the facility or a change in operating procedures and, therefore, cannot affect any accident as analyzed in the FSAR. The Category C changes improve the reliability and availability of a system which can be used under accident conditions. Because no credit has been taken for the RCIC system in the FSAR accident analyses, the Category C changes do not affect the probability or consequences of previously analyzed accidents.

As stated above, the proposed changes increase the reliability of systems or functions which mitigate accident conditions (Category A and C) or are purely administrative in nature (Category B). No new or different types of accidents can occur as a result of improving the availability and reliability of the reactor water level instrumentation system, eliminating obsolete instrumentation set point references, or improving the availability of the RCIC system.

The proposed changes improve the performance of instrumentation and systems which mitigate transients and accidents. Elimination of obsolete reactor water level instrument zeros achieves consistency in the reactor vessel instrumentation setpoints. This reduces the probability of an misinterpretation of the specifications. Therefore, operation in accordance with the proposed amendment will not involve a reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Southern California Edison Company, et al., Docket No. 50-208, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of amendment request: October 30, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications to delineate the limiting conditions of operation (LCOs) and surveillance requirements for reactor coolant system (RCS) leakage and the leakage detection systems.

Basis for proposed no significant hazards consideration determination: The Commission proposes to determine that this amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92 a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided its analysis as to whether or not the proposed amendment involves a significant hazards consideration and has concluded that the proposed changes do not constitute a significant hazards consideration, based on the following discussion.

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No, the revisions to the technical specifications contained in this proposed change require the operability and the performance of surveillance for systems that are currently necessary to meet technical specification requirements but do not have explicit operability and surveillance requirements. The imposition of these additional requirements merely formalizes what is now an informal requirement, and provide actions to be performed in the event of the systems' unavailability. The requirement to perform a reactor coolant system water inventory balance already exists, the proposed change merely increases the required frequency. The allowance of 4 hours to reduce leakage to within the specifications allows personnel a reasonable amount of time to locate and mitigate a leak. This increased time for

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action does not involve a significant increase in system failure probability and is consistent with the STS provisions. The remaining changes are only clarifying in nature and do not affect the specification content. Therefore, it is concluded that this proposed change will not cause a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No, the systems covered by the revisions in this proposed change are already used and surveilled in a manner similar to that proposed. Therefore, the proposed revisions will merely formally require their operability and surveillance. The requirement to perform a reactor coolant system water inventory balance already exists, the proposed change merely increases the required frequency. The proposed surveillance requirements, in three cases, reference surveillance requirements that already exist in other sections of the technical specifications. The format changes the addition of a new leakage action statement, merely allows a similar action time similar to that in the STS. Therefore, it is concluded that this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No, as previously stated, the systems whose operability and surveillance requirements are proposed to be added are systems already in use at San Onofre Unit 1. Accordingly, it is not expected that the imposition of these operability and surveillance requirements on these systems would impact any margin of safety and considering their purpose, these additional requirements result in a net increase in the margin of safety. The allowance for action time to respond to exceedance of leakage limits is similar to that in the STS that is allowed for other safety systems. Therefore, it is concluded that this proposed change will not result in a significant reduction in a margin of safety.

The NRC staff reviewed the request and the licensee's analysis and agrees that the criteria of 10 CFR 50.92 appear to be satisfied. The NRC staff, therefore, proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room
location: General Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket No. 50-208, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: October 30, 1987

Description of amendment request: The proposed change is a request to revise the Technical Specifications on "Inservice Inspections of Steam Generator Tubing" to delete certain special inspection requirements. The proposed deletion is based on results of a recent inspection which indicate that the special inspection requirements are no longer justified.

Basis for proposed no significant hazards consideration determination: The Commission proposes to determine that this amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92 a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided its analysis as to whether or not the proposed amendment involves a significant hazards consideration and has concluded that the proposed changes do not constitute a significant hazards consideration, based on the following discussion.

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No, the proposed change revises only the magnitude of the inspection scope. The areas in question will continue to be inspected, but in a scope consistent with the safety significance. Given that recent operating experience and inspection results have demonstrated a reduction to the significance of the steam generator tube degradation mechanisms and the

inspection scope requirements of Specification 4.16.A includes the areas currently specified in Specification 4.16.C, a deletion of the special inspection requirements will not result in any significant accident or accident consequence increase. Also, the mandatory inspection of these areas in the manner described required an expenditure of man-rem and resources that is inconsistent with the safety significance. The remaining changes are administrative in nature and do not affect plant safety. Therefore, it is concluded that this proposed change will not cause a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No, the impact of steam generator tube failure is a previously analyzed scenario for San Onofre Unit 1. The revisions proposed herein do not alter the assumptions in those analyses. The proposed steam generator inspection requirement will still require that the inspection scope include "problem areas." These requirements assure that the steam generator tube rupture analysis assumptions remain valid. Therefore, it is concluded that this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No, as stated above, the assumptions of the steam generator tube rupture analysis remain unchanged. The licensee states that the conditions in these two special areas of the steam generators are not changing with time. Therefore, the margin provided by the plugging limit of 4.16.E, "Acceptance Criteria" is adequate to assure the proper margin to safety. Therefore, it is concluded that this proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the request and the licensee's analysis and agrees that the criteria appear to be satisfied. The NRC staff, therefore, proposes to determine that the proposed amendment involves no significant hazard consideration.

Local Public Document Room
location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Dockets Nos. 50-258, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: June 13, 1988 (TS 243)

Description of amendment request: The proposed amendment would modify the Browns Ferry Nuclear Plant (BFN) Units 1, 2 and 3 Technical Specifications (TS) to add instruments to Table 3.2.B, Instrumentation that Initiates or Controls the Core and Containment Cooling Systems, and Table 4.2.B, Surveillance Requirements for Instrumentation that Initiates or Controls the Core Standby Cooling System. The four additional instruments to be listed are to trip and isolate the High Pressure Coolant Injection (HPCI) System and Reactor Core Isolation Cooling (RCIC) System on low steam supply pressure and high turbine exhaust pressure. The proposed amendment would also modify the BFN TS to add turbine exhaust diaphragm high pressure to the lists of conditions that cause Group 4 and 5 (HPCI and RCIC) isolation in the Notes for Table 3.7.A.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The subject HPCI/RCIC instrumentation provides system/equipment protection as addressed in the BFN-FSAR [Final Safety Analysis Report] Section 4.3, 6.4, and 7.3. This instrumentation and allowable values not only protects this equipment, it also provides assurance that radioactive gases do not escape through the rupture in the HPCI/RCIC pump shaft seals upon turbine stall. This instrumentation provides additional pressure boundary protection by assuring HPCI/RCIC pump casing integrity.

The BFN FSAR provides various analyses for potential BFN accidents. Adding these instruments to the BFN Technical Specifications does not change any operational characteristics, modify any equipment or minimize any mitigation responsibilities of the HPCI/RCIC Systems as analyzed in the BFN FSAR. The main function of the HPCI/RCIC Systems is to assure that the reactor is adequately cooled to limit fuel cladding temperature in the event of a small break in the nuclear system and a loss of coolant which does not result in a rapid depressurization of the reactor vessel. These changes do not alter the function of these systems; therefore, their intended safety function is maintained as previously analyzed. This change is also being made to bring the BFN Technical Specifications in compliance with the as-built plant, BFN FSAR, and GE Standard Technical Specifications.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not eliminate, modify nor provide any new operational conditions. These changes provide assurance that these systems operate as designed and analyzed in the BFN FSAR.

3. This change does not involve a significant reduction in a margin of safety. Adding these instruments to the BFN Technical Specifications provides additional safety to the HPCI/RCIC Systems. The proposed changes do not eliminate or decrease any operational characteristics or processes of the plants. These instruments are presently installed and operational. Adding these instruments to the BFN Technical Specifications also assures that they are incorporated into the plant surveillance testing program. This program includes verification on a specified frequency that the subject instrumentation functions as designed.

The allowable setpoints used for these instruments are within their calculated maximum values. This provides adequate margin such that instrument drift or inadvertent transients will not affect the intended safety function of the HPCI/RCIC Systems.

The addition of this instrumentation does not alter any seismic or environmental qualification criteria for BFN. Based on the above, this change does not involve a significant reduction in the margin of safety to the BFN HPCI/RCIC Systems.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the

application for amendments involves no significant hazards considerations.

Local Public Document Room
location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: June 13, 1988 (TS 88-01)

Description of amendment request: The Tennessee Valley Authority (TVA) proposes to change the Sequoyah (SQN) Units 1 and 2 Technical Specifications (TS). The changes are to Table 3.6-2, "Containment Isolation Valves." The changes are to add five motor-operated butterfly valves (MOV) to the table. These MOVs are being proposed to replace check valves as containment isolation valves. The proposed change also adds a note to Table 3.3-5, "Engineered Safety Features Response Times," item 7.b, to reflect the response times for the new valves when actuated by a phase B containment isolation signal.

Basis for proposed no significant hazards consideration determination: TVA provided the following description in its submittal on the five check valves which are to be replaced by motor-operated butterfly valves:

Check valves 67-562A, -B, -C, and -D are the inboard containment isolation valves for the essential raw cooling water (ERCW) supply headers to lower containment. The lower compartment coolers, the reactor coolant pump (RCP) motor coolers, and the control rod drive ventilation coolers are supplied by these headers. The flow diagram for these headers is Final Safety Analysis Report (FSAR) Figure 9.2.2-3.

Check valve 70-682 is the inboard containment isolation valve for the component cooling system (CCS) supply header to the RCP oil coolers. The flow diagram for this header is FSAR figures 9.2.2-1 (unit 1) and 9.2.1-3 (unit 2).

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the

licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. Containment isolation provides the means of isolating fluid systems that pass through containment penetrations so as to confine to the containment any radioactivity that may be released in the containment following a postulated accident. Containment isolation is required following a postulated accident to isolate various fluid systems penetrating containment. SQN does not have a particular system for containment isolation, but isolation design is achieved by applying common criteria to penetration(s) in many different fluid systems and by using engineered safety feature signals to actuate appropriate valves. The proposed change in the containment isolation scheme will not affect any components capable of initiating any accident as evaluated in the FSAR. The installation of the additional MOV in the CCS supply line to the RCP motor oil coolers could increase the probability of a spurious isolation of the CCS supply. Plant instructions require the RCPs to be shut down if CCS flow is lost to the RCP motor oil coolers. This would result in a complete loss of forced reactor coolant flow, which is evaluated in section 15.3.4 of the FSAR. The FSAR analysis assumes a simultaneous loss of the power supplies to the RCPs initiates the event. It is concluded that the small increase in the probability of a spurious isolation will not significantly increase the probability of the complete loss of forced RCS flow as evaluated in the FSAR. The increased reliability of the isolation mechanism can potentially reduce the consequences of evaluated accidents.

(2) create the possibility of a new or different kind of accident from any previously analyzed. The loss of CCS flow to the RCP oil coolers has been previously identified as a condition that would require shutdown of the affected RCP because of high motor-bearing temperatures. This condition is addressed in plant instructions. The resulting loss of forced reactor coolant flow, either partial or total, has been analyzed in the FSAR. The ERCW supplies to lower containment were evaluated when the lower compartment coolers were upgraded to ensure reliability under postaccident conditions. All safety system interfaces were evaluated to ensure that the use of these supply headers will not degrade other safety systems used to mitigate postulated accidents.

(3) involve a significant reduction in a margin of safety. The proposed change is made as the result of replacing containment isolation check valves with MOVs. This was done to provide a more reliable isolation mechanism for the associated penetrations. This in turn provides a better assurance of meeting the leakage limits of 10 CFR 50, Appendix J, and specification 3.6.1.2.

Inclusion of the valves in Table 3.6-2 properly reflects the automatic isolation valves used in the SQN containment isolation design. The addition of the note to Table 3.3-5, item 7.b, reflects that the new containment isolation MOVs have slightly longer response times associated with a phase B isolation signal because their closure times are slightly longer than other phase B isolation presently installed. This ensures that the appropriate testing for these valves is performed. Because of the enhancements, the margin of safety will not be reduced, but increased.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis with the following supplement by the staff to the licensee's evaluation: The proposed change is to replace five check valves by more leak tight and isolation reliable MOVs for containment isolation. These valves will be in a closed, water containing system. They will not be for isolating the containment ventilation to prevent the release of radioactivity from the containment atmosphere directly to the environment. The check valves are proposed to be replaced to reduce the leakage and improve the leak tightness of the containment. The new valves must meet the Appendix J Type C test for containment isolation valves and the required reliability, control, power, configuration and design of containment isolation valves in the FSAR. The new valves will be automatically isolated on Phase B containment isolation consistent with the other ERCW and CCS MOVs. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The new containment isolation valve design, power, configuration and control are consistent with that for other containment isolation valves. The new MOVs are similar to other MOVs used as containment isolation valves. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The new MOVs will be in closed, water containing systems and will not interface with the environment. The new valve closure times will be 5 to 10 seconds longer than the existing valve closure time of 60 seconds. For the proposed use of the MOVs, this is not considered a significant increase in the existing valve closure time. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, the staff proposes to determine that the amendments involves no significant hazards considerations.

Local Public Document Room
location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Virginia Electric and Power Company, Docket Nos. 50-250 and 50-251, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: June 10, 1988

Description of amendment requests: The proposed amendments would revise the Technical Specifications for Surry Units 1 and 2 by deleting the requirements for and references to the Control Room Chlorine Monitoring System. Chlorine gas storage bottles at the sewage treatment plant are scheduled to be permanently removed from the site by June 30, 1988. Since these bottles were the only significant source of chlorine, the need for the chlorine detection system will be eliminated with this removal.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations. The licensee's analysis is provided below:

Following the removal of the source of chlorine gas, the subsequent removal of the control room chlorine monitors poses no significant hazard as defined in 10 CFR 50.92.

a. The implementation of this modification does not involve a significant increase in the probability or consequences of an accident previously evaluated. The [c]ontrol [r]oom chlorine monitors provide an alarm and control of the [c]ontrol [r]oom isolation dampers in the event of chlorine gas release creating a hazardous environment in the [c]ontrol [r]oom. As identified in our 1981

NUREG-0737, Item III.D.3.4. submittals, the sewage treatment plant is the only regulatory significant source of chlorine gas from which a release could cause [c]ontrol [r]oom habitability concerns. Chlorine gas storage at the sewage treatment plant is being eliminated. Based on our previous studies, the chlorine gas release which could adversely affect [c]ontrol [r]oom habitability will be eliminated after removal of the chlorine gas storage from the site. The chlorine monitors are then no longer required since the chlorine gas source will have been eliminated. The chlorine monitors can be removed and the associated modifications can be completed without increasing the probability of occurrence or consequences of an accident previously evaluated.

b. The implementation of this modification does not create the possibility of a new or different kind of accident from any accident previously evaluated. The monitors are very specific in that they detect the presence of chlorine. The source of chlorine gas will be removed prior to the removal of the chlorine monitors. The associated modifications to the ventilation system damper controls and annunciator will eliminate unnecessary alarms and damper controls. These modifications will not change the function of or impinge upon any other existing safety system.

c. The implementation of this modification does not involve a significant reduction in a margin of safety. The proposed removal of the chlorine monitors is a result of eliminating the presence of chlorine gas. Eliminating the source of chlorine gas from the site eliminates the need to depend on equipment to monitor for and initiate safety systems based on detection of chlorine.

Therefore, pursuant to 10 CFR 50.92, the licensee has determined that the proposed changes do not involve a significant hazards consideration.

After a preliminary review of the licensee's analysis, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

Local Public Document Room
location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, WNP2, Richland, Washington

Date of amendment request: April 21, 1987 as supplemented May 10, 1988.

Description of amendment request: By letter dated April 21, 1987 the licensee submitted an application to amend the "Administrative Controls" section of the WNP-2 Technical Specifications. The

proposed amendment involved changes of position titles and changes in responsibilities of designated positions. The licensee also asked to remove certain positions from the organization charts in the Technical Specification. On September 9, 1987 a notice of this amendment request and the Commission's proposed determination that the proposed changes involve no significant hazards consideration was published in the Federal Register (52 FR 34022).

On March 22, 1988 the Commission issued a letter to all power reactor licensees encouraging the removal of organization charts from technical specifications (Generic Letter 88-06). The Commission provided guidance to licensees for amendments that may be proposed for accomplishing the removal of the organization charts.

By letter dated May 10, 1988 the licensee submitted a supplement to the earlier amendment application. The May 10, 1988 supplement requested that the organization charts in Figures 6.2.1-1, 6.2.2-1a, and 6.2.2-1b be removed from the Technical Specifications. In accordance with guidance provide in the Generic Letter, the amendment would add language to Section 6.2.1, to be titled "Offsite and Onsite Organization," describing the organization.

The May 10 supplement made two other minor revisions to the original submittal. The position title, Plant Quality Assurance Manager, will be retained rather than changed. On page 6-1 a change is made to clarify that it is the Shift Manager rather than the Shift Supervisor who is prohibited from belonging to the site fire brigade.

These latter two changes are considered insignificant. This notice is being made to give recognition to the request for removal of the organization charts.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Washington Public Power Supply System has evaluated the augmented material per 10 CFR 50.92 and provides

the following in support of a finding for no significant hazards consideration.

(1) The proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated because no physical modification of the plant or equipment is involved. Removal of the organization charts does not alter compliance of the WNP-2 Technical Specifications to 10 CFR 50.36. The added text ensures that the essential aspects for responsibility, authority and communication with regard to safe operation of the plant remain clear and evident. The organization charts will continue to be maintained in the WNP-2 FSAR with changes reviewed per 10 CFR 50.59 and reported through annual updates as required by 10 CFR 50.71. Therefore, for the above reasons, the probability or consequences of accidents previously evaluated will not be adversely affected.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because as discussed, no physical changes to the plant or equipment are involved and the added text ensures the responsibility, authority, and communication for safe plant operation are not changed and remain clear and evident. Hence, no possibility for a new or different kind of accident from an previously evaluated is represented in the proposed change.

(3) The proposed changes do not involve a significant reduction in a margin of safety because the revision in no way alters the licensee's commitment to maintain a management structure that contributes to the safe operation and maintenance of WNP-2. The added text ensures that clarity of responsibility, authority, and communication remains in the Technical Specifications. Since no physical change to the plant or equipment is involved and responsibility for safety is not diminished, no significant reduction in a margin of safety is presented in this change.

The staff is in agreement with the licensee's evaluation. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room
location: Richland Public Library, Swift and Northgate Streets, Richland, Washington, 99352.

Attorney for the Licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., Washington, DC 20005-3502.

NRC Project Director: George W. Knighton

Wisconsin Public Service Corporation, Docket No. 50-385, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 28, 1987

Description of amendment request: The proposed amendment would involve editorial changes that clarify existing technical specifications and increase the consistency within Technical Specifications (TS). The amendment would modify the Technical Specifications to: (1) Change the phrase in TS 3.10.i and TS 3.10.j from "... after [greater than] 30 in. of control rod motion..." to "... after [greater than] 24 steps of control rod motion..."; (2) Delete the last sentence in TS 4.5.a.2.A; (3) Change the phrase in Table TS 4.1-1 (items 9 and 10) from "Following rod motion in excess of six in. ..." to "Following rod motion in excess of 24 steps..."; and (4) Add a note to the bottom of Table 4.2-2 that clarifies that second and third steam generator sample inspections can be conducted in accordance with TS 4.2.b.2.d. The amendment also involves several minor editorial changes that clarify the TS Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for a no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). The examples include: (i) a purely administrative change to Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature; (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; and (vi) a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

Change (1) would help establish a consistent measure for control rod motion in the Technical Specifications. In addition, this change is more restrictive because it requires individual rod position be logged after more than 24 steps (15 inches) instead of after more than 30 inches in the event that the rod deviation monitor is inoperable.

Change (2) would delete the last sentence in Technical Specification 4.5.a.2.A in order to clarify the surveillance requirements for the internal containment spray (ICS) system. The last sentence currently reads, "Operation of the system is initiated by tripping the normal actuation instrumentation." However, the existing surveillance procedure directs the operator to initiate the ICS system by pushing the manual actuation pushbuttons. Manual action of the ICS is preferable because normal actuation of the ICS (i.e., by injecting false pressure signals into the containment pressure transmitters) would require seven additional starts and would lead to excessive and unnecessary wear of the pumps, which are run against their shut off head. The normal actuation instrumentation, including the bistables, actuation relays and high containment pressure logic, are tested using other surveillance procedures for the ICS system. Change (2) would not result in a decrease in surveillance requirements.

Change (3) would make items 9 and 10 of Table TS 4.1-1 consistent with change (1). Presently items 9 and 10 of Table TS 4.1-1 require rod position to be logged when the plant computer is out of service following rod motion in excess of 6 inches. Change (3) would change "six inches" to "24 steps", which is consistent with change (1). This change would be less conservative since 6 inches of rod motion is roughly equivalent to about 10 steps. The basis for the 24 step rod misalignment specification is a 7 1/4-inch rod misalignment (12 steps) with an allowance of 12 steps for analog instrument inaccuracy. Because the rod motion indication used to initiate the action required by items 9 and 10 of Table TS 4.1-1 is the digital control rod group demand position indicator, and not the analog rod position indicator, no allowance for analog instrument error is applied. Change (3) is also consistent with Standard TS.

Change (4) would add a note to the bottom of Table TS 4.2-2 clarifying that second and third steam generator tube sample inspections during each inservice inspection may be less than the full length of the tube by concentrating the inspection on those areas of the tube sheet array and on those portions of the tube where imperfections were previously found. This change does not remove any existing inspection requirements and is purely administrative in nature.

Change (1) is more restrictive in nature (i.e., requires additional surveillance) and, therefore, falls within

the scope of example (ii). Changes (2) and (4) are "purely administrative changes" intended to clarify existing specifications. These changes will have no effect on safety, involve no changes to limiting conditions for operation or surveillance requirements, and are within the scope of example (i).

Change (3) would result in TS which would be consistent with change (1), existing TS 3.10.f.1.A and Standard TS 3.1.3.2. Since the proposed change would result in TS which would be consistent with standard TS, the proposed change is within the safety margin defined by the Standard Review Plan and falls within the scope of example (vi).

Since the application for amendment involves proposed changes that are encompassed by the criteria or an example for which no significant hazards consideration exists, the staff has made the proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq. Foley and Lardner, P.O. Box 2193 Orlando, Florida 31082.

NRC Project Director: Kenneth E. Perkins

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Alabama Power Company, Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit No. 1, Houston County, Alabama.

Date of amendment request: April 28, 1988

Brief description of amendment request: The proposed amendment would modify Section 6 of the Technical

Specifications to remove organizational charts in accordance with Generic Letter 88-06.

Date of publication of individual notice in Federal Register: June 6, 1988 (53 FR 20700).

Expiration date of individual notice: July 6, 1988

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Carolina Power & Light Company, North Carolina Eastern Municipal Power Agency, Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 10, 1988

Brief description of amendment request: The proposed amendment would revise the operability requirements of Technical Specification 3.3.3.7, Chlorine Detection Systems.

Date of publication of individual notice in Federal Register: June 21, 1988 (53 FR 23324).

Expiration date of individual notice: July 21, 1988

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant

to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of applications for amendments: December 4, 1987 as supplemented April 14, 1988.

Brief description of amendments: Changes the Administrative Controls sections of the Technical Specifications to reflect organizational changes in the Nuclear Operations Department of the Arkansas Power & Light Company. Additionally the management position designated to serve as the Plant Safety Committee chairman is changed.

Date of issuance: June 24, 1988

Effective date: June 24, 1988

Amendment Nos.: 109 and 85

Facility Operating License Nos. DPR-51 and NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 27, 1988 (53 FR 2309 and 2310). The April 14, 1988 submittal provided additional clarifying information and did not change the finding of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 8, 1988 (partial response)

Brief description of amendment: Deletion of Organization Charts on Figures 6.2.1-1 and 6.2.2-1 of the Technical Specifications and addition of the essential elements of organizational structure to the administrative control section of the Technical Specifications.

Date of issuance: June 30, 1988

Effective date: June 30, 1988

Amendment No. 13

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 31, 1988 (53 FR 19832). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44061

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: January 29, 1988

Brief description of amendments: Technical Specifications (TS) amendments were issued to delete the bounding tolerance of the Reactor Low-Low Water Level setpoint for ECCS initiation. Associated TS Bases were revised accordingly, and typographical errors were corrected.

Date of issuance: June 23, 1988

Effective date: June 23, 1988

Amendment Nos.: 109 and 105

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 9, 1988 (53 FR 7588). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket Nos. 50-243 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of application for amendments: April 15, 1988

Brief description of amendments: The amendments revise the Indian Point 1 and 2 Technical Specifications to incorporate changes to the Facility Organization. The amendments revise the organizational figures contained in the Technical Specifications.

Date of issuance: June 21, 1988

Effective date: June 21, 1988

Amendment Nos.: 38 and 131

Facility Operating License Nos. DPR-5 and DPR-26: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: May 18, 1988 (53 FR 17785). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: June 12, 1987, as supplemented August 3, 1987 and May 10, 1988.

Brief description of amendment: The amendment revises Sections 3.3.B.2.b and 5.2.C of Technical Specifications, requested on June 12, 1987, as supplemented on August 3, 1987 and modified on May 10, 1988, concerning allowable time for one containment spray pump being inoperable and containment spray flow and fan cooler heat removal performance. The June 12, 1987 amendment application also requested the deletion of the fan cooler unit HEPA filters, charcoal adsorbers and associated fire protection and detection equipment. This issue will be the subject of a separate review.

Date of issuance: June 29, 1988

Effective date: June 29, 1988

Amendment No.: 132

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 16, 1987 (52 FR 47782). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: April 27, 1987, as supplemented August 14, 1987.

Brief description of amendment: This amendment revises the Fermi-2 Technical Specifications to change the drywell air temperature limit from 135° F to 145° F to ensure plant operation during the summer months without need to derate plant operations.

Date of issuance: June 23, 1988

Effective date: June 23, 1988

Amendment No.: 20

Facility Operating License No. NPF-43: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 20, 1987 (52 FR 18976). The substance of the changes noticed in the Federal Register on May 20, 1987, and the proposed determination of no significant hazards consideration were not affected by the August 14, 1987, supplement which responded to an NRC question. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 11, 1988

Brief description of amendments: The amendments changed Technical Specifications Sections 3.0 and 4.0 to conform to Generic Letter 87-09.

Date of issuance: June 21, 1988

Effective date: June 21, 1988

Amendment Nos.: 87 and 88

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 20, 1988 (53 FR 13014). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 21, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-259, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: June 1, 1987, as supplemented November 24, 1987.

Brief description of amendments: The amendments revised the Station's common Technical Specifications to update the LOCA-Limited Maximum Allowable Linear Heat Rates.

Date of issuance: June 23, 1988

Effective date: June 23, 1988

Amendment Nos.: 168, 169, and 165

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 18, 1988 (53 FR 17787). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29991

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: August 22, 1986, supplemented by letter dated April 16, 1987.

Brief description of amendment: The amendment deletes from Technical Specification Table 3.6-1 the inside-containment isolation valves 1HY-120 and -119, and adds the outside-containment isolation valves 1HY-197 and -196. These valves all pertain to the hydrogen recombiner system.

Date of issuance: June 22, 1988

Effective date: June 22, 1988

Amendment No.: 127

Facility Operating License No. DPR-66: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 29, 1987 (52 FR 28375). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 29, 1988, as supplemented May 11, 1988.

Brief description of amendment: The amendment revises Technical Specifications 3.13.B.2 and 3.13.B.3 by adding a note which would permit a one time change, for current operating Cycle 11 only, which allows continued power operation if both of the primary and backup safety valve position indicators become inoperable on no more than two safety valves.

The amendment also makes an administrative change to Technical Specification Sections 3.13.A, 3.13.B and 3.13.C to capitalize Technical Specifications definitions where they appear in these sections.

Date of issuance: June 28, 1988

Effective date: June 28, 1988

Amendment No.: 123

Provisional Operating License No. DPR-16: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 26, 1988 (53 FR 19089). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of application for amendment: June 5, 1987 as modified May 13, 1988.

Brief description of amendment: This amendment increases (1) the allowable drywell air temperature from 140° F to 145° F; and (2) the area temperature limit for the main steam tunnel (north) from 122° F to 135° F.

Date of issuance: June 29, 1988

Effective date: June 29, 1988

Amendment No.: 25

Facility Operating License No. NPF-47: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 29, 1987 (52 FR 28378). The May 13, 1988 letter withdrew a portion of the amendment request and did not change the finding of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1988 and a supplement to the Safety Evaluation in support of Amendment No. 24.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: August 17, 1987

Brief description of amendment: The Technical Specifications change would revise Section 3.5.C, Feedwater Coolant Injection (FWCI) Subsystem, by increasing the minimum required condensate storage tank volume from 225,000 gallons to 250,000 gallons of water to provide added assurance for achieving cold shutdown in the event of a reactor building fire.

Date of issuance: June 27, 1988

Effective date: June 27, 1988

Amendment No.: 18

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 7, 1987 (52 FR 37549). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 15, 1988

Brief description of amendment: The amendment revised Technical Specification 3/4.6.3 Containment Isolation Valves to allow entry into an operational mode with inoperable containment isolation valves if the LCO for operation for an unlimited time is met.

Date of issuance: June 22, 1988

Effective date: June 22, 1988

Amendment No.: 20

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 18, 1988 (53 FR 17790). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 1, 1988

Brief description of amendment: The amendment revises Technical Specification Section 6.2.3.1 to state that Independent Safety Engineering Group (ISEG) recommendations, records and reports are provided to appropriate station and corporate management instead of to the Vice President-Nuclear and Environmental Engineering.

Date of issuance: June 29, 1988

Effective date: June 29, 1988

Amendment No.: 21

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 4, 1988 (53 FR 15914). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 19, 1988

Brief description of amendment: The amendment revises the thermal shock analysis in the Technical Specifications to reflect the new fluence prediction developed and the more limiting chemistry factor associated with the 3-410 weld.

Date of issuance: June 28, 1988

Effective date: June 28, 1988

Amendment No.: 114

Facility Operating License No. DPR-40: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 23, 1988 (53 FR 9510). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 23, 1988

Brief description of amendment: The amendment revised Section 5 of the Technical Specifications to delete the offsite and onsite organizational charts, to revise composition of the Plant Review Committee and Safety Audit and Review Committee, and to revise position titles to reflect organizational changes.

Date of issuance: July 1, 1988

Effective date: 30 days from date of issuance in order to fully implement the revised specifications.

Amendment No.: 115

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 31, 1988 (53 FR 19835). The licensee's May 23, 1988 submittal supersedes the previous submittal dated April 15, 1988. This submittal was supplemented by a letter dated June 7, 1988 which had no effect on the No Significant Hazards Determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: February 17, 1988

Brief description of amendment: The amendment revises Trojan Technical Specification Section 3/4.3.3.10, "Radioactive Liquid Effluent Instrumentation," by adding two new instruments for monitoring steam generator blowdown liquid effluent discharge.

Date of issuance: June 16, 1988

Effective date: June 16, 1988

Amendment No.: 143

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 6, 1988 (53 FR 11375). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University

Library, 731 S. W. Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: April 12, 1988

Brief description of amendment: The amendment revises the Trojan Technical Specifications regarding the referencing of the remote shutdown station.

Date of issuance: June 22, 1988

Effective date: June 22, 1988

Amendment No.: 144

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 18, 1988 (53 FR 17792). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: December 18, 1987, as supplemented March 15, 1988.

Brief description of amendment: The amendment revises the means by which source range neutron flux instrumentation calibration will be performed. The March 15, 1988 supplement did not effect the staff's initial determination as published in the Federal Register.

Date of issuance: June 23, 1988

Effective date: June 23, 1988

Amendment No.: 145

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 24, 1988 (53 FR 5496). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 2, 1987, as supplemented July 7, 1987

Brief description of amendments: The amendments revised the reactor trip block with a turbine trip from P-7 (11%) permissive up to P-9 (50%) permissive.

Date of issuance: June 27, 1988

Effective date: For Unit 1, as of the next refueling outage, cycle 8, currently scheduled for April 1989. For Unit 2, as of the next refueling outage, cycle 4, currently scheduled for September 1988.

Amendment Nos.: 85 and 58

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 21, 1987 (52 FR 39305). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 2, 1986 and September 4, 1987

Brief description of amendments: The amendments combined paragraphs 2.D and 2.E to become paragraph 2.E in the Unit 1 license and modified paragraph 2.E in the Unit 2 license to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of this amendment.

Date of issuance: June 27, 1988

Effective date: June 27, 1988

Amendment Nos.: 86 and 59

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the License.

Date of initial notice in Federal Register: March 9, 1988 (53 FR 7600). The Commission's related evaluation of the amendments is contained in a letter to the Public Service Electric and Gas Company dated June 27, 1988 and a Safeguards Evaluation Report dated June 27, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 8, 1988

Brief Description of amendment: This amendment revises the Technical Specifications associated with monitoring releases through the containment mini-purge system and to clarify action statements following inoperability of the mini-purge system for 31 days.

Date of issuance: June 23, 1988

Effective date: June 23, 1988

Amendment No.: 29

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 23, 1988 (53 FR 9514). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NRC Project Director: Richard H. Wessman, Director

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-305, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 7, 1987

Brief description of amendment: The amendment changes the Technical Specifications to reflect the appropriate channel calibrations for the source range fission detectors installed as a result of the implementation of the modifications of Regulatory Guide 1.97, Revision 3.

Date of issuance: June 27, 1988

Effective date: June 27, 1988

Amendment No.: 73

Facility Operating License No. NPF-12: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 26, 1987 (52 FR 32211). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendment: December 30, 1987, as supplemented by letters dated January 12, February 22, March 11, 18 and 23, 1988.

Brief description of amendment: The amendments revised the licenses to allow storage of spent fuel produced by the operation of Unit 1 in either Unit 2 or Unit 3.

Date of issuance: June 22, 1988

Effective date: June 22, 1988

Amendment Nos.: 63 and 52

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revised the licenses.

Date of initial notice in Federal Register: February 12, 1988 (53 FR 4947). The supplemental letters of January 12, February 22, March 11, 18 and 23, 1988 did not change the initial proposed determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 22, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 15, and November 23, 1987

Brief description of amendments: The amendments modified paragraph 2.E of the licenses to require compliance with the amended Physical Security Plan. This plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: June 24, 1988

Effective date: June 24, 1988

Amendment Nos.: 73 and 65

Facility Operating License Nos. DPR-77 and DPR-78: Amendments revised the Licenses.

Date of initial notice in Federal Register: May 4, 1988 (53 FR 15917). The Commission's related evaluation of the

amendment is contained in a Safety Evaluation dated June 24, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 9, 1987 and April 13, 1988.

Brief description of amendment: The amendment deleted the offsite and unit organizational charts and added the essential aspects of organizational structure to the Technical Specifications.

Date of issuance: June 21, 1988

Effective date: June 21, 1988

Amendment No.: 37

Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 4, 1987 (52 FR 42372). The April 13, 1988 supplement added the essential aspects of organizational structure to the Technical Specifications and is, therefore, more conservative than the original application. It was consistent with the staff's original findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: November 21, 1986, and November 17, 1987

Brief description of amendment: The amendment modified paragraph 2.E of Facility Operating License No. NPF-30 to require compliance with the revised Physical Security Plan for the Callaway Plant. The Plan was revised to reflect recent changes to the requirements of 10 CFR 73.55.

Date of issuance: June 21, 1988

Effective date: June 21, 1988

Amendment No.: 38

Facility Operating License No. NPF-30: Amendment revised the license.

Date of initial notice in Federal Register: May 18, 1988 (53 FR 17793). The Commission's related evaluation of the amendment is contained in a Safeguards Evaluation dated June 21, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 30, 1988

Brief description of amendments: The amendments added in-core thermocouples to the Accident Monitoring Instrumentation, NA-1&2 TS Tables 3.3-10 and 4.3-7. The addition is in conformance with NUREG-0737 and Generic Letter 83-37.

Date of issuance: June 20, 1988

Effective date: June 20, 1988

Amendment Nos.: 104 and 91

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 18, 1988 (53 FR 17795). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 20, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: December 11, 1986, as supplemented October 16, 1987 and February 24, 1988.

Brief description of amendments: The amendments modified paragraph 3.] of the licenses to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: June 20, 1988

Effective date: June 20, 1988

Amendment Nos.: 121 and 121

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Licenses.

Date of initial notice in Federal Register: May 18, 1988 (53 FR 17796). The Commission's related evaluation of the amendments is contained in a letter to Virginia Electric and Power Company dated June 20, 1988 and a Safeguards Evaluation Report dated June 20, 1988.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: January 5, 1988 and as supplemented March 11, 1988

Brief description of amendment: The amendment removes from the Technical Specifications the requirements for the Plant Operations Manager to maintain a Senior Reactor Operator's license.

Date of Issuance: June 28, 1988

Effective date: June 28, 1988

Amendment No.: 111

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 6, 1988 (53 FR 11379). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01201.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the period since publication of the last biweekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this biweekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No

Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendment: November 10, 1987 as augmented by information in the "Plan for Restart of Peach Bottom Atomic Power Station, Section I, Corporate Action" dated November 25, 1987 and in revisions to Section I of the Plan submitted on April 8, 1988.

Brief description of amendment: These amendments modified Section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure, (III) a revised composition of the Plant Operations Review Committee and (IV) several administrative changes.

Date of Issuance: June 22, 1988

Amendment Nos.: 132 and 135

Effective date: For Units 2 and 3, as of the date of issuance. The subject changes in the organizational structure are to be completed within ninety (90) days of the issuance of the amendments.

Facility Operating License Nos. DPR-44 and DPR-56. The Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 23, 1987 (52 FR 48593)

Dated at Rockville, Maryland, this 7th day of July, 1988.

For the Nuclear Regulatory Commission

Steven A. Varga,
Director, Division of Reactor Projects-I/II,
Office of Nuclear Reactor Regulation

[Doc. 88-15574 Filed 7-12-88; 8:45 am]

BILLING CODE 7590-01-0

[Docket No. 50-341]

Detroit Edison Co. et al.; Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. NPF-43, issued to the Detroit Edison Company and Wolverine Power Supply Cooperative,

Inc. (the licensee), which revised the Technical Specifications (TSs) for operation of Fermi-2 located in Monroe County, Michigan. The amendment is effective as of the date of issuance.

This amendment revises the Fermi-2 Technical Specifications to delete the Non-regenerative Heat Exchanger Outlet Temperature-High signal from the listing of the Reactor Water Cleanup system isolation signals.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the Federal Register on May 11, 1988 (53 FR 16801). No request for hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the Federal Register on July 5, 1988, at 53 FR 25219.

For further details with respect to this action, see (1) the application for amendment dated March 10, 1988, as supplemented April 21, 1988, (2) Amendment No. 21 to License No. NPF-43, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Rockville, Maryland, this 6th day of July.

For the Nuclear Regulatory Commission.

Theodore R. Quay,
Project Manager, Project Directorate III-1,
Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-15687 Filed 7-12-88; 8:45 am]

BILLING CODE 7590-01-0

[Docket No. 30-19498, License No. 35-17186-02, EA 07-184]

Precision Logging and Perforating Co., Order Imposing Civil Monetary Penalty

I

Precision Logging and Perforating Company, Cleveland, Oklahoma (the licensee) is the holder of Materials License No. 35-17186-02 issued by the Nuclear Regulatory Commission (NRC/Commission) on December 2, 1981, and amended last in its entirety on January 21, 1988. The license authorizes the licensee to use sealed sources for oil and gas well logging in accordance with the conditions specified therein.

II

A routine inspection of the licensee's activities was conducted on August 18 and 19, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated December 10, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by two letters, both dated January 7, 1988.

In its response, the licensee contested Violations A and D but not the other violations. In addition, the licensee requested that the proposed civil penalty be rescinded for several stated reasons, including financial hardship. By letter dated February 16, 1988, the NRC provided the licensee with the opportunity to submit specific financial information on the company's recent profit and loss and its net worth. The licensee submitted this information by letter dated February 15, 1988.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that the violations occurred as stated, but that the civil penalty proposed in the Notice of Violation would constitute an excessive financial hardship for the licensee, and therefore should be mitigated by 50 percent.

IV

In view of the foregoing and pursuant to sections 81, 161b, 182, and 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Five Hundred Dollars (\$500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of Section IV.A. of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of Violations A and D of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of the admitted violations, this Order should be sustained.

Dated at Rockville, Maryland, this 7th day of July 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,
Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions

On December 10, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during an NRC inspection. Precision Logging and Perforating Company responded to the

Notice by two letters dated January 7, 1988, and by subsequent statement of the corporate financial status sent by letter dated February 15, 1988. In its response, the licensee claimed that two of the violations should not have been cited. In addition, the licensee requested that the proposed civil penalty be rescinded for several reasons, including financial hardship. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Restatement of Violation A

10 CFR 20.201(b) requires that each licensee shall make or cause to be made such surveys as: (1) May be necessary for the licensee to comply with the regulations in 10 CFR Part 20 and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present.

10 CFR 20.105(b) requires, in part, that radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any one hour or in excess of 100 millirems in any seven consecutive days.

Contrary to the above, surveys had never been made in the unrestricted areas adjacent to the radioactive source storage area to determine compliance with 10 CFR 20.105(b) and 20.201(b).

Summary of Licensee's Response

The licensee contends that the violation should not have been cited. The licensee claims that previous surveys revealed no reading above 2 millirems in any hour, and since the number of sources and the other factors did not vary, it did not realize that it was necessary to make additional surveys.

NRC Evaluation of Licensee's Response

The licensee admits that no previous surveys were recorded. During the NRC inspector's survey of the storage area, the licensee's representative stated, when asked, that he had never performed such a survey and knew of no records of anyone having performed one previously. During the Enforcement Conference, the licensee's representatives acknowledged this violation. Given these statements and the absence of records of previous surveys, the NRC has no evidence that such surveys were performed. Because no basis has been submitted in the licensee's response that would support withdrawal of the violation, the violation remains as stated.

Restatement of Violation B

10 CFR 20.203(e) requires, in part, that areas in which specified amounts of licensed material are stored or used be conspicuously posted with a sign or signs bearing the radiation caution symbol and either the words "CAUTION RADIOACTIVE MATERIAL" or "DANGER RADIOACTIVE MATERIAL."

Contrary to the above, during the NRC inspection, the area of the shop in which the storage wells were located contained stored licensed material in the specified amounts and was not posted.

Summary of Licensee's Response

The licensee does not deny the violation.

NRC Evaluation of Licensee's Response

Since the licensee does not deny the violation, the violation remains as stated.

Restatement of Violation C

10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area to which access is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on August 18, 1987, an americium-beryllium source, serial no. T-222, was found by the NRC inspector to be stored in an unlockable shipping container, in an unlocked outer compartment of a truck parked in an unlocked garage.

Summary of Licensee's Response

The licensee does not deny the violation.

NRC Evaluation of Licensee's Response

Since the licensee does not deny the violation, the violation remains as stated.

Restatement of Violation D

License Condition 14 requires that the licensee shall conduct a physical inventory every 6 months to account for all sources received and possessed under the license. Records of inventories shall be maintained for 2 years from the date of each inventory.

Contrary to the above, records of inventories, to account for all sources received and possessed under the license, were not available for any time during the 2 years prior to the inspection.

Summary of Licensee's Response

The licensee contends that this violation should not be cited. The licensee claims that it has maintained leak test procedures on each source and used the sources at least monthly. The licensee argues that the leak tests as well as use of the sources constitutes inventories, and that while the regulation may be appropriate to a large company, it should not be enforced in this case because it has complied with the intent of the regulation through its leak test records.

NRC Evaluation of Licensee's Response

The violation was not that inventories were not performed, but rather that proper records of these inventories were not maintained.

Additionally, while records of leak tests and inventories may be combined, the leak test record in itself does not provide all the information required by the inventory record. In addition to indicating the date of inventory and the quantity and type of material, an inventory record includes the location of the licensed material and the individual conducting the inventory. Furthermore, the NRC emphasizes that the regulation applies to all licensees, regardless of their size, and that a licensee is expected to comply with NRC regulations, not what they perceive as "the intent" of the regulations. Because no basis has been provided by the licensee for withdrawal of the violation, the violation remains as stated.

Restatement of Violation E

License Condition 15 requires the licensee to transport licensed material in accordance with the provisions of 10 CFR Part 71. 10 CFR 71.5(a) requires, in part, that the licensee comply with applicable requirements of the Department of Transportation in 49 CFR Parts 170-180.

1. 49 CFR 172.403 requires that each package of radioactive material be labeled, as appropriate, with a RADIOACTIVE WHITE-I, a RADIOACTIVE YELLOW-II, or a RADIOACTIVE YELLOW-III label.

Contrary to the above, the transportation containers housing source Nos. T-222 containing 4.6 curies of americium-beryllium, 71-1-422B containing 5 curies of americium-beryllium, and CSV-989 containing 2 curies of cesium-137, were transported during approximately the last 2 years without the appropriate labels.

This is a repeat violation.
2. 49 CFR 172.200 requires that each person who transports or offers a package of hazardous material for

transport describe the material on a shipping paper as described in this subpart.

Contrary to the above, the licensee's representative stated that shipping papers were not prepared and carried during transportation for approximately the last 4 years.

This is a repeat violation.

Summary of Licensee's Response

The licensee does not deny the violation.

NRC Evaluation of Licensee's Response

Since the licensee does not deny the violation, the violation remains as stated.

Restatement of Violation F

License Condition 16 requires that licensed material shall be possessed and used in accordance with statements, representations, and procedures contained in the application dated November 4, 1981; and letters dated October 10, 1986, and January 7, 1987.

Section 3 of the procedures submitted with the license application requires that all sources of radioactivity be kept locked in storage unless actually in use. The letter of October 10, 1986, confirms that storage wells are to be used.

Contrary to the above, on August 18, 1987, a 4.6 curie americium-beryllium source, T-222; a 5-curie americium-beryllium source, 71-1-422B; and a 2-curie cesium-137 source, CSV-H50, were stored on trucks rather than in storage wells.

Summary of Licensee's Response

The licensee does not deny the violation.

NRC Evaluation of Licensee's Response

Since the licensee does not deny the violation, the violation remains as stated.

II. Summary of Licensee's Request for Mitigation

The licensee contests the proposed civil penalty for two basic reasons. These can be summarized as follows: (1) The severity of the violations does not warrant a penalty. In this connection, the licensee argues that the statement in the December 10, 1987, cover letter transmitting the Notice of Violation that these violations collectively demonstrate a significant breakdown in management oversight and control over its licensed program is erroneous, and that the violations do not constitute a health physics problem but a procedural problem and, as such, do not warrant a cumulative civil penalty in the amount proposed. (2) In light of the financial

hardship experienced by the licensee as a result of the current economic depression being experienced by the oil industry, and the expense which the licensee has undergone in order to "accommodate the enforcement actions which resulted from the inspection," the proposed civil penalty is excessive.

NRC Evaluation of Licensee's Request for Mitigation

Regarding the licensee's request for mitigation of the civil penalty based on its contention that the severity of the violations does not warrant a penalty and that the violations do not constitute a health physics problem but a procedural problem, the NRC maintains that the severity of the violations do warrant a penalty because the violations collectively demonstrate a significant breakdown in the licensee's oversight and control of its radiation safety program. In addition, the NRC considers these violations to be more than procedural problems and proposed a penalty to emphasize that the NRC considers these violations to be a serious matter, and to emphasize the need to take timely and comprehensive corrective actions. The NRC expects licensees to maintain a high level of compliance with NRC requirements. The base civil penalty was increased by 100 percent because of the licensee's poor prior performance, the multiple occurrences of most of the violations, and the licensee's failure to take adequate corrective actions to preclude repeat violations identified during the previous inspection.

The NRC Enforcement Policy recognizes that a licensee's ability to pay is a proper consideration in determining the amount of the civil penalty. The licensee's financial information submitted in its February 15, 1988 letter demonstrates that imposition of a civil penalty in the amount proposed would create a severe financial burden. In light of the licensee's current financial situation, the penalty is being mitigated by 50 percent.

III. NCR Conclusion

The NRC staff has carefully reviewed the licensee's response and the financial information submitted by the licensee, and has concluded that the violations occurred as stated. However, the NRC has determined that in light of the licensee's financial situation, the proposed civil penalty should be mitigated by 50 percent.

[FR Doc. 88-15688 Filed 7-12-88; 8:45 am]

BILLING CODE 7500-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25889; File No. SR-NASD-88-25]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to Amendments to Procedures for the Imposition of Remedial Business Limitations for Member Firms in or Approaching Financial or Operational Difficulty

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Article III, section 38 of the NASD's Rules of Fair Practice provides for the imposition of remedial business limitations upon member firms in or approaching financial or operational difficulty. The procedures implementing the substantive provisions of Article III, section 38 are set forth in Article V, Part A of the NASD's Code of Procedure. In SR-NASD-87-42, approved by the Commission on April 18, 1988, the NASD amended these procedures to clarify the selection of members and the composition of District Surveillance Committees ("DSCs"), to permit DSCs to appoint subcommittees to hear proceedings, and to provide for terms of office of up to three years for DSC members. Whereas section 2 of Article V formerly prescribed a five-member DSC, the approved amendments provide for a DSC of at least five members. The approved amendments eliminate the requirement that each DSC carry a complement of two current members of the Board of Governors' Surveillance Committee. Under the approved rule, each DSC will consist of current members of the District Committee and/or persons who have been members of a District Committee or the NASD Board of Governors within the last five years. The instant proposed rule change provides that decisions of a DSC imposing sanctions for failure to comply with previous limitations imposed by a

DSC or the Board of Governors pursuant to Section 5(c) of Article V, Part A of the NASD Code of Procedure constitute final action which is appealable directly to the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Article III, section 38 of the NASD's Rules of Fair Practice provides for the imposition of remedial business limitations upon member firms in or approaching financial or operational difficulty. The procedures implementing the substantive provisions of Article III, section 38 are set forth in Article V, Part A of the NASD's Code of Procedure. The NASD is proposing to amend sections 5(c) and 6 of Part A of Article V of the Code of Procedure.

The proposed amendment to Article V, Part A, section 5(c) would further clarify that District Surveillance Committee action taken pursuant to Article V, Part A, section 5(c) constitutes a final action of the NASD which is reviewable by the Commission. It is contemplated that the issues involved in 5(c) proceedings, imposing sanctions for violation of previously established business limitations, would be limited, and that the effect of immediate imposition of sanctions, if any, would be counterbalanced by the availability of immediate review on the part of the Commission.

The proposed amendment to Article V, Part A, section 6 would further clarify that in contrast to determinations made pursuant to section 5(c), written decisions issued pursuant to section 5 (a) or (b) remain subject to review by the NASD's Board of Governors upon application of the member.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(2) of the Act because it will enable the NASD

more effectively to enforce compliance with its rules by clarifying minor ambiguities in the present procedural scheme.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- By order approve such proposed rule change, or
- Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-25 and should be submitted by August 3, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: July 7, 1988.

[FR Doc. 88-15706 Filed 7-12-88; 8:45 am]
BILLING CODE 8010-01-M

[Released No. 34-25890; File No. SR-NASD-87-1]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change

On March 17, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change SR-NASD-87-1, ("Proposed Rule Change") pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 ("Act") to offer a new service consisting of a low-speed ticker signal by which subscribers can obtain a moving display of last sale reports for all NASDAQ/NMS securities from any of a number of vendors, and to set applicable subscriber fees.¹ In response to concerns raised by public commentators and expressed by the Commission to the NASD, the NASD on July 1, 1988, submitted a letter to the Commission amending its proposed fee structure.² The Commission is hereby publishing this ORDER approving the proposed rule change.

I. Background and Comments

The proposed rule change consisted of (1) a ticker service consisting of a moving display of last sale reports on all NASDAQ/NMS securities and (2) related subscriber charges of \$5/month for terminal devices and \$50/month for wall display units carrying the NASDAQ/NMS Ticker Service ("Ticker Service"). As proposed, the Ticker Service would not be available on any display unit owned by the NASD or its subsidiaries with the exception of those devices used for marketing purposes. Hence, the NASD intended that its low-speed ticker signal would be distributed to end users by vendors of securities information or other third party facilitators. The end users (i.e., the vendors' subscribers) would incur either

¹ The proposed rule change was noticed in Securities Exchange Act Release No. 24280 (March 25, 1987), 52 FR 10849.

² A copy of the letter will be available at the Commission's Public Reference Room at 450 5th Street, NW., Washington, DC 20549.

the \$5 or \$50 monthly service charge depending upon the display mode chosen for receipt of the Ticker Service.

On June 29, 1988, the Board of NASD Market Services, Inc. ("MSI") reconsidered the proposed fees for the Ticker Service in light of the vendors' comments and concerns raised by the Commission staff regarding justification of disparate charges for terminal devices and wall units carrying ticker displays of NASDAQ/NMS trade reports.³ Accordingly, the following changes in the proposed fee structure were authorized:

1. Elimination of the proposed charge of \$5/month for any terminal device receiving a low-speed ticker signal created by a vendor's reprocessing of the NMTS high-speed data feed.
2. Elimination of the proposed charge of \$50/month for any wall unit carrying

³ Free comment letters dealing primarily with the proposed subscriber fees were received.

Three of them (Quotron, the Information Industry Association ("IIA"), and Instinet) opposed the proposal on the basis of unjustifiable fees, undue burden on competition, and the inapplicability of the retransmission release of 1980 (Securities Exchange Act Release No. 16589, 45 FR 12377 (February 20, 1980)) to the low-speed ticker. The letter from the NYSE discussed comparable Network A and B fees and the applicability of the retransmission release. The Amex, finally, explained in its comment letter the operation and fee structure of Network B.

With respect to the proposed fee schedule, Quotron argued that such a fee schedule would result in charging subscribers twice for the same information, because end-users will have to pay for the low-speed ticker in addition to paying for last sale prices. Similarly, Instinet stated that "... either the fee schedule ... does not adequately pass on to subscribers the cost associated with providing this service, or the fee applicable to the current NMTS service overcharges subscribers to that service." Instinet further argued that the fee schedule does not accurately reflect the costs associated with providing the underlying service to vendors.

As for the burden on competition, Quotron, IIA, and Instinet argued that the NASD proposal would result in hampering competition, because the fees imposed would hinder the development of new and more competitive services by vendors. In effect, the NASD would be collecting for a service it has not created or provided, thus removing any incentive for vendors to develop new services. IIA argued that "[i]f, by inaugurating a slow ticker service, NASD is able to develop new revenue sources from the new services created and derived by the vendors, the result will be a dampening of the innovative efforts of vendors on which so much depends." Both IIA and Quotron agreed, however, that, at the moment, there are no other comparable ticker services.

With respect to the applicability of retransmission rules, the NYSE stated in its letter that the "rules are clearly applicable and were originally written to address just this type of situation." Instinet and IIA raised the issue that what the NASD is attempting to charge for is not "retransmission," but simply the use of the NMTS high-speed line. IIA stated in its letter that "the slow ticker services already offered in the marketplace are not retransmissions of last sale data since the products offered have been developed at vendor expense from the high-speed line, product development previously open to vendors without charge."

a ticker display of NASDAQ/NMS trade reports regardless of whether such displays are driven by the NASD's ticker signal or a vendor's reprocessing of the NMTS high-speed feed.

The amended fee structure would result in the NASD assessing only one charge for Ticker Service, i.e., \$5 per month for every terminal device receiving the NASD's low-speed ticker signal. The NASD will impose no service-based charge for wall units carrying a serial-typed display of NASDAQ/NMS trade reports. Several factors were considered in justifying the elimination of a charge for wall displays of the NASDAQ/NMS ticker:

First, access to ticker displays via wall units is not subject to the control of a registered person engaged in the securities business. By their nature, wall-mounted ticker displays enable broad public access to last sale information and provide opportunities for identification of market trends based upon independent observation of such displays. The NASD has determined to promote these benefits to public investors by levying no service charge for wall displays of NASDAQ/NMS trade reports.

Second, it was noted that one vendor already provides wall displays of NASDAQ/NMS trade reports based upon reprocessing of the NMTS last sale feed. If another vendor were to provide this service utilizing the NASD's ticker signal, potential subscribers might incur disparate charges for receipt of identical wall displays. The MSI Board determined that a charge payable to the NASD should not be the cause of any such disparity respecting wall-mounted ticker displays of NASDAQ/NMS trade reports.

Third, the MSI Board believed that the costs of developing and operating the Ticker Service could be recovered through the \$5 charge for terminal devices receiving the Service.

Finally, the Board reasoned that elimination of the proposed charge for wall displays, which are primarily used by public investors, was consistent with the concept of providing market information to non-professionals at the lowest possible cost. The Commission has frequently advocated that concept in the course of evaluating the reasonableness of charges proposed by self-regulatory organizations/exclusive processors for receipt of market information.

II. Staff Response

The Commission believes that the amended fee structure eliminates the anti-competitive concerns raised by the

commentators; the NASD no longer charges a retransmission fee, and, in addition, it does not charge its direct subscribers a fee for a wall display.

Accordingly, the Commission finds that the proposed rule change, together with the amended fee structure is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the above-mentioned proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: July 7, 1988.

[FR Doc. 88-15707 Filed 7-12-88; 8:45 am]
BILLING CODE 8010-01-M

[Released No. 34-25888; File Nos. SR-Phlx-87-05; SR-Amex-87-09; SR-PSE-87-21; SR-CBOE-88-11; SR-NYSE-87-40]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; American Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; New York Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Changes

On June 15, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² Amendment No. 3 to a proposed rule change to extend the market index option escrow receipt ("MIOER") pilot program until October 31, 1988.³

In August 1985, the Commission approved a one-year pilot program to permit the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based

¹ 15 U.S.C. 78e(b)(1) (1982).

² 17 CFR 240.19b-4 (1986).

³ On June 20, 23, 27, and 30, 1988, the American Stock Exchange, Inc. ("Amex"), the Pacific Stock Exchange, Inc. ("PSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the New York Stock Exchange, Inc. ("NYSE"), submitted, respectively, essentially identical proposals for the extension of the MIOER pilot. See File Nos. SR-Amex-87-09, Amendment No. 3; SR-PSE-87-21, Amendment No. 2; SR-CBOE-88-11; SR-NYSE-87-40, Amendment No. 2.

stock index options.⁴ The proposed rule changes are designed to amend previously filed rule changes respecting extension of the pilot program and to provide a workable mechanism through which index call options could be written in a cash account.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposal in the Federal Register for several reasons. First, the extension will allow for uninterrupted continuation of a program designed to reduce operational difficulties of banks and trust companies while the options exchanges and the Options Clearing Corporation continue their review of the receipt format. Second, the extension will allow the Commission to continue its evaluation of the program's effectiveness, especially during the October 1987 market break. Third, the pilot was previously approved by the Commission and no adverse comments have been received regarding its operation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁵ that the proposal to extend the operation of the pilot through October 31, 1988, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,
Secretary.

Dated: July 6, 1988.

[FR Doc. 88-15708 Filed 7-12-88; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 7, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Alberto-Culver Company
Class A Common Stock, \$0.22 Par
Value (File No. 7-3591)
Kansas City Southern Industries, Inc.
Non-Cumulative Preferred Stock (File

⁴ See Securities Exchange Act Release No. 22323 (August 13, 1985) 50 FR 33436 for a description of the pilot.

⁵ 15 U.S.C. 78a(b)(2) (1982).

⁶ 17 CFR 200.30-3(a)(12) (1988).

No. 7-3592)
Genesco Incorporated
Common Stock, \$1.00 Par Value (File
No. 7-3593)
Prudential Intermediate Income Fund,
Inc.

Common Stock, \$0.01 Par Value (File
No. 7-3594)

Sun Electric Corporation
Common Stock, \$1.00 Par Value (File
No. 7-3595)

Tacoma Boatbuilding Co.
Common Stock, \$0.01 Par Value (File
No. 7-3596)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 28, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15709 Filed 7-12-88; 8:45 am]
BILLING CODE 8010-01-M

(Rel. No. IC-16472; 812-7039)

FG Series, Inc., et al.; Application

July 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: FG Series, Inc. (the "Company") and Financial Programs, Inc. ("Programs") (collectively, "Applicants").

Relevant 1940 Act Sections: Order requested under section 11(a).

Summary of Application: Applicants seek an order, on behalf of themselves and other registered open-end diversified management investment companies distributed by Programs

which may be organized in the future, under section 11(a) of the 1940 Act approving certain offers of exchange.

FILING DATE: The application was filed on May 19, 1988, and amended on June 24, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 1, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 6312 South Fiddler's Green Circle, Suite 100N, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, (202) 272-2847, or Curtis R. Hilliard, Special Counsel, (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Company is an open-end management investment company registered under the 1940 Act. The Company is a series company which currently intends to offer investors a selection of four investment funds (such investment funds being referred to individually as a "Fund" and in the aggregate as the "Funds"): the FG Money Fund (the "No-Load Fund"), the Global Bond Fund, the Asset Allocation Aggressive Fund, and the Asset Allocation Conservative Fund (collectively, the "Load Funds"). Additional investment funds may be added prior to the time the Company's registration statement is declared effective or thereafter.

2. Shares of all of the Funds are distributed by Programs. Financial Trust Company serves as investment adviser

of each Fund. Programs will maintain a continuous public offering of shares of the No-Load Fund at its current net asset value without a sales charge (but, as is the case with the Load Funds, Programs will receive certain fees for distribution services and expenses pursuant to the Company's distribution plan adopted under Rule 12b-1 of the 1940 Act, as described below) and a continuous public offering of shares of the Load Funds at their respective current net asset values plus a sales charge that is expected to equal 4.25% of the public offering price (4.4% of the net amount invested). Programs will be paid an annual fee, authorized under a distribution plan adopted under Rule 12b-1 of the 1940 Act, for certain services rendered and expenses incurred in connection with the offer and sale of the Company's shares.

3. Applicants seek the flexibility to allow shareholders of any No-Load Fund or any Load Fund to exchange all or a portion of their shares (including shares acquired through the reinvestment of dividends and capital gains distributions) for shares of any other Fund as specified in the application.

4. The Company reserves the right to terminate the exchange privilege of any shareholder who requests more than 4 exchanges during any one year. The Company would consider exercising its right to terminate the exchange privilege of any shareholder who requests more than four exchanges a year only where the Company's investment adviser believes such action is necessary in order to prevent abuse of the exchange privilege to the disadvantage of other shareholders. In particular, the Company is concerned about the adverse impact frequent exchanges of substantial size in and out of the various portfolios of the Company could have on effective portfolio management of each portfolio. Exchanges of a lesser magnitude which (viewed individually and without regard to the actions of other shareholders) do not necessitate the liquidation of portfolio securities in order to fund the request or which, in the judgment of the Company's investment adviser, are not likely to have an adverse impact upon the yield or total return of a portfolio would not be impeded by the foregoing policy.

Accordingly, shareholders not making frequent exchanges of substantial blocks of shares will not be limited in their ability to exercise their exchange privilege as a result of such policy.

5. Applicants seek the ability to permit the following exchange offers between Funds:

(i) Shares of a Load Fund may be exchanged for shares of another Load Fund on the basis of relative net asset value without the payment of a sales load;

(ii) Shares of a Load Fund may be exchanged for shares of a No-Load Fund on the basis of relative net asset value without the payment of a sales load; and

(iii) Shares of a No-Load Fund may be exchanged for shares of any Load Fund subject to the sales load normally charged by the Load Fund (unless those shares were previously charged a sales load by one of the Funds).

6. It is currently contemplated that exchanges between individuals Funds would not be subject to the payment of any service charge. However, the Company reserves the right to impose a nominal administrative fee in the future, in an amount not to exceed \$5.00 per exchange, payable to the Fund from which the exchange was made and applied uniformly to all shareholders. Any administrative fee imposed would be disclosed in the Company's prospectus and in advertising and sales literature that described the exchange offers. Each exchange will be subject to the minimum investment requirements of the Fund's shares that are to be acquired in the exchange.

7. In each of the exchanges described above, shares acquired through reinvestment of dividends and capital gains distributions will be deemed to have been sold with a sales load equal to the sales load previously paid on the shares on which the dividend was paid or distributions made. Moreover, where a shareholder exchanges less than all of his shares of a particular Fund, the shares upon which the highest sales load was previously paid will be deemed to be exchanged first.

8. Applicants submit that the proposed exchange privilege between individual Funds would permit a shareholder of any Fund to exchange, in a simple transaction, his Fund shares for shares of any other Fund on a fair and equitable basis when market, tax considerations or changes in the shareholder's investment objectives warrant such an exchange. Thus, Applicants believe that the proposed offers of exchange are fair and equitable to all shareholders, while at the same time giving them necessary flexibility in their financial planning.

9. If any administrative fee were to be imposed on exchanges, the purpose of the fee would be to defray the administrative expenses incurred in the exchanges.

10. Applicants request that any order issued on the application also be

applicable to any other registered investment company or series thereof distributed by Programs which may be organized in the future, provided that the shares of such investment company or series thereof are sold either without any sales load or with a front-end sales charge in a manner substantially similar to the manner described in the Application.

Applicants' Conditions

1. Shareholders of each Fund will be notified of the exchange privilege by means of the Company's prospectus and possibly in other communications.

2. Shareholders of the Company will be notified by means of the Company's prospectus of the fact that the Company reserves the right to modify or terminate its exchange privilege, including exchanges of shares between two Funds as described more fully in the application.

3. In connection with sales literature and advertising that refers to the Company's exchange privilege, the Company undertakes to consider the desirability of disclosing the fact that the Company reserves the right to modify or terminate its exchange privilege.

4. Shareholders will be notified in writing at least 60 days prior to any modification or termination of the Company's exchange privilege, except in the case of a reduction of any administrative fee in which case prior notice shall not be required; provided, however, that the temporary cessation of the sale of Company shares under extraordinary circumstances such as when the Company is unable to effectively invest amounts in accordance with applicable investment objectives, policies and restrictions, or the suspension of the redemption of Company shares pursuant to section 22(e) of the 1940 Act and the rules and regulations thereunder shall not be considered a modification or termination of the Company's exchange privilege.

5. The Applicants undertake to obtain an amended order from the Commission prior to any modification (i.e., manner, frequency or basis) or the Company's exchange privilege in a manner not described in the Application; provided, however, that an amended order is not required in order to terminate the Company's exchange privilege.

6. Applicants will comply with the provisions of proposed Rule 11a-3, as if and when such Rule may be adopted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15710 Filed 7-12-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24675]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 7, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 1, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pennsylvania Electric Company (70-7518)

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a wholly owned subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

Penelec proposes to lease certain tracts of land which are located in Western Pennsylvania and all or unused portions of various buildings it owns to unaffiliated third parties, through December 31, 1997, for annual rentals of from \$1 to \$2,400 and for terms of up to

25 years. Such proposed leases would enable Penelec to employ currently underutilized assets in a manner useful to the communities it serves.

The real property was acquired by Penelec for use as sites for electric facilities, such as generating stations, substations and transmission lines. Some of these properties are being used as originally intended while others are currently being held by Penelec for future use. The buildings are now used only in part, not used full time, or are not now used but which are being held for future use. It is stated that Penelec regularly receives requests to lease these real properties, including, for example, land for farming, grazing of livestock, public recreation facilities and timber rights, and all or unused portions of various buildings. Penelec anticipates that its investment of capital or employees' time in connection with the proposed transactions will not exceed \$100,000.

Public Service Company of Oklahoma (70-7526)

Public Service Company of Oklahoma ("PSO"), 323 East 6th Street, Tulsa, Oklahoma 74102, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application pursuant to sections 9(a)(1) and 10 of the Act.

PSO proposes to purchase the electric distribution system currently owned by the Town of Chelsea, Oklahoma ("Chelsea"). Under the purchase agreement, PSO would acquire all the utility assets included in Chelsea's electric distribution system, including all easements and right-of-way interests on which the assets are located. The purchase price would be \$2.2 million, and the acquisition would represent an addition of less than 1% to PSO's property accounts.

The Southern Company (70-7527)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act of 1935 and Rule 50(a)(5) thereunder.

Southern proposes to issue and sell from time to time, through December 31, 1991, pursuant to an exception from the competitive bidding requirements of Rule 50 (b) and (c) under Rule 50(a)(5), up to 31,119,000 shares of its authorized but unissued common stock, par value \$5 per share. A maximum of 20 million of those shares, in addition to the balance of 5,425,126 shares (as of May 31, 1988) approved by a previous order of the Commission (HCAR No. 23986,

December 30, 1985), would be sold to Southern's Dividend Reinvestment and Stock Purchase Plan. The remaining 11,119,000 shares, in addition to the balance of 454,893 shares (as of May 31, 1988) approved by a previous order of the Commission (HCAR No. 24544, December 17, 1986), would be available to be sold to Southern's Employee Savings Plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15711 Filed 7-12-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

(CGD 88-054)

Houston/Galveston Navigation Safety Advisory Committee; Solicitation for Membership

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee. Present appointments will expire with the present committee charter on 6 November 1988. Approximately sixteen memberships will be filled.

Applicants may be State and local government, the marine industry, environmental groups, academia, and other interested parties. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communication, surveillance, traffic control, anchorages, and other related topics dealing with navigation safety in the Houston/Galveston area as required by the Coast Guard. The committee normally meets once a quarter at various locations in the Houston/Galveston area. Members serve voluntarily, without compensation from Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, 6 November 1990.

DATES: Requests for applications should be received no later than 25 July 1988. Completed applications should be returned no later than 15 August 1988.

ADDRESS: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs

Federal Building, 500 Camp Street, New Orleans, LA 70130-3396.

FOR FURTHER INFORMATION CONTACT:

Commander Gary A. Bird, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan) Room 1141, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6234.

Dated: June 29, 1988.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88-15621 Filed 7-12-88; 8:45 am]

BILLING CODE 4910-14-M

(CGD 88-055)

Working Groups for the Subcommittee on Vapor Control, Chemical Transportation Advisory Committee; Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of meetings of the Waterfront Facilities Working Group, Tankship Working Group, and Tank Barge Working Group for the Subcommittee on Vapor Control of the Chemical Transportation Advisory Committee (CTAC). The Subcommittee is considering requirements for tank vessels and waterfront facilities which use vapor control systems. The working groups are to address new work items from the Subcommittee's Work Plan, and to finalize recommendations on the new work items. The new work items which will be addressed are listed on the Subcommittee's Work Plan, which was enclosed in the minutes of the Subcommittee meeting of May 4 and 5, 1988. The meetings of the working groups will be held on Wednesday, August 3, and Thursday, August 4, 1988 in Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC. Prior to convening the working groups, members of each working group will meet jointly in order to coordinate efforts. The meeting is scheduled to begin at 9:00 a.m. on Wednesday and 8:00 a.m. on Thursday.

The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Break up into individual working groups.

4. Discussion and development of recommendations on new work items from the Subcommittee's Work Plan.

5. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any members of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander R.H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second St. SW., Washington, DC 20593-0001, (202) 287-1217.

Dated: July 6, 1988.

N.W. Lemley,

Acting Executive Director, Chemical Transportation Advisory Committee.

[FR Doc. 88-15620 Filed 7-12-88; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Noise Exposure Map Determination and Receipt of Noise Compatibility Program and Request for Review; Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Dayton for Dayton International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Dayton International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before December 19, 1988.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is June 12, 1988. The public comment period ends August 6, 1988.

FOR FURTHER INFORMATION CONTACT:

Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Dayton International Airport are in compliance with applicable requirements of Part 150, effective June 22, 1988. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 19, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of the Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for the FAA's approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Dayton submitted to the FAA in November of 1985 noise exposure maps, descriptions and other documentation subsequently revised in October of 1986 and again in June of 1988, which were produced during the Airport Noise Compatibility Planning (Part 150) Study at Dayton International Airport from May 1984 to June 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1), of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Dayton. The specific maps under consideration are Noise Exposure Maps: 1984 Noise Contours and 1989 Noise Contours (abated conditions). They are included along with supporting documentation found in the noise

BEST COPY AVAILABLE

exposure map documentation of the Part 150 Study in the submission. The FAA has determined that these maps for Dayton International Airport are in compliance with applicable requirements. This determination is effective on June 22, 1988. The airport operator has also submitted an addendum to the Noise Compatibility Study for Dayton International Airport based on changes in operations since the first submittal of the Noise Compatibility Program for review in 1985, and a subsequent revision in October of 1986. The city of Dayton has formally requested that FAA review this addendum documentation as part of its review of the Noise Compatibility Program for Dayton International Airport, and make a determination at the time of approval of the noise compatibility program that the following noise exposure maps found in this Addendum are the official Noise Exposure Maps: 1987 Noise Contours (current conditions) and 1992 Noise Contours (abated conditions). FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification

by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Dayton International Airport, also effective on June 22, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 18, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20501
Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018
Federal Aviation Administration, Detroit Airports District Office, East Willow Run Airport, 3800 Beck Road, Belleville, Michigan 48111
City of Dayton, Department of Aviation, Terminal Building, Dayton International Airport, Vandalia, Ohio 45377.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, Illinois, June 22, 1988.
William H. Pollard,
Director, Great Lakes Region.
[FR Doc. 88-15613 Filed 7-12-88; 8:45 am]
BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, St. Lucie County International Airport, Fort Pierce, FL

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Ft. Pierce Port and Authority for St. Lucie County International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for St. Lucie County International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before December 16, 1988.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is June 20, 1988. The public comment period ends August 16, 1988.

FOR FURTHER INFORMATION CONTACT: Pablo C. Auffant, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32827, Telephone (407) 648-6583.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for St. Lucie County International Airport are in compliance with applicable requirements of Part 150, effective June 20, 1988. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 16, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submissions of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The

Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for the FAA's approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Fort Pierce Port and Airport Authority submitted to the FAA on March 31, 1988 noise exposure maps, description and other documentation which were produced during an airport noise compatibility planning study from March 7, 1986 to January 2, 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and the surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Ft. Pierce Port and Airport Authority. The specific maps under consideration are "Existing (1986) Ldn Contours" and "Future (1992) Ldn Contours." The FAA has determined that these maps for St. Lucie County International Airport are in compliance with applicable requirements. This determination is effective on June 20, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedure contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise

exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with whom consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for St. Lucie County International Airport also effective on June 20, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 16, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC.
Orlando Airports District Office, 4100

Tradecenter Street, Orlando, Florida 32827.

Fort Pierce Port and Airport Authority, 2300 Virginia Avenue, Room 104, Fort Pierce, FL 33482-5652.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, June 20, 1988.
James E. Sheppard,
Manager, Orlando Airports, District Office.
[FR Doc. 88-15614 Filed 7-12-88 8:45 am]
BILLING CODE 4910-13-M

Informal Airspace Meetings; Mississippi et al.

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of informal airspace meetings.

SUMMARY: This notice announces informal airspace meetings to discuss the following: 1. Establishment of an Airport Radar Service Area (ARSA) at Gulfport, MS; 2. Establishment of an ARSA at Tri-City, TN; 3. Modification of the Chicago, IL, Terminal Control Area (TCA); and 4. Establishment of a TCA at Salt Lake City, UT.

SUPPLEMENTARY INFORMATION: The informal airspace meeting dates and places are as follows:

Gulfport, MS, ARSA

Date: September 13, 1988
Time: 7:00 p.m.

Location: Mississippi Air National Guard Site Auditorium, Gulfport Municipal Airport, Gulfport, MS.

Tri-City, TN, ARSA

Date: September 20, 1988
Time: 7:00 p.m.

Location: Tri-City Technical College Auditorium, Tri-City Regional Airport, Blountsville, TN.

Chicago, IL, TCA

Date: September 28, 1988
Time: 7:30 p.m.

Location: Maine West High School Auditorium, 1755 Wolfe Road, Des Plaines, IL.

Salt Lake City, UT, TCA

Date: October 4, 1988
Time: 7:00 p.m.

Location: National Guard Armory, 625 East 5300 South, Ogden, UT.
and

Date: October 5, 1988
Time: 7:00 p.m.

Location: Utah Air National Guard Base
Theater, 765 North 2200 West, Salt
Lake City, UT.

Date: October 6, 1988
Time: 7:00 p.m.

Location: National Guard Armory, 222
West 500 North, Provo, UT.

FOR FURTHER INFORMATION CONTACT:
Joe Gill, Airspace Branch (ATO-240),
Airspace-Rules and Aeronautical
Information Division, Air Traffic
Operations Service, Federal Aviation
Administration, 800 Independence
Avenue, SW., Washington, DC 20591;
telephone: (202) 267-9252.

Issued in Washington, DC, on July 7, 1988.

Temple H. Johnson,

Acting Manager, Airspace-Rules and
Aeronautical Information Division.

[FR Doc. 88-15616 Filed 7-12-88; 8:45 am]

BILLING CODE 4910-13-4

Flight Service Station At Ephrata, WA; Closing

Notice is hereby given that on or
about July 7, 1988, the Ephrata,
Washington, Flight Service Station will
be closed. Services to the aviation
public formerly provided by this facility
will be provided by the Automated
Flight Service Station at Seattle,
Washington. This information will be
reflected in the FAA Organization
Statement the next time it is issued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)
Issued in Seattle, Washington, on June 20,
1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.
[FR Doc. 88-15617 Filed 7-12-88; 8:45 am]

BILLING CODE 4910-15-4

Federal Highway Administration

Environmental Impact Statement; Surry County, NC

AGENCY: Federal Highway
Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this
notice of advise the public that an
environmental impact statement will be
prepared for a proposed highway project
in Surry County, North Carolina.

FOR FURTHER INFORMATION CONTACT:
Kenneth L. Bellamy Division
Administrator, Federal Highway
Administration, Suite 470, 4505 Falls of
Neuse Road, P.O. Box 26808, Raleigh,

North Carolina 27611. Telephone (919)
790-2850.

SUPPLEMENTARY INFORMATION: The
FHWA, in cooperation with the North
Carolina Department of Transportation
(NCDOT), will prepare an
environmental impact statement (EIS)
on a proposed connector from US 52 to
I-77 in Surry County. The proposed
action would be the construction of an
expressway on new location from US 52
south of Mount Airy to I-77 near Pine
Ridge, a distance of approximately 11
miles. The proposed project is needed to
serve the existing and anticipated traffic
demand in the area. It will provide a
much needed alternative route south of
existing NC 89 and will help relieve the
congestion, delay, and inconvenience
currently being experienced by
removing through traffic from this local
highway. The proposed connector will
also serve as a bypass for Mount Airy.

Alternatives under consideration
include (1) the "no-build", (2) improving
existing NC 89, and (3) the construction
of an expressway on new location.

Letters describing the proposed action
and soliciting comments are being sent
to appropriate Federal, State and local
agencies. Public meetings and meetings
with local officials will be held in the
project area. A corridor public hearing
and a design public hearing will also be
held. Information on the time and
location of the public meetings and
public hearings will be provided in the
local news media. The draft EIS will be
available for public and agency review
and comment at the time of the corridor
public hearing. No formal scoping
meeting is planned at this time.

To insure that the full range of issues
relating to the proposed action are
addressed and all significant issues
identified, comments and suggestions
are invited from all interested parties.
Comments and questions concerning
this proposed action should be directed
to the FHWA at the address provided
above.

(Catalog of Federal Domestic
Assistance Program Number 20.205,
Highway Planning and Construction.
The regulations implementing Executive
Order 12372 regarding
intergovernmental consultation on
Federal programs and activities apply to
this program.)

Issued on June 23, 1988.

J.M. Tate,

District Engineer, FHWA, Raleigh, North
Carolina

[FR Doc. 88-15624 Filed 7-12-88; 8:45 am]

BILLING CODE 4910-32-4

DEPARTMENT OF THE TREASURY

Office of the Secretary

(Dept. Circ.; Public Debt Series No. 18-88)

Treasury Notes of July 15, 1995; Series G-1995

July 6, 1988.

1. Invitation for Tenders

1.1. The Secretary of the Treasury,
under the authority of Chapter 31 of
Title 31, United States Code, invites
tenders for approximately \$6,500,000,000
of United States securities, designated
Treasury Notes of July 15, 1995, Series
G-1995 (CUSIP No. 912827 WK 4),
hereafter referred to as Notes. The
Notes will be sold at auction, with
bidding on the basis of yield. Payment
will be required at the price equivalent
of the yield of each accepted bid. The
interest rate on the Notes and the price
equivalent of each accepted bid will be
determined in the manner described
below. Additional amounts of the Notes
may be issued to Government accounts
and Federal Reserve Banks for their
own account in exchange for maturing
Treasury securities. Additional amounts
of the Notes may also be issued at the
average price to Federal Reserve Banks,
as agents for foreign and international
monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 15,
1988, and will accrue interest from that
date, payable on a semiannual basis on
January 15, 1989, and each subsequent 6
months on July 15 and January 15
through the date that the principal
becomes payable. They will mature July
15, 1995, and will not be subject to call
for redemption prior to maturity. In the
event any payment date is a Saturday,
Sunday, or other nonbusiness day, the
amount due will be payable (without
additional interest) on the next business
day.

2.2. The Notes are subject to all
taxes imposed under the Internal
Revenue Code of 1954. The Notes are
exempt from all taxation now or
hereafter imposed on the obligation or
interest thereof by any State, any
possession of the United States, or any
local taxing authority, except as
provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to
secure deposits of Federal public
monies. They will not be acceptable in
payment of Federal taxes.

2.4. The Notes will be issued only in
book-entry form in denominations of
\$1,000, \$5,000, \$10,000, \$100,000, and
\$1,000,000, and in multiples of those

amounts. They will not be issued in
registered definitive or in bearer form.

2.5. The Department of the Treasury's
general regulations governing United
States securities, i.e., Department of the
Treasury Circular No. 300, current
revision (31 CFR Part 306), as to the
extent applicable to marketable
securities issued in book-entry form, and
the regulations governing book-entry
Treasury Bonds, Notes, and Bills, as
adopted and published as a final rule to
govern securities held in the TREASURY
DIRECT Book-Entry Securities System
in 51 FR 18260, *et seq.* (May 16, 1986),
apply to the Notes offered in this
circular.

3. Sales Procedures

3.1. Tenders will be received at
Federal Reserve Banks and Branches
and at the Bureau of the Public Debt,
Washington, DC 20239-1500, prior to
1:00 p.m., Eastern Daylight Saving time,
Tuesday, July 12, 1988. Noncompetitive
tenders as defined below will be
considered timely if postmarked no later
than Monday, July 11, 1988, and received
no later than Friday, July 15, 1988.

3.2. The par amount of Notes bid for
must be stated on each tender. The
minimum bid is \$1,000, and larger bids
must be in multiples of that amount.
Competitive tenders must also show the
yield desired, expressed in terms of an
annual yield with two decimals, e.g.,
7.10%. Fractions may not be used.
Noncompetitive tenders must show the
term "noncompetitive" on the tender
form in lieu of a specified yield.

3.3. A single bidder, as defined in
Treasury's single bidder guidelines, shall
not submit noncompetitive tenders
totaling more than \$1,000,000. A
noncompetitive bidder may not have
entered into an agreement, nor make an
agreement to purchase or sell or
otherwise dispose of any
noncompetitive awards of this issue
prior to the deadline for receipt of
tenders.

3.4. Commercial banks, which for this
purpose are defined as banks accepting
demand deposits, and primary dealers,
which for this purpose are defined as
dealers who make primary markets in
Government securities and are on the
list of reporting dealers published by the
Federal Reserve Bank of New York, may
submit tenders for accounts of
customers if the names of the customers
and the amount for each customer are
furnished. Others are permitted to
submit tenders only for their own
account.

3.5. Tenders for their own account will
be received without deposit from
commercial banks and other banking
institutions; primary dealers, as defined

above; Federally-insured savings and
loan associations; States, and their
political subdivisions or
instrumentalities; public pension and
retirement and other public funds;
international organizations in which the
United States holds membership; foreign
central banks and foreign states; Federal
Reserve Banks; and Government
accounts. Tenders from all others must
be accompanied by full payment for the
amount of Notes applied for, or by a
guarantee from a commercial bank or a
primary dealer of 5 percent of the par
amount applied for.

3.6. Immediately after the deadline for
receipt of tenders, tenders will be
opened, followed by a public
announcement of the amount and yield
range of accepted bids. Subject to the
reservations expressed in Section 4,
noncompetitive tenders will be accepted
in full, and then competitive tenders will
be accepted, starting with those at the
lowest yields, through successively
higher yields to the extent required to
attain the amount offered. Tenders at
the highest accepted yield will be
prorated if necessary. After the
determination is made as to which
tenders are accepted, an interest rate
will be established, at a 1/8 of one
percent increment, which results in an
equivalent average accepted price close
to 100.000 and a lowest accepted price
above the original issue discount limit of
98.250. That stated rate of interest will
be paid on all of the Notes. Based on
such interest rate, the price on each
competitive tender allotted will be
determined and each successful
competitive bidder will be required to
pay the price equivalent to the yield bid.
Those submitting noncompetitive
tenders will pay the price equivalent to
the weighted average yield of accepted
competitive tenders. Price calculations
will be carried to three decimal places
on the basis of price per hundred, e.g.,
99.923, and the determinations of the
Secretary of the Treasury shall be final.
If the amount of noncompetitive tenders
received would absorb all or most of the
offering, competitive tenders will be
accepted in an amount sufficient to
provide a fair determination of the yield.
Tenders received from Government
accounts and Federal Reserve Banks
will be accepted at the price equivalent
to the weighted average yield of
accepted competitive tenders.

3.7. Competitive bidders will be
advised of the acceptance of their bids.
Those submitting noncompetitive
tenders will be notified only if the
tender is not accepted in full, or when
the price at the average yield is over
par.

4. Reservations

4.1. The Secretary of the Treasury
expressly reserves the right to accept or
reject any or all tenders in whole or in
part, to allot more or less than the
amount of Notes specified in Section 1,
and to make different percentage
allotments to various classes of
applicants when the Secretary considers
it in the public interest. The Secretary's
action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted
must be made at the Federal Reserve
Bank or Branch or at the Bureau of the
Public Debt wherever the tender was
submitted. Settlement on Notes allotted
to institutional investors and to others
whose tenders are accompanied by a
guarantee as provided in Section 3.5,
must be made or completed on or before
Friday, July 15, 1988. Payment in full
must accompany tenders submitted by
all other investors. Payment must be in
cash; in other funds immediately
available to the Treasury; in Treasury
bills, notes, or bonds maturing on or
before the settlement date but which are
not overdue as defined in the general
regulations governing United States
securities; or by check drawn to the
order of the institution to which the
tender was submitted, which must be
received from institutional investors no
later than Wednesday, July 13, 1988. In
addition, Treasury Tax and Loan Note
Option Depositories may make payment
for the Notes allotted for their own
accounts and for accounts of customers
by credit to their Treasury Tax and Loan
Note Accounts on or before Friday, July
15, 1988. When payment has been
submitted with the tender and the
purchase price of the Notes allotted is
over par, settlement for the premium
must be completed timely, as specified
above. When payment has been
submitted with the tender and the
purchase price is under par, the discount
will be remitted to the bidder.

5.2. In every case where full payment
has not been completed on time, an
amount of up to 5 percent of the par
amount of Notes allotted shall, at the
discretion of the Secretary of the
Treasury, be forfeited to the United
States.

5.3. Registered definitive securities
tendered in payment for the Notes
allotted and to be held in TREASURY
DIRECT are not required to be assigned
if the inscription on the registered
definitive security is identical to the
registration of the note being purchased.
In any such case, the tender form used
to place the Notes allotted in

TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive

payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-15076 Filed 7-9-88; 2:26 pm]

BILLING CODE 4810-10-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 134

Wednesday, July 13, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

July 7, 1988.

TIME AND DATE: 10:00 a.m., Thursday, July 14, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Mettiki Coal Corporation*, Docket No. YORK 87-1-R, etc. (Issues include whether the judge erred in finding that Mettiki did not violate 30 CFR 75.306)
2. *Peabody Coal Company*, Docket No. KENT 86-94-R, etc. (Issues include whether the judge erred in finding violations of 30 CFR 75.1710-1)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 / (202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 88-15727 Filed 7-11-88; 9:09 am]

BILLING CODE 6725-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-16]

TIME AND DATE: Monday, July 18, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification.
4. Petitions and Complaints.
5. Inv. No. 731-TA-409 and 410(P) (Certain light-walled rectangular pipes and tubes from Argentina and Taiwan)—Briefing and vote.

6. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 6, 1988

[FR Doc. 88-15730 Filed 7-11-88; 9:10 am]

BILLING CODE 7050-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-17]

TIME AND DATE: Monday, July 22, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. TA-201-01 (Certain Knives)—briefing and vote on injury.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 6, 1988

[FR Doc. 88-15731 Filed 7-11-88; 9:10 am]

BILLING CODE 7050-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-15A]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 24398—dated June 28, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 3:00 p.m., Monday, July 11, 1988.

CHANGE IN TIME OF THE MEETING: 10:00 a.m., Monday, July 11, 1988.

In conformity with 19 CFR 201.37(b), Commissioners Brunsdale, Eckes, Lodwick, Rohr, and Cass determined that Commission business required the change in time of the meeting on July 11, 1988, and affirmed that no earlier announcement of the change to the time was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Liebel was not available to participate in the decision.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 6, 1988.

[FR Doc. 88-15732 Filed 7-11-88; 9:10 am]

BILLING CODE 7050-02-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

AGENCY: Institute of Museum Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME & DATE: 10:00 a.m., Thursday, July 21, 1988.

STATUS: Open and closed.

ADDRESS: The New England Aquarium, Central Wharf, Boston, Massachusetts, 02110, (617) 973-5209.

FOR FURTHER INFORMATION CONTACT: S. William Laney, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board.

The meeting of July 21, 1988 will be open to the public from 10:00 a.m. until the closed session portion of item V, section C and D, and open again to the public from item V, section E through discussion of item VI. The meeting will be closed to the public for the portion relating to discussion of PSP applications in agenda item V, section C and pursuant to paragraphs 6, 9(B), and other relevant provisions of subsection (c) of section 552b of Title 5, United States Code and pursuant to 45 CFR 1180.88, because the Board will consider

information that may disclose:
Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy; and information the disclosure of which might significantly impede implementation of proposed agency actions related to the grant award process.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, Room 510 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0539, TDD (202) 682-5496 at least seven (7) days prior to the meeting.

National Museum Services Board

July 21, 1988 Meeting Agenda

I. Approval of Minutes of April 22, 1988 Meeting.

II. Director's Report.

III. Legislative and Regulatory Update.

IV. Program Report.

A. Museum Assessment Program.

B. General Operating Support.

C. Conservation Program—There will be a closed session portion of this agenda item.

D. Professional Services Program—There will be a closed session portion of this agenda item.

V. Presentation of Reports.

VI. Other Business.

Dated: July 6, 1988.

Lois Burke Shepard,

Director.

Certification of Closed Meeting

In accordance with section 3(f)(1) of the Government in the Sunshine Act (5 U.S.C. 552b (c)) and with the applicable regulations of the Institute of Museum Services (45 CFR 1180.88), I hereby certify that the portion of the meeting of the National Museum Services Board ("Board"), scheduled for July 21, 1988 in Boston, Massachusetts, at which the Board will consider applications for assistance from IMS, may properly be closed to the public on the basis of the exemption set forth in the regulations of the Institute, 45 CFR Part 1180, Subpart G, Appendix A, paragraph 6.

Lois Burke Shepard,

Director, Institute of Museum Services.

[FR Doc. 88-15876 Filed 7-11-88; 3:11 pm]

BILLING CODE 7030-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meeting

"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: (53 FR 24399
June 28, 1988 and 53 FR 25567 July 7,
1988).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW.,
Washington, DC.

DATE PREVIOUSLY ANNOUNCED:

Thursday, June 23, 1988 and Friday, July
1, 1988.

CHANGES IN THE MEETING: Deletion.

The following item was not
considered at an open meeting
scheduled for Thursday, July 7, 1988, at
2:00 p.m.

Consideration of whether to authorize for
publication (1) a release adopting
amendments to Regulation S-X that would
require accountants' reports included in
Commission filings to be signed by an
independent accountant who within the last
three years has undergone a peer review of
its accounting and auditing practice, and (2) a
release publishing for comment proposals to
specify procedures to be used for review an
accountant's audit work pending the
accountant's compliance with peer review
requirements when the accountant first
becomes subject to the requirement due to
accepting a Commission registrant as a client
or a current client becoming a Commission
registrant. For further information, please
contact John Heyman at (202) 272-2130.

At times changes in Commission
priorities require alterations in the
scheduling of meeting items. For further
information and to ascertain what, if
any, matters have been added, deleted
or postponed, please contact: Kevin
Fogarty at (202) 272-3195.

Jonathan G. Katz,

Secretary.

July 6, 1988.

[FR Doc. 88-15712 Filed 7-11-88; 9:08 am]

BILLING CODE 8070-01-M

Corrections

This section of the FEDERAL REGISTER
contains editorial corrections of previously
published Presidential, Rule, Proposed
Rule, and Notice documents and volumes
of the Code of Federal Regulations.
These corrections are prepared by the
Office of the Federal Register. Agency
prepared corrections are issued as signed
documents and appear in the appropriate
document categories elsewhere in the
issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for
Certain Cotton and Man-Made Fiber
Textile Products Produced or
Manufactured in the Republic of
Turkey

Correction

In notice document 88-15199 beginning
on page 25526 in the issue of Thursday,
July 7, 1988, make the following
correction:

On page 25527, in the table, in the
entry opposite "341", "325,000" should
read "525,000".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

National Flood Insurance Program;
Assistance to Private Sector Property
Insurers

Correction

In rule document 88-9378 beginning on
page 15208 in the issue of Thursday,
April 28, 1988, make the following
correction:

Appendix B [Corrected]

On page 15219, in the second column,
in Appendix B to Part 62, Part 6, the 17th
and 18th lines should read as follows:

"—Large/unusual balance in Cash-
Other (Receivable and/or Payable)."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 85

Enforcement of Nondiscrimination on
the Basis of Handicap in Programs or
Activities Conducted by the
Department of Health and Human
Services

Correction

In rule document 88-15382 beginning
on page 25595 in the issue of Friday, July
8, 1988, make the following corrections:

1. On page 25597, in the second
column, in the fourth complete
paragraph, in the ninth line, "by" should
read "be".

2. On page 25600, in the third column,
in the third complete paragraph, in the
fourth line, "form" should read "for".

3. On page 25607, in § 85.61(d), in the
first line, "the" should read "and".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 84F-0408]

Food Additives Permitted for Direct
Addition to Food for Human
Consumption; Sucrose Fatty Acid
Esters

Correction

In rule document 88-13434 beginning
on page 22294 in the issue of
Wednesday, June 15, 1988, make the
following correction:

On page 22297, in the first column, in
the first complete paragraph, in the
second line, "test" should read "text".

BILLING CODE 1505-01-D

Federal Register

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Animal Drugs, Feeds, and Related
Products; Hyaluronate Sodium
Injection

Correction

In rule document 88-13432 beginning
on page 22297 in the issue of
Wednesday, June 15, 1988, make the
following correction:

On page 22297, in the third column,
after paragraph 2, the part heading
should read:

**PART 522—IMPLANTATION OR
INJECTABLE DOSAGE FORM NEW
ANIMAL DRUGS NOT SUBJECT TO
CERTIFICATION**

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 355

[Docket No. 80N-0042]

Anticaries Drug Products for Over-the-
Counter Human Use; Tentative Final
Monograph

Correction

In proposed rule document 88-13431
beginning on page 22430 in the issue of
Wednesday, June 15, 1988, make the
following corrections:

1. On page 22442, in the third column,
in the second complete paragraph, in the
ninth line, "calories" should read
"caries".

2. On page 22444, in the third column,
in paragraph 14., in the ninth line from
the bottom, after "Edition III," insert
"page 271,".

BEST COPY AVAILABLE

§ 355.70 [Corrected]

3. On page 22447, in the third column, in § 355.70, in the 14th line, "or" should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

(Docket No. 88N-0246)

Drug Export; Platinol AQ Injection 1 mg/1 mL (Cisplatin)

Correction

In notice document 88-15006 appearing on page 25212 in the issue of Tuesday, July 5, 1988, make the following corrections:

In the second column, in the second line of the subject heading, and under SUMMARY in the last line, "ml" should read "mL".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

48 CFR Parts 1452 and 1480

Acquisition Regulations; Buy Indian Act; Procedures for Contracting Pursuant to the Act of June 25, 1910

Correction

In proposed rule document 88-14583 beginning on page 24738 in the issue of Thursday, June 30, 1988, make the following corrections:

1. On page 24738, in the third column, in the second complete paragraph, in the second line, "public" was misspelled.
2. On page 24740, in the second

column, in the 11th line from the bottom, "sure" should read "aware".

1480.401 [Corrected]

3. On page 24742, in the third column, in section 1480.401, in the last line, "place" should read "price".

1480.700 [Corrected]

4. On page 24745, in the first column, section 1480.700(a), in the first line "contracting" was misspelled.

5. On the same page, in the same column, in section 1480.700(d), in the second line, "complied" should read "compiled".

1480.702 [Corrected]

6. On the same page, in the second column, in section 1480.702(c)(4), in the first line, "Department" should read "Debarment".

1480.802 [Corrected]

7. On page 24746, in the second column, in section 1480.802(b), in the 13th line, "materials" was misspelled.

1480.803 [Corrected]

8. On the same page, in the same column, in section 1480.803, in the ninth line, "question" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

(Application No. D-5600)

Amendments to Prohibited Transaction Exemption (PTE) 82-87 for Transactions Involving Certain Residential Mortgage Financing Arrangements

Correction

In notice document 88-14794 beginning

on page 24811 in the issue of Thursday, June 30, 1988, make the following corrections:

1. On page 24812, in the second column, in the ninth line, "prohibitions" was misspelled.

2. On page 24813, in the second column, in the last paragraph, in the 13th line, "tandem" was misspelled.

3. On page 24816, in the second column, in paragraph "D", in the 21st line, insert "under" after "applicable".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 193

(Docket No. PS-96, Amdts. 191-4, 192-58, 193-5, 195-39)

Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities

Correction

In rule document 88-14758 beginning on page 24942 in the issue of Friday, July 1, 1988, make the following corrections:

1. On page 24959, in the first column, under amendatory instruction 8, in the section heading "§ 191.605" should read "§ 192.605".

2. On the same page, in the same column, under amendatory instruction 10, in the section heading "§ 191.2605" should read "§ 193.2605".

BILLING CODE 1505-01-D

federal register

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Part II

Office of Personnel Management

5 CFR Part 930

Training Requirement for the Computer Security Act; Interim Regulation

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 930****Training Requirement for the
Computer Security Act****AGENCY:** Office of Personnel
Management.**ACTION:** Interim regulation.

SUMMARY: This regulation implements Pub. L. 100-235, the Computer Security Act of 1987, which requires training for all employees responsible for the management and use of Federal computer systems that process sensitive information. Under the regulation agencies will be responsible for identifying the employees to be trained and providing appropriate training.

DATES: Interim rule effective July 13, 1988. Submit written comments on or before September 12, 1988.

ADDRESSES: Send written comments to Mr. Harold Segal, Chief, Policy and Oversight Branch, Office of Training and Development, Training and Investigations, Office of Personnel Management, P.O. Box 7230, Washington, DC 20044, or deliver to 1121 Vermont Avenue NW., Room 1215, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Guitian, Policy and Oversight Branch, (202) 832-8769.

SUPPLEMENTARY INFORMATION: Public Law 100-235, the "Computer Security Act of 1987", requires mandatory periodic training for all employees involved in the management or use of Federal computer systems that contain sensitive information. In order to accomplish this goal the law requires the National Bureau of Standards (NBS) to develop guidelines for the training of employees in security awareness and accepted security practices. The Office of Personnel Management (OPM), however, is required to issue regulations for the training within six months (July 8, 1988) of the passage of the law. The law further requires that agencies initiate training within 60 days of the issuance of the regulation. This means that agencies should start their training programs by September 8, 1988.

The preparation of these regulations required extensive coordination with NBS. Pursuant to sections 553 (b)(3) and (d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in order to meet a statutory deadline. Even though we are issuing these regulations as

interim effective immediately, we are inviting comments for a 60-day period. Those comments will be given consideration in the final regulations which we plan to issue within 120 days after the comment period. OPM has worked with NBS in defining areas that should be included in training activities and these are embodied in the regulation. The principal features of the regulation are:

(1) The subject matter of the training should stress awareness of the computer system's vulnerabilities and risks and be organized around each agency's computer security policies, practices and procedures;

(2) Training is a continuing process; and,

(3) Refresher training must be provided as appropriate.

The depth of coverage for each of the subjects listed in the regulation should depend on the sensitivity of the data to which the employee has access and the employee's level of responsibility and authority with respect to the information. Each agency will have to decide the appropriate level of training for its employees. The agency may include computer security awareness as a part of existing computer training, management courses and employee orientation. In addition, agencies should explore non-classroom modes of delivery of training such as computer assisted training, video tapes, workbooks, job aids and desk guides.

The Congressional Budget Office estimates that about half of all Government employees will need computer security training to make them aware of the vulnerability of sensitive information and the risks of unauthorized use. Training for most of these employees will not be technical in nature but will teach them how to safeguard the information to which they have access. Although training is of vital importance to a security program, it is only a part of a larger information management system. Agency management needs to foster a work environment where information security is seen as critical to accomplishing the agency's mission.

This regulation will be issued in Part 930 of the Code of Federal Regulations and subsequent Federal Personnel Manual guidance will be issued as an appendix to Chapter 410. The regulation may be changed when NBS issues its guidelines. The law allows the agency head the option to exempt the agency from the training requirements of the guidelines if it is determined that the agency has an alternative training program at least as effective as the one described in the guidelines.

Office of Personnel Management.
Constance Horner,
Director.

Accordingly, the Office of Personnel Management adds Subpart C to Part 930 to read as follows:

**Subpart C—Employees Responsible for the
Management or Use of Federal Computer
Systems**

Sec.
930.301 Training requirement.
930.302 Initial training.
930.303 Continuing training.
930.304 Refresher training.

**Subpart C—Employees Responsible
for the Management or Use of Federal
Computer Systems**

Authority: 40 U.S.C. 759 note.

§ 930.301 Training requirement.

(a) The head of each agency shall identify and provide training in computer security, which emphasizes an awareness of the vulnerabilities and risks of the systems, to all employees responsible for the management or use of Federal computer systems¹ that process sensitive information.²

(b) The objective of the training is to provide employees an awareness of the vulnerabilities and risks of the computer system. The training should also provide the knowledge and skills needed to apply an agency's computer security policies, practices, and procedures.

(c) The training shall include as appropriate agency computer security practices and procedures for:

- (1) Meeting information security objectives;
- (2) Responsibility and accountability;
- (3) Information accessibility, handling, and storage;
- (4) Physical and environmental hazard protection;
- (5) System and data access controls;
- (6) Emergency and disaster situations;

¹ Under the statute, the term "Federal computer system": (A) means a computer system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer system) on behalf of the Federal Government to accomplish a Federal function; and

(B) includes automatic data processing equipment as that term is defined in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949.

² Under the statute, the term "sensitive information" means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

- (7) Identification of threats and vulnerabilities; and
- (8) Other security related matters.

§ 930.302 Initial training.

The head of each agency shall start the initial required training for all employees responsible for the management or use of Federal computer systems that process sensitive information within 60 days of the

effective date of this regulation. The head of the agency shall provide the initial required training to all such new employees within 60 days of their appointment.

§ 930.303 Continuing training.

The head of each agency shall provide training whenever there is a significant change in the agency information security environment or procedures.

§ 930.304 Refresher training.

Computer security awareness refresher training which covers, as appropriate, the topics outlined in § 930.301 of this part shall be given as frequently as determined necessary by the agency based on the sensitivity of the information.

[FR Doc. 88-15650 Filed 7-8-88; 2:52 pm]

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Part III

**Department of the
Interior**

**Office of Surface Mining Reclamation and
Enforcement**

**30 CFR Part 942
Programs for the Conduct of Surface
Mining Operations Within Each State;
Tennessee; Proposed Rule**

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Programs for the Conduct of Surface Mining Operations Within Each State; Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) proposes to amend its regulations governing the Federal surface mining regulatory program in Tennessee. The amendment is being proposed in response to a petition for rulemaking. The effect of this action would be to codify criteria for determining whether a proposed revision to an existing coal mining permit is significant. A significant revision to a permit involves public notice and hearing requirements.

DATES: Written comments: OSMRE will accept written comments on the proposed rule until 4:00 p.m. Eastern time on September 12, 1988.

Public hearings: Upon request, OSMRE will hold a public hearing on the proposed rule in Knoxville, Tennessee on September 6, 1988 at 9:30 a.m. local time. OSMRE will accept requests for public hearings until 4:00 p.m. Eastern time on August 12, 1988. Individuals wishing to attend but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: Written comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Suite 500, 530 Gay Street SW., Knoxville, Tennessee, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, 530 Gay Street SW., Knoxville, Tennessee 37902.

Public hearings: The Hyatt Regency, 500 Hill Avenue SE., Knoxville, Tennessee.

Requests for public hearings: Submit requests orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mr. J. Hammond Eve, Division of Tennessee Permitting, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., Knoxville, TN 37902; Telephone (615) 673-4349 or Dr. Fred Block, Branch of Federal and

Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343-1864 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rules should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") or delivered to addresses other than those listed above may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, date and address scheduled for the hearing in Knoxville, Tennessee is specified previously in this notice (see "DATES" and "ADDRESSES"). Any person interested in participating at the hearing should inform Mr. Eve or Dr. Block (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing by 4:00 p.m. Eastern time August 12, 1988. If no one has contacted Mr. Eve or Dr. Block to express an interest in participating in a hearing by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit an advance copy of their testimony to OSMRE, at least two working days prior to any hearing. The testimony should be submitted at the address previously specified for the submission of written comments (see "ADDRESSES").

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201

et seq. (SMCRA) sets forth the general statutory requirements governing surface coal mining operations and the surface impacts of underground coal mining. The Office of Surface Mining Reclamation and Enforcement (OSMRE) has implemented by regulations, the general requirements of SMCRA, and the requirements specific to the States with approved regulatory programs. In the case of Tennessee, there is no approved State regulatory program. OSMRE directly regulates the surface coal mining operations in Tennessee through regulations contained in 30 CFR Part 942. This part was promulgated on October 1, 1984 (49 FR 36892), and revised on May 29, 1986 (51 FR 19462).

OSMRE, through the Division of Tennessee Permitting (DTP), has been developing criteria for use in Tennessee in determining whether a proposed revision to an existing coal mining permit is significant and therefore subject to the public notice and hearing requirements of 30 CFR Part 774 as incorporated by 30 CFR 942.774(a). In direct response to draft guidelines developed by DTP, Ms. Carol S. Nickle and Mr. Mark Squillace, representing four organizations (Environmental Policy Institute, Legal Environmental Assistance Foundation, Illinois South Project and Save Our Cumberland Mountains), filed a petition for rulemaking on February 19, 1986. Pursuant to section 201(g) of SMCRA, any person may petition the Director, OSMRE, "to initiate a proceeding for the issuance, amendment, or repeal of a rule." The principal concerns of the petitioners are that the DTP failed to incorporate all of the petitioners' comments on earlier draft guidelines and that the guidelines are rules and can only be implemented by following the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

OSMRE published a notice on March 5, 1987, granting the petition for the Federal program for Tennessee and accepting the petitioners' proposed criteria in principle (52 FR 6827). In the decision on the petition it was noted that section 511 of SMCRA requires the regulatory authority to establish guidelines for determining when a proposed revision to a permit is significant. As the regulatory authority in Tennessee, OSMRE is developing guidelines for use in that State. OSMRE would not develop such guidelines for States with approved regulatory programs, because under 30 CFR 774.13(b)(2) the regulatory authorities in primacy States develop such guidelines to reflect their own unique circumstances and interests. In granting

the petition, for the Federal program in Tennessee, OSMRE decided to provide criteria for review of permit revision applications in that State by rule.

III. Discussion of Proposed Rule

Under the provisions of 30 CFR 774.13, OSMRE, as the regulatory authority for surface coal mining and reclamation activities in Tennessee, is proposing criteria to determine when a proposed permit revision is significant. These criteria for significant revisions to permits, and the public notice and hearing requirements to which they are subject will both be detailed in proposed amendments to 30 CFR 942.774.

Under the proposed amendments, OSMRE would review each administratively complete application for a permit revision to determine if any of the proposed revisions included in the application match the criteria proposed herein as significant revisions. Should any one of the proposed revisions be found to be significant, the permit application information requirements and procedures of Subchapter G, including public notice, public participation and notice of decision requirements of §§ 773.13, 773.19(b) (1) and (3), and 778.21, would be followed for the evaluation of the proposed revisions in that application.

OSMRE has gained considerable experience with significant revisions in the review of revision applications received during the conduct of the Federal Program for Tennessee. This experience together with the comment letters received pursuant to the June 13, 1986 Federal Register notice soliciting comments on this petition, and the concerns rulemaking expressed in the petition itself, aided in identifying those revisions that would constitute significant revisions.

Section 942.774

Proposed § 942.774 would codify criteria for determinations of significant revisions at 30 CFR 942.774 paragraph (c). Existing paragraph (c) would be redesignated as paragraph (d). Existing paragraph (b) contains material on both revisions in general and significant revisions. The material on significant revisions would be removed from paragraph (b) and added to proposed new paragraph (c) which would consolidate requirements for significant revisions.

The proposed rule at 30 CFR 942.774(b) would contain general requirements for permit revisions. It would provide that any revision to the approved mining or reclamation plan would be subject to review and approval by the Office.

The proposed rule at 30 CFR 942.774(c) would state that a significant revision to the mining or reclamation plan would be subject to the permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b) (1) and (3), and 778.21, prior to approval and implementation. Any proposed revision would be considered significant if it meets any of the specific requirements contained in §§ 942.774(c)(1) through (c)(8).

The proposed rule at 30 CFR 942.774(c)(1) would provide that revisions resulting in adverse impacts beyond those previously considered, that would affect cultural resources listed on or eligible to be listed on the National Register of Historic Places, would constitute a significant revision.

The proposed rule at 30 CFR 942.774(c)(2) would provide that any changes to an approved blasting plan which would be likely to cause adverse impact beyond those previously considered, to persons or property outside of the permit area, would constitute a significant revision. A proposal for a change in the blasting plan that expedites the reasonable course of mining and which is proposed only for that purpose, may in and of itself be considered a non-significant revision if there is no potential for injury to persons or damage to property outside the permit area.

The proposed rule at 30 CFR 942.774(c)(3) would provide that a proposed revision that would result in adverse impacts beyond those previously considered, affecting a legitimate water supply to which the requirements of 30 CFR 816.41(h) apply, would constitute a significant revision. A proposed revision that is not reasonably expected to impact a legitimate or reasonable water use may be considered non-significant.

The proposed rule at 30 CFR 942.774(c)(4) would provide that a proposed revision which would require a new or updated probable hydrologic consequences determination or cumulative hydrologic impact analysis as required under 30 CFR 780.21(f)(4) or 780.21(g)(2) would be considered a significant revision.

The proposed rule at 30 CFR 942.774(c)(5) would provide that a proposed revision that requires a change in procedures for identification, disturbance, or handling of toxic- or acid-forming materials different from those previously considered, where the changes have the potential for causing additional impacts not previously

considered (such as long-term environmental, public health or safety effects beyond the permit boundary), would be considered significant revisions. A proposed revision to incorporate an equivalent or better, demonstrated and proven methodology for the identification, disturbance, or handling of toxic- or acid-forming materials from those previously considered may be considered non-significant.

The proposed rule at 30 CFR 942.774(c)(6) would provide that a proposed revision which would result in adverse impacts on fish, wildlife and related environmental values beyond those previously considered, would be considered a significant revision.

The proposed rule at 30 CFR 942.774(c)(7) would provide that a proposed revision which provides for the addition of a coal processing facility or any permanent support facility, where the addition of the facility would cause impacts not previously considered, would be considered as a significant revision, except for a coal processing facility used exclusively for crushing and screening. The addition of coal processing facilities, such as a wash plant, which have the potential effect of concentrating toxic materials from the coal in the form of coarse refuse which must be disposed of by proper means would be considered a significant revision. The addition of a temporary crusher, screener, or similar non-permanent facility which does not concentrate coal wastes and that expedites the reasonable course of mining may be considered a non-significant revision.

The proposed rule at 30 CFR 942.774(c)(8) would provide that a revision would be considered significant if it involves a change in the postmining land use to a residential, industrial/commercial, recreation or developed water resources land use, as defined in 30 CFR 701.5; except that a change to a developed water resource not meeting the size criteria of the Mine Safety and Health Administration (MSHA) standards at 30 CFR 77.216(a) need not be considered a significant revision.

Consideration of a proposed revision to an existing permit is not to be confused with incidental boundary revisions. Under 30 CFR 774.13(d) the only extensions allowed in the size of a permit area without requiring a new permit are incidental boundary revisions. Any other extensions to the area covered by a permit are not considered revisions, and must be made by application for a new permit.

IV. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

Section 702(d) of the Surface Mining Control and Reclamation Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no environmental assessment is required for this rulemaking.

Author

The principal authors of this rule are Mr. J. Hammond Eve, Division of Tennessee Permitting, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, SW., Knoxville, TN 37902; Telephone (615) 673-4349, and Dr. Fred Block, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW.,

Washington, DC 20240; Telephone: (202) 543-4553.

List of Subjects in 30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Part 942 is proposed to be amended to read as follows:

Dated: June 21, 1988.

J. Steven Grilee,

Assistant Secretary—Land and Minerals Management.

PART 942—TENNESSEE

1. The authority citation for Part 942 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

2. Section 942.774, is amended by revising paragraph (b) redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

§ 942.774 Revision; renewal; and transfer, assignment or sale of permit rights.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the Office.

(c) A significant revision to the mining or reclamation plan will be subject to the permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirement of §§ 773.13, 773.19(b) (1) and (3), and 778.21, prior to approval and implementation. The Office will consider any proposed revision to be significant if it:

(1) Will result in adverse impacts beyond those previously considered, affecting cultural resources listed on, or

eligible to be listed on, the National Register of Historic Places;

(2) Involves changes to the blasting plan that will be likely to cause adverse impacts beyond those previously considered, to persons or property outside of the permit area;

(3) Will result in adverse impacts beyond those previously considered, affecting a legitimate water supply to which the requirements of 30 CFR 816.41(h) apply;

(4) Will cause a new or updated probably hydrologic consequence determination or cumulative hydrologic impact analysis to be required under 30 CFR 780.21(f)(4) or 780.21(g)(2) as a result of an increase in impacts;

(5) Requires a change in the identification, disturbance, or handling of toxic- or acid-forming materials different from those previously considered, where the changes have the potential for causing additional impacts not previously considered;

(6) Will result in adverse impacts on fish, wildlife and related environmental values beyond those previously considered;

(7) Includes the proposed addition of a coal processing facility, or any permanent support facility, where the addition of the facility will cause impacts not previously considered, except that the addition of a temporary coal processing facility used exclusively for crushing and screening shall not be considered a significant revision; or

(8) Involves a change in the postmining land use to a residential, industrial/commercial, recreation or developed water resources land use, as defined in 30 CFR 701.5; except that, a change to a developed water resource not meeting the size criteria of § 77.216(a) of this title need not be considered a significant revision.

[FR Doc. 88-15672 Filed 7-12-88; 8:45 am]

BILLING CODE 4310-35-41

Wednesday
July 13, 1988

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 905

Surface Coal Mining and Reclamation Operations Under a Federal Program for California; Final Rule

federal register

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 905

Surface Coal Mining and Reclamation Operations Under a Federal Program for California

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior (DOI) promulgates a Federal program to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of California. This includes surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities in the absence of a State program.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Hagen, Director, Albuquerque Field Office, OSMRE, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102; Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

- I. Federal Programs Generally
- II. California Federal Program
 - A. Background
 - B. Content and Organization of the Program
 - C. Detailed Discussion
 - D. Response to Comments
- III. Procedural Matters

I. Federal Programs Generally

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, established a nationwide program for the regulation of surface coal mining and reclamation operations. To provide a consistent regulatory framework for this nationwide program, section 501(b) of SMCRA requires the Secretary of the Interior (the Secretary) to promulgate a permanent regulatory program. The permanent program regulations are grouped in 30 CFR Chapter VII. These regulations include performance standards for surface coal mining and reclamation operations (Subchapter K) and procedures for establishing State and Federal programs (Subchapter C).

Pursuant to section 503 of SMCRA, a State program may be established that, with certain exceptions, gives a State exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within its borders. Where a

State does not establish a State program, section 504 of SMCRA requires the Secretary to establish a Federal program for that State. Standards and procedures that govern Federal programs and their promulgation appear in Subchapter C at 30 CFR Part 736.

Once the decision is made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of SMCRA and 30 CFR 736.22(a)(1) require that the Secretary take into consideration the nature of the State's soils, topography, climate, and biological, chemical, geological, hydrological, agronomic, and other relevant physical conditions. Section 505(b) of SMCRA provides that if a State has more stringent land use and environmental protection laws or regulations, they shall not be construed to be inconsistent with SMCRA or the Secretary's regulations. The Secretary believes that the requirements of section 505(b) of SMCRA can best be met by identifying any State laws and regulations that may impose more stringent environmental controls and by listing them in the Federal program. If the State's laws or regulations establish more stringent standards than those of SMCRA or the Secretary's regulations, or if the State regulates any aspect of the environment that neither SMCRA nor the Secretary's regulations protect, the Secretary would then specifically preserve those State standards in the Federal program and any permits issued pursuant thereto.

Section 504(g) of SMCRA specifies that any State statutes or regulations that regulate surface mining and reclamation operations are to be identified by the Secretary and will be superseded and preempted by the Federal program to the extent that they interfere with the achievement of the purposes and requirements of SMCRA and the Federal program. This provision is reinforced by section 505(a) of SMCRA, which states that only inconsistent State laws shall be superseded by any provision of SMCRA or regulation. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and that do not provide as much protection as do the Federal law and regulations are considered to interfere with the achievement of the purposes and requirements of SMCRA. Accordingly, they must be identified and preempted.

Finally, a Federal program, according to section 504(h) of SMCRA, must include a process for coordinating the review and issuance of surface mining permits with other Federal or State

permits applicable to the proposed operation. The Federal statutes for which compliance must be coordinated in the issuance of a surface mining permit are set out in 30 CFR 736.22(c). State statutes for which a permit is required must be identified in the process of promulgating a Federal program, and the Federal program must provide for coordination with the permit review and issuance procedures. To the degree practicable, OSMRE will coordinate coal mining permit requirements with State agencies to avoid unnecessary duplication.

Federal programs are based on the Secretary's permanent program regulations, 30 CFR Subchapters A, F, G, H, J, K, L and M. The permanent program regulations implement five essential aspects of the surface coal mining regulatory program: permitting, performance standards, designation of lands as unsuitable for mining, bonding and inspection and enforcement. These rules form the benchmark for State and Federal regulatory programs.

The permanent program rules refer to the "regulatory authority," which, under a Federal program, is the Secretary. The Secretary has delegated all of his authority under SMCRA to the Assistant Secretary-Land and Minerals Management (Secretarial Order Nos. 3013 and 3099 of November 9, 1977 and December 22, 1983 respectively). With limited exceptions, the Assistant Secretary has in turn redelegated all of this authority under SMCRA to the Director, OSMRE, through the DOI Departmental Manual (216 DM 1, November 9, 1977). Thus, the Director, OSMRE, is the official directly responsible for the implementation of a Federal regulatory program.

The parts of the permanent regulatory program rules that must be included in a Federal program are listed in 30 CFR 736.22(b). They include the general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands as unsuitable for surface mining (Parts 761, 762 and 764), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845) and blaster training and certification (Subchapter M).

To take full advantage of the existing permanent program regulations while avoiding unnecessary repetition, most of the rules that make up each Federal program do not themselves set out detailed requirements, but instead cross-

reference a corresponding part in the permanent program. In situations where a cross-reference to the permanent program does not meet the needs of a particular State, the Federal program rule for that State also includes an additional paragraph or paragraphs with appropriate detailed requirements. For example, the Federal program for California will be codified at 30 CFR Part 905. The general requirements for permits and permit applications, § 905.773, in paragraph (a) cross-references the corresponding Part 773 of the permanent program regulations. In addition, paragraphs (d) through (g) provide State-specific permit application review procedures.

One effect of this cross-referencing from the Federal program to the permanent program is that whenever a permanent program rule is revised, each Federal program rule that cross-references that particular permanent program rule is similarly revised. The notice of proposed rulemaking to revise the permanent program rule would invite comments not only on the proposed rule generally, but also on how the change might affect a particular Federal program. If certain changes are needed for a Federal program, then a separate provision would be added to the Federal program rule that is the counterpart of the permanent program rule.

Several provisions of the permanent program rules already apply to all Federal programs because they were promulgated for application to all regulatory programs and therefore need not be cross-referenced. These provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees, Part 706—Restrictions on Financial Interests of Federal Employees, Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining, Subchapter D—Federal Lands Program and Part 955—Certification of Blasters in Federal Program States and on Indian Lands.

II. California Federal Program

A. Background

On July 28, 1982, OSMRE published a proposed Federal program for California to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in that State (47 FR 32686). On August 12, 1982, OSMRE postponed the scheduled public hearing and extended the comment period indefinitely (47 FR 35011). During the comment period, OSMRE was informed by the California

Division of Mines and Geology that all known coal deposits in California were too small and of too poor quality for commercial recovery in the foreseeable future.

As a result of California's comments, it was determined that development of the State's known coal reserves on non-Federal and non-Indian lands was extremely unlikely and that a regulatory program was not needed. Publication of this determination was made in the May 10, 1983, Federal Register (48 FR 20939). The notice also provided that, "Should information come to light which indicates an increased likelihood of coal exploration or surface coal mining on non-Federal and non-Indian lands within the State, promulgation of the required program will be reinitiated by subsequent rulemaking notice."

Subsequent information available to OSMRE indicated that coal exploration and coal surface mining operations do exist in the State, and OSMRE determined it was necessary to promulgate a Federal program for the State of California. Therefore, on October 22, 1987, OSMRE published a proposed Federal program for California in the Federal Register (52 FR 39594). The proposal was consistent with the previous proposed rulemaking of July 28, 1982 (47 FR 32686) although some modifications were made to take into account revisions OSMRE had made to its permanent program rules since that date. The notice announced a 70-day comment period ending on December 31, 1987, and a public hearing on December 24, 1987, in Sacramento, California. Shortly afterward, OSMRE extended the comment period to January 21, 1988, and rescheduled the public hearing for January 14, 1988 to avoid conflict with the holiday season (52 FR 44918, November 23, 1987).

Section 504(a) of SMCRA and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the State's soils, topography, climate, and biological, chemical, geological, hydrological, agronomic, and other relevant physical conditions. Section 505(b) of SMCRA provides that if a State has more stringent land use and environmental protection laws or regulations, they shall not be construed to be inconsistent with SMCRA or the Secretary's regulations. Section 504(g) of SMCRA specifies that any State statutes or regulations that regulate surface coal mining and reclamation operations are to be identified by the Secretary and will be superseded and preempted by the Federal program to the extent that

they interfere with the achievement of the purposes and requirements of SMCRA and the Federal program.

OSMRE reviewed California statutes to determine which ones provide regulatory requirements for coal exploration and surface coal mining and reclamation operations as defined by SMCRA, and to identify provisions that might be either more stringent than or inconsistent with the requirements of SMCRA. The more stringent requirements, whether State or Federal, have been adopted for this program. Section 905.700(e) lists the State statutes that set more stringent controls and for which compliance is required in the surface coal mining and reclamation operation. Although OSMRE has made a comprehensive search of California law, the list in § 905.700(e) may not be complete. OSMRE does not intend an omission to mean that a permittee does not have to meet those obligations under State law. To the contrary, any relevant State law not superseded by these rules must be complied with by permittees and permit applicants.

Determining whether State statutes are more stringent than the Federal regulations will often require a case-by-case analysis, the result of which cannot be predetermined. Citation in the program of State statutes with which compliance is required is not meant as an adoption of those State statutes for purposes of enforcement by OSMRE. Citation of such statutes is instead intended as an aid to persons who must comply with both the Federal program requirements and State statutes.

OSMRE has primarily cited statutes, and has minimized citations to the California Administrative Code, in the various parts of the California Federal program. This is because State regulations can readily change and OSMRE's incorporation of these changes would necessarily lag behind them. However, if an operator must comply with a State statute, the operator must also comply with the State regulations that implement the statute.

In accordance with 30 CFR 736.23, OSMRE has identified the California statutes cited at § 905.700(f) as inconsistent with the requirements of SMCRA and the Federal program and thus superseded by the Federal program to the extent they relate to coal exploration or surface coal mining and reclamation operations subject to regulation under SMCRA. Permittees will be required to conduct surface coal mining activities in compliance with all other existing State statutes and regulations.

Section 504(h) of SMCRA requires that each Federal program include a process for coordinating the review and issuance of surface mining permits with other Federal or State permits applicable to the proposed operation. OSMRE will coordinate permit requirements with State agencies to the degree practicable to avoid unnecessary duplication. The California Department of Conservation, Division of Mines and Geology, has statutory responsibility for administering and enforcing the laws and rules pertaining to surface mining.

OSMRE has concluded that this responsibility interferes with the achievement of the purposes of the Federal program. Therefore, after the effective date of the Federal program, the California statutes cited in § 905.700(f) will no longer be applicable to the regulation of coal exploration, surface coal mining operations or the reclamation of surface coal mined lands in the State of California except insofar as they are as stringent as or more stringent than the Federal provisions.

The Federal statutes for which compliance must be coordinated in the issuance of a surface mining permit are set out in 30 CFR 736.22(c). Federal and State statutes for which a permit is required are identified in § 905.773(b). The California Federal program provides for coordination with these permit review and issuance procedures by stipulating that no person may conduct coal exploration or surface coal mining operations without first obtaining all other necessary permits from the State in § 905.773(c).

B. Content and Organization of the Program

The content and organization of the Federal program for California follows the permanent program regulations. As discussed above, however, instead of the full text appearing, each section includes only a reference to the pertinent permanent program regulation part. Sections 905.700 (e) and (f) set out more stringent and inconsistent State statutes and regulations respectively. A separate paragraph has been added under any section where there are deviations from the Federal permanent program regulation for the California Federal program. These paragraphs will generally be found in a subsection (b).

The content and organization of the Federal program for California is based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

Subchapter A—General
Subchapter F—Areas Unsuitable for Mining
Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems Under Regulatory Programs
Subchapter H—Small Operator Assistance
Subchapter J—Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations
Subchapter K—Permanent Program Performance Standards
Subchapter L—Permanent Program Inspection and Enforcement Procedures
Part 955—Certification of Blasters in Federal Program States and on Indian Lands

Technical literature cited by OSMRE in the preambles to the permanent regulatory program and subsequent rulemaking notices revising those rules was relied upon in developing the California Federal program. The reader is referred to those preambles for a discussion of the basis and purpose of the permanent program rules proposed to be referenced in the California program without substantive change.

The numbering system of the permanent program regulations has been incorporated into the numbering system for the proposed California Federal program. Subchapter T in 30 CFR Chapter VII has been established to include regulatory programs by State in alphabetical order. Each State is assigned a part number; the regulatory program for California is assigned Part 905. Program elements have been categorized under headings similar to the subchapter titles of the permanent program in 30 CFR Chapter VII.

C. Detailed Discussion

General—Section 905.700 contains six subsections. The first four, subsections 905.700 (a), (b), (c) and (d), contain general statements on the scope and applicability of the program. Section 905.700(e) lists California State laws that have been identified as having provisions that regulate activities involved in surface coal mining operations and are more stringent than SMCRA and the Secretary's regulations. The second sentence of the subsection provides for an instance when a provision of one of the listed State laws establishes less environmental protection than does the Federal program, and the operator is placed in a situation of complying with one and violating the other. Section 905.700(f) identifies the California State laws interfering with the achievement of the purposes of SMCRA and Federal

regulations and, therefore, being preempted and superseded by this Federal program insofar as they pertain to surface coal mining. The subsection also allows preemption of other State laws in an instance where the Federal act or regulations set more stringent standards than an unpreempted State law.

Sections 905.701 through 905.707 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter A, General. Section 905.701(a) contains all applicable general requirements, including the definitions in 30 CFR 700.5 and 701.5. Subsection (b) makes clear that beginning on the effective date of this program and continuing until an operation has a permanent program permit issued by OSMRE, compliance with the initial program standards in 30 CFR Chapter VII, Subchapter B is required. Section 502(c) of SMCRA provides that all surface coal mining operations on lands on which such operations are regulated by a State shall comply with the initial program standards until a permanent program permit is issued. Paragraph (c) provides that records required by 30 CFR 700.14 to be made available locally to the public shall be retained at the OSMRE Albuquerque Field Office. Section 905.707 establishes the same requirements as 30 CFR Part 707, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.

Areas Designated Unsuitable for Mining—Sections 905.761 through 905.764 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter F, Areas Unsuitable for Mining. However, 30 CFR 736.15(b)(1) provides that the procedures and criteria for designating lands unsuitable shall be implemented one year after a Federal program is made effective for a State. Therefore, § 905.764 provides that Part 764 shall apply beginning one year after the effective date of the California program. No separate section for Federal lands is included because 30 CFR Part 769 is directly applicable and need not be made a part of a Federal program for a State.

Permits and Coal Exploration Approvals—Sections 905.772 through 905.785 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems under Regulatory Programs. The following amplifications have been made:

For exploration applications where 30 CFR 772.12 applies, § 905.772(b) requires

publication by the applicant of public notice of the filing upon submission of an administratively complete application. Section 905.772(c) allows ten days after publication of the public notice for persons adversely affected to file written comments. Section 905.772(d) requires the regulatory authority to act upon a complete exploration application and any written comments within 15 days from the close of the comment period.

In § 905.773, Requirements for permits and permit processing, subsection (b) has been added to list Federal laws and corresponding or relevant State laws that need to be coordinated by OSMRE in order to prevent or minimize duplication of effort with California. Section 905.773(c) has been added that contains the stipulation that no person may conduct coal exploration or surface coal mining and reclamation operations without first obtaining all other necessary permits from the State and lists State laws with which the Secretary will endeavor to coordinate when issuing a surface mining permit under this Federal program.

In addition to the requirements under the permanent program rules, other provisions are added for permit review. More detail is necessary when OSMRE is the regulatory authority in order to provide direction to the permit applicant. Section 905.773(d) establishes specific permit application review procedures. This is necessary to dispose of grossly deficient applications early in processing, to provide a procedure for obtaining additional information, and to indicate the procedure for determinations of completeness. Section 905.773(e) allows OSMRE to require an applicant to submit supplemental information to ensure compliance with applicable Federal laws and regulations other than SMCRA and its implementing regulations. Section 905.773(f) establishes, pursuant to 30 CFR 773.15(a)(1), a time period of 60 days from the close of the comment period for the regulatory authority to issue a written decision. Section 905.773(g) establishes a procedure for ensuring confidentiality of qualified permit application information. Such information must be labeled confidential and submitted separately to be reviewed by OSMRE for withholding from disclosure. In addition, § 905.773(g)(1) requires the public notice required by § 905.773(d)(3) to identify the type of information considered to be confidential. Finally, § 905.773(g)(2) requires OSMRE to rule on the confidentiality of labeled application information within ten days of the last

publication of the notice required under § 905.773(d)(3).
Section 905.774(b) provides that a revision of the permit will be considered significant if it has the potential to adversely affect the achievement of reclamation as specified in the approved plan. A significant revision requires public notice and is subject to a formal hearing if one is requested. Section 905.774(c) specifies a period of 30 days within which OSMRE must approve or disapprove non-significant permit revisions. Section 905.774(d) allows 30 days for any person having an interest that is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights to submit written comments after publication of the notice required by 30 CFR 774.17(b)(2). The proposed rule would have allowed 10 days but has been revised in the final version to be consistent with the time period allowed in other Federal program States for such comments. Section 905.774(e) allows interested persons and public entities 30 days from the last publication of the notice to submit written comments or objections on an application for significant revision or renewal of a permit.
In § 905.777, a new subsection (b) has been added to provide that any person wishing to conduct new surface coal mining and reclamation operations shall file a complete application as early as possible prior to the date permit issuance is desired and to pay a permit fee in accordance with 30 CFR 777.17. Also, a new subsection (c) has been added that requires any person wishing to revise a permit to file a complete application as early as possible prior to the date approval of the permit revision is desired and to pay a permit fee in accordance with 30 CFR 777.17. OSMRE is currently in the process of establishing fees for permits and permit revisions. Therefore, payment of a permit fee will be deferred until final promulgation of a fee schedule. Prospective permit applicants should contact OSMRE's Western Field Operations office in Denver, Colorado, to determine the format for an application.

publication of the notice required under § 905.773(d)(3).

The permanent program regulations at 30 CFR 779.19(a) give the regulatory authority discretion to require a map that delineates vegetation types in the proposed permit area. Section 905.779(b) requires the applicant for a surface mining permit to submit such a map. Similarly, § 905.783(b) exercises the discretion provided to the regulatory authority by 30 CFR 783.19(a) to require a vegetation map for underground mining permits.

Small Operator Assistance—Section 905.795 establishes the same standards for the small operator assistance program (SOAP) as are found in Part 795 of the permanent program rules. OSMRE expects during its administration of the SOAP in California that Federal funds will be sufficient to provide for authorized services and does not expect to exercise its option at 30 CFR 795.11(b). That option allows OSMRE to establish a formula for allocating limited funds to provide the service pursuant to Part 795. OSMRE will award SOAP contracts to qualified laboratories utilizing a streamlined procurement system that complies with the Federal Acquisition Regulations. Prior to issuing a Request for Proposals, OSMRE will announce its intention through publication in the Commerce Business Daily. OSMRE will qualify laboratories as part of its contracting process.

Bonding—Section 905.800 establishes the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations. Section 905.800(b) requires the operator to file an application for release of performance bond no later than 30 days prior to the end of the growing season. Section 905.800(c) specifies the three types of acceptable bonds, surety bond, collateral bond and self-bond. These terms are defined in 30 CFR 800.5. Section 905.800(d) allows a permittee to replace existing bonds with other bonds that provide equivalent coverage.

Performance Standards—Sections 905.815 through 905.828 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter K, Permanent Program Performance Standards. The following changes have been made:

Section 905.816(b) has been added that lists State laws with which compliance generally will be required notwithstanding the preemption of the State's Surface Mining Act. When the unpreempted State statute or regulation establishes a less stringent standard than does the Federal program, the operator may be in a position of not being able to comply with both State and Federal provisions. In such cases, OSMRE will make a determination that compliance with the State law or regulation, as provided by section 504(g) of SMCRA, interferes with the purposes of the Federal program. Thus, the State statute or regulation will be preempted in that instance so that compliance with a particular law could not be required by the State. In order to effect the *ad hoc* preemption, OSMRE will publish a

notice in the Federal Register identifying the particular State law or regulation that is being preempted. Section 905.816(c) requires that the standards for revegetation success for surface mining activities shall be those specified in 30 CFR 816.116(a)(2) and that the statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan. Section 905.817(b) has been added that lists for underground mining the same State laws with which compliance is required under § 905.816(b) for surface mining. In some instances these statutes and their implementing regulations establish more stringent standards than those found in 30 CFR Parts 816 and 817.

Determinations of stringency, however, will be made on a case-by-case basis. Section 905.817(c) requires that the standard for revegetation success for underground mining activities shall be those specific in 30 CFR 817.116(a)(2) and that the statistically valid sampling technique for measuring success shall be included in the mining and reclamation plan.

Inspection and Enforcement Procedures—Sections 905.842, 905.843 and 905.845 establish the same provisions as 30 CFR Chapter VII, Subchapter L, Permanent Program Inspection and Enforcement Procedures. No changes to the inspection and enforcement provisions of the permanent program regulations have been made for the California Federal program. Sections 905.842(b) and 905.843(b) require OSMRE to furnish the California Department of Conservation, Division of Mining and Geology, or request, copies of inspection reports and enforcement actions, respectively. Section 905.846 incorporates Part 846 of the permanent program regulations, *Individual Civil Penalties*, into the California Federal program. Section 905.846 was not included in the proposed California Federal program because Part 846 had not been promulgated at the time the proposal was published. Subsequently Part 846 was promulgated (53 FR 3664, February 8, 1988) and is therefore incorporated by reference into the final California Federal program.

Blast Training and Certification—Section 905.955 establishes the same provisions, where applicable, as 30 CFR Part 955.

D. Response to Comments

On October 22, 1987, OSMRE published a proposed Federal program for California in the Federal Register (52 FR 39594). In the preamble to the proposed program, OSMRE invited comments from all interested persons. A

public hearing was scheduled for December 24, 1987 in Sacramento, California, and later rescheduled for January 14, 1988. Since no one requested to testify at the hearing, it was not held. The extended comment period closed on January 21, 1988. During this time, OSMRE received comments from three State agencies, the California Department of Forestry and Fire Protection, the California Department of Health Services and the California State Water Resources Control Board, and from one Federal agency, the Advisory Council on Historic Preservation.

Most of the comments received by OSMRE concerned the State laws identified in the proposed program as being either more stringent than or superseded by the Federal regulations, in paragraphs (e) and (f) respectively of proposed § 905.700. The California State agencies identified State laws that they believed were more stringent than the requirements of the Federal program. The changes made to the proposed program in response to these comments are discussed more fully in the responses to individual comments below. Specific regulatory provisions addressing the permit coordination process required pursuant to section 504(h) of SMCRA have been added to the final rule at §§ 905.773(b) and (c), 905.816(b) and 905.817(b).

One commenter identified the Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub. Res. Code section 4511 *et seq.* as containing reforestation requirements and timberland conversion mitigation requirements that are more stringent than the proposed regulations. The commenter suggested that the Forest Practice Act be listed at § 905.700(e) of the California Federal program rules. OSMRE has examined the State statute and agrees that the Forest Practice Act may establish more stringent standards than those contained in SMCRA or the Secretary's regulations or may regulate an aspect of the environment that neither SMCRA nor the Secretary's regulations protect. The Forest Practice Act has been added to the list of more stringent State laws at § 905.700(e). It should be emphasized that determining whether State statutes are more stringent than the Federal regulations will be handled on a case-by-case basis. For the same reason, the Forest Practice Act has been added to the Federal program provisions concerning permit coordination (§§ 905.773, 905.816 and 905.817).

One commenter recommended changing paragraph (e)(1) of proposed § 905.700 to read, "California Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.*"

instead of "California Hazardous Waste Management Act of 1986, Cal. Health & Safety Code section 25179.1 *et seq.*" The commenter indicated that his recommendation is the correct citation for the body of State laws addressing control of hazardous waste. OSMRE has accepted this change. The revised citation appears in paragraph (e)(3) of § 905.700 of the final rule.

The commenter recommended that two California State laws be added to the list of more stringent State laws at paragraph (e) of § 905.700 of the proposed rule. These State laws are: The Porter-Cologne Water Quality Control Act, Cal. Water Code section 13000 *et seq.*; and The State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.* OSMRE has examined these State statutes and agrees that they may establish more stringent standards than those contained in SMCRA of the Secretary's regulations or may regulate an aspect of the environment that neither SMCRA nor the Secretary's regulations protect. They have been added to the list of more stringent State laws at paragraphs (e)(2) and (e)(4) respectively of § 905.700 of the final rule.

The commenter also opposed the proposed preemption of the State Hazardous Waste Control Law and implementing regulations in paragraphs (f)(4) and (f)(5) of proposed § 905.700. According to the commenter, this law should be identified as more stringent than SMCRA and the Federal regulations; it was specifically enacted to provide additional protection to the environment. OSMRE agrees with the commenter and has deleted the State statute and its implementing regulations from paragraph (f) of § 905.700 and added the State statute as paragraph (e)(3) of § 905.700 of the final rule.

In addition, the commenter identified several State statutes for which a permit is required, including section 1225 of the State Water Code, the Porter-Cologne Act, the Toxic Injection Well Control Act of 1985 and the Toxic Pits Cleanup Act of 1984. OSMRE has examined these State statutes and agrees that the California Federal program should provide for coordination with them, where applicable. OSMRE has added section 1225 of the State Water Code and the Porter-Cologne Act to paragraphs (b) and (c) of § 905.773 of the final rule. OSMRE did not include specific references to the Toxic Injection Well Control Act of 1988 and the Toxic Pits Cleanup Act of 1984 in the final rule. Citation in the final rule of the California Hazardous Waste Control Law (Cal. Health & Safety Code Ann.

section 25100 *et seq.*) which is the body of State laws addressing control of hazardous waste, is sufficient to provide for coordination with the provisions of these two State laws.

One commenter suggested that the preamble to the proposed rule did not provide sufficient background information to allow the commenter "to provide constructive comments on the proposed rule." In reference to § 905.700(e)(1), (f)(4) and (f)(5) of the proposed rule, the commenter requested that additional information be sent to him concerning the proposed preemption of the California Hazardous Waste Control Act and implementing regulations along with identification of a portion of the same statute as more stringent than SMCRA and the Federal regulations. OSMRE believes that the commenter's concerns are addressed by the changes made to § 905.700(e) and (f) in response to other commenters.

One commenter suggested that the proposed program failed to provide clearly for OSMRE to meet its responsibilities under section 106 of the National Historic Preservation Act, 16 U.S.C. 470 *et seq.* The commenter recommended integrating provisions for compliance with the Act and its implementing regulations, 36 CFR Part 800, into the special provisions for compliance with the National Environmental Policy Act in proposed § 905.773. OSMRE agrees with the commenter and has modified § 905.773(d)(5) and (f) accordingly.

The commenter also suggested that the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code Ann. section 21000 (West), be added to the list of State statutes found to be more stringent than SMCRA or the Federal regulations by virtue of CEQA's provisions for the protection of historic properties. OSMRE agrees and has added CEQA as paragraph (e)(1) of § 905.700 of the final rule. In addition, CEQA is listed in the final rule at paragraphs (b) and (c) of § 905.773 as one of the State statutes requiring coordination during permit review and issuance.

III. Procedural Matters

Federal Paperwork Reduction Act

The recordkeeping and reporting requirements of this rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and has determined that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental effects are anticipated as a result of this rule.

National Environmental Policy Act

Section 702(d) of SMCRA provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no environmental assessment or environmental impact statement is required for this rulemaking.

Author

The principal author of these rules is Patrick W. Boyd, Branch of Federal and Indian Programs, Division of Regulatory Programs, OSMRE, 1951 Constitution Avenue NW., Washington, DC 20240.

List of Subjects in 30 CFR Part 905

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Accordingly, 30 CFR Chapter VII, Subchapter T, is amended by adding Part 905.

Date: June 21, 1988.

J. Steven Griles,
Assistant Secretary—Land and Minerals
Management.

30 CFR Chapter VII, Subchapter T.
1. Part 905 is added to read as follows:

PART 905—CALIFORNIA

- Sec.
905.700 California Federal Program.
905.701 General.
905.707 Exemption for coal extraction incident to government-financed highway or other construction.
905.761 Areas designated unsuitable for surface coal mining by act of Congress.
905.762 Criteria for designating areas as unsuitable for surface coal mining operations.
905.764 Proccas for designating areas unsuitable for surface coal mining operations.
905.772 Requirements for coal exploration.

- Sec.
905.773 Requirements for permits and permit processing.
905.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
905.775 Administrative and judicial review of decisions.
905.777 General content requirements for permit applications.
905.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.
905.779 Surface mining permit applications—Minimum requirements for information on environmental resources.
905.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.
905.783 Underground mining permit applications—Minimum requirements for information on environmental resources.
905.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.
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905.795 Small operator assistance program.
905.800 Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.
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905.819 Special performance standards—Auger mining.
905.822 Special performance standards—Operations in alluvial valley floors.
905.823 Special performance standards—Operations on prime farmland.
905.824 Special performance standards—Mountaintop removal.
905.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.
905.828 Special performance standards—In situ processing.
905.842 Federal inspections.
905.843 Federal enforcement.
905.845 Civil penalties.
905.846 Individual civil penalties.
905.955 Certification of blasters.

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 905.700 California Federal Program.

(a) This part contains all rules that are applicable to surface coal mining operations in California which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this Chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of the California Federal program.

(c) This part applies to all coal exploration and surface coal mining and

reclamation operations in California conducted on non-Federal and non-Indian lands. To the extent required by 30 CFR Part 740, this part also applies to operations on Federal lands in California.

(d) The information collection requirements contained in this part have already been approved by the Office of Management and Budget under 44 U.S.C. 3507 in its approval of the information collection requirements contained in the permanent regulatory program.

(e) The following provisions of California law generally provide for more stringent land use and environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act of 1977, and the regulations in this chapter. Therefore, pursuant to section 505(b) of SMCRA, these provisions shall not generally be considered to be inconsistent with SMCRA unless, in a particular instance, the Federal program regulations establish more stringent environmental or land use controls:

(1) The California Environmental Quality Act, Cal. Pub. Res. Code section 21000 *et seq.* (West 1986).

(2) The Porter-Cologne Water Quality Control Act, Cal. Water Code section 13000 *et seq.* (West 1971).

(3) California Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.* (West 1984).

(4) The State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.* (West 1984).

(5) California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 *et seq.* (West 1986).

(6) The Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub. Res. Code section 4511 *et seq.* (West 1984).

(7) Cal. Pub. Res. Code section 4656 (West 1984), requiring a permit for mining in State forests.

(f) The following are the California laws that generally interfere with the achievement of the purposes and requirements of SMCRA and are, in accordance with section 504(g) of SMCRA, preempted and superseded. Other California laws may in an individual situation interfere with the purposes and achievements of SMCRA and may be preempted and superseded with respect to the performance standards of §§ 905.815 through 905.828

as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the Federal Register.

(1) The California Surface Mining and Reclamation Act of 1975, Cal. Pub. Res. Code section 2710 *et seq.* (West 1984), as it relates to coal mining, except to the extent that it regulates other activities that are not regulated by SMCRA.

(2) Cal. Labor Code section 7990 *et seq.* (West Supp. 1988) (licensing of blasters), except as it applies to other activities that are not regulated by SMCRA.

(3) California Solid Waste Management and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 *et seq.* (West 1983), except to the extent that it regulates other activities that are not regulated by SMCRA.

§ 905.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations in California.

(b) Beginning on the effective date of this program, each surface coal mining and reclamation operation in California shall comply with Subchapter B of this chapter until issuance of a permanent program permit under the provisions of Subchapter C of this chapter.

(c) Records required by § 700.14 of this chapter to be made available locally to the public shall be made available in the OSMRE Albuquerque Field Office.

§ 905.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 905.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining operations.

§ 905.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining operations.

§ 905.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitions, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining operations beginning one year after the effective date of this program.

§ 905.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts coal exploration. For applications where § 772.12 applies, the requirements of paragraphs (b) through (d) apply in place of § 772.12(c) (1) and (3) and § 772.12(d)(1).

(b) Upon submission of an administratively complete application for an exploration permit, the applicant shall publish one public notice of the filing in a newspaper of general circulation in the county of the proposed exploration area, and provide proof of this publication to the regulatory authority within one week after the newspaper notice is published.

(c) Any person having an interest which is or may be adversely affected, shall have the right to file written comments for 10 days after the advertisement appears in the newspaper.

(d) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within 15 days from the close of the comment period. The approval of a coal exploration permit shall be based only on a complete and accurate application.

§ 905.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) The Secretary shall coordinate, to the extent practicable, his responsibilities under the following Federal laws with the relevant California State laws to avoid duplication:

Federal law	State law
(2) Clean Air Act, as amended, 42 U.S.C. 7401 <i>et seq.</i>	California Air Pollution Control Laws, Cal. Health & Safety Code section 38000 <i>et seq.</i> (West 1986).
(3) Resource Conservation and Recovery Act, 42 U.S.C. 3251 <i>et seq.</i>	Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 <i>et seq.</i> (West 1984); Solid Waste Mgmt. and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 <i>et seq.</i> (West 1983).
(4) National Environmental Policy Act, 42 U.S.C. 4321 <i>et seq.</i>	California Environmental Quality Act (CEQA), Cal. Pub. Res. Code section 21000 (West 1986).
(5) Archeological and Historic Preservation Act, 16 U.S.C. 489a.	CEQA.
(6) National Historic Preservation Act, 16 U.S.C. 470 <i>et seq.</i>	CEQA.
(7) Coastal Zone Management Act, 16 U.S.C. 1451, 1453-1454.	California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 <i>et seq.</i> (West 1986).
(8) Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 <i>et seq.</i>	The Porter-Cologne Act.
(9) Endangered Species Act, 16 U.S.C. 1531 <i>et seq.</i>	California Endangered Species Act of 1984, Cal. Fish & Game Code section 2060 <i>et seq.</i> (West Supp. 1988).
(10) Fish and Wildlife Coordination Act, 16 U.S.C. 661-667.	
(11) Noise Control Act, 42 U.S.C. 4903.	California Noise Control Act of 1973, Cal. Health & Safety Code section 40000 <i>et seq.</i> (West Supp. 1986).
(12) Bald Eagle Protection Act, 16 U.S.C. 668-668(d).	

(c) Where applicable, no person shall conduct coal exploration operations which result in the removal of more than 250 tons in one location or surface coal mining and reclamation operations without a permit issued by the Secretary pursuant to 30 CFR Parts 772 and 773 and permits, leases and/or certificates required by the State of California, including compliance with the Porter-Cologne Water Quality Control Act, Cal. Pub. Res. Code section 13000 *et seq.*; the California Water Code section 1200 *et seq.*; the California Air Pollution Control Laws, Cal. Health & Safety Code section 38000 *et seq.*; the Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.*; the State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.*; the Solid Waste Management and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 *et seq.*; the California Environmental Quality Act, Cal. Pub. Res. Code section 21000; the California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 *et seq.*; the Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub. Res. Code section 4511 *et seq.*; and the California Public Resources Code section 4656.

(d) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Western Field Operations office (WFO) in Denver, Colorado.

(2) The WFO shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The WFO may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) When the application is judged administratively complete, the applicant shall be advised by the WFO to file the public notice required by § 773.13 of this chapter.

(4) A representative of the WFO shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(5) Adequacy of information to allow the WFO to comply with the National Environmental Policy Act, 42 U.S.C. 4332, and the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, shall be considered in the determination of a complete application. The WFO may require specific additional information from the applicant as any environmental review progresses when such specific information is needed.

(e) In addition to the information required by Subchapter G of this chapter, the WFO may require an applicant to submit supplemental information to ensure compliance with applicable Federal laws and regulations other than the Act.

(f) The regulatory authority shall review the application for a permit, written comments and objections

submitted; and records of any informal conference or hearing held on the application and, where there is no environmental impact statement (EIS) and the WFO has found, pursuant to 36 WFO 800.4(d) and 800.5(b), that the operation will not affect historic properties, issue a written decision within 60 days from the close of the comment period or if an informal conference is held under § 773.13(c), 60 days from the close of the informal conference. Where an EIS has been prepared for the application and/or the WFO must comply with 36 CFR 800.5 (d) or (e), the written decision shall be issued within 60 days from the Environmental Protection Agency's publication of the notice of availability of the final EIS in the Federal Register or the completion of OSMRE's responsibilities under 36 CFR Part 800, whichever is later.

(g) Only application information that is labeled confidential by the applicant and submitted separately from the remainder of the application will be reviewed by OSMRE for withholding from disclosure under § 773.13(d).

(1) If the application contains information identified as confidential by the applicant, the public notice required by § 905.773(d)(3) must identify the type of information considered to be confidential.

(2) OSMRE shall determine in regard to qualification of any application information labeled confidential within 10 days of the last publication of the notice required under § 905.773(d)(3) of this chapter, unless additional time is necessary to obtain public comment or in the event of unforeseen circumstances.

§ 905.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or

Federal law	State law
(1) Clean Water Act, as amended, 33 U.S.C. 1251 <i>et seq.</i>	The Porter-Cologne Water Quality Control Act, Cal. Pub. Res. Code section 13000 <i>et seq.</i> (West 1971).

Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits, except as specified below.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the WFO. A significant revision to the reclamation plan will be subject to the public notice and hearing provisions of §§ 905.773(d)(3) and 773.13 (b) and (c) prior to approval and implementation. A revision to the reclamation plan will be considered significant if it has the potential to adversely affect the achievement of reclamation as specified in the approved plan.

(c) The regulatory authority will approve or disapprove non-significant permit revisions within 30 days of receipt of the administratively complete revision. Significant revisions and renewals will be approved or disapproved under the provisions of § 905.773(f).

(d) In addition to the requirements of part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within 30 days of the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter, or receipt of an administratively complete application, whichever is later.

(e) Within 30 days from the last publication of the newspaper notice, written comments or objections on an application for significant revision, or renewal of a permit under § 774.15 of this chapter may be submitted to the regulatory authority by any person having an interest that is or may be adversely affected by the decision on the application, or by public entities notified under § 773.13(a)(3) of this chapter with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

§ 905.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 905.777 General content requirements for permit applications.

(a) Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who makes application for a permit to

conduct surface coal mining and reclamation operations.

(b) Any person who wishes to conduct new surface coal mining and reclamation operations shall file a complete application as early as possible prior to the date permit issuance is desired and shall pay to the Secretary a permit fee in accordance with 30 CFR 777.17.

(c) Any person who wishes to revise a permit shall submit a complete application as early as possible prior to the date approval of the permit revision is desired and to pay a permit fee in accordance with 30 CFR 777.17.

§ 905.778 Permit application—Minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 905.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

(a) Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 779, the permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area.

§ 905.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 905.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

(a) Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct underground coal mining operations.

(b) In addition to the requirements of Part 783, the permit application shall contain a map that delineates existing

vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area.

§ 905.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 905.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to any person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 905.795 Small operator assistance program.

Part 795 of this chapter, Small Operator Assistance Program, shall apply to any person making application for assistance under the small operator assistance program.

§ 905.800 Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

(a) Part 800 of this chapter, Bond and Insurance requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations, except for § 800.40(a)(1) regarding the bond release application, for which paragraph (b) of this section substitutes and except as provided in paragraphs (c) and (d) of this section.

(b) The permittee may file an application with the regulatory authority for the release of all or part of a performance bond. The application shall be filed no later than 30 days prior to the end of the vegetation growing season in order to evaluate properly the completed reclamation operations. The appropriate season for evaluating reclaimed operations shall be identified in the mining and reclamation plan required by Subchapter G of this chapter approved by the regulatory authority.

(c) The following bonds are acceptable for compliance with the California Federal Program.

- (1) A surety bond;
- (2) A collateral bond;
- (3) A self-bond; or

(4) A combination of these bonding methods.

(d) A permittee may replace existing bonds with other bonds that provide equivalent coverage.

§ 905.815 Performance standards—Coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person who conducts coal exploration.

§ 905.816 Performance standards—Surface mining activities.

(a) Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface mining activities, except for § 816.118(a)(1) regarding revegetation success standards, for which paragraph (c) of this section substitutes.

(b) All operators shall comply with the Porter-Cologne Water Quality Control Act, Cal. Pub. Res. Code section 13000 *et seq.*; the California Water Code section 1200 *et seq.*; the California Air Pollution Control Laws, Cal. Health & Safety Code section 39000 *et seq.*; the Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.*; the State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.*; the Solid Waste Management and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 *et seq.*; the California Environmental Quality Act, Cal. Pub. Res. Code section 21000; the California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 *et seq.*; the Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub. Res. Code section 4511 *et seq.*; the California Public Resources Code section 4656; and regulations promulgated pursuant to these laws.

(c) Standards for success shall be those identified in § 816.118(a)(2) of this chapter. Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan, and approved by the regulatory authority.

§ 905.817 Performance standards—Underground mining activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground mining activities, except for § 817.118(a)(1) regarding revegetation success standards, for which paragraph (c) of this section substitutes.

(b) All operators shall comply with the Porter-Cologne Water Quality Control Act, Cal. Pub. Res. Code section

13000 *et seq.*; the California Water Code section 1200 *et seq.*; the California Air Pollution Control Laws, Cal. Health & Safety Code section 39000 *et seq.*; the Hazardous Waste Control Law, Cal. Health & Safety Code section 25100 *et seq.*; the State Underground Storage of Hazardous Substances Law, Cal. Health & Safety Code section 25280 *et seq.*; the Solid Waste Management and Resource Recovery Act of 1972, Cal. Gov. Code section 66770 *et seq.*; the California Environmental Quality Act, Cal. Pub. Res. Code section 21000; the California Coastal Act of 1976, Cal. Pub. Res. Code section 30000 *et seq.*; the Z'berg-Nejedly Forest Practice Act of 1973, Cal. Pub. Res. Code section 4511 *et seq.*; the California Public Resources Code section 4656; and regulations promulgated pursuant to these laws.

(c) Standards for success shall be those identified in § 817.118(a)(2) of this chapter. Statistically valid sampling techniques for measuring success shall be included in the mining and reclamation plan, and approved by the regulatory authority.

§ 905.819 Special performance standards—Auger mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 905.822 Special performance standards—Operations in alluvial valley floors.

Part 822 of this chapter, Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 905.823 Special performance standards—Operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmland.

§ 905.824 Special performance standards—Mountaintop removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal mining.

§ 905.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 905.828 Special performance standards—In situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 905.842 Federal inspections.

(a) Part 842 of this chapter, Federal Inspections, shall apply to all coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 842, copies of inspection reports will be furnished, upon request, to the California Division of Mining and Geology.

§ 905.843 Federal enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall apply regarding enforcement action on coal exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 843, copies of enforcement actions and orders to show cause will be furnished, upon request, to the California Division of Mining and Geology.

§ 905.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply to the assessment of civil penalties for violations on coal exploration and surface coal mining and reclamation operations.

§ 905.846 Individual Civil Penalties.

Part 846 of this chapter, Individual Civil Penalties, shall apply to the assessment of individual civil penalties under section 518(f) of SMCRA.

§ 905.955 Certification of blasters.

Part 955 of this chapter, Certification of Blasters in Federal Program States and on Indian Lands, shall apply to the training, examination and certification of blasters for surface coal mining operations.

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July 13, 1988

Part V

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

30 CFR Part 762
Surface Coal Mining and Reclamation
Operations; Unsuitability Criteria;
Substantial Legal and Financial
Commitments; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 762

Surface Coal Mining and Reclamation Operations; Unsuitability Criteria; Substantial Legal and Financial Commitments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule.

SUMMARY: The Surface Mining Control and Reclamation Act of 1977 (the Act) provides that the regulatory authority shall establish a planning process to enable it to make an objective decision as to which, if any, lands are unsuitable for all or certain types of surface coal mining operations. That process does not apply to lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977. The definition of "substantial legal and financial commitments" (SLFC) is found at 30 CFR 762.5. The final rule revises the definition of SLFC to clarify that the presence of an existing mine is not necessary to demonstrate SLFC.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5145 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Proposed Rule

II. Rule Adopted and Response to Public Comments

III. Procedural Matters

I. Background and Discussion of Proposed Rule

The Act provides that each State regulatory authority must establish a "planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface coal mining operations * * *." (unsuitability process). 30 U.S.C. 1272(a)(1). The same requirements apply to Federal land and in States with a Federal program where the Office of Surface Mining Reclamation and Enforcement (OSMRE) is the regulatory authority. 30 U.S.C. 1272(b). The unsuitability process may be used to prohibit or limit surface coal mining operations which (1) would be incompatible with existing State or local land use plans or programs; or (2) would

affect fragile or historic lands and could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; or (3) affect renewable resource lands and could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, which lands include aquifers and aquifer recharge areas; or (4) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology. 30 U.S.C. 1272(a)(3)(A)-(D). Also, areas must be designated as unsuitable for all or certain types of surface coal mining operations if the State regulatory authority determines that reclamation pursuant to the requirements of the Act is not technologically and economically feasible. 30 U.S.C. 1272(a)(2).

However, the Act provides that the unsuitability process does not apply (1) to lands on which surface coal mining operations were conducted on the date of its enactment; (2) under a permit issued pursuant to the Act; or (3) where SLFC were in existence prior to January 4, 1977. 30 U.S.C. 1272(a)(6). OSMRE first defined SLFC in its regulations on March 13, 1979. 44 FR 15344. The 1979 definition provided in part that "(a)n example (of SLFC) would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring coal in place or the right to mine it without an existing mine, * * * alone are not sufficient to constitute substantial legal and financial commitments." *Id.* OSMRE retained the 1979 definition in its 1983 revision of Part 762. 48 FR 41351, September 14, 1983.

The coal industry challenged the 1983 revisions, asserting, among other arguments, that the definition of "substantial legal and financial commitments" was too narrow and rigid to define the universe of circumstances in which the term should apply. Industry objected to the predominant features of the definition which incorporated an example suggesting that there be an existing mine and a long-term coal contract. *In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144 (D.D.C., July 15, 1985) (Hereafter *In re II*). It claimed that the language in the House of Representatives committee report, on which the Secretary relied for his definition, did not mandate the definition chosen, but was merely intended to be illustrative, and therefore should not have set the outer bounds of the definition. The committee report declared:

The phrase "substantial legal and financial commitments" in the designation section and other provisions of the act is intended to apply to situations where, on the basis of a long-term coal contract, investments have been made in power plants, railroads, coal handling and storage facilities and other capital-intensive activities. The Committee does not intend that mere ownership on acquisition costs of the coal itself or the right to mine it should constitute "substantial legal and financial commitments." H.R. Rep. No. 216, 95th Cong., 1st Sess. 95 (1977).

During oral argument in response to this industry challenge, counsel for the government explained that the use of the term, "an existing mine," as an example in the rule language "is simply an example of a situation where SLFC will be found." The court noted that the Secretary had filed a memorandum which stated that the definition is not limited to existing coal mines. The court concluded that the use of the example in the rule suggested that there had to be an existing mine to establish SLFC, and that this was inconsistent with the Secretary's memo. Therefore, the court remanded the rule to the Secretary for the express purpose of clarifying his position that an existing mine is not necessary for SLFC. *In re II*, at 55. The court did not remand the definition with respect to long-term coal contracts. Pursuant to the court's remand, OSMRE is promulgating this final rule.

On October 20, 1987 (52 FR 39186) OSMRE published a proposed rule that would delete all reference to an existing mine in the definition of SLFC. The proposal announced a 70-day comment period ending on December 29, 1987. OSMRE also offered to hold public hearings upon request in Washington, DC on December 22, 1987, and in each Federal program State. It was announced that requests for public hearings would be accepted until November 15, 1987. However, no requests for public hearings were made, and none were held.

II. Rule Adopted and Response to Public Comments

A. Summary of the Final Rule

This final rule adopts the proposal to delete all language describing "an existing mine" from the definition as a requirement for a finding of "substantial legal and financial commitment." The rule adopted here and found at section 762.5 now reads:

Substantial legal and financial commitment in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal handling, preparation, extraction, or storage facilities, and other capital-intensive

activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute "substantial legal and financial commitments."

This final definition remains unchanged from the proposed rule.

B. Public Comments

Three States and one industry group commented on the proposed rule. The comments addressed the proposed changes. A discussion of the comments and OSMRE's response follows.

Three commenters supported OSMRE's deletion of the phrase containing the example. Two of those commenters suggested that OSMRE had not gone far enough in revising the definition. The commenters stated that the definition should be expanded to include those operators who have made considerable investments in exploration, scientific analysis, environmental monitoring and studies, planning and legal fees, permitting, the regulatory approvals, but have not concluded a long-term coal contract. The commenters suggested that OSMRE include additional language in the definition to reflect this point of view. The commenters also stated that this aspect of the definition is on appeal before the U.S. Court of Appeals for the District of Columbia Circuit. Finally, the commenters stated that the definition of SLFC should be changed to recognize that, where an operator has made a substantial financial investment in acquiring coal rights, depending on the size of the company, or setting a minimum investment amount, that alone should be considered as being SLFC.

The items enumerated by the commenters, including acquisition of the coal, may be considered collectively in determinations of whether substantial investments have been made. They may be considered under the term "capital-intensive activities" already included in the definition. However, with respect to the cost of acquiring the coal, OSMRE determined in promulgating the March 13, 1979, definition of SLFC that acquisition of the coal alone as a criterion for SLFC is inconsistent with the House of Representatives committee report discussed above. OSMRE believes that retention of the language on long term contracts is appropriate since it mirrors the language in the House of Representatives committee report as discussed earlier and as upheld by the District Court. Further, this interpretation of SLFC has recently been upheld by the U.S. Court of Appeals for the District of Columbia Circuit. *NWF v. Hodel*, C.A. 87-5743,

January 29, 1988. Therefore, with the exception of removing references to existing mines, OSMRE has decided to finalize this rule as proposed.

One commenter stated that the comma after the word "facilities" altered the meaning of the sentence so that it could be read that "other capital intensive activities" in and of themselves could satisfy the definition of SLFC without being based on the existence of a long-term contract. OSMRE disagrees. The insertion of the comma after "facilities" simply makes the sentence grammatically correct, showing that "other capital-intensive activities" is simply the last item in a series of items that together with a long-term coal contract is necessary to meet the requirements for a finding of SLFC. The same commenter contends that the phrase in the last sentence "without other significant investments, as described above" is both redundant and creates another ambiguity as to whether OSMRE intends that acquisition of coal or the right to mine when coupled with one or more of the investments earlier identified would satisfy SLFC, without the linchpin of the long-term coal contract underlying the investments. The commenter suggests that the phrase "without other significant investments, as described above" should be revised to read "without other significant investments made on the basis of a long-term coal contract," in order to remove any ambiguity. OSMRE disagrees. OSMRE believes that the grammatical construction of the definition of the rule makes it perfectly clear that all of the items in the series in the first sentence are capital-intensive activities, and include other unenumerated capital-intensive activities (thus the phrase "other capital-intensive activities") which are dependent upon long-term coal contracts. Thus, when the phrase "other significant investments as described above" is used in the second sentence, OSMRE believes that phrase refers to the other items in the series, and that those items depend on long-term coal contracts in order to make a finding of SLFC.

III. Procedural Matters

Effect in Federal Program States

The final rule applies through cross-referencing in those States with Federal programs. The States include Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. OSMRE has proposed a Federal program for California (52 FR 39594, October 22, 1987). When that program becomes final this final rule will apply

to that State as well. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of the Act to determine whether any change in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291, Regulatory Flexibility Act, and Federalism

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions proposed by the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. Finally, in accordance with the Executive Order on Federalism, OSMRE has determined that the rule described above does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

OSMRE has prepared a final environmental assessment (EA), and has determined that the final rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A Finding of No Significant Impact has been approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on

file in the OSMRE Administrative Record at the address previously specified (see "ADDRESSES").

Author

The principal author of this rule is James Kress, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5145 (Commercial or FTS).

List of Subjects in 30 CFR Part 762

Historic preservation, Wildlife refuges, Surface mining, Underground mining.

Accordingly, 30 CFR Part 762 is amended as follows:

Dated: May 11, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

1. The authority citation for Part 762 is revised to read as follows:

Authority: Pub. L. 95-67, 30 U.S.C. 1201 et seq., and Pub. L. 100-34.

2. The definition of "substantial legal and financial commitments in a surface coal mining operation" in § 762.5 is revised to read as follows:

§ 762.5 Definitions.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments.

[FR Doc. 88-15000 Filed 7-12-88; 8:45 am]

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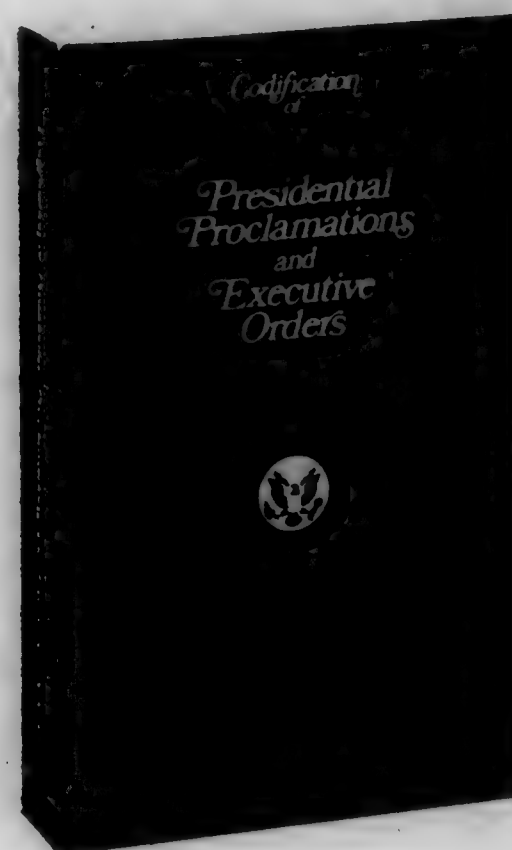
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In the Federal Register of July 5, 1988, H.R. 3927, Public Law 100-358, was incorrectly printed as Public Law 100-359 in this list.

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Federal Register

Vol. 53, No. 135

Thursday, July 14, 1988

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905

[Docket No. AMS-FY-88-058]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Handling Requirements for Remainder of 1987-88 Shipping Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of an interim final rule which relaxed the minimum size requirement for shipments of domestic and imported white seedless grapefruit from size 48 (3 1/8 inches in diameter) to size 56 (3 1/2 inches in diameter) for the period May 9-August 21, 1988. In addition, the rule relaxed the minimum external grade requirement for domestic, export, and import shipments of pink and white seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet for the period June 1-August 21, 1988. Effective August 22, 1988, tighter handling requirements will resume for seedless grapefruit. Also, the rule relaxed the minimum grade requirement for domestic shipments of Valencia and other late type oranges from U.S. No. 1 to U.S. No. 1 Golden for the period July 1-September 25, 1988. Effective September 26, 1988, tighter handling requirements will resume for Valencia and other late type oranges. Such relaxations were warranted by the grade, size, and maturity of the remaining 1987-88 season crop, and market demand conditions for these fruits.

EFFECTIVE DATE: July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing

Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the Florida citrus marketing order, approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. A minority of these handlers and a majority of these producers and importers may be classified as small entities. A review of audit reports which was recently completed indicates that a majority of the handlers are large

entities, and a minority being small entities. Thus, the finding in the interim final rule that a majority of the handlers are small entities has been changed in this final rule to reflect this new finding.

An interim final rule amending § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 was issued May 9, 1988, and published in the Federal Register (53 FR 17109, May 16, 1988). Section 905.306 specifies minimum grade and size requirements for fresh Florida oranges, grapefruit, tangerines, and tangelos regulated under Marketing Order 905. That rule provided that interested persons could file public comments through June 15, 1988. No comments were received.

The interim final rule temporarily relaxed the minimum size requirement for domestic and import shipments of white seedless grapefruit from size 48 (3 1/8 inches in diameter) to size 56 (3 1/2 inches in diameter) for the period May 9, 1988, through August 21, 1988. Also, the minimum external grade requirement for domestic, export, and import shipments of pink and white seedless grapefruit was temporarily relaxed from Improved No. 2 to U.S. No. 2 Russet for the period June 1, 1988, through August 21, 1988. In addition, the minimum grade requirement for domestic shipments of Valencia and other late type oranges was temporarily relaxed from U.S. No. 1 to U.S. No. 1 Golden for the period July 1, 1988, through September 25, 1988. The relaxations for grapefruit will remain in effect through August 21, 1988, and for Valencia oranges through September 25, 1988, by which times 1987-88 season shipments of these fruits will be finished.

The relaxed handling requirements for pink and white seedless grapefruit and Valencia and other late type oranges is only for the remainder of the 1987-88 shipping seasons for these fruits. Tighter handling requirements, as specified in § 905.306, will resume for seedless grapefruit effective August 22, 1988, and for Valencia and other late type oranges effective September 26, 1988. The resumption of tighter requirements for 1988-89 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

The committee unanimously recommended the relaxed handling requirements for grapefruit and Valencia oranges at its May 3, 1988 meeting. It

recommended that the size relaxation for white seedless grapefruit be made effective as soon as possible; that the grade relaxation for pink and white seedless grapefruit be made effective June 1, 1988; and that the grade relaxation for Valencia and other late type oranges be made effective July 1, 1988. The committee reported that at that time only a small portion of the Florida 1987-88 season grapefruit crop remained to be harvested, and that the crop would not remain in a condition to ship fresh much longer. Also, much of the remaining grapefruit crop was not in a condition to be shipped to distant export markets, and very few processing plants were utilizing grapefruit at that time of the season. The committee also estimated that most of the Valencia orange crop will be shipped by July 1, 1988, and that increased amounts of the fruit remaining for shipment at that time will have increased amounts of external discoloration. The changes in grade and size requirements reflected the composition of the remaining crop and prospective supply conditions, and were designed to maximize shipments to fresh market channels.

Section 905.306 was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I. Paragraph (b) of § 905.306 provides that no handler shall ship fruit to any destination outside the continental United States, other than Canada or Mexico, unless the specified varieties meet the requirements prescribed in Table II.

The Citrus Administrative Committee, which administers the program locally, meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to

effectuate the declared policy of the Act.

Some Florida orange and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act (7 U.S.C. 900e-1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action continues the relaxed minimum size requirement for domestically produced white seedless grapefruit and the relaxed minimum external grade requirement for domestically produced pink and white grapefruit, the continued relaxations are also applicable to imported pink and white seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944), which requires that the various varieties of grapefruit imported into the United States meet the same grade and size requirements as those specified for Florida grapefruit in Table I of paragraph (a) in § 905.306. Section 944.106 was issued under section 8e of the Act. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed ½-bushel cartons exempt from the import requirements.

The minimum grade and size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to relax the minimum size requirements applicable to domestic and import shipments of white seedless grapefruit; the minimum grade requirement applicable to the domestic, export, and import shipments of pink and white seedless grapefruit; and the minimum grade requirement applicable to domestic shipments of Valencia oranges. This rule recognizes current and prospective supply and demand for these fruits and continues to

permit handlers to ship fruit meeting the relaxed requirements to meet market needs. No problems with fruit quality maturity, and size are expected in the marketplace because of the continuation of relaxed requirements.

Therefore, the Department's view is that the impact of this action upon producers, handlers, and importers would be beneficial because it will enable handlers to provide grapefruit and Valencia oranges consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and Valencia oranges, and to imported grapefruit over the past several years, has resulted in fruit of acceptable grade and size being shipped to fresh markets.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action continues relaxed handling requirements currently in effect for Florida grapefruit and Valencia and other late type oranges; (2) handlers of these fruits are aware of this action which was recommended unanimously by the committee at a public meeting and they are prepared to continue operating in accordance with the requirements; (3) shipment of the 1987-88 season Florida grapefruit and Valencia orange crops is nearly finished; (4) the grapefruit import requirements are mandatory under section 8e of the Act; (5) the interim final rule provided a 30-day period for filing comments, and no comments were received; and (6) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subject in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 905 is taken:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 901-974.

§ 905.306 [Amended]

2. Accordingly, the interim final rule amending § 905.306, which was published in the Federal Register (53 FR 17171, May 18, 1988), is adopted as a final rule without change.

Dated: July 11, 1988.

Charles R. Brader,
Director, Fruit and Vegetable Division,
Agricultural Marketing Service.
[FR Doc. 88-15863 Filed 7-13-88; 9:45 am]
BILLING CODE 3410-25-2

Farmers Home Administration

7 CFR Parts 1823, 1864, 1902, 1941, 1942, 1943, 1944, 1945, and 1951

Implementation of Concentration Banking System (CBS)

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to reflect changes in the internal handling of collections. This action is necessary because of the implementation of the Concentration Banking System (CBS). FmHA offices under CBS (more than 98 percent of all field offices) must use those systems for collections. The intended effect of these amendments is to implement CBS, thereby enabling the Government to realize substantial savings through more expeditious processing of collections.

EFFECTIVE DATE: July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Debt Management Specialist, telephone (202) 475-4425, Farmers Home Administration, U.S. Department of Agriculture, Room 5507, South Agriculture Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and, since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal agency management. While these amendments do change the techniques used by

FmHA for processing collections, these changes concern only processing after collections are received by FmHA. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal agency management and publication for comment is unnecessary.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, Environmental Program. It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

For reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is related to the following programs that are subject to intergovernmental consultations with State and local officials:

- 10.405—Farm Labor Housing Loan and Grants
 - 10.411—Rural Housing Site Loans (Sections 523 and 524 Site Loans)
 - 10.414—Resource Conservation and Development Loans
 - 10.415—Rural Rental Housing Loans
 - 10.416—Soil and Water Loans
 - 10.418—Water and Waste Disposal System for Rural Communities
 - 10.419—Watershed Protection and Flood Prevention Loans
 - 10.420—Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
 - 10.422—Business and Industrial Loans
 - 10.423—Community Facilities Loans
 - 10.427—Rural Rental Assistance Payment (Rental Assistance)
- In turn, the following programs to which this activity is also related, are not subject to Executive Order 12372:
- 10.404—Emergency Loans
 - 10.406—Farm Operating Loans
 - 10.407—Farm Ownership Loans
 - 10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
 - 10.417—Very Low-Income Housing Repair Loans and Grants (Section 504 Rural Housing Loans and Grants)
 - 10.421—Indian Tribes and Tribal Corporation Loans

10.428—Economic Emergency Loans

List of Subjects

7 CFR Part 1823

Credit.

7 CFR Part 1864

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1902

Accounting, Banks, banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Aged, Administrative practice and procedure, Handicapped, Farm labor housing, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

7 CFR Part 1945

Agriculture, Disaster assistance, Livestock, Loan programs—Agriculture.

7 CFR Part 1951

Accounting, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages, Collection of loan payments and depositing payments through the Concentration Banking System (CBS), Financial institutions.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

1. The authority citation for Part 1823 is revised to read as follows:

Authority: 7 U.S.C. 1909, 5 U.S.C. 301, 7 CFR 2.23 and 7 CFR 2.70.

Subpart I—Processing Loans to Associations (Except for Domestic Water and Waste Disposal)

2. Section 1823.275(b)(1)(ii) is revised to read as follows:

§ 1823.275 Applications not receiving favorable consideration and loan cancellation.

- (b) * * *
- (1) * * *
- (ii) In a direct loan or a loan made from the ACIF, if the check has been received or is received subsequently in the County Office, the County Supervisor will return it through the Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office), or, if an office is not using CBS, the check will be returned to the Finance Office with an original of Form FmHA 1940-10.

PART 1864—DEBT SETTLEMENT

3. The authority citation for Part 1864 is revised to read as follows:

Authority: 7 U.S.C. 1909, 42 U.S.C. 1400, 5 U.S.C. 301, 7 CFR 2.23 and 7 CFR 2.70.

4. Section 1864.15(b)(1) is revised to read as follows:

§ 1864.15 Preparation and processing of Form FmHA 1956-1.

- (b) * * *
- (1) Except as provided in the next sentence, payments offered by debtors in compromise or adjustment of debts will be deposited in accordance with FmHA Instruction 1951-B (available in any FmHA office). If a borrower submits a check bearing a restrictive notation or submits an accompanying letter containing restrictive statements and has not signed Form FmHA 1956-1, the check and the letter containing the restrictive statements will be sent to the State Office with an explanation of the circumstances and the State Office will determine with the advice of OGC how to handle the check. The use of restrictive notations will be discouraged to the fullest extent possible.

PART 1902—SUPERVISED BANK ACCOUNTS

5. The authority citation for Part 1902 is revised to read as follows:

Authority: 7 U.S.C. 1909, 42 U.S.C. 1400, 5 U.S.C. 301, 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Loan and Grant Disbursement

6. Section 1902.2 is amended by revising paragraph (b) to read as follows:

§ 1902.2 Policies concerning disbursement of funds.

- (b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested through State Office terminals. Subsequent checks will be ordered as needed through State Office terminals.

7. Section 1902.3 is amended by removing paragraph (b), redesignating current paragraphs (c) and (d) as paragraphs (b) and (c), respectively, and revising paragraph (a) to read as follows:

§ 1902.3 Procedures to follow in fund disbursement.

- (a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to process through State Office terminals.

8. Subpart C, consisting of § 1902.101 through 1902.150 is added to read as follows:

Subpart C—Selecting a Financial Institution for the Concentration Banking System (CBS)

Sec.
1902.101 through 1902.103 [Reserved]
1902.104 Establishing or changing a TLA.
1902.105 through 1902.149 [Reserved]
1902.150 OMB control number.

§§ 1902.101 through 1902.103 [Reserved]

§ 1902.104 Establishing or changing a TLA.

- (a) *Establishing a TLA.* (1) After a FI has been selected by the FmHA field office, the FmHA office will provide the State Office with the name and address of the FI selected.

(2) The FmHA field office must have the FI execute a MOU for CBS. Form FmHA 1902-7, will be completed when the MOU is executed. The FmHA field office will complete item 1 and the FI will complete the rest of the summary. Instructions for completing this form are in the FMI. The FmHA field office will forward three signed copies of the MOU together with the original and two copies of Form FmHA 1902-7 to the State Office coordinator. The State Office coordinator will check for the following common errors before submitting to the: Cash Management

Staff, FmHA Finance Office, Mail Code FC-32, 1520 Market Street, St. Louis, MO 63103.

- (i) Check to see that the local bank has signed all copies of the MOU and has affixed its seal next to the signature
- (ii) Check signature blocks to insure that the local FmHA office has not signed in any of the blocks provided for the local bank and Treasury. This agreement is between the local bank and Treasury and FmHA will not be a party to the agreement.

(iii) Do not allow the bank to cross out or change any clauses in the MOU. Treasury will not accept modified agreements.

(iv) Do not allow the bank to retype the agreement as this would require a word-for-word verification of the entire document to determine whether anything had been changed.

(3) The Cash Management Staff will submit the MOU's to Treasury for signature along with the original and one copy of Form FmHA 1902-7. Treasury will sign the copies of the MOU, send one copy to the FI, one to the local FmHA office, and keep one copy for the files. Treasury will notify the Cash Management Staff if a MOU is rejected.

(4) The local FmHA office must obtain selected information from the FI for funds transfer purposes on CBS including information necessary to establish a compensation account to receive ACH transfers from the concentrator bank.

§§ 1902.105 through 1902.149 [Reserved]

§ 1902.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575-0128.

PART 1941—OPERATING LOANS

9. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1909, 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.33 [Amended]

10. Section 1941.33 is amended by removing paragraphs (c)(1) and (c)(3), and by redesignating paragraphs (c)(2) and (c)(4) as (c)(1) and (c)(2).

11. Section 1941.35(b) is revised to read as follows:

§ 1941.35 Actions after loan approval.

- (b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be cancelled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be canceled, the check will be returned through Concentration Banking System (CBS), as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or, if an office is not using CBS, the check will be returned to the Finance Office with an original of Form FmHA 1940-10. (See FmHA Instruction 102.1, a copy of which may be obtained in any FmHA office.)

PART 1942—ASSOCIATIONS

12. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1909, 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Community Facility Loans

§ 1942.6 [Amended]

13. Section 1942.6 is amended by removing paragraph (d)(1) and redesignating current paragraphs (d)(2) and (d)(3) as (d)(1) and (d)(2), respectively.

14. Section 1942.12(a) is revised to read as follows:

§ 1942.12 Loan cancellation.

- (a) *Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation."* The District Director or State Director may prepare and execute Form FmHA 1940-10 in accordance with the Forms Manual Insert (FMI). For a loan made from the RDIF, if the check has been received or is subsequently received in the District Office, the District Director will return it through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or, if an office is not using CBS, return it to the Finance Office with an original of Form FmHA 1940-10.

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

15. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1909, 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

§ 1943.33 [Amended]

16. Section 1943.33 is amended by removing paragraphs (c)(1) and (c)(3), and redesignating paragraphs (c)(2) and (c)(4) as (c)(1) and (c)(2).

17. Section 1943.35 is amended by revising paragraph (c)(1) to read as follows:

§ 1943.35 Action after loan approval.

- (c) * * *
- (1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940-10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B, (available in any FmHA office) or, if an office is not using CBS, the check will be returned to the Finance Office with an original of Form FmHA 1940-10.

18. Section 1943.35(e) is amended by changing in the last sentence, the words "Finance Office" to read "State Office."

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.83 [Amended]

19. Section 1943.83 is amended by removing paragraphs (c)(1) and (c)(3), and redesignating paragraphs (c)(2) and (c)(4) as (c)(1) and (c)(2).

20. Section 1943.85 is amended by revising paragraph (c)(1) to read as follows:

§ 1943.85 Action after loan approval.

- (c) * * *
- (1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940-10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned through

Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office), or, if an office is not using CBS, the check will be returned to the Finance Office with an original of Form FmHA 1940-10.

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

21. In § 1943.133, paragraphs (b)(2)(i) and (d)(1) are amended by changing the reference "Form FmHA 440-1" to read "Form FmHA 1940-1."

22. Section 1943.133 is amended by revising paragraph (c) to read as follows:

§ 1943.133 Loan approval or disapproval.

(c) *Distribution of forms after loan approval.* The applicable docket forms will be distributed as outlined below by the loan approval official after a loan is approved.

(1) The original of Form FmHA 1940-1 and the remainder of the loan docket will be retained in the County Office.

(2) A signed copy of Form FmHA 1940-1 will be sent to the borrower on date of loan approval.

23. Section 1943.135 is amended by revising the introductory text of paragraph (a), by revising the first sentence of paragraph (a)(2), and by revising paragraph (c)(1) to read as follows:

§ 1943.135 Action after loan approval.

(a) *Requesting check.* If real estate will not be taken as security or if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval or when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through State Office terminals. If funds are not requested when the loan is approved, advances in the amount needed will be requested through State Office terminals. The original Form FmHA 440-57 will be retained in the County Office. The initial loan advance will be requested when loan approval conditions can be met, satisfactory title to real estate security can be provided, and a date has been set for loan closing.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to

meet the immediate needs of the borrower will be requested through State Office terminals.

(c) * * *

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The County Office will send a copy of Form FmHA 1940-10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled, the check will be returned through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or, if an office is not using CBS, the check will be returned to the Finance Office with an original of Form FmHA 1940-10.

24. Section 1943.135(e) is amended by changing, in the last sentence, the words "Finance Office" to read "State Office."

PART 1944—HOUSING

25. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

26. Section 1944.32 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 1944.32 Actions subsequent to loan approval.

(a) * * *

(1) A loan check may be requested when all approval conditions can be met and necessary curative actions have been taken to provide a satisfactory title to real estate security. All check requests will be requested through State Office terminals.

(c) *Cancellation of loan.* Loans may be canceled before loan closing by the use of Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," prepared in accordance with the FMI for the form. Checks received in the County Office will be returned through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or if an office is not using CBS, checks will be returned with the original Form FmHA 1940-10 to the Finance Office. Interested parties will be notified of the cancellation as provided

in Part 1807 of this chapter (FmHA Instruction 427.1). If the cancellation is not a voluntary action by the applicant, the applicant will be notified in accordance with § 1910.6(b) of Subpart A of Part 1910 of this chapter.

27. Section 1944.33(f) is revised to read as follows:

§ 1944.33 Loan closing.

(f) *Direct Payments.* Direct payment coupons for all new borrowers, including transferees, will be retained in the County Office until the borrower has made at least six monthly payments on time. The coupons may then be delivered to the borrower and payments made directly to the Finance Office. The County Supervisor may retain the payment coupons for a longer period if such action is considered to be necessary to determine that the borrower is able to make timely payments as agreed. Payments made to the County Office will be processed through CBS as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or, if an office is not using CBS, payments will be forwarded to the Finance Office with the appropriate direct payment coupon in the Finance Office mail. Cash payments, refunds, and extra payments made by borrowers will be handled in accordance with Subpart B of Part 1951 (available in any FmHA office).

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

28. Section 1944.175(e) is revised to read as follows:

§ 1944.175 Actions subsequent to loan and/or grant approval.

(e) *Cancellation of loan.* Loans and/or grants may be canceled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 1944-53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert (FMI) as prescribed in FmHA Instruction 1951-B (available in any FmHA office).

(2) If the loan or grant check is received in the District Office, the District Director will return it through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or, if an office is not using CBS, the check will be

returned to the Finance Office with original of Form FmHA 1944-53.

(3) All interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1).

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

29. Section 1944.235 is amended by removing paragraph (f)(2), redesignating current paragraph (f)(3) as paragraph (f)(2), and revising paragraph (f)(1) to read as follows:

§ 1944.235 Actions subsequent to loan approval.

(f) * * *

(1) *Treasury check method.* If the loan check is received in the District Office, the District Director will return the check through the Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or, if an office is not using CBS, the check will be returned to the Finance Office with Form FmHA 1944-53, except if the check was issued by the National Finance Center (NFC). If the check was issued by NFC, cancel under FmHA Instruction 2024-P (available in any FmHA office).

Subpart J—Section 504 Rural Housing Loans and Grants

30. Section 1944.469 (g)(1)(ii)(A) is revised to read as follows:

§ 1944.469 Loan and/or grant closing.

(g) * * *

(1) * * *

(ii) * * *

(A) Any funds returned shall first be applied to reducing a grant. When returning grant funds to the Finance Office, the collecting office will enter payment code 21 (other) on Form FmHA 451-2, "Schedule of Remittances," with a brief explanation ("Recovery of Section 504 Housing Repairs Grants") and return the grant funds through Concentration Banking System (CBS), as prescribed in FmHA Instruction 1951-B (available in any FmHA office). For offices not using CBS, they will forward Form FmHA 451-2 along with the check to the Finance Office.

PART 1945—EMERGENCY

31. The authority citation for Part 1945 continues to read as follows:

Authority: U.S.C. 1989, 5 U.S.C. 301, 7 CFR 2.23 and 7 CFR 2.70.

Subpart C—Economic Emergency Loans

32. Section 1945.126 (b)(3) is revised to read as follows:

§ 1945.126 Cancellation of loan checks and advances.

(b) * * *

(3) Transmit to the Finance Office an original of Form FmHA 1940-10 and Form FmHA 440-57 reflecting the revised repayment schedule. The advance will be cancelled through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or, for offices not using CBS, the check will be sent to the Finance Office.

§ 1945.127 [Amended]

33. Section 1945.127 is amended by changing in the last sentence, the words "Finance Office" to read "State Office."

34. Section 1945.128(b) is revised to read as follows:

§ 1945.128 Docket preparation.

(b) *Form FmHA 1940-1, "Request for Obligation of Funds."* A separate Form FmHA 1940-1 will be prepared for each amount of the total loan which has a different purpose (operating or real estate), but Form FmHA 1940-37, "Economic Emergency Loan Analysis," will be prepared to reflect the total loan. When the County Supervisor is reasonably certain that the EE loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through State Office terminals. Loan funds may be scheduled for multiple advances, if appropriate. The amount of the initial advance will be requested through State Office terminals. Subsequent advances may be scheduled by using the State Office terminals. Each advance will be limited to an amount which can be used promptly, usually within sixty days from the date of the check.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

35. Section 1945.185(a) is revised to read as follows:

§ 1945.185 Actions after loan approval.

(a) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check and obligation will be cancelled, the County Supervisory will notify the State Office of loan cancellation by using Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." If a check received in the County Office is to be cancelled, the check will be returned through Concentration Banking System (CBS) as prescribed in FmHA Instruction 1951-B (available in any FmHA office) or, if an office is not using CBS, returned to the Finance Office with an original of Form FmHA 1940-10 (see FmHA Instruction 102.1, a copy of which is available in any FmHA office).

36. Section 1945.185(c) is amended by changing in the last sentence, the words "Finance Office" to read "State Office."

PART 1951—SERVICING AND COLLECTIONS

37. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1460, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

38. Subpart B, consisting of §§ 1951.51 through 1951.55, is revised to read as follows:

Subpart B—Collections

Sec.
1951.51 General.
1951.52 through 1951.53 [Reserved]
1951.54 Authority
1951.55 Receiving and processing collections.

§ 1951.51 General.

This Subpart prescribes the policies and procedures of the Farmers Home Administration (FmHA) for collection of loan payments and depositing payments through the Concentration Banking System (CBS). Under CBA, FmHA field offices select a local financial institution to maintain a Treasury Limited Account (TLA) for depositing FmHA loan collections. Deposits to these accounts are withdrawn daily by the concentrator bank for transfer to the Treasury. Under these procedures, the local FmHA office will deposit the daily office collections in a participating local financial institution and report the amount deposited to a data service facility that is under contract to the concentrator bank. The data service facility will inform the concentrator bank of the amount available in each local financial institution and the concentrator bank will use this information to transfer the funds to the concentrator bank and then to the Treasury.

§§ 1951.52 through 1951.53 [Reserved]

§ 1951.54 Authority.

The provisions of this subpart are applicable to FmHA employees who are authorized to receive collections. Employees listed in Exhibit B of this subpart (available in any FmHA office) are hereby authorized to receive, receipt for, exchange for money orders or bank drafts, and transmit collections or deposit collections in a TLA.

§ 1951.55 Receiving and processing collections.

FmHA offices receive borrower payments either through the mail or in person in the form of checks, money orders, and cash. Payments are recorded on the appropriate accounting forms which are Form FmHA 451-2, Form FmHA 1944-9, or a payment coupon. These documents are used to transmit accounting information to the Finance Office. In addition, the FmHA office records payments on either a management system card, a servicing card, or a rental assistance tracking form, as appropriate. (Note: The borrower's case number will be inserted in any clear space in the upper part of the face of the check, preferably in the upper right hand corner. For Multi-Family Housing, the project number must be inserted after the case number. If the remittance covers more than one borrower, insert the State and County or District Code on the face of the check.)

Dated: March 23, 1988.

Vance L. Clark,
Administrator, Farmers Home
Administration.
[FR Doc. 88-16545 Filed 7-13-88; 8:45 am]
BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

General Requirements for Decommissioning Nuclear Facilities; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the Federal Register on June 27, 1988 (53 FR 24018) which establishes technical and financial criteria for decommissioning licensed nuclear facilities. This action is necessary to insert a date that was inadvertently omitted from the final rule.

EFFECTIVE DATE: July 27, 1988.

FOR FURTHER INFORMATION CONTACT: K. Steyer, C. Feldman, or P. Cardile, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-492-3824.

SUPPLEMENTARY INFORMATION:

PART 70—DOMESTIC LICENSING SPECIAL NUCLEAR MATERIAL

§ 70.22 [Corrected]

1. On page 24553, the last line of § 70.22(a)(9), should be corrected to read "submitted on or before July 27, 1990."

Dated at Rockville, Maryland, this 11th day of June 1988.

For the Nuclear Regulatory Commission,

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 88-15856 Filed 7-13-88; 8:45 am]

BILLING CODE: 7550-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25531; Amdt. No. 91-203]

RIN 2129-AC56

Transponder with Automatic Altitude Reporting Capability Requirement; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: In the June 21, 1988, issue of the Federal Register, the FAA published a final rule regarding transponder with automatic altitude reporting capability requirement (53 FR 23356). The final rule, as published, contained an incorrect paragraph reference. This document serves to correct that error.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: A. Wayne Pierce, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267-8783.

Adoption of the Correction

Document No. 88-14085, Amdt. No. 91-203, published in the Federal Register on June 21, 1988 (53 FR 23356), is corrected as follows:

On page 23374, in the third column, last full paragraph added, "Appendix D", remove "§ 91.24(b)(4)(ii)" and substitute "§ 91.24(b)(5)(ii)", both in the title and in the paragraph text.

Issued in Washington, DC, on July 8, 1988.

John H. Cassidy

Assistant Chief Counsel, Regulations and Enforcement Division,

[FR Doc. 88-15814 Filed 7-13-88; 8:45 am]

BILLING CODE: 4310-10-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Approval of Amendments; Award of Costs and Attorney's Fees

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of several proposed amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern the award of costs and attorney's fees by the Ohio Reclamation Board of Review.

EFFECTIVE DATE: July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 Federal Register (47 FR 34686). Subsequent actions concerning the conditions of approval and other revisions, modifications, and amendments to the Ohio program are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of Amendments

On August 10, 1987 (52 FR 29515), the Deputy Director of OSMRE approved amendments to the rules of the Ohio Reclamation Board of Review (RBR) at Ohio Administrative Code (OAC) Sections 1513-3-21(E) (3), (4), and (5).

These amendments had been required by OSMRE at 30 CFR 935.16(a) so that the standards used by the RBR to award costs and attorney's fees would be no less effective than the Federal counterparts at 43 CFR Part 4.

During the promulgation of the approved rule change, the Ohio Mining and Reclamation Association (OMRA) voiced opposition to the rule change and the RBR withdrew the amendments in a letter dated November 13, 1987 (Administrative Record No. OH-0993). The disputed issues concerning this rule change were subsequently resolved under a settlement agreement filed in *Ohio Mining and Reclamation Association, et al. v. Hodel et al.*, Civil Action No. C2-88-0811 (S.D. Ohio, December 23, 1987) between OMRA, the Mining and Reclamation Council of America, and OSMRE.

By letter dated March 24, 1988 (Administrative Record No. OH-1021), the RBR resubmitted revised amendments to the Ohio Administrative Code (OAC) at Sections 1513-3-21(E)(3), (4), and (5) which reflect the terms of the settlement agreement. The resubmitted changes are briefly summarized below:

(1) The proposed amendments modify OAC Section 1513-3-21(E)(3) to delete the award of costs and expenses to a permittee from persons other than the State of Ohio where the permittee initiates or participates in a proceeding under Chapter 1513 of the Ohio Revised Code and where a finding has been made that the permittee made a substantial contribution to a full and fair determination of the issues.

(2) The proposed amendments would add a new OAC Section 1513-3-21(E)(4) which provides that costs and expenses may be awarded to a permittee from any person if the permittee demonstrates that the person initiated or participated in a proceeding under Chapter 1513 of the Ohio Revised Code in bad faith and for the purpose of harassing or embarrassing the permittee.

(3) The proposed amendments would renumber old OAC Section 1513-3-21(E)(4) as OAC Section 1513-3-21(E)(5) and would modify this provision to provide for the award of costs and expenses to the Ohio Division of Reclamation where the Division demonstrates that any person applied for RBR review pursuant to Chapter 1513 of the Ohio Revised Code, or where any party has participated in such a proceeding, in bad faith and for the purpose of harassing or embarrassing the Division.

OSMRE announced receipt of the proposed amendments in the April 18, 1988 Federal Register (53 FR 12705), and,

in the same notice, opened the public comment period and provided opportunity for a public hearing on the substantive adequacy of the proposed amendments.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Ohio program.

OAC Section 1513-3-21(E) Award of Costs and Expenses

1. *OAC 1513-3-21(E)(3) Awards to a Permittee.* Ohio proposes to delete the provision which allows awards of costs and expenses to a permittee from persons other than the State of Ohio where the permittee initiates or participates in a proceeding under Chapter 1513 of the Ohio Revised Code and where a finding has been made that the permittee made a substantial contribution to a full and fair determination of the issues. The allowance of this type of award to the permittee from the State of Ohio is retained in OAC Section 1513-3-21(E)(3).

Awards of this type to a permittee from persons other than OSMRE are not included in the types of awards authorized under 43 CFR Part 4, Subpart L, Special Rules Applicable to Surface Coal Mining Hearings and Appeals, Section 4.1294. Therefore, the Director finds that the deletion of the provision does not make the Ohio rule any less effective than the analogous Federal regulation. The Director also finds that the retention of the allowance of these awards to the permittee from the State of Ohio is in keeping with the terms of Article 2 of the settlement agreement signed by OSMRE.

2. *OAC 1513-3-21(E)(4) Awards to a Permittee.* Ohio proposes to add a new section (E)(4) authorizing the award of costs and attorney's fees to a permittee from any person if the permittee demonstrates that the person initiated a proceeding under Chapter 1513 of the Ohio Revised Code, or participated in such a proceeding, in bad faith and for the purpose of harassing or embarrassing the permittee.

The proposed language is equivalent to the corresponding Federal rule at 43 CFR 4.1294(d). The Director therefore finds that the proposed rule is no less effective than that Federal regulation. The proposed revision is also in keeping with Article 3 of the settlement agreement which stipulates that the circumstances described in 43 CFR 4.1294(d) are the only ones under which OSMRE will approve the award of

attorney's fees to permittees from persons other than the State of Ohio.

3. *OAC 1513-3-21(E)(5) Awards to the Ohio Division of Reclamation.* Ohio proposes to renumber old OAC Section 1513-3-21(E)(4) as OAC Section 1513-3-21(E)(5) and revise this provision to allow for the award of costs and expenses from any person to the Ohio Division of Reclamation (the Division). The revision would specify that these awards are authorized where the Division demonstrates that any person applied for review pursuant to Chapter 1513 of the Ohio Revised Code, or that any party participated in such a proceeding, in bad faith and for the purpose of harassing or embarrassing the Division.

The proposed language is equivalent to the corresponding Federal rule at 43 CFR 4.1294(e). The Director therefore finds that the proposed rule is no less effective than that Federal regulation. This proposed revision at OAC Section 1513-3-21(E)(5) is not discussed in the settlement agreement.

IV. Public and Agency Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the April 18, 1988 Federal Register ended on May 18, 1988. A summary of the comments received and their disposition is given below:

1. At the request of eight individuals, a public hearing was held at OSMRE's Columbus Field Office on May 13, 1988 to provide an opportunity for testimony on the proposed amendments. Six individuals gave verbal testimony at the hearing and these comments, in the form of a written summary of the hearing compiled by OSMRE, were placed in the Ohio Administrative Record (OH-1035). No written statements were received at the hearing.

The commenters at the hearing were landowners or the legal representatives of landowners who have initiated proceedings or presented testimony before the RBR or have attended RBR hearings. The commenters stated that the case record of the RBR shows a consistent prejudice against private citizens who bring actions against coal mining companies and that the RBR has misused its existing authority for the fair determination of mining issues under Ohio law. The commenters felt it is inappropriate to give additional authority to the RBR to award financial penalties against individuals when the RBR has already violated rules promulgated by OSMRE and the State of Ohio outlining the appeal rights of citizens. The commenters stated that the

effect of the proposed amendment would be to further discourage citizens from exercising their rights of appeal and due process.

The Director believes that the State of Ohio may amend its program to authorize the award of costs and fees against private individuals in the limited circumstances identified in the proposed rule. As proposed, the rules are consistent with and no less effective than the Federal provisions under 43 CFR 4.1294(d). However, the Director concurs that the proposed rule should not be implemented in a manner that would discourage citizens from exercising their rights to appeal actions or the failure to act.

The standard of bad faith, harassment, or embarrassment is an extraordinary test that would have to be met to allow the award of costs and fees against a private individual and would prohibit the award of costs and fees where the award would discourage the exercise of citizen rights. In the upcoming evaluation year, OSMRE will place special emphasis in its oversight of the Ohio program and the RBR to insure that citizen involvement is not discouraged by improper implementation of this rule.

2. Written comments were also received from a coal mining organization in support of the proposed amendments for recovery of costs and attorney's fees by a permittee from the State of Ohio and from any person under the specified circumstances. The commenter felt that the added provisions were consistent with SMCRA and with 43 CFR 4.1294(c) and (d).

These comments were placed in the Ohio Administrative Record (OH-1032) for these proposed amendments and have been considered by the Director in his findings.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The Farmers Home Administration responded that it had no comments on the proposed changes. The remaining agencies gave no response.

V. Director's Decision

Based on the findings discussed above, the Director is approving the amendment as submitted on March 24, 1988, and is amending Part 935 of 30 CFR Chapter VII to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to

encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, and 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 7, 1988.

Robert E. Boldt,
Deputy Director.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (ff) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

(ff) The following amendments concerning the award of costs and attorney's fees by the Ohio Reclamation Board of Review, as submitted to OSMRE on March 24, 1988, are approved effective July 14, 1988: Revisions of the following provisions of Chapter 1513 of the Ohio Administrative Code: 1513-3-21(E) (3), (4), and (5).

[FR Doc. 88-15797 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Petersburg Watershed, Alaska

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture hereby revises the regulations at 36 CFR 251.35 governing access into the Petersburg watershed in the Tongass National Forest, Alaska. The intended effect of the rule is to correct and update technical provisions of the rule and to reduce administrative burdens of managing public access into the watershed by allowing access to public recreation areas without a permit. Revision of this rule arises from review of the existing regulation as required by Executive Order 12291.

EFFECTIVE DATE: This rule is effective August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Rhey Solomon, Watershed and Air Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-0090, (703) 235-8163.

SUPPLEMENTARY INFORMATION: The existing regulation governing access to the Petersburg watershed within the Tongass National Forest in Alaska, 36 CFR 251.35, was issued January 3, 1941, to implement the provisions of the Act of October 14, 1940 (54 Stat. 1197). That act authorized protection of the municipal water supply for the town of Petersburg, Alaska. The existing regulation permits Federal and territorial officials and employees of the town of Petersburg to enter the watershed to operate, maintain, and improve the town's water system. The regulation prohibits all other access within the watershed without a permit approved by an official of the town of Petersburg and countersigned by a forest officer. The regulation also permits the removal of timber from the watershed, but only under such

conditions as will adequately safeguard the town's water supply.

On September 8, 1987 (52 FR 33839), the Forest Service published a proposed rule changing references to "territorial" officials and "town" and allowing access to public recreation areas without a permit. Since promulgation of the rule in 1941, Alaska became a State, and Petersburg is now denominated as a city. The proposed rule also proposed authorizing public access of the Raven's Roost Trail for travel to the Raven's Roost public recreation cabin and the Alpine Recreation Area without the need for a permit. The proposed rule also expressly acknowledged the right of access by Forest Service and other Federal officials and their agents in the conduct of their official duties.

Because the proposed rule would prohibit unauthorized use, a penalty provision was incorporated so that the public is fully aware of the penalties for violation of the rule. Finally, the contextual sequence and the language of the regulation was revised for ease of understanding and reference.

The disposal of timber on National Forest lands is guided by Forest Plans and, more specifically, regulations found at 36 CFR Part 223. The proposed rule makes reference to the timber sale regulations to make clear the requirements for the disposal of timber within the Petersburg Watershed.

Public Comment and Responses

No public comments were received in response to the proposed rule. Therefore, the proposed rule is adopted with a minor change in paragraph (d) to reference the general penalty provision in 7 CFR 261.1b.

Regulatory Impact

This rule has been reviewed under E.O. 12291 and procedures of the Department of Agriculture. It has been determined that this is not a major rule. The regulation will have little or no effect on the economy since the changes are technical and administrative. The Secretary of Agriculture has determined that this action will not have a significant economic impact on a substantial number of small entities, since it essentially affects only one community, Petersburg, Alaska, and it is principally a procedural conforming regulation that does not substantially alter the existing regulation.

Based on both past experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. The removal of the permit requirement for entrance to public

recreation areas and the conformance of the timber removal provision to subsequent legislation will not, in and of themselves, result in any additional impacts on the watershed or management direction for the area. Therefore, this action is categorically excluded from any requirement for documentation in an environmental assessment or environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 251

Environmental protection, National Forests, Water resources, Watersheds.

Therefore, for the reasons set forth above, Subpart A of Part 251 of Title 36 of the Code of Federal Regulation is hereby amended as follows:

PART 251—LAND USES

Subpart A—Miscellaneous Land Uses

1. The authority citation for Subpart A is revised to read as follows:

Authority: 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Public Law 76-887, 54 Stat. 1197.

2. Revise § 251.35 to read as follows:

§ 251.35 Petersburg Watershed.

(a) Except as authorized in paragraphs (b) and (c), access to lands within the Petersburg watershed, Tongass National Forest, as described in the Act of October 17, 1940 (54 Stat. 1197), is prohibited.

(b) Access to lands within the Petersburg watershed is hereby authorized, without further written approval, for the following routine purposes:

(1) The discharge of official duties related to management of the Tongass National Forest by Federal employees, holders of Forest Service contracts, or Forest Service agents;

(2) The operation, maintenance, and improvement of the municipal water system by Federal and State officials and employees of the city of Petersburg; and

(3) Public recreational use of the Raven's Roost Trail for access to and from the Raven's Roost public recreation cabin and the Alpine Recreation Area.

(c) Any person who wishes to enter upon the lands within the watershed for purposes other than those listed in paragraph (b) must obtain a permit that has been signed by the appropriate city official and countersigned by the District Ranger.

(d) Unauthorized entrance upon lands within the watershed is subject to punishment as provided in 36 CFR 261.1b.

(e) The Forest Supervisor of the Stikine Area of the Tongass National

Forest may authorize the removal of timber from the watershed under the regulations governing disposal of National Forest timber (36 CFR Part 223). In any removal of timber from the watershed, the Forest Supervisor shall provide adequate safeguards for the protection of the Petersburg municipal water supply.

Date: July 6, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-15895 Filed 7-13-88; 8:45 am]

BILLING CODE 3410-11-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Amendment E-254]

Reporting Quality Deficiencies

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation provides current policies and procedures on reporting quality deficiencies and deletes text that is no longer appropriate. The regulation will provide improved direction for agencies regarding the reporting of quality deficiencies which will allow appropriate action to be taken to remove defective items from the supply system and to document contractor performance files for use in future procurements.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Diana K. Price, Quality Assurance Division on 703-557-1435 or FTS 557-1435.

SUPPLEMENTARY INFORMATION: The GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-26

Government property management, Inventory management, Procurement programs, Reporting requirements,

Shipments and billings, Sources of supply.

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

1. The authority citation for Part 101-26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. The table of contents for Part 101-26 is amended by revising and adding the following entries:

101-26.803-2 Reporting quality deficiencies.
101-26.803-3 Reporting of discrepancies in shipments, material, or billings.
101-26.803-4 Adjustments.

Subpart 101-26.9—Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings

3. Section 101-26.803-1 is revised as follows:

§ 101-26.803-1 Reporting discrepancies or deficiencies.

Discrepancies or deficiencies in shipments or material occur in four broad categories: Quality deficiencies, shipping discrepancies, transportation discrepancies, and billing discrepancies. When discrepancies or deficiencies occur, activities shall document them with sufficient information to enable initiation and processing of claims against suppliers and carriers. Procedures for documenting discrepancies or deficiencies are set forth in the GSA Handbook, Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings, issued by the Commissioner, Federal Supply Service. Copies of the handbook may be obtained by submitting a GSA Form 457, FSS Publications Mailing List Application, (referencing mailing list code number ODDH-0001) to the following address: General Services Administration, Centralized Mailing List Service (CMLS-C), 819 Taylor Street, P.O. Box 17077, Fort Worth, TX 76102-0077.

Note.—Copies of the GSA Form 457 may be obtained by writing the Centralized Mailing List Service.

4. Section 101-26.803-2 is revised to read as follows:

§ 101-26.803-2 Reporting quality deficiencies.

(a) Quality deficiencies are defined as defects or nonconforming conditions which limit or prohibit the item received from fulfilling its intended purpose. Quality deficiencies include deficiencies in design, specification, material, manufacturing, and workmanship. Timely reporting of all quality

deficiencies is essential to maintain an acceptable quality level for common-use items. GSA relies on agency reporting of quality deficiencies in order to act to remove the defective items from the supply system as well as to document contractor performance files for use in future procurements.

(b) A product deficiency which may cause death, injury, or severe occupational illness, or directly restrict the mission capabilities of the using organization, is called a "category I" complaint. Quality complaints that do not meet the category I criteria are called "category II" complaints. Standard Form (SF) 368, Quality Deficiency Report, or a message in the format of the Standard Form 368, is used to report quality deficiencies.

(c) Standard Form 368 (including SF's 368 submitted in message formats) are required for all product quality deficiencies that involve material (1) shipped to the user from a GSA distribution center (including shipments made directly to the user from GSA distribution centers as well as "indirect" shipments (shipments with intermediate stops between the GSA distribution center and the ultimate user)), (2) shipped to the user from a DOD depot or another Government activity, as directed by GSA, (3) purchased by GSA for the user and inspected by GSA, or (4) ordered from a GSA Federal Supply Schedule contract which specified source inspection by GSA.

(d) Category I complaints are to be reported to GSA by telephone or telegraphic message within 72 hours of discovery. Category II complaints are to be reported within 15 days after discovery.

(e) Standard Forms 368 (in triplicate) should be sent to the following address: GSA Discrepancy Reports Centers (6 FR-Q), 1500 East Bannister Road, Kansas City, MO 64131-3088. Communications routing indicator: RUEVFYE (unclassified), RULSSAA (classified), Com: (816) 926-7447, FTS: 926-7447, AUTOVON: 465-7447.

In addition, when reporting a category I product quality deficiency condition, an information copy should be sent to the following address: General Services Administration, FSS, Office of Quality and Contract Administration, Quality Assurance Division (FQA), Washington, DC 20406. Communications routing indicator: RUEVFWM (unclassified), RULSSAA (classified), COM: (703) 557-8515, FTS: 557-8515.

(f) For defective items covered by a manufacturer's commercial warranty, activities should initially attempt to resolve all complaints on these items themselves (examples of items with a

commercial warranty are vehicles, major appliances such as gas and electric ranges, washing machines, dishwashers, and refrigerators). If the contractor replaces or corrects the deficiency, an SF 368, in triplicate, should be sent to the Discrepancy Reports Center at the above address. The resolution of the case should be clearly stated in the text of the SF 368.

(g) If, however, the contractor refuses to correct, or fails to replace, either a defective item or an aspect of service under the warranty, an SF 368, along with copies of all pertinent correspondence, should be forwarded to the GSA office executing the contract (address will be contained in the pertinent contract/purchase order). An information copy of the SF 368 should also be submitted to the Discrepancy Reports Center at the above address.

(h) For items ordered from a GSA Federal Supply Schedule contract when the inspection is performed by an activity other than GSA or when the items are purchased by GSA for the user but not inspected by GSA, activities should initially attempt to resolve all complaints on these items directly with the contractor. If the contractor refuses to correct, or fails to replace a defective item, an SF 368, along with copies of all correspondence, should be forwarded to the GSA office executing the contract (address will be contained in the pertinent contract/purchase order). An information copy of the SF 368 should also be submitted to the Discrepancy Reports Center at the above address.

(i) Information submitted to the Discrepancy Reports Center regarding defective items will be maintained as a quality history file for use in future procurements.

(j) Additional information regarding reporting of quality deficiencies may be obtained by referring to chapter 4 of the GSA handbook referenced in § 101-26.803-1.

5. Section 101-26.803-3 is added to read as follows:

§ 101-26.803-3 Reporting of discrepancies in transportation, shipments, material, or billings.

(a) Transportation-type discrepancies shall be processed under the instructions in Subpart 101-40.7 when the discrepancies are the fault of the carrier and occur while the shipments are in the possession of:

(1) International ocean or air carriers regardless of who pays the transportation charges, except when shipment is on a through Government bill of lading (TGBL) or is made through the Defense Transportation System (DTS). Discrepancies in shipments on a

TGBL or which occur while in the DTS shall be reported as prescribed in the GSA handbook referenced in § 101-26.803-1; or

(2) Carriers within the continental United States, when other than GSA or DOD pays the transportation charges.

(b) All other shipping, transportation, or billing discrepancies shall be reported on the forms and within the time frames and dollar limitations and according to the procedures prescribed in the GSA handbook referenced in § 101-26.803-1.

6. Section 101-26.803-4 is added to read as follows:

§ 101-26.803-4 Adjustments.

GSA and DOD will adjust billings resulting from over or under charges or discrepancies or deficiencies in shipments or material on a bill submitted under the provisions of this Subpart 101-26.8 and the GSA handbook referenced in § 101-26.803-1.

Dated: June 21, 1988.

John Alderson,
Acting Administrator of General Services.
[FR Doc. 88-15757 Filed 7-13-88; 8:45 am]
BILLING CODE 4820-24-2

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 88-192]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission's *ex parte* rules (§ 1.1200 *et seq.*) have been revised to reflect minor changes and corrections. The *ex parte* rules specify standards of conduct and procedures to be followed with regard to *ex parte* presentations in Commission proceedings and provide for the imposition of sanctions for violations of these standards and procedures.

EFFECTIVE DATE: July 14, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Solomon, Office of General Counsel, Federal Communications Commission (202) 632-6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 88-192, adopted June 8, 1988, and released June 24, 1988. The complete text of this decision may be purchased from the Commission's copy contractor,

International Transcription Service, (202) 857-3670, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. In this Order, the Commission makes minor corrections and changes to its *ex parte* rules. Specifically, it makes the following changes: (1) Incorporates in a Note to § 1.1202(a) an interpretation regarding the treatment of status inquiries that was issued by the General Counsel in an October 30, 1987 Public Notice (Mimeo No. 414); (2) makes the list of exempt proceedings in § 1.1204(a) more comprehensive by including references to additional proceedings that are exempt under §§ 1.1206(b) and 1.1208(c)(1); (3) adds a new Note to § 1.1204(a) clarifying that where a formal opposition (or request for hearing) would render a proceeding non-restricted, any *ex parte* presentations by informal objectors are subject to the "permit but disclose" rules that would otherwise be applicable if a formal opposition (or request for hearing) were filed; (4) without changing their treatment under the rules, clarifies that section 214(a) certificate proceedings are adjudications; and (5) corrects minor drafting errors made in previous orders.

2. Accordingly, it is ordered that the Rules and Regulations of the Federal Communications Commission are amended in the manner indicated below, to become effective immediately upon publication in the Federal Register. H. Walker Foster III,
Acting Secretary.

List of Subjects in 47 CFR Part 1

Commission practice and procedure.

Part 1 (Practice and Procedure) of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read:

Authority: Sections 4, 303, 40 Stat. 1096, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 1.1202 is amended by adding the following Note immediately following paragraph (a):

§ 1.1202 Definitions.

(a) * * *
Note.—Any congressional or other communication expressing concern with administrative delay in a particular proceeding or expressing concern that a particular proceeding be resolved expeditiously, will be treated as a status inquiry and therefore excluded from the definition of presentation, provided that: no view is expressed as to the merits or outcome

of the proceeding; no view is expressed as to a date by which the proceeding should be resolved; and no specific reasons are given as to why the proceeding should be resolved expeditiously, other than the need to resolve administrative delay.

3. Section 1.1204(a) introductory text is amended by adding a comma and the phrase ", § 1.1206 (Non-Restricted Proceedings)," immediately following the phrase "(Sunshine Period Prohibition)".

4. Section 1.1204 is amended by adding the phrase "or other proceeding specified in § 1.1208(c)(1)(ii)" to paragraph (a)(1) immediately following the words "§ 1.1202(d)".

5. Section 1.1204 is further amended by removing the Note following paragraph (a)(3) and adding said Note immediately following paragraph (a)(2), by adding to said Note the word "or" immediately following the words "subsection 1.1204(a)(1)", by removing the comma following the words "subsection 1.1204(a)(1)", and by removing from said Note the words "or (a)(3)".

6. Section 1.1204 is further amended by adding the words "and where the requested information is not the subject of a request for confidentiality" to paragraph (a)(3), immediately following the word "opposed".

7. Section 1.1204 is further amended by adding new paragraphs (a)(7), (a)(8), (a)(9), (a)(10) and (a)(11), and a Note immediately thereafter, to read as follows:

§ 1.1204 General exemptions.

(a) * * *
(7) A proceeding conducted pursuant to section 220(b) of the Communications Act for prescription of common carrier depreciation rates prior to release of a public notice of specific proposed depreciation rates for a carrier or carriers.

(8) A petition or request for declaratory ruling unless a formal opposition has been filed.

(9) A rule making proceeding conducted pursuant to sections 201(a), 213(a), 221(c) or 222 of the Communications Act or sections 201(c)(2) or 201(c)(5) of the Communications Satellite Act of 1962, unless the proceeding has been formally opposed or has been set for investigation by the Commission.

(10) A proceeding under section 221(a) of the Communications Act unless a formal request for hearing has been made by an entity specified in that section.

(11) A proceeding under section 214(a) of the Communications Act unless a

formal opposition has been filed or the proceeding has been designated for hearing.

Note.—In proceedings exempted by subsection 1.1204 (a)(3), (a)(8), (a)(9), (a)(10), or (a)(11), oral *ex parte* communications without disclosure pursuant to § 1.1206 are permissible, but only between the Commission and the formal party involved or his representative. Any informal objectors (whether their objections are oral or written) are subject to *ex parte* procedures set forth in § 1.1206 requiring disclosure of such communications except where confidentiality is necessary to protect these persons from possible reprisals.

[FR Doc. 88-14962 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-406; RM-5893]

Radio Broadcasting Services; Prattville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 236C2 for Channel 237A at Prattville, Alabama, and modifies the Class A license of Downs Broadcasting, Inc. for Station WQIM (FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 236C2 at Prattville are 32-27-49 and 86-24-12. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-406, adopted June 7, 1988, and released July 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

BEST COPY AVAILABLE

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Alabama, is amended by revising the entry for Prattville by removing Channel 237A and adding Channel 236C2.

Federal Communications Commission,
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15809 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-439; RM-5889]

Radio Broadcasting Services; Lake City, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C2 for Channel 232A at Lake City, Florida, and modifies the Class A license for Station WQPD(FM) to specify Channel 232C2, at the request of the licensee, Holder Media, Inc. The coordinates for Channel 232C2 at Lake City are 30-08-01 and 82-52-45. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-439, adopted May 31, 1988, and released July 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 657-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Lake City, Florida by adding Channel 232C2 and removing Channel 232A.

Federal Communications Commission,
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15806 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-382; RM-5904]

Radio Broadcasting Services; Colonial Heights, Petersburg and Charlottesville, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237B1 for Channel 237A at Colonial Heights, Virginia and modifies the license of Station WKHK(FM) to reflect the higher class co-channel, at the joint request of WPVA, Inc., licensee of Station WKHK(FM) and Charlottesville Broadcasting Corporation. In order to accomplish the substitution at Colonial Heights Charlottesville Broadcasting Corporation, licensee of Station WQMC(FM), Channel 237A, Charlottesville, Virginia, is required to substitute Channel 236A for Channel 237A. Colonial Heights could receive its first wide coverage area FM service. Channel 237B1 can be used at the current transmitter site of Station WKHK(FM) at coordinates 37-20-22 and 77-24-31. Channel 236A can be used at the current transmitter of Station WQMC(FM) at coordinates 38-02-54 and 78-28-12. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 19, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-382, adopted May 31, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 657-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Virginia by removing Channel 237A and adding Channel 237B1 at Colonial Heights; and by removing Channel 237A and adding Channel 236A at Charlottesville.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15810 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-357; RM-5854]

Radio Broadcasting Services; Rice Lake, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C2 for Channel 249A at Rice Lake, Wisconsin, and modifies the license of Station WAQE-FM to specify operation on the higher class frequency, at the request of Red Cedar Broadcasters, Inc., as that community's second wide coverage area FM service. A site restriction of 18.3 kilometers (11.4 miles) northeast of Rice Lake is required. The proposed site coordinates are 45-39-51 and 91-40-20. Canadian concurrence has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6430.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-357, adopted April 4, 1988, and released June 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 657-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Wisconsin by removing Channel 249A and adding Channel 249C2 for Rice Lake.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15812 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 661**

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off The Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces an adjustment to recreational ocean salmon management measures in the area from the Orford Reef Red Buoy, Oregon, to Horse Mountain, California. The adjustment modifies the daily bag limit in this area from two salmon of any species to one salmon of any species, and establishes the gear restriction that no person may use more than one rod and line while recreationally fishing between the Oregon-California border and Point Delgada (40°01'24" N. lat.). The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife (ODFW), and the California Department of Fish and Game (CDFG), that the adjustment is necessary to avoid exceeding the chinook quota established in the preseason announcement of 1988 management measures. This action is intended to slow the catch of chinook salmon, extend the recreational season in this area, and ensure conservation of chinook salmon.

EFFECTIVE DATES: Modification of the recreational daily bag limit from the Orford Reef Red Buoy, Oregon, the Horse Mountain, California, and establishment of a gear restriction from the Oregon-California border to Point Delgada, California, is effective at 0001 hours local time, July 12, 1988. Comments on this notice will be received through July 20, 1988.

ADDRESSES: Comments may be mailed to Rolland A. Schmitt, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. In the management measures for 1988 effective on May 1, 1988 (53 FR 16002, May 4, 1988), NOAA announced that the 1988 recreational fishery for all salmon species in the area from the Orford Reef Red Buoy, Oregon, to Horse Mountain, California, would begin on May 28 and continue through the earlier of September 11 or attainment of the preseason reservation (quota) of 55,000 chinook salmon. The recreational fishery in this area has a daily bag limit of two salmon of any species and the gear restriction that no person may use more than one rod and line while fishing off Oregon.

Based on the best available information, the recreational fishery catch in the area from the Orford Reef Red Buoy, Oregon, to Horse Mountain, California, is estimated to be about 22,700 chinook salmon through June 28, 1988. It is projected that the quota of 55,000 chinook salmon will be reached well in advance of the scheduled September 11 closing date unless inseason action is taken to slow the catch of chinook salmon and extend the recreational season in this area. Such action is provided for by the regulations at 50 CFR 661.21(b)(1)(iii)-(iv) which authorize changes in recreational bag limits and establishment or modification of gear restrictions.

Therefore, NOAA issues this notice to adjust the recreational salmon fishery in the exclusive economic zone (EEZ) from the Orford Reef Red Buoy, Oregon, to Horse Mountain, California, by modifying the daily bag limit from two

salmon of any species to one salmon of any species in this area, and establishing the gear restriction that no person may use more than one rod and line while recreationally fishing from the Oregon-California border to Point Delgada (40°01'24" N. lat.) effective 0001 hours local time, July 12, 1988. The restriction that no more than 6 fish may be retained in 7 consecutive days remains in effect in the EEZ.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, ODFW, and CDFG regarding this inseason adjustment of the recreational fishery.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 11, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15907 Filed 7-11-88; 5:05 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish from domestic annual processing (DAP) to joint venture processing (JVP) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intent of this action is to assure optimum use of these groundfish by allowing continued retention of Pacific ocean perch (POP) and "other rockfish" by JVP fisheries in the Aleutians Islands subarea of the Bering Sea and Aleutian Islands.

DATES: Effective July 11, 1988.

Comments will be accepted July 28, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine

Fisheries Service, P.O. Box 1868, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT:
Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the U.S. exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and is implemented by rules appearing at 50 CFR 611.93 and Part 675.

The total allowable catch (TAC) for various groundfish species is apportioned initially among domestic annual harvest (DAH), reserves and the total allowable level of foreign fishing (TALFF). The reserve amount, in turn, is to be apportioned to TALFF and/or DAH during the fishing year, under §§ 611.93(c) and 675.30(b) respectively. As soon as practicable after April 1, June 1, August 1 and on such other dates as are necessary, the Secretary of Commerce will apportion to DAH all or

part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, and apportion to JVP the part of DAP that he determines will not be harvested by U.S. vessels and delivered to U.S. processors during the remainder of the year, unless such apportionments would adversely affect the conservation of groundfish resources or prohibited species.

The initial specifications of DAP for 1988 were based on the projected needs of the U.S. processing industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director), to fishermen and processors in October 1987. After 15 percent of the Bering Sea and Aleutian Islands (BSAI) total allowable catch (TAC) was placed in the non-specific reserve, as required at § 675.20(a)(3), the initial specifications for DAP were determined, and the remaining amounts were provided to JVP (53 FR 894, January 14, 1988). No initial specification was provided for TALFF because DAH requirements exceeded TAC.

On January 14, JVP in the Bering Sea and Aleutian Islands subareas was supplemented by a total of 604 mt of the non-specific reserve to provide

necessary bycatch of Greenland turbot, Pacific ocean perch, rockfish, sablefish, and squid. On April 14 (53 FR 12772, April 19, 1988), JVP was supplemented by 24,000 mt of the non-specific reserve to provide additional amounts of yellowfin sole, "other flatfish" and Pacific cod in order to allow joint venture operations to continue without interruption. At its April meeting, the Council recommended that the Regional Director supplement the JVP for pollock in the Bering Sea by 100,000 mt. On May 5 (53 FR 18552, May 10, 1988), JVP was supplemented by 135,000 mt of the non-specific reserve to provide the recommended amount of pollock and necessary bycatch amounts of Greenland turbot, "other flatfish," Pacific cod, and "other species." On May 20 (53 FR 19303, May 25, 1988) JVP was supplemented by 95,000 mt of pollock and 1,000 mt of arrowtooth flounder from the non-specific reserve, and DAP was supplemented by 10,000 mt of "other flatfish" from the non-specific reserve. On June 17 (53 FR 23402, June 22, 1988), JVP was supplemented by 6,750 mt of pollock and 20 mt of Greenland turbot from the non-specific reserve.

Reapportionment (Table 1)

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons]

		Current	This action	Revised
POP (Aleutian Is. subarea)	DAP	5,100	-1,000	4,100
TAC=6,000; ABC=16,600	JVP	441	+1,000	1,441
"Other Rockfish" (Al. Is. subarea)	DAP	935	-200	735
TAC=1,100; ABC=1,100	JVP	165	+200	365
Totals (TAC=2,000,000)	DAP	6,035	-1,200	4,835
	JVP	1,171,284	+1,200	1,172,484
	Reserves	27,296		27,296

The following actions are taken by this notice to reapportion groundfish from DAP to JVP fisheries.

To the BSAI JVP: In the Aleutian Islands subarea, nine U.S. catcher boats delivering fish to six foreign processors are conducting directed fisheries on Atka mackerel and have intermittently experienced high bycatch amounts of POP and "other rockfish". At current catch rates, the current JVPs of Aleutian Islands subarea POP and "other rockfish" are in danger of being reached and exceeded in the near future. Should either JVP be reached, POP or "other rockfish" would be required to be discarded, resulting in wastage of high-value species and reduced income to U.S. fishermen who would otherwise be

paid for retained and processed amounts.

The current DAP catch (173 mt) of Aleutian Islands subarea POP is only 3 percent of its 5,100 mt DAP quota; in 1987 the DAP catch was only 728 mt, or 11 percent of its 6,786 mt quota. The current DAP catch (16 mt) of Aleutian Islands subarea "other rockfish" is only 2 percent of its 935 mt quota; in 1987 the DAP catch (143 mt) was only 14 percent of its 1,001 mt quota. For these reasons, the Regional Director has determined that the current DAP amounts for Aleutian Islands subarea POP and "other rockfish" are excess to DAP needs in 1988. Therefore, 1,000 mt of the DAP amount for POP is transferred to

JVP, and 200 mt of the DAP amount for "other rockfish" is transferred to JVP.

These apportionments do not result in overfishing of Aleutian Islands subarea POP or "other rockfish" stocks, as the resulting species TACs do not exceed their ABCs.

Classification

This action is taken under the authority of § 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit

domestic fishermen who otherwise would have to discard substantial amounts of POP or "other rockfish" if nonretention was required as a result of achieving previously specified JVP amounts. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 8, 1988.

Richard H. Schaeffer,
Director of Office of Fisheries Conservation
and Management, National Marine Fisheries
Service.

[FR Doc. 88-15885 Filed 7-12-88; 4:25 pm]

BILLING CODE 3010-32-01

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

Expenses and Assessment Rate for Dried Prunes Produced in California

AGENCY: Agricultural Market Service.
ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 993 for the 1988-89 fiscal year established under the marketing order for dried prunes produced in California. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the Prune Marketing Committee (committee) and submitted to the U.S. Department of Agriculture for approval. The members of the committee are handlers and producers of regulated prunes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by July 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 98456, Room 2085-S, Washington, DC 20090-8456. Comments should reference the date and page number of this issue of the

Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 98456, Room 2525-S, Washington, DC 20090-8456; telephone (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 993 (7 CFR Part 993), regulating the handling of dried prunes produced in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 16 handlers of prunes grown in California, and approximately 1,200 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of prune handlers and producers may be classified as small entities.

The marketing order requires that assessment rates for a particular fiscal year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and

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submitted to the U.S. Department of Agriculture for approval. The members of the committee are handlers and producers of regulated prunes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of assessable prunes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met on June 28, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$248,320 and an assessment rate of \$1.60 per salable ton of prunes. In comparison, 1987-88 marketing year budgeted expenditures were \$250,848 and the assessment rate was \$1.52 per ton under M.O. 993. Assessment income for 1988-89 is estimated at \$248,320 based on a crop of 155,200 salable tons of prunes.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. Further, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 993

California, Dried prunes, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that a new § 993.339 be added as follows:

PART 993—[AMENDED]

1. The authority citation for 7 CFR Part 993 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 993.339 is added to read as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

§ 993.339 Expenses and assessment rate.

Expenses of \$248,320 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at \$1.60 per ton for salable dried prunes for the 1988-89 crop year ending July 31, 1989.

Dated: July 11, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-15900 Filed 7-13-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 80475-8075]

U.S. Trade in Services; Revisions in Requirements for Exemption From Reporting in the BE-29 Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules to change the exemption requirements for the annual BE-29 survey of foreign ocean carriers' expenses in the United States. The survey is mandatory and is conducted pursuant to the International Investment and Trade in Services Survey Act.

The proposed rules will amend 15 CFR Part 801, as amended. They implement changes in exemption criteria requested by U.S. agents that represent foreign ocean carriers in the United States.

DATE: Comments on the proposed rules will receive consideration if submitted in writing on or before August 29, 1988.

ADDRESS: Comments may be mailed to the Office of the Chief, Balance of Payments Division (BE-58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room 407, Tower Building, 1401 K Street, NW., Washington, DC 20006 between 9 a.m. and 4 p.m. Comments received will be available for public inspection in Room 407, Tower Building between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Anthony J. Di Lullo, Assistant Chief, Balance of Payments Division (BE-56), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; Phone (202) 523-0621.

SUPPLEMENTARY INFORMATION: The proposed rules will change the exemption criteria for reporting in the BE-29 survey of foreign ocean carriers' expenses in the United States. The changes were prompted by requests from four regional associations of steamship agents and ship owners and brokers. The associations said that agents were expanding excessive amounts of time in searching records to determine whether they were exempt from reporting.

The revision in the "Exemption" section is intended to reduce the amount of time expended by agents to determine eligibility for exemption from reporting by introducing alternative criteria. Some association members suggested that small agents (agents that were not major representatives of foreign ocean carriers) would probably handle less than forty port calls per year by foreign ocean carriers, and it is simpler to count the number of port calls by foreign ocean carriers that the agent handled than to tabulate the expenses of foreign carriers it handled to determine exemption eligibility. Thus, the revised criteria exempt an agent from reporting if the agent handled less than forty port calls by foreign ocean carriers in a given year. If an agent handled more than forty port calls by foreign ocean carriers, then the agent must report unless total expenses were less than \$250,000. Also, agents are no longer required to conduct a manual search of records. The determination of whether an agent handled more than \$250,000 in port call expenses of foreign ocean carriers may be based on the judgement of knowledgeable persons in the agent's firm who can identify such transactions without conducting a manual search of records. Previously, the sole criterion for exemption was that covered expenses must be less than \$500,000.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

- (1) An annual effect on the economy of \$100.0 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Executive Order 12612

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act. The existing BE-29 survey has been approved by OMB for use through September 30, 1988 (OMB No. 0608-0012). The paperwork to revise this survey and to incorporate other changes requested by the associations has been submitted to OMB. Comments regarding the collection of information requirements may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Bureau of Economic Analysis, Washington, DC 20503.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this proposed rulemaking because it will not have a significant economic impact on a substantial number of small entities. The exemption levels were revised to ensure that small businesses are excluded from reporting.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: April 8, 1988.

Allan H. Young,
Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR Part 801 is amended as follows:

PART 801—[REVISED]

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101-3106, and E.O. 11961, as amended.

2. Section 801.9(b)(1)(ii) is revised to read as follows:

§ 801.9 Reports required.

(b) * * *

(1) * * *

(ii) *Exemption.* Any U.S. person otherwise required to report is exempted from reporting if the total number of port calls by foreign vessels handled in the reporting period is less than forty and total covered expenses are less than \$250,000. For example, if an agent handled less than 40 port calls in a calendar year, the agent is exempted from reporting. If the agent handled more than 40 calls, the agent must report unless covered expenses for all foreign carriers handled by the agent were less than \$250,000. The determination of whether a U.S. person is exempt may be based on the judgment of knowledgeable persons who can identify reportable transactions without conducting a detailed manual records search.

[FR Doc. 88-15822 Filed 7-13-88; 8:45 am]
BILLING CODE 3810-06-30

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

Customs Regulations Amendments Concerning the Reporting Requirements for Aircraft

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to implement a portion of recent legislative changes relative to the arrival of aircraft. These changes will enhance Customs enforcement of the controlled substances and currency reporting laws and assist in preventing the importation of merchandise contrary to law. Certain information regarding the passengers on an aircraft arriving in the U.S. from a

foreign location will generally be required to be submitted to Customs prior to the arrival of the aircraft at the first port of entry. This will permit Customs to query the Treasury Enforcement Communications System (TECS) prior to the arrival of air passengers and to thereby more efficiently and effectively process those persons.

DATE: Comments must be received on or before September 12, 1988.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229. Comments relating to the information collection aspects of the proposed rule may be addressed to Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: (Operational matters) Robert Heiss, Office of Passenger Enforcement and Facilitation (202)-566-5607 or (Legal matters) Claib Cook, Office of the Chief Counsel (202)-566-2482.

SUPPLEMENTARY INFORMATION:

Background

The Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) (the Act), made various changes to the Tariff Act of 1930 relating to the arrival in the U.S. and the reporting to Customs of persons and transportation conveyances; penalties and search and seizure of persons and conveyances; forfeiture and disposition of articles and conveyances; the Customs Forfeiture Fund; aviation smuggling; preclearance; and investigation matters such as records production, undercover Customs operations, informer compensation, and the exchange of information with domestic and foreign Customs and law enforcement agencies. The reporting requirements are consolidated in section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), which provides, in pertinent part, that the pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

This document implements a portion of the arrival and reporting provisions of the Act as to aircraft arriving from a foreign location and carrying passengers. The aircraft pilot, or person authorized on his behalf, will be

required to provide a list of passengers, along with their respective dates of birth and passport numbers, to Customs at the airport of first arrival prior to the arrival of the aircraft. Some of this information is already collected by airlines for their own revenue purposes or is otherwise available. Passenger names are presently listed by flight number in the airlines' computer based reservation systems. Also, airlines generally check the passports of passengers departing foreign locations for a U.S. destination in order to determine their likelihood of admission to the U.S. for immigration purposes. Therefore, date of birth information which appears in the passport and the passport number are available to the airlines in the normal course of business. This information can be readily placed in the reservation system flight information record and electronically transmitted to U.S. Customs at the port of first arrival, along with other currently required flight arrival information, so that it will be received prior to the arrival of the flight to which it relates.

The Customs Service recognizes that some flights arrive in the U.S. from locations for which a passport is not required. The airlines will not be required to submit passport numbers for persons arriving in the U.S. from such locations with the flight arrival information. Although the Customs Service recognizes that in such cases the airlines will not have a passport available from which to obtain the passengers' dates of birth, it is anticipated that the collection of this information can be accomplished at the time the ticket is purchased. We understand that a substantial amount of the travel to the U.S. from locations for which a passport is not required actually originates in the U.S. with tickets purchased at domestic locations. We, therefore, believe that date of birth information may be collected without significant difficulty at the time of original ticket sale and placed in the airline flight reservation system with other flight information for later retrieval. It is anticipated that the information being required will only be retrievable by airline flight number and date of arrival.

Flights carrying only persons who have been precleared at a location in a foreign country by U.S. Customs officers stationed there will not be required to submit a list of passengers.

The procedures established by this amendment will permit Customs to query the Treasury Enforcement Communication System (TECS) and to

thereby more efficiently and effectively process arriving air passengers.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, Customs Service Headquarters, 1301 Constitution Ave., NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information requirements contained in § 122.42(e) are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501), and have been submitted to the Office of Management and Budget (OMB) for review and comment pursuant to 44 U.S.C. 3504(h). Public comments relating to the information collection aspects of the proposal should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503. A copy of the comments to OMB should also be sent to Customs at the address set forth in the ADDRESS portion of this document.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs

Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Air transportation, Aircraft, Airports, Cuba, Freight.

Proposed Amendments

It is proposed to amend Part 122, Customs Regulations (19 CFR Part 122, published in the Federal Register of March 22, 1988 (53 FR 9285)), as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The general citation of authority for Part 122 would continue as presently stated.

Authority: 5 U.S.C. 301, 19 U.S.C. 60, 1433, 1436, 1459, 1590, 1594, 1624, 1644, 49 U.S.C. App. 1509.

2. It is proposed to amend § 122.42 by revising paragraph (c) and adding a new paragraph (e) to read as follows:

§ 122.42 Aircraft entry.

(c) *Delivery of forms.* When the aircraft arrives, the aircraft commander or agent, having already complied with paragraph (e) as to a listing of passenger names, shall deliver any required forms to the Customs officers at the place of entry at once.

(e) *Passenger information.* The aircraft commander or agent shall provide a listing of passengers, along with their respective dates of birth and passport numbers, to the district director in charge of the port of entry where the airport of first arrival is located. The listing of passengers shall be presented on a flight by flight basis and shall be provided at least one hour prior to the scheduled arrival of the flight at the first port of entry. Such a listing need not, however, be submitted for flights carrying only persons who have been examined in foreign countries in accord with § 148.22 of this chapter. Further, passport numbers need not be furnished for persons arriving from locations for which a passport is not required.

William von Raab,
Commissioner of Customs.

Approved: May 24, 1988.

Francis A. Keating II,
Assistant Secretary of the Treasury
[FR Doc. 88-15874 Filed 7-13-88; 8:45 am]
BILLING CODE 4820-02-30

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Silicon Electrical Steel

AGENCY: Customs Service, Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: On January 4, 1988, a petition, pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), was filed with the U.S. Customs Service on behalf of Armco, Inc. and Allegheny-Ludlum Steel Corporation. The petition challenges the classification of certain silicon steel toroids (strips of electrical steel arranged in a donut shape), as unfinished parts of transformers in item 682.60, Tariff Schedules of the United States (TSUS). The articles in issue were the subject of a ruling letter of December 23, 1986 (file 077880).

The petitioners are domestic producers of grain-oriented silicon steel which is said to be the same as the silicon electrical steel. The petitioners request that the Customs Service reconsider its determination and hold that the cutting and stacking of electrical steel sheet or strip into toroids does not result in an identifiable, unfinished part of a transformer, and, therefore, that toroidal stacks should be classified as electrical steel in items 607.9205, 607.9210, 608.2500, or 608.3900, TSUS Annotated (TSUSA).

DATE: Comments must be received on or before September 12, 1988.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Valentine, Commercial Rulings Division, U.S. Customs Service, (202)-566-8181.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1986, the Customs Service ruled (file 077880) that the processing of silicon steel coil into toroids was sufficient to identify each toroid as a distinct, unfinished core for a transformer, and, therefore, that toroids were classifiable as parts of transformers in item 682.60, Tariff Schedules of the United States (TSUS). The processing consisted of the following operations: Cutting to length, layering or rewinding the sheets in a

staggered manner to allow air gaps at specific points in each layer, and then riveting the end to maintain the shape.

The toroids were further processed as follows: forming into a rectangular shape, annealing to remove stress, disassembly and reassembly around a coil, addition of insulating material, and binding with a plastic belt. The finished products were cores for electrical transformers.

On January 4, 1988, a petition, pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), was filed with the U.S. Customs Service on behalf of Armco, Inc. and Allegheny-Ludlum Steel Corporation. The petition challenges the classification of certain silicon steel toroids (strips of electrical steel arranged in a donut shape), as unfinished parts of transformers in item 682.60, TSUS.

The petitioners are domestic producers of grain-oriented silicon steel which is said to be the same as the silicon electrical steel. The petitioners request that the Customs Service reconsider its determination and hold that the cutting and stacking of electrical steel sheet or strip into toroids does not result in an identifiable, unfinished part of a transformer, and, therefore, that toroidal stacks should be classified as electrical steel in items 607.9205, 607.9210, 608.2500, or 608.3900, TSUS Annotated (TSUSA).

The petitioners allege the following:

(1) The facts presented to Customs in the request for the December 23, 1986 ruling were inadequate to show that there is sufficient processing of the electrical steel after its exportation from its country of manufacture and prior to its importation into the U.S. to change the steel sheet and strip into a part of a transformer. In this regard, the petitioners note that the electrical steel sheet and strip have not been materially advanced in condition beyond that of a basic steel shape prior to importation. It notes that electrical steel wound into a toroidal shape must undergo substantial processing after importation and before the steel becomes a part of a transformer, whether finished or unfinished.

(2) The cutting and stacking process is minimal and does not affect the condition of the electrical steel as a mere material in part 2 of schedule 6, TSUS. The petitioners note that Headnote 1(iv) of Part 2, Schedule 6, TSUS, excludes "parts of articles" from coverage under Part 2, which encompasses metals in basic shapes and forms. The article in question must be classifiable simultaneously as a material and as an identifiable part for Part 2 to be operative. The petitioners conclude

that the classification of a basic shape as a part can only be accomplished when the article can be classified as a discrete part in the first instance.

(3) The electrical steel remains classifiable as a material because substantial additional processing is necessary after the stacked toroids are formed. In this regard the petitioners note that the electrical steel, as imported, does not possess the shape, size and all of the necessary characteristics of an unfinished part; nor has it acquired the individuality necessary to identify it as a part in its unfinished state.

(4) The policy reasons for the voluntary restraint arrangements (VRAs) require that the toroids be classified as a material under a tariff provision subject to the VRAs. The petitioners note that electrical steel sheet and strip are covered in a product specific category by the VRA between the U.S. and Japan under which Japan has agreed to limit the quantity of certain steel products which may be exported from Japan for shipment to the U.S. The petitioner further notes that the VRA was negotiated pursuant to the President's Steel Import Relief Program of September 23, 1984, which it states was designed to "remedy pervasive unfair trade in steel through the restraint of steel imports" and to thereby "encourage American industries and to protect America labor."

If the petition is granted and electrical steel toroids classified as requested, they may be subject to a higher rate of duty than they would have been under the referenced Customs determination, which held that they were unfinished parts of transformers rather than steel products. In addition, the electrical steel sheet and strip which form the toroids could become subject to quantitative limits imposed pursuant to a VRA if the sheet or strip is the product of a country which is a party to a VRA with the U.S. If subject to a VRA, the importer would be required to produce a certificate by the country of production that the quantity being exported to the U.S. is within the established quantitative limits.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the classification issue.

The domestic interested party petition, as well as comments received in response to this notice, will be available for public inspection in accordance with the Freedom of

Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:30 on normal business days, at the Regulations and Disclosure Law Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2324, Washington, DC 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development. Michael H. Lane,

Acting Commissioner of Customs,

June 23, 1988.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88-15875 Filed 7-13-88; 8:45 am]

BILLING CODE 4820-02-8

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Iowa Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to the repeal of an exemption from permitting requirements of surface coal mining operations of one half acre or less in size.

This notice sets forth the times and locations that the Iowa program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and procedures that will be followed

regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. August 15, 1988. If requested, a public hearing on the proposed amendment will be held on August 8, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., on July 29, 1988.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below. Copies of the Iowa program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374-5527.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343-5492.

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, East 9th and Grand Streets, Des Moines, Iowa 50319, Telephone: (515) 281-6142.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office at the address or telephone number listed in "ADDRESSED".

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 1981, the Secretary of Interior approved the Iowa program. Information regarding the general background on the Iowa program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981, Federal Register (46 FR 5885). Subsequent actions taken with regard to the Iowa Program and program amendments can be found at 30 CFR 915.15.

II. Proposed Amendment

By letter dated June 9, 1988, Iowa submitted a proposed amendment to its permanent regulatory program under SMCRA (Administrative Record No. IA-

305). Iowa submitted the proposed amendment in response to a June 15, 1987, letter that OSMRE sent to inform Iowa of the notice of suspension in the Federal Register (52 FR 21228) that repealed the two-acre exemption at 30 CFR 700.11. The State statute that Iowa proposes to amend is section 83.28, subsection 2, of the Iowa Code 1987. It is amended by striking the subsection on the one half acre exemption.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendment proposed by Iowa satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Iowa program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. July 29, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting

the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: June 30, 1988.

Raymond L. Lowrie,
Assistant Director, Western Field Operations.
[FR Doc. 88-15798 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3414-2]

Approval and Promulgation of Air Quality Implementation Plans; State of New Mexico, Removal of Federal Assistance Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On August 31, 1987, the Albuquerque City Council adopted ordinances to govern the operation of a vehicle inspection and maintenance (I/M) program and to provide the necessary funding for the administration of the I/M program. Subsequently, Bernalillo County adopted similar ordinances. On May 13, 1988, the City conducted a public hearing and adopted the final I/M regulations. With this notice, EPA is proposing removal of only the limitations on federal funding assistance in New Mexico. These funding restrictions are applied to highway and air program grants pursuant to section 176(a) of the Clean Air Act (CAA). The construction moratorium under section 110(a)(2)(I) will remain in effect until a complete SIP revision for the Bernalillo County carbon monoxide (CO) problem is submitted by the State of New Mexico and approved by EPA. EPA is proposing to remove the federal funding restrictions because, by adopting legal authorities to implement and to provide adequate funding to administer the I/M program, the City of Albuquerque, Bernalillo County, and the State of New Mexico have initiated reasonable efforts to submit a legally enforceable I/M

program, which is an essential portion of the State Implementation Plan (SIP) for Bernalillo County for attainment of the National Ambient Air Quality Standard (NAAQS) for CO. EPA will not finalize this action unless the program design elements and regulations are submitted and appear approvable to EPA.

This notice solicits comments on EPA's proposal to remove the funding restrictions and EPA's finding that the State of New Mexico is making reasonable efforts to submit the required plan.

DATE: Written comments must be submitted by August 15, 1988.

ADDRESSES: Written comments should be sent to the address below:

Gerald Fontenot, Chief, Air Programs Branch (6T-A), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Copies of all materials relating to EPA's action may be inspected during normal business hours at the following locations:

Air Programs Branch (6T-A), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Air Quality Bureau, Environmental Improvement Division, 1190 Saint Francis Drive, Harold Runnels Building, Santa Fe, New Mexico 87504-0968.

Air Pollution Control Division, City of Albuquerque, 1 Civic Plaza, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Gerald Fontenot, Air Programs Branch (6T-A), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 855-7204.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a) of the CAA, the State of New Mexico submitted a Part D SIP in January 1979, which demonstrated that the CO standard could not be attained by December 31, 1982, in Bernalillo County. (A Part D SIP is a SIP submitted by the State in order to meet the requirements of Part D of Title I of the Clean Air Act, as amended in 1977.) Consequently, the State of New Mexico requested and received an extension to December 31, 1987, to attain the CO standard in this area. The State was required to submit a SIP revision in 1982 which would demonstrate attainment of the CO standard by December 31, 1987. The SIP was required to include an I/M program that met EPA's program specifications as

outlined in the January 22, 1981 policy for extension area SIPs (47 FR 7182).

The State of New Mexico submitted the 1982 SIP for attainment of the CO NAAQS in Bernalillo County on June 28, 1982. On July 1, 1983 (48 FR 30366), EPA approved the 1982 SIP for attainment of the CO NAAQS in Bernalillo County, including the provisions for an I/M program in Bernalillo County.

On January 3, 1983, the I/M program in Bernalillo County began operation. However, on January 4, 1983, a suit was filed in a New Mexico State District Court to stop the I/M program on both statutory and constitutional grounds. The New Mexico Supreme Court issued a final ruling on the suit in March 1984 concluding that the City of Albuquerque and Bernalillo County did not have the authority to collect an inspection fee. Following the ruling that no I/M fee could be collected to fund the program, the Albuquerque City revoked Ordinance No. 49-1988, governing the operation of the I/M program, on March 28, 1984. The inspection facilities for the I/M program closed on March 28, 1984.

On September 4, 1984, EPA published a notice in the *Federal Register* (49 FR 34866) proposing to disapprove the I/M portion of the 1982 CO SIP for Bernalillo County and to impose both funding sanctions under section 170(a) of the CAA and a construction ban under section 110(a)(2)(I). Subsequently, in response to requests by the City of Albuquerque, State of New Mexico and other interested parties a public hearing on the proposed EPA action was held on December 4, 1984. A rulemaking which finalized the disapproval of the I/M plan, authorized a construction moratorium, and imposed funding restrictions on highway and air program grants was published by EPA on March 4, 1985 (50 FR 8616). The sanctions became effective on April 3, 1985. Challenges to EPA's rulemaking action were dismissed by the United States Court of Appeals for the Tenth Circuit in *New Mexico Environmental Improvement Division vs. Thomas*, 789 F.2d 825, on April 23, 1986.

The March 4, 1985, notice also outlined the conditions which must be met for EPA to remove the funding restrictions. Either of the following conditions must be met:

(a) The State submits evidence that it has taken concrete steps toward restarting its I/M program in an expeditious manner, including the submittal of adequate legal authority and the institution of an adequate funding mechanism, or

(b) The County is formally redesignated by EPA to attainment for CO.

On August 4, 1988, the Albuquerque City Council adopted an ordinance to govern the operation of the I/M program. Subsequently, Bernalillo County adopted a similar ordinance.

The ordinance which provided funding for the I/M program was based on a two cent gasoline tax to be imposed in Bernalillo County. The tax ordinance could not be imposed without a referendum vote of Bernalillo County citizens, scheduled for November 4, 1988. The referendum was defeated and the ordinances revoked.

Due to the failure of the funding referendum and lack of any further action to reestablish the I/M program, section 316(b) funding restrictions on EPA sewage treatment facility grants were proposed in the *Federal Register* on February 25, 1987, (52 FR 5556).

B. I/M Activities

On August 31, 1987, the City Council adopted ordinances to govern and fund a decentralized I/M program. The County Commission adopted similar ordinances on October 13, 1987. On May 13, 1988, the City/County Air Quality Control Board conducted a public hearing and adopted the final I/M regulations.

The ordinances and regulations provide for the inspection of vehicles for excess tailpipe emissions of CO and hydrocarbons (HC), the presence and proper connection of a catalytic converter, air pump or aspiration system, fuel inlet restrictor, oxygen sensor, and presence of lead in the tailpipe of vehicles requiring unleaded gasoline. The inspection is to be performed biennially on 1975 and newer model year, gasoline powered, four wheeled vehicles with a gross vehicle weight of 26,000 pounds or less. Diesel and off-road vehicles will be exempted. Although Bernalillo County currently attains the ozone NAAQS, HC standards will be set to help maintain the ozone standard.

The program enforcement will be registration based. The ordinance requires the Director of the I/M program to enter into a binding agreement with the New Mexico Motor Vehicle Division whereby motor vehicles registered to an owner who resides or has principal place of business within Bernalillo County will be eligible for re-registration only if the owner presents a valid certificate of inspection with registration application. On-street enforcement will be performed by Police in conjunction with enforcement of other traffic violations.

The program will not charge a fee for inspections. Each licensed inspection

facility can charge what the market will bear for the inspections performed. The charge must be prominently posted in each inspection station. The administration of the program will be funded from general revenue funds and inspection station license fees.

The I/M program seems generally viable. However, many critical details of the local program design such as enforcement, equipment requirements, quality assurance plan, and repair requirements are not yet finalized. Without such details, EPA cannot fully evaluate the acceptability of the general plan. EPA will not finalize this proposed action until the adopted regulations and the program design elements have been submitted and are preliminarily determined to be approvable by EPA.

C. EPA Findings

Based upon the City's and County's adoption of ordinances to implement and fund the necessary I/M program in the nonattainment area, the approval of regulations at public hearing, and the submission of draft emission analyzer specifications, EPA is proposing to find that New Mexico is now making reasonable efforts to submit a CO attainment plan for Bernalillo County that considers each of the elements in section 172 of the Act. Therefore, EPA is proposing to remove the funding assistance limitations imposed pursuant to section 176(a) of the Act, to be finalized only when other program development activities are complete and appear approvable. Specifically, this action is proposing to remove the funding restrictions affecting highway grants in Bernalillo County and air pollution control program grants for the State of New Mexico Health and Environment Department and the City of Albuquerque/Bernalillo County Air Quality Control Board that EPA imposed on March 4, 1985, (50 FR 8616). The construction moratorium under section 110(a)(2)(I) will remain in effect until a complete SIP revision for the Bernalillo County CO problem is submitted by the State of New Mexico and approved by EPA.

This notice is also proposing to withdraw EPA's action of February 25, 1987, (52 FR 5556), which proposed withholding of Federal construction grant funds for sewage treatment facilities under section 316(b) of the CAA.

D. Summary and Request for Comments

EPA is soliciting comments on its proposal to find that reasonable efforts are being made to develop and implement a vehicle inspection and maintenance program for Bernalillo

County which will meet all EPA's requirements, and on its proposal to lift funding restrictions. EPA will consider all comments received within 30 days of the publication of this notice.

E. Miscellaneous

Under 5 U.S.C. 605(b), I certify that this action will not have a significant impact on a substantial number of small entities. (See 48 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice of proposal is issued under the authority of sections 110, 172, 176(a) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7410(d), 7502, 7506(a) and 7601.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

Date: June 1, 1988.

John S. Floeter,
Acting Regional Administrator (6A),
[FR Doc. 88-15635 Filed 7-13-88; 8:45 am]
BILLING CODE 5560-50-M

40 CFR Part 52

[A-1-FRL-3413-B]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Reasonably Available Control Technology for Tech Industries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision defines and imposes reasonably available control technology (RACT) on Tech Industries (Tech) located in Woonsocket, Rhode Island. This revision is necessary to limit volatile organic compound (VOC) emissions from this source. The intended effect of this action is to propose approval of a source-specific RACT determination made by the State in accordance with commitments specified in its Ozone Attainment Plan approved by EPA on July 6, 1983 (48 FR 31026).

This action is being taken in accordance with section 110 of the Clean Air Act.

DATE: Comments must be received on or before August 15, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, EPA Region I,

Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the State submittal and EPA's Technical Support Document for this proposed action are available during normal business hours at the Environmental Protection Agency, Region I, JFK Federal Building, Room 2311, Boston, MA 02203; and the Division of Air and Hazardous Materials, Department of Environmental Management, 75 Davis Street, Cannon Building, Room 204, Providence, RI 02906.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565-3248; FTS 835-3248.

SUPPLEMENTARY INFORMATION: On May 8, 1987 and October 15, 1987, the Rhode Island Department of Environmental Management (DEM) submitted an administrative consent agreement negotiated between that agency and Tech for approval and incorporation into the Rhode Island SIP. The consent agreement establishes and imposes RACT to control VOC emissions from Tech. RACT must be defined for Tech under Rhode Island SIP Regulation No. 15, subsection 15.5, "Miscellaneous Facilities Emitting 100 Tons/Year or More."

Rhode Island Regulation No. 15, subsection 15.5 requires the DEM to determine and impose RACT on otherwise unregulated stationary sources of VOC greater than or equal to 100 tons per year (TPY). EPA approved this subsection of Regulation No. 15 on July 6, 1983 (48 FR 31026) as part of Rhode Island's Ozone Attainment Plan. That approval stipulated that all RACT determinations made by the DEM under subsection 15.5 would be submitted to EPA as source-specific SIP revisions.

Tech manufactures and coats plastic caps and covers for the cosmetics industry. Tech is subject to subsection 15.5 because it is considered a greater than 100 TPY source of VOCs which is not subject to RACT under any other Rhode Island regulation. The DEM has determined that 3.5 pounds VOC/gallon of coating (minus water) is RACT for Tech. This emission limit is consistent with EPA-approved emission limits for plastic parts coaters in Missouri and Oregon. This consent agreement fulfills all of the requirements found in subsection 15.5, as approved by EPA. (For further discussion, see the Technical Support Document prepared on this revision.)

The version of the consent agreement originally submitted to EPA on May 6, 1987 contains language that could be interpreted to allow Tech to bubble to meet the 3.5 pounds VOC/gallon of

coating (minus water) RACT limit. This was not the intent of the DEM. At the time this consent agreement was negotiated, Tech was reformulating each of its coatings to meet 3.5 pounds VOC/gallon of coating (minus water). In the October 15, 1987 letter requesting parallel processing, the DEM stated that the language which could be interpreted to allow Tech to bubble will not be included in the final consent agreement submitted as a formal SIP revision request. If, in the future, Tech chooses to comply with this emission limit on a facility-wide daily basis, the source will have to secure a bubble from the DEM through the negotiation of a separate approval document. The DEM has the authority to issue generic bubbles under subsection 15.4. EPA granted this authority to the DEM on July 6, 1983 (48 FR 31026).

The October 15, 1987 letter from the DEM also includes a statement that provisions 7 and 8 of the consent agreement submitted for parallel processing will not be included in the formal SIP submittal. The deletion of provisions 7 and 8 is necessary in order for EPA to approve the final consent agreement. These provisions could extend Tech's compliance date fourteen months beyond the final compliance date as defined in subsection 15.5.2. That subsection allows a source eighteen months to be in compliance with RACT after it has been notified by the DEM that it is subject to subsection 15.5 as a 100 TPY or greater source of VOCs. Tech was so notified on January 24, 1986, making its final compliance date July 24, 1987. Therefore, prior to final rulemaking by EPA, the DEM must formally submit a SIP revision including a revised final consent agreement for Tech. That consent agreement cannot allow for bubbling or for a compliance date extension beyond July 24, 1987.

EPA is proposing to approve the DEM's request for a SIP revision for Tech, which was submitted on May 6, 1987 and October 15, 1987 for parallel processing. EPA is soliciting public comments on this action. These comments will be considered before taking final action. If no substantial changes are made to the consent agreement in areas other than those cited in this notice, EPA will publish a Final Rulemaking Notice on this revision. Final Rulemaking by EPA will occur only after the DEM formally submits a fully approvable SIP revision to EPA. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the above address.

Proposed Action

EPA is proposing to approve the consent agreement submitted by the DEM as a SIP revision request for Tech in Woonsocket, Rhode Island. The consent agreement requires Tech to meet a RACT emission limit of 3.5 pounds VOC/gallon of coating (minus water). Prior to final rulemaking on this SIP revision, the DEM must amend the consent agreement as described in this notice and formally submit the revised version for approval and incorporation into the SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of section 110(a)(1)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Date: January 20, 1988.

Michael R. Deland,
Regional Administrator, Region I.

Editorial note: This document was received at the Office of the Federal Register July 11, 1988.

[FR Doc. 88-15836 Filed 7-13-88; 8:45 am]

BILLING CODE 5500-50-01

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-30, and 201-32

Electronic Office Equipment Accessibility for Handicapped Employees

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule implements Pub. L. 99-508, the "Rehabilitation Act Amendments of 1986." That statute directed the Secretary of the Department of Education, through the Department's National Institute on Disability and

Rehabilitation Research, and the Administrator of General Services in consultation with the electronics industry to develop and establish guidelines for electronic equipment accessibility designed to ensure that handicapped individuals may use electronic office equipment with or without special peripherals. Initial guidelines were developed in 1987 to implement this Act. Federal Information Resources Management Regulation (FIRMR) Bulletin —, Electronic Office Equipment Accessibility for Handicapped Employees, implements these initial guidelines.

This proposed rule provides mandatory FIRMR coverage regarding office equipment accessibility. It requires that determinations of need and requirements analyses be conducted for all automatic data processing equipment requirements to specifically determine the electronic equipment accessibility requirements of handicapped employees. The proposed rule further provides that the designated senior official may exempt any FIRMR provision not specifically required by executive order or statute that is impeding or obstructing a procurement limited solely to providing technology for handicapped employees. The objective of this regulatory guideline is to enable handicapped users to access and use electronic office equipment.

DATE: Comments are due August 15, 1988.

ADDRESS: Requests for copies of this proposed rule should be addressed to GSA, Office of Information Resources Management Policy, Regulations Branch (KMPR), Project KMP-88-14, Room 3224, 18th and F Sts., NW., Washington, DC 20405. Comments should be submitted to the same address.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich or Mary Anderson, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) The purpose of this amendment is to ensure that Federal handicapped employees are provided with the electronic equipment capability to access and use electronic office equipment.

(2) Changes made in 41 CFR Chapter 201 are explained in the following paragraphs.

(a) In Part 201-1, § 201-1.102 will be amended to add a provision to cite the statutory authority for electronic office equipment accessibility.

(b) In Part 201-30, a new § 201-30.007-2 will be added to provide that

determinations of need and requirements analyses shall be made to specifically identify the needs of handicapped employees. It will also establish policies of equal access for handicapped employees.

(c) In Part 201-32, § 201-32.202 will be revised to provide that procurements of ADPE shall include requirements that ensure electronic equipment accessibility for handicapped Federal employees. It will also provide that any FIRMR provision, other than a provision specifically required by executive order or statute, impeding or obstructing a procurement limited solely to providing technology for handicapped employees, may be exempted from the procurement by the designated senior official.

(3) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. This rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The proposed rule is therefore not likely to have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Parts 201-1, 201-30, and 201-32

Computer technology, Government procurement, Government property management, Telecommunications, Information resources activities, Government records management, Competition, Hearing and appeal procedures.

Dated: June 13, 1988.

Francis A. McDonough,
Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 88-15756 Filed 7-13-88; 8:45 am]

BILLING CODE 5020-35-01

NATIONAL SCIENCE FOUNDATION

45 CFR Part 613

Administrative Regulations; Amendment of Privacy Act Regulations/Exemption of System of Records

AGENCY: National Science Foundation.

ACTION: Proposed rule.

SUMMARY: The National Science

Foundation (NSF) proposes to amend 45 CFR 613.6(a) to apply exemption 5 U.S.C. 552a(k)(5) of the Privacy Act to investigatory material involving applicants for Federal contracts (including grants and cooperative agreements). In addition, the NSF proposes to exempt a new Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system is NSF-50, "Principal Investigator/Proposal File and Associated Records." It includes the investigatory records maintained by NSF when proposals are submitted to the agency and subsequent evaluations of the applicants and their proposals are obtained. The exemption is needed to protect the identity of persons supplying evaluations of NSF applicants and their proposals.

DATE: Comments must be received on or before August 15, 1988.

ADDRESS: Interested persons may submit written comments to Lawrence Rudolph, Assistant General Counsel, Office of General Counsel, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Lawrence Rudolph, (202) 357-9435.

SUPPLEMENTARY INFORMATION: Section 613.6(a) of NSF's Privacy Act regulations, 45 CFR Part 613, presently exempts from disclosure any material which would identify persons supplying references for various types of NSF fellowships. This exemption, effective September 27, 1975, was necessary to maintain the confidentiality of fellowship references so that evaluations continue to be given with complete candor. For identical reasons NSF now proposes to apply the same exemption, 5 U.S.C. 552a(k)(5), to any material which would identify persons supplying evaluations of NSF applicants for Federal contracts (including grants and cooperative agreements) and their proposals.

The new system of records subject to this exemption is NSF-50, "Principal Investigator/Proposal File and Associated Records." It contains the name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material. The provision of the Privacy Act from which the system is to be exempted is 5 U.S.C. 552a(d). Notice of this new system is published in the Notice Section of today's Federal Register.

The addition of this system of records to those already exempted from certain sections of the Privacy Act, and minor revisions to the exemption language itself to encompass applicants for Federal contracts (including grants and cooperative agreements), are the only changes being made to 45 CFR 613.6(a). These changes have been italicized for public convenience and ease of reference.

Under the criteria set forth in Executive Order No. 12291, this rule has been determined not to be a "major rule" requiring a regulatory impact analysis. In addition, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

List of Subjects in 45 CFR Part 613

Privacy.

Pursuant to the authority granted by 5 U.S.C. 552a(f), it is proposed to amend 45 CFR Part 613 by revising § 613.6(a) as set forth below.

Dated: July 6, 1988.

Charles H. Herz,
General Counsel.

PART 613—[AMENDED]

1. The authority for Part 613 continues to read as follows:

Authority: 5 U.S.C. 552a(f).

2. It is proposed to amend 45 CFR Part 613 by revising § 613.6(a) as follows:

§ 613.6 Exemptions.

(a) *Fellowships and other support.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(d) any materials which would disclose the identity of references of fellowship applicants or reviewers of applicants for Federal contracts (including grants and cooperative agreements) contained in any of the following systems of records: (1) Fellowship and Traineeship Filing System, (2) Applicants to Committee on the Challenges of Modern Society Fellowship Program (NATO), and (3) *Principal Investigator/Proposal File and Associated Records.*

[FR Doc. 88-15740 Filed 7-13-88; 8:45 am]

BILLING CODE 7555-01-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Gen. Docket No. 84-467]

Expanded AM Band; Extension of Comment/Reply Period

AGENCY: Federal Communications Commission.

ACTION: Extension of comment/reply comment period.

SUMMARY: This action grants, in part, a motion for extension of time for filing comments and reply comments in response to the *Fourth Notice of Inquiry* in General Docket No. 84-467 (Planning of Broadcasting in the 1605-1705 kHz Band) 53 FR 23426, June 22, 1988. The Association For Broadcast Engineering Standards, Inc. (ABES) requested that the deadline for filing comments and reply comments, currently July 11 and July 26, 1988, respectively, be extended to August 25 and September 20, 1988, respectively, to respond to the numerous technical and allocations issues raised in the *Notice*. The Commission granted a 30 day extension which it believes will provide adequate time to develop a complete record while at the same time permitting this inquiry proceeding to be concluded expeditiously.

DATES: Comments are now due by August 11, 1988, and reply comments by August 26, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Mass Media Bureau (202) 254-3394.

SUPPLEMENTARY INFORMATION: The full text of this commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street, NW., Suite 140 Washington, DC 20037.

Federal Communications Commission
Alex D. Felker,
Chief, Mass Media Bureau.

[FR Doc. 88-15813 Filed 7-13-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-319, RM-6247]

Radio Broadcasting Services; Opelika, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ronald H. Livengood, seeking the allotment of Channel 244A to Opelika, Alabama, as that community's first local FM service. Reference coordinates utilized for Channel 244A at Opelika are 32-38-11 and 85-20-44.

DATES: Comments must be filed on or before August 29, 1988, and reply comments on or before September 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Ronald H. Livengood, P.O. Box 966, Scottsboro, AL 35078.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-319, adopted June 7, 1988, and released July 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15800 Filed 7-13-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-318, RM-6387]

Radio Broadcasting Services; York, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Grantell Broadcasting Company, licensee of Station WSLY(FM), Channel 257A, York, Alabama, seeking the substitution of Channel 258C2 for Channel 257A and modification of its license accordingly. The proposal is feasible if Station WHOD(FM), Channel 285A, Jackson, Alabama is modified to another Class A channel, as proposed in MM Docket No. 87-216. Reference coordinates for Channel 285C2 at York are 32-24-04 and 88-06-41.

DATES: Comments must be filed on or before August 29, 1988, and reply comments on or before September 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: William B. Grant, Grantell Broadcasting Company, Route 1, Box 400B, York, AL 36925.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-318, adopted June 7, 1988, and released July 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is

no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15802 Filed 7-13-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-317, RM-6328]

Radio Broadcasting Services; Lenwood, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Gary Albarez, seeking the allotment of Channel 297A to Lenwood, California, as that community's second local FM service. Reference coordinates utilized for this proposal are 34-52-30 and 117-00-48.

DATES: Comments must be filed on or before August 29, 1988, and reply comments on or before September 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Ave., NW., Washington, DC 20036-5339.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-317, adopted June 7, 1988, and released July 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service,

(202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court reviews, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15804 Filed 7-13-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-314, RM-6266]

Radio Broadcasting Services; Kahala'u, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Timothy D. Martz, which proposes to allot Channel 291A to Kahala'u, Hawaii, as its first FM service. Coordinates for the proposal are 19-35-00 and 155-58-09.

DATES: Comments must be filed on or before August 26, 1988, and reply comments on or before September 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy D. Martz, 187 Brookmere Drive, Fairfield, Connecticut 06430, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-314, adopted June 1, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets

Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rule governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-15811 Filed 7-13-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-316, RM-6269]

Radio Broadcasting Services; Lanai City, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Timothy D. Martz, which proposes to allot Channel 284A to Lanai City, Hawaii, as its first local FM service at coordinates 20-49-06 and 156-54-22.

DATES: Comments must be filed on or before August 29, 1988, and reply comments on or before September 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy D. Martz, 187 Brookmere Drive, Fairfield, Connecticut 06430, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of

Proposed Rule Making, MM Docket No. 88-316, adopted June 1, 1988, and released July 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-15805 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-315, RM-6308]

Radio Broadcasting Services; Hawesville, KY

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Harold Wayne Newton, proposing to allot Channel 234A to Hawesville, Kentucky, as its second local FM service, at coordinates 37-54-12 and 86-45-12.

DATES: Comments must be filed on or before August 20, 1988, and reply comments on or before September 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: Harold Wayne Newton, P.O. Box 355, Hawesville, Kentucky 42348, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-315, adopted June 1, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-15807 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-320, RM-6314]

Radio Broadcasting Services; Russellville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Target Communications of Kentucky, Inc., licensee of Station WBVR(FM), Russellville, Kentucky, which seeks to downgrade the facilities for Station WBVR(FM) by substituting Channel 266C1 for Channel 266C at

Russellville and modifying its Class C license accordingly. Coordinates for Channel 266C1 at Russellville are 36-50-40 and 86-55-11.

DATES: Comments must be filed on or before August 29, 1988, and reply comments on or before September 13, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, Fisher, Wayland, Cooper and Leader, 1255 Twenty-third Avenue, NW., Suite 800, Washington, DC 20037-1125 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-320, adopted May 31, 1988, and released July 8, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-15801 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-311, RM-6230]

Radio Broadcasting Services; Richton, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Richton Broadcasting Company, proposing the allotment of FM Channel 243A to Richton, Mississippi, as that community's first FM broadcast service. The coordinates used for this proposal are 31-16-12 and 88-58-18.

DATES: Comments must be filed on or before August 26, 1988, and reply comments on or before September 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: c/o Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-311, adopted May 25, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-15809 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-313, RM-6375]

Radio Broadcasting Services; Eagle River, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Nicolet Broadcasting Inc., licensee of Station WRJO(FM), Channel 232A, Eagle River, Wisconsin, proposing the substitution of Channel 233C2 for Channel 232A and modification of its license to specify operation on Channel 233C2. The proposal could provide the community with its first wide coverage area FM service. A site restriction of 18.9 kilometers (11.7 miles) north of the community is required. The coordinates are 46-05-00 and 89-11-47.

DATES: Comments must be filed on or before August 26, 1988, and reply comments on or before September 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: c/o Mark E. Fields, Esquire, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for petitioner) and Nicolet Broadcasting, Inc., Box 309, Eagle River, WI 54521 (petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-313, adopted May 25, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communication Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-15808 Filed 7-13-88; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket PS-102, Notice 2]

Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.

ACTION: Notice of public hearing.

SUMMARY: This Notice announces the time and place of a public hearing on proposed rules concerning the use of prohibited drugs by persons engaged in sensitive safety and security-related functions involving pipeline facilities.

DATES: The hearing will be held from 9:00 a.m. to 5:00 p.m. August 17, 1988. Persons should give notice of their intent to make oral statements by August 12, 1988.

ADDRESS: The hearing will be held at the Dallas/Fort Worth Airport Marriott Hotel, in Irving, Texas (214) 929-8800.

FOR FURTHER INFORMATION CONTACT: Requests to make a statement should be directed to Linda Craver, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 368-1640. Questions concerning the subject matter of the notice should be directed to Cesar De Leon using the same address and telephone number.

SUPPLEMENTARY INFORMATION: RSPA recently published a notice of proposed rulemaking regarding the use of prohibited drugs by persons who perform sensitive safety and security-related functions involving gas, liquefied natural gas, or hazardous liquid pipeline facilities that are subject to the safety standards in 49 CFR Part 192, Part 193, or Part 195 (53 FR 25892, July 8, 1988). The proposed rules would apply to operators of these pipeline facilities (other than operators of master meter systems).

Under the proposed rules, each operator would have to establish and conduct a written drug testing plan covering its own employees and those of contractors. Testing would be conducted prior to employment, after an accident, randomly, and based on reasonable cause. Operators also would be required to have an Employee Assistance Program to provide education and training about drugs.

RSPA will hold a public hearing chaired by the Administrator of RSPA, and Co-chaired by the Director of OPS on the proposed rules at the time and place stated above under "DATE" and "ADDRESS." The hearing will be open to the public subject to the space available. The hearing will be informal, not a judicial or evidentiary type of hearing. Participants will not be permitted to cross examine persons presenting oral statements, although the hearing officer or RSPA staff may ask clarifying questions.

Interested persons will have an opportunity to present initial oral statements in the order in which requests to do so are received. The time allowed for statements will be at the discretion of the hearing officer, and a speakers roster will be available at the hearing room. After initial oral statements have been presented, those who wish to make rebuttal statements may, if time permits, be given an opportunity to do so in the same order in which the initial statements were made. The hearing will be recorded by a court reporter. A transcript of the hearing will be included in the docket as part of the record of this rulemaking proceeding. Persons who wish to purchase a copy of the transcript should contact the court reporter directly. Further procedures for conducting the hearing will be announced by the hearing officer at the beginning of the hearing.

Persons who wish to make oral statements at the hearing should notify the person whose name appears above under "FOR FURTHER INFORMATION CONTACT" not later than August 12, 1988. Later requests will be accepted only if the statements can be made

during the allotted hearing time. Please give your name and the organization you represent, if any. Indicate the amount of time that is requested for your initial oral statement. Requests for more than 15 minutes of initial speaking time must be justified. Requests for special display equipment will not be granted.

Persons who wish to submit written statements in addition to their oral presentation may do so at the hearing. At least twenty-five copies should be available for distribution. Persons who wish to submit written statements without participating in the hearing may do so by sending them in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Such submissions must be received before the close of the period for public comment on the proposed rules, September 6, 1988.

(49 App. U.S.C. 1672, 1804, and 2002; 49 CFR 1.53)

Issued in Washington, DC, on July 11, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88-15843 Filed 7-13-88; 8:45 am]

BILLING CODE 4910-95-28

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Six-Month Extension of the Proposed Rule for *Boerhavia mathisiana* (Mathis Spiderling)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of proposed rule and comment period.

SUMMARY: The U.S. Fish and Wildlife Service extends the 1-year period on the proposed rule (52 FR 28033; July 10, 1987) for *Boerhavia mathisiana* (Mathis spiderling) for 6 additional months as provided for under section 4(b)(6)(B)(i) of the Endangered Species Act of 1973, as amended. Since publishing the proposed rule in the *Federal Register*, additional specimens annotated as *Boerhavia mathisiana* have been found at the herbarium of the University of Texas at Austin. These specimens provide eight new localities for *Boerhavia mathisiana* and extend the species' range approximately 500 kilometers (310 miles) south into

southern Tamaulipas, Mexico. The extension period will allow time to assess the status of the Mexican populations and to search for additional populations in southern Texas and northeastern Mexico. Comments are solicited.

DATES: With this 6-month extension, the new deadline for the final rule will be January 10, 1989. A new comment period will commence with the publication of this notice and will close August 15, 1988.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Endangered Species Office, U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Charles McDonald, Endangered Species Botanist, Region 2, Office of Endangered Species, 500 Gold Avenue, SW., Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION

Background

Boerhavia mathisiana (Mathis spiderling) is a small perennial herb in the four o'clock family. The species was proposed for listing as endangered on July 10, 1987, (52 FR 28033). At that time the species was known from caliche outcrops at only two localities, these in San Patricio and Live Oak Counties, Texas.

In a comment on the proposal, Ms. Jackie M. Poole of the Texas Natural Heritage Program indicated that specimens of *Boerhavia mathisiana* from Tamaulipas, Mexico, are present in the herbarium of the University of Texas at Austin. The specimens, collected between 1947 and 1982 were mostly identified originally only as *Boerhavia*. Six specimens were annotated as *Boerhavia mathisiana* in January 1986, by Dr. Richard Spellenberg of New Mexico State University during his study of the *Nyctaginaceae* (four o'clock family) for the Chihuahuan Desert flora. Two additional specimens were annotated as *Boerhavia mathisiana* by Poole during her inspection of the other material. The specimens were all collected within a 125 kilometer (78 miles) radius of Ciudad Victoria in southern Tamaulipas. These localities are approximately 500 kilometers (310 miles) disjunct from the two localities in Texas. In addition, the specimen labels indicate the Mexican plants occurred on substrates other than caliche.

In light of this information, more time is needed to locate and assess the status

of *Boerhavia mathisiana* in southern Tamaulipas. Additional searches are also needed to determine if other populations occur in previously unsearched habitat in southern Texas and northeastern Mexico. Therefore, the Service under section 4(b)(6)(B)(i) extends for 6 months the 1-year deadline on *Boerhavia mathisiana*. Future actions on the proposed listing of this species depend on the results of the additional studies. After a thorough analysis of the data, the service will decide either to continue with the final listing of the species or to withdraw the proposal for *Boerhavia mathisiana* as provided under section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended.

Author

The primary author of this notice is Charles B. McDonald, Endangered Species Botanist, Region 2, Office of Endangered Species, 500 Gold Avenue, SW., Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: July 6, 1988.

Susan Rocca,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-15845 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-55-28

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The new England Fishery Management Council (Council) will hold a series of public hearings and provide a comment period to solicit public input regarding proposed measures to be included in Amendment 2 to the

Northeast Multispecies Fishery Management Plan (FMP). Individuals and organizations may comment in writing to the Council if they are unable to attend the hearings.

DATES: The public comment period will close July 29, 1988. See "SUPPLEMENTARY INFORMATION" for dates, times, and locations of the hearings.

ADDRESS: Written comments should be sent to Chairman, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas C. Marshall, Executive Director, New England Fishery Management Council, 671-231-0422.

SUPPLEMENTARY INFORMATION: The Council seeks input from the public on the following proposals scheduled for possible inclusion in Amendment 2 to the FMP. (1) Increases in the minimum sizes of four regulated species: Atlantic cod, from 19 to 21 inches; yellowtail flounder, from 12 to 13 inches; winter flounder, from 11 to 12 inches; and American plaice, from 12 to 14 inches. (2) The establishment of a 9-inch minimum size for redfish. (3) The application of uniform minimum fish sizes to both commercial and recreational fishermen, where minimum sizes of some regulated species currently do not apply to the recreational sector. (4) Indefinite postponement of the schedule increase in mesh size from 5½ to 6 inches in the Georges Bank portion of the regulated mesh area. Nets on all vessels operating anywhere in the regulated mesh area must contain at least 5½ inch mesh throughout the net by October 1, 1989. (5) All vessels operating in the regulated mesh area may have no mesh on board smaller than 5½ inches. (6) An annual extension of the 5½ inch mesh requirement to the Nantucket Shoals area (December 31 through March 31) in order to protect juvenile cod in the winter fishery in that area. (7) Denial of exempted fisheries permits by the Director, northeast Region, to participants in the Exempted Fisheries Program who have not complied with reporting requirements. (8) Establishment of a trip bycatch limit of 25 percent regulated species weight for vessels operating in the Exempted Fisheries Program. (9) A prohibition on trawl vessels entering into or transiting haddock spawning Area II during the period of seasonal closure.

For information gathering purposes, the Council is also seeking comments on several other measures that will not be included in Amendment 2. (a) A prohibition on landing regulated species

that have been filleted as sea. (b) Additional flexibility in timing the winter/spring Exempted Fisheries for whiting and shrimp. (c) The implementation of a flexible area action system to allow the Director, Northeast Region, with the agreement of the Council, to quickly close areas containing concentrations of juveniles of the regulated species on an emergency basis. A summary document will be made available in advance and also distributed at the hearings.

The dates, times, and locations of the public hearings are as follows:

July 18, 1988

7:30 p.m., Holiday Inn Route 25, Riverhead, Long Island, New York.

7:00 p.m., Rockland District High School, 400 Broadway, Rockland, Maine.

July 19, 1988

7:00 p.m., Massachusetts Maritime Academy, Academy Drive, Buzzards Bay, Massachusetts.

7:00 p.m., Holiday Inn By The Bay, 88 Spring Street, Portland, Maine.

July 20, 1988

7:00 p.m., Dutch Inn, Great Island Road, Galilee, Rhode Island.

7:00 p.m., Fuller School, Blackburn Circle, Gloucester, Massachusetts.

Dated: July 6, 1988.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15849 Filed 7-13-88; 8:45 am]

BILLING CODE 3510-22-28

50 CFR Part 662

[Docket No. 80737-4137]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary determination.

SUMMARY: NOAA announces the estimated spawning biomass and preliminary determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) for the 1988-1989 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. Those regulations require this announcement to be made on or about July 1 each year. This action provides data and requests comments for NOAA's determination of the final

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specifications for the 1988-1989 fishing year.

DATE: Comments must be received on or before July 31, 1988.

ADDRESS: Comments should be addressed to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the Southwest Region has made a preliminary determination that the spawning biomass of the central subpopulation of northern anchovy (*Engraulis mordax*) is estimated to be 950,000 metric tons (mt). The biomass estimate is derived from, and is equivalent to, the Egg Production Method measurement, but is based on the Stock Synthesis Model. The Regional Director has made the following preliminary determinations for the 1988-1989 fishing season, applying the formulas in the FMP and in § 662.20 of the implementing rules to calculate the harvest quotas and expected processing levels:

1. The total U.S. harvest quota or optimum yield (OY) of northern anchovy is 144,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 140,000 mt.

a. Of the total reduction harvest quota, 9,072 mt is reserved for the reduction fishery in subarea A (north of Pt. Buchon).

b. The reduction quota for subarea B (south of Pt. Buchon) is 130,928 mt.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt. However, non-reduction fishing is not limited until the total catch in both the reduction and non-reduction fisheries reaches the total harvest quota of 144,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing (DAP) capacity for the reduction and non-reduction industry is 1,621 mt.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. The domestic annual harvest (DAH) capacity, the sum of DAP and JVP, is 1,621 mt.

8. The total allowable level of foreign fishing (TALFF) is 80,903 mt. The FMP states that the TALFF in the U.S. EEZ will be based on the U.S. portion of the OY minus the DAH and minus that amount of expected harvest in the

Mexican fishery zone which is in excess of that allocated by the FMP. The excess Mexican harvest in 1988-1989 is expected to be 62,376 mt. Applying the formula in the FMP results in the following: $[TALFF = (144,900 \text{ mt} - 1,621 \text{ mt}) - (62,376 \text{ mt})]$.

A summary of the information on which this preliminary determination is based has been provided to the Pacific Fishery Management Council. Consultations with the Council will continue through July. In addition, the Regional Director will consider, until July 31, any evidence received from domestic land-based processors that the preliminary DAP should be modified. A final determination will be announced on or about August 1, 1988.

Classification

This action is authorized by 50 CFR Part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 1988.

James E. Douglas, Jr.,
Deputy Assistant Administrator For
Fisheries, National Marine Fisheries Service.
(FR Doc. 88-15906 Filed 7-11-88; 5:07 pm)
BILLING CODE 3510-22-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Regulation of the Administrative Conference of the United States. The committee will meet to discuss the draft recommendation dealing with "Federal Agency Valuations of Human Life."

DATE: Tuesday, July 19 at 2:00 p.m.

Location: Steptoe and Johnson, 4th Floor Conference Room, 1330 Connecticut Avenue, NW., Washington, DC.

Public Participation: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

FOR FURTHER INFORMATION CONTACT: Sara Gordon, Staff Attorney, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

Jeffrey S. Lubbers,
Research Director.
July 8, 1988.

(FR Doc. 88-15755 Filed 7-13-88; 8:45 am)
BILLING CODE 8110-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to the 1989 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1989 crop of upland cotton: (a) Whether Plan A or Plan B should be implemented and the loan repayment level under the chosen Plan; (b) whether first handler certificates should be issued and, if so, what restrictions should be placed on the use of such certificates; (c) whether loan deficiency payments should be made available and, if so, whether such payments should be made available in cash only or in cash and commodity certificates; (d) the percentage reduction under the acreage reduction program (ARP); (e) whether an optional land diversion program should be established and, if so, the percentage of diversion required under such a program; (f) whether a seed cotton recourse loan program should be implemented and, if so, the appropriate loan level and the method of adjustment to a lint basis; and (g) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation (CCC) Charter Act, as amended.

DATE: Comments must be received on or before September 12, 1988 in order to be assured of consideration.

ADDRESS: Dr. Orval Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA-ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA

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procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The titles and numbers of the Federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Titles	Numbers
Commodity Loans and Purchases.....	10.051
Cotton Production Stabilization.....	10.052

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On April 19, 1988 (FR Vol. 53 No. 75) a notice of proposed determinations was published which set forth provisions common to the 1989 feed grains, wheat, upland cotton, extra long staple (ELS) cotton, and rice price support and production adjustment programs.

The comments received with respect to such notice and this notice of proposed determination which is applicable only to the 1989 crop of upland cotton will be reviewed in determining the provisions of the 1989 Upland Cotton Program. Comments must be received by September 12, 1988, in order to be assured of consideration.

Accordingly, the following program determinations are proposed to be made by the Secretary with respect to the 1989 crop of upland cotton.

a. Plan A/Plan B and Loan Repayment Level. Section 103A(a)(5) of the 1949 Act provides that if the Secretary determines that the prevailing world market price for upland cotton (adjusted to the United States quality and location) is below the loan level determined under section 103A(a) (1) and (2), then, in order to make United States upland cotton competitive in world markets, the Secretary shall implement the provisions of Plan A or Plan B.

If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made for the 1989 crop at a level determined and announced by the Secretary at the same time the Secretary announces the 1989 loan level. Such repayment level for the 1989 crop shall not be less than 80 percent of the 1989 loan level. Such repayment level, once announced for the crop, shall not thereafter be changed.

Section 103A(a)(5) further provides that if the Secretary elects to implement Plan B, the Secretary shall permit a producer to repay a loan made for the 1989 crop at the lesser of (1) the 1989 loan level; or (2) the prevailing world market price for upland cotton (adjusted to United States quality and location), as determined by the Secretary. Section 103A(a)(5) further provides that for the 1989 crop of upland cotton, if the prevailing world market price for cotton (adjusted to United States quality and location) as determined by the Secretary, is less than 80 percent of the 1989 loan level, the Secretary may permit a producer to repay the 1989 loan at such a level (not in excess of 80 percent of the 1989 loan level) as the Secretary determines will (1) minimize potential loan forfeitures; (2) minimize the accumulation of cotton stocks by the Federal Government; (3) minimize the cost incurred by the Federal Government in storing cotton; and (4) allow cotton produced in the United States to be marketed freely and competitively, both domestically and internationally.

Comments are requested on whether Plan A or Plan B should be implemented and the level of the loan repayment rate.

b. First Handler Certificates. Section 103A(a)(5)(D) of the 1949 Act provides for the Secretary to make payments to first handlers in the form of negotiable marketing certificates if the Secretary determines that a loan program carried out in accordance with Plan A or Plan B fails to make upland cotton fully competitive in world markets and that the prevailing world market price of upland cotton (adjusted to United States quality and location) is below the current loan repayment rate. CCC may

assist any person receiving such negotiable marketing certificates in the redemption of such certificates for cash, or marketing or exchange of such certificates for upland cotton owned by CCC or (if the Secretary and the person agree) other agricultural commodities or the products thereof owned by the CCC at such times, in such manner, and at such price levels as the Secretary determines will best effectuate the purposes of the first handler program.

Comments are requested with respect to (1) whether first handler certificates should be issued, (2) what restrictions should be placed on the use of such certificates.

c. Loan Deficiency Payments. Section 103A(b)(1)-(5) of the 1949 Act provides that, for the 1989 crop of upland cotton, the Secretary may make payments available to producers who, although eligible to obtain a loan, agree to forgo obtaining such loan in return for such payments. Pursuant to that section, payments shall be computed by multiplying (1) the loan payment rate, by (2) the quantity of upland cotton the producer is eligible to place under loan. The section provides that the loan payment rate shall be the amount by which the loan level exceeds the loan repayment rate and that the quantity of upland cotton eligible to be placed under loan may not exceed the product obtained by multiplying the individual farm program acreage for the crop by the farm program payment yield established for the farm. Section 103A(b) further provides that the Secretary may make up to one-half the amount of such payment in the form of negotiable marketing certificates.

Comments are requested on whether loan deficiency payments should be made available and, if so, the percentage of each loan deficiency payment to be made available in the form of negotiable marketing certificates.

d. Acreage Reduction Program. Section 103A(f) of the 1949 Act provides that, with respect to the 1989 crop of upland cotton, if the Secretary determines the total supply of upland cotton, in the absence of an acreage reduction program (ARP), will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may provide for an acreage reduction program.

If the Secretary elects to put an ARP into effect for 1989, the Secretary shall announce the program not later than November 1, 1988. The Secretary shall, to the maximum extent practicable, carry out an ARP for the 1989 crop of

upland cotton in a manner that will result in a carryover of 4 million bales of upland cotton.

If an upland cotton ARP is announced, such reduction shall be achieved by applying a uniform percentage reduction (not to exceed 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm shall be ineligible for loans and payments with respect to that farm. Acreage on the farm to be devoted to conservation uses shall be determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres planted to upland cotton, by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary. This acreage is referred to as "reduced acreage."

Comments are requested on whether an ARP should be implemented and, if so, the appropriate percentage level of such limitation.

e. Land Diversion Program. Section 103A(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not an ARP is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of upland cotton to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into with the Secretary.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any additional acreage reduction (beyond the ARP) under a land

diversion program would be at a producer's option.

Comments are requested with respect to the need for an optional land diversion program as well as the provisions of such program.

f. Loan Level for Seed Cotton. Consideration is being given as to whether recourse loans should be made available to producers of seed cotton for the 1989 crop pursuant to the authority of the Charter Act and, if so, the level at which such loans should be made available for seed cotton under the 1989 program.

Comments are requested on whether a seed cotton recourse loan program should be implemented and, if so, the appropriate loan level for seed cotton and the method of adjustment to a lint basis for the purpose of determining the seed cotton loan value.

g. Other Related Provisions. A number of other determinations must be made in order to carry out the upland cotton loan program such as: (1) Premiums and discounts for grades, staples, and other qualities; (2) establishment of base loan rates by warehouse location; and (3) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 103A, and 107E, of the Agricultural Act of 1949, as amended; 99 Stat. 1407, as amended, and 1448 (7 U.S.C. 1444-1, and 1445b-4); Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended; 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c).

Signed at Washington, DC, on July 7, 1988.

Milt Hertz,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-15873 Filed 7-13-88; 8:45 am]
BILLING CODE 3410-05-M

Forest Service

Land and Resource Management Planning; San Juan, Grand Mesa, Uncompahgre, and Gunnison National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice; interpretation of appeal decision.

SUMMARY: On July 31, 1985, the Deputy Assistant Secretary for Natural Resources and Environment rendered a decision upon review of a decision by the Chief of the Forest Service of the Land and Resource Management Plans for the San Juan, Grand Mesa, Uncompahgre, and Gunnison National

Forests. The decision was reviewed pursuant to the administrative appeal regulations governing decisions of Forest Service officers at 36 CFR 211.18. In response to queries from Forest Service field officers, the Deputy Chief for the National Forest System issued a letter to all Regional Foresters, dated June 23, 1988, addressing the extent to which the Deputy Assistant Secretary's decision is applicable to other forest plans. The text of that letter is set out at the end of this notice.

EFFECTIVE DATE: The interpretation of the Deputy Assistant Secretary's decision was effective on June 23, 1988.

FOR FURTHER INFORMATION CONTACT: Questions about this matter should be addressed to Everett Towle, Director, Land Management Planning Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-8090, (202) 447-6897.

Date: July 6, 1988.

Mark A. Riemers,
Acting Chief, Forest Service.

Date: June 23, 1988.

Reply to: 1920; 1570

Subject: Secretary of Agriculture's decision on the appeals of the Forest Plans for the San Juan and Grand Mesa, Uncompahgre, and Gunnison National Forests

To: Regional Foresters

The Washington Office has received questions from field units regarding the implications of the Secretary of Agriculture's July 31, 1985, decision on the appeals of the Forest Plans for the San Juan and Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests. The most common question is whether the Secretary's decision in these two appeals is also applicable to other National Forests.

The Secretary's decision found that the Regional Forester had not adequately explained his reasons for approving the San Juan and GMUG Forest Plans. It found that the Record of Decision in each case should have addressed three concerns: the rationale for the proposed vegetation management program, efforts to cut costs and raise revenues in the timber management program, and the circumstances under which timber sale levels would be increased during the planning period.

This decision was an interpretation of existing law, regulation, and policy rather than an attempt to create new policy for Forest planning. It applied existing policy to the specific factual situations of these two National Forests. Consequently, other National Forests with the same factual situations are subject to the same conclusions.

In addition, the Secretary's decision contains interpretations of existing law, regulation, and policy that have general application, particularly with respect to the role of economics in National Forest planning.

The balance of this letter provides some additional information on the rationale for the Secretary's decision and its implications for other National Forests. However, it is important that the decision be read in its entirety so that the context be understood. A copy is enclosed.

Background

The two appeals were brought by a coalition of environmental groups led by the Natural Resources Defense Council. They raised a number of issues, the most prominent of which included timber land suitability, timber harvest levels, and the environmental effects of timber management. The Chief's decisions on the appeals affirmed the Regional Forester on most issues but remanded the Plans and their EIS's with the instruction that additional information be added to the record on timber demand, timber land suitability, and timber sale scheduling.

The Secretary of Agriculture subsequently chose to review the Chief's decisions. The Secretary's decision, which was signed by Deputy Assistant Secretary Douglas W. MacCleery, found that the Regional Forester had not adequately explained his reasons for concluding that the alternative selected for each Plan maximized net public benefits. The decision emphasized the role of the Record of Decision in providing this explanation but recognized that some additional analysis might be required in order to support the conclusions that were reached. As Deputy Assistant Secretary MacCleery stated in a letter of clarification on September 11, 1985:

My principal concern is that information clearly relevant to making the decision on the allowable sale quantity be brought forward and made a part of the public record. Additional analysis may or may not be necessary. If it is, consideration should be given to the costs of carrying it out in the light of the resource values involved.

In acting on the remand, the Regional Forester decided that the San Juan and GMUG would carry out some additional analysis to address some concerns identified in the Secretary's decision and to improve the overall quality of the Plans.

Rationale for the Secretary's Decision

The Secretary's decision letter reviews the statutory and regulatory

basis for Forest planning, as well as the Secretary's October 11, 1983, paper on "The Role of Economic Analysis in National Forest Land Management Planning and Decisionmaking," to identify the key principles that are pertinent to these appeals. As a general principle, the decision letter states that:

• • • applicable regulations, policy, and planning procedural guidelines impose an obligation on the Forest Service to explain the economic implications of the planning alternatives it evaluates • • • (and) to utilize economic considerations not just in the evaluation of its planning alternatives, but in the development and formulation of these alternatives as well (p 5-6).

Within this general principle, the decision letter identifies a more specific one:

A particularly strong obligation is imposed on the Forest Service to explain the economic, social and environmental tradeoffs which are likely to occur when resource objectives or responses to public issues are proposed which would reduce economic efficiency (reduced present net value) (p 6).

And even more specifically:

Where, as is the situation on the San Juan and GMUG, the selected alternative authorizes an expansion of timber sales, and projections are for costs to exceed revenues for the entire planning horizon, a considerably greater burden is imposed on the Forest Service to provide even greater detail as on the rationale for, and specific benefits that will be achieved from such a continuation and expansion (p 6).

The decision letter then goes to emphasize the role of the Record of Decision (ROD) in providing the explanation that these principles call for. It states two fundamental requirements for the ROD. It must (1) explain in adequate detail why the selected alternative is thought to provide greater net public benefits than the other alternatives evaluated, and (2) explain how the information derived from the planning analysis was used in arriving at the decision as to the alternative to be selected.

Application to the San Juan and GMUG

The Secretary's decision letter characterizes the factual situation of the San Juan and GMUG Forest Plans as (1) proposing an expansion of a timber program in which projected timber sale revenues would fall short of projected timber costs for the entire planning horizon, and (2) projecting that the bulk of the costs would be for road construction and timber management activities while the bulk of the benefits would be nontimber and nonmarket benefits resulting from the vegetation management effects of the timber program.

Given these two key facts, the decision letter states that there should be consideration of ways to achieve both the timber and nontimber benefits more effectively. The letter concludes that the explanation in the ROD should address three areas: (1) The rationale for the proposed vegetation management program, why it is believed to maximize net public benefits, and why alternative approaches are less desirable; (2) efforts to cut costs and raise revenues for the timber program; and (3) the circumstances under which timber sale levels would be increased during the planning period.

The decision letter characterizes the rationale for the proposed vegetation management program on the two National Forests as follows: healthy vegetation is needed to provide a high level of benefits, a more balanced distribution of age classes is needed to ensure healthy vegetation, and a timber sale program is the best way to achieve the needed distribution of age classes. The decision letter states that the ROD must explain why the Regional Forester has reached these conclusions. The explanation should refer to the supporting evidence in the planning records. The decision letter on page 8 lists a number of specific questions as examples of the kinds of questions that should be explored when this evidence is developed. These are presented merely as examples of the kinds of questions that might be addressed rather than direction to exhaustively analyze these specific questions.

The decision letter cites with approval recent Forest Service efforts to cut costs and raise revenues of the timber management program. It states that the ROD must explain the likely effect of these efforts on the economics of the timber management program and the projections of below cost timber sales.

The timber sale levels allowed on these two National Forests (the ASQ's) are somewhat higher than the actual sale levels in recent years, but lower than the levels allowable under preceding timber management plans. The decision letter states that the ROD must explain the circumstances under which actual timber sale levels will be increased under the new plans. If timber sale levels are increased in response to increases in timber demand, there may be associated increases in timber prices. The ROD should explain the likely effect of such price increases on the economics of the timber management program. On the other hand, if sale levels are increased without increases in timber prices, local economies may become more dependent on a timber sale program in which revenues do not cover

costs. If this is the course of action that the plans allow, the ROD should address the likely effects on community stability.

Implications for the Record of Decision

As stated above, the ROD for a Forest Plan must explain why the selected alternative is believed to maximize net public benefits. National Forests with factual situations that are similar to those of the San Juan and GMUG may need to address the same concerns as those listed above in the ROD's for their plans. In making this judgment, responsible line officers should be guided by the following sources of direction:

1. General guidance on ROD's is found in 40 CFR 1505.2 and 1506.1(a); FSM 1953.4; FSH 1909.14-47.1, 47.11, and 47.12; 36 CFR 219.8(d), 219.10(c), and 219.12(j); and CEQ Forty Most Asked Questions (FSH 65.12) #10a, 14b, 19, 23c, 33b, and 34.

2. More specific guidance on using the ROD to explain why the selected alternative is believed to maximize net public benefits can be found in our 1570 letter of April 10, 1985. This letter was issued after the Chief's decision on the San Juan and GMUG appeals but before the Secretary's decision on review. The letter was cited with approval in the Secretary's decision. The contents of the letter have been incorporated into section 4.34 of the forthcoming Land and Resource Management Planning Handbook, FSH 1909.12.

3. Specific instructions on the treatment of below cost timber sales in ROD's and associated EIS's can be found in our 1920 letter of April 24, 1985.

4. General direction on the adjustment of timber sale levels in response to changes in market situations can be found in our 2430 letter of May 31, 1985. Additional direction on the discussion to appear in the ROD can be found in our 1920 letter of January 12, 1987.

Information Needs for Planning

As stated above, the explanation in the ROD must include an explanation of how the information developed in planning was used in selecting the preferred alternative. For National Forests which have factual situations similar to those of the San Juan and GMUG, the items listed below will be particularly important. Appendix B should summarize the principal conclusions reached on all of these items and should provide specific references to the places in the planning records where the underlying information may be found.

1. *Financial Analysis of Timber Management.* This is called the "Stage II" analysis in the Secretary's decision. It is an examination of the costs and revenues of timber options for the various timber strata that are identified on a Forest. It is required for all National Forests by 36 CFR 219.14(b). Detailed guidance on carrying out this analysis can be found in Chapter 20 of the Timber Planning Handbook (FSH 2409.13).

The summary of the financial analysis should describe the principal conclusions with respect to costs and revenues for the timber options considered and how this information was used in the formulation of alternatives and in the development and selection of prescriptions to be applied to specific lands. It will provide one of the bases for the subsequent discussion in the ROD of the economic implications of the planning alternatives and the proposed timber management program.

2. *Sensitivity analysis.* Sensitivity analysis is an analysis of how net economic values, outputs, and effects change as the principal items of input data in the analysis vary through their likely future range. In this case, the purpose of the analysis is to determine how the economics of timber management are affected by varying assumptions regarding future costs, revenues, and benefits.

There are a number of ways in which sensitivity analysis can be accomplished. The range of appropriate methods might include systematic variation of the variables in the financial analysis, sequential runs of the planning model for one or more of the Benchmarks constructed for the AMS or the preferred alternative, or special studies. The choice of the appropriate method will depend upon the specific situation in which a Forest finds itself. Guidance can be found in section 18.1 of the Economic and Social Analysis Handbook (FSH 1909.17). Particular attention should be given to assessing how reasonably achievable reductions in timber related costs would affect economic efficiency and the area of land identified as unsuitable for timber production.

The results of the analysis will provide a basis for the discussion in the ROD of how net public benefits of the vegetation management program may be affected by changes in timber prices or quantities demanded in the timber market or by the National Forest's own efforts to cut costs and raise revenues of timber management programs.

3. *Costs of alternative vegetation management practices.* Under 36 CFR 219.1, all National Forests have an

obligation to ensure that Forest Plans provide for management in a manner that is sensitive to economic efficiency. Under 36 CFR 219.12(f), all planning alternatives must represent cost efficient means of accomplishing objectives. Thus, whenever National Forests propose timber management programs as means to achieve vegetation management objectives, they have an obligation to examine the relative efficiency of achieving these vegetation management objectives through other means, such as prescribed fire.

There are a number of ways in which this can be accomplished. The range of appropriate methods might include the study of vegetation management options in the financial analysis, consideration of planning alternatives that featured alternative methods for achieving vegetation management objectives, or special studies of the costs of various vegetation management practices.

4. *Demand.* Analysis of demand for both timber and other goods and services of the National Forests is required for all National Forests by 36 CFR 219.12(e). Detailed guidance for conducting the analysis can be found in FSM 1971 and Chapter 10 of the Economic and Social Analysis Handbook (FSH 1909.17).

The results of the timber demand study will establish a basis for expectations regarding future prices and quantities for timber. This, in turn, will provide a basis for the discussion in the ROD of the effects of demand changes on the economics of timber management and the net public benefits of the planning alternatives.

The results of the demand study for nontimber benefits will establish a basis for the discussion in the ROD regarding the need for and benefits of the nontimber outputs of the vegetation management program.

5. *Effects on local communities.* Analysis of community effects is required for all National Forests by 36 CFR 219.12(g). Detailed guidance can be found in FSM 1972 and 1973 and in existing Chapter 30 and forthcoming Chapter 20 of the Economic and Social Analysis Handbook (FSH 1909.17).

The analysis will provide both quantitative and nonquantitative information regarding the effects of the planning alternatives on local communities. It will provide one of the bases for the discussion in the ROD of the net public benefits associated with below cost sale programs.

General Applicability of the Secretary's Decision

As a general matter, the Secretary's interpretation of the role of economic

analysis is applicable to all National Forests. For Forests without approved plans, draft and final plans, and NEPA documents must meet the standards described by the Secretary's decision and other national direction.

Forests with approved plans should evaluate during annual monitoring and evaluation the degree of similarity between their factual situations and those of the San Juan and GMUG National Forests. If a National Forest is found to have a similar factual situation, its planning records should be further evaluated to determine if the information included or cited in the planning records is sufficient to support the necessary discussion in the ROD for the Forest Plan. The ROD should also be evaluated to determine if it meets the standards described by the Secretary's decision and other national direction. If inadequacies are identified, remedial work should be scheduled as part of Forest Plan revisions or as part of amendments related to timber management.

James C. Overbay,
Deputy Chief.

[FR Doc. 88-15896 Filed 7-13-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Switching Subcommittee
Telecommunications Equipment
Technical Advisory Committee;
Partially Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held August 2, 1988, 1:00 p.m. Herbert C. Hoover Building Room B-841, 14th Street & Constitution Avenue, NW., Wash., DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of trunked radar systems.
4. Discussion of radio paging systems.
5. Continuation of discussion on CCL 1565 and 1567.

6. Discussion of annual Report/Annual Plan.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A Copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: July 8, 1988.

Betty A. Ferrell,
Acting Director, Technical Support Staff,
Office of Technology & Policy Analysis.
[FR Doc. 88-15623 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held August 2, 1988, 9:30 a.m., Room B-841 at the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda:

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Development of Annual Report/Annual Plan.
4. Discussion of export control status of GPS receivers.
5. Report by Switching Subcommittee on spare parts.
6. Discussion of CCL 1565/1567 issues and:

- a. Related equipment.
- b. Packet switching.
- c. Local area networks and wide area networks.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: July 8, 1988.

Betty Anne Ferrell,
Acting Director, Technical Support Staff,
Office of Technology & Policy Analysis.
[FR Doc. 88-15624 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-DT-M

Fiber Optics Subcommittee, Telecommunications Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Fiber Optics Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held August 2, 1988, 1:00 p.m., Herbert C. Hoover Building, Room 1092, 14th Street & Constitution Avenue, NW., Washington, DC. The Fiber Optics Subcommittee was formed to study fiber optic communications equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Annual Report/Annual Plan.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: July 8, 1988.

Betty Anne Ferrell,
Acting Director, Technical Support Staff,
Office of Technology & Policy Analysis.
[FR Doc. 88-15625 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-DT-M

[C-357-801]

Preliminary Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products from Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of certain welded carbon steel pipe and tube products (pipe and tube) as described in the "Scope of Investigations" section of this notice. The estimated net bounties or grants are specified in the "Suspension of Liquidation" section of this notice.

We are directing the U.S. Customs Service to suspend liquidation of all entries of pipe and tube from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond on entries of these products in an amount equal to the appropriate estimated net bounty or grant as specified in the "Suspension of Liquidation" section of this notice.

If these investigations proceed normally, we will make final determinations by September 20, 1988.

EFFECTIVE DATE: July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Gary Tavernman, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based on our investigations, we preliminarily determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters

in Argentina of pipe and tube. For purposes of these investigations, the following programs are preliminarily found to confer bounties or grants:

- Export Payments Provided Under Decree 176
- Pre-Export Financing

Case History

Since the last Federal Register publication pertaining to these investigations (the Notice of Initiation (53 FR 13431, April 25, 1988)), the following events have occurred. On May 5, 1988, we presented a questionnaire to the Government of Argentina in Washington, DC, concerning petitioners' allegations.

On May 24, 1988, Trafilam S.A. filed a timely request for exclusion from any countervailing duty order resulting from these investigations. We notified the Government of Argentina regarding the requirements associated with the exclusion process. We received certifications from the Government and the Central Bank of Argentina regarding Trafilam's exclusion request on June 8, 9, and 13, 1988. However, on June 29, 1988 Trafilam informed the Department that it had not exported the subject merchandise during the review period. As such, Trafilam does not qualify as a respondent in these investigations and is not eligible to request exclusion from any resulting countervailing duty order.

On June 13, 1988, we received responses from the Government of Argentina and the following companies: Acindar Industria Argentina de Aceros S.A. (ACINDAR), Comatter S.A. (COMATTER), Tubos Argentinos S.A. (TASA), and Laminfer S.A. (LAMINFER). According to these responses, ACINDAR, COMATTER and TASA produce and export standard pipe, COMATTER produces and exports line pipe, and LAMINFER produces and exports light-walled rectangular tubing. We did not receive responses from any manufacturer, producer, or exporter in Argentina of heavy-walled rectangular tubing. Therefore, this preliminary determination with respect to heavy-walled rectangular tubing is made on the basis of the best information available.

On June 30, 1988, we presented supplemental and deficiency questionnaires to the Government of Argentina and the above-referenced companies. On June 30, and July 1, 5, and 6, 1988, we received supplemental responses from ACINDAR, COMATTER, TASA, and LAMINFER. On July 6, 1988, we received a supplemental response from the Government of Argentina.

Scope of Investigations

The products covered by these investigations are certain welded carbon steel pipe and tube products from Argentina. These products constitute the following four separate "classes or kinds" of merchandise:

(1) *Standard Pipe*: Certain circular welded carbon steel pipes and tubes, 0.375 inch or more but not over 16 inches in outside diameter, generally known in the industry as standard pipe. This is a general-purpose commodity used in such applications as plumbing pipe, sprinkler systems, and fence posts. Standard pipe may be supplied with an oil coating (black pipe) or may be galvanized, and is sold in plain ends, threaded, threaded and coupled, or beveled. These products are generally produced to ASTM specifications A-120, A-53, or A-135. Imports of these products are classified under TSUSA categories 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925, and are classified under HS categories 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065, and 7306.30.5075. Oil country tubular goods entering under TSUSA categories 610.3242, 610.3243, 610.3252, 610.3254, and 610.3258 are already covered by a countervailing duty order and are not covered by these investigations.

(2) *Line Pipe*: Certain welded carbon steel American Petroleum Institute (API) line pipe, 0.375 inch or more but not over 16 inches in outside diameter known in the industry as line pipe. Line pipe generally is produced to API specification 5L. Line pipe is used for the transportation of gas, oil, or water, generally in pipeline or utility distribution systems. API line pipe not over 16 inches in outside diameter is classified under TSUSA categories 610.3208 and 610.3209, and are classified under HS categories 7306.10.1010 and 7306.10.1050.

(3) *Heavy-Walled Rectangular Tubing*: Certain heavy-walled carbon steel rectangular tubing having a wall thickness of 0.156 inch or greater, which is generally used for support members for construction or load-bearing purposes in construction, transportation, farm, and material-handling equipment. The product is generally produced to ASTM specification A-500, Grade B. Imports of heavy-walled rectangular tubing are classified under TSUSA category 610.3955, and are classified under HS category 7306.60.1000.

(4) *Light-Walled Rectangular Tubing*: Certain light-walled carbon steel rectangular tubing having a wall

thickness of less than 0.156 inch, which is generally employed in a variety of end uses not involving the conveyance of liquid or gas, such as agricultural equipment frames and parts, and furniture parts. The product is generally produced to ASTM specification A-513 or A-500, Grade A. Imports of light-walled rectangular tubing are classified under TSUSA category 610.4028, and are classified under HS category 7306.60.5000.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and a program is otherwise countervailable, it will be considered a bounty or grant in the final determination.

For purposes of these preliminary determinations, the period for which we are measuring bounties or grants ("the review period") is calendar year 1987. As is common under our method of analysis, if the companies under investigation have different fiscal years, which is the case in these investigations, our review period is the most recently completed calendar year. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Argentina of pipe and tube under the following programs:

A. Export Payments Provided Under Decree 176

In February 1986, the government established Decree 176 to provide "special incentives to producer and exporter companies of promotional goods and services," which participate in the Reembolso program under Decree 1555/86 (discussed in Section II below) and fulfill requirements of the Special Export Program. In order to qualify for export payments under this decree, the producing and/or exporting company must increase exports by a minimum of two million U.S. dollars per year or by ten million U.S. dollars for the duration

of the program, not to exceed five years. Decree 176 also allows the Secretary of Industry and Foreign Trade the discretion to grant exceptions to program requirements.

In our questionnaire, we asked for all relevant laws and decrees, along with English translations, for each program under investigation. However, in its response, the Government of Argentina provided neither a copy of the original nor an English translation of Decree 176. These documents were, however, provided in the petition.

On the basis of our understanding of Decree 176, the program operates to provide the following benefits. For each company qualifying for the Special Export Program, the amount of the export payment equals 15 percent of the company's increase in exports over a certain base period. An additional payment equal to five percent of the increase is available if export sales are made to new markets or to previously lost markets.

According to the government and company responses, none of the standard and line pipe companies received benefits provided under Decree 176. The government response, however, states that "with regard to the light- and heavy-walled rectangular tubing industries, benefits have been renounced on shipments of the investigated products exported after June 1, 1988." This statement indicates that the light- and heavy-walled rectangular tubing producers received Decree 176 benefits during the review period. However, no information on the amount of benefits received was provided in the government or company questionnaire responses. Therefore, as the best information available, we are assuming that the light- and heavy-walled rectangular tubing producers received benefits under Decree 176 during the review period.

Because this program provides benefits contingent on export performance and does not function as a rebate of indirect taxes, we preliminarily determine that it confers a bounty or grant. The benefit equals the amount of the payments provided under this program.

Using the best information available, we assume that the light- and heavy-walled rectangular tubing producers received both the 15 and five percent export payments. We determined the increase in the value of exports by comparing the Department's IM-146 import statistics for 1986 and 1987. The resulting percentage difference was applied to the 1987 value of exports of light-walled rectangular tubing to the United States reported in the response

of the producer of light-walled rectangular tubing. To arrive at the benefit, we multiplied this estimated increase by 20 percent. We then divided the resulting amount by the value of light-walled rectangular tubing exports to the United States. Given that no response was filed on behalf of the heavy-walled rectangular tubing producers, we have assigned heavy-walled rectangular tubing, as best information available, the same estimated net bounty or grant calculated for the light-walled rectangular tubing producers. Thus, the estimated net bounty or grant for both light- and heavy-walled rectangular tubing under Decree 176 is 17.21 percent *ad valorem*. For line pipe and standard pipe, the estimated net bounty or grant is zero percent.

B. Pre-Export Financing

Under Circular RF-153 of the Central Bank of Argentina, exporters may receive pre-export financing through austral-denominated loans. The amount of the loan can equal up to 65 percent of the f.o.b. export value, if the merchandise to be exported is produced solely from domestically-produced inputs. If the exporter uses imported materials, then the level of financing is reduced according to the import-content of the merchandise to be exported. Loans under this program are paid out to individual corporate borrowers by commercial banks which are reimbursed by the Central Bank. The loans are extended for a maximum period of 180 days.

The loan principal and interest payments under this program are indexed to the austral/dollar exchange rate. The loans are given in australes but are tied to a fixed dollar amount based on the exchange rate prevailing on the date of the loan. At the time of repayment, the fixed dollar amount is reconverted to australes based on the exchange rate prevailing on that date, and the borrower must repay the new austral amount. In addition, the borrower must make quarterly interest payments in australes applying a one percent annual interest rate to the fixed dollar amount reconverted to australes at the exchange rate prevailing at the end of each quarter. (According to the responses, the interest rate on these loans was increased to five percent effective June 3, 1988.)

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential interest rates. We are using as our benchmark rate the average of

the regulated and unregulated interest rates on short-term loans as reported in the Government of Argentina response and as published by the Fundacion de Investigaciones Economicas Latinoamericanas (FIEL). This is consistent with our practice of using the national average commercial interest rate or the most comparable, predominant commercial rate for short-term financing as the benchmark for short-term loans.

We calculated the amount of interest that would have been paid at the benchmark rate on loans related to sales to the United States of each of the classes or kinds of merchandise on which interest was paid during the review period. Given that we consider the increase in the principal due to indexation to be part of the company's interest obligation, we compared the amount calculated above to the sum of the interest payments and the increase in the principal due to indexation actually paid by each of the companies. In all cases, we found that the amount of interest paid under this program was less than the amount of interest calculated at the benchmark rate. Therefore, we preliminarily determine that the pre-export financing under this program confers a bounty or grant.

According to the company responses, COMATTER and LAMINER received loans under this program on which interest was paid during the review period. To derive the benefit for each of the companies under investigation, we divided the interest payment difference described above by the total sales to the United States of the respective class or kind of merchandise by each of the companies under investigation.

On this basis, with respect to standard pipe, we calculate an estimated net bounty or grant of zero percent for ACINDAR and TASA and 4.24 percent *ad valorem* for all other producers of standard pipe. We calculate an estimated net bounty or grant of 2.46 percent *ad valorem* for all producers of line pipe, and of 6.92 percent *ad valorem* for all producers of light-walled rectangular tubing. Since no producers of heavy-walled rectangular tubing responded to our questionnaire, as the best information available, we have assigned to them the highest of the rates calculated for the other three classes or kinds of merchandise under investigation. We therefore calculated an estimated net bounty or grant of 6.92 percent *ad valorem* for all producers of heavy-walled rectangular tubing.

II. Program Preliminarily Determined Not To Confer a Bounty or Grant

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Argentina of pipe and tube under the following program:

Reembolso

The Reembolso program was established in 1971. It authorized a cash refund, upon export, of taxes "that bear directly or indirectly" on exported products and/or their component raw materials for the purpose of promoting exports. In October 1986, the Government of Argentina, through Decree 1555/86, revised the Reembolso program making it "exclusively a refund of indirect taxes physically included in the incorporated costs of the exported goods," independent of other "macro-economic functions."

Decree 1555/86 set precise guidelines for implementing this refund program. Three broad rebate levels were established to replace the separate rebate rates for each product or industry sector that had existed under the previous program. The rates are 10 percent for level I, 12.5 percent for level II, and 15 percent for level III. Pipe and tube producers are eligible for level II benefits.

To determine whether an indirect tax rebate system which incorporates rebates of import duties confers a bounty or grant, we perform the following analysis. First, we examine whether the system is intended to operate as a rebate of both indirect taxes and import duties. Next, we analyze whether the government properly ascertained the level of the rebate. This requires an analysis of the calculation of the indirect tax incidence of inputs which are physically incorporated in the exported product. Finally, we review whether the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of actual duties and indirect taxes paid.

When the study upon which the indirect tax and import duty rebate system is based meets the three tests identified above, the Department will consider that the system does not confer a bounty or grant if the amount rebated does not exceed the amount of duties and indirect taxes on physically incorporated inputs. When the system rebates duties and indirect taxes on both physically incorporated and non-physically incorporated inputs, we find that a bounty or grant exists to the extent that the fixed rebate exceeds the indirect tax and duty incidence on

physically incorporated inputs. Based on these tests, we preliminarily determine the following.

As the language of Decree 1555/86 cited above clearly shows, the purpose of the Reembolso is to refund indirect taxes on the physically incorporated inputs to exported products. Thus, we preliminarily determine that the program is intended to operate as a rebate of indirect taxes and, therefore, meets our first test.

The next step in our analysis is to examine whether the government properly ascertained the level of the rebate. We have reviewed the documentation submitted by the government in its response. The government provided a study of the indirect tax incidence in the pipe and tube industry. Although the study includes indirect taxes on both physically and non-physically incorporated inputs, it appears that the level of eligibility for the Reembolso has been calculated using the indirect taxes on physically incorporated inputs at the final stage of production, plus an aggregate percentage of indirect tax incidence on prior stage inputs. However, the government response did not provide a breakdown of the indirect tax incidence for all prior stages of production as requested in our questionnaire. Since prior stage production could include indirect taxes on both physically and non-physically incorporated inputs, we estimated the share of prior stage indirect taxes attributable to physically incorporated inputs. To do this, we multiplied the ratio of indirect taxes on physically incorporated inputs at the final stage of production to total indirect tax incidence at the final stage of production by the aggregate level of tax incidence reported for prior stages. We are disallowing the estimated amount of indirect taxes on non-physically incorporated inputs attributable to certain prior stages of production.

Taking into account these disallowances, we recalculated the amount of indirect taxes on inputs physically incorporated into pipe and tube and found that the Reembolso of 12.5 percent is less than the allowable indirect tax incidence. As such, we find that the Reembolso on pipe and tube is not excessive and, therefore, not countervailable.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters

in Argentina of pipe and tube during the review period:

A. Post-Export Financing

Petitioners alleged that Argentine pipe and tube exporters are receiving low-interest post-export financing from the Central Bank of Argentina under OPRAC-1, Chapter 1, section 2.3. Under our standard short-term methodology, we consider a benefit to have been received when interest is paid. According to the responses, none of the pipe and tube producers paid interest on any post-export financing loans during the review period.

B. Corrientes Regional Tax Incentives

Under National Law 20560, Corrientes Law 5751/74, and Decrees 2633/75, 9641/81, and 32031/76, companies located in the Corrientes Province are eligible for certain tax benefits. According to the responses, none of the companies covered by these investigations have facilities located in this area.

C. Industrial Parks

Firms which operate in designated industrial parks receive special credit from local banks, tax exemptions, and infrastructure benefits. According to the responses, none of the companies covered by these investigations have facilities located in an industrial park.

D. Low Cost Loans for Projects Outside Buenos Aires

The 1977 Industrial Promotion Law for Projects Outside Buenos Aires provides government-mandated, low-cost loans to eligible companies. According to the responses, none of the pipe and tube producers received loans for projects outside Buenos Aires.

E. Discounts of Foreign Currency Accounts Receivable Under Circular RF-21

Argentina Central Bank Circular RF-21 authorizes the discounting of foreign currency accounts receivable at an interest rate less than the national average commercial rate for short-term borrowing. According to the responses, none of the companies under investigation have received financing under RF-21.

F. Exemption from Stamp Tax Under Decree 186/76

Under Decree 186/76, Certain Argentine industries receive an exemption from paying stamp taxes. According to the responses, the Government of Argentina has not exempted the companies under

investigation from payment of Stamp Tax under Decree 186/76.

G. Government Trade Promotion Programs

Trade promotion programs, which are funded by the Government of Argentina, are designed to increase the participation of Argentine companies in international trade fairs and trade missions. According to the responses, the Government does not maintain any trade promotion programs.

Verification

In accordance with section 770(a) of the Act, we will verify the information used in making our final determinations.

Suspension of Liquidation

In accordance with sections 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pipe and tube from Argentina (except as noted below) which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register and to require a cash deposit or bond in the amounts indicated below:

Manufacturers / producers / exporters	Estimated net bounty or grant
Standard Pipe:	
ACINDAR	0.00% (excluded)
TASA	0.00% (excluded)
COMATTER and all other companies	4.24%
Line Pipe:	
All companies	2.46%
Heavy-walled Rectangular Tubing:	
All companies	24.13%
Light-walled Rectangular Tubing:	
All companies	24.13%

This suspension of liquidation will remain in effect until further notice.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations on August 16, 1988, at 10:00 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the Federal Register.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants;

(3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by August 9, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 355.34, written views will be considered if received not less than 30 days before the final determinations are due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Jan W. Maros,
Assistant Secretary for Import Administration.

July 7, 1988.

[FR Doc. 88-15883 Filed 7-13-88; 8:45 am]

BILLING CODE 3510-05-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00009." A summary of the application follows.

Applicant: Port of Montana Port Authority (POMPA), P.O. Box 3741, Butte, Montana 59702.

Contact: Mr. Kurt Krueger, Attorney-at-Law. Telephone: (406) 782-2365.

Application #: 88-00009

Date Deemed Submitted: July 1, 1988
Members (in addition to applicant): Port of Montana, Inc., Butte, Montana.

Summary of the Application

Export Trade

Products

All products.

Related Services

Consulting; international market research; advertising; marketing; insurance; product research and design; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

POMPA seeks certification to:

1. Require exporters using its export trade services to:
 - a. Use it as an intermediary in arranging for transportation and financing; and
 - b. Export through the Port of Montana.
2. Study the feasibility of joint export ventures by collecting:

a. Commercial, financial, or industry information that is already generally available to the trade or public, and

b. Commercial, financial, or industry information that is not already generally available to the trade or public from prospective participants that produce or supply similar or substitutable commodities.

3. Study the feasibility of such information mentioned in Item 2 above provided that:

a. POMPA shall solicit such information from at least three companies that produce or supply each commodity to be exported,

b. POMPA shall not disclose the number of identities of companies solicited, and

c. POMPA shall limit access to the information collected by POMPA and appropriate POMPA staff.

4. Distribute separately to each prospective participant the results of its feasibility study, which may contain, if materially related to the venture:

a. Information that is already generally available to the trade or public;

b. Information (such as selling strategies, prices in the foreign market, projected demand, and customary terms of sale) solely about the Export Markets;

c. Information on expenses specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or post storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing); and

d. Other information, except individual firm data (whether past, current, or projected) concerning domestic prices, costs of production, production capacity, production volume, domestic sales volume, and inventories.

5. Require prospective participants or participants in a joint export venture to agree not to compete, upon withdrawal from the venture, for export orders for which the venture has bid or announced its intention to bid.

Dated: July 8, 1988

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-15883 Filed 7-13-88; 8:45 am]

BILLING CODE 3510-05-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration

will be held August 9, 1988, 9:00 a.m. to 3:00 p.m. The open session will be held at the Herbert C. Hoover Building, in Room 4820, 14th & Constitution Avenue, NW., Washington, DC from 9:00 a.m. until 11:45 a.m. The afternoon session meeting from 1:30 p.m. to 3:00 p.m., will be closed. It will be held at the same site, the Herbert C. Hoover Building, Room 4830.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session: 9:00-11:45 a.m. Departmental updates, objectives of Subcommittee; working group status reports.

Executive Session: 1:30-3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1987 in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230.

For further information, contact Sharon Congwer, (202) 377-3856.

Date: July 9, 1988.

Michael E. Zacharis,

Assistant Secretary for Export Administration.

[FR Doc. 88-15882 Filed 7-13-88; 8:45 am]

BILLING CODE 3510-05-M

Applications for Duty-Free Entry of Scientific Instruments; University of Illinois et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (a)(4) of the regulations

and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-048R. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, 506 South Wright Street, Urbana, IL 61801. **Instrument:** Cryostat System for Mossbauer Spectrometer. **Manufacturer:** Technology Systems Ltd., United Kingdom. Original notice of this resubmitted application was published in the Federal Register of December 12, 1987.

Docket Number: 87-181R. Applicant: University of Wisconsin-Madison, Department of Biochemistry, 420 Henry Mall, Madison, WI 53706. **Instrument:** NMR Spectrometer, Model AM 400 WB. **Manufacturer:** Bruker Instruments Inc., Switzerland. Original notice of this resubmitted application was published in the Federal Register of June 28, 1987.

Docket Number: 87-182R. Combined Resubmission of Docket Numbers 87-182 and 87-183. Applicant: University of Wisconsin-Madison, Department of Biochemistry, 420 Henry Mall, Madison, WI 53706. **Instrument:** NMR Spectrometer, Model AM 500 and NMR Spectrometer Data Station. **Manufacturer:** Bruker Instruments, Inc., Switzerland. Original notice of this resubmitted application was published in the Federal Register of May 28, 1987.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88-15884 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council and the Council's Standing Committees will convene public meetings at the King Kamehameha Hotel, Kailua-Kona, HI, as follows:

Council—at its 62nd meeting on August 10, 1988, at 9 a.m., will deliberate making changes to the fishery management plans (FMPs) for crustaceans, large pelagic species, bottom fish and seamount groundfish, and precious corals on the basis of advice received from the Council's

Advisory Panels, its Plan Monitoring Teams, and its Scientific and Statistical Committee. The public is encouraged to participate in these deliberations.

It is anticipated that the Council will adopt a fisheries habitat policy, approve experimental fishing permit guidelines for the precious coral fishery, appoint members to the Advisory Review Board for Limited Entry, address reporting requirements under the proposed national standards, administrative guidelines and regulations, adopt a decision on fishing power criteria for the bottomfish fishery in the Northwestern Hawaiian Islands, adopt a recommendation regarding proposed observer coverage on domestic fishing vessels, adopt a two-year administrative and programmatic budget for 1989-1990, and adopt a five-year program of data and research needs with respect to each of the FMPs.

The Council also may review precious coral experimental fishing applications and adopt changes to management approaches to FMPs based on recommendations of its advisors.

The public meeting will include reports from Islanders, fisheries agencies and organizations, Council standing committees, reports on foreign fishing and foreign and domestic enforcement, as well as on FMPs, reports on the five-year program, data and research needs, meetings, conferences, administrative matters, etc. The meeting will reconvene August 11 at 9 a.m.

Plan Monitoring Teams—on August 8 at 8:30 a.m., the Crustaceans, Bottomfish and Seamount Groundfish, Pelagic Species, and Precious Corals Plan Monitoring Teams will meet concurrently to discuss data and research needs for FMPs for 1990-1995. They will review management approaches now undertaken and determine if changes to the approaches are warranted. The Crustaceans Plan Monitoring Teams will discuss how to change the FMP into a framework document to make new management measures more timely to implement. The Bottomfish Plan Monitoring Team will discuss fishing power criteria for replacement of fishing under the limited entry program for the bottomfish fishery in the Northwestern Hawaiian Islands. The Precious Corals Plan Monitoring Team will review guidelines for experimental fishing permits. The public meeting will adjourn at 12:30 p.m.

Advisory Panels—on August 8 at 1:30 p.m., the Crustaceans, Bottomfish and Seamount Groundfish, Pelagic Species and Precious Corals Advisory Panels will meet concurrently to receive reports on the status of the fisheries covered by

the FMPs, and additional management needs. The Advisory Panels will discuss research, data and management needs for each respective FMP and make recommendations to the Council for action.

Scientific and Statistical Committee (SSC)—on August 8 at 1:30 p.m., at its 43rd public meeting, will review the FMPs for crustaceans, pelagic species, bottomfish and seamount groundfish, precious corals, and will develop new research and data needs regarding these FMPs. The SSC will formulate recommendations to the Council based on these reviews. The meeting will also include reviews of proposed regulations and guidelines regarding fisheries management processes, and observes coverage on domestic vessels. There also will be reports on ongoing fisheries research and new research proposals. The public meeting will reconvene on August 9 at 8 a.m., and adjourn at 5 p.m.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Date: July 8, 1988.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 88-15846 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; The Maritime Center of Norwalk (P417)

On March 29, 1988, notice was published in the Federal Register (53 FR 10139) that an application had been filed by The Maritime Center of Norwalk, 112 Washington Street, South Norwalk, Connecticut 06854, to take harbor seals (*Phoca vitulina*) for public display.

Notice is hereby given that on July 11, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following office(s):

Permit Division, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service NOAA 14

Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs.

Dated: July 11, 1988.

[FR Doc. 88-15886 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; National Zoological Park, Smithsonian Institution (P6K)

On May 4, 1988, notice was published in the Federal Register (53 FR 15864) that an application had been filed by the National Zoological Park, Smithsonian Institution, for a permit to take and import milk samples from Argentina taken from 40 Juan Fernandez fur seals and 20 southern sea lions taken in Chile for scientific research.

Notice is hereby given that on July 11, 1988 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, Federal Bldg., 14 Elm Street, Gloucester, Massachusetts 01930.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: July 11, 1988.

[FR Doc. 88-15887 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; John G. Shedd, Aquarium (P396A)

On April 19, 1988, notice was published in the Federal Register (53 FR 12801) that an application had been filed by the John G. Shedd Aquarium, 1200 South Lakeshore Drive, Chicago, Illinois 60605 for a permit to capture and maintain eight (8) Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) for public display.

Notice is hereby given that on July 11, 1988 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National

Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: July 11, 1988.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-15888 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Xoma Corporation, having a place of business in Berkeley, CA 94710, an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7-191,067, "Method for Treating Autoimmune Diseases Using Succinylacetone". The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent

Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,
Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.
[FR Doc. 88-15750 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Non-Authorization To Export Textile Products from Thailand

July 8, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUMMARY INFORMATION: The Government of Thailand has notified the U.S. Government that it believes that World-Wide Export-Import (Thailand) Co. Ltd., 558 Rama 4 Road, Bangkok, Thailand, has sent shipments of textiles to the United States using fraudulent textile visas. The Thai Government asserts that it has not authorized the exportation of textiles from this firm to the United States. For that reason, and at the request of the Thai Government, the U.S. Customs Service will treat visas from World-Wide Export-Import (Thailand) Co. Ltd. as invalid.

Any persons holding textile visas for goods produced by this company should contact the Royal Thai Embassy at the following address: Dumrong Indharamesup, Commercial Counselor, Royal Thai Embassy, 1990 M Street NW., Suite 380, Washington, DC 20036, (202) 467-6790.

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textiles and Apparel.
[FR Doc. 88-15847 Filed 7-13-88; 8:45 am]
BILLING CODE 3510-07-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Commission on Base Realignment and Closure; Meeting

ACTION: Notice of business meeting and public hearing.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a business meeting at 9:00 a.m., July 28, 1988 in the Dirksen Senate Office Building, Room 138. This will immediately be followed by a hearing to take public testimony on environmental issues associated with realignments and closures.

For further information, please contact: Russel Milnes, (202) 653-0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 11, 1988.

[FR Doc. 88-15679 Filed 7-13-88; 8:45 am]
BILLING CODE 3010-01-M

Defense Science Board Task Force To Review the Strategic Force Modernization Program

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force To Review the Strategic Force Modernization Program will meet in closed session on August 30-31, 1988 at TRW Inc., Merrifield, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine strategic force modernization issues within the context of evolving Soviet threat capabilities, potential strategic arms control restraints, and an increasingly austere fiscal environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,
Alternative OSD Federal Register Liaison
Officer, Department of Defense.
July 11, 1988.

[FR Doc. 88-15681 Filed 7-13-88; 8:45 am]
BILLING CODE 3010-01-M

Defense Science Board Task Force on B-1B Defensive Avionics

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on B-1B Defensive Avionics will meet in closed session on August 2, 1988 at Eaton, AIL Division, Deer Park, New York.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the status of the Air Force B-1B Defensive Avionics Program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 11, 1988.

[FR Doc. 88-15680 Filed 7-13-88; 8:45 am]
BILLING CODE 3010-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

July 6, 1988.

The USAF Scientific Advisory Board panel on a Software Center of Excellence will meet on 8 August 1988, from 1:30 p.m. to 5:00 p.m., and on 9 August 1988, from 8:00 a.m. to 4:00 p.m. at the Standard Systems Center Headquarters, Building 888, Gunter AFS, Alabama.

The purpose of this meeting is to review the plans of the Air Force Communications Command to establish a Software Center of Excellence at the Standard Systems Center.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,
Air Force Federal Register, Liaison Officer.
[FR Doc. 88-15732 Filed 7-13-88; 8:45 am]

BILLING CODE 3010-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meetings: August 3, 4, and 5, 1988.

Time of Meetings: 0800-1700 hours, each day.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet for the purpose of further drafting and refining an interim report. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally Warner,
Administrative Officer, Army Science Board.
[FR Doc. 88-15754 Filed 7-13-88; 8:45 am]

BILLING CODE 3701-06-M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.200, 84.202, and 84.204]

Technical Assistance Workshop for the Graduate Assistance in Areas of National Need Program

AGENCY: Department of Education.

ACTION: Notice of Technical Assistance Workshop for the Graduate Assistance in Areas of National Need Programs, Grants to Institutions to Encourage Minority Participation in Graduate Education Program, and the School, College, and University Partnerships Program.

Purpose: The Secretary of Education will conduct a technical assistance workshop to assist applicants under the Graduate Assistance in Areas of National Need Program. Grants to Institutions to Encourage Minority Participation in Graduate Education Program, and the School, College, and University Partnerships Program. This workshop will be conducted by representatives of the Office of Higher Education Program Services.

DATES: The Technical Assistance workshop is scheduled to be held on July 25, 1988 at the GSA Regional Office Building, Auditorium (1st floor), 7th and D Streets, SW., Washington DC.

The following time schedule will be used:

10:00 a.m.—Graduate Assistance in Areas of National Need Program
1:00 p.m.—School, College, and University Partnerships Program
2:30 p.m.—Grants to Institutions to Encourage Minority Participation in Graduate Education Program

For those persons who cannot attend the workshop, information can be obtained by calling the contact person or by referring to the Federal Register notice listed below.

"Notice Inviting Applications for New Awards Under the Graduate Assistance in Areas of National Need Program for Fiscal Year 1988", published in 53 FR 25470 on Wednesday, July 6, 1988.

"Notice Inviting Applications for New Awards Under the Grants to Institutions to Encourage Minority Participation in Graduate Education Program for Fiscal Year 1988", published in 53 FR 25653 on Friday, July 8, 1988.

"Notice Inviting Applications for New Awards Under the School, College, and University Partnerships Program for Fiscal Year 1988", published in 53 FR 25290 on Tuesday, July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara Harvey, Office of Higher Education Program Services, Office of Postsecondary Education, on (202) 732-4853.

(Catalog of Federal Domestic Assistance Nos. 84.200, Graduate Assistance in Areas of National Need Programs; 84.202, Grants to Institutions to Encourage Minority Participation in Graduate Education Program; 84.204, School, College, and University Partnerships Program)

Dated: July 11, 1988.

Kenneth D. Whitehead,
Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-15948 Filed 7-13-88; 8:45 am]
BILLING CODE 4000-01-M

Office of Postsecondary Education

PLUS and Supplemental Loans for Students Programs

AGENCY: Department of Education.

ACTION: Notice of SLS and PLUS interest rate for the period July 1, 1988, through June 30, 1989.

The Assistant Secretary for Postsecondary Education announces the interest rate for variable rate Supplemental Loans for Students (SLS) and PLUS loans to be 10.45 percent for

the period July 1, 1988, through June 30, 1989. The interest rate for these loans is provided under section 427A(c) of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1077a(c)).

Section 427A(c) of the Act provides that a variable interest rate applies to new SLS and PLUS loans disbursed on or after July 1, 1988, existing SLS and PLUS loans made at a variable interest rate (currently 10.27 percent), and SLS and PLUS loans made prior to July 1, 1987 that are refinanced at a variable rate. The variable rate applies for each 12-month period beginning July 1 and ending June 30. The rate is equal to the bond equivalent rate of the 52-week Treasury bills auctioned at the final auction held before the June 1 preceding that 12-month period plus 3.25 percent.

Pursuant to section 427A(c) of the Act, as amended, the Assistant Secretary has determined the interest rate for variable rate PLUS and SLS loans for the period July 1, 1988 through June 30, 1989 in the following manner:

Step 1. By determining the bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to June 1, 1988 (7.20 percent); and
Step 2. By adding 3.25 percent to that average.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Division of Policy and Program Development, Department of Education on (202) 732-4242.

(20 U.S.C. 1077a(c))

Dated: June 24, 1988.

Kenneth D. Whitehead,
Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance No. 94.032, Guaranteed Student Loan Program and PLUS Program)

[FR Doc. 88-15844 Filed 7-13-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangements With Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned

agreement involve approval of the following sales: Contract Number S-JA-387, for the sale of 30 kilograms of natural uranium metal to the Toshiba Corporation, Japan, for use in isotope separation experiments. U.S. Nuclear Regulatory license XUO 8656 has been issued for export of this material. Contract Number S-JA-388, for the sale of 5 kilograms of natural uranium metal to the Tokai University, Japan, for use in basic research.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Date: July 7, 1988.

For the Department of Energy.

David B. Walker,
Assistant Secretary of Energy, International Affairs and Energy Emergencies.

[FR Doc. 88-15794 Filed 7-13-88; 8:45 am]
BILLING CODE 4010-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement With Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-JA-389 for the sale of 10 kilograms of natural uranium metal for use by the Nippon Atomic Industry Group, Japan, for use in investigations to clarify chemical and physical properties in various circumstances such as in toxic chemicals at high temperatures.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Date: July 7, 1988.

For the Department of Energy.
David B. Waller,
Assistant Secretary of Energy, International
Affairs and Energy Emergencies.
[FR Doc. 88-15795 Filed 7-13-88; 8:45 am]
BILLING CODE 5400-01-M

Federal Energy Regulatory Commission

[Project No. 8612-000; Project No. 9967-000]

George Arkcoosh, Shorrock Hydro, Inc.; Availability of Environmental Assessment

July 11, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the competing applications for minor license for the proposed Geo-Bon No. 1 and Shoshone Hydroelectric Projects and has prepared an Environmental Assessment (EA) for the proposed projects. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed projects and has concluded that approval of either project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Casbell,
Acting Secretary.
[FR Doc. 88-15792 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 8641-003]

Smithland Hydroelectric Partnerships; Availability of Environmental Assessment

July 11, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Smithland Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA,

the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Casbell,
Acting Secretary.
[FR Doc. 88-15791 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP88-528-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Co.

[Docket No. CP88-528-000]
July 6, 1988.

Take notice that on June 27, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP88-528-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Act (18 CFR 284.223) for authorization to transport natural gas for W.A. Sadler Resources, Inc. (Sadler), a marketer, under Panhandle's blanket certificate issued in Docket No. CP88-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle proposes to transport on an interruptible basis up to 2,500 Dt. per day on behalf of Sadler pursuant to a transportation agreement dated May 1, 1988, between Panhandle and Sadler (Agreement). Panhandle would receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, offshore Texas, Offshore Louisiana and Canada and redeliver the subject gas, less fuel used and unaccounted for line loss to Central Illinois Public Service Company in Peoria and Pike Counties, Illinois, for purchase by various end users.

Panhandle further states that the estimated daily and estimated annual quantities would be 400 Dt. and 146,000 Dt., respectively. Service under

§ 284.223(a) commenced on May 2, 1988, as reported in Docket No. ST88-3929.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP88-473-000]
July 6, 1988.

Take notice that on June 16, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563 Birmingham, Alabama 35202-2563, filed in Docket No. CP88-473-000 an application pursuant to section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing Southern to sell natural gas on an interruptible basis and to transport natural gas for direct interruptible sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a blanket certificate of public convenience and necessity authorizing it to make interruptible sales for resale in interstate commerce to third parties, including other interstate pipelines, intrastate pipelines, local distribution companies, and marketers, brokers, and other resellers of natural gas supplies. Southern also requests authorization to transport natural gas in interstate commerce to effectuate interruptible direct sales to end-users. It is stated that all such interruptible sales would be made pursuant to the terms and conditions of Southern's proposed Rate Schedule IS-1 for sales customers who also purchase gas from Southern under its OCD rate schedules, and Rate Schedule IS-2 for sales to all other customers. It is indicated that only natural gas supplies in excess of the current and projected requirements of Southern's existing firm sales customers would be available for sale under these rate schedules.

Southern states that it proposes to charge a negotiated rate for sales under Rate Schedules IS-1 and IS-2 between a maximum and minimum rate. It is stated that under the IS-1 rate schedule the maximum rate for its interruptible purchases would equal Southern's OCD commodity rate in the zone in which delivery occurs, until the customer's total purchases from Southern exceed its contract demand. Southern states that once the customer's total purchases from Southern exceed its contract demand, the maximum rate for its interruptible purchases would equal Southern's 100 percent load factor OCD rate for the zone in which delivery occurs. It is indicated that under the IS-

2 rate schedule, the maximum rate for all sales would equal Southern's 100 percent load factor rate for the zone in which delivery occurs. Southern states that the minimum rate for sales under both the IS-1 and IS-2 rate schedules would equal Southern's actual weighted average cost of gas purchased in the month of delivery plus fuel, variable costs of delivery, GRI surcharge, and annual charge adjustments.

Southern states that it does not propose to construct any new facilities in connection with the implementation of Rate Schedule IS. Southern anticipates that all sales would be made by means of existing Southern facilities and transportation agreements that Southern has with other pipelines. It is stated that purchasers would be responsible for downstream transportation if any is required.

Southern states that there are no end-use restrictions applicable to gas purchased under the IS rate schedules and that accordingly, all of Southern's existing or new customers would have equal access to gas sold under the proposed rate schedules. It is further stated that the proposed sales would be interruptible and of lower priority than Southern's firm sales and firm transportation services to its traditional firm entitlement customers.

Southern states that in order to insure that sales made under Rate schedule IS would not generate amounts to be charged or returned to Southern's customers through future PGA charges, Southern would exclude from the computation of its Account No. 191 balance all volumes sold under Rate Schedules IS as well as the pro rata share of its total actual systemwide purchase gas cost incurred in connection with sales under Rate Schedules IS. Accordingly, Southern proposes to retain all revenues from sales under Rate Schedules IS.

Comment date: July 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP88-516-000]
July 6, 1988.

Take notice that on June 24, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-516-000 an application pursuant to section 7(b) of Natural Gas Act requesting an order for permission and approval to partially abandon transportation services for Sea Robin Pipeline Company (Sea Robin) related to two transportation agreements dated April 10, 1979, all more fully set forth in the application

which is on file with the Commission and open to public inspection.

United States that it transports gas for Sea Robin through its capacity in Stingray Pipeline Company (Stingray) pursuant to two transportation agreements on file with the Commission as United's Rate Schedules X-74 and X-75. United asserts that Sea Robin has, pursuant to the provisions of the transportation agreements, requested that its contract demand be reduced from 4,700 Mcf per day to 1,000 Mcf per day in Rate Schedule X-74 and from 56,100 Mcf per day to 800 Mcf per day in Rate Schedule X-74.

United and Sea Robin have executed amendments each dated May 10, 1988 to the Rate Schedules which would provide for the proposed change, it is stated.

Comment date: July 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipeline Company

[Docket No. CP88-520-000]
July 6, 1988.

Take notice that on June 24, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88-520-000 a request pursuant to §§ 157.205 and 157.211(b) of the Regulations under the Natural Gas Act for authorization to construct and operate a sales tap under the blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to install one-inch tap on its existing 18-inch Sterlington-Jackson Main Line in Hinds County, Mississippi. The proposed tap would enable United to supply Mississippi Valley Gas Company (Mississippi Valley), a local distribution company, with about 60 Mcf/d for resale for commercial use at a egg laying and processing plant, it is stated. United explains that Mississippi would pay for all costs resulting from the tap installation. United further explains that the new sales tap would not result in an increase on Mississippi Valley's aggregate base requirements or contractual MDQ of 118,542 Mcf per day.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP88-524-000]
July 6, 1988.

Take notice that on June 27, 1988, Trunkline Gas Company (Trunkline),

P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP88-524-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-586-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Exxon Corporation (Exxon), a producer, pursuant to a transportation agreement dated January 30, 1988. Trunkline explains that service commenced May 1, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-3923-000. Trunkline further explains that the peak day quantity would be 40,000 dekatherms, the average daily quantity would be 1,000 dekatherms, and the annual quantity would be 365,000 dekatherms. Trunkline explains that it would receive natural gas for Exxon's account at points of receipt in South Timbalier Area blocks 171, 165, and 170, Offshore Louisiana and would redeliver natural gas for Exxon's account to Columbia Gulf Transmission Company at Centerville, St. Mary Parish, Louisiana. Trunkline indicates that the natural gas to be transported is for the ultimate consumption by Humble Gas System, a local distribution company.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP88-526-000]
July 6, 1988.

Take notice that on June 27, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP88-526-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Exxon Corporation (Exxon), a producer, under Trunkline's blanket certificate issued in Docket No. CP88-586-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Trunkline proposes to transport up to 50,000 dt. per day on behalf of Exxon pursuant to a transportation agreement dated May 20, 1988. It is estimated that the average daily quantity and the annual quantity of gas to be transported would be 1,000 dt. and 365,000 dt., respectively. It is

stated that the transportation agreement provides for Trunkline to receive gas from various existing points of receipt on its system from Offshore Louisiana and redeliver the gas, less fuel used and unaccounted for line loss, to Texas Eastern Transmission Corporation, (TETCO), in Beauregard Parish, Louisiana. Trunkline advises that the subject gas would be purchased by Connecticut Power & Light Company. Finally, Trunkline states that the transportation service commenced on May 25, 1988 under § 284.223(a), as reported in Docket No. ST88-3922.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Granite State Gas Transmission Inc.

[Docket No. CP88-521-000]

July 6, 1988.

Take notice that on June 27, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP-88-521-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new delivery point in Scarborough, Maine to its affiliated distributor, Northern Utilities, Inc. (Northern) under the certificate issued in Docket No. CP-82-515-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Granite states that it will install a new delivery point in the existing right-of-way at the intersection of Eastern Road and Black Point Road in Scarborough at an estimated cost of \$14,820 to serve a new customer of Northern. Granite also states that it will be reimbursed by Northern for the cost of the new delivery point.

Granite further states that the total volumes which it is authorized to deliver to Northern after approval of this request will not exceed the volumes authorized prior to approval. It is also stated that the construction of the new delivery point is not prohibited by Granite State's existing tariff pursuant to which sales are made to Northern and deliveries through the new delivery point will be made without detriment or disadvantage to Granite State's other customer requirements nor will any abandonment of service result from approval of this request.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP88-525-000]

July 6, 1988.

Take notice that on June 27, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-525-000 a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Unicom Energy, Inc. (Unicom), a marketer, under the certificate issued in Docket No. CP88-586-000 on April 30, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated April 28, 1988, as amended June 3, 1988, it proposes to transport up to 100,000 dekatherms per day equivalent of natural gas on an interruptible basis for Unicom from points of receipt listed in Exhibit "A" of the agreement to redelivery points also listed in Exhibit "A". The subject of transportation service would involve interconnections between Trunkline and various transporters. Trunkline states that it would receive the gas at various existing points on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to (1) Consumers Power Company in Elkhart, Indiana, and (2) Panhandle Eastern Pipe Line Company in Douglas County, Illinois, for various local distribution companies and end users. It is stated that the transportation charge for the proposed service is based upon Trunkline's currently effective Rate Schedule PT.

Trunkline further states that the average daily and annual quantities would be equivalent to 40,000 dekatherms and 14,600,000 dekatherms, respectively. Trunkline advises that service under § 284.233(a) commenced May 6, 1988, as reported in Docket No. ST88-3920.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP88-527-000]

July 6, 1988.

Take notice that on June 27, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-527-000 a request pursuant to § 157.205 of the

Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Archer Daniels Midland Company (Archer), the shipper and end user, under the certificate issued in Docket No. CP88-586-000 on April 30, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated April 12, 1988, it proposes to transport up to 250 dekatherms per day equivalent of natural gas on an interruptible basis for Archer from points of receipt listed in Exhibit "A" of the agreement to redelivery points also listed in Exhibit "A". The subject of transportation service would involve interconnections between Trunkline and various transporters. Trunkline states that it would receive the gas at various existing points on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Illinois Power Company in Champaign County, Illinois, for ultimate use by Archer. It is stated that the transportation charge for the proposed service is based upon Trunkline's currently effective Rate Schedule PT.

Trunkline further states that the average daily and annual quantities would be equivalent to 35 dekatherms and 12,775 dekatherms, respectively. Trunkline advises that service under § 284.233(a) commenced May 1, 1988, as reported in Docket No. ST88-3927.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. K N Energy, Inc.

[Docket No. CP88-533-000]

July 6, 1988.

Take notice that on June 28, 1988, K N Energy, Inc. (K N), P.O. Box 15285, Lakewood, Colorado 80215, filed in Docket No. CP88-533-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon metering stations and appurtenant facilities for and service to certain direct sales customers under the authorization issued in Docket No. CP83-140-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that three customers to whom K N makes retail sales have

ceased taking natural gas and have requested that K N permanently terminate natural gas service. K N, therefore, proposes to abandon, by removal, the metering stations and appurtenant facilities which were installed to deliver natural gas to the following direct sales customers:

Name	Docket No.
Atwood Cheese Company (Atwood, KS)	CP70-228
Excel Corporation (Cozad, NE)	CP82-57
Sargent Alfalfa Products, Inc. (Sargent, NE)	CP62-215

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipeline Company

[Docket No. CP88-534-000]

July 6, 1988.

Take notice that on June 28, 1988, United Gas Pipeline Company (United), P.O. Box 1487, Houston, Texas 77251, filed in Docket No. CP88-534-000 a request pursuant to § 284.223 of the Regulations under the National Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Chevron U.S.A. Inc. (Chevron). United explains that service commenced May 1, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4237. United explains that the peak day quantity would be 20,600 dekatherms, the average daily quantity would be 20,600 dekatherms, and that the annual quantity would be 7,519,000 dekatherms. United explains that it would receive natural gas for Chevron's account at points of receipt in Mississippi. United states that it would redeliver the gas for Chevron's account at existing delivery points in Mississippi.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

12. Trunkline Gas Company

[Docket No. CP88-523-000]

July 6, 1988.

Take notice that on June 27, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-523-000 a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for

authorization to provide a transportation service for Loutex Energy, Inc. (Loutex), a marketer, under the certificate issued in Docket No. CP88-586-000 on April 30, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated May 1, 1988, it proposes to transport up to 65,000 dekatherms per day equivalent of natural gas on an interruptible basis for Loutex from points of receipt listed in Exhibit "A" of the agreement to redelivery points also listed in Exhibit "A". The subject of transportation service would involve interconnections between Trunkline and various transporters. Trunkline states that it would receive the gas at various existing points on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to (1) Exxon Corporation in St. Mary Parish, Louisiana, (2) Bridgeline Gas Distribution Company in St. Mary Parish, Louisiana, (3) Monterey Pipeline Company in St. Mary Parish, Louisiana, (4) Southern Natural Gas Company in St. Mary Parish, Louisiana, and (5) United Gas Pipe Line Company in St. Mary Parish, Louisiana, for various local distribution companies. It is stated that the transportation charge for the proposed service is based upon Trunkline's currently effective Rate Schedule PT.

Trunkline further states that the average daily and annual quantities would be equivalent to 30,000 dekatherms and 10,950,000 dekatherms, respectively. Trunkline advises that service under § 284.233(a) commenced May 3, 1988, as reported in Docket No. ST88-3919.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

13. Algonquin Gas Transmission Company

[Docket No. CP88-510-000]

July 6, 1988.

Take notice that on June 24, 1988, Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP88-510-000 a request pursuant to § 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) for authorization to construct and operate facilities in connection with establishing a new delivery point for Boston Gas

Company (Boston Gas), under the certificate issued in Docket No. CP87-317-000 on April 30, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Algonquin states that Boston Gas has requested and Algonquin has agreed to construct a new measuring and regulating station on land owned by Polaroid Corporation (Polaroid) adjacent to Algonquin's existing pipeline facilities in Waltham, Massachusetts. It is stated that Boston Gas would install connecting facilities between the proposed station and Polaroid, the ultimate end user. It is also stated that Boston Gas would pay all costs associated with the project including reimbursement to Algonquin for out of pocket expenses incurred. It is estimated that the total cost of the new station would be \$321,000.

Algonquin states that it does not propose to increase the maximum daily obligation under firm service agreements between Algonquin and Boston Gas. Algonquin states that it would designate the proposed delivery point on its service agreements with Boston Gas with zero delivery obligation. Accordingly, Algonquin states that its peak day or annual commitments under firm service agreements would not be affected by construction of the new station.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

14. Natural Gas Pipeline Company of America

[Docket No. CP88-531-000]

July 6, 1988.

Take notice that on June 28, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-531-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Transco Energy Marketing Company (TEMCO), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP88-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 300,000 MMBtu of gas on a peak day (and any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) and 36,500,000 MMBtu on

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an annual basis for TEMCO. It is stated that Natural would receive the gas for TEMCO's account at various existing receipt points in Texas, offshore Texas, Louisiana and Kansas, and would deliver equivalent amounts of gas in Oklahoma, Illinois, Louisiana, Iowa, Arkansas and Kansas. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced May 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

15. Williams Natural Gas Company

[Docket No. CP88-102-001]

July 7, 1988.

Take notice that on June 20, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-102-001 an amendment to its application filed in Docket No. CP88-102-000 pursuant to section 7(c) of the Natural Gas Act so as to reflect a sale of certain facilities as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its original application, WNG proposed to abandon by reclaim the Chase Central compressor station and appurtenant facilities. Following negotiation, WNG and Vail Energy corporation (Vail) doing business as EnMark Gas Gathering, have modified the original agreement, as explained. WNG now proposes to sell the Chase Central station to Vail for \$19,000. The 250 hp compressor unit would be reclaimed to stock. It is stated. WNG also indicates that Vail would purchase no facilities at the Peckham delivery point.

WNG further states that total cost to abandon the facilities is estimated to be \$34,270 with a salvage value of \$69,622.

Comment date: July 28, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

16. Southwest Gas Corporation

[Docket No. CP88-530-000]

July 7, 1988.

Take notice that on June 28, 1988, Southwest Gas Corporation (Applicant), P.O. Box 98510, Las Vegas, Nevada 89193, filed in Docket No. CP88-530-000 an application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations under the Natural Gas Act for a certificate of

public convenience and necessity authorizing the construction and operation of certain pipeline, pressure regulating, and measurement facilities along Applicant's northern Nevada jurisdictional transmission system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of the proposed facilities is to enhance the design deliverability of certain segments of Applicant's system so as to enable Applicant to meet both the existing and projected design day requirements of Applicant's Priority 1 and 2 customers for natural gas through the 1990-91 winter season. Applicant also states that it has recently conducted an evaluation of the daily design capacity of the existing facilities along its northern Nevada transmission system, and gas determined that, due to high priority customer load growth and deterioration of some facilities, Applicant needs to reinforce and augment the design delivery capability of its system along certain segments. Applicant asserts that the estimated design day requirements for natural gas by its customers, beginning with the upcoming 1988-89 winter heating season, exceed the daily design capacity of the existing facilities to deliver such gas.

Specifically, Applicant proposes to: (1) Construct and operate 15.5 miles of 16" O.D. replacement pipeline along the portion of its northern Nevada system referred to as the Carson lateral in Washoe, Storey and Lyon Counties, Nevada; (2) construct and operate 1.7 miles of 10.75" O.D. loop pipeline along the Carson lateral in Carson City County, Nevada; (3) upgrade, and in some instances relocate, existing pressure regulating station and measurement facilities at a total of five locations on the Carson, Reno, South Tahoe, and North Tahoe laterals in Washoe, Lyon, and Douglas Counties, Nevada; and (4) install new pressure regulating station facilities at a total of three locations on the Reno and Carson laterals in Washoe and Lyon Counties, Nevada. Applicant estimates the total cost of the proposed construction activities to be \$4,940,000, which would be financed from treasury funds.

Applicant indicates that the facilities proposed in (1) above would replace two existing segments of 12 3/4" pipeline and would enable Applicant to increase the maximum allowable operating pressure on those segments, thereby increasing design capacity. Applicant indicates it intends to abandon the two pipeline segments due to deterioration of the coating on the pipe and the questionable ability of the line to permit

an increase in the maximum available operating pressure equivalent to that of the proposed new line. Applicant indicates that it believes that the abandonment of the existing pipeline segments does not require abandonment authorization under section 7(b) of the Natural Gas Act inasmuch as the facilities have physically deteriorated and are being replaced by the new pipeline and no reduction or abandonment of service would result. However, Applicant requests that the Commission grant any abandonment authorization as deemed necessary.

Applicant requests expeditious approval of its application in order to ensure that the necessary facilities can be constructed and placed into operation to meet design day requirements for the upcoming winter heating season.

Applicant further states that in Docket No. CP87-309-000, Applicant filed a joint application, along with Applicant's wholly-owned subsidiary, Paiute Pipeline Company (Paiute), by which Applicant proposes to transfer to Paiute all of Applicant's northern Nevada system facilities and operations that are subject to the Commission's jurisdiction under the Natural Gas Act. Applicant asserts that by order issued May 17, 1988, the Commission granted the necessary authorization to permit the transfer to Paiute of Applicant's northern Nevada jurisdictional facilities and operations. Applicant asserts that Paiute has accepted the certificate to acquire and operate the facilities, and that Applicant and Paiute are presently engaged in completing the arrangements to effectuate the transfer such that Paiute will commence operations no later than August 1, 1988. It is indicated that if Paiute commences operations prior to the issuance of the certificate requested in the instant application, Paiute would be substituted as the applicant in this proceeding. It is further indicated that if the certificate authority requested in the application is issued prior to the date that Paiute commences operations, Applicant believes that the certificate authorization issued in the instant proceeding, consistent with the authorization in Docket No. CP87-309-000, would be subsequently transferred to Paiute upon Paiute's commencement of operations.

Comment date: July 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment

date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15632 Filed 7-13-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket Nos. CP88-535-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

July 8, 1988.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP88-535-000]

Take notice that on June 28, 1988, United Gas Pipe Line Company, (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP88-535-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service on behalf of Texas Gas Marketing Inc. (Texaco) under United's blanket certificate issued in Docket No. CP88-6-000 on January 15, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated May 3, 1988, it proposes to transport natural gas for Texaco, from one point of receipt located offshore Louisiana, to a delivery point on United's system offshore Louisiana.

United further states that the peak day quantities would be 15,450 MMBtu, the average daily quantities would be 15,450 MMBtu and that the annual quantities would be 5,639,250 MMBtu. It is stated, service under § 284.223(a) commenced May 10, 1988, as reported in Docket No. ST88-4273 (filed June 17, 1988).

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. National Fuel Gas Supply Corporation

[Docket No. CP88-508-000]

Take notice that on June 24, 1988, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-508-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales tap facilities to attach new residential customers of National Fuel Gas Distribution Corporation (Distribution) and to add, delete and relocate delivery points to Distribution under the certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application

that is on file with the Commission and open to public inspection.

National proposes to construct sales tap facilities in Clarion, Armstrong, McKean, Jefferson, and Erie Counties, Pennsylvania, in order to serve additional residential customers of Distribution. National also proposes the addition, deletion and relocation of delivery points with respect to Distribution in Clearfield and Mercer Counties, Pennsylvania, and in Allegheny County, New York. National states the proposed deliveries will have minimal impact on its peak and annual deliveries.

Comment date: August 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15704 Filed 7-13-88; 8:45 am]

BILLING CODE 5717-01-M

[Project No. 8517-004, et al.]

Hydroelectric Applications, Prodek, Inc., et al.; Applications

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Surrender of License.

b. *Project No.:* 8517-004.

c. *Date Filed:* May 23, 1988.

d. *Applicant:* Prodek, Inc.

e. *Name of Project:* Jackson Gulch Project.

f. *Location:* On the West Mancos River near the town of Mancos, in Montezuma County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Carole A. Durnal, Prodek, Inc., 2431 E. 61st Street.

Suite 318, Tulsa, OK 74136, (918) 749-7749.

i. *FERC Contact:* Thomas Dean, (202) 376-9562.

j. *Comment Date:* August 12, 1988.

k. *Description of Project:* The proposed project would have utilized the Bureau of Reclamations' Jackson Gulch dam and reservoir and would have consisted of: (1) powerhouse No. 1 containing one 175 kW generating unit; (2) a 24-inch-diameter, 750-foot-long penstock leading to; (3) powerhouse No. 2 containing one 200 kW generating unit and powerhouse No. 3 containing one 450 kW generating unit; (4) two 7.2-kV buried transmission lines; and (5) appurtenant facilities.

The project would have had a total installed capacity of 825 kW. The applicant estimated the average annual energy generation to be 1,350,000 kWh.

The applicant states that the project is infeasible at this time due to: (1) limited early spring releases from the reservoir; (2) an altered method for calculating capacity payments for category 3 contracts under the Public Utility Regulatory Policies Act; and (3) increase equipment costs due to the foreign exchange rate.

l. *Purpose of Project:* Applicant intended to sell the power generated from the proposed facility.

m. *This notice also consists of the following standard paragraphs:* B and C.

2 a. *Type of Application:* Minor License.

b. *Project No.:* 10502-000.

c. *Date Filed:* November 6, 1987.

d. *Applicant:* Garkane Power Association, Inc.

e. *Name of Project:* Lower Boulder Creek.

f. *Location:* On Boulder Creek within the Dixie National Forest in T33S, R4E, near Boulder in Garfield County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Glen P. Willardson, P.O. Box 790, Richfield, UT 84701, (801) 896-5403.

i. *FERC Contact:* Julie Bernt, (202) 376-1036.

j. *Comment Date:* September 8, 1988.

k. *Description of Project:* The proposed project would consist of: (1) a 2,981-foot-long, 30-inch-diameter steel pipeline extending from an open canal which transports water from the tailrace of the existing upstream Boulder Creek Project (Project No. 2219); (2) a prefabricated intake structure; (3) a powerhouse at elevation 7,400 feet msl containing two generating units each with a rated capacity of 450 kW; and (4) a 5,280-foot-long transmission line. The average annual energy production is estimated to be 5,513 MWh and the

estimated cost of the project is \$1,210,500.

l. *Purpose of Project:* The power produced will be consumed by the applicant or sold to local power companies.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C and D1.

3 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10566-000.

c. *Date filed:* March 31, 1988.

d. *Applicant:* Southern Energy, Inc.

e. *Name of Project:* Lutak Inlet.

f. *Location:* On an unnamed stream near the town of Haines in the First Judicial District, Juneau, Alaska, T.30S., R.59E., Sections 9, 10, and 16, Cooper River Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. John Floreske, Jr., P.O. Box 34117, Juneau, AK 99803, (907) 789-7544.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376-9821.

j. *Comment Date:* September 6, 1988.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) A 4.5-foot-high screened intake structure at elevation 320 feet; (2) an 18-inch-diameter, 2,047-foot-long buried penstock with an 18-inch butterfly valve; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 150 kW; (4) a 3-foot-wide, 3-foot-high tailrace; (5) a 40-foot-long, 12.47-kV transmission line tying into an existing Haines Light and Power distribution system.

The applicant estimates the cost for conducting these studies under the preliminary permit at \$30,000.

l. *Purpose of Project:* Power produced from the project will be sold to Haines Light and Power.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

4 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10567-000.

c. *Date filed:* April 4, 1988.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Cispus River No. 4.

f. *Location:* On Cispus River, in Lewis County, Washington, T11N, R6E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Steve P. Barrish, Barrish and Sorenson Hydroelectric Co., 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254-2423.

i. *FERC Contact:* William Roy-Harrison, (202) 376-9830.

j. *Comment Date:* September 6, 1988.

k. *Description of Project:* The proposed project consists of: (1) A 14-foot-high, 250-foot-long diversion structure at elevation 980 feet msl; (2) a 12-foot-deep, 90-foot-wide, 11,400-foot-long canal; (3) parallel 12-foot-diameter, 600-foot-long penstocks; (4) a powerhouse containing a generating unit with a rated capacity of 15.3 MW; (5) a 1.9-mile-long, 69-kV transmission line tying into a new Lewis County PUD substation; and (6) a tailrace putting water back into the Cispus River. The applicant estimates an 100,384 MWh average annual energy production. The approximate cost of the studies under the permit would be \$35,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10568-000.

c. *Date filed:* April 4, 1988.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Cispus River No. 3.

f. *Location:* Partially within Gifford Pinchot National Forest, on Cispus River in Lewis County, Washington, T11N, R7E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Steve P. Barrish, Barrish and Sorenson Hydroelectric Company, 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254-2423.

i. *FERC Contact:* William Roy-Harrison, (202) 376-9830.

j. *Comment Date:* September 6, 1988.

k. *Description of Project:* The proposed project consists of: (1) An 8-foot-high, 200-foot-long diversion structure, at elevation 1,180 feet msl; (2) a 10-foot-deep, 75-foot-wide, 30,500-foot-long canal; (3) parallel 10-foot-diameter, 600-foot-long penstocks; (4) a powerhouse containing a generating unit with a rated capacity of 13.1 MW; (5) a 6.25-mile-long, 69-kV transmission line tying into a new Lewis County PUD substation; and (6) a tailrace putting water back into the Cispus River.

The applicant estimates an 85,882 MWh average annual energy production. The approximate cost of the studies under the permit would be \$35,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10569-000.

c. *Date filed:* April 4, 1988.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Greenhorn Creek.

f. *Location:* Partially within Gifford Pinchot National Forest, on Greenhorn Creek, Lewis County, Washington T11N, R7E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Steve P. Barrish, Barrish and Sorenson Hydroelectric Company, 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254-2423.

i. *FERC Contact:* William Roy-Harrison, (202) 376-9830.

j. *Comment Date:* September 6, 1988.

k. *Description of Project:* The proposed project consist of: (1) A 6-foot-high, 75-foot-long diversion structure at elevation 2,480 feet msl; (2) a 42-inch-diameter, 14,500-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 4.6 MW; (4) a 10-mile-long, 69-kV transmission line tying into a new Lewis County PUD substation; and (5) a tailrace putting water back into Greenhorn Creek.

The applicant estimates a 30,370 MWh average annual energy production. The approximate cost of the studies under the permit would be \$25,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10570-000.

c. *Date filed:* April 4, 1988.

b. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Smith Creek.

f. *Location:* Partially within Gifford Pinchot National Forest, on Smith Creek in Lewis County, Washington, T12N, R9E and T13N, R9E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Steve P. Barrish, Barrish and Sorenson Hydroelectric Company, 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254-2423.

i. *FERC Contact:* William Roy-Harrison, (202) 376-9830.

j. *Comment Date:* September 6, 1988.

k. *Description of Project:* The proposed project consist of: (1) A 6-foot-high, 100-foot-long diversion structure at elevation 2,720 feet msl; (2) a 54-inch-diameter, 20,500-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 10.4 MW; (4) a 350-foot-long, 69-kV transmission line connecting into the existing Lewis County PUD substation; and (5) a tailrace putting water back into Smith Creek.

The applicant estimates a 68,674 MWh average annual energy production. The approximate cost of the studies under the permit would be \$30,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

8 a. *Type of Application:* Preliminary Permit.

h. *Project No.:* 10571-000.

c. *Date filed:* April 4, 1988.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Silver Creek.

f. *Location:* Partially within Gifford Pinchot National Forest, on Silver Creek, in Lewis County, Washington T13N, R7E and T12N, R7E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Steve P. Barrish, Barrish and Sorenson Hydroelectric Company, 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254-2423.

i. *FERC Contact:* William Roy-Harrison, (202) 376-9830.

j. *Comment Date:* September 6, 1988.

k. *Description of Project:* The proposed project consist of: (1) A 6-foot-high, 80-foot-long diversion structure at elevation 1,400 feet msl; (2) a 72-inch-diameter, 21,800-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 6.2 MW; (4) a 3,500-foot-long, 69-kV transmission line tying into the existing Lewis County PUD system; and (5) a tailrace putting water back into Silver Creek.

The applicant estimates a 41,916 MWh average annual energy production. The approximate cost of the studies under the permit would be \$25,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10578-000.

c. *Date filed:* April 18, 1988.

b. *Applicant:* PRODEK, INC.

e. *Name of Project:* Mildford Dam.

f. *Location:* On the Republican River near Junction City, Geary County, Kansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ms. Carole A. Durnal, 2431 East 61st St., Suite 318, Tulsa, OK 74136, (918) 749-7749.

i. *FERC Contact:* Charles T. Raabe, (202) 376-9778.

j. *Comment Date:* September 1, 1988.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Milford Dam and Reservoir, and would consist of: (1) Two turbine/generator bulkheads to be installed in the intake tower, each bulkhead comprising 80 turbine/generator units having a capacity of 57-kW and 78-HP per unit, for a total installed capacity of 9,120-kW; (2) an outdoor gantry crane; (3) a 15-foot-wide,

30-foot-long switchgear and control powerhouse; (4) a 200-foot-long, 34.5-kV underground transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 33 million kWh. Project power will be marketed to an established operating electric utility. Applicant estimates that the cost of the studies under the terms of the permit would be \$60,000 to \$90,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10616-000.

c. *Date filed:* June 9, 1988.

d. *Applicant:* Branch Associates.

e. *Name of Project:* 3rd Branch.

f. *Location:* On the Mohawk River, near the Village of Waterford and the City of Cohoes, Saratoga and Albany Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Matthew Lavenia, 234 Woodin Road, Clifton Park, NY 12065, (518) 371-5871.

i. *FERC Contact:* Michael Dees, (202) 376-9414.

j. *Comment Date:* September 1, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A new 10 acre reservoir with a storage capacity of 80 acre-feet at a normal surface elevation of 27 feet msl; (2) a new concrete dam 200 feet long, ranging from two to five feet high; (3) a new powerplant 50 feet wide and 20 feet long housing two hydropower units each rated at 550-kW; (4) a new tailrace 50 feet wide, 200 feet long, with a maximum depth of 15 feet; (5) a new 13.8-kV transmission line 300 feet long; and (6) appurtenant facilities. The estimated annual energy production is 5.5 GWh. Project power would be sold to the Niagara Mohawk Power Corporation. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$21,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

11 a. *Type of Application:* Change in Land Rights.

b. *Project No.:* 2580-010.

c. *Date Filed:* May 2, 1988.

d. *Applicant:* Consumers Power Company.

e. *Name of Project:* Tippy Plant.

f. *Location:* Manistee River in Manistee County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. T.A. McNish, Secretary, Consumers Power Company, 212 West Michigan Avenue, Jackson, MI 49201.

i. *FERC Contact:* Mr. Donald Wilt, (202) 376-1762.

j. *Comment Date:* August 11, 1988.

k. *Description of Application:*

Consumers Power Company, licensee for the Tippy Plant Project, seeks Commission authorization to dispose of 2 parcels of land currently located within the project boundary. Parcel 1, which is presently undeveloped and contains approximately 362 acres, would be transferred to Caberfae Skiing Company, Inc., which would later transfer the land to the United States Forest Service. Parcel 2, which contains approximately 24 acres surrounding the Stronach Dam, would be transferred to STS Consultants, LTD., for the purposes of hydroelectric development. (A copy of the application may be obtained by interested parties directly from the licensee).

l. *This notice also consists of the following standard paragraphs:* B, C, & D2.

12 a. *Type of Application:* Study Plan.

b. *Project No.:* 2680-006.

c. *Date Filed:* April 19, 1988.

d. *Applicant:* Consumers Power Corporation and Detroit Edison Power Corporation.

e. *Name of Project:* Ludington Pumped Storage Project.

f. *Location:* The eastern shore of Lake Michigan in the City of Ludington, Mason County, Michigan.

g. *Filed Pursuant to:* FERC Order Modifying a Mitigative Plan for Turbine Mortality, issued August 11, 1987.

h. *Applicant Contact:* Mr. William M. Lange, Assistant General Counsel, Consumers Power Corporation, 1016 18th Street, NW, Washington, DC 20036, (202) 293-5795.

i. *FERC Contact:* Lon Crow, (202) 376-1759.

j. *Comment Date:* August 15, 1988.

k. *Description of the Plan:* Consumers Power and Detroit Edison Power Corporations propose a study plan designed to determine measures that would reduce or minimize the impacts to fish resources associated with operation of the Ludington Pumped Storage Project.

l. *This notice also consists of the following standard paragraphs:* B, C.

13 a. *Type of Application:* Amendment of License.

b. *Project No.:* 6281-008.

c. *Date Filed:* May 17, 1988.

d. *Applicant:* Five Bears Hydro, Inc.

e. *Name of Project:* Five Bears.

f. *Location:* Ward Creek, Plumas County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Robert L. Triebert, Secretary, Five Bears Hydro, Inc., 13293 Lower Grass Valley Road, Suite 102, Nevada City, CA 95959.

i. *FERC Contact:* Mr. Robert Grieve, (202) 376-9063.

j. *Comment Date:* August 11, 1988.

k. *Description of Amendment of License:* Five Bears Hydro, Inc. (licensee) proposed to change the location of the diversion structure and a portion of the penstock by moving the diversion structure about 1600 feet upstream of where it was originally sited in the original license.

l. *This notice also consists of the following standard paragraphs:* B, C.

14 a. *Type of Application:* Declaration of Intention.

b. *Project No.:* EL87-1-000.

c. *Date Filed:* October 2, 1988.

d. *Applicant:* Dunn & McCarthy, Inc.

e. *Name of Project:* Dunn & McCarthy Project.

f. *Location:* Owasco Outlet, Cayuga County, New York.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* McNeill Watkins II, William J. Madden, Jr., Bishop, Liberman, Cook, Purcell, & Reynolds, 1200 Seventeenth Street, NW, Washington, DC 20036.

i. *FERC Contact:* Hank Ecton, (202) 376-9073.

j. *Comment Date:* August 18, 1988.

k. *Description of Project:* The proposed Dunn & McCarthy Project would consist of: (1) An existing 9.5-foot-high and 100-foot-long stone and masonry dam; (2) a reservoir with a surface area of 1.2 acres, a net storage capacity of 4.5 acre-feet m.s.l.; (3) an existing intake canal, 1,050 feet long; (4) an existing steel penstock with a diameter of 9.5 feet and a length of 140 feet; (5) an existing powerhouse containing a new generating unit with a capacity of 700 kilowatts; (6) an existing transmission line, 100 feet long; (7) an existing 30-foot-wide, 500-foot-long tailrace; and (8) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any

construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* To reinstall the original turbine-generator unit or one of similar capacity and sell the generated electricity to the local public utility (New York State Electric and Gas Corporation) or such other entity that can efficiently and economically utilize the power.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

15 a. *Type of Application:* Change in Land Rights.

b. *Project No.:* 1889-012.

c. *Date Filed:* May 27, 1988.

d. *Applicant:* Western Massachusetts Electric Company.

e. *Name of Project:* Turners Falls.

f. *Location:* On the Connecticut River in Franklin County, Massachusetts; Windham County, Vermont; and Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* Mr. R.A. Reckert, Western Massachusetts Electric Company, P.O. Box 270, Hartford, CT 06141-0270, (203) 665-5000.

i. *FERC Contact:* Mr. Donald Wilt, (202) 376-1762.

j. *Comment Date:* August 18, 1988.

k. *Description of Application:* Western Massachusetts Electric Company, licensee for the Turners Falls Project, seeks Commission authorization to convey certain interests in real property within the project boundary to Turners Falls Ltd. Partnership. The easements will allow for: (a) Construction of an overhead electric transmission line on project lands; (b) rights to install and use an access roadway along the licensees' power canal; and (c) rights for emergency access across the licensees' power canal by means of an existing bridge. (A copy of the application may be obtained by interested parties directly from the licensee).

l. *This notice also consists of the following standard paragraphs:* B, C, & D2.

16 a. *Type of Application:* Surrender of License.

b. *Project No.:* 8611-003.

c. *Date Filed:* June 16, 1988.

d. *Applicant:* John N. Webster.

e. *Name of Project:* Alton Dam Project

f. *Location:* On the Merrymeeting River in Belknap County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. John N. Webster, P.O. Box 1073, Dover, NH 03820, (207) 384-5334.

i. *FERC Contact:* Steven H. Rossi, (202) 376-9814.

j. *Comment Date:* August 22, 1988.

k. *Description of Proposed Surrender:*

The proposed project would have consisted of: (1) A 15-foot-high, 136-foot-long earth embankment and concrete gravity dam with; (2) 4-foot-high flashboards; (3) a reservoir with a normal water surface area of 500 acres and a storage capacity of 4,758 acre-feet at surface elevation 526.3 feet MSL; (4) a gate house located on the left abutment; (5) a 4-foot-diameter, 330-foot-long penstock; (6) a concrete and masonry powerhouse containing a generating unit with a capacity of 125 kW; (7) the 0.48-kV generator leads; (8) the 0.48/2.4-kV, 250-kVA transformer; (9) a 350-foot-long, 2.4-kV line; and (10) appurtenant facilities. The proposed project would have generated up to 600,000 kWh annually and would have been sold to the Public Service Company of New Hampshire.

The licensee states that due to its inability to obtain a power sales contract, the licensee wishes to surrender its license. No construction has started.

l. *This notice also consists of the following standard paragraphs:* B, C and D2.

17 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10615-000.

c. *Date filed:* June 7, 1988.

d. *Applicant:* Wolverine Power Supply Cooperative, Inc.

e. *Name of Project:* Tower and Kleber Hydro Project.

f. *Location:* On the Black River near Onaway, Cheboygan County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Raymond G. Towne, Wolverine Power Supply Cooperative, Inc., 1050 East Division, P.O. Box 369, Boyne City, MI 49712, (616) 582-6572.

i. *FERC Contact:* Ed Lee, (202) 376-9116.

j. *Comment Date:* September 16, 1988.

k. *Description of Project:* The existing run-of-river Tower and Kleber Project consists of two developments located at the Tower and Kleber Dams. The Tower Dam is about 7.1 miles upstream from the point of which the Black River flows into the Black Lake. Kleber Dam is 2.5 miles downstream from the Tower Dam.

The Tower Hydro Development consists of: (1) The Tower Dam which is 727-foot-long and 22-foot-high; (2) a 102-

acre reservoir having a maximum storage capacity of 620 acre-feet at 722.1 feet msl; (3) a concrete powerhouse integral with the dam and housing two 280-kW generators for a total installed capacity of 560 kW and an average annual generation of 1,868 MWh; (4) a 150-foot-long, 69-KV transmission line; and (5) appurtenant facilities.

The Kleber Hydro Development consists of: (1) The Kleber Dam which is 535-foot-long and 40-foot-high; (2) a 295-acre reservoir having a maximum storage capacity of 3,000 acre-feet at 701.1 feet msl; (3) a concrete powerhouse located in the river channel and housing two 600-KW generator for a total installed capacity of 1,200 kW and an average annual generation of 5,630 MWh; (4) a 50-foot-long, 12.5-KV transmission line; and (5) appurtenant facilities. The applicant estimates the cost of the work to be performed under the preliminary permit would be \$68,000.

l. *Purpose of Project:* The power produced is utilized by the applicant within its own distribution system.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application.

Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application

must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original

and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-28, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application

may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 11, 1988.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15905 Filed 7-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA-58-000]

Arkansas Power & Light Co.; Order Establishing Hearing Procedures

Issued: July 11, 1988.

On April 18, 1988, the Commission issued a letter order¹ noting Arkansas Power & Light Company's (AP&L) disagreement with certain items contained in the staff's audit report of AP&L's books and records. The letter noted AP&L's staff's findings regarding: (1) Transfers of property between affiliated companies, (2) allowance for funds used during construction, depreciation and overheads after the in-service date of Independence Unit No. 1 and (3) expenses related to equal employment opportunity cases. AP&L was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by Part 41 of the Commission's Regulations, 18 CFR 41.1, *et seq.*

On May 17, 1988, AP&L responded that it did not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given the proceeding will be assigned for hearing. Accordingly, the Acting Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the Federal Register.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of

Energy Organization Act, the provisions of the Federal Power Act particularly sections 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, Chapter I), a public hearing shall be held concerning the appropriateness of AP&L's accounting practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the Federal Register.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15962 Filed 7-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-83-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 11, 1988.

Take notice that Carnegie Natural Gas Company ("Carnegie"), on July 1, 1988, tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. Specifically, Carnegie filed the following tariff sheets:

Ninth Revised Sheet No. 47
Ninth Revised Sheet No. 48

Carnegie states that these tariff sheets are being filed pursuant to 18 CFR 154.305 as part of Carnegie's annual purchased gas adjustment filing. Carnegie states that pursuant to the Purchased Gas Adjustment provisions of its FERC Gas Tariff it proposes to increase gas its rates to reflect changes in projected purchase costs. Ninth Revised Sheet Nos. 47 and 48 reflect an increase of .3164 per Dth in the Demand-1 charge applicable to LVWS and CDS service; an increase of \$.0005 per Dth in the Demand-2 charge applicable to LVWS and CDS service; an increase of \$.0138 per Dth in the commodity charges applicable LVWS and CDS service; and an increase of \$.0267 per Dth applicable to LVIS service.

¹ 43 FERC ¶ 61,100 (1988).

Copies of the filing were served upon Carnegie's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15964 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-212-000]

Enogex, Inc.; Petition for Declaratory Order, Or for Waiver of Regulations, or Alternatively, for Approval of Rates and Charges for Transportation of Gas Pursuant to Subpart C of Part 284 of the Commission's Regulations

July 11, 1988.

Take notice that Enogex Inc. (Enogex) on July 6, 1988, filed a petition for a declaratory order that certain natural gas transportation arrangements between (i) Delhi Gas Pipeline Corporation (Delhi) and Enogex, and (ii) Transok, Inc. (Transok) and Enogex, are not subject to the Commission's jurisdiction under the Natural Gas Act, 15 U.S.C. 717, *et seq.* (1982), and further, that transportation arrangements between Enogex and these two companies do not require Commission approval under section 311(a)(2) of the Natural Gas Policy Act, 15 U.S.C. 3371 (1982). If the Commission concludes that these transportation arrangements are subject to its regulations, Enogex requests a waiver of those regulations and filing requirements.

In the event the Commission declines to issue the requested order or grant requested waiver, then alternatively, pursuant to § 284.123(b)(2) of the Commission's regulations (18 CFR 284.123(b)(2) (1987)), Enogex requests that the Commission approve a maximum transportation charge of 28.50 cents per Mcf for NGPA section 311 transportation on behalf of Delhi and Transok

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions should be filed on or before July 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15967 Filed 7-13-88; 8:45 am]
BILLING CODES 6717-01-M

[Docket No. TA88-1-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

July 11, 1988.

Take notice that Equitrans, Inc. (Equitrans) on July 7, 1988, tendered for filing with the Federal Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective:

September 1, 1988
Second Revised Sheet No. 10
Second Revised Sheet No. 14
October 1, 1988
Third Revised Sheet No. 10
Third Revised Sheet No. 14

Equitrans states that the filing is made pursuant to §§ 154.305 and 154.310 of the Commission's regulations and is in conformity to the provisions of Order 483, as amended.

Equitrans states that the change in rates results from the application of its Purchase Gas Cost Adjustment provisions in Section 19, of its General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

The sales rates set forth on Rate Schedule PLS reflect an overall increase of \$.0332 per dth in the Commodity rate. The current purchase gas adjustment to Rate Schedules PLS is a decrease of \$.0420 per dekatherm (dth) and the Surcharge Adjustment is an increase of \$.0752 per dth. This change results in a current estimated average cost of gas in this filing of \$2.2255 per dth and a Total Commodity Charge of \$2.6636 per dth.

The current adjustment to D (1) Purchase Gas Costs for Rate Schedule PLS reflects an increase of \$.1415 per dth for an overall D (1) demand costs of \$.3,0206 per dth.

The current adjustment to D (2) Purchase Gas Costs for Rate Schedule PLS reflects a decrease of \$.0037 per dth for an overall D (2) demand costs of \$.0711 per dth.

The current purchase gas adjustment to Rate Schedules GS-1 is a decrease of \$.9318 per dth. The Surcharge Adjustment is a decrease of \$1.0318 per dth. This change results in a current estimated average cost of gas in this filing of \$.9897 per dth and a Total Commodity Charge of \$1.1927 per dth.

Equitrans states that tariff sheets Third Revised Sheet No. 10 and Third Revised Sheet No. 14 are submitted in accordance with §§ 154.305 and 154.310 of the Commission's regulations to be effective October 1, 1988. Said tariff sheets eliminate the one month Surcharge Adjustment of \$.0752 per dth for Rate Schedule PLS and the one month Surcharge Adjustment of \$1.0318 per dth for Rate Schedule GS-1.

After the elimination of the Surcharge Adjustment effective October 1, 1988 the total Commodity Charges for Rate Schedules PLS and GS-1 will be \$2.5894 and \$3.0245 per dth, respectively.

Equitrans states that a copy of its filing has been served upon its purchasers and interested State commissions and upon each party on the service list of Docket CP88-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. All such motions or protests should be filed on or before July 21, 1988.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15965 Filed 7-13-88; 8:45am]
BILLING CODE 6717-01-M

[Docket No. TA88-2-14-000]**Lawrenceburg Gas Transmission Corp.; Filing Substitute Tariff Sheet**

July 11, 1988.

Take notice that on July 5, 1988, Lawrenceburg Gas Transmission Corporation ("Lawrenceburg") tendered for filing one (1) revised gas tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, dated as issued on July 1, 1988, proposed to become effective August 1, 1988, and identified as follows: Forty-fourth Revised Sheet No. 4

Lawrenceburg states that its revised tariff sheet was filed under its Purchased Gas Adjustment (PGA) Provision in order to track changes in the rates of its pipeline supplier. Lawrenceburg was granted a temporary waiver from the requirement of Orders No. 483 and 483-A, that allow it to continue to use its existing purchased gas adjustment provision pending Commission approval of its abandonment application at Docket No. CP88-368-000.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15870 Filed 7-13-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket No. FA85-65-000]**Mississippi Power & Light Co.; Order Establishing Hearing Procedures**

Issued July 11, 1988.

On April 18, 1988, the Commission issued a letter order¹ noting Mississippi

¹ 43 FERC ¶ 61,103.

Power & Light Company's (MP&L) disagreement with certain items contained in the staff's audit report of MP&L's books and records. The letter noted MP&L's disagreement with the staff's findings regarding: (1) Transfers of property between affiliated companies, (2) allowance for funds used during construction and (3) accounting for coal slurry pipeline costs. MP&L was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by Part 41 of the Commission's Regulations, 18 CFR 41.1, *et seq.*

On May 19, 1988, MP&L responded that it did not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given the proceeding will be assigned for hearing. Accordingly, the Acting Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the Federal Register.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, Chapter I), a public hearing shall be held concerning the appropriateness of MP&L's accounting practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the Federal Register.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15863 Filed 7-13-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket No. RP88-94-005]**Sea Robin Pipeline Co.; Compliance Tariff Filing**

July 11, 1988.

Take notice that on July 7, 1988, Sea Robin Pipeline Company (Sea Robin) submitted the following tariff sheets as part of Sea Robin's FERC Gas Tariff, Original Volume No. 1, in compliance with the Commission's Order dated June 22, 1988:

Revised Fourth Revised Sheet No. 4-A2

First Revised Sheet No. 33

First Revised Sheet No. 51

First Revised Sheet No. 52

First Revised Sheet No. 56

First Revised Sheet No. 63

Original Sheet No. 63A

First Revised Sheet No. 64

First Revised Sheet No. 65

First Revised Sheet No. 72

First Revised Sheet No. 73

First Revised Sheet No. 75

Original Sheet No. 75A

First Revised Sheet No. 76

First Revised Sheet No. 83

First Revised Sheet No. 84

First Revised Sheet No. 85

First Revised Sheet No. 88

First Revised Sheet No. 115

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before July 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15868 Filed 7-13-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket No. RP88-200-000]**Transcontinental Gas Pipe Line Corp.; Request For Waiver of Tariff Provisions**

July 11, 1988.

Take notice that on June 27, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a petition for authorization for limited waiver of certain provisions of its FERC Gas Tariff.

Transco requests authorization for a limited waiver of certain provisions of its FERC Gas Tariff so as to permit Transco to avoid collection of its minimum annual commodity bill from its full requirement customers during the contract year commencing November 1, 1985 and ending October 31, 1986 (contract year 1986). Transco states there is good cause to allow waiver of its minimum annual commodity bill tariff provisions for full requirement customers who had no control over their market loss during contract year 1986.

Transco further states that the economic impact of the requested waiver will fall on Transco's shareholders and that it has no objection to the Commission imposing a condition precluding future recovery of losses related to the waiver from its customers.

Copies of the filing have been served on Transco's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, and 385.211). All such motions or protests should be filed on or before July 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15869 Filed 7-13-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket No. TQ88-2-43-000]**Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

July 11, 1988.

Take notice that Williams Natural Gas Company (WNG) on July 5, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume, No. 1:

Sixth Revised Sheet No. 6

Fifth Revised Sheet No. 7

Third Revised Fourth Revised Sheet No. 6

Fourth Revised Third Revised Sheet No. 7

A magnetic tape is also being filed in compliance with FERC Form No. 542-PCA.

WNG states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to decrease its rates effective August 1, 1988, to reflect a \$.1203 per Mcf decrease in the Cumulative Adjustment due to a decrease in WNG's projected gas purchase costs.

WNG states that the alternative Sheet Nos. 6 and 7 are submitted to accommodate the timing of effectiveness of corresponding sheets filed by WNG on June 15, 1988, in Docket Nos. RP88-32, *et al.*

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 18, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15866 Filed 7-13-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket No. TA88-2-22-000]**CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff**

July 11, 1988.

Take notice that CNG Transmission Corporation ("CNG"), on July 1, 1988, filed the following revised tariff sheet to Original Volume No. 1 of its tariff:

Second Revised Sheet No. 31

The filing is CNG's annual PGA filing to be effective September 1, 1988. The effect of the filing is to increase RQ and CD commodity rates by 18.46 cents per Dt, increase RQ and CD D-1 demand rates by 53 cents per Dt and to increase RQ and CD D-2 demand rates by 4.13 cents per Dt. Other sales rates are changed correspondingly.

The filing is based upon a quarterly gas supply and requirements estimate required by the Commission but reflects only those gas used expenses (including lost and unaccounted for gas) that relate to sales for the quarter. The filing also reflects a revision to CNG's storage inventory valuation method. Effective January 1, 1988, CNG has removed demand costs from the computation of its storage inventory rate.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rule of Practice and Procedure 18 CFR Sections 385.214 and 385.211. All motions or protests should be filed on or before July 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15790 Filed 7-13-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket No. RP85-58-019]**El Paso Natural Gas Co.; Tariff Filing**

July 7, 1988.

Take notice that El Paso Natural Gas

Company ("El Paso"), on July 1, 1988, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, Article XII of the Stipulation and Agreement at Docket No. RP85-58-000, *et al.*, and in compliance with ordering paragraph (B) of the Commission's order issued May 18, 1988 at Docket Nos. RP85-58-017 and RP88-44-000, certain tariff sheets which reflect a reduction in jurisdictional rates which are identified on the attached Appendix, for inclusion in its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that on January 29, 1988, it submitted data and information necessary to comply with the Commission's order issued December 16, 1987 at Docket No. RP85-58-000, *et al.* By order issued May 18, 1988 at Docket Nos. RP85-58-017 and RP88-44-000 the Commission, *inter alia*, rejected El Paso's January 29, 1988 compliance filing as being in non-compliance with the December 16, 1987 order. Ordering paragraph (B) of the May 18, 1988 order directed El Paso to file, within 15 days of the date the order is final, revised tariff sheets to be effective July 1, 1987, to reflect the decrease in the Federal corporate income tax rate from 46 percent to 34 percent, without the proposed offset for AMT.

El Paso states that in accordance with the Commission's order of May 18, 1988, El Paso has recalculated the decrease in its rates utilizing the offsets determined by the Commission to be allowable under the terms of El Paso's Stipulation and Agreement which results in a decrease in rates of \$.0202 per dth.

El Paso further states that the tendered tariff sheets reflect the reduction of \$.0202 per dth to the commodity portion of El Paso's jurisdictional sales rates and, in the transportation rates, the mainline transmission charges (\$.0101 per dth is applicable to the Back Haul Charge).

El Paso requested that the tendered revised tariff sheets be accepted for filing and permitted to become effective on the dates specified on the attached appendix.

Copies of the filing were served upon all parties of record in Docket No. RP85-58-000, *et al.*, and otherwise upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214

and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,
Acting Secretary.

EL PASO NATURAL GAS COMPANY

	Effective date
First Revised Volume No. 1	
First Substitute Thirteen Revised Sheet No. 100.	July 1, 1987.
First Substitute First Revised Sheet No. 100-A.	Do.
Substitute Fourteenth Revised Sheet No. 100.	Oct. 1, 1987.
Substitute Second Revised Sheet No. 100-A.	Do. ¹
Substitute Fifteenth Revised Sheet No. 100.	Do.
Substitute Third Revised Sheet No. 100-A.	Do. ¹
Alternate Sixteenth Revised Sheet No. 100.	Jan. 1, 1988.
Alternate Fourth Revised Sheet No. 100-A.	Do.
Alternate Substitute Sixteenth Revised Sheet No. 100.	Apr. 1, 1988. ²
Alternate First Substitute Sixteenth Revised Sheet No. 100.	Do.
Alternate First Substitute Fourth Revised Sheet No. 100-A.	Do.
Original Volume No. 1-A	
First Substitute Third Revised Sheet No. 20.	July 1, 1987.
Substitute Fourth Revised Sheet No. 20.	Oct. 1, 1987.
Substitute Fifth Revised Sheet No. 20.	Jan. 1, 1988.
Third Revised Volume No. 2	
First Substitute Thirty-seventh Revised Sheet No. 1-D.	July 1, 1987.
First Substitute Eighteenth Revised Sheet No. 1-D.2.	Do.
Substitute Thirty-eighth Revised Sheet No. 1-D.	Oct. 1, 1987.
Substitute Thirty-ninth Revised Sheet No. 1-D.	Do. ¹
Substitute Nineteenth Revised Sheet No. 1-D.2.	Do.
Alternate Fortieth Revised Sheet No. 1-D.	Jan. 1, 1988.
Substitute Twentieth Revised Sheet No. 1-D.2.	Do.
Alternate Substitute Fortieth Revised Sheet No. 1-D.	Apr. 1, 1988. ²
Alternate First Substitute Fortieth Revised Sheet No. 1-D.	Do.
Original Volume No. 2A	
Substitute Thirty-ninth Revised Sheet No. 1-C.	July 1, 1987.
Substitute Fortieth Revised Sheet No. 1-C.	Oct. 1, 1987.

EL PASO NATURAL GAS COMPANY— Continued

	Effective date
Substitute Forty-first Revised Sheet No. 1-C.	Do. ¹
Alternate Forty-second Revised Sheet No. 1-C.	Jan. 1, 1988.
Alternate Substitute Forty-second Revised Sheet No. 1-C.	Apr. 1, 1988. ²
Alternate First Substitute Forty-second Revised Sheet No. 1-C.	Do.

¹ The rates reflected on said tariff sheets were accepted for filing by order issued September 29, 1987 at Docket No. RP87-139-000, *et al.*, which provides for the assessment and collection from interstate pipelines' annual charges to their customers through an annual charge adjustment, pursuant to the Commission's Order No. 472.

² The rates reflected on said tariff sheets were accepted for filing by order issued March 31, 1988 at Docket Nos. TA88-3-33-000 and TA88-1-33-000. As permitted by and in compliance with ordering paragraph (C) of said order, El Paso notified the Commission of its election to file lower rates which were accepted for filing by letter order dated April 26, 1988 at Docket No. TA88-3-33-001.

[FR Doc. 88-15703 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-116-002]

Louisiana-Nevada Transit Co.; Correction to Filing

July 8, 1988.

Take notice that on June 28, 1988, Louisiana-Nevada Transit Company's (LNT) filed a revised schedule showing its plan for the distribution of its balance in account 191. The original schedule, labelled Compliance Schedule A, was submitted with LNT's filing dated June 9, 1988.

LNT states that a revision to Compliance Schedule A was requested by Commission staff to correct the account 191 balance to be distributed. The Commission Order of May 27, 1988, (paragraph D) directed LNT to file a plan for distribution of its balance in Account 191. In the discussion section of that same order, that balance is shown as an overcollection of \$4,570. Compliance Schedule A showed disposition of that amount.

LNT states that on review, Commission staff determined that the correct amount to be distributed was \$14,949, and that revised Compliance Schedule A, corrects the balance to be distributed.

LNT states that copies of the filing were served upon all its jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15788 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-151-002 and TQ88-1-27-002]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

July 8, 1988.

Take notice that North Penn Gas Company (North Penn) on July 1, 1988 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Fourth Revised Sheet No. 1
Substitute Eighty-Eighth Revised Sheet No. PGA-1
Fortieth Revised Sheet No. 4
Forty-first Revised Sheet No. 5
First Revised Sheet No. 5A(1)
First Revised Sheet No. 5A(2)
First Revised Sheet No. 5B
Substitute Sixth Revised Sheet No. 15C
Substitute Seventh Revised Sheet No. 15D
Substitute Seventh Revised Sheet No. 15E
Substitute Third Revised Sheet No. 15F
Substitute Fourth Revised Sheet No. 15G

The revised tariff sheets are being filed in compliance with the Federal Energy Regulatory Commission's (Commission) letter orders in the above docket numbers dated May 31 and June 23, 1988 and are proposed to be effective June 1, 1988.

In support of the rates contained in Substitute Eighty-Eighth Revised Sheet No. PGA-1, North Penn submits Schedule D1 (Appendix A) and Schedule Q1 (Appendix B) which eliminates volumes associated with Corning Natural Gas Corporation (Corning) pursuant to the Commission's May 31, 1988 letter order in these dockets.

North Penn respectfully requests waiver of any other of the Commission's rules and Regulations as may be

required to permit this filing to become effective June 1, 1988, as proposed.

Copies of this filing are being mailed to each of North Penn's jurisdictional customers (including Corning) and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motion or protests should be filed on or before July 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15787 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ88-1-37-000 and RP88-154-002]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

July 8, 1988.

Take notice that on July 1, 1988, Northwest Pipeline Corporation ("Northwest") filed the tariff sheets listed below in compliance with the Federal Energy Regulatory Commission ("Commission") order issued June 1, 1988 in the above-captioned dockets.

First Revised Volume No. 1
Eleventh Revised Sheet No. 126
Sixth Revised Sheet No. 128-A
Fifth Revised Sheet No. 128-A
Sixth Revised Sheet No. 129

Northwest states that the tariff sheets mentioned above were filed to comply with ordering paragraphs (E) and (F) of the aforementioned order. Such tariff revisions reflect the proper handling of Canadian toll credits in a manner consistent with Order 483. Northwest requests an effective date of June 1 for each of the respective tariff sheets.

A copy of this filing has been mailed to Northwest's jurisdictional customers and affected state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214

and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15786 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ88-2-41-000]

Paiute Pipeline Co.; Proposed Revised Tariff Sheets

July 8, 1988.

Take notice that on July 1, 1988, Paiute Pipeline Company (Paiute) tendered for filing six (6) copies of First Revised Sheet No. 10 applicable to its FERC Gas Tariff, Original Volume No. 1. Paiute states that pursuant to the Purchased Gas Adjustment (PGA) provision contained in Section 9 of the General Terms and Conditions of Paiute's tariff, Paiute is submitting its quarterly PGA filing and that the instant filing reflects changes in rates from Paiute's pipeline and non-pipeline suppliers.

Paiute states that it is submitting this quarterly PGA filing as a successor to the jurisdictional activities of Southwest Gas Corporation (Southwest) pursuant to Commission order issued May 17, 1988 in Docket No. CP87-308-000, 43 FERC ¶61,257. Paiute states that the effective date of the transfer of the facilities and services to Paiute, and the date of Paiute's commencement of operations, will be August 1, 1988. Accordingly, Paiute is submitting the instant quarterly PGA filing in lieu of Southwest.

Paiute further states that Southwest has been, and Paiute will be, acquiring and having transported substantial quantities of Canadian gas to meet its system supply requirements. Paiute requests that the Commission grant it permanent approval under § 154.302(j)(11) to treat as purchased gas costs to be recovered through Paiute's PGA clause the costs of Canadian gas supplies and gas purchased from marketers.

Paiute further states that in the concurrent tariff filing being submitted by Paiute and Southwest in Docket Nos. CP87-308-002 and RP88-208-000, Paiute

and Southwest indicate that in their joint application filed in Docket No. CP87-309-000 on April 28, 1987, Southwest proposed to eliminate the surcharge in effect in its rates to amortize its Account No. 191 balance, and to clear any balance remaining in its Account No. 191 as of the date of the transfer of its jurisdictional facilities and operations to Paiute, by either remitting a credit balance to Sierra Pacific and CP National in lump sum payments, or by billing a debit balance to Sierra Pacific and CP National in equal installments over a six-month period. The purpose of this proposal was to permit Paiute to commence operations with a zero balance in its Account No. 191, and to avoid any inequities in distributing credits or assigning costs in view of the fact that Paiute will be serving two additional jurisdictional sales customers, Southwest-Northern Nevada and southwest Southern-Nevada. Accordingly, the revised tariff sheet proposed in the instant filing sets forth proposed rates that do not reflect any Account No. 191 surcharge amounts.

Pursuant to the Commission's Blanket Order issued May 25, 1988 in Dockets Nos. RP88-152-000, *et al.*, Paiute states that herewith submits its PGA data on a 5.25" (300KB) double sided, double density diskette, 48 tracks per inch, 40 tracks per surface, 512 bytes per sector, 9 sectors per track. The data has been saved in a Lotus 2.1 program file under the name of 542-PGA.

Finally, Paiute states that if the rates submitted by its primary supplier, Northwest Pipeline Corporation are revised for any reason, Paiute reserves the right to submit a substitute sheet to track the Northwest revisions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 15, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-15785 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA88-2-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

July 11, 1988.

Take notice that Trunkline Gas Company (Trunkline) on July 1, 1988, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Third Revised Sheet No. 3-A

The proposed effective date of the revised tariff sheet is September 1, 1988. Trunkline states that the revised tariff sheet reflects a commodity rate increase of 5.85¢ per Dt. This increase includes:

(1) A (0.98¢) per Dt decrease in the projected purchased gas cost component; and

(2) A 6.83¢ per Dt increase in the surcharge to recover the Current Deferred Account Balance at April 30, 1988 and related carrying charges.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 27, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15789 Filed 7-13-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of \$1,057,703 (plus accrued interest) obtained as a result of a

Consent Order that the DOE entered into with World Oil Company (Case No. KEF-0005), a refiner of crude oil and a reseller-retailer of petroleum products located in Los Angeles, California. The fund will be available to firms that purchased World product during the consent order period.

DATE AND ADDRESS: Application for Refund from the World Oil Company refined product pool must be filed no later than February 1, 1989. Applications for Refund from the World Oil Company crude oil pool must be postmarked no later than October 31, 1989. All applications should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0005.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wicker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a January 19, 1984 consent order between the DOE and World Oil Company (World). That consent order settled certain disputes between the firm and the DOE concerning World's possible violations of DOE regulations in its sales of crude oil and refined petroleum products. The consent order covers the period August 20, 1973 through January 27, 1981.

The Decision sets forth the procedures and standards that the DOE has formulated to distribute the contents of an escrow account in the amount of \$1,057,703, funded by World pursuant to the consent order. Under the procedures adopted, the DOE will divide the consent order fund into two pools, one relating to World's crude oil sales and the other relating to the sales of refined products. Purchasers of World refined products may file claims for refunds from the escrow fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the World consent order fund allocated to refined products. In order to receive a refund, a claimant must furnish the DOE with evidence that it was injured by the alleged overcharges. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms that file refund claims in amounts of \$5,000 or less. The

specific requirements for proving injury are set forth in the Decision and Order.

Under the procedures adopted, the portion of the consent order fund attributable to World's alleged crude oil violations will be placed into a pool of crude oil monies for distribution pursuant to the DOE's Modified Statement of Restitutionary Policy for crude oil claims.

Applications for Refund for a portion of the World Oil Company refined product pool must be postmarked no later than February 1, 1989. Applications for Refund from the World Oil Company crude oil pool must be postmarked no later than June 30, 1989. Refund applicants must file two copies of their submission. All applications will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: July 7, 1988.

George B. Breznay,
Director, Office of Hearings and Appeals.
July 7, 1988

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: World Oil Company.
Date of Filing: October 16, 1985.
Case Number: KEF-0005.

On October 16, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving World Oil Company (World). See 10 CFR Part 205, Subpart V. This Decision and Order sets forth the procedures that the OHA has formulated to govern the distribution of the World settlement fund.

I. Background

World was a "producer" of crude oil and a "refiner" as those terms are defined in 10 CFR 212.31. Between August 20, 1973 and January 27, 1981 (the consent order period), World was a "producer" of crude oil. From February 1976, the date World acquired its refining subsidiary Sunland Refining Corporation, through the end of the consent order period, World was a "refiner" of crude oil. World was therefore subject to the Mandatory

Petroleum Price and Allocation Regulations set forth at 10 CFR Parts 211 and 212. The ERA conducted an extensive audit of World's operations and found in two Notices of Probable Violation that the firm had violated applicable DOE pricing and allocation regulations in its sales of crude oil and refined petroleum products during the consent order period. In order to settle all claims and disputes between World and the DOE, the two parties entered into a consent order that became final on January 19, 1984. Under the terms of the Consent Order, World agreed to remit \$1,100,000 to the DOE to settle alleged violations that occurred during the consent order period.

The World Consent Order states that \$900,000 of the \$1,100,000 remitted by World would be disbursed to the State of California for indirect restitution.¹ After this disbursement was made, there remained \$200,000 in the World Account (\$1,100,000 - \$900,000 = \$200,000). The Consent Order states that this \$200,000 concerns alleged violations in World's pricing of crude oil during the consent order period.

Furthermore, in the Consent Order, World agrees to waive its right to a potential refund of \$857,703 (\$445,487 in principle and \$412,216 in interest) held by the DOE in escrow in a pending DOE proceeding with Edgington Oil Company, Inc. (EDG). *Id.* Consequently, the DOE transferred World's potential refund amount in the EDG proceeding, or \$857,703 from the EDG Account to the World Account. The EDG Consent Order indicated that World was allegedly overcharged in that amount as a result of World's purchases of motor gasoline from EDG. Therefore, this amount, or \$857,703, concerns alleged violations in the sales of refined petroleum products during the consent order period.

On February 18, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the World consent order fund. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the Federal Register and comments regarding the proposed refund procedures were

¹ World is a California based corporation that made virtually all of its sales in that state during the months in which the alleged violations occurred. In the Consent Order, World agreed to remit \$900,000 to the State of California to fund any of the five energy conservation programs specified in the Consent order. The DOE determined that indirect restitution through the State of California would be appropriate because it would otherwise be difficult to identify those California end-user customers who, in all likelihood, bore the ultimate burden of World's alleged pricing violations. See World Consent Order, 49 FR 2290 (January 19, 1984).

solicited. 53 FR 5455 (February 24, 1988). We received no comments concerning the proposed procedures for the distribution of the World consent order fund. Consequently, they will be adopted as proposed.

II. Refund Procedures

As we indicated in the PD&O, the World Consent Order resolved alleged regulatory violations involving the sale of both crude oil and refined petroleum products. Therefore, the escrow fund will be divided into two pools. Because \$200,000 of the World fund concerns alleged violations in World's pricing of crude oil, this amount shall be set aside as a pool of crude oil funds available for disbursement. Furthermore, because the \$857,703 transferred from the EDG Account to the World Account involves alleged violations in sales of refined petroleum products, this amount shall be set aside as a pool of funds to be made available for distribution to claimants who demonstrate that they were injured by World in its sales of refined petroleum products.

III. Distribution of the World Crude Oil Funds

On July 28, 1986, as a result of the court-approved Settlement Agreement in *The Department of Energy Stripper Well Exemption Litigation, In Re: M.D.L. No. 378*, the DOE issued a Modified Statement of Restitutionary Policy (MSRP) providing that crude oil overcharge revenues will be divided among the States, the United States Treasury and eligible purchasers of crude oil and refined products. 51 FR 27899 (August 4, 1986). Twenty percent of the crude oil violations amounts will be reserved to satisfy claims from injured parties that purchased refined petroleum products between August 19, 1973 and January 31, 1981 (the crude oil price control period). The MSRP also calls for the remaining 80 percent of the funds to be disbursed equally between state and federal governments for indirect restitution. Once all valid claims are paid, any remaining funds will be divided equally between the state and federal governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

The World crude oil monies, \$200,000, plus interest, will be disbursed in accordance with the MSRP, using the procedures described in *A. Tarricone, Inc., et al.*, 15 DOE ¶ 85,495 (1987). We will reserve 20 percent of those funds, \$40,000, plus interest, for distribution to injured parties in the DOE's Subpart V

crude oil refund proceedings. As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e., that they did not pass through the alleged overcharges to their own customers). However, in the Subpart V crude oil refund proceedings, we are adopting a presumption that end-users and ultimate consumers whose business are unrelated to the petroleum industry were injured by a consent order firm's alleged overcharges. Refunds to eligible claimants that purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the World crude oil refund pool of \$200,000 by the total consumption of petroleum products in the United States during the crude oil price control period (2,020,997,335,000 gallons). *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,868 (1986). This approach reflects the fact that crude oil overcharges were spread to every region by the Entitlements Program.³ The volumetric amount for the crude oil pool established in this proceeding is therefore \$0.000000989861 per gallon of refined products purchased (\$200,000/2,020,997,335,000 = \$0.000000989861). All claimants that filed successful crude oil applications will receive additional refunds without having to file another application.

The remaining 80 percent of the World crude oil funds, \$160,000, plus interest, as well as any portion of the above-mentioned 20-percent reserve that is not distributed, will be divided equally between the state and federal governments for indirect restitution. We will therefore direct the DOE's Office of the Controller to disburse immediately \$80,000, plus appropriate interest, to the State crude oil tracking account and \$80,000, plus appropriate interest, to the federal government crude oil tracking account.

IV. Final Refund Procedures for the World Refined Product Funds

This Section sets forth the considerations applicable to refund claims from the pool apportioned to World refined products. The World refined products pool will be distributed

³ The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly dispersing overcharges resulting from crude oil miscalculations throughout the domestic refining industry. See *Amber Refining, Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

to purchasers of World refined product who satisfactorily demonstrate that they were injured by World's alleged pricing violations. From our experience with Subpart V refund proceedings, we believe that most applicants will fall into the following categories: (1) End-users, i.e., ultimate consumers that used World refined products; (2) regulated entities, such as public utilities that used World products in their businesses, or cooperatives that sold World products in their businesses; and (3) refiners, resellers or retailers that resold World products.

As we discussed in our Proposed Order, refunds will generally be made on a pro rata or volumetric basis. This approach is based on the presumption that the alleged overcharges were dispersed equally in all sales of refined products made by World during the consent order period. In the absence of better information, a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric refund approach we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons purchased times the per gallon refund amount, plus accrued interest. The record in the present case is inconclusive with respect to the precise volume of products sold by World. As we indicated in the PD&O, based on our considerable experience in conducting refund proceedings, we have made a reasonable estimate and have set the per gallon refund amount at \$.001 per gallon. We also recognize that some claimants may have been disproportionately overcharged. Therefore, any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. See, e.g., *Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

(A) Specific Application Requirements for Each Category of Refund Applicants

(1) Refund Applications of End-Users

End-users, i.e., ultimate consumers of World refined products, will be presumed to have been injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and

services would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*Texas*). Consequently, end-user claimants need only document their purchase volumes of World products to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications of Cooperatives and Regulated Entities

Public utilities, agricultural cooperatives and other entities whose prices are regulated by governmental agencies, or governed by cooperative agreements do not have to submit detailed proof of injury. Although such regulated entities generally would have passed any overcharges through to their customers, they generally would pass through any refunds as well. Therefore, those firms and cooperative groups will be required to certify that they will pass any refund received through to their customers, to provide us with a full explanation of how they plan to accomplish this restitution to their customers and to explain how they will notify the appropriate regulatory body or membership group of the receipt of refund money. See *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note, however, that a cooperative's sales of World products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Refiners, Resellers and Retailers

a. *Refiners, Resellers and Retailers Seeking Refunds of \$5,000 or Less.* We are adopting the small-claims presumption set forth in the Proposed Order. Therefore, a refiner, reseller or retailer claiming a refund of \$5,000 or less, excluding accrued interest, will be presumed to have been injured by World's alleged overcharges. Without this presumption, such an applicant would have to sort through records dating as far back as 1973 to gather proof that it absorbed the alleged overcharges. The cost to the claimant of gathering this information, and to the OHA of analyzing it, could exceed the actual refund amount. Under this injury presumption, a small-claims claimant need only document the volume of World refined petroleum products that it purchased during the consent order period. See *Texas*, 12 DOE at 88,210; *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984).

b. *Refiners, Resellers and Retailers Seeking Refunds Greater Than \$5,000.* A refiner, reseller or retailer whose full allocable share of the World consent order funds exceeds \$5,000 will be

required to document its injury. Such a claimant will be required to demonstrate that it maintained a bank of unrecovered product costs at least equal to the amount of the refund claimed beginning with the first month of the period for which a refund is claimed, through the date on which either that product was decontrolled or the banking regulations expired. In addition, the claimant must show, through market conditions or otherwise, that it did not pass through those increased costs to its customers. Such a showing might be made through a demonstration of a competitive disadvantage, lowered profit margin, decreased market share or depressed sales volume during the period of purchases from World. *American Pacific International*, 14 DOE ¶ 85,158 at 88,295 (1986). If a refiner, reseller or retailer that is eligible for a refund in excess of \$5,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of \$5,000, plus accrued interest.

(4) Applicants Seeking Refunds Based on Allocation Claims

We also recognize that we may receive claims alleging World allocation violations. Such claims will be based on the consent order firm's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. See 10 CFR Part 211. We will evaluate refund applications based on allocation claims by referring to standards such as those set forth in *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984) and *Tenneco Oil Company/Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982). As those decisions recognize, the DOE will grant a refund application based on an allocation claim if the DOE determines that the grant will result in an equitable distribution of the consent order fund. Those decisions refer to some of the factors to be considered in assessing the merits of a refund application. The decisions also refer to some of the possible methodologies to be used to determine the refund amount.

(5) Refund Applications of Spot Purchasers

If a claimant made only sporadic purchases of significant volumes of World product, we will consider that claimant to be a spot purchaser. We are adopting a rebuttable presumption that claimants who made only spot purchases from World were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases. Therefore, they generally would not have made

spot market purchases from World unless they were able to pass through the full amount of any price increases to their own customers. See *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396 (1981). Therefore, a firm that made only spot purchases from World will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured.

(6) Refund Applications of Consignees

Finally, as in previous cases, we will presume that consignees of World refined petroleum products were not injured by the alleged overcharges. See, e.g., *Jay Oil Company*, 16 DOE ¶ 85,147 at 88,286 (1987). A consignee agent is an entity that distributed products pursuant to an agreement whereby its supplier established the prices to be paid and charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products distributed. This presumption may be rebutted by showing that the consignee's sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of World's pricing practices. See *Gulf Oil Corporation/C.F. Carter Oil Company*, 13 DOE ¶ 85,388 at 88,962 (1986).

(B) General Refund Application Requirements for Claims From the World Refined Product Pool

Pursuant to 10 CFR 205.283, we will accept Applications for Refund from individuals and firms that purchased refined petroleum products sold by World during the consent order period. There is no specific application form that must be used. However, all Applications for Refund should include the following information:

(1) An Application for Refund must be in writing, signed by the applicant and specify that it pertains to the World Oil Company Special Refund Proceeding, Case No. KEF-0005.

(2) Each applicant should furnish its name, title, street or post office address and telephone number. If the applicant is a business firm, it should furnish all other names under which it operated during the period for which the claim is being filed.

(3) Each applicant should specify how it used the World product,—i.e., whether it was a refiner, reseller, retailer, consignee or end-user.

(4) Each applicant must submit the volume of World petroleum product that it purchased in each month of the consent order period. If the applicant was an indirect purchaser, it must also submit the name of its immediate

supplier and indicate why it believes the product was originally sold by World.

(5) If the applicant is a refiner, reseller or retailer that wished to claim a refund in excess of \$5,000, it should also:

a. State whether it maintained banks of unrecouped product cost increased and furnish the OHA with quarterly bank calculations through January 27, 1981;

b. State whether it or any of its affiliates have filed any other Applications for Refund in which it referred to its level of banks as a basis for refund; and

c. Submit evidence that it did not pass through the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases were infeasible.

(6) If the applicant is in any way affiliated with World, it must indicate the nature of the affiliation.

(7) If the applicant is involved in DOE enforcement or private actions filed under section 210 of the Economic Stabilization Act, it should describe the action and its current status. If the applicant was a party to such an action that is no longer pending, it should indicate how the proceeding was resolved. The applicant must keep the OHA informed of any change in status during the pendency of its Application for Refund. See 10 CFR 205.9(d).

(8) All applicants must submit the following signed statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." See 10 CFR 205.283 (c); 18 U.S.C. 1001.

(9) All Applications for Refund from the World Oil Company refined product pool must be filed in duplicate no later than February 1, 1989. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20085. Any applicant that believes its application contains confidential information must indicate this on the first page of its application and submit two additional copies of its application from which confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

(10) Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(11) Applications for Refund from the World Oil Company refined product pool

must be postmarked no later than February 1, 1989.

(C) Distribution of the Remainder of the Consent Order Funds Attributable to World's Refined Product Sales

In the event that money remains after all refund claims from the World refined product pool have been analyzed, undistributed funds in that refund pool will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session., Cong. Rec. H11319-21, (Daily E. October 17, 1986).

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by World Oil Company pursuant to the Consent Order finalized on January 19, 1984, may now be filed.

(2) Applications for Refund from the World Oil Company refined product pool must be filed no later than February 1, 1989.

(3) Applications for Refund from the World Oil Company crude oil pool must be filed no later than October 31, 1989. Individuals that have already filed a claim for a crude oil refund (RF272) should not file a new application.

(4) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, as provided in Paragraphs (5), (6) and (7) below, the total net current crude oil equity from the World Oil Company subaccount (Consent Order No. 980S00104Z) within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States.

(5) The Director of Special Accounts and Payroll shall transfer \$118,382 (\$80,000 in principal and \$38,382 in interest), of the funds obtained pursuant to Paragraph (4) above into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002WO.

(6) The Director of Special Accounts and Payroll shall transfer \$118,382 (\$80,000 in principal and \$38,382 in interest), of the funds obtained pursuant to Paragraph (4) above into a subaccount denominated "Crude Tracking-States," Number 999DOE003WO.

(7) The Director of Special Accounts and Payroll shall transfer \$59,191 (\$40,000 in principal and \$19,191 in interest), of the funds obtained pursuant to Paragraph (4) above into a subaccount denominated "Crude

Tracking-Claimants 1," Number 999DOE007Z.

George B. Brezney,

Director, Office of Hearings and Appeals.

[FR Doc. 88-15890 Filed 7-13-88; 8:45 am]

MAILING CODE 9452-01-M

Southwestern Power Administration

Order Confirming, Approving And Placing Integrated System Power Rates In Effect On An Interim Basis

AGENCY: Southwestern Power Administration (SWPA), DOE.

ACTION: Notice of power rate order.

SUMMARY: The Under Secretary of Energy, acting under Delegation Order No. 0204-108, as amended, 51 FR 19744 (May 30, 1986), has confirmed, approved and placed in effect on an interim basis the following Southwestern Power Administration System Rate Schedules: Rate Schedule P-87A, Peaking Power Rate Schedule P-87B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority

Rate Schedule F-87B, Firm Power through Oklahoma Utility Companies

Rate Schedule TDC-87, Transmission Service

Rate Schedule IC-87, Interruptible Capacity

Rate Schedule EE-87, Excess Energy

The rate schedules supersede the existing rate schedules shown below:

Rate Schedule P-84A, Peaking Power

Rate Schedule P-84B, Peaking Power

through Oklahoma Utility Companies

and/or Oklahoma Municipal Power Authority

Rate Schedule F-84A, Firm Power

Rate Schedule F-84B, Firm Power

through Oklahoma Utility Companies

Rate Schedule TDC-82 (Revised),

Transmission Service

Rate Schedule IC-82, Interruptible

Capacity

Rate Schedule EE-82, Excess Energy

EFFECTIVE DATES: Rate order No.

SWPA-21 specifies July 1, 1988, through

September 30, 1991, as the effective

period for the rate schedules.

FOR FURTHER INFORMATION CONTACT:

Francis R. Gajan, Director, Power

Marketing, Southwestern Power

Administration, Department of Energy,

P.O. Box 1619, Tulsa, Oklahoma 74101,

(918) 581-7529.

SUPPLEMENTARY INFORMATION: The

SWPA Administrator has determined,

based on the Final 1987 Integrated

System Current Power Repayment

Study, that existing System rates will

not satisfy cost recovery criteria

specified in Department of Energy Order No. RA 6120.2 and section 5 of the Flood Control Act of 1944. The Administrator prepared a Final 1987 Integrated System Revised Power Repayment Study based on additional annual revenue of \$2,614,600 beginning July 1, 1988.

The increase in annual revenue from \$87,917,100 to \$90,785,900 will be recovered primarily through an increase in the base energy charge for sales of Federal hydroelectric power and energy, although a slight decrease in the basic monthly demand charges and the combination of a decrease and an increase in the conditions of service charges for 69 kV and load center or below 69 kV deliveries respectively, contribute as well. Significantly increased charges for the use of SWPA's transmission system to deliver non-Federal power and energy are indicated and new alternate energy-based transmission rates have been designed for delivery of economy energy. Further, a credit, specifically designed for each customer, will apply against the purchased power adder component of the rate schedules to refund excess revenues collected in the purchased power deferral account during recent years of favorable water conditions. This credit is intended to effectively equalize each customer's average purchased power adder cost and should reduce the deferral account to a level needed to cover system purchases under one year of critical water conditions. The credit will offset the effects of the overall rate increase for the vast majority of customers, except those to which the purchased power adder does not apply who will experience an increase of about one percent in their basic 1200 hour peaking service. The total rate increase is derived about 20 percent from the basic peaking and firm service, about 45 percent from non-firm energy sales, and about 35 percent from facilities and transmission service charges.

During the 27-month effective period of the credit (July 1, 1988-September 30, 1990), customers affected by the purchased power adders, under basic peaking or the remaining firm service contracts, will experience a wide range of rate decreases dependent upon their previous statuses as either peaking or firm customers, or both, the duration of firm contracts, and whether they had collateral peaking arrangements or merely converted a firm contract directly to peaking. In addition, under the previous rates the \$0.0005 credit was to terminate September 30, 1989, and the purchased power adder would have reverted to \$0.002 with no credit

applicable. Consequently, with the new base purchased power adder at \$0.0013, a rate decrease ranging from one to four percent for these customers is expected after the new specific credits terminate, with the larger reductions occurring for 69 kV customers whose capacity charge adjustments will have decreased substantially. The proposal also includes a provision for SWPA's Administrator, at his discretion, to adjust the purchased power adder annually up to \$0.0005 per kilowatt-hour as necessary, without the need to submit a formal rate filing, but only requiring notification of the Federal Energy Regulatory Commission (FERC). The System rate schedules will be in effect on an interim basis through September 30, 1991, or until confirmed and approved on a final basis by the FERC.

Issued in Washington, DC, this — day of July, 1988.

Joseph F. Salgado,
Under Secretary.

The text of Rate Order No. SWPA-21 follows:

[Rate Order No. SWPA-21]

In the matter of: Southwestern Power Administration—System Rates; Order Confirming, Approving and Placing Increased Power Rates in Effect on an Interim Basis.

July 1, 1988.

Pursuant to section 302 (a) and 301 (b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place into effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204-33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy. By Delegation Order No. 0204-108, effective December 14, 1983, 48 FR 55864 (December 14, 1983) the Secretary of Energy delegated

to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This rate order is issued pursuant to the delegation to the Under Secretary of Energy.

Background

Federal Energy Regulatory Commission (FERC) confirmation and approval of the following system rate schedules was provided in FERC Docket No. ER86-4011-000 issued July 22, 1986, for the period October 1, 1985, through September 30, 1989:

Rate Schedule P-84A, Peaking Power Rate Schedule P-84B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority

Rate Schedule F-84A, Firm Power

Rate Schedule F-84B, Firm Power

through Oklahoma Utility Companies

Rate schedule TDC-82 (Revised),

Transmission Service

Rate schedule IC-82, Interruptible

Capacity

Rate schedule EE-82, Excess Energy.

SWPA's November 1987 Current

Power Repayment Study indicated that

the existing rates would not satisfy

present financial criteria regarding

repayment of investment in a 50-year

period primarily because of projected

increases in annual operating expenses

for the generation and transmission

facilities. The November 1987 Revised

Power Repayment Study indicated that

an increase in average annual revenue

from the Integrated System of \$3,768,100

was necessary in FY 1988 to accomplish

System repayment in the required

number of years. Accordingly, SWPA

developed proposed system rate

schedules in the November 1987 Rate

Design Study based on the additional

revenue requirement.

Title 10, Part 903, Subpart A of the

Code of Federal Regulations,

"Procedures for Public Participation in

Power and Transmission Rate

Adjustments," has been followed in

connection with the proposed rate

adjustments. More specifically, opportunities for public review and comment on proposed system power rates during a 90-day period were announced by notice published in the Federal Register November 18, 1987 (52 FR 44217). A Public Information Forum was held December 15, 1987, in Tulsa, Oklahoma, and a Public Comment Forum was held January 12, 1988, also in Tulsa. Written comments were due by February 16, 1988. On November 17, 1987, SWPA mailed a pre-publication copy of the Federal Register notice making copies of the proposed rate schedules and supporting data for the 1987 Power Repayment Studies available to customers and interested parties. During the comment period, interested parties reviewed SWPA's studies designed to produce an annual revenue increase of \$3,768,100, or 4.3 percent to begin March 1, 1988. In addition and prior to the formal 90-day public participation process, SWPA held a number of informal meetings with customer representatives during preparation of the November 1987 Current and Revised Power Repayment Studies and Rate Design Study. SWPA personnel met informally with the Federal Power Marketing Committee (Committee) of the Southwestern Power Resources Association on two occasions at SWPA headquarters in Tulsa to explain the studies, answer questions, and consider comments and suggestions concerning development of the proposed system rates. At one of these meetings, representatives of the Corps of Engineers from the Dallas Division and Tulsa District Offices were present to discuss Corps Operation and Maintenance expense projections, estimates of major project replacement costs, and cost allocations to hydropower. Further, SWPA staff met with the Committee again following completion of the November 1987 Current and Revised Power Repayment Studies and Rate Design Study to discuss the results of these studies.

Following the conclusion of the comment period in February 1988, modification of the November 1987 Power Repayment and Rate Design Studies and the proposed Rate Schedules was begun based on formal comments received. The numerous comments presented during the formal public participation process were considered, responses developed and, where appropriate, incorporated into the studies. Once all comments had been carefully considered, the Administrator made the decision to complete the revised rate proposal. At that time another meeting was held with the

Committee to apprise SWPA's customer representatives of the status of the rate increase proposal and the Administrator's decision to pursue it. Responses to major comments are contained herein. The proposed rate schedules resulting from these changes are designed to produce ultimate average annual revenue of \$90.8 million, which is an increase of \$2.8 million, or 3.2 percent, over the revenue produced by the existing rates of \$88.0 million.

Discussion

General

The rate schedules proposed by SWPA for implementation increase annual revenue from \$87,971,100 to \$90,785,900, which will satisfy cost recovery criteria outlined in Department of Energy Order No. RA 6120.2 and section 5 of the Flood Control Act of 1944, by increasing annual net revenues by \$2,814,800. This amount is less than that initially proposed in November 1987 due to incorporation of several customer comments received as well as a number of significant events which had occurred during the period of public participation. The following adjustments, which had not been included in the November 1987 studies, affected the level of rate increase needed:

1. Concluded a new contractual resource agreement in December 1987 with a major area cooperative customer through which SWPA receives a guaranteed amount of capacity from the cooperative's resource surplus, for sale by SWPA in return for SWPA system energy made available to the cooperative. This arrangement enabled SWPA to sell an additional 30 MW of capacity beginning January 1, 1988, and 4 MW of capacity beginning July 1, 1988, to preference customers, increasing annual system revenues by over \$900,000.

2. Used actual FY 1987 audited financial statement results in place of estimated average year financial data, including actual deferred purchase power revenue account balances, final cost allocation adjustments on seven Corps projects, etc.

3. Corrected the level of repayable investment at the Harry S. Truman Project used in the Power Repayment Studies from 48 percent to 44 percent, based on the capability of the plant to produce revenues from the capacity of two generating units declared commercially operable (rather than incremental capacity marketed in anticipation of full operation of power at Truman) and full energy production compared to the capacity of six units and full energy production.

Following are a number of other adjustments, in response to customer comment, which were made to both the Power Repayment and Rate Design Studies which had no effect on the level of system net revenue increase required:

1. Reduced SWPA's average purchase power cost per kWh based on new data published by the Energy Information Administration regarding fuel costs in the SWPA marketing area for the rate approval period.

2. Changed assumptions regarding accounting for the use and valuation of banking energy which is used to offset energy purchases, and included regular annual banking activities for standby/reserve operations which had previously understated banking activity under the assumption that they would net off.

3. Revised the purchased power adder credit from a single, general energy rate for all customers to a specific energy rate developed for each customer, which is intended to place all customers on an equal footing with regard to SWPA's future need to purchase energy by refunding to each customer amounts necessary to equalize the average purchased power adder rate per kWh paid on all energy received from SWPA.

4. Developed an alternate energy-based rate for wheeling of non-Federal economy energy utilizing interruptible capacity in SWPA's transmission system.

Included in the above adjustments are two issues of note which set this rate proposal apart from the normal. The first, and most significant, is the treatment of the Harry S. Truman Project with regard to the limitations placed on its operation by the Corps of Engineers.

Harry S. Truman Project

By way of background, construction of the Truman project began in 1961 with general completion and testing of turbines in 1961. The project was designed and constructed to have 160 MW of dependable (marketable) capacity. Due to extreme variations in water available to generate and lack of storage capacity in the project (only two feet), six generating units were installed with the ability to reverse and operate as motors and pump water back into the reservoir. The pumping enables the reservoir to be refilled as needed to maintain dependability and allow marketing of the entire capacity of all six units. Upon confirmation of turbine testing, two units were tested for motor operation of the pumps for pump storage capability. Testing proved they operated and were mechanically sound; however, a substantial fish kill occurred, resulting in a moratorium by the Corps on the

future use of the pumps. The State of Missouri is opposed to the use of the pumps and to the use of more than three units of simultaneous generation when storage is in the power pool. The Corps developed a "Report on the Future Direction of Hydro Power at Harry S. Truman" (Future Direction Report), concluding that they would allow the normal use of four generating units simultaneously, and were committed to the future development of power at Truman. Consequently, by letter of February 12, 1986, from General Charles E. Dominy, Omaha Division Engineer, the Corps agreed to test the downstream impact of five and six unit generation on a planned basis, but placed an indefinite moratorium on the use of the pumps until new technology could minimize fish kills during pumping. Recent proposals have caused suspension of testing of five-unit operation, would make some of the present restrictions permanent and would impose additional limits on water release rates, velocity and fluctuations in water levels below the dam. A new operating plan is under development by the Corps.

In FY 1982, one-third of the total investment allocated to power was transferred from construction-work-in-progress to plant-in-service when SWPA declared two out of six generating units in commercial operation. However, in FY 1985, during the development of the Corps' Future Direction Report, the Corps, knowing that all six units had been tested and were mechanically functional as generators, and that two of the pumps had been tested under load and three of the pumps had been tested without load, considered the project "available for commercial operation" and determined that it was time to include the full tentative cost allocation as plant-in-service even though SWPA had not declared the additional units in commercial service. This determination followed standard Corps procedures with regard to accounting for plant-in-service. Since that time, the Corps has finalized their Future Direction Report, as referenced in General Dominy's letter, and it is now known that while all generating units (including pumps) will technically function, the moratorium on pumping and the ability to operate only four turbines at one time with only two feet of power storage substantially limits the project's dependability and marketability under present contract arrangements. According to data from the Corps' Future Direction Report, a maximum of 29.6 MW of dependable capacity (for only 280 hours of use during the critical summer period) is available. Using a more severe 900 hour

scheduling criteria, the Corps has determined only 13.8 MW is dependable. This is far less than the project's 160 MW of installed capacity which SWPA had planned to market when all units may be utilized and the pumps are available for use as designed.

Since the Corps will not allow the pumps to be used, the pumps can hardly be considered placed in-service or even "available for commercial operation," and although the generating units at the project are individually functional, they are not useable simultaneously as designed and intended, and as in the case of the pumps, cannot be considered fully operational. The Corps' decisions to forego the use of pumping capability has resulted in the loss of project dependability from a hydropower marketing standpoint; thus, the project's revenue-producing ability is significantly reduced.

DOE Order No. RA 6120.2 requires only allocated investment costs which are revenue producing (Section 12b(1)), have been declared in commercial service (Section 10d(2)), or which are expected to be in service within the cost evaluation period (Section 10(k)), to be included as repayable investment in Power Repayment Studies. (emphasis added). These requirements are echoed in the FERC's Docket No. RM80-40-000, Order No. 382, Issued June 12, 1984, "Filing Requirements and Procedures for Approving the Rates of Federal Power Marketing Administrations," 49 FR 25235 (June 20, 1984). Section 300.11(b)(3)(ii)(A) states that all capitalized investments to be repaid from power revenues "are expected to produce revenue during the rate test period. Further, § 300.12(b)(2) states that "a PRS must contain only those investments in plant which will be in commercial operation during the proposed rate approval period" (emphasis added). These conditions are being met only in part due to the limitations placed on project operation which directly affect the dependable (marketable) capacity of the project. Only two units have been declared in commercial service, or are expected to be in service through the end of FY 1991, and are revenue producing. Consequently, the current allocated costs of the project have been adjusted to reflect the limit revenue-producing ability of the project with two generating units in commercial operation and marketable with full project energy production compared to its ultimate full revenue-producing capability with all six units and full energy production. The adjustment provides for about 44 percent of the

allocated costs to be considered repayable investment with the remaining 56 percent deferred.

The Corps has agreed by letter dated February 4, 1988, from General Robert H. Ryan, Omaha Division Engineer, that SWPA's reduction of the repayable investment at the project is reasonable, as is the method and amount of such reduction. However, the Corps would not commit to a reduction of recorded plant-in-service at this time, prior to an official adjustment in the cost allocation or a specific policy decision directing the action, but the Corps did agree to consider SWPA's methodology in development of an interim cost allocation for the project under constrained operating conditions for use until full operations are attained.

We believe the limited operating condition of this project provides a situation analogous to that which exists when a regulator, during a rate action either determines that an asset has been impaired and, hence, disallows part of the cost of such asset for ratemaking purposes, preventing the regulated enterprise from recovering some amount of its investment, or orders a phase-in plan to defer rates intended to recover allowable costs to moderate a sudden increase in rates while providing the regulated enterprise with recovery of its investment. We believe the Statement of Financial Accounting Standards (SFAS) No. 71, as amended by Statements No. 90 and 92 to cover accounting for disallowed plant costs and phase-in plans respectively, provides a basis for accounting which tracks these ratemaking principles. Statement No. 71 is the same standard of accounting for certain types of regulation used to account for SWPA's purchase power rate component approved by the FERC in Docket No. EF83-4011-000 issued, August 1, 1983. Its application to SWPA continues to be appropriate under the same criteria used previously.

It is very important for the financial statements of the Southwestern Federal Power system to accurately and faithfully reflect the financial condition of the SWPA and Corps facilities, as well as provide a reconcilable basis for development of power repayment studies and rates for SWPA. There, subject to the approval of the FERC, we propose treatment of the non-revenue-producing portion of the Harry S. Truman Project as a disallowance or deferral. Since the asset's revenue-producing ability is impaired at this time, in accordance with SFAS 71, 90 and 92, a portion of the project investment should be deferred from plant-in-service until such time as it

becomes probable that the project's revenue-producing ability will remain limited, at which time a loss should be recognized, or a final decision to use the pumps and allow full six-unit generation, as designed, is agreed upon by SWPA and the Corps. The total investment should not be considered plant-in-service until this is accomplished. We recommend that 43.94% of the allocated hydropower plant cost be identified as plant-in-service with the remaining amount to be transferred back into construction-work-in-progress.

Purchase Power Deferral Account

As indicated in the preceding section, the FERC has also approved the use of a separate purchased power adder component in SWPA's system rates since August 1983. The resulting accounting mechanism, provided under SFAS No. 71 which tracks the matching of designated purchased power revenues to meet actual purchase power expenses incurred over an appropriate period of time, has been very successful in providing a pool of revenue to cover such expenses. However, the period since 1983 has been a period of above average water conditions and, although considerable banking activity has occurred both into and out of the account in essentially equal amounts, no direct purchases of energy have occurred. As a result, in spite of the \$,0005 credit applied to the purchase power adder since October 1985 in an attempt to stop the growth of the account, the account had doubled in size to a balance of over \$23 million by September 30, 1987, and has continued to increase to its present level of over \$26 million.

As of July 1, 1988, SWPA will have completed the conversion of all its high load factor (firm) contract commitments to low load factor (peaking) contracts. The conclusion of this process significantly reduces SWPA's purchased energy requirements under critical low water conditions. Consequently, we believe an adequate and reasonable level of deferred revenues to maintain in the account during an extended wet cycle, or period of low account depletion such as SWPA is currently experiencing, is the amount equal to the cost of purchasing energy under the most critical conditions, or approximately \$14 million.

Further, the purchased power revenues that have been deferred and accumulated in the account were based on different rates applied to peaking customers and firm customers which reflected the differing level of risk

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expected to be experienced by SWPA associated with purchasing for those customers. However, since no direct purchases have been made since 1983 and all customers are now peaking customers, exposing SWPA to purchases in proportion only to their individual capacity requirements, there is no reason to maintain the larger pool or deferred revenues previously necessary to meet higher load factor contractual obligations. A new purchase power credit has been specifically designed for each customer to flow back deferred revenues in such a way as to equalize the customer to flow back deferred revenues in such a way as to equalize the average purchased power adder rate per kWh paid by each customer. The credits will remain in effect for the 27-month period July 1, 1988, through September 30, 1990, to guarantee balancing each customer's average cost irrespective of the condition or balance of the deferral account, or the need for rate adjustment in the meantime.

This method is intended to place all customers on an equal footing with regard to the need for future SWPA purchases of energy, by refunding amounts to each customer which will bring their average purchased power adder paid on all energy received to 1.3 mills per kilowatt-hour, SWPA's average long-term purchased power rate requirement. It also eliminates the differential created by the earlier risk factor applied to firm power customers and automatically corrects for those situations where differing contract terms and changing or new peaking capacity allocations have occurred. It is based on each customer's maximum guaranteed level of 1200 hour peaking power purchases over the period July 1, 1988, through September 30, 1990. This period was chosen to enable SWPA to flow back the significant excess deferred purchased power revenues collected over the period August 1983 through June 1988 in as short a time period as possible to avoid exposing the account to a precipitous drop in case of an unexpected down turn in water conditions, to be able to offset the proposed rate increase in most customer situations, and to avoid having to make net cash payments to customers credits in excess of charges in months of high energy usage. However, in case such a condition may occur, the rate schedules limit the amount of applicable credit in any month to the level of total charges for SWPA services rendered and allow for any excess credit to be used in future billing periods. These credits are also proposed for applications over this 27-month period, without revocation, to

insure a reasonable equalization of each customer's purchased power adder and to avoid the need for a continuous accounting of individual customer contributions to the purchase power account. Amounts of revenue in the account at any time are system revenues, entirely within the purview of SWPA. No customer is considered to have escrowed these funds, nor have any specific entitlement or ownership right in contributions to the account, although SWPA will attempt to apply purchased power adders, and credits, on a basis reasonably proportional to customer purchases of peaking power and energy. While application of this credit is assured through September 30, 1990, below average water conditions during the intervening time period may dictate an addition to the adder, but such addition would be based on the assumption that all customers are on an equal footing and would all participate in required system purchases proportionate to their purchases of peaking power.

During the time the purchased power adders and the accounting mechanism have been in place, they have proven to be effective in assuring that purchased power revenues equal purchased power costs over an appropriate period of time. The financial interests of the Government have been protected in this endeavor and the rate component has been adjusted as necessary. However, while the component may be changed as needed whenever overall system rates are revised, if an adjustment is needed when system rates prove to be otherwise adequate, a very time-consuming and expensive rate filing must be developed and submitted to merely adjust the purchased power rate component. This type of filing would seem to be unnecessary in light of the fact that the purchased power account has no effect on system repayment requirements and the separate rate component serves to provide revenues to meet perceived costs which, if they do not come to pass, are either held to meet future costs or are refunded to customers through reduced rates.

Therefore, the SWPA Administrator may adjust the purchased power adder component in SWPA's system rate schedules, P-87A, P-87B and F-87B annually by up to \$0.005 per kilowatt-hour as he determines necessary. This flexibility will enable SWPA to react quickly to significant changes in water conditions which may have occurred during the preceding year. The maximum adjustment of \$0.005 per kilowatt-hour would allow SWPA to meet about 75 percent of

expected needs for direct purchases of energy and nearly 50 percent of total purchased and banking energy requirements. The Administrator will advise the FERC of any such adjustments in the purchased power adder component of SWPA's rate schedules.

Comments and Responses

The Southwestern Power Administration (SWPA) received numerous comments from customers and interested parties resulting from the public participation process. A number of these comments were accepted either in whole or in part, as noted in the earlier General Discussion section. More detailed responses to those issues are available in the Administrator's Record of Decision. A summary of the two major comments and SWPA's responses to those comments follows:

Delay or Defer Proposed Rate Increase

Comment: SWPA's proposed rate increase is not justified and should be delayed or deferred at this time. Major reasons given in support of this position are: (1) severe economic conditions in the SWPA region, (2) desire to avoid possible conflict with the National Administration and the FERC over a small rate increase, (3) concern for potential failure of SWPA's recommended methodology in supporting reduced level of proposed rate increase, and (4) the FERC's desire to enforce higher rates on SWPA than approved by DOE.

Response: SWPA's customers' concerns about pursuing a rate increase at this time, as well as strong and numerous recommendations by many to defer, or delay, any such proposals, have been considered carefully. While SWPA recognizes that economic conditions in its region have been difficult in recent years, SWPA is faced with certain statutory (1944 Flood Control Act) and regulatory (RA6120.2) requirements which limit the latitude the Administrator can exercise. SWPA remains committed to the continued financial integrity and stability of its system through the development of regular annual power repayment studies based upon average water year conditions and the implementation of indicated rate increases, preferably smaller and more frequent, in accordance with such legal and regulatory requirements. This process has been strongly supported in recent years by customers and customer organizations. It should be noted that potential legislative issues such as repayment reform and defederalization

are not a part of the President's Fiscal Year 1989 Budget Proposal, and should have no impact on approval or disapproval of an SWPA rate filing. Further, SWPA's proposed methodologies, particularly those with regard to limiting the Truman project's repayable investment, for determining the level of rate increase appear to be fully supportable and should effectively justify such reduced increase in our filing before the FERC. While the FERC has in the past expressed its concern over certain of the Department of Energy's (DOE) repayment policies (e.g., scheduled amortization and highest-interest-bearing investment first repayment), it has consistently approved rates in accord with such DOE policies, within its approval authority specified by DOE Secretarial Order. In addition, for all practical purposes a delay in this proposed rate increase of some eight months has already occurred as a result of SWPA's effort to elicit and incorporate customer comments on the proposal. However, this delay has allowed SWPA to include Fiscal Year 1987 actual financial results rather than previously included estimates, making it possible to supplant the annual 1988 PRS. This means that the next annual PRS will be performed in 1989 and an indicated rate increase, if any, probably could not become effective before October 1, 1989.

In consideration of the above information, the relatively small increase, the delay that has already occurred in developing this rate proposal, the full customer participation, and recognition that no additional increases would likely be implemented prior to October 1989, it would be inappropriate to delay further. Therefore, the Administrator decided to propose the rate increase to the Under Secretary of Energy and to the FERC, with the new rates to become effective on July 1, 1988.

Operation, Maintenance And Replacement Projections

Comment: Corps of Engineers projections of O&M expenses and replacements are excessive, and such costs should be prudently and timely incurred at a reasonable level, and reduced and/or deferred. Lack of an effective means of oversight of these costs is frustrating and a serious weakness in SWPA's ratemaking process, leaving customers unable to question such projections, or quantify an appropriate adjustment. SWPA's O&M, GA&O and replacement estimates should be subjected to vigorous review to ensure justification and where

possible, without affecting reliability, be deferred.

Response: Corps of Engineers projections of future O&M and replacement costs used in Power Repayment Studies have received wide criticism, since these elements of cost contribute significantly to SWPA's revenue requirements. We agree that such costs should be prudently and timely incurred at reasonable levels consistent with maintaining the high level of reliability required in the utility industry. While the Corps' O&M projections have been very accurate in recent years, including FY 1987 which proved slightly below the actual expense, the perception exists that such accuracy only proves that any level of costs projected may be spent if there is no exercise of restraint or control over such costs. However, SWPA is required to repay costs as experienced and reported by the Corps, and does not exercise authority over Corps appropriations or expenses. These types of authority are exercised by the Congress and its agents. This condition does not relieve SWPA of the responsibility to review such costs for reasonableness and to keep customers well-informed by providing opportunities to meet with Corps representatives to review projections, methodology, back-up data and other information which may be of help in understanding the level of costs being experienced and projected. In this regard, SWPA will contact the Corps on behalf of customers or customer organizations on request to enable such interchange of information. SWPA has expressed both SWPA and customer concern to the Corps over rapidly increasing O&M costs and the common customer perception of lack of oversight of O&M and replacement costs. Corps project replacement estimates will be reviewed prior to SWPA's next annual power repayment study. SWPA has also agreed to a proposal by the Sam Rayburn Dam Electric Cooperative to establish an informal intergovernmental working group for the Sam Rayburn Dam to discuss issues of common interest to the Cooperative, SWPA and the Corps such as project rate information and cost allocations. If successful, this concept may serve as a model for similar arrangements with other customers in the future.

SWPA's O&M, GA&O and replacement costs have been the subject of internal review to ensure that such costs are appropriate and held to a minimum consistent with reliability, considering the age of SWPA's transmission system. Transmission

replacements are the subject of a detailed study undertaken by SWPA, which will include coordination with the other power marketing administrations, to assess the accuracy and adequacy of present methods of estimating such future replacements in power repayment studies. Appropriate revisions will be incorporated in SWPA's next annual power repayment study.

In summary, while all such cost projections will continue to be reviewed, we believe that Corps projections of future O&M and replacement expenses reflect their best estimates of the actual costs to be incurred over the period 1988-1991 and beyond. Thus no adjustment in O&M projections in warranted considering the Corps' past success in projecting such costs, although replacement cost estimates will undergo a thorough evaluation. SWPA also believes its cost projections to be appropriate, but will remain alert for opportunities to save on costs and will pursue its planned, detailed study of transmission replacement estimates.

Other Issues

Other repayment and rate design issues are discussed in the Administrator's Record of Decision.

Availability of Information

Information regarding this rate proposal including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, 333 West 4th, Tulsa, Oklahoma 74101.

Administrator's Certification

The 1987 Revised System Power Repayment Study indicates that the increased power rates will repay all costs of the Integrated system including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204-108, the Administrator has determined that the proposed System rates are consistent with applicable law and the lowest possible rates consistent with sound business principles in accordance with section 5 of the Flood Control Act of 1944.

Environment

The environmental impact of the proposed System rates has been analyzed in consideration of the Department of Energy "Environmental Compliance Guide," the amount of the proposed increase does not warrant an Environmental Assessment or an

Environmental Impact Statement in accordance with these regulations.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective July 1, 1988, the following SWPA System Rate Schedules which shall remain in effect on an interim basis through September 30, 1991, or until the FERC confirms and approves the rates on a final basis, to supersede the rate schedules named:

Service	Rate	Superseded rate
Peaking power	P-87A	P-84A.
Peaking power through Oklahoma utility companies and/or municipal power authority.	P-87B	P-84B.
Firm power	None	F-84A.
Firm power through Oklahoma utility companies.	F-87B	F-84B.
Transmission service	TDC-87	TDC-82 (Revised).
Interruptible capacity	IC-87	IC-82.
Excess energy	EE-87	EE-82.

Issued at Washington, DC, this 1st day of July 1988.

Joseph F. Salgado,
Under Secretary.

[FR Doc. 88-15869 Filed 7-13-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3413-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 362-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Stationary Gas Turbines (Subpart GG)—Information Requirements. (EPA ICR #1071).

Abstract: Owners/operators of stationary gas turbines must notify EPA of constructions, modifications, startups, malfunctions, and dates and results of performance tests. They must report periods of excess SO₂ and NO_x emissions quarterly. They must maintain records of (a) the sulfur and nitrogen content of the fuel, (b) data from all tests, (c) data from the continuous monitoring system, and (d) data on any startup, shutdown, or malfunction in the operation of the affected facility, its controls, or the monitoring systems. The States and/or EPA use the data to ensure compliance with standards, to target inspections, and, when necessary, to provide evidence in court.

Burden Statement: Public reporting burden for this collection of information is estimated to average 150 hours per year per respondent. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners/Operators of Stationary Gas Turbines.

Estimated No. of Respondents: 245.

Estimated Burden: 14,000 hours.

Frequency of Collection: Quarterly.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St. SW., Washington, DC 20460 and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR #0180: Pesticides Report for Pesticide-Producing Establishments, was approved 6/22/88; OMB #2070-0078; expires: 6/30/91.

Date: July 7, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88-15838 Filed 7-13-88; 8:45 am]

BILLING CODE 6550-02-M

[FRL-3414-3]

Municipal Settlement Discussion Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Municipal Settlement Discussion Group will meet in Washington, DC on August 4, 1988. The Environmental Protection Agency formed the group in order to provide a public forum for interested parties to provide input on how municipalities should fit into the Superfund settlement process. The group consists of members representing EPA, States, local governments, industry and environmental concerns. The Agency is currently developing a Municipal Settlement Policy to address issues related to notifying and bringing municipalities that are responsible parties into the Superfund settlement process.

FOR FURTHER INFORMATION CONTACT: Mary Kay Voytilla of the Environmental Protection Agency, Office of Waste Programs Enforcement (WH-527), Washington, DC 20460; telephone 202/475-8367.

Lloyd S. Guerri,
Director, CERCLA Enforcement Division.
[FR Doc. 88-15839 Filed 7-13-88; 8:45 am]

BILLING CODE 6550-02-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 17, 1988

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 17, 1988.¹ The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests continuing strong expansion in economic activity and rising levels of resource utilization. In April, total nonfarm payroll employment rose further; the increase included sizable growth in the manufacturing sector. The civilian unemployment rate fell to 5.4 percent, down appreciably from its level at the start of the year. Growth in industrial production picked up considerably in April from a reduced pace earlier in the year. Retail sales fell appreciably last month but

¹ Copies of the Record of policy actions of the Committee for the meeting of May 17, 1988, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551.

estimates of sales in February and March were revised substantially higher. Indicators of business capital spending point to substantial gains thus far this year, notably for equipment. The nominal U.S. merchandise trade deficit in the first quarter was substantially smaller than that for the fourth quarter. Consumer and producer prices have risen more rapidly recently following a period of relatively modest increases. Broad measures of labor costs indicate a substantial advance in the first quarter, in part because of a rise in payroll taxes.

Interest rates have risen somewhat since the Committee's meeting on March 29. The trade-weighted foreign exchange value of the dollar in terms of other G-10 currencies had increased slightly on balance over the intermeeting period prior to May 17 and jumped following release of the March trade data.

M1 and M2 grew rapidly in April, owing in part to a buildup in transaction balances associated with tax payments, while M3 expanded at a slower pace than in previous months. Through April, expansion of M2 and M3 was in the upper portion of the ranges established by the Committee for 1988. Expansion in total domestic nonfinancial debt appears to be continuing at a pace close to that in 1987.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established growth ranges of 4 to 8 percent for both M2 and M3, measured from the fourth quarter of 1987 to the fourth quarter of 1988. The monitoring range for growth in total domestic nonfinancial debt was set at 7 to 11 percent for the year.

With respect to M1, the Committee decided in February not to establish a specific target for 1988. The behavior of this aggregate in relation to economic activity and prices has become very sensitive to changes in interest rates, among other factors, as evidenced by sharp swings in its velocity in recent years. Consequently, the appropriateness of changes in M1 this year will continue to be evaluated in the light of the behavior of its velocity, developments in the economy and financial markets, and the nature of emerging price pressures.

In the initial implementation of policy, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of conditions in financial markets, the strength of the business expansion, indications of inflationary pressures, developments in foreign exchange markets, and the behavior of the monetary aggregates, the Committee expects that a slight increase in the degree of pressure on reserve positions would be appropriate in the weeks ahead. Depending on further developments in these factors, somewhat greater reserve restraint might, or slightly lesser reserve restraint might, also be acceptable later in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth in M2 and M3 over the period from March through

June at annual rates of about 6 to 7 percent. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 5 to 9 percent.

By order of the Federal Open Market Committee, July 8, 1988.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 88-15826 Filed 7-13-88; 8:45 am]

BILLING CODE 6210-01-M

Centvest, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 4, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Centvest, Inc.*, Meriden, Connecticut; to acquire 100 percent of the voting shares of Meriden Trust and Safe Deposit Company, Meriden, Connecticut.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *ONB Corporation*, Clifton Springs, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Ontario National

Bank of Clifton Springs, Clifton Springs, New York.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Commex Financial Corporation*, Kennesaw, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Exchange Bank, Kennesaw, Georgia. Comments on this application must be received by July 29, 1988.

2. *Dahlonga Bancorp., Inc.*, Dahlonga, Georgia; to acquire 100 percent of the voting shares of First National Bank of Polk County, Copperhill, Tennessee. Comments on this application must be received by July 29, 1988.

3. *Financial Services Bancorp., Inc.*, Miami, Florida; to become a bank holding company by acquiring 82 percent of the voting shares of Eagle National Holding Company, Miami, Florida, and thereby indirectly acquire Eagle National Bank of Miami, Miami, Florida. Comments on this application must be received by July 29, 1988.

4. *Forest Bancorp.*, Forest, Mississippi; to acquire 20 percent of the voting shares of Metropolitan Corporation, Biloxi, Mississippi, and thereby indirectly acquire Metropolitan National Bank, Biloxi, Mississippi. Comments on this application must be received by July 29, 1988.

5. *University National Bankshares, Inc.*, Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of University National Bank, Orlando, Florida, a *de novo* bank. Comments on this application must be received by July 29, 1988.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central West Bancorp.*, Casey, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bank, Casey, Iowa. Comments on this application must be received by July 15, 1988.

2. *Jay Financial Corporation*, Portland, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Portland, Portland, Indiana.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Clifton Bancshares, Inc.*, Wamego, Kansas; to become a bank holding company by acquiring 98.6 percent of

the voting shares of First National Bank, Clifton, Kansas.

2. *Lexington Bancshares, Inc.*, Lexington State Bank & Trust Company Trust Department, and Lexington State Bank & Trust Company Employee Stock Ownership Plan, all of Lexington, Nebraska; to acquire 53.44 percent of the voting shares of Seven V Banco, Inc., Callaway, Nebraska, and thereby indirectly acquire Seven Valleys State Bank, Callaway, Nebraska.

Board of Governors of the Federal Reserve System, July 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15829 Filed 7-13-88; 8:45 am]

BILLING CODE 3210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 29, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *John Sid Dinsdale*, Roy G. Dinsdale, Lynn Barclay, and Thomas Gooding; to acquire 95.31 percent of the voting shares of Morningside Development Company, Sioux City, Iowa, and thereby indirectly acquire Morningside Bank and Trust, Sioux City, Iowa.

Board of Governors of the Federal Reserve System, July 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15831 Filed 7-13-88; 8:45 am]

BILLING CODE 3210-01-M

First Merchants Corp. et al.; Formations of Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 4, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Merchants Corporation*, Muncie, Indiana; to acquire 100 percent of the voting shares of Pendleton Banking Company, Pendleton, Indiana. Comments on this application must be received by July 28, 1988.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Tri-County Bancshares, Inc.*, Linn, Kansas; to become a bank holding company by acquiring 94.4 percent of the voting shares of Linn State Bank, Linn, Kansas, which engages in the sale of credit-related and crop hail insurance in a town of less than 5,000 in population.

Board of Governors of the Federal Reserve System, July 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15828 Filed 7-13-88; 8:45 am]

BILLING CODE 3210-01-M

First Wisconsin Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 4, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, First Wisconsin Asset Management, Inc., in acting as an investment adviser pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. The Mitsui Bank, Limited, Tokyo, Japan; to engage *de novo* through its subsidiary, Mitsui Securities Company (U.S.A.), Inc., New York, New York, in discount securities brokerage pursuant to § 225.25(b)(15); and underwriting and dealing in obligations of the United States, general obligations of states and political subdivisions, and other obligations in which state member banks are authorized to underwrite and deal pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15830 Filed 7-13-88; 8:45 am]

BILLING CODE 3210-01-M

The Fuji Bank, Ltd., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 88-14817) published at page 25009 of the issue for Friday, July 1, 1988.

Under the Federal Reserve Bank of New York, the entry for The Fuji Bank, Limited is revised to read as follows:

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Fuji Bank, Limited*, Tokyo, Japan; to acquire 24.9 percent and assume certain subordinated debt of Kleinwort Benson Government Securities, Inc., Chicago, Illinois, and thereby engage in: (1) Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by a bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks (such obligations being "eligible securities"), pursuant to § 225.25(b)(16) and activities incidental thereto, including repurchase and reverse repurchase transactions on such securities, collateralized borrowing and lending of such securities, clearing, settling, accounting, record keeping and other ancillary services, pursuant to § 225.21(a)(2) of the Board's Regulation Y; (2) engaging in futures, forward and options contracts on eligible securities for hedging purposes in accordance with 12 CFR 225.142; (3) providing portfolio

investment advice and research and furnishing general economic information and advice, general economic statistical forecasting services and industry studies in connection with, and as an incident to, the proposed eligible securities activities, pursuant to § 225.25(b)(4)(iii) and (iv) of the Board's Regulation Y; (4) acting as a futures commission merchant ("FCM") for affiliated and nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts on bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, pursuant to § 225.25(b)(18) of the Board's Regulation Y (Applicant argues that providing FCM activities to affiliates is permissible under § 225.25(b)(18) or, alternatively, permissible under sections 4(c)(1)(C) and 4(c)(8) of the BHC Act.); (5) providing investment advice including counsel, publication, written analyses and reports, with respect to the purchase and sale of futures contracts and options on futures contracts, pursuant to § 225.25(b)(19) of the Board's Regulation Y. Applicant has also applied for approval to acquire indirectly through the company, one percent of the voting shares of Liberty Brokerage, Inc., an inter-dealer blind broker of government securities.

Comments on this application must be received by July 25, 1988.

Board of Governors of the Federal Reserve System, July 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15827 Filed 7-13-88; 8:45 am]

BILLING CODE 3210-01-M

Reid, Raymond E., et al.; Correction

This notice corrects a previous Federal Register notice (FR Doc. 88-13789) published at page 23153 of the issue for Monday, June 20, 1988.

Under the Federal Reserve Bank of Kansas City, the entry for Bettye Cree Reid is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Raymond E. Reid and Bettye C. Reid*, Pampa, Texas; to acquire an additional 0.42 percent of the voting shares of American Republic Bancshares, Inc., Belen, New Mexico, and thereby indirectly acquire shares of First National Bank of Belen, Belen, New Mexico.

Comments on this notice must be received by July 29, 1988.

Board of Governors of the Federal Reserve System, July 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-15832 Filed 7-13-88; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements To Support a Breast Cancer Control Demonstration Project; Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for competitive applications for cooperative agreements for the development of Breast Cancer Control Programs. The demonstration projects will address planning, development, coordination, and evaluation of programs to control breast cancer.

Background

Currently, a woman's lifetime risk of breast cancer is estimated at 10 percent. According to current estimates, in 1988 135,000 women in the U.S. will be diagnosed with invasive breast cancer, and 42,000 women will die from the disease. Breast cancer accounts for 28 percent of all newly diagnosed female cancers, and 18 percent of female cancer deaths. An examination of recent trends in breast cancer reveals an increase in both incidence and mortality. Among women it is the most common form of cancer and the leading cause of premature mortality from cancer. These figures take on particular significance because of the dynamic changes that are now taking place in the size of the population at risk. Prior to 1945 both the birth rate and the annual number of births increased, creating the post-war baby boom. This cohort of women is just now reaching age 40, the age when breast cancer incidence begins to climb sharply. In 1985 approximately 57 million women were 35 years or older, and by the year 2025, nearly 91 million women will be in that age category, an increase of 61 percent.

Authorizing Legislation

These cooperative agreements are authorized by section 317 [42 U.S.C. 247b] of the Public Health Service Act.

as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Eligible Applicants

Eligible applicants for this program are official State public health agencies, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Island, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Purpose and Programmatic Interest

The purpose of these cooperative agreements is to promote the ability within State public health agencies to control breast cancer through the design of a State coordinated breast cancer screening program. The demonstration projects should address the following programmatic goals for this disease:

- A. Increase physician endorsement and appropriate referral for screening mammography.
- B. Develop programs for radiologists and radiology technicians to improve the quality of the screening process and mammographic interpretation, and communication with primary care providers.
- C. Plan directed information and education programs to women about the importance of breast cancer screening, and the availability of breast cancer screening.
- D. Plan a system to provide regular information to the medical provider community about progress in the program to control breast cancer.
- E. Design a quality assurance program for mammography.

Availability of Funds

One or two cooperative agreements will be awarded under this announcement. Awards will average approximately \$80,000. It is expected the cooperative agreements will begin on or about September 15, 1988. Depending on the availability of funds, it is expected that funding will be forthcoming for a second year. Funding estimates may vary and are subject to change. Projects are intended to be short term and address specific problems as noted in the Background section. Non-federal funding sources should provide greater shares of support in any later budget period.

Use of Funds

Cooperative agreement funds shall not be used for treatment or treatment services.

Program Requirements

CDC will assist the State in conducting the project. The application should be presented in a manner that demonstrates the applicant's ability to conduct the activity in a collaborative manner with CDC.

A. Recipient Activities

Due to the nature of the cooperative agreement, and the diversity of projects that may be initiated, activities may vary. However, some general activities would be expected for any applicant. These include:

1. Assess the capacity in the State for mammography.
2. Organize committees composed of primary care providers, nurses, radiologists, radiology technicians, professional and voluntary organizations, and community representatives to participate in the planning and implementation of a broad-based breast cancer screening program.
3. Organize a committee to plan a program to monitor and assure that mammography screening meets state-of-the-art criteria for quality assurance. These criteria would need to meet minimum standards set by the American College of Radiology.
4. Devise a plan to address financial barriers to breast cancer screening.
5. Devise plans for a breast cancer information and education program for women and providers and a State-coordinated breast cancer screening program. These plans should include an evaluation component. The protocols for education programs for women and providers will be due to CDC at the end of the third quarter of the first year, and the protocol for the State-coordinated breast cancer screening program will be due to CDC at the end of the third quarter of the second year.
6. Establish a project management information system for the activities of the cooperative agreement.

To the extent that the recipient engages in information collection through questionnaires, survey forms, or any related means, there shall be no review of such forms or the information collection design by CDC or another Federal agency. However, recipients may request technical consultation from CDC.

B. Centers for Disease Control Activities

In addition to the financial support provided, CDC will provide assistance to the State by:

1. Assisting in the design of the education intervention for health care

providers, radiologists, and radiology technicians.

2. Providing technical assistance in the design of a quality assurance program, and the evaluation component for that program.

3. Providing technical assistance in the design of a State-coordinated breast cancer screening program and the evaluation component for that program.

4. Providing assistance in data analysis for evaluation component of the breast cancer screening program.

Reporting Requirements

Reports on the progress of project activities will be due to CDC 30 days after the end of each quarter. Financial status reports must be filed no later than 90 days after the end of the budget period. Final financial status and progress reports are required no later than 90 days after the end of the project period.

Application Review and Evaluation Criteria

Applications will be reviewed and ranked with other applications, and evaluated based on the following factors:

- A. Evidence of the applicant's understanding of the problem and the purpose of the cooperative agreement.
- B. Consistency of the application with the stated programmatic interests of the CDC.
- C. The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to meet the objectives and timetable within the specified period.
- D. The adequacy of the applicant's plan to monitor progress toward meeting the objectives of the project.
- E. The extent to which the budget is reasonable, adequately justified and consistent with the intended use of the cooperative agreement funds.
- F. The applicants capability to provide the staff and resources necessary to perform and manage the project.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161) must be submitted to Henry Cassell, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305 on or before July 15, 1988. Applications received or postmarked after the above date are considered late applications.

- A. **Deadline:** Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. **Late Applications:** Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Availability of Complete Program Description and Application Assistance

Information on application procedures, copies of application forms and other material may be obtained from Terry Maricle, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 320, Atlanta, GA 30305, telephone (404) 842-6572 or FTS 236-6575.

Technical assistance may be obtained from the Division of Chronic Disease Control. This effort is being coordinated by Robert A. Smith, Ph.D., Division of Chronic Disease Control, Center for Environmental Health and Injury Control, Centers for Disease Control (F10), Atlanta, GA 30333, telephone (404) 488-4390 or FTS 236-4390.

Dated: July 7, 1988.

Robert L. Foster,
Acting Director, Office of Program Support,
Centers for Disease Control.

[FR Doc. 88-15046 Filed 7-13-88; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreements for the Prevention of Disabilities, Demonstration/Epidemiology Projects; Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces that competitive cooperative agreement applications for Demonstration/Epidemiology Projects are being accepted for financial assistance under a Federal program for conducting and evaluating interventions

to prevent disabilities. In addition, CDC is issuing a related Program Announcement (published elsewhere in this issue of the Federal Register) for the prevention of disabilities describing cooperative agreements for State-Based Projects.

Authority

This disabilities prevention program is authorized by Pub. L. 100-202, the Continuing Appropriation Act for Fiscal Year 1988, and section 301 of the Public Health Service Act. The Catalog of Federal Domestic Assistance Number is 13.283.

Goals and Objectives

The goal of CDC in these cooperative agreements is to reduce the incidence and/or severity of primary and secondary disabilities.

The objectives of the Demonstration/Epidemiology Project are:

- To conduct demonstration and epidemiologic projects to build a disabilities prevention information base. Projects will document: (a) The incidence, prevalence and economic impact of preventable disabilities, and/or (b) the effectiveness and costs of preventive intervention(s).

Targeted Disabilities

Disabilities prevention activities will be focused on targeted disabilities. In the first year of these cooperative agreements, the targeted disability group is secondary disabilities in persons with physical disabilities.

CDC will continue consultation with leaders in the disabilities prevention community and intends to expand this targeted disability group in subsequent years.

Cooperative Agreements for Demonstration/Epidemiology Projects

These awards will support prevention-oriented groups to document important aspects of disabilities prevention that can contribute to a national information base. These projects are expected to be completed over a one or two year period.

Although disabilities prevention activities are implemented on a local level, a national information base, in conjunction with technical assistance/technology transfer, can be used to assist States and communities in the implementation of these prevention activities.

The results of Demonstration/Epidemiology Projects must contribute to the disabilities prevention information base. These projects will be utilized when States or community groups have unique opportunities to conduct prevention projects

demonstrating the effectiveness of interventions, or unique access to data bases, the analysis of which will be of value to other States and communities.

Organizations having little experience in evaluation that have ready access to clinical settings of demonstration and/or epidemiologic projects are encouraged to collaborate with academic or other groups that have such experience.

Eligible Applicants

Demonstration Epidemiology Projects

Eligible applicants for this program are public and private non-profit entities, including disabilities service organizations (such as Independent Living Centers), local health departments, other local governmental agencies including local organizational units of a State agency, voluntary agencies, universities, colleges, medical facilities, research institutions, and Federally recognized Indian Tribal Governments. Also eligible are State health departments or other official State agencies or departments.

Availability of Funds

It is anticipated that approximately \$400,000 will be available for cooperative agreement awards in Fiscal Year 1988 for Demonstration/Epidemiology Projects. It is projected that awards will be at the level of \$175,000 to \$225,000 per year. It is estimated that two awards for such projects will be made in the first budget period.

Cooperative Activities

A. Recipient Activities

1. Implement and evaluate specified demonstration/epidemiology project activities.
2. Conduct demonstration or epidemiology projects to document the incidence, prevalence, and economic impact of preventable secondary disabilities in persons with physical disabilities, and/or to measure the effectiveness and costs of preventive intervention(s).

B. Centers for Disease Control

1. Provide on-site technical assistance in planning, operation, and evaluation of ongoing and innovative program activities.
2. Assist in improving program performance through consultation based on national program information and activities in other projects.
3. Support project staff by conducting training programs, conferences and project workshops to enhance skills and knowledge.

4. Provide medical, epidemiologic, surveillance, and public health management assistance and consultation.

Application Review and Evaluation Criteria

Applications for Demonstration/Epidemiology Projects will be reviewed and evaluated for technical merit based on the following factors:

A. The quality and consistency of the applicant's proposal with respect to the disabilities problem, program needs and purposes of the project. This specifically includes the public health importance of the problem as reflected by reducing the prevalence, severity and economic burden of the disabilities. This also includes the merits and adequacy of the methods and activities to be developed and employed to meet the project requirements.

B. The extent of the applicant's experience and performance in conducting and evaluating demonstration or epidemiology projects.

C. The adequacy of the applicant's organizational function and staffing plan to meet project objectives.

D. The specificity of measurable project tasks and the feasibility of their being accomplished in the time-frames proposed, including the explicitness of the management plan proposed.

E. The extent to which the proposed methods and sources of data to be used in the project will produce a) the information necessary to quantitate incidence, prevalence, and economic impact of preventable disabilities, and/or b) document measures of intervention effectiveness and costs. Applications that propose to document both a and b will receive no more consideration than those that propose to document either a or b alone.

F. The adequacy of the project application budget in relation to program operations, collaboration, and services.

G. The quality of the overall evaluation approaches to be used to monitor, assess, and modify as necessary cooperative agreement activities.

H. The adequacy of project facilities to provide full access to persons with disabilities and evidence that all project programs will involve and be accessible to persons with disabilities.

Other Submission and Review Requirements

Applications are not subject to review as governed by Executive Order No. 12372, Intergovernmental Review of Federal Programs. Since program evaluation may require access to

personal identifiers to link relevant data sets, ongoing human subjects review is strongly recommended.

Application Submission and Deadlines

The original and two copies of the application must be submitted on Form PHS 5101-1 by August 11, 1988 to: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Attention: Henry S. Cassell, III, Room 321, 255 East Paces Ferry Road NE., Atlanta, Georgia 30305.

Applications forms may be obtained from the above address.

Deadlines: Applications will be considered to meet the deadline if they are either:

1. Received on or before the deadline date, or
2. Sent on or before deadline date, and received in time for submission to the review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the above criteria are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A full description of the program, including program background, goals and objectives, areas of interest, program requirements, criteria for review of applications, application forms and other materials must be obtained from: Kay Reeves, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia, 30305, telephone (404) 842-6880 or FTS 230-6880. Technical assistance may be obtained from Myron J. Adams, Jr., M.D., Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia, 30333, telephone (404) 488-4751, or FTS 236-4751. Technical assistance is also available from the Division of Preventive Health Services, Public Health Service in the appropriate Department of Health and Human Services Regional Office.

Please note that this announcement is distinct from two other notices issued by CDC entitled "Cooperative Agreements for the Prevention of Disabilities: State-Based Projects" and "Incentive Grants for Injury Control Intervention Projects".

Awards

Awards will be made based on priority score ranking through a formal review process, availability of funds, and such other significant factors deemed necessary and appropriate by the Director, CDC.

Dated: July 7, 1988.

Robert L. Foster,
Acting Director, Office of Program Support
Centers for Disease Control.

[FR Doc. 88-15851 Filed 7-13-88; 8:45 am]

BILLING CODE 4160-10-M

Cooperative Agreements for the Prevention of Disabilities, State-Based Projects; Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces that competitive cooperative agreement applications for State-Based Projects are being accepted for financial assistance under a Federal program for conducting and evaluating interventions to prevent disabilities. In addition, CDC is issuing a related Program Announcement (published elsewhere in this issue of the Federal Register) for the prevention of disabilities describing cooperative agreements for Demonstration/Epidemiology Projects.

Authority

This disabilities prevention program is authorized by Pub. L. 100-202, the Continuing Appropriation Act for Fiscal Year 1988, and section 301 of the Public Health Service Act. The Catalog of Federal Domestic Assistance Number is 13.283.

Goals and Objectives

The goal of CDC in these cooperative agreements is to reduce the incidence and/or severity of primary and secondary disabilities.

The objective of the State-Based Projects are to build capacity at the State and community level:

- To coordinate disabilities prevention activities,
- To develop plans for the prevention of disabilities,
- To establish surveillance activities of targeted disability groups,
- To employ epidemiologic methods for the purpose of setting priorities for intervention activities and targeting of interventions needed to prevent disabilities, and
- To provide state-based technical assistance to community prevention activities.

Targeted Disabilities

Disabilities prevention activities will be focused on targeted primary and secondary disabilities. In the first year of these cooperative agreements, targeted disability groups are:

- Primary disabilities—developmental disabilities,
- Primary disabilities—injury disabilities from head and/or spinal cord trauma,
- Secondary disabilities—secondary disabilities in persons with physical disabilities.

CDC will continue consultation with leaders in the disabilities prevention community and intends to expand this group of targeted disabilities in subsequent years.

Cooperative Agreements for State-Based Projects

There are two types of cooperative agreements to support State-Based projects:

A. **State Capacity Building Projects:** These awards will support eligible State agencies to:

- (1) Establish a state-based advisory body and an office of disability prevention,
- (2) Develop a State Strategic Plan for the prevention of all major disabilities,
- (3) Develop State Prevention Objectives and Implementation Plans for targeted disability groups including the establishment of state-based surveillance, and
- (4) Develop Community Project Plans for targeted disability groups.

After one year, States with State Capacity Building Projects are expected to be in a position to compete for State Disabilities Prevention and Evaluation Projects.

B. **State Disabilities Prevention and Evaluation Projects:** These awards will support eligible State agencies to:

- (1) Establish a State-based advisory body and an office of disability prevention to carry out planning activities noted in A, 2 through 4 above,
 - (2) Conduct and evaluate activities to prevent targeted disabilities in selected communities, and in addition,
 - (3) Conduct state-based surveillance.
- State Disabilities Prevention and Evaluation Projects are expected to be in a position to compete for and be continued for a 3 to 5 year project period.

Eligible Applicants

Eligible applicants for both State Capacity Building Projects and State Disabilities Prevention and Evaluation Projects are State health departments or other official State agencies or

departments deemed most appropriate by the State to lead and coordinate the State's disability prevention program. This eligibility also includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. A number of different State agencies such as physical health, mental health, rehabilitation, and education may currently be involved in disability prevention. Involved State agencies are encouraged to develop consensus on the most appropriate lead agency for the State. Applications from more than one agency from a State will be interpreted as evidence of a lack of a coordinating focus. Eligibility for State Disabilities Prevention and Evaluation Projects is dependent on established written State Prevention Objectives and Implementation Plans for the Prevention of Disabilities including the targeted disability group which is to be included in the proposed project.

Availability of Funds

It is anticipated that approximately \$2,000,000 will be available for cooperative agreement awards for State-Based Projects in Fiscal Year 1988. Estimated levels of funding, based on the type program applied for are as follows:

A. State Capacity Building Projects

It is projected that awards will be at the level of \$125,000 to \$175,000 per year. It is estimated that 3 to 5 such awards will be made in the first budget period.

B. State Disabilities Prevention and Evaluation Projects

It is projected that awards will be at the level of \$300,000 to \$400,000 per year. It is estimated that 4 to 5 such awards will be made in the first budget period.

Cooperative Activities

A. Recipient Activities

1. State Capacity Building Projects

- a. Establish a State advisory body to coordinate and provide guidance for disabilities prevention in the State.
- b. Establish a state-based office of disability prevention as a technical assistance resource and focus for disabilities prevention.
- c. Develop a State Strategic Plan for disabilities prevention at the State level.
- d. Develop or improve the State Prevention Objectives and Implementation Plans for targeted groups of major disabilities.
- e. Develop surveillance activities for targeted disability groups in order to

assist prevention efforts and program evaluation.

f. Promote disability prevention planning in communities.

g. Assist in the development of Community Project Plans.

2. State Disabilities Prevention and Evaluation Projects

- a. Conduct activities a-g under State Capacity Building Projects.
- b. Implement and evaluate specified community projects.
- c. Implement state-based surveillance.

B. Centers for Disease Control

1. Provide on-site technical assistance in the planning, operation, and evaluation of ongoing and innovative program activities.

2. Assist in improving program performance through consultation based on national program information and project services in other States.

3. Support State project staff by conducting training programs, conferences and project workshops to enhance skills and knowledge.

4. Provide medical, epidemiologic, surveillance, and public health management assistance and consultation to State planning functions and capacity development.

5. Provide a focus for sharing surveillance data at the regional and/or national levels.

Application Review and Evaluation Criteria

Applications for State Capacity Building Projects and State Disabilities Prevention and Evaluation Projects will be reviewed and evaluated for technical merit based on the following factors:

A. The quality and consistency of the applicant's proposal with respect to the disabilities problem, program needs and purposes of the project. This specifically includes the public health importance of the problem as reflected by reducing the prevalence, severity and economic burden of the disabilities. This also includes the merits and adequacy of the methods and activities to be developed and employed to meet the project requirements.

B. The potential for the State planning capacity to develop a State Strategic Plan, State Prevention Objectives and Implementation Plan, and to provide technical assistance for the development of Community Project Plans to meet the disability prevention requirements of the project.

C. The extent of the applicant's experience and performance in planning for and conducting similar prevention programs.

D. The adequacy of the plan contained in the proposal for the organization and functions of the State advisory body and the office of disability prevention in conducting program activities.

E. The adequacy of the proposed technical assistance to be furnished by the office of disability prevention to support community prevention planning and implementation.

F. Evidence that the conduct of project activities will demonstrate responsiveness to the interests of persons with disabilities and their families (e.g., representation on the advisory body, in the office of disability prevention, and the planning/implementation of community projects).

G. The adequacy of the applicant's staffing plan to meet project objectives.

H. The specificity of measurable project tasks and the feasibility of their being accomplished in the time-frames proposed, including the explicitness of the management plan proposed.

I. The extent to which the proposed methods and sources of data to be used can evaluate the impact of preventive interventions.

J. The adequacy of the project application budget in relation to program operations, collaboration, and services at the State level and in the community projects including the magnitude of cost sharing or other indicators of applicant's commitment to the project.

K. The quality of the overall evaluation approaches to be used to monitor, assess, and modify as necessary cooperative agreement activities.

L. The adequacy of project facilities to provide full access to persons with disabilities and evidence that all project programs will involve and be accessible to persons with disabilities.

Other Submission and Review Requirements

Applications are not subject to review as governed by Executive Order No. 12372, Intergovernmental Review of Federal Programs. Since program evaluation may require access to personal identifiers to link relevant data sets, ongoing human subjects review is strongly recommended.

Application Submission and Deadlines

The original and two copies of the application must be submitted on Form PHS 5161-1 by August 4, 1988 to: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Attention: Henry S. Cassell, III, Room 321, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30306.

Applications forms may be obtained from the above address.

Deadlines: Applications will be considered to meet the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before deadline date, and received in time for submission to the review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the above criteria are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A full description of the program, including program background, goals and objectives, areas of interest, program requirements, criteria for review of applications, application forms and other materials must be obtained from: Kay Reeves, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia, 30306, telephone (404) 842-6880 or FTS 236-6880. Technical assistance may be obtained from Myron J. Adams, Jr., M.D., Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia, 30333, telephone (404) 488-4751, or FTS 236-4751. Technical assistance is also available from the Division of Preventive Health Services, Public Health Service in the appropriate Department of Health and Human Services Regional Office.

Please note that this announcement is distinct from two other notices issued by CDC entitled "Cooperative Agreements for the Prevention of Disabilities: Demonstration/Epidemiology Projects" and "Incentive Grants for Injury Control Intervention Projects".

Awards

Awards will be made based on priority score ranking through a formal review process, availability of funds, and such other significant factors deemed necessary and appropriate by the Director, CDC.

Dated: July 7, 1988.

Robert L. Foster,
Acting Director, Office of Program Support,
Centers for Disease Control.
[FR Doc. 15850 Filed 7-13-88; 8:45 am]
BILLING CODE 4160-15-M

Project Grants for Immunization Influenza Vaccination Demonstration Projects Program Announcement and Availability of Funds for Fiscal Year 1989

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1989 for grants to support demonstration projects on the cost effectiveness of Medicare reimbursement for influenza vaccination.

Authority

These projects are authorized under the Public Health Service Act, section 317(k)(1) [42 U.S.C. 247b(k)(3)], as amended by the Public Health Service Amendments of 1987 (Pub. L. 100-177, approved December 1, 1987) and by section 1861(S)(10)(A) of the Social Security Act [42 U.S.C. 1395x(a)(10)(A)] as amended by Title IV, section 4071, of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203 enacted December 22, 1987). The Catalog of Federal Domestic Assistance is 13.283.

Eligible Applicants

Eligible applicants are the official public health agencies of States, political subdivisions of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, American Samoa, and any other public or nonprofit private entity.

Priority will be given to those areas having an established immunization delivery program and a large Medicare eligible population base. Applications submitted by public health agencies must, at a minimum, include a plan for having private physicians and public health department clinics participate in the demonstration. Public health agencies are encouraged to also include nursing homes, hospital settings, and health maintenance organizations (HMO) in their plans.

Purpose

The purpose of this program is to assess the cost effectiveness of

furnishing influenza vaccine to Medicare beneficiaries.

Availability of Funds

Approximately \$6,500,000 is available, \$3,000,000 to provide financial assistance to implement the demonstration project and \$3,500,000 in direct assistance vaccine to be provided in lieu of cash. Funds are available in Fiscal Year 1989 for up to 9 awards, ranging from \$500,000 to \$2,000,000 with an average award of \$660,000. It is expected the initial budget period for these projects will be for 12 months and will begin on or about October 1, 1988. Depending upon the availability of funds, continuation of the project grants covered by this announcement are to be funded in a 12-month budget period; thus, the project period will be approximately 2 years. Funding estimates outlined above may vary and are subject to change.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria.

1. The applicant's understanding of the purpose of the program, including assessment of the timing and potential for positive impact of the project on meeting the stated goal(s) of the program.

2. The extent to which the applicant demonstrates the ability to accomplish project goals.

3. The degree to which long- and short-term objectives are consistent with the Congressional mandate, and are specific, measurable, and time-phased.

4. The quality of plans for conducting and monitoring activities designed to meet project objectives.

5. The extent to which the proposed project adheres to the program announcement and the established demonstration design.

6. The extent to which qualified and experienced personnel are available to carry out the proposed activities of the project.

7. The potential effectiveness of the applicant's collaboration with local health departments, hospitals, medical schools, nursing homes, HMO, laboratories, and any other agencies where joint liaison efforts would enhance the success of the project.

8. The potential appropriateness and feasibility of the project and the extent to which results may be transferred to other areas.

In addition, consideration will also be given to the extent to which the budget request and proposed use of project funds are reasonable, justified, and

consistent with the intended use of grant funds.

Application and Submission Deadline

The original and two copies of the application form 5161-1 must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before August 12, 1988.

1. **Deadline:** Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. **Late Applications:** Applications which do not meet the criteria in 1.A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA, 30305 (404) 842-6575 or FTS 236-6575.

Technical assistance may be obtained from Brent Shaw, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-1857 or FTS 236-1857.

Questions about demonstration design or Medicare issues should be directed to: The Ambulatory Services Branch, Office of Research and Demonstration, Health Care Financing Administration, 2603 Oak Meadows Building, 6325 Security Boulevard, Baltimore, MD 21207, (301) 966-6617 or FTS 646-6617.

Dated: July 7, 1988.

Robert L. Foster,
Acting Director, Office of Program Support,
Centers for Disease Control.
[FR Doc. 68-15854 Filed 7-13-88; 8:45 am]
BILLING CODE 4160-15-M

Surveillance of Cumulative Trauma Disorders (CTDs) of the Upper Extremities With Emphasis on the Wrist; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: July 14, 1988

Time: 9:00 a.m. to 3:00 p.m.

Place: NIOSH Alice Hamilton Laboratory, Conference Room A, 5555 Ridge Avenue, Cincinnati, Ohio

Purpose: To review a project protocol, "Surveillance of Cumulative Trauma Disorders (CTDs) of the Upper Extremities with Emphasis on the Wrist."

Additional information may be obtained from: Shiro Tanaka, M.D., DHHS, PHS, CDC, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Mail Stop R-16, Cincinnati, Ohio 45226, TELEPHONES: FTS: 684-4481, Commercial: (513) 841-4481

Dated: July 11, 1988.

Elvin Hilyer,
Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 88-15949 Filed 7-12-88; 2:40 pm]
BILLING CODE 4160-15-M

Food and Drug Administration

[Docket No. 88E-0225]

Determination of Regulatory Review Period for Purposes of Patent Extension, AXID®

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Axid® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce,

for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrea E. Chamblee, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Axid® (nizatidine) which is indicated for up to 8 weeks for the treatment of active duodenal ulcer. In most patients, the ulcer will heal within 4 weeks. Axid® is indicated for maintenance therapy for duodenal ulcer patients, at a reduced dosage of 150 mg h.d. after healing of an active duodenal ulcer. The consequences of continuous therapy with Axid® for longer than one year are not known.

Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Axid® (U.S. Patent No. 4,375,547) from

Eli Lilly and Co., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated June 15, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, nizatidine, represented the first permitted marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Axid® is 2,436 days. Of this time, 1,737 days occurred during the testing phase of the regulatory review period, while 699 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* August 13, 1981. FDA has verified the applicant's claim that August 13, 1981 is the effective date of the first investigational new drug application related to the approved product (IND 18-975).

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* May 15, 1986. FDA has verified the applicant's claim that the new drug application for the product (NDA 19-508) was initially submitted on May 15, 1986.

3. *The date the application was approved:* April 12, 1988. FDA has verified the applicant's claim that NDA 19-508 was approved on April 12, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 12, 1988, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 10, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42,

1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 6, 1988.

Allen B. Duncan,
Acting Associate Commissioner for Health Affairs.

[FR Doc. 88-15821 Filed 7-13-88; 8:45 am]
BILLING CODE 4160-01-40

[Docket No. 88M-0221]

Diagnostic Products Corp.; Premarket Approval of Double Antibody AFP To Aid in the Management of Testicular Cancer

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Diagnostic Products Corp., Los Angeles, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Double Antibody AFP to aid in the management of testicular cancer. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 31, 1988, of the approval of the application.

DATE: Petitions for administrative review by August 15, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: S.K. Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On October 26, 1987, Diagnostic Products Corp., Los Angeles, CA 90045, submitted to CDRH an application for premarket approval of the Double Antibody AFP to aid in the management of testicular cancer. The device is an ¹²⁵I radioimmunoassay indicated for the

quantitative serial measurement of alpha-fetoprotein (AFP) in human serum, EDTA plasma, and heparinized plasma to aid in the management of patients with nonseminomatous testicular cancer.

On March 21, 1988, the Immunology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 31, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact S.K. Vadlamudi (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device

and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 6, 1988.

John C. Villforth,
Director, Center for Devices and Radiological Health.

[FR Doc. 88-15817 Filed 7-13-88; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 88M-0221]

Boehringer Mannheim Diagnostics Division; Premarket Approval of Enzymun-Test® CEA

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Boehringer Mannheim Diagnostics Division, Indianapolis, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Enzymun-Test® CEA. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 31, 1988, of the approval of the application.

DATE: Petitions for administrative review by August 15, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: S.K. Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On December 1, 1986, Boehringer Mannheim Diagnostics Division, Indianapolis, IN 46250-0100, submitted to CDRH an application for premarket approval of the Enzymun-Test® CEA. The device is an enzyme immunoassay (immunoenzymetric assay) indicated for

the quantitative measurement of carcinoembryonic antigen (CEA) in human serum to be used as an aid in the management of cancer patients in whom changing concentrations of CEA are observed. It is for use on Boehringer Mannheim Diagnostics' Automated Immunoassay Systems: Enzymun-Test® System ES 22⁺ and ES-600TM Immunoassay System.

On June 29 and 30, 1987, the Immunology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 31, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact S.K. Vadlamudi (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

BEST COPY AVAILABLE

Petitioners may, at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 8, 1988.

John C. Villforth,
Director, Center for Devices and Radiological Health.

[FR Doc. 88-15818 Filed 7-13-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Subcommittee of the Arthritis Advisory Committee

Date, time, and place: August 1, 1988, 8:30 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; David F. Hersey, Center for Drug Evaluation and Research, (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in arthritis and related disease.

Agenda—Open public hearing. Interested persons requesting to present

data, information, or views, orally or in writing, on issues pending before the committee should notify the committee contact person.

Open committee discussion. The subcommittee will discuss: (1) Several proposals for changing the labeling of nonsteroidal anti-inflammatory drugs and review recent responses and discussions among the Pharmaceutical Manufacturers Association, FDA, and company representatives on such labeling; (2) approaches to improving adverse drug reaction identification and reporting; (3) status of discussions between FDA and company representatives on possible labeling changes for Clinoril (sulindac), based on questions raised at the May 16 and 17, 1988, advisory committee meeting; and (4) the final labeling for Voltaren (diclofenac) upon which the FDA and the company have reached agreement; a followup to the meeting of May 16 and 17, 1988. The report of the subcommittee meeting will be sent to the full advisory committee for comment.

Microbiology Devices Panel

Date, time, and place: August 2, 1988, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before July 22, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for an over-the-counter Group A Streptococcus detection device.

Obstetrics-Gynecology Devices Panel

Date, time, and place: August 29, 1988, 9 a.m., Conference Rm. E, Parklawn

Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Type of meeting and contact person. Open public hearing, 9 a.m. to 12 m.; open committee discussion, 1 p.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 12, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness of diagnostic Doppler ultrasound medical devices used for fetal evaluation.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public

advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 8, 1988.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-15820 Filed 7-13-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: LOS ANGELES DISTRICT OFFICE, chaired by George J. Gerstenberg, District Director. The topics to be discussed are ethnic foods, new drug development, and health fraud.

DATE: Friday, August 5, 1988, 9 a.m. to 12 m.

ADDRESS: Asian Community Service Center, 14112 South Kinsley Dr., Gardena, CA 90247.

FOR FURTHER INFORMATION CONTACT: Gordon L. Scott, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213-252-7597.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 8, 1988.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-15819 Filed 7-13-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0205]

Biosonics; Premarket Approval of the SALITRON™ System

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Biosonics, Inc., Mount Laurel, NJ, for premarket approval, under the Medical Devices Amendments of 1976, of the SALITRON™ System used to stimulate salivary production from existing glandular tissue. After reviewing the recommendation of the Dental Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 17, 1988, of the approval of the application.

DATE: Petitions for administrative review by August 15, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative

review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: On March 27, 1987, Biosonics, Inc., Mount Laurel, NJ 08054, submitted to CDRH an application for premarket approval of the SALITRON™ System. The SALITRON™ System is indicated for use in patients with xerostomia, secondary to Sjogren's Syndrome. The device is intended to stimulate salivary production from existing glandular tissue.

The SALITRON™ System is intended for use by the physician to screen patients for response to electrostimulation prior to prescribing the system to the patient. The SALITRON™ System is intended for use by the patient three times per day to stimulate increased salivation.

On August 27, 1987, the Dental Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On May 17, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CRH—contact Gregory Singleton (HFZ-470), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be

in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 1, 1988.
John C. Villforth,
Director, Center for Devices and Radiological Health.
[FR Doc. 88-15053 Filed 7-13-88; 8:45 am]
BILLING CODE 4160-01-M

Health Care Financing Administration Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), *Federal Register*, Vol. 53, No. 47, pg. 7803, dated Thursday, March 10, 1988) is amended to reflect technical revisions to the recently approved functional statements in order to better describe the duties being performed.

The specific changes to Part F. are described below:

- Section F.20.A.2. is revised to reflect technical corrections concerning

jurisdiction determination by the Board. The new section now reads as follows:

2. Jurisdiction and Case Management Staff (FA-12)

The Jurisdiction and Case Management Staff is responsible for identifying and presenting jurisdiction problems to the Provider Reimbursement Review Board (Board) for a determination on whether the Board has jurisdiction for appeals filed under section 1878 of the Social Security Act. Upon the Board determining that jurisdiction requirements have been met, this staff is responsible for the management of the case until position papers are received or the case is withdrawn or dismissed prior to the submission of position papers.

Date: June 16, 1988.
William L. Roper,
Administrator.
[FR Doc. 88-15840 Filed 7-13-88; 8:45 am]
BILLING CODE 4120-01-M

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 we are proposing to establish a new system of records, "Medicaid Statistical Information System, (MEDSTAT)" HHS/HCFA/OACT No. 09-70-0001. We have provided background information about the proposed system in the "supplementary information" section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 7, 1988. The new system of records, including routine uses, will become effective September 8, 1988, unless HCFA receives comments which would warrant modification of the notice.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, G-M-1, ELR, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received

will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Richard L. Bale, Ph.D., Director, Division of Medicaid Statistics, Health Care Financing Administration, J-1, EQ05, 6325 Security Boulevard, Baltimore, Maryland, 21207, Telephone 301-986-7911.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 1902(a)(6) of the Social Security Act, which provides that "A State plan for medical assistance must provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports." We plan to create a records system using Medicaid data which would greatly improve HCFA's ability to conduct program evaluation, strengthen program management, provide higher quality care for all enrolled persons, and contain costs.

The Medicaid program pays for a large portion of personal health care expenses for the poor who are aged, blind, disabled, families with dependent children, pregnant women, and certain others. In 1986, Federal and State Medicaid expenditures were \$42.3 billion for such health care. Accurate, detailed information about the characteristics of the recipients of services, types of services provided, and categories of providers is necessary to improve HCFA's ability to evaluate all aspects of the Medicaid program and provide this information to Congress, HHS employees, and employees of State governments with the need to know.

At present, HCFA relies on a variety of hard copy reports of aggregated data submitted by the individual States. These data are often inaccurate, are untimely, and provide information which is inadequate to assist HCFA in its goal of assuring that the Medicaid program provides high quality medical care at reasonable costs. A high quality, centralized, integrated method of collecting data, such as the Medicaid Statistical Information system, will provide for the more accurate and detailed data required to attain this goal.

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purposes for which the information

was collected. Any such compatible use of data is known as a "routine use." The proposed routine uses in this system are standard routine uses included in many of HCFA's other records systems and meet the compatibility criterion of the Privacy Act. Disclosure of information under these routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: July 1, 1988.
William L. Roper,
Administrator, Health Care Financing Administration.

SYSTEM NAME

Medicaid Statistical Information System (MEDSTAT).

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207 (Contact system manager for location of magnetic computerized records.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Persons enrolled in Medicaid in participating States.

CATEGORIES OF RECORDS IN THE SYSTEM

Medicaid enrollment records; and Paid health care claims records.

AUTHORITY OF MAINTENANCE OF THE SYSTEM

Section 1902(a)(6) of the Social Security Act (42 U.S.C. 1396a(a)(6)).

PURPOSE OF THE SYSTEM

1. To make available high quality, accurate, flexible, and timely data on the Medicaid program by collecting standardized enrollment and paid claims data that will be reported, verified, and maintained on an ongoing basis.
2. To establish a single primary source of Medicaid data at the Federal level for maintaining a single, accurate, and comprehensive Medicaid data base that can be analyzed to produce regular statistical reports; to support research of important policy, quality and effectiveness of care, and epidemiological issues; and to support detecting fraud, abuse, and waste regarding the Medicaid program.
3. To eliminate the need for special data collection efforts to obtain the data necessary to support special studies.
4. To reduce the State reporting burden by eliminating redundant reporting and the need to prepare complex, time consuming summary information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

Disclosure may be made to:

1. A contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system, or for developing, modifying and/or manipulating it with ADP software. Data would also be available to users incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

2. The Congressional office of an individual, in response to an inquiry from that congressional office at the request of the individual involved.

3. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or the study of the costs of providing health care, if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained.

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) There is reasonable probability that the objective for the use would be accomplished.

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

a. In emergency circumstances affecting the health or safety of any individual;

b. For use in another research project, under these same conditions, and with written authorization of HCFA;

c. For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

d. When required by law.

(d) Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

5. Employees of a State government for the purposes of investigating potential fraud, abuse, or waste related to the Medicaid program or for research relating to the Medicaid program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Magnetic media.

RETRIEVABILITY:

Records may be retrieved by the MEDSTAT identification number (which may be either a State-assigned identifier or a social security number.)

SAFEGUARDS:

a. Authorized Users: Only HHS employees and contract personnel whose duties require the use of the system may access the data. In addition, such HHS employees and contractor personnel are advised that the information is confidential and that criminal sanctions for unauthorized

disclosure of private information may be applied.

b. Physical Safeguards: Data tapes are stored in secured facilities and access is protected by Resource Access Control Facility (RACF) data security system. Access to data on disk is secured by using RACF, Model 204 password security, MEDSTAT system password security, file-level password security, and field-level password security.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel. Contractors who maintain records in the system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act.

d. Implementation Guidelines: Safeguards are implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of Health and Human Services' automated Data Processing Manual, Part 6 "ADP System Security."

RETENTION AND DISPOSAL:

Records will be retained for 10 years after the last action on the record.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Medicaid Estimates and Statistics, Health Care Financing Administration, J-1, EQ05, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

Inquiries and requests for system records should be addressed to the system manager at the address above. The requestor must specify the State, Medicaid Identifier number, date of birth, and social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors must reasonably specify the information being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, reasonably identify the record (provide State, Medicaid identifier number, date of birth, and social security number), and specify the information to be contested. State the reason for contesting it; e.g., why the information is inaccurate, irrelevant, incomplete or not current. (These

procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

RECORDS SOURCE CATEGORIES:

HCFA obtains the identifying information in this system from State Medicaid Agencies. Almost all information in the proposed system is derived from States' Medicaid Management Information Systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-15790 Filed 7-13-88; 8:45 am]

BILLING CODE 4125-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NV-930-08-4212-11; N-35255)

Classification Termination and Opening Order, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purposes classification and provides for a limited opening order.

EFFECTIVE DATE: August 15, 1988.

FOR FURTHER INFORMATION CONTACT:

Rodney Harris, District Manager, Elko District Office, Bureau of Land Management, 3900 E. Idaho Street, Elko, Nevada 89801, 702-738-4071.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6, the Bureau of Land Management hereby terminates Recreation and Public Purposes Classification N-35255 which involves the following described lands:

Mount Diablo Meridian

T. 33 N., R. 52 E.,

Sec. 16, W $\frac{1}{2}$ SE $\frac{1}{4}$.

The area described contains 80 acres located in Elko County.

In 1982, in response to an application by the City of Carlin, the subject lands were classified as suitable for disposal under the Recreation and Public Purposes Act (43 U.S.C. 869, 869-1 to 869-4).

The classification provided for segregation of the lands against all forms of appropriation under the public land laws, including location under the mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws. A 25-year lease was subsequently issued to the City of Carlin for sanitary landfill purposes.

The City would now like to acquire unrestricted title to the lands pursuant to section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713); therefore, they have relinquished their lease. Accordingly, the Recreation and Public Purposes classification is no longer appropriate and is hereby terminated.

At 10:00 a.m., on August 15, 1988, the lands described above will be open only to disposal pursuant to section 203 of the Federal Land Policy Management Act, subject to any valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations.

Edward F. Spang,

State Director.

[FR Doc. 88-15762 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-NC-M

(CO-010-08-4133-02)

Craig, CO, Advisory Council Meeting

Time and Date: August 24, 1988, 9 a.m.

Place: County Commissioners' Meeting Room, City/County Building, Rangely, Colorado.

Matters To Be Considered:

1. Effective use of the Craig District Advisory Council.
2. Federal Coal Royalties.
3. Discussion of Douglas Creek rock art.

4. Field trip to view Douglas Creek rock art sites.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: July 7, 1988.

Jerry L. Kidd,

Associate District Manager.

[FR Doc. 88-15764 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-JB-M

(CO-070-07-4322-10-2410)

Grand Junction District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Grand Junction District Grazing Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, August 18, 1988. The meeting will convene in the third floor conference room at the Bureau of Land Management Office, 764 Horizon Drive, Grand Junction, Colorado, at 9:00 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Welcome and introductions; (2) election of officers; (3) minutes of the previous meeting; (4) the advisory board election process; (5) new allotment management plans; (6) coordination with the Colorado Division of Wildlife on big game seasons and numbers; (7) honor camp construction of range improvement materials; (8) future scheduling of advisory board meetings; (9) the Fish Park Pipeline Agreement; (10) status of current project work; (11) proposed 8100 project work for fiscal year 1989; (12) new advisory board project proposals; (13) public presentations; (14) arrangements for the next meeting; (15) adjournment.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by August 15, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address or by calling (303) 243-6552.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 88-15765 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-JB-M

(OR-010-08-4410-12-GPB-184)

Lakeview District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of change of meeting date.

SUMMARY: The Meeting scheduled for July 28, 1988 of the Lakeview District Multiple Use Advisory Council, published in the Federal Register June 21, 1988, has been changed to August 15, 1988.

DATE: August 15, 1988, 10:00 a.m.

ADDRESS: Lakeview District Conference Room, 1000 South Ninth, Lakeview, Oregon.

FOR FURTHER INFORMATION CONTACT:

Renee Snyder, Environmental Coordinator, telephone: (503) 947-2177.

Terry H. Sodorff,

Acting District Manager.

[FR Doc. 88-15766 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-33-M

(AZ-040-08-4410-02)

Notice of Meeting of the Safford District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Safford District Grazing Advisory Council will be held.

DATE: Friday, August 5, 1988 at 10:00 a.m.

ADDRESS: Ramada Inn, Soldiers Room, Sierra Vista, Arizona.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: Draft San Pedro Plan/EIS; Water Rights on the San Pedro; RMP update; Management update; and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:30 p.m. or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must contact the Safford District Manager by August 4, 1988. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

FOR FURTHER INFORMATION: Gil Esquerdo, Public Affairs Specialist, Safford District Office, 425 E. 4th St., Safford, AZ 85546. Telephone (602) 428-4040.

Mog Johnson,

Acting District Manager.

[FR Doc. 88-15767 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-33-M

(8-00153-1-LM-NM-010-GPB-0119; NM-010-4333-12)

Office Opening—Grants, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has opened a new office, the Grants Field Station in Grants, New Mexico on July 1, 1988. Telephone number for the new office will be (505) 285-5041. The address is: Bureau of Land Management, 620 E. Santa Fe Avenue, Grants, New Mexico 87020.

SUPPLEMENTARY INFORMATION: For further information contact Steve Fischer, Project Coordinator, at (505) 285-5041.

Richard Fagan,

District Manager.

[FR Doc. 88-15761 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-FB-M

((AZ-050-08-4212-11, AZA-22715))

Arizona: Yuma District Notice of Realty Action, Lease/Conveyance of Public Lands in Yuma County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease/conveyance of public lands for recreation and public purposes (R&PP).

SUMMARY: The following described public lands located east of the community of Yuma, Arizona, in Yuma County, have been examined and found suitable for lease/conveyance to the Arizona Game and Fish Department for a regional office complex and are so classified under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

Gila and Salt River Meridian, Arizona

T. 9 S., R. 22 W.,

Sec. 1, SW $\frac{1}{4}$ NW $\frac{1}{4}$ lying south of the B Canal, W. 294.13 feet of the W $\frac{1}{4}$ W $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying south of the B Canal.

The area described contains 14.25 acres, more or less.

Lease or conveyance is consistent with BLM land use planning, would not affect any BLM programs, and would be in the public interest.

The lease/conveyance would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way thereon for ditches or canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights granted to the Bureau of Reclamation under permit number AZAR-016569.

5. Those rights granted to the Department of Energy, Western Area Power Administration, under permit number AZA-16010.

6. Those rights granted to the Yuma County Board of Supervisors under permit number AZA-6297.

Upon publication of this notice in the Federal Register, these lands will be segregated from all forms of appropriation under any other public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

On or before August 29, 1988, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Bureau of Land Management, District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Yuma Resource Area, Yuma District at 002-726-6300.

Robert V. Abbey,
Acting District Manager.

Date: July 6, 1988.
[FR Doc. 88-15709 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-32-M

[AZ-020-08-4321-01; A 20346-L]

Realty Action: Exchange of Public Lands, Pima County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 15 S., R. 15 E.,
Sec. 15, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$.
Containing 120 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands, as described in this notice, from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,
District Manager.

Date: July 7, 1988.

[FR Doc. 88-15770 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-32-M

[SDM 57797; (MT-020-08-4212-13)]

Montana; Amended Notice of Realty Action

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area, Interior.

ACTION: Notice of realty action—exchange of public lands in Lawrence County, South Dakota.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, and have been added for consideration to be used to equalize exchange land values to complete the proposed land exchange described in the original Notice of Realty Action dated August 21, 1987, Federal Register 52 FR 31671:

Black Hills Meridian

T. 5 N., R. 3 E.,
Sec. 27, MS2078.
Containing 9.4 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Homestake Mining Company:

Black Hills Meridian

T. 4 N., R. 3 E.,
Sec. 9, Lone Star Fraction of MS1555;
Sec. 16, Lone Star Fraction of MS1555.
Containing 10.3 acres of private land.

In the document published August 21, 1987, Volume 52, No. 162, the public land and acreage should read as follows:

Black Hills Meridian

T. 4 N., R. 3 E.,
Sec. 3, Lots 1-3, 6-10;
Sec. 3, MS1798;
Sec. 4, Lots 1-3, 5, 8, 10, 12-16;
Sec. 9, Lots 1-6, 11-13, 15-17;
Sec. 9, MS1557;

Sec. 10, Lots 1-5, 7-17;
Sec. 15, Lots 1, 3, 4, 6 and Tracts 72, 73.

T. 5 N., R. 3 E.,

Sec. 28, Lots 1-14;
Sec. 29, Lots 1-6, 9-12;
Sec. 29, MS1544;
Sec. 30, Lot 9;
Sec. 32, Lots 1, 4-9, 11, 12, 15-21, Tract 41;
Sec. 33, Lots 1-14, 16-30;
Sec. 34, Lots 3-7, 12-14, 18, 22;
Sec. 34, MS1696.
Containing 251.734 acres.

All other descriptions and information in the original Notice of Realty Action are still effective in this amendment.

Exchange of these lands will be subject to reservations of Homestake Mining Company for valid existing rights.

DATES: On or before August 29, 1988, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination for the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report is available for review at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the surface estate described above from sale, exploration and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication.

Date: July 6, 1988.

Sandra E. Sacher,
Associate District Manager.
[FR Doc. 88-15771 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-08-M

[NM-030-08-4212-13; NM NM69994]

An Exchange of Public Land in Dona Ana, Eddy, and Otero Counties for Private Land in Dona Ana and Hidalgo Counties, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the

Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Dona Ana County

T. 23 S., R. 1 E., NMPM,
Sec. 18, lots 6-8, S $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 19, all;
Sec. 20, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 28, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$;
Sec. 29, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 30, S $\frac{1}{2}$;
Sec. 31, all;
Sec. 33, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 23 S., R. 1 W., NMPM,
Sec. 13, lots 7, 8, S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 24, E $\frac{1}{2}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 25, lots 6, 7, 9, 14-16, 18-23.

T. 22 S., R. 2 E., NMPM,
Sec. 10, all;
Sec. 17, NW $\frac{1}{4}$.

T. 23 S., R. 2 E., NMPM,
Sec. 11, N $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
Sec. 12, all.

T. 24 S., R. 2 E., NMPM,
Sec. 13, lots 3, 4, 5, N $\frac{1}{2}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
Sec. 14, lots 3, 4, 5;
Sec. 24, lots 6-9, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 25 S., R. 2 E., NMPM,
Sec. 34, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 35, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 21 S., R. 3 E., NMPM,
Sec. 28, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 35, W $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 22 S., R. 3 E., NMPM,
Sec. 7, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 23 S., R. 3 E., NMPM,
Sec. 7, lots 1-4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 17, all;
Sec. 18, lots 1-4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 19, lots 1-4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 29, N $\frac{1}{2}$ N $\frac{1}{2}$.

T. 26 S., R. 3 E., NMPM,
Sec. 11, lots 4-8, 10, 11, 10-25, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 14, lots 4-8, 12, 13, 15-18, 26-31, 33-36, 38-40, 51, 60-62, 73, and 82.

T. 27 S., R. 3 E., NMPM,
Sec. 31, lots 1-4, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$.

T. 28 S., R. 3 E., NMPM,
Sec. 6, lots 1-9, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 29 S., R. 3 E., NMPM,
Sec. 12, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 13, lots 5-8, W $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 31, lots 1-6, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 28 S., R. 4 E., NMPM,
Sec. 19, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 31, lots 1-6, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$.

Otero County

T. 26 S., R. 6 E., NMPM,
Sec. 19, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 20, W $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 29, N $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 22 S., R. 6 E., NMPM,
Sec. 34, lots 11-14.

T. 16 S., R. 9 E., NMPM,
Sec. 3, lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 4, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$.

T. 15 S., R. 10 E., NMPM,
Sec. 17, E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 18, lots 3, 4, NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 19, lots 1, 2, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 20, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 29, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
Sec. 30, lot 1;

Sec. 31, lots 2, 3, 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 34, E $\frac{1}{2}$ NE $\frac{1}{4}$.

T. 16 S., R. 10 E., NMPM,
Sec. 5, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
Sec. 32, N $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 17 S., R. 10 E., NMPM,
Sec. 6, lot 1, S $\frac{1}{2}$ NE $\frac{1}{4}$.

Eddy County

T. 19 S., R. 24 E., NMPM,
Sec. 35, N $\frac{1}{2}$.

T. 23 S., R. 27 E., NMPM,
Sec. 8, SW $\frac{1}{4}$.

Containing 16,256.58 acres, more or less.

In exchange for an equal value of some of the above lands, the United States proposes to acquire the following lands from The Nature Conservancy.

Dona Ana County

T. 23 S., R. 3 E., NMPM,
Sec. 1, lots 2-6, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$;
Sec. 11, lots 3, E $\frac{1}{2}$, lot 4, 5, 6, 7, 9, 10, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 12, all;

Sec. 13, NW $\frac{1}{4}$;
Sec. 14, lots 1, 2, 3, 6-9, S $\frac{1}{2}$ NE $\frac{1}{4}$.

T. 22 S., R. 4 E., NMPM,
Sec. 31, lots 7-10, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 23 S., R. 4 E., NMPM,
Sec. 6, lots 2, 3, 7, 8;
Sec. 7, lots 1-4, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 18, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Hidalgo County

T. 29 S., R. 21 W., NMPM,
Sec. 16, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 21, S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 27, S $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 28, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 33, N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 34, NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$.

Containing 4,166.80 acres.

DATES: Comments must be submitted on or before August 29, 1988.

ADDRESS: Comments should be sent to Bureau of Land Management, 1800 Marquess, Las Cruces District, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at 505-525-8228 (FTS 571-8350).

SUPPLEMENTARY INFORMATION: The land to be transferred will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. Mineral resources that have potential for oil and gas, and geothermal and related rights shall be reserved to the United States together with the right

to prospect for, mine and remove the minerals.

3. All valid existing rights and reservations of record. The purpose of this exchange is to acquire an inholding of private land in an area designated by BLM as the Organ Mountains Recreation Lands and lands for bighorn sheep habitat in the Peloncillo Mountains for public land that has been identified for disposal in the BLM's planning process. The exchange is in accord with BLM's approved resource management plans.

Publication of this Notice in the Federal Register will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of patent or 2 years from the date of publication of this Notice in the Federal Register or upon publication of a Notice of Termination.

Any adverse comments will be evaluated and a decision issued by the appropriate authorized officer. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Robert R. Calkins,
Associate.

July 7, 1988.
[FR Doc. 88-15772 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-08-M

[Co-010-08-7150-09]

Supplemental Draft Environmental Impact Statement for the Muddy Creek Reservoir Right-of-Way Application; Resource Management Plans, etc.: Kremmling Resource Area, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement (EIS) for the Muddy Creek Reservoir Right-of-Way application and notice of intent to amend the Kremmling Resource Management Plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the U.S. Department of Agriculture, Forest Service and the U.S. Department of the Interior, Bureau of Land Management will prepare a Supplemental Draft (EIS) for a proposal from the Colorado River Water Conservation District (CRWCD) to construct and operate a reservoir on Rock Creek, located on the Yampa Ranger District of the Routt National Forest, Routt County, Colorado. An

alternative site is located on Muddy Creek, on private lands and Public Lands administered by the Kremmling Resource Area of the Craig District of the Bureau of Land Management, Grand County, Colorado.

The original Notice of Intent appeared in *Federal Register*, Volume 50, Number 143 on July 25, 1985 on Page 30287. A Draft EIS (Agency Number: 02-11-87-02) was prepared and filed with the Environmental Protection Agency. The Notice of Availability of the Draft Environmental Impact Statement (DEIS) appeared in the *Federal Register*, Volume 52, Number 175, on September 4, 1987 on page 33638.

A Supplemental DEIS will be prepared, pursuant to the provisions of 40 CFR 1502.9(c) for the following reasons:

(1) Subsequent to filing the DEIS, the CRWCD requested that an alternative be considered increasing the size of the Muddy Creek Reservoir from 47,000 acre feet to 60,000 acre feet.

(2) The USDI Bureau of Land Management, a Cooperating Agency in the preparation of the Draft EIS, will assume the role of Joint Lead Agency in the subsequent preparation of the Supplemental EIS and Final EIS.

(3) The Preferred Alternative, which did not appear in the Draft EIS, will appear in the Supplemental Draft EIS.

(4) The permitting of the Rock Creek Alternative would require an amendment to the Routt National Forest Land and Resource Management Plan (Forest Plan) pursuant to 36 CFR 219.10(f).

(5) The permitting of the Muddy Creek Alternative would require an amendment to the Kremmling Resource Area Resource Management Plan (RMP) pursuant to 43 CFR 1610.5-5.

The proposed amendment to the Kremmling Resource Management Plan would change approximately 1740 acres of livestock grazing, 30 acres of wildlife habitat and 1.1 miles of water quality management priorities to the recreation management priority category to accommodate recreational use at the Muddy Creek Reservoir should the reservoir be constructed. Approximately 1080 acres of Visual Resource Management (VRM) Class II and 400 acres of VRM Class III would be changed to VRM Class IV. The amendment would also change the visual resource management decision in the approved Resource Management Plan to make it consistent with current policy.

DATES: Written comments on the planning criteria to be utilized to determine if the Kremmling Resource

Management Plan should be amended will be accepted on or before August 15, 1988. The preliminary criteria to be used include:

A. Section 501 of the Federal Land Policy and Management Act provides that rights-of-way for reservoir use may be used for public lands when the affected lands are found suitable for such use.

B. 43 CFR 1610.3-2 provides that amendments to Resource Management Plans shall be consistent with the plans, programs and policies of other affected federal, state and local agencies to the extent that federal laws allow.

C. Public lands will be considered suitable for reservoir use if the adverse impacts to existing uses and resources are found to be less than the positive impacts expected to occur.

ADDRESS: Written comments should be addressed to: David Harr, Project Coordinator, Bureau of Land Management, Kremmling Resource Area, P.O. Box 68, Kremmling, Colorado 80459; telephone (303) 724-3437.

FOR FURTHER INFORMATION CONTACT: David Harr, Bureau of Land Management, Kremmling Resource Area, Kremmling, Colorado 80459; telephone (303) 724-3437.

SUPPLEMENTARY INFORMATION: This document will be prepared and reviewed by an interdisciplinary team which includes specialists in the fields of soil science, hydrology, civil engineering, range science, wildlife, visual resource management, recreation management, economics and other disciplines as needed.

The USDI Bureau of Reclamation and Fish and Wildlife Service, the US Army Corps of Engineers, and the Colorado Division of Wildlife are cooperating agencies in the preparation of this EIS.

Gary E. Cargill, Regional Forester, Rocky Mountain Region, USDA Forest Service, is the responsible official for authorizing easements on National Forest System Lands.

Jerry E. Schmidt, Forest Supervisor, Routt National Forest, USDA Forest Service is the responsible official for amending the Routt Forest Plan.

Neil F. Morck, Colorado State Director, USDI Bureau of Land Management is the responsible official for amending the Kremmling Area RMP.

William Pulford, District Manager, USDI Bureau of Land Management, Craig District Office is the responsible official for authorizing rights-of-way on Public Lands within the Bureau of Land Management, Craig District.

The Supplemental DEIS is expected to be completed in August of 1988 and ready for public review. The Final EIS is

scheduled to be completed by January of 1989.

Date: July 8, 1988.
William J. Pulford,
District Manager.
[FR Doc. 88-15763 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-JB-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

July 7, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., July 7, 1988.

The plat representing the dependent resurvey of portions of the subdivisional lines and certain tracts, and the survey of the north and south center line of section 1, T. 9 N., R. 66 W., Sixth Principal Meridian, Colorado, Group No. 805, was accepted June 22, 1988.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,
Chief, Cadastral Surveyor for Colorado.
[FR Doc. 88-15773 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-JB-M

[NV-930-05-4212-22]

Filing of Plats of Survey; Nevada

July 6, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local Government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filings are effective of 10:00 a.m. on dates shown below.

FOR FURTHER INFORMATION CONTACT: Laci Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-784-5484.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below will be officially filed at the Nevada State

Office, Reno, Nevada, effective at 10:00 a.m., on August 29, 1988:

Mount Diablo Meridian
T. 12 N., R. 68 E.
T. 13 N., R. 68 E.

The plat for Township 12 North, Range 68 East, representing the dependent resurvey of Mineral Survey Nos. 37, 40, and a portion of 4289 and monumentation of certain corners of Mineral Survey Nos. 38 and 39 and the survey of a portion of the south and north boundaries, a portion of the subdivisional lines, the subdivision of certain sections and a traverse through sections 28 and 36 of Township 12 North, Range 68 East, was accepted May 23, 1988.

The area surveyed within Township 12 North, Range 68 East, is steep rocky mountainous terrain including Highland Ridge and the western slope of the Snake Mountain Range. The elevation ranges from about 8,000 to 12,000 ft. above sea level.

The area is drained by numerous creeks and small streams which flow westerly into Spring Valley.

The soil is composed of rocky and clay loam. This supports a medium to heavy growth of timber which consists of mountain mahogany, aspen, subalpine and Douglas fir, limber pine, bristlecone pine and spruce. The undergrowth consists of ceanothus, Brigham tea, buckbrush, chokecherry, rosebush, serviceberry, sagebrush, and native grass.

Mining activity was present in sections 11, 14, 15, 22, and 23. No other mining deposits of value were noted.

The plat for Township 13 North, Range 68 East, representing the survey of a portion of the subdivisional lines and a traverse through section 4 of Township 13 North, Range 68 East, was accepted May 23, 1988.

The area surveyed within Township 13 North, Range 68 East, is steep mountainous terrain on the western slope of Highland Ridge in the Snake Mountain Range. The elevation ranges from about 8,200 to 10,000 ft. above sea level.

The area is drained by numerous creeks and small streams which flow westerly into Spring Valley.

The soil is composed of rocky and clay loam. This area supports a medium growth of timber which consists of mountain mahogany, aspen, subalpine and Douglas fir, pinon pine, bristlecone pine and spruce timber. The undergrowth consists of ceanothus, Brigham tea, buckbrush, chokecherry, rosebush, serviceberry, sagebrush, and native grass.

Mining activity was present in sections 28, 29, and 33. No other mining deposits of value were noted. Currently, the principal users of the township are sheepherders.

Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the following described lands which are located within the Humboldt National Forest will be open at 10:00 a.m. on August 29, 1988, to such forms of dispositions as may by law be made of national forests lands.

Mount Diablo Meridian
T. 12 N., R. 68 E.,

MOUNT DIABLO MERIDIAN

		Accepted	Officially filed at 10:00 a.m.
T. 10 N., R. 36 E.	Supplemental Plat	4/29/88	5/9/88
T. 40 N., R. 70 E.	Dependent Resurvey	5/23/88	6/1/88

The surveys of Township 10 North, Range 36 East, and Township 40 North, Range 70 East, were executed to meet the administrative needs of the Bureau of Land Management. The surveys of Township 12 North, Range 68 East, and Township 13 North, Range 68 East, were executed to meet the administrative needs of the National Park Service.

All of the above listed plats are now the basic record of describing the lands for all authorized purposes. The plats

will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,
State Director, Nevada,
[FR Doc. 88-15774 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-MC-M

Sec. 3, lots 3, 4, S½NW¼, SW¼;
Sec. 10, W¼;
Sec. 14, lots 2, 3, 4, 5, 6;
Sec. 15, lots 1, 2, N¼, N½SW¼, SW¼ SW¼;
Sec. 22, lots 1, 2, 3, 4, NW¼NW¼, NE¼ SW¼, S½SW¼;
Sec. 36, lots 1, 2, 3, 4, SW¼NW¼, SW¼.
T. 13 N., R. 68 E.,
Sec. 4, lots 1, 2, 3, 4, NW¼NE¼, NW¼, NW¼SW¼.

The lands described above have been and continue to be open to mining location and mineral leasing.

Subject to valid existing rights, the following described lands which are located within the Great Basin National Park remain closed to all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and geothermal laws.

Mount Diablo Meridian

T. 12 N., R. 68 E.,
Sec. 3, lots 1, 2, S½NE¼, SE¼;
Sec. 10 E¼;
Sec. 14, lots 1, 7, 8, 9, 10, 11, W½SW¼, E¼ E¼;
Sec. 15, lot 3, N½SE¼, SE¼S¼;
Sec. 22, E¼;
Sec. 23, lots 1, 2, 3, E¼NE¼, SW¼NE¼, W½NE¼, S¼;
Sec. 26, lots 1, 2, 3, 4, NE¼, NE¼NW¼, NE¼SE¼;
Sec. 36, lot 5.

The following Plats of Survey which are resurveys of supplemental plats and, therefore, do not require an opening, were accepted and officially filed at the Nevada State Office, Reno, Nevada on the dates shown:

[WY-940-06-4520-12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., June 24, 1988.

Sixth Principal Meridian
T. 53 N., R. 70 W.

The plat representing the corrective dependent resurvey of the line between sections 3 and 10, T. 53 N., R. 70 W., Sixth Principal Meridian, Wyoming, Group No. 515, was accepted June 22, 1988.

T. 20 N., R. 88 W.

The plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North, through Rs. 87 and 88 W., portions of the south and east boundaries, and the subdivisional lines, T. 20 N., R. 88 W., Sixth Principal Meridian, Wyoming, Group No. 445, was accepted June 22, 1988.

T. 20 N., R. 101 W.

The plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North, through R. 100 W., the Twelfth Auxiliary Meridian West, through T. 20 N., between Rs. 100 and 101 W., and the subdivisional lines, T. 20 N., R. 101 W., Sixth Principal Meridian, Wyoming, Group No. 444, was accepted June 22, 1988.

T. 21 N., R. 101 W.

The plat representing the dependent resurvey of the Fifth Standard Parallel North, through R. 101 W., the Twelfth Auxiliary Meridian West, through T. 21 N., between Rs. 100 and 101 W., the north boundary and the subdivisional lines, T. 21 N., R. 101 W., Sixth Principal Meridian, Wyoming, Group No. 444, was accepted June 22, 1988.

T. 20 N., R. 102 W.

The plat representing the dependent resurvey of the east boundary and the subdivisional lines, T. 20 N., R. 102 W., Sixth Principal Meridian, Wyoming, Group No. 444, was accepted June 22, 1988.

T. 21 N., R. 102 W.

The plat representing the dependent resurvey of the Fifth Standard Parallel North, through R. 102 W., the north and east boundaries, and a portion of the subdivisional lines, T. 21 N., R. 102 W., Sixth Principal Meridian, Wyoming, Group No. 439, was accepted June 22, 1988.

T. 20 N., R. 103 W.

The plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North, through R. 103 W., the east and west boundaries and the subdivisional lines, T. 20 N., R. 103 W., Sixth Principal Meridian, Wyoming, Group No. 439, was accepted June 22, 1988.

T. 42 N., R. 108 W.

The plat representing the dependent resurvey of a portion of the Thirteenth Auxiliary Meridian West, through T. 42 N., between Rs. 108 and 109 W., a portion of the subdivisional lines and the subdivision of certain sections, T. 42 N., R. 108 W., Sixth Principal Meridian, Wyoming, Group No. 447, was accepted June 22, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

T. 36 N., R. 75 W.

The plat showing a subdivision of certain sections, T. 36 N., R. 75 W., Sixth Principal Meridian, Wyoming, was accepted June 22, 1988.

T. 37 N., R. 75 W.

The plat showing a subdivision of certain sections, T. 37 N., R. 75 W., Sixth Principal Meridian, Wyoming, was accepted June 22, 1988.

These supplemental plats were prepared to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: July 6, 1988.

Richard L. Oakes,
Chief, Branch of Cadastral Survey.

[FR Doc. 88-15775 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-22-M

[CA-940-08-4220-10; CA 17454]

Proposed Withdrawal and Opportunity for Public Meeting; California

July 6, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 15 acres of public land in Lake County, to protect the ground campground at Indian Valley Reservoir. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by October 12, 1988.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: On June 24, 1988, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 14 N., R. 6 W.,

Sec. 5, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described contains 15 acres in Lake County.

The purpose of the proposed withdrawal is to protect the group campground at Indian Valley Reservoir.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the *Federal Register* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the *Federal Register*, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land-use authorizations of a temporary nature.

Nancy J. Alex,

Chief, Land Section, Branch of Adjudication and Records.

[FR Doc. 88-15776 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-40-M

[NM-940-08-4220-11; NM NM 016634, NM NM 0559461, NM NM 0556981]

Proposed Continuation of Withdrawals; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all of portions of three separate land withdrawals continue for an additional 20 years. The lands would remain closed to mining, but have been and will remain open to mineral leasing.

DATE: Comments should be received by October 12, 1988.

ADDRESS: Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, 505-888-6554.

The Forest Service proposes that all or portions of the existing land withdrawals made by Public Land Order Nos. 1074, 4078, and 4643 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Lincoln National Forest

1. NM NM 016634—Public Land Order No. 1074

Dark Canyon Lookout

T. 25 S., R. 22 E. (unsurveyed),
Sec. 31, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Sitting Bull Falls Recreation Area (formerly Sitting Bull Falls Campground)

T. 24 S., R. 22 E.,
Sec. 3, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 4, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

2. NM NM 0559461—Public Land Order No. 4078

Black Cave

T. 25 S., R. 22 E. (unsurveyed),
Sec. 28, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 29, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$.

Hidden Cave

T. 25 S., R. 22 E. (unsurveyed),
Sec. 29, SW $\frac{1}{4}$.

Hell Below and McCollum Caves

T. 25 S., R. 22 E. (unsurveyed),
Sec. 28, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 29, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 32, E $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 33, W $\frac{1}{2}$ NW $\frac{1}{4}$.

Cottonwood Cave

T. 25 S., R. 22 E. (unsurveyed),
Sec. 31, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 26 S., R. 22 E.,

Sec. 8, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Little Sentinel, Sentinel, and Hermit Caves

T. 26 S., R. 22 E.,
Sec. 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 9, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$.

Lonesome Cave

T. 26 S., R. 22 E.,
Sec. 18, lots 1, 2, and E $\frac{1}{2}$ NW $\frac{1}{4}$.

3. NM NM 0550981—Public Land Order No. 4643

Guadalupe Administrative Site

T. 26 S., R. 22 E.,
Sec. 22, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$.
The areas described aggregate 1,359.37 acres in Eddy County.

The withdrawals are essential for protection of substantial capital improvements on these sites. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the *Federal Register*. The existing withdrawals will continue until such final determination is made.

Monte G. Jordan,
State Director, Associate.

Dated: July 6, 1988.

[FR Doc. 88-15777 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-FB-M

[ID-050-4360-10]

Idaho Emergency Closure of Public Lands, Designation Order ID-050-88-03

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency closure of public lands.

SUMMARY: Notice is hereby given that effective immediately the following public land in the Shale Butte Wilderness Study Area (WSA) are

closed to all vehicle access: T. 5 S., R. 22 E.; all lands within the WSA in the S $\frac{1}{2}$ of Section 15; all lands within the WSA in the W $\frac{1}{2}$ of Section 21; and the W $\frac{1}{2}$ of Section 28. The approximately 665 acres affected by the closure are in the Shoshone District Monument Resource Area.

The purpose of this closure is to prevent all vehicle use on two vehicle routes in the northern part of the WSA that were subject to unauthorized blading. The impacts of the unauthorized blading are being rehabilitated in accordance with the provisions of the *Interim Management Policy and Guidelines for Lands Under Wilderness Review* (BLM Handbook 8550-1).

The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until reclamation has been achieved on two vehicle routes legally described in the above paragraph.

ADDRESS: For further information about this emergency closure, contact either of the following Bureau of Land Management officials.

District Manager, Shoshone District
Office, P.O. Box 2-B, Shoshone, Idaho 83352, 208-886-2206.

Area Manager, Monument Resource Area, P.O. Box 2-B, Shoshone, Idaho 83352, 208-886-2206.

K. Lynn Bennett,
District Manager.
[FR Doc. 88-15841 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-GG-M

Competitive Oil and Gas Lease Sale, Alaska

ACTION: Notice of sale.

SUMMARY: The purpose of this notice is to announce that a Competitive Oil and Gas Lease Sale No. 883 will be held on September 1, 1988. The lands are offered for sale under 43 CFR Part 3120.

FOR FURTHER INFORMATION CONTACT: Kay F. Kletka, 907-271-3791, Bureau of Land Management, 701 C Street, Box 13, Anchorage, AK 99513.

SUPPLEMENTARY INFORMATION: Notice is hereby given that at 9 a.m. on September 1, 1988, certain lands in the State of Alaska containing approximately 1 million acres will be offered by oral bid to the highest responsible qualified bidders in a competitive oil and gas lease sale.

A detailed list of the parcels offered, the terms and conditions of the lease offering and how and where to bid may be obtained from the BLM, Public

Services Section, at the address shown above.
 July 8, 1988.
 John Santora,
Deputy State Director for Mineral Resources.
 [FR Doc. 88-15769 Filed 7-13-88; 8:45 am]
 BILLING CODE 4310-JA-M

[MT-930-08-4212-12; M74179]

**Cancellation of Realty Action;
 Proposed Lease of Public Lands in
 Jefferson County, MT**

AGENCY: Bureau of Land Management,
 Butte District Office; Interior.
ACTION: Cancellation of realty action;
 proposed lease of public lands in
 Jefferson County, Montana.

The Notice of Realty Action—
 Proposed lease of public lands in
 Jefferson County, Montana, published in
 the *Federal Register*, Vol. 53, No. 14,
 page 1857, on January 22, 1988, is hereby
 cancelled in its entirety.

The public lands were being
 considered for a commercial lease for a
 radon health mine. Comments from the
 Notice of Realty Action were received
 from the Montana Department of Health
 and Environmental Sciences and from
 the BLM Director's Office. Serious
 concerns over public safety and liability
 associated with exposure to radon gas
 were identified. Therefore, it was
 determined that the proposed lease was
 not a suitable use of the subject public
 lands.

Dated: July 6, 1988.
 Gary L. Gerth,
Acting District Manager.
 [FR Doc. 88-15842 Filed 7-13-88; 8:45 am]
 BILLING CODE 4310-DN-M

[NM-940-08-4111-13; OK NM 52641]

**Proposed Reinstatement of
 Terminated Oil and Gas Lease; New
 Mexico**

AGENCY: Bureau of Land Management,
 Interior.
ACTION: Notice.

SUMMARY: Under the provisions of 43
 CFR 3108.2-3, Mewbourne Oil Company
 petitioned for reinstatement of oil and
 gas lease OK NM 52641 covering the
 following described lands located in
 Ellis County, Oklahoma:

T. 18 N., R. 25 W., 1/4 Sec. 31;
 SW 1/4 NE 1/4, SE 1/4 SW 1/4,
 Containing 80.00 acres.

It has been shown to my satisfaction
 that failure to make timely payments of
 rental was due to inadvertence.

No valid lease has been issued
 affecting the lands. Payment of back
 rentals and administrative cost of \$500
 has been paid. Future rentals shall be at
 the rate of \$10 per acre per year and
 royalties shall be at the rate of 16%
 percent, computed on a sliding scale
 four percentage points greater than the
 competitive royalty schedule attached to
 the lease. Reimbursement for cost of
 the publication of this notice shall be
 paid by the lessee.

Reinstatement of the lease will be
 effective as of the date of termination,
 June 1, 1987.

Martha A. Rivers,
Chief, Adjudication Section.
 Dated: July 6, 1988.

[FR Doc. 88-15891 Filed 7-13-88; 8:45 am]
 BILLING CODE 4310-FB-M

[NM-940-084520-1]

New Mexico; Filing of Plat of Survey

July 5, 1988.

The plats of surveys described below
 were officially filed in the New Mexico
 State Office, Bureau of Land
 Management, Santa Fe, New Mexico,
 effective at 10:00 a.m. on the dates
 shown.

The survey representing the
 dependent resurvey of a portion of the
 north boundary, a portion of the
 subdivisional lines, and the subdivision
 of sections 2, 3, 9 and 10, Township 17
 South, Range 25 East, New Mexico
 Principal Meridian, New Mexico,
 executed under Group 861, filed July 5,
 1988.

This survey was requested by the
 District Manager, Roswell District
 Office, Roswell, New Mexico.

The supplemental plat of a portion of
 section 28, was prepared to amend the
 erroneous acreage of 0.02 to 0.01 acres
 for lot 98, section 28, Township 23 North,
 Range 10 East, New Mexico Principal
 Meridian, New Mexico, filed July 5, 1988.

This plat was requested by BLM
 Records.

The survey representing the
 dependent resurvey of a portion of the
 subdivisional lines and the adjusted
 record meanders of the right bank of the
 Deep Fork River in section 14, the
 reestablishment of the 1892 left bank of
 the Deep Fork River in section 14, the
 survey of partition lines in section 14,
 and the survey of the 1892 medial line of
 the avulsed portion of the Deep Fork
 River in section 14, Township 14 North,
 Range 2 East, Indian Meridian,
 Oklahoma, executed under Group 52,
 filed July 5, 1988.

These surveys were requested by the
 BLM Area Manager, ORAH, Tulsa
 District, Oklahoma.

These plats will be in the open files of
 the New Mexico State Office, Bureau of
 Land Management, P.O. Box 1449, Santa
 Fe, New Mexico 87504. Copies of the
 plats may be obtained from the office
 upon payment of \$2.50 per sheet.

John P. Bennett,
Chief, Branch of Cadastral Survey.
 [FR Doc. 88-15760 Filed 7-13-88; 8:45 am]
 BILLING CODE 4310-FB-M

Fish and Wildlife Service

**Information Collection Submitted to
 the Office of Management and Budget
 for Review Under the Paperwork
 Reduction Act**

The proposal for the collection of
 information listed below has been
 submitted to the Office of Management
 and Budget (OMB) for approval under
 the provisions of the Paperwork
 Reduction Act (44 U.S.C. Chapter 35).
 Copies of the proposed information
 collection requirement and related forms
 and explanatory material may be
 obtained by contacting the Service's
 clearance officer at the phone number
 listed below. Comments and suggestions
 on the requirement should be made
 directly to the Service Clearance Officer
 and the OMB Interior Desk Officer,
 Washington, DC 20503, telephone 202-
 395-7340.

Title: Woodcock Wing Collection
 Envelope.

OMB Approval Number: 1018-0009.

Abstract: The woodcock wing
 collection provides data on annual
 recruitment to the woodcock
 populations, distribution and chronology
 of the woodcock harvest, and success of
 woodcock hunters. This information is
 used primarily by the Service, to
 develop annual hunting regulations.
 State conservation agencies, university
 associates and other interested parties
 use such data for various research and
 management projects.

Service Form Number: 3-156a.

Frequency: On occasion.

Description of Respondents:
 Individuals and households (woodcock
 hunters).

Estimated Completion Time: 4
 minutes per response.

Annual Responses: 2,000 respondents
 (each respondent averages 5 responses
 annually).

Annual Burden Hours: 670.

Service Clearance Officer: James E.
 Pinkerton, 202-653-7500, Room 850

Riddell Building, U.S. Fish and Wildlife
 Service, Washington, DC 20240.

Date: June 22, 1988.

John G. Rogers, Jr.,
*Acting Assistant Director—Refuges and
 Wildlife.*
 [FR Doc. 88-15750 Filed 7-13-88; 8:45 am]
 BILLING CODE 4310-35-M

Minerals Management Service

**Development Operations Coordination
 Document; Cockrell Oil Corp.**

AGENCY: Minerals Management Service,
 Interior.

ACTION: Notice of the receipt of a
 proposed Development Operations
 Coordination Document (DOCD).

SUMMARY: Notice is hereby given that
 Cockrell Oil Corporation has submitted
 a DOCD describing the activities it
 proposes to conduct on Lease OCS-G
 6618, Block 117, East Cameron Area,
 offshore Louisiana. Proposed plans for
 the above area provide for the
 development and production of
 hydrocarbons with support activities to
 be conducted from an existing onshore
 base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed
 submitted on July 6, 1988. Comments
 must be received within 15 days of the
 publication date of this Notice or 15
 days after the Coastal Management
 Section receives a copy of the plan from
 the Minerals Management Service.

ADDRESSES: A copy of the subject
 DOCD is available for public review at
 the Public Information Office, Gulf of
 Mexico OCS Region, Minerals
 Management Service, 1201 Elmwood
 Park Boulevard, Room 114, New
 Orleans, Louisiana (Office Hours: 8 a.m.
 to 4:30 p.m., Monday through Friday). A
 copy of the DOCD and the
 accompanying Consistency Certification
 are also available for public review at
 the Coastal Management Section Office
 located on the 10th Floor of the State
 Lands and Natural Resources Building,
 625 North 4th Street, Baton Rouge,
 Louisiana (Office Hours: 8 a.m. to 4:30
 p.m., Monday through Friday). The
 public may submit comments to the
 Coastal Management Section, Attention
 OCS Plans, Post Office Box 44487, Baton
 Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT:

Mr. W. Williamson; Minerals
 Management Service, Gulf of Mexico
 OCS Region, Field Operations, Plans,
 Platform and Pipeline Section,
 Exploration/Development Plans Unit;
 Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The
 purpose of this Notice is to inform the
 public, pursuant to section 25 of the OCS
 Lands Act Amendments of 1978, that the
 Minerals Management Service is
 considering approval of the DOCD and
 that it is available for public review.
 Additionally, this Notice is to inform the
 public, pursuant to § 930.61 of Title 15 of
 the CFR, that the Coastal Management
 Section/Louisiana Department of
 Natural Resources is reviewing the
 DOCD for consistency with the
 Louisiana Coastal Resources Program.
 Revised rules governing practices and
 procedures under which the Minerals
 Management Service makes information
 contained in DOCDs available to
 affected States, executives of affected
 local governments, and other interested
 parties became effective May 31, 1988
 (53 FR 10595).

Those practices and procedures are
 set out in revised § 250.34 of Title 30 of
 the CFR.

Date: July 7, 1988.

J. Rogers Percy,
*Regional Director, Gulf of Mexico OCS
 Region.*
 [FR Doc. 88-15778 Filed 7-13-88; 8:45 am]
 BILLING CODE 4310-35-M

**Development Operations Coordination
 Document; Columbia Gas**

AGENCY: Minerals Management Service,
 Interior.

ACTION: Notice of the receipt of a
 proposed Development Operations
 Coordination Document (DOCD).

SUMMARY: Notice is hereby given that
 Columbia Gas has submitted a DOCD
 describing the activities it proposes to
 conduct on Lease OCS-G 2549, Block
 507, West Cameron Area, offshore
 Louisiana. Proposed plans for the above
 area provide for the development and
 production of hydrocarbons with
 support activities to be conducted from
 an existing onshore base located at
 Sabine Pass, Louisiana.

DATE: The subject DOCD was deemed
 submitted on June 30, 1988.

ADDRESS: A copy of the subject DOCD
 is available for public review at the
 Public Information Office, Gulf of
 Mexico OCS Region, Minerals
 Management Service, 1201 Elmwood
 Park Boulevard, Room 114, New
 Orleans, Louisiana (Office Hours: 8 a.m.
 to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT:

Mr. Mike J. Tolbert; Minerals
 Management Service, Gulf of Mexico
 OCS Region, Field Operations, Plans,
 Platform and Pipeline Section,

Exploration/Development Plans Unit;
 Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The
 purpose of this Notice is to inform the
 public, pursuant to section 25 of the OCS
 Lands Act Amendments of 1978, that the
 Minerals Management Service is
 considering approval of the DOCD and
 that it is available for public review.

Revised rules governing practices and
 procedures under which the Minerals
 Management Service makes information
 contained in DOCDs available to
 affected States, executives of affected
 local governments, and other interested
 parties became effective May 31, 1988
 (53 FR 10595). Those practices and
 procedures are set out in revised
 § 250.34 of Title 30 of the CFR.

Date: July 1, 1988.

J. Rogers Percy,
*Regional Director, Gulf of Mexico OCS
 Region.*
 [FR Doc. 88-15779 Filed 7-13-88; 8:45 am]
 BILLING CODE 4310-35-M

**Development Operations Coordination
 Document; Hall-Houston Oil Corp.**

AGENCY: Minerals Management Service,
 Interior.

ACTION: Notice of the receipt of a
 proposed Development Operations
 Coordination Document (DOCD).

SUMMARY: Notice is hereby given that
 Hall-Houston Oil Company has
 submitted a DOCD describing the
 activities it proposes to conduct on
 Leases OCS-G 5739 and 5742, Blocks 22
 and 34, respectively, Chandelur Area,
 offshore Louisiana and Mississippi.
 Proposed plans for the above area
 provide for the development and
 production of hydrocarbons with
 support activities to be conducted from
 an existing onshore base located at
 Venice, Louisiana.

DATE: The subject DOCD was deemed
 submitted on July 6, 1988. Comments
 must be received within 15 days of the
 publication date of this Notice or 15
 days after the Coastal Management
 Section receives a copy of the plan from
 the Minerals Management Service.

ADDRESSES: A copy of the subject
 DOCD is available for public review at
 the Public Information Office, Gulf of
 Mexico OCS Region, Minerals
 Management Service, 1201 Elmwood
 Park Boulevard, Room 114, New
 Orleans, Louisiana (Office Hours: 8 a.m.
 to 4:30 p.m., Monday through Friday). A
 copy of the DOCD and the
 accompanying Consistency Certification
 are also available for public review at

the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 7, 1988.

J. Rogers Percy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-15780 Filed 7-13-88; 8:45 am]
BILLING CODE 4310-MF-M

Development Operations Coordination Document; Walter Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 9428 and 5350, Blocks 574 and 584, respectively, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to

be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on June 30, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT:

Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2887.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 1, 1988.

J. Rogers Percy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-15781 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-01-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 10]

Waterways Freight Bureau, Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of show-cause proceeding.

SUMMARY: The Commission has made preliminary findings relating to the application of Waterways Freight Bureau (WFB) for approval of its collective ratemaking agreement and directed WFB to show cause: (1) Why it and its member carriers should not be directed to cease and desist from engaging in certain collective ratemaking activity; and (2) why any claimed antitrust immunity should not be revoked. The action is taken to update the record in this proceeding and resolve whether WFB has ceased operations.

DATES: WFB's response to the show-cause order is due by August 15, 1988. Comments from other parties are due by September 12, 1988. WFB's rebuttal is due by October 3, 1988.

FOR FURTHER INFORMATION CONTACT:

A. Klose, (202) 275-7935

or

Richard B. Felder, (202) 275-7691

[TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. Copies are available from the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275-7428, (assistance for the hearing impaired is available through TDD Services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 11701, 10906, and 10321.

Decided: July 5, 1988.

By the Commission Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noretta R. McGee

Secretary.

[FR Doc. 88-15656 Filed 7-13-88; 8:45 am]

BILLING CODE 7030-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Wellsville, OH

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 30, 1988, a proposed consent decree in *United States v. City of Wellsville*, Civil Action No. C87-1077Y, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent decree resolves a judicial enforcement action brought by the United States against the City of Wellsville for violations of the Clean Water Act.

The proposed consent decree requires the City of Wellsville to attain and, thereafter, maintain compliance with section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and comply with its NPDES permit. To ensure compliance with the final effluent limits, the proposed consent decree requires Wellsville to make improvements at the pump station, treatment plant and sewer system. The proposed consent decree also requires Wellsville to take specific measures to ensure that the treatment plant is properly operated and maintained. Finally, the consent decree requires Wellsville to pay a civil penalty of \$5,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Wellsville*, D.J. Ref. 90-5-1-1-2801.

The proposed consent decree may be examined at the office of the United States Attorney, 1404 East Ninth Street, Cleveland, Ohio and at the office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and

Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$2.00 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-15782 Filed 7-13-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—International Diatomite Producers Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), International Diatomite Producers Association ("IDPA") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to IDPA and (2) the nature and objectives of IDPA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to IDPA, and its general areas of planned activities, are given below.

IDPA is a joint research and development venture corporation, consisting of the following members: Ceca S.A., Eagle-Picher Minerals, Inc., Grefco, Inc., Manville Corporation, Manville de France S.A./Manville Europe Corporation, Witco Corporation.

Membership in IDPA is open to all producers of diatomaceous earth, by invitation after affirmative vote of the board of directors and the members of IDPA, and the parties intend to file additional written notification disclosing all changes in membership of this project.

The principal objective of IDPA is to provide a forum for the collection, exchange and analysis of information relating to health, safety and environmental issues involving

diatomaceous earth, to disseminate such information, and to stimulate cooperative research and development regarding diatomaceous earth.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-15678 Filed 7-13-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Applications To Conduct a Self-Employment Demonstration Project for Structurally Unemployed Workers; Extension of Period for Filing Applications

AGENCY: Employment and Training Administration, Labor.

ACTION: Extension of application period.

SUMMARY: The Omnibus Budget Reconciliation Act of 1987 includes section 9152, "Demonstration Program to Provide Self-Employment Allowances for Eligible Individuals," which requires the Secretary of Labor to carry out a self-employment demonstration project, select and enter into agreements with three States that will operate the demonstration, analyze the benefits and costs of the demonstration, and submit reports to Congress two and four years after enactment. The Department of Labor (DOL) published a Federal Register notice on March 1, 1988 for the purpose of requesting applications from States that would like to conduct a self-employment demonstration project under the Act pursuant to an agreement with the Department of Labor. The application period under the March 1 notice expired on May 2, 1988. The purpose of this notice is to extend the period for submitting applications for the self-employment demonstration project.

DATE: State applications to conduct a self-employment demonstration project under section 9152 of the Omnibus Budget Reconciliation Act of 1987 must be received by close of business on August 15, 1988.

ADDRESS: Send applications to the Unemployment Insurance Service, Employment and Training Administration, Room S-4231, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wyrach, Director, Unemployment Insurance Service,

Employment and Training Administration, Room S-4231, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202-535-0600.

SUPPLEMENTARY INFORMATION: For additional information on the Three-State Self-Employment Demonstration Project authorized by the Omnibus Budget Reconciliation Act of 1987 and the procedures that States should use for submitting applications to DOL to conduct a demonstration project, please refer to the Federal Register notice dated March 1, 1988, 53 FR 6508. Final selection of States for the demonstration project is scheduled for August 1988.

Signed at Washington, DC, on July 7, 1988.

Roberta R. Jones,

Acting Assistant Secretary of Labor.

[FR Doc. 88-15745 Filed 7-13-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-113-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Loveridge No. 22 Mine (I.D. No. 46-01433) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that the pump is located along an older haulageway that is congested with major falls and severe water problems. The haulageway is ventilated with intake air and there are no effective return airways in the immediate vicinity.

3. As an alternate method, petitioner proposes that—

(a) The electric equipment would be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit. Such fire doors would be designed to enclose all associated electric components in a

reasonably airtight enclosure in case of a fire or excessive temperature;

(b) A signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure;

(e) Flammable or combustible material would not be stored or be allowed to accumulate in the fireproof structure;

(f) Firefighting equipment would be provided on the outside of the fireproof structure on the intake side;

(g) The electric equipment would be examined, tested, and maintained by a qualified person. These examinations and tests would include the electric equipment, the automatically closing fire doors, the signalling system, and the automatic fire suppression system;

(h) The area enclosing the structure would be examined daily for hazardous conditions. A record of the examinations would be kept in a book on the surface; and

(i) Grounded-phase devices protecting three-phase circuits would be adjusted to remove incoming power at not more than 40 percent of the available ground fault current.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances

Date: July 7, 1988.

[FR Doc. 88-15741 Filed 7-13-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-109-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Amonate No. 31 Mine (I.D. No. 46-04421) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air in the belt entry to ventilate active working places as follows:

(a) The belt conveyor entry would be examined at least once during each coal producing shift while persons are working. Examinations would be conducted at intervals that would provide the most effective examinations of the entry;

(b) The requirement for "Fire Protection" would be strictly followed as it pertains to water lines, fire hoses, fire suppression systems, warning devices, and flame-resistant belting;

(c) An early warning fire detection system would be installed. A low-level carbon monoxide system would be installed in all belt entries utilized as intake aircourses, and at each belt drive and tailpiece. The low-level CO system would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 ppm above the ambient level and an audible signal would sound at 15 ppm above the established ambient level for the mine. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO monitoring system would initiate the fire alarm signals at a central location on the surface where a responsible person is always on duty when miners are underground. This person would have two-way communication with all working sections; and would notify all working sections and other personnel who may be endangered, when the established alert and alarm levels are reached. The CO monitoring system would be capable of identifying any activated sensor and

monitoring electrical continuity and detecting electrical malfunctions;

(d) The CO monitoring system would be examined visually at least once each shift when belts are in operation and tested for functional operation weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures monthly;

(e) If at any time the CO monitoring system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using hand-held CO detection devices;

(f) The details for the fire detection system including, but not limited to, type of monitor, sensor location, alarm system, maintenance and calibration schedule would be included as a part of the Ventilation System and Methane and Dust Control Plan;

(g) The concentration of respirable dust would be determined by establishing a designated area in the mine's Ventilation Plan, with specific sampling locations that is always within 200 feet outby the working face of the section in the intake airways; and

(h) The permanent stoppings separating the conveyor belt entries from the intake escapeways would be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

3. In support of this request, petitioner states that—

(a) The use of belt air provides a safer, more effective system to ventilate the working sections;

(b) The use of belt air at the face would provide two additional safety factors for early detection of hot spots or small fires on the belt lines. They are: The human sense of smell and the highly sensitive CO monitoring system which is superior to the present heat detection system; and

(c) The use of belt air aids in controlling respirable dust and in dissipating methane which is liberated when mining virgin coal.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: July 7, 1988.

[FR Doc. 88-15742 Filed 7-13-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-105-C]

Jet Coal Co. Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jet Coal Company, Inc., Box 276, Virgie, Kentucky 41572 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Maverick Mine (I.D. No. 15-07453) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 2 Elkhorn seam and ranges from 40 to 50 inches in height. The coal seam has consistent ascending and descending grades creating dips in the coal beds. The top is uneven and contains numerous brows.

3. Petitioner states that due to the dips and brows in the top, installation of canopies on the mine's electric face equipment would create a hazard to the equipment operator, because the canopies could strike and possibly destroy roof support. Also, the canopies would limit the equipment operator's visibility and seating position increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition

are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: July 7, 1988.

[FR Doc. 88-15743 Filed 7-13-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-103-C]

Spurlock Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Spurlock Mining Company, 30 Hill Drive, Prestonsburg, Kentucky 41653 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-06540) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Fireclay Coal Seam, and ranges from 35 to 54 inches in height.

3. Petitioner states that operating the mine's electric face equipment with canopies is detrimental to their roof control plan, as they hit previously installed permanent roof supports.

4. Petitioner further states that when canopies are lowered on the mine's electric face equipment to a height which allows clearance throughout the mine, the canopies limit the equipment operator's vision.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: July 6, 1988.

[FR Doc. 88-15744 Filed 7-13-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration**Maryland State Standards; Approval**

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the *Federal Register* (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letter dated March 15, 1988, from Commissioner Henry Koellein, Jr., Maryland Department of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to 29 CFR 1910.1028 pertaining to amendments to the Benzene Standard as published in the *Federal Register* of September 11, 1987, (52 FR 34562). This standard is contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standard was promulgated after public hearing on January 26, 1988. This standard was effective on March 21, 1988.

2. *Decision.* Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standard is identical to the Federal standard and accordingly is approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, Room

N-3476, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective July 14, 1988.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Philadelphia, Pennsylvania, this 12th day of May, 1988.

Linda R. Anku,

Regional Administrator.

[FR Doc. 15748 Filed 7-13-88; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the *Federal Register* (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change

supplement to a State plan shall be required.

In response to Federal standards changes, the State submitted, by letter dated March 25, 1988, from John A. Pompei, Administrator, Accident Prevention Division, Department of Insurance and Finance, to James W. Lake, Regional Administrator, standard amendments comparable to 29 CFR 1926.550(b)(2), Cranes and Derricks; 1926.552(c)(15), Personnel Hoists; and 1926.803(e), Underground Transportation of Explosives, Standards for Construction, as published in the *Federal Register* on September 28, 1987 (52 FR 36376). These standard amendments were adopted effective by the State on February 29, 1988, after the Notice of Proposed Amendment of Rules was mailed, on December 24, 1987, to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution mailing list as their interest appeared. No written comments or requests for a public hearing concerning this adoption were received.

2. *Decision.* Having reviewed the State submission in comparison with the relevant Federal standard amendments, it has been determined that the State standard amendments are at least as effective as the comparable Federal Act. OSHA has also determined that the difference between the State and Federal standard amendments are substantially identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Accident Prevention Division, Department of Insurance and Finance, Room 204, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the

Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective July 14, 1988.

(Section 18, Pub. L. 91-596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Seattle, Washington this 20th day of May, 1988.

James W. Lake,

Regional Administrator.

[FR Doc. 88-15748 Filed 7-13-88; 8:45 am]

BILLING CODE 4510-26-M

Oregon State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the *Federal Register* (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State submitted by letter dated March 25, 1988 from John A. Pompei, Administrator, Accident Prevention Division, Department of Insurance and Finance, to James W. Lake, Regional Administrator, standards changes comparable to the Federal Construction Standard 29 CFR 1926.151(a)(1), Fire Prevention;

1926.152(b)(4)(v), Flammable and Combustible Liquids; 1926.351(d)(5), Arc Welding and Cutting; and 1926.803(j)(3), Compressed Air as published in the *Federal Register* on July 11, 1986 (51 FR 25294). These standards were adopted effective by the State on March 14, 1988 after the Notice of Proposed Amendment of Rules was mailed, on February 12, 1988, to those on the Department of Insurance and Finance mailing list established pursuant to OAR 436-01-000 and to those on the Department's distribution mailing list as their interest appeared. No written comments or requests for a public hearing concerning this adoption were received.

2. *Decision.* Having reviewed the State submission in comparison with the relevant Federal standard amendments, it has been determined that the State standard amendments are at least as effective as the comparable Federal standard amendments, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standard amendments are minimal and that the standard amendments are thus substantially identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal working hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

This decision is effective July 14, 1988.

(Section 18, Pub. L. 91-596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Seattle, Washington, this 20th day of May, 1988.

James W. Lake,

Regional Administrator.

[FR Doc. 88-15747 Filed 7-13-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION**Privacy Act of 1974; New Systems of Records**

AGENCY: National Science Foundation.
ACTION: Notice of new systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing notice of the existence of two new systems of records. The systems are designated NSF-50, "Principal Investigator/Proposal File and Associated Records," and NSF-51, "Reviewer/Proposal File and Associated Records." Both systems include the investigatory records maintained by NSF when proposals are submitted to the agency and subsequent evaluations of the applicants and their proposals are obtained.

The "Principal Investigator/Proposal File and Associated Records" system will contain the name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material. The "Reviewer/Proposal File and Associated Records" system is a subsystem of the above-mentioned file, and will contain the reviewer's name, the proposal and its identifying number, proposal rating, and other related material.

In the Proposed Rules Section of today's *Federal Register*, NSF also proposes to exempt portions of NSF-50, "Principal Investigator/Proposal File and Associated Records" from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). The exemption is needed to protect the identity of peer reviewers who provide confidential evaluations of applicants and their proposals.

In accordance with Privacy Act requirements, NSF has provided a report

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on the proposed systems to the Director of OMB, the President of the Senate, and the Speaker of the House of Representatives.

EFFECTIVE DATE: Title 5 U.S.C. 552a(e) (4) and (11) require that the public be provided a 30-day period in which to comment on the routine uses of a new system. The Office of Management and Budget, which has oversight responsibilities under the Privacy Act, requires that it be given a 60-day period in which to review a proposed system. Accordingly, public comments must be received by August 15, 1988. These systems shall take effect without further notice on September 12, 1988, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESS: Written comments should be submitted to the NSF Privacy Act Officer, Division of Personnel and Management, National Science Foundation, Rm. 208, 1800 G Street, NW., Washington, DC 20550. All comments will be available for public inspection in Rm. 208, at the above address between the hours of 9:00 a.m. and 4:00 p.m.

Dated: July 9, 1988.

Herman G. Fleming,
NSF Privacy Act Officer.

NSF-50

SYSTEM NAME:

Principal Investigator/Proposal File and Associated Records.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each person that requests support from the National Science Foundation, either individually or through an academic institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

The name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE OF THE SYSTEM:

This system enables program offices to maintain appropriate files and investigatory material in evaluating applications for grants or other support. NSF employees may access the system to make decisions regarding which proposals to fund, and to carry out any other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Disclosure of information may be made:

1. To qualified reviewers for their opinion and evaluation of applicants and their proposals as part of the application review process.
2. To government agencies needing data regarding the names of Principal Investigators and their proposals in order to coordinate programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer disks or in hard copy files, depending upon the individual program office.

RETRIEVABILITY:

Information can be accessed from the computer data base by addressing any type of data contained in the data base, including individual names. An individual's name may be used to manually access material in alphabetized hard copy files.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures. Only those employees with a need-to-know in order to perform their duties will be able to access the information.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with

procedures set forth at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the principal investigator, academic institution or other applicant, and peer reviewer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system consisting of investigatory material which would identify persons supplying evaluations of NSF applicants and their proposals have been exempted pursuant to 5 U.S.C. 552a(k)(5).

NSF-51

SYSTEM NAME:

Reviewer/Proposal File and Associated Records.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reviewers that evaluate NSF applicants and their proposals, either by submitting comments through the mail or serving on review panels or site visit teams.

CATEGORIES OF RECORDS IN THE SYSTEM:

The "Reviewer/Proposal File and Associated Records" system is a subsystem of the "Principal Investigator/Proposal File and Associated Records," and will contain the reviewer's name, the proposal and its identifying number, proposal rating, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSE OF THE SYSTEM:

This system enables program offices to reference specific reviewers and maintain appropriate files and investigatory material in evaluating applications for grants or other support. NSF employees may access the system to make decisions regarding proposals and to perform any other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Disclosure of information may be made to government agencies needed names of potential reviewers or specialists in particular fields.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer disks or in hard copy files, depending upon the individual program office.

RETRIEVABILITY:

Information can be accessed from the computer database by addressing any type of data contained in the database, including individual names. An individual's name may be used to manually access material in alphabetized hard copy files.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures. Only those employees with a need-to-know in order to perform their duties will be able to access the information.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR Part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual reviewer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-15739 Filed 7-13-88; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

(Docket No. 50-400)

Carolina Power & Light Co. et al. and Shearon Harris Nuclear Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from a portion of the requirements of 10 CFR 50.71(e)(3)(i) to the Carolina Power & Light Company and the North Carolina Eastern Municipal Power Agency (the licensees) for the Shearon Harris Nuclear Power Plant, Unit 1, (Shearon Harris, Unit 1) located in Wake and Chatham Counties, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e) to submit an updated Final Safety Analysis Report (UFSAR) for Shearon Harris, Unit 1, within 24 months of the issuance of an operating license. A low power operating license was issued for Shearon Harris, Unit 1, on October 24, 1986, and a full power operating license was issued on January 12, 1987. By letter dated April 21, 1988, the licensee requested an exemption from 10 CFR 50.71(e) requiring the refiling of a complete FSAR as the UFSAR. Instead, the licensee proposes to update the existing docketed FSAR by issuing an amendment to the FSAR. The FSAR had been updated through October 30, 1987.

The Need for Proposed Action

10 CFR 50.71(e) requires that the information contained in the FSAR docketed with the operating license application be maintained current. The underlying purpose of 10 CFR 50.71(e) will be achieved by updating the docketed FSAR through the amendment process and will provide a single complete updated FSAR providing the state of completeness contemplated by the rule. The additional expenditure of resources entailed in the filing of a new UFSAR would cause a hardship since the same objective would be achieved by the proposed action of the licensee. Therefore, an exemption is needed to eliminate the unnecessary costs associated with the filing of a UFSAR.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the method by which the FSAR is kept

up-to-date and does not affect plant operation or the risk of facility accidents. Accordingly, the exemption will not increase the probability or consequences of any reactor accident sequence and will not otherwise affect any other radiological impact associated with the facility. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement" related to the operation of the Shearon Harris Nuclear Power Plant, Units 1 and 2" dated October 1983.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption dated April 21, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Rockville, Maryland, this 8th day of July, 1988.

For the Nuclear Regulatory Commission.
Elinor G. Adensam,
Director, Project Directorate II-1, Division of
Reactor Projects I/II.
[FR Doc. 88-15861 Filed 7-13-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co., Oyster Creek Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License DPR-16 issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise Technical Specification Sections 3.2.C, 4.2.E, and 6.9.3 to reflect the use of an enriched sodium pentaborate solution in the Standby Liquid Control System (SLCS).

The proposed action is in accordance with the licensee's application for amendment dated May 10, 1988.

The Need for the Proposed Action

The proposed change to the Technical Specifications is required in order for the licensee to comply with ATWS Rule (10 CFR 50.62), and Generic Letter 85-03 "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," dated January 28, 1985.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The proposed revision would allow the licensee to use an enriched sodium pentaborate solution in the Standby Liquid Control System. The use of an enriched sodium pentaborate solution would not increase the probability or consequence of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this action would result in no significant environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the Technical Specifications involve systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on June 3, 1988 (53 FR 20396). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

It has been determined that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal operation.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for amendment dated May 10, 1988. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 8th day of July 1988.

For the Nuclear Regulatory Commission.
John F. Stolz,
Director, Project Directorate I-4, Division of
Reactor Projects I/II.
[FR Doc. 88-15857 Filed 7-13-88; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Revision 1

The Advisory Committee on Nuclear Waste will hold a meeting on July 21-22,

1988, Room 1046, 1717 H Street, NW., Washington, DC. The meeting will start at 10:30 a.m. on Thursday, July 21 and continue until close of business at 5:30 p.m. It will resume at 8:30 a.m. on Friday, July 22 and continue until the close of business at 5:30 p.m.

Thursday, July 21, 1988

10:30 a.m.-10:45 a.m.: *Comments by ACNW Chairman* (Open)—The ACNW Chairman will report briefly regarding items of current interest.

10:45 a.m.-12:15 p.m.: *Below Regulatory Concern* (Open)—The NRC Staff will present their proposed policy statement to the ACNW.

1:15 p.m.-3:30 p.m.: *Dry Cask Storage Study* (Open)—The DOE Staff will brief the ACNW on their Dry Cask Storage Study. This study is required by the Nuclear Waste Policy Amendments Act of 1987 to be submitted to Congress in October 1988.

3:30 p.m.-4:30 p.m.: *Rulemaking on Anticipated and Unanticipated Events* (Open)—The NRC Staff will discuss the proposed rulemaking on this topic.

4:30 p.m.-5:30 p.m.: *ACNW Activities and Preparation of ACNW Reports* (Open)—The ACNW will discuss ACNW activities, future meeting agendas, and organizational matters.

Friday, July 22, 1988

8:30 a.m.-9:30 a.m.: *Environmental Monitoring of Low-Level Waste Facilities* (Open)—The NRC Staff will discuss the NRC Draft Technical Position on this topic.

9:30 a.m.-11:30 a.m.: *Center for Nuclear Waste Regulatory Analyses* (Open)—The NRC Staff and representatives from the Center will brief the ACNW on the status of this program.

11:30 a.m.-12:30 p.m.: *EPA Standards for HLW Geologic Repository* (Open)—The EPA will provide a briefing on the status of this topic.

1:30 p.m.-4:00 p.m.: *Briefing on the Barnwell/Savannah River/Chem-Nuclear and LN Technologies Facilities* (Open)—The NRC Staff and, if possible, representatives of the above organizations and of the state of South Carolina will brief the members of the ACNW to prepare them for their proposed visit to these facilities in early August. The Office of State Program will also describe the Agreement States program in general and their recent interaction with the state of South Carolina in particular.

4:00 p.m.-4:45 p.m.: *NRC Staff Actions on ACNW Recommendations* (Open)—The ACNW will discuss with the NRC

Staff the actions that the NRC Staff has taken on ACNW recommendations.

4:45 p.m.-5:30 p.m.: *ACNW Activities and Preparation of ACNW Reports* (Open)—The ACNW will discuss ACNW activities, future meeting agendas, and organizational matters.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Date: July 16, 1988.

John C. Hoyle,
Advisory Committee Management Office.
[FR Doc. 8-15855 Filed 7-13-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260, 50-296]

Biweekly Notice Applications and Amendments to Operating Licenses Including No Significant Hazards Considerations; Tennessee Valley Authority; Correction

On June 1, 1988, the Federal Register published the Bi-weekly Notice of Issuance of Amendment to Facility Operating License. On page 20052, for Browns Ferry, Units 1, 2 and 3 (application dated January 14, 1988, TS-237) the effective date read, "May 4, 1989." The correct effective date is May 4, 1988.

Dated at Rockville, Maryland, this 7th day of July 1988.

For the Nuclear Regulatory Commission.
Rajender Auluck,

Acting Assistant Director for Projects, TVA
Projects Division, Office of Special Projects.
[FR Doc. 88-15859 Filed 7-13-88; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-58 and DPR-74 issued to the Indiana Michigan Power Company (the licensee), for operation of Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan.

In accordance with the licensee's application for amendments dated February 1, 1988, the amendments would revise the Technical Specifications (TS's) to make them more consistent with NRC guidelines concerning obtaining milk samples for analysis. In addition, the TS bases concerning radioactive gaseous effluents would be changed to be more consistent with the Westinghouse Standard TS's with regard to the thyroid dose rate release pathway for a child, and an editorial error would be corrected.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 15, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a

notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so

inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated February 1, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 5th day of July.

For the Nuclear Regulatory Commission,
Martin J. Virgilio,
Director, Project Directorate III-1, Division of Reactor Projects III, IV, V & Special Projects.
[FR Doc. 88-15800 Filed 7-13-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment

to Facility Operating License No. DPR-46, issued to the Nebraska Public Power District (the licensee), for operation of the Cooper Nuclear Station located in Nemaha County, Nebraska.

The amendment would revise the frequency for surveillance testing of main steam isolation valves (MSIV's).

The facility Technical Specifications presently require that MSIV's be slow-speed/partial-stroke tested weekly and full-speed/full-stroke tested quarterly. Since issuance of the Cooper Technical Specifications the staff position has been revised to reflect increased experience with MSIV testing. The current staff position, which is consistent with ASME Section XI Inservice Testing requirements, is that stroke testing can be conducted quarterly, partial stroke only, if full stroke testing cannot be performed at power. Cooper presently has an inoperable slow-speed test solenoid valve in one of its MSIV control circuits. This precludes the capability to partially stroke that valve. Because the MSIV cannot be slow-speed/partial-stroke tested weekly, it must be full-speed/full-stroke tested weekly in order to comply with the Technical Specifications. The full-speed/full-stroke test requires that power be reduced in order to prevent a high pressure scram.

The amendment would eliminate the weekly test. By expediting the amendment, the weekly power reductions, with the concurrent increased possibility of scram, with the attendant increased challenges to Safety 1 Relief valves can sooner be eliminated.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed license amendment involve a significant

increase in the probability or consequences of an accident previously evaluated?

Evaluation

This proposed change deletes the weekly exercise of the MSIV's. The weekly surveillance involves partial closure of each individual valve to the 90% open position and reopening to the full open position.

The safety function of the MSIV is to isolate the main steamline in case of a steamline break or major fuel failure, to limit the loss of reactor coolant and to limit the release of radioactive materials. The MSIV's do not affect the probability of any accident occurring. Also, the test which is being deleted does not test the safety function of the MSIV's. The safety function is tested during the quarterly full stroke fast closure trip test. Since deleting the weekly partial closure test is not considered to have any effect on the reliability of the MSIV's to perform their safety function, there is no increase in the consequences of any postulated accidents.

2. Does the proposed license amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

The safety function of the MSIV's is to mitigate the consequences of accidents by isolating the main steamline to limit the release of reactor coolant and radioactive materials. The MSIV's do not prevent the occurrence of any accident. Failure of the MSIV's to isolate could increase the consequences of several accidents previously evaluated in Chapter 14 of the Updated Safety Evaluation Report, but would not create any new or different kind of accident since they perform only a mitigation function. The elimination of the weekly exercising of the MSIV's by partial closure does not test the safety function of the valves, and therefore, cannot increase the consequences of an accident. Since the MSIV's perform a mitigating safety function, and the quarterly test adequately tests the safety function, elimination of the weekly test cannot create any new or different kind of accident.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

Evaluation

The deletion of the weekly partial closure test of the MSIV's does reduce the frequency of testing the MSIV's. This could be considered to reduce the

margin of safety for the MSIV's, however, the test to be deleted does not test the safety function of the valves, and therefore, does very little to test any function or capability of the valve.

The weekly partial closure test uses a test solenoid valve to change the position of the three way pilot valve, which slowly exhausts the air pressure that holds open the MSIV. As the air pressure is reduced, the springs in the MSIV start to close the valve. At the 90% open position, a limit switch is tripped and the test solenoid valve is de-energized by the operator, allowing the MSIV to return to its full open position. The normal MSIV isolation does not rely upon the test solenoid valve for full closure. The only purpose that this test fulfills is a weekly check to verify that the MSIV is not binding. The MSIV's are tested quarterly, and this test adequately verifies that the MSIV's are not binding and that the valves will perform their safety function.

The quarterly full stroke fast closure trip test is considered to be adequate, since this is the only test required by the ASME Boiler and Pressure Vessel Code and the Standard Technical Specifications (STS). Also, a quarterly test is all that is required of the other power operated primary containment isolation valves.

Based upon the discussion above, the weekly partial closure test does not test the safety function of the MSIV's, the quarterly full stroke fast closure test is clearly a better test and deletion of the partial closure test would not significantly reduce any margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice.

Written comments may also be delivered to Room 4000, National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to

5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 29, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with

reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is

requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-0700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 8th day of July 1988.

For the Nuclear Regulatory Commission,
William O. Long,

Project Manager, Project Directorate—IV,
Division of Reactor Projects—III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 88-15886 Filed 7-13-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25885; File No. SR-DTC-
88-071]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Co.

The Depository Trust Company ("DTC") on June 8, 1988, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would authorize a

Receiver Authorized Delivery ("RAD") function to enhance DTC's Same-Day Funds Settlement ("SDFS") Service.¹ The Commission is publishing this notice to solicit public comment on the proposal.

I. DTC's Description of the Proposal

DTC states in its filing that the proposal would authorize the implementation of RAD functions that would enhance its SDFS Service. The operations of RAD would be detailed in DTC's Participant Terminal System ("PTS") Reference Manual. The use of RAD would mean that DTC participants that are due to receive securities would have the option of reviewing and authorizing delivery orders ("DOs") and payment orders ("POs") before the items are posted to their accounts. The use of RAD also would enable each receiving participant to set a money amount level so that, if any incoming book-entry delivery exceeded that amount, the delivery must be authorized by the participant before its SDFS settlement account may be debited.²

DTC has developed several PTS functional programs that would support RAD, including: (1) The Deliver Order Function ("DO Function") which sends an electronic authorization request to the receiving participant each time a delivery participant enters a transaction that is subject to RAD's control and indicates the SDFS DOs and POs that require receiver authorization; (2) the Deliver Order Approval Function which allows the SDFS receiving participant to view all unapproved RAD transactions sent to it via the DO function and allows it to approve or cancel any of such transactions; (3) the Deliver Order Approval Deliverer Inquiry Function which allows the delivering participant to browse through all of the approved, unapproved, and cancelled RAD transactions that the delivering participant initiated via the DO function;

¹ The SDFS Service provides depository and transaction settlement services for securities that settle in same-day funds. Same-day funds (also known as "Fed Funds") are immediately available for re-delivery on the day of receipt.

On June 9, 1987, the Commission issued an order approving implementation of an SDFS Service pilot program on a temporary basis until January 31, 1988, and on December 28, 1987, the Commission extended that pilot program to June 30, 1988. See Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 28613 and 25306 (February 4, 1988), 53 FR 9900. DTC since has filed a proposal with the Commission requesting that SDFS be approved on a permanent basis. See File No. SR-DTC-88-06, which was noticed for public comment by Securities Exchange Act Release No. 25891 (May 11, 1988), 53 FR 17322.

² For start-up purposes, DTC states in the filing that it has set the money amount levels of all DTC participants at \$9,999,999, subject to participants setting their own amount levels.

(4) the Deliver Order Approval Receive Inquiry Function which permits the SDFS receiving participant to browse through all of the approved, unapproved, and cancelled transactions that the receiving participant received via the DO function; and (5) the Receiver Authorized Delivery Limit Function which allows the SDFS receiving participant to add, delete, or maintain money levels to control DOs and POs sent to its account by other SDFS participants. Additionally, RAD will be triggered automatically by: (1) DOs determined by DTC as possibly overvalued (based on daily market values), (2) DOs and POs entered over PTS from 2:00 to 2:30,³ and (3) all POs for amounts greater than \$50,000.

II. DTC's Rationale for the Proposal

DTC states in its filing that the purpose of the proposed rule change is to clarify the procedures to be used by participants to review and authorize Deliver Orders and Payment Orders before its SDFS Service attempts to process them. DTC emphasizes that SDFS is a tightly controlled system requiring that receivers of attempted securities deliveries have sufficient collateral in their accounts to support the settlement debits that would result from the deliveries. To reduce reclamations from erroneous deliveries and limit a receiver-participant's exposure to the possibility that its reclamation might be blocked by system controls, SDFS contemplates that a receiver-participant will have the option of authorizing Deliver Orders and Payment Orders before they are posted to its account.

DTC states that the proposal is consistent with the Act, particularly section 17A(b)(3)(F) of the Act, in that it promotes the prompt and accurate clearance and settlement of transaction in securities that settle in same day funds.

III. Proposal's Effectiveness and Solicitations of Comments

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to be the Commission that abrogation is necessary to appropriate

³ The daily cut-off time for entering DOs and POs over PTS is 2:30 p.m., and DTC believes that RAD should be triggered by all orders for value entered over PTS during the last half hour of the day. Telephone conversation between Richard Nesson, General Counsel, DTC, and Thomas C. Etter, Attorney, Securities and Exchange Commission, June 28, 1988.

in the public interest, for the protection of investors, or in furtherance of the purpose of the Act.

Written comments may be submitted within 21 days after notice is published in the *Federal Register*. Six copies of such comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available, at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal offices of the DTC. All submissions should refer to File No. SR-DTC-88-07 and should be submitted by August 4, 1988.

For the Commission, by the Division of
Market Regulation pursuant to delegated
authority.

Dated: July 8, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15889 Filed 7-13-88; 8:45 am]

BILLING CODE 3010-01-M

[Release No. 34-25883; File No. SR-NASD-
88-18]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Removal of Fine Limitations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") on May 23, 1988, and amended on June 30, 1988, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Article V, Section 1 of the NASD Rules of Fair Practice removes the limitation on fines (currently \$15,000 per violation) that may be assessed against a member or a person associated with a member, and adds a reference to the NASD Market Surveillance Committee.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD Board of Governors has determined that the current limitation on fines which the NASD may impose in connection with its disciplinary proceedings should be removed since such limitations inhibit the NASD's ability to adequately redress violations of the NASD's rules. The Board has noted cases in which the number of alleged violations was small but the underlying misconduct was egregious and/or involved substantial sums. In those instances, the NASD's ability to respond appropriately to the gravity of the misconduct was limited because of the current limitations. These restrictions undermine the usefulness of fines as a deterrent to future misconduct.

The proposed amendments to Article V, Section 1 of the NASD Rules of Fair Practice would eliminate the \$15,000 ceiling placed on the amount of the fine that the NASD's District Business Conduct Committees (DBCCs), Market Surveillance Committee (MSC), or Board of Governors may assess for each violation of the Rules of Fair Practice. The amendments would allow a DBCC, the MSC, or the Board to establish the amount of each fine based upon the nature of the violation and other relevant considerations.

The proposed rule change is consistent with the provisions of section 15A(b)(2) of the Act, as the proposed amendments will enable the NASD more effectively to enforce compliance with its rules by providing its DBCCs, MSC, and Board of Governors with additional flexibility in fashioning remedial monetary sanctions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any

burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed amendment to Article V, Section 1 of the NASD's Rules of Fair Practice was circulated for members' comment in Notice to Members 87-20, dated April 1, 1987. The NASD received 35 comments in response to this Notice to Members. Nine generally supported removing the fine limitations and 26 were opposed.

Eight commentators supported the proposal without qualification. Of these, one noted that removing fine limitations would be consistent with the practices of another self-regulatory organization and would provide necessary flexibility to the NASD's DBCCs. One commentator fully supported the proposal but observed that the size of the fine imposed in any individual case should be reasonably related to the degree of misconduct and the net worth of the respondent.

Thirteen commentators opposed the proposed without qualification. Of these, one believed that the proposal would vest too much discretion in DBCCs and feared discrimination against larger institutions; other commentators feared the oppression of smaller firms because of the proposal. Three additional commentators opposed the proposal, but suggested alternative remedies, and ten commentators opposed the proposal, but favored some increase in the authorized size of the fine which could be imposed for a single violation.

The NASD Board reviewed the comments and concluded that the amendment to Article V, Section 1 of the NASD Rules of Fair Practice should be adopted. The Board noted recent initiatives that it has taken to promote consistency in the imposition of remedial sanctions by DBCCs and the MSC pursuant to its oversight role and as an appellate body in the review of disciplinary proceedings. The Board also noted that applications by the New York Exchange and the American Stock Exchange to remove fine limitations in their respective disciplinary rules were approved by the Securities and Exchange Commission on January 20, 1988. The proposed rule change was published for member vote on May 4, 1988, in NASD Notice to Members 88-31. Of 2,796 valid ballots received, 1,885 reflected approval of the proposed rule change, 899 reflected disapproval, and

12 members abstained. Having received the results of the member vote authorizing final action, the NASD submitted the proposed rule change in Amendment No. 1 to SR-NASD-88-18.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 30 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20540. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 4, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(2).

Jonathan G. Katz,
Secretary.

Dated: July 5, 1988.

[FR Doc. 88-15900 Filed 7-13-88; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-25881; File No. SR-OCC-88-06)

Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on June 15, 1988, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change. The proposal is designed to clarify that thresholds used by OCC to exercise certain expiring options contracts are not intended to dictate options positions in customer accounts which may, should, or must be exercised by OCC members for their customers. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

If an option meets certain exercise thresholds on its expiration date, it is subject to automatic exercise by OCC.¹ To prevent automatic exercise, members must indicate on exercise reports² those options meeting exercise thresholds that they don't want exercised. OCC believes that requiring members to indicate only those options meeting the thresholds that are not to be exercised reduces the number of exercise instructions received on expiration date and expedites processing of those instructions.

OCC represents that many members have asked whether they are required or encouraged to exercise for their customers positions meeting OCC's exercise thresholds. OCC believes that its exercise thresholds are merely administrative guidelines to expedite processing and are not intended to

¹ Options contracts are subject to automatic exercise if they have an exercise price below (in the case of a call) or above (in the case of a put) the closing price of the underlying security by (i) 1/4 of a point or more, if the option contract is carried in a customer's account, or (ii) 1/4 of a point or more, if the option contract is carried in any other account. For the purpose of (i), the aggregate price interval applicable to index option contracts is \$25 per contract, and for the purpose of (ii), the aggregate price interval applicable to index option contracts is \$1 per contract. See OCC Rules 805(f)(2) and 1804(1).

² By 8:00 a.m. (EST) on each expiration date, OCC delivers to members a preliminary exercise report listing expiring options in each of the member's accounts with OCC. Members indicate options they want exercised and options subject to automatic exercise that they don't want exercised and return those reports to OCC by 10:00 a.m. (EST). By 3:00 p.m. (EST), OCC delivers final exercise reports to members reflecting previous exercise instructions. Members make changes to exercise instructions on these reports and submit them to OCC by 3:00 p.m. (EST).

dictate options positions which may, should, or must be exercised for customers. The proposal would add this interpretation to OCC Rule 805.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act, because it would further the public interest by clarifying the purpose of exercise thresholds contained in OCC Rules 805 and 1804.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20540. Reference should be made to File No. SR-OCC-88-06.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR-OCC-88-06) and of any subsequent amendments also will be available for inspection and copying at OCC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: July 5, 1988.

[FR Doc. 88-15901 Filed 7-13-88; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-25885; File No. SR-OCC-88-04)

Self-Regulatory Organizations; Filing of Proposed Rule Change by Options Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 4, 1988, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Proposed Rule Change

The proposed rule change would provide for the issuance and settlement of options based upon the annualized yield to maturity (or the annualized discount, in the case of Treasury bills) of Treasury securities. (Such options are hereafter referred to as "yield-based Treasury options".) The proposed rules provide for the clearance and settlement of yield-based Treasury options transactions and the processing and settlement of exercises of such options. In general, the OCC rules applicable to index options will apply to yield-based Treasury options as well, with such exceptions as are specified in the proposed rule change. The format of the proposed yield-based Treasury options rules is similar to that of OCC's rules pertaining to other non-equity option products.

The proposed rule change would establish definitions applicable to yield-based Treasury options, specify margin requirements for such options, and establish procedures for the settlement of such option exercises.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Purpose of, and Statutory Basis for, the Proposed Rule Change

General

The overall purpose of the proposed rule change is to provide for the issuance of cash-settled, European-style options ("yield-based Treasury options") covering the annualized yield to maturity (or the annualized discount, in the case of Treasury bills) of Treasury securities, the clearance and settlement of yield-based Treasury option transactions, and the processing and settlement of yield-based Treasury option exercises. The proposed rule change is intended to permit the trading of such options as proposed by the Chicago Board Options Exchange and as expected to be proposed by the American Stock Exchange.

Organization of Proposed Rule Change

The proposed rule change consists of four sections: amendments to existing By-Laws, new By-Laws (which are organized into a separate Article) dealing exclusively with yield-based Treasury options, amendments to existing Rules, and new Rules (which are organized into a separate Chapter) dealing exclusively with yield-based Treasury options. Following the same general format as OCC's rule changes relating to other new option products, the present rule change segregates, where feasible, By-Laws and Rules dealing with yield-based Treasury options so as to keep existing By-Laws and Rules as simple as possible.

OCC's existing By-Laws in Articles I-XI and the Rules in Chapters I-XII will also apply to yield-based Treasury options except where such By-Laws or Rules are expressly limited or expressly replaced or supplemented by the Rules proposed herein.

Proposed Amendments to Existing By-Laws

Proposed amendments to Article I, Section 1 of the existing By-Laws consist of additions to three definitions in order to provide for the application of those terms to yield-based Treasury options. Yield-based Treasury options are proposed to be classified as "non-equity options" and would therefore participate in the same Clearing Fund as do other non-equity options.

Because virtually identical procedures will be applicable to all cash-settled products, Section 1 of Article V is proposed to be amended to provide that a single approval will authorize a Clearing Member to clear all such products. Clearing Members that are presently authorized to clear transactions in index options will

therefore automatically be authorized to clear transactions in yield-based Treasury options.

The proposed amendment to the Interpretations and Policies to Article VI Section 9 makes clear the inapplicability of paragraphs (a) and (b) of that Section to yield-based Treasury options. Similarly, the introduction to Article XIII is amended so as to make clear the inapplicability of that Article to yield-based Treasury options.

Proposed Article XVI of the By-Laws

The introduction to proposed Article XVI of the By-Laws makes clear that the By-Laws in Articles I-XI apply to yield-based Treasury options as well as to stock options, except where expressly modified or made inapplicable to yield-based Treasury options by Article XVI. The effect on other By-Laws of each By-Law Section in Article XVI is stated in brackets at the end of the Section.

Article XVI, Section 1, adds certain definitions uniquely applicable to yield-based Treasury options and redefines certain terms to assign different meanings when those terms are used in respect of such options. The definition of "underlying yield" in Section 1(b) makes clear that underlying yields may be expressed either in terms of a "yield indicator" (as proposed by CBOE) or in terms of a "Yield complement" (as proposed by AMEX).

Article XVI, Section 2, sets forth the basic rights and obligations of holders and writers of yield-based Treasury options. Their rights and obligations are similar to the rights and obligations of holders and writers of European-style index options except that cash settlement is based upon the yields of underlying Treasury securities rather than an index. The holder has the right to purchase from the Corporation (in the case of a call) or to sell to the Corporation (in the case of a put) the "aggregate settlement value" which is a dollar amount determined by the annualized yield to maturity (or the annualized discount, in the case of Treasury bills) of the underlying Treasury securities or Treasury bills. An interpretation following Section 2 emphasizes that the effect of changes in the underlying yield upon the value of an option is reversed when the yield is expressed as a yield complement.

Article XVI, Section 3, would permit the Corporation to make equitable adjustments in the terms of outstanding yield-based Treasury options in the event that the Treasury changes the terms or the schedule on which an underlying security is issued, or ceases to issue securities of the specified maturity

periods, or in the event that an Exchange decreases the multiplier for any class of such options. The provisions of Section 3 are closely parallel to the corresponding provisions of OCC's By-Laws applicable to index options.

Article XVI, Section 4, would give the Corporation power to postpone the exercise settlement date and/or fix the exercise settlement amount in the event that the settlement value of the underlying yield for any series of yield-based Treasury options becomes unavailable and cannot be calculated. Only in extraordinary circumstances will the Corporation adjust officially reported settlement values, even if those values are subsequently found to have been erroneous. In no event will a completed settlement be adjusted due to errors in officially reported settlement values. This Section is also very similar to the corresponding provisions applicable to index options.

Article XVI, Section 5, provides that the Exchange shall specify the time of day and method by which settlement values for yield-based Treasury options are determined. Any change in the method by which settlement values are determined may be made applicable to outstanding contracts if the Exchange so specifies.

Proposed Amendment to Existing Rules

Rule 101(h) is being amended to make clear that the definition of "exercise settlement amount" set forth there is applicable only to stock options. The term is separately defined elsewhere in respect of certain other options and is defined in proposed Section 1 of Article XVI in respect of yield-based Treasury options.

OCC's existing margin rules relating to other non-equity options will apply to yield-based Treasury options as well. The proposed amendment to Rule 802A indicates how the term "marking price" applies to yield-based Treasury options.

The proposed amendment to the introduction to Chapter XIV of the Rules makes explicit that the scope of that Chapter is limited to Treasury securities options that are settled through delivery of the underlying security and that it does not apply to yield-based Treasury options.

Proposed Chapter XVII of the Rules

Proposed Rule 1701, in effect, provides that underlying securities may not be deposited in lieu of margin on yield-based Treasury call options and that Treasury bills may not be deposited in lieu of margin on yield-based Treasury put options.

Proposed Rule 1702 establishes an expiration date exercise procedure for yield-based Treasury options at the Clearing Member level. This procedure is essentially similar to that applicable to other options. Options that are in the money by at least \$25.00 (for a contract carried in a customer's account) or \$1.00 (in the case of a contract carried in any other account) will be exercised unless the Clearing Member directs otherwise. Because yield-based Treasury options are European-style options, exercises will be processed only on the expiration date.

Proposed Rule 1703 provides that the exercise settlement date for yield-based Treasury options is the business day following the expiration date. OCC's Board of Directors retains the authority to extend or postpone any exercise settlement date.

Proposed Rule 1704 provides for the cash settlement of yield-based Treasury option exercises through payment by the assigned Clearing Member and receipt by the exercising Clearing Member of the difference between the aggregate exercise price and the aggregate settlement value on the day of exercise. The proposed settlement procedure is essentially like that currently used for premium settlement and exercise settlement of index options. Under Rule 1704, all settlement rights and obligations are between each Clearing Member and OCC rather than between exercising and assigned Clearing Members.

Proposed Rule 1705 provides for the disposition of exercised and assigned option contracts of a suspended Clearing Member (e.g., a Clearing Member that is insolvent). Because yield-based Treasury option exercises are settled in cash rather than through the delivery of underlying securities, such contracts may not be liquidated by the buy-in and sell-out procedures of Rules 910 and 911. Instead, exercised and assigned yield-based Treasury option contracts of suspended Clearing Members will be settled in the ordinary manner under Rule 1704, provided that the settlement amount will be paid from or, subject to the rights of any pledgees under Rule 614, credited to (as the case may be) the Liquidation Settlement Account established under Rule 1104.

Statutory Basis for the Proposed Rule Change

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended, in that it facilitates the prompt and accurate clearance and settlement of transactions in yield-based Treasury options. It does so by applying to such

options transactions substantially the same rules and procedures that have been used successfully in the clearance and settlement of transactions in index options.

The proposed rule change is consistent with the safeguarding of funds and securities in OCC's custody or control or for which OCC is responsible in that it would apply to yield-based Treasury options a system of safeguards, including margin and clearing fund requirements, which is substantially the same as OCC currently uses for other options.

The proposed rule change does not affect OCC's dues, fees or other charges, nor does it impose any schedule of prices, or fixed rates or other fees for services rendered by Clearing Members, nor does it have any effect on OCC's disciplinary rules.

(B) Burden on Competition

OCC does not believe that the proposed rule change would have any material impact on competition.

(C) Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and no written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: July 8, 1988.

[FR Doc. 88-15902 Filed 7-13-88; 8:45 am]
BILLING CODE 8010-01-M

(Release No. IC-16476; 812-7010)

Boston Financial Qualified Housing Tax Credit L.P. II; Application

July 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Boston Financial Qualified Housing Tax Credits L.P. II, a Delaware limited partnership (the "Partnership") and its managing general partner, Arch Street, Inc., a Massachusetts corporation ("Arch Street, Inc.", collectively with the Partnership, "Applicants").

Relevant 1940 Act Sections: Exemption under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order exempting the Partnership from all provisions of the 1940 Act and the rules thereunder to permit the Partnership to invest in other limited partnerships that in turn will engage in the development, rehabilitation, ownership and operation of low income housing projects.

FILING DATE: The application was filed on March 25, 1988 and amended on June 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 2, 1988. Request a hearing in

writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant: c/o The Boston Financial Group Incorporated, 225 Franklin Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035 or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership was formed on March 10, 1988, as a vehicle for equity investment in apartment complexes to be qualified, in the opinion of counsel, for the low income housing tax credit (the "Low Income Housing Credits") under the Internal Revenue Code of 1986, as amended. Up to 15% of the aggregate capital contributions of the limited partners of the Partnership may be invested in non-subsidized apartment complexes that will be qualified for the Low Income Housing Credits.

2. The Partnership will operate as a "two-tier" entity, i.e., the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships"), that in turn, will engage in the development, rehabilitation, ownership and operation of apartment complexes. The Partnership's investment objectives are to provide current tax benefits in the form of tax credits which qualified investors, i.e., those meeting the suitability requirements set forth herein, may use to offset their federal income tax liability, to preserve and protect the Partnership's capital, to provide limited cash distributions which are not expected to constitute taxable income during Partnership operations and to provide cash distributions from sale or refinancing transactions, as defined in the Partnership's partnership agreement (the "Partnership Agreement").

3. The Partnership will normally acquire at least a 90% interest in the profits, losses and tax credits of the Local Limited Partnerships, with the balance remaining with the local general partners. However, in certain cases, at the discretion of the managing general partner, the Partnership may acquire a lesser interest in a Local Limited Partnership. In such cases, the Partnership will normally acquire at least a 50% interest in the operating profits, losses and tax credits of the Local Limited Partnership. Should the Partnership invest in any Local Limited Partnership in which it acquires less than 50% of the Limited Partnership interest, the Partnership Agreement will provide that the Partnership will have at least a 50% vote to: amend such partnership agreement of such Local Limited Partnership; dissolve such Local Limited Partnership; remove the Local General Partner and elect a replacement; approve or disapprove the sale of substantially all of the assets of such Local Limited Partnership. The Partnership will normally acquire at least a 90% interest in the cash distributions of the Local Limited Partnership, with the balance remaining with the Local General Partners. In addition, in connection with the qualification of the sale of the units of limited partnership interests in certain states, the Partnership has entered into an undertaking with certain state securities authorities indicating that the Local Limited Partnership Agreements will provide to the limited partners of the local limited partnerships substantially all of the rights required by Section VII of the NASAA Guidelines.

4. On March 18, 1988, the Partnership filed a registration statement (as amended on June 16, 1988) under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to which the Partnership intends to offer publicly 35,000 units of limited partnership interest ("Units") at \$1,000 per Unit with a minimum investment of \$5,000 per investor. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership. In the event that subscriptions for more than 35,000 Units are received, the Partnership has registered a total of 60,000 Units and has granted to Arch Street, Inc., a right to sell up to 25,000 additional units.

5. Subscriptions for Units must be approved by Arch Street, Inc. (the "Managing General Partner"), and such approval will be made conditional upon representations as to suitability of the investment for each subscriber. The form of subscription agreement for

Units, set forth as Exhibit B to the Prospectus, provides that each subscriber will represent, among other things, that he meets the general investor suitability standards established by the Partnership and set forth under the heading "Who Should Invest." Such general investor suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor (a "Qualified Investor") who meets the following requirements: (a) In the case of an investor that is a corporation, other than a corporation subject to Subchapter S of the Internal Revenue Code of 1986 (a "C Corporation"), such corporation has a net worth of not less than \$75,000, or (b) in the case of a noncorporate investor, such investor reasonably expects to have substantial unsheltered passive income or, if an individual, such investor reasonably expects to have adjusted gross income of less than \$250,000 in the next twelve years and reasonably expects to have income tax liability during those years in respect of which the tax credits can be utilized and either (1) he has a net worth (exclusive of home, furnishings and automobiles) of at least \$50,000 (\$35,000, if such investor is a resident of New Hampshire) and an annual gross income of not less than \$30,000 (\$35,000, if such investor is a resident of New Hampshire) in the current year and estimates he will maintain these levels for the twelve succeeding years and that (without regard to investment in the Partnership) some part of his income for the current year and the twelve succeeding years will be subject to Federal income tax at the rate of 28% or more, or (2) irrespective of annual taxable income, he has a net worth (exclusive of home, furnishings and automobiles) of at least \$75,000, or is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) or such net worth as set forth in clause (2). Units will be sold in certain states only to persons who meet additional or alternative standards which will be set forth in the Prospectus, any supplement to the Prospectus or the Subscription Agreement; *provided, however*, that in no event shall the Partnership employ any such suitability standard which is less restrictive than that set forth above. Further, it is required that, prior to admission to the Partnership as a limited partner, each proposed assignee must deliver to the Managing General Partner evidence of the suitability of his investment. The Partnership Agreement also imposes

certain restrictions on transfer of the Units.

6. The Partnership will be controlled by Arch Street, Inc. and Arch Street Limited Partnership, its general partners (the "General Partners"), and the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. Limited Partners owning a majority of Partnership interests will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement therefor and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The Partnership Agreement provides that certain significant actions cannot be taken by the Managing General Partner without the express consent of a majority in interest of the Limited Partners. Such actions include: (a) Sale at any one time of all or substantially all of the assets of the Partnership, except for (1) a sale of any one Local Limited Partnership interest in a twelve month period or (2) sales in connection with the liquidation and winding up of the Partnership's business upon its dissolution, (b) dissolution of the Partnership and (c) causing the Partnership to merge or be consolidated with any other entity. The admission of a successor or additional General Partner would also require express consent under the Partnership Agreement. For the protection of the Limited Partners, the Managing General Partner and the partners of Arch Street L.P. have agreed that PaineWebber Incorporated, which is expected to act as a soliciting dealer for a majority of the Units, or an affiliated entity controlled by PaineWebber Incorporated (collectively, "PaineWebber") would have the option to become the managing general partner of Arch Street L.P. If certain adverse events occur with respect to the financial condition of Boston Financial, Inc. If PaineWebber elects to exercise such option, the Partnership Agreement provides that Arch Street L.P. would become the Managing General Partner of the Partnership. In such circumstances, PaineWebber would purchase a 1% general partner interest in Arch Street L.P. for an agreed price of \$100. The remaining 99% economic interest in Arch Street L.P. would be retained by Affiliates of Boston Financial. Such actions would be conditioned upon an opinion of counsel

that PaineWebber has sufficient net worth to ensure that the Partnership will continue to be classified as a partnership for Federal income tax purposes. However, there cannot be any assurance that PaineWebber will agree to serve in such role or that it would be able to successfully carry on the business of the Partnership in such an event.

8. Boston Financial Securities, Inc., an affiliate of the General Partners (the "Selling Agent"), will receive customary commissions on the sale of the Units together with an expense allowance to defray accountable due diligence activities. The Selling Agent may authorize other members ("Soliciting Dealers") of the National Association of Securities Dealers, Inc. ("NASD") to sell Units. The Selling Agent will pay a concession to each Soliciting Dealer on all sales of Units by such Soliciting Dealer and may reallocate all or any portion of its expense allowance to such Soliciting Dealer. Such selling commissions are customarily charged in securities offerings of this type and are consistent with the guidelines of the NASD.

9. During the offering and organizational phase, the Managing General Partner or its affiliates will receive from the Partnership reimbursement of organizational, offering and selling expenses and an allowance for marketing expenses.

10. Acquisition phase fees payable to all persons, including the General Partners or their affiliates, in connection with the acquisition of interests in Local Limited Partnerships, will be limited by the guidelines adopted by the North American Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships. During the operating phase, the Partnership may pay additional fees or compensation to the General Partners or their Affiliates including without limitation an asset management fee. Such asset management fee is paid in consideration of the administration of the affairs of the Partnership in connection with each Local Limited Partnership in which the Partnership invests. Such other fees may be paid in consideration of property management services rendered by the General Partners or their Affiliates as the management and leasing agent for some of the Local Limited Partnerships and for consulting services rendered by the General Partners or their Affiliates as consultants to some of the Local Limited Partnerships. All such fees shall be subject to the terms of the Partnership Agreements. As well, the

General partners or their Affiliates may receive amounts from Local Limited Partnerships to the extent permitted by applicable law and regulations. Such amounts shall be paid in the event that the General Partners or their Affiliates are Local General Partners and all such amounts shall be subject to the terms of the Partnership Agreement.

Compensation to the General Partners or their affiliates during the liquidating stage will be in the form of distributions of the proceeds of the sale or refinancing of Local Limited Partnership projects or interests, or of real or personal property of the Partnership. In addition to the foregoing fees and interests, the General Partners and their affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes.

11. The substantial fees and other forms of compensation that will be paid to the General Partners and their affiliates will not have been negotiated through arm's length negotiations. Terms of all such compensation, however, will be fair and not less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. In addition, compensation in various forms will be paid to the local general partner of each Local Limited Partnership.

12. The Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various States which prescribe such guidelines, including without limitation, the statement of policy adopted by the North American Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships.

13. All proceeds of the public offering of Units will initially be placed in an escrow account with Shawmut Bank, N.A. ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in the "Shawmut Interest Bearing Account," a federally insured money market deposit account. The offering of Units will terminate not later than one year from the date upon which the Partnership's Registration Statement shall have been declared effective. If subscriptions for at least 5,000 Units have not been received by such termination date, no Units will be sold and funds paid by subscribers will be returned promptly, together with a pro rata share of any interest earned thereon. The Partnership will not accept any subscriptions for Units until the exemptive order applied for herein is granted or the Partnership receives an

opinion of counsel that it is exempt from registration under the Act. Upon receipt of the prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Limited Partnerships. Any net proceeds not immediately utilized to acquire Local Limited Partnership interests or for other Partnership purposes will be invested in highly liquid, non-speculative securities which provide adequately for the preservation of capital. After an initial capital contribution to a Local Limited Partnership, other funds allocated for subsequent investment therein will also be temporarily invested in such securities. Interest earned thereon shall be employed in a manner determined by the General Partners.

14. The Partnership does not intend to trade in such temporary investments or in investments of reserves or of funds allocated for subsequent investment in Local Limited Partnerships and there will be no speculation by the Partnership in any of such investments. Further, the Partnership will own and hold these securities on a temporary basis pending full investment in Local Limited Partnership interests in accordance with the purposes of the Partnership. It is the Partnership's intention to apply capital raised in its public offering to the acquisition of Local Limited Partnership interests as soon as possible.

15. The Partnership expects to file with the Commission, pursuant to section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), all required reports. The Partnership will, under the terms of the Partnership Agreement, be required to distribute, among other things, unaudited quarterly financial statements and audited annual financial statements, in each case together with reports summarizing the Partnership's activities.

16. The Partnership Agreement provides that, subject to certain limitations, the Partnership shall indemnify the General Partners and certain affiliates for losses sustained by them or their affiliates in connection with the business of the Partnership provided that the same were not the result of negligence or misconduct on the part of such General Partner or affiliate and were the result of a course of conduct which such General Partner or a designated affiliate, in good faith, determined was in the best interest of the Partnership. Insofar as indemnification for liabilities under the Securities Act may be permitted to the General Partners, however, the

Partnership has been advised that in the opinion of the Commission, such indemnification is contrary to public policy as expressed in said Act and is therefore unenforceable.

Applicants' Legal Conclusions

1. Without conceding that the Partnership is an investment company as defined in the 1940 Act, Applicants request that the Partnership be exempted from all provisions of the 1940 Act. The exemption of the Partnership from all provisions of the 1940 Act is both necessary and appropriate in the public interest, because: (a) Investment in low and moderate income housing in accordance with the national policy expressed in Title IX is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form; (b) the limited partnership structure provides the only means of bringing private equity capital into such housing; (c) the limited partnership form insulates each limited partner from personal liability and limits financial risk incurred by the limited partner to the amount he has invested in the program, while also allowing the limited partner to claim on his individual tax return his proportionate share of the credits, income and losses from the investment; (d) the limited partnership form of organization is incompatible with fundamental provisions of the 1940 Act, such as the requirement of annual approval by investors of a management contract and the requirements concerning election of directors and the termination of the management contract; and (e) real estate limited partnerships such as the Partnership generally cannot comply with the asset coverage limitations imposed by Section 18 of the 1940 Act. Thus, an exemption from these basic provisions is necessary, and it is appropriate that such exemption be granted so as not to discourage use of the two-tier limited partnership entity or frustrate the public policy established by the housing laws.

2. Interests in the Partnership will be sold only to (and transfers will be permitted only to) investors who meet specified suitability standards (as described above) which the Partnership believes are consistent with the requirements in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"), with the guidelines of those states which prescribe suitability standards and with the securities laws of all states where the Units will be sold. Such investors will receive extensive reports concerning the

Partnership's business and operations. Although the interests of the General Partners and their affiliates may conflict in various ways with the interests of Limited Partners, Limited Partners are adequately protected through disclosure in the Prospectus. To address this conflict, the General Partners agree, in Section 5.7 of the Partnership Agreement, that each General Partner and each Affiliate of each General Partner, prior to entering into an investment which could be suitable for the Partnership or recommending such investment to others, must present to the Partnership the opportunity to enter into such investment and may not enter into such investment on its own behalf nor recommend it to others unless the Partnership has declined to enter into such investment. Further protection for the interests of Limited Partners is provided by the numerous provisions of the Partnership Agreement designed to prevent over-reaching by the General Partners and to assure fair dealing by the General Partners vis-a-vis the Limited Partners.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-15903 Filed 7-13-88; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 305-32]

Request for Information Regarding Obtaining and Enforcing Patents in Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Request for submissions from the public regarding experiences in obtaining and enforcing patent rights in the Republic of Korea (Korea).

SUMMARY: On June 13, 1988, United States Trade Representative Clayton Yeutter established an Interagency Fact-Finding Task Force to examine practices and policies of the Republic of Korea related to obtaining and enforcing patent rights. The Task Force was set up under section 305 of the Trade Act of 1974, 19 U.S.C. 2415, in response to concerns expressed by U.S. companies that obtaining patent protection in Korea was unusually difficult and that patent rights, once obtained, did not provide adequate and effective protection due to lack of proper enforcement.

The Task Force is seeking information from the public regarding specified issues. Submissions to the U.S. Patent and Trademark Office must be made by Aug. 15, 1988.

FOR FURTHER INFORMATION CONTACT: Documents and questions should be submitted to H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Task Force will examine the validity of these concerns with a view to determining whether the complaints are isolated cases or part of a broader problem representing discriminatory treatment of foreign patent applicants and patent owners in Korea or deficiencies in the patent enforcement system. To accomplish this, the Task Force needs to obtain factual information from patent applicants and owners documenting their experiences relating to the protection of their patent rights in Korea. Information serving to establish the pattern for Korean patent treatment of foreign patentees and applicants is desired. Evidence intended to demonstrate improper or discriminatory patent treatment should be documented and show, or tend to show, that such practices and procedures are clearly contrary to the apparent meaning of Korean patent laws or to generally accepted standards followed by the United States and its other trading partners.

Specifically, the Task Force seeks information about:

(1) The treatment of foreign patent applicants (as both petitioners and respondents) by the Korean Office of Patents Administration, including experiences where foreign applicants had their patent applications appropriately or inappropriately granted or denied;

(2) The treatment of foreign patent applicants and owners by the Korean judicial system, including the fairness of the procedures for plaintiffs as well as defendants;

(3) The frequency of granting and denying patent applications submitted by Korean as compared to foreign applicants, so as to indicate the existence or non-existence of a systemic bias by Korean administrative or judicial bodies.

All documents must be in English and thoroughly legible. Although it is not possible to specify the exact documentary evidence required in each case, the materials provided should be sufficient to enable experts and examiners of the U.S. Patent and Trademark Office to evaluate the

specific allegation of unfair treatment under the Korean patent law and generally prevailing standards of practice in the area.

For example, if a complainant believes the Korean Patent Office unevenly applied the patentability criterion of unobviousness, the documents submitted to the Task Force should include a recitation of the specific circumstances and facts, supported by copies of the relevant patent application, references cited against the particular claim in question, relevant communications between the applicant and the Korean Patent Office, and decisions affirming the Korean patent examiner's position. If the same claim or one substantially identical to the claim rejected in Korea was allowed by the patent office of another country that conducts examination for patentability, documents to that effect should be submitted also. If, in the alternative, a claim was allowed to a Korean national that, applying prevailing standards, a complainant believes should not have been allowed, similar documentation should be submitted including, where possible, copies of any published unexamined applications and/or patents on the same subject matter granted to the Korean national in other patent examining countries that would demonstrate that the particular claim in question was not allowed there.

The mandate of the Task Force does not include assistance to patent applicants to obtain patents or prosecute applications presently pending before the Korean Office of Patents Administration. Similarly, the Task Force will not intervene in actual court proceedings on behalf of an individual patent owner. The purpose of the Task Force is simply to determine whether there is any evidence of a systemic problem in the granting and enforcement of patents in Korea.

We anticipate that submissions will consist of documents that do not contain proprietary information and therefore these documents will not be accorded confidential treatment. It should also be noted that information submitted may be disclosed to the Korean government.

Ambassador Yeutter has requested that the Task Force provide him with a preliminary report by Dec. 1, 1988. Accordingly, submissions to the Task Force must be made by Aug. 15, 1988, to permit adequate time for review. The Task Force reserves the right to determine which submissions it will use for investigation. Further, any determination by the Task Force regarding Korean practices or

procedures in patent matters remains strictly within its purview and is not subject to further review by any other body or person.

Peter Allgeier,

Assistant U.S. Trade Representative for Asia and the Pacific.

[FR Doc. 88-15940 Filed 7-13-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Indianapolis International Airport, Indiana

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Indianapolis Airport Authority for Indianapolis International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Indianapolis International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before December 21, 1988.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is June 24, 1988. The public comment period ends July 24, 1988.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-811, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Indianapolis International Airport are in compliance with applicable requirements of Part 150, effective June 24, 1988. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before December 21, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement

Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of the Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for the FAA's approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Indianapolis Airport Authority submitted to the FAA on May 22, 1987 noise exposure maps, descriptions and other documentation which were produced during the Airport Noise Compatibility Planning (Part 150) Study at Indianapolis International Airport from May 1986 to May 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Indianapolis Airport Authority. The specific maps under consideration are Noise Exposure Maps: Current Unabated Conditions, Part A and B and 1992 Unabated Conditions, Part A and B. They are included along with supporting documentation found in the Part I Noise Exposure Map Documentation of the Part 150 Study in the submission. The FAA has determined that these maps for Indianapolis International Airport are in compliance with applicable requirements. This determination is effective on June 24, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise

compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Indianapolis International Airport, also effective on June 24, 1988. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 21, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of

the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 260, Des Plaines, Illinois 60018

Indianapolis Aviation Administration, Indianapolis International Airport, Indianapolis, Indiana 46251.

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Des Plaines, Illinois, June 24, 1988.
William H. Pollard,

Director, Great Lakes Region.

[FR Doc. 88-15815 Filed 7-13-88; 8:45 am]

BILLING CODE 4910-13-M

(Summary Notice No. FE-88-28)

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 3, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (POB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 8, 1988.

Denise D. Hall,
Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25050	Wrangler Aviation, Inc.	14 CFR 121.371(a)	To allow petitioner to contract with certain foreign countries for the maintenance, repair, overhaul, and modification of engines, propellers, and other systems and component of the Canadair CL-44 aircraft and to purchase CL-44 parts from certain foreign suppliers.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
23771	Cessna Aircraft Company	14 CFR 91.213 and 91.31	To amend Exemption No. 40508, as amended, that allows operators of Cessna Models 550, 550S, and 552 to operate the aircraft without a second in command, subject to certain conditions and limitations. <i>GRANT, June 30, 1988, Exemption No. 40508.</i>
24256	Dallfort Corporation	14 CFR 61.57(a)(1), (c), and (d); 61.58(c)(1) and (d); 61.63(d) (2) and (3); 61.67(d)(2); Part 61, Appendix A; and Part 121, Appendix H.	To allow: (1) Certain in-flight checking requirements of Part 61 to be accomplished in FAA-approved simulators; (2) approval of petitioner's B-727-200, B-747-200, and DC-8 simulators without meeting the certificate-holding requirement of § 121.496; (3) the use of instructors who have not been employed by petitioner for at least 1 year in the capacity of an instructor, pilot in command, or second in command of an airplane of the same group in which they are instructing or checking and without its pilot instructors participating in an FAA-approved line flying program or line observation program; and (4) petitioner to conduct Phase II training for airline operators using petitioner's approved training programs. <i>GRANT, June 29, 1988, Exemption No. 4955.</i>
25450	Air Specialties Corporation dba Air America	14 CFR 121.371(a)	To allow petitioner to contract with Hong Kong Aircraft Engineering Company to perform repairs, engine module refurbishment, and component overhauls on two of its Rolls-Royce RB211-228 engines utilized on petitioner's L-1011 aircraft. <i>GRANT, July 1, 1988, Exemption No. 4956.</i>

[FR Doc. 88-15816 Filed 7-13-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Dade County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in Dade County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahassee, Florida 32201, Telephone: (904) 681-7230.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project to improve SR-932 in Dade County, Florida, was issued on July 8, 1987 and published in the July 17, 1987 Federal Register. The FHWA, in cooperation with the Florida Department of Transportation, has since determined that preparation of an EIS is not necessary for this proposed highway project and hereby rescinds the previous Notice of Intent. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: July 7, 1987.

R. V. Robertson,
District Engineer, Tallahassee, Florida.

[FR Doc. 88-15071 Filed 7-13-88; 8:45 am]
BILLING CODE 4910-22-M

Environmental Impact Statement; Navarro County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Navarro County, TX.

FOR FURTHER INFORMATION CONTACT: W.L. Hall, Jr., P.E., District Engineer, Federal Highway Administration, 826 Federal Building, Austin, Texas 78701, Telephone: 512-482-5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State Department of Highways and Public Transportation of Texas, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a bypass on State Highway 31 (S.H. 31) around Corsicana in Navarro County, Texas. The proposed project consists of selecting a corridor to be reserved for a divided highway from west of Corsicana's Central Business District to Interstate Highway 45 (IH 45). The proposed facility will be a four-lane divided highway on new location, with a 76-foot wide median. Two 12-foot lanes with 10-foot outside and four-foot inside shoulders will be provided in each direction.

The existing S.H. 31 provides a major transportation corridor from Waco to Tyler, with north-south access to Dallas and Houston through the U.S. 75 and I.H. 45 intersections. Through the Central Business District of Corsicana, the existing roadway creates a problem of traffic congestion. The present route is burdened with eight traffic signals, one school zone, and unprotected left turns. The narrow right-of-way does not provide sufficient area for development of the required improvements. Business and residential developments are built near the right-of-way and would be disrupted by acquisition of additional right-of-way. The facility does not meet the current design standards for capacity or safety.

The proposed project will ease the traffic congestion in the downtown area and simultaneously provide a continuous external route with direct connection to IH 45.

The proposal offers 3 routes; Routes 1 and 2, which are respectively 5.7 miles and 3.7 miles in length, provide for a southerly by-pass and will pass through sections of the cities of Corsicana and Retreat. Route 3, which is 8 miles in length, provides for a northerly by-pass and will pass through the northern section of the City of Corsicana. In addition to these corridors, an alternative exists to use the existing facility through Corsicana. The no improvement, or the "no-build" option would result in increased traffic congestion due to increased traffic volume, or would compel traffic to find less desirable routes other than the proposed project.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting was held on January 29, 1987, for the

proposed action. A public hearing will also be held. Public notice will be given as to the time and place of the hearing. The draft EIS will be available for public and agency review prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: July 6, 1988.

W.L. Hall, Jr.,

District Engineer, Austin, Texas.

[FR Doc. 88-15783 Filed 7-13-88; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act, Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **FEDERAL REGISTER** each time a grant is obligated pursuant to Sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act

of 1982. Funds appropriated to this program are allocated on a formula

basis to provide capital and operating assistance in urbanized areas. Pursuant

to the statute UMTA reports the following grant information.

Transit property	Grant number	Grant amount	Obligation date
Section 3 Grants			
Town of Vail, Vail, CO.....	CO-03-0041-01	\$697,125	Apr. 30, 1988.
City of Charlotte, Charlotte, NC.....	NC-03-0023	\$330,000	June 8, 1988.
Section 9 Grants			
City of Napa, Napa, CA.....	CA-90-X237-02	\$16,311	Apr. 21, 1988.
Ann Arbor Transportation Authority, Ann Arbor, MI.....	MI-90-X037-01	\$29,592	Apr. 27, 1988.

Issued on: June 20, 1988.

Alfred A. Dellibovi,
Administrator.

[FR Doc. 88-15904 Filed 7-13-88; 8:45 am]
BILLING CODE 4910-57-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "DEGAS" (see list)¹ imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art in New York, New York, beginning on or about October 11, 1988,

to on or about January 8, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

R. Wallace Stuart,
Acting General Counsel.

Date: July 8, 1988.

[FR Doc. 88-15790 Filed 7-13-88; 8:45 am]

BILLING CODE 5230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained

from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 15, 1988.

Dated: June 30, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

New

1. Department of Veterans Benefits.
2. Marital Status Questionnaire.
3. VA Form 21-0537.
4. This form is used to request certification of a continued unmarried status by surviving spouses in receipt of Dependency and Indemnity Compensation.
5. Triennially.
6. Individuals or households.
7. 88,000 responses.
8. 14,667 hours.
9. Not applicable.

[FR Doc. 88-15749 Filed 7-13-88; 8:45 am]

BILLING CODE 5320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 135

Thursday, July 14, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

Date: July 12, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15925 Filed 7-12-88; 11:17 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

Committee on Employee Benefits

TIME AND DATE: 9:00 a.m., Tuesday, July 19, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific item is: Amendment to the Life and Survivor Income Plan.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting

TIME AND DATE: 4:00 p.m., Monday, July 18, 1988.

PLACE: National Credit Union Administration, 1776 G Street, NW., Chairman's Conference Room, 6th Floor, Washington, DC 20456.

STATUS: Closed.

CONTACT PERSON FOR MORE

INFORMATION: Bonnie Nance Frazier, Director of Communications, 376-3224.

AGENDA:

1. Approval of Officer Performance Objectives.
2. Recommendation of Officer Merit Award Pool.

Carol J. McCabe,

Secretary.

[FR Doc. 88-15892 Filed 7-11-88; 5:12 pm]

BILLING CODE 7570-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of July 11, 1988.

A closed meeting will be held on Tuesday, July 12, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commission, the Security of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 12, 1988, at 2:30 p.m., will be:

- Institution of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of administrative proceedings of an enforcement nature.
- Formal orders of investigation.
- Settlement of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272-2468.

Jonathan G. Katz,
Secretary.

July 8, 1988.

[FR Doc. 88-15897 Filed 7-11-88; 5:13 pm]

BILLING CODE 8010-01-M

BEST COPY AVAILABLE

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53104; FRL-3393-9]

Premanufacture Notices; Monthly Status Report for March 1988

Correction

In notice document 88-12887 beginning on page 25408 in the issue of Wednesday, July 6, 1988, make the following corrections:

1. On page 25408, in the second column, in the sixth line from the bottom, "P 87-1882" should read "P 87-1882".

2. On page 25411, in table IV, under "Date of commencement", in the 25th line from the bottom, "Do." should read "Feb. 17, 1988."

3. On the same page, in the same table, under "Identity/generic name", in the 10th line from the bottom, the last word should read "titanate".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53105; FRL-3403-4]

Premanufacture Notices; Monthly Status Report for April 1988

Correction

In notice document 88-14150 beginning on page 25414 in the issue of Wednesday, July 6, 1988, make the following correction:

On page 25416, in table IV., under "Identity/Generic name", in the 12th line, "-aryl-3-3-hydroxy" should read "-aryl-3-hydroxy".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53105; FRL-3405-9]

Premanufacture Notices; Monthly Status Report for May 1988

Correction

In notice document 88-14380, beginning on page 25418 in the issue of Wednesday, July 6, 1988, make the following correction:

On page 25420, in table IV., under "Identity/generic name", in the last line, "alkyd. resin" should read "alkyd resin".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 88N-0121]

Antibiotic Drugs; Cefixime Trihydrate; Cefixime Trihydrate Tablets and Cefixime Trihydrate Powder for Oral Suspension

Correction

In rule document 88-14119 beginning on page 24256 in the issue of Tuesday, June 28, 1988, make the following corrections:

§ 430.4 [Corrected]

1. On page 24257, in the first column, in § 430.4(a)(59), in the seventh line, "carboxymethoxyjiminio" was misspelled.

§ 436.215 [Corrected]

2. On the same page, in the same column, in § 436.215(c), paragraph "(101)" should read "(10)".

3. On the same page, in the same column, in § 436.215(c)(10)(iii), in the fourth line, "peak of" should read "peak at".

§ 442.15 [Corrected]

4. On the same page, in the third column, in § 442.15(a)(3)(i), in the second line, "of" should read "for".

5. On the same page, in the same column, in § 442.15(b)(1), in the fourth line, "direction" should read "detection".

BILLING CODE 1505-01-D

Federal Register

Vol. 53, No. 135

Thursday, July 14, 1988

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 411

[BERC-302-P]

Medicare as Secondary Payer and Medicare Recovery Against Third Parties

Correction

In proposed rule document 88-13228 beginning on page 22335 in the issue of Wednesday, June 15, 1988, make the following corrections:

§ 411.15 [Corrected]

1. On page 22347, in the first column, in § 411.15(i)(1)(ii), in the third line, remove "Z".

2. On the same page, in the same column, in § 411.15(m)(2)(i), in the fifth line, "asthetist" should read "anesthetist".

§ 411.21 [Corrected]

3. On the same page, in the second column, in § 411.21, make the following corrections:

a. In the definition for "Conditional payment", in the seventh line, "known" should read "know".

b. In the definition for "Proper claim", in the first line, "if" should read "is".

§ 411.24 [Corrected]

4. On the same page, in the third column, in § 411.24(a), in the fifth line, "and" should read "any".

5. On the same page, in the same column, in § 411.24(c), in the first line, "and" should read "an"; and in the second line, the first "ot" should read "to" and the second "ot" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-08-4220-11; NM NM D24545]

Proposed Continuation of Withdrawal; New Mexico

Correction

In notice document 88-14779 beginning on page 24807 in the issue of Thursday,

June 30, 1988, make the following correction:

On page 24807, in the third column, in the land description, in the last line, "W ½ SE ¼" should read "W ½ NE ¼".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

[CFDA No: 84.202]

Notice Inviting Applications for New Awards for Fiscal Year 1988 Under the Grants to Institutions to Encourage Minority Participation in Graduate Education Program

Correction

In notice document 88-15451 beginning on page 25653 in the issue of Friday, July 8, 1988, on page 25657, in the first column, Part II-Budget Information should have been photographed. The photographed information follows.

PART II - BUDGET INFORMATION**GRANTS TO INSTITUTIONS TO ENCOURAGE MINORITY PARTICIPATION IN GRADUATE EDUCATION**

AWARDS MADE TO INSTITUTIONS UNDER THIS PROGRAM MUST BE USED EXCLUSIVELY TO PROVIDE DIRECT FELLOWSHIP AID. INCLUDE BELOW THE BREAKDOWN OF FEDERAL FUNDS REQUESTED FOR STUDENT EXPENSES:

	TOTAL COSTS
STIPENDS:*	
A. TUITION	
B. ROOM AND BOARD	
C. TRANSPORTATION	
D. OTHER APPLICABLE EXPENSES	
TOTAL FEDERAL REQUEST	
TOTAL NUMBER OF FELLOWSHIPS REQUESTED	
NUMBER OF WEEKS OF SEMINAR/INSTITUTE	
LIST ACADEMIC AREA or AREAS:	

INSTRUCTION:

- * CALCULATE EACH STUDENT'S NEED-BASED STIPEND FOR APPLICABLE EXPENSES, INCLUDING ROOM AND BOARD, TRANSPORTATION AND TUITION FOR COURSES FOR WHICH CREDIT IS GIVEN, FOLLOWING THE PROCEDURES USED BY THE APPLICANT'S STUDENT FINANCIAL AID OFFICE. THE STUDENTS' NEED SHOULD BE CALCULATED PURSUANT TO PART F OF TITLE IV OF THE HIGHER EDUCATION ACT OF 1965, AS AMENDED.

INDICATE WITHIN THE TOTAL COST OF THE STIPENDS THE AMOUNTS CHARGED FOR EACH OF THE SPECIFIC CATEGORIES LISTED ABOVE.

- C. TRANSPORTATION COSTS MAY INCLUDE THE COST OF ONE ROUND-TRIP FROM THE STUDENT'S RESIDENCE TO CAMPUS AND RETURN, IF APPLICABLE, AND OTHER TRAVEL REQUIRED AS PART OF THE PROGRAM OF STUDY.

BILLING CODE 1505-01-0

Thursday
July 14, 1988

Part II**Securities and
Exchange
Commission**

17 CFR Parts 229 and 230

Acquisitions By Limited Partnerships In
Specified Industries; Proposed Rule

federal register

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 230

(Release No. 33-6784; 57-12-88)

Acquisitions By Limited Partnerships In Specified Industries

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing for comment alternative forms of a new Rule 465 that would provide for the automatic effectiveness of post-effective amendments filed by a limited partnership during the distribution period, provided that such amendments relate to significant acquisitions and contain required financial statements, financial information and textual information ("required acquisition information"). The proposed Rule could be used by limited partnerships formed for the purpose of making acquisitions solely in one of the specified industries, provided the effective registration statement included specific disclosure concerning the acquisition policy of the registrant and the nature of the acquisitions to be pursued. The specified industries do not include real estate, for which distinctive procedures are provided by Industry Guide 5, but comment is solicited on whether real estate instead should be subject to proposed Rule 465.

Under Alternative I, offers and sales of limited partnerships could continue after an acquisition became probable if the prospectus used was supplemented with all required acquisition information. A post-effective amendment including such information would be required to be filed no later than five business days after the acquisition became probable. Failure to file such post-effective amendment would require offers and sales to be suspended until the post-effective amendment was filed.

Under Alternative II, offers and sales could continue once an acquisition became probable, if the prospectus used was supplemented with any of the required acquisition information available to the registrant. This alternative would require that offers and sales be suspended if the post-effective amendment containing the required acquisition information was not filed by the earlier of five business days after the required financial statements became available or five business days after the signing of a binding purchase agreement.

Finally, an amendment to Rule 424 regarding the filing of prospectus

supplements pursuant to proposed Rule 465 is being proposed.

DATE: Comments should be received by September 12, 1988.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-12-88. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sarah A. Miller or Alexander G. Shtofman, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272-2589, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment alternative versions of proposed new Rule 465 under the Securities Act of 1933 ("Securities Act"),¹ a new paragraph (b)(6) for filing prospectuses under Rule 424,² and technical revisions to Industry Guide 5³ and Rule 406.⁴

I. Introduction and Background

Representatives of the general partner of various partnerships engaged in the business of acquiring cable television systems have advised the Commission staff that current procedures for updating registration statements to reflect significant acquisitions made during the usually extended offering period for their securities present significant practical difficulties. Current procedures require that, during any period in which offers or sales are being made, registrants file a post-effective amendment to reflect any facts or events arising after the effective date of the registration statement that, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement.⁵ A significant acquisition⁶

not disclosed in the registration statement prior to effectiveness, or a series of acquisitions that is significant in the aggregate, constitutes a fundamental change for purposes of Item 512(a)(1)(ii) of Regulation S-K.⁷

By the very nature of these "blind pool" limited partnership offerings,⁸ the precise use of proceeds is not known at effectiveness and, thus, information regarding the specific use of proceeds cannot be disclosed in the original registration statement. Accordingly, an issuer of limited partnership interests offered on a continuous basis pursuant to Rule 415⁹ continually must file post-effective amendments to the registration statement to reflect significant acquisitions by the partnership. Usually, the greatest impact is early on in the offering period when it is more likely that acquisitions will fall within the significant category. Sales of partnership interests must be stopped from the time that a significant acquisition becomes probable until a post-effective amendment, including full audited financial statements of the business being acquired and pro forma financial information,¹⁰ is declared effective.¹¹ Such suspensions not only can be for extended periods of time, but can be numerous due to the frequency of acquisition activity.

The Commission previously has addressed similar problems in the real estate industry with the adoption of the procedures outlined in Industry Guide 5. Rather than following the post-effective amendment procedures generally applicable to continuous offerings, real estate limited partnerships¹² are

¹ 15 U.S.C. 77a, et seq.

² 17 CFR 230.424.

³ "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships" [17 CFR 229.801(e)].

⁴ 17 CFR 230.406.

⁵ Item 512(a)(1)(ii) of Regulation S-K [17 CFR 229.512(a)(1)(ii)].

⁶ Item 2 of Form 8-K [17 CFR 249.300] requires the filing of a current report on that form if the registrant has acquired a significant amount of assets otherwise than in the ordinary course of business. Instruction 4 to Item 2 provides that an acquisition of a business is deemed to involve a significant amount of assets if the business is "significant" as defined in Rule 11-01(b) of Regulation S-X [17 CFR 210.11-01(b)]. See also Rule

1-02(v) [17 CFR 210.1-02(v)] defining "significant subsidiary."

⁷ See Release No. 33-6383, Part IV.B.2, text at n.80 (March 16, 1982) [51 FR 11380].

⁸ As used in this release, "blind pool" refers to an offering that does not have a material portion of the maximum net proceeds committed at the time of effectiveness. Such an offering does, however, include specific disclosure regarding the industries in which it will invest and, if made in reliance on the proposed Rule, would be limited to one of the specified industries and would disclose explicit investment objectives and criteria. In contrast, a "blank check" offering does not disclose the particular industries in which acquisitions will be made nor does it specify explicit guidelines for acquisitions. See discussion *infra*, II.A., II.B.3.

⁹ 17 CFR 230.415.

¹⁰ See Rule 3-05 and Article 11 of Regulation S-X [17 CFR 210.3-05 and 210.11-01 through 210.11-03].

¹¹ Offers also must be suspended until the filing of the post-effective amendment.

¹² The procedure has been extended through staff interpretation to blind pool real estate investment trusts.

permitted to file a prospectus supplement pursuant to Rule 424¹³ describing each property not identified in the prospectus when it becomes reasonably probable that such property will be acquired.¹⁴ Such supplements need not include financial statements. Instead, a post-effective amendment that includes audited financial statements meeting the requirements of Rule 3-14 of Regulation S-X¹⁵ for acquired properties is filed by the registrant at least every three months if an acquisition has been consummated during the period.¹⁶ If all of the information contained in the most recently filed post-effective amendment is disclosed in a current supplement accompanying the prospectus, sales of partnership interests may continue pending effectiveness of the post-effective amendment.¹⁷ Consequently, no halt in the retail sales effort need occur as a result of pursuing real estate acquisitions during the distribution.¹⁸

Proposed Rule 465 would address the issues raised by acquisitions during the offering period for other industries that customarily make public offerings by means of blind pool single purpose limited partnerships, in which the serial acquisition of business and properties is a primary element of the entities' business. Relief in this area appears to be justified by the nature of the business of these limited partnerships (which, in effect, is to acquire businesses or properties), the facts that few or no assets are owned at effectiveness and that acquisitions during the offering are

numerous and frequent, and the likelihood that the acquisitions will be of a size that would require post-effective amendments. The proposed Rule would not apply to blank check offerings, however.¹⁹

The proposed approach differs in a number of respects from the treatment currently accorded to real estate limited partnerships. Unlike the procedures for real estate limited to partnerships, the proposed Rule would require the post-effective amendment to be filed prior to consummation of the acquisition. The post-effective amendment would become effective automatically. In contrast, a real estate limited partnership is required to file a post-effective amendment at least every three months, but only if an acquisition has been consummated during that period. Although offers and sales of real estate limited partnership offerings are not halted upon filing a post-effective amendment, the post-effective amendment is not immediately effective and may be selected for staff review and comment. Since the post-effective amendment would be filed earlier under proposed Rule 465 than is required for real estate limited partnerships, the information regarding the acquisition also would become part of the registration statement and thus subject to liability under section 11 of the Securities Act²⁰ at an earlier point in time.

Moreover, proposed Rule 465 would require the prospectus supplement to disclose specified information regarding the acquisition, while Industry Guide 5 merely requires the prospectus supplement to describe the property to be acquired. Consequently, the proposed Rule provides for more extensive prospectus disclosure to investors than is required for real estate limited partnerships. The proposed Rule is intended to provide sufficient flexibility to limited partnership sponsors in connection with their marketing efforts while, at the same time, assuring timely disclosure to investors and earlier inclusion of the specified information regarding the acquisition in the registration statement.

Specific comment is solicited on whether it is appropriate to treat real estate limited partnership offerings differently from those in other industries, and whether the approach proposed should be extended to real estate limited partnership offerings. If the Commission determined that the approach proposed herein should be

extended to real estate, the proposed rule would be amended to refer to real estate limited partnerships, and Industry Guide 5, in particular Item 20, would be revised accordingly.²¹

II. Discussion of Proposed Rule 465

A. Overview of Alternatives

Rule 465 would be available to limited partnership offerings that the specify that the proceeds are to be used to make acquisitions²² solely in one of the following: Hotels, nursing homes, oil and gas programs, self-service storage facilities, cable television systems, television or radio broadcast facilities, power generating facilities, or equipment to be leased.²³ In the event that the registrant wishes to rely on Rule 465 with respect to acquisitions occurring subsequent to effectiveness, the cover sheet of the registration statement would have to so state at the bottom of the page at the time of effectiveness.²⁴

The Rule would be available only when the nature of acquisitions to be pursued is disclosed in the registration statement. The registration statement would be required to specify the investment criteria and objectives for determining individual businesses that would be considered for acquisition, including such factors as geographical location of the businesses expected to be acquired, the size of such businesses, and whether such businesses would be established or in a start-up phase.²⁵

²¹ The North American Securities Administrators Association ("NASAA") Policy Statement on Real Estate Programs (NASAA REPORTS (CCH) ¶ 3001-3611) also could be affected.

²² The Rule would be available only for amendments filed to reflect acquisitions, not for those including other information requiring an amendment, such as updating pursuant to Section 10(a)(3) of the Securities Act [15 U.S.C. 77(a)(3)] or Item 512 of Regulation S-K [17 CFR 229.512] (aside from Item 512(a)(1)(ii) requirements insofar as they relate to the acquisitions).

²³ The Rule would not be available if the registrant did not offer the securities for cash but, instead, as consideration for the acquisition. For such requirements, see Form S-4 [17 CFR 239.25] and Service Corporation International (available December 2, 1985). Rather, the Rule is intended to cover typical blind pool limited partnership acquisitions of properties. See proposed Rule 465(a)(3) (Alternatives I and II).

²⁴ Proposed Rule 465(a)(4) (Alternatives I and II). As used in proposed Rule 465(a), the registration statement at the time of effectiveness would include any post-effective amendment that is declared effective and otherwise meets the requirements of the rule.

²⁵ While to use proposed Rule 465 the registration statement must disclose the specific investment objectives and criteria of the limited partnership, the Rule otherwise would not alter the information that must be included in the registration statement at effectiveness. Thus, required information

Continued

¹³ See discussion *infra* I.B.3.

¹⁴ 15 U.S.C. 77k. See discussion *infra* at I.C.

This disclosure would include the amount or percentage of proceeds to be allocated to each investment criterion and objective where more than one is stated. If the partnership's investment criteria and objectives were subject to amendment during the course of the distribution, the proposed Rule would not be available from the time the determination to amend the criteria or objectives was made until a post-effective amendment reflecting the new criteria or objectives was filed and declared effective.³⁶ At that point, Rule 465 procedures could be used once more.

Under both versions of proposed Rule 465, an acquisition related post-effective amendment filed by a qualifying limited partnership would become effective upon filing, and sales of partnership interests could continue uninterrupted provided the requisite prospectus supplement were used.³⁷ Both alternatives would require registrants to supplement the prospectus to provide specified information concerning the acquisition once it became probable.³⁸ The alternative proposals differ principally as to the extent of information required in the supplement and the timing required for the post-effective amendment³⁹ containing

regarding acquisitions deemed probable at the time of effectiveness of the original registration statement must be disclosed.

³⁶ In order for a limited partnership to use proposed Rule 465, such change in investment criteria and objectives must be permitted under the limited partnership's governing instruments and the original registration statement must have prominently disclosed such possibility. Such change in investment criteria and objectives could not encompass any change in the specified industry and still rely on proposed Rule 465. A post-effective amendment would have to be filed pursuant to Item 512(a)(1)(ii) of Regulation S-K reflecting such change and declared effective whenever the investment criteria and objectives are changed materially, whether or not proposed Rule 465 is relied upon. Offers and sales would have to cease until the post-effective amendment was filed, and sales could not resume until it was declared effective.

³⁷ Proposed Rule 465 is not intended to alter a registrant's obligation otherwise to supplement the prospectus to reflect material events that occur after effectiveness and during an acquisition. See sections 12(2) and 17(a) of the Securities Act [16 U.S.C. 771(2) and 77(a)]; section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)]; Rule 10b-5 [17 CFR 240.10b-5]. Cf. *Basic Inc. v. Levinson*, 108 S. Ct. 978 (1988) (intentional failure to disclose material information in the face of a duty to disclose such information violates section 10(b) and Rule 10b-5).

³⁸ The term "probable" should be interpreted as it is in Article 11 of Regulation S-X and section 506.02(c) of the Financial Reporting Codification [17 CFR 211, Subpart A].

³⁹ Offerings that would use Rule 465, if adopted, would continue to be subject to the requirements of Rule 415 and would include the undertakings required by Item 512(a) of Regulation S-K [17 CFR 229.512(a)]. Thus, eligible registrants could satisfy

financial statements of the acquired business or property, pro forma financial information, and appropriate textual disclosure, collectively referred to as "required acquisition information."⁴⁰ While the Commission is proposing the two alternatives for comment, it may adopt a Rule that combines elements of both alternatives.

Alternative I would require the supplement to contain all of the required acquisition information, including the required financial statements and financial information. Alternative II would require the prospectus supplement to include any required acquisition information available⁴¹ to the registrant. In the event the required historical financial statements of the acquired business or property were not immediately available, the prospectus would be required to be supplemented with that information as soon as it became available. With regard to both alternatives, failure to update the prospectus appropriately would require the sales effort to be suspended.

With regard to the post-effective amendment, Alternative I would require that a post-effective amendment containing the required acquisition information be filed no later than five business days after the acquisition became probable; otherwise offers and sales would have to be suspended from the time the post-effective amendment was required to be filed until such time as it actually was filed.⁴²

In contrast, under Alternative II, the post-effective amendment containing the required acquisition information would not be required until the fifth business day following the availability of the required historical financial statements,⁴³ but in no event later than

the requirement of filing a post-effective amendment regarding the acquisition as required by Item 512(a)(1)(ii) by complying with Rule 465.

⁴⁰ Rule 3-05 and Article 11 of Regulation S-X require provision of historical financial statements of the business whose acquisition is probable and pro forma financial information with respect to the acquisition. In limited circumstances, pro forma financial information may be required even though historical financial statements are not required. In this Release, Rule 3-05 and Article 11 statements and information are referred to respectively as "required financial statements and financial information."

⁴¹ The term "available" should be interpreted as it is in Rules 3-01 and 3-12 of Regulation S-X [17 CFR 210.3-01 and 210.3-12].

⁴² Proposed Rule 465 (c) and (d) (Alternative I).

⁴³ Once historical financial statements are available, all other required acquisition information (i.e., pro forma financial information which is derived from the historical financial statements, and complete textual information) should be available shortly, even if not available previously

the fifth business day after the parties have signed a binding purchase agreement⁴⁴ with respect to the acquisition.⁴⁵ As under Alternative I, Alternative II would require that offers and sales be suspended from the time the post-effective amendment was required to be filed until such time as it actually was filed.⁴⁶

Alternative I presupposes that in negotiating the acquisition, the acquiring company will have obtained required financial statements of the target company prior to the acquisition becoming probable. Alternative II, on the other hand, presupposes that, in some cases, the required financial statements will not be available to the acquiring company when it decides to proceed with the acquisition. The Commission requests comment on the practicality of the five business day time period for filing the post-effective amendment with respect to both alternatives and, in particular with respect to Alternative II, whether the time period should be extended to ten or 15 business days from availability.

In the event that the registrant failed to file the post-effective amendment within the time required under either Alternative I or II and must suspend the sale effort, Rule 465 would be available immediately upon filing the amendment. Thus, the post-effective amendment would be effective upon filing and offers and sales could resume immediately.⁴⁷

The cover sheet of a post-effective amendment filed in reliance upon Rule 465 would have to state at the bottom of the page that the filing is made in reliance on the Rule so that it can be processed properly for automatic effectiveness.⁴⁸ Prospectus supplements used pursuant to proposed Rule 465 would be filed in accordance with the requirements of proposed new paragraph (b)(6) of Rule 424.⁴⁹ Note 1 of

⁴⁴ Whether a particular agreement constituted a binding agreement would depend upon the specific facts. See H. Temkin, *When Does the "Fat Lady" Sing? An Analysis of "Agreements in Principle" in Corporate Acquisitions*, 55 Fordham L. Rev. 125 (1986).

⁴⁵ Once the post-effective amendment was filed and the sales effort resumed, the prospectus used would, of course, need to contain all the required acquisition information.

⁴⁶ Proposed Rule 465 (c) and (d) (Alternative II).

⁴⁷ Proposed Rule 465(d) (Alternatives I and II).

⁴⁸ Proposed Rule 465(e) (Alternatives I and II).

If the notation were not made, the post-effective amendment would not become effective automatically.

⁴⁹ The facts or events requiring the prospectus supplement to be filed under proposed paragraph (b)(6) of rule 424 would constitute substantive change information normally required to be filed under paragraph (b)(3) of Rule 424 [17 CFR Part

Continued

Rule 465 would direct registrants' attention to this requirement.

Finally, Notes 2 and 3 to the Rule would describe the procedure for filing confidential treatment requests and the number of copies required for filing the post-effective amendment. Technical, conforming changes also are proposed to be added to Rule 406, the confidential treatment rule.⁵⁰

B. Availability of Rule

1. Availability Based on Business Structure

Proposed Rule 465 responds to a need that has been articulated by representatives of those limited partnerships engaged in various industries in which continuous acquisitions take place during the distribution period. The Rule as proposed would be available only for offerings of interests in limited partnerships.⁵¹ The Commission requests comment as to whether the same considerations necessitate relief for other forms of business organizations. In particular, the Commission requests comment on whether proposed Rule 465 should be available for all "direct participation programs," as that term is defined in paragraph (b)(1) of Rule 3a12-9⁵² under the Securities Exchange Act of 1934,⁵³ regardless of legal form, engaged in the specified industries.

2. Restriction to Specified Industries

As proposed, Rule 465 would be available only to limited partnerships investing solely in one of the following: hotels, nursing homes, cable television systems, radio or television broadcast systems, oil and gas programs, self-service storage facilities, power generating facilities, or equipment to be leased.⁵⁴ Registrants engaging in these specified industries have offered limited partnership programs for an extended period of time and the Commission has considerable administrative experience with them. The Commission requests

comment, however, as to the appropriateness of the industries for which the Rule would be available and as to the advisability of extending the proposed procedures to limited partnership offerings in other industries. As noted above, comment particularly is solicited on including real estate limited partnerships and eliminating the procedures provided by Industry Guide 5 for real estate partnerships.

The Rule, as proposed, would not be available to limited partnerships operating in two or more industries. Permitting acquisitions to be made in more than one industry could lead to use of the proposed Rule by registrants engaged in blank check offerings. However, comment is requested on whether a means to overcome this concern could be developed, such as requiring registrants to specify the percentage of proceeds to be apportioned to acquisitions in the various specified industries.

⁵⁰ Proposed Rule 406(a)(2) (Alternatives I and II).

⁵¹ See, e.g., Item 10 of Industry Guide 5, "Investment Objectives and Policies." Disclosure comparable to that currently being provided in this area by real estate blind pool partnerships would be needed in order to provide sufficient specificity for use of the proposed Rule.

⁵² 17 CFR 240.3a12-9.

⁵³ 15 U.S.C. 78a, et seq.

⁵⁴ Proposed Rule 465(a)(1) (Alternatives I and II).

comment, however, as to the appropriateness of the industries for which the Rule would be available and as to the advisability of extending the proposed procedures to limited partnership offerings in other industries. As noted above, comment particularly is solicited on including real estate limited partnerships and eliminating the procedures provided by Industry Guide 5 for real estate partnerships.

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3. Exclusion of "Blank Check" Offerings

Sales halts similar to those that occur in connection with blind pool partnership acquisitions, also may occur in so-called "blank check" offerings. However, unlike blind pool partnership offerings eligible to use the proposed Rule, blank checks do not describe the industries in which funds will be invested and do not provide specific disclosure concerning investment criteria and objectives or the nature of the acquisitions that are to be pursued. This lack of specific information as to the nature of the intended acquisitions is a substantive difference from the disclosure regarding intended acquisitions that would be made by qualifying limited partnerships under the proposed Rule.⁵⁵ For those limited partnerships that have identified legitimate concerns about procedural impediments to the capital raising process, the proposed Rule would present a reasonable resolution to those concerns without impairing the ability of offerees to make investment decisions. In contrast, opening such a procedure to blank check offerings would impair the ability of offerees to make such decisions, given the lack of disclosure to potential investors. Furthermore, availability of Rule 465 for blank check offerings would remove prior staff review in an area that has been subject

⁵⁵ Proposed Rule 465(a)(2) (Alternatives I and II). See, e.g., Item 10 of Industry Guide 5, "Investment Objectives and Policies." Disclosure comparable to that currently being provided in this area by real estate blind pool partnerships would be needed in order to provide sufficient specificity for use of the proposed Rule.

to abuses. Accordingly, the Commission has determined that the proposed Rule will not be available to blank check offerings.

C. Section 11 Liability

Section 11 of the Securities Act imposes liability on the issuer, directors, signers, experts and other designated persons for material misstatements in, or omissions from, a registration statement at the time of effectiveness. Section 11 extends to post-effective amendments filed in accordance with the undertakings required by Rule 415. Such amendments constitute a new registration statement for purposes of the statute of limitations of section 13.⁵⁶

Under both alternatives, those who purchase after the transaction becomes probable, at which point the prospectus must be supplemented, but prior to the filing of an automatically effective amendment, may not have rights under section 11 with respect to information concerning the acquisition in question. The seller will continue nonetheless to be liable to the purchaser under section 12(2) of the Securities Act⁵⁷ for misleading information contained in, or omissions from, the supplemented prospectus.

With respect to both alternatives, the Commission requests comment on whether requiring financial statements in a prospectus supplement without prior or simultaneous inclusion in a registration statement raises concerns regarding: (1) The lack of a statutory requirement for the filing of an accountant's consent to use of its opinion in connection with a prospectus supplement; (2) the ability of the accountant to determine, in the absence of a consent requirement, the use of required financial statements; or (3) liability under Section 11 for sales made pursuant to the prospectus supplement but prior to an effective post-effective amendment.

In this connection, the Commission solicits comment on whether the approach used in Rule 430A(b)⁵⁸ should be applied to proposed Rule 465. In Rule 430A(b), the information contained in the form of prospectus that is filed not later than five business days after the effective date of the registration statement is deemed to be part of the registration statement as of the time it was declared effective.⁵⁹ If a similar

⁵⁶ 15 U.S.C. 77m. See Item 512(a)(2) of Regulation S-K [17 CFR 229.512(a)(2)].

⁵⁷ 15 U.S.C. 77j(2).

⁵⁸ 17 CFR 230.430A(b).

⁵⁹ See also Item 512(j)(1) of Regulation S-K [17 CFR 229.512(j)(1)].

approach were used for proposed Rule 465, the prospectus supplement filed pursuant to proposed Rule 465 would be deemed to be a part of the original registration statement (or most recent previous post-effective amendment) as of the time the earlier document became effective. A second alternative would be for the required acquisition information contained in the post-effective amendment, as opposed to the prospectus supplement, to be deemed to relate back to the date of first use of the prospectus supplement or the effective date of the original registration statement (or most recent previous post-effective amendment). In this regard, the Commission also requests comment on whether the filing of the post-effective amendment should be deemed to constitute agreement by registrants, accountants and other parties subject to section 11 liability to the use of the required acquisition information in the prospectus supplement.

Finally, a third alternative would be to use automatically effective post-effective amendments rather than prospectus supplements to disclose the required information relating to the acquisition.

Unlike Rule 430A, however, there could be significant time periods between the effective date of the registration statement or most recent previous post-effective amendment and use of the prospectus supplement with the specified information relating to the acquisition. Moreover, unlike the information required in the Rule 430A prospectus, the prospectus supplement under both alternatives would have to include required financial statements. Accordingly, if there were to be a relation back to an earlier date, the accountant would have to agree that its consent be deemed part of the prior document. The Commission solicits comment on whether these potentially significant time periods and the requirement for having the accountant agree that its consent be deemed part of the prior document would pose difficulties for either issuers or accountants.

D. Relationship between Prospectus Disclosure and Form 8-K Disclosure of Acquisitions

1. Current System

A current report responding to Item 2 of Form 8-K with respect to a business acquired is not required until the acquisition has been consummated.⁵⁰

⁵⁰ Pursuant to General Instruction B of Form 8-K, required reports are to be filed within 15 days after the occurrence of the earliest such event reported.

Pursuant to paragraph (a)(4) of Item 7 of Form 8-K, if it is impracticable to provide the required financial statements of the acquired business or property and financial information at the time the report on Form 8-K is filed, the registrant may file such of the required financial statements financial information as are available and file the remainder as soon as practicable, but no later than 60 days after the date the report on Form 8-K must be filed.

During the pendency of any such 60-day extension, Securities Act offerings may not be made except as provided in Instruction 2 of Item 7(a) of Form 8-K.⁵¹ This general prohibition, however, was not intended to change the procedure established in Undertaking D of Item 20 of Industry Guide 5. Thus, when a real estate limited partnership consummates an acquisition during the offering period, sales activities may continue notwithstanding the pendency of the 60-day extension of time, as long as the quarterly post-effective amendments containing the required financial statements and financial information are filed when required.⁵²

See n.6 *supra*. Disclosure may be made prior to consummation of the acquisition pursuant to Item 5 of Form 8-K.

⁵¹ Under Item 7(a), the following offerings or sales of securities are not affected by this restriction:

- (a) Offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;
- (b) Dividends or interest reinvestment plans;
- (c) Transactions involving secondary offerings; and
- (d) Sales of securities pursuant to Rule 144 [17 CFR 230.144].

With respect to offerings registered on Form S-3 [17 CFR 239.13], filing a report on Form 8-K omitting required financial statements and financial information of the acquired business does not satisfy the Item 512(a)(1)(ii) undertaking requiring information to be provided regarding a fundamental change. Thus, except as provided in Instruction 2 of Item 7(a) of Form 8-K, sales of securities registered on Form S-3 may not continue to be made pursuant to the effective registration statement once a significant acquisition is probable unless the required financial statements and financial information are contained in an effective post-effective amendment or in a Form 8-K (or a Form 8 [17 CFR 249.400] amendment to the Form 8-K).

⁵² Undertaking D of Industry Guide 5 does not relieve registrants from filing current reports on Form 8-K within 15 days of the consummation of a significant acquisition. Furthermore, if the required financial statements and financial information are due (pursuant to paragraph (a)(4) of Item 7 of Form 8-K) before the post-effective amendment is due, the Form 8-K must contain this information. If any of this information was omitted from the Form 8-K as initially filed pursuant to the 60-day extension of time provided, it may be filed under cover of Form 8. If the post-effective amendment is filed before the report on Form 8-K is due or before the time by which the financial statements required pursuant to Form 8-K must be filed, no additional report of the information need be made on Form 8-K. (See General Instruction B.3 of Form 8-K).

2. Proposed System

Under proposed Rule 465, the required acquisition information concerning a business acquired during the distribution period generally would be required to be filed in a post-effective amendment before a current report on Form 8-K is due. This is because the proposed requirements for filing the required acquisition information are dependent upon events relating to the particular acquisition that occur prior to consummation, which is the triggering event for filing a report on Form 8-K.⁵³ In the usual case, the Form 8-K filed during the distribution would need to reflect only the fact that the acquisition has been consummated; the required financial statements and financial information already would have been provided in the post-effective amendment and need not be included in the Form 8-K.

Of course, any changes in the terms of the acquisition that could have a material effect would have to be included in a prospectus supplement whether or not this information has been disclosed in a Form 8-K filed to reflect consummation. In the unlikely event that an acquisition previously disclosed as probable was not consummated, a post-effective amendment would be required to report such fundamental change.⁵⁴ Such an amendment would not be filed pursuant to proposed Rule 465, and thus would not become effective automatically. Pending effectiveness, the sales effort would have to be suspended.

E. Determining When an Acquisition Is Significant

Questions have been raised as to how to determine whether an acquisition or series of acquisitions by a blind pool partnership requires the filing of a post-effective amendment. Before the minimum net offering proceeds are raised, the determination of whether an acquisition, or acquisitions in the aggregate, is significant should be made in comparison to such minimum net proceeds. After sales of the interests have surpassed the minimum, the comparison should be made to the total assets of the registrant, including the net amount of proceeds raised, as of the date the filing is required to be made.⁵⁵

⁵³ The proposed Rule would not require the prospectus to be supplemented to reflect consummation of any acquisition for which a post-effective amendment previously had become effective pursuant to Rule 465. Whether such a supplement is required is determined according to general materiality principles.

⁵⁴ Item 512(a)(1)(ii) of Regulation S-K.

⁵⁵ See Staff Accounting Bulletin No. 71A, Question No. 4 and Interpretive Response (December 14, 1987) [52 FR 48193].

Thus, as the offering is sold beyond the minimum, the size of an acquisition that would necessitate an amendment increases.⁵⁶

F. When Financial Statements and Financial Information Requirements Are Inapplicable

Concerns have been raised regarding the procedure to be followed if no financial statements are required pursuant to Rule 3-05 of Regulation S-X with respect to the transaction and no pro forma financial information is required pursuant to Article 11 of Regulation S-X. This circumstance can arise either because assets, rather than a business, are being acquired⁵⁷ or because there is no operational history of the acquired business. When a material amount of the offering proceeds is used to make an acquisition that does not require the filing of required financial statements or financial information, material information concerning the acquisition generally is required to be provided in a prospectus supplement at the time the acquisition becomes probable. Use of Rule 465 would not be necessary in such circumstances. If the acquisition of assets or property constitutes a fundamental change, however, a qualifying registrant could rely on Rule 465 procedures, if adopted.

G. Provision of Information to Existing Security Holders

1. Industry Guide 5 Requirements

Pursuant to Item 20 of Industry Guide 5, a registrant that did not provide disclosure concerning investment of a material portion of the maximum net proceeds of the offering in the registration statement at the time it became effective must provide the required information regarding the acquisition filed in post-effective amendments during the distribution period simultaneously to existing limited partners.⁵⁸ After the distribution has

⁵⁶ After the distribution, for purposes of disclosure on Form 8-K, financial statements would be required with respect to consummated acquisitions involving the use of more than 10% of the total assets of the registrant and its consolidated subsidiaries. See also Industry Guide 5, Undertaking D of Item 20.

⁵⁷ See Rule 11-01(d) of Regulation S-X [17 CFR 210.11-01(d)].

⁵⁸ This requirement is in accord with the recommendation of the Commission's Real Estate Advisory Committee that:

Investors in such offerings should be provided with annual reports, filed with the Commission, which disclose in detail the investments of the program and clearly demonstrate their conformity with the specific investment criteria outlined in the prospectus.

ended, the information required to be filed in a current report on Form 8-K for each material commitment⁵⁹ of the net proceeds must be provided to existing limited partners at least once each quarter.⁶⁰ Item 20 Industry Guide 5 also requires existing limited partners to be provided with the financial statements required by Form 10-K⁶¹ for the first fiscal year of operations and a detailed statement of any transactions with, or all fees paid to the General Partner.

2. State Requirements

The North American Securities Administrators Association's ("NASAA") Statement of Policy regarding Real Estate Programs provides that at least quarterly a "Special Report" of real property acquisitions that took place within the prior quarter be sent to all participants until all the proceeds are invested or returned.⁶² Annual and quarterly reports concerning the operations of the program also are required to be distributed to holders of real estate limited partnership interests.⁶³

NASAA's Statement of Policy Regarding Equipment Programs requires quarterly reports for acquisitions by non-specified equipment programs.⁶⁴ In addition, annual and quarterly reports to holders of limited partnership interests concerning the operations of the equipment program are required.⁶⁵ There also are quarterly and annual reporting obligations for commodity pool and cattle feeding programs.⁶⁶

Report of the Real Estate Advisory Committee to the Securities and Exchange Commission, October 12, 1972.

⁵⁹ Because "commitment" is defined as the signing of a binding purchase agreement, Industry Guide 5 requires that, after the distribution has ended, the financial statements of an acquired property must be filed in a report on Form 8-K earlier (i.e., upon such signing) than when the same financial statements are required during the distribution (i.e., upon consummation of the acquisition).

⁶⁰ See also Forms 1-C [17 CFR 239.101] and 3-G [17 CFR 239.101] under Regulation B [17 CFR 230.300-340], which require provision of information to investors in exempt offerings of fractional undivided interests in oil and gas rights. Form 1-G, which requires a report of sales of such interests, is to be delivered to the purchaser of such interests at the time of the offer and no sale can occur until 48 hours after delivery of such report. Form 3-G, which requires a report of the results of such offerings, is to be sent to each purchaser at the time the report is filed with the Commission.

⁶¹ 17 CFR 249.310.

⁶² NASAA Reports (CCH) ¶ 3807 at VII.1.

⁶³ *Id.* at VII.C.

⁶⁴ NASAA Statement of Policy Regarding Equipment Programs (CCH) ¶ 1806 at VII.C.1.

⁶⁵ *Id.* at VII.C.

⁶⁶ See NASAA Statement of Policy Regarding Commodity Pool Programs ¶ 1205 at V.D.2. Sponsors of such programs must furnish participants with quarterly and annual reports containing a balance

3. Possible Requirements for Limited Partnerships Using Proposed Rule 465

The Commission is not proposing to require registrants to undertake to provide existing limited partners with information comparable to that provided to existing real estate limited partners. Industry Guide 5 undertakings provide for quarterly distribution of, among other things, required financial statements and financial information—information that is currently not distributed through prospectus supplements. Proposed Rule 465, on the other hand, provides for more frequent distribution of such information through prospectus supplements.⁶⁷

The Commission solicits specific comment on whether the proposed Rule should require registrants to undertake to distribute post-effective amendments to existing limited partners and to distribute to limited partners the financial statements required by Form 10-K for the first full fiscal year of operations of the partnership. In addition, registrants could be required to send to each limited partner, at least on an annual basis, a detailed statement of any transactions with the General Partner or its affiliates, and of fees, commissions, compensation and other benefits paid or accrued to the General Partner for the fiscal year completed. These undertakings are similar to those required by Industry Guide 5 for real estate limited partnerships.

In the alternative, the Commission solicits comment on whether registrants should be required to undertake to provide existing limited partners on an annual basis (not only for the first fiscal year) with the financial statements required by Form 10-K.⁶⁸

sheet and statements of income and changes in financial position, and a statement showing the total fees, compensation, brokerage commissions and expenses paid by the program. See also NASAA Statement of Policy Regarding Cattle Feeding Programs ¶ 604 at I.D.1. Sponsors of these programs must provide, at least quarterly as well as annually, each public investor with a report stating the current value of his interest and the progress of the venture.

⁶⁷ In addition, Form SR [17 CFR 239.61] requires a first-time issuer to file with the Commission a report regarding sales of securities and use of proceeds from such sales.

⁶⁸ Unlike other registrants that are subject to the Commission's proxy rules [17 CFR 240.14a-1—240.14a-14] and are required to distribute annual reports to security holders when directors are to be elected (Rule 14a-3(b) [17 CFR 240.14a-3(b)]), limited partnerships rarely hold such elections. Thus, even if a limited partnership were subject to Section 12 of the Securities Act [15 U.S.C. 78j], and thus required to comply with the Commission's proxy rules, annual reports to security holders would not be distributed to existing limited partners in the absence of an election of directors.

III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Rule 465 and the amendments to Rule 424, the Commission requests commentators to provide views and data as to the costs and benefits associated with the rules to provide for the automatic effectiveness of post-effective amendments for acquisitions by specified limited partnerships. In this regard, the Commission notes that the proposals should reduce the costs associated with acquisition-related halts in the sales efforts of sponsors of limited partnerships and may reduce costs to investors of delays in investment of partnership proceeds.

IV. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis in accordance with 5 U.S.C. 603 has been prepared regarding proposed Rule 465 and related proposed amendments to Rule 424. The analysis notes that the proposals will eliminate much of the delay, and the resulting impact on the sales effort, caused by the necessity to await staff review (or a determination of no-review status) of amendments filed to reflect acquisitions by limited partnerships.

The proposed amendments would not result in any significant increase in reporting or recordkeeping requirements.

The following significant alternatives were considered: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities. These alternatives would not be consistent with the Commission's statutory mandate of investor protection. A further alternative could be to apply the same treatment accorded to real estate limited partnerships to small issuer limited partnerships. As proposed, the Rule would provide sufficient flexibility to limited partnership sponsors in connection with their marketing efforts while, at the same time, requiring earlier filing of the specified information regarding the acquisition than is currently required for real estate limited partnership offerings.

A copy of the analysis may be obtained by contacting Sarah A. Miller, (202) 272-2589, Office of Disclosure

Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

V. Request For Comments

Any interested persons wishing to submit written comments on the alternative rule proposals, as well as other matters that might have an impact on the proposals, are requested to do so. In addition to the areas specifically addressed throughout this Release, the Commission solicits comment on whether the proposed modification of the timing requirements for filing information would have any adverse impact on the need of the investing public for information and whether Alternative I or Alternative II is preferable in this regard. The Commission also solicits comment on the practicability of both alternatives from the registrant's point of view, and on the amount of relief that would be granted by each alternative.

VI. Statutory Basis Of Rule Proposals

These rules are being proposed pursuant to sections 2, 6, 7, 8, 10 and 19 of the Securities Act of 1933.⁶⁶

List of Subjects in 17 CFR Parts 229 and 230

Prospectus delivery requirements, Reporting and recordkeeping requirements, Registration requirements, Securities.

VII. Text of Rule Proposals

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-X

1. The authority citation for Part 229 continues to read:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 657; secs. 8, 202, 60 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77i, 77j(a), 78f, 78m, 78n, 78(d), 78w(a), unless otherwise noted. Section 229.801(e) also issued under

⁶⁶ 15 U.S.C. 77b, 77f, 77g, 77h, 77i and 77j.

sections 6, 15 U.S.C. 77f, 7, 15 U.S.C. 77g, 8, 15 U.S.C. 77h, and 10, 15 U.S.C. 77j.

2. By amending Items 11.B. and 20.D. of Industry Guide 5, 229.801(e), to replace the words "424(c) supplement" with "Rule 424(b) [§ 230.424(b) of this chapter] supplement."

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citations: (citations before . . . indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77a . . . Section 230.406 also issued under sections 7, 15 U.S.C. 77g, and 10, 15 U.S.C. 77j. Section 230.424 also issued under sections 2, 15 U.S.C. 77b, and 10, 15 U.S.C. 77j. Section 230.465 also issued under sections 7, 15 U.S.C. 77g, 8(c), 15 U.S.C. 77h(c) and 10, 15 U.S.C. 77j.

2. By revising paragraph (a) of § 230.406 to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

(a) Any person submitting any information in a document required to be filed under the Act may make written objection to its public disclosure by following the procedure in paragraph (b) of this section, which shall be the exclusive means of requesting confidential treatment of information included in any document (hereinafter referred to as the "material filed") required to be filed under the Act, except that if the material filed is a registration statement on Form S-8 (§ 239.16b of this chapter) or on Form S-3, F-2, F-3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) complying with General Instruction F of that Form, or if the material filed is a registration statement that does not contain a delaying amendment pursuant to Rule 473 (§ 230.473 of this chapter), or if the material filed is a post-effective amendment filed pursuant to Rule 465 (§ 230.465 of this chapter), the person shall comply with the procedure in paragraph (b) prior to the filing of a registration statement.

3. By adding new paragraph (b)(6) to § 230.424 to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

(b) . . .
(6) A form of prospectus that discloses information with respect to an acquisition of a business [as defined in § 210.11-01(d) of this chapter] that is significant [as defined in § 210.11-01(b) of this chapter] in accordance with Rule 465 under the Securities Act [§ 230.465 of this chapter] shall be filed with the Commission no later than the fifth business day after the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

4. By adding new § 230.465 to read either one of the two following ways:

Alternative I

§ 230.465 Acquisitions by limited partnerships in specified industries.

(a) The provisions of this section are available only to limited partnership offerings as to which: (1) The proceeds are to be invested solely in one of the following: Hotels, nursing homes, oil and gas programs, self-service storage facilities, cable television systems, television or radio broadcast facilities, power generating facilities, or equipment to be leased; (2) the registration statement includes, at the time of effectiveness, specific disclosure concerning explicit investment criteria and objectives and the nature of acquisitions that are to be pursued; (3) the securities registered are not being used as consideration for the acquisition(s); and (4) the registration statement includes, at the time of effectiveness, the following statement in bold-face type at the bottom of the cover page:

THE REGISTRANT MAY RELY ON RULE 465 WITH RESPECT TO ACQUISITIONS SUBSEQUENT TO EFFECTIVENESS.

(b) A post-effective amendment with respect to an acquisition of a business [as defined in § 210.11-01(d) of this chapter] that is significant [as defined in § 210.11-01(b) of this chapter], filed during the public offering of interests in a limited partnership of the type specified in paragraph (a) of this section, shall satisfy the following requirements:

(1) The post-effective amendment shall contain financial statements and financial information required by Rule 3-05 and Article 11 of Regulation S-X [§§ 210.3-05 and 210.11-01 through 11-03 of this chapter] with respect to the acquisition, as well as appropriate textual disclosure regarding the acquisition, and may only include such other information as would not, in the

absence of the acquisition, itself necessitate the filing of a post-effective amendment; and

(2) Either:
(i) The post-effective amendment shall be filed no later than five business days after the acquisition becomes probable; or
(ii) Offers and sales of limited partnership interests shall be suspended until the post-effective amendment is filed.

(c) Offers and sales of limited partnership interests may continue for five business days after an acquisition has become probable, provided that the requirements of paragraph (a) of this section are met and the prospectus used has been supplemented with all of the information concerning the acquisition specified by paragraph (b)(1) of this section.

(d) Offers and sales of limited partnership interests may resume after a suspension of the same, provided that the requirements of paragraphs (a), (b)(1), and (b)(2)(ii) of this section are met.

(e) In the event that an eligible registrant intends to rely on the provisions of this section, the registrant must place the following statement in bold-face type at the bottom of the cover page of the post-effective amendment described in paragraph (b)(1) of this section:

THIS AMENDMENT IS TO BECOME EFFECTIVE AUTOMATICALLY PURSUANT TO RULE 465.

Such post-effective amendment shall become effective upon filing with the Commission.

Note 1.—Any prospectus supplement required by this section shall be filed pursuant to Rule 424(b)(6) [§ 230.424(b)(6)].

Note 2.—Requests for confidential treatment made pursuant to Rule 406 [§ 230.406 of this chapter] in connection with any post-effective amendment must be processed by the Commission's staff prior to filing.

Note 3.—The number of copies of each post-effective amendment required by Rule 472 [§ 230.472 of this chapter] shall be filed with the Commission. Provided, however, that the number of additional copies referred to in Rule 472(a) [§ 230.472(a) of this chapter] may be reduced from eight to three, one of which shall be marked to clearly and precisely indicate changes.

Alternative II

§ 230.465 Acquisitions by limited partnerships in specified industries.

(a) The provisions of this section are available only to limited partnership offerings as to which: (1) The proceeds are to be invested solely in one of the following: hotels, nursing homes, oil and

gas programs, self-service storage facilities, cable television systems, television or radio broadcast facilities, power generating facilities, or equipment to be leased; (2) the registration statement includes, at the time of effectiveness, specific disclosure concerning explicit investment criteria and objectives and the nature of acquisitions that are to be pursued; (3) the securities registered are not being used as consideration for the acquisition(s); and (4) the registration statement includes, at the time of effectiveness, the following statement in boldface type at the bottom of the cover page:

THE REGISTRANT MAY RELY ON RULE 465 WITH RESPECT TO ACQUISITIONS SUBSEQUENT TO EFFECTIVENESS.

(b) A post-effective amendment with respect to an acquisition of a business [as defined in § 210.11-01(d) of this chapter] that is significant [as defined in § 210.11-01(b) of this chapter], filed during the public offering of interests in a limited partnership of the type specified in paragraph (a) of this section, shall satisfy the following requirements:

(1) The post-effective amendment shall contain financial statements and financial information required by Rule 3-05 and Article 11 of Regulation S-X [§§ 210.3-05 and 210.11-01 through 11-03 of this chapter] with respect to the acquisition, as well as appropriate textual disclosure regarding the acquisition, and may only include such other information as would not, in the absence of the acquisition, itself necessitate the filing of a post-effective amendment; and

(2) Either:
(i) The post-effective amendment shall be filed no later than five business days after the financial statements required by Rule 3-05 of Regulation S-X become available or a binding purchase agreement is signed, whichever occurs first; or

(ii) Offers and sales of limited partnership interests shall be suspended until the post-effective amendment is filed.

(c) Offers and sales of limited partnership interests may continue once an acquisition has become probable, provided that the requirements of paragraph (a) of this section are met and the prospectus used has been supplemented with any available information regarding the acquisition specified by paragraph (b)(1) of this section; Provided, however, that offers and sales must be suspended if the post-effective amendment is not filed by the

fifth business day after the financial statements required by Rule 3-05 of Regulation S-X become available or a binding purchase agreement is signed, whichever occurs first.

(d) Offers and sales of limited partnership interests may resume after a suspension of the same, provided that the requirements of paragraphs (a), (b)(1), and (b)(2)(ii) of this section are met.

(e) In the event that an eligible registrant intends to rely on the provisions of this section, the registrant must place the following statement in bold face type at the bottom of the cover

page of the post-effective amendment described in paragraph (b)(1) of this section;

THIS AMENDMENT IS TO BECOME EFFECTIVE AUTOMATICALLY PURSUANT TO RULE 405.

Such post-effective amendment shall become effective upon filing with the Commission.

Note 1.—Any prospectus supplement required by this section shall be filed pursuant to Rule 424(b)(6) [§ 230.424(b)(6)].

Note 2.—Requests for confidential treatment made pursuant to Rule 406 [§ 230.406 of this chapter] in connection with any post-effective amendment must be

processed by the Commission's staff prior to filing.

Note 3.—The number of copies of each post-effective amendment required by Rule 472 [§ 230.472 of this chapter] shall be filed with the Commission; *Provided, however,* that the number of additional copies referred to in Rule 472(a) [§ 230.472(a) of this chapter] may be reduced from eight to three, one of which shall be marked to clearly and precisely indicate changes.

By the Commission.

Jonathan G. Katz,

Secretary.

July 8, 1988.

[FR Doc. 88-15898 Filed 7-13-88; 8:45 am]

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July 14, 1988

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 842 and 843
Surface Coal Mining and Reclamation Operations; Evaluation of State Responses to Ten-Day Notices; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 842 and 843

Surface Coal Mining and Reclamation Operations; Evaluation of State Responses to Ten-Day Notices

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior is amending certain portions of its rules on the federal inspection of coal mines and federal monitoring of state programs for regulating coal mine reclamation under the Surface Mining Control and Reclamation Act of 1977 (SMCRA, the Surface Mining Act, or the Act). This action is being taken in response to a petition for rulemaking, filed by several organizations representing members of the coal mining industry, and is designed to assure consistent treatment of states and surface coal mining and reclamation operations throughout the country.

The amended rules establish a uniform standard by which OSMRE will evaluate state responses to federal notices of possible violations of the Surface Mining Act. Under the amended rules, OSMRE will accept a state regulatory authority's response to such a notice, called a ten-day notice, as constituting appropriate action to cause a possible violation to be corrected or showing good cause for failure to act, unless OSMRE makes a written determination that the state's response was arbitrary, capricious, or an abuse of discretion under the state program. The rules also provide a process by which a state regulatory authority can request informal review of OSMRE's written determination that the state response did not constitute appropriate action or show good cause for such failure.

EFFECTIVE DATE: August 15, 1988.

ADDRESSES: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Chief, Branch of Inspection and Enforcement, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202/343-4295 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Final Rule and Response to Comments
- III. Procedural Matters

I. Background

When Congress enacted the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, it established a complex regulatory structure for protecting the environment from the surface effects of coal mining.

Although Congress could have enacted a statute mandating only federal regulation of coal mining, it did not. Instead, "the Surface Mining Act establishes a program of cooperative federalism that allows the States, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs." *Hodel v. Virginia Surface Mining and Reclamation Association*, 452 U.S. 284, 289 (1981) (emphasis added). This final rule implements the cooperative federalism intended by Congress and clarifies OSMRE's role in overseeing the states' administration of their regulatory programs.

Because this final rule must be viewed and implemented in the context of the structure provided by Congress, it is important to keep in mind the statutory and regulatory framework on which the rule is based.

A. Statutory Background

1. Role of the States and the Secretary

The Surface Mining Act authorizes the federal government, acting through the Interior Department and OSMRE, to delegate primary responsibility for enforcing the Act on non-federal and non-Indian lands to the coal-producing states. In Section 101(f), Congress found that "because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations should rest with the States; * * * 30 U.S.C. 1201(f).

While establishing nationwide standards for reclamation, the Act gives the states an opportunity to develop and propose their own programs for regulating the surface effects of coal mining. Once a state program is approved by the Secretary of the Interior (the Secretary), the state assumes primary responsibility for enforcing the Act on non-federal and non-Indian lands within its borders.

Section 503 of the Act provides the standards on which the Secretary is to

base his approval. As described by the U.S. Court of Appeals, "[t]he Secretary may only approve a program if he determines that the state 'has the capability of carrying out the provisions of this Act and meeting its purposes.' Act Section 503(a). The proposed state program must include 'a State law which provides for the effective implementation, maintenance, and enforcement of a permit system,' Act section 503(a)(4), and 'rules and regulations consistent with regulations issued by the Secretary pursuant to this Act' Act section 503(a)(7)." *In re: Permanent Surface Mining Regulation Litigation*, 653 F.2d 514, 520 (D.C. Cir., 1981), cert. denied Oct. 5, 1981.

Once the Secretary approves a state program, the state takes the lead role, issuing permits, approving or disapproving reclamation plans, setting bond amounts, and inspecting mines to determine compliance.

2. State Law Applied

In primacy states, a mine operator's compliance is measured against the approved state program, rather than directly against the Act. As the court explained in *In re: Permanent Surface Mining Regulation Litigation*, "It is with an approved state law and with state regulations consistent with the Secretary's that surface mine operators must comply." 653 F.2d at 519.

This interpretation of the law is supported by the legislative history of the Act. In discussing the promulgation of federal regulatory programs, a Senate committee stated that "[s]urface mine operators need to know which regulations—Federal or State—they must follow at any given point in time." Senate Report No. 128, 95th Congress, 1st Sess., 72 (1977). The clear implication is that in primacy states, operators are responsible for complying with state regulations.

In the same report, the Senate committee also stated that "[i]n order to prevent federal-state overlap, the federal inspector is only to use his authority under section 421(a)(3) [subsequently enacted as Section 521(a)(3)] where the Secretary is the regulatory authority. However in other circumstances the Secretary must insure, in accordance with the provisions of section 421(a)(1), that the State is notified of the compliance problem so that it may act under the terms of the approved state program." *Id.* at 92 (emphasis added).

The sections of the Act providing for citizen suits also reflect Congressional intent that operators in primacy states should only be liable for compliance with the state program. Section 520(a)(1)

authorizes citizen suits against operators for violations of the applicable regulations, but not of the Act. Such suits may be brought "against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this title * * *." Section 520(a)(1) of SMCRA.

The U.S. Court of Appeals for the 3rd Circuit reached the same conclusion in *Haydo v. Amerikohl Mining*, 830 F.2d 494 (3rd Cir., 1987). In that case, private landowners sued a mining company in federal court for damage to a water well, claiming the damage was caused by the company's exploration drilling. The court concluded there was no federal jurisdiction over the case, declaring:

"Section 512 [of SMCRA] makes the requirements of section 515 [of SMCRA] applicable to certain coal exploration operations. By their very terms these sections of the statute merely prescribe minimum performance standards which must be required of applicants for permits under a state or federal regulatory program before the program may be approved by the Secretary. They do not themselves create any rights and duties as between operators and other persons. The SMCRA itself is not violated by an operator's violation of a permit condition, even though the SMCRA requires that the condition be imposed." *Haydo*, 830 F.2d at 498 (footnote omitted).

3. The Federal Role

Once a state has been granted primacy, the federal role becomes one of oversight. As described by the U.S. Court of Appeals, "[t]he Secretary is initially to decide whether the proposed state program is capable of carrying out the provisions of the Act, but is not directly involved in local decisionmaking after the program has been approved." *In re: Permanent Surface Mining Regulation Litigation*, 653 F.2d 514, 518 (D.C. Cir., 1981). The court further stated that "[o]nce a state program has been approved, the state regulatory agency plays the major role, with its greater manpower and familiarity with local conditions. It exercises front-line supervision, and the Secretary will not intervene unless its discretion is abused." *Id.* at 523.

Program Oversight. The Act sets forth an oversight role for the Secretary as follows:

Section 517(a) of SMCRA authorizes oversight inspections by the federal government as necessary to evaluate the administration of approved State programs. Section 517(e) requires that when an inspector detects a violation of any requirement of any State or Federal program or of the Act, he informs the

operator in writing, and also reports in writing any such violation to the regulatory authority. Given Congress' more specific enunciation in section 521(a) of SMCRA of the Secretary's enforcement role in primacy states, section 517(e), taken alone, does not require an OSMRE inspector to issue a federal notice of violation (NOV) against the operator in a primacy state. The relationship between sections 517(e) and 521 will be discussed further in a subsequent section of this preamble.

Mine-Specific Federal Inspection and Enforcement. Federal inspection and enforcement actions regarding possible violations are specified in section 521 of SMCRA. Under section 521(a)(1), if the Secretary has reason to believe that a person is in violation of the Act or of any permit condition required by the Act, he must notify the State regulatory authority in the primacy states. "If no such state authority exists or the state regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order federal inspection * * *." Section 521(a)(1) (emphasis added).

Although the Secretary's obligation to notify the state arises with his belief that a violation of the Act or required permit condition exists, the Secretary's obligation to order a federal inspection only arises if the Secretary believes that the violation continues to exist after the state responds to the ten-day notice and the state has failed to take appropriate action to compel its correction, or the state did not show good cause for failing to take appropriate action.

Thus, three conditions are required before the Secretary must order a federal inspection under section 521(a)(1) in primacy states, absent an imminent danger of significant environmental harm or danger to the public health or safety: 1. The state fails to take appropriate action to cause correction of the violation following notification of a possible violation; 2. the state does not show good cause for failing to act; and 3. the Secretary believes that the violation continues to exist. Absent any one of those three, the Secretary has no obligation to order a federal inspection.

An exception to the 10-day notification requirement exists where the Secretary is provided proof that an imminent danger of significant environmental harm or danger to the public health or safety exists and the state has failed to take appropriate

action. Act section 521(a)(1). In a case of imminent danger of significant environmental harm, or danger to the health or safety of the public, section 521(a)(2) provides the Secretary with authority to issue cessation orders.

As seen from the preceding paragraphs, two concepts become central to the Secretary's responsibilities: "Appropriate action," and "good cause" for the failure to take appropriate action. Neither the statute nor OSMRE's regulations define the terms "appropriate action" or "good cause" for failure to take appropriate action. Providing those definitions is a primary focus of this rulemaking.

In addition to the sections of the Act described above, an understanding of other related provisions is helpful in determining what may constitute appropriate action and good cause and in responding to the numerous comments received.

Section 521(a)(3) details the conditions under which OSMRE is expressly obligated to issue federal notices of violation. That duty arises during the enforcement of a federal program in states without an approved state program; during the enforcement of an interim program (before the state had an approved permanent program); and on federal lands.

The responsibility also arises under section 521(a)(3) of the Act where a federal inspection is carried out pursuant to section 504(b). Section 504(b) states that "in the event that a state has a State program for surface coal mining, and is not enforcing any part of such program, the Secretary may provide for the Federal enforcement, under the provisions of section 521, of that part of the State program not being enforced by such State."

Finally, section 521(a)(3) authorizes OSMRE to issue NOV's when an inspection is carried out during federal enforcement of a state program in accordance with section 521(b). Section 521(b) provides procedures for the Secretary when he has reason to believe that violations of all or any part of the state program result from the state not effectively enforcing the state program. Under such circumstances, the Secretary is to notify the state, hold a hearing, provide public notice of the findings required by Section 521(b), and, until such time as the state shows its capability and intent to enforce the state program, the Secretary is required to enforce "any permit condition required under this Act." The section includes the proviso, however, that where a permittee has met his obligations under a state permit that was not willfully

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secured through fraud or collusion, he will be given a reasonable amount of time to "conform ongoing surface mining and reclamation to the requirements of this Act before suspending or revoking the State permit."

Thus, where OSMRE takes over an inadequately enforced state program, Congress clearly envisioned a time lag in the suspension or revocation of permits in situations where an operator was in violation because of a permit not requiring full compliance with the state program. Rather than penalizing the operator when the state is at fault, OSMRE must allow a reasonable time for a permittee to comply with additional permit conditions required by OSMRE when the permittee has been complying with the original permit conditions. Although the proviso expressly addresses suspensions and revocations, it naturally follows that during the reasonable period for compliance, OSMRE would refrain from issuance of NOV's and cessation orders related to the problem being corrected. The same principle is also established in Section 504(d) of SMCR.

B. Regulatory Background

The statutory roles discussed above are implemented through regulations promulgated at 30 CFR Parts 842 and 843.

Section 842.11(a)(1) implements section 517(a) of the Act, authorizing oversight inspections. Section 842.11(a)(3) implements the inspection requirements of sections 521(b) and 504(b) of the Act, where the federal government concludes the state is not adequately enforcing its program.

Section 842.11(b) implements section 521(a)(1) of the Act, and is the focus of this final rulemaking. Under that regulation, the authorized representative of the Secretary is to notify the state regulatory authority of a possible violation and to conduct a federal inspection immediately if the state fails within ten days to "take appropriate action to cause the violation to be corrected or to show good cause for such failure and to inform the authorized representative of its response." 30 CFR 842.11(b)(1)(ii)(B).

If there is adequate proof that an imminent danger to the public health and safety, or danger of a significant, imminent environmental harm to land, air or water resources exists, and that the state regulatory authority has failed to take appropriate action, the Secretary will order a federal inspection. 30 CFR 842.11(b)(1)(ii)(C).

Section 843.12(a)(1) implements section 521(a)(3) of the Act, including

the issuance of federal NOV's in certain circumstances.

Section 843.12(a)(2) implements section 517(e) of the Act, by requiring the authorized representative to notify the state and the permittee of violations of the Act, the state program, or any condition of a permit. The section also provides the authority for OSMRE to issue federal NOV's in primacy states, but only where the state fails to take appropriate action to cause a violation to be corrected, or to show good cause for such failure.

The agency has concluded previously that it has authority to issue federal NOV's in primacy states under § 843.12(a)(2), based on the Secretary's enforcement discretion. The Secretary chose to implement that power, not by requiring an immediate federal NOV for every possible violation detected, but instead by allowing the state regulatory authority to take appropriate action or to show good cause for its failure to do so. By so doing, the Secretary is respecting the goal of state primacy, while preserving the authority to protect the environment if a state should fail to implement its program. Thus, while the regulation uses the word "shall" to denote the Secretary's authority, that authority is exercised following a Federal inspection after the Secretary has determined that a state has failed to take appropriate action or to show good cause. The Secretary's authority to issue NOV's under § 843.12(a)(2) is not the subject of this rulemaking.

Summary Overview of Regulatory Structure. Combining these separate statutory and regulatory references produces the following structure: Once the Secretary approves a state regulatory program, the state has the primary enforcement role, and OSMRE oversees the implementation of the program. If a state is not enforcing its program adequately, the law provides a mechanism by which OSMRE can review and, if needed, enforce the state program. In the meantime, mine operators must comply with the requirements of the state program. If OSMRE has reason to believe a violation of the state program, or of the Act exists, it must notify the state except in the case of imminent danger to the public or the environment, where OSMRE can immediately inspect and issue a cessation order when a state has failed to take appropriate action. Once notified of a possible violation, the state then has ten days in which to take appropriate action to cause the violation to be corrected, or to show good cause for its failure to take such action.

C. Background of This Rule

On May 30, 1988, the Mining and Reclamation Council of America (now part of the National Coal Association) and the Regulatory Assistance Program, an organization of ten state coal associations, submitted a petition for rulemaking to OSMRE. The petition sought amendments and modifications to regulations found at 30 CFR Parts 701, 842, and 843. In particular, the petitioners asked that OSMRE repeal its regulations authorizing the issuance of federal notices of violations in primacy states—those with approved regulatory programs. The Director denied that portion of the petition on June 8, 1987 (52 FR 21598). The denial of that portion of the rulemaking petition is currently being litigated in the case of *N.C.A. v. Gentile*, No. 87-2076 (D.D.C.).

The petitioners also requested that OSMRE adopt a uniform standard for reviewing state responses to federal ten-day notices. In particular, the petitioners asked that OSMRE adopt an "arbitrary, capricious, or abuse of discretion" standard of review in determining whether a state had taken appropriate action or shown good cause for failing to do so.

The petitioners argued that the lack of a uniform standard for evaluating appropriate action and good cause led to considerable disparity in the treatment of coal operators and state regulatory authorities, and failed to reflect the goals and principles of the congressionally mandated primacy.

On June 8, 1987 (52 FR 21598), the Director granted the petitioners request for an "arbitrary, capricious, or abuse of discretion" standard of review, and, in accordance with federal regulations, began rulemaking proceedings to implement that standard.

On September 9, 1987, OSMRE proposed a rule to implement the decision (52 FR 34050), and requested comments on the proposed rule. On October 27, 1987, in response to a request from the petitioners, OSMRE extended the public comment period on the proposed rule. The extended comment period closed November 20, 1987.

II. Discussion of Final Rule and Response to Comments

A. General

The final rule establishes a uniform standard by which OSMRE will evaluate state responses to federal ten-day notices. It defines "appropriate action" on the part of the state to cause a violation to be corrected, lists five situations that will constitute good

cause for a state failing to take appropriate action, and provides an opportunity for informal review before a federal inspection will occur following a ten-day notice to a state.

OSMRE received 42 comments on the proposed rule, representing the views of 39 groups and individuals.

Of those, 34 expressed general support for the proposed rule, while, in some instances, requesting modification. Many expressed their belief that the rule as proposed more closely reflects congressional intent behind the concept of primacy than the regulations then in effect.

Eight commenters disagreed with the proposal, requesting that the rule not be adopted. Most directed their opposition at specific provisions in the proposed rulemaking, and those comments will be discussed in detail in the following sections. Several commenters expressed broader concerns.

Several individuals described their personal experiences and frustrations in dealing with specific state regulatory authorities. Those persons, while not addressing specific provisions in the rulemaking, expressed general concern over the willingness of states to enforce the law. They suggested that the states would be incapable or unwilling of adequate enforcement without the federal government playing a strong, active role on a day-to-day basis.

A coalition of commenters forwarded descriptions of specific instances in which OSMRE inspections, following ten-day notices, were instrumental in preventing environmental harm. Such examples, the commenters contend, show that ongoing violations of the Act that are not subject to enforcement action by state regulatory agencies, for whatever reason, will be left uncorrected if the rule is adopted as proposed.

Other commenters relayed their concerns over coal mine operators being "caught in the middle" in disagreements between state and federal authorities.

Those points of view reflect clearly the dichotomy of the surface mining law. The law was enacted, in part, because some states did not have reclamation requirements as strict as others, thus creating a competitive disadvantage to those states that had strict reclamation requirements. Yet, as discussed above, the law gives the states the lead, with the federal government playing an oversight role once a state program is approved. What that federal oversight should entail has been a continuing source of debate. This rulemaking is an attempt to reach a proper balance, recognizing the lead role of the primary states, while at the same time providing

the federal presence that Congress intended, to assure the law, through the approved state programs, if effectively enforced.

OSMRE disagrees with the comments that argue the federal government must have primary enforcement responsibility in primacy states. As enacted, the law allows the Secretary to give the lead to the states. The U.S. Court of Appeals succinctly described the Secretary's role: "Once a state program has been approved, the state regulatory agency plays the major role, with its greater manpower and familiarity with local conditions. It exercises front-line supervision, and the Secretary will not intervene unless its discretion is abused." *In re: Permanent Surface Mining Regulations Litigation*, 653 F.2d at 523 (1981).

The law also provides mechanisms for resolving problems with state implementation of the program: Amendments to state programs (described in 30 CFR 732.17), federal enforcement of state programs, and withdrawal of federal approval for a state program (described in 30 CFR 733.12). With this final rule, OSMRE expects that use of 732 and 733 actions may increase, as the regulatory focus shifts from individual situations to a broader evaluation of a state's overall program. Such a shift in focus, and a willingness on the part of OSMRE to require program amendments and to process those amendments expeditiously, as well as ongoing program oversight, answers the concern that states will not effectively implement, enforce, or maintain their programs.

At the same time, the likelihood of operators being given conflicting orders from state and federal officials should decrease, without hampering federal oversight of state implementation of the regulatory programs.

In other general comments, a coalition of commenters opposed the rule as a whole because they say it would do more than codify a standard for OSMRE review of state responses to ten-day notices. Instead, they contend that the rule attempts to remove the mandatory obligation to issue NOV's that the Act imposes on both OSMRE and the states. In particular, the commenters argue that the agency has, without proper notice and explanation of the authority for such action, proposed to alter the mandatory enforcement requirements of sections 517 and 521 of the Act. As a result, they argue that the rule is in derogation of the Administrative Procedure Act.

OSMRE disagrees with the commenters' characterization of the

proposed rule. The rule, as proposed and as adopted, does not remove any obligation to issue a notice of violation. Where the Secretary is the regulatory authority, the Secretary has a duty to issue an NOV for each violation detected. In primacy states, a state inspector continues to have an obligation to issue a notice of violation when the inspector detects a violation.

That obligation on the state inspector is included in the requirements of an approved state program, and is incorporated into this rule by defining appropriate action as "enforcement or other action authorized under the State program," in § 842.11(b)(1)(ii)(B)(3). Thus only actions authorized under state programs may be considered appropriate.

As stated above, it is important to view this rule in the context of the Surface Mining Act and the regulations that implement it. The rule addresses the issue of when a federal inspection is required in OSMRE's oversight capacity in primacy states. It is not an effort to weaken the enforcement scheme imposed by other sections of the Act or regulations. In enacting the Surface Mining Act, Congress clearly envisioned a regulatory structure in which states would bear the primary responsibility for enforcing the law, but with oversight by the federal government. That oversight must be based on respect for the role of the states.

States are expected to implement their programs fully, including all the applicable enforcement provisions. If they do not do so, the Act provides mechanisms by which OSMRE can address inadequacies in the state's implementation. Those mechanisms allow the inadequacies to be corrected, however, without placing the mine operator in the middle of conflicting orders from state and federal officials.

The purpose of the rule is as was stated in the preamble to the proposed rule (52 FR 34050). That purpose is to establish a uniform standard for OSMRE's evaluation of responses by state regulatory authorities to ten day notices, not to remove enforcement obligations.

Other general comments addressed language in the preamble to the proposed rule. That preamble had stated that the rule would not affect a decision to inspect based on § 842.11(b)(1)(ii)(C) when adequate proof is supplied that an imminent danger to the public health and safety or a significant imminent environmental harm exists. The preamble also stated that the rule was not intended to interfere with OSMRE's issuance of NOV's as required by court

orders in *Save Our Cumberland Mountains v. Clark*, No. 81-2134 (D.D.C. 1985) and *Save Our Cumberland Mountains v. Clark*, No. 81-2238 (D.D.C. 1985).

A group of commenters requested clarification on this point, asking that OSMRE clearly state whether the standard for review, if finalized, would apply to the two cases.

The standards of review adopted in this rule under sections 842.11(b)(1)(ii)(B)(2), (3), and (4) do not apply to OSMRE evaluation of state responses to ten day notices issued under the two aforementioned cases. Although OSMRE could have proposed to modify OSMRE's responsibilities under those orders, OSMRE elected not to do so. As stated in the preamble to the proposed rule, application of the final rule will be consistent with the court orders in the two cited cases.

With regard to the first case cited, this final regulation is not intended to modify the procedures of paragraph 3 of the court order—commonly called the "Parker Order,"—except that a state may request informal review from the OSMRE deputy director, in accordance with procedures established by this rule, of an OSMRE determination relating to a state response to a ten day notice. For the situations covered by the Parker Order, paragraph 3 establishes which state actions are considered appropriate following an OSMRE ten day notice.

The second case cited involves the 2-acre settlement agreement. Promulgation of this final rule will not modify implementation of that agreement in the manner agreed upon by the parties.

The same group of commenters asserted that the proposed rule—if applied to the two cases cited—would not only interfere with the issuance of NOV's, but would hamper the enforcement process.

OSMRE disagrees with this characterization of the rule, generally and as applied to the two cited cases. The previous rule already accepted appropriate action and good cause as reasons for not ordering a federal inspection. This rule clarifies the meaning of those terms and establishes a process for review. These changes will allow state and federal regulatory authorities to implement the law more effectively. As stated previously, OSMRE retains its right to inspect based on § 842.11(b)(1)(ii)(C), when adequate proof is supplied that an imminent danger to the public health and safety or a significant imminent environmental harm exists. In addition, OSMRE retains the authority to inspect under § 842.11 and issue federal NOV's under § 843.12. OSMRE also retains significant

authority, through the procedures of 30 CFR 732.17 and 733.12 to require amendments of state programs and to substitute federal enforcement of the program if needed to protect the environment and enforce the law.

B. Part 842—Federal Inspections and Monitoring

1. Written Determination

Section 842.11(b)(1)(ii)(B)(7) of the final rule provides that OSMRE will make a written determination that a state has failed to take appropriate action to cause a violation to be corrected or has failed to show good cause for its failure to do so, before ordering an inspection that could lead to direct Federal enforcement against an operator in a primacy state. The proposal reflects a change from the previous rule because it requires that the determination be in writing.

The language of final § 842.11(b)(1)(ii)(B)(7) is the same as that of the proposed rule, but will one minor change to clarify the meaning. That change consists of one sentence that has been added to clarify that the failure of a state to respond to a ten day notice will not prohibit OSMRE from acting.

OSMRE was concerned that the language as proposed left the implication that only after receiving a response from the state regulatory authority could OSMRE then make a determination as to whether the standards for appropriate action or good cause for such failure were met. This left an ambiguity as to what OSMRE would do if a state did not respond. The added sentence is intended to make clear that OSMRE will not be prevented from acting merely because the state regulatory authority fails to respond within ten days. The failure to respond to a ten day notice will constitute a waiver of the state regulatory authority's right to request informal review under § 842.11(b)(1)(iii). If a state simply fails to respond to a ten day notice, it would not be reasonable to delay federal inspections for another five days to give the state time to request review.

2. Arbitrary or Capricious Standard of Review

Section 842.11(b)(1)(ii)(B)(2) defines appropriate action and good cause to include any action that is not arbitrary, capricious, or an abuse of discretion, as judged by the approved state program. After considering the comments, OSMRE is adopting the language of § 842.11(b)(1)(ii)(B)(2) as proposed, but with one editorial change. The proposed language had stated the definitions of

appropriate action and good cause would apply for purposes of Part 842. The final rule has been revised to clarify that the definitions are applicable to the subchapter. The change was necessary because the same terms are used in 30 CFR Part 843, notably in § 843.12(a)(2) as the standard upon which to determine whether a federal reinspection is required. OSMRE intends that the terms be applied consistently, regardless of whether Part 842 or 843 is applied.

Under the final rule, the state program is the standard for judging the appropriateness of a state response because once such a program is approved, a state is expected to act in accordance with that program. It is therefore the approved state program, rather than the Act, that will be used to determine whether a state action, taken in response to a federal ten day notice, is appropriate or constitutes good cause. See, Sen. Rep. 128, 95th Cong., 1st Sess., 92 (1977), quoted earlier in this preamble.

In comments on § 842.11(b)(1)(ii)(B)(2), several commenters asked that OSMRE clarify the rule to ensure that state interpretations of non-federal standards are controlling.

Implementation of the goal of state primacy requires that OSMRE defer to a state's interpretation of its own regulations, as long as that deference occurs within the framework of careful oversight, as provided by the statute. OSMRE will recognize a state's interpretation of its own program as long as it is not inconsistent with the terms of the program approval or any prior state interpretation recognized by the Secretary and as long as the state interpretation is not arbitrary, capricious, or an abuse of discretion. Terms of the program approval are codified in the Code of Federal Regulations, and are explained in the Federal Register preamble accompanying the approval, as well as in other correspondence between OSMRE and the state.

If the state interpretation is inconsistent with SMCRA or the Federal regulations, the Secretary must notify the state that its program needs to be modified, under the program amendment provisions of 30 CFR 732.17, and may supersede the inconsistent provision under 30 CFR 730.12(a).

Another group of commenters voiced support for the proposed language, noting that it is in keeping with the Court of Appeals' decision in *In re: Permanent Surface Mining Regulation Litigation*, 653 F.2d 514, 523 (D.C. Cir. 1981), where the court concluded "[o]nce a state program has been approved, the

state agency plays the major role, with its greater manpower and familiarity with local conditions. It exercises front-line supervision and the Secretary will not intervene unless its discretion is abused." The commenters also mentioned a decision from the U.S. District Court for the Northern District of Alabama (*Drummond Coal v. OSM*, No. 85-Ar-1411-S (N.D. Ala., June 5, 1985)) as showing that an abuse of discretion standard is appropriate for evaluating responses to ten-day notices. The commenter then suggested that to guard against erosion of the deferential standard, OSMRE should emphasize in the preamble to the final rule that "arbitrary and capricious" and "abuse of discretion" mean that actions by a state regulatory authority are to be accorded the same deference by OSMRE as the Secretary's regulations are by federal courts.

OSMRE has considered the comment, but has decided that the suggested language is unnecessary for purposes of this rule. The rule states clearly that the standard of review will be "arbitrary, capricious, or abuse of discretion." Concerns about future application of those words will best be decided when specific fact situations have arisen and can be evaluated.

Other comments addressed language in the preamble to the proposed rule that explained that "an arbitrary or capricious response, or one that is an abuse of discretion under the state program, would be one in which the state regulatory authority has acted irrationally, or without adherence to correct procedures, or inconsistently with applicable law, or without proper evaluation of relevant criteria."

A group of commenters requested that the language in the preamble be deleted because it implied that state action which occasionally departs from the procedures approved in the state program will render the state response inappropriate. They argued that such a departure may constitute a proper exercise of discretion, particularly if it ultimately allows correction of a violation.

OSMRE disagrees with this comment. Approved programs should contain ample discretion for the state. If additional options are needed, an amendment to the state program would be the appropriate mechanism to resolve the issue, not deviation from the program on a case-by-case basis.

Other commenters also asked that state interpretations of state laws be given deference, but then suggested that where a state program is more stringent than the Act, OSMRE should only

require compliance with the less stringent federal requirements.

OSMRE disagrees with this comment. In primacy states, the law to be applied is the entire state program, not merely parts of the state program. In addition, in its oversight role, OSMRE is charged with evaluating how well a state implements its state program—including all provisions of that program. Under section 517(e) of the Act, federal inspectors are required to notify the state regulatory authority of violations of "any State . . . program" Therefore, while OSMRE does not have an immediate obligation to issue an NOV upon detecting a possible violation in a primacy state, it is obligated to notify the state of the possible violation of any part of the state program and to evaluate the appropriateness of the state response.

3. Appropriate Action

Section 842.11(b)(1)(ii)(B)(3) of the final rule defines "appropriate action" as being enforcement or other action authorized under the state program to cause the violation to be corrected. This definition expands appropriate action to include more than just enforcement actions, but only if the other action is 1) authorized under the state program, and 2) will cause the violation to be corrected.

In the 1982 Federal Register preamble to OSMRE's revised inspection and enforcement regulations, OSMRE declined to spell out in greater detail what appropriate action meant. The agency did conclude, however, that "[t]he crucial response of a State is to take whatever enforcement action is necessary to secure abatement of the violation." (47 FR 35627-35628, August 16, 1982.)

The 1982 decision not to define the term "appropriate action" did not reflect the experience that has since been gained by OSMRE in implementing the primacy concept. The first state program was not approved until 1980, with 15 others approved by the end of fiscal year 1981. The last of the 25 state program approvals occurred in 1983. The agency has now applied the 1982 rules for six years, and has found the absence of a well-established review standard has resulted in disparate treatment of states and coal mine operators nationwide.

Because of its experience with primacy over the past six years, OSMRE rejects the concept that appropriate action to cause a violation to be corrected can only include responses showing that at the time of the state response either the condition constituting the possible violation of the

Act no longer exists or the state has issued an NOV or cessation order. Instead, OSMRE recognizes that situations vary and may, in some cases, either be so complex or otherwise allow other actions to resolve the situation.

For example, "other action" to cause the violation to be corrected could include the initiation of the process to require a revision or modification to the operator's permit under 30 CFR 774.11(f) where the original permit contained a defect. Other actions might also include the commencement of a proceeding to forfeit the performance bond if the bond amount is adequate to correct the violation and achieve reclamation, as allowed under 30 CFR 800.50. In both examples, the actions will be appropriate only if they are authorized under the state law in lieu of enforcement action and if they will cause the violation to be corrected.

A coalition of commenters argued that the proposal to broaden the definition of "appropriate action" to include actions in addition to enforcement actions abridges the duty of the state regulatory authority immediately to issue a notice of violation upon detecting a violation. They argued that the only "appropriate" response to cause a violation to be abated is an enforcement response, consistent with section 517(e) and 521(a)(1) of the Act.

Furthermore, the commenters claim that the state and OSMRE lack authority to waive the mandatory citation of a violation, and say that the rule, if adopted, would permit a "free bite" for operators who will violate the conditions of a permit or the state program, knowing that they will have the opportunity to correct the error if caught. To support their position, the commenters cite the legislative history and OSMRE's past construction of the Act, as reflected in the 1982 preamble discussed previously. In addition, they cite *Thomas J. Fitzgerald*, 86 IBLA 24, and quote the Interior Board of Land Appeals as saying that a "state regulatory authority has failed to take appropriate action . . . where it fails to initiate an enforcement action."

OSMRE has considered the comment but disagrees with the conclusion. A State regulatory authority continues to have an obligation to take the actions provided in the approved state program to cause a violation to be corrected. In most situations, that means issuing an NOV. In a few instances, other action may be appropriate, if it is authorized by the state program and if it will cause the violation to be corrected. The rule does not change that obligation.

Instead, the rule focuses on the goal of the Act itself—to see that violations are corrected. In doing so, the rule allows state discretion in how best to accomplish that goal—but only if those means are authorized under the state program. OSMRE is not permitting a “free bite”, but is simply saying that the federal government will not substitute its judgment and second-guess the states on a case-by-case basis, unless the state action is arbitrary, capricious or an abuse of discretion under its program. The Act entrusts primary implementation of the law in primary states to the state regulatory authority. The Secretary's obligation to inspect arises only after the Secretary makes the determination that the state has failed to take appropriate action or to show good cause for failing to take such action.

The commenters' assertion that sections 521(a)(1) and 517(e) of the Act do not allow OSMRE to accept anything but State issuance of an NOV or cessation order as appropriate action is incorrect.

As mentioned earlier, the term “appropriate action” is not defined in the Act. The context of the term as used in section 521(a)(1) is action which causes the violation to be corrected. If the state takes action to cause the violation to be corrected, no need exists for the Secretary to conduct an inspection of the site. For purposes of that subsection, the nature of the action is not necessarily relevant, as long as an authorized action causes abatement to occur.

OSMRE has reviewed *Thomas J. Fitzgerald, supra*, and finds the case inapplicable to the rule in question. That case involved mines operating without a permit, but affecting more than two acres. Under 30 CFR 843.11(a)(2), operations without a permit pose a condition that can be expected to cause significant imminent environmental harm. The *Fitzgerald* case raised the issue of whether a state has taken appropriate action when it fails to enforce a cessation order in a situation posing imminent environmental harm because of a state court injunction issued in a situation where section 525(c) of SMCRA would not provide a basis for temporary relief.

The Board of Land Appeals concluded that the state did not take appropriate action, relying in part upon the 1982 preamble which is rejected by this rule. The Board also specifically said that 30 CFR 842.11(b)(1)(ii)(B)—the section addressed by this rulemaking—was “inapplicable” because the case involved a question of imminent harm.

Other commenters generally supported the proposal, but requested clarification that appropriate action by a state in response to a ten-day notice for permit deficiencies can consist of a request for a permit revision rather than enforcement action. Another commenter specifically objected to the preamble language that would allow an application for permit revision to constitute appropriate action. That commenter argued that “appropriate action to cause the violation to be corrected” in section 521(a)(1) of the Act implies that the violation must either be abated or a citation issued within ten days. The commenter thus concluded that merely initiating a permit revision within the ten days would not be sufficient. The permit, the commenter argued, must be approved during the ten days in order to meet the terms of the Act.

The same commenter also asserted that while the Act allows a permit to be revised, the Act does not provide an exemption for the operator while he seeks a permit revision. Instead, the commenter argues that 30 CFR 773.17(c) requires a permittee to comply with the terms and conditions of a permit, and section 521(a)(3) of the Act requires state and federal officials to cite violations of permit conditions. Therefore, the commenter concludes, the only “appropriate action” a state can take when faced with a permittee's failure to comply with a permit is to issue a notice of violation.

Section 521(a)(1) of the Act provides that a state must take action to cause a violation to be corrected after receiving a ten-day notice. It does not provide that abatement must occur during the ten days. Therefore, in limited circumstances, obtaining an application for a permit revision may be appropriate to cause the violation to be corrected.

For instance, in a case where the state regulatory authority erred in issuing the permit and the permittee is performing in accordance with the permit, the appropriate state response to a ten-day notice could be to require interim steps if needed to minimize any potential environmental harm, to notify the permittee in writing that a revision is required, and then to receive an application for the required revision and establish a time period for its decision on the application. In other words, processing a permit revision rather than taking enforcement action would be appropriate action only if the state had erred in approving the permit or otherwise determines that revision is needed. On the other hand, if the operator is violating a condition of a

permit, the appropriate response by the state will continue to be to issue an NOV.

Another group of commenters stated general support for the evaluation standard, but also recommended several changes with respect to the definition of appropriate action under the proposed rule. First, they requested that the definition of appropriate action in the final rule reflect the situation where the state adequately demonstrates that a condition or practice does not constitute a violation. They argue that such a request would mitigate the tendency of OSMRE to substitute its subjective judgment for that of the states and would be in accordance with court decisions that indicate that the state is in a better position to apply its approved program because of its familiarity with local conditions.

OSMRE agrees with the commenters' concern but, after considering the comment, has concluded that such situations are already covered under the definition of good cause, provided in § 842.11(b)(1)(ii)(B)(4)(i). A showing that no violation exists under the state program would constitute good cause for failure to take action to have a violation corrected. It would not fall under the category of appropriate action to cause a violation to be abated.

The same commenters also requested that the rule reflect that actual abatement of a violation is not the standard for determining whether a state response is appropriate.

OSMRE agrees with this comment. The rule provides that appropriate action is action to cause the violation to be corrected. Thus, actual abatement is not required within the ten days. Initiating an action within the ten days that would lead to abatement within a reasonable time would also be acceptable.

The commenters also requested that the definition of appropriate action in the final rule explicitly indicate that any definition of appropriate action is not exhaustive. The commenters suggested specific language that would show that the definition is not exhaustive.

After considering the comments, OSMRE has concluded that the rule already reflects the concerns of the commenters. As proposed and as adopted, § 842.11(b)(1)(ii)(B)(3) states that appropriate action includes enforcement or other action authorized under the state program. The language “other action” clearly shows that the definition is not exhaustive. “Other action” is confined, however, to actions that are authorized under the state program to cause the violation to be

corrected. If the “other action” cannot meet those criteria, it will not be considered appropriate because it would be arbitrary, capricious, or an abuse of discretion because of inconsistency with the state program.

In similar remarks, another commenter offered support for the proposed rule, but suggested that the definition of appropriate action be expanded to include other alternatives. The commenter, however, did not offer specific suggestions as to what those additional examples might include.

Other commenters requested specific additions to the definition of appropriate action. One coalition of commenters asked that the definition of appropriate action include agreed-upon abatement or reclamation plans. Another commenter asked that the definition of appropriate action include “state-dictated action by the operator which indicates enforcement or other action or efforts undertaken pursuant to the state program.”

Both comments appear to be addressing the situation where the state regulatory authority and the permittee have agreed on abatement or reclamation plans to correct a violation.

To the extent that the abatement or reclamation plan is authorized under and follows the procedures of the approved state program, OSMRE agrees that such a plan could qualify as appropriate action. The agency is not changing the regulatory language, however, because such an example is included in the phrase “enforcement or other action authorized under the state program * * *”. It should be emphasized again, however, that this rule is not intended to eliminate enforcement obligations which exist under any state program.

4. Good Cause

Section 842.11(b)(1)(ii)(B)(4) of the final rule lists five situations that will be considered “good cause” for the state regulatory authority to fail to take action to have a violation corrected. Those actions are: (a) Under the state program, the possible violation does not exist; (b) the state regulatory authority requires a reasonable and specified additional time to determine whether a violation of the state program exists; (c) the state regulatory authority lacks jurisdiction under the state program over the possible violation or operation; (d) the state regulatory authority is precluded by an administrative or judicial order from an administrative body or court of competent jurisdiction from acting on the possible violation, where that order is based on the violation not existing or where the temporary stay standards of

section 525(c) or 526(c) of the Act have been met; or (e) with regard to abandoned sites as defined in 30 CFR 840.11(g), the state regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the state program.

The first three items under good cause were adopted as proposed. The fourth and fifth items have been revised in response to comments, as discussed below. A sixth item in the proposed rule, which would have included as good cause situations where “extraordinary circumstances preclude or render futile enforcement against the possible violation,” is not included in the final rule.

In comments on the proposed language, a coalition of commenters opposed any attempt to list situations that will constitute good cause for a state failing to take appropriate action. They argued that the only appropriate action that can be taken by a state in response to a violation-in-fact is enforcement action that will cause the violation to be abated, so there can never be a situation where the state's failure to issue a notice of violation for a violation-in-fact will constitute good cause.

The commenters cited the Act's legislative history to support their contention that the “state must take action to have the violations corrected,” rather than show good cause for failing to do so.

OSMRE disagrees with the commenters' interpretation of SMCRA because it ignores the plain language of the Act. By including the phrase “or to show good cause for such failure * * *”, Congress clearly recognized there would be situations when neither the state nor OSMRE will act immediately under section 521(a)(1) of SMCRA. Therefore, the agency's effort to define what specific situations constitute good cause is clearly authorized. In situations where good cause is based upon a problem with the state program, OSMRE will take whatever action is needed to resolve the programmatic issue.

The same commenters asserted that the only situation where a state would have good cause for failing to take appropriate action is where the state asserts that, in fact, no violation exists. In such a case, the commenters argued, OSMRE would still be obligated to inspect the site to determine whether the state response was justified.

Again OSMRE disagrees with the commenters' interpretation of the Act. In effect, the commenters themselves define good cause, but include just one of OSMRE's five categories. Although

this may be the commenter's preferred policy choice, the Act allows and supports OSMRE's practical and reasonable definition of good cause.

In cases where a state concludes that no violation exists, OSMRE will defer to the state's decision unless it determines that the state conclusion was arbitrary, capricious, or an abuse of discretion. That is in keeping with the statutory framework, the congressionally-mandated concept of primacy, and with the decision in *In re: Permanent Surface Mining Regulation Litigation*, quoted earlier.

As discussed earlier, in determining whether a state action is arbitrary or capricious, the Secretary will continue to make independent determinations, based on the facts in each case. Such determinations are not required to be made on the basis of inspections, however. The federal duty to inspect only occurs after the Secretary determines that the state action was not appropriate and the state did not have good cause for failing to take appropriate action. The Act does not require a federal inspection to determine whether to inspect.

Other commenters addressed the specific examples that were included in the proposed rule. Those are discussed below.

Section 842.11(b)(1)(ii)(B)(4)(i). Section 842.11(b)(1)(ii)(B)(4)(i) is the first item in the category of good cause and provides that a state regulatory authority has good cause for failing to take appropriate action to have a violation corrected if “under the state program, the possible violation does not exist.” The proposed rule would have referred to whether the violation “did not,” as well as does not, exist. The “did not” language has not been adopted because the key to judging the state response is how it responded to an existing violation.

A coalition of commenters opposed this provision because, it appears, they oppose any deference to the states in determining whether site conditions constitute a violation. The commenters argued that Congress intended that a federal inspection would occur in all instances as a follow-up to the ten-day notice, so that OSMRE could independently determine whether the facts constitute a violation of the program or of the Act. Thus, the commenters concluded that there “is no authority for interposing any review procedure of state inaction between the state response and subsequent immediate federal inspection.”

As discussed earlier, OSMRE's role in primacy states is one of oversight, in

which it evaluates the manner in which a state implements the state program, rather than OSMRE taking the lead role in implementing either the program or the Act. After issuing a ten-day notice, OSMRE independently determines whether the state has taken appropriate action or shown good cause for such failure, based upon the state response.

OSMRE disagrees with the commenter's contention that OSMRE's independent determination must be based on an inspection of the site. Section 521(a)(1) states that "the Secretary shall immediately order Federal inspection" of a mine site with an alleged violation if the state regulatory authority fails within ten days after notification of the possible violation to take appropriate action or show good cause for failing to act. Thus the Act clearly envisioned that the Secretary would make a determination as to whether the state action was appropriate, before ordering a federal inspection. The commenters, on the other hand, appear to be arguing that an inspection is required in every instance in order to determine whether to inspect. Such a conclusion is contrary to the language and purpose of the statute.

With regard to the commenter's contention that good cause should be based upon whether a violation of the Act exists, a state should only be expected to act under the terms of its state program, which was approved by the Secretary as being consistent with the Act following the opportunity for public participation. If any aggrieved person believed that the approved state program was not consistent with the Act and the Secretary's regulations, the program approval was subject to challenge under section 526(a)(1) of SMCRA. At this point, such challenges have almost all been resolved. Also, adversely affected persons may continue to bring actions under section 520(a)(2) to address Secretarial or state regulatory authority failure to perform non-discretionary duties arising out of program deficiencies.

In situations which do not involve significant imminent environmental harm or danger to the public health and safety, neither an obligation nor a compelling reason exists for OSMRE to conduct a federal inspection with regard to facts which, even if true, do not constitute a violation of the state program. The proper course of conduct under such circumstances is for OSMRE to inquire whether the state program accords with the Act. If not, the state program should be changed and, when necessary, may be superseded by OSMRE under 30 CFR 730.11(a).

OSMRE recognizes that situations which ultimately will become violations of the state program might continue until the required state program change occurs. With respect to requirements that should be included in a state program, however, neither section 521(a)(1) nor any other section of the Act requires the issuance of a notice of violation until the state program undergoes modification.

Because the requirements of the Act are implemented in a primacy state through the state program, operators in a state are directly answerable under the state program. See *Haydo, supra*.

To judge whether the state has taken appropriate action, or has shown good cause, under the terms of the Act instead of under the state program, is not fair to the operator performing in accordance with the state program. The operator should be responsible under one set of standards, and not be subject to enforcement sanctions for violating other standards when he was not on notice of such standards.

Section 842.11(b)(1)(ii)(B)(4)(ii). Section 842.11(b)(1)(ii)(B)(4)(ii) includes as good cause situations where state regulatory authorities require reasonable and specified additional time to determine whether a violation of the state program exists. Several commenters expressed support for this provision and viewed the example as one illustrating the "traditional discretion afforded administrative agencies."

Another group of commenters opposed this category. They asserted that failure of a state to take enforcement action within ten days in a situation that OSMRE believes constitutes a violation-in-fact would, by definition, be an inappropriate response because the state exceeded the time certain allotted by Congress. Congress, they said, has already given the state ten days in which to act and if Congress had wanted to give states more time, or to allow a period of "non-decision," it would have done so explicitly.

OSMRE agrees that the state's response to a ten-day notice is required within ten days, as specified by Congress in section 521(a) of the Act, but has concluded it may be reasonable for a state, in certain cases, to respond that it needs a specified amount of additional time to determine whether a violation does, in fact, exist. This situation might arise, for example, where technical analysis or laboratory work must be conducted on soil or water samples collected at a mine site in order to establish that a violation exists or to enable the regulatory authority to

make the finding to support a permit revision under 30 CFR 774.11(c) where an operator is acting in compliance with a defective permit.

Under section 521(a)(1) of the Act, the state regulatory authority has an obligation within 10 days to take action to cause a violation to be corrected or to show good cause why it has failed to take such action. Thus, Congress clearly provided for a situation where the state was unable to act within the 10 days to have the violation corrected, but where the state had good cause for its inability to act. OSMRE's obligation to immediately inspect the site arises only after the state regulatory authority fails to take appropriate action or fails to show good cause for such failure within 10 days. If the state has good cause for not acting, such as needing additional time for technical or laboratory analysis, then OSMRE's obligation to inspect has not yet arisen.

A ten-day notice only describes the existence of a possible violation. Before an enforcement action can be taken, the state or OSMRE must be able to prove a violation exists, which in some cases may require more than 10 days. Where a state regulatory authority has shown that it is diligently pursuing the facts to determine whether a violation exists, it would be improper to require the state to take enforcement action before the state concludes a violation exists.

Another commenter expressed concern that allowing states more time in which to make a determination would offer an opportunity for abuse and would allow unlimited time for violations to be forgotten or abated without ever being cited as required under sections 521(a)(3) and (d) of the Act.

OSMRE agrees that the need for more time must not be allowed to become an abused provision. The rule allows the need for additional time to constitute good cause only where the state regulatory authority demonstrates that it requires a *reasonable and specified* amount of additional time—not unlimited time. By limiting the additional time allowed to a reasonable and specified amount, OSMRE has reduced the potential for abuse.

Section 842.11(b)(1)(ii)(B)(4)(iii). Section 842.11(b)(1)(ii)(B)(4)(iii) includes as good cause, "the state regulatory authority lacks jurisdiction under the state program over the possible violation or operation."

One group of commenters asserted that even if a state lacks jurisdiction, OSMRE would still have jurisdiction and would be required to order a federal inspection.

The commenters are wrong in focusing on OSMRE's jurisdiction to conduct federal inspections. As mentioned earlier, section 517(a) of the Act provides authority for the Secretary to conduct inspections in primacy states to evaluate the administration of state programs. The issue under section 521(a)(1), however, is not whether authority exists for a federal inspection, but whether the state has shown good cause so as not to trigger the Secretary's obligation to inspect.

The same commenters also said that section 517(e) of SMCRA calls for a federal inspector to issue an NOV whenever the inspector sees a violation of a state program or of the Act.

As can be inferred from the earlier discussion of section 517(e), OSMRE disagrees with the commenters' interpretation of that section. Section 517(e) does not separately require the Secretary to issue a notice of violation in a primacy state. In determining the Secretary's enforcement role in primacy states, section 517(e) must be read together with section 521. Thus, in situations covered by section 521(a)(3), the issuance of a federal NOV would implement section 517(e). Under section 521(a)(1), however, instead of immediately issuing an NOV in a primacy state, the Secretary provides a state and the permittee with a "ten-day notice," the notice of the possible violation, and gives the state the opportunity to have the violation corrected. In such circumstances, providing the ten-day notice implements the section 517(e) requirement.

If section 517(e) required the issuance of an NOV upon detection of each violation by every Federal inspector during oversight and other inspections, it would make superfluous both the state notification provisions of section 521(a)(1) and the carefully drafted language prescribing the applicability of section 521(a)(3) of SMCRA.

This interpretation of section 517(e) is not new and is consistent with OSMRE's previous regulations. In the 1979 adoption of 30 CFR 843.12(a)(2), the section which provided a procedure for the issuance of federal NOV's in a primacy state, OSMRE specifically adopted a procedure whereby a federal NOV would not be written on an initial inspection, but would await until notification was provided to the state for the state to act. (44 FR 15303, March 13, 1979.)

The commenters also said that the state programs, in theory, have jurisdictional provisions identical to those required by the Act and, to the extent that they do not, OSMRE should require corrective amendments under 30

CFR Part 732. In the absence of state jurisdiction, however, the commenters asserted that OSMRE would continue to have an obligation to inspect, because the state took no action to cause the violation to be corrected. The commenters also argued that Congress could not have intended violations to go uncorrected during pendency of the amendment process.

OSMRE agrees that where a state lacks jurisdiction because of deficiencies in the approved state program, OSMRE must require a program amendment under 30 CFR 732.17, the assure that the state program is in accordance with the Act and consistent with the federal regulations.

OSMRE disagrees with the commenters' view that a jurisdictional deficiency in the state program imposes an inspection duty on OSMRE. Under section 521(a)(1), OSMRE's responsibility to inspect following a ten-day notice arises when the state fails to take appropriate action to cause a violation to be corrected and fails to show good cause for such a failure. If the state lacks jurisdiction, then the state has good cause for failing to act. If a state has good cause, then OSMRE's obligation to inspect a site, other than through oversight inspections or in cases of imminent harm, has not come into being.

Disagreements over the jurisdictional reach of state programs and the Federal Act and regulations should be few and few between. But the federal/state experience over the last several years has shown that the disagreements do occur, however, seldom. Under the previous ten-day-notice rules, which did not define "good cause" and "appropriate action," operators could be given conflicting directions from two different governing entities. By this final rulemaking, OSMRE intends to allow a consistent and rational process to resolve disagreements and to avoid unnecessary issuance of a federal NOV to an operator merely because OSMRE and the state cannot resolve the disagreement between them on the eleventh day.

In theory, disagreements should never exist. Before the Secretary may approve a state program, the state program must be consistent with, and cover the same ground as, the federal Act and regulations. While adopted in the first instance by a state, a state program becomes Federal law when approved by the Secretary and promulgated as Federal regulation. (44 FR 15023, March 13, 1979.) The State program must be "no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act" and be

"no less effective than the Secretary's regulations in meeting the requirements of the Act." 30 CFR 730.5 and 732.15(a). Federal standards imposed by the Act are thus enforced through the state program. If, in practice, jurisdictional reach disagreements arise, most likely these are the fault of either the Secretary or the state, and not the fault of the operator. Rather than sort out disagreements after operators have been issued federal NOV's, OSMRE intends this rulemaking to allow disagreements, to be sorted out without unnecessary issuance of federal NOV's. (It should be understood that notwithstanding these procedures, Federal enforcement action will be taken to resolve imminent harm situations.)

Comments asserted that OSMRE has an obligation to issue an NOV for a violation of the Act in a primacy state, even if the condition is not a violation of the state program.

The commenters are wrong in asserting that OSMRE must issue NOV's for "violations of the Act" which are required to be, but have not yet been, incorporated into a state program. Until jurisdictional deficiencies are resolved, the state program governs state and operator actions. Congress clearly intended operators to be responsible for complying with only one set of regulations—either state or federal, but not both. As a result, in primacy states the Act is implemented through the approved states program rather than directly. Thus factual situations which the commenters characterize as "violations of the Act" are not enforceable against operators until incorporated, as required, into the state program. This was recently recognized by the U.S. Court of Appeals for the Third Circuit when it stated that "Sections 512 and 515 [of SMCRA] set forth standards for approved regulatory programs and impose no duties on operators themselves." *Haydo v. Amerikohl Mining, supra*, 830 F.2d at 498, n.2.

The limitations under which OSMRE can issue NOV's in primacy states do not apply to situations involving imminent harm. Significant imminent harm to the environment or danger to public health or safety, is prevented through OSMRE's power to issue cessation orders under 30 CFR 842.11(b)(1)(ii)(C) and 843.11(a). Under § 843.11, and under section 521(a)(2) of the Act, OSMRE may issue cessation orders for conditions or practices, as well as violations, which create an imminent danger to the health or safety of the public, or is causing, or can be reasonably be expected to cause significant imminent environmental

harm. Thus the Act provides a mechanism through which to abate significant harm or dangerous conditions, regardless of whether the state program prohibits the condition or practice causing such harm or danger.

Similarly OSMRE is not precluded from taking enforcement action with respect to requirements of the Act directly imposed upon an operator which are not required to be included in state programs. One example would be the obligation to pay Abandoned Mine Reclamation Fees and otherwise comply with Title IV of the Act, 30 U.S.C. 1231-1243, which exists regardless of its inclusion in a state program.

Another commenter asserted that lack of jurisdiction might be "good cause" for the state not acting, but not for OSMRE to fail to act. To support that contention, the commenter cited section 504(b) of the Act, which provides that where a state, with an approved state program, is not enforcing a part of its program, the Secretary may provide for federal enforcement under the provisions of section 521. Section 521(a)(3), the commenter then points out, states that federal inspectors shall issue NOV's where a federal inspection is carried out pursuant to section 504(b), among other reasons. From this, the commenter concludes that even where a state is justified for not correcting a violation because of lack of jurisdiction, OSMRE is required to inspect.

OSMRE agrees in part and disagrees in part with the comment. OSMRE agrees with the commenter's apparent acceptance that lack of jurisdiction by the state constitutes good cause for the state's failure to act. That is all a state has to show in response to a ten day notice under section 521(a)(1) of SMCRA.

OSMRE disagrees with the commenter's view that OSMRE must take enforcement action despite the good cause showing by the state. Such an interpretation reads the good cause provision out of the Act. Section 521(a)(1) plainly provides that if good cause exists, then OSMRE is not obligated to perform an inspection under that section in non-imminent harm situations.

It is possible, however, that in certain limited circumstances a state may not have jurisdiction to take enforcement action because particular facts, which are required by the Act to constitute a violation of the state program, are not in fact a violation of the state program. Under such circumstances, the operator is not subject to the issuance of an NOV by OSMRE because the violation of a requirement of the Act results from the

state program deficiency, not the conduct by the operator.

Future jurisdictional disputes should be rare because, after six years of primacy, OSMRE oversight has resolved major issues stemming from deficiencies in the state programs. Generally, the only remaining areas of difference relate to OSMRE adopting new regulations—typically the result of policy changes or court orders—after the state program approvals. Although such new rules must be reflected in state programs, operators are ordinarily given time to comply before enforcement action is taken following necessary state program changes.

OSMRE also disagrees with commenter's interpretation of section 504(b) of SMCRA. That section refers to a state's failure to enforce any part of its approved program. Where the state's approved program fails to provide jurisdiction, the state is not failing to enforce its approved program, and therefore section 504(b) does not apply.

Section 521(a)(1) is not the only provision of the Act under which congress allowed corrective action, such as a state program amendment, to occur without enforcement action being taken immediately. For instance, Section 521(b) provides the mechanism through which the Secretary assumes responsibility for enforcing a state program if the state's enforcement is found to be inadequate. The section provides, however, that permittees who are in compliance with a state permit are to be given a reasonable time to conform to the Act. Thus Congress recognized that a period would exist during which regulatory requirements would not be met—and Federal NOV's would not be issued—because of a lapse in enforcement of a state program.

Congress recognized, in various sections of the Act, that the Federal/State relationship and the actions of the regulatory authority may not be perfect. The Act includes a number of procedures, all of which take time, to remedy the potential imperfections. The current rules implementing the Act provide, basically, four mechanisms to sort out potential Federal/State disagreements: (1) 30 CFR Part 732, (2) 30 CFR 730.11, (3) 30 CFR Part 733, and (4) the rules affected by this final rulemaking. Which of these four mechanisms is most apt for resolving a particular disagreement, of course, depends on the facts.

When State law itself is the problem, and not just its implementation, Congress explicitly provided procedures in sections 504 and 505 of the Act to resolve them. Those sections have been implemented at 30 CFR 730.11, regarding

federal preemption, and at 30 CFR Part 733, regarding federal programs. Also, 30 CFR Part 732 provides the process for State program amendments when appropriate. When state program implementation is the problem, Congress explicitly provided procedures in sections 504(a)(3), 504(b) and 521(b) of the Act to deal with the failure of a state to implement, enforce, or maintain the approved state program. Again, all of these mechanisms take time. See section 504(c), 30 CFR 733.12. In the sections Congress explicitly recognized that a permittee might not be in compliance because of state regulatory mistake and through no fault of his own, sections 504(d) and 521(b) of the Act, Congress directed the Secretary to give the permittee a reasonable time for compliance.

In sections 521(b), 521(a), and 520(a)(2) of the Act Congress has implied that permittees should not always be responsible for error authorized by the regulatory authority. The "reasonable time" allowed in section 521(b), the ten day period for a state to show "appropriate action" or "good cause" in section 521(a), and the limitations on citizen suits in 521 for violations of "any rule, regulation, order or permit", rather than violations of the Act, all point to the conclusion that Congress intended a procedural time "buffer" before making an operator responsible for the consequences of a mistake by the state regulatory authority or OSMRE. In keeping with this congressional recognition and intent, this final rulemaking provides an explicitly consistent and rational procedures concerning federal intervention on a mine by mine basis in a primacy state.

Section 842.11(b)(1)(B)(4)(iv). Section 842.11(b)(1)(B)(4)(iv), the fourth category listed for good cause, provides that where the state regulatory authority is precluded from acting on the possible violation because of an order issued by administrative body or court of competent jurisdiction, good cause will exist for the state's failure to act.

To reflect the concerns expressed by the commenters, OSMRE has revised the language of the final rule, in § 842.11(b)(1)(ii)(B)(4)(iv), to articulate more clearly the basis on which OSMRE will conclude an injunction is good cause. OSMRE will view the state regulatory authority as having good cause for not taking action to have a violation corrected when it is precluded from doing so by an order from an administrative body or court of competent jurisdiction, but only where that order is based on the violation not

existing or on the temporary stay standards of section 525(c) or 526(c) of the Act being met. Such circumstances would demonstrate that the state court or administrative body was acting within the confines of the approved state program and no need exists for mine-specific federal intervention. The category as adopted is narrower than the proposed rule, which did not contain the latter constraints.

Commenters opposed the proposed provision, arguing that it conflicts with OSMRE's independent obligation to inspect and enforce, as mandated by sections 517(e) and 521(a)(1) of the Act. The commenters cited *Thomas J. Fitzgerald, supra*, and quoted the Interior Board of Land Appeals as saying that a regulatory authority has failed to take appropriate action under section 521(a)(1) of the Act not only where it fails to initiate enforcement action, but also where it is unable to pursue that action because of a court injunction. The commenters concluded that if a thwarted attempt to take enforcement action is not appropriate action, then failure of the state to take action in the first instance because of a bar to such action would not constitute good cause for the inaction.

Other commenters reflected the opposite opinion, expressing support for the proposal. They cited *Midwestern Mining Consultants, Inc. v. DNR of Indiana and OSM*, Civ. No. EV 83-102-C (S.D. Ind. July 17, 1984), to support their conclusion that a state will have already met the statutory requirement for taking appropriate action based on the initial enforcement action which was later enjoined.

The *Fitzgerald* case, discussed earlier, addressed the question of "appropriate action" when a situation exists posing imminent environmental harm. The Board found that 30 CFR 842.11(b)(1)(ii)(B), the subject of this rulemaking, was inapplicable because the state had taken action to secure abatement of the violation by issuing cessation orders. It went on to find that the state had failed to take "appropriate action," even though it had issued cessation orders, because it was later enjoined from enforcing those orders by a state court, which did not apply the temporary relief standards in the state program. The Board concluded that, based on the facts, temporary relief would not have been available under section 525(c) of SMCRA. 88 IBLA 24, 29 at n.4. Given these considerations, the result reached in the *Fitzgerald* case appears consistent with this rule.

Midwestern involved a mine operating without a permit, and therefore, under 30 CFR 843.11(a)(2),

posed a danger of imminent environmental harm. As in *Fitzgerald*, a state court had enjoined the state regulatory authority from enforcing cessation orders against the operator. In *Midwestern*, OSMRE attempted to take enforcement actions, and issued a federal NOV against the operator. The court found that OSMRE had no jurisdiction in the situation and stated that "[t]he Secretary must contact the state regulatory board and wait for that board to take appropriate action. This requirement is only waived if there is evidence of 'imminent danger of significant environmental harm' and 'if the State has failed to take appropriate action'" *Midwestern*, Slip op. at 6. The court went on to conclude "the State of Indiana had taken action against plaintiff for certain violations, and a state court had promptly granted a preliminary injunction against the State" The State did take appropriate action; it was simply enjoined from enforcing that action. Since there was no imminent environmental danger and the state had taken appropriate action, the Secretary could not avoid his obligation to allow the State regulatory authority to remedy this situation." *Id.*

Thus the court in *Midwestern* reached a conclusion contrary to that of the Interior Board of Land Appeals in *Fitzgerald* on similar facts. However, the Board in *Fitzgerald* based its decision on the fact that not only was imminent environmental harm posed, but also that the state court made no finding that the operators were likely to prevail on the merits.

Some commenters supported the rule but expressed concern over language in the preamble to the proposed rule. In the preamble to the proposed rule, OSMRE said that if a state were seeking to overturn the injunction, good cause would exist, but if a state was not seeking to overturn the restraint, OSMRE would examine the state action and determine whether it was arbitrary, capricious, or an abuse of discretion under the state program.

The commenters asked that OSMRE delete any reference in the final rule to a federal examination of state decisions not to appeal restraining orders or adverse decisions. They argued that for OSMRE to override the relief granted the operator at the state level would completely undermine the relief provisions set forth in section 525 of the Act and would subject an operator to double jeopardy by having to prevail at both the state and federal level.

OSMRE has considered the conflicting comments and court decisions, and believes that a state regulatory authority

has good cause for not taking action when it is enjoined from doing so by a state administrative or judicial body acting within the scope of its authority under the state program. A state regulatory authority is enforcing state law and a state regulatory program, and state courts have jurisdiction to interpret those state laws. Although a state regulatory authority cannot disregard an injunction issued for any reason by a state court, OSMRE concludes that good cause exists for the regulatory authority not acting only where the order has a proper basis. Such a basis would exist if the temporary relief criteria of the state program (which presumably would reflect those in sections 525 and 526 of SMCRA) are satisfied or if the state court concluded the violation does not exist.

OSMRE is aware of concerns that a limited number of courts might not base their decisions on the temporary relief criteria of the state program. Those concerns were the basis for the language in the proposed preamble that OSMRE would review state decisions not to appeal in determining whether an injunction constituted good cause. After considering the comments, OSMRE has concluded that consideration of whether an appeal was taken is unnecessary to the determination of whether the state administrative or judicial review body acted properly within the authority of the state program.

As a result, OSMRE will examine decisions by the state not to appeal judicial or administrative orders barring state enforcement action only to the extent that such decisions illustrate state program effectiveness or ineffectiveness. In other words, if OSMRE disagrees with a decision of the state not to appeal an administrative or judicial restraint, actions provided under Parts 732 and 733 will be the appropriate mechanism for resolution of that particular disagreement.

In other comments on § 842.11(b)(1)(ii)(B)(4)(iv), a commenter suggested that OSMRE may want to reconsider the proposal to the extent it would permanently bar OSMRE from taking action when the state is administratively or judicially precluded from acting. The commenter pointed out that, given the wide variety of administrative and judicial procedures among the states, some regulatory authorities could be precluded from acting for unreasonable lengths of time, which would be unfair to those states with more expeditious procedures. Therefore, the commenter suggested that OSMRE consider imposing a reasonable, maximum time limit for state inaction,

after which OSMRE would have the option, but not necessarily the duty, to initiate federal action.

OSMRE disagrees and will not impose a time limit as suggested by the commenter. OSMRE will not intervene in a case because of the duration of injunctive relief granted by state administrative or judicial review authorities. Rather, OSMRE will examine the basis for the relief, and OSMRE will closely watch for patterns of departure from the state's administrative and judicial procedures.

Section 842.11(b)(1)(ii)(B)(4)(v). As proposed, § 842.11(b)(1)(ii)(B)(4)(v) provided that the state has good cause for failing to take action against a violation if the state regulatory authority is diligently pursuing or has exhausted other appropriate enforcement provisions of the state program. The final rule has been revised to make it clear that this category will only apply to abandoned sites, as defined in 30 CFR § 840.11(g), promulgated June 30, 1988 (FR 24872) in a separate rulemaking.

Commenters asserted that proposed categories v and vi under good cause, would eliminate the obligation of state regulatory authorities to issue a notice of violation for every violation observed, regardless of whether enforcement actions for previous unrelated violations are pending. The commenters argued that the agency is without authority to abridge this enforcement obligation. They cite case law, the legislative history of the Act, and past OSMRE policy to support their contention that sections 517(e), 521(a)(3), and 521(d) of the Act make issuance of an NOV by states mandatory and unconditional for each violation detected, in all cases.

Furthermore, the commenters argued that the rule, if adopted, would be an "open invitation to abuse" by state regulatory authorities, and point to the history of "two-acre" enforcement efforts in Kentucky to support their contention.

OSMRE agrees with this comment when applied to violations of the state program at all but abandoned sites, and has revised the final rule accordingly. For all sites, except those which qualify as abandoned, good cause would not ordinarily exist where a violation of the state program exists, state action is not causing the violation to be corrected, and the state has not taken enforcement action.

Abandoned sites present a more complicated situation. Under the final abandoned sites rule, abandoned sites include those at which surface and underground coal mining and reclamation activities have ceased, an

unabated failure-to-abate cessation order remains outstanding (or service of a notice of violation could not be completed), alternative enforcement is proceeding, permits no longer are current, and bond forfeiture is proceeding. These criteria describe sites at which the regulatory authority has been unsuccessful at achieving reclamation despite diligent efforts to do so. Under the abandoned sites rule, sites that are classified as abandoned may be inspected at a frequency of less than eight partial and four complete per year because inspections of such sites are unlikely to lead to the resolution of problems at the sites.

In the abandoned sites rule, OSMRE provides in 30 CFR 843.22 that a notice of violation or cessation order need not be issued for a violation at an abandoned site if abatement of the violation is required under any previously issued notice or order. Thus, if in response to a ten day notice a state regulatory authority informs OSMRE that the site in question is an abandoned site and an earlier order requires abatement of the violation detected, then good cause would exist for no further enforcement action to be taken.

The preamble to the abandoned sites rule makes it clear that in situations not covered by § 843.22, the regulatory authority would continue to be obligated to take enforcement action when it observed a violation at an abandoned site, even though the issuance of either a notice of violation or a cessation order is unlikely to cause additional reclamation and would almost certainly generate uncollectible penalties. OSMRE reached this conclusion because it concluded that the Act mandates the regulatory authority to take such action.

With regard to the present rule, if in response to a ten day notice a state regulatory authority informs OSMRE that it has classified a site as abandoned because it meets the criteria enumerated above, the Secretary may consider such a response good cause under section 521(a)(1). Good cause would exist because a Federal inspection followed by Federal enforcement action would likely be as fruitless as state enforcement action in such circumstances.

Proposed § 842.11(b)(1)(ii)(4)(vi). The final rule does not include the provision proposed as § 842.11(b)(1)(ii)(4)(vi). As proposed, that paragraph provided that a state would have good cause for failing to take action to cause a violation to be corrected if "extraordinary circumstances preclude or render futile enforcement against the possible violation." The state would have had to

show that further enforcement action would not likely cause the correction of a violation in such circumstances or serve any other useful purpose.

One commenter expressed concern that including "extraordinary circumstances" as good cause is "neither clear nor adequately justified in the proposal." The commenter also stated that in the case of abandoned sites, the proposal would allow a state to take no enforcement action simply because of an operator's inability to comply, contradicting 30 CFR 843.18(a), which provides that no cessation order or notice of violation issued under Part 843 may be vacated because of inability to comply.

Another commenter supported the provision but recommended replacing the word "extraordinary" with language reflecting merely that further enforcement actions are unlikely to achieve compliance. The commenter cited cases where enforcement action is futile even though all available enforcement actions have not been exhausted. As an example of such a situation, the commenter points to interim program violations that remain because the operator has fled or has declared bankruptcy and has no assets with which to correct the violations.

After considering the comments, OSMRE has concluded that the proposed category was too broad. The category was originally intended to provide flexibility in responding to unique situations that can occur in enforcing the Act at mining operations. The result of the item, however, would have been to create a standard which would not necessarily have covered all possible situations which constitute good cause and which could have included circumstances that do not constitute good cause. OSMRE has decided not to adopt a sixth category because it is not possible to specify precisely what would be contained in it.

The five items listed in § 842.11(b)(1)(ii)(B)(4) as constituting good cause for a state's failure to act are not meant to be exhaustive. However, any other situations that will constitute good cause will have to be determined on a case-by-case basis under the standard of whether they are arbitrary, capricious or an abuse of discretion under the state program.

Requests for Additional Examples. In addition to the comments on the specific instances proposed as constituting good cause, OSMRE received a number of comments asking that other examples be included as well. Some asked that specific situations be included, while

other merely asked for additional, but unspecified, examples.

A large number of the commenters requested the addition of four specific categories of good cause. Those were: (1) Prior state administrative or judicial adjudication that a condition or practice does not constitute a violation of the state program; (2) the state has terminated its notice of violation for the same condition identified in a ten day notice; (3) state enforcement action is currently under administrative or judicial appeal; and (4) the state has released the reclamation bond. The commenters pointed out that these are examples where the state has taken some action. The regulations authorizing federal enforcement, the commenters said, were promulgated to address only those situations where a state fails or refuses to take action in the first instance, not for purposes of overriding state action or decisions.

OSMRE agrees that prior adjudications that a condition or practice does not constitute a violation of the state program would be good cause for the state not to take action. That situation, however, is already included in the first category of the proposed rule, namely, that "under the state program, the possible violation does not exist". Before concluding that good cause has been shown, OSMRE will ensure that the possible violation which is the subject of the ten day notice would be governed by the prior adjudication.

The issuance by the state of a notice of violation, and the subsequent termination by the state of the notice of violation, where the violation is fully abated, would constitute appropriate action on the part of the state—not good cause for failure to act. If, on the other hand OSMRE determines that the termination was premature, the issuance and termination would constitute neither appropriate action nor good cause for failure to act.

The next situation suggested by the commenters—state enforcement action under administrative or judicial appeal—would represent appropriate action in the absence of a stay because the filing of an appeal does not stay a permittee's obligation to abate a violation. Moreover, if a permittee received temporary relief based upon the state counterpart to the SMCRA standards, good cause would exist under section 842.11(b)(1)(ii)(B)(4)(iv), which provides that good cause for failing to take appropriate action includes the state regulatory authority being precluded from acting on the possible violation by an administrative

or judicial order based on SMCRA's temporary relief standards.

The issue of bond release—the fourth item the commenters asked to be added—turns on the point at which a state regulatory authority has concluded that reclamation has been achieved in accordance with the state program, and an operation is no longer a surface coal mining and reclamation operation as defined in the Act. Whether bond release constitutes good cause for failing to take appropriate action, will depend on the conditions surrounding the bond release. Under normal circumstances, bond release would constitute good cause. Where charges are made of collusion or impropriety in the bond release, however, OSMRE would evaluate how the state responds to those charges in determining whether the state response is arbitrary, capricious or an abuse of its discretion. A separate final rule is currently being prepared which will address the relation between final bond release and termination of regulatory jurisdiction.

5. Informal Review Process

The final rule adds an informal review process in § 842.11(b)(1)(iii). The final rule is substantially the same as was proposed. Changes are discussed below.

Request for review. Section 842.11(b)(1)(iii)(A) requires OSMRE's authorized representative to notify the state regulatory authority immediately in writing of any determination by OSMRE that the state has failed to take appropriate action to cause a possible violation to be corrected or to show good cause for such failure. The rule allows the state regulatory authority five days to request an informal review by the Deputy Director of OSMRE. The state request must be received by OSMRE within five days of the state's receipt of OSMRE's written determination.

Inspection stayed. Section 842.11(b)(1)(iii)(B) provides that no federal inspection will take place, nor will a notice of violation be issued, regarding the ten-day notice until the time to request informal review has passed, or, if informal review has been requested, until the deputy director has completed the review. The provision is the same as that proposed except for the addition of a clarification that the stay in inspecting during the time allowed for requesting review will not apply if a cessation order is required under § 843.11 or if the state has waived its right to appeal by failing to respond to the ten-day notice.

Decision on review. Section 842.11(b)(1)(iii)(C) provides that OSMRE's deputy director will review

the written determination of the authorized representative and the state's request for informal review, and will either affirm, reverse, or modify the determination within 15 days. A written explanation of the decision will be provided to the state and to the permittee, and if the decision is to affirm the previous decision, the deputy director will immediately order a federal inspection or reinspection. If the ten-day notice resulted from a request for a federal inspection under 30 CFR 842.12, the person requesting the inspection will be notified of the deputy director's decision.

One commenter asserted that the times proposed for requesting review and for the deputy director to make a decision are too restrictive. That commenter suggested that the regulatory authority should have fifteen days instead of five to file a request for review of the written determination. In addition, the commenter suggested the deputy director should have thirty days instead of fifteen to either affirm, modify, or reverse the written determination. The commenter stated that the suggested time requirements are similar to other filing requirements in the Act, and would increase the likelihood that disagreements between the state and OSMRE can be settled without involving the deputy director.

Another commenter also expressed concern that five days is insufficient time in which to file a written request for an informal review if that notice must be delivered to Washington, D.C. or otherwise out-of-state. The commenter recommended expanding the time limit from five to ten days. The commenter also suggested adding a provision that would authorize the deputy director to request additional information within a reasonable time.

OSMRE disagrees with the suggestion for expanding the time to request review. While the agency recognizes that five days is a short period of time, any longer delay could increase the potential for environmental harm. To help alleviate the time constraints, however, a provision has been included in the final rule allowing a state to submit a request for review by the deputy director either to the nearest OSMRE field office or to Washington, DC.

OSMRE also disagrees with the suggestion that the deputy director needs to be expressly authorized to request additional information. The written record of the ten-day notice, the state response, the authorized representative's written determination on the adequacy of the state response,

and the original inspection (if applicable) should be sufficient for the deputy director to render a fair decision. If these are not sufficient, however, additional information can be required under the rule.

A group of commenters supported the proposed provision but requested that the permittee be afforded the opportunity to submit written information to the Deputy Director to assist in evaluating the state request for review. Another commenter asked that the permittee be allowed to request review of the written determination, even if the state regulatory authority chooses not to request informal review.

A separate group of commenters argued that because Congress intended that citizens be involved in administrative processes under the Act, any informal review procedure must provide the opportunity to participate to persons having an interest that may be adversely affected by the review. The group also sought clarification of the rule's impact on the public's right, provided by other sections of the Act, to seek informal and formal review of a decision by OSMRE not to take inspection or enforcement action.

OSMRE disagrees with both the request for public and permittee participation in the informal review process. A ten-day notice is not an enforcement action. Instead, it is a communication device between OSMRE and the states. The informal review process is intended as a mechanism for states and OSMRE to resolve programmatic disagreements prior to mine-specific federal intervention. Public participation, whether for private citizens or for permittees, could tend to convert the process into an adversarial proceeding, which could delay a decision and unnecessarily divert the focus. Thus OSMRE has decided not to provide additional participation in the informal review process.

To the extent that OSMRE decides not to inspect, based on a state having taken appropriate action or shown good cause, 30 CFR 842.15 continues to apply and provides that any adversely affected person may ask the OSMRE Director for informal review of a decision not to inspect. Thus the public is protected.

Similarly, if a state chooses not to request review of a determination that it had not taken appropriate action or shown good cause or, if, following such a review, the OSMRE deputy director concludes that a federal inspection is required, a potentially affected permittee is not aggrieved. The permittee will continue to have the right to seek administrative review of any

federal NOV's that may later be issued to it.

Several commenters expressed support for § 842.11(b)(1)(iii). They asserted that if federal inspection and enforcement proceeded during the pendency of a state appeal, the possibility would arise to simultaneous review by the deputy director and the Office of Hearings and Appeals (OHA) if the permittee appealed the citation under Section 525. Although OSMRE appreciates the commenters' support, the purpose of the rule is not so much to avoid simultaneous review, but to avoid making the deputy director's review meaningless. It does not make sense for a federal inspection to be conducted while the deputy director is reviewing the determination which, if not reversed, will lead to a federal inspection.

Other commenters expressed concern with the provision. One pointed out that while OSMRE's determination as to the adequacy of the state response may sometimes be made solely on the record in the case, in other cases it would be difficult to make a proper evaluation without an inspection. The commenter cites as an example a situation where a state claims that an alleged violation does not exist. In such a case, the commenter points out, it may be very difficult for OSMRE to evaluate such a response without first-hand knowledge about the conditions at the site. To resolve the problem, the commenter suggests that OSMRE make inspections for "information gathering purposes only" that would not lead to issuance of a federal NOV to the permittee.

OSMRE has considered the comment, but has concluded the proposed change would defeat the purpose of the inquiry which is to decide whether a federal inspection is required, or to defer to the state. The Secretary's duty to inspect under section 521(a)(1) arises only after the Secretary makes a determination as to the adequacy of the state response. It does not make sense for OSMRE to conduct an inspection only to decide whether to conduct an inspection.

Another group of commenters noted that while they have no objection to a review procedure per se, they consider the proposed procedure illegal because it delays the "mandatory obligation of OSMRE to conduct a federal inspection on the eleventh day after the ten-day notice is sent and to take all required enforcement until such review is completed." Another commenter pointed out that totaling the 10 days allowed for a state to investigate after receiving a ten-day notice, the five days to appeal a written determination of inappropriate response, and the fifteen days for the deputy director to review

the issue, allows 30 days to elapse, during which no federal inspection will take place. This, the commenter asserted, does not include additional time for mailing delays or time needed for the authorized representative to make the initial written determination as to whether the state response was appropriate. This time frame, the commenter stated, falls outside the time allowed under section 521(a)(1) of the Act.

OSMRE appreciates the commenters' concerns over the time required to implement the review procedure, but concludes the time is justified and is consistent with the Act.

As an initial matter, the commenters misinterpret the time limits imposed by the Act. Two time directives are set forth in section 521(a)(1) of the Act, which states if "the state regulatory authority fails within ten days after notification" to take appropriate action or show good cause, then the Secretary shall immediately order federal inspection. The "ten days" requirement establishes the response time for state regulatory authorities, but creates no duty upon the Secretary.

The Secretary's responsibility is "immediately" to order a federal inspection when he determines that the state did not take appropriate action or show good cause for such failure. Until such a determination is made, no obligation exists to conduct a federal inspection. Given the statutory goal of protecting the environment, the Secretary's determination must be made expeditiously. The statute does not specify, however, that the determination of the adequacy of the state response, or that the follow-up inspection, must occur on the eleventh day following notification to the state.

Sound reasons exist for the Secretary to establish procedures to assist him in determining the adequacy of the state response. Under the Act, state regulatory authorities bear the primary responsibility for enforcing the law. Therefore, the Secretary should not take lightly any determination that a state has abused its discretion. Where programmatic concerns surface, it is entirely appropriate to allow the state to express its views and involve agency policymakers in the decision. The review procedure does just that. The time provided for the review has been kept to a minimum, however, to assure that possible violations of state programs are not left uncorrected for any longer than necessary.

In promulgating this rule, OSMRE views as key the fact that abatement of significant imminent harm to the

environment or danger to the public health and safety is unaffected by the review procedure and will continue under 30 CFR 842.11(b)(1)(ii)(C) and 843.11. Because of that protection, as well as for the other reasons discussed above, OSMRE believes the limited delays caused by the review process are reasonable.

Section 842.11(b)(1)(iii)(C) is identical to that proposed, except for editorial revisions and one change made in response to comments. Those comments were from a group of commenters who supported the proposed provision, but asked that the permittee be sent a copy of the decision by the deputy director, much as a copy of the ten-day notice to the state must be sent to the permittee.

OSMRE agrees with this comment, and has included in the final rule a provision that the permittee will be furnished with a copy of the deputy director's decision. Such an allowance is in keeping with 30 CFR 843.12(a)(2), which provides that the permittee be given copies of the ten-day notice itself. Providing a copy of the decision reached in the informal review will tend to increase communication among the parties.

One commenter expressed concern that the informal review process established in the proposed rule did not specify the basis on which the deputy director will affirm, reverse, or modify the written determination of the authorized representative. That basis, however, is provided by the rule now being promulgated—namely, whether the state action was arbitrary, capricious, or an abuse of discretion under the state program.

C. Part 843—Federal Enforcement

The final rule amends § 843.12(a)(2) to make OSMRE's actions under that section subject to the informal review process established in § 842.11(b)(1)(iii). Thus OSMRE will not reinspect or issue an NOV under that section during the pendency of the review process.

The final rule adopts the language as it was proposed for § 843.12(a)(2), with one conforming change. In the final clause of the first sentence of § 843.12(a)(2), OSMRE has deleted the word "enforcement." This was necessary to make section 843 conform with § 842.11. Thus, the final rule provides that the authorized representative shall give a ten-day notice to the state and to the permittee so that appropriate action can be taken by the state. Appropriate action is defined in § 842.11(b)(1)(ii)(B)(3).

Comments on proposed § 843.12(a)(2) fell into two general categories. In the first category, a number of commenters

stated that the Act does not authorize federal NOV's in primacy states at all. They argued that Congress established exclusive regulatory jurisdiction for states that obtain approval of their regulatory programs—not concurrent jurisdiction in the states and the federal government. Therefore, they claim, any reference to allowing federal NOV's in primacy states should be deleted.

OSMRE clearly stated in the preamble to the proposed rule that although it was proposing to amend a portion of § 843.12(a)(2), it was not reopening the issue of its authority to issue NOV's in primacy States. Therefore, the request is beyond the scope of this rulemaking.

In the second category of comments on the section, several commenters recommended that both the final rule and preamble reflect that compliance is measured against the state program, rather than the Act, because they say the Act imposes no duties or obligations upon operators directly. The commenters therefore asked that the word "Act" be deleted in the two places that it appears in proposed 30 CFR 843.12(a)(2).

OSMRE agrees that an operator's compliance is measured against the state program and that notices of violation should be based upon violations of the state program. That is not the context, however, in which the word "Act" is used in § 843.12(a)(2).

The word "Act" appears in § 843.12(a)(2) as one basis for OSMRE giving a written report to the state and the permittee following a federal oversight inspection in a primacy state. In part the section implements section 517(e) of the Act which specifies that each inspector, upon detection of each violation of any requirement of any state program or of the Act must inform the operator in writing and report the violation in writing to the regulatory authority. In addition, section 521(a)(1) of the Act clearly states that ten-day notices are to be issued for possible violations of any requirement of the Act. That is consistent with the purpose of ten-day notices—to be a communication device between OSMRE and the states.

If a state program does not contain a requirement of the Act that it is supposed to contain, the violation of the requirement of the Act results from the state program deficiency and not the conduct of an operator performing in accordance with the state program. In such circumstances, notification to a state that a requirement of the Act is being violated will allow the state program to be amended to include the requirement of the Act.

In addition, the suggestion to delete the word "Act" was not part of the

proposed rulemaking, and is beyond the scope of this rulemaking. For all of these reasons, the word "Act" in 30 CFR 843.12(a)(2) will not be deleted.

The commenters should not be concerned that federal NOV's will be issued in primacy states under § 843.12(a)(2) for factual situations which do not constitute violations of the state program. Under that section, federal NOV's are required only after states fail to take appropriate action or to show good cause. If a state demonstrates that the facts which are the subject of the ten day notice do not constitute a violation of the state program, good cause will have been shown.

III. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has examined the final rule, according to the criteria of Executive Order 12291 (February 17, 1981), and has determined that it is not a major rule within the standards established by the Executive Order. Therefore, no regulatory impact analysis is required.

Federal Paperwork Reduction Act

There are no information collection requirements in the final rule requiring review by the Office of Management and Budget under 44 U.S.C. 3507.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the final rule will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of this rulemaking. The EA is on file in the OSMRE administrative Record at the address listed in the "Addresses" section of this preamble.

Author

The principal author of this rule is Barbara Geigle, Office of Surface Mining Reclamation and enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202/343-4953 (FTS or Commercial).

List of Subjects

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining Underground mining. Accordingly, 30 CFR Parts 842 and 843 are amended as set forth below.

Dated: June 13, 1988.

J. Steven Griles,
Assistant Secretary for Land and Minerals
Management.

PART 842—FEDERAL INSPECTIONS AND MONITORING

1. The authority citation of Part 842 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; and Pub. L. 100-34.

2. In § 842.11, paragraph (b)(1)(ii)(B) is revised and paragraph (b)(1)(iii) is added to read as follows:

§ 842.11 Federal inspections and monitoring.

(b)(1)

(ii)

(B)(i) The authorized representative has notified the state regulatory authority of the possible violation and more than ten days have passed since notification and the State regulatory authority has failed to take appropriate action to cause the violation to be corrected or to show good cause for such failure and to inform the authorized representative of its response. After receiving a response from the State regulatory authority, before inspection, the authorized representative shall determine in writing whether the standards for appropriate action or good cause for such failure have been met. Failure by the State regulatory authority to respond within the ten days shall not prevent the authorized representative from making the determination, and will constitute a waiver of the state regulatory authority's right to request review under paragraph (b)(i)(iii) of this section.

(2) For purposes of this subchapter, an action or response by a State regulatory authority that is not arbitrary, capricious, or an abuse of discretion under the state program shall be considered "appropriate action" to cause a violation to be corrected or "good cause" for failure to do so.

(3) Appropriate action includes enforcement or other action authorized under the State program to cause the violation to be corrected.

(4) Good cause includes: (i) Under the State program, the possible violation does not exist; (ii) the State regulatory authority requires a reasonable and specified additional time to determine whether a violation of the State program does exist; (iii) the State regulatory authority lacks jurisdiction under the State program over the possible violation or operation; (iv) the State regulatory authority is precluded by an administrative or judicial order from an administrative body or court of competent jurisdiction from acting on the possible violation, where that order is based on the violation not existing or where the temporary relief standards of section 525(c) or 525(c) of the Act have been met; or (v) with regard to abandoned sites as defined in § 840.11(g) of this chapter, the State regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the State program.

(iii)(A) The authorized representative shall immediately notify the state regulatory authority in writing when in response to a ten-day notice the state regulatory authority fails to take appropriate action to cause a violation to be corrected or to show good cause for such failure. If the State regulatory authority disagrees with the authorized representative's written determination, it may file a request, in writing, for informal review of that written determination by the Deputy Director. Such a request for informal review may be submitted to the appropriate OSMRE field office or to the office of the Deputy Director in Washington, DC. The request must be received by OSMRE within 5 days from receipt of OSMRE's written determination.

(B) Unless a cessation order is required under § 843.11, or unless the state regulatory authority has failed to respond to the ten-day notice, no Federal inspection action shall be taken or notice of violation issued regarding the ten-day notice until the time to request informal review as provided in § 842.11(b)(1)(iii)(A) has expired or, if informal review has been requested, until the Deputy Director has completed such review.

(C) After reviewing the written determination of the authorized representative and the request for informal review submitted by the State regulatory authority, the Deputy Director shall, within 15 days, render a decision on the request for informal review. He

shall affirm, reverse, or modify the written determination of the authorized representative. Should the Deputy Director decide that the State regulatory authority did not take appropriate action or show good cause, he shall immediately order a Federal inspection or reinspection. The Deputy Director shall provide to the State regulatory authority and to the permittee a written explanation of his decision, and if the ten-day notice resulted from a request for a Federal inspection under § 842.12 of this Part, he shall send written notification of his decision to the person who made the request.

PART 843—FEDERAL ENFORCEMENT

3. The authority citation for Part 843 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; and Pub. L. 100-34.

4. Section 843.12(a)(2) is revised to read as follows:

§ 843.12 Notices of violation.

(a)

(2) When, on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section, an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate action can be taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, subject to the procedures of § 842.11(b)(1)(iii) of this chapter, the authorized representative shall reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation if previous notification was given under § 842.11(b)(1)(ii)(B) of this chapter.

[FR Doc. 88-15670 Filed 7-13-88; 8:45 am]

BILLING CODE 4310-04-M

Thursday
July 14, 1988

Part IV

Federal Emergency
Management Agency

44 CFR Part 300

Disaster Preparedness Assistance;
Grants; Proposed Rule

federal register

FEDERAL EMERGENCY
MANAGEMENT AGENCY

44 CFR Part 300

Disaster Preparedness Assistance;
Grants

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This part prescribes requirements for the implementation of section 201 of the Disaster Relief Act Amendments of 1974, (the Act). Section 201 establishes a mechanism for providing Federal technical assistance to States, local governments and the private sector, and authorizes grants to develop and improve capabilities of State governments to deliver disaster assistance and to prepare for and mitigate hazards to which the grant recipient is exposed. The changes proposed to the existing rule clarify the statutory intent for the Disaster Preparedness Improvement Grant (DPIG) Program.

DATE: Comments due September 12, 1988.

ADDRESSES: Submit comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Gregory S. Jones, Office of Disaster Assistance Programs, FEMA, Room 714, 500 C Street SW., Washington, DC 20472, Telephone: (202) 646-3668.

SUPPLEMENTARY INFORMATION: Section 201 of the Disaster Relief Act of 1974 ("the Act") authorizes matching grants of up to \$25,000 to States for "improving, maintaining, and updating State disaster assistance plans." "Disaster assistance" within the context of the Act includes "programs for both public and private losses sustained in disasters."

Additionally, an essential component of "disaster assistance" and "disaster preparedness" as cited at section 101 of the Act, "Findings, Declarations, and Definitions" and section 201 of the Act "Disaster Preparedness Assistance," is hazard mitigation—the systematic approach to reduce vulnerability to losses and thereby serve the fundamental purpose of the legislation "to alleviate the suffering and damage which results from disasters." The delivery of disaster assistance programs including mitigation planning requires the improvement and maintenance of State plans and procedures to (1) identify the tasks needed to deliver disaster assistance and to avoid or mitigate hazards; (2) make clear

assignments to specific offices to execute those tasks; (3) reflect the State authorities for executing disaster assignments; and, (4) provide for adequate training of personnel in their disaster assignments.

The disaster preparedness improvement grants are intended to support, improve, and maintain such efforts. The delivery of disaster assistance to individuals and communities and efforts to reduce vulnerability to losses may be considered as the major components of a State disaster assistance program. The limited resources in a given year to improve or maintain such State programs requires judicious application of the grants to meeting the State's highest disaster assistance priorities. It is important for States to take advantage of technical assistance resources available from the appropriate FEMA Regional Director to identify areas of highest concern or needed revision and include those priorities in their statements of work as part of the application process for the disaster preparedness improvement grant.

The changes proposed to the existing rule clarify the statutory intent for the Disaster Preparedness Improvement Grant (DPIG) Program. In summary, the proposed changes are:

1. Add a definition of "State" to clarify the intended recipients of the annual grants (commonly referred to as Disaster Preparedness Improvement Grants or DPIG's);
2. Underscore the flexible use of the DPIG's within the light of State disaster assistance needs and capabilities;
3. Removes Part 300.1 *General*, and Part 300.3 *Federal Disaster Preparedness Program* from the rule because they are not essential and renumber the rule accordingly; and,
4. Add a definition of "mitigation" to further clarify the intended usage of the grants.

The benefits to be derived from the proposed rule will be clarification of the appropriate uses of the DPIG's and the separation of program administration requirements which are in 44 CFR Part 13 from the program management requirements contained herein.

The proposed changes apply only to §§ 300.1 through 300.5. Section 300.6 "Earthquake and Hurricane Plans and Preparedness" is not proposed for change by the present initiative. However, it is redesignated as § 300.4. Any changes to this section will be proposed under separate rulemaking initiatives.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this

proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 United States Code 3501 *et seq.* and has assigned OMB Control Number 3067-0123. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503 marked "Attention Desk Officer of FEMA". The final rule will respond to any OMB or public comments on the information collection requirements.

Environmental Considerations

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council of Environmental Quality (40 CFR Parts 1500-1508), FEMA has prepared an environmental assessment for the issuance of proposed regulations implementing section 406 of the Act. This proposed rule is essentially procedural and is intended to clarify and add detail to existing procedures. FEMA has determined, therefore, that there will be no significant impact on the environment caused by issuance of this rule. As a result, an environmental impact statement will not be prepared. Copies of this assessment are available for inspection at: Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472, Telephone (202) 646-4106.

Executive Order 12291, "Federal Regulations"

This rule is not a major rule within the context of Executive Order 12291. It will not have an annual impact on the economy of \$100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

Federalism

Consistent with Executive Order 12612, the proposed rule is intended to assist States and local units of government in reducing vulnerability from recurring or potentially severe natural hazards by supporting disaster preparedness and hazard mitigation planning activities.

This program encourages States to develop their own program initiatives within the limits of authorized activity as allowed by the Act. The proposed rule imposes no additional costs or burdens on the States, but rather, has a long-term Federal and State cost-saving potential.

List of Subjects in 44 CFR Part 300

Disaster assistance.

Accordingly, it is proposed to amend 44 CFR Part 300 Chapter I, Subchapter E as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read:

Authority: 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

§§ 300.1 and 300.3 [Removed]

2. Sections 300.1 and 300.3 are removed.

3. Sections 300.2, 300.4, and 300.5 are redesignated as §§ 300.1, 300.2, and 300.3 respectively and revised to read as follows:

§ 300.1 Definitions.

As used in this part:

(a) "The Act" means the Disaster Relief Act of 1974, as amended 42 U.S.C. 5121 *et seq.*

(b) "Disaster assistance plans" means those plans which identify tasks needed to deliver disaster assistance and to avoid or mitigate natural hazards; make assignments to execute those tasks; reflect State authorities for executing disaster assignments; and provide for adequate training of personnel in their disaster or mitigation assignments.

(c) "Mitigation" means the process of systematically evaluating the nature and extent of vulnerability to the effects of natural hazards present in society and planning and carrying out actions to minimize future vulnerability to hazards to the greatest extent practicable.

(d) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands.

§ 300.2 Technical assistance.

Requests for technical assistance under section 201(b) of the Act shall be made by the Governor or his/her designated representative to the Regional Director.

(a) The request for technical assistance shall indicate as specifically as possible the objectives, nature, and duration of the requested assistance; the recipient agency or organization within the State; the State official responsible for utilizing such assistance; the manner in which such assistance is to be utilized; and any other information needed for a full understanding of the need for such requested assistance.

(b) The request for assistance requires participation by the State in the technical assistance process. As part of its request for such assistance, the State shall agree to facilitate coordination among FEMA, local governments, State agencies and the businesses and industries in need of assistance in the areas of disaster preparedness and mitigation.

§ 300.3 Financial assistance.

(a) The Regional Director may provide to States upon written request by the State Governor or an authorized representative, an annual improvement grant up to \$25,000, but not to exceed 50 percent of eligible costs, except where separate legislation requires or permits a waiver of the State's matching share, e.g., with respect to "insular areas", as that term is defined at 46 U.S.C. 1409a(d). The non-Federal share in all cases may exceed the Federal share.

(b) The improvement grant shall be product-oriented; that is, it must produce something measurable in a way that determines specific results, to substantiate compliance with the grant workplan objectives and to evidence contribution to the State's disaster capability. The following list, which is neither exhaustive nor ranked in priority order, offers examples of eligible products under the Disaster Preparedness Improvement Grant Program:

(1) Hazard mitigation activities, including development of predisaster hazard mitigation plans, policies, programs and strategies for State-level multi-hazard mitigation;

(2) Updates to State disaster assistance plans, including plans for the Individual and Family Grant (IFG)

Program, Disaster Application Center operations, damage assessment etc.;

(3) Handbooks to implement State disaster assistance program activities;

(4) Exercise materials (EXPLAN, scenario, injects, etc.) to test and exercise procedures for State efforts in disaster response, including provision of individual and public assistance;

(5) Standard operating procedures for individual State agencies to execute disaster responsibilities for IFG, crisis counseling, mass care or other functional responsibilities;

(6) Training for State employees in their responsibilities under the State's disaster assistance plan;

(7) Report or formal analysis of State enabling legislation and other authorities to ensure efficient processing by the State of applications by governmental entities and individuals for Federal disaster relief;

(8) An inventory or updated inventory of State/local critical facilities (including State/local emergency operations centers) and their proximity to identified hazard areas;

(9) A tracking system of critical actions (identified in postdisaster critiques) to be executed by State or local governments to improve disaster assistance capabilities or reduce vulnerability to hazards;

(10) Plans or procedures for dealing with disasters not receiving supplementary Federal assistance;

(11) Damage assessment plans or procedures;

(12) Procedures for search and rescue operations; and

(13) Disaster accounting procedures.

(c) The State shall provide quarterly financial and performance reports to the Regional Director. Reporting shall be by program quarter unless otherwise agreed to by the Regional Director.

§ 300.6 [Redesignated as § 300.4]

4. Section 300.6 is redesignated as § 300.4.

Date: July 7, 1988.

Grant C. Peterson.

Associate Director, State and Local Programs and Support.

[FR Doc. 88-15623 Filed 7-13-88; 8:45 am]

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July 14, 1988

Part V

The President

Executive Order 12645—Amending
Executive Order 12364, Relating to the
Presidential Management Intern Program

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Presidential Documents

Title 3—

The President

Executive Order 12645 of July 12, 1988

Amending Executive Order 12364, Relating to the Presidential Management Intern Program

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and in order to improve the Presidential Management Intern Program by providing for the recruitment and selection of an increasing number of outstanding employees for careers in public sector management, it is hereby ordered that Section 3(c)(1) of Executive Order No. 12364 of May 24, 1982, is amended by deleting "two hundred" and inserting in lieu thereof "four hundred".

THE WHITE HOUSE,
July 12, 1988.

Ronald Reagan

[FR Doc. 88-18084

Filed 7-13-88; 11:33 am]

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Lentils

AGENCY: Federal Grain Inspection Service, USDA.¹

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is revising the United States Standards for Lentils to include a U.S. No. 3 Lentil grade designation. The new grade level is being established to bring the U.S. lentil standards in line with standards used by major lentil exporters in the world market.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 98454, Washington, DC 20090-8454, Telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

¹ The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75e; 7 CFR 68.5).

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this final rule does not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Final Action

On June 6, 1988, FGIS proposed to revise Subpart H-United States Standards for Lentils, of the Part 68 regulations to include a U.S. No. 3 Lentil grade designation. The American Dry Pea and Lentil Association (ADPLA), which represents the majority of those persons using the United States lentil standards, had proposed that an additional grade be added to the current lentil standards. Currently, U.S. competitors in the lentil market are effectively selling on the world market a quality lentil slightly below the current U.S. No. 2 grade. The Canadians, for example, label this quality as a Number 3 Canada Lentil. Under the U.S. standards, the same quality is labeled U.S. Sample grade. In order to effectively compete in the world market, ADPLA had requested that FGIS establish a U.S. No. 3 Lentil grade. ADPLA had recommended that the maximum amount of defective lentils total, heat-damaged lentils, and skinned lentils be set at 5.0 percent, 1.0 percent and 10.0 percent, respectively. Skinned lentils result from handling and heat-damaged lentils may occur through drying at too high of a temperature or during storage. All other limits would remain the same as the limits for U.S. No. 2 lentils.

The ADPLA requested that the change be effective by August 1, 1988, so that the grade designation can be used to market the 1988 lentil crop. Accordingly, a 15 day comment period was deemed adequate in order to have new standards, if adopted, in effect at the beginning of the crop year to facilitate the marketing of lentils. Interested

parties were invited to participate in the rulemaking process by submitting written comments on the proposed rule. During the comment period, a total of four comments were received. The four commenters included the United States of America Dry Pea and Lentil Council, the American Dry Pea and Lentil Association, the Washington Association of Dry Pea and Lentil Producers, and the Washington State Department of Agriculture. The commenters who represent the majority of those persons using the United States lentil standards all supported the proposed new grade designation.

In addition to the above, a minor change is being made to an agency reference in § 68.605.

It has been determined that in order to facilitate the marketing of lentils and in order that the grade designation can be used to market lentils at the beginning of the 1988 crop year, good cause is found pursuant to the administrative procedures provisions in 5 U.S.C. 553 to make this final rule effective on August 1, 1988, less than 30 days after publication in the Federal Register.

List of Subjects in 7 CFR Part 68

Administrative practice and procedure, Agricultural commodities, Lentils.

For reasons set forth in the preamble, 7 CFR Part 68 is amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

Subpart H—United States Standards for Lentils

1. The authority citation for Part 68 is revised to read as follows:

Authority: Secs. 202-206, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

§ 68.605 (Amended)

2. Section 68.605 is amended by changing the word "Division" to read "Service."

3. Section 68.607 is revised to read as follows:

§ 68.607 Grades and grade requirements for dockage-free lentils. (See also § 68.606.)

Grade	Maximum limits of—						Minimum requirements—color
	Defective lentils			Foreign material			
	Total (percent)	Weevil-damaged lentils (percent)	Heat-damaged lentils (percent)	Total (percent)	Stones (percent)	Skinned lentils (percent)	
U.S. No. 1	2.0	0.3	0.2	0.2	0.1	4.0	Good.
U.S. No. 2	3.5	0.8	0.5	0.5	0.2	7.0	Fair.
U.S. No. 3	5.0	0.8	1.0	0.5	0.2	10.0	Fair.

U.S. Sample grade: U.S. Sample grade shall be lentils which—

- (a) Do not meet the requirements for the grades U.S. 1, 2 or 3; or
 (b) Contain more than 14.0 percent moisture, live weevils or other live insects, metal fragments, broken glass, or a commercially objectionable odor; or
 (c) Are materially weathered, heating or distinctly low quality.

Date: July 6, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88-15024 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Marketing Service

7 CFR Part 910

(Lemon Regulation 622)

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 622 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period July 17 through July 23, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry. **DATES:** Regulation 622 (§ 910.922) is effective for the period July 17 through July 23, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action on the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing order issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (17 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on July 12, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 7-5 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open

meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 46 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.922 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.922 Lemon Regulation 622.

The quantity of lemons grown in California and Arizona which may be handled during the period July 17, 1988, through July 23, 1988, is established at 400,000 cartons.

Dated: July 13, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-10089 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 945

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 945 for the 1988-89 fiscal period.

Authorization of this budget will allow the Idaho-Eastern Oregon Potato Committee to incur expenses necessary to administer this program. This action will designate that funds to administer this program will be derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1988 through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 945 (7 CFR Part 945) regulating the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 3,650 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee

and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The recommended assessment rate is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

A proposed rule was published in the Federal Register (53 FR 19000, May 26, 1988). That document contained a proposal to add § 945.241 to establish expenses of \$76,900 and an assessment rate of \$0.0026 per hundredweight for the Idaho-Eastern Oregon Potato Committee for the fiscal year beginning August 1, 1988. The proposal was based on an initial budget recommendation made in March. That rule provided that interested persons could file comments through June 27, 1988.

One comment was received from the Idaho-Eastern Oregon Potato Committee. That comment was based on an unanimous vote at a meeting held on June 8, 1988, when the recommended budget was revised to \$82,200. The principal addition to the budget is the purchase of a computer, printer and software for \$4,320. The assessment rate recommendation of \$0.0026 per hundredweight of potatoes was unchanged. That rate is the maximum permitted under the order, and has remained the same for over two decades. The revenue from assessments is revised to be 21 million hundredweight at \$54,600, instead of 20 million hundredweight at \$52,000. The fees for services increases from \$1,200 to \$3,600. Assessment income (\$54,600), fees (\$3,600), interest (\$1,000), and reserve (\$23,000) will be adequate for budgeted expenses. By the end of the fiscal period the reserve fund is expected to total \$250.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits

derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes (Idaho and Oregon).

For the reasons set forth in the preamble, 7 CFR Part 945 is amended as follows:

PART 945—POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1-19, 46 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 945.241 is added to read as follows (this section prescribes the annual assessment rate and will not be published in the Code of Federal Regulations):

§ 945.241 Expenses and assessment rate.

Expenses of \$82,200 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of \$0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: July 12, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-15998 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 998

(Docket No. AMS-FV-88-066)

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Incoming and Outgoing Quality Regulations and Terms and Conditions of Indemnification for 1988 Crop Peanuts**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule changes the current incoming and outgoing quality regulations and the terms and conditions of indemnification for 1988 crop peanuts. Two changes will be made in current incoming quality regulations. The first change will limit the quantity of loose shelled kernels in farmers' stock peanuts which can be acquired by handlers to improve the quality of storage peanuts and peanuts ultimately sold for edible use. The second will allow handlers to acquire peanuts with higher moisture levels in recognition of industry practices. With regard to outgoing quality regulations, the screen sizes used in grading minimum quality peanuts will be increased to remove small kernels. Such kernels tend to be immature, contribute to quality problems, and are not as flavorful as larger kernels. These changes are intended to improve the minimum quality of peanuts available for edible channels. The final change regarding indemnification will streamline the clearance procedures used in making indemnification payments to handlers incurring losses in disposing of rejected peanuts.

EFFECTIVE DATE: Applicable to the 1988 crop peanuts handled after July 15, 1988.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 [7 CFR Part 998; 53 FR 20291, June 3, 1988], regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 67 handlers of peanuts subject to regulation under Peanut Marketing Agreement 146 [7 CFR Part 998], and there are about 46,950 peanut growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest, covered under the agreement. These areas cover 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, peanut production in 1987 is expected to total 3.6 billion pounds, 3.1 percent less than 1986, and 18.6 percent less than the record 1984 production of 4.4 billion pounds. The 1987 production value is expected to be \$1.02 billion; the 1986 production value was \$1.07 billion.

The objective of the agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The peanut marketing agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with practically all U.S. shellers participating. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to nonedible uses. Each lot of peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the

Department of Agriculture or in laboratories approved by the Peanut Administrative Committee. The committee works with the Department of Agriculture in administering the marketing agreement program. The sampling and chemical analysis quality control programs are administered by the Department of Agriculture. Having complied with these requirements, provision is made for indemnification of sheller losses if the committee or Food and Drug Administration (FDA) deems the peanuts unsuitable because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the agreement.

The incoming quality regulations specify the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulations require shellers to mill peanuts to meet certain quality specifications before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in this operation. Each lot of milled peanuts also must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

Notice of the changes in the incoming and outgoing quality regulations and indemnification procedures were unanimously recommended by the committee for 1988 crop peanuts and were published in the June 9, 1988, issue of the *Federal Register* [53 FR 21668]. Comments were invited until June 24, 1988. Several comments were received for and against the proposed changes, and some commenters suggested modifications. The comments are discussed thoroughly later in this final rule.

The 1988 incoming quality regulations will be changed in two ways from the 1987 regulations. Paragraph (d)(1) of § 998.100 will be changed to provide that no handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, unless the peanuts are held separately until milled or shipped directly to a plant for prompt shelling. This change is intended to improve the quality of lots of peanuts milled for human consumption by limiting the quantity of loose shelled kernels in each lot. Experience has

shown that loose shelled kernels tend to have a higher incidence of aflatoxin than other components of farmers' stock peanuts. Loose shelled kernels are peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

The second change in the current incoming regulations will allow handlers to acquire or receive peanuts which have been dried to not more than 10.49 percent moisture. Under paragraph (b)(1) of § 998.100 of the current incoming quality regulations, generally peanuts must be dried to 10.00 percent moisture and moisture determinations on farmers' stock peanuts are required to be rounded to the nearest whole number, except that when the moisture level is 10.01 percent to 10.49 percent, the moisture determination is required to be carried to the hundredths place. According to the committee, this requirement has placed an undue burden on producers because their peanut drying equipment is not engineered to the point of drying peanuts on the farm with a maximum of 10 percent moisture without overdrying. This has resulted in an excessive amount of splitting during the milling process, which is not desirable. The change in the moisture limit, and the elimination of the exception concerning moisture determinations for farmers' stock peanuts to be carried to the hundredths place is expected to correct this problem without causing quality problems during storage.

A major user of peanuts favored the proposed incoming actions as a means of minimizing the risk of aflatoxin contamination in peanuts used in the production of peanuts and peanut products. This user, however, favored lowering the maximum limit for loose shelled kernels below the 14.49 percent level proposed. In his comment, this user indicated that industry operating procedures suggested a level closer to a five percent level.

This is the first time that the committee has recommended setting such a limit on loose shelled kernels. The committee believes the 14.49 percent level is a reasonable tolerance because it will foster a measure of quality control without unduly burdening producers and handlers. It is expected that as experience is gained in applying this tolerance, adjustments may be made to the tolerance to further advance the objective of fostering consumer confidence in the wholesomeness of edible peanuts.

Several changes were proposed in the 1988 outgoing quality regulations from those in effect for 1987 crop peanuts. One proposed change increased the

sizes of the slotted screens used for determining fall through (fall through includes sound split and broken kernels and whole kernels which pass through specified screen openings and must be disposed of in inedible outlets) in minimum quality whole kernels. In addition, the table in paragraph (a) of § 998.200 was proposed to be changed to specify U.S. No. 1 screen-sizes (slotted) for all types of whole peanuts, including those in No. 2 Virginia. Currently, only screens with round openings are specified and used for determining fall through for split, broken, and whole kernels of No. 2 Virginia type peanuts.

The minimum size screen openings for whole Runner type peanuts were proposed to be changed from a $1\frac{1}{4}$ x $\frac{3}{4}$ inch slot to a $1\frac{1}{4}$ x $\frac{3}{4}$ inch slot, for whole Spanish and Valencia type peanuts from a $1\frac{1}{4}$ x $\frac{3}{4}$ inch slot to a $1\frac{1}{4}$ x $\frac{3}{4}$ inch slot, and for whole Virginia type, including No. 2 Virginia peanuts, from a $1\frac{1}{4}$ x 1 inch slot to a $1\frac{1}{4}$ x 1 inch slot. With these changes, No. 2 Virginia type peanuts would be graded using a $1\frac{1}{4}$ inch round screen for split and broken kernels and $1\frac{1}{4}$ x 1 inch slotted screen for whole kernels. The proposed use of slotted screens in determining fall through of whole kernels in No. 2 Virginias would cause all Virginia type peanuts to be graded similarly.

The screen opening changes were proposed to improve the minimum quality available for edible trade channels. Research data which has been presented by scientists at North Carolina State University and the National Peanut Research Laboratory in Dawson, Georgia, clearly identify damaged kernels, loose shelled kernels and small immature kernels as the highest risk components in *Aspergillus Flavus* mold contamination. The screen size changes for all types of peanuts would eliminate the small kernels, which tend to be immature, from edible channels. This would lessen the chances of unwholesome peanuts entering such channels and would improve the flavor of peanuts and peanut products, according to the committee and the researchers.

In comments, representatives for some peanut product manufacturers and some peanut processors contended that the screen size changes (i.e., the changes in the minimum size requirements) would eliminate a sizable volume of peanuts which are currently being used, and raise peanut prices. Processors also indicated that this action would cause them financial problems because they have made long term commitments into 1988-89 to supply peanut butter and other products using the peanuts to be

removed from edible use. The proponents of the action acknowledged that some impact on supply will occur. However, they indicated that this action continues the industry's goal of providing wholesome peanuts to edible channels that can be used with confidence. The intent of removing small whole kernels from edible channels is to eliminate a category of peanuts that is known to be susceptible to *Aspergillus Flavus* mold and aflatoxin.

With regard to the supply and price conditions, these changes are expected to remove five percent or less of the 1988 crop from edible channels based on shipments from 1976 to 1985. Hence, the effect of these changes on the total supply of edible quality peanuts for domestic use is expected to be minimal and no significant effect on the price of better quality peanuts is expected because of these changes.

Peanut yields have been sharply below trend or the past two years. This has resulted in short crops. With these short crops, prices for the better grades of shelled peanuts advanced sharply from the two preceding years when more normal crops were harvested. The prices for low quality peanuts showed less response to the smaller supplies so the difference in prices between better quality U.S. No. 1 peanuts and minimum standard peanuts increased. In the 1984 and 1985 seasons when yields were near normal, the difference in f.o.b. prices between U.S. No. 1 runner type peanuts and $1\frac{1}{4}$ runners (i.e., the peanuts to be eliminated from edible channels by this action) was in the range of 1 to 9 cents per pound. With the short crops in 1986 and 1987, this difference increased to 17 to 24 cents per pound. Runner type peanuts are the major commercial type produced, comprising about 75 percent of the production.

If yields return to more normal levels in 1988, production should be sharply higher than the short crops in 1986 and 1987. Since the yields in 1986 and 1987 were both more than 15 percent lower than the average yield in 1984 and 1985, a return to more normal yields would have a much greater impact on supplies than the elimination of whole kernels which are smaller than the U.S. No. 1 size. As indicated in the proposal, in the last 25 years, dry weather has not caused similar reductions in yields for three consecutive years.

One peanut butter processor acknowledged the potential for aflatoxin problems with the smaller peanut kernels indicating that his firm has all such peanuts blanched to assure their quality for edible use. All peanuts for peanut butter are blanched during some

part of the manufacturing process. However, blanching itself does not remove aflatoxin; it merely makes aflatoxin removal easier by exposing the surface discoloration associated with the problem.

Aside from aflatoxin, the smaller peanuts proposed to be removed tend to be immature and do not have as good a flavor as the larger, more mature peanuts. Hence, the screen size changes should help the peanut industry make better tasting peanuts available to edible market channels.

This processor also indicated that the price of the small-sized 1/4 runner peanuts recently rose principally because of the proposed screen size changes. Departmental peanut market news reports indicate that the prices of the peanuts have risen about 10 cents per pound since 1987. However, prior to this adjustment, the prices for these peanuts were at unusually low levels when compared with previous seasons. Therefore, the price change was not unexpected and in any event cannot be solely attributed to the proposal.

This processor and others also indicated that firms which have used the smaller peanuts scheduled to be eliminated for use would no longer be able to provide consumers with good nutritious peanut butter at a cost substantially below the major brands. Peanut prices may increase because of this action, but, as indicated earlier, any price increase for the better quality peanuts is not expected to be substantial.

This processor also indicated that the screen changes would cause them financial problems because they have made long term commitments into 1988-89 to supply peanut butter and products using the peanuts to be eliminated from edible channels by this action. Because this action addresses quality concerns with regard to aflatoxin, the Department concludes that consumer food quality concerns should take precedence over commitments to deliver lower quality peanuts. It is likely that better quality peanuts can be substituted for the lower quality peanuts in these agreements with corresponding price adjustments.

Another manufacturer of peanut products stated that his firm always tries to ensure that only wholesome peanuts enter the edible market channels. This manufacturer stated that the increase in screen sizes as proposed would lessen the likelihood that unwholesome nuts would be consumed as edible material. He has indicated that the proposal to limit the percentage of allowable loose shelled kernels in farmers' stock peanuts would improve the quality and storability, and help

ensure that only the better quality peanuts reach the consumer.

This manufacturer stressed the importance of peanut industry unanimity in support of efforts to improve the quality of peanuts and to ensure that only the very best quality peanuts be allowed to reach the consumer.

An association composed of all but one of the commercial peanut shellers, with facilities in Georgia, Florida, and Alabama, stated that its members supported all of the proposed changes relating to quality changes. This association indicated that quality should be a concern for all enterprises in the United States, but particularly with reference to those dealing in food consumed by the public. Its members feel that the proposed actions are a very positive step forward in improving the quality of the peanuts consumed by the public and urged that the proposed rule changes be adopted.

A national association which represents 90 companies who manufacture chocolate and confectionery products also submitted a comment. According to the association, the confectionery industry is the third largest user of peanuts in the United States, and accounts for about 20 percent of domestic edible usage or 330 million pounds annually. The association supported the committee's efforts to improve quality. Another association representing roasters and packers of peanuts, peanut butter, peanut butter cracker sandwiches, and other peanut products questioned the Department's conclusions on the price impact of the proposed screen size changes.

At this time, it appears that the size of the 1988 peanut crop is dependent upon the growing conditions between now and the harvest. If growing conditions are favorable in the major production areas, yields should be more normal and supplies adequate. If growing conditions deteriorate, as has been true during the last two years, yields will again be down and supplies tight. In any case, whether yields in 1988 are up or down, the supply of peanuts removed from edible channels by the proposed screen size changes will have less of an impact on supplies and prices than the low yields have had in the past two years (as stated earlier, yields in 1986 and 1987 were off about 15 percent from those in 1984 and 1985).

The Department's conclusion that the proposed screen size changes would not materially affect the price of better quality peanuts was premised on the fact that the quantity scheduled to be removed only represented about five

percent of the edible peanuts and that the market effect of that would be less than the impact caused by the 15 percent reduction in yields the last two years. Moreover, reported planting intentions for 1988 were somewhat higher than those a year earlier and a return to more normal yields and larger crops would provide enough peanuts for edible market channels.

It is difficult to predict precisely the price increases that may occur. However, the Department concludes that the quality assurance goals expected to be achieved by the proposed screen size changes justify possible price increases. The Department believes that the recommended screen size changes address the potential aflatoxin problem in a sound and reasonable manner.

A major user of peanuts agreed with the committee that the removal of small, immature kernels will lessen the risks of aflatoxin contamination and off-flavor in peanuts and peanut products. This commenter supported the industry's efforts, stating that the proposed regulations were necessary to engender continued consumer confidence in the wholesomeness of peanuts and peanut products in general. The commenter felt that these changes will result in long-term benefits to peanut growers, shellers, users, and most importantly, to the consumers who buy the product. He also stated that the proposed change in inspection procedures (i.e., the screen size changes) will not materially affect the market for higher quality edible peanuts.

A national association of manufacturers of food products derived from or containing peanuts also supported the proposed screen changes characterizing them as a significant step to address legitimate concerns regarding the presence of aflatoxin in peanuts. This association reported that its members utilize about two-thirds of the annual domestic production of edible peanuts. The association also favored a lower tolerance for loose shelled kernels.

With regard to the change in inspection procedures to remove small, immature kernels, this association stated that this proposed action will, in its opinion, remove a major source of mold in both raw peanuts and peanut products. It also agreed with the Department's view that the removal of these peanuts (which represent about five percent of all edible quality peanuts) from edible market channels will not materially affect the market for better quality peanuts, but will increase

consumers' confidence in peanuts as a wholesome food.

Another comment from a firm which manufactures, sells, and distributes a major brand of peanut butter and nut products commended the committee for recommending the quality regulation changes regarding the loose shelled kernel content in farmers' stock peanuts and the moisture content limit in such peanuts. This firm also supported the recommended outgoing quality regulation change as a means of reducing the incidence of aflatoxin introduced into the food chain as well as off-flavors. It believes that the efforts of the committee will continue to assure the consumer of U.S. produced peanuts of a high quality product.

After analyzing all of the comments for and against the proposed loose shelled kernel content tolerance, the moisture tolerance, and the screen size changes, the Department has determined that the changes should be adopted as proposed to further the industry's objective of providing good quality peanuts to the public and of maintaining its good quality image.

One change is made in the Terms and Conditions for Indemnification for 1988 crop peanuts. This change will streamline the clearance procedures in making indemnification payments to handlers incurring losses due to aflatoxin. This will be done by paying handlers "quota" indemnification prices on eligible poundage up to 60 percent of the handler's net quota farmers' stock acquisitions. Sixty percent is the conversion factor for converting farmers' stock to shelled peanuts. This limitation will insure that no handler receives indemnification payments at quota price levels for more peanuts than were actually acquired as quota peanuts. Approved claims on poundage in excess of that amount will be paid at "additional" indemnification prices, which are lower than quota prices. This distinction reflects market price differences between "quota" and "additional" peanuts.

The current clearance process requires a great deal of staff time. The change is intended to reduce the amount of time the committee's staff now spends on handling certain indemnification claims and to make the system more efficient. This change will not be detrimental to handlers or the program, and no comments were received in opposition to this change.

It is the Department's view that these changes will help the peanut industry in providing only good quality, wholesome peanuts for edible channels, which is vital to maintaining and expanding markets for peanuts and products such

as peanut butter, cookies, and candies. The change in the moisture determination requirements will relieve an undue burden on peanut producers and, as such, will not result in additional costs. The limitations on loose shelled kernels are expected to improve the quality of storage peanuts, thereby providing good quality peanuts for edible channels and reducing the committee's indemnification costs.

Based on the above, the Administrator of AMS has determined that the changes will not have a significant economic impact of a substantial number of small entities.

The final rule does not increase the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) which have been previously approved by the Office of Management and Budget (Approval No. 0581-0067).

After consideration of all relevant information presented, including the committee's recommendations, the comments received in favor and opposition, and other information, it is found that the regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The harvest and shipment of 1988 crop peanuts is expected to begin the third week of July; and (2) growers and handlers should be given as much advance notice as possible of these regulations and procedures applicable to 1988 crop peanuts so they can plan accordingly.

List of Subjects in 7 CFR Part 998

Marketing agreement, peanuts.

For the reasons set forth in the preamble, 7 CFR Part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 [53 FR 20291, June 3, 1988] continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 998.100, paragraph (b)(1), and paragraph (d), are revised for 1988 crop peanuts to read as follows:

§ 998.100 Incoming quality regulation—1988 crop.

(b) Moisture and foreign material.

(1) Moisture. Except as provided under paragraph (e), *Seed Peanuts*, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. On farmer's stock, such moisture determinations shall be rounded to the nearest whole number; or shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(d) Loose shelled kernels.

No handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be received or acquired if they are held separately until milled or shipped directly to a plant for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Handlers may separate from the loose shelled kernels received with farmers' stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner—1/4 x 3/4 inch; Spanish and Valencia—1/4 x 3/4 inch; Virginia—1/4 x 1 inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided*, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the outgoing quality regulation. If the kernels which ride the prescribed screens are not separated from the kernels which do not ride the prescribed screens, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

3. In § 998.200, paragraph (a) *Shelled peanuts*, is revised for 1988 crop peanuts to read as follows:

§ 998.200 Outgoing quality regulation—1988 crop peanuts.

The following modify or are in addition to the peanut marketing agreement restrictions of § 998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this regulation, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than—

(1) A total of 1.50 percent unshelled peanuts and damaged kernels;

(2) A total of 2.50 percent unshelled peanuts and damaged kernels and minor defects except for "No. Two Virginia," which may not exceed 3.00 percent;

(3) 9.00 percent moisture; or

(4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade. The lot size of such peanuts in bulk or bags shall not exceed 200,000

pounds. Fall through in such peanuts shall not exceed 4 percent except that fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits." The term "fall through," as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph (a) shall be as follows:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners	1 1/4 x 1/4 inch round	1 1/4 x 1/4 inch slot
Spanish & Valencia	1 1/4 x 1/4 inch round	1 1/4 x 1/4 inch slot
Virginia	1 1/4 x 1/4 inch round	1 1/4 x 1/4 inch slot

4. Paragraph (v) of § 998.300 *Terms and conditions of indemnification* is amended for 1988 crop peanuts to read as follows:

§ 998.300 Terms and conditions of indemnification—1988 crop peanuts.

(v) For the purpose of determining indemnification values, the term "quota peanuts" means peanuts marketed, or considered marketed, for domestic edible use, as defined by USDA-ASCS; and the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association, and verified. Handlers electing non-physical supervision shall receive "quota" indemnification prices on peanuts indemnified, and they shall not be required to furnish Area Association verification. However, under no circumstance shall a handler be paid "quota" indemnification prices on poundage greater than 60 percent of the net "quota" Segregation 1 farmers' stock peanuts acquired by the handler.

Dated: July 12, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-15030 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-22-8

7 CFR Part 1030

[Docket No. AO-361-A25; DA-88-101]

Milk in the Chicago Regional Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the order regulating the handling of milk in the Chicago Regional marketing area based on industry proposals considered at a public hearing held at Madison, Wisconsin, on June 2-4, 1987. The amended order establishes minimal supply plant shipping requirements of three percent for the months of August and January, and five percent for each month of September through December. Such provisions replace those of the Chicago order which authorize the market administrator to require reserve supply plants to ship milk to bottling plants, when called upon to do so. If the new requirements are met, the supply plants generally will be pool plants during February through July without making any shipments. Handlers are permitted to form a unit of their own plants, or to form a unit, or units, with other handlers, in order to meet the performance requirements by shipping the required amounts of milk from only certain plants rather than from each plant in the unit. However, a unit will have to ship twice the percentage of milk required to be shipped from individual plants. Both the market administrator and the Director of the Dairy Division have limited authority to

temporarily change the shipping requirements, if necessary. Other changes reduce the touch-base requirements, eliminate percentage limits on diversions, and eliminate storage requirements for supply plants.

Cooperative association representing more than the required two-thirds of the producers supplying milk for the market have approved the issuance of the amended order.

EFFECTIVE DATE: This regulation is effective August 15, 1988, except for § 1030.13(d)(1), which will be effective September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 [52 FR 18894].

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 [52 FR 29196].

Emergency Partial Decision: Issued October 8, 1987; published October 15, 1987 [52 FR 38235].

Order Amending Order: Issued October 20, 1987; published October 23, 1987 [52 FR 39611].

Recommended Decision: Issued March 8, 1988; published March 14, 1988 [53 FR 8205].

Extension of Time for Filing Exceptions: Issued March 29, 1988; published April 4, 1988 [53 FR 10894].

Final Decision: Issued June 23, 1988; published June 28, 1988 [53 FR 24296].

The amended order provides in § 1030.7(b)(6)(iii) that a handler or handlers establishing a unit must submit a written request to the market administrator on or before July 15, requesting that such plants qualify as a unit for the period of August through July of the following year. For the initial application of this rule, the deadline for submitting such request shall be August 15, 1988.

Similarly, each supply plant that is a pool plant in each month of September 1988 through January 1989 shall be considered to have met the shipping requirements for the month of August 1988 for the purpose of meeting the requirements set forth in §§ 1030.7(b)(1), 1030.7(b)(6)(iii), and 1030.7(b)(6)(v). The provision in § 1030.13(d)(1) concerning a dairy farmer's eligibility for diversion will become effective September 1, 1988.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Chicago Regional order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Chicago Regional marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for 7 CFR Part 1030 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 1030.4 is revised to read as follows:

§ 1030.4 Plant.

"Plant" means a building together with its facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment that has facilities adequate for cleaning tank trucks, is approved by an appropriate health authority, at which milk is received from dairy farmers or other plants, and at which milk is processed and/or shipped to another plant.

3. Section 1030.6 is revised to read as follows:

§ 1030.5 Supply plant.

"Supply plant" means a plant at which Grade A milk is physically unloaded into the plant or a tank truck in the plant and is either processed and/or shipped during the month to another milk processing plant, except that any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

4. Section 1030.7 is revised to read as follows:

§ 1030.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant or unit described in paragraph (a)(4) of this section from which during the month the disposition of fluid milk products specified in paragraph (a)(2) of this section is not less than 10 percent of the receipts specified in paragraph (a)(1) of this section and from which the disposition of fluid milk products specified in paragraph (a)(3) of this section as a percent of the receipts specified in paragraph (a)(1) of this section is not less than 45 percent in each of the months of September, October, November, and December, 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted to nonpool plants and to pool supply plants pursuant to § 1030.13, but excluding producer milk diverted to other pool distributing plants, receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44(a)(8) (i)(a) and (ii) and the corresponding step of § 1030.44(b).

(2) Packaged fluid milk products, except filled milk, disposed of as either route disposition in the marketing area or moved to other plants from which it is disposed of as route disposition in the marketing area. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Packaged fluid milk products, except filled milk, disposed of as either route disposition or moved to other plants. Such disposition is to be

exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(4) A unit consisting of at least one distributing plant and one or more additional plants of a handler at which milk is processed and packaged or manufactured shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the State of Wisconsin or that portion of the marketing area within the State of Illinois, and if, prior to the first day of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the market administrator.

(b) A supply plant or unit of supply plants described in paragraph (b)(6) of this section from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped and received and physically unloaded into plants described in paragraph (b)(2) of this section as a percent of the Grade A milk received at the plant(s) from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1030.9(c), including producer milk diverted pursuant to § 1030.13, but excluding packaged fluid milk products that are disposed of from such plant(s) as route disposition, is not less than 3 percent for the months of January through August, and 5 percent for the months of September through December for individual plants and 6 percent and 10 percent, respectively, for any unit of plants, subject to the following conditions:

(1) A plant that was a pool plant pursuant to this paragraph during each of the months of August through January shall be a pool plant for each of the following months of February through July.

(2) Qualifying shipments pursuant to this paragraph may be made to the following plants, except as provided in paragraph (b)(2)(v) of this section:

(i) Pool plants described in paragraph (a) of this section;

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk which receives a Class I classification at the transferee plant;

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants, shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II or Class III utilization; and

(v) Whenever the authority provided in paragraph (b)(5) of this section is applied to increase the shipping requirements specified in this section, only shipments described in paragraph (b)(2)(i) of this section shall count as qualifying shipments for the purpose of meeting the increased requirements.

(3) The operator of a supply plant may include as qualifying shipments deliveries to pool distributing plants directly from farms of producers pursuant to § 1030.13(d).

(4) The quantity of condensed skim milk and fluid milk products moved (including milk diverted) from supply plants to each pool plant described in paragraph (a) or (c) of this section that shall count towards meeting the shipping requirements of this paragraph shall be a net quantity assignable at each such pool plant pro rata to supply plants in accordance with total receipts from such plants. The net quantity shall be computed by subtracting from the quantity of fluid milk products and condensed skim milk received from supply plants the following:

(i) The quantity of condensed skim milk not disposed of in a fluid milk product and the quantity of fluid milk products in the form of bulk milk and skim milk moved from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II or Class III milk other than:

(A) Transfers or diversions classified pursuant to § 1030.40(b)(3); and

(B) Transfers or diversions on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and on any Saturday if no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quality of producer milk diverted pursuant to § 1030.13(d) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used for this purpose; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipts from the supply plant, the quantity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of any emergency situation such as a breakdown of trucking equipment or hazardous road conditions if such emergency is reported to the market administrator.

(5) The shipping requirements of this paragraph may be increased or decreased if found necessary to obtain

needed shipments or to prevent uneconomic shipments as follows, subject in either case to the conditions specified to paragraph (b)(5)(iii) of this section.

(i) The market administrator may, for a period of up to three months, increase or decrease the shipping requirements of this paragraph by up to two percentage points;

(ii) The Director of the Dairy Division may increase the shipping requirements of this paragraph by up to five percentage points or decrease them by up to ten percentage points;

(iii) Before making a finding that a change is necessary for the purposes set forth in this section, the market administrator or the Director of the Dairy Division shall investigate the need for revision, either on such person's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that revision is being considered and inviting data, views, and arguments. If a plant that would not otherwise qualify as a pool plant during the month does qualify as a pool plant because of a reduction in shipping requirements pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool status with the market administrator on or before the first day of the following month. If an increase is required in any month of February through July, the increase shall also apply to any supply plant that has pool status for the month pursuant to paragraph (b)(1) of this section.

(6) Two or more plants shall be considered a unit for the purpose of meeting the requirements of this paragraph if the following conditions are met:

(i) The plants are located within the State of Wisconsin or within that portion of the State of Illinois within the marketing area;

(ii) The plants included in the unit are owned or fully leased and operated by the handler establishing the unit and such plants were pool plants during the month prior to being included in a unit. Two or more handlers may establish a unit of designated plants by certifying to the market administrator a marketing agreement specifying the plants to be considered as a unit, and specifying which handler will be responsible for qualification of the unit. With regard to any leased plants included in a unit, the handler that leases a plant(s) and is a party to a marketing agreement with respect to plants included in a unit, shall

satisfy the market administrator that such handler:

(A) Is responsible pursuant to § 1030.73 for payments to producers whose milk is delivered to the leased plant or diverted therefrom by the handler;

(B) Controls and operates the leased plant; and

(C) Maintains in its books and records the accounts of the leased plant(s), including, but not limited to, records reflecting the receipt, sale, collection of proceeds, the gross value of the payrolls for all producer milk pooled by the handler operating the leased plant, and employee payroll or independent contractor records reflecting the handler's financial responsibility for operation of the plant.

(iii) The handler or handlers establishing the unit submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a unit for the period of August through July of the following year. In the months of February through July, a unit shall not include any plant that was not a pool plant each month of the preceding period of August through January. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following July unless the plant subsequently fails to qualify for pooling or the handler or handlers establishing the unit submits a written request to the market administrator that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from a unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through July. The handler or handlers that establish a unit may add a plant operated by such handler or handlers to a unit, if such plant has been a pool plant each prior month of the current unit-operating period (August through July) and would otherwise be eligible to be in a unit, upon submission of a written request to the market administrator. Such plant will remain in the unit through the following July.

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order, and

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order, and

(iv) If a unit fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the unit shall notify the market administrator which plant or plants will be deleted from the unit so that the remaining plants may be pooled as a unit. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the unit and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the unit; and

(v) Each plant in a unit shall ship to a plant or plants pursuant to paragraph (a) or (c) of this section not less than 3 percent of the plant's receipts of milk from producers or 47,000 pounds, whichever is less, of condensed skim milk or fluid milk products in each of five months during the period of August through January, subject to the provisions of paragraph (b)(4) of this section. If the unit shipping requirements are reduced to zero pursuant to paragraph (b)(5)(ii) of this section, shipments by each plant in a unit shall not be required.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant;

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b) or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order, and

(3) That portion of a plant that is physically separated from the Grade A portion of such plant, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

5. Section 1030.13 is amended by removing in paragraph (a) the words "in the case of a reload facility," by removing paragraphs (d)(3) and (d)(6), redesignating (d)(4), (d)(5), and (d)(7) as (d)(3), (d)(4), and (d)(5), and revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1030.13 Producer milk.

(d)

(1) During each of the months of August through January, milk from a dairy farmer shall not be eligible for diversion unless at least one day's production is received and physically unloaded at the pool plant where such milk is reported as producer milk;

(2) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless at least one day's production is received and physically unloaded during the month at the pool plant where such milk is reported as producer milk;

6. Section 1030.30 is amended by removing in the introductory text of paragraph (a) the words "and/or reserve supply plants", and revising paragraph (a)(3) to read as follows:

§ 1030.30 Reports of receipts and utilization.

(a)

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable), including a separate statement of the net receipts from each supply plant, computed pursuant to § 1030.7(b)(4);

Signed at Washington, DC, on: July 12, 1988.

Kenneth A. Gilles,

Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-15079 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-02-8

Commodity Credit Corporation

7 CFR Part 1427

Cotton Loan Program Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Commodity Credit Corporation (CCC) Cotton Loan Program Regulations governing the 1980 and subsequent crops of cotton concerning the packaging of cotton which is pledged to CCC as collateral for price support loans. The specifications for bale packaging materials used in wrapping cotton for 1988 that were approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) are acceptable to CCC. Therefore, CCC is incorporating these specifications by reference and will require that 1988-crop cotton pledged to CCC as collateral for price support loan be wrapped to comply with these specifications.

EFFECTIVE DATE: July 14, 1988. The Director of the Federal Register approved the incorporation by reference of the specifications effective on July 14, 1988.

ADDRESS: Director, Cotton, Grain, and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Beverly Pritts, Cotton, Grain, and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447-8374.

The Final Impact Statement describing the options considered in developing the rule that eliminated the publishing in the *Federal Register* of packaging specifications and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

A final rule was published in the *Federal Register* on July 1, 1982, that amended the cotton loan program regulations to provide that CCC would no longer publish in the *Federal Register* the packaging specifications acceptable to CCC for packaging cotton pledged to CCC for price support loans. Instead, CCC determined that the specifications for cotton bale packaging materials approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) were acceptable to CCC for packaging cotton pledged to CCC for price support loans and incorporated by reference, in accordance with 1 CFR Part 51, the specifications approved and published by the JCIBPC for 1982-crop cotton. Since the only purpose of this final rule is to amend the cotton loan program regulations to incorporate, by reference, the specifications approved and published by the JCIBPC for 1988-crop cotton which are generally available and accepted by the cotton industry, it has been determined that no further public rulemaking is required.

Accordingly, the regulations governing the cotton loan program set forth at 7 CFR Part 1427 are amended as stated herein in order to incorporate, by reference, in accordance with 1 CFR Part 51, the packaging specifications approved and published by the JCIBPC for 1988-crop cotton.

Copies of the specifications published by the JCIBPC will be made available to the public upon request by that Committee and by county ASCS offices.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

PART 1427—[AMENDED]

Accordingly, 7 CFR Part 1427 is amended as follows:

1. The authority citation for 7 CFR Part 1427 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070 as amended, 1072 (15 U.S.C. 714b and 714c); sec. 103A, 401 and 403 of the Agricultural Act of 1949, as amended, 99 Stat. 1407, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1444-1, 1421 and 1423); sec. 501 of Pub. L. 99-198.

2. In § 1427.5, paragraph (1) is revised to read as follows:

§ 1427.5 Eligible cotton.

(1) Each bale must be packaged in materials which meet specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging material. Heads of bales must be completely covered. Copies of the 1988 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Information with respect to experimental packaging material may be obtained from JCIBPC. This incorporation by reference was approved by the Director of the Federal Register on July 14, 1988.

Signed at Washington, DC, on July 12, 1988.

Milton Hertz,
Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 88-16002 Filed 7-14-88; 8:45 am]
BILLING CODE 3410-25-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 88-NM-85-AD; Amdt. 39-5979]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires

inspection of main landing gear drag brace actuators, and repair or replacement, as necessary. This amendment is prompted by reports that two operators were unable to retract the right main landing gear due to an inoperative drag brace actuator. This condition, if not corrected, could also result in the main landing gear not fully extending when alternate landing gear extension procedure is required.

EFFECTIVE DATE: August 3, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Two operators of Boeing Model 767 airplanes have reported the inability to retract the right main landing gear due to an inoperative drag actuator. Investigation revealed that the piston in each actuator was very tight in the cylinder due to a swollen piston seal. The swollen piston seal had caused the piston retaining nut to back off of the threaded end of the piston due to torsional forces induced by the swollen seal during normal landing gear cycling. The piston seal was found to be manufactured with an incorrect material. In addition, two drag brace actuators have been discovered with excessive piston friction forces attributed to obsolete configuration of rod seals. In the event that the alternate landing gear extension system operation is required, swollen piston seals or obsolete configuration rod seals may prevent full extension and locking of the main landing gear. The FAA has determined that, while this problem may not be exhibited on actuators when first installed, it would be exhibited within the first 200 hours time-in-service.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-32A0071, dated June 2, 1988, which describes inspection, and repair or replacement, as necessary, of the main landing gear drag brace actuators.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires

inspection, and repair or replacement, as necessary, of main landing gear drag brace actuators, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767-32A0071, dated June 2, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude failure of the main landing gear to fully extend and lock due to faulty actuator piston seals or obsolete configuration rod seals, accomplish the following:

A. Within the next 300 hours time-in-service after the effective date of this AD, inspect the main landing gear drag brace actuators in accordance with Boeing Alert Service Bulletin 767-32A0071, dated June 2, 1988.

B. If any actuator has accumulated less than 200 hours total time-in-service at the time of inspection, repeat the inspection required by paragraph A., above, at intervals not to exceed 100 hours time-in-service until the actuator has accumulated more than 200 hours time-in-service, at which time the inspections may be terminated.

C. If any actuator is found to have swollen seals or obsolete configuration seals, before further flight, replace or modify the actuator, in accordance with Boeing Service Bulletin 767-32A0071, dated June 2, 1988.

D. Accomplishing the piston seal replacement, and the rod seal inspection and replacement, if necessary, in accordance with Boeing Service Bulletin 767-32A0071, dated June 2, 1988, constitutes terminating action for the initial and repetitive inspections required by paragraphs A. and B., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received copies of the appropriate service bulletin cited herein may obtain copies upon requests to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 3, 1988.

BEST COPY AVAILABLE

Issued in Washington, DC, on July 8, 1988.
M.C. Beard,
 Director, Office of Airworthiness.
 [FR Doc. 88-15915 Filed 7-14-88; 8:45 am]
 BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-11-AD; Amdt. 39-5961]

Airworthiness Directives: British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, which requires inspection of the main landing gear main fitting for defects, and repair, if necessary. This amendment is prompted by results of the manufacturer's fatigue testing and static strength tests. This condition, if not corrected, could lead to collapse of the main landing gear.

EFFECTIVE DATE: August 22, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, applicable to Model BAe 146 series airplanes, to require inspection and repair, if necessary, of the main landing gear main fitting, was published in the Federal Register on March 30, 1988 (53 FR 10254).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the issuance of the AD as proposed.

The other commenter questioned the need for the AD, since the proposed inspection requirements have already

been made part of the BAe 146 aircraft Maintenance Manual (AMM) (as of January 1988). The FAA does not concur that the AD is unwarranted. While the FAA recognizes that changes may have been made to the manufacturer's maintenance program, that program in and of itself is not mandatory for U.S. operators. The FAA has determined that the inspections must be performed by U.S. operators of this series airplane, and the means to ensure that the inspections are accomplished is by issuance of an AD.

Paragraph A. of the final rule, including the NOTE portion, has been revised: (1) To identify the appropriate Dowty Rotor Service Bulletin where instructions for certain required procedures are located; (2) to delete reference to the revision number and date of the Dowty Rotor Service Bulletins; and (3) to clarify that the modification of the MLG fittings in accordance with Dowty Rotor Service Bulletin 146-32-56 (as recommended in Dowty Rotor Service Bulletin 146-32-23) is not made mandatory by this AD. The FAA has determined that these changes are for clarification purposes only; they will not increase the economic burden on any operator, nor will they increase the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes described above.

It is estimated that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$9,600.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative,

on a substantial number of small entities because of the minimal cost of compliance per airplane (\$320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all British Aerospace (BAe) Model 146 series airplanes as listed in BAe 146 Service Bulletin 32-73, dated March 13, 1987, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG) due to defective main fittings, accomplish the following:

A. Prior to the accumulation of 12,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect the main fitting and barrel section of the main fitting in accordance with British Aerospace BAe 146 Service Bulletin 32-73, dated March 13, 1987. If defective parts are identified during the inspection, repair, prior to further flight, in accordance with Dowty Rotor Service Bulletin number 146-32-23.

Note: British Aerospace BAe Service Bulletin 32-73 references Dowty Rotor Service Bulletin 146-32-23 for specific procedures for identification, inspection, and repair of the affected MLG parts. The modification of MLG fittings in accordance with Dowty Rotor Service Bulletin 146-32-56 (as recommended in Dowty Rotor Service Bulletin 146-32-23) is not made mandatory by this airworthiness directive.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comment; and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletin, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 22, 1988.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,
 Director, Office of Airworthiness.

[FR Doc. 88-15916 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-70-AD; Amdt. 39-5960]

Airworthiness Directives: McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10 and KC-10 series airplanes, which requires inspection and modification or repair, if necessary, of the battery ground cable ground stud installation and the drain valve installations in the Center Accessory Compartment (CAC). This amendment is prompted by a report of a loose and/or corroded battery ground stud connection and possible contamination of insulation blankets, or flammable liquid, within the CAC lower fuselage area. This condition, if not corrected, could result in an in-flight or ground fire in the CAC.

EFFECTIVE DATE: August 3, 1988.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. Attention: Director of Publications, C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: A McDonnell Douglas Model DC-10 airplane recently experienced a fire in the Center Accessory Compartment (CAC) during taxi after landing. A flight attendant informed the captain of smoke entering the cabin. The airplane continued to the gate and passengers were off-loaded in a normal manner. The fire department accessed the CAC through a hatch in the cabin and extinguished the fire.

Subsequent investigation revealed a loose and/or corroded battery ground stud connection as the ignition source for the fire. Possible contamination of insulation blankets in the CAC, or flammable liquid within the CAC lower fuselage area, may have provided the fuel source for the fire.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin A24-141, Revision 1, dated May 12, 1988, which describes procedures for inspection for arcing and/or corrosion on the CAC battery ground stud installation and for proper operation of the two CAC drain valves. The service bulletin also provides information for proper installation of ground stud parts and advises of an improved drain valve which may be used to replace faulty drain valves.

McDonnell Douglas released Service Bulletin 24-73, Revision 1, dated February 2, 1978, which contains procedures to modify the CAC battery ground stud installation by adding a clamp to the battery ground cable. This service bulletin was released as a result of a McDonnell Douglas investigation which revealed the potential for development of a loose ground stud connection due to wrenching of the ground cable during routine battery maintenance. Installation of this clamp will eliminate the unsafe condition described above.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and modification or repair, if necessary, in accordance with McDonnell Douglas Service Bulletin A24-141, Revision 1, dated May 12, 1988, and replacement of the main battery ground cable bracket in accordance with McDonnell Douglas Service Bulletin 24-73, Revision 1, dated February 2, 1978.

Since a situation exists that requires immediate adoption of this regulation, it

is found that notice and public procedure herein are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, as listed in McDonnell Douglas Service Bulletin A24-141, Revision 1, dated May 12, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a fire in the Center Accessory Compartment (CAC), accomplish the following:

A. For all airplanes: Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 60 days, inspect the battery ground stud installation for evidence of arcing and/or corrosion, and check the two CAC drain valve installations for proper operation, in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin A24-141, Revision 1, dated May 12, 1988.

1. If the ground stud installation is found to be burnt or corroded, prior to further flight, replace the ground stud installation parts in accordance with the service bulletin.

2. If the drain valve installation is not free of deterioration, is sticking, or is not functioning properly, prior to further flight, repair or replace the drain valve installation in accordance with the service bulletin.

B. For airplanes that have not incorporated McDonnell Douglas Service Bulletin 24-73, Revision 1, dated February 2, 1978, or the production equivalent: Within 90 days after the effective date of this AD, replace the main battery ground cable bracket in accordance with the Accomplishment Instructions of McDonnell Douglas Service Bulletin 24-73, Revision 1, dated February 2, 1978. This constitutes terminating action for the repetitive inspection requirements of paragraph A., above.

C. Alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60).

This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 3, 1988.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,
Director, Office of Airworthiness.
[FR Doc. 88-15917 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket Nos. 76N-0366 and 83C-0127]

Revocation of Regulations; D&C Red No. 8 and D&C Red No. 9

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing the color additive regulations that provide for the use of color additives D&C Red No. 8 and D&C Red No. 9 for use in ingested drugs and cosmetic lip products and in externally applied drugs and cosmetics. This action is based upon previous findings by FDA that these color additives are carcinogenic in test animals and on the decision of the U.S. Court of Appeals for the District of Columbia on D&C Orange No. 17 and D&C Red No. 19 that carcinogenic color additives cannot be listed as color additives on the basis of a *de minimis* exception to the color additive Delaney clause in the Federal Food, Drug, and Cosmetic Act (the act). Published elsewhere in this issue of the Federal Register is a notice denying the color additive petition that requested permanent listing of D&C Red Nos. 8 and 9 as color additives.

DATES: Effective July 15, 1988; objections by August 15, 1988.

ADDRESS: Documents may be seen in, and written objections to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

In the Federal Register of December 5, 1986 (51 FR 43877), FDA published a final rule permanently listing D&C Red No. 8 and D&C Red No. 9 for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics. In that final rule FDA concluded that, although available studies establish that D&C Red No. 9 and, by implication, D&C Red No. 8 are carcinogens when ingested by laboratory animals, quantitative risk assessments of the color additives indicate that the risk of human cancer

from use of these color additives in ingested drug and cosmetic lip products, and in externally applied drugs and cosmetics, would be extremely low and that there would be no benefit to the public health from prohibiting these uses of the color additives. FDA concluded that the use of D&C Red No. 8 and D&C Red No. 9 were safe under the conditions prescribed in the regulations permanently listing the color additives.

FDA also concluded in the December 5, 1986, final rule that it was appropriate to apply *de minimis* exceptions to the Delaney clause of the Color Additive Amendments of 1960 (the amendments) to the act because any risk of cancer that the color additives may present is of no public health consequence.

II. Comments and Objections

In response to the December 5, 1986, final rule, the Public Citizen Litigation Group (Public Citizen) and others filed objections to the listing of D&C Red Nos. 8 and 9. These objections stayed the effective date of the final regulations. Additionally, the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), submitted comments to FDA in support of the agency's actions. Neither group requested a hearing.

FDA, in the Federal Register of June 5, 1987 (52 FR 21302), responded to the objections. In that document, FDA modified several aspects of the manufacturing process for D&C Red No. 9, and established a new effective date for the permanent listing of D&C Red Nos. 8 and 9. This rule also established a new effective date for the revised new manufacturing process for D&C Red No. 9, incorporated FDA's explanation of its interpretations of the Delaney clause that had been published in the Federal Register of February 19, 1987, and reaffirmed the agency's conclusions as to the safety of the two color additives.

On July 31, 1987, FDA confirmed the effective date of the rule revising the manufacturing process for D&C Red No. 9.

III. Legal Action

On August 3, 1987, Public Citizen filed suit in the U.S. Court of Appeals for the Third Circuit of Philadelphia, seeking to overturn FDA's decision to permanently list D&C Red Nos. 8 and 9. However, before a decision was reached by that Court, the U.S. Court of Appeals in Washington, DC issued a decision relating to D&C Red No. 19 and D&C Orange No. 17 and holding that "the Delaney clause of Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans."

and that the listing of carcinogenic color additives is contrary to law.

Following this decision, CTFA, an intervenor in the D.C. Circuit case, petitioned the U.S. Supreme Court to grant a writ of certiorari on the decision. On April 28, 1988, the Supreme Court denied certiorari. The agency, on May 28, 1988, asked the Court of Appeals for the Third Circuit to remand the case on D&C Red Nos. 8 and 9 to the agency so that it could revoke the listings of these colors because of the D.C. Circuit's decision, involving the same issues, on D&C Red No. 19 and D&C Orange No. 17. D&C Res Nos. 8 and 9 had been permanently listed based upon legal reasoning identical to that used to permanently list D&C Red No. 19 and D&C Orange No. 17. Subsequently, the Court of Appeals for the Third Circuit granted the agency's request and remanded to FDA the decision in D&C Red Nos. 8 and 9.

IV. FDA Action

In reaching its decision regarding the action to be taken on D&C Red No. 8 and D&C Red No. 9, FDA has considered the D.C. Circuit's decision on D&C Red No. 19 and D&C Orange 17 that the Delaney clause bars the permanent listing of any color additive that has been shown to induce cancer. FDA has found that D&C Red No. 9, and, by implication, D&C Red No. 8, induce cancer in laboratory test animals. There have been no additional data submitted to FDA that would contravene the agency's previous findings. The carcinogenicity of D&C Red No. 9 and other data relevant to the safety of the two additives were discussed in the Federal Register in documents published on December 5, 1986 (51 FR 43877), June 5, 1987 (52 FR 21302), and July 31, 1987 (52 FR 28552).

V. Conclusions

FDA has previously concluded that D&C Red No. 9 induces cancer in test animals, that D&C Red No. 8 is toxicologically equivalent to D&C Red No. 9, and that therefore the results of toxicity and carcinogenicity studies of D&C Red No. 9 apply to both additives. No new data or information have been submitted to FDA on this issue. On the basis of the finding of carcinogenicity and the D.C. Circuit Court's decision on D&C Red No. 19 and D&C Orange No. 17 that there is no *de minimis* exception to the Delaney clause for color additives, FDA concludes that the regulations permanently listing D&C Red Nos. 8 and 9 are contrary to law and without legal effect. Moreover, in light of the Court's ruling, the carcinogenicity of the color additives, and the congressional concern

as expressed in the Delaney clause about the safety of color additives found to be carcinogens, the agency concludes that not only is there no legal basis upon which to permit the permanent listing of the color additives, but also no basis to put them back on the provisional list (Pub. L. 86-618, section 203(a)). Thus, in the regulations set forth below, the agency is removing those color additive regulations which permanently listed D&C Red No. 8 and D&C Red No. 9, and removing the regulations that provide for the provisional use of the lakes of the color additives.

Consistent with the revocation regulations, all certificates heretofore issued for both D&C Red No. 8 and D&C Red No. 9, their lakes, and all mixtures containing these color additives for ingested drug and cosmetic lip products and for externally applied drug and cosmetic uses are cancelled as of July 15, 1988. After this date, the addition of D&C Red No. 8 or D&C Red No. 9 to drugs or cosmetics will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. This prohibition applies to the use of the straight color additives, their lakes, and mixtures of the color additives and their lakes. Elsewhere in this issue of the Federal Register, FDA is publishing a notice denying the color additive petition for these two color additives.

FDA also concludes that the health concern regarding the use of these color additives does not represent an acute, imminent hazard. Therefore, the protection of the public health does not require: (1) Recall from the market of drug and cosmetic products for external use that contain either color additive, or (2) the destruction of such drug or cosmetic products to which either color has already been added.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that contain D&C Red No. 8 or D&C Red No. 9 may either discontinue use of the color additives or substitute different color additives in accordance with the provisions of 21 CFR 314.70(b)(2)(i) and (d)(4) or 21 CFR 314.8(d)(3) and (e), as appropriate. If a substitute color additive is not used, the human drug manufacturer shall describe the change fully in the next annual report as required under § 314.81(b)(2)(iv)(b). If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or a supplemental new animal drug application containing data describing the new composition and showing that

the change in composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate.

The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit to FDA those data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing D&C Red No. 8 or D&C Red No. 9 should promptly amend the IND or INAD to indicate that the color additives have been deleted or a different color additive substituted.

FDA is aware that supplies of alternative color additives and labeling may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artificial color" or that specifically identifies D&C Red No. 8 and D&C Red No. 9 may continue to be used with the uncolored product or product containing alternative color additives during the time necessary to obtain supplies of revised labeling or until July 17, 1989, whichever comes first.

VI. Economic and Environmental Impacts

Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354) do not apply to actions of this type.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. A copy of the FDA environmental assessment is on file with the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additives lakes, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376; 21 CFR 5.10).

§ 74.1308 [Removed]

2. Section 74.1308 D&C Red No. 8 is removed.

§ 74.1309 [Removed]

3. Section 74.1309 D&C Red No. 9 is removed.

§ 74.2308 [Removed]

4. Section 74.2308 D&C Red No. 8 is removed.

§ 74.2309 [Removed]

5. Section 74.2309 D&C Red No. 9 is removed.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

6. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

7. Section 81.30 is amended by adding new paragraphs (s) (3) and (4) to read as follows:

§ 81.30 Cancellation of certificates.

- (s)
- (3) Certificates issued for D&C Red No. 8, and D&C Red No. 9, their lakes, and all mixtures containing these color additives are cancelled and have no effect as pertains to their use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics after July 15, 1988, and use of these color additives in the manufacture of ingested drugs and cosmetic lip products and in externally applied drugs and cosmetics after this date will result in adulteration.
- (4) The agency finds, on the basis of the scientific evidence before it, that no action has to be taken to remove from the market ingested drug and cosmetic

lip products and externally applied drugs and cosmetics to which the color additives were added on or before July 15, 1988.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

8. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 82.1308 [Removed]

9. Section 82.1308 D&C Red No. 8 is removed.

§ 82.1309 [Removed]

10. Section 82.1309 D&C Red No. 9 is removed.

Dated: July 12, 1988.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-18045 Filed 7-14-88; 8:45 am]
BILLING CODE 4160-01-01

21 CFR Parts 74, 81, and 82

[Docket Nos. 78N-0366, 83C-0102, and 83C-0129]

Revocation of Regulations; D&C Red No. 19 and D&C Orange No. 17

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing the color additive regulations that provide for the use of the color additives D&C Red No. 19 and D&C Orange No. 17 for use in externally applied drugs and cosmetics. The FDA action is based upon the fact that the color additives induce cancer and the finding of the U.S. Court of Appeals for the District of Columbia that the two color additives cannot be listed as color additives on the basis of a *de minimis* exception to section 706(b) of the Federal Food, Drug, and Cosmetic Act (the act). (The U.S. Supreme Court subsequently refused a writ of certiorari on the Appeals Court decision.) Published elsewhere in this issue of the *Federal Register* are notices denying the color additive petitions that requested approval of D&C Red No. 19 and D&C Orange No. 17 as color additives.

DATES: Effective July 15, 1988; objections by August 15, 1988.

ADDRESS: Documents may be seen in, and written objections to, the Dockets Management Branch (HFA-305), Food

and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerard L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5878.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

In the *Federal Register* of August 7, 1986, FDA published final regulations permanently listing D&C Orange No. 17 and D&C Red No. 19 for use in externally applied drugs and cosmetics (51 FR 28331 and 51 FR 28346, respectively). In these two documents FDA concluded that, although available studies establish that the color additives induced cancer in animals, quantitative risk estimates of the colors indicate that the risk of human cancer from use of these color additives in externally applied drugs and cosmetics would be extremely low and that there would be no benefit to the public health from prohibiting these uses of the color additives. FDA concluded that the use of D&C Red No. 19 and D&C Orange No. 17 in externally applied drugs and cosmetics was safe under the conditions of use prescribed in the regulations permanently listing the colors.

FDA also concluded in the August 7, 1986, documents that it was appropriate to apply *de minimis* exceptions to the Delaney clause of the Color Additives Amendment to the Food, Drug, and Cosmetic Act because any theoretical risk of cancer that the color additives may present is of no public health consequence.

II. Comments and Objections

On August 21, 1986, in response to the final rules permanently listing D&C Orange No. 17 and D&C Red No. 19, the Public Citizen Litigation Group (Public Citizen) filed objections to the final rule. This filing automatically stayed the effective date of the color additive regulations. On September 8, 1986, the Cosmetic Toiletry and Fragrance Association, Inc. (CTFA), filed comments in support of both final rules. Neither the objections nor comments, however, requested a hearing.

FDA, in the *Federal Register* of October 6, 1986 (51 FR 35509), published a final rule which responded to the objections from Public Citizen; removed the stay of the regulations for the permanent listing of D&C Orange No. 17 and D&C Red No. 19; and established the effective date of October 6, 1986, for their use in externally applied drugs and cosmetics.

Following publication of this final rule, Public Citizen filed suit in the U.S. Court of Appeals for the District of Columbia to overturn the FDA decision to permanently list these two color additives (*Public Citizen v. Young*, No. 86-1548).

III. Judicial Review

In an opinion dated October 23, 1987, the court presented its finding regarding the Public Citizen challenge of the decision by FDA to permanently list the color additives D&C Red No. 19 and D&C Orange No. 17, stating:

In sum, we hold that the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans. We based this decision on our understanding that Congress adopted an "extraordinarily rigid" position, denying the FDA authority to list a dye once it is found to "induce cancer in animals" in the conventional sense of the term.

In its conclusion the Court stated:

In sum we hold that the agency's *de minimis* interpretation of the Delaney Clause of the Color Additive Amendments is contrary to law. The listing decisions for D&C Orange No. 17 and D&C Red No. 19 based on that interpretation must therefore be corrected.

Following this decision, the Cosmetic, Toiletry and Fragrance Association, an intervenor in the Court of Appeals case, petitioned the United States Supreme Court to grant a writ of certiorari on the decision of the Appeals Court. The petition was opposed by both Public Citizen and the U.S. Government. On April 18, 1988, the Supreme Court refused, without comment, to grant the writ.

IV. FDA Action

In reaching its decision regarding the action to be taken on the D&C Red No. 19 and D&C Orange No. 17, FDA has considered the Appeals Court's decision that the Delaney clause presents a bar to the permanent listing of any color additive that has been shown to induce cancer and the Supreme Court's refusal to grant a writ of certiorari for appeal of the decision. FDA has found that the two color additives induce cancer in test animals, and there have been no additional data submitted to FDA that would contravene the agency's previous findings. The carcinogenicity of D&C Red No. 19 and other data relevant to its safety were discussed in the *Federal Register* in documents published on February 4, 1983 (48 FR 5262) and August 7, 1986 (51 FR 28346). The carcinogenicity of D&C Orange No. 17 and other data relevant to its safety were discussed in the *Federal Register*

in documents published April 1, 1983 (48 FR 14045) and August 7, 1986 (51 FR 28331).

V. Conclusions

FDA has previously concluded that these colors additives induce cancer in test animals. On the basis of the finding of carcinogenicity and the Court decision that there is no *de minimis* exception to the Delaney clause for color additives, FDA hereby concludes that the regulations are contrary to law and without legal effect. Moreover, in light of the Court's ruling, the carcinogenicity of the color additives, and the Congressional concern as expressed in the Delaney clause about the safety of color additives found to be carcinogens, the agency concludes that not only is there no legal basis upon which to continue the permanent listing of the color additives, but also no basis to put them back on the provisional list (Pub. L. 86-618, section 203(a)). Thus, in the regulations set forth below, the agency is removing those color additive regulations which permanently listed D&C Orange No. 17 and D&C Red No. 19 and removing the regulation that provides for the provisional use of lakes of these color additives.

Furthermore, consistent with the revocation regulations, all certificates heretofore issued for both D&C Red No. 19 and D&C Orange No. 17, their lakes, and all mixtures containing these color additives for externally applied drug and cosmetic use are cancelled as of July 15, 1988. After this date, the addition of D&C Red No. 19 or D&C Orange No. 17 to drugs or cosmetics will cause such products to be adulterated within the meaning of sections 501 and 601 of the act (21 U.S.C. 351 and 361) and to be subject to regulatory action. This prohibition applies to the use of the straight color additives, their lakes, and mixtures of the color additives and their lakes. Elsewhere in this issue of the *Federal Register*, FDA is publishing notices denying the color additive petitions for these two color additives.

FDA also concludes that the health concern regarding the use of these color additives does not represent an acute, imminent hazard. Therefore, the protection of the public health does not require: (1) Recall from the market of drug and cosmetic products for external use that contain either color additive, or (2) the destruction of such drug or cosmetic preparations to which either color has already been added.

Manufacturers of new drugs and new animal drugs (including certifiable antibiotics for animal use) that contain D&C Red No. 19 or D&C Orange No. 17 may either discontinue use of the color

additives or substitute different color additives in accordance with the provisions of 21 CFR 314.70(b)(2)(i) and (d)(4) or 21 CFR 314.8(d)(3) and (e) as appropriate. If a substitute color additive is not used, the human drug manufacturer shall describe the change fully in the next annual report as required under § 314.81(b)(2)(iv)(b). If a substitute color additive is used, the manufacturer shall file with FDA a supplemental new drug application or a supplemental new animal drug application containing data describing the new composition and showing that the change in composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the assay and control procedures have been revised to make them adequate.

The applicant shall also submit data available to establish the stability of the revised formulation. If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit to FDA those data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing one of the subject colors should promptly amend the IND or INAD to indicate that the color additives have been deleted or a different color substituted.

FDA is aware that supplies of alternative color additives and labeling may be difficult to obtain immediately. Consequently, drug and cosmetic labeling that states that the product contains "artificial color" or that specifically identifies D&C Red No. 19 and D&C Orange No. 17 may continue to be used with the uncolored product or product containing the alternative colors during the time necessary to obtain supplies of revised labeling or until July 17, 1989, whichever comes first.

VI. Economic and Environmental Impacts

The Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354) do not apply to actions of this type.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not

required. A copy of the FDA environmental assessment is on file with the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 81

Color additives, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetics Act and under authority delegated to the Commissioner of Food and Drugs, Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 74.1267 [Removed]

2. Section 74.1267 *D&C Orange No. 17* is removed.

§ 74.1319 [Removed]

3. Section 74.1319 *D&C Red No. 19* is removed.

§ 74.2267 [Removed]

4. Section 74.2267 *D&C Orange No. 17* is removed.

§ 74.2319 [Removed]

5. Section 74.2319 *D&C Red No. 19* is removed.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

6. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

7. Section 81.30 is amended by adding new paragraphs (r) (4) and (5), and (t) (3) and (4) to read as follows:

§ 81.30 Cancellation of certificates.

(r) . . .

(4) Certificates issued for D&C Red No. 19, its lakes, and all mixtures containing this color additive are

cancelled and have no effect as pertains to its use in externally applied drugs and cosmetics after July 15, 1988, and use of this color in the manufacture of externally applied drugs or cosmetics after this date will result in adulteration.

(5) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market externally applied drugs and cosmetics to which D&C Red No. 19 was added on or before July 15, 1988.

(t) . . .

(3) Certificates issued for D&C Orange No. 17, its lakes and all mixtures containing this color additive are cancelled and have no effect as pertains to its use in externally applied drugs and cosmetics after July 15, 1988, and use of this color in the manufacture of externally applied drugs or cosmetics after this date will result in adulteration.

(4) The agency finds, on the scientific evidence before it, that no action has to be taken to remove from the market externally applied drugs and cosmetics to which D&C Orange No. 17 was added on or before July 15, 1988.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

8. The authority citation for 21 CFR Part 82 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

§ 82.1267 [Removed]

9. Section 82.1267 *D&C Orange No. 17* is removed.

§ 82.1319 [Removed]

10. Section 82.1319 *D&C Red No. 19* is removed.

Dated: July 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-16041 Filed 7-14-88; 8:45 am]

BILLING CODE #100-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 08-88-21]

Special Local Regulations: Detroit Jazz Festival Fireworks, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule and request for comments.

SUMMARY: Special Local Regulations are being adopted for the Detroit Jazz Festival Fireworks Display. This event will be held on the Detroit River on September 2, 1988 from 9:00 P.M. to 10:00 P.M. In case of inclement weather, the event will be held on September 3, 1988. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective on September 2, 1988 and terminate on September 3, 1988. Comments on this regulation must be received on or before July 29, 1988.

ADDRESSES: Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: MST2 SCOTT E. BEFUS, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until June 16, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event. Interested parties have, however, been previously notified of, and some have commented on, this event. Those comments were considered in preparing this regulation.

An opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed. Comments must be received on or before July 29, 1988.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal

Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 28, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are MST2 SCOTT E. BEFUS, project officer, Office of Search and Rescue and LCDR C. V. MOSEBACH, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Detroit Jazz Festival Fireworks Display will be conducted on the Detroit River on September 2, 1988. This event will have falling ash and debris and an unusually large concentration of spectator boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary section 100.35-0921 to read as follows:

§ 100.35-0921 Detroit Jazz Festival Fireworks Display, Detroit River.

(a) *Regulated Area:* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 7:00 p.m. (local time) until 11:00 p.m. on September 2, 1988:

The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle.

(2) The following portion of the Detroit River will be closed to all vessel traffic, from 8:00 p.m. (local time) until 11:00 p.m. on September 2, 1988:

The area bound on the south by the International Boundary, on the west by 83 degrees 3 minutes West, on east by 83

degrees 2 minutes West, and the north by the U.S. shoreline.

(b) *Special Local Regulations:*

(1) Vessels under 65 feet shall begin clearing the shipping channels at 11:00 p.m. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 6:30 p.m. on September 2, 1988, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: COBO HALL, VETERANS MEMORIAL BLDG., and the FORD AUDITORIUM. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white bands will mark each special mooring.

(3) If the weather on September 2, 1988 is inclement, the fireworks display and the river closure will be postponed until 7:00 p.m. to 11:00 p.m. on September 3, 1988. If postponed, notice will be given on September 2, 1988 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective Dates:* This section is effective from 7:00 P.M. on September 2, 1988, to 11:00 P.M. on September 3, 1988.

Dated: July 5, 1988.

R. A. Appelbaum,

RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 88-15914 Filed 7-14-88; 8:45 am]

BILLING CODE #100-14-M

33 CFR Part 165

[COTP Baltimore, MD Regulation 88-08]

Safety Zone Regulation: Patuxent River, Upper Chesapeake Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule with request for comments.

SUMMARY: The Coast Guard Marine Safety Office Baltimore established a safety zone in the Patuxent River on June 22, 1988 to protect watercraft from hazards associated with the possible structural failure of the Governor Thomas Johnson Memorial Bridge, which crosses the river between Town Point and Johnstown, Maryland (COTP Baltimore, MD Regulation 88-07 not published in the Federal Register). This rule modifies the previous regulation. No person or vessel may enter, remain in, or anchor in this zone unless authorized by the Captain of the Port, Baltimore, Maryland, or his designated representative.

EFFECTIVE DATE: This regulation is effective from 4:00 p.m., June 23, 1988 to 8:00 a.m., September 20, 1988, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

ADDRESS: Comments should be mailed to Commanding Officer, U.S.C.G. Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022.

FOR FURTHER INFORMATION CONTACT: Commander L.I. McClelland, Chief, Port Operations Department, (301) 962-5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after date of publication in the Federal Register. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard watercraft and their occupants and the surrounding waters during the effective dates.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket numbers for the regulations, and give reasons for their comments. Based upon

comments received, the regulations may be changed.

Drafting Information

The drafters of this regulation are Lieutenant F.L. Propst, project officer for the Captain of the Port, Baltimore, Maryland, and Lieutenant R.K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The incident requiring this regulation is the discovery by the State of Maryland Department of Transportation of the structurally unsound condition of the Governor Thomas Johnson Memorial Bridge crossing the Patuxent River between Town Point and Johnstown, Maryland. The State of Maryland has determined that the center span and four flanking spans on either side of the center span are structurally unsound. On June 22, 1988, the Captain of the Port, Baltimore, Maryland, responded to this discovery by issuing a safety zone encompassing the entire bridge (COTP Baltimore, MD Regulation 68-07). This regulation modifies Regulation 68-07 by reducing the size of the zone to cover only the area surrounding the center span and four flanking spans on either side of the center span. This action will minimize the hazards to any watercraft and their occupants in the event of structural failure of the bridge, while accommodating the reasonable needs of the boating public.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows.

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 40 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.T0548 is added to read as follows:

§ 165.T0548 Safety Zone: Patuxent River, Upper Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety zone: The waters of the Patuxent River enclosed by a line drawn between the following points: latitude 38°19'38.5" North, longitude 076°28'13.0" West; thence to latitude 38°19'31.0" North, longitude 076°28'12.5" West; thence to latitude 38°19'17.0" North, 076°28'28.0" West; thence to 38°19'25.0" North, 076°28'39.0" West; thence to 38°19'38.5"

North, 076°28'24.0" West; and thence to the beginning.

(b) *Regulations.* (1) No person or vessel may enter, remain in, or anchor in, this zone unless authorized by the Captain of the Port, Baltimore, Maryland, or his designated representative.

(2) Any vessel operating within this zone shall comply with the directions of the Captain of the Port, Baltimore, Maryland, or his designated representative.

(c) *Effective date.* This regulation is effective from 4:00 p.m., June 23, 1988 to 8:00 a.m., September 20, 1988, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: June 23, 1988.

J.H. Parent,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 88-15013 Filed 7-14-88; 8:45 am]

BILLING CODE 4810-14-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of Suspension of Impact Aid Regulatory Provision.

SUMMARY: The Secretary of Education suspends, beginning with funds for Fiscal Year (FY) 1988 funds, the use of the methodology described in 34 CFR 222.100 for computing the maximum entitlement under section 2 of Pub. L. 81-874 (the Impact Aid law). This suspension is necessary so that the methodology is not in effect for FY 1988 only, since Congress has mandated the return in FY 1989 to the method used in FY 1987.

EFFECTIVE DATE: This suspension takes effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of the suspension, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW.,

Room 2107, Washington, DC 20202-6272. Telephone: (202) 732-3637.

SUPPLEMENTARY INFORMATION

Background

A notice of proposed rulemaking (NPRM) to govern, in part, eligibility and entitlement determinations under section 2 of the Impact Aid program (Pub. L. 81-874) was published in the Federal Register on May 1, 1987, 52 FR 16144-16155. This proposed regulation was developed to provide information and guidance regarding the operation of section 2 for all LEAs applying for section 2 assistance and was proposed to take effect beginning with payments of FY 1988 funds.

One portion of the proposed regulations set forth a methodology for calculating maximum entitlements under section 2. Under that proposed methodology, which was a change from existing practice, the Secretary proposed to calculate section 2 maximum entitlements, beginning with FY 1988, by multiplying only the unequalized portion of a school district's local real property tax rate for school current expenditure purposes by the estimated current assessed value for the Federal property, rather than using the full tax rate in that calculation as had previously been done. This method was proposed in order to address more effectively the purpose of the Impact Aid program—which is to alleviate federally caused burdens on local educational agencies—by eliminating that portion of the section 2 payment that had duplicated compensation guaranteed to a school district by the State.

Many of the commenters who responded to the NPRM expressed concern over the administrative burden and fiscal disruption they felt were associated with the proposed calculation method. They indicated that the new method would result in significantly reduced section 2 payments and, in some cases, loss of section 2 eligibility altogether.

The final section 2 regulations published in the Federal Register on February 24, 1988, 53 FR 5552, responded to the concerns of commenters but incorporated as a final regulation the proposed method of using the unequalized portion of the tax rate to calculate section 2 maximum entitlements. However, on April 28, 1988, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100-297, was enacted. Those amendments contain a provision that preempts the regulatory method for

calculating section 2 maximum entitlements by mandating the use of the full local real property tax rate in that calculation.

Under Pub. L. 100-297, as originally enacted, this legislative provision would have taken effect on July 1, 1988, and would have applied to FY 1988 funding calculations—thus continuing previous practice and nullifying the regulatory provision. However, Pub. L. 100-351, enacted June 27, 1988, changes the general effective date for the Impact Aid provisions of Pub. L. 100-297 to October 1, 1988, governing payments beginning with FY 1989. The regulatory provision providing for use of only the unequalized portion of the local real property tax rate would therefore be effective for a one-year period, i.e., for FY 1988 funding, only.

The consequence of the regulations being effective for only one year is that State and local educational agencies would need to determine, on a one-time basis, the unequalized portion of their local real property tax rates. While making this determination may not be burdensome in some States, it now appears that it would require substantial effort in others. Furthermore, because this regulatory provision would cause significantly reduced section 2 entitlements for some section 2 applicants, and entire loss of section 2 eligibility for others, implementing it for a one-year period only could cause considerable fiscal disruption to a number of section 2 applicants.

The Secretary continues to believe that there is a sound basis for use of only the unequalized portion of the local real property tax rate in calculating section 2 maximum entitlements. However, in view of the congressional restriction on the use of that method beginning with FY 1989 funding, the Secretary believes the administrative burden and fiscal disruption to applicants to require use of the unequalized portion of the local real property tax rate to calculate section 2 maximum entitlements for only one year would outweigh the programmatic benefit. Therefore, the Secretary suspends the methodology contained in the regulations requiring use of the unequalized portion of the local real property tax rate to calculate section 2 maximum entitlements for payments from FY 1988 funds. See 34 CFR 222.97(a) and 222.100. Instead, the Secretary will, as a general non-binding policy, apply the previously used method of calculating section 2 maximum entitlements, i.e., the Secretary will use the full local real property tax rate for school current

expenditure purposes for determining section 2 payment amounts for FY 1988.

If this suspension becomes effective before October 1, 1988 (i.e., during FY 1988), it will govern the Secretary's calculations of maximum entitlements under section 2 of Pub. L. 81-874 (the Impact Aid law) for FY 1988. If, because of congressional adjournments, this suspension does not become effective until on or after October 1, 1988, this suspension will be null and void and will have no effect on the calculation of section 2 maximum entitlements for FY 1988. In that case, the existing regulations (34 CFR 222.100) will govern section 2 maximum entitlement calculations for FY 1988.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. When the NPRM was published, the Secretary received a substantial number of comments opposing implementation of the regulatory provision regarding calculation of section 2 maximum entitlements. In addition, the method has been overturned by legislation that will be effective beginning with FY 1989 funding. As a result, the Secretary has determined that it would be administratively burdensome and fiscally disruptive to applicants to apply the regulatory provision regarding use of the unequalized portion of the local real property tax rate to calculate section 2 maximum entitlements for only one year. This document eliminates that requirement for FY 1988.

It is essential that this suspension take effect immediately so as not to affect the calculations of section 2 maximum entitlements for FY 1988. Under section 431(d) of the General Education Provisions Act, this suspension does not become effective until between 45 and 84 days after publication, depending upon congressional adjournments. Unless the suspension is effective on or before October 1, 1988, it will not affect FY 1988 funds, and the Secretary will be required to calculate section 2 maximum entitlements under the February 1988 regulations, using the unequalized portion of the local real property tax rate.

Because this suspension is beneficial to applicants and in accordance with the public comment that has been received, the Secretary does not anticipate that

any further comment period would provide the Department with additional information or new comments.

Suspending the regulatory provision would have the effect of allowing section 2 maximum entitlements to be calculated under the same methodology that the Congress has mandated beginning with FY 1989. Therefore, the Secretary has determined that publication of a proposed rule is impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

This notice has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act

The Secretary has determined that this notice will not have the type of effect on a sufficient number of small entities that would require analysis under the Regulatory Flexibility Act.

List of Subjects in 34 CFR Part 222

Education, Elementary and secondary education, Federally affected areas, Grant programs—education.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

PART 222—[AMENDED]

§ 222.100 (Suspended)

Therefore, § 222.100 is suspended.

Dated: July 11, 1988.

William J. Bennett,
Secretary of Education.

[FR Doc. 88-15910 Filed 7-14-88; 8:45 am]

BILLING CODE 4000-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-6

[FPMR Amdt. A-42]

Home-to-Work Transportation

AGENCY: Federal Supply Service, GSA.
ACTION: Final rule.

SUMMARY: This regulation establishes policy, agency responsibilities, and reporting requirements concerning official use of Government passenger carriers between residence and place of employment and provides guidance concerning the implementation of Pub. L. 99-550, which amends 31 U.S.C. 1344.

EFFECTIVE DATE: July 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William Rivers, Fleet Management Division (703-557-1278).

SUPPLEMENTARY INFORMATION: This regulation has been developed in conjunction with an interagency working group of Federal vehicle fleet managers and reflects their views and comments.

During the review of this regulation, agencies should be aware of its possible income tax impact on their employees. Additional information is available in the Internal Revenue Service tax regulations, 26 CFR 1.61, Computation of Taxable Income.

Agency heads, as defined in the regulation, are allowed discretion to establish conditions and issue policies under which agency personnel may use home-to-work transportation in unusual circumstances which present a clear and present danger, emergencies, or compelling operational considerations. The intent of this regulation is to prevent abuse. This discretion, when exercised by the agency head, will ensure that an employee, acting responsibly while conducting official business, is protected in the reasonable, good faith use of a Government passenger carrier in unique or unpredictable circumstances.

The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; of significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

This regulation was published as a proposed rule in the Federal Register on March 24, 1987 (52 FR 9448), requesting further comments from interested parties. In response to the proposed rule, comments were received from 14 agencies. After a careful review of the comments, GSA has decided to adopt several suggested changes and to reformat the regulation into 41 CFR Part 101-6, Miscellaneous Regulations. Suggestions which were not adopted are outlined below.

One agency recommended that the language in § 101-6.400 be consolidated and amended to remove the references

to intelligence, counterintelligence, protective services, and criminal law enforcement duties, which are not subject to the regulation. Those references were not removed so that the regulation's applicability would be easily understood.

Another agency suggested that the language in § 101-6.400(b) was too broad and that the term "place of employment" needed to be further explained to avoid misinterpretation. Since the term is defined in § 101-6.401(f), it is not necessary to define it in another subsection.

Two agencies noted that the term "criminal law enforcement duties" is used in § 101-6.400(c) but is not defined. The term is not defined because it is beyond the scope of GSA's authority to regulate home-to-work transportation for employees who perform such duties. One agency asked if the exclusion included employees with intermittent law enforcement duties. The other agency inquired if auditors in the Office of the Inspector General were included in the exemption. These matters are not specifically addressed because it is each agency's responsibility to determine those duties which are criminal law enforcement in nature. It is also the agency's responsibility to prepare appropriate documentation if the agency determines that home-to-work transportation is required for employees who perform such duties. With respect to auditors, it may be more appropriate to determine them eligible for home-to-work transportation under the field work provision or under compelling operational considerations. The legislative history contained in *Congressional Record S 15867* (daily ed. October 10, 1986) refers to the activities of investigators and auditors as being field work.

Agencies should note that even though this regulation may not apply to employees who perform intelligence, counterintelligence, protective services, or criminal law enforcement duties, 31 U.S.C. 1344 does not exempt agencies from controlling home-to-work transportation for such employees. Rather, the law requires agencies to prepare the same documentation for employees performing such duties as it does for employees performing field work.

Comments of three agencies on the definition of "passenger carrier" (§ 101-6.401(c)) were not adopted. One agency wanted to exempt vehicles which are in the custody of the Government for testing purposes, but not owned or leased by the Government. The statute refers to the expenditure of funds for maintenance, operation, or repair of

passenger carriers. House of Representatives Report No. 98-451, 98th Cong., 1st Sess. (1985) states, on p. 5, that "the term includes those carriers procured outright and carriers that come into the possession of executive agencies by other means, such as by confiscation." Therefore, if an agency is using a vehicle owned by an entity other than the Government, but the agency is paying any of the costs associated with operating the vehicle, the provisions of this regulation apply to that vehicle.

The second agency asked if the regulation limited the coverage of motor vehicles strictly to sedans and station wagons. Although the law uses the term "passenger motor vehicle" as part of the definition of "passenger carrier," the legislative history leaves no doubt that all means of transportation are covered by the law. To clarify the statutory definition, the term "motor vehicle" is used in the regulation instead of "passenger motor vehicle."

The third agency suggested deleting the reference to passenger carriers in the custody of the Government through forfeiture or confiscation because forfeited vehicles are owned by the Government and confiscated vehicles cannot be used by the Government until forfeiture proceedings have been completed. Part of this reasoning is valid. However, congressional intent was to include passenger carriers in the possession of the Government through any means. By clarifying the definition to include forfeited and donated passenger carriers, as well as passenger carriers which have been purchased or leased (including non-TDV rentals) by the Government, the regulation better reflects the intent of Congress.

Comments from two agencies on the definition of "place of employment" (§ 101-6.401(f)) were not incorporated. One agency recommended shortening the definition to make it more concise and understandable. The resulting definition would not have adequately explained the extent of the coverage. Instead, other comments prompted the expansion of this definition to agree with Comptroller General decisions on the subject and to avoid misinterpretation.

The other agency wanted to replace the term "any place," which appears twice in the definition, with "the primary place," one term used in the committee report. The agency stated the definition conflicted with many previous definitions of "place of employment" and would apply to numerous situations such as assigned training or meetings. This recommendation could not be adopted since it directly conflicts with

long-established GAO opinions and with Congressional intent stated in the committee report and in Congressional Record H 10528 (daily ed. October 15, 1986) that an employee is responsible for his/her daily commuting costs to any place within the local commuting area where the employee is assigned to work. The need for an employee to attend a meeting, training, or any other official function at a location within the same commuting area as his/her primary work location cannot be considered as justification for providing a Government passenger carrier to transport the employee to such a site from his/her residence.

Comments from three agencies concerning the definition of "field work" (§ 101-6.401(g)) were partially adopted. One agency recommended deleting the term "itinerant-type travel" because it means an employee would need to visit two or more work sites away from his/her place of employment in order for an agency to be able to authorize any vehicle usage to or from a residence. To be in conformance with GAO decisions, an employee would need to make two or more stops if the sites are within the local commuting area before he/she can be eligible for home-to-work transportation under the field work provision. The agency's comment is valid only for single site visits outside the commuting area. Therefore, the definition has been modified to specify that itinerant-type travel involves visits to two or more work sites inside the local commuting area.

The second agency suggested deletion of the term "itinerant-type travel" and the entire last sentence in § 101-6.401(g) to clarify the definition. Removal of that language would open the definition to misinterpretation and cause confusion as to the intent of the law. Therefore, the suggestion was not adopted.

The third agency wanted to include in the definition of field work the testing and evaluation of vehicles during various traffic conditions, including nighttime and rush-hour conditions. This would allow an employee to perform the evaluation by driving a test vehicle home at the end of the work day and returning the vehicle the following morning. While the argument may be valid for increasing the efficiency and economy of the Government by allowing the evaluation to be done after the employee's normal workday, it does not fit the Congressional definition of field work. Approval of such home-to-work transportation is more appropriate under the compelling operational considerations provision.

One agency felt it appropriate to change the word "critical" to "essential"

for describing employees in the definition of "emergency" (§ 101-6.401(i)) since the word "essential" is used in the committee report. While the suggestion has some merit, there must be a differentiation between the term used in this definition and the terms "essential" and "nonessential" used for determining who stays at, or reports to, work during hazardous weather simply to answer the telephone or perform other non-critical functions. Therefore, the definition has been rewritten and expanded to incorporate GAO opinions which impart the need for an agency to provide an uninterrupted essential service and there is no other way for those employees to get to work other than by Government-provided home-to-work transportation.

One agency recommended rewording the definition of "compelling operational considerations" (§ 101-6.401(j)) to remove the inference that this exemption is limited to life and death situations, and to delete the requirement that the home-to-work transportation be "essential to the successful accomplishment of the agency's mission." This recommendation has been partially implemented by a complete rewrite of the definition. However, the law specifically states that such transportation must be "essential to the conduct of official business." Therefore, that language is used in the revised definition.

Three agencies had comments regarding the "logs or other records" referenced in § 101-6.403(a). The first agency suggested adding the word "local" before the word "logs" in the first sentence. Rather than requiring all agencies to keep the logs or other records at the local level, the regulation was rewritten to allow agencies to determine the best location for such records to be kept.

The second agency recommended deletion of the seven items identified for collection on the logs or records because such detailed recordkeeping places an undue burden on the agencies. The requirement for the logs or other records was added by the Senate and, therefore, is not addressed in the committee report. However, the legislative history contained in *Congressional Record S 15866-15867* (daily ed. October 10, 1986) addresses the subject. The intent of the requirement was to allow GAO to effectively monitor agency compliance with the statute. Because of the desire for uniformity among the agencies, the referenced items should be the minimum information required on the logs or other records.

The third agency, in order to assure the broad exemptions afforded law

enforcement agencies by Pub. L. 99-550, wanted the regulation to state that maintenance of logs or recordkeeping shall not apply to law enforcement agencies. This suggestion was not adopted for two reasons. First, it is outside the scope of GSA's authority to regulate the requirements for home-to-work transportation in the performance of law enforcement duties as outlined in § 101-6.400(c). Second, the law does not exempt such agencies from maintaining logs or other records necessary to establish the official purpose of home-to-work transportation. Subsection 1344(f) of title 31, United States Code, which states the requirement for the recordkeeping, applies to all agencies covered by the law. Also, the legislative history makes clear the intent of Congress that each agency must maintain adequate records of such transportation.

Eight agencies had comments on § 101-6.403 (b) and (c). Seven agencies stated that both subsections should be rewritten to specifically allow the agency head to delegate the authority to determine which employees are eligible for home-to-work transportation. They stated that the approval process was cumbersome, time consuming, and did not allow for immediate local approval in response to emergencies or changing operational requirements. Due to the wide geographic dispersion of their employees and the problem in obtaining a timely approval from the agency head, they reasoned that a more practical approach would be to allow for delegation of authority to a more appropriate level or to permit post-approvals rather than require prior approvals. One agency cited the committee report in its interpretation that delegation of authority is allowed for determining eligible employees under the field work provision.

The statute does not allow for delegation of such authority. Subsection 1344(d)(3) of title 31, United States Code, states in relevant part that "the authority to . . . make determinations pursuant to subsections (a)(2) . . . and (b)(8) of this section and pursuant to (subsection (d)(2)) . . . may not be delegated . . ." Subsection (a)(2) permits home-to-work transportation that is required for the performance of field work, when approved in writing by the head of the agency. Subsections (b)(8) and (d)(2) apply to determinations involving highly unusual circumstances which present a clear and present danger, emergencies, and compelling operational considerations. Therefore, the regulation does not allow the agency head to delegate the authority to

approve home-to-work transportation. The agency interpretation of the committee report is not valid because the report was written for the original bill, H.R. 3614, which did not prohibit delegation of authority to determine eligible employees under the field work provision. The Senate amended the original bill in several places, including the provision in issue, and the final version which was signed into law clearly does not allow for delegation of the agency head's authority.

One agency requested deletion of the requirement of § 101-6.403(b) to recertify the field work determinations annually since such a requirement is not imposed by the law or expressed in the committee report. The requirement for renewing determinations on a periodic basis conveys the intent of Congress contained in *Congressional Record* S 15866 (daily ed. October 10, 1986) that the regulations for home-to-work transportation contain appropriate safeguards against abuse. Without a system to monitor and reevaluate field work determinations, and agency could allow unwarranted or improper passenger carrier use to occur. However, GSA agrees that the benefits of an annual recertification may be outweighed by the administrative burden of such a frequent review. Therefore, the final rule requires a biennial recertification with more frequent updates as necessary.

One agency suggested that § 101-6.403(c) include a requirement for agencies to provide to GSA a copy of each determination submitted to Congress. This is not necessary since the determinations will be supplied to two Congressional committees and also be available within each agency for audit.

Two agencies recommended increasing the duration of determinations for circumstances which present a clear and present danger, emergencies, and compelling operational considerations under § 101-6.403(c) to reduce the administrative burden. The law is specific about maximum durations and the regulation must reflect those same durations.

One agency suggested that the reports to Congress, as specified in § 101-6.404, be submitted annually instead of quarterly to make the reporting process less cumbersome. The law requires the agency to report promptly to Congress each determination prepared for a clear and present danger, an emergency, or a compelling operational consideration. The committee report states that the information should not be held for consolidation if such holding would make the report not prompt. Since the

maximum duration of an extended determination is 90 days, the requirement for prompt notification would not be met by an annual report.

One agency recommended including in § 101-6.404 a requirement for agencies to report to Congress any determinations allowing home-to-work transportation for a single principal deputy as specified in 31 U.S.C. 1344(b)(2)(B). Although this is a requirement for agencies to meet, it is not appropriate to include in the regulations. The law authorizes GSA to promulgate regulations to govern home-to-work transportation only for field work, highly unusual circumstances presenting a clear and present danger, emergencies, and compelling operational considerations. However, the FPMR amendment which will transmit the regulation contains a reminder that agencies need to report to Congress such determinations for a single principal deputy in accordance with 31 U.S.C. 1344(d)(4).

One agency expressed concern over the language of the committee report quoted in § 101-6.405(a). The report states that the field work exemption cannot be used when the employee's workday begins at the official duty station. The agency stated that this prohibition may impinge upon the efficiency and economy of their operations. A change to the regulation would be contrary to Congressional intent. However, the agency may be able to justify home-to-work transportation in such cases using the provisions for compelling operational considerations if a substantial increase in an agency's efficiency and economy would result.

One agency suggested that the regulations require employees of contractors to meet the same restrictions for home-to-work transportation if the contract provides for use of Government vehicles. Such coverage is not necessary in this regulation because use of Government-furnished vehicles by contractors is included in FPMR 101-38.3 (41 CFR 101-38.3) and will be included in a future change to the Federal Acquisition Regulation (48 CFR Parts 1-51).

The same agency suggested inclusion of a reference to an employee's income tax liability when he/she is provided with home-to-work transportation. While it is true that the value of the home-to-work transportation may be considered by the Internal Revenue Service to be a fringe benefit and, therefore, taxable income, there is nothing in Pub. L. 99-550 which gives GSA the authority to regulate, or include in the regulation, the imputation of

income. However, reference to the income tax issue is included in the supplementary information published with the regulation in the *Federal Register* and in the FPMR amendment which will transmit the regulation.

List of Subjects in 41 CFR Part 101-6

Government property management.
Home-to-work transportation.

PART 101-6—MISCELLANEOUS REGULATIONS

1. The authority citation for Part 101-6 is added to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); 31 U.S.C. 1344(e)(1).

2. The table of contents for Part 101-6 is amended by adding Subpart 101-6.4 to read as follows:

Subpart 101-6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

- 101-6.400 Scope and applicability.
- 101-6.401 Definitions.
- 101-6.402 Policy.
- 101-6.403 Agency responsibilities.
- 101-6.404 Reports.
- 101-6.405 Additional guidance.

3. Part 101-6 is amended by adding new Subpart 101-6.4 to read as follows:

Subpart 101-6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 101-6.400 Scope and applicability.

(a) All Federal agencies and entities, as defined in § 101-6.401(a), in the executive, judicial, and legislative branches of the Government are subject to this regulation, with the exception of the Senate, House of Representatives, Architect of the Capitol, and government of the District of Columbia.

(b) This subpart applies to the use of home-to-work transportation for employees on normal duty (non-travel) status performing assigned duties at their place of employment. This subpart does not apply to the use of a Government passenger carrier when the passenger carrier is used in conjunction with official travel to perform temporary duty (TDY) assignments away from a designated or regular place of employment.

(c) This subpart does not apply to those employees essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties, when those employees have been so designated in writing by the head of a Federal agency. Each Federal agency which uses

Government passenger carriers to perform such duties or services should issue guidance concerning the use of home-to-work transportation by its employees.

§ 101-6.401 Definitions.

For purposes of this regulation, the following definitions apply:

- (a) "Federal agency" means:
 - (1) A department (as such term is defined in section 18 of the Act of August 2, 1946 (41 U.S.C. 5a));
 - (2) An executive department (as such term is defined in 5 U.S.C. 101);
 - (3) A military department (as such term is defined in 5 U.S.C. 102);
 - (4) A Government corporation (as such term is defined in 5 U.S.C. 1031);
 - (5) A Government controlled corporation (as such term is defined in 5 U.S.C. 103(2));
 - (6) A mixed-ownership Government corporation (as such term is defined in 31 U.S.C. 9101(2));
 - (7) Any establishment in the executive branch of the Government (including the Executive Office of the President);
 - (8) Any independent regulatory agency (including an independent regulatory agency specified in 44 U.S.C. 3502(10));
 - (9) The Smithsonian Institution;
 - (10) Any nonappropriated fund instrumentality of the United States; and
 - (11) The United States Postal Service.
- (b) "Head of agency" means the highest official of a Federal agency.
- (c) "Passenger carrier" means a motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned or leased (including non-TDY rentals) by the United States Government, or has come into the possession of the Government by other means, including forfeiture or donation.
- (d) "Employee" means a Federal officer or employee of a Federal agency and includes an officer or enlisted member of the Armed Forces.
- (e) "Residence" means the primary place where an employee resides and from which the employee commutes to his/her place of employment. The term "residence" is not synonymous with "domicile" as that term is used for taxation or other purposes, nor does this regulation affect the provisions set forth in the Federal Travel Regulations for employees on temporary duty (TDY) away from their designated or regular place of employment.
- (f) "Place of employment" means any place within the accepted commuting area as determined by the agency for the locality involved, where an employee performs his/her business, trade, or occupation, even if the employee is there only for a short period

of time. The term includes, but is not limited to, an official duty station, home base, headquarters, or any place where an employee is assigned to work, including locations where meetings, conferences, or other official functions take place.

(g) "Field work" means official work performed by an employee whose job requires the employee's presence at various locations that are at a distance from the employee's place of employment (itinerant-type travel involving multiple stops within the accepted local commuting area, or use outside that area) or at a remote location that is accessible only by Government-provided transportation. The designation of a work site as a "field office" does not, of itself, permit the use of a Government passenger carrier for home-to-work transportation. (See § 101-6.405.)

(h) "Clear and present danger" means those highly unusual circumstances which present a threat to the physical safety of the employee's person or property under circumstances where:

- (1) The danger is—
 - (i) Real, not imaginative, and
 - (ii) Immediate or imminent, not merely potential; and
- (2) A showing is made that the use of a Government passenger carrier would provide protection not otherwise available.

(i) "Emergency" means those circumstances which exist whenever there is an immediate, unforeseeable, temporary need to provide home-to-work transportation for those employees who are necessary to the uninterrupted performance of the agency's mission. An emergency may occur where there is a major disruption of available means of transportation to or from a work site, an essential Government service must be provided, and there is no other way to transport those employees.

(j) "Compelling operational considerations" means those circumstances where the provision of home-to-work transportation to an employee is essential to the conduct of official business or would substantially increase a Federal agency's efficiency and economy. Home-to-work transportation may be justifiable if other available alternatives would involve substantial additional costs to the Government or expenditures of employee time. These circumstances need not be limited to emergency or life and death situations.

§ 101-6.402 Policy.

(a) Each Federal agency shall ensure that Government passenger carriers operated by its employees are used for

official purposes only; i.e., to further the mission of the agency.

(b) Each Federal agency shall limit the use of Government passenger carriers between an employee's residence and his/her place of employment to:

- (1) Those persons, including the President, the Vice-President, and other principal Federal officials and their designees, as provided in 31 U.S.C. 1344(b)(1) through (b)(7); or
- (2) Those persons engaged in field work as defined in § 101-6.401(g).

(c) Other than those uses provided for in § 101-6.402(b), a Federal agency shall only authorize the use of a Government passenger carrier for home-to-work transportation when there is:

- (1) A clear and present danger;
- (2) An emergency; or
- (3) A compelling operational consideration.

(d) The comfort and convenience of an employee shall not be considered sufficient justification for an agency to authorize home-to-work transportation under § 101-6.402 (b) or (c).

(e) Each Federal agency shall consider the location of the employee's residence prior to authorizing home-to-work transportation. Such transportation shall be authorized only within the usual commuting area for the locale of the employee's place of employment.

(f) An employee authorized home-to-work transportation may elect to share space in a Government passenger carrier with other individuals on a space available basis, provided that the passenger carrier does not travel additional distances as a result, and provided such sharing is consistent with his/her agency's policy. When an agency establishes its space sharing policy, it should consider the effects of its potential liability for and to those individuals. If an employee is authorized transportation between his/her residence and an official duty site, this privilege does not extend to his/her spouse, other relatives, or friends unless—

- (1) It is consistent with the agency's policy,
- (2) They are with the employee when he/she is picked up, and
- (3) They are transported to the same place or event.

(g) The head of each Federal agency shall authorize the use of home-to-work transportation only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

§ 101-6.403 Agency responsibilities.

(a) Each Federal agency shall maintain logs or other records necessary

to establish that any home-to-work transportation was used for official purposes. The agency may determine the organizational level at which the logs should be maintained and kept. The logs or other records should be easily accessible for audit and should contain the following information:

(1) Name and title of employee (or other identification, if confidential) using the passenger carrier;

(2) Name and title of person authorizing use;

(3) Passenger carrier identification;

(4) Date;

(5) Location;

(6) Duration; and

(7) Circumstances requiring home-to-work transportation.

(b) The head of each Federal agency shall determine which employees are eligible to use home-to-work transportation in accordance with the definition of field work in § 101-6.401(g) and the guidance contained in § 101-6.405. Determinations must be in writing and must be accomplished as soon as practicable, but not later than 90 days from the effective date of the issuance of the regulations as a final rule. Determinations should be updated as necessary and must be recertified at least every 2 years thereafter. The authority to make determinations may not be delegated.

(c) When circumstances described in § 101-6.402(c) apply, the head of a Federal agency shall make a written determination, containing the following information: Name (or other identification, if confidential) and title of the employee; the reason for authorizing home-to-work transportation; and the anticipated duration of the authorization. The authority to make a determination may not be delegated. The determination should be completed before the employee is provided with home-to-work transportation. In some cases, an agency may wish to have certain employees ready to respond immediately when those circumstances arise without warning. To meet those events, the head of an agency may approve a contingency determination. Such a determination should include the names of authorized individuals or positions, the situation(s) upon which the provision of home-to-work transportation is contingent, and administrative controls. When it is used to provide an employee with home-to-work transportation, the contingency determination must be supplemented with the following information on the specific situation if it is not already part of the contingency determination: Name (or other identification, if confidential) and title of the employee; the reason

that justified using the contingency determination; and the starting date and ending date (or anticipated ending date) of the authorization.

(1) Each determination and contingency determination must be submitted to Congress in accordance with procedures set forth in § 101-6.404. When a contingency determination is exercised, supplemental information on the specific situation, as outlined in paragraph (c) of this section, must also be provided to Congress. Such documentation must be easily available within the agency for audit. Additional guidance concerning determinations is contained in § 101-6.405.

(2) The initial duration of a determination shall not exceed 15 calendar days. Should the circumstances justifying home-to-work transportation continue, the head of a Federal agency may approve a subsequent determination of not more than 90 additional calendar days. If at the end of the subsequent determination, the underlying circumstances continue to exist, the head of the Federal agency may authorize an additional extension of 90 calendar days. This process may continue as long as required by the circumstances.

§ 101-6.404 Reports.

Each initial determination and contingency determination, as well as supplemental information on each situation where a contingency determination is exercised, prepared under § 101-6.403(c) shall be submitted to Congress promptly, but not later than 90 calendar days after approval. An agency may consolidate any subsequent determinations into a single report and submit them quarterly. Determinations and reports shall be sent to:

Chairman, Committee on Governmental Affairs, United States Senate, Suite SD-340, Dirksen Senate Office Building, Washington, DC 20510.

Chairman, Committee of Governmental Operations, United States House of Representatives, Suite, 2157, Rayburn House Office Building, Washington, DC 20515.

§ 101-6.405 Additional guidance.

(a) House of Representatives Report No. 99-451 99th Cong., 1st Sess. (1985) clearly indicates the intent of Congress to eliminate abuse of home-to-work transportation. The report notes, on p. 7, that:

The provision for "field work" is meant to cover an employee of [a Federal] agency whose job requires the employee's presence at various locations that are at a distance from [the employee's] place of employment Examples of such employees include, but are not limited to, mine inspectors, meat

inspectors, and certain other law enforcement officers, whose jobs require travel to several locations during the course of a workday. However, the field work exception may not be used (1) when the [employee's] workday begins at his or her official [Government] duty station, or (2) when the [employee] normally commutes to a fixed location, however far removed from his or her official duty station (for example, auditors or investigators assigned to a defense contractor plant). Although their daily work station is not located in a [Government] office, these [employees] are not performing "field work" Like all [Government] employees, [employees] working in a "field office" are responsible for their own commuting costs.

The report also states in the same section that the legislation is intended to allow home-to-work transportation for medical officers on outpatient service. The guidelines contained in the report, as well as the *Congressional Record* (daily ed. October 10, 1986, pp. S 15865-15868), should provide an adequate basis for an agency to determine which of its employees may be authorized home-to-work transportation.

(b) Additional examples of employees who may perform field work include, but are not limited to, quality assurance inspectors, construction inspectors, customs inspectors, dairy inspectors, revenue officers, compliance investigators, and personnel background investigators. The assignment of an employee to such a position does not, of itself, entitle an employee to receive daily home-to-work transportation. When authorized, such transportation should be provided only on days when the employee actually performs field work, and then only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

(c) Instances may occur when an employee, by the nature of his/her job, is designated as being authorized home-to-work transportation under the field work provision. However, circumstances may require that field work only be performed on an intermittent basis. In those instances, the agency shall establish procedures to ensure that a Government passenger carrier is used only when field work is actually being performed.

(d) In making field work determinations under § 101-6.403(b), an agency head may elect to designate positions rather than individual names, especially in positions where rapid turnover occurs. The determination should contain sufficient information, such as the job title, number, and operational level where the work is to be performed (i.e., five recruiter

personnel or positions at the Detroit Army Recruiting Battalion) to satisfy an audit, if necessary.

(e) Situations may arise where it is more cost-effective for the Government to provide an employee a vehicle for home-to-work transportation rather than have the employee travel a long distance to pick up a vehicle and then drive back toward or beyond his/her residence to perform his/her job. In those situations agencies should consider basing the vehicle at a Government facility located near the employee's job site. If such a solution is not feasible, an agency must then decide if the use of the vehicle should be approved under the compelling operational considerations definition. Home-to-work transportation in such cases may be approved only if other available alternatives would involve substantial cost to the Government or expenditure of substantial employee time.

Dated: July 7, 1988.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88-15758 Filed 7-14-88; 8:45 am]

BILLING CODE 5020-24-M

41 CFR Part 101-41

[FPMR Amdt. G-37]

Prepayment Transportation Audit Procedures

AGENCY: Federal Supply Service, GSA.
ACTION: Final rule; correction.

SUMMARY: This notice corrects the prepayment audit delegation conditions which appeared in the *Federal Register* on July 5, 1988 (53 FR 25162).

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, Office of the Controller, (202) 786-3065 or FTS 786-3065.

SUPPLEMENTARY INFORMATION: The prepayment transportation audit procedures published in the *Federal Register* on July 5, 1988, contained an error on page 25165 in § 101-41.103(e). Section 101-41.103(e) is correctly added to read as follows.

§ 101-41.103 [Amended]

(e) The request shall contain a mechanism to report savings, on a semi-annual basis and in a manner acceptable to GSA, accomplished by identifying overcharges/overbillings, or other savings indicating the program is

cost-effective or otherwise in the public interest.

Dated: July 8, 1988.

Leonard Vonkler,

Controller, Federal Supply Service.

[FR Doc. 88-15950 Filed 7-14-88; 8:45 am]

BILLING CODE 5030-24-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 80630-8130]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery for chinook salmon throughout the exclusive economic zone (EEZ) off Southeastern Alaska and closes a small part of this area, the "Fairweather Grounds" to all commercial salmon fishing. This action is necessary to conserve chinook salmon stocks. The intent of this action is to ensure that the harvest of chinook salmon does not exceed the limit imposed by the Pacific Salmon Treaty. This action complements similar closures of the commercial troll fishery in waters managed by the State of Alaska.

DATE: This notice is effective from 11:59 p.m. Alaska Daylight Time (ADT), July 12, 1988, until 12 midnight, September 20, 1988. Public comments are invited until August 11, 1988.

ADDRESSES: Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection during the hours of 8:00 a.m. to 4:30 p.m. (ADT) Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: This notice implements the Pacific Salmon Treaty and the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska (FMP). The FMP was developed and amended by the North Pacific Fishery Management Council. The regulations (50 CFR Part

674) govern the salmon fisheries in the EEZ off the coast of Alaska east of 175° E. longitude. They were issued under section 7(a) of Pub. L. 99-5, the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 *et seq.*) and under section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Closure of the Troll Chinook Fishery

The Pacific Salmon Commission limited the 1988 harvest by all salmon fisheries in Southeast Alaska to 263,000 chinook salmon, exclusive of the harvest of chinook salmon resulting from Alaska's new enhancement activities. These activities added about 27,000 chinook, bringing the total to about 290,000 chinook.

Of this number, the Alaska Board of Fisheries set the guideline harvest level for the 1988 summer troll fishery at 173,000 chinook. That number was derived by deducting from the 290,000 the following: 20,000 for the net fisheries; 22,000 for the sport fisheries; 62,000 for the winter troll fishery; 5,000 for the spring experimental troll fishery; and 8,000 for new Alaska hatchery chinook salmon expected to be taken by fisheries other than the troll fishery. The remainder is the guideline of 173,000 chinook for the summer troll fishery. Overall, the troll fishery (winter, experimental, and summer) was allocated about 221,000 chinook.

On July 1, 1988, NMFS issued a final rule to announce the chinook harvest limit and set fishing periods for the 1988 commercial troll fishery in the EEZ (53 FR 25492 July 7, 1988). This rule allowed the troll harvest of chinook salmon to begin on July 1 and continue until the chinook harvest guideline of 221,000 for the troll fishery was reached (50 CFR 674.21(a)(2)(i)).

Counts, estimates, and forecasts made by the Alaska Department of Fish and Game (ADF&G) show that the summer commercial salmon troll fishery will have harvested 154,400 chinook salmon through July 11, 1988. Based on (1) the harvest to date, (2) an average daily catch rate by the troll fleet of about 13,000 chinook per day, and (3) allowing for some unreported harvests, NMFS and ADF&G predict that the guideline harvest level of 173,000 will be reached by midnight July 12, 1988. Thus, the troll harvest of chinook salmon must stop at that time.

Closure of the Fairweather Grounds

A provision of the Pacific Salmon Treaty requires that each party to the treaty "minimize . . . all sources of induced fishing mortality . . . of chinook salmon" (annex 4, chapter 3,

paragraph 1(e)). In a move to achieve this requirement, the Alaska Board of Fisheries and the North Pacific Fishery Management Council expressed their desire to minimize the incidence of chinook salmon hook-and-release during any chinook-only closures that may be necessary to manage the chinook salmon harvest to the desired level. Therefore, the ADF&G and the Secretary are closing certain areas known to have high numbers of chinook salmon to commercial fishing for all salmon species.

These areas are places where adult and juvenile chinook salmon concentrate. If they were left open to commercial salmon fishing, a large number of chinook would be caught and released, with a resulting substantial incidental mortality of those released.

The Secretary closes to all commercial salmon fishing the area of the EEZ known as the Fairweather Grounds. It is roughly rectangular and is bounded by lines connecting the following points:

56°46.7' N. Latitude, 136°54.5' W. Longitude
56°24.5' N. Latitude, 136°48.8' W. Longitude
57°50.0' N. Latitude, 136°19.5' W. Longitude
58°15.8' N. Latitude, 137°21.5' W. Longitude

The following Loran C lines are provided as estimates of the boundary lines at the request of fishermen. The closed area is roughly bounded on the northwest by Loran C line 7980-Y-29800, on the seaward side by Loran C line 7980-X-14400, and on the southeast by Loran C lines 7980-Y-29150, and on the shoreward side by Loran C line 7980-X-14660. Refer to NOAA chart 16760.

This action is authorized by § 674.23 of the regulations, which provides that the Secretary may modify the fishing periods and areas by publishing a notice

in the Federal Register. Any such modification, however, must be based on a determination by the Director of the Alaska Region of NMFS (Regional Director) that (a) the condition of a salmon species is "substantially different from the condition anticipated in the FMP" and (b) this difference requires a modification of the fishing times and areas to adequately conserve that salmon species. The regulations specify the factors the Regional Director may consider. The regulations also specify that the Secretary may consult with the ADF&G before he makes his modifications.

In view of these requirements, the Regional Director (acting on behalf of the Secretary) has consulted with the ADF&G. Also, he has reviewed the information on the 1988 salmon fishery to date, has determined that the chinook stocks in 1988 are substantially different from the condition anticipated in the FMP, and has determined that this difference in stock condition requires that, in conjunction with area closures made by the ADF&G, he needs to close the Fairweather Grounds to all commercial salmon fishing as of 11:50 p.m. (ADT) on July 12, 1988.

These closures will become effective after they have been broadcast over VHF channel 16 and publicized for 48 hours through ADF&G procedures.

Possibility of Reopening the Troll Chinook Fishery

After the closure, the actual troll harvests of chinook will be tabulated and the number from Alaska's new enhancement activities will be determined. If the total number of chinook harvested by the trollers falls considerably short of the harvest

guideline, then the troll fishery will be reopened to allow harvest of the remainder of its allotment before the troll season closes on September 20.

Classification

This action is exempt from sections 4 through 8 of the Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291 because, as is expressly provided in section 7(a) of Pub. L. 96-5, it involves a foreign affairs function. It contains no requirement for collecting information for purposes of the Paperwork Reduction Act.

Section 674.23(b)(3) of the rule implementing the FMP requires the Secretary to accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure was based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity for this action and will publish another notice in the Federal Register either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded for other reasons.

List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fish, Fisheries, Fishing, International organizations.

(16 U.S.C. 3631 *et seq.*; 16 U.S.C. 1801 *et seq.*)

Dated: July 12, 1988.

Richard H. Schoenfer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-10006 Filed 7-12-88; 4:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices

is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Credit for CHAMPUS Coverage for the Purpose of Continuing an FEHB Enrollment During Retirement

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing its proposal to discontinue allowing credit for time covered under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for the purpose of continuing a Federal Employees Health Benefits (FEHB) enrollment during retirement. The proposed regulations, published May 21, 1987 (52 FR 19152), would have discontinued the administrative practice of substituting CHAMPUS coverage for FEHB coverage, with respect to the requirement for continuation of FEHB coverage during retirement. Recent developments, including the need to reform the structure of the FEHB program, have convinced OPM to withdraw the proposed regulations. Any further consideration of this issue is being deferred until further study and plans for FEHB reform are completed.

FOR FURTHER INFORMATION CONTACT: Bill Smith, (202) 632-4634.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-15939 Filed 7-14-88; 8:45 am]

BILLING CODE 5325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 180

(No. AMS-LS-88-022)

Plant Variety Protection Act: Increase of Certification Fee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Plant Variety Protection Act of 1970, as amended, authorizes the Secretary of Agriculture to prescribe, charge, and collect reasonable fees for costs incurred in the issuance of plant variety protection certificates. This amendment proposes to increase such fees to more accurately reflect costs of different services and to make the administration of the certification program substantially self-supporting.

DATES: Comments must be received on or before August 15, 1988.

ADDRESS: Written comments may be mailed to Kenneth H. Evans, Commissioner, Plant Variety Protection Office; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture; Room 500, National Agricultural Library Building; Beltsville, Maryland 20705. Comments will be available for public inspection at this location during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Evans (301/344-2518).

SUPPLEMENTARY INFORMATION: The Plant Variety Protection Act of 1970, as amended, (7 U.S.C. 2321 *et seq.*), provides for the assessment and collection of reasonable fees for expenses incurred by the Department of Agriculture in the issuance of plant variety protection certificates and related services. The Act has recently been amended to provide that fees, including late payments and accrued interest, shall be credited to the account that accrues the costs and shall remain available without fiscal year limitation to pay the costs incurred. Present fees will not cover the projected costs for fiscal year 1988. Therefore, the Department proposes (1) to increase total fees for processing an application to \$2,400 and (2) to adjust the schedule of other fees to more accurately reflect the costs incurred by the Department for providing different services under the Act.

This proposed rule has been reviewed under USDA procedures established to

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implement Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be "non-major." It will not result in an annual effect on the economy of \$100 million or more; will not cause a major increase in production costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor will it have a significant effect on competition, employment, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of the Agricultural Marketing Service has determined that this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (1) the fee represents a minimal increase in the costs of developing and producing a new variety for the commercial market; and (2) competitive effects are offset under this voluntary program since charges are based on volume (i.e., the cost to users varies in proportion to the number of applications submitted).

From fiscal year 1981 to fiscal year 1984, the cost of processing an application was reduced from approximately \$3,600 to \$2,000; and fees were increased from \$750 to \$1,500, and then in 1984, to \$2,000 to make the program self-supporting. From the time of the 1984 fee increase to fiscal year 1988, operating costs attributed to the program have risen 35 percent. Contributing to this overall rise in costs have been the following specific cost increases: 28 percent for salaries, 104 percent for retirement and other benefits, 67 percent for rent and maintenance, 33 percent for overhead, and 10 percent for depreciation. A substantial amount of this increased expense has been absorbed by improved productivity. For example, when calculated on a per-employee year basis, the Plant Variety Protection Office staff increased productivity by 44 percent in fiscal year 1986 when compared with fiscal year 1985—and 113 percent over fiscal year 1982. This significant improvement was due in large part to the use of new computers. However, in spite of these major gains, projected revenues for 1988 are estimated to be 20 percent below projected costs.

On September 22, 1987, the Plant

Variety Protection Advisory Board (Board) met and was provided information concerning increased costs which would be incurred by the Department in processing an application for a plant variety protection certificate during fiscal year 1988. This information was provided to support the Plant Variety Protection Office's recommendation for a fee increase to fully fund the program. The Board recommended that fees not be raised at this time, stating that (1) the trend in numbers of applications over 7 years indicates a fee increase is not likely to be needed, (2) the public benefits from the actions of the Plant Variety Protection Office, and (3) any funds above expenses go to the U.S. Treasury. The Board also noted that the number of applications had varied both above and below the number required at existing fees to meet present budget requirements.

The increased fees proposed by the Plant Variety Protection Office were based on the receipt of an estimated 189 applications per year. The Board felt that a more realistic estimate would be 200 applications per year, and that the present fees should be sufficient to cover the costs of the program if 200 applications are received.

The Department considered the Board's recommendations. However, it believes that fees must be sufficient to fund the program. Under legislation passed December 22, 1987, all fees collected are deposited in an account designated for funding the program and are not returned to the general Treasury. In only 1 of the past 7 years (1985) has the number of applications been sufficient to fund the program through fees based on current charges per application. There were 219 applicants that year. In the remaining 6 years, the fees were not sufficient to fund the program. Therefore, the Board's recommendation that fees remain at present levels is not accepted. However, in reevaluating the recommended fee increase, the Department agrees that an estimate of 200 applications per year in calculating fees is a more appropriate figure than the 189 applications used in the initial recommendation. Even using that number, it is the Department's opinion that fees must be raised to cover the program costs.

Therefore, in view of the 35 percent increase in costs discussed above, with an adjustment for the improved productivity—and using the 200-certificates-per-year estimate—the Department proposes an increase in the fee charged for processing an application from \$2,000 to \$2,400. This is

necessary to cover the costs incurred by the Plant Variety Protection Office.

While decreasing the cost of processing applications is theoretically an alternative to increasing fees, this is not a realistic option. The Plant Variety Protection Office has achieved major advances in productivity as stated above, and further substantial increases in efficiency are not possible at this time.

Reducing the staff would not be a satisfactory alternative to increasing fees since the output per person would stay the same and the backlog, as well as the time period ineligible varieties are protected under the "protection-applied-for status," would increase. In addition, reducing the staff would not decrease overhead or supervisory costs.

Also not viable as an alternative, would be the reduction of the amount of supervision and review of plant examiners' work by the Commissioner or the elimination of the placement of information on new varieties in the computer file. Either of these actions would increase the probability of issuing certificates on ineligible applications, which would adversely affect the integrity of the program. Moreover, all of the above-mentioned possible alternatives would merely delay the expenditure of necessary funds, thereby increasing the average costs of processing future applications.

Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in duplicate to the Plant Variety Protection Office and should bear a reference to the date and page number of this issue of the Federal Register. Comments submitted pursuant to this document will be made available for public inspection in the Plant Variety Protection Office in Beltsville, Maryland, during regular business hours.

List of Subjects in 7 CFR Part 180

Plant Variety Protection Act, Administrative practices and procedures, Fees, Courts, Labeling, Plants (agricultural).

Accordingly, the Department proposes amending 7 CFR Part 180 as follows:

PART 180—REGULATIONS AND RULES OF PRACTICE UNDER THE PLANT VARIETY PROTECTION ACT

1. The authority citation for Part 180 is revised to read as follows:

Authority: Secs. 6, 22, 23, 28, 31, 42(b), 43, 50, 57, 91(c), 84 Stat. 1542; 7 U.S.C. 2320, 2352.

2353, 2356, 2371, 2402(b), 2403, 2420, 2427, 2501(c); 29 FR 10210, as amended, 37 FR 6327, 6505; 7 U.S.C. 2371.

2. Section 180.175 is revised to read as follows:

§ 180.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

- (a) Filing the application and notifying public of filing.....\$250
- (b) Search or examination.....\$1,900
- (c) Allowance and issuance of certificate and notifying public of issuance.....\$250
- (d) Revive an abandoned application.....\$250
- (e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material).....\$1
- (f) Authentication (each page).....\$1
- (g) Correcting or reissuance of a certificate.....\$250
- (h) Recording assignments (per certificate/application).....\$25
- (i) Copies of 8 x 10 photographs in color.....\$25
- (j) Additional fee for reconsideration.....\$250
- (k) Additional fee for late payment.....\$25
- (l) Additional fee for late replenishment of seed.....\$25
- (m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision).....\$2,400

(n) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(o) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed \$40 per employee-hour.

Done at Washington, DC, July 11, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88-15094 Filed 7-14-88; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 917

Proposed Expenses and Assessment Rate for Marketing Order Covering Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an

assessment rate for the Pear Commodity Committee established under Marketing Order 917 for the 1988-89 fiscal year. The proposal is needed for the Pear Commodity Committee to incur operating expenses during the 1988-89 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers. DATE: Comments must be received by July 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jerry N. Brown, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: (202) 475-5464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulations 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 43 handlers of California pears under this marketing order, and approximately 2,800 pear, plum, and peach producers in California.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of the administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Pear Commodity Committee met June 21, 1988, and unanimously recommended proposed 1988-89 fiscal year expenditures of \$825,793 and an assessment rate of \$0.22 per carton (No. 29B special lug box) of assessable pears shipped under M.O. 917. In comparison, 1987-88 fiscal year budgeted expenditures were \$910,111 and the assessment rate was \$0.20 per carton.

The major expenditure item this year is \$675,000 for advertising and promotion compared to \$713,800 in 1987-88. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts. Total income for 1988-89 would amount to \$801,260, including assessment income of \$786,260 based on shipments of 3,483,000 cartons of fresh pears, \$20,000 from the California

Department of Food and Agriculture, and \$15,000 from other sources such as interest earned on the reserve fund. The reserve fund of \$183,352 would be sufficient to cover the anticipated deficit.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on the producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the pear program need to be expedited so the committee has sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreement and orders, Fresh pears, Plums, Peaches grown in California.

For the reasons set forth in the preamble, it is proposed that § 917.252 be added as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New § 917.252 is added to read as follows:

§ 917.252 Expenses and assessment rate.

Expenses of \$825,793 by the Pear Commodity Committee are authorized, and an assessment rate of \$0.22 per No. 29B special lug box of assessable pears is established, for the fiscal year ending February 28, 1989. Unexpended funds may be carried over as a reserve.

Dated: July 12, 1988.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-16000 Filed 7-14-88; 8:45 am]
BILLING CODE 3410-02-M

BEST COPY AVAILABLE

7 CFR Part 987

(Docket No. AMS-FV-88-049)

Domestic Dates Produced or Packed in Riverside County, CA; Proposal To Disallow Handlers To Dispose of Utility Dates in Human Consumption Outlets, and Conforming Changes**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

SUMMARY: The Department invites comments on a proposal to increase the minimum quality of dates for export to Mexico, for use in date products for human consumption, and for donations to needy persons. Under the proposal, dates exported to Mexico would have to meet U.S. Grade C requirements and dates used for products would have to meet modified U.S. Grade C requirements. Currently, utility dates are permitted for export to Mexico and for use in date products. This authority has been in effect since the early 1970's. The industry reports that there are sufficient supplies of better quality dates for use in these outlets. This proposal would return the quality level to that in effect prior to the early 1970's.

DATE: Comments must be received by August 15, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this docket. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456. Copies of the written material will be made available for public inspection in the office of the Docket Clerk during regular business hours. Written comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order 987 (7 CFR Part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of dates subject to regulation under this marketing order, and there are approximately 135 producers of this commodity in the regulated areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose annual revenues are less than \$3,500,000. The majority of handlers and producers of dates produced or packed in California may be classified as small entities.

This proposal would change § 987.112a of Subpart—Administrative Rules (7 CFR 987.101-987.172) to discontinue authority specified therein allowing handlers to ship dates inspected and certified as utility dates to Mexico, and to dispose of such dates for use or use them in certain products for human consumption. Section 987.152(b)(2) of that subpart also is proposed to be changed to disallow donations of such dates to needy persons. These changes would raise the minimum quality requirements for these outlets from utility quality to U.S. Grade C or modifications thereof. The proposed changes in § 987.161 and § 987.164 of the same subpart are conforming changes in recognition of the changes proposed in § 987.112a. This proposal is based upon a unanimous recommendation of the California Date Administrative Committee, which works with the Department in administering the marketing order program.

When the marketing order for dates was amended in 1978, (7 CFR Part 987, 43 FR 4249, February 1, 1978), the term "substandard dates" was changed to "utility dates." However, not all references to substandard dates were changed in the Code of Federal Regulations, including § 987.56. For the purposes of this rulemaking, all references in the order to "substandard

dates" will be interpreted to mean "utility dates."

Section 987.56 specifies outlets for utility dates and cull dates. Such dates may be disposed of without inspection, but only in feed, non-table syrup, alcohol, or brandy outlets, or in such other outlets for non-human food products as the committee, with the approval of the Secretary, may specify. That section also provides that whenever the committee concludes and the Secretary finds that the use of utility dates of any variety in certain products for human consumption would tend to effectuate the declared policy of the Act, the Secretary shall specify such products, and dates of such variety that are inspected and certified as utility dates may be disposed of for use, or used, in such products. Similar procedures also are specified for the disposition of utility dates through any export outlet.

Utility dates are dates which fail to meet the minimum quality requirements for marketable dates primarily because of an excess of defects such as off-color, deformity, scarring, or broken skin. These defects detract from the dates' appearance but not their edibility. Because of this, such dates are acceptable in some seasons for donations, use in products or export outlets; for example, when supplies of marketable dates are less than market needs.

In the early 1970's, a strong demand existed for dates and date products domestically and in Mexico, but the supply of marketable dates to meet these and other market needs was insufficient. To augment supplies, the committee recommended that lower quality utility dates be permitted to be used for date products for human consumption and for export to Mexico. The California date industry enjoyed relatively strong market conditions throughout the 1970's and early 1980's. However, the demand for dates started to weaken in 1984. The industry currently has an abundant supply of product quality dates, and expects to start the 1988-89 marketing season on October 1 with a more-than-two-year supply.

Accordingly, the committee has recommended that the use of utility dates for certain products in human consumption outlets be ended, effective September 30, 1988, the end of the crop year. This proposed action would return the quality standard to the level for human consumption outlets which existed prior to the relaxation in the early 1970's, and thereby require that better quality dates be made available

for products for human consumption. The committee expects this, together with its ongoing market promotion program instituted two seasons ago, to stimulate buyer interest and improve market conditions. Utility dates usually comprise such a very small part of the date crop that no shortage of dates would result from this proposal.

If the proposed changes were adopted effective October 1, 1988, dates inspected and certified as utility dates prior to that date would be eligible for needy person donations, disposal in product outlets, and for export to Mexico. On or after October 1, 1988, utility dates would have to be disposed of in feed, non-table syrup, alcohol, or brandy outlets, or in such other outlets for non-human food products as the committee, with the approval of the Secretary, may specify. To be eligible as product dates, dates would have to meet at least modified U.S. Grade C requirements, and for export to Mexico at least the requirements of U.S. Grade C. Dates for donations would have to be at least product date quality, but not package date quality.

To implement the committee's recommendation, the first sentence in § 987.112a(d)(3) would specify that dates of any variety identified as "Export-Mexico", and inspected and certified as at least meeting the requirements of U.S. Grade C, may be exported to Mexico. This change would raise the minimum quality for export to Mexico from utility to U.S. Grade C. In addition, paragraph (f) of this section, specifying that utility dates may be disposed of by handlers in the same outlets and subject to the same requirements prescribed in paragraph (e) for product dates, or may be exported to Mexico, would be removed. This change would raise the minimum requirements for product dates from utility quality to U.S. Grade C, and continue the exception that mashing and mechanical injury not affecting eating quality would not be considered in determining the defect factor.

In § 987.152(b)(2), the minimum quality of donated dates would be increased from utility to at least the requirements for product dates. The committee believes this action is necessary to make better quality dates available for human consumption. There are more than ample supplies of product quality dates available for this purpose. For the last two seasons no dates have been donated under this program.

In addition, conforming changes in § 987.161, regarding handler carryover, and § 987.164, regarding reports of shipments, are proposed. References in the sections to utility dates would be removed in conformity with the

proposed regulation changes discontinuing the use of such dates in human consumption outlets.

A typical date crop consists of about 38 percent modified U.S. Grade B (for packaged domestic market use), 20 percent export grade (somewhat better than U.S. Grade C), 35 percent product quality (U.S. Grade C), 5 percent utility, and 2 percent culls (which are not marketable for human consumption because they are unwholesome).

Based on available information, the Administrator of AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities. It is the Department's view that discontinuing the use of utility dates for export to Mexico, or disposal as products for human consumption, or for manufacture into such products, would benefit the date industry by improving market conditions and fostering increased date sales with little impact on handler or grower costs. The expected market improvements contemplated by this proposal, and benefits resulting from them would offset any additional costs incurred. The Department has no information to conclude that discontinuing the use of utility dates for donation would adversely affect handler or grower costs.

The information collection requirements contained in the proposed rule have been previously approved by the Office of Management and Budget and assigned OMB No. 0581-0077. The committee's recommendation and all written comments timely received in response to this request for comments will be considered before a final determination is made on this proposal.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, dates, California.

For the reasons set forth in the preamble, 7 CFR Part 987 is proposed to be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 987.112a, the first sentence of paragraph (d)(3) is revised, the title and provisions of paragraph (f) are removed, and paragraphs (g) and (h) are redesignated as paragraphs (f) and (g), respectively, to read as follows:

§ 987.112a Grade, size, and container requirements for each outlet category.

(d) * * *

(3) Dates of any variety identified as "Export-Mexico" and inspected and certified as at least meeting the requirements of U.S. Grade C may be exported only to Mexico. * * *

(f) (Removed)

§ 987.152 (Amended)

3. In the first sentence of § 987.152(b)(2), the words "Utility or" are removed.

§ 987.161 (Amended)

4. In the second sentence § 987.161, the words "and utility dates" are removed from paragraph (c).

5. In § 987.164, the section heading is revised by removing the words "or utility dates", and the first sentence is revised to read as follows:

§ 987.164 Shipments of product dates and disposition of restricted dates in approved product outlets.

Each handler shall file with the Committee a completed CDAC Form No. 8 showing the shipment of each lot of product dates or the No. 8 showing the shipment of each lot of product dates or the disposition of restricted dates in approved product outlets.

Dated: July 12, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-15999 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

(Docket No. 88-NM-00-AD)

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9 (Includes MD-80 Series), and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain transport category airplanes certificated for operation with a main

deck Class B cargo compartment, which would require design changes either to modify the cargo compartment to the Class C configuration or to require the use of flame penetration-resistant cargo containers. This action is prompted by the recent loss of a Boeing Model 747 "Combi" airplane that apparently developed a major fire in the main deck cargo compartment.

DATES: Comments must be received no later than November 7, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Weston B. Slifer, Systems & Equipment Branch, ANM-130S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-1945; or Mr. Kevin Kuniyoshi, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (210) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket

No. 88-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A Boeing Model 747 "Combi" airplane, operating with a main deck Class B cargo compartment, as defined by Federal Aviation Regulation (FAR) 25.857(b) was lost over the Indian Ocean on November 28, 1987. While the cause of the accident has not been determined, there was evidence of a major fire on board the airplane, which developed from an undetermined origin and progressed within the main deck cargo compartment.

This information prompted an FAA review of existing regulations, policies, and procedures pertaining to the certification of large main deck Class B cargo compartments with volumes exceeding 200 cu. ft. The results of this review are contained in a report titled "Evaluation of Transport Airplane Main Deck Cargo Compartment Fire Protection Certification Procedures," which has been made a part of the Rules Docket for examination by interested persons. The report concludes that, notwithstanding compliance with the existing regulations, airplanes equipped with main deck Class B cargo compartments do not provide an acceptable level of safety in terms of smoke and fire protection.

The FAA is considering the development of new type certification and operations regulations to address this issue; however, the existing unsafe condition requires immediate action, applicable to both new production and in-service airplanes. This Notice, therefore, proposes to require a design change for all airplanes listed above that are operated with main deck Class B cargo configurations with volumes exceeding 200 cu. ft. This design change would require either that the Class B cargo compartment be modified to a Class C configuration, meeting the requirements of FAR 25, Appendix F, Part III; or that flame penetration-resistant containers, meeting the requirements of FAR 25, Appendix F, Part III, and having smoke detection and fire extinguishing systems, be used to carry all cargo. The requirements for a Class C cargo compartment are contained in FAR 25.855 and FAR 25.857(c). Class C cargo compartments require a smoke detection system and a built-in fire extinguishing system controllable from the cockpit.

FAA recognizes that other alternative design changes may be developed which may provide a level of safety equivalent to the options stated above. Therefore, the proposal includes provisions for the

use of alternate means of compliance, when approved by FAA.

It should be noted that the applicability of this proposal is not limited by airplane serial number. Accordingly, the provisions of the AD, upon becoming effective, would also apply to new designs of the affected models and approved designs that are in production. When such airplanes are inspected for the issuance of an airworthiness certificate, they would be required to comply with the provisions of the AD resulting from this proposal.

Since this condition is likely to exist or develop on other airplanes of these same type designs, an AD is proposed which would require the modification of all main deck Class B cargo compartments to the Class C configuration; or the use of flame penetration-resistant containers with smoke detection and fire extinguishing systems to carry all cargo; or an alternate means of compliance approved by the FAA.

It is estimated that a total of approximately 80 U.S.-registered Boeing Model 707, 727, 737, and 747 series airplanes, and 124 U.S.-registered McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes, have been certificated to operate with a Class B main deck cargo compartment. Many of these airplanes have been permanently converted to the all-passenger configuration and are, therefore, not affected by this proposal. Approximately 40 of these model Boeing and McDonnell Douglas series airplanes are presently operating in the mixed cargo/passenger configuration. There are no known U.S.-registered McDonnell Douglas DC-8 or DC-9 series "combi" airplanes in service.

The design alternative selected by an operator will have a significant impact on the cost of complying with this proposed AD. The highest cost option is expected to be the conversion to a Class C compartment, as defined in paragraph A. of this proposal. A conservative cost estimate for such a modification, based upon costs of required materials, labor, and testing, between \$750,000 and \$1,000,000 per airplane. Based on these figures, the total cost of this AD on U.S. operators is estimated to be between \$30,000,000 and \$40,000,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have

federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, large transport airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing and McDonnell Douglas: Applies to Boeing Models 707, 727, 737, 747, and 757 series airplanes; and McDonnell Douglas Model DC-8, DC-9 (includes MD-80 series), and DC-10 series airplanes; equipped with a main deck Class B cargo compartment, as defined by FAR 25.857(b) or its predecessors, with a volume exceeding 200 cu. ft.; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

A. Within 180 days after the effective date of this AD, or prior to carrying cargo in a main deck Class B cargo compartment, whichever occurs later, accomplish either of the following:

1. Modify all main deck Class B cargo compartments of volume exceeding 200 cu. ft. to comply with the design standards specified in FAR 25.857(c) for a Class C compartment. In addition, the ceiling and sidewall liner panels must meet FAR 25, Appendix F, Part III, effective June 16, 1986. The modification must be approved by the Manager, Seattle

Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas airplanes).

2. Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas airplanes), throughout the compartment:

"Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c), with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, Appendix F, Part III, effective June 16, 1986."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (Boeing Models); or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (McDonnell Douglas Models).

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office, or the Manager, Los Angeles Aircraft Certification Office, as appropriate.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88-15918 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-12-M

14 CFR Part 39

[Docket No. 88-NM-55-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10-10 and -30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Model DC-10-10 and -30 series airplanes, which would require the inspection and modification of Passenger Service Unit (PSU) and the removal, inspection, and replacement of the PSU oxygen canisters, as necessary. This proposal is prompted by reports that the chemical oxygen generator

canisters have been punctured by the existing standoff bracket within the PSU. This condition, if not corrected, could lead to loss of the use of the emergency oxygen system during rapid depressurization of the airplane.

DATES: Comments must be received no later than September 6, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-55-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be extended at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103),

Attention: Airworthiness Rules Docket No. 88-NM-55-AD, 17900 Pacific Highway South, C-68086, Seattle, Washington 98148.

Discussion

The airplane manufacturer and eight airline operators reported that, during routine maintenance inspections of the PSU oxygen system, several chemical oxygen canisters were found to be worn or punctured in the vicinity of the standoff brackets within the PSU unit containers. The oxygen generator brackets may settle in service, and this downward deflection can result in contact between the oxygen generator and the food tray latch cotter pin. The canister bracket may vibrate and abrade the thin wall of the canister, causing a scuff mark or small puncture. This condition, if not corrected, could lead to loss of the use of the emergency oxygen system during rapid depressurization of the airplane.

The FAA has reviewed and approved Jepson-Burns Service Bulletin Number 25-20-618, dated June 10, 1987, which describes procedures for visual inspection of Scott Aviation chemical oxygen generators and the addition of new standoff brackets within the PSU units on Jepson-Burns seat Model FBC-2000UHDE- () installed in McDonnell Douglas Model DC-10-10 and -30 series airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the 3-man oxygen generators (Scott Aviation part number 801386-08) within the PSU, and replacement, if necessary, of any generator showing evidence of bracket contact and wear on the canister; and replacement of the existing brackets with new bracket assemblies (Jepson-Burns part number 42703001); in accordance with the service bulletin previously mentioned.

It is estimated that 105 airplanes of U.S. registry would be affected by this AD. There are approximately 88 PSU on each airplane. It would take approximately .5 manhour per PSU to accomplish the required actions, and the average labor cost would be \$40 per manhour. The cost of modification parts is estimated to be \$192 per PSU. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$18,658 per airplane, or \$1,958,880 for the U.S. fleet.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same

subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model DC-10-10 and -30 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—(AMENDED)

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.60.

§ 39.13 (Amended)

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10 and -30 series airplanes equipped with Jepson-Burns Corporation seat Model FBC-2000UHDE- () certificated in any category. Compliance required as indicated, unless previously accomplished.

To assure proper operation of the passenger emergency oxygen system, accomplish the following:

A. Within 90 days after the effective date of this AD, remove and inspect all 3-man oxygen generators, Scott Aviation Part Number 801386-08, within the Passenger Service Unit (PSU) of the seat. Replace, prior to further flight, any generator showing evidence of food tray latch and cotter pin contact and wear on the canister.

B. Within 90 days after the effective date of this AD, remove existing brackets and install new bracket assemblies, Jepson-Burns Part Number 42703001, in accordance with the

Implementation Instructions of Jepson-Burns Service Bulletin Number 25-20-618, dated June 10, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Washington, DC, on July 8, 1988.
M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88-15919 Filed 7-14-88; 8:45 am]

BILLING CODE 4910-13-B

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Early Retirement Plans

AGENCY: Equal Employment Opportunity Commission (EEOC, Commission).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission hereby publishes an advance notice of proposed rulemaking (ANPRM) under section 9 of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, relating to the prohibition against discrimination on the basis of age in early retirement plans, to develop guidance for the public.

DATES: Comments should be submitted on or before October 13, 1988.

ADDRESS: Comments should be submitted, in quadruplicate if possible, to: Executive Secretariat, EEOC, 2401 E Street, NW., Washington, DC 20507. The Commission may schedule a public hearing on the issue after the expiration of the comment period.

FOR FURTHER INFORMATION CONTACT: Paul E. Boymel, Office of Legal Counsel, Room 214, EEOC, 2401 E Street, NW., Washington, DC 20507, (202) 634-6423.

Background

The ADEA prohibits discrimination on the basis of age with respect to an employee's compensation, terms, conditions, or privileges of employment. In light of recent amendments to the ADEA and several cases dealing with early retirement, questions have arisen regarding the legality of early retirement plans in general and of specific plans. Since the use of early retirement has expanded greatly in recent years, the Commission deems it appropriate to consider the issuance of regulatory guidance in the area.

Since a project of this magnitude should not be undertaken without sufficient study, the Commission is publishing this ANPRM to seek public comment in several specific areas, to enable the Commission to channel its regulatory efforts effectively.

Questions for Public Comment

The Commission requests public comment on the following specific issues (the Commission would also welcome comment on any other issues relating to early retirement plans under the ADEA):

I. Background Information and Statistical Data

- What types of early retirement plans are currently being offered by employers? What types of benefits are offered in such plans? Under what circumstances are such plans being offered?
- For what purposes have such plans been offered? Have the plans actually achieved such purposes?
- How many employers offer such plans? How are the plans communicated to the employees?
- How many employees, and in which age groups, accept such plans?
- What restrictions are provided in such plans on the availability of early retirement, the amount of benefits, or other terms of the plans?
- How frequently do such plans result from the collective bargaining process?
- What alternatives to early retirement programs could be implemented to achieve the same results? How effective have such alternatives been in the past?

II. Legal Issues

- What types of early retirement plans are currently legal under the ADEA?

- What types of early retirement plans should be permitted under the ADEA?

- Should early retirement be available to all employees? To all employees age 40 or over? To all employees over an age specified in the plan?

- Is it permissible to reduce or eliminate an early retirement benefit in correlation with increasing age or other factors? If so, under what circumstances?

- Should the employer be allowed to target the early retirement plan for cost savings or other business purposes? If so, under what circumstances?

- Are "window period" early retirement plans, those in which the plan is a temporary provision designed to promote a reduction in force, permissible under the ADEA? If so, under what circumstances?

- What is the effect of section 4(i) of the ADEA on early retirement plans?

- Early retirement decisions by employees must be voluntary. How should this requirement be implemented? What standards or factors would be appropriate in judging whether a plan was truly voluntary?

Signed on behalf of the Commission this 11th day of July, 1988, at Washington, DC.
Clarence Thomas,
Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88-16006 Filed 7-14-88; 8:45 am]
BILLING CODE 1570-36-M

29 CFR Part 1625

Employee Benefit Plans

AGENCY: Equal Employment Opportunity Commission (EEOC, Commission).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission hereby publishes an advance notice of proposed rulemaking (ANPRM) under section 9 of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, relating to the prohibition against discrimination on the basis of age in employee benefit plans and the exception contained in section 4(f)(2) of the ADEA, 29 U.S.C. 623(f)(2), to develop guidance for the public.

DATES: Comments should be submitted on or before October 13, 1988.

ADDRESS: Comments should be submitted, in quadruplicate if possible, to: Executive Secretariat, EEOC, 2401 E Street, NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Paul E. Boymel, Office of Legal Counsel, Room 214, EEOC, 2401 E Street, NW., Washington, DC 20507, (202) 634-6423.

Background

In light of the fact that the ADEA has been amended several times since the Department of Labor published regulations in 1979 and that numerous cases have been decided by the federal courts under the ADEA, it is appropriate to review the current regulations.

Congress, in section 4(a)(1) of the ADEA, described the employer conduct that is prohibited (unlawful discrimination by employment agencies and labor organizations is covered by sections 4(b) and 4(c) of the ADEA, respectively):

(a) It shall be unlawful for an employer—

(1) To fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

However, Congress fashioned an exception to the general prohibitions in section 4(a)(1) of the ADEA. That exception in section 4(f)(2) provides:

It shall not be unlawful for an employer, employment agency, or labor organization—

(2) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 12(a) of this Act because of the age of such individual.

On June 21, 1969, the Department of Labor (DOL), which at that time had jurisdiction over the ADEA, published in the Federal Register (34 FR 9709) an Interpretative Bulletin on employee benefit plans under section 4(f)(2) of the ADEA (the 1969 I.B.). The purpose of the 1969 I.B. was to provide guidance as to what conduct by employers would be permissible under section 4(f)(2). DOL's 1969 rules stated the general principle that:

[A]n employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For

example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers than he does to younger workers, where the plan is not a subterfuge to evade the purposes of the Act. A retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage * * *.

The ADEA was amended in 1978 to preclude mandatory retirement of covered employees and to raise the upper age limit for coverage under the ADEA from 65 to 70. In amending section 4(f)(2), Congress made clear that DOL should issue more comprehensive guidance on that section. On May 25, 1979, DOL published the "Employee Benefit Plans: Amendment to Interpretative Bulletin" 29 CFR 860.120, 44 FR 30648 (the 1979 I.B.), which provided guidance on employee benefit plans covered under the ADEA and provided special rules for pension plans. The 1979 I.B. states the general principle that:

The legislative history of [section 4(f)(2)] indicates that its purpose is to permit age-based reductions in employee benefit plans where such reductions are justified by significant cost considerations. * * * Where employee benefit plans do meet the criteria in section 4(f)(2), benefit levels for older workers may be reduced to the extent necessary to achieve approximate equivalency in cost for older and younger workers. A benefit plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of benefits or insurance coverage.

When the EEOC took over enforcement of the ADEA on July 1, 1979, EEOC continued the DOL regulations under section 860.120 in force. On July 1, 1987, the regulations were redesignated as 29 CFR 1625.10. With a few exceptions, e.g., the rescission of § 860.120(f)(1)(iv)(B) on March 18, 1987, the rules in the 1979 I.B. have remained unchanged since 1979. The ADEA was amended in 1982 by the addition of section 4(g), relating to health insurance (section 4(g) was then amended in 1984 and 1986), in 1986 by the addition of section 4(i), relating to pension benefits, and also in 1986 with the removal of the age 70 cap for most employees.

In light of the amendments to the ADEA and the developing case law in the area of employee benefit plans, the Commission has decided to review the 1979 I.B. Since a project of this magnitude should only be done after sufficient study and public comment, the Commission is publishing this ANPRM to maximize public participation in several specific areas, to enable the Commission to channel its regulatory efforts effectively. It should be noted that the ANPRM does not request comments regarding either pension benefits or early retirement programs, both of which will be addressed in separate proceedings.

Questions for Public Comment

The Commission requests public comment on the following specific issues (the Commission would also welcome comment on any other issues dealing with employee benefit plans under the ADEA):

1. In General

- Which plans should be considered to be "employee benefit plans" under the ADEA?
- What factor should be assessed when determining the presence or absence of "subterfuge" under section 4(f)(2)? Should employee benefit plans which predate the ADEA be considered as meeting the lack of subterfuge requirement? If so, under what circumstances?
- Is the present "benefit package" approach adequate to meet problems arising from the impact of age on employment?
- Should the Commission provide "safe harbors" (specific numerical examples of permissible plans) with respect to each type of employee benefit plan?
- How should "cost" be defined with regard to employee benefit plans, particularly with regard to group insurance plans?
- Is the "integration" of government-provided benefits (such as Social Security) still viable, and, if so, what specific issues should be addressed?

2. Life insurance plans

- Does the five-year bracketing permitted in the 1979 I.B. accurately reflect insurance industry practice? Would other brackets be more realistic or preferable?
- Does adequate data exist that would allow the Commission to develop satisfactory safe harbors relating to the specific percentages of decrease in benefits per age (e.g., a safe harbor could provide that a life insurance plan providing 100 units of coverage for

persons in the 55-60 age bracket need only provide 90 units of coverage for persons in the 60-65 age bracket)?

c. What is the employer's obligation to older workers (e.g., those over 80) if life insurance is not commercially available?

3. Long-term disability

- In light of the lifting of the age 70 cap, are the safe harbors in the 1979 I.B. still valid?
- Is there adequate data to develop more precise safe harbors?
- What is the employer's obligation to older workers (e.g., those over 80) if long-term disability insurance is not commercially available?
- Must long-term disability benefits and retirement benefits be paid at the same time?

4. Health insurance

- In light of the passage of section 4(g), should health insurance plans be permitted to reduce the benefits of (or increase the costs for) employees under the age of 65?

5. Severance pay and sick pay plans

- Should severance pay and/or sick pay plans be considered "employee benefit plans" under section 4(f)(2)? If so, under what circumstances?
- How could such plans show lack of subterfuge?
- Under what circumstances, if any, could such plans be included in a benefit package with other section 4(f)(2) benefits?

Signed on behalf of the Commission this 11th day of July, 1988, at Washington, DC.

Clarence Thomas,
Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88-18009 Filed 7-14-88; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1918

[Docket No. C-02]

General Safety and Health Programs; Request for Comments and Information

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Request for Comments and Information.

SUMMARY: The Occupational Safety and Health Administration (OSHA) seeks

information which could lead to the development and promulgation of an occupational safety and health guideline or other means of encouraging and assisting employers in general industry, shipyard employment and longshoring to use management methods to provide workplaces free of recognized hazards. The purpose of this Request for Comments and Information is to stimulate public participation and comment by suggesting rationale and language to provide adequate guidance.

DATES: All comments on this notice should be received by August 29, 1988.

ADDRESS: All comments should be submitted in quadruplicate to the Docket Officer, Docket No. C-02, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3670, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: (202) 523-7894. Comments will be available for public inspection and copying at the above location.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, Washington, DC 20210. Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

Although sec. 5(a)(1) of the Act assigns a general duty to each employer to furnish each employee "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees," OSHA's major focus has been on setting standards for specific hazards and enforcing compliance with them. In recent years, however, OSHA has become increasingly convinced of the relationship between superior management of safety and health programs—which address all safety and health hazards, whether or not covered by OSHA standards—and low incidence and severity of employee injuries. The application of management techniques in these programs also appears to be essential to the elimination or adequate control of employee exposure to toxic substances and other unhealthful conditions.

As a result of this awareness, OSHA has increased emphasis on management practices in several of the Agency's programs. Some of the Agency's standards contain requirements for management practices, such as the standards on Hazard Communication (29 CFR 1910.1200) and Hazardous Waste Operations (29 CFR 1910.120). In addition, subpart C of the construction

standards, 29 CFR 1926, specifically requires management programs for accident prevention and employee training and education in the recognition, avoidance and prevention of unsafe conditions. In 1987, these construction standards were clarified with the issuance of OSHA Instruction STD 3-1.1. OSHA has also instituted programs to encourage voluntary improvement of safety and health management and prepared informational pamphlets describing the elements of health management. In spite of this variety of activities, most employers are not fully aware of OSHA's emphasis on the value and importance of effective management in worker safety and health protection.

The purpose of this Request for Comments and Information is to stimulate public participation and comment by suggesting rationale and language to provide adequate guidance. OSHA invites ideas, data and opinions about the need, practicability and prospective effectiveness of such guidance in general industry, shipyard employment and longshoring in reducing workplace injuries and illnesses.

Over the years, OSHA field staff have seen many examples of exemplary workplaces where safety and health programs were well-managed and where injury rates were exceptionally low. The common characteristic observed at these sites was the use of organized and systematic methods to assign appropriate responsibility to all managers, supervisors and employees, to inspect regularly for and control existing or potential hazards, and to orient and train all employees in the ways and means to eliminate or avoid those hazards.

The fundamental importance of such methods has been reflected in decisions of the Occupational Safety and Health Review Commission and the U.S. Courts of Appeals, especially in cases involving an employer claim that a violative workplace condition or action resulted from unpreventable employee misconduct. Such misconduct has been recognized as a defense against citation only when an employer had a work rule prohibiting the conduct, had provided training to ensure that the rule was understood, and had supplied adequate supervision (including regular inspections and work rule enforcement) to ensure that the work rule was followed. These criteria have been applied in cases involving the citation of OSHA standards as well as the general duty clause. The implication of these cases is that the employer has the duty to establish and maintain such management practices, to the extent that

they are necessary to ensure that safe and healthful working conditions are maintained and that safe and healthful work practices are followed.

OSHA inspection checklists provide information as to whether worksites have a safety and health program, and some regions (OSHA's Region III in particular) have established protocols for making determinations as to the quality of the programs. In some cases, these findings have been a factor in "general duty" citations; in others they have prompted recommendations for safety and health program improvements which employers have agreed to as part of citation settlement agreements. In addition, a chemical industry special emphasis enforcement program, which included the review of management systems needed to lower the risk of catastrophic releases of toxic chemicals, resulted in an unusually high number of general-duty citations being issued for system problems not covered by standards.

To encourage employers and employees to adopt and improve existing safety and health programs, OSHA announced a plan to approve worksites with exemplary programs for participation in the Voluntary Protection Programs (VPP) beginning July 2, 1982 (47 FR 29025). The participation requirements embodied in the VPP are a distillation of the means, methods and processes already in use at worksites where safety and health conditions are exceptionally good.

Because VPP participating worksites are officially recognized and are excluded from routine programmed OSHA inspections, the quality of the safety and health programs at these sites must be maintained as models of effectiveness. Currently, 60 sites are participating in VPP, and several have been in the program for five or more years. Collectively, during their participation in the VPP, these sites have experienced lost-time injuries that are approximately one-fourth of the average for their industrial classifications. In addition, employers at these sites have reported improved morale and productivity benefits, as well as significantly reduced workers' compensation and other costs.

For injuries alone, costs can be considerable. According to Frank E. Bird, Jr.'s *Management Guide to Loss Control* (Ex. 2-1), for every \$1 in medical or insurance compensation costs for a worker injury, \$5-50 more are likely to be spent to repair building, tool or equipment damage; to replace damaged products or materials; or to make up for losses from production delays and

interruptions. An additional \$1-3 will be spent for hiring and training replacements and for time to investigate the incident.

Mr. Bird goes on to point out that if a company's profit margin is five per cent, it will have to sell \$20,000 worth of its product to pay for \$1,000 of injury costs. If the profit margin is one per cent, sales would have to reach \$100,000. The

incentive to reduce injuries as much as possible is very clear. The fact that VPP participants have injury rates which are one-quarter of their industry averages not only demonstrates that significant reduction is possible; it also strongly indicates that the guidance proposed by OSHA is a major means to achieve the reduction.

By using a formula developed by

David R. Bell and published in his article "Gauging Safety Outlays and Objectives" in *Occupational Hazards*, June, 1987, (Ex. 2-2), the number of lost workday cases avoided can be calculated for each worksite with a lost workday case rate (LWCR) below the national average for the industry to which it belongs. This formula is as follows:

$$\frac{\text{Industry LWCR} \times \text{Employment at the site}}{100} - \text{Expected LWCR} = \text{Actual LWCR} = \text{Number of injuries avoided}$$

The use of this formula provides OSHA with the information that VPP participants in 1986 avoided 75 per cent of the lost-workday injuries that could have been expected by average industry performance for the same industrial classifications and employment sizes. That means that 1,478 lost-workday cases were avoided as a result of effective safety and health management. Management at each site within the VPP can objectively project the number of injuries that they could expect if their site were average for the next year, and then compare their projection to their actual experience as a means of evaluating their performance. This formula can also be used to demonstrate the value of investing in and of upgrading the site safety and health program, based on the site's determination of the average cost of a lost workday injury.

Although OSHA recognizes that the VPP worksites are exceptional in providing safe and healthful working conditions, their successes have highlighted the importance of effective safety and health management in reducing occupational injuries and illnesses and have demonstrated that such protection can be achieved by other employers with the commitment to provide a safe and healthful workplace.

In addition, both employer and employee representatives have encouraged OSHA to consider alternative regulatory approaches for safety and health programs. In comments before the National Advisory Committee on Occupational Safety and Health (NACOSH), Ms. Margaret Seminario, AFL-CIO, stated that "... one of the problems with OSHA has always been ... that OSHA has focused on particular hazards rather than health and safety programs in the workplaces." (See Ex. 2-3.) Joe A. Adam, United Association of

Journeyman and Apprentices of the Plumbing and Pipefitting Industry, while addressing the OSHA Advisory Committee on Construction Safety and Health (ACCSH), stated that "... employers, in some cases, completely disregard ... [their] responsibility to train, instruct and set up a program, leading to a very unsafe situation on some jobs." (See Ex. 2-4.) At the April 30, 1986 meeting, ACCSH approved a motion commending OSHA for developing program guidelines for Secs. 1926.20 and 21 which require construction industry employers to maintain safety and health programs for frequent and regular inspections, and for education and training of construction personnel (Ex. 2-5).

In 1981, Robert A. Hanson, Chairman of the Board for Deere and Company, said that:

Deere has been committed to strong occupational health and safety programs for many years preceding the passage of the Occupational Safety and Health Act ... By supplementing our OSHA compliance efforts with our own objective-oriented accident analysis and prevention program, since 1974 our total injury and illness incidence rate has been reduced by 82 percent. (See Ex. 2-6.)

In light of the absence of comprehensive, positive guidance from OSHA on the management methods needed to lower injury rates and of the evidence from the VPP and other sources that systematic management policies, procedures and practices can have a major impact on the incidence of injuries and illnesses, OSHA is inclined to believe that a guideline is both reasonable and advisable. OSHA is requesting comment on this issue, as well as advice as to the language of the guidance. In addition, OSHA would appreciate comments on what methods should be used to maximize employer understanding of the guideline and of the benefits of following it. Finally,

OSHA is requesting comments on possible incentives which may increase employer attention to the benefits of effective safety and health management.

Following is suggested language, segmented for the purpose of analysis, that such a guideline might contain. Each part is followed by discussion of the reasoning behind the language outlined. The suggested language has evolved out of general industry and construction experience. Employers in shipbuilding and longshoring may want to suggest other language to address the employee protection issues of their industry. On the other hand, this language relates to essential functions in all organizations and may be adequate as general guidance for general industry, shipbuilding and longshoring. The suggested guideline in its entirety has been repeated at the end of the notice for easy reference.

II. Possible Language for Safety and Health Program Guidelines—Provided for Discussion Purposes

(a) *General.* Employers are advised to institute and maintain in their establishments a program which provides policies, procedures and practices that are adequate to recognize and protect their employees from occupational safety and health hazards. An effective program will include provisions for the identification, evaluation and control or prevention of general workplace hazards, specific job hazards and potential hazards arising from foreseeable conditions. The degree of formality and complexity of an effective program will vary with the size of the establishment and the complexity of the worksite hazards. Especially in smaller sites, the extent to which the program is described in writing is less important than how effective it is in practice.

Paragraph (a)—General. This paragraph would describe the overall objectives of effective safety and health management, and indicate the principal motives for meeting them. Although compliance with the law, including the general duty clause and OSHA standards, is an important objective of an effective program and a motive for an employer to implement such a program, OSHA has found that the most successful programs look beyond the legal requirements to address all hazards. Their purpose is to prevent injuries and illnesses and the attendant human and economic costs, whether or not compliance with the law is at issue. This approach is essential in view of the difficulty that regulatory agencies have in moving quickly to set standards for every possible hazard in the workplace and to revise them when new information becomes available.

An effective program will anticipate and guard against the possibility of injury or illness, not only in relation to existing hazards which are common to the general workplace or unique to specific jobs, but also in relation to conditions or practices which might change in a way which creates a hazard. To avoid falling victim to a hazard, it is essential to stay ahead of it.

The statement concerning formality and complexity is intended to stress OSHA's recognition that relatively simple, unwritten policies, practices and procedures are adequate to address the hazards in many smaller and less hazardous establishments. The more complex and hazardous an operation is, the more formal and complex the program will probably need to be.

(b) *Specific Elements.* An effective occupational safety and health program will include each of the following actions in an appropriate form:

Paragraph (b)—Specific Elements. The intent of this section is to set forth the areas of managerial practice which are essential to effective safety and health protection. These practices, means and methods are consistent with those used by employers to achieve other organizational objectives, such as cost control, quality and productivity. Giving safety and health equal organizational priority with these other objectives is fundamental to the protection of individual employees and to the effectiveness of the organization itself.

These elements consist of methods historically used to accomplish management objectives for safety and health. They are generic in that they are generally applicable regardless of unique operations or conditions of particular firms. Though at points they are expressed in the terms of the

"hierarchical" organizations most common in American industry (i.e., by reference to "managers," "supervisors," "employees"), they can easily be adapted to other organizational forms or styles of operation. They relate to essential concerns and activities of any organization. It is on this basis that OSHA proposes consideration of their application in shipyard employment and longshoring as well as general industry.

Four principal elements of effective safety and health management are listed. They are: Management commitment, worksite analysis, hazard prevention and control, and safety and health training.

Management commitment provides the central means for organizing and controlling activities within organizations. These central means include establishing goals and objectives; assigning responsibility to perform specific actions and to accomplish prescribed objectives; providing adequate authority and resources to meet the responsibility; and, using systems of accountability to ensure that the responsibility is met. Equally important is the comprehensive periodic review of operations to see if they are meeting the objectives and whether the objectives are adequate to meet the goals. This section recommends that these means be used in safety and health protection with at least as much vigor as for other organizational purposes.

Worksite analysis involves active examination of the workplace to identify, not only existing hazards but also conditions and operations in which changes might occur to create hazards. Passive unawareness of a hazard is both an insufficient reason for failure to recognize a hazard under the general duty clause of the Act and a sure sign that safety and health policies and/or practices are ineffective.

In Congressional deliberations on the general duty clause of the Act, a proposal to use the term "readily apparent" hazards, rather than "recognized" hazards, was debated. In describing the language that Congress finally adopted, Congressman Daniels (NJ) stated:

A recognized hazard is a condition that is known to be hazardous, and is known not necessarily by each and every individual employer but is known taking into account the standard of knowledge in the industry. In other words, it does not depend on whether the particular employer is aware of it.

I am afraid that "readily apparent" as used in the substitute, means apparent without investigation, even though a prudent employer would investigate under the circumstances. A danger, in other words, may

be recognized as such in the industry, but may not be apparent to an employer who is ill-informed and does not choose to investigate the danger of the situation. That is not sufficient protection for employees. (See Legislative History of the Occupational Safety and Health Act of 1970 (S. 2193, Pub. L. 91-559) p. 1007.)

Identifying at a worksite those hazards which are recognized in a particular industry is a critical foundation for safety and health protection. An effective program will not stop at this point, however. It will continually review working conditions and operations to identify hazards which have not previously been recognized in the industry, and conditions and operations which may change in a way which creates a hazard.

Hazard prevention and control are triggered by the determination that a hazard or potential hazard exists. Where possible, hazards should be eliminated. Where potential hazards cannot be completely prevented, they must be controlled to prevent actual exposure. When exposure does occur, it must be corrected in a timely manner.

Safety and health training need not be elaborate, formal or always solely related to safety and health. Safety and health information and instruction is often most effective when incorporated into other training about performance requirements and job practices, such as management training on performance evaluation, supervisors' training on the reinforcement of good work practices and the correction of poor ones, and employee training on the operation of a particular machine.

(1) *Management Commitment.*
(i) Establish a clear goal for the safety and health program and objectives for meeting it; communicate them to all employees; and ensure that employees can see top management involvement.

(b)(1)(i) The establishment of clear goals and objectives is integral to the accomplishment of any desired result. Communicating these goals and objectives ensures that all members of the organization understand the direction that the organization must take. In order to ensure the credibility of management commitment, it is particularly important that employees be able to see actual demonstrations of management involvement in safety and health concerns. For example, a plant manager who performs periodic "housekeeping" inspections demonstrates such involvement.

(ii) Provide for employee involvement in the structure and operation of the program and in decisions which affect their safety and health.

(b)(1)(ii) Employee participation does not mean transfer of responsibility. The Act clearly places responsibility for safety and health protection on the employer in Sec. 5. Participation does mean the utilization of the special knowledge and interest that employees have to develop and maintain programs to protect themselves and their fellow employees. OSHA has been many functions through which employees have been effectively included in safety and health programs at the worksites in the VPP. Among these are: Inspecting for hazards and recommending corrections or controls for hazards found; analyzing jobs to locate potential hazards and develop safe work procedures; developing or revising safe work rules; training new hires in safe work procedures and rules and/or their peers in newly revised safe work procedures; providing programs and presentations for safety meetings; and, assisting in accident investigation. Such functions have been carried out in a number of organizational contexts—most commonly in joint labor-management committees but also through such means as labor safety committees, rotational assignment of employees to such functions, and acceptance of employee volunteers for the functions. Inclusion of employees in one or more of these approaches, or in any way that fits the individual worksite and provides an employee role that has impact on decisions about safety and health protection, will strengthen the employer's overall program of safety and health protection.

(iii) Assign and communicate responsibility for all aspects of the program, so that managers, supervisors and employees at all organizational levels know what performance is expected of them.

(b)(1)(iii) An effective program will include all members of the organization in these procedures—managers, supervisors and others—both in planning and in operations. Two-way communication between management and employees, both about organizational goals and objectives and about expectations of individuals, is critical. If all persons do not understand what is expected of them, and why, they are unlikely to perform as desired.

(iv) Provide adequate authority and resources to meet the assigned responsibilities.

(b)(1)(iv) If those who are assigned responsibility for ensuring effective safety and health program performance are not also given adequate authority and the resources—in terms of adequate personnel, budget and capital expenditure funds—to fulfill the

responsibility, it is unlikely that they will meet management expectations.

(v) Hold managers, supervisors and employees accountable for meeting their responsibilities.

(b)(1)(v) After assigning responsibility and providing the necessary authority and resources to accomplish safety and health program goals and objectives, it is essential to hold accountable those who are responsible for achieving them. Systems of accountability need to include recognition for competent performance and correction of inadequate performance. When a refusal to follow safe and healthful practices is at issue, consistently applied disciplinary procedures for enforcing those practices are essential.

(vi) Review program operations at least annually to evaluate their success in meeting the goal and objectives, and revise the program and/or the objectives when they do not meet the goal of effective safety and health protection.

(b)(1)(vi) A comprehensive program audit is essential periodically to evaluate the whole set of safety and health management means, methods and processes, to ensure that they are adequate to protect against the potential hazards at the specific worksite. The audit determines whether policies and procedures are implemented as planned and whether in practice they have met the objectives set for the program. It also determines whether the objectives, when met, are adequate to meet the program goal of effective safety and health protection. When either performance or the objectives themselves are found to be inadequate, revisions are made. Without such a comprehensive review, program flaws and their interrelationship may not be caught and corrected.

(2) *Worksite Analysis.*

(i) So that all hazards and potential hazards are identified, provide for competent persons: (1) To conduct comprehensive worksite surveys periodically, (2) to analyze new processes, materials and equipment, and (3) to perform routine job or phase hazard analyses.

(b)(2)(i) Periodic comprehensive surveys of the worksite provide an opportunity to step back from the routine checks for previously recognized hazards and look for others. Job hazard analysis in stable work situations common in general industry, and phase hazard analysis in changing work processes such as those in construction, provide another important tool for identifying hazards not previously recognized. Analysis of new processes, materials and equipment before their use as well as when they are first

introduced provides a check against the introduction of new hazards with them.

The frequency with which comprehensive examinations would be needed is understood to depend on the complexity, hazardousness, and changeability of the worksite. Many successful worksites conduct this review on an annual or biannual basis.

Implicit in the provision for all worksite surveys, reviews and analyses is the need for employers to seek competent advice and assistance when they lack needed expertise and to use appropriate means methods to identify and assess all existing and foreseeable hazards. Personnel who perform baseline and periodic comprehensive surveys and analysis of new processes, procedures and equipment may require greater expertise than those who conduct routine inspections, since the former are conducting a broader and deeper review.

(ii) Provide for regular site inspections by competent persons and encourage employee reports of hazards, to identify new or previously missed hazards and failures in hazard controls.

(b)(2)(ii) Once a comprehensive examination of the workplace has been conducted and hazard controls have been established, routine site inspections are necessary to ensure that changes in conditions and activities do not create new hazards and that hazard controls remain in place and continue to be effective. These inspections also look out for new or previously unrecognized hazards, but not to the same degree as baseline or other comprehensive surveys. Numerous specific OSHA standards require inspection of particular equipment, conditions and activities as a safety precaution prior to operation or use. This guideline would make clear that, in effective safety and health programs, this generally recognized inspection practice is applied more broadly to all conditions and activities.

Personnel performing regular inspections should possess a degree of experience and competence adequate to search for hazards described by the comprehensive survey. They may not have the degree of competence in analyzing worksite conditions and operations to identify potential hazards that is required of those who perform baseline and comprehensive surveys. They are able to recognize hazards in the areas they review and to identify reasonable means for their correction or control. Such competence should normally be expected of ordinary employees who are capable of safely

supervising or performing the operations of the specific workplace. Smaller businesses which need assistance in the development of such competence can receive free assistance from OSHA and from a nationwide network of OSHA-funded, State-operated consultation projects.

(iii) Provide for investigation of accidents and "near miss" incidents by competent persons, to identify their causes and means for their prevention.

(b)(2)(iii) Accidents and incidents in which employees narrowly escape injury clearly expose hazards. Analysis to identify their causes permits development of measures to prevent future injury or illness. A review of injury experience over a period of time may reveal patterns of injury with common roots which can be addressed.

(3) *Hazard Prevention and Control.*

(i) Establish procedures for ensuring the timely prevention and control of hazards, however detected, through engineering techniques where feasible, through personal protective equipment, and through safe work procedures which are understood by all affected employees and enforced by a clearly communicated disciplinary system.

(b)(3)(i) Once hazards and potential hazards are detected by any of the means listed above, they must be systematically prevented or controlled. Where feasible and appropriate, they should be engineered out of the workplace. If that is not appropriate, the degree of exposure should be controlled by personal protective equipment and carefully developed safe work procedures. Those procedures must first be understood and then enforced so that employees are not tempted to take short cuts and thereby endanger themselves.

(ii) Provide for equipment maintenance, to prevent hazardous breakdown.

(b)(3)(ii) Equipment maintenance is of particular importance in preventing the development of hazards which go unidentified. A regular schedule of servicing, replacing or repairing equipment at intervals frequent enough to avoid foreseeable equipment breakdowns is an integral part of hazard control.

(iii) Provide for prompt and appropriate correction of hazards to which, due to breakdowns of hazard prevention and control systems, employees are exposed.

(b)(3)(iii) Factors which may affect the time required for correction of hazards include: (1) The complexity of abatement technology; (2) the degree of risk; and (3) the availability of necessary equipment, materials and staff qualified to complete the correction. Because conditions affecting hazard prevention

and control vary widely, it is impractical for OSHA to propose specific time limits for all situations. An effective program will correct hazards in the shortest feasible time permitted by the nature of technology required and the availability of needed personnel and materials. It will also provide for interim protection when immediate correction is not possible.

(iv) Plan and prepare for emergencies, with training and drills as needed.

(v) Establish a medical program which includes easy accessibility of first aid, physician services and emergency medical care nearby.

(b)(3)(iv) and (v) Planning and training for emergencies and the availability of first aid and emergency medical care are essential in minimizing the harmful consequences of accidents and injuries. Training and drills allow for appropriate action to become "second nature" to employees who may be called upon to react to the highly stressful conditions of a fire or other life-threatening emergency. The degree of preparation and drill needed will depend upon the nature of possible emergencies and the complexity of evacuation of the worksite.

(4) *Safety and Health Training.*

(i) Ensure that all employees understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards.

(b)(4)(i) The duty to inform employees about workplace hazards and to provide training that will enable them to avoid work-related injuries or illnesses is specified for chemical hazards in OSHA's standard on Hazard Communication and is addressed elsewhere in other specific standards such as Sec. 1926.21—the general training requirements for construction. Moreover, OSHA's comprehensive health standards, Secs. 1910.1001–1910.1200, contain provisions for signs, information and training to inform employees of hazards and of procedures necessary to reduce the risks of hazardous exposures.

The rationale for these standards requirements is, however, applicable in relation to all hazards. OSHA has found that successful safety and health management includes education of employees about all significant hazards and potential hazards to which they may be exposed and training on how to perform their work without harm from those hazards. The cooperation of employees in identifying and controlling hazards is critical, not only for their own safety and health but for that of others as well.

The importance of education and training is reflected by the

disproportionately high injury rates among workers newly assigned to work tasks. Although some of these injuries may be attributable to other causes, a substantial number are directly related to inadequate knowledge of job hazards and safe work practices. The Bureau of Labor Statistics reports that in 1979, 48 percent of workers injured had been on the job less than one year (Ex. 2-7).

BLS studies show that during 1979 employees injured at work often lacked information to protect themselves:

(1) Of 724 workers hurt while using scaffolds, 27 percent said they received no information on safety requirements for installing the kind of scaffold on which they were injured (Ex. 2-8).

(2) Of 868 workers who suffered head injuries, 71 percent said they had no instruction concerning the hazards in the workplace that necessitate the wearing of hard hats (Ex. 2-9).

(3) Of 554 workers hurt while servicing equipment, 61 percent said they were not informed about lockout/tagout procedures (Ex. 2-10).

The extent of hazard information needed by workers for self-protection varies, but would include: (1) The general hazards and safety rules of the worksite, (2) specific hazards, safety rules and practices related to particular work assignments and, (3) the employee's role in emergency situations. Such information and training is particularly relevant to hazards that may not be readily apparent to, or within the ordinary experience and knowledge of, the employee.

(ii) Ensure that supervisors understand their responsibilities for safety and health, including: (1) Analysis of the work under their supervision to identify unrecognized potential hazards, (2) maintenance of physical protections in their work areas, and (3) reinforcement of employee training on the nature of potential hazards in their work and on needed protective measures, through continued performance feedback and through enforcement of safe work practices when necessary.

(b)(4)(ii) First-line supervisors have an especially critical role in safety and health protection because of their immediate supervision of the work being performed. Their training is therefore emphasized separately. Although they may have other safety and health responsibilities, those listed in the guideline are proposed to merit particular attention.

(iii) Ensure that managers understand their safety and health responsibilities, as described under "Management Commitment."

(b)(4)(iii) Because there is a tendency in some businesses to consider safety and health a staff function and to

neglect the training of managers in safety and health responsibilities, the importance of managerial training is noted separately. Managers who understand both the way and the extent to which effective safety and health protection impacts on the overall effectiveness of the business itself, and who understand their critical role in ensuring effective protection, are far more likely to ensure that the necessary safety and health management systems operate effectively.

III. Issues for Discussion

A. The Nature of the Risk. What is the extent of risk to employees resulting from hazards that exist because employers and employees have not actively and systematically attempted to identify them? Or, if they have been identified, what is the extent of risk which results from each of the following: (1) Where no one in the organization has specific responsibility, authority and/or resources to correct or control them; (2) where employees and/or supervisors have not been made aware of these hazards or trained in the necessary precautions to control or avoid them; (3) or where systematic provisions for controlling them have not been continuously maintained?

What is the extent of risk to employees from conditions and operations which may foreseeably change in a way which creates a hazard?

B. The Value of Safety and Health Programs. Are verifiable sources of data available to document the value of benefits and the cost of safety and health programs, apart from those already referenced in this Request?

1. How can the value of "losses avoided" through effective safety and health management best be measured?

a. Is the comparison of a site's injury rates with rates for its industry the most viable measure of "injuries avoided?" Given that BLS illness incidence rates do not capture a significant portion of work-related illnesses, is there an alternative measure for estimating "illnesses avoided?"

b. Are there reasonably accurate data on the costs of injuries and illnesses? What costs should be included in such data? It is generally agreed that direct costs, such as medical expenses and workers' compensation claims, are only a fraction of the total cost of an injury or illness. Indirect costs, such as production time lost by the injured employee and others, hiring and/or retraining replacement workers, reduced employee morale and related lower efficiency, accident investigation and increased workers' compensation

insurance rates, may be several times greater than the direct costs. A Business Roundtable study ("Improving Construction Safety Performance," January, 1982) on the costs of a lost-worktime injury for construction found that the ratio of indirect to direct costs varies from 4 to 1 to as high as 17 to 1 (Ex. 2-11). Are more current, comparable data available for general industry? Are data available for shipyard employment and longshoring?

2. How can the costs of effective safety and health management best be measured? When safety and health responsibilities are assigned throughout the organization, is it possible to determine the costs of activity motivated by safety and health concerns? How much will the complexity or formality of the safety and health program affect those cost determinations? For example, is it less costly to the employer to have a system of employee reports of hazards which consists of oral notification of supervisors that to have one involving forms on which the reports are written? The latter system may be needed where there are many employees reporting hazards but the former may be adequate where there are few employees or few hazards to report.

3. Do an employer's beliefs and attitudes regarding accident causation influence the nature of loss prevention activities? For example, it has been stated in some quarters that many, perhaps most, accidents are the result of human carelessness and, hence, are uncontrollable. On the other hand, it has been OSHA's experience, in the Voluntary Protection Programs particularly, that effective safety and health management can have a major impact in reducing both the opportunities for exposure to hazards and the behavior of employees in identifying and guarding against hazards. Could some official, comprehensive guidance from OSHA be a potentially valuable means for expanding the latter attitude and counteracting the former? Are there other ways that could be more effective?

C. Suitable Language. 1. Do the specific elements suggested cover the management needs for operating an effective safety and health program? Are there other elements that should be included? Should any of the suggested be eliminated? Are there ways in which these elements can be expressed more clearly or usefully?

2. Is the suggested language general enough to cover the needs of the variety of industries specified, or are there better ways of addressing this issue? If

so, please specify and include the rationale for the recommendation.

D. The Most Appropriate Methods for Educating Employers. OSHA seeks guidance as to the most effective means of educating employers about effective safety and health management and its benefits. OSHA is currently developing a course aimed at a broad spectrum of private sector employers to teach these guidelines or a variation of them. It is also considering outreach through trade associations to assist in the design of industry-specific safety and health management programs. These efforts would complement the safety and health management assistance provided to small businesses by the OSHA-sponsored consultation services provided by State governments.

OSHA has previously published the elements of an effective occupational health program agreed upon by OSHA, organized labor and industry representatives; voluntary training guidelines; informational pamphlets and significant quantities of safety and health management literature.

Are there other methods of promoting understanding of effective safety and health management that OSHA should consider as well?

E. Incentives for Effective Management. OSHA is also requesting comment on possible incentives which may stimulate increased employer action to establish effective safety and health management practices. It is OSHA's experience that the most important incentives are the benefits of such practices—that is, the reduction in injuries and illnesses and in attendant costs, and the consequent improvements in productivity. These benefits may not appear immediately, however, and employers may not make the necessary investment in organizational change without a clear sense of immediate benefits. Are there incentives which might encourage employers to make this investment?

OSHA currently offers recognition to employers with outstanding safety and health management through the Voluntary Protection Programs. The Program for Inspection Exemption through Consultation provides recognition to smaller businesses that demonstrate effective management to the OSHA-funded consultation services. The OSHA standards on safety and health management in construction provide incentives in that industry.

Would the publication of formal, comprehensive guidelines as outlined here be an effective means of motivating employers to improve the management of worker safety and health protection?

Are there voluntary mechanisms, as yet untried by OSHA, which would increase the effectiveness of voluntary guidelines? If so, what are they?

Are there other means of motivating employers to use these management elements, beyond the guidelines, which OSHA should consider?

Authority: This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210. It is issued under Sec. 41, Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059) or 9-83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Signed at Washington, DC, this 8th day of July, 1988.

John A. Pendergrass,
Assistant Secretary.

Suggested Guidelines

(a) **General.** Employers are advised to institute and maintain in their establishments a program which provides policies, procedures and practices that are adequate to recognize and protect their employees from occupational safety and health hazards. An effective program will include provisions for the identification, evaluation and control or prevention of general workplace hazards, specific job hazards and potential hazards arising from foreseeable conditions. The degree of formality and complexity of an effective program will vary with the size of the establishment and the complexity of the worksite hazards. Especially in smaller sites, the extent to which the program is described in writing is less important than how effective it is in practice.

(b) **Specific Elements.** An effective occupational safety and health program will include each of the following actions in an appropriate form:

(1) Management Commitment.

(i) Establish a clear goal for the safety and health program and objectives for meeting it; communicate them to all employees; and ensure that employees can see top management involvement.

(ii) Provide for employee involvement in the structure and operation of the program and in decisions which affect their safety and health.

(iii) Assign and communicate responsibility for all aspects of the program, so that managers, supervisors and employees at all organizational

levels know what performance is expected of them.

(iv) Provide adequate authority and resources to meet the assigned responsibilities.

(v) Hold managers, supervisors and employees accountable for meeting their responsibilities.

(vi) Review program operations at least annually to evaluate their success in meeting the goal and objectives, and revise the program and/or the objectives when they do not meet the goal of effective safety and health protection.

(2) Worksite Analysis.

(i) So that all hazards and potential hazards are identified, provide for competent persons (1) to conduct comprehensive worksite surveys periodically, (2) to analyze new processes, materials and equipment, and (3) to perform routine job or phase hazard analyses.

(ii) Provide for regular site inspections by competent persons and encourage employee reports of hazards, to identify new or previously missed hazards and failures in hazard controls.

(iii) Provide for investigation of accidents and "near miss" incidents by competent persons, to identify their causes and means for their prevention.

(3) Hazard Prevention and Control.

(i) Establish procedures for ensuring the timely correction and control of hazards, however detected, through engineering techniques where feasible, through personal protective equipment, and through safe work procedures which are understood by all affected employees and enforced by a clearly communicated disciplinary system.

(ii) Provide for equipment maintenance, to prevent hazardous breakdown.

(iii) Provide for prompt and appropriate correction of hazards to which, due to breakdowns of hazard prevention and control systems, employees are exposed.

(iv) Plan and prepare for emergencies, with training and drills as needed.

(v) Establish a medical program which includes availability of first aid on site and of physician and emergency medical care nearby.

(4) Safety and Health Training.

(i) Ensure that all employees understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards.

(ii) Ensure that supervisors understand their responsibilities for safety and health, including: (1) Analysis of the work under their supervision to identify unrecognized potential hazards, (2) maintenance of

physical protections in their work areas, and (3) reinforcement of employee training on the nature of potential hazards in their work and on needed protective measures, through continued performance feedback and through enforcement of safe work practices when necessary.

(iii) Ensure that managers understand their safety and health responsibilities, as described under "Management Commitment."

[FR Doc. 88-15911 Filed 7-14-88; 8:45 am]

BILLING CODE 4510-26-M

29 CFR Part 1953

Supplement to Wyoming State Plan; Request for Public Comment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for Comment: Wyoming State Standard.

SUMMARY: This notice invites comments on the Wyoming standard for Multi-Piece Rim and Single-Piece Rim Wheels. This standard was submitted on April 10, 1984, in response to a Federal program change under 29 CFR 1953.21. Wyoming's standard for Multi-Piece Rim and Single-Piece Rim Wheels is substantively different from the Federal Occupational Safety and Health Administration (OSHA) standard found at 29 CFR 1910.177. The State standard, which applies to all industries except construction, is broader in scope than the Federal standard, which does not apply to agriculture. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" as the Federal standard. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment on whether the Wyoming standard meets the above requirements.

DATES: Written comments should be submitted by August 15, 1988.

ADDRESSES: Written comments should be submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523-6148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations (29 CFR 1953.23(a)(1)) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register (29 CFR 1953.23(a)).

A 30-day response time is required to State adoption of a standard comparable to a Federal emergency temporary standard 29 CFR 1953.22(a)(1). Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that State standards must be at least as effective as their Federal counterparts, and that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 3, 1974, notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming State plan and the adoption of Subpart BB to Part 1952 containing the decision. The Wyoming State plan provides for the adoption of State standards in the following manner.

The Wyoming Occupational Health and Safety Department either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with other persons knowledgeable in the specific field for which the standards are being formulated. The standards are submitted to the Wyoming Occupational Health and Safety Commission for its approval. The Wyoming plan provides for

adoption of a standard as a State standard after public notice and hearing are published in accord with the Wyoming Administrative Procedure Act, and the Secretary's rules on rule-making.

The Federal standard for Multi-Piece Rim and Single-Piece Rim Wheels was promulgated on February 3, 1984 (49 FR 4338). After public input, the Wyoming Health and Safety Commission adopted a standard for Multi-Piece Rim and Single-Piece Rim Wheels on May 18, 1984. The standard became effective on July 27, 1984. By letter dated April 10, 1984, with attachments, from Donald D. Owsley, former Administrator, Wyoming Occupational Health and Safety Department, to Byron Chadwick, OSHA Regional Administrator, the State submitted the standard (Safety rules and regulations for General Industry as required by Wyoming Statute 1977, section 27-11-105 (a)(viii)) and incorporated the revision as part of its occupational health and safety plan.

B. Issues for Determination

The Wyoming standard in question is now under review by the Assistant Secretary to determine whether it meets the requirements of section 18(c)(2) of the Act and 29 CFR Parts 1902 and 1953. Public comment is being sought by OSHA on the following issues.

(1) "At Least as Effective" Requirement

OSHA has preliminarily determined that the Wyoming standard for Multi-Piece Rim and Single-Piece Rim Wheels, although different, appears to be "at least as effective" as the comparable OSHA standard (29 CFR 1910.177). The State standard, which applies to all industries except construction, is broader in scope than the Federal standard, which does not apply to agriculture. Finally, the State has made some minor editorial changes relating to paragraph numbering and referencing to specific Wyoming Rules and Regulations which do not affect the requirements of the standard. Public comment on the effectiveness requirement is solicited for OSHA's consideration in its final decision on whether or not to approve the State's standards.

(2) Product Clause Requirement

OSHA is also seeking through this notice public comment on whether the Wyoming standard described above:

- Is applicable to products which are distributed or used in interstate commerce;
- If so, whether it is required by compelling local conditions; and
- Unduly burdens interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to the issues described above. These comments must be postmarked on or before August 15, 1988 and submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, and will thereafter publish notice of the decision approving or disapproving it.

D. Location of Supplement for Inspection and Copying

A copy of the Wyoming standard on Multi-Piece Rim and Single-Piece Rim Wheels, along with approved State provisions for adoption of standard, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, Room 1578, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (43 FR 35736).

Signed this 11th day of July, 1988, in Washington, DC.
John A. Pendergrass,
Assistant Secretary.
(FR Doc. 88-15912 Filed 7-14-88; 8:45 am)
BILLING CODE 3010-29-3

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 88-328; FCC 88-205]

47 CFR Part 73

Revision of Application for Construction Permit for Commercial Broadcast Station

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission issued this Notice of Proposed Rulemaking in response to a proposal informally presented to the Commission by an *ad hoc* committee of the Federal Communications Bar Association to revise FCC Form 301 to include additional informational requirements. The FCBA contends that the additional informational requirements will serve to: (1) Curtail the filing of sham applications; (2) encourage settlements among competing applications; and (3) facilitate the comparative hearing process.

DATES: Comments due on or before August 26, 1988. Reply Comments due on or before September 12, 1988.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

A. Holly Berland, Federal Communications Commission, Washington, DC, (202) 632-8990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, adopted June 20, 1988, and released July 5, 1988. The full text of this Commission decision and the rule amendments are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 320), 1919 M Street NW., Washington, DC. The full text of this decision and the rule amendments may also be purchased from the Commission's contractor, International Transcription Services, Inc., (202) 657-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The collection of information requirements contained in the proposed revisions to FCC Form 301 has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on these information collection requirements should direct a copy of their comments to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Summary of Notice

The Commission is proposing to revise FCC Form 301 to include additional informational requirements for applicants for new commercial broadcast stations. Specifically, the proposed revisions would:

- Require corporate and partnership applicants to specify both the date and place of incorporation and place of organization;
- Require applicants to identify all equity owners, including limited partners and non-voting stockholders;

- Reinstate Item 9 from the pre-1981 Form 301, which called for the disclosure of current or future ownership rights;

- Reimpose some financial disclosure requirements, including: (i) Listing of applicants' estimated costs of construction and the first three months of operation, and (ii) identification of applicants' sources of funds; and
- Include detailed instructions regarding financial qualification requirements.

In addition, the Commission requests comments on changing the standard for evaluating the availability of funds for new broadcast station applications from the current "reasonable assurance" standard to a "firm financial commitment" standard.

Ex Parte

This is a non-restricted notice and comment rulemaking proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will somewhat increase small business entities' costs in filing an application for a construction permit for a new broadcast station. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Notice of Proposed Rulemaking.

Comments

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 26, 1988, and reply comments on or before September 12, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Legal Basis

The Commission has authority to institute the proposed revisions to FCC Form 301 pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

(FR Doc. 88-15973 Filed 7-14-88; 8:45 am)

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of American Alligators Harvested in 1988

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed on Appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws enacted for their protection.

This notice announces proposed findings by the United States Scientific Authority and Management Authority on the export of alligators harvested in Florida, Georgia, and South Carolina in 1988. These proposed findings also stipulate that monitoring procedures previously established for other States including Florida, be extended to include Georgia, and South Carolina. The Service also requests comments on these proposed findings.

DATE: The U.S. Fish and Wildlife Service (Service) will consider comments received by July 25, 1988 in making its final determinations and rule.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, Mail Stop: Room 527 Matomic Building, U.S. Fish and Wildlife Service, Washington, DC 20240. Materials received will be available for public inspections from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, room 537, 1717 H Street, NW, Washington, DC or at the Office of Management Authority, room 400, 1375 K Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653-5948.

Management Authority Findings—Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and

Wildlife Service, Washington, DC 20240, telephone (202) 343-4968.
 Export Permits—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4955.
 State Export Programs—Mr. S Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4963.

SUPPLEMENTARY INFORMATION: On September 2, 1986, Federal Register (51 FR 31130), the Service published a rule granting export approval for American alligator (*Crocodylus mississippiensis*) from specified States for the 1986-88 harvest seasons. The purpose of this proposed rule is to add Georgia and South Carolina to the list of States for which alligator export would be approved, and to issue Scientific Authority findings on a revised harvest program in Florida to enable continued export of alligators from that State.

Scientific Authority Findings

Article IV of CITES requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The Scientific Authority must advise "that such export will not be detrimental to the survival of that species" before a permit can be granted.

The American alligator is listed in Appendix II to respond both to problems of potential threat to the survival of American alligators [Convention Article II.2(a)] and its similarity in appearance to other crocodilians that are threatened with possible extinction (Convention Article II.2(b)).

The Regional 10-year review of the Convention's Appendices confirmed the suitability of this treatment, as set forth in the proposal that the Conference of the Parties adopted in 1979 to transfer this species to Appendix II.

The marking of hides with specified tags and documentation of shipments of meat and parts, as well as the issuance of export permits, is considered sufficient to address the issue of identification due to the similarity in appearance between American alligators and other listed species (see Management Authority findings for tag specification).

Inasmuch as the alligator is also listed because of a potential threat to its survival, the Service must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for Scientific Authority advice on exports of American alligators under the provisions of Convention Article II.2(a), are summarized as follows:

A. Minimum requirements for biological information:

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available;

(2) Information on total harvest of the species;

(3) Information on distribution of harvest; and

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest, methods and seasons to be a matter of State choice;

(2) All hides should be registered and marked; and

(3) Harvest level objectives should be determined annually by the State.

In applying these guidelines, the Service considers the following types of information on the conditions of the population: (a) A current estimate (if such information is available) of the total number of animals in the preharvest population derived by extrapolating the number of animals per unit area in each of the major habitat types to obtain an estimate of the total number of animals where the number of animals per unit area is determined by direct count, by indirect indications of abundance in the State, or by population modeling; (b) a description of ongoing research being conducted to assess the distribution, abundance, or general condition of the species in the State, with a summarization of results obtained, including results of any analyses of age structure or reproductive parameters; and (c) an assessment of long-term trends of the species in the State, and the relationship of these trends to habitat conditions, management practices, harvest pressure, and/or other factors.

Information on anticipated harvest to be considered by the Service should include: (a) the number of animals to be harvested (by county or game management unit, if data are available at these local level(s)); (b) the number of alligator hunters expected to be licensed; and (c) the time of the harvest season.

In the case of the alligator, as with most other wild animals, the resource is monitored by a variety of techniques that yield information used in evaluating the condition of a population. As these data are accumulated over time, they reflect trends and call attention to

changes in the populations. Habitat information, indices of population size, age and sex structure, and harvest information, are all used to evaluate population status. Although the Endangered Species Act Amendments of 1982 provided that population estimates are not to be required for the approval of export of Appendix II wildlife, if such estimates are provided by the States or are otherwise available, they will be considered together with information of the types listed above in making findings on nondetriment.

The status of the American alligator has dramatically improved throughout its range over the last 10 years. One of the primary reasons for this improvement has been the effective management programs run by State wildlife agencies. The Service expects these management programs to continue to be effective in conserving the American alligator in the future.

The export of American alligators taken in the 1986 through 1988 harvest seasons in Florida, Louisiana, and Texas was previously approved by the Service (1 FR 31130). At that time, the Service found that "current information on the population status, management, and harvest" available from those States as well as other information collected by the Service, supported a finding that the export of alligators taken in accordance with State regulations in Florida, Louisiana, and Texas during those harvest seasons would not be detrimental to the survival of the species in those States.

The States of South Carolina and Georgia have requested that the export of alligators taken during State-supervised nuisance control programs be permitted. In addition, the State of Georgia has requested approval for the export of American alligators raised on "farms", and finally the State of Florida from which the export of alligators was previously approved is planning to increase the areas in which alligators may be taken.

Based on alligator population and habitat information received from the South Carolina Wildlife and Marine Resources Department and their estimated take of up to 500 alligators in conjunction with their nuisance alligator control program, the Service proposes to issue Scientific Authority advice in favor of alligator export from the State. Based on the expected limited take under Georgia Department of Natural Resources' nuisance control program and upon available information indicating that the populations in Georgia are stable within those areas with suitable habitat, the Service

proposes to issue Scientific Authority advice to allow the export of alligators taken under this State's program. Furthermore, the export of alligators from designated, State-approved farms in Georgia represent animals bred in captivity and their export should not be detrimental to the survival of the wild population. Therefore, the Service proposes to allow the export of specimens from these "farms".

The State of Florida implemented harvest programs on a limited number of experimental areas in 1986, and now plans to expand this program allowing harvest on areas throughout the State. The previously accepted population monitoring system continues to indicate a stable or increasing population and the expanded program would retain harvest quotas on an annual basis. Based on the population information and proposed quotas developed by the Florida Game and Fresh Water Fish Commission, the Service proposes to issue Scientific Authority advice to continue to allow the export of alligators taken in Florida in 1988.

Based upon information presented by Florida, Georgia, and South Carolina, and considering the basis for the species' listing on Appendix II of the Convention, the Service proposes to issue Scientific Authority advice in favor of export of alligators harvested in 1988 from these States, and proposes the addition of Georgia and South Carolina to the list of those States already granted export approval for this species.

Management Authority Findings

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws enacted for the protection of the involved species. The Service, therefore, must be satisfied that alligator hides, meat or products were not obtained in violation of State or Federal law in order to allow export. Evidence of legal taking for American alligator is provided by Service-approved State tagging programs. The Service annually contracts for the manufacture and delivery of special Convention animal-hide tags for export-qualified States. In a Federal Register notice, published on April 24, 1986 (51 FR 15548), the Service announced the introduction, use, and protection of a US-CITES tag symbol. This symbol appears on every Service-approved export tag to provide legal evidence of export approval for certain Convention Appendix II listed species.

Guidelines developed for Management Authority findings on State American alligator export programs,

slightly modified from the 1986-1988 rule, under provisions of Convention Article IV.2(b), are summarized as follows:

(1) Current State alligator trapping and tagging, meat, and parts processing regulations must be on file with the Office of Management Authority;

(2) Sample reporting forms, export tag, meat packing seal, and parts tag must be on file with the Office of Management Authority;

(3) The export tag must be durable and permanently locking, and must show U.S.-CITES logo, State of origin, year of take, species, and be serially unique;

(4) The export tag, meat seal, and parts tag must be applied to all hides, meat or parts, within a minimum time after take or processing, as specified by State law, and such time should be as short as possible to minimize movement of untagged hides, meat, or parts;

(5) The tags or seals must be permanently attached, as mandated by the State;

(6) All alligator harvesters and processors must be State registered;

(7) All hide, meat, and parts dealers are to be State registered;

(8) All State-registered alligator harvesters, processors, and dealers must make available their alligator harvest and commerce data to the State on at least an annual basis, as specified by the State;

(9) State-registered alligator dealers and licensed harvesters allowed to attach export tags to the hides must account for all tags received and must return unused tags to the State within a specified time after the harvest period closes; and

(10) Fully manufactured alligator hide products may be exported from the United States when the State-hide Convention export tags, removed from hides contained in the manufactured products, are surrendered to the Service prior to export.

Monitoring State Programs

From monitoring existing State programs for the American alligator in Florida, Louisiana, and Texas, the Service expects these States will continue to satisfy Convention requirements. States seeking for the first time to establish a harvest program for alligators should apply for Convention export approval no later than January 31 of the year they plan to initiate such a program. To ensure that export-approved States maintain successful programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State management

and export marking programs through evaluation of State information and export reports from the ports, no later than May 31 of each year.

Proposed Findings

The Service proposes to approve exports of 1988 alligators harvested in Florida, Georgia, and South Carolina on the grounds that both Scientific Authority and Management Authority export requirements are satisfied.

Public Comments Solicited

The Service requests comments and recognizes that a public comment period is important concerning the Federal actions described herein. However, a standard 30-day comment period would additionally delay publication of final findings for the export of alligators harvested in 1988, that in turn, may adversely affect those interested in exporting American alligators.

The Service, therefore, finds that good cause exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, to grant a 10-day public comment period.

The proposal is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*). The authors are S Ronald Singer, Office of Management of Authority, and Dr. Charles W. Dane, Office of Scientific Authority.

Note.—The Department had previously determined that the export of alligators of various States taken in the 1986-1988 harvest seasons, was not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(a)(c) of the National Environmental Policy Act, therefore, the preparation of an environmental impact statement was not required (46 FR 37494). Because these proposed findings do not significantly differ from the previous export findings, the previous determination not to prepare an Environmental Impact Statement on export of alligators taken during the 1986-1988 harvest seasons in certain States (51 FR 31130) remains appropriate. The Department had also previously determined that such harvest was not a major rule under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because the existing rule treats exports on a State-by-State basis and proposes to approve export in accordance with a State management/export program, the rule will have little effect on small entities in and of itself. This proposed rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Regulations, as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 stat. 684, 16 U.S.C. 1531 et seq.

Subpart F—Export of certain Species

2. In § 23.57 revise paragraphs (a) and (b), and remove paragraph (c) through (g) to read as follows:

§ 23.57 American alligator (*Alligator mississippiensis*).

(a) 1979–1988 harvests (wild and captive bred for each year unless noted).

	Florida	Georgia	Louisiana	South Carolina	Texas
1979 (*)	+	–	+	–	–
1980	+	–	+	–	–
1981	+	–	+	–	–
1982	+	–	+	–	–
1983	+	–	+	–	–
1984	+	–	+	–	+
1985	+	–	+	–	+
1986	+	–	+	–	+
1987	+	–	+	–	+
1988	+	+	+	–	+

Legend:
+ Export approved.
– Export not approved.
* And prior years.

(b) Conditions on export. (1) Each hide must be clearly identified as to species, Country and State of origin, and season of taking, and must be marked by a permanently attached, serially numbered tag of a type approved by that Service that is attached under conditions established by the Service. Fully manufactured hide products may be exported from the United States when State hide export tags, removed from hides contained in the products, are surrendered to the Service prior to export.

(2) Meat from legally harvested and tagged alligators shall be packed in uniform containers, permanently sealed and labeled as required by State law. Bulk meat containers shall be marked with a State "parts tag" or "bulk meat tag" permanently attached indicating, at a minimum, State of origin, year of take, species, original hide export tag number,

weight of container, and identification of State-licensed process or packer.

(3) Large individual parts shall have a "parts tag" permanently attached, while smaller parts may be packed with a "parts tag" permanently attached to the package. "Parts tags" shall all supply the same information as described for such tags used to mark alligator meat. Alligator skulls shall carry a "parts tag" and also be marked with the number of the original U.S.-CITES export tag used for the hide of that individual, and other markings, as required by State law.

Dated: June 14, 1988.

Susan Recce,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–15903 Filed 7–14–88; 8:45 am]
BILLING CODE 4310–35–M

50 CFR Part 23**Export of American Ginseng Harvested in 1988–90 Seasons**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. Export of animals and plants listed in Convention Appendix II may occur only if the Scientific Authority has advised the permit-issuing Management Authority that (1) such export will not be detrimental to the survival of the species, and (2) this export will maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs, and (3) if the Management Authority is satisfied that the animals or plants being exported were not obtained in violation of laws for their protection. Export of cultivated specimens of plants listed in Appendix II may occur only if the Management Authority is satisfied that the plants being exported were artificially propagated.

This document announces proposed findings by the United States Scientific Authority and Management Authority for export of American ginseng from certain States for the 1988–90 harvest seasons.

The Service began to make multi-year findings for the export of American ginseng on a State-by-State basis when it issued Scientific Authority and Management Authority findings

covering the 1982–84 harvest seasons. This was followed by multi-year findings for ginseng harvested from certain States for the 1985–87 harvest seasons. Certain States were not granted multi-year export approval because they had not satisfied Management Authority guidelines. The Service continues to seek data and information on topics described in this proposed rule as a basis for determining whether to initiate or to continue approval of export from specified States for the 1988–90 harvest seasons.

Monitoring State ginseng programs for 10 years has shown the Service that States from which ginseng export has been approved will continue to satisfy Convention requirements. To ensure that this is so, the Service will continue annual monitoring in accordance with the procedures described herein. This monitoring will include analysis of program reports made available to the Service no later than May 31 every year from each State from which ginseng export is approved. These program reports document the most recent harvest and current status of ginseng management in that State.

DATE: The Service will consider information and comments received by August 15, 1988, in making its final rule.

ADDRESS: Please send correspondence concerning this document to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 400, 1375 K Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Scientific Authority:* Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, 527 Matomic Building, Washington, DC 20240, telephone (202) 653–5948.

Management Authority: Marshall P. Jones, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329, telephone (202) 343–4968.

Export Programs: S Ronald Singer, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329, telephone (202) 343–4963.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in Convention listed species. Export of species listed in Appendix II of the Convention may only occur upon approval of both a Scientific

Authority and a Management Authority of the country of export. In the United States, Scientific Authority and Management Authority responsibilities are assigned to the Secretary of the Interior and are carried out by the U.S. Fish and Wildlife Service (Service). This notice concerns the Service's findings on the export of American ginseng (*Panax quinquefolius*) taken in the 1988–90 harvest seasons.

The Convention provides for listing of plants and specifically designated parts and derivatives of Appendix II plants. Since 1973, whole plants and roots of *Panax quinquefolius* have been so listed. Then, in 1985, for reasons unrelated to the trade in American ginseng, the Parties to the Convention revised the listing practices and decided to regulate not only whole specimens of plants on Appendix II but also all their parts and derivatives, unless specifically exempted. As a consequence, the listing for ginseng needed restatement, and the listing proposal adopted by the Parties (November 22, 1985, *Federal Register*, 50 FR 48212) continues to regulate ginseng exports, including plants, whole roots, basically intact roots, and root chunks or slices.

In 1982, the Service reported that it had found that the status of wild ginseng did not appear to vary greatly from year to year within any given State, and that existing information compiled was adequate to justify multi-year findings under the Convention (47 FR 43701, October 4, 1982). This initial multi-year rule was followed by a second such rule for the 1985–1987 harvest seasons (50 FR 39691, September 30, 1985; 50 FR 42027, October 17, 1985). The Service has used information compiled since 1977 to make multi-year findings under the Convention. Even though findings were made approving the export of ginseng harvested in certain States in the 1985–87 seasons, the Service indicated it would continue to monitor the status of ginseng each year, and would retain the option of revising the findings at any time if new information showed the need for a change.

The Service now requests current biological and harvest information concerning those States previously approved for export and those States not previously approved that are now seeking export approval for ginseng harvested in the 1988–90 harvest seasons. Information submitted in the past need not be resubmitted if it is referred to and its validity re-affirmed. The States of Alabama and Pennsylvania have submitted such information in support of requests for initial export approval of ginseng

harvested from those States for the 1988–1990 harvest seasons. New York has submitted such information in support of a request for initial export approval of ginseng harvested in that State for the 1987–1990 harvest seasons.

Scientific Authority Criteria

General criteria used by the Scientific Authority in advising on whether export will or will not be detrimental to the survival of species are as follows (originally described in a notice of July 11, 1977; 42 FR 35800):

1. Whether such export has occurred in the past and has or has not reduced numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystems;

2. Whether such export is expected to increase, remain constant, or decrease; and

3. Whether the life history parameters of the species and the relevant structure and function of its ecosystem indicate that present or proposed levels of export will or will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystems.

For ginseng, the evaluation for nondetriment by the Scientific Authority, in accordance with these general criteria, will continue to be based on the following information for each affected State, to the extent it is available in annual reports (with sources, accuracy, and still-valid items in previous reports indicated) or from other suitable sources:

1. Historic, present, and potential distribution of wild ginseng by county using State maps with county outlines; distribution of optimal natural habitat on a regional basis in the State, and description of recent trends in loss and/or protection of habitat; and map of locations and information on approximate acreage and percentage of the State's wild ginseng that is on statute-protected lands where collecting is permanently prohibited. (Ginseng is considered as wild if it occurs in naturally perpetuated habitat, where the species is naturally propagated or with only limited planting of local seed by people at or near the site of collection with no subsequent tending of species or habitat before harvest.)

2. Map of the approximate number or density of wild ginseng populations per county or region, and information on the total number of wild ginseng localities in the State;

3. Map of the average number of plants per population or patch, or local abundance of wild ginseng, per county or region of the State; map and information on the population trends per county or region, indicating if populations of wild ginseng are increasing, stable, decreasing, extirpated, or unknown; and discussion of any recent changes from previous years or differences from historical population sizes;

4. A description of the State's annual harvest practices and controls on wild ginseng including a regulated harvest season (States are urged not to permit local harvest until seeds are mature), and harvest requirements such as minimum size or age of collected plants [3-leaf (3-prong) minimum recommended] and on planting seeds at the collection site;

5. Map of the harvest intensity by county or region, indicating if collecting is heavy, moderate, light, none, or unknown, and discussion of any changes from previous years; information on the number of ginseng collectors (diggers) in the State, and on the amount of wild ginseng plants and roots harvested in the State and the amount certified for export, in pounds (dry weight) per year;

6. Information on the average number of wild roots per pound (dry weight) harvested, preferably on a county or regional basis or, if not available, on a statewide basis; and an assessment of any trend in number of wild roots per pound (dry weight) or root sizes over previous years;

7. A description of the State's ongoing research program on wild ginseng and its progress, including a summary of results obtained; and

8. State maps showing those counties in which ginseng is commercially cultivated; and information on the amount of cultivated ginseng plants or roots harvested in the State and the amount certified, in pounds (dry weight) per year. (Ginseng is considered cultivated when it is artificially propagated and maintained under controlled conditions, for example, in intensively or intermittently prepared or managed gardens or patches, under artificial or natural shade.)

Management Authority Criteria

In addition to Scientific Authority advice that ginseng experts will not be detrimental to the survival of the species, the Management Authority must be satisfied that (1) the ginseng was not obtained in contravention of laws for its protection, and (2) whether

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it was of wild or artificially propagated origin.

Criteria used by the Management Authority in determining a State program's qualifications for export are that the State has adopted and is implementing the following regulatory measures (see publication of September 30, 1985, 50 FR 39691).

1. A State ginseng law and regulations mandating State licensing or regulation of persons purchasing or selling ginseng collected or grown in that State;

2. State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in ginseng and provide copies of such records of commerce to the State in a signed and dated statement at least every 90 days (generally within 15 days of the end of each quarter of the calendar year);

3. Dealer records required to show date of transaction, whether plants and roots were wild or artificially propagated, if roots were dried or green (fresh) at time of transaction, weight of roots, weight or number of plants, State of origin of plants or roots, and the identification numbers of the State certificates used to ship ginseng from the State of origin. The name and address of the seller or buyer of the ginseng of record shall be maintained by the dealer on his or her own copy of commerce record forms supplied by the State(s) of licensing, and shall be made available to the State ginseng program manager(s) if requested;

4. Inspection and certification by State personnel of all ginseng harvested in the State to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. (Experience has shown the value of an inspection and certification program by a State official who can document both the weight of the ginseng roots (weight or number of plants) in question and that the roots or the plants were legally taken from the wild or artificially propagated in that State);

5. Ginseng unsold by March 31 of the year after harvest must be weighed by the State and the dealer given a weight receipt. Future State export certification of this stock is to be issued against the State weight receipt;

6. The certificate of origin forms must remain in State control until issued at certification and must contain the following information:

- State of origin,
- Serial number of certificate,
- Dealer's State registration number,
- Dealer's shipment number for that harvest season,
- Year of harvest of ginseng being certified,

- Designation as wild or artificially propagated plants or roots,
- Designation as dried or green (fresh) roots, or live plants,
- Weight of roots and plants (or number of plants) separately expressed both numerically and in writing,
- Verified statement by State ginseng official that the ginseng was obtained in that State in accordance with State law of that harvest year,
- Name and title of State-certifying official,
- Date of certification, and
- Signatures of both dealer and State official making certification.

This certificate should be issued in triplicate, with the original designated for dealer's use in commerce, first copy for dealer records, and second copy retained by the State for reference; and

7. State regulations that (a) prohibit export of its ginseng from the State without certification by the State of origin, and (b) require uncertified ginseng supplied to State-registered dealers to be returned to the State of origin within 30 calendar days for certification. Failure to have such ginseng certified will render this root illegal for export from the United States under State law.

Each State from which ginseng export is approved shall make program information, identified by harvest year, available on an annual basis to the Service's Office of Management Authority no later than May 31 (for example, the 1987 State ginseng data should be available by May 31, 1988). This data should be sufficient to satisfy the Scientific Authority criteria and should contain the following information to satisfy the Management Authority criteria.

1. Reaffirm State ginseng program and indicate modifications, if any, concerning:

- (a) State ginseng laws and regulations;
- (b) Season of ginseng harvest and commerce;
- (c) State dealer, digger, and/or grower license or registration rules;
- (d) Sample of required ginseng-related licenses, including cost of license and dates of authorized use;
- (e) Fees for any ginseng-related license or registration;
- (f) Dealer, digger, or grower record-maintenance and reporting requirements;
- (g) Sample of current year dealer certificates and reporting forms;
- (h) Description of State certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or out of the State; and

(i) Name, address, and telephone number of State official to contact concerning such information.

2. The State data should also include information on the following:

(a) Pounds dry weight of wild and of cultivated ginseng roots and weight or number of live plants (i) harvested and (ii) certified by the State, and (iii) the pounds of each bought and sold from in-State and out-of-State sources;

(b) Indicate how dealers not resident in the State obtain certification for ginseng roots harvested in that State and how this type of commerce is controlled by State law;

(c) Indicate ginseng law enforcement procedures, violations discovered, and remedies; and

(d) Sample of current-year State certificate of legal take and origin.

Program for Artificially Propagated Ginseng

In an October 21, 1980, rule (45 FR 68944), the Service announced it would approve export of artificially propagated ginseng only from States for which export of wild-collected ginseng was approved because those States had programs that could adequately document the source of the ginseng. The Service announced in an October 4, 1982, rule (47 FR 43701) that it would approve export of artificially propagated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service will continue to consider granting such approval.

Previous Export Approval

On September 30, 1985 (50 FR 39691) the Service approved multi-year export of 1985-87 harvested ginseng only from States with a legally regulated ginseng program that provided for a State inspection and certification system and that satisfied all other criteria of both the Management and Scientific Authorities. The export of wild and/or cultivated ginseng harvested from 1985 through 1987 was approved only from the States named in 50 CFR 23.51 (see chart below).

HARVEST YEARS

State	1985	1986	1987
Arkansas.....	x	x	x
Georgia.....	x	x	x
Indiana.....	x	x	x
Illinois.....	x	x	x
Iowa.....	x	x	x
Kentucky.....	x	x	x
Maryland.....	x	x	x
Minnesota.....	x	x	x
Missouri.....	x	x	x

HARVEST YEARS—Continued

State	1985	1986	1987
North Carolina.....	x	x	x
Ohio.....	x	x	x
Tennessee.....	x	x	x
Vermont.....	x	x	x
Virginia.....	x	x	x
West Virginia.....	x	x	x
Wisconsin.....	x	x	x

x Export approval granted for wild and cultivated ginseng.

Such export approval means that any ginseng legally harvested during these years from Service-approved States may be exported at any time when accompanied by appropriate State certification and valid Federal export documents granted by the U.S. Management Authority. For example, 1985 legally harvested ginseng from a Service-approved State may be exported in 1988 when accompanied by valid 1985 State Certificates of origin, shippers invoice, and a valid export document issued in 1988 by the Management Authority for the 1985 certified ginseng.

Multi-year Findings

As a result of monitoring State ginseng programs and the status of ginseng since 1977, the Service expects that States from which the export of ginseng has been approved will continue to satisfy Convention requirements. Therefore, States previously approved for export of ginseng harvested in 1985-87 need not resubmit new applications for export program approval for the 1988-90 harvest seasons. They must, however, reaffirm the validity of their existing programs and notify the Service of any program changes or modifications in their 1987 annual report. Annual data for the past harvest and reaffirmations of State programs with new program information must have been received for all States from which ginseng export was approved for the 1985-1987 harvest years by the Service. The Service proposes to find that the status of the species and State programs is such that the 1988-90 harvests of ginseng for export will not be detrimental to the survival of the species for the States approved for the 1985-87 harvest seasons. The export of wild and cultivated ginseng plants and roots harvested in the 1988-90 seasons is proposed for the States identified in 50 CFR 23.51(e), as indicated at the end of this document. Because of a State program initiated late in 1987, New York has applied for export approval of ginseng harvested in the 1987-90 harvest seasons, and Alabama and Pennsylvania have applied for export approval for ginseng harvested in the

1988-90 seasons. However, Pennsylvania and New York have not yet completely satisfied Service ginseng export program information requirements. New York State did not certify its 1987 harvested ginseng, making it ineligible for export. The Service is now proposing the addition of these three States to the States listed below in 50 CFR 23.51(e) to be approved for export of ginseng harvested in the years specified. However, unless these States supply the required information, they will not receive export approval in the final notice and rule to be published soon. If export approval is not granted to any State for the 1988 ginseng harvest season, there will be no 1988 harvest for export in that State. Furthermore, such 1988 harvested ginseng may not be exported at any time. States wishing to initiate export programs for ginseng harvested in 1989 or thereafter should begin work with the Service as soon as possible so that their finalized application can be submitted by March 31 of the year in which they anticipate certifying harvested ginseng for subsequent export.

Service export approval would be subject to revision prior to the 1989 and 1990 harvest seasons in any approved State if a review of information reveals that Management Authority or Scientific Authority findings in favor of export must be changed. The Service proposes not to grant general approval for export of ginseng originating in any State not named in 50 CFR 23.51(e) because: (1) The species does not occur there, (2) no harvest of the species is allowed by the State, or (3) the Service does not have current information needed for Management Authority or Scientific Authority findings. To ensure Service-approved States maintain successful programs and that export is not detrimental to the survival of this species, the Service plans to continue annual monitoring of State programs and of information on the status of ginseng populations, especially by the evaluation of annual data from the States and of export documents returned from the ports. Notices will be published in the Federal Register in 1989 and 1990 only if new information or changed conditions show reason for revised findings or guidelines.

Export Procedures

Valid Federal Convention documents are necessary to export wild or artificially propagated ginseng plants or roots. Applications for these documents should be sent to the Office of Management Authority at the address given above.

Ginseng may only be exported through ports with personnel and/or facilities of the U.S. Department of Agriculture ("USDA ports") and designated by the U.S. Department of Interior (see 49 FR 49238; October 25, 1984). For each export, the exporter must present to the Port Inspector of the U.S. Department of Agriculture Animal and Plant Health Inspection Service, Plant Protection and Quarantine, the following:

(1) Ginseng plants or roots being exported;

(2) Original State certificates of origin for the ginseng (or foreign export documents for American ginseng imported to the United States). An exporter or dealer may split an original State certificate by striking a line through the original weight, and identify by numbers and writing the lower weight of ginseng being exported. This change in certificate weight must be certified with the written words "I made these changes on (date)" followed by full legal signature of the dealer or exporter. The modified State certificate must bear this certification in original ink form;

(3) Three completed Federal Convention export documents; and (4) one copy of executed shippers invoice.

The Plant Protection and Quarantine port inspector may sign and validate the Convention documents only after a satisfactory inspection of the State certificate of origin, shippers invoice, Convention export documentation and contents of the shipment. Once the Convention documents are validated, the inspector will then forward State certificates, one Convention export document, and shipper's invoice to the Office of Management Authority for recordkeeping and reporting. The second Federal export document is for the exporter, and the remaining Convention export document will authorize the international shipment of the ginseng and will be collected by the importing country.

Request for Information and Comments

The Service requests information and comments on the status of ginseng in any individual State: the criteria, procedures and implementation for demonstrating that ginseng is not harvested in contravention of protective laws, that the exported specimen is accurately declared as wild or artificially propagated, and that it originates in a particular State. Comments are also requested on criteria and proposed findings that export will not be detrimental to the species' survival in any approved State.

The Service recognizes that public comment is important concerning the Federal actions described herein. However, a 30-day comment period would delay publication of final findings and may adversely affect ginseng export. Therefore, the Service finds that good cause exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, to grant a 10-day public comment period.

The Service also requests information on environmental or economic impacts and effects on small entities (including small businesses, small organizations, and small governmental jurisdictions) that would result from findings for or against export approval. This information will aid the Service in further evaluating, prior to the final rule, the conclusions stated in the Note below. The proposed rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended), and was prepared by S Ronald Singer, Office of Management Authority, and Dr. Wayne Milstead, Office of Scientific Authority.

Note.—The Department has determined that these proposed findings are not a major Federal action significantly affecting the quality of the human environment under the

National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. The Department determined that the findings for the 1978-87 harvest seasons were not major rules under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Exporters normally derive their product from the ginseng harvested in a number of States. Therefore, the approval or disapproval of wild ginseng export from any one State would not significantly affect the industry. Furthermore, because the proposed rule treats exports on a State-by-State basis and proposes to approve export in accordance with State management programs, the rule would have little effect on small entities in and of itself. For the 1988 through 1990 harvest seasons, the Service has analyzed the impacts and again concludes that this would not be a major rule and would not have a significant economic effect on a substantial number of small entities. This proposed rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened plants,
Endangered and threatened wildlife,

Exports, Fish, Imports, Plants
(agriculture), Treaties.

Proposed Regulation Promulgation

Accordingly, Part 23, Subchapter B of Chapter 1, Title 50, Code of Federal Regulations, is proposed for amendment as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

Subpart F—Export of Certain Species

2. In § 23.51 revise paragraph (e) and remove paragraph (f) to read as follows:

§ 23.51 American Ginseng (*Panax quinquefolius*).

(e) 1982-1990 harvests (wild and cultivated roots for each year unless noted):

HARVEST YEARS

State (1)	1982	1983	1984	1985	1986	1987	1988	1989	1990
Alabama	-	-	-	-	-	-	x	x	x
Arkansas	x	x	x	x	x	x	x	x	x
Georgia	x	x	x	x	x	x	x	x	x
Indiana	x	x	x	x	x	x	x	x	x
Illinois	x	x	x	x	x	x	x	x	x
Iowa	x	x	x	x	x	x	x	x	x
Kentucky	x	x	x	x	x	x	x	x	x
Maryland	x	x	x	x	x	x	x	x	x
Minnesota	x	x	x	x	x	x	x	x	x
Missouri	x	x	x	x	x	x	x	x	x
North Carolina	x	x	x	x	x	x	x	x	x
New York	-	-	-	-	-	-	x	x	x
Ohio	x	x	x	x	x	x	x	x	x
Pennsylvania	-	-	-	-	-	-	x	x	x
Tennessee	x	x	x	x	x	x	x	x	x
Vermont	x	x	x	x	x	x	x	x	x
Virginia	x	x	x	x	x	x	x	x	x
West Virginia	x	x	x	x	x	x	x	x	x
Wisconsin	x	x	x	x	x	x	x	x	x

(1) Service export-approved State.
x Exported approval granted for wild and cultivated ginseng.
- Export not requested or not granted.
a Export approval only for artificially propagated (cultivated) ginseng.

Conditions on export: All plants and roots must be documented as to State or origin, season of collection, and dry or green (fresh) weight. The State must certify whether roots and plants originated in the State, are wild or cultivated (artificially propagated) specimens, and were legally obtained. Such State certification, a current Federal export

document, and an executed dealer's invoice must be presented upon export. The State must maintain a ginseng program, as described by the Service in this rule, and annual ginseng program data for the preceding harvest season should be available to the Office of Management Authority by May 31. Export procedures must be

completed as outlined and discussed in this paragraph.
Susan Recco,
Assistant Secretary for Fish and Wildlife and Parks.

Dated: July 1, 1988.

[FR Doc. 88-15064 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-05-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy; request for comment.

SUMMARY: The Forest Service is issuing amendments to Forest Service Manual Chapter 1920—Land and Resources Management Planning and four chapters of the accompanying Forest Service Handbook 1909.12 to clarify the forest planning process, state documentation requirements, describe forest plan implementation and amendment procedures, and define monitoring and evaluation requirements. There is an immediate need to amend the Forest Service Manual and issue the remaining chapters of the Forest Service Handbook in order to facilitate consistent interpretation and application of the direction by Regional and Forest-level personnel. Therefore, the direction is being issued in final form. However, the Forest Service invites public comment on the direction which is set out at the end of this notice. If comments received indicate a need to revise the direction, the Agency will publish proposed revisions and request comment at that time.

DATES: Comments must be received in writing by September 13, 1988.

EFFECTIVE DATE: This policy is effective August 1, 1988. This date allows issuance and receipt of the implementing directives by Forest Service personnel.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Everett Towle, Director, Land Management Planning Staff, Forest Service, USDA, P.O. Box 60000, Washington, DC 20060-0000, (202) 447-6697.

SUPPLEMENTARY INFORMATION: Forest Service Manual Chapter 1920 and Forest Service Handbook 1909.12 contain Forest Service policy and procedures to guide Agency personnel in complying with the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976, and the implementing regulations found at 36 CFR Part 219. The law and implementing regulations establish the process for land and resource management planning at both the Regional and National Forest level of the Agency. The direction provided in FSM 1920 provides broad planning direction for line and primary staff officers and establishes specific responsibility for preparing regional guides and forest plans and implementing, monitoring, and changing forest plans. Forest Service Handbook 1909.12 provides detailed procedural direction and technical guidance for carrying out the direction contained in the law, regulations, and the Forest Service Manual.

The major changes being issued to FSM 1920 related to: requiring a monitoring plan and responds to identified issues and legal requirements; reserving authority to the Chief to approve the schedule for forest plan revision; and establishing specifications for interim management direction for management of recommended wilderness and wild and scenic river candidates.

The most significant changes being made are for forest plan implementation and amendment. Interim Directive No. 15 to Forest Service Manual 1920 dated February 8, 1988, originally published in the Federal Register January 13, 1986 (15 FR 1476) is incorporated in this amendment. The Interim Directive (ID) focuses on forest plan amendment and revision. It reserves authority to the Chief to approve the schedule for forest plan revision and establishes Regional Forester responsibility to review and approve significant amendments to a forest plan. It also clarifies the distinction between significant and nonsignificant amendments of a forest plan. Comments requested and received in early 1988 following publication of the ID have been used in amending applicable parts of Chapter 1920. Twelve letters were received in response to our request for comments: three from the Forest Service; two from

the timber industry; two from the oil industry; two from environmental groups; one from an inter-tribal fish commission; one from a State forester; and one from an individual.

Most respondents stated a need to clarify criteria for distinguishing between plan amendment and plan revision. In response, the Agency has expanded to seven the possible reasons for amending a forest plan (FSM 1922.5). Requirements for forest plan revision were unchanged because of the time-certain characteristics of revision. These requirements have been incorporated at FSM 1922.8.

Most respondents felt there was a need to determine whether a forest plan amendment is either significant or not significant. We agree and have added direction for making this determination at FSM 1922.5 and 1922.52. Additional factors related to significance of amendments, namely timing, location, size of change, goals, objectives, outputs, and the scope of changed management prescriptions are addressed in the Handbook at section 5.32. In both the Manual and Handbook, the language addresses the significance of the change rather than the significance of the amendment to more closely follow the wording in 36 CFR 219.10(f).

Most respondents indicated the need to define procedural steps for amending and revising forest plans. Basic direction for preparing, amending, and revising forest plans is found in the planning regulations at 36 CFR Part 219. Procedures for amending forest plans have been added to sections 5.32 and 5.4 of FSH 1909.12. The process is specific for either a nonsignificant or significant change to the forest plan with a different process and approval required for each. The procedures to revise a forest plan are the same as for preparing a new plan and are found throughout the planning regulations, Chapter 1920 of the Manual, and in the Planning Handbook.

Chapters 1, 2, 7, 8, and 9 of Forest Service Handbook 1909.12 were issued in July 1987. Chapters 3, 4, 5, and 6 are now being added to complete the Handbook. Chapter 3 describes the forest planning process and elaborates on the steps involved in developing a forest land and resource management plan. Chapter 4 provides outlines to be used in preparing and documenting draft and final environmental impact

statements, proposed and final forest plans, and the record of decision. Chapter 5 sets forth the process for forest plan implementation, including the process required to amend the plan. Chapter 6 provides guidance on monitoring levels, monitoring requirements, and the evaluation of monitoring results. Interested persons should review the entire Handbook to fully understand the forest land and resource management planning process. Copies of the Handbook are available for review at all National Forests and Forest Service Regional offices.

The text of the final policy contained in Chapter 1920 of the Forest Service Manual and Chapters 3, 4, 5, and 6 of Forest Service Handbook 1909.12, the Land and Resource Management Planning Handbook, is set forth at the conclusion of this document as it will appear in the Agency's directive system.

If analysis of comments received on the chapters indicates a need to further amend the direction, the Agency will give notice of the proposed revisions in the *Federal Register* and request further comments on the Manual and Handbook.

Date: July 5, 1988.

George M. Leonard,
Associate Chief, Forest Service.

Title 1900—Planning

Chapter 1920—Land and Resource Management Planning

This chapter provides for an integrated land and resource management planning effort at both the regional and local levels. The planning process determines availability of land for resource management, predicts levels of resource use and output, and provides direction for management of a variety of resource management practices.

1920.1—Authority. Planning for the management and use of the National Forest System must conform to the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) as amended by the National Forest Management Act of 1976 (NFMA), implementing regulations found in 36 CFR Part 219, the National Environmental Policy Act (NEPA), and implementing regulations found in 40 CFR Parts 1500–1508. See FSM 1901 for a summary of the Acts, FSM 1013 for the text of 36 CFR Part 219, and FSH 1909.15 for Council on Environmental Quality (CEQ) regulations implementing NEPA.

1920.2—Objectives. The objectives of land and resource management planning are:

1. To determine the capability of a planning area to supply goods and services in an environmentally sound manner.
2. To determine the most cost-efficient method of supplying goods and services from a planning area to maximize net public benefits in response to society's demand.
3. To develop a fully integrated plan for management of the land and resources within a planning area.
4. To display short- and long-term management intent to the public, Federal, State, and local governments, and industrial and other users.
5. To serve as a source of information in developing the RPA Assessment and Program and to provide the means for implementing the National Forest System portion of the Renewable Resources Program (FSM 1910).

1920.3—Policy. The general policy governing Forest Service planning is found in FSM 1903. Specific principles that apply to land and resource management planning are found in 36 CFR 219.1. In addition, the following policies apply to regional and forest planning processes:

1. Prepare and maintain a work plan to guide and manage the planning process.
2. Determine and display the most cost efficient method for meeting the goals and objectives of any alternative developed in the planning process.
3. Obtain the most current data available through use of efficient, compatible, and timely resource inventories. National standards, definitions, and specifications for resource inventories are found in specific Forest Service Handbooks that contain data requirements, resource measurements, and inventory planning and implementation instructions. Coordinate inventories to reduce duplication of data collection at all planning levels.
4. Use FSH 1309.16, the National Activity Structure Handbook, to identify, code, and define outputs and management practices (activities) used in the planning process.
5. Organize planning records and make them available for public review when the draft environmental impact statement is filed.
6. Use the management review system as the primary process to ensure evaluation and documentation of the results of forest plan monitoring are accomplished.
7. Display planning data and information in a manner that can be easily understood by users and the public.

Regional guides and forest plans begun prior to issuance of this direction are exempt from the requirements of this chapter until such time as a significant amendment to the regional guide is prepared or, for forest plans, until the next scheduled revision.

It is the policy of the Chief that all primary direction necessary for development of regional guides and forest plans be contained in this chapter, or supplements or handbooks thereto.

1920.4—Responsibility. General responsibilities for planning are found in 36 CFR Part 219 and in FSM 1904. Additional, specific responsibilities for regional and forest level land and resource management planning and for planning special areas to include potential wilderness designations and wild and scenic river system additions are found in appropriate sections of this chapter.

1920.41—Director, Land Management Planning. The Washington Office Director of Land Management Planning provides staff assistance to the Chief, through the Deputy Chief for the National Forest System, in all matters of regional and forest planning. Additional responsibilities include providing planning assistance to the regions and coordinating regional and forest planning matters at the national level.

1920.5—Definitions. See FSM 1905 for definitions that uniformly apply to land and resource management planning.

1921—REGIONAL PLANNING. The primary product of regional planning is a regional guide. Minimum requirements for regional planning and preparation of regional guides are found in 36 CFR 219.8 and 219.9.

1921.04—Responsibility. Basic responsibilities for development and approval of regional guides are specified in 36 CFR 219.8 (b) and (d).

1921.04a—Chief. The Chief reserves the authority to approve regional guides prior to publication.

1921.04b—Regional Forester. The Regional Forester is responsible for preparing the regional guide, including coordinating preparation of the guide with the Area Director and appropriate Station Directors.

1921.04c—Technical Review Group. A Washington Office Technical Review Group, consisting of a representative from each Deputy Chief area, is responsible for reviewing regional guides. The Director of Land Management Planning chairs the group.

1921.1—Regional Planning Process.

1921.11—Results of Regional Planning. Regional planning results in:

1. An analysis of a region's management situation, including an

assessment of current and future supply capability, demand projections for goods and services, and an assessment of public issues and management concerns within the region. Management concerns include achievement of goals and objectives assigned by the Chief.

2. An identification and analysis of the need to adopt new or change existing standards and guidelines.

3. New or revised planning and/or resource direction to forests.

4. The region's input and response to RPA alternatives.

5. The assignment of RPA Program targets to forests.

Document these analyses and findings in the regional guide (FSM 1921.2).

1921.12—Formulation of Alternatives. Develop a full range of alternative standards and guidelines, including those specified in 36 CFR 219.9(a)(5), in accordance with CEQ regulations 40 CFR Parts 1500–1508 implementing NEPA. The range of alternatives to be examined depends upon the public issues, management concerns, and resource opportunities identified through analysis of the management situation.

1921.13—Estimated Effects of Alternatives. Document the estimated effects for each alternative. If sound data are not available, use and document the best professional judgment available. Environmental consequences of implementing the alternatives are documented in the environmental impact statement accompanying the regional guide.

1921.14—Evaluation of Alternatives. The evaluation of alternatives reflects the net overall physical, biological, economic, and social changes expected with implementation of each alternative. The Regional Forester, with the concurrence of the Chief, shall designate as the preferred alternative the alternative that best addresses major regional issues and management concerns.

1921.2—Regional Guide Content. The regional guide contains those elements specified in 36 CFR 219.9. The guide and environmental impact statement document the analysis required by FSM 1921.11.

1921.3—Review and Approval of Regional Guides.

1921.31—Internal Review. Regional Foresters shall submit draft and final regional guides and accompanying environmental impact statements to the Chief for review by both the Technical Review Group and the Planning Coordination Group prior to Chief's approval for regional publication.

1921.32—External Review. See 36 CFR 219.8(c) for direction on external review of draft and final regional guides and

accompanying environmental impact statements.

1921.33—Amendments. See 36 CFR 219.8(f) for the process to amend regional guides. In addition, the Regional Forester:

1. Approves all nonsignificant amendments to a regional guide.

2. Documents approval and determination of nonsignificance in writing.

3. Forwards copies of nonsignificant amendments to interested and affected publics and to all Forest Service offices that have copies of the regional guide on file.

4. Determines, upon completion of each RPA Program update, whether an amendment to the regional guide is necessary when the regional share of the RPA Program, regional conditions, or the demands of the public in the region have changed significantly.

1921.4—Planning Records. Planning records documenting the regional planning process must meet the requirements of 36 CFR 219.8(g).

1922—FOREST PLANNING. Planning for units of the National Forest System involves two levels of decisions. The first is development of a forest plan that provides direction for all resource management programs, practices, uses, and protection measures. The forest plan consists of both forest-wide and area specific standards and guidelines that provide for land uses with anticipated resource outputs under the given set of management constraints. The outputs are not hard and fast decisions within the plan since all conditions required to produce outputs, such as annual budget appropriations, are not controlled by the unit. The second level planning involves the analysis and implementation of management practices designed to achieve the goals and objectives of the forest plan. This level involves site-specific analysis to meet NEPA requirements for decisionmaking.

1922.03—Policy. In addition to complying with the general policies and principles set forth in FSM 1920.3, the forest planning process must:

1. Integrate all resource programs and supporting activities.

2. Base resource inventories on sound sampling designs using common definitions and standards.

3. Use FORPLAN as the primary analysis tool to schedule outputs and activities in the management areas.

4. Use present net value as the indicator of cost efficiency in each alternative (See FSM 1970 and FSH 1909.17).

5. Use economic, social, and other environmental analyses to evaluate and

display differences associated with producing alternative levels of the various renewable resources.

6. Evaluate and display the compatibility and conflict between resource values.

7. Document and display the economic and social effects and physical and biological conditions anticipated with implementation of each alternative as well as the differences between alternatives.

8. Systematically construct, analyze, and display the rationale, resource implications, and effects of management standards on present net value and potential production of significant resources.

9. Estimate the goods and services, activities, and investments to be implemented or produced by decade and display these outputs for the identified RPA time periods.

10. Prepare a monitoring plan that is responsive to identified issues and sufficient to meet legal requirements for monitoring soil, water, air, wildlife and fish, vegetation, and other resources.

1922.04—Responsibility. The Chief reserves the authority to approve the schedule for revising individual forest plans.

1922.04a—Regional Forester. In addition to the responsibilities specified in FSM 1904 and 36 CFR 219.10(a), each Regional Forester shall:

1. Coordinate planning efforts between forests within the region and between regions where forests adjoin.

2. Maintain quality control of forest plans by ensuring that forest plans meet the standards of FSM 1922.21.

3. Ensure forest plan monitoring standards are consistent among adjoining units.

4. Review, and approve as appropriate, any amendment that results in a significant change to a forest plan.

5. Propose to the Chief a schedule for revising forest plans.

1922.04b—Forest Supervisor. In addition to the responsibilities specified in FSM 1904 and 36 CFR 219.10(a), each Forest Supervisor shall:

1. Prepare the draft and final forest plan and environmental impact statement to meet the standards in FSM 1922.21 and 1922.31a.

2. Ensure that the interdisciplinary team integrates knowledge of the physical, biological, economic and social sciences, and environmental design arts in the planning process.

3. Conduct planning activities in a manner fully consistent with the National Environmental Policy Act (NEPA), the Council on Environmental Quality implementing regulations, the

Forest Service's environmental policies and procedures described in FSM 1950 and FSH 1909.15, and the requirements of 36 CFR 219.5.

4. Develop and approve amendments that result in a nonsignificant change to the forest plan.

5. Prepare amendments that result in a significant change to the forest plan and recommend them to the Regional Forester for approval.

6. Propose revision of the forest plan to meet the requirements of 36 CFR 219.10(g) and when directed by the Chief.

1922.1—Forest Planning Process. The framework for forest planning is a set of 10 actions described in 36 CFR 219.12 (b) through (k). All the actions are interdependent but some may occur simultaneously. Of necessity, the process is open-ended, dynamic, and interactive.

1922.11—Forest Planning Results. Minimum result required of forest planning are:

1. Identification of resource management issues and concerns and management opportunities.

2. Development of a set of criteria to guide the formulation and evaluation of alternatives (36 CFR 219.12(c)).

3. Analysis of the management situation including all items required in 36 CFR 219.12(e). The analysis determines both the need for and the opportunity to establish or change management direction.

4. Formulation of a set of alternatives that reflects a wide range of options responsive to the significant issues described through benchmark analysis (FSM 1922.12).

5. Evaluation of alternatives and identification of a preferred alternative in accordance with NEPA, CEQ regulations, and Forest Service environmental policies and procedures (FSM 1950 and FSH 1909.15).

6. A forest plan that achieves the 14 principles described in 36 CFR 219.1.

7. A monitoring program to evaluate progress toward achieving the goals, objectives, and standards of the plan and the validity of assumptions and coefficients used to estimate outputs and effects.

1922.12—Benchmark Analysis. Benchmark analysis provides baseline data necessary to formulate and analyze alternatives. Benchmarks estimate a forest's physical, biological, and technical capabilities to produce goods and services. The development of benchmarks is not limited by Forest Service policy or budget, discretionary constraints, or program and staffing requirements. To carry out the requirements of 36 CFR 219.12(e)(1), all

forests shall develop and analyze the following benchmarks:

1. Minimum level management.
2. Maximum present net value based on established market price.
3. Maximum present net value including assigned values.

4. Current level management.
5. Maximum resource levels. (Where appropriate, develop individual benchmarks that estimate the maximum capability of the unit to provide significant resource emphasis levels.)
6. Maximum wilderness.

7. Maximum nonwilderness.
Ensure that analysis of wilderness and nonwilderness benchmarks is consistent with wilderness legislation passed for individual States.

1922.13—Formulation of Alternatives. Formulate alternatives to meet the requirements of 36 CFR 219.12(f) and 219.16. Forests must, as a minimum, formulate:

1. An alternative that represents the current program (no action).

2. An alternative that emphasizes market opportunities.

3. An alternative that emphasizes nonmarket opportunities.

4. An alternative that emphasizes meeting RPA Program outputs assigned by the regional guide.

5. Other alternatives necessary to respond to the full range of public issues, management concerns, and resource use and development opportunities.

6. A preferred alternative resulting from the analysis and evaluation required by 36 CFR 219.12 (g) and (h).

1922.14—Estimated Effects of Alternatives. The estimated effects of alternatives provide an objective, scientific, and analytic basis for comparing the alternatives (36 CFR 219.12(g)). The analysis and comparison must be sufficient to permit an informed selection of the preferred alternative as described above.

1922.15—Resource Integration Requirements. Requirements for integrating individual forest resources including wilderness and other special areas into the forest planning process are found in 36 CFR 219.14 through 219.27. Refer to current Service-wide Handbooks for more specific detail on how to incorporate resources. In addition, the forest planning process must:

1. Provide management direction for wilderness, wild and scenic rivers, national recreation areas, national trails, national monuments, national scenic areas, research natural areas, national management emphasis areas, and other identified special interest areas.

2. Use the recreation opportunity spectrum (ROS) system to determine management of recreation settings, opportunities, and to provide a broad spectrum of experiences in response to user preference.

3. Determine the silvicultural systems and practices to be applied to suitable lands.

4. Provide for management of land suitable for timber production for sawtimber-size crop trees unless exceptions such as pulpwood crop trees are provided for in the forest plan. Also, provide for management of suitable forest land to provide multiple products including, but not limited to, sawlogs, pulpwood, poles, posts, and fuelwood through appropriate silvicultural practices to utilize site productivity.

5. Determine output levels for fuelwood and other nonindustrial wood products that do not require secondary processing where sustained demand is anticipated.

6. In addition to the requirements and conditions for a departure from the base sale schedule of 36 CFR 219.16(a)(3), analyze a departure in at least one alternative presented in detail in the EIS for appropriate forests to include the Clearwater, Idaho Panhandle, Nezperce, Boise, Payette, Lassen, Shasta-Trinity, Six Rivers, and all National Forests in Region 6. Treat the departure alternative as a discrete alternative; however, it must be linked to an alternative with a base sale schedule exhibiting nondeclining flow.

7. Permit a departure sale schedule to temporarily drop below the base timber sale schedule at or beyond the end of the first decade.

8. For those alternatives where the base timber sale schedule in the first decade equals the long-term sustained-yield capacity, evaluate the possibility of departing and subsequently dropping down to, but not below, the base sale schedule at any time in the future.

9. Meet the intent of the culmination of mean annual increment (CMAI) requirement by ensuring the total yield from stands at harvest age is equal to or greater than 95 percent of the volume production corresponding to CMAI Base CMAI on cubic measure and on the yield from regeneration harvests and any additional yields resulting from intermediate harvests.

10. Determine the annual net growth on lands suitable for timber production for the year 2030 for at least the preferred alternative. If in the preferred alternative, the net growth at 2030 is less than 90% of the long-term sustained-yield capacity for that alternative, describe the additional actions and

costs along with the resulting benefits and environmental effects to achieve this level.

11. Use cubic foot volume and harvest acres, by harvest method, as a dual control in regulating the amount of timber to be offered and sold as specified by the allowable timber sale quantity. Base the control for treatment practices such as site preparation, reforestation, and precommercial thinning on acreage measurements.

12. Develop a timber sale schedule (See 42.7 of FSH 2409.13) and display in the forest plan. The schedule should include timber sales for at least the first 3 to 5 years, and preferably for the 10 year period; the location of specific sales by section, township, and range or other appropriate designations; the area and volume in each sale; and the miles of road to be constructed or reconstructed for each sale.

13. Ensure that the set of management indicator species includes RPA and regional wildlife and fish indicators and represents all significant forest level wildlife and fish diversity and resource production issues, concerns, and opportunities.

14. Ensure that management prescriptions will provide for habitat capability to meet demand for management indicator species and provide access for recreational and commercial uses with minimal disturbance to species use of suitable habitats.

15. Ensure that planned management prevents the need for Federal or State listing of additional plant or animal species.

16. Ensure the plan provides for the kinds, amounts, and distribution of habitat needed for recovery of threatened or endangered species and needed to maintain viable, well-distributed populations of all existing native and desired non-native species.

17. Plan for wildfire protection and prescribed fire use appropriate to efficient attainment of land management goals and objectives. Use the National Fire Management Analysis System (NFMAS) to develop and evaluate potential protection alternatives.

18. Identify the desired landownership pattern and develop guidelines for landownership adjustments to include purchase, donations, exchange, right-of-way acquisition, transfers, interchanges, sales, and boundary adjustments. Guidelines for landownership adjustments should emphasize the following objectives:

a. Acquisition to meet identified resource management needs.

b. Acquisition contributing to consolidation that reduces

administrative problems and costs and further enhances public use.

c. Conveyance of land better suited for non-federal ownership.

19. Provide access to energy and mineral resources in the most efficient manner and encourage industry proposals for resource development on National Forest System lands, consistent with the rights that individuals or companies have acquired under the mineral leasing acts and mining laws and consistent with the objective of the alternatives.

20. Identify the specific access requirements and travel management options available to meet the objectives for each management prescription. Describe how access will be provided and how travel will be managed. Include the forest development road system, off-road travel, and air and water access. Integrate considerations of biological, physical, social, and economic factors and environmental design criteria. Link access and travel requirements and opportunities to the full spectrum of resource objectives for each management area and alternative.

21. Plan for the development and maintenance of other physical support facilities required to carry out management objectives.

22. Provide for consideration of transportation and utility corridor designation and utilization as specified in the regional guide (36 CFR 219.9(a)(5)(iv)). Coordinate activities between Regions and with other Federal and State agencies to designate location, alignment, and associated use and occupancy standards for rights-of-way.

23. Determine watershed condition class and include objectives or prescriptions for improving watershed conditions when necessary.

24. Insure municipal watershed requirements (36 CFR 251.9) are incorporated in forest plan standards and guidelines.

25. Identify groundwater aquifers and provide management direction for their protection.

26. Provide management direction to protect air quality related values, including visibility, in Class I Federal areas as required by the Clean Air Act Amendments of 1977 and FSM 2120.

1922.2—Forest Plan Content. 36 CFR 219.11 establishes minimum requirements for content of the forest plan.

1922.21—Standards for Forest Plans. In addition to the other requirements of this chapter and 36 CFR Part 219, forest plans must meet the following standards:

1. Resource information and other data are factual and accurate.

2. Direction is adequate to guide formulation of individual resource programs and schedules needed to implement the plan.

3. Assumptions, analytical approaches, and data are consistently applied within the plan.

4. Interdisciplinary planning and resource coordination are clearly evident.

5. A map delineating management areas and designating future corridors is included.

1922.3—Review and Approval of Forest Plans. 36 CFR 219.10 establishes general requirements for review and approval of forest plans.

1922.31—Internal Review. The Regional Forester reviews forest plans against the standards in section 1922.21.
1922.31a—Standards for Regional Review. Regional review shall ensure that:

1. Each forest plan complies with laws, regulations, policy, the regional guide, and Chief's direction.

2. Each forest plan is reviewed against RPA targets and related costs for the forest and the region as a whole.

3. The range of alternatives in each forest plan is reviewed against maximum resource and economic efficiency capabilities. Ensure the alternatives presented adequately span the identified, feasible range.

4. The analysis and comparative evaluation, documented in the environmental impact statement, is adequate to permit an informed selection of the preferred alternative.

5. The completed forest plan and environmental impact statement have received an interdisciplinary review.

1922.31b—Internal Review Process

1. The Regional Forester approves and forwards the draft proposed plan and environmental impact statement to the Washington Office Land Management Planning (LMP) Staff. The LMP Staff review, coordinated with other Washington Office staffs, focuses on the forum, content, and the ability of these documents to meet national standards for the planning process.

2. Following Washington Office technical review and final approval by the Regional Forester, the forest prints and draft forest plan and accompanying environmental impact statement and makes them available for public review.

3. The Regional Forester reviews a summary of the public comment received on the draft, the forest's response to the comment, and the proposed final forest plan and final environmental impact statement.

4. The Chief requires Washington Office review and approval prior to

printing of all final plans and their accompanying environmental impact statement, if the plan makes recommendations that ultimately will require Congressional action such as additions to or deletions from the National Wilderness Preservation System, National Trails, National Recreation Areas, studies or changes to the National Wild and Scenic River System, and proposed adjustments in National Forest boundaries. Otherwise, upon approval of final forest plans by the Regional Forester, the forest may print and release the final documents unless:

a. The Region has specifically requested additional Washington Office review.

b. The Chief has specified additional Washington Office review because of the degree or intensity of controversy, the extent of changes in the preferred or any other alternative, or if other circumstances warrant.

1922.32—External Review. External reviews during the forest planning process require public participation and coordination with other public planning efforts (36 CFR 219.6, 219.7, 219.10, and 40 CFR 1502.9 and 1503). Plan public participation at the earliest stages of the process. Obtain public participation in the identification of public issues during the formal scoping process and during review of draft documents. Prepare a public participation plan and make this plan a part of the planning records along with documented results of participation activities. Document results of coordination with other Federal agencies, State and local governments, and Indian tribes.

1922.4—Forest Plan Implementation. Detailed instructions for implementation of forest plans are found in Chapter 5 of the Land and Resource Management Planning Handbook, FSH 1909.12.

1922.41—Analysis and Evaluation. Conduct analysis and evaluation to establish a rational basis for making decisions on proposed management practices or actions. The analysis must provide the responsible official with relevant information necessary to make a decision to select or reject proposed management practices or actions. The information must be sufficient to establish a determination of consistency, comply with NEPA requirements, document findings, and provide a basis for selecting actions to implement. The following provides specific requirements for analysis and evaluation:

1. Confirm and document that the proposed management decisions are consistent with the management direction in the forest plan. Management

practices should be consistent with the forest plan before they can be selected for implementation. If an action cannot be changed to be consistent, the action must be rejected or the forest plan must be amended as directed in FSM 1922.5. Consistency determinations, including specific required findings, are described in Chapter 5.3 of FSH 1909.12.

2. Normally, base economic analysis of proposed management practices on cost effectiveness (least cost analysis). Use cost-efficiency analysis (FSM 1970) where costs or consequences are in question or where cost-efficiency was not adequately evaluated in the forest plan. Select actions that reduce the overall cost while meeting forest plan direction; and

3. Conduct analysis of management practices and alternatives in a manner that allows evaluation or the interconnected actions necessary to achieve the integrated resource objectives envisioned by the forest plan.

4. Conduct environmental analysis as necessary to determine direct, indirect, and cumulative effects of various actions proposed within a given area. Analyze cumulative effects when thresholds such as the hydrologic capacity of a watershed, visual quality standards, or wildlife or fisheries habitat may be exceeded;

5. Complete environmental analysis before deciding upon an action (FSM 1952 and FSH 1909.15, Chapter 20);

1922.42—Selected Management Practices. Upon completion of analysis, the responsible official decides which management practices to select to achieve forest plan direction. Develop an implementation schedule for these selected management practices. Management practices not identified in the implementation schedule may be considered, but the forest plan may require amendment.

1922.5—Amendment. The need to amend a forest plan may arise from several sources, including the following:

1. Recommendations of the Forest interdisciplinary team based on findings that result from monitoring and evaluating implementation of the forest plan (36 CFR 219.12(k) and FSM 1922.7);

2. Findings that existing or proposed permits, contracts, cooperative agreements, and other instruments authorizing occupancy and use are not consistent with the forest plan but should be approved (36 CFR 219.10(e));

3. Changes in proposed implementation schedules (36 CFR 219.10(e)) necessary to reflect differences between funding levels contemplated in the forest plan and funds actually appropriated;

4. Changes necessitated by resolution of administrative appeals;

5. Changes to correct planning errors;

6. Changes necessitated by changed physical, social, or economic conditions; and

7. Implementation of management practices outside the scope of the forest plan.

Upon receiving advice of the interdisciplinary team that the plan requires change, the responsible official shall:

1. Determine whether proposed changes to a forest plan are significant or not significant in accordance with the requirements of 36 CFR 219.10 (e) and (f), 36 CFR 219.12(k), and sections 1922.51 and 1922.52 that follow;

2. Document the determination of whether the change is significant or not significant in a decision document; and

3. Provide appropriate public notification of the decision prior to implementing the changes.

Findings of the responsible official regarding the consistency of management practices and actions with the forest plan and the determination of the significance of an amendment are an integral part of decisions. As such, they are appealable.

1922.51—Changes to the Forest Plan That Are Not Significant. Changes to the forest plan that are not significant can result from:

1. Actions that do not significantly alter the multiple-use goals and objectives for long-term land and resource management;

2. Adjustments of management area boundaries or management prescriptions resulting from further on-site analysis when the adjustments do not cause significant changes in the multiple-use goals and objectives for long-term land and resource management; and

3. Minor changes in standards and guidelines.

4. Opportunities for additional management practices that will contribute to achievement of the management prescription.

The Forest Supervisor must prepare an amendment to the forest plan to accommodate a change determined not to be significant. Appropriate public notification is required prior to implementation of the amendment.

1922.52—Changes to the Forest Plan That Are Significant. The following examples are indicative of circumstances that may cause a significant change to a forest plan:

1. Changes that would significantly alter the long-term relationship between levels of multiple-use goods and

services originally projected (36 CFR 219.10(e)); and

2. Changes that may have an important effect on the entire forest plan or affect land and resources throughout a large portion of the planning area during the planning period.

When a significant change needs to be made to the forest plan, the Forest Supervisor must prepare an amendment.

Documentation of a significant change, including the necessary analysis and evaluation should focus on the issues that have triggered the need for the change. In developing and obtaining approval of the amendment for significant change to the forest plan, follow the same procedures as are required for developing and approving the forest plan (36 CFR 219.10(f) and 36 CFR 219.12).

1922.6—Revision. The National Forest Management Act requires revision of forest plans at least every 15 years; however, a plan may be revised sooner if physical conditions or demands on the land and resources have changed sufficiently to affect overall goals or uses for the entire forest. To revise a forest plan, follow procedures set forth in 36 CFR 219.12 after obtaining approval of the Chief to schedule a revision.

1922.7—Monitoring and Evaluation. Conduct monitoring of the forest land and resource management plan and of the individual management practices, to determine how well objectives have been met and how closely management standards and guidelines have been applied. Monitoring and evaluation requirements for the forest plan are found at 36 CFR 219.12(k). See Chapter 6, FSH 1909.12 for an explanation of monitoring and evaluation of forest plans.

1. Monitoring of the forest plan is conducted at three levels:

a. Implementation Monitoring. Implementation monitoring determines if plans, prescriptions, projects, and activities are implemented as designed and in compliance with forest plan objectives, requirements, and standards and guidelines. Evaluation of implementation monitoring may require adjustment of prescriptions and targets or changes in plan or project administration.

b. Effectiveness Monitoring. Effectiveness monitoring determines if plans, prescriptions, projects, and activities are effective in meeting management direction, objectives, and the standards and guidelines. Evaluation of the results of effectiveness monitoring is used to adjust forest plan objectives, targets, prescriptions, standards and guidelines, conservation practices,

mitigation measures, and other best management practices and could result in change to or amendment of the forest plan.

c. Validating Monitoring. Validation monitoring is designed to ascertain whether the initial assumptions and coefficients used in development of the forest plan are correct or if there is a better way to meet forest planning regulations, policies, goals, and objectives. Evaluation of this type of monitoring can result in amendment of forest plans and may be used to recommend changes in laws, regulations, and policies that affect both the plan and project implementation.

1922.71—Monitoring Requirements.

1. Focus monitoring on those activities that affect significant management systems such as total silvicultural systems and other monitoring requirements of the regional guide; those activities that are responsive to stated issues, concerns, and management opportunities; and those activities that affect major components of the environment.

2. Coordinate monitoring efforts with resource inventory needs to reduce duplication.

3. Monitor to ensure that:

a. The forest plan complies with applicable laws and regulations.

b. Cumulative effects of project implementation do not exceed standards or thresholds stated in the forest plan.

c. Planned mitigation actions are implemented and maintained as designed.

d. Local, state, and federal air, water, noise, and other legal requirements are met.

1923—Wilderness Evaluation. Consideration of wilderness suitability is inherent in land and resource management planning. Although the President and the Secretary may recommend that certain areas be designated wilderness, Congress reserves the authority to designate areas as wilderness. In addition, the Congress may direct the study of specific areas and provide other guidance on wilderness evaluations through specific wilderness legislation. Planning for potential wilderness designation may occur in development of a forest plan or may require a separate study.

1923.01—Authority. Specific authority for the study and designation of wilderness is contained in the Wilderness Act of September 3, 1964, and the Eastern Wilderness Act of January 3, 1975.

1923.03—Policy.

1. Specific policies governing identification and evaluation of roadless areas in the forest planning process are

found in 36 CFR 219.17 and Chapter 7 of FSH 1909.12.

2. A roadless area being evaluated and ultimately recommended for wilderness or wilderness study is not available for any use or activity that may reduce the area's wilderness potential. Activities currently permitted may continue, pending designation, if the activities do not compromise wilderness values of the roadless area.

1923.04—Responsibility.

1923.04a—Chief. The Chief reserves authority to:

1. Review the final environmental impact statement when wilderness is recommended as a part of the forest planning process.

2. Recommend wilderness proposals to the Secretary.

1923.04b—Regional Forester. The Regional Forester is assigned responsibility to:

1. Review, recommend approval of, and forward to the Chief, final wilderness study reports for all Congressionally mandated wilderness studies and all other studies that recommend that wilderness be designated or that recommend Congressional wilderness study designation for areas east of the 100th meridian.

2. Approve final management direction for designated wilderness as provided in 36 CFR 219.18.

1923.04c—Forest Supervisor. The Forest Supervisor shall conduct necessary wilderness studies and prepare a study report/environmental impact statement, either as a part of the forest plan or as a separate study.

1923.1—Review and Approval. In addition to the requirements of this section, internal review and approval of wilderness recommendations must meet the same requirements as for forest plans (FSM 1922.3).

1923.11—Proposals Resulting From Forest Planning. Prior to printing the forest plan's final environmental impact statement, the Regional Forester must notify the Chief by letter of the tentative recommendations on wilderness study areas or other roadless areas evaluated during forest planning. The environmental impact statement accompanying the forest plan must be structured in such a way as to permit "lifting" the wilderness recommendation and evaluation from the parent document to become a legislative EIS. The wilderness document must meet NEPA requirements and stand on its own.

Forest plans and final environmental impact statements that make recommendations for wilderness

designation must contain the following statement:

This recommendation is a preliminary administrative recommendation that will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States. The Congress has reserved the authority to make final decisions on wilderness designation. Therefore, this wilderness recommendation is not appealable under the agency's administrative appeal procedures.

1923.12—Proposals Resulting From Special Wilderness Studies Not Incorporated in Forest Plans. The Regional Forester shall transmit the combined study document and draft environmental impact statement to the Chief for filing with the Environmental Protection Agency. Special wilderness studies follow essentially the same steps through the public review and comment period on the environmental impact statement as studies conducted as part of forest planning. Exceptions are made to meet the requirements of legislative language developed by the Congress.

1924—Wild and Scenic River Evaluation. Consideration of potential wild and scenic rivers is an inherent part of the ongoing land and resource management planning process. A river study assesses the eligibility of a river for designation as a unit of the National Wild and Scenic River System and evaluates the potential physical, biological, economic, and social effects of adding the river to the National System. See Chapter 8 of FSH 1909.12 for eligibility criteria and the river study process. The studies form the basis for reports and recommendations to the President and Congress and for legislative action regarding a river's designation.

1924.01—Authority. The principle authority for study and designation of wild and scenic rivers is the Wild and Scenic Rivers Act of October 2, 1968, as amended. The revised USDA-USDI Guidelines for Eligibility, Classification, and Management of River Areas dated September 7, 1982, supplement the Act and provide more specific direction. In addition, the Nationwide Rivers Inventory published in January, 1982, by the National Park Service identifies some of the potential wild and scenic rivers.

1924.03—Policy.

1. Complete river studies as expeditiously as possible. Give priority to studying those rivers most threatened by adverse developments and use and those bordered by the greatest proportion of private lands.

2. Conduct studies in close cooperation with affected Federal

agencies and with agencies of the affected State(s) and its political subdivision. The studies include a determination of possible State participation in the preservation and administration of the river if it is added to the System.

3. Rivers identified for study are managed to maintain their outstanding values. Refer to the USDA-USDI Guidelines for Eligibility, Classification, and Management of River Areas dated September 7, 1982, for specific management guidance for each of the river classifications and Chapter 8 of FSH 1909.12 for additional direction.

1924.04—Responsibility. The Secretary of Agriculture has designated the Forest Service as the lead coordinating agency for the Department in the studies of rivers that involve National Forest System lands.

1924.04a—Chief. The Chief reserves the authority to:

1. Approving the draft environmental impact statement/study report for Congressionally designated study rivers and to authorize submission of the report for interdepartmental and intradepartmental review of the proposal as required in section 4(b) of the Wild and Scenic Rivers Act.

2. Approve the final environmental impact statement/study report for all river studies and to submit a recommendation for the Secretary of Agriculture's consideration.

1924.04b—Deputy Chief for National Forest System. The Deputy Chief is responsible for:

1. Approve designation of the lead region when a Congressionally designated study river involves more than one region.

2. Coordinating the Department's review of other agency and State wild and scenic river proposals that are submitted pursuant to section 2(a)(ii) of the Wild and Scenic Rivers Act.

1924.04c—Regional Forester. The Regional Forester:

1. Designates the lead forest when a study river involves more than one National Forest.

2. Invites the concerned State(s) to participate jointly in the study of potential wild and scenic rivers where USDA is the lead agency.

3. Approves management direction for noncongressionally designated study rivers that are found eligible during land management planning but await completion of a suitability analysis.

1924.04d—Forest Supervisor. The Forest Supervisor:

1. Prepares a plan of study for assigned study rivers. The study plan provides for the completion of all tasks

within the time period specified in the legislation or by other policy.

2. Arranges for public meetings to inform the public of the purposes and objectives of a study and to obtain public views and concerns that should be addressed during a study.

3. Assigns an interdisciplinary team to conduct the study. The team shall possess skills commensurate with the resource values associated with the river and adjacent lands.

4. Prepares the necessary environmental impact statements/study reports either as part of the forest land management planning process or as required for a Congressionally designated study.

5. Ensures that the forest plan contains management direction for rivers or segments of rivers that have been recommended for inclusion in the National Wild and Scenic River System.

1924.1—Report. The Forest Supervisor must prepare a detailed study report to be submitted to the Congress for all Congressionally designated study rivers and those rivers identified through the forest planning process as suitable for wild and scenic river designation. The report describes the river's eligibility and suitability for designation as a component of the National Wild and Scenic Rivers System.

1924.2—Review and Approval. FSM 1924.04 prescribes the review and approval responsibilities for recommending Congressionally designated study rivers. Review and approval of rivers identified or studied for designation in the course of the forest planning process shall follow the process set forth in FSM 1922.3.

Land and Resource Management Planning Handbook

Chapter 3—Forest Planning Process

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3.8 PLAN APPROVAL

This chapter sets forth the minimum procedures for meeting forest planning requirements in 36 CFR 219.12 and FSM 1922. Subsequent chapters address documentation requirements, procedural requirements for forest plan implementation and amendment, and forest plan monitoring and evaluation.

3.1—IDENTIFICATION OF PURPOSE AND NEED.

Forest planning is based on public issues, management concerns, and opportunities for resource management. The issue, concerns, and opportunities designated for consideration in the planning process are used to develop the goals and objectives that give purpose to the land and resource management plan. The minimum requirements for documenting issues, concerns, and opportunities in the planning records are as follows:

1. Keep a dated copy of the initial list of issues and concerns from both internal and external sources.

2. Keep a dated copy of criteria used to screen issues, concerns, and opportunities.

3. Document the disposition of each issue to indicate how each was evaluated in the screening process.

4. Describe development of goals and objectives to be used to resolve issues and concerns.

5. Document the preliminary selection of issues and concerns on which the forest plan is to concentrate. Describe

any conflict involved or the competitive nature of the issue or concern and the goals or objectives for resolution of the issue or concern.

3.2—PREPARATION OF PLANNING CRITERIA.

The purpose of preparing planning criteria is to guide analysis during the planning process. In addition to the requirements of 36 CFR 219.12(c), the following criteria should be applied:

1. Alternatives are technically possible to implement.

2. Alternatives meet management requirements or standards.

3. Various levels of multiple use objectives and outputs are achieved.

3.2.1—Management Requirements.

Minimum specific management requirements are requirements of law and regulation that must be met while implementing management prescriptions for resource use. Management requirements are specified in 36 CFR 219.27. Attainment of management requirements should impose the least possible restrictions on the achievement of multiple use goals and objectives.

Management requirements are primarily achieved through application of standards and guidelines. The standards and guidelines define physical and biological conditions that are consistent with the management requirements and specify how the conditions are to be met.

Estimate opportunity costs of the sets of standards and guidelines that are proposed to meet management requirements during benchmark analysis. If these standards and guidelines significantly limit achievement of multiple use goals and objectives, consider alternative standards and guidelines that may be less restrictive. Where alternative standards and guidelines are available, the analysis of the alternatives and the selection and display of final standards and guidelines is specified in section 4.13(3) of this handbook.

3.3—INVENTORY DATA AND INFORMATION COLLECTION.

Various data are necessary both for planning for and managing the National Forest. Collect data for the forest as a whole and specific to parts of the forest, as appropriate. Coordinate data collection to meet all resource data needs.

Document as part of the planning records the delineation of capability, analysis, and management areas; the criteria used to delineate analysis and management areas; data sources and coefficients used in the analysis process; the results of monitoring the previous land and resource management plan; and other analytical tools used in planning.

3.3.1—Capability, Analysis, and Management Areas. Delineation of capability, analysis, and management areas forms the basis for analysis in the forest planning process.

1. A capability area is an identifiable, contiguous area of land that, because of its characteristics, responds to management prescriptions relatively the same throughout its area. Retain maps delineating capability areas as part of the planning records.

2. An analysis area consists of one or more capability areas grouped together for the purpose of conducting analysis.

3. A management area consists of one or more capability or analysis areas or portions thereof. It is an area with specific management goals, objectives, standards, and guidelines that comprise the management prescription for the land area.

3.3.2—Data and FORPLAN Coefficients

1. The following documentation requirements apply to all resource, economic, social, and budgetary data collected or generated in the planning process. Note that the requirements apply to both qualitative and quantitative data that are to be maintained as part of the planning records.

a. Record the source or method of data collection or generation. For example, if water quality data is collected by sampling certain streams, describe the sampling procedure. Also, describe or cite the timber inventory and yield projection procedure. List and describe simulation models used to generate certain coefficients and model assumptions and results. Also, state whether the data are based on experience, published documents, and/or professional judgment. If the data are based on published information, cite the source.

b. Describe the accuracy and precision of the data.

c. List assumptions associated with the data collection or generation processes.

d. Set forth the methods or basis for projecting future yields or results.

2. Describe the structure and components of any data base management system used. Retain a copy of the final data base used during development of the forest plan until the plan is revised.

3. The FORPLAN Version 2 data only matrix print-out (FORPLAN Users Guide) meets the requirement to document the coefficients associated with each analysis area and prescription. Clearly describe the process used to develop coefficients, the

individuals responsible for coefficient development, and the assumptions and agreements reached in their development and define any codes or abbreviations used.

3.33—Analytical Tools. Various analytical models such as FORPLAN, IMPLAN, simulation models, fire analysis models, transportation analysis models, cost-benefit tools, and fish and wildlife habitat capability models may have been used during the planning process. If so, record in the planning records the:

1. Purpose of the model and the role it played in the planning process.
2. Assumptions of the model.
3. Details needed to understand the implications of using the model or of interpreting its results.
4. Source, version, author, date, and any literature describing the particular model or tool.

3.4—ANALYSIS OF THE MANAGEMENT SITUATION. The analysis of the management situation converts inventory data into management information to determine if it is necessary to change or establish management direction. The analysis provides the basis for a range of alternative ways to solve the management problem and for development of management prescriptions to provide management direction. Conduct benchmark analysis to define the range of the alternatives.

3.41—Required Analysis. Conduct an analysis of the current management situation to determine whether there is a need for new management direction. Sections 3.41a through 3.41d specify minimum standards for documenting this analysis.

3.41a—Description of Current Management Situation. Describe the current management situation in the following manner:

1. Summarize existing management direction to include current goals and objectives, standards and guidelines, and land classifications.
2. Refer to existing management plans.
3. Summarize actual current outputs and activities, including road system development and operating strategy.
4. Describe projected outputs and activities if current management direction were to continue into the future. If different than projections shown in the forest plan, display forest plan projections and explain the differences.
5. Describe the expected future condition of the forest if current management direction were to continue.
6. Describe any known problems with the existing direction or situation.

7. Keep a copy of the FORPLAN results of current management (no action alternative) in the planning records.

3.41b—Benchmark Analysis. The minimum requirements of benchmark analysis are set forth in FSM 1922.12. Document the benchmark analysis as follows:

1. Describe the formulation of the benchmarks; include purpose, objectives, assumptions, constraints, and FORPLAN input.
2. Maintain a copy of the final FORPLAN analysis of each benchmark.
3. Describe the outcome of benchmark analysis to indicate what was learned about forest capabilities and limitations, interaction among resources, and the forest's ability to respond to known issues or concerns.

3.41c—Resource Demand Projections. In documenting resource demand projections, include:

1. The source of information and methodology for generating demand projections.
2. The assumptions pertinent to trends in population size, growth, and composition; trends in employment; identification of areas of population growth and decline; a description of the structure of the local and regional economy; and trends in resource utilization and consumption.
3. An evaluation of the sensitivity of projected demands to changing conditions.

4. Identification of the market area.
5. A discussion of price-quantity relationships—past, current, and future—when the data are available.
6. The relationship of total demand to projected supply from other, adjacent National Forests and from non-National Forest System lands.
7. The projected demand.

3.41d—Analytical Conclusions. Document the conclusions drawn from the analysis of the current situation, the benchmarks, and the demand projections. Include:

1. An assessment of the forest's capability to supply (produce) goods and services, including adequacy of the current transportation system.
2. An assessment of the demand for goods and services from the forest.
3. The need and opportunities for the forest to establish or change management direction.
4. An assessment of the ability to resolve issues and concerns through the planning process.
5. An assessment and display of the range within which it is possible to formulate alternatives.

3.42—Benchmark Requirements. Benchmarks approximate maximum

economic and biological resource production opportunities, are useful in evaluating the compatibilities and conflicts between individual resource objectives, and help define the range within which integrated alternatives can be developed. The following principles govern benchmark development:

1. Benchmarks display a forest's physical, biological, economic, and technical capabilities. They are not to be limited by Forest Service policy or budget, discretionary constraints, or program and staffing requirements. It must be physically and technically feasible to implement benchmark management situations, but it may not be prudent to do so.

2. Benchmarks provide an analytical base for developing alternatives and provide a reference point for comparison among alternatives.

3. The purpose of benchmarks is not only to approximate the resource potentials but also to establish the degree of change from current management that can occur.

4. Each benchmark:

- a. Must be consistent with the management requirements and must indicate whether they are met.
- b. Must comply with a base sale schedule (nondeclining yield) of timber harvest and permit scheduling of the harvest of even-aged stands generally at or beyond culmination of mean annual increment of growth. Timber-significant forests (FSM 1922.15(6)) shall evaluate relaxation of both the base sale schedule and harvest generally at or beyond culmination of mean annual increment (FSH 1909.13).

c. Must not be constrained by forest budgets.

d. Must use maximum present net value (market values) as the objective function in FORPLAN except as noted below for the resource specific benchmarks.

3.42a—Minimum Level Management Benchmark. This benchmark represents the minimum level of management needed to maintain and protect the unit as part of the National Forest System. Think of minimum level as the level of management necessary to meet the background outputs and fixed costs associated with maintaining the National Forest in Federal ownership. Because it is only an accounting analysis, ignore the phase-in period that would be necessary if the minimum level were actually implemented.

1. *Specifications:*

- a. The objective function is to minimize cost for the planning horizon.
- b. The management objectives are:

(1) Protect the life, health, and safety of incidental users;

(2) Prevent environmental damage to the land or resources of adjoining lands of other ownerships or downstream users;

(3) Conserve soil and water resources;

(4) Prevent significant or permanent impairment of the productivity of the land; and

(5) Administer unavoidable non-Forest Service special uses and mineral leases, licenses, permits, contracts, and operating plans.

c. Incidental outputs are permissible but there is to be no management that would produce timber, range, and developed recreation outputs.

d. Vegetation is to follow natural succession.

e. Maintenance is only for those facilities needed to support the basic ownership activities. Allow all other facilities to deteriorate. Greatly reduce the fire organization.

f. Dispersed recreation use that cannot be discouraged or controlled is to occur.

g. Cultural resource management is to be at a minimum level and is primarily for identification and protection of the resources in conjunction with any proposed ground disturbing activities.

3.42b—Maximum Present Net Value with Assigned Values Benchmark. The purpose of establishing this benchmark is to estimate the mix of resource uses and a schedule of outputs and costs that would maximize the present net value of outputs assigned a monetary value. Base dollar values on actual or simulated market prices (willingness to pay) for timber, recreation, range, water, minerals, and wildlife and fish, as appropriate for the forest.

Minimum specific management requirements and nondeclining yield requirements apply to this benchmark.

3.42c—Maximum Present Net Value with Market Values Only Benchmark. The purpose of establishing this benchmark is to estimate the mix of resource uses and determine a schedule of outputs and costs that would maximize the present net value of those outputs that have an established market price. Base dollar values on actual market prices for timber, range, commercially utilized fish, minerals, and developed recreation.

Minimum specific management requirements and nondeclining yield requirements also apply to this benchmark.

Run the solution through the FORPLAN report writer to price out assigned market values. Use the PNV-COST values from the second report to make comparisons.

3.42d—Current Level Benchmark.

This benchmark provides for management using the current plan, adjusted to incorporate changes necessary to meet current management direction. The benchmark estimates the capability of the planning area to provide for a wide range of goods, services, and other uses from the present land allocation. This benchmark meets all requirements specified in the regulations (36 CFR, Part 219).

3.42e—Maximum Timber Benchmark. All forests with lands identified as tentatively suitable for timber production should establish this benchmark to define the maximum timber output possible for the first 5 decades of the plan under current policies and minimum specific management requirements.

To establish this benchmark:

1. Perform three FORPLAN model runs. The first run uses an objective function that maximizes timber values for the first decade.

2. Perform the second run (called a "rollover") to ensure that the maximum amount of timber is produced for fifteen decades.

3. Perform the third run, constrained by the results of the first two, to maximum PNV for fifteen decades.

4. Apply nondeclining yield requirement.

5. Apply management requirements.

3.42f—Maximum Range Benchmark. The purpose of this benchmark is to define the maximum capability of the forest to provide commercial livestock grazing, subject to minimum management requirements.

For this benchmark:

1. Perform two model runs. The first must maximize livestock forage production for 5 periods.

2. Perform the second run to ensure that the maximum amount of forage is produced in an economically efficient manner by using the maximum production specified in the first run as right-hand-site range constraint and by rerunning FORPLAN with a maximum present net value objective function.

3. Apply management requirements.

3.42g—Maximum Wilderness Benchmark. The purpose of this benchmark is to evaluate the impacts of a maximum wilderness recommendation.

The specifications for this benchmark are:

1. The objective function maximizes present net value for the planning horizon.

2. All roadless and wilderness study areas have wilderness prescriptions. Do not adjust boundaries; use the largest,

unroaded area (see inventory criteria at section 7.11).

3. Apply management requirements.

4. Apply nondeclining yield requirement.

3.42h—Maximum Nonwilderness Benchmark. The purpose of this benchmark is to evaluate the impacts on no additional wilderness designations.

The specifications for this benchmark are:

1. The objective function maximizes present net value for the planning horizon.

2. All roadless and wilderness study areas have nonwilderness prescriptions. Existing wildernesses remain designated.

3. Apply management requirements.

4. Apply nondeclining yield requirement.

3.42i—Maximum Present Net Value with Assigned Values—Departure Benchmark. The purpose of establishing this benchmark is to estimate the mix of resource uses and outputs as identified in section 3.42b without the constraints of meeting nondeclining yield requirements. This benchmark is developed only on timber significant forests as described in FSM 1922.15(6). The only specification for this benchmark is that minimum specific management requirements apply.

3.43—Management Prescriptions. Document management prescriptions available for selection as follows:

1. Describe the process used to develop prescriptions, including steps taken to ensure all feasible prescriptions were considered. Show how the process identified a reasonable range of prescription and included the most economically efficient prescriptions.
2. List the assumptions made while developing prescriptions and the basis for those assumptions.

3. Identify practices (activities), outputs, and costs associated with each prescription.

4. Describe the objectives of each prescription.

5. List the criteria used to determine which prescriptions are suitable or possible for each analysis area. These criteria include, but are not limited to:

- a. A definition of resource capability; for example, only forest types that can be regenerated within 5 years following final harvest removal cutting are suitable for timber production.
- b. Qualifying/disqualifying attributes; for example, any prescription requiring construction of roads is not suitable within existing wildernesses.
- c. A definition of lands not available for timber, mineral entry, or other resource management; for example,

designated wildernesses are not available for timber production.

d. A definition of access strategy; for example, low standard, low-density roads controlled by gates or regulation to protect wildlife habitat.

e. A list of criteria for compatibility of management emphasis for each analysis area.

6. Describe all suitable prescriptions by analysis area. The FORPLAN matrix files can document this.

3.5—FORMULATION OF ALTERNATIVES. Formulate a broad range of reasonable alternatives that address major public issues, management concerns, and resource use and development opportunities. See FSM 1922.13 for the minimum requirements for formulating alternatives. Document the process used to formulate alternatives in the planning records. For each alternative analyzed, document:

1. The overall management approach and resource emphasis.

2. Management goals and objectives and how they relate and respond to identified issues, concerns, and opportunities.

3. Standards and guidelines necessary to achieve the alternative.

4. The relationship of the alternative to benchmarks and how it falls within the range of management opportunities defined by the benchmarks.

5. The FORPLAN and other constraints imposed. Include the rationale for constraints, the constraint analysis (that is, an assessment of the costs of the constraint), and an evaluation indicating that the constraints were the most cost efficient means to achieve the objectives of each alternative.

3.51—Guiding Principles. The following principles govern development of alternatives:

1. In any alternative, ensure that a forest is not proposing to produce more of an output than its maximum capability.

2. Management requirements set forth in 36 CFR 219.27 must be met.

3. Alternatives must use the same dollar values and estimated levels of economic demands for priced outputs as those used in the benchmarks.

4. Ensure the alternatives, through their range, respond to stated issues and concerns. Explain that each alternative responds differently to the issues and concerns, based upon the overall goal of the alternative.

5. Always examine departures from the base sale schedule for the preferred alternative and for any other alternative that satisfies at least one of the departure conditions (36 CFR

219.10(a)(3) and section 34 of FSH 2409.13).

6. In examining departures, those forests designated by FSM 1922.15(6) to conduct additional analysis must explore the possibility of using rotation lengths less than indicated by culmination of mean annual increment (CMAI). Other forests shall conduct such departure analyses as necessary to address public issues, management concerns, or resource use and development opportunities.

7. With two exceptions, do not apply budget constraints to any alternative considered in detail if the constraint results in foregoing economically efficient commodity and/or noncommodity production opportunities. The first exception is a budget constraint that may be applied to the current direction/no action alternative. The second exception is that budget constraints may be applied to alternatives specifically designed to define the implications of that budget constraint, provided that the environmental impact statement:

a. Explicitly states the purpose of the alternative.

b. Displays the specific implications of imposing the budget constraint.

c. Does not reduce the obligation to discuss a full range of reasonable alternatives that reflect the budgetary authority granted in recent appropriations and that reflect probable future funding levels.

3.52—Current Direction (No Action) Alternative. Each plan must identify the current direction (no action) alternative.

1. *Purpose.* The purpose of the no action alternative is to reflect the existing levels of outputs and to estimate the expected outputs and services that would be possible to provide in the future if current allocations, direction, policies, and practices were to continue.

2. *Specifications.*

a. Use land classification assignments that exist in current plans.

b. Meet management requirements and indicate how current direction may have changed in response to better timber yield data.

c. Reflect the Administration's current recommendations for wilderness, wilderness study, and wild and scenic river designation. Assume that other roadless areas and wild and scenic rivers would be open to the full range of multiple-use prescriptions.

3.53—Emphasis of Market Opportunities Alternative. The purpose of this required alternative is to emphasize market resources, such as timber, range, minerals, commercial fish, and developed recreation. Management

for other resources would be economically efficient, environmentally feasible, and consistent with emphasis on market outputs.

3.54—Emphasis on Nonmarket (Amenity) Opportunities Alternative. The purpose of this required alternative is to emphasize nonmarket resources, such as fish and wildlife, dispersed recreation, and wilderness, with market outputs of economically efficient and environmentally feasible levels.

3.55—Emphasis on Meeting Assigned Renewable Resource Program Outputs Alternative. This required alternative determines how best to implement the most current RPA Program as distributed to a forest through the regional guide. The assigned program is not to be a constraint in the consideration of other alternatives or in selection of the preferred alternative.

3.56—Wilderness Emphasis with Capital Investment Emphases on Remaining Lands Alternative

1. *Purpose.* The purpose of this required alternative is to emphasize wilderness and evaluate the potential for maintaining or increasing market outputs on the nonwilderness portions of the forest through intensified management.

2. *Specifications*

a. This alternative is not necessarily the maximum wilderness alternative. However, be sure that it has a fairly substantial amount of quality roadless acres recommended for wilderness.

b. Assure intensive management of nonwilderness lands in this alternative to maintain or increase commodity outputs as compared to the current. If this level of output is not feasible, come as close as possible to the current. Accomplish intensive management in an economically efficient manner.

3.57—Other Alternatives. Other alternatives are developed to describe a complete range of reasonable choices available to the decisionmaker. Be sure that there are no significant gaps or voids between the upper and lower limits established through benchmark analysis.

3.58—Constraints on Alternatives

1. List and describe constraints for every planning alternative analyzed in detail. Separate those that are common to all alternatives, such as constraints required to honor management requirements, from those that vary by alternative.

2. Explain in detail why each constraint, or related set of constraints, is necessary. Explain how the constraints meet management requirements, environmental standards, or multiple-use goals and objectives.

The identification of issues, concerns, and opportunities should provide specific reasons for having certain constraints; if so, explain.

3. To the extent that discretionary constraints common to each alternative are additional to those required to meet management requirements (and are not necessary to ensure technically implementable), explain why it is necessary to include them in every alternative or why they do not vary among alternatives.

4. Define the monetary opportunity costs and other resource implications of constraints that significantly reduce present net value. Always do this for constraints that are common to all alternatives. Make every effort to make these determinations during the systematic process of formulating alternatives.

5. Describe the processes used to test and evaluate all constraints to ensure that they are cost efficient in achieving the objectives of each alternative.

3.6—ESTIMATED EFFECTS OF ALTERNATIVES. Completing this planning action provides information for comparing alternatives and their response to public issues, management concerns, and resource opportunities. Use the results to evaluate and recommend selection of a preferred alternative and to prepare the draft environmental impact statement. Document analytical procedures, data sources, and the evaluation process in consideration of the effects on:

1. Outputs of goods and services.

2. Sustained yield and productivity of resources.

3. The physical and biological environment.

4. The social and economic environment.

5. Prime farmlands, wetlands, floodplains, and energy requirements.

3.7—EVALUATION OF ALTERNATIVES AND PREFERRED ALTERNATIVE RECOMMENDATION.

Evaluation of forest plan alternatives leads to the Forest Supervisor's recommendation of a preferred alternative to be displayed in the draft EIS and as the proposed forest plan. Document the evaluation procedures in the planning records leading to the draft EIS and proposed plan recommendation, but do not make these available for public review until the record of decision accompanying the final plan and environmental impact statement is made available to the public.

Adjustments to the draft may be made, based upon public input and other factors, in preparation of the final plan and environmental impact statement. During this process, the

following is considered predecisional, deliberative information (FSM 6270) and is not to be displayed until the record of decision is prepared:

1. The process used to evaluate the alternatives and to arrive at the preferred alternative.

2. The physical, biological, social, and economic criteria used to evaluate the alternatives.

3. The results of the evaluation.

3.8—PLAN APPROVAL. Document procedures used in approving the final forest plan in the record for decision. The decision is made by the Regional Forester, based on the recommendation of the Forest Supervisor, following analysis of public comment on the draft plan and EIS.

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This chapter describes the documentation of the planning process by providing an outline for the contents of environmental impact statement accompanying the forest plan and for the plan itself.

4.1—ENVIRONMENTAL IMPACT STATEMENT OUTLINE. Direction for environmental impact statement preparation is in 40 CFR Parts 1500–1506, FSM 1950, and FSH 1909.15. The outline contained in this section is a list of additional content requirements for statements accompanying forest plans. Requirements are the same for both draft and final statements unless otherwise indicated.

4.11—Summary. The purpose of the summary is to summarize the content of the environmental impact statement (40 CFR 1502.12). The summary should stress major conclusions, areas of controversy, issues raised by agencies and the public, the issues to be resolved, and the preferred alternative and range of alternatives analyzed. It should be limited to 20 to 25 pages including the effective use of a few tables. It should be clearly written, complete, accurate, candid, and readable so as to invite review of the parent document. The summary should contain the following sections:

1. *A Summary of Chapter 1—Purpose and Need.* Introduce the document and the concept of the summary. Identify the nature of the decision and content of the environmental impact statement. Summarize the purpose and need for the plan and environmental impact statement. Tie to the National Forest Management Act and the National Environmental Policy Act and their implementing regulations. Summarize the public issues, management concerns, and resource opportunities and the process for identifying ICO's.

2. *A Summary of Chapter 2—Alternatives Including the Proposed Action.* Summarize the process used to develop alternatives. Describe each alternative in terms to its goals and objectives. Summarize a comparison of the alternatives through the use of narrative and tabular displays. Include a

table that lists alternatives in decreasing amounts of vegetative management, displays pertinent resource outputs, and summarizes economic tradeoffs.

3. *A Summary of Chapter 3—Affected Environment.* Present a brief overview of the environmental setting by describing the resource and environmental components to be affected.

4. *A Summary of Chapter 4—Environmental Consequences.* Present a summary of significant environmental consequences and briefly describe mitigation measures that will be used in plan implementation.

4.12—*Chapter 1—Purpose and Need.* This chapter identifies the reason(s) for preparing and environmental impact statement (40 CFR 1502.13). It should address the following elements:

1. *Introduction.* The introductory paragraphs describe the nature of the decision to be made and the content of the environmental impact statement (EIS). In this paragraph:

a. Assert the guiding principles of multiple-use and sustained-yield management.

b. Describe net public benefit to meet the definition in 36 CFR 219.3.

c. Briefly describe content. Include statements that the FIS discloses environmental effects and considers alternatives to the proposed action.

d. Note the separation of the EIS and forest plan. Incorporate the plan by reference and indicate that the plan is the preferred alternative presented in the EIS.

e. Note the scope of the planning horizon but place emphasis on management during the 10 to 15 year plan period.

2. *Planning Process.* The second section summarizes national, regional, and forest planning linkages, legislative authorities, and the planning process. In this section:

a. Describe the relationship to the Renewable Resources Program and the regional guide.

b. Refer to statutes governing planning and the implementing regulations (FSM 1901 and 1920.1).

c. Briefly outline planning and environmental analysis process steps.

d. Include a statement on tiering proposed projects to the environmental impact statement during plan implementation (40 CFR 1506.20).

3. *Location.* Provide an overview of the forest's location, including a narrative description of the planning area and a one-page map.

4. *Issues, Concerns, and Opportunities.* In this section:

a. Summarize the process used to identify issues, concerns, and opportunities.

b. List ICO's to be considered in the forest plan. State possible resource conflicts in responding to the ICO's. Identify the interest groups and institutions associated with the issue and identify indicators of response and their measurements used in responding to ICO's.

c. Refer to Appendix A on ICO's.

d. Discuss resource use and development opportunities.

5. *Final Environmental Impact Statement.* In this section:

a. Provide a summary of draft EIS public participation activities and reference Appendix D for further discussion and display of public comment received and Forest Service response to the comments.

b. Indicate the changes between the draft and final and further summarize changes made in the final EIS as a result of public comment. Highlight new items of emphasis or controversy that developed as a result of the draft review and state how the final resolves the items.

6. *Planning Records.* In this section:

a. Indicate availability of planning records and state where they may be viewed.

b. Note the presence and location of the glossary and other materials that would help the reader more easily understand the EIS and plan.

4.13—*Chapter 2—Alternatives Including the Proposed Action.* This chapter of the environmental impact statement summarizes the process used to develop alternatives, presents alternatives considered, and then compares the alternatives to provide an opportunity for objective evaluation (40 CFR 1502.14). Begin with an overview of the chapter's organization and reference the analysis process described more fully in Appendix B. The following items should then be covered in chapter 2:

1. *Overview of Alternative Development.*

a. Explain the concept of net public benefit and its relation to alternative formulation, including the concept of priced and nonpriced benefits and costs and their use in decisionmaking. Differentiate between qualitative and quantitative nonpriced benefits.

b. Describe the basis of developing the alternatives (36 CFR 219.12(f)) including the process used in formulating and analyzing benchmarks and alternatives.

c. Explain the relationship of the forest's management situation to projected demand and supply potentials and explain how management and

supply potentials respond to the issues and concerns.

d. Summarize changes made in alternative development between the draft and final. Examples include a discussion of sensitivity analysis done on timber, recreation, or wildlife valuing or on other questions about assumptions used to develop alternatives.

2. *Description of the Analysis Process.*

a. Briefly describe the inventory process that identified land attributes, production potentials, and capability areas.

b. Describe the process used to develop optional management objectives (prescriptions) and the various management intensities used.

c. Describe the role of FORPLAN in selecting and scheduling management options. Indicate the degree of flexibility that FORPLAN has in reaching cost efficient solutions.

3. *Development and Implications of Minimum Specific Management Requirements.* Develop minimum specific management requirements as defined in 36 CFR 219.27 using the analytical process described in section 3.21 of this handbook. Display the opportunity costs of meeting the management requirements for the maximum present net value benchmark and, when the opportunity costs in total are significant (in excess of 2% change in PNV and ASQ), discuss the opportunity costs of meeting the standards and guidelines for the preferred alternative.

When opportunity costs of meeting the standards and guidelines for the preferred alternative are estimated to be significant over the planning period, provide the following information:

1. Define the alternative sets of standards and guidelines that were examined for each management requirements. Indicate the scientific basis for the alternatives. If alternatives were not examined, state why.

2. Estimate the opportunity costs and likelihood of satisfying the management requirements associated with the alternative sets of standards and guidelines, in quantitative terms when possible.

3. Discuss why particular sets of standards and guidelines were selected and why others were rejected.

4. Identify the monitoring and/or research that is needed prior to revision of the plan to permit reevaluation of the standards and guidelines.

The analysis of standards and guidelines to meet management requirements must be documented or referenced in chapter II of the

environmental impact statement. The discussion should include:

1. The rationale for initially selecting a set of standards and guidelines and the scientific basis for that selection.

2. The opportunity costs and other tradeoffs considered when evaluating alternative standards and guidelines.

3. The reasons why one set of standards and guidelines was selected and used in the planning process.

4. *Development and Use of Benchmarks.*

a. Discuss the role and use of benchmarks, including the results of benchmark analysis in defining resource potentials.

b. Show how benchmarks assisted in formulating alternatives. Describe the constraints common to all benchmarks and the process used for identifying tradeoffs in implementation of management requirements.

c. Include the rationale for eliminating benchmarks from further detailed development and analysis. Refer to Appendix B, Description of Analysis Process.

5. *Range of Alternatives.*

a. Discuss the information used to develop the alternatives. For the final EIS, mention changes made between draft and final pertaining to the range of alternatives.

b. Describe the decision space resulting from the analysis of the management situation for selected indicators of issue resolution.

c. Describe the constraints used to develop alternatives and indicate modification made to the constraints in response to public comment.

d. Discuss how all facets of mitigation are a part of alternative formulation (40 CFR 1506.20).

6. *Alternatives Eliminated from Further Detailed Study.* Describe the alternatives eliminated from further detailed study and the rationale for eliminating them.

7. *Alternatives Considered in Detail.* Describe the alternatives in equal detail.

a. Include the objectives to be achieved by each and describe how each alternative would respond to issues, concerns, and opportunities (ICO's).

b. Describe the purpose, intent, or management emphasis of each alternative in succinct terms. Mention changes between draft and final.

c. Indicate that analytical results of the alternatives will display outputs, timeframes, costs, benefits, and availability of acres for management.

d. Refer to mitigation measures in management prescriptions that may be unique for any alternative, and refer to

other parts of the EIS where additional or detailed information is available.

e. Explain the basis for development and use of the "no action" alternative (36 CFR 219.12(f)(7)). Reference the NEPA requirement to use this alternative as a basis for comparison of all alternatives.

8. *Comparison of Alternatives.* The alternative comparison section describes management alternatives for significant resources; presents the outputs; summarizes physical, biological, economic, and social impacts; and displays discounted costs and benefits (PNV) in a way that sharply defines tradeoffs and allows a reader to make an objective evaluation. Ensure the changes made between draft and final are clearly indicated and that they are responsive to public comment. Refer to chapters III and IV and appropriate appendices to substantiate conclusions reached in this comparison. The following items should be discussed and included in the comparison of alternatives:

a. Discuss the application of management direction to the land through use of management areas and management prescriptions. Indicate that the acreage and location of land areas assigned to a management area varies by alternative while the direction for the management area remains the same. Briefly describe each management area and accompanying direction to be applied. Use a table to indicate the acres of land by management area by alternative.

b. Present a table displaying quantitative resource outputs by alternative and selected benchmarks, if appropriate. Order the alternatives in columns from most to least suitable land selected for timber production. Indicate this ordering is used to present a logical progression of all outputs due to the close tie experienced with vegetation management. Arrange the units of measures in rows in logical groupings by combining similar items such as recreation use/outputs and other similar resources.

c. Discuss qualitative resource outputs and effects. This discussion should support the quantitative table with discussion as necessary to show key relationships. If this discussion is better adapted to a tabular display, order the alternatives in the same order as in the quantitative table.

d. Provide a discussion of how each alternative responds to the issues, concerns, and opportunities. Provide a cross walk to the previous two tables if appropriate.

e. The remainder of the chapter focuses on outputs for and effects upon

individual resources. The discussion should focus on significant variations by alternative and should highlight unavoidable adverse effects when identified. As a minimum, the following resources/uses should be considered in displaying alternative comparisons.

(1) *Recreation.* Provide a general orientation to the types and scope of recreation opportunities to be managed and introduce the Recreation Opportunity Spectrum (ROS) concept. Discuss each type of recreation use individually.

(a) *Dispersed*—Present the various dispersed recreation settings and relate how the supply (capacity) by alternative compares with projected demand. Discuss the differences by ROS class by alternative in tabular or narrative displays.

(d) *Developed*—Identify existing capacity and development and timeframe required to meet projected demand. Discuss the types and location of development planned and indicate the differences between alternatives.

(c) *Hunting and Fishing*—Indicate the planned wildlife and fish user days by alternative and display the response to user demand over time.

(d) *Wild and Scenic Rivers*—Identify wild and scenic river eligibility as appropriate. If suitability is analyzed, indicate the differences by alternative.

(2) *Wilderness.* The goal of this section is to describe the roadless area situation and to indicate proposed management decisions for these areas. This section should:

(a) Identify acres recommended for wilderness by alternative to include a table indicating recommendations for each individual roadless area by alternative.

(b) In the same or in a different table, indicate management emphasis for each roadless area when not recommended for wilderness including the acres of the area that will remain roadless and undeveloped at the end of the planning period.

(3) *Visual Quality.* Indicate the acres to be managed to meet visual quality objectives of preservation, retention, partial retention, modification, and maximum modification for each alternative.

(4) *Research Natural Areas.* Indicate acres, names of areas, and resources represented by alternative.

(5) *Wildlife.* Provide the following listings:

(a) Indicator species with management emphasis specified for each alternative.

(b) Threatened and endangered species with consultation with the US

Fish and Wildlife Service noted. Note changes made between draft and final due to a biological opinion from the US Fish and Wildlife Service.

(c) A listing of the amount of old growth timber remaining after the first and in the tenth decade.

(6) *Fish*. Discuss indicator species, habitat capability, and smolt production by alternative.

(7) *Range*. Discuss planned use of the resources by alternative and the relationship to range capacity and demand.

(8) *Timber*. Display the following for the timber resource in both cubic foot and board foot measure for all decades:

(a) Compare current and future timber outputs for all alternatives by indicating projected allowable sale quantity, timber sale program quantity, and long-term sustained yield capacity. Include a display of lands suitable for timber production by alternative and the past decade allowable sale quantity, average annual volume sold, and average annual volume harvested.

(b) Discuss the differences between the current level of timber production and the projected output for all alternatives. Include explanations for differences in utilization standards, inventories/inventory standards, yield calculations and tables, land base acreage (both tentatively suitable and suitable acres), and changes in management requirements.

(c) Discuss the silvicultural methods available to manage the resource and the acres scheduled for clear-cut, shelterwood, and selective harvest by alternative.

(8) *Soil and Water*. Insure the comparison:

(a) Displays and discusses the sediment production potential in terms of the activities that generate sediment. Include a table displaying amounts of sediment producing activities by alternative as indicators of their sediment production potential. Rank alternative as to their relative risk of affecting watersheds and discuss differences among alternatives.

(b) Discusses best management practices and states they will be used in all alternatives to assure that activities will meet or exceed water quality standards. Mention the use of monitoring during project execution to ensure meeting water quality goals and identify how adjustments will be made in projects where conflict with the goal is identified.

(10) *Minerals*. Show mineral potential and indicate areas closed, restricted, and opened to entry by alternative.

(11) *Transportation System*. The focus of this section is on road and trail

construction and management. Separate construction from reconstruction and indicate planned outputs by alternative for both roads and trails. Indicate the miles of roads to be seasonally or permanently closed with a total of the transportation system indicated by alternative. Use a narrative discussion to distinguish between plan period and planning horizon transportation needs and indicate flexibility of the transportation system to meet future management needs.

(12) *Fire*. Include a discussion of the differences in fire management by alternative.

(13) *Energy*. Include a table showing energy consumption by major categories of activities by alternative for the planning period in billion BTU's.

(14) *Environmental Consequences*. Present a summary of environmental consequences from chapter IV to explain the alternatives being considered and their differences. Present in tabular form the significant quantitative and qualitative environmental effects that bear on the issues and concerns by alternative. Summarize and refer to chapter IV to present environmental effects by alternative and appropriate benchmarks. Highlight unavoidable adverse effects and discuss significant variations in effects by alternative.

(15) *Economic Effects*. Display and discuss differences in economic benefits and costs, and the general reasons for those differences. Include here, or provide a cross-reference, to a full discussion elsewhere in the EIS of the relationship between economic values and net public benefits.

(a) Display in a table, as shown in exhibit 1, data corresponding to the following:

Rows: List maximum present net value (PNV) benchmark and the alternatives in order of decreasing PNV.

Columns:

Column 1: Present net value (PNV).

Column 2: Incremental differences in PNV among successive alternatives.

Column 3: Discounted costs.

Column 4: Incremental difference in discounted costs between alternatives.

Column 5: Discounted economic benefits.

Column 6: Incremental differences in discounted economic benefits between alternatives.

Minor variations of column ordering to meet Regional Office guidance are permissible. Discuss the table and the differences displayed.

(b) Display in a table, as shown in exhibit 2, data corresponding to the following:

Rows: Alternatives ranked in order of decreasing PNV.

Columns:

Column 1: Present net value (PNV).

Column 2: Largest discounted economic benefits associated with a single resource output.

Column 3-5: Discounted economic benefits associated with other individual outputs that account for a significant portion of total discounted economic benefits.

Column 6: Largest discounted costs directly attributable to producing a single resource output.

Column 7: Discounted costs attributable to expenditures for roads.

Additional Columns as Necessary:

Discounted costs directly attributable to other individual outputs that account for a significant portion of total discounted costs.

Minor variations of column ordering to meet Regional Office guidance are permissible. Include all discounted benefits and all discounted costs in the table. Include a footnote with this table saying that direct comparisons of benefits and costs displayed for individual resource outputs provide general indications of relationships, but that these general indications may be misleading because many outputs in multiple-use forestry have common costs of production that cannot be reliably separated and attributed to individual resources.

Define general patterns of changes across alternatives in PNV, discounted benefits, and discounted costs. Explain deviations from general patterns.

Recognize the likely or possible significance of currently speculative and unquantified economic values, such as those often associated with minerals. To the extent reasonable, indicate in the narrative discussion whether or not they are likely to vary significantly among alternatives.

(c) Describe and distinguish between capital investment and operations and maintenance costs and between costs that do and do not vary significantly by alternative. Reference detailed discussion of costs in Appendix B.

(d) Discuss significant differences in economic benefits among alternatives by market and nonmarket resources. Distinguish between financial values collected as cash receipts and economic benefits received by users without payment.

(e) Display in a table, as shown in exhibit 3, data corresponding to the following rows and columns:

Rows: Alternatives ranked in order of decreasing average annual (undiscounted) net cash flows in the first decade.

Columns:

Column 1: Average annual net cash flow in the first decade.

Column 2: Average annual total costs in the first decade.

Column 3: Average annual total cash receipts in the first decade.

Column 4: Average annual noncash economic benefits in the first decade.

Columns 5-8: Repeat the data of columns 1 through 4 for a later decade that best defines changes in net cash flows over time.

Minor variations of column ordering to meet Regional Office guidance are permissible. Include footnote stating in effect that costs are limited to agency or taxpayer expenditures and that payments to counties and expenditures by cooperators are excluded.

(f) For the purposes of preparing this section of the EIS, noncash economic benefits are defined to be that portion of total economic benefits not collected as cash receipts. Define the relationship between cash receipts and total economic benefits. Contrast the ranking of alternatives in exhibit 1 and exhibit 3. Discuss the differences in values displayed for the different decades in exhibit 3.

(g) Follow the general order of presentation in items a-f above, but subdivisions of the materials are optional. Supplementary figures and tables useful in more fully explaining the situation on a forest are optional. Liberal cross referencing to more detailed discussions is encouraged.

(16) *Major Tradeoffs Among Alternatives*. Display and discuss the major tradeoffs related to major issues and national concerns among alternatives. State that a complete understanding of differences among alternatives requires reading all of chapters II and IV.

(a) Provide a partial context for evaluating alternatives by briefly stating how and which national, regional, and local publics would be served by forest management in the future.

(b) Summarize in text form quantified indicators of responsiveness to all issues, concerns, and opportunities that lead to differences in alternatives and that vary across alternatives. Cross-reference full discussions of these indicators in Appendix A or elsewhere in accord with Regional Office guidance.

(c) Define, as indicators of national interest, present net value and net cash flow.

(d) Include forest-dependent jobs and community income as indicators of either responsiveness to ICO's or of local community interest.

(e) Display in a table, as shown in exhibit 4, quantitative data

corresponding to the following rows and columns:

Rows: Alternatives ranked in order of decreasing PNV.

Columns:

Column 1: Present net value (PNV).

Column 2: Average annual net cash flow in first decade and in later decade reported in exhibit 3.

Column 3: Average annual noncash benefits in first decade and in later decade reported in exhibit 3.

Remaining Columns as Necessary: The most appropriate forms of expression in quantitative terms of each of the remaining indicators identified above. These must include indicators for forest-dependent employment and income for the average annual year in first decade.

(f) Summarize as briefly as possible in the text the meaning of differences in the indicators as displayed in exhibit 4 for each alternative, in order of decreasing PNV. Emphasize similarities and differences among alternatives. Do not dwell on minor differences; include differences not reflected in exhibit 4 only as necessary. Highlight the sources or reasons for differences in cash (financial) and/or noncash benefits. Then describe the positive and negative changes in other indicators in a manner that makes clear the significant trade-offs that accompany changes in responses to ICO's and in net economic benefits across alternatives.

EXHIBIT 1.—PRESENT NET VALUE AND DISCOUNTED COSTS AND BENEFITS OF ALTERNATIVES

(Million dollars)

Alternative/Benchmark	PNV	Change	Discounted		Discounted	
			Costs	Change	Benefits	Change
Max PNV (Benchmark)	2,569		866		3,435	
Alt. 2	2,417	-152	937	71	3,354	-81
Alt. 4	2,333	-84	932	-5	3,265	-89
Alt. 8 (Current Mgt)	2,163	-170	788	-144	2,951	-3
Alt. 1 (RPA)	2,140	-23	826	38	2,967	16
Alt. 6	2,014	-99	786	-30	2,837	-130
Alt. 5	1,962	-79	785	-11	2,747	-90
Alt. 10	1,909	-53	753	-32	2,662	-85
Alt. 12 (Departure)	1,831	-78	645	-108	2,476	-186
Alt. 11 (Preferred)	1,799	-31	638	-7	2,437	-39
Alt. 7	1,515	-284	730	92	2,245	-192
Alt. 9	1,460	-55	712	-18	2,172	-73
Alt. 3	1,320	-140	661	-51	1,981	-191

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EXHIBIT 2.—PRESENT NET VALUE AND DISCOUNTED BENEFITS AND COSTS BY RESOURCE GROUPS ¹

[Million dollars]

Alternative	Present net value	Discounted benefits				Discounted costs				
		Timber	Rec.	Range	Other	Timber	Roads	Rec.	Range	Other
2.....	2,410	3,103	246	3	0	357	332	63	6	179
4.....	2,333	2,907	263	3	0	332	337	69	7	167
8 Current.....	2,163	2,611	259	3	0	275	80	60	6	175
1(RPA).....	2,140	2,674	268	3	0	302	271	68	6	179
6.....	2,041	2,504	249	3	0	290	266	58	5	177
5.....	1,962	2,458	266	3	0	298	234	58	5	190
10.....	1,909	2,371	287	3	0	275	224	69	5	180
12 Depart.....	1,831	2,182	292	2	0	225	217	61	3	139
11 Prefer.....	1,799	2,143	292	2	0	219	216	61	3	139
7.....	1,515	1,872	307	3	0	283	198	61	3	165
9.....	1,460	1,794	305	3	0	273	167	71	3	178
3.....	1,320	1,631	290	3	0	244	176	62	3	176

¹ Direct comparisons of benefits and costs by individual resource provide broad indications of relationships, but they may be misleading because many costs are nonseparable under multiple use management.

EXHIBIT 3.—AVERAGE ANNUAL CASH FLOWS AND NONCASH BENEFITS IN THE FIRST AND FIFTH DECADES BY ALTERNATIVE ¹

[Million dollars]

Alternative	Decade 1				Decade 5			
	Net receipts	Total costs	Total receipts	Noncash benefits to users	Net receipts	Total costs	Total receipts	Noncash benefits to users
2.....	30	33	63	7	161	33	194	15
1.....	21	29	50	8	137	29	166	16
6.....	19	28	47	8	134	28	162	14
12.....	18	21	39	8	131	23	154	16
11.....	17	22	39	8	122	22	144	16
8.....	17	25	42	7	160	26	186	15
4.....	14	35	49	7	163	32	195	16
5.....	11	25	36	8	148	30	178	16
10.....	9	23	32	8	137	29	165	18
7.....	1	28	29	8	116	27	143	19
9.....	-1	27	26	8	110	25	135	19
3.....	-4	25	21	8	98	24	122	18

¹ Costs include only those of the Forest Service; receipts do not include payments to counties.

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Exhibit 4

Indicators Of Responsiveness of Alternatives to Major Issues And National Concerns

ALTERNATIVE	PNV \$ Million	Decades 1/5		Timber Issues			Water Issue		Wilderness & Roadless		Fisheries & Wildlife Issues		
		Average per Year		First Decade	LTSY	Suitable Timber	Smolt	Production	Wilderness Management	Roadless	Catchable	Summer	
		Net	Benefits	Harvest	Average/ Annual	Lands	by Decade	1st			3rd	Trout	Elk by
		Receipts	\$ Million	Annual									
		\$ Million		MMBF			N ACRES	Index 1/	N Acres		Index 1		
2	2.417	30/161	7/15	303	616	1.769	100	114	0	17	94/102	94/83	
4	2.333	14/163	7/16	296	624	1.786	98	114	69	0	95/105	95/84	
8	2.163	17/160	7/15	253	552	1.594	100	117	131	90	100/111	100/92	
1	2.140	21/137	8/18	256	504	1.501	94	116	153	131	99/109	105/93	
6	2.041	19/134	8/14	248	495	1.453	100	116	374	0	99/110	107/94	
5	1.962	11/148	8/18	283	541	1.552	101	116	146	220	100/110	104/99	
10	1.909	9/137	8/18	230	504	1.415	101	117	640	0	101/110	104/99	
12	1.831	18/131	8/18	190	424	1.522	100	120	142	188	100/112	106/104	
11	1.799	17/122	8/18	192	424	1.522	101	120	142	188	100/112	100/104	
7	1.515	1/116	8/19	189	453	1.926	101	119	252	283	100/112	107/106	
9	1.460	-1/110	8/19	182	423	1.230	100	120	390	268	100/112	108/108	
3	1.320	-4/98	8/18	164	385	1.107	101	120	53	15	100/112	109/109	

ALTERNATIVE	Community Effects Issue			Recreational Issue				
	Payments To County Increase 1st Decade \$ MM	Percent Change		Demand Satisfied - 5th Decade		I VQ Management of Managed Tim Acres		
		Jobs and Income 1st Decade	Income	Developed	Semi-Primitive		Retention	Partial Retention
		Jobs			Non-	Motor		
					Motor	Motor		
	\$	%	%	%	%	%	%	%
2	17.6	0	9	75	35	0	5	1
4	12.7	6	6	75	85	10	5	1
8	11.9	1	1	48	105	31	2	7
1	14	4	4	101	105	38	4	1
6	13.3	3	3	48	309	0	3	1
5	10	0	-1	75	134	79	20	69
10	9.8	2	-2	101	398	0	9	45
12	11.0	8	8	90	109	72	19	65
7	10	0	0	90	109	72	19	65
9	8.3	2	-2	101	199	86	23	85
3	7.2	2	3	101	309	55	21	84
3	6.4	4	5	101	464	3	17	74

1/ Index 100 equals first decade annual production under continuation of current program Alternative 8 which is 1,467,000 smolt 932,000 catchable trout and 13,300 Summer elk

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4.14—Chapter 3—Affected Environment. (40 CFR 1502.15). This chapter should help the environmental impact statement reviewer understand the effects of implementing each alternative considered in detail. Describe the current condition, past practices, and future trends as indicated below:

1. Succinctly describe the existing environment of the area(s) affected by the alternatives. Include areas within and outside the forest boundary. The description should be commensurate with the importance of the potential impact upon the resource and related to the issues, concerns, and opportunities identified during the planning process and the decisions being made in the forest plan.

2. Describe physical and biological characteristics of the area affected. Summarize significant existing resources including potential problems, conflicts, constraints, or opportunities. Discuss and resource supply potentials and projected future demands for resource outputs.

3. Discuss historic costs and receipts associated with timber sales and recent history of below cost sales on the forest. Illustrate situations where individual sales may not recover costs but contribute to economic efficiency objectives. Display the allowable sale quantity and actual volume of timber sold and harvested by year during the period that the existing plan has been in effect.

4. Describe social and economic characteristics. Present the demographic and employment/income picture of the planning area. Identify groups potentially affected by the alternatives, state where they live and identify how they may be affected.

4.15—Chapter 4—Environmental Consequences. (40 CFR 1502.16). This chapter describes the scientific basis for determining impacts and the specific environmental consequences that can be anticipated with implementation of the alternatives.

1. **Introduction.** State the purpose and content of the chapter.

2. **Activities of No Significant Environmental Effect.** In this section of the chapter, identify those environmental issues eliminated from further detailed study or covered by previous environmental review (40 CFR 1501.7(a)(3)).

3. **Environmental Consequences.** Describe environmental consequences associated with the alternatives. Note that resource outputs and/or activities are not necessarily effects.

a. Describe direct, indirect, and cumulative environmental effects of the alternatives.

b. Identify possible conflicts between the proposed action and other Federal, Regional, State, and local goals and objectives.

c. Identify energy requirements and the conservation potential of the alternatives and their mitigation measures.

d. Identify nonrenewable resource requirements and the conservation potential by alternative. Describe mitigation measures if developed.

e. Discuss consequences upon urban quality, historical values, and cultural resources.

f. Discuss incomplete or unavailable essential information and how it is or will be addressed.

g. Discuss cumulative effects on the social and economic environment, including any conflicts that could occur with energy requirements of other agencies and the Forest Service.

h. Discuss the relationship between short-term use and long-term productivity.

i. Discuss irreversible and irretrievable commitment of resources.

j. Discuss probable adverse environmental effects that are unavoidable.

4. **Mitigation.** Describe the mitigation measures included in management prescriptions and the additional measures needed. Provide information or references to support conclusions regarding effectiveness of mitigation measures.

4.16—Chapter 5—List of Preparers. Present a brief list of those individuals who made a contribution to the planning effort. List each person's name, academic degree(s) and major(s), years of experience in planning, and the principle function or subject matter handled. The list should normally not exceed two or three pages.

4.17—Chapter 6—List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent. Group recipients by Federal officials and agencies, Indian tribes, State officials and agencies, local officials and agencies, libraries, organizations, and individuals. Do not include addresses and phone numbers of individuals. This chapter of the final EIS may also contain response to comments received on the draft EIS.

4.18—Index. Guidelines for development of an index are in chapter 60 of FSH 1909.15, the Environmental Policy and Procedures Handbook.

4.19—Appendices. Three appendices are mandatory in the draft environmental impact statement—

Issues, Concerns, and Opportunities; Description of Analysis Process; and Roadless Area Evaluation. Include other appendices if they are necessary to support special analyses and topics of special concern. At appropriate points in the text of the EIS, provide cross references to the appendices. The final environmental impact statement must include a fourth appendix—Public Comment.

4.19a—Appendix A—Issues, Concerns, and Opportunities.

1. Describe the process used to identify issues, concerns, and opportunities (ICO's). Also, list criteria and describe the screening process used to narrow the scope of ICO's.

2. Describe the selected issues, concerns, and opportunities.

a. List issues addressed in the environmental impact statement and describe relationships among resources within and between issues.

b. Distinguish ICO's deferred for resolution outside the forest planning process, treated the same way in all alternatives, and/or treated differently in the design of alternatives.

c. Describe both quantitatively and qualitatively the forest's potential capability to respond to each ICO or to groups of ICO's.

d. Describe how ICO's and resultant goals and objectives were used to build alternatives within the range defined by the benchmarks.

e. Discuss which of the ICO's are competitive and require trade-off evaluation.

f. Identify interest groups and institutions associated with the issues, the conflict involved, and the indicators of response and their measurements.

3. Describe the process used to consult with others.

a. List other agencies and Indian tribes contacted. Describe other agency and tribal plans reviewed and how such plans figured in the Forest Service planning process.

b. List other consultations and contacts in addition to general public involvement activities.

4.19b—Appendix B—Description of Analysis Process. This appendix describes the forest's analysis process. Summarize the analysis process under the following headings:

1. **Introduction.**

a. Describe the complexity and magnitude of the planning problem along with the opportunity for use of analytical techniques to reduce its complexity and magnitude to manageable proportions. Provide an overview of the process; devote at least one paragraph to each step of the

process. Refer to and incorporate the planning records (40 CFR 1502.21).

b. Distinguish between the analytical phase of the process and the judgmental and execution phases. Cite location of judgmental and execution phases in the environmental impact statement.

2. **Inventory Data for Information Collection.**

a. Briefly describe conceptual data needs and indicate how the interdisciplinary team collected and used data to:

(1) Delineate basic capability areas.

(2) Stratify the forest into analysis areas.

(3) Determine production coefficients.

(4) Determine areas that are tentatively suitable for management practices.

(5) Develop allocation and scheduling alternatives.

(6) Monitor implementation.

(7) Develop subsequent programs for plan implementation.

b. Summarize, cite, and describe sources of data used in analysis.

3. **The Forest Planning Model (FORPLAN).**

a. **Overview.** Develop an introductory overview of FORPLAN including its basic concepts such as analysis areas, prescriptions, coefficients, and constraints. Describe the development of the prescriptions and their analysis in the FORPLAN models to provide a cost-efficient means of achieving objectives.

b. **Analysis Process.** Explain the analysis process, including the various analytical tools. Discuss the analysis prior to FORPLAN, use of FORPLAN in the analysis, and the analysis done in addition to FORPLAN model analysis. Indicate how cost efficiency beyond that revealed through FORPLAN analysis is considered in achieving objectives.

c. **Delineation of Analysis Areas.** Present the process, criteria, and implications of delineating the analysis areas. Include as appropriate:

(1) Spatial differences related to production costs.

(2) Influences of inventory and data reliability on the delineation of analysis areas.

(3) Effects of computer model limitations of analysis area delineation.

(4) Reporting needs by specific geographic area.

(5) Need for output controls by analysis area of timeframes based on legal or policy constraints.

(6) Trade-offs made in determining the relationship of spatial issues to resource use and production issues and rationale for determination.

d. **Selection of Management Prescriptions.** Present the process and criteria used in (and the implications of)

selecting management prescriptions for FORPLAN. Discuss the interdisciplinary team process, and research used, explain how prescriptions deal with minimum specific management requirements, and discuss the process used to ensure development of an adequate range of prescriptions. Define the purpose, criteria, and assumptions for each category of prescription, and explain the consideration of cost efficiency in development of prescriptions. Present a standard and guideline table comparing prescriptions that discusses how each set of standards and guidelines varies from one analysis level to another and describe the measures taken to ensure that a broad range of prescriptions was available (36 CFR 219.14(b)(c)). Finally, make certain there is a reference to planning records for those reviewers who wish a more detailed presentation of prescriptions by analysis areas.

e. **Development of Timber Options.** For significant timber forests (FSM 1922.15(6)), summarize the process used to develop timber options for the FORPLAN model. The summary should identify criteria used to eliminate those timber options not included in the model and should discuss the role and use of economic efficiency as opposed to biologically based criteria in the development of timber options.

f. **Development of Yield Coefficients.** Describe the process of developing yield coefficients for the FORPLAN model, including, but not limited to, a description of simulation models and the research used.

4. **Economic Efficiency Analysis.**

a. Define present net value (PNV) and specify what it does and does not include. Explain the major assumptions used in cost efficiency analysis of alternatives including benefits, costs, and sources of estimates.

b. Identify parameters to include interest rates (discount) and base year dollars.

c. Describe benefits and costs in FORPLAN, benefits and costs applied outside of FORPLAN, and real cost increases/decreases used.

d. Discuss the point at which the benefit is realized for those benefits given dollar value. Also, describe benefits considered in and outside of FORPLAN.

e. Distinguish between capital investment and operation and maintenance costs.

f. Identify costs that do not vary significantly by alternative.

g. Identify and describe priced and non-priced benefits.

h. Distinguish between economic values that are collected as cash

receipts and economic benefits received by users without payment.

5. **Social and Economic Impact Analysis.** (FSM 1970). In this section:

a. Provide an overview of the analysis process.

b. Identify sources of data.

c. Describe information generated from analysis through a narrative discussion.

d. Discuss the development of comparisons made in chapter 2 of the EIS.

6. **Analysis Prior to Development of Alternatives.**

a. **Introduction.** Provide a narrative description of the analysis prior to development of alternatives.

b. **Development of Management Requirements.** Explain the development and modeling of minimum specific management requirements. Identify modeling constraints necessary to meet management requirements in 36 CFR 219.27 and explain why constraints are necessary. Provide assurance that the constraints used to meet management requirements are not compounding.

c. **Benchmark Analysis.** For each benchmark:

(1) State the purpose and objective of analysis, including exploration of maximum economic and biological resource use and development opportunities; discuss evaluation of capability to produce priced and nonpriced objectives; and describe the ability to respond to major issues and concerns.

(2) Define and state the purpose of the objectives of each benchmark.

(3) Define the constraints used to accomplish the objectives including applicable time periods.

(4) State assumptions used relative to demand, monetary values, and minimum specific management requirements to meet 36 CFR 219.27.

(5) Describe for each modeling constraint or set of constraints the change in present net value (PNV) for each benchmark; use assigned values and a PNV objective and the changes in first period production.

(6) Describe calculations for both maximum PNV benchmarks unconstrained by culmination of mean annual increment (CMAI) on significant timber forests (FSM 1922.15(6)) or those that use rotations shorter than defined by CMAI in benchmarks and alternatives.

(7) For significant timber forests, describe recalculation of maximum PNV benchmarks constrained by nondeclining yield (36 CFR 219.12(e)(1)(iii)(c)). Identify differences based on recalculations in PNV.

quantities of timber produced during each period within the planning horizon, and other significantly affected outputs and conditions.

(8) Discuss the significant relationships in the production of market and nonmarket outputs between the two maximum PNV benchmarks.

(9) Summarize the results of each of the benchmarks in terms of its resource outputs and effects, total discounted costs and total discounted benefits, PNV, acreage of prescription assignments, and the economic impact on employment and income.

7. Narrative Description of the Formulation of Alternatives.

a. *Introduction.* Define the alternatives and discuss the requirements of 36 CFR 219.12(f). Describe the process used to derive alternatives in terms of their relationship to issues, concerns, and opportunities (ICO's). Describe the interactive analysis process, including analysis performed, what was learned from the analysis, how the information was used to adjust the next sequential analysis, and how the potential capability to respond to each ICO or groups of ICO's was used to develop alternatives within the established decision space. In addition, describe measures taken to ensure a cost efficient solution.

b. *Constraints.* Describe the constraints common to all alternatives by identifying each constraint, its purposes, and the rationale for its establishment.

c. *Alternatives.* Describe development of each alternative by identifying its purpose and the criteria and assumptions used. Discuss the relationship between ICO's and benchmarks in terms of how they affected the design of the alternative. Identify the constraint or set of constraints needed to satisfy 36 CFR 219.27 and indicate if it is a common constraint or an additional constraint. For each constraint or set of constraints, describe the purpose and discuss why it is necessary to accomplish the goals and objectives. Explain how the constraint sets were used in a cost-effective way and display for each constraint or set of constraints the change in PNV, total discounted costs of principal resources, and the total discounted benefits of principal resources. Refer to the catalogue of constraints developed in the benchmark section. Summarize the process used to develop alternatives. Refer to the sequential, incremental analysis process documented in the planning records. Describe departure and CMAI analysis and explain how

departure or CMAI limits were established, if part of the analysis.

8. Estimate Effects of Benchmarks, Discretionary Constraints, and Alternatives.

a. *Introduction.* Describe the purpose of identifying, estimating, and displaying the effects of each benchmark, discretionary constraint, and alternative.

b. *Testing Constraints.* Explain the process used to test constraints that have a significant effect on outputs or PNV to ensure they were the most cost efficient in achieving the objectives of each alternative.

(1) Describe any sensitivity testing conducted.

(2) Identify significant opportunity costs of constraints associated with achieving alternative resource objectives.

(3) Identify opportunity costs of constraints associated with resource outputs or conditions not assigned monetary values but supplied at specific levels.

c. Analysis of Tradeoffs.

(1) Define the consequences of each alternative in respect to responses to each major ICO or groups of ICO's, resource outputs, and environmental consequences including social and economic effects.

(2) List alternatives in order of increasing discount costs and decreasing present net values (PNV). Display the cost above the next lower cost alternative along with the associated change in total discounted benefits and change in PNV.

(3) Display benchmarks and explain reasons for PNV change. It is not necessary to determine or display added costs or benefits.

(4) Display for each benchmark and alternative the PNV, total discounted costs and benefits, the contribution to total discounted benefits of each priced output, the distribution of discounted costs by major input cost categories, and the specific reasons accounting for significant differences in PNV between the PNV assigned value benchmark and the alternatives.

(5) Compare each alternative and display the difference in total discounted benefits, the reasons for differences in discounted costs, and differences in the achievement of goals and objectives, or nonpriced benefits not fully reflected in PNV.

(6) Discuss the factors primarily responsible for differences in the resolution of the ICO's. List and describe each effect estimated and reference the appropriate tables and graphs for each effect.

d. Analysis of Constraints Within Alternatives.

(1) Describe the set of objectives reflecting the response of each alternative to ICO's. Explain model constraints designed to achieve objectives, progressive results for each set of constraints applied, and the rationale for each constraint. Use a chart to show constraints added or changed from one step to the next and the resultant differential changes, and the changes in outputs/effects and their associated discounted costs and discounted benefits.

(2) Provide a chart for each alternative examined in detail that identifies and describes the individual constraints that have the most significant effect on PNV.

4.19c—Appendix C—Roadless Area Evaluation. The intent of this Appendix is to describe the roadless areas and the analysis factors used in evaluating individual roadless areas. Contiguous roadless areas on adjacent units must be identified and evaluated in total within a forest plan. Normally, the National Forest with the largest roadless area acreage assumes the lead in this discussion. The content listed here is the minimum required; supplement as appropriate. Refer also to 36 CFR 219.17, FSM 1923, and chapter 7 of this handbook for evaluation criteria.

1. *Overview.* Provide an overview that includes:

a. Roadless area name and number of acres included in the area.

b. Location and vicinity, including access by type of road or trail.

c. Geography.

d. Topography.

e. Vegetation, including the ecosystem type(s).

f. Current uses of the area.

g. Appearance of the area.

h. Surroundings such as the characteristics of contiguous areas.

i. Key attractions, if any, such as sensitive wildlife and scenic landmarks.

2. *Wilderness Capability.* Indicate each area's capability for wilderness by describing the basic characteristics that make the area appropriate and valuable for wilderness, regardless of the area's availability or need. Address the following characteristics:

a. Natural integrity of the area; include the degree to which humans and past or present human activity have affected natural ecological processes and conditions.

b. Natural appearance; include the degree to which the area's appearance is appropriate and valuable for wilderness.

c. Opportunities for experiences often unique to wilderness, such as solitude and serenity, self-reliance, adventurous

and challenging experiences, and primitive recreation.

d. Special features of the area, including those of ecological, geological, scientific, educational, scenic, or historical value. Describe rare and endangered plant and animal species and other wildlife.

e. A description of size and shape to include the implications of the area's size, shape, and juxtaposition to external influences on the wilderness attributes.

f. A summary of the boundary conditions, needs, and management requirements should the area be designated for wilderness. Address whether or not boundary changes would enhance the wilderness characteristics or whether or not it would be possible to use boundary modifications to separate incompatible activities from wilderness attributes.

3. Availability for Wilderness.

Indicate availability of the area by describing other resource potential and

by summarizing pertinent quantitative and qualitative information. Include current use, outputs, trends, and potential future use and/or outputs. Summarize the following information for each roadless area:

a. Recreation, including tourism.

b. Information on wildlife species, populations, and management needs.

c. Water availability and use.

d. Livestock operations.

e. Timber.

f. Minerals.

g. Cultural resources.

h. Authorized and potential land uses.

i. Management considerations including fire, insects and diseases, and presence of non-Federal lands.

4. *Wilderness Evaluation.* Summarize the factors considered and the process used in assessing the need for each area. Include the public involvement process (both past and present), assumptions made, the social and economic factors considered, and interest expressed by

proponents, including Congress. Discuss nearby wildernesses and their uses, nearby roadless areas, distance from population centers, and use trends.

5. *Environmental Consequences.* Describe the potential environmental consequences of a wilderness and a nonwilderness recommendation.

a. Include a table displaying the acreage assignment of prescriptions by alternative as shown in exhibit 1.

b. Discuss the impact on the roadless area of wilderness designation and the impact of each nonwilderness prescription. Show the social and economic effects in each case. Include mitigation, if any, for loss of wilderness characteristics and the effects on plant and animal communities.

c. Exhibit 1 tracks roadless areas through each alternative considered in detail in the environmental impact statement.

EXHIBIT 1.—APPLICATION OF PRESCRIPTIONS TO ROADLESS AREAS BY ALTERNATIVE

Prescription	Alternatives				
	A	B	C	D	E
xx	10,200 (50%)	0	20,400 (100%)	0	0
yy	0	20,400 (100%)	0	0	0
zz	10,200 (50%)	0	0	5,100 (25%)	0
aa	0	0	0	15,300 (75%)	20,400 (100%)
Total	20,400	20,400	20,400	20,400	20,400

(1) Designation: Wilderness.

Prescription: xx.

Alternatives: A, C.

Describe:

Effects on wilderness attributes.

Effects on nonwilderness resources and uses.

Economic and social effects.

(2) Designation: Nonwilderness.

Prescription: yy.

Alternative: B.

Describe:

Effects on wilderness attributes.

Mitigation, if any.

Indicate if development is planned during the first 2 decades.

Effects on nonwilderness resources and uses.

Economic and social effects.

(3) Designation: Nonwilderness.

Prescription: zz.

Alternatives: A, D.

Describe:

Effects on wilderness attributes.

Mitigation, if any.

Indicate if development is planned during the first 2 decades.

Effects on nonwilderness resources and uses.

Economic and social effects.

(4) Continue through this discussion of environmental consequences for each prescription.

4.19d—Appendix B—Forest Service Response to Comments.

The final environmental impact statement for the proposed forest plan must contain response to comments received on the draft environmental impact statement. The response may be in Appendix D or may be discussed in chapter 6 of the final EIS. Refer to 40 CFR 1503.4 and chapter 42.5 of FSH 1903.15 for treatment of comment.

4.2—FOREST PLAN OUTLINE.

This outline represents the desired order of chapters and the desired order of sections within the chapter for the content of a forest plan. Regions may reorder chapters and sections within each chapter to meet current direction

and/or to improve the document. Each section listed must be present in a plan. Regions may include or require additional sections and content as deemed necessary.

1. *Preamble.* The preamble to the forest plan includes a preface, table to contents, and a list of maps, tables, and figures.

a. *Preface.* The preface is a brief statement that relates the forest plan to applicable laws and regulations. Include the title and address of the Forest Supervisor as a source of information about the plan. The preface should include the following statement:

If any particular provision of this proposed action, or the application of the action to any person or circumstances, is found to be invalid, the remainder of the proposed action and the application of that provision to other persons or circumstances shall not be affected.

b. *Contents.* Include a standard table of contents and a list of maps, tables, and figures. The standardized arrangement of the table of contents follows the order in section 4.21 through section 4.27.

4.21—*Chapter 1—Forest Plan Introduction.* This chapter introduces the general purpose of the forest plan and the plan structure, and explains how the plan relates to the environmental impact statement and other documents. It also provides a brief description of the forest.

1. *Purpose of the Forest Plan.* The following text is suggested:

The Forest Plan guides all natural resource management activities and establishes management standards and guidelines for the _____ National Forest. It describes resource management practices, levels of resource production and management, and the availability and suitability of lands for resource management.

The Forest Plan embodies the provisions of the National Forest Management Act, the implementing regulations, and other guiding documents. Land use determinations, prescriptions, and standards and guidelines constitute a statement of the plan's management direction; however, the projected outputs, services, and rates of implementation are dependent on the annual budgeting process.

2. *Relationship of the Forest Plan to Other Documents.* The following text is suggested:

This Forest Plan sets forth the preferred alternative for managing the land and resources of the _____ National Forest. The Plan results from extensive analysis and considerations addressed in the accompanying environmental impact statement (EIS). The planning process and the analysis procedures used to develop this Plan are described or referred to in the EIS. The EIS also describes other alternatives considered in the planning process. Specific activities and projects will be planned and implemented to carry out the direction in this plan. The Forest will perform environmental analysis on these projects and activities. This subsequent environmental analysis will use the data and evaluations in the Plan and environmental impact statement as its basis. Environmental analysis of projects will be tied to the EIS accompanying this Forest Plan.

3. *Plan Structure.* This section introduces the reader to the interrelated purposes of the plan chapters 2 through 5.

4. *Forest Description.* This section describes the location of the forest. Include forest location maps showing

national, regional, and local vicinity of the administrative unit covered by the plan. Place all three maps on a single page if possible.

4.22—*Chapter 2—Summary of the Analysis of the Management Situation.* This chapter of the plan briefly summarizes the supply and demand conditions for significant market and nonmarket goods and services associated with the planning area. Briefly describe special conditions affecting supply or demand.

1. *Resource Supply Conditions.* This section includes a summary display of the constrained maximum physical and biological production potentials for significant individual goods and services (maximum resource level benchmarks) identified in the analysis of the management situation (sec. 3.4). Also include displays of the production levels that are attainable under current management direction. Guidelines for each of the production levels are as follows:

a. *Maximum Production Potential.* The highest level of a particular output or use that it would be possible to produce over time considering legal and other requirements.

b. *Production Under Current Management Direction (No-Action Alternative).* The level of goods and services provided under current management direction, as constrained by current forest budgets, and the most likely level of goods and services expected to be provided under probable budgets if current management direction continues.

c. *Use and Development Opportunities.* The opportunities available to permit and promote use and development of the various resources, including land status and adjustment situations.

2. *Resource Demand Projections.* In this section include a summary display of projected demands for the significant goods and services addressed in the Analysis of the Management Situation. Display both supply and demand conditions for each of the National Resources Planning Act planning periods. All of the above mentioned supply and demand condition levels may be contained in a single table.

3. *Research Needs.* This section addresses the research needs identified by the Forest Supervisor. In the proposed plan, they are considered as research proposals subject to the approval of the Regional Forester. Point out in the final plan that the set of research needs may expand if monitoring and evaluation identify additional needs.

4.23—*Chapter 3—Response to Issues, Concerns, and Opportunities.* Include this chapter in the forest plan if it is necessary to discuss information not included in the environmental impact statement (EIS). If not, incorporate the discussion in the EIS by reference.

4.24—*Chapter 4—Forest Management Direction.* This chapter presents the management goals, objectives, standards and guidelines that constitute direction for resource management covered by the plan. Ensure that appendices prepared do not include direction, but supplement, clarify, and support forest management direction.

4.24a—*Forest Management Goals.* Present the multiple use and other goals established in the planning process to develop the preferred alternative. Include any other goals that are part of the definition of management direction.

4.24b—*Forest Management Objectives.* In this section, list the overall objectives in narrative form, explain how the projected outputs also serve as objectives, and introduce resource summaries.

1. *Projected Outputs.* Display the levels of goods and services anticipated as the plan is implemented. Clarify the fact that outputs are projections based on available inventory data and assumptions, subject to the annual budget. Display these outputs in a chart that shows how they vary during five planning decades. Express outputs on an average annual yield per decade basis; use NAS codes and definitions whenever possible.

2. *Resource Summaries.* Prepare narrative summaries of resource outputs and schedules for attainment. Supplement the narrative statements with charts and tables as indicated.

a. Include timber resource summaries that describe timber productivity, land suitability, allowable sale quantity, vegetation management practices, and planned timber sales. See FSH 2409.13, Timber Resource Planning Handbook for additional information.

b. Present other resource summaries and schedules for activities such as wildlife and fisheries habitat improvement, road construction, range improvements, vegetation burning, and other capital investments. Include the detailed schedules as appendices to the plan. It is suggested that these schedules cover the same timeframe as the planned timber sales schedule.

4.24c—*Standards and Guidelines.* Forest-wide standards and guidelines state the bounds or constraints within which all practices are to be carried out in achieving the planned objectives. Standards and guidelines should be

measurable to be meaningful. List the forest-wide management standards and guidelines that are applicable to all management areas. Then list those that are applicable only to specific management areas.

4.24d—*Desired Future Condition of the Forest.* The future condition of the forest is as much a part of management goals and objectives as are outputs and effects. This section on the desired condition describes what the forest should be like after implementation of the management direction contained in the plan. It summarizes the anticipated physical changes that would result from carrying out planned management practices. Emphasize what the physical structure of the forest would be at the end of 10 years, at the end of 50 years, and beyond, as appropriate, especially when the management plan calls for departures from the base timber sale schedule. Examples of the physical structural components include stand composition and age structure, miles of road, acres of roadless area, numbers and kinds of facilities, acre-feet of water produced, and other dimensions as appropriate.

4.24e—*Management Prescriptions.* This section contains the management prescriptions and the standards and guidelines that apply to each management area. Management prescriptions are management practices scheduled for implementation on a defined management area.

1. Describe management prescriptions in a standard format and include the alpha-numeric code associated with the prescription in the planning process.

2. List the probable management practices constituting each management prescription. Use NAS codes and definitions of management practices to simplify the formulation of annual program budgets.

3. For prescriptions that involve vegetation manipulation, indicate how and why these prescriptions are associated with the various vegetative types manipulated on the forest. State the objectives of the prescription or set of prescriptions and the desired results as applied to a given vegetative type.

4. Address access management in each management area and further refine it in the standards and guidelines. Where necessary, establish direction to define the way access is provided and managed to meet access goals. Access direction should include all modes of transportation, timing of necessary actions, and the mix of facility management objectives needed to meet forest plan goals.

5. Write standards and guidelines for each management area to meet the requirements of 36 CFR 219.11(c). In addition, address each of the resources discussed in 36 CFR Part 219.13 through 219.26 by standards and guidelines, management prescriptions, or other management direction in the plan if significant on the forest. The resource integration requirements are often synonymous with the management standards and guidelines they are to be associated with.

6. Write direction for any proposed special areas (wilderness, wild and scenic rivers, national trails, research natural areas, national recreation areas, and national forest monuments) as if they are already designated special areas. Existing and proposed special areas may be defined as individual management areas, as parts of other management areas, or as a combination of several management areas when they are very large and when internal management needs vary significantly from location to location. Direction for existing special areas may be incorporated by reference, indicating the process by which the existing direction was developed.

4.25—*Chapter 5—Implementation of the Forest Plan.* This chapter incorporates direction in three sections under the headings of Implementation Direction, Monitoring and Evaluation Program, and Amendment. Collectively, these sections explain methods of implementing management direction, monitoring and evaluating implementation activities, and of keeping the plan current in light of changing conditions or other findings. See chapter 5 of this handbook for further discussion of the process for forest plan implementation. See chapter 6 for a discussion of monitoring and evaluation.

4.25—*Implementation Direction.* Explain that implementation of the forest plan occurs through identification, selection, scheduling, and execution of management practices to meet management direction provided in the plan. Implementation also involves responding to proposals by others for use and/or occupancy of National Forest System lands. Additional requirements of this section include a need to show consistency of other plans or instruments with the forest plan, formulation of budget proposals, and environmental analysis required for implementation of specific management practices.

1. *Scheduling.* The identification and selection of management practices must meet the requirements of FSM 1922.4 and chapter 5 of this handbook.

Scheduling of the practices is in response to the management direction in the forest plan and the near-term management needs and opportunities. Additional requirements for timber sale scheduling is found in FSH 2409.13. Execution is in response to the annual budget.

2. *Consistency with Other Instruments.* This section of the forest plan sets a target date for achieving consistency, subject to valid existing rights, for all outstanding and future permits, contracts, cooperative agreements, and other instruments for occupancy and use of lands included in the forest plan. In an appendix, list plans that the forest plan supersedes or that must come into compliance with the forest plan.

3. *Budget Proposals.* This section of the forest plan translates scheduled practices into multiyear program budget proposals. Use the schedule for requesting and allocating the funds needed to carry out the planned management direction. The plan should state that, upon approval of a final budget, the forest finalizes and implements the annual program of work. Accomplishment of the annual program of work results in the incremental implementation of the management direction of the forest plan.

4. *Environmental Analysis.* This section of the forest plan indicates that management practices proposed within the forest plan are subject to environmental analysis as they are planned for implementation. Follow the requirements of 40 CFR 1502.20, FSM 1950, and FSH 1909.15 in determining subsequent environmental analysis and documentation. An analysis file and/or a project file must be available for public review, but it is not always necessary to document the analysis in the form of an environmental assessment or environmental impact statement.

4.25—*Monitoring and Evaluation Process.* This section of the forest plan describes how the forest is to meet monitoring and evaluation requirements. Refer to chapter 6 of this handbook for a discussion of the monitoring and evaluation process.

1. *Monitoring.* Identify the monitoring program necessary to meet the minimum requirements of 36 CFR 219.5(a)(7), 219.11(d), and 219.12(d) and (k) as well as any additional monitoring needs. Describe the monitoring activities and methods that are to satisfy the identified monitoring requirements. State the actions, effects, or resources to be measured and the frequency of measurement for each of these.

including the periodic intervals between measurements and the sampling schemes. Estimate the precision and reliability of the monitoring program. Identify ongoing accomplishment reporting processes, such as PAMARS and annual attainment reports, used to monitor actions, effects, and/or resources.

2. *Evaluation.* Identify the evaluation program necessary to meet the minimum requirements of 36 CFR 219.12(k)(1), (2), (3), and (5); 219.10(e) and (g); and 219.7(f).

4.25c—*Amendment.* This part of the forest plan describes the opportunities and procedures for amendment of the plan. Refer to chapter 5 of this handbook for a discussion of the amendment process.

4.26—*Glossary.* This section contains forest plan terms that require common understanding or that have special meanings. Include those terms in 36 CFR 219.3 that you use in the plan along with their given definitions.

4.27—*Appendices.* This part of the forest plan contains supplemental plan information that is explanatory in nature. Appendices may include management area maps, timber sale schedules, and other activity schedules and costs as appropriate.

4.3—*RECORD OF DECISION.* The Council on Environmental Quality regulations for implementing the National Environmental Policy Act require a Federal agency to prepare a concise public record of decision whenever the agency undertakes an action requiring an environmental impact statement. The purpose of the record of decision is to describe a rational basis for the decision. Because this record is often the first document read by the public, by the reviewing officer in an administrative appeal under 36 CFR 211.18, or by a judge in a lawsuit, write it in non-technical language. The record of decision is the primary document that summarizes a basis and need for the decision; it thereby allows the reader to decide whether the agency made a reasoned choice among the alternatives.

1. Make the record of decision brief. To avoid unnecessary repetition, refer to specific pages of the plan and final environmental impact statement whenever possible. The record of decision can also serve as an index to those two documents for particular subjects, facilitating the public's use and understanding of them.

2. Inform the readers of how to get copies of any forthcoming amendments and revisions of the plan.

Contents of a record of decision are set forth in section 4.31 through 4.37. The

order in which the contents are listed in these sections can be changed; topics may also be combined as long as the requirements of 40 CFR 1505.2, FSM 1950, and FSH 1000.15 are met.

4.31—*Table of Contents.* A table of contents or outline helps the reader locate subjects of particular interest and to understand how the record of decision is organized. If the record consists of only a few pages, bold headings and subheadings, indentation, and so forth, may suffice.

4.32—*The Decision.* State the decision to be made. Describe what is being decided and what is not being decided. Establish the management framework of which the plan is a part. Include an explanation of what the plan is and is not, similar to that in exhibit 1. Add specific comments unique to the particular plan.

Exhibit 1

Sample Introductory Paragraphs for the Record of Decision

The forest plan is a strategy for managing the forest. It is not a plan for the various administrative activities needed to carry on the Forest Service's day-to-day internal operations. For example, the plan does not address personnel matters, law enforcement, fleet equipment, or internal organization changes. However, it is a plan for managing unit of the National Forest System in an environmentally sound manner to produce goods and services in a way that maximizes long-term public benefits.

The plan is part of the 50-year framework for long-range resource planning established by the Forest and Rangeland Renewable Resources Planning Act (RPA). As such, it establishes general direction for a period of time, usually between 10 and 15 years. Information regarding outputs and effects beyond this period are provided only to broadly indicate the currently anticipated consequences of each plan alternative if it is selected to continue into the future. However, the plan must be revised at least every 15 years. Once adopted, the plan replaces all previous resource management plans prepared for the forest, subject to existing rights, contracts, and specific direction for special areas such as wilderness, wild and scenic rivers, national recreation areas, and national trails.

The emphasis of the plan is not on site-specific decisions or specific resource outputs. Rather, the emphasis is on applying various general management practices at various intensities to areas of land to achieve

multiple-use goals and objectives in the most cost efficient manner. To respond to changing needs and opportunities, Congressional land designations, catastrophic events, or major new management or production technologies, the plan may have to be amended or revised. If there is a significant change to the plan, it must be altered by a procedure identical to that used in the development and approval of the original plan. If the change does not significantly affect the plan, the Forest Supervisor may amend it by a less extensive procedure to include public notification.

It is important to note that all proposals in the plan can be accomplished from a physical, biological, economic, and legal perspective. It is not certain that these proposals will be accomplished. First, the outputs proposed by the plan are projections or targets. For example, the number of acre-feet of water meeting water quality goals is a target number the forest will strive to attain. Another example is allowable sale quantity of timber. That is the maximum regulated volume of timber that can be sold over the planning period, not necessarily the volume that will be sold.

Secondly, all activities, many of which are interdependent, may be affected by annual budgets. The plan is implemented through various site-specific projects, such as the building of a road, development of a campground, or the sale of timber. If the budget changes for any given year covered by the plan, the projects scheduled for that year may have to be rescheduled. However, the goals and land activity assignments described in the plan would not change unless the plan itself were changed. If budgets change significantly over a period of several years, the plan itself may have to be amended and, consequently, would reflect different target outputs and environmental conditions. The significance of budget related or other changes is determined in the context of the particular circumstances.

As a long-range strategy for the forest, this plan and accompanying environmental impact statement are programmatic. During implementation, when the various projects are designed, more site-specific analyses are performed. These analyses may result in environmental assessments, environmental impact statements, or categorical exclusions and, possibly, an amendment or revision of the plan. Any resulting documents are to be tiered to the final environmental impact

statement for this plan, pursuant to 40 CFR 1505.28.

4.33—*Alternatives and Issues Considered.* Describe concisely all major issues identified in the draft environmental impact statement and note new issues identified from public comments on the draft statement. Summarize all alternatives considered, referring to the more detailed descriptions in the final environmental impact statement when appropriate. In this discussion, it is appropriate to summarize or emphasize public involvement and to describe how any alternatives from the draft environmental impact statement changed because of this involvement. Also, note new alternatives developed for the final environmental impact statement as a result of public input. Refer to the comments/response appendix and chapter 2 in the final EIS for details on responses to alternatives and issues from the draft.

4.34—*Rationale for the Decision.* Briefly describe management concerns and all factors (economic, technical, national policy, and so forth), regulations, and laws relevant to the decision. Describe the methods used to consider the various issues and interests and how they balanced with all other factors, laws, and regulations. Explain that the companion document to the plan, the final environmental impact statement, discloses the environmental effects of all alternatives considered, including the preferred alternative. Where appropriate to explain the rationale, refer to specific pages of the EIS. A reviewing court is likely to want to know whether the agency took a "hard look" and made a "reasoned choice." The following elements are mandatory in this section:

1. *Environmentally Preferable Alternatives.* (40 CFR 1505.2(b)). This section requires the identification of the environmentally preferable alternative but does not require its selection. More than one such alternative may be described. Identify as environmentally preferable the alternative(s) having the least impact on the physical and biological environment; give secondary consideration to the impact on the economic and social environment. The Council on Environmental Quality has defined "environmentally preferable" as follows:

The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best

protects, preserves, and enhances historic, cultural, and natural resources.

After identifying the environmentally preferable alternative(s), compare the selected alternative, which maximizes net public benefits (36 CFR 219.1 (a), 219.3 and 219.12 (f)), to any other alternative(s) considered and identified as environmentally preferable. This comparison is required by 36 CFR 219.12 (j)(1). The comparison can be made by summarizing:

a. A description of the difference between the environmental effects or outputs that are likely to occur with implementation of environmentally preferable alternatives and the environmental effects or outputs anticipated with implementation of the selected alternative.

b. The objectives of the selected alternative in terms of priced and nonpriced outputs and/or responses to expressed public issues that would not be likely to occur with implementation of the environmentally preferable alternative(s).

c. A summary of the major tradeoffs or differences between a and b, expressed in economic, environmental, physical, and/or other appropriate quantitative and qualitative terms.

d. An explanation showing why the selected alternative is expected to provide greater overall net public benefits than the environmentally preferable alternatives.

Refer to the final environmental impact statement where appropriate. In this section of the record of decision, note that all alternatives meet minimum legal and environmental standards, but acknowledge and discuss any environmental uncertainties.

2. *Alternatives with Higher Present Net Values.* Identify the present net value (PNV) of the selected alternative. Then, as provided by 36 CFR 219.12 (j)(2), compare the selected alternative to all other alternatives having a higher PNV. This requires summarizing:

a. A description of the difference between the net value and mix of the priced outputs that are likely to occur with implementation alternatives having a higher PNV and the net value and mix of the priced outputs anticipated with implementation of the selected alternative.

b. The objective of the selected alternative in terms of priced and nonpriced outputs and/or responses to expressed public issues that would not be likely to occur with implementation alternatives having a higher PNV.

c. A summary in the record of decision of the major tradeoffs of differences

between a and b expressed in economic, environmental, physical, and/or other appropriate quantitative and qualitative terms.

d. An explanation showing why the selected alternative is likely to provide greater overall net public benefits than the alternatives with a higher PNV.

3. *Areas of Public Interest.* Identify all areas that have a high degree of public interest and briefly describe how the plan proposes to deal with them. For example, if management of a wilderness with respect to visitor intensity or any other significant aspect is to be different from management prior to the forest plan, describe these differences. Explain why a particular roadless area was or was not recommended for wilderness designation, is or is not to be scheduled for timber sales, and so forth.

4.35—*Mitigation and Monitoring.* Mitigation measures are an essential part of each alternative and, consequently, require detailed description in chapter 4 of the environmental impact statement. Refer to the mitigation measures, the minimum management requirements, the standards and guidelines applicable to the entire forest, and specific management prescriptions in the plan. If all practicable measures were not taken, explain why not (40 CFR 1505.2(c)). The Council on Environmental Quality (CEQ) states in response to the 40 most asked questions concerning NEPA regulation (46 FR 18028, March 23, 1981):

The discussion of mitigation and monitoring in a Record of Decision must be more detailed than a general statement that mitigation is being required, but not so detailed as to duplicate discussion of mitigation in the EIS. The Record of Decision should contain a concise summary identification of the mitigation measures which the agency has committed itself to adopt.

CEQ continues:

To ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. Thus the EIS and the Record of Decision should indicate the likelihood that such measures will be adopted or enforced by the responsible agencies.

Briefly describe the monitoring program and its purpose. State that the Forest Service uses the data gathered by the program to update its inventory data, to improve future mitigation measures, and to assess the need for amending or revising the plan.

4.36—*Implementation.* Briefly describe any schedules used to implement the plan and note how often they are to be updated (FSM 1922.51).

Emphasize any aspects of implementation that received special public attention or that require clarification. The record of decision affords one more opportunity to speak to the public to clarify issues and eliminate any confusion about the plan or its implementation. Be sure to refer to the most recent regional or national policy on below-cost timber sales and note the differences between sales policy and suitability determination if applicable.

4.37—*Appeal Rights.* State appeal rights and associated time periods. In accordance with 40 CFR 1506.10(b)(2) and 36 CFR 221.18(c)(3), the appeal period for approval of the land and resource management plan cannot expire prior to the later of the following two dates:

1. Thirty days after publication by the Environmental Protection Agency of the Notice of Availability of the Final environmental impact statement accompanying the plan.

2. Forty-five days from the date of decision.

The discussion of appeal rights is also an appropriate place to clarify areas of confusion regarding appeals and their consequences. For example, consider addressing the following:

1. An appeal of a plan does not halt its implementation. A stay does.

2. If an individual or group is dissatisfied with a specific project, that individual or groups should appeal the plan if the site-specific decision for that project is made in the plan. Otherwise, they should appeal the site-specific decision.

3. If applicable, note the appeal rights of (mineral) operators under 36 CFR 228.14 or other avenues of appeal (36 CFR 211.18 (b)).

4.38—*Approval.* The Regional Forester signs and dates the record of decision.

Chapter 5—Forest Plan Implementation and Amendment Process

Contents

5.1 PURPOSE OF FOREST PLAN IMPLEMENTATION

5.2 PROPOSED PROJECT AND ACTIONS

5.3 ANALYSIS AND EVALUATION

5.31 Findings

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5.31b National Environmental Policy Act Compliance

5.32 Process to Amend the Forest Plan

5.4 DECISION AND DOCUMENTATION

5.5 BUDGET DEVELOPMENT

5.6 PROJECT DESIGN

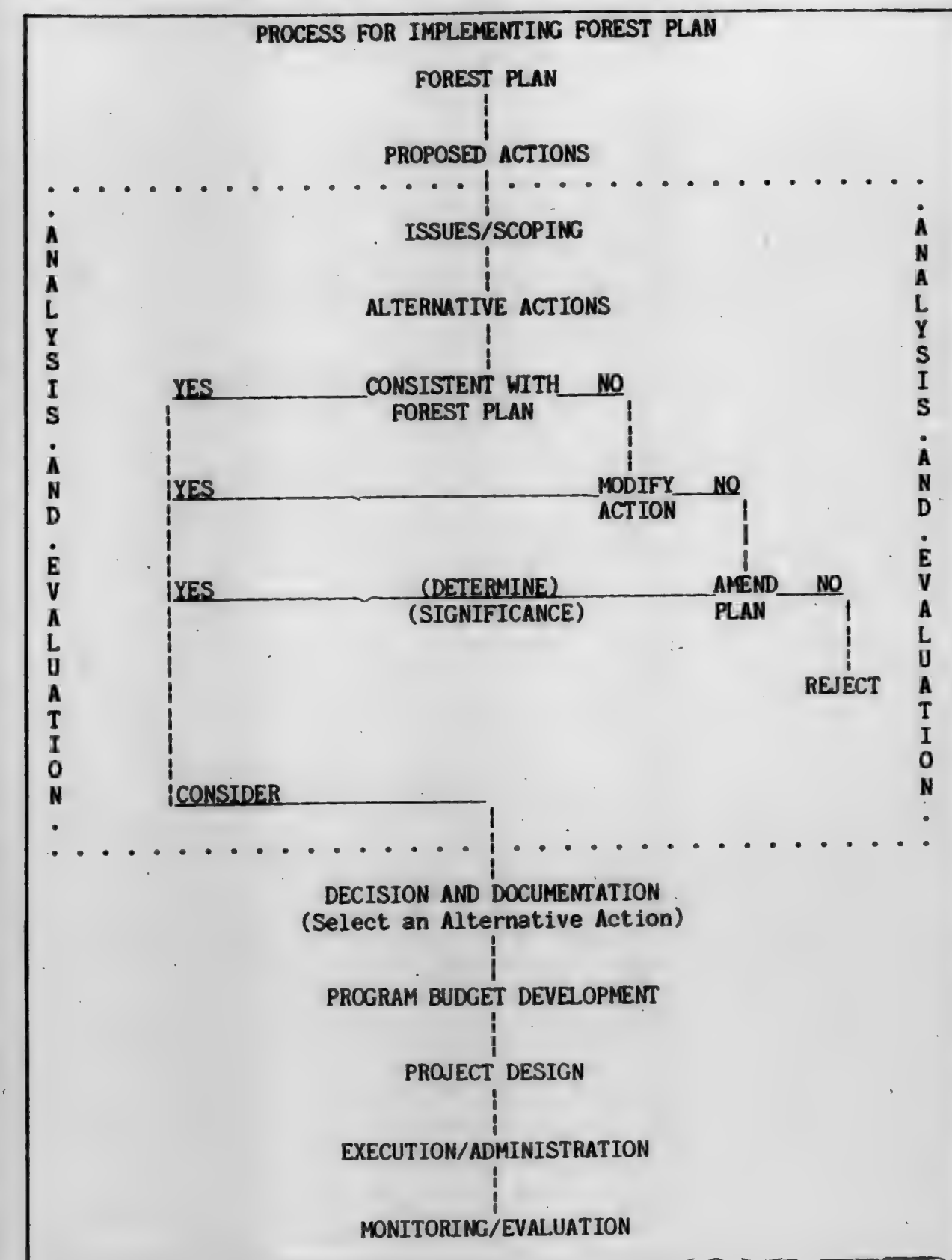
5.7 PROJECT EXECUTION AND ADMINISTRATION

This chapter establishes procedural guidance for implementing the forest plan through selecting and scheduling management practices that meet

direction established by the forest plan. This chapter describes the process for analyzing and determining consistency of actions with the forest plan and specifies the process for amending the forest plan when change is necessary. Overall direction for forest plan implementation is in FMS 1922.4 while forest plan amendment is described in FMS 1922.5.

5.1—*PURPOSE OF FOREST PLAN IMPLEMENTATION.* Forest plan implementation, the activity to accomplish the management direction of a forest plan, is necessary to meet legal requirements and public expectations of Forest Service actions. It is accomplished through identification of management practices; analysis and evaluation of proposed actions; deciding upon and appropriate course of action; and budget development, project execution, and administration. Implementation involves analysis of proposed and probable management practices to meet both NFMA and NEPA requirements. The process of implementing the forest plan is shown in exhibit 1. Although the process is depicted as sequential, activities may be simultaneous or iterative. A discussion of the major actions in the forest plan implementation process follows the exhibit.

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5.2—PROPOSED ACTIONS.

Management prescriptions, including standards and guidelines, and the schedule of management practices provide information and direction needed to achieve the desired future condition of the forest as expressed by the goals and objectives of the forest plan. Proposed management practices are identified following review of this management direction. In addition, actions may be proposed by others outside the Forest Service. The following specifies the process for analysis and evaluation to select, approve, or reject proposed actions.

5.3—ANALYSIS AND EVALUATION.

The purpose of analysis and evaluation is to make site specific decisions based on Forest Plan direction. The analysis process includes an assimilation of management direction, current issues, and site-specific data to make site specific decisions on land management. The analysis assists in determining costs, schedules, and direct, indirect, and cumulative effects of related management practices. An interdisciplinary process must be used to address a single practice or multiple practices within a given area. The responsible official determines the scope and geographic area of analysis required to reach a well-reasoned decision on proposed actions. Consider the following steps in identifying the scope and area involved in analysis:

1. Review data and information used in development of the forest plan;
2. Consider the land management decisions to be made in any given geographic area for the plan period;
3. Conduct scoping and determine issues, concerns, and other information about the area and the possible decisions to be made;
4. Determine the extent of the geographic area requiring analysis based on identified issues, concerns, and resource opportunities;
5. Determine the requirements for NEPA compliance, including the range of alternative actions, the potential for cumulative effects, and the possibility of connected and cumulative actions; and
6. Ensure that proposed management practices and actions are analyzed through an integrated approach to resource management.

5.31—Findings. The analysis provides information to evaluate proposed management practices and actions, whether Forest Service or non-Forest Service proposals, to determine findings for NFMA, to ensure compliance with NEPA, and to meet other appropriate laws and regulations. Review of the findings is essential in making a well-reasoned decision.

5.31a—National Forest Management Act Findings.

The National Forest Management Act and implementing regulations require specific findings to be made when implementing the forest plan. In deciding on proposed management practices, the following findings must be made and documented.

1. **Consistency.** All resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands are to be consistent with the forest plan (16 U.S.C. 1604(i)). The forest plan guides all natural resource management activities (36 CFR 219.1(b)). All administrative activities affecting the National Forest must be based on the forest plan (36 CFR 219.10(e)). Thus, all management practices and activities must be consistent with the forest plan. If a proposed project or alternative action is not consistent with the forest plan, there are three options available for consideration:

- a. Modify the proposal to make it consistent with the forest plan;
- b. Reject the proposal; or
- c. Amend the plan to permit the proposal. Follow the direction in 5.32 below to amend the forest plan.

2. **Suitability for Timber Production.** No timber harvesting, other than salvage sales or sales to protect other multiple-use values, shall occur on lands not suited for timber production (16 U.S.C. 1604(k) and 36 CFR 219.27(c)(1)). When timber harvest is proposed and the land has been determined to be suitable, a finding to that effect must be made. If the land is determined not suited for timber production and timber harvesting is proposed, a finding must ensure that harvesting is necessary to protect other multiple use values or activities. The finding should reference the appropriate management direction found in the forest plan, planning records, or environmental documents.

3. **Clearcutting and Even-aged Management.** When a timber is to be harvested using an even-aged management system, a determination that the system is appropriate to meet the objectives and requirements of the forest plan must be made (16 U.S.C. 1604(g)(3)(F)(i) and (ii)). In addition, where clearcutting is to be used, it must be determined to be the optimum method. Reference should be made to the discussions of even-aged management contained in the forest plan, planning records, or environmental documents.

4. **Vegetative Manipulation.** All proposals that involve vegetative manipulation of tree cover for any purpose must comply with the seven requirements found at 36 CFR 219.27(b).

Reference the discussion or management direction found in the forest plan, planning records, or environmental documents.

5.31b—National Environmental Policy Act Compliance. The analysis of a management practice or action must comply with Forest Service environmental policies and procedures (FSM 1950 and SH 1909.15). Insure that adequate consideration has been given to:

1. Scope of the action (including interconnected actions);
2. A reasonable range of alternative actions (including necessary mitigation); and
3. Site specific environmental effects (including direct, indirect, and cumulative effects).

5.32—Process to Amend the Forest Plan. The following actions must be taken when a proposal is not consistent with the forest plan and the proposal is to be considered further for implementation.

1. Prepare a proposed amendment to the forest plan.
2. Make a determination of the significance of the change to the forest plan under 16 U.S.C. 1604(f)(4), 36 CFR 219.10(f), and FSM 1922.5. It is important to distinguish between significance of the change to a forest plan and significance of the environmental impacts of the proposed action as defined by Council on Environmental Quality regulations found at 40 CFR 1500 to 1508.

3. The following factors are to be used when determining whether a proposed change to a forest plan is significant or not significant, based on NFMA planning requirements. Other factors may also be considered, depending on the circumstances.

a. **Timing.** Identify when the change is to take place. Determine whether the change is necessary during or after the plan period (the first decade) or whether the change is to take place after the next scheduled revision of the forest plan. In most cases, the later the change, the less likely it is to be significant for the current forest plan. If the change is to take place outside the plan period, forest plan amendment is not required.

b. **Location and Size.** Determine the location and size of the area involved in the change. Define the relationship of the affected area to the overall planning area. In most cases, the smaller the area affected, the less likely the change is to be a significant change in the forest plan.

c. **Goals, Objectives, and Outputs.** Determine whether the change alters long-term relationships between the

levels of goods and services projected by the forest plan. Consider whether an increase in one type of output would trigger an increase or decrease in another. Determine whether there is a demand for goods or services not discussed in the forest plan. In most cases, changes in outputs are not likely to be a significant change in the forest plan unless the change would forego the opportunity to achieve an output in later years.

d. Management Prescription.

Determine whether the change in a management prescription is only for a specific situation or whether it would apply to future decisions throughout the planning area. Determine whether or not the change alters the desired future condition of the land and resources or the anticipated goods and services to be produced.

4. If the amendment is determined not to be a significant change to the forest plan, the Forest Supervisor may implement the amendment following appropriate public notification and satisfactory compliance with Forest Service environmental policies and procedures for the project or action.

5. If the change to the forest plan is determined to be significant, follow the required 10 step planning process found at 36 CFR 219.12. Preparation of an environmental impact statement (EIS) is mandatory (16 U.S.C. 1604(f)(4), 36 CFR 219.10(f), and 36 CFR 219.12). The Forest Supervisor shall determine the issues, concerns, and opportunities to be addressed in the amendment and will normally concentrate on those issues that have generated the need for change.

5.4—DECISION AND DOCUMENTATION.

The analysis and evaluation of management practices and actions provide information and findings for reaching a well reasoned decision. Decisions made following analysis must be documented to: provide a public record; facilitate public notification; explain the rationale for selection of an action; and document the findings addressed above at 5.31. The process depicted in exhibit 1 is not precise in either the order or timing of events it predicts. Discretion must be used in determining consistency with and the need to change the forest plan. The following is required.

1. In order to assure the responsible official and the public that all actions are consistent with the forest plan, a finding of consistency must be a part of each decision document. The finding must indicate consistency with the general management requirements of the forest plan (36 CFR 2319.27), as well as indicating consistency with the specific standards and guidelines. This finding

need not be lengthy or detailed, but should briefly state why the proposed action is consistent with the particular management direction or requirements of law or regulation. The finding should include appropriate references to the pages in the forest plan, planning records, or environmental documents used in making the consistency determination. This finding is an appealable decision (36 CFR 211.18).

2. In the case of a change to the forest plan that is determined not to be significant, the Forest Supervisor documents the decision in the appropriate document and at the same time, if the activity is approved, amends the forest plan and implements the project or activity following appropriate public notification. Once the amendment is approved, permanently attach a copy of the amendment to all reference copies (36 CFR 219.6(i)(3)) of the forest plan. This finding is an appealable decision (36 CFR 211.18).

3. In the case of a change to the forest plan that is determined to be significant, follow the same procedure required for development of a forest plan (36 CFR 219.10(f)). Prepare a record of decision that accompanies the final environmental impact statement and address both the project and the change to be made to the forest plan. The decision is appealable (36 CFR 211.18) once the Regional Forester has signed the record of decision. When 45 days have elapsed since signing the record of decision, the forest plan is amended and the project or activity may be implemented.

4. Instructions for documentation necessary to comply with Forest Service environmental policies and procedures are found in FSM 1950 and FSH 1909.15.

5.5—BUDGET DEVELOPMENT. The selected projects and actions are the basis for program budget development. Policy contained in FSM 1930.3 requires that budget proposals be consistent with long-range direction provided by, among others, the forest plan. Follow procedures established in FSH 1909.13, The Program Development and Budgeting Handbook, for budget development.

5.6—PROJECT DESIGN. Project design is a process for developing detailed project plans, specifications, instructions, and cost estimates for selected actions. During field work for project design, mitigating measures directed by environmental analysis must be incorporated.

5.7—PROJECT EXECUTION AND ADMINISTRATION. Administer project execution to ensure that projects are completed as designed. Document any changes made during execution to

ensure there is a complete project history. Use monitoring and evaluation techniques described in chapter 6 to provide feedback on forest plan implementation.

Chapter 6—Forest Plan Monitoring and Evaluation Process**Contents**

- 6.02 Objectives
- 6.03 Policy
- 6.04 Responsibility
- 6.04a Regional Foresters
- 6.04b Forest Supervisors
- 6.06 References
- 6.1 MONITORING LEVELS
- 6.11 Implementation Monitoring
- 6.12 Effectiveness Monitoring
- 6.13 Validation Monitoring
- 6.2 MONITORING REQUIREMENTS
- 6.21 Monitoring Required by NFMA Regulations
- 6.3 EVALUATION OF MONITORING RESULTS
- 6.31 Evaluation Techniques
- 6.32 Evaluation in Relation to the Three Monitoring Levels
- 6.32a Implementation Monitoring Results
- 6.32b Effectiveness Monitoring Results
- 6.32c Validation Monitoring Results
- 6.33 New Assumptions, Coefficients or External Changes

Monitoring and evaluation are separate, sequential activities that provide information to determine whether programs and projects are meeting forest plan direction. Monitoring collects information, on a sample basis, from sources specified in the forest plan. Evaluation of monitoring results is used to determine the effectiveness of the forest plan and the need to either change the plan through amendment or revision or to continue with the plan. This chapter establishes procedural guidance for monitoring and evaluating forest plans. Overall direction is found in FSM 1922.7 and 36 CFR 219.12(k).

6.02—Objectives. The overall objective of monitoring and evaluating forest plans is to determine whether programs and projects are meeting forest plan direction. Within this broad objective, specific goals are to:

1. Ensure that forest plan goals and objectives are being achieved and management prescriptions are being implemented as directed.

2. Determine if the costs of implementing the plan and the management effects are occurring as predicted.

6.03—Policy

1. Ensure that the intensity of monitoring is commensurate with the risks, costs, and values involved in meeting plan objectives through resource management.

2. Use the formal management review system in FSM 1400 as an approach to evaluate overall effectiveness of forest plan monitoring.

3. Involve the public and other agencies as appropriate in the monitoring process.

6.04—Responsibility

6.04a—Regional Foresters. It is the responsibility of the Regional Forest to:

1. Ensure forest-level commitment to monitoring and evaluation of forest plan implementation.

2. Ensure the distribution of those monitoring and evaluation results that have application to other Forests.

3. Use accumulated results or monitoring and subsequent evaluations as the basis for amending regional guides.

6.04b—Forest Supervisors. Forest Supervisors are responsible for ensuring that the forest plan contains a monitoring and evaluation program as part of plan implementation and for overseeing monitoring and evaluation.

6.06—References. The following Department and Forest Service

Handbooks provide direction and standards to guide monitoring:

1. FSH 2109.14, Air Resources Management Handbook

2. FSH 2209.11, Range Project Effectiveness Analysis Handbook

3. FSH 2409.13, Timber Resource Planning Handbook

4. FSH 2509.15, Watershed Improvement Handbook

5. FSH 2509.16, Water Resource Inventory Handbook

6. FSH 2509.18, Soil Management Handbook

7. FSH 2809.12, Minerals Planning Handbook

8. FSH 2809.13, Minerals Program Handbook

9. FSH 7109.52, Engineering Activities Evaluation Handbook

10. USDA Handbook 434, National Forest Landscape Management

11. USDA Handbook 462, The Visual Management System

12. USDA Handbook 478, National Forest Landscape Management—Utilities

13. USDA Handbook 484, National Forest Landscape Management—Range

14. USDA Handbook 483, National Forest Landscape Management—Roads

15. USDA Handbook 559, National Forest Landscape Management—Timber

16. USDA Handbook 608, National Forest Landscape Management—Fire

17. USDA Handbook 617, National Forest Landscape Management—Ski Areas

In addition to the preceding Service-wide Handbooks, there are regional and forest-level handbooks in the resource areas that may contain direction and standards relevant to monitoring.

6.1—MONITORING LEVELS. There are three distinct levels of monitoring: (1) implementation monitoring, (2) effectiveness monitoring, and (3) validation monitoring. These levels are defined in FSM 1822.7. Exhibit 1 provides examples of each level.

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EXHIBIT 1

MONITORING PROCESS WITH EXAMPLES FOR PROJECT MONITORING

<u>FOREST PLAN</u>	<u>PROJECT ACTION</u>	<u>IMPLEMENTATION MONITORING</u>	<u>EFFECTIVENESS MONITORING</u>	<u>VALIDATION MONITORING</u>
<p>Items to Monitor</p> <p>1 Objectives</p> <p>2 Standards and Guidelines</p> <p>3 Minimum Mgt Requirements</p> <p>These are established to meet goals, policy and regulations</p>	<p>Prescribe site specific methods, practices, objectives, and design to carry out forest plan</p>	<p>Determine if plans and prescriptions are implemented as designed</p>	<p>Determine if implemented plans and prescriptions achieve objectives, standards and guidelines, and other requirements</p>	<p>Determine if objectives, standards and guidelines, and other requirements meet regulations, goals, and policy</p>
<u>ITEMS TO MONITOR:</u>	<u>PROJECT STANDARD:</u>	<u>QUESTIONS TO BE ANSWERED AT EACH LEVEL OF MONITORING:</u>		
Keep erosion within soil T-factors to maintain soil productivity	Prescribed mechanical site preparation Brush chop on contour	Was site preparation carried out according to prescription?	Was erosion rate within tolerance as a result of prescribed practices?	Are tolerance factors sufficient to maintain productivity?
Use 2 step shelterwood on 80% of Ponderosa stands. The objective is to provide stand variety for wildlife and visual	Use 2 step shelterwood on stands 1 thru 8 Clearcut stands 9 and 10	Was harvesting accomplished according to plan?	Did harvest methods provide the expected stand variety?	Did the resulting stand variety provide adequate wildlife habitat and maintain visual quality
Maintain 10% shade over perennial stream to maintain water temp for trout	Limit harvesting trees within 15 feet of the stream	Were cutting restrictions adhered to according to Plan?	Did the prescribed practice(s) provide 10% shade?	Is 10% shade adequate to maintain water temperature within limits for trout?
BMPs to limit sediment yield to meet State and Federal Water Quality Goals for beneficial uses	Set site-specific Mgt practices (BMPs) to match site capability 2 S&W cons practices 3 Mitigation measures	Were BMPs, prescriptions, and measures implemented as designed?	Did BMPs limit sediment yield as expected?	Were sediment limits or surrogates to meet water quality goals (that BMPs were designed for) appropriate to protect beneficial uses
Maintain a minimum of 80% of the pre-disturbance population of primary excavators woodpeckers	Leave minimum of 4 snags per acre	Were a minimum of 4 snags per acre left following the disturbance?	Did at least 80% of the pre-disturbance population remain following the disturbance?	Did maintaining 80% of the pre-disturbance population result in a viable population?

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6.11—Implementation Monitoring. Forest and Ranger District personnel conduct implementation monitoring as part of their routine assignments and document the results in project files as part of their management responsibilities. Use implementation monitoring to determine if plans, prescriptions, projects, and activities are implemented as designed and in compliance with forest plan objectives and standards and guidelines.

6.12—Effectiveness Monitoring. Effectiveness monitoring determines if plans, prescriptions, projects, and activities are effective in meeting management direction, objectives, and the standards and guidelines. This level of monitoring is conducted by resource and/or technical specialists on a limited basis as determined by resource values and risks, and public issues. Begin effectiveness monitoring only after determining that the plan, prescription, project, or activity to be monitored has been implemented according to the plan's direction.

6.13—Validation Monitoring. Validation monitoring determines whether the initial data, assumptions, and coefficients used in development of the plan are correct; or if there is a better way to meet forest planning regulations, policies, goals, and objectives. Conduct validation monitoring when effectiveness monitoring results indicate basic assumptions or coefficients are questionable. Generally, conduct validation monitoring by establishing permanent plots or studies in close coordination with research personnel. Limit the scope of validation monitoring to those coefficients and standards that are not reasonably substantiated by existing research.

6.2—MONITORING REQUIREMENTS

6.21—Monitoring Required by NFMA Regulations. The planning regulations at 36 CFR Part 219 require monitoring to:

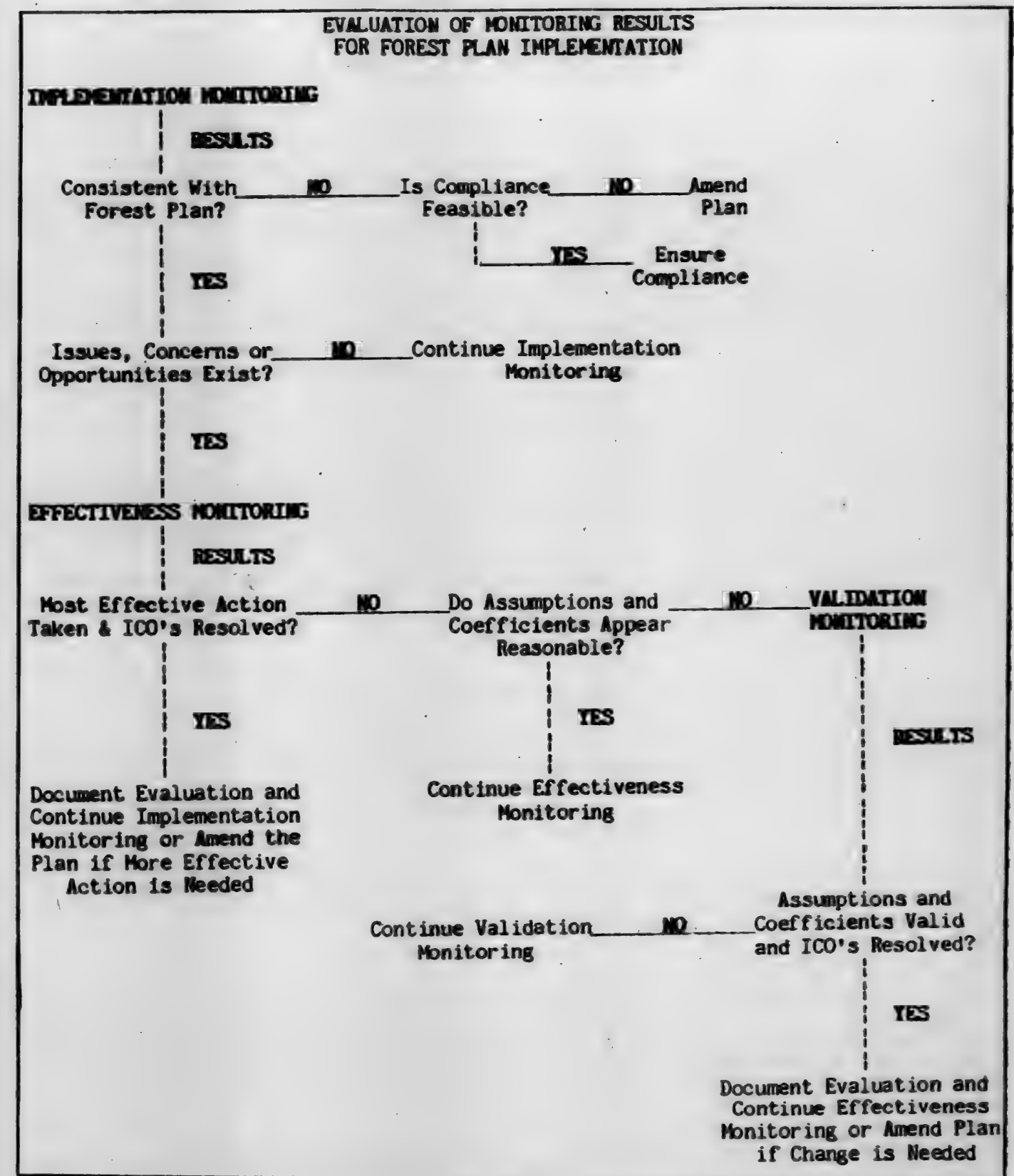
1. Compare planned versus applied management standards and guidelines to determine if objectives are achieved (36 CFR 219.12(k)).
 2. Quantitatively compare planned versus actual outputs and services (36 CFR 219.12(k)(1)).
 3. Measure effects of prescriptions, including significant changes in land productivity (36 CFR 219.12(k)(2)).
 4. Determine planned cost versus actual costs associated with carrying out prescriptions (36 CFR 219.12(k)(3)).
 5. Determine population trends of the management indicator species and relationship to habitat changes (36 CFR 219.19(a)(6)).
 6. Evaluate effects of National Forest management on adjacent land, resources, and communities (36 CFR 219.7(f)).
 7. Identify research needs to support or improve National Forest management (36 CFR 219.28).
 8. Determine if lands are adequately restocked (36 CFR 219.12(k)(5)(i)).
 9. Determine, at least every ten years, if lands identified as unsuitable for timber production have become suitable (36 CFR 219.12(k)(5)(ii)).
 10. Determine whether maximum size limits for harvest areas should be continued (36 CFR 219.12(k)(5)(iii)).
 11. Ensure that destructive insects and disease organisms do not increase to potentially damaging levels following management activities (36 CFR 219.12(k)(5)(iv)).
- 6.3—EVALUATION OF MONITORING RESULTS.** Monitoring and evaluation are separate, sequential tasks. Monitoring is designed to observe and record the results of both natural processes and actions permitted by forest land and resource management

plans. Evaluation looks at those results, determines how well those results meet forest plan direction, and identifies measures to keep the plan viable.

6.31—Evaluation Techniques. Use a full spectrum of techniques and methods to evaluate the results obtained from monitoring. Evaluation techniques include but are not limited to:

1. Site-specific observations by on-site resource specialists.
 2. Field assistance trips by other technical specialists.
 3. General field observations by Forest Service officials.
 4. On-going accomplishment reporting processes such as PAMARS.
 5. Formal management reviews on a scheduled basis.
 6. Discussions with other agencies and the public users.
 7. Management team review of monitoring results.
 8. Interdisciplinary team reviews of monitoring results.
 9. Involvement with existing research activities.
 10. Review and analysis of records documenting monitoring results.
- 6.32—Evaluation in Relation to the Three Monitoring Levels.** Exhibit 1 displays the process for evaluating monitoring results from each monitoring level. There is a direct, sequential relationship between the levels. This relationship is designed to focus initial attention at the implementation monitoring phase. The approved forest plan represents the most appropriate, current management direction; therefore, first ensure that it is implemented as designed. Needless expense and confusion may result by going directly to effectiveness or validation monitoring.

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6.32a—Implementation Monitoring Results. Evaluation of the results of implementation monitoring indicate whether implementation of a project or activity is consistent with the forest plan.

1. If implementation is not consistent with the plan, determine if compliance is feasible. If compliance is feasible, take appropriate measures to ensure complete implementation. If compliance is not feasible, either change the activity or follow the forest plan amendment procedures described in chapter 5.

2. If implementation is consistent with the plan, determine if the original planning issues, concerns, or opportunities (ICO's) are still unresolved or if new ICO's have developed. If there are no ICO's or they are of minor consequence, continue implementation monitoring. If ICO's exist, begin effectiveness monitoring.

6.32b—Effectiveness Monitoring Results. Evaluation of the results of effectiveness monitoring indicate whether plans, prescriptions, projects, or activities are effective in meeting management direction, objectives, and the standards and guidelines.

1. If results indicate the initial action implemented was the most effective and the ICO's have been resolved; document the evaluation and continue implementation monitoring.

2. Even though ICO's have been resolved, the results of effectiveness monitoring may identify a different, more effective action that needs to be taken and the plan requires change. Follow the plan amendment procedures in chapter 5 and continue implementation monitoring.

3. If results indicate the most effective action was not taken or the ICO's have not been resolved, estimate if the basic assumptions and coefficients used in development of the plan are reasonable. If they appear reasonable, continue effectiveness monitoring. If the basic assumptions or coefficients appear questionable, begin validation monitoring.

6.32c—Validation Monitoring Results. Evaluation of the results of validation monitoring indicate whether initial data, assumptions, and coefficients used in development of the plan are correct, or if there is a better way to meet forest planning regulations, policies, goals, and objectives.

1. If results indicate initial assumptions and coefficients are valid, document the evaluation and continue effectiveness monitoring.

2. If ICO's have been resolved but the results of validation monitoring indicate a change in the basic assumptions or coefficients is needed, the plan may

require change. Follow the plan amendment procedures in chapter 5 and continue implementation monitoring.

3. If results indicate assumptions and coefficients are still questionable and the ICO's have not been resolved, continue validation monitoring.

6.33—New Assumptions, Coefficients, or External Changes. It may be necessary to initiate monitoring at the effectiveness or validation level, rather than at the implementation level, when either a condition develops that is uncontrollable under the current management situation or a change is expressly directed. Examples include:

1. Changes in laws, regulations, or direction.

2. Major changes in the resource base.

3. Major economic changes, both local and regional.

4. Fundamental changes in the basic data, assumptions, and coefficients due to proven results of research.

[FR Doc. 88-15751 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Magnolia Cemetery; RC&D Critical Area Treatment Measure Plan; Phillips County, AR

AGENCY: Soil Conservation Service; USDA.

ACTION: Notice of availability of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines 40 CFR Part 1500; and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Magnolia Cemetery Resource Conservation and Development Critical Area Treatment Measure Plan, Phillips County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Gene Sullivan, State Conservationist, Soil Conservation Service, 5404 Federal Office Building, 700 W. Capitol Avenue, Little Rock, Arkansas 72201. Telephone (501) 378-5445.

Magnolia Cemetery, Arkansas

Notice of Finding of No Significant Impact

Supplementary Information: The environmental assessment of this federally assisted project indicates that the project will not cause significant local, regional, or national impacts on

the environment. As a result of these findings, Gene Sullivan, state conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns critical area treatment of 2,500 feet of streambank stabilization, 17 acres of land stabilization, and 200 feet of roadbank stabilization.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies plus interested individuals. A limited number of copies of the FONSI are available to fill single copy requests at the aforementioned address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gene Sullivan, state conservationist, Arkansas.

Notice of Finding of No Significant Impact

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Date: July 12, 1988.

Leroy Brown, Jr.,

Acting State Conservationist.

[FR Doc. 88-16065 Filed 7-14-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Amended Hearing on Indian Civil Rights Issues; Change of Venue

Notice is hereby given pursuant to the provisions of the United States Commission on Civil Rights Act of 1983, Pub. L. 98-183, 97 Stat. 1304, that a public hearing on Indian civil rights issues before a Subcommittee of the U.S. Commission on Civil Rights has been relocated. The hearing will be held in the 100 North Banquet Room of the Monte Vista Hotel, 100 North San Francisco Street, Flagstaff, Arizona 86001.

The purpose, date, and time of the hearing remain the same as previously published in 53 FR 20881 (June 7, 1988) and 53 FR 25524 (July 7, 1988).

Dated at Washington, DC, July 12, 1988.

Murray Friedman,

Vice Chairman.

[FR Doc. 88-15932 Filed 7-14-88; 8:45 am]

BILLING CODE 6225-01-M

Colorado Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m., on September 19, 1988, at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 8, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-15934 Filed 7-14-88; 8:45 am]

BILLING CODE 6335-01-M

New Hampshire Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 3:00 p.m., on July 28, 1988, at the McLane, Graf, Raulerson & Middleton Bldg., Conference Room, 40 Stark St., Manchester, NH 03105. The purpose of the meeting is 1) to provide orientation for new members and receive an update on Commission and regional program activities, 2) plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert A. Wells 603/625-8464 or John I. Binkley, Director of the Eastern Regional Division of the Commission at 202/523-5264 or TDD 202/376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 6, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-15933 Filed 7-14-88; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:00 noon on August 3, 1988, at the West Virginia Human Rights Commission, Room 215, 1036 Quarrier St., Charleston, WV 25301. The purpose of the meeting is 1) discuss the proceedings of the 12/10/87 forum on "Under-representation of Minorities and Women in Institutions of Higher Education in West Virginia," and 2) plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Adam R. Kelly 304/652-4141 or John I. Binkley, Director of the Eastern Regional Division of the Commission at 202/523-5264 or TDD 202/376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 6, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-15935 Filed 7-14-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Bureau of Standards

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in

November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1989 Annual Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: The National Electrical Code (NEC) is published in a separate Technical Committee Report and is available for distribution on June 17, 1988. Comments received on or before October 21, 1988 will be considered by the NEC Committee of NFPA before final action is taken on the proposals.

Thirty-six other Reports are published in the 1989 Annual Meeting Technical Committee Reports and are available for distribution on July 29, 1988. Comments received on or before October 7, 1988 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESS: The National Electrical Code Technical Committee Report and the 1989 Annual Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is \$5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each

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year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02280. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 21, 1988 for the NEC and March 24, 1989 for the others, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by April 7, 1989 for the NEC and March 24, 1989 for the others, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 15-18, 1989, in Washington, DC, by NFPA members.

Dated: July 11, 1988.

Ernest Ambler,
Director.

1989 FALL MEETING TECHNICAL COMMITTEE REPORTS

(P-Partial revision; W-Withdrawal; R-Reconfirmation; N-New; C-Complete Revision)

NFPA No.	Title	Action
12A	Halon 1301 Fire Extinguishing Systems.	P
13E	Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems.	P
20	Centrifugal Fire Pumps.	P
33	Spray Application Using Flammable and Combustible Materials.	P
34	Dipping and Coating Process Using Flammable & Combustible Liquids.	P
51B	Cutting and Welding Process.	P
701	National Electrical Code.	P
71	Central Station Service Signaling Systems.	P
75	Electronic Computer/Data Processing Equipment.	P
78	Lightning Protection Code.	P
85B	Natural Gas-Fired Multiple Burner Boilers-Furnaces.	R

1989 FALL MEETING TECHNICAL COMMITTEE REPORTS—Continued

(P-Partial revision; W-Withdrawal; R-Reconfirmation; N-New; C-Complete Revision)

NFPA No.	Title	Action
85D	Fuel-Oil Fired Multiple Burner Boiler-Furnaces.	P
90A	Air Conditioning and Ventilating Systems.	C
90B	Warm Air Heating and Air Conditioning Systems.	P
110A	Stored Energy Systems.	N
231D	Storage of Rubber Tires.	P
241	Building Construction & Demolition Operations.	P
258	Test Method for Determining Smoke Generation of Solid Materials.	P
260	(Existing Cigarette Ignition Resistance of Upholstered 260A) Furniture Components.	C
298	Chemicals and Wildland Fire Control.	N
402M	Aircraft Rescue & Fire Fighting Operational Procedures.	P
406	Aircraft Hand Fire Extinguishers.	R
422M	Aircraft Fire and Explosion Investigations.	R
423	Aircraft Engine Test Facilities.	C
497B	(Classified) Locations for Electrical Installations in Chemical Processing Plants.	N
497M	Classification of Gases, Vapors and Dusts for Electrical Equipment in Hazardous Locations.	P
701	Flame Resistant Textiles and Films.	C
914	Fire Protection Practices for Rehabilitation of Historic Buildings.	N
1123	Public Display of Fireworks.	C
1201	Organization for Fire Services.	C
1202	Organization of a Fire Department.	W
1231	Water Supplies for Suburban & Rural Fire Fighting.	C
1301	Public Fire Prevention Criteria.	W
1401	Training Reports & Records.	C
1404	Use of Self-Contained Breathing Apparatus in Training Exercises.	N
1931	Fire Department Ground Ladders.	P
1932	Fire Department Ground Ladders, Use, Maintenance & Service Testing.	P

¹ Published in a separate Technical Committee Report.

[FR Doc. 88-15954 Filed 7-14-88; 8:45am]

BILLING CODE 3510-12-M

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Bureau of Standards, Commerce Department.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and

requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02280.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02280. Proposals should be submitted on forms available from the NFPA Standards Administration Office. Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 P.M. E.D.S.T. on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition. Each person who has submitted a written proposal will receive a copy of the report.

Dated: July 11, 1988.
Ernest Ambler,
Director.

NFPA No. and Title	Prop. closing date
NFPA10-1988, Portable Fire Extinguishers.	July 15, 1988.
NFPA10L-1988, Model Enabling Act for the Sale or Leasing and Servicing of Portable Fire Extinguishers.	Do.
NFPA12B-1985, Halon 1211 Fire Extinguishing Systems.	Dec. 2, 1988.
NFPA12D-Proposed, Halogenated Agent Use & Release Reporting Method.	Do.
NFPA14-1988, Installation of Standpipe and Hose System.	July 15, 1988.
NFPA30-1987, Flammable and Combustible Liquids Code.	Jan. 13, 1989.
NFPA30A-1987, Service Stations.	Do.
NFPA30B-Proposed, Aerosol Products.	Do.
NFPA31-1987, Oil Burning Equipment.	July 14, 1989.
NFPA32-1985, Drycleaning Plants.	July 15, 1988.
NFPA35-1987, Manufacture of Organic Coatings.	July 15, 1990.
NFPA37-1984, Stationary Combustion Engines and Gas Turbines.	July 15, 1988.
NFPA45-1988, Fire Protection for Laboratories Using Chemicals.	Open.
NFPA46-1985, Storage of Forest Products.	July 15, 1988.
NFPA53M-1985, Fire Hazards in Oxygen Enriched Atmospheres.	Do.
NFPA70B-1987, Electrical Equipment Maintenance.	Jan. 13, 1989.
NFPA72A-1987, Local Protective Signaling Systems.	July 15, 1988.
NFPA72B-1986, Auxiliary Protective Signaling Systems.	Do.
NFPA72C-1986, Remote Station Protective Signaling Systems.	Do.
NFPA72D-1986, Proprietary Protective Signaling Systems.	Do.
NFPA72E-1987, Automatic Fire Detectors.	Jan. 13, 1989.
NFPA72F-1984, Emergency Voice/Alarm Communication Systems.	July 15, 1988.
NFPA79-1987, Industrial Machines.	Jan. 13, 1989.
NFPA88-1985, Ovens and Furnaces.	July 15, 1988.
NFPA88D-1986, Ovens Using Vacuum Atmosphere.	Do.
NFPA88A-1985, Parking Structures.	Jan. 13, 1989.
NFPA89B-1985, Repair Garages.	Do.
NFPA92B-Proposed, Recommended Practice for Smoke Control Systems in Atria, Covered Malls and Large Areas.	July 15, 1988.
NFPA96-1984, Removal of Smoke & Grease-Laden Vapors from Commercial Cooking Equipment.	Jan. 13, 1989.
NFPA101-1988, Life Safety Code.	Jan. 6, 1989.
NFPA123-1987, Underground Coal Mines.	Jan. 13, 1989.
NFPA150-1985, Firesafety in Racetrack Stables.	Do.
NFPA251-1985, Fire Tests of Building Construction Materials.	July 15, 1988.

NFPA No. and Title	Prop. closing date
NFPA252-1984, Fire Tests of Door Assemblies.	Do.
NFPA253-1984, Critical Radiant Flux Test for Floor Covering Systems.	Do.
NFPA255-1984, Test of Surface Burning Characteristics of Building Materials.	Do.
NFPA257-1985, Fire Tests of Window Assemblies.	Do.
NFPA262-1985, Test for Fire and Smoke Characteristics Wires and Cables.	Do.
NFPA264-Proposed, Test Methods for Heat Release Rates Using Oxygen Consumption/Calorimeter.	July 17, 1988.
NFPA264A-Proposed, Test Methods for Heat Release Rates For Upholstered Furniture Components or Composites Using Oxygen Consumption Calorimeter.	Jan. 13, 1989.
NFPA265-Proposed, Method of Test for Evaluating Room Fire Growth Potential of Textile Wall Coverings.	July 15, 1988.
NFPA312-1984, Fire Protection of Vessels During Construction Repair and Lay-Up.	Do.
NFPA318-Proposed, Protection of Clean Rooms.	Dec. 2, 1988.
NFPA321-1987, Classification of Flammable & Combustible Liquids.	July 14, 1989.
NFPA325M-1984, Fire-Hazard Properties of Flammable Liquids, Gases and Volatile Solids.	July 14, 1988.
NFPA327-1987, Cleaning or Safeguarding Small Tanks and Containers.	July 15, 1990.
NFPA328-1987, Control of Flammable & Combustible Liquids and Gases in Manholes & Sowers.	Do.
NFPA329-1987, Underground Leakage of Flammable & Combustible Liquids.	Do.
NFPA385-1985, Tank Vehicles for Flammable and Combustible Liquids.	July 15, 1988.
NFPA386-1985, Portable Shipping Tanks.	Do.
NFPA418-1979, Roof-Top Helicopter Construction & Protection.	Oct. 1, 1988.
NFPA491M-1986, Hazardous Chemical Releases.	July 14, 1989.
NFPA501C-1986, Recreational Vehicles.	July 15, 1988.
NFPA501D-1986, Recreational Vehicle Parks.	Do.
NFPA704-1985, Identification of Fire Hazards of Materials.	Do.
NFPA850-1986, Fossil Fueled Steam Electric Generating Plants.	Do.
NFPA901-1986, Uniform Coding for Fire Protection.	Do.
NFPA902M-1986, Fire Reporting Field Incident Manual.	Do.
NFPA903M-1986, Property Survey Manual.	Do.
NFPA904M-1986, Incident Follow-up Report Manual.	Do.
NFPA910-1985, Protection of Library Collections from Fire.	Jan. 1, 1989.
NFPA911-1985, Protection of Museum Collections from Fire.	Do.
Proposed 921M, Manual on Investigation of Fires.	July 15, 1988.

NFPA No. and Title	Prop. closing date
NFPA1901-1985, Pumper Fire Apparatus.	Nov. 1, 1988.
NFPA1902-Proposed, Initial Attack Fire Apparatus.	Do.
NFPA1903-Proposed, Mobile Water Supply Fire Apparatus.	Do.
NFPA1904-Proposed, Aerial Ladder Fire Apparatus.	Do.
NFPA1905-Proposed, Elevating Platform Fire Apparatus.	Do.
NFPA1906-Proposed, Water Tower Fire Apparatus.	Do.
NFPA1911-1987, Testing Fire Department Pumps.	Do.
NFPA1965-Proposed, Fire Hose Couplings.	Jan. 13, 1989.
NFPA1986-Proposed, Threadless Couplings.	Do.
NFPA1975-1985, Station Uniforms.	Oct. 1, 1988.
NFPA1981-1987, Open Circuit Self-Contained Breathing Apparatus.	Oct. 15, 1988.
NFPA1983-1985, Personnel Ropes.	Oct. 1, 1989.
NFPA1991-Proposed, Vapor-Protective Suits for Hazardous Chemical Emergencies.	July 15, 1988.
NFPA1992-Proposed, Liquid Splash-Protective Suits for Hazardous Chemical Emergencies.	Do.
NFPA1993-Proposed, Liquid Splash-Protective Suits for Non-Emergency Non-Flammable Hazardous Chemical Situations.	Do.

[FR Doc. 88-15955 Filed 7-14-88; 8:45 am]
BILLING CODE 3510-12-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; North Gulf Oceanic Society (P351C)

On March 29, 1988, notice was published in the Federal Register (53 FR 10139) that an application had been filed by North Gulf Oceanic Society, P.O. Box 15244, Homer, Alaska 99603, to inadvertently harass up to 350 killer whales (*Orcinus orca*) during photo-identification studies for the purpose of scientific research.

Notice is hereby given that on July 11, 1988, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), National Marine Fisheries Service issued a Scientific Research Permit for the above taking to North Gulf Oceanic Society subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

and Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Nancy Foster,
Director, Office of Protected Resources and
Habitat Programs.

Date: July 11, 1988.

[FR Doc. 88-18945 Filed 7-14-88; 8:45 am]
BILLING CODE 3510-23-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Liposome Co. Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Liposome Company Inc., having a place of business at Princeton, NJ, an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7-148,692, "A Synthetic Antigen Evoking Anti-HIV Response." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms of conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,
Office of Federal Patent Licensing, National
Technical Information Service, U.S.
Department of Commerce.

[FR Doc. 88-15901 Filed 7-14-88; 8:45 am]

BILLING CODE 3510-24-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

July 12, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: July 19, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6486. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Categories 339, 341, 347/348 and 352 are being reduced for carryforward used during the previous agreement year.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 51 published in the Federal Register on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation
of Textile Agreements.

Committee for the Implementation of Textile Agreements
July 12, 1988.

Commissioner of Customs,
Department of the Treasury, Washington,
D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 19, 1988, the directive of December 30, 1987 is hereby amended to reduce the current limits for cotton textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Pakistan:

Category	Adjusted 12-mo limit (dozen) ¹
339	606,422
341	244,936
347/348	318,710
352	202,000

¹ The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation
of Textile Agreements.

[FR Doc. 88-15962 Filed 7-14-88; 8:45 am]
BILLING CODE 3510-07-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 20, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 18117) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46928).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1988: Commissary Shelf Stocking, Custodial and Warehouse Service, McClellan Air Force Base, California.

H.G. Fischer,
Acting Executive Director.
[FR Doc. 88-15958 Filed 7-14-88; 8:45 am]
BILLING CODE 6820-22-M

Procurement List 1988 Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: August 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1988, December 10, 1987 (52 FR 46928).

Commodity

Lanyard, Camouflage
1080-00-571-5015

Service

Grounds Maintenance and Sprinkler System Maintenance
Buildings 1250, 1260, 1633, 2410, 2419, 2453, 2800, 2850, 3535, Offsite, 3950,

5601, 6441, 6443, 8251, 8252, 8255, T-38, and 1200 Parking Islands
Edwards Air Force Base, California

Deletion

It is proposed to delete the following service from Procurement List 1988, December 10, 1987 (52 FR 46928): Commissary Shelf Stocking and Custodial Service, Columbus Air Force Base, Mississippi.

H.G. Fischer,
Acting Executive Director.
[FR Doc. 88-15959 Filed 7-14-88; 8:45 am]
BILLING CODE 6820-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Preaward Survey Forms.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Greene, Defense Acquisition Regulatory Council Staff, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

a. Purpose

To protect the government's interest and to ensure timely delivery of items of the items of the requisite quality, contracting officers, prior to award, must make and affirmative determination that the prospective contractor is responsible, i.e., capable of performing the contract. Before making such determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv)

has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 12,000; responses per respondent, .5; total annual responses, 6,000; preparation hours per response, 24; and total response burden hours, 144,000.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0011, Preaward Survey Forms.

Dated: July 8, 1988.

Margaret A. Willis,
FAR Secretariat.

[FR Doc. 88-15952 Filed 7-14-88; 8:45 am]
BILLING CODE 6820-51-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Solicitation Mailing List Application.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy, (202) 523-5168.

SUPPLEMENTARY INFORMATION:

a. Purpose

Government Procurement Solicitation Mailing List Application, is used by all Federal Agencies as an application form for prospective contractors in connection with the establishment and maintenance of lists of firms interested in selling to the Government. The information is used to establish files of firms to be solicited when the products or services they provide are needed by the government.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 243,000; responses per respondent, 4; total annual responses, 972,000; preparation hours per response, .58; and total response burden hours, 563,760.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0002, Solicitation Mailing List Application.

Dated: July 18, 1988.

Margaret A. Willis,
FAR Secretariat.
[FR Doc. 88-15951 Filed 7-14-88; 8:45 am]
BILLING CODE 5030-01-M

DEPARTMENT OF ENERGY

**Economic Regulatory Administration
[ERA Docket No. 88-34-NG]**

**Encor Energy (America) Inc.;
Application to Import Natural Gas
From Canada**

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 2, 1988, of an application filed by Encor Energy (America) Inc. (Encor) for blanket authorization to import up to a maximum of 29.2 Bcf of Canadian natural gas for sale in the domestic spot market over a two-year term beginning on the date of the first delivery.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas

Act and DOE Delegation Order No. 0204-111. Protests motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 15, 1988.

FOR FURTHER INFORMATION:

P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586-4819
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Encor, a Delaware corporation with its principal office in Calgary, Alberta, Canada, is an indirect subsidiary of Encor Energy Corporation Inc., one of Canada's largest natural gas producers, which, in turn, is a subsidiary of TransCanada Pipeline Limited. The imported gas would be supplied from both affiliated and non-affiliated sources and sold at competitive market prices to a wide range of U.S. consumers on a short-term and spot basis. The specific terms of each import and sale would be individually negotiated. Encor intends to use existing facilities of U.S. pipelines to transport the gas. The delivery points where the gas would enter the U.S. would be established during sales contract negotiations and may vary for different transactions.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may permit the import of the gas at any existing point of entry and through any existing transmission system. The ERA will also condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of

the operation and effectiveness of the blanket program.

Public Committee Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application, must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the National Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. There must be filed no later than 4:30 p.m. e.d.t., August 15, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, as oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice in accordance with 10 CFR 590.316.

A copy of Encor's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 7, 1988.
Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.
[FR Doc. 88-15984 Filed 7-14-88; 8:45 am]
BILLING CODE 5450-01-M

**Federal Energy Regulatory
Commission**

[Docket Nos. ER88-506-000, et al.]

**Portland General Electric Co., et al.;
Electric Rate, Small Power Production,
and Interlocking Directorate Filings**

July 11 1988.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER88-506-000]

Take notice that on July 5, 1988, Portland General Electric Company (PGE) tendered for filing an amendment to its November 24, 1987 filing, Rate Schedule FERC No. 60, which is a sales agreement with the City of Santa Clara for the sale during a 19-month period beginning October 1, 1987 of up to 378,920 MWh of firm energy surplus deliverable at rates not in excess of 40 MW per hour. A portion of Santa Clara's energy delivery is assignable to Sacramento Municipal Utility District (SMUD).

PGE states the reason for the amendment is to file a letter agreement between PGE and SMUD, required by the Agreement, pertaining to assignment terms and conditions of the contract.

PGE requests a continuation of the October 1, 1987 effective date and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon the City of Santa Clara, the Sacramento Municipal Utility District, and the Oregon Public Utility Commission.

COMMENT DATE: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Kentucky Utilities Company and Old Dominion Power Company

[Docket No. EC88-24-000]

Take notice that on July 5, 1988, Kentucky Utilities Company (KU) and Old Dominion Power Company (ODP) tendered for filing an application for an Order authorizing a planned corporate reorganization.

KU is a corporation organized and existing under the laws of the Commonwealth of Kentucky, and is engaged in producing and selling electric energy. KU owns 100% of the capital stock of Old Dominion Power Company. ODP is a public utility which furnishes electric energy in five counties in southwestern Virginia. KU also owns 20% of the common stock of Electric Energy, Inc. (EEL), which owns a generating station at Joppa Illinois. The remaining ownership of EEL is as follows: Union Electric Company, 40%; Illinois Power Company, 20%; and Central Illinois Public Service Company, 20% (together with KU, the "Sponsoring Companies"). EEL supplies electrical energy requirements to an installation of the Department of Energy (DOE) at Paducah, Kentucky. All of the electricity sold by EEL is sold either to the DOE or the Sponsoring Companies. KU and ODP propose to reorganize by causing the creation of a holding company (Company) which will become the owner of all the common stock of KU. Under the reorganization plan, KU will retain the whole of its facilities, as well as its ownership interest in ODP and EEL. ODP seeks (1) a declaratory order disclaiming jurisdiction by the Commission over the reorganization insofar as it involves ODP or (2) if such declaratory order is not issued, an order granting any authorization required insofar as the reorganization involves ODP.

KU and ODP states that the proposed corporate reorganization is consistent with the public interest.

COMMENT DATE: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER87-418-003]

Take notice that on July 1, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing its compliance refund report pursuant to the Commission's letter order issued April 18, 1988.

Niagara Mohawk states that it submitted this report for the refund and

interest on the rates charged the New York Power Authority under Rate Schedule No. 138 in accordance with the Settlement Agreement approved by the Commission on April 18, 1988.

Niagara Mohawk further states that the refund (principal and interest) of \$43,886.94 was tendered to the Power Authority on June 2, 1988. This Report shows monthly billing determinants; revenue receipt dates, revenues under the prior, present, and settlement rates; the monthly revenue refund; monthly interest computed; and a summary of such information for the total refund period.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. American Electric Power Service Corp.

[Docket No. ER88-504-000]

Take notice that on July 1, 1988, American Electric Power Service Corp. (AEP) tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Ohio Power Company, which are all AEP affiliated operating subsidiaries (and are sometimes collectively referred to as the AEP Parties), revisions to the AEP Parties' Emergency Energy and Short Term Power rates. The AEP Parties have revised their rate in their Emergency Energy and Short Term Power Service Schedules to insure uniform rates by the AEP System companies for the same service to unaffiliated AEP System companies. These rates previously have been accepted for filing by the Commission in Docket No. ER88-358-000. AEP has requested an effective date of July 1, 1988.

Copies of the filing were served upon Kentucky Public Service Commission, Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporate Commission of Virginia, Public Service Commission of West Virginia, and the appropriate utilities interconnected with the AEP Parties.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Eben W. Pyne

[Docket No. ID-2363-000]

Take notice that on July 6, 1988, Eben W. Pyne tendered for filing an application for authorization under Section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position	Corporation	Classification
Director	Long Island Lighting Company.	Public Utility.
Director	The Home Group, Inc.	owns through a subsidiary all of the stock of two corporations authorized to underwrite or participate in the marketing of securities of a public utility (other than LILCO).
Director	The Home Insurance Company.	owns through a subsidiary all of the stock of two corporations authorized to underwrite or participate in the marketing of a public utility (other than LILCO).

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-75995 Filed 7-14-88; 8:45 am]
BILLING CODE 9717-01-M

Experiments Colloquium; Natural Gas Transportation Network; Auction; Laboratory

Issued July 11, 1988

On July 18, 1988, Professor Charles Plott (California Institute of Technology) and Professor Vernon L. Smith (University of Arizona) will discuss their laboratory experiments, sponsored by

the Federal Energy Regulatory Commission (FERC), concerning the use of auctions for a natural gas transportation network. The colloquium will start at 10:00 a.m. in Hearing Room A, 825 North Capitol Street, NE., Washington, DC.

The professors' research is described in their FERC Office of Economic Policy Technical Reports, *Research on Pricing in a Gas Transportation Network* (no. 88-2) by Professor Plott and *An Experimental Examination of Competition and "Smart" Markets on Natural Gas Pipeline Networks* (no. 88-2) by Professor Smith and his colleagues. A policy context and a summary of this research is provided by a companion Technical Report by Dan Alger (a member of the FERC staff), entitled *A Policy Context for FERC-sponsored Laboratory Experiments concerning Market-based Regulation of Natural Gas Transportation* (no. 88-1). These Technical Reports will be available on July 13 from the Division of Public Inquiries, Room 2214, 825 North Capitol Street, NE., Washington, DC 20426 (202-357-8055) during regular business hours.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15937 Filed 7-14-88; 8:45 am]
BILLING CODE 9717-01-M

[Docket Nos. ER88-502-000, et al.]

Toledo Edison Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Toledo Edison Company

[Docket No. ER88-502-000]

July 8, 1988.

Take notice that on June 30, 1988, Toledo Edison Company (Toledo Edison) tendered for filing the Fourth Addendum to the Municipal Resale Service Rate Agreement between Toledo Edison and American Municipal Power-Ohio, Inc. (AMP-Ohio) dated June 8, 1988.

Toledo Edison states that the Fourth Addendum permits AMP-Ohio to request that demand charges for production transmission and distribution capacity be assessed on the basis of the Monthly Maximum Coincident Peak Demand, as defined in the Fourth Addendum, at all Customer Delivery Points in lieu of the monthly maximum noncoincident peak demand

at each Customer Delivery Point. Toledo Edison further states that the Fourth Addendum to the Municipal Resale Service Rate Agreement contains certain modifications which have been found to be necessary or desirable as a result of the experience of the parties. Toledo Edison states that the Fourth addendum will not have any impact on rates or sales under the Municipal Resale Service Rate Agreement, and has requested waiver of the Commission's regulations to the extent necessary to permit the Fourth Addendum to become effective on June 9, 1988.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this document.

Tucson Electric Power Company, San Diego Gas & Electric Company, SD Acquisition Corp. (California), and San Diego Acquisition Corp. (Arizona)

[Docket No. EC88-23-000]

July 7, 1988.

Take notice that on July 1, 1988, Tucson Electric Power Company (Tucson), San Diego Gas & Electric Company (SDG&E) SD Acquisition Corp. (California Acquisition), and San Diego Acquisition Corp. (Arizona Acquisition) tendered for filing a Joint Application seeking approval of a proposed merger.

Under the merger proposal, Tucson and SDG&E will merge into and within California Acquisition, which will be renamed upon completion of the merger. If the parties so elect, Arizona Acquisition, a wholly-owned subsidiary of SDG&E, would be merged into Tucson and Tucson would become a wholly-owned subsidiary of SDG&E. The parties to the merger anticipate substantial efficiencies issuing from integration of applicants' now-separate electric businesses, and expect no adverse impact on any of their resale or transmission service customers.

Copies of this filing have been served upon the Arizona Corporation Commission and the California Public Utilities Commission.

Comment date: August 5, 1988, in accordance with Standard Paragraph E at the end of this notice.

Watsonville Cogen Corp.

[Docket No. QF88-440-000]

July 8, 1988.

On June 20, 1988, Watsonville Cogen Corp. (Applicant), of P.O. Box 25042, San Mateo, California, 94402 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No

determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located at Watsonville, Santa Cruz County, California. The major equipment will include a combustion turbine-generator, a waste heat recovery boiler, and an extraction steam turbine-generator. The facility will provide useful thermal energy to an industrial process. The net electric power production capacity will be approximately 28.7 megawatts. The primary energy source will be natural gas.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

4. Kamine South Glens Falls Cogen Co., Inc.

[Docket No. QF88-437-000]

July 8, 1988.

On June 14, 1988, Kamine South Glens Falls Cogen Co., Inc. (Applicant), of 1620 Route 22 East, Union, New Jersey 07083, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the James River Corporation in South Glens Falls, New York. The facility will consist of a gas turbine generator, a waste heat recovery steam generator equipped with supplementary firing and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used in a papermaking process. The net electric power production capacity of the facility will be 50 MW. The primary source of energy will be natural gas. Construction of the facility will begin September 1988.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

5. Colstrip Energy Limited Partnership

[Docket No. ER88-500-000]

July 8, 1988.

Take notice that on June 30, 1988, Colstrip Energy Limited Partnership (Colstrip), a limited partnership consisting of Rosebud Energy Corp., Spruce Limited Partnership and Harrier Power Corporation, tendered for filing pursuant to 18 CFR 35.1 and 35.12, proposed FERC Rate Schedule No. 1, applicable to sales of energy by Colstrip to the Montana Power Company (MPC) from a waste coal electric generating

facility to be located in Rosebud County, Montana (Facility). The Facility is certified as a qualifying cogeneration facility and as a qualifying small power production facility within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and the regulations promulgated thereunder.

The proposed initial rate is set forth in the Power Purchase Agreement, as amended, dated October 15, 1984, between Colstrip and MPC. Pursuant to Order Nos. 5017 and 5017a of the Public Service Commission of the State of Montana (Montana Commission), the Power Purchase Agreement establishes a purchase price, based on MPC's avoided cost, for all electricity delivered by Colstrip to MPC which includes both an energy charge and a capacity charge.

The energy and capacity rates are comprised of a scheduled component and an escalating component. The scheduled component is based on a schedule prescribed by the Power Purchase Agreement for each year thereafter for the first 15 years of project operation. Starting in year 16, the scheduled component will be established based on order of the Montana Commission. The escalating component is calculated based on rates established by the Montana Commission pursuant to tariffs filed by MPC.

Colstrip requests waiver of the Federal Energy Regulatory Commission's (Commission) notice requirements so that the rate schedule may take effect as of the date of Colstrip's initial delivery to MPC.

Additionally, Colstrip seeks waiver of the Commission's regulations regarding cost of service documentation, accounting practices, reporting requirements, filing charges and annual charges as well as waiver as to property dispositions and consolidations, securities issuances or assumptions of liability, the holding of interlocking positions and such other matters as the Commission deems appropriate.

Copies of the instant filing have been served upon MPC and the Montana Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Kanawha Valley Power Company

[Docket No. ER88-499-000]

July 8, 1988.

Take notice that on June 30, 1988, Kanawha Valley Power Company (Kanawha) tendered for filing modifications to its 1935 and 1937 Agreements (Schedule FPC Nos. 1 and 2, respectively) with Appalachian Power

Company (Appalachian) providing for the supply of power and energy from Kanawha's Marmet and London (Project No. 1175) and Winfield (Project No. 1290) hydro-electric plants, respectively, to be effective September 1, 1988.

The modifications would increase annual revenues to Kanawha for sales to Appalachian by \$753,579 based on the twelve month period ended April 30, 1988.

The proposed changes are required due to increases in the cost of providing service under the 1935 and 1937 Agreements since the 1st rate modification in April 1988. The rates under the proposed modification are designed to provide Kanawha with the opportunity to earn a 10.42% overall return. Both Kanawha and Appalachian are affiliates of the American Electric Power System.

Kanawha states that a copy of the filing has been provided to the Public Service Commission of West Virginia, the Virginia State Corporation Commission and Appalachian Power Company.

7. Detroit Edison Company

[Docket No. ER88-493-000]

July 8, 1988.

Take notice that on June 29, 1988, Detroit Edison Company (Detroit Edison) tendered for filing Supplement No. 3 and Supplement No. 4 to Detroit Edison's Rate Schedule No. 23.

Detroit Edison states that it had constructed an additional connection and delivery point between its system and the system of the City of Wyandotte, Michigan, as requested by the City. Detroit Edison states that the connection is scheduled to be completed and ready to be energized on June 30, 1988. Detroit Edison further states that Supplement No. 3 is a Special Facilities Contract between Detroit Edison and the City which establishes that Wyandotte will pay upon the initiation of service a monthly charge of one-half of one percent of the costs of constructing the facilities to connect the two systems to cover property taxes, insurance, and maintenance and a monthly charge to reserve 25 MW of Detroit Edison's River Rouge-Riverview 120 kV line.

Detroit Edison states that Supplement No. 4 establishes the rates for service at the additional delivery point. The rates provide for a monthly service charge, a demand charge for monthly billing demand, an additional demand charge for maximum demand less a substation credit, energy charges, miscellaneous surcharges and credits all as more fully set forth in the filing. Detroit Edison also

states that under Supplement No. 4 the City may obtain standby service.

Detroit Edison requests an effective date of June 30, 1988 for both Supplement No. 3 and Supplement No. 4.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.
[Docket No. ER88-501-000]

July 8, 1988.

Take notice that on June 30, 1988, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., tendered for filing a Notice of Cancellation of its Rate Schedule F.P.C. No. 9. This terminates its Systems Interconnection Agreement between Montana-Dakota, Otter Tail Power Company (Otter Tail) and Northwestern Public Service Company (NWPS) which was originally dated April 5, 1965.

Notice of proposed cancellation has been served upon Otter Tail and NWPS.

The agreement contains numerous obsolete provisions such as Article II of the agreement relating to the Upper Mississippi Valley Power Pool which no longer exists, having been superseded by the Midwest Area Power Pool. The agreement also has fulfilled its purpose and is no longer necessary.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation
[Docket No. ER88-494-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Newport Electric Corporation dated April 22, 1986.

The April 22, 1986 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to Newport Electric Corporation. The terms of this agreement and the period during the purchase of Peaking Capacity can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Newport Electric Corporation and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation
[Docket No. ER88-495-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation tendered for filing an agreement between Niagara Mohawk Power Corporation and Central Vermont Public Service Corporation dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of firm capacity and related energy to Central Vermont Public Service Corporation. The terms of this agreement and the period during which the purchase of Capacity and Energy can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Central Vermont Public Service Corporation and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation
[Docket No. ER88-496-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation tendered for filing an agreement between Niagara Mohawk Power Corporation and New England Power Company dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of firm capacity and related energy to New England Power Company. The terms of this agreement and the period during which the purchase of Capacity and Energy can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon New England Power Company and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company
[Docket No. ER88-503-000]

July 8, 1988.

Take notice that on July 1, 1988, Arizona Public Service Company (APS) tendered for filing a Letter Agreement between APS and Maricopa County Municipal Water Conservation and Drainage District Number One (MCM) executed June 24, 1988. This Agreement provides for continuation of existing supplemental power, wheeling, administrative and banking services being rendered by APS for MCM for an

extended interim period of six months or upon execution of more comprehensive agreements, whichever date occurs first. Such services are currently provided to MCM under APS FERC Rate Schedule No. 157.

APS with the concurrence of MCM requests waiver of 18 CFR 35.11 and 35.3 so that the Agreement will become effective on July 1, 1988.

No change in rates, revenues or condition of service except extension of the term are proposed.

Copies of this filing have been served upon the Arizona Public Service Company and MCM.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company
[Docket No. ER88-507-000]

July 11, 1988.

Take notice that on July 5, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amended Agreement No. 1 to Municipal Wholesale Firm Power Contract, between KCPL and the City of Carrollton, Missouri dated June 1, 1988. KCPL states that the Amended Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL request an effective date of June 1, 1988, and therefore requests waiver of the Commission's notice requirements.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation
[Docket No. ER88-508-000]

July 11, 1988.

Take notice that on July 5, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with GPU Service Corporation (GPU). The agreement provides that service will occur from time-to-time when either NYSEG or GPU have excess energy available to sell to the other Party and when the purchase of such excess would be economic for that other Party. This agreement will commence on June 1, 1988 and can be terminated by either Party, upon no less than four (4) weeks prior written notice of termination.

NYSEG has filed a copy of this filing with GPU Service Corporation and the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirements be waived and that June 1, 1988 be allowed as the effective date of the filing.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

15. West Texas Utilities Company
[Docket No. ER88-510-000]

July 11, 1988.

Take notice that on July 6, 1988, West Texas Utilities Company (WTU) tendered for filing twenty-nine (29) executed Delivery Point and Service specifications sheets providing for various minor changes to the Service Agreements between WTU and Brazos Electric Power Cooperatives, Inc., Concho Valley Electric Cooperative, Inc., Midwest Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., Stamford Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc., executed under WTU's FERC Electric Tariff, Original Volume No. 1.

WTU states that copies of the filing have been sent to the Public Utility Commission of Texas and the affected full requirements wholesale customers.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation
[Docket No. ER88-497-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation tendered for filing an agreement between Niagara Mohawk Power Corporation and Public Service Company of New Hampshire dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to Public Service Company of New Hampshire. The terms of this agreement and the period during which the purchase of Peaking Capacity can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Public Service Company of New Hampshire and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation
[Docket No. ER88-498-000]

July 8, 1988.

Take notice that on June 30, 1988, Niagara Mohawk Power Corporation tendered for filing an agreement

between Niagara Mohawk Power Corporation and Boston Edison Company dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk Power Corporation of firm capacity and related energy to Boston Edison Company. The terms of this agreement and the period during which the purchase of Capacity and Energy can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Boston Edison Company and the New York State Public Service Commission.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

18. Boston Edison Company
[Docket No. ER88-509-000]

July 11, 1988.

Take notice that on July 5, 1988, Boston Edison Company (Edison) tendered for filing updated charges to be paid by Cambridge Electric Light Company (Cambridge) for the support of Edison's Substation 508 located in North Cambridge, Massachusetts. These charges are filed pursuant to Boston Edison FPC Rate No. 101 approved by the Commission on March 11, 1975 in Docket No. E-9254.

Edison requests waiver of the Commission's notice requirements to permit these charges to be made effective as of July 15, 1988.

Edison states that it has served the filing on Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

Comment date: July 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-15938 Filed 7-14-88; 8:45 am]

BILLING CODE 6717-01-M

Docket Nos. CP88-429-000, et al.]

Pelican Interstate Gas System et al.; Natural Gas Certificate Filings

Take notice that the following filing have been made with the Commission:

1. Pelican Interstate Gas System

[Docket No. CP88-429-000]

July 8, 1988.

Take notice that on June 8, 1988, Pelican Interstate Gas System (Pelican), 1800 Smith Street, Suite 3075, Houston, Texas 77002, filed in Docket No. CP88-429-000 an application, as supplemented July 5, 1988, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Pelican to transport up to a maximum of 15,000 MMBtu of natural gas per day on an interruptible basis for the account of Pogo Producing Company (Pogo), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pelican has entered into a Gas Transportation Agreement dated May 25, 1988, to provide on an interruptible basis transportation of up to a maximum of 15,000 MMBtu per day of natural gas for Pogo for a primary term of one (1) year from May 25, 1988, and continuing month to month thereafter.

Pelican states that it will receive volumes of gas for the account of Pogo at the existing subsea interconnection of the pipeline facilities of Pelican and those of Pogo in West Cameron Block 210, Offshore Louisiana. Pelican proposes to transport and redeliver such gas at the existing onshore terminus of Pelican's pipeline facilities located at the Mobil Cameron Meadows plant in Cameron Parish, Louisiana.

It is stated that the gas to be transported by Pelican for Pogo will be sold to Pontchartrain Natural Gas System (Pontchartrain), a hinchaw pipeline with facilities in Louisiana, pursuant to a gas purchase agreement between Pogo and Pontchartrain dated June 23, 1988. It is further stated that pursuant to Section 311 of the Natural Gas Policy Act of 1978, either Columbia Gulf Transmission Company, ANR Pipeline Company or Natural Gas Pipeline Company of America will further transport the gas from the Mobil

Cameron Meadows plant and redeliver such gas to Pontchartrain for its system supply.

Pelican states that it proposes to charge Pogo a transportation fee of three and three-tenths cents (3.3 cents) per Mcf of gas received for transportation.

Comment date: July 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP88-481-000]

July 11, 1988.

Take notice that on June 20, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88-481-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service to Uniroyal Goodrich Tire Company, formerly B.F. Goodrich (Uniroyal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the service to Uniroyal authorized in Docket No. CP81-38. Panhandle states that it delivers gas to Northern Indiana Fuel and Light Company (NIFL) in Allen County, Indiana for ultimate delivery to Uniroyal.

It is stated that Uniroyal has advised Panhandle that the service is no longer a required part of Uniroyal's operations. It is indicated that Panhandle and Uniroyal seek to terminate and abandon this service pursuant to a letter agreement dated June 8, 1987. No abandonment of facilities is proposed herein.

Comment date: August 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Michigan Consolidated Gas Company

[Docket Nos. CP88-404-000; CP88-509-000]

July 11, 1988.

Take notice that Michigan Consolidated Gas Company-Utility Division (MichCon), 500 Griswold Street, Detroit, Michigan 48226 on June 13, 1988, in Docket No. CP88-404-000 applied pursuant to Sections 153.10 through 153.12 of the Commission's Regulations for a Presidential Permit and on June 24, 1988, in Docket No. CP88-509-000 pursuant to Section 3 of the Natural Gas Act applied for authorization for the siting, construction, connection, operation and maintenance of pipeline facilities at the international border between the United States and Canada, which will be used for the importation

and exportation of natural gas, and the place of exit and entry for the imported and exported gas.

MichCon will construct the facilities, which will be called the Belle River-Bickford Pipeline, under an agreement with Union Gas Limited (Union) and St. Clair Pipeline Limited (St. Clair), both subsidiaries of Union Enterprises Limited and all of which are Canadian corporations. Union is a local distribution company located in Ontario, Canada, and St. Clair has been created for the purpose of constructing, owning and operating that portion of the pipeline from the Canadian riverbank to the international border. The new pipeline facilities will result in the interconnection of the transmission systems of MichCon and Union at a point on the international boundary under the St. Clair River.

The gas imported and exported will be done pursuant to an Exchange, Firm Transportation and Interruptible Transportation Agreements between MichCon and Union. In the Exchange Agreement the volumes will be up to 200,000 MMBtu's per day, and the exchange point will be at that point on the Bell River-Bickford Pipeline which is the international border between the U.S. and Canada. In the Firm Transportation Agreement the volume will be 15,000 MMBtu's per day for the first year, a minimum of 15,000 MMBtu's and up to 30,000 MMBtu's per day in the second year and a minimum of 15,000 MMBtu's per day and up to 45,000 MMBtu's on the third and subsequent years of the Agreement. Under this agreement through year one through five Union may request transportation of an "Additional Quantity" of up to 33,333 MMBtu's per day. The receipt and delivery point will be Willow Run, Bell River and the international border. In the Interruptible Transportation Agreement the volume would be up to 2,200,000 MMBtu's at the same receipt and delivery point as stated in the Firm Transportation Agreement.

In this proposal MichCon will not act as the importer or exporter of natural gas under the Agreements. All deliveries of gas at the international border will be deemed to have been made one foot on the U.S. side of the Bell River-Bickford Pipeline.

The Bell River-Bickford Pipeline will be 3 miles of 24 inch O.D. pipeline.

Comment date: August 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Tarpon Transmission Company

[Docket No. CP88-485-000]

July 11, 1988.

Take notice that on June 21, 1988, Tarpon Transmission Company (Tarpon), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-485-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Texas Power Corporation (Texas), a marketer, under the certificate issued in Docket No. CP88-88-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Tarpon states that it proposes to transport natural gas from points of receipt located near the Eugene Island area, Blocks 380 and 381, Offshore Louisiana to a point of delivery located in Block 274 of the Ship Shoal area, South Addition, Offshore Louisiana.

Tarpon further states that the maximum daily and annual quantities that it would transport for Texas would be 40,000 MMBtu equivalent and 4,745,000 MMBtu equivalent, respectively.

Tarpon indicates that in Docket No. ST88-4021-000, filed with the Commission on June 1, 1988, it reported that transportation service for Texas commenced on May 3, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

Comment date: August 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP88-480-000]

July 11, 1988.

Take notice that on June 23, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88-480-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon jurisdictional sales service provided to Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in application which is on file with the Commission and open to public inspection.

It is stated that Panhandle currently provides a quantity of 255,000 Mcf of natural gas per day of firm sales service to Columbia. It is alleged by letter dated April 24, 1987, in accordance with Article 5 of the Gas Sales Contract dated September 1, 1973, (Contract)

Panhandle served notice to Columbia of cancellation of the Contract effective October 31, 1988 (Termination Notice). It is asserted that by letter dated June 2, 1988, Columbia notified Panhandle that it no longer requires sales service from Panhandle thereby accepting and confirming the Termination Notice. It is further asserted that there would be no abandonment of facilities, only the jurisdictional sales service is being discontinued as requested by Columbia. It is alleged that Columbia indicates that at the present time it does not require "replacement" service from Panhandle. The facilities presently in place would be used to provide transportation service as may be required by Columbia and other shippers.

Panhandle states that it has not as yet made an election pursuant to Order No. 500 with respect to the resolution of take-or-pay obligations. It is stated that this matter would be the subject of a future filing with the Commission. It is further stated that the proposal is with prejudice to Panhandle's rights to recover the appropriate residual costs associated with this service and any amount due and payable pursuant to the service provided under the Contract.

Panhandle submits that the proposed abandonment of service is in the public interest because such is at the request of Columbia.

Comment date: August 1, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held

without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear to be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15990 Filed 7-14-88; 8:45 am]
BILLING CODE 6717-01-01

[Docket Nos. CP88-551-000 et al.]

United Gas Pipeline Company et al.; Natural Gas Certificate Filings

July 13, 1988.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipeline Company

[Docket No. CP88-551-000]

Take notice that on July 7, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88-551-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Amoco Production Company

(Amoco). United explains that service commenced May 4, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4387. United explains that the peak day quantity would be 30,900 dekatherms, the average daily quantity would be 30,900 dekatherms, and that the annual quantity would be 11,276,500 dekatherms. United explains that it would receive natural gas for Amoco's account at an existing interconnection between United and Sea Robin Pipeline Company (Sea Robin) in Vermilion Parish, Louisiana. United states that it would redeliver the gas for Amoco's account at an existing interconnection between United and Dow Intrastate Gas Company in Lafayette Parish, Louisiana.

Comment date: August 28, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88-522-000]

Take notice that on June 27, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP88-522-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity for authorization to provide standby service to its Rate Schedules CD, G and GS customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that the proposed standby service would allow Rate Schedules CD, G and GS customers that convert a portion of their firm sales entitlement to firm transportation service to elect standby service equivalent to the amount of service converted, not to exceed fifty percent of the lesser of the customer's original or reduced sales entitlement. Tennessee states that a customer's election to receive standby service would be made at the same time the customer notifies Tennessee of its intent to exercise its conversion rights under § 284.10 of the Regulations. Further, the customer may choose on any day to receive gas transportation service or gas sales service, or any combination of those services within the customer's elected standby service entitlement, it is stated.

Tennessee states that the gas transportation service would be pursuant to its Rate Schedule FT-A and the gas sales service would be pursuant to the terms of the applicable Rate Schedules CD, G or GS. Tennessee states that the Reservation Charge under Rate Schedule FT-A which would otherwise be applicable to conversion

customers would be waived to the extent the customer has elected standby service. Rate Schedules CD and G customers would instead pay a demand charge under those rate schedules, calculated on the customer's firm sales plus standby service entitlement, it is stated. Tennessee states that for transportation service within standby entitlement, Rate Schedules CD and G customers would pay the Standby Transportation Commodity Rate and Rate Schedule GS customers would pay a one-part Standby Transportation Commodity Rate. Tennessee states that firm sales service within standby entitlement would be provided at the applicable Rate Schedules CD, G and GS commodity and gas rates.

Comment date: August 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Great Lakes Gas Transmission Company

[Docket No. CP88-539-000]

Take notice that on July 1, 1988, Great Lakes Gas Transmission Company (Applicant), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88-539-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to provide gas transportation service on a firm basis along with overrun service for Consumers Power Company (Consumers), a Michigan gas distribution company, and POCO Petroleum Ltd. (POCO), a Canadian supplier, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Consumers and POCO have requested that Great Lakes transport up to 50,000 Mcf and 15,000 Mcf, per day, respectively, for an initial contract quantity, and up to 59,000 Mcf and 25,000 Mcf per day, respectively, effective November 1, 1988, as the increased contract quantity. Applicant indicates that it also proposes to provide overrun service if mutually agreed upon by the parties. Great Lakes states that it would receive the gas at a point on the international boundary at Emerson, Manitoba, and transport the gas to an existing point of interconnection between the facilities of Great Lakes and ANR Pipeline Company, located at Fortune Lake, Michigan. Applicant indicates that both the POCO and Consumers volumes would be utilized by Consumers for its system supply.

Great Lakes states that it has entered into transportation service agreements with Consumers and POCO each dated

May 25, 1988, which provide for a 15-year term for the firm and overrun service. It is indicated that the agreements also provide for rates of monthly Demand-1 charge of \$1.066 per Mcf of contract quantity, Demand-2 charge of 3.572 cents per Mcf multiplied by one-twelfth of the annual contract quantity, and commodity charge of 15.195 cents per Mcf for volumes received for transportation under the agreements. Applicant states that these demand and commodity charges represent the transportation components of Rate Schedule CQ-2 of Great Lakes' FERC Gas Tariff, under which volumes are also transported from the international boundary near Emerson, Manitoba to the Fortune Lake, Michigan interconnection.

Applicant also proposes an overrun charge equal to Applicant's 140 percent load factor rate, as determined for the demand and commodity components as noted above.

It is indicated that no new facilities are required to provide the proposed service of Consumers and POCO.

Comment date: August 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipeline Company

[Docket No. CP88-553-000]

Take notice that on July 7, 1988, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251 filed in Docket No. CP88-553-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-8-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas for Mobil Oil Exploration and Producing Southeast, Inc. (Mobil). United explains that service commenced May 4, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-4370. United explains that the peak day quantity would be 103,000 dekatherms, the average daily quantity would be 103,000 dekatherms, and that the annual quantity would be 37,595,000 dekatherms. United explains that it would receive natural gas for Mobil's account at an existing interconnection between United and Sea Robin Pipeline Company (Sea Robin) in Vermilion Parish, Louisiana. United states that it would redeliver the gas for Mobil's account at an existing interconnection between United and Florida Gas

Transmission Company in St. Landry Parish, Louisiana.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP88-538-000]

Take notice that on June 30, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-538-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a one-inch sales tap near Covington, St. Tammany Parish, Louisiana, under the blanket authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that the new sales tap would enable United to supply an estimated average of one Mcf of natural gas per day to Entex Inc., under United's Rate Schedule DG-N, for resale to Mrs. Patricia R. Strain's residence near Covington, St. Tammany Parish, Louisiana. United further states that it would construct the proposed sales tap on its existing 10-inch tie-over to the Bogalusa Junction-Amite lateral main line near Covington. According to United, Entex would reimburse United for the construction cost of the proposed sales tap. Finally, United states that it has sufficient capacity to render the herein proposed service without detriment or disadvantage to its other existing customers.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rules 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15997 Filed 7-14-88; 8:45 am]

BILLING CODE 5717-01-01

[Docket No. RP82-55-038]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 11, 1988.

Take notice that on July 6, 1988, Transcontinental Gas Pipe Line Corporation (Transco) filed in the captioned proceeding certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed effective dates of the revised tariff sheets are October 1, and November 1, 1987; January 1, February 1, April 22, May 1, June 1, and August 1, 1988.

Transco states that the purpose of the instant filing is to revise Transco's sales and transportation rates to reflect the cost allocation and rate design methodology approved for the Transco system by the Commission in Opinion Nos. 280 and 260-A issued in this docket on December 30, 1986 and August 19, 1987, respectively, as modified by the Commission's October 18, 1987 order on rehearing, and the October 19, 1987 and December 10, 1987 letter orders of the Director, Office of Pipeline and Producer Regulation, which letter orders rejected Transco's compliance filings herein of September 18, 1987, and November 3, 1987, respectively. In that regard, the instant filing is submitted in accordance with Ordering Paragraph (B) of the Commission's Order Denying Appeals of Staff Action issued June 6, 1988 in Docket No. RP82-55-033, wherein the Commission directed Transco to file revised tariff sheets in full compliance with Opinion Nos. 280 and 260-A within thirty days of the issue date of its order.

Transco further states that the revised compliance rates contained herein are based on the cost of service and billing determinants contained in: Transco's compliance filing of April 1, 1987 in Docket No. RP87-7-007 which was accepted to become effective on said date by the Commission's order issued May 20, 1987, *Transcontinental Gas Pipe Line Corporation*, 39 FERC 61, 189 (1987); Transco's compliance filing of August 21, 1987 in Docket No. RP87-7-021 (reflecting the reduction in the corporate Federal income tax rate) which was accepted to become effective July 1, 1987 by letter order issued September 24, 1987; and Transco's August 31, 1987 filing in Docket No. RP87-117-000 of revised tariff sheets to provide for collection from its sales and transportation customers of an Annual Charge Adjustment (ACA) of 0.20 cents per dt, which was accepted to be effective October 1, 1987 by an order of the Director of the Office of Pipeline and Producer Regulation issued September 29, 1987 in *Algonquin Gas Transmission Company, et al.*, Docket Nos. RP87-109-000, *et al.*, Appendix B to the filing contains an Mcf-mile study and schedules supporting the derivation of the revised sales and transportation rates included in the filing.

Transco also states that the base tariff rates contained in the revised sheets proposed to be effective October 1, 1987 are based on (i) the non-gas cost component of the rates and mileage of fuel derived in accordance with Opinion Nos. 280 and 260-A and (ii) the cost of gas and fuel (including where applicable the unit rates attributable to demand charges paid to Esso Canada Limited,

formerly Sulpetro Limited) which was effective pursuant to Transco's filing of May 29, 1987 which was approved by the Commission's letter order issued July 16, 1987 in Docket No. TA85-1-29-012, *et al.*

Transco states that copies of the filing are being mailed to each of its customers, State Commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protest should be filed on or before July 18, 1988. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15936 Filed 2-14-88; 8:45 am]

BILLING CODE 5717-01-01

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3415]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared June 27, Through July 1, 1988

Availability of EPA comments prepared June 27, 1988 through July 1, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Request for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the rating assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318)

Draft EISs

ERP No. D-BLM-J365147-WY. Rating EO2. Cody Resource Area Land Management Plan, Implementation, Big Horn and Park Counties, WY.

Summary

EPA has concerns with the extensive amount of deteriorated wetland/riparian

areas and systems in the planning area. Further, EPA finds insufficient information and commitments for meeting surface water quality standards, controlling produced water discharges, and protecting ground water. Standards and guidelines for achieving wetland/stream objectives and for the Clean Water Act monitoring need to be improved.

ERP No. DS-CGD-C50010-NT, Rating EC2, Davids Island Residential Development, Marina and Bridge Access from New Rochelle Mainland and Davids Island Construction, Updated Information and Design Modifications, Bridge and 404 Permits, City of New Rochelle, Long Island Sound, Westchester County, NY.

Summary

EPA's previous objections to the proposed project have been adequately addressed. Although, EPA still has outstanding concerns regarding marine habitats, water quality, and air quality. EPA has requested additional information in the final EIS to address these concerns.

ERP No. D-COE-J38042-ND, Rating 3, Devils Lake Basin, Flood Control and Related Purposes Project, Implementation, Benson, Eddy, Nelson, Walsh, Cavalier, Towner, Rolette, Pierce and Ramsey Counties, ND.

Summary

EPA concludes that the draft EIS is inadequate to meet the purposes of NEPA because it lacks demonstration of a feasible operating plan to attain water quality standards, lack an adequate wetlands mitigation plan, does not analyze water quality impacts in Devils Lake and downstream, and does not provide biological data to adequately explain the purpose and need for the connecting channel or the eastern outlet. EPA recommends a revised or supplemental draft EIS be prepared that corrects these deficiencies according to the provisions of 40 CFR 1502.9.

ERP No. D-FHW-D40233-VA, Rating EC2, VA-642/Hoadly Road Improvements, VA-234 to VA-641, Funding, Prince William County, VA.

Summary

EPA is concerned that this document does not specify many of the impacts directly associated with each build alternative, making it difficult to compare and evaluate the alternatives. Groundwater contamination resulting from the project is also of concern. Furthermore, the final EIS must present stronger evidence concerning the need and the potential benefits of the project.

Dated: July 12, 1988.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 88-18004 Filed 7-14-88; 8:45 am]
BILLING CODE 5550-50-M

[ER-FRL-3414-9]

Environmental Impact Statements; Availability of Environmental Impact Statements Filed July 4, 1988 Through July 8, 1988

Responsible Agency

Office of Federal Activities General Information (202) 382-5074 or (202) 382-5076.

EIS No. 880217, Draft, AFS, NM, Las Huertas Canyon Land and Resource Management Plan, Implementation, Cibola National Forest Bernalillo and Sandoval Counties, NM, Due August 29, 1988, Contact: Jimmy E. Hibbetts (505) 275-5207.

EIS No. 880218, Final, FHW, MD, MD-5/Branch Avenue Improvement, North of I-95 to South of US 301, Funding and 404 Permit, Prince Georges County, MD, Due: August 15, 1988, Contact: Edward Terry (301) 962-4010.

EIS No. 880219, Final, COE, WA, Puget Sound Unconfined Open-Water Disposal Sites for Dredged Material, Phase 1 (Central Puget Sound), Site Identification and Sections 10 and 404 Permits, San Juan, Mason, Thurston, Island, Jefferson, Whatcom, Skagit, and Snohomish Counties, WA, Due: August 15, 1988, Contact: Frank Urabeck (206) 764-3708.

EIS No. 880220, DSUpl, SFW, AK, Becharof National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK, Due: August 29, 1988, Contact: William Knauer (907) 786-3399.

EIS No. 880221, Draft, FAA, MD, 15L/33R Runway Extension, Baltimore/Washington International Airport, Approval and Funding, Anne Arundel County, MD, Due: August 29, 1988, Contact: Frank Squeglia (718) 917-0902.

EIS No. 880222, Final, FHW, WA, I-405 Construction, South Renton Interchange to Sunset Interchange, Funding and Section 10 Permit, City of Renton, King County, WA, Due: August 15, 1988, Contact: P.C. Gregson (206) 753-2120.

EIS 880223, DSUpl, FHW, VT, US 189 Contruction Improvements, Utah Valley to Heber Valley Project, US 189 Widening and Realignment, UT-52 to US 40, Funding and 404 Permit, Utah and Wasatch Counties, UT, Due: September 15, 1988, Contact: Donald W. Killmore (801) 524-5141.

EIS No. 880224, DSUpl, SFW, AK, Alaska Peninsula National Wildlife Refuge Management Plan, Wilderness Recommendations, Designation or Nondesignation, AK, Due: August 30, 1988, Contact: William Knauer (907) 786-3399.

EIS No. 880225, Final FRC, RI, NY, MA, Ocean State Power Project, Natural Gas Fired Combined-Cycle Power Plant and Pipeline Construction and Operation, Licenses and sections 10 and 404 Permits, Providence County, RI; Erie, Livingston, Onondaga, Niagara, Rensselaer and Wyoming Counties, NY and Hampden and Worcester Counties, MA, Due: August 15, 1988, Contact: Lonnie Lister (202) 357-8874.

Dated: July 12, 1988.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 88-18003 Filed 7-14-88; 8:45 am]
BILLING CODE 5550-50-M

[FRL-3414-8]

A.Y. McDonald Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past and oversight costs at the A.Y. McDonald Site, Dubuque, Iowa. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Nancy J. Johnson, Regional Project Manager, U.S. EPA, Region VII, Compliance Section, Superfund Branch, Waste Management Division, 728 Minnesota Ave., Kansas City, Kansas 66101, (913) 236-2858.

Written comments may be submitted to the person above by August 15, 1988.

Date: July 7, 1988.

Carl V. Blomgren,
Acting Waste Management Division Director.
[FR Doc. 88-15926 Filed 7-14-88; 8:45 am]
BILLING CODE 5550-50-M

[FRL-3414-5]

Babb Drum Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the the Babb Drum Site, Little Chicago, South Carolina. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Rosalind Brown, Life Scientist, U.S. EPA, Region IV, Investigations and Cost Recovery Unit, Investigation Support Section, Site Investigation and Support Branch, Waste Management Division, 345 Courtland Street, NE, Atlanta, Georgia 30365, 404/347-5059.

Written comments may be submitted to the person above by August 15, 1988.

June 24, 1988.

Greer C. Tidwell,
Regional Administrator.
[FR Doc. 88-15927 Filed 7-14-88; 8:45 am]
BILLING CODE 5550-50-M

[FRL-3414-4]

Public Hearing on Proposed 404(C) Determination To Withdraw, Deny, or Restrict the Specification or Use of Portions of Hurricane Creek Floodplain and Portions of Unnamed Tributaries of Hurricane Creek

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Section 404(c) Determination and Notice of Public Hearing.

SUMMARY: EPA Region IV is proposing to take action under Section 404(c) of the Clean Water Act (CWA) to prohibit deny, or restrict specification or use of certain Hurricane Creek area waters near the City of Alma in Bacon County, Georgia, as a disposal site for dredged or fill materials in connection with construction of Lake Alma, a proposed 1,400-acre recreational lake project. The waters of the United States which are subject to the proposed 404(c) action include a segment of Hurricane Creek extending 7.2 miles upstream of a point

approximately 4,000 feet south of Georgia Highway 32 (the planned location of the main Lake Alma dam), certain unnamed tributaries flowing into Hurricane Creek, and the wetlands lying adjacent to both the creek segment and these tributaries. This section 404(c) determination is being proposed because EPA Region IV has reason to believe that filling and inundating the above-described waters, including wetland, would have an unacceptable adverse effect on wildlife habitat. In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has decided that a hearing on this proposed 404(c) determination would be in the public interest.

Purpose of Public Notice

The Regional Administrator of Region IV is giving notice of this proposed Section 404(c) action and of a public hearing to consider the action. EPA Region IV is soliciting information and observations about whether filling or inundating the above-described Hurricane Creek waters, including wetlands, would have an unacceptable adverse effect on wildlife habitat.

Hearing Date

August 30, 1988, beginning at 7:00 P.M.

Hearing Location

Bacon County High School Gymnasium, 202 East Fourth Street, Alma, Bacon County, Georgia.

Comments may be submitted prior to the hearing or presented orally and/or in writing at the hearing. The hearing record will remain open after the hearing until close of business September 13, 1988, for receipt of written comments. Written comments or requests for copies of the proposed determination may be submitted to EPA Region IV's designated Record Clerk, Suzanne Potter, Office of Congressional and External Affairs, EPA, 345 Courtland Street, Atlanta, Georgia 30365, (404) 347-3004. Comments should directly address whether EPA Region IV's proposed determination should become the Agency's final determination or whether corrective action could be taken to reduce the adverse impact of the discharge. All such comments will be considered by EPA Region IV in reaching a decision either to withdraw the proposed determination or make a recommended determination to prohibit, deny, or restrict the specification or use of all or portions of the Hurricane Creek floodplain and tributaries as disposal sites for reservoir construction. Any recommendation from Region IV together with the administrative record

will be forwarded to the EPA Assistant Administrator for Water in Washington, DC, for review and the final determination. The procedures to be used in making the final determination are specified at 40 CFR 231.6.

Copies of all comments submitted in response to this notice will be available for public inspection during normal working hours (8:00 a.m. to 5:00 p.m.) at the EPA, Region IV office in Atlanta.

Individuals with handicaps requiring special assistance at the public hearing should contact Ms. Suzanne Potter at (404) 347-3004 by August 10, 1988, so that reasonable accommodations may be made.

Hearing Procedures

a. The Regional Administrator of EPA, Region IV has designated the Deputy Director of the Region's Water Management Division, Mr. Al J. Smith, to be the Presiding Officer at the hearing.

b. Any person may appear at the hearing and submit oral and/or written statements or data and may be represented by counsel or other authorized representative. Any person may present written statements or recommendations to be included in the hearing file prior to the time the hearing file is closed to public submissions. The Presiding Officer will afford the participants an opportunity for rebuttal.

c. The Presiding Officer will establish reasonable limits on the nature, amount, or form of presentation of documentary material and oral presentations. There will be no cross examination of any hearing participant. Because it appears likely that a number of persons may want to make oral statements during the limited time available for this hearing, those persons wishing consideration of lengthy statements should be prepared to submit them in writing.

d. The hearing file will be open for submission of written comments until close of business on September 13, 1988.

Supplemental Information and Background

A. Section 404(c) Procedure and Criteria

Under Section 404 of the CWA (33 U.S.C. 1251 *et seq.*), any person who proposes to discharge dredged or fill material into the waters of the United States, including wetlands, must first obtain a permit from the Secretary of the Army, acting through the Chief of Engineers. However, CWA Section 404(c) authorizes the EPA Administrator to prohibit or restrict such permitting within any area defined by him if he determines after notice and opportunity

for public hearing that discharges of dredged or fill material there would have an unacceptable adverse effect on municipal water supplies shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. EPA's procedures for implementing Section 404(c) are set forth in 40 CFR, Part 231.

Under § 231.3 of the regulations, Section 404(c) proceedings begin when the Regional Administrator issues a proposed determination that a site should be prohibited, withdrawn, or restricted for use as a disposal site because of unacceptable adverse environmental effects. This proposed determination does not represent a judgment that discharge of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that the issue should be explored. The Regional Administrator then consults with the Corps; if no corrective actions are agreed upon, he issues a public notice, inviting public comments on the proposed determination. The Corps has agreed that if there is a permit application pending, such notice will serve to stay its issuance of the permit.

If there is enough interest, the Regional Administrator or his designee holds a public hearing under § 231.4 to supplement the public comments. After the comment period and the hearing, if one is held, the Regional Administrator or his designee reviews the information available to him and decides whether to withdraw his proposed determination to prohibit, restrict or withdraw a site. If he withdraws the proposed determination, he gives public notice of that step, and the matter drops (unless the Administrator decides to review). Otherwise the Regional Administrator or his designee sends a "recommended determination," and the record on which it was based, to the Administrator for a "final determination." The Administrator or his designee then reviews that material, and makes a final determination whether a discharge of dredged or fill material will result in unacceptable adverse effects warranting the prohibition or restriction of the disposal site. This determination and reasons therefor are then made public.

These regulations define "unacceptable adverse effect" in § 231.2(e) as:

Impact on aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given

to the relevant portions of the Section 404(b)(1) Guidelines (40 CFR Part 230).

The preamble to 40 CFR Part 231 explains that one of the basic functions of section 404(c) is to police the application of the Section 404(b)(1) Guidelines. Those portions of the Guidelines relating to significant degradation of waters of the United States (40 CFR 230.10(c)), as well as consideration of cumulative impacts (40 CFR 230.11(g)), are of particular importance in the evaluation of the unacceptability of environmental impacts in this case. Section 230.10(c) of the Guidelines requires that no discharge of dredged or filled material shall be permitted that contributes to significant degradation of waters of the United States. § 230.10(d) requires that no discharge of dredged or fill material shall be permitted unless appropriate steps have been taken which will minimize potential adverse impacts. Within the decision-making process, § 230.11(g) requires that the permitting authority collect, analyze, consider, and document information relevant to cumulative impacts resulting from the subject action. Thus, it is appropriate under Section 404(c) to take into account whether significant degradation of waters of the United States will occur as a result of individual and/or cumulative fill activities and whether appropriate steps have been taken to minimize adverse impacts.

The Administrator's Section 404(c) authority may be used either to veto a permit which the Corps has determined it would issue (as in the case of the mitigation application described below) or to withdraw an issued permit (as in the case of the 1981 permit for the reservoir construction noted below). Under his Section 404(c) authority, the Administrator may totally prohibit all discharges of dredged or fill material in a defined area or he may impose some partial prohibition, such as a restriction on discharges from a particular type of activity. This proposed Section 404(c) determination is limited to a prohibition on discharges resulting from lake and reservoir construction for the above mentioned sites.

B. Nature of Proposed Discharge (Project Description).

As indicated above, the discharges being proposed are intended to create a recreational lake covering some 1400 acres by means of damming Hurricane Creek and thereby causing the flooding of adjacent tributary and wetland areas. In November 1981, the Corps of Engineers issued Section 404 Permit No. 074 OYN 003752 to the applicant, City of

Alma/Bacon County, for discharges required for construction of an earthen dam and spillway. This permit authorized the discharge of 412,000 cubic yards of fill material into Hurricane Creek and its adjacent wetlands to create Lake Alma. The placement of fill and the resultant impoundment would have destroyed or inundated approximately 1200 acres of floodplain wetlands and other waters.

Construction of the proposed lake was delayed, however, by a 1983 decision of the Eleventh Circuit Court of Appeals. This decision held that a Supplemental Environmental Impact Statement (SEIS) was required to evaluate the impacts of the proposed "greentree reservoirs" plan which had been developed to mitigate some of the adverse effects of lake construction (see "Project History" section below). After completion of this SEIS, the Corps of Engineers indicated its intent in May of this year to issue a second Section 404 permit to the City of Alma/Bacon County (Application No. 074 OYN 008129) authorizing additional discharges needed to implement this mitigation plan.

This second permit would allow discharge of an additional 99,030 cubic yards of fill material for the purposes of constructing 14 earthen dams and an emergency access road. The proposed dams would create 14 greentree reservoirs (forested impoundments) with an aggregate surface area of approximately 194 acres in tributaries to Hurricane Creek. The purpose of the impoundments would be to provide partial mitigation for habitat losses that would result from impounding Hurricane Creek. The construction of these 14 greentree reservoirs would enhance approximately 137 acres of existing wetlands and create 23 acres of new wetlands, primarily to attract waterfowl. Additional habitat improvement is planned for the upland portions (714 acres) of the project site. However, 35 acres of existing wetlands would be filled or flooded by the greentree reservoirs and an additional .5 acre would be filled during construction of the emergency access road. Implementation of the mitigation plan would entail the net loss or degradation of 12.5 acres of existing wetlands.

C. Characteristics and Functions of the Project Site.

Hurricane Creek, located in the Georgia coastal plain, is part of the Satilla River drainage system. The Creek drains a 228 square mile watershed which has been developed primarily for farming and forestry. The 1,000- to 2,000-foot wide floodplain is

well defined but not deeply incised into the constituent sands and abundant organic matter. The main channel is often braided with three or four separate channels. Where the channel is defined it has an average width of 40 to 60 feet and a depth of 2 to 3 feet. Deeper pools retain water even during no-flow conditions. Mean daily flow in Hurricane Creek is estimated at 112 cubic feet per second (cfs); however, flows range from 0 cfs during extended droughts to peak flows of 4450 cfs (1953) or greater during storm events. The creek contains a diverse fish community (25 species) and a supporting snag and drift macroinvertebrate community.

The proposed Lake Alma site encompasses approximately 1350 acres of bottomland hardwoods, e.g., forested floodplain areas including the bay swamp community in the Hurricane Creek floodplain and branch swamp communities in the drainageways to Hurricane Creek. The wetlands along this 7.2 mile reach of the Creek are relatively undisturbed. As such, they provide high quality, diverse habitat for fish and wildlife, a travel corridor for upland and wetland animals, food web production for on-site and downstream biological communities, nutrient and pollutant uptake and assimilation, floodwater storage, and flow moderation. Additionally, they serve as an environment for outdoor activities including fishing, hunting, and bird watching as well as other nature-oriented activities.

The major floodplain plant communities include nearly mature bay swamp and branch swamp associations. The bay swamp community is located in the main floodplain of Hurricane Creek where soils consist primarily of alluvial deposits. The community is characterized by broadleaf evergreen and deciduous hardwood species that are adapted to periodic inundation. Overstory trees include sweetbay, loblolly bay, swamp redbay, red maple, swamp blackgum, sweetgum, water oak, cypress, ogeechee plum, and black willow.

The branch swamp communities are located in the drainageways leading to the main floodplain. They are similar in composition to the bay swamps but have a greater number of deciduous trees and shrubs and more abundant understory vegetation. Understory vegetation includes sweetpepper bush, greenbriar, honey suckle, privet, saw palmetto, muscadine, and wildgrape. Pitcher plant bogs are located at the edge of the floodplain at sites where seepage from adjacent uplands occurs. The bogs contain trumpet pitcher plant

and hooded pitcher plant which are classified as threatened within the State of Georgia. Adjacent to the floodplain are less diverse plant associations including sandhill, upland pine, pine plantation, and cleared or abandoned fields.

The forested wetlands which would be lost to project construction are part of an intact, functioning system that has specifically adapted to the pulsed hydrologic regime of Hurricane Creek and its tributaries. A variety of contiguous habitats are created within the floodplain by natural fluctuations in water levels including forested wetlands, braided stream channel, remnant pools, hummocks, and floodplain-upland interface. This segmentation of the environment allows the bottomland hardwoods to support aquatic, semiaquatic, and terrestrial animal communities. Vertical stratification of the forest canopy, subcanopy, and ground cover also contributes to habitat diversity. Hence, the floodplain is used by fish and wildlife as a resting, breeding, rearing, and feeding area as well as a travel corridor in an area surrounded by low quality wildlife habitat such as urban, agricultural, and pine plantation areas.

In fact, the bulk of primary (plant) and secondary (animal) production is accomplished during the seasonal inundation of the creek swamp floodplain. Further, leaf biomass produced by the trees and shrubs provides the trophic basis for the diverse fish and wildlife communities both on the project site and downstream. The mixed hardwood tree community within the proposed project site is conducive to a diversity of wildlife because the tree species have various periods of fruition resulting in staggered mast (acorn and seeds) and fruit production. This makes food available for a variety of wildlife throughout the year. As these trees mature, their habitat value and food production will increase.

Wetlands in Hurricane Creek play a role in maintaining and/or improving water quality, as well as regulating water quantity. Pollutants from agricultural, silvicultural, and urban activities in the watershed are trapped, assimilated, or transformed within the diverse substrates and microclimates provided by the wetlands. Water temperatures in the creek and remnant pools are modulated by the shading effects of the forest canopy. Wetland trees and shrubs retard floodwaters, which are temporarily stored in the floodplain. This situation tends to decrease downstream flood stages.

During drier times of the year, water stored in the spongy organic substrate of the wetlands is released, contributing to stream base flows.

As noted, creek swamps such as this gum-bay-maple assemblage are among the most productive wildlife habitats in the coastal plain. Moreover, they are becoming increasingly valuable due to the rate at which these freshwater forest communities are being lost in the Southeast through agricultural/silvicultural development, drainage projects, and impoundments. By recent estimates, over 7,300 acres of wetlands, mostly freshwater types, are being destroyed each year in the State of Georgia. Hence, the impacts of the Lake Alma Project cannot be viewed in isolation.

D. Adverse Impacts of Permit Issuance

Constructing the main dam, clearing the floodplain, and impounding Hurricane Creek to create an artificial lake will destroy or inundate a 1,350-acre section of a productive floodplain forest and blackwater creek system. This loss represents approximately 35 percent of the total wetlands in the Bacon County portion of the Hurricane Creek watershed. Virtually all of the diverse forested habitat that now exists in the 7.2 mile reach of the floodplain will be destroyed. The proposed Lake will physically eliminate all of the forest-stream-pool habitat and the floodplain community which has adapted to periodic flooding. Wetlands immediately downstream from the dam would be partially dewatered by the proposed structure. Succession to more upland plant communities may eventually occur. Depending on the Lake discharge regime, floodplain wetlands further downstream may be similarly affected. Reduction of detrital export will reduce overall productivity and/or alter species composition of downstream animal communities.

The dam and Lake will permanently block the Hurricane Creek floodplain. Since the floodplain functions as a travel corridor for wildlife, this would disrupt animal and fish movement patterns. Animals currently living on the Lake site or migrating through it will either be killed or forced into adjacent lower quality, upland habitat. There they will have to compete for available food and habitat with the present upland animal communities. This competition may result in temporary disruptions of animal communities and lowered overall population levels, thereby adversely affecting indigenous wildlife.

Although 230 acres of forested wetlands in the upstream end of the proposed reservoir and in several embayments will remain after being selectively timbered (a 75% reduction in tree stems) much of the present wetland value of this area will be destroyed or degraded especially after the remaining trees die from the effects of continuous flooding (3 to 6 foot depth). These areas then will function primarily as scrub-shrub backwater areas of the lake, subject to irregular drawdowns.

The existing forested wetlands will be replaced by a shallow recreational lake with a depth ranging from 3 to 19 feet that contains standing water habitat primarily for fish and bottom dwelling organisms. During the initial few years, the lake should be relatively productive, but thereafter lower productivity may limit its value as a sports fishery. Moreover, it is anticipated that fish species diversity would decline since the project would transform a stream fishery into a still water lake fishery. Approximately 180 acres at the periphery of the proposed lake may develop aquatic weed growth that should provide some habitat for aquatic and semiaquatic animals, but may limit the recreational value of the lake. Anticipated weed control programs—rimming, chemical applications and periodic drawdowns—will reduce the value of this shallow water habitat.

EPA Region IV believes that the destruction of 1,350 acres of relatively undisturbed bottomland hardwoods may constitute significant degradation of the waters of the United States. Forested wetlands and the valuable fish and wildlife habitat they provide have been rapidly declining in the Southeast during the last four decades. On the other hand, flatwater habitat, such as lakes, reservoirs, ponds, and mining pits, has increased. The anticipated wetlands loss represents a substantial portion of the wetlands in the Hurricane Creek watershed and is regionally significant.

While the possibility of unacceptable wildlife habitat losses serves as the primary basis of this proposed 404(c) determination, EPA Region IV has other concerns about the proposed project. These include the effects of nutrient loadings from the Hurricane Creek watershed on water quality in the proposed Lake, especially during warm season, low flow periods; the effects of aquatic weed growth/die-out cycles on the water quality and the recreational value of the Lake; and the effects over the long-term on downstream wetlands and stream communities from changes in flood regime and detrital export.

A mitigation plan has been developed which includes: (1) The construction of

14 small greentree reservoirs (194 acres of forested impoundments) in drainageways adjacent to and upstream from the lake site, (2) tree plantings, and (3) a water management scheme to periodically flood and drain the reservoirs. These forested impoundments are designed primarily to enhance or create water fowl habitat, although other wildlife will also benefit.

Construction of the greentree reservoirs and an access road would destroy or permanently flood 35 acres of existing forested wetlands in the drainage ways. Only 23 acres of new wetlands would be created. The greentree reservoirs would have to be managed regularly and, almost certainly, would require a rigorous beaver and muskrat control program to keep them functioning. Most producing trees will be planted in the greentree reservoirs to improve food supplies for wildlife. However, these benefits will not be realized fully until the trees reach maturity many years after planting.

The 194 acres of habitat which the greentree reservoirs would either create or enhance represent only a very small portion of the wildlife habitat which the project would destroy. According to a 1978 Habitat Evaluation Procedure (HEP) conducted by the U.S. Fish and Wildlife Service, only 13 percent of the wetland habitat units lost by lake construction would be replaced by the mitigation plan. Most of the other functions and values of the forested floodplain wetlands, e.g., leaf litter export and travel corridor, etc., would not be replaced and would be irreparably lost. Although 714 acres of upland habitat surrounding the reservoir would be enhanced as part of the mitigation proposal, the enhancement of uplands will not replace any wetland habitat or other wetland functional losses associated with Lake construction. Based on current information/data, EPA believes that it may not be possible to mitigate for the loss of a 7.2 mile long floodplain corridor and its attendant functions and values.

E. Project History

On December 15, 1976, the final EIS on Lake Alma construction was published. EPA rated the project unsatisfactory based on its significant environmental impacts on wetlands and water quality, and referred the project to the Council on Environmental Quality (CEQ). On June 10, 1977, the Chairman of CEQ in letters to the applicant, City of Alma/Bacon County, and to the Department of Housing and Urban Development (HUD) concurred with EPA's position that the project would result in serious environmental degradation. CEQ

recommended to HUD that project funds should be reprogrammed to more environmentally acceptable projects.

On January 18, 1978, EPA Regional Administrator John White recommended that the Corps of Engineers deny a Section 404 permit for the lake project based on its nonconformance with 404(b)(1) guidelines, EPA's wetland policy, Executive Order 11980, and the expected adverse water quality impacts. U.S. Fish and Wildlife Service (FWS) and Bureau of Outdoor Recreation also recommended denial of this permit.

In 1978, FWS initiated studies to determine the mitigation necessary to offset the habitat losses resulting from the project. The report concluded that 7428 acres of wooded swamp would have to be managed intensively to compensate for these losses. Since this was considered impractical, FWS prepared a mitigation plan to mitigate some of the habitat losses. Based on the applicant's acceptance of this proposed plan, the FWS withdrew its objections to permit issuance in November, 1978. On November 15, 1979, CEQ reviewed the proposed mitigation plan and found it provided inadequate compensation. It then reaffirmed its earlier determination regarding the environmental unacceptability of the Lake Alma Project.

On August 8, 1980, EPA Assistant Administrator E.C. Beck requested review of the Savannah District Engineer's favorable permit decision by the Assistant Secretary of the Army under the MOA per Section 404(q). However, on October 9, 1981, EPA Administrator Ann Gorsuch in a response to a letter from Assistant Secretary of the Army William Gianelli withdrew EPA's objections to permit issuance. Accordingly, on November 10, 1981, the Corps issued Army Permit No. 074 OYN 003752 for the construction of the dam for Lake Alma. The permit stipulated the development of mitigation based on the FWS Plan.

On December 19, 1983, the Eleventh Circuit Court of Appeals determined that a Supplemental EIS would be required to evaluate the impacts of the plan prior to the Corps 404 permit action required for construction of the greentree reservoirs. The court also enjoined lake construction pending completion of the Supplemental EIS.

In January and April 1986, EPA Region IV recommended that the Corps evaluate the impacts of the entire (Lake/mitigation plan) project in the Supplemental EIS. Region IV also stated it intent to consider the total project in the reviewing process. On April 4, 1986, Regional Administrator Jack E. Ravan

recommended denial of the Section 404 permit for the mitigation project as part of the unacceptability of the overall project. In January and November 1987, Region IV's comment letters on the Supplemental EIS reaffirmed a position opposing the project, and stated that if the Corps decided to issue the Section 404 permit then EPA would seriously consider 404(c) action.

On March 25, 1988, Regional Administrator Greer C. Tidwell met with representatives from the State of Georgia Department of Natural Resources, the Corps, and FWS to discuss EPA's objections to the project. Regional Administrator Tidwell also met with representatives from the City of Alma and Bacon County on May 9, 1988, to tour the project site.

After receiving the Corps May 27, 1988, letter stating the Savannah District Engineer's intent to issue a Section 404 permit for the Lake Alma mitigation, Regional Administrator Tidwell notified the Savannah District Engineer, the City of Alma, and Bacon County, on June 8 that he would initiate Section 404(c) proceedings covering the entire project site unless it was demonstrated to him within 15 days that no unacceptable adverse effects would be caused by the project. After considering a June 15, 1988 letter from the Savannah District Engineer, Colonel Ralph V. Locurcio, restating the Corps' position that construction of Lake Alma would serve the public interest, the Regional Administrator initiated the action made subject of this notice.

FOR FURTHER INFORMATION CONTACT:
Frank M. Redmond, Chief, Wetland Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Greer C. Tidwell,
Regional Administrator.
[FR Doc. 88-15929 Filed 7-14-88; 8:45 am]
BILLING CODE 4850-50-M

FEDERAL COMMUNICATIONS COMMISSION

(Report No. CL-88-130)

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Block 5 Cellular RSAs

June 24, 1988.

During the months of August and September, 1988 applications for Block 5 cellular RSAs will be accepted for filing.

Specific filing dates and markets appear on pages 5 and 6 of this notice.

All applications for these markets must be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (ENTER MARKET NUMBER), P.O. Box 371995M, Pittsburgh, PA 15250-7995.

Applications shipped via common carrier or hand carried must be brought to the following address between the hours of 8:30 a.m. and 5:00 p.m.: Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Directions to the Strip Commerce Center filing location appear on page 4 of this notice.

Note.—If the number of applications filed in the previous block of RSAs is excessive, these dates may be modified. If this is necessary a new public notice will be issued.

Format of Applications

Applications must consist of: (1) A completed transmittal sheet, a copy of which is attached hereto (see also page 4); (2) a \$200 fee; and (3) a sealed 5" x 7.5" envelope containing two microfiche copies of the application.

The two microfiche copies of each application shall be prepared in accordance with § 22.913(c) of the Commission's rules.

Each fiche must be labeled at the top with the Applicant's Name, Market Number, Market Name, and Frequency Block. For Example: Jones, Robert Market # 336 California 1—Del Norte Frequency Block A

One microfiche jacket must be labeled "Original" and the other jacket must be labeled "Copy".

The fiche must be black & white (the purple or blue fiche are unacceptable as they do not produce readable paper copies), and the "original" microfiche copy must be archival quality.

The information required by § 22.913(b)(2) must be placed on the 5" x 7.5" microfiche envelope, therefore, must be clearly labeled with the Applicant's Name, Market Number, Market Name, and Frequency Block.

The information on the microfiche envelope must match the information on the transmittal sheet.

The completed transmittal sheet, the \$200 fee and the microfiche envelope must be placed in a 9" x 12" envelope. The market number of the market being applied for must be placed in the lower left hand corner of all envelopes

delivered to the Strip Commerce Center facility.

The certification required under § 22.913(b)(3) is included on the transmittal sheet and will no longer be the first page in the application itself. The applicant chosen in each market will be required to submit its original application and two copies thereof within seven (7) days of the public notice announcing the winning applicant in each market.

Receipt Copies

Applicants wishing stamped receipts must provide an additional copy of the transmittal sheet for each application submitted.

Such applications that are mailed or shipped via common carrier must contain a self-addressed business-sized (approximately 4.5" x 9.5") stamped envelope along with the extra copy of the transmittal sheet. Both the extra copy and the envelope must be attached to the application inside the 9" x 12" outer envelope.

Applications that are hand delivered must not include the receipt copy of the transmittal sheet inside the outer envelope. The receipt copy shall be presented to the acceptance clerk with the 9" x 12" envelope containing the application and will be stamped at that time.

Points to Remember

1. Each application, with associated material (transmittal sheet, check or money order, and 5" x 7.5" microfiche envelope) must be separately packaged in a 9" x 12" outer envelope.
2. A separate \$200 fee must be submitted with each application.
3. A separate completed transmittal sheet is required with each application.
4. The label on the microfiche envelope must agree with the information on the transmittal sheet and the information on the top of each fiche.
5. The transmittal sheet must be signed in ink (preferably not black ink).
6. No extraneous material (such as transmittal letters) should be submitted; it will only serve to impede the processing of the application.
7. The market name and market number must match.
8. A single check or money order in the amount of \$200 (made payable to the Federal Communications Commission) must be included. Cash is strongly discouraged.
9. For applications sent via the U.S. Postal Service, the market number of the market being applied for must appear at the end of the second line in the address.

BEST COPY AVAILABLE

10. For applications delivered by any means other than the U.S. Postal Service, the market number must appear in the lower left hand corner of the 9" x 12" outer envelope.

11. The 9" x 12" outer envelope may be placed inside a shipping envelope when applications are shipped by couriers which use special shipping envelopes.

12. DO NOT submit FAA Form 7640-1 to the Federal Aviation Administration at the time of filing this application. See *Public Notice* (Report No. CL-88-33, Mimeo No. 726, released November 27, 1987).

13. The application must include a firm financial commitment, as required by section 22.917 of the Commission's Rules.

14. The reduced map, which should show the complete RSA and all CGSAs therein, may be on a scale of 1:500,000. This map must be included in the microfiche copies of the application.

Directions to Strip Commerce Center

From Greater Pittsburgh International Airport and Interstate 79

Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh.

Go through the Fort Pitt tunnels and across the Fort Pitt bridge to Liberty Avenue.

Take Liberty Avenue to 28th Street (28 blocks).

Turn right on 28th Street and follow FCC signs to parking lot.

Enter building at designated area and follow signs.

From Pennsylvania Turnpike

Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3).

Proceed on Grant Street to Liberty Avenue (Approximately 6-7 blocks).

Bear right on to Liberty Avenue.

Take Liberty Avenue to 28th Street.

Turn right on 28th Street and follow FCC signs to parking lot.

Enter building at designated area and follow signs.

Transmittal Sheet

Attached is a copy of the transmittal sheet which must be filed with each cellular application. You may make copies of the attached form for your use. In accordance with Report No. CL-88-119 (released June 2, 1988) copies of the transmittal sheet should be two-sided, containing all the information found on the original. Only a limited number of transmittal sheets will be available to the public through the forms room located at 1919 M Street, NW. in room B-10.

Notice

A copy of this Public Notice (excluding the transmittal sheet) will be placed in the Federal Register.

Acceptance of Applications for Cellular RSAs in Block 5

August 31-September 2

South Dakota

- 634. South Dakota 1—Harding
- 635. South Dakota 2—Corson
- 636. South Dakota 3—McPherson
- 637. South Dakota 4—Marshall
- 638. South Dakota 5—Custer
- 639. South Dakota 6—Haakon
- 640. South Dakota 7—Sully
- 641. South Dakota 8—Kingsbury
- 642. South Dakota 9—Hanson

Wisconsin

- 708. Wisconsin 1—Burnett
- 709. Wisconsin 2—Bayfield
- 710. Wisconsin 3—Vilas
- 711. Wisconsin 4—Marinette
- 712. Wisconsin 5—Pierce
- 713. Wisconsin 6—Trempealeau
- 714. Wisconsin 7—Wood
- 715. Wisconsin 8—Vernon
- 716. Wisconsin 9—Columbia
- 717. Wisconsin 10—Door

September 7-9, 1988

Iowa

- 412. Iowa 1—Mills
- 413. Iowa 2—Union
- 414. Iowa 3—Monroe
- 415. Iowa 4—Muscatine
- 416. Iowa 5—Jackson
- 417. Iowa 6—Iowa
- 418. Iowa 7—Audubon
- 419. Iowa 8—Monona
- 420. Iowa 9—Ida
- 421. Iowa 10—Humboldt
- 422. Iowa 11—Hardin
- 423. Iowa 12—Winnebago
- 424. Iowa 13—Mitchell
- 425. Iowa 14—Kossuth
- 426. Iowa 15—Dickinson
- 427. Iowa 16—Lyon

North Dakota

- 580. North Dakota 1—Divide
- 581. North Dakota 2—Bottineau
- 582. North Dakota 3—Barnes
- 583. North Dakota 4—McKenzie
- 584. North Dakota 5—Kidder

September 14-16, 1988

Minnesota

- 482. Minnesota 1—Kittson
- 483. Minnesota 2—Lake of the Woods
- 484. Minnesota 3—Koochiching
- 485. Minnesota 4—Lake
- 486. Minnesota 5—Wilkin
- 487. Minnesota 6—Hubbard
- 488. Minnesota 7—Chippewa
- 489. Minnesota 8—Lac qui Parle

- 490. Minnesota 9—Pipestone
- 491. Minnesota 10—Le Sueur
- 492. Minnesota 11—Goodhue

Nebraska

- 533. Nebraska 1—Sioux
- 534. Nebraska 2—Cherry
- 535. Nebraska 3—Knox
- 536. Nebraska 4—Grant
- 537. Nebraska 5—Boone
- 538. Nebraska 6—Keith
- 539. Nebraska 7—Hall
- 540. Nebraska 8—Chase
- 541. Nebraska 9—Adams
- 542. Nebraska 10—Cass

September 21-23, 1988

Illinois

- 394. Illinois 1—Jo Daviess
- 395. Illinois 2—Bureau
- 396. Illinois 3—Mercer
- 397. Illinois 4—Adams
- 398. Illinois 5—Mason
- 399. Illinois 6—Montgomery
- 400. Illinois 7—Vermilion
- 401. Illinois 8—Washington
- 402. Illinois 9—Clay

Indiana

- 403. Indiana 1—Newton
- 404. Indiana 2—Kosciusko
- 405. Indiana 3—Huntington
- 406. Indiana 4—Miami
- 407. Indiana 5—Warren
- 408. Indiana 6—Randolph
- 409. Indiana 7—Owen
- 410. Indiana 8—Brown
- 411. Indiana 9—Decatur

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15074 Filed 7-14-88; 8:45 am]

BILLING CODE 6712-01-M

(Report No. W-44)

Window Notice for the Filing of FM Broadcast Applications

Release: July 8, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning July 8, 1988 and ending August 16, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.¹

¹ There exist the potential for interference between this allotment and a recently authorized station on Channel 247C in the British Virgin Islands. The United States is not a party to any bilateral agreement with Great Britain concerning FM Broadcast stations in the British Virgin Islands. However, Channel 247A at Rio Grande may be subject to deletion or replacement.

Channel—247A

- Homewood.....AL
- Globe.....AZ
- Litchfield.....CT
- Chieffland.....FL
- Salysville.....KY
- Orange.....MA
- Essexville.....MI
- Natchez.....MS
- Lebanon.....OH
- Oak Harbor.....OH
- Spangler.....PA
- Rio Grande¹.....PR
- Parsons.....TN

Channel—247C2

- Longview.....TX

Channel—247C

- Pecos.....TX

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15075 Filed 7-14-88; 8:45 am]

BILLING CODE 6712-01-M

(Report No. 1737)

Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 8, 1988.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-657-3800). Oppositions to these petitions must be filed on or before August 1, 1988.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 1, 63 and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1934. (MM Docket No. 84-1298) Number of petitions received: 1

Subject: Amendment of the Commission's Rules for Rural Cellular Services. (CC Docket No. 85-388) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Roland and Heavener, Oklahoma) (MM Docket No. 87-393, RM's-5966 & 6170) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Surfside Beach, South Carolina) (MM Docket No. 87-434,

RM-6021) Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Garden City, Indiana) (MM Docket No. 87-298, RM-5754) Number of petitions received: 1

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15076 Filed 7-14-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-011195-001.

Title: Hyundai Australia Direct Line.

Parties:

PAD Line Overseas S.A. d/b/a/ Pacific Australia Direct Line.

Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment would expand the scope of the agreement to include ports on the West Coast of the United States and ports on the West Coast of Canada.

Agreement No.: 207-011202.

Title: Japan Line, Ltd. Yamashita-Shinnihon Steamship Co., Ltd. Joint Service/Consortium Agreement ("the Service").

Parties:

Japan Line, Ltd., Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed agreement would permit the parties to discuss, plan, establish and operate the Service to be called "Nippon Liner System, Ltd." The parties will discontinue their separate liner service in the agreement trade. The parties have requested a shortened review period.

Agreement No.: 217-011203.

Title: Wallenius-NOSAC Space Charter and Cooperative Working Agreement.

Parties:

Wallenius Lines.

Norwegian Specialized Autocarriers-NOSAC.

Synopsis: The proposed agreement would authorize the parties to agree on the chartering of space or sub-chartering of space to Wallenius Lines on vehicle carrier vessels owned or chartered by NOSAC in the trades between United Kingdom/Eire and Atlantic (including Baltic and North Sea) ports of Europe including shipments from, to or between inland or coastal points via ports.

By Order of the Federal Maritime Commission.

Dated: July 12, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-15931 Filed 7-14-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 1, 1988.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415) for copies of package)

1. Instructions for Grant Applications for Head Start—0980-0016—These instructions will provide Head Start Program staff with a clear and more detailed description of grantee program design, activities and cost data in order to improve services provided to children and families. Number of Respondents: 1,950; Frequency of Response: 1; Estimated Annual Burden: 11,700 hours.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of packages)

Office of Community Services

1. Requirement for application and annual report, Emergency Community Services Homeless Grant Program—NEW—As required by Pub. L. 100-77, pending regulations require an application from States for homeless assistance grants. Also required are annual reports from grantees which provides information for a mandatory HHS annual report to Congress. Respondents: State or Local Governments. Number of Respondents: 132; Frequency of Response: 1 or 2; Estimated Annual Burden: 8,764 hours.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of package)

Office of The Inspector General

1. Social Security Client Satisfaction Survey—Fiscal Year 1989—0990-0171—This request for information on client satisfaction with Social Security services is needed to determine the effect of staff reductions and productivity and management improvement initiatives on clients. The improvements will be used to identify areas where improvements in service delivery are necessary to maintain SSA's high level of service to the public. Number of Respondents: 4800; Frequency of Response: single time; Estimated Annual Burden: 2,000 hours.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
FSA: 202-245-0852
SSA: 301-985-4149
OS: 202-245-6511
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: Shannah Koss-McCallum.

Date: July 7, 1988.

James V. Oberthaler,
Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88-15077 Filed 7-14-88; 8:45 am]

BILLING CODE 4150-04-M

*[Program Announcement No. OCS-OEA-88-1]**Family Support Administration; Office of Community Services*

Availability of Funds and Requests for Applications Under the Office of Community Services, Office of Energy Assistance, Technical Assistance and Training Discretionary Authority.

AGENCY: Office of Energy Assistance, Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for applications under the Office of Energy Assistance's Technical Assistance and Training Discretionary Authority.

SUMMARY: The Office of Energy Assistance (OEA) announces that applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 2809A of the Low Income Home Energy Assistance Act (the Act) of 1981 (title XXVI of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. 8621) as amended by Title VI of the Human Services Reauthorization Act of 1984 (Pub. L. 98-558) and Title V of the Human Services Reauthorization Act of 1986 (Pub. L. 99-425).

This program announcement consists of three parts. Part I describes the Technical Assistance and Training Program initiative and indicates who is eligible to apply, the types of projects that will be considered for funding and the duration of awards; Part II outlines application requirements; Part III describes the review, selection and award process.

DATE: The closing date for receipt of applications submitted under this Program Announcement is 30 days after publication. An application will be considered to be received on time under either of the following two circumstances:

a. The application was sent via the U.S. Postal Service or by private commercial carrier and postmarked or dated by carrier no later than midnight of the closing date unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specially instructed to do so.)

b. The application is hand delivered on or before the closing date to the Office of Grants Management, Family

Support Administration (FSA), at the address indicated below. Hand delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, (excluding Federal legal holidays) up through the closing date. In establishing the date of receipt of hand-delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA.

Late applications will be returned to the senders without consideration. Applications once submitted are considered final and no additional materials will be accepted by OEA. An application with an original signature and two copies is required. All applications will be assigned an identification number which will be noted on the FSA/Office of Grants Management acknowledgment card that will be sent after receipt of the application package. This number must be referred to in all subsequent communication with OEA concerning the application.

Applicants who have not received an identification number within three (3) weeks after the deadline date should notify Pera Daniels, FSA, Office of Financial Management (OFM), by telephone at (202) 245-0937.

Applications should be mailed or hand delivered to: Family Support Administration, Office of Grants Management, 370 L'Enfant Promenade, SW., Washington, DC 20407 Attn: OCS-OEA-88-1.

FOR FURTHER INFORMATION CONTACT: Susan Peters Telephone: (202) 245-1303 or 252-5319, Family Support Administration, Office of Community Services Office of Energy Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20407.

*Part I. General Information**A. Purpose of the Technical Assistance and Training Discretionary Program*

Section 2809A(a) of the Act authorizes the Secretary of the Department of Health and Human Services to set aside up to \$500,000 each fiscal year to "make grants to State and public agencies and private nonprofit organizations; or to enter into contracts or jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations, to provide training and technical assistance related to the purposes of this subtitle, including collection and dissemination of information about programs and projects assisted under this subtitle, and ongoing matters of regional or national significance that the Secretary finds

would assist in the more effective provision of services under this title."

Allowable activities not specifically mentioned include demonstration projects, clearinghouse activities, and regional and national round tables to promote the sharing of innovative techniques and program models.

B. Applications

OEA is soliciting applications for the following technical assistance and training activities (activities listed are in no particular order of priority):

1. National round tables to promote the sharing of innovative techniques and program models. Round table topics should be of national significance and interest (i.e., reducing recipient dependency, reducing arrearages by coordinating energy assistance, or the case management approach to service delivery).

2. Regional round tables to promote the sharing of information concerning topics of regional significance.

3. Clearinghouse activities related to the collection and dissemination of information relating to the Low Income Home Energy Assistance Program (LIHEAP).

4. Demonstration projects of the following activities/topics related to providing LIHEAP assistance:

- Percentage of Income Payment Plans;
- Innovative Approaches to Reducing Administrative Costs;
- Guaranteed Service Plans.

An application may contain only one project and this project must be identified as responding to one of the project areas stated in this announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

There is no limit to the number of applications that can be submitted under a specific project area as long as each application contains a proposal for a different project.

C. Eligible Applicants

Eligible applicants are States, Indian Tribes, Territories, public agencies and private nonprofit organizations. In addition, section 2809(b) states that "No provision of this section shall be construed to prevent the Secretary from making a grant pursuant to subsection (a) to one or more private nonprofit organizations that apply jointly with a business concern to receive such grant."

D. Availability of Funds

The Office of Energy Assistance (OEA) of the Family Support Administration (FSA) expects to award approximately 3-5 grants. No single

grant will exceed \$200,000 in Federal funds, and no more than one grant will be made to any eligible applicant.

E. Duration of Awards

FSA/OEA expects that most of the funds for these grants will be for an 18-24 month period. Regardless of the time requested in an application, it must be clearly demonstrated that the project work plan will achieve measurable results and can be successfully completed within the funding period requested.

F. General Terms

Grantees are subject to the provisions of Office of Management and Budget Circular A-100 or Government-wide Grants Administration Rules for State and Local Governments, published March 11, 1988, A-122, A-87 and to the provisions of 45 CFR Parts 16, 74, 75, 76, 80, 81, 83, 84, 86, 90, and 91. These are not the only requirements, and grantees will be specifically informed of other grant conditions on receipt of an award. Grantees will be required to submit quarterly financial reports, quarterly narrative reports, a final narrative report, and a final audit for any project that receives OEA funds. Where applicable, grantees are subject to the provisions of the Single Act (Pub. L. 98-502) and OMB Circular A-128. Proportional costs associated with fulfillment of the audit requirement may be charged to the grant.

G. Definitions

For the purpose of this program announcement, the following definitions apply:

"State" means each of the several States and the District of Columbia.

"Indian tribe" means any tribe, band, or other organized group of Indians recognized in the State in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

"Territory" refers to the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Micronesia, the Marshall Islands and Palau.

Except where specifically noted, where the word "State" appears in this program announcement, it also means "Indian Tribe" or "Territory".

A "Low-income LIHEAP household" is a household with income at or below 150 percent of the Department of Health and Human Services (DHHS) poverty level for such State or an amount equal to 80 percent of the State median income. Attachment A to this

announcement is an excerpt from the most recently published poverty guidelines. Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects implemented at the time of publication. (These revised guidelines may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 2040 or through the Office of Energy Assistance).

No other government agency or privately defined poverty guidelines are applicable for the determination of low income eligibility for the LIHEAP.

A "provider of LIHEAP services/programs" refers to those States, Indian Tribes, Territories, and Local Administering Agencies that administer a Federally funded Low Income Home Energy Assistance Program. Local administering agencies include any local public or private nonprofit agency designated by a State, Territory or Indian Tribe to carry out the purposes of the LIHEAP.

H. Population To Be Served

Projects proposed for funding under this announcement must benefit those providers of LIHEAP services/programs, and/or provide long term benefits to low-income LIHEAP households.

I. Indian Tribes

In recognition of the special needs of Indian Tribes and Tribal LIHEAP grantees, priority consideration will be given to proposals which assist and address these populations.

*Part II. Application Requirements**A. Availability of Forms*

Applications for awards under this program must be submitted on the Standard Form (SF) 424. Attachment B to this announcement contain all forms and instructions required for submittal of applications. The forms may be reproduced for use in submitting applications. Additional copies of the announcement may be obtained by writing or telephoning: Susan Peters, Department of Health and Human Services, Family Support Administration, Office of Community Services, Office of Energy Assistance, 330 C Street SW.—Room 2054, Switzer Building, Washington, DC 20201, RE:OCS-OEA-88-1, telephone: (202) 245-1303.

B. Application Package

1. Each application package must include an original and four copies of

the application. The original copy must contain the original signature on the Standard Form 424 of an official of the eligible entity having legal authority to obligate the applicant. Applications must be uniform in composition. They must be submitted on 8 1/2 by 11 inch paper and the text of the application cannot exceed ten (10) single-spaced pages. This excludes the cover page, Table of Contents, Standard Form 424 and its attachments and assurances, as well as any appendices to the application. Do not include extraneous materials, such as promotional brochures, slides, tapes, film clips, etc. They will be discarded.

2. Applications submitted in binders must allow for easy separation and reassembly.

C. Application Content

All applications must include a cover page followed by a Table of Contents with page numbers for each section, subsection, and attachment(s). Each page of the application, including any attachment(s), must be numbered consecutively. The Table of Contents should list the following items and the application should present the material in the following order:

1. Standard Form 424, Parts I-V; if applicable, include in Part I, justification for requesting a grant period of more than or less than 12 months.

The first page of the SF-424 must contain in the lower right hand corner a designation indicating under which project area funds are being requested. The following project area designations must be used:

RRT—Regional Round Table
NRT—National Round Table
DIP—Demonstration Project, Percentage of Income Plans
DPG—Demonstration Project, Guaranteed Service Plans
DPA—Demonstration Project, Reducing Administrative Costs
CHA—Clearinghouse Activities

For each item below, the applicant should provide a thorough but succinct statement and related documentation, as required.

2. Executive Summary:

(a) Description of the project activities.

(b) Intent/purpose of the project.

(c) Certification that, if the proposed project is an extension of an existing project or activity, the applicant is supplementing, not supplanting, existing funds.

(d) Description of the target population.

(e) Description as to the impact or value of the proposed project on the target population.

3. Project Narrative:

(a) Description of the project goals and objectives.

(b) Description of the project activities related to the goals and objectives. (Include target dates in the chronological order by which the key activities will occur in order to accomplish the goals and objectives of the project).

(c) Documentation to substantiate how, based on prior experience, the project can be successfully accomplished within the proposed funding period requested.

(d) Description of the methods to be used to disseminate the information resulting from the project to LIHEAP grantees and the other interested parties.

(e) Describe a plan for a written self-assessment or 3rd party evaluation of the project that will objectively evaluate the extent to which the project produced the intended goals and objectives.

4. Significant and Beneficial Impact:
(a) Description of how the project will result in long term improvements in the LIHEAP.

(b) Description of how the project will result in long term benefits to low-income participants and beneficiaries eligible under the LIHEAP.

5. Ability of Applicant to Perform:

(a) Description of applicant's organizational structure, mission, strategy. (If this application involves a partnership arrangement, also provide the aforementioned information for each of the partners.)

(b) Demonstrate and document accomplishments relevant to the proposed project.

(c) Describe history of experience relevant to the LIHEAP.

6. Staffing and Resources:

(a) Description of proposed key staff experiences or job descriptions relevant to the project.

(b) Identification of the Chief Executive Officer, and the proposed project manager.

(c) Description of the assigned responsibilities of staff to the tasks identified for the project.

7. Narrative Justification of the Budget Request:

(a) Describe how the resources requested are reasonable and adequate to accomplish the project.

(b) Demonstrate that the total cost is reasonable and consistent with the anticipated results.

(c) Provide line item budget and justification.

Those applications focusing on regional round tables to promote the sharing of information of regional

significance must also provide the following:

8. Regional Round Tables:

(a) Documentation of Regional Interest (i.e., letters indicating regional support) to substantiate regional interest in the proposed round table.

For those applications addressing the special needs of Indian Tribes, provide the following:

9. Indian Tribes:

(a) Description of how the project will address the special needs of Indian tribes.

(b) Description of the impact and value of the project on Tribal LIHEAP grantees and/or the low-income Tribal populations.

Part III. Review, Selection and Award Process

All applications that meet the published deadline for receipt at FSA will be screened to determine completeness and conformity to the requirements of this announcement. Only complete and conforming applications will be reviewed and rated.

A. Screening Requirements

In order for an application to be processed, it must meet all of the following requirements:

1. The text of the application must not exceed ten (10) single spaced 8 1/2 by 11 inch pages, excluding the cover page, Table of Contents, the SF-424 and its attachments and assurances, and any appendices.

2. The SF-424 form must be completed according to its instructions and Item 23b of Part I must be signed by an official having the legal authority to obligate the applicant.

3. A signed original application and four copies must be submitted.

4. Only those entities specified under Section 2809A of the Low Income Home Energy Assistance Act of 1981 (Title XXVI of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. 8621) as amended by Title VI of the Human Services Reauthorization Act of 1984 (Pub. L. 98-558) and Title V of the Human Services Reauthorization Act of 1986 (Pub. L. 99-425) are eligible to apply.

5. The application contains only one project and this project is identified as responding to one of the project areas stated in this announcement.

Failure to comply with these requirements may result in the disqualification and return of an application.

B. Pre-rating Review

Applications which pass the initial screening will be reviewed by the program office to verify that they comply with this program announcement in the following areas:

1. The project proposal must focus on no more than one of the following program activities authorized under the Technical Assistance and Training Discretionary Program; demonstration projects relating to the LIHEAP; national round tables; regional round tables; clearinghouse activities.

2. If the proposed project is an extension or expansion of an existing project or activity, the applicant must certify that they are supplementing, not supplanting, existing funds for the project.

3. The applicant must target the specific outcomes and benefits of the project to low-income LIHEAP households and/or to the providers of LIHEAP services/programs.

4. The applicant must describe the impact or value of the proposed project on the target population.

Applicants must meet items 1-4 of the above requirements to be considered for funding. In addition, if the proposed project is a regional round table the applicant must also meet the requirement specified below.

5. If the proposed project is a regional round table, the applicant must include documentation of regional interest (i.e., letters indicating regional support) to substantiate regional interest in the proposed round table.

C. Rating Criteria

Applications which pass initial screening and pre-rating review will be rated on a competitive basis by a panel of independent reviewers.

Each reader will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement. An overall rating will include the reviewer's judgement of each application. This review and rating process will use the following criteria.

1. Adequacy of Work Program (maximum: 30 points)

(a) The project goals and objectives are appropriately described and are specific. (0-5 points)

(b) Activities are adequately described and appropriately related to the goals and objectives. (0-5 points)

(c) The applicant proposes realistic time frames, and identifies the key activities in chronological order that are

necessary to accomplish the goals and objectives of the project. (0-5 points)

(d) The applicant adequately documents, based on prior experience, that the project can be successfully accomplished within the proposed funding period requested. (0-5 points)

(e) The application includes a realistic plan for disseminating the information resulting from the project to LIHEAP grantees and other interested parties. (0-5 points)

(f) The application includes an adequate plan for conducting a self-assessment or 3rd party evaluation of the project that will assess the degree to which the stated goals and objectives of the project are achieved. (0-5 points)

2. Significant and Beneficial Impact (maximum: 15 points)

(a) Applicant adequately describes how the project will deliver long term improvements in the LIHEAP. (0-7 points)

(b) Applicant adequately describes how the project will result in significant long term benefits to low-income participants and beneficiaries eligible under the LIHEAP. (0-8 points)

3. Ability of Applicant to Perform (maximum: 15 points)

(a) The applicant has the administrative and programmatic capability to perform the project. (0-5 points)

(b) The application demonstrates and documents experience and competence relevant to the proposed project. (0-5 points)

(c) The application demonstrates that the applicant has experience relevant to the LIHEAP. (0-5 points)

4. Staffing and Resources (maximum: 15 points)

(a) The applicant's proposed key staff are well qualified and their professional experiences are relevant to the successful implementation of this project. (0-8 points)

(b) The applicant's description of how the assigned responsibilities of staff are appropriate to the tasks identified for this project is clear and logical and shows that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project. (0-7 points)

5. Budget (maximum: 15 points)

(a) The application demonstrates that the resources requested for the project are reasonable and adequate to accomplish the project. (0-7 points)

(b) The total cost is reasonable and consistent with anticipated results. (0-8 points)

For those applications addressing the special needs of Indian Tribes:

6. Indian Tribes (maximum: 10 points)

(a) Applicant adequately describes how the project will address the special needs of Indian tribes. (0-5 points)

(b) Applicant adequately describes the impact and value of the project on Tribal LIHEAP grantees and/or the low-income Tribal populations. (0-5 points)

D. Selection and Award Process

1. The results of the rating process will be used to assist the Director and OEA staff in considering competing applications. Rating scores will weigh heavily in funding decisions but will not be the only factors considered, and highly ranked applications are not guaranteed funding.

2. The Director may also consider other factors, including, but not limited to, comments of rating panels and public officials; program staff quality review; geographic distribution of projects; prior program performance of applicants; audit and investigative reports; and applicant's progress in resolving any final audit disallowances on OEA or other Federal grants.

3. The Office of Energy Assistance reserved the option to discuss these applications with other funding sources to determine an applicant's performance record.

4. The official award document is the Notice of Grant Award, which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, and the total project period for which support is approved.

Mary M. Evert,
Director, Office of Community Services.

Dated: July 6, 1988.

Attachment A—Annual Revision of Poverty Income Guidelines.

Attachment B—SF-424, Federal Assistance.

Attachment A.—1987

110% AND 150% OF POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

Size of family unit	110%	150%
1.....	\$6,050	\$8,250
2.....	8,140	11,100
3.....	10,230	13,950
4.....	12,320	16,800
5.....	14,410	19,650
6.....	16,500	22,500
7.....	18,590	25,350
8.....	20,680	28,200

For household units with more than 8 members: add \$2,090 for each additional household member at 110% of poverty;

add \$2,850 for each additional member at 150% of poverty.

110% AND 150% OF POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	110%	150%
1	\$7,546	\$10,290
2	10,164	13,880
3	12,792	17,430
4	15,408	21,000
5	18,018	24,570
6	20,636	28,140
7	23,254	31,710

110% AND 150% OF POVERTY INCOME GUIDELINES FOR ALASKA—Continued

Size of family unit	110%	150%
0	25,872	35,280

For household units with more than 6 members: add \$2,610 for each additional household member at 110% of poverty; add \$3,570 for each additional member at 150% of poverty.

110% AND 150% OF POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	110%	150%
1	\$6,941	\$9,485
2	9,350	12,750
3	11,759	16,035
4	14,168	19,320
5	16,577	22,605
6	18,986	25,890
7	21,395	29,175
8	23,804	32,460

60% OF STATE MEDIAN INCOME FISCAL YEAR 1988

State	1	2	3	4	5	6
Alabama	\$9,863	\$11,598	\$14,317	\$17,044	\$19,771	\$22,498
Alaska	13,394	17,502	21,610	25,718	29,826	33,934
Arizona	10,024	13,109	16,193	19,277	22,362	25,446
Arkansas	8,192	10,712	13,233	15,753	18,273	20,794
California	11,302	14,778	18,254	21,730	25,206	28,682
Colorado	10,957	14,367	17,777	21,187	24,597	28,007
Connecticut	12,801	16,596	20,391	24,186	27,981	31,776
Delaware	10,640	13,914	17,188	20,462	23,736	27,010
District of Columbia	10,174	13,305	16,435	19,566	22,697	25,827
Florida	9,788	12,797	15,807	18,816	21,826	24,836
Georgia	9,555	12,018	14,481	16,944	19,407	21,870
Hawaii	10,866	14,131	17,457	20,782	24,107	27,432
Idaho	8,543	11,172	13,801	16,430	19,059	21,688
Illinois	10,725	14,025	17,324	20,624	23,924	27,224
Indiana	9,787	12,788	15,810	18,831	21,853	24,874
Iowa	9,181	12,065	14,950	17,834	20,718	23,602
Kansas	8,706	11,589	14,473	17,357	20,241	23,125
Kentucky	8,520	11,141	13,763	16,384	19,005	21,627
Louisiana	9,332	12,203	15,075	17,946	20,817	23,689
Maine	8,904	11,643	14,383	17,122	19,862	22,601
Maryland	12,497	16,342	20,187	24,032	27,877	31,722
Massachusetts	12,193	15,844	19,495	23,146	26,797	30,448
Michigan	10,579	13,834	17,089	20,344	23,599	26,854
Minnesota	10,725	14,025	17,324	20,624	23,924	27,224
Mississippi	8,023	10,482	12,941	15,400	17,859	20,318
Missouri	9,801	12,817	15,833	18,848	21,864	24,879
Montana	8,736	11,424	14,111	16,799	19,487	22,175
Nebraska	9,564	12,507	15,450	18,393	21,336	24,279
Nevada	10,082	13,184	16,286	19,388	22,490	25,592
New Hampshire	11,139	14,566	17,993	21,419	24,845	28,271
New Jersey	12,739	16,648	20,557	24,466	28,377	32,286
New Mexico	8,464	11,088	13,712	16,336	18,960	21,584
New York	10,752	14,067	17,377	20,692	23,997	27,302
North Carolina	9,450	12,358	15,266	18,174	21,082	23,990
North Dakota	9,046	11,829	14,612	17,395	20,179	22,962
Ohio	10,445	13,659	16,873	20,087	23,301	26,515
Oklahoma	9,584	12,552	15,520	18,488	21,456	24,424
Oregon	9,591	12,542	15,493	18,445	21,396	24,347
Pennsylvania	10,057	13,164	16,271	19,378	22,485	25,592
Rhode Island	10,696	13,935	17,174	20,412	23,641	26,850
South Carolina	9,176	12,002	14,828	17,650	20,472	23,298
South Dakota	8,180	10,670	13,161	15,652	18,143	20,634
Tennessee	8,710	11,390	14,070	16,750	19,430	22,110
Texas	10,043	13,133	16,223	19,313	22,404	25,494
Utah	9,246	12,091	14,936	17,780	20,625	23,470
Vermont	8,366	10,848	13,330	15,812	18,294	20,776
Virginia	11,030	14,424	17,818	21,212	24,606	28,000
Washington	10,231	13,379	16,527	19,675	22,823	25,970
West Virginia	9,165	11,877	14,589	17,301	20,013	22,725
Wisconsin	9,989	13,058	16,127	19,196	22,275	25,344
Wyoming	8,591	11,142	13,693	16,244	18,795	21,346

For each additional household size greater than six persons, add 3% to 132%

for each additional household member and multiply the new percentage by the

State's dollar amount for 60% of the state median for a 4-person household.

BILLING CODE 4188-04-01

FEDERAL ASSISTANCE		ATTACHMENT H		OMB Approval No. 0348-0008	
1. TYPE OF SUBMISSION (Mark appropriate box) <input type="checkbox"/> NOTICE OF INTENT (OPTIONAL) <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION	2. APPLICANT'S APPLICATION IDENTIFIER	3. STATE APPLICATION IDENTIFIER	4. NUMBER	5. DATE	6. DATE ASSIGNED
7. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & Telephone No.)		8. EMPLOYER IDENTIFICATION NUMBER (EIN) a. NUMBER b. TITLE		9. TYPE OF APPLICANT/RECIPIENT A—State B—County C—City D—Federal District E—Other (Specify)	
10. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)		11. ESTIMATED NUMBER OF PERSONS BENEFITING		12. TYPE OF ASSISTANCE A—Basic Grant B—Specialized Grant C—Loan D—Other (Specify)	
13. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. Total \$.00		14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT		15. TYPE OF APPLICATION A—New B—Renewed C—Extension D—Continuation E—Amendment F—Other (Specify)	
16. PROJECT START DATE Year month day		17. PROJECT DURATION Months		18. DATE DUE TO FEDERAL AGENCY Year month day	
19. FEDERAL AGENCY TO RECEIVE REQUEST a. ORGANIZATIONAL UNIT (IF APPROPRIATE) b. ADMINISTRATIVE CONTACT (IF KNOWN) c. ADDRESS		20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER		21. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	
22. THE APPLICANT CERTIFIES THAT: To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.		23. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		24. SIGNATURE	
25. TYPED NAME AND TITLE		26. FEDERAL APPLICATION IDENTIFICATION NUMBER		27. FEDERAL GRANT IDENTIFICATION	
28. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE <input type="checkbox"/> e. DEFERRED <input type="checkbox"/> f. WITHDRAWN		29. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		30. ACTION DATE Year month day	
31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		32. STARTING DATE Year month day		33. ENDING DATE Year month day	
34. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No					

HSN 7540-01-008-8182
PREVIOUS EDITION
IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

SECTION IV—REMARKS (Please reference the proper item number from Sections I, II or III, if applicable)

OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1. Does this assistance request require State, local regional, or other priority rating? ____ Yes ____ No	Name of Governing Body _____ Priority Rating _____
Item 2. Does this assistance request require State, or local advisory, educational or health clearances? ____ Yes ____ No	Name of Agency or Board _____ (Attach Documentation)
Item 3. Does this assistance request require State, local, regional or other planning approval? ____ Yes ____ No	Name of Approving Agency _____ Date _____
Item 4. Is the proposed project covered by an approved comprehensive plan? ____ Yes ____ No	Check one: State <input type="checkbox"/> Local <input type="checkbox"/> Regional <input type="checkbox"/> Location of Plan _____
Item 5. Will the assistance requested serve a Federal installation? ____ Yes ____ No	Name of Federal Installation _____ Federal Population benefiting from Project _____
Item 6. Will the assistance requested be on Federal land or installation? ____ Yes ____ No	Name of Federal Installation _____ Location of Federal Land _____ Percent of Project _____
Item 7. Will the assistance requested have an impact or effect on the environment? ____ Yes ____ No	See instructions for additional information to be provided.
Item 8. Will the assistance requested cause the displacement of individuals, families, businesses, or farms? ____ Yes ____ No	Number of: Individuals _____ Families _____ Businesses _____ Farms _____
Item 9. Is there other related assistance on this project previous, pending, or anticipated? ____ Yes ____ No	See instructions for additional information to be provided.

BILLING CODE 4150-04-C

INSTRUCTIONS: PART III

General Instructions

This form is designated so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grant or agencies may require Budgets to be separately shown by function or activity. For other programs, grantor agencies may not require a break-down by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1-4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line entry in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line in

Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns 9 (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of the amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets were prepared for Section A, provide similar column headings on each sheet. For each program, function, or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-h—Show the estimated amount for each direct cost budget (object class) category for each column with program, function, or activity heading.

Line 6i—Show the totals of Lines 6a and 6h in each column.

Line 6j—Show the amount of indirect cost. Refer to appendix E, 45 CFR Part 74; Federal Management Circular 74-4; and Office of Management and Budget Circular Nos. A-21 and A-122.

Line 6k—Enter the total amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase

or decrease as shown in Columns (1)-(4). Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5. When additional sheets were prepared, the last two sentences apply only to the first page with summary totals.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Source of Non-Federal Resources

Lines 8-11—Enter the amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief statement on a separate sheet. (See subpart G, 45 CFR, Part 74).

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the amount of cash and in-kind contributions to be made by the applicant as shown in Section A. (See also subpart G, 45 CFR, Part 74).

Column (c)—Enter the State contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f) Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuing grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the

program or project over the succeeding funding periods (usually in years). This Section need not be completed for amendments, changes, or supplements to funds for the current year of existing grants.

If more than four lines are needed to list the program titles submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final and fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations required herein or any other comments deemed necessary.

SUPPLEMENTARY INSTRUCTIONS: PART III

General

Sections A thru D should provide budget estimates for 12 month periods unless program guidelines stipulate otherwise.

Research Grant Applications

Cost sharing from non-Federal funds is required on all research projects; however, the level of such cost sharing proposed by the applicant should not be shown in the application. Use the following instructions when applying for a research grant.

1. Section A—Leave columns (d) and (f) blank.

2. Section B—Enter the requirements for Federal funds only.

3. Section C—Leave blank.

4. Section D—Complete line 13 only. HHS Form 490, Project Cost Sharing Agreement for HHS Awards must be submitted if the applicant does not have institutional cost sharing agreement with HHS.

Section A—Budget Summary

Lines 1-4

Columns (c) and (d)—For continuing grant applications only, the estimated unobligated funds should always be entered in these columns.

Section B—Budget Categories

Line 6(a) Personnel—Show salaries and wages only. Fees and expenses for consultants should be included on Line (h) Other. The name or title, salary amounts and level of effort must be identified in the supplement to Section H (Page 15) of each position.

Line 6(b) Fringe Benefits—Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of indirect costs in the indirect cost rate negotiation agreement.

Line 6(c) Travel—Use only for travel (foreign and domestic) of employees on the grant. Travel of consultants, trainees, etc., should not go on this line, nor should local transportation (i.e., where no out-of-town trip is involved). Any foreign travel requested must be separately identified and justified under Section F.

Line 6(d) Equipment—Use only for nonexpendable personal property, which is defined as follows:

Nonexpendable personal property means tangible personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined below:

Personal property means property of any kind except real property. It may be tangible—having physical existence or intangible—having no physical existence, such as patents, inventions, and copyrights.

Each item of nonexpendable personal property costing over \$1000 and each item of General Purpose Equipment costing over \$500 must be identified and explained under Section F. State and local government applicants must identify and explain each item of nonexpendable personal property costing over \$500 under Section F.

(General Purpose Equipment means items such as office equipment, air conditioning and furnishings which are usable for activities other than the technical, specialized aspects of the grant program).

Line 6(e) Supplies—Include all tangible personal property except that which is on line (d) Equipment. Requests in excess of \$500 per category of tangible personal property (supply) must be identified and explained under Section F.

Line 6(f) Contractual—Use for (1) procurement contracts (except those which belong on other lines such as equipment, supplies and construction), (2) inpatient and outpatient care cost, and (3) contracts or other agreements with secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, political subdivisions, etc. Line (f) must not include payments to individuals such as stipends and allowances for trainees, consulting fees, benefits, etc. Requests in (1) above in excess of \$2,500 and each item in (2) and (3) above must be identified and explained under Section F.

Line 6(g) Construction—Use for both new construction and for alteration and renovation. ORR programs using this application do not have construction authority but may support limited amounts of alteration or renovation. Check the program guidelines. Amounts entered for this item must be explained under Section F.

Line 6(h) Other—Use for all direct cost not clearly covered by lines (a) through (g). Examples are computer use charges, consultant cost, payments to individuals such as stipends and allowances, tuition, space or equipment rental, local transportation, assistance payments, and medical services. Requests for any item identified in Appendix E, 45 CFR, Part 74, and Office of Management and Budget Circular Nos. A-21, A-87, and A-122, which require approval by the awarding agency must be identified and explained under Section F.

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OMB NO. 0348-0026

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

OMB NO. 0348-0026

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

BILLING CODE 4100-04-C

**SUPPLEMENTARY INSTRUCTIONS FOR
PART III, SECTION H**

1. Personal

List all personnel chargeable as a direct cost to this program by title, salary and percentage of effort. Include names for key positions only.

Enter in Column 1 the annual (12 months) salary rate for each position which will be filled for all or any part of the year by an incumbent working on the project. This rate may not be more than that paid by the grantee to other employees in comparable positions or, if the grantee has no comparable positions, the rate may not be more than that paid for such services elsewhere in the community.

Enter in Column 2 the number of months the position will be filled by an incumbent working on the project.

Enter in Column 3 the percent of time or effort the incumbent will devote to the project during the number of months show in Column 2.

Enter in Column 4 the total amount required, as computed from the

information shown in Columns 1 thru 3.
Use the following formula:

Annual Salary (Col. 1) × No. of Months (Col. 2) ÷ 12 × Percent of Effort (Col. 3) = Total Amount Required (Col. 4)

Examples	(1)	(2)	(3)	(4)
Name	Annual salary rate	No. mos. budg.	% Time	Total amount required
John Doe, Project Director ¹	24,000	12 12	100	24,000
Jane Smith, Asst. Dir. ¹	18,500	10 12	100	15,417
Senior Counselor ²	19,750	12 12	60	11,850
Secretary ³	11,500	9 12	75	6,469
Fringe Benefits: Rate: ¹ - 21%				8,278

2. Fringe Benefits

Enter in the parenthesis the fringe benefit rate applicable to employees of the institutions. In Column 4, enter the amount determined by applying the rate to the total of the salaries in Column 4 to which the rate applies.

3. Option for Salary Detail Submission

Institutions may request that the salary rates and amounts requested for individuals not be made available to HHS reviewing consultants. To do so, an additional copy of this page must also be submitted, complete in all respects, except that Columns 1 and 4 may be left blank.

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SUPPLEMENT TO PART III, SECTION H
PERSONNEL

Name and Position Title	Annual Salary Rate	No. Mos. Budg.	% Time	Total Amount Required
	(1)	(2)	(3)	(4)
Fringe Benefits (Rate _____)				
CATEGORY TOTAL				\$

BILLING CODE 4150-04-C

INSTRUCTIONS: PART IV: PROGRAM NARRATIVE

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. Requests for continuation or refunding and changes on an approved project should respond to item 5b only. Requests for supplemental assistance should respond to question 5c only.

1. Objectives and Need for This Assistance

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood health center provide a description of who will occupy the facility, how the facility will be used, and how the facility will benefit the general public.

3. Approach

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity, provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

b. Provide for each grant program, function, or activity, quantitative monthly or quarterly projections of the accomplishments to be achieved in such terms as the number of jobs created; the number of people served; and the number of patients treated. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item 2 are being achieved.

d. List organizations, cooperators, consultants, or other key individuals

who will work on the project along with a short description of the nature of their effort or contribution.

4. Geographic Location

Give a precise location of the project or area to be served by the proposed project. Maps or other graphic aids may be attached.

5. If Applicable, Provide the Following Information

a. For research or demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, phone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project.

b. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress, or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach, or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded, or if individual budget items have changed more than the prescribed limits contained in Attachment K to FMC 74-7, explain and justify the change and its effect on the project.

c. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

PART V: ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all

understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminating employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8)

by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding \$10,000, in accordance with Department of labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt

nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds \$2,500.

[FR Doc. 88-15471 Filed 7-14-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 83C-0129]

Color Additives; Denial of Petition for Listing of D&C Red No. 19 for Use in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying the color additive petition to permanently list D&C Red No. 19 for use in externally applied drugs and cosmetics. This action is based upon previous findings of FDA that this color additive is carcinogenic in test animals and the finding of the U.S. Court of Appeals for the District of Columbia that D&C Red No. 19, which had been found to be a carcinogen in animals, cannot be listed as a color additive in externally applied drugs and cosmetics on the basis of a *de minimis* exception to section 706(b) of the Federal Food, Drug, and Cosmetic Act (the act). In a final rule published elsewhere in the issue of the Federal Register, FDA is removing the regulations permanently listing D&C Red No. 19 for use in externally applied drugs and cosmetics and removing the regulation that provides for the provisional use of its lakes.

DATE: Objections by August 15, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerard L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:**I. Introduction**

D&C Red No. 19, which has been in use for many years, is principally the 3-ethochloride of 9-o-carboxyphenyl-6-diethylamino-3-ethylamino-3-isoxanthene (CAS Reg. No. 81-88-9). Because D&C Red No. 19 was in use at the time the Color Additive Amendments of 1960 were enacted, it

was provisionally listed for drug and cosmetic use in the Federal Register of October 12, 1980 (25 FR 9759).

II. Regulatory History

D&C Red No. 19 is the subject of a color additive petition (CAP 9C0091) that was submitted by the Toilet Goods Association, Inc. (CTFA), 1100 Vermont Ave. NW., Washington, DC 20005) on April 14, 1983, which requested the permanent listing of D&C Red No. 19 for coloring lipsticks, ingested drugs and cosmetics, and externally applied drugs and cosmetics.

In the Federal Register of February 4, 1977 (44 FR 6992), FDA published revised provisional regulations which required new chronic toxicity studies on 31 color additives, including D&C Red No. 19, as a condition for continued provisional listing of these color additives.

In the Federal Register of February 4, 1983 (48 FR 5262) FDA published a final rule terminating the provisional listing of D&C Red No. 19 for use in ingested drugs and cosmetics. This document acknowledged the withdrawal by CTFA of that portion of CAP 9C0091 that requested permanent listing of D&C Red No. 19 for ingested drugs and cosmetics. The color additive remained provisionally listed for use in externally applied drugs and cosmetics. In the February 4, 1983, document terminating the provisional listing of D&C Red No. 19 FDA explained the findings that D&C Red No. 19 was a carcinogen when ingested by test animals. The rationale for this decision is stated in detail in the Federal Register of February 4, 1983. CTFA did not object to the finding of carcinogenicity.

In the Federal Register of August 7, 1986 (51 FR 28346), FDA published a final regulation permanently listing D&C Red No. 19 for use in externally applied drugs and cosmetics. In the August 7, 1986, document FDA concluded that the results of chronic toxicity studies demonstrate that D&C Red No. 19 is carcinogenic when administered in the diet to laboratory mice and rats. Specifically, the agency concluded from the data that dietary exposure to D&C Red No. 19 causes an increase in the number of female mice with hepatocellular neoplasms. Likewise, the agency determined that D&C Red No. 19 in the diet induces neoplasms in the thyroid gland of male rats and a tumorigenic effect in the parathyroid of male rats.

In its submissions in support of its petition, CTFA presented several arguments that raised questions about the relevance of the ingestion studies to a determination of the safety of the

external uses of D&C Red No. 19. The entire discussion of FDA's determination that this color additive induced cancer in animals, including FDA's responses to the issues raised by CTFA, as summarized below, appeared in the listing document in the Federal Register (51 FR 28346).

A. Difference in Reported Incidence Figures

In the submissions, CTFA noted that the tumor incidence data on the mouse study and a rat study as reported by FDA (48 FR 5262) in its order terminating the provisional listing of D&C Red No. 19 for use in ingested cosmetics and drugs differed from those reported by the testing laboratory. FDA explained in the August 7, 1986, document that the difference was due largely to a different interpretation of the data by FDA pathologists compared to the interpretation of the data by the pathologists from the testing laboratory. The conclusions, however, were the same, namely that dietary exposure to D&C Red No. 19 causes treatment or dose-related increases of tumors in mice and rats.

B. Interpretation of Maximum Tolerated Dose

In the submissions CTFA asserted that the maximum tolerated dose was exceeded in the second of the rat studies with D&C Red No. 19 and this violated the National Cancer Institute (NCI) guidelines for carcinogenicity testing, thereby raising questions about the carcinogenic effect observed with the dose (0.075 percent) in this study. FDA concluded that there was no indication whatsoever that the maximum tolerated dose was exceeded in the male rats tested (the gender shown to be positive in the study—thus CTFA's arguments on this issue were of little relevance and impact).

C. Significance of Mouse Liver Tumors

In its submissions, CTFA questioned the significance of the mouse liver tumors observed in the chronic tests. FDA evaluated the arguments presented by CTFA and concluded that, based on the agency's analysis of the data, the hepatocellular tumors observed in the female mice were the result of the ingestion of D&C Red No. 19 and must be considered in any evaluation of the safety of the color additive.

D. Mechanism of Carcinogenicity

CTFA stated in its submissions that it reviewed the information available on D&C Red No. 19 to determine the likely mechanism of action of the additive and contended that currently available

evidence does not demonstrate that D&C Red No. 19 is a primary carcinogen. CTFA presented arguments based upon the results of mutagenicity studies to support its contention. FDA concluded that the arguments CTFA presented regarding mutagenicity (and impurity activity) do not provide evidence that D&C Red No. 19 is not a carcinogen.

CTFA also argued that it is possible that a secondary mechanism may have caused each of the types of tumors observed in the chronic bioassays of D&C Red No. 19.

In response to the several arguments presented by CTFA, FDA stated that the arguments were speculative, and CTFA had not submitted factual evidence that D&C Red No. 19 does indeed act as a secondary carcinogen. Finally, FDA concluded that CTFA had failed to present any basis on which to find that D&C Red No. 19 is a secondary carcinogen.

In the document permanently listing this color FDA concluded that although studies established that the color additive caused cancer in animals, quantitative risk assessment of the color indicated that the risk of human cancer from its use in externally applied drugs and cosmetics would be extremely low, and that there would be no benefit to the public from prohibiting these uses of the color additive. Thus, FDA concluded that the uses of D&C Red No. 19 in externally applied drugs and cosmetics was safe under the conditions of use prescribed in the regulations permanently listing the color additive.

FDA also concluded that it was appropriate for the agency to apply a *de minimis* exception to the Delaney clause of the act where the color additives impose essentially no additional risk of cancer to the public; that any risk the color additives may present is of no public health consequence; and that, under these circumstances, the Delaney clause does not require a ban of the externally applied use of D&C Red No. 19.

In response to the permanent listing of D&C Red No. 19, the Public Citizen Litigation Group (Public Citizen) filed objections on August 21, 1986, which stayed the effective date of the regulation. Public Citizen, however, did not request a hearing. Additionally, on September 8, 1986, CTFA filed comments in support of FDA's permanent listing of D&C Red No. 19.

The CTFA comments specifically stated that CTFA supported the permanent listing of the color additive. The comments did not represent objections to the listing rule. In the introduction to its comments, however,

CTFA asserted that some cancer experts consider the liver of the inbred mouse to be an invalid system for carcinogenicity testing and the comments stated that these experts considered mouse liver tumors to be of limited relevance to human risk because of the extreme sensitivity of the mouse liver to chemical insult. FDA finds that CTFA's arguments on this subject were discussed in detail in the Federal Register in the listing document (51 FR 28346 at 28351). CTFA did not present any new data in support of its position and did not request a hearing on the subject.

CTFA also postulated that thyroid tumors induced in rats fed D&C Red No. 19 may have been produced by thyroid hormonal imbalance rather than by the direct carcinogenic action of the test compound, D&C Red No. 19. FDA finds that no data to support this position were submitted by CTFA and there was no request for a hearing on this contention. This subject was also discussed in detail in the Federal Register (51 FR 28351).

FDA, in the Federal Register of October 6, 1986 (51 FR 35509), published a final rule which removed the stay of the effective date for the permanent listing of D&C Red No. 19 and established the effective date of the permanent listing for use in externally applied drugs and cosmetics as October 6, 1986. In that rule, the Public Citizen's objections, which stated that the Delaney clause of the act unequivocally prohibits approval of a color additive (D&C Red No. 19), were evaluated by FDA and rejected. In rejecting the objections, FDA concluded that "... under any reasonable standard, D&C Orange No. 17 and D&C Red No. 19 are safe for use in externally applied drugs and cosmetics and that the Delaney clause does not bar permanent listing of these color additives."

Following publication of the final rule establishing the effective date for D&C Red No. 19, which also rejected Public Citizen's objections to the rulemaking, Public Citizen filed suit in the U.S. Court of Appeals for the District of Columbia to overturn the FDA decision to permanently list the color additives D&C Orange No. 17 and D&C Red No. 19 (*Public Citizen v. Young*, No. 86-1548).

In the Federal Register of February 19, 1987 (52 FR 5081 and 52 FR 5083) FDA published clarifications to the preamble of the August 7, 1986, documents permanently listing D&C Red No. 19 and D&C Orange No. 17. These documents refined the position taken by FDA that the Delaney clause of the act did not apply to this situation. The documents

were summarized by the Court of Appeals as follows:

These notices effectively apply quantitative risk assessment at the stage of determining whether a substance "induce[s] cancer in man or animal". They assert that even where a substance does cause cancer in the conventional sense of the term, the FDA may find that it does not "induce cancer in man or animal" within the meaning of 21 U.S.C. (§) 376(b)(5)(B).

In an opinion dated October 23, 1987, the court issued its opinion regarding Public Citizen's challenge of FDA's decision to permanently list the color additives D&C Orange No. 17 and D&C Red No. 19.

In sum, we hold that the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans. We based this decision on our understanding that Congress adopted an "extraordinarily rigid" position, denying the FDA authority to list a dye once it is found to "induce cancer in ... animals" in the conventional sense of the term, and, "... that the agency's *de minimis* interpretation of the Delaney Clause of the Color Additive Amendments is contrary to law. The listing decisions for D&C Orange No. 17 and D&C Red No. 19 based on that interpretation must therefore be corrected.

The U.S. Supreme Court subsequently refused to grant a writ of certiorari on the Appeals Court decision.

III. Conclusions

FDA has reviewed the petition for D&C Red No. 19 in light of its finding that the color additive has been shown to induce cancer and the Court's decision that there is no *de minimis* exception to the Delaney anti-cancer clause. The agency concludes that there is no basis upon which to grant the petition. Therefore FDA denies the color additive petition to permanently list D&C Red No. 19 for use in externally applied drugs and cosmetics. This action is based not only upon previous findings by FDA that this color additive is carcinogenic in test animals, but on its continuing belief that those findings are correct. In addition, there are no scientific issues raised by CTFA that have not been addressed. Applying these findings to the decision of the U.S. Court of Appeals for the District of Columbia that D&C Red No. 19, which had been found to be a carcinogen in animals, cannot be listed as a color additive on externally applied drugs and cosmetics on the basis of a *de minimis* exception to section 706(b) of the act, FDA concludes that it must deny the petition.

In a final rule published elsewhere in this issue of the Federal Register, FDA is

removing the regulations permanently listing D&C Red No. 19 for use in externally applied drugs and cosmetics and removing the regulations that provide for the provisional use of its lakes. That final rule is referenced, along with the earlier Federal Register documents of February 4, 1983 (48 FR 5262), August 7, 1986 (51 FR 28346), October 6, 1986 (51 FR 35509) and February 19, 1987 (52 FR 5081).

Any person who will be adversely affected by this regulation may at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

This notice is issued under the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: July 12, 1988.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10042 Filed 7-14-88; 8:45 am]
BILLING CODE 4160-01-M

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[Docket No. 83C-0102]

Color Additives; Denial of Petition for Listing of D&C Orange No. 17 for Use in Externally Applied Drugs and Cosmetics**AGENCY:** Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying the color additive petition to permanently list D&C Orange No. 17 for use in externally applied drugs and cosmetics. This action is based upon previous findings by FDA that this color additive is carcinogenic in test animals and the finding of the U.S. Court of Appeals for the District of Columbia that D&C Orange No. 17, which had been found to be a carcinogen in animals, cannot be listed as a color additive in externally applied drugs and cosmetics on the basis of a *de minimis* exception to section 706(b) of the Federal Food, Drug, and Cosmetic Act (the act). In a final rule published elsewhere in this issue of the *Federal Register*, FDA is removing the regulations permanently listing D&C Orange No. 17 for use in externally applied drugs and cosmetics and removing the regulations that provide for the provisional use of its lakes.

DATE: Objections by August 15, 1988.**ADDRESS:** Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.**FOR FURTHER INFORMATION CONTACT:** Gerald L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.**SUPPLEMENTARY INFORMATION:****I. Introduction**

D&C Orange No. 17, which has been in use for many years, is the chemical 1-[(2,4-dinitrophenyl)azo]-2-naphthalenol (CAS Reg. No. 3468-63-1). Because D&C Orange No. 17 was in use at the time the Color Additive Amendments of 1960 were enacted, it was provisionally listed for drug and cosmetic use in the *Federal Register* of October 12, 1960 (25 FR 9759).

II. Regulatory History

D&C Orange No. 17 is the subject of a color additive petition (CAP 8C0090) that was submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toilet and Fragrance Association, Inc. (CTFA)), 1100 Vermont Ave. NW., Washington, DC 20005) on April 14, 1969. The petition requested the

permanent listing of D&C Orange No. 17 for coloring lipsticks, ingested drugs and cosmetics, and externally applied drugs and cosmetics. The petition was amended on May 14, 1974, to include the listing of D&C Orange No. 17 for eye-area use.

In the *Federal Register* of February 4, 1977 (44 FR 6992), FDA published revised provisional regulations which required new chronic toxicity studies on 31 color additives, including D&C Orange No. 17, as a condition for the continued provisional listing of these color additives.

In the *Federal Register* of April 1, 1983 (48 FR 14045), FDA published a notice denying that portion of CAP 8C0090 dealing with ingested uses of D&C Orange No. 17 in drugs and cosmetics and withdrawing that portion of the petition that requested listing of D&C Orange No. 17 for eye area use. (Also published in the April 1, 1983, issue of the *Federal Register* (48 FR 13976) was a final regulation extending the provisional listing of D&C Orange No. 17 for use in externally applied drugs and cosmetics.) The denial was based upon a finding by FDA that D&C Orange No. 17 was a carcinogen when ingested by test animals. The rationale for this decision is stated in the *Federal Register* document of April 1, 1983. CTFA did not object to the denial.

In the *Federal Register* of August 7, 1986 (51 FR 28331), FDA published a final regulation permanently listing D&C Orange No. 17 for use in externally applied drugs and cosmetics. In the August 7, 1986, document FDA concluded that the results of chronic toxicity studies demonstrate that D&C Orange No. 17 is carcinogenic when administered in the diet to laboratory mice and rats. Specifically the agency concluded from the data that dietary exposure to D&C Orange No. 17 produced the carcinogenic effect of a statistically significant increase in the number of female rats with hepatocellular neoplasms as compared to the control groups. Moreover, the agency determined that D&C Orange No. 17 exposure in long-term feeding studies in mice was associated with a statistically significant dose-related increase in the number of male mice with hepatocellular neoplasms as compared to the control groups.

In its submissions, CTFA presented several arguments that raised questions about the relevance of the ingestion studies to a determination of the safety of the external uses of D&C Orange No. 17. The entire discussion of FDA's determination that the color additive induced cancer in animals, including FDA's response to issues raised by

CTFA, as summarized below, appeared in the listing document of August 7, 1986 (51 FR 28331).

A. Interpretation of Maximum Tolerated Dose

CTFA asserted that the dose level of the second rat study substantially exceeded the maximum tolerated dose and violated the National Cancer Institute (NCI) guidelines for carcinogenicity testing. However, in summary, the agency concluded that, for the female rats, the maximum tolerated dose was not exceeded and the CTFA's contention that the study violated NCI guidelines for carcinogenicity testing was not substantiated.

B. Significance of Mouse Liver Tumors

CTFA questioned the significance of the mouse liver tumors observed in the chronic test. FDA's Cancer Assessment Committee reviewed the data and CTFA's arguments and reached the following conclusion: CTFA's argument about the high background incidence of liver cancer in mice does not apply to the CD-1 mouse, the strain used in the mouse study. Moreover, CTFA's argument that the maximum tolerated dose was exceeded is misplaced. In the absence of any observed significant treatment-related effects in the high-dose male mouse group in which the increase in hepatocellular neoplasms was observed, the Cancer Assessment Committee concluded that the maximum tolerated dose was not exceeded in the study. Finally, CTFA's arguments concerning the limited statistical significance associated with the male mouse liver tumors were evaluated. The Cancer Assessment Committee noted that the tumor incidence in treated mice was greater than the historical control values and concluded that the hepatocellular tumors observed in the male mice were the result of the ingestion of D&C Orange No. 17. Although a scientific review panel of the U.S. Public Health Service scientists reached different conclusions with respect to the mouse bioassay, the agency concluded that this difference was inconsequential in light of the results of the rat feeding study.

C. Mechanism of Carcinogenicity and Significance of "Benign" Tumors

In its submissions, CTFA offered the following arguments concerning the significance of benign tumors: "[In the female rat] only the incidence of benign hepatocellular adenomas (neoplastic nodules) was increased. There was no significant increase in the incidence of malignant carcinomas in the treated

females. Nor was there any effect in the males fed the same level of the color additive. This indicates a very weak effect apparently occurring only at high doses that are toxic to the liver. This suggests an indirect mechanism of neoplasia secondary to toxic damage." In summary, the FDA response stated that the data lead the agency to conclude that D&C Orange No. 17 most likely exhibits a primary effect. CTFA has offered no evidence to the contrary. CTFA also suggested in its submission that the female rat liver tumors in the 1 percent dose group are caused by an "indirect mechanism of neoplasia secondary to toxic damage." However, FDA noted that CTFA had not submitted any scientific evidence to support such a hypothesis.

In the document listing this color, FDA concluded, on the basis of its evaluation of the data for the color additive, that although studies established that the color additive caused cancer in animals, quantitative risk assessment of the color indicated that the risk of human cancer from its use in externally applied drugs and cosmetics would be extremely low, and that there would be no benefit to the public from prohibiting these uses of the color additive. Thus, FDA concluded that the use of D&C Orange No. 17 in externally applied drugs and cosmetics was safe under the conditions of use prescribed in the regulations permanently listing the color additive.

FDA also concluded that it was appropriate for the agency to apply a *de minimis* exception to the Delaney clause of the act where the color additive imposes essentially no additional risk of cancer to the public; that any risk the color additive may present is of no public health consequence; and that, under these circumstances, the Delaney clause does not require a ban of the externally applied uses of D&C Orange No. 17.

In response to the permanent listing of D&C Orange No. 17, the Public Citizen Litigation Group (Public Citizen) filed objections on August 21, 1986, which stayed the effective date of the regulation. However, Public Citizen did not request a hearing. Additionally, on September 8, 1986, CTFA filed comments in support of the FDA's permanent listing of D&C Orange No. 17.

The CTFA comments specifically stated that CTFA supported the permanent listing of the color additive. The comments did not represent objections to the listing rule. In the introduction to its comments, however, CTFA asserted that some cancer experts consider the liver of the inbred mouse to be an invalid system for carcinogenicity testing and the comments stated that

these experts considered mouse liver tumors to be of limited relevance to human risk because of the extreme sensitivity of the mouse liver to chemical insult. FDA finds that CTFA's arguments on this subject were discussed in detail in the *Federal Register* in the listing document (51 FR 28335 and 28336). CTFA did not present any new data in support of its position and did not request a hearing on the subject.

Additionally, CTFA also commented, in the case of the female rat liver tumors, that the tumors were benign and found only at a high feeding level that probably exceeded the maximum tolerated dose. CTFA further stated that the female rat liver data suggest an indirect mechanism for causing tumors that was secondary to toxic damage, which could not occur in humans because they would never be exposed to such high levels of D&C Orange No. 17. FDA finds that CTFA's safety arguments on this issue were also addressed in detail in the *Federal Register* (51 FR 28331). Additionally, CTFA has at no time submitted data in support of its speculation that such a secondary mechanism may occur.

FDA, in the *Federal Register* of October 6, 1986 (51 FR 35509), published a final rule which removed the stay of the effective date for the permanent listing of D&C Orange No. 17 and established the effective date of the permanent listing for use in externally applied drugs and cosmetics as of October 6, 1986. In that rule, Public Citizen's objections, which stated that the Delaney clause of the act unequivocally prohibits approval of a color additive (D&C Orange No. 17), were evaluated by FDA and rejected. In rejecting the objections, FDA concluded that "under any reasonable standard, D&C Orange No. 17 and D&C Red No. 19 are safe for use in externally applied drugs and cosmetics and that the Delaney clause does not bar the permanent listing of these color additives."

Following publication of the final rule establishing the effective date for D&C Orange No. 17, which also rejected Public Citizen's objections to the rulemaking, Public Citizen filed suit in the U.S. Court of Appeals for the District of Columbia to overturn the FDA decision to permanently list the color additives D&C Orange No. 17 and D&C Red No. 19 (*Public Citizen v. Young*, No. 86-1548).

In the *Federal Register* of February 19, 1987 (52 FR 5081 and 52 FR 5083) FDA published clarifications to the preamble of the August 7, 1986, documents permanently listing D&C Red No. 19 and

D&C Orange No. 17. These documents refined the position taken by FDA that the Delaney clause of the act did not apply to this situation. The clarification documents were summarized by the Court of Appeals as follows:

These notices effectively apply quantitative risk assessment at the stage of determining whether a substance "induce[s] cancer in man or animal". They assert that even where a substance does cause cancer in the conventional sense of the term, the FDA may find that it does not "induce" cancer in man or animal" within the meaning of 21 U.S.C. § 376(b)(5)(B).

In an opinion dated October 23, 1987, the court issued its opinion regarding the Public Citizen challenge of the decision by FDA to permanently list the color additives D&C Red No. 19 and D&C Orange No. 17:

In sum, we hold that the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans. We based this decision on our understanding that Congress adopted an "extraordinarily rigid" position, denying the FDA authority to list a dye once it is found to "induce cancer in animals" in the conventional sense of the term, and, "that the agency's *de minimis* interpretation of the Delaney Clause of the Color Additive Amendments is contrary to law. The listing decisions for D&C Orange No. 17 and D&C Red No. 19 based on that interpretation must therefore be corrected.

The U.S. Supreme Court subsequently refused to grant a writ of certiorari on the Appeals Court decision.

III. Conclusions

FDA has reviewed the petition for D&C Orange No. 17 in light of its finding that the color additive has been shown to induce cancer and the Court's decision that there is no *de minimis* exception to the Delaney anti-cancer clause. The agency concludes that there is no basis upon which to grant the petition. Therefore FDA denies the color additive petition to permanently list D&C Orange No. 17 for use in externally applied drugs and cosmetics. This action is based not only upon previous findings by FDA that this color additive is carcinogenic in test animals, but on its continuing belief that those findings are correct. In addition, there are no scientific issues raised by CTFA that have not been addressed. Applying these findings to the decision of the U.S. Court of Appeals for the District of Columbia that D&C Orange No. 17, which had been found to be a carcinogen in animals, cannot be listed as a color additive in externally applied drugs and cosmetics on the basis of a *de minimis* exception to section 706(b) of

the act, FDA concludes that it must deny the petition.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing the regulations permanently listing D&C Orange No. 17 for use in externally applied drugs and cosmetics and removing the regulation that provides for the provisional use of its lakes. That final rule is referenced, along with the earlier Federal Register documents of April, 1983 (48 FR 14045), August 7, 1986 (51 FR 28331), October 6, 1986 (51 FR 35500) and February 19, 1987 (52 FR 6061).

Any person who will be adversely affected by this regulation may at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

This notice is issued under the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d)) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: July 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-10043 Filed 7-14-88; 8:45 am]

BILLING CODE 4190-01-M

[Docket No. 83C-0127]

Color Additives; Denial of Petition for Listing of D&C Red Nos. 8 and D&C Red No. 9 for Use in Ingested Drug and Cosmetic Lip Products and in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying the color additive petition to permanently list D&C Red Nos. 8 and 9 for use in ingested drugs and cosmetic lip products and in externally applied drugs and cosmetics. This action is based upon previous findings by FDA that these color additives are carcinogenic in test animals and on the decision of the U.S. Court of Appeals for the District of Columbia on D&C Orange No. 17 and D&C Red No. 19 that carcinogenic color additives cannot be listed as color additives on the basis of a *de minimis* exception to the color additive Delaney clause in the Federal Food, Drug, and Cosmetic Act (the act). In a final rule, published elsewhere in this issue of the Federal Register, FDA is removing the regulations permanently listing D&C Red Nos. 8 and 9 for use in ingested drugs and cosmetic lip products and in externally applied drugs and cosmetics and removing the regulations that provide for the provisional use of their lakes.

DATE: Objections by August 15, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerard L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Introduction

D&C Red Nos. 8 and 9 have been in use for many years. D&C Red No. 8 is principally the monosodium salt of 5-chloro-2-[(2-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid (CAS Reg. No. 2092-56-0). D&C Red No. 9 is

principally the barium salt (1:2) of 5-chloro-[(2-hydroxy-1-naphthalenyl)azo]-4-methylbenzenesulfonic acid (CAS Reg. No. 5160-2-1). Because D&C Red Nos. 8 and 9 were in use at the time the Color Additive Amendments of 1960 (the amendments) were enacted, they were provisionally listed for drug and cosmetic use in the Federal Register of October 12, 1960 (25 FR 9759).

II. Regulatory History

D&C Red Nos. 8 and 9 have been the subject of a color additive petition (CAP 5C0028), submitted by the Toilet Goods Association, Inc. (now the Cosmetic, Toilet and Fragrance Association, Inc. (CTFA)), 1100 Vermont Ave. NW., Washington, DC 20005) on May 17, 1965. The petitioner has requested the permanent listing of D&C Red Nos. 8 and 9 for use generally in coloring drugs and cosmetics.

In the Federal Register of February 4, 1977 (44 FR 6991), FDA published revised provisional regulations which required new chronic toxicity studies on 31 color additives, including D&C Red Nos. 8 and 9, as a condition to the continued provisional listing of these color additives.

In the Federal Register of December 5, 1986 (51 FR 43877), FDA published a final rule permanently listing D&C Red Nos. 8 and 9 for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics. In the December 5, 1986, document, FDA concluded that the results of chronic toxicity studies demonstrate that D&C Red No. 9 is carcinogenic when administered in the diet of laboratory rats. Specifically, the agency concluded from the data that dietary exposure to D&C Red No. 9 is associated with an increase in the occurrence of splenic cancer in male rats and, thus, that D&C Red No. 9 induces cancer when tested in laboratory animals. As discussed in the final rule (51 FR 43877), D&C Red No. 8 has not been tested in a chronic feeding study, but FDA has concluded that, for the purpose of assessing safety, D&C Red No. 8 and D&C Red No. 9 are toxicologically equivalent. The petitioner has agreed with this conclusion. Thus, the agency has concluded that D&C Red No. 8 is also a carcinogen and that action on both of these color additives can be taken on the basis of the results of chronic studies on D&C Red No. 9.

The December 5, 1986, final rule permanently listing D&C Red Nos. 8 and 9 also responded to CTFA's arguments in support of its petition. In its submission in support of its petition, CTFA raised questions about the

relevance of the ingestion studies to a determination of the safety of the uses of D&C Red Nos. 8 and 9, as well as several other issues. FDA's determination that these color additives induce cancer in animals, including FDA's responses to CTFA's contentions, summarized below, appeared in the listing document in the Federal Register (51 FR 43877).

1. In its laboratory reports, CTFA contended that the chronic studies with mice demonstrated no significant compound-related effects. In addition, CTFA contended that, in its chronic studies with rats, at up to 0.05 percent color additive, there were no treatment-related effects. However, CTFA acknowledged that, at the 1.0 percent feeding level, signs of anemia were evident in both males and females; in addition, in male rats, there were several notable treatment-related splenic lesions.

CTFA also raised various points related to the conduct of the National Cancer Institute (NCI)/National Toxicology Program (NTP) chronic rat study and the validity of the data derived from the bioassay. CTFA maintained that dosages used in the NCI/NTP study exceeded the maximum tolerated dose; that the results of the study were flawed due to improper caging of animals, alleged violations of good laboratory practices and the presence of other carcinogens in testing rooms; and that D&C Red No. 9 produces cancer by a secondary mechanism and not by direct carcinogenic action.

FDA responded to these points in the December 5, 1986, final rule. The agency agreed that the increase in the number of rats with splenic neoplasms in the CTFA study was not large but rejected CTFA's claim that the study could not be used to provide supportive evidence that D&C Red No. 9 is a carcinogen. The agency considered and rejected CTFA's arguments that the outcome of the NCI/NTP study, (which concluded, among other things, that the color additive was carcinogenic for male F-344 rats), was materially compromised by deficiencies in its design or conduct. The agency noted that the chronic toxicity/carcinogenicity studies of D&C Red No. 9 (the NCI/NTP and CTFA studies as well as FDA's own studies) demonstrated a common pattern of unusual splenic lesions which occurred only in the treatment groups, and that similar lesions had been described in connection with several other compounds known to induce splenic sarcomas in F-344 rats. These findings, combined with the positive result of the NCI/NTP study, support the agency's

conclusion that exposure to D&C Red No. 9 is associated with the occurrence of splenic cancer in male F-344 rats.

With respect to the issue of secondary mechanism, CTFA maintained that there is a level of administration of D&C Red No. 9 that represents a threshold, and that it does not induce cancer when administered at or below that threshold. FDA rejected this argument because no experimental evidence was submitted in the CTFA submission to support this hypothesis, and, as a result, no serious analysis could be made of this issue.

2. CTFA sponsored an in vitro percutaneous absorption study on D&C Red No. 9 in an attempt to determine whether this substance penetrates excised skin and whether ingestion study results could be used in evaluating the safety of the use of the color additive in externally applied drugs and cosmetics. FDA found that the study was performed in a generally satisfactory manner and that D&C Red No. 9 did pass through the skin. On this basis, the agency concluded that systemic exposure to the color additive does occur from external use and that the ingestion studies are appropriate for evaluating the safety of the externally applied uses of D&C Red No. 9.

In the December 5, 1986, document permanently listing these color additives, FDA concluded on the basis of its evaluation of the data for the color additives that, although studies established that D&C Red No. 9 caused cancer in laboratory animals, quantitative risk assessment of the two color additives indicated that the risk of human cancer would be extremely low from use in ingested drug and cosmetic lip products (provided that levels of use were lowered to 0.1 percent) and in externally applied drugs and cosmetics. Further, the agency concluded that there would be no benefit to the public from prohibiting these uses of the color additives. Thus, FDA concluded that these uses of D&C Red Nos. 8 and 9 were safe under the limited conditions of use prescribed in the regulations permanently listing these color additives.

In the December 5, 1986, document FDA also concluded that it was appropriate for the agency to apply a *de minimis* exception to the Delaney clause of the act in this instance, where these color additives pose essentially no additional risk of cancer to the public, and risk the color additives may present is of no public health consequence, and, under these circumstances, the Delaney clause does not require a ban of these uses of D&C Red Nos. 8 and 9.

The Public Citizen Litigation Group (Public Citizen) objected to the December 5, 1986 (51 FR 43877), permanent listing of D&C Red Nos. 8 and 9, on the basis that FDA is prohibited under the Delaney clause from approving color additives which have been found to be animal carcinogens. The objections stayed the effective date of the final regulations. Public Citizen did not request a hearing as part of its objections but incorporated the basis for its interpretation of the Delaney clause that it had previously filed in *Public Citizen v. Department of Health and Human Services*, and *Public Citizen v. Young*, cases on D&C Red No. 19 and D&C Orange No. 17 involving the same legal issues.

CTFA also filed comments on the December 5, 1986, final rule for D&C Red Nos. 8 and 9. The CTFA comments stated that CTFA supported the permanent listing of the color additives D&C Red Nos. 8 and 9. However, CTFA again asserted: (1) That because of an apparent violation of the maximum tolerated dose in the NTP and CTFA studies, the results of the high-dose chronic feeding studies produced questionable evidence of carcinogenicity, and (2) there was scientific evidence that D&C Red No. 9 is not a primary carcinogen.

Concerning (1) above, CTFA stated that it considered that the test compound had been administered in such large amounts that normal functioning of the test animals had been impaired, resulting in tumors which were not directly attributable to the compound itself. FDA discussed CTFA's arguments on this subject in detail in the Federal Register (51 FR 43877). CTFA did not present any new data in support of its position and did not request a hearing on the subject.

Concerning its argument that D&C Red No. 9 is not a primary carcinogen, CTFA stated that, according to current scientific understanding, carcinogens may be divided into two broad classes, primary and secondary. Primary carcinogens are those that initiate carcinogenesis by interacting directly with genetic cell material. Secondary carcinogens are those that may inhibit deoxyribonucleic acid (DNA) repair, promote the growth of tumors, suppress immune mechanisms, or have other indirect effects.

CTFA argued that the splenic tumors observed in male rats in both the NTP and CTFA studies may have been the result of a secondary effect, because the evidence in these studies showed that tumors were caused by a toxic effect in rats that could never occur at the much

lower levels to which humans are exposed. FDA discussed CTFA's arguments on this subject in detail in the Federal Register (51 FR 43877). CTFA did not present any new data in support of its position and did not request a hearing on the subject.

FDA, in the Federal Register of June 5, 1987 (52 FR 21302), published a final rule which confirmed the effective date for the permanent listing of D&C Red Nos. 8 and 9. In response to objections, FDA modified several aspects of the manufacturing process for D&C Red No. 9. In that rule, FDA evaluated and rejected the Public Citizen's objection to the December 5, 1986, final rule (stating that the Delaney clause unequivocally prohibits approval of the color additives D&C Red Nos. 8 and 9) and acknowledged receipt of one CTFA comment (expressing support for the permanent listing of D&C Red Nos. 8 and 9). FDA concluded that, under any reasonable standard, D&C Red No. 8 and D&C Red No. 9 are safe for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics, and that the Delaney clause does not bar permanent listing of these color additives.

In the Federal Register of July 31, 1987 (52 FR 28552), FDA confirmed the effective date for the June 5, 1987 (52 FR 21302) final rule that amended the color additive regulations to modify the manufacturing process for D&C Red No. 9. The agency received no objections or requests for a hearing on this final rule. Following publication of the July 31, 1987, final rule, Public Citizen on August 3, 1987, filed suit in the U.S. Court of Appeals for the Third Circuit in Philadelphia to overturn the FDA decision to permanently list D&C Red Nos. 8 and 9. Before a decision was reached by that Court of Appeals concerning D&C Red Nos. 8 and 9, the Court of Appeals for the District of Columbia Circuit, decided that "the Delaney clause of the color additive amendments does not contain an implicit *de minimis* exception for carcinogens with trivial risk to humans" and that the listing of D&C Red No. 19 and D&C Orange No. 17, or other carcinogenic color additives, is contrary to law (*Public Citizen v. Young*, 831 F.2d 1108 (D.C. Cir. 1987)).

Following this decision, CTFA, an intervenor in the Court of Appeals' case, petitioned the U.S. Supreme Court to grant a writ of certiorari on the latter decision. On April 28, 1988, the Supreme Court denied certiorari. On May 26, 1988, FDA asked the Court of Appeals for the Third Circuit to remand the case on D&C Red Nos. 8 and 9 to the agency

so that it could revoke the listings of these colors, consistent with the D.C. Circuit's decision, involving the same issues, on D&C Red No. 19 and D&C Orange No. 17. Subsequently the Court of Appeals for the Third Circuit Granted the agency's request and remanded to FDA the decision on D&C Red Nos. 8 and 9.

III. Conclusions

FDA has reviewed the petition for D&C Red Nos. 8 and 9 in light of its finding of carcinogenicity and the decision of the U.S. Court of Appeals for the District of Columbia Circuit on D&C Red No. 19 and D&C Orange No. 17. FDA concludes that it must deny the color additive petition to permanently list D&C Red Nos. 8 and 9 for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics. FDA believes that previous findings that D&C Red No. 9 and, (because it is toxicologically equivalent) D&C Red No. 8 are carcinogenic in laboratory test animals are correct. In addition, there are no scientific issues raised by CTFA that have not been addressed. Under the reasoning of the U.S. Court of Appeals for the District of Columbia Circuit that D&C Orange No. 17 and D&C Red No. 19 cannot be listed as color additives on the basis of a *de minimis* exception to section 708(b) of the act, FDA concludes that it must deny the petition for D&C Red Nos. 8 and 9.

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing the regulations permanently listing D&C Red Nos. 8 and 9 for use in ingested drug and cosmetic lip products and in externally applied drugs and cosmetics and removing the regulations that provide for the provisional use of their lakes (51 FR 43877; December 5, 1986). Related Federal Register documents were published on June 5, 1987 (52 FR 21302), and July 31, 1987 (52 FR 28552).

Any person who will be adversely affected by this regulation may at any time on or before August 15, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and

analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

This notice is issued under the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 708(b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376(b), (c), and (d), the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))), and the Administrative Procedure Act (5 U.S.C. 556, 557), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: July 12, 1988.
John M. Taylor,
Associate Commissioner for Regulatory
Affairs.
[FR Doc. 88-16044 Filed 7-14-88; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

(DES 88-38)

Availability of Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Review for the Alaska Peninsula National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared for public review a Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/

Environmental Impact Statement/ Wilderness Review for the Alaska Peninsula National Wildlife Refuge, Alaska, pursuant to section 3(d) of the Wilderness Act of 1964, section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act), and section 102(2)(C) of the National Environmental Policy Act of 1969. The Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement analyzes the impacts of four alternative wilderness proposals for the Alaska Peninsula National Wildlife Refuge.

DATES: Comments on the draft document must be submitted on or before August 30, 1988, to receive consideration in the preparation of the Final Supplemental Environmental Impact Statement.

ADDRESS: Comments should be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the Draft Statement may be obtained by contacting Mr. Knauer.

Copies of the Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement are also available for review at the Office of the Regional Director, address as listed previously, as well as at the office of the Alaska Peninsula National Wildlife Refuge, King Salmon, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, Main Interior Bldg., 18th and C Streets NW., Washington, DC 20240;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street, Suite 1692, Portland, OR 97232;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW., Albuquerque, NM 87103;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street SW., Atlanta, GA 30303;

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and

U.S. Fish and Wildlife Service, Refuges and Wildlife, 1340 Union Blvd., Lakewood, CO 80225.

The Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/ Environmental Impact Statement/ Wilderness Review for the Alaska Peninsula National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, U.S. Department of the Interior, to fulfill the requirements of section 1317(a) of the Alaska Lands Act. This section requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all lands in refuges in Alaska not Congressionally designated as wilderness as to their suitability or nonsuitability for the preservation as wilderness and report Department recommendations to the President.

Although large tracts of land in the refuge were found to meet the criteria of the Wilderness Act for designation as wilderness, not all of these lands were proposed for wilderness designation because of management strategies that will be used to meet refuge purposes. As a result, a range of wilderness alternatives was evaluated subsequent to the Service's selection of its proposed management alternative in the Final Alaska Peninsula Plan. Four wilderness proposals, ranging from recommending all refuge lands that qualify for wilderness designation to recommending no additional lands for wilderness designation, were examined in the Draft Statement. The Record of Decision for the Final Alaska Peninsula Plan recommended that an additional 640,000 acres be proposed for designation as wilderness as does the proposed action in the Wilderness Review Amendment and Supplemental Environmental Impact Statement.

The wilderness review in the Final Alaska Peninsula Plan/Environmental Impact Statement/Wilderness Review discussed the wilderness suitability of lands on the refuge, but did not adequately evaluate the environmental impacts of the wilderness proposal. To ensure full compliance with the Wilderness Act and the National Policy Act, the Fish and Wildlife Service has prepared this Wilderness Review Amendment and Supplemental Environmental Impact Statement, clearly discussing the proposal for and environmental impacts of wilderness designation on the refuge.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the Final Supplemental Environmental Impact Statement.

Date: July 8, 1988.

Bruce Blanchard,
Director, Environmental Project Review.
[FR Doc. 88-15622 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-55-M

Geological Survey

Application Establishing a Tentative Closing Date for Transmittal of Applications Under the Water Resources Research Grant Program for Fiscal Year 1989

Applications are invited for water research projects under the Water Resources Research Grant Program.

Authority for this program is contained in section 105 of Pub. L. 98-242, Water Resources Research Act of 1984. (42 U.S.C. 10301-10309)

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Applications may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications

Applications are tentatively due on or before October 14, 1988. The announcement will state the actual due date for receipt of the applications.

Program Information

This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems. The research interests for Fiscal Year (FY) 1989 are: (1) Groundwater quality; (2) water quality management; (3) institutional change in water resource management; and (4) climate variability and the hydrologic cycle.

Application Forms

The announcement is expected to be available on or about August 15, 1988, and may be obtained by writing to the U.S. Geological Survey, Attn: Melissa Calloway—MS 205C, Office of Procurement and Contracts, 12201 Sunrise Valley Drive, Reston, VA 22092 and requesting a copy of announcement 7442. All organizations that applied for a FY 1988 award, all Historically Black Colleges and Universities, and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the announcement.

Further Information: For further information contact Robert Robinson—MS 426, U.S. Geological Survey, Water Resources Division, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: 703-648-6813.

(Catalog of Federal Domestic Assistance Number 15.906)

Dated: July 11, 1988.

Paul A. Donett,
Acting Assistant Director for Administration.
[FR Doc. 88-15923 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-31-M

Bureau of Land Management

[AK-963-4213-15; AA-39595]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f), will be issued to Chevak Company for approximately 7.20 acres. The lands involved are in the vicinity of Chevak, Alaska.

A parcel of land located within Sec. 32, T. 16 N., R. 90 W., Seward Meridian.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in *The Tundra Drums*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 15, 1988 to file an appeal.

However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of

Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ann Johnson,
Chief, Branch of Calista Adjudication.
[FR Doc. 88-15921 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-1A-M

[WY-930-08-4332-09]

Intent To Prepare Environmental Impact Statement; Thirteen Western States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and conduct public scoping.

SUMMARY: Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM), will prepare an Environmental Impact Statement (EIS) on vegetation treatment measures proposed for use on BLM administered lands in thirteen contiguous Western States. The purpose of the vegetation treatment program is to manage the vegetation for improved forage and habitat condition for wildlife and livestock, and provide watershed protection. Potential vegetation treatment measures include biological, chemical, mechanical, and thermal methods, individually and in combination. The EIS will analyze ground and aerial application of herbicides.

DATES: The public is invited to submit issues, concerns, and alternative treatment suggestions in writing. Responses and comments will be accepted until Thursday, August 15, 1988. Written comments should be sent to: Jim Melton; Team Leader; Bureau of Land Management; Casper District; 1701 East E Street; Casper, Wyoming 82601.

Scoping meetings will be conducted at the following locations and times:

Arizona

Four scoping meetings will be conducted on August 2, 1988, from 7 to 9 p.m. at the following locations:

Arizona Strip District, Vermillion/Shivwits Resource Area Office, 225 North Bluff Street, St. George, Utah 84770

Safford District Office, 425 East 4th Street, Safford, Arizona 85546

Phoenix District, 2015 West Deer Valley Road, Yuma, Arizona 85364
Yuma District Office, 3150 Winsor Avenue, Phoenix, Arizona 85027

Colorado

None planned.

Idaho

A scoping meeting will be conducted on August 1, 1988, at 7 p.m. at the following location:

Boise District Office, District Conference Room, 3948 Development Avenue, Boise, ID 83705

Montana

None planned.

Nevada

None planned.

New Mexico

Scoping meetings will be conducted at the following times and locations:

1. August 3, 1988, at 1 p.m.—Agricultural Auditorium, New Mexico State University Campus, Las Cruces, New Mexico 88005
2. August 4, 1988, at 10 a.m.—Bondurant Room, Roswell Public Library, Roswell, New Mexico 88201
3. August 9, 1988, at 7 p.m.—District Office Conference Room, 435 Montano Road NE, Albuquerque, New Mexico 87107
4. August 10, 1988, at 7 p.m.—Sagebrush Inn, Highway 64, Taos, New Mexico 87571
5. August 11, 1988, at 1 p.m.—Farmington Resource Area Office, Conference Room, 1235 La Plata Highway, Farmington, New Mexico 87401

Oregon

A scoping meeting will be conducted on August 4, 1988, at 7 p.m. at the following location:

Riverhouse Motor Inn, Mt. Bachelor Room, Bend, OR 97701

Utah

A scoping meeting will be conducted on August 5, 1988, at 10 a.m. at the following location:

Utah State Office, 4th Floor Conference Room, 324 South State Street, Salt Lake City, UT 84111

Wyoming

A scoping meeting will be conducted on August 9, 1988, at 1:30 p.m. at the following location:

Casper District Office, 1701 East "E" Street, Casper, WY 82601

ADDRESSES: For the convenience of the public, the following individuals should

be contacted within the respective state for additional information:

Arizona

John Augsburg, Safford District Office, 425 E. 4th Street, Safford, AZ 85546
Phone: (602) 428-4040

Colorado

Scott F. Archer, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, Phone: (303) 236-1762

Jeanette Pranzo, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, Phone: (303) 776-1752

Idaho

Karl Gebhart, Idaho State Office, 3380 Americana Terrace, Boise, ID 83708
Phone: (208) 334-1892

Montana

Hank McNeel, Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 36800, Billings MT 59107
Phone: (406) 657-6655

Nevada

Steve Smith, Nevada State Office, 650 Harvard Way, P.O. Box 12000, Reno, NV. 89520 Phone: (702) 784-5748

New Mexico

Jan Knight, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504-1449 Phone: (505) 988-6231

Oregon

Diane White, Oregon State Office, P.O. Box 2965, Portland, OR 97208 Phone: (503) 231-6847

Utah

Douglas Wood, Richfield District Office, 150 East 900 North, Richfield, UT 84701 Phone: (801) 896-8221

Wyoming

Cliff Fanning, P.O. Box 1828, Cheyenne, WY 82003, Phone: 307 772-2080
Jim Melton, 1701 East "E" Street, Casper, WY 82601, Phone: (307) 261-5101

SUPPLEMENTAL INFORMATION: The proposed action and alternatives will incorporate a mix of vegetation treatment measures including biological, chemical, mechanical, and thermal methods to achieve the most cost effective and practical means of satisfying specific management objectives. Alternatives will include various combinations of the aforementioned treatments under four basic themes consisting of: the Proposed Action, No Action, No Aerial Application of Herbicides, and No Herbicide Use. The proposed action will represent an integrated pest management approach for the

vegetation treatment program. The Environmental Consequences will depict reasonably foreseeable direct, indirect, and cumulative impacts of the Proposed Action and Alternatives. Impacts on the biological, physical, and social components of the human environment will be analyzed.

Date: July 11, 1988.
Hillary A. Oden,
State Director.
[FR Doc. 88-15961 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-32-M

[OR-010-08-4410-12GP8-185]

Extension of the Comment Period for the Warner Lakes Plan Amendment for Wetlands and Associated Uplands

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Land Management (BLM) has extended the comment period for the Warner Lakes Plan Amendment for Wetlands and Associated Uplands as published in the *Federal Register* May 26, 1988.

DATE: Written comments on the plan must be submitted by September 2, 1988 to: District Manager, Lakeview District Office, P.O. Box 151, Lakeview, Oregon, 97630.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, District Planning Coordinator, Bureau of Land Management, P.O. Box 151, Lakeview, Oregon 97630, (503) 947-2177.

Judy Nelson,
District Manager.
[FR Doc. 88-15922 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-32-M

[AK-080-08-4333-02]

Designation of Off-Road Vehicle (ORV) Use Areas for the Steese National Conservation Area (Steese NCA)

This notice of designated ORV use area applies to all lands and water surfaces within the Steese National Conservation Area and the Pinnell Mountain National Recreational Trail, as shown on the Steese National Conservation Area Off-Road Vehicle Designations Map, and is subject to valid existing rights.

This order is issued pursuant to 43 CFR Subpart 8342 and in accordance with the authority and requirements of Executive Order 11644 and 11989 and implements provisions of the Steese NCA Resources Management Plan signed on February 2, 1986. This order

will remain in effect until rescinded or modified by the District Manager, Steese/White Mountains District.

Definitions: The term "winter use" refers to the period of time between October 15 and April 30, inclusive. The term "summer use" refers to the remaining period of time between May 1 and October 14. The terms "gross vehicle weight" and "GVW" refer to the loaded weight of the vehicle, including gear, passengers, and fuel.

A. Limited ORV Use Designations

1. The foothills areas, as shown on the Steese National Conservation Area Off-Road Vehicle Designations Map, are open to use of ORVs that weigh less than 1,500 pounds GVW. Subject to valid existing rights, the use of ORVs weighing over 1,500 pounds GVW in these areas is prohibited without written authorization from the District Manager, Steese/White Mountains District, except that written authorization is not required by this notice for use of ORVs on the Montana Creek Trail from the Steese NCA boundary along Bachelor Creek to its confluence with Preacher Creek; the Harrison Creek Trail along the North Fork of Harrison Creek to Harrison Creek, and downstream to Squaw Creek; and the Portage Creek Trail along Bottom Dollar Creek downstream to Harrison Creek. These trails are identified on the Steese National Conservation Area Off-Road Vehicle Designations Map.

2. The highlands areas, as shown on the Steese National Conservation Area Off-Road Vehicle Designations Map, are managed to protect the wild and natural character of the area. Subject to valid existing rights, these areas are open to winter use by snowmachines that weigh less than 1,500 pounds GVW. Any other ORV use in these areas is prohibited without written authorization from the District Manager, Steese/White Mountain District.

3. Birch Creek has been designated, and is managed as, a "wild" river pursuant to the Wild and Scenic Rivers Act (WSRA, Pub. L. 90-542). Subject to valid existing rights, the Birch Creek National Wild River corridor is open to winter use of snowmachines that weigh less than 1,500 pounds GVW. Any other ORV use in this area is prohibited without written authorization from the District Manager, Steese/White Mountains District.

B. Closed to ORV Use Designation

1. There are two designated Research Natural Areas (RNAs), (Mount Prindle and the Big Windy Hot Springs) shown on the Steese National Conservation

Area Off-Road Vehicle Designations Map. Both areas are closed to all ORV use. These areas have been identified as having representative examples of ecosystems or unusual natural features that are of scientific interest for the Ecological Reserve System.

The foregoing provisions are not applicable to any Federal, state, or local law enforcement officer, or any member of any organized rescue or fire suppression force in the performance of an official duty.

Signs will be placed at major access points showing ORV use restrictions. Maps identifying these designated use areas are available at the office listed below. Operators of ORVs in violation of these designations are subject to the penalties prescribed in 43 CFR Subpart 8340.0-7.

Direct questions are responses to: Steese/White Mountains District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks Alaska 99703, (907) 356-5367.

Dated: June 27, 1988.

Donald E. Runberg,
District Manager, Steese/White Mountain District.

[FR Doc. 88-15406 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-JA-M

[AK-080-08-4333-02]

Designation of Off-Road Vehicle (ORV) Use Areas for the White Mountains National Recreation Area (White Mountains NRA) and Associated Lands

This notice of designated ORV use areas applies to all lands and water surfaces within the White Mountains National Recreation Area and BLM-managed lands between the White Mountains NRA and the Steese and Elliott Highways, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, and is subject to valid existing rights.

This order is issued pursuant to 43 CFR Supart 8342 and in accordance with the authority and requirements of Executive Order 11644 and 11989, and implements provisions of the White Mountains NRA Resource Management Plan signed on February 2, 1986. This order will remain in effect until rescinded or modified by the District Manager, Steese/White Mountains District.

Definitions: The term "winter use" refers to the period of time between October 15 and April 30, inclusive. The term "summer use" refers to the remaining period of time between May 1 and October 14. The terms "gross vehicle weight" and "GVW" refer to the

loaded weight of the vehicle, including gear, passengers, and fuel.

A. Limited ORV Use Designations

1. The foothills area, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, is open to use of ORVs that weight less than 1,500 pounds GVW. Subject to valid existing rights, the use of ORV's weighting over 1,500 pounds GVW is prohibited for all other lands in this area without written authorization from the District Manager, Steese/White Mountains District. Written authorization is not required by this notice for use of ORVs that weight over 1,500 pounds GVW on the U.S. Creek Road and the mining tailings along Nome Creek.

2. The highlands area, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designations Map, is managed to protect the wild and natural character of the area. Subject to valid existing rights, this area is open to winter use by snowmachines that weigh less than 1,500 pounds GVW. All ORV use is prohibited in the Windy Creek drainage, and the Fossil Creek drainage below the Windy Gap cabin, from April 15 to August 31, inclusive, in order to avoid disturbance to known peregrine falcon nesting areas. All other ORV use is prohibited without written authorization from the District Manager, Steese/White Mountains District.

3. Beaver Creek has been designated, and is managed as, a "wild" river pursuant to the Wild and Scenic Rivers Act (WSRA, Pub. L. 90-542). Except for the closures noted above for Windy Creek and Fossil Creek, and subject to valid existing rights, the Beaver Creek National Wild River corridor is open to winter use of snowmachines that weigh less than 1,500 pounds GVW. Any other ORV use is prohibited without written authorization from the District Manager, Steese/White Mountains District.

4. The White Mountains Summer Trail (specifically, the land within 12.5 feet of the centerline of the trail) is managed as a non-motorized recreation trail and is closed to all motorized vehicle use, except that the trail is open to winter use by snowmachines that weigh less than 1,500 pounds GVW to the extent necessary to allow these snowmachines to cross the trail at right angles, more or less, incidental to accessing State or Federal lands otherwise open to such use.

B. Closed to ORV Use Designation

1. There are three designated Research Natural Areas (RNAs) shown on the White Mountains National

Recreation Area Off-Road Vehicle Designations Map (Serpentine Slide, Limestone Jags, and Mount Prindle), which are closed to all ORV use. These have been identified as having representative examples of ecosystems or unusual natural features that are of scientific interest for the Ecological Reserve System.

The foregoing provisions are not applicable to any Federal, state, or local law enforcement officer, or any member of any organized rescue or fire suppression force in the performance of an official duty.

Signs will be placed at major access points showing ORV use restrictions. Maps identifying these designated use areas are available at the office listed below. Operators of ORVs in violation of these designations are subject to the penalties prescribed in 43 CFR Subpart 8340.0-7.

Direct questions and responses to: Steese/White Mountains District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, (907) 356-5367.

Dated: June 27, 1988.

Donald E. Runberg,
District Manager, Steese/White Mountains District.

[FR Doc. 88-15406 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-JA-M

[NV-930-08-4212-11; N-48582]

Battle Mountain District; Tonopah Resource Area; NV

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Realty action; classification of Federal lands for lease or sale for recreation and public purposes in Nye County, NV.

SUMMARY: In response to an application from the Beatty Water and Sanitation District for a sewage treatment plant site, the following described lands have been identified as suitable for lease or sale under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 889, *et seq.*):

Mount Diablo Meridian

T. 12 S., R. 47 E.,
Sec. 19, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 30, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ N
E $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

A parcel of land containing 155 acres.

These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. No conflicts with State or local plans have

been identified. The grazing lessee will be given the two-year notification prescribed in Section 402(g) of the Federal Land Policy and Management Act of 1976.

The lands described in this notice meet the criteria for classification set forth in 43 CFR 2410.1-2 and 2430.4. They will not be offered for lease or sale until the classification becomes effective and all required environmental, archaeological, and mineral reports have been completed.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (43 U.S.C. 94).

2. All mineral deposits in the lands so patented and to the United States, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law.

And would be subject to: 1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the Federal Register, the above described public lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to applications under the mineral leasing laws and applications under the Recreation and Public Purposes Act. The segregative effect will end upon issuance of patent or as specified in an opening order to be published in the Federal Register.

For a period of 45 days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, P.O. Box 1420, Battle Mountain, NV 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated: June 29, 1988.

Terry L. Plummer,
District Manager, Battle Mountain, Nevada.

[FR Doc. 88-16011 Filed 7-14-88; 8:45 am]
BILLING CODE 4310-NC-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF ENERGY

Western Area Power Administration

Hoover Powerplant Modification, Boulder Canyon Project, Arizona/Nevada

AGENCIES: Bureau of Reclamation, Department of the Interior and Western Area Power Administration, Department of Energy.

ACTION: Notice of receipt of a proposal for the study of hydropower development on the Boulder Canyon Project, Arizona/Nevada; request for comments or additional proposals.

SUMMARY: Hoover Dam is an existing Bureau of Reclamation (Reclamation) structure which includes two existing powerhouses containing 17 main generating units.

By letter dated May 3, 1988, the Arizona Power Authority (APA) and the Colorado River Commission of Nevada (CRC) jointly submitted a proposal to Reclamation and the Western Area Power Administration (Western) wherein APA and CRC have proposed to study the feasibility of additional power development at Hoover Dam, and if feasible, finance the Hoover Powerplant Modification (Modification) for development by Reclamation, pursuant to the provisions of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617, *et seq.*) (Act) and the Contributed Funds Act (43 U.S.C. 395). Reclamation and Western believe that any study must evaluate the capability of the existing transmission system to deliver the proposed additional capacity and determine any additions to the existing transmission system that may be required. Additional environmental studies could also be required.

The proposed Modification program would involve the construction of additional generating equipment at or near the existing powerhouses and would necessarily be integrated operationally and physically with the existing facilities.

All capacity from existing generating units (including uprating) and all energy that can be generated with the available water supply at Hoover Dam are fully allocated. The proposed Modification program would not increase the available energy from Hoover. However, the proposed Modification program would increase the generating capacity,

which would allow APA and CRC to use their energy allocations in greater concentrations during times of peak demand.

Following the 30-day comment period, Reclamation and Western will evaluate the proposal, comments on the proposal, and any additional proposals, and determine what action is appropriate at that time.

DATES: Additional proposals or written comments concerning this Notice should be submitted on or before August 15, 1988.

ADDRESS: Additional proposals or written comments concerning this notice should be sent to: Mr. Benedict R. Radecki, Assistant Manager, Washington Liaison Office—Resource Management, Bureau of Reclamation, 18th and C Streets NW., Washington, DC 20240.

Availability of Information: Copies of the proposal may be obtained upon request from the contacts identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Maestas, Acting Regional Supervisor of Power, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, (702) 293-8104, concerning power development matters; or Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 477-3255, concerning power marketing and transmission matters.

SUPPLEMENTARY INFORMATION: Reclamation completed a congressionally authorized feasibility study, "Hoover Power Plant Modification Feasibility Report," in December 1982, concluding that the proposed Modification program was feasible at that time. In December 1984, Reclamation also issued a Final Environmental Impact Statement on the proposed Modification program (Statement No. FES 84-48 dated December 27, 1984).

The proposed Modification program consists of two 250-MW generating units which would operate in parallel with generating units on an existing 25-foot diameter penstock and which would share the existing reservoir intake works with the remaining generating units.

Reclamation is responsible for planning, designing, constructing, operating, and maintaining electrical power generation facilities as authorized

by Congress. Reclamation is also responsible for allocating all costs for Reclamation project purposes and determining the reimbursable costs to be recovered by revenues. Western is responsible for marketing that power which is surplus to project needs, constructing transmission facilities, making transmission arrangements, assuring recovery of all costs assigned to power for repayment, and for setting power and transmission rates. Reclamation and Western will work together in the negotiation and execution of any contracts relating to the proposal.

In order for generating capacity made available by the proposed Modification program to be used and useful, a developer must have a contract with the Secretary of the Interior (Secretary) for the release of water through the Hoover Powerplant Modification program turbines. However, the Secretary is already and will continue to be contractually committed to the use of all available water releases for the exclusive beneficial use of the current Hoover contractors as specified in the Hoover Power Plant Act of 1964. Hence, any use of water by a Modification developer must be accomplished within the framework of those contracts, and absent a voluntary relinquishment of rights by an existing contractor, such use must be restricted to the situation where the Modification developer(s) and the existing contractor(s) are one and the same; i.e., capacity made available by the Modification program can only be contracted for by an existing Hoover contractor.

Section 5 of the Act further provides that preference to applicants for the use of water and appurtenant works and privileges for the generation and distribution of hydroelectric energy "shall be given first to a State for use in that State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants."

Date: July 11, 1988.

C. Dale Duvall,
Commissioner, Bureau of Reclamation.

Date: July 5, 1988.

William H. Clagett,
Administrator, Western Area Power Administration.

[FR Doc. 88-15940 Filed 7-14-88; 8:45 am]

BILLING CODE 4315-06-M

INTERNATIONAL JOINT COMMISSION—UNITED STATES AND CANADA

Public Hearings; a Request From Governments That the Commission Examine Into and Report Upon the Water Quality and Quantity Implications of a Proposed Mine Development on Cabin Creek in British Columbia

Notice is hereby given that the International Joint Commission will conduct public hearings on the report of the Flathead River International Study Board regarding the water quality and quantity implications of a proposed mine development on Cabin Creek in British Columbia. The Commission was requested by the Governments of Canada and the United States to examine and report on the present state of water quality and quantity at the border, the nature, location and significance of fisheries currently dependent on the waters of the Flathead River, and on the effects of the construction, operation and post-mine reclamation of the proposed Cabin Creek coal mine on current waters. David A. LaRocca,
Secretary, United States Section,
July 8, 1988.

The public hearings will be held at the following times and locations:

September 20, 1988

2:00 p.m. and 7:30 p.m.

Cavanaugh's Motor Inn

Kalispell, Montana

September 21, 1988

2:00 p.m. and 7:30 p.m.

The Inn of the South

Cranbrook, British Columbia.

These public hearings will allow all interested parties to make presentations to the Commission. Any interested person or organization may address the hearing in either location, although the time allowed for presentation may be limited. Written submissions may also be sent to:

Secretary, Canadian Section,
International Joint Commission, 100
Metcalf Street, Ottawa, Ontario K1P
5M1, (613) 995-2984

Secretary, United States Section,
International Joint Commission, 2001
"S" Street, NW., Washington, DC
20440, (202) 673-6222

Prior to the formal public hearings, the Flathead River International Study Board will conduct two public information meetings on its report to the Commission at Cranbrook, B.C. July 27, 7:30 p.m. at the Inn of the South, and

Kalispell, Montana, July 28, 7:30 p.m. at the Outlaw Inn.

These meetings have been designed to allow members of the public to hear first hand from members of the Board about their findings and to obtain further information about the study. Copies of the Board's report will be available at the meetings and may be requested from the Commission Secretaries at the addresses above.

[FR Doc. 88-15920 Filed 7-14-88; 8:45 am]

BILLING CODE 4710-14-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: July 12, 1988.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Land O'Lakes, Inc., 4001 Lexington Ave., No., Arden Hills, MN 55128.

(2) 4001 Lexington Ave., No., Arden Hills, MN 55128.

(3) Herb Sorvik, P.O. Box 110, Minneapolis, MN 55440.

Noreta E. McGee,

Secretary.

[FR Doc. 88-15956 Filed 7-14-88; 8:45 am]

BILLING CODE 7025-01-M

Motor Carrier Applications To Consolidate, Merge or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure reasonable to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicants must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application on a non-complying applicant shall stand denied.

Findings

The findings for these applications are set forth at 49 CFR 1182.6.

MC-F-19192, filed June 27, 1988. Allen Transportation Company Inc. (Allen) (1331 "C" St., Sacramento, CA 95852)—Purchase—Boise School Bus & Charter Service doing business as Sierra Trailways (Boise) (1109 Borah St., Boise, ID 83707). Representative: William D. Taylor, 333 Market St. #2277, San Francisco, CA 94105. Allen (MC-172280) seeks authority to purchase the authority held by Boise in Certificate No. MC-157803 (Sub-No. 2), authorizing the transportation of passengers and their baggage, over regular routes, between San Francisco, CA and Reno, NV over Interstate Hwy. 800, serving all intermediate points. Allen is controlled by A.B. Allen and R.E. Allen, who each own 50 percent of Allen's class A stock, and by William Allen, William Allen, Trustee, and Paula Del Carlo, who each

own 1/3 of Allen's class B stock. Allen in turn controls 100 percent of the stock of Amador State Lines, Inc. (MC-82965).

Decided: July 8, 1988.

By the Commission, Motor Carrier Board, Members Grossman, Thomas, and Johnson. (Member Johnson not participating).

Noreta E. McGee,

Secretary.

[FR Doc. 88-15957 Filed 7-14-88; 8:45 am]

BILLING CODE 7025-01-M

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service (SES) Performance Review Boards, 1988

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1988 SES Performance Review Boards.

SUMMARY: Pursuant to the requirement of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its SES Performance Review Boards. The purposes of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals and to make recommendations to the Deputy Attorney General regarding the ratings. FOR FURTHER INFORMATION CONTACT: Mr. Warren Oser, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530. Telephone: (202) 633-3221.

Paul W. Mathwin,
Acting Executive Secretary, Senior Executive Resources Board.

Performance Review Boards

David J. Anderson, Director, Federal Programs Branch, Civil Division
James S. Angus, Chief, Employment Litigation Section, Civil Rights Division
Robert K. Bratt, Executive Officer, Civil Rights Division
Ronald A. Brooks, Assistant Commissioner for Inspections, Immigration and Naturalization Service
David T. Buente, Jr., Chief, Environmental Section, Land and Natural Resources Division
Benjamin F. Burrell, Director, Facilities and Administrative Services Staff, Justice Management Division
A.R. Cinquegrana, Deputy Counsel for Intelligence Policy, Office of Intelligence Policy and Review
Jonathan S. Cohen, Special Litigation Counsel, Tax Division

Richard L. DeHaan, Director, Office of Administration and Review, Executive Office for U.S. Attorneys
Robert L. Dennis, Assistant to the Director, Executive Office for Immigration Review
Vito J. DiPietro, Director, Commercial Litigation Branch, Civil Division
David K. Flynn, Chief, Appellate Section, Civil Rights Division
Donald J. Gavin, Chief, Office of Special Litigation, Tax Division
J. Patrick Glynn, Director, Torts Branch, Civil Division
Theodore S. Greenberg, Deputy Chief, Fraud Section, Criminal Division
Frank A. Guglielmo, Director, Computer Technology and Telecommunications Staff, Justice Management Division
William C. Hendricks III, Chief, Fraud Section, Criminal Division
Wade B. Houk, Assistant Director for Administration, Bureau of Prisons
I. Curtis Jernigan, Chief, Economic Regulatory Section, Antitrust Division
William J. Kollins, Chief, Land Acquisition Section, Land and Natural Resources Division
Douglas T. Lansing, Assistant Director for Human Resources Management, Bureau of Prisons
Robert E. Lindsay, Director, Office of Policy and Tax Enforcement, Tax Division
M. Miles Matthews, Assistant Director and Comptroller, U.S. Marshals Service
Anthony C. Moscato, Principal Deputy Assistant Attorney General, Justice Management Division
Warren Oser, Director, Personnel Staff, Justice Management Division
Thomas N. Perrelli, Comptroller, Immigration and Naturalization Service
James A. Puleo, Assistant Commissioner for Adjudication, Immigration and Naturalization Service
Benjamin H. Renshaw, Deputy Director, Bureau of Justice Statistics
Neil E. Roberts, Chief, Legal Policy Section, Antitrust Division
John R. Schroeder, Assistant Commissioner for Employment Cooperation, Immigration and Naturalization Service
Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Division
Peter R. Steenland, Jr., Chief, Appellate Section, Land and Natural Resources Division
Dale Thomas, Deputy Assistant Director (UNICOR), Bureau of Prisons
Ronald J. Waldron, Deputy Assistant Director for Administration, Bureau of Prisons
Carol A. Williams, Special Counsel, Office of Legal Counsel

Philip M. Zeidner, Deputy Director,
Executive Office for U.S. Trustees
Michael F. Zeldin, Deputy Chief,
Narcotic and Dangerous Drug Section,
Criminal Division

[FR Doc. 88-15953 Filed 7-14-88; 8:45 am]
BILLING CODE 4110-05-M

Drug Enforcement Administration

Cedars North Towers Pharmacy, Inc., d/b/a Cedars of Lebanon Apothecary; Revocation of Registration

On March 24, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Cedars North Towers Pharmacy, Inc., d/b/a Cedars of Lebanon Apothecary (Respondent), of Miami, Florida, proposing to revoke its DEA Certificate of Registration AC5854206, and to deny any pending applications for renewal. The statutory basis for the issuance of the Order to Show Cause was that the pharmacy's continued registration was inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), based upon the following allegations: (1) An accountability audit of the pharmacy's controlled substance stock revealed excessive shortages and overages of most of the drugs audited; (2) the pharmacy handled controlled substances pursuant to an expired DEA Certificate of Registration; (3) the pharmacy failed to maintain controlled substance order forms and invoices in accordance with Federal laws and regulations; (4) the pharmacy failed to fill and maintain controlled substance prescriptions in accordance with Federal laws and regulations; (5) on numerous occasions, the pharmacy filled prescriptions for controlled substances which the pharmacist knew or should have known were not authorized by the physician alleged to have issued such prescriptions; and (6) on numerous occasions, the pharmacy refilled prescriptions for controlled substances which were not authorized by the issuing physician.

Through counsel, Respondent waived its opportunity for a hearing on the issues raised in the Order to Show Cause. Instead, Respondent filed a written statement in accordance with 21 CFR 1301.54(c). In the written statement, Respondent's counsel responded to the issues raised in the Order to Show Cause by stating that: (1) Any shortages or overages were the result of inadvertence and excusable neglect in minor recordkeeping mistakes, and were minor; that the audit did not take into

consideration certain invoices and prescriptions which were misfiled; and that shortages were due to disposition of out of date substances and returns to manufacturers for credit; (2) with respect to the expired DEA Certificate of Registration, the owner was "under the mistaken impression that the certificate was not in effect and did not realize it had expired"; (3) all order forms were maintained; the owner was unaware that invoices which included controlled substances were required to be filed separately; (4) all prescriptions were filed substantially in accordance with Federal law and slight deviations were not inconsistent with the public interest; (5) all prescriptions filled by the pharmacy were authorized by physicians; and (6) all prescriptions refilled by the pharmacy were authorized by physicians. Respondent's counsel also averred that the violations would not be repeated, and requested that the Administration take alternative action short of revocation of the pharmacy's registration.

In making the final determination in this matter, the Administrator has carefully considered all of the evidence contained in the DEA investigative file and the written statement provided by Respondent's counsel.

The Administrator finds that on November 5, 1986, Diversion Investigators from the Miami Field Division visited Respondent pharmacy after receiving information from state investigators that the pharmacy was operating with an expired DEA Certificate of Registration. The Investigators discovered that Respondent's DEA registration expired on August 31, 1986, and had not been renewed as of the date of their visit to the pharmacy. Ira Stern is the sole owner of the pharmacy. DEA Diversion Investigators found that the pharmacy failed to maintain complete controlled substance records, controlled substance prescriptions were not readily retrievable, several controlled substance invoices were missing or incomplete, order forms were incomplete, and controlled substances were found scattered in various boxes and bags throughout the pharmacy's prescription area. Based upon Respondent's lack of authority to handle controlled substances at that time, on November 12, 1986, the Administrator ordered the seizure of all controlled substances in Respondent's possession. On November 17, 1986, Respondent was served with the a notice of inspection, and all controlled substances and controlled substance records were removed from the pharmacy.

In January 1987, Respondent's DEA Certificate of Registration was renewed inadvertently during the continued investigation of the pharmacy's controlled substance handling activities.

DEA Diversion Investigators conducted an accountability audit of Respondent's controlled substance stock for the period from July 21, 1985, to November 17, 1986. The audit revealed a total shortage of more than 8,000 dosage units of various controlled substances, with unexplained shortages of certain controlled substances as high as 86.4% and unexplained overages as high as 78.36%. In addition, the audit revealed that a significant number of the pharmacy's controlled substance invoices and one DEA order form did not include dates the drugs were received, nor the initials of the pharmacist who received the drugs, in violation of 21 U.S.C. 827(a)(3). Several of the controlled substance prescriptions bore no issuance date, physician's DEA registration number, address for the physician or patient address, or patient name, in violation of 21 U.S.C. 842(a)(5). Some prescriptions were refilled more than five times and some did not contain the pharmacist's initials on the refills, in violation of 21 U.S.C. 842(a)(5). In addition, several prescriptions were not readily retrievable in that they were mixed with other prescriptions for non-controlled drugs but were not stamped with the letter "C" to designate that they were controlled substance prescriptions, in violation of 21 U.S.C. 842(a)(5) and 21 CFR 1304.04(f)(2).

DEA Diversion Investigators also interviewed several physicians whose names were listed as prescribing physicians on a number of telephone prescriptions for controlled substances found at the pharmacy. Many of the physicians informed the Diversion Investigators that they did not authorize the telephone prescriptions for controlled substances which bore their names.

With respect to controlled substance prescriptions which were refilled at the pharmacy, several physicians interviewed indicated that they did not authorize the refills indicated on prescriptions bearing their names as the issuing physicians.

DEA Diversion Investigators also interviewed an individual listed as a patient on controlled prescriptions filled at the pharmacy; she stated that she was not a patient of the physician listed on the prescriptions, nor did she ever receive the controlled substances allegedly dispensed to her from the pharmacy.

The Administrator finds that Respondent pharmacy has not handled controlled substances with the care and restraint required of DEA registrants. It operated for several months without a valid DEA Certificate of Registration. The discrepancies in the pharmacy's recordkeeping disclosed during the controlled substances accountability audit were unjustified. The pharmacy never produced records to explain the excessive overages or shortages. It could not account for more than 8,000 dosage units of controlled substances. Many of the "telephone" prescriptions filled by the pharmacy were not legitimate or authorized by the listed physician, nor were many of the refills. In addition, the pharmacy failed to maintain proper controlled substance receiving records.

The explanations contained in Respondent's written statement do not mitigate or justify the pharmacy's improper and unlawful controlled substance activities. Ignorance of the law and regulations under which the pharmacy operates is inexcusable. Interviews conducted with physicians and patients demonstrate that Respondent's allegations that all prescriptions for controlled substances filled and refilled at the pharmacy were properly authorized are false.

Based upon the available information concerning Respondent's operation of the pharmacy, the Administrator concludes that its handling of controlled substances has been unacceptable and that it has not complied with Federal laws concerning controlled substances. The Administrator is not persuaded by Respondent's written statement that the public interest would be served by allowing Respondent to retain its controlled substance registration. Since Respondent pharmacy has not handled controlled substances in a responsible manner, the Administrator concludes that Respondent's continued registration is now inconsistent with the public interest and must be revoked.

Having concluded the Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AC5854206, previously issued to Cedars North Towers Pharmacy, Inc., d/b/a Cedars of Lebanon Apothecary, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration or for a new registration be, and they hereby are, denied.

This order is effective August 15, 1988.

Dated: July 7, 1988.

John C. Lawn,
Administrator.

[FR Doc. 88-15960 Filed 7-14-88; 8:45 am]
BILLING CODE 4110-05-M

[Docket No. 87-1]

Lewis K. Curtwright, D.O.; Revocation of Registration

On December 4, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lewis K. Curtwright, D.O. (Respondent), of Milford, Ohio, proposing to revoke his DEA Certificate of Registration BC0306399, and to deny any pending applications for renewal of his registration. The grounds for the proposed action cited in the Order to Show Cause were that Respondent was not currently authorized to handle controlled substances in the state in which he maintained his DEA Certificate of Registration and that based upon numerous controlled substance violations, his continued registration was inconsistent with the public interest.

Through counsel, Respondent requested a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young.

Both parties filed prehearing statements and a prehearing conference was held by Judge Young on September 4, 1987. On September 8, 1988, Judge Young issued a prehearing ruling which outlined the issues, stipulations, witnesses and their expected testimony, documentary evidence to be introduced, and the date and location for the pending hearing. The hearing was scheduled to be held in Washington, DC on December 3, 1987. In his prehearing ruling, Judge Young also ordered Respondent's counsel to provide the Government with an expanded summary of Respondent's expected testimony and copies of witness affidavits by November 4, 1987. Respondent's counsel failed to provide the required information by that date and Government counsel filed a motion requesting that the Administrative Law Judge strike portions of Respondent's prehearing statement or, in the alternative, postpone the hearing and order Respondent's counsel to comply with the earlier ruling. By memorandum to counsel dated November 25, 1987, Judge Young deferred ruling on the Government's motion until the scheduled hearing.

On December 1, 1987, Government counsel received correspondence from Respondent in which he requested information on the status of the action against his registration and claimed that his attorney had not informed him of the pending hearing. The Administrative Law Judge, having been advised about Respondent's letter, convened a telephone conference with counsel from both sides to discuss the allegations in Respondent's letter and to determine whether a postponement of hearing might be appropriate. Respondent's counsel provided documentation that he had informed Respondent of the scheduled hearing date, had sent him a copy of the prehearing ruling, and had also requested Respondent's assistance in preparing his summary of testimony and witness affidavits. Respondent did not respond to any of his counsel's requests.

Based upon the fact that Respondent had been fully informed of the scheduled hearing, Government counsel requested that the hearing be held on December 3, 1987, as previously scheduled. The hearing was so held. Neither Respondent nor his attorney appeared at the hearing. The Government offered the testimony of one witness and introduced a total of 17 documents. No evidence was introduced on behalf of Respondent.

Since Respondent failed to appear at the hearing, he is deemed to have waived his opportunity for a hearing. 21 CFR 1301.54(d). Accordingly, on February 14, 1988, the Administrative Law Judge terminated the proceedings before him and the matter was submitted to the Administrator for a final determination.

The Administrator has reviewed all of the evidence in this matter, including the testimony and documentary evidence presented at the hearing and the information contained in the investigative file. After careful consideration, the Administrator determines that Respondent's registration should be revoked and that any pending applications for renewal should be denied.

The Administrator finds that on January 19, February 2, and March 8, 1984, Respondent appeared before the Ohio State Medical Board to answer to several allegations that he had improperly handled controlled substances. On August 8, 1984, the Board issued an order suspending Respondent's license to practice medicine in that state for a period of eighteen months, effective September 15, 1984. All but 30 days of the suspension were stayed conditioned upon his

compliance with other provisions of the order, including: (1) Appearing before the Board on a quarterly basis during the suspension; (2) spending four weeks at a drug treatment facility, as an observer; (3) surrendering his DEA Certificate of Registration for a period of six months; and (4) maintaining a log of all controlled substances prescribed during the suspension period. The Board action against Respondent was based upon findings that he inappropriately prescribed controlled substances to at least four patients, treated a number of patients with addictive controlled substances for an excessive period of time, and treated a number of patients with excessive amounts of addictive controlled substances. The Board concluded that Respondent's actions constituted "failure to use reasonable care [and] discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," and "a departure from, or failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances." After reviewing the transcript of the 1984 Ohio State Medical Board proceeding, the Administrator reaches essentially the same conclusions as did the Board.

The record indicates that on September 15, 1984, Respondent surrendered his DEA Certificate of Registration in compliance with the earlier board order. During the period from September 15, 1984, to February 25, 1986, Respondent did not possess a valid DEA Certificate of Registration. On February 25, 1986, Respondent was issued a new DEA Certificate of Registration shortly after submitting a new application.

On June 12 and August 15, 1985, Respondent again appeared before the Ohio State Medical Board to answer allegations that he violated the Board's 1984 order prohibiting him from handling controlled substances for the six-month period from September 15, 1984, to March 15, 1985, by issuing at least eight controlled substance prescriptions during the months of October, November and December 1984. The Board determined that Respondent violated its earlier order by writing eight prescriptions for Restoril, Fiorinal and Tenuate at a time when he was not authorized to do so. On March 12, 1986, the Board issued an order reimposing the eighteen-month suspension of

Respondent's medical license, to take effect on May 1, 1986.

The Administrator finds that, in addition to violating the Board's earlier order, Respondent also unlawfully issued controlled substance prescriptions during that time since he did not possess a valid DEA Certificate of Registration when he issued the prescriptions. The DEA administrative record also includes additional controlled substance prescriptions issued by Respondent in October 1985 and January 1986, also at a time he did not possess a valid DEA Certificate of Registration.

The Administrator finds that Respondent appealed the Board's 1986 decision suspending his medical license. On December 31, 1986, the Ohio Court of Appeals for the Twelfth Appellate District, Clermont County reversed the Board's actions on the ground that the 1984 order was ambiguous and contradictory with respect to Respondent's ability to handle controlled substances during the suspension period, in that although the Board ordered Respondent to surrender his DEA Certificate of Registration, it also required him to maintain a log of controlled substances he prescribed. The court did not question the validity of the Board's 1984 findings and conclusions regarding Respondent's record of improperly handling controlled substances. Based upon the court's reversal of the Board orders, Respondent's Ohio state medical license was restored.

On October 16, 1986, Respondent executed an application for renewal of his DEA Certificate of Registration listing 220 N. Lincoln Street, Daytona Beach, Florida as his registered address. On August 7, 1987, Respondent also executed a new application for registration with the Drug Enforcement Administration listing P.O. Box 555669, Orlando, Florida as his registered address. Both applications are before the Administrator in this proceeding. Although Respondent is currently registered with the Drug Enforcement Administration to handle controlled substances in the State of Ohio, he is not so registered in the State of Florida.

The Administrator finds, based upon the evidence previously discussed, that Respondent improperly handled controlled substances by treating patients with controlled substances when their symptoms did not support such treatment and by treating patients with controlled substances for excessive periods of time and in excessive quantities. In addition, Respondent issued several prescriptions for

controlled substances at a time when he did not possess a valid DEA Certificate of Registration. These violations demonstrate that Respondent does not handle controlled substances with the care and restraint required of registrants, and also that he has demonstrated a disregard for the laws and regulations under which he is registered. Such behavior is inconsistent with the public interest and cannot be tolerated. Therefore, the Administrator concludes that Respondent's continued registration is inconsistent with the public interest and that his DEA Certificate of Registration must be revoked.

Having concluded that Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration BC0306399, previously issued to Lewis K. Curtwright, D.O., be, and it hereby is, revoked. It is further ordered that Respondent's pending applications for registration, executed on October 16, 1986, and August 7, 1987, be, and they hereby are, denied.

This order is effective August 15, 1988.

Dated: July 8, 1988.

John C. Lawm,

Administrator.

[FR Doc. 88-15909 Filed 7-14-88; 8:45 am]

BILLING CODE 4410-39-M

Manufacturer of Controlled Substances; Registration; Smithkline and French Laboratories

By Notice dated May 11, 1988, and published in the Federal Register on May 19, 1988; (53 FR 17988), Smithkline and French Laboratories, Division of Smithkline Beckman Corporation, 1530 Spring Garden Street, Philadelphia, Pennsylvania 19101, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of amphetamine, its salts, optical isomers and salts of its optical isomers (1100), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 5, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-15970 Filed 7-14-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Smithkline Chemicals

By Notice dated May 11, 1988, and published in the Federal Register on May 19, 1988; (53 FR 17989), Smithkline Chemicals, Division of Smithkline Beckman Corporation, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
4-methoxyamphetamine (7411).....	I
Amphetamine, its salts, optical isomers and salts of its optical isomers (1100).....	II
Phenylacetone (8501).....	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 5, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-15971 Filed 7-14-88; 8:45 am]

BILLING CODE 4410-09-M

Docket No. 87-57]

Wyeth Hardy Worley, D.D.S.; Revocation of Registration

On June 24, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Wyeth Hardy Worley D.D.S. (Respondent) of Bossier City, Louisiana proposing to revoke his DEA Certificate of Registration AW338660, and deny any pending applications for renewal of that registration. The

statutory predicate for the Order to Show Cause was that Respondent's continued registration with DEA was inconsistent with the public interest as evidenced by (1) his failure to maintain inventory and dispensing records of controlled substances, (2) his failure to maintain all DEA order forms, (3) his excessive purchases of controlled substances, including Desoxyn, a stimulant drug not dispensed by dentists in legitimate practice, and (4) his personal abuse of controlled substances.

Respondent, through counsel, requested a hearing by letter dated July 16, 1987. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing filings, a hearing was held in New Orleans, Louisiana on November 17, 1987. Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision on March 25, 1988. Respondent filed his proposed findings of fact, conclusions of law and argument on April 7, 1988, approximately a month after the due date for filing. On April 22, 1988, Respondent filed a document in the nature of exceptions entitled Memorandum in Opposition to Findings of Fact and Conclusion of Law and Decision of Administrative Law Judge. On May 10, 1988, Respondent filed another document which was entitled Respondent's Exceptions to Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. Government counsel filed a response to Respondent's exceptions on May 18, 1988.

On May 24, 1988, the Administrative Law Judge transmitted the record in this matter to the Administrator. In the letter of transmittal, the Administrative Law Judge advised the Administrator that he had reconsidered his opinion in light of Respondent's proposed findings of fact, conclusions of law and argument, and concluded that no changes in his opinion or recommendation were necessary. The Administrative Law Judge also informed the Administrator that Respondent had attached various documents to his post-hearing filings which were in the nature of evidentiary material. Since this material was proffered after the time for submitting such evidentiary documents had passed, the Administrative Law Judge did not consider those documents. The Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

The Administrative Law Judge found that Respondent had a 20-year history of controlled substance abuse, which included abuse of Desoxyn and

Dilaudid. Respondent ordered large quantities of controlled substances for office use in 1984, 1985, and 1986. In 1985 Respondent was investigated by the Louisiana State Police because of his unusually large purchases of Schedule II controlled substances, including Desoxyn, a stimulant drug containing methamphetamine. This is not a drug used by dentists in legitimate dental practice. The Louisiana State Police referred their investigative findings to the Vice-President of the Louisiana State Board of Dentistry. The Vice-President of the dental board told Respondent to cease dispensing Desoxyn and write prescriptions for his patients if necessary. Respondent continued to purchase large quantities of Desoxyn.

In January 1987, DEA Diversion Investigators went to Respondent's Office to inspect his records and stocks of controlled substances. Respondent told investigators he had no inventory or dispensing records. He also told the investigators that he intended to take all the controlled substances on hand with him to Mexico the following day for use in his work with the Indians. Respondent indicated that he transported controlled substances to Mexico on many occasions in order to treat the Indians, and had no records of the controlled substances he took out of the country. Respondent was not registered by DEA as an exporter nor did he file any of the required declarations or permits prior to exporting controlled substances.

The Administrative Law Judge further found that Respondent was addicted to Dilaudid and Desoxyn and was admitted to a treatment program, of his own volition, in February 1987. Respondent left this program against medical advice and was admitted to another program in Louisiana. He successfully completed 90 days of intensive treatment. As of the date of the hearing, Respondent was following the course of his aftercare monitoring program.

The Administrative Law Judge concluded that Respondent failed to meet his burden of showing that he could be trusted with a DEA Registration. Respondent's period of recovery had been less than a year at the time of the hearing. This is in contrast to a 20 year history of controlled substances abuse. In addition, the Administrative Law Judge noted that Respondent's explanation of the extent of his drug use did not account for the very large quantities of Desoxyn he purchased. Since this drug has no legitimate use in dentistry, such

large purchases lead to the conclusion that the Desoxyn which was not for Respondent's own abuse was used for some illicit purpose. The Administrative Law Judge recommended that Respondent's registrations be revoked, and that any pending renewal applications be denied.

Respondent filed two documents in the nature of exceptions to the opinion and recommended ruling of the Administrative Law Judge. Respondent argues that he has entered into a consent agreement with the Louisiana State Board of Dentistry regarding his state dental license. This consent agreement was apparently entered into following the hearing, and there is no evidence in the record regarding its existence. Respondent further argues that his conduct was not criminal, and that there is no evidence to support a contention that he disposed of controlled substances in a criminal manner. He also argues that all his problems arose because of his drug abuse problem. Respondent violated the law in many respects. He obtained controlled substances fraudulently, he exported controlled substances without being registered or filing required documents, and he failed to maintain required controlled substances dispensing records. These violations do not lose their significance because criminal charges were not filed against Respondent.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that Respondent's long history of personal drug abuse in contrast to a short period of rehabilitation and his failure to maintain records and to properly handle controlled substances in his practice require the DEA registration to be revoked as inconsistent with the public interest.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW337660, previously issued to Wyeth Hardy Worley, D.D.S., be, and it hereby is, revoked. Any pending applications for renewal of that registration are hereby denied. This order is effective August 15, 1988.

Dated: July 7, 1988.

John C. Laws,
Administrator.

[FR Doc. 88-15072 Filed 7-14-88; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Research, Evaluation, and Pilot and Demonstration Projects Program; Program Year 1988: Availability of Funds and Request for Applications

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of Solicitation for Grant Applications.

SUMMARY: The Employment and Training Administration announces the availability of funds under the Job Training Partnership Act for providing technical assistance to States that replicate the Summer Training and Education Program (STEP) model starting with the summer of 1989.

DATES: The closing for receipt of applications under this announcement is August 29, 1988.

To be considered, an application must be received no later than 4:45 (Eastern Daylight Time) at the address below, on August 29, 1988. Any application not reaching the designated place and date of delivery will not be considered.

To receive consideration, applications submitted by mail must be postmarked no later than August 24, 1988. The term "postmark" means a printed, stamped or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

ADDRESS: Mail or hand-deliver applications to: Division of Acquisition and Assistance, Office of Financial and Administrative Management, Employment and Training Administration, U.S. Department of Labor, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Brenda Banks, Reference: SGA-DAA 104-88.

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Division of Acquisition and Assistance, Telephone: (202) 535-8702.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds under the Job Training Partnership Act (JTPA) for providing technical assistance to States and service delivery areas (SDAs) that replicate the Summer Training and Education Program (STEP) model, starting with the summer of 1989. The Department of Labor (Department) plans

to replicate this model in ten States, with approximately five SDAs per State.

STEP is a combined education and work experience program aimed toward reducing dropout and teenage pregnancy rates among disadvantaged and educationally deficient youth. Early results of a STEP demonstration suggest that widespread implementation of this program will help achieve the Department of Labor's (Department's) goals of increasing literacy and employability of disadvantaged youth.

One (1) grantee will be chosen to facilitate the replication of STEP in the States by assisting in the selection of States, guiding the implementation of STEP, and providing technical assistance and training to States and SDAs during implementation and program operation.

Grantee selection will be based primarily on demonstration of an understanding of the key features of the STEP model, the technical assistance States and local staff will need to implement it, and the timeframe needed to mount the various activities; and experience in providing technical assistance to State and local staff who are mounting new program designs.

The Department anticipates making an award of approximately \$600,000. This award, together with local matching funds, should support technical assistance through the approximately nine months of State and local planning and 15 months of program operation beginning in summer 1989. Pending availability of funds and adequate grantee performance, a grant may be awarded for additional States, beginning program operation in summer 1990.

This project announcement consists of three parts. Part I provides background information on the STEP model. It describes the model and gives the history of the demonstration project, the Department's involvement in it, and the early research results on its effectiveness. Part II describes the technical assistance needed to mount the replication. Part III provides guidance on how to prepare and submit an application.

Eligible Applicants

Proposals will be accepted from all applicants who can provide the services outlined in this solicitation. Any grant awarded as a result of this notice will be non-fee bearing.

Part I—Background

A. The Summer Training and Education Program (STEP) Model

The Summer Training and Education Program (STEP) targets youth who are 14 and 15 years old, doing poorly in school and eligible for the federally-funded Summer Youth Employment and Training Program established pursuant to Title II-B of the Job Training Partnership Act (JTPA).

Participants are enrolled in the program for approximately 15 months, including two consecutive summers and the intervening school year. During the first summer, STEP participants receive remedial instruction in reading and math, work part-time, and attend life planning sessions. They are offered school-year support and guaranteed a second summer of work study if they successfully complete the first summer, stay in school, and otherwise remain eligible for the program. The program, thus, has four basic components: Basic skills remediation, a life-planning curriculum, work experience, and a school-year support program.

Remediation

STEP's educational component attempts to overcome deficiencies in basic skills and the weak student's lack of self-confidence and sense of control over the learning process.

The STEP approach has several key features:

- (a) A concentration on reading and math;
- (b) Competency-based instruction (five competency areas in reading and nine in math);
- (c) Individually-paced learning tailored to the needs of 14-16 year olds who are behind in school and often grade retained;
- (d) A minimum of 90 hours of summer instruction with 20 to 25 per cent of time devoted to computer-assisted instruction and 20 minutes of daily silent, sustained reading;
- (e) Remediation sessions not exceeding three hours daily (excluding breaks);
- (f) A curriculum including teacher-led group instruction, student-paced skill reinforcement exercises, opportunities for supplementary projects, and independent reading and writing assignments; and
- (g) A teacher-student ratio of at least 1:15.

A curriculum containing week-long learning modules (called "Practical Academics") has been developed for STEP. Curricula, however, may be locally developed as long as all of STEP's key features are included.

Life Planning Curriculum

STEP includes an educational program, called "Life Skills and Opportunities" (LSO), that focuses on teen decisions about preparing for the world of work and dealing with sexual and reproductive development, feelings and behaviors. It is designed to motivate youth to delay parenthood until they achieve their educational and career goals. The curriculum emphasizes the serious economic, health, and social risks of early and unprotected sexual activity. Abstinence is advocated throughout the curriculum; however, because a substantial proportion of participants reported sexual activity prior to entering STEP, information on contraception is also provided. Participants are required to have signed parental consent forms to receive this instruction.

The curriculum consists of twelve 90-minute segments, for a total of 18 hours. It uses role-playing, games, films, discussions and small group interactions to challenge and motivate participants. Among the topics covered are:

- (a) Handling the pressures of dating relationships, understanding sexual feelings and managing them responsibly;
- (b) The personal and financial responsibilities and costs of parenthood;
- (c) Key facts about sexuality, including anatomy, contraception and sexually transmitted diseases;
- (d) Appropriate work attitudes and behavior;
- (e) How to set career goals and plan for the future;
- (f) Maintaining good health; and
- (g) The risks of substance abuse.

Work Experience

Through linkages with programs operated under Title II-B of JTPA, STEP participants secure parttime summer jobs. Participants work for at least 80 hours. Their jobs include, for example, positions as custodial or maintenance aides, recreation aides, clerical helpers and day care aides. In placing youth in jobs, the program matches the interests of the youth to the extent possible.

School-Year Support Program

The objectives of the school-year support component are: (1) To encourage STEP participants to stay in school and build upon their achievements of the summer; (2) to provide a means of keeping track of participants and re-enrolling them in the second summer; and (3) to link participants with tutorial, health, counseling, and other support services. To achieve these objectives, a coordinator plans activities for

participants throughout the school year. These activities include:

- (a) Quarterly meetings of STEP participants in groups of 20-25;
- (b) Monthly or bi-monthly one-to-one contacts with a mentor or counselor; and
- (c) An early fall meeting with parents to brief them on the summer experience and plans for school-year activities, and to encourage their help in planning school-year activities.

Quarterly sessions are intended to build "esprit de corps" among participants through such activities as field trips, workshops, outside speakers, films, or "rap" sessions.

Field trips may include sporting or cultural events or visits to local business or industry. Workshops, speakers, and films may focus on issues related to life planning, career development or increasing self-esteem.

Mentor contacts may be either a half-hour meeting, a letter or telephone call. The counselor/mentor may be a counselor on the school staff, a work-study intern, a high-school senior who could serve as a role model, or a counselor with a community agency. He or she will check on the youth's school attendance and performance and will help make connections with whatever other social services or resources the youth may require to stay in school.

The STEP model, based on remediation, a life planning curriculum, work experience, and school-year support, is sufficiently flexible to accommodate local variation. It can be operated in one or several neighborhoods or in an area as large as a county. Remediation and work experience can occur at the same site (e.g., on the campus of a high school or community college), or remediation can occur at a central location, with worksites located elsewhere. In the latter case, students travel between the remediation and worksites at mid-day.

B. The History of STEP

Public/Private Ventures (P/PV), Philadelphia, PA, developed the STEP model along with a randomized experimental design to test its effectiveness. In 1984, STEP was pilot-tested in three sites in Boston, MA, and Pinellas County, FL. When early results were encouraging, P/PV mounted a demonstration in five sites. The sites, selected because of their capacity to undertake the project successfully, included Boston, MA, Fresno, CA, Portland, OR, San Diego, CA, and Seattle, WA. The demonstration now includes three cohorts—those enrolled in the summers of 1985, 1986, and 1987—

with the third cohort completing its second summer in 1988.

The demonstration's research design required 300 youth per site in the experimental program, and another 300 in a control group whose members were placed in full-time summer jobs with no school year support program. This design also calls for a five-year follow-up of demonstration participants to examine STEP's short- and long-term effects on development of responsible social and sexual attitudes and behavior, reduction of adolescent parenthood, school retention and high school graduation, military service and early labor force experience. The follow-up of all three cohorts is on-going and will not be complete until 1993.

Now that the operational Phase of the demonstration is nearly complete and research results continue to be encouraging, many other States and local areas are interested in replicating the STEP model. In 1988, four new States are replicating the STEP model, each in three to five SDAs.

P/PV is currently giving technical assistance to States replicating the STEP model. P/PV staff help the State plan and implement the STEP model, including selecting sites, training State, regional and local officials, providing curricula, and training staff to conduct STEP's remedial education and LSO curricula and to carry out other STEP components.

The development of the STEP model and research demonstration of its effectiveness has been funded by a number of private foundations, including the Edna McConnell Clark, William and Flora Hewlett, Ahmanson, Aetna Life and Casualty, and J.C. Penney Foundations; and the Lilly Endowment. Early in 1986, the Department, and later the Department of Health and Human Services, joined in supporting the demonstration during its operational phase. In two of the four States that are replicating the STEP model in summer 1988, the Department has helped fund P/PV's technical assistance.

C. Research Results of the Demonstration

In the absence of a summer program, youth who are behind in school typically experience losses in their reading and math achievement. Summer reading losses of the STEP demonstration's control group are the equivalent of about one grade level. After the STEP remediation curricula, the treatment group achieves significantly more than the control group, however, the former still experiences reading losses. Thus, STEP "gains" must be viewed as stemmed reading losses.

In the absence of remediation, summer losses in math achievement are not as large as in reading. Because of this, the STEP treatment group often gains math achievement over the summer. However, these gains, measured against the earlier end-of-the-school-year peak, are small.

The STEP remediation has produced the following "gains" (i.e., stemmed losses) of the treatment group over the control group:

- .3 or .4 of a grade equivalent in both reading and math for the first cohort's first summer when some sites were late in planning the program and remediation curricula were developed locally and often hastily; and
- .7 of a grade equivalent in both reading and math for the second cohort's first summer when sites were more experienced in implementing the STEP model and curricula were provided.

Preliminary results with the demonstration's third cohort are in approximately the same range as results with the second cohort.

The demonstration did not include a control group to measure achievement differences between treatment and control groups in the second summer, except in one site. These results suggest that the second summer of remediation also appears to stem reading and math losses. In addition, the treatment group appeared to have had larger school year gains.

The LSO curricular produced a strong effect on STEP participants' knowledge about birth control.

The five-year post-program follow-up will monitor pregnancy rates to see whether contraceptive knowledge, or other aspects of the LSO curricular, affect behavior. It will also examine STEP effects on school attendance, standardized test scores, credits earned, grade promotion and dropout behavior.

Part II—Technical Assistance for the Replication of STEP

The Department plans to replicate the STEP model in 10 States, with approximately 50 SDAs. To facilitate this replication, it is soliciting, by this notice, technical assistance from a grantee. The grantee awarded this grant will have responsibility for identifying States interested in replicating STEP and soliciting their matching funds for technical assistance, guiding the implementation of STEP, ensuring that the integrity of the STEP model is maintained, and providing technical assistance and training to States and SDAs during the planning stages as well as during the entire 15-month period of STEP operation. The grantee will also

consult with any other technical assistance providers that are involved in implementing STEP replications. The technical assistance should prepare State and local staff to implement STEP in other sites within the State without further aid.

Replication must include the four components of the STEP model—summer remediation, the LSO curriculum, part-time summer work experience and school-year support. The basic education component need not use the "Practical Academics" curricula developed by P/PV, but must have all the key features of their remedial program.

The technical assistance should offer:

- Strategies for successful planning and management of the implementation of the STEP model and each of its four components;

- Means of developing a close collaboration among private industry councils, school districts and employment and training agencies;

- Methods of identifying the target population and strategies for outreach, recruitment, and re-enrollment of participants in the second summer;

- Guidelines for sites to use in selecting high quality teachers whose teaching philosophy is consistent with the method of the STEP model;

- Approaches for integrating computer assisted instruction into the remediation component;

- Strategies for securing part-time jobs; and

- Guidance for the in-school support program.

Training sessions could use written materials already developed by P/PV: a STEP operations manual, a special brochure on STEP, the remediation curricula ("Practical Academics") and the LSO curricula (all materials will be available for review during regular business hours at the ETA Division of Acquisition and Assistance, Room C-4305, 200 Constitution Ave., NW., Washington, DC 20210). The grantee would take responsibility for preparing any other necessary materials.

All activities must be timely for the implementation of the program for summer 1989. Technical assistance activities for regional, State and local officials and staff include:

- Consulting with the Department to identify a list of 12-20 States and contacting and visiting these States to determine their interest in replicating STEP in several SDAs for the summer of 1989; prior to the award of this grant, the Department will distribute a Field Memorandum to all Regional Administrators with an attached letter

to all State JTPA Liaisons soliciting interest from the States in replicating the STEP model. A list of approximately 25 States will be developed.

- For each of 10 States selected, assisting State staff, as requested, in determining the SDAs which will implement STEP;

- Briefing key State and local officials on the STEP program and on the process, logistics and personnel required for training local staff;

- Holding training sessions in each of the selected States in which appropriate federal, State, and local officials and staff are included;

- Working with the selected local jurisdictions to make the STEP model operational in the summer of 1989; and, in particular, assisting them in developing: (a) The coordination between educational and employment and training sectors to structure a day that contains both work and education, and (b) the part-time summer job slots;

- Conducting training on the remedial education and LSO curricula at central locations in each of the participating States;

- Inviting other individuals designated by the Department as interested in briefings or training sessions regardless of their jurisdictions;

- Providing on-going assistance to those States and SDAs operating the full STEP model during the 1989 summer, and, in particular, working with State staff so that they can assist and monitor the replication of STEP in future sites;

- Working with States and SDAs during the school year to ensure that the school-year support component is adequately implemented;

- Serving as a clearinghouse for the exchange of experiences that enrich and improve the school-year support component and its implementation; and

- Conducting follow-up training sessions for the sites prior to the implementation of the second summer. Other national technical assistance providers may be involved in implementing components of STEP. The grantee will arrange technical assistance activities for them as well. Technical assistance activities for national technical assistance providers include:

- Organizing and delivering a one-day training session with an overview of STEP and an exchange of expertise and advice regarding the STEP model's written materials, training approach and content;

- Inviting national technical assistance providers and their staff to attend training sessions;

- Being available for assistance and consultation to national technical

assistance providers who provide ongoing assistance to sites; and

- Preparing national technical assistance providers to service new jurisdictions without further assistance, while maintaining the integrity of the STEP model.

Support for these activities is estimated at \$60,000 per State or approximately \$600,000.

Part III—Application Process

An original and four copies of the grant application shall be submitted. The application package shall consist of two separate and distinct parts. Part I shall contain a fact sheet and the budget. Part II shall contain a technical proposal that demonstrates the offerer's capabilities. No cost data or reference to price shall be included in the technical proposal.

The fact sheet shall include the following:

- The name of the institution or organization submitting the proposal (the offerer);

- The address of the offerer, including the zip code;

- The telephone number, including area code, of the offerer; and

- The name, position, phone number, and signature of the offerer's official who is approving the submission of the proposal. This person shall be someone with legal authority to commit the offerer to the proposed project.

- The telephone number, including area code, of the offerer; and

- The name, position, phone number, and signature of the offerer's official who is approving the submission of the proposal. This person shall be someone with legal authority to commit the offerer to the proposed project.

Budget information shall follow the format specified below in the attachment, Appendix A.

Criteria used to evaluate the proposal are given below. Deliverables are listed after the evaluation criteria.

A. Evaluation Criteria

The Department's reviewers will score the applications, basing their scoring decision on the following criteria:

(a) Offerer's understanding (40 points), as demonstrated by the proposal, of the key features of the STEP model, the technical assistance States and local staff will need to implement it, and the timeframe needed to mount the various activities.

(b) Experience of the firm (20 points) in providing technical assistance to State and/or local staff who are mounting new program designs. The offerer's position would be enhanced by experience with JTPA and experience in

providing technical assistance to implement disadvantaged youth programs; multi-component programs; programs requiring partnerships between school districts, employment and training agencies, and/or JTPA Private Industry Councils; or programs featuring competency-based training, computer-assisted instruction or other aspects of STEP.

(c) Experience of key staff (20 points) in providing technical assistance to State and/or local staff who are mounting new program designs. As above, the offerer's position would be enhanced by key staff with knowledge of JTPA and experience in providing technical assistance to implement disadvantaged youth programs; multi-component programs; programs requiring partnerships between school districts, employment and training agencies, and/or JTPA Private Industry Councils; or programs featuring competency-based training, computer-assisted instruction or other aspects of STEP.

(d) Effective written communication (10 points). The proposal and any appendices or attachments should demonstrate the ability to clearly state concepts, extract critical aspects, translate technical information for the uninitiated, and give effective presentations to user groups with varying needs.

(e) Level of effort (10 points). The proposal should specify the resources that will be dedicated to the technical assistance effort, including personnel, time, facilities, and planned number of training sessions. These resources should be adequate for the work described in the application. The staff should be qualified and should have the required skills and abilities. The staffing pattern must clearly link responsibilities to project tasks. The proposal must identify any collaborative effort with other agencies or organizations.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The reviewers' evaluations are only advisory to the Grant Officer. The final decision to award the grant will be made by the ETA Grant Officer, after considering the reviewers' scoring decisions. The ETA Grant Officer's decision will be based on the Grant Officer's determination of what is most advantageous to the Federal Government in terms of technical quality and other factors.

BEST COPY AVAILABLE

B. Reporting Requirements After the Award of the Grant

The grantee shall furnish the reports and documents listed below:

1. Financial Reports

The grantee shall submit to the Department's Federal Representative an original and two copies of a quarterly detailed account of expenditures. The detailed report of expenditures must include the same line items of cost categories as those specified in the grant budget.

2. Program Reports

The grantee shall submit an original and two copies of each of the following reports or materials to the Federal Representatives within the specified time.

(a) **Quarterly Progress Reports.** The grantee shall submit within 10 days following the end of each quarter, a quarterly progress report, which provides a detailed account of services provided during each quarter of grant performance. Reports shall include, in brief narrative form, such information as:

(1) A description of overall progress of work activities accomplished during the reported period;

(2) an indication of any current problems which may delay performance, and proposed corrective action, if any; and

(3) program status and financial data/information relative to expenditure rate versus budget, anticipated staff changes, etc.

(b) **Draft Training Materials.** These materials shall be submitted at least one month prior to any training session in which they are used. Training materials may include technical assistance guides or manuals, workbooks, exercises or audio visual aids.

(c) **Final Training Materials.** These materials shall be submitted when they are used in training sessions.

(d) **Draft Evaluation Report.** This report shall be submitted at least 2 months prior to the grant expiration date. This report should evaluate the technical assistance effort. It should list common problems States and local areas had in replicating STEP, suggested solutions to them, and make recommendations for ways in which future technical assistance can address those or any other problems.

(e) **Final Evaluation Report.** This report shall be submitted by the grant expiration date.

Signed at Washington, DC, on June 29, 1988.

Roberts T. Jones,
Acting Assistant Secretary of Labor.

Appendix A—Budget Information

Each applicant shall submit a project budget using the following format. In addition, a detailed breakdown supporting each budget line item is required.

Special Clause No. Budget

	Government	Grantee contribution	Total
Direct Costs:			
Staff salaries and wages	\$—	\$—	\$—
Fringe benefits for staff	—	—	—
Staff travel and per diem	—	—	—
Consultant fees	—	—	—
Materials and supplies	—	—	—
Communications	—	—	—
Subcontract	—	—	—
Total Direct Costs	\$—	\$—	\$—
Indirect Costs	—	—	—
Total Estimated Cost	\$—	\$—	\$—

Note.—The maximum Government contribution under this grant will be \$—.

[FR Doc. 88-15980 Filed 7-14-88; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division**Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal

statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue NW., Room S-3504,
Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC88-1 (Jan. 8, 1988) pp. 78, 84.
Pennsylvania:
PA88-6 (Jan. 8, 1988) pp. 694-696.
West Virginia:
WV88-2 (Jan. 8, 1988) p. 1183.
WV88-3 (Jan. 8, 1988) pp. 1207-1208, P. 1214.

Volume II

Iowa:
IA88-1 (Jan. 8, 1988) p. 22.
IA88-2 (Jan. 8, 1988) pp. 28-29.
Illinois:
IL88-7 (Jan. 8, 1988) p. 136.
Indiana:
IN88-4 (Jan. 8, 1988) p. 279.
Michigan:
MI88-2 (Jan. 8, 1988) p. 426.
MI88-5 (Jan. 8, 1988) p. 462.
New Mexico:
NM88-1 (Jan. 8, 1988) pp. 696, 699.

Volume III

Colorado:
CO88-2 (Jan. 8, 1988) pp. 114-114b.
CO88-4 (Jan. 8, 1988) pp. 120-121.
Idaho:
ID88-1 (Jan. 8, 1988) p. 143.
Nevada:
NV88-3 (Jan. 8, 1988) p. 266.
NV88-4 (Jan. 8, 1988) p. 272.
NV88-5 (Jan. 8, 1988) p. 282.
Oregon:
OR88-1 (Jan. 8, 1988) p. 303; pp. 305-316b.
Washington:
WA88-1 (Jan. 8, 1988) pp. 364, 366; pp. 376-377.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of

Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3232.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of July 1988.

Alan L. Moss,

Director, Division of Wage Determinations.
[FR Doc. 88-15753 Filed 7-14-88; 8:45 am]
BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-104-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, HC 67, Box 1290, Cumberland, Kentucky 40623 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Scotia Mine (I.D. No. 15-02055) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that after an experiment was conducted with the projection system, the length of the tailgate panel identified as No. 1 entry "D" Gate longwall panel deteriorated.

3. As an alternate method, petitioner proposes to establish check points for an 1800 foot length of the No. 1 entry "D" Gate longwall panel. This entry would be a future tailgate entry for the longwall when it is set up in the entry connecting "E" Gate longwall panel to the "D" Gate Panel.

4. In support of this request, petitioner states that—

(a) Miners would be informed as to the condition of the tailgate;

(b) Miners would be refreshed in the use of the self-contained self-rescuers, which are stored at the tailgate and near the headgate;

(c) Communications are in place at the headgate to the dispatcher, who is always on duty, and communications are in place from the headgate throughout the longwall face. A person is always at the headgate when people are in the face;

(d) Additional support would be set in the headgate area as a precautionary measure until the point is reached where the tailgate is accessible for travel;

(e) Daily examinations would be made of the checkpoints to evaluate their condition;

(f) Three of four separate escape routes would be provided from the headgate to the mouth of the section or around the bleeder;

(g) The belt air is being continuously monitored with low-level carbon monoxide sensors; and

(h) Two continuous methane monitors have been added, making a total of three, with constant readouts at the headgate indicating the presence of methane throughout the face.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Date: July 11, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-15981 Filed 7-14-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-115-C]

Helvetia Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Helvetia Coal Company, Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer substations, compressor stations, shops, and permanent pumps) to its Lucerne No. 6 Mine (I.D. No. 36-00917) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner has electrical installations which are currently being ventilated into the 1½ South Returns, the only return entries in this portion of the West Mains. These returns will be converted into intake entries for a more efficient ventilation system. This will prohibit normal ventilation of these installations directly into the return.

3. As an alternate method, petitioner proposes that—

(a) The electric equipment would be housed in a fireproof structure or area, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit. Such fire doors would be designed to enclose all associated electric components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) A signal activated by a heat sensor, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designated and installed to interrupt all power circuits supplying electric equipment with the fireproof structure;

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure area;

(e) Flammable or combustible material would not be stored or allowed to accumulate in the fireproof structure or area. The area within the structure would be clean and rock dusted;

(f) Firefighting equipment would be provided on the outside of the fireproof structure on the intake side;

(g) The electric equipment and related enclosure would be examined, tested, and maintained by a qualified person. These examinations and tests would include the electric equipment, the automatically closing fire doors, the signalling system and the automatic fire suppression system. The results of these tests and examinations would be recorded in the appropriate record books maintained on the surface; and

(h) The area enclosing the structure would be examined daily for hazardous conditions and a record of the examinations would be kept in a book on the surface.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Date: July 11, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 88-15982 Filed 7-14-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-128-C]

Mullis Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mullis Coal Company, General Delivery, Gausdale, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-15835) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and is required to be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane

concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standard, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Date: July 11, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 88-15983 Filed 7-14-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-118-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c)

of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that four underground pump installations located adjacent to the mine's main trolley haulage through the old works are not able to be ventilated effectively to the returns, due to deteriorating roof conditions. Even if ventilation tubing could be installed to the return, it would be ineffective due to the extreme distance. Supporting the falls to the return would pose unnecessary risks to the miners.

3. As an alternate method, petitioner proposes that—

(a) The pump installations would be housed in a fireproof structure, equipped with automatically closing fire doors activated by thermal devices with an activation temperature not greater than 165 degrees Fahrenheit. Such fire doors would be designed to enclose all associated electric components in a reasonably airtight enclosure in case of a fire or excessive temperature;

(b) An audible and visual signal, activated by the heat sensors, would be located so that it can be seen or heard by a responsible person;

(c) The electric equipment would be protected with thermal devices, or equivalent, designed and installed to interrupt all power circuits supplying electric equipment within the fireproof structure;

(d) A suitable automatic fire suppression system would be installed and maintained in the fireproof structure in accordance with applicable provisions;

(e) Flammable or combustible material would not be stored or be allowed to accumulate in the fireproof structure;

(f) Firefighting equipment would be provided on the outside of the fireproof structure on the intake side;

(g) The electric equipment would be examined, tested, and maintained by a qualified person. These examinations and tests would include the electric equipment, the automatically closing fire doors, the signalling system, and the automatic fire suppression system; and

(h) The area enclosing the structure would be examined daily for hazardous conditions. A record of the examinations would be kept in a book on the surface.

4. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Date: July 11, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 88-15984 Filed 7-14-88; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-88-129-C]

Summit Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Summit Coal Company, R.D. No. 1, Box 12-A, Klingersstown, Pennsylvania 17941, has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Summit Slope (I.D. No. 36-07981) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in

the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 15, 1988. Copies of the petition are available for inspection at that address.

Dated: July 8, 1988.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 88-15985 Filed 7-14-88; 8:45 am]
BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-5600]

Amendment to Prohibited Transaction Exemption (PTE) 82-37 for Transactions Involving Certain Residential Mortgage Financing Arrangements; Correction

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Correction.

SUMMARY: In 53 FR, published at page 24811, on Thursday, June 30, 1988, make the following correction:

1. On page 24816, in the second column under "[D]" in the fifteenth line through the seventeenth line, delete "[insert the date of publication in the Federal Register of the final grant of the amended class exemption]" and insert therein "June 30, 1988". Under "[E]" in the second line through the fourth line, delete "[insert the date of publication in the Federal Register of the final grant of the amended class exemption]" and insert therein "June 30, 1988".

Signed at Washington, DC, this 12th day of July, 1988.

Robert J. Doyle.

Acting Director of Regulations and Interpretations Pension and Welfare Benefits Administration.

[FR Doc. 88-15986 Filed 7-14-88; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 88-60; Exemption Application No. D-6061 et al.]

Grant of Individual Exemptions; AmeriTrust Company National Association (AmeriTrust) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and

- (c) They are protective of the rights of the participants and beneficiaries of the plans.

General Information

The attention of interested persons is directed to the following:

- (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

- (2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

AmeriTrust Company National Association (AmeriTrust) Located in Cleveland, Ohio

[Prohibited Transaction Exemption 88-60; Exemption Application No. D-6061]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by AmeriTrust from the Financial Reserves Fund, an open-end investment company for which AmeriTrust performs services, in connection with the investment of funds through a daily automated sweep arrangement, of those individual retirement accounts (the IRAs) for which AmeriTrust acts as trustee, under the terms described in the notice of proposed exemption.¹

¹ Because the IRAs do not meet the conditions described in 29 CFR 2510.3-2(d), there is no jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18921.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Drs. Pauly, Cocotos, Sherman, Koch, Burigo and Ross, P.A. Pension Plan and Trust and Drs. Pauly, Cocotos, Sherman, Koch, Burigo and Ross, P.A. Profit Sharing Plan and Trust (collectively, the Plans) Located in West Palm Beach, FL

[Prohibited Transaction Exemption 88-61; Exemption Application Nos. D-7160 and D-7161, respectively]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plans of certain improved real property consisting of a parcel of land (the Land) and a building (the Building) situated thereon, for the total cash consideration of \$379,761, to a trust, the beneficiaries of whom are the six shareholders of Drs. Cocotos, Sherman, Koch, Burigo and Ross, P.A. and several of their spouses, provided the amount paid for the Land and the Building is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18930.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The NYNEX Master Pension Trust (the Trust) Located in New York, New York

[Prohibited Transaction Exemption 88-62; Exemption Application Nos. D-7171 and D-7172]

Exemption

(a) General Exemption

The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction arising in connection with the acquisition, ownership, management,

development, leasing or sale of real property (including the acquisition, ownership or sale of any joint venture or partnership interest in such property) and the borrowing or lending of money in connection therewith, between a party in interest with respect to the Trust and the Trust, provided that the following conditions are satisfied:

- (1) The decision to invest the assets of the Trust, directly or indirectly, in such transaction is made by the NYNEX Corporation (NYNEX) or the Treasurer of NYNEX as a fiduciary of the trust;

- (2) Any such party in interest is not—
 - (i) NYNEX, any person directly or indirectly controlling, controlled by, or under common control with NYNEX, any officer, director or employee of NYNEX or any of its subsidiaries or affiliated companies, or any partnership in which NYNEX is a 10 percent or more (directly or indirectly in capital or profits) partner, or
 - (ii) A person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction;

- (3) At the time the transaction is entered into and at the time of any subsequent renewal or modification thereof that requires the consent of the Treasurer of NYNEX or any person to whom such responsibility has been delegated, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's-length transactions between unrelated parties;

- (4) NYNEX shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if due to circumstances beyond the control of NYNEX the records are lost or destroyed prior to the end of the six year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 501(1) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by subparagraph (5) below; and

- (5)(i) Except as provided in subdivision (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504

of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at NYNEX's headquarter's offices or, upon prior arrangement with NYNEX, at any other customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

- (A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

- (B) Any fiduciary of a plan which is funded, in whole or part, by the Trust, or any duly authorized employee or representative of such fiduciary.

- (C) Any participant or beneficiary of any plan which is funded, in whole or part, by the Trust, or any duly authorized representative of such participant or beneficiary.

- (ii) None of the persons described in subdivisions (i)(B) and (i)(C) of this subparagraph (5) shall be authorized to examine NYNEX's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) Specific Exemption

The restrictions of section 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to:

Transactions Involving Places of Public Accommodation. The furnishing of services, facilities and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a) (4) and (5) of this proposed exemption are met.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13350.

Effective Date: This exemption is effective January 1, 1988.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Popham, Haik, Schnobrich & Kaufman, Ltd., 401(k) Profit Sharing Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 88-63; Exemption Application No. D-7327]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the past purchase by the individually directed accounts in the Plan held by certain shareholders, who are also employees and/or officers and directors of Popham, Haik, Schnobrich & Kaufman, Ltd. (the Employer), the Plan sponsor and a party in interest with the respect to the Plan, of 89,000 shares of stock owned by the Employer/Plan sponsor; provided the terms and conditions of the transactions were as favorable to the Plan as those which could have been obtained in an arm's-length transaction between unrelated parties.

Effective Date: March 25, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1988 at 53 FR 20919.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Retirement Plan for Non-Bargaining Unit Employees of the Altoona Hospital and the Retirement Plan for Bargaining Unit Employees of the Altoona Hospital (together, the Plans) Located in Altoona, Pennsylvania

[Prohibited Transaction Exemption 88-64; Exemption Application Nos. D-7379 and D-7380]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed exchange of certain publicly-traded securities between the Plans and the Funded Depreciation Fund for the Altoona Hospital, the sponsor of the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18932.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8863. (This is not a toll-free number.)

Upper Peninsula Building and Construction Industry Investment Plan (the Program) Located in Escanaba, MI

[Prohibited Transaction Exemption 88-85; Exemption Application No. D-7388]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed participation by employee pension plans (the Plans) in construction mortgage loans through the Program where such loans are already committed to parties in interest with respect to such Plans, by certain lending institutions, provided that the terms of the loans are not less favorable to the Plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described in the notice of proposed exemption, are complied with during the operation of the Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1988 at 53 FR 13358.

Written Comments: The Department received one written comment to the notice of proposed exemption which was submitted by the applicants' representative. The commentator informed the Department that the State of Michigan Laborers' District Council Pension Plan and Trust, the Michigan Carpenters Pension Plan and Trust and the Operating Engineers Local No. 324 Pension Plan and Trust, which had initially joined in the exemption request, had decided not to participate in the contemplated transactions and did not wish the granted exemption to apply to them. The commentator indicated that the Upper Peninsula Plumbers and Pipefitters Pension Fund, Local 783 of the International Association of Bridge, Structural and Ornamental Ironworkers Pension Fund and the Michigan Upper Peninsula IBEW Pension Plan and Trust still wanted approval of the subject exemption and as such, had given timely notice to interested persons. Accordingly, the Department has considered the entire record, including the comment submitted, and has determined to grant the exemption as it has been proposed.

For Further Information Contact: Ms. Jan Broady of the Department, telephone

(202) 523-8861. (This is not a toll-free number.)

Linda Wells, Inc. Pension Plan and Trust, and Linda Wells, Inc. Profit Sharing Plan and Trust (the Plans) Located in New York, New York

[Prohibited Transaction Exemption 88-84; Exemption Application Nos. D-7400 and D-7412]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plans of certain improved real property to Linda Wells, a disqualified person with respect to the Plans, provided that the terms of such sale are at least as favorable to the Plans as the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Wednesday, May 25, 1988 at 53 FR 18934.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8861. (This is not a toll-free number.)

Cornelius C. Rose Associates, Inc. Defined Benefit Pension Plan, Cornelius C. Rose Associates, Inc. Employee Target Benefit Plan and Trust, and Cornelius C. Rose, Associates, Inc. Profit Sharing Plan (collectively, the Plans) Located in Hanover, New Hampshire

[Prohibited Transaction Exemption 88-67; Exemption Application Nos. D-7480 through D-7482]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to sales (the Sales) of certain securities made to the Plans on November 22 and December 30, 1982, and on March 24, 1983, by Cornelius C. Rose, a disqualified person with respect to the Plans, to the extent that the aggregate values of the securities sold to each of the Plans did not exceed 25 percent of the total assets of each of the Plans on the dates of the respective Sales, and also, provided that the terms of the Sales were not less favorable to the Plans than terms obtainable in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988, at 53 FR 18927.

Effective Date: This exemption will be effective November 22 and December 30, 1982, and March 24, 1983, the dates the securities were sold to the Plans as described in the proposed exemption.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523-8861. (This is not a toll-free number.)

Metro Electrical Joint Apprenticeship and Training Trust (the Plan) Located in Portland, OR

[Prohibited Transaction Exemption 88-68; Exemption Application No. D-7528]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the proposed sale by the Plan of a tract of unimproved land (the Lot), for the total cash consideration of \$45,500, to Electric Workers Local 48 Building Association, Inc., a party in interest with respect to the Plan, provided the amount paid for the Lot is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 25, 1988 at 53 FR 18934.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8861. (This is not a toll-free number.)

Charles D. Pemberton Self-Employed Retirement Plan (the Plan) Located in Lubbock, Texas

[Prohibited Transaction Exemption 88-69; Exemption Application No. D-7541]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan by the Plan of \$45,000 (the Loan) to Charles D. Pemberton, the owner-employee and participant in the Plan and a disqualified person with respect to the Plan, provided that the terms and conditions of the proposed Loan be no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the proposed Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption refer to the notice of proposed exemption published on June 10, 1988 at FR 21941.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8861. (This is not a toll-free number.)

Colorado Imaging Associates, P.C. Profit Sharing Plan (the Plan) Located in Littleton, Colorado

[Prohibited Transaction Exemption 88-70; Exemption Application No. D-7549]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale to Neal Goodman, M.D., Paul K. Danner, M.D., David A. Raetz, M.D., and Kenneth B. Reynard, M.D., of certain diamonds (the Diamonds) from their individually directed accounts in the Plan, provided that the sale price be no less than the retail fair market value of the Diamonds on the date of sale as established by an independent qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21941.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8861. (This is not a toll-free number.)

D.W. Brown, M.D. Inc. Defined Benefit Plan and Trust (the Plan) Located in Sacramento, California

[Prohibited Transaction Exemption 88-71; Exemption Application No. D-7579]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of unimproved real property and related water rights (the Property) to Donald W. Brown, M.D., and Margaret R. Brown, his wife, both of whom are disqualified persons with respect to the Plan, provided that the sales price for the Property is not less than the fair market value of the Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 10, 1988 at 53 FR 21945.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8863. (This is not a toll-free number.)

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of July 1988.

Robert J. Doyle,

Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-15987 Filed 7-14-88; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-7290] et al.

Proposed Exemptions; Consolidated Electrical Distributors, Inc. Employees' Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200

Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedures 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Consolidated Electrical Distributors, Inc. Employees' Retirement Plan (the Plan) Located in Village, California

[Application No. D-7290]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of four mortgage notes to the Plan by Edmundston International, Inc. (Edmundston), a wholly-owned subsidiary of Consolidated Electrical Distributors, Inc., the Plan Sponsor and therefore a party in interest, nor to the guarantee of repayment by the Plan Sponsor on default, provided that the

terms and conditions of sale are at least as favorable to the Plan as those which the plan could receive in similar transactions with unrelated parties.

Summary of Facts and Representations

1. The Plan is a non-contributory defined benefit pension plan which was established on January 1, 1969. The Plan

has approximately 2025 participants and net assets of \$58,246,752 as of December 31, 1986. The Plan's trustee is Trust Services of America, Inc. (the Trustee). The Plan Sponsor is a Delaware corporation engaged primarily in the wholesale distribution of electrical parts. Edmundston's primary function is to hold assets for the Plan Sponsor

which are unrelated to its basic electrical business.

2. The applicant represents that the Plan currently has a substantial portion of its current assets available for reinvestment. The Plan proposes to use a portion of these assets to purchase four adjustable rate mortgage notes (the Mortgages) from Edmundston.¹

Original loan amount	Loan balance (\$/¢)	Appraised value of collateral	Interest rate (percent)	Original term of loan (years)	Maturity date of loan
1. 300,000	294,850	490,000	11	30	5/1/2014
2. 418,600	411,367	552,000	11½	30	4/1/2014
3. 275,000	271,886	490,000	11	30	5/1/2015
4. 182,000	180,593	256,000	11	30	1/1/2016
Total		1,788,000			

3. The Mortgages originated from purchases of condominium units in a fifty-eight story residential and commercial office building (the Property) located at 950 N. Michigan Avenue, Chicago, Illinois. The Property was developed by Newcastle Properties, Inc. (Newcastle), a wholly-owned subsidiary of the Plan Sponsor. Once all the condominium units were sold by Newcastle, it became inactive and as part of its winding down process transferred the Mortgages to Edmundston. The applicant represents that all of the mortgagors on the Mortgages to be sold to the Plan are unrelated parties.

4. The Mortgages provide for monthly payments of principal and interest with the interest rate being adjusted every five years based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 5 years. The rate adjustment formula requires that 2.5% be added to the current rate for 5-year Treasury notes.

5. The condominium units acting as collateral for the Mortgages were appraised by John F. Miaso, S.R.A. of Alpha Appraisal Services, Inc. as having a total combined appraised value of \$1,788,000 as of December 11, 1987 (See individual appraised amounts of condominiums in footnote, supra). The Mortgages being sold to the Plan represent a first lien on such properties and will be recorded as such. In addition, the Plan will not pay any commissions or other expenses in connection with this transaction and the Plan Sponsor will repurchase from the Plan any Mortgage in the event of default.

¹ Mortgage Loan Rate.

6. The Trustee provides administrative and investment management services to employee benefit plans. The Trustee represents that it will serve as independent fiduciary for the Plan in the subject transaction and that it holds no financial or other business relationship with the Plan Sponsor or its affiliates. The Trustee has reviewed all aspects of the proposed sale including the terms of the Mortgages, the current market value of the condominium units serving as collateral and the payment history of the mortgagors. Based on this analysis the Trustee believes that the purchase of the Mortgages by the Plan is a prudent investment and is in the best interests of, and protective of, the Plan and its participants and beneficiaries. The Trustee represents that the Property is well located and expected to continue to rise in value and coupled with the current high rates of interest being paid on the Mortgages, provides safety as well as a strong rate of return to the Plan. The Trustee represents further that the Mortgages would be an appropriate addition to the Plan's portfolio, with total Plan mortgage holdings constituting 5.7% of Plan assets after the purchase.

The Trustee represents that it will monitor the transaction and ensure that all payments are promptly received and will take all appropriate steps to enforce the rights of the Plan.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act because, among other things:

(a) The Plan will pay the appraised value for the Mortgages;

¹ Since Mr. Jack H. Mayfield, Jr. (Mr. Mayfield) is the only participant in the Plan there is no

(b) The Plan will not pay any costs or other expenses in connection with the sale of the Mortgages;

(c) The Plan Sponsor has agreed to repurchase the Mortgages if there is a default; and

(d) The Trustee has reviewed the proposed transaction and has concluded that it is in the interest of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Mayfield Corporation Defined Benefit Pension Plan and Trust (the Plan)
Located in Houston, Texas

[Application No. D-7467]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-28, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the loans made by the Mary Iris Goldston Corporation (Goldston) to the Plan, provided that the terms and conditions of the loans were at least as favorable to the Plan as those which the Plan would receive in similar transactions with unrelated parties.¹

Effective Date: If granted, the proposed exemption will be effective August 17, 1987.

jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4075 of the Code.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with net assets as of September 30, 1987 of \$773,796. The trustee of the Plan is American Industries Trust Company. Mr. Mayfield, the sole participant in the Plan, owns 85.2% of the stock of the Plan Sponsor. Goldston and the Plan Sponsor are in the business of oil and gas exploration and production.

2. On November 1, 1986, Goldston executed an agency agreement with the Plan, for the purpose of acquiring for the Plan an oil and gas mineral interest in the Eunice Monument South Unit in Lea County, New Mexico (the Property). In order to purchase the Property, Goldston advanced funds on the Plan's behalf. Unsecured loans of \$60,480 and \$75,168 were made on behalf of the Plan on January 1, 1987 and May 11, 1987 by Goldston. No fees were charged by Goldston for the services provided to the Plan nor was any interest charged on the loans.

3. Goldston, prior to August 17, 1987, was owned 100% by Iris T. Goldston, (Ms. Goldston). Ms. Goldston was deceased on August 17, 1987. At that time, ownership of 60% of Goldston transferred to the three adult children of Mr. Mayfield. Therefore, the applicant represents that Mr. Mayfield indirectly owns 60% of Goldston. This indirect ownership resulted in Goldston being classified as a disqualified person under section 4975(e)(2)(G) of the Code effective August 17, 1987 and the outstanding loans becoming prohibited transactions under section 4975(c)(1)(A) of the Code.²

4. It was anticipated that the loans would be repaid upon legal assignment of the royalty interest to the Plan. Such assignment, however, was not made until February 12, 1988 because of the death of Ms. Goldston. The loans, however, remain outstanding pending resolution of the exemption request.

5. The applicant represents that the loans were in the Plan's best interest because they enabled the Plan to purchase the Property at a competitive price. In addition, the loans made to the Plan were interest free as well as being unsecured. Goldston didn't charge any fees for its services and Mr. Mayfield, the sole participant in the Plan, made the decision that this investment should be made.

6. In summary, the applicant represents that the loans met the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

² The applicant represents that Goldston was not a disqualified person with respect to the Plan prior to August 17, 1987.

(a) The loans to the Plan were both interest free and unsecured; and
(b) Mr. Mayfield is the only Plan participant effected by the loan transactions and he desired that the transaction be consummated.

Notice to Interested Persons: Because Mr. Mayfield is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Frank Pavel, D.D.S., Inc. Money Purchase Pension Plan (the Plan)
Located in San Diego, California

[Application No. D-7498]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 26, 1975). If the exemption is granted, the restrictions of sections 406 (a)(1), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase of two limited partnership units (the Units) by the self-directed account (the Account) in the Plan of Frank Pavel, D.D.S. (Dr. Pavel), from Dr. Pavel and his wife (the Pavels); provided the terms and conditions of the transaction will be similar to those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with individually directed separate accounts. As of June 30, 1987, the Plan had 7 participants and Dr. Pavel's Account held \$1,900,524.69 in assets. The trustee of the Plan is San Diego Trust & Savings Bank.

2. The Pavels currently own twelve Units of Segal-Gerber Properties, Limited Partnership (the LP). The remaining Units in the LP are owned by parties unrelated to the Pavels and the Plan. The LP is a group of Texas limited partnerships which own and operate more than 1,000 apartments in ten U.S. Department of Housing and Urban Development projects in Texas and Arkansas.

3. The Pavels now wish to sell two Units to Dr. Pavel's Account in the Plan for the lower of their acquisition cost or their fair market value. Dr. Pavel believes the Units would be an excellent investment for the Plan. He represents that the Units would constitute a diversification of his Account's investment portfolio and would bring a high rate of return.

4. The Units have been appraised by W. Allen Jacobs, III, Vice President of Pacific Corporate Valuation, Inc., a qualified independent appraiser in La Jolla, California. Mr. Jacobs determined the Pavels twelve Units had a total fair market value of \$1,416,000 or \$118,000 for each Unit as of December 31, 1987. Each Unit cost the Pavels \$113,750 as of December 31, 1987. The Account will pay the Pavels \$227,500 to acquire the two Units and will pay required capital contributions as they become due. The Account will pay no fees or commissions in connection with the purchase. After consummation of the transaction, the Units will represent 12% of the Account's assets.

5. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The transaction involves no more than 12% of the Account's assets; (2) the purchase price will be the lower of the acquisition cost of the Units or the fair market value as established by an independent appraisal and valuation; (3) Dr. Pavel is the only Plan participant to be affected by the transaction; and (4) Dr. Pavel has determined that the proposed transaction is appropriate for and in the best interest of the Account and he desires that the transaction be consummated by the Account.

Notice to Interested Persons: Because Dr. Pavel is the only participant in the Plan affected by the transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, comments and requests for a public hearing are due 30 days after the date of publication in the Federal Register.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Sholom Home, Inc. Pension Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Application No. D-7519]

Proposed Exemption

The Department is considering granting an exemption under the

authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 408(a), 408(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan to Sholom Home, Inc., the Plan sponsor (the Plan Sponsor), of all rights under a group annuity contract (the Contract) in exchange for a cash payment to the Plan of not less than the fair market value of the Contract as of the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which was terminated effective December 31, 1987. A determination letter has been requested from the Internal Revenue Service approving the termination. As of February 24, 1988, the Plan had 262 participants and total assets of \$1,096,052.06.

2. Among the Plan's assets is a group annuity contract (the Contract) with Ohio National Life Insurance Company of Cincinnati, Ohio (the Carrier), with face value of \$250,000 and accrued interest of \$29,624.72 as of December 31, 1987. The Contract pays interest at 8.01% per annum. Pursuant to the terms of the Contract a lump sum payment at maturity will not be made until July 22, 1989. If payment by the Carrier is made prior to the maturity date, an early withdrawal penalty is imposed in the form of an 18% discount of face amount plus accrued interest.

3. On May 16, 1988, Barbara A. Hopewell, Esquire, Assistant Counsel of the Carrier, represented that the Carrier has no objection to the assignment of the Contract to the Plan Sponsor. She further represented that the fair market value of the Contract as of August 31, 1988 will be \$294,147.92 without regard to any early withdrawal penalty.

4. Accordingly, the Plan Sponsor proposes to purchase from the Plan all rights under the Contract in exchange for a cash payment to the Plan in an amount equal to the fair market value of the Contract as of the date of sale as determined by the Carrier. In so doing, the Plan would avoid the penalty for early withdrawal or the expense of maintaining a trust until such time as the total amount due under the Contract has been received, and would be able to make prompt distribution of all benefits under the Contract to the participants.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a)

of the Act because: (a) All rights under the Contract will be sold to the Plan Sponsor for an amount in cash equal to the fair market value of the Contract as of the date of sale as determined by the Carrier; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions, fees, or taxes by the Plan; and (d) the Plan will be able to complete distribution of its assets to its participants in a timely manner without incurring a penalty for early withdrawal from the Contract.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and

representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC., this 12th day of July 1988.

Robert J. Doyle,
Acting Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.
[FR Doc. 88-15988 Filed 7-14-88; 8:45 am]
BILLING CODE 4810-35-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-824]

Finding of No Significant Impact; Amendment of Special Nuclear Material License No. SNM-778; Babcock and Wilcox NNF Research Laboratory

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Special Nuclear Material License No. SNM-778 for the construction of a temporary storage facility at Babcock & Wilcox's (B&W) NNF Research Laboratory in Lynchburg, Virginia.

Environmental Assessment

Identification of the Proposed Action

The proposed action is the construction and use of a temporary storage facility for hot cell waste. This facility will be an in-ground array of eight vertical, concrete cylinders arranged in two rows of four with 24 inches of concrete shielding at the top of each cylinder. The bottom of the cylinders will be at approximately 560 ft mean sea level (MSL) which is 58 ft above the Standard Project Flood determined by the U.S. Army Corps of Engineers for the James River at the B&W site.

The top of the concrete shielding will be approximately at ground level. Each cylinder will be 6 feet in diameter and 13-feet tall, and each is equipped with a stainless steel drain pipe which leads to a common sampling pit and rests on a common concrete pad. The concrete slab is surrounded by a foundation drain system which pipes to a second sampling pit. The two sampling pits will be sampled regularly and analyzed for the presence of radioactive material. In this facility, the stored waste is in long-life containers, the majority of which are stainless steel, 30-gallon drums. Others will be 30- and 55-gallon carbon steel

drums but will be overpacked in stainless steel or galvanized drums.

Need for the Proposed Action

Presently, hot cell waste is stored in the Annex of Building J. This facility is full, and the normal operations in support of existing and anticipated contracts will generate approximately 100 more drums over the next 5 years. This waste is being stored onsite until it is accepted by the Department of Energy under the Nuclear Waste Policy Act of 1982. Denying the construction and use of this facility would completely curtail the normal operations associated with the hot cells.

Environmental Impact of the Proposed Action

Since only dry containerized waste will be stored in this facility, there should be no effluents produced. Any rain or snowmelt that manages to enter the concrete cylinders will automatically drain into the sampling pit. This water will be periodically removed. In the unlikely event that water should penetrate the drums, any leachate would flow to the sampling pit before radioactive material could enter the ground water. The drums, concrete walls, and subterranean location will provide shielding to reduce radiation levels above ground to below regulatory levels.

Agencies and Persons Consulted

There was no contact with other agencies.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based upon the Environmental Assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Environmental Assessment for the proposed action, on which this Finding of No Significant Impact is based, relies on the Babcock & Wilcox information submitted as Amendment 4 to License No. SNM-778, December 8, 1987, and the additional information submitted by B&W on March 30, 1988, and June 20, 1988.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying, for a fee, at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492-0609 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety,

U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of July, 1988.

For the Nuclear Regulatory Commission,
Leland C. Rouse,
Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.
[FR Doc. 88-15985 Filed 7-14-88; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its third meeting on August 3-5, 1988. On August 3rd and 4th it will meet at 4:00 p.m. at the Holley Inn, 235 Richland Avenue and Laurens Street, Aiken, SC. The meetings will be concluded by 7:00 p.m. on those days. On August 5 the meeting will be held in Room 405, Fims Building, 2800 Bull Street, Columbia, SC. On that day the meeting will start at 2:00 p.m. and be concluded by 5:00 p.m. The entire meeting will be open to the public.

Wednesday, August 3, 1988

4:00 p.m.-7:00 p.m.: The Committee will discuss their visits to the LLW disposal facility at Barnwell, SC and the Chem-Nuclear operations center.

Thursday, August 4, 1988

4:00 p.m.-7:00 p.m.: The Committee will discuss their visit to the waste handling and storage facilities at DOE's Savannah River Plant.

Friday, August 5, 1988

2:00 p.m.-5:00 p.m.: The Committee will discuss their visit to the facilities of LN Technologies and meet with representatives of the South Carolina Bureau of Radiological Health.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras

during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Dated: July 11, 1988.

John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 88-15986 Filed 7-14-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-400]

Carolina Power & Light Co., Shearon Harris Nuclear Power Plant, Unit 1; Exemption

I

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. NPF-63, which authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 103(c)(2) to 10 CFR Part 20 requires a determination by a physician at least once every 12 months that an individual is physically able to use the respiratory protective equipment in an environment containing airborne radioactive material.

By letter dated January 30, 1986, the licensee requested an exemption from 10 CFR 20.101(c)(2) with regard to the interval for the administration of a physical examination for users of respiratory equipment. Specifically, the licensee requested an exemption to permit the physicals to be administered at an interval of every 9 to 15 months rather than the currently scheduled 8 to 12 months. In support of its request, the licensee notes that the exemption would provide greater flexibility in scheduling of examinations and would preclude the need for administration of two examinations in the same calendar year.

The acceptability of the exemption request is discussed below.

III

In order to satisfy the 10 CFR 20.103(c)(2) requirement of "at least once every 12 months," the licensee has to administratively schedule the physical examinations every 6 to 12 months because of the large number of workers for whom these examinations have to be scheduled. Therefore, over a period of a few years, a substantial number of workers would receive two physical examinations within one calendar year. This would result in an unnecessary expenditure of the licensee's resources. On the other hand, according to the licensee's proposed schedule of a physical examination of every 9 to 15 months, it would be possible for a worker to average fewer than one examination every year over an extended period of time, for example, only four examinations in five years. This practice clearly does not meet the intent of the regulation.

In order to provide the licensee with administrative flexibility and yet meet the intent of the regulation to provide one physical examination every year, the staff has determined that an exemption to 10 CFR 20.103(c)(2), as requested by the licensee, with a provision that total time over any three consecutive physical examination periods will not exceed 39 months, should be granted.

IV

The Commission has determined that, pursuant to 10 CFR 20.501, this exemption is authorized by law, and will not result in undue hazard to life or property. Accordingly, the Commission hereby grants an exemption related to the time interval requirement of 10 CFR 20.103(c)(2) on physical examinations from "at least once every 12 months" to "every 9 to 15 months, provided that the total time over any three consecutive physical examination periods does not exceed 39 months." Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (53 FR 24817).

This exemption is effective upon issuance. Dated at Rockville, Maryland, this 6th day of July 1988.

For the Nuclear Regulatory Commission,
Steven Varga,
Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.
[FR Doc. 88-15967 Filed 7-14-88; 8:45 am]

BILLING CODE 7530-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25897; File No. SR-NYSE-88-17]

Self-Regulatory Organizations; Proposed Rule Changes by New York Stock Exchange, Inc., Relating to Debt Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1988, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend some of its rules governing trading in debt securities.

In addition, the Exchange proposes to amend an interpretation of Rule 85(e)(1) with respect to the crossing procedure on the Automated Bond System.¹

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed revisions is to eliminate outdated bond rules, refine rules to address current bond trading procedures, and to narrow language of certain rules that do not apply to trading in bonds or in certain types of bonds.

Rule 61 defines recognized quotations in equities and bonds. The proposed amendments will allow minimum size lots and reduce the 50 bond minimum to 25 for all or none orders in cabinet bonds.

Rule 72 defines the priority and precedence of bids and offers. The

proposed rule change makes clear that bonds dealt in by cabinets are not subject to this rule. Rather, trading in these bonds is governed by Rule 85.

Rule 79A governs bond trading on the Exchange floor (as distinguished from the cabinets). The proposed revisions clarify the definition of transactions at wide variations which would require approval of a Floor Official. Such transactions are those that occur two or more points away or 30 or more days from the last transaction.

The proposed revisions also eliminate confusing references to "free bonds," "free crowd" and "Bond Crowd". For the sake of consistency, the term "Bond Floor" is substituted. In addition, by deleting specific references to floor clerks and quote cards, the new rule provides for flexibility in the quote capture process.

Rule 85 governs trading in cabinet bonds, including bonds traded via the Automated Bond System. The proposed amendments to Rule 85 delete all references to month and week orders, which no longer exist. In addition, these amendments provide the Exchange with the flexibility to designate types of orders for particular issues of bonds.

Rules 124 deals with trading of odd-lot equity orders. The proposed change—the substitution of the word "stock" for "security"—does not affect the operation of the rule.

Foreign Currency Denominated Bonds

Recent listings have marked a return to the trading of foreign currency denominated bonds on the Exchange. The changes to Rules 55, 191 and 251 clarify the Exchange's practice with respect to these bonds.

Rule 55 defines units of trading for stocks and bonds. The proposed amendments would allow the Exchange to designate units of trading of other than \$1,000 for U.S. dollar and foreign currency denominated bonds.

Rule 191 sets forth the manner in which contracts in foreign currency denominated bonds shall be made and settled. The rule specifies that such contracts shall be made and settled on the basis of U.S. currency equivalents set by the Exchange. The proposed amendment eliminates the Exchange's burden of setting currency equivalents and allows the parties to agree on the currency for contract settlements.

Rule 251 governs cash adjustment for coupons by establishing the time and basis for a foreign currency exchange in settlement of bond contracts. It is proposed that this rule be deleted. The rule is redundant as such situations are adequately covered by other Exchange

rules and, in most cases, by the prospectus as well.

Reinterpretation of Rule 85(e)(1)

Rule 85(e)(1) provides that when a member files a bid or offer in the cabinets as agent and then receives an order in the same security on the opposite side, he can "cross" the orders without making any further bids or offers provided that the first bid or offer has been in the cabinets for a "reasonable" period of time (allowing other members the chance to trade at the bid and offered prices) and that the member announces his intention to cross before he does so.

While Rule 85(e)(1) does not define a "reasonable period of time", a floor practice of 15 minutes had evolved, and is programmed into ABS.² The 15 minute established bid and offer period serves a valid purpose where bids and offers are stored in physical cabinets. With physical cabinets, quote information is manually updated. In ABS, on the other hand, quotes are updated automatically. Thus, for crosses effected on ABS, 15 minute exposure is not reasonable. The new interpretation of "reasonable" in ABS establishes that time at two minutes.

The statutory basis under the Securities Exchange Act of 1934 (the "Act") is section 6(b)(5) and its requirement that a national securities exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii)

as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 5, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,
Secretary.

July 11, 1988.
[FR Doc. 88-15992 Filed 7-14-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-25895; File No. SR-PCC-88-02]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change; Pacific Clearing Corp. ("PCC")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1988, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Three member committees, chaired by Governors of the Pacific Stock Exchange ("PSE"), were established for the purpose of examining the cost and revenue structure of PCC and PSE operations in Options, Equities, and Data Processing. These committees had extensive input from the membership community. The proposed changes to the fee structure of PCC were recommended by the Equities Committee.

There is a proposed increase of \$1,050 in post cashing fees. In addition, there is a proposed charge of \$8 per trade for each manually processed DTC ineligible Master Limited Partnership.

There is a proposed increase in fees for the Signature Guarantee Program. The fees for this program currently appear in the Schedule of Rates for PCC. Because the program is actually administered by PSE, the increased fees will now appear in the PSE Equities Schedule of Rates, and any reference to the program in PCC's Schedule will be deleted by this rule filing.

The proposed changes will be imposed on PSE members only, and should not impact the public.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In March 1988, PSE established three committees to examine the cost and revenue structure of PCC and PSE operations.

The Equities Committee, composed of 1 Director of PCC, 3 Governors, 8 specialists, 5 floor brokers, and 1 allied member of PSE, recommended the changes in PCC's fee structure. The increases proposed by this Committee are designed to allocate operating costs to members based on their usage of the trading floor.

Currently, a fee of \$1,100 is charged to specialists for cashing services provided or purchased by PCC. An increase of \$1,050 is proposed. The increased total of \$2,150 will be reviewed quarterly.

There is a proposed increase in fees for the Signature Guarantee Program, and for the Facsimile Stamp. The fees for this program currently appear in the Schedule of Rates for PCC. Because the program is actually administered by PSE, the increased fees will now appear in the PSE Equities Schedule of Rates, and any reference to the program in PCC's Schedule will be deleted by this rule filing.

In addition, a charge is proposed for manually processing DTC ineligible Master Limited Partnerships. The proposed charge is \$8 per trade. Because these issues are ineligible at DTC, PCC staff must process these trades manually, by shipping securities to brokers and transfers agents.

The proposed rule changes and this rule proposal are consistent with sections 6(b)(4) and 17A of the Securities Exchange Act of 1934 (the "Act") in that they provide an equitable allocation of reasonable dues, fees and other charges among the members using the facilities of the PCC and with section 15A(b)(6) of the Act which requires that PSE's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PCC does not believe that the proposed rule changes impose a burden on competition. The changes should have no impact on the public.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed changes are the result of recommendations of a member committee, which included one PCC director. Written comments were not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule changes have become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraphs (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate

such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-PCC-88-2. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned, self-regulatory organization. All submissions should refer to the file number (File No. SR-PCC-88-2) and should be submitted by August 5, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 8, 1988.

Jonathan G. Katz,
Secretary.

FEE SCHEDULE—PACIFIC CLEARING CORPORATION SCHEDULE OF RATES AND CHARGES

(Italics indicates additions, brackets indicates deletions)

Post Cashing.....	● (\$1,100.00 per month)
	\$2,150/month.
Post Clearing.....	● \$1,650.00 per month.
	● Each manually processed DTC ineligible Master Limited Partnership \$8.00/trade.
[Signature Card Program]	[● Additions and Deletions: \$50.00 for first name change, \$25.00 for each change thereafter. Plus pass-through of postage and mailing expense. Maintenance Fee—\$50.00 per year.]

[FR Doc. 88-15993 Filed 7-14-88; 8:45 am]
BILLING CODE 8010-01-01

[Release No. IC-16472; 812-7063]

Public Facility Loan Trust; Application

July 12, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Shawmut Bank, N.A., not in its individual capacity, but solely as trustee (the "Applicant" or "Owner Trustee"), on behalf of the Public Facility Loan Trust (the "Trust").

Relevant Sections of the 1940 Act: Exemption requested under section 9(c) from the provisions of sections 10(h), 14(a), 16(a), 17 (a) and (d), 18 (a), and (i) and 32(a) of the 1940 Act.

Summary of the Application: The Applicant, serving as Owner Trustee on behalf of the Trust, seeks an order to permit the issuance and sale by the Trust of debt securities and two classes of certificates of beneficial interest in the Trust, collateralized by certain loans originated by the United States Department of Housing and Urban Development ("HUD"), in connection with the Federal government's loan asset sale program.

Filing Date: The Application was filed on July 12, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by SEC by 5:30 p.m. on July 27, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Geoffrey K. Hurley, Esq., Shadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022-9932.

FOR FURTHER INFORMATION CONTACT: Karen L. Skidmore, Special Counsel (202) 272-3023; or Fran Pollack-Matz, Staff Attorney (202) 272-3024 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's

Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Trust has been organized as a Massachusetts business trust pursuant to a Declaration of Trust (the "Declaration of Trust") filed by Shawmut Bank, N.A. with the Commonwealth of Massachusetts on July 8, 1988, and has registered with the Commission as a closed-end, management investment company. The Trust has been organized for the purpose of acquiring certain loans (the "Loans") from HUD, pursuant to a loan sale agreement (the "Loan Sale Agreement"), in exchange for equity interests and proceeds of debt securities to be issued by the Trust. The Loans are bonds were issued by municipalities, special districts and not-for-profit organizations to refinance construction loans, which bonds were purchased by the predecessor agency to HUD under its Public Facilities Loan Program ("PFLP"). The PFLP was designed to assist small municipalities in the construction of public works, such as water, sewer, hospital and other public facilities. The Loans comprise substantially all of HUD's portfolio of PFLP loans (the "Portfolio").

2. The Loans will be sold by HUD in accordance with a directive issued by the United States Office of Management and Budget ("OMB") and the amended Guidelines for Loan Asset Sales, dated March 8, 1988, prepared by the Federal Credit Policy Working Group and issued by OMB (the "Guidelines").

3. The proposed transaction has been designed to implement the objectives of the Guidelines by: (a) Providing for the sale of Loans without recourse to the Federal government; (b) providing for the transfer of servicing responsibilities for the Loans to a private sector loan servicer; and (c) ensuring that interest on the Bonds issued to finance the acquisition of the Loans by the Trust (and thus, in effect, the future interest payments on the Loans themselves) will be subject to full Federal income tax.

4. The proposed transaction that is the subject of this application involves the issuance of securities by the Trust to finance the Trust's purchase of the Loans from HUD. In general, in order to be eligible for selection from HUD's Portfolio, the Loan must not have been a "Delinquent Loan" as of the Cut-off Date specified in the Prospectus (the "Cut-off Date"). A "Delinquent Loan" will be defined in the Prospectus and the Indenture as a Loan which is more than

6 or 12 months (to be determined prior to pricing) past due in any scheduled payment (or rescheduled payment) of principal or interest as of the date of determination. The Trust, however, may include a limited amount (not to exceed 10 percent of its assets as of the Closing Date) of Loans that are Delinquent Loans as of the Cut-off Date but subject to the Trust's specifically representing and warranting that such Delinquent Loans will become current before the second anniversary of the Closing Date. If such Delinquent Loans fail to become current as warranted, HUD will be obligated under the Loan Sale Agreement to perform one of the remedies discussed below with respect to a "Non-Conforming Loan," that is, a Loan not complying with certain warranties made by HUD under the Loan Sale Agreement. Pursuant to the Loan Sale Agreement between the Owner Trustee and HUD, HUD will sell the Loans to the Trust in exchange for: (a) The proceeds from the issuance of certain debt securities (the "Bonds"); and (b) two classes of certificates evidencing ownership of beneficial interests on the net assets of the Trust (the "Certificates").

5. Under the Loan Sale Agreement, HUD makes certain warranties about the Loans as of the Closing Date. Upon breach of certain warranties and notice thereof and satisfaction of the requirements set forth in the Loan Sale Agreement within the applicable warranty period ("Warranty Period"), (generally, two years from the Closing Date), HUD will promptly either (1) cure the breach, (2) substitute a Loan for a Non-Conforming Loan, (3) make certain cash payments, or (4) purchase Bonds in the open market for surrender and cancellation, or any combination of the foregoing. HUD may elect to defer any such performance until such time, if any, as the subject Non-Conforming Loan becomes a Delinquent Loan. Until a Non-Conforming Loan becomes a Delinquent Loan, the Bondholders will continue to benefit from the principal and interest payments on the Loan. However, if the Non-Conforming Loan becomes a Delinquent Loan, HUD must perform its obligations under the Loan Sale Agreement and such obligations are backed by the full faith and credit of the United States. See the application for a fuller description of these remedies. Notice will be given by the Bond Trustee and the Owner Trustee to the Bondholders and the Certificateholders of any substitution of Loans, as described in the application, within five days after such substitution as contemplated by section 26(a)(4)(B) of

the 1940 Act. With the exception of such limited remedies and the advances in connection with interest deferrals, the Loans will be transferred to the Trust without recourse to HUD.

6. The Trust will issue separate maturities of collateralized sequential pay Bonds in an aggregate principal amount currently estimated in a range up to \$300 million expected to be issued at a discount to yield net proceeds in a range up to \$200 million. The Bonds will be issued pursuant to an indenture (the "Indenture") between the Owner Trustee and Chemical Bank, as bond trustee (the "Bond Trustee"). The Bond Trustee and Owner Trustee and any successors thereto will be banks and will be required to have at all times an aggregate capital, surplus and undivided profits of not less than \$50,000,000. The date on which such transactions will occur is referred to herein as the "Closing Date."

7. The Bonds will be registered under the Securities Act of 1933 (the "1933 Act") pursuant to a registration statement (the "Registration Statement") on Form N-2. The Indenture will be qualified under the Trust Indenture Act of 1939 ("1939 Act"). The Bonds will be rated in the highest rating category ("AAA" or "Aaa") by two nationally recognized statistical rating organizations ("Rating Agencies") not affiliated with the Trust. The Trust will offer the Bonds through the underwriters (the "Underwriters") named in the prospectus included in the Registration Statement (the "Prospectus").

8. The Bonds are expected to be issued in separate maturities. Each maturity of Bonds will have a fixed interest rate and stated maturity date and will be amortized on each Payment Date in a manner such that, assuming principal of and interest on the Loans is paid when due, the overcollateralization levels specified in the Indenture will be maintained (to the extent of available moneys therefor under the Indenture). Interest on the Bonds will be payable on each semi-annual Payment Date. Aggregate principal amounts, initial public offering prices, maturity dates and interest rates of each maturity will be determined in light of market conditions at the time of the pricing of the Bonds so as to achieve the highest return to HUD both in terms of net proceeds of the Bonds and the value of the Certificates. The Bonds are currently expected to be issued at substantial discounts below par if it is determined at the time of pricing of the bonds that the sale of the Bonds with original issue discount will reduce the yield on the Bonds below the yield which the Bonds

would bear if issued at par. The Bonds will not be subject to redemption prior to maturity other than through amortization of principal as described above.

9. The Certificates will evidence ownership of beneficial interest in the net assets of the Trust and accordingly will entitle holders to shares of the cash flow of the Trust after the funding or certain funds and payment of all principal and interest payments on the Bonds then due. Such distributions to the Certificateholders shall be made semi-annually on or immediately following each Payment Date in respect of the Bonds. It is expected that HUD initially will retain the Certificates.

10. For certain tax reasons, described in the application, the Certificates will be issued by the Owner Trustee in two classes with different rights as to distributions. On each date on which the Owner Trustee makes a distribution to the Certificateholders one class of Certificateholders will receive a specified return on the Certificates' value assigned to that Class prior to distributions to the other class. The Certificates will be transferable, subject to the limitations described below and in the application. The Certificates will not be redeemable at the option of the holders. The holders of the Certificates will not be liable for payment of principal of, or interest on, the Bonds or for any other liabilities of the Trust.

11. The Owner Trustee will contract with General Electric Capital Corporation (formerly, General Electric Credit Corporation) (the "Servicer") as servicer of the Loans under a servicing agreement ("Servicing Agreement"). Under the Servicing Agreement, the Servicer will administer, service, collect and enforce the Loans on behalf of the Trust. The Servicing Agreement will not permit the Servicer to resign so long as any Loans are outstanding except upon a determination that is duties thereunder are no longer permissible under applicable law or if the Servicer has obtained a successor Servicer satisfactory to the Bond Trustee and the Owner Trustee, the appointment of which will not cause the rating on the Bonds to be reduced. The fees of the Servicer will be disclosed in the Prospectus. The Owner Trustee will assign the Loans and its rights under the Loan Sale Agreement and the Servicing Agreement to the Bond Trustee pursuant to the Indenture as security for the Bonds.

12. The Indenture will provide for three Funds, the Revenue Fund, the Expense Fund the Liquidity Fund (the "Funds"), and for one account, the Breach Account. The Revenue Fund, to

be held by the Bond Trustee under the Indenture as security for the Bonds, will be credited with all payments due on the Loans and received after the Cut-Off Date specified in the Loan Sale Agreement, net of the fees of the Servicer, all earnings on the Investment Agreement (described below and in the application), and any required transfers from the Expense Fund, the Liquidity Fund and the Breach Account. Amounts credited to the Revenue Fund will be applied on each Payment Date in the following order of priority: first, to pay principal at maturity of and interest on the Bonds due on such Payment Date; second, to pay scheduled Administrative Expenses ("Administrative Expenses" will include fees and expenses of the Bond Trustee, the Trust's auditors and accountants, and of the Owner Trustee, and Servicer Advances (defined below) not previously paid) then due and not previously paid from the Expense Fund; third, to fund the Expense Fund to the required level set forth in the Indenture; fourth, the fund the Liquidity Fund to the required level set forth in the Indenture; fifth, to amortize principal of the Bonds in the manner described in paragraph 8; and sixth, to pay Administrative Expenses not paid pursuant to the second application of funds described above. Any remaining amounts in the Revenue Fund on such Payment Date (other than certain specified amounts received prior to such date) will be promptly paid over by the Bond Trustee to the Owner Trustee for distribution to the Certificateholders after payment of any expenses of the Trust not payable by the Bond Trustee as Administrative Expenses (including any indemnities payable by the Trustee).

13. The Expense Fund may be available to be used on a monthly basis for reimbursement of advances made by the Servicer for the purpose of collecting amounts due on the Loans or for the protection of collateral that is security for any Loan ("Servicer Advances") and, on each Payment Date, to pay scheduled payments on the Bonds, as necessary, and Administrative Expenses. The Liquidity Fund, as necessary, will be used to pay scheduled payments on the Bonds and to pay scheduled Administrative Expenses not previously paid from the Expense Fund or the Revenue Fund. The Breach Account will hold cash received from HUD with respect to certain defective Loans. Amounts in the Breach Account will be available to pay any shortfalls in scheduled payments on such Loans up to the Cash Value of the Breach (as defined in the application) for such Loans. Any amounts remaining in the Breach Account after all Bonds have

been paid in full will be transferred to HUD.

14. In order to provide for earnings on the Funds referred to above without creating investment discretion in the Bond Trustee, the Indenture will require the Owner Trustee and the Bond Trustee prior to the issuance of the Bonds, to enter into an investment agreement (the "Investment Agreement") with a financial institution. Such institution will be (a) or a national bank, a banking institution organized under the laws of any State or the District of Columbia the business of which is substantially confined to banking and is supervised by the State banking commission or similar official, or a foreign bank subject to substantially the same supervision under the International Banking Act of 1978; (b) an insurance company, subject to the supervision of the insurance commissioner, bank commissioner or any agency or officer performing like functions, of any State of the District of Columbia; or (c) a United States government agency or government sponsored corporation, in each case, whose obligations are rated in, or eligible to be pledged as collateral for securities rated in, the highest rating category ("AAA" or "Aaa") by the same Rating Agencies which rate the Bonds. The Trust anticipates entering an Investment Agreement with Morgan Guaranty Trust Company of New York or another entity acceptable to the Rating Agencies and not affiliated with any parties to the transaction ("Provider").

15. The Investment Agreement will have a term equal to the final maturity of the Bonds. The Indenture will require the Bond Trustee to invest under the Investment Agreement all amounts held under the Indenture and credited from time to time to the Funds. The Investment Agreement will bear a fixed or variable interest rate or rates specified in the Investment Agreement and disclosed in the Prospectus. If the Investment Agreement bears a variable interest rate or rates, such rate or rates will be pegged to a published financial index specified in the Indenture and disclosed in the Prospectus. At no time, however, will such variable rate or rates be permitted to fall below the weighted average rate on the Loans.

16. The Investment Agreement will not be terminable or assignable by the Provider, except that if the Provider is a bank which is a principal subsidiary of a bank holding company, the Provider may be permitted to assign its obligations under the Investment Agreement to its parent corporation if the long-term debt rating of the parent

by each Rating Agency rating the Bonds is at least as high as that of the Bonds (i.e., AAA or Aaa, the same as the original Provider). The Investment Agreement will terminate if the Bond Trustee or the Owner Trustee should inform the Provider that any Rating Agency then rating the Bonds has stated that the continuation of the Investment Agreement with that Provider will adversely affect such Rating Agency's rating of the Bonds. In the event of such termination, the Bond Trustee will enter into a substitute investment agreement that would not result in a reduction in the rating of the Bonds, if such an agreement can be procured. Any such substitute agreement would be permitted only with the financial institutions described above. If the Investment Agreement is with an entity other than a United States government agency or government sponsored corporation, in the event that the amounts invested in the Investment Agreement exceed the limits required to maintain the Trust's status as a regulated investment company under the Internal Revenue Code, the Bond Trustee will be required to invest any such excess amounts in one or more additional investment agreements meeting all of the requirements of a substitute agreement specified above or, if no such additional investment agreement can be procured, in the kinds of investments described in paragraph 17 for instances when no substitute agreement can be procured.

17. If no such substitute investment agreement can be procured, amounts in the Funds will be invested by the Bond Trustee only in (a) obligations issued by the United States (and supported by its full faith and credit); or (b) repurchase agreements with respect to such obligations and overcollateralized on a basis that will not result in a reduction in the ratings of the Bonds. All such investments must mature before the next scheduled distribution date and will respect to any amount on deposit in the Expense Fund for reimbursement of advances made by the Servicer, such investments must mature monthly. In addition, after final payment of the Bonds, any amounts paid over by the Bond Trustee to the Owner Trustee for distribution to Certificateholders may be invested, pending distribution, in the same investments described above any demand or time deposit or certificate of deposit which is fully insured by the Federal Deposit Insurance Corporation.

18. The Bonds will not be redeemable at the option of the holders and, except in the event of a default on the Bonds

followed by an acceleration, holders of the Bonds will not be entitled to compel the liquidation of the Loans in order to redeem the Bonds prior to maturity.

19. At the date of issuance of the Bonds, the principal balance of the Bonds will not exceed the Aggregate Collateral Value of the Loans (as defined in the application). To the extent permitted by the Rating Agencies, Aggregate Collateral Value will include a Loan after it becomes Delinquent, as defined in the Prospectus. The Rating Agencies will take into account the inclusion of Delinquent Loans in determining the appropriate level of overcollateralization and of required funding of the Liquidity Fund. When the maximum overcollateralization level is determined at the pricing of the Bonds, the Applicant undertakes to amend the application in order to inform the SEC of such maximum level. It is expected that the level of overcollateralization will be no less than 104% and no more than 120%, which is the level of overcollateralization required to obtain the highest investment grade rating on the Bonds.

20. Neither the holders of the Certificates, the Owner Trustee nor the Bond Trustee will be able to impair the security afforded by the Loans to the Holders of the Bonds. Without the consent of each Bondholder to be affected, the Indenture may not be amended so as to: (a) Change the stated maturity of and Bond; (b) reduce the principal amount of or the rate of interest on any Bond; (c) change the priority of payment on any maturity of Bonds; (d) impair or adversely affect the Loans securing any maturity of Bonds; (e) permit the creation of a lien ranking prior to or on a parity with or subordinate to the lien of the Indenture with respect to the assets pledged under the Indenture; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the Indenture. The sale of the Certificates by HUD or any other holder will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the Funds or Breach Account created pursuant to the Indenture to support payments of principal of and interest on the Bonds.

21. Conflicts of interest, if any, between the Bondholders and the holders of the Certificates in the Trust are addressed in the following ways:

(a) The Indenture will subject the Loans, the various Funds and the Breach Account held under the Indenture, and the Investment Agreement to a first priority perfected security interest in favor of the Bond Trustee for the benefit of the Bondholders. The Indenture will

further provide that no amounts may be released from the lien of the Indenture to be remitted to the Owner Trustee (or the holders of Certificates) on any Payment Date until: (i) The Bond Trustee has made the scheduled payment of principal of and interest on the Bonds on such Payment Date; (ii) all Administrative Expenses then due have been paid; (iii) any required deposits have been made to the Expense Fund, the Liquidity Fund and the Breach Account; and (iv) the Bond Trustee has paid principal of the Bonds on such Payment Date in the manner described in paragraph 8.

(b) The holders of the Certificates will be entitled to receive current distributions representing the residual payments on the Loans in accordance with the terms of the Indenture and the Declaration of Trust. Except for such rights to receive residual payments, the holders of the Certificates will have no rights in, or discretionary control over, the Trust while the Bonds are outstanding other than the right to replace the Owner Trustee for breach of fiduciary duty, willful misfeasance, bad faith, gross negligence or reckless disregard of its duties under the Declaration of Trust and to replace the Trust's auditors with respect to the responsibilities of the auditors other than those arising under the Indenture. The holders of the Certificates will have the right to replace the Servicer for breach of the Servicing Agreement only after all Bonds have been paid.

(c) The Bonds will only be issued if they have been rated in the highest rating category by two Rating Agencies not affiliated with the Trust.

22. The Trust expects to make certain payments to cover various costs to be paid or reimbursed at the closing of the sale of the Bonds and Certificates, as well as various ongoing costs and expenses, all such costs and expenses being fully described in the application and Prospectus. Should the Trust expect to make any other payments not described in the application, Applicant will submit an amendment to this application to the Commission requesting that those fees be exempted from the provisions of section 26(a)(2) of the 1940 Act and stating that the amounts thereof will be disclosed in the Prospectus.

23. Upon payment of the Bonds in full and the discharge of the Indenture, any remaining assets of the Trust held by the Bond Trustee will be transferred to the Owner Trustee. Any cash assets will then be distributed to the holders of the Certificates. Any remaining Loans will be retained by the Owner Trustee and

cash flows from the Loans will be distributed by the Owner Trustee to the holders of the Certificates at least monthly on a pass-through basis after payment of the fees and expenses of the Owner Trustee, the Servicer and the Trust's accountants and auditors. Upon final payment of the Loans, any remaining assets of the Trust will be distributed to the Certificateholders and the Trust will be terminated.

24. In order to allow the Trust to register with the Commission as a closed-end management investment company, exemptive relief is required from the provisions of the 1940 Act specified below.

Applicant's Legal Conclusions

1. Section 10(h)

Section 10(h) of the 1940 Act applies certain of the restrictions of sections 10 (a), (b) and (c) of the 1940 Act to the board of directors of the depositor of a registered management company which is an unincorporated company not itself having a board of directors, as well as the case with the Trust. HUD, by conveying the Loans to the Trust, might be deemed to be the depositor of the Trust. However, HUD, as a Federal department in the Executive Branch, has no board of directors nor can it elect or appoint a board of directors. Except for its limited rights as a Certificateholder, HUD would not have any discretion over the administration of the Trust under the Declaration of Trust and the Indenture. Moreover, the Trust will operate as a passive entity without the traditional methods of management and investment.

2. Section 14(a)

Section 14(a)(1) of the 1940 Act provides that no investment company shall make a public offering of securities of which such company is the issuer unless such company has a net worth of at least \$100,000. On the date of issuance of the Bonds and the Certificates, the aggregate scheduled payments of principal of and interest on the Loans plus the amount on deposit in the Funds will exceed the aggregate scheduled payments of principal of and interest on the Bonds by substantially more than \$100,000. Thus, the net worth of the Trust will exceed \$100,000 on the date of issuance of the Bonds and the Certificates. Prior to the issuance and delivery of the Bonds to the Underwriters, the Underwriters will agree to purchase the Bonds subject to customary conditions of the closing. The Underwriters will not be entitled to purchase less than all of the Bonds. Accordingly, either the offering will not

be completed at all or the Trust will have a net worth in excess of \$100,000 on the date of issuance of the Bonds and the Certificates. Based on the determination of the independent evaluator, it is not anticipated that the net worth of the Trust will fall below the minimum level until the Bonds and the Certificates have been retired.

3. Section 16(a)

Section 16(a) of the 1940 Act requires that no person shall serve as director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company. The powers of the Bond Trustee and the Owner Trustee are so circumscribed that neither the Bond Trustee nor the Owner Trustee should be deemed a director within the meaning of section 2(a)(12) of the 1940 Act. Election or subsequent ratifications of the Owner Trustee or the Bond Trustee are not necessary in the public interest or to protect investors, and the additional expense for the Trust is not justified. The Trust will be a passive entity that will not require investment management. Similar to a unit investment trust, neither the Owner Trustee nor the Bond Trustee will be authorized to manage the Trust's portfolio of Loans. The activities of the Owner Trustee will be carefully limited to receipt of payments from the Bond Trustee while the Bonds are outstanding and of payments on the Loans thereafter and to making current distributions to Certificateholders of the amounts received. The Bond Trustee will also be required to mail a report, based on information supplied by the servicer, to Bondholders, as described in Condition 5 below, which will enable Bondholders to determine the extent to which any outstanding Delinquent Loans may affect the ability of the Trust to make payments of interest and principal on the Bonds in accordance with the Bonds in accordance with the provisions of the Indenture. Moreover, the Trust has agreed to comply with section 26 of the 1940 Act as if it were a unit investment trust, including the requirements in that section regarding entities acting on behalf of the Trust and the limitations on expenses set forth therein. Finally, exemption from section 18(a) of the 1940 Act is necessary in light of the exemption requested from section 18(i) of the 1940 Act discussed below to permit the issuance of only non-voting securities.

4. Section 17(a)

An exemption from section 17(a) of the 1940 Act is sought to permit the Trust to acquire Loans from HUD in

exchange for the Certificates and the proceeds of the Bonds issued by the Trust, to repay HUD if HUD advances funds upon a deferment of interest payment granted to the borrower by HUD, and to effect substitution for Non-Conforming Loans or make cash payments to the Trust in lieu of such substitutions.

Section 17(a) of the 1940 Act prohibits specified transactions between certain persons related to a registered investment company and such investment company. HUD would otherwise be prohibited from entering into the above transactions under section 17(a) of the 1940 Act because HUD may either be considered an "affiliated person" under section 2(a)(3) of the 1940 Act or a "promoter" under section 2(a)(30) of the 1940 Act.

Section 17(a) of the 1940 Act specifically excepts sales which involve securities deposited with the trustee of a unit investment trust. Although the Trust is not a unit investment trust, its structure is very similar to one in that both entities involve the deposit into a trust by a related person of a predetermined fixed portfolio of securities. Moreover, the transactions would meet the requirements of section 17(b) of the 1940 Act, the provision granting the Commission authority to exempt transactions under section 17(a) of the 1940 Act, in that the terms of the exchange will be reasonable and fair and do not involve overreaching on the part of any person concerned.

In order to establish the reasonableness and fairness of the price of the Loan received by HUD, HUD's financial advisor, PaineWebber Incorporated, will advise HUD that the proceeds of the Bonds, less transaction costs, plus the Certificates representing the residual interest in the Trust, represent a fair price for the Loans. In order to establish that the price paid by the Trust for the Loans is reasonable and fair to the Trust, the Trust will retain an independent, qualified evaluator (not including any Underwriters for the Bonds or the Certificates) which will determine that the consideration to be paid by the Trust for the Loan is reasonable and fair.

HUD is also seeking an exemption from 17(a) because HUD has statutory authority to permit the borrower on a Loan to defer interest payments for certain periods upon certain terms and after the making of certain findings by HUD. HUD will be obligated to advance to the Trust interest payments which would be due but for the deferral. The Trust, in turn, will be obligated to reimburse HUD for the aforesaid

advances (together with interest accrued thereon pursuant to the terms of the deferral) in accordance with the borrower's obligation to repay deferred interest under the terms of the deferral. This is intended to allow Bondholders to receive interim cash flows without altering whatever credit risk the Bondholders have assumed by purchasing the Bonds. Any institutional purchaser of the Certificates will have the sophistication and bargaining power necessary to take into account whatever risk is assumed by the Certificateholder in the price it is willing to pay HUD for the Certificates.

Any cash payments made in lieu of Loan substitutions must be in amounts adequate to replace the cash flow from the Non-Conforming Loans or, in cases where the defects affect collateral for Loans, to replace the defective collateral. If HUD elects to surrender Bonds in Lieu of the foregoing remedies, HUD must purchase Bonds with a weighted average life as long as practicable as the dollar weighted average life of the Loans as to which any breach has occurred. As a condition to delivery of the Bonds, HUD must also deliver a statement from the auditors confirming that (1) the aggregate collateral value is at least equal to the aggregate outstanding principal amount of the Bonds and (2) schedule payments on the Loans (other than the Loan or Loan as to which any breach has occurred), together with reinvestment income thereon, is sufficient to pay interest on the Bonds on each date when such payment is due and to retire each class of Bonds no later than its scheduled maturity. Consequently, provision for such payment will provide protection for Bondholders, in the event defects in the Loans are identified, at least as great as the protection afforded by the other remedies available to the Trust under the Loan Sale Agreement.

5. Section 17(d)

An exemption is being sought from Section 17(d) of the 1940 Act to permit the Trust, in the event HUD is deemed an "affiliated person" or "promoter" under the 1940 Act, to effect substitutions of conforming for Non-Conforming Loans or to surrender Bonds or make cash payments in lieu thereof or to repay HUD for any advances upon a deferment of interest payments. Applicants state that these transactions will not be on a basis different from or less advantageous than that of other participants insofar as the Trust will be the only participant on one side of the transaction dealing with HUD as the participant on the other side of the transaction. An exemption is also being

sought from section 17(d) of the 1940 Act to permit the Trust, in the event that GECC is deemed an "affiliated person" of a "principal underwriter" under the 1940 Act, to enter into a servicing agreement with GECC. Section 17(d) makes it unlawful for any affiliated person or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter to effect a transaction in which an investment company is a joint or joint and several participant in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such investment company on a basis different from or less advantageous than that of such other participant.

In the proposed transaction, Kidder Peabody & Co. Incorporated ("Kidder Peabody"), as one of the co-managers of the proposed offering of the Bonds, could be deemed a "principal underwriter". Both Kidder Peabody and GECC are subsidiaries of General Electric Financial Services, Inc., therefore, they are under common control. Although GECC could be deemed an affiliated person of a principal underwriter, Kidder Peabody and GECC are separately managed. As described in the application, GECC has been selected as the servicer because of a competitive bid and non-quantitative factors such as ability and related experience. The Trust believes, among other things, that the level of services proposed to be provided by GECC represents the most appropriate and highest quality of services being offered by qualified candidates, and the proposed fees (including GECC's absorption of start-up costs) represent the lowest cost to the Trust consistent with the extent and quality of service being offered. Consequently, permitting GECC to act as servicer for the Trust would be consistent with the provisions, policies and purposes of the 1940 Act, and the Trust would not be treated differently from or less advantageous than the other participants.

6. Section 18(a)

Section 18(a) of the 1940 Act prohibits a registered closed-end investment company from issuing any class of senior securities unless certain asset coverage requirements are met. The Trust will have an asset coverage ratio immediately after the sale of the Bonds and Certificates currently expected to be at least 4 percent and no more than 120 percent. In addition, the Trust will receive advances from HUD upon deferral of interest payments by HUD and repay such advances. The proposed

transaction, in view of the overcollateralization of the Trust and the nature of the investors in the Certificates, adequately protects against the dangers of excessive leveraging, the concern underlying section 18(a) of the 1940 Act. As a condition to the issuance of the Bonds, the Trust will obtain a determination from an independent, qualified evaluator that the aggregate scheduled payments on the Loans plus the initial deposit in the Funds and reinvestment earnings will exceed the aggregate scheduled payments of principal and interest on the Bonds by an amount adequate to provide for payment of the Bonds in light of the payment terms and past experience on the Loans. Moreover, the Certificates may only be sold to sophisticated institutional investors having sufficient expertise to evaluate the risks involved in acquiring either Class of Certificates.

7. Section 18(c)

The Applicant is seeking an exemption from section 18(c) of the 1940 Act to permit the Trust to issue the Bonds in several maturities. Section 18(c) of the Act makes it unlawful for any registered investment company to have more than one class of senior security of debt or equity. Here, each maturity of Bonds will be secured by collateral equally and ratably with every other maturity and all maturities will have the benefit of the same covenants and rights on default. Moreover, no action by the Owner Trustee or the Certificateholders can affect the timely payment of Bonds, and no action by the Bondholders of one maturity can affect the timely payments of Bonds of any other maturity. All of the assets of the Trust will be pledged to the Bond Trustee and the Owner Trustee will be permitted to borrow against the assets of the Trust. Further, Loans will not be permitted to be removed from the Trust or substituted for other assets, except under limited circumstances.

8. Section 18(i)

Under section 18(i) of the 1940 Act, a registered investment company may not issue stock which does not have equal voting rights with every other class of stock. The Trust will operate essentially as a unit investment trust, to which section 18(i) of the 1940 Act does not apply. Given the lack of discretion vested in the Certificateholders and the Owner Trustee, voting rights would have very little actual effect on the operation of the Trust and would not enhance investor protection.

BEST COPY AVAILABLE

9. Section 26

Applicant has agreed that it will be subject to section 26 of the 1940 Act (with certain exceptions) as though it were a unit investment trust within the meaning of section 4(2) of the 1940 Act. With respect to sections 26(a)(2) (B) and (C), the Applicant has requested to be able to pay certain costs and expenses described in the application. The Applicant believes that the payment of those costs and expenses will be fair and reasonable in light of the requirements of the offering and sale of Bonds and the ongoing servicing requirements for the Loans. To the extent any administrative costs and fees are determined on the basis of a percentage of outstanding Bonds, the Applicant has specifically considered the fairness of such percentage formula under the Indenture and that the practice of determining fees in this manner is fair within the meaning of section 26 of the 1940 Act. The Applicant further believes that the granting of the Order sought by this application will satisfy the provisions of section 26(b) of the 1940 Act relating to substitution of collateral to the extent Loan substitution is made as described in the application.

10. Section 32(a)

Sections 32(a)(1) and 32(a)(3) of the 1940 Act require the independent public accountant filing the investment company's financial statements to be selected annually by a vote of a majority of the board of directors and ratified annually by a majority of the voting securities of the investment company. The Trust, however, will not have voting securities. The initial auditors will be selected and disclosed in the Prospectus prior to the issuance of the Bonds and Certificates. Both the Bond Trustee and the Owner Trustee will have the right to remove the auditors for the Trust. Moreover, the Trust will not engage in any investing or reinvesting of securities, except to a limited extent. As a result, the Trust's financial statements will be primarily records of receipts and distributions, and audits of the Trust's financial statements will be straightforward and will not involve complex auditing and accounting principles. Therefore, the additional expense of ratification of the auditors would not be justified given the nature of the Trust.

11. Section 6(c)

For the reasons stated above, the requested exemptions are consistent with the section 6(c) standards. The relief requested is appropriate in the

public interest, because: (a) The Trust's activities will promote the public interest by permitting HUD to sell its loan assets pursuant to a directive from the United States Office of Management and Budget and will provide investors with a highly rated security; (b) the Trust may be unable to proceed fully and in a timely manner with its proposed activities in the uncertainties concerning the applicability of the above sections are not removed; and (c) the activities of the Trust are not the types of activities intended to be prevented by the 1940 Act.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following conditions:

A. Conditions Relating to the Bonds

(1) The Bonds will be registered under the 1933 Act. The Indenture will be qualified under the 1933 Act.

(2) The Loans, the Funds, the Breach Account and the Investment Agreement securing the Bonds ("Collateral") will be held by the Bond Trustee. The Bond Trustee may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Trust. The Bond Trustee will be provided with a first priority perfected security interest in the Collateral. The Servicer will not be affiliated with either the Bond Trustee or the Owner Trustee.

(3) The initial collateral for the Bonds will consist only of the Loans and any moneys initially deposited to the credit of the Funds and invested in the Investment Agreement. No Loans may be released from the liens of the Indenture prior to the payment of the Bonds (except upon the acceleration of defaulted Loans) or substituted except pursuant to the limited substitution obligations of HUD under the warranties of HUD contained in the Loan Sale Agreement described in the application. Any such substitute collateral may consist only of Loans and will: (a) Be of equal quality as the Non-Conforming Loans being replaced in that they will be covered by the warranties of HUD contained in the Loan Sale Agreement (subject to the limitation on HUD's obligation to replace Non-Conforming Loans notified to it during the Warranty Period) and will be selected by HUD in a manner so as to not adversely affect the rating of the Bonds; (b) have equal or greater principal amounts and cash flow as the Non-Conforming Loans being replaced, subject to the cash payment option and credit to HUD for prior substitutions of Substitute Loans with cumulative payments in excess of the Non-Conforming Loan being replaced;

and (c) meet the conditions set forth in paragraph (2) above. The replacement of such Substitute Loans for Non-Conforming Loans will not affect the level of collateralization on which the original rating or ratings on the Bonds were based or affect the rating or ratings on the Bonds. If HUD elects to purchase Bonds in the open market and surrender such Bonds in lieu of other remedies for breach of warranty, HUD will purchase Bonds with a weighted average life as long as practicable as the weighted average life of the Loan or Loans as to which such breach of warranty occurred. In surrendering any such Bonds, HUD must also deliver a statement from the auditors confirming that (i) the Aggregate Collateral Value calculation (excluding the Loan or Loans as to which the breach of warranty occurred) is at least equal to the then outstanding principal amount of Bonds and (ii) the scheduled payments on the Loans (excluding the Loan or Loans as to which the breach of warranty occurred), together with reinvestment income thereon, is sufficient to pay interest on the Bonds on each date when such payment is due and to retire each class of Bonds no later than its stated maturity.

(4) The Bonds will be rated in the highest bond rating category by two Rating Agencies that are not affiliated with the Trust. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(5) On each Payment Date, the Bond Trustee will mail to each Bondholder a written report containing the following information as of the end of the immediately preceding Payment Date: (i) The aggregate principal amount of each Class of Bonds outstanding, (ii) the respective amounts credited to each of the Funds, (iii) the amount of any draw on any Fund, (iv) the respective amounts of the Expense Fund Requirement and the Liquidity Fund Requirement, (v) two calculations of Aggregate Collateral Value, one calculation including Delinquent Loans and one calculation excluding Delinquent Loans, (vi) the respective ratios which the two Aggregate Collateral Value calculations described in clause (v) bear to the then aggregate outstanding principal amount of the Bonds (which ratios will provide Bondholders with information as to the extent of then existing overcollateralization), (vii) a schedule indicating the number and aggregate principal amount of Delinquent Loans and delinquency periods aggregated by years, and (viii) the amount of funds released from the Revenue Account to

make distributions to holders of Certificates. With respect to the calculations under clauses (v) and (vi) above, the Bond Trustee will receive such information from the Servicer with respect to Delinquent Loans as will enable it to generate the information specified in such clauses. Such report will also state, based on the information set forth therein, whether or not scheduled payments on the Loans (both including and excluding Delinquent Loans), together with reinvestment income thereon, will be sufficient to pay interest and principal on the Bonds in accordance with their terms. Copies of each such report will be provided to the Owner Trustee who will distribute them to Certificateholders. In addition, no less often than annually, an independent public accountant will audit the financial statements of the Trust. Upon completion, copies of the auditor's reports will be provided to the Bond Trustee and the Owner Trustee and will be made available to the Bondholders and the Certificateholders.

(6) At the time of the deposit of the Collateral with the Trust, the scheduled payments to be received by the Bond Trustee on the Collateral will be more than sufficient to make all payments of principal of and interest on the Bonds. The Collateral will pay down as the Loans are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds (except upon the acceleration of defaulted Loans and substitutions of Non-Conforming Loans).

B. Conditions Relating to the Certificates

(1) The Certificates will be offered and sold to sophisticated institutional investors pursuant to private placements exempt from the registration requirements of the 1933 Act under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, pension funds and other large institutional investors (*i.e.*, having assets of not less than \$100,000,000) that will have such knowledge and experience in financial and business matters so as to be capable of evaluating the risks of the purchase of the Certificates ("Eligible Investors"). (Any Mutual Funds which may purchase Certificates will continue to be required to satisfy themselves that purchase of such Certificates complies with the provisions of section 12(d)(1) of the 1940 Act.)

(2) Sales of the Certificates will be to a limited number, not exceeding 100, of sophisticated institutional investors. Each purchaser of Certificates will be

required to represent that it is acquiring its Certificates for investment for its own account and not as nominee for undisclosed investors and to agree that it will not resell its Certificates except to other Eligible Investors pursuant to private placements subject to the same representation and agreement and subject to the above limitation on the number of Certificateholders. (The Declaration of Trust will provide that the Owner Trustee may not register any transfer of Certificates if, following such transfer, the number of Certificateholders would exceed one hundred.)

(3) Neither the Trust nor any Certificateholder will be affiliated with the Bond Trustee. No holder of a controlling interest in the Trust (as such term is defined in Rule 405 of the 1933 Act) nor the Trust, will be affiliated with either (a) any custodian which may hold the Collateral on behalf of the Bond Trustee; or (b) any statistical Rating Agency rating the Bonds.

(4) The Certificates will not be redeemable at the option of the holders.

C. Other Conditions

(1) All administrative fees and expenses in connection with the administration of the Trust will be paid or provided for in a manner satisfactory to each Rating Agency rating the Bonds. The Trust will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Trust by the following methods:

(a) The Expense Fund will be established with the Bond Trustee under the Indenture to provide for the payment of such fees and expenses. Such fees will be either fixed amounts or will be determined as a percentage of the aggregate outstanding principal amount of the Bonds, or a combination of both, in any case to be determined prior to the establishment of the Expense Fund. Thereafter, the Bond Trustee will look solely to the Expense Fund for the payment of Administrative Expenses and, to the extent there are not sufficient moneys in the Expense Fund, then to the Revenue Fund. The procedure used to calculate the anticipated level of fees and expenses will provide for funds sufficient to pay such fees and expenses. To the extent any such fees are determined on the basis of a percentage of outstanding Bonds, the Applicant has specifically considered the fairness of such percentage formula under the Indenture and that the "standard industry practice" of determining fees in this manner is fair within the meaning of section 26 of the 1940 Act.

(b) The Bonds will be secured by the Collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with the other method described above. The anticipated level of fees and expenses will be more than adequately provided for by the above methods.

(2) Applicant agrees that the Trust will comply with the provisions of section 26 of the 1940 Act as though it were a unit investment trust within the meaning of section 4(2) of the 1940 Act, provided that for purposes of sections 26(a)(4) (A) and (B) of the 1940 Act, the Bond Trustee and the Owner Trustee shall perform the recordkeeping and notice responsibilities of the depositor or its agent as provided therein, and the requirements of section 26(a)(2) (B) and (C) shall not prevent the Trust from paying certain expenses described in the application.

(3) The Owner Trustee will be required under the Declaration of Trust, and, to the extent stated in the application, the Bond Trustee will be required under the Indenture, to monitor compliance by the Trust with the requirements of the 1940 Act and to fulfill the Trust's ongoing obligations under the 1940 Act including, without limitation, the filings of periodic reports with the Commission as and when required by the 1940 Act.

(4) To alleviate any potential conflict of interest between the Bondholders and the Certificateholders, the Applicant further agrees that the representations in the application regarding the Certificates may be made express conditions to the requested Order.

Therefore, Applicant requests that the Commission enter an order pursuant to section 6(c) of the 1940 Act exempting the Trust from sections 10(h), 14(a), 16(a), 17 (a) and (d), 18 (a), (c) and (i) and 32(a) of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16020 Filed 7-13-88; 10:42 am]
BILLING CODE 8010-01-01

SELECTIVE SERVICE SYSTEM**Employee Responsibilities and Conduct**

AGENCY: Selective Service System.

ACTION: Notice.

Pursuant to 5 CFR 735.104(f) including the approval of the Office of Personnel Management and the Office of Government Ethics, I have adopted the regulations at 5 CFR Part 735 for application, as appropriate, to the employees and special Government employees of the Selective Service System.

Dated: July 6, 1988.

Samuel K. Lessey, Jr.,

Director of Selective Service.

[FR Doc. 88-15947 Filed 7-14-88; 8:45 am]

BILLING CODE 5015-01-M

SMALL BUSINESS ADMINISTRATION**Region VI Advisory Council; Public Meeting; Louisiana**

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of New Orleans, will hold a public meeting, 10:00 am, on Friday, August 12, 1988, at the Small Business Administration office, 1661 Canal Street, Suite 2000, New Orleans, Louisiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert J. Crochet, District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112-2890—(504) 589-2744.

July 12, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-15989 Filed 7-14-88; 8:45 am]

BILLING CODE 5025-01-M

[License No. 02/02-0517]**Sterling Commercial Capital, Inc.; Application for a Small Business Investment Company License**

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, et seq.) has been filed by Sterling Commercial Capital, Inc., 175 Great Neck, New York New York 11021 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
Harvey L. Granet, 26 Nassau Drive, Great Neck, NY 11021.	President, Director	12.00
Jack Kaufman, 6 Lisa Drive, Dix Hills, NY 11748.	Executive Vice President, Treasurer, Director	8.00
Fred Wilson, 100 Shamp Lane, Locust Valley, NY 11560.	Director	23.10
Saul B. Katz, Valley Road, Glen Cove, NY 11542.	Director	16.86
Michael Katz, 89 Wheatley Road, Old Westbury, NY 11568.	Assistant Treasurer, Assistant Secretary, Director, Secretary, Director.	4.50
Arthur Friedman, 40 Knott Drive, Glen Cove, NY 11542.	Secretary, Director.	.56

All other shareholders none of whom will own 10 or more percent of the 34.98 outstanding stock.

The Applicant, a New York Corporation, will begin operations with \$2,500,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of New York, but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L St., NW., Washington, DC 20418.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York. (Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 11, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-15989 Filed 7-14-88; 8:45 am]

BILLING CODE 5025-01-M

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption**

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes July 29, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Branch, Room 8428, Nassif Building, 400 7th Street, SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
868-X	U.S. Department of Defense, Falls Church, VA.	868
3142-X	U.S. Department of Energy, Washington, DC.	3142

Application No.	Applicant	Renewal of exemption	Application No.	Applicant	Renewal of exemption	Application No.	Applicant	Parties to exemption
4588-X	do.	4588	9001-X	T.I. Chesterfield, Ltd., Derbyshire, England.	9001	2582-P	Air Products & Chemicals, Inc., Allentown, PA.	2582
5248-X	3M, New Brighton, MN.	5248	9106-X	Kitty Hawk Airways, Inc., DFW INT'L Airport, TX.	9106	2709-P	Aerojet Solid Propulsion Co., Sacramento, CA.	2709
5820-X	ICI Americas, Inc., Wilmington, DE.	5820	9180-X	M & G Tankers, Ltd., West Midlands, England.	9180	4850-P	Austin Powder Co., Cleveland, OH.	4850
6117-X	Montana Sulphur & Chemical Co., Billings, MT.	6117	9256-X	U.S. Department of Energy, Washington, DC.	9256	5248-P	Magnavox Government & Industrial Electronics Co., Fort Wayne, IN.	5248
6296-X	American Cyanamid Co., Wayne, NJ.	6296	9277-X	FMC Corp., Philadelphia, PA.	9277	6626-P	Strate Welding Supply Co., Inc., Buffalo, NY.	6626
6296-X	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	6296	9277-X	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	9277	7455-P	Austin Powder Co., Cleveland, OH.	7455
6296-X	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	6296	9277-X	Rhone-Poulenc Ag Co., Research Triangle Park, NC.	9277	7607-P	Betz Murdock & Converse Inc. (BMC), Plymouth Meeting, PA.	7607
6472-X	Morton Thiokol, Inc., Ogden, UT.	6472	9277-X	American Cyanamid Co., Wayne, NJ.	9277	7803-P	Rocky Mountain Pro Clean Inc., Denver CO.	7803
6530-X	AGL Welding Supply Co., Inc., Clifton, NJ.	6530	9287-X	Shell Pipe Line Corp., Houston, TX.	9287	7835-P	Sunox Inc., Charlotte, NC.	7835
6674-X	Degussa Corp., Ridgefield Park, NJ.	6674	9296-X	Honeywell, Inc., Minneapolis, MN.	9296	7835-P	American Welding Supply, San Jose, CA.	7835
6674-X	ICI Americas, Inc., Wilmington, DE.	6674	9331-X	Olin Chemicals, Stamford, CT.	9331	8214-P	Chrysler Motors Corp., Center Line, MI.	8214
7097-X	Plant Products Corp., Vero Beach, FL.	7097	9501-X	Hughes Aircraft Co., Los Angeles, CA.	9501	8451-P	Hercules Aerospace Co., Magna, UT.	8451
7268-X	Union Carbide Corp., Danbury, CT.	7268	9551-X	Connie Kalitta Services, Inc., Ypsilanti, MI.	9551	8451-P	Schlumberger Well Services, Houston, TX.	8451
7650-X	ICI Americas, Inc., Wilmington, DE.	7650	9581-X	RAMP Industries, Inc., Denver, CO.	9581	8473-P	EVA Eisenbahn-Verkehrsmittel-Gesellschaft mbH, Dusseldorf, West Germany.	8473
7840-X	General Dynamics Corp., Fort Worth, TX.	7840	9610-X	Honeywell, Inc., New Brighton, MN.	9610	8518-P	Austin Powder Co., Cleveland, OH.	8518
7840-X	Weber Aircraft, Burbank, CA.	7840	9611-X	Bucca Bundenbender GmbH & Co., Niederrdorf, West Germany.	9611	8518-P	Denver Truck Sales, Commerce City, CO.	8518
8003-X	Pennwalt Corp., Buffalo, NY.	8003	9623-X	Austin Powder Co., Cleveland, OH.	9623	8554-P	Maurer & Scott Sales Inc., Douglassville, PA.	8554
8080-X	American Chrome & Chemicals, Inc., Corpus Christi, TX.	8080	9629-X	Pennwalt Corp., King of Prussia, PA.	9629	8554-P	Blasting Supplies Co. Inc., Douglassville, PA.	8554
8244-X	Halburton Services, Duncan, OK.	8244	9634-X	Luder U.S.A., Ltd., Riverside, CA.	9634	8554-P	PEPIN-IRECO Inc., Ishpeming, MI.	8554
8273-X	TRW Vehicle Safety Systems, Washington, MI.	8273	9642-X	Allied-Signal Inc., Morris-town, NJ.	9642	8579-P	Austin Powder Co., Cleveland, OH.	8579
8407-X	Occidental Chemical Corp., Dallas, TX.	8407	9646-X	U.S. Department of Defense, Falls Church, VA.	9646	8723-P	PEPIN-IRECO Inc., Ishpeming, MI.	8723
8451-X	Lockheed Missiles & Space Co., Inc., Palo Alto, CA.	8451	9758-X	Defence Technology and Procurement Agency, Bern, Switzerland.	9758	8877-P	Image Technology, Tampa, AR.	8877
8451-X	U.S. Department of Energy, Washington, DC.	8451	9785-X	Compagnie Generale Maritime, Paris, France.	9785	8877-P	Hi Pure Chemicals, Inc., Nazareth, PA.	8877
8451-X	Honeywell, Inc., Hopkins, MN.	8451	9951-X	General Defense Corp., York, PA.	9951	9416-P	Olin Hunt Specialty Products, Inc., West Paterson, NJ.	9416
8473-X	Boeing Aerospace, Seattle, WA.	8473	9977-X	Brown Measurement Co., Inc., Kilgore, TX.	9977	9533-P	Platte Chemical Co., Greeley, CO.	9533
8526-X	Degussa Corp., Ridgefield Park, NJ.	8526		Hercules Aerospace Co., Magna, UT.		9606-P	Sacramento Air Logistics Center, McClellan Air Force Base, CA.	9606
8526-X	Rohm & Haas Co., Philadelphia, PA.	8526				9750-P	Aulin Powder Co., Cleveland, OH.	9750
8526-X	Key Way Transport, Inc., Baltimore, MD.	8526				9769-P	Rollins Chempak, Inc., Wilmington, DE.	9769
8555-X	Morton Thiokol, Inc., Brigham City, UT.	8555				9953-P	Stoops Express, Inc., Anderson, IN.	9953
8723-X	Atlas Powder Co., Dallas, TX.	8723				9977-P	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	9977
8723-X	Austin Powder Co., Cleveland, OH.	8723						
8789-X	Turner Co., Sycamore, IL.	8789						
8870-X	Everpure, Inc., Westmont, IL.	8870						
8870-X	Culligan International Co., Northbrook, IL.	8870						
8870-X	Preussag Pure Metals GmbH, Langenloheim, West Germany.	8870						
8891-X	BIC Corp., Milford, CT.	8891						
8920-X	Applied Companies, San Fernando, CA.	8920						
8921-X	Hoover Group, Inc., Beatrice, NE.	8921						
8931-X	C-I-L, Inc., North York, Ontario, Canada.	8931						
8943-X	BASF Corp., Chemicals Division, Parsippany, NJ.	8943						

¹ To modify exemption, to revise net contents to onemetric ton, to change box dimensions to 45x45x43 1/4 inches and to allow for polyester lid securing straps.

² To authorize an additional DOT Specification marine portable tank.

³ To authorize an alternative packaging method and an increase in the quantity of igniter composition to 1 gram.

⁴ To authorize rail as an additional mode of transportation and to incorporate provisions from Approval BA-3078 into the exemption.

⁵ To authorize an increase in the net weight capacity of the non-DOT Specification multiwall bag from 50 pounds to 55.1 pounds (25 kilograms).

⁶ To authorize two additional shipments of certain Class A and Class B explosives and an additional air carrier for these shipments.

⁷ To authorize type explosive projectiles (m549 155mm).

⁸ To reissue an exemption, originally issued on an emergency basis, that authorizes manufacture, mark and sell of non-DOT containers identified as meter provers to ship hydrocarbon products.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Regulations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 8, 1988.
J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of
Hazardous Materials Transportation.
[FR Doc. 88-15943 Filed 7-14-88; 8:45 am]
BILLING CODE 4910-95-M

Applications for Exemptions; Hazardous Materials

AGENCY: Research and Special Programs
Administration, DOT

ACTION: List of applicants for
exemptions.

SUMMARY: In accordance with the
procedures governing the application
for, and the processing of, exemptions
from the Department of Transportation's
Hazardous Materials Regulations (49
CFR Part 107, Subpart B), notice is
hereby given that the Office of
Hazardous Materials Transportation has
received the applications described
herein. Each mode of transportation for
which a particular exemption is
requested is indicated by a number in
the "Nature of Application" portion of
the table below as follows: 1—Motor
vehicle, 2—Rail freight, 3—Cargo vessel,

4—Cargo-only aircraft, 5—Passenger-
carrying aircraft.
DATES: Comment period closes August
15, 1988.
ADDRESS COMMENTS TO: Dockets
Branch, Research and Special Programs
Administration, U.S. Department of
Transportation, Washington, DC 20590.
Comments should refer to the
application number and be submitted in
triplicate.
FOR FURTHER INFORMATION CONTACT:
Copies of the applications are available
for inspection in the Dockets Branch,
Room 8426, Nassif Building, 400 7th
Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9998-N	Accumulators, Inc., Houston, TX	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of non-DOT Specification packaging, identified as accumulators, for shipping Nitrogen, classed as Nonflammable gas. (Modes 1, 2, 3, and 4.)
9999-N	Arbel-Fauvet-Rail, Douel, Cedex, France	49 CFR 173.315, 173.315	To authorize manufacture, marking and sale of non-DOT Specification IMO Type 5 portable tanks for the shipment of certain materials classed as Flammable liquid, Flammable gas or Nonflammable gas. (Modes 1, 2, and 3.)
10000-N	Flight International, Newport News, VA	49 CFR 172.101, 172.204, 173.27, 175.3, 175.30, 175.320, Part 107, Subpart B, Appendix B	To authorize transport of explosives that are forbidden for transport by air or are in quantities greater than authorized for transport by air. (Mode 4.)
10001-N	Union Carbide Corp., Danbury, CT	49 CFR 172.101, 173.316, 173.316, 173.320	To authorize shipment of mixtures of Argon, refrigerated liquid and up to 10% Oxygen, refrigerated liquid, both classed as Nonflammable gas, in DOT Specification 4L cylinders, portable tanks and cargo tanks. (Modes 1 and 3.)
10002-N	Virginia Electric & Power Co., Richmond, VA	49 CFR 172.504(c)	To authorize shipment of Nitrogen and Sulfur Hexafluoride, both classed as Nonflammable gas, without placards although the combined gross weight of the materials exceeds 1000 pounds. (Mode 1.)
10003-N	Hoover Group, Inc., Beatrice, NE	49 CFR 178.82	To authorize manufacture, marking and sale of non-DOT Specification steel, 55 gallon capacity containers, similar to DOT Specification 5B, for the shipment of Paint and Resin solution, both classed as Flammable liquid. (Mode 1.)
10004-N	Atlantic Research Corp., Camden, AR	49 CFR 173.239a	To authorize shipment of Ammonium perchlorate, classified as Oxidizer, in non-DOT Specification tanks, similar in design to the Association of American Railroad 207W railcar tanks. (Mode 1.)
10005-N	Mobay Corp., Pittsburgh, PA	49 CFR 173.245	To authorize shipment of Dimethyldicarbonate, described as Corrosive liquid, poisonous, n.o.s., classed as Corrosive material, in a non-DOT composite packaging consisting of 4 polystyrene enclosed glass bottles packaged inside a fiberboard box, rd box. (Mode 1.)
10006-N	Knappco, Kansas City, MO	49 CFR 178.341-4(b)	To authorize an alternative pressure vent for DOT Specification MC 306 cargo tanks, which are used to ship certain materials classed as Flammable liquid. (Mode 1.)
10007-N	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.249	To authorize shipment of materials described as alkaline corrosive liquid, n.o.s., classed as Corrosive material, in a non-DOT composite packaging consisting of a tin can in a polyethylene insert within a DOT Specification 37A steel drum. (Modes 1, 2, 3, and 4.)
10009-N	Texaco Pipeline, Inc., Glendive, MT	49 CFR 173.119, 173.304, 173.315	To authorize shipment of hydrocarbon products, classed as Flammable liquid or Flammable gas, in a non-DOT Specification container described as a meter prover. (Mode 1.)
10010-N	Smith Systems, a Moorco operation, Corpus Christi, TX	49 CFR 173.119, 173.304, 173.315	To authorize shipment of hydrocarbon products, classed as Flammable liquid or Flammable gas, in a non-DOT Specification container described as a meter prover. (Mode 1.)

This notice of receipt of applications
for new exemptions is published in
accordance with Part 107 of the
Hazardous Materials Regulations
Act (49 U.S.C. 1808; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 8, 1988.

J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of
Hazardous Materials Transportation.
[FR Doc. 88-15944 Filed 7-14-88; 8:45 am]
BILLING CODE 4910-95-M

DEPARTMENT OF THE TREASURY Public Information Collection Requirements Submitted to OMB for Review

Date: July 8, 1988.

The Department of Treasury has made
revisions and resubmitted the following
public information collection
requirement(s) to OMB for review and
clearance under the Paperwork
Reduction Act of 1980, Pub. L. 96-511.
Copies of the submission(s) may be
obtained by calling the Treasury Bureau
Clearance Officer listed. Comments
regarding this information collection
should be addressed to the OMB
reviewer listed and to the Treasury
Department Clearance Officer,
Department of the Treasury, Room 2224,
15th and Pennsylvania Avenue, NW.,
Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0088.

Form Number: 8609.

Type of Review: Resubmission.
Title: Low-Income Housing Credit
Allocation Certification.

Description: Form 8609 is used by
state and local housing credit agencies
to allocate a low-income housing credit
dollar amount to owners of low-income
housing. It is also used by owners to
certify that the building qualifies for
credit. Part I is completed by state or
local agency; rest of form is completed
by building owner. (Part II completed
first year only; Part III completed each
year for 15-year compliance period.)

Respondents: State or local
governments, Businesses or other for-

profit, Non-profit institutions, Small
businesses or organizations.

Estimated Number of Respondents:
1,000.

Estimated Burden Hours Per
Response: 44 minutes.

Frequency of Response: Annually.
Estimated Average Reporting Burden:
36,509 hours.

OMB Number: 1545-1020.

Form Number: 8693.

Type of Review: Resubmission.

Title: Low-Income Housing Credit
Disposition Bond.

Description: Form 8693 is needed per
Internal Revenue Code section 42(j)(6) to
post bond and waive the recapture
requirement under section 42(j) in the
case of disposition of a building on
which the low-income housing credit
was claimed. Internal Revenue
regulations § 301.7101-1 requires that
the posting of a bond must be done on
the appropriate form as determined by
the Internal Revenue Service.

Respondents: Individuals or
households, Businesses or other for-
profit, small businesses or organizations.

Estimated Number of Respondents:
5,000.

Estimated Burden Hours Per
Response: 59 minutes.

Frequency of Response: On occasion.
Estimated Average Reporting Burden:
2,673 hours.

Clearance Officer: Garrick Shear (202)
535-4297, Internal Revenue Service,
Room 5571, 1111 Constitution Avenue,
NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhuf
(202) 395-6880, Office of Management
and Budget, Room 3208, New Executive
Office Building, Washington, DC 20503.
Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88-15941 Filed 7-14-88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 8, 1988.

The Department of Treasury has

submitted the following public
information collection requirement(s) to
OMB for review and clearance under
the Paperwork Reduction Act of 1980,
Pub. L. 96-511. Copies of the
submission(s) may be obtained by
calling the Treasury Bureau Clearance
Officer listed. Comments regarding this
information collection should be
addressed to the OMB reviewer listed
and to the Treasury Department
Clearance Officer, Department of the
Treasury, Room 2224, 15th and
Pennsylvania Avenue, NW.,
Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0096.

Form Number: 1042 and 1042S.

Type of Review: Revision.

Title: Annual Withholding Tax Return
For U.S. Source Income of Foreign
Persons; Foreign Person's U.S. Source
Income Subject to Withholding.

Description: Used by withholding
agents to report tax withheld at source
on payment of certain income paid to
nonresident alien individuals, foreign
partnerships, or foreign corporations.
The Service uses this information to
verify that the correct amount of tax has
been withheld and paid to the U.S.

Respondents: Individuals or
households, Businesses or other for-
profit.

Estimated Number of Respondents:
15,000.

Estimated Burden Hours Per
Response: 3 hours and 30 minutes.

Frequency of Response: Annually.
Estimated Average Reporting Burden:
478,284 hours.

Clearance Officer: Garrick Shear (202)
535-4297, Internal Revenue Service,
Room 5571, 1111 Constitution Avenue,
NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhuf (202)
395-6880, Office of Management and
Budget, Room 3001, New Executive
Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88-15942 Filed 7-14-88; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 136
Friday, July 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, Page 26367, July 12, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: Wednesday, July 13, 1988.

CHANGES: The following item was added to the agenda.

*Open to the Public*¹

Lawn Darts—Notice of Proposed Rulemaking

The Commission will consider a draft Notice of Proposed Rulemaking (NPR) which would implement the Commission decision of May 25, 1988 to prohibit the sale of lawn darts that present a risk of skull puncture injuries.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary,
July 12, 1988.

[FR Doc. 88-16005 Filed 7-12-88; 5:11 pm]
BILLING CODE 4355-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., July 20, 1988.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

¹ The Commission decided by majority vote that agency business required adding this item without the usual advance notice.

MATTERS TO BE CONSIDERED:

1. Trans-Atlantic Enforcement Initiative.
2. Trans-Pacific Trades Malpractices.

CONTACT PERSON FOR MORE

INFORMATION: Joseph C. Polking,
Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 88-16007 Filed 7-12-88; 5:12 pm]

BILLING CODE 4730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 20, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed Book-entry Securities service pricing change regarding reversal transactions.
2. Request by the State of California for an exemption from the cosigner provision of the Board's Credit Practices Rule.

Discussion Agenda

3. Proposals regarding the Board's 1988 budget.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of

Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204.

Date: July 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16021 Filed 7-13-88; 10:41 am]

BILLING CODE 6210-31-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, July 20, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16022 Filed 7-13-88; 10:41 am]

BILLING CODE 6210-01-M

Friday
July 15, 1988

Part II

National Aeronautics and Space Administration

48 CFR Part 1801 et al.

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Final Rule

federal register

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1805, 1807, 1808, 1815, 1816, 1817, 1822, 1824, 1828, 1832, 1839, 1842, 1845, 1852, and 1870

[NASA FAR Supplement Directive 85-11]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with NASA internal or administrative matters.

EFFECTIVE DATE: July 20, 1988.

FOR FURTHER INFORMATION CONTACT:

W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) Internal contract reporting, (2) procurement plan and master buy plan approval levels, (3) procurement of electricity, (4) award fees, (5) options, and (6) technical direction. Typographical and editorial changes to improve readability and conformance with FAR drafting conventions have been made. Substantive meanings have not been altered; however, entire textual segments have been reprinted when such changes are both numerous and scattered throughout the rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no burdens on the public within the ambit of the Paper Work Reduction Work Act, as implemented at 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 1801, 1804, 1805, 1807, 1808, 1815, 1816, 1817, 1822, 1824, 1828, 1832, 1839, 1842, 1845, 1852, and 1870

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1801, 1804, 1805, 1807, 1808, 1815, 1816, 1817, 1822, 1824, 1828, 1832, 1839, 1842, 1845, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1801 is amended as set forth below:

a. Subpart 1801.3 is revised to read as follows:

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy.

The following shall be included in the NASA FAR Supplement:

(a) All agency-wide policies and procedures that govern the contracting process or that control contracting relationships, and

(b) All procurement policies, regulations, procedures, and forms requiring publication for public comment in accordance with Pub. L. 98-557. This statute requires publication for public comment at least 30 days before they may take effect of procurement policies, regulations, procedures, and forms (including amendments or modifications thereto) relating to the expenditure of appropriated funds that have either a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure, or form, or a significant cost or administrative impact on contractors or offerors.

(1) The statute does not delineate those policies and procedures that will have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact. Examples of policies or procedures that fall in either of these categories are given in (b)(1) (i) through (iv) below. This list is not all inclusive and does not prohibit the agency from publicizing a policy or procedure that does not fall within one of the categories mandated by the statute.

(i) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective

devices for boat propellers and take other safety actions.

(ii) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(iii) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(iv) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(2) In contrast, the following would not have to be publicized for public comment:

(i) Security procedures for identifying and badging contractor personnel to obtain general access at a NASA installation.

(ii) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is part of the specification or statement of work.)

(iii) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.302-70 Field installation regulatory implementation.

(a) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies and procedures, described in 1801.301, must be forwarded to NASA Headquarters for approval in accordance with NASA's procedures for initiating changes to the NASA FAR Supplement.

(b) The Procurement Officer at each installation shall establish procedures, including screening and written rationale for each installation procurement policy, regulation, procedure, and form, to demonstrate compliance with 1801.302-70(a). The Procurement Officer shall provide a copy of each of these issuances, along with the associated rationale, to the Assistant Administrator for Procurement (Attn. Code HP).

1801.303 Publication and codification.

1801.303-70 Assignment of numbers.

(a) Part, subpart, section, and subsection numbers 1 through 89 are reserved for FAR use.

(b) Part, subpart, section, and subsection numbers 70 through 89 are reserved for NASA FAR Supplement use.

b. In Subpart 1801.4, 1801.401 is revised to read as follows:

1801.401 Definition.

"Deviation" means "deviation" as defined at FAR 1.401, except that, for NASA, the words "or NASA FAR Supplement" are added wherever "FAR" appears in the definition.

PART 1804—ADMINISTRATIVE MATTERS

1804.671-8 [Removed]

3. Section 1804.671-8 is removed.

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303-71 [Amended]

4. In paragraph (b)(1) of 1805.303-71, the amounts "\$5,000,000" and "\$10,000,000" are revised to read "\$10,000,000" and "\$25,000,000," respectively.

PART 1807—ACQUISITION PLANNING

5. Subpart 1807.1, consisting of sections 1807.101 through 1807.170-3 and subpart 1807.71 consisting of sections 1807.7100 through 1807.7107 are revised to read as follows:

Subpart 1807.1—Acquisition Plans

1807.101 Definitions.

"Procurement plan" means a detailed outline of the method by which the contracting officer expects to accomplish the procurement. The plan is an administrative tool designed to enable the contracting officer to plan effectively for accomplishing an assigned procurement by analyzing the requirement and determining the method of procurement.

1807.102 Policy.

(a) In R&D procurements over \$100,000, when three or fewer sources are known, the contracting officer shall have the requirements office query the Defense Technical Information Center (DTIC) IR&D Database to identify additional sources conducting IR&D in the area of the instant procurement. This is in addition to any other market survey techniques. Where needed, specific information concerning access to and use of the DTIC IR&D Database by a particular NASA Center may be obtained from that Center's designated IR&D Focal Point.

(b) As authorized in FAR 7.102, NASA uses its procurement planning system in lieu of the criteria in FAR Subpart 7.1.

However, all procurement plans will comply with FAR 7.104(c), 7.105(b)(2), and when appropriate, 7.106. Regardless of the method employed, every acquisition shall be adequately planned to allow sufficient time to complete the competitive procurement process and award a contract by the required date.

1807.103 Agency-head responsibilities.

(a) Requirement for preparation of procurement plans. (1) Except as otherwise authorized by paragraph (a)(2) below, the contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, on each negotiated procurement estimated to exceed the dollar amount set forth below for the installation concerned. The plan shall be prepared before soliciting proposals.

(i) \$250,000 for—

(A) Stennis Space Center.

(B) Headquarters Contracts and Grants Division.

(C) Space Station Procurement Office.

(D) NASA Resident Office—JPL.

(ii) \$500,000 for—

(A) Ames Research Center.

(B) Goddard Space Flight Center.

(C) Johnson Space Center.

(D) Kennedy Space Center.

(E) Langley Research Center.

(F) Lewis Research Center.

(G) Marshall Space Flight Center.

(2) Procurement plans are not required to be prepared for procurements—

(i) Of architect-engineer services;

(ii) Based on unsolicited proposals;

(iii) Of basic research from nonprofit organizations;

(iv) Of utility services where the services are available from only one source;

(v) Made from or through other government agencies;

(vi) Of industrial facilities required in support of related procurement contracts; and

(vii) Of flight payloads and investigations where selection is made pursuant to Subpart 1870.1, NASA Acquisition of Investigations System.

(b) Approval of procurement plans. (1) Whenever the estimated cost of the procurement (including the aggregate amount of follow-on contracts) meets the thresholds below, procurement plans, shall, as a minimum, be reviewed and approved as follows:

(i) For procurements in excess of the dollar amount in 1807.103(a)(1) above, but less than the dollar amount below for the installation concerned, the procurement plan shall be submitted for the approval of the Procurement Officer or designee after review and written concurrence by the head of the cognizant technical division or

laboratory, as applicable. (For the purpose of this requirement, the term "or designee" shall mean the individual authorized by the Procurement Officer to sign the procurement plan. Such authorization shall be in writing and shall not be delegated to more than one individual.)

(A) \$5,000,000 for—

(1) Stennis Space Center.

(2) Headquarters Contracts and Grants Division.

(3) Space Station Procurement Office.

(4) NASA Resident Office—JPL.

(B) \$10,000,000 for—

(1) Ames Research Center.

(2) Goddard Space Flight Center.

(3) Johnson Space Center.

(4) Kennedy Space Center.

(5) Langley Research Center.

(6) Lewis Research Center.

(7) Marshall Space Flight Center.

(ii) For procurements within the range of the dollar amounts below for the installation concerned, the procurement plan shall be submitted for the approval of the Head of the Installation, Deputy Installation Head, or Associate Director (the title "Associate Director" means a full Associate Director and not an Associate Director for * * *) after review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

(A) \$5,000,000 but less than \$10,000,000 for—

(1) Stennis Space Center.

(2) Headquarters Contracts and Grants Division.

(3) Space Station Procurement Office.

(4) NASA Resident Office—JPL.

(B) \$10,000,001 but less than \$25,000,000 for—

(1) Ames Research Center.

(2) Goddard Space Flight Center.

(3) Johnson Space Center.

(4) Kennedy Space Center.

(5) Langley Research Center.

(6) Lewis Research Center.

(7) Marshall Space Flight Center.

(iii) For procurements that are selected for Headquarters review and approval in accordance with the Master Buy Plan Procedure, the procurement plan shall be submitted for the signature of the Head of the Installation after review and written concurrences by the Director or Assistant Director of the cognizant technical directorate, cognizant Program/Project Manager, or cognizant staff official, as applicable, who reports directly to the Head of the Installation, and by the Procurement Officer.

Officer. The procurement plan shall be submitted to the Assistant Administrator for Procurement (Code HS) for approval. The original and ten copies shall be submitted. The position title will be shown for each individual signing the procurement plan as required by paragraphs (b)(1) (i) through (iii) above.

(2) Examples of what is meant by the phrase "including the aggregate amount of follow-on contracts" appearing in paragraph (b)(1) above are—

(i) Options as defined in FAR Subpart 17.2; and

(ii) Later phases of the same project.

(3) Approval of a procurement plan does not constitute approval of any deviation or special conditions or clauses which may be required. Any such deviations must be submitted for review and approval under FAR Subpart 1.4 and/or 1801.4.

1807.170 Contents of the procurement plan.

1807.170-1 Procurement plans requiring approval by NASA Headquarters.

(a) Each procurement plan prepared for approval by NASA Headquarters shall be prepared on NASA Forms 1451 and 1452. Form 1451, Request for Procurement Plan Approval, shall be completed as follows:

(1) *Item 1. A descriptive short title.* In this item, include only a descriptive short title of the procurement plan. A Detailed Description of the Proposed Procurement will be included in subsequent pages as required. The information to be provided will consist of—

(i) A clear and concise description, including intended use, of the item or service to be procured;

(ii) Number of units, delivery schedule, and/or period of performance (Note: In the event a schedule of major events will enhance the plan, it should also be included);

(iii) An identification of any option provision including the period(s) covered and estimated costs thereof; and

(iv) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort.

(2) *Item 2. Name of installation.* Indicate the name of the installation responsible for the procurement.

(3) *Item 3. Plan prepared by.* Indicate the name of the individual who prepared the plan.

(4) *Item 4. Date.* Date the plan is prepared.

(5) *Item 5. Responsible technical office.* Identify the office (by title) that

will be responsible for technical monitoring of the contract. Include a technical point of contact and telephone number.

(6) *Item 6. Total estimated cost of this procurement.* Provide one figure for the total estimated cost of the proposed procurement, including options, if any. When options are involved, show the cost for each option separately on subsequent pages as a breakout from total cost.

(7) *Item 7. Proposed funding by fiscal year and Unique Project Number (UPN).* Identify the funding amounts by appropriation, fiscal year, and UPN, for the procurement covered by the plan. Where funding is obtained from multiple projects, provide a complete identification of each fund source. Obligations shall not exceed those authorized in the Headquarters-approved Annual Operating Plan.

(8) *Item 8. Full and open competition.* If full and open competition is provided for, check box. If other than full and open competition is contemplated, check box.

(9) *Item 9. Type of contract.* State the type of contract recommended for the procurement. On subsequent pages, discuss the type of contract and the rationale for its selection. Where an incentive-type contract is proposed, discuss the type of incentive provision considered most suitable for the accomplishment of the procurement objectives.

(10) *Item 10. Facilities and Government-furnished property.* Indicate, by checking the appropriate box, whether the procurement will require the providing of any existing, new, or modified Government property. When other Government property is to be provided, identify the item(s) and dollar amount(s) involved. The dollar amount(s) provided in Item 10 will not be included in the dollar amounts specified under Items 6 and 7 of the form unless the property or facilities specified are part of the procurement. If dollar amounts under Item 10 are included under Items 6 and 7, the amounts should be so annotated under this item on the following pages.

(11) *Item 11. Procurement action schedule.* Indicate the date the procurement plan was submitted to Headquarters for review and approval. For all other entries, provide only the number of calendar days required to complete the action (beginning at the time the previous action was completed) in order to meet the program schedule.

(b) *Additional pages—(1) General.* Additional pages to the plan should include any information required from the Form 1451 items. Include any

comments required by the above instructions not covered elsewhere and any other information considered essential to amplify or clarify any item on the form. In addition—

(i) Identify specific deviation(s) to the Acquisition Regulation;

(ii) Identify any special conditions or clauses required;

(iii) Identify all separate approvals required in support of the proposed procurement;

(iv) Include a copy of any comments by Counsel for the contracting office (or a statement that Counsel has no objection to the plan) and describe the actions taken in response to any such comments (counsel concurrence on the plan will satisfy this item); and

(v) Discuss considerations given to small business, including minority business enterprises, participation.

(2) *Competition.* Describe how competition will be sought and promoted. If appropriate, discuss how competition will be sustained through the course of the acquisition. If full and open competition is not contemplated, cite the authority in FAR 8.202 or 8.302; identify the source(s); and discuss why full and open competition cannot be obtained.

(3) *Relationship to other procurements, relevant data, and studies.* Discuss the relationship of this procurement to any other active contracts, including the status of completion of each such contract. Identify the extent to which the product of related contracts may affect this procurement. Indicate whether performance under related, active contracts should be permitted to continue during the competitive phase of this action. Discuss all relevant data and studies, whether obtained under contract or through in-house efforts, and state whether such data and studies will be made available to all offerors participating in the competition. If data or studies are available, but it is not planned to make them available to prospective offerors, discuss the reasons for not doing so.

1807.170-2 Procurement plans requiring approval at the installation level.

Procurement plans prepared for the approval at the installation level shall be prepared in accordance with 1807.170-1 or in the format prescribed by the Installation.

1807.170-3 Assistance in providing for reliability assurance in procurement plans.

When system hardware costing over \$1,000,000 is involved, reliability personnel at the field installation

involved shall assist in the preparation of the procurement plan with respect to arrangements to be made for reliability monitoring. In the absence of such reliability personnel, the field installation shall seek the advice and assistance of the Director, Reliability, Maintainability, and Quality Assurance, NASA Headquarters, Code QR, or designee, in the preparation of procurement plans.

Subpart 1807.71—Master Buy Plan Procedures

1807.7100 Scope of subpart.

This subpart prescribes the Master Buy Plan Procedure, contains the requirements for furnishing advance information to NASA Headquarters on proposed procurements that meet the criteria in this subpart, and prescribes the procedures for selecting those procurement documents that are to be subject to NASA Headquarters review and approval and those that are to be processed at the installation level. This subpart also prescribes the approval requirements for those documents that are to be processed at the installation level.

1807.7101 Policy.

The Master Buy Plan Procedure is designed to enable management to focus its attention on a representative selection of high dollar value and otherwise sensitive procurement actions without compromise of Headquarters visibility or control over essential management functions.

1807.7102 Applicability.

(a) The Master Buy Plan Procedure is applicable to each negotiated procurement when the expected dollar value of that procurement, including the aggregate amount of follow-on procurements (see 1807.103(b)(2)), is expected to equal or exceed the dollar value in paragraph (b) below, for the installation making the award. In order to conduct the reviews required by FAR 8.307-1(b) for separate contracts, this procedure also applies to procurement of utility services when an area-wide contract is not used and either—

(1) The annual cost of the services to be procured is estimated by the using installation, at the time of the initiation of the service or annual renewal of the expenditure, to exceed \$150,000 or

(2) When, except for communication services, a proposed connection charge, termination liability, or any other facilities charge to be paid (whether or not refundable) is estimated to exceed \$75,000.

(b) The following are monetary limitations under the Master Buy Plan procedures.

(1) \$10,000,000—

(i) John C. Stennis Space Center.

(ii) Headquarters Contracts and Grants Division.

(iii) Space Station Procurement Office.

(iv) NASA Resident Office—JPL.

For the purpose of the initial Master Buy Plan submission only, the above installations not having any procurements at or above the \$10 million limitation will submit the three largest procurements over \$5 million.

(2) \$25,000,000—

(i) Ames Research Center.

(ii) Goddard Space Flight Center.

(iii) Johnson Space Center.

(iv) Kennedy Space Center.

(v) Langley Research Center.

(vi) Lewis Research Center.

(vii) Marshall Space Flight Center.

(c) The foregoing monetary limitations also apply to the following:

(1) A supplemental agreement (except one that provides only for the addition or deletion of funds for incremental funding purposes) that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof) where any one of which (new work or an individual change order) or the aggregate of two or more actions equals or exceeds the dollar value in paragraph (b) above for the installation making the award.

(2) A supplemental agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature which, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan Procedure, notwithstanding the fact that the monetary amount under consideration does not equal or exceed the installation's limitation in paragraph (b) above.

(d) The Master Buy Plan Procedure is not applicable to termination settlement agreements (see FAR Part 49).

1807.7103 Submission, selection, and notification procedures.

1807.7103-1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation will submit to the Assistant Administrator for Procurement (Code HS) a Master Buy Plan (original and eight copies) for the next fiscal year, listing therein every known procurement that meets the criteria in 1807.7102, and that (1) is expected to be initiated in that fiscal year and (2) has not been included in a

previous Master Buy Plan or amendment to a Master Buy Plan. The plan will include any type of phased procurement wherein the value of the initial phase (normally Phase B) is less than the dollar threshold in 1807.7102, but the overall procurement value for all phases exceeds the dollar threshold.

(b) The plans will be prepared in accordance with 1807.7107 and, for every procurement listed therein, an identification will be provided as to the individual procurement documents that are involved. Procurement documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7103-3 (a) or (b). This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required. The fiscal year Master Buy Plan shall include a listing of those procurements that were selected for Headquarters review and approval from prior fiscal year(s) Master Buy Plans and amendments to Master Buy Plans that have not been completed. The procurements should be listed by the appropriate fiscal year Master Buy Plan; include the individual item numbers and current status of the individual procurement documents previously selected for Headquarters review and approval.

1807.7103-2 Submission of amendments to the Master Buy Plan.

Procurements identified by installations after submission of their Master Buy Plan for a fiscal year, which meet one of the criteria in 1807.7102, will be submitted to Headquarters in accordance with 1807.7107. Such amendments will be submitted sufficiently in advance of contract award date to allow Headquarters to select those procurement documents which will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement. When timely submittal is not possible, the installation will provide with the amendment a narrative explaining the circumstances leading to the late submittal. Master Buy Plan submissions should not be accomplished after the fact. A Master Buy Plan submission for a contract change order which is expected to meet the criteria in 1807.7102 will be submitted to Headquarters immediately upon issuance of the change order.

1807.7103-3 Selection and notification procedures.

(a) Selection of procurement documents from the Master Buy Plan

and amendments to Master Buy Plans to receive Headquarters review and approval and designation of the Source Selection Officials shall be made by the Assistant Administrator for Procurement or designee.

(b) In the event a procurement, subsequent to document selection or delegation is changed (for example, increase or decrease in dollar amount, change in requirement), is cancelled, superseded, deferred, or no longer is subject to the Master Buy Plan procedures in accordance with the criteria in 1807.7102, the Assistant Administrator of Procurement (Code HS) will be immediately advised by the installation, together with the reasons therefor. The Assistant Administrator for Procurement or designee will notify the installation procurement office in writing of any further action which may be required.

1807.7104 Procurement documents selected for Headquarters review and approval.

(a) General. For those procurement documents selected for Headquarters review and approval under this procedure, the cognizant installation will ensure that they are submitted in accordance with this Subpart.

(b) Request for Proposal (RFP) review and approval. Should the RFP be selected for Headquarters review and approval, the installation procurement office shall submit ten (10) copies of the RFP to the Assistant Administrator for Procurement (Code HS). Also to be submitted with the RFP shall be the Source Selection Board evaluation methodology, including the rationale for the selection of the associated evaluation criteria, the expected significant discriminators that should result and the proposed method to be used in developing the Source Evaluation Board probable cost comparison. Any other significant cost or other factors that are expected to have a bearing on the evaluation should be discussed.

1807.7105 Acquisition Strategy Meeting (ASM).

(a) As a result of the Master Buy Plan review a decision to have an ASM at Headquarters may be made. The ASM is a meeting where all parties from Headquarters and the installation, who have an interest in the instant procurement, come together to discuss all aspects of the procurement and to resolve any major issues prior to proceeding with the processing of the formal documentation.

(b) The objective of an ASM is to provide sufficient business and

programmatic planning as early as feasible in the acquisition of a product or service. An ASM is conducted as an early planning session to develop an agreed upon systematic approach to achieve an economical, efficient, and effective acquisition. Recommendations which result from the ASM are advisory in nature. The ASM will be scheduled by the Code HS procurement analyst responsible for the procurement. Attendance at the ASM will be coordinated between the Code HS analyst and the installation procurement office. However, it is expected that the following offices will participate:

(1) Headquarters: Cognizant program office, procurement, comptroller, SRM&QA and legal;

(2) Installation: Project office, procurement and other offices as determined by the installation.

(c) The meeting will normally be chaired by the Director, Program Operations Division (Code HS) or the designee of the Assistant Administrator for Procurement (Code H).

(d) A summary of any decisions, actions, and conclusions as a result of the meeting will be prepared by the Code HS analyst and be distributed to all participants for information and/or action.

1807.7106 Procurement documents not selected for Headquarters review and approval.

(a) Procurement documents which are not selected for Headquarters review and approval shall be processed at the installation level. For such procurements, the following documents, to the extent applicable, shall be approved by the Head of the Installation; procurement plans and prenegotiation positions. If the procurement is subject to the Source Evaluation Board Manual, the Head of the Installation shall sign the source evaluation board appointment letter and shall normally be the Source Selection Official.

(b) If the procurement is between \$10,000,000 and \$25,000,000 and the installation's Master Buy Plan limitation is \$10,000,000, the Head of the Installation shall be the Source Selection Official but may redelegate this authority to cognizant management officials. The Head of the Installation may redelegate the authority to approve procurement plans and to sign source evaluation board appointment letters to the Installation's Deputy or Associate Director. The Head of the Installation may redelegate the authority to approve prenegotiation positions to the level of the Procurement Officer.

(c) Requests for proposals shall be approved as directed by the Procurement Officer, commensurate with the sensitivity or significance of the procurements. Contracts (including supplemental agreements) that are not selected for Headquarters review and approval under the Master Buy Plan Procedure, shall be subject to approval by the Procurement Officer. The signing of those documents by the Procurement Officer, as the contracting officer, constitutes such approval. The approvals required above may not be redelegated.

(d) Procurement documents authorized to be processed at the installation level will be subject to after-the-fact reviews by Headquarters personnel during normal procurement surveys or as the situation may otherwise indicate or through special reviews. However, procurement delegations to the field installations may subsequently be rescinded if a Headquarters review is deemed appropriate.

1807.7107 Format of Master Buy Plan.

In accordance with the requirements of 1807.7103-1 and 1807.7103-2, Master Buy Plans and amendments to Master Buy Plans will be prepared in accordance with the format illustrated in Table 7-1.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Part 1808 is amended as set forth below:

a. In Subpart 1808.3, 1808.303, 1808.304-5 and 1808.304-570 are revised to read as follows:

1808.303. General.

(a) For procurement of utility services without a written document, see 1808.304-5. Requirements for utility services shall be determined by technically qualified personnel who will assist the contracting officer as required. Before soliciting technical assistance outside the agency (see FAR 8.303(b)), technical personnel shall contact the Facilities Division (Code NX), NASA Headquarters.

(b) Appropriated funds may not be used to purchase electricity in a manner inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements (Pub. L. 100-202, Sec. 8093, 101 Stat. 1329-79). Before acquiring electric utility service, the contracting officer shall

determine whether the manner of acquisition, in particular, competitive acquisition under FAR 8.304-5(d), would be inconsistent with state law. Section 8093 of Pub. L. 100-202 is not intended to affect transfers of electricity to agencies from Federal power marketing agencies or the Tennessee Valley Authority, such as NASA's power allocation from the Western Area Power Marketing Administration. Such transfers do not constitute "purchases" for purposes of section 8093.

1808.304-5 Agency acquisition.

1808.304-570 Renewal of contracts.

(a) A contract may be renewed or extended by option, provided that the contract is not in effect for more than a total of 5 successive years.

(b) The Contracting Officers shall consider selecting an expiration date for the contract sufficiently after the end of the fiscal year to ensure that appropriations will be available when the option is exercised.

1808.705-4 and 1808.711 [Removed]

b. Sections 1808.705-4 and 1808.711 are removed.

PART 1815—CONTRACTING BY NEGOTIATION

1815.613-7 [Amended]

a. In 1815.613-71, in the heading, the word "Manual" is removed, and the word "Handbook" is added in its place.

b. In 1815.613-71, paragraphs (b)(1) and (b)(2) are revised to read as follows:

1815.613-71 Evaluation and negotiation of procurements conducted in accordance with the Source Evaluation Board Handbook (NHB 5103.6).

(b) Evaluation and selection procedures—(1) Responsibility of source selection official. In the final analysis, NASA judgment on the totality of the evaluation will be that of the Source Selection Official. This includes assessment of the procedures followed by the Board, the validity of its substantive evaluations, the relative significance of the several areas of evaluation and their weightings in the light of all the information produced by the source evaluation and selection process.

(2) Evaluation factors, subfactors, and elements and weights. The establishment of evaluation factors, subfactors, and elements and their weights requires the exercise of judgment on a case-by-case basis. They should be tailored to the requirements of each particular procurement. Technical excellence, price or estimated cost, and

contractor management capability are important factors in selection. Their relative importance depends on the nature of the products or services procured. Any factor may tip the balance when competition is very close as to other factors. Evaluation factors, subfactors, and elements shall be described in each request for proposals (RFP) fully enough to inform evaluators and prospective offerors of the significant matters to be addressed in proposals. The evaluation factors (Mission Suitability, Relevant Experience and Past Performance, Cost, and Other Considerations) shall be described and a statement of the relative importance of each included in the RFP. In addition, the weights assigned to the Mission Suitability subfactors and elements shall be included in the RFP.

PART 1816—TYPES OF CONTRACTS

7. Subpart 1816.4 is amended by adding 1816.404 and 1816.404-2 to read as follows:

1816.404 Cost-reimbursement incentive contracts.

1816.404-2 Cost-plus-award-fee contracts.

To assure compliance with FAR 16.404-2(b)(2), all contract performance areas subject to evaluation on a judgmental basis, including performance areas such as cost and technical management, quality, timeliness, and productivity, shall be consolidated in a single award fee criteria and rating plan. The objective is a balanced evaluation of the contractor's overall performance, resulting in a single award fee determination consistent with NASA's management concerns and priorities in the particular situation.

PART 1817—SPECIAL CONTRACTING METHODS

8. Part 1817 is amended by revising Subpart 1817.2 to read as follows:

Subpart 1817.2—Options

1817.200 Scope of subpart.

The exceptions at FAR 17.200 do not apply to NASA contracts; therefore, the policy and procedures at FAR Subpart 17.2 apply to all contracts.

1817.203 Solicitations.

The "authorized person" mentioned in FAR 17.203(g)(2) is hereby designated as being the Procurement Officer.

1817.204 Contracts.

(a) As set forth in FAR 17.204, the total of basic and option periods shall

not exceed five years. Deviations from this policy will not be granted unless (1) the extended years can be reasonably priced, and (2) a persuasive case (other than resources problems) can be made for exceeding five years.

Example: Some specific program event will occur at or near the end of the total contract period and a competition and potential change of contractor would be unacceptably disruptive or inefficient, or some other programmatic considerations dictate a longer period.

(b) In addition to establishing either a fixed or maximum fee or a formula for determining the fixed or maximum fee, options under cost type contracts shall contain an estimated cost for the option period(s).

1817.206 Evaluation.

For the purpose of FAR 17.206(b), the procurement officer at each center shall be the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

1817.207 Exercise of options.

(a) Unless a determination has been approved under FAR 17.206(b), the selection statement for each procurement involving an option shall include the source selection official's consideration of the option as part of the initial competition.

(b) Use of the provision (or formula) specified in FAR 17.207(f)(2) requires advance approval by the Assistant Administrator for Procurement (Code HC).

(c) For the purposes of FAR 17.207(f)(3)—

(1) In FAR 17.207(f)(3)(i), the term "fixed fee" applies only to cost-plus-fixed-fee (CPFF) contracts and the term "maximum fee" applies to cost-plus-award-fee (CPAF) and cost-plus-incentive-fee (CPIF) contracts.

(2) When using a formula pursuant to FAR 17.207(f)(3)(ii), the formula shall be expressed in the contract in a way that precludes the contractor from increasing costs for the purpose of earning additional fee. Use of a formula requires advance approval of the Assistant Administrator for Procurement (Code HC).

1817.208 Solicitation provisions and contract clauses.

For the purpose of FAR 17.206(c)(3), cost reimbursement types of contracts are approved for agency use.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**1822.608 [Removed]**

9. Section 1822.608 is removed.
10. Part 1824 is revised to read as follows:

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**1824.000 Scope of part.**

For NASA rules and regulations implementing the Privacy Act, see NMI 1382.17 (14 CFR Part 1212). NASA implementation of the Freedom of Information Act is found in NMI 1382.2 (14 CFR Part 1206).

PART 1828—BONDS AND INSURANCE

11. Subpart 1828.1 is amended by adding 1828.106-6 to read as follows:

1828.106-6 Furnishing information.

(a) The contracting officer is designated to furnish a certified copy of the payment bond and the contract for which it was given upon receipt of an appropriate affidavit from the requestor.
(b) The contracting officer shall obtain the Office of Chief Counsel concurrence prior to release of any documents.

PART 1832—CONTRACT FINANCING

12. Part 1832 is amended as set forth below:

1832.172 [Removed]

a. Section 1832.172 is removed.
b. In Subpart 1832.4, 1832.402 is revised to read as follows:

1832.402 General.

Determinations and Findings in support of an advance payment with nonprofit organizations and educational institutions as authorized by the Armed Services Procurement Act of 1947, as amended (10 U.S.C. 2307(c) and 2310(b)), shall be prepared in accordance with 1832.410. Determination and Finding shall be by the level of authority designated below, or any of the higher levels designated below:

(a) *The Assistant Administrator for Procurement for—*

(1) Advanced payments greater than \$25,000,000 for a single action or in the aggregate for a single contract are subject to the appropriate 60-day notification to Congress in accordance with 10 U.S.C. 2307(d);

(2) Advance payments in any amount to a foreign entity; or

(3) Advance payments in any amount when the organization will receive a fee for the effort involved.

(b) *The Procurement Officer—*for advance payments of \$25,000,000 or less (other than with a foreign entity or an organization who will receive a fee); *Provided That* the action has been coordinated with the Installation Financial Management Officer.

(c) *The Contracting Officer—*for increases in the advance payment amount initially authorized by the Procurement Officer in (b) above, through any modification, supplemental agreement, or extension to an existing contract; provided that the Contracting Officer has coordinated the action with the Installation Financial Management Officer; and provided the increase is not greater than the Procurement Officer's initial amount and when aggregated with the Procurement Officer's initial amount and all previous increases is not greater than \$25,000,000.

PART 1839—MANAGEMENT ACQUISITION AND USE OF INFORMATION RESOURCES**1839.000 [Removed]**

13. Section 1839.000 is removed.

PART 1842—CONTRACT ADMINISTRATION

14. Part 1842 is amended as set forth below:

a. In Subpart 1842.2, paragraphs (b), (c), and (d) of 1842.270 are revised to read as follows:

1842.270 Contracting Officer Technical Representative (COTR) Delegations.

(b) COTRs shall be designated by name and position title (but see 1801.670(b) prohibition against delegating COTR duties to a position rather than a named individual). Each COTR designation shall be in writing and shall clearly define the scope and limitations of the COTR's authority. NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to designate COTRs. The COTR delegation shall be signed by an appropriate contracting officer (see 1801.670(b)) and shall state that these duties are not redelegable and that the COTR may be personally liable for unauthorized direction. (However, this does not prohibit the COTR from having assistants for the purpose of monitoring contractor progress and gathering information.) When one individual is to act for a contracting officer on more than one contract, separate delegations shall be issued for each contract. A separate NASA Form 1634 may be modified as necessary to designate an alternate COTR; alternates may act only during official absences of

the COTR such as leave, TDY, or other special assignments. The delegated duties of the alternate shall not exceed those of the COTR.

(c) A COTR delegation shall remain in effect throughout the life of the contract unless cancelled in writing by an appropriate contracting officer. The contracting officer shall modify the scope and limitations of a COTR assignment only by cancelling the delegation and issuing a new delegation.

(d) A COTR shall not be authorized to initiate procurement actions by use of purchase orders, to place calls or delivery orders under indefinite quantity-type contracts, indefinite delivery-type contracts, or basic ordering agreements. A COTR shall not be authorized to award, agree to, or sign any contract or modification or in any way obligate the payment of money by the Government. The COTR is not authorized to issue technical direction unless the clause at 1852.242-70, Technical Direction, is included in the contract and such authorization is specifically listed in paragraph 3(m) of the COTR delegation letter (NASA Form 1634). However, delegations may be made to construction contract COTRs to sign emergency change orders, if sufficient funds have been certified to cover the emergency change, with an estimated value not to exceed \$2,500 onsite at construction sites.

b. In Subpart 1842.70, paragraph (a) of 1842.7001 is revised to read as follows:

1842.7001 Contract clause.

(a) The contracting officer shall insert the clause at 1852.242-70, Technical Direction, in cost reimbursement solicitations and contracts where the contracting officer determines that (1) technical direction as defined in the clause (which includes the Government approving approaches and solutions of the contractor and shifting emphasis among work areas or tasks) is appropriate to accomplish the contract requirements effectively, (2) the statement of work is conducive to technical direction by the Government, and (3) technical direction is to be in writing. Identify this duty in subparagraph 3(m), "Other duties as follows:" of the Contracting Officer Delegation (see 1842.270). This clause addresses COTR responsibilities that are in addition to those discussed in subparagraphs 3(a)-(1) of the COTR delegation and is not intended to be used for fulfilling those other responsibilities. This clause is not authorized for use with institutions of

higher education and other non-profit organizations.

PART 1845—GOVERNMENT PROPERTY

15. In Subpart 1845.71, in 1845.7101, paragraph (g) of the Property Classification Accounts is revised to read as follows:

1845.7101 Instructions for the preparation of NASA Form 1018.**1. Property Classification Accounts**

(g) *Special Test Equipment.* The classification "special test equipment" includes costs of either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract; items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include costs of material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Part 1852 is amended as set forth below:

a. In Subpart 1852.1, 1852.103 is revised to read as follows:

1852.103 Identification of provisions and clauses.

(a) Provisions and clauses prescribed by a NASA field installation to satisfy the needs of that particular installation shall be identified as stated in paragraphs (a) (1) and (2) below. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section.

(1) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, GSFC, HW, JSC, KSC, LARC, LERC, MSFC, and SSC). The base shall be a numeric value beginning with "52.2," with the next two digits corresponding to the number of the FAR subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from -90 to -199. For example, the first Johnson Space Center (JSC) clause relating to Part 36 of the FAR or

NASA FAR Supplement shall be JSC 52.236-90, the second clause JSC 52.236-91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(2) Contracting officers shall identify provisions and clauses as in the following examples:

(i) **1.2 BID ENVELOPES** (GSFC 52.214-90) (AUG 1987). This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the Uniform Contract Format (UCF). The first number ("1.2") designates the UCF section and the sequential clause within that section. "GSFC 52.214-90" specifies the clause number.

(ii) **GSFC 52.214-90—Bid Envelopes** (AUG 1987). This example is applicable in all other instances in which the provision or clause citation is not associated with the UCF number.

(b) Contracting officers shall not number provisions and clauses developed for individual procurements only. For example, "F.3 Delivery Procedures for Special Hardware" cites the third clause in Section F of a contract using the Uniform Contract Format (UCF) but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

b. Section 1852.210-70 is revised to read as follows:

1852.210-70 Brand name or equal.

As prescribed in 1810.011, insert the following provision:

BRAND NAME OR EQUAL

(July 1988)

(a) As used in this provision, the term "brand name" includes identification of products by make and model. The term "bid" means "offer" if this is a negotiated acquisition.

(b) If items called for by this solicitation have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation or

such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as other information reasonably available to the contracting activity. **CAUTION TO OFFERORS.** The contracting office is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall—

(i) Include in the bid a clear description of such proposed modifications and

(ii) Clearly mark any descriptive material to show the proposed modifications.

(3) If this is a sealed bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

1852.217-71 and 1852.217-72 [Removed]

c. Sections 1852.217-71 and 1852.217-72 are removed.

1852.235-72 [Amended]

d. In 1852.235-72, in the introductory text, the word "clause" is removed, and the word "provision" is added in its place.

e. Section 1852.242-70 is revised to read as follows:

1852.242-70 Technical direction.

As prescribed in 1842.7001, insert the following clause:

TECHNICAL DIRECTION

(July 1988)

(a) Performance of the work under this contract shall be subject to the written technical direction of the Contracting Officer's Technical Representative (COTR), who shall be specifically appointed by the contracting officer in writing in accordance with NFS 1842.270. "Technical direction" means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among

work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instructions purporting to be technical direction which—

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes";

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COTR in the manner prescribed by this clause and within his/her authority under the provisions of this clause. If, in the opinion of the Contractor, any instructions or direction by the COTR falls within one, or more, of the categories defined in (b) (1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to take action as described herein. Upon receiving the notification from the Contractor, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is—

(1) Rescinded in its entirety; or

(2) Within the scope of the contract and does not constitute a change under the "Changes" clause of the contract and that the Contractor should proceed promptly with the performance of the technical direction.

(e) A failure of the Contractor and Contracting Officer to agree that the technical direction is both within the scope of the contract and does not constitute a change under the "Changes" clause of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the "Disputes" clause of this contract.

(f) Any action(s) taken by the Contractor in response to any technical direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

ALTERNATE I

(July 1988)

As prescribed in 1842.7001(b), substitute Alternate I as paragraph (d) of the basic clause.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within his/her authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COTR falls within one or more of the categories defined in subparagraphs (b) (1) through (5) above, the Contractor shall not implement the direction but shall notify the Contracting Officer in accordance with the Notification of Changes clause (FAR 52.243-7) of this contract.

(End of clause)

PART 1870—NASA SUPPLEMENTARY REGULATIONS

17. Appendix I to 1870.103 is amended as set forth below:

a. In Chapter 5, Part 501.1.c., paragraph (4) is added to read as follows:

1870.103 NASA Acquisition of Investigations.

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Chapter 5—The Selection Process

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501 Decisions To Be Made

• • • • •

c. • • • • •

(4) If a NASA employee submits a proposal as a principal investigator, any concomitant requirement for hardware necessary to perform the investigation must, in accordance with CICA, either be competed by the installation procurement office or, should it be determined that the hardware is so unique as to constitute a sole source, a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NFS.

Appendix D to Appendix I of 1870.103 [Amended]

b. In Appendix D, under the term "Co-Investigator (Co-I)," the following sentence is added at the end of the definition:

"A NASA employee can participate as a Co-I on an investigation proposed by a private organization."

c. In Appendix D, under the term "Principal Investigator (PI)," the following sentence is added at the end of the definition:

"A NASA employee can participate as a PI only on a government-proposed investigation."

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Friday
July 15, 1988

Part III

Department of the Interior

Minerals Management Service
Bureau of Land Management

30 CFR Parts 202 et al.

43 CFR Part 3480

Revision of Coal Product Valuation
Regulations and Related Products;
Further Proposed Rulemaking

federal register

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Parts 202, 203, 206, and 212

43 CFR Part 3480

Revision of Coal Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Bureau of Land Management, Interior.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This proposed rulemaking provides for the amendment and clarification of regulations governing the valuation of coal for royalty purposes. The regulations being amended affect Federal coal leases and Indian (Tribal and allotted) coal leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

The purpose of this proposed rulemaking is to update, consolidate, and clarify existing regulations in order to provide industry and the public with a comprehensive and consistent coal valuation policy. The revised regulations will result in consistent and uniform guidance to industry relative to the valuation of coal for royalty computation purposes.

DATE: Written comments must be received on or before September 13, 1988. A hearing will be held on September 7, 1988, 8:30 a.m. to 4:00 p.m. in Lakewood, Colorado.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225. Attention: Dennis C. Whitcomb.

The hearing will be held in the auditorium, Building 25, Denver Federal Center, 6th and Kipling Streets, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rule are Earl Cox, Herbert B. Wincentsen, Thomas J. Blair, and Stanley J. Brown of the Royalty Valuation and Standards Division of the Minerals Management Service (MMS), Lakewood, Colorado; Donald T. Sant, Deputy Associate Director for Valuation and Audit, MMS; and Peter J. Schaumburg of the Office of the Solicitor, Washington DC.

I. Introduction

A notice of proposed rulemaking for coal product valuation regulations was published in the Federal Register on January 15, 1987 (52 FR 1840), with a 90-day comment period. The public comment period was reopened on July 9, 1987. Additional comments were accepted through July 23, 1987 (52 FR 25887). A total of 82 comments were received from industry representatives, State governments, local governments, Indian Tribes, Indian organizations, and other persons.

During the initial comment period, a public hearing on the proposed rulemaking was held on March 3, 1987, in Denver, Colorado. The Royalty Management Advisory Committee (RMAC) also held a meeting on April 1, 1987, in Denver, Colorado, on the proposed coal valuation rulemaking. Industry, State, and Indian representatives also met with MMS and Department of the Interior (Department) officials during the comment period to discuss issues pertaining to the proposed rulemaking. Minutes from these meetings were included in the record and were incorporated as comments on the proposed rulemaking along with the transcripts from the public hearing and RMAC meeting, and written comments received by MMS.

On August 12, 1987, MMS published a notice in the Federal Register (52 FR 29868) reopening the public comment period for 60 days primarily to obtain public comments on a proposal submitted jointly on behalf of the coal and electric utility industries. This proposal included a comprehensive, section-by-section set of revisions to the January 1987 proposed rulemaking. The MMS received 48 comments on the industry proposal which are discussed in more detail below.

The MMS also recently completed two rulemakings to adopt new product valuation regulations for oil (53 FR 1104, January 15, 1988) and gas (53 FR 1230, January 15, 1988). The rulemaking process for oil and gas included draft rules, proposed rules, and two further notices of proposed rulemaking with draft final rules appended. (Citations are included in the preamble to the final rules.)

On June 7, 8, and 9, 1988, MMS held open meetings with representatives of the Western States, Indian Tribes, and the coal and electric utility industries to discuss a draft of this proposed rule. Several suggested changes and additions offered at those meetings have been incorporated in this proposed rule.

In this preamble, MMS will note some of the principal comments received thus

far on the coal rules. Most comments will be addressed in the final rule. The MMS will include in the rulemaking record all comments received to date plus the comments on this further notice of proposed rulemaking.

To the extent that the regulatory provisions in this notice have not changed significantly from the January 1987 proposal, we are not repeating the preamble discussion in this notice. Commenters should refer to the January 15, 1987, notice of proposed rulemaking (52 FR 1840).

Sections 206.254, 206.257, 206.259, 206.262, and 206.263 of the proposed rule contain information collection requirements. Public reporting burden for this collection of information is estimated to vary from one half hour to 3 hours per response with an average of 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Due to the complexity of the information requested, applications for allowances, using Forms MMS-4292 and MMS-4293 in non-arm's-length or no-contract situations may require up to an estimated 40 hours per response. Send comments regarding the burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Information Collection Clearance Officer, Mail Stop 631, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

II. Purpose and Background

These rules would supersede all currently effective coal royalty valuation directives, such as those contained in numerous Secretarial, MMS, and U.S. Geological Survey Conservation Division (now Bureau of Land Management Onshore Operations) decisions and orders. These rules would apply to production on or after the effective date of the final rule for all leases including coal from existing leases, except for certain proposed grandfather provisions which are addressed later in this preamble.

Structurally, these rules add sections to 30 CFR Parts 202, 203, and 206, revise subpart titles in Part 212, and remove paragraphs from 30 CFR 203.250 and 43 CFR 3485.2. Paragraph (b) of § 203.250 is redesignated to Part 202 as § 202.250. Also, §§ 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257,

206.258, 206.259, 206.260, 206.261, 206.262, 206.263, 206.264, and 206.265 are added to Subpart F of Part 206.

For the convenience of coal lessees, payors, and the public, the following chart summarizes the effects of the

proposed rule:

Regulation Changes (all from 30 CFR, except as noted)	Descriptions
I. Redesignations:	
1. Paragraph (b) of § 203.250 is designated to Part 202 as § 202.250.	This administrative action more appropriately locates within 30 CFR the information contained in this paragraph.
2. Paragraph (a) of § 203.250 is redesignated as § 203.250.	This administrative action removes the paragraph designation.
3. Paragraph 3485.2(i) is redesignated to 3485.2(d).	This action resulted from the deletion of paragraphs 3485.2(d) through 3485.2(i).
II. Deletions:	
1. Paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) of § 203.250 are removed.	This action eliminates the existing coal product valuation regulations.
2. Paragraphs (d), (e), (f), (g), (h), (i), and (k) of § 3485.2 are removed.	This action eliminates the existing coal product valuation regulations found at Subpart 3485 of 43 CFR. These regulations are redundant with those at § 203.200, of 30 CFR Part 203, and would conflict with the new regulations intended to replace those in § 203.200.
III. Additions:	
1. Sections 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257, 206.258, 206.259, 206.260, 206.261, 206.262, 206.263, 206.264, and 206.265 are to be added to Subpart F of Part 206.	The addition of these sections provides new coal valuation regulations to replace those currently found at § 203.200 of 30 CFR and § 3485.2 of 43 CFR.
2. Subpart H—Geothermal Resources—[Reserved] and Subpart I—"OCS Sulfur (Reserved)" are added to Part 212.	This administrative action creates new subparts for future rulemaking requirements.
IV. Amendments:	
1. Section 206.10 is amended to add information collection requirements for coal product valuation.	This administrative action places all information collection in Subpart A—General Provisions.
2. The titles of Subparts C, D, F, and G under Part 212 are revised to read: Subpart C—Federal and Indian Oil—[Reserved] Subpart D—Federal and Indian Gas—[Reserved] Subpart F—Coal—[Reserved] Subpart G—Other Solid Minerals—[Reserved]	This administrative action creates new subparts for future rulemaking requirements.
3. Section 212.200 under Part 212 is amended.	This technical amendment deletes the obsolete reference to the "District Mining Supervisor" and replaces the word "Associate Director for Royalty Management" with the word "MMS" for consistency with other parts.

These rules generally would apply the same valuation standards to coal from Indian lands and coal from Federal lands. Except for Indian cents-per-ton leases (which currently have specific royalty provisions in Title 25 of the Code of Federal Regulations, see 25 CFR 211.15(c), 212.10(c), 213.23(c), and 214.10(b)), this is a continuation of the practices under existing regulations.

These rules expressly recognize, however, that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease, statute, or treaty shall govern to the extent of the inconsistency. This same principle applies to Federal leases.

The mineral leasing laws require that the Secretary receive a royalty on the "value of production" or the "value of coal" from minerals produced from Federal lands, but value is a word without precise definition. "Men have all but driven themselves mad in an effort to definitize its meaning."

Andrews v. Commissioner of Internal Revenue, 135 F.2d 314, 317 (2nd Cir. 1943). The word "value" has sometimes been modified by the words "fair market," although the mineral leasing law provisions on "value of production" do not include these words. But, these adjectives do not really clarify the word value. The word "fair" can modify the word value as in "fair value" or it can

modify the word market as in "fair market." The term "fair value" may not be interpreted the same as the "fair market" value. The term fair market value, however, has been generally accepted to be the price received by a willing and knowledgeable seller, not obligated to sell, from a willing and knowledgeable buyer not obligated to buy. Willing, knowledgeable, and obligated are again adjectives which are not terms of precise definition. These general concepts, however, were still the general principles which were followed in drafting these regulations on valuation of production for the purpose of calculating royalties. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell. Because the U.S. economy is built upon a system whereby individuals are provided the opportunity to advance their individual self interest, this seems to be a reasonable presumption. This system and its reliance on self-motivated individuals to engage in transactions that are to their own best interest, therefore, is a cornerstone of the regulations.

The purpose of the regulations is to define the value of production, for royalty purposes, for production from Federal and Indian lands. Value can be determined in different ways, and these

rules explain how value is to be established in different circumstances. Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to arm's-length contracts are often accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determined by reference to prices received by individuals buying or selling like-quality products in the same general area and having opposing economic interests. Also, in no instance can value be less than the amount received by a lessee in a particular transaction.

III. Response to General Comments on the First Notice of Proposed Rulemaking

Comment: One issue that permeated many of the comments, but which is unrelated to coal valuation, concerns the royalty rate. Several comments submitted by industry and several States stated that the 12½-percent

royalty rate was too high thus placing an unfair financial burden on lessees, which in turn places them at an economic disadvantage. One State commented that royalty rates, in concert with valuation of deep-mined coal, place underground mines at a disadvantage and the 8-percent royalty rate "should be lowered accordingly to a maximum rate of 5 percent, but more equitably, a lower rate should be adopted by legislative action."

MMS Response: The royalty rate is not a valuation issue. The 12½-percent royalty rate imposed on surface coal operations is required by statute. The Mineral Leasing Act of 1920 (MLA), as amended specifically by the Federal Coal Leasing Amendments Act of 1976 (FCLAA), requires the Secretary of the Interior to determine a royalty "of not less than 12½-per centum . . . except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." The Bureau of Land Management (BLM) regulations at 43 CFR 3473.3-2 require a royalty rate of 8 percent for coal from underground mines, with the provision to determine a lesser rate if conditions warrant, but in no case less than 5 percent. The MLA at 30 U.S.C. 209 provides statutory authority to reduce royalty rates for those lessees that cannot successfully operate their leases under the prevailing terms and conditions.

Comment: Several commenters expressed concern that deletion of redundant royalty provisions from 43 CFR 3485.2 would create confusion because of cross-references found in other sections of 43 CFR Part 3480. The MMS agrees that some potential confusion could result if certain sections of 43 CFR 3480 continue to refer to portions of 43 CFR 3485.2 which would be deleted under a final rulemaking. The BLM will, as part of its normal ongoing housekeeping duties, ensure that 43 CFR 3480 is appropriately modified to eliminate cross-references to nonexistent sections.

Comment: Some commenters stated that in the January 1987 proposed rulemaking, MMS neither acknowledged nor adopted the Royalty Management Advisory Committee's (RMAC's) recommendations concerning coal product valuation. These commenters also stated that MMS did not provide its reasoning for not accepting RMAC's recommendations.

MMS Response: These comments are without merit. The January 15, 1987, Federal Register notice states that "MMS also has considered the written and oral comments from the public on the draft rules and the resolution

presented to the Secretary by RMAC." (52 FR 1840) The MMS also noted with appreciation the dedicated efforts of all participants who worked on the problems of coal valuation. The MMS considered the section-by-section analysis that preceded the proposed rules adequate explanation and notice to the public, including RMAC, of the substantive reasoning and motivation that guided the formulation of the proposed rules.

Comment: Several industry commenters claimed that MMS's proposed regulations were destroying the longstanding past practice of royalty valuation which is supported by administrative and judicial decisions. Some commenters stated that MMS's regulations represented an attempt to broaden, not clarify, regulations pertaining to royalty valuation. One commenter stated that, "The Minerals Management Service has demonstrated an attitude which borders on the rapacious. The proposed rules are nothing more than a naked attempt to maximize revenues from federal and Indian coal leaseholds." One commenter stated that MMS's use of longstanding policy to support these regulations was untenable, because there is no longstanding policy for coal product valuation.

MMS Response: The MMS disagrees with the commenter's categorization of MMS's attitude as bordering on the "rapacious." On the contrary, MMS believes the proposed rules appropriately update and clarify existing policies regarding coal royalty valuation. The MMS and its predecessor agency, the Conservation Division, U.S. Geological Survey, have always required royalty to be paid on the full value of the coal. This policy was established in the early 1970's in order to uniformly administer the first Federal coal leases that carried ad valorem royalty rates. Many of the original underlying principles of coal royalty valuation were cloned from existing valuation practices for noncoal leaseable minerals, notably phosphate, potassium, and sodium, which, since the enactment of the MLA, have always required ad valorem royalty rates. The MMS considers royalty valuation principles dating back to the 1920's and 1930's as longstanding.

Comment: State and Indian commenters stated that the manner in which the proposed regulations were constructed essentially eliminates the protection of the existing regulations, and the self-implementing aspects of the proposed regulations invite industry abuse. These commenters further charged that MMS was abrogating its

monitoring, review, and audit responsibilities with respect to coal product valuation. On the other hand, one industry commenter stated an objection to the "subjective determination elements [which] indicate a significant distrust by the government of the coal industry's past practices of valuation and accounting for royalty purposes."

MMS Response: The MMS believes that no derogatory connotation of industry accounting or valuation practices should be attributed to the first proposed rules. These rules should also not be viewed as delegating valuation responsibilities and duties to industry. The report entitled "Fiscal Accountability of the Nation's Energy Resources" written by the Linowes Commission and published in January 1982 (p. xvi) stated "The Federal government should perform an oversight role. It must not waste its limited resources on tasks that are industry's responsibility. In managing royalty collection, it should not remain mired in bookkeeping details that rightly belong to the lessees. Instead, it should develop systematic, independent cross checks of royalties paid and reports submitted by companies, and it should impose meaningful penalties for false statements or gross errors." The MMS considers these rules to carry out that recommendation.

Comment: Many industry commenters stated that the proposed regulations do not promote development of Federal coal resources. An area of concern to these commenters is that these regulations discourage conservation of Federal coal. Some industry commenters stated that the proposed regulations would influence the economic behavior of the coal industry. One commenter's rationale for this position was that "The economic forces of the marketplace would move mine plans away from high-royalty/high-cost coal to lower-royalty/lower-cost coal or would hasten the closure or cessation of the mining of such Federal coal reserves." One commenter also stated "that MMS or BLM, in party to the ups and downs of the coal business and as such should work with the industry to improve market share as well as profitability." One commenter stated that MMS failed to take into consideration the Mining and Minerals Policy Act of 1970, which states that in part that: "The Congress declares that it is the continuing policy of the Federal Government . . . to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining . . ." One State commenter and one Indian

commenter suggested that MMS should ignore any potential economic impacts that may result from the final coal valuation regulations. Opposing this viewpoint, one industry commenter stated that MMS should consider the plight of the electric utility rate payer who ultimately bears the full burden of any royalty increase.

MMS Response: The MMS disagrees with the statement that these regulations do not promote development of coal resources. The MMS considers these regulations to promote development to the extent that they would better communicate MMS's coal valuation policy to lessees. In this respect, the informed judgment of lessees, who are also prudent businessmen, is enhanced, thus providing increased certainty regarding the economic consequences of Federal or Indian coal lease production. The MMS has no mandate to promulgate coal valuation rules that are expressly designed to preserve or improve the Federal or Indian lessor's overall nationwide market share of coal production.

Comment: Some industry commenters stated that all existing coal sales contracts or supply agreements should be "grandfathered" under any new royalty scheme. Under this approach, any such coal sales contracts would be subject to the royalty requirements in effect at the time the coal supply contract was executed. One of these comments cited the Interior Board of Land Appeals (IBLA) support for this position by quoting *Kanawha & Hocking Coal & Coke Co.*, 83 IBLA 179, at 183 as follows: "The method of calculating the value of coal for royalty purposes shall be that method set forth in the regulation on the effective date of readjustment, and any subsequent regulatory change will not alter that method." Similarly, two industry commenters requested that only leases readjusted after these rules become effective should be subject to these regulatory requirements. Other respondents raised this issue again in comments submitted specific to § 206.250(b).

MMS Response: It is MMS's intent that absent specific lease terms that set forth specific valuation criteria, the proposed rules, when final, would govern the valuation of coal from Federal and Indian leases. However, there are some lessees with contracts that pre-date the Federal Coal Leasing Amendments Act (FCLAA) of 1976 and that do not have reimbursement provisions common to contracts after FCLAA's enactment. The MMS would like comments on whether there is a

way to grandfather these contracts that would be consistent with the requirements of FCLAA and the Mineral Leasing Act.

With regard to the comments that MMS should not make the new regulations applicable to existing pre-FCLAA contracts because the new rules would require royalty to be paid on payments which the commenters said are not royalty bearing under existing rules, MMS would like further comments, specifically identifying the type of payments that are involved.

Comment: Two industry commenters stated that the proposed royalty valuation instructions are unclear when there is mixed mineral ownership at a single mine. One commenter requested that MMS provide guidance for the calculation of royalties "when an operator is producing coal from both Federal and non-Federal [lands] . . ." This commenter also stated that this issue becomes even more critical with respect to payments for insurance compensation, coal recovered from waste piles or slurry ponds, take-or-pay payments, and purchaser reimbursements for certain costs items. Another industry commenter claimed that it is "entirely possible that the definition of gross proceeds will be significantly different on the Federal and non-Federal leases."

MMS Response: The MMS agrees that royalty terms in leases between private land owners and coal operators, or between States and coal operators, may differ significantly from Federal lease royalty terms. However, the applicability of these proposed rules is limited to Federal and Indian Tribal and allotted coal leases. See § 206.250. Similarly, valuation procedures or instruction contained in private or State leases do not pertain to Federal or Indian leases.

Comment: Two State commenters argued that MMS's attempt to provide certainty to coal valuation in the regulations has resulted in the elimination of necessary agency discretion. One commenter explained, "Flexibility in the regulations that allows for some discretion on the part of the auditing agency is necessary."

MMS Response: The MMS disagrees that the rules eliminate necessary agency discretion. For example, §§ 206.259(b) [now designated § 206.257(d)] and 206.259(d) [now designated § 206.257(d)] provide for MMS to establish a value for royalty purposes if a determination is made that the lessee's reported value is inconsistent with the requirements of the regulations. Similar provisions for

MMS's adjustment of coal washing and transportation allowances are provided §§ 206.260 and 206.262 [now designated §§ 206.259 and 206.262]. Also, in response to these comments, additional language has been added to § 206.259(b) [now designated—§ 206.257(b)] which now allows MMS to determine if the sales contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to seller and also to determine if certain factors would render the sales contract to be deemed non-arm's-length.

IV. Section-by-Section Analysis

Many of the sections have not changed significantly from the January 1987 notice of proposed rulemaking. This preamble primarily will focus on the significant changed sections.

Proposed § 206.250 Purpose and Scope.

This section would provide that if the provisions of any statute, treaty, lease, or settlement agreement (resulting from administrative or judicial litigation) are inconsistent with any of the regulations, then the statute, treaty, lease, or settlement agreement provision governs to the extent of the inconsistency.

Paragraph (d) has been revised so that it would specifically refer to the trust responsibility of the United States with respect to the administration of Indian coal leases.

Proposed § 206.251 Definitions.

Comment: Some industry respondents recommended deletion of the words "amount or" from the proposed definition of "ad valorem lease." One commenter explained: "Amount of production is only relevant in a take-in-kind royalty provisions [sic]. There is no authorization for such a provision in the MLA [Minerals Leasing Act of 1920, as amended]."

MMS Response: The phrase "based upon a percentage of the amount or value of the production" is appropriate because Indian leases may be designated to include a royalty-in-kind proviso. Because these rules would be equally applicable to Federal and Indian coal production, it is proper to include regulatory language that provides for this possibility.

Comment: The phrase "Coal washing allowance" appears in these proposed rules as an integral part of the definition of "Allowance." Many industry respondents recommended expanding the scope of the definition and changing the term "coal washing allowance" to "coal processing allowance." One commenter stated this change was necessary to be consistent with the

proposed revisions to § 206.260 [now designated §§ 206.258 and 206.259]. Many other commenters supported the proposed expansion for various similar reasons including the suggestions that "an allowance should be extended to all processing costs incurred downstream from the point of royalty determination" and to "other methods of beneficiation which may increase the value of coal" Examples provided as other forms of processing included pelletizing, treatment with chemicals or oil, drying, crushing, and sizing.

MMS Response: The MMS acknowledges the existence of developing coal quality enhancement techniques other than the commercially available coal washing process. However, rather than transplant coal washing allowance procedures to other coal beneficiation technologies, MMS believes it is preferable to provide a rule that recognizes coal beneficiation processes other than coal washing for royalty valuation purposes. A new § 206.265 has been added to these proposed rules to address these comments. The discussion of § 206.265 appears later in this preamble.

Comment: One Indian commenter recommended deleting "all references to washing allowances," and maintained that the basic premise of the regulations is that the lessee "is obligated to place the mineral in its first marketable condition." In support of this position, this commenter stated: "The incorporation of a practice which is primarily a conservation measure does not belong in regulations to value the product for royalty purposes." This commenter concluded that such decisions as approving washing allowances be the responsibility of "the agency leasing the minerals."

MMS Response: Coal washing is not necessarily practiced as an exclusive conservation measure. It is feasible for coal operators to wash coal to upgrade a first marketable product. Because the net effect of coal washing is to increase heat content and to provide a cleaner burning product by removal of ash and sulfur, an operator may desire to wash coal to extend its market reach or expand its potential customer base. The MMS considers any attempt to differentiate between washing as a conservation measure (to develop a first marketable product) and washing as a marketing tactic to be a needless expenditure of MMS's limited manpower resources. Allowances have been provided to coal lessees that wash Federal or Indian coal since the inception of ad valorem royalty rates. These rules increase the level of detail

necessary to obtain coal washing allowances but otherwise would continue existing policy.

Comment: Some industry comments recommended deleting the "reasonableness" standard. The proposed definition provided for a coal washing allowance based on the "reasonable, actual costs." One commenter explained that "there is no indication of what would be considered reasonable or unreasonable. We believe that the concept of 'reasonableness' is inherent in all of the lessee's obligations under these regulations."

MMS Response: The MMS normally considers any cost incurred for coal washing or transportation that is out of proportion to standard industry practices to be unreasonable. However, this statement may be tempered by the specific situation that created the unusual and unreasonable costs. In any event, because the commenter acknowledges that the concept of reasonableness is present in all lessee's obligations, it seems no greater an imposition to explicitly state the term in the regulation.

The phrase "Transportation allowance" also appears in these rules as an integral part of the definition of "Allowance." Several industry respondents provided comments on this proposed definition. Many of the same comments were received as discussed above with respect to the phrase "coal washing allowance." These will not be addressed again.

Comment: One industry commenter recommended "that the final regulations should be amended to provide an allowance for all transportation costs." No elaboration or explanation was provided.

MMS Response: The MMS has no intent to provide transportation allowances for routine in-mine transportation costs, which every mining operation encounters to some degree. In-mine transportation is an integral part of the total mining process, the cost of which the Federal or Indian owner has historically not shared. Additional discussion of transportation allowances appears later in this preamble. The MMS notes, however, that under the definition of "mine," no allowance would be approved for coal transported between mine facilities, including, for instance, transportation between the pit (or portals, in the case of an underground mine) and the crusher, or for transfer from the crusher to other mine surface facilities, including the storage and loadout facility.

Comment: The MMS received numerous comments on the definition of

"arm's-length contract." "Arm's-length contract" would be defined as a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. Affiliation essentially would be a control test: ownership in excess of 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol which MMS can rebut. Contracts between relatives would not be arm's-length contracts. To be considered arm's-length for any production month, a contract must meet the requirements of the definition for that month as well as when the contract was executed. Thus, if two contracting parties were not affiliated when the contract was executed, but are affiliated now, the contract would be non-arm's-length.

The definition of gross proceeds received more comments than any other section of the proposed regulations. Thirty-nine respondents, consisting of industry representatives, one local government association, and one State, specifically supported MMS's proposed deletion of reimbursements for Black Lung Excise Taxes and Abandoned Mine Land Reclamation Fees (AML) from the gross proceeds definition. One industry respondent explained: "The exclusion of Abandoned Mine Reclamation (AML) fees and Black Lung (BL) taxes is appropriate as they add no enhancement to the real value of the coal." Another industry commenter noted support for "Secretary Hodel's proposal to exclude those reimbursables [Federal Black Lung Taxes and Abandoned Mine Lands Fees] from gross proceeds on the grounds that it is inequitable to require lessees to pay royalties on levies imposed by federal, state, or local governments solely to mine coal." Many other respondents repeated this rationale. One industry respondent offered a somewhat different reasoning by stating that it was appropriate for MMS to take action to "enhance the competitiveness of Federal and Tribal coal, and hence the viability of the domestic coal industry."

Eighteen respondents, consisting of 14 State organizations and 4 Indian groups, opposed the exclusion of any reimbursed taxes or fees from gross proceeds. Most respondents maintained that MMS's explanation of why Black Lung Excise Taxes and AML fees are excluded from gross proceeds was not sufficient or acceptable. One Indian respondent specifically commented that MMS's justification for exclusion was

not true with respect to Indians, who do not set the rate of either the Black Lung Excise Tax or the AML fee. The respondent further noted that AML fees have not been made available to Indian lands. A State respondent commented: "These fees are essentially a pass-through, the lessee does receive the benefit of the purchaser reimbursing him * * *." These costs would otherwise be borne by the lessee. Another State respondent claimed: "The MMS proposal would have the effect of reducing royalties on coal without going through the findings required under the Minerals Leasing Act, 30 U.S.C. 209." One other State respondent concurred with this statement. Several other State respondents objected to the exclusion of Black Lung Excise Taxes and AML fees on the grounds that it sets a precedent and "opens the door for the exclusion of other items * * *."

Over 50 industry and 2 States respondents submitted comments requesting that MMS extend the exclusion of Black Lung Excise Taxes and AML fees to other similar taxes and fees that are normally assessed at the State and local levels. One particular industry commenter explained that "The lessee receives no additional value from these payments which are only incidentally related to the value of the coal through the tax structure. In fact, by adding these taxes to the value of coal, the government is directly placing taxes on taxes and improperly inflating the royalty payment." Many other industry comments concurred with the "taxes on taxes" objection and stated that this royalty practice was not the intent of the MLA. Three industry respondents stated that MMS's proposed definition was inconsistent with the recommendation contained in the Linowes Commission report entitled "Fair Market Value Policy for Federal Coal Leasing." As noted by one commenter, "The Commission recommended that 'the base for calculating Federal royalty payments should be f.o.b. price minus all State and local severance and similar taxes.'"

MMS Response: The MMS has considered both the comments calling for the reinstatement of reimbursements for the Black Lung Excise Tax and AML fees into the value basis for royalty computation, and all comments requesting the further exclusion of all other reimbursements for State and local imposed taxes and fees from the value basis of Federal and Indian coal. The MMS has determined that the definition of gross proceeds is not the place to address issues as to whether certain payments are royalty-bearing.

There is no doubt that when the purchaser pays \$10/ton for coal, that is the lessee's gross proceeds. Whether all of that \$10 is royalty-bearing is a separate issue and is addressed below in § 206.257(b).

Comment: Many commenters, including States, Indians, and industry, commented that they favored recognizing all forms of consideration received by the lessee for purposes of valuing Federal and Indian coal. Some industry respondents opposed the concept of including all forms of consideration, other than the sales price, as part of gross proceeds. One industry commenter stated that its firm "provides substantial water to power plant customers buying coal, without separate consideration for the water." Another industry commenter stated that the concept of collecting royalty on all consideration was logical, but that MMS was carrying the idea to an extreme. The commenter maintained: "There may be occasions when there truly is significant consideration given to the seller which is not included in the actual sales price of the coal. When that is the case, then there is justification to collect royalty on such consideration." This commenter concluded, however, that the proposed rules do not define what is significant.

MMS Response: The MMS has always required royalty to be paid on all components of coal value, including those components of a coal sales agreement that are not in the form of cash and imbedded in the price. As stated in the January 15, 1987, proposed rulemaking, "The definition of gross proceeds is intended to be expansive to ensure that it includes all the benefits flowing from the purchaser to, or on behalf of, the seller for the disposition of the coal, * * *."

Comment: Eleven industry commenters stated that the use of "gross proceeds valuation" does not have a basis in law. One commenter supported this position by stating that, "The words 'gross proceeds' do not appear in the Mineral Leasing Act of 1920. Section 7 of the Act, as amended in 1976, established a royalty based on coal's value." This reasoning was expressed as support in other comments.

MMS Response: Section 7 of the MLA, as amended by FCLAA, requires royalty to be paid on "the value of coal as defined by regulation." The regulations in effect since 1976 have required royalty to be based on "gross value." Although the "gross proceeds" term herein is new, it is not forwarding a new concept. The selection of the term "gross proceeds" is to assure regulatory

consistency within MMS and is an exercise of discretion provided by statute. However, as discussed further below with regard to § 206.157, MMS is proposing certain adjustments to the value of coal.

Comment: Some industry commenters stated that MMS should not use the gross proceeds established under contracts signed in the 1970's. One respondent commented that "These negotiated coal prices are over-inflated and not indicative of fair market value. They were contracted during the 'oil crisis' and the moratoriums on federal coal leasing." The commenter advocates that MMS "should develop a method that takes into account the average coal price at each mine and does not consider these 1970's contracts as indicative of fair market value." Another industry commenter offered an alternative proposal where royalty would be based on the average price of a geographic area if "the current 'arm's-length' price exceeds the average price for coal sold in the same geographic area by 20 percent or more * * *."

MMS Response: For arm's-length contracts, MMS does not believe that there is any justification for receiving a royalty based on less than a contract sales price. The lessee receives the benefit of a higher price and the royalty owner is entitled to share in that benefit. For non-arm's-length situations, a possible exception is addressed later in this preamble.

Comment: The MMS received many comments from industry respondents stating that all preparation costs should be excluded from the royalty value. One commenter stated that the value should include "payments to the lessee for the extraction, primary crushing, storing, mixing, and loading coal * * *." We recommend the exclusion of reimbursements for secondary processing and beneficiation, such as oiling to suppress dust or freeze prevention chemical treatment * * *. Several commenters recommended excluding from the value for royalty purposes "processing in excess of that which is necessary to bring coal to the first point of marketability." Other commenters stated that coal should be valued "from where it's taken off, the mine at the face * * *." One commenter continued to explain that "various forms of cleaning or other treatment do not add to the value of the product at the mine." Other commenters suggested a similar approach with one stating that it was inappropriate for MMS "to collect a royalty on the increased value * * * from * * * crushing, storing, mixing loading [sic], treatment

with substances including chemicals or oil, and other preparation of the coal * * *

MMS Response: The proposed rulemaking would maintain the status quo of MMS policy. Standard mining and preparation costs would be considered as part of the mine operation and not be deductible from royalty. Hence, under the approach of the rules, expenses arising from separating the coal from the seam, hauling coal from the surface pit or underground face to other mine facilities, crushing coal, sizing or screening coal, storing coal while awaiting shipment, spraying with oil or with coal antifreeze treatment chemicals, and loading coal at the point of shipment to market would be borne 100 percent by the lessee and could not be deducted from royalties.

Comment: One industry commenter stated that it was more reasonable to maintain MMS's current gross value requirement, which is the unit sale or contract price times the number of units sold.

MMS Response: The MMS noted earlier that the concept of coal valuation remains unchanged. The term "gross proceeds" has been selected for purposes of regulatory consistency.

Comment: The MMS received many comments concerning the inclusion of take-or-pay payments in the proposed gross proceeds definition. Four commenters, two Indian and two States, expressed support for the inclusion of take-or-pay payments as part of gross proceeds. One commenter reasoned that the inclusion was proper "since the other contractual terms may be affected by inclusion of such language in the selling agreement." Another commenter stated that gross proceeds "does not simply mean the amount received by the lessee. Rather, it must have an expansive definition to include any consideration * * * including any minimum payments, stand-by fees, or take-or-pay payments." Other commenters recommended that the gross proceeds definition stand as proposed with respect to including take-or-pay payments, but offered no additional reasoning or support.

Industry commenters generally opposed the collection of royalty on take-or-pay payments. Several commenters specifically stated that royalty is due only on production; others specifically stated that MMS lacked statutory support to collect royalty on take-or-pay payments; and some commenters stated that royalty should be collected on take-or-pay payments only under certain circumstances. With respect to the issue that royalty is only due on production, one commenter

explained that "if no coal is produced, there is no diminution in the value of the coal reserve and therefore no royalty should be payable." Several other commenters took the same position. Another commenter stated that the "assessment of royalties on take-or-pay payments is inconsistent with the traditional framework for royalty payments * * *. The royalty becomes due only when coal is mined." Many commenters urged that the take-or-pay payment serves as a mechanism to cover the producer's investment risk and as such does not constitute a prepayment for Federal coal. Several commenters continued by stating that the Government has no right to share in the rewards resulting from risk of the capital investment. Several commenters declared that the proposed regulations were internally inconsistent, with certain parts requiring royalties to be paid on take-or-pay payments not related to coal production, while other parts such as §§ 206.250, 206.255, and 206.257 (now designated §§ 206.257, 206.253, and 206.255, respectively) required royalty to be paid on coal produced and sold or otherwise finally disposed of. One commenter also suggested that MMS adopt a wait-and-see position and let the courts decide the legality of collecting royalty or take-or-pay issues.

With regard to the comments citing MMS's lack of statutory support to collect royalties on take-or-pay payments, one commenter noted that "The plain language of FCLAA (30 U.S.C. 207) ties royalty assessment to the value of recovered coal." Other commenters echoed this view. Another commenter stated that the MLA does not allow royalty collection "on coal not mined, produced and sold." Another commenter stated that "The statutory authority to include in production royalties payments made on 'take-or-pay' provisions as if they were 'advance royalties' is certainly subject to question." The commenter further noted that payment of advance royalties is controlled by 30 U.S.C. 207(b). The commenter concluded: "Since advance royalties can only be accepted in lieu of continued operation—one percent of commercial quantities of recoverable coal reserves * * * if an operator is producing the required one percent, section 6 [of FCLAA] would prohibit the lessee from reducing his production royalty payment by the amount of his 'take-or-pay' payment, since these payments are not, by statute, considered 'advance royalties.'"

As noted earlier, several commenters agreed that under certain conditions royalty should be collected on take-or-

pay payments. One industry commenter stated: "Some payments received under 'take-or-pay' clauses may well constitute payments for the disposition of coal produced by the lessee, and in such cases we agree that they should be subject to royalty."

Other industry commenters objected to collecting royalty on any other contractually required compensatory payments, other than take-or-pay, which are not based on coal production. The commenters referred to such payments as assignment payments, prepaid reserve payments, damages awarded by courts, by-outs, bonuses, and capacity charges.

MMS Response: By collecting royalties on "take-or-pay" payments, MMS is not departing from existing coal royalty valuation policy. The collection of royalty has always been based on the total value of coal sold. The MMS and its predecessor agency, Conservation Division, U.S. Geological Survey, have never permitted royalty to be paid on values reduced by prior take-or-pay payments. The proposed regulation's definition of gross proceeds represented a clarification of existing policy and practice. However, MMS does agree that no royalty should be paid on a payment which is not for production. See discussion below related to § 206.157(b)(6).

The proposed definition of "gross proceeds" has been modified to include the total monies and other consideration "accruing" to the lessee. Because the definition of arm's-length contract does not include any provisions which address the concept that such contracts must reflect the entirety of the agreement between the parties, MMS concluded that the definition of gross proceeds should be sufficiently broad to encompass all consideration to which the lessee is entitled. The term "accruing" would be intended to accomplish that purpose.

Comment: Several industry respondents provided comments regarding the proposed definition of "marketable condition." One commenter described the definition as being so subjective that it was meaningless. Four commenters stated that MMS should regard coal as being in marketable condition if sold and accepted by the purchaser. One commenter requested clarification of the meaning of the phrase "typical sales contract," stating "there is no such thing as a typical sales contract for an area * * *." One commenter requested that the entire definition, as proposed, be deleted. Two commenters suggested an alternative definition seeking to define coal as

being in marketable condition when it has been extracted, crushed, and screened. No other processing of coal would be deemed necessary before being considered marketable.

MMS Response: The proposed definition was modified for purposes of clarity. The thrust of the definition is unchanged, as an explicit notice that MMS will not accept, as an appropriate value for royalty purposes, any value paid for coal which has not been conditioned to meet the minimum recognized market standard.

Finally, the definition of "net-back method" has been revised in the proposed rules so that it would be clear that the net-back procedure is to begin from the first downstream point at which value could be ascertained by reference to arm's-length contracts or other comparable sales.

Proposed § 206.253 Coal subject to royalty—general provisions.

This section has not been changed significantly from the first proposed rulemaking.

Proposed § 206.254 Quality and quantity measurement standards for reporting and paying royalties.

This section has not been changed significantly.

Proposed § 206.255 Point of royalty determination.

This section has not been changed significantly from the first proposed rulemaking. The term "used" has been added to make it clear that use of coal by the lessee triggers the royalty payment obligation.

Proposed § 206.256 Valuation standards for cents-per-ton leases.

This section has not been changed significantly from the first proposed rulemaking.

Proposed § 206.257 Valuation Standards for ad valorem leases.

The fundamental approach of this section is the same as in the first proposed rulemaking. However, several changes have been incorporated.

Paragraph (a) has been modified slightly. It would continue to provide that value for royalty purposes is the value determined pursuant to this section less applicable coal washing and transportation allowances, or any other applicable allowances for beneficiation. See discussion of § 206.255, above. The paragraph would clarify that the royalty due is equal to the value for royalty purposes multiplied by the royalty rate in the lease.

Paragraph (b) still would provide that the value of coal which is sold pursuant to an arm's-length contract will be the gross proceeds accruing to the lessee. Under MMS's existing regulations in 30 CFR 203.250, the lessee's gross proceeds pursuant to an arm's-length contract are acceptable as the value for royalty purposes. The MMS believes that the gross proceeds standard should be applied to arm's-length sales for several reasons. The MMS typically accepts this value because it is well grounded in the realities of the marketplace where, in most instances, the 7/8ths owner will strive to obtain the highest attainable price for the coal production for its own benefit. The royalty owner benefits from this incentive.

It also adds more certainty to the valuation process for payors and provides them with a clear and logical value on which to base royalties. Under the proposed regulations, in most instances, the lessee will not need to be concerned that several years after the production has been sold MMS will establish royalty value in excess of the arm's-length contract proceeds, thereby imposing a potential hardship on the lessee. This is particularly a concern for lessees who have long-term arm's-length contracts where sales prices under newer contracts may be higher. If MMS were to establish royalty value based on prices under those newer contracts, (i.e., prices which the lessee cannot obtain under its contract), the resulting royalty obligation could consume a larger percentage of the lessee's proceeds.

Establishing gross proceeds under an arm's-length contract as the royalty value also has benefits for MMS and those States that assist MMS in the audit and enforcement efforts. The gross proceeds standard would give auditors an objective basis for measuring lessee compliance. It would reduce audit workload and reduce the administrative appeal burden that results when valuation standards are too subjective, particularly when values are determined to be in excess of a lessee's arm's-length contract gross proceeds.

The MMS recognizes, however, that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes. One such situation is where the contract does not reflect all of the consideration flowing either directly or indirectly from the buyer to the seller. For example, in return for Seller's reduced price for coal production from a Federal lease, Buyer may agree to reduce the price of coal it sells to Seller's affiliate from a non-Federal lease. This agreement is not reflected in

the coal sales contract for the Federal coal. In the event that MMS becomes aware of consideration that exists outside the contract, MMS would adjust the lessee's gross proceeds to reflect the additional consideration. However, in some circumstances the additional consideration may not be easily calculable. Thus, even if the parties are not affiliated and the contract is "arm's-length," MMS could require in paragraph (b)(2) that the coal production be valued in accordance with paragraph (c), the standards used to value coal disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts.

The MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be treated as non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties. The proposed regulations also include a provision in paragraph (b)(4) whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration flowing from the buyer to the seller for the coal. The MMS is proposing to include this provision because there may be circumstances where an auditor could not reasonably be expected to find other consideration, yet there is good reason to believe it exists. Because of the potentially severe penalties for a false certification, this will assure that no other consideration exists when the certification is received.

In other situations it may not be apparent why an arm's-length contract price is unusually low, yet the lessor should not accept the arm's-length contract proceeds as value. It may be because of collusion between the buyer and seller or improper conduct by the seller, or it could be the result of a patently imprudent contract. Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to paragraph (b)(3), if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS could require that the coal production be valued pursuant to paragraphs (c)(2) (ii) through (v). Thus, MMS first must determine that a price is unreasonable; for example, by looking at

comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market its production for the mutual benefit of itself and the lessor.

A breach of the lessee's duty to market production to the mutual benefit of the lessor would include, but is not limited to, collusion between the producer/seller and buyer, pricing practices found by a court or regulatory authority to be incorrect or fraudulently manipulated, or negligence in negotiating contracts. The MMS would give a lessee an opportunity to comment when it determines the lessee has breached its duty to market the coal for the mutual benefit of the lessee and the lessor.

The suggestion that the Secretary should determine whether each contract is arm's-length or non-arm's-length was implied in the rules. However, the MMS has added a clarifying provision to paragraph (b)(1) of the proposed rule which would provide that the lessee will have the burden of demonstrating that its contract is arm's-length. This includes overcoming presumptions of control where two parties are possibly affiliated.

The MMS has determined that the phrase "or which could accrue" should be deleted in reference to gross proceeds in paragraph (b)(1). Many commenters on other product value rules thought that this phrase would allow MMS to second-guess the price which the lessee agreed to in its contract by arguing that other persons selling the same product may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it actually receives from the buyer.

Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it is being deleted from the proposed rule.

Comment: Many industry and State respondents provided comments on alternative valuation methods other than gross proceeds. Several commenters from industry advocated adopting some form of a cents-per-million British thermal units (Btu)

valuation procedure. This valuation procedure would establish a value for Federal and Indian coal based exclusively on the coal's heating value and would be expressed in cents-per-million Btu. The actual sale price would not be relevant, nor would other factors such as distance to market or other quality parameters. In general, these commenters claimed that this valuation method was simple and fair and that the value would be based on the intrinsic heating value of the coal. One commenter stated that the cents-per-million Btu valuation method "would eliminate the unfairness, inequities and disparities created by an *ad valorem* rate." A number of variations on the theme of cents-per-million Btu valuation were offered. Some commenters recommended initially fixing the dollar amount per million Btu and then adjusting "for inflation or deflation at regular intervals" by use of an "appropriate index." One commenter specified that whatever index was used "could be set nationally." One commenter stated that MMS should use a cents-per-million Btu base value, but "this value should reflect the 'value of the coal at the mine mouth.'" One industry and one State respondent opposed using a cents-per-million Btu royalty valuation method. The State commenter noted that the concept was not simple, because to make the method fair "you would have to bring some other quality factors into the coal that are going to have an effect on the value of it at the burner." The industry commenter expressed concern about abandoning the free market concept. One other industry commenter suggested that the first sentence of paragraph (b) be rewritten to read: "The value of coal for royalty purposes shall be determined by the MMS on the basis of Btus per ton on a regional basis through regulation that sets fair and reasonable values." The commenter elaborated, stating that value should be independent of factors such as time of contract execution, contract provisions, unit taxes, and transportation competitiveness.

MMS Response: The basic premise of MMS's royalty calculation methods is that royalty should be based on the value received by the lessee under an arm's-length contract for selling the coal (less allowances). The Btu-based royalty concept is neither easy to implement nor conducive to equitable administration. It is not easy to implement because MMS would be charged with the responsibility to establish, using some rational method, an initial value per million Btu. The MMS believes such an undertaking could easily consume all

the limited manpower resources of MMS without achieving an initial credible and tenable value. The Btu-based royalty concept would be inequitable to many lessees because the royalty value would be unresponsive to the sulfur content or other quality parameters affecting the value of Federal or Indian coal. The MMS maintains that the free market value established by an arm's-length sale is the best measure of coal value for royalty purposes.

As discussed above, MMS is proposing as an option for public comment a paragraph (b)(5) which would provide that notwithstanding the provisions of any other regulations in Subpart F, the value of coal would be reduced by the amounts of Federal Black Lung Excise Taxes and Abandoned Mine Lands Fees (AML fees) authorized by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), which are paid for the coal. Thus, if a coal contract provides that the purchaser is to reimburse the lessee for Black Lung and AML fees, those amounts would be part of gross proceeds, but paragraph (b)(5) nevertheless would not require the payment of royalty on those amounts. Similarly, even if a coal contract does not have a separate reimbursement clause, the lessee could reduce the value of coal for royalty payment purposes by the amount of Black Lung and AML fees the lessee is required to pay for the coal production. For example, if the lessee's arm's-length contract requires a flat payment of \$5.00 per ton, then \$5.00 is the lessee's gross proceeds. However, if the lessee is required to pay \$0.57 in Black Lung and AML fees, then the effect of paragraph (b)(5) would be to reduce the value of the coal to \$4.43.

While it is well-established that the lessee's gross proceeds include all payments for coal production, including reimbursements received either directly or indirectly by the lessee (*see, e.g., Knife River Coal Mining Co.*, 29 IBLA 28 (Feb. 8, 1977); *Knife River Coal Mining Co.*, 43 IBLA 104 (Sept. 24, 1979); and *Hoover & Bracken Energies, Inc. v. DOI*, 723 F.2d 1488 (10th Cir. 1983), *cert. denied*, 469 U.S. 821 (1984)), payments for Black Lung and AML fees are distinguishable from other types of fees or costs imposed on coal producers or on coal production because these are fees imposed by the Federal Government, the lessor. Thus, the lessor could raise its royalty revenues by imposing or increasing such fees. For this reason, MMS would like comment on whether it would be appropriate to reduce the value of coal for royalty payment purposes by the amounts the

lessee must pay for such fees and, therefore, pass on to its purchaser.

The MMS also is proposing that the provisions of paragraph (b)(5) would not be applicable to Indian tribal and allotted leases. It is MMS's intention that these rules be revenue neutral for Indian leases. Also, since the Indian lessor does not impose the AML and Black Lung taxes, the above-stated rationale for excluding these fees from royalty value (*i.e.*, that the lessor can increase royalties by imposing or increasing these taxes) does not apply to Indian leases. The MMS specifically would like comment whether the proposed exclusion language will be sufficient to ensure that the exception provided by paragraph (b)(5) will not be applicable to existing Indian leases.

The MMS received many comments that the value of coal also should be reduced by amounts for State severance taxes. Most of the arguments were similar to those for the AML fee and Black Lung Tax exclusion. Although excluding severance taxes from value would be a departure from long established Departmental policy, MMS would like further comment on whether it should add a deduction for State severance taxes to paragraph (b)(5). It would be MMS's intent not to grant a deduction for State severance taxes from the value applicable to coal production from Indian leases.

The MMS received many comments from industry that it is inappropriate to impose a royalty burden on that portion of the value of coal which becomes the royalty payment; *i.e.*, industry claims that a royalty on royalty is unfair. This issue can best be understood by an example. Assume a lease with a 12.5 percent royalty rate. Assume that the lessee sells 100,000 tons of coal under an arm's-length contract at \$10 per ton for a total of \$1,000,000. Historically, MMS would consider the value for royalty purposes to be the \$1,000,000 and would require a royalty payment of 12.5 percent or \$125,000.

Those who advocate that it is unfair to pay royalty on royalty first would divide the proceeds by 1.125 to remove the royalty portion of the proceeds. (\$1,000,000 divided by 1.125 = \$888,888.88). The result then would be multiplied by the royalty rate to determine the royalty payment (\$888,888.88 × .125 = \$111,111.11). The MMS is not proposing regulatory language on this suggested exclusion but, in view of the many comments received, MMS would like public comment on whether it should include in the final rule a provision which would reduce the value of coal by an amount equal to the difference between: (1) the

value of the coal; and (2) the value of the coal divided by (1 + the royalty rate).

This provision also would result in reduced royalty values in situations where the lessee has a royalty reimbursement provision in its contract.

As discussed above, the definition of gross proceeds includes payments made under take-or-pay clauses in contracts and similar clauses which MMS considers to be consideration for production. Paragraph (b)(6) would reflect the fact that the purchaser may make certain payments to a lessee under the contract that are not part of the total amount or consideration which the purchaser pays for the purchase of the product. For example, payments made for lessee provided services that are totally unrelated to the production and sale of coal would not be regarded as part of the total effective price paid for coal purchases under the contract. By way of contrast, if the contract required the purchaser to continue to make payments for certain mine operation costs, such payments would be royalty-bearing.

The MMS recognizes that coal sales contracts may contain provisions that are unique in form to that contract and the effect of which must be examined on the specific facts of the transaction. Ordinarily, payments made under contract clauses that allocate the risk of production and the risk of market demand and ensure a minimum return to the seller for the sale of the product (*i.e.*, take-or-pay clauses and similar clauses) are part of the total consideration paid for the product and are royalty-bearing. In all instances, the substance of the contract clause or payment involved, and not its form, will control.

In the comments received from industry, many different types of payments were identified and questions raised as to whether they would be royalty bearing. These include:

1. Damages recovered under a court judgment for the purchaser's breach of the sales contract;
2. Payments made under a force majeure clause;
3. "Settlement" payments made to terminate a sales contract before the contractually-specified termination date; this includes situations where there may or may not be a follow-on contract;
4. Payments for assignment of an interest in the lease;
5. Payments not designated as part of the purchase price but made on a periodic or regularly scheduled basis under the contract;
6. Payments not designated as part of the purchase price, which may or may not vary with the amount of coal delivered, and paid on a one-time or not

regularly scheduled basis under the contract in a specific sum or calculated under a prescribed formula;

7. Payments or reimbursements for services or processing costs customarily the responsibility of the lessee, including that required to put the product in marketable condition;

8. Minimum payment obligations, price guarantees, or deficiency charges; and

9. Payments which are accepted by public service commissions as made for purposes other than for coal received.

The MMS specifically solicits comment on whether payments or reimbursements in these categories constitute part of the total consideration paid for the purchase of the product. Under the proposed provision, the lessee would have the opportunity to demonstrate that, under the terms of its contract, the payment made was not part of the consideration for production. However, unless MMS concurs with the lessee's position, royalty payment will be due on that payment.

Paragraph (c) would apply to coal production that is not sold pursuant to an arm's-length contract. Valuation benchmarks would have to be considered in the prescribed order with the value based upon the first applicable benchmark. The first benchmark is still based upon the lessee's gross proceeds from the disposition of the coal. However, the proposed rule has been modified so that, before the lessee's gross proceeds would be acceptable as value, they must be equivalent not just to the gross proceeds under the lessee's other arm's-length contracts, but they must be equivalent to the gross proceeds under arm's-length contracts involving other buyers and sellers in the area. The effect of this change is to combine what previously were the first and second benchmarks and broaden the base of comparability in the first benchmark. The other provisions of the first benchmark, including the comparability criteria, are not changed.

Where value is determined based on the benchmarks, the adjustments from §§ 206.257(b) (5) and (6), if adopted, would apply. These adjustments, which have been proposed for comment, relate to amounts for such costs as AML fees, Black Lung Taxes, State severance taxes, and the royalty-on-royalty issue. This would apply both where there is a reimbursement clause for these costs and where the cost is embedded in a net price. In some cases it may not be appropriate to make any further deduction for these items, for example, where the value determined under the

benchmarks already does not include a state severance tax component.

The MMS received many comments on the benchmarks. However, there was no one issue that received considerable comment. The MMS will address the comments in the final rulemaking.

The remaining benchmarks for valuing coal disposed of under non-arm's-length contracts were not changed.

It has come to MMS's attention that there may exist a disparity between the current market value of coal and the prices for coal paid under contracts between affiliates (e.g., a coal mining company owned by an electric utility) which, in many instances, are based on mining costs. In today's environment, mining costs often exceed the price for which coal can be sold in the marketplace. Some coal industry members have questioned whether it is reasonable to use these "gross proceeds" as a royalty value, or whether value should be based upon factors that more contemporaneously reflect the coal's value in the open market.

For mine-mouth or captive mine situations, the coal industry has commented that in today's weak market MMS should not receive a royalty computed on a cost-based contract that exists between affiliates. Therefore, MMS specifically requests comments on whether the final rules should include a provision whereby royalty value for non-arm's-length sales in mine mouth or captive mine situations should be based principally on current market determinants (such as spot prices) which several coal industry commenters advocated.

Paragraph (d) has been modified from the first proposal. Paragraph (d)(1) still would provide that value determinations under paragraph (c) do not require MMS's prior approval. However, the lessee would be required to retain all data that would be subject to review and audit. The MMS could direct a lessee to use a different value if it determines that the lessee's reported value is inconsistent with the requirements of the regulations.

Paragraph (d)(2) would require a lessee to make sales and sales quantity data available to authorized MMS, State, and Indian representatives, to the Inspector General of the Department of the Interior, and to other authorized persons.

Paragraph (d)(3) would continue to provide a notification requirement if a lessee determined value using the second through fifth benchmarks.

Paragraph (e) has been added to clarify that if a lessee improperly determines value, it would be liable for

both the additional royalties and interest.

The first proposed rule included a provision in paragraph (h) that lessees could request value determinations from MMS. That provision now is in paragraph (f).

Proposed paragraph (g) establishes gross proceeds as a minimum value. This provision is unchanged from the first proposal except that the specific reference to gross proceeds "which could accrue" was deleted. The reason for this change was discussed above with regard to paragraph (b)(1).

Paragraph (h), which requires the lessee to place coal in marketable condition at no cost to the lessor, is unchanged from the first proposal. The MMS specifically requests comments on whether or not this section, plus the definition of marketable condition, requires further development in these coal regulations to provide better guidance for the lessee. Commenters are requested to provide specific suggestions for changes to the regulatory language.

Paragraph (i) imposes a diligence requirement on lessees. This section would require a lessee to pay royalty in accordance with its contract price, but also expressly would recognize that contract prices may be amended retroactively. Retroactive price adjustments would be limited to 2 years. The MMS is aware that often there is a process of negotiation that occurs before the contract is formally amended and that lower payments may be received in the interim. Royalties may be paid on the gross proceeds received by the lessee until all reasonable attempts to force the purchaser to renegotiate the contract or to comply with the existing contract are exhausted, provided the lessee takes proper and timely action to receive prices or benefits to which it is entitled, or to revise the contract retroactively. Thus, the MMS will accept a renegotiated or a revised contract price if the main reason for renegotiating or revising the contract is not solely to reduce royalties. However, if a higher price can be legally enforceable under a contract and the lessee is not diligent in obtaining that price, royalties will be due on that higher price.

The MMS has added a new paragraph (j) to the proposed rules which would provide that, in those situations where MMS may make a preliminary value determination in the course of monitoring compliance with these regulations, the determination will not be binding until MMS has done an audit and the audit formally is closed. The MMS intends to issue further guidelines on when an audit is closed.

Paragraph (k) includes some minor changes to the paragraph originally proposed as paragraph (i).

Proposed § 206.258 Washing allowances—general.

The MMS received many comments on the limitations on washing allowances contained in the first proposed rule. Industry generally objected to any limit on allowances. Most State and Indian commenters thought the limits were not sufficiently restrictive. In this further notice of proposed rulemaking, MMS is not proposing a threshold requiring MMS approval to exceed that threshold. The purpose of a threshold is to assist MMS in monitoring allowances. Because there are few coal leases, and only a small number of those coal leases involve washing allowances, MMS does not believe that a threshold would be necessary to monitor the reasonableness of allowances. In fact, MMS is aware of only one instance where a washing allowance would have exceeded the threshold. The rules would continue to provide that a washing allowance could not reduce the value for royalty purposes to zero.

The MMS also has added a paragraph which would clarify that, if a lessee improperly determines a washing allowance, the lessee would be liable for any additional royalties plus interest.

Proposed § 206.259 Determination of washing allowances.

If a lessee has an arm's-length contract for coal washing under paragraph (a), the allowance would be the reasonable actual costs incurred by the lessee. This paragraph was not changed from the first proposal, but MMS has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to paragraph (b). The first situation is where MMS determines that the coal washing contract reflects more than the consideration transferred from the lessee to the wash plant operator for the washing; i.e., the washing cost has been inflated. The second situation is where the MMS determines that there has been misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor. The types of misconduct or breach of duty that would trigger application of these provisions are essentially the same as those discussed above in the valuation section.

Paragraph (b), which is applicable to non-arm's-length coal washing situations, has not been changed significantly from the first proposal. It would continue to be a cost-based determination. The MMS has made some changes to the provisions relating to reporting of allowances in response to comments that the first proposal was somewhat unclear. Under paragraph (b)(1), no washing allowance may be taken before a Form MMS-4292 is filed. Washing allowances may be claimed retroactively for a period of 3 months prior to the month the form is filed. Thus, if a lessee takes an allowance for January, February, and March but does not file the form until April 15, the lessee will be entitled to the allowance but will owe interest for the time period that it was taken before it was authorized.

The MMS received many comments on the rate of return to be used in the cost computation. Paragraph (b)(2)(v) now would provide that the rate of return will be the industrial rate associated with Standard and Poor's BBB rating. This is the same rate adopted in the oil and gas rules, and the preambles provide an extensive explanation of this issue (Oil—53 FR 1212-1214; Gas—53 FR 1262-1263). However, as noted in those preambles, MMS is preparing a notice of proposed rulemaking to again address the rate of return issue.

In the gas processing regulations, MMS provided an exception to the cost-based approach in certain circumstances where the plant operator provides services under arm's-length contracts. See 30 CFR 206.159(b)(4). The MMS requests comments on whether or not a similar provision should be included for coal washing.

As noted above, MMS has modified the reporting requirements in paragraph (c). This paragraph generally is self-explanatory. One change is that washing allowances in effect on the effective date of the regulations would be allowed to continue until their termination date.

Section 206.260 Allocation of washed coal.

This section was not changed from the first proposal.

Proposed § 206.261 Transportation allowances—general.

This section would provide generally for a transportation allowance when coal is not sold at the mine or wash plant near the mine. The MMS received many comments on transportation allowances from industry, States and Indians.

Comment: Indian commenters recommended that paragraph (a) provide for a negotiated allowance for Indian lessors. One of these commenters explained that "certain transportation costs, unless cited in the lease, are a matter of negotiated settlement between the lessor and lessee and not subject to an arbitrary allowance." The other Indian commenter stated that transportation allowances were a reversal of past MMS practice and would be difficult to administer. This commenter stated, "Transportation costs should simply not be deducted from the value on which a company pays royalties to the Tribes."

MMS Response: The MMS and its predecessor agency, the Conservation Division, U.S. Geological Survey, have maintained a policy of providing coal transportation allowances to lessees that transport coal to distant points of sale at their own expense. As a matter of policy, MMS considers the assessment of ad valorem royalty on sale prices inclusive of value added by transportation to be an improper royalty practice leading to disincentives for the lessee to seek out and exploit all available markets. Unless specifically prohibited by lease terms, these rules would continue the past practice of allowing deductions for those selling arrangements that specify remote points of sale.

Comment: Paragraph (b)(1) of the original proposed rules, which establishes thresholds on transportation allowances, received numerous comments. Many industry commenters objected to any limit for transportation allowances. One industry commenter maintained that "Any standard other than actual transportation costs is arbitrary and places the burden on industry to then apply for a full deduction." Another industry commenter characterized the limit "to be an arbitrary amount intended for the sole purpose of increasing royalties." One industry commenter stated that "The coal mine operator should have the freedom to be able to market its product wherever possible without the requirement to obtain the approval of the Director when transportation costs exceed the value of the coal." Over 20 commenters offered similar rationales, most stating there was no justification for any limit.

One industry commenter suggested the 50- and 75-percent limits of the proposed rules "should be established as a guideline only so that MMS can freely exercise its authority to allow charges in excess of these amounts."

State and Indian respondents opposed the limits of paragraph (b)(1) citing that

the limits are too high. A State commenter recommended reducing allowance limits to 33-35 percent and explained, "It has been our experience that published acceptable allowances or deductible expenses often become self fulfilling [sic] prophecies providing targets to be attained by some lessees." The Indian commenter maintained that the 75-percent limit for combined washing and transportation was too high and recommended that the limit not exceed 50 percent of the value of the coal.

MMS Response: The 50- and 75-percent transportation allowance thresholds that were initially proposed are not retained in these proposed rules. The purpose of a threshold is to assist MMS in monitoring the reasonableness of allowances. Because there are few coal leases, and only a few of those involve significant transportation allowances, MMS does not believe that a threshold or limit is necessary. The rules would provide that the allowances cannot reduce the value for royalty purposes to zero.

Comment: One Indian commenter stated the proposed regulations did not clearly prohibit leases with cents-per-ton royalty terms from receiving transportation allowances.

MMS Response: Allowances for cents-per-ton leases are specifically prohibited by the regulations at § 206.256(c).

Section 206.261(c) would provide that lessees would not be required to allocate costs between coal and waste products. Allowances would be permitted for the total tonnage transported, even for coal that is transported to a wash plant for washing.

The MMS has reviewed all the comments received to date. Section 206.262 is being proposed again with only minor modifications from the first proposal.

Proposed § 206.262 Determination of transportation allowances.

This section was proposed initially as paragraph (d) of the transportation allowance section. The MMS has added a separate section for clarity and to simplify numbering.

This section has not been changed significantly from the first proposed rules. Some changes were made to the reporting requirements and effective date mechanisms for ease of understanding. These and other changes are similar to those made to the washing allowance rules that were discussed above. Likewise, many of the comments received on this section were similar to those received for washing allowances,

such as comments addressing rate of return.

Pursuant to this section, MMS generally would accept arm's-length transportation costs. The MMS also has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to paragraph (b). The first situation is where MMS determines that the transportation contract reflects more than the consideration transferred from the lessee to the transporter for the transportation; i.e., the transportation cost has been inflated. The second situation is where MMS determines that there has been misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor. The types of misconduct or breach of duty that would trigger application of these provisions are essentially the same as those discussed above in the valuation section.

For non-arm's-length contracts, the allowance generally would be based upon the lessee's reasonable actual costs for transportation. The cost calculation procedure has not been changed from the initial proposal. The MMS also is proposing to add a new paragraph (b)(3) whereby the lessee could apply to MMS for an exception from the requirement that it compute actual costs if the lessee has a transportation rate approved by a regulatory authority and the rate is not excessive as compared to other arm's-length contracts. If there are no other arm's-length contracts to use for comparison, other criteria apply.

The MMS also received some comments that provision should be made for new technology transportation systems which may justify a different type of allowance procedure or a means for modifying the proposed procedure, such as allowing for a greater rate of return on investment for the increased risk. The MMS would like comment on this issue, describing the new technology and what provisions should be added to the rules.

Discussion of the Coal and Electric Utility Industries' Proposal for Valuing Federal and Indian Coal.

On July 9, 1987, the Department reopened the coal comment period for 14 days. During this second comment period, the Department received additional significant comments from principal interested parties raising issues that merited further consideration and response from the public. To allow

for this further consideration, the Department, once again, reopened the comment period on August 12, 1987, for 60 days to give interested persons an opportunity to obtain from DOI copies of three specific comments received from industry, State, and Indian representatives and then to provide a response for DOI to consider in developing a final rulemaking.

Comment: The industry comments were submitted as a joint proposal by six groups representing the coal producers and electric utilities. This proposal included a comprehensive, section-by-section set of revisions to the January proposed rulemaking, including a justification for the suggested modifications. The most significant revision in the joint industry proposal is to set aside the valuation standards contained in MMS's January 15, 1987, proposed rulemaking and substitute, instead, the concepts of "gross royalty value" and "net royalty value." Industry stated the basis for their proposal is the Internal Revenue Code's (IRC) concept of "gross income from property" as used for depletion allowance calculations (IRC 613). This "gross royalty value" would be increased by amounts for non-Federal royalties and reduced by processing allowances and amounts based on Federal Black Lung excise taxes, Abandoned Mine Land fees, and State and local taxes (such as severance taxes). The resulting figure would be the "net royalty value" upon which royalties would be paid. The "gross royalty value" would exclude outbound (long-distance) transportation costs incurred with f.o.b. destination sales. "Gross royalty value" would also exclude take-or-pay payments for royalty assessment.

The Department has received considerable comments on the joint industry proposal. A letter from Governor Schwinden of Montana, representing his views and those of the Governors of Colorado, New Mexico, and Wyoming, generally opposed the joint industry proposal and supported continued reliance on the proposed valuation procedures. Several Governors subsequently wrote individual letters to express personal opinions where their views differed from that of the consensus view. Governor Sullivan of Wyoming and Governor Romer of Colorado indicated they could support exclusion of royalty reimbursements from gross proceeds to address the "royalty on royalty" issue.

Governor Sinner of North Dakota urged the Department to continue the ongoing review of product valuation and expressed specific concerns regarding the production of lignite in his State.

Numerous comments were submitted by electric utility firms and from Governors of States that consume substantial quantities of western coal production. These commenters urged adoption of the joint industry proposal, stating that the joint industry proposal would reduce fuel costs, which in turn would reduce consumer electricity costs. Some commenters supported the valuation proposal by rationalizing that a reduced valuation basis would compensate for the increased ad valorem royalty rates now required under the MLA.

No Indian Tribe or allottee submitted written comments concerning the joint industry proposal. However, Mr. Donald R. Wharton, Assistant Attorney General for Natural Resources, The Navajo Nation, offered comments to the Subcommittee on Mineral Resources Development and Production during the Oversight Hearing on Proposed Coal Product Valuation Rules on November 16, 1987. Mr. Wharton opposed the joint industry proposal, stating: "Industry's deletion of the concept of 'gross proceeds' for royalty payment purposes is inconsistent with the concept underlying the present valuation regulations—that royalties from *ad valorem* leases be based on a percentage of gross proceeds. We urge MMS to retain the 'gross proceeds' methodology for valuation."

MMS Response: The Department expended considerable effort in reviewing the joint industry proposal. Representatives from MMS and from the Department met separately with representatives of the Internal Revenue Service (IRS) to discuss the operation of the "gross income from property" rules and the computation of the percentage depletion allowance. Also, analysts in the MMS reviewed the potential advantages and disadvantages of revenue problems that could arise if the joint industry proposal were adopted as the basis of coal royalty valuation. The MMS analysts solicited input from States and coordinated with principal industry representatives to arrive at a mutually agreed upon range of royalty revenue amounts that would, in the collective judgment of the States, MMS, and industry, most likely occur if the joint industry proposal were accepted.

Following this extensive review, MMS decided not to adopt the joint industry proposal. The following reasoning is provided to explain MMS's decision.

1. The Joint Industry Proposal is not Readily Adaptable to Lease Accounting.

The MMS is required to collect and account for royalties on a lease basis. Royalty rates may vary from lease to

lease; prices will vary from contract to contract; and contracts may dedicate specific reserves. The IRS determination is made on a taxpayer basis, which would be an aggregate, at least, of all leases and contracts for a single mine, and could conceivably encompass more than one mining operation. Thus, the industry proposal seems to be inconsistent with the basis on which MMS must collect and account for royalties. Making the proposal consistent with MMS needs would require that MMS develop an allocation procedure to convert depletable income to a lease basis. Such a procedure would likely be expensive and require the use of simplifying assumptions to the extent of being unacceptable.

2. Joint Industry Proposal Has No Relation to Historical Federal Royalty Valuation Practices.

The Joint Industry Proposal introduces a royalty valuation concept that has never been used in the valuation of any leaseable mineral. The Joint Industry Proposal valuation concept is not consistent with the Department of the Interior's current valuation procedure for coal. Also, the Joint Industry Proposal is inconsistent with existing royalty valuation procedures for noncoal solid minerals; e.g., sodium and potassium, which have not been substantially revised since 1978.

3. Joint Industry Proposal Has No Relation to Prior Statutory Interpretation.

The Mineral Leasing Act of 1920 (Act), as amended specifically by the Federal Coal Leasing Amendments Act of 1976, requires that:

A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations.

The Act and leases issued under the Act do not define value, gross value, gross proceeds, or value of production, or how to arrive at those values.

However, a long history of royalty valuation rulemaking for all leaseable minerals shows a consistent adherence to common principles of valuation. The Joint Industry Proposal departs from previous administrative interpretations of legislation and in this regard strays from "original intent" that has been established by longstanding practice.

4. The Joint Industry Proposal Creates New Auditing Problems.

The Joint Industry Proposal would be a new and complex approach to coal royalty value determinations. It is significantly different from the existing valuation methodology used for coal and

other minerals. As a result, MMS (as well as State and Indian) auditors would be required to relearn an entirely new system. This necessarily would delay many audits.

Proposed § 206.263 Contract submission.

Comment: Section 206.263(a), which requires sales contract submittal upon MMS request, received many industry comments and one Indian comment. All comments except the one Indian comment opposed the submittal requirement. The Indian commenter recommended "No changes" to the language of this section. Most industry commenters stated that MMS should have free access for review of contracts at the lessee's place of business. In objecting to the requirement of possible contract submittal, one industry commenter stated that "Coal supply agreements contain extremely proprietary information, which, if divulged to the public and/or competitors, can have a significantly negative impact upon both the coal buyer and the coal seller." Another industry commenter expressed the same concern, stating that if contracts are sent to MMS, it would "unnecessarily increase the risk of unwarranted disclosure of highly confidential, proprietary information * * *." Again, another industry commenter addressed similar fears of contract disclosure by MMS and recommended that the entire section be deleted from the regulations. One industry commenter stated that the "Royalty Management Advisory Committee recommended that contracts be reviewed on site." One industry commenter questioned the need for contract submittal, stating that "it is our understanding that MMS is developing its own financial audit team, through which all necessary contractual information could be obtained."

MMS Response: The MMS intends to review contracts during on-site audits. However, the MMS must retain the right to obtain sales contracts or other agreements from Federal or Indian lessees. The MMS will take all necessary precautions to safeguard contracts from unauthorized disclosure. The section has not been changed from the first proposal, except for some wording changes.

Comment: Section 206.263(b), which requires lessees to designate each submitted contract as arm's-length or non-arm's-length, received six comments. Industry commenters recommended deleting the phrase "submitted pursuant to this section" in order to be consistent with similar recommendations for paragraph (a). An

Indian commenter stated that "Any contract submitted should be available to the [Indian] lessors also under paragraph (b)." The same Indian respondent maintained that "there should be some prior determination by MMS as to whether a contract is arm's-length or not instead of leaving the matter up to the lessee subject to audit to verify that the contract meets the criteria." One industry commenter recommended revising paragraph (b) to read: "Lessees and other payors shall designate each contract that is non-arm's-length." No rationale was supplied to support this recommendation.

MMS Response: When warranted, the MMS will make submitted contracts available to Indian lessors who certify that proprietary industry information in the contracts will be safeguarded. Regarding the issue of a lessee determining whether or not a contract is arm's-length, the MMS stresses that a lessee's determination of the arm's-length nature of a contract is not conclusive. Under paragraph (c), MMS may audit any contract to determine its character under the definition at § 206.251.

Proposed § 206.264 In-situ and surface gasification and liquefaction operations.

This section is changed only slightly from the first proposed rule.

Proposed § 206.265 Value enhancement of marketable coal.

The MMS is proposing to add a section which provides guidance to royalty valuation involving beneficiation beyond marketable condition by the lessee. This section would not be applicable in situations where a lessee sells its coal, in marketable condition, pursuant to an arm's-length contract and the purchaser performs the enhancement. In that circumstance, value would be determined by the lessee's gross proceeds pursuant to § 206.257(b).

This new section would provide generally that, if a lessee further processes coal (after placing it in marketable condition) to enhance its value prior to use, sale, or other disposition, royalties would be based on the value of the coal in marketable condition prior to enhancement.

The MMS received many industry comments that any valuation procedure for beneficiated coal must allow the lessee to recover the full costs of its activities. The focus of most concerns was that in the usual situation where MMS determines value based upon the sales price of the product less a

processing allowance, the typical MMS-allowed rate of return does not permit the lessee to fully recover its investment, hence the MMS benefits from the beneficiated coal without having made any investment. The MMS has revised its proposal to address this concern and would like further comment on this issue.

As stated above, this section would apply to situations where the value of the coal is enhanced beyond the point of marketable condition prior to use, sale, or other disposition by the lessee. The purpose of the proposal is to attempt to establish royalty value at the point when the coal has been placed in marketable condition but prior to its enhancement.

The first method to be applied would be to determine the value of the feedstock coal in marketable condition by application of the valuation benchmarks in § 206.257(c). Thus, MMS would consider the royalty value reported by the lessee and compare it to the values identified under the applicable benchmarks to determine the reasonableness of the value assigned by the lessee.

If the first four benchmarks cannot be applied, then MMS would use § 206.257(c)(v), or the net-back method. However, MMS would permit an allowance that is different than the normal net-back approach. This approach, to be seen as a last resort, determines royalty value after the marketable coal has been enhanced and is subsequently used, sold, or otherwise transferred. Under this net-back procedure, the MMS would begin with the gross proceeds accruing to the lessee from sales of the beneficiated coal. This amount would be reduced by MMS-approved processing costs. In recognition of the greater risk associated with coal beneficiation technologies and so as not to discourage their development, MMS is proposing to use a rate of return on investment (in doing the net-back procedure) that would be equal to two times the Standard and Poor's BBB bond rate applicable under § 206.259(b)(2)(v). The MMS specifically requests comments on the appropriateness of the proposed rate of return.

The MMS believes that using the approach described above for royalty purposes will accomplish MMS's goal of receiving the value of production in this circumstance, while assuring that the benefits associated with investments in beneficiation activities remain solely with the lessee. By first using the benchmarks to value feedstock coal in these situations, MMS ensures that market conditions are reflected in the

royalty determination, thus minimizing the use of non-market approaches.

V. Public Comment Procedures

A. Written Comments

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m. of the day specified in the "DATES" section to the appropriate address indicated in the "ADDRESS" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Coal, Royalty Valuation Regulations and Related Topics." All comments received by MMS will be available for public inspection in Room C420, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which is considered to be confidential must be so identified and submitted in writing, one copy only. The MMS reserves the right to determine the confidential status of the information or data and to treat it according to its independent determination.

B. Public Hearing

1. *Procedure for requests to make oral presentations:* The time and place for the hearing are indicated in the "DATES" and "ADDRESSES" sections of the preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation. The request should contain a business telephone number and also a telephone number where you may be contacted during the day prior to the hearing. If you are selected to be heard at the hearing you will be notified. You will be required to submit 50 copies of your statement to MMS at the address indicated in the "ADDRESS" section of the preamble.

2. *Conduct of the hearing:* The MMS reserves the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

A Department of the Interior official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only

by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer at the hearing.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the opening of the hearing.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by MMS and made available for inspection in Room C420, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours 8:00 a.m. and 4:00 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

VI. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking consolidates Federal and Indian coal royalty valuation regulations; clarifies DOI coal royalty valuation and coal transportation and coal washing allowance policy; and provides for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations into a single part for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act of 1980

The information collection requirements contained in §§ 206.254, 206.257, 206.258, 206.262, and 206.263 of this rule have been approved by the Office of Management and Budget

(OMB) under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1010-0040, -0063, -0064, and -0074.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 212

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3480

Government contracts, Intergovernmental relations, Land Management Bureau, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: June 28, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, and 212 are proposed to be amended as follows:

TITLE 30—MINERAL RESOURCES

PART 202—ROYALTIES

1. The authority citation for Part 202 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraph (b) of § 203.250 under Subpart F of Part 203 is redesignated as a new § 202.250 under Subpart F of Part 202.

3. 30 CFR Part 202 is amended by revising newly redesignated § 202.250 to read as follows:

§ 202.250 Overriding royalty interest.

The regulations governing overriding royalty interests, production payments, or similar interests created under Federal coal leases are in 43 CFR Group 3400.

PART 203—RELIEF OR REDUCTION IN ROYALTY RATE

1. The authority citation for Part 203 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) of § 203.250 under Subpart F are removed.

3. Paragraph (b) of § 203.250 is redesignated as a new § 202.250 under Subpart F of Part 202.

4. In § 202.250, paragraph (a) designation is removed and the section heading is revised to read as follows:

§ 203.250 Advance royalty.

5. A new § 203.251 is added in Subpart F to read as follows:

§ 203.251 Reduction in royalty rate or rental.

An application for reduction in coal royalty rate or rental shall be filed and processed in accordance with 43 CFR Group 3400.

PART 206—PRODUCT VALUATION

30 CFR Part 206 is amended as follows:

1. The authority citation for Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. 30 CFR Part 206 is amended by revising § 206.10 of Subpart A to read as follows:

Subpart A—General Provisions

§ 206.10 Information collection.

The information collection requirements contained in 30 CFR Part 206 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The forms and approved OMB clearance numbers are as follows:

Form No., name and filing date	OMB No.
MMS-4014—Report of sales and royalty remittance—solid minerals—due by end of month following sales or production month (unless lease terms specify a different frequency for royalty payments) and for rentals no later than the date specified in the lease terms.	1010-0064
MMS-4030—Solid Minerals Payor Information form—due 30 days after issuance of a new lease or change to an existing account established by an earlier form.	1010-0064
MMS-4050—Mine Information Report—due at the request of MMS during the initial conversion of the mine/lease to the Production Accounting and Auditing System (PAAS).	1010-0063
MMS-4051—Facility and Measurement Information Form and Supplement—due at the request of MMS during the initial conversion of the facility and measurement device operators to the PAAS.	1010-0040
MMS-4059—Solid Minerals Operation Report—due by the 15th day of the second month following the production month.	1010-0063
MMS-4060—Solid Minerals Facility Report—due by the 15th day of the second month following the production month.	1010-0063
MMS-4109—Gas Processing Allowance Summary Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS.	1010-0075
MMS-4110—Oil Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS.	1010-0061
MMS-4292—Coal Washing Allowance Report/Application—due prior to, or at the same time that the allowance is first reported on Form MMS-4014, and annually thereafter if the allowance does not change.	1010-0074
MMS-4293—Coal Transportation Allowance Report/Application—due prior to, or at the same time that the allowance is first reported on Form MMS-4014 and annually thereafter if the allowance does not change.	1010-0074
MMS-4295—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed unless a longer period is approved by MMS.	1010-0075

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information collected will be used to determine whether royalty payments represent the proper values and to determine the transportation and processing allowances that may be deducted from royalty payments due on Federal and Indian lands. The reports are mandatory and are required to receive a benefit. Information reporting forms are available from MMS. Requests should be addressed to: Minerals Management Service, Royalty Management Program, P.O. Box 17110, Denver, Colorado 80217.

3. 30 CFR Part 206 is amended by adding §§ 206.250, 206.251, 206.252, 206.253, 206.254, 206.255, 206.256, 206.257, 206.258, 206.259, 206.260, 206.261, 206.262, 206.263, 206.264, and 206.265 to Subpart F to read as follows:

Subpart F—Coal

- Sec.
- 206.250 Purpose and scope.
 - 206.251 Definitions.
 - 206.252 Information collection.
 - 206.253 Coal subject to royalties—general provisions.
 - 206.254 Quality and quantity measurement standards for reporting and paying royalties.
 - 206.255 Point of royalty determination.
 - 206.256 Valuation standards for cents-per-ton leases.
 - 206.257 Valuation standards for ad valorem leases.
 - 206.258 Washing allowances—general.
 - 206.259 Determination of washing allowances.
 - 206.260 Allocation of washed coal.
 - 206.261 Transportation allowances—general.
 - 206.262 Determination of transportation allowances.
 - 206.263 Contract submission.
 - 206.264 In situ and surface gasification and liquefaction operations.
 - 206.265 Value enhancement of marketable coal.

§ 206.250 Purpose and scope.

(a) This subpart prescribes the procedures to establish the value, for royalty purposes, of all coal from Federal and Indian Tribal and allotted leases (except leases on the Osage Indian Reservation).

(b) If the specific provisions of any statute, treaty, or settlement agreement between the United States (or Indian lessor) and a lessee resulting from administrative or judicial litigation, or any coal lease subject to the requirements of this subpart, are inconsistent with any regulation in this subpart, then the statute, treaty, lease

provision, or settlement shall govern to the extent of that inconsistency.

(c) All royalty payments made to the Minerals Management Service (MMS) are subject to later audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian coal leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.251 Definitions.

"Ad valorem lease" means a lease where the royalty due to the lessor is based upon a percentage of the amount or value of the coal.

"Allowance" means an approved, or an MMS-initially accepted deduction in determining value for royalty purposes. "Coal washing allowance" means an allowance for the reasonable, actual costs incurred by the lessee for coal washing, or an approved or MMS-initially accepted deduction for the costs of washing coal, determined pursuant to this subpart. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving coal to a point of sale or point of delivery remote from both the lease and mine or wash plant, or an approved MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region in which coal has similar quality and economic characteristics. Area boundaries are not officially designated and the areas are not necessarily named.

"Arm's-length contract" means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 10 through 50 percent creates a presumption of control; and

(c) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal or Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Coal" means coal of all ranks from lignite through anthracite.

"Coal washing" means any treatment to remove impurities from coal. Coal washing may include, but is not limited to, operations such as flotation; air, water, or heavy media separation; drying; and related handling (or combinations thereof).

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to a coal lessee for the production and disposition of coal. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as crushing, sizing, screening, storing, mixing, loading, treatment with substances including chemicals or oil, and other preparation of the coal to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to coal, also includes, but is not limited to: payments or credits for advanced prepaid reserve payments subject to recoupment through reduced prices in later sales; payments or credits for advanced exploration or development costs that are subject to recoupment through reduced prices in later sales; take-or-pay payments; and reimbursements, including but not limited to, reimbursements for royalties, taxes or fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Monies and other

consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States for a Federal or Indian coal resource under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of coal—or the land area covered by that authorization, whichever is required by the context.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality coal" means coal that has similar chemical and physical characteristics.

"Marketable condition" means coal that is sufficiently free from impurities and otherwise in a condition that it will be accepted by a purchaser under a sales contract typical for that area.

"Mine" means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of lease products.

"Net-back method" means a method for calculating market value of coal at the lease or mine. Under this method, costs of transportation, washing, handling, etc., are deducted from the ultimate proceeds received for the coal at the first point at which reasonable values for the coal may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of coal, to ascertain value at the mine.

"Net output" means the quantity of washed coal that a washing plant produces.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of coal are made to a purchaser.

"Spot market price" means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding one year.

§ 206.252 Information collection.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are identified in § 206.10 of this part.

§ 206.253 Coal subject to royalties—general provisions.

(a) All coal (except coal unavoidably lost as determined by BLM pursuant to 43 CFR Group 3400) from a Federal or Indian lease subject to this part is subject to royalty. This includes coal used, sold, or otherwise disposed of by the lessee on or off the lease.

(b) If a lessee receives compensation for unavoidably lost coal through insurance coverage or other arrangements, royalties at the rate specified in the lease are to be paid on the amount of compensation received for the coal. No royalty is due on insurance compensation received by the lessee for other losses.

(c) In the event waste piles or slurry ponds are reworked to recover coal, the lessee shall pay royalty at the rate specified in the lease at the time the recovered coal is used, sold, or otherwise finally disposed of. The royalty rate shall be that rate applicable to the production method used to initially mine coal in the waste pile or slurry pond; i.e., underground mining method or surface mining method. Coal in waste pits or slurry ponds initially mined from Federal or Indian leases shall be allocated to such leases regardless of whether it is stored on Federal or Indian lands. The lessee shall maintain accurate records to determine to which individual Federal or Indian lease coal in the waste pit or slurry pond should be allocated. However, nothing in this section requires payment of a royalty on coal for which a royalty has already been paid.

§ 206.254 Quality and quantity measurement standards for reporting and paying royalties.

(a) For leases subject to § 206.257, the quality of coal on which royalty is due shall be reported on the basis of percent

sulfur, percent ash, and number of British thermal units (Btu) per pound of coal. Coal quality determinations shall be made at intervals prescribed in the lessee's sales contract. If there is no contract, or if the contract does not specify the intervals of coal quality determination, the lessee shall propose a quality test schedule to MMS. In no case, however, shall quality tests be performed less than quarterly using standard industry-recognized testing methods. Coal quality information shall be reported on the appropriate forms required under 30 CFR Part 216.

(b) For all leases subject to this subpart, the quantity of coal on which royalty is due shall be measured in short tons (of 2,000 pounds each) by methods prescribed by the BLM. Coal quantity information shall be reported on appropriate forms required under 30 CFR Part 216 and on the Report of Sales and Royalty Remittance, Form MMS-4014, as required under 30 CFR Part 210.

§ 206.255 Point of royalty determination.

(a) For all leases subject to this subpart, royalty shall be computed on the basis of the quantity and quality of Federal or Indian coal in marketable condition measured at the point of royalty measurement as determined jointly by BLM and MMS.

(b) Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of. The MMS may ask BLM or BIA to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventory become excessive so as to increase the risk of degradation of the resource.

(c) The lessee shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise finally disposed of, unless otherwise provided for at § 206.256(d) of this chapter.

§ 206.256 Valuation standards for cents-per-ton leases.

(a) This section is applicable to coal leases on Federal, Indian Tribal, and allotted Indian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty on a cents-per-ton (or other quantity) basis.

(b) The royalty for coal from leases subject to this section shall be based on the dollar rate per ton prescribed in the lease. That dollar rate shall be applicable to the actual quantity of coal used, sold, or otherwise finally disposed of, including coal which is avoidably lost as determined by BLM pursuant to 43 CFR Part 3400.

(c) For leases subject to this section, there shall be no allowances for transportation, removal of impurities, coal washing, or any other processing or preparation of the coal.

(d) When a coal lease is readjusted pursuant to 43 CFR Part 3400 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section. All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of § 206.257 of this chapter, and royalties shall be paid at the royalty rate specified in the readjusted lease.

§ 206.257 Valuation standards for ad valorem leases.

(a) This section is applicable to coal leases on Federal, Indian Tribal, and allotted Indian lands (except leases on the Osage Indian Reservation) which provide for the determination of royalty as a percentage of the amount or value of coal (ad valorem). The value for royalty purposes of coal from such leases shall be the value of coal determined pursuant to this section, less applicable coal washing allowances and transportation allowances determined pursuant to §§ 206.258 through 206.262 of this chapter, or any allowance authorized by § 206.265 of this chapter. The royalty due shall be equal to the value for royalty purposes multiplied by the royalty rate in the lease.

(b)(1) The value of coal that is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(2), (b)(3), (b)(5), and (b)(6) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the coal. If the contract does not reflect the total consideration, then the MMS may require that the coal sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(3) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do

not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the coal production be valued pursuant to paragraph (c)(2) (ii), (iii), (iv), or (v) of this section, and in accordance with the notification requirements of paragraph (d)(3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.

(4) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal.

(5) Notwithstanding any other regulations in this subpart, except for Indian leases the value of coal shall be reduced by the amounts of Federal Black Lung excise taxes and abandoned mine lands fees authorized by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), applicable to the coal production.

(6) The value of production for royalty purposes shall not include payments received by the lessee pursuant to a contract which the lessee demonstrates, to MMS's satisfaction, were not part of the total consideration paid for the purchase of coal.

(c)(1) The value of coal from leases subject to this section and which is not sold pursuant to an arm's-length contract shall be determined in accordance with this section.

(2) If the value of the coal cannot be determined pursuant to paragraph (b) of this section, then the value shall be determined through application of other valuation criteria. The criteria shall be considered in the following order, and the value shall be based upon the first applicable criterion: (i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition by other than an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for sales, purchases, or other dispositions of like-quality coal in the area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of coal, quantity, and such other factors as may be appropriate to reflect the value of the

coal; (ii) prices reported for that coal to a public utility commission; (iii) prices reported for that coal to the Energy Information Administration of the Department of Energy; (iv) other relevant matters including, but not limited to, published or publicly available spot market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of coal; (v) if a reasonable value cannot be determined using paragraphs (c)(2) (i), (ii), (iii), or (iv) of this section, then a net-back method or any other reasonable method shall be used to determine value.

(3) When the value of coal is determined pursuant to paragraph (c)(2) of this section, that value shall be subject to the adjustments provided in paragraphs (b)(5) and (b)(6), as appropriate.

(d)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require MMS's prior approval. However, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraphs (c)(2) (ii), (iii), (iv), or (v) of this section. The notification shall be by letter to the Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on a Form MMS-4014 using a valuation method authorized by paragraphs (c)(2) (iv) or (v) of this section, and each time there is a change in a method under paragraphs (c)(2) (iv) or (v) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference,

if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.202. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee, less applicable allowances determined pursuant to §§ 206.258 through 206.262, and § 206.265 of this chapter. If take-or-pay payments are a part of gross proceeds, no additional royalty shall be due if future make-up deliveries are taken, unless the purchaser is required to pay any additional amount because only a partial payment was previously made or as a result of price increases during the make-up period.

(h) The lessee is required to place coal in marketable condition at no cost to the Federal Government or Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds has been reduced because the purchaser, or any other person, is providing certain services, the cost of which ordinarily is the responsibility of the lessee to place the coal in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactively applied to value for royalty purposes for a period not to exceed two

years, unless MMS approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph applies to price increases only and shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of coal.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation, coal washing, or other allowances pursuant to § 206.265 of this chapter, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease or applicable law.

§ 206.258 Washing allowances—general.

(a) For ad valorem leases subject to § 206.257 of this chapter, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to wash coal, unless the value determined pursuant to § 206.257 was based upon like-quality unwashed coal. Under no circumstances shall the washing allowance and the transportation allowance authorized by § 206.262 of this subpart reduce the value for royalty purposes to zero.

(b) If MMS determines that a lessee has improperly determined a washing allowance authorized by this section,

then the lessee shall be liable for any additional royalties, plus interest determined in accordance with 30 CFR 218.202, or shall be entitled to a credit without interest.

(c) Lessees shall not disproportionately allocate washing costs to Federal or Indian leases.

(d) No cost normally associated with mining operations and which are necessary for placing coal in marketable condition shall be allowed as a cost of washing.

(e) Coal washing costs shall only be recognized as allowances when the washed coal is sold and royalties are reported and paid.

§ 206.259 Determination of washing allowances.

(a) *Arm's-length contracts.* (1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance shall be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The MMS's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the washer for the washing. If the contract reflects more than the total consideration paid, then the MMS may require that the washing allowance be determined in accordance with paragraph (b) of this section.

(3) If the MMS determines that the consideration paid pursuant to an arm's-length washing contract does not reflect the reasonable value of the washing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the washing allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the

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value of the washing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's washing costs.

(4) Where the lessee's payments for washing under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent. Washing allowances shall be expressed as a cost per ton of coal washed.

(b) Non-arm's-length or no contract.

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of washing allowances is not required for non-arm's-length or no contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual washing allowance.

(2) The washing allowance for non-arm's-length or no contract situation shall be based upon the lessee's actual costs for washing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the wash plant multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the wash plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other

directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the wash plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the wash plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a wash plant, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves, whichever is appropriate, which the wash plant services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a wash plant shall not alter the depreciation schedule established by the original operator/lessee for purposes of the allowance calculation. With or without a change in ownership, a wash plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the wash plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service or acquired after [insert the effective date of these regulations].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent washing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The washing allowance for coal shall be determined based on the lessee's reasonable and actual cost of

washing the coal. The lessee may not take an allowance for the costs of washing lease production that is not royalty bearing.

(c) Reporting requirements. (1) Arm's-length contracts.

(i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee shall submit page one of the initial Form MMS-4292 prior to, or at the same time as, the washing allowance determined pursuant to an arm's-length contract is reported on Form MMS-4014, Report of Sales and Royalty Remittance. A Form MMS-4292 received by the end of the month that the Form MMS-4014 is due shall be considered to be timely received. The initial reporting may be based on estimated costs.

(ii) The initial Form MMS-4292 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4292 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length washing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Washing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) Non-arm's-length or no contract.

(i) With the exception of those washing allowances specified in paragraphs (c)(2)(v) and (vi) of this section, the lessee shall submit an initial Form MMS-4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-

length contract or no contract situation is reported on Form MMS-4014, Report of Sales and Royalty Remittance. A Form MMS-4292 received by the end of the month that the Form MMS-4014 is due shall be considered to be timely received. The initial reporting may be based on estimated costs.

(ii) The initial Form MMS-4292 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a washing allowance and shall continue until the end of the calendar year, or until the washing under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS-4292 containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on Form MMS-4292 its estimated costs for the next calendar year. The estimated coal washing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS-4292 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new wash plants, the lessee's initial Form MMS-4292 shall include estimates of the allowable coal washing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar coal wash plants.

(v) Washing allowances based on non-arm's-length or no-contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS-4292. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) The MMS may establish coal washing allowance reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Washing allowances must be reported as a separate line on the Form MMS-4014, unless MMS approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and failure to report. (1) If a lessee deducts a washing allowance on its Form MMS-4014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section. (2) If a lessee erroneously reports a washing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) Adjustments. (1) If the actual coal washing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a washing allowance. If the actual washing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) The lessee must submit a corrected Form MMS-4014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) Other washing cost determinations. The provisions of this section shall apply to determine washing costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of washing costs.

§ 206.260 Allocation of washed coal.

(a) When coal is subjected to washing, the washed coal must be allocated to the leases from which it was extracted.

(b) When the net output of coal from a washing plant is derived from coal obtained from only one lease, the quantity of washed coal allocable to the lease will be based on the net output of the washing plant.

(c) When the net output of coal from a washing plant is derived from coal obtained from more than one lease, the quantity of net output of washed coal allocable to each lease will be based on the ratio of measured quantities of coal delivered to the washing plant and washed from each lease compared to the total measured quantities of coal delivered to the washing plant and washed.

§ 206.261 Transportation allowances—general.

(a) For ad valorem leases subject to § 206.257 of this chapter, where the value for royalty purposes has been determined at a point remote from the lease or mine, MMS shall, as authorized by this section, allow a deduction in determining value for royalty purposes for the reasonable, actual costs incurred to:

- (1) Transport the coal from a Federal or Indian lease to a sales point which is remote from both the lease and mine; or
- (2) Transport the coal from a Federal or Indian lease to a wash plant when that plant is remote from both the lease and mine and, if applicable, from the wash plant to a remote sales point.

In-mine transportation costs shall not be included in the transportation allowance.

(b) Under no circumstances shall the washing allowance and the transportation allowance authorized by § 206.259 of this subpart reduce the value of coal under any selling arrangement to zero.

(c) (1) When coal transported from a mine to a wash plant is eligible for a transportation allowance in accordance with this section, the lessee is not required to allocate transportation costs between the quantity of clean coal output and the rejected waste material. The transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of cleaned coal transported. (2) For coal that is not washed at a wash plant, the transportation allowance shall be authorized for the total production which is transported. Transportation allowances shall be expressed as a cost per ton of coal transported.

(3) Transportation costs shall only be recognized as allowances when the so transported coal is sold and royalties are reported and paid. (d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this section, then the lessee shall pay any additional

royalties, plus interest, determined in accordance with 30 CFR 218.200, or shall be entitled to a credit, without interest.

(e) Lessees shall not disproportionately allocate transportation costs to Federal or Indian leases.

§ 206.252 Determination of transportation allowances.

(a) Arm's-length contracts.

(1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. The MMS's prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4293, Coal Transportation Allowance Report, in accordance with paragraph (c) (1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration paid, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a

dollar value equivalent for the purposes of this section.

(b) Non-arm's-length or no contract.

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of transportation allowances is not required for non-arm's-length or no-contract situations. However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS-4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS-4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable

maintenance expenses which the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either paragraph (b)(2)(iv)(A) or (B) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves, whichever is appropriate, which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(B)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service or acquired after [insert the effective date of these regulations].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) A lessee may apply to the MMS for an exception to the requirement that it compute actual costs in accordance with paragraphs (b)(1) and (b)(2) of this section. The MMS will grant the exception only if the lessee has a rate for the transportation approved by a

Federal agency (for both Federal and Indian leases) or by a State regulatory agency (for Federal leases). The MMS shall deny the exception request if it determines that the rate is excessive as compared to arm's-length transportation charges by systems, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if: (i) no Federal or State regulatory agency cost analysis exists and the Federal or State regulatory agency, as applicable, has declined to investigate pursuant to MMS timely objections upon filing; and (ii) the rate significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) Reporting requirements. (1) Arm's-length contracts.

(i) With the exception of those transportation allowances specified in paragraphs (c)(1) (v) and (vi) of this section, the lessee shall submit page one of the initial Form MMS-4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS-4014, Reports of Sales and Royalty Remittance.

(ii) The initial Form MMS-4293 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS-4293 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period). Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances that are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes

of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(2) Non-arm's-length or no contract. (i) With the exception of those transportation allowances specified in paragraphs (c)(2) (v) and (vii) of this section, the lessee shall submit an initial Form MMS-4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS-4014, Report of Sales and Royalty Remittance. The initial report may be based on estimated costs.

(ii) The initial Form MMS-4293 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS-4293 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS-4293 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments that are based on the lessee's knowledge of decreases or increases that will affect the allowance. Form MMS-4293 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS-4293 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length-contract or no-contract-based transportation allowances that are in effect at the time these regulations become effective will

be allowed to continue until such allowances terminate. For purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS-4293. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(viii) If the lessee is authorized to use its Federal- or State-agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this paragraph in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS-4014, unless MMS approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and failure to report. (1) If a lessee deducts a transportation allowance on its Form MMS-4014 without complying with the requirements of this section, the lessee shall be liable for interest on the amount of such deduction until the requirements of this section are complied with. Penalties may also be assessed, if appropriate.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.202.

(e) Adjustments. (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest, computed pursuant to 30 CFR 218.202, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) The lessee must submit a corrected Form MMS-4014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(f) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.263 Contract submission.

(a) The lessee and other payors shall submit to MMS, upon request, contracts for the sale of coal from ad valorem leases subject to this subpart. The MMS must receive the contracts within a reasonable period of time, as specified by MMS. Lessees shall include as part of the submittal requirements any contracts, agreements, contract amendments, or other documents that affect the gross proceeds received for the sale of coal, as well as any other information regarding any consideration received for the sale or disposition of coal that is not included in such contracts. At the time of its contract submittals, MMS may require the lessee to certify in writing that it has provided all documents and information that reflect the total consideration provided by purchasers of coal from ad valorem leases subject to this subpart. Information requested under this section may include contracts for both ad valorem and cents-per-ton leases and shall be available in the lessee's offices during normal business hours or provided to MMS at such time and in such manner as may be requested by authorized Department of the Interior personnel. Any oral sales arrangement negotiated by the lessee must be placed in a written form and be retained by the lessee. Nothing in this section shall be construed to limit the authority of MMS to obtain or have access to information pursuant to 30 CFR Part 212.

(b) Lessees and other payors shall designate, for each contract submitted pursuant to this section, whether the contract is arm's-length or non-arm's-length.

(c) A lessee's or other payor's determination that its contract is arm's-length is subject to future audit to verify that the contract meets the criteria of the arm's-length contract definition in § 206.251.

(d) Information required to be submitted under this section that

constitutes trade secrets and commercial and financial information that is identified as privileged or confidential shall not be available for public inspection or made public or disclosed without the consent of the lessee or other payor, except as otherwise provided by law or regulation.

§ 206.264 In-situ and surface gasification and liquefaction operations.

If an ad valorem Federal coal lease is developed by in-situ or surface gasification or liquefaction technology, the lessee shall propose the value of coal for royalty purposes to MMS. The MMS will review the lessee's proposal and issue a value determination. The lessee may use its proposed value until MMS issues a value determination.

§ 206.265 Value enhancement of marketable coal.

If the lessee enhances the value of coal after the coal has been placed in marketable condition in accordance with § 206.257(h) of this chapter, prior to use, sale, or other disposition the lessee shall notify MMS that such processing is occurring or will occur. The value of that production shall be determined as follows:

(a) A value established for the feedstock coal in marketable condition by application of the provisions of § 206.257(c)(2)(i)-(iv); or,

(b) In the event that a value cannot be established in accordance with paragraph (a) of this section, then the value of production will be determined in accordance with § 206.257(c)(2)(v) and the value shall be the lessee's gross proceeds accruing from the disposition of the enhanced product, reduced by MMS-approved processing costs and procedures (including a rate of return on investment equal to two times the Standard and Poor's BBB bond rate applicable under § 206.259(b)(2)(v)).

PART 212—RECORDS AND FILES MAINTENANCE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. The title of Subparts C, D, F, and G under Part 212 are revised to read as follows:

Subpart C—Federal and Indian Oil—
[Reserved]

Subpart D—Federal and Indian Gas—
[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—
[Reserved]

3. The following subparts are added to Part 212:

Subpart H—Geothermal Resources—
[Reserved]

Subpart I—DCS Sulfur [Reserved]

4. Paragraph (b) introductory text of § 212.200 is revised to read as follows:

§ 212.200 Maintenance of and access to records.

• • • • •

(b) The MMS shall have access to all records of the operator/lessee pertaining to compliance to Federal royalties, including, but not limited to:

• • • • •

TITLE 43—PUBLIC LANDS: INTERIOR

GROUP 3400—COAL MANAGEMENT

PART 3400—COAL EXPLORATION AND MINING OPERATIONS RULES

1. The authority citation for Part 3400 continues to read as follows:

Authority: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, et seq.); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 20, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.); the National Environmental Policy Act of 1966, as amended (42 U.S.C. 4321, et seq.); and the Freedom of Information Act (5 U.S.C. 552).

2. Section 3485.2 of 43 CFR Part 3400 is amended by removing paragraphs (d), (e), (f), (g), (h), (i), and (k). Paragraph (j) of § 3485.2(j) is redesignated as paragraph (d) of § 3485.2.

[FR Doc. 88-15834 Filed 7-14-88; 8:45 am]

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Friday
July 15, 1988

Part IV

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for the Colville
Indian Reservation in the State of
Washington; Proposed Rule

federal register

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 131

(WH-FRL-3317-5)

Water Quality Standards for the
Colville Indian Reservation in the State
of WashingtonAGENCY: Environmental Protection
Agency.

ACTION: Proposed rule.

SUMMARY: This proposal would establish Federal water quality standards on the Colville Confederated Tribes Reservation located within the State of Washington. This action, which is being taken at the request of the Tribes, would establish designated uses and criteria for all surface waters on the Reservation.

DATES: Comments must be received by September 13, 1988.

A public hearing will be held on August 18, 1988, beginning at 7:00 p.m.

ADDRESSES: Comments on this proposed rule should be addressed to: Fletcher Shives, EPA, Region X (M/S 433); 1200 Sixth Avenue; Seattle, WA 98101 (206) 442-8293. The public may inspect the administrative record for this rulemaking and all comments received on this proposed rule at: EPA, Region X; 1200 Sixth Avenue; Seattle, WA 98101, between the hours of 8:00 am and 4:00 pm on business days. A reasonable fee will be charged for copying. Inquiries can be made over the phone by calling (202) 475-7315 or (206) 442-8293. Portions of the record, including the correspondence and other actions cited in this proposal and written public comments will be available from the Criteria and Standards Division, OWRS; 401 M Street SW.; Room 919 East Tower; Washington, DC 20460, during usual business hours.

The public hearing will be held at the Nespelem Community Center, Nespelem, Washington.

FOR FURTHER INFORMATION CONTACT: Fletcher Shives, (206) 442-8293.

SUPPLEMENTARY INFORMATION:**A. Background**

On February 7, 1986, the Environmental Protection Agency received a request from the Colville Confederated Tribes to promulgate the Tribes' recently adopted water quality standards as Federal standards for waters on the lands of the Reservation. The Colville Confederated Tribes are a federally recognized Indian Tribe operating pursuant to a Constitution and Bylaws approved by the Commissioner

of Indian Affairs on April 19, 1938. EPA reviewed the Tribes' adopted standards. EPA today is proposing to adopt most of the Tribes' use designations and conventional water quality criteria for its waters. The Colville Confederated Tribes and the State of Washington have an agreement to maintain consistent standards on boundary and other common bodies of water. The State of Washington has formally proposed to adopt criteria for certain toxic and nonconventional pollutants for which EPA has recommended criteria (WSR 87-13-089, published July 1, 1987). These criteria are contained in guidance published, under section 304(a) of the Clean Water Act, in the *Federal Register* from time to time and summarized in *Quality Criteria for Water (1986)* as updated. The State may take final action on its changes during the pendency of this rulemaking. EPA will consider the State's action and may subsequently propose equivalent criteria for Reservation-State boundary waters, if need dictates.

Amendments to the Clean Water Act which specifically address water quality standards on Indian lands have been enacted by Congress and require EPA to promulgate regulations within 18 months of enactment for treating Indian Tribes as States (section 506, Pub. L. 100-4; section 518 of the Clean Water Act). The amendments authorize the Administrator to "treat an Indian tribe as a State for purposes of Title II and sections 104, 106, 303, 305, 306, 309, 314, 319, 401, 402, and 404 of this Act to the degree necessary to carry out the objectives" of the amendments when certain conditions have been met. Section 518(e). Because the regulations "specify[ing] how Indian tribes shall be treated as States" for purposes of the Act have not yet been promulgated, EPA is proposing to establish Federal water quality standards for the Colville Confederated Tribes Indian Reservation.

As noted above, EPA initiated this action before the 1987 amendments to the Clean Water Act were enacted. Under the 1987 amendments, EPA intends to assist other Tribes to establish their own water quality standards for EPA review and approval as provided by section 518 of the CWA.

B. Statement of Basis and Purpose**1. Legal Authority**

Under section 303 of the Clean Water Act, States are given the first opportunity to set standards. However, if the Administrator disapproves a State adopted water quality standard, the Act directs the Administrator to promulgate the necessary standards. The

Administrator must also promulgate standards whenever he determines a revised or new standard is "necessary to meet the requirements of the Act." The Clean Water Act does not authorize States to implement or enforce their water quality management programs on Indian lands. Therefore, in the absence of a treaty or Federal statute granting such State authority over a particular tribal land, it is appropriate for EPA to proceed under section 303(c)(4)(B) to promulgate Federal water quality standards, where justified, for waters on Indian lands—in this case, for waters on the lands of the Colville Confederated Tribes.

Today's proposal is based on water quality standards developed by the Colville Confederated Tribes for application to waters on their Reservation. It is not, nor is it intended to be applicable to other lands, or used as a model for other Reservations. EPA's deference to the Colville Confederated Tribes on today's proposal is consistent with EPA's Indian Policy Statement of November 8, 1984, implementing the President's Indian Policy Statement of January 24, 1983, in which EPA committed to achieving a government-to-government relationship between the Agency and Indian tribes. (See also EPA Office of Federal Activities, *Administration of Environmental Programs on Indian Lands* (1983).) In keeping with the principle of Indian self-government, the EPA policy provides that Tribal governments are the primary parties for setting standards, making environmental policy decisions and managing programs for reservations. Moreover, Federal courts have approved EPA's decision to grant Indian Tribes the same degree of autonomy to determine the quality of their environment as was granted to the States. See *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981). See also, *State of Washington Dept. of Ecology v. EPA*, 752 F.2d 1465 (9th Cir. 1985), and *Phillips Petroleum Company v. EPA*, 803 F.2d 545 (10th Cir. 1986).

On August 28, 1985, EPA approved the Colville Water Quality Management Program under the Act and acknowledged that the Colville Confederated Tribes possess adequate authority and capability to enforce effective water quality management on the Reservation. EPA also determined that the Tribal activities would lead to on-reservation attainment of the water quality goals envisioned by Congress in enacting the Clean Water Act. See letter of Ernesta B. Barnes, EPA Regional Administrator, Region 10, to Governor Booth Gardner, re: Approval of the

Colville Water Quality Management Program (August 28, 1985). The Tribes have subsequently adopted water quality standards applicable to the waters of the Reservation.

Today, EPA is proposing Federal water quality standards applicable to the waters of the Colville Confederated Tribes Reservation that are essentially the same as the current tribal water quality standards. Thus, EPA will maintain Federal authority, but will work cooperatively with the Tribes in implementing the Clean Water Act and the Colville Water Quality Management Program on the Colville Confederated Tribes Indian Reservation.

2. Contents of the Proposed Rule

The proposed rule will become part of EPA's water quality standards regulation as § 131.35. Paragraphs (a) and (b) on "Background" and "Territory Covered" are self-explanatory.

Paragraph 131.35(c)(1), "Applicability, Administration and Amendment", specifies that these standards will be the basis of any NPDES permit limitations established based on water quality requirements. Water quality-based permits are those which have one or more parameters with more stringent limitations than required for a technology-based permit. As discussed above, EPA will be issuing regulations regarding when Indian tribes may be treated as States under the Clean Water Act. If the Colville Confederated Tribes qualify for treatment as a State for purposes of section 303, these Federally-issued water quality standards would remain in effect only until such time as EPA approves water quality standards adopted by the Colville Confederated Tribes and withdraws these regulations.

Paragraph 131.35(c)(2) authorizes the Regional Administrator, in consultation with the Tribal government, to develop general policies applicable to water quality standards. Public participation in establishing such policies would be provided in conjunction with the NPDES permit issuance process. Mixing zones must be justified by a discharger by an analysis similar to that presented in EPA's Technical Support Document for Water Quality Based Toxics Control (EPA, Office of Water; September 1985) or other technically sound method.

Paragraphs 131.35(c)(3) and (c)(4) establish amendment procedures. Paragraph (c)(5) simply reiterates that the existing regulation applies to the Reservation and identifies sections of special importance for compliance.

Paragraph 131.35(c)(6) provides that numeric criteria apply at instream flows equal to or greater than the lowest average 7-consecutive day low flow

with a recurrence frequency of once in ten years. Qualitative criteria apply at all times regardless of flow.

Paragraph 131.35(d) includes the definitions which are applicable to this rulemaking. These definitions are intended to apply only to § 131.35.

Paragraph 131.35(e), "General Considerations", establishes requirements and interpretations for all waters on the Reservation. Paragraph 131.35(e)(1) establishes that at boundaries between waters of different classifications, the more stringent use and criteria apply.

Paragraph 131.35(e)(2), "Antidegradation", is a restatement of 40 CFR 131.12 with changes authorizing the Regional Administrator to administer the policy on the Reservation.

Paragraph 131.35(e)(3), "Aesthetic Qualities", establishes minimum, qualitative criteria which are applicable to all waters under all circumstances and flows.

EPA is not proposing numeric criteria for toxic pollutants for the protection of aquatic life or for the protection of human health for the Tribes' waters at this time. EPA is preparing proposed regulatory changes to the Water Quality Standards regulation to address the new requirements of the Clean Water Act Amendments of 1987 related to toxic pollutants. Until these regulatory changes are finalized it is the Agency's judgment that adopting numeric criteria for toxic pollutants in waters on the Colville Confederated Tribes Reservation is premature. The Agency has reviewed the current discharges with NPDES permits on the Reservation and did not discover any discharges causing a human health or aquatic life risk due to toxics discharges based on available Agency criteria guidance.

Paragraph 131.35(e)(4), requires that EPA's approved analytical methods be used for all testing done to demonstrate compliance with these standards.

Paragraph 131.35(f) defines water use classifications and specifies the criteria to protect each use classification. The Tribes' uses and criteria generally were used as the basis for today's proposal. However, with the concurrence of the Tribes, one change in criteria was to substitute EPA's section 304(a) recommended bacteriological indicator for the Tribes' criteria in swimmable waters. EPA is proposing enterococci (rather than fecal coliform) as a bacteriological indicator because it is a more reliable indicator. EPA's proposed bacteriological criterion is designed to provide approximately the same level of protection as a tribal one.

The dissolved oxygen criteria for Class I and II waters are the same as those adopted by the Tribes and the State of Washington for boundary waters between the Reservation and the State. These criteria are more stringent than EPA recommends under section 304(a).

EPA is proposing to adopt dissolved oxygen and bacteriological criteria similar in stringency to those adopted by the Tribes for the following reasons. First, EPA has determined that Federal promulgation of these criteria is consistent with the intent of the framers of the Clean Water Act and Federal policy regarding Indian tribes. (See section B.1. of this preamble.) Second, the Agency determined that the tribal program would be compatible with State water quality standards for surface waters adjacent to the Reservation; 40 CFR 131.10(b) provides that upstream standards shall provide for the attainment and maintenance of the water quality standards of downstream waters. Third, the more stringent criteria were adopted by the Tribes in consultation with the State of Washington and were designed to provide consistent levels of protection on waters passing between the State and Tribal boundaries; it was not designed to force the State to impose more stringent regulatory measures than otherwise required under the Act.

Paragraph 131.35(g), "General Classification", assigns designated uses to all waters not receiving use designations by name (for example, tributary streams) and establishes rules for assigning use designations to impoundments. All waters not covered by these rules or whose uses are not specifically designated are established as Class II. This latter provision is the same as in the Tribes' standards.

Paragraph 131.35(h) contains the specific use designations. EPA is proposing the identical use designations as those made by the Tribes except for waters designated Class IV. Class IV is not a fishable-swimmable classification. Until the Tribes provide a use attainability analysis for each of these segments, the use will be established as Class III. Even though Class III waters are only designated for secondary contact recreation, the bacteriological and other criteria applicable to these waters are suitable for swimming. Therefore, EPA is treating this classification as fishable-swimmable.

C. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a Regulatory Flexibility Analysis for all

proposed regulations that have a significant impact on a substantial number of small entities. EPA has determined that because of the small area and number of people affected, and because a Tribal regulation is already in place which is essentially equivalent in stringency to this rule, there will be no significant adverse impact on small entities caused by the subsequent promulgation of this rule.

D. Executive Order 12291

Under E.O. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of preparing a Regulatory Impact Analysis. EPA has determined that this rule is not major and that no Regulatory Impact Analysis is required. Also, as required by Executive Order 12291 this proposed rule has been reviewed by the Office of Management and Budget. Any comments from OMB to EPA and any response to those comments are available for public inspection through contacting the person listed at the beginning of this notice.

E. Paperwork Reduction Act

There are no significant information collection provisions in this rule. Therefore, there is no requirement for approval of an additional ICR by OMB for the Paperwork Reduction Act of 1980.

List of Subjects in 40 CFR Part 131

Indian reservation water quality standards, Water pollution control, Water quality standards.

Date: July 6, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the SUPPLEMENTARY INFORMATION section, Part 131, Subpart D, of the Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

Authority: Clean Water Act, Pub. L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

2. By adding a new § 131.35 to read as follows:

§ 131.35 Colville Confederated Tribes Indian Reservation.

The water quality standards applicable to the waters within the Colville Indian Reservation, located in the State of Washington.

(a) *Background.* (1) It is the purpose of these Federal water quality standards to prescribe minimum water quality

requirements for the surface waters located within the exterior boundaries of the Colville Indian Reservation to ensure compliance with section 303(c) of the Clean Water Act.

(2) The Colville Confederated Tribes have a primary interest in the protection, control, conservation, and utilization of the water resources of the Colville Indian Reservation. Water quality standards have been enacted into tribal law by the Colville Business Council of the Confederated Tribes of the Colville Reservation, as the *Colville Water Quality Standards Act*, CTC Title 33 (Resolution No. 1984-526 (August 6, 1984) as amended by Resolution No. 1985-20 (January 18, 1985)).

(b) *Territory covered.* The provisions of these water quality standards shall apply to all surface waters within the exterior boundaries of the Colville Indian Reservation.

(c) *Applicability, administration and amendment.* (1) The water quality standards in this section shall be used by the Regional Administrator for establishing any water quality based National Pollutant Discharge Elimination System Permit (NPDES) for point sources on the Colville Confederated Tribes Reservation.

(2) General Policies, as defined in § 131.13 of this part, may be implemented by the Regional Administrator for the Reservation. However, opportunity for public hearings in conjunction with that provided pursuant to the NPDES Regulations (40 CFR Parts 122, 124 and 125) will be provided by EPA for all such actions.

(3) Amendments to this section at the request of the Tribe shall proceed in the following manner.

(i) The requested amendment shall first be duly approved by the Confederated Tribes of the Colville Reservation (and so certified by the Tribes' Legal Counsel) and submitted to the Regional Administrator.

(ii) The requested amendment shall be reviewed by EPA (and by the State of Washington, if the action would affect a boundary water).

(iii) If deemed in compliance with the Clean Water Act, EPA will propose and promulgate an appropriate change to this section.

(4) Amendment of this section at EPA's initiative will follow consultation with the Tribe and other appropriate entities. Such amendments will then follow normal EPA rulemaking procedures.

(5) All other applicable provisions of this Part 131 shall apply on the Colville Confederated Tribes Reservation. Special attention should be paid to

§§ 131.6, 131.10, 131.11 and 131.20 for any amendments to these standards to be initiated by the Tribe.

(6) All numeric criteria contained in this section apply at all instream flow rates greater than or equal to that flow rate calculated as the minimum 7-consecutive day average flow with a recurrence frequency of once in ten years (7Q10); qualitative criteria (§ 131.35(e)(3)) apply regardless of flow. The 7Q10 low flow shall be calculated using methods recommended by the U.S. Geological Survey.

(d) *Definitions.* (1) "Acute toxicity" means the 96-hour LC₅₀; that is, the concentration of a constituent that causes lethality to 50% of the test organisms over a 96-hour exposure period.

(2) "Background conditions" means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source discharge under consideration. Background sampling location in an enforcement action will be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and an enforcement action is being taken for possible violations to the standards, background sampling will be undertaken immediately upstream from each discharge.

(3) "Ceremonial and Religious water use" means activities involving traditional Native American spiritual practices which involve, among other things, primary (direct) contact with water.

(4) "Chronic Toxicity" means the lowest concentration of a constituent causing observable effects (i.e., considering lethality, growth, reduced reproduction, etc.) over a relatively long period of time, usually a 28-day test period for small fish test species.

(5) "Council" or "Tribal Council" means the Colville Business Council of the Colville Confederated Tribes.

(6) "Geometric mean" means the "nth" root of a product of "n" factors.

(7) "Mean retention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the non-zero 30-day, ten-year low-flow from the reservoir.

(8) "Mixing Zone" or "dilution zone" means a limited area or volume of water where initial dilution of a discharge takes place; and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring.

(9) "pH" means the negative logarithm of the hydrogen ion concentration.

(10) "Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence, including but not limited to skin diving, swimming, and water skiing.

(11) "Regional Administrator" means the Administrator of EPA's Region X.

(12) "Reservation" means the Colville Indian Reservation established on July 2, 1872 by Executive Order and presently containing 1,389,000 acres more or less.

(13) "Secondary contact recreation" means activities where a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(14) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Colville Indian Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(15) "Temperature" means water temperature expressed in degrees Celsius (°C).

(16) "Total dissolved solids" (TDS) means the total filterable residue that passes through a standard glass fiber filter disk and remains after evaporation and drying to a constant weight at 180 °C. It is considered to be measure of the dissolved salt content of the water.

(17) "Toxicity" means acute and/or chronic toxicity.

(18) "Tribe" or "Tribes" means the Colville Confederated Tribes.

(19) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(20) "Wildlife habitat" means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life history or activity.

(e) *General considerations.* The following general guidelines shall apply to the water quality standards and classifications set forth in the use designation Sections.

(1) *Classification boundaries.* At the boundary between waters of different classifications, the water quality standards for the higher classification shall prevail.

(2) *Antidegradation policy.* This antidegradation policy shall be applicable to all surface waters of the Reservation.

(i) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(ii) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Regional Administrator finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Tribes' continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Regional Administrator shall assure water quality adequate to protect existing uses fully. Further, the Regional Administrator shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(iii) Where high quality waters are identified as constituting an outstanding national or reservation resource, such as waters within areas designated as unique water quality management areas and waters otherwise of exceptional recreational or ecological significance, and are designated as special resource waters, that water quality shall be maintained and protected.

(iv) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy's implementing method shall be consistent with section 316 of the Clean Water Act.

(3) *Aesthetic qualities.* All waters within the Reservation, including those within mixing zones, shall be free from substances, attributable to wastewater discharges or other pollutant sources, that:

(i) Settle to form objectionable deposits;

(ii) Float as debris, scum, oil, or other matter forming nuisances;

(iii) Produce objectionable color, odor, taste, or turbidity;

(iv) Cause injury to, are toxic to, or produce adverse physiological responses in humans, animals, or plants; or

(v) Produce undesirable or nuisance aquatic life.

(4) *Analytical methods.* (i) The analytical testing methods used to measure or otherwise evaluate compliance with water quality standards shall to the extent practicable, be in accordance with the "Guidelines Establishing Test Procedures for the Analysis of

Pollutants" (40 CFR Part 136). When a testing method is not available for a particular substance, the most recent edition of "Standard Methods for the Examination of Water and Wastewater" (published by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation) and other or superseding methods published and/or approved by EPA shall be used.

(f) *General water use and criteria classes.* The following criteria shall apply to the various classes of surface waters on the Colville Indian Reservation:

(1) *Class I (Extraordinary)—(i) Designated uses.* The designated uses include, but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) *Bacteriological Criteria.*—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 8 per 100 milliliters, nor shall any single sample exceed an enterococci density of 35 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) *Dissolved oxygen.*—The dissolved oxygen shall exceed 9.5 mg/l.

(C) *Total dissolved gas.*—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) *Temperature.*—shall not exceed 16.0°C due to human activities. Temperature increases shall not, at any time, exceed $t = 23/(T + 5)$.

(E) *When natural conditions exceed 16.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.*

(2) For purposes hereof, "I" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 16.3°C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.2 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(2) *Class II (Excellent).* (i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) *Bacteriological Criteria.*—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 16/100 ml, nor shall any single sample exceed an enterococci density of 75 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen.—The dissolved oxygen shall exceed 8.0 mg/l.

(C) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature—shall not exceed 18.0°C due to human activities. Temperature increases shall not, at any time, exceed $t = 28/(T + 7)$.

(7) When natural conditions exceed 18.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(2) For purposes hereof, "I" represents the permissive temperature change

across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 18.3°C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(3) *Class III (Good).*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(ii) *Water quality criteria.* (A) *Bacteriological Criteria.*—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen.

	Early life stages ¹	Other life stages
7 day mean	9.5 (8.5)	NA
1 day minimum	8.0 (5.0)	6.5

¹ These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. The 3 mg/l differential is discussed in the criteria document. For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

² Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching.

³ NA (not applicable).

⁴ All minima should be considered as instantaneous concentrations to be achieved at all times.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature shall not exceed 21.0°C due to human activities. Temperature increases shall not, at any time, exceed $t = 34/(T + 9)$.

(7) When natural conditions exceed 21.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(2) For purposes hereof, "I" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 21.3°C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(4) *Class IV (Fair).*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (industrial).

(B) Stock watering.

(C) Fish (salmonid and other fish migration).

(D) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(E) Commerce and navigation.

(ii) *Water quality criteria.* (A)

Dissolved oxygen.

	During periods of salmonid and other fish migration	During all other time periods
30 day mean	6.5	5.5
7 day mean	NA	NA
7 day mean minimum	5.0	4.0
1 day minimum	4.0	3.0

¹ NA (not applicable).

² All minima should be considered as instantaneous concentrations to be achieved at all times.

(B) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(C) Temperature shall not exceed 22.0°C due to human activities. Temperature increases shall not, at any time, exceed $t = 20/(T + 2)$.

(7) When natural conditions exceed 22.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(2) For purposes hereof, "I" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(D) pH shall be within the range of 6.5 to 9.0 with a human-caused variation of less than 0.5 units.

(E) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(F) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(5) *Lake Class.*—(i) *Designated uses.* The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.*

(A) *Bacteriological Criteria.*—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—no measurable decrease from natural conditions.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature—no measurable change from natural conditions.

(E) pH—no measurable change from natural conditions.

(F) Turbidity shall not exceed 5 NTU over natural conditions.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(6) *Special Resource Water Class (SRW).*—(i) *General characteristics.* These are fresh or saline waters which comprise a special and unique resource to the Reservation. Water quality of this class will be varied and unique as determined by the Regional Administrator in cooperation with the Tribes.

(ii) *Designated uses.* The designated uses include, but are not limited to, the following:

(A) Wildlife habitat.

(B) Natural foodchain maintenance.

(iii) *Water quality criteria.* (A)

Enterococci bacteria densities shall not exceed natural conditions

(B) Dissolved oxygen—shall not show any measurable decrease from natural conditions.

(C) Total dissolved gas shall not vary from natural conditions.

(D) Temperature—shall not show any measurable change from natural conditions.

(E) pH shall not show any measurable change from natural conditions.

(F) Settleable solids shall not show any change from natural conditions.

(G) Turbidity shall not exceed 5 NTU over natural conditions.

(H) Toxic, radioactive, or deleterious material concentrations shall not exceed those found under natural conditions.

(g) *General classifications.* General classifications applying to various surface water bodies not specifically classified under § 131.35(h) are as follows:

(1) All surface waters that are tributaries to Class I waters are classified Class I, unless otherwise classified.

(2) Except for those specifically classified otherwise, all lakes with existing average concentrations less than 2000 mg/L TDS and their feeder streams on the Colville Indian Reservation are classified as Lake Class and Class I, respectively.

(3) All lakes on the Colville Indian Reservation with existing average

concentrations of TDS equal to or exceeding 2000 mg/L and their feeder streams are classified as Lake Class and Class I respectively unless specifically classified otherwise.

(4) All reservoirs with a mean detention time of greater than 15 days are classified Lake Class.

(5) All reservoirs with a mean detention time of 15 days or less are classified the same as the river section in which they are located.

(6) All reservoirs established on preexisting lakes are classified as Lake Class.

(7) All wetlands are assigned to the Special Resource Water Class.

(8) All other waters not specifically assigned to a use classification of the reservation are classified as Class II.

(h) *Specific classifications.* Specific classifications for surface waters of the Colville Indian Reservation are as follows:

(1) <i>Streams:</i>	
Alice Creek	Class III
Anderson Creek	Class III
Armstrong Creek	Class III
Barnaby Creek	Class II
Bear Creek	Class III
Beaver Dam Creek	Class II
Bridge Creek	Class II
Brush Creek	Class III
Buckhorn Creek	Class III
Cache Creek	Class III
Canteen Creek	Class I
Capoose Creek	Class III
Cobbe Creek	Class III
Columbia River from Chief Joseph Dam to Wells Dam	Class II
Columbia River from northern Reservation boundary to Grand Coulee Dam (Roosevelt Lake)	Class I
Columbia River from Grand Coulee Dam to Chief Joseph Dam	Class II
Cook Creek	Class I
Copper Creek	Class III
Cornstalk Creek	Class III
Cougar Creek	Class I
Coyote Creek	Class II
Deerhorn Creek	Class III
Dick Creek	Class III
Dry Creek	Class I
Empire Creek	Class III
Faye Creek	Class I
Forty Mile Creek	Class III
Gibson Creek	Class I
Gold Creek	Class II
Granite Creek	Class II
Grizzly Creek	Class III
Haley Creek	Class III
Hall Creek	Class II
Hall Creek, West Fork	Class I
Iron Creek	Class III
Jack Creek	Class III
Jerred Creek	Class I
Joe Moses Creek	Class III
John Tom Creek	Class III
Jones Creek	Class I

Kartar Creek.....	Class III	San Poil River.....	Class I	Crawfish Lakes.....	LC
Kincaid Creek.....	Class III ¹	Sanpoil, River West Fork.....	Class II	Camille Lake.....	LC
King Creek.....	Class III ¹	Seventeen Mile Creek.....	Class III	Elbow Lake.....	LC
Klondyke Creek.....	Class I	Silver Creek.....	Class III	Fish Lake.....	LC
Lime Creek.....	Class III	Sitdown Creek.....	Class III	Gold Lake.....	LC
Little Jim Creek.....	Class III	Six Mile Creek.....	Class III ¹	Great Western Lake.....	LC
Little Nespelem.....	Class II	South Nanamkin Creek.....	Class III	Johnson Lake.....	LC
Louie Creek.....	Class III	Spring Creek.....	Class III	LaFleur Lake.....	LC
Lynx Creek.....	Class II	Stapaloop Creek.....	Class III	Little Goose Lake.....	LC
Minila Creek.....	Class III	Stepstone Creek.....	Class III	Little Owhi Lake.....	LC
McAllister Creek.....	Class III	Stranger Creek.....	Class II	McGinnis Lake.....	LC
Meadow Creek.....	Class III	Strawberry Creek.....	Class III	Nicholas Lake.....	LC
Mill Creek.....	Class II	Swimptkin Creek.....	Class III	Omak Lake.....	SRW
Mission Creek.....	Class III ¹	Three Forks Creek.....	Class I	Owhi Lake.....	SRW
Nespelem River.....	Class II	Three Mile Creek.....	Class III ¹	Penley Lake.....	SRW
Nex Perce Creek.....	Class III	Thirteen Mile Creek.....	Class II	Rebecca Lake.....	LC
Nine Mile Creek.....	Class II	Thirty Mile Creek.....	Class II	Round Lake.....	LC
Nineteen Mile Creek.....	Class III	Trail Creek.....	Class III	Simpson Lake.....	LC
No Name Creek.....	Class II	Twentyfive Mile Creek.....	Class III	Soap Lake.....	SRW
North Nanamkin Creek.....	Class III	Twentyone Mile Creek.....	Class III	Sugar Lake.....	LC
North Star Creek.....	Class III	Twentythree Mile Creek.....	Class III	Summit Lake.....	LC
Okanogan River from Reser- vation north boundary to Columbia River	Class II	Wannacot Creek.....	Class III	Twin Lakes.....	SRW
Olds Creek.....	Class I	Wells Creek.....	Class I		
Omak Creek.....	Class II	Whitelaw Creek.....	Class III ¹		
Onion Creek.....	Class II	Wilmont Creek.....	Class II		
Parmenter Creek.....	Class III ¹				
Peel Creek.....	Class III ¹	(2) Lakes:			
Peter Dan Creek.....	Class III ¹	Apex Lake.....	LC		
Rock Creek.....	Class I	Big Goose Lake.....	LC		
		Bourgeau Lake.....	LC		
		Buffalo Lake.....	LC		
		Cody Lake.....	LC		

¹ The Tribe has adopted a class IV use designation for these waters. EPA will likewise designate these waters as class IV if the Tribe provides adequate use attainability analyses prior to final promulgation of these standards.

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Friday
July 15, 1988

federal register

Part V

Department of Education

Office of Special Education and
Rehabilitative Services

34 CFR Part 367

Independent Living Services for Older
Blind Individuals; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 367

Independent Living Services for Older Blind Individuals

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary adds a new part to implement Title VII, Part C of the Rehabilitation Act of 1973, as amended. This program authorizes grants to designated State units for projects that provide independent living services for older blind individuals.

These regulations include information about the kinds of project activities supported under this program, the application requirements, and the selection criteria for evaluating applications.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments, with the exception of §§ 367.20 and 367.21. Sections 367.20 and 367.21 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Judith Miller Tynes, Rehabilitation Services Administration, U.S. Department of Education, Mary E. Switzer Building, Room 3326, (M/S 2312) 330 C Street SW., Washington, DC 20202; (202) 732-1346.

SUPPLEMENTARY INFORMATION: The regulations also contain post-award requirements that relate to permissible methods of providing project services and mandatory confidentiality of client information.

On January 29, 1988, the Secretary published a notice of proposed rulemaking for this program in the *Federal Register* (53 FR 2702). Except for minor editorial and technical revisions, there are only four differences between the NPRM and these final regulations, as indicated below.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, twenty-one (21) parties submitted comments on the proposed regulations. An analysis of the

comments and of the changes in the proposed regulations since publication of the NPRM follows.

Issues are grouped according to subject. Technical and other minor changes are not addressed. Four changes have been made to the proposed regulations. First, language has been added to § 367.2 to clarify that the designated State unit that is authorized to provide rehabilitation services to blind individuals is the agency eligible for assistance under this program. Second, language has been added to § 367.10 requiring an applicant for assistance under this program to submit an assurance that it has been designated as the sole State agency authorized to provide rehabilitation services to blind individuals. Third, the word "aging" has been added to the selection criterion in § 367.21(a)(2) to avoid duplication of otherwise available resources and foster coordination among service providers. Fourth, the word "older" has been added to the selection criterion in § 367.21(b)(6) to encourage applicants to include older blind individuals (the target population for this program) in the planning and conduct of program activities. However, these last two changes to the selection criteria in § 367.21(a)(2) and (b)(6) will not be effective until FY 1989 awards are made.

Process for Reviewing Grants

Comments: Two commenters stated that procedures for conducting peer review and for selecting peer review panels should be included in the regulations.

Discussion: The procedures for selecting review panels and new projects to be funded are contained in 34 CFR Part 75, Subpart D of the Education Department General Administrative Regulations. Part 75 is made fully applicable to this program through § 367.4(a) of these regulations.

Changes: None.

Discrimination in the Delivery of Services

Comments: One commenter requested that § 367.21(b)(5) be expanded to prohibit discrimination in the delivery of services to otherwise qualified individuals based upon age or employment potential.

Discussion: The Secretary believes that § 367.21(b)(5), which requires applicants to describe how they will ensure that project participants are selected without regard to age or handicaps, addresses the commenter's concern about non-discrimination in the delivery of project services.

Changes: None.

Distribution of Part C Funds on a Formula Grant Basis

Comments: The Secretary received many comments requesting the Rehabilitation Services Administration to consider allocating funds to States on a formula basis. Some commenters recommended using population as the sole criterion, while others suggested a straight formula or a combination formula-competitive grant program with a minimum allotment for each State with the remainder to be distributed competitively.

Discussion: Section 721(a) of the Act establishes this program as a discretionary grant program by giving the Secretary the discretion to make grants for the purposes stated in the statute. The Secretary is not legally authorized to change this program to a formula grant program.

Changes: None.

Eligibility for an Award

Comments: The Secretary received many comments on the proposed provision in § 367.2 that states that any designated State unit is eligible for an award under this program. Some commenters felt strongly that the blind agency in a State with a separate general agency should have preference for an award under this program and that both agencies in a State should not be granted an award simultaneously.

Some commenters suggested that State agencies with prior experience in serving the legally blind (i.e., the blind agency) receive priority over any other State agency. Other commenters requested that when there are two agencies, the agency serving the blind should be the exclusive applicant for Part C funds. One commenter requested that the following phrase could be added at the end of § 367.5(b)(1): "particularly those organizational units which are specifically designated to provide vocational rehabilitation services to blind and visually impaired individuals."

Discussion: The definition of "designated State unit" in the final regulations is consistent with the definition of this term in section 7(3) of the Act. This definition must be read in concert with section 101(a)(1)(A) of the Act, which provides a State with the option of designating, in its State vocational rehabilitation services plan submitted to the Secretary, the State agency for the blind, or another agency which provides assistance or services to the blind, as the sole State agency to administer that part of the State plan under which vocational rehabilitation

services are provided for the blind, if such agency is authorized by State law to provide vocational rehabilitation services to blind individuals.

This statutory option permits a State to designate one agency to provide services to all individuals with handicaps except the blind and a second agency to provide services to the blind. The Secretary has interpreted section 101(a)(1)(A) of the Act as applicable to the State Independent Living Services Program under Title VII, Part A of the Act. (See 34 CFR 365.5(b).)

Thus, if a State designates only one State agency to deliver rehabilitation services under the above two programs to all individuals with handicaps in the State, such designated State agency is eligible to receive funding under the Independent Living Services Program for Older Blind Individuals under Title VII, Part C of the Act. However, if a State exercises its option under section 101(a)(1)(A) of the Act to designate a separate agency as the sole State agency to deliver rehabilitation services to the blind, in addition to the designated State agency that provides rehabilitation services to all other disability groups, then only the separate agency designated to provide rehabilitation services to the blind is eligible for funding under the Independent Living Services for Older Blind Individuals Program.

Changes: Two changes have been made. First, language has been added to § 367.2 to clarify that the designated State unit that is authorized to provide rehabilitation services to blind individuals is the agency eligible for assistance under this program. Second, language has been added to § 367.10 requiring an applicant for assistance under this program to submit an assurance that it has been designated as the sole State agency authorized to provide rehabilitation services to blind individuals.

RSA Grantmaking Authority

Comments: One commenter stated that the grantmaking authority for this program is vested in the Commissioner of Rehabilitation Services and not in the Secretary. References to the "Secretary" should be deleted and replaced with references to the Commissioner, with an appropriate definition added to § 367.5.

Discussion: Section 3 of the Rehabilitation Act of 1973 (Act), as amended, states that "Any reference in this Act to duties to be carried out by the Commissioner shall be considered to be a reference to duties to be carried out by the Secretary acting through the Commissioner." In addition, section 412 of the Department of Education

Organization Act (DEOA), Pub. L. 96-88 (1980), states that "No delegation of functions by the Secretary . . . shall relieve the Secretary of responsibility for the administration of such functions." Finally, the definition of "Secretary" found at 34 CFR 77.1 applies to all Department programs and means, in addition to the Secretary of the Department of Education, any official or employee of the Department acting for the Secretary under a delegation of authority. Taken together, the above authorities clearly support the use of the term "Secretary" rather than the term "Commissioner" in these regulations because the Secretary is ultimately responsible for the administration of this program.

Changes: None.

Definition of an Older Blind Individual

Comments: The Secretary received many comments regarding the definition of an older blind individual as described in § 367.5(b). One commenter suggested that the definition should be consistent with each State's definition of legal blindness in providing vocational rehabilitation services as stated in the Rehabilitation Act of 1973, as amended. The commenter suggested that the term "severely visually impaired individuals" needs to be defined separately. Several commenters stated that gainful employment should be omitted from this definition.

Discussion: The definition in the final regulations is identical to the definition of "older blind individual" specified by Congress in section 721(d) of the Act and cannot be changed.

Changes: None.

Activities That May be Funded

Comments: Two commenters requested that social and recreational programs be identified as a discrete service option in § 367.3. One commenter explained that in rural states isolation can be debilitating and must be counterbalanced with social and recreational involvement for older blind and visually impaired individuals.

Another commenter said that advocacy and self-advocacy services should be added as one of the authorized activities under the program. The commenter also stated that § 367.3(f) should be changed to read "any other appropriate services designed to assist a person who is blind and coping with daily living activities, including supportive services, training or rehabilitation teaching services."

One commenter requested that § 367.21(g)(2)(vii) be amended to read "Any other needed services, such as transportation, peer support group/

activities, or guide services provided to individuals with severe handicaps . . ." Another commenter stated that individual psychological services for adjustment to blindness and support services, such as counseling for families, should be added to the list.

Discussion: The list of activities in § 367.3 that may be funded under this part is not exhaustive. In addition, § 367.3(f) and § 367.3(g) provide sufficient flexibility to permit the types of activities suggested, if such activities are determined appropriate for that individual or such activities will further the provision of independent living services for older blind individuals. Advocacy and self-advocacy are authorized activities to the extent that such activities are not in conflict with the anti-lobbying restrictions applicable to nonprofit organizations found in OMB Circular A-122. Because these activities are already encompassed under § 367.3 (f) and (g), it is not necessary to list them individually. Additionally, some of these activities are already included under § 367.21(g) (service comprehensiveness).

Changes: None.

Individual Written Independent Living Program

Comments: Two commenters requested that an Individual Written Independent Living Program be developed for each consumer who receives services.

Discussion: The statute does not require an Individual Written Independent Living Program for each client.

Changes: None.

Consumer Involvement

Comments: One commenter stated that States seeking Part C funds should assure consumer involvement in the process of the planning and delivery of program services.

Discussion: Under the selection criterion for evaluating proposals found at § 367.21(b)(6), the Secretary considers consumer involvement in planning for and conducting program activities.

Changes: None.

Selection Criteria Points

Comments: The Secretary received many comments requesting that more weight be assigned to the "adequacy of resources," "evaluation plan" and "service comprehensiveness" criteria and less weight to the criterion "likelihood of sustaining program." One commenter stated that such a change would add more balance to the overall review mechanism. Another commenter

requested that "likelihood of sustaining program" be eliminated altogether and that "meeting the purposes of the authorizing statute", which was used in the past, be restored. A third commenter requested that the number of points in "quality of key personnel" be increased to 20 points. The writer felt that if general agencies were not prohibited from applying for Part C funding in those States in which two agencies exist, then a change in value would benefit agencies for the blind in the competition. Another commenter requested that criteria from prior years be combined with the proposed selection criteria and that the point structure be revised.

Discussion: The Secretary believes that the number of points assigned to "likelihood of sustaining program" and the weights assigned to the other selection criteria are appropriate and do not need to be revised. The Secretary believes that the applicant's intention and capacity to continue the program after the completion of Federal project grant assistance is an appropriate and important consideration in selecting applicants to be awarded assistance under this program.

Changes: None.

Extent of Need for the Project

Comments: One commenter stated that the needs assessment in § 367.21(a)(1)(ii) should include input from agencies and organizations concerned with aging. The same commenter stated that the needs assessment in § 367.21(a)(2) should include programs and facilities for the aging.

Discussion: The final regulations do not specify the agencies that should be consulted in collecting information for the needs assessments. However, although the Secretary agrees that agencies and organizations serving the elderly are excellent sources for obtaining this information, the Secretary believes that applicants for assistance under this program will consult with such agencies and organizations without explicit direction from this Department. Congress created this program to assist older blind persons to adjust to blindness. The Secretary agrees that, in order to avoid duplication, it would be appropriate for applicants to demonstrate that services provided under this program complement or expand upon services available to older blind persons through other programs for independent living or the aging.

Changes: Section 367.21(a)(2) has been changed to include a determination of the extent to which the need for independent living services for older blind individuals is justified in terms of

complementing or expanding both existing independent living and aging programs and facilities.

Plan of Operation

Comments: One commenter stated that the word "older" should be added to the selection criterion in § 367.21(b)(6).

Discussion: The Secretary agrees that the word "older" should be added to the phrase "blind individuals" in § 367.21(b)(6) of the final regulations. Adding the word "older" to this selection criterion is consistent with the purposes of this program and will encourage applicants to involve the target population of this program in the planning and conduct of program activities. Adding the word "older" establishes neither an absolute requirement nor a minimum level of participation by older blind individuals in the planning and conduct of program activities.

Changes: A change has been made to § 367.21(b)(6) by adding the word "older" immediately preceding the phrase "blind individuals." However, this last change to the selection criterion in § 367.21(b)(6) will not be effective until FY 1989 awards are made.

Budget and Cost-effectiveness

Comments: One commenter stated that programs funded under the Older Americans Act should be added to § 367.21(d)(3).

Discussion: An applicant for assistance under this program may demonstrate the cost-effectiveness of its proposed project by comparing it to programs funded under the Older Americans Act. The Secretary recognizes that many alternative services and programs authorized under other statutes could be used for comparison but are not included in the regulations. However, the Secretary does not believe it is either appropriate or necessary to list all such programs in these regulations.

Changes: None.

Service Comprehensiveness

Comments: One commenter stated that § 367.21(g) should be expanded to reflect that these programs assist the older blind individual to utilize general services as well as services which are appropriate to the individual's age.

Discussion: The Secretary anticipates that an individual will receive services tailored to that person's needs and that take into account the age and any other factors affecting his or her ability to live independently.

Changes: None.

Evaluation Plan

Comments: One commenter stated that RSA should define the concepts of quality and effectiveness as well as develop criteria for use in judging the program's expected outcomes or goals and cost-effectiveness.

Discussion: Although the Secretary believes that it may be desirable to establish specific criteria to evaluate the quality and cost-effectiveness of projects under this program, reliable and sufficient data are not available at this time to establish Federal standards.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 367

Education, Independent living services, Older blind individuals, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.177, Independent Living Services for Older Blind Individuals Program)

Dated: June 23, 1988.

William J. Bennett,
Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 367 to read as follows:

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER BLIND INDIVIDUALS

Subpart A—General

- Sec.
367.1 What is Independent Living Services for Older Blind Individuals?
367.2 Who is eligible for an award?
367.3 What activities may the Secretary fund?
367.4 What regulations apply?
367.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

- 367.10 What assurances must a designated State unit submit to receive a grant?

Subpart C—How Does the Secretary Make an Award?

- 367.20 How does the Secretary evaluate an application?
367.21 What selection criteria does the Secretary use?
367.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

- 367.30 How are services to be administered under this program?
367.31 What are the requirements pertaining to the protection, use and release of personal information?
Authority: 29 U.S.C. 790f, unless otherwise noted.

Subpart A—General

§ 367.1 What is Independent Living Services for Older Blind Individuals?

This program supports projects that provide independent living services to older blind individuals.

(Authority: 29 U.S.C. 790f)

§ 367.2 Who is eligible for an award?

Any designated State unit that is authorized to provide rehabilitation services to blind individuals is eligible for an award under this program.

(Authority: 29 U.S.C. 711(c) and 790f(a))

§ 367.3 What activities may the Secretary fund?

Authorized activities under this program include—

- (a) Services to help correct blindness or visual impairment such as—
(1) Outreach services;
(2) Visual screening;
(3) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions;
(4) Ocular prostheses; and
(5) Hospitalization related to these services;

- (b) The provision of eyeglasses and other visual aids;
(c) The provision of services and equipment to assist an older blind individual to become more mobile and more self-sufficient;

- (d) Mobility training, braille instruction, and other services and equipment to help an older blind individual adjust to blindness;
(e) Guide services, reader services, and transportation;

- (f) Any other appropriate services designed to assist a blind person in coping with daily living activities, including supportive services or rehabilitation teaching services; and
(g) Activities that will improve or expand services for older blind individuals and help improve public understanding of the problems of those individuals.

(Authority: 29 U.S.C. 711(c) and 790f(a))

§ 367.4 What regulations apply?

The following regulations apply to Independent Living Services for Older Blind Individuals:

- (a) The Education Department General Administrative Regulations

(EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

- (b) The regulations in this Part 367.

- (c) The regulations in 34 CFR 365.13.

(Authority: 29 U.S.C. 711(c) and 790f)

§ 367.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

"Designated State unit" means either—

- (1) The State agency vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with handicaps and that is responsible for the administration of the vocational rehabilitation program of the State agency; or
(2) The independent State commission, board, or other agency that has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: 29 U.S.C. 706(3) and 721(a))

"Independent living services for older blind individuals" means any services enumerated in § 367.3 that will assist an older blind individual to correct blindness or visual impairment or to adjust to blindness by becoming more able to care for individual needs.

(Authority: 29 U.S.C. 790f(a))

"Older blind individual" means an individual aged fifty-five or older whose severe visual impairment makes gainful employment extremely difficult to obtain but for whom independent living goals are feasible.

(Authority: 29 U.S.C. 790f(d))

Subpart B—How Does One Apply for an Award?

§ 367.10 What assurances must a designated State unit submit to receive a grant?

(a) Each applicant for assistance under this part shall submit to the Secretary an assurance that it has been designated by the State as the sole State agency authorized to provide rehabilitation services to blind individuals.

(b) Each designated State unit shall submit to the Secretary assurances that any new methods and approaches relating to the services described in § 367.3 for older blind individuals that are developed by projects under this program will be incorporated into its State plan for independent living services required by section 705 of the Act.

(Authority: 29 U.S.C. 711(c) and 790f(b))

Subpart C—How Does the Secretary Make an Award?

§ 367.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the criteria in § 367.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 711(c) and 790f)

§ 367.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

- (i) The needs addressed by the project;
(ii) How the applicant identified those needs;
(iii) How those needs will be met by the project; and
(iv) The benefits to be gained by meeting those needs.

(2) The Secretary reviews each application to determine the extent that the need for independent living services for older blind individuals is justified in terms of complementing or expanding existing independent living and aging programs and facilities and the potential of the project to support the overall

mission of the State-Federal independent living program as stated in Title VII, section 701 of the Act.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(6) The extent to which the plan of operation and management includes involvement by older blind individuals in planning for and conducting of program activities.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the scope of the project; and

(ii) Any other qualifications that pertain to the objectives of the project.

(d) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant demonstrates the cost-effectiveness of project services in comparison with alternative services and programs available to older blind individuals.

(e) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Accurately evaluate the success and cost-effectiveness of the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.500 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including accessibility of facilities, equipment and supplies.

(g) *Service comprehensiveness.* (20 points)

(1) The Secretary reviews each application to determine the extent to which effective outreach services for independent living will be provided within the project to enable older blind individuals to live more independently in the home and community.

(2) The Secretary reviews each application to determine the extent to which the availability of the following core services that will meet the independent living needs of older blind individuals with varying degrees of visual impairment are included:

(i) Orientation and mobility skills training that will enable older blind individuals to travel independently, safely and confidently in familiar and unfamiliar environments.

(ii) Skills training in braille, handwriting and typewriting or other means of communication.

(iii) Communication aids such as large print, cassette tape recorders and readers.

(iv) Training to perform daily living activities such as meal preparation, identifying coins and currency, selection of clothing, telling time and maintaining a household.

(v) Provision of low-vision services and aids such as magnifiers to perform reading and mobility tasks.

(vi) Family and peer counseling

services to assist the older blind individual adjust emotionally to the loss of vision as well as to assist in the individual's integration into the community and its resources.

(vii) Any other needed services such as transportation or guide services provided to individuals with severe handicaps under the State-Federal independent living program authorized by 34 CFR Part 365.

(h) *Likelihood of sustaining program.* (15 points) The Secretary reviews each application to determine—

(1) The likelihood that the service program will be sustained after the completion of Federal project grant assistance;

(2) The extent to which the applicant intends to continue to operate the service program through cooperative agreements and other formal measures; and

(3) The extent to which the applicant will identify and, to the extent possible, use comparable services and benefits under other programs for which project clients might be eligible.

(Authority: 29 U.S.C. 711(c) and 796f)

§ 367.22 What additional factors does the Secretary consider?

In addition to the criteria in § 367.21, the Secretary considers the geographic distribution of projects in making an award.

(Authority: 29 U.S.C. 711(c) and 796f)

Subpart D—What Conditions Must Be Met After an Award?

§ 367.30 How are services to be administered under this program?

Each designated State unit may either directly provide independent living services under this program or it may make subgrants to other public agencies or private nonprofit organizations to provide these services.

(Authority: 29 U.S.C. 796f(c))

§ 367.31 What are the requirements pertaining to the protection, use and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information (including records) concerning individuals must be limited to purposes directly connected with the project, including project evaluation activities. This information

may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and of the individual to whom the information applies, or the individual's representative, has been obtained in writing. However, the Secretary and other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or the individual's representative.

(Authority: 29 U.S.C. 711(c))

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Part VI

The President

Proclamation 5840—Captive Nations
Week, 1988

Executive Order 12646—Establishing an
Emergency Board To Investigate a
Dispute Between the Port Authority
Trans-Hudson Corporation and Certain of
Its Employees Represented by the
International Brotherhood of Electrical
Workers

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Presidential Documents

Title 3—

The President

Proclamation 5840 of July 13, 1988

Captive Nations Week, 1988

By the President of the United States of America.

A Proclamation

During Captive Nations Week, we honor the courage, faith, and aspirations of the millions of people the world over who suffer under Soviet domination. They desire, seek, and deserve, as the common heritage of humanity, the liberty, justice, self-determination, and independence we Americans and all free peoples cherish. The citizens of the captive nations daily hear the mighty call of freedom and answer it boldly, sending an echo around the globe to remind totalitarians and all mankind that their voices cannot be quelled—because they are the voices of the human spirit.

Across the continents and seas, the cry for freedom rings out and the struggle for its blessings continues, in the republics of the Soviet Union, in the Baltic States and throughout Eastern Europe, in Cuba and Nicaragua, in Ethiopia and Angola, and in Vietnam, Laos, and Cambodia. It also continues in Afghanistan, despite initial Soviet withdrawal, because the Najibullah regime imposes its will upon the Afghan people. We in America, who have held high the torch of liberty for 2 centuries and more, pause during Captive Nations Week to express our solidarity with those who strive at great personal risk and sacrifice to win justice for their nations. We commemorate as well the many freedom fighters and individuals such as Polish Father Jerzy Popieluszko and Ukrainian poet Vasyl Stus who have given their lives in the imperishable cause of liberty. We cannot and will not shirk our duty and responsibility to insist on the speediest end to subjugation, persecution, and discrimination in the captive nations. We repeat our call for all governments to respect and honor the letter and the spirit of the United Nations Charter and the Helsinki Accords.

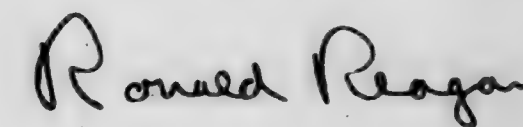
Last year's Captive Nations Week Proclamation mentioned four people in the Soviet Union imprisoned for their struggle for national rights. Now, 1 year later, two of them, both Helsinki human rights monitors, remain in internal exile—Viktoras Petkus, a Lithuanian, and Lev Lukyanenko, a Ukrainian. Another, Helsinki monitor Mart Niklus, an Estonian, is still in a labor camp. The last, Gunars Astra, Latvia's highly respected national rights activist, was released in poor health earlier this year after 19 years in Soviet labor camps. He died several months ago at 56 years of age.

America is keenly aware of, and will continue to encourage, the great tide of democratic ideas that now sweeps the globe. We cannot forget decades of tragedy, the tens of millions of lives lost, or the enormity of the suffering inflicted on the innocent. We applaud the courage and faith that have sustained countless people and kept alive the dream of freedom against unthinkable odds. Despite starvation, torture, and murder, the indomitable human spirit will outlast all oppression. We continue to stand ready to cooperate in meeting the just aspirations of the oppressed and needy of the world. We will remain forever steadfast in our commitment to speak out for those who cannot, to seek justice for those to whom it is denied, and to assist freedom-seeking peoples everywhere.

The Congress, by joint resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning July 17, 1988, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities, and I urge them to reaffirm their devotion to the aspirations of all peoples for justice, self-determination, and liberty.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of July, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 88-16159

Filed 7-14-88; 11:37 am]

Billing code 3195-01-M

Editorial note: For the President's remarks of July 13 on signing Proclamation 5840, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 28).

Presidential Documents

Executive Order 12846 of July 13, 1988

Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the International Brotherhood of Electrical Workers

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the International Brotherhood of Electrical Workers.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

Parties empowered by the Act have requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. Section 159a).

Section 9A(c) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

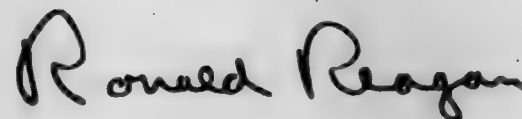
Section 1. Establishment of Board. There is established, effective July 13, 1988, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The Board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. Maintaining Conditions. As provided by Section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. Expiration. The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

THE WHITE HOUSE,
July 13, 1988.



[FR Doc. 88-16160
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Editorial note: For a White House statement, dated July 13, on the labor dispute, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 28).

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Rules and Regulations

Federal Register

Vol. 53, No. 137

Monday, July 18, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; Docket No. R-0642]

Equal Credit Opportunity; Intent to Preempt New York Law

AGENCY: Board of Governors of Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination that a certain provision in New York law, Article 15, section 296-a, is inconsistent with the Equal Credit Opportunity Act and Regulations B. Any provision of state law that is inconsistent with the federal law, unless more protective, is preempted.

The inconsistency in this case has to do with the offering of special purpose credit programs. Both the federal and the New York state law prohibit credit discrimination on the basis of race, color, national origin, religion, sex, marital status or age. (In addition, the federal law bars discrimination based on receipt of income from public assistance programs or the good-faith exercise of any rights under the Consumer Credit Protection Act; and the New York law bars discrimination based on disability.) However, whereas the federal law permits creditors to offer special-purpose credit programs in which program participants may be required to share one or more of these characteristics, New York law permits no exceptions. The Board has made a preliminary determination that the New York law is preempted to the extent that it bars a creditor from offering a special-purpose credit program.

DATE: Comments must be received on or before September 12, 1988.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary,

Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services Courtyard Entrance on 20th Street between C Street and Constitution Avenue, NW., Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0642. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Linda Vespereny, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-2412; for the hearing-impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

SUPPLEMENTARY INFORMATION: (1) *General.* The Board has been asked to determine whether certain provisions of New York law are inconsistent with, and therefore preempted by, the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1601 *et seq.*) and Regulation B (12 CFR Part 202). The request came from an organization set up specifically to guarantee loans made in the United States to overseas Chinese residing in the United States. This request is available for public inspection and copying, subject to the Board's rules regarding availability of information (12 CFR Part 261). Section 705(f) of the ECOA authorizes the Board to determine, for purposes of preemption, whether an inconsistency exists between a provision of the act and a state law relating to credit discrimination.

This notice of proposed preemption is based on a review of the New York and the ECOA provisions. It is issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's rules regarding delegation of authority (12 CFR Part 265).

(2) *Determination of Preemption.* The ECOA and Regulation B prohibit discrimination in any credit transaction on the basis of race, color, national origin, religion, sex, marital status, age, receipt of income from public assistance programs, or the good-faith exercise of any rights under the Consumer Credit Protection Act. However, § 202.8 of the regulation (which implements section 701(c) of the ECOA) permits a creditor

to extend special-purpose credit to individuals who meet certain eligibility requirements, and to consider one or more common characteristics of program participants (for example, race or national origin) when extending credit under these programs.

Under section 705 of the ECOA and § 202.11 of Regulation B, state law provisions that are inconsistent with the requirements of the act and the regulation are preempted. Section 202.11(b)(v) of Regulation B also provides that a state law is inconsistent with the requirements of the federal law to the extent that the state law prohibits inquiries necessary to establish or administer a special-purpose credit program as defined by § 202.8.

(3) *Comparison of New York Law and Regulation B.* Preemption determinations generally are limited to those provisions of state law identified in the request for a Board determination. New York Law, Article 15, section 296-a(1) is the primary focus of this inquiry. The language of this New York provision is set forth below, along with an analysis of it in light of Regulation B.

The relevant portions of section 296-a(1) — "Unlawful discriminatory practices in relation to credit" read as follows:

It shall be an unlawful discriminatory practice for any creditor or any officer, agent or employee thereof:

(b) To discriminate in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any form of credit, on the basis of race, creed, color, national origin, age, sex marital status or disability.

(c) To use any form of application for credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, age, sex, marital status or disability * * *

This section of the New York Human Rights law prohibits credit discrimination based on an applicant's or class of applicants' race, creed, color, national origin, sex, marital status or disability. Moreover, creditors may not make any record or inquiry regarding these characteristics. Based on the Board's analysis and discussions with officials of New York agencies, neither this nor any other section of the New York law appears to permit exceptions.

The Board has made a comparison of these provisions—New York statute section 296-a(1) (b) and (c)—to § 202.8 of the Regulation B, which implement section 701(c) of the federal statute. Section 202.8 allows for taking a prohibited basis into account when certain special-purpose credit programs are involved. It allows creditors to offer credit assistance programs authorized by federal or state law, or established by a not-for-profit organization, for the benefit of an economically disadvantaged class of persons. It allows not-for-profit organizations to offer credit assistance programs for the benefit of their members. In addition, for-profit organizations may provide special-purpose credit programs to meet special social needs if the programs are administered pursuant to a written plan that identifies the class of persons the particular program is designed to benefit. In these special-purpose credit programs, participants may be required to share one or more common characteristics, such as race, national origin, or sex. If participants are required to possess a common characteristic, the creditor may request and consider information regarding that particular characteristic.

Under New York law the establishment of a special-purpose credit program, though permissible under the ECOA and § 202.8, would be unlawful since section 296-a(1) of the Human Rights law prohibits, without exception, discrimination on the basis of the specified characteristics. Furthermore, creditors are expressly prohibited under New York law from even inquiring about these characteristics.

(4) *Proposed Determination and Effect of Preemption.* Based on its analysis, the Board has made a preliminary determination that the New York law on credit discrimination is inconsistent with federal law, and that it is preempted by the ECOA and Regulation B to the extent of the inconsistency. Thus, if the preliminary determination is ultimately adopted following the comment period, the state of New York would be barred from prohibiting special-purpose credit programs that are permissible under federal law.

The Board makes no determination, however, as to whether a particular program qualifies as a special-purpose credit program under Regulation B. As explained in comment 8(a)-1 of the official staff commentary to the regulation (12 CFR Part 202, Supp. 1) the agency or creditor administering or offering the loan program must make the determination.

(5) *Comment Requested.* Interested persons are invited to submit comments regarding the proposed finding that the New York statute section 296-a is preempted by ECOA and Regulation B. After the close of the comment period and an analysis of the comments received, notice of final action will be published in the Federal Register.

Board of Governors of the Federal Reserve System, July 11, 1988.
William W. Wiles,
Secretary of the Board.
[FR Doc. 88-10025 Filed 7-15-88; 8:45 am]
BILLING CODE 3210-01-01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-16-AD; Amdt. 39-5977]

Airworthiness Directives; Cessna Models

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, and FRA150M airplanes, which have undergone any modification which relocated the battery from the firewall to the aft fuselage, and, for Models 150, 150A, 150B, and 150C airplanes, from its location just aft of the baggage compartment aft bulkhead to any other aft position. The AD requires securing the battery to battery contactor cable to the battery box cover lock pin. This action is necessary to prevent chafing of this cable against the elevator up cable, possible failure of the elevator cable, subsequent loss of elevator control and possible loss of the airplane.

DATES: Effective date: August 3, 1988.
Compliance: Within the next 25 hours time-in-service after the effective date of this AD.

ADDRESSES: Background information pertinent to this AD is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, ACE-120W, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4400.

SUPPLEMENTARY INFORMATION: A recent fatal accident involved a Cessna Model

150D airplane which had undergone a modification that relocated the battery box from the firewall to the aft fuselage. The up elevator control cable was found to have chafed against the battery to battery contactor cable such that the insulation on the latter cable was destroyed resulting in an electrical short circuit of the battery cable. This produced sufficient electrical resistance and subsequent heat to cause the up elevator cable to fail. Inspection of other airplanes with similar modifications indicates that this condition could develop on these airplanes.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the battery to battery contactor cable be secured to the battery cover lock pins on Cessna Models 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, and FRA150M airplanes which have undergone any modification that relocated the battery from the firewall to the aft fuselage, and, for Models 150, 150A, 150B, 150C airplanes, from its location just aft of the baggage compartment aft bulkhead to any other aft position. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12812, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not major under section 6 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final

regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to all Models 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, and FRA150M (all serial numbers) airplanes which have undergone any modifications which have relocated the battery from the firewall to the aft fuselage, and to the Models 150, 150A, 150B, and 150C (all serial numbers) airplanes which have undergone any modifications in which the battery has been moved from its location just aft of the baggage compartment aft bulkhead to any other aft position.

Compliance: Within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the up elevator cable, accomplish the following:

(a) Tie the battery to battery contactor cable to the lock pin which attaches the battery box cover to the battery box using either MIL-C-5649 cord, or a MS17821 or MS3367 tiedown strap to achieve a minimum of one inch clearance between the battery cable and the elevator up cable.

(b) Visually inspect the battery cable and elevator cable for damage. Prior to further flight repair any such damage found.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4400.

All persons affected by this directive may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 3, 1988.

Issued in Washington, DC on July 8, 1988.
M.C. Beard,
Director of Airworthiness, AWS-1.
[FR Doc. 88-10031 Filed 7-15-88; 8:45 am]
BILLING CODE 4910-12-01

14 CFR Part 39

[Docket No. 88-CE-05-AD; Amdt. 39-5978]

Airworthiness Directives; de Havilland Model DHC-3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to de Havilland DHC-3 airplanes which supersedes AD 85-11-01, Amendment 39-5071. This superseded AD required initial and repetitive checks of the security of engagement of the utility seat front leg with the floor rail until a positive locking modification is installed. Subsequent to the issuance of AD 85-11-01, it was realized that the AD did not provide for the above checks each time the folding seat is moved from the stowed to the deployed position; this AD includes such a requirement. This action is deemed necessary to address this condition to ensure the continuing airworthiness of the airplane.

DATES: Effective date: August 27, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 3/42, Revision A, dated September 18, 1987, applicable to this AD, may be obtained from the de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5, telephone (416) 633-7310. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD, applicable to de Havilland Model DHC-3 airplanes, requiring initial and repetitive checks of the security of attachment of the seat front leg with the floor rail and a check each time the seats are moved from the stowed to the

deployed position, until Modification No. 3/932 in S/B No. 3/42, Revision A, dated September 18, 1987, is installed, was published in the Federal Register on February 8, 1988 (53 FR 3603). The proposal resulted from the realization that AD 85-11-01, Amendment 39-5071, was inadequate by not providing checks of the seat engagement with the floor rail each time the seats are moved from the stowed to the deployed position. De Havilland issued S/B No. 3/42, Revision A, dated September 18, 1987, and Transport Canada issued Canadian AD CF-85-03 R1, effective April 24, 1986. Both publications require an additional check of the seat front leg each time a seat is moved from the stowed to the deployed position.

Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, made this service bulletin and the actions recommended therein by the manufacturer mandatory by issuance of Transport Canada AD CF-85-03 R1, to ensure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the designs of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States. The FAA examined the available information related to the issuance of S/B No. 3/42, Revision A, dated September 18, 1987, and the issuance of AD CF-85-03 R1 by Transport Canada, and concluded that the condition addressed by S/B No. 3/42, Revision A, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves approximately 42 de Havilland DHC-3 airplanes in the United States registry at an approximate annual cost of \$40 for a check of each airplane. The total cost for each check of the fleet is estimated to be \$1,680 to the

private sector. The cost of compliance with the AD is so small that the expense of compliance with not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*) which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action: (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADONIS".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:
Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-440, January 12, 1983); and 14 CFR 11.60.

2. By adding the following new AD:
de Havilland: Applies to Model DHC-3 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished in accordance with AD 85-11-01, Amendment 39-5071.

To prevent disengagement of the folding utility seat forward leg from the floor mounting rail, which could result in hazards to seat occupants from an inadequately restrained seat during a crash, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, and at subsequent intervals of 50 hours TIS, attempt to move the lower end of each leg sideways into the open part of the keyhole slot using as much force as can be exerted by hand. If the leg can be released from the keyhole slot, remove the seat from service until de

Havilland Modification No. 3/932 is incorporated. (This modification is contained in de Havilland Service Bulletin No. 3/42, Revision A, dated September 18, 1987).

(b) Repeat the check in Paragraph (a) of this AD each time the seats are moved from the stowed to deployed position.

(c) The check required by Paragraph (b) of this AD may be accomplished by a flightcrew member, certificated under FAR 61 or FAR 63 rules, briefed on the procedure.

Note: When the checks required by Paragraph (b) of this AD are accomplished by a flightcrew member pursuant to the restrictions specified in Paragraph (c) of this AD, maintenance records must be made as required by FAR 43.9 and those records must be maintained as required by FAR 91.173, 121.360, or 135.439 as applicable.

(d) When Modification No. 3/932 is installed in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" of de Havilland S/B No. 3/42, Revision A, on each seat, subsequent checks required by this AD are no longer required.

(e) An equivalent means of compliance may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, FAA, New England Region, 101 South Franklin Avenue, Valley Stream, New York 11581.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310, or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 85-11-01, Amendment 39-5071.
This amendment becomes effective on August 27, 1988.

Issued in Washington, DC on July 8, 1988.
M.C. Beard,
Director of Airworthiness, AWS-1.
[FR Doc. 88-16032 Filed 7-15-88; 8:45 am]
BILLING CODE 4910-13-28

FEDERAL TRADE COMMISSION

16 CFR Part 13

(Docket No. 9195)

Massachusetts Board of Registration in Optometry; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Final order.

SUMMARY: This Final Order requires the Massachusetts board to allow truthful advertising by optometrists in the state, requires the optometry board to repeal its current regulation banning

advertising of affiliations between optometrists and optical retailers, and is also required to send a copy of the order to all optometrists currently licensed in Massachusetts and to all new applicants for five years.

DATE: Complaint issued July 8, 1985.
Final Order issued June 13, 1988.¹

FOR FURTHER INFORMATION CONTACT: Elizabeth Hilder, FTC/S-3115, Washington, DC 20580. (202) 326-2545.

SUPPLEMENTARY INFORMATION: In the Matter of Massachusetts Board of Registration in Optometry. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing And Intimidating: § 13.346 Competitors; § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.386 To control marketing practices and conditions. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication; § 13.533-60 Release of general, specific, or contractual restrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Optometrists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azucena, Andrew J. Strenio, Jr.

In the Matter of Massachusetts Board of Registration in Optometry.

[Docket No. 9195]

Final Order

This matter has been heard by the Commission upon the cross-appeals of Respondent, Massachusetts Board of Registration in Optometry, and Complaint Counsel from the Initial Decision, and upon briefs and oral argument in support of and in opposition to the appeals. For the reasons stated in the accompanying Opinion, the Commission has determined to affirm in part and reverse in part the Initial Decision. Accordingly, the Commission enters the following order.

¹ Copies of the Complaint, Initial Decision, and Opinion of the Commission are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, N.W., Washington, DC 20580.

I
It is ordered that for the purpose of this order, the following definitions shall apply:

A. "Board" shall mean the Massachusetts Board of Registration in Optometry, its officers, committees, representatives, agents, employees, and successors.

B. "Discounted price" shall mean a price that is less than the price the person or organization usually charges for the good or service.

C. "Disciplinary action" shall mean:
1. The revocation or suspension of, or refusal to grant, a license to practice optometry in Massachusetts, or the imposition of a reprimand fine, probation, or other penalty or condition; or

2. The initiation of an administrative, criminal, or civil proceeding.
D. "Optical good" shall mean any commodity for the aid or correction of visual or ocular anomalies of the human eyes, such as lenses, including contact lenses, spectacles, eyeglasses, eyeglass frames, and appliances.

E. "Optometric service" shall mean any service that a person duly registered and licensed to practice optometry under Mass. Gen. Laws Ann. ch. 112 § 66 *et seq.*, or any future recodification thereof, is authorized to provide pursuant to those statutory provisions.

F. "Price advertising" shall mean advertising information about the price of any optometric service or optical goods.

II

It is further ordered that the Board, in or in connection with its activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, shall cease and desist from, directly or indirectly, or through any rule, regulation, policy, disciplinary action or other conduct:

A. Prohibiting, restricting, impeding, or discouraging any person or organization from advertising or offering a discounted price or from otherwise engaging in price advertising;

B. Prohibiting, restricting, impeding, or discouraging the advertising or publishing of the name of an optometrist or the availability of an optometrist's services by a person or organization not licensed to practice optometry;

C. Prohibiting, restricting, impeding, or discouraging any advertising that uses testimonials and advertising that the Board believes is sensational or flamboyant;

D. Inducing, urging, encouraging, or assisting any person or organization to

take any of the actions prohibited by this Part.

Nothing in this order shall prevent the Board from adopting and enforcing reasonable rules, or taking disciplinary or other action, to prevent advertising that the Board reasonably believes to be fraudulent, false, deceptive, or misleading within the meaning of Massachusetts General Laws, Chapter 112, Sections 71 and 73A, or that the Board reasonably believes to be otherwise unlawful under Massachusetts General Laws, Chapter 112, Section 73A, or any future recodification thereof.

III

It is further ordered that this order shall not be construed to prevent the Board from engaging in activity protected under the First Amendment to the United States Constitution to petition for legislation concerning the practice of optometry.

IV

It is further ordered that the Board shall:

A. Within Sixty (60) days after the date that this order becomes final, institute procedures to repeal 246 C.M.R. § 5.07(3), and complete such repeal within a reasonable time thereafter;

B. Distribute by mail a copy of this order, and executed Appendix:
1. To each person licensed to practice optometry in Massachusetts within one (1) year after the date this order becomes final;

2. Within thirty (30) days after this order becomes final, to each person whose application to practice optometry in Massachusetts is pending, and to each person who applies for five (5) years thereafter, within sixty (60) days after the filing of the application; and

3. To the Massachusetts Optometric Association, within sixty (60) days after the date this order becomes final;

C. Within one hundred twenty (120) days after the date that this order becomes final, and annually for a period of five (5) years on or before the anniversary of the date on which this order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner in which the Board has complied with this order;

D. For a period of five (5) years after the date that this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, all documents and records containing any reference to any matter covered by this order.

By the Commission, Commissioner Strenio concurring.

C. Landis Plummer,
Acting Secretary.

Appendix

The Federal Trade Commission has issued an order against the Massachusetts Board of Registration in Optometry. This order provides that the Board may not prohibit or restrict:

1. Offering, or truthful advertising that offers, discounted fees for goods and services provided by optometrists, or other truthful price advertising;

2. Truthful advertising of an optometrist's name and the availability of his or her services by retail sellers of optical goods or other persons not licensed to practice optometry;

3. Advertising that uses testimonials or that the Board believes is sensational or flamboyant.

The order does not affect the Board's authority to prohibit advertising that is fraudulent, false, deceptive, or misleading, or advertising that otherwise violates Massachusetts statutes.

Pursuant to the Federal Trade Commission's order, the Board has undertaken to repeal 246 C.M.R. § 5.07(3), which states, in part, that a "licensee shall not permit or authorize the use of his name, professional ability or services by any person or establishment not duly authorized to practice optometry."

In conformity with the Federal Trade Commission's order, you are advised that the prohibition on advertising gratuitous services contained in 246 C.M.R. § 5.11(1)(b) does not prohibit all advertising of gratuitous services. It only applies to those advertisements of gratuitous services prohibited by Massachusetts law, specifically M.G.L. c. 112 s. 73A. This statute prohibits "in any newspaper, radio, display sign or other advertisements . . . any statement containing the words 'free examination of eyes', 'free advice', 'free consultation', 'consultation without obligation', or any other words or phrases of similar import which convey the impression that eyes are examined free." The Board's rule is no broader than that statutory prohibition.

Pursuant to 246 C.M.R. § 5.11(6), the Board may require reasonable substantiation of a licensee's usual fees for services or goods, for the purpose of preventing the false, deceptive, or misleading advertisement of discounted fees by a licensee.

For more specific information, you should refer to the order itself, a copy of which is enclosed.

Chairman, Massachusetts Board of Registration in Optometry.
[FR Doc. 88-18086 Filed 7-15-88; 8:45 am]
BILLING CODE 8750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25591A; File Nos. 57-22-57, 4-308, SR-NYSE-86-17, and SR-PSE-84-23]

Voting Rights Listing Standards; Disenfranchisement Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: On July 12, 1988, the Commission issued a release adopting Rule 19c-4 under the Securities Exchange Act of 1934 at 53 FR 26376 (July 12, 1988). This document corrects the concurring statement of Commissioner Fleischman that was appended to the rule.

FOR FURTHER INFORMATION CONTACT: Amy N. Kroll, Counsel to Commissioner Fleischman (202) 272-2092.

Accordingly, in FR Doc. 15609, in the issue of July 12, 1988, page 26386, second sentence of the first full paragraph in column 3, the language for the concurring statement of Commissioner Fleischman is corrected to read as follows:

"Recognizing that application, *i.e.*, interpretation, of its own rule will as always fall in the first instance to each of the exchanges and the NASD, paragraph (f) of Rule 19c-4 admonishes those organizations to adhere to interpretive policies 'consistent with' and 'otherwise in furtherance of' ¹⁰ the broad purposes of the Exchange Act to which Rule 19c-4 is directed."

July 13, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16103 Filed 7-15-88; 1:45 pm]

BILLING CODE 8010-01-M

¹⁰ Rule 19c-4(f).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 292, and 375

[Order No. 489; Docket No. RM87-13-000]

Implementation of Section 8 of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants With Projects at a New Dam or Diversion Seeking Benefits Under the Public Utility Regulatory Policies Act of 1978

Issued: July 11, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.
ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing a hydroelectric license or exemption applicant with a project at a new dam or diversion that is seeking benefits under section 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 824a-3 (1982)). In promulgating these regulations, the Commission is implementing section 8 of the Electric Consumers Protection Act of 1986 (ECPA) and terminating an interim rule currently in effect in Docket No. RM87-8-000 (52 FR 5276 (Feb. 20, 1987)).

EFFECTIVE DATE: September 10, 1988.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this final rule is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000,

825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) amends its regulations governing a hydroelectric license or exemption applicant with a project at a new dam or diversion that is seeking benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ In promulgating these regulations, the Commission implements section 8 of the Electric Consumers Protection Act of 1986 (ECPA).² In addition, the Commission terminates one interim rule currently in effect.³

II. Background

Section 210 of PURPA requires electric utilities to sell electricity to, and purchase electricity from, qualifying small power production facilities. The Federal Power Act (FPA) defines "small power production facility" to include facilities with a power production capacity of 80 megawatts or less that produce electric energy solely by the use of renewable resources.⁴ The Commission has interpreted "renewable resources" to include water used at a hydroelectric project located at either an existing dam or a new dam or diversion.⁵ Therefore, a small hydroelectric project qualifies as a "small power production facility" and may seek PURPA benefits.⁶

A. Section 8 of ECPA

Section 8(a) of ECPA amends section 210 of PURPA to add a new section 210(j). Section 210(j) establishes three new environmental requirements that a hydroelectric project located at a new dam or diversion must satisfy before it can qualify for PURPA benefits. In addition, section 8(e) of ECPA imposes a moratorium on PURPA benefits for such projects. The purpose of the moratorium

¹ 16 U.S.C. 824a-3 (1982).

² Pub. L. No. 99-498; 100 Stat. 1243 (Oct. 10, 1986).

³ Hydroelectric Applicants Seeking Benefits Under section 210 of the Public Utility Regulatory Policies Act of 1978 for Projects Located at a New Dam or Diversion, Docket No. RM87-8-000, 52 FR 5276 (Feb. 20, 1987), III FERC Stats. & Regs. ¶30,729 (Feb. 13, 1987).

⁴ 16 U.S.C. 796(17)(A) (1982).

⁵ Small Power Production and Cogeneration Facilities—Qualifying Status, 45 FR 17059 at 17066 (Mar. 20, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,134 (Mar. 13, 1980).

⁶ The term "PURPA benefits" refers to the provision in section 210 of PURPA that requires electric utilities to purchase electricity from, and sell electricity to, any qualifying facility.

is to allow Congress time to evaluate whether PURPA benefits should continue to be extended to hydroelectric projects located at new dams or diversions (210(j) projects). Section 8(d) of ECPA requires the Commission to study whether PURPA benefits should be available to these facilities. The Commission will submit the results of its study to Congress, and Congress will then have one full session to consider the issue. The moratorium on PURPA benefits will end at the expiration of the first full session in which the Commission submits its report to Congress.

Under PURPA section 210(j), PURPA benefits will not be available to hydroelectric projects located at new dams or diversions unless the project meets each of the following requirements:

(1) *No Substantial Adverse Effects.* At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project.

(2) *Protected Rivers.* At the time application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

(3) *Fish and Wildlife Terms and Conditions.* The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

While section 8 of ECPA establishes three new requirements for PURPA

benefits, it also creates four exceptions to the new requirements and to the moratorium. Any project which qualifies for one of the exceptions may seek PURPA benefits without complying with one or more of the new requirements. Any project that qualifies for one of the exceptions is also exempted from the moratorium.⁷

The first exception to these new requirements is embodied in section 210(j) of PURPA itself. This exception applies to any new dam or diversion project that is located at a government dam where non-Federal hydroelectric development is permissible (government dam exception). Any project in this category is exempted from the moratorium and may seek PURPA benefits without complying with any of the new requirements.⁸ The remaining exceptions, in section 8(b) of ECPA, provide relief to developers who had relied on existing law and had expended a significant amount of money and effort on their projects at the time of ECPA's enactment. The remaining exceptions in section 8(b) of ECPA are:

1. None of the three new requirements applies if the application was filed, and accepted for filing by the Commission, before October 16, 1986, the date of ECPA's enactment (section 8(b)(2) of ECPA).

2. Only the protected rivers requirement (section 210(j)(2) of PURPA) applies if the application was filed before October 16, 1986, and accepted for filing by the Commission between October 16, 1986, and October 16, 1989 (section 8(b)(3) of ECPA).⁹

3. The fish and wildlife agency requirement (section 210(j)(3) of PURPA) does not apply if the application was filed after October 16, 1986, and if the Commission finds, based on a petition filed by the applicant within 18 months from October 16, 1986, that the applicant had (prior to ECPA's enactment)

⁷ The result of this framework is that the new requirements can have immediate application even though there is a moratorium on PURPA benefits. For example, one of the exceptions only excepts a project from one of the new requirements. Such a project would be exempt from the moratorium and would be able to seek PURPA benefits. However, the project still would have to comply with remaining requirements in section 210(j) of PURPA.

⁸ This "exception", unlike the exceptions in section 8(b) of ECPA, is a categorical exception and is not keyed to the timing of any event. By definition section 210(j) does not apply to new dams or diversions that are located at government dams where non-Federal hydroelectric development is permissible.

⁹ For projects that qualify for this exception, the Commission is contacting the appropriate state agencies and requesting that the agencies determine if such projects are located on any natural watercourse as described in section 210(j)(2) of PURPA.

committed substantial monetary resources to development of the project and to the diligent and timely completion of all filing requirements of the Commission (section 8(b)(4) of ECPA).

The exception in section 8(b)(4) only excepts an applicant from the terms and conditions of fish and wildlife agencies under section 210(j)(3) of PURPA; it does not exempt the applicant from the terms and conditions set by fish and wildlife agencies under section 10(j) or 30(c) of the FPA.¹⁰

B. The Commission's Environmental Responsibilities under the FPA

As mentioned above, Congress established three new environmental requirements that must be satisfied before certain small power production facilities (*i.e.*, hydroelectric projects located at new dams and diversions) can be qualifying facilities (QFs) under PURPA. In addition to administering the new environmental requirements in section 210(j) of PURPA, the Commission has the responsibility under the FPA to ensure that all hydroelectric projects are environmentally sound. Accordingly, the Commission's hydroelectric licensing regulations require the submission of substantial amounts of environmental information, and every hydroelectric project at a new dam or diversion must comply with these regulations ¹¹ regardless of whether PURPA benefits are sought.

The Commission licenses hydroelectric projects pursuant to section 4(e) of the Federal Power Act (FPA).¹² In order to issue a license, the

¹⁰ If an applicant qualifies for the exception from the fish and wildlife agency requirement in section 210(j)(3) of PURPA, the applicant is still subject to either recommended terms and conditions set by fish and wildlife agencies under section 30(c) of the FPA. Congress intended FPA section 10(j) to apply to all applications for licenses except for those applications covered by PURPA section 210(j)(3). The Conference report which accompanies ECPA states: "Section 10 of the Federal Power Act, as amended by [ECPA], shall apply to all projects . . . for which a license is issued . . . except that section 10(j) will not apply if section 210(j)(3) of PURPA . . . applies to the project." H.R. Rep. No. 934, 99th Cong., 2d Sess. 32 (1986).

¹¹ Congress also did not intend to alter the application of section 30(c) of the FPA. Section 8(c) of ECPA requires that, "Nothing in this Act [ECPA] shall affect the application of section 30(c) of the Federal Power Act to any exemption issued after the enactment of this Act." H.R. Rep. No. 934, 99th Cong., 2d Sess. 32 (1986) (emphasis added).

¹² See 18 CFR Part 4 (1967).

¹³ 16 U.S.C. 797(e) (1982).

Commission must find under section 10(a) of the FPA that the project "will be best adapted to a comprehensive plan for improving or developing a waterway¹² The courts interpret this standard to require consideration of the environmental consequences of any proposed project. In *FPC v. Idaho Power Company*,¹⁴ the Supreme Court observed that the Commission is plainly made the guardian of the public domain under section 10(a) of the FPA.¹⁵ In *Idaho v. FPC*,¹⁶ the Court held that:

The test [under the FPA] is whether the project will be in the public interest. And that determination can be made only after an exploration of all the issues relevant to the 'public interest' . . . including the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes and the protection of wildlife.¹⁷

In addition, the term "recreational purposes" has been interpreted to encompass the conservation of natural resources, the maintenance of natural beauty and the preservation of historic sites.¹⁸ Therefore, in deciding whether to issue a license of exemption, the Commission must give serious consideration to the impacts the project will have on the environment including recreation, fish, wildlife, aesthetics and water quality. The Commission's current regulations require submission of substantial amounts of environmental information so that the Commission can fulfill its duties under the FPA. The Commission intends that every applicant with a hydroelectric project at a new dam or diversion seeking PURPA benefits full comply with its hydroelectric licensing regulations.

C. The Interim Rule and Section 8(b)(4) of ECPA

The Commission issued an interim rule on February 13, 1987, that implemented portions of section 8 ECPA.¹⁹ The interim rule was necessary

¹² 16 U.S.C. 803a (1982). The comprehensive plan must include plans for the adequate protection, mitigation and enhancement of fish and wildlife (including related spawning grounds and habitat) and for other beneficial public uses, including irrigation, flood control, water supply and recreational purposes.

¹⁴ 344 U.S. 17 (1952).

¹⁵ *Id.* at 21.

¹⁶ 387 U.S. 428 (1966).

¹⁷ *Id.* at 450.

¹⁸ Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608, 614 (2nd Cir. 1965), cert. denied, 384 U.S. 941 (1966).

¹⁹ *Supra* note 3.

because of a provision in section 8(b)(4) of ECPA. Section 8(b)(4)(A) allows an applicant to be exempted from the fish and wildlife agency requirement in section 210(j)(3) of PURPA if, based on a petition, the applicant can demonstrate a commitment of substantial monetary resources to the project prior to ECPA's enactment. Section 8(b)(4)(A) required the Commission to issue a rule within 120 days from ECPA's enactment promulgating regulations to govern the petition to demonstrate a commitment of substantial monetary resources (CSMR petition). Section 8(b)(4)(B) provides that if an applicant had a preliminary permit and had completed environmental consultations prior to ECPA's enactment, there is a rebuttable presumption that the applicant had committed substantial monetary resources to the project.

Section 8(b)(4)(C) provides that any applicant who has filed a CSMR petition under section 8(b)(4)(A) may file a second petition and receive a preliminary determination on whether the project satisfies section 210(j)(1) of PURPA, which requires that the project not have a substantial adverse effect on the environment. Section 8(b)(4)(C) provides further that if the Commission initially finds that the project will have a substantial adverse effect, the Commission must give the applicant a reasonable opportunity to provide for mitigation of such adverse effects before making a final determination. Finally, section 8(b)(4)(C) provides that if the Commission has notified the State of its initial finding and the State has not taken any action under the protected rivers requirement (section 210(j)(2) of PURPA), the failure to take such action will be the basis for a rebuttable presumption that there is not a substantial adverse effect on the environment related to natural, recreational, cultural, or scenic attributes.

The interim rule defined "commitment of substantial monetary resources" (CSMR) and provided procedures for the filing and processing of a CSMR petition. Applicants had from March 23, 1987 (the effective date of the interim rule) until April 18, 1988 to file a CSMR petition. Three CSMR petitions have been filed with the Commission.²⁰ In

²⁰ City of Harrisburg, applicant for the Dock Sheet Project—Project No. 10418-000 (Pennsylvania), filed a CSMR petition on August 5, 1987; Beaver Creek Hydro, Inc. applicant for the Beaver Creek Project—Project No. 7853-003 (Idaho), filed a CSMR petition on September 28, 1987; and Reeds Creek Hydro, Inc. applicant for the Reeds Creek Project—Project No. 10490-000 (Idaho), filed a CSMR petition on October 1, 1987. However, the license applications

addition to implementing sections 8(b)(4)(A) and 8(b)(4)(B) of ECPA, the Commission implemented (on an interim basis) the remaining exceptions in section 8 of ECPA and the new requirements of section 210(j) of PURPA. The Commission did not implement the provisions of section 8(b)(4)(C) of ECPA in the interim rule; rather, the Commission proposed regulations to implement section 8(b)(4)(C) in a notice of proposed rulemaking that is discussed below. The Commission, in issuing this final rule, revokes the interim rule and terminates Docket No. RM87-8-000.

D. The Notice of Proposed Rulemaking

On October 5, 1987, the Commission issued a notice of proposed rulemaking (NPR) in order to implement remaining portions of section 8 of ECPA.²¹ In the NPR, the Commission proposed filing requirements that would allow the Commission to enforce the new requirements in section 210(j) of PURPA. The Commission also proposed to define "substantial adverse effect on the environment" for the purposes of section 210(j)(1) of PURPA. In addition, the Commission proposed to implement that portion of the exception in section 8(b)(4) of ECPA which was not addressed in the interim rule (*i.e.*, section 8(b)(4)(C)).

The Commission received five comments on the interim rule and ten comments in response to the NPR. Commenters included State agencies, an electric utility and several private associations.²²

III. Discussion

In this final rule, the Commission implements section 8 of ECPA by amending Part 4, Part 292, and Part 375 of its regulations. The Commission merges the regulations in the interim

for the Beaver Creek Project and the Reeds Creek Project have been dismissed by the Commission.

²¹ Implementation of Section 8 of the Electric Consumers Protection Act of 1986: Hydroelectric Applicants with New Dam or Diversion Projects, 52 FR 38460 (Oct. 16, 1987), FERC Stats. & Regs. [Proposed Regulations 1982-1987] § 32,453 (Oct. 5, 1987).

²² Comments on the Interim Rule (Docket No. RM87-8-000) were submitted by the Alabama Power Company and the Montana Department of Fish, Wildlife & Parks. In addition, joint comments were filed by American Rivers, Inc., American Whitewater Affiliation, and Friends of the Earth.

Comments on the NPR (Docket No. RM87-13-000) were submitted by American Whitewater Affiliation, California Save Our Streams Council, Class VI River Runners, Inc., Eastern Professional River Outfitters, National Wildlife Federation, New York State Department of Environmental Conservation, Oregon Department of Energy, and Pocono Whitewater, LTD. In addition, joint comments were filed by American Rivers, Inc. and Friends of the Earth.

rule and the regulations proposed in the NPR into one set of comprehensive regulations governing the requirements of section 210(j) of PURPA. In addition, the Commission makes changes in the regulations in response to the suggestions of commenters. An overview of the regulatory changes is provided below. As adopted, the rule:

- Sets out the provisions of section 210(j) of PURPA and establishes filing requirements to ensure that the Commission has the information it needs to make the required findings. This information includes filing an environmental report that conforms to § 4.41(f) of the Commission's regulations;
- Requires all applicants to state (during the initial stage of pre-filing consultation under § 4.38 of the Commission's regulations) whether or not the applicant intends to seek PURPA benefits and whether the project is located at a new dam or diversion;
- Prohibits applicants who have stated they will not seek PURPA benefits from reversing their statement of intent after the license or exemption has been issued by the Commission.
- Requires all applicants with a hydroelectric power project located at a new dam or diversion that seek PURPA benefits to perform the environmental studies in § 4.38(b)(2)(i)(D)-(F) of the Commission's regulations.
- Revises the definitions of "substantial adverse effect of the environment"; and
- Revises the regulations implementing the exceptions contained in section 8(b)(4)(C) of ECPA.

A. Public Reporting Burden

Except for the specific information collection burdens discussed below, this rule does not substantially change existing Commission regulations for hydroelectric license or exemption applicants. Section 8 of ECPA attaches new significance to the status of a project as either an "existing dam" or a "new dam or diversion" for the purposes of obtaining PURPA benefits. Consequently, new § 4.38(b)(1)(vi)(A) requires every applicant to state whether or not it intends to seek PURPA benefits. If the applicant intends to seek PURPA benefits it must also state whether the dam is an existing dam or a new dam or diversion.²³ The information collection requirement of stating whether or not the applicant intends to seek PURPA benefits represents a minimal burden that is estimated to be 5 minutes per response. This requirement will affect all

²³ See, new § 4.38(b)(1)(vi)(B).

hydroelectric applicants with projects that have a capacity of 80 MW or less and the number of these respondents is estimated to be 76 (per year).

Section of ECPA imposed a moratorium on PURPA benefits. However, as noted earlier, any project that qualifies for one of the statutory exceptions is exempted from the moratorium. Consequently, except for the new requirement in § 4.38(b)(1)(vi)(A) discussed above, the information collection burdens imposed by this rule only apply to applicants that can qualify for one of the exceptions in section 8 of ECPA.

For an applicant that qualifies for the exception in section 8(b)(3) of ECPA, the information collection burden is estimated to be 16 hours per response. The number of likely respondents is 7. For an applicant that qualifies for the exception in section 8(b)(4) of ECPA, the information collection burden is estimated to be 40 hours per response. The number of likely respondents is 1. Two of the exceptions in section 8 of ECPA except applicants from all of the requirements in section 210(j) of PURPA. Therefore, there is no information collection burden for such applicants.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis, (202) 357-8173); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission.]

B. Implementation of Section 210(j) of PURPA

The Commission will make the findings required by section 210(j) of PURPA within the context of its current environmental review process. Any project within the guidelines of section 210(j) of PURPA is subject to specific environmental findings. The Commission, therefore, amends its regulations to require that all projects within the purview of section 210(j) be subject to specific filing requirements under Part 4 and Part 292 of its regulations.

Many commenters in this rulemaking proceeding express a general concern whether the proposed regulations would ensure that the Commission would receive the information needed to make the findings under section 210(j) of PURPA. These commenters apparently believe that the proposed regulations implementing section 210(j) would

subject projects to less environmental scrutiny than would otherwise be the case if PURPA benefits were not being sought. This idea is incorrect and misinterprets the relationship between the Commission's regulations implementing section 210(j) of PURPA and the Commission's hydroelectric licensing regulations under the FPA. As noted earlier, the Commission is already charged with the duty under the FPA to ensure that hydroelectric projects are environmentally sound. The regulations implementing section 210(j) of PURPA do not take the place of, but are in addition to, the Commission's hydroelectric licensing regulations. The Commission intends that every applicant with a hydroelectric project located at a new dam or diversion who seeks PURPA benefits satisfy all the applicable requirements in Part 4 of the Commission's regulations, as well as the environmental requirements of section 210(j) of PURPA.

Prefiling Consultation Requirements

The Commission's hydroelectric licensing regulations contain general conditions for all hydroelectric license or exemption application.²⁴ These general conditions include prefiling consultation requirements contained in § 4.38 of the Commission's regulations. Section 4.38 requires applicants to consult with each appropriate Federal and state agency before submitting its application to the Commission, and the consultation is broken down into three stages. The initial stage of consultation requires the applicant to provide each appropriate agency with detailed information regarding the project. Information required in the initial stage includes the identification of the environment to be affected, the significant resources present, and any environmental protection, mitigation, or enhancement plans.²⁵

The second stage of consultation requires the applicant to conduct any studies that are necessary for the Commission to make an informed decision regarding the merits of the application. Studies must be conducted if the results are needed to determine the impact of the project on important natural or cultural resources, or are necessary to determine suitable mitigation, or are necessary to minimize impacts to a significant resource (e.g., wild and scenic river, anadromous fish, endangered species, caribou migration routes).²⁶

²⁴ See 18 CFR 4.30-4.39 (1987).

²⁵ 18 CFR 4.38(b)(1)(iv) (1987).

²⁶ 18 CFR 4.38(b)(2)(i)(D)-(F) (1987).

The third stage of pre-filing consultation occurs when the applicant files its application for a license or exemption. The applicant must serve a copy of the application on each agency it has consulted and must document in Exhibit E of its application that all three stages of the consultation process have been fully satisfied.³⁷ In order to comply with ECPA and section 210(j) of PURPA, the Commission amends § 4.36 of its regulations concerning pre-filing consultation requirements.

(i) *Statement of intent to seek PURPA benefits; verification of new dam or diversion.* Prior to ECPA, there was no distinction between new dams and diversions and existing dams for the purpose of obtaining PURPA benefits. ECPA introduced this distinction, imposing three new environmental requirements on projects located on new dams or diversions. Therefore, in order to comply with ECPA, the Commission must verify whether or not a project is located at a new dam or diversion. In the NOPR, the Commission proposed that every applicant for a project with a power capacity of 80 megawatts (MW) or less state in its application whether or not PURPA benefits will be sought, and if so, whether the project is located at a new dam or diversion.

All commenters were in favor of this requirement and agree with the Commission's goal of preventing an applicant from deliberately circumventing the requirements of section 210(j) by initially indicating an intent not to seek PURPA benefits and then at some point in the future seeking PURPA benefits as a project located at an "existing dam." The New York State Department of Environmental Conservation (NYDEC), while in favor of the requirement, also suggests that an applicant be required to state its intention to seek PURPA benefits at the time pre-filing consultation begins under § 4.36 of the Commission's regulations.³⁸

The Commission agrees with NYDEC and amends its regulations to require an applicant to state, during the initial stage of pre-filing consultation, whether it intends to seek PURPA benefits, and if so, whether the project is located at a new dam or diversion.³⁹ Congress

³⁷ 18 CFR 4.36(b)(3) (1987). In addition, § 4.36(b)(3) requires the applicant to include in Exhibit E a copy of the water quality certification under section 401 of the Water Pollution Control Act (Clean Water Act) and any agency letters containing comments, recommendations, or proposed terms and conditions.

³⁸ Comments of NYDEC, at p. 1.

³⁹ See new § 4.36(b)(1)(iv).

intended that the Commission obtain the views of the various Federal and state environmental agencies on the issue of whether a dam qualifies as a new dam or diversion.⁴⁰ Requiring an applicant to notify the appropriate agencies whether it intends to seek PURPA benefits and whether the project is a new dam or diversion will ensure that the Commission receives the views of those agencies on that issue.

(ii) *Reversal of statement of intent not to seek PURPA benefits.* In the NOPR, the Commission proposed that if, prior to the issuance of a license or exemption, an applicant filed a statement reversing its intent not to seek PURPA benefits, the Commission would treat the statement as a material amendment to the application. Treating a reversal of intent in this manner would also change the acceptance date of the application to the date on which the amendment was filed. The Commission would then consider the amended application a new filed for the following purposes:

- (1) Reissuing public notice of the application (§ 4.32 of the Commission's regulations—Acceptance for filing or rejection) 18 CFR 4.32 (1987).
- (2) Timeliness (§ 4.36 of the Commission's regulations—Competing applications) 18 CFR 4.36 (1987), and
- (3) Disposal of competing applications (§ 4.37 of the Commission's regulations—Rules of preference among competing applications) 18 CFR 4.37 (1987).

In addition, the Commission proposed to rescind any acceptance letter for the application which may have been issued. As a consequence, the applicant would be subject to a new notice period and might lose priority among competing applicants.

The New York State Department of Environmental Conservation (NYDEC) suggests that applicants should not be given the opportunity to seek PURPA benefits after the initial stage of consultation.⁴¹ The Commission disagrees with NYDEC and will allow an applicant to reverse its statement of intent up until the time the license or exemption is issued. However, the Commission believes that the pre-filing consultation process under § 4.36 of its regulations is important for gathering the information necessary to comply with section 8 of ECPA. Accordingly, if an applicant were to reverse its statement of intent not to seek PURPA benefits prior to the issuance of a license or exemption, the Commission

⁴⁰ H.R. Rep. No. 904, 96th Cong., 2d Sess. 30 (1980).

⁴¹ Comments of NYDEC at p. 2.

will require the applicant to repeat the consultation process under § 4.36 of its regulations.⁴²

The Commission also requested comments in the NOPR on whether it should, after the issuance of a license or exemption, prohibit an applicant from seeking PURPA benefits if the applicant reverses its statement of intent not to seek PURPA benefits. The National Wildlife Federation (NWF) believes the regulations should explicitly prohibit an applicant from initially stating that it will not seek PURPA benefits and later obtaining such benefits at the same site.⁴³ The Commission agrees with the NWF and adopts a regulation that prohibits applicants from seeking PURPA benefits after a license or exemption has been issued.⁴⁴

(iii) *Environmental studies.* The second stage of pre-filing consultation requires an applicant to conduct any studies that are necessary for the Commission to make an informed decision regarding the merits of the application. Section 4.38(b)(2)(i) requires an applicant to perform studies prior to filing an application if the results: (1) Are needed to determine the impacts of the project on important natural or cultural resources; (2) are necessary to determine suitable mitigation; or (3) are necessary to minimize impacts to a significant resource. The Commission anticipates that environmental studies are likely to be required under § 4.38(b)(2)(i)(D)–(F) of its regulations for the Commission to make the required findings under section 210(j) of PURPA. Therefore, the Commission references the environmental studies that may be required under Part 4 of its regulations in new § 292.208(c)(1)(i) of its regulations.⁴⁵

2. Other Filing Requirements

Under section 210(j) of PURPA, a hydroelectric project located at a new dam or diversion must not have a substantial adverse effect on the environment (section 210(j)(1)), must not be located on a protected river (section 210(j)(2)), and must meet the terms and conditions set by fish and wildlife agencies (section 210(j)(3)). In its comments on the NOPR, the NWF states

⁴² See new § 4.32(c)(2)(i)(A).

⁴³ Comments of NWF at p. 2.

⁴⁴ See new § 4.32(c)(2)(ii). As mentioned earlier, if an applicant reverses its intent not to seek PURPA benefits prior to issuance of the license or exemption, § 4.32(c)(2)(i) provides that the Commission will treat the reversal of intent as an amendment of the application under § 4.36, and the applicant must satisfy all the requirements in § 292.208 of the Commission's regulations.

⁴⁵ See new § 292.208(c)(1)(i).

that the Commission should promulgate a separate section of its regulations governing the findings it must make under section 210(j) of PURPA.⁴⁶ The Commission concurs with NWF and has restructured its regulations by merging the regulations in the interim rule and the regulations in the NOPR into one set of regulations governing the requirements in section 210(j) of PURPA. New § 292.208(a) provides that a hydroelectric project located at a new dam or diversion can be a qualifying facility only if it meets the requirements in §§ 292.208, 292.203, and Part 4 of the Commission's regulations. Section 292.208(b) sets out the statutory requirements of section 210(j) of PURPA and § 292.208(c) contains mandatory filing requirements that the Commission believes are necessary in order for it to make the required environmental findings.

(i) *Filing requirements for purposes of section 210(j)(1).* In order for the Commission to make a finding of no substantial adverse effect, § 292.208(c)(1) mandates that an applicant comply with the applicable licensing requirements in Part 4 of the Commission's regulations. These requirements include completing the pre-filing consultation process under § 4.36 and submitting an environmental report which meets the requirements of § 4.41(f).

Subpart E of Part 4 of the Commission's regulations applies to initial licenses for major unconstructed projects or major modified projects of more than 5 megawatts (MW).⁴⁷ Section 4.41(f) requires an applicant to file an Exhibit E, which is an environmental report. Exhibit E must contain reports on the following environmental attributes: Water use and water quality; fish, wildlife and botanical resources; historic and archeological resources; socio-economic impacts; geological and soil resources; recreational resources; aesthetic resources; land use; and alternative locations, designs, and energy sources. The Commission believes this report is essential to its ability to make the finding in section 210(j)(1) of PURPA.

(ii) *Filing requirements for purposes of section 210(j)(2).* Section 292.208(c)(2) contains filing requirements that pertain to the protected rivers requirement in section 210(j)(2) of PURPA. In their joint comments on the interim rule, American Rivers, American Whitewater Affiliation, and Friends of the Earth (American, et al.) request that the

⁴⁶ Comments of NWF, at pp. 2, 3.

⁴⁷ 18 CFR 4.40–4.41 (1987).

Commission clarify which State river protection programs qualify as wild and scenic rivers systems and indicate the type of State action required to trigger section 210(j)(2)(B) of PURPA.⁴⁸

The filing requirements in §§ 292.208(c) and (d) satisfy the request of American, et al. Section 292.208(c)(2) requires an applicant to state whether the project is located on any segment of a natural watercourse that: (1) is included in, or designated for potential inclusion in, the National Wild and Scenic River System⁴⁹ or a State wild and scenic river system; or (2) crosses an area designated under, or recommended for designation under, the Wilderness Act;⁵⁰ or (3) is one that the State, either by or pursuant to an act of the State legislature, has determined to possess unique, natural, recreational, cultural, or scenic attributes that would be adversely affected by hydroelectric development. If a project is located on a natural watercourse that meets any of the above conditions, the applicant must provide the Commission with the date on which the natural watercourse became protected, the statutory authority under which the watercourse was protected, and the Federal or State agency or political subdivision of the State that is in charge of administering the watercourse.⁵¹

3. Definition of New Dam or Diversion

Section 210(k) of PURPA defines new dam or diversion as a "dam or diversion which requires, for purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices)." The proposed definition of new dam or diversion in the NOPR tracked the statutory definition of new dam or diversion in section 210(k) of PURPA.

In its comments on the NOPR, the Oregon Department of Energy (ODE) objects to the proposed definition based on its interpretation of the words "any construction" to include construction unrelated to the impoundment or diversion structure.⁵² In fact, the

⁴⁸ Joint comments of American Rivers, American Whitewater Affiliation, and Friends of the Earth on interim rule (Docket No. RM87-8-000) at p. 2.

⁴⁹ 28 U.S.C. 1271–1278 (1982).

⁵⁰ 16 U.S.C. 1132 (1982).

⁵¹ See new § 292.208(d).

⁵² Comments of ODE at p. 1. ODE's interpretation is based on the placement of the comma which sets off the words "any construction" from the rest of the proposed definition of new dam or diversion, (and the absence of a comma after the word "enlargement").

Commission and ODE agree that it is the construction or enlargement of the impoundment or diversion structure which makes a structure a "new dam or diversion." To interpret the words "any construction" to include construction unrelated to the impoundment or diversion structure is unreasonable and would lead to irrational results.⁵³ In addition, such an interpretation would conflict with the current definition of "existing dam" in the Commission's regulations. The Commission uses the same concept of "construction or enlargement of impoundment structures" to determine whether a structure is an existing dam.⁵⁴ The Commission believes it is axiomatic that the words "any construction" in section 210(k) of PURPA refer to construction relating to the impoundment or diversion structure.

(i) *Flashboards.* Under the definition of a new dam or diversion in section 210(k) of PURPA, the addition of flashboards does not preclude a project from seeking PURPA benefits as an existing dam.⁵⁵ In contrast, the addition of flashboards or similar adjustable devices may preclude a project from qualifying for an exemption as an existing dam under the FPA. Section 4.30(b)(6)(ii) of the Commission's regulations defines an existing dam for exemption purposes as "any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project."⁵⁶ The Commission has stated that whether a dam is an "existing dam" is an issue of fact, suited for a case-specific determination.⁵⁷ One factor the

⁵³ Such an interpretation would mean that any construction at an existing dam, including construction unrelated to the impoundment or diversion structure, would make the dam a "new dam or diversion."

⁵⁴ "Existing dam" . . . means any dam . . . which does not require any construction or enlargement of impoundment structures . . . 18 CFR 4.30(b)(6)(i), (ii) (1987).

⁵⁵ Section 210(k) of PURPA provides that "the term new dam or diversion means a dam or diversion which requires, for proposing of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices)" (emphasis added).

⁵⁶ 18 CFR 4.30(b)(ii) (1987).

⁵⁷ See Winchester Water Control District, 24 FERC ¶ 61,267 (1983), *aff'd in pertinent part*, Steamboaters v. FERC, 759 F.2d 362 (9th Cir. 1985); Foundry Associates, 33 FERC ¶ 61,118 (1985).

Commission reviews in determining whether an exemption project is an existing dam is whether there has been a significant change in the original impoundment.⁴⁰ Consequently, whether or not an exemption project can qualify as an existing dam may turn on the question of whether the project historically used flashboards as a part of the original impoundment.⁴¹ The Commission will continue to examine the historical use of flashboards for exemption projects.

(ii) *Reconstruction.* The NYDEC and American Rivers and Friends of the Earth (AR) cite the legislative history of ECPA and request that the Commission establish a mechanism to ensure that before determining whether a dam is a new one, it will obtain the views of the various Federal and state environmental agencies, as well as other interested parties.⁴²

The Commission agrees with NYDEC and AR. Accordingly, new § 4.38(b)(1)(vi) requires an applicant to state during its initial stage of consultation, whether or not the applicant will seek PURPA benefits and whether or not the project is located at a new dam or diversion. Requiring an applicant to provide this information during pre-filing consultation ensures that the Commission will have the views of the appropriate Federal and state agencies on the issue of whether the project qualifies as a new dam or diversion under section 210(k) of PURPA. Interested persons will also have the opportunity to comment on whether the project is a new dam or diversion or an existing dam. The regulations adopted in this rule ensure that an application will contain the information necessary for this determination, and any interested person can always review and comment on the application filed with the Commission.⁴³

4. Definition of "Substantial Adverse Effect on the Environment"

In the NOPR, the Commission proposed to define substantial adverse effects on the environment as,

⁴⁰ Foundry, *supra* note 45, at p. 61,253.
⁴¹ See Robert Z. Walker, 36 FERC ¶ 61,284 (1986) (where altering the historic pattern of the diversion was one of the reasons for denying existing dam status).

⁴² The Conference report states: The conferees presume that before FERC determines whether such dam is a new or existing dam, it will obtain the views of the various Federal and State environmental agencies, and all other interested parties to ensure that, in fact, the particular proposal can qualify as "reconstruction" under the definition. H.R. Rep. No. 934, 99th Cong., 2d Sess. 30 (1986).

⁴³ See 18 CFR 300.108(b)(1) (1987).

Those effects which are characterized by substantial alteration of natural features, existing habitat, recreational uses, water quality or other environmental resources. For the purposes of this section, "substantial alteration" of a particular resource means a change in the resource which results in a modification of the continued use of that resource.⁴⁴

The NWF and AR object to certain aspects of the proposed definition.⁴⁵ NWF suggests that the definition of "substantial adverse effect" should be set out in a separate regulatory section governing the findings the Commission must make under section 210(j) of PURPA. The Commission concurs with NWF and has restructured its regulations implementing section 210(j) of PURPA.⁴⁶ The definition of "substantial adverse effect on the environment" is added to § 292.202 of the Commission's regulations, which contains all the definitions for Part 292, Subpart B of the Commission's regulations.⁴⁷

The NWF and AR also object to the language "a change in the resource which results in a modification of the continued use of that resource."⁴⁸ Both commenters believe that the definition does not take into account a substantial adverse effect on an anticipated future use of a resource (e.g., planned restoration or resource recovery projects). AR also interprets the language to exclude changes in the quality of an affected resource. Specifically, AR believes that a substantial adverse effect can take place without a modification in the use of the resource.⁴⁹

The Commission intends the definition of a substantial adverse effect on the environment to include adverse effects that would diminish the quality of a resource. Consequently, the Commission amends its definition of substantial adverse effect on the environment to read as follows:

Substantial adverse effect on the environment means a substantial alteration in the existing or potential use of, or a loss of,

⁴⁴ Implementation of Section 8 of the Electric Consumers Protection Act of 1986: Hydroelectric Applicants with New Dam or Diversion Projects, 52 FR 38480, 38463, (Oct. 16, 1987); FERC Stats. & Regs. [Proposed Regulations 1982-1987] § 32,453, 33,640-33,649 (Oct. 5, 1987).

⁴⁵ Comments of NWF at pp. 3-4; Comments of AR at pp. 6-7.

⁴⁶ See new § 292.203(c), and §§ 292.206-292.211.

⁴⁷ See new § 292.202(q) (1987).

⁴⁸ Comments of NWF at p. 4; Comments of AR pp. 6-7.

⁴⁹ Comments of AR at p. 7. As an example, AR states that a river could still be used for recreational whitewater rafting after the construction of a hydroelectric project, but the quality of that recreational experience could be significantly diminished.

natural features, existing habitat, recreational uses, water quality or other environmental resources. Substantial alteration of a particular resource includes a change in the environment that substantially reduces the quality of the affected resource.⁵⁰

C. Section 8(b)(4) of ECPA

Section 8(b)(4) of ECPA excepts an applicant from the fish and wildlife agency requirement in section 210(j)(3) of PURPA, if the applicant can demonstrate a commitment of substantial monetary resources to the development of the project prior to October 16, 1986. In the interim rule, the Commission defined a "commitment of substantial monetary resources" as the expenditure of, or commitment to expand, at least 50 percent of the total cost of preparing an application for a license or exemption that is accepted for filing by the Commission. The total cost includes (but is not limited to) the cost of agency consultation, environmental studies, and engineering studies conducted under Part 4 of the Commission's regulations.

The Montana Department of Fish, Wildlife & Parks (Montana) expresses concern "that an applicant is very likely to expend at least 50 percent of its funds on agency consultation and engineering studies before doing any environmental studies, and could, therefore, be exempt from conducting any environmental studies."⁵¹ The Commission disagrees with Montana's conclusion. While it is technically possible for an applicant to spend 50 percent of its funds on agency consultation and engineering studies before doing any environmental studies, an applicant would never be exempt from conducting any environmental studies under the Commission's regulations. The second state of pre-filing consultation in § 4.38 of the Commission regulation requires an applicant to perform any reasonable studies necessary for the Commission to make an informed decision regarding the merits of the application.⁵² Section 4.38(b)(2) requires environmental studies if the results are: (1) Needed to determine the impacts of the project on important natural or cultural resources, (2) necessary to determine suitable mitigation, or (3) necessary to minimize impacts to a significant resource (e.g., wild and scenic river, anadromous fish,

⁵⁰ In response to NWF's and AR's concern regarding restoration or resource recovery projects, the Commission notes that it will consider the impact of the project on a restoration or resource recovery project as part of the record on which the Commission makes its determination on the merits of the application.

⁵¹ Comments of Montana at p. 1.

⁵² See 18 CFR 4.38(b)(2) (1987).

endangered species, caribou migration routes). The Commission believes it is highly unlikely that such environmental studies would not be required for an applicant with a project located at a new dam or diversion seeking PURPA benefits.⁵³

1. Rebuttable Presumption in Section 8(b)(4)(B) of ECPA

Section 8(b)(4)(B) of ECPA provides that any applicant who filed a commitment of substantial monetary resources petition (CSMR petition) and who had a preliminary permit and had completed environmental consultations prior to October 16, 1986, can benefit from a rebuttable presumption that the applicant had committed substantial monetary resources to the project. In the interim rule, the Commission provided that such an applicant could simply file a statement identifying the preliminary permit by project number instead of submitting more detailed information. American, *et al.* objects to this regulation and requests that the applicant not be relieved of the obligation to file detailed cost information.⁵⁴ American, *et al.* argues these data are necessary to rebut the presumption.

In the Commission's view, the fact that an applicant has a preliminary permit and has completed environmental consultations indicates a sufficient commitment of substantial monetary resources to allow the presumption in section 8(b)(4)(B) to arise. Consequently, the Commission does not require such applicants to file detailed information to demonstrate that they have committed substantial monetary resources. However, the Commission is amending its regulations to provide that if any interested person objects to the presumption, the applicant must provide the cost information in §§ 292.210(d)(3)-(5). Interested persons have ample information on which to base an objection to the presumption. Since the applicant will have completed pre-filing consultation, its application will be on file with the Commission.⁵⁵ In addition, the application for the preliminary permit will also be on file with the Commission. Any interested party can review both of these applications. If an objection is made, the applicant must provide the cost information in §§ 292.210(d)(3)-(5).

⁵³ The Commission specifically references these studies in its new filing requirements. See new § 292.208(c)(1)(i).

⁵⁴ Comments of American, *et al.* on the interim rule (RM87-8-000) at p. 3.

⁵⁵ See 18 CFR 4.38(b)(3) (1987).

2. Section 8(b)(4)(C) of ECPA

Section 8(b)(4)(C) of ECPA provides that an applicant who filed a successful CSMR petition may file an adverse environmental effects (AEE) petition asking for an initial determination that the project will not have substantial adverse effects on the environment as specified in PURPA section 210(j)(1).⁵⁶ The AEE petition can be filed any time before the license or exemption is issued by the Commission. If the Commission initially decides that the project will have a substantial adverse effect, it must afford the applicant a reasonable opportunity to provide for mitigation of those adverse effects before making a final determination. If the Commission initially decides that the project will not have a substantial adverse effect, it will afford states and interested persons a reasonable opportunity to comment on whether the project satisfies section 210(j)(1) before making a final determination.⁵⁷ ECPA also provides that if a State has not taken any of the actions described in section 210(j)(2) of PURPA between the time of the Commission's initial and final determination on the AEE petition, a rebuttable presumption arises that there is not a substantial adverse effect related to the natural, recreational, cultural or scenic attributes of the environment.

In the NOPR, the Commission proposed that the AEE petition identify the project and request that the Commission make an initial determination on whether the project satisfies section 210(j)(1) of PURPA. Eastern Professional River Outfitters (EPRO) and American Whitewater Affiliation (AWA) argue this requirement is inadequate.⁵⁸ EPRO and AWA are apparently under the misapprehension that this information in the AEE petition would be the only information the Commission would require in order to make the section 210(j)(1) finding of substantial adverse effects.

⁵⁴ The provisions of section 8(b)(4)(C) of ECPA are only available to those applicants who have filed a successful CSMR petition, see new § 292.211(a) and (c). Applicants had until April 16, 1986, to file a CSMR petition see, 18 CFR § 292.209(c) (1987) (redesignated in this rule as § 292.210(c)). Through April 16, 1986, three applicants have filed CSMR petitions; see applicants cited *supra* note 30. These applicants are the only applicants who may (if their CSMR petitions are granted) receive a determination on any AEE petition filed with the Commission.

⁵⁵ Section 8(b)(4)(C) of ECPA requires the Commission to make a final determination on the AEE petition at the time the license or exemption is issued.

⁵⁶ Comments of EPRO at p. 2; comments of AWA at p. 7.

This perception misinterprets the relationship between the exception in section 8(b)(4)(C) of ECPA and section 210(j)(1) of PURPA. The Commission has an absolute obligation under section 210(j)(1) of PURPA, independent of the exception in section 8(b)(4)(C), to ensure that a hydroelectric project at a new dam or diversion does not have a substantial adverse effect on the environment. The filing of the AEE petition is a voluntary decision by the applicant. Therefore, regardless of whether the applicant files an AEE petition, the Commission must have the information it needs to make the finding under section 210(j)(1) of PURPA. To ensure that it receives the necessary information the Commission establishes new filing requirements in § 292.208(c). In addition, § 292.211(b) provides that the filing of the AEE petition does not exempt an applicant from the new filing requirements.⁵⁹

3. Initial Determination on the AEE Petition

The NOPR provided that the Director of the Office of Hydropower Licensing (OHL) pursuant to delegated authority would make the initial determination on the AEE petition after the close of the public notice period for the accepted application.⁶⁰ If the initial determination were that the project would not have a substantial adverse effect on the environment, the Commission proposed waiting at least 45 days before making a final determination. If the initial determination were that the project would have substantial adverse effects, the Commission proposed to give the applicant 45 days in which to file proposed mitigative measures. The Commission also proposed to give the State 45 days to review any mitigative measures filed by the applicant.

Several commenters suggest changes concerning the initial determination on the AEE petition. AR, NWF, and AWA suggest that the regulations should allow both the State and members of the public to review the mitigative measures proposed by the applicant.⁶¹ NWF and AWA suggest that the State and other interested persons should have 90 days to review mitigative measures. NYDEC suggests that the applicant be given 90 days to file the mitigative measures.⁶²

⁵⁷ See, new § 292.211(b).

⁵⁸ This same provision is included in the final rule. See new § 292.211(f), and § 375.314(r).

⁵⁹ Comments of AR at p. 8; comments of AWA at p. 9; comments of NWF at pp. 4-5.

⁶⁰ Comments of NYDEC at p. 30.

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The Commission is persuaded that 45 days is too short a time period for the applicant to prepare and submit mitigative measures. Therefore, the final rule at § 292.211(g)(2) gives an applicant 90 days to submit mitigative measures and § 292.211(h)(1) provides that notice of the mitigative measures will be published in the Federal Register. Section 292.211(h)(2) affords the State and interested persons 90 days in which to review and comment on the mitigative measures.

4. Rebuttable Presumption

Section 8(b)(4)(C) provides that if, between the time of the Commission's initial and final findings on the AEE petition, the State has not taken any action under section 210(j)(2) of PURPA, the failure to take such action shall be the basis for a rebuttable presumption that there is not a substantial adverse effect on the environment related to natural, recreational cultural or scenic attributes.

In implementing this section, it is important to note that the rebuttable presumption applies, if it arises at all, only to certain environmental attributes. The Commission has an independent obligation to make the section 210(j)(1) finding.

Several commenters object to the Commission's proposed implementation of the rebuttable presumption.⁷¹ Specifically, these commenters object to (1) the timing of the presumption, (2) the evidence required to rebut the presumption, and (3) any limitations as to who may rebut the presumption.

The Commission originally proposed that in order to rebut the presumption a State had to show that it has already protected the watercourse at the time the license was accepted.⁷² This proposal was based on the fact that section 210(j)(2) of PURPA applies at the time the application for a license or exemption is accepted by the Commission. AR and NWF suggest that Congress intended the presumption to operate between the Commission's initial and final findings on the AEE petition, and that, accordingly, a State may prevent the presumption from arising if it protects the watercourse at any time before the Commission makes its final finding on the AEE petition.

In addition, NWF criticized the proposed regulation because it would

require the State to come forward with evidence that it had protected the watercourse. While NWF believes the State should be free to make such a showing, it also believes the Commission has a duty to make a reasonable inquiry into the status of the watercourse under State law, and that other persons should be able to present evidence that the watercourse is protected under State law.

Finally, several commenters were concerned about who would be able to rebut the presumption. AWA, AR and NWF interpret the proposed regulation as only giving the State the opportunity to rebut the presumption. These commenters all argue that any interested person should be able to rebut the presumption.

The Commission adopts certain commenters' suggestions concerning the rebuttable presumption in section 8(b)(4)(C) of ECPA. The Commission also notes that it is helpful to distinguish between how the presumption arises and who can rebut the presumption once it has arisen. The Commission intends that the presumption can be prevented from arising if the State, the Commission or an interested person demonstrates that the State has acted to protect the natural watercourse under section 210(j)(2) of PURPA. In contrast, if the State has failed to take any action under section 210(j)(2) of PURPA, the presumption takes effect and the question becomes how can the presumption be rebutted. In this case, the Commission intends that any interested person (including the State or the Commission) can present evidence to show that the project will have a substantial adverse effect on the natural, recreational, cultural or scenic attributes of the environment. In either case the Commission still must make a finding of no substantial adverse effect under section 210(j)(1) of PURPA.

Accordingly, new § 292.211(k) provides that the presumption can operate between the Commission's initial and final findings on the AEE petition. In addition, § 292.211(k)(2)(iii) specifically states that the presumption has no effect on the Commission's independent (and broader) obligation to find that the project will not have a substantial adverse effect on the environment under section 210(j)(1) of PURPA. Finally, § 292.211(k)(3) provides that the presumption is prevented from taking effect if the State, the Commission or an interested person demonstrates that the State has acted to protect the natural watercourse under section 210(j)(2) of PURPA. In addition § 292.211(k)(4) provides that if the

presumption is in effect it can be rebutted if: (1) The Commission determines that the project will have an adverse effect on the environment related to the natural, recreational, cultural or scenic attributes of the environment or (2) an interested person, including a State, demonstrates that the project will have a substantial adverse effect on the environment related to the natural, recreational, cultural or scenic attributes of the environment.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.⁷³ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.⁷⁴ No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.⁷⁵ This final rule is procedural in nature. It requires that certain information be included with an application. Moreover, the rule does not substantially change existing Commission regulations providing for pre-filing consultation with all appropriate agencies and the contents of a hydroelectric application. Thus, no environmental assessment or environmental impact statement is necessary for the regulations promulgated by this rule.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act⁷⁶ requires a final rule to contain either an analysis of the impact the rulemaking will have on small entities,⁷⁷ or to certify that the rule will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission found that the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received on this finding and the modifications adopted in this final rule do not affect the earlier conclusion.

⁷³ Regulations Implementing National Environmental Policy Act, 52 FR 47,667 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,763 (Dec. 10, 1987).

⁷⁴ 18 CFR 390.4 (1987).

⁷⁵ 18 CFR 390.4(a)(2)(ii) (1987).

⁷⁶ 5 U.S.C. 601-612 (1982).

⁷⁷ 5 U.S.C. 603 (1982).

VI. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)⁷⁸ and the Office of Management and Budget's (OMB) regulations⁷⁹ require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this notice will be submitted to OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to comply with its statutory responsibilities under section 8 of the ECPA. Section 8 of ECPA attaches new significance to the status of a project as either an "existing dam" or a "new dam or diversion" for the purposes of obtaining PURPA benefits.

Consequently, new § 4.38(b)(1)(vi)(A) requires every applicant to state whether or not it intends to seek PURPA benefits. If the applicant intends to seek PURPA benefits it must also state whether the dam is an existing dam or a new dam or diversion.⁸⁰ The information collection requirement of stating whether or not the applicant intends to seek PURPA benefits represents a minimal burden that is estimated to be 5 minutes per response. This requirement will affect all hydroelectric applicants with projects that have a capacity of 80 MW or less and the number of these respondents is estimated to be 76 (per year).

Section 8 of ECPA imposed a moratorium on PURPA benefits. However, as noted earlier, any project that qualifies for one of the statutory exceptions is exempted from the moratorium. Consequently, except for the new requirement in § 4.38(b)(1)(vi)(A) discussed above, the information collection burdens imposed by this rule only apply to applicants that can qualify for one of the exceptions in section 8 of ECPA.

For an applicant that qualifies for the exception in section 8(b)(3) of ECPA, the information collection burden is estimated to be 16 hours per response. The number of likely respondents is 7. For an applicant that qualifies for the exception in section 8(b)(4) of ECPA, the information collection burden is estimated to be 40 hours per response. The number of likely respondents is 1. Two of the exceptions in section 8 of ECPA except applicants from all of the requirements in section 210(j) of PURPA. Therefore, there is no information collection burden for such applicants.

⁷⁸ 44 U.S.C. 3501-3520 (1982).

⁷⁹ 5 U.S.C. 1320.13 (1987).

⁸⁰ See, new § 4.38(b)(1)(vi)(B).

Interested person can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 (Attention: Marian Obis, Office of Information Resources Management (202) 357-8173). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VIII. Effective Date

This final rule is effective September 18, 1988.

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations [Government agencies], Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends Parts 4, 292 and 375, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission

Lois D. Cashell,

Acting Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATIONS OF PROJECT COSTS

1. The authority citation for Part 4 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99-495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.30, a new paragraph (b)(28) is added to read as follows:

§ 4.30 Applicability and definitions.

(b) * * * (28) "PURPA benefits" means benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Section 210(a) of PURPA requires electric utilities to purchase electricity from, and to sell electricity to, qualifying facilities.

3. In § 4.32, paragraphs (a)(5)(vii) and (a)(5)(viii) are revised, a new paragraph (a)(5)(ix) is added, paragraphs (c) through (i) are redesignated as paragraphs (d) through (j), and a new paragraph (c) is added to read as follows:

§ 4.32 Acceptance for filing or rejection.

(a) * * * (5) * * *

(vii) Exemption of a small conduit hydroelectric facility: § 4.92;

(viii) Case-specific exemption of a small hydroelectric power project: § 4.107; or

(ix) License or exemption for a project located at a new dam or diversion where the applicant seeks PURPA benefits: § 292.208.

(c)(1) Every application for a license or exemption for a project with a capacity of 80 megawatts or less must include in its application copies of the statements made under § 4.38(b)(1)(vi). (2) If an applicant reverses a statement of intent not to seek PURPA benefits:

(i) Prior to the Commission issuing a license or exemption, the reversal of intent will be treated as an amendment of the application under § 4.35 and the applicant must:

(A) Repeat the pre-filing consultation process under § 4.38; and

(B) Satisfy all the requirements in § 292.208 of this chapter; or

(ii) After the Commission issues a license or exemption for the project, the applicant is prohibited from obtaining PURPA benefits.

4. In § 4.32, redesignated paragraphs (d) through (f) remove the words "(a) and (b)" and insert, in their place, the words "(a), (b) and (c)".

5. In § 4.32, paragraphs (b)(1) and (2) and redesignated (e)(1)(ii), remove the words, "paragraph (c)" and insert, in their place, the words "paragraph (d)".

6. In § 4.32, redesignated paragraph (d)(4), remove the words "paragraph (c) ((2)(1))" and insert, in their place, the words "paragraph (d)(2)(ii)".

7. In § 4.32, redesignated paragraphs (e) introductory text and (g), remove the word "delegate" and insert, in its place, the word "designee".

8. In § 4.32 redesignated paragraph (e)(1)(iii), remove the words "paragraph (d)(2)(iii)" and insert, in their place, the words "paragraph (e)(2)(iii)".

9. In § 4.32 redesignated paragraph (e)(2)(ii)(B), remove the words "paragraph (d)(1)" and insert, in their place, the words "paragraph (e)(1)".

10. In § 4.32 redesignated paragraph (f), remove the words "paragraph (d)" and

⁷¹ See comments of AR at pp. 2-6; AWA at pp. 4-6; California Save Our Streams Council at p. 2; Class VI River Runners at pp. 1-2; Eastern Professional River Outfitters at pp. 2-3; NWF at pp. 5-6; NYDEC at p. 3; and Pocono Whitewater at p. 1.

⁷² See proposed § 292.210(i), 53 FR at 30,460.

FERC Stats. & Regs. [Proposed Regulations 1983-1987] ¶ 32,453 at 33,055.

insert, in their place, the words "paragraph (c)".

§ 4.33 [Amended]

11. In § 4.33 paragraph (d)(3), remove the words "§ 4.32(c)(2)" and insert, in their place, the words "§ 4.32(d)(2)".

12. In § 4.35, the section heading and paragraph (a) are revised, paragraph (b) is redesignated as paragraph (f), and new paragraphs (b) through (e) are added to read as follows:

§ 4.35 Amendment of application; date of acceptance.

(a) *General rule.* Except as provided in paragraph (d) of this section, if an applicant amends its filed application as described in paragraph (b) of this section, the date of acceptance of the application under § 4.32(f) is the date on which the amendment to the applicant was filed.

(b) Paragraph (a) of this section applies if an applicant:

(1) Amends its filed license or preliminary permit application in order to change the status or identity of the applicant or to materially amend the proposed plans of development; or

(2) Amends its filed application for exemption from licensing in order to materially amend the proposed plans of development; or

(3) Amends its filed application in order to change its statement of intent of whether or not it will seek benefits under section 210 of PURPA, as originally filed under § 4.32(c)(1).

(c) An application amended under paragraph (a) is a new filing for:

(1) The purpose of determining its timeliness under § 4.36 of this part;

(2) Disposing of competing applications under § 4.37; and

(3) Reissuing public notice of the application under § 4.32(d)(2).

(d) If an application is amended under paragraph (a) of this section, the Commission will rescind any acceptance letter already issued for the application.

(e) *Exceptions.* This section does not apply to:

(1) Any corrections of deficiencies made pursuant to § 4.32(e)(1);

(2) Any amendments made pursuant to § 4.37(b)(4) by a State or a municipality to its proposed plans of development to make them as well adapted as the proposed plans of an applicant that is not a state or a municipality;

(3) Any amendments made pursuant to § 4.37(c)(2) by a priority applicant to its proposed plans of development to make them as well adapted as the proposed plans of an applicant that is not a priority applicant.

(4) Any amendments made by a license or an exemption applicant to its proposed plans of development to satisfy requests of fish and wildlife agencies submitted after an applicant has consulted under § 4.38; and

(5)(i) Any license or exemption applicant with a project located at a new dam or diversion who is seeking PURPA benefits and who:

(A) Has filed an adverse environmental effects (AEE) petition pursuant to § 292.211 of this chapter; and

(B) Has proposed measures to mitigate the adverse environmental effects which the Commission, in its initial determination on the AEE petition, stated the project will have.

(ii) This exception does not protect any proposed mitigative measures that the Commission finds are a pretext to avoid the consequences of materially amending the application or are outside the scope of mitigating the adverse environmental effects.

12. In § 4.36, new paragraph (b)(1)(vi) is added to read as follows:

§ 4.36 Pre-filing consultation requirements.

(b)

(1)

(vi)(A) A statement (with a copy to the Commission) whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter; and

(B) If benefits under section 210 of PURPA are sought, whether or not the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter).

13. In § 4.38 paragraph (b)(3), remove the words "§ 4.32(d)(1)" and insert, in their place, the words "§ 4.32(e)(1)".

§ 4.40 [Amended]

14. In § 4.40 paragraph (b), remove the words "§ 4.32(g)" and insert, in their place, the words "§ 4.32(h)".

§ 4.50 [Amended]

15. In § 4.50 paragraph (b), remove the words "§ 4.32(g)" and insert, in their place, the words "§ 4.32(h)".

§ 4.82 [Amended]

16. In § 4.82 paragraph (b), remove the words "§ 4.32(c)(2)(i)" and insert, in their place, the words "§ 4.32(d)(2)(i)".

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

17. The authority citation for Part 292 is revised to read as follows:

Authority: Federal Power Act 16 U.S.C. 701a-824r (1982), as amended by Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 6701 (1982); Electric Consumers Protection Act of 1986, Public Utility Regulatory Policies Act, 16 U.S.C. 2001-2045 (1982), as amended.

18. In § 292.202, new paragraphs (p), (q), and (r) are added to read as follows:

§ 292.202 Definitions.

(p) "New dam or diversion" means a dam or diversion which requires, for the purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards of similar adjustable devices);

(q) "Substantial adverse effect on the environment" means a substantial alteration in the existing or potential use of, or a loss of, natural features, existing habitat, recreational uses, water quality, or other environmental resources. Substantial alteration of particular resource includes a change in the environment that substantially reduces the quality of the affected resources; and

(r) "Commitment of substantial monetary resources" means the expenditure of, or commitment to expend, at least 50 percent of the total cost of preparing an application for license or exemption for a hydroelectric project that is accepted for filing by the Commission pursuant to § 4.32(e) of this chapter. The total cost includes (but is not limited to) the cost of agency consultation, environmental studies, and engineering studies conducted pursuant to § 4.38 of this chapter, and the Commission's requirements for filing an application for license exemption.

19. In § 292.203, paragraph (c) is revised to read as follows:

§ 292.203 General requirements for qualification.

(c) *Hydroelectric small power production facilities located at a new dam or diversion.* (1) Except as provided in paragraph (c)(2) of this section, a hydroelectric small power production facility that impounds or diverts the

water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility if it meets the requirements of:

(i) Paragraph (a) of this section; and

(ii) Section 292.206.

(2) *Moratorium.*—(i) *General rule.* Except as provided in paragraph (c)(2)(ii) of this section, a hydroelectric small power production facility that impounds or diverts the water of a natural watercourse is not a qualifying facility if the moratorium described in section 8(e) of the Electric Consumers Protection Act of 1986 (ECPA), Pub. L. No. 99-495, is in effect. The moratorium applies to a license or an exemption issued on or after October 16, 1986. The moratorium will end at the expiration of the first full session of Congress following the session during which the Commission reports to Congress on the results of the study required by section 8(d) of ECPA.

(ii) *Exemption.* A hydroelectric small power production facility is exempt from the moratorium and can be a qualifying facility if it:

(A) Meets the requirements in paragraph (c)(1) of this section; and

(B) Qualifies for one of the exceptions in §§ 292.209 or 292.210.

§§ 292.209 and 292.210 [Redesignated from §§ 292.206 and 292.209]

20. Sections 292.206 and 292.209 are redesignated as §§ 292.209 and 292.210 respectively, and a new § 292.206 is added to read as follows:

§ 292.206 Special requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility only if it meets the requirements of:

(1) Paragraph (b) of this section;

(2) Section 292.203(c); and

(3) Part 4 of this chapter.

(b) A hydroelectric small power production described in paragraph (a) is a qualifying facility only if:

(1) The Commission finds, at the time it issues the license or exemption, that the project will not have a substantial adverse effect on the environment (as that term is defined in § 292.202(q)), including recreation and water quality;

(2) The Commission finds, at the time the application for the license or exemption is accepted for filing under § 4.32 of this chapter, that the project is not located on any segment of a natural watercourse which:

(i) Is included, or designated for potential inclusion in, a State or National wild and scenic river system; or

(ii) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural or scenic attributes which would be adversely affected by hydroelectric development; and

(3) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(c) For the Commission to make the findings in paragraph (b) of this section an applicant must:

(1) Comply with the applicable hydroelectric licensing requirements in Part 4 of this chapter, including:

(i) Completing the pre-filing consultation process under § 4.38 of this chapter, including performing any environmental studies which may be required under §§ 4.38(b)(2)(i)(D) through (F) of this chapter; and

(ii) Submitting with its application an environmental report that meets the requirements of § 4.41(f) of this chapter, regardless of project size;

(2) State whether the project is located on any segment of a natural watercourse which:

(i) Is included in or designated for potential inclusion in:

(A) The National Wild and Scenic River System (28 U.S.C. 1271-1278 (1982)); or

(B) A State wild and scenic river system;

(ii) Crosses an area designated or recommended for designation under the Wilderness Act (16 U.S.C. 1132) as:

(A) A wilderness area; or

(B) Wilderness study area; or

(iii) The State, either by or pursuant to an act of the State legislature, has determined to possess unique, natural, recreational, cultural, or scenic attributes that would be adversely affected by hydroelectric development.

(d) If the project is located on any segment of a natural watercourse that meets any of the conditions in paragraph (c)(2) of this section, the applicant must provide the following information in its application:

(1) The date on which the natural watercourse was protected;

(2) The statutory authority under which the natural watercourse was protected; and

(3) The Federal or state agency, or political subdivision of the state, that is in charge of administering the natural watercourse.

21. Redesignated § 292.209 is revised to read as follows:

§ 292.209 Exceptions from requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) The requirements in §§ 292.206(b)(1) through (3) do not apply if:

(1) An application for license or exemption is filed for a project located at a Government dam, as defined in section 3(10) of the Federal Power Act, at which non-Federal hydroelectric development is permissible; or

(2) An application for license or exemption was filed and accepted before October 16, 1986.

(b) The requirements in §§ 292.206(b)(1) and (3) do not apply if an application for license or exemption was filed before October 16, 1986, and is accepted for filing by the Commission before October 16, 1989.

(c) The requirements in § 292.206(b)(3) do not apply to an applicant for license or exemption if:

(1) The applicant files a petition pursuant to § 292.210; and

(2) The Commission grants the petition.

(d) Any application covered by paragraphs (a), (b), or (c) of this section is excepted from the moratorium imposed by section 8(e) of the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495.

22. Redesignated § 292.210 is revised to read as follows:

§ 292.210 Petition alleging commitment of substantial monetary resources before October 16, 1986.

(a) An applicant covered by § 292.203(c) whose application for license or exemption was filed on or after October 16, 1986, but before April 16, 1988, may file a petition for exception from the requirement in § 292.206(b)(3) and the moratorium described in § 292.203(c)(2). The petition must show that prior to October 16, 1986, the applicant committed substantial monetary resources (as that term is defined in § 292.202(r)) to the development of the project.

(b) Subject to rebuttal under paragraph (d)(7)(ii) of this section, a showing of the commitment of substantial monetary resources will be presumed if the applicant held a preliminary permit for the project and had completed environmental consultations pursuant to § 4.38 of this chapter before October 16, 1986.

(c) *Time of filing petition.*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the applicant must:

(i) File the petition with the application for license or exemption; or

(ii) Submit with the application for license or exemption a request for an extension of time, not to exceed 90 days or April 16, 1988, whichever occurs first, in which to file the petition.

(2) *Exception.* If the application for license or exemption was filed on or after October 16, 1986, but before March 23, 1987, the petition must have been filed by June 22, 1987.

(d) *Filing requirements.* A petition filed under this section must include the following information or refer to the pages in the application for license or exemption where it can be found:

(1) A certificate of service, conforming to the requirements set out in § 385.2010(h) of this chapter, certifying that the applicant has served the petition on the Federal and State agencies required to be consulted by the applicant pursuant to § 4.38 of this chapter;

(2) Documentation of any issued preliminary permits for the project;

(3) An itemized statement of the total costs expended on the application;

(4) An itemized schedule of costs the applicant expended, or committed to be expended, before October 16, 1986, on the application, accompanied by supporting documentation including but not limited to:

(i) Dated invoices for maps, surveys, supplies, geophysical and geotechnical services, engineering services, legal services, document reproduction, and other items related to the preparation of the application; and

(ii) Written contracts and other written documentation demonstrating a commitment made before October 16, 1986, to expend monetary resources on the preparation of the application, together with evidence that those monetary resources were actually expended; and

(5) Correspondence or other documentation to support the items listed in paragraphs (d)(3) and (d)(4) of this section to show that the expenses presented were directly related to the preparation of the application.

(6) The applicant must include in its total cost statement and in its schedule of the costs expended or committed to be expended before October 16, 1986, the value of services that were performed by the applicant itself instead of contracted out.

(7)(i) If the applicant held a preliminary permit for the project and had completed pre-filing consultation pursuant to § 4.38 of this chapter prior to October 16, 1986, the applicant may, instead of submitting the information listed in paragraphs (d)(3), (d)(4), and (d)(5) of this section, submit a statement

identifying the preliminary permit by project number.

(ii) If any interested person objects (pursuant to § 385.211 of this chapter) to the presumption in paragraph (b) of this section, the applicant must supply the information listed in paragraphs (d)(3), (d)(4), and (d)(5) of this section.

(8) If the application is deficient pursuant to § 4.32(e) of this chapter, the applicant must include with the information correcting those deficiencies a statement of the costs expended to make the corrections.

(e) *Processing of petition.* (1) The Commission will issue a notice of the petition filed under this section and publish the notice in the Federal Register. The petition will be available for inspection and copying during regular business hours in the Public Reference Room maintained by the Division of Public Information.

(2) *Comments on the petition.* The Commission will provide the public 45 days from the date the notice of the petition is issued to submit comments. The applicant for license or exemption has 15 days after the expiration of the public comment period to respond to the comments filed with the Commission.

(3) *Commission action on petition.* The Director of the Office of Hydropower Licensing will determine whether or not the applicant for license or exemption has made the showing required under this section.

23. A new § 292.211 is added to read as follows:

§ 292.211 *Petition for initial determination on whether a project has a substantial adverse effect on the environment (AEE petition).*

(a) An applicant that has filed a petition under § 292.210 may also file an AEE petition with the Commission for an initial determination on whether the project satisfies the requirement that it has no substantial adverse effect on the environment as specified in § 292.208(b)(1).

(b) The filing of the AEE petition does not relieve the applicant of the filing requirements of § 292.208(c).

(c) The Commission will act on the AEE petition only if the Commission has granted the applicant's commitment of resources petition under § 292.210.

(d) *Time of filing petition.* The applicant may file the AEE petition with the application for license or exemption or at any time before the Commission issues the license or exemption.

(e) *Contents of petition.* The AEE petition must identify the project and request that the Commission make an initial determination on the adverse

environmental effects requirements in § 292.208(b)(1).

(f) The Director of the Office of Hydropower Licensing will make the initial determination on the AEE petition. In making this determination, the Director will consider the following:

(1) Any proposed mitigative measures;

(2) The consistency of the proposal with local, regional, and national resource plans and programs;

(3) The mandatory terms and conditions of fish and wildlife agencies under section 210(j) of PURPA, or section 30(c) of the Federal Power Act; or the recommended terms and conditions of fish and wildlife agencies under Section 10(j) of the Federal Power Act, whichever is appropriate; and

(4) Any other information which the Director believes is relevant to consider.

(g) *Initial finding on the petition.* The Director of the Office of Hydropower Licensing will make the initial determination on the AEE petition after the close of the public notice period for the accepted application. If the Director's initial determination finds:

(1) No substantial adverse effect on the environment, the Commission must wait at least 45 days before making a final determination that the project satisfies the requirements of § 292.208(b)(1).

(2) A substantial adverse effect on the environment, the applicant may file, within 90 days of the initial finding that the project does not satisfy the requirements in § 292.208(b)(1), proposed measures to mitigate the adverse environmental effects found.

(3) (i) The Commission will provide written notice of the Director's initial finding on the petition to the applicant and to the Federal and State and agencies that the applicant must consult under § 4.38 of this chapter.

(ii) The Commission will publish notice of the Director's initial finding in the Federal Register.

(h) *Notice and Comment on the Mitigative measures.* (1) The Commission will issue notice of the mitigative measures filed by an applicant under paragraph (g)(2) of this section and will publish the notice in the Federal Register. The mitigative measures will be on file and available for inspection or copying during regular business hours in the Public Reference Room maintained by the Division of Public Information;

(2) The Commission will provide the State and interested persons within 90 days from the date the notice is issued to review and submit comments on the mitigative measures. The applicant for license or exemption has 15 days after

the expiration of the public comment period to respond to the comments filed with the Commission.

(i) *Material amendments to application.* The proposed mitigative measures filed under paragraph (g)(2) of this section will not be considered a material amendment to the application unless the Commission finds that the proposed measures are unnecessary to, or exceed the scope of, mitigating substantial adverse effects. If the Commission finds the proposed mitigative measures constitute a material amendment, the application will be considered filed with the Commission on the date on which the applicant filed the proposed mitigative measures, and all other provisions of § 4.35(a) of this chapter will apply.

(j) *Final determination on the petition.* The Commission will make a final determination on the petition at the time the Commission issues a license or exemption for the project.

(k) *Presumption.* (1) If, between the Commission's initial and final findings on the AEE petition, the State does not take any action under § 292.208(b)(2), the failure to take action can be the basis for a presumption that there is not substantial adverse effect on the environment (as that term is defined in § 292.202(q)).

(2) If the presumption in paragraph (k)(1) of this section comes into effect, it:

(i) Is only available for those adverse effects related to the natural, recreational, cultural, or scenic attributes of the environment;

(ii) Can only operate during the time between the Commission's initial and final findings on the AEE petition; and

(iii) Has no effect on the Commission's independent obligation to find that the project will not have a substantial adverse effect on the environment under § 292.208(b)(1).

(3) The presumption in paragraph (k)(1) of this section does not take effect if the State, the Commission or an interested person demonstrates that the State has acted to protect the natural watercourse under § 292.208(b)(2).

(4) The presumption in paragraph (k)(1) of this section can be rebutted if:

(i) The Commission determines that the project will have a substantial adverse effect on the environment related to the environmental attributes listed in paragraph (k)(2)(i) of this section; or

(ii) Any interested person, including a State, demonstrates that the project will have a substantial adverse effect on the environment related to the

environmental attributes listed in paragraph (k)(2)(i) of this section.

PART 375—THE COMMISSION

24. The authority citation for Part 375 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act 1968, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101-7352, E.O. 12008, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Federal Power Act, 16 U.S.C. 791-828c, as amended; Natural Gas Act, 15 U.S.C. 717-717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

25. In § 375.314, a new paragraph (r) is added to read as follows:

§ 375.314 *Delegations to the Director of the Office of Hydropower Licensing.*

(r) Pass upon petitions filed under §§ 292.210 and 292.211 of this chapter.

[FR Doc. 88-15872 Filed 7-15-88; 8:45 am]
BILLING CODE 4717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Injection

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories providing for safe and effective use of IVOMEC® (ivermectin) injection in swine for treating and controlling infections caused by somatic threadworm larvae, in addition to certain species of gastrointestinal roundworms, lungworms, lice, and mites.

EFFECTIVE DATE: July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box

2000, Rahway, NJ 07065, has filed a supplement to NADA 135-006 providing for subcutaneous use of a 1-percent IVOMEC® (ivermectin) injection in swine for treating and controlling infections caused by somatic threadworm larvae (*Strongyloides ransomi*) in addition to the currently approved use for treating and controlling infections caused by certain species of gastrointestinal roundworms, lungworms, lice, and mites.

The supplemental NADA is approved and the regulations in 21 CFR 522.1192(d)(4)(ii) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(j), 62 Stat. 347 (21 U.S.C. 360b(j)); 21 CFR 5.10 and 5.63.

2. Section 522.1192 is amended by revising paragraph (d)(4)(ii) to read as follows:

§ 522.1192 Ivermectin injection

(d) * * *

(4) * * *

(ii) *Indications for use.* It is used in swine for treatment and control of gastrointestinal roundworms (adults and fourth-stage larvae) (large roundworm, *Ascaris suum*; red stomach worm, *Hyostrogylus rubidus*; nodular worm, *Oesophagostomum* spp.; threadworm, *Strongyloides ransomi* (adults only)); somatic roundworm larvae (threadworm, *Strongyloides ransomi* (somatic larvae)); lungworms (*Metastrongylus* spp. (adults only)); lice (*Haematopinus suis*); and mites (*Sarcoptes scabiei* var. *suis*).

Dated: July 12, 1988.

Richard H. Teske,
Deputy Director, Center for Veterinary Medicine.

[FR Doc. 88-10048 Filed 7-15-88; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Mono-alkyl (C₈-C₁₈) Trimethyl Ammonium Oxytetracycline

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc., providing for safe and effective use of a 100-gram-per-pound mono-alkyl (C₈-C₁₈) trimethyl ammonium oxytetracycline Type A article to make a Type C feed for salmonids and catfish.

EFFECTIVE DATE: July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Henry E. Schmaus, Center for Veterinary Medicine (HFV-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2280.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, has filed supplemental NADA 38-439 providing for use of a 100-gram-per-pound mono-alkyl (C₈-C₁₈) trimethyl ammonium oxytetracycline Type A article to make Type C feeds for salmonids for the control of ulcer disease, furunculosis, bacterial

hemorrhagic septicemia, and pseudomonas disease, and for catfish for the control of bacterial hemorrhagic septicemia and pseudomonas disease. Currently, 10- and 50-gram-per-pound Type A articles are approved for making this Type C fish feed.

The supplemental NADA is approved and 21 CFR 558.450(a)(2) is amended to reflect the approval.

This supplement provides for use of a higher strength Type A article to make a previously approved Type C medicated fish feed. The feed is used at previously approved treatment levels for the approved indications and limitations. Since approval of this supplement does not require added safety or effectiveness data or information, a freedom of information (FOI) summary is not required.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 62 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.450 is amended by revising paragraph (a)(2) to read as follows:

§ 558.450 Oxytetracycline.

(a) * * *

(2) 100 grams per pound to 000089 in § 510.600(c) of this chapter for use as in paragraph (d)(1), table 1, item (v) and table 3, item (ii) of this section.

Dated: July 8, 1988.

Suzanne Fitzpatrick,
Acting Director, Division of Drug Manufacturing and Residue Chemistry, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-10049 Filed 7-15-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8214]

Application of Section 904 to Income Subject to Separable Limitations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the application of section 904 with respect to income received or accrued by a taxpayer consisting of income described in section 904(d). These regulations are necessary because of the changes made to the applicable law by the Tax Reform Act of 1986. The regulations provide the public with guidance needed to comply with that act and affect individuals and entities claiming the foreign tax credit. **DATES:** The amendments are generally to be effective for taxable years beginning after December 31, 1986. Paragraphs (c) (2), (3), (4), and (5) of § 1.904-4 apply to taxable years beginning after December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn M. DuPuy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-634-5406).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 904 of the Internal Revenue Code of 1954. These amendments are made to conform the regulations to section 1201 of the Tax Reform Act of 1986 (Pub. L. 99-514) and are issued under the authority contained in sections 7805 and 904(d)(5) of the Internal Revenue Code (68A Stat. 637, 26 U.S.C. 7805 and 100 Stat. 2524, 26 U.S.C. 904(d)(5)).

On August 26, 1987, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 904 of the Internal Revenue Code of 1954 (51 FR 3193). The amendments provide rules for determining a taxpayer's foreign tax credit limitations under section 904(d). The proposed regulations reflected proposed technical corrections. Because the technical corrections bill has not yet been passed by the Congress, portions

of the final regulations have been reserved. In addition, the regulations have been reserved on the issue of whether payments from a foreign parent to its United States subsidiary should be characterized under the principles of the look-through rules. The reserved portions are:

Section 1.904-4(c)(6)(iv) increase in taxes paid by successors;

Section 1.904-4(e)(1) the definition of financial services income;

Section 1.904-4(e)(5) (i) and (ii) exceptions to the definition of financial services income;

Section 1.904-4(g)(2)(iv) the treatment of section 1293 inclusions attributable to section 902 corporations;

Section 1.904-4(h)(3)(ii) export financing interest received or accrued by a financial services entity;

Section 1.904-4(h)(3)(iii) export financing interest that is high-withholding tax interest;

Section 1.904-4(h)(3)(iv) *Example (2)*;

Section 1.904-4(h)(3)(v)(C) *Example (2) and Example (4)*;

Section 1.904-4(k) priority rules;

Section 1.904-5(c)(1)(ii) *Example (2) and Example (3)*;

Section 1.904-5(d)(1) de minimis amounts of subpart F income;

Section 1.904-5(d)(3) *Example (1) and Example (2)*;

Section 1.904-5(h)(3) income from the sale of a partnership interest;

Section 1.904-5(i)(3) special rule for payments from foreign parents to domestic subsidiaries;

Section 1.904-5(j) look-through rules applied to passive foreign investment companies;

Section 1.904-5(1) *Example (2) and Example (5)*;

Section 1.904-5(m)(7) coordination with treaties.

Numerous written comments were received with respect to the proposed regulations. A public hearing was held on November 12, 1987. The significant points raised by the comments and the changes made to the proposed amendments are discussed in the remainder of the preamble. After consideration of the comments regarding the proposed amendments, the amendments are adopted as modified by this Treasury decision.

Discussion of Major Comments and Revised Amendments

Section 1.904-4 Separate application of section 904 with respect to certain categories of income.

In response to comments, an example has been added to paragraph (b)(1) to make it clear that if a taxpayer has foreign currency gain that would not be

foreign personal holding company income if the taxpayer were a controlled foreign corporation because the gain is directly related to the business needs of the corporation, that income will not be passive income within the meaning of section 904(d)(2)(A)(i).

Paragraph (b)(2) has been revised to provide that the determination of whether a rent or royalty is an active rent or royalty for purposes of section 904(d) shall be made taking into account the activities of all members of the recipient's affiliated group (as redefined to include foreign corporations). This revision changes the rules in the proposed regulations in several respects.

First, the regulations, as revised, now treat rents and royalties received by a domestic corporation and those received by a controlled foreign corporation in the same way.

Second, the regulations now provide a rule for qualifying rents received by a controlled foreign corporation as active rents by reference to the activities of an affiliate of the controlled foreign corporation. Third, the requirement that the controlled foreign corporation perform activities that are an essential economic element with respect to the royalties it receives is eliminated. Fourth, the regulations, as revised, provide that a United States shareholder that receives a rent or royalty directly can satisfy the active conduct test by reference to its own activities or the activities of affiliates (including foreign affiliates) of the shareholder. These changes to the proposed regulations were made in response to numerous comments that the proposed regulations were too restrictive because they did not allow the activities of foreign affiliates of the recipient to be considered and because they required a recipient that was a controlled foreign corporation to perform an activity that was an essential economic element in the realization of the royalty. The changes were also in response to comments that the proposed regulations did not provide parallel treatment for rent and royalty income received by a controlled foreign corporation.

Section 1.904-4(c)(1) provides rules for determining whether an item of income that is otherwise passive income is high-taxed income and, therefore, should be treated as general limitation income. Numerous comments were received suggesting that the rules be simplified. In response to those comments the grouping rules have been changed and paragraph (c)(2)(ii) is added to provide that a taxpayer that allocates and apports interest expense on an asset basis may further apportion passive interest expense among the groups of

passive income on a gross income basis. Paragraph (c)(3), as revised, groups items of income received directly by a United States person (other than through a foreign branch) according to the rate of withholding tax on the items. These rules apply both to income received from unrelated persons and income received from controlled foreign corporations. These rules also apply to subpart F inclusions and items of income earned through a foreign branch to the extent provided in paragraph (c)(4). Under paragraph (c)(4), income is initially grouped into two groups, income from sources within the QBU's country of operation and income from sources outside the QBU's country of operation. Income from outside the country of operation is then grouped according to the rate of withholding tax. These rules are applied separately for each foreign QBU. Paragraph (c)(5) provides special rules for grouping certain enumerated items of income. The grouping rules are effective for taxable years beginning after December 31, 1987. See Notice 87-6, 1987-3 I.R.B. 6, for the grouping rules for taxable years beginning after December 31, 1986 and before January 1, 1988.

Paragraph (c)(6) provides rules relating to the determination of whether an amount included in gross income under section 951(a) is high-taxed income if additional taxes are paid or deemed paid in the year of receipt of this income. Several commenters suggested that we should permit taxpayers to elect, on a distribution by distribution basis, whether to go back and amend their returns to reflect the increase in tax. It was also suggested that the exception for distributions received during the pre-filing period be changed to expand the pre-filing period. The final regulations do not allow such an election but do redefine the pre-filing period to be a period ending 90 days prior to the due date of the return (determined with extensions) for the taxable year of inclusion.

The preamble to the proposed regulations asked for comments concerning whether the rules in paragraph (c) should apply to gains and losses resulting from a change in the effective rate of tax because of exchange rate fluctuations between the time an amount is included in the gross income of a United States shareholder of a controlled foreign corporation under section 951 and the distribution to the United States shareholder of earnings attributable to that amount. Several commenters stated that there should be no recharacterization of the initial inclusion because of exchange rate

fluctuations between the time of the inclusion and the time of the distribution of that income. The final regulations do not require such a recharacterization because the foreign currency gain or loss is attributable to an increase or decrease in the value of the controlled foreign corporation's earnings and profits and not to an increase or decrease in the amount of income earned by the controlled foreign corporation in the inclusion year.

Paragraph (c)(7) provides special rules for determining whether income that has been taxed under an integrated tax system is high-taxed income. In the preamble to the proposed regulations taxpayers were invited to comment on the application of this rule to cases in which the foreign tax system does not provide a mechanism for tracing distributions out of a particular year's earnings. One commenter suggested that the regulations adopt a FIFO rule for tracing distributions. The final regulations provide that, in general, the rules of § 1.904-8 apply for purposes of determining to which category the reduction in taxes on distribution relate. However, the reduction in taxes shall be attributable on a last-in first-out (LIFO) basis to foreign taxes potentially subject to reduction that are associated with previously taxed income, on a LIFO basis to foreign taxes associated with income that remains as passive income under paragraph (c)(7)(iii), and then on a LIFO basis to foreign taxes associated with other earnings and profits. The final regulations also clarify that the rules in paragraphs (6) and (7) relating to increases and decreases in foreign tax rate on distributions out of PTI apply only to net increases or decreases in foreign tax liability. Thus, if on distribution the foreign corporate tax is reduced but the reduction is fully offset by a withholding tax on the distribution, no reduction will be considered to have occurred for purposes of determining whether the income is high-taxed.

Paragraph (e)(1) concerning the definition of financial services income has been reserved because of the pending technical corrections bill that limits the financial services category to entities that are predominantly engaged in the active conduct of a banking, insurance, financing or similar business (active financing business). Paragraph (e)(2), (3), and (e)(4) have not been reserved because the definition of active financing income, the determination of when an entity is predominantly engaged in the active financing business and the definition of incidental income are relevant under current law and under the technical corrections bill.

Paragraphs (e)(5)(i) and (ii) have been reserved because of the proposed technical correction concerning the exceptions from financial services income for income that is export financing interest and high withholding tax interest.

Numerous comments were received with respect to what constitutes income from the active conduct of a banking, insurance, financing or similar business (active financing income). Paragraph (e)(2) reflects some of the suggestions for additions to the list of includible income. The list has been changed to include related person insurance income. Paragraph (e)(2) has also been changed to allow taxpayers to include items of income similar to those enumerated if such items are disclosed in a manner designated in the instructions to the Forms 1118 and 1119 or in guidance published by the Internal Revenue Service. For any year in which the instructions to the Forms 1118 and 1119 do not provide a method of designating similar items, a taxpayer may include similar items as active financing income even though they are not designated. This change is made in recognition of the fact that financial institutions constantly market new products, income from which may appropriately be categorized as active financing income.

Several commenters suggested that the requirement that an entity earn eighty percent of its gross income from active financing income should be liberalized. The eighty percent test in paragraph (e)(3)(i) has been maintained. The Conference Report to the 1986 Act makes it clear that an entity shall not be considered predominantly engaged in the active conduct of a financial services business unless a "high percentage" of the entity's income is active financing income. In addition, the eighty percent test seems reasonable in light of two other changes to the proposed regulations. The first of these changes is the addition of similar items of income to the list of active financing income. The second change is a revision of paragraph (e)(3)(i) to exclude from the eighty percent computation any gain from the sale of stock of a corporation controlled by the transferor. This latter change was made to prevent an entity from disqualifying itself from financial services status because of a large one-time gain from the sale of stock. In addition, the application of the eighty percent test has been changed to eliminate from the test any income characterized under the look-through rules that is received from a related person that is a financial services entity.

Income received from a related person that is not a financial services entity but that is financial services income under the look-through rules is also eliminated.

In response to comments, paragraph (e)(3)(i) has been changed to require foreign affiliates to be considered when applying the eighty percent test on an affiliated basis. In addition, that paragraph has been changed to make it clear that certain income from intercompany transactions is not considered in applying the affiliated group test, that leasing income will not be considered to be active financing income for purposes of the affiliated group test if any member of the group meets the requirements of section 954 (c)(2)(A), and that passive income will not be considered active financing income for purposes of the affiliated group test merely because that income is earned by a member of the group that is a financial services entity under the entity level test.

Paragraph (e)(3)(iii) provides rules for applying the eighty percent test to partnerships. That paragraph has been changed to conform with changes to the general rule in paragraph (e)(3)(i).

Paragraph (e)(4) describes incidental income that will be considered to be financial services income if earned by a financial services entity. Several commenters stated that the rule regarding debt-equity conversions was too restrictive. That rule has been changed to establish that income received within the first five years of the conversion is incidental income.

Section 1.904-4(g)(1) defines the term "noncontrolled section 902 corporation." That paragraph has been changed to make it clear that, in general, a controlled foreign corporation is not a section 902 corporation with respect to distributions out of earnings and profits earned during periods when the corporation is a controlled foreign corporation.

Paragraph (g)(2)(iv) concerning the treatment of inclusions under section 1293 has been reserved.

Paragraph (g)(3) has been changed to provide that dividends from a CFC attributable to a period when the CFC was neither a CFC nor a noncontrolled section 902 corporation will be treated as dividends from a noncontrolled section 902 corporation. This change has been made because it is consistent with the statute. Two commenters suggested that dividends from earnings attributable to periods when the CFC was neither a CFC or a noncontrolled section 902 corporation should be characterized under look-through principles. It was determined that there

was no statutory basis for such treatment.

Sections 1.904-4(h)(3) (ii) and (iii) relating to export financing interest that is received or accrued by a financial service entity and export financing interest that is high-withholding tax interest have been reserved.

Section 1.904-4(j) contains a special rule relating to the treatment of certain currency gain or loss.

Section 1.904-4(k) relating to the priority rules has been reserved.

Section 1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.

Section 1.904-5 provides look-through rules for CFCs and other entities. Paragraph (a)(1) defines the term "separate category" of income. Paragraph (a)(2) defines the term "controlled foreign corporation." Paragraph (a)(3) defines the term "United States shareholder." This paragraph has been changed to include affiliates in the definition of a "United States shareholder."

Section 1.904-5(c)(2)(i) provides that interest that is received or accrued from a CFC in which the taxpayer is a United States shareholder shall be treated as income in a separate category to the extent it is allocable to income of the CFC in that category. Paragraph (c)(2)(ii) provides rules for allocating expenses of a CFC to the income of the CFC in separate categories if interest is paid to a United States shareholder of the CFC (related person interest). Pursuant to section 954(b)(5), this paragraph provides that related person interest is allocated to passive income of the CFC to the extent of such passive income (the "netting rule").

Two commenters suggested that unrelated person interest should be allocated to passive income before related person interest. One commenter suggested that the netting rule should be applied to financial services income. These changes were not adopted because they lack statutory support.

The final regulations do, however, change paragraph (c)(2) in some important respects. Under the final regulations, non-interest expenses that are not definitely related, or that are definitely related to all classes of income, are allocated to the separate categories after the allocation of related person interest. This change was made to avoid the creation of passive losses and because it seemed more consistent with the theory underlying the netting rule that passive investments of a controlled foreign corporation that are funded by related person debt should be treated as if they were direct

investments of the related person. In addition, the final regulations have been changed to combine into one step the allocation of these non-definitely related expenses and non-definitely related third person interest. This change is a simplifying change and is consistent with the theory of the netting rule. The final regulations also provide rules for allocating expenses when the CFC allocates interest expense on a gross income basis. This rule reflects the anticipated adoption of this alternative in § 1.861-8.

Paragraph (c)(4)(i) provides that dividends shall be treated as income in a separate category in proportion to the ratio of the portion of earnings and profits attributable to income in such category to the total amount of earnings and profits of the CFC. This rule has been changed to make it clear that it applies to an amount included in gross income under section 951(a)(1)(B). Paragraph (c)(4)(ii) provides a special rule for dividends attributable to loans made to the CFC payor by a related person. In response to several comments, this rule has been changed to clarify the situations in which it will apply.

Section 1.904-5(d) concerning the de minimis rule for subpart F income has been reserved pending the passage of the technical corrections bill. Several commenters suggested that de minimis rules should be adopted in other contexts, e.g. for partnership income or for income earned directly by a United States person. These changes were not adopted because they lack statutory support.

Section 1.904-5(g) provides for the application of the look-through rules to certain foreign source payments between related United States corporations. The final regulations expand the types of entities to which the look-through rules apply.

Section 1.904-5(h)(1) provides rules for the application of the look-through rules to partnerships. Paragraph (h)(2) provides an exception to the look-through rules for certain less than 10 percent general and limited partnership interests. Several commenters suggested that the exception should be deleted. The final regulations retain the exception, because it is felt that these interests are properly characterized as passive investments.

In response to comments, paragraph (h)(4) has been added to provide rules for valuing a partnership interest.

Section 1.904-5(i) provides rules for the application of the look-through rules to related CFCs. Several commenters suggested that the definition of a related CFC be expanded to include all

situations in which there is 10 percent common ownership of the CFCs or in which the CFC owns at least 10 percent of other CFCs. This change was not adopted because it was felt that it would allow significant dilution of the ownership requirements when income is paid through tiers. In response to comments, these rules have been expanded to provide rules for determining when entities other than CFCs are related.

Section 1.904-5(j) concerning the application of the look-through rules to passive foreign investment company inclusions has been reserved.

Section 1.904-5(k) provides ordering rules for purposes of determining the character of income received or accrued by a person from a related person if the payor or another related person also receives or accrues income from the recipient and the look-through rules apply to the income in all cases. These rules have been clarified to deal with partnership distributions and offsetting interest payments when more than two related persons are involved.

Section 1.904-5(l) provides rules for the application of section 904(g) to income of a CFC. The application of section 904(g) to income of United States-owned foreign corporations other than CFCs is not addressed in these rules. Paragraph (l)(2) has been changed to reflect the changes to the treatment of related person interest.

Section 1.904-5(n) provides rules for the order of application of sections 904 (d) and (g). This rule does not address how principles similar to those of section 904(f) apply to income earned at the CFC level because the Service is still considering this issue. See Notice 88-71, 1988-27 I.R.B. 17, for the effect of deficits in one separate category on earnings and profits in other categories.

Section 1.904-6 Allocation of taxes.

Section 1.904-6 provides rules for the allocation of taxes to a separate category of income. Paragraph (a)(1) provides the general rule for allocating taxes to separate categories of income. This rule has been changed to make it clear that the principles of section 954(b)(5) apply for purposes of determining the net amount of income in a separate category. In response to comments, paragraph (a)(1)(iii) has been added to provide rules for apportioning taxes to groups of passive income for purposes of the high-tax kickout. One commenter suggested that foreign taxes should be allocated on a multi-year basis. This suggestion was not adopted. Paragraph (a)(2) provides a special rule for the treatment of foreign taxes

allocable to certain dividends from noncontrolled section 902 corporations. An example has been added that clarifies the application of this paragraph.

Section 1.904-6(b)(1) provides rules for the determination of foreign taxes deemed paid under sections 902 and 900 for taxes allocated to different categories of income. The proposed regulations provided a special allocation rule for taxes on income excluded from subpart F under section 954(b)(4). In response to comments, this rule has been eliminated.

Section 1.904-7 Transition rules.

Section 1.904-7 provides transition rules for the application of section 904(d). The heading of paragraph (a)(1) has been modified to refer to controlled foreign corporations because some taxpayers were incorrectly reading this paragraph as applying to distributions from noncontrolled corporations out of pre-effective date earnings. Under the rules of § 1.904-4(g)(1), distributions from a noncontrolled section 902 corporation are treated as distributions from a noncontrolled section 902 corporation even if out of pre-effective date earnings and profits.

Paragraph (e) provides a rule for the characterization of amounts subject to recapture under section 585(c). This rule has been changed to provide that the recapture income can be treated as attributable to high-withholding tax interest if the taxpayer establishes to the satisfaction of the Secretary that the recapture amount is attributable to high-withholding tax interest. In determining whether recapture income is attributable to high-withholding tax interest or financial services income, the transition rule of section 1201(e)(2) of the Tax Reform Act of 1986 will be taken into account to the extent this rule is applicable in the recapture year.

Section 701 of the Act (relating to the limitation on the use of foreign tax credits against minimum tax liability) shall apply notwithstanding any treaty provisions in effect on the date of enactment of the Act.

Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has also concluded that regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the

Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of this regulation is Carolyn M. DuPuy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects in 26 CFR 1.901-1 Through 1.907-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Sections 1.904-4 through 1.904-7 also issued under 26 U.S.C. 904(d)(5). * * *

Par. 2. Sections 1.904-4 and 1.904-5 are removed. New § 1.904-0 is added immediately before § 1.904-1. New § 1.904-4 through § 1.904-7 are added immediately after § 1.904-3. The added sections read as follows:

§ 1.904-0 Outline of regulation provisions for section 904.

- (I) Reserved.
- (II) Reserved.
- (III) Reserved.

(IV) § 1.904-4 Separate application of section 904 with respect to certain categories of income.

- (a) In general.
- (b) Passive income.
- (1) In general.
- (i) Rule.
- (ii) Example.

- (2) Active rents or royalties.
- (i) In general.
- (ii) Exception for certain rents and royalties.

- (iii) Unrelated person.
- (iv) Example.
- (c) High-Taxed Income.

- (1) In general.
- (2) Grouping of items of income in order to determine whether passive income is high-taxed income.
- (i) Effective date.
- (ii) Allocation and apportionment of expenses.

- (3) Amounts received or accrued by United States persons.
- (4) Income of controlled foreign corporations and foreign branches.
- (i) Income from sources within the QBU's country of operation.
- (ii) Income from sources without the QBU's country of operation.
- (iii) Determination of the source of income.
- (5) Special rules.
- (i) Certain rents and royalties.
- (ii) Treatment of partnership income.
- (iii) Currency gain or loss on distributions out of previously taxed income.
- (6) Application of this paragraph to additional taxes paid or deemed paid in the year of receipt of previously taxed income.
- (i) Determination made in year of inclusion.
- (ii) Exceptions.
- (iii) Allocation of foreign taxes imposed on distributions of previously taxed income.
- (iv) Increase in taxes paid by successors.
- (7) Application of this paragraph to certain reductions of tax on distributions of income.
- (i) In general.
- (ii) Allocation of reductions of foreign tax.
- (iii) Interaction with section 954(b)(4).
- (8) Redeterminations of foreign tax.
- (9) Examples.
- (d) High withholding tax interest.
- (e) Financial services income.
- (1) In general.
- (2) Active financing income.
- (i) Income included.
- (3) Financial services entities.
- (i) In general.
- (ii) Special rule for affiliated groups.
- (iii) Treatment of partnerships and other pass-through entities.
- (A) Rule.
- (B) Examples.
- (4) Definition of incidental income.
- (i) In general.
- (A) Rule.
- (B) Examples.
- (ii) Income that is not incidental income.
- (5) Exceptions.
- (f) Shipping income.
- (g) Non-controlled section 902 corporations.
- (1) Definition.
- (2) Treatment of dividends for each separate non-controlled section 902 corporation.
- (i) In general.
- (ii) Special rule for dividends received by a controlled foreign corporation.
- (iii) Special rule for high withholding tax interest.

(3) Amounts received or accrued by United States persons.

(4) Income of controlled foreign corporations and foreign branches.

(i) Income from sources within the QBU's country of operation.

(ii) Income from sources without the QBU's country of operation.

(iii) Determination of the source of income.

(5) Special rules.

(i) Certain rents and royalties.

(ii) Treatment of partnership income.

(iii) Currency gain or loss on distributions out of previously taxed income.

(6) Application of this paragraph to additional taxes paid or deemed paid in the year of receipt of previously taxed income.

(i) Determination made in year of inclusion.

(ii) Exceptions.

(iii) Allocation of foreign taxes imposed on distributions of previously taxed income.

(iv) Increase in taxes paid by successors.

(7) Application of this paragraph to certain reductions of tax on distributions of income.

(i) In general.

(ii) Allocation of reductions of foreign tax.

(iii) Interaction with section 954(b)(4).

(8) Redeterminations of foreign tax.

(9) Examples.

(d) High withholding tax interest.

(e) Financial services income.

(1) In general.

(2) Active financing income.

(i) Income included.

(3) Financial services entities.

(i) In general.

(ii) Special rule for affiliated groups.

(iii) Treatment of partnerships and other pass-through entities.

(A) Rule.

(B) Examples.

(4) Definition of incidental income.

(i) In general.

(A) Rule.

(B) Examples.

(ii) Income that is not incidental income.

(5) Exceptions.

(f) Shipping income.

(g) Non-controlled section 902 corporations.

(iv) Treatment of inclusions under section 1293.

(3) Special rule for controlled foreign corporations.

(4) Examples.

(h) Export financing interest.

(1) Definitions.

(i) Export financing interest.

(ii) Fair market value.

(iii) Related person.

(2) Treatment of export financing interest.

(3) Interaction of export financing interest and related person factoring income.

(i) Export financing interest that is also related person factoring income.

(ii) Export financing interest that is received and accrued by a financial services entity.

(iii) Export financing interest that is high withholding tax interest.

(iv) Examples.

(v) Income eligible for section 864(d)(7) exception (same country exception) from related person factoring treatment.

(A) Income other than interest.

(B) Interest income.

(C) Examples.

(i) Interaction of section 907(c) and income described in this section.

(j) Special rule for certain currency gains and losses.

(k) Priority rules.

(V) § 1.904-5 Look through rules as applied to controlled foreign corporations and other entities.

(a) Definitions.

(b) In general.

(c) Rules for specific types of inclusions and payments.

(1) Subpart F inclusions.

(i) Rule.

(ii) Examples.

(2) Interest.

(i) In general.

(ii) Allocating expenses including interest paid to a related person.

(iii) Definitions.

(A) Value of assets and reduction in value of assets and gross income.

(B) Related person debt allocated to passive assets.

(iv) Examples.

(3) Rents and royalties.

(4) Dividends.

(i) Look-through rule.

(ii) Special rule for dividends attributable to certain loans.

(iii) Examples.

(d) Effect of exclusions from Subpart F income.

(1) De minimis amount of Subpart F income.

(2) Exception for certain income subject to high foreign tax.

(3) Examples.

(e) Treatment of Subpart F income in excess of 70 percent of gross income.

(1) Rule.

(2) Example.

(f) Modifications of look-through rules for certain income.

(1) High withholding tax interest.

(2) Dividends from a non-controlled section 902 corporation.

(3) Distributions from a FSC.

(4) Example.

(g) Application of the look-through rules to certain domestic corporations.

(h) Application of the look-through rules to partnerships and other pass-through entities.

(1) General rule.

(2) Exception for certain partnership interests.

(i) Rule.

(ii) Exceptions.

(3) Income from the sale of a partnership interest.

(4) Value of a partnership interest.

(i) Application of look-through rules to related entities.

(1) In general.

(2) Exception for distributive shares of partnership income.

(3) Special rule for payments from foreign parents to domestic subsidiaries.

(j) Look-through rules applied to passive foreign investment company industries.

(k) Ordering rules.

(1) In general.

(2) Specific rules.

(l) Examples.

(m) Application of section 904 (g)

(1) In general.

(2) Treatment of interest payments.

(3) Examples.

(4) Treatment of dividend payments.

(i) Rule.

(ii) Determination of earnings and profits from United States sources.

(iii) Example.

(5) Treatment of Subpart F inclusions.

(i) Rule.

(ii) Example.

(6) Treatment of section 78 amount.

(7) Coordination with treaties.

(n) Order of application of sections 904 (d) and (g).

(o) Effective date.

(VI) § 1.904-6 Allocation of taxes.

(a) Allocation of taxes to a separate category or categories of income.

(1) In general.

(i) Taxes related to a separate category of income.

(ii) Apportionment of taxes related to more than one separate category.

(iii) Apportionment of taxes for purposes of applying the high tax income test.

(2) Treatment of certain dividends from non-controlled section 902 corporations.

(b) Application of paragraph (a) to sections 902 and 900.

(1) Determination of foreign taxes deemed paid.

(2) Distributions received from foreign corporations that are excluded from gross income under section 959(b).

(3) Application of section 78.

(4) Increase in limitation.

(c) Examples.

(VII) § 1.904-7 Transition rules.

(a) Characterization of distributions and section 951(a)(1)(B) inclusions of earnings of a controlled foreign corporation accumulated in taxable years beginning before January 1, 1987 during taxable years of both the payor controlled foreign corporation and the recipient which begin after December 31, 1986.

(1) In general.

(2) Limitation on establishing the character of earnings and profits.

(b) Application of look-through rules to distributions (including deemed distributors) and payments by an entity to a recipient when one's taxable year begins before January 1, 1987 and the other's taxable year begins after December 31, 1986.

(1) In general.

(2) Payor of interest, rents, or royalties is subject to the Act and recipient is not subject to the Act.

(3) Recipient of interest, rents, or royalties is subject to the Act and payor is not subject to the Act.

(4) Recipient of dividends and subpart F inclusions is subject to the Act and payor is not subject to the Act.

(5) Examples.

(c) Installment sales.

(d) Special effective date for high withholding tax interest earned by persons with respect to qualified loans described in section 1201(e)(2) of the Act.

(e) Treatment of certain recapture income.

§ 1.904-4 Separate application of section 904 with respect to certain categories of income.

(a) In general. A taxpayer is required to compute a separate foreign tax credit limitation for income received or accrued in a taxable year that is described in section 904(d)(1)(A) (passive income), (B) (high withholding tax interest), (C) (financial services income), (D) (shipping income), (E) (dividends from each noncontrolled section 902 corporation), (F) (dividends from a DISC or former DISC), (G) (foreign trade income), (H) (distributions from a FSC or former FSC), or (I) (general limitation income).

(b) Passive income—(1) In general—

(i) Rule. The term "passive income" means any—

(A) Income received or accrued by any person that is of a kind that would be foreign personal holding company income (as defined in section 954(c)) if the taxpayer were a controlled foreign corporation, including any amount of gain on the sale or exchange of stock in excess of the amount treated as a dividend under section 1248; or

(B) Amount includible in gross income under section 561 or section 1293.

Passive income does not include any income that is also described in section 904(d)(1) (B) through (H), any export financing interest (as defined in section 904(d)(2)(G) and paragraph (h) of this section), any high-taxed income (as defined in section 904(d)(2)(F) and paragraph (c) of this section), or any foreign oil and gas extraction income (as defined in section 907(c)). In determining whether any income is of a kind that would be foreign personal holding company income, the rules of section 964(d)(6) shall apply only in the case of income of a controlled foreign corporation (as defined in section 957).

(ii) *Example.* The following example illustrates the application of paragraph (b)(1)(i) of this section:

P is a domestic corporation with a branch in foreign country X. P does not have any financial services income. For 1988, P has a net foreign currency gain that would not constitute foreign personal holding company income if P were a controlled foreign corporation because the gain is directly related to the business needs of P. The currency gain is, therefore, general limitation income to P because it is not income of a kind that would be foreign personal holding company income.

(2) *Active rents or royalties.*—(i) *In general.* Passive income does not include any rents or royalties that are derived in the active conduct of a trade or business and received from a person who is an unrelated person. Except as provided in paragraph (b)(2)(ii) of this section, the principles of § 1.954-2(d)(1) shall apply in determining whether rents or royalties are derived in the active conduct of a trade or business. For this purpose, the term "taxpayer" shall be substituted for the term "controlled foreign corporation" if the recipient of the rents or royalties is not a controlled foreign corporation.

(ii) *Exception for certain rents and royalties.* Rents or royalties are considered derived in the active conduct of a trade or business by a United States person or by a controlled foreign corporation (or other entity to which the look-through rules apply) for purposes of section 904 (but not for purposes of section 954) if the requirements of section 954(c)(2)(A) are satisfied by one or more corporations that are members

of an affiliated group of corporations (within the meaning of section 1504(a) without regard to section 1504(b)(3)) of which the recipient is a member.

(iii) *Unrelated person.* For purposes of this paragraph (b)(2), a person is considered to be an unrelated person if the person is not a related person within the meaning of section 954(d)(3), without regard to whether the relationship described in section 954(d)(3) is between a controlled foreign corporation and another person or between two persons neither one of which is a controlled foreign corporation.

(iv) *Example.* The following example illustrates the application of paragraph (b)(2)(ii) of this section.

Example. Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S is regularly engaged in the restaurant franchise business. P licenses trademarks, tradenames, certain know-how, related services, and certain restaurant designs for which S pays P an arm's length royalty. P is regularly engaged in the development and licensing of such property. The royalties received by P for the use of its property are allocable under the look-through rules of § 1.904-5 to the royalties S receives from the franchisees. All of the franchisees are unrelated to S or P and operate in S's country of incorporation. S does not satisfy, but P does satisfy, the active trade or business requirements of § 1.954-2(d)(1). The royalty income earned by S with regard to its franchisees is foreign personal holding company income that is general limitation income, and the royalties paid to P are general limitation income to P.

(c) *High-taxed income.*—(1) *In general.* Income received or accrued by a United States person that would otherwise be passive income shall not be treated as passive income if the income is determined to be high-taxed income. Income shall be considered to be high-taxed income if, after allocating expenses of the United States person to that income, the sum of the foreign income taxes paid or accrued by the United States person with respect to such income and the foreign taxes deemed paid or accrued by the United States person with respect to such income under section 902 or section 960 exceeds the highest rate of tax specified in section 1 or section 11, whichever applies (and with reference to section 15 if applicable), multiplied by the amount of such income (including the amount treated as a dividend under section 78). If, after application of this paragraph, income that would otherwise be passive income is determined to be high-taxed income, it shall be treated as general limitation income, and any taxes imposed on that income shall be considered related to general limitation income under § 1.904-6. Income and

taxes shall be translated at the appropriate rates, as determined under sections 986 and 989 and the regulations thereunder, before application of this paragraph.

(2) *Grouping of items of income in order to determine whether passive income is high-taxed income.*—(i) *Effective Date.* For purposes of determining whether passive income is high-taxed income, the grouping rules of paragraphs (c)(3), (c)(4), and (c)(5) of this section apply to taxable years beginning after December 31, 1987. See notice 87-6 for the grouping rules applicable to taxable years beginning after December 31, 1986 and before January 1, 1988.

(ii) *Allocation and apportionment of expenses.* For purposes of determining whether passive income is high-taxed, expenses shall be allocated and apportioned to each of the groups of passive income (described in paragraphs (c)(3), (c)(4), and (c)(5) of this section) under the rules of § 1.861-8. Taxpayers that allocate and apportion interest expense on an asset basis may nevertheless apportion passive interest expense among the groups of passive income on a gross income basis.

(3) *Amounts received or accrued by United States persons.* Except as provided in paragraph (c)(5) of this section, all passive income received by a United States person shall be subject to the rules of this paragraph (c)(3). However, subpart F inclusions that are passive income and income that is earned by a United States person through a foreign qualified business unit (foreign QBU) that is passive income shall be subject to the rules of this paragraph only to the extent provided in paragraph (c)(4)(ii) of this section. For purposes of this section, a foreign QBU is a QBU (as defined in section 969(a)) other than a controlled foreign corporation, that has its principal place of business outside the United States. These rules shall apply whether the income is received from a controlled foreign corporation of which the United States person is a United States shareholder or from any other person. For purposes of determining whether passive income is high-taxed income, the following rules apply:

(i) All passive income received during the taxable year that is subject to a withholding tax of fifteen percent or greater shall be treated as one item of income.

(ii) All passive income received during the taxable year that is subject to a withholding tax of less than fifteen percent (but greater than zero) shall be treated as one item of income.

(iii) All passive income received during the taxable year that is subject to no withholding tax shall be treated as one item of income.

(4) *Income of controlled foreign corporations and foreign branches.* Except as provided in paragraph (c)(5) of this section, all amounts included in the gross income of a United States shareholder under section 951(a)(1) for a particular year that (after application of the look-through rules of section 904(d)(3) and § 1.904-5) are attributable to passive income received or accrued by a controlled foreign corporation and all amounts received or accrued by a United States person through a foreign QBU shall be subject to the rules of this paragraph (c)(4). These rules shall be applied separately to inclusions with respect to each controlled foreign corporation of which the taxpayer is a United States shareholder. These rules shall also be applied separately to income attributable to each foreign QBU of a United States person and to each QBU of a controlled foreign corporation or any other entity subject to the look-through rules of § 1.904-5.

(i) *Income from sources within the QBU's country of operation.* Passive income from sources within the QBU's country of operation shall be treated as one item of income.

(ii) *Income from sources without the QBU's country of operation.* Passive income from sources without the QBU's country of operation shall be grouped on the basis of the withholding tax imposed on that income as provided in paragraph (c)(3) (i) through (iii) of this section.

(iii) *Determination of the source of income.* For purposes of this paragraph (c)(4), income will be determined to be from sources within or without the QBU's country of operation under the laws of the foreign country of the payor of the income.

(5) *Special rules.*—(i) *Certain rents and royalties.* All items of rent or royalty income to which an item of rent or royalty expense is directly allocable shall be treated as a single item of income and shall not be grouped with other amounts.

(ii) *Treatment of partnership income.* A partner's distributive share of partnership income that is not subject to the look-through rules and that is treated as passive income under § 1.904-5(h)(2) shall be treated as a single item of income and shall not be grouped with other amounts. A distributive share of partnership income that is treated as passive income under the look-through rules shall be grouped according to the rules in paragraph (c)(4) of this section that are applicable to subpart F inclusions.

(iii) *Currency gain or loss on distributions out of previously taxed income.* Any currency gain or loss with respect to a distribution received by a United States shareholder of previously taxed earnings and profits that is recognized under section 986(c) and that is treated as an item of passive income shall be treated as an item of passive income that is subject to no withholding tax for purposes of paragraph (c)(3) of this section, unless the distribution is received by a controlled foreign corporation or a foreign QBU of the United States shareholder. Any currency gain or loss with respect to a distribution of previously taxed earnings and profits that is recognized under section 986(c) and that is treated as passive income, and that is received by a controlled foreign corporation or a foreign QBU of a United States person shall be treated as an item of passive income from sources within the QBU's country of operation for purposes of paragraph (c)(4) of this section. The preceding sentence shall be applied separately for each foreign QBU of the United States person and for each QBU of a controlled foreign corporation.

(6) *Application of this paragraph to additional taxes paid or deemed paid in the year of receipt of previously taxed income.*—(i) *Determination made in year of inclusion.* The determination of whether an amount included in gross income under section 951(a) is high-taxed income shall be made in the taxable year the income is included in the gross income of the United States shareholder under section 951(a) (hereinafter the "taxable year of inclusion"). Any increase in foreign taxes paid or accrued, or deemed paid or accrued, when the taxpayer receives an amount that is excluded from gross income under section 959(a) and that is attributable to a controlled foreign corporation's earnings and profits relating to the amount previously included in gross income will not be considered in determining whether the amount included in income in the taxable year of inclusion is high-taxed income.

(ii) *Exceptions.* Paragraph (c)(6)(i) of this section shall not apply to an increase in tax in a case in which the taxpayer is required to adjust its foreign taxes in the year of inclusion under section 905(c). Paragraph (c)(6)(i) of this section shall also not apply to the extent that the taxpayer receives a distribution of earnings and profits that is excluded from gross income under section 959(a), the distribution is received prior to the day that the taxpayer files its return for the taxable year of inclusion of the amount to which the distribution is

attributable, and the distribution is received in the "prefiling period." For this purpose the "prefiling period" is the period ending 90 days prior to the due date of the return (determined with extensions) for the taxable year of inclusion. In such a case, for purposes of determining whether the amount included in income in the taxable year of inclusion is high-taxed income, the United States shareholder shall consider as taxes attributable to that inclusion all foreign taxes paid or accrued, or deemed paid or accrued, prior to the end of the prefiling period with respect to that inclusion. A United States shareholder may also elect to consider as taxes paid or accrued, or deemed paid or accrued, with respect to the inclusion all foreign taxes paid or accrued or deemed paid or accrued after the end of the prefiling period but before the taxpayer files its return for the year of inclusion.

(iii) *Allocation of foreign taxes imposed on distributions of previously taxed income.* If an item of income is considered high-taxed income in the year of inclusion and paragraph (c)(6)(i) of this section applies, then any increase in foreign income taxes imposed with respect to that item shall be considered to be related to general limitation income. If an item of income is not considered to be high-taxed income in the taxable year of inclusion and paragraph (c)(6)(i) of this section applies, the following rules shall apply. The taxpayer shall treat an increase in taxes paid or accrued, or deemed paid or accrued, on any distribution of the earnings and profits attributable to the amount included in gross income in the taxable year of inclusion as taxes related to passive income to the extent of the excess of the product of (A) the highest rate of tax in section 11 (determined with regard to section 15 and determined as of the year of inclusion) and (B) the amount of the inclusion (after allocation of parent expenses) over (C) the taxes paid or accrued, or deemed paid or accrued, in the year of inclusion. The taxpayer shall treat any taxes paid or accrued, or deemed paid or accrued, on the distribution in excess of this amount as taxes related to general limitation income. If these additional taxes are not creditable in the year of distribution the carryover rules of section 904(c) apply. For purposes of this paragraph, the foreign tax on a subpart F inclusion shall be considered increased on distribution of the earnings and profits associated with that inclusion if the total of taxes paid and deemed paid on the inclusion and the distribution (taking

into account any reductions in tax and any withholding taxes) is greater than the total taxes deemed paid in the year of inclusion. Any foreign currency loss associated with the earnings and profits that are distributed with respect to the inclusion is not to be considered as giving rise to an increase in tax.

(iv) *Increase in taxes paid by successors.* [Reserved]

(7) *Application of this paragraph to certain reductions of tax on distributions of income.*—(i) *In general.* If the effective rate of tax imposed by a foreign country on income of a foreign corporation that is included in a taxpayer's gross income is reduced under foreign law on distribution of such income, the rules of this paragraph (c) apply at the time that the income is included in the taxpayer's gross income without regard to the possibility of subsequent reduction of foreign tax on the distribution. If the inclusion is considered to be high-taxed income, then the taxpayer shall treat the inclusion as general limitation income. When the foreign corporation distributes the earnings and profits to which the inclusion was attributable and the foreign tax on the inclusion is reduced, then the taxpayer shall redetermine whether the inclusion should be considered to be high-taxed income provided that a redetermination of United States tax liability is required under section 905(c). If, taking into account the reduction in foreign tax, the inclusion would not have been considered high-taxed income, then the taxpayer, in redetermining its United States tax liability for the year or years affected, shall treat the inclusion and the associated taxes (as reduced on the distribution) as passive income and taxes. See section 905(c) and the regulations thereunder regarding the method of adjustment. For this purpose, the foreign tax on a subpart F inclusion shall be considered reduced on distribution of the earnings and profits associated with the inclusion if the total of taxes paid and deemed paid on the inclusion and the distribution (taking into account any reductions in tax and any withholding taxes) is less than the total taxes deemed paid in the year of inclusion. Any foreign currency gain associated with the earnings and profits that are distributed with respect to the inclusion is not to be considered a reduction of tax.

(ii) *Allocation of reductions of foreign tax.* For purposes of paragraph (c)(7)(i) of this section, reductions in foreign tax shall be allocated among the separate categories under the same principles as those of § 1.904-6 for allocating taxes

among the separate categories. For purposes of determining to which year's taxes the reduction in taxes relate, the reduction in taxes shall be attributable, on an annual last-in-first-out (LIFO) basis, to foreign taxes potentially subject to reduction that are associated with previously taxed income, then on a LIFO basis to foreign taxes associated with income that under paragraph (c)(7)(iii) of this section remains as passive income but that was excluded from subpart F income under section 954(b)(4), and finally on a LIFO basis to foreign taxes associated with other earnings and profits. Furthermore, in applying the ordering rules of section 959(c), distributions shall be considered made on a LIFO basis first out of earnings described in section 959(c) (1) and (2), then on a LIFO basis out of earnings and profits associated with income that remains passive income under paragraph (c)(7)(iii) of this section but that was excluded from subpart F under section 954(b)(4), and finally on a LIFO basis out of other earnings and profits.

(iii) *Interaction with section 954(b)(4).* If the effective rate of tax imposed by a foreign country on income of a foreign corporation is reduced under foreign law on distribution of that income, the rules of section 954(b)(4) shall be applied without regard to the possibility of subsequent reduction of foreign tax. If a taxpayer excludes passive income from a controlled foreign corporation's foreign personal holding company income under these circumstances, then the income shall be considered to be passive income until distribution of that income. At that time, the rules of this paragraph shall apply to determine whether the income is high-taxed income and, therefore, general limitation income. For purposes of determining whether a reduction in tax is attributable to taxes on income excluded under section 954(b)(4), the rules of paragraph (c)(7)(ii) of this section apply. The rules of paragraph (c)(7)(ii) of this section shall apply for purposes of ordering distributions to determine whether such distributions are out of earnings and profits associated with such excluded income.

(8) *Redeterminations of foreign tax.* If in the pre-filing period there is a redetermination of foreign taxes, within the meaning of section 905(c) and the regulations thereunder, then, for purposes of this paragraph (c), the amount of foreign taxes paid or deemed paid for the taxable year will be the taxes as redetermined.

(9) *Examples.* The following examples illustrate the application of this paragraph (c).

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S is a single qualified business unit (QBU) operating in foreign country X. In 1988, S earns \$130 of gross passive royalty income from country X sources, and incurs \$30 of expenses that do not include any payments to P. S's \$100 of net passive royalty income is subject to \$30 of foreign tax, and is included under section 951 in P's gross income for the taxable year. P allocates \$50 of expenses to the \$100 (consisting of the \$70 section 951 inclusion and \$30 section 78 amount), resulting in a net inclusion of \$30. After application of the high-tax kick-out rules of paragraph (c)(1) of this section, the \$50 inclusion is treated as general limitation income, and the \$30 of taxes deemed paid are treated as taxes imposed on general limitation income, because the foreign taxes paid and deemed paid on the income exceed the highest United States tax rate multiplied by the \$50 inclusion ($\$30 > \17 ($.34 \times \50)).

Example (2). The facts are the same as in Example (1) except that instead of earning \$130 of gross passive royalty income, S earns \$65 of gross passive royalty income from country X sources and \$65 of gross passive interest income from country Y sources. S incurs \$15 of expenses and \$5 of foreign tax with regard to the royalty income and incurs \$15 of expenses and \$10 of foreign tax with regard to the interest income. P allocates \$50 of expenses pro rata to the \$50 inclusion (\$45 section 951 inclusion and \$5 section 78 amount) attributable to the royalty income earned by S and the \$50 inclusion (\$40 section 951 inclusion and \$10 section 78 amount) attributable to the interest income earned by S. Under paragraph (c)(4) of this section, the high-tax test is applied separately to the section 951 inclusion attributable to the income from X sources and the section 951 inclusion attributable to the income from Y sources. Therefore, after allocation of P's \$50 of expenses, the resulting \$25 inclusion attributable to the royalty income from X sources is still treated as passive income because the foreign taxes paid and deemed paid on the income do not exceed the highest United States tax rate multiplied by the \$25 inclusion ($\$5 < \8.50 ($.34 \times \25)). The \$25 inclusion attributable to the interest income from Y sources is treated as general limitation income because the foreign taxes paid and deemed paid exceed the highest United States tax rate multiplied by the \$25 inclusion ($\$10 > \8.50 ($.34 \times \25)).

Example (3). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S is incorporated and operating in country Y and has a branch in country Z. S has two QBUs (QBU Y and QBU Z). In 1988, S earns \$65 of gross passive royalty income in country Y through QBU Y and \$65 of gross passive royalty income in country Z through QBU Z. S allocates \$15 of expenses to the gross passive royalty income earned by each QBU, resulting in net income of \$50 in each QBU. Country Y imposes \$5 of foreign tax on the royalty income earned in Y, and country Z imposes \$10 of tax on

royalty income earned in Z. All of S's income constitutes subpart F foreign personal holding company income that is passive income and is included in P's gross income for the taxable year. P allocates \$50 of expenses pro rata to the \$100 subpart F inclusion attributable to the QBUs (consisting of the \$45 section 951 inclusion derived through QBU Y, the \$5 section 78 amount attributable to QBU Y, the \$40 section 951 inclusion derived through QBU Z, and the \$10 section 78 amount attributable to QBU Z), resulting in a net inclusion of \$50. Pursuant to paragraph (c)(4) of this section, the high-tax kick-out rules must be applied separately to the subpart F inclusion attributable to the income earned by QBU Y and the income earned by QBU Z. After application of the high-tax kick-out rules, the \$25 inclusion attributable to Y will still be treated as passive income because the foreign taxes paid and deemed paid on the income do not exceed the highest United States tax rate multiplied by the \$25 inclusion ($\$5 < \8.50 ($.34 \times \25)). The \$25 inclusion attributable to Z will be treated as general limitation income because the foreign taxes paid and deemed paid on the income exceed the highest United States tax rate multiplied by the \$25 inclusion ($\$10 > \8.50 ($.34 \times \25)).

Example (4). Domestic corporation M operates in branch form in foreign countries X and Y. The branches are qualified business units (QBUs), within the meaning of section 980(a). In 1988, QBU X earns passive royalty income, interest income and rental income. All of the QBU X passive income is from country Z sources. The royalty income is not subject to a withholding tax, and the interest income and the rental income are subject to a 5 percent and 10 percent withholding tax, respectively. QBU Y earns interest income in Country Y that is not subject to foreign tax. For purposes of determining whether M's foreign source passive income is high-taxed income, the rental income and the interest income earned in QBU X are treated as one item of income pursuant to paragraphs (c)(4)(ii) and (c)(3) of this section. The interest income earned in QBU Y and the royalty income earned in QBU X are each treated as a separate item of income under paragraphs (c)(4)(i) and (c)(4)(ii) and (c)(3) of this section.

Example (5). S, a controlled foreign corporation incorporated in foreign country R, is a wholly-owned subsidiary of P, a domestic corporation. For 1988, P is required under section 951(a) to include in gross income \$80 attributable to the earnings and profits of S for such year, all of which is foreign personal holding company income that is passive rent or royalty income. S does not make any distributions in 1988 or 1989. Foreign income taxes paid by S for 1988 that are deemed paid by P for such year under section 960(a) with respect to the section 951(a) inclusion equal \$20. Twenty dollars (\$20) of P's expenses are properly allocated to the section 951(a) inclusion. The foreign income tax paid with respect to the section 951(a) inclusion does not exceed the highest United States tax rate multiplied by the amount of income after allocation of parent expenses ($\$20 < \27.20 ($.34 \times \$80$)). Thus, P's section 951(a) inclusion for 1988 is included in P's passive income and the \$20 of taxes attributable to that inclusion are treated as

taxes related to passive income. In 1990, after P has filed its return for its 1988 tax year, S distributes \$80 to P, and under section 969 that distribution is treated as attributable to the earnings and profits with respect to the amount included in income by P in 1988 and is excluded from P's gross income. Foreign country R imposes a withholding tax of \$15 on the distribution in 1990. Under paragraph (c)(6)(i) of this section, the withholding tax in 1990 does not affect the characterization of the 1988 inclusion as passive income nor does it affect the characterization of the \$20 of taxes paid in 1988 as taxes paid with respect to passive income. No further parent expenses are allocable to the receipt of that distribution. In 1990, the foreign taxes paid (\$15) exceed the product of the highest United States tax rate and the amount of the inclusion reduced by taxes deemed paid in the year of inclusion ($\$15 > (\$.34 \times \$80) - \20). Thus, under paragraph (c)(6)(iii) of this section, \$7.20 ($[(.34 \times \$80) - \$20] \times .34$) of the \$15 withholding tax paid in 1990 is treated as taxes related to passive income and the remaining \$7.80 ($\$15 - \7.20) of the withholding tax is treated as related to general limitation income.

Example (6). The facts are the same as in Example (5) except that S distributes the \$80 in 1989 rather than 1990 and the distribution is made during the pre-filing period with respect to P's 1988 tax year. Under paragraph (c)(6)(ii) of this section both the \$20 tax paid by S in 1988 and the \$15 withholding tax paid by P in 1989 are considered in determining whether the section 951(a) inclusion for 1988 is high-taxed income. Thus, because the total amount of foreign taxes paid with respect to the 1988 inclusion exceeds the amount determined by multiplying the highest United States rate for 1988 by the amount of the inclusion reduced by allocable parent expenses ($\$35 > \27.20 ($.34 \times \$80$)), the section 951(a) inclusion in 1988 is treated as general limitation income and the entire \$35 of tax (the \$20 of 1988 taxes and the \$15 of 1989 taxes) is treated as taxes related to general limitation income.

Example (7). S, a controlled foreign corporation incorporated in foreign country R, is a wholly-owned subsidiary of P, a domestic corporation. For 1988, P is required under section 951(a) to include in gross income \$80 attributable to the earnings and profits of S for such year, all of which is foreign personal holding company income that is passive rent or royalty income. S does not make any distributions in 1988. Foreign income taxes paid by S for 1988 that are deemed paid by P for such year under section 960(a) with respect to the section 951(a) inclusion equal \$20. Twenty dollars (\$20) of P's expenses are properly allocated to the section 951(a) inclusion. In 1989, during P's pre-filing period, foreign country R redetermines the tax liability of S for 1987 to be \$30. Under paragraph (c)(8) of this section the entire \$30 of foreign tax is taken into account in determining if the inclusion is high-taxed. The inclusion is considered to be high-taxed because the foreign income tax paid with respect to the section 951(a) inclusion exceeds the highest United States tax rate multiplied by the amount of income after allocation of parent expenses

($\$30 > \27.20 ($.34 \times \$80$)). Thus, P's section 951(a) inclusion for 1988 is included in P's general limitation, and the \$30 of taxes attributable to that inclusion are treated as taxes related to general limitation taxes. \$10 will be added to S's pool of general limitation taxes in 1990.

Example (8). S, a controlled foreign corporation, is a wholly-owned subsidiary of P, a domestic corporation. P and S are calendar year taxpayers. In 1987, S's only earnings consist of \$200 of passive income that is foreign personal holding company income that is earned in a foreign country X. Under country X's tax system, the corporate tax on particular earnings is reduced on distribution of those earnings and no withholding tax is imposed. In 1987, S pays \$100 of foreign tax. P does not elect to exclude this income from subpart F under section 954(b)(4) and includes \$200 in gross income (\$100 of net foreign personal holding company income and \$100 of the section 78 amount). At the time of the inclusion, the income is considered to be high-taxed income under paragraphs (c)(1) and (c)(6)(i) of this section and is general limitation income to P. S does not distribute any of its earnings in 1987. In 1988, S has no earnings. On December 31, 1988, S distributes the \$100 of earnings from 1987. At that time, S receives a \$50 refund from X attributable to the reduction of the country X corporate tax imposed on those earnings. Under paragraph (c)(7)(i) of this section, P must redetermine whether the 1987 inclusion should be considered to be high-taxed income. By taking into account the reduction in foreign tax, the inclusion would not have been considered high-taxed income. Therefore, P must redetermine its foreign tax credit for 1987 and treat the inclusion and the taxes associated with the inclusion as passive income and taxes. P must follow the appropriate section 905(c) procedures.

Example (9). The facts are the same as in Example (8) except that P elects to apply section 954(b)(4) to S's passive income that is subpart F income. Although the income is not considered to be subpart F income, it remains passive income until distribution. In 1988, S distributes \$150 to P. The distribution is a dividend to P because S has \$150 of accumulated earnings and profits (the \$100 of earnings in 1987 and the \$50 refund in 1988). P has no expenses allocable to the dividend from S. In 1988, the income is subject to the high-tax kick-out rules under paragraph (c)(7)(iii) of this section. The income is passive income to P because the foreign taxes paid and deemed paid by P with respect to the income do not exceed the highest United States tax rate on that income.

Example (10). The facts are the same as in Example (8) except that the distribution in 1988 is subject to a withholding tax of \$25. Under paragraph (c)(7)(i) of this section, P must redetermine whether the 1987 inclusion should be considered to be high-taxed income because there is a net \$25 reduction of foreign tax. By taking into account both the reduction in foreign corporate tax and the withholding tax, the inclusion would continue to be considered high-taxed income. P must follow the appropriate section 905(c) procedures. P

must redetermine its foreign tax credit for 1987, but the inclusion and the \$75 taxes (\$50 of deemed paid tax and \$25 withholding tax) will continue to be treated as general limitation income and taxes.

Example (11). (i) S, a controlled foreign corporation operating in country G, is a wholly-owned subsidiary of P, a domestic corporation. P and S are calendar year taxpayers. Country G imposes a tax of 50 percent on S's earnings. Under country G's system, the foreign corporate tax on particular earnings is reduced on distribution of those earnings to 30 percent and no withholding tax is imposed. Under country G's law, distributions are treated as made pro rata from each year's earnings. For 1987, S's only earnings consist of passive income that is foreign personal holding company income that is earned in foreign country G. S has taxable income of \$110 for United States purposes and \$100 for country G purposes. Country G, therefore, imposes a tax of \$50 on the 1987 earnings of S. P does not elect to exclude this income from subpart F under section 954(b)(4) and includes \$110 in gross income (\$60 of net foreign personal holding company income and \$50 of the section 78 amount). At the time of the inclusion, the income is considered to be high-taxed income under paragraph (c) of this section and is general limitation income to P. S does not distribute any of its taxable income in 1987.

(ii) In 1988, S earns general limitation income that is not subpart F income. S again has \$110 in taxable income for United States purposes and \$100 in taxable income for country G purposes, and S pays \$50 of tax to foreign country G. In 1988, S has no taxable income or earnings. On December 31, 1988, S distributes \$60 of earnings and receives a refund of foreign tax of \$24. Country G treats the distribution of earnings as pro rata from the earnings accumulated in 1987 and 1988. However, under paragraph (c)(7)(iii) of this section, the distribution, and, therefore, the reduction of tax is treated as first attributable to the \$60 of passive earnings attributable to income previously taxed in 1987. However, because, under foreign law, only 40 percent of the \$50 of foreign taxes on the passive earnings can be refunded, \$20 of the \$24 foreign tax refund reduces foreign taxes on passive earnings. The other \$4 of the tax refund reduces the general limitation taxes from \$50 to \$46 (even though for United States purposes the \$60 distribution is entirely out of passive earnings).

(iii) Under paragraph (c)(7) of this section, P must redetermine whether the 1987 inclusion should be considered to be high-taxed income. By taking into account the reduction in foreign tax, the inclusion would not have been considered high-taxed income (\$30 < .34 × \$110). Therefore, P must redetermine its foreign tax credit for 1987 and treat the inclusion and the taxes associated with the inclusion as passive income and taxes. P must follow the appropriate section 905(c) procedures.

Example (12). Controlled foreign corporation S is a wholly owned subsidiary of domestic corporation P. S is incorporated in foreign country X. Under country X's tax system, the foreign corporate tax on particular earnings is reduced on distribution

and no withholding tax is imposed. In 1987, S has \$200 of foreign personal holding company income that is passive income that is subject to a foreign tax of \$100. P does not elect section 954(b)(4) with respect to that income. S has no earnings and profits in 1988. In 1988, S distributes the earnings and profits attributable to the 1987 income on a date that is 30 days before P files its return for the taxable year of inclusion and S receives a \$50 refund of foreign tax on the distribution. P may file its return for the year of inclusion to reflect the decrease in foreign tax or file an amended return to reflect the decrease in foreign tax if P does not reflect the decrease in its original return. The proffiling exception does not apply when there is a reduction in foreign taxes imposed because, under the rules of paragraph (c)(7)(i) of this section and section 905(c), P must redetermine its foreign tax credit for the year of inclusion and must redetermine whether the inclusion should be considered high-taxed income.

(d) **High withholding tax interest.** The term "high withholding tax interest" means any interest if such interest is subject to a withholding tax of a foreign country or a possession of the United States and the rate of tax applicable to such interest is at least 5 percent. For purposes of the preceding sentence, a withholding tax is any tax imposed by a foreign country or possession of the United States that is determined on a gross basis. A withholding tax shall not be considered to be determined on a gross basis if the tax is not the final tax payable on the interest income, but is merely a prepayment or credit against a final foreign tax liability determined on a net basis on the interest alone or on interest and other income. High withholding tax interest does not include any interest described as export financing interest (as defined in section 904(d)(2)(C) and paragraph (h) of this section).

(e) **Financial services income—(1) In general.** [Reserved]

(2) **Active financing income—(i) Income included.** For purposes of paragraph (e)(1) and (e)(3) of this section, income is active financing income only if it is described in any of the following subdivisions.

(A) Income that is of a kind that would be insurance income as defined in section 953(a) (including related party insurance income as defined in section 953(c)(2)) and determined without regard to those provisions of section 953(a)(1)(A) that limit insurance income to income from countries other than the country in which the corporation was created or organized.

(B) Income from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary to the proper conduct of the insurance business, income from providing services as an insurance

underwriter, income from insurance brokerage or agency services, and income from loss adjuster and surveyor services.

(C) Income from investing funds in circumstances in which the taxpayer holds itself out as providing a financial service by the acceptance or the investment of such funds, including income from investing deposits of money and income earned investing funds received for the purchase of traveler's checks or face amount certificates.

(D) Income from making personal, mortgage, industrial, or other loans.

(E) Income from purchasing, selling, discounting, or negotiating on a regular basis, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness.

(F) Income from issuing letters of credit and negotiating drafts drawn thereunder.

(G) Income from providing trust services.

(H) Income from arranging foreign exchange transactions, or engaging in foreign exchange transactions.

(I) Income from purchasing stock, debt obligations, or other securities from an issuer or holder with a view to the public distribution thereof or offering or selling stock, debt obligations, or other securities for an issuer or holder in connection with the public distribution thereof, or participating in any such undertaking.

(J) Income earned by broker-dealers in the ordinary course of business (such as commissions) from the purchase or sale of stock, debt obligations, commodities futures, or other securities or financial instruments and dividend and interest income earned by broker-dealers on stock, debt obligations, or other financial instruments that are held for sale.

(K) Service fee income from investment and correspondent banking.

(L) Income from interest rate and currency swaps.

(M) Income from providing fiduciary services.

(N) Income from services with respect to the management of funds.

(O) Bank-to-bank participation income.

(P) Income from providing charge and credit card services or for factoring receivables obtained in the course of providing such services.

(Q) Income from financing purchases from third parties.

(R) Income from gains on the disposition of tangible or intangible personal property or real property that was used in the active financing

business (as defined in paragraph (e)(3)(i) of this section) but only to the extent that the property was held to generate or generated active financing income prior to its disposition.

(S) Income from hedging gain with respect to other active financing income.

(T) Income from providing traveller's check services.

(U) Income from servicing mortgages.

(V) Income from finance leasing that would not qualify as active leasing income under section 954(c)(2)(A).

(W) High withholding tax interest that meets the requirements of section (e)(3)(i) of this section. For purposes of determining if the affiliated group meets the requirements of paragraph (e)(3)(i) of this section the rules of this paragraph (e)(3)(ii) apply. The income of the group will not include any income from transactions with other members of the group. Leasing income of any member of the group will not be considered active financing income if any member of the recipient's group satisfies the active trade or business requirements of section 954(c)(2)(A), and the regulations thereunder, with respect to that income. Passive income will not be considered to be active financing income merely because that income is earned by a member of the group that is a financial services entity without regard to the rule in this paragraph (e)(3)(ii).

(X) Income from providing investment advisory services, custodial services, agency paying services, collection agency services, and stock transfer agency services.

(Y) Any similar item of income that is disclosed in the manner provided in the instructions to the Form 1118 or 1116 or that is designated as a similar item of income in guidance published by the Internal Revenue Service.

(3) **Financial services entities—(i) In general.** The term "financial services entity" means an individual or entity that is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business (active financing business) for any taxable year. Except as provided in paragraph (e)(3)(ii) of this section, a determination of whether an entity is a financial services entity shall be done on an entity-by-entity basis. An individual or entity is predominantly engaged in the active financing business for any year if for that year 80 percent of its gross income is income described in paragraph (e)(2)(i) of this section. For this purpose, gross income includes all income realized by an individual or entity, whether includible or excludible from gross income under other operative provisions of the Code, but excludes gain from the disposition of stock of a corporation that prior to the disposition of its stock is related to the transferor within the meaning of section 267(b). For this purpose, income received from a related person that is a financial services entity shall be excluded if such income is characterized under the look-through rules of section 904(d)(3) and § 1.904-5. In addition, income received from a related person that is not a financial services entity but that is characterized as financial services income under the look-through rules shall be excluded. Any income received from a related person that is characterized under the look-through rules and that is not otherwise excluded by this paragraph will retain its character either as active financing

income or other income in the hands of the recipient for purposes of determining if the recipient is a financial services entity and if the income is financial services income to the recipient.

(ii) **Special rule for affiliated groups.** In the case of any corporation that is not a financial services entity under paragraph (e)(3)(i) of this section, but is a member of an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)), such corporation will be deemed to be a financial services entity if the affiliated group as a whole meets the requirements of section (e)(3)(i) of this section. For purposes of determining if the affiliated group meets the requirements of paragraph (e)(3)(i) of this section the rules of this paragraph (e)(3)(ii) apply. The income of the group will not include any income from transactions with other members of the group. Leasing income of any member of the group will not be considered active financing income if any member of the recipient's group satisfies the active trade or business requirements of section 954(c)(2)(A), and the regulations thereunder, with respect to that income. Passive income will not be considered to be active financing income merely because that income is earned by a member of the group that is a financial services entity without regard to the rule in this paragraph (e)(3)(ii).

(iii) **Treatment of partnerships and other pass-through entities—(A) Rule.** For purposes of determining whether a partner (including a partnership that is a partner in a second partnership) is a financial services entity, all of the partner's income shall be taken into account, except that income that is excluded under paragraph (e)(3)(i) of this section shall not be taken into account. Thus, if a partnership is determined to be a financial services entity none of the income of the partner received from the partnership that is characterized under the look-through rules shall be included for purpose of determining if the partner is a financial services entity. If a partnership is determined not to be a financial services entity, then income of the partner from the partnership that is characterized under the look-through rules will be taken into account (unless such income is financial services income) and such income will retain its character either as active financing income or as other income in the hands of the partner for purposes of determining if the partner is a financial service entity and if the income is financial services income to the partner. If a partnership is a financial services entity and the partner's income from the partnership is characterized as financial services

income under the look-through rules, then, for purposes of determining a partner's foreign tax credit limitation, the income from the partnership shall be considered to be financial services income to the partner regardless of whether the partner is itself a financial services entity. The rules of this paragraph (e)(3)(iii) will apply for purposes of determining whether an owner of an interest in any other pass-through entity the character of the income of which is preserved when such income is included in the income of the owner of the interest is a financial services entity.

(B) **Examples.** The principles of paragraph (e)(3)(iii) of this section are illustrated by the following examples.

Example (1). PS is a domestic partnership operating in branch form in foreign country X. PS has two equal general partners, A and B. A and B are domestic corporations that each operate in branch form in foreign countries Y and Z. All of A's income, except that derived through PS, is manufacturing income. All of B's income, except that derived through PS, is active financing income. A and B's only income from PS are distributive shares of PS's income. PS is a financial services entity and all of its income is financial services income. The income from PS is excluded in determining if A or B are financial services entities. Thus, A is not a financial services entity because none of A's income is active financing income and B is a financial services entity because all of B's income is active financing income. However, both A and B's distributive shares of PS's taxable income consist of financial services income even though A is not a financial services entity.

Example (2). PS is a domestic partnership operating in foreign country X. A and B are domestic corporations that are equal general partners in PS and, therefore, the look-through rules apply for purposes of characterizing A's and B's distributive shares of PS's income. Fifty (50) percent of PS's gross income is active financing income that is not high withholding tax interest. The active financing income includes income that also meets the definition of passive income and income that meets the definition of general limitation income. The other 50 percent of PS's income is from manufacturing. PS is, therefore, not a financial services entity. A's and B's distributive shares of partnership taxable income consist of general limitation manufacturing income and active financing income. Under paragraph (c)(3)(i) of this section, the active financing income shall be financial services income to A or B if either A or B is determined to be a financial services entity. If A or B is not a financial services entity, the distributive shares of income from PS will not be financial services income to A or B and will consist of passive and general limitation income. All of the income from PS is included in determining if A or B are financial services entities.

(4) **Definition of incidental income—(i) In general—(A) Rule.** Incidental

income is income that is integrally related to active financing income of a financial services entity. Such income includes, for example, income from precious metals trading and commodity trading that is integrally related to futures income. If securities, shares of stock, or other types of property are acquired by a financial services entity as an ordinary and necessary incident to the conduct of a active financing business, the income from such property will be considered to be financial services income but only so long as the retention of such property remains an ordinary or necessary incident to the conduct of such business. Thus property, including stock, acquired as the result of, or in order to prevent, a loss in an active financing business upon a loan held by the taxpayer in the ordinary course of such business will be considered ordinary and necessary to the conduct of such business, but income from such property will be considered financial services income only so long as the holding of such property remains an ordinary and necessary incident to the conduct of such business. If an entity holds such property for five years or less then the property is considered held incident to the financial services business. If an entity holds such property for more than five years, a presumption will be established that the entity is not holding such property incident to its financial services business. An entity will be able to rebut the presumption by demonstrating that under the facts and circumstances it is not holding the property as an investment. However, the fact that an entity holds the property for more than five years and is not able to rebut the presumption that it is not holding the property incident to its financial services business will not affect the characterization of any income received from the property during the first five years as financial services income.

(B) *Examples.* The following examples illustrate the application of paragraph (e)(4)(i) of this section.

Example (1). X is a financial services entity within the meaning of paragraph (e)(3)(i) of this section. In 1987, X made a loan in the ordinary course of its business to an unrelated foreign corporation, Y. As security for that loan, Y pledged certain operating assets. Those assets generate income of a type that would be subject to the general limitation. In January 1989, Y defaulted on the loan and forfeited the collateral. During the period X held the assets, X earned operating income generated by those assets. This income was applied in partial satisfaction of Y's obligation. In 1993, X sold the forfeited assets. The sales proceeds were in excess of the remainder of Y's obligation. The

operating income received in the period from 1989 to 1993 and the income on the sale of the assets in 1993 are financial services income of X.

Example (2). The facts are the same as in *Example (1)*, except that instead of pledging its operating assets as collateral for the loan, Y pledged the stock of its operating subsidiary Z. In 1993 X sold the stock of Z in complete satisfaction of Y's obligation. X's income from the sale of Z stock in satisfaction of Y's obligation is financial services income.

Example (3). P, a domestic corporation, is a financial services entity within the meaning of paragraph (e)(3)(i) of this section. P holds a United States dollar denominated debt (the "obligation") of the Central Bank of foreign country X. The obligation evidences a loan of \$100 made by P to the Central Bank. In 1988, pursuant to a program of country X, P delivers the obligation to the Central Bank which credits 70 units of country X currency to M, a country X corporation. M issues all of its only class of capital stock to P. M invests the 70 units of country X currency in the construction and operation of a new hotel in X. In 1994, M distributes 10 units of country X currency to P as a dividend. P is not able to rebut the presumption that it is not holding the stock of M incident to its financial services business. The dividend to P is, therefore, not financial services income.

(ii) *Income that is not incidental income.* Income that is attributable to non-financial activity is not incidental income within the meaning of paragraph (e)(4)(i) and (ii) of this section solely because such income represents a relatively small proportion of the taxpayer's total income or that the taxpayer engages in non-financial activity on a sporadic basis. Thus, for example, income from data processing services provided to related or unrelated parties or income from the sale of goods or non-financial services (for example travel services) is not financial services income, even if the recipient is a financial services entity.

(5) *Exceptions.* Financial services income does not include income that is:

(i) [Reserved];
(ii) [Reserved]; and
(iii) Dividends from noncontrolled section 902 corporations as defined in section 904(d)(2)(E) and paragraph (g) of this section.

(f) *Shipping income.* The term "shipping income" means any income received or accrued by any person that is of a kind that would be foreign base company shipping income (as defined in section 954(f) and the regulations thereunder). Shipping income does not include any dividends received or accrued from a noncontrolled section 902 corporation or any income that is financial services income.

(g) *Noncontrolled section 902 corporation—(1) Definition.* Except as

otherwise provided, the term "noncontrolled section 902 corporation" means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) or, for purposes of applying the look-through rules described in section 904(d)(3) and § 1.904-5, the taxpayer meets the requirements of section 902(b). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distributions out of its earnings and profits for periods during which it was a controlled foreign corporation. In the case of a partnership owning a foreign corporation, the determination of whether a taxpayer meets the ownership requirements of section 902(a) or (b) will be made with respect to the partner's indirect ownership, and not the partnership's direct ownership, in the foreign corporation.

(2) *Treatment of dividends from each separate noncontrolled section 902 corporation—(i) In general.* Except as otherwise provided, a separate foreign tax credit limitation applies to dividends received or accrued by a corporation from each noncontrolled section 902 corporation. Any dividend distribution made by a noncontrolled section 902 corporation out of earnings and profits attributable to periods in which the shareholder did not meet the stock ownership requirements of section 902(a) or section 902(b) shall be treated as distributions made by a noncontrolled section 902 corporation.

(ii) *Special rule for dividends received by a controlled foreign corporation.* If—

(A) Stock in a foreign corporation is owned by a controlled foreign corporation,

(B) There are two or more shareholders of that controlled foreign corporation, and

(C) The ownership requirements of section 902(b) with respect to the foreign corporation are met by at least one of the United States shareholders of the controlled foreign corporation,

then any dividends received by the controlled foreign corporation from the foreign corporation shall be treated in their entirety to the controlled foreign corporation as dividends from a noncontrolled section 902 corporation, notwithstanding that all the United States shareholders of the controlled foreign corporation do not meet the requirements of section 902(b). Any income received or accrued by a United States shareholder of a controlled foreign corporation described in the preceding sentence that is attributable to a dividend paid by a foreign corporation shall be considered to be

passive income if the shareholder's interest in that foreign corporation does not satisfy the requirements of section 902(b).

(iii) *Special rules for high withholding tax interest.* If a taxpayer receives or accrues a dividend distribution from a noncontrolled section 902 corporation out of earnings and profits attributable to high withholding tax interest earned or accrued by the noncontrolled section 902 corporation, any gross basis foreign tax (as defined in paragraph (d) of this section) imposed on such interest, to the extent that the taxes are imposed at a rate in excess of 5 percent, shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid or accrued by the taxpayer under section 902. The preceding sentence shall have no effect upon the determination of the amount of earnings and profits of a noncontrolled section 902 corporation.

(iv) *Treatment of inclusions under section 1293.* [Reserved]

(3) *Special rule for controlled foreign corporations.* Distributions from a controlled foreign corporation shall be treated as dividends from a noncontrolled section 902 corporation, and therefore not subject to the look-through rules of § 1.904-5, to the extent that the distribution is out of earnings and profits for periods during which the controlled foreign corporation was not a controlled foreign corporation.

(4) *Examples.* The following examples illustrate the application of this paragraph (g).

Example (1). A and B are domestic corporations. A owns 90 percent of the stock of C, a foreign corporation and B owns the remaining 10 percent of the C stock. C is a controlled foreign corporation. A and B are United States shareholders. C owns 20 percent of the stock of D, a foreign corporation, not a controlled foreign corporation, that is incorporated in a different country than C. D is a noncontrolled section 902 corporation with respect to C and A, but not with respect to B. In 1987, C has foreign personal holding company income of \$1000, \$100 of which is attributable to a dividend from D. The remainder of the foreign personal holding company income is passive income. Assume that gross income and net income are equal and that C pays no foreign taxes on its foreign personal holding company income. In 1987, A and B have section 951(a)(1)(A) inclusions of \$900 and \$100, respectively, attributable to the foreign personal holding company income. Under paragraph (g)(2)(ii) of this section, the \$900 included by A consists of \$810 passive income and \$90 of income attributable to a dividend from a noncontrolled section 902 corporation. The \$100 included by B in gross income is characterized as passive income in its entirety although \$10 of the \$100 is attributable to the dividend from D, and, as to

C, that dividend is characterized as a dividend from a noncontrolled section 902 corporation. As to B, the \$10 is characterized as passive income because B does not meet the ownership requirements of section 902(b) with regard to D.

Example (2). In 1987, A, a domestic corporation, owned 9 percent of the stock of B, a foreign corporation. In 1988, A acquired an additional 20 percent of the stock of B. Thus, in 1988, B is a noncontrolled section 902 corporation with regard to A. In 1988, A acquired an additional 25 percent of the stock of B. A acquired no additional stock in 1990. In 1989 and 1990, A owned 54 percent of the stock of B. For 1989 and 1990, B is a controlled foreign corporation in which A is a United States shareholder. B has no subpart F income in 1989 or 1990. In 1990, B pays a dividend of \$3,000 to A. One thousand dollars (\$1,000) of the dividend is attributable to earnings and profits from 1987, \$1,000 is attributable to earnings and profits from 1988, and \$1,000 is attributable to earnings and profits from 1989. Under paragraph (g)(1) of this section, the \$1,000 attributable to the earnings and profits from 1989 is subject to the look through rules of section 904(d)(3) and § 1.904-5(c)(4) and is characterized in A's hands according to those rules. Under paragraph (g)(3) of this section, the \$2,000 attributable to the 1987 and 1988 earnings and profits is treated as income subject to a separate limitation for dividends from a noncontrolled section 902 corporation (B corporation).

Example (3). M owns 40 percent of the voting stock of foreign corporation N. N is a noncontrolled section 902 corporation. In 1987, N earns \$2,000 of gross interest income and incurs \$1,700 of interest expense. N incurs no other expenses and earns no other income. One thousand dollars (\$1,000) of the interest income is subject to a 10 percent withholding tax and is, therefore, high withholding tax interest. N's earnings and profits are \$200 (\$2,000 gross interest income less \$1,700 interest expense less \$100 withholding tax). N pays the full \$200 out as a dividend. M receives \$80 (40 percent of the \$200). Under paragraph (g)(3) of this section, \$50 (\$100—5% × \$1,000) of the \$100 withholding tax is not treated as a foreign tax for purposes of determining the amount of foreign taxes deemed paid by M under section 902. M's deemed paid credit with respect to the \$80 dividend it receives is, therefore, reduced from \$40 (\$100 × \$80/\$200) to \$20 (\$50 × \$80/\$200).

(h) *Export financing interest—(1) Definitions—(i) Export financing interest.* The term "export financing interest" means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property that is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and not more than 50 percent of the fair market value of which is attributable to products imported into the United States. For purposes of this paragraph, the term "United States"

includes the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(ii) *Fair market value.* For purposes of this paragraph, the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation. For purposes of determining the foreign content of an item of property imported into the United States, see section 927 and the regulations thereunder.

(iii) *Related person.* For purposes of this paragraph, the term "related person" has the meaning given it by section 954(d)(3) except that such section shall be applied by substituting "the person with respect to whom the determination is being made" for "controlled foreign corporation" each place it applies.

(2) *Treatment of export financing interest.* Except as provided in paragraph (h)(3) of this section, if a taxpayer derives export financing interest from an unrelated person, then that interest shall be treated as general limitation income.

(3) *Interaction of export financing interest and related person factoring income—(i) Export financing interest that is also related person factoring income.* Export financing interest shall be treated as passive income if that income is also related person factoring income. For this purpose related person factoring income is—

(A) Income received or accrued by a controlled foreign corporation (other than a financial services entity) that is income described in section 864(d)(6) (income of a controlled foreign corporation from a loan for the purpose of financing the purchase of inventory property or services of a related person); or

(B) Income received or accrued by any person (other than a financial services entity) that is income described in section 864(d)(1) (income from a trade or service receivable acquired from a related person).

(ii) *Export financing interest that is received or accrued by a financial services entity.* [Reserved]

(iii) *Export financing interest that is high-withholding tax interest.* [Reserved]

(iv) *Examples.* The following examples illustrate the operation of this paragraph (h)(3).

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S has accumulated cash reserves. P has uncollected trade and service

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receivables of foreign obligors. P sells the receivables at a discount ("factors") to S. The income derived by S on the receivables is related person factoring income. The income is also export financing interest. Because the income is related person factoring income, the income is passive income to S.

Example (2). [Reserved]

Example (3). Domestic corporation S is a wholly-owned subsidiary of domestic corporation P. S has accumulated cash reserves. P has uncollected trade and service receivables of foreign obligors. P factors the receivables to S. The income derived by S on the receivables is related person factoring income. The income is also export financing interest. The income will be passive income to S.

Example (4). The facts are the same as in *Example (3)* except that instead of factoring P's receivables, S finances the sales of P's goods by making loans to the purchasers of P's goods. The interest derived by S on these loans is export financing interest and is not related person factoring income. The income will be general limitation income to S.

(v) *Income eligible for section 904(d)(7) exception (same country exception) from related person factoring treatment.*—(A) *Income other than interest.* If any foreign person that is not a financial services entity receives or accrues income that is described in section 904(d)(7) (income on a trade or service receivable acquired from a related person in the same foreign country as the recipient) and such income would also meet the definition of export financing interest if section 904(d)(1) applied to such income (income on a trade or service receivable acquired from a related person treated as interest), then the income shall be considered to be export financing interest and shall be treated as general limitation income.

(B) *Interest income.* If export financing interest is received or accrued by any foreign person and that income would otherwise be treated as related person factoring income under section 904(d)(6) if section 904(d)(7) did not apply, section 904(d)(2)(A)(iii)(II) shall apply, and the interest shall be treated as general limitation income unless the interest is received or accrued by a financial services entity.

(C) *Examples.* The following examples illustrate the operation of paragraph (h)(4)(iii) (A) and (B) of this section.

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. Controlled foreign corporation T is a wholly-owned subsidiary of controlled foreign corporation S. S and T are incorporated in country M. In 1987, P sells tractors to T, which T sells to X, a foreign corporation organized in country M. The tractors are to be used in country M. T has uncollected trade receivables from X that it factors to S. The income derived by S from the receivables is not derived in an active

financing business, and S is not a financial services entity. The income is not related person factoring income because it is described in section 904(d)(7) (income eligible for the same country exception). Because the income derived by S from the receivables would meet the definition of export financing interest if the income were described in section 904(d)(1), the income is considered to be export financing interest and is, therefore, general limitation income to S.

Example (2). [Reserved]

Example (3). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. Controlled foreign corporation T is a wholly-owned subsidiary of controlled foreign corporation S. S and T are incorporated in country M. S is not a financial services entity. In 1987, P sells tractors to T, which T sells to X, a foreign partnership that is organized in country M and is related to S and T. S makes a loan to X to finance the tractor sales. The interest earned by S from financing the sales is described in section 904(d)(7) and is export financing interest. Therefore, the income shall be general limitation income to S.

Example (4). [Reserved]

(i) *Interaction of section 907(c) and income described in this section.* If a person receives or accrues income that is income described in section 907(c) (relating to oil and gas income), the rules of section 907(c) and the regulations thereunder, as well as the rules of this section, shall apply to the income. Thus, for example, if a taxpayer receives or accrues a dividend distribution from two separate noncontrolled section 902 corporations out of earnings and profits attributable to income received or accrued by the noncontrolled section 902 corporations that is income described in section 907(c), the rules provided in section 907 shall apply separately to the dividends received from each noncontrolled section 902 corporation. The reduction in amount allowed as foreign tax provided by section 907(a) shall therefore be calculated separately for dividends received or accrued by the taxpayer from each separate noncontrolled section 902 corporation.

(j) *Special rule for certain currency gains and losses.* Any currency gain or loss computed under § 1.985-3T(d)(2) will be allocated among the separate categories of income on the basis of foreign source gross income in that category before the application of the section 904(d)(2)(A)(iii)(III) (the exception from passive income for high-taxed income).

(k) *Priority rules.* [Reserved]

§ 1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.

(a) *Definitions.* For purposes of section 904(d)(3) and this section, the following definitions apply:

(1) The term "separate category" means, as the context requires, any category of income described in section 904(d)(1) (A), (B), (C), (D), (E), (F), (G), (H), or (I) and in § 1.904-4 (b), (d), (e), (f), and (g), or any category of earnings and profits to which income described in such provisions is attributable.

(2) The term "controlled foreign corporation" has the meaning given such term by section 957 (taking into account the special rule for certain captive insurance companies contained in section 953(c)).

(3) The term "United States shareholder" has the meaning given such term by section 951(b) (taking into account the special rule for certain captive insurance companies contained in section 953(c)), except that for purposes of this section, a United States shareholder shall include any member of the controlled group of the United States shareholder. For this purpose the controlled group is any member of the affiliated group within the meaning of section 1504(a)(2) except that 50 percent shall be substituted for 80 percent wherever it appears in section 1504(a)(2).

(b) *In general.* Except as otherwise provided in section 904(d)(3) and this section, dividends, interest, rents, and royalties received or accrued by a taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as general limitation income.

(c) *Rules for specific types of inclusions and payments.*—(1) *Subpart F inclusions.*—(i) *Rule.* Any amount included in gross income under section 951(a)(1)(A) shall be treated as income in a separate category to the extent the amount so included is attributable to income received or accrued by the controlled foreign corporation that is described as income in such category. For purposes of this paragraph, the priority rules of § 1.904-4(k) shall apply prior to application of the rules of this paragraph.

(ii) *Examples.* The following examples illustrate the application of this paragraph (c)(1):

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S earns \$200 of net income, \$85 of which is foreign base company shipping income, \$15 of which is foreign personal holding company income, and \$100 of which is non-subpart F general limitation income. No foreign tax is imposed on the income. One hundred dollars (\$100) of S's income is subpart F income taxed currently to P under section 951(a)(1)(A). Because \$85 of the subpart F inclusion is attributable to shipping income of S, \$85 of the subpart F inclusion is shipping income to P. Because \$15

of the subpart F inclusion is attributable to passive income of S, \$15 of the subpart F inclusion is passive income to P.

Example (2). [Reserved]

Example (3). [Reserved]

Example (4). Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S owns 40 percent of foreign corporation A, 45 percent of foreign corporation B, 30 percent of foreign corporation C and 20 percent of foreign corporation D. A, B, C, and D are noncontrolled section 902 corporations. In 1987, S's only income is a \$100 dividend from each foreign corporation. Assume that S pays no foreign taxes and has no expenses. All \$400 of the income is foreign personal holding company income and is included in P's gross income. P must include \$100 in its separate limitation for dividends from A, \$100 in its separate limitation for dividends from B, \$100 in its separate limitation for dividends from C, and \$100 in its separate limitation for dividends from D.

(2) *Interest.*—(i) *In general.* Any interest that is received or accrued from a controlled foreign corporation by a taxpayer that is a United States shareholder in such foreign corporation shall be treated as income in a separate category to the extent it is allocable to income of the controlled foreign corporation in that category. If related

person interest (as defined in this paragraph (c)(2)(ii)) is received or accrued from a controlled foreign corporation by two or more persons, the amount of interest received or accrued by each person that is allocable to any separate category of income shall be determined by multiplying the amount of related person interest allocable to that separate category of income by a fraction. The numerator of the fraction is the amount of related person interest received or accrued by that person and the denominator is the total amount of related person interest paid or accrued by the controlled foreign corporation.

(ii) *Allocating expenses including interest paid to a related person.* If interest is paid or accrued by a controlled foreign corporation to any United States shareholder in such corporation (or to any other related person) and the look-through rules apply ("related person interest"), such related person interest and other expenses of a controlled foreign corporation shall be allocated and apportioned in the following manner.

(A) Gross income in each separate category shall be determined:

$$\frac{\text{Related person interest} - \text{Related person interest allocated under paragraph (c)(2)(ii)(C)}}{\text{Total gross income (other than passive)}}$$

If under § 1.861-8, the asset method of allocating interest expense is elected,

related person interest shall be

allocated according to the following formula:

$$\frac{\text{Related person interest} - \text{Related person interest allocated under paragraph (c)(2)(ii)(C)}}{\text{Value of total assets (other than passive)}}$$

(E) Any other expenses (including unrelated person interest that is not directly allocated to income from a specific property) that are not definitely related expenses or that are definitely

related to all classes of gross income shall be apportioned under the rules of this paragraph to reduce income in each separate category. For this purpose, unrelated person interest is all interest

other than related person interest. If the taxpayer elects to use the gross income method to apportion the expense, then the expense shall be apportioned according to the following formula:

$$\frac{\text{Expense apportionable to a separate category} - \text{Expense}}{\text{Total gross income minus related person interest allocated to passive income under paragraph (c)(2)(ii)(C)}}$$

If the taxpayer uses the asset method to apportion the expense, then the expense shall be apportioned according to the following formula:

$$\text{Expense apportionable to a separate category} = \frac{\text{Ex-} \times \text{Value of assets in a separate category (minus related person debt allocated to passive assets if the category is passive)}}{\text{Value of total assets minus related person debt allocated to passive assets}}$$

(iii) **Definitions.**—(A) *Value of assets and reduction in value of assets and gross income.* For purposes of paragraph (c)(2)(ii)(D) and (E) of this section, the value of total assets is the value of assets in all categories (determined under the principles of § 1.861-8). See § 1.861-8 to determine the reduction in value of assets and gross income for

purposes of apportioning additional third person interest expense that is not directly allocated when some interest expense has been directly allocated. For purposes of this paragraph and paragraph (c)(2)(ii)(E) of this section, any reduction in the value of assets for indebtedness that relates to interest allocated under paragraph (c)(2)(ii)(C) of

this section is made before determining the average of asset values. For rules relating to the averaging of reduced asset values see § 1.861-8.

(B) *Related person debt allocated to passive assets.* For purposes of paragraph (c)(2)(ii)(E) of this section, related person debt allocated to passive assets is determined as follows:

$$\text{Related person debt allocated to the passive category} = \frac{\text{Total related person debt} \times \text{Related person interest allocable to passive income under paragraph (c)(2)(ii)(C)}}{\text{All related person interest}}$$

For this purpose, the term "total related person debt" means the sum of the principal amounts of obligations of a controlled foreign corporation owed to any United States shareholder of such corporation or to any related entity (within the meaning of paragraph (g) of this section) determined at the end of the taxable year.

(iv) **Examples.** The following examples illustrate the operation of this paragraph (c)(2).

Example (1). (i) Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S earns \$200 of foreign personal holding company income that is passive income. S also earns \$100 of foreign base company sales income that is general limitation income. S has \$2000 of passive assets and \$2000 of general limitation assets. In 1987, S makes a \$150 interest payment to P with respect to a \$1500 loan from P. S also pays \$100 of interest to an unrelated person on a \$1000 loan from that person. S has no other expenses. S uses the asset method to allocate interest expense.

(ii) Under paragraph (c)(2)(ii)(C) of this section, the \$150 related person interest payment is allocable to S's passive foreign personal holding company income. Therefore, the \$150 interest payment is passive income to P. Because the entire related person interest payment is allocated to passive income under paragraph (c)(2)(ii)(C) of this section, none of the related person interest payment is allocable to general limitation income under paragraph (c)(2)(ii)(D) of this section. Under paragraph (c)(2)(ii)(B) of this section, the entire amount of the related person debt is allocable to passive assets (\$1500 = \$1500 × \$150/\$1500). Under paragraph (c)(2)(ii)(E) of this section, \$20 of interest expense paid to an unrelated person is allocated to passive income (\$20 = \$100 × (\$2000 - \$1500)/(\$4000 - \$1500)).

Eighty dollars (\$80) of the interest expense paid to an unrelated person is allocated to general limitation income (\$80 = \$100 × \$2000/(\$4000 - \$1500)).

Example (2). The facts are the same as in Example (1), except that S uses the gross income method for allocating interest expense. Under paragraph (c)(2)(ii)(E) of this section, the unrelated person interest expense would be allocated on a gross income method. Therefore, \$33 of interest expense paid to unrelated persons would be allocated to passive income (\$33 = \$100 × (\$200 - \$150)/(\$300 - \$150)) and \$67 of interest expense paid to unrelated persons would be allocated to general limitation income (\$67 = \$100 × \$100/(\$300 - \$150)).

Example (3). (i) The facts are the same as in Example (1), except that S has an additional \$50 of third person interest expense that is directly allocated to income from a specific property that produces only passive income. The principal amount of indebtedness to which the interest relates is \$500. S also has \$50 of additional non-interest expenses that are not definitely related expenses and that are allocated on an asset basis.

(ii) Under paragraph (c)(2)(ii)(B) of this section, the \$50 of directly allocated third person interest is first allocated to reduce the passive income of S. Under paragraph (c)(2)(ii)(C) of this section, the \$150 of related person interest is allocated to the remaining \$150 of passive income. Under paragraph (c)(2)(iii)(B) of this section, all of the related person debt is allocated to passive assets. (\$1500 = \$1500 × \$150/\$1500).

(iii) Under paragraph (c)(2)(ii)(E) of this section, the non-interest expenses that are not definitely related are allocated on the basis of the asset values reduced by the allocated related person debt. Therefore \$10 of these expenses are allocated to the passive category (\$50 × (\$2000 - \$1500)/(\$4000 - \$1500)) and \$40 are allocated to the

general category (\$50 × (\$2000/(\$4000 - \$1500)).

(iv) In order to allocate third person interest between the categories of assets, the value of assets in a separate category must also be reduced under the principles of § 1.861-8 by the indebtedness relating to the specifically allocated interest. Therefore, under paragraph (c)(2)(iii)(B) of this section, the value of assets in the passive category for purposes of allocating the additional third person interest = 0 (\$2000 minus \$500 (the principal amount of the debt, the interest payment on which is directly allocated to specific interest producing properties) minus \$1500 (the related person debt allocated to passive assets)). Under paragraph (c)(2)(ii)(E) of this section, all \$100 of the non-definitely related third person interest is allocated to the general limitation (\$100 = \$100 × \$2000/(\$4000 - \$500 - \$1500)).

Example (4). (i) Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S earns \$100 of foreign personal holding company income that is passive income. S also earns \$100 of foreign base company sales income that is general limitation income. S has \$1000 of general limitation assets and \$1000 of passive assets. In 1987, S makes a \$150 interest payment to P on a \$1500 loan from P and has \$20 of general and administrative expenses (G & A) that under the principles of § 1.861-8 is treated as directly allocable to all of P's gross income. S also makes a \$25 interest payment to an unrelated person on a \$250 loan from the unrelated person. S has no other expenses. S uses the asset method to allocate interest expense. S uses the gross income method to allocate G & A.

(ii) Under paragraph (c)(2)(ii)(B) of this section, \$100 of the interest payment to P is allocable to S's passive foreign personal holding company income. Under paragraph (c)(2)(ii)(D) of this section, the additional \$50 of related person interest expense is

allocated to general limitation income (\$50 = \$50 × \$1000/\$1000). Under paragraph (c)(2)(iii)(B) of this section, related person debt allocated to passive assets equals \$1000 (\$1000 = \$1500 × \$100/\$1500).

(iii) Under paragraph (c)(2)(ii)(E) of this section, none of the \$25 of interest expense paid to an unrelated person is allocated to passive income (\$0 = \$25 × (\$1000 - \$1000)/(\$2000 - \$1000)). Twenty-five dollars (\$25) of the interest expense paid to an unrelated person is allocated to general limitation income (\$25 = \$25 × \$1000/(\$2000 - \$1000)). Under paragraph (c)(2)(ii)(E) of this section, none of the G & A is allocable to S's passive foreign personal holding company income (\$0 = \$20 × (\$100 - \$100)/(\$200 - \$100)). All \$20 of the G & A is allocable to S's general limitation income (\$20 = \$20 × \$100/(\$200 - \$100)).

Example (5). The facts are the same as in Example (4), except that S uses the gross income method to allocate interest expense. As in Example (4), \$100 of the interest payment to P is allocated to passive income under paragraph (c)(2)(ii)(C) of this section. Under paragraph (c)(2)(ii)(D) of this section, the additional \$50 of related person interest expense is allocated to general limitation income (\$150 = 100 × \$100/\$100). Under paragraph (c)(2)(ii)(E) of this section, none of the unrelated person interest expense and none of the G & A is allocated to passive income, because after the application of paragraph (c)(2)(ii)(C) of this section, no passive income remains in the passive income category.

Example (6). Controlled foreign corporation T is a wholly-owned subsidiary of S, a controlled foreign corporation. S is a wholly-owned subsidiary of P, a domestic corporation. S is not a financial services entity. S and T are incorporated in the same country. In 1987, P sells tractors to T, which T sells to X, a foreign corporation that is related to both S and T and is organized in the same country as S and T. S makes a loan to X to finance the tractor sales. Assume that the interest earned by S from financing the sales is export financing interest that is neither related person factoring income nor foreign personal holding company income. The export financing interest earned by S is, therefore, general limitation income. S earns no other income. S makes a \$100 interest payment to P. The \$100 of interest paid is allocable under the look-through rules of paragraph (c)(2)(ii) of this section to the general limitation income earned by S and is therefore general limitation income to P.

(3) **Rents and Royalties.** Any rents or royalties received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as income in a separate category to the extent they are allocable to income of the controlled foreign corporation in that category under the principles of § 1.861-8.

(4) **Dividends.**—(i) *Look-through rule.* Any dividend paid or accrued out of the earnings and profits of any controlled foreign corporation, shall be treated as income in a separate category in

proportion to the ratio of the portion of earnings and profits attributable to income in such category to the total amount of earnings and profits of the controlled foreign corporation. For purposes of this paragraph, the term "dividend" includes any amount included in gross income under section 951(a)(1)(B) as a pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

(ii) **Special rule for dividends attributable to certain loans.** If a dividend is distributed to a taxpayer by a controlled foreign corporation, that controlled foreign corporation is the recipient of loan proceeds from a related look-through entity (within the meaning of paragraph (i) of this section), and the purpose of such loan is to alter the characterization of the dividend for purposes of this section, then, to the extent of the principal amount of the loan, the dividend shall be characterized with respect to the earnings and profits of the related person lender rather than with respect to the earnings and profits of the dividend payor. A loan will not be considered made for the purpose of altering the characterization of a dividend if the loan would have been made or maintained on substantially the same terms irrespective of the dividend. The determination of whether a loan would have been made or maintained on substantially the same terms irrespective of the dividend will be made taking into account all the facts and circumstances of the relationship between the lender and the borrower. Thus, for example, a loan by a related party lender to a controlled foreign corporation that arises from the sale of inventory in the ordinary course of business will not be considered a loan made for the purpose of altering the character of any dividend paid by the borrower.

(iii) **Examples.** The following examples illustrate the application of this paragraph (c)(4).

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S has earnings and profits of \$1,000, \$600 of which is attributable to general limitation income that is not subpart F income and \$400 of which is attributable to dividends received by S from a noncontrolled section 902 corporation, T. T is incorporated and operates in the same country as S, and S has a 50 percent ownership interest in T. In December of 1987, S pays a dividend of \$200, all of which is attributable to earnings and profits earned in 1987. Six-tenths of the dividend, \$120, is treated as general limitation income because six-tenths of S's earnings and profits are attributable to general limitation income. Four-tenths of the dividend, \$80, is treated as

income subject to a separate limitation for dividends from a noncontrolled section 902 corporation because four-tenths of S's earnings and profits are attributable to dividends from T, a noncontrolled section 902 corporation.

Example (2). A, a United States person, has been the sole shareholder in controlled foreign corporation X since its organization on January 1, 1963. Both X and A are calendar year taxpayers. X's earnings and profits for 1963 through the end of 1967 totaled \$3,000. A sells his stock in X at the end of 1967 and realizes a gain of \$4,000. Of the total \$4,000 gain, \$3,000 (A's share of the post-1962 earnings and profits) is includible in A's gross income as a dividend and is subject to the look-through rules including the transition rule of § 1.904-7(a) with respect to the portion of the distribution out of pre-67 earnings and profits. The remaining \$1,000 of the gain is includible as gain from the sale or exchange of the X stock and is passive income to A.

(d) **Effect of exclusions from subpart F income.**—(1) *De minimis amount of subpart F income.* [Reserved]

(2) **Exception for certain income subject to high foreign tax.** For purposes of the dividend look-through rule of paragraph (c)(4)(i) of this section, an item of net income that would otherwise be passive income (after application of the priority rules of § 1.904-4 (k)) and that is received or accrued by a controlled foreign corporation shall be treated as general limitation earnings and profits, if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11 (with reference to section 15, if applicable). The preceding sentence has no effect on amounts (other than dividends) paid or accrued by a controlled foreign corporation to a United States shareholder of such controlled foreign corporation to the extent those amounts are allocable to passive income of the controlled foreign corporation.

(3) **Examples.** The following examples illustrate the application of this paragraph.

Example (1). [Reserved]
Example (2). [Reserved]

(e) **Treatment of subpart F income in excess of 70 percent of gross income.**

(1) **Rule.** If the sum of a controlled foreign corporation's gross foreign base company income (determined without regard to section 954(b)(5)) and gross insurance income for the taxable year exceeds 70 percent of the gross income, then all of the controlled foreign

corporation's gross income shall be treated as foreign base company income and, thus, included in a United States shareholder's gross income. However, the inclusion in gross income of an amount that would not otherwise be subpart F income does not affect its character for purposes of determining whether the income is within a separate category. The determination of whether the controlled foreign corporation's gross foreign base company income and gross insurance income exceeds 70 percent of gross income is made before the exception for certain income subject to a high rate of foreign tax.

(2) *Example.* The following example illustrates the application of this paragraph.

Example. Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S earns \$100, \$75 of which is foreign personal holding company income and \$25 of which is non-subpart F services income. S is not a financial services entity. S's gross and net income are equal. Under the 70 percent full inclusion rule of section 954(b)(3)(B), the entire \$100 is foreign base company income currently taxable to P under section 951. Because \$75 of the \$100 section 951 inclusion is attributable to S's passive income, \$75 of the inclusion is passive income to P. The remaining \$25 of the inclusion is treated as general limitation income to P because \$25 is attributable to S's general limitation income.

(f) *Modification of look-through rules for certain income—(1) High withholding tax interest.* If a taxpayer receives or accrues interest from a controlled foreign corporation that is a financial services entity, and the interest would be described as high withholding tax interest if section 904(d)(3) and paragraph (c)(2) of this section (the look-through rules for interest) did not apply, then the interest shall be treated as high withholding tax interest to the extent that the interest is allocable under section 904(d)(3) and paragraph (c)(2)(i) of this section to financial services income of the controlled foreign corporation. The amount treated as high-withholding tax interest under this paragraph (f)(1) shall not exceed the interest, or equivalent income, of the payor that would be taken into account in determining the financial services income of the payor if the look-through rules applied.

(2) *Dividends from a noncontrolled section 902 corporation.* If a United States shareholder that is a corporation receives or accrues income from a controlled foreign corporation that is attributable to dividends from a noncontrolled section 902 corporation, such income shall be subject to a separate limitation for such dividends except as provided in § 1.904-4(g)(2)(ii)

(relating to dividends from a foreign corporation with respect to which the United States shareholder does not meet the stock ownership requirements of section 902).

(3) *Distributions from a FSC.* Income received or accrued by a taxpayer that, under the rules of paragraph (c)(4) of this section (look-through rules for dividends), would be treated as foreign trade income or as passive income that is qualified interest and carrying charges (as defined in section 245(c)), and that is also a distribution from a FSC (or former FSC), shall be treated as a distribution from a FSC (or former FSC).

(4) *Example.* The following example illustrates the operation of paragraph (f)(1) of this section.

Example. Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S is a financial services entity. In 1988, S earns \$80 of interest that meets the definition of financial services income and \$20 of high withholding tax interest. S makes a \$100 interest payment to P. The interest payment to P is subject to a withholding tax of 15 percent. Twenty dollars (\$20) of the interest payment to P is considered to be high withholding tax interest because, under section 904(d)(3), it is allocable to the high withholding tax interest earned by S. The remaining eighty dollars (\$80) of the interest payment is also treated as high withholding tax interest to P because, under paragraph (f)(1) of this section, interest that is subject to a high withholding tax but would not be considered to be high withholding tax interest under the look-through rules of paragraph (c)(2) of this section, shall be treated as high withholding tax interest to the extent that the interest would have been treated as financial services income under the look-through rules of paragraph (c)(2)(i) of this section.

(g) *Application of look-through rules to certain domestic corporations.* The principles of section 904(d)(3) and this section shall apply to any foreign source interest, rents, and royalties that are paid by one United States corporation to another related United States corporation. For this purpose, two United States corporations are considered to be related if one owns, directly or indirectly, stock possessing 50 percent or more of the total voting power of all classes of stock of the other corporation or 50 percent or more of the total value of the corporation. In addition, two United States corporations shall be considered related if the same United States shareholders own, directly or indirectly, stock possessing 50 percent or more of the total voting power of all classes of stock or 50 percent of the total value of each corporation. For purposes of this paragraph, the constructive stock ownership rules of section 318 apply.

(h) *Application of look-through rules to partnerships and other pass-through entities—(1) General rule.* Except as provided in paragraph (h)(2) of this section, a partner's distributive share of partnership income shall be characterized as income in a separate category to the extent that the distributive share is a share of income earned or accrued by the partnership in such category. Payments to a partner described in section 707 (e.g., payments to a partner not acting in capacity as a partner) shall be characterized as income in a separate category to the extent that the payment is attributable under the principles of § 1.861-8 and this section to income earned or accrued by the partnership in such category. If the payments are interest, rents, or royalties that would be characterized under the look-through rules of this section if the partnership were a foreign corporation, and the partner who receives the payment owns 10 percent or more of the value of the partnership. A payment by a partnership to a member of the controlled group (as defined in paragraph (a)(3) of this section) of the partner shall be characterized under the look-through rules of this section if the payment would be a section 707 payment entitled to look-through treatment if it were made to the partner.

(2) *Exception for certain partnership interests—(i) Rule.* Except as otherwise provided, if any limited partner or corporate general partner owns less than 10 percent of the value in a partnership, the partner's distributive share of partnership income from the partnership shall be passive income to the partner, and the partner's distributive share of partnership deductions from the partnership shall be allocated and apportioned under the principles of § 1.861-8 only to the partner's passive income from that partnership.

(ii) *Exceptions.* To the extent a partner's distributive share of income from a partnership is a share of high withholding tax interest received or accrued by the partnership, that partner's distributive share of partnership income will be high withholding tax interest regardless of the partner's level of ownership in the partnership. If a partnership interest described in paragraph (h)(2)(i) of this section is held in the ordinary course of a partner's active trade or business, the rules of paragraph (h)(1) of this section shall apply for purposes of characterizing the partner's distributive share of the partnership income. A partnership interest will be considered to be held in the ordinary course of a

partner's active trade or business if the partner (or a member of the partner's affiliated group of corporations (within the meaning of section 1504(a) and without regard to section 1504(b)(3))) engages (other than through a less than 10 percent interest in a partnership) in the same or related trade or business as the partnership.

(3) *Income from the sale of a partnership interest.* [Reserved]

(4) *Value of a partnership interest.* For purposes of paragraphs (i), (h)(1), and (h)(2) of this section, a partner will be considered as owning 10 percent of the value of a partnership for a particular year if the partner has 10 percent of the capital and profits interest of the partnership. Similarly, a partnership (first partnership) is considered as owning 50 percent of the value of another partnership (second partnership) if the first partnership owns 50 percent of the capital and profits interests of another partnership. For this purpose, value will be determined at the end of the partnership's taxable year.

(i) *Application of look-through rules to related entities—(1) In general.* Except as provided in paragraph (i)(2) of this section, the principles of this section shall apply to distributions and payments that are subject to the look-through rules of section 904(d)(3) and this section from a controlled foreign corporation (or other entity described in paragraph (h) of this section) (look-through entities) to a related look-through entity. Two look-through entities shall be considered to be related to each other if one owns, directly or indirectly, stock possessing more than 50 percent of the total voting power of all classes of voting stock of the other entity or more than 50 percent of the total value of such entity. In addition, two look-through entities are related if the same United States shareholders own, directly or indirectly, stock possessing 50 percent or more of the total voting power of all voting classes of stock (in the case of a corporation) or 50 percent or more of the total value of each look-through entity. In the case of a corporation, value shall be determined by taking into account all classes of stock. In the case of a partnership, value shall be determined under the rules in paragraph (h)(4) of this section. For purposes of this section, indirect ownership shall be determined under section 318 and the regulations thereunder.

(2) *Exception for distributive shares of partnership income.* In the case of tiered partnership arrangements, a distributive share of partnership income will be characterized under the look-through rules of section 904(d)(3) and

this section if the partner meets the requirements of paragraph (h)(1) of this section with respect to the partnership (first partnership), whether or not the income is received through another partnership or partnerships (second partnership) and whether or not the first partnership and the second partnership are considered to be related under the rules of paragraph (i)(1) of this section.

(3) *Special rule for payments from foreign parents to domestic subsidiaries.* [Reserved]

(j) *Look-through rules applied to passive foreign investment company inclusions.* [Reserved]

(k) *Ordering rules—(1) In general.* The rules of paragraph (k)(2) of this section apply for purposes of determining the character of income received or accrued by a person from a related person if the payor or another related person also receives or accrues income from the recipient and the look-through rules apply to the income in all cases.

(2) *Specific rules.* For purposes of characterizing income under this paragraph, the following types of income are characterized in the order stated:

- (i) Rents and royalties;
- (ii) Interest;
- (iii) Subpart F inclusions and distributive shares of partnership income;
- (iv) Dividend distributions.

If an entity is both a recipient and a payor of income described in any one of the categories described in (k)(2) (i) through (iv) of this section, the income received will be characterized before the income that is paid. In addition, the amount of interest paid or accrued, directly or indirectly, by a person to a related person shall be offset against and eliminate any interest received or accrued, directly or indirectly, by a person from that related person before application of the ordering rules of this paragraph. In a case in which a person pays or accrues interest to a related person, and also receives or accrues interest indirectly from the related person, the smallest interest payment is eliminated and the amount of all other interest payments are reduced by the amount of the smallest interest payment.

(1) *Examples.* The following examples illustrate the application of paragraphs (g), (h), (i), and (k) of this section.

Example (1). S and T, controlled foreign corporations, are wholly-owned subsidiaries of P, a domestic corporation. S and T are incorporated in two different foreign countries and T is a financial services entity. In 1987, S earns \$100 of income that is general limitation foreign base company sales income. After expenses, including a \$50 interest payment to T, S's income is subject to foreign tax at an effective rate of 40

percent. P elects to exclude S's \$50 of net income from subpart F under section 954(b)(4). T earns \$350 of income that consists of \$300 of subpart F financial services income and \$50 of interest received from S. The \$50 of interest is foreign personal holding company income in T's hands because section 954(c)(3)(A)(i) (same country exception for interest payments) does not apply. The \$50 of interest is also general limitation income to T because the look-through rules of paragraph (c)(2)(i) of this section apply to characterize the interest payment. Thus, with respect to T, P includes in its gross income \$50 of general limitation foreign personal holding company income and \$300 of financial services income.

Example (2). [Reserved]

Example (3). P, a domestic corporation, wholly-owns S, a domestic corporation that is a 80/20 corporation. In 1987, S's earnings consist of \$100 of foreign source shipping income and \$100 of foreign source high withholding tax interest. S makes a \$100 foreign source interest payment to P. The interest payment to P is subject to the look-through rules of paragraph (c)(2)(i) of this section, and is characterized as shipping income and high withholding tax interest to the extent that it is allocable to such income in S's hands.

Example (4). PS is a domestic partnership that is the sole shareholder of controlled foreign corporation S. PS has two general partners, A and B. A and B each have a greater than 10 percent interest in PS. PS also has two limited partners, C and D. C has a 50 percent interest in the partnership and D has a 9 percent interest. A, B, C and D are all United States persons. In 1987, S has \$100 of general limitation non-subpart F income on which it pays no foreign tax. S pays a \$100 dividend to PS. The dividend is the only income of PS. Under the look-through rule of paragraph (c)(4) of this section, the dividend to PS is general limitation income. Under paragraph (h)(1) of this section, A's, B's, and C's distributive shares of PS's income are general limitation income. Under paragraph (h)(2) of this section, because D is a limited partner with a less than 10 percent interest in PS, D's distributive share of PS's income is passive income.

Example (5). [Reserved]

Example (6). P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. S has \$100 of passive foreign personal holding company income from unrelated persons and \$100 of general limitation income. S also has \$50 of interest income from T. S pays T \$100 of interest. Under paragraph (k)(2) of this section, the \$100 interest payment from S to T is reduced for limitation purposes to the extent of the \$50 interest payment from T to S before application of the rules in paragraph (c)(2)(ii) of this section. Therefore, the interest payment from T to S is disregarded. S is treated as if it paid \$50 of interest to T, all of which is allocable to S's passive foreign personal holding company income. Therefore the \$50 interest payment from S to T is passive income.

Example (7). P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation. S owns 100 percent of the stock of T, a controlled foreign corporation and 100 percent of the stock of U, a controlled foreign corporation. In 1988, T pays S \$5 of interest, S pays U \$10 of interest and U pays T \$20 of interest. Under paragraph (k)(2) of this section, the interest payments from S to U must be offset by the amount of interest that S is considered as receiving indirectly from U and the interest payment from U to T is offset by the amount of the interest payment that U is considered as receiving indirectly from T. The \$10 payment by S to U is reduced by \$5, the amount of the interest payment from T to S that is treated as being paid indirectly by U to S. Similarly, the \$20 interest payment from U to T is reduced by \$5, the amount of the interest payment from S to U that is treated as being paid indirectly by T to U. Therefore, under paragraph (k)(2) of this section, T is treated as having made no interest payment to S, S is treated as having paid \$5 of interest to U, and U is treated as having paid \$15 to T.

Example (8). (i) P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. In 1987, S earns \$100 of passive foreign personal holding income and \$100 of general limitation non-subpart F sales income from unrelated persons and \$100 of general limitation non-subpart F interest income from a related person, W. S pays \$150 of interest to T. T earns \$200 of general limitation sales income from unrelated persons and the \$150 interest payment from S. T pays S \$100 of interest.

(ii) Under paragraph (k)(2) of this section, the \$100 interest payment from T to S reduces the \$150 interest payment from S to T. S is treated as though it paid \$50 of interest to T. T is treated as though it made no interest payment to S.

(iii) Under paragraph (k)(2)(ii) of this section, the remaining \$50 interest payment from S to T is then characterized. The interest payment is first allocable under the rules of paragraph (c)(2)(ii)(C) of this section to S's passive income. Therefore, the \$50 interest payment to T is passive income. The interest income is foreign personal holding company income in T's hands. T, therefore, has \$50 of subpart F passive income and \$200 of non-subpart F general limitation income.

(iv) Under paragraph (k)(2)(iii) of this section, subpart F inclusions are characterized next. P has a subpart F inclusion with respect to S of \$50 that is attributable to passive income of S and is treated as passive income to P. P has a subpart F inclusion with respect to T of \$50 that is attributable to passive income of T and is treated as passive income to P.

Example (9). (i) P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. P also owns 100 percent of the stock of U, a controlled foreign corporation. In 1987, S earns \$100 of passive foreign personal holding company income and \$200 of non-subpart F general limitation income from unrelated persons. S also

receives \$150 of dividend income from T. S pays \$100 of interest to T and \$100 of interest to U. U earns \$300 of non-subpart F general limitation income and the \$100 of interest received from S. U pays a \$100 royalty to T. T earns the \$100 interest payment received from S and the \$100 royalty received from U.

(ii) Under paragraph (k)(2)(i) of this section, the royalty paid by U to T is characterized first. Assume that the royalty is directly allocable to U's general limitation income. Also assume that the royalty is not subpart F income to T. With respect to T, the royalty is general limitation income.

(iii) Under paragraph (k)(2)(ii) of this section, the interest payments from S to T and U are characterized next. This characterization is done without regard to any dividend income received by S because, under paragraph (k)(2) of this section, dividends are characterized after interest payments from a related person. The interest payments are first allocable to S's passive income under paragraph (c)(2)(ii)(C) of this section. Therefore, \$50 of the interest payment to T is passive and \$50 of the interest payment to U is passive. The remaining \$50 paid to T is general limitation income and the remaining \$50 paid to U is general limitation income. All of the interest payments to T and U are subpart F foreign personal holding company income to both recipients.

(iv) Under paragraph (k)(2)(iii) of this section, P has a \$100 subpart F inclusion with respect to T that is characterized next. Fifty dollars (\$50) of the subpart F inclusion is passive income to P because it is attributable to the passive income portion of the interest income received by T from S, and \$50 of the inclusion is treated as general limitation income to P because it is attributable to the general limitation portion of the interest income received by T from S. Under paragraph (k)(2)(iii) of this section, P also has a \$100 subpart F inclusion with respect to U. Fifty dollars (\$50) of the subpart F inclusion is passive income to P because it is attributable to the passive portion of the interest income received by U from S, and \$50 of the inclusion is general limitation income to P because it is attributable to the general limitation portion of the interest income received by U from S.

(v) Under paragraph (k)(2)(iv) of this section, the \$150 distribution from T to S is characterized next. One hundred dollars (\$100) of the distribution is out of earnings and profits attributable to previously taxed income. Therefore, only \$50 is a dividend that is subject to the look-through rules of paragraph (d) of this section. The \$50 dividend is attributable to T's general limitation income and is general limitation income to S in its entirety.

Example (10). (i) P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. P also owns 100 percent of the stock of U, a controlled foreign corporation. S, T and U are all incorporated in the same foreign country. In 1987, S earns \$100 of passive foreign personal holding income and \$200 of general limitation non-subpart F income from unrelated persons. S pays \$100 of interest to T and \$100 of interest

to U. U earns \$300 of general limitation non-subpart F income and the \$100 of interest received from S. T's only income is the \$100 interest payment received from S.

(ii) Under paragraph (k)(2)(ii) of this section, the interest payments from S to T and U are characterized first. The interest payments are first allocated under the rule of paragraph (c)(2)(ii)(C) of this section to S's passive income. Therefore, under that provision and paragraph (c)(2)(i) of this section, \$50 of the interest payment to T is passive income to T and \$50 of the interest payment to U is passive income to U. The remaining \$50 paid to T is general limitation income and the remaining \$50 paid to U is general limitation income.

(iii) Under paragraph (k)(2)(iii) of this section, any subpart F inclusion of P is determined and characterized next. Under paragraph (g) of this section, paragraphs (c)(2)(i) and (c)(2)(ii) apply not only for purposes of determining the separate category of income of S to which the interest payments from S to T and U are allocable but also for purposes of determining the subpart F income of T and U. Although the interest payments from S to T and U are "same country" interest payments that would otherwise be excludible from T's and U's subpart F income under section 954(c)(3)(A)(i), section 954(c)(3)(B) provides that the exception for same country payments between related persons shall not apply to the extent such payments have reduced the subpart F income of the payer. In this case, \$50 of the \$100 interest payment from S to T reduced S's subpart F income and \$50 of the \$100 interest payment from S to U reduced the remaining \$50 of S's subpart F income. Therefore, T has \$50 of subpart F income that is passive income and U has \$50 of subpart F income that is passive income. P includes \$100 of subpart F income in gross income that is passive income to P.

(iv) The remaining \$50 of interest paid by S to T and the remaining \$50 of interest paid by S to U is not subpart F income to T or U because it did not reduce S's subpart F income and is therefore eligible for the same country exception.

(m) **Application of section 904(g)—(1)**
In general. For purposes of determining the portion of an interest payment that is allocable to income earned or accrued by a controlled foreign corporation from sources within the United States under section 904(g)(3), the rules in paragraph (m)(2) of this section apply. For purposes of determining the portion of a dividend paid or accrued by a controlled foreign corporation that is treated as from sources within the United States under section 904(g)(4), the rules in paragraph (m)(4) of this section apply. For purposes of determining the portion of an amount included in gross income under section 951(a) that is attributable to income of the controlled foreign corporation from sources within the United States under section 904(g)(2), the rules in paragraph (m)(5) of this section apply. In order to

determine whether section 904(g) applies, section 904(g)(5) (exception if controlled foreign corporation has a de minimis amount of United States source income) shall be applied to the total amount of earnings and profits of a controlled foreign corporation for a taxable year without regard to the characterization of those earnings under section 904(d).

(2) **Treatment of interest payments.** If interest is received or accrued by a United States shareholder or a person related to a United States shareholder (within the meaning of paragraph

(c)(2)(ii) of this section) from a controlled foreign corporation, the interest shall be considered to be allocable to income of the controlled foreign corporation from sources within the United States for purposes of section 904(d) to the extent that the interest is allocable under paragraph (c)(2)(ii)(C) of this section to passive income that is from sources within the United States. If related person interest is less than or equal to passive income, the related person interest will be allocable to United States source passive income based on the ratio of United States

source passive income to total passive income. To the extent that related person interest exceeds passive income, and, therefore, is allocated under paragraph (c)(2)(ii)(D) of this section to income in a separate category other than passive, the following formulas apply in determining the portion of the interest payment that is from sources within the United States. If the taxpayer uses the gross income method to allocate interest, the portion of the interest payment from sources within the United States is determined as follows:

$$\frac{\text{The amount of the interest payment allocated to the separate category under paragraph (c)(2)(ii)(D) of this section}}{\text{Gross income from United States sources in that category}} \times \frac{\text{Gross income from all sources in that category}}{\text{Gross income from all sources in that category}}$$

If the taxpayer uses the asset method to allocate interest, then the portion of

the interest payment from sources

within the United States is determined as follows:

$$\frac{\text{The amount of the interest payment allocated to the separate category under paragraph (c)(2)(ii)(D) of this section}}{\text{Value of domestic assets in that category}} \times \frac{\text{Value of total assets in that category}}{\text{Value of total assets in that category}}$$

For purposes of this paragraph, the value of assets in a separate category is the value of assets as determined under the principles of § 1.861-8. See § 1.861-8 for purposes of determining the value of assets and gross income in a separate category as reduced for indebtedness the interest on which is directly allocated.

(3) **Examples.** The following examples illustrate the application of this paragraph.

Example (1). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1988, S pays P \$300 of interest. S has no other expenses. In 1988, S has \$3000 of assets that generate \$650 of foreign source general limitation sales income and a \$1000 loan to an unrelated foreign person that generates \$20 of foreign source passive interest income. S also has a \$4000 loan to an unrelated United States person that generates \$70 of United States source passive income and \$4000 of inventory that generates \$100 of United States source general limitation income. S uses the asset method to allocate interest expense. The following chart summarizes S's assets and income:

	Foreign	U.S.	Total
Assets:			
Passive	1000	4000	5000
General	3000	4000	7000
Total	4000	8000	12000

	Foreign	U.S.	Total
Income:			
Passive	20	70	90
General	650	100	750
Total	670	170	840

Under paragraph (c)(2)(ii)(C) of this section, \$90 of the related person interest payment is allocable to S's passive income. Under paragraph (m)(2) of this section, \$70 is from sources within the United States and \$20 is from foreign sources. Under paragraph (c)(2)(ii)(D) of this section, the remaining \$210 of the related person interest payment is allocated to general limitation income. Under paragraph (m)(2) of this section, \$120 of the remaining \$210 is treated as income from sources within the United States (\$120 = \$210 × \$4000/\$7000) and \$90 is treated as income from foreign sources. (\$90 = \$210 × \$3000/\$7000).

Example (2). The facts are the same as in Example (1) except that S uses the gross income method to allocate interest expense. The first \$90 of related person interest expense is allocated to passive income in the same manner as in Example (1). Under paragraph (c)(2)(ii)(D) of this section, the remaining \$210 of the related person interest expense is allocated to general limitation income. Under paragraph (m)(2) of this section, \$28 of the remaining \$210 is treated as income from United States sources (\$28 = \$210 × \$100/\$750) and \$182 is treated as income from foreign sources (\$182 = \$210 × \$650/\$750).

Example (3). Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1988, S pays \$300 of interest to P. S has no other expenses. S uses the asset method to allocate interest expense. In 1988, S has \$4000 of assets that generate \$650 of foreign source general limitation manufacturing income and a \$1000 loan to an unrelated foreign person that generates \$100 of foreign source passive interest income. S has \$500 of shipping assets that generate \$300 of foreign source shipping income and \$500 of shipping assets that generate \$200 of United States source shipping income. S also has a \$1000 loan to an unrelated United States person that generates \$100 of United States source passive income. S's passive income is not also described as shipping income. The following chart summarizes S's assets and income:

	Foreign	U.S.	Total
Assets:			
Passive	1000	1000	2000
Shipping	500	500	1000
General	4000	0	4000
Total	5500	1500	7000
Income:			
Passive	100	100	200
Shipping	200	200	400
General	650	0	650
Total	950	300	1250

Under paragraph (c)(2)(ii)(C) of this section, \$200 of the related person interest payment is allocable to S's passive income. Under paragraph (m)(2) of this section, \$100

of this amount is from foreign sources and \$100 is from sources within the United States.

Under paragraph (c)(2)(ii)(D) of this section, \$60 of the remaining \$100 of the related person interest payment is allocated to general limitation income (\$80 = \$100 × \$4000/\$5000) and \$20 is allocated to shipping income (\$20 = \$100 × \$1000/\$5000).

Under paragraph (m)(2) of this section, none of \$60 of the interest payment allocated to general limitation income is treated as income from United States sources (\$0 = \$60 × \$0/\$4000). Therefore, the entire \$60 is treated as income from foreign sources.

Under paragraph (m)(2) of this section, \$10 of the \$20 of the interest payment allocated to the shipping income is treated as income from United States sources (\$10 = \$20 × \$500/\$1000) and \$10 of the \$20 is treated as income from foreign sources (\$10 = \$20 × \$500/\$1000).

Example (4). The facts are the same as in Example (3) except that S uses the gross income method to allocate interest expense. The interest allocated to passive income under paragraph (c)(2)(ii)(C) of this section is the same, \$200, \$100 from United States sources and \$100 from foreign sources.

Under paragraph (c)(2)(ii)(D) of this section, the remaining \$100 of related person interest is allocated between the shipping and general limitation categories based on the gross income in those categories. Therefore, \$36 of the remaining \$100 interest payment is allocated to shipping income (\$36 = \$100 × \$400/(\$1250 + \$200)) and \$64 is treated as allocated to general limitation income (\$64 = \$100 × \$650/(\$1250 + \$200)).

Under paragraph (m)(2) of this section, \$16 of the \$36 allocable to shipping income is treated as income from United States sources (\$16 = \$36 × \$200/\$400) and \$20 is treated as income from foreign sources (\$20 = \$36 × \$200/\$400).

Under paragraph (m)(2) of this section, all of the \$64 allocated to general limitation income is treated as income from foreign sources (\$64 = \$64 × \$650/\$650).

(4) Treatment of dividend payments—(i) Rule. Any dividend or distribution treated as a dividend under this section that is received or accrued by a United States shareholder from a controlled foreign corporation shall be treated as income in a separate category derived from sources within the United States in proportion to the ratio of the portion of the earnings and profits of the controlled foreign corporation in the corresponding separate category from United States sources to the total amount of earnings and profits of the controlled foreign corporation in that separate category.

(ii) Determination of earnings and profits from United States sources. In order to determine the portions of earnings and profits from United States sources and from foreign sources within each separate category, related person interest shall be allocated to the United States source portion of income in a separate category by applying the rules of paragraph (m)(2) of this section. Other

expenses shall be allocated by applying the rules of paragraph (c)(2)(ii) of this section separately to the United States source income and the foreign source income in each category. For example, unrelated person interest expense that is allocated among categories of income based upon the relative amounts of assets in a category must be allocated between United States and foreign source income within each category by applying the rules of paragraph (c)(2)(ii)(E) of this section separately to United States source and foreign source assets in the separate category.

(iii) Example. The following example illustrates the application of this paragraph.

Example. Controlled foreign corporation, S, is a wholly owned subsidiary of P, a domestic corporation. S is a financial services entity. In 1987, S has \$100 of non-subpart F general limitation earnings and profits and \$100 of non-subpart F financial services income. None of the general limitation earnings and profits are from sources within the United States, and \$50 of the financial services earnings and profits are from United States sources. In 1988, S earns \$300 of non-subpart F general limitation earnings and profits and \$500 of non-subpart F financial services earnings and profits. One hundred dollars (\$100) of the general limitation earnings and profits are from sources within the United States. None of the financial services earnings and profits are from United States sources. In 1988, S pays P a \$500 dividend. Under paragraph (c)(4) of this section, \$200 of the dividend is attributable to general limitation earnings and profits (\$200 = \$500 × \$400/\$1000). Under this paragraph (m)(3), the portion of the dividend that is attributable to general limitation earnings and profits from sources within the United States is \$50 (\$200 × \$100/\$400). Under paragraph (c)(4) of this section, \$300 of the dividend is attributable to financial services earnings and profits (\$300 = \$500 × \$600/\$1000). Under this paragraph (m)(3), the portion of the dividend that is attributable to financial services earnings and profits from sources within the United States is \$25 (\$300 × \$50/\$600).

(5) Treatment of subpart F inclusions—(i) Rule. Any amount included in the gross income of a United States shareholder of a controlled foreign corporation under section 951(a) shall be treated as income subject to a separate limitation that is derived from sources within the United States to the extent such amount is attributable to income of the controlled foreign corporation in the corresponding category of income from sources within the United States. In order to determine a controlled foreign corporation's taxable income and earnings and profits from sources within the United States in each separate category, the principles of paragraph (m)(4)(ii) of this section shall apply.

(ii) Example. The following example illustrates the application of this paragraph (m)(5).

Example. Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation, P. In 1987, S earns \$100 of subpart F foreign personal holding company income that is passive income. Of this amount, \$40 is derived from sources within the United States. S also earns \$50 of subpart F general limitation income. None of this income is from sources within the United States. Assume that S pays no foreign taxes and has no expenses. P is required to include \$150 in gross income under section 951(a). Of this amount, \$60 will be foreign source passive income to P and \$40 will be United States source passive income to P. Fifty dollars (\$50) will be foreign source general limitation income to P.

(6) Treatment of section 78 amount. For purposes of treating taxes deemed paid by a taxpayer under section 902(a) and section 960(a)(1) as a dividend under section 78, taxes that are paid or accrued with respect to United States source income in a separate category shall be treated as United States source income in that separate category.

(7) Coordination with treaties. [Reserved]

(n) Order of application of sections 904(d) and (g). In order to apply the rules of this section, section 904(d)(1) shall first be applied to the controlled foreign corporation to determine the amount of income and earnings and profits derived by the controlled foreign corporation in each separate category. The income and earnings and profits in each separate category that is from United States sources shall then be determined. Sections 904(d)(3), 904(g), and this section shall then be applied for purposes of characterizing and sourcing income received, accrued, or included by a United States shareholder in the controlled foreign corporation that is attributable or allocable to income or earnings and profits of the controlled foreign corporation.

(o) Effective date. Section 904(d)(3) and this section apply to distributions and section 951 inclusions of earnings and profits of a controlled foreign corporation (or other entity to which this section applies) derived during the first taxable year of the controlled foreign corporation (or other entity) beginning after December 31, 1986, and thereafter, and to payments made by a controlled foreign corporation (or other entity) during such taxable years, without regard to whether the corresponding taxable year of the recipient of the distribution or payment or of one or more of the United States shareholders of the controlled foreign corporation begins after December 31, 1986.

§ 1.904-8 Allocation of taxes.

(a) Allocation of taxes to a separate category or categories of income—(1) In general—(i) Taxes related to a separate category of income. The amount of foreign taxes paid or accrued with respect to a separate category of income (including United States source income) shall include only those taxes that are related to income in that separate category. Taxes are related to income if the income is included in the base upon which the tax is imposed. If, for example, foreign law exempts certain types of income from foreign taxes, or certain types of income are exempt from foreign tax under an income tax convention, then no taxes are considered to be related to such income for purposes of this paragraph. As another example, if foreign law provides for a specific rate of tax with respect to certain types of income (e.g., capital gains), or certain expenses, deductions, or credits are allowed under foreign law only with respect to a particular type of income, then such provisions shall be taken into account in determining the amount of foreign tax imposed on such income. A withholding tax (unless it is a withholding tax that is not the final tax payable on the income as described in § 1.904-4(d)) is related to the income from which it is withheld. A tax that is imposed on a base that includes more than one separate category of income is considered to be imposed on income in all such categories, and, thus, the taxes are related to all such categories included within the foreign country or possession's taxable income base.

(ii) Apportionment of taxes related to more than one separate category. If a tax is related to more than one separate category, then, in order to determine the amount of the tax paid or accrued with respect to each separate category, the tax shall be apportioned on an annual basis among the separate categories on the basis of the following formula:

$$\frac{\text{Foreign tax related to more than one separate category}}{\text{Net income subject to that foreign tax included in a separate category}} \times \frac{\text{Net income subject to that foreign tax}}{\text{Net income subject to that foreign tax}}$$

For purposes of apportioning foreign taxes among the separate categories, gross income is determined under the law of the foreign country or a possession of the United States to which the foreign income taxes have been paid or accrued. Gross income, as determined under foreign law, in the passive category shall first be reduced by any related person interest expense that is

allocated to the income under the principles of section 954(b)(5) and § 1.904-5(c)(2)(ii)(C) (adjusted gross passive income). Gross income in all separate categories (including adjusted gross passive income) is next reduced by deducting any expenses, losses, or other amounts that are deductible under foreign law that are specifically allocable to the gross amount of such income under the laws of that foreign country or possession. If expenses are not specifically allocated under foreign law then the expenses will be apportioned under the principles of foreign law but only after taking into account the reduction of passive income by the application of section 954(b)(5). Thus, for example, if foreign law provides that expenses will be apportioned on a gross income basis, the gross income amounts will be those amounts determined under foreign law except that, in the case of passive income, the amount will be adjusted gross passive income. If foreign law does not provide for the direct allocation or apportionment of expenses, losses, or other deductions to a particular category of income, then the principles of § 1.861-8 and section 954(b)(5) shall apply in allocating such expenses, losses, or other deductions to gross income as determined under foreign law after reduction of passive income by the amount of related person interest allocated to passive income under section 954(b)(5) and § 1.904-5(c)(2)(ii)(C). For example, the principles of § 1.861-8 apply to require definitely related expenses to be directly allocated to particular categories of gross income and provide the methods of apportioning expenses that are definitely related to more than one category of gross income or that are not definitely related to any particular category of gross income. For this purpose, the apportionment of expenses required to be made under § 1.861-8 need not be made on other than a separate company basis. The rules in this paragraph apply only for purposes of the apportionment of taxes among separate categories of income and do not affect the computation of a taxpayer's foreign tax credit limitation with respect to a specific category of income.

(iii) Apportionment of taxes for purposes of applying the high-tax income test. If taxes have been allocated and apportioned to passive income under the rules of paragraph (a)(1) (i) or (ii) of this section, the taxes must further be apportioned to the groups of income described in § 1.904-4(c) (3), (4) and (5) for purposes of determining if the group is high-taxed

income. Taxes will be related to income in a particular group under the same rules as those in paragraph (a)(1) (i) and (ii) of this section except that those rules shall be applied by substituting the term "group" for the term "category."

(2) Treatment of certain dividends from noncontrolled section 902 corporations. If a taxpayer receives or accrues a dividend from a noncontrolled section 902 corporation, and if the Commissioner establishes that there is an agreement, express or implied, that such dividend is paid out of a designated pool of earnings of the foreign corporation, then only the foreign taxes imposed on that pool of earnings will be considered to be taxes related to the dividend.

(b) Application of paragraph (a) to sections 902 and 960—(1) Determination of foreign taxes deemed paid. If, for the taxable year, there is included in the gross income of a domestic corporation under section 951 an amount attributable to the earnings and profits of a controlled foreign corporation for any taxable year and the amount included consists of income in more than one separate category of the controlled foreign corporation, then the domestic corporation shall be deemed to have paid only a portion of the taxes paid or accrued, or deemed paid or accrued, by the controlled foreign corporation that are allocated to each separate category to which the inclusion is attributable. The portion of the taxes allocated to a particular separate category that shall be deemed paid by the United States shareholder shall be equal to the taxes allocated to that separate category multiplied by the amount of the inclusion with respect to that category (as determined under § 1.904-5(c)(1)) and divided by the earnings and profits of the controlled foreign corporation with respect to that separate category (in accordance with § 1.904-5(c)(2)(iii)). The rules of this paragraph (b)(1) also apply for purposes of computing the foreign taxes deemed paid of United States shareholders of controlled foreign corporations under section 902.

(2) Distributions received from foreign corporations that are excluded from gross income under section 959(b). The principles of this paragraph shall be applied to—

(i) Any portion of a distribution received from a first-tier corporation by a domestic corporation that is excluded from the domestic corporation's gross income under section 959(a) and § 1.959-1, and

(ii) Any portion of a distribution received from an immediately lower-tier

corporation by a second- or first-tier corporation that is excluded from such foreign corporation's gross income under section 959(b) and § 1.959-2, if such distribution is treated as a dividend pursuant to § 1.960-2(a).

(3) *Application of section 78.* For purposes of treating taxes deemed paid by a taxpayer under section 902(a) and section 960(a)(1) as a dividend under section 78, taxes that were allocated to income in a separate category shall be treated as income in that same separate category.

(4) *Increase in limitation.* The amount of the increase in the foreign tax credit limitation allowed by section 960(b) and § 1.960-4 shall be determined with regard to the applicable category of income under section 904(d).

(c) *Examples.* The following examples illustrate the application of this section.

Example (1). M, a domestic corporation, conducts business in foreign country X. M earns \$400 of shipping income, \$200 of general limitation income and \$200 of passive income as determined under foreign law. Under foreign law, none of M's expenses are directly allocated or apportioned to a particular category of income. Under the principles of § 1.861-8, M allocates \$75 of directly allocable expenses to shipping income, \$10 of directly allocable expenses to general limitation income, and no such expenses to passive income. M also allocates expenses that are not directly allocable to a specific class of gross income—\$40 to shipping income, \$20 to general limitation income, and \$20 to passive income. Therefore, for purposes of paragraph (a) of this section, M has \$285 of net shipping income, \$170 of net general limitation income, and \$180 of net passive income. Country X imposes tax of \$100 on a base that includes M's shipping income and general limitation income. Country X exempts passive income from tax. The tax paid by M is related to M's shipping and general limitation income. The \$100 tax is apportioned between those limitations. Thus, M is considered to have paid \$63 of X tax on its shipping income (\$100 × \$285/\$455) and \$37 of tax on its general limitation income (\$100 × \$170/\$455). None of the X tax is allocated to M's passive income.

Example (2). The facts are the same as in example (1) except that X does not exempt all passive income from tax but only exempts interest income. M's passive income consists of \$100 of gross dividend income, to which \$10 of expenses that are not directly allocable are apportioned, and \$100 of interest income, to which \$10 of expenses that are not directly allocable are apportioned. The \$90 of net dividend income is subject to X tax, and \$90 of net interest income is exempt from X tax. M pays \$130 of tax to X. The \$130 of tax is related to M's general, shipping, and passive income. The tax is apportioned among those limitations as follows: \$66 to shipping income (\$130 × \$285/\$545), \$41 to general limitation income (\$130 × \$170/\$545), and \$21 to passive income (\$130 × \$90/\$545).

Example (3). P, a domestic corporation, owns 100 percent of S, a controlled foreign corporation organized in country X. S owns 100 percent of T, a controlled foreign corporation that is also organized in country X. Country X grants group relief to S and T. In 1987, S earns \$100 of income and T incurs an \$80 loss. Under country X's group relief provisions, only \$20 of S's income is subject to country X tax. Country X imposes a 30 percent tax on this income (\$6). P includes \$100 of S's income in gross income under section 951. Six dollars (\$6) of foreign tax is related to that income for purposes of section 960.

Example (4). P, a domestic corporation, owns 100 percent of S, a controlled foreign corporation organized in country X and 100 percent of T, a controlled foreign corporation organized in country Y. T has \$200 of gross manufacturing general limitation income and \$50 of passive income. T also pays S \$100 for shipping T's goods, a price that may be justified under section 482. T has no other expenses and S has no other income or expense. T's income and earnings and profits are the same. Foreign country X does not tax S on its shipping income. Foreign country Y taxes all of T's income at a rate of 20 percent. Under the law of foreign country Y, T is only allowed a \$50 deduction for the payment to S. Therefore, for foreign law purposes, T has \$150 of manufacturing income and earnings and profits and \$50 of passive income and earnings and profits upon which it pays \$40 of tax. Under the principles of foreign law, \$30 of that tax is imposed on the general limitation manufacturing income and \$10 of the tax is imposed on passive income. Therefore, the foreign effective rate on the general limitation income is 30 percent and the foreign effective rate on the passive income is 20 percent. T has \$100 of general limitation income and \$50 of passive income and pays \$30 of general limitation taxes and \$10 of passive taxes. S has \$100 of shipping income and pays no foreign tax.

Example (5). R, a domestic corporation, owns 50 percent of T, a foreign corporation that is not a controlled foreign corporation and that is organized in foreign country X. R licenses certain property to T. T then relicenses this property to a third person. In 1987, T paid R a royalty of \$100 all of which is treated as passive income to R because it was not an active royalty as defined in § 1.904-4(b)(2). R has \$10 of expenses associated with the royalty income and no foreign tax was imposed on the royalty so the high-tax kickout does not apply. In 1988, the Commissioner determined that the correct arm's length royalty was \$150 and under the authority of section 482 reallocated an additional \$50 of income to R for 1987. Under a closing agreement with the Commissioner, R elected the benefits of Rev. Proc. 85-17 in relation to the income reallocated from R and established an account receivable from T. In 1988, T paid R an additional \$50 to reflect the section 482 adjustment and the account receivable that was established because of the adjustment. Foreign country X treats the \$50 payment in 1988 as a dividend by T and imposes a \$10 withholding tax on the payment. Under paragraph (a)(1) of this section, the \$10 of withholding tax is treated

as fully allocable to the \$50 payment because under foreign law the tax is imposed only on that income. For U.S. purposes, the income is not characterized as a dividend but as a repayment of a bona fide debt and therefore the \$50 of income is not required to be recognized by P in 1988. The \$10 of tax is treated as a tax on the \$50 of passive income included by P in 1987 pursuant to the section 482 adjustment rather than as taxes associated with a dividend from a noncontrolled section 902 corporation and the taxes are therefore taxes imposed on passive income.

Example (6). P, a domestic corporation owns all of the stock of S, a controlled foreign corporation that is incorporated in country X. In 1988, S has \$100 of passive income, \$200 of dividends from a noncontrolled section 902 corporation and \$200 of general limitation income. S also has \$100 of related person interest expense and \$100 of other expenses that under foreign law are directly allocable to the general limitation income of S. S has no other expenses. Country X imposes a tax of 25% on all of the net income of S and S, therefore, pays \$75 in foreign tax. Under paragraph (a)(1)(ii) of this section, the passive income of S is first reduced by the amount of related person interest for purposes of allocating the \$75 of tax. Under paragraph (a)(1)(ii) of this section, the general limitation income of S is reduced by the \$100 of other expenses. Therefore, \$50 of the foreign tax is allocated to the dividends from a noncontrolled section 902 corporation (\$25 = \$75 × \$200/\$300). \$25 is allocated to the general limitation income of S (\$25 = \$75 × \$100/\$300), and no taxes are allocated to S's passive income.

Example (7). R, a domestic corporation owns preferred stock in T, a foreign corporation that is not a controlled foreign corporation, incorporated in foreign country X. R's stock represents 15 percent of the value of T. Dividends on the preferred stock are paid only out of certain designated passive investments of T. Foreign country X does not tax the passive income of T. Under paragraph (a)(2) of this section, no taxes will be considered to be related to any dividend paid by T to R.

Example (8). Domestic corporation P owns all of the stock of controlled foreign corporation S, which owns all of the stock of controlled foreign corporation T. All such corporations use the calendar year as the taxable year. Assume that earnings and profits are equal to net income and that the income amounts are identical under United States and foreign law principles. In 1987, T earns \$187.50 of gross passive income and \$62.50 of gross general limitation income and pays \$50 of foreign taxes. Assume that T incurs no other expenses. S earns no income in 1987 and pays no foreign taxes. For 1987, P is required under section 951 to include in gross income \$175 attributable to the earnings and profits of T for such year. One hundred and fifty dollars (\$150) of the subpart F inclusion is attributable to passive income earned by T, and \$25 of the subpart F inclusion is attributable to general limitation income earned by T. In 1988, T earns no

income and pays no foreign taxes. T pays a \$200 dividend to S, consisting of \$175 from its earnings and profits attributable to amounts required to be included in P's gross income with respect to T and \$25 from its other earnings and profits. Assume that no withholding taxes imposed with respect to the distribution from T to S. In 1988, S earns \$100 of gross general limitation income and receives a \$200 dividend from T. S pays \$30 of foreign taxes. Assume that S incurs no other expenses. For 1988, P is required under section 951 to include in gross income \$22.50 attributable to the earnings and profits of S for such year. The entire subpart F inclusion is attributable to general limitation income earned by S. In 1988, S pays P a dividend of \$247.50, consisting of \$157.50 from its earnings and profits attributable to the amount required under section 951 to be included in P's gross income with respect to T, \$22.50 from its earnings and profits attributable to the amount required under section 951 to be included in P's gross income with respect to S, and \$67.50 from its other earnings and profits. The foreign income taxes deemed paid by P for 1987 and 1988 under section 960(a)(1) and section 902(a) are determined as follows upon the basis of the following facts and computations.

T corporation (second-tier corporation):	
1. Pre-tax earnings and profits:	
(a) Passive income (p.i.)	187.50
Plus:	
(b) General limitation income (g.l.i.)	62.50
(c) Total	250.00
Less:	
(d) Foreign income taxes paid on or with respect to T's earnings and profits (20%)	50.00
(e) Earnings and profits	200.00
2. Allocation of taxes:	
(a) Foreign income taxes paid by T that are allocable to p.i. earned by T:	
Line 1(d) taxes	50.00
Multiplied by:	
foreign law net p.i.	187.50
Divided by:	
foreign law total net income	250.00
Result	37.50

(b) Foreign income taxes paid by T that are allocable to g.l.i. earned by T:	
Line 1(d) taxes	50.00
Multiplied by:	
foreign law net g.l.i.	62.50
Divided by:	
foreign law total net income	250.00
Result	12.50
3. T's earnings and profits:	
(a) Earnings and profits attributable to T's p.i.:	
Line 1(a) e & p	187.50
Less: line 2(a) taxes	37.50
Result	150.00
(b) Earnings and profits attributable to T's g.l.i.:	
Line 1(b) e & p	62.50
Less: line 2(b) taxes	12.50
Result	50.00
4. Subpart F inclusion attributable to T:	
(a) Amount required to be included in P's gross income for 1987 under section 951 with respect to T that is attributable to T's p.i.	150.00
(b) Amount required to be included in P's gross income for 1987 under section 951 with respect to T that is attributable to T's g.l.i.	25.00
5. Foreign income taxes deemed paid by P under section 960(a)(1) with respect to T:	
(a) Taxes deemed paid that are attributable to T's subpart F inclusion that are attributable to T's p.i.:	
Line 2(a) taxes	37.50
Multiplied by:	
line 4(a) sec. 951 incl. dividend	150.00
Divided by: line 3(a) e & p	150.00
Result	37.50

(b) Taxes deemed paid that are attributable to T's subpart F inclusion that are attributable to T's g.l.i.:	
Line 2(b) taxes	12.50
Multiplied by:	
line 4(b) sec. 951 incl. dividend	25.00
Divided by: line 3(b) e & p	50.00
Result	6.25
6. Dividends paid to S:	
(a) Dividends attributable to T's previously taxed p.i.	150.00
Plus:	
(b) Dividends attributable to T's previously taxed g.l.i.	25.00
Plus:	
(c) Dividends from T's non-previously taxed earnings and profits attributable to p.i.	0
Plus:	
(d) Dividends from T's non-previously taxed earnings and profits attributable to g.l.i.	25.00
(e) Total dividends paid to S	200.00
7. Taxes deemed paid by S:	
(a) Taxes of T deemed paid by S for 1987 under section 902(b)(1) with regard to T's p.i.:	
Line 2(a) taxes	37.50
Multiplied by:	
line 6(c) dividend	0
Dividend by: line 3(a) e & p	150.00
Result	0
(b) Taxes of T deemed paid by S for 1987 under section 902(b)(1) with regard to T's g.l.i.:	
Line 2(b) taxes	12.50
Multiplied by:	
line 6(d) dividend	25.00
Dividend by: line 3(b) e & p	50.00
Result	6.25

<i>S corporation (first-tier corporation):</i>	
8. Pre-tax earnings and profits:	
(a) Dividends from T attributable to T's non-previously taxed p.l.....	0
Plus:	
(b) Dividends from T attributable to T's non-previously taxed g.l.i.....	25
Plus:	
(c) Dividends from T attributable to T's previously taxed p.l.....	150
Plus:	
(d) Dividends from T attributable to T's previously taxed g.l.i.....	25
Plus:	
(e) Passive income other than dividend from T...	0
Plus:	
(f) General limitation income other than dividend from T.....	100.00
(g) Total pre-tax earnings and profits.....	300.00
(h) Foreign income taxes paid on or with respect to S's earnings and profits (10%).....	30.00
(i) Earnings and profits.....	270.00
9. Allocation of taxes:	
(a) Foreign income taxes paid by S that are allocable to non-previously taxed p.l. earned by S:	
Line 8(h) taxes.....	30.00
Multiplied by:	
foreign law line 8(a) & 8(e) p.l. amounts.....	0
Dividend by:	
foreign law total net income.....	300.00
Result.....	0

(b) Foreign income taxes paid by S that are allocable to S's previously taxed p.i. received from T:		
Line 8(h) taxes	30.00	
Multipled by: foreign law line 8(c) p.i. amount	150.00	
Divided by: foreign law total net income	300.00	
Result		15.00
(c) Foreign income taxes paid by S that are allocable to non-previously taxed g.i.i. earned by S:		
Line 8(h) taxes	30.00	
Multipled by: foreign law line 8(b) & line 8(f) g.i.i. amounts	125.00	
Divided by: foreign law total net income	300.00	
Result		12.50
(d) Foreign income taxes paid by S that are allocable to S's previously taxed g.i.i. received from T:		
Line 8(h) taxes	30.00	
Multipled by: foreign law line 8(d) amount	25.00	
Divided by: foreign law total net income	300.00	
Result		2.50
10. (a) Non-previously taxed earnings and profits of S:		
Lines 8(a), 8(b), 8(e), & 8(f) e & p	125.00	
Less: lines 9(a) & 9(c) taxes	12.50	
Result		112.50
(b) Portion of result in 10(a) attributable to S's p.i. 0		
(c) Portion of result in 10(a) attributable to S's g.i.i. 112.50		

11. (a) Previously taxed earnings and profits of S:		
Lines 8(c) and 8(d) e & p.....	175.00	
Less: lines 8(b) & 9(d) taxes.....	17.50	
Result.....		157.50
(b) Portion of result in 11(a) attributable to T's p.i.:		
Line 8(c).....	150.00	
Less: line 9(b) taxes.....	15.00	
Result.....		135.00
(c) Portion of result in 11(a) attributable to T's g.l.i.:		
Line 8(d).....	25.00	
Less: line 9(d) taxes.....	2.50	
Result.....		22.50
12. Subpart F inclusion attributable to S:		
(a) Amount required to be included in P's gross income for 1988 under section 951 with respect to S that is attributable to S's p.i.		0
(b) Amount required to be included in P's gross income for 1988 under section 951 with respect to S that is attributable to S's g.l.i.		22.50
13. Foreign income taxes deemed paid by P under section 960(a)(1) with respect to S:		
(a) Taxes deemed paid that are attributable to S's subpart F inclusion that are attributable to S's p.i.:		
Line 9(a) taxes.....	0	
Multiplied by: line 12(a) sec. 951 incl.	0	
Divided by: line 10(b) e & p.....	0	
Result.....		0
(b) Taxes deemed paid that are attributable to S's subpart F inclusion that are attributable to S's g.l.i.:		
Line 9(c) taxes.....	12.50	

Multiplied by:		
line 12(b) sec.		
951 incl.	22.50	
Divided by: line		
10(c) e & p	112.50	
Result		2.50
(c) Foreign income		
taxes deemed		
paid by S		
deemed paid by		
P that are		
allocable to S's		
p.i.:		
Line 7(a) taxes		
deemed paid		
by S	0	
Multiplied by:		
line 12(a) sec.		
951 incl.	0	
Divided by: line		
10(b) e & p	0	
Result		0
(d) Foreign income		
taxes deemed		
paid by S		
deemed paid by		
P that are		
allocable to S's		
g.l.i.:		
Line 7(b) taxes		
deemed paid		
by S	6.25	
Multiplied by:		
line 12(b) sec.		
951 incl.	22.50	
Divided by: line		
10(c) e & p	112.50	
Result		1.25
14. Dividends paid		
to P:		
(a) Dividends from		
S attributable to		
S's previously		
taxed p.i.	0	
Plus:		
(b) Dividends from		
S attributable to		
S's previously		
taxed g.l.i.	22.50	
Plus:		
(c) Dividends to		
which section		
902(a) applies:		
(i) Consisting of		
S's earnings		
and profits		
attributable to		
T's previously		
taxed p.i.	135.00	
Plus:		
(ii) Consisting of		
S's earnings		
and profits		
attributable to		
T's previously		
taxed g.l.i.	22.50	
Plus:		
(iii) Consisting		
of S's other		
p.i. earnings		
and profits	0	

Plus:		
(iv) Consisting of S's other g.l.i. earnings and profits	67.50	
(v) Total section 902 dividend	225.00	
(d) Total dividends paid to P	247.50	
15. Foreign income taxes deemed paid by P under section 902 and section 960(a)(3) with respect to S:		
(a) Taxes paid by S deemed paid by P under section 902(a) with regard to S's p.i.:		
Line 9(a) taxes	0	
Multiplied by: line 14(c)(iii) div.	0	
Divided by: line 10(b) e & p.	0	
Result	0	
(b) Taxes paid by S deemed paid by P under section 902(a) with regard to S's g.l.i.:		
Line 9(c) taxes	12.50	
Multiplied by: line 14(c)(iv) div.	67.50	
Divided by: line 10(c) e & p.	112.50	
Result	7.50	
(c) Taxes deemed paid by S deemed paid by P under section 902(a) with regard to S's p.i.:		
Line 7(a) deemed paid taxes	0	
Multiplied by: line 14(c)(iii) div.	0	
Divided by: line 10(b) e & p.	0	
Result	0	
(d) Taxes deemed paid by S deemed paid by P under section 902(a) with regard to S's g.l.i.:		
Line 7(b) deemed paid taxes	6.25	
Multiplied by: line 14(c)(iv) div.	67.50	

Divided by: line 10(c) e & p.....	112.50	
Result.....		3.75
(e) Foreign income taxes paid by S under section 960(a)(3) deemed paid by P with regard to S's previously taxed p.i.: Line 9(b) taxes.....	15.00	
Multiplied by: line 14(c)(i) div.....	135.00	
Divided by: line 11(b) e & p.....	135.00	
Result.....		15.00
(f) Foreign income taxes paid by S under section 960(a)(3) deemed paid by P with regard to S's previously taxed g.i.: Line 9(d) taxes.....	2.50	
Multiplied by: line 14(c)(ii) div.....	22.50	
Divided by: line 11(c) e & p.....	22.50	
Result.....		2.50
Summary:		
Total taxes deemed paid by P under section 960(a)(1) with respect to— Passive income of S and T included under section 951 in income of P: Line 5(a).....	37.50	
Plus: Line 13(a).....	0	
Plus: Line 13(c).....	0	
Result.....	37.50	
General limitation income of S and T included under section 951 in income of P: Line 5(b).....	6.25	
Plus: Line 13(b).....	2.50	
Plus: Line 13(d).....	1.25	
Result.....	10.00	
Total deemed paid taxes under section 960(a)(1).....	47.50	

Total taxes deemed paid by P under section 902 and section 960(a)(3) attributable to passive income of S and T (line 15(e))	15.00
Total taxes deemed paid by P under section 902 and section 960(a)(3) attributable to general limitation income of S and T:	
Line 15(b)	7.50
Plus:	
Line 15(d)	3.75
Plus:	
Line 15(f)	2.50
Result	13.75

§ 1.904-7 Transition rules.

(a) *Characterization of distributions and section 951(a)(1)(B) inclusions of earnings of a controlled foreign corporation accumulated in taxable years beginning before January 1, 1987 during taxable years of both the payor controlled foreign corporation and the recipient which begin after December 31, 1986—(1) In general.* Income derived by a foreign corporation in taxable years beginning before January 1, 1987, is characterized in the foreign corporation's hands under section 904(d)(1)(A) (separate limitation interest income), or section 904(d)(1)(E) (general limitation income) (prior to their amendment by the Tax Reform Act of 1986 (the Act)) after application of the de minimis rule of former section 904(d)(3)(C) (prior to its amendment by the Act). When, in a taxable year after the effective date of the Act, earnings and profits attributable to such income are distributed, or included in the gross income of a United States shareholder under section 951(a)(1)(B), the ordering rules of section 904(d)(3)(D) and § 1.904-5(c)(4), shall be applied in determining initially the character of the income of the distributee or United States shareholder. Thus, a proportionate amount of a distribution described in this paragraph will be initially characterized as separate limitation interest income in the hands of the distributee based on the ratio of the separate limitation interest earnings and profits out of which the dividend was

paid to the total earnings and profits out of which the dividend was paid. The distribution or section 951(a)(1)(B) inclusion must then be recharacterized in the hands of the distributee or United States shareholder on the basis of the following principles:

(i) Distributions and section 951(a)(1)(B) inclusions that are initially characterized as separate limitation interest income shall be treated as passive income;

(ii) Distributions and section 951(a)(1)(B) inclusions that are initially characterized as old general limitation income shall be treated as general limitation income, unless the taxpayer establishes to the satisfaction of the Commissioner that the distribution or section 951(a)(1)(B) inclusion is attributable to:

(A) Earnings and profits accumulated with respect to shipping income, as defined in section 904(d)(2)(D) and § 1.904-4(f), or

(B) In the case of a financial services entity, earnings and profits accumulated with respect to financial services income, as defined in section 904(d)(2)(C)(ii) and § 1.904-4(e)(1).

(2) *Limitation on establishing the character of earnings and profits.* In order for a taxpayer to establish that distributions or section 951(a)(1)(B) inclusions that are attributable to general limitation earnings and profits of a particular taxable year beginning before January 1, 1987, are attributable to shipping or financial services earnings and profits, the taxpayer must establish the amounts of foreign taxes paid or accrued with respect to income attributable to those earnings and profits that are to be treated as taxes paid or accrued with respect to shipping or financial services income, as the case may be, under section 904(d)(2)(I). Conversely, in order for a taxpayer to establish the amounts of general limitation taxes paid or accrued in a taxable year beginning before January 1, 1987, that are to be treated as taxes paid or accrued with respect to shipping or financial services income, as the case may be, the taxpayer must establish the amount of any distributions or section 951(a)(1)(B) inclusions that are attributable to shipping or financial services earnings and profits. For purposes of establishing the amounts of general limitation taxes that are to be treated as taxes paid or accrued with respect to shipping or financial services income, the principles of § 1.904-5 shall be applied.

(b) *Application of look-through rules to distributions (including deemed distributions) and payments by an*

entity to a recipient when one's taxable year begins before January 1, 1987 and the other's taxable year begins after December 31, 1986—(1) In general. This paragraph provides rules relating to the application of section 904(d)(3) to payments made by a controlled foreign corporation or other entity to which the look-through rules apply during its taxable year beginning after December 31, 1986, but received in a taxable year of the recipient beginning before January 1, 1987. The paragraph also provides rules relating to distributions (including deemed distributions) or payments made by a controlled foreign corporation to which section 904(d)(3) (as in effect before the Act) applies during its taxable year beginning before January 1, 1987, and received in a taxable year of the recipient beginning after December 31, 1986.

(2) *Payor of interest, rents, or royalties is subject to the Act and recipient is not subject to the Act.* If interest, rents, or royalties are paid or accrued on or after the start of the payor's first taxable year beginning on or after January 1, 1987, but prior to the start of the recipient's first taxable year beginning on or after January 1, 1987, such interest, rents, or royalties shall initially be characterized in accordance with section 904(d)(3) and § 1.904-5. To the extent that interest payments in the hands of the recipient are initially characterized as passive income under these rules, they will be treated as separate limitation interest in the hands of the recipient. To the extent that rents or royalties in the hands of the recipient are initially characterized as passive income under these rules, they will be recharacterized as general limitation income in the hands of the recipient.

(3) *Recipient of interest, rents, or royalties is subject to the Act and payor is not subject to the Act.* If interest, rents, or royalties are paid or accrued before the start of the payor's first taxable year beginning on or after January 1, 1987, but on or after the start of the recipient's first taxable year beginning after January 1, 1987, the income in the recipient's hands shall be initially characterized in accordance with former section 904(d)(3) (prior to its amendment by the Act). To the extent interest income is characterized as separate limitation interest income under these rules, that income shall be recharacterized as passive income in the hands of the recipient. Rents or royalties will be characterized as general limitation income.

(4) *Recipient of dividends and subpart F inclusions is subject to the Act and payor is not subject to the Act.* If

dividends are paid or accrued or section 951(a)(1) inclusions occur before the start of the first taxable year of a controlled foreign corporation beginning on or after January 1, 1987, but on or after the start of the first taxable year of the distributee or United States shareholder beginning on or after January 1, 1987, the dividends or section 951(a)(1) inclusions in the hands of the distributee or United States shareholder shall be initially characterized in accordance with former section 904(d)(3) (including the ordering rules of section 904(d)(3)(A)). Therefore, under former section 904(d)(3)(A), dividends are considered to be paid or derived first from earnings attributable to separate limitation interest income. To the extent the dividend or section 951(a)(1) inclusion is initially characterized under these rules as separate limitation interest income in the hands of the distributee or United States shareholder, the dividend or section 951(a)(1) inclusion shall be recharacterized as passive income in the hands of the distributee or United States shareholder. The portion, if any, of the dividend or section 951(a)(1) inclusion that is not characterized as passive income shall be characterized according to the rules in paragraph (a) of this section.

(c) *Installment sales.* If income is received or accrued by any person on or after the effective date of the Act (as applied to such person) that is attributable to a disposition of property by such person with regard to which section 453 or section 453(A) applies (installment sale treatment), and the disposition occurred prior to the effective date of the Act, that income shall be characterized according to the rules of §§ 1.904-4 through 1.904-7.

(d) *Special effective date for high withholding tax interest earned by persons with respect to qualified loans described in section 1201(e)(2) of the Act.* For purposes of characterizing interest received or accrued by any person, the definition of high withholding tax interest in § 1.904-6(d) shall apply to taxable years beginning after December 31, 1986, except as provided in section 1201(e)(2) of the Act.

(e) *Treatment of certain recapture income.* Except as otherwise provided, if income is subject to recapture under section 506(c), the income shall be general limitation income. If the income is recaptured by a taxpayer that is a financial services entity, the entity may treat the income as financial services income if the taxpayer establishes to the satisfaction of the Secretary that the deduction to which the recapture amount is attributable is allocable to financial services income. If the taxpayer establishes to the satisfaction

of the Secretary that the deduction to which the recapture amount is attributable is allocable to high-withholding tax interest income, the taxpayer may treat the income as high-withholding tax interest.

December 31, 1986, the look-through rules of section 904(d)(3) do not apply. Assume that, under former section 904(d)(3), the interest payment would be characterized as separate limitation interest income. For purposes of determining P's foreign tax credit limitation, the interest payment will be passive income as provided in section 904(d)(1)(A).

Example (3). The facts are the same as in Example (2) except that on June 1, 1987, S makes a \$100 dividend distribution to P. Because the dividend is paid prior to July 1, 1987 (the first day of S's first taxable year beginning after December 31, 1986), the look-through rules of section 904(d)(3) do not apply. Assume that, under former section 904(d)(3), S's earnings and profits for the taxable year ending June 30, 1987, consist of \$200 of earnings attributable to general limitation income and \$75 of earnings attributable to separate limitation interest income. The portion of the dividend that is attributable to S's separate limitation interest income and is treated as separate limitation interest income under former section 904(d)(3) is \$75. The remaining \$25 of the dividend is treated as general limitation income under former section 904(d)(3). For purposes of determining P's foreign tax credit limitation, \$75 of the dividend will be recharacterized as passive income. The remaining \$25 of the dividend will be characterized as general limitation income, unless P can establish that the general limitation portion is attributable to shipping or financial services income.

(f) *Examples.* The following examples illustrate the application of this paragraph (b).

Example (1). P is a domestic corporation that is a fiscal year taxpayer (July 1-June 30). S, a controlled foreign corporation, is a wholly-owned subsidiary of P and has a calendar taxable year. On June 1, 1987, S makes a \$100 interest payment to P. Because the payment is made after January 1, 1987 (the first day of S's first taxable year beginning after December 31, 1986), the look-through rules of section 904(d)(3) apply to characterize the payment made by S. To the extent, however, that the interest payment to P is allocable to passive income earned by S, the payment will be included in P's separate limitation for interest as provided in former section 904(d)(1)(A).

Example (2). P is a domestic corporation that is a calendar year taxpayer. S, a controlled foreign corporation, is a wholly-owned subsidiary of P and has a July 1-June 30 taxable year. On June 1, 1987, S makes a \$100 interest payment to P. Because the payment is made prior to July 1, 1987 (the first day of S's first taxable year beginning after

of the Secretary that the deduction to which the recapture amount is attributable is allocable to high-withholding tax interest income, the taxpayer may treat the income as high-withholding tax interest.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: June 27, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-15078 Filed 7-15-88; 8:45 am]

BILLING CODE 4830-01-2

25 CFR Parts 1 and 602

[T.D. 8215]

Special Allocation Rules for Certain Asset Acquisitions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to allocation rules for certain asset acquisitions under section 1060 of the Internal Revenue Code of 1986 ("Code"). The temporary regulations provide guidance concerning the application of section 1060 and also modify certain rules relating to stock purchases treated as asset purchases under section 336 of the Code. In addition, the temporary regulations coordinate the application of section 755 with the rules of section 1060. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective July 18, 1988. These temporary regulations under section 1060 generally apply to asset acquisitions made after May 6, 1986. The reporting requirements apply to asset acquisitions (and to certain adjustments of consideration) occurring in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1990.

FOR FURTHER INFORMATION CONTACT: Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CCLR:T (Telephone 202-566-3458, not a toll-free number). For information concerning the temporary regulations under section 755, contact Robert E. Shaw of the Legislation and Regulations Division.

Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Attention: CC:LR:T (Telephone 202-566-3297, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1021. The estimated average burden associated with the collection of information in this regulation is 1.05 hours per respondent or recordkeeper.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Federal Register.

Background

This document adds new temporary regulations §§ 1.167(a)-5T, 1.755-2T, 1.1031(d)-1T, and 1.1060-1T to part 1 of Title 26 of the Code of Federal Regulations and amends § 1.338(b)-3T. The new temporary regulations implement section 1060 of the Code. Section 1060 was added to the Code by section 641 of the Tax Reform Act of 1986 (Pub. L. No. 99-514; 100 Stat. 2282).

Explanation of Provisions

Introduction

For tax purposes, the sale of a going trade or business for a lump sum amount is viewed as a sale of each individual asset rather than a single capital asset. Both the purchaser and the seller must allocate the purchase price for the acquisition among the assets transferred. The seller must allocate the purchase price among the assets to determine the amount and character of its realized gain or loss on the sale. The purchaser's allocation determines its basis in each asset and will affect its amount of allowable depreciation, cost depletion, or amortization deductions, its realized gain or loss on a subsequent sale of those assets, and may have other tax consequences.

Section 1060(a) provides that, in the case of an applicable asset acquisition, the seller and the purchaser each must

allocate the consideration among the assets transferred in the same manner as the amounts are allocated under section 338(b)(5) (relating to certain stock purchases treated as asset acquisitions). Thus, the seller and the purchaser are required to allocate consideration under the residual method in order to make the respective determinations of the amount of gain or loss from the transfer of each asset and the basis in each asset acquired.

Prior to the enactment of section 1060, there was considerable controversy between taxpayers and the Internal Revenue Service concerning the allocation of the purchase price among assets of a going business. The controversy principally was due to the difficulty in establishing the value of goodwill and going concern value. Section 1060, by mandating the application of the residual method of allocation as prescribed in the regulations under section 338(b)(5), alleviates this controversy since the residual method does not require a separate determination of the value of goodwill and going concern value. Instead, under the residual method any "premium" paid in excess of the total fair market value of the purchased assets (other than goodwill or going concern value) is treated as payment for goodwill or going concern value. The mandatory application of the residual method of allocation also eliminates disparities in purchase price allocations that existed, prior to the enactment of section 1060, between asset purchases and stock purchases treated as asset purchases under section 338.

Section 1060(b) requires the seller and the purchaser to report certain information in connection with an applicable asset acquisition. The information reporting requirements are intended to encourage compliance with the substantive rules of section 1060 and to assist the Internal Revenue Service in identifying returns which are likely to involve an attempt to amortize goodwill or going concern value. The temporary regulations define the term "applicable asset acquisition," provide rules for allocating consideration under the residual method among the assets transferred (including increases or decreases in consideration occurring after the purchase date), and implement the reporting requirements of section 1060(b).

Applicable Asset Acquisition

An "applicable asset acquisition" is any transfer, whether direct or indirect, or a group of assets constituting a trade or business with respect to which the purchaser's basis is determined wholly

by reference to the consideration paid for the assets. (However, a transfer does not fail to be an applicable asset acquisition solely because section 1031 (relating to like-kind exchanges) applies to a portion of the assets.) Under § 1.1060-1T(b), a group of assets constitutes a trade or business if the use of such assets would constitute an active trade or business for purposes of section 355 or if their character is such that goodwill or going concern value could under any circumstances attach to such assets. A group of assets which constitutes a trade or business in the hands of the seller or the purchaser will constitute a trade or business for purposes of section 1060. Thus, for example, a purchaser cannot avoid the application of section 1060 by arguing that he will not use the assets of an acquired business in the same business. All the facts and circumstances surrounding the transaction are taken into account in determining whether a group of assets constitutes a trade or business. Factors to be considered include related transactions between the purchaser and seller such as a lease agreement, covenant not to compete, management contract, or other similar agreement between purchaser and seller (or managers, directors, owners, or employees of the seller); and the excess, if any, of the total consideration over the aggregate book value of the tangible and intangible assets (other than goodwill and going concern value) as shown in the purchaser's financial accounting books and records.

The temporary regulations provide rules for the allocation of consideration when a portion of the group of assets, which constitutes a trade or business under section 1060, is exchanged for other assets in a transaction to which section 1031 applies. The like-kind property and other property or money which is treated as transferred in exchange for the like-kind property are excluded from the allocation rules of section 1060. The temporary regulations include rules for determining the amount of the other property or money which is treated as transferred in exchange for the like-kind property. A conforming amendment (new § 1.1031(d)-1T) is made to the section 1031 regulations. When finalized, the new paragraph will follow § 1.1031(d)-1(e). Rules relating to the transfer of a partnership interest are prescribed in new § 1.755-2T.

Allocation of Consideration

Section 1.1060-1T (d) and (e) prescribes the method by which the seller and purchaser must allocate consideration among the assets

transferred. The method of allocation is substantially the same as the method of allocation prescribed in § 1.338(b)-2T (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made).

Section 1.1060-1T(d) identifies four classes of assets, which are identical to the four classes of assets identified in § 1.338(b)-2T. "Class I assets" are cash, deposits in banks, and similar items. "Class II assets" are certificates of deposit, U.S. government securities, certain marketable stocks and securities, foreign currency, and similar items. "Class III assets" are intangible assets in the nature of goodwill and going concern value. All assets not described above, specifically including accounts receivable, are "Class IV assets." As a general rule, a proportionate method of allocation is prescribed for the allocation of consideration within each class of assets, although a residual method of allocation is prescribed for allocation among the asset classes, allocation beginning with the lowest numbered class. After consideration is reduced by the amount of Class I assets, it is allocated among Class II assets in proportion to their fair market values as of the purchase date, and then among Class III assets in such proportion, and finally to Class IV assets. Thus, consideration is allocated within each of asset classes II and III to the extent of the fair market value of the assets in that class, with any remaining amount allocated to the next class of assets. The unallocated amount of consideration remaining after allocation among the Class III assets is allocated to Class IV assets, intangible assets in the nature of goodwill and going concern value.

The amount of consideration allocated to an asset, other than assets in the nature of goodwill and going concern value, cannot exceed its fair market value on the purchase date. The "fair market value" of an asset is its fair market value determined without regard to mortgages, liens, pledges, or other liabilities. However, the amounts assigned as fair market values by the seller, but not the purchaser, are subject to rules similar to section 7701(g) (relating to fair market value in the case of property subject to nonrecourse indebtedness).

The amount of consideration allocated to an asset is also subject to any applicable limitations under the Code or general principles of tax law. Thus, for example, the amount of the consideration allocated by a purchaser to a player contract described in section

1056 cannot exceed the limitation imposed by that section.

In connection with the examination of a return, the Internal Revenue Service may challenge the taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties. For example, in certain cases the Internal Revenue Service may make an independent showing of the value of goodwill and going concern value as a means of calling into question the validity of the taxpayer's valuation of other assets.

Subsequent Adjustments to Consideration

Section 1.1060-1T(f) provides rules for the allocation of increases or decreases in consideration of either the purchaser or seller that occur after the purchase date. Increases in consideration are allocated among the assets in accordance with the general allocation rules set forth in § 1.1060-1T(d), subject to the limitation rules contained in § 1.1060-1T(e). Thus, in general, the aggregate amount of consideration allocated to an asset may not exceed the asset's fair market value on the purchase date, except for assets in the nature of goodwill and going concern value.

The rule for decreases in consideration is similar to the one for increases, except that decreases are allocated to assets in the reverse of the order in which consideration is allocated under § 1.1060-1T(d). Thus, as a general rule, decreases are allocated first among assets in the nature of goodwill and going concern value to the extent of the consideration previously allocated to them, and then as a decrease in the consideration previously allocated to other acquired assets.

The regulations provide that, if an asset has been disposed of, depreciated, amortized, or depleted by the purchaser before an increase (or decrease) in consideration is taken into account, the increase (or decrease) in consideration otherwise allocable to such asset by the purchaser is properly taken into account under principles of tax law applicable when part of the cost of an asset (not previously reflected in its basis) is paid (or reduced) after the asset has been disposed of, depreciated, amortized, or depleted. For purposes of this rule, an asset is considered to have been disposed of to the extent that its allocable portion of a decrease in consideration would reduce the purchaser's basis in that asset below zero.

The regulations provide a special rule analogous to § 1.338(b)-3T(g) for allocating an increase (or decrease) in consideration that directly relates to the income produced by a particular intangible asset, such as a patent, copyright, or secret process ("contingent income assets"), as long as the increase (or decrease) in consideration is related to such contingent income asset and does not relate to other assets. Subject to the fair market value and other limitations in § 1.1060-1T(e), the increase (or decrease) in consideration is first allocated to the contingent income asset and then to other assets. Solely for purposes of applying the fair market value and other limitations to a contingent income asset, its fair market value shall be redetermined when the increase (or decrease) is taken into account. (For purposes of this redetermination, only those circumstances that resulted in the increase (or decrease) in consideration are taken into account.) In appropriate cases, the Internal Revenue Service may apply the principles of this provision to reallocate an increase (or decrease) in consideration among some of the assets to the extent such allocation is necessary to reflect properly the consideration that relates to each of those assets.

Reporting Requirements

Section 1.1060-1T(h) of the temporary regulations implements section 1060(b) by requiring that the seller and the purchaser in an applicable asset acquisition each report on Form 8594 specific information about the allocation of consideration among the assets transferred. Each must file Form 8594 with its income tax return or return of income for the taxable year that includes the purchase date. This reporting requirement applies to asset acquisitions occurring in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988.

Information that must be reported on Form 8594 includes:

- The name, address, and taxpayer identification number of the purchaser and the seller;
- The purchase date;
- The total consideration of the assets;
- The amount of consideration allocated to each class of assets and the aggregate fair market value of assets of each class;
- A statement as to whether the purchaser and seller agreed upon the

fair market value of the assets in a sales contract;

f. The useful life of each Class III intangible, amortizable asset; and
g. A statement as to whether, in connection with the acquisition of the group of assets, the purchaser also obtained a license or covenant not to compete or entered into a lease agreement, an employment contract, a management contract, or similar arrangement with the seller (or managers, directors, owners, or employees of the seller).

The purchaser or seller is required to make a supplemental statement on Form 8594 concerning increases (or decreases) in the amount of consideration allocated to an asset if such increases (or decreases) in consideration occur after the end of its taxable year that includes the purchase date. Form 8594, reporting the increase (or decrease) in consideration, must be filed with the return for the taxable year in which the increase (or decrease) is taken into account if the due date of that return (including extensions of time) is on or after September 13, 1988.

Interim procedures provide that, if Form 8594 is not available to the general public, the purchaser and the seller must furnish the information required under § 1.1060-1T(h) by filing with their income tax returns acquisition statements (as the case may be) which include the information required under § 1.1060-1T(h)(3).

Coordination of Sections 1060 and 167

This document adds a new temporary regulation under section 167 to provide rules for computing the depreciable basis of any property which is included in an applicable asset acquisition under section 1060. The basis for depreciation of such a depreciable asset cannot exceed the amount of consideration allocated to that asset under section 1060 and § 1.1060-1T. When the final regulations are promulgated, this new paragraph will become part of § 1.167(a)-5.

Amendments to § 1.338(b)-3T

In response to public comment, this document amends § 1.338(b)-3T(g)(1)(ii), the special rule for allocating an increase (or decrease) in adjusted grossed-up basis that directly relates to the income produced by a "contingent income asset," such as a patent, and does not relate to other assets. For purposes of applying the various limitation rules to the contingent income asset, its fair market value is redetermined when the increase (or decrease) in adjusted grossed-up basis is taken into account. The rule has been

amended to clarify that this redetermination is of the asset's fair market value on the purchase date and that, for purposes of this redetermination, only those circumstances that resulted in the increase (or decrease) in consideration are taken into account.

Coordination of Sections 1060 and 755

The principles of section 1060 apply to any transfer of an interest in a partnership to which section 743(b) or section 732(d) applies, but only for the purpose of determining the amount of the transferee partner's basis adjustment that must be allocated to goodwill and going concern value (hereinafter referred to as "goodwill") under section 755. Temporary regulation § 1.755-2T provides rules for determining the fair market value of partnership property and provides that these values must be used for purposes of allocating basis under § 1.755-1. Under § 1.755-2T(b)(1), the fair market value of partnership property other than goodwill is determined on the basis of all the facts and circumstances.

Section 1.755-2T(b)(2) provides that the fair market value of a partnership's goodwill is deemed to equal the amount (not below zero) which if assigned to partnership goodwill would result in a liquidating distribution to the transferee partner equal to such partner's basis for the transferred partnership interest if all partnership property were sold for its fair market value and the proceeds of that sale were distributed to the partners. The Service is currently studying whether to provide additional regulations to address any situations in which a different method of valuing goodwill would be more accurate, and invites comment on such situations and alternative rules for valuing goodwill.

Consistent with the purpose of section 1060, the temporary regulation is intended to overrule the decision in *United States v. Cornish*, 348 F.2d 175 (9th Cir. 1965). Although the regulation provides a new procedure for determining the value of goodwill, § 1.755-2T(d) provides that the requirements of the temporary regulation will be deemed to be satisfied with respect to any transfer made before July 15, 1988 if the amount of any basis adjustment under section 743(b) or section 732(d) made as a result of such transfer that is allocated to each item of partnership property other than goodwill does not exceed the amount equal to the difference between the transferee partner's share of the partnership basis of such property and the partner's share of the fair market value of such property.

Except as provided in § 1.755-2T, section 1060 does not affect the determination of a transferee partner's share of the basis of partnership property or the determination of the basis of property distributed by the partnership.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of the temporary regulations under sections 167, 338, 1031, and 1060 is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. The principal author of the temporary regulations under section 755 is Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61-1-1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.301-1-1.383-3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR 1.701-1-1.771-1

Income taxes, Partnerships.

26 CFR 1.1001-1-1.1102-3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

26 CFR PART 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, Parts 1 and 602 of Title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1988

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.338(b)-3T is also issued under 26 U.S.C. 338; * * * § 1.755-2T is also issued under 26 U.S.C. 755; * * * § 1.1060-1T is also issued under 26 U.S.C. 1060.

Par. 2. There is added in the appropriate place a new § 1.1060-1T. The new section reads as follows:

§ 1.1060-1T Special allocation rules for certain asset acquisitions (temporary).

(a) *Scope*—(1) *In general*. This section prescribes rules relating to the requirements of section 1060, which, in the case of an applicable asset acquisition, requires the transferor (the "seller") and the transferee (the "purchaser") each to allocate the consideration paid or received in the transaction among the assets transferred in the same manner as amounts are allocated under section 338(b)(5) (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made). In the case of an applicable asset acquisition described in paragraph (b)(1) of this section, sellers and purchasers must allocate the consideration under the residual method, as described in paragraph (d) of this section, in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets. Subsequent adjustments to the consideration for the transferred assets must be allocated under the residual method in the manner described in paragraph (f) of this section. For rules relating to an applicable asset acquisition that is the transfer of a partnership interest, see § 1.755-2T.

(2) *Effective date*. This section applies with respect to any acquisition of assets that occurs after May 6, 1986, unless it occurs pursuant to a binding contract in effect on May 6, 1986, and at all times thereafter. The reporting requirements of this section apply to asset acquisitions occurring in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988. See paragraph (h) of this section for special effective dates for certain reporting requirements.

(3) *Outline of topics*. In order to facilitate the use of this section, this paragraph (a)(3) lists the paragraphs, subparagraphs, and subdivisions contained in this section.

(a) *Scope*.

- (1) In general.
- (2) Effective date.
- (3) Outline of topics.
- (b) Applicable asset acquisition.
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- (b) *Applicable asset acquisition*—(1) *In general*. An "applicable asset acquisition" is any transfer, whether direct or indirect, of a group of assets if (i) the assets transferred constitute a trade or business in the hands of either the seller or the purchaser and (ii) except as provided in paragraph (b)(4) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration.
- (2) *Assets constituting a trade or business*. For purposes of this section, a

group of assets constitutes a trade or business if the use of such assets would constitute an active trade or business for purposes of section 355. Even though a group of assets may not qualify as an active trade or business for purposes of section 355, it will constitute a trade or business for purposes of this section if its character is such that goodwill or going concern value could under any circumstances attach to such group. In making this determination, all the facts and circumstances surrounding the transaction shall be taken into account. Factors to be considered include:

- (i) The existence of an excess of the total consideration over the aggregate book value of the tangible and intangible assets purchased (other than goodwill and going concern value) as shown in the financial accounting books and records of the purchaser; and
- (ii) Related transactions, including lease agreements, licenses, covenants not to compete, employment contracts, management contracts, or other similar agreements between the purchaser and seller (or managers, directors, owners, or employees of the seller) in connection with the transfer.

(3) *Examples*. Paragraph (b) (1) and (2) of this section may be illustrated by the following examples:

Example (1). S is a high grade machine shop that manufactures microwave connectors in limited quantities. It is a successful company with a reputation within the industry and among its customers for manufacturing unique, high quality products. Its tangible assets consist primarily of ordinary machinery for working metal and plating. It has not secret formulas or patented drawings of value. P is a company that designs, manufactures, and markets electronic components. It wants to establish an immediate presence in the microwave industry, an area in which it previously has not been engaged. P is acquiring assets of a number of smaller companies and hopes that these assets will collectively allow it to offer a broad product mix. P acquires the assets of S in order to augment its product mix and to promote its presence in the microwave industry. P will not use the assets acquired from S to manufacture microwave connectors. The assets transferred are assets which constitute a trade or business in the hands of the seller. Thus, P's purchase of S's assets is an applicable asset acquisition. The fact that P will not use the assets acquired from S to continue the business of S does not affect this conclusion.

Example (2). S, a sole proprietor who operates a restaurant, leases the building housing the restaurant and sells all its restaurant equipment to P. S's use of the building and the restaurant equipment constitute a trade or business. P begins operating a restaurant in the building it leases from S. Because the assets transferred together with the asset leased are assets

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which constitute a trade or business, P's purchase of S's assets is an applicable asset acquisition.

Example (3). The S corporation conducts various business enterprises including a retail store in State X that conducts activities that meet the active trade or business requirements for purposes of section 335. P is a minority shareholder of S. In complete redemption of P's stock in S held by P within the meaning of section 302(b)(3), S distributes to P all the assets of S used in S's retail business in State X. The distribution of S's assets in redemption of P's stock is treated as a sale or exchange, and P's basis in the assets transferred is determined wholly by reference to the consideration paid, the S stock. Thus, S's distribution of assets constituting a trade or business to P is an applicable asset acquisition.

(4) Like-kind exchange. Notwithstanding the fact that a portion of a group of assets which constitute a trade or business is exchanged for like-kind property, the transaction nevertheless may constitute an applicable asset acquisition. For purposes of this subparagraph (4), like-kind property means any property permitted by section 1031, 1033, or 1036 to be received without the recognition of gain or loss. For purposes of determining whether the transaction constitutes an applicable asset acquisition, (i) the fact that, by reason of section 1031(d), the purchaser's basis in the group of assets is not determined wholly by reference to the consideration paid is disregarded, and (ii) whether the assets transferred constitute a trade or business is determined by taking into account all the assets transferred (including the like-kind property). If an applicable asset acquisition includes like-kind property, then for purposes of allocating consideration among the assets under paragraph (d) of this section, the like-kind property exchanged and any other property or money which is treated as transferred in exchange for the like-kind property are excluded. The basis in and the gain or loss recognized from the like-kind property exchanged and the other property (if any) which is treated as transferred in exchange for the like-kind property is determined under section 1031. For purposes of this section, the amount of money and other property that is treated as transferred in exchange for the like-kind property is equal to so much of the amount of money and the fair market value of other property as does not exceed the difference between the fair market values of the like-kind properties exchanged. The money and other property that are treated as transferred in exchange for the like-kind property (and which are excluded from the assets to which section 1060 applies) are

considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, and then from Class IV assets. For this purpose, liabilities assumed (or to which the like-kind property or other property that is part of the like-kind exchange is subject) are treated as Class I assets. See **Example (3)** in paragraph (g) of this section for an example of the application of section 1060 to a single transaction which is, in part, a like-kind exchange.

(c) Definitions.—(1) Consideration. The purchaser's consideration is the cost of the assets acquired in the applicable asset acquisition. The seller's consideration is the amount realized from the applicable asset acquisition under section 1001(b).

(2) Fair market value. Generally, the fair market value of an asset is its gross fair market value (i.e., fair market value determined without regard to mortgages, liens, pledges, or other liabilities). However, for purposes of determining the amount of the seller's gain or loss, the fair market value of any property subject to a nonrecourse indebtedness shall be treated as being not less than the amount of such indebtedness. (For purposes of the preceding sentence, a liability that was incurred by reason of the acquisition of the property is disregarded to the extent that such liability was not taken into account in determining the seller's basis in such property.)

(3) Purchase date. The purchase date is the date on which the applicable asset acquisition occurs.

(d) Allocation of consideration among assets under the residual method.—(1) Reduction in the amount of consideration for cash and other items designated by the Internal Revenue Service. Consideration is first reduced by the amount of Class I assets (if any) transferred by the seller. Class I assets are cash, demand deposits and like accounts in banks, savings and loan associations (and other depository institutions), and other similar items designated in the Internal Revenue Bulletin by the Internal Revenue Service. The amount of the consideration remaining after the reduction is to be allocated to the other assets transferred.

(2) Assets other than Class I assets. Subject to the limitations and other special rules of paragraph (e) of this section, consideration (as reduced by the amount of Class I assets) is allocated among Class II assets transferred by the seller in proportion to the fair market values of such Class II assets on the purchase date, then among Class III assets transferred by the seller

in proportion to the fair market values of such Class III assets on that date, and finally to Class IV assets.

(i) Class II assets. Class II assets are certificates of deposit, U.S. government securities, readily marketable stock or securities (within the meaning of § 1.351-1(c)(3)), foreign currency, and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(ii) Class III assets. Class III assets are all assets (other than Class I, II, and IV assets), both tangible and intangible (whether or not depreciable, depletable, or amortizable), including furniture and fixtures, land, buildings, equipment, accounts receivable, and covenants not to compete.

(iii) Class IV assets. Class IV assets are intangible assets in the nature of goodwill and going concern value.

(e) Certain limitations and special rules for consideration allocable to an asset.—(1) Allocation not to exceed fair market value. The amount of consideration allocated to an asset (other than Class IV assets) shall not exceed the fair market value of that asset on the purchase date.

(2) Other limitations. The amount of consideration allocated to an asset is subject to any applicable limitations under the Code or general principles of tax law. For example, if the applicable asset acquisition is a transaction described in section 1056(a) (relating to basis limitation for player contracts transferred in connection with the sale of a franchise), the amount of consideration the purchaser may allocate to a contract for the services of an athlete shall not exceed the limitation imposed by that section.

(3) Liabilities taken into account in determining amount realized on subsequent disposition. In determining the amount realized on a subsequent sale or other disposition of property acquired by the purchaser, the entire amount of any liability included in determining the purchaser's consideration is considered to be an amount taken into account in determining the purchaser's basis in property which secures such liability for purposes of applying § 1.1001-2(a). Thus, if a liability is included in the purchaser's consideration, § 1.1001-2(a)(3) shall not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001-2(a)(4) as a result of the purchaser's sale or disposition of the property which secures such liability.

(4) Internal Revenue Service authority. In connection with the examination of a return, the Internal

Revenue Service may challenge the taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties. For example, in certain cases the Internal Revenue Service may make an independent showing of the value of goodwill and going concern value as a means of calling into question the validity of the taxpayer's valuation of other assets.

(f) Subsequent adjustments to consideration.—(1) In general. If there is an increase or a decrease in consideration of either the seller or the purchaser after the purchase date that must be taken into account in order to adjust or redetermine, under applicable principles of tax law, the seller's amount realized with respect to, or the purchaser's cost of, the assets transferred, then such increase or decrease is allocated by the seller or the purchaser among the assets pursuant to this paragraph (f).

(2) Allocation of increases in consideration.—(i) In general. An increase in consideration is allocated under paragraph (d) of this section among the assets transferred. Amounts allocable to an asset (or with respect to an asset disposed of by the purchaser) are subject to the fair market value limitation and other limitations in paragraph (e) of this section. Except as provided in paragraph (f)(4)(ii) of this section, for the purpose of applying paragraph (e) of this section, the fair market value is the fair market value on the purchase date.

(ii) Effect of disposition or depreciation of assets by purchaser. If an asset has been disposed of, depreciated, amortized, or depleted by the purchaser before an increase in consideration is taken into account, the increase in consideration otherwise allocable to such asset by the purchaser shall be taken into account under principles of tax law applicable when part of the cost of an asset (not previously reflected in its basis) is paid after the asset has been disposed of, depreciated, amortized, or depleted.

(3) Allocation of decreases in consideration.—(i) In general. A decrease in consideration is allocated in the following order: (A) first, as a reduction in the amount previously allocated to Class IV assets, (B) second, as a reduction in the amount previously allocated to Class III assets in proportion to their fair market values, and (C) finally, as a reduction in the amount previously allocated to Class II assets in proportion to their fair market values. Decreases in consideration

allocated to an asset shall not exceed the amount of consideration previously allocated to that asset. Except as provided in paragraph (f)(4)(ii) of this section (relating to patents and similar property), the fair market value is the fair market value on the purchase date.

(ii) Effect of disposition of assets or reduction of basis below zero. If an asset has been disposed of, depreciated, amortized, or depleted by the purchaser before a decrease in consideration is taken into account, the decrease in the purchaser's consideration otherwise allocable to such asset shall be taken into account under principles of tax law applicable when the cost of an asset (previously reflected in basis) is reduced after the asset has been disposed of or depreciated, amortized, or depleted. For purposes of this subdivision (ii), an asset is considered to have been disposed of to the extent that its allocable portion of the decrease in consideration would reduce its basis below zero.

(4) Specific allocation of increases (or decreases) in consideration to certain contingent income assets.—(i) Patents and similar property. The specific allocation under paragraph (f)(4)(ii) of this section of an increase (or decrease) in consideration applies if (A) the increase (or decrease) is the result of a contingency that directly relates to income produced by a particular intangible asset ("contingent income asset"), such as a patent, a secret process, or a copyright, and (B) the increase (or decrease) is related to such contingent income asset and not to other assets. Consideration as initially determined, and any increase (or decrease) in consideration to which this specific allocation rule does not apply, are allocated among the assets (including contingent income assets) in accordance with the provisions of paragraph (f) (2) and (3) of this section.

(ii) Specific allocation. Subject to the fair market value and other limitations in paragraph (e) of this section, any increase (or decrease) in consideration to which this subdivision (ii) applies is allocated first, specifically to the contingent income asset to which the increase (or decrease) relates and, then, under paragraph (f) (2) (or 3)) of this section. Solely for purposes of applying the fair market value and other limitations to a contingent income asset, the fair market value of such asset on the purchase date shall be redetermined when the increase (or decrease) is taken into account. (For purposes of this redetermination, only those circumstances that resulted in the increase (or decrease) in consideration are taken into account.) This redetermination does not affect the fair

market value limitations or other limitations as they apply to other transferred assets.

(5) Internal Revenue Service authority. In connection with the examination of a return, the Internal Revenue Service, in appropriate cases, may apply the principles of paragraph (f)(4) of this section to allocate an increase (or decrease) in consideration among particular assets to the extent such allocation is necessary to reflect properly the consideration that relates to each of those assets.

(g) Examples. The provisions of paragraphs (b), (d), (e), and (f) of this section may be illustrated by the following examples:

Example (1). (i) On January 1, 1987, S, a sole proprietor, sells to P, a corporation, a group of assets which constitute a trade or business under paragraph (b)(2) of this section. P pays S \$2,000 in cash and assumes \$1,000 in liabilities. Thus, the total consideration is \$3,000.

(ii) Assume that P acquires no Class I assets and that on the purchase date, the fair market values of the Class II and III assets S sold to P are as follows:

Asset class	Asset	Fair market value
II	Portfolio of marketable securities	\$400
III	Total Class II	400
	Furniture and fixtures	800
	Building	800
	Land	200
	Equipment	400
	Accounts receivable	100
	Covenant not to compete	100
	Total Class III	2,400

(iii) Under paragraph (d) (1) and (2) of this section, the amount of consideration allocable to the Class II, III, and IV assets is the total consideration reduced by the amount of any Class I assets. Since P acquired no Class I assets, the total consideration of \$3,000 is next allocated first to Class II and then to Class III assets. Since the fair market value of the Class II asset is \$400, \$400 of consideration is allocated to the Class II asset. Since the remaining amount of consideration is \$2,600 (i.e., \$3,000-\$400), an amount which exceeds the sum of the fair market values of the Class III assets (\$2,400), the amount allocated to each Class III asset is its fair market value. Thus, the total amount allocated to Class III assets is \$2,400.

(iv) The amount allocated to the Class IV assets (assets in the nature of goodwill and going concern value) is \$200 (i.e., \$2,600-\$2,400).

Example (2). (i) Assume the same facts as in **Example (1)**. Assume further that P and S each use the calendar year as the taxable year, and that, on June 1, 1988, P filed a claim against S alleging fraud in the sale of all the assets.

(ii) On January 1, 1991, S refunds \$300 of the purchase price to P in a settlement of the 1989 lawsuit.

(iii) Under paragraph (f)(3)(i) of this section, both S and P take into account the \$300 decrease in consideration and allocate it among the assets. First, since \$200 of consideration previously was allocated to goodwill and going concern value, \$200 of the decrease in consideration is allocated to that asset. The remaining decrease in consideration (\$100) is allocated to the Class III assets in proportion to their fair market values on the purchase date as follows:

Asset	Fair market value	Allocation fraction	Decrease in consideration (\$100 x Col. (2))
Furniture and fixtures	\$800	800/2,400	\$33.33
Building	800	800/2,400	33.33
Land	200	200/2,400	8.33
Equipment	400	400/2,400	16.67
Accounts receivable	100	100/2,400	4.17
Covenant not to compete	100	100/2,400	4.17
Total	2,400		100.00

(iv) In summary, the redetermined consideration that S received for the group of assets is \$2,700 after taking into account the decrease in consideration. After allocating the decrease, P's and S's redetermined consideration is as follows:

Asset	Original consideration	Decrease in consideration	Redetermined consideration
Portfolio of marketable securities	\$400.00	\$0.00	\$400.00
Furniture and fixtures	800.00	33.33	766.67
Building	800.00	33.33	766.67
Land	200.00	8.33	191.67
Equipment	400.00	16.67	383.33
Accounts receivable	100.00	4.17	95.83
Covenant not to compete	100.00	4.17	95.83
Goodwill and going concern value	200.00	200.00	0.00
Total	3,000.00	300.00	2,700.00

(v) Assume that, as a result of deductions under section 168, P's adjusted basis in the equipment immediately before the decrease in consideration is zero. P, therefore, treats the equipment as if it were disposed of before the decrease is taken into account. In 1991, P recognizes income of \$16.67, the character of which is determined under the principles of *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952), and the tax benefit rule.

Example (3). (i) On January 1, 1987, A transfers assets X, Y, and Z worth \$1,000 to B in exchange for the assets D, E, and F, worth \$100 plus \$1,000 cash.

(ii) Assume the exchange of assets constitutes an exchange of like-kind property to which section 1031 applies. Assume also that goodwill or going concern value could under any circumstances attach to each group of assets and, therefore, each group constitutes a trade or business under section 1060.

(iii) Assume the fair market values of the assets and the amount of money transferred are as follows:

Asset	Fair market value
By A	
X	\$400
Y	400
Z	200
Total	1,000
By B	
D	40
E	30
F	30
Cash (amount)	1,000
	1,100

(iv) Under paragraph (b)(4) of this section, for purposes of allocating consideration under paragraph (d) of this section, the like-kind assets exchanged and any money or other property which are treated as transferred in exchange for the like-kind property are excluded from the application of section 1060.

(v) Since assets X, Y, and Z and like-kind property, they are excluded from the application of the section 1060 allocation rules.

(vi) Since assets D, E, and F are like-kind property, they are excluded from the application of the section 1060 allocation rules. In addition, \$900 of the \$1,000 cash B gave to A for A's like-kind assets is treated as transferred in exchange for the like-kind property in order to equalize the fair market values of the like-kind assets. Therefore, \$900 of the cash is excluded from the application of the section 1060 allocation rules.

(vii) \$100 of the cash is allocated under section 1060 and paragraph (d) of this section. (viii) A, as transferor of assets X, Y, and Z, received \$100 that must be allocated under section 1060 and paragraph (d) of this section. Since A transferred no Class I, II, or III assets to which section 1060 applies, the \$100 is allocated to Class IV assets (assets in the nature of goodwill and going concern value).

(ix) A, as transferee of assets D, E, and F, gave consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 and paragraph (d) of this section are not applied to determine the bases of the assets A received.

(x) B, as transferor of assets D, E, and F, received consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 do not apply in determining B's gain or loss.

(xi) B, as transferor of assets X, Y, and Z, gave A \$100 that must be allocated under section 1060 and paragraph (d) of this section. Since B received from A no Class I, II or III assets to which section 1060 applies, the \$100

consideration is allocated by B to Class IV assets (assets in the nature of goodwill and going concern value).

Example (4). (i) On January 1, 1988, S, a sole proprietor, sells to P a group of assets which constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes a covenant not to compete in P's favor. P pays S \$3,000 in cash and assumes \$1,000 in liabilities. Thus, the total consideration is \$4,000.

(ii) On the purchase date, P and S also execute a separate agreement that states that the fair market values of the Class II and III assets S sold to P are as follows:

Asset class	Asset	Fair market value
II	Portfolio of marketable securities	\$500
	Total Class II	500
III	Furniture and fixtures	800
	Building	800
	Land	200
	Equipment	400
	Construction contract	200
	Covenant not to compete	900
	Total Class III	3,300

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (d) of this section in accordance with the agreed upon fair market values of the assets, so that \$500 is allocated to Class II assets, \$3,300 is allocated to Class III assets, and \$200 (\$4,000 total consideration less \$3,800 allocated to asset classes I, II and III) is allocated to the Class IV assets (assets in the nature of goodwill and going concern value).

(iv) In connection with the examination of P's return, the District Director, in determining the fair market values of the assets transferred, may disregard the parties' agreement. Assume that the District Director correctly determines that the fair market value of the covenant not to compete was \$100. Since the allocation of consideration among Class I, II, and III assets results in allocation up to the fair market value limitation, the \$800 of unallocated consideration resulting from the District Director's redetermination of the value of the covenant not to compete is allocated to Class IV assets.

(h) **Applicable asset acquisition reporting requirements.**—(1) *In general.* The seller and the purchaser in an applicable asset acquisition each shall report information concerning the amount of consideration in the transaction and its allocation among the assets transferred. They also must report information concerning subsequent adjustments to consideration. For reporting requirements relating to the transfer of the partnership interest, see § 1.755-2T(c).

(2) **Time and manner of reporting.**—(i) *In general.* The seller and the purchaser each must file asset acquisition statements on Form 8594 with their income tax returns or returns of income for the taxable year that includes the purchase date. This reporting requirement applies to asset acquisitions that occur in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988.

(ii) **Additional reporting requirement.** If the amount of consideration allocated to any asset by the seller or the purchaser is increased (or decreased) after the taxable year that includes the purchase date, the seller or purchaser making the increase (or decrease) shall file a supplemental asset acquisition statement on Form 8594 with the income tax return or return of income for the taxable year in which the increase (or decrease) is properly taken into account. This reporting requirement applies to an increase (or decrease) in the amount of consideration allocated to any asset that is properly taken into account in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988, even if the seller or purchaser may not have been required to file an asset acquisition statement for the taxable year that included the purchase date because of the effective date rule in paragraph (h)(2)(i) of this section.

(3) **Interim procedures.**—(i) **Asset acquisition statement.** If Form 8594 has not been made available to the general public, an asset acquisition statement prepared by the seller or purchaser (as the case may be) shall be filed in lieu of Form 8594. This statement must:

(A) Be identified prominently as an "ASSET ACQUISITION STATEMENT UNDER SECTION 1060".

(B) State the name, address, and taxpayer identification number of the purchaser and the seller.

(C) State the purchase date.

(D) State the total amount of consideration for the assets.

(E) List the amount of Class I assets and list separately the aggregate fair market values of the Class II and the Class III assets.

(F) State whether the amount of Class I assets and the fair market values listed for asset Classes II and III were agreed upon in a sales contract or in some other written document signed by both parties.

(G) List for each of asset Classes I, II, III, and IV the aggregate amount of consideration allocated to the assets in the class.

(H) State whether the purchaser and seller provided for an allocation of the purchase price in the sales contract or in some other written document signed by both parties.

(I) List each Class III intangible amortizable asset, its fair market value, its useful life, and the amount of consideration allocated to it.

(J) State whether, in connection with the acquisition of the group of assets, the purchaser also obtained a license or a covenant not to compete or entered into an employment contract, a lease agreement, management contract, or similar arrangement with the seller (or managers, directors, owners, or employees of the seller). Specify the type of such agreement, and state the maximum amount of consideration (exclusive of interest) paid or to be paid pursuant to the agreement. The maximum amount of consideration paid (or to be paid) pursuant to the agreement is determined by assuming that any contingencies contemplated by the agreement are met or otherwise resolved in a manner that will maximize the consideration paid or to be paid. If the maximum amount of consideration cannot be determined as of the close of the taxable year in which the applicable asset acquisition occurs, then state the manner in which the amount of consideration is to be computed and the period over which it is to be paid.

(ii) **Supplemental asset acquisition statement.** If Form 8594 is not available to the general public, a supplemental asset acquisition statement prepared by the seller or purchaser (as the case may be) shall be filed in lieu of that form. This statement must:

(A) Be identified prominently as a "SUPPLEMENTAL ASSET ACQUISITION STATEMENT UNDER SECTION 1060 FOR [insert name of purchaser or seller]".

(B) Contain the information required under paragraph (h)(3)(i) (B), (C), and (D) of this section.

(C) List for each of asset Classes I, II, III, and IV the aggregate amount of consideration previously allocated to the assets in the class.

(D) State the amount of and the reason for the increase (or decrease) in the consideration.

(E) List for each of asset Classes I, II, III, and IV the redetermined aggregate amount of consideration allocated to the assets in each class.

(F) State the form number of the return and tax year or years for which the original and any supplemental asset acquisition statements were filed. (If an original or supplemental asset acquisition statement was not filed

because the reporting requirements were not in effect, so state.)

(iii) **Taxpayer identification number.** For provisions concerning the requesting and furnishing of identifying numbers, see section 6109 and the regulations thereunder.

Part 3. Immediately after § 1.167(a)-5, there is added a new § 1.167(a)-5T to read as follows:

§ 1.167(a)-5T Application of section 1060 to section 167 (temporary).

In the case of an acquisition of a combination of depreciable and nondepreciable property for a lump sum in an applicable asset acquisition to which section 1060 applies, the basis for depreciation of the depreciable property cannot exceed the amount of consideration allocated to that property under section 1060 and § 1.1060-1T.

§ 1.338(b)-3T [Amended]

Par. 4. Section 1.338(b)-3T is amended as follows:

1. The second sentence in paragraph (g)(1)(ii) is amended by removing the words "may be redetermined as of the time" and by adding in their place the words "at the beginning of the day after the acquisition date shall (may, in the case of qualified stock purchases for which the acquisition date is before September 16, 1988 be redetermined)".

2. A new sentence is added after the second sentence of paragraph (g)(1)(ii). The new sentence reads as set forth below.

3. **Example (6)** (v) in paragraph (j) is revised to read as set forth below.

4. **Example (7)** (iii) in paragraph (j) is amended by adding the following new sentence at the end thereof: "(For purposes of this redetermination, only those circumstances that resulted in the decrease to AGUB are taken into account.)"

5. A new **Example (8)** is added to paragraph (j) to read as set forth below.

§ 1.338(b)-3T Subsequent adjustments to adjusted gross-up basis (temporary)

(g) **Special rule for allocation of increases (or decreases) in adjusted gross-up basis to specific assets.**—(1) *Patents and similar property.* . . .

(ii) **Specific allocation.** . . . (For purposes of this redetermination, only those circumstances that resulted in the increase (or decrease) to adjusted gross-up basis are taken into account.) . . .

(j) **Examples.** . . . **Example (6).** . . .

(v) Assume that on January 1, 1990, the fair market value of the secret process is redetermined to be \$52. (For purposes of this redetermination, only those circumstances that resulted in the increase to AGUB are taken into account.)

Example (8). The facts are the same as in Example (6) except that the intangible Class III asset is a patent instead of a secret process. The redetermination of the fair market value of the patent on January 1, 1990, is made without regard to the decrease in the remaining life of the patent because that is not a circumstance that resulted in the increase in AGUB.

Par. 5. Immediately after § 1.755-1, there is added a new § 1.755-2T to read as follows:

§ 1.755-2T Coordination of sections 755 and 1060 (temporary).

(a) Coordination with section 1060—(1) In general. If there is a basis adjustment to which this section applies—

(i) The fair market value of each item of partnership property must be determined under this section; and

(ii) The rules of § 1.755-1 must be applied using the values so determined.

(2) Application of this section. This section applies to any basis adjustment made under section 743(b) (relating to certain transfers of interests in a partnership) or section 732(d) (relating to certain partnership distributions), if assets of the partnership constitute a trade or business for purposes of section 1060(c).

(b) Determining the fair market value of partnership property—(1) Property other than that in the nature of goodwill or going concern value. For purposes of this section, the fair market value of each item of partnership property (other than property in the nature of goodwill or going concern value) shall be determined on the basis of all the facts and circumstances.

(2) Property in the nature of goodwill or going concern value. For purposes of paragraph (a) of this section, the fair market value of partnership property in the nature of goodwill or going concern value (referred to hereinafter in this section as goodwill) shall be deemed to equal the amount (not below zero) which if assigned to such property would result in a liquidating distribution to the transferee partner equal to such partner's basis for the transferred partnership interest immediately after the transfer (reduced by the amount, if any, of such basis that is attributable to partnership liabilities) if—

(i) All partnership property were sold

immediately after such transfer for an amount equal to the fair market value of such property (as determined under this section), and

(ii) The proceeds of that sale were, after the payment of all partnership liabilities (within the meaning of section 752 and the regulations thereunder), distributed to the partners.

(c) Cross-reference. See §§ 1.732-1(d)(3) and 1.743-1(b)(3) for rules requiring a transferee partner to attach a statement to such partner's return showing the computation of the special basis adjustment and the partnership properties to which the adjustment is allocated under section 755.

(d) Effective date. This section applies to any basis adjustment under section 743(b) made as a result of any transfer of a partnership interest made after May 6, 1986, unless such transfer is made pursuant to a binding contract that was in effect on May 6, 1986, and at all times thereafter prior to such transfer.

However, the requirements of this section shall be deemed to be satisfied with respect to any transfer made on or before July 15, 1988, if the amount of any basis adjustment under section 743(b) or section 732(d) made as a result of such transfer that is allocated to each item of partnership property (other than goodwill) does not exceed the amount equal to the difference between the transferee partner's share of the partnership basis of such property and such partner's share of the fair market value of such property.

(e) Example. The provisions of this section may be illustrated by the following example which assumes that the assets of the partnership constitute a trade or business under section 1060 and that the partnership has an election in effect under section 754 at the time of the sale of the partnership interest.

Example (1). A is a member of partnership ABC. ABC has three assets: a building with a fair market value of \$2,000,000, equipment with a fair market value of \$800,000 and goodwill. ABC has no liabilities. A has a one-third interest in partnership capital and profits. A sells his partnership interest to D for \$1,000,000. Under paragraph (b)(2) of this section, the fair market value of goodwill is deemed to equal the value that must be assigned to goodwill in order for the partnership to distribute \$1,000,000 to D if it were to sell all of its property at fair market value (in the case of goodwill, its assigned value) and completely liquidate after D's purchase of A's partnership interest. In order for D, a one-third partner, to receive a liquidating distribution of \$1,000,000, the partnership would have to sell all partnership property for a total of \$3,000,000. The fair market value of partnership property other

than goodwill is \$2,800,000. Therefore, goodwill must be assigned a value of \$200,000 (\$3,000,000 - \$2,800,000) in order for D to receive a liquidating distribution of \$1,000,000. Accordingly, D's section 743(b) basis adjustment must be allocated under § 1.755-1 using a fair market value of \$200,000 for goodwill.

Par. 6. Immediately after § 1.1031(d)-1, there is added a new § 1.1031(d)-1T to read as follows:

§ 1.1031(d)-1T Coordination of section 1060 with section 1031 (temporary).

If the properties exchanged under section 1031 are part of a group of assets which constitute a trade or business under section 1060, the like-kind property and other property or money which are treated as transferred in exchange for the like-kind property shall be excluded from the allocation rules of section 1060. However, section 1060 shall apply to property which is not like-kind property or other property or money which is treated as transferred in exchange for the like-kind property. For application of the section 1060 allocation rules to property which is not part of the like-kind exchange, see § 1.1060-1T (b), (d), and (g) Example (3).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7005.

§ 602.101(c) (Amended)

Par. 8. Section 602.101(c) is amended by inserting in the appropriate place in the table "1.1060-1T . . . 1545-1021".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: July 8, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.
(FR Doc. 88-10095 Filed 7-15-88; 8:45 am)
BILLING CODE 4830-01-4

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

(T.D. ATF-275; Ref: Notice No. 656)

Alcoholic Content Statements on Labels of Wine, and the Related Type Size Requirements

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations in 27 CFR Part 4, by providing that statements of alcoholic content on labels of wine may appear in an abbreviated form, and in a form other than that currently prescribed. The Bureau is also increasing the maximum allowable type size for such alcoholic content statements from two millimeters to three millimeters. ATF believes the amended regulations will facilitate trade between domestic and foreign markets, particularly with the European Economic Community (EEC), by promoting harmonization of labeling requirements. In addition, the amended regulations will continue to provide the consumer with adequate information as to the alcoholic content of the wine product.

EFFECTIVE DATE: August 17, 1988.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20228 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

Section 5 (e) and (f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205 (e) and (f), provides, in general terms, that wine labeling and advertising shall not contain any statement which is false, deceptive, misleading, or is likely to mislead the consumer regarding the product. In addition, section 5 (e) and (f) authorizes the Secretary to prescribe such regulations as will provide the consumer with adequate information as to the identity and quality of the product except that, as specified in section 5(e), statements of alcoholic content on labels of wine are required only for products containing more than 14 percent of alcohol by volume. Section 5(f) prohibits statements of, or statements likely to be considered as

statements of, alcoholic content of wines in advertising.

Regulations which implement the provisions of section 5 (e) and (f), as they relate to wine, are set forth in Title 27, Code of Federal Regulations (CFR), Part 4. Requirements for statements of alcoholic content on wine labels are prescribed in § 4.36(b). In essence, if a specific alcoholic content is to be disclosed, it shall appear as "Alcohol ____% by volume." If a range is to be utilized, the alcoholic content statement shall read as "Alcohol ____% to ____% by volume."

The size of type requirements for the alcoholic content statements mentioned above are prescribed in § 4.36(b). Specifically, § 4.36(b)(3) reads as follows:

Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 2 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not be set off with a border or otherwise accentuated.

Petition

ATF received a petition, dated January 29, 1988, filed by the Wine Institute, requesting that § 4.36(b) and 4.36(b) be amended. The Wine Institute is an industry association of California wineries representing 538 California winery members.

Specifically, the petitioners requested that § 4.36(b)(1) be amended to permit the alcoholic content statement to appear in an abbreviated form as "Alc. ____% vol." as an alternative to "Alcohol ____% by volume." Similarly, they requested that § 4.36(b)(2) be amended to permit the alcoholic content statement, when given as a range, to appear as "Alc. ____% to ____% vol." as an alternative to "Alcohol ____% to ____% by volume."

The Wine Institute also requested that § 4.36(b)(3) be amended, increasing the maximum allowable type size for alcoholic content statements from two millimeters to three millimeters.

According to the petitioners, the European Economic Community (EEC), which presently includes 12 Member States, has established regulations that make the disclosure of alcoholic content on wine labels mandatory as of May 1, 1988, and that prescribe the form, and type size in which the alcoholic content statements may be made on wine labels.

Under the new EEC regulations, the alcoholic content figure must be followed by "% vol" and may be preceded by, among other alternatives, the abbreviation "alc." The petitioners noted that "[T]his requirement renders wine containers labeled in compliance

with BATF regulations unacceptable for shipment to the EEC without relabeling. The necessity of relabeling would be obviated by amending the regulation [§ 4.36(b)] to accommodate EEC language."

Regarding the type size of alcoholic content statements, the EEC now requires such statements to appear in printing no smaller than three millimeters. Current U.S. regulations (§ 4.36(b)) require that the alcoholic content statement appear in printing *not* larger than two millimeters. Again, wine containers labeled in compliance with U.S. regulations would be unacceptable for shipment to the EEC, and would have to be relabeled.

The petitioners stated that adoption of their proposed amendments would result in cost savings to U.S. wineries, since wines for export would not have to be relabeled in order to comply with EEC requirements. Further, wineries would not have to design new labels solely for products intended for sale in the EEC.

Subsequent to the filing of the Wine Institute petition, the Bureau received a letter (dated February 23, 1988) on behalf of the National Association of Beverage Importers, Inc. (NABI), supporting the Wine Institute petition. NABI is an industry association representing more than 100 member companies that import over 90% of all alcoholic beverages brought into the U.S.

Notice No. 656

Consequently, ATF published a notice in the Federal Register (Notice No. 656, March 25, 1988; 53 FR 9775), proposing to amend § 4.36(b) by providing that the alcoholic content statement may appear in an abbreviated form. However, the words "alcohol" and/or "volume," if abbreviated, shall be shown as "alc." (alc) and/or "vol." (vol), respectively. ATF believes that consumers can easily recognize the words that these abbreviations represent.

The Bureau also proposed to amend § 4.36(b) to provide for the alcoholic content to be disclosed on the label in a form other than that currently prescribed. Examples of such statements included, "____% alcohol by volume," "____% alcohol/volume," "alcohol ____% volume," and "alcohol ____% to ____% volume." Again, if the words "alcohol" and/or "volume" are to be abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively.

Finally, the Bureau proposed to amend § 4.36(b)(3), by raising the maximum allowable type size for statements of alcoholic content from two millimeters

to three millimeters. The comment period for Notice No. 856 closed on April 25, 1988.

Analysis of Comments

In response to Notice No. 856, the Bureau received five comments. Four of the five comments supported the proposals made in the notice, and were submitted by—the French Federation des Exportateurs de Vins et de Spiritueux (FEVS), a private organization of more than 500 members representing all aspects of the French wine and spirits industry; the Federation Internationale des Industries et du Commerce en Gros des Vins Spiritueux, Eaux-de-vie et Liqueurs (FIVS), on behalf of its members (56 associations in 24 countries); the Embassy of the Federal Republic of Germany, on behalf of the Republic, and; Heublein, Inc.

The opposing comment was submitted by the Center for Science in the Public Interest (CSPI). Of the three proposals made in Notice No. 856, CSPI objected to the one which would permit the alcoholic content statement to appear in an abbreviated form. Specifically, CSPI opposed the Bureau's proposal to permit the abbreviation of the word "alcohol" as "alc." (alc). In essence, CSPI contended that this proposal "makes the [alcoholic content] disclosure inherently smaller, less conspicuous, and more likely to be overlooked altogether" by consumers. Furthermore, CSPI stated that consumers may not be able to recognize the abbreviated form, and may be confused by it.

In regard to CSPI's first concern, the Bureau does not believe that permitting the statement of alcoholic content to appear in an abbreviated form would result in its being "overlooked" by consumers. Under the labeling regulations (§ 4.32), statements of alcoholic content, including the use of the designation "table" (light) wine, are considered to be mandatory information and, as such, must comply with the requirements of § 4.38 as to legibility, size of type, etc. In addition, the regulations in § 4.32(a)(3) specify that statements of alcoholic content must appear on the brand (front) label. Thus, whether the word "alcohol" in the alcoholic content statement is spelled out, or abbreviated, the regulations require it to appear on the front label, legibly and conspicuously.

As to CSPI's second concern, the Bureau is aware of the possibility that consumers might not be able to easily recognize the abbreviated form of the word "alcohol" depending, however, on how the word is abbreviated. For example, although "al." is recognized as an acceptable abbreviation for the word

"alcohol," the Bureau believes that consumers may be confused by it. Thus, as indicated in Notice No. 856, when the Bureau has permitted the alcoholic content of the wine to be disclosed on the label in an abbreviated form, only the abbreviations "alc." (alc) and "vol." (vol) were acceptable. This qualification was also included in the Bureau's notice of proposed rulemaking.

Therefore, based on the above, the Bureau is adopting the regulations as proposed in the notice of proposed rulemaking.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this regulation is not a major rule since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1512-0482. The estimated average burden associated with the collection of information in this final rule is 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for ATF.

Drafting Information

The author of this document is James P. Ficareta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

27 CFR Part 4—Labeling and Advertising of Wine is amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.36 is amended by revising the first sentence of paragraphs (b)(1) and (b)(2) as follows:

§ 4.36 Alcoholic content.

- (b) * * *
- (1) "Alcohol ____ % by volume," or similar appropriate phrase; *Provided*, that if the word "alcohol" and/or "volume" are abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively. * * *
- (2) "Alcohol ____ % to ____ % by volume," or similar appropriate phrase; *Provided*, that if the word "alcohol" and/or "volume" are abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively. * * *

Par. 3 Section 4.38(b)(3) is revised to read as follows:

§ 4.38 General requirements.

- (b) * * *
- (3) Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 3 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not

be set off with a border or otherwise accentuated.

Signed: May 20, 1988.
Stephen E. Higgins,
Director.

Approved: June 23, 1988.
John P. Simpson,
Acting Assistant Secretary (Enforcement).
[FR Doc. 88-18084 Filed 7-15-88; 8:45 am]
BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Collection of Late Fees and Interest Penalties on VA Funding Fees

AGENCY: Veterans Administration.
ACTION: Final regulatory amendments.

SUMMARY: The Veterans Administration (VA) is amending its loan guaranty regulations (38 CFR Part 36) to provide for timely collection and deposit of loan guaranty funding fees. These regulatory amendments enable the VA to bring its loan guaranty program into conformance with other Federal loan programs.

EFFECTIVE DATE: These regulatory amendments are effective August 17, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 233-3042.

SUPPLEMENTARY INFORMATION: On October 13, 1987, the VA published in the Federal Register (52 FR 37973) a proposed regulatory amendment to 38 CFR 36.4254(d) and 38 CFR 36.4312(e). Public comments were requested on a proposal to provide for timely collection and deposit of the VA loan guaranty funding fee. A 15-day deadline from date of loan closing is established with penalty and interest payments assessed for late payment. Please refer to the October 15, 1987, Federal Register for a complete discussion of the proposed regulations.

The VA received one comment on the proposal. The commenter expressed appreciation for agency efforts to follow existing government policy as exemplified by the conduct of other agencies and believed that such consistency would eliminate confusion and facilitate lender understanding of VA's requirements. The commenter is concerned that adequate flexibility in assessing the late charges be exercised

in adjudicating individual problems in an equitable manner in light of recent changes to the funding fee program. The VA shares these concerns; necessary precautions and administrative flexibility will be exercised to protect lenders from late charges for errors that are beyond the lender's control.

The Administrator hereby certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 and 612. The provision concerning the assessment of late fees and interest against lenders will affect lenders only in those cases in which the lender fails to take timely action to deposit the funding fee. To prevent this from occurring, prudent loan guaranty practice dictates that the VA assess late fees and interest. Assessment of these late fees and interest will also assure that the VA Loan Guaranty Program is consistent with similar Federal loan programs. As only a relatively small percentage of VA guaranteed loans are held by small entities, these final regulatory amendments will not significantly affect small entities. Pursuant to 5 U.S.C. 605(b), these final regulatory amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Administrator has also determined that these final regulatory amendments are not a "major rule" within the meaning of Executive Order 12291. They will not have an annual effect on the economy of \$100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—Housing and community development, Manufactured homes, Veterans.

These amendments are made final under the authority granted the Administrator by U.S.C. 210(c), 1820 and 1829 of title 38.

Approved: June 16, 1988.

Thomas K. Turnage,
Administrator.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. In § 36.4232, paragraph (e) is revised to read as follows:

§ 36.4232 Allowable fees and charges—manufactured home unit.

(e)(1) Subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, a fee of 1 percent of the total loan amount must be paid to the Administrator before a manufactured home unit loan will be eligible for guarantee. All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) The lender is required to pay to the Administrator the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 210(c))

(3) The fee described in paragraph (e)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) nor from a surviving spouse described in section 1829(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(4) Collection of the loan fee in this section does not apply to loans closed prior to August 17, 1984, between October 1 and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989. (Authority: 38 U.S.C. 1829(c))

2. In § 36.4254 paragraph (d) is revised to read as follows:

§ 36.4254 Fees and charges.

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(3) and (d)(4) of this section, a fee or 1 percent of the total loan amount must be paid to the Administrator before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) The lender is required to pay to the Administrator the fee described in paragraph (d)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in subparagraphs (d)(3) and (d)(4) of this paragraph, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 210(c))

(3) The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) nor from a surviving spouse described in

section 1829(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(4) Collection of the loan fee in this paragraph does not apply to loans closed prior to August 17, 1984, between October 1 and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989.

(Authority: 38 U.S.C. 1829(c))

3. In § 36.4312, paragraph (e) is revised to read as follows:

§ 36.4312 Charges and fees.

(e)(1) Subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, a fee of 1 percent of the total loan amount must be paid to the Administrator before a home or condominium loan will be eligible for guaranty or insurance. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) The lender is required to pay to the Administrator the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirement Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 210(c))

(3) The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) nor from a surviving spouse described in

section 1829(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(4) Collection of the loan fee in this paragraph does not apply to loans closed prior to August 17, 1984, between October 1 and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989.

(Authority: 38 U.S.C. 1829(c))

[FR Doc. 88-10016 Filed 7-15-88; 8:45 am]

BILLING CODE 5320-01-01

38 CFR Part 36

Loan Guaranty; Increase in the Maximum Allowable Amount the VA Will Reimburse a Loan Holder for Legal Services Incurred in Terminating a Loan

AGENCY: Veterans Administration.
ACTION: Final Regulatory Amendment.

SUMMARY: The Veterans Administration (VA) is amending its loan guaranty regulations (38 CFR Part 36) by increasing from \$350 to \$700 the maximum allowable amount the VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred by the holder in terminating a VA guaranteed home loan. The amendment is the result of the increased cost of legal services. It will allow the VA to reimburse a loan holder for the cost of, or a greater portion of the cost of, retaining the experienced legal counsel needed for the timely termination of a VA guaranteed home loan.

EFFECTIVE DATE: August 17, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 233-3688.

SUPPLEMENTARY INFORMATION: On January 19, 1988, the VA published in the Federal Register (53 FR 1378) a proposed regulatory amendment to 38 CFR 4276(b) and 36.4313(b). Public comments were requested on a proposal to increase from \$350 to \$700 the maximum allowable amount the VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred by the holder in terminating a VA-guaranteed loan. Please refer to the January 19, 1988, Federal Register for a complete discussion of the proposed amendment.

The VA received five comments on the proposal. Four commenters favored

it while the fifth suggested that the VA should consider a varying schedule of allowable fees to allow for amounts of compensation which are customary in the different states. He stated that while the proposed increase was a step in the right direction, \$700 could be insufficient to compensate the lender in full for the attorney's fees incurred in judicial foreclosures.

The VA's position is that the increase in the maximum allowable amount will allow the VA to reimburse a loan holder for the cost of, or a greater portion of the cost of, retaining counsel needed for terminating a VA-guaranteed loan. The VA's reimbursement of the loan holder is not intended to completely cover the cost of liquidating the property in every case. The amount paid by a lender to its legal counsel is not addressed by VA regulation and is therefore left solely to the discretion of the lender and its counsel.

The Administrator hereby certifies that this final regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Raising the maximum the VA can reimburse loan holders will enable holders to more easily retain experienced legal counsel to foreclose loans. However, it will not have a significant economic impact because only actual costs paid may be reimbursed, and holders do not ordinarily incur costs in excess of the reimbursable amount. Also, holders of most VA guaranteed loans are not small entities. Pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is, therefore, exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Administrator has also determined that this final regulatory amendment is not a "major rule" within the meaning of Executive Order 12291, entitled Federal Regulation. It will not have an annual effect on the economy of \$100 million or more; it will not cause a major increase in costs or prices for consumers or individual industries; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped,
Housing loan programs—housing and

community development, Manufactured homes, Veterans.

This amendment is made final under the authority granted the Administrator by sections 210(c) and 1829(a) of title 38, United States Code.

Approved: June 16, 1988.

Thomas K. Turnage,
Administrator.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

§ 36.4276 [Amended]

1. In § 36.4276(b) remove the words "\$350" wherever they appear and insert the words "\$700" in their place.

§ 36.4313 [Amended]

2. In § 36.4313(b) remove the words "\$350" wherever they appear and insert the words "\$700" in their place.

[FR Doc. 88-10017 Filed 7-15-88; 8:45 am]

BILLING CODE 5320-01-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-281; FCC 88-135]

Radio Broadcasting Services; Foreign Clear Channels

AGENCY: Federal Communications Commission.

ACTION: Second Report and Order; Reaffirmation of Rules.

SUMMARY: In response to the *Further Notice of Proposed Rule Making*, the Commission adopted the *Second Report and Order* reaffirming rules establishing new full-time AM stations on the foreign Class I-A channels. These rules place important emphasis on technical criteria, but do not incorporate non-technical acceptance criteria on applications for new full-time stations on the foreign clears. The Commission also directed the staff to resume the processing of applications for AM stations on the 14 foreign clear channels that had been suspended pending the completion of this proceeding. This action provides the best approach to provide for the filing of applications by any interested party, including minorities and noncommercial applicants. This can bring needed services promptly where there is interest in doing so and the allocation situation permits.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Policy and Rules

Division, Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order*, in MM Docket No. 84-281, FCC 88-135, adopted April 6, 1988 and released June 8, 1988.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the *Second Report and Order* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Summary of Second Report and Order

1. For many years, nighttime use of 14 frequencies designated as Canadian, Mexican and Bahamian Class I-A clear channels had been precluded in large parts of the United States by international agreements. These agreements imposed limitations on the nighttime use of these channels that far exceeded that necessary to avoid interference. However, new agreements which had been or were being negotiated in 1984 were based solely on protection from interference. As a result, it became possible to use these frequencies more extensively at night in the United States. Consequently, the Commission sought comment on their most effective use. Initially, the Commission proposed rules similar to those then employed for the 25 U.S. Class I-A clear channels which required applicants to meet both technical and non-technical acceptance criteria.

2. The Commission conducted a number of intensive and wide ranging studies to determine the pattern of use of the foreign clear channels and the degrees to which they might be available for the establishment of new full-time stations. These studies indicated that the majority of opportunities to establish new stations would occur in unserved or underserved areas. Therefore, the Commission concluded in its *Report and Order* that the need to impose new service-based criteria designed to encourage filings in such areas no longer existed. Further, since the ownership-based non-technical acceptance criteria were designed as an exception to the service based criteria, the Commission concluded there was no need to provide an alternative basis for accepting applications based on the nature of the applicant.

3. In the *Report and Order* (50 FR 24515, June 11, 1985) the Commission

also adopted rules permitting most of the daytime-only stations on the foreign clear channels to operate at night. Because it did not want to preclude opportunities that might be available to establish new full-time stations on these channels, it provided an initial five year period during which interference protection would not have to be afforded the nighttime operations of the former daytime-only stations.

4. The National Black Media Coalition (NBMC) sought judicial review of the *Report and Order*. The Court of Appeals agreed with NBMC that the Commission's action did not fully comply with the requirements of the Administrative Procedure Act. Additionally, the court held that the Commission's action had to be set aside because unpublished data was used in reaching the conclusions in the *Report and Order*, and it remanded the matter to the Commission. Since neither NBMC nor any other party had sought review of the portion of the decision granting nighttime operation to the daytime-only stations of the foreign clear channels, this aspect of the proceeding is no longer before the Commission.

5. Pursuant to the Court of Appeals' remand, the Commission issued the *Further Notice of Proposed Rule Making* (52 FR 31432, Aug. 20, 1987) reopening this proceeding to determine what policies with respect to these newly available channels we should adopt. Interested parties were invited to comment on a proposal to accept new applications to use the newly available foreign clear channels based solely on technical criteria (i.e. based on interference considerations) and thereby dispense with the imposition of non-technical acceptance criteria.

6. To ensure a solid technical foundation for its recommendation, the Commission performed new and more extensive engineering studies regarding the current pattern of use of these frequencies, and it attached them to the *Further Notice*. These studies further supported the proposition that opportunities to establish new full-time stations on these channels are limited. Interested parties were asked to comment on these studies.

7. After a careful review of the record in this proceeding, we have decided not to adopt rules which would impose non-technical acceptance criteria on applications for new full time stations on the newly available foreign Class I-A

clear channels. Since our studies show that the vast majority of opportunities for establishing new full time stations already exists in areas with limited or no service, there is no compelling justification for the imposition of service based criteria to encourage applicants to apply in these unserved or underserved areas.

8. CPB has provided a list of markets which it says lacks effective public radio service and where new station allegedly could be established. We have examined each of these markets. Our studies show that in the majority of cases it would not be possible to locate a new AM station in the markets identified in CPB's list. We have also carefully reviewed NPR's concerns regarding the maps relied on by the Commission in performing the studies and, in particular, its objections to the scale of the maps and the handwork done in their preparation. The maps were not intended to reflect each and every technical parameter that could possibly relate to where new stations could be located nor were they designed to take into account certain specific technical factors which must be borne in mind by individual applicants in determining whether a station is feasible in a given location. First, any proposed station would have to be located at some distance from the cross-hatched areas on the map so that no prohibited overlap with existing station contours would occur. Second, there are important nighttime restrictions which it was not possible to depict. Actual locations could not be used because there was no way to know where a party might desire to locate a new station.

9. In terms of the studies themselves, we continue to believe they accurately reflect the pattern of use on these channels. It is true that using measured conductivity values, where they are available, could give a more precise picture of an individual station's coverage. However, such data do not exist in most cases. It was appropriate to rely on Figure M3 in making the studies, and the possible up-dating of Figure M3 some years hence is not a basis for questioning the validity of the Commission's existing methodology. As for NPR's criticisms of the maps involved, the scale of the maps used by the Commission provided sufficiently reliable results. Furthermore, even if a particular applicant through individual

measurement analyses might be able to locate a station in an area that is already congested, this hardly constitutes sufficient reason for the adoption of non-technical criteria across-the-board.

10. Our review of the situation affecting these frequencies convinces us that there are relatively few opportunities to establish new full-time stations and that most of these opportunities are outside the more populated areas. While there may be some exceptions, that fact does not warrant the imposition of non-technical acceptance criteria. Similarly, there is no reason to provide an alternative basis for filings if applicants already had qualified under the principal technical non-interference criteria.

11. It is important to emphasize that the absence of the non-technical acceptance criteria will not limit minorities and noncommercial broadcasters from applying for new stations in either the few urban areas capable of providing an available frequency or in the unserved and underserved areas. Because of the abundant availability of spectrum in most of these areas, minorities and noncommercial applicants are likely to face little competition. On the other hand, applying the ownership-based criteria without applying the service-based criteria would, in effect, limit the acceptance of applications for use of the foreign clear channels exclusively to minority and non-commercial applicants. As a practical matter, imposing non-technical acceptance criteria may result in frequencies lying fallow and, consequently, in the public being deprived of new AM radio service in the few areas where full time opportunities exist.

Authority Citation

12. This action reaffirms 47 CFR Secs. 73.21, 73.24, 73.25, 73.51, 73.99, 73.162, 73.163, and 73.3571.

13. Authority for the action taken is contained in §§ 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Foster III,

Acting Secretary.

[FR Doc. 88-16052 Filed 7-15-88; 8:45 am]

BILLING CODE 4710-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. FR-88-6]

Petition for Rulemaking; Summary

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period on petition for rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a petition requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations. The

FAA published the petition in the *Federal Register* on June 2, 1988 (53 FR 20124), with the comment period closing August 1, 1988. Based on a request for extension of the comment period, the FAA is extending the comment period for an additional 30 days.

DATE: Comments on the petition must identify the petition docket number, 25591, and must be received on or before August 31, 1988.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 25591, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 916, FAA Headquarters Building (POB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

SUPPLEMENTARY INFORMATION: The FAA has received a request for extension of

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of petition
25591	United States Ultralight Association, Inc.	Part 103	To amend the regulations for powered, fixed-wing ultralight vehicles in order to modify the definition; to establish mandatory airman certification, vehicle registration and marking; and, in the case of two-place ultralights, to establish standards for pilot's knowledge, experience, medical fitness; and for the airworthiness of the vehicle.

[FR Doc. 88-16030 Filed 7-15-88; 8:45 am]
BILLING CODE 4710-13-M

14 CFR Part 39

[Docket No. 88-CE-17-AD]

Airworthiness Directives; Cessna Models T210L, T210M, T210N, P210N and T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to certain Cessna

Models T210L, T210M, T210N, P210N and T303 airplanes that are equipped with Slick Aircraft Products Division, Unison Industries, Inc., Model 6220 or 6224 pressurized magnetos. The proposed AD would require repetitive inspections and pre-flight checks to detect magneto moisture contamination. This action is prompted by numerous reports of contaminated magnetos which could result in engine stoppage and forced landing of the airplane. The inspections and checks specified in this proposal would preclude this situation from occurring.

DATE: Comments must be received on or before August 17, 1988.

ADDRESSES: Slick Aircraft Products Division, Unison Industries, Inc., Service

the comment period on the subject proposal from the Experimental Aircraft Association (EAA). In its request, the EAA states that the annual EAA convention, held in Oshkosh, Wisconsin, hosts a great number of ultralight owners, operator and manufacturers attending its annual convention. This year between July 29 and August 5, a forum will be planned for those owners, operators, manufacturers and interested parties of ultralight aircraft attending the EAA convention, in order to provide them with an opportunity to evaluate these proposed regulations. The EAA asserts that a forum of this type will place the public in a better position to understand the scope of the proposal and also to evaluate their position relevant to it. The extended comment period will give the public an opportunity to prepare meaningful comments and for the FAA to receive knowledgeable and informed input.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 12, 1988.

Denise D. Hall,
Manager, Program Management Staff.

Bulletin SB 1-88, dated April 1, 1988, and 4200/6200 Series Aircraft Magnetos Maintenance and Overhaul Instructions, Form L-1037-C-2, dated October, 1985, applicable to this AD may be obtained from Slick Aircraft Products Division, Unison Industries, Inc., 530 Blackhawk Park Avenue, Rockford, Illinois 61108, telephone (815) 985-4700, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-17-AD, Room 1558, 801 East 12th Street, Kansas City, Missouri 64108. Comments may be inspected at this location

between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Taylor, Chicago Aircraft Certification Office, ACE-115C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7134.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88-CE-17-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64108.

Discussion

The FAA has received numerous reports of internal moisture contamination of Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 and 6224 pressurized magnetos used on Cessna Models T210L, T210M, T210N, P210N and T303 airplanes. Evidence of moisture is shown by corrosion of some internal metal components, indications of electrical arcing or tracking near the center of the distributor block, decomposition of non-metallic components indicated a gummy or powdery substances, and/or traces of water pooling.

Two accidents have been reported in which dual magneto failure occurred resulting in forced landings. Examination of these magnetos revealed

long term deterioration with evidence of moisture contamination. It was also revealed that these magnetos had not been inspected per the airplane manufacturer's maintenance instructions, which require several internal magneto inspections before the 500 hour inspection and/or overhaul interval recommended by Slick Aircraft Products Division. Of the airplanes involved, one had flown through rain at the time of failure and the other had previous flights in rain conditions.

The Models 6220 and 6224 pressurized magnetos are identical in design to other approved models except for changes necessary for pressurization. Several thousand of these other non-pressurized magnetos have been in service with no reported moisture contamination problems. All of the reported incidents of internal magneto moisture contamination have occurred on turbocharged engines such as are used on Cessna Models T210L, T210M, T210N, P210N and T303 airplanes. Approximately 50% of these reports occurred after the recommended 500 hour inspection and/or overhaul interval. Nearly 30% occurred between 400 and 500 hours. Long term deterioration was reported in most of these reports, indicating a lack of internal magneto inspections.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being proposed requiring initial and repetitive inspections for evidence of moisture contamination, and repair as necessary on Cessna Models T210L, T210M, T210N, P210N and T303 airplanes equipped with Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 or 6224 pressurized magnetos. The FAA has determined there are approximately 3,500 airplanes affected by the proposed AD. The maximum annual cost per affected airplane is estimated to be \$100. The annual total estimated cost of this inspection for the fleet is \$280,000. Few, if any, small entities are expected to own more than one affected airplane.

The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the

provisions of Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to Models T210L, T210M, T210N, P210N and T303 (all serial numbers) airplanes, certified in any category, that are equipped with Slick Aircraft Products Division, Unison Industries, Inc. Model 6220 or 6224 pressurized magnetos.

Compliance: Required as indicated, unless already accomplished.

To preclude magneto moisture contamination, which could result in dual magneto failure, engine stoppage, and forced landing, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) Revise the "NORMAL PROCEDURES" section of the Airplane Flight Manual (AFM) or the airplane Pilot's Operating Handbook (POH), by inserting the AFM/POH Supplement, dated April 1, 1988, provided in Appendix 1 of the AD.

(2) Fabricate and install on the instrument panel in clear view of the pilot a placard with letters not less than 1/10 inches in height with the following wording:

"PRIOR TO EACH FLIGHT, CONDUCT MAGNETO CHECKS IN ACCORDANCE WITH AFM/POH SUPPLEMENT DATED APRIL 1, 1988."

and operate the airplane accordingly.

(3) The requirements of paragraph (a)(2) of this AD may be accomplished by the owner/operator of any airplane owned or operated

by him. The person accomplishing these actions must make the appropriate airplane maintenance record entry per FAR 43.9 and 91.173.

(b) Within the next 50 hours time-in-service after the effective date of this AD, inspect the airplanes in accordance with paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 1, 1988, and:

(1) For airplanes operating for compensation or hire, at intervals not to exceed 100 hours TIS after the initial inspection, inspect the Model 6220 or 6224, as applicable, pressurized magnetos in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 1, 1988. Prior to further flight repair any defects found in accordance with the instructions contained in the above referenced service bulletin.

(2) For airplanes operating under FAR 91, after the initial inspection, at each annual inspection, inspect the Model 6220 or 6224, as applicable, pressurized magnetos in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 1, 1988. Prior to further flight repair any defects found in accordance with the instructions contained in the above referenced service bulletin.

(c) Airplanes may be flown in accordance with provisions of FAR 21.197 to a base where the requirements of this AD may be accomplished.

(d) The 100 hour TIS repetitive inspection interval specified in paragraph (b) of this AD may be extended up to an additional 10 hours TIS to allow compliance with previously scheduled maintenance.

(e) An equivalent means of compliance with the requirements of this AD may be used, if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Slick Aircraft Products Division, Unison Industries, Inc. 530 Blackhawk Park Avenue, Rockford, Illinois 61108 or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64108.

Issued in Washington, DC, on July 6, 1988.

M.C. Beard,
Director of Airworthiness, AWS-1.

Appendix 1

FAA approved supplement to the pilot's operating handbook and FAA approved airplane flight manual for Cessna models P210, TU200, TP200, T207, T210, T303, T310, 320, 335, 340, 401, 402, and 414 Series aircraft

Reg. No. _____
Ser. No. _____

This Supplement must be attached to the FAA Approved Airplane Flight Manual when the airplane is modified by the installation of Model 6220 and 6224 magnetos. The information contained herein supplements or

supersedes the basic manual only in those areas listed. For limitations, procedures and performance information not contained in this supplement, consult the basic Airplane Flight Manual.

FAA approved: _____

W.F. Horn, Manager, Chicago Aircraft Certification Office, FAA Central Region
Date: _____

Section II. Limitations

No change.

Section III. Emergency Procedures

No change.

Section IV. Normal Operating Procedures

Before Takeoff

Perform a magneto check of each engine at 1700 RPM as follows. Move ignition switch first to R position and note RPM. Next move switch back to both to clear the other set of plugs. Then move switch to the L position, note RPM and return the switch to the Both position. RPM drop should not exceed 150 RPM on either magneto or show greater than 50 RPM differential between magnetos. If there is doubt concerning operation of the ignition system, RPM checks at higher engine speeds will usually confirm whether a deficiency exists.

Caution

Many non-ignition system factors influence engine performance during a magneto check, and the replacement or repair of ignition components may not remedy problems in all cases. After verifying that all non-ignition system related causes for problems have been explored, proceed with the inspection procedures as stated below. If the magneto check exceeds either of the above limits, both magnetos must be disassembled and inspected in accordance with Section III 100 hour inspection of Slick Aircraft Products Division, Unison Industries, Inc., Service Bulletin SB 1-88 dated April 1, 1988 or FAA approved equivalent. An absence of RPM drop may be an indication of faulty grounding of one side of the ignition system or should be cause for suspicion that the magneto timing is set in advance of the setting specified. Check ignition ground and magneto timing.

FAA Approved _____

Date: _____

[FR Doc. 88-16033 Filed 7-15-88; 8:45 am]

BILLING CODE 4910-13-2

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

(LR-119-86)

Section 1060—Allocation Rules for Certain Asset Acquisitions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations to provide guidance to taxpayers concerning the application of the allocation rules for certain asset acquisitions under section 1060 to taxpayers generally and to partnerships. The text of the new sections also serves as the comment document for this notice of proposed rulemaking.

DATES: Proposed Effective Date:

The regulations are proposed to apply generally to any applicable asset acquisition made after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter. The reporting requirements apply to asset acquisitions (and to certain adjustments of consideration) occurring in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988.

Date for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by September 18, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-119-86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202-566-3458 (not a toll-free number). For information concerning the temporary regulations under section 755, contact Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, (Attention: CC:LR:T) or telephone 202-566-3297 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent

to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Internal Revenue Service, with copies to the Internal Revenue Service at the address previously specified.

The collection of information in this regulation is in section 26 CFR 1.1060-1T(h). This information is required by the Internal Revenue Service pursuant to section 1060. This information will be used to verify that the purchaser and the seller are complying with section 1060 by allocating the consideration among the assets pursuant to the residual method of allocation. The likely respondents are businesses or other for-profit institutions and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 21,053 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1.05 hours.

Estimated number of respondents and/or recordkeepers: 20,000.

Estimated annual frequency of responses: One time generally.

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new temporary regulations §§ 1.167(a)-5T, 1.755-2T, 1.1031(d)-1T, and 1.1060-1T, to Part 1 of Title 26 of the Code of Federal Regulations (CFR), and amend § 1.338(b)-3T. The final regulations that are proposed to be based on these temporary regulations would be added to Part 1 of Title 26 of the CFR. Those final regulations would provide guidance on the allocation of consideration among the assets transferred in an applicable asset acquisition. Section 1060 was added by section 641 of the Tax Reform Act of 1986 (Pub. L. No. 99-514; 100 Stat. 2085). For the text of the new temporary regulations, see T.D. 8215, published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the regulations.

Special Analyses

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 5). The Commissioner of Internal Revenue has determined that

this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of the proposed regulations under section 167, 338, 1031, and 1060 is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. The principal author of the proposed regulations under section 755 is Robert Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-16096 Filed 7-15-88; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Forfeiture of Education Benefits

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: A veteran can forfeit his or her education benefits by engaging in subversive activities or, in limited circumstances, committing fraud or treasonable acts. The regulation concerning forfeiture of education benefits indicates that forfeiture is governed by various VA regulations. However, the regulations which are referenced do not deal with forfeiture. This proposal will correct that error.

DATES: Comments must be received on or before August 17, 1988. Comments will be available for public inspection until August 29, 1988.

ADDRESSES: Send written comments, suggestions, or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until August 29, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service (225), Department of Veterans Benefits, (202) 233-2002.

SUPPLEMENTARY INFORMATION: The VA rarely has to invoke the regulation dealing with forfeiture of education benefits. Nevertheless, it is a requirement of law. If the regulation ever has to be invoked, it is essential that it be correct. Accordingly, the proposal would amend § 21.4007 to state the correct regulations which govern forfeiture of benefits.

The VA has determined that this proposed regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 15, 1988.

Thomas K. Turnage,
Administrator.

PART 21—[AMENDED]

38 CFR Part 21 is proposed to be amended by revising § 21.4007 to read as follows:

§ 21.4007 Forfeiture.

The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§ 3.900, 3.901 (except paragraph (c)), 3.902 (except paragraph (c)), 3.903, 3.904, 3.905 and 19.2 of this chapter.

(Authority: 38 U.S.C. 3503, 3504, and 3505)

[FR Doc. 88-16019 Filed 7-15-88; 8:45 am]

BILLING CODE 3230-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 242

Federal Acquisition Regulation Supplement; Indirect Cost Rates

AGENCY: Department of Defense (DoD).

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The proposed rule published at 52 FR 6177, March 2, 1987 concerning proposed changes to DFARS Subpart 242.7 to: (a) extend the auditor determination of final indirect cost rates procedures to all commercial contractor locations where DoD has the predominant interest and (b) assign the auditor the responsibility for determining billing rates for all contractor locations, has been withdrawn by the Defense Acquisition Regulatory Council. On June 20, 1988 the Deputy Secretary of Defense directed that the responsibility for the determination of interim billing and final indirect cost rates at major contractor locations be assigned to the Contracting Officer. Therefore, the proposed rule is no longer necessary and is hereby withdrawn. Based on the foregoing, DAR Case 85-259 is closed. This notice is for information purposes only. No further comments are solicited for this action.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition
Regulatory Council.

[FR Doc. 88-16046 Filed 7-15-88; 8:45 am]

BILLING CODE 3010-01-M

48 CFR Ch. 2, Appendix I

Federal Acquisition Regulation Supplement; Appendix I, DD Form 250

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering a change to Appendix I of the DFARS that will require contractors to include unit prices on DD Form 250s when the end item will be shipped to a contractor as Government-Furnished Property (GFP). **DATE:** Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no later than September 18, 1988, to be considered in developing a final rule. Please cite DAR Case 88-12 in all correspondence related to this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Government property, in recent years, has come under scrutiny from the DoD Inspector General, the General Accounting Office, and Congress because of a perception of property mismanagement both within DoD and at DoD contractors' plants. In response, the Office of the Secretary of Defense initiated a Task Force to develop a more effective financial accounting and management control system for Government property. This proposed coverage implements one aspect of the Task Force recommendations for development of accounting and management systems for Government property under the control of contractors.

Specifically, the contractor will be required to list the unit price on DD 250s for those deliverables which will be

shipped to a contractor as Government-Furnished Property (GFP). The inclusion of the unit prices on DD Form 250s is a major step in the establishment of an improved property accounting and management system.

Use of the DD Form 250 appears to be the most effective and efficient means of establishing this requirement since the DD Form 250 is already a contractual requirement for purposes of inspection and acceptance, and the unit price would already be established in Section B of the contract. Comments are solicited for purposes of determining if there are any other alternatives that can be used to meet this requirement.

B. Regulatory Flexibility Act

The proposed coverage is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because most small entities do not have contractual requirements to provide end items as Government-Furnished Property to other contractors.

C. Paperwork Reduction Act

Contractors must already provide a lot of the contractual data for a part on the DD 250. The contractor already has the unit price information available from its contract with the Government. Providing the unit price information encompasses nothing more than typing the unit price amount on the DD 250. This is considered to be an insignificant burden and therefore not subject to OMB approval under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Chapter 2, Appendix I

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition
Regulatory Council.

Therefore, it is proposed to amend 48 CFR Chapter 2, Appendix I, as follows:

1. The authority citation for 48 CFR Chapter 2, Appendix I, continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

Appendix I—Material Inspection and Receiving Report

I-301 [Amended]

2. I-301 is amended by revising under the section entitled "Block 19" paragraph (a) to read as follows:

I-301 Preparation Instructions.

Block 19—UNIT PRICE. The contractor may, at his option, enter unit prices on all MIRR copies, except as a minimum:

(a) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government-Furnished Property (GFP). The line items (from Block 19) shall be priced using the prices from Section B of the contract or, if not available, estimated prices. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

[FR Doc. 88-18047 Filed 7-15-88; 8:45 am]
BILLING CODE 4910-01-0

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Denial of a Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Denial of a petition for rulemaking.

SUMMARY: This notice denies a petition filed by Leroy Lanier requesting that this agency promulgate a rule requiring vehicle manufacturers to repair or repurchase defective motor vehicles from consumers, and authorizing consumer suits to enforce that requirement. NHTSA is denying this petition because the National Traffic and Motor Vehicle Safety Act already requires manufacturers to provide a remedy for defective motor vehicles. Section 154 of that Act requires a manufacturer to repair, repurchase, or replace each of its motor vehicles that is determined either to contain a safety-related defect, or to be in noncompliance with a Federal motor vehicle safety standard. Further, the agency lacks the authority to authorize consumers suits.

FOR FURTHER INFORMATION CONTACT: Joan F. Tilghman, Office of Chief

Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2982.

SUPPLEMENTARY INFORMATION: In a petition dated October 16, 1987, Mr. Leroy Lanier (petitioner) requested that the National Highway Traffic Safety Administration (NHTSA) issue a rule to protect new motor vehicles and the first purchasers of these vehicles (1) by establishing a repair or repurchase remedy for consumers whose vehicles are found to be defective, and (2) by authorizing consumers to file civil actions to enforce that remedy. The petitioner suggested that NHTSA model this rule after section 111 (a) and (b) of the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act). (15 U.S.C. 1400 (a) and (b).) That provision creates a remedy for distributors or dealers who purchase noncomplying or defective motor vehicles from a manufacturer or distributor. If a new motor vehicle purchase and possessed by a distributor or dealer is found either to be in noncompliance or to contain a safety defect, then the party from whom the distributor or dealer purchased the vehicle either must repurchase it or furnish the parts necessary to remedy the noncompliance or defect. If the manufacturer or distributor elects the latter course, then it also must reimburse the distributor or dealer both for the reasonable value of installing the parts, and for a prorated percentage of the distributor's or dealer's selling price of the vehicle. If the manufacturer or distributor refuses to comply with these requirements, then the buyer is authorized to sue the seller to recover actual damages, court costs, and reasonable attorney's fees.

In support of his petition, Mr. Lanier included addenda documenting a history of his experience with a model year 1984 vehicle, including information of various remedial actions he pursued within the private community.

NHTSA is denying Mr. Lanier's petition for several reasons. First much of the redress he seeks already is provided in the Vehicle Safety Act.

Sections 151-154 of the statute state, in pertinent part, that if either (1) a vehicle manufacturer or (2) the Secretary of Transportation determine that a motor vehicle does not comply with a Federal safety standard, or contains a safety-related defect, the manufacturer must notify the vehicle's owner or most recent, known purchaser, and supply one of the following remedies:

- Repair the vehicle;
- Replace the vehicle without charge with an identical or reasonably equivalent vehicle; or
- Refund the vehicle's purchase price in full, less a reasonable allowance for depreciation.

While the statute attaches some other conditions to the operation of these remedy provisions, it essentially supplies the relief that the petitioner is seeking, with respect to safety-related problems. The statute does not authorize the agency to direct these remedies when the alleged defect does not relate to safety. The Vehicle Safety Act also authorizes the agency to seek judicial enforcement of the vehicle manufacturer's notification and remedy obligations.

Second, the agency lacks the authority to authorize consumer to seek judicial enforcement of a manufacturer's remedy obligations. Only Congress may provide that authority. Congress did not provide that authority in enacting the mandatory recall and remedy provisions in 1974. It did, however, authorize any interested person to petition the agency to hold a hearing on the question of whether a manufacturer has reasonably met his recall and remedy obligations.

For the preceding reasons, NHTSA denies Mr. Lanier's petition.

(Secs. 103, 119, Pub. L. 95-593, 90 Stat. 716, (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50)

Issued on July 12, 1988.

Barry Felice,
Associate Administrator for Rulemaking.
[FR Doc. 88-18088 Filed 7-15-88; 8:45 am]
BILLING CODE 4910-01-0

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Design Criteria and Operational Performance Specifications for Grain Constituent Measuring Instruments Using Near Infrared Spectroscopy

AGENCY: Federal Grain Inspection Service, USDA.
ACTION: Notice.

SUMMARY: This notice announces that the Administrator of the Federal Grain Inspection Service (FGIS) has tentatively approved and is requesting comments on "Design Criteria and Operational Performance Specifications for Grain Constituent Measuring Instruments Using Near Infrared Spectroscopy." This notice also provides information concerning procedures that FGIS will follow in approving such equipment.

DATES: Comments to be postmarked on or before August 15, 1988.

ADDRESSES: Comments must be submitted in writing to Lewis Lebakken, Jr., Management Improvement and Information Programs, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 475-3428.

All comments received will be made available for public inspection at the above address located at 14th & Independence Avenue, SW., Washington, DC, during regular business hours.

SUPPLEMENTARY INFORMATION: The FGIS Type Evaluation Handbook instructions require that prior to the establishment of new or amended design criteria and performance standards for grain inspection or sampling equipment, comments shall be solicited by publishing a notice in the Federal Register. This notice is

published in accordance with those instructions. Interested parties may obtain copies of the design criteria and operational performance specifications from: Federal Grain Inspection Service, Standardization Division, Quality Control Branch, P.O. Box 20285, Kansas City, MO 64195 (816) 374-7585.

The Administrator has tentatively approved new design criteria and performance standards for grain inspection and sampling equipment using near infrared spectroscopy and is seeking comments concerning the criteria and standards from the public.

We believe it is vitally important to formally adopt new design criteria as soon as possible, and to immediately begin the process of approving near infrared spectroscopy instruments for the determination of oil, protein, and moisture in soybeans.

Companies requesting approval of equipment for use in official inspection shall submit their requests to the Quality Control Branch, Standardization Division, P.O. Box 20285, Kansas City, MO 64195 in accordance with the procedures detailed in the Type Evaluation Handbook. Copies of the Type Evaluation Handbook are available from the Standardization Division.

Because of limited facilities and staff and the urgency of approving such near infrared spectroscopy instruments, requests for approval by FGIS of these instruments will take priority over all other approval requests between July 1, 1988, and March 1, 1989. Any manufacturer or representative seeking approval of near infrared spectroscopy instrumentation for official inspection of soybeans by March 1, 1989, shall submit a request for type evaluation by September 1, 1988. Two instruments of each model accepted for type evaluation shall be made available to the Quality Control Branch by October 1, 1988. Companies will be limited to two models each in the initial tests commencing October 1, 1988.

Date: July 12, 1988.

W. Kirk Miller,
Administrator.

[FR Doc. 88-18027 Filed 7-15-88; 8:45 am]
BILLING CODE 3410-01-0

Federal Register

Vol. 53, No. 137

Monday, July 18, 1988

Forest Service

Woewodski Island Implementation Analysis; Tongass National Forest, AK

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the Implementation Analysis of Woewodski Island on the Petersburg Ranger District. The Notice of Intent for this project, which was formerly called the Whiskey Timber Sale EIS, was published in Federal Register (Vol. 51, No. 91) on May 12, 1986. This Notice of Intent revises the Whiskey Timber Sale notice to reflect the expanded scope of the EIS and update for issuing the Final EIS.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Peter M. Tennis, Petersburg District Ranger, Stikine Area, Tongass National Forest, P.O. Box 1326, Petersburg, Alaska 99833, by October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to David C. Schmitt, Timber Management Assistant, Petersburg Ranger District, Stikine Area, Tongass National Forest, phone 907-772-3871.

SUPPLEMENTARY INFORMATION: An environmental analysis was done for the Whiskey Timber Sale which considered a range of action alternatives and a "No Action" alternative. This analysis was documented in an Environmental Assessment (EA) in April, 1985. Alternative locations for a Log Transfer Facility (LTF) were also considered and documented in the same EA. This facility will allow equipment to be landed on the island and logs to be transferred from land to saltwater and subsequently towed to a mill.

Extensive scoping and public review occurred over a 14 month period during IDT analysis of sale alternatives and preparation of the EA. The original analysis indicated that the proposed project would not have a significant effect on the human environment. The decision to prepare an Environmental Impact Statement for Woewodski Island was made after considering public

comments received through the scoping process.

Additional public involvement and review took place while the EIS was being prepared. A Draft EIS for Woewodski Island was issued on June 1, 1987. It considered a "No Action" alternative and a range of action alternatives that would harvest from 10 to 40 MMBF of timber and associated road construction. A formal public comment period followed the release of the Draft EIS from June 1 to August 15, 1987. A notice of availability for the Draft EIS was published in the Federal Register (Vol. 52, No. 118) on June 19, 1987.

Federal, State, and local agencies; potential purchasers; and other individuals or organizations who have been, or who may be, interested in, or affected by, the decision were invited to participate in the scoping process for both the EA and the EIS.

The Final EIS is scheduled to be completed by October 1988. The Forest Service is required to respond in the Final EIS to the comments received during the review period for the Draft EIS (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Douglas K. Barber, Forest Supervisor, Stikine Area, Tongass National Forest, Petersburg, Alaska, is the responsible official.

Douglas K. Barber,
Forest Supervisor.

Date: July 8, 1988.

[FR Doc. 88-10012 Filed 7-15-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Caribbean Basin Initiative Investment Survey.

Form Numbers: Agency—ITA-734P, OMB—0625-0193.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 200 respondents; 67 reporting hours.

Average Hours Per Response: 20 minutes.

Needs and Uses: As a member of the Operations Subcommittee for the Interagency Caribbean Basin Initiative (CBI) Task Force, the International Trade Administration (ITA) is responsible for implementing the survey. This survey of companies that have made equity investment in CBI beneficiary countries (1) measures the impact and effectiveness of U.S. and Caribbean government investment and trade promotion programs, (2) identifies problems and opportunities by country and industrial sector, and (3) indicates where additional effort is required to achieve the goals outlined by the President's Caribbean Basin Initiative.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 11, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-10066 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 389]

Resolution and Order Approving the Application of the Community Development Foundation for a Foreign-Trade Zone in Findlay, OH, and a Subzone at Sites in Findlay and Moraine, OH

Resolution and Order

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Pursuant to the authority granted in the Foreign-Trade Zones Act of January 18, 1934, as amended (19 U.S.C. 81a-

81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Community Development Foundation, an Ohio non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on October 7, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Findlay, Ohio, adjacent to the Toledo Customs port of entry, and special-purpose subzone sites at the tire manufacturing plant of Cooper Tire and Rubber Company in Findlay, Ohio, and at its distribution facility in Moraine, Ohio, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and, finding that the general-purpose zone proposal is in the public interest, and that the special-purpose subzone proposal would be in the public interest if approval were given subject to certain restrictions, approves the general-purpose zone and approves the special-purpose subzone subject to the following conditions:

1. Cooper Tire shall elect privileged foreign status (19 CFR 146.65) on foreign steel tire cord (not classifiable as a textile product) and foreign steel mill products prior to manipulation or manufacturing, if the same items are being produced by a domestic plant.

2. Cooper Tire shall make Customs entry for consumption on any foreign textile products, including polyester tire cord, prior to admission into the subzone for manipulation or manufacturing, so that there will be no exemption from quota, visa or license requirements applicable to foreign textile products in the subzone.

3. Cooper Tire shall elect privileged foreign status on any foreign merchandise that is subject to antidumping or countervailing duty orders at the time of admission to the subzone.

As the general-purpose zone proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall

notify the Board for approval prior the commencement of any manufacturing operation within the general-purpose zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board,
Washington, DC

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Findlay, Ohio, With Subzone Sites in Findlay and Moraine, Ohio

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Community Development Foundation (the Grantee), an Ohio non-profit corporation, has made application (filed October 7, 1986, FTZ Docket 31-86, 51 FR 37617) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Findlay, Ohio, adjacent to the Toledo Customs port of entry, and a special-purpose subzone for the tire manufacturing and distribution facilities of Cooper Tire and Rubber Company in Findlay and Moraine, Ohio;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied and that the proposal would be in the public interest if approval is given subject to the condition in the resolution accompanying this action;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone and subzone, designated on the records of the Board as Zone No. 151 and Subzone No. 151A, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the

regulations, and to those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Operation of the foreign-trade zone and subzone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing within the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 6th day of July 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.
C. William Verity,
Chairman and Executive Officer.

Attest:
John J. De Ponte, Jr.,
Executive Secretary.
[FR Doc. 88-10097 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-05-M

[Docket 25-88]

Proposed Foreign-Trade Zone, Muskogee, OK; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Muskogee City-County Port Authority (Port Authority), requesting authority to establish a

general-purpose foreign-trade zone in Muskogee, Oklahoma, within the Muskogee Station of the Tulsa Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 28, 1988. The Port Authority is authorized to make the proposal under Title 61, section 1108, of the Oklahoma Statutes.

The proposed general-purpose foreign-trade zone will involve 14 acres located within the Port Authority's industrial park at the Port of Muskogee at Port & Industrial Park Service Road and the Port Access Road. The site contains over 94,000 square feet of storage space for warehousing operations.

The application contains evidence of the need for zone services in the Muskogee area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of paper products, machinery and parts, gauges and lighting equipment. Specific manufacturing approvals are not being sought at this time. Requests will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057-3012; and Colonel Frank M. Patete, District Engineer, U.S. Army Engineer District Tulsa, P.O. Box 61, Tulsa, Oklahoma 74121-0061.

As part of its investigation, the examiners committee will hold a public hearing on August 10, 1988, beginning at 1 p.m., at Meeting Room "B," Muskogee Civic Center.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by August 1. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through September 9, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

BEST COPY AVAILABLE

Muskogee City-County Port Authority
Offices, Rt. 6, Port 50, Muskogee,
Oklahoma 74401
Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room 1529,
14th and Pennsylvania Avenue, NW.,
Washington, DC 20230.

Dated: July 11, 1988.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-10060 Filed 7-15-88; 8:45 am]
BILLING CODE 3510-19-41

National Bureau of Standards

[Docket No. 80335-8138]

NBS Manufacturing Technology Centers Program

AGENCY: National Bureau of Standards,
Commerce.

ACTION: Notice: Announcing program to
fund cooperative agreements for
manufacturing technology centers.

SUMMARY: The purpose of this notice is
to inform potential applicants of a
Program to fund Cooperative
Agreements for Manufacturing
Technology Centers. The National
Bureau of Standards (NBS) is
establishing a special Program for
Manufacturing Technology Centers to
provide seed money and technical
assistance on a one-time basis to assist
non-profit organizations.

Closing Date for Applications:
Applications will be accepted until
September 16, 1988.

ADDRESS: Applicants must submit one
signed original plus two (2) copies of
their proposal along with the Standard
Form 424 as referenced under the
provisions of Attachment M of OMB
Circular A-110 to: NBS Manufacturing
Technology Centers Program, National
Engineering Laboratory, National
Bureau of Standards, Room B-119,
Technology Building, Gaithersburg, MD
20899.

FOR FURTHER INFORMATION CONTACT: To
receive additional Program information
telephone Dr. John W. Lyons, Director of
the National Engineering Laboratory,
(301) 975-2300.

SUPPLEMENTARY INFORMATION: The
National Bureau of Standards will
provide one-time seed money to not
more than three non-profit organizations
for the operation of Manufacturing
Technology Centers (MTC) serving
different U.S. geographic regions. The
goal of the Manufacturing Technology
Centers is to accelerate the transfer of
advanced manufacturing technology to
U.S. industry (especially small and

medium-sized companies) and to assist
firms in improving their productivity and
competitiveness. Each center will be
capable of applying advanced
manufacturing techniques to the needs
of manufacturers located in its region
and demonstrate its capability to
transfer specific advanced
manufacturing technologies developed
at the National Bureau of Standards' Automated Manufacturing Research Facility. Applicants must identify the technologies to be demonstrated and transferred by the proposed center.

To accomplish the technology transfer
mission effectively, each center shall be
active in assisting the adoption of
advanced manufacturing techniques by
U.S. industry. Each center shall work
with firms within its region to improve
their manufacturing and process
capabilities. The services of the center
shall be available to firms located in its
state, in its region, and elsewhere. Also,
each center is expected to amplify
(leverage) its regional efforts so its
technology transfer experience will have
national impact.

The transfer of pragmatic technology
applications is the primary objective
rather than performance of basic
research. This task requires that each
center must: (1) Inform and educate the
industrial firms in its region; (2)
demonstrate the applicability of
advanced technology to these firms; (3)
actively assist firms to evaluate their
requirements; (4) assist with
implementation of desired applications;
(5) support work force training and
retraining; and (6) amplify appropriate
transfer experiences to a relevant
national audience. Each center shall
operate as an active agent in
precipitating technology transfer, rather
than operating as a passive agent that
only provides information.

Each MTC will be operated by a
nonprofit organization which already
may exist or may be incorporated
specifically for this purpose. NBS will
support the operating budget of each
center for the purpose of carrying out
this program on an equal matching-
funds basis with the host organization
providing the remaining financial
support. The matching share must meet
the criteria in Attachment E of OMB
Circular A-110. The funds provided by
NBS may be used for capital and
operating and maintenance expenses.
NBS will provide technical and financial
support for the Program, and will assist
each center with its planning and
implementation activities for this
Program during the time that the centers
are receiving seed monies. NBS will
monitor the performance of each center
in meeting its technology transfer

mission and in fulfilling its fund-
matching requirements for this Program.

A national competition will be held
during 1988 to make the Operating
Awards. It is anticipated that up to three
Operating Awards of up to \$1.5 million
each will be made. The amount of NBS
investment in each Program will depend
upon the particular requirements and
plans for the Program, as well as the
availability of NBS funds. No further
appropriations will be sought for this
Program.

The purpose of the Manufacturing
Technology Centers Program is to
accelerate the diffusion of productivity-
enhancing advanced manufacturing
technology to U.S. industry (especially
small and medium-sized companies).
This purpose will be achieved through the:

- (1) Rapid transfer to industry of new
specific advanced manufacturing
technologies including those developed
at the NBS Automated Manufacturing
Research Facility;
- (2) Active participation from industry,
universities, Federal/State government,
and NBS in the Program;
- (3) Efforts to make new manufacturing
technology and processes available
and usable by U.S.-based industries,
especially small and medium-sized
companies;
- (4) Dissemination of scientific,
engineering, and management
information about manufacturing to
industrial firms including small and
medium-sized manufacturing companies; and
- (5) Utilization where appropriate of
the technical expertise and capability
that exist in Federal laboratories other
than NBS, when centers and the
laboratories find it to be in their mutual
interest.

Proposal Review Process

NBS will provide all proposals to a
Merit Review Panel organized by the
National Research Council which will
evaluate the proposals. NBS will
consider the evaluations of the Merit
Review Panel and make a selected
number of Operating Awards, to the
extent feasible and within limitations of
available funds. Applications should be
in sufficient detail to permit NBS to
evaluate the proposal under the criteria
set forth in the six general categories
below:

(a) Program Relevance

- (1) The specific advanced
manufacturing technologies including
those developed at the NBS Automated
Manufacturing Research Facility which
will be demonstrated and transferred to

a wide range of companies and
enterprises in the region and whenever
possible, small and medium-size
manufacturers.

(b) Technical Capability

- (1) Relevant experience and education
of the full-time key technical staff.
- (2) Adequacy of the facilities and
equipment to support the proposed
Program.
- (3) Proximity and availability of staff
to service the targeted industrial base.
- (4) Adequacy of the work force
training and retraining activities.
- (5) Relevance of the applicants
technical capabilities to the needs of the
regional industrial base.

(c) Market Requirements

- (1) Appropriateness of the regional
target user groups; i.e., the identification,
analysis, and justification of the regional
industries to be served. This includes an
assessment of the needs and receptivity
of these groups to technology transfer
efforts.
- (2) Appropriateness and potential
effectiveness of the Program in
producing technology transfer to the
target industries. Where the service area
of the center includes firms from other
states, the approach for linking with
these states to serve these markets
should be detailed.
- (3) Appropriateness of national
audience; i.e., identification, and
analysis of national audience that would
be most usefully served.
- (4) Appropriateness and effectiveness
of the center's programs, plans, and
mechanisms (e.g., plan for allocating
intellectual property rights) for
producing technology transfer to a larger
national audience.
- (5) Budget, personnel, and facility
allocations to the program activities.

(d) Regional Relationships

- (1) Demonstrated linkages with
regional/state/local economic
development and extension
organizations.
- (2) Demonstrated linkages with
regional industrial, educational, and
training organizations.
- (3) Demonstrated interest of the region
(local, state, industrial, or other entities)
in improving its manufacturing
capabilities.
- (4) Geographic location of the
proposed center vis-a-vis the
concentration of target industries, the
location of other centers and similar
Programs and the technical focus of the
other centers.

(e) Organization and Management Staff

- (1) Appropriateness of the legal and
organizational structure proposed for
facilitating technology transfer.
- (2) Appropriateness of the full-time
staffing levels of management and
technical personnel, and the quality of
this staff's manufacturing, marketing,
and technology transfer experience.
- (3) Record among the management
team for attracting top personnel and for
raising funds with industry, industrial
associations, and state/local
governmental bodies.
- (4) Record of the management team in
building successful organizations and
the team's commitment to technology
transfer.

(f) Funding

- (1) Stability and duration of the
Applicant's matching funding
commitments.
 - (2) Percent of operating costs
guaranteed by the Applicant.
 - (3) Ability to continue to operate
when NBS funds terminate.
- The enumerated criteria will be
equally weighted. To be considered for
an Operating Award, a proposal must
receive at least 70 percent of the
evaluation points from each of the
categories above.

Additional Requirements

Applicants are reminded that a false
statement may be grounds for denial or
termination of funds and grounds for
possible punishment by a fine or
imprisonment. Except where declared
by law or approved by the head of
agency, no award of Federal funds shall
be made to an applicant who is
delinquent on a Federal debt until the
delinquent account is made current or
satisfactory arrangements are made
between affected agencies and the
debtor. The grantee will administer the
grant in accordance with OMB Circular
A-110.

Classification

This document is not a major rule
requiring a regulatory analysis under
Executive Order 12291 because it will
not have an annual impact on the
economy of \$100 million or more, nor
will it result in a major increase in costs
or prices for any group, nor have a
significant adverse effect on
competition, employment, investment,
productivity, innovation, or on the
ability of U.S.-based enterprises to
compete with foreign-based enterprises
in domestic or export markets. It is not a
major federal action requiring an
environmental assessment under the
National Environmental Policy Act. The
NBS Manufacturing Technology Centers

Program does not involve the mandatory
payment of any matching funds from a
state or local government, and does not
affect directly any state or local
government. Accordingly, NBS has
determined that Executive Order 12372
is not applicable to the NBS
Manufacturing Technology Centers
program. This notice does not contain
policies with Federalism implications
sufficient to warrant preparation of a
Federalism assessment under Executive
Order 12612. This notice contains a
collection of information requirements
subject to the Paperwork Reduction Act
which have been approved by the Office
of Management and Budget under
control number 0693-0005 for use
through September 1989. The NBS
Manufacturing Technology Centers
Program is being carried out under the
authority of 15 U.S.C. 1525, 15 U.S.C.
3705 and 3706, and Department of
Commerce Organization Order 30-2A.
Ernest Ambler,
Director, National Bureau of Standards.

Dated: July 12, 1988.

[FR Doc. 88-16035 Filed 7-15-88; 8:45 am]
BILLING CODE 3510-12-41

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal
Consistency Appeal by Paul
Copenhagen From an Objection by the
New York State Department of State

AGENCY: National Oceanic and
Atmospheric Administration,
Commerce.

ACTION: Notice of appeal.

On April 4, 1988, the Secretary of
Commerce received a notice of appeal
from Paul Copenhagen (Appellant).
Appellant is appealing to the Secretary
under section 307(c)(3)(A) of the Coastal
Zone Management Act of 1972 (CZMA),
16 U.S.C. 1456(c)(3)(A), and the
Department's implementing regulations,
15 CFR Part 930, Subpart H. The appeal
arises from an objection by the New
York State Department of State to
Appellant's consistency certification for
the construction of a retaining wall in
Greece, New York, on Lake Ontario.

On May 23, 1988, the Department
received a request from Appellant for a
stay of the appeal pending negotiations
with the State. The State had no
objection, and the Department
accordingly granted a six-month stay. If
the stay expires without resolution of
the issues under dispute and Appellant
then perfects the appeal by submittal of
a brief and supporting data and

information, the Department will publish notices in the *Federal Register* and a local newspaper soliciting public comments on the issues raised in the appeal.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: July 11, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88-10037 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-26-2

Coastal Zone Management; Federal Consistency Appeal by Sucesion Alberto Bachman From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On March 18, 1988, Sucesion Alberto Bachman (Appellant), through counsel, filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal arises from and objection by the Puerto Rico Planning Board (PRPB) to the Appellant's certification that his proposed installation of a swimmer's protection barrier at Palomino Island would be consistent with Puerto Rico's coastal management program. The PRPB's objection precludes the U.S. Army Corps of Engineers from issuing to the Appellant a permit to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the *Federal Register* and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric

Administration U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: July 11, 1988.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 88-10036 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-26-2

Intent To Conduct Scoping Meetings and Prepare Draft Environmental Impact Statement on Proposed Estuarine Research Reserve Components, Chesapeake Bay, MD

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to conduct scoping meeting and prepare draft environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), intends to conduct scoping meetings and prepare a draft environmental impact statement (DEIS) on the designation of the proposed Chesapeake Bay Estuarine Research Reserve components in the State of Maryland. In accordance with the provisions of the National Environmental Policy Act (NEPA) and section 315 of the Coastal Zone Management Act (CZMA). Designation of these reserve components would protect approximately 1,500 acres of important estuarine habitat in Talbot, Hartford, Prince Georges and Anne Arundel Counties.

Discussion: This estuarine reserve proposal is currently being developed in consultation with the State of Maryland, Federal agencies and affected public groups. The proposal, as a Federally-assisted action, has been reviewed by the Maryland Department of State Planning, in accordance with OMB Circular A-95.

The proposed Chesapeake Bay National Estuarine Research Reserve is a multiple-site reserve which will total five components. The Monie Bay component was designated in 1985. Three other sites have been selected through a set of criteria for site selection and these include Adkins Marsh/Kingston Landing, Otter Point Creek and Jug Bay. The fifth component, a middle bay site, will be nominated and selected by the end of 1989.

The Office of Ocean and Coastal Resource Management will hold scoping meetings at the following time and places:

Wednesday, August 10, 1988 at 7:00 p.m.—Easton Town Building, Second Floor, 14 South Harrison Street, Easton, Maryland 21801 (comments on Adkins Marsh/Kingston Landing).

Tuesday, August 16, 1988 at 7:00 p.m.—Equitable Bank Building, First Floor Conference Room, 220 South Main Street, Belair, Maryland 21014 (comments on Otter Point Creek).

Thursday, August 18, 1988 at 7:00 p.m.—Prince Georges County Administration Building, Council Hearing Room, First Floor, Upper Marlboro, Maryland 20772 (comments on Jug Bay).

Interested parties who wish to submit suggestions, comments, or substantive information concerning the scope or content of this proposed environmental impact statement are invited to attend. Parties who wish to respond in writing should do so by August 29, 1988. The DEIS will be prepared in compliance with the Council on Environmental Quality (CEQ) regulations (FR Vol. 43 November 29, 1978).

Comments may be submitted in writing or by telephone to: Ms. Cheryl Graham, Project Assistant, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone 202/673-5122).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Estuarine Reserves)

Date: July 12, 1988.

John J. Carey,

Deputy Assistant Administrator, National Ocean Service.

[FR Doc. 88-10034 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-26-2

National Telecommunications and Information Administration

Institute for Telecommunications Sciences; Establishment of Core Research Advisory Committee

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of establishment.

SUMMARY: Notice is hereby given that the Secretary of Commerce, after consultation with the General Services Administration, has determined that the establishment of an Institute for Telecommunication Sciences (ITS) Core

Research Advisory Committee is in the public interest and will enhance the Department's performance of legally-imposed duties.

DATES: The Committee's charter will be filed no sooner than 15 days from August 2, 1988.

ADDRESS: Interested persons are invited to submit comments or inquiries regarding the establishment of the Committee to: Policy Coordination Division, Office of Policy Coordination and Management, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4890, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jack Gleason, Chief, Policy Coordination Division, NTIA, at the address given above; telephone 202/377-1835; or Suzanne Kern, Committee Management Analyst, DOC; telephone 202/377-0142.

SUPPLEMENTARY INFORMATION: The committee will advise the Assistant Secretary of Commerce for Communications and Information on the basic research programs and services of ITS and its related technology transfer and cooperative research programs. In this role, the committee will suggest areas where neither private industry nor academic institutions are performing basic research which could lead to the development and use of new telecommunications technologies by U.S. industry. The committee will make recommendations as to how the results of that research should be disseminated to the private sector.

The committee will consist of approximately nine members representative of the scientific and technological disciplines which ITS employs in its research. We anticipate that three members will be from the private sector, three from academic institutions, and three from other Federal departments and agencies. Members will be appointed by the Secretary of Commerce so as to assure a balanced representation.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Authority: 15 U.S.C. 272(11-13, 18); sec. 5 E.O. 12046, 43 FR 13349, 3 CFR, 1979 Comp., pp. 164-165.

Date: July 12, 1988.

Alfred C. Sikes,

Administrator.

[FR Doc. 88-10051 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-26-2

DEPARTMENT OF DEFENSE

Defense Communications Agency

Systems of Records; Privacy Act

AGENCY: Defense Communications Agency, DoD.

ACTION: Notice for public comment.

SUMMARY: The Defense Communications Agency proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974.

DATE: This proposed action will be effective August 17, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Ms. Susan Chadick, Deputy General Counsel, Code H105, Defense Communications Agency, Washington, DC 20305-2000. Telephone: 202-692-2270; Autovon: 222-2770.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Chadick at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The Defense Communications Agency systems of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the *Federal Register* as follows:

FR Doc. 85-10237 (50 FR 22808) May 29, 1985 (Compilation)

FR Doc. 86-13778 (51 FR 22111) June 18, 1986

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on July 6, 1988, to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 12, 1988.

K317.01

SYSTEM NAME:

Mishap Report.

SYSTEM LOCATION:

Facilities Engineering and Building Services Branch, Code H317, Headquarters, Defense Communications Agency (DCA), 6th and South Courthouse Road, Arlington, VA 22204.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Those DCA civilian and military employees who receive a job-related injury or illness.

CATEGORY OF RECORDS IN THE SYSTEM:

Name, social security number, age and sex of employee injured, the Department, Agency, Branch, date and time of injury, nature of injury/illness, brief description of injury and corrective action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR 1960.2; Pub. L. 91-596; Executive Orders 12196 and 9397, DoD Instruction 6055.1

PURPOSE(S):

The Mishap Report establishes the requirements and responsibilities for reporting all mishaps which result in injury, occupational illness, and/or property damage, or which interrupt or interfere with the orderly progress of normal DCA activities. The information contained in the report will be used for mishap prevention purposes only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the "Blanket Routine Uses" set forth at the beginning of DCA's listing of records system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Currently paper records are stored in file folders, however in the future computer storage will also be used.

RETRIEVABILITY:

Information is retrieved by the name, social security number, and date of injury.

SAFEGUARDS:

Records are filed in a secure file system, accessible only to authorized personnel who clearly have a need to know the information. Doors are locked at night and the building has security guards.

RETENTION AND DISPOSAL:

Records are not permanent. They are retained for at least five years following the end of the calendar year to which they relate and then destroyed.

SYSTEM MANAGER AND ADDRESS:

DCA Safety and Occupational Health Manager, Facilities Engineering and Building Services Branch, Code H317.

Headquarters, DCA, 8th and South Courthouse Road, Arlington, VA 22204.

NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to Facilities Engineering and Building Services Branch, Code H317, Headquarters, DCA, 8th and South Courthouse Road, Arlington, VA 22204. The full name of the injured person and the date of injury will be required to determine if the system contains a record. The requestor may visit the Facilities Engineering and Building Services Branch, Code H317 during normal working hours to obtain information on whether the system contains records pertaining to him or her.

RECORD ACCESS PROCEDURES:

Access may be obtained through the Facilities Engineering and Building Services Branch, Code H317, Headquarters, DCA. The address is listed above.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Names and other personal information on those individuals in the system are obtained/gathered by supervisors of injured employees, recorded on DCA Form 73 and 74, and forwarded to the Safety and Health Manager, Facilities Engineering and Building Services Branch, Code H317.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-16059 Filed 7-15-88; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF EDUCATION

Notice Of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 17, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs,

Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 725 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) Recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 12, 1988.

Carlos U. Rios,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: EXISTING

Title: Procedures and Criteria for Recognition of Accrediting Agencies

Frequency: Once every five years

Affected Public: State or local governments; non-profit institutions

Reporting Burden:

Responses: 30

Burden Hours: 2,400

Recordkeeping:

Recordkeepers: 88

Burden Hours: 86

Abstract: National and regional accrediting agencies submit petitions to the Department addressing the procedures and criteria for the

Secretary's recognition of accrediting agencies.

Office of Postsecondary Education

Type of Review: EXTENSION

Title: Application for Fulbright-Hays

Seminars Abroad Program

Frequency: Annually

Affected Public: Individuals or households

Reporting Burden:

Responses: 1,000

Burden Hours: 1,000

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used by individuals to apply for grants under the Fulbright-Hays Seminars Abroad Program. The Department will use the information to select educators to participate in the program.

[FR Doc. 88-16014 Filed 7-15-88; 8:45 am]

BILLING CODE 4100-01-M

DEPARTMENT OF ENERGY

Idaho Operations Office; Refractory Materials Research and Development

AGENCY: Department of Energy.

ACTION: Solicitation for Financial Assistance applications No. DE-PS07-88ID12782.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is seeking to assist research and development of new refractory materials, or improvements to existing refractory materials. This research is to be directed towards those refractories utilized by the aluminum, glass, cement, and iron and steel industries. The research and development to be assisted must lead to reduced energy consumption in the end-use industries. The objective of this solicitation is to support projects for the development of new or improved refractory materials which will lead to reduction of energy consumption in one or more of the above end-use industries of .01 quadrillion BTU annually by providing commercially viable technology that will enhance the competitive position of the domestic end-use industries. This enhancement may be through major gains in manufacturing productivity, process cost reduction, and/or product quality improvement. These objectives will be accomplished by entering into cost-shared financial assistance agreements with the applicants selected. Multi-year, multi-phased projects are anticipated with a total of approximately \$8.0 million to be

available over the five-year program period. DOE anticipates four awards for the initial phase of the projects; however, this number may vary. Applications must state that the potential energy savings of the proposed project is a minimum of .01 quadrillion BTU annually by the end-use industry. Applications must show a cost share which will be provided by the applicant in each phase of the project. Applications must also evidence the commitment of a refractory producer and an end-user, either by virtue of being the applicant or by a letter of commitment to the project. Private industry, educational institutions, nonprofit organizations, individuals, and other organizations are invited to respond to this announcement. Applications from Federal Agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government will not be considered for selection and should not respond.

DATES: This solicitation is expected to be available to interested parties by mid-July. Applications are due October 17, 1988.

CONTACTS: Potential applicants desiring to receive a copy of this solicitation should provide a written request to: Elizabeth M. Bowhan, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Issued at Idaho Falls, Idaho on July 6, 1988.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 88-16105 Filed 7-15-88; 8:45 am]

BILLING CODE 3450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-17-NG]

National Energy Systems, Inc.; Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting National Energy Systems, Inc. (National Energy), blanket authorization to import natural gas. The order issued in ERA Docket No. 88-17-NG authorizes National Energy to import up to 146 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-8478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 13, 1988.

Constance L. Buckley,

Acting Director, Natural Gas Division, Office of Fuels Programs.

[FR Doc. 88-16106 Filed 7-15-88; 8:45 am]

BILLING CODE 3450-01-M

[ERA Docket No. 87-63-NG]

National Steel Corporation; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting National Steel Corporation (National) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87-63-NG authorizes National to import up to 50 Bcf of Canadian natural gas for use at its Great Lakes Steel plant through a proposed new pipeline to be constructed under the Detroit River. The term of the authorization granted is two years, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-8478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 13, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-16115 Filed 7-15-88; 8:45 am]

BILLING CODE 3450-01-M

[ERA Docket No. 88-36-NG]

Petro-Canada Hydrocarbons, Inc.; Application to Extend Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Application for Extension of Blanket Authorization to Import Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 28, 1988, of an application filed by Petro-Canada Hydrocarbons Inc. (PCH) requesting that the blanket authorization previously granted in DOE/ERA Opinion and Order No. 100 (Order No. 100), issued January 3, 1986 (ERA Dkt. No. 85-29-NG), be amended to extend its term for one year beginning on March 2, 1988, the expiration of its current import authorization, through the period ending March 3, 1990. PCH's existing blanket import authorization allows it to import up to a maximum of 150 Bcf of Canadian natural gas. Under the extension requested, PCH would be authorized to import volumes not to exceed in the aggregate 75 Bcf of Canadian natural gas over a one-year period.

Quarterly reports filed with the ERA indicate that PCH has imported 2.1 Bcf of natural gas under its current import authorization as of April 1, 1988.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 17, 1988.

FOR FURTHER INFORMATION:

Laraine A. Moore, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8478. Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8667.

SUPPLEMENTARY INFORMATION: PCH is a wholly-owned subsidiary of Petro-Canada Inc. (PCI). The gas would continue to be supplied by PCI or such other supply sources as may become available and sold by PCH on a short-term or spot basis to local gas distribution companies, natural gas pipelines, and direct sale customers in California, the Pacific Northwest, the Middle West, and other areas in the U.S. as market opportunities develop. PCH will act either as agent of PCI or will

itself resell gas it has purchased. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. PCH intends to use existing pipeline facilities to transport the gas.

In support of its application, PCH asserts that the proposed extension of its existing blanket import authorization is not inconsistent with the public interest since the extension requested would assure gas consumers expanded access to competitively-priced Canadian gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6084, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

The ERA will condition any authorization issued in this proceeding on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments

received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-070, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., August 17, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice

to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.318.

A copy of PCH's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-070-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 11, 1988.
Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.
[FR Doc. 88-16102 Filed 7-15-88; 8:45 am]
BILLING CODE 5400-01-2

Office of Hearings and Appeals

Cases Filed; Week of May 20, Through May 27, 1988

During the Week of May 20 through May 27, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Bressany,
Director, Office of Hearings and Appeals.
July 8, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 20 through May 27, 1988]

Date	Name and location of applicant	Case No.	Type of submission
May 25, 1988	Glen Minor, Seattle, WA	KFA-0189	Appeal of an Information Request Denial. If granted: The May 10, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Glen Minor would receive a fee waiver for information regarding types of towing vehicles and/or tractors used for the transport of nuclear weapons.
May 27, 1988	Mary Ellen Walsh, Schenectady, NY	KFA-0190	Appeal of an Information Request Denial. If granted: Mary Ellen Walsh would receive access to information of names of individuals at the Knolls Atomic Power Laboratory who were alleged to have possible overexposure to radiation and the results of any safety audits performed during the 30 days prior to April 11, 1988.

REFUND APPLICATIONS RECEIVED

[Week of May 20 to May 27, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/20/88 thru 5/27/88	Crude Oil Refund, Applications Received	RF-272-57075 thru RF272-58003 RF300-6906
5/20/88 thru 5/27/88	Gulf Oil Refund, Applications Received	RF300-7081 thru RF304-3099
5/20/88 thru 5/27/88	ARCO Refund Applications Received	RF304-3112 and RF304-2587 thru RF304-2620

[FR Doc. 88-16112 Filed 7-15-88; 8:45 am]
BILLING CODE 5400-01-2

Cases Filed; Week of June 3 Through June 10, 1988

During the Week of June 3 through June 10, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with

the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of

publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Richard T. Tedrow,
Acting Director, Office of Hearings and Appeals.
July 1, 1988.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 3 through June 10, 1988]

Date	Name and location of applicant	Case No.	Type of submission
June 6, 1988	American Air Filter, Louisville, KY	KFA-0192	Appeal of an Information Request Denial. If granted: The April 26, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and American Air Filter would receive access to certain bid abstracts.
Do.	Arkansas, Little Rock, AR	KEA-0001	Appeal of Energy Conservation Program Decision. If granted: The May 25, 1988 Decision issued to Arkansas by the DOE's Dallas Support Office denying funding under the State Energy Conservation Program, 10 C.F.R. Part 420, for a photovoltaic demonstration project at Meadowcreek, Inc. would be reversed.

REFUND APPLICATIONS RECEIVED

[Week of June 3 to June 10, 1988]

Date	Name	Case No.
5/6/88	Farmington & 8 Mile Mobil	RF225-11031
5/12/88	Knight Oil Company	RF225-11030
5/3/88 thru 5/10/88	Crude Oil Refund Applications Received	RF272-58784 thru RF272-60371
5/3/88 thru 5/10/88	Gulf Oil Refund, Applications Received	RF300-7176 thru RF300-7446
5/3/88 thru 5/10/88	Arco Refund, Applications Received	RF304-2653 thru RF304-2686
5/5/88	Beneet Propane Company	RF304-3161
5/5/88	Milligan Bros. Propane Co.	RF265-2672
5/5/88	Milligan Bros. Propane Co.	RF265-2673
5/5/88	Milligan Bros. Propane Co.	RF265-2674
5/5/88	Milligan Bros. Propane Co.	RF265-2675
5/5/88	Benden Bros. Oil Co.	RF265-2676
5/5/88	Lucky's Sales & Service	RF265-2677
5/7/88	Ozark Gas & Appliance Co.	RF265-2678
5/7/88	Farmers Coop. Grain & Supply	RF265-2679
5/9/88	Reilly's Coin-op Car Wash	RF238-87
5/9/88	Torrid Gas Company, Inc.	RF225-11032

REFUND APPLICATIONS RECEIVED—Continued

(Week of June 3 to June 10, 1988)

Date	Name	Case No.
6/10/88	Gibson LP, Inc.	RF295-2680

[FR Doc. 88-16113 Filed 7-15-88; 8:45 am]
BILLING CODE 4450-01-M

Cases Filed: Week of June 10 Through June 17, 1988

During the Week of June 10 through June 17, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with

the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of

publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

July 1, 1988.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

(Week of June 10 through June 17, 1988)

Date	Name and location of applicant	Case No.	Type of submission
June 13, 1988	The Augusta Chronicle/Augusta Herald, Augusta, GA.	KFA-0193	Appeal of an Information Request Denial. If granted: The May 13, 1988 Freedom of Information Request Denial issued by the DOE Inspector General would be rescinded and the newspapers would receive access to the Inspector General's report on severance payments by the Du Pont Company to employees of the Savannah River Plant.
Do	Harold Fine, Corrales, NM	KFA-0194	Appeal of an Information Request Denial. If granted: Mr. Harold Fine would receive access to certain DOE information which the DOE Inspector General withheld pursuant to various Freedom of Information Act exemptions.
June 14, 1988	Richard M. Neal, Jr. M.D., Lawndale, CA.	KFA-0195	Appeal of an Information Request Denial. If granted: The May 19, 1988 Freedom of Information Request Denial issued by the DOE Executive Secretariat would be rescinded and Dr. Neal would receive access to information on the Advisory Committee for Biology and Medicine of the U.S. Atomic Energy Commission (1947-1951).
June 17, 1988	Salomon, Inc., Washington, DC	KEF-0109	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures, pursuant to 10 C.F.R. Part 205, Subpart V, in connection with the Consent Order entered into with Salomon, Inc.
Do	Suffolk County, Long Island, NY, Washington, DC.	KFA-0196	Appeal of an Information Request Denial. If granted: Suffolk County, Long Island, NY would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

(Week of June 10 to June 17, 1988)

Date	Name	Case No.
6/10/88 thru 6/17/88	Crude Oil Refund, Applications Received	RF272-50372 thru RF272-51670
6/10/88 thru 6/17/88	Gulf Oil Refund, Applications Received	RF300-7447 thru RF300-7590
6/10/88 thru 6/17/88	Arco Refund, Applications Received	RF304-3162 thru RF304-3242
6/13/88	Veterans Petroleum Service	RF265-2681
6/14/88	DeMeyers Service Station	RF265-2683
6/14/88	Farm Supply, Inc.	RF265-2682
6/14/88	Landings Car Wash	RF225-11033
6/14/88	Landings Car Wash	RF225-11034
6/14/88	Monroe Holt	RF225-11035
6/14/88	Monroe Holt	RF225-11036
6/14/88	Helst Implement Company	RF265-2684 thru RF265-2686
6/14/88	Helst Implement Company	RF265-2686
6/16/88	Vanguard Petroleum Corp.	RF308-2
6/20/88	Mendon Gas & Electric Co.	RF265-2687

[FR Doc. 88-16114 Filed 7-15-88; 8:45 am]
BILLING CODE 4450-01-M

Issuance of Decisions and Orders;
Week of May 9 Through May 13, 1988

During the week of May 9 through May 13, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Petition for Special Redress

Oklahoma, 5/13/88, KEG-0032

The DOE issued a Decision and Order concerning a Petition for Special Redress filed by the State of Oklahoma. The State sought approval to use Stripper Well funds for a project previously found by the DOE's Assistant Secretary for Conservation and Renewable Energy to be inconsistent with the terms of the Stripper Well Settlement Agreement. After reviewing Oklahoma's proposal to grant \$100,000 to Waynoka Manufacturing, the DOE decided to disapprove the Oklahoma Petition. The DOE found that the project, which would use Stripper Well funds for the design and production of fiberglass vaults, was an economic development program and did not provide energy-related benefits to injured consumers of petroleum products. Accordingly, Oklahoma's Petition for Special Redress was denied.

Refund Applications

APCO Oil Corp./B.J. Brooks Oil Co., 5/10/88, RF83-136

The DOE issued a Decision and Order concerning an Application for Refund filed by B.J. Brooks Oil Company. Brooks, a motor gasoline and distillate fuel oil reseller, sought a portion of the settlement fund obtained by the DOE through a consent order entered into with its supplier, Apco Oil Corporation. The DOE determined that Brooks met the criteria for a refund, but had not made an adequate showing of injury to merit a refund in excess of the \$5,000 small claims threshold. Specifically, the DOE found that the approximated cost bank data submitted by Brooks in support of its injury claim was not acceptable because it included cost and revenue components for refined products other than motor gasoline. Accordingly, Brooks was awarded a small claims refund of \$5,000 plus \$3,168 in accrued interest.

Request for Modification and/or
Rescission

New York, 5/13/88, KER-0040

The DOE issued a Decision and Order regarding a Motion for Reconsideration filed by the State of New York. The State's Motion sought reconsideration of a DOE denial of a Petition for Special Redress that the State had filed previously. New York, 17 DOE ¶ 82,503 (1988). In New York, the DOE concluded that the State's proposal to use \$5,000,000 of its Stripper Well funds to start a Not-for-Profit Energy Conservation Financing Fund was not consistent with the terms of the Stripper Well Settlement Agreement. In denying the State's Motion for Reconsideration of New York, the DOE found that the project would not be completed for 12 years and that this period exceeds the Stripper Well requirement of timely restitution. Specifically, the DOE found that ten years is a reasonable sunset period for Stripper Well programs. Therefore, the Motion for Reconsideration was denied.

Supplemental Order

Apex Oil Company, 5/10/88, KRX-0053

The DOE considered a request for review of a Special Report Order issued to Apex Oil Company, requiring the firm to provide the DOE with information concerning its crude oil transactions during the period January 1, 1978 through March 31, 1978 and from February 1, 1979 through January 27, 1981. The SRO directed the firm to provide that information in 60 days. In its request for review, Apex stated that the SRO was burdensome and that in any event, it would need additional time to provide the specified information. After fully reviewing the type of information that Apex was directed to provide, the DOE found that the SRO was not unduly burdensome, and that most of the documents involved should already be in existence. Accordingly, the request to withdraw the SRO was denied. However, the DOE found that in view of the considerable amount of material that the firm was directed to provide and the fact that Apex was involved in a bankruptcy proceeding, it should be granted additional time to comply with the SRO. The firm was therefore granted an additional 60 days in which to provide the material related to the earlier period and 120 additional days to provide responses pertaining to the latter period.

Bernard G. Gordon, et al., 5/13/88, RF272-5045 et al.

The DOE issued a Decision and Order granting refunds from crude oil

overcharge funds to 49 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the petroleum products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is \$938. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available. Charles A. Johns, et al., 5/9/88, RF272-5050 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision was \$2,626.

Christian Haaland A/S, et al., 5/13/88, RD272-0244 et al.

A group of thirty States and two Territories of the United States (collectively "the States") filed Motions for Discovery relating to Applications for Refund filed by 58 foreign flag ship carriers. In their refund applications, the foreign flag ship carriers request refunds from the crude oil monies currently available for disbursement by the Office of Hearings and Appeals under 10 CFR Part 205, Subpart V, for injury incurred in purchases of domestically refined petroleum products during the period August 19, 1973 through January 27, 1981. In the motions for Discovery, the States sought information in support of their position that foreign flag ship carriers are not entitled to a refund. Since the issues raised by the States in these refund proceedings are identical, OHA consolidated its consideration of the States' Motions for Discovery. In considering the States' discovery requests, OHA determined that conventional discovery is not appropriate in the context of a refund proceeding under Subpart V but that the States had raised certain matters critical to OHA's evaluation of the underlying Applications for Refund. Accordingly,

the States' Motions for Discovery were dismissed. However, OHA ordered additional pleadings by the foreign flagship carriers and the States concerning: (1) Whether "export sales" are eligible for refunds as a matter of law; and (2) whether the carriers were able to pass through crude oil overcharges under the regulatory regime of the Federal Maritime Commission.

Crystal Oil Company/Crystal-U.S.A., INC., 5/11/88, RF136-1

Crystal-USA, Inc., filed a request for a refund from a consent order fund made available by Crystal Oil Company. Crystal-USA filed that request on behalf of Crystal Petroleum Company, a wholly owned subsidiary of Crystal Oil Company until February 1977, when it was purchased by Crystal-USA. The basis of the refund request was Crystal Petroleum Company's purchase of motor gasoline from Crystal Oil Company. The DOE found that no refund was warranted from the Crystal Oil Company consent order fund, since the relevant consent order settled only alleged crude oil violations and Crystal Petroleum Company did not purchase any crude oil from Crystal Oil Company. The DOE further found that Crystal Petroleum Company was not eligible for a Subpart V crude oil refund based on its gasoline purchases because it did not show that it incurred any injury as a result of those purchases. Accordingly, the refund application was denied.

George Brown et al., 5/12/88, RF272-7005 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is \$2,539.

Gilpatrick Ranch, et al., 5/13/88, RF272-7111 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various activities. With the exception of some agricultural

applicants who used estimates to determine their volume claims, all of the applicants relied on actual purchase records from the crude oil price control period. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is \$1,707.

La Gloria Oil & Gas Company/Racetrac Petroleum, Inc., 5/13/88, RF263-29

The DOE issued a Decision and Order granting a refund from the La Gloria Oil & Gas Company Consent Order Fund to Racetrac Petroleum, Inc. The DOE determined that the firm's approximated cost banks were sufficient to support most of the refund claimed, and, based upon the competitive disadvantage methodology, determined that the firm was eligible for a refund of \$21,112 (\$11,483 principal plus \$9,674 interest).

M.C. Barnes, et al., 5/13/88, RF272-7180 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 26 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is \$671.

Marathon Petroleum Company/East Side Oil Company, 5/12/88, RF250-2712, RF250-2713

The DOE issued a Decision and Order concerning two Applications for Refund filed by East Side Oil Company, a retailer of motor gasoline and middle distillates covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applicant limited its claim to 35 percent of its allocable share and therefore was not required to demonstrate injury. The refund approved in this Decision is \$13,940 in principal and \$2,257 in interest.

Marathon Petroleum Company/Plymouth Oil, Inc., 5/11/88, RF250-2745

The DOE issued a Decision and Order denying Plymouth Oil's Application for Refund filed in the Marathon Petroleum Company special refund proceeding. Plymouth was denied a refund because

its entire claim was based on middle distillate purchases made after the July 1, 1976 decontrol date for middle distillates.

Mobil Oil Corp./Girling & Coutts, 5/13/88, RF225-11024

The DOE issued a Supplemental Order concerning a refund granted to Girling & Coutts in Mobil Oil Corp./Girling & Coutts, 17 DOE ¶ 85,388 (1988). The DOE determined that the refund granted to the applicant had been based on an understatement of the firm's purchases from Mobil. Therefore, an additional refund of \$34, representing \$27 of principal and \$7 of interest, was granted to the firm on the basis of the additional gallons purchased.

Mobil Oil Corp./Meenan Oil Co., Inc., 5/10/88, RF225-9205

The DOE issued a Decision and Order concerning the Application for Refund filed by Meenan Oil Co., Inc., seeking a portion of the funds remitted by Mobil Oil Corp. pursuant to a consent order entered into by Mobil with the DOE. Meenan purchased 79,074,284 gallons of middle distillates from Mobil during the consent order period. After applying a competitive disadvantage analysis to the information submitted by Meenan, the DOE found that the firm had purchased a portion of the Mobil middle distillates at below market prices. Consequently, the refund amount for middle distillates was limited to an amount equal to the gallons of product purchased at above market prices multiplied by the per gallon refund rate. The refund granted totals \$15,930, representing \$12,808 in principal and \$3,122 in interest.

Mobil Oil Corporation/R.L. Vallee, Inc., et al., 5/10/88, RF225-8672 et al.

The DOE issued a Decision granting three Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the Mobil decision. Mobil Oil Corp., 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling \$9,934 (\$7,987 principal plus \$1,947 interest).

Mobil Oil Corp./Simonson Oil Co., Inc., 5/9/88, RF225-10038, RF225-10040, RF225-10041

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Simonson Oil Co., Inc., a reseller of Mobil refined petroleum products. In its refund application, Simonson elected to submit

documentation that it was injured by Mobil's pricing practices. The DOE found that the firm's negative cost banks through September 1, 1974 indicated that the firm had passed through any motor gasoline overcharges incurred prior to that date. The DOE concluded that Simonson was therefore eligible to receive the full volumetric refund amount only for its purchases of Mobil motor gasoline made after September 1, 1974. The refund amount was \$4,180. Because this amount is less than the \$5,000 small claims level and because the firm had not attempted to demonstrate injury concerning its Mobil middle distillates and motor oil purchases, the DOE also granted Simonson a refund based on its purchases of those products in the amount of \$625. The DOE further granted the firm interest of \$1,171.

Northwest Pipeline Corp./Home Petroleum Corp., 5/11/88, RF116-9

In this Decision, OHA approved a refund application filed by Home Petroleum Corporation in the Northwest Pipeline Corporation refund proceeding. Home purchased 5,822,300 gallons of natural gasoline from Northwest during the consent order period. OHA found that Home paid above market prices for 89 percent of the gallons that it purchased from Northwest, and incurred substantial amounts of gross and net excess costs. OHA therefore granted Home a refund of \$10,913 which equals the numbers of gallons that Home purchased times the per gallon refund rate of \$0.001941. Home also receives accrued interest of \$3,961.

Osceola County Secondary Road Department, 5/9/88, RF272-6672

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Osceola County Secondary Road Department (Osceola) based on its documented purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Osceola used petroleum products in the maintenance of county roads. The firm was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of Osceola's refund granted in this Decision is \$130.

St. Joseph Public Schools, et al., 5/12/88, RF272-88 et al.

The DOE issued a Decision and Order granting refunds to seven public school districts that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicants had provided sufficient evidence of the

volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. As end-user of petroleum products, the applicants were presumed to have been injured as a result of the crude oil overcharges. The total of the refunds granted was \$697.

Standard Oil Co. (Indiana)/Grand Traverse Band of Ottawa & Chippewa Indians Inter-Tribal Council of Michigan, Inc., 5/12/88, RQ251-448, RQ251-443

The DOE issued a Decision and Order granting the refund applications filed by the Grand Traverse Band of Ottawa & Chippewa Indians (the Grand Traverse Band) and the Inter-Tribal Council of Michigan, Inc. (Inter-Tribal Council) in the Standard Oil Co. (Indiana) second-stage refund proceeding. Each of the six federally recognized tribal organizations in Michigan requested permission to use its portion of its Amoco monies to found programs suited to the unique needs of its community. The DOE found that the programs provided restitution to injured consumers of petroleum products. Accordingly, the submissions were granted and the Grand Traverse Band and the Inter-Tribal Council were given refunds totalling \$17,305 (representing \$15,314 in principal and \$1,991 in interest).

Standard Oil Co. (Indiana)/Indiana, 5/13/88, RM21-106

The DOE issued a Decision and Order regarding a Motion for Modification filed by the State of Indiana in the Standard Oil Co. (Indiana) (Amoco II) second-stage refund proceeding. In its application, Indiana proposed to modify its use of \$67,296.73 in Amoco II funds. The State proposed that the funds be used to supplement funds previously granted by the DOE for a Fuel Saver Van program and for an Energy Conservation Financial Assistance program. The DOE approved Indiana's Motion for Modification, finding that the two programs for which the State proposed to spend additional funds would make restitution to injured consumers of petroleum products in the State.

Steven W. Landers, et al., 5/9/88, RF272-933 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 150 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum

of the refunds granted in this Decision is \$4,211.

UPG, Inc./Mobil Oil Corporation, 5/12/88, RF288-2

Mobil Oil Corporation filed a refund application in the UPG, Inc. refund proceeding. Mobil purchased 8,612,562 gallons of gasoline from UPG in June 1979. Because of their isolated nature, these purchases appear to have been made on the spot market and would not ordinarily be eligible for a refund. Nevertheless, Mobil successfully demonstrated that the purchases were necessary for maintaining supplies to its base-period customers. Mobil also submitted documents to prove that it sustained a loss in selling the UPG products. The DOE therefore granted Mobil a refund of \$23,254, which equals the number of gallons that Mobil purchased times the volumetric rate of \$0.0027 per gallon. Mobil also receives accrued interest of \$2,170.

Vickers Energy Corporation/Iowa, 5/12/88, RQ1-449

The DOE issued a Decision and Order regarding an Application for Refund filed by the State of Iowa in the Vickers Energy Corporation second-stage refund proceeding. In the Decision, the DOE approved the disbursement of \$131,472 (\$72,984 in principal plus \$58,488 in interest) from the Vickers Energy Corp. escrow account for use for five distinct energy conservation programs that were approved in Standard Oil Co. (Indiana)/Iowa, 17 DOE ¶ 85,043 (1988).

Warrensburg Heights City School et al., 5/12/88, RF272-5783 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 20 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of petroleum products, and established its claim either by consulting actual purchase records or by estimating its consumption based on annual usage. As end-users, each applicant was presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is \$4,766.

Dismissals

The following submissions were dismissed:

Name	Case No.
Boothel LP Gas Company	RF139-21
Cooper Tire and Rubber Co.	RF272-61452
Farmers Union Central Exchange	RF272-47923
St. Joseph Public Schools	RF97-1
	RF272-11965

Name	Case No.
West Iron County Public Schools	RF272-15158

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20565, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

July 1, 1988.

Richard T. Tedrow,
Acting Director, Office of Hearings and Appeals.

[FR Doc. 88-16106 Filed 7-15-88; 8:45 am]
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Issuance of Decisions and Orders; Week of May 16 Through May 20, 1988

During the week of May 16, through May 20, 1988 the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contain a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Kasigluk, Inc., 5/19/88, KEE-0153

The OHA issued a Decision and Order denying an Application for Exception filed by Kasigluk, Inc. of Kasigluk, Alaska. In the Order, the OHA found that Kasigluk had not demonstrated that it was experiencing a hardship, inequity or unfair distribution of burdens by having to file Form EIA-782B, the Reseller/Retailer Monthly Petroleum Products Sales Report. Accordingly the firm was instructed to continue filing the report.

Webb's Oil Corporation, 5/17/88, KEE-0161

Webb's Oil Corporation (Webb) filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." In reviewing the request, the DOE found that Webb would not suffer a hardship, inequity or unfair distribution of burdens by fulfilling its reporting obligation. Accordingly, exception relief was denied.

Motion for Discovery

Mutual Petroleum Marketing Co., Inc., Mutual Petroleum Marketing Co., of California, Inc., Mutual Petroleum Marketing Co., of Texas, Inc., KRD- 0340; Louisiana Bayou Oil Corporation, 5/19/88 KRF-0340

Mutual Petroleum Marketing Co., Inc. (MPM), Mutual Petroleum Marketing Co., of California, Inc. (MPM-California), Mutual Petroleum Marketing Co., of Texas, Inc. (MPM-Texas), and Louisiana Bayou Oil Corporation (collectively referred to as Mutual) filed a Motion for Discovery and Motion for Evidentiary Hearing in connection with their Statements of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to Mutual on September 8, 1986. The DOE denied Mutual's request for contemporaneous construction and administrative record discovery concerning 10 CFR 212.186 (the layering regulation), 205.202 (the anti-circumvention regulation) and 210.62(c) (the normal business practice rule), citing numerous precedents for the denial of these requests. The DOE also denied Mutual's requests for discovery concerning clarification of the PRO, finding that the ERA's pleadings and workpapers already supplied to Mutual were sufficient for the companies to understand the allegations against them and to respond to the disputed issues in the case. Furthermore, the DOE found that some of Mutual's requests were not relevant to Mutual's arguments presented in the companies' Statements of Objections. The DOE granted Mutual 30 days in which to provide alternative matching for the ERA's matching of MPM's 1977 transactions concerning MPM's alleged Subpart F violations. Finally, the DOE granted Mutual's Motion for Evidentiary Hearing solely on the issues of the traditional and historical services provided by MPM-Texas, and the allocation of costs and revenues in the calculation of MPM-California's permissible average markup, including the effect of exchange transactions on those calculations.

Refund Applications

Algona Municipal Utilities, 5/16/88, RF272-1267

The DOE issued a Decision and Order, granting Algona Municipal Utilities' (Algona) Application for Refund from the DOE's Subpart V crude oil refund proceedings. Algona is a regulated public utility that claimed a refund based on its purchases of 6,993,551 gallons of petroleum products. The OHA has regarded refund applications filed by utility firms as

claims filed on behalf of utility customers. Thus, to the extent that utility customers were end-users of petroleum products, the OHA has applied the end-user presumption of injury to claims filed by public utilities. Based on this policy, the OHA granted Algona's refund request, with the condition that Algona pass through the refund to its customers. The total amount of refund approved in this Decision and Order is \$1,390.

Aminoil U.S.A. Inc./Christian County Gas Company, RF139-37; L.H. Osting & Son, Inc., RF139-48; Miller LP Gas Service, 5/20/88, RF139-55

The DOE issued a Decision and Order concerning Applications for Refund filed by Christian County Gas Company, L.H. Osting & Sons and Miller LP Gas Service in the Aminoil U.S.A., Inc. special refund proceeding. This firms submitted cost banks in excess of their refund claims and market price comparison in support of their claims for refunds exceeding \$5,000. After examining the firms' applications and supporting documentation, the DOE concluded that they should receive refunds totaling \$219,137, representing \$125,343 in principal and \$93,794 in interest.

Aminoil U.S.A. Inc./Nelson Lutz D/B/A Lutz LP Gas Company, 5/17/88, RF139-40

The DOE issued a Decision and Order concerning an Applications for Refund filed by Nelson Lutz d/b/a Lutz LP Gas Company (Lutz) in the Aminoil U.S.A., Inc. special refund proceeding. Lutz submitted cost banks in excess of its refund claims and market price comparison material in support of a refund of more than \$5,000. After examining Lutz's applications and supporting documentation, the DOE concluded that the firm should receive refund of \$112,884, representing \$64,476 in principal and \$48,208 in interest.

Belridge Oil Co./Hawaii, 5/18/88, RQ- 451

The DOE issued a Decision and Order granting a second-stage refund application submitted by the State of Hawaii. Hawaii will use \$469 of Belridge Oil Co. monies to provide energy conservation information to the public.

Burke Farms et al., 5/20/88, RF272-4960 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products

for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the petroleum products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is \$1,596. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Conoco Inc./Armour Oil Co., 5/16/88, RF220-170

The DOE issued a Decision and Order concerning an Application for Refund filed by Armour Oil Co., a purchaser of diesel fuel and motor gasoline from Conoco Inc. Armour's level of purchases resulted in a potential refund in excess of the \$5,000 small claims threshold amount. According to the methodology set forth in *Conoco Inc.*, 13 DOE ¶ 85.316 (1985), an applicant who claims a refund above the threshold amount must demonstrate that it maintained sufficient banks of unrecouped increased product costs for the products concerned throughout the consent order period. Despite being given an ample opportunity to do so, Armour was unable to make such a demonstration. The DOE therefore determined that Armour's refund should be limited to the \$5,000 threshold amount. The refund approved in this Decision totaled \$7,719, including interest.

Conoco Inc./Genico Distributors, Inc., 5/17/88, RF220-363

The DOE issued a Decision and Order granting an Application for Refund filed by Genico Distributors, Inc. in the Conoco Inc. special refund proceeding. *Conoco Inc.*, 13 DOE ¶ 85.316 (1985). Genico, a reseller/retailer of refined petroleum products, was eligible for a volumetric refund of \$11,767 on its motor gasoline purchases from Conoco and \$90 on its distillate purchases. After examining the firm's cost banks and applying a three-part competitive disadvantage test, the DOE concluded that Genico should receive a refund of \$4,254 on its motor gasoline purchases. Although Genico did not attempt to demonstrate injury on its distillate purchases, the DOE also granted it a refund on those purchases because the firm's combined principal refund amount fell below the \$5,000 small claims threshold. The total refund granted to Genico was \$6,256, representing \$4,344 in principal and \$1,912 in accrued interest.

Gulf Oil Corporation/Ryder System, Inc., 5/16/88, RF40-1823

The DOE issued a Decision and Order concerning an Application for Refund filed by Ryder System, Inc., the parent company of Ryder Truck Rental, Inc. (RTR), Truckstops Corporation of America (Truckstops), M & G Convoy, Inc. (M & G), and Commercial Carriers, Inc. (Commercial). Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85.048 (1984), Ryder claimed a refund based on the 108,823,234 gallons of petroleum products that its subsidiaries purchased from Gulf during the consent order period. With respect to the 51,033,508 gallons purchased by RTR, the DOE found that the firm did not absorb any of Gulf's alleged overcharges, and thus that portion of Ryder's claim was denied. The DOE also found that Ryder sold 100% of Truckstops' common stock to the Standard Oil Company of Ohio in 1984 and thus was not the appropriate party to apply for a refund based on the 45,478,906 gallons of petroleum products that Truckstops purchased from Gulf. The DOE did approve the portion of Ryder's claim associated with the 12,210,820 gallons of Gulf products purchased by M & G and Commercial. Accordingly, Ryder was granted a refund of \$19,171, representing \$14,897 in principal and \$4,274 in accrued interest.

Husky Oil Company/Petroenergy Corporation, 5/18/88, RF161-66

The DOE issued a Decision and Order concerning an Application for Refund filed by Petroenergy Corporation, a reseller of Husky motor gasoline. Petroenergy submitted information which indicated that it purchased 107,916,236 gallons of motor gasoline from Husky during the consent order period. However, Petroenergy made the required showing of inquiry for only 71,987,795 gallons of Husky motor gasoline. Accordingly, Petroenergy was granted a refund of \$48,016, representing \$32,828 in principal plus \$15,190 in accrued interest.

James Humpala & Sons, Inc. et al., 5/ 17/88, RF272-7367 et al.

The DOE issued a Decision and Order granting refunds to 34 claimants that filed Applications for Refund in OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicants had provided sufficient evidence of the volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that, as agricultural end-users of petroleum products, the applicants were injured as a result of the crude oil overcharges. The total of the refunds granted was \$930.

John W. Hadley, et al., 5/16/88, RF272- 602, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 13 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural, manufacturing, school administration, or service activities. Each determined its purchase volume either on the basis of actual records or by reasonable estimates. Since the applicants were end-users of the petroleum products, they were presumed to have been injured by the alleged crude oil overcharges. The total amount of refund granted in this Decision is \$6,223.

Michael H. Moore, et al., 5/16/88, RF272-948, et al.

The DOE issued a Decision and Order granting eleven Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Five of the applicants determined their purchase volumes by using the USDA estimate for annual petroleum product consumption per acre among the nation's farmers for specific crops. The remaining applicants used estimation methods that the DOE approved in prior determinations. The sum of the refunds granted in this Decision is \$443.

Mobil Oil Corporation/Clauss Heating Oils, Inc., et al., 5/16/88, RF225- 5204, et al.

The DOE issued a Decision and Order granting applications filed by seven purchasers of Mobil refined petroleum products in the Mobil Oil Corporation special refund proceeding. According to the procedures set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85.339 (1985), each applicant was found to be eligible for a refund based on the volume of products it purchased from Mobil. The total amount of refunds approved in this Decision was \$18,724, representing \$15,055 in principal plus \$3,669 in accrued interest.

Smithway Motor Xpress, Inc., 5/17/88, RF272-1008

The DOE issued a Decision and Order dismissing an Application for Refund filed by Smithway Motor Xpress, Inc. (Smithway) in the Subpart V crude oil refund proceedings (Subpart V). The DOE dismissed Smithway's Application because Smithway had already been

approved for a refund from the Surface Transporters Escrow that was created by the Stripper Well Settlement Agreement. Under the terms of the Settlement Agreement, the applicant had to waive its right to a refund in any Subpart V crude oil proceeding. Accordingly, Smithway was ineligible for Subpart V crude oil refunds.

Dismissals

The following submissions were dismissed:

Name	Case No.
Hart Oil Co.	RF225-9533 KF225-9534 RF225-9535

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

July 1, 1988.

Richard T. Tadrow,
Acting Director, Office of Hearings and Appeals.

[FR Doc. 88-16100 Filed 7-15-88; 8:45 am]
BILLING CODE 4900-91-M

Issuance of Proposed Decision and Order; Period of May 16 Through June 3, 1988

During the period of May 16 through June 3, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will

be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

July 8, 1988.

George B. Brezany,
Director, Office of Hearings and Appeals,
Petroleum Traders Corporation, Fort Wayne, IN, KEE-0163, Reporting Requirements

Petroleum Traders Corporation filed an Application for Exception from the provisions of filing Form EIA-782B. The Exception request, if granted, would permit Petroleum Traders Corporation to be exempt from filing this form. On June 1, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 88-16111 Filed 7-15-88; 8:45 am]
BILLING CODE 4900-91-M

Issuance of Decisions and Orders; Week of June 13 through June 17, 1988

During the week of June 13 through June 17, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Decker & Hallman, 6/16/88; KFA-0187

On May 20, 1988, Decker & Hallman, a law firm, filed an Appeal from a determination issued to the firm on April 23, 1988 by the Director of the Office of Oil and Gas of the Energy Information Administration (Director) of the Department of Energy. In that determination, the Director partially granted a request for information

pursuant to the Freedom of Information Act (FOIA), but withheld a master list of companies from which respondents to an Energy Information Administration survey are selected. In considering the Appeal, the DOE found that the Director's denial was based upon a misinterpretation of the scope of the Appellant's request for information. The Director interpreted the Appellant's request to include all potential respondents to the EIA survey, and not just the names and addresses of actual respondents to the survey, as originally requested by Decker & Hallman. Consequently, the case was remanded to the Director for a determination regarding the releasability of the names and addresses of the survey respondents.

William Albert Hewgley, 6/15/88; KFA-0186

William Albert Hewgley filed an Appeal from a determination issued to him by the Inspector General of the Department of Energy. In his determination, the Inspector General first found that 5 U.S.C. 552a (j)(2) and (k)(2) of the Privacy Act shielded from disclosure any documents Hewgley sought under that Act. The Inspector General then denied Mr. Hewgley's request for the same documents under the Freedom of Information Act on the ground that no documents responsive to his request are known to exist.

In considering the Appeal, the DOE contacted the FOI/Privacy Acts Specialist at the DOE Inspector General's Office and learned that some documents responsive to Mr. Hewgley's Original FOI/Privacy Acts Request do exist. Accordingly, the DOE remanded Mr. Hewgley's Request to the Office of the Inspector General for a new and thorough search for documents responsive to the Request. The DOE further ordered that the Inspector General either (i) promptly release any responsive documents to Mr. Hewgley or (ii) promptly issue a denial letter which adequately justifies the applicability of an exemption to each of the documents withheld.

Petitions for Special Redress

Mississippi, 6/13/88; KEG-0034

The DOE issued a Decision and Order concerning the Petitions for Special Redress filed by the State of Mississippi. Mississippi sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposal

to use \$503,800 for a rail yard switching relocation project in Greenwood, Mississippi. The DOE determined that the project was remedial because it would result in smoother traffic flow, less idling time for motorists, and hence substantial fuel savings for the considerable number of motorists traveling through Greenwood. The DOE also found that the project was timely and part of a well-balanced restitutionary plan. In conclusion, the DOE found that Mississippi's program was permissible under the terms of the Settlement, Agreement and OHA precedent. Accordingly Mississippi's Petition for Special Redress was approved.

Texas, 6/13/88; KEG-0033

The DOE issued a Decision and Order concerning a Petition for Special Redress submitted by the State of Texas. The State sought approval to use Stripper Well monies for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE disapproved Texas' proposal to use \$8 million to conduct research related to enhanced oil recovery from oil reservoirs on State lands in Texas. In reaching this determination, the DOE found that the Texas proposal was not restitutionary because the primary beneficiaries of the proposal would be oil companies and certain owners of surface rights on State lands rather than injured consumers. The DOE concluded that oil companies and owners of surface rights were narrow economic interests that should not receive the lion's share of benefits that were intended to be distributed to consumers overcharged on purchases of petroleum products. Accordingly, Texas' Petition for Special Redress was denied.

Request for Modification and/or Rescission

Arizona, 6/13/88; KER-0041

The DOE issued a Decision and Order concerning the Motion for Reconsideration filed by the State of Arizona. The State sought reconsideration of a DOE determination that denied the Petition for Special Redress filed by Arizona concerning the use of Stripper Well funds for a proposed natural gas and electric utility assistance program which would use \$7 million of Stripper Well funds over a 2-year period. In its motion, Arizona demonstrated that the State's low-income elderly population would be the primary beneficiaries of the program. Accordingly, Arizona's Motion for Reconsideration was granted.

Motions for Discovery

Lajet, Inc., 6/15/88; KRD-0011

Lajet, Inc. (Lajet) filed a Motion for Discovery relating to a Proposed Remedial Order (PRO) issued to its predecessor in interest, North American Petroleum Company (NAPCO), by the Economic Regulatory Administration (ERA) on May 8, 1985. In the PRO, the ERA alleges that NAPCO entered into a series of processing agreements with Young Refining Company, a small refiner which had received 100% entitlements exception relief. According to the ERA, NAPCO entered into these agreements for the sole purpose of evading its entitlements purchase obligations. The firm's actions, asserts the ERA, violated 10 CFR 205.202 in that they circumvented the Entitlements Regulations set forth at 10 CFR 211.68 and 211.67. In its Motion for Discovery, Lajet sought the following items: (1) Documents and transcripts of testimony provided to DOE by or on behalf of Young concerning Young's processing agreements, purchase and sales of crude oil, and sales of refined product during the audit period; (2) workpapers explaining the manner in which the ERA computed violation and interest amounts set forth in the PRO; and (3) documents relating to the contemporaneous construction of certain DOE rulemakings and regulations. In considering Lajet's motion, the DOE first determined that the firm had already been provided with sufficient audit workpapers to understand and challenge the methodology employed by the ERA in computing the alleged violation amount and interest assessment. Next, the DOE found that Lajet's contemporaneous construction request was almost identical to that submitted by the firm in another case. Since the DOE had recently found the firm's request to be without merit in the other case, the DOE denied Lajet's request based on the reasons set forth in that other case. Finally, the DOE questioned the relevancy of submissions made by Young in exceptions proceedings in this case, pointing out the differences between the exceptions process and remedial order proceedings. The DOE then found that most of the material submitted by Young in its exceptions proceedings is publicly available. To the extent redactions have been made to any of the Young material because of confidentiality, the DOE held that Lajet had failed to identify specific deleted material they seek or attempt to establish that such deleted material constitutes relevant and material

evidence. Accordingly, the DOE denied Lajet's discovery motion.

The Crude Company, Inc., 6/16/88; KRD-0440

The Crude Company, Inc. (TCC) filed a Motion for Discovery in connection with a Proposed Remedial Order (PRO) issued to the firm on January 9, 1987. In the PRO, the ERA alleges that TCC resold crude oil at a price that exceeded its maximum allowable selling price, or maintained an average markup in excess of its permissible average markup (PAM), in violation of the DOE price regulations codified at 10 C.F.R. Part 212, Subparts F and L. In its Motion for Discovery, TCC propounded numerous requests for admissions, interrogatories, and requests for documents regarding the following issues: (1) The ERA's discretionary choice of TCC's imputed May 15, 1973 base price; (2) the ERA's use of separate inventory accounting to calculate TCC's product costs and banks; and (3) the ERA's calculation of TCC's PAM. A majority of these requests were denied because the firm failed to show that the discovery was necessary for it to obtain relevant and material factual evidence. Five requests for admissions were granted, however, because they sought material, factual information concerning the timing of TCC's first two successful offers for the resale of crude oil. In addition, the OHA determined that the production of additional information by the ERA would be helpful in determining whether the ERA properly used its prosecutorial discretion in establishing TCC's May 15 base price. Accordingly, the OHA ordered the ERA to submit information concerning the following three issues: (1) The reasonableness and scope of the ERA's efforts to locate TCC's nearest comparable outlet; (2) the comparability of TCC and the firm which the ERA claims was TCC's nearest comparable outlet; and (3) the reasonableness of the ERA's choice of TCC's May 15 base price.

Refund Applications

Beacon Oil Company/Cash Oil Company of California, 6/17/88; RF238-8, RF238-75

The DOE issued a Decision and Order concerning two Applications for Refund filed by Cash Oil Company of California (Cash) in the Beacon Oil Company special refund proceeding. On March 25, 1986, Mr. Clyde E. Harvey, the president of Cash, filed a refund claim; on October 15, 1986, Cash's counsel submitted a second Application for Refund which falsely stated that Cash had not filed a previous claim in the Beacon

proceeding. As an initial matter, the DOE dismissed the second application. The March 25, 1988 application was based only on Cash's purchases of Beacon motor gasoline during the August 19, 1973, through March 31, 1975 consent order period. Because Cash already had received credit refunds from Beacon based on those purchases, Cash's original claim was denied.

Billings Freight Systems/Kensington Corp., 6/13/88; RF272-1172, RF272-1192

The DOE issued a Decision and Order granting two Applications for Refund from crude oil overcharge funds based on each Applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each Applicant submitted detailed documentation supporting its claim. As an end-user, each Applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is \$3,337.

Conoco, Inc./Gulf Oil Corporation, 6/16/88; RF220-277

The DOE issued a Decision and Order concerning an Applications for Refund filed by Chevron Corporation on behalf of Gulf Oil Corporation. In its Application, Chevron sought refunds for Gulf's purchases of propane, butane and motor gasoline from Conoco Inc. during the period from January 1, 1973 through January 28, 1981. In the Decision and Order, the DOE determined that Gulf was a spot purchaser of motor gasoline from Conoco, had not shown injury, and was therefore not entitled to a refund for these purchases. With respect to Gulf's purchases of propane and butane, the DOE determined that Chevron was entitled to refunds of \$426 for propand and \$1 for butane. Including interest, the total refund granted in this Decision is \$599.

Earl L. Passwaters et al., 6/13/88; RF272-6807 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 14 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of petroleum products, and established its claim either by consulting actual purchase records or by estimating its consumption. As end-users of the products they claimed, each applicant was found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is \$5,963.

Giltner Public Schools, et al., 6/15/88; RF272-9623 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to eight applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various activities, and each determined its claim either by consulting actual purchase records or by a reasonable method of estimation. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is \$1,129. All of the Claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Gulf Oil Corporation/Rice-Lindquist, Inc., 6/16/88; RF40-1484

Rice-Lindquist, Inc. (Rice) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Gulf Oil Corporation (Gulf). The DOE found that Rice demonstrated that it purchased Gulf motor gasoline, fuel oil and diesel fuel during the consent order period and that Rice was injured. Under the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Rice was found entitled to receive a volumetric refund of \$57,547. In addition, the firm is entitled to receive accrued interest of \$16,509 for a total refund of \$74,056. However, the DOE concluded that it is not appropriate to issue the refund directly to Rice at the present time. Rice is a respondent in an on-going enforcement proceeding. This case is now on appeal to the Federal Energy Regulatory Commission. Pending the outcome of the enforcement proceeding, the DOE determined that the refund of \$74,056 should be deposited into a separate interest-bearing escrow account on behalf of Rice.

Lockheed Air Terminal Inc./Northwest Airlines, Inc., 6/15/88; RF280-24

The DOE issued a Decision and Order granting a refund to Northwest Airlines on behalf of Republic Airlines in the Lockheed Air Terminal refund proceeding. Republic, which is now owned by Northwest, was an end-user of Lockheed's aviation fuel and was therefore presumed to have suffered injury as a result of Lockheed's alleged overcharges. Based on the amount by which Republic was allegedly overcharged, the DOE determined that Northwest was due a refund of \$31,695 (\$17,919 principal and \$13,776 interest).

Marine Petroleum Company and Mars Oil Company/J.D. Streett & Company; Emro Marketing Company, 6/15/88; RF139-15, RF139-18

The DOE issued a Decision and Order concerning Applications for Refund filed by J.D. Streett & Company and Emro Marketing Company in the Marine Petroleum Company and Mars Oil Company special refund proceeding. The firms are resellers who limited their refund requests to \$5,000 in principal or less and were, therefore, presumed to have been injured. The DOE determined that the firms should receive refunds totalling \$12,977, representing \$7,421 in principal and \$5,556 in interest. The refund granted J.D. Streett & Company was placed in an interest-bearing escrow account pending the outcome of an enforcement proceeding involving the firm.

Mobil Oil Corporation/Fultroup Service Station et al., 6/17/88; RF225-58 et al.

The DOE issued a Decision granting eight Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling \$26,433 (\$21,211 principal plus \$5,222 interest).

Mobil Oil Corporation/Monroe Holt, 6/17/88; RF225-11035, RF225-11036

The DOE issued a Decision granting an additional refund of \$198 to Monroe Holt from the Mobil Oil Corp. escrow account. Holt received a second refund because Mobil was able to provide gallonage figures for a gas station for which Holt no longer maintained records. Holt met the requirements set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), and therefore received an additional refund of \$198 (\$159 in principal and \$39 in interest).

Mobil Oil Corp./Smith Oil Co., Inc., 6/17/88; RF225-8767, RF225-8768, RF225-8769, RF225-8770

The DOE issued a Decision and Order granting an Application for Refund filed by Smith Oil Co., Inc., in the Mobil Oil Corp. special refund proceeding. See *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Smith, a reseller-retailer of refined petroleum products, attempted to rebut the level-of-distribution presumption of injury for its purchases of Mobil motor gasoline. After examining the firm's cost books and applying a three-part competitive disadvantage test, the DOE

concluded that Smith should receive a full volumetric refund on its motor gasoline purchases. Smith also claimed a refund on its middle distillate purchases from Mobil. The firm, however, did not attempt to demonstrate injury with regard to its middle distillate purchases. Therefore, that portion of its claim was denied. The total refund granted to Smith was \$6,416, representing \$5,146 in principal and \$1,268 in accrued interest.

Pennzoil Co./West Virginia, 6/15/88; RM10-110

The DOE issued a Decision and Order approving the Motion for Modification filed by the State of West Virginia in the second stage of the Pennzoil Co. special refund proceeding. West Virginia requested permission to use \$72,317 of its previously-approved Pennzoil funds for traffic light synchronization programs in four locations and for the continuation of its interstate highway program. The DOE found that West Virginia's programs were consistent with programs that the DOE approved in the past, and therefore approved the State's proposed modifications.

Pinellas Suncoast/Transit Authority, 6/13/88; RF272-3504

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products from August 19, 1973, through January 27, 1981. The Applicant used actual invoices to calculate its volume claim. Part of the claim was based on transmission fluid. The DOE determined that transmission fluid is derived from petroleum and is an eligible product in these proceedings. The DOE further determined that the Applicant should be presumed injured because it was an end-user of the gallons claimed. The refund granted in this Decision is \$295.

Polcyn Farms et al., 6/13/88; RF272-5288 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to four applicants based on their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities and calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is \$45.

Seward & Harris Gin Co. Seward & Harris, 6/15/88; RF272-2364, RF272-2365

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Seward & Harris Gin Co. used propane to operate its public cotton gin and Seward & Harris used various petroleum products in agricultural activities associated with the cultivation of cotton. Seward & Harris Gin Co. consulted actual fuel supplier invoices to determine its propane gallonage. Seward & Harris estimated its consumption based on the number of acres it farmed. Both applicants were end-users of the products they claimed and were therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is \$243. Both of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Townsend Bros., Inc., 6/13/88; RF272-1133

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of motor gasoline and propane during the period August 19, 1973 through January 27, 1981 (Settlement Period). Because the Applicant lacked gallonage figures, it based its claim on its gasoline and propane expenditures for the Settlement Period. Consequently, the DOE divided the Applicant's gasoline and propane expenditures by weighted average prices for gasoline and propane that the DOE accepted as reasonable in prior crude oil cases. As an end-user, the Applicant was entitled to receive a refund of its full volumetric share. The refund granted in this Decision is \$43.

Dismissals

The following submissions were dismissed:

Name, and Case No.

Don E. Keith Petroleum Products—RF238-31
Torrid Gas Co., Inc.—RF225-11032

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy*

Guidelines, a commercially published loose leaf reporter system.

George B. Breenay,

Director, Office of Hearings and Appeals,
July 8, 1988.

[FR Doc. 88-16110 Filed 7-15-88; 8:45 am]
BILLING CODE 6450-01-8

ENVIRONMENTAL PROTECTION AGENCY

[OSWER-FR-3415-6]

Financial Assistance Program Eligible for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response is announcing the availability of a new financial assistance program, "Source Reduction and Recycling Technical Assistance," for States to establish and expand source reduction and recycling technical assistance programs. This is a grant/cooperative agreement program designed to provide assistance to a limited number of States to develop or expand technical assistance programs that address the reduction of pollutants across all environmental media: air, land, surface water, ground water. The grants/cooperative agreements will be awarded under the authority of section 8001(a) of the Resource Conservation and Recovery Act (RCRA) and any State environmental Agency is eligible to apply.

FOR FURTHER INFORMATION CONTACT: Jackie Krieger, Office of Solid Waste, Waste Minimization Staff (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-6972.

SUPPLEMENTARY INFORMATION: In fiscal year 1988, Congress appropriated to EPA \$4 million for "incentive grants to States to establish and expand waste reduction technical assistance programs and for EPA to establish and operate a technical information clearinghouse." Of the total \$4 million, \$3 million will be awarded to States in cooperative agreements.

The Hazardous and Solid Waste Amendments (HSWA) of 1984 established a national policy declaring that, "wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated

should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment." EPA initially developed a program under HSWA, referred to as the waste minimization program, which focused on promoting source reduction and recycling activities that either: (1) Reduce the total volume of waste that would otherwise be subsequently treated, stored, or disposed; (2) reduce the toxicity of waste that would otherwise be subsequently treated, stored, or disposed; or (3) both, as long as reduction is consistent with the general goal of minimizing present and future threats to human health and the environment.

The waste minimization program originated under HSWA, including its definition and objectives, focused on applications to hazardous waste. However, EPA has expanded the scope of its policy and program to implement a source reduction and recycling program which extends to reducing the potential for environmentally harmful releases to all media, including air, land, surface water, and ground water. EPA stresses that source reduction, involving the reduction or elimination of releases through either production process changes or other source modifications, is a more desirable technique than recycling.

Under this multi-media program, EPA is taking action to build source reduction and recycling options into its decisionmaking and operating processes. EPA's strategy for implementing this program focuses on four areas:

- Focusing on the need for a preventative approach to environmental protection throughout government, industry and the public;
- Creating incentives for and eliminating barriers to source reduction and recycling;
- Supporting the development and implementation of State source reduction and recycling programs;
- Collecting and analyzing data essential to measure national progress on source reduction and recycling.

Because State agencies have more direct contact with generators and hence are more aware of their needs and problems, EPA believes that States working with local governments have the greatest opportunity to work directly with industries on source reduction and recycling. A primary goal of EPA's program is to support States in developing and implementing source reduction and recycling programs and to foster Federal/State information sharing and communication.

These grant/cooperative agreement funds are to be used specifically for establishing and expanding source reduction and recycling technical assistance programs in the States. The activities funded must be performed in the context of a State program—the development or expansion of an ongoing, complementary set of source reduction and recycling activities. Grant/cooperative agreement funds will be awarded to State environmental Agencies with programs in all stages of development, from established programs to programs needing start-up funds.

To apply for funds, State environmental agencies must:

- (1) Submit a Letter of Intent to participate, signed by the Agency Commissioner or Secretary, to the Grants Operations Branch at EPA (see address below by August 15, 1988, and
- (2) Submit a complete grant application package to the Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by September 30, 1988. Applications received after September 30, 1988 will not be considered for an award.

A grant/cooperative agreement application package will be available in July 1988. The package will contain an application, instructions for completing the application, and further information on EPA's source reduction and recycling program. Copies of the application package will be sent to State environmental Agencies. Additional copies will be available from Jackie Krieger of the Office of Solid Waste at the address listed above in the Further Information section.

This program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States must notify the following office writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policies and Procedures Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to determine if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications including projects within a metropolitan area must be sent to the areawide/Regional/local planning

agency designated to perform metropolitan or Regional planning for the area for their review.

SPOCs and other reviewers should send their comments concerning applications to the Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, no later than sixty days after receipt of an application/other required material for review.

Dated: July 5, 1988.

J.W. McGraw,

Assistant Administrator.

[FR Doc. 88-18073 Filed 7-15-88; 8:45 am]

BILLING CODE 5550-50-M

[OPTS-140097; FRL-3415-2]

Access to Confidential Business Information by the General Accounting Office

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The General Accounting Office (GAO) has requested access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In a June 6, 1988, letter to the EPA Director for the Information Management Division of the Office of Toxic Substances, the GAO requested that the Agency provide specified GAO employees access to materials submitted to EPA under all sections of TSCA. The letter indicated that such access is necessary so that GAO can evaluate EPA's efforts to regulate the production of chemicals that deplete stratospheric ozone. Some of the information requested by GAO may be claimed or determined to be confidential.

In accordance with section 14(e) of TSCA and 40 CFR 2.306(h), EPA is required to provide TSCA to GAO in response to a properly authorized request.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide

GAO access to these CBI materials on a need-to-know basis. GAO has indicated that all access to TSCA by GAO will take place at EPA Headquarters. Clearance for access to TSCA CBI under this request is scheduled to expire on July 29, 1988.

EPA will inform GAO of the confidential status of the information in question, of the security procedures EPA follows to protect the information, and of the provisions of section 14 of TSCA, which set criminal penalties for unlawful disclosure of CBI.

Dated: July 6, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-18075 Filed 7-15-88; 8:45 am]

BILLING CODE 5550-50-M

[OPTS-140098; FRL-34153]

Access to Confidential Business Information by Columbia Cascade, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its subcontractor, Columbia Cascade, Incorporated (CCI) of Reston, VA for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than July 28, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under section 4, 6, 7, and 8 of TSCA.

Under contract no. 68-02-4281, subcontractor CCI, 12147 Stirrup Road, Reston, VA will assist the Office of Toxic Substances' Exposure Evaluation

Division in evaluating chemicals being proposed for manufacture for human and environmental exposure and release. Access authorization will be necessary so that the subcontractor may attend meetings where TSCA CBI will be discussed. CCI is working as a subcontractor under the General Sciences Corporation (GSC). Access to TSCA CBI by GSC was previously announced in the Federal Register of August 25, 1987 (52 FR 32053).

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide CCI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on June 15, 1990.

CCI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: July 6, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-18076 Filed 7-15-88; 8:45 am]

BILLING CODE 5550-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service, Implementation Subcommittee

The time has been changed for the next meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service announced at 53 FR 26114 (pub. July 11, 1988). It now is scheduled for: July 20, 1988, 2:00 p.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (800) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-18090 Filed 7-15-88; 8:45 am]

BILLING CODE 4712-01-M

[CC Docket No. 88-301; DA 88-898]

J. Hashtroudi, R. Pelissier, and U.S. Cellular Corp.; Order To Show Cause

AGENCY: Federal Communications Commission.

ACTION: Order to show cause and hearing designation order.

SUMMARY: Pursuant to § 1.91 of the Commission's Rules, Jalal Hashtroudi, Robert A. Pelissier, and U.S. Cellular Corporation (USCC), the partners of JHP Partnership, the nonwireline cellular license of Station KNKA483 in the Manchester-Nashua, New Hampshire MSA, have been ordered to show cause why an order of revocation should not be issued, or some other sanction be imposed. The reason for this action is that it appears the parties have violated § 22.39 of the Commission's Rules.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

DATES: The Order was released on June 15, 1988. Notices of appearance by those named as parties in the Order were due July 5, 1988. The prehearing conference is August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: The issues designated are as follows:

1. To determine the facts and circumstances surrounding the sale of Jenkins' partnership interest to USCC;
2. To determine the facts and circumstances of the "renewed partnership agreement" and the relationship between USCC and the other JHP partners;
3. Whether, in view of the evidence adduced under the foregoing issues, the non-wireline cellular license for the Manchester-Nashua, N.H., MSA has been the subject of one of more authorized transfers of control in violation of § 22.39 of the Commission's Rules;
4. Whether, in view of the evidence adduced on the foregoing issues, the non-wireline cellular license for the Manchester-Nashua, N.H., MSA should be revoked or some other sanction be imposed.

Gerald Brock,
Chief, Common Carrier Bureau.
[FR Doc. 88-18091 Filed 7-15-88; 8:45 am]

BILLING CODE 4712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

BEST COPY AVAILABLE

Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200133

Title: Port of Saipan Ground Lease Agreement.

Parties:

Commonwealth Ports Authority
Antonio Salas Camacho d/b/a
WestPac Freight

Synopsis: The agreement provides for the lease of certain land (Lot 032E 03, containing an area of 5,043 square meters) located at the Commercial Port of Saipan.

By Order of the Federal Maritime Commission.

Dated: July 13, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-16060 Filed 7-15-88; 8:45 am]

BILLING CODE 4730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 11, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 63 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment

period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the Federal Register.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: There is no form used in the collection of this information. The requirement involves a notification to the Federal Reserve which may be in a free-form letter. A copy of the request for clearance (SF 63), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

1. Report title: Notification Pursuant to section 211.23(h) of Regulation K on Acquisitions Made by Foreign Banking Organizations

Agency form number: FR 4002

OMB Docket number: 7100-0110

Frequency: On occasion (estimated average of two per year)

Respondents: Foreign banking organizations

Estimated Number of Respondents: 160

Average hours per response: .5

Annual reporting hours: 160

Small businesses are not affected.

General description of report:

This report is required by law [12 U.S.C. 1844 and 3106], and confidential treatment may be requested.

Foreign banking organizations (FBOs) must inform the Board of shares acquired in companies engaged in activities in the U.S. and of direct and indirect U.S. activities commenced by a subsidiary of the FBO.

Board of Governors of the Federal Reserve System, July 11, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-16026 Filed 7-15-88; 8:45 am]

BILLING CODE 4210-01-M

Banque Nationale de Paris; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be

received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 1988.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Banque Nationale de Paris, Paris, France; to engage de novo through its subsidiary, BNP Leasing Corporation, Dallas, Texas, in leasing real property or acting as agent, broker, or adviser in leasing such property, provided that all such leasing shall comply with the requirements of § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16023 Filed 7-15-88; 8:45 am]

BILLING CODE 4210-01-M

RHNB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 5, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23281:

1. RHNB Corporation, Rock Hill, South Carolina, to acquire 100 percent of the voting shares of MetroBank, N.A., Charlotte, North Carolina.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Tracorp, Inc., Tullahoma, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of The Traders National Bank, Tullahoma, Tennessee.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Worthington Bancshares, Inc., Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Worthington State Bank, Worthington, Indiana.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062788 AND 070888

Name of acquiring person, name of acquired person, name of acquired entity	PMN number	Date terminated
James H. Desnick, M.D., British Land Company plc, British Land of America Inc.	88-1728	06/27/88
Varian Corporation, Precision Scientific, Inc., Precision Scientific, Inc.	88-1905	06/27/88
Optek Technology, Inc., TRW, Inc., Optoelectronics Division	88-1718	06/28/88
Pelika Herlin, Michael Nicklaus, 1) Flynn-Hill Elevator Corp. & 2) Curtis Elevator	88-1750	06/28/88
Lennox International Inc., Richard W. Snyder, SnyderGeneral Corporation	88-1753	06/28/88
VenTech Healthcare Corporation Inc., Avon Products, Inc., Foster Medical Corporation	88-1758	06/28/88
CSR Limited, Rinker Materials Corporation, Rinker Materials Corporation	88-1770	06/28/88
Hickson International PLC, Kerley Enterprises, Inc., Kerley Enterprises, Inc.	88-1792	06/28/88
Alko N.V., Dr. K.C. Bae, My-K Laboratories, Inc.	88-1794	06/28/88
Pope & Talbot, Inc., Georgia-Pacific Corporation, Georgia-Pacific Corporation	88-1796	06/28/88
Wasserstein, Perella & Co. Holdings, Inc., PA Holdings Corporation, PA Holdings Corporation	88-1805	06/28/88
The Henley Group, Inc., PA Holding Corporation, PA Holding Corporation	88-1806	06/28/88
Wasserstein, Perella & Co. Holdings, Inc., IC Industries, Inc., Pneumo Abex Corporation	88-1810	06/28/88
The Henley Group, Inc., IC Industries, Inc., Pneumo Abex Corporation	88-1811	06/28/88
Olympia & York Developments Limited, Datatex Systems Inc., Datatex Systems Inc.	88-1825	06/28/88
Olympia & York Developments Limited, Datatex Systems Inc., Datatex Systems Inc.	88-1831	06/28/88
Galactic Resources Ltd., Homestake Mining Company, Homestake Mining Company	88-1847	06/28/88
Citicorp, Jai Florida, Inc., Jai Florida, Inc.	88-1852	06/28/88
Sara Lee Corporation, Pannill Knitting Company, Incorporated, Pannill Knitting Company, Incorporated	88-1853	06/28/88
Sara Lee Corporation, Pannill Knitting Company, Incorporated, Pannill Knitting Company, Incorporated	88-1858	06/28/88
Kamliche Company, The Times Mirror Company, Certain timberlands of TM	88-1871	06/28/88
Kamliche Company, The Times Mirror Company, Certain timberlands of TM	88-1872	06/28/88
Irving Bank Corporation, Intercontinental Affiliates, DC-9T-1, Inc.	88-1887	06/28/88
Satchi & Satchi Company PLC, Gartner Group, Inc., Gartner Group, Inc.	88-1896	06/28/88

Board of Governors of the Federal Reserve System, July 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10024 Filed 7-15-88; 8:45 am]

BILLING CODE 4210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the in the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062788 AND 070888—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN Number	Date terminated
Saatchi & Saatchi Company PLC, Gartner Group, Inc., Gartner Group, Inc.	88-1897	06/28/88
The Albert Fisher Group PLC, Grossman Paper Company, Grossman Paper Company	88-1846	06/29/88
Bernard B. Kozloff, Diane Corporation, Ben Kozloff, Inc.	88-1851	06/29/88
Rohio Pharmaceutical Co., Ltd., The Mentholatum Company, The Mentholatum Company	88-1780	06/30/88
Bernard Lee House, University of Rochester, University of Rochester	88-1882	06/30/88
Sulzer Brothers Limited, Intermedica, Inc., BMC Acquisition Corp.	88-1906	06/30/88
Energy Development Partners, Ltd., Pyro Energy Corp., Ener Resources Corporation	88-1908	06/30/88
Sulzer Brothers Limited, Intermedica, Inc., Intermedica, Inc.	88-1914	06/30/88
Sulzer Brothers Limited, Intermedica, Inc., Intermedica, Inc.	88-1915	06/30/88
Exxon Corporation, Bernard Lee House, Bernard Lee House	88-1937	06/30/88
Rockwell International Corporation, Communication Machinery Corporation, Communication Machinery Corporation	88-1755	07/01/88
Eastman Kodak Company, Interactive Systems Corporation, Interactive Systems Corporation	88-1790	07/01/88
Japan Storage Battery Co., Ltd., Enpak Incorporated, Enpak Incorporated	88-1843	07/01/88
Pacific Dunlop Limited, Enpak Incorporated, Enpak Incorporated	88-1844	07/01/88
Kramer Capital Partners, L.P., Mission Insurance Group, Inc., Mission American Insurance Company, Compac Insurance	88-1846	07/01/88
Mesulam Rite, American Brands, Inc., E-I Holdings, Inc.	88-1854	07/01/88
Innopac Inc., Jack Kaitman, Continental Extrusion Corp.	88-1885	07/01/88
Integrated Resources, Inc., Equus Building Products, L.P., Equus Building Products, L.P.	88-1902	07/01/88
Huber + Suhner AG, Hercules Incorporated, Champlain Cable Corporation	88-1817	07/01/88
Applied Magnetics Corporation, Magnetic Data, Inc., Magnetic Data, Inc.	88-1818	07/01/88
Environmental Treatment and Technologies Corp., Anthony Meeli, National Surface Cleaning, Inc.	88-1833	07/01/88
Kubota, Ltd., Ardent Computer Corporation, Ardent Computer Corporation	88-1936	07/01/88
Haril Development Co., Ltd., Calista Corporation, Calista Corporation	88-1966	07/01/88
H Group Holding, Inc., Ramada Inc., Ramada Inc.	88-1779	07/05/88
MCO Holdings, Inc., KaiserTech Limited, KaiserTech Limited	88-1797	07/05/88
J.B. Poincaré, Durakon Industries, Inc., Jav-Dan Corporation	88-1823	07/05/88
MEDIQ Incorporated, Bank of New England Corporation, Financial Enterprises Corp.	88-1868	07/05/88
Sumitomo Chemical Company, Ltd., Hispan Corporation, Hispan Corporation	88-1875	07/05/88
Hercules Incorporated, Hispan Corporation, Hispan Corporation	88-1877	07/05/88
Arabian Investment Banking Corp., (INVEBCORP) E.C., Ronald DeFusco, NYTSA Acquisition Corp.	88-1901	07/05/88
Erol Y. Baker, F. Browne Gregg, Consolidated Minerals, Inc.	88-1921	07/05/88
Sameer Y. Zaher, F. Browne Gregg, Consolidated Minerals, Inc.	88-1922	07/05/88
William A. Fickling, Jr., WAF Acquisition Corporation, WAF Acquisition Corporation	88-1924	07/05/88
Ira M. Koger, Koger Properties, Inc., Koger Properties, Inc.	88-1938	07/05/88
W.D. Company, Inc., Miller & Paine, M & P	88-1945	07/05/88
Eric F. Findlay, c/o Sicom Limited, Charles Gallup, GalCorp	88-1847	07/05/88
Mr. Peter W. May, Avery, Inc., Avery, Inc.	88-1952	07/05/88
Mr. Peter W. May, Nelson Peltz, CJI Industries, Inc.	88-1953	07/05/88
Ralph J. Roberts, SCI Associates, L.P., SCI Holdings, Inc.	88-1786	07/06/88
Tele-Communications, Inc., SCI Associates, L.P., SCI Holdings, Inc.	88-1793	07/06/88
Golden Nugget, Inc., Del Webb Corporation, Del Webb Corporation	88-1814	07/07/88
Emerson Electric Co., Low & Bonar PLC, One subsidiary and LE's Powerlec Division	88-1932	07/07/88
BellSouth, Raychem Corporation, Raynet International, Inc.	88-1840	07/07/88
Nelson Peltz (Triangle Industries, Inc.), Avery, Inc., Avery, Inc.	88-1879	07/07/88
Golder, Thoma, Greasey Fund II, Interco, Inc., Interco, Inc.	88-1881	07/07/88
King Broadcasting Company, Barry Silverstein, Coastal Associates of St. Croix Limited Partnership	88-1862	07/07/88
Warner Communications Inc., R.E. Turner, Turner Broadcasting System, Inc.	88-1926	07/07/88
Thomas J. Lutsey, The Coca-Cola Company, Nutri-Foods Int'l, Inc.	88-1951	07/07/88
Boston Ventures Limited Partnership II, Barry Gordy, Motown Records Corporation	88-1806	07/08/88
The Penn Central Corporation, Capital Wire and Cable Corporation, Capital Wire and Cable Corporation	88-1827	07/08/88
Mr. Randolph W. Lenz, c/o KCS Industries, Inc., Kendavis Holding Company, Unit Rig & Equipment Co.	88-1845	07/08/88
Robert F. Browne, Kenneth G. Adams, c/o Adams Investment Company, Oklahoma Beverage Company	88-1883	07/08/88
Frank M. Late, Kenneth G. Adams, c/o Adams Investment Company, Oklahoma Beverage Company	88-1884	07/08/88
Japan Storage Battery Co., Ltd., Pacific Dunlop Limited, GNB Incorporated	88-1894	07/08/88
Metalgesellschaft AG, Horsehead Industries, Inc., Horsehead Resource Development Company, Inc.	88-1841	07/08/88
Centel Corporation, United Telecommunications, Inc., United TeleSpectrum, Inc.	88-1900	07/08/88

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact
Representative, Premerger Notification
Office, Bureau of Competition, Room
301, Federal Trade Commission,
Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-18067 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and
Health Statistics Subcommittee on
Ambulatory Care Statistics; Meeting

Action: Notice of Meeting.

In accordance with the Federal
Advisory Committee Act (Pub. L. 92-
463), notice is hereby given that the
National Committee on Vital and Health
Statistics Subcommittee on Ambulatory
Care Statistics established pursuant to

42 U.S.C. 242k, section 306(k)(2) of the
Public Health Service Act, as amended,
announces the following meeting.

Name: National Committee on Vital
and Health Statistics Subcommittee on
Ambulatory Care Statistics.

Time and Date: 10:00 am-5:00 p.m.—
August 15, 1988; 9:00 a.m.-5:00 p.m.—
August 16, 1988.

Place: Hubert H. Humphrey Building,
Room 337A, 200 Independence Avenue,
SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting
is for the Subcommittee to continue the
review and revision of the Uniform

Ambulatory Medical Care Minimum
Data Set.

Contact Person for More Information:
Substantive program information as well
as summaries of the meeting and roster
of Committee members may be obtained
from Gail F. Fisher, Ph.D., Executive
Secretary, National Committee on Vital
and Health Statistics, Room 2-12, Center
Building, 3700 East West Highway,
Hyattsville, Maryland 20782, telephone
(301) 436-7050.

Dated: July 12, 1988.

Elvin Hillyer,

Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 88-18071 Filed 7-15-88; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration
(HSQ-151-N)Meeting of the Advisory Panel on the
Development of Uniform Needs
Assessment Instrument(s)

AGENCY: Health Care Financing
Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the
second meeting of the Advisory Panel
on the Development of Uniform Needs
Assessment Instrument(s). The Panel is
responsible for the development of a
standard method to be used to evaluate
the post-hospitalization needs of
patients. The Panel was established as
required by section 9305(h)(2) of the
Omnibus Budget Reconciliation Act of
1986 (OBRA '86), Pub. L. 99-509. The
meeting is open to the public.

DATE: August 3-4, 1988.

TIME: August 3, 8:30 a.m. to 5:00 p.m.;
August 4, 8:00 a.m. to 11:00 a.m.

ADDRESS: Sheraton Santa Barbara Hotel
and Spa, 1111 East Cabrillo Boulevard,
Santa Barbara, California 93103.

FOR FURTHER INFORMATION CONTACT:
Sue Nonemaker, (301) 966-6825.

SUPPLEMENTARY INFORMATION: Section
9305(c) of OBRA '86, in amending the
Medicare definition of "hospital" in
section 1861(e)(6) of the Social Security
Act, and in enacting the new definition
of "discharge planning process" in
section 1861(ee), requires that hospitals,
as a condition to participate in the
Medicare program, provide discharge
planning. Discharge planning activities
vary and we currently lack a
standardized method for evaluating a
patient's need for health care after
hospitalization. The development of a
standardized method would allow more
uniformity among those responsible for

discharge planning and improve
determination of a patient's need for
post-hospital services.

Section 9305(h) of OBRA '86 requires
the Secretary to develop a uniform
needs assessment instrument in
consultation with an advisory panel
made up of experts in the delivery of
post-hospital extended care services,
home health services, and long term
care services. The panel is to include
experts in the delivery of post-hospital
extended care services, home health
services, long term care services and
representatives of physicians, Medicare
beneficiaries, hospitals, skilled nursing
facilities, home health agencies, long
term care providers, and fiscal
intermediaries. The Secretary has
named Mr. Jay Rudman, Director of the
Clinical Social Work Department at the
University of California at Los Angeles
Medical Center as chairman of the panel
and appointed 17 members to the panel.

The panel will have several meetings
at which it plans to:

- Develop a standard method to
evaluate an individual's ability to
function or engage in activities of daily
living, the nursing and other care
requirements necessary to meet health
care needs, and the social and familial
resources available to the individual;
- Construct the standard method so
that it could be used by discharge
planners, hospitals, nursing facilities,
other health care providers and fiscal
intermediaries in evaluating an
individual's needs for post-hospital
extended care; and
- Evaluate the advantages and
disadvantages of using the tool as a
basis for determining whether payment
should be made for post-hospital
extended care services and home health
services which are provided to Medicare
beneficiaries.

The Secretary must report to Congress
no later than January 1, 1989 his
recommendations for the appropriate
use of a uniform needs assessment
instrument to determine a beneficiary's
need for post-hospital extended care.

At this meeting, the Advisory Panel
will review topics that need to be
considered in developing the standard
method. Content areas will include:
critical elements in the assessment of
the elderly; functional assessment;
behavioral and cognitive issues in
assessment; nursing and other care
considerations; measures of familial and
community resources; and care setting
considerations that pertain to a patient's
need for skilled nursing or home health
care. The items of discussion are subject
to change as priorities dictate.

(Catalog of Federal Domestic Assistance
Program No. 13.714, Medical Assistance
Program; No. 13.773, Medicare—Hospital
Insurance; No. 13.774, Medicare—
Supplementary Medical Insurance)

Dated: July 12, 1988.

William L. Roper,

Administrator, Health Care Financing
Administration.

[FR Doc. 88-18090 Filed 7-15-88; 8:45 am]

BILLING CODE 4130-01-M

Social Security Administration

Finding Regarding Foreign Social
Insurance or Pension System—
Burundi

AGENCY: Social Security Administration,
HHS.

ACTION: Notice of finding regarding
foreign social insurance or pension
system—Burundi.

Finding: Section 202(t)(1) of the Social
Security Act (42 U.S.C. 402(t)(1))
prohibits payment of monthly benefits to
any individual who is not a United
States citizen or national for any month
after he or she has been outside the
United States for 6 consecutive months.
This prohibition does not apply to such
an individual where one of the
exceptions described in section 202(t)(2)
through 202(t)(5) of the Social Security
Act (42 U.S.C. 402(t)(2) through 402(t)(5))
affects his or her case.

Section 202(t)(2) of the Social Security
Act provides that, subject to certain
residency requirements of section
202(t)(11), the prohibition against
payment shall not apply to any
individual who is a citizen of a country
which the Secretary of Health and
Human Services finds has in effect a
social insurance or pension system
which is of general application in such
country and which:

- (a) Pays periodic benefits, or the
actuarial equivalent thereof, on account
of old age, retirement, or death; and
- (b) Permits individuals who are
United States citizens but not citizens of
that country and who qualify for such
benefits to receive those benefits, or the
actuarial equivalent thereof, while
outside the foreign country regardless of
the duration of the absence.

The Secretary of Health and Human
Services has delegated the authority to
make such a finding to the
Commissioner of Social Security. The
Commissioner has redelegated that
authority to the Director of the
International Policy Staff. Under that
authority the Director of the
International Policy Staff has approved a
finding that Burundi, beginning July 1,

1967, does not have a social insurance system of general application in effect which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death.

Accordingly, it is hereby determined and found that Burundi does not have in effect, beginning July 1, 1987, a social insurance system which meets the requirements of section 202(i)(2) of the Social Security Act (42 U.S.C. 402(i)(2)) because it does not meet the requirements for general application.

FOR FURTHER INFORMATION CONTACT: J. Joseph Rauch, Room 1104, West High Rise Building, 6401, Security Boulevard, Baltimore, MD 21235, (301) 965-3567.

(Catalog of Federal Domestic Assistance Programs No. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

Dated: July 8, 1988.

Elizabeth K. Singleton,
Director, International Policy Staff.

Finding That Burundi Does Not Have A Social Insurance Or Pension System That Meets All The Conditions Of Section 202(i)(2) Of The Social Security Act

I. Background

There is no prior Section 202(i)(2) determination for Burundi. There is a copy of Burundi's former social security law (1962) in file as well as a completed SSA-142. There is no indication why a determination was not completed but a reasonable assumption would be that at the time, there were no beneficiaries of the United States Social Security system residing in Burundi. Currently, the Forbes listing shows one United States citizen beneficiary residing in Burundi.

II. Material Used in the Evaluation

1. Translation of excerpts from Burundi's Social Security Law #1/17 dated October 6, 1981.
2. SSA-142 information supplied by Burundi officials.
3. SSA-142 information supplied by the International Activities & Studies Staff (IASS).
4. Pages re Burundi from *Social Security Programs Throughout the World (SSPTW)*—1985.
5. Pages re Burundi from the *International Labor Organization's (ILO) Yearbook of Statistics*—1986.
6. Pages re Burundi from *The Statesman's Yearbook*—1986.
7. Pages re Burundi from *The World Almanac*—1985.
8. IPPTS's CL-10-2(g) file for Burundi.

III. Application of Section 202(i)(2) Criteria to the Social Insurance or Pension System of Burundi

A. The Country Must Have a Social Insurance or Pension System

As used in Section 202(i)(2) of the Social Security Act, a "social insurance system" means a governmental plan which pays

benefits as an earned right on the basis either of contributions to the plan or work in employment covered under the plan, without regard to financial need of the beneficiary. A "pension system" means a governmental plan which pays benefits based on residence or age, but without regard to the financial need of the beneficiary.

The Government of Burundi's social insurance system pays benefits based on contributions and employment, there is no requirement to consider financial need. (Ref. SSPTW—1985, Article 3 of the translation and item 3 of the SSA-142 completed by the National Institute of Social Security.)

Burundi does have a social insurance system within the meaning of Section 202(i)(2) of the Social Security Act.

B. The System Must Be in Effect

The system is considered in effect if it is in full operation with regard to taxes (or contributions) and payment of benefits or is in full operation with regard to taxes (or contributions) and payment is scheduled to begin at the earliest moment prescribed by law for acquiring earliest eligibility.

Contributions were first collected in 1957. (Ref. SSA-142 supplied by IASS and page 486 of the *International Labour Review*). Contributions and credits under the 1957 scheme were incorporated first into the system enacted by the law of July 20, 1962 and subsequently by the law enacted October 16, 1981.

Although the 1962 law as translated is not clear on the length of coverage required for entitlement, articles 36 and 38 discuss the number of quarters of coverage required in a 20 quarter (5 year) period. Further, pages 488 and 489 of the *International Labour Review*, indicate a 5-year period for determining benefits. Article 69 of the 1962 law states that there will be no changes in the benefits under prior laws. Therefore, benefits are currently being paid.

The system is found to be in effect beginning July 1987 (this is based on enactment of the 1962 law and the 20-quarter period for determining benefits).

C. The System Must Be of General Application

A system is considered to be of general application if it covers a substantial portion of the paid labor force in industry and commerce, taking into consideration the industrial classification and size of the paid labor force and the population of the country, as well as occupational, size of employer and geographical limitations on coverage.

All geographic areas of the country are covered by the system (see both SSA-142's). All employed persons except casual or temporary labor are covered.

There is some discrepancy between the two SSA-142's in the figures used to identify the size of the labor force in industry and commerce and persons covered under the system. We are using the most favorable figures (those supplied by the National Institute of Social Security on the SSA-142) in this analysis even though past experience urges caution when rounded numbers are furnished.

The 75 percent ratio (75,000 covered in a commerce and industry workforce of 100,000)

if considered on its own would easily meet the requirement of "General Application". But, we must also consider the number of those covered and the industry and commerce workforce in relation to the total economically active population of the country.

The Statesman's Yearbook for 1986 provides a 1986 estimated population of 4,923,000 based on a 1979 census figure of 4,111,310. The 1986 ILO Yearbook of Statistics using "official estimates" for 1984 shows a total population of 4,520,572 and an economically active population of 2,752,070 or 60.9 percent. Using the same ratio of 60.9 percent to project a 1986 economically active population figure (60.9% of 4,923,000) provides an estimate of 2,998,107.

Based on the above figures, less than 3.4 percent of the economically active population is engaged in industry and commerce, only 2.5 percent of the economically active population is covered under the system and only 1.5 percent of the total population is covered under the system. Information in *The World Almanac-1985* and *The Statesman's Yearbook-1986* indicates there is little possibility of any expansion of the commerce and industry workforce in the future.

Based on the small percentage of the economically active population covered under the system, the social insurance system of Burundi is found not to be of general application.

Since Burundi's system does not meet the requirements of "General Application", we will reserve our decision on the other requirements of Section 202(i)(2).

IV. Determination

Burundi is found not to have a social insurance system that meets all the conditions of Section 202(i)(2) of the Social Security Act (is not of general application). This determination is effective with July 1987 (based on enactment of the 1962 law plus the 5 years of coverage needed for entitlement).

V. Publication

Notice of the finding is authorized for publication in the *Federal Register*.

Date: April 7, 1988.

Approved.

Elizabeth K. Singleton.

[FR Doc. 88-18050 Filed 7-15-88; 8:45 am]

BILLING CODE 4199-11-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA-650-05-4121-09]

Departmental Long-Range Coal Lease Sale Planning Schedule; Deferring the Adoption of a Long-Range Plan

SUMMARY: This notice is to inform the public that the Department of the Interior will defer adoption of a long-range coal lease sale plan at this time. This decision, which is subject to annual

review by the Federal-State Coal Advisory Board, is based on current circumstances/conditions that indicate that there are sufficient quantities of marketable coal available to meet production needs in each of the coal production regions.

FOR FURTHER INFORMATION CONTACT: Walter Rewinski, Chief, Division of Solid Mineral Leasing, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240, Telephone (202) 343-8821.

SUPPLEMENTARY INFORMATION: In its report of February 1984, the Commission on Fair Market Value Policy for Federal Coal Leasing (Linowes Commission) recommended that the Government should establish and announce in a timely fashion a coal leasing schedule to promote predictability and stability of Federal leasing actions. The Commission further recommended that the Government should have the flexibility to change the timing of lease sales and the quantity of coal offered based on its assessment of emerging market conditions.

The Department, in its March 1984 response to the Commission, agreed with the Commission's recommendations and proposed to continue to maintain a long-range planning schedule for coal leasing and to seek the advice of the Federal-State Coal Advisory Board on this schedule. This proposal was formally adopted as part of the Department's final coal program decisions announced February 26, 1986. Specifically, the Department decided to develop a long-range plan that reflects regional and national coal market conditions, data needs, and budget constraints. Development of the plan is to include the recommendations of the individual regional coal teams on regional lease sale plans to the Board, which has the responsibility to formulate a coordinated Departmental plan that meets national needs and goals.

In the fall of 1987, each of the RCTs met to evaluate the need for the resumption of regional coal activity planning and for developing a regional lease sale plan. They had at their disposal, among other things, regional long-range market analyses that compared regional coal production needs against available capacity under two different scenarios (high and low) through the year 2005. Without exception, these market analyses revealed that the available productive capacity exceeded the projected production needs for the immediate future in each of the regions. The RCTs, based on these long-range regional

market analyses and other information presented at the RCT meetings by industry, the public, and the affected States, concluded that the resumption of the regional coal activity planning process was unnecessary at this time. Similarly, they did not believe that it was necessary to schedule regional coal lease sales for the near-term.

At the December 2, 1987, meeting of the Federal-State Coal Advisory Board, each of the RCTs summarized coal leasing activities in their respective regions and advised the Board of their conclusions regarding the resumption of regional activity planning and the scheduling of regional coal sales. The Board was also briefed on the national coal market outlook and Federal coal leasing activities that have taken place since 1984. Based on this information the Board agreed to recommend to the Secretary that adoption of a long-range Departmental lease sale planning schedule should be deferred at this time. The Board further recommended that it review this recommendation at least once per year. This annual review by the Board would insure consideration of emerging market conditions and the development of a proposed Departmental long-range plan, as necessary.

The Board's recommendation is accepted. Accordingly, the adoption of a Departmental long-range lease sale plan is deferred, subject to annual review by the Board. This decision will remain in effect until such time as a recommendation of a long range plan is received from the Board. At that time the Board's recommendation will be considered.

Date: July 11, 1988.

J. Steven Griles,
Assistant Secretary of the Interior.

Bureau of Land Management

[ES-970-08-4121-14-2410; MSES 12356]

Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Reinstatement of terminated oil and gas lease MSES 12356.

SUMMARY: Terminated oil and gas lease MSES 12356 located in Wilkinson County, Mississippi, T. 4 N., R. 1 E., containing 648.64 acres.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Beckham at (703) 461-1449.

SUPPLEMENTARY INFORMATION: Federal oil and gas lease MSES 12356 terminated

automatically by operation of law on August 1, 1986 (30 U.S.C. 188).

A petition for reinstatement of oil gas lease MSES 12356 was filed by James B. Furh, Jr. (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The Lessee has met all the following requirements for reinstatement:

- (a) \$500..... Reimbursement of Departmental Administrative Cost.
- (b) \$5,041..... Back Rental Payments.
- (c) \$130..... Publication Cost.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5 per acre per year, and royalty will remain at 12½ percent provided the lease is producing within six months after receipt of notification of reinstatement. However, if the lease does not produce within the time allowed the royalty rate will follow procedures under Class II reinstatement of increased royalty rate of 16½ percent beginning August 1, 1986.

G. Curtis Jones, Jr.,
State Director.

[FR Doc. 88-16102 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-728006

Applicant: Lee Ralph Grater, Pueblo, CO

The applicant requests a permit to import one pair of captive-bred American peregrine falcons (*Falco peregrinus anatum*) from Mr. John Lejeune, Falcon Farms Ltd., British Columbia, Canada, for purposes of captive breeding and research.

PRT-728082

Applicant: Joseph Edward Fairchild, Sarasota, FL

The applicant requests a permit to export and reimport one captive-bred male leopard (*Panthera pardus*) for performance in a magician act, during which the applicant intends to educate the public with regard to the leopard's ecological role and conservation needs.

PRT-720258

Applicant: Merrill D. Martin, Oakland, CA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-727165

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import up to four Bawean deer [*Axis (= Cervus) porcinus kuhli*] from L. Ruhe KG, West Germany. These deer are not yet born, but are expected to be born to Bawean deer authorized for import under PRT-697337 and which are presently in pre-entry quarantine in West Germany.

PRT-720359

Applicant: Trunks & Humps, Inc., Cut & Shoot, TX

The applicant requests a permit to export one wild caught male Asian elephant (*Elephas maximus*) to Mike Hackenberger, Bowmanville, Ontario, Canada, for inclusion in a breeding program. This elephant has been in captivity since 1971.

PRT-728302

Applicant: Leslie Niehaus, Berlin Center, OH

The applicant requests a permit to purchase one female nene goose (*Neochen (= Branta) sandvicensis*) captive-bred at Sylvan Heights Waterfowl, Sylva, North Carolina, to pair with an existing male for propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: July 12, 1988.

S.M. Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-16117 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-AM-M

National Park Service**Concurrent Jurisdiction in Modoc, Siskiyou, Shasta, Marin, Monterey, and San Benito Counties, CA**AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given that, effective April 12, 1988, current criminal jurisdiction was established over Federally owned or controlled lands and waters administered by the National Park Service within Lava Beds National Monument, Pinnacles National Monument, Point Reyes National Seashore, and the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area.

Concurrent jurisdiction was conveyed for a five year period by the State of California to the National Park Service by the California State Lands Commission pursuant to Section 128 of the California Government Code, and accepted by Denis P. Galvin, Acting Director of the National Park Service, pursuant to applicable Federal statutory law.

Dated: July 7, 1988.

Denis P. Galvin,

Director, National Park Service.

[FR Doc. 88-16121 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-70-M

Olympic National Park; Concession Contract Negotiations; Log Cabin Resort, Inc., et al.AGENCY: National Park Service, Interior.
ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to extend for 30 days the acceptance of applications for the concession opportunity at Olympic National Park now operated by Log Cabin Resort, Inc., to August 15, 1988, in lieu of 60 days following the notice which appeared in the Federal Register, Vol. 53, No. 93, Friday, May 13, 1988, pages 17118 and 17119.

EFFECTIVE DATE: August 15, 1988.

ADDRESS: Interested parties should contact the Regional Director, Pacific Northwest Region, 83 South King Street, Suite 212, Seattle, Washington 98104, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or

before August 15, 1988, to be considered and evaluated.

Dated: July 11, 1988.

Charles H. Odgaard,

Regional Director, Pacific Northwest Region.

[FR Doc. 88-16118 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-70-M

Blackstone River Valley National Heritage Corridor; Massachusetts and Rhode Island; Blackstone River Valley National Heritage Corridor Commission; Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be Tuesday, July 19, 1988.

The Commission was established pursuant to Pub. L. 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:30 p.m. in the William Howard Taft Room of the Uxbridge Inn, 20 North Main St., Uxbridge, Massachusetts, for the following reasons:

1. Swearing in of Commissioners;
2. Report of the Sub Committee on Operations including adoption of By Laws and consideration of establishing headquarters;
3. Report of the Sub Committee on Planning including discussion of procedures for preparing the Cultural Heritage and Land Management Plan;
4. Report of the Sub Committee on Administration including adoption of budget, staff hiring procedures, and job descriptions and discussion of interim director;
5. Report of the Electoral Sub Committee and election of office holders;
6. Appointments of new Sub-Committees;
7. Election of Sub-Committee Chairpersons.

It is anticipated that about fifty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park

Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565-8887.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 88-16119 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-20-M

Lewis and Clark National Historic Trail Advisory Council Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Lewis and Clark National Historic Trail Advisory Council will be held August 6-7, 1988, beginning at 9 a.m. on August 6 at the Kirkwood Motor Inn, 800 South Third Street, Bismarck, North Dakota.

The council was originally established on June 28, 1979, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1241 et seq., to advise the Secretary of the Interior on matters relating to the administration and development of the Lewis and Clark National Historic Trail.

Matters to be discussed at the meeting will include strategies for implementing the comprehensive management plan for the Lewis and Clark National Historic Trail and the status of development and management of the trail in each state.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting.

Further information concerning the meeting may be obtained from Thomas L. Gilbert, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 884-3441). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Warren H. Hill,

Acting Regional Director, Midwest Region.

[FR Doc. 88-16120 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 24)]

Norfolk and Western Railway Co.—Abandonment—Between Frankfort and Linden in Clinton, Tippecanoe and Montgomery Counties, IN; Findings

The Commission has issued a certificate authorizing the Norfolk and Western Railway Company to abandon its 21.9-mile line of railroad between

Frankfort (milepost TS-209.3) and Linden (milepost TS-231.2) in Clinton, Tippecanoe, and Montgomery Counties, IN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88-16239 Filed 7-15-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research Act of 1984—Manville Corp.—Bird, Inc. Roofing Division Agreement**

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. (the "Act"), Manville Corporation has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and the venture's general area of planned activities are given below.

The parties to the venture are Manville Corporation and Bird, Inc. Roofing Division. The general area of the venture's planned activity is research relating to the economic, environmental and energy conservation benefits or recycling used asphalt

shingles for the production of new asphalt shingles.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-16094 Filed 7-15-88; 8:45 am]

BILLING CODE 9410-01-M

Office of Justice Programs**Law Enforcement Training and Technical Assistance Grant**

AGENCY: Office for Victims of Crime, Office of Justice Programs, Department of Justice (DOJ).

ACTION: Notice of the availability of funds and request for applications for law enforcement training and technical assistance grants.

SUMMARY: Fiscal Year 1988 funds are available to provide regionally-based training and technical assistance to local and state law enforcement agencies in methods for and policies on responding to incidents of family violence. The Office for Victims of Crime (OVC) anticipates that \$400,000 will be made available to support these activities.

DATE: Applications for these funds must be received by August 15, 1988.

ADDRESS: Address applications to: Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531. Attention: Susan Stanley.

FOR FURTHER INFORMATION CONTACT: Susan Stanley (202) 272-6500.

SUPPLEMENTARY INFORMATION:**Background**

On October 9, 1984, the President signed into law the Child Abuse Amendments of 1984 (Pub. L. 98-457, 42 U.S.C. 10401 et seq.). Title III of these Amendments, entitled the "Family Violence Prevention and Services Act" (the Act), enumerates the responsibilities of the Departments of Justice and Health and Human Services, pursuant to section 311 of the Act, "Law Enforcement Training and Technical Assistance Grants and Contracts." In order to enable the Department of Justice to carry out these responsibilities, funds are transferred from the Secretary of Health and Human Services to the Attorney General of the United States.

The overall purposes of the Act are to: assist states in efforts to prevent family violence; provide immediate shelter and related assistance for victims of family violence and their dependents; and provide technical assistance and training relating to family violence

programs for state and local public agencies (including law enforcement agencies), nonprofit organizations, and other persons seeking such assistance.

Section 311 of the Act provides for regionally-based training and technical assistance to personnel of local and state law enforcement agencies to provide them with the means for responding to incidents of family violence. The Act states that "applications which propose projects or programs which will develop, demonstrate, or disseminate information with respect to improved techniques for responding to incidents of family violence by law enforcement officers shall be given priority."

This announcement applies only to section 311 of the Act. Also, for purposes of this program announcement, the term "family violence", as defined in section 300 of the Act, means any act or threatened act of violence, including any forcible detention of any individual, which:

- a. Results or threatens to result in physical injury; and
- b. Is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or with whom such person is or was lawfully residing.

Statement of Problem

The problem of family violence has existed for generations, yet only recently has it begun to receive any degree of attention. The Reagan Administration focused special attention on this issue with initiation of the Attorney General's Task Force on Family Violence which issued its final report in September 1984. Based upon considerable research, including testimony received from public hearings held across the country, the Task Force reported that a law enforcement agency is usually the first and often the only agency called upon to intervene in family violence incidents. Public safety officers are in the forefront of the effort to preserve peace, even within families. But the Task Force discovered that—largely as a result of traditional community attitudes which considered violence within the family to be a private, less serious matter than violence between strangers—calls to police involving family violence are usually given a low priority. The Task Force research also indicated that in carrying out the community's priorities and law enforcement agency practices, police dispatchers and emergency call operators may often give the impression that a family violence call is a nuisance. Accordingly, minimal information is

requested from the caller and the dispatcher or emergency call operator assigns the call a low dispatch priority. As a result, the intervention by the patrol officer may be slow and inconsistent.

The FBI has reported that nearly 26 percent of all homicides in this country occur among family members. To reduce this high incidence of violence and prevent these tragic consequences, it is essential that all law enforcement agencies review their existing policies and publish operational procedures that establish family violence as a priority response. Implementation must begin with the police chief or sheriff and continue down the chain of command to the individual patrol officer. Consequently, patrol officers, and the officers who provide training both at the academies and within the departments, should understand the need for swift and responsive law enforcement intervention, the need to respond with caution and sensitivity toward the seriousness of the situation, the proper methods of screening and classifying family violence calls, and the appropriate referral and disposition of family violence victims and perpetrators.

The Attorney General's Task Force on Family Violence made several recommendations for the justice system, law enforcement and education and training. Among the recommendations were that:

1. Family violence should be recognized and responded to as a criminal activity.
2. Law enforcement agencies should publish operational procedures that establish family violence as a priority response and require officers to file written reports on these incidents. In addition, the operational procedures should require officers to perform a variety of activities to assist the victim.
3. Consistent with state law, the chief executive of every law enforcement agency should establish arrest as the preferred response in cases of family violence.
4. Law enforcement officials should maintain a current file of all protection orders valid in their jurisdiction.
5. Law enforcement officers should respond without delay to calls involving violations of protection orders.
6. Federal, state, and local government should train relevant personnel to diagnose and appropriately intervene in family violence cases.

A significant number of law enforcement agencies have made marked progress in addressing the recommendations and in responding to the handling of family violence incidents

since the report was issued. Many agencies have indicated their interest in further improving their operational procedures and response to family violence incidents.

In order to support efforts by state and local law enforcement agencies to improve their response to family violence incidents, the Office of Justice Programs is issuing this program announcement.

Purpose

In issuing this program announcement, the Office of Justice Programs, through awarding one to three grants from funds made available under the Act, seeks to provide training on domestic violence policies and procedures to the maximum number of law enforcement executives and mid-level managers possible.

Additionally, such training will utilize a curriculum which was developed under a previous grant made from these funds, wherein regional training sessions reached approximately 3% of this nation's law enforcement executives.

Program Description

The selected grantees will be required to perform the following tasks:

1. Implement a training program for state and local law enforcement management personnel, including sheriffs, chiefs of police and mid-level managers by conducting regional training sessions (no fewer than four) for law enforcement management personnel. The training program should utilize the training package developed under an award made in September, 1986, by the Office of Justice Programs to the Victim Services Agency in New York City. The project, "Training and Operational Procedures: A Coordinated Response to Domestic Violence," was funded under the provisions of the Family Violence Prevention and Services Act.
2. Develop a procedure and mechanism for responding to requests for information and assistance from various law enforcement agencies and serve as a broker and/or provider of technical assistance and expertise. A description of how individual technical assistance and information requests will be processed should be included.
3. Develop and utilize a multidisciplinary advisory board for project activities.
4. Consult with the developer of the above-noted training package and utilize their expertise so that the project will build on the progress which was made during the developmental phase.

Selection Criteria

The selection of the grantees will be based on:

1. Understanding of the problem. (10 points)
2. Appropriateness of program design and approach. (25 points)
3. Soundness of methodology. (30 points)
4. Financial and technical capability of the organization. (10 points)
5. Cost effectiveness. (10 points)
6. Accuracy and completeness of required information. (5 points)
7. The expertise and background of the employees assigned to the effort. (10 points)

Funds Available

\$400,000 will be available from the Office for Victims of Crime for the purpose of providing regionally-based training and technical assistance to local and state law enforcement agencies in methods for and policies on responding to incidents of domestic violence.

Grant Period and Award Amount

The cooperative agreements will be for eighteen (18) months and will cover 100% of the project costs (no matching funds required).

Eligible Applicants

Eligible applicants are private nonprofit organizations with law enforcement membership that have experience in providing training and technical assistance to law enforcement personnel on a national and/or regional basis. The Office for Victims of Crime will accept applications from eligible organizations, and will award one to three grants. However, a single grant award of up to \$400,000 to a consortium of national law enforcement organizations representing the program's primary target audience, i.e., law enforcement executives, would also be considered.

Submission Deadlines

Applications must be received by August 15, 1988. Applications which are hand delivered must be received by the close of business (5:00 p.m.).

Applications

Applicants should submit three (3) copies of their completed proposal by the deadline established above.

Submissions must include: A. A completed and signed Federal Assistance application on the current Standard Form 424. Copies of the required forms, and any information or clarification regarding them, may be obtained by writing or calling the Office

for Victims of Crime, National Victims Initiative Division, 633 Indiana Avenue, NW., Washington, DC, 20531. (202) 272-6500.

B. An abstract of the full proposal, not to exceed one page.

C. A program narrative of not more than fifteen (15) single-spaced typed pages should include:

1. A clear, concise statement of the issues surrounding the problem area. A discussion of the relationship of the proposed work to the existing training literature is also expected;
2. A clear statement of the project objectives including an approximation of the number of law enforcement personnel to be trained, a list of the major milestones of events, activities, products, and a timetable for completion;
3. A clear statement which describes the approach and strategy to be utilized in responding to each of the tasks identified in the program description (applicants should indicate how the training package will be individualized for the proposed target audience, and how the organization plans to maximize attendance at the training conferences);
4. The proposed organization and management plan to be used including, at a minimum, the staff of the project, with their experience, and the time commitments of key staff to individual project tasks. A full-time project director must be allocated to the project.

D. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, project advisory board costs and overhead, and a short narrative justification of each budgeted cost. It is anticipated that a subcontract relationship with the developer of the training curriculum may be established. If such a relationship is contemplated, a separate detailed budget should be submitted.

E. Copies of vitae for the professional staff which summarize education, research and training experience, and bibliographic information related to the proposed work. Detailed technical material that supports or supplements the description of the proposed effort, but is not integral to it, should be included in an appendix.

All three copies of the application must be sent or hand delivered to: Office for Victims of Crime, National Victims Initiative Division, 633 Indiana Avenue NW., Washington, DC, 20531, by the deadline established above.

FOR FURTHER INFORMATION CONTACT: Susan Stanley, National Victims Initiative Division, (202) 272-6500. Information concerning model programs and practices is available from the

National Criminal Justice Reference Service, 1600 Research Boulevard, Rockville, Maryland 20850, 251-5000; and the National Victims Resource Center, Box 6000, Rockville, Maryland 20850, 251-5525.

Notification Under Executive Order 12372

This program, recently reauthorized and funded by Congress, provides support for training and technical assistance for law enforcement and other personnel to assist in addressing issues related to family violence. The Department of Health and Human Services, under whose authority these funds are transferred to the Department of Justice, excludes this program from coverage under Executive Order 12372. This training and technical assistance program is national in scope and the statutory requirement for "regionally based training" will be offered by the selected grantees in only a few cities/states nationwide. Therefore, the requirements of Executive Order 12372 are waived.

Jane Nady Burnley,
Director, Office for Victims of Crime.
[FR Doc. 88-16068 Filed 7-15-88; 8:45 am]
BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

[Case No. 88-INA-54]

World Bazaar, Employer, on Behalf of Pi-Ling Hsieh Lee, Alien; Notice of Court Order

The Office of Administrative Law Judges hereby publishes a copy of a court order issued in *In the Matter of World Bazaar, Employer, on behalf of Pi-Ling Hsieh Lee, Alien*, Case No. 88-INA-54. The Board of Alien Labor Certification Appeals requests the parties in Case No. 88-INA-54 and any other interested person to submit briefs on specific issues involved in the case by August 19, 1988.

For further information contact: John M. Vittone at (202) 653-5052.

Signed in Washington, DC, this 12th day of July, 1988.

John M. Vittone,
Deputy Chief Judge.

Board of Alien Labor Certification Appeals,
1111 20th Street, N.W.,
Washington, D.C. 20036.

Date: July 6, 1988
Case No. 88-INA-54

In the Matter of World Bazaar, Employer,
on behalf of PI-LING HSIEH LEE, Alien.

Order

1. The parties are hereby notified that, on its own motion, this case has been designated for consideration by the Board of Alien Labor Certification Appeals *en banc*.

2. Pursuant to 20 C.F.R. § 656.27(b), the parties are ordered to file briefs with the Board addressing, in the context of this case, the following questions arising under 20 C.F.R. § 656.21(b)(7):

a. Is it lawful for an employer to reject a U.S. worker for a job for which alien labor certification is being sought because that worker is overqualified for the job?

b. Is it lawful for an employer to reject an otherwise qualified U.S. worker for a job for which alien labor certification is being sought because the U.S. worker intends to leave that job as soon as a better job opportunity comes along?

c. In the event the answer to question (b) above is "yes", is it lawful for an employer to assume that an overqualified U.S. worker for a job for which alien labor certification is being sought will leave that job as soon as a better job opportunity comes along?

The parties shall file their respective briefs no later than August 19, 1988.

For the Board,

Jeffrey Tureck,
Administrative Law Judge.

[FR Doc. 88-16101 Filed 7-15-88; 8:45 am]
BILLING CODE 4510-25-M

Employment and Training Administration

(TA-W-20, 482)

3M Co., Rochester, NY; Negative Determination on Reconsideration

On May 27, 1988, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at the 3M Company, Rochester, New York. This determination was published in the Federal Register on June 10, 1988 (53 FR 21936).

The petitioner claims that workers producing color print paper and microfilm were adversely affected because of imports. Petitioner also claims that imports of x-ray film from Italy displaced workers producing XD and XDL film in 1987 and that Rochester included company import data in its production figures. It is also claimed that infra red (I.R.) film should be considered separately.

The Department's denial was based on the fact that the decreased sales and/or production criterion was not met. Sales and production of x-ray film at the Rochester facility increased both in quantity and value in 1987 compared to 1986.

Investigative findings show that the workers at Rochester are not separately identifiable by type of film. Accordingly,

it would serve no purpose to carve out small appropriate subdivisions by film type. Further, 3M considers infra-red (I.R.) film a type of x-ray film and has included such film production data with Rochester's x-ray production data.

On reconsideration the Department found that the Rochester facility ceased production of color print paper and microfilm prior to the period applicable to the petition. Section 223(b)(1) of the Trade Act does not permit the certification of workers prior to one year of the date of the petition which in this case is February 5, 1988.

Petitioner's March 19th letter did not contain any substantial information. The letter contained information from 1981 through 1985 with import and production forecasting for 1987. The Department has actual company import and production data for 1986 and 1987.

Also, on reconsideration, the Department found that imported film data was included in Rochester's production figures since Rochester slit, cut, and packaged the imported film. However, Rochester still has an increase in production of film in 1987 compared to 1986 after allowing for company imported film. Although production declined in the first two months of 1988, company imports did not reach a significant level to form a basis for certification. Workers should repetition in six months if they feel that imports are the cause of worker separations in 1988.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the 3M Company, Rochester, New York. Signed at Washington, DC, 6th day of July 1988.

Robert O. Deslongchamps,
Director, Office of Legislation and Actuarial Service, ILS.

[FR Doc. 88-16100 Filed 7-15-88; 8:45 am]
BILLING CODE 4510-25-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by August 17, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington DC 20506; (202 682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3505(h).

Title: Theater Application Guidelines for FY 1989-90.

Frequency of Collection: One-time.

Respondents: Individuals or households; State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, non-profit arts organizations, and state or local arts agencies that apply for funding under specific Theater program categories. The information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 824.

Average Burden Hours per Response: 20.36.

Total Estimated Burden: 16,776.

Vera K. Yanowsky,

Assistant Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-16058 Filed 7-15-88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Carrollton, KY, Highway Accident

In connection with its investigation of the accident involving a pickup truck/church activity bus head-on collision and fire on May 14, 1988, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on August 2, 1988, in the Grand Ballroom, Parlors C & D, of the Holiday Inn Hotel, 1325 Hurstbourne Lane, Louisville, Kentucky. For more information contact Alan Pollock, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382-8606.

Dee Hardesty,

Federal Register Liaison Officer.
July 12, 1988.

[FR Doc. 88-16052 Filed 7-15-88; 8:45 am]

BILLING CODE 7530-01-M

NUCLEAR REGULATORY COMMISSION

(Docket No. 50-388)

Arkansas Power and Light Co., Arkansas Nuclear One, Unit 2; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-6 issued to Arkansas Power and Light Company, (the licensee), for operation of the Arkansas Nuclear One, Unit 2 (ANO-2) located at Russellville, Arkansas.

Environmental Assessment

Identification of Proposed Action

By letter dated October 28, 1987 (2CAN108708), the licensee requested a change in the plant Technical Specifications (TSs) to decrease the required differential pressure produced by the high pressure safety injection pumps during surveillance testing, from 1402.5 psid to 1380.4 psid.

The Need for Proposed Action

The proposed TS change is needed because the current specification provides little margin for variation in pump performance. The proposed revision establishes a more realistic differential pressure requirement for the high pressure safety injection (HPSI) pumps which will increase operational

flexibility. Recent analyses have shown that a lower differential pressure requirement will not adversely impact the original analysis results, and will result in only a very small reduction of the injection leg flow rates.

Environmental Impact of the Proposed Action

The proposed reduction in the required differential pressure for the HPSI pumps was considered with respect to all the accident analyses in Chapter 15 of the Final Safety Analysis Report (FSAR), and also with respect to the loss of coolant accident (LOCA) analysis in Chapter 6 of the FSAR. The proposed reduction does not increase the probability or consequences of a previously evaluated accident. Therefore the proposed changes will not increase to greater than previously determined, the probability of accident and post-accident radiological releases, nor otherwise affect radiological plant effluents. The Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS changes.

With regard to potential non-radiological impacts, the proposed TS change involves features located entirely within the restricted area as defined in 10 CFR Part 20. This would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing regarding the proposed changes to the TS, was published in the Federal Register on December 28, 1987 (52 FR 48887). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result for the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's safety analysis and change to the TS that support the proposed amendment. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the applications for license amendment dated October 28, 1987. Copies are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the local public document room located at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 9th day of June.

For the Nuclear Regulatory Commission,

Jose A. Calvo,
Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-16078 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

(Docket No. 50-313)

Arkansas Power and Light Co., Arkansas Nuclear One, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to the Arkansas Power and Light Company, (the licensee), for Arkansas Nuclear One, Unit 1 (ANO-1) located in Pope County, Arkansas.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of Sections III.C, III.J and III.O of Appendix R to 10 CFR Part 50, which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage, to the provision of emergency lighting, and to the provision for the oil collection system for reactor

coolant pumps (RCPs). The exemptions are technical since the licensee must demonstrate that fire protection, emergency lighting, and RCP oil collection configurations meet the specific requirements of Section III.G, III.J, and III.O, or that alternate configurations can be justified by an acceptable analysis.

The Need for Proposed Action

The proposed exemptions are needed because the features described in the licensee's exemption request regarding the existing and proposed fire protection at the plant would result in a net benefit to the public health and safety.

Environmental Impact of the Proposed Action

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at ANO-1. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20, with the minor exception of the redundant seismic condensate storage tank level transmitters. These exemptions would not affect non-radiological plant effluents and have no other environmental impact. Therefore we, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

The Commission has determined not to prepare an environmental impact statement of the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated August 15, 1984 and August 30, 1985 which contained the exemption requests, and letters dated October 20, 1986, April 22 and June 24, 1987, and April 25, 1988 which provided supplemental information. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas

Technical University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 9th day of June.

For the Nuclear Regulatory Commission.

Jose A. Calvo,
Director, Project Directorate—IV, Division of
Reactor Projects—III, IV, V and Special
Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 88-10079 Filed 7-15-88; 8:45 am]
BILLING CODE 7550-01-2

[Docket No. 50-289]

GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. DPR-50, issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specification (TS) to support core reload for Cycle 7 of operation. The proposed action is in accordance with the licensee's application for amendment dated April 5, 1988.

The Need for Proposed Action

The proposed change to the TS is required in order to provide the new safety limits and instrument setpoints associated with the core configuration for the next operating cycle. These changes result in part from the use of more highly enriched fuel and to accommodate changes in power peaking and control rod worths.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. As a result of these changes, the plant will be able to operate for about 17 months before the next refueling outage instead of the current 14 months. Operation with the core configuration will result in fewer fuel shipments and will remain within the operating parameters approved by the Commission prior to issuance of a full power license and within the analysis of environmental impacts in the Final Environmental Statement (FES) for operation. The proposed changes do not increase the probability or

consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment of Opportunity for Hearing in connection with this action was published in the Federal Register on April 25, 1988 (53 FR 13450). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not allowing operation of the plant.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the final Environmental Statement for the Three Mile Island Nuclear Station, Unit 1, dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 5, 1988, which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Government Publication Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1001, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 11th day of July, 1988.

For the Nuclear Regulatory Commission.

John F. Stols,
Director, Project Directorate I-4, Division of
Reactor Projects—II, Office of Nuclear
Reactor Regulation.

[FR Doc. 88-10080 Filed 7-15-88; 8:45 am]
BILLING CODE 7550-01-2

[Docket No. 50-289]

Metropolitan Edison Co. et al.; Environmental Assessment and Finding of No Significant Impact

In the Matter of Metropolitan Edison Co., Jersey Central Power & Light Co., Pennsylvania Electric Co., and GPU Nuclear Corp.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-50 issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI-1), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

This Environmental Assessment is written in connection with the proposed core uprate for TMI-1 in response to the licensee's application for a license amendment dated April 18, 1988. The proposed action would upgrade the rated core power level for TMI-1 from the current level of 2535 megawatts-thermal (MWt) to 2588 MWt. This uprate would represent an increase of approximately 1.3 percent over the current rated core power and Nuclear Steam Supply System (NSSS) thermal power.

The Need for the Proposed Action

The proposed action would increase the TMI-1 electrical output by approximately 10 megawatts-electrical (MWe) and thus provide additional electric power to the electrical power grid which serves industrial, commercial and residential customers in the Commonwealth of Pennsylvania.

Environmental Impacts of the Proposed Action

In December 1972, the U.S. Atomic Energy Commission issued the "Final Environmental Statement Related to Operation of Three Mile Island Nuclear Station, Units 1 and 2" (NUREG-0552). This document evaluates the environmental impact associated with the operation of Three Mile Island Units 1 and 2. The Final Environmental Statement (FES) assumed a 30-year operating lifetime for each unit and was based upon a design thermal rating of 2535 MWt for Unit 1 and 2772 MWt for Unit 2. The staff has reviewed the FES to determine if any significant environmental impacts, other than those previously considered, would result from raising the licensed thermal power level for TMI-1 from 2535 MWt to 2588 MWt.

Radiological Impacts

The FES discussed population growth or decline by municipality between 1960 and 1970 but did not project population growth for the operating lifetime of TMI-1. However, the FES implied an overall population growth in the area primarily related to growth of Harrisburg International Airport. The trend of population in this area has generally increased very little between 1970 and 1980. In fact, the population of Harrisburg (nine miles northwest of TMI-1) has declined from 66,061 in 1970 to about 53,000 in 1980. The population within a 20 mile radius of TMI-1 was 621,000 in 1970. In 1980, the population within a 30 kilometer radius (18.9 miles) had increased to about 643,000. Using the methodology of NUREG-0017, "Calculations of Releases of Radioactive Materials in Gaseous and Liquid Effluents from PWRs," raising the authorized core thermal power level for TMI-1 as requested could result in a maximum increase of 1.3% in total core fission product inventory. Therefore, off-site dose rates from plant radiological effluents (i.e., indirect exposure) would be expected to increase no more than 1.3%. When converted to actual off-site dose commitments, this incremental potential increase in off-site releases is insignificant and is more than offset by the conservations in the FES. The "1987 Radiological Environmental Monitoring Report for the Three Mile Island Nuclear Station," submitted to the staff on April 29, 1988, indicates that radiation doses to the public from TMI-1 operation continue to be well below all regulatory limits and well within the assumptions used in the staff's FES. For example, the FES calculated the maximum exposure to an individual due to liquid and

airborne effluents would be 0.72 mrem per year. The 1987 environmental monitoring report estimated this maximum dose to be 0.16 mrem for the year 1987, or less than 25% of the FES assumption. By comparison, a typical individual living in the Harrisburg area in 1987 would be expected to receive an annual dose of approximately 288 mrem from natural causes, including radon. The lower observed levels in radioactive effluents from the plant results in a substantially lower radiological impact than assumed in the FES. Therefore, the staff concludes a 1.3% increase in these effluents, and therefore a 1.3% increase in the off-site radiological impact due to liquid and airborne effluents is insignificant and is bounded by the FES. A similar comparison can be shown for direct radiation exposure (i.e., irradiation directly from the reactor itself rather than from effluents released from the reactor systems) to members of the public at the site boundary and for potential exposure due to postulated reactor plant accidents. These exposures were conservatively calculated in the FES and were shown to be low. Therefore an increase of 1.3% is insignificant.

The staff considered the incremental increase in occupational (on-site) exposure as part of its assessment of the proposed 1.3% power increase. The 1972 FES did not address occupational exposure for TMI-1. A supplement to the FES for Three Mile Island Unit 2 (TMI-2) only, issued in December 1976 as NUREG-0112, noted that the licensee committed to assure that individual radiation doses and plant population doses would be maintained as low as reasonably achievable (ALARA). Based on experience by the nuclear industry at that time, an estimate of 500 man-rems per year per reactor unit was made for expected occupational exposure at TMI-2. Actual personnel exposures since restart of TMI-1 in late 1985 indicates that exposures are well below the estimates for TMI-2 and declining each year. Total exposure at TMI-1 for 1980 was 246 person-rems and for 1987 was 174 person-rems, as documented in the licensee's annual reports to the NRC. This compares favorably to the current five-year average of 500 person-rems per unit per year for operating pressurized water reactors (PWRs) in the United States. Since most of this exposure is received during maintenance and refueling periods, and not while the reactor is operating, an increase in operating power level of 1.3% would be expected to have an insignificant effect on occupational exposures at TMI-1.

particularly with the licensee's commitment to an ALARA program.

The staff reviewed the environmental impacts attributable to the transportation of fuel and waste to and from the TMI-1 site. With respect to the normal conditions of transport and possible accidents in transport, the staff concludes that the environmental impacts are bounded by those identified in Table S-4, "Environmental Impact of Transportation of Fuel and Waste To and From One Light Water-Cooled Nuclear Power Reactor" of 10 CFR 51.52. The bases for this conclusion are that:

(1) Table S-4 is based on an annual refueling cycle which would, by itself, require fewer spent fuel shipments per reactor year. Reducing the number of fuel shipments would reduce the overall impacts related to population exposure and accidents discussed in Table S-4. However, GPU Nuclear has not shipped any TMI-1 irradiated fuel off-site to date and has no plans to do so in the near future. (2) Table S-4 represents the contribution of such transportation to annual radiation dose per reactor year to exposed transportation workers and to the general public. Presently, TMI-1 is authorized to slightly exceed the fuel enrichment and average fuel irradiation levels that are specified in 10 CFR 51.52(a)(2) and (3) as the bases for Table S-4. The radiation levels of the transport fuel casks are limited by the Department of Transportation and are not dependent on fuel enrichment and/or irradiation levels. Therefore, the estimated doses to exposed individuals per reactor year will not increase over that specified in Table S-4. In term of transportation of solid radioactive waste (other than fuel) from TMI-1, the number of shipments has been well within the assumptions of the FES. The FES stated that from 50 to 200 truckloads of solid radioactive waste would be shipped per year from the TMI site. In 1987, TMI-1 shipped only 36 truckload of solid radioactive waste.

Non-Radiological Impacts

Reexamination of the staff's FES of December 1972 reveals that the assessments of non-radiological impacts were based on several considerations depending on the type of impact being addressed. For some types of impact, the assessments were based on a design power level; for other types, the assessments were based on plant design features, on relative loss of renewable resources, or on relative loss or degradation of available habitat. The staff considered those types of impacts

that may be influenced by plant power level and also considered the fact that the FES assumed both Units 1 and 2 to be operating. TMI-2 has not operated since the March 1979 accident and it is very unlikely to resume operation in the future. Future operation would require a new environmental impact statement. The following topics were considered for a 1.3% increase in power level at TMI-1:

Consumptive Water Use—Water usage would be expected to increase between 1.5% and 1.7% at the higher power level of 3568 MWt. For the worst case atmospheric conditions, the increase would be about 180 gallons per minute (gpm).

Cooling Tower Effects/Salt Drift—Cooling tower evaporation rates would be equal to the consumptive water use rates, or a maximum of 180 gpm. This incremental increase would not be expected to significantly increase fogging effects as related to operations at Harrisburg International Airport. Studies conducted in 1977, 1978 and 1980 indicated that no cooling tower drift-related impact to the surrounding biota had occurred. Therefore, this incremental power level increase would not be expected to have any impact.

Meteorology—Plume dispersion from the cooling towers will not change because of this incremental power increase since this increase is so small and other factors are more controlling. Increased buoyancy of gaseous releases from increased stack temperatures will not occur because the stack temperature increase will be insignificant.

Impingement/Entrapment of Fish—Impingement and entrapment of adult, juvenile and larval fish were studied from 1974 through 1982. These studies concluded that no significant impact resulted from operation of the TMI units. The proposed power increase is not expected to significantly increase the impingement and entrapment of fish.

Chemical Impact from Liquid Discharge—The additional use of river water at TMI-1, due to the power increase, will not result in the discharge of concentrations of chemicals in excess of that evaluated in the FES because the additional water is lost to evaporation. Therefore, the proposed power increase will not have any significant adverse effects on the aquatic environment or impact the water quality of the Susquehanna River.

Thermal Impact from Liquid Discharges—Computer modeling predicts an increase in temperature of 0.4°F in the liquid effluent as a result of the proposed power increase. This increase will not violate the limits of the

National Pollutant Discharge Elimination System (NPDES) issued by the Commonwealth of Pennsylvania. Slight variations in the temperature of effluents released to the environment may affect the composition of macroinvertebrate populations in the vicinity of the discharge. However, such population shifts, if any, are very localized and do not affect the overall quality of the aquatic environment.

The staff therefore concludes that the proposed power level increase will have negligible non-radiological impacts.

Alternatives to the Proposed Action

The principal alternative to the proposed action would be to deny the licensee's request to raise licensed power level for TMI-1 to 2568 MWt. In this case, TMI-1 would continue to operate with a maximum power level of 2535 MWt. In Chapter XI of the FES, the staff presented a cost-benefit analysis of the environmental impacts of operation of TMI-1 compared to alternate methods of generating electricity (e.g., burning of coal or oil). In the FES, the staff concluded that the environmental benefit of generating electricity by nuclear fission (as compared to coal or oil) greatly outweigh the environmental cost. Even considering significant changes in the economics of the alternatives since 1972, operation of TMI-1 at 2568 MWt would require only incremental additional yearly costs. These costs would be substantially less than the purchase of replacement power or the installation of new electrical generating capacity. Therefore, the staff concludes at this time that generation of an additional 10 MWe of electricity at TMI-1 is more cost beneficial from an environmental standpoint than generating 10 MWe by other means.

Alternative Use of Resources

This action does not involve the use of resources not previously considered and evaluated in the TMI FES.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment

dated April 18, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 11th day of July, 1988.

For the Nuclear Regulatory Commission,
John F. Stolz,
Director, Project Directorate I-4, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 88-16061 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co.; The Cleveland Electric Illuminating Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the Reactor Coolant System (RCS) pressure-temperature operating limits and the Reactor Vessel Material Surveillance Program in accordance with Toledo Edison Company's application dated March 30, 1988.

Specifically, the proposed amendment would:

(1) Reflect the changes in the RCS pressure-temperature operating limits during heatup, cooldown and inservice leak and hydrostatic tests to accommodate operation to 10 Effective Full Power Years (EFPY).

(2) Reflect changes to the Low Temperature Overpressurization (LTOP) mitigation measures to ensure continued protection against LTOP events to 10 EFPY, and

(3) Delete specific details regarding surveillance requirements and surveillance capsule withdrawal schedule of the Reactor Vessel Material Surveillance Program in favor of referencing a previously NRC-approved

document (BAW-1543A) for these program details.

The Need for the Proposed Action

The proposed changes are needed to support station operation beyond 5 EFPY by imposing new RCS pressure-temperature limitations and LTOP mitigation measures.

Environmental Impacts of the Proposed Action

The Davis-Besse reactor coolant system consists of mechanical piping and motive force to circulate reactor coolant between the reactor, where energy is added to the coolant, and the steam generators, where energy is removed from the coolant. The reactor vessel is an integral part of the RCS, and in order for the coolant to reach the core, the integrity of the reactor vessel must be maintained. The proposed changes will revise the pressure-temperature limits to reflect actual changes in the reactor vessel material due to neutron irradiation and will assure that the reactor is operated conservatively. The changes to the Reactor Vessel Material Surveillance Program are consistent with previous staff determination and ensure reactor vessel properties are periodically monitored to ascertain potential embrittlement effects.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves changes in the operating procedures for station heatup, cooldown and inservice leak and hydrostatic tests, and in the evaluation of the reactor vessel material properties. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on May 4, 1988 (53 FR 15932). No request for hearing or petition

for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in operation being terminated at the end of 5 EFPY.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 30, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington DC., and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 7th day of July, 1988.

For the Nuclear Regulatory Commission,
Kenneth E. Perkins,
Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-16062 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities; Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the May 13, 1988 request of Gulf States Utilities (the licensee) to withdraw portions of Attachment 3 of its

June 5, 1987 application for amendment to Facility Operating License No. NPF-47, which authorizes operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The portions of the amendment application that are withdrawn proposed raising the isolation actuation instrumentation setpoints for the south main steam tunnel temperature and differential temperature monitors (Technical Specification Table 3.3.2-2, items 2.h.1 and 2.h.2). The Commission issued Notice Consideration of Issuance of Amendment in the Federal Register on July 29, 1987 (52 FR 26378). The Commission has considered the May 13, 1988 letter and has determined that permission to withdraw the portions of the June 5, 1987 application for license amendment should be granted.

For further details with respect to this action, see: (1) The application for amendment dated June 5, 1987; and (2) the Gulf States Utilities letter dated May 13, 1988 withdrawing portions of the June 5, 1987 application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555 and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 23rd day of May, 1988.

For the Nuclear Regulatory Commission,

Walter A. Paulson,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-10077 Filed 7-15-88; 8:45 am]

BILLING CODE 7550-01-M

[Docket Nos. 50-072 and 50-407, License Nos. R-25 and R-126, EA 88-64]

University of Utah; Order Modifying License

I

The University of Utah (the Licensee), located in Salt Lake City, Utah, is the holder of Licenses R-25 and R-126 issued by the Nuclear Regulatory Commission (NRC/Commission). License No. R-25 authorizes the Licensee to operate an AGN-201 research reactor (5 watt thermal power maximum) on its campus for the conduct of educational activities in accordance with the conditions specified therein. Amendment No. 10 (renewal of license) to the license was issued May 2, 1979. The license expires on September 12, 1987. License R-126 authorizes the Licensee to operate a TRIGA research

reactor (100 kilowatt thermal power) on its campus for the conduct of educational activities in accordance with the conditions specified therein. Amendment No. 5 (renewal of license) was issued April 17, 1985. The license expires April 17, 2005.

II

The University of Utah reactors are located on campus in the Merrill Engineering Building, Nuclear Engineering Laboratory (NEL) and are utilized to conduct irradiations in support of academic studies. The NEL staff is comprised of a Reactor Administrator (tenured professor), reactor supervisor (tenured professor) and two graduate students who are licensed senior reactor operators. The Reactor Administrator only presides over the Reactor Safety Committee and is not experienced in research reactor operations, while the Reactor Supervisor spends approximately 20 percent of his time involved in reactor activities.

The two graduate students are pursuing advanced degrees and are considered part time employees.

III

A special team inspection was conducted during February 16-19, 1988, to assess the licensee's conduct of operations. The inspection was prompted by observations from NRC inspectors and consultants that modifications to the facility and reactors had been made without NRC approval. During this inspection, seven violations, a deviation, and several programmatic concerns (open items) involving reactor operations, radiation protection, and physical security were identified. NRC Inspection Report 50-072 and 50-407/88-01 discusses these inspection findings. Although no unauthorized modifications to either reactor were found to have been made, a lack of management support for the reactor programs, a lack of full time technical support of day-to-day reactor activities, and failure to thoroughly review and apply adequate corrective action to audit findings in a timely manner were determined to be the root causes of the licensee's problems.

As the result of a previous inspection in 1986 (50-407/86-01; 50-072/86-01), the Licensee was issued a Civil Penalty (\$3,500) due to radiation protection program breakdowns. Corrective actions taken in response to those radiation protection problems somewhat improved the licensee's audit program and did correct specific violations and concerns. However, those corrective actions apparently did not bring about broad enough changes to prevent

occurrence of problems in other areas as evidenced by the findings of the most recent NRC inspection.

On March 28, 1988, an enforcement conference was held with the Licensee in which each item of concern, identified in the February 1988 inspection, was reviewed. Because the Licensee failed to demonstrate that positive corrective actions had been taken to improve technical support for the NEL and provide the reactor supervisor relief from some of his other duties and academic responsibilities, a Confirmatory Action Letter (CAL 88-06) was issued on March 30, 1988, confirming that the NEL reactors would remain shutdown until the Region IV office had reviewed the Licensee's response to the violations discussed at the enforcement conference and has authorized the Licensee, in writing, to operate the reactors. As of the date of this Order NRC Region IV has not authorized the Licensee to restart either reactor.

Based on the enforcement conference discussions and further review the licensee decided that increasing the staffing level at the NEL was necessary. In a letter dated June 14, 1988 the licensee committed to retaining a qualified individual to serve as reactor supervisor and whose job description requires the individual spend three quarters of his time carrying out the duties and responsibilities of that position. I have determined that, given the significance of the licensee's commitments in assuring the safe operation of the reactors, the commitments should be incorporated as conditions to the facility's license.

IV

In view of the foregoing and pursuant to Sections 104, 161b, 161i, and 162 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered that licenses No. R-25 and R-126 are modified as follows:

A. The Licensee shall retain a full time professor who has at least one year of research reactor experience to act as the reactor supervisor.

B. The professor retained as reactor supervisor shall devote at least 75 percent of his employed time to carrying out the duties and responsibilities of the reactor supervisor as defined in facility procedures and technical specifications.

The Regional Administrator, Region IV, may relax or terminate any of the above conditions for good cause shown.

V

The Licensee or any other person adversely affected by this Order may, within 30 days of the date of this Order, request a hearing. A request for a hearing should be clearly marked as a "Request for Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Upon failure of the licensee and any other person adversely affected by this Order to answer or request a hearing within the specified time, this Order shall be final without further proceedings.

Dated at Rockville, Maryland, this 8th day of July 1988.

For the Nuclear Regulatory Commission,

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88-10083 Filed 7-15-88; 8:45 am]

BILLING CODE 7550-01-M

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Matching Program to Identify Registration Violators

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Program", the Selective Service System publishes the following information concerning the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources.

The notice published in the Federal Register, February 19, 1987 (52 FR 5231) is amended by adding to the list of record systems that are matched against the SSS-8 the following system of records:

United States Postal Service

USPS 050.020, Finance Records, published in 53 FR 25028 (July 1, 1988) and; USPS 120.120, Personnel Records, published in 53 FR 25028 (July 1, 1988).

The matching will begin August 15, 1988.

Congressional Notice

Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

Dated: July 12, 1988.

Samuel K. Lessey, Jr.,
Director of Selective Service.

[FR Doc. 88-16104 Filed 7-15-88; 8:45 am]

BILLING CODE 9015-01-M

DEPARTMENT OF STATE

[Public Notice 1009]

Statutory Debarment Under the ITAR

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been debarred pursuant to section 127.6(c) of the International Traffic in Arms Regulations (22 CFR Parts 120-130).

EFFECTIVE DATE: July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Clyde Bryant, Chief, Compliance Analysis Division, Office of Munitions Control, Department of State (202-875-6650).

SUPPLEMENTARY INFORMATION:

Section 1255 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Dec. 22, 1987, Pub. L. 100-204, 101 Stat. 1331, 1429) amended section 38 of the Arms Export Control Act (22 U.S.C. 2778) (the AECA), which governs the export of defense articles and services. The amendment provides additional authority for the Department to implement the AECA. The amendment is designed primarily to ensure that persons convicted of certain offenses or debarred by U.S. Government agencies for certain actions are denied export privileges. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities.

New section 30(g)(4) of the AECA prohibits the issuance of export licenses to a person if that person, or any party to the export, has been convicted of violating certain U.S. criminal statutes, including the AECA, or is ineligible to receive an export license or approval from any agency of the U.S.

Government. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis.

On April 4, 1988, the Department revised the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) to clarify the debarment process provided by Part 127. Section 127.6 authorizes the Assistant Secretary of State for Politico-Military Affairs to prohibit certain persons from participating directly or indirectly in the export of defense articles or in the furnishing of defense services. Such a prohibition is referred to as a debarment, which, depending upon the circumstances, may be imposed on the basis of judicial proceedings that resulted in a conviction for violating or conspiring to violate the AECA (statutory debarment), or on the basis of an administrative proceeding described in Part 128 (administrative debarment). See 22 CFR 127.6(b). Statutory debarment is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. Thus, those procedures of Part 128 of the ITAR that apply to administrative debarment are not applicable in such cases.

It is the policy of the Department not to consider applications for licenses or requests for approvals that involve any person who has been convicted of violating the AECA, or of conspiracy to violate the AECA for a period of three years following the conviction. The ITAR provides the Assistant Secretary for Politico-Military Affairs with the discretion to determine an alternative period of time for debarment. Persons who have been statutorily debarred may appeal to the Under Secretary of State for Security Assistance, Science and Technology for reconsideration of the ineligibility determination.

Pursuant to amended section 38 of the AECA and § 127.6 of the ITAR, the Assistant Secretary for Politico-Military

Affairs has debarred twenty-six persons who have been convicted of violating the AECA, or of conspiracy to violate the AECA. These persons have been debarred for a three year period following their conviction, and have been so notified by a letter from the Office of Munitions Control. Pursuant to § 127.0(c), the names of these persons (and their offense, date of conviction(s), and court of conviction(s)) are being published in the Federal Register. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Munitions Control.

This notice involves a foreign affairs function of the United States and is thus excluded from the procedures of 5 U.S.C. 553 and 564 and Executive Order 12291 (46 FR 13198).

It implements statutory and regulatory requirements that entered into force on December 22, 1967 and April 4, 1968, respectively.

In accordance with these authorities, the following persons are debarred for a period of three years following their conviction for violating, or conspiring to violate, the AECA (name/offense/date/court):

1. European Defense Associates
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778)
January 21, 1968
Middle District of Florida
2. John J. McTeaviah
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778
February 20, 1968
Northern District of Georgia
3. Antonio Achurra
22 U.S.C. 2778
February 24, 1968
Central District of California
4. Arif Durrani
22 U.S.C. 2778
May 13, 1967
District of Connecticut
5. Francesco Bilotta
22 U.S.C. 2778
May 29, 1967
Eastern District of New York
6. Joseph P. Murray, Jr.
22 U.S.C. 2778
June 30, 1967
District of Massachusetts
7. Robert Anderson
22 U.S.C. 2778
June 30, 1967
District of Massachusetts
8. Patrick Nee
22 U.S.C. 2778
June 30, 1967
District of Massachusetts
9. Johannes Nootenboom
22 U.S.C. 2778
July 17, 1967
Western District of Washington
10. Edward James Bush
22 U.S.C. 2778
August 3, 1967
Central District of California
11. Anthony George Cenci
22 U.S.C. 2778
August 10, 1967
Central District of California
12. Richard Nortman
22 U.S.C. 2778
August 10, 1967
Central District of California
13. Richard Herman Schroeder
22 U.S.C. 2778
August 10, 1967
Central District of California
14. George MacArthur Posey
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778
September 21, 1967
Central District of California
15. Hassan Kangaroo
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778
October 6, 1968
Central District of California
16. Cesario Estanislao Benitez
22 U.S.C. 2778
October 26, 1967
Northern District of California
17. Arie Aviv
22 U.S.C. 2778
October 30, 1967
Southern District of New York
18. Ildiro Manabat Roman
22 U.S.C. 2778
November 13, 1967
Northern District of California
19. George Wenzl
22 U.S.C. 2778
November 19, 1967
District of Colorado
20. Clifford Kapel
22 U.S.C. 2778
November 20, 1967
Southern District of Florida
21. Technical Service International
22 U.S.C. 2778
November 20, 1967
Southern District of Florida
22. Ronald Howard Semler
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778
February 10, 1968
Central District of California
23. Monte Barry Semler
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778
February 10, 1968
Central District of California
24. Hercaire International
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778)
January 13, 1968
Southern District of Florida
25. Norman Thomas Steckler
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778)

January 15, 1988
Southern District of Florida
26. Robert Eugene Helmuth
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778)
January 15, 1988
Southern District of Florida.
Date: July 8, 1988.
William H. Robinson,
Director, Office of Munitions Control, Bureau of Politico-Military, Department of State.
[FR Doc. 88-10008 Filed 7-15-88; 8:45 am]
BILLING CODE 4710-25-2

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 8, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45888

Date Filed: July 7, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 4, 1988.
Description: Application of Tropical Airways, Inc. pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations applies for certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation.

Docket No. 45887

Date Filed: July 7, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 4, 1988.
Description: Application of Tropical Airways, Inc. pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to engage in foreign scheduled air transportation.

Docket No. 45894

Date Filed: July 8, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 1988.
Description: Application of Virgin Atlantic Airways Limited, pursuant to section 402 of the Act and subpart Q of the Regulations requests amendment of its foreign air carrier permit to engage in foreign charter air transportation of passenger and cargo between any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers.

Docket No. 42012

Date Filed: July 8, 1988.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 1988.
Description: Amendment No. 1 of the Application of Servicios Aereos, S.A. d/b/a Aero California, pursuant to section 402 of the Act and subpart Q of the Regulations, requests that it be granted permit authority to engage in scheduled foreign air transportation of persons, property and mail between between (1) La Paz and San Jose del Cabo, Mexico on the one hand, and Los Angeles, California on the other hand, and (2) La Paz, Guaymas and San Jose del Cabo on

the one hand, and Tucson and Phoenix, Arizona on the other hand.
Phyllis T. Keyler,
Chief, Documentary Services Division.
[FR Doc. 88-10067 Filed 7-15-88; 8:45 am]
BILLING CODE 4910-22-2

Federal Aviation Administration

[Summary Notice No. PE-88-27]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25505	Horizon Air	14 CFR SFAR 38-2	To allow the application of § 121.9 in the conduct of operations with 10-passenger SA327 aircraft.
25602	Trans World Airlines, Inc.	14 CFR 121.360	To allow petitioner to operate six Lockheed L-1011-385-1-15 airplanes for an indefinite period of time with a ground proximity warning system that utilizes the Civil Aviation Authority certification requirements instead of complying with the requirements of Technical Standard Order C32.
25616	America West Airlines	14 CFR 108.5(a)(1)	To allow petitioner to utilize Boeing 737 aircraft without a security program that meets the requirements of § 108.7.

[FR Doc. 88-10029 Filed 7-15-88; 8:45 am]
BILLING CODE 4910-13-2

Air Traffic Control Tower Commissioned; Nashua, NH

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of commissioning Air Traffic Control Tower.

SUMMARY: Notice is hereby given that on August 3, 1988, the Airport Traffic Control Tower at Boire Field, Nashua, New Hampshire, will be commissioned. Tower hours of operation will be established in advance by Notice to Airmen, and thereafter published in the Airman's Information Manual. The

designated facility identification for the airport control tower will be: Nashua Tower.

FOR FURTHER INFORMATION CONTACT: Communications to the tower should be directed to: Mr. Royce N. Rankin, Jr., Airport Traffic Control Tower, 79 Perimeter Road, Nashua, New Hampshire 03063.

[49 USC 1346 and 1354(a); 49 USC 106(g) (Revised Pub. L. 97-409 (January 12, 1983))]
Issued in Burlington, Massachusetts, on July 8, 1988.

James L. Lucas,
Manager, Air Traffic Division, New England Region.

[FR Doc. 88-10023 Filed 7-15-88; 8:45 am]
BILLING CODE 4910-13-2

regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 8, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 12, 1988.

Denise D. Hall,
Manager, Program Management Staff.

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 12, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

BEST COPY AVAILABLE

and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

INTERNAL REVENUE SERVICE

OMB Number: 1545-0084

Form Number: 8586

Type or Review: Revision

Title: Low-Income Housing Credit

Description: The Tax Reform Act of 1986 (Code sec. 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Estimated Number of Respondents: 50,000

Estimated Burden Hours Per Response: 18 minutes

Frequency of Response: Annually

Estimated Average Reporting Burden: 15107 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Date A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-18040 Filed 7-15-88; 8:45 am]

BILLING CODE 4810-25-14

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 654; Ref: ATF O 1100.91C]

Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum

Delegation Order

1. **Purpose.** This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. **Cancellation.** ATF O 1100.91B, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum, dated August 27, 1986, is cancelled.

3. **Background.** Under current regulations, the Director has the authority to take final action on matters

relating to the distribution and use of denatured alcohol and rum. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. **Delegations.** Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order 120-01 (formerly Order No. 221), dated June 6, 1972, and 26 CFR 301.7701-6, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To approve containers, other than those specified in regulations, for the conveyance of large quantities of denatured spirits or articles, under 27 CFR 20.11.

b. To prescribe all forms required by regulations under 27 CFR 20.21.

c. To approve, pursuant to written applications, alternate methods or procedures (including alternate construction or equipment, but excluding action on general-use formulas), in lieu of methods or procedures specifically prescribed in regulations, under 27 CFR 20.22(a).

d. To withdraw approval of any alternate method or procedure whenever the revenue is jeopardized or the effective administration of the regulations is hindered, under 27 CFR 20.22(c).

e. To issue permits, pursuant to 27 CFR 20.242, to cover the use of specially denatured spirits by the United States or a governmental agency, under 27 CFR 20.25.

f. To approve or disapprove adoption by a successor of a predecessor's formulas and statements of process, under 27 CFR 20.63.

g. To approve other suitable materials for packages containing more than 5 gallons of completely denatured alcohol, under 27 CFR 20.144.

h. To approve the printing of extraneous matter on labels which are to be used on containers of completely denatured alcohol of 5 gallons or less, under 27 CFR 20.147.

i. To authorize other marks to be placed on the Government head or side of a package, under 27 CFR 20.178.

j. To approve applications and grant permits on ATF Form 5150.33, Spirits for Use of the United States, for the procurement and withdrawal of specially denatured spirits for use by the United States or any governmental agency, and to receive evidence of authority to sign for the head of an agency or subagency, under 27 CFR 20.241 and 27 CFR 20.242.

k. To cancel issued permits under 27 CFR 20.245.

l. To authorize the disposition of excess specially denatured spirits in the possession of a governmental agency, under 27 CFR 20.246.

5. Coordination With Other Offices.

The authority delegated under paragraphs 4a and 4f through 4h of this order shall be carried out in coordination with the Office of the Comptroller, Director of Laboratory Services, Chief, Alcohol and Tobacco Laboratory.

6. Redelegation.

a. The authorities in paragraphs 4a, 4b, 4d and 4g may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4c, 4e, 4f and 4h through 4i may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

c. The authority in paragraph 4c above may be redelegated to regional directors (compliance) to approve, without submission to Bureau Headquarters, subsequent applications for alternate methods or procedures and processes which are identical to those previously approved by Bureau Headquarters. Regional director (compliance) may redelegate this authority to personnel not lower than the position of technical section supervisor.

d. The authority in paragraph 4i may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor or area supervisor.

e. The authority in paragraph 4d above may be redelegated to regional directors (compliance) to withdraw approval alternate methods or procedures which were approved at the regional level. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of chief, technical services.

f. The authority in paragraphs 4f and 4i may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor.

7. **For Information Contact.** Colleen M. Then, Distilled Spirits and Tobacco Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202) 566-7531.

8. **Effective Date.** This delegation order becomes effective on (Date of Publication in the Federal Register).

Approved: June 20, 1988.

W.T. Drake,

Acting Director.

[FR Doc. 88-18085 Filed 7-15-88; 8:45 am]

BILLING CODE 4810-12-14

[Notice No. 655; Ref: ATF O 1100.97D]

Delegation to the Comptroller of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum

Delegation Order

1. **Purpose.** This order delegates certain authorities of the Director to the Comptroller and permits redelegation to other Office of the Comptroller personnel.

2. **Cancellation.** AFT O 1100.87C, Delegation Order—Authorities of the Director in 27 CFR Part 211, Distribution and Use of Denatured Alcohol and Rum Regulations, dated June 30, 1982 is canceled.

3. **Background.** The Director has authority, under current regulations, to take final action on matters relating to denatured distilled spirits and the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits. It has been administratively determined that certain authorities now vested in the Director by regulations in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum Regulations, belong at a lower organizational level and should be delegated.

4. **Delegation.** Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order 120-01 (formerly Order No. 221), dated June 6, 1972, and 26 CFR 301.7701-6, authority to take final action on the following matters is delegated to the Comptroller:

a. To approve all formulas for articles and statement of processes relating to recovery operations or other activities required to be submitted on ATF F 5150.19, under 27 CFR 20.23.

b. To cancel any approved formulas or statements of process, under 27 CFR 20.91(c).

c. To request for submission of samples of (1) any ingredient used in the manufacture of an article or (2) any finished article under 27 CFR 20.92.

d. To restrict on ATF F 5150.19 covering the size of containers in which an article may be sold, the maximum quantity which may be sold to any person at one time, the class of vendee to which an article may be sold, and the specific use for which an article may be sold, under 27 CFR 20.100.

5. **Redelegation.** The authorities delegated herein may be redelegated in Bureau Headquarters but not below the level of Physical Science Technician.

6. **For Information Contact.** Colleen M. Then, Distilled Spirits and Tobacco Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7531.

7. **Effective Date.** This delegation order becomes effective on July 18, 1988.

Approved: June 20, 1988.

W.T. Drake,

Acting Director.

[FR Doc. 88-18086 Filed 7-15-88; 8:45 am]

BILLING CODE 4810-21-14

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies. ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 17, 1988.

Dated: July 8, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.

2. Notice of Change in Student Status.

3. VA Forms 22-1999b and 22-1999b-1.

4. This form is issued by school certifying officials to report changes in the enrollment status of a student who is in receipt of VA benefits. The information is used by the VA as a basis for adjusting the students' benefits.

5. On occasion.

6. State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.

7. 8,550 responses.

8. 82,023 hours.

9. Not applicable.

[FR Doc. 88-18018 Filed 7-15-88; 8:45 am]

BILLING CODE 8320-01-14

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held August 2, and 3, 1988. This is a regularly scheduled meeting for the purpose of reviewing Agency and other relevant services to Vietnam veterans and to formulate Committee recommendations and objectives. The meeting will be held in the Omar Bradley Conference Room at VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The meeting August 2, will begin at 8:30 a.m. and conclude at 4 p.m. The day's agenda will consist of an update and review of the National Vietnam Veterans Readjustment Study, the utilization of Resource Allocation Methodology (RAM) and Diagnostic Related Groups (DRG) in VA health care facilities, VA Social Work Service and mental health, and the Department of Veterans Benefits management of post-traumatic stress disorder (PTSD) claims. The meeting on August 3 will begin at 8:30 a.m. and conclude at 4 p.m. The second day's agenda will consist of a review of the influence of RAM and DRG on mental health services, VA mental health and quality assurance, VA domiciliary care and PTSD treatment, and a status update on the activities of the Chief Medical Director's Special Committee on PTSD. Both day's meetings will be open to the public to the seating capacity of the room.

Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling

Service, Veterans Administration
Central Office (phone number 202 233-
3317/3303).

Dated: July 11, 1988.

By direction of the Administrator:

Dennis R. Boxx,

Deputy Associate Deputy Administrator for
Public Affairs.

[FR Doc. 88-16055 Filed 7-15-88; 8:45 am]

BILLING CODE 5320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 137

Monday, July 18, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: 53 FR 26367,
Tuesday, July 12, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE
OF MEETING: 9:30 a.m. (eastern time)
Tuesday, July 19, 1988.

CHANGE IN THE MEETINGS:

Open Session

The items listed below have been added to the agenda:

- Proposed Policy Statement on Application of Section 4(f)(2) of the ADEA of 1967, as amended, 29 U.S.C. § 623(f)(2), to the Treatment of Welfare Benefits Under Pension Plans
- Policy Statement on Equal Pay Act Cases Involving Sports Coaches

CONTACT PERSON FOR MORE

INFORMATION: Frances M. Hart,
Executive Officer, Executive Secretariat,
(202) 634-6746.

Date: July 14, 1988.

Frances M. Hart,
Executive Officer, Executive Secretariat.
[FR Doc. 88-16134 Filed 7-11-88 11:48 am]

BILLING CODE 5755-05-M

FARM CREDIT ADMINISTRATION

Correction of Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on July 11, 1988 (53 FR 26128) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for July 12, 1988. This notice is to revise the agenda for that meeting to add an item to the closed session.

FOR FURTHER INFORMATION CONTACT:

David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22101-5090.

ADDRESS: Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22101-5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, July 12, is revised as follows:

Open Session

- Final Regulations Governing Civil Money Penalties, 12 CFR Parts 622 and 623.
- Final Regulations Governing FCA's Examination Process, 12 CFR Parts 611 and 617.
- Reaffirmation of Final Rule Relating to Book-Entry Procedure Applicable to the Farm Credit System Financial Assistance Corporation, 12 CFR 615, new Subpart R.

*Closed Session

- Examination and Enforcement Matters.
- Update regarding Federal Land Bank of Jackson, in receivership, and Federal Land Bank Association of Jackson, in receivership.

Dated: July 13, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-16116 Filed 7-13-88; 4:38 pm]

BILLING CODE 5705-01-M

FEDERAL COMMUNICATIONS COMMISSION

July 13, 1988.

FCC To Hold a Closed Commission Meeting Wednesday, July 20, 1988

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Wednesday, July 20, 1988, following the Open Meeting, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Hearing—1.—Petition for Approval of Settlement Agreement and related matters in the Los Angeles, California television comparative renewal proceeding (Docket Nos. 16679-80).

Hearing—2.—Petition for Approval of Settlement Agreement and related matters in the Memphis, Tennessee radio comparative renewal proceeding (MM Docket Nos. 84-1051, 84-1053).

These items are closed to the public because they concern Adjudicatory Matters. (See 47 CFR 0.803 (j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff

General Counsel and members of her staff

Chief, Office of Public Affairs and members of his staff

Action by the Commission July 13, 1988.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (6), (8) and (9).

Commissioners Patrick, Chairman; Quello, and Dennis voting to hold a closed meeting.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 13, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-16151 Filed 7-11-88; 11:40 am]

BILLING CODE 4712-01-M

FEDERAL COMMUNICATIONS COMMISSION

July 13, 1988.

FCC To Hold Open Commission Meeting, Wednesday, July 20, 1988

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, July 20, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1.—Title: Applications for authority to construct and operate an Automated Maritime Telecommunications System using the Group C channels (216.512 to 216.9875 MHz) along the Lower Mississippi River and Gulf Intracoastal Waterway filed by Riverphone, Inc. t/a Maritel. Summary: The FCC will consider the applications and waiver request submitted by Maritel for an Automated Maritime Telecommunications System and the petitions filed opposing them.

General—2.—Title: Amendment of Parts 2 and 80 of the Commission's Rules applicable to Automated Maritime Telecommunications Systems (AMTS). Summary: The Commission will consider a petition for rule making asking that AMTS service be expanded nationwide and that operation on Group C and D channels be permitted subject to the same restrictions concerning interference to television reception applicable to Group A and B channels.

General—3.—Title: Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for use of the 821-824/866-869 MHz Bands by the Public Safety Services. Summary: The Commission will address four petitions for Reconsideration filed in

regard to the Report and Order in this proceeding.

Private Radio—1—Title: In the Matter of Amendment of Part 90 of the Commission's Rules to Permit Business Radio Use of Certain Channels in the 150 MHz Band. Summary: The Commission will consider a Notice of Proposed Rule Making regarding Business and Taxicab Radio use of certain channels in the 150 MHz band.

Common Carrier—1—Title: In the Matter of Telephone Company Cable Television Cross-Ownership Rules. Sections 63.54-63.58, CC Docket No. 87-388. Summary: The Commission will consider further action in this proceeding.

Mass Media—1—Title: Section 403 inquiry into alleged abuses of the Commission's processes by applicants for broadcast facilities. Summary: The Commission will consider whether to initiate an inquiry into abuses of its processes in the filing of applications by various applicants.

Mass Media—2—Title: Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations. Summary: The Commission will consider whether to propose to establish an additional intermediate classification (Class C3) for Zone II FM broadcast stations and allotments, as requested by Petex Communications, Inc. (RM-6236). Also, the Commission will consider whether to propose to increase the maximum effective radiated power limit for Class A FM broadcast stations from 3000 to 6000 watts, as requested by the New Jersey Class A FM Broadcasters Association (RM-5237).

Mass Media—3—Title: Amendment of Part 73 of the Commission's Rules to adopt a new emission limitation and to eliminate restrictions on interference to the protected daytime contours of AM stations. Summary: The Commission will consider adoption of a Notice of Proposed Rule Making in the above-entitled matters.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 13, 1988.
Federal Communications Commission,
H. Walker Foster III,
Acting Secretary.
[FR Doc. 88-16152 Filed 7-11-88; 11:40 am]
BILLING CODE 6715-01-0

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:29 a.m. on Tuesday, July 12, 1988, the Board of Directors of the Federal

Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the possible closing of certain insured banks; (2) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: July 13, 1988.

Federal Deposit Insurance Corporation,
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 88-16128 Filed 7-14-88; 11:48 am]
BILLING CODE 6714-01-0

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1405)

TIME AND DATE: 10 a.m. (e.s.t.),
Wednesday, July 20, 1988.

PLACE: TVA Chattanooga Office
Complex (Auditorium), 1101 Market
Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 22, 1988.

Discussion Item

1. Preliminary Rate Review.

Action Items

Old Business

1. Contract No. TV-74000A Among State of Alabama Community College in Gadsden, The University of Alabama, the City of Gadsden, and TVA under which the Parties will Cooperate to Continue a Project to Establish a Joint Research and Training Center.

New Business

A—Budget and Financing

*A1. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Performance of a Safety System Quality Evaluation on the Containment Spray System for Unit 1 at Sequoyah Nuclear Plant.

C—Power Items

*C1. Proposed Interruptible Wheeling Agreement with Mississippi Power & Light Company.

C2. Supplement to the Statement to Distributors Regarding Administration of Wholesale Power Contract Resale Provisions.

C3. Revision of TVA's Current Arrangements with General Power Customers Relating to Contract Demand Reduction.

C4. Proposal to Inform Distributors that Mercury-vapor Fixtures may be Offered for New Service to Individual Outdoor Lighting Customers Under the Outdoor Lighting Rate Schedule.

C5. Revision to the Economy Surplus Power Program.

C6. Proposed Form Agreement Covering Distributor Cooperation in a Residential Electrical Development Program.

D—Personnel Items

D1. Supplement to Consulting Contract TV-44938A with John M. Kellberg, Knoxville, Tennessee, for Consultation on Major Hydro Projects and Engineering Problems Associated with Thermal Power Plants. Requested by the Power Group.

D2. Supplement to Consulting Contract TV-55304A with Robert B. Jansen, Spokane, Washington, for Consultation on Major Hydro Projects and Engineering Problems Associated with Thermal Power Plants. Requested by the Power Group.

D3. Supplement to Consulting Contract TV-69636A with Thomas M. Lepa, Incorporated, Menlo Park, California, for Consultation on Major Hydro Projects and Engineering Problems Associated with Thermal Power Plants. Requested by the Power Group.

*D4. Supplement to Consulting Contract TV-72363A with Southerland, Asbill & Brennan to Provide Advice and Consultation with Respect to Legal Matters.

E—Real Property Transactions

E1. Modification of Deed Affecting Approximately 0.06 Acre of Chickamauga Reservoir Land Located in Meigs County, Tennessee, to Resolve an Existing Violation of the Deed Covenants.

F—Unclassified

*F1. Drawdown of Norris Reservoir in an Effort to Maintain Essential Raw Cooling Water Temperature Limit at Sequoyah Nuclear Plant.

F2. Supplement to Memorandum of Agreement No. TV-23928A Between TVA and U.S. Department of the Army, Corps of Engineers, Covering Arrangements for Improvements to Navigation Facilities on the Tennessee River.

F3. Supplement to Agreement No. TV-69546A Between TVA and the U.S. Forest Service, Department of Agriculture, Covering

Arrangements for TVA Assistance in Support of Forest Service Land Management and Natural Resources Programs.

F4. Supplement to Contract No. TV-72460A Between TVA and the U.S. Forest Service, Department of Agriculture, Covering Arrangements for a Study Relating to Hardwood in the Tennessee Valley Region.

F5. Supplement to Agreement No. TV-73630A with U.S. Army Corps of Engineers, Lower Mississippi Valley Division, Vicksburg, Mississippi, Covering Arrangements for a Fishery Survey on the Lower Mississippi River.

F6. Agreement Between TVA and U.S. Geological Survey, U.S. Department of the Interior, Covering Arrangements for a Phosphate Beneficiation Prefeasibility Study.

F7. Interagency Agreement with the U.S. Army Project Manager for Binary Munitions Covering Arrangements for Loan of TVA Employees in Connection with Pilot-Scale Verification of the Process for Methylphosphonic Dichloride Production.

F8. Interagency Agreement with the U.S. Army Resource Management Division, Rocky Mountain Arsenal, Covering Arrangements for Loan of TVA Employees in Connection with a Chemical Agent Safety Program.

F9. Fertilizer Distribution Agreement with Nitron Chemical Corporation. *

*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE

INFORMATION: Alan Carmichael, Director of Information, or a member of this staff can respond to requests for information about his meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: July 13, 1988.

W.F. Willis,

Executive Vice President and Chief Operating Officer.

[FR Doc. 88-16162 Filed 7-14-88; 3:43 pm]

BILLING CODE 6715-01-0

Corrections

Federal Register
Vol. 53, No. 137
Monday, July 18, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3410-4]

Municipal Settlement Discussion Group

Correction

In notice document 88-15229 appearing on page 25537 in the issue of Thursday, July 7, 1988, make the following correction:

In the third column, under **FOR FURTHER INFORMATION CONTACT**, the telephone number should read 202/ 475-8387.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AAL-4]

Alteration of Colored Federal Airway R-39; AK

Correction

In rule document 88-14939 beginning on page 25141 in the issue of Tuesday, July 5, 1988, make the following correction:

On page 25142, in the second column, "§ 71.817—[Amended]" should read "§ 71.107—[Corrected]".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 88-AAL-2]

Alteration of Jet Route; Ohio

Correction

In rule document 88-14938 beginning on page 25143 in the issue of Tuesday, July 5, 1988, make the following corrections:

1. On page 25143, in the third column, in the second line from the bottom, "0910 u.t.c." should read "0901 u.t.c.".

2. On page 25144, in the first column, under "FOR FURTHER INFORMATION CONTACT", in the second line, "2400," should read "240)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-08; Notice 2]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

Correction

In rule document 88-15121 beginning on page 25337 in the issue of Wednesday, July 6, 1988, make the following correction:

§ 571.208 [Corrected]

On page 25344, in the third column, in § 571.208, in section 4.4.2.2., in the ninth line, "of" should read "to".

BILLING CODE 1505-01-D

Monday
July 18, 1988

Part II

Department of Education

34 CFR Part 700

Educational Research Grant Program;
Final Regulations

federal register

DEPARTMENT OF EDUCATION

34 CFR Part 700

Educational Research Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Educational Research Grant Program. These amendments are needed to implement certain provisions of the General Education Provisions Act (GEPA), as amended by Title XIV of the Higher Education Amendments of 1986, and to improve the operation of the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence Bussey, Jr., Office of Research, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Suite 610, Washington, DC 20208-1633. Telephone number: (202) 357-6240.

SUPPLEMENTARY INFORMATION: The Educational Research Grant Program (ERGP) provides assistance to institutions of higher education, public and private organizations, institutions and agencies and individuals for educational research and related activities designed to advance educational theory and practice.

On March 18, 1988, the Secretary published in the Federal Register (53 FR 9088) a notice of proposed rulemaking (NPRM) for the Educational Research Grant Program.

Public Comment

In the NPRM, the Secretary invited comments on the proposed regulations. The Secretary received comments from one organization that fully supported the proposed rules. There are no differences between the NPRM and these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would

require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 700

Education, Education research, Grant programs—education.

(Catalog of Federal Domestic Assistance Number 84.117: Educational Research and Development)

Dated: June 23, 1988.

William J. Bennett,
Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 700 to read as follows:

PART 700—EDUCATIONAL RESEARCH GRANT PROGRAM

Subpart A—General

Sec.

700.1 What is the Educational Research Grant Program?

700.2 Who is eligible for an award?

700.3 What types of activities may the secretary fund?

700.4 What priorities may the secretary establish?

700.5 What regulations apply?

700.6 What definitions apply?

Subpart B—How Does One Apply For An Award?

700.10 What types of applications may one submit?

700.11 When may one submit an unsolicited application?

Subpart C—How Does The Secretary Make An Award?

700.20 How does the secretary evaluate an application?

700.21 What special procedures does the secretary use to evaluate an unsolicited application?

700.22 What selection criteria does the secretary use?

700.23 What additional procedures may the secretary use to determine which applications will be selected for funding?

700.24 What additional factors may the secretary consider in making awards for invitations applications and field-initiated applications?

Subpart D—What Conditions Must Be Met After An Award?

700.30 What restrictions apply to the use of funds awarded under this program?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

Subpart A—General

§ 700.1 What is the Educational Research Grant Program?

The Educational Research Grant Program supports scientific inquiry designed to advance educational theory and practice.

(Authority: 20 U.S.C. 1221e)

§ 700.2 Who is eligible for an award?

The following are eligible for awards under the Educational Research Grant Programs:

- (a) Institutions of higher education.
- (b) Public and private organizations, institutions, and agencies.
- (c) Individuals.

(Authority: 20 U.S.C. 1221e)

§ 700.3 What types of activities may the Secretary fund?

(a) The Secretary may fund applications that include, but are not limited to, those designed to carry out one or more of the following activities:

- (1) Educational research.
- (2) Dissemination of educational research.
- (3) Training of individuals in educational research.
- (b) For each competition, the Secretary may restrict applications to one or more of the activities in paragraph (a) of this section.
- (c) For each competition for invitations applications announced in the Federal Register, the Secretary may restrict educational research projects to one or more of the following activities:

- (1) Basic research.
- (2) Applied research.
- (3) Development.
- (4) Planning.
- (5) Surveys.
- (6) Assessments.
- (7) Evaluations.
- (8) Investigations.
- (9) Experiments.
- (10) Demonstrations in education and fields related to education.

(Authority: 20 U.S.C. 1221e)

§ 700.4 What priorities may the Secretary establish?

(a) For each competition for invitations applications, the Secretary may select funding priorities from a list of biennial research priorities published in the Federal Register for public comment pursuant to section 405(b)(4) of the Act. These biennial research priorities may include one or more priorities from paragraph (b) of this section.

(b) The Secretary may also select one or more funding priorities from the

following list of priorities or combinations of these priorities:

- (1) Learning.
- (2) Teaching.
- (3) Technology in education.
- (4) Instructional processes and materials, including textbooks and computer software for instruction.
- (5) Education and staff development for teachers, administrators, and other education staff.
- (6) Organization and management of schools, including effective education leadership.
- (7) Evaluation and indicators, including testing, measurement, and standards of performance.
- (8) Governance of education, including school board policies and practices.
- (9) Educational finance and productivity.
- (10) Education and the law.
- (11) Dissemination and knowledge utilization in education.
- (12) Improvement in education, including State and local reform initiatives.
- (13) Student achievement, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.
- (14) Home, family, cultural, and community influences on education, including parental choice and involvement in schooling.
- (15) Education, work, and careers.
- (16) Equity and excellence, including the effects of ability grouping.
- (17) Guidance and counseling.
- (18) International education.
- (19) English literacy, including reading, writing, and language skills.
- (20) Mathematics.
- (21) Science.
- (22) Foreign languages.
- (23) Early childhood education.
- (24) History and social sciences including economics, geography, political science, sociology, anthropology, and psychology.
- (25) Physical and health education.
- (26) Humanities, including music, art, literature, and dance.
- (27) Citizenship and character education.
- (28) Elementary education.
- (29) Secondary education.
- (30) Early adolescent education.
- (31) Adolescent education.
- (32) Postsecondary education.
- (33) Adult and continuing education.
- (34) Teachers.
- (35) School professionals and personnel.
- (36) Public and private institutions.
- (37) School discipline and crime in schools.
- (38) Education of special populations, including the educationally

disadvantaged or students at-risk, those with limited English proficiency, the handicapped, immigrants, and the academically gifted and talented.

(Authority: 20 U.S.C. 1221e)

§ 700.5 What regulations apply?

The following regulations apply to grants under the Educational Research Grant Program:

(a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government).

(b) The regulations in this Part 700.

(Authority: 20 U.S.C. 1221e)

§ 700.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant	Facilities
Application	Grant
Award	Grantee
Budget	Nonprofit
Contract	Private
Department	Project
EDGAR	Public
Equipment	Secretary

(b) *Other definitions.* The following definitions also apply to this part: "Act" means the General Education Provisions Act, as amended.

"Educational research" means basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and related fields.

"Field-initiated applications" means applications to conduct educational research on a topic or topics chosen by the applicant.

"Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1141(a))

"Invitational applications" means applications meeting one or more priorities established by the Secretary in accordance with § 700.4 and 34 CFR 75.105.

"Unsolicited application" means an application not specifically invited by the Secretary, to carry out one or more of the activities listed in § 700.3(a).

(Authority: 20 U.S.C. 1221e)

Subpart B—How Does One Apply For An Award?

§ 700.10 What types of applications may one submit?

An eligible party listed in § 700.2 may submit one or more of the following types of applications for awards under this program:

- (a) An invitational application in response to an application notice that establishes one or more priorities in accordance with § 700.4 and 34 CFR 75.105.
- (b) A field-initiated application in response to an application notice in accordance with 34 CFR 75.100.
- (c) An unsolicited application as described in § 700.11.

(Authority: 20 U.S.C. 1221e)

§ 700.11 When may one submit an unsolicited application?

An applicant may submit an unsolicited application at any time during a fiscal year.

(Authority: 20 U.S.C. 1221e)

Subpart C—How Does The Secretary Make an Award?

§ 700.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates separately invitational applications, field-initiated applications, and unsolicited applications.

(b) (1) The Secretary evaluates applications on the basis of the selection criteria in § 700.22.

(2) The Secretary awards up to 100 points, including a reserved 25 points to be distributed in accordance with paragraph (b)(4) of this section, based on the selection criteria in § 700.22.

(3) Subject to paragraph (b)(4) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading of the criterion.

(4) For each competition announced in the Federal Register for awards for invitational applications and field-initiated applications, the Secretary distributes the reserved 25 points among the criteria in § 700.22, as announced in a notice published in the Federal Register, and for unsolicited applications, the Secretary distributes the reserved 25 points in accordance with § 700.21(d).

(Authority: 20 U.S.C. 1221e)

§ 700.21 What special procedures does the Secretary use to evaluate an unsolicited application?

(a) At any time during a fiscal year, the Secretary may accept and consider

for funding unsolicited applications, for projects that do not meet a priority established in accordance with § 700.4 (a) and (b), and that have not been submitted under a competition for field-initiated applications for that fiscal year.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(c) The Secretary selects an unsolicited application for funding in accordance with the procedures in § 700.20.

(d) The Secretary assigns 15 of the reserved 25 points under § 700.20(b)(2) to the selection criteria in § 700.22(f) (Significance) so that the maximum number of possible points for this criterion is 30 and 10 of the reserved points to the selection criterion in § 700.22(g) (Technical soundness) so that the maximum number of possible points for this criterion is 25.

(Authority: 20 U.S.C. 1221e)

§ 700.22 What selection criteria does the Secretary use?

(a) *Plan of operation* (10 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) The quality of the applicant's plans to use its resources and personnel to achieve each objective of the project; and

(3) The extent to which the applicant will equitably address the educational needs of students and educators in both public and private educational institutions.

(b) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (b)(1) (i)

and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives, design, and potential significance of the project.

(d) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(f) *Significance* (15 points).

(1) The Secretary reviews each application to determine the significance of the of the proposed project.

(2) The Secretary determines the project's potential to make a significant contribution to American education, as measured by factors such as—

(i) Importance of the proposed project from the standpoint of basic knowledge or of problems in American education;

(ii) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the extent to which the proposed outcomes can be broadly applied.

(iii) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(iv) The extent to which the project is designed to yield products and outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

(g) *Technical soundness* (15 points).

(1) The Secretary reviews each application to determine the technical soundness of the proposed activities.

(2) The Secretary determines—

(i) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(ii) The extent to which the application exhibits a thorough

knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(iii) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(h) *Applicant's commitment and capacity* (0 points). The Secretary may assign points to this criterion pursuant to § 700.20(b)(3). The Secretary determines the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850-0602)

§ 700.23 What additional procedures may the Secretary use to determine which applications will be selected for funding?

(a) After review of applications and preparation of a rank order of applications on the basis of the selection criteria in § 700.22 and in accordance with 34 CFR 75.217(b) and (c), the Secretary selects highly rated applications for further consideration on the basis of the factors in 34 CFR 75.217(d).

(b) For field-initiated applications, the Secretary reviews each application chosen for further consideration to determine whether the proposed activities would address educational problems of national importance. The Secretary determines the relative importance of field-initiated applications and selects only those applications that propose activities that are of the greatest national importance.

(c) In determining the order in which applications chosen for further consideration may be selected for funding under 34 CFR 75.217(d), the Secretary may consider the recommendations of experts.

(Authority: 20 U.S.C. 1221e)

§ 700.24 What additional factors may the Secretary consider in making awards for invitational applications and field initiated applications?

In addition to the criteria in §§ 700.22 and 700.23(b), the Secretary may consider the following factors in selecting invitational applications and field-initiated applications for funding:

(a) The geographical distribution of projects funded under a particular competition or under this program.

(b) The diversity of activities or projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 1221e)

Subpart D—What Conditions Must Be Met After an Award?

§ 700.30 What restrictions apply to the use of funds awarded under this program?

Of the funds made available through an award under the program, the Secretary may restrict the amount of funds used to purchase equipment.

(Authority: 20 U.S.C. 1221e)

[FR Doc. 88-18013 Filed 7-15-88; 8:45 am]

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VOL

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federal register

Monday
July 18, 1988

Part III

Department of
Education

34 CFR Part 779
College Library Technology and
Cooperative Grants Program; Final
Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 779

College Library Technology and Cooperation Grants Program

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: These regulations implement the College Library Technology and Cooperation Grants Program authorized under Title II-D of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. The program is designed to encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking and to improve library and information services provided to them by public and nonprofit private organizations. Funds may also be granted to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, write or call the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank Stevens or Louise Sutherland, U.S. Department of Education, Office of Education Research and Improvement, Library Programs, 555 New Jersey Avenue, NW., Room 402, Washington, DC 20208-1430. Telephone (202) 357-6315.

SUPPLEMENTARY INFORMATION: On March 21, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the College Library Technology and Cooperation Grants Program in the Federal Register 53 FR 9246. This is a new program, funded for the first time in FY 1988. The proposed rules were drafted with input from national library and education organizations. Largely due to this involvement and guidance, few major issues have been raised in response to the NPRM. Comments principally addressed areas needing clarification; these required only minor editorial changes. Other changes included the addition of the minimum amount to be awarded, substitution of more accurate names for two of the types of grants, a clearer statement of the fiscal responsibilities of the grantee, and the addition of a dissemination requirement to the Research and Demonstration Grants.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 779

Colleges and universities, Education, Grant programs—education, Libraries, Library and information science, Libraries—resource sharing, Network, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.107, College Library Technology and Cooperation Grants)

Dated: June 30, 1988.

William J. Bennett,
Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 779 to read as follows:

PART 779—COLLEGE LIBRARY TECHNOLOGY AND COOPERATION GRANTS PROGRAM

Subpart A—General

Sec

779.1 What is the College Library Technology and Cooperation Grants Program?

779.2 What types of grants does the Secretary provide?

779.3 Who is eligible for an award?

779.4 What activities may the Secretary fund?

779.5 What priorities may the Secretary establish?

779.6 What regulations apply?

779.7 What definitions apply?

779.8 What is the time period for expenditure of grant funds?

Subpart B—How Does One Apply for an Award?

779.10 How does an applicant satisfy the matching requirement?

Subpart C—How Does the Secretary Make an Award?

779.20 How does the Secretary evaluate an application?

779.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

779.30 What agency must be informed of activities funded by this program?

Authority: 20 U.S.C. 1021 and 1047, unless otherwise noted.

Subpart A—General

§ 779.1 What is the College Library Technology and Cooperation Grants Program?

The College Library Technology and Cooperation Grants Program provides grants of at least \$15,000 for technological equipment and other special purposes designed to encourage the use of technology to enhance library resource sharing.

(Authority: 20 U.S.C. 1047)

§ 779.2 What types of grants does the Secretary provide?

Under the College Library Technology and Cooperation Grants Program, the Secretary shall make competitive awards in each of the following four types of grants:

(a) *Networking Grants.* These grants are designed to plan, develop, acquire, install, maintain, or replace technological equipment and software necessary to participate in networks for sharing of library resources.

(b) *Combination Grants.* These grants are designed to establish and strengthen joint-use library facilities, resources, software, or equipment.

(c) *Services to Institutions Grants.* These grants are designed to establish, develop, or expand programs or projects that improve the grantee's service to institutions of higher education.

(d) *Research and Demonstration Grants.* These grants are designed to conduct research or demonstration projects to meet specialized national or regional needs in utilizing technology to enhance library and information sciences.

(Authority: 20 U.S.C. 1047)

§ 779.3 Who is eligible for an award?

The following are eligible to receive an award under this program:

(a) For Networking Grants, institutions of higher education.

(b) For Combination Grants, combinations of institutions of higher education.

(c) For Services to Institutions Grants, public or nonprofit private organizations (other than institutions of higher education) that provide library and information services to institutions of higher education on a formal cooperative basis.

(d) For Research and Demonstration Grants, institutions of higher education.

(Authority: 20 U.S.C. 1047)

§ 779.4 What activities may the Secretary fund?

(a) The Secretary awards grants under this program to enable eligible recipients to develop or implement activities or services that the Secretary determines are likely to carry out a purpose specified in § 779.2.

(b) The types of activities or services referred to in paragraph (a) of this section may include, but are not limited to:

- (1) Networking membership fees and expenses;
- (2) Acquisition of equipment and supplies, including computer hardware and software;
- (3) Telecommunications expenses;
- (4) Salaries of project personnel;
- (5) Evaluation of the project; and
- (6) Dissemination of information about the project.

(Authority: 20 U.S.C. 1047)

Cross Reference: (See 34 CFR Part 79, Appendix D.)

§ 779.5 What priorities may the Secretary establish?

(a) Each year, the Secretary may give priority to one or more of the four types of grants listed in § 779.2.

(b) The Secretary announces these priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 1047)

Cross Reference: (See 34 CFR 75.105 Annual priorities.)

§ 779.6 What regulations apply?

The following regulations apply to the College Library Technology and Cooperation Grants Program:

(a) The Education Department General Administration Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 779.

(Authority: 20 U.S.C. 1021)

§ 779.7 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant	Nonprofit
Application	Private
Award	Project
Contract	Project period
EDGAR	Public
Grant	Secretary
Grantee	

(b) *Other definitions.* The following definitions also apply to this part: "Combination of institutions of higher education" means—

(1) Two or more institutions of higher education that have entered into a formal cooperative agreement for the purpose of carrying out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

"Institution of higher education" means a public or nonprofit private institution of higher education as defined in 34 CFR 600.3.

"Joint-use" means shared facilities, resources, and services of member institutions of a combination of institutions of higher education.

"Librarianship" means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

"Library organization or agency" means a public or nonprofit private organization or agency that provides library services or programs.

"Network" means a system of sharing library resources that is developed, maintained, or operated by a library organization or agency and that possesses that following characteristics:

- (1) The system is primarily or exclusively used by other library organizations or agencies.
- (2) The system provides users with cooperative services or activities beyond traditional interlibrary loan services.

(3) The system is not restricted in access or use to units, departments, branches, or components that are part of the library organization or agency sponsoring the system.

(4) The system is constituted under a formal written instrument that describes services, activities, and membership offered by the system.

(Authority: 20 U.S.C. 1021)

§ 779.8 What is the time period for expenditure of grant funds?

Grant funds for these projects may be expended over a three-year period.

(Authority: 20 U.S.C. 1047)

Subpart B—How Does One Apply for an Award?

§ 779.10 How does an applicant satisfy the matching requirement?

An applicant shall, in its application, give satisfactory assurance that, if it is selected as a grantee, it will—

(a) Expend, for the same purposes as the propose for which the grant is made, an amount not less than one-third of the grant during the three-year period for which the grant is made; and

(b) Make the expenditure from funds other than funds received under Title II of the Higher Education Act of 1965.

(Authority: 20 U.S.C. 1047)

Subpart C—How Does the Secretary Make an Award?

§ 779.20 How does the Secretary evaluate an application?

(a) The Secretary uses the general selection criteria in § 779.21(a) and the special program criteria in § 779.21(b) to evaluate applications for new grants.

(b) The maximum possible score for the general criteria is 60 points.

(c) The maximum possible score for the specific criteria is 40 points.

(Authority: 20 U.S.C. 1047)

§ 779.21 What selection criteria does the Secretary use?

(a) *General selection criteria.* An applicant may receive up to 60 points under the general selection criteria in this section, for each type of grant, as follows:

(1) *Project description* (10 points). The Secretary reviews each application to determine the quality of the applicant's project, including—

- (i) A concise description of the project;
 - (ii) A clear statement of the project objectives; and
 - (iii) Evidence of adequate planning.
- (2) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—
- (i) The quality of the design of the project;
 - (ii) The effectiveness of the plan of management to assure proper and efficient administration of the project;
 - (iii) How well the objectives of the project relate to the purpose of the program; and
 - (iv) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(3) *Quality of key personnel* (15 points). The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

- (i) The qualifications of the project director (if one to be used);
- (ii) The qualifications of each of the other key personnel to be used in the project;
- (iii) The time that each person referred to in paragraph (a)(3)(i) and (ii) of this section will commit to the project; and

(iv) Key personnel's knowledge of librarianship and library technology.

(4) *Budget and cost-effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

- (i) The budget is adequate to support the project; and
- (ii) Costs are reasonable in relation to the objectives of the project.

(5) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(6) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

- (i) Are appropriate to the project; and

(ii) Are objective and produce data that are quantifiable. Cross Reference. (See 34 CFR 75.590 Evaluation by the grantee.)

(b) *Special program criteria.* An applicant may receive up to 40 points under the special program criteria in this section for each type of grant, as follows:

(1) *Networking Grants.* The Secretary reviews each Networking Grant application to determine the extent to which—

- (i) The project strengthens the academic programs of the institution;
- (ii) There is a need for special assistance as evidenced by the inability of the institution, because of fiscal constraints, institutional size, or any other factors—

(A) To plan, develop, acquire, install, maintain, or replace technological equipment with its existing resources; and

(B) To participate in resource-sharing networks;

(iii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iv) There is evidence of strong and continuing institutional willingness to share library resources and to participate in cooperative arrangements with other libraries;

(v) The project would increase local, regional, or national access to materials; and

(vi) The applicant possesses, or will possess, after an award of a grant under this program, equipment and software compatible with that of other members of the network.

(2) *Combination Grants.* The Secretary reviews each Combination Grant application to determine the extent to which—

- (i) There is a need for special assistance as evidenced by the inability of the institution to establish and strengthen joint use of library facilities, resources, or equipment with its existing resources because of fiscal constraints, institutional size, or any other factors;
- (ii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iii) There is evidence of willingness to share library resources and to participate in cooperative arrangements with other academic libraries;

(iv) The academic programs of the institutions of higher education described in the application would be strengthened by the project;

(v) Local, regional, or national academic resource sharing would increase;

(vi) Project equipment and software would be compatible with that of other academic networks; and

(vii) Technological expertise would be shared with the academic library community.

(3) *Services to Institutions Grants.* The Secretary reviews each Services to Institutions Grant application to determine the extent to which—

- (i) The project would establish, develop, or expand local, regional, or national resource-sharing programs;
- (ii) There is a demonstrated level of support from institutions of higher education that the project is needed and desired;

(iii) There is evidence of the applicant's commitment to the project and capability to continue the project, and of the likelihood that the applicant will build upon the project when the grant period ends; and

(iv) There is evidence that formal written cooperative agreements to provide library and information services exist between the applicant and the institutions of higher education identified in the application.

(4) *Research and Demonstration Grants.* The Secretary reviews each Research and Demonstration Grant application to determine the extent to which—

- (i) The applicant proposes an innovative approach in utilizing technology for library services;
- (ii) There is evidence from library users, library educators, or library administrators that the research or demonstration project is desirable;

(iii) The project meets a special national or regional need in utilizing technology to enhance library or information sciences;

(iv) The project was developed in consultation with leading experts and takes account of current research; and

(v) The applicant provides plans to disseminate the results of the project.

(Authority: 20 U.S.C. 1047)

(Approved by Office of Management and Budget under control number 1850-0622.)

Subpart D—What Conditions Must Be Met after an Award?

§ 779.30 What agency must be informed of activities funded by this program?

Each applicant that receives a grant under this part shall annually inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Authority: 20 U.S.C. 1022)

Appendix—Analysis of Comments and Responses

The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the headings of the regulations to which they pertain. Technical and other minor changes are not addressed.

The College Library Technology and Cooperation Grants Program

Comment: Two commenters, representing two major national library constituencies, suggested that the minimum grant award amount be included in § 779.1. They noted that this is basic program information and would provide consistency with section 241(b) of the Act.

Discussion: The omission of the minimum grant award in the proposed regulations was inadvertent. The Secretary agrees that the law and the regulations should be consistent.

Change: Section 779.1 has been changed in accordance with the comments and the law to read "the College Library Technology and Cooperation Grants Program provides grants of at least \$15,000 for technological equipment and other special purposes designed to encourage the use of technology to enhance library resources sharing."

Types of Grants Available

Comment: Three commenters sought clarification of the intent and scope of the four types of grants available. For Networking Equipment Grants, they suggested that the intent should be to target funds on new networking initiatives or major program improvements rather than on continuing activities. One commenter questioned whether the emphasis in this category is solely on the purchase of equipment rather than participation in, enhancement of, or creation of new networks. For Joint-Use Grants, one commenter sought a definition of the types of allowable activities.

Discussion: With regard to Networking Grants, the law does not state that new networking initiatives or major program improvements are the only fundable activities under this category. The law includes maintenance of technological equipment as an eligible activity and, in doing so, provides for special assistance for ongoing activities. The law also recognizes the planning, development, acquisition, installation and replacement of technological equipment, and, therefore, applicants may focus their projects on new

networking initiatives or major program improvements, if they so desire. Similarly, activities other than the acquisition of equipment are allowable.

In § 779.2(b), the name "Joint-Use Grants" requires clarification. The focus of the statute is on four separate types of applicants rather than four separate types of activities. The law states that the second type of grant is for combinations of institutions of higher education to establish and strengthen joint-use library facilities, resources, or equipment. Joint-use means shared facilities, resources, and services of member institutions of a combination of institutions of higher education.

Change: In order to clarify the intent and purpose of the statute, the term "equipment" is deleted from the title of the first type of grant to read "Networking Grants." To clarify the second type of grant, the name is changed to "Combination Grants."

The definition of "joint-use" as described above, is added to "What definitions apply?" at § 779.7(b).

Eligibility for an Award

Comment: In § 779.3, two commenters noted that there are no guidelines as to whether an institution of higher education or other entity can be involved in more than one grant at a time. Their opinion is that an institution of higher education or other entity should administer only one grant at a time, with possible exceptions in the Services to Institutions and Research and Demonstration Grants categories. They also questioned whether grantees can have overlapping grants in several fiscal years.

Discussion: Institutions of higher education are not precluded from applying for both Networking Grants and Research and Demonstration Grants, nor shall they be precluded if they are also parties to Combination Grants projects. Non-academic entities are only eligible in the Services to Institutions Grants category and, therefore, would not be involved in any other grant type. Applicants are allowed to apply for grants in each fiscal year provided that subsequent grants do not replicate existing efforts.

Change: None. Generally, procedures governing the awarding of discretionary grants are found in Part 75 of the Education Department General Administrative Regulations (EDGAR).

Activities the Secretary May Fund

Comment: All of the commenters noted that the term "illustrative" in § 779.4(b) is misleading and confusing. They suggested that the phrase be changed to "examples of eligible

activities." They noted that this would also be more consistent with the law. They questioned whether specific activities, such as support for the salaries of staff members directly involved in the project, are fundable. Two commenters suggested the addition of "campus or multi-campus systems support for interfacing with library networks" as an eligible activity.

Discussion: The statute does not specifically limit the types of eligible activities, and a list of examples would be more consistent with the law. Salaries of project personnel are allowable as described in 34 CFR Part 74, Appendix D, Part I. Support for campus or multi-campus systems is not precluded in the regulations or the law and therefore, is an allowable activity.

Change: Section 779.4(b) is changed to read, "The types of activities or services referred to in paragraph (a) of this section may include, but are not limited to." In § 779.4(b), "Salaries of project personnel" is added as item number four.

Establishment of Priorities by the Secretary

Comment: Several commenters were in opposition to setting priorities for the program as they believe the content of the projects proposed by the applicants will reflect the needs and priorities of the library community. They noted that setting priorities adds unpredictability to a new program and leaves no room for libraries to plan future projects. They also questioned upon what bases the Secretary will establish annual priorities and suggest that, if priorities must be set, the Secretary should consult with the library profession before doing so.

Discussion: There is a great demand for the limited funds available under this program and it is the intent of the Secretary to allocate the available funds in the most productive way possible. The Secretary has the authority under EDGAR, in § 75.105, to set annual priorities, if he so desires. In the course of setting priorities, the Secretary will consider input from the profession, the public and other interested parties.

Change: None.

Comment: In § 779.5(c), three commenters opposed apportioning funds in each category, as they believe this is a method of setting priorities.

Discussion: As discussed above, the Secretary is authorized to set priorities. In accordance with the authority provided in EDGAR, in any year the Secretary decides to set priorities, the apportionment of different levels of funds in each category will be the method by which the selected priorities

will be implemented. However, the EDGAR regulations adequately address the procedures and proposed § 779.5(c) is, therefore, unnecessary.

Change: Section 779.5(c) has been deleted.

Assurances Regarding "Maintenance of Effort"

Comment: Two commenters sought clarification of the requirement in § 779.10 regarding what is referred to in the Notice of Proposed Rulemaking as the Maintenance of Effort requirement. They suggested that the term "matching" be included to define the one-third applicant contribution requirement.

Discussion: The requirement in the law states that the applicant will expend during the 3-year period for which the grant is sought, from funds other than funds received under this title, for the same purpose as such grant, an amount from such other sources equal to not less than one-third of such grant. This contribution is, in fact, a matching requirement. The Secretary, however, wants to stress that it is a one-third match and not a one for one match as is the case with most matching requirements.

Change: To clarify the intent of the statute, § 779.10 has been changed to read "How does an applicant satisfy the matching requirement?" This reflects the nature of the statute and adds to the clarity of the regulations.

Selection Criteria the Secretary Uses

Comment: Two commenters were concerned that certain projects may take more than three years to become effective due to the complex and far reaching nature of technological development. They suggested that these grants should include support for significant steps taken toward a new level of sharing resources, and further suggested the revision of § 779.21(b)(1)(v) to read "the project

would increase local, regional or national access to materials, or would be a critical and identifiable step toward that end."

Discussion: Congress specifically made provisions for the complex nature of technological projects by extending the normal grant period from one to three years. Three years is sufficient time to achieve the program purposes and goals under the Networking Grant. This does not preclude start-up activities or planning and development, provided that a program purpose is clearly achieved within the three year timeframe.

Change: None.

Comment: Two commenters suggested the addition of the term "software" to § 779.21(b)(1)(vi) under Networking Grants and § 779.21(b)(2)(vi) under Combination Grants to read "the applicant possesses or will possess . . . equipment and software compatible with that of other members of the network" and "project equipment and software would be compatible with that of other networks," respectively. They felt this would further clarify the scope of the grants and add consistency to the program.

Discussion: The Secretary agrees that not only should the acquired hardware be compatible but also the software.

Change: The term "software" has been added to §§ 779.21(b)(1)(vi) and 779.21(b)(2)(vi), and for consistency, software is also added to § 779.2 (a) and (b).

Comment: Under subsection 779.21(b)(4), two commenters suggested the addition of an assurance that project results of Research and Demonstration Grants will be widely disseminated. They believe that this will ensure the widest possible benefits from federal support of research and demonstration activities.

Discussion: Dissemination is usually an inherent activity in Research and

Demonstration projects, but the Secretary agrees that there should be appropriate and widespread dissemination.

Change: The following is added under § 779.21(b)(4): "(v) The applicant provides plans to disseminate the results of the project."

Agencies Which Must Be Informed of Funded Activities

Comment: One commenter suggested that in § 779.30 an additional section be added that would require the applicant to submit a copy of its application to the State Library Administrative Agency for review in order to make comments which the Secretary would then be obliged to take under consideration in making grant awards. The commenter suggested that the grants awarded from this program would have a significant impact on the other state programs.

Discussion: The Department recognizes that the State Library Administrative Agencies would like to facilitate coordination of networking activities among the many types of libraries in their states, but the Department has no authority to require such submission of applications. The regulations in § 779.30 require the applicant to inform the state agency designated under section 1203 of the Higher Education Act of its activities under this part. Further, this program is covered under Executive Order 12372 which additionally requires that the applicant notify the State Single Point of Contact of its intent to apply. In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Change: None.

[FR Doc. 88-10038 Filed 7-15-88; 8:45 am]
BILLING CODE 4000-01-M

Monday,
July 18, 1988

Part IV

Department of Education

Office of Special Education and
Rehabilitative Services

Handicapped Special Studies Program;
Notice of Final Annual Evaluation
Priorities

federal register

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

Office of Special Education and
Rehabilitative ServicesHandicapped Special Studies Program;
Notice of Final Annual Evaluation
Priorities

AGENCY: Department of Education.

ACTION: Notice of final annual
evaluation priorities.

SUMMARY: The Secretary announces annual evaluation priorities for the Handicapped Special Studies program. These studies have been selected to ensure effective use of program funds and to meet requirements of the Education of the Handicapped Act (EHA).

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the Federal Register or later if the Congress take certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511-M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

SUPPLEMENTARY INFORMATION: The Handicapped Special Studies program, authorized by Section 618 of Part B of the Education of the Handicapped Act (EHA), as amended, supports studies to evaluate the impact of the Act, including efforts to provide a free appropriate public education and early intervention services to infants, toddlers, children and youth with handicaps. The results of these studies must be included in the annual report submitted to the Congress by the Department.

On March 7, 1988, the Secretary published a notice of proposed annual evaluation priorities for this program in the Federal Register at 53 FR 7294. There is no difference between the proposed priorities and these final priorities.

Public Comment

In the March 7 notice, the Secretary invited comments on the proposed annual evaluation priorities. One comment was received which enthusiastically supported Priority 2 "Study of Anticipated Services for Students with Handicaps Exiting from School." Except for minor editorial revisions, the Secretary has made no changes in these final annual evaluation priorities since publication of the proposed priorities.

Priorities: The Secretary announces priorities under the Handicapped Special Studies Program, CFDA No. 84.159, for fiscal year 1988 applications. Under priority 1, the Secretary invites applications for cooperative agreements to support certain types of studies. Priority 2 will also be addressed through cooperative agreements.

Priority 1: State Agency/Federal
Evaluation Studies Projects (CFDA No.
84.159A)

This priority supports evaluation studies by State agencies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act. Within this priority, the Secretary particularly invites studies that: (1) Assess the effect of State and local fiscal policies on the delivery of pre-referral services and special education in regular classrooms at either the elementary or secondary school levels; (2) document experiences of special education students after they exit secondary school, and determine the relationship between secondary programming and post-secondary outcomes; (3) evaluate the effect of alternative assessment practices on multilingual and limited English speaking children and youth; and (4) assess program effectiveness and impact through utilization of student outcome indicators. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), (3), and (4) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

Priority 2: Study of Anticipated Services
for Students with Handicaps Exiting
From School (CFDA No. 84.159B)

Section 618(b)(3) of the Education of the Handicapped Act requires the Secretary to report annually on the number of handicapped children and youth exiting the educational system through program completion or otherwise, by disability category and age, and anticipated services for the next year. The anticipated services data are intended to provide national and State-level information for planning the adult services required by these youths after they leave school. Data to respond to this requirement have been collected through reports from each of the States. Most States gather these data from local school districts. However, State educational agencies report that local educational agency staff have difficulty inferring the type or nature of anticipated adult services individual

youths will require. Because of this difficulty, the Secretary believes that more useful information for adult service planning can be obtained from information on the characteristics of exiting students from which adult service needs could be inferred.

Under this priority, the Secretary supports cooperative agreements to identify, define and operationalize student performance indicators and other descriptive indicators (e.g., reading level, mobility) to determine adult service needs. Projects must develop an array of indicators related to the services these youths will require from adult service agencies to live independently and achieve gainful employment. Indicators must be supported by research findings, conceptual rationales, or both. Further, alternative methods of measurement for each indicator must be developed. Indicators must be developed in cooperation with State adult service agencies. Projects should provide evidence that the indicators have significant practical utility in planning adult services for students with handicaps exiting from school. Finally, alternative strategies for collecting data on these indicators on a State by State basis need to be specified. These strategies must address sampling issues, the burden involved in collecting the data, instrument administration, data verification and data aggregation at State and national levels, and issues related to periodic (e.g., annual) collection of data. The Secretary is particularly interested in indicators of in-school as well as out-of-school functioning so that a program of services can be designed to enhance the effectiveness of the individual in educational, home, community, and work environments. Performance indicators on students with a wide range of limitations and disabilities must be addressed.

These projects would cumulatively provide potential designs by which schools, rather than inferring anticipated adult service needs, could provide relevant student performance characteristics to adult service agencies for the purpose of planning.

(20 U.S.C. 1418)

Dated: June 30, 1988.
William J. Bennett,
Secretary of Education.

(Catalog of Federal Domestic Assistance
Number 84.159; Handicapped Special Studies
Program)

[FR Doc. 88-16039 Filed 7-15-88; 8:45 am]

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Monday
July 18, 1988

Part V

Office of
Management and
Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET**Cumulative Report on Rescissions and Deferrals**

July 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of July 1, 1988, of 22 deferrals contained in the

three special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987, and February 19, 1988.

Rescissions (Table A and Attachment A)

As of July 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of July 1, 1988, \$5,494.3 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 52, FR p. 37739, Thursday, October 8, 1987

Vol. 52, FR p. 42400, Wednesday, November 4, 1987

Vol. 53, FR p. 6734, Wednesday, March 2, 1988

James C. Miller III,
Director.

BILLING CODE 3110-01-2

TABLE A**STATUS OF 1988 RESCISSIONS**

	Amount (In millions of dollars)
Rescissions proposed by the President.....	0
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	0

TABLE B**STATUS OF 1988 DEFERRALS**

	Amount (In millions of dollars)
Deferrals proposed by the President.....	9,310.0
Routine Executive releases through July 1, 1988 .. (OMB/Agency releases of \$3,840 million and cumulative adjustments of \$24.3 million)	-3,815.7
Overtaken by the Congress.....	0
Currently before the Congress.....	5,494.3

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of July 1, 1988 Amounts in Thousands of Dollars	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of July 1, 1988 Amounts in Thousands of Dollars	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 7-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit.....	D88-20	2,949,000		2-19-88	865,000			17,500	2,101,500
Economic support fund.....	D88-1	40,000		10-1-87					
	D88-1A		1,960,727	2-19-88	988,583				1,012,144
Military assistance.....	D88-21	608,186		2-19-88	310,001				298,185
International disaster assistance.....	D88-22	13,479		2-19-88	11,650				1,829
Special Assistance for Central America									
Promotion of stability and security in Central America.....	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....	D88-3	120,425		10-1-87					
	D88-3A		10,529	2-19-88	300				130,654
Timber salvage sales.....	D88-4	34,841		10-1-87	10,456				24,385
Cooperative work.....	D88-5	628,025		10-1-87	157,084				470,941
Gifts, donations, and bequests for forest and rangeland research.....	D88-6	104		10-1-87	60				44
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense.....	D88-7	900		10-1-87					
	D88-7A		1,297,848	2-19-88	1,297,848				900
Family Housing									
Family housing, Defense.....	D88-8	51,015		10-1-87					
	D88-8A		135,940	2-19-88	186,955				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense.....	D88-9	636		10-1-87					
	D88-9A		149	2-19-88	26				759

Attachment B - Status of Deferrals - Fiscal Year 1988

As of July 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 7-1-88
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, operation and maintenance.....	D88-14	120		10-29-87					120
Southeastern Power Administration, operation and maintenance.....	D88-15	2,000		10-29-87	2,000				0
Southwestern Power Administration, operation and maintenance.....	D88-16 D88-16A	6,000	7,200	10-29-87 2-19-88					13,200
Western Area Power Administration, construction, rehabilitation, operation and maintenance.....	D88-17 D88-17A	774	2,426	10-29-87 2-19-88	3,200				0
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D88-18 D88-18A	2,391	549	10-29-87 2-19-88					2,940
Social Security Administration Limitation on administrative expenses (construction).....	D88-10 D88-10A	6,171	36	10-1-87 2-19-88					6,207
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund.....	D88-19	85,000		10-29-87	6,800			6,800	85,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive.....	D88-11	11,638		10-1-87					11,638
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D88-12 D88-12A	879,049	450,858	10-1-87 2-19-88					1,329,907
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing Local government fiscal assistance trust fund.....	D88-13	2,933		10-1-87					2,933
TOTAL DEFERRALS.....		5,443,680	3,866,281		3,839,963	0		24,300	5,494,306

(FR Doc. 88-18070 Filed 7-15-88; 8:45 am)

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Monday

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Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Shortnose and Lost River Suckers, Houghton's Goldenrod and Pitcher's Thistle; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Shortnose Sucker and Lost River Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*), fishes restricted to the Klamath Basin of south-central Oregon and north-central California. Dams, draining of marshes, diversion of rivers and dredging of lakes have reduced the range and numbers of both species by more than 95 percent. Remaining populations are composed of older individuals with little or no successful recruitment for many years. Both species are jeopardized by continued loss of habitat, hybridization with more common closely related species, competition and predation by exotic species, and insularization of remaining habitats. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for the shortnose sucker and Lost River sucker.

EFFECTIVE DATE: August 17, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1802, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1802, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Cope (1879) originally described the shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*) from Upper Klamath Lake, Oregon. Later, Gilbert (1898) and Evermann and Meek (1898) described two other species of *Chasmistes* from the same lake. A careful review of all available specimens, however, documented that *brevirostris* is the only valid species of *Chasmistes* from Upper Klamath Lake and that the other two "species" were merely sex or condition

variants of *brevirostris* (Miller and Smith 1981).

The Lost River sucker was originally placed in the genus *Chasmistes* by Cope (1879). *Deltistes*, a monotypic genus, was erected for the Lost River sucker in 1898 based on the delta-shaped gill rakers (Seale 1898). In addition to the deltoid, short gill rakers, the Lost River sucker is characterized by subterminal mouth, small hump on the snout (at least in preserved specimens), and large size of adults (ca. 10 lbs.). The primary morphological characters that distinguish the shortnose sucker from other species of *Chasmistes* include the presence of a terminal, oblique mouth with weak or no papillae on the lips. Scales are small, with 85 to 79 in the lateral line and 21 to 25 around the caudal peduncle (Miller and Smith 1981).

Upper Klamath Lake and its tributaries are now the primary refuge for both the Lost River and shortnose suckers. A substantial population of shortnose suckers occurs in Copco Reservoir on the Klamath River, but the Lost River sucker population has practically been eliminated there (Beak Consultants 1987). Remnant or highly hybridized populations of these two species occur in the Lost River system and other nearby areas.

In addition to Upper Klamath Lake, Copco Reservoir, and their tributary streams, shortnose suckers and Lost River suckers have been collected from Iron Gate Reservoir, California (California Dept. of Fish and Game 1980), J.C. Boyle Reservoir, Oregon (Jeff B. Ziller, pers. comm.) and Clear Lake Reservoir, California (Coots 1985, Loch et al. 1975). Additionally, shortnose suckers have been collected from Lake of the Woods, Oregon (Andreassen 1975a). The Lost River sucker also was known from Sheepy Lake, Lower Klamath Lake and Tule Lake in California (Coots 1985).

The populations of shortnose and Lost River suckers in Copco and Iron Gate Reservoirs may have resulted from drift of individuals downstream in the Klamath River from Upper Klamath Lake. Specimens of shortnose suckers collected from Copco Reservoir in 1962, 1978 and 1979 were introgressed with the Klamath smallscale sucker (*Catostomus snyderi*) (Miller and Smith 1981). Nonetheless, Miller and Smith (1981) regarded the Copco Reservoir population as consisting of a "relatively intact gene pool of *Chasmistes brevirostris*." A few shortnose suckers have recently been collected from J.C. Boyle Reservoir, located along the Klamath River between Upper Klamath Lake and Copco Reservoir. The status of this

population, which appears quite small, is uncertain. Other reaches of the Klamath River between Copco Reservoir and Upper Klamath Lake also may harbor small remnant populations of both species. The remaining populations of shortnose suckers have not fared as well. The Lake of the Woods population was lost in 1962 during a fish eradication program aimed at removing carp and perch from the lake (Andreassen 1975a). The Clear Lake Reservoir population of shortnose suckers shows evidence of extensive hybridization with the Klamath largescale sucker (*Catostomus snyderi*) (Williams et al. 1985), but further work is needed to precisely determine the genetic constitution of suckers in this system.

A few Lost River suckers have been collected from J.C. Boyle Reservoir in the Klamath River between Upper Klamath Lake and Copco Reservoir (Jeff B. Ziller, pers. comm.). Only one Lost River sucker was collected from Copco Reservoir in 1987 despite intensive collection efforts (Beak Consultants 1987). Populations of Lost River suckers in Sheepy Lake, Lower Klamath Lake and Tule Lake were lost after 1924, when the lakes were drained for farming (Moyle 1976). Prior to 1924, large numbers of Lost River suckers were taken from Sheepy Creek, the spawning stream tributary to Sheepy Lake, for human consumption and livestock feed (Coots 1985). The Clear Lake Reservoir population of Lost River suckers is the last known remnant of the species in the Lost River system. The population in Clear Lake Reservoir is small and suffers from large numbers of exotic species and lack of sufficient spawning area (Koch et al. 1975).

The primary factors in the widespread decline of the shortnose sucker and Lost River sucker have included damming of rivers, instream flow diversion, draining of marshes, dredging of Upper Klamath Lake and other forms of water manipulation. Dams have been particularly destructive in that they have blocked spawning runs of the fish and facilitated hybridization with other types of suckers in the dam's tailwaters. Although the construction of large reservoirs may provide suitable feeding and resting habitat for these lacustrine species, the reservoirs often lack long stretches of large inflowing rivers that are necessary for successful spawning. Such is the case in Clear Lake Reservoir, where small intermittent creeks are the only habitat that remains for spawning attempts.

Survey work performed in 1984-1986 by the Oregon Department of Fish and

Wildlife, The Klamath Tribe, and the Service have shown drastic declines in the largest remaining populations of both species in Upper Klamath Lake (Brenz and Ziller, ms.). During the 1984 survey, the population of shortnose suckers moving out of Upper Klamath Lake in the spawning run was estimated at 2,650 individuals. The 1985 and 1986 surveys found too few shortnose suckers to accurately estimate the population size. The catch per unit effort of shortnose suckers declined 34 percent between the 1984 and 1985 spawning runs. In 1986, catch per effort statistics yielded 74 percent decrease in the spawning run when compared to 1985. Although the population levels of the Lost River sucker have remained substantially above those critically low levels observed for the shortnose, the overall decline has been equally precipitous. In 1984, a population of 23,123 Lost River suckers was estimated in the Upper Klamath Lake spawning run. By the 1985 spawning run, the population had declined to 11,861 (Brenz and Ziller, ms.). Although the shortnose sucker and Lost River sucker are long-lived (up to at least 43 years in the latter species), the drastic decline can be explained by lack of successful spawning. No significant recruitment of young into the populations has occurred for approximately 18 years (Scoppettone 1988).

The Service included both the Lost River and shortnose suckers in category 2 of its December 30, 1982, comprehensive notice of review (47 FR 58954) of vertebrate species under consideration for listing as endangered or threatened. Category 2 includes those species for which information indicates that proposing to list as endangered or threatened is possibly appropriate but for which additional data are needed. These two suckers were maintained in the September 18, 1985, update (50 FR 37958) of the 1982 notice. Surveys conducted since 1984 provided the additional information on which to base a proposed rule. The shortnose sucker and Lost River sucker were proposed as endangered species on August 26, 1987 (52 FR 32145-32149) in accordance with section 4(b) of the Endangered Species Act of 1973, as amended.

Summary of Comments and Recommendations

In the August 26, 1987, proposed rule (52 FR 32145-32149) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, city governments, Federal agencies,

scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comments were published in the *Ashland Tidings* (September 22, 1987), *Medford Mail Tribune* (September 22, 1987), *Redding Record-Searchlight* (September 22, 1987), *Klamath Falls Herald & News* (September 20, 1987), *The Oregonian* (September 20, 1987), and *Siskiyou News* (September 20, 1987).

A total of 13 written comments were received during the 60-day comment period following publication of the proposed rule. Comments were submitted by two Federal agencies, two State agencies, one Indian tribe, one City government, five conservation organizations, and two private parties. Twelve responses supported listing and one response expressed no opinion regarding the listing. No comments in opposition to the listing were received. The City of Klamath Falls took no position regarding the listing, but offered results of studies on the potential impact of the proposed Salt Caves Hydroelectric Project on both species. It is the opinion of the City that the project would not impact either species, however, data to support this position are lacking. Government agencies writing to express their support for the listing included the U.S. Forest Service, Bureau of Land Management, California Department of Fish and Game, and Oregon Department of Fish and Wildlife. In addition to voicing support for the listing, The Klamath Tribe, Desert Fishes Council, Rogue Chapter of the Sierra Club, and Save our Klamath River also stated their belief that critical habitat should be officially designated for both species. The critical habitat designation is discussed below.

Additional data on the decline of the shortnose sucker and Lost River sucker were provided by The Klamath Tribe, California Department of Fish and Game, Oregon Department of Fish and Wildlife, and an independent biologist familiar with the species. As appropriate, this additional information was incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the shortnose sucker and Lost River sucker should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A

species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Initial biological surveys of the Klamath Basin indicated the presence of large populations of fishes, and suckers in particular (Cope 1879, Gilbert 1898). Spawning runs of suckers from Upper Klamath Lake were large enough to provide a major food source for Indians and local settlers. The shortnose sucker and Lost River sucker were staples in the diet of the Klamath Indians for thousands of years (Charles E. Kimbel, pers. comm.). In the late 1800's, a cannery was operated for commercial harvest of the Lost River sucker on the Lost River near Olney, Oregon (Howe 1984). Even through the 1960's and 1970's, runs of suckers moving from Upper Klamath Lake up into the Williamson and Sprague Rivers were great enough to provide a major sport fishery that annually attracted many people from throughout the West (Brenz and Ziller, ms.; John Fortune, pers. comm.). The primary species was the larger Lost River sucker, locally known as mullet, but significant numbers of shortnose suckers also occurred in the runs. During the past years, however, The Klamath Tribe and local biologists have been so alarmed by the population decline of both suckers that in 1987, the Oregon Fish and Wildlife Commission closed the fishery for both species and placed them on the State's list of protected species.

Causes of the declines are varied and not fully understood. Clearly, there has been a drastic reduction in spawning success. Recent data show that neither species of sucker has successfully spawned in Oregon for approximately 18 years (Brenz and Ziller, ms.; Scoppettone 1988). Similar results have recently been obtained for populations of both species in Copco Reservoir, California (Beak Consultants 1987). Most of the spawning habitat for the shortnose sucker and Lost River sucker in the Upper Klamath Lake drainage has been lost. The primary factor may have been the construction of the Sprague River Dam at Chiloquin, Oregon. The dam is located just upstream of the junction of the Sprague and Williamson Rivers and probably eliminated more than 95 percent of the historical spawning habitat. Neither the shortnose sucker nor Lost River sucker spawn in the

Williamson River upstream of its confluence with the Sprague. Fish ladders have been constructed at various times on the Sprague River Dam but their effectiveness in facilitating movement of suckers around the structure has been minimal to non-existent because, although these suckers are strong swimmers, their leaping ability is greatly limited. Any successfully-spawned larvae may be diverted into agricultural fields by unscreened irrigation pumps and diversions. Minor secondary spawning occurred in the larger springs that flow from along the shores of Upper Klamath Lake. However, the usefulness of these spawning areas along the east shore of the lake was lost when a railroad was constructed and riprap was used to fill in the springs. Further problems may have been caused by decreases in water quality that result from timber harvest, dredging activities, removal of riparian vegetation and livestock grazing.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Prior to 1987, Oregon State law allowed a snag fishery for the Lost River sucker. In 1987, the Oregon Fish and Game Commission removed both species from the list of fishes in the State that may be harvested. The shortnose sucker was incidentally taken each spring during its spawning runs by sport fishermen snagging the larger Lost River sucker. In the 1985 sport fishery, Lost River suckers comprised 92 percent of the catch, whereas shortnose and Klamath largescale accounted for 3 and 6 percent, respectively (Blenz and Ziller, ms.). Prior to recent population declines, some recreational take of the shortnose sucker and Lost River sucker was acceptable. No commercial take is known. It should be noted that nearly all scientific data has been obtained from fish collected in natural die-offs (see Factor E, below), or during sport fishing. High mortality of the shortnose sucker occurred during a recent study at Copco Reservoir (Beak Consultants 1987), indicating that great care should be taken in future studies of these species.

C. Disease or predation. Exotic fishes have been stocked into the Klamath Basin and have played some role in the decline of the shortnose sucker and Lost River sucker. In addition to preying on young suckers, such exotic species can serve as sources of parasites and/or diseases.

D. The inadequacy of existing regulatory mechanisms. Recent action by the State of Oregon to remove the shortnose sucker and Lost River sucker from the list of fishes that may be harvested, and place both species on the

State's list of protected species has improved the adequacy of regulations to protect these species. California State Law lists the shortnose sucker and Lost River sucker as endangered. Although the California Endangered Species Act has provisions for State agencies to consult with the California Department of Fish and Game on projects affecting State-listed species, neither State law protects habitat of the species from projects that are permitted, funded or carried-out by Federal agencies.

E. Other natural or manmade factors affecting its continued existence. Hybridization with the Klamath largescale and Klamath smalleale suckers has been recognized as a problem in maintaining the genetic purity of shortnose sucker populations (Miller and Smith 1981, Williams et al. 1985). Similarly, hybridization between the Klamath largescale sucker and Lost River sucker has been reported in Upper Klamath Lake (Andreassen 1975a). Although hybridization occurs naturally between many species of suckers (family Catostomidae), increased incidence of hybridization occurs if one of the parental species experiences a major population decline, as in the case of the shortnose sucker. Further hybridization is facilitated by dams that block spawning runs and force individuals of closely related species to spawn in mass in the dam's tailwaters. Spawning of the shortnose, Lost River and Klamath largescale sucker occurs below the Sprague River Dam at Chiloquin.

An additional source of mortality is late-summer die-offs in Upper Klamath Lake. A major die-off of Lost River and shortnose suckers was observed during 1988 that resulted from blue-green algal blooms (genus *Aphanizomenon*) (Scoppettone 1986). Sucker die-offs do not occur every year, but may occur in dry or particularly hot years. Pollution of the lake and decreased summer inflows, perhaps caused by diversion of water for agricultural purposes, aggravate this phenomenon.

The presence of exotics, such as fathead minnows (*Pimephales promelas*) and yellow perch (*Perca flavescens*), may inhibit recovery. Fathead minnows were first documented in the Klamath River system during 1974 and have now spread into Upper Klamath Lake, where they have become abundant (Andreassen 1975b; Jeff S. Ziller, pers. comm.). The minnows may compete with the native suckers for food. Perhaps in response to the increased number of fathead minnows, the yellow perch population in Upper Klamath Lake has increased

recently (Jeff S. Ziller, pers. comm.). The perch are potential predators on larval suckers and may be a major factor in preventing any young suckers from being recruited into the population. Exotic fishes in the Lost River system include bullheads (*Ictalurus* spp.), largemouth bass (*Micropterus salmoides*), crappie (*Pomoxis* sp.), green sunfish (*Lepomis cyanellus*), and Sacramento perch (*Archoplites interruptus*) (Koch et al. 1975; Jack E. Williams, pers. obs.).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the shortnose and Lost River suckers as endangered. Threatened status would not adequately reflect the sharp decline of either species, lack of recruitment, or the continued threat to remaining habitat fragments. Critical habitat is not being designated for this species at this time for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent or determinable for these species at this time. As noted in Factor "A" of the above "Summary of Factors Affecting the Species" much of the historic spawning grounds of the Upper Klamath Lake population is no longer accessible because a dam blocks the spawning run near the confluence of the Sprague and Williamson Rivers. Similarly, dams on the Klamath River downstream of Upper Klamath Lake have eliminated or blocked access to spawning habitat. Therefore, determining the boundaries of areas to be included as critical habitat is difficult. Further, agency personnel are well-aware of the distribution of both species through the Klamath Basin Sucker Interagency Working Group. Little additional benefits of notification of the species presence would be achieved through critical habitat designation. Because of these factors, the Service finds that the determination of critical habitat cannot be made at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered

Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may affect the shortnose sucker and Lost River sucker are issuances of licenses or permits for dam projects by the Federal Energy Regulatory Commission; grazing or timber harvesting practices on Forest Service land in the Upper Klamath Lake and Clear Lake Reservoir watersheds; and agreements, leases, or other arrangements between the Klamath Tribe and local irrigation interests that would result in the diversion of water from the Williamson or Sprague Rivers; and management of canals and diversion structures by the Bureau of Reclamation. Permitting activities of the Army Corps of Engineers pursuant to section 404 of the Clean Water Act or section 10 of the River and Harbor Act also may be affected.

The Act implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import, ship in interstate commerce in the course of a commercial activity, or

sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered fish or wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1966, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, Sacramento, California; and Department of Wildlife and Fisheries Biology, University of California, Davis, California 95616 (telephone 916/752-7703).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 67 Stat. 604; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1223; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 98-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order, under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) . . .

Species	Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
FISHES								
	Sucker, Lost River	<i>Deltistes luxatus</i>	U.S.A. (OR, CA)	Entire	E	313	NA	NA
	Sucker, Short-nose	<i>Chasmistes brevirostris</i>	U.S.A. (OR, CA)	Entire	E	313	NA	NA

Dated: June 27, 1988.
Susan Kocan,
 Acting Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 88-16062 Filed 7-15-88; 8:45 am]
 BILLING CODE 4210-34-8

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Solidago houghtonii* (Houghton's Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status for *Solidago houghtonii* (Houghton's goldenrod), a perennial native to the sand beach flats of the northern shorelines of Lakes Michigan and Huron. This plant is threatened by residential development, hydrologic changes of the Great Lakes, destabilization of the shoreline sand dunes and beach flats, human disturbance, and the use of off-road vehicles. *Solidago houghtonii* is presently known to occur at 39 sites within eight Michigan counties. There are also several populations in Ontario, Canada. This action will implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Solidago houghtonii*.

EFFECTIVE DATE: August 17, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator, at the above address, (612/725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

Solidago houghtonii (Houghton's goldenrod), a plant of the family Asteraceae, was discovered in 1839, by Douglass Houghton, Michigan's first State Geologist, along the north shore of

Lake Michigan in Mackinac County, Michigan, between what are now the communities of Naubinway and Epoufette (Guire and Voss 1963). This large-headed goldenrod, 8-30 inches tall, is characterized by its relatively large heads on slightly hairy stalks in a more or less flat-topped inflorescence. The stem is slender and smooth, with a few tiny hairs on the upper portions. Leaves are glabrous (without hairs), but may be scarious (with hairs) on the margins and linear, alternately arranged, and number 7 to 15. The basal and lower leaves are up to 8 inches long and 3/4 inches wide, tapering and partially clasping the stem. The upper leaves are similar but reduced upwards. All leaves are weakly triple veined and acute. Inflorescences, which appear from midsummer until fall, consist of a few somewhat flat-topped clusters of 5-30 heads containing relatively large flowers. Voss (University of Michigan, pers. comm. 1987) reports one specimen in Cheboygan County, Michigan, with 125 heads.

Solidago houghtonii typically occurs on the sparsely vegetated, moist calcareous sand beach shoreline flats, and the damp hollows or depressions between the foredune ridges of northern Lake Michigan and Lake Huron (Nepstad 1981). Its occurrence behind the lakefront dunes has also been noted (Morton 1979). Two other species proposed for federal listing, *Cirsium pitcherii* (Pitcher's thistle) and *Iris lacustris* (Dwarf lake iris), occur in some of the same areas.

Nepstad (1981) described localities in six Michigan counties (Cheboygan, Chippewa, Crawford, Delta, Emmet, and Mackinac), where *Solidago houghtonii* is found in more or less continuous or semi-continuous populations along the Great Lakes shorelines. He noted that it may be misleading to count each population as an individual occurrence, as these populations are merely separated by local discontinuities in habitat. He considered there to be no more than 18 known populations of *Solidago houghtonii*. However, after later survey work, Crispin (Michigan Department of Natural Resources, pers. comm. December 1985 and February 1986) identified additional populations.

A review of data furnished by the Nature Conservancy indicates that within the general areas of the 18 populations noted by Nepstad (1981), about 39 sites now actually exist. *S. houghtonii* is currently known from about 37 sites in seven Michigan counties (Cheboygan, Chippewa, Delta, Emmet, Mackinac, Presque Isle, and Schoolcraft) along the northern shores of Lake Michigan and Lake Huron, and from 2 sites in inland Crawford county within the confines of the State-owned Camp Grayling military reservation (Nepstad 1981). The plant is also known from several sites in Canada, specifically the Manitoulin district and the Bruce peninsula near Cabot Head, in Ontario (Morton 1979). The taxon is considered rare in the province of Ontario (Semple and Ringius 1983).

An additional population of *S. houghtonii* was once reported to occur in Bergen Swamp, Genesee County, New York (Guire and Voss 1963). That population, however, is not now thought to represent the taxon and is undergoing further study.

Solidago houghtonii is threatened by residential development, lakefront dune destabilization because of hydrologic changes, human disturbance, and off-road recreational vehicle traffic (Nepstad 1981).

Federal actions involving this species began with section 12 of the Endangered Species Act of 1973 (Act) which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A) of the Act, and of its intention to review the status of the plant taxa named within. *Solidago houghtonii* was included in the Service's 1975 notice of review. *Solidago houghtonii* was also included as a category 1 species in an updated notice of review for plants published in the Federal Register of December 15, 1980 (45 FR 82480).

Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted by that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. On October 13, 1983, October 12, 1984, October 11, 1985, and October 10, 1986, the petition finding was made that listing *Solidago houghtonii* was warranted but precluded. A final finding, to the effect that the petitioned action was warranted, was incorporated in a proposed rule to determine threatened status for *Solidago houghtonii* issued in the Federal Register of August 19, 1987 (52 FR 31045).

Summary of Comments and Recommendations

In the August 19, 1987, proposed rule (52 FR 31045) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Sault Ste. Marie News* on August 31, 1987, the *Cheboygan Daily Tribune* on September 2, 1987, the *Crawford Avalanche*, the *Manistique Pioneer-Tribune*, and the *St. Ignace News* on September 3, 1987, and the *Petoskey News Review* on September 8, 1987.

Six comments were received. Support for the proposal was expressed in three comments. A University of Michigan professor provided editorial suggestions, specific species information, and additional reference recommendations. The Michigan chapter of The Nature Conservancy confirmed taxonomic features, threats to the taxon, and that listing the plant is reasonable and necessary. A botanist from the National Museum of Natural Sciences, Canada, provided clarifying information regarding site locations in Canada. Three comments were received which did not take a position on the proposal, but did offer new species information. Two of these, one from the University of New York and the other from the Royal Botanical Gardens, Hamilton, Ontario,

provided thoughts on the taxonomic status of the species. The other response, from the Michigan Department of Military Affairs (National Guard) acknowledged that the presence of *S. houghtonii* within the boundaries of Camp Grayling has not been a problem. However, if the plant expands its range a conflict could arise with military training on adjoining lands. Restrictions associated with the plant's habitat which might affect activities within Camp Grayling are expected to be minimal. All comments are now incorporated into this rule and the Service appreciates the assistance of all parties.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Solidago houghtonii* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solidago houghtonii* are as follows:

A. *Present or threatened destruction, modification, or curtailment of its habitat or range.* *Solidago houghtonii* is presently threatened by the potential development of the shoreline along those portions of Lakes Michigan and Huron where the species is found (Nepstad 1981). Private development has already rendered some lakeshore areas unsuitable as long-term habitat for this species. Crispin (pers. comm. 1987) also reported that beachfront development has destroyed part of a *S. houghtonii* population in Cheboygan County, Michigan. In addition to current and potential shoreline development, *Solidago houghtonii* is threatened by disturbances to the lakefront dune habitat caused by recreational vehicles and by human activities. Nepstad (1981) stated that while the ability of *S. houghtonii* to tolerate changes in the habitat has not yet been determined, the narrow habitat requirements of the plant indicate that destabilization of the foredunes and beach flats could be detrimental to the species. High water levels of the Great Lakes are also a threat to *S. houghtonii*. This natural condition should not be exacerbated by human disturbance. Wolwode (The Nature Conservancy, pers. comm. 1987) reports that continuous high water

levels at some lakeside *S. houghtonii* populations have reduced many of the plants to a vegetative state which does not induce flowering. He questions how long these non-flowering plants can continue to exist. Presently, *Solidago houghtonii* is found at about 37 sites in seven Michigan counties along the shores of Lake Michigan and Lake Huron, two sites inland in Crawford County, and several sites in Ontario. Of the 39 sites in Michigan, 14 are publicly owned; 11 by the State, two by the Federal Government, and one by The Nature Conservancy. The remaining 25 privately owned areas are not protected and are subject to various types of habitat alterations, which could adversely affect *Solidago houghtonii*.

Data does not indicate that this plant was ever more widespread geographically than it now is; however, some formerly known populations within the current range can no longer be relocated (Crispin pers. comm. 1987). Current information indicates that 10 populations (20 percent) may have been extirpated within the last 10 years. Crispin has further noted that several monitoring projects for *Solidago houghtonii* have been initiated by The Nature Conservancy. However, extensive knowledge of the species' ecological requirements are not known.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known trade in this species, and scientific or horticultural collecting is not known to pose any threat to it. The species is attractive, and publicity concerning its rarity could stimulate greater interest and collecting.

C. *Disease or predation.* This species is not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* *S. houghtonii* is officially listed as threatened in Michigan and afforded protection under State law which generally prohibits taking, possession, sale, purchase, and transport of plant species on the Federal and State endangered and threatened lists. Federal listing would reinforce and broaden protection for the species and its habitat.

E. *Other natural and manmade factors affecting its continued use.* Since many populations of this species occur on the lake beachfronts, the plants are subject to hydrologic changes, as well as human and vehicular disturbances. The fact that approximately 20 percent of the earlier known populations have not been found since 1975 (Crispin pers. comm.) points out the need for research

into the population dynamics of the taxon.

In determining to make this final rule, the Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this taxon. Based on this evaluation, the preferred action is to list *Solidago houghtonii* as threatened. Although not thought to be in imminent danger of extinction, this plant is rare, has suffered the loss of many local populations, and faces the prospect of further losses occurring as a result of habitat alteration. For reasons detailed below, critical habitat is not being designated.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States; it also requires that recovery actions be carried out for all listed species. These actions are initiated by the Service following listing. Management actions that may be of benefit to *S. houghtonii* include monitoring populations, obtaining protective easements at sites of occurrence, providing protection against human disturbance, investigating measures to prevent long-term habitat degradation, and State-Federal cooperation in habitat management and reintroduction projects. The protection required by Federal agencies and applicable prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperative provisions of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two of the sites at which *S. houghtonii* occurs are administered by Federal agencies, but no authorized activities, actually or potentially detrimental to the species, are known in these areas. The U.S. Bureau of Land Management has jurisdiction over a small island in Chippewa County, Michigan, where the plant is found. It is contemplated that ownership of this island will soon be transferred to the State of Michigan. Another small population is located on the Hiawatha National Forest in Mackinac County. Implementation of the management plan for this area, by the U.S. Forest Service, could involve *S. houghtonii* and its habitat.

Section 9 of the Act, and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce, or remove it from land under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and

inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27239, Central Station, Washington, DC 20038-7329 (703/343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the Federal Register on October 25, 1985 (48 FR 48244).

References Cited

- Guire, K.E., and Edward G. Voss. 1963. Distribution of Distinctive Shoreline Plants in the Great Lakes Region. The Michigan Botanist 1:99-114.
- Morton, J.K. 1979. Observations on Houghton's Goldenrod (*Solidago houghtonii*). The Michigan Botanist 18:31-35.
- Nepstad, D.C. 1981. Status report on *Solidago houghtonii* Torrey and Gray. Department of Botany and Plant Pathology, Michigan State University. Unpubl. ms. 20 pp.
- Scuple, J.C., and G.S. Ringler. 1983. *Solidago houghtonii* Torrey and Gray. In G.W. Angus and D.J. White, eds., Atlas of the rare vascular plants of Ontario. National Museum of Natural Science, Ottawa.

Author

The primary author of this rule is William F. Harrison (see ADDRESSES section) (612/725-3276 or FTS 725-3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened Wildlife, Fish, Marine mammals, Plants (agriculture).

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the CFR, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 96-365, 57 Stat. 686; Pub. L. 94-289, 50 Stat. 611; Pub. L. 95-632, 52 Stat. 3751; Pub. L. 96-188, 50 Stat. 1225; Pub. L. 97-304, 50 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 98-625, 100 Stat. 3606 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

Species	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name				
Asteraceae:					
<i>Solidago houghtonii</i>	Houghton's goldenrod	U.S.A. (MI), Canada (Ont.)	T	314	NA NA

Dated: June 24, 1988.

Susan Recco,
Acting Assistant Secretary for Fish and
Wildlife and Parks.
[FR Doc. 88-16063 Filed 7-15-88; 8:45 am]
BILLING CODE 4210-35-3

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Cirsium Pitcheri*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Cirsium pitcheri* (Pitcher's thistle), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. The species occurs on the shores of the Great Lakes in Indiana, Michigan, and Wisconsin in the U.S., and Ontario Canada. Development, loss, and disturbance of dunelands by the public are the principal threats to the species. This final rule will implement the protection provided by the Act for *Cirsium pitcheri*.

EFFECTIVE DATE: August 17, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel (see ADDRESSES section) at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Cirsium pitcheri (Pitcher's thistle) was first discovered by Z. Pitcher in the 1820's and first described by Eaton as *Cnicus pitcheri* in the 5th edition of his manual (Eaton 1829); the first use of the current binomial was by Torrey and Gray ca. 1843. *Cirsium pitcheri*, a member of the composite or sunflower family, Asteraceae, possesses densely white-wooly and deeply divided leaves

with long petioles (Smith 1966, Alverson 1961). Other general characteristics include cream-colored or yellowish flowers in heads borne singly or few together on numerous stem branches up to 30 inches (0.76 meters) tall (Alverson 1961). Flowering occurs in June and may continue until mid-August; seed dispersal begins in late July (Keddy and Keddy 1984).

Cirsium pitcheri occurs primarily in the dry sand of stabilized, well developed dunes along the shorelines of the Great Lakes. It is also found in dry areas of loose sand ("sand blows" or "blowouts") behind main dunes in open areas of older dunes from higher Pleistocene lake levels (Alverson 1961). Plants are infrequently found on the lower, moist areas of the beach which are more frequently inundated and disturbed by storm wave action (Alverson 1961). Apparently, *Cirsium pitcheri* can tolerate infrequent disturbance to its habitat (i.e., once every 5-10 years) and it has been known to colonize disturbed areas. Periodic disturbance of this species' habitat apparently helps maintain an earlier successional stage of sparsely vegetated, open dunes; colonies of these plants appear to thrive on sites with these ecological conditions. The earlier-to mid-successional stage sites are well drained and support dry sand prairie-like vegetation communities; sites are sunny and open (Nepstad 1981). However, colonies of this plant do not tolerate frequent (i.e., monthly to annual) modification or disturbance to their habitat (see discussion below).

This plant appears to have originated in the Great Plains area and migrated east to its present range through suitable sandy habitats as the last ice age receded approximately 8,000 years ago (Moore and Frankton 1983). *Cirsium pitcheri* is closely related to *Cirsium canescens*, a plant characteristic of the western U.S. sand hills flora (Ownsby and Hai 1963).

The greatest part of the species' range is in Michigan where it is found at about 100 sites in 25 counties along Lakes Huron, Michigan and Superior (Sue Crispin, Michigan Natural Heritage

Program, pers. comm. 1987). Although the plant is still widespread in Michigan, it depends on dynamic dune processes which have largely disappeared. In Wisconsin the species currently exists at eight sites in three counties on the Lake Superior shoreline (Alverson 1961). No known historic colonies of *Cirsium pitcheri* in Wisconsin have been extirpated but present activities have reduced existing colonies and threats continue (Alverson 1961). In Indiana, *Cirsium pitcheri* is known from seven sites along Lake Michigan (John Bacone, Indiana Division of Nature Preserves, pers. comm. 1987). The species is extirpated in Illinois. It occurs at 12 sites in Ontario, where it is found on the sandy shores of Lakes Huron and Superior (Keddy 1987). This plant occurs on public lands managed by the U.S. National Park Service (NPS) (Indiana Dunes National Lakeshore in Indiana and Sleeping Bear Dunes and Pictured Rocks National Lakeshore in Michigan), the U.S. Forest Service (FS) (Huron-Manistee National Forest), on small (100 yard or 91 meter) stretch of shoreline on Lake Michigan in Wisconsin, that is managed by the U.S. Coast Guard, and on Strawberry Island, which is administered by the Bureau of Land Management (BLM). It also occurs on State owned lands at sites within State parks in Indian, Michigan, and Wisconsin.

Cirsium pitcheri reproduces only sexually, and requires 3-10 years between germination and flowering; seeds are dispersed by a pappus which acts like a parachute for wind dispersal (Keddy 1987, Keddy and Keddy 1984). Most seeds are dispersed and settle downwind (inland) from parents, and seedling clusters appear to result from seeds that are dispersed with entire heads rather than separate achenes (Keddy and Keddy 1984). Because of their weight, entire seed heads are also more likely to be buried in the sand than are individual seeds. Keddy and Keddy (1984) suggest that dispersal of entire heads rather than separate achenes may be the mechanism which restricts seedlings establishment to a narrow

band of open beach rather than having all seeds blow inland to shrub and forest habitats. The combination of these reproductive factors, and other life-history requirements, may restrict these plants to clusters in narrowly-defined microhabitats along shorelines of the Great Lakes. These reproductive limitations may also affect the selection of conservation strategies that might be used to protect this species (see discussion in Factor E of the "Summary of Factors Affecting the Species" section).

Federal government actions on this species began on December 15, 1986, when the Service published a revised notice of review for native plants (45 FR 82486). *Cirsium pitcheri* was included in that notice as a category 1 species. Category 1 includes those species for which the Service has sufficient biological data to propose to list them as endangered or threatened species. In subsequent notices published on November 28, 1986 (48 FR 53040), and September 27, 1986 (50 FR 30528), *Cirsium pitcheri* remained in Category 1 where development and publication of proposed rules are anticipated, but because of the large number of taxa, actual publication could take some time. The proposed rule of July 20, 1987 (52 FR 27229), constituted the Service's most recent findings.

Summary of Comments and Recommendations

In the July 20, 1987, proposed rule (52 FR 27229) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Bay City Times* on August 6, 1987; *Alpena News*, *Cheboygan Daily Tribune*, *Door County Advocate*, *Manistiquie Pioneer-Tribune*, *Manitowoc Herald-Times-Reporter*, *Petoskey News-Review*, and the *Sault Ste. Marie News* on August 7, 1987; the *Sheboygan Press* on August 8, 1987; the *Gary Post Tribune*, *Muskegon Chronicle*, *Kalamazoo Gazette*, and the *Traverse City Record-Eagle* on August 10, 1987; the *Munising News* on August 12, 1987; and the *Ludington Daily News* on August 26, 1987. No public hearing was requested or held.

Eleven comments were received. Of these, five respondents expressed support for the proposal and provided new status information, including the Wisconsin Department of Natural

Resources, the National Park Service (NPS), Indiana Department of Natural Resources, a private individual, and a university professor. The Indiana Department of Natural Resources also provided new occurrence and ownership information. The NPS advised that it expects to initiate mapping and monitoring of *C. pitcheri* colonies at Indiana Dunes, Sleeping Bear Dunes, and Pictured Rocks National Lakeshores. Six respondents did not take a position but did provide new information on several populations. The U.S. Forest Service (FS) advised us of an occurrence of *Cirsium pitcheri* within the Huron-Manistee National Forest. Two comments were received from the Michigan Department of Transportation (MDOT). One of these expressed reservations about the increased involvement MDOT will have through the Federal Highway Administration in the section 7 consultation process and indicated it would be difficult for MDOT to meet construction and roadside maintenance schedules because of the added time required for section 7. MDOT is also concerned that listing *C. pitcheri* might affect its ability to maintain new safety standards along coast roads. MDOT also expressed concern about its added responsibilities once *C. pitcheri* is listed, while adjoining landowners are not bound by the Act and sometimes destroy plants. Therefore, MDOT supports added protection for plants on private land and further suggests continued cooperation and early consultation under section 7 with the Federal Highway Administration. Since MDOT is currently complying with the Michigan Department of Natural Resources requirements for endangered and threatened species permits, the Service will endeavor to integrate these State requirements and actions into section 7 activities so as not to cause unnecessary delay or added work for MDOT. MDOT expressed a desire to cooperate with the Service, but admits it has limited control over some uses on the right-of-way. Because of the restrictive nature of seed dispersal for *C. pitcheri*, and the narrow habitat requirements, the number of instances in which *C. pitcheri* may be affected by MDOT actions may not be of the magnitude expected. MDOT also requested representation on the recovery team for *C. pitcheri*. The Service will consider the expertise of MDOT staff when formulating a recovery plan for this species. The other comment from MDOT provided additional status information and recommended the Service focus on

people management and habitat protection in the recovery of *C. pitcheri*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their applications to *Cirsium pitcheri* (Eaton) Torrey and Gray are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The development of beaches has and will continue to reduce the range of *Cirsium pitcheri*. In Michigan, approximately 5-10 percent of this species' suitable habitat has been lost due to construction of roads, houses, and other facilities (See Crisman, pers. comm. 1987). Although there has been little documented loss of *Cirsium pitcheri* from sites throughout this plant's range, many colonies have been reduced in size (Alverson 1981). The reduction of colony size may severely hamper the ability of the species to recolonize sites that are disturbed naturally (i.e., high water) (see discussion in Factor E of this section).

Historical records indicate that the plant occurred on the shores of Lake Michigan in Illinois (Paulson and Schwegman 1978), but recent surveys have failed to relocate any colonies in the State. There are no data to indicate how these colonies might have been lost.

As indicated in the "Background" section, the species can withstand periodic disturbance to its habitat, and may colonize sites where disturbance creates an earlier successional stage (i.e., open grass dune). However, frequent disturbance and trampling destabilize dunes resulting in reduction or loss of *Cirsium pitcheri* colonies. In addition, road and housing construction result in the permanent loss of dune habitat. In some areas dunes have been bulldozed to reduce topographic relief in order to provide a better view of the lake for cottage residents (Alverson 1981). Some private landowners have attempted to eradicate the species because they believed it was a weed (Alverson 1981). As far as is known, all attempted eradications have been by mechanical means; there are no reports of chemical applications. These types of disturbance and habitat destruction

appear to be critical at several sites in Wisconsin (Ron Nicotera, Wisconsin Department of Natural Resources, personal communications 1987). There are sites within the range of *Cirsium pitcheri* that appear to be suitable habitat, but there are no individual plants or colonies on these sites (Nepstad 1981). Whether this is due to human disturbance, ecological limitations, or environmental factors is unknown.

As previously mentioned, this plant occurs on various public lands, including three National Lakeshores, a small stretch of shoreline managed by the U.S. Coast Guard, a National Forest, a small island administered by the BLM, several State parks, and within State highway rights-of-way. Although the maintenance of quality shoreline habitat is an objective of agencies that manage these lands, hikers, campers, swimmers, and others using beach areas unknowingly disturb or trample *Cirsium pitcheri*. Again, these activities appear to be detrimental only when they occur frequently (i.e., monthly to yearly) over a period of years. It appears that the most serious threat to this plant is the use of off-road vehicles (Edward G. Voss, University of Michigan, pers. comm. 1987). A recent study in Wisconsin reveals that the plant's habitat continues to be lost due to public use of sand dune areas (Nicotera, pers. comm. 1987).

The Indiana Dunes, Sleeping Bear Dunes, and Pictured Rocks National Lakeshores are managed by the NPS, and management plans for these sites contain provisions for protecting colonies of these plants. No other current or planned projects appear to threaten the existence of this plant on these National Lakeshores. The NPS is currently evaluating a request for road access through the Indiana Dunes National Lakeshore to a proposed marina on private land. However, neither the road nor proposed marina site has any known colonies of *Cirsium pitcheri* although some colonies occur in the general area. Prior to the publication of the proposed rule for *Cirsium pitcheri*, (52 FR 27229), the U.S. Department of Army, Corps of Engineers (COE), reviewed a light-draft vessel harbor project on the shoreline of Lake Michigan and concluded that the project would destroy some of the *Cirsium pitcheri* plants at the site. However, the project is not funded. The COE has discussed this with the Service. Once this rule is effective, the COE will initiate consultation with the Service under section 7(a)(2) of the Act, to insure that this activity is not likely to

jeopardize the continued existence of *C. pitcheri*. As mentioned in the "Summary of Comments and Recommendations" section, the Michigan Department of Transportation anticipates that several road maintenance projects may affect this plant, and it will be involved with the Federal Highway Administration consultation process under section 7 of the Act. It has been the experience of the Service that the majority of section 7 consultations are resolved so that the species is protected and the project can continue.

The Coast Guard operates a lighthouse on a 100 yard (91 meter) stretch of shoreline that contains a colony of *Cirsium pitcheri*. That agency neither currently conducts nor plans to conduct any activities that would threaten *Cirsium pitcheri* on this stretch of shoreline. It is anticipated that the BLM administered island will eventually be transferred to the State of Michigan; there are no plans for any type of development on the island.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Not applicable.

C. *Disease or predation.* White *et al.* (1983) report that total seed production of *Cirsium pitcheri* in Pukaskwa National Park, Ontario, is reduced by larvae of a plume moth (*Platyptilla carduidactyla*), which feed on immature seeds, and Nepstad (1981) states that juvenile plants are lost due to herbivory by rabbits. It is not known if these forms of predation are a threat to *Cirsium pitcheri*. Loveless (1984) documents predation by several types of moths as well as goldfinches.

D. *The inadequacy of existing regulatory mechanisms.* Over one-half of the known *Cirsium pitcheri* populations occur on private lands and are offered no protection. Over one-fourth of the sites are on Federal lands; the remainder are found on various State lands. *Cirsium pitcheri* is listed as threatened by Indiana, Michigan, and Wisconsin, and rare in Ontario. However, State listing does not protect this plant's habitat, and habitat modification appears to be the principal reason for the plant's decline. Indiana's Nature Preserves Act protects endangered and threatened plants within Nature Preserves; endangered and threatened plants found within Indiana's State parks cannot be removed without a permit. Michigan law prohibits taking, possession, sale, purchase, and transport of plant species on the Federal and State endangered and threatened lists. Wisconsin regulations prohibit any person from removing or transporting any

endangered or threatened wild plant from its native habitat on public property, or from property he or she does not own or control, except in the course of forestry or agricultural practices, or in the construction or maintenance of a utility facility. The prohibitions in the Endangered Species Act will provide additional protection.

E. *Other natural or manmade factors affecting its continued existence.* As previously mentioned, this plant appears to have reproductive characteristics that limit its establishment to clusters within narrow ecological conditions in open dunes along lakeshores. Because of its limited ability to disperse seeds and establish seedlings, this plant may require relatively large colonies to colonize effectively and recolonize naturally and artificially disturbed sites. Reduction of colony size due to frequent, human-induced disturbance may decrease the ability of this plant to recolonize sites that are disturbed by natural phenomena such as high water. For example, 100 acres (42 hectares) of habitat was recently lost in Wisconsin due to high water (June Dobberpuhl, Wisconsin Department of Natural Resources, pers. comm. 1987). The probability of successful recolonization of this site after the water recedes is greater if the colony size is large prior to inundation; however, small colonies are less likely to survive. Large colonies are especially important in areas where the plants are widely dispersed since this plant does not disperse seed over large distances. In addition to a lowered ability to survive catastrophic events, the fitness of smaller colonies is also more likely to be lowered by predators. Therefore, conservation strategies for this plant should include establishment and maintenance of large clusters rather than numerous small colonies spread out over the entire range of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this final rule. Based upon this evaluation, the preferred action is to list *Cirsium pitcheri* as threatened as opposed to endangered because the species is not in immediate danger of extinction, but does have a restricted range and is confronted by a variety of problems. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary

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designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Cirsium pitcheri* at this time. Publishing a detailed description and map of this species' habitat might make this species more vulnerable to vandalism (see factor "D" in the "Summary of Factors Affecting the Species"). No benefit would be derived from designating critical habitat and so it would not be prudent or beneficial to determine critical habitat for *Cirsium pitcheri* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for listed species. Such actions are initiated by the Service following the listing. Some may be undertaken prior to listing, circumstances permitting. Potential habitat management actions that might benefit *Cirsium pitcheri* include: Increasing protection of shorelines within National Lakeshores, educating the public to the harmful effects of offroad vehicles, establishing large colonies of plants in areas with suitable habitat, and reducing frequent disturbance to the plant's habitat throughout its range. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action is likely to affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. *Cirsium pitcheri* is known to occur within the

Indiana Dunes, Sleeping Bear Dunes, and Pictured Rocks National Lakeshores, on a 100 yard (91 meter) stretch of Lake Michigan shoreline that is managed by the U.S. Coast Guard, and in the Nordhouse Dunes Area of the Huron-Manistee National Forest. Habitat management strategies currently employed on the National Lakeshores should eventually help improve the conditions of colonies on these sites. No Federal activities or projects are currently proposed on the National Lakeshores that would jeopardize this plant. As mentioned previously in this rule, the NPS is evaluating a request for road access through the Indiana Dunes National Lakeshore to a proposed marina. However, neither the use of the road, nor the construction of the proposed marina is expected to affect existing colonies of *Cirsium pitcheri*. Also, the aforementioned activities of the Michigan Department of Transportation, authorized in part, by the Federal Highway Administration may affect *C. pitcheri*. No current or planned activities of the U.S. Coast Guard, the U.S. Forest Service, or the BLM are expected to jeopardize any colonies of this plant.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Cirsium pitcheri*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export a threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for *Cirsium pitcheri* since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management

Authority. U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (703/343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is William F. Harrison (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of chapter I, Title 50 of the Code of Federal Regulations, is amended, as set forth below:

PART 17—(AMENDED)

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 684; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 98-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetic order under the

family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.
 (h) . . .

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Sunflower family:						
<i>Cirsium pitcheri</i>	Pitcher's thistle	U.S.A. (IL, IN, MI, WI) Canada (ON)	T	315	NA	NA

Dated: June 24, 1988.

Susan Racco,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-18061 Filed 7-15-88; 6:45 am]

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Part VII

Department of Labor

Employment and Training Administration

American Standard, Inc., Union Switch
and Signal Division, Swissvale, PA;
Revised Determination on Remand;
Notice

DEPARTMENT OF LABOR

Employment and Training
Administration

(TA-W-17,139)

American Standard, Inc., Union Switch
and Signal Division Swissvale, PA;
Revised Determination on Remand

Pursuant to a U.S. Court of International Trade order requiring the Department of Labor to withdraw its redetermination and allow petitioners access to confidential information and the opportunity to present evidence and further argument, the Department is issuing a revised determination.

Findings in the record for the initial investigation completed in July, 1986 as well as the subsequent reconsideration found that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met for rail systems and hardware.

The Department's log of official actions indicates that the factfinding investigation was finished in June 1986 with the completion of the customer survey. Data requested from the company during the original and subsequent investigations did not involve periods of time later than calendar year 1986. However, as a result of the most recent inquiry of company officials stemming from the latest allegations from the petitioners it was determined that the company began importing relay frames in May, 1987.

The restructuring of company production of rail system and components that resulted in the closure of the Swissvale facility was related to the sharp reduction of demand in the export market that was not offset by domestic market demand because of reduced Federal spending on transit systems. Export sales accounted for a substantial proportion of total sales of rail systems and hardware. The decline in sales for exports greatly exceeded declines in sales in the domestic market. A substantial portion of component imports were for finished goods destined for the export market.

Restructuring took the form of relocation of production to other domestic facilities, the elimination of in-house component production and the utilization of domestic and foreign vendors for components previously produced at the Swissvale facility. Although the company explored the feasibility of utilizing foreign vendors for a number of components, only two components were subsequently sourced from foreign suppliers to be utilized in company production. As noted above, importation of one of the items was

initiated for incorporation in production beginning in May, 1987.

On March 10, 1987 the Court remanded the case for further investigation including a public hearing. This time the petitioners focused on component production instead of rail or transit systems. The petitioners presented evidence and allegations of component imports and the company subsequently acknowledged and produced data indicating importation of panels that replaced some production and employment at the Swissvale facility. Other company imports during the period applicable to the petition were related to items being tested for possible incorporation into domestic production or for re-export.

As a result of this investigation on remand the Department found that workers in Departments 110, 222 and 390 were adversely affected because of imports of panels. The certification of panel imports was limited to the three departments because of the positive employment effect of panel imports on other departments. Company imports of panels received at Swissvale were unpacked, reassembled, tested, disassembled and repacked before being reshipped. Consequently, such imports would not have had an adverse impact on these activities.

The company submitted a list of its domestic vendors where outsourcing occurred. The investigative record shows no import replacement of components except for panels. Component imports by Union Switch are unimportant when compared to the company's total sales volume as evidenced by the company's submission under subpoena of all its purchase orders to overseas vendors for the period 1982-1986 (B-334 ff.).

As a result of a further court remand vacating the Department's limited certification, the Department received affidavits from 22 interested persons in Counsel's Memorandum in Support of Petition. Three other affidavits were received in Counsel's Supplemental Memorandum. Counsel also provided further argument in his Second Supplemental Memorandum.

The affiants claimed production and employment declines as a result of rail system components (panels, frames, relays, M-movements, L-shaped relay frames and train stop kits). Counsel noted arithmetic discrepancies and other inconsistencies in the data submitted by the company. Inspection reports on several part numbers from an overseas vendor were also submitted. The Department reviewed the claims and determined that they are unimportant. The arithmetic

discrepancies, even if true, are small compared to total Swissvale production and would not in themselves provide a basis for certification.

Findings in the second remand investigation indicate that the imported parts noted by counsel were for evaluation only and except for relay frames did not replace any of Swissvale's production. Swissvale's production of M-movement machines and relays were transferred to domestic corporate plants in Georgia and South Carolina. Coil production, including wayside coils, was outsourced to independent domestic firms. Production of train stop kits was transferred to the company's Georgia plant in early 1986. A domestic transfer of production would not provide a basis for certification. The findings show no vendors outside the U.S. supplying feeder parts to Union Switch on a regular basis during the period applicable to the petition.

The company began importing relay frames (L-shaped frames) in May 1987 from Korea. Relay frame imports occurred outside the period applicable to the Department's initial investigation and affected only the machining operations at Swissvale. During the period applicable to the petition, the forging of the relay frames was outsourced domestically and returned for machining at Swissvale. Beginning in May 1987 this production was transferred from the domestic vendor to vendors overseas and imported completely machined. The imported relay frames accounted for a negligible share of the company's total purchases of outsourced parts. Imports of relay frames accounted for about one percent of all outsourced parts and less than one-half of one percent of total Union Switch and Signal's sales in 1987.

Counsel in his Second Supplemental Memorandum has understandably tried to emphasize company imports as an important cause of the petitioners' unemployment and has taken the Department to task for allegedly relying solely on company statements and data in arriving at its conclusions. The petitioners clearly have little or no confidence in the reliability of the data submitted by the company.

Clearly, the Department did not rely solely on information submitted by company officials. In its investigation the Department utilized U.S. Custom and the Census Bureau sources that provided data on industry imports, as well as specific consignments of imports by specific firm. In addition, the investigation relied on information from customers of the firm.

Also, petitioners were provided the opportunity to express their views and give information at the Public Hearing mandated by the Court. Leads provided by petitioners were followed up by the Department and are included in the record of the investigation.

Further, there is no dispute regarding the company's massive restructuring of production and the company's outsourcing of components formerly produced at the Swissvale facility.

The company did respond to the Department's request by indicating that there were no imports except for panels and L-shaped relay frames. The company has acknowledged that foreign sources for component manufacture were considered and that foreign produced components were evaluated for possible inclusion in the final product assembled domestically. However, much of the information regarding components and parts requested on remand was not necessary since the company indicated there were no imports except for a few sample runs

which did not affect domestic production. The company's purchase orders on foreign parts substantiates this. In only two instances (panels and L-shaped relay frames) did the company actually substitute imported items for items formerly produced at Swissvale and in one such instance, the substitution occurred after much of the production had initially been contracted out to a domestic vendor. Further, imports of this component (L-shaped frames) occurred beginning in May, 1987 which would place it outside the Department's initial investigation. The company compiled extensive lists of domestic vendors utilized in component purchases.

Conclusion

After careful review of the additional facts obtained on remand, it is concluded that increased imports of panels like or directly competitive with the panels produced at Swissvale, Pennsylvania contributed importantly to worker separations and to declines in

production and employment in Departments 110, 222 and 390 at Union Switch & Signal Division, Swissvale, Pennsylvania. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of American Standard, Inc., Union Switch and Signal, Swissvale, Pennsylvania in Departments 110, 222 and 390 who were separated from employment on or after January 17, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

It is further determined that the Department's initial negative determination for all other workers at the Swissvale plant be affirmed.

Signed at Washington, DC, this 14th day of July 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, U.S.

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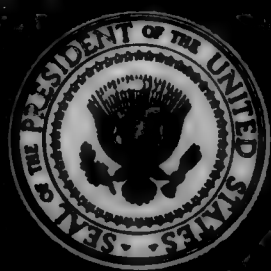
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting an interim rule as a final rule to comply with a recent decision of the U.S. Court of Appeals for the Federal Circuit concerning the computation of overtime pay for Federal employees under the Fair Labor Standards Act of 1938, as amended.

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT:
James E. Matteson, (202) 632-5056.

SUPPLEMENTARY INFORMATION: On December 16, 1987, an interim rule with request for comments was published in the Federal Register (52 FR 47687) by the Office of Personnel Management to comply with a decision by the U.S. Court of Appeals for the Federal Circuit in the matter of *Chester Lanehart, et al. v. Constance Horner, et al.* 618 F. 2d 1574 (Fed. Cir. 1987). The comment period ended on February 16, 1988.

The Office of Personnel Management received comments from two agencies. One agency urged OPM to limit its application of *Lanehart* to Federal firefighters or, in the alternative, to define the term "regular and recurring overtime." The other agency urged OPM to define "regularly scheduled overtime work" in such a way as to require that such work be regular and recurring in nature.

We do not believe it would be prudent to limit the applicability of *Lanehart* to Federal firefighters because the decision of the Court of Appeals for the Federal Circuit makes it clear that the same

rationale would apply in the case of any Federal employee who receives additional compensation for overtime work on a "customary and regular" basis. In addition, we do not believe it is necessary or desirable to revise the definition of "regularly scheduled" work in 5 CFR 550.103(p) and 610.102(g) to give effect to the changes required by *Lanehart*. The suggested change would increase agencies' administrative burdens by requiring them to ascertain, in each case, not only whether overtime work was scheduled in advance of the administrative workweek, but also whether the overtime work was "regular and recurring" in nature.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant impact on a substantial number of small entities because it will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is adopting the interim rule amending 5 CFR Part 551, published in the Federal Register (52 FR 47687, December 16, 1987) as a final rule without change.

[FR Doc. 88-16218 Filed 7-18-88; 8:45 am]

GILLING CODE 0025-01-01

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 735

[Amdt. No. 2]

Cotton Warehouses; Definitions,
Financial Statement, Bonding and Net
Asset Requirements, Warehouse
Bonds and Transfer of Stored Cotton

AGENCY: Agricultural Stabilization and
Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations at 7 CFR Part 735 relating to cotton warehouses licensed or applying for license under provisions of the United States Warehouse Act to: (1) Add definitions; (2) establish financial statement requirements; (3) increase the total bonding and net asset requirements; (4) require warehousemen to have and maintain total current assets equal to or exceeding total current liabilities; (5) allow the Secretary to accept a letter of credit for a deficiency in total net assets above the minimum requirement; (6) permit a warehouseman to deposit, with the Secretary, for the protection of depositors, United States public debt obligations as security in lieu of a bond furnished by a corporate surety; (7) allow a waiver of the requirements for an individual financial statement from a warehouseman wholly-owned by another business entity if the other entity is willing to furnish an acceptable financial statement and guarantee the storage obligations of the licensed warehouseman; (8) allow the inclusion of certain appraisals of real and personal property in the determination of assets; (9) provide for the acceptance of a continuous form of bond from a surety company; and (10) permit the transfer of receipted cotton from one licensed warehouse to another licensed warehouse. These changes are being made to provide better protection for depositors.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT:
Clifford J. McNeill, (202) 475-4028.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This final rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "non major." This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1993.

Milton J. Hertz, Administrator,
Agricultural Stabilization and
Conservation Service (ASCS), has
determined that this action is not a
major rule since implementation will not

result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographic region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements in this rule have been approved by the Office of Management and Budget under OMB No. 0560-0120 in accordance with the Paperwork Reduction Act of 1980.

Milton J. Hertz, Administrator, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities because: (1) This action imposes only moderate economic costs on small entities; and (2) the use of the service is voluntary. Therefore, no regulatory flexibility analysis was prepared.

This rule is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as wildlife habitat, water quality, or land use and appearance. Accordingly, neither an environmental assessment nor an environmental impact statement is required, and none was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12291 (February 17, 1981) was not used to assure that units of local government are informed of this action.

Background

The U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) (the "Act") provides that warehousemen who apply to the Secretary of Agriculture and who meet certain statutory and regulatory standards may be federally licensed. The primary objectives of the Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title, thereby facilitating trading of agricultural commodities in interstate commerce; and (3) set and maintain a standard for sound warehouse operations.

The Department of Agriculture has sought to attain these objectives by research and development of basic standards for good warehousing practices; requiring original and continuing examinations of applicants and licensees; establishing financial and

bonding requirements; and establishing licensing and regulatory requirements. Rules and regulations have been promulgated by the Department from time to time under authority of 7 U.S.C. 268.

Changes in the economy, governmental administrative policy, the cotton warehousing industry, and needs of cotton warehousemen have necessitated continuous departmental review of operations and requirements under the Act. A notice of proposed rulemaking was published by the Department on Friday, December 11, 1987, in the Federal Register at 52 FR 37125, requesting comments with respect to several proposed changes in the regulations for cotton warehouses. The comment period ended on January 11, 1988.

Amendments were proposed which would (1) add definitions, (2) require an audit or review level financial statement, (3) increase the total bonding and net asset requirement, (4) permit acceptance of letters of credit for a deficiency in net assets above the minimum required, (5) accept deposit of United States public debt obligations in lieu of surety bond, (6) accept financial statement of a parent entity for a wholly owned subsidiary under certain conditions, (7) accept appraisals of land, buildings, and equipment under specified conditions, (8) provide for a continuous bond and license, and (9) permit the transfer of receipted cotton from one licensed warehouse to another licensed warehouse.

Comments were received from two entities. One comment was from a large multi-state cotton warehouseman and consisted of a telephone call followed by a written comment. This comment mainly dealt with clarification. In reviewing the proposed rule it was determined that clarification was needed on the net asset requirement by States. This subsection has been revised. The comment also suggested a minor change in the bond language. The other comment was from a trade association suggesting a change in the bond language to eliminate possible confusion with respect to the surety's maximum limit of liability. Therefore, the bond language has been revised to incorporate the suggested changes from both comments.

List of Subjects in 7 CFR Part 735

Definitions, Warehouse licenses, Financial requirements, Warehouse bonds.

Final Rule

Accordingly 7 CFR Part 735 is amended as follows:

PART 735—COTTON WAREHOUSES

1. The authority citation for 7 CFR Part 735 continues to read as follows:

Authority: 7 U.S.C. 268.

2. Section 735.2 is amended by adding paragraph (x), (y), (z), and (aa) as follows:

§ 735.2 Terms defined.

(x) *Net Assets*. The difference remaining when liabilities are subtracted from allowable assets. In determining allowable assets, credit may be given for appraisal of real property less improvements and for the appraisal of insurable property such as buildings, machinery, equipment, and merchandise inventory only to the extent that such property is protected by insurance against loss or damage by fire, lightning, and tornado. Such insurance must be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in the State in which the warehouse is located. The Secretary shall, at his discretion, determine what assets are allowable and under what conditions appraisals may be used.

(y) *Warehouse Capacity*. Warehouse capacity is the maximum number of bales of cotton that the warehouse will accommodate when stored in the manner customary to the warehouse and as required by the Secretary.

(z) *Current Assets*. Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

(aa) *Current Liabilities*. Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

§ 735.4 [Amended]

3. Section 735.4 is amended by changing "\$10,000.00" to "\$25,000."

4. Section 735.5 is revised to read as follows:

§ 735.5 Financial requirements.

(a) Each warehouseman conducting a warehouse licensed under the Act or for which application for a license under the Act has been made must maintain complete, accurate, and current financial records which shall be available to the Secretary for review or audit at the Secretary's request.

(b) Each warehouseman conducting a warehouse for which application for

license under the Act is made shall provide with the application and each licensed warehouseman shall annually, or more frequently if required, furnish to the Secretary, financial statements from the records required in paragraph (a) of this section, prepared according to generally accepted accounting principles. Such statements shall include but not be limited to: (1) Balance sheet, (2) statement of income (profit and loss), (3) statement of retained earnings, and (4) statement of changes in financial position. The chief executive officer for the warehouseman shall certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the warehouseman as of the date designated and fairly represent the results of operations for the period designated.

(c) Each warehouseman conducting a warehouse licensed under these regulations shall have the financial statements required in paragraph (b) of this section audited or reviewed by an independent public accountant. The Secretary may, at his discretion, require an audited financial statement prepared by an independent certified public accountant. He may also, at his discretion, require an on-site examination and an audit by USDA personnel. Audits and reviews by independent certified public accountants and independent public accountants specified in this section must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, must be furnished along with the financial statements. Licensees who cannot immediately meet these requirements may apply to the Secretary for a temporary waiver of this provision. The Secretary may grant such waiver for a period not to exceed 180 days if the licensee can furnish evidence of good and substantial reasons therefor.

(d) Each warehouseman conducting a warehouse which is licensed under this part, or for which application for such a license has been made, must have and maintain:

(1) Total net assets liable and available for the payment of any indebtedness arising from the conduct of the warehouse of at least the amount obtained by multiplying \$10.00 by the warehouse capacity in bales to a maximum of \$250,000 in each State; however, no person may be licensed or remain sufficient as a warehouseman under this part unless that person has

allowable net assets of at least \$25,000 in each State. (Any deficiency in net assets above the \$25,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 735.12(c) of this part); and

(2) Total current assets equal to or exceeding total current liabilities or evidence acceptable to the Secretary that funds will be and remain available to meet current obligations.

(e) If a warehouseman is licensed or is applying for licenses to operate two or more warehouses under this part, the maximum number of bales which all such warehouses will accommodate when stored in the manner customary to the warehouses, as determined by the Secretary, shall be considered in determining whether the warehouseman meets the net asset requirements specified in paragraph (d) of this section.

(f) Subject to such terms and conditions as the Secretary may prescribe and for the purposes of determining allowable assets and liabilities under paragraphs (d) and (e) of this section:

(1) Capital stock will not be considered a liability;

(2) Appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouseman to conform with paragraphs (b) and (c) of this section may be allowed if (i) prepared by independent appraisers acceptable to the Secretary and (ii) the assets are fully insured against casualty loss;

(3) Financial statements of a parent company which separately identifies the financial position of the warehouse as a wholly owned subsidiary and which meets the requirements of paragraphs (b), (c), and (d) of this section may be accepted by the Secretary in lieu of the warehouseman meeting such requirements; and

(4) Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Secretary as meeting the requirements of paragraphs (b), (c), and (d) of this section, if the parent company submits a financial statement which qualifies under this section.

(g) If a State agency is licensed or applying for a license as provided in section 9 of the Act has funds of not less than \$500,000 guaranteeing the performance of obligations of the agency as a warehouseman, such funds shall be considered sufficient to meet the net asset requirements of this section.

(h) If a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in § 735.11(b), the certification may only be used to satisfy any deficiencies in assets above \$25,000.

(i) When a warehouseman files a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States as provided for in § 735.11(c):

(1) The obligation deposited shall not be considered a part of the warehouseman's assets for purposes of § 735.5(d), (1) and (2);

(2) A deficiency in total allowable net and current assets as computed for § 735.5(d), (1) and (2) may be offset by the licensed warehouseman furnishing a corporate surety bond for the difference;

(3) The deposit may be replaced or continued in the required amount from year to year; and

(4) The deposit shall not be released until one year after termination (cancellation or revocation) of the license which it supports or until satisfaction of any claim against the deposit, whichever is later.

Nothing in these regulations shall prohibit a person other than the licensed warehouseman from furnishing such bond or additions thereto on behalf of and in the name of the licensed warehouseman subject to provisions of § 735.11(c).

§ 735.7 [Amended]

5. Section 735.7(a) is amended by changing "\$10,000.00" to "\$25,000."

6. Section 735.11 is revised to read as follows:

§ 735.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall faithfully perform during the period of this bond all obligations of a licensed warehouseman under the terms of [the United States

Warehouse Act) and regulations thereunder relating to the above-named products.

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act, regulations, and contracts include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

This bond shall remain in force and effect for a minimum term of one year beginning with the effective date of this bond and thereafter shall be considered as a continuous bond, subject to termination as herein provided.

Regardless of the number of years this bond remains in force, or the number of premiums paid, and regardless of the number or amount of claims or claimants, in no event shall the aggregate liability of the surety under this bond exceed the amount of this bond.

This bond may be terminated at the end of the initial one year term by providing at least 120 days advance written notice of cancellation to the Secretary. This bond may be canceled at any time after the initial one year term beginning with the bond effective date by providing 120 days advance written notice of cancellation to the Secretary. If said notice is given by the surety, a copy of the notice shall be mailed on the same day to the principal. Cancellation of this bond shall not affect any liability that shall have accrued under this bond prior to the effective date of cancellation.

This bond shall be effective on and after

A bond in this form shall be subject to 7 CFR 735.5 and 735.12 through 735.15, and 31 CFR Part 225; or

(b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraphs (a) or (c) of this section. Such certificate of participation shall not be subject to §§ 735.12 and 735.13; or

(c) In the form of a deposit with the Secretary as security, United States bonds, Treasury notes, or other public

debt obligations of the United States or obligations which are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the penal bond required to be furnished, together with an irrevocable power of attorney and agreement in the form prescribed, authorizing the Secretary to collect or sell, assign and transfer such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Obligations posted in accordance with this paragraph may not be withdrawn by the warehouseman until one year after license termination or until satisfaction of any claims against the obligations whichever is later. A bond in this form shall be subject to 7 CFR 735.5 and 735.12 through 735.15, and 31 CFR Part 225.

7. Section 735.12 is revised to read as follows:

§ 735.12 Amount of bond; additional amounts.

(a) The amount of bond to be furnished by each warehouseman under the regulations in this part, shall be the rate of ten dollars (\$10.00) per bale for the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Secretary, but not less than twenty thousand dollars (\$20,000) nor more than two hundred fifty thousand dollars (\$250,000); except as provided in paragraphs (b) and (c) of this section.

(b) In case a warehouseman is licensed or applying for licenses to operate two or more warehouses in the same State, he may give a single bond meeting the requirements of the Act and the regulations in this part to cover all his warehouses within the State and shall be deemed to be one warehouse only for purposes of determining the amount of bond required under paragraph (a) of this section.

(c) In case of a deficiency in net assets above the twenty-five thousand dollars (\$25,000) minimum required by § 735.5(d)(1), there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency or a letter of credit in the amount of the deficiency issued to the Secretary for a period of not less than two years to coincide with the period of any deposit of obligations under 7 CFR 735.11(c). Any letter of credit must be clean, irrevocable, issued by a commercial bank payable to the Secretary by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation.

(d) If the Secretary, or his designated representative, finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of this section, a further amount to meet such conditions.

8. Section 735.14 is revised to read as follows:

§ 735.14 Bond required each year.

A continuous form of license shall remain in force for more than one year from its effective date or any subsequent extension thereof, provided that the warehouseman has on file with the Secretary a bond meeting the terms and conditions as outlined in 7 CFR 735.11. Such bond must be in the amount required by the Secretary and approved by him or his designated representative. Failure to provide for or renew a bond shall result in immediate and automatic termination of the warehouseman's license.

9. Section 735.40 is revised to read as follows:

§ 735.40 Excess Storage.

(a) If at any time a warehouseman shall store cotton in his licensed warehouse in excess of the capacity thereof as determined in accordance with 7 CFR 735.12, such warehouseman shall so arrange the cotton as not to obstruct free access thereto and the proper operation of the sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the Secretary of such excess storage, the reason therefor and the location thereof.

(b) A warehouseman who lacks space and desires to transfer at his own expense, identity preserved depositor stored cotton, for which receipts have been issued to another licensed warehouse may physically do so subject to the following terms and conditions:

(1) The transferring (shipping) warehouseman's accepted rules or schedule of charges must contain notice that the warehouseman may forward cotton deposited on an identity preserved bases with the written permission of the depositor under such terms and conditions as the Secretary may prescribe;

(2) For purposes of this section, a licensed warehouse means: (i) a warehouse operated by a warehouseman who holds an unsuspended, unrevoked license under the U.S. Warehouse Act for cotton; or (ii) a warehouse operated by a warehouseman who holds an effective warehouse license for the public storage of cotton issued by a State that has

financial, bonding and examination requirements for the benefit of all depositors at least equal to the requirements of this section;

(3) The transferring (shipping) warehouseman must list all forwarded bales on a Bill of Lading by receipt number and weight, in blocks not to exceed 200 bales. The receiving warehouse shall promptly issue a non-negotiable block receipt for each block attaching a copy of the corresponding Bill of Lading to each receipt and forward the receipt promptly to the transferring warehouseman (The receiving warehouseman will store each block intact, attach a header card showing the receipt number, number of bales and a copy of the Bill of Lading with the individual tag numbers. Such non-negotiable block receipts shall have printed or stamped in large bold outline letters diagonally across the face the words "NOT NEGOTIABLE." Receipts are not valid for collateral purposes. The non-negotiable receipt shall be retained by the shipping warehouseman to be presented to and used by Department examiners in lieu of an on-site inventory. The cotton covered by such receipts is not the property of either the receiving or shipping warehouseman but held in trust by both solely for the benefit of the depositors whose bailed cotton was transferred individually or collectively and the depositor or the depositor's transferee retains title thereto);

(4) The shipping warehouseman's bond shall be increased to consider the addition of the transferred cotton to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity and the forwarded cotton (The bond amount need not be more than \$250,000 unless necessary to cover a deficiency in net assets to meet requirements. The receiving warehouseman must not incur storage obligations that exceed the licensed capacity of the receiving warehouse);

(5) The shipping warehouseman continues to retain storage obligations to the owners of all cotton deposited in the warehouse for storage whether forwarded or retained and is, except as otherwise agreed upon under paragraph (b)(6) of this section, required to redeliver the cotton, upon demand, to the depositor or the depositor's transferee at the warehouse where the cotton was first deposited for storage;

(6) The owner of cotton deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the cotton was first deposited for storage, unless the owner of the cotton, with the consent of both

the shipping warehouseman and the receiving warehouseman, elects to take delivery at the warehouse to which cotton was transferred under this section;

(7) Nothing in this section diminishes the right of the owner of the cotton to receive or the obligation of the warehouseman of a licensed warehouse from which the product is transferred, to deliver to the owner the same cotton, identity preserved, called for by the warehouse receipt or other evidence of storage;

(8) Recording and retention of non-negotiable warehouse receipts received as a result of forwarding cotton under this section shall be subject to the requirements for warehouse receipts specified elsewhere in these regulations; and

(9) If it is the shipping warehouseman's obligation by terms of the warehouse receipt or otherwise to insure the cotton subject to the transfer, he must in accordance with 7 CFR 735.23 keep such cotton insured in his own name or transfer the cotton only to a warehouse where the cotton is fully insured.

10. Section 735.93 is added to read as follows:

§ 735.93 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 735) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0120.

Signed at Washington, DC, July 12, 1988.
Milton Hertz,
Administrator, Agricultural Stabilization and Conservation Service.
[FR Doc. 88-16001 Filed 7-16-88; 8:45 am]
BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Parts 916, 917, and 919

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order No.'s 916 and 917 (California nectarines, plums, and peaches) and 919 (Colorado peaches) for the 1988-89 fiscal year established for each order. The proposal

is needed for the Nectarine Administrative Committee, the Plum and Peach Commodity Committees, and the Colorado Peach Administrative Committee to incur operating expenses during the 1988-89 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: March 1, 1988, through February 28, 1989 (§§ 916.227, 917.250 and 917.251), and July 1, 1990, through June 30, 1991 (§ 919.227).

FOR FURTHER INFORMATION CONTACT: Jerry N. Brown, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-5464.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No.'s 916 (7 CFR Part 916) regulating the handling of nectarines grown in California; 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California; and 919 (7 CFR Part 919) regulating the handling of peaches grown in Mesa County, Colorado. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of California plums, peaches, and nectarines subject to regulation under marketing orders (7 CFR Parts 916, and 917), and there are approximately 2,030 producers of these commodities in the regulated area. There are approximately 28 handlers of Colorado peaches subject to regulation under a marketing order (7

CFR Part 919), and there are approximately 245 producers of peaches in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of the committees are primarily handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee met on May 5, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$3,123,908 and an assessment rate of \$0.16 per No. 22D standard lug box (package) of fresh nectarines. For comparison, 1987-88 fiscal year budgeted expenditures were \$2,844,417 and the assessment rate was \$0.16 per package. Major expenditure categories in the 1988-89 budget are \$1,801,886 for market development and \$867,000 for inspection, with most of the remainder for program administration. Total income for 1988-89 is expected to amount to \$3,173,900, including assessment income of \$3,132,900 based on shipments of 17,405,000 packages of

fresh nectarines, \$30,000 from the California Department of Food and Agriculture, and \$21,000 from other sources such as interest earned on the reserve fund. Committee reserves are within limits authorized under the program.

The Plum Commodity Committee met on May 4, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$3,510,678 and an assessment rate of \$0.19 per No. 22D standard lug box (package) of fresh plums. For comparison, 1987-88 fiscal year budgeted expenditures were \$3,125,036 and the assessment rate was \$0.19 per package. Major expenditure categories in the 1988-89 budget are \$1,971,459 for market development and \$1,066,900 for inspection, with most of the remainder for program administration. Total income for 1988-89 is expected to amount to \$3,508,030, including assessment income of \$3,466,030 based on shipments of 18,237,000 packages of fresh plums, \$20,000 from the California Department of Food and Agriculture, and \$23,000 from other sources such as interest earned on the reserve fund. Additional estimated income includes \$100,000 from the USDA's Foreign Agricultural Service for export matching funds. Reserves are within the maximum amounts authorized under the program.

The Peach Commodity Committee met on May 5, 1988, and recommended, by a 12-1 vote, 1988-89 marketing order expenditures of \$2,562,069 and an assessment rate of \$0.18 per No. 22D standard lug box (package) of fresh peaches. For comparison, 1987-88 fiscal year budgeted expenditures were \$2,409,160 and the assessment rate was \$0.16 per package. Major expenditure categories in the 1988-89 budget are \$1,280,435 for market development and \$866,000 for inspection, with most of the remainder for program administration. Total income for 1988-89 is expected to amount to \$2,580,980, including assessment income of \$2,553,480 based on shipments of 14,186,000 packages of fresh peaches, \$20,000 from the California Department of Food and Agriculture, and \$17,500 from other sources such as interest earned on the reserve fund. Additional estimated income includes \$20,000 from the USDA's Foreign Agricultural Service for export matching funds. Reserves are within the maximum amounts authorized under the program.

The Colorado Peach Administrative Committee met on May 23, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$1,830 and an assessment rate of \$0.01 per

bushel of fresh peaches. The Federal marketing order program is operated in conjunction with a State program. For comparison, 1987-88 fiscal year budgeted expenditures were \$683. There was no assessment rate for the 1987-88 season because the committee wanted to reduce the Federal portion of the reserve account. The reserve was reduced to \$30. Federal assessment income for 1988-89 is expected to amount to \$1,800 based on shipments of 180,000 bushels of fresh peaches. Operating reserves are well within the amounts authorized under the program. The Federal program budget expenditures of \$1,830 will be used to help pay the manager's salary.

While this section will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule regarding this action was issued on June 16, 1988, and published in the Federal Register (53 FR 232244, June 21, 1988). That document provided that interested persons could file comments through July 1, 1988. No comments were received.

Based on the foregoing, it is found that the specified expenses are reasonable and likely to be incurred, and that such expenses, assessment rates, and operating reserves will tend to effectuate the declared policy of the Act.

Approval of the expenses, assessment rates, and operating reserves should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 916, 917, and 919

Marketing agreements and orders. Nectarines, Peaches, Plums, Peaches (California), Peaches (Colorado).

For the reasons set forth in the preamble, new §§ 916.227, 917.250, 917.251, and 919.227 are added as follows:

1. The authority citation for 7 CFR Parts 916, 917, and 919 continues to read as follows:

Authority: Secs. 1-10, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New §§ 916.227, 917.250, 917.251, and 919.227 are added to read as follows:

Note.—These sections will not appear in the Code of Federal Regulations.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.227 Expenses and assessment rate.

Expenses of \$3,123,908 by the Nectarine Administrative Committee are authorized, and an assessment rate of \$0.16 per No. 22D standard lug box of assessable nectarines is established, for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.250 Expenses and assessment rate.

Expenses of \$3,510,678 by the Plum Commodity Committee are authorized, and an assessment rate of \$0.19 per No. 22D standard lug box of assessable peaches is established for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

§ 917.251 Expenses and assessment rate.

Expenses of \$2,562,069 by the Peach Commodity Committee are authorized, and an assessment rate of \$0.18 per No. 22D standard lug box of assessable plums is established for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

§ 919.227 Expenses and assessment rate.

Expenses of \$1,830 by the Administrative Committee are authorized, and an assessment rate of \$0.01 per bushel of assessable peaches is established for the fiscal period ending June 30, 1989. Unexpended funds may be carried over as a reserve. Dated: July 14, 1988.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-10236 Filed 7-16-88; 8:45 am]

BILLING CODE 3110-10-10

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

(No. 88-577)

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions

Date: July 13, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Temporary rule with request for comments.

SUMMARY: The Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is adopting a temporary regulation addressing the purchase and sale of preferred stock of the Federal Home Loan Mortgage Corporation ("Freddie Mac") held by institutions insured by the FSLIC ("insured institutions") that do not currently meet their minimum regulatory capital requirements. The temporary regulation provides that no such institution may buy or sell such stock without obtaining prior approval from its Principal Supervisory Agent ("PSA") or his designee, subject to the concurrence of the Office of Regulatory Activities. It also sets forth general guidelines that the PSA will use in determining whether to grant such approval. Comments are solicited on all aspects of the temporary rule.

DATE: The temporary regulation is effective July 13, 1988. Comments must be received on or before September 19, 1988. The regulation will expire on December 31, 1988.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office, 801 17th Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377-6445; Daniel G. Lonergan, Attorney, (202) 377-6458; or Thomas J. Delaney, Attorney, (202) 377-6417, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 13, 1988, the Board of Directors of Freddie Mac voted in principle to permit holders of the preferred stock of Freddie Mac to sell such stock to the general public as of January 1, 1989. Before this time, pursuant to a previous resolution creating the class of preferred stock

covered by the July 13 action, such stock could only be held by stockholders of a Federal Home Loan Bank, a Federal Home Loan Bank in connection with collateral for advances, the FSLIC in connection with the receivership or insolvency of a holder of the preferred stock, a pre-approved market maker or nominee thereof, or a specialist on any national securities exchange. Additionally, single holders of such preferred stock were limited in the maximum amount of shares each could hold to 150,000. Freddie Mac's Board of Directors also acted on July 13, 1988 to increase sequentially the maximum number of shares that any single holder could own from 150,000 to 6000,000 by January 1, 1989.

Currently, Freddie Mac preferred stock is primarily held by the approximately 3,000 insured institutions that own stock in the Federal Home Loan Banks. In general, the Board believes that any decision to purchase or sell Freddie Mac stock both before and after January 1, 1989, is best left to the sound business judgment of insured institutions themselves. The Board is concerned, however, with the possible effect of the removal of the restrictions on ownership and transferability of Freddie Mac preferred stock on those insured institutions not currently meeting their minimum regulatory capital requirement as set forth in 12 CFR 563.13 and 563.14. These institutions require closer supervision as a result of their impaired capital position.

The Board has therefore determined to require that such institutions obtain the approval of their PSA or his designee, subject to the concurrence of the Office of Regulatory Activities, before buying or selling any of the shares of Freddie Mac preferred stock they now hold or may later acquire. This restriction is similar to restrictions the Board has imposed on such institutions in other contexts. See, e.g., 12 CFR 563.4 (brokered deposits), 12 CFR 563.9-8(c)(2)(iii) (equity risk investments). In so acting, the Board believed, as it does today, that the impaired capital status of such insured institutions warrants particular supervisory scrutiny of certain business decisions. The PSA for the institution is best able to determine whether an institution's decision to purchase or sell Freddie Mac preferred stock may have adverse consequences for the institution and ultimately the FSLIC as insurer of the institution.

The Board believes that the elimination of the ownership and transferability restrictions that had previously applied to Freddie Mac

preferred stock may subject the value of those securities to increased market fluctuations. This could, in turn, have a significant impact on the financial condition of insured institutions holding such stock. To the extent that institutions can immediately increase their holdings of Freddie Mac preferred stock, the results of potential market fluctuations in the value of this stock take on more significant consequences.

With the removal of the previous Freddie Mac restriction significantly limiting the amount any single holder of preferred stock could own, insured institutions can immediately double their holdings of Freddie Mac preferred stock. At the same time, the value of this stock will be subject to unprecedented volatility. The capital position of institutions that are not presently meeting their minimum capital requirement may be particularly vulnerable to these variations. The Board believes that before such institutions can significantly alter their holdings of Freddie Mac preferred stock, there must be an opportunity for the institution's Principal Supervisory Agent to evaluate the potential impact resulting from a change in the level of this type of investment. Although the Freddie Mac action does not contemplate that this preferred stock will be available for sale to the public until January 1, 1989, in the interim the Board recognizes that intra-industry purchases and sales among institutions with impaired capital could detrimentally affect the sound operation of such institutions.

The temporary rule that the Board adopts today will prevent institutions that do not meet their minimum regulatory capital requirement under §§ 563.13 and 563.14 from buying or selling Freddie Mac preferred stock without first obtaining written approval from their PSA.

The rule requires that institutions not meeting their minimum capital requirement must submit written applications to their PSAs. It sets forth factors to be considered by the PSAs when evaluating an institution's application to buy or sell Freddie Mac preferred stock. In making a written application to buy or sell Freddie Mac preferred stock, institutions will be required to demonstrate the effect that the proposed transaction will have on their overall asset composition. Factors that are to be addressed in applications include, but are not limited to, the effect proposed transactions will have on an institution's future growth, its risk exposure, and portfolio diversification. The PSA may require an institution to

include in its application any additional information that the PSA may consider relevant to evaluating portfolio risk in connection with the purchase or sale of Freddie Mac preferred stock. If the institution proposes to sell its shares of Freddie Mac preferred stock, it must indicate in its application the manner in which the resulting proceeds are to be used. Moreover, it must comply with any conditions imposed by the PSA. All institutions not meeting their minimum capital requirement that sell shares of Freddie Mac preferred stock may, at the discretion of the PSA, be further restricted from declaring dividends for the years in which the gain on such sales are recognized until an amount equivalent to such gain is subtracted from the institution's earnings. Any waivers granted by the PSA with respect to other dividend restrictions will not apply to this dividend restriction.

Although the Board has determined that immediate action is required to ensure that institutions failing their regulatory capital requirement buy and sell Freddie Mac stock consistent with principles of safety and soundness, the Board also believes that public comment on today's rule will be useful in shaping any permanent rule that it may determine to adopt upon expiration of this temporary rule. It therefore requests public comment on the temporary regulation adopted today. Comments received will be taken into account in determining the scope of any final regulation that the Board may adopt.

The Administrative Procedure Act, 5 U.S.C. 553(b), (d)(3), provides that the general provisions requiring notice and comment and a delay in the effective date of a substantive regulation do not apply when an agency determines that the public interest would not be served by notice and comment before agency action and that good cause for dispensing with the delay in effective date exists and is published with the rule. As set forth elsewhere in this SUPPLEMENTARY INFORMATION, the Board believes that in order to preserve its ability to supervise institutions with impaired capital adequately its Principal Supervisory Agents must be able to act promptly to monitor the decision by any such institution to purchase or sell Freddie Mac preferred stock. It anticipates that it will have adequate time, during the period this temporary rule is in effect, to review any comments received during the comment period and any other supervisory information regarding these institutions to determine the most effective way of affording such institutions managerial flexibility in this

area consistent with the Board's supervisory concerns. The Board therefore finds that good cause exists for dispensing with a delayed effective date.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. *Issues raised by comments and agency assessment and response.* These elements will be considered by the Board in reviewing any comments received and will be fully addressed in any final regulation.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed \$100 million." 13 CFR 121.13(a). This temporary regulation will only affect those small savings and loan associations that are not currently meeting their regulatory capital requirements. The Board believes that the temporary rule provides the least burdensome alternative available for addressing the Board's supervisory concern about the safe and sound operation of such insured institutions in this area. The Board will consider any alternatives presented in comments addressing this concern.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1431 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 258, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as amended by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1946 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.13-3 to read as follows:

§ 563.13-3 Sale of Federal Home Loan Mortgage Corporation Preferred Stock.

(a) An insured institution that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forbearances, shall not be permitted to sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities.

(b) An insured institution that fails to satisfy the regulatory capital requirement set forth in §§ 563.13 and 563.14 of this subchapter shall make written application to the Principal Supervisory Agent for permission to buy or sell preferred stock of the Federal Home Loan Mortgage Corporation. The written application shall provide the Principal Supervisory Agent or his designee with sufficient information to demonstrate how the proposed sale or purchase of such preferred stock will affect the overall level of risk of the institution's portfolio, as well as any additional information which the institution may deem relevant to supervisory review. In evaluating the overall risks posed by the sale or purchase of preferred stock to the institution's portfolio, the Principal Supervisory Agent or his designee shall consider the purposes for which such sale proceeds will be used, the effect of investment of the proceeds on the composition and quality of the institution's asset portfolio, the institution's growth plans, the likely effect on the institution's liquidity, as well as any additional relevant information the Principal Supervisory Agent or his designee may seek in evaluating overall portfolio risk.

(c) The Principal Supervisory Agent or his designee, in approving the application of an insured institution not meeting its minimum regulatory capital requirement to sell such preferred stock, may impose conditions upon his approval, including the requirement that such institution not declare a dividend unless it has first subtracted any gain realized from the sale of such stock from earnings.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,
Assistant Secretary.

[FR Doc. 88-10200 Filed 7-18-88; 8:45 am]
BILLING CODE 6730-01-0

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 617

Organization; Examinations and Investigations

AGENCY: Farm Credit Administration.
ACTION: Final rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts in final form, with no changes, the proposed rule deleting 12 CFR Part 617, Subpart A, and amending 12 CFR Part 611 that was published with request for comment on May 12, 1988 (53 FR 16936). The rule eliminates duplicative or unnecessary regulations relating to Farm Credit Administration (FCA) examinations and investigations. **EFFECTIVE DATE:** This rule shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Stephen G. Smith, Examiner, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4180,

or
James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On May 12, 1988 (53 FR 16936), the FCA published a proposed rule to delete duplicative and unnecessary regulations concerning examinations. The FCA requested comments on the proposed rule. The deadline for comments was June 13, 1988. The FCA received one comment, a letter from the Farm Credit Banks of Baltimore supporting the proposed rule. For the reasons set forth below, the FCA Board adopts the regulations as final with no changes.

12 CFR Part 617, Subpart A, contains regulations governing examinations and investigations conducted by FCA examiners. The FCA is deleting those provisions of Part 617, Subpart A, which are merely duplicative of provisions contained in the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, or which are more appropriately addressed in internal agency procedures.

The provisions of § 617.7000 repeat § 5.19 of the Act except the definition of "System institution" in § 617.7000 includes incorporated or unincorporated service organizations. In order to clarify

that service organizations are subject to FCA examination, § 611.1136 is amended and § 617.7000 is deleted.

Section 617.7010 is deleted in its entirety as System institutions have reported possible criminal violations directly to the appropriate U.S. Attorney without involvement of the Farm Credit Administration since June 1986.

Section 617.7020 is deleted because it merely repeats requirements contained in § 5.21 of the Act, relating to examination of other financing institutions.

Section 617.7030 is duplicative of statutory requirements relating to the responsibilities of Farm Credit Administration examiners. Accordingly, § 617.7030 is deleted.

Section 617.7070 provides a non-exclusive listing of some of the elements of an examination. The scope of a particular examination is a matter of discretion with the FCA. However, the general scope of examinations is specified in the FCA Examination Manual and Examination Bulletins, which are publicly available. Therefore § 617.7070 is deleted.

Sections 602.205 and 602.289 contain the requirements concerning disclosure which are currently contained in § 617.7080. The requirements of § 617.7080 concerning reporting to the banks are operational in nature and are covered by the Examination Manual and Examination Bulletins. Therefore, § 617.7080 is deleted in its entirety.

Section 617.7090 repeats §§ 611.1160 and 611.1176 concerning examination of institutions in receivership or liquidation and is accordingly deleted.

List of Subjects in 12 CFR Parts 611 and 617

Agriculture, Banks, Banking, Investigations, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Chapter VI, Title 12, Code of Federal Regulations is amended as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 4.12, 5.9, 5.10, 5.17; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2183, 2243, 2244, 2252; sec. 412 of Pub. L. 100-233.

2. Section 611.1136 is revised to read:

§ 611.1136 Incorporated and unincorporated service organization—regulation and examination.

Incorporated and unincorporated service organizations shall be subject to

regulations for the banks and associations of the Farm Credit System, and shall be subject to examination by the Farm Credit Administration.

PART 617—INVESTIGATIONS

3. The authority citation for Part 617 is revised to read as follows:

Authority: Secs. 5.9, 5.17(a)(10); 12 U.S.C. 2243, 2252(a)(10).

4. The heading for Part 617 is revised to read as follows:

Subpart A—(Removed and Reserved)

5. Subpart A consisting of §§ 617.7000, 617.7010, 617.7020, 617.7030, 617.7070, 617.7080, and 617.7090 is removed and reserved.

Date: July 12, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.
[FR Doc. 88-16155 Filed 7-18-88; 8:45 am]

BILLING CODE 6705-01-8

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Reaffirmation of Final Rule and Technical Change.

SUMMARY: On January 11, 1988, the Farm Credit Administration (FCA) chartered the Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) (53 FR 1679, January 21, 1988) pursuant to § 6.20 of the Farm Credit Act of 1971, as added by the Agricultural Credit Act of 1967, Pub. L. 100-233 (1967). The Financial Assistance Corporation is to issue debt securities in the capital markets to provide capital to institutions of the Farm Credit System which are experiencing financial difficulty. On April 5, 1988 the Farm Credit Administration Board (Board) adopted final regulations regarding the issuance of Financial Assistance Corporation securities and book-entry procedures applicable to such securities and requested comments thereon (53 FR 12140, April 13, 1988). The Board hereby responds to the comment received on the final regulations and makes an unrelated technical change in the authority citation.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. LaVerghetta, Financial and Credit Standards Division, Farm Credit Administration, McLean, VA 22102-5090, (703) 863-4444.

or
James M. Morris, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102-5090 (703) 863-4020, TDD (703) 863-4444.

SUPPLEMENTARY INFORMATION: Final regulations concerning the issuance of Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) securities and book-entry procedures applicable to such securities were adopted on April 7, 1988 with a request for comments. The deadline for receiving comments on the final regulations was May 13, 1988. Only one comment letter, from the Farm Credit Corporation of America (FCCA), was received concerning the regulations.

The FCCA supported § 615.5560 as adopted, but expressed a need for definitions for terms used in the sections of Subpart D of Part 615 which were incorporated by reference in § 615.5560(c). The Board sees no need to amend the final regulation, since the incorporation by reference of the sections listed in § 615.5560 incorporates appropriate meanings of the terms used in the sections incorporated, wherever those meanings are found.

In order to aid those using the regulations, FCA revises the authority citation, to provide the reader with parallel citations to both the Farm Credit Act of 1971, as amended, and the United States Code.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

Accordingly, the final rule amending Part 615 of Chapter VI, Title 12, Code of Federal Regulations, which was published at 53 FR 12140 on April 13, 1988, with the following technical change:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 is revised to read as follows:

Authority: Secs. 4.3, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2154, 2243, 2252, 2278b, 2278b-4.

Date: July 12, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.
[FR Doc. 88-16156 Filed 7-18-88; 8:45 am]

BILLING CODE 6705-01-8

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373 and 399

[Docket No. 80516-8116]

Editorial Corrections to the Commodity Control List

AGENCY: Bureau of Export Administration, Commerce.
ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List, which includes those items subject to Department of Commerce controls. A final rule, published on July 21, 1987 (52 FR 27496), amended the Commodity Control List by transferring instruments employing time compression of the input signal or Fast Fourier Transform techniques from ECCN 1529A to ECCN 1533A. This rule amends Parts 373 and 399 of the Export Administration Regulations, revising certain references that now read ECCN 1529A to read ECCN 1533A.

EFFECTIVE DATE: This rule is effective July 19, 1988.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3850.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule mentions collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) that are cleared under OMB control numbers 0625-0002, 0625-0041, and 0625-0052.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section

553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 373 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 373 and 399 of the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

1. The authority citation for 15 CFR Parts 373 and 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1986; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 et seq.); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 et seq.); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 373—(AMENDED)

Supplement No. 1 (Amended)

2. In Supplement No. 1 to Part 373 (Commodities Excluded from Certain Special License Procedures), the entry for ECCN 1529 is removed and a new entry for ECCN 1533 is inserted between

the existing entries for ECCN 4530 and ECCN 1534, as follows:

Supplement No. 1 to Part 373

Commodities Excluded from Certain Special License Procedures

1533 Sub-entries (h) and (i) only: Signal analyzers (including spectrum analyzers) employing time compression of the input signal or FFT (Fast Fourier Transform) techniques.

PART 399—(AMENDED)

Supplement No. 1 (Amended)

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1516A is amended by revising the heading, as follows:

1516A Receivers, and specially designed components and accessories therefor. (For instruments using time compression of input signal or FFT techniques associated with receivers, see ECCN 1533A (h) and (i).)

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by revising the "Special Licenses Available" paragraph to read "Special Licenses Available: No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for commodities defined in ECCN 1529A."

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by removing the parenthetical sentence that begins ("See paragraph (b)(4) of ECCN 1529A . . .") under the heading and by revising the "Special Licenses Available" paragraph to read "Special Licenses Available: Certain items under paragraphs (h) and (i) of the List below are excluded from special licenses—see the entry for ECCN 1533A, Supplement No. 1 to Part 373. See Part 373 for special licenses available for other commodities defined in ECCN 1533A."

Dated: July 9, 1988.

Michael E. Zerkow,

Assistant Secretary for Export Administration.

[FR Doc. 88-16175 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-07-8

15 CFR Part 375

[Docket No. 80506-8106]

Editorial Clarification

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations (15 CFR Parts 368-399), makes an editorial clarification in the provisions of § 375.6(c) regarding substitution of Form ITA-629P for the People's Republic of China (PRC) end-user Certificate.

This rule clarifies that Form ITA-629P may be substituted for the PRC End-User Certificate when the commodities to be exported are replacement parts or sub-assemblies, not tools or test equipment, for previously exported equipment and are valued at \$75,000 or less.

EFFECTIVE DATE: This rule is effective July 19, 1988.

FOR FURTHER INFORMATION CONTACT: Will Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3850.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under Control Number 0625-0136.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for

public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. Because of a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 375

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 375 of the Export Administration Regulations is amended as follows:

1. The authority citation for 15 CFR Part 375 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 375—[AMENDED]

§ 375.6 [Amended]

2. In § 375.6, paragraph (c)(3) is revised by adding the words "(i.e., replacement parts or sub-assemblies, not tools or test instruments)" between the words "commodity" and "to be exported".

Dated: June 21, 1988.

Vincent F. DeCain,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 88-16173 Filed 7-19-88; 8:45 am]

BILLING CODE 3010-07-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 290

[Docket No. R-88-0707; FR-0432]

Management and Disposition of HUD-Owned Multifamily Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final certain rent-setting provisions relating to the management of HUD-owned multifamily housing projects. These provisions were one of the matters included in the proposed rule published on October 18, 1984 at 49 FR 40888, which involved an overall revision of 24 CFR Part 290, the rules governing the management and disposition of multifamily projects owned by HUD. Recent statutory amendments require further rulemaking before the Department can completely revise Part 290.

Under this final rule, HUD will set rents for projects acquired on or after the effective date of the rule as if the rent-setting requirements that governed rents before the project was acquired still applied.

EFFECTIVE DATE: September 19, 1988.

FOR FURTHER INFORMATION CONTACT: Marc Harris, Chief, Management Branch, Multifamily Property Disposition Division, Department of Housing and Urban Development, Room 6186, 451 7th Street, SW., Washington, DC 20410-8000. Telephone (202) 755-9280. Hearing- and speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1984, the Department published a proposed rule (49 FR 40888) to revise substantially 24 CFR Part 290, the regulations governing the management and disposition of HUD-acquired multifamily rental projects. The current Part 290 property disposition regulations were promulgated as an interim rule on October 1, 1979, at 44 FR 56606. The proposed rule was intended to conform the regulations more closely to section 203 of the Housing and Community Development Amendments of 1978, as amended (12 U.S.C. 1701a-11) (section 203); to decrease reliance on

project-based Section 8 subsidies as a means of maintaining availability of units to low- and moderate-income persons; and to conform the rental structure in HUD-owned properties to statutory changes in rents charged under HUD's subsidy programs.

The Department received fifteen public comments. The commenters included several cities, legal aid societies and legal services corporations, the National Housing Law Project, public interest groups, project managers, and State housing finance agencies. In general, these public commenters were concerned with what they believed to be the overly broad amount of discretion in the proposed rule to manage and dispose of individual HUD-owned multifamily projects. They believed that the rule could permit management and disposition decisions that would result in a decrease in the supply of housing available to lower income families.

The proposed rule has also been the topic of Congressional hearings. HUD's Proposed Revisions to the Multifamily Property Disposition Regulations: Hearing Before the Subcomm. on Employment and Housing of the House Comm. on Government Operations, 99th Cong., 1st Sess. (February 20, 1985).

Section 181 of the Housing and Community Development Act of 1967 (Pub. L. 100-242, approved February 5, 1988) substantially revised and expanded the scope of section 203. The Department was about to publish its final rule when this legislation was enacted, and is now developing further rulemaking to implement fully section 203 as recently amended.

The Department, however, believes that it is appropriate to publish as a final rule a portion of the proposed rule, namely, the provisions relating to the setting of rents in HUD-owned multifamily projects. The rent provisions implemented in this final rule are consistent with the goals of section 203(a), as revised by section 181 of the HCD Act of 1967. In particular they further the goal of:

[P]reserving so that they are available to and affordable by low- and moderate-income persons—

(A) all units in multifamily housing projects that are "formerly subsidized projects; and

(B) in other multifamily housing projects owned by the Secretary, at least the units that are occupied by low- and moderate-income persons or vacant.

(Section 203(a)(1) (A) and (B))

The current rule is anomalous because it continues to use 25 percent of adjusted income to set subsidized rents even

though all other HUD programs involving income-based rental assistance use 30 percent of adjusted income. In addition, the policy, implemented in this rule, to continue to set rents as they were set before HUD acquires the project, should minimize the need to make changes in tenant rent based solely on the fact that HUD has acquired the project.

Comparison of the Current Rule, Proposed Rule, and Final Rule Rent Provisions

Current Rule—Section 8 eligible tenants in formerly subsidized projects pay 25% of their adjusted income as rent. Other tenants pay the lesser of market rent or the gross potential rent.

Proposed Rule—Lower income tenants (including very low-income tenants) in occupancy, would pay a "Section 8" rent if needed to keep the unit affordable to these tenants. Very low-income new admissions would pay a "Section 8" rent if needed to make the rent charged to these new admissions comparable to rent already charged to existing tenants with comparable incomes. Lower income new admissions, other than very low-income new admissions, would pay a "Section 8" rent only in order to obtain full occupancy.

Final Rule—For a project owned by HUD when this final rule takes effect, the requirements of the current rule would continue to apply, except that the subsidized rent would be based on 30% of adjusted income, and the use of gross potential rent would be discontinued.

For a project acquired by HUD on or after the effective date of this final rule, rent would be set by HUD as if the rent-setting requirements for the program under which the project was insured or assisted before it was acquired by HUD still applied.

Discussion of Public Comments on Rent Provisions

Several commenters believed that the proposed § 290.14 could result in tenants in HUD-owned housing paying more rent than the congressionally mandated standard for Section 8 and public housing, and could result in displacement. They argued that the same uniform rent formula (then 29% of income for in-place tenants and 30% for new admissions) should apply to all lower income tenants in HUD-owned projects. One of these commenters also claimed that, to the extent that the regulation would permit HUD to charge market rents to lower income tenants of formerly subsidized housing, it is contrary to the statute.

The commenters did not specify the reasons for their concern that the proposed rule could cause displacement of tenants. Their concern may have arisen from the fact that providing a Section 8-based rent under the proposed rule was discretionary, and was conditioned on a determination by HUD that the reduced rent was necessary in order that the unit occupied by the lower income tenant remain available to and affordable by the tenant.

One commenter found the rent-setting provisions of the proposed rule confusing and potentially unfair. This commenter noted that most tenants in HUD-acquired projects would be eligible for reduced rents, and suggested that it would be simpler to provide rental rates at rents equivalent to those payable under Section 8.

The Department believes that the rent-setting requirements in the proposed rule were consistent with section 203, as it then existed, and would not cause displacement. It has revised the final rule in a way that both simplifies the policy and addresses the commenters' concerns about affordability and displacement.

Under the final rule, a tenant's rent in a project acquired after the effective date of the rule would be determined as if the rent-setting requirements that applied to the project before HUD's acquisition still applied. Thus, most tenants' rent would not be directly affected by the change of ownership. For example, if HUD acquired a project that had been insured under section 236 of the National Housing Act, a tenant who had been paying basic rent before HUD's acquisition would continue to pay basic rent, and a tenant who received the benefit of rental assistance payments would continue to pay a rent equal to the amount that would be payable by the tenant if rental assistance payments were still being made. In addition, a newly admitted tenant's rent would be established as if the tenant were admitted before HUD acquired the project. For administrative convenience, rent in project acquired before the effective date of this rule will continue to be established under essentially the same rent-setting requirements that applied to these projects under the current rule immediately before the effective date of this rule. The final rule makes two changes from the current rule with respect to projects in inventory. First, eligible tenants in formerly subsidized projects would pay 30% (rather than 25%) of their adjusted income, which conforms to the percentage paid under HUD's various rent subsidy programs. Second, market rent would not be limited by gross

potential rent. Gross potential rent is the rent needed to meet operating expenses plus an assumed debt service based on the terms of the original mortgage. Gross potential rent is an unnecessary restraint on market rent.

The commenter's recommendation that HUD apply a uniform rent formula (30% of adjusted income) to all lower income families, would require HUD to reduce rents—even for tenants who had not been receiving rental subsidy before acquisition—for the sole reason that HUD acquired the project. Both the final rule and the commenters' suggestion would further the two goals set out in section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701a-11) that are most pertinent to the subject matter of this rule: namely, preserving the housing units so they can remain available to and affordable by low- and moderate-income families, and minimizing the involuntary displacement of tenants. The final rule, however, furthers these goals as section 203 directs, "in a manner that is consistent with the National Housing Act and this section and that will, in the least costly fashion among the reasonable alternatives available, further the goals. . . ." The Department, therefore, has not adopted the commenter's suggestion.

There is no absolute statutory prohibition against charging a lower income tenant market rent, and the commenter making this assertion cited none. The Department believes that the final rule is a reasonable implementation of the statutory goals in section 203. Under the final rule, HUD-owned projects would continue to provide affordable housing to low- and moderate-income persons on the same terms, with respect to rent, as the projects provided before acquisition by HUD.

Finally, several commenters recommended that HUD take a reasonable utility allowance into consideration when determining rents for a lower income tenant, as is done in HUD's assisted housing programs. The Department agrees. HUD currently takes a reasonable utility allowance into consideration in establishing rents (see § 290.17(c) of the current rule) and will continue to do so for tenants who pay their own utilities and whose rent is based on a percentage of adjusted income (see § 290.17(d) of this final rule).

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD

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regulations in 24 CFR Part 50, which implements the National Environmental Policy Act of 1969, (42 U.S.C. 4321-4347). The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule revises the standards governing the setting of rent in multifamily housing projects during HUD's ownership. These revisions should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

This rule was listed as Sequence No. 950 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 290

Mortgage insurance, Low- and moderate-income housing.

Accordingly, the Department amends Chapter II, Part 290 of Title 24 of the Code of Federal Regulations as follows:

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS

1. The authority citation for 24 CFR Part 290 is revised to read as follows:

Authority: Secs. 202, 203, and 204, Housing and Community Development Amendments of 1970, (12 U.S.C. 1715a-1b, 1701a-11, 1701a-12); secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 202, Housing Act of 1950, (12 U.S.C. 1701a); sec. 312, Housing Act of 1964, (42 U.S.C. 1452b); sec. 7(d), 7(i), Department of HUD Act (42 U.S.C. 3635(d), (i)).

2. Section 290.17 is revised to read as follows:

§ 290.17 Rental rates during ownership by HUD.

(a) *Determining a schedule of maximum rental rates.* As soon as practicable, but no later than 30 days after it assumes management responsibility, HUD shall establish a schedule of maximum rental rates for each unit in a HUD-owned multifamily project that is comparable to the rates charged in other multifamily projects, based on unit size, location, condition, services, and amenities provided, and is conducive to attracting high occupancy without impacting adversely on the viability of other multifamily projects and other housing projects in the area. HUD shall review and update the maximum rental rate schedule periodically to maintain current comparability.

(b) *Rents in projects acquired on or after September 19, 1988.* Except as modified by this section, HUD shall set rents in a multifamily project acquired by HUD on or after September 19, 1988, as if the rent setting requirements that governed rents before the project was acquired still applied.

(1) To determine the appropriate rent and to obtain information that may be useful in HUD's disposition analysis, HUD shall request an income certification from each family in occupancy at the time of acquisition of a project by HUD. This certification of income shall be conducted as soon as practicable after HUD acquires the project. Certification of income is not required, however, if the family's income has been examined by the owner or by HUD not more than four months before HUD acquired the project. If a tenant does not certify income as required by this paragraph (b)(1), the tenant must pay the unit rent as determined under paragraph (a) of this section.

(2) HUD shall request an income certification from each family applying for admission to a rental housing project to determine the family's ability to pay the unit rent, eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent. This information is also used in HUD's disposition analysis.

(3) HUD shall determine rent, for a unit in a multifamily project that, at the time of acquisition by HUD, had a market-based rent, from the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set a lower rent if it determines that a lower rent is necessary or desirable to maintain the

existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(c) *Rents in projects acquired before September 19, 1988.* Each tenant (other than an eligible tenant in a formerly subsidized project) in a HUD-owned multifamily project acquired by HUD before September 19, 1988, shall be charged a rent based on the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set a lower rent, if it determines that a lower rent is necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy. Each eligible tenant in a formerly subsidized project acquired by HUD before September 19, 1988 shall be charged the lesser of an amount equal to the tenant rent that would be payable by the eligible tenant under Part 613 of this title, or the rent established for the unit under paragraph (a) of this section.

(d) *Utility allowance.* For a tenant in a HUD owned rental housing project whose rent is based on a percentage of adjusted income, if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD shall deduct from the rent to be paid by the tenant to HUD an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment.

(e) *Notice of rent changes.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project, HUD shall provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants as to its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous locations around the project.

Date: July 7, 1988.

James E. Schoenberger,
General Deputy Assistant Secretary for
Housing—Federal Housing Commissioner.
[FR Doc. 88-16124 Filed 7-19-88; 8:45 a.m.]
BILLING CODE 4210-27-88

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1268-88]

Revision of Business Information FOIA Regulation Implementing Executive Order 12600 and Amendment of List of Public Reading Rooms

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This notice constitutes the final revision of a procedural regulation of the Department of Justice, 28 CFR 16.7, setting forth the procedures to be followed in notifying submitters of business information that such information has been requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552. This final revision brings the regulation into conformity with the criteria of Executive Order 12600, 52 FR 23781 (1987), and modifies its language for purposes of clarity. In addition, this notice contains a revised listing of the Department's public reading rooms, previously listed at 28 CFR 16.2(a).

EFFECTIVE DATE: August 18, 1988.

FOR FURTHER INFORMATION CONTACT: Richard L. Huff or Daniel J. Metcalfe, Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530 ((202) 633-3642).

SUPPLEMENTARY INFORMATION: On March 23, 1988, the Department of Justice published a proposed revision of its business information notification regulation to clarify its language and to bring the provision into conformity with Executive Order 12600, 53 FR 9452 (1988). Public comment on the proposed regulation was invited, with the comment period extending to April 22, 1988.

Analysis of Comments Received

One comment was received within the comment period, from the Reporters Committee for Freedom of the Press. This commenter was concerned that the notification procedures would interfere with the statutory time limits imposed on agencies for responding to FOIA requests and suggested that the Department's regulation include the language of the Executive Order that such notification procedures be

accomplished "to the extent permitted by law." Inasmuch as this caveat is expressly included in the Executive Order, the Department has included it in § 16.7(c).

This proposed rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 28 CFR Part 16

Freedom of information.

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510, and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 16—(AMENDED)

1. The authority citation for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 9701.

2. Section 16.2(a) is revised to read as follows:

§ 16.2 Public reference facilities.

(a) The Department of Justice shall maintain public reading rooms or areas at the locations listed below:

(1) United States Attorneys and United States Marshals—at the principal offices of the United States Attorneys listed in the United States Government Manual;

(2) Federal Bureau of Investigation—at the J. Edgar Hoover Building, 9th Street and Pennsylvania Avenue NW., Washington, DC;

(3) Immigration and Naturalization Service—at the Central Office, 425 I Street NW., Washington, DC, and at each District Office in the United States listed in the United States Government Manual;

(4) Drug Enforcement Administration—in Room 1207, 1405 I Street NW., Washington, DC;

(5) Civil Rights Division—in Room 948, 320 First Street, NW., Washington, DC;

(6) Community Relations Service—in Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland;

(7) Office of the Pardon Attorney—in Suite 490, 5550 Friendship Boulevard, Chevy Chase, Maryland;

(8) United States Parole Commission—in the Fourth Floor, 5550 Friendship Boulevard, Chevy Chase, Maryland;

(9) Office of Justice Programs—in Room 1268 B, 633 Indiana Avenue, NW., Washington, DC;

(10) Foreign Claims Settlement

Commission—in Room 400, 1120 20th Street, NW., Washington, DC;

(11) Executive Office For Immigration Review (Board of Immigration Appeals)—in Suite 1808, 5203 Leesburg Pike, Falls Church, Virginia;

(12) INTERPOL—in Room 907, 806

15th Street, NW., Washington, DC;

(13) All other components of the Department of Justice—at the Department of Justice, 10th Street and Constitution Avenue, NW., Washington, DC.

The public reference facilities of all components shall contain the materials relating to those components which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying.

3. Section 16.7 is revised to read as follows:

§ 16.7 Business information.

(a) *In General.* Business information provided to the Department of Justice by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* The following definitions are used in reference to this section:

"Business information" means commercial or financial information provided to the Department by a submitter that arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

"Submitter" means any person or entity who provides business information, directly or indirectly, to the Department. The term includes, but is not limited to, corporations, state governments and foreign governments.

(c) *Notice to Submitters.* A component shall, to the extent permitted by law, provide a submitter with prompt written notice of a Freedom of Information Act request or administrative appeal encompassing its business information wherever required under paragraph (d) of this section, except as is provided for in paragraph (i) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(d) *When Notice is Required.* Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information deemed protected from disclosure under Exemption 4, or (2) the component has reason to believe that the information may be protected from disclosure under Exemption 4.

(e) *Designation of Business Information.* Submitters of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under Exemption 4. Such designations shall be deemed to have expired ten years after the date of the submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(f) *Opportunity to Object to Disclosure.* Through the notice described in paragraph (c) of this section, a component shall afford a submitter a reasonable period of time within which to provide the component with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of Intent to Disclose.* A component shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall forward to the submitter a written notice which shall include:

- (1) A statement of the reasons for which the submitter's disclosure objections were not sustained;
 - (2) A description of the business information to be disclosed; and
 - (3) A specified disclosure date.
- Such notice of intent to disclose shall be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester shall be notified likewise.
- (h) *Notice of FOIA Lawsuit.* Whenever a requester brings suit

seeking to compel disclosure of business information, the component shall promptly notify the submitter.

(i) *Exceptions to Notice Requirements.* The notice requirements of paragraph (c) of this section shall not apply if:

- (1) The component determines that the information should not be disclosed;
- (2) The information lawfully has been published or has been officially made available to the public;
- (3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or
- (4) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous; except that, in such case, the component shall provide the submitter with written notice of any final administrative decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

Dated: July 8, 1988.

Edwin Mense III,
Attorney General.
[FR Doc. 88-16169 Filed 7-18-88; 8:45 am]
BILLING CODE 4110-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 273

[DoD Directive 3210.2]

Research Grants and Title to Equipment Purchased Under Grants

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This amendment is issued to remove approval requirements previously required by 32 CFR Part 273. Paragraph 273.5(b) required approval of the Secretary of Defense or Deputy Secretary of Defense for research grants in excess of \$1 million to institutions of higher education, hospitals, or nonprofit organizations. Paragraph 273.5(c) provided for approval by the Under Secretary of Defense for Research and Engineering or the Secretaries of the Military Departments for grants of \$1 million or less. It has been determined by the Deputy Secretary of Defense that these approval requirements are no longer necessary.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. M. Herbst, Office of the Deputy Under Secretary of Defense (Research and Advanced Technology), Room 3E114, the Pentagon, Washington, DC 20301, telephone (202) 694-6205.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 273

Grant programs—science and technology; research.

Accordingly, 32 CFR Part 273 is amended as follows:

PART 273—RESEARCH GRANTS AND TITLE TO EQUIPMENT PURCHASED UNDER GRANTS—(AMENDED)

1. The authority citation continues to read as follows:

Authority: Rev. Stat 161, 5 U.S.C. 301; Pub. L. 85-554.

§ 273.5 (Amended)

2. Section 273.5 is amended by removing paragraphs (b) and (c) of that section and redesignating paragraph "(d)" to "(b)".

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 14, 1988.
[FR Doc. 88-16240 Filed 7-18-88; 8:45 am]
BILLING CODE 3010-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-3416-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Technical Correction

AGENCY: Environmental Protection Agency.

ACTION: Technical correction to special requirements for conditionally exempt small quantity generators.

SUMMARY: On March 24, 1988 (51 FR 10174), EPA promulgated a final rule that established special requirements for generators of between 100 and 1,000 kilograms of hazardous waste per month (kg/mo). Generators of acute hazardous waste were not affected by this rulemaking. However, in drafting the regulatory amendments, EPA, through a typographical error, inadvertently changed a requirement for generators of acute hazardous waste. EPA recently became aware of this mistake and is today amending the regulation to restore the correct language, and inserting a note to further clarify the point.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-6346 or (202) 382-3000. For specific questions

on this notice, contact Ms. Emily Roth, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4777.

SUPPLEMENTARY INFORMATION:

I. Technical Correction

On March 24, 1988 (51 FR 10174) EPA amended the regulations under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, for hazardous waste generators to establish special standards for generators of 100-1,000 kg/mo. These generators had previously been conditionally exempt from regulation, but Congress, under RCRA Section 3001(d), required EPA to develop the new regulations. Congress, in RCRA section 3001(d)(7), made it clear that the EPA regulations that applied to generators of acute hazardous waste (see 40 CFR 261.11(a)(2)) were not to be affected by this new regulatory program. In drafting the new regulations, however, EPA inadvertently amended 40 CFR 261.5 in such a way as to imply that generators of acute hazardous waste would come under the new standards for generators of 100-1,000 kg/mo. The last sentence in the new § 261.5(f)(2), because of a typographical error, refers to "the time period of § 262.34(d)," emphasis added. Paragraph (d) was created on March 24, 1988 for generators of 100-1,000 kg/mo. EPA meant to refer to § 262.34(a), which is the paragraph generators of acute hazardous waste had been previously subject to. The difference is that paragraph (a) provides that, once the quantity limitations of § 261.5 are exceeded, generators may then accumulate waste on-site for up to 90 days without having to obtain a permit or interim status, while paragraph (d) allows 180 (or in some cases 270) days. EPA is today amending § 261.5(e) by adding a note clarifying how acute hazardous waste is regulated and amending § 261.5(f)(2) to refer to § 262.34(a) instead of (d).

EPA finds that it has good cause to make the corrections immediately effective and to promulgate the amendments without prior notice and opportunity for comment under both section 3010 of RCRA and section 552 of the Administrative Procedure Act. Comment is unnecessary because EPA, in the course of the rulemaking for generators of 100-1,000 kg/mo of hazardous waste, made it very clear we had no intention of amending the requirements for generators of acute hazardous waste. (See the preambles for the proposed rule, August 1, 1985, at 50 FR 31288, and the final rule, March 24, 1988, at 51 FR 10153). Generators of acute hazardous waste then had no

reason to believe their requirements were being changed. EPA also notes that when the public has asked about this point, the Agency has noted that the reference to paragraph (d) was incorrect, the result of a typographical error, and that we planned to correct the rule at our earliest opportunity.

Finally, EPA notes that we have no information to indicate that the 90-day time limit, or any of the requirements, in § 262.34(a) is inadequate for generators of acute hazardous waste. In fact, these are the time limits that have applied to such generators since November 19, 1980 (45 FR 78624), and public comment was accepted and considered on the 90-day generator requirements at that time (*id.*). Consequently, additional comment is unnecessary, and since EPA never indicated that it intended to change the requirements for acute hazardous waste generators (and in fact indicated the opposite), the regulated community should not need any time to come into compliance with today's amendment. (EPA notes that Section 262.34(b) provides that the EPA Regional Administrator may grant a 30-day extension, on a case-by-case basis, for waste to remain on-site due to "unforeseen, temporary, and uncontrollable circumstances." Any generator of acute hazardous waste who cannot comply with the 90-day limit because of his confusion over the regulatory language should contact the Regional Administrator to obtain a 30-day extension.)

II. Executive Order No. 12291-Regulatory Impacts

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus is subject to the requirement to prepare a regulatory impact analysis. Today's amendment merely corrects a typographical error and does not impose new requirements, so it does not have an economic impact.

III. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify,

pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities because it merely corrects a typographical error, and so does not change previously existing rules.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: July 13, 1988.

J.W. McCraw,
Acting Assistant Administrator, Office of
Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

2. Section 261.5 is amended by adding the following comment to the end of paragraph (e) and by revising paragraph (f)(2) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

- (e) . . .
- (1) . . .
- (2) . . .

[Comment: "Full regulation" means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]

- (f) . . .

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under Parts 262 through 266, 268, and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(a) of this chapter, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit:

[FR Doc. 88-16169 Filed 7-18-88; 8:45 am]

BILLING CODE 5900-01-M

40 CFR Parts 262, 264, 265, 266 and 270**Farmer Exemptions; Technical Corrections**

AGENCY: Environmental Protection Agency.

ACTION: Technical Corrections.

SUMMARY: On August 8, 1986, EPA promulgated regulations for the export of hazardous waste under the Resource Conservation and Recovery Act (RCRA), and in doing so moved the RCRA farmer exemption to a new section in the *Code of Federal Regulations* (CFR). EPA, however, failed to modify a number of other sections in the CFR which refer to the farmer exemption by section. Then, on July 8, 1987, EPA sought to amend the farmer exemption to make it clear that farmers who were otherwise exempt from hazardous waste regulations were also exempt from the land disposal restrictions. In doing so, however, EPA inadvertently moved the farmer exemption back to its old section (which was already occupied by the export regulations). Today's amendments will correct these errors.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free (800) 424-6346 or (202) 382-3000. For specific questions on this notice contact Ms. Emily Roth, EPA, 401 M Street SW., Washington, DC 20460, (202) 382-4777.

SUPPLEMENTARY INFORMATION:**I. Technical Corrections**

The following amendments are promulgated today in 40 CFR:

1. Section 262.10(b) is amended by changing the reference "§ 262.51" to "§ 262.70;"
2. Section 262.10(d) is amended by changing the reference "§ 262.51" to "§ 262.70" and by adding "Part 266" (the land disposal restrictions) to the list of Parts farmers are exempt from;
3. Section 262.51 is revised so that it contains the definitions for the hazardous waste export regulations. This change was made on August 8, 1986 (51 FR 28664), but then the Agency inadvertently revised the section on July 8, 1987 (52 FR 25760);
4. Section 262.70 is amended so that "Part 266" (the land disposal restrictions) is added to the Parts a farmer may be exempt from. The Agency attempted to make this change July 8, 1987 (52 FR 25760), but mistakenly amended the wrong section;
5. Section 264.1(g)(4) is amended by changing the reference from "§ 262.51" to "§ 262.70;"

6. Section 265.1(c)(8) is amended by changing the reference from "§ 262.51" to "§ 262.70;"

7. Section 268.1(c)(5) is amended by changing the reference from "§ 262.51" to "§ 262.70;"

8. Section 270.1(c)(2)(ii) is amended by changing the reference from "§ 262.51" to "§ 262.70."

These amendments correct cross-references in the regulations and correct changes in the regulations made by mistake. All of the provisions were originally promulgated after public notice and opportunity for comment and there are no new issues raised by these corrections. In addition, these amendments do not impose any new substantive requirements on any persons. For these reasons, the Agency has good cause under RCRA § 3010 and the Administrative Procedure Act for making these amendments immediately effective without additional public notice and opportunity for comment.

II. Regulatory Impacts

The regulations promulgated today are merely renumbering actions and so have no impacts on the regulated community.

A. Executive Order No. 12291—Regulatory Impacts

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus is subject to the requirement to prepare a regulatory impact analysis. Today's amendment merely corrects CFR section numbering errors and does not impose new requirements, so it does not have an economic impact.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis for all proposed rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities because it merely involves renumbering actions, and so does not change previously existing rules.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

List of Subjects for Parts 262, 264, 265, and 270

Hazardous waste, Exports, Farmer exemption.

Dated: July 13, 1988.

J.W. McGraw,
Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**I. In Part 262:**

1. The authority citation for Part 262 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6922, 6923, 6924, 6925, and 6938.

2. Section 262.10 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

(b) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this part with respect to that waste: Section 262.11 for determining whether or not he has a hazardous waste, § 262.12 for obtaining an EPA identification number, § 262.34 for accumulation of hazardous waste, § 262.40 (c) and (d) for recordkeeping, § 262.43 for additional reporting, and if applicable, § 262.70 for farmers.

(c) Any person who imports hazardous waste into the United States must comply with the standards applicable to generators established in this part.

(d) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.70 is not required to comply with other standards in this part or 40 CFR parts 270, 264, 265, or 266 with respect to such pesticides.

3. Section 262.51 is revised to read as follows:

§ 262.51 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart:

"Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

"EPA Acknowledgement of Consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the

receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Primary Exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

4. Section 262.70 is revised to read as follows:

§ 262.70 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Parts 264, 265, 268, or 270 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**II. In Part 264:**

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by revising paragraph (g)(4) to read as follows:

§ 264.1 Purpose, scope, applicability.

(g)

(4) A farmer disposing of waste pesticides from his own use in compliance with § 262.70 of this chapter; or

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**III. In Part 265:**

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. Section 265.1 is amended by revising paragraph (c)(8) to read as follows:

§ 265.1 Purpose, scope, applicability.

(c)

(8) A farmer disposing of waste pesticides from his own use in compliance with § 262.70 of this chapter; or

PART 268—LAND DISPOSAL RESTRICTIONS**IV. In Part 268:**

1. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.1 is amended by revising paragraph (c)(5) to read as follows:

§ 268.1 Purpose, scope, and applicability.

(c)

(5) Where a farmer is disposing of waste pesticides in accordance with § 262.70.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**V. In Part 270:**

1. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 270.1 Purpose and scope of these regulations.

(c)

(2)

(i)

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in § 262.70 of this chapter;

[FR Doc. 88-16190 Filed 7-18-88; 8:45 am]

BILLING CODE 6910-50-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 22**

[CC Docket No. 85-388]

Amendment of Sections of Part 22 of the Commission's Rules as They Apply to Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule; corrections.

SUMMARY: The Federal Communications Commission is correcting the text of Section 22.917(c)(1)(ii) as amended in the Final Rule (*Fourth Report and Order*) FCC 88-154, a summary of which was published in the *Federal Register* at 53 FR 18061, May 20, 1988, concerning Rural Service Areas.

EFFECTIVE DATE: June 20, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sari E. Greenberg, Mobile Services Division, Common Carrier Bureau; (202) 632-6450.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission is correcting § 22.917(c)(1)(ii) at 53 FR 18063, by adding the following phrase at the end of the paragraph: ". . . and must be sufficient to cover the costs of the proposed RSA systems."

Federal Communications Commission.

H. Walker Foster III,

Acting Secretary.

[FR Doc. 88-18063 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-14; RM-6099]

Radio Broadcasting Services; Batesville and Charleston, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The following action is taken in response to a request filed jointly by Batesville Broadcasting Company and

Charleston Broadcasting Company, Inc. This document substitutes FM Channel 263C2 for Channel 240A at Batesville, Mississippi, and modifies the Batesville Broadcasting Company's license for Station WBLE to specify Channel 263C2. The coordinates for Channel 263C2 at Batesville are 34-25-26 and 89-48-47. This document also substitutes Channel 239A for Channel 232A at Charleston, Mississippi, and modifies the Charleston Broadcasting Company, Inc.'s license for Station WTGY to specify Channel 239A in lieu of Channel 232A. The coordinates for Channel 239A at Charleston are 33-58-43 and 90-06-47. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 26, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-14, adopted June 10, 1988, and released July 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In Section 73.202(b), the Table of FM Allotments under Mississippi is amended by removing Channel 240A and adding Channel 263C2 at Batesville and by removing Channel 232A and adding Channel 239A at Charleston.
Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-16145 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-478; RM-6019; RM-6296]

Television Broadcasting Services; Roseburg and Canyonville, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KMTR, Inc., allots Channel 36 to Roseburg, Oregon, as the community's second local television service. Channel 36 can be allotted to Roseburg, Oregon, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. However, any application which is filed for this channel which does not specify at least a 175 mile separation to Portland, Oregon, may not be accepted for filing if the Commission's freeze on such applications is still in effect. See 52 FR 28346, July 29, 1987. The counterproposal of Gee Jay Broadcasting Inc. requesting the allotment of Channel 36 to Canyonville, Oregon, is dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 20, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-478, adopted June 7, 1988, and released July 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments is amended by revising the entry for Roseburg, Oregon, by adding Channel 36.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-16146 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-469; RM-6585, RM-5758, RM-5761]

Radio Broadcasting Services; Hilton Head Island and Bluffton, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Island Communications, Inc., substitutes Channel 300C2 for Channel 288A at Hilton Head Island, SC, and modifies its permit for Station WIJY to specify the higher powered channel. At the request of Hilton Head Broadcasting Corp., the Commission substitutes Channel 291C2 for Channel 282A at Hilton Head Island, SC, and modifies its license for Station WHHR-FM to specify the higher powered channel. At the request of Dohara Associates, the Commission substitutes Channel 295C2 for Channel 288A at Bluffton, SC, and modifies its permit for station WLOW to specify the higher powered channel. The three Class C2 channels can be allocated to their respective communities in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter sites specified in their licenses or construction permits. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 26, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, MM Docket No. 88-

469, adopted June 10, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for South Carolina is amended by revising the entry for Bluffton by removing Channel 296A and adding Channel 295C2 and by revising the entry for Hilton Head Island by removing Channels 288A and 292A and adding Channel 291C2 and Channel 300C2.

Federal Communications Commission.
Steve Kaminer,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-16147 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-32; RM-5005; RM-5040; RM-5041; RM-5217; RM-5300; FCC 88-199]

Radio Broadcasting Services; Greenwood, Seneca, Aiken and Clemson, SC and Biltmore Forest, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies an Application for Review of action which allotted FM Channel 243A to Biltmore Forest, North Carolina and which denied a counterproposal filed by Tri-County Broadcasting Corporation to allot that channel to Clemson, South Carolina. Tri-County's request for waiver of the principal city coverage requirement was denied. This document also allots Channel 285A to Clemson on a conditional basis with the window application period delayed until Station WAGQ, Athens, Georgia, is licensed to operate at a site which permits the Clemson allotment to meet the minimum distance separation requirements of

Section 73.207 of the Commission's Rules. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 19, 1988.

FOR FURTHER INFORMATION CONTACT: Karl Kensinger, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 88-32, adopted June 13, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for South Carolina, is amended by adding the entry of Clemson, Channel 285A.

Federal Communications Commission.
H. Walker Foster III,
Acting Secretary.
[FR Doc. 88-16184 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Parts 73 and 76

[Gen. Docket No. 87-24; FCC 88-180]

Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: In this *Report and Order* (Order), the Commission adopts changes to its rules regarding program exclusivity, to remove anticompetitive restrictions on the ability of broadcasters to serve their viewers. The action is needed to provide a common set of fairly-enforced ground rules, which will result in proper market incentives for video outlets to deliver the programming that will maximize consumer benefits, rather than foster the

economically wasteful duplication of programming that is likely under our current rules.

EFFECTIVE DATE: August 18, 1988, except for §§ 76.92-76.95, which will become effective August 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kenneth Gordon, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, Gen. Docket No. 87-24, adopted May 18, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In this proceeding, the Commission considers changes to its rules regarding program exclusivity in the cable television and broadcast industry. The instant *Order* adopts changes to three of these rules. First, we extend exclusivity protection to broadcasters who purchase syndicated programming, by adopting simplified syndicated exclusivity rules to promote fair and efficient competition among all the video programming delivery systems from which viewers may select. Broadcasters may enforce any contractually-obtained syndicated exclusivity rights beginning August 18, 1989. We emphasize that our actions in this matter do not directly bestow exclusivity rights on broadcasters, but simply permit broadcasters to obtain the same enforceable exclusive distribution rights in syndicated programming that all other video programming distributors already enjoy. Second, we modify our network non-duplication rules, making them similar to the syndicated exclusivity rule provisions where possible and extending their scope to any retransmissions of network programming. Again, these modifications do not become enforceable until August 18, 1989. The non-duplication rules will remain effective in their present format until that time. Third, we modify our territorial exclusivity rule to allow broadcasters to acquire *national* exclusive rights to non-network programming.

2. This proceeding is a direct outgrowth of concerns we expressed in our Report and Order in the "must-carry" proceeding (51 FR 44806, December 11, 1986). Among the governmental actions which that decision explicitly identified as requiring reexamination were the compulsory copyright law and our 1980 action repealing the syndicated exclusivity rules. It was determined that copyright issues would be dealt with separately from the communications issues presented in this docket. Thus, the scope of this proceeding was limited to the effects on the television distribution market and the competitive imbalance resulting from our current cable-broadcast exclusivity rules. Because changes to those rules could affect or be affected by our territorial exclusivity rules, we also sought comment on the territorial exclusivity rules.

3. The Notice of Inquiry and Notice of Proposed Rulemaking (Notice) in this proceeding (52 FR 15738, April 30, 1987) posed three major questions: (1) Whether we should amend our program exclusivity rules to reinstitute some form of syndicated exclusivity rules that would permit broadcasters to negotiate for enforceable exclusive exhibition rights with respect to syndicated programming; (2) whether we should modify our network non-duplication rules which currently permit network affiliates to show network programming on an exclusive basis; and (3) whether we should relax or eliminate the territorial exclusivity rules which delineate the maximum amount of geographic exclusivity a broadcaster may obtain vis-a-vis other broadcasters. After full and careful review of the comments received in response to the Notice, we answer these questions in the affirmative.

4. In adopting simplified exclusivity rules, the Commission acknowledges that our 1980 decision removing such rules was based on certain assumptions and conditions which have changed in the intervening years. The exclusivity rules were eliminated for two reasons: (1) To increase programming and time diversity for cable subscribers, and (2) to foster the development of new cable systems. Further analysis leads us now to conclude that the reasoning that shaped the 1980 decision was flawed in two significant respects. First the Commission mistakenly justified the rules' repeal based on an analysis of how their repeal or retention would affect particular competitors, rather than competition itself, in the local television market. Second, the Commission failed

to analyze the effects on the local television market of denying broadcasters the ability to enter into contracts with enforceable exclusive exhibition rights when they had to compete with cable operators who could enter into such contracts.

5. The Commission at that time had only just begun to change its view of cable as a supplement to over-the-air broadcasting, and it still failed to appreciate fully the role that cable would come to play as a full competitor in the video marketplace. The incomplete 1980 analysis led the Commission to mischaracterize the role that exclusivity rules play in the functioning of the local television distribution market. Equally important, this mischaracterization caused it to ignore the effect on that market of the asymmetry introduced when broadcasters' enforceable exclusivity rights in syndicated programming were abolished while both cable operators and network affiliates providing network programming continued to enjoy such enforceable rights. Such a regulatory scheme introduces a bias into the market process, with the result that success in the marketplace becomes an artifact of regulation, rather than an indicator that the successful competitor is meeting consumer demands efficiently. We find no compelling public interest argument that would justify such an asymmetric treatment of competitors.

6. Further, we find ample evidence in the record that the cable and broadcast industries have grown in ways quite different from what we expected when we rescinded the syndicated exclusivity rules in 1980. As a result, the costs of no syndicated exclusivity to broadcasters and program suppliers in terms of lost revenues, and to the public in terms of foregone program diversity, are far greater than anticipated in 1980, while the benefit to the public—time and episode diversity—can be satisfied by other methods. Even using the 1980 cost-benefit analysis, the Commission must find that the benefits of syndicated exclusivity outweigh its associated costs.

7. More importantly, the limitations our current rules impose on broadcasters actually work against the public interest by preventing television viewers from getting the best possible mix of programs across different types of video outlets. That is, some programs that broadcasters could acquire if they could enforce exclusivity are currently likely to be unattainable by them. Such programs are provided by other outlets, or perhaps not at all. Because local

viewers may be diverted to distant stations, the ability of local advertisers as a group to make the best use of all available advertising media is reduced. As a consequence, suppliers of syndicated programs do not produce as rich and diverse a mix of programs as they would produce if the local broadcasters who buy their programs had the same rights to enforce exclusive contracts that cable and broadcast networks already enjoy. We believe that reimposition of syndicated exclusivity would lead to the development of new programs to take the place of those for which broadcasters enforce exclusivity.

8. The restoration of syndicated exclusivity protection is also consistent with our policy of relying on competition, whenever feasible, to accomplish our goals under the Communications Act. Competition is generally far more reliable than regulation for fostering fair and efficient use of the means of mass communication. We believe that as long as those conditions are met and we can also continue to meet all of our responsibilities under the Communications Act, we should not favor one delivery mode over another. To do so may predetermine the competitive outcome, and eliminate any presumption that the outcome that occurs is the one most beneficial to society.

9. The new syndicated exclusivity regulations are the simplest and most straightforward rules that will allow the marketplace for video programming to function evenhandedly, at low cost, and in a manner that is fully responsive to viewers. The specifics of these new regulations are indicated in the amendatory section below. They differ from the former exclusivity rules in several ways. For example, unlike the old rules, the syndicated exclusivity rules adopted today treat all types of syndicated product as a unit, rather than sorting the programming into categories, each subject to varying provision. Also, unlike the former rules, the new syndicated exclusivity regulations apply to all syndicated programming covered by exclusivity contracts, whatever the size of the broadcast market. However, small cable systems, with under 1,000 subscribers, are exempt from the requirements of the new exclusivity rules.

10. The new rules provide that exclusivity may run for the length of time specified in the contract granting such exclusivity to the broadcaster. They further indicate that a station's right to exercise its syndicated options will not depend on carriage by the cable

system. Other provisions of the new rules concern the geographical extent of exclusivity, notification issues, contract terms and exclusivity determination in existing contracts. As stated above, these requirements become enforceable beginning one year from the effective date of these regulations.

11. The second rule change adopted through this decision revises the network non-duplication rules. The network non-duplication rules, like the syndicated exclusivity rules, allow a network affiliate to prevent a cable system from simultaneously importing another affiliate network program signal into its market. Thus, each affiliate is normally the exclusive distributor of network programming in its own market. Our analysis suggested that because the network programming material is identical, the rules actually protect the local advertising and the public service announcements within and adjacent to network programming. They do not, however, allow the network to increase its revenues. In the Notice we suggested that broadcasters who are network affiliates should have the same right to contract for exclusivity with respect to their principal programming as other broadcasters. We argued that many of the same policy concerns about fair competition, and enhancing diversity of programming and efficient distribution, apply here as well. Finally, we observed that the difference between the network non-duplication rules and the former syndicated exclusivity rules appears to be one more of degree than of kind. Henceforth, both will simply permit the broadcaster to negotiate for and enforce exclusivity provisions in their program contracts.

12. In the Notice, the Commission sought comment on how, if at all, the network non-duplication rules should be changed. We further sought comment on whether we should return to same-day protection, who should be able to invoke the rule, whether the network is in essentially the same position as the copyright holder, whether there might be instances where the interests of the network and the station in invoking the rule might diverge, and whether a network's invoking the rule might cause the public harm. Finally, we asked whether one rule might suffice for both network and syndicated product, and whether changes in our waiver or other procedures might be warranted.

13. After reviewing the numerous comments received in response to the Notice, we continue to believe that the private organization of networks is an efficient method of doing business, and that it is in the public interest to allow

enforcement of reasonable exclusivity to support that method of distribution. There is evidence that the importation of duplicating network signals can have severe adverse effects on a station's audience. Loss of audience by affiliates undermines the value of network programming both to the affiliate and to the network. Thus, an effective non-duplication rules continues to be necessary.

14. However, technological changes, primarily satellite distribution of signals, that permit easy movement of affiliates' signals across time zones now necessitate a change in the existing non-duplication rules. These technological changes have seriously increased the potential for disruption, leading the Commission to conclude that an increase in network programming exclusivity protection is necessary to allow network arrangements that provide important benefits to viewers to continue to function efficiently. We have also determined that, similar to syndicated programming, the contractual relationship between a network and its affiliates, rather than the Commission Rules, is the appropriate determinant of the extent of no-duplication protection. Therefore, we shall not limit network non-duplication protection to any particular period of time, leaving it to the parties to determine a mutually agreeable arrangement.

15. Network non-duplication protection has a purpose analogous to that of syndicated exclusivity; namely to allow all participants in the marketplace to determine, based on their own business judgment, what degree of programming exclusivity will best allow them to compete in the marketplace and most effectively serve their viewers. Thus, where possible, the network non-duplication protection should conform closely to our other programming exclusivity provisions. As in the syndicated exclusivity rules adopted in this decision, small cable systems, with under 1,000 subscribers, are exempt from the non-duplication rules. Also like the exclusivity rules, the modifications will not be effective until August 18, 1989. The network non-duplication rules will remain in effect in their present format until that time.

16. Specifically, we have decided: (1) To retain the current geographic limits, including the priorities set forth in 47 CFR 76.92 and the exceptions thereto as set forth in 47 CFR 76.92 (f) and (g) on the extent of non-duplication protection, pending further exploration in a Further Notice of Proposed Rulemaking on geographic issues; (2) to leave

enforcement of network non-duplication to the local broadcaster; (3) to allow broadcasters sole standing to invoke exclusivity protection; (4) to affirm that broadcasters need not be carried on a cable system in order to enforce network non-duplication protection for which it has negotiated; and (5) to adopt notification procedures, whereby affiliates enforce the non-duplication protection for which they have bargained, that are the same as those we have adopted for syndicated exclusivity.

17. Several commenters from the broadcast industry requested that we review our policy of granting cable systems waivers of compliance with the network non-duplication rules. Currently, such waivers are based on the cable systems' ability to demonstrate that no significant harm would befall the broadcast station by virtue of its duplicating the network signal. The burden is then shifted to the broadcaster to prove that a waiver would harm the station. Because we are retaining and strengthening our network non-duplication rules, and placing greater reliance on the contractual relations between the parties, we no longer believe this is a proper criterion for granting waivers. We believe that such waivers inappropriately interfere with effectively exclusive arrangements, and that the burden of proof is misplaced on broadcasters. The relevant question is whether such exclusive arrangements ultimately operate to foster competition among the various program providers and promote a greater diversity of programming for viewers. We believe that network non-duplication rules promote such an outcome. Therefore, we eliminate our existing waiver policy.

18. With respect to existing waivers, upon proper notification by the broadcast television station requesting non-duplication protection, the cable television system shall comply therewith by one year from the effective date of this section or sixty days after notification, whichever is later. We note that, as in the case of syndicated exclusivity, cable systems remain free to negotiate with the local broadcast affiliates of networks for the right to continue such carriage.

19. Our decision deals with several matters relating to whether our action here is consistent with the first amendment and within the authority delegated us through the Communications Act. In the Notice, we expressed our belief that promulgation of these exclusivity rules lay within our authority and that there was no

statutory or constitutional impediment to our taking this action. While many commenting parties shared our belief, those opposed most particularly to syndicated exclusivity asserted that the Cable Act of 1964, the Copyright Revision Act of 1976, or the first amendment impose legal barriers to our reimposition of these rules. We have examined carefully the arguments of those commenters claiming that we lack authority. These arguments have failed to persuade us that our initial assessment of our statutory authority was incorrect. Accordingly, we reaffirm our belief that our action amending and extending our exclusivity provisions with respect to network and syndicated programming is within the scope of our authority under the Communications Act and is consistent with the first amendment and the Copyright Act.

20. Finally, in the Notice, we sought comment on the possibility of eliminating or modifying § 73.658(m) of the rules. This rule limits the geographic area in which a television station may obtain exclusivity rights for non-network programs against other broadcast television stations. Specifically, the existing rule prohibits a television station from entering into a contract or arrangement with a non-network program producer, distributor, or supplier which precludes another television station located more than thirty-five miles away from obtaining the broadcast rights to the same programming.

21. We did not receive enough substantial data to effectively decide whether to modify or eliminate or leave untouched the non-network territorial exclusivity rule. Therefore, we will issue a further notice of proposed rule making in the near future to seek additional comment and information on the geographic limits of all program exclusivity arrangements, including those established under non-network territorial exclusivity. Separate consideration of the issues associated with the territorial exclusivity rule will provide us with a more comprehensive record on which to base our decision. However, because we have determined that certain broadcasters, e.g., superstations, compete for programming in a national market, we are modifying the existing rule in one respect, to permit broadcast stations to purchase nationwide exclusivity against other broadcast stations. Until we are able to develop a more complete record regarding the non-network territorial exclusivity issue, the existing rule will, with this one exception, remain in place in its current form.

Final Regulatory Flexibility Analysis Statement

22. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rules and modifications will have a significant impact on a substantial number of small entities, particularly broadcasters and cable operators. Through this decision, we make three changes to our rules relating to program exclusivity in the cable and broadcast industries. First, we adopt simplified syndicated exclusivity rules that should promote fair and efficient competition among all the delivery systems for video programming from which viewers may select. These rules will permit, but not require, broadcasters to obtain the same enforceable exclusive distribution rights in syndicated programming that all other video programming distributors already enjoy. Second, we modify our network non-duplication rule provisions to extend their scope to protection against any transmission of network programming and to simplify their administration and enforcement. Third, we retain the existing limits on territorial exclusivity, but intend to issue a further notice on the issue, and do modify it in one respect—to permit broadcast stations to purchase nationwide exclusivity against other broadcast stations.

23. In order to minimize the expense of obtaining equipment inherent in reimposition of the syndicated exclusivity rule provisions and the network non-duplication provisions, systems serving fewer than 1,000 subscribers will be exempt from the requirements of both of these provisions. We believe that equipment costs to the remaining systems will be affordable, may be amortized over a number of years, and note that such equipment may be used for nonregulatory revenue-producing functions such as ad insertion as well.

24. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq., (1981).

Paperwork Reduction Act Statement

25. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be

subject to approval by the Office of Management and Budget, as prescribed by the Act.

26. Public reporting burden for this collection of information is estimated to vary from one minute to one hour per response, with an average of ten minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Plans and Policy, Federal Communications Commission, Washington, DC 20554; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Ordering Clause

27. Accordingly, IT IS ORDERED THAT, under the authority contained in sections 4(i), 4(g), 302, 303(a) and 604 of the Communications Act of 1934, as amended, Parts 73 and 76 of the Commission's Rules and Regulations are amended as set forth below, subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980.

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.
H. Walker Fester III,
Acting Secretary.

Program Exclusivity Rules

Parts 73 and 76 of Title 47 of the Code of Federal Regulations are amended to read as follows:

1. The authority citations for Parts 73 and 76 continue to read as follows:

Authority: 47 U.S.C. 134 and 305.

PART 73—[AMENDED]

2. Section 73.658 is amended by revising paragraph (m) to read as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

(M) Territorial exclusivity in non-network arrangements. (1) No television station shall enter into any contract,

arrangement, or understanding, expressed or implied; with a non-network program producer, distributor, or supplier, or other person; which prevents or hinders another television station located in a community over 56.3 kilometers (35 miles) away, as determined by the reference points contained in § 76.53 of this chapter, (if reference points for a community are not listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the ARB Television Market Analysis for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this paragraph, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

(2) Notwithstanding paragraph (m)(1) of this section, a television station may enter into a contract, arrangement, or understanding with a producer, supplier, or distributor of a non-network program if that contract, arrangement, or understanding provides that the broadcast station has exclusive national rights such that no other television station in the United States may broadcast the program.

3. Section 76.5 is amended by revising paragraph (c) and adding new paragraph (nn) to read as follows:

§ 76.5 Definitions.

(o) A network program is any program delivered simultaneously to more than one broadcast station regional or national, commercial or noncommercial.

(nn) A "syndicated program" is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in § 76.92.

4. Subpart F, consisting of §§ 76.92 through 76.163, is revised to read as follows: (new §§ 76.92-76.96 will become effective August 18, 1988, in place of old §§ 76.92-76.99):

Subpart F—Nonduplication Protection and Syndicated Exclusivity

Sec.
76.92 Network non-duplication; extent of protection.
76.93 Parties entitled to network non-duplication protection.
76.94 Notification.
76.95 Exceptions.
76.97 Effective dates.
76.151 Syndicated program exclusivity; extent of protection.
76.153 Parties entitled to syndicated exclusivity.
76.155 Notification.
76.156 Exceptions.
76.157 Exclusivity contracts.
76.159 Requirements for invocation of protection.
76.161 Substitutions.
76.163 Effective dates.

Subpart F—Nonduplication Protection and Syndicated Exclusivity

§ 76.92 Network non-duplication; extent of protection.

(a) Upon receiving notification pursuant to § 76.94, a cable community unit located in whole or in part within the geographic zone for a network program, the network non-duplication rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

(b) For purposes of this section, the order of nonduplication priority of television signals carried by a community unit is as follows:

(1) First, all television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;
(2) Second, all smaller market television broadcast stations within whose secondary zone the community of the community unit is located, in whole or in part.

(c) For purposes of this section, all noncommercial educational television broadcast stations licensed to a community located in whole or in part within a major television market as specified in § 76.51 shall be treated in the same manner as a major market commercial television broadcast station, and all noncommercial educational television broadcast stations not licensed to a community located in whole or in part within a major television market shall be treated in the same manner as a smaller market television broadcast station.

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the

translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of any television broadcast station whose reference point (See Section 76.53) is more than 55 miles from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any major market television broadcast station whose reference point (See § 76.53) is also within 55 miles of the community of the community unit.

(f) A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to § 76.54.

Note: With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m), except that small market television stations shall be entitled to a secondary protection zone of 20 additional miles.

§ 76.93 Parties entitled to network non-duplication protection.

Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.92 in accordance with the contractual provisions of the network-affiliate agreement.

§ 76.94 Notification.

(a) In order to exercise non-duplication rights pursuant to § 76.92, television stations shall notify each cable television system operator of the non-duplication sought in accordance with the requirements of this Section. Non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;
(2) The name of the program or series (including specific episodes where necessary) for which protection is sought;

(3) The dates on which protection is to begin and end.

(b) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. A broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster;

(c) In determining which programs must be deleted from a television signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The television station requesting exclusivity.

(d) A television station exercising exclusivity pursuant to § 76.92 shall provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

§ 76.95 Exceptions.

The provisions of §§ 76.92-76.94 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

§ 76.97 Effective dates.

The provisions outlined in §§ 76.92-76.95 shall become enforceable on August 18, 1989. The rules in effect on

May 18, 1988 will remain operative until August 18, 1989.

§ 76.151 Syndicated program exclusivity: extent of protection.

Upon receiving notification pursuant to § 76.155, a cable community unit located in whole or in part within the geographic zone for a syndicated program, the syndicated exclusivity rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

Note: With respect to each syndicated program, the geographic zone within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m).

§ 76.153 Parties entitled to syndicated exclusivity.

(a) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to § 76.151 in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.159.

(b) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to § 76.151 for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

§ 76.155 Notification.

(a) In order to exercise exclusivity rights pursuant to § 76.151, distributors or television stations shall notify each cable television system operator of the exclusivity sought in accordance with the requirements of this section. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3) The dates on which exclusivity is to begin and end.

(b) Broadcasters entering into contracts containing syndicated exclusivity protection shall notify

affected cable systems within sixty calendar days of the signing of such a contract. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster;

(c) In determining which programs must be deleted from a television broadcast signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available:

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The distributor or television station requesting exclusivity.

§ 76.156 Exceptions.

(a) Notwithstanding the requirements of §§ 76.151-76.155, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal's grade B contour, or when the signal is significantly viewed pursuant to § 76.54 in the cable community.

(b) The provisions of §§ 76.151-76.155 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

§ 76.157 Exclusivity contracts.

A distributor or television station exercising exclusivity pursuant to § 76.151 shall provide to the cable system, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration,

nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

§ 76.159 Requirements for invocation of protection.

For a station licensee to be eligible to invoke the provisions of this subpart, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after August 18, 1988, must contain the following words: "the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Compulsory Copyright License, as provided in § 76.151 of the FCC rules." Contracts entered into prior to August 18, 1988, must contain either the foregoing language or a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against

cable television broadcast signal carriage by the cable system in question upon the contingency that the government reimposed syndicated exclusivity protection. In the absence of such a specific reference in contracts entered into prior to August 18, 1988, the provisions of these rules may be invoked only if (a) the contract is amended to include the specific language referenced above or (b) a specific written acknowledgement is obtained, from the party from whom the broadcast exhibition rights were obtained, that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgement by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

§ 76.161 Substitutions.

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's rules, such community unit may, consistent with these rules and the sports blackout rules at 47 CFR 76.67, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

§ 76.163 Effective dates.

No cable system shall be required to delete programming pursuant to the provisions of §§ 76.151-76.159 prior to August 18, 1989.

[FR Doc. 88-16187 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1106 and 1126

[Docket Nos. AO-231-A58 and AO-210-A45; DA-88-110]

Milk in the Texas and Southwest Plains Marketing Areas; Rescheduling of Hearing on Proposed Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Rescheduling of public hearing on proposed rulemaking.

SUMMARY: The hearing on proposals to amend the producer-handler definitions of the Texas and Southwest Plains milk orders, originally scheduled to begin on July 19, 1988, has been rescheduled to begin on September 7, 1988.

DATE: The rescheduled hearing will convene at 9:00 a.m., local time, on September 7, 1988.

ADDRESS: The rescheduled hearing will be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061 (214) 399-1010.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2988, South Building, P.O. Box 98456, Washington, DC 20090-0456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administration action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

A notice was issued on June 10, 1988 (53 FR 22499), giving notice of a public hearing to be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75071 (214) 399-1010, beginning at 9:00 a.m., local time, on July 19, 1988, with respect to proposed amendments to the marketing agreements and orders

regulating the handling of milk in the Texas and Southwest Plains marketing areas.

Notice is hereby given, pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that the said hearing is rescheduled to be held on September 7, 1988 at the same place and time as originally scheduled (Holiday Inn, Dallas-Ft. Worth Airport South, beginning at 9:00 a.m., local time).

Prior documents in the proceeding: Notice of hearing: Issued June 10, 1988; published June 10, 1988 (53 FR 22499).

List of Subjects in 7 CFR Parts 1126 and 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1126 and 1106 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: July 14, 1988.

J. Patrick Boyle,
Administrator,
[FR Doc. 88-10237 Filed 7-18-88; 8:45 am]
BILLING CODE 3410-22-M

Packers and Stockyards Administration

9 CFR Part 203

Statements of General Policy

AGENCY: Packers and Stockyards Administration; U.S. Department of Agriculture.

ACTION: Notice of intent to institute proposed rulemaking; extension of comment period.

SUMMARY: On May 24, 1988, a notice of intent to institute proposed rulemaking was published in the Federal Register (53 FR 18572) advising that the Packers and Stockyards Administration was considering proposing a Policy Statement which would provide a "bill back" mechanism designed to shift economic responsibility for violative residues in slaughter livestock from the packer to the producer.

That notice provided that comments regarding the proposal should be filed with the Administration on or before July 25, 1988.

Federal Register

Vol. 53, No. 138

Tuesday, July 19, 1988

Pursuant to a request from interested parties for additional time to prepare their comments, the time for filing comments concerning the notice of intent is hereby extended 60 days.

DATE: The time for filing comments is hereby extended to and including September 23, 1988.

ADDRESSES: Written comments may be mailed to: Packers and Stockyards Administration, Room 3039-South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the office of the Administrator.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, Packers and Stockyards Administration, Room 3400-South Building, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-8851.

Done at Washington, DC, this 13th day of July, 1988.

Calvin W. Watkins,
Acting Administrator, Packers and Stockyards Administration,
[FR Doc. 88-16161 Filed 7-19-88; 8:45 am]
BILLING CODE 3410-20-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licenses Action During National Security Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations to allow a licensee to take action that departs from approved technical specifications in a national security emergency. The amendment is necessary to specify in the regulations that for a national security emergency a licensee is permitted to take a needed action although it may deviate from technical specifications. This amendment will allow the licensee to implement national security objectives as designated by the national command authority through the NRC.

DATE: Comment period expires August 18, 1988. Comments reviewed after this

date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver written comments to: One White Flint North, Room 16H, 11555 Rockville Pike, Rockville, Maryland. Comments may also be delivered to the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joan Aron, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-9001.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1983, the Commission published in the Federal Register (48 FR 13986), a final rule that set out § 50.54 of 10 CFR entitled, "Conditions of Licenses," that contains a provision permitting a licensee to take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. However, this provision does not apply to a national security emergency. The proposed addition would allow a licensee to take action that departs from approved technical specifications in a national security emergency when this action is immediately needed to implement national security objectives as directed by the national command authority through the NRC.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were

approved by The Office of Management and Budget approval number 3150-0011.

Regulatory Analysis

The Commission previously has granted authority pursuant to 10 CFR 50.54(x) to nuclear power reactor licensees to take reasonable action that departs from a license condition or a technical specification in an emergency when the action is immediately necessary to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This proposed rule will provide the same flexibility to licensees for the purpose of attaining national security objectives in accordance with governmental directives during a declared national emergency due to nuclear war or natural disaster. The proposed change does not significantly impact state and local government and geographic locations; health, safety, and the environment; or costs to licensees, the NRC, or other Federal agencies. The proposed rule is in the interest of the common defense and security of the United States because it would assist the NRC in maintaining the public health and safety in a national security emergency during which some deviation from facility technical specifications may be appropriate. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects only licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Because these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.108, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.108(a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactor, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment at 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 188, 86 Stat. 936, 937, 938, 943, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2238, 2282); sec. 201, as amended, 202, 206, 86 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 50.10 also issued under secs. 101, 185, 63 Stat. 938, 955 as amended (42 U.S.C. 2131, 2236); sec. 102, Pub. L. 91-190, 13 Stat. 953 (42 U.S.C. 4332). Sections 50.13 and 50.54(d) also issued under sec. 108, 86 Stat. 938, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 86 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 953 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 86 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 98 Stat. 2073 (42 U.S.C. 2239). Section 50.80 also issued under sec. 122, 86 Stat. 938 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 86 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 86 Stat. 938, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 86 Stat. 955 (42 U.S.C. 2237). For the purposes of sec. 223, 86 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 86 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10 (a)-(c), 50.34 (a) and (e), 50.44 (a)-(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(e)(i), (i)(1), (i)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 86 Stat. 948, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(d), 50.70(a), 50.71 (a)-(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.80 are issued under sec. 161(o), 86 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, a new paragraph (dd) is added to read as follows:

§ 50.54 Conditions of licenses.

(dd) A licensee may take reasonable action that departs from a licensee condition or a technical specification (contained in a license issued under this part) in a national security emergency when this action is immediately needed to implement national security objectives as directed by the national command authority through the NRC. A national security emergency is established by a law enacted by the Congress or by an order or directive issued by the President pursuant to statutes or the Constitution of the United States. The discretionary authority under this paragraph is in addition to the authority granted under paragraph (x) of this section, which remains in effect unless otherwise directed by the Commission during a national security emergency.

Dated at Rockville, Maryland, this 7th day of July, 1988.

For the Nuclear Regulatory Commission,
Victor Stello, Jr.,
Executive Director for Operations.

[FR Doc. 88-16197 Filed 7-18-88; 8:45 am]
BILLING CODE 7550-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-18-AD]

Airworthiness Directives; Piper PA-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) applicable to Piper PA-60 series airplanes as modified by Machen, Inc., Supplemental Type Certificate (STC) SA980NM which pertains to the installation of AVCO Lycoming Models T10- and LT10-540-J2BD engines. The AD would require repetitive inspections and replacement as necessary of the exhaust system components and engine oil lines, including the turbocharger oil supply line and its routing. A report of an inflight fire has been received that indicates fire resulted from deterioration of the engine oil lines and exhaust system components. If not corrected, this condition could result in inflight fires and subsequent loss of the airplane.

DATE: Comments must be received on or before August 18, 1988.

ADDRESSES: Machen, Inc. Service Bulletins (SB) No. SB 66-002 dated September 22, 1981, SB 66-011 dated January 22, 1984, SB 66-018 dated June 5, 1987, and SB 66-019 dated January 8, 1988, applicable to this AD may be obtained from Machen, Inc., South 3608 Davison Boulevard, Spokane, Washington 99204; Telephone number (509) 838-5328. A copy of this information may also be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-18-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64108. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Michael H. Borfitt, ANM 181D, Denver FAA, Denver Aircraft Certification Field Office, 10455 East 25th Avenue, Suite 307, Aurora, Colorado 80010; Telephone (303) 340-5575.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, and arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel,

Attention: Rules Docket No. 88-CE-18-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64108.

Discussion

A report has been received of an inflight engine fire caused by leaking turbocharger lubrication oil impinging on the exhaust system of a Piper PA-60 series Aerostar modified by Machen, Inc., STC No. SA980NM which involves the installation of AVCO Lycoming Models T10- and LT10-540-J2BD engines. The subsequent investigation indicated the oil leak resulted from the oil line deterioration caused by the flexible hose being in contact with the exhaust system.

Machen, Inc., has issued Service Bulletin SB 66-018, which sets forth the procedures for repetitive inspections and re-routing (if necessary) of the turbocharger oil line and inspection of the exhaust system. SB 66-018 is based on accomplishment of Machen, Inc. SB 66-002 and 66-011 that give instructions for installation of clamp tab assemblies. Machen, Inc., has also issued SB 66-019 which replaces the exhaust system components affected by SB 66-018 and eliminates the requirement for repetitive inspections of the exhaust system.

Since this condition is likely to exist or develop in other Piper PA-60 series airplanes, modified per Machen, Inc. STC SA980NM, the proposed AD would require inspection and replacement, if necessary, of the exhaust system components and engine oil lines of these airplanes, in accordance with the SB's previously mentioned.

The FAA has determined there are approximately 31 airplanes affected by the proposed AD. It would take approximately four manhours per airplane to accomplish the required actions, at an average labor cost of \$40 per manhour, for a cost per airplane of \$160. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$4,960 for each reoccurring fleet-wide inspection. The cost of compliance with the proposed AD is so small that it will not involve a significant financial impact on any small entities operating these airplanes. The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, or a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.09.

§ 39.13 [Amended]

2. By adding the following new Airworthiness Directive:

Piper: Applies to PA-60 series airplanes certificated in any category modified per Machen, Inc., Supplemental Type Certificate (STC) No. SA980NM.

Note: STC No. SA980NM pertains to installation of AVCO Lycoming Model T10- and LT10-540-J2BD engines.

Compliance: Required as indicated, unless previously accomplished.

To prevent a possible inflight engine fire, accomplish the following:

(a) Within the next 50 hours time-in-service, after the effective date of this AD, and thereafter at every 100 hours time-in-service, inspect, and replace, as necessary, the exhaust systems on both engines in accordance with Machen, Inc., Service Bulletin (SB) No. SB 66-018 dated June 5, 1987.

(b) The repetitive inspections specified in paragraph (a) are no longer required when the exhaust system has been modified in accordance with Machen, Inc., Service Bulletin (SB) No. SB 66-019, dated January 8, 1988.

(c) Within the next 50 hours time-in-service, after the effective date of this AD, and thereafter at every 100 hours time-in-service, inspect, and replace as necessary the oil lines on both engines in accordance with Machen, Inc., Service Bulletin (SB) No. SB 66-018, dated June 5, 1987.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Modification Branch, ANM-190S, FAA, Northwest Mountain Region.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Machen, Inc., South 3608 Davison Boulevard, Spokane, Washington 99204 or may examine these documents at the Office of the Regional Counsel, Room 1558 at the FAA, 601 East 12th Street, Kansas City, Missouri 64108.

Issued in Washington, DC, on July 12, 1988.

Daniel F. Salvano,
Acting Director, Office of Airworthiness.
[FR Doc. 88-16126 Filed 7-18-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 88-15-8115]

Requests for Identifiable Records

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking sets forth changes that the Patent and Trademark Office (PTO) is proposing to the rules governing requests for records not disclosed to the public as part of the regular informational activity of the PTO. The present rule sets out PTO Freedom of Information Act (FOIA) procedures. The proposed rule updates these procedures and specifies that FOIA requests will be processed in accordance with Department of Commerce regulations contained in Part 4 of 15 CFR (Public Information).

DATE: Comments must be submitted on or before September 20, 1988. No hearing will be held.

ADDRESS: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231 marked to the attention of Albin F. Drost.

FOR FURTHER INFORMATION CONTACT: Albin F. Drost by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: As presently written, 37 CFR 1.15 describes procedures for obtaining documents under the Freedom of Information Act (FOIA) that have been superseded. The purpose of this rule change is to bring

the PTO FOIA procedures into conformity with the Department of Commerce FOIA rules. The proposed rule directly advises requesters that the PTO will follow the Department of Commerce rules for disclosure of information under FOIA.

Other Considerations

The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities [Regulatory Flexibility Act, Pub. L. 96-354] because no increase in fees or paperwork should result from this rule change.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than \$100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the national government and the states as outlined in Executive Order 12612.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Records.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.15 is proposed to be revised as follows:

§ 1.15 Requests for identifiable records.

(a) Requests for records, not disclosed to the public as part of the regular informational activity of the Patent and Trademark Office and which are not otherwise dealt with in the rules in this part, shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request." Each such request, so marked, should be submitted by mail addressed to the "Patent and Trademark Office, Freedom of Information Request Control Desk, Box 8, Washington, DC 20231," or hand delivered to the Office of the Solicitor, Patent and Trademark Office, Arlington, Virginia. The request will be processed in accordance with the procedures set forth in Part 4 of Title 15, Code of Federal Regulations.

(b) Any person whose request for records has been initially denied in whole or in part, or has not been timely determined, may submit a written appeal as provided in § 4.8 of Title 15, Code of Federal Regulations.

(c) Procedures applicable in the event of service of process or in connection with testimony of employees on official matters and production of official documents of the Patent and Trademark Office in civil legal proceedings not involving the United States shall be those established in Parts 15 and 15a of Title 15, Code of Federal Regulations.

Date: May 24, 1988.

Donald J. Quinn,
Assistant Secretary and Commissioner of
Patents and Trademarks.

[FR Doc. 88-16148 Filed 7-18-88; 8:45 am]

BILLING CODE 3710-16-M

FEDERAL MARITIME COMMISSION**46 CFR Part 571**

[Docket No. 88-17]

Interpretations and Statements of Policy

AGENCY: Federal Maritime Commission.

ACTION: Proposed interpretive rule.

SUMMARY: The Commission proposes an interpretive rule stating that common carriers or conferences may not require

the production of a Department of Justice Business Review Letter prior to or as part of a service contract negotiation process with a shipper's association. The rule is intended to help eliminate unnecessary impediments to the operation of shippers' associations and the negotiation of service contracts.

DATE: Comments due August 18, 1988.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Burgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984, 46 U.S.C. app. 1701 et seq. ("1984 Act") provides at section 8(c), 46 U.S.C. app. 1707(e), that ocean common carriers and conferences are authorized to enter into service contracts with shippers' associations, and at section 10(b)(13), 46 U.S.C. app. 1709(b)(13), that it is unlawful for a common carrier to refuse to negotiate with a shippers' association. The Conference Report accompanying the 1984 Act (H.R. Rep. No. 600, 98th Cong., 2d Sess. 38 (1984)) indicates that cooperative activities of shippers seeking shipping services would not be proscribed by the antitrust laws if the cooperating group lacks threatening market power. In a Notice dated May 15, 1984 on the Status of Shippers' Associations under the 1984 Act, the Commission announced its intention to address on an *ad hoc* basis matters and issues arising from shippers' association activities subject to the 1984 Act, rather than to issue industry-wide rules.

Subsequently, when petitioned to initiate a rulemaking proceeding to set forth procedures by which carriers could determine if an entity meets the statutory definition of "shippers' association," the Commission reiterated its policy against implementing an industry-wide regime of regulation of the formation and operation of shippers' associations. Order Denying Petition, 22 SRR 1624 (1985). It specifically rejected the suggestion that shippers' associations be required to produce for the benefit of carriers and conferences with which they are negotiating, any Department of Justice Business Review Letters they had received. The Commission suggested that the only protection a carrier or conference may need is a certification, obtained perhaps during the course of normal business negotiations, that the group meets the statutory definition of "shippers'

association." The Commission also indicated that there is little potential for conference exposure to the antitrust laws, should a shippers' association with which a conference is dealing turn out not to be a true shippers' association, as long as the conference is acting in good faith. The Commission noted:

Section 7(a)(2) of the [1984] Act [46 U.S.C. § 1708(a)(2)] "exempts from the antitrust laws any activity or agreement undertaken or entered into with a reasonable basis to conclude that it is pursuant to an effective agreement. Therefore, if a conference agreement contains language authorizing negotiations with shippers or shippers' associations, the conference would appear to have antitrust protection."

The Commission further explained that given section 10(b)(13)'s requirement that carriers *must* negotiate with shippers' associations, a carrier could claim the defenses of implied immunity from the antitrust laws should its conduct be challenged.

In spite of these Commission pronouncements, as well as similar advice contained in speeches and Business Review Letters from the Department of Justice, shippers' associations continue to request Business Review Letters from the Department of Justice, allegedly because conferences refuse to negotiate with them unless they have such a letter. Thus, it appears that conferences may be adhering to the mistaken belief that they may inadvertently violate the antitrust laws by negotiating a service contract with an association itself violating the antitrust laws. Regardless of a conference's motive, a refusal to negotiate with a shippers' association pending receipt of documentation which has been established to be clearly unnecessary or immaterial constitutes a section 10(b)(13) prohibited act.

Because of the continuing nature of this problem, the Department of Justice, in order to alleviate the expenditure of its resources inherent in the preparation of repetitive Business Review Letters, has requested that the Commission take action to clarify its views on the subject. Therefore, in order to dispel any misunderstandings which apparently persist regarding shippers' associations' and carriers' risks of antitrust exposure while negotiating a service contract, the Commission proposes to issue an interpretive rule clarifying that carriers and conferences may not require shippers' associations to produce Business Review Letters prior to or as part of the negotiation process. An interpretive rule should help to eliminate unnecessary impediments to the

operation of shippers' associations and the negotiation of service contracts. Comments from interested parties limited to this narrow issue will be considered prior to issuance of a final interpretive rule.

List of Subject in 46 CFR Part 571

Antitrust Contracts, Maritime carriers, Shippers' associations.

Therefore, pursuant to 5 U.S.C. 553; and secs. 7, 8, 10, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1708, 1707, 1709 and 1716) the Federal Maritime Commission proposes to add a new Part 571 to Subchapter D of Title 46 of the Code of Federal Regulations as follows:

PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1708, and 1716.

§ 571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and conferences to enter into a service contract with shippers' associations, subject to the requirements of the 1984 Act. Section 10(b)(13) of the 1984 Act prohibits carriers from refusing to negotiate with a shippers' association. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shippers' association to obtain or produce a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

By the Commission.

Tony P. Kemneth,

Assistant Secretary.

[FR Doc. 88-16215 Filed 7-18-88; 8:45 am]

BILLING CODE 4730-01-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 88-330, RM-6210; RM-6304]

Radio Broadcasting Services; Gadsden and Holly Pond, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually-exclusive proposals, seeking the allotment of FM Channel 238A. The first, filed by Ron Hale seeks the allotment as a second local FM service to Gadsden, Alabama. The second proponent, American Communications and Marketing, Inc., seeks the allotment to Holly Pond, Alabama, as its first local broadcast service Reference coordinates used for Channel 238A at Gadsden, Alabama, are 34-01-08 and 86-01-00, while those used for Holly Pond, Alabama, are 34-09-03 and 86-36-30.

DATES: Comments must be filed on or before September 2, 1988, and reply comments on or before September 19, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel, as follows: Ron Hale, 5457 Woodford Drive, Birmingham, AL 35243 and Gary S. Smithwick, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Wash., DC 20036 (counsel for American Communications and Marketing, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-330, adopted June 7, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kammer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-16142 Filed 7-18-88; 8:45 am]

BILLING CODE 4710-01-M

47 CFR Part 73

[MM Docket No. 88-323, RM-6258]

Radio Broadcasting Services; Kawaihae, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Timothy D. Martz, which proposed to allot Channel 285A to Kawaihae, Hawaii, as its first FR service at coordinates 20-02-30 and 155-50-08.

DATES: Comments must be filed on or before September 1, 1988, and reply comments on or before September 18, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy D. Martz, 187 Brookmere Drive, Fairfield, Connecticut 06430 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-323 adopted May 31, 1988, and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

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Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kammer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-16135 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-321, RM-8270]

Radio Broadcasting Services; Volcano, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Timothy D. Martz, which proposes to allot Channel 299A to Volcano, Hawaii, as it first FM service at coordinates 19-26-00 and 155-15-42.

DATES: Comments must be filed on or before September 1, 1988, and reply comments on or before September 18, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy D. Martz, 187 Brookmere Drive, Fairfield, Connecticut 06430 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-321, adopted June 1, 1988, and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kammer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-16140 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-331, RM-8356]

Radio Broadcasting Services; Duluth, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Minnesota Public Radio, proposing the allotment of FM Channel *247C2 to Duluth, Minnesota, as that community's eighth FM service. Petitioner also requests that the channel be reserved for noncommercial educational use. The coordinates for Channel *247C2 are 46-47-00 and 92-06-48. Canadian concurrence will be sought for the allotment of Channel *247C2 at Duluth.

DATES: Comments must be filed on or before September 2, 1988, and reply comments on or before September 19, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David G. Rozzelle, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-331, adopted June 10, 1988, and released July 13, 1988. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kammer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-16141 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-333, RM-8325]

Radio Broadcasting Services; Sartell, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Sartell FM, Inc., permittee of Channel 241A, Sartell, Minnesota, proposing the substitution of Channel 244C2 for Channel 241A. The coordinates for Channel 244C2 are 45-44-47 and 94-03-48. Canadian concurrence will be sought for the allotment of Channel 244C2 at Sartell.

DATES: Comments must be filed on or before September 1, 1988, and reply comments on or before September 18, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, Fisher,

Wayland, Cooper & Leader, 1255-23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-333, adopted June 10, 1988 and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kammer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-16138 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-325, RM-8316]

Radio Broadcasting Services; Ocean Springs, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Charles H. Cooper, licensee of Station WOSM(FM), proposing the substitution of FM Channel 276C2 for Channel 276A at Ocean Springs, Mississippi. Petitioner also requests modification of his license

for WOSM(FM) to specify operation on Channel 276C2 in lieu of Channel 276A. The coordinates for Channel 276C2 are 30-24-34 and 88-42-23.

DATES: Comments must be filed on or before September 1, 1988, and reply comments on or before September 18, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, John Joseph McVeigh, Fisher, Wayland, Cooper and Leader, 1255 Twenty-third St., NW., Suite 800, Washington, DC 20037-1125, (Counsel to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-325, adopted June 1, 1988 and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kammer,

Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 88-16139 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-329, RM-8355]

Radio Broadcasting Services; Boonville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Big Country of Missouri, Inc., licensee of Station KSBX-FM, Boonville, Missouri, requesting the substitution of Channel 257C2 for Channel 257A at Boonville. The coordinates for Channel 257C2 are 38-46-29 and 92-33-22.

DATES: Comments must be filed on or before September 2, 1988, and reply comments on or before September 19, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Haley, Bader & Potts, Lee W. Shubert, 2000 M Street, NW., Suite 600, Washington, DC 20036-4574, (Counsel to the petitioner)

Big Country of Missouri, Inc., Richard Billings, President, Station KWRT/KDBX-FM, Radio Hill Road, Boonville, Missouri 65233.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-329, adopted June 10, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Steve Kaminar,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-16143 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-332, RM-6390]

Radio Broadcasting Services; Egg Harbor City, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Rodio Radio, Inc. proposing the substitution of Channel 285B1 for Channel 285A at Egg Harbor City, New Jersey, and the modification of its license for Station WRDR(FM) to specify operation on the higher powered channel. Channel 285B1 can be allotted to Egg Harbor City in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.6 kilometers (14.1 miles) east to avoid a short-spacing to Station WQHQ, Channel 284B, Ocean City, Maryland. The coordinates for this allotment are North Latitude 39-29-05 and West Longitude 74-23-38. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Egg Harbor City nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James M. Weitzman, Kaye, Scholer, Fierman, Hays & Handler, 1575 Eye Street, NW., Washington, DC 20005 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-332, adopted June 7, 1988, and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Steve Kaminar,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-16137 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-324, RM-6368]

Radio Broadcasting Services; Fort Bridger, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jim Dunker, proposing the allocation of Channel 257A to Fort Bridger, Wyoming, as that community's first local FM service. The coordinates for the proposal are 41-10-06-110-22-54.

DATES: Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jim Dunker, P.O. Box 34, Fort Bridger, Wyoming 82933 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-324, adopted May 31, 1988 and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Steve Kaminar,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-16136 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-322, RM-6267]

Radio Broadcasting Services; Hali'imale, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Timothy D. Martz, which proposes to allot of Channel 288A to Hali'imale, Hawaii, as

its first local FM service at coordinates 20-52-10 and 156-20-38.

DATES: Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or its counsel or consultant, as follows: Timothy D. Martz, 187 Brookmere Drive, Fairfield, Connecticut 06430, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-322, adopted June 1, 1988 and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Steve Kaminar,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-16100 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-265, RM-6141]

Radio Broadcasting Services; Chandler, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Brent R. Wookey to allot Channel 228A to Chandler, Indiana, as that community's first local broadcast service. Channel 228A can be allotted to Chandler in conformity with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules, utilizing city reference coordinates of 38-02-36 and 87-22-18.

DATES: Comments must be filed on or before August 15, 1988, and reply comments on or before August 30, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brent R. Wookey, 10 Woodland Drive, Bismarck, IL 61814.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-289, adopted May 13, 1988, and released June 23, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subject in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Steve Kaminar,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.
[FR Doc. 88-16161 Filed 7-18-88; 8:45 am]
BILLING CODE 6712-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes and Committee on Judicial Review; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of meetings of the Committee on Governmental Processes and the Committee on Judicial Review of the Administrative Conference of the United States.

Committee on Governmental Processes

Date: Tuesday, July 26, 1988

Time: 4:00 p.m.

Location: Covington and Burling, 1201 Pennsylvania Avenue, NW., Washington, DC (Room 1206)

Agenda: The committee will meet to discuss a study by Professor Henry H. Perritt, Jr., of Villanova University School of Law, on computer-aided transmission and handling of regulatory documents. The committee will also consider a related draft report by Professor Susan G. Hadden of the LBJ School of Public Affairs, University of Texas, on the use of computers in connection with the Emergency Response and Community Right to Know Act (Title III of the Superfund Amendment of 1986).

Contact: David M. Pritzker 202-254-7005

Committee on Judicial Review

Date: Thursday, August 4, 1988

Time: 10:00 a.m.

Location: Administrative Conference of the United States Library 2120 L Street, NW., Suite 500, Washington, DC.

Agenda: The Committee has scheduled this meeting to continue discussion of (1) a draft recommendation on agency nonacquiescence in the decisions of courts of appeals, based on a study by Professors Samuel Estreicher and

Richard Revesz (see 53 FR 24331, June 28, 1988); and (2) a revised draft recommendation on the forum for judicial review of preliminary challenges to agency action, related to a study by Professor Thomas Sargentich. Contact: Mary Candace Fowler 202-254-7005

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Jeffrey S. Labbers,
Research Director.
July 15, 1988.

[FR Doc. 88-16306 Filed 7-18-88; 8:45 am]

BILLING CODE 5110-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 387]

Approval for Expansion of Foreign-Trade Zone No. 124, Gramercy, LA; Adjacent to the Gramercy Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign Trade Zones Board (the Board) adopts the following order:

Whereas, the South Louisiana Port Commission, Grantee of Foreign-Trade Zone No. 124, Gramercy, Louisiana, has applied to the Board for authority to expand its general-purpose zone to include an additional site (213 acres) in St. Charles Parish, Louisiana, adjacent to the Gramercy Customs port of entry;

Whereas, the application was filed on November 19, 1987, and notice inviting public comment was given in the

Federal Register

Vol. 53, No. 138

Tuesday, July 19, 1988

Federal Register on November 30, 1987 (Docket 36-87, 52 FR 45475);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval based on a finding that the expansion would improve zone services in the Gramercy area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 19, 1987. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 5th day of July 1988.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest.

John J. De Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-16211 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-06-M

[Order No. 388]

Approval for Expansion of Foreign-Trade Zone No. 100, Dayton, OH; Within the Dayton Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Greater Dayton Foreign-Trade Zone, Inc., Grantee of Foreign-

Trade Zone No. 100, Dayton, Ohio, has applied to the Board for authority to expand its general-purpose zone to include an additional site (39 acres) in downtown Dayton, within the Dayton Customs port of entry;

Whereas, the application was filed on November 25, 1987, and notice inviting public comment was given in the Federal Register on December 3, 1987 (Docket No. 36-87, 52 FR 54980);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval based on a finding that the expansion would improve zone services in the Dayton area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 25, 1987. The grant does not include authorization for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 7th day of July 1988.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest.

John J. De Ponte, Jr.,
Executive Secretary.

[FR Doc. 88-16212 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-06-M

International Trade Administration

[A-588-302]

Postponement of Preliminary Antidumping Duty Determination; 3.5" Microdisks and Coated Media Thereof From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)).

Based on this request, we are postponing our preliminary determination as to whether sales of 3.5" microdisks and coated media thereof from Japan have occurred at less than fair value until not later than September 23, 1988.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, (202) 377-1789, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTAL INFORMATION: On March 23, 1988 (53 FR 9464), we published the notice of initiation of an antidumping duty investigation to determine whether 3.5" microdisks and coated media thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by August 4, 1988.

On June 30, 1988, counsel for the petitioner requested that the Department extend the period for the preliminary determination by 50 days, until September 23, 1988, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination concerning sales at less than fair value until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioner has done so. Accordingly, we are postponing the date of the preliminary determination until not later than September 23, 1988.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Jan W. Mares,
Assistant Secretary for Import Administration.

July 14, 1988.

[FR Doc. 88-16208 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-05-M

[A-427-009]

Industrial Nitrocellulose From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 18, 1988, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers the only known manufacturer and/or exporter of this merchandise to the United States, and the period August 1, 1986 through July 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 1988, the Department published in the Federal Register (53 FR 17740) the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of industrial nitrocellulose containing between 10.8 and 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing

inks. These imports are currently classifiable under item number 445.2500 of the *Tariff Schedules of the United States Annotated* and under item numbers 3912.20.00 and 3912.90.00 of the *Harmonized System*.

The review covers Societe Nationale des Poudres et Explosifs ("SNPE"), the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the period August 1, 1986 through July 31, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review and we determine that a 4.39 percent margin exists for SNPE.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 4.39 percent shall be required for SNPE. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1987 and who is unrelated to the reviewed firm, a cash deposit of 4.39 percent shall be required. These cash deposit requirements are effective for all shipments of French industrial nitrocellulose, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,
Assistant Secretary, for Import
Administration.

[FR Doc. 88-16200 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-05-01

[A-428-051]

Precipitated Barium Carbonate From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On April 28, 1988, the Department of Commerce published the preliminary results of its administrative review and intent to revoke in part on precipitated barium carbonate from the Federal Republic of Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period July 1, 1986 through April 3, 1987. The review indicates the existence of a *de minimis* dumping margin for the firm during the period.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: Harry A. Patrick or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4477/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the Department of Commerce ("the Department") published in the *Federal Register* (53 FR 15263) the preliminary results of its administrative review and intent to revoke in part the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32884, June 25, 1981). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound (BaCO₃), currently classifiable under item 472.0600 of the *Tariff Schedules of the United States Annotated* and under item 2838.6000 of the *Harmonized System*.

The review covers one manufacturer/exporter of West German precipitated barium carbonate to the United States, Kali-Chemie AG, and the period July 1, 1986 through April 3, 1987.

Final results of Review and Revocation in Part

We invited interested parties to comment on the preliminary results of the review and intent to revoke in part. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review, and we determine that *de minimis* margins exist for the period July 1, 1986 through April 3, 1987.

For the reasons set forth in the preliminary results of review and intent to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Kali-Chemie. Accordingly, we revoke in part the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. This revocation applies to all unliquidated entries of this merchandise manufactured and exported to the United States by Kali-Chemie AG and entered, or withdrawn from warehouse, for consumption on or after April 3, 1987, the date of our tentative determination to revoke the order in part. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries.

For any future shipments from the one remaining known manufacturer/exporter not covered in this review, the cash deposit will continue to be the rate published in the final results of the last administrative review for that firm (50 FR 16330, April 25, 1985).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after April 3, 1987, and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53a and 353.54 of

the Commerce Regulations (19 CFR 353.53a and 353.54).

Jan W. Mares,
Assistant Secretary for Import
Administration.

Date: July 8, 1988.

[FR Doc. 88-16210 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-05-01

[A-475-701]

Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain granite products from Italy are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson (202) 375-5288 or Steven Lim (202) 377-4087, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that certain granite products from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the last *Federal Register* publication pertaining to this investigation (the Notice of Preliminary Determination of Sales at Less Than Fair Value (53 FR 6021, February 29, 1988)), the following events have occurred.

On March 2, 1988, respondents requested that we postpone the final determination until June 20, 1988. On March 10, 1988, in accordance with section 735(a)(2)(A) of the Act, we postponed the final determination until

June 20, 1988 (53 FR 8479, March 15, 1988).

Verification of the responses was conducted from March 14 through April 1, 1988. A public hearing was requested. This request was subsequently withdrawn. Final comments were received from petitioner and respondents.

On June 2, 1988, respondents requested that we postpone the final determination until not later than 135 days after the date of publication of our preliminary determination. On June 9, 1988, in accordance with section 735(a)(2)(A) of the Act, we postponed the final determination until July 13, 1988 (53 FR 22369, June 15, 1988).

Scope of Investigation

The products covered by this investigation are certain granite products. Certain granite products are 3/4 inch (1 cm) to 2 1/4 inches (6.34 cm) in thickness and include the following: Rough-sawn granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are provided for under *TSUSA* item number 513.7400 and under *HS* item numbers 2516.12.00, 6802.23.00 and 6802.93.00.

Period of Investigation

For rough slabs, slabs not cut-to-size, and tiles, the period of investigation (POI) is March 1, 1987 through August 31, 1987. For cut-to-size slabs or projects, the POI is January 1, 1987 through August 31, 1987, for projects completed by November 30, 1987. In order to include additional sales of some larger projects, we requested data on projects sold as early as July 1986. (See Comment 9.)

Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value as specified below.

For the reasons cited below, we have determined, in accordance with section 776(b) of the Act, that use of best information otherwise available (BIA) is appropriate for all sales by F.lli Guarda S.p.A. (Guarda) and for sales of slabs not cut-to-size by Pisani Brothers S.p.A. (Pisani).

With respect to Guarda, we were unable to verify almost all sales price information, including charges or adjustment information, as it was

submitted in the response. We were also unable to verify any of the cost information submitted for constructed value calculations. During verification of costs, the company was unable to explain the methodology used in its response. Additionally, the company could not provide support for its calculations. (See Comment 8).

For these reasons, we have assigned Guarda a BIA rate that is based on a combination of adjusted constructed values as found in the petition, data collected during the Guarda verification relative to sales prices to the United States, and verified information submitted by other producers. We could not use petition data exclusively for our BIA rate as it was apparent that various parts of the constructed value computations found in the petition required adjustment due to assumptions which are invalid for the Italian granite industry. Specifically, the petition used actual size of blocks rather than the smaller commercial size in which granite is sold. The petition's calculations included freight which is typically paid by trading companies in the Italian market. In addition, the petition including packing in determining SG&A and profit in its constructed value calculation, both of which are inappropriate. Furthermore, as the U.S. prices for projects shown in the petition did not specify material thicknesses, they could not be reasonably compared to our adjusted, BIA constructed values. Finally, the petition established rates only for cut-to-size sales while Guarda sold both cut-to-size and slabs in the U.S. during the POI.

The use of certain information collected on-site during the Guarda verification for BIA should not be construed as a willingness on the part of the Department to reconstruct responses for respondents at verification.

With regard to Pisani's sales of slabs not cut-to-size, the cost of production information supplied by this company could not be reconciled to company documentation pertaining to slab production. (See Comment 8). For this reason, we have used BIA to determine foreign market value for these sales. BIA is based on verified information for other companies, as the petition contained no information on the home market price of slabs. (See Comment 8.)

United States Price

Except where BIA was used, we based United States price for all U.S. sales on purchase price in accordance with section 772(b) of the Act. These sales were made directly to unrelated customers in the United States prior to

importation. Under these circumstances, section 772(b) clearly requires that purchase price be used for determining the U.S. sales price.

We calculated purchase price based on the ex-factory, f.o.b., c.i.f., or c.i.f., duty paid, packed prices to unrelated purchasers in the United States. We made deductions for foreign inland freight and handling, ocean freight, marine insurance, U.S. duty and inland freight, as appropriate.

Foreign Market Value

For rough slabs, slabs not cut-to-size, and tiles, we established separate categories of "such or similar" merchandise, pursuant to section 771(10) of the Act, on the basis of form of material, type of stone, dimension, finish, edgework, anchoring and assembly work.

Where there were no identical products in the home market with which to compare products sold in the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

The petitioner alleged that home market sales of slabs not cut-to-size were at prices below the cost of producing the merchandise. Having determined that these allegations were sufficiently documented, the Department initiated a cost investigation for Campolongo Italia S.p.A. (Campolongo), and Freda S.p.A. (Freda), Henraux S.p.A. (Henraux), Euromarble S.p.A. (Euromarble), Formai and Mariani S.r.l. (Formai), and Pisani. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. The cost of production calculation for each respondent was adjusted for those costs which were not appropriately quantified or valued in the response. Except for certain types of stone sales by Euromarble, where we used constructed values, we found sufficient home market sales above the cost of production to allow us to use these prices for foreign market value, in accordance with section 773(a)(1)(A).

For sales of rough slabs, face-finished slabs not cut-to-size, and tiles, we calculated foreign market value based on unpacked prices to unrelated purchasers in the home market, in accordance with section 773(a) of the Act. We made deductions, where appropriate, for inland freight. We made adjustments for differences in circumstances of sale for credit

expenses pursuant to § 353.15(b) of our regulations, and for commissions on sales in the United States and in the home market pursuant to § 353.15(c) of our regulations. Where appropriate, we used indirect selling expenses to offset commissions. We deducted home market packing costs and added the packing costs incurred on sales to the United States.

For cut-to-size projects, we calculated the foreign market value based on constructed value in accordance with section 773(e) of the Act because there were no comparable sales in the home market by producers being investigated. The constructed value was based on the costs for the cut-to-size projects sold in the United States.

In calculating general expenses for constructed value, we used U.S. selling expenses for the projects since these were such unique items that there were no comparable home market or third country sales.

Where the amount for general expenses was less than ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent. Where the amount for profit was less than eight percent of the sum for the costs of materials, fabrication and general expenses, we used the statutory minimum of eight percent. We also added the cost of U.S. packing.

When calculating constructed value, the respondents' submissions were used, except when all costs were not appropriately quantified or valued.

The following adjustments were made for each respondent:

For Campolongo:

- (1) The block costs were reduced by the net exchange gains on purchases.
- (2) Cost of production was increased to reflect the accelerated method of depreciation used in the respondent's accounting system.
- (3) The slabbing waste was changed from the overall 7 mm per cut to the actual slabbing waste computed by granite type.
- (4) Polishing costs were increased to reflect the cost from unrelated suppliers based on commercial square meters.
- (5) Special works were adjusted, based on differences in quantities obtained at verification.
- (6) The dimensioning waste was revised to reflect the amount computed for each grant type.
- (7) General expenses were changed from the statutory minimum of 10 percent to include the actual general, administrative, and interest expenses of the company and the U.S. selling expenses for the projects. For calculating the cost for producing slabs,

home market selling expenses were used.

(8) Interest income related to short-term investments was included as an offset to interest expenses.

(9) The costs incurred by the related company, Granite Marketing Associates (GMA), were used for the blocks purchased by Campolongo in calculating the cost of producing Campolongo's slabs.

For Freda:

(1) The block and fabrication costs used to establish the costs of Capao Bonito granite in the respondent's submission were changed to the price paid for finished slabs, since the only block which was purchased by Freda was sold one month later by the company.

(2) The slabbing waste was changed from the overall 7 mm per cut to actual slab waste for each specific type of granite.

(3) The price charged by a related company for sawing was adjusted to reflect a market value based on invoices of an unrelated fabricator.

(4) The material costs for certain slab sizes, which, in the response, had been based on the block costs, were revised to reflect the actual cost of slabs purchased because these sizes had not been sawn by the company.

(5) The price of slabs purchased from Campolongo were revised to reflect the market price for the slabs.

(6) The dimensioning waste was revised to reflect an average dimensioning waste for the types of granite used in the projects under investigation.

(7) General expenses were revised to include the actual general and administrative expenses, interest, and U.S. selling expenses for the projects. For calculating the cost of producing slabs, home market selling expenses were used.

For Henraux:

(1) The block costs were revised to reflect the cost of the actual granite blocks used in the cut-to-size projects.

(2) Where appropriate, general expenses were changed from the statutory minimum of 10 percent to include the actual general and administrative expenses, interest, and U.S. selling expenses for the projects. For calculating the cost of producing slabs, home market selling expenses were used.

For Savema S.p.A. (Savema):

(1) The slabbing waste was adjusted to reflect the actual slabbing waste for the specific types of granite the Department investigated during the course of the verification. The

Department calculated an average slabbing waste factor for those granite types which were included in project under investigation, but which the Department was unable to review during the verification.

(2) Factory overhead costs for the flaming and polishing processes were revised to reflect the losses which occur during the dimensioning stage.

(3) General expenses were changed from the statutory minimum of 10 percent to the actual general and administrative expenses, interest expenses of the company, and the U.S. selling expenses for the projects.

For Formai and Northern Granites S.r.l. (Northern Granites):

(1) The cost of manufacturing, used as the basis for allocating general, administrative, and interest expenses, was revised by reclassifying certain costs which were not considered by the Department to be part of the manufacturing costs. U.S. selling expenses were included for the projects. For calculating the cost for producing slabs, home market selling expenses were used.

For Pisani:

(1) For projects using Balmoral Red granite, we used the weighted-average cost of the blocks of Balmoral Red rather than the cost submitted in the response, which was based on the lowest-priced block, because the company was unable to identify the actual blocks used in the projects.

(2) The Department used BIA for slabbing waste because the response waste figures could not be verified.

(3) Sawing costs were increased by the average of the "additional charges" noted on the sawing invoices which were reviewed during verification.

(4) The verified average dimensioning waste was used instead of the dimensioning waste submitted in the response.

(5) The actual lease expense for the company's computer equipment was included instead of the imputed expenses submitted in the response.

(6) Certain costs, such as expenses for production consultants, outside drafting, architectural consulting, quality control, and salaries and termination pay funds for the production manager, project manager, and draftsman, were included in the cost of manufacturing and deducted from the general and administrative expenses.

(7) The U.S. selling expenses were included in general expenses for the projects. For calculating cost of producing slabs, home market selling expenses were used.

(8) General and administrative expenses and interest expenses were

based on the amounts on the financial statements, appropriately adjusted.

For Euromarble:

(1) The material cost and fabrication costs were revised to reflect the cost of blocks and special works resubmitted by the respondent at the verification for some of the cut-to-size projects.

(2) The dimensioning waste factor was revised to reflect a weighted-average waste factor.

(3) Factory overhead was revised to include certain expenses, such as rent and other industrial costs, in the calculation of overhead expenses.

(4) General and administrative expenses, including financial expenses, were revised to reflect the information on their 1987 financial statement.

Currency Conversion

We made currency conversions as of the date of sale in accordance with section 353.56(a)(1) of the Regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 770(a) of the Act, and except where noted, we verified all information used in reaching the final determination in this investigation.

Interested Party Comments

Comment 1: Henraux and Savema state that the Department should not make an adjustment for commissions paid to their related companies.

DOC Position: We agree. At verification, the Department ascertained that these commissions were paid to related companies. Therefore, we made no adjustment for these commissions in our final determination.

Comment 2: Henraux and Savema contend that the Department may not offset commissions paid on home market slab sales with indirect selling expenses incurred in Italy for sales to the United States.

DOC Position: We disagree. The Act and regulations place no geographic test on the commission offset. In our preliminary and final determinations, the Department offset commissions paid on home market sales with indirect selling expenses incurred in connection with sales to the U.S. market, including those incurred in Italy. The Department did not use indirect selling expenses incurred in home market sales of slabs to offset commissions paid on sales in the same market. See *Silver Reed v. United States*, Slip Op. 88-37 (CIT, March 18, 1988).

Comment 3: Campolongo, Formai, Henraux and Savema point out that the

Department erred in using 1987 exchange rates for certain sales of cut-to-size projects made in 1986.

DOC Position: We agree. In its final determination, the Department has used the proper exchange rates for these sales.

Comment 4: Euromarble and Henraux point out that, for certain of their slab sales, the Department erred in calculating a single weighted-average foreign market value for each type of stone, regardless of thickness, in our preliminary determination.

DOC Position: We agree. The Department has corrected this calculation for purposes of our final determination by calculating individual weighted-average foreign market values for different thicknesses of stone.

Comment 5: Respondents contend that the Department should calculate separate margins for various groups of companies which the Department believes are related to Campolongo and Formai.

DOC Position: Although not expressly required by the Act, the Department has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. The issue, then, is whether companies of the Campolongo group and companies of the Formai group constitute separate manufacturers or exporters for purposes of the dumping law. We believe that, under the facts present on the record, the companies within each of these groups of companies are not separate, and it is appropriate to calculate a single, weighted-average margin for each group of firms.

The administrative record establishes close, intertwined relationships between the companies within both the Campolongo group and the Formai group. Each group is predominantly owned by a small group of individuals and the companies in each group share common boards of directors.

Transactions have taken place between companies within each of these groups during the period of investigation. The various production facilities within each group share the same type of equipment, so it would not be necessary to retool a particular plant's facilities before implementing a decision to restructure manufacturing priorities within either group. Given these facts, we believe it would be incorrect to conclude that each of these entities constitutes separate manufacturers or exporters under the dumping law. Therefore, we have treated the Campolongo group of companies and the Formai group of companies each as a single entity for

purposes of determining a dumping margin.

Comment 6: Respondents contend that the Department's final determination should specify, by company, what percentage of sales by each respondent was made at less than fair value. Respondents believe that this would assist the ITC in its analysis of injury from imports of merchandise sold at less than fair value.

DOC Position: We believe this unnecessary. We always make all privileged and business proprietary information in our files available to the ITC, if requested.

Comment 7: Respondents argue that the Department may not use any of petitioner's confidential data as BIA since petitioner has not submitted this data in accordance with the Department's requirements. Respondents also argue that petitioner has not properly summarized its confidential data.

DOC Position: We have determined that petitioner has properly submitted its business proprietary data. Where appropriate, we have used data provided in the petition as BIA.

Comment 8: Petitioner argues that because respondents' data contain numerous errors, inconsistencies and omissions, the Department should base its final determination on the BIA, which is the data submitted by petitioner.

DOC Position: Except for all sales by Guarda and sales of slabs not cut-to-size by Pisani, the Department considers the responses of the other companies to be verified. We have reported in our verification reports all significant issues raised at the verification of these other companies, our verification methods, and discrepancies found. We do not, however, consider the errors, inconsistencies and omissions we found to be of a frequency or magnitude to warrant rejecting the data submitted by these companies and using petitioner's data as BIA.

With respect to Guarda, during our attempted verification of its sales and cost responses, we found that the extent of the errors, inconsistencies and omissions in these responses did not permit satisfactory analysis or verification. For example, with regard to Guarda's cost response:

1. Materials

- materials could not be traced to actual inputs for any of the projects;
- certain costs, e.g., bank charges, were omitted;
- slabs taken out of inventory were not included in the material costs;

—the blocks included in one project were removed from inventory one day before the project was shipped.

2. Sawing

—five different rates of sawing waste were used by the respondent in its response, depending upon the hardness of the stone. However, during verification, the company calculated an average rate;

—the average rate used was an estimate for 1987 since actual 1987 data was not available. Guarda estimated that the slabbing waste in 1987 was lower than in 1986.

3. Fabrication

—the costs for honing, dimension cutting, and special works were based on estimated production and usage rates, which the company could not support;

—costs calculated during verification did not agree with the response nor could these costs be verified;

—subcontractors' costs for extra thicknesses were not included;

—special works were not included in the response. The company provided estimates during verification.

4. Dimension Waste

—the company could not explain the dimension waste calculation used in the response;

—a recalculated dimension waste factor was based on estimates of the "cost of making a polished edge in special work." The company could not explain the relationship between these costs and dimensioning costs, nor could they support them.

Regarding Guarda's sales response:

1. Guarda waited until verification to revise the originally reported amounts for quantity and value of sales.

2. On three out of five projects under investigation, Guarda miscalculated the total volume of the investigated granite. This resulted in discrepancies in the sales price of three sales.

3. Guarda could not explain its reported packing expenses.

4. Reported credit expenses were based on the terms stated on the invoice rather than the actual credit period.

5. Guarda used the wrong interest rate to calculate credit expenses.

6. Guarda failed to provide any explanation of indirect selling expenses until verification. In addition to the questionnaire, this information was specifically requested by the Department in deficiency letters on November 24 and December 11, 1987.

For costs of Pisani's slabs not cut-to-size, the following discrepancies were noted regarding its cost response:

1. Invoices for block purchases used to establish the cost of materials were dated after the sawing and finishing invoices and, therefore, could not have been the actual invoices for the blocks used to produce the slabs in the reported sale.

2. Invoices used for sawing and finishing were for blocks other than those identified in the response.

3. Invoices for sawing and finishing could not be reconciled to the company's records.

4. Sawing costs for one sale were based on November 1985 costs. No slabs were in inventory for this type of granite as of June 30, 1986. The origin of the materials that were used could not be explained.

5. The same invoice as used to calculate the cost of production for slabs sold in the U.S. and for slabs sold in Italy.

Faced with responses containing numerous fundamental flaws, the Department could not properly base its determination on the information submitted by Guarda or information on cost of production submitted by Pisani. It is not acceptable, in such situations, that the Department bear the responsibility for attempting to identify and perform the numerous and substantial recalculations necessary for the development of accurate sales and cost of production data. Such a role would place too great a burden on the resources of the Department under the time constraints and procedural framework of this investigation. As stated in *Photo Albums and Filler Pages from Korea; Final Determination of Sales at Less Than Fair Value* (50 FR 43754, October 29, 1985): "[I]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to fully analyze the information and other parties are able to review and comment on it." A respondent cannot shift this burden to the Department by submitting incomplete and inaccurate information and expect the Department to correct its response during the course of verification. Verification is intended to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department or to perform the recalculations necessary to develop accurate information. Nevertheless, as discussed above in the "Fair Value Comparisons" section of this notice due to lack of information in the petition, certain information collected at verification was used as BIA.

Comment 9: Petitioner asserts that the Department has not considered at least 60 percent of exports from Italy during the period of investigation (POI) as required by § 353.38(a) of the Commerce Regulations, 19 CFR 353.38(a).

DOC Position: Under normal circumstances, we do look at 60 percent of the dollar value of exports. However, given the fact that many of the sales under investigation consisted of long-term projects for which constructed values had to be calculated, the Department believed it was appropriate to amend its typical practice to fit the somewhat atypical circumstances of this case. After analyzing the constructed value submissions for cut-to-size granite slab projects, it was apparent that respondents had not furnished actual cost data for almost all of their larger project sales made during the POI (March 1, 1987 through August 31, 1987). This was because these projects had not been completed by the time the responses were due. On the basis that such data might not be sufficiently representative, we extended the POI back to January, 1987 and requested respondents to report constructed value information for all projects completed by November 30, 1987. Moreover, to capture the actual costs of some larger cut-to-size projects (i.e., those valued at approximately \$500,000 or more), we also requested information on some projects sold as early as July 1986. Consequently, our POI for cut-to-size granite slabs is January 1, 1987 through August 31, 1987 plus, some larger projects sold as early as July, 1986, if completed by November 30, 1987. By using these as our criteria, we have captured over 60 percent of total sales completed within the POI.

Comment 10: Petitioner argues that, because the U.S. dollar has declined against the Italian lira, the Department should include currency exchange costs as a direct expense for sales to the United States.

DOC Position: We have determined that there is no basis in the Act or in the regulations for such an adjustment. Section 353.56(a)(1) of our regulations stipulates that any necessary conversion of a foreign currency into its equivalent in United States currency will be "as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison." Therefore, it is not the Department's policy to take into account differences in home market currency revenue based on currency fluctuations in calculating direct selling expenses, regardless of whether the fluctuations are favorable or unfavorable.

Comment 11: Petitioner argues that the Department should compare U.S. slab sales to verified constructed values.

DOC Position: We disagree. Since we found that all respondents, except for Euromarble in certain instances and Pisani and Guarda, had sufficient home market sales at prices above their costs of production, we have no reason to make comparisons on anything other than a price-to-price basis.

Comment 12: Petitioner has alleged that processors related to the respondents are "dumping" their input materials and fabrication services. Petitioner contends, therefore, that the Department should initiate cost investigations of these processors.

DOC Position: We disagree. For any element of value included in constructed value, section 773(e)(2) of the Act requires the Department to determine whether prices charged by related parties fairly reflect the amount usually reflected in sales to unrelated parties in the market under consideration. Therefore, when these materials and fabrication services are provided at market rates, the Act neither requires nor allows us to do a cost analysis of these inputs.

Comment 13: Respondents state that the Department must eliminate from its analysis the nine percent additional slab loss that it presumed existed with respect to Henraux and the other respondents and which was applied in the preliminary determination.

DOC Position: The Department verified waste losses for the respondents who used a slab waste factor and dimensioning waste factor as a basis to calculate their total cost of production for the projects. These companies were Campolonghi-Freda, Savema, Euromarble, Pisani and Guarda. In all cases, except Guarda (whose response could not be verified), the slabbing waste factor and/or the dimensioning waste factor, which was documented at verification, was markedly higher than the losses reported in the response. Therefore, the Department used the actual waste losses obtained at verification as a basis for its final determination.

General Constructed Value Comments

Comment 14: The respondents argue that the Department incorrectly used imputed credit costs for calculating general expenses in the preliminary determination. They contend that the Department is bound to use actual expenses in its constructed value. The respondents cite cases and legal determinations which they allege support this position. They are *Hercules Inc. v. United States*, *Al Tech Speciality*

Steel Corp. v. United States, *Industrial Nitrocellulose from France*, *Tubeless Steel Disc Wheels from Brazil*, *Titanium Sponge from Japan* and *Oil Country Tubular Goods from Israel* in support of this position. The respondents further state that actual expenses should be used in the final determination.

The petitioner states that it is essential for the Department to include imputed credit expenses in the constructed value calculations, because such expenses are imputed in the U.S. price. The petitioner further states that the Department's failure to include such imputed credit expenses would result in an improper comparison.

The petitioner claims that the Department should follow its usual methodology and include the "credit expense" as a selling expense in the constructed value.

DOC Position: The Department followed its usual methodology and included an imputed credit expense as part of selling expenses in constructed value. This practice was recently upheld in *Silver Reed v. United States*, Slip. Op. 88-5 (CIT, January 12, 1988). In the Department's view, this credit expense reflects the costs incurred by the company (costs of debt and equity) in financing its accounts receivable for the product. To avoid double-counting, the portion of actual interest expense attributable to accounts receivable was deducted from total interest charges.

Comment 15: The respondents argue that the Department must use the home market selling expense because section 773(e) of the Act requires that general expenses be use "equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation."

Petitioner claims that U.S. selling expenses should be used because (1) home market selling expenses have not been verified, and (2) the sales in the home market for the products under investigation are very dissimilar from the U.S. sales.

DOC Position: We agree that generally the Department should use home market selling expenses in calculating constructed value. With respect to sales of cut-to-size projects, however, the Department determined that, due to the uniqueness of the merchandise, there was no comparability between sales in the home market and sales in the U.S. Therefore, the Department used the U.S. selling expenses as a surrogate for each individual U.S. project for which a constructed value was computed. The

Department used home market selling expenses for slabs.

Constructed Value/Cost Comments—Henraux

Comment 16: The petitioner argues that Henraux's raw block costs are underreported because Henraux used the moving average cost method in its response. The petitioner further states that the Department must use the respondent's highest raw material costs for the final determination.

Henraux argues that changing from the moving average inventory method to the cost for specific blocks used for cut-to-size projects actually reduced Henraux's material costs.

DOC Position: The moving average inventory method was not used because it averaged the costs of the current period with costs from prior periods. Using Henraux's accounting system, we were able to identify specifically the blocks used on each cut-to-size project. Therefore, the Department used the cost of the specifically identified blocks for the final determination. The effect was to increase the cost of some projects and to decrease the cost of others.

Comment 17: The petitioner argues that, if Henraux used an inflated allocation of cost to marble and to granite with thicknesses over 2½ inches, it would unjustifiably reduce the constructed value for the projects.

DOC Position: The allocations of the costs for marble and granite with thicknesses over 2½ inches for the projects were reviewed at verification. We found no inflated allocations.

Comment 18: The petitioner argues that costs of production of Henraux's related company, Lavorazioni, rather than the invoiced prices, should be used for the cut-to-size projects. The petitioner further states that comparing related party invoices to unrelated party invoices is questionable because petitioner believes that the fabrication input of unrelated parties is being provided at less than cost. Respondent states that all Lavorazioni sales are to Henraux. The respondent argues that for purposes of constructed value, the related party prices should be used if they reflect prevailing market prices offered by other suppliers.

DOC Position: For purposes of constructed value, we have used the transfer prices of the related company, in accordance with section 773(e)(2) of the Act, since these prices were comparable to prices charged by unrelated suppliers.

For purposes of the cost of production of slabs, we would ordinarily use the cost of the input from related companies. However, since the transfer

prices presented in Henraux's response were equivalent to the cost of production, the Department did not revise the response.

Comment 19: The petitioner argues that the sawing loss attributed to the cost of production for Henraux's granite slabs appears to be unsubstantiated, theoretical waste and does not account for breakage or second quality slabs.

Henraux states that it accounted fully for all waste costs.

DOC Position: Henraux measures the usable size of the granite blocks and computes the actual sawing waste for the slabs in its records. Therefore, the actual sawing waste was used in the final determination for the cost of production for slabs, rather than the theoretical waste reported in its original response.

Comment 20: The petitioner argues that the administrative record indicates that the cost of dimensioning waste for the cut-to-size projects has not been verified and, therefore, the Department should use the best information otherwise available.

DOC Position: Total material cost was used for the cut-to-size projects. Therefore, the Department did not need to measure the dimension waste in calculating constructed value.

Comment 21: Petitioner questions whether the factory overhead for Henraux was calculated properly. Petitioner argues that the overhead assigned to the projects appears to be low and, therefore, the highest, verified factory overhead amount should be used. Henraux states that it accurately included all overhead costs in its constructed value calculations.

DOC Position: The factory overhead in Henraux's response, including quality control, maintenance, depreciation, yard handling, block selection, and indirect salaries, was assigned to various aspects of the cost of cut-to-size projects such as block cost and surface treatment. Other factory overhead items, such as internal transport, handling, insurance, and consumable material, were assigned to the projects and listed in the costs separately. Therefore, no adjustments were necessary.

Comment 22: Petitioner states that the respondent has not used the most similar merchandise for the difference in merchandise calculations and, therefore, the petitioner's data should be used.

Henraux has submitted several alternative product comparisons.

DOC Position: We disagree with petitioner as regards use of BIA. For purposes of comparisons, we have used that slab, not cut-to-size, found to be most similar to the slab sold to the United States. This comparison is

different from that made at the time of our preliminary determination.

Comment 23: Petitioner argues that all costs may not be included for one project for which the material was sold to an independent contractor and then repurchased as completed cut-to-size pieces. The respondent states that all costs of the project were included in the constructed value.

DOC Position: We agree with the respondent. At verification, we determined that granite blocks were purchased for the project. A portion of the blocks were sawn into slabs and polished prior to the sale of the slabs and the sale of the remaining blocks to an unrelated supplier. The amount received from the supplier was deducted only from the material cost (not the total value which would include the costs of material and fabrication) to arrive at a negative balance for the material cost. However, since the cost of processing by Henraux and Henraux Lavorazioni and the cost of repurchasing the finished product from the unrelated supplier were included in total cost, the amount received from the sale of the slabs and blocks should have been deducted from the total cost. The net effect would have been the same without giving the appearance of obtaining a profit on the sale of material.

Constructed Value/Cost Comments—Campolonghi

Comment 24: The petitioner argues that the Department should use the market price of the granite block purchased by Campolonghi from its related company, Granite Marketing Associates (GMA). The market price should be the price charged to unrelated customers. The petitioner further states that distribution costs should not be deducted from the sales price because the statute requires that every element of value reflected in sales to unrelated parties be included in the price to unrelated parties.

The respondent states that commissions and handling fees incurred for sales to unrelated companies are not incurred for sales to Campolonghi and, therefore, should be deducted from the sales price to unrelated companies when comparing the prices.

DOC Position: We do not need to address this issue. The application of either measure of price has no impact on the margins for the projects.

Comment 25: The petitioner states the Department must use the highest block prices verified for Campolonghi, because the Department was unable to obtain permission from the Swiss Ministry of Foreign Commerce to verify

the cost of blocks purchased and sold to Campolonghi by GMA.

Campolonghi states that both it and GMA have cooperated fully in attempting to obtain permission to verify the records in Switzerland. Campolonghi further states that it should not be penalized for circumstances over which it has no control.

DOC Position: We were granted permission to verify the cost and sales records of GMA in Switzerland and based the final determination on verified data.

Comment 26: The petitioner argues that the Department must include all costs of GMA for the granite blocks obtained from them for the cost of production for slab sales.

Campolonghi argues that the transfer price should be used for the cost of production. The respondent states there is no legal or logical justification for the Department using related party prices in its cost of production analysis but not in its constructed value calculations. The respondent refers to *Washington Red Raspberry Commission v. United States*, 657 F. Supp. 537 (CIT, 1987).

DOC Position: The Department used the costs incurred by GMA in computing the cost of production for the slab sales. The constructed value related party provision contained in section 773(e)(2) is not directly applicable to cost of production calculations, because, by its terms it only refers to constructed value calculations. See, *Mirrors in Stock Sheet and Lehr End Sizes from the Federal Republic of Germany* 51 FR 43403 (1986). The Department based its cost of production calculations on "generally accepted accounting principles." According to these principles, when one company is at least 50 percent owned by another company, the costs are based on the consolidated financial information of the two companies.

Comment 27: The petitioner argues that a certain unaccounted for amount of money in the respondent's revised methodology for special works should be allocated to the granite sold during the period of investigation.

DOC Position: We have adjusted the "special works" in the response in accordance with the revised calculation obtained at verification. Approximately one half of the difference was not assigned to specific special works operations. This amount was so insignificant that it would have no effect on the cost of the special works.

Comment 28: Petitioner states that the highest verified dimension waste factor must be used for the final determination, rather than the amounts provided by Campolonghi prior to verification.

DOC Position: During the course of the verification, actual dimensioning waste for each granite type used in the projects was obtained. This information was tested against underlying documentation and was used in the final determination. For those granite types for which a specific waste loss was not ascertained, we applied the weighted-average waste loss obtained at verification.

Comment 29: The petitioner argues that the Department should use the highest verified sawing waste factor in the final determination.

DOC Position: Calculations related to this loss factor were tested extensively against underlying documentation for two of the stone types and verified. Therefore, the sawing waste factor computed for each stone type was used in the final determination.

Comment 30: The petitioner argues that the polishing cost for the final determination must be based on commercial square meters instead of actual square meters.

DOC Position: We agree and have used the unit cost based on commercial square meters in the final determination.

Comment 31: Petitioner argues that the Department should not accept the deduction from selling, general and administrative expenses of legal expenses that the respondents incurred in the antidumping investigation.

Respondent argues these expenses should not be included because they relate to future sales and not to sales under investigation. The respondent refers to *Industrial Nitrocellulose from France* (51 FR 43230, December 1, 1986) and *Certain Steel Pipes and Tubes from Japan* (48 FR 1206, January 11, 1983).

DOC Position: We agree with respondents. Following our precedents in *Industrial Nitrocellulose and Steel Pipes and Tubes and Televisions from Japan* (53 FR 4050, February 11, 1988), the Department has not included the expenses incurred by Campolonghi in defending the antidumping investigation.

Comment 32: The petitioner argues that the Department should use the accelerated depreciation used by the company in its accounting records instead of the straight line depreciation calculated for the submission.

The respondent states the company used a systematic method of depreciation for the response instead of the voluntary accelerated method used to defer corporate tax liability.

DOC Position: The Department applied the method of depreciation which was the method used by the company in its accounting records and accepted in Italy for financial statement purposes.

Comment 33: Petitioner argues the overall cost should be increased at least 34 percent to correct respondent's underreporting of raw material costs as a result of the computation of dimension waste.

DOC Position: For the final determination, the dimension waste factor has been computed for each granite type on the basis of the percentage of the quantity of waste to the output of material quantities from the dimensioning process. This factor was then applied to the cost of the project incurred prior to the dimension process in order to obtain a dimension waste cost. Since the factor used was based on verified quantities of output, an additional increase in cost is not warranted.

Constructed Value/Cost Comments—Freda

Comment 34: Petitioner argues that Freda's purchases of granite blocks from its related company, Campolonghi, should not be relied upon for the final determination. Petitioner states that Freda made all of its purchases of granite blocks from related companies, and cites one instance where Freda purchased granite block from Campolonghi and resold it one month later at a profit. Petitioner states that the calculation of Freda's constructed value is overwhelmingly dependent on the raw material cost used for granite block. If this price is inaccurate, the Department must increase Freda's raw material costs to reflect market values.

Freda states that the block it purchased from the Campolonghi and sold to a third unrelated slabbing company for a higher price one month later was not sold to that slabbing company for its own production process. Freda required the third company to purchase the block. The block had been sent to this company for conversion into slabs for Freda's use. As the slabs were found to be unsatisfactory, Freda billed the slabbing company the cost of the block plus a profit.

DOC Position: The Department analyzed the block and slab prices paid by Freda to Campolonghi and compared these to invoice prices of the same type and size of product purchased from unrelated companies. We found that unrelated companies charged a higher price. Therefore, in accordance with section 773(e)(2), the Department increased Freda's material costs by the difference between the invoice prices between Freda and Campolonghi and the invoice prices for the same material for transactions between unrelated companies, when exact comparisons

could be made. The Department used an average of these comparisons to increase material costs for the granite types for which an exact comparison could not be found.

The details of the purchase of the block and its resale one month later were not provided to the Department during Verification and, therefore, could not be verified.

Comment 35: Petitioner argues that constructed values for a significant number of projects were calculated erroneously, because Freda reported the cost of granite blocks from related companies rather than the cost of finished slabs purchased from unrelated companies.

DOC Position: The Department revised the material costs to reflect arm's length transaction prices using the slabs that had been purchased and used for the projects instead of the granite blocks which had not actually been sawn and finished by the company for the projects.

Comment 36: Petitioner argues that Freda stated that its block vendor credits Freda's account for broken, defective, or otherwise unusable slabs. Freda, however, provided no documentation to support this statement. The petitioner further states that undocumented comments by a respondent should not be considered verified information or relied upon for the final determination, and that the sawing waste factor of respondent should be discarded or at least increased for the broken, defective or unusable slabs.

DOC Position: The Department used the actual verified slab waste for those specific granite types used in the projects under investigation for its final determination.

Comment 37: Petitioner argues that the Department verified the polishing costs for only one type of granite and, therefore, the unverified nature of Freda's other cost of production requires that the overall cost of production be determined by using petitioner's information as the best information available.

DOC Position: When all or some elements of specific types of reported costs could not be verified, the Department made adjustments based on information developed at verification. However, these adjustments were confined to limited areas. Therefore, the Department accepted the remainder of Freda's response which could be verified.

Comment 38: Petitioner states that the Department's verification report shows that the dimensioning waste factor used by Freda is incorrect. The petitioner

further states that the verification report indicated that the amount calculated by respondent at verification must be increased by netting the beginning cut-to-size granite inventory against net granite output. The report then states that the respondent did not make such beginning cut-to-size inventory figures available to the Department at verification. Petitioner states that this refusal to cooperate with the Department's verifiers must lead the Department to discard the figures provided by respondent.

Freda argues that the opening cut-to-size slab inventory for 1987 was not included in its waste calculations because the inventory included none of the granite types subject to the investigation. Moreover, the opening inventory was not provided to the Department during verification because it was not requested by the Department at that time. Respondent further states that Freda personnel were cooperative with Department personnel and were willing to answer questions and recalculate or revise certain data as requested by the Department during the verification process.

DOC Position: The Department requested that Freda provide its dimensioning waste calculation during verification. Beginning inventory is one of the factors which must be considered for this calculation. Therefore, the company should have provided this information to the Department during verification. Since Freda did not do so, the Department had to rely on a BIA number for this component.

As BIA, the Department derived a dimensioning waste factor by calculating "beginning inventory" based on the company's financial statements. After adjusting the waste factor for the beginning inventory, the Department applied the company's dimensioning waste factors to the company's costs.

Constructed Value/Cost Comments—Formai and Northern Granites

Comment 39: The petitioner alleges that material costs were not verified for Formai and Northern Granites because the companies could not trace raw granite blocks from purchase to the completion of cut-to-size projects and certain critical documentation, such as invoices and ending inventory, were not provided. Therefore, the material costs were not verified and the Department should use "best information."

DOC Position: The Department performed various verification procedures to determine whether all materials used for a project were included in the cost of production. The Department inspected the official "block

purchased book", which the company is required to maintain for the Italy Tax Authority, and traced actual invoices of the fabricators from cut-to-size pieces to slabs and blocks for the projects. The Department concluded that all material costs were included in the projects reviewed.

Comment 40: The petitioner contends that movement expenses related to bringing the block to the company and exchange gains and losses of the company should be included in fabrication expenses for cut-to-size granite and for slabs.

DOC Position: The movement expenses related to bringing the block to the company were included as material costs since they were incurred in order to make the material available for use in production. These were appropriately classified as material costs.

The exchange gains and losses related to material purchases could not be segregated from the company's overall exchange gains and losses. However, the net amount was so insignificant as not to have an effect on the cost of materials.

Comment 41: Petitioner argues that since the cost of production of Northern Granites was higher than the prices charged by unrelated contractors for sawing block, the actual costs should be used.

DOC Position: In calculating constructed value for cut-to-size projects, the Department used the invoice prices between Formai and Northern Granites (Formai's related company) for sawing performed by Northern Granites, pursuant to section 773(e)(2), since these prices were comparable to prices paid to unrelated companies. For cost of production purposes, the Department used respondent's submission which was based on transfer price, since transfer price was equivalent to cost.

Comment 42: Petitioner states that there is no evidence on the record that Formai's and Northern Granite's selling, general and administrative expenses were satisfactorily verified.

DOC Position: The information presented in Formai's response was reconciled to the underlying records of both companies. However, certain costs included in the cost of manufacturing, which was the basis used to allocate the G&A expenses, were misclassified by Formai. Therefore, the Department adjusted the calculation by reclassifying these expenses.

Comment 43: The petitioner claims that the project included in Formai's response, which was not completed by November 30, 1987, should not be

excluded because the Department is not reviewing sixty percent of respondents' U.S. exports during the period of investigation.

DOC Position: As explained in response to comment 9, the Department obtained information on 60 percent of the sales completed during the POL. In our view, this information is sufficient to determine whether Italian granite is being, or is likely to be, sold at less than fair value. Therefore, we have not considered this additional sale by Formai.

Constructed Value/Cost Comments for Euromarble

Comment 44: Petitioner contends that, for the final determination, the Department should not rely on any data submitted by Euromarble, but should rely on the BIA. Petitioner bases this contention on the belief that Euromarble failed to establish the reliability and credibility of its data during verification. Although Euromarble resubmitted its data, correcting the specific numbers verified by the Department, the Department should not assume that unverified information resubmitted by the respondent is correct.

DOC Position: The Department verified the actual costs incurred by Euromarble for purposes of the final determination. The Department did not use the unverified information submitted by the respondent.

Comment 45: Petitioner contends that Euromarble initially failed to submit all of the costs incurred under factory overhead and general expenses for the granite under investigation. The corrected figures should be used in the final determination, if the Department does not rely on the best information available, as petitioner insists.

Respondent contends that Euromarble does not engage in drafting of any kind either before or after a U.S. sale is made. Since Euromarble revised overhead costs and general expenses during the verification, the Department should use these verified expenses.

DOC Position: Neither Euromarble's submission nor its revised calculations included certain factory overhead expenses, such as rent and other industrial costs. Therefore, the Department included these amounts which it obtained during the course of verification and allocated these expenses based on the "cost of sales" in 1987.

Comment 46: Petitioner contends that all companies incur a certain amount of additional waste at the slabbing stage due to breakage, slabs cuts whose veining makes them second quality slabs, and other factors. This additional

waste must be accounted for in the final determination, since none of this additional waste is accounted for by respondent's theoretical waste figure. Respondent contends that the Department scrutinized Euromarble's slabbing production data and reviewed information showing that sawing waste figures used by Euromarble were reasonable and accurate.

DOC Position: The Department examined actual slabbing waste for six different types of granite during the verification and reviewed actual slabbing waste for some cut-to-size projects. Based on this analysis, the average waste factor used by the respondent was confirmed.

Comment 47: Petitioner contends that the dimensioning waste percentages examined by the Department are not necessarily indicative of the percentages experienced on projects other than the two projects examined at verification. Therefore, if the Department uses the dimensioning waste factor submitted by the respondent, at a minimum, the Department should use the highest percentage of dimensioning waste factor submitted by the respondent.

Euromarble contends that the waste figures used in the submission were conservative and reasonable, as the sample transactions that the Department examined during verification demonstrated.

DOC Position: The Department's analysis of dimensional cutting waste, during and subsequent to verification, reflected a higher overall dimensioning waste than the estimated average used by the respondent in its submissions. Therefore, a revised weighted-average waste factor was used for the final determination.

Comment 48: Petitioner contends that Euromarble's claim for a reduction in its costs, based on its related company overcharging for sawing three centimeter thick slabs for one type of granite, should not be accepted. There is no indication in the verification report whether the revised price for this sawing was a reasonable market value.

Respondent contends that the revised price, in fact, reflected market prices as demonstrated to the Department during verification.

DOC Position: The Department verified the amount claimed through the published price list for the subcontracting service and then compared this amount to other invoices for the same or similar service. After this analysis, the Department concluded that the amount was actually higher than the price that should have been charged and, therefore, accepted Euromarble's claim.

Constructed Value/Cost Comments for Savema

Comment 49: The petitioner argues that the Department should not use Savema's theoretical sawing waste figures to determine the amount of cubic meter raw block which was necessary to produce a square meter of finished granite, because such information was not verified. Instead the petitioner's information or the average sawing waste for the three granite types which were verified should be used.

The respondent argues that the slabbing waste used in the submission was not theoretical. The amount used in the response, the company claims, was the average sawing waste rounded to the nearest tenth of a centimeter and that this sawing waste was tested at verification by a physical measurement. Therefore, the submission should be used.

DOC Position: The Department calculated the slabbing waste for three granite types from documentation provided by the company during verification and adjusted the material cost for those projects which used the granite types. The slabbing waste for all three types, which accounted for a substantial amount of the granite used in the projects under investigation, were higher than the slabbing waste reported in the submission. The Department, therefore, used a weighted-average slabbing waste based on these granite types.

Comment 50: The petitioner claims that the Department should account for the exchange losses in the material costs calculations.

DOC Position: The exchange losses related to material purchases were so insignificant that there was no effect on the costs of the materials.

Comment 51: The petitioner claims that the verification report does not state whether the sawing services, finishing, dimensioning, dimensioning waste and subcontract labor were successfully verified.

DOC Position: During verification the Department did not note any methodological questions or issues related to the reconciliation of the information presented in the response with the data maintained in the books of the company in its ordinary course of business. The dimensioning waste for the granite types verified by the Department confirmed the average dimensioning waste used by the respondent.

Comment 52: The petitioner argues that, in some cases, the allocation method used to attribute factory

overhead to different departments bore no relationship to the use of the costs.

DOC Position: The Department tested the allocation of overhead using a method which appeared to be more reflective of the actual usage of specific overhead costs and found that this method did not yield a different result in the method used by the respondent.

Comment 53: The petitioner claims that certain technical expenses, such as drafting shop tickets and other services, should be project-related and should, therefore, be included in the cost of manufacturing, rather than general expenses. Since Savema could not identify these services with a project, the full amount should be included and allocated to the projects. Savema contends that the expenses recorded are properly classified as general expenses, because:

(1) Technical services and administrative functions are performed by an unrelated company which billed for both of these services in one amount not segregated as to the administrative or to the technical services;

(2) The company pays an even, fixed administrative fee; and

(3) Certain drafting costs are related to bids, not specific projects.

DOC Position: The Department did not revise the respondent's submission since the amount of technical services which were related to a specific project and which would have been considered part of the cost of manufacturing, could not be determined.

Constructed Value/Cost Comments for Pisani

Comment 54: Respondent claims that some of the deficiencies noted during verification related to the dimensioning waste are insignificant and other statements are in error. For example, although the Department states that there are no sales made from miscellaneous inventory, the company did, in fact, make some sales. Also, according to the information attributed to one project, the full amount of the block used in that project should not be attributed to the project since, in fact, the block was defective.

DOC Position: The Department's verification report summarizes the information obtained during verification. Although there may be additional facts related to some of the statements made in the report, the company did not provide such information during verification nor documentation to support such statements. Therefore, any information submitted is untimely. We base our final determination on verified information.

Comment 55: The petitioner argues that, since the slabbing waste could not be verified for Pisani, the Department should use the total waste for the two granite types which were obtained during verification.

DOC Position: Because the Department could not verify that the total output of slabs from the sawing process were usable slabs for the cut-to-size projects, the Department had to resort to best information available. As BIA, the Department based the slabbing waste on the overall waste for the two granite types reviewed during verification and a third type analyzed subsequent to verification. The Department deducted the dimensioning waste from the overall waste to calculate a "best information" amount for slabbing waste.

Comment 56: The petitioner claims that the Department should use the actual lease expense reported on the company's financial statements, not the imputed amount which the company calculated for its submission.

DOC Position: The Department agrees with the petitioner and has included the amount for the lease reported on the company's financial statements.

Comment 57: The petitioner argues that the costs for production consultants, drafting, architectural consulting, quality control inspection, and the salaries and termination pay for the production manager, project manager, and draftsman, should be included in the cost of manufacturing, because these costs are related to manufacturing.

DOC Position: The Department agrees with the petitioner and has reclassified these expenses as part of the costs of manufacturing.

Comment 58: The petitioner argues that the Department should not accept the unverified sawing invoice charges as evidence that related companies charge the same prices as unrelated companies. The Department must use "best information available" based on the petitioner's information.

DOC Position: The Department reviewed the invoice in question and has no basis to believe that it is not an invoice from an unrelated party. Therefore, the Department used this invoice to adjust Pisani's fabrication costs in accordance with section 773(e)(2) of the Act.

Comment 59: The petitioner argues that the Department should use the highest price for Pisani's block purchases of Balmoral Red since the company could not identify the block used in the project under investigation.

The respondent contends that it told the Department during verification that

the lower-priced blocks were used for the project.

DOC Position: Since the specific block used in the project could not be determined from the company's records, the average prices for purchases of blocks of Balmoral Red were used.

Comment 60: The petitioner contends that Pisani's sawing costs should take into account the additional amounts charged by its subcontractor. Therefore, the sawing costs should be increased by the amount of the subcontractor's charge.

The respondent argues that the material costs were based on list price and that, in addition to these charges, discounts were also received.

DOC Position: The Department agrees that the additional charges reflected on the invoices for sawing costs should be included when determining the total costs for these services. The company did not provide invoices or other evidence reflecting the discounts during verification.

Comment 61: The petitioner claims that the Department should not reduce the costs of slabs for reimbursements for defective slabs because there is no evidence on the record which supports respondent's claim.

DOC Position: The Department did not make an adjustment for reimbursement for defective slabs because the respondent did not provide support for the statement.

Comment 62: The petitioner states that, unless the Department has verified that Pisani pays no transportation costs from the non-Italian quarry to Italy, it should attribute to Pisani's purchases of raw granite block the highest transportation expenses incurred by another respondent to ensure that all costs have been included in the constructed value.

The respondent claims that all of its purchases are from granite trading companies with offices located in the Carrara area and, therefore, transportation cost should be the same.

DOC Position: The Department could not verify the transportation cost which Pisani submitted in its questionnaire response. Therefore, as best information available, the Department used the amount of transportation costs reflected in Pisani's financial statements and allocated this amount to each project based on its cost of manufacturing.

Other Comments

Comment 63: An interested party argues that if contracts negotiated by importers prior to the time of the Department's preliminary determination are not exempted from the suspension of

liquidation order, material injury will be caused these parties.

DOC Position: Section 733(d)(2) of the Act, 19 U.S.C. 1673b(d)(2), requires the posting of a cash deposit, bond, or other security for each entry subject to the Department's suspension of liquidation order. The Act does not allow the Department to make this sort of exception for merchandise subject to the investigation.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain granite products from Italy for all manufacturers/producers/exporters, with the exception of Formai, Henraux and Savema, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. For Formai & Mariani S.r.l. and its related company, Northern Granites S.r.l., Henraux S.p.A. and Savema S.p.A., liquidation is not suspended. For the remaining firms, the Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Margin percent-age
Campolongo Italia S.p.A. and its related companies, Frede S.p.A. and Olympia Marmi S.p.A.	1.54
Euromarble S.p.A.	1.02
F.lli Guardia S.p.A.	20.34
Formai & Mariani S.r.l. and its related company, Northern Granites S.r.l.	0.21
Henraux S.p.A.	0.09
Pisani Brothers S.p.A.	4.93
Savema S.p.A.	0.00
All others	4.98

With respect to all companies except Formai & Mariani S.r.l. and its related company, Northern Granites S.r.l., and Henraux S.p.A., the cash deposit or bonding rate established in the preliminary antidumping duty determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the Federal Register. This suspension of liquidation will remain in effect until further notice. With respect to Formai & Mariani S.r.l. and its related company Northern Granites S.r.l., and Henraux S.p.A., any bond of other security ordered in its

preliminary antidumping duty determination are hereby released or refunded.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order on certain granite products from Italy, entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

July 13, 1988.

Jan W. Mass,
Assistant Secretary for Import
Administration.

[FR Doc. 88-16213 Filed 7-19-88; 8:45 am]

BILLING CODE 3510-06-01

[C-475-702]

Final Negative Countervailing Duty Determination; Certain Granite Products From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that *de minimis* countervailable benefits are being provided to manufacturers, producers or exporters in Italy of certain granite products as described in the "Scope of Investigation" section of this notice. Since the estimated net subsidy is either *de minimis* or zero for all manufacturers, producers or exporters in Italy of certain granite products, our determination is negative.

We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mark Linscott, Lori Cooper or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8330, 377-8320 or 377-2438.

SUPPLEMENTARY INFORMATION

Final Determination

Based on our investigation, we determine that *de minimis* countervailable benefits are being provided to manufacturers, producers or exporters in Italy of certain granite products. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Transportation Rates
- Interest Rebates on Conversion Loans from the European Coal and Steel Community (ECSC)
- Reductions in Social Security Payments for Companies Located in the Mezzogiorno
- Tax Concessions under Law 614.

We determine the estimated net subsidy under these programs to be *de minimis* or zero for all manufacturers, producers or exporters in Italy of certain granite products.

Case History

Since the publication of the preliminary determination (*Preliminary Negative Countervailing Duty Determination: Certain Granite Products from Italy* (52 FR 48732, December 24, 1987)) (*Certain Granite*), the following events have occurred. On December 30, 1987, petitioner requested an extension of the final determination to correspond with the final determination in the concurrent antidumping duty investigation of certain granite products from Italy. On January 28, 1988, we published the extension notice (53 FR 2521). On March 2, 1988, respondents requested a postponement of the final antidumping duty determination from May 9, 1988, to June 20, 1988. On March 15, 1988, we published a postponement notice (53 FR 8479, March 15, 1988). On June 2, 1988, respondents requested another postponement of the final determination in the antidumping duty investigation to July 13, 1988. This postponement notice was published on June 15, 1988 (53 FR 22369).

The Government of Italy (GOI) and respondent companies submitted supplemental questionnaire responses on the following dates: January 28, 29, February 1, 2, and March 29, 1988.

From April 5 to May 2, 1988, we conducted verification in Italy of the questionnaire responses of the GOI and the following respondent companies: Campolongo and related companies Frede and Olympia Marmi, Euromarble, Henraux and related company Giuseppe Furrer, Pisani, Fratelli Guardia, Bonotti, Antolini Luigi, Granitex, Margraf, Marcolini Marmi and Cremer.

Amended responses based on information reviewed at verification were submitted by the GOI on May 19, 1988, and by the respondent companies on June 15 and 16, 1988. None of the interested parties requested a public hearing; however, initial case briefs were filed by petitioner, respondent companies and the GOI on June 2, 1988. The parties filed rebuttal briefs on June 10. Comments on verification were filed by the GOI on June 13, 1988. Petitioner filed its rebuttal to the GOI's verification comments on July 7, 1988.

On May 31, 1988, we served a supplemental questionnaire on the Commission of the European Communities (EC), the GOI and the respondent companies concerning EC-sourced loan programs. We received responses on June 14 and 15, 1988, and we conducted verification of the EC response from June 29 to July 1, 1988, in Luxembourg. We received initial briefs on the EC verification on July 7, 1988, and reply briefs on July 8, 1988, from petitioner and respondents. The Commission of the EC submitted factual corrections to the EC verification report on July 7, 1988.

Scope of Investigation

The products covered by this investigation are certain granite products from Italy. Certain granite products are 3/4 inch (1 cm) to 2 1/4 inches (6.34 cm) in thickness and include the following: Rough-sawn granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are currently classified under TSUSA item number 513.7400 and under HS item numbers 2516.12.00, 6802.23.00 and 6802.93.00.

Exclusion Requests

As discussed in *Certain Granite*, the largest companies comprising 60 percent of the value of exports of the subject merchandise to the United States in 1986 (our review period) requested exclusion from any possible countervailing duty order which might result from this investigation, claiming not to have benefitted from countervailable subsidies. Following our standard practice, we required the GOI to certify that those companies requesting exclusion either did not use any of the programs under investigation or received only *de minimis* benefits under these programs. Based on the responses and the government's certification, we preliminarily determined that those

companies producing and exporting the subject merchandise which requested exclusion would have qualified for exclusion from any eventual countervailing duty order. However, since we preliminarily determined that manufacturers and exporters of Italian granite do not receive subsidies, based on the responses of firms not requesting exclusion, we did not need to reach the issue of exclusion.

While verifying the GOI's responses, we also verified the government's certification of the exclusion requests. We verified that the certification was essentially accurate in all respects and that the government correctly certified that no exclusion company received benefits that were cumulatively above *de minimis*. During this verification and the verification of the responses of the companies requesting exclusion, we discovered a few minor discrepancies which are described in the verification report. However, these discrepancies in the government certification were insignificant in nature and were not sufficient to raise any company requesting exclusion above the *de minimis* level. Accordingly, we would determine that those companies that requested exclusion and are producers and exporters of the subject merchandise would qualify for exclusion. However, we find that the situation here is identical to that in our preliminary determination. Because the estimated net subsidy for respondent companies that did not request exclusion is *de minimis*, no final order will be issued and the exclusion provision does not apply.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidization is calendar year 1986 (the review period), which corresponds to the fiscal year of all but one of the respondent companies.

At the outset of this investigation, the GOI identified the largest producers and exporters of certain granite products that accounted for at least 60 percent of exports of the subject merchandise to the United States during the review period. These companies subsequently requested exclusion and the government certified these exclusion requests. We then informed the GOI that, by requesting exclusion, these companies had set themselves on a separate investigative track, necessitating our choosing a new representative group of companies consisting of the largest producers and exporters accounting for 60 percent of the remaining pool of exports to the United States. In response, the GOI identified twelve

additional companies, and we sent questionnaires to ten of these companies.

In countervailing duty investigations, it is our practice to calculate a country-wide rate which is an average rate for all companies whose individual rates for all countervailable programs combined are neither *de minimis* nor significantly different from rates for other companies. Since no respondent company's individual rate is above *de minimis*, we have not calculated country-wide rates for those programs determined to be countervailable.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments from respondents and petitioner, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers or exporters in Italy of certain granite products under the following programs:

A. Preferential Transportation Rates

Petitioner alleges that manufacturers, producers and exporters of certain granite products in Italy receive preferential transportation rates from Ferrovie dello Stato (the Italian state railway system).

The provisions set forth in Article 19 of Law 887 establish reduced rail rates for raw mineral substances produced and processed in the Italian islands. There are two levels of incentives available under Article 19: For raw mineral substances mined or extracted in the Italian islands, the normal tariff rates are reduced by 30 percent; for the same substances that are further processed on the islands, the rates are reduced by 60 percent.

According to the text of Law 887, raw mineral substances are the only products eligible for preferential rail rates. However, it does not specify a list of qualifying raw mineral substances and we could verify only that oil, clay, marble and granite, among other substances, are included within the definition of raw mineral substances.

The normal railway rates to which the reductions are applied are calculated based on the weight, distance, and tariff classification of the shipped products. For shipments from the islands, the calculation includes the distance covered by the state-run ferries, which are used to transport the rail cars across the water. The reductions are automatically applied to qualifying shipments of raw mineral substances by state rail officials.

In our preliminary determination we stated that, based on information submitted to the Department by the GOI and respondent companies, none of the respondent companies received benefits under this program. However, at the company verifications and after the government verification, we were informed for the first time that, during the review period, three respondent companies received 30 percent discounts from Ferrovie dello Stato for rail shipments of granite blocks from Sardinia to the Italian mainland.

No information provided to us during verification indicated what industries, in fact, ship qualifying substances from the Italian islands, or even what materials specifically fall under the definition of raw mineral substances within the meaning of Law 887. Based on the limited information submitted on the record of this investigation, we determine that granite producers are one group of a limited number of industrial groups in the Italian economy that purchase the raw mineral substances for which preferential rates under Law 887 are granted, and, therefore, that these special rates are limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5)(B) of the Act.

Of the respondent companies, we verified that only Henraux, Antolini Luigi and Cremer received reductions in transportation rates during the review period. To calculate the benefit to these companies under this program, we took the difference between the price they would have paid absent the 30 percent reduction and the price they actually paid with the reduction for shipments of granite and allocated this amount over total granite sales during the review period. This resulted in an estimated net subsidy of less than 0.0001 percent *ad valorem* for Henraux, 0.04 percent *ad valorem* for Cremer, and 0.30 percent *ad valorem* for Antolini Luigi. The *ad valorem* rate is zero for all others.

B. Interest Rebates on Conversion Loans From the European Coal and Steel Community (ECSC)

Although not alleged by the petitioner, we investigated this program because it was discovered during the course of the company verifications.

Article 56(2)(b) of the Treaty of Paris, which created the ECSC, authorizes ECSC aid to "activities capable of reabsorbing redundant [ECSC] workers into productive employment." A council decision published in the *Official Journal of the European Communities*, No. C 178 of July 27, 1977, authorized conversion loans for projects that involve, or are likely to involve,

reemployment of redundant ECSC workers.

Directorate General-16 (DG-16), the office of the Commission of the European Communities that administers these loans, may finance up to 50 percent of the costs associated with a qualifying investment. An applicant must be a small- or medium-sized enterprise, defined as an enterprise that: (1) Employs less than 500 people; (2) has net fixed assets of less than 75 million European Currency Units (ECUs); and (3) has no parent enterprise that owns more than one-third of its share capital. A qualifying project must create new positions that are capable of being filled by coal and steel workers.

We verified that loans are available and have been disbursed to companies in virtually every manufacturing and service industry. We also verified that no region of a member country is excluded from receipt of conversion loans. However, interest rebates associated with these loans are determined based on regional location. For firms located in "priority" regions that have suffered high unemployment in the coal and steel industries, the interest rebate is granted whether or not a qualifying firm actually employs redundant ECSC workers. A five percent interest rebate is granted for the portion of loan principal equal to (a) the number of new positions created, multiplied by (b) two-thirds, multiplied by (c) 20,000 ECUs per worker. In contrast, firms located outside "priority" regions must hire redundant ECSC workers. Their five percent interest rebate applies only to a portion of the loan equal to the proportion of newly-created positions actually filled by redundant ECSC workers multiplied by 20,000 ECUs.

We verified that Fratelli Guarda, the only respondent company that received a conversion loan, is located in a "priority" region and that it received an interest rebate for a loan that was outstanding during the review period. We also verified that it filled no newly-created position with a redundant ECSC worker. If Fratelli Guarda were located outside a "priority" region, it would not have qualified for an interest rebate. Therefore, we determine that this rebate is countervailable because receipt was dependent on location in a specifically designated "priority" region.

To calculate the benefit under this program, we divided the total value of rebates received by Fratelli Guarda during the review period by its total sales of all products during the review period and arrived at an estimated net subsidy of 0.10 percent *ad valorem* for Fratelli Guarda. The *ad valorem* rate is zero for all others.

C. Reductions in Social Security Payments Under the Cassa per il Mezzogiorno Program

Petitioner alleges that manufacturers, producers and exporters in Italy of certain granite products receive benefits under the following Mezzogiorno Regional Assistance Programs: (1) National corporate tax exemptions; (2) local corporate tax exemptions; (3) capital grants; (4) interest rate reductions; and (5) reductions in social security payments. We verified that the first four programs were not used by the respondent companies (see section III.C. of this notice). The last program, reductions in social security payments, is discussed below.

According to the government's responses, all Italian companies that operate facilities in the Mezzogiorno region of Italy are entitled to a ten percent reduction in social security payments owed to the National Social Security Institute (INPS) for all workers employed in this region. The reduction may be increased to 20 percent for any additional employees hired after September 30, 1986, over and above the number of individuals employed by the company on that date. For staff employed between July 1, 1976, and December 31, 1980, there was a total exemption from payments owed to the INPS, up to December 31, 1986.

Because benefits under this program are available only to firms that locate facilities in the Mezzogiorno, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is countervailable.

We verified that only Henraux received reductions in social security payments during the review period for employees at stockyards it owns in the Mezzogiorno. Henraux filed a timely request for exclusion and was certified by the Government of Italy as having received only *de minimis* benefits under this program.

To calculate the benefit under this program, we divided the total value of the social security reductions Henraux received during the review period by its total sales of all products during the review period and arrived at an estimated net subsidy of 0.08 percent *ad valorem* for Henraux. The *ad valorem* rate is zero for all others.

D. Tax Concessions Under Law 614

Article 30 of Law 614 provides for reductions in local corporate income tax (ILOR) rates to small- and medium-sized Italian companies that establish or

expand facilities in designated depressed territories of northern and central Italy. ILOR is one component of a company's overall national corporate tax liability; and other component is the national corporate tax, IRPEG. Both IRPEG and ILOR are imposed and collected by the national government; however ILOR revenues are redistributed to local areas based on need and other criteria, without regard to the amount collected from a given locality.

If an enterprise is newly established, the total amount of the company's income is exempt from the ILOR tax. For firms expanding their productive facilities, the ILOR exemption applies only to income derived as a result of the expansion. Reductions may be claimed for ten years following the establishment or expansion of a facility.

Law 614 was terminated for most regions on December 31, 1985. It was later reinstated under Law 879 until December 31, 1990, exclusively for two depressed territories devastated by earthquakes: Friuli-Venezia Giulia and Marche. Residual benefits under Law 614 may continue for ten years following expiration.

Because this program is available only to firms that invest in designated areas of northern and central Italy, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is countervailable.

Based on our review of certified tax returns for all respondent companies, we verified that only Granitex claimed a reduction in taxes under this program on the tax return filed during the review period. We calculated the benefits under this program based on the company's overall corporate income tax liability for the year in which the tax return was filed. We included in this calculation the net effect on Granitex's national corporate tax (IRPEG) liability, because both ILOR and IRPEG are part of a company's overall national tax liability. We first determined the difference between what Granitex paid in ILOR and IRPEG during the review period and what it would have paid absent this program. We then divided this amount by the total sales of Granitex during this period. Based on this calculation, we arrived at an estimated net subsidy of 0.36 percent *ad valorem* for Granitex. The *ad valorem* rate for all others is zero.

II. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers.

producers or exporters in Italy of certain granite products under the following programs:

A. Interest Rate Reductions Under Decree 902 of 1976

Petitioner alleges that manufacturers, producers and exporters in Italy of certain granite products receive loans under Decree 902 of 1976 that are limited in availability and that are received on terms inconsistent with commercial considerations. In its responses, the GOI stated that Decree 902 offers loans to firms located in all regions of Italy and involved in all types of production activity.

During verification, we reviewed the legislative structure that implemented this program. Decree 902 was issued pursuant to Law 183 of May 2, 1976. Article 15 of Law 183 authorized the establishment of a national fund to promote industrialization and modernization in northern, central and southern Italy. Decree 902 divides administration of the loan program, which offers reductions in interest rates, between the Ministry of Industry and Commerce (MIC), which has authority to disburse loans to firms in northern and central Italy under Title II, and the Cassa per il Mezzogiorno (the Mezzogiorno Agency), which has similar authority for firms in southern Italy under Title III.

As originally enacted, Decree 902 authorized the maximum interest rate reduction for firms located in either southern Italy or in areas designated as insufficiently developed in northern and central Italy. For these firms, the reduced rate was equal to 40 percent of the "reference rate," a conglomerate of commercial interest rates in Italy compiled monthly by the Bank of Italy. The minimum benefit, equal to 60 percent of the reference rate, was available to firms located in the remaining areas of northern and central Italy. In 1981, these benefits were changed by ministerial decree to an interest rate of 36 percent of the reference rate for firms in southern Italy, 48 percent for firms in insufficiently developed areas of central Italy and 72 percent for firms in the remaining areas of central Italy and all areas of northern Italy. In 1986, the rates in effect were 50 percent of the reference rate for southern Italy and 60 percent for northern and central Italy.

The determine whether any countervailable benefits were provided to manufacturers, producers and exporters in Italy of certain granite products, we examined the availability and use of 902 benefits by Italian firms.

Together, Articles Five, Six and Eight of Title II and Article 12 of Title III offer benefits to all companies in all areas of Italy. There are no provisions in Decree 902 that limit availability of benefits to particular types of production activities. The only restrictions set forth in Decree 902 are capitalization ceilings, as the program is designed for small- and medium-sized firms, and project requirements. Firms located in southern Italy and in insufficiently developed areas of central and northern Italy may receive loans for modernization, expansion or new construction of production facilities, while firms located in the remaining areas of central and northern Italy qualify for modernization of existing facilities.

We verified that, since 1980, loans under Decree 902 have been awarded to virtually every productive sector in Italy. In each year between 1980 and 1987, all 17 categories of Italian manufacturing industries, as defined by the Istituto Centrale di Statistica, received 902 loans. These categories include: food; textiles; leather; woodworking; metallurgical; mechanical; non-metallic mineral; plastic products; consumer products repair; mineral extraction; apparel and furnishings; steel; chemical; rubber; paper and paper products; printing and publishing; and other manufacturing. We also verified that the non-metallic mineral grouping, in which granite production is categorized, received neither a dominant nor a disproportionate share of loans in any of these years. In addition, we verified that Law 902 loans have been awarded in every region of Italy but at differing interest rates, depending upon the region.

In past cases (e.g., *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, 10045, March 24, 1986)) (*Groundfish from Canada*), where the level of benefits under a particular program was tiered, i.e., varied between regions, but the tiers together covered all regions of the country, we calculated countervailable benefits based on any additional benefits received over and above the lowest tier of benefits that was available under the program. We reasoned that, when a tiered program is available in every region of the country, the lowest level of benefits is not limited, so long as the minimum level of benefits has been received by more than a group of enterprises or industries.

We verified that Giuseppe Furrer and Ronchi Marmi, the only two producers of certain granite products to have received Decree 902 loans, were never

located in southern Italy or in insufficiently developed areas of northern and central Italy, and that these two companies received only the minimum benefit that was available.

Because the manufacturers, producers and exporters in Italy of certain granite products received only the lowest level of benefits under Decree 902, and we verified that the lowest level of benefits has been received by more than a specific enterprise or industry, or group of enterprises or industries, and by companies in all regions of Italy, we determine that the minimum level of benefits received by these companies is not countervailable.

B. Contributions for Purchases of Electronic Equipment Under Law 696

Under Law 696 of December 19, 1983, small- and medium-sized Italian companies engaged in production activities could apply for a contribution from the MIC toward the price of certain electronic machinery. This program was not alleged by petitioner but was discovered in reviewing the financial statements of the respondent companies. Under this program, a contribution of 32 percent of the price of the machinery is available to firms operating in the Mezzogiorno region. The remaining areas of Italy are eligible to receive a 25 percent contribution.

During verification we reviewed the criteria set forth in the law and the procedure developed by MIC to administer this program. The following eligibility criteria must be met by a firm applying for a Law 696 contribution: (1) It must have no greater than 300 employees; (2) it must have a net invested capital of less than L. 12 billion in 1986; (3) it must be a manufacturing, mining, artisan or crafts enterprise; (4) the application filed with MIC must be for the purchase of electronically-controlled machines; and (5) the application must have been submitted to MIC on or before April 30, 1985, for machinery ordered between December 21, 1983 and March 31, 1985.

Law 696 provisions for contributions toward the purchase of electronic machinery were terminated on December 29, 1984 for all applications postmarked after April 30, 1985. MIC is still in the process of processing and approving applications filed prior to this deadline.

In our preliminary determination, we stated that additional information was needed to determine whether Law 696 conferred subsidies on the manufacture, production or exportation of certain granite products from Italy. In order to determine if the provision of Law 696 contributions constitutes a

countervailable subsidy, we must determine if the benefits provided are limited to a specific enterprise or industry, or group of enterprises or industries, in accordance with section 771(5)(B) of the Act.

The text of Law 696 states that a 25 percent contribution is available to Italian firms in the mining and manufacturing sectors as well as artisan or crafts enterprises. The contribution is increased to 32 percent for firms operating in the Mezzogiorno. We verified that none of the respondent companies received Law 696 contributions at the 32 percent level during the operation of the program. Several of the respondent companies received contributions of 25 percent.

At verification we reviewed the sectors that received Law 696 contributions during the 18 months of its existence. We confirmed that contributions have been awarded to thousands of companies throughout Italy representing a variety of industries and a wide range of products. Law 696 contributions have been approved and disbursed to companies in virtually all manufacturing sectors, including mineral extraction, food, textiles, steel, metallurgical work, chemicals, rubber, plastic products, paper and paper products, printing and publishing, consumer goods, leather, wood, mechanical products, non-metallic mineral processing and industrial construction and installation. We also verified that non-metallic minerals processing, the industrial group in which granite production falls, received neither a dominant nor a disproportionate share of Law 696 benefits.

As discussed in section II.A., above, where the level of benefits under a particular program is tiered, i.e., varies between regions, but the tiers together covered all regions of the country, we calculate countervailable benefits based only on any additional benefits received over and above the lowest tier of benefits available under the program. When a tiered program is available in every region of a country, the lowest level of benefits is not limited, so long as the minimum level of benefits has been utilized by more than a group of enterprises or industries.

Because we verified that the respondent companies received only the minimum 25 percent contribution for purchases of electronically-controlled machinery under Law 696 and that this benefit has been granted to more than a specific enterprise or industry, or group of enterprises or industries, we determine that the minimum level of rebate awarded to these companies is not countervailable.

C. Loans From Italian Special Credit Institutions

Petitioner alleges that medium- and long-term loans disbursed by Italian special credit institutions, also known as medium- and long-term credit institutions (MLTs), to manufacturers, producers and exporters in Italy of certain granite products confer countervailable benefits. Petitioner argues that these institutions are either financed or directed by the GOI and, therefore, this all medium- and long-term loans from them are countervailable.

During verification, we met with officials of Istituto Mobiliare Italiano (IMI) and an official of Mediocredito Toscano. Both institutions are MLTs and are authorized by law to engage in medium- and long-term lending. There are approximately 40 to 50 MLTs in Italy. Most of these institutions were established pursuant to Law 445 of 1952 and they derive their lending authority pursuant to this law. Except in very limited circumstances, only MLTs are authorized to disburse loans of more than 18 months. The government owns shares in many MLTs; 50 percent of IMI is owned by Cassa Depositi, which, in turn, is owned by the Ministry of Treasury. In contrast, Mediocredito Toscano has no direct government ownership.

We verified that all MLTs disburse two separate and distinct forms of medium- and long-term credit: (1) Loans that carry interest rate reductions under specific government programs and (2) commercial loans that are not mandated or funded by government programs. By reviewing all loan contracts for each respondent company, we were able to identify those loan transactions in which the government intervened in the form of interest rate reductions under specific programs (e.g., Decree 902) and those which involved no government intervention. At each company, we confirmed that a loan contract pursuant to a government loan program always identifies the loan program and, if relevant, contains provisions which prescribe the interest rate reduction, such as the reduction available under Decree 902 which is calculated as a certain percentage of the reference rate (see discussion of "Interest Rate Reductions under Decree 902 of 1976" in section II.A. above). We found no evidence that those loans, for which the loan contracts specify no government program, are disbursed on any basis other than a commercial one.

As we stated in the *Final Negative Countervailing Duty Determination*:

Carbon Steel Wire Rod from Singapore (53 FR 16304, May 6, 1988).

"[G]overnment ownership or control of a bank does not necessarily lead to the conclusion that the bank is operating in other than a commercial fashion." Based on information obtained during verification, we confirmed that agencies of the GOI own shares, at varying proportions, in many deposit banks which lend short-term, and in MLTs. All MLTs, whether government-owned in part or not, act on behalf of the government in disbursing loans with interest rate reductions under specific government programs. The bulk of their lending, however, involves no government intervention.

We examined the commercial nature of MLT lending that is not tied to government-funded programs by comparing interest rates on loans disbursed by one MLT, IMI, that has significant government ownership and those disbursed by another, Mediocredito Toscano, that has no government ownership. We found that, for loans disbursed simultaneously and on comparable terms, the interest rates were also comparable. Accordingly, we determine that medium- and long-term lending by MLTs, in which the GOI has direct or indirect ownership, that involves no government program does not confer countervailable subsidies on manufacturers, producers and exporters in Italy of certain granite products.

D. Interest Contributions Under the Sabatini Law

Although not alleged by the petitioner, we investigated this program because the company questionnaire responses indicated that several firms benefitted under the Sabatini Law during the review period. In our preliminary determination, we stated that we needed additional information in order to determine whether this program confers subsidies on the manufacture, production or exportation of certain granite products from Italy.

The Sabatini Law was enacted in 1965 to encourage the sale of machine tools and production machinery. It provides for deferred payment of up to five years on installment contracts for the purchase of such equipment and for a one-time, lump sum contribution from Mediocredito Centrale (MC), the administering agency, toward the interest owned by the buyer of such equipment on the installment contracts.

Under the Sabatini Law, a buyer of machine tools issues promissory notes to the seller, with deferred payment of up to five years. The seller then discounts the notes payable at a MLT. The MLT decides whether to make

application to MC for Sabatini Law benefits for the financing. If it applies, and if MC approves, the interest contribution is paid in one lump sum by MC either to the MLT, or to the seller, which in turn passes the contribution on to the buyer. The buyer then pays the MLT on the notes according to schedule, including all the charges and fees required by the institution.

The contribution is calculated as the present value of the difference between the stream of payments, over the term of all notes, using a market discount rate (the "reference rate") and the stream of payments using a beneficial discount rate (calculated as a certain percentage of the reference rate). The benefit associated with the lower discount rate is passed on to the buyer as a lump sum interest contribution for its obligations on the promissory notes. The discount transaction between the seller and the MLT for the notes remains a commercial operation, because the actual discount rate is a market rate.

Benefits under the Sabatini Law are available to companies throughout Italy at varying levels depending upon company location. The benefit is calculated using a discount rate equal to 35 percent of the reference rate for purchases of machines to be used in production units in southern Italy and a discount rate of 45 percent of the reference rate for purchases of machines to be used in production units in the remaining areas of Italy. The MC contribution accounts for the balance of the reference rate. During verification we found that the respondent companies received Sabatini Law contributions equal to the minimum level of benefit (i.e., a discount rate of 45 percent of the reference rate).

The text of the Sabatini Law specifies no limitation regarding beneficiaries; all companies are eligible. Article One establishes a minimum machinery cost that now stands at L. 1,000,000. The text of the Sabatini Law does not limit eligibility based on regional location.

During verification, we reviewed documentation relating to the availability and use of Sabatini benefits throughout Italy. We verified that between 14 and 16 industrial groups covering all spheres of manufacturing received Sabatini Law benefits in each of the years from 1982 through 1986. These industrial groupings were as follows: Mining; food; textiles and clothing; skins, leather and shoes; wood and furniture; metallurgy; mechanics; non-metallic minerals; chemicals and artificial fibers; paper and cardboard; other manufacturing; agriculture and livestock; building construction and plant installation; trade; transportation

and communication; and other services. We also verified that non-metallic mineral processing, the industrial group in which granite production falls, received neither a dominant nor a disproportionate share of the Sabatini Law benefits in any of these years.

Because the manufacturers, producers and exporters in Italy of certain granite products received only the minimum benefit under the Sabatini Law, and because we verified that Sabatini Law benefits are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that the minimum level benefits received by the respondent companies under the Sabatini Law are not countervailable.

E. IVA Deductions

This program was not alleged by petitioner but was discovered in reviewing the financial statements of the respondent companies. Under Article 15 of Law 130, companies operating in Italy were granted a six percent credit on the balance of their value-added tax, the "imposta sul valore aggiunto" (IVA), for purchases of depreciable assets ordered between April 26 and December 31, 1983, and delivered before December 31, 1984. For purchases ordered or delivered after these dates, credits in the same amount were allowed only for purchases approved under Law 696 (see section II.B. of this notice). The last application date for credits under Article 15 of Law 130 was the year-end IVA return for 1984, due on March 5, 1985, while the last application date for credits under Law 696 was the year-end IVA return for 1986, due on March 5, 1987. We verified that, since the termination of these laws, there has been no renewal of the six percent credit. However, because credits could be carried forward or received as future cash payments a year or more after filing the return, we were unable to verify that qualifying companies would no longer receive lagged benefits.

Article 15 states that qualifying companies must operate in an industrial category listed under Groups IV through XIV of a ministerial decree of October 29, 1974. Groups IV through XIV include the following manufacturing and artisan activities: extraction of metallic and non-metallic minerals; food processing; wood processing; mechanical and metallurgical manufacturing; non-metallic mineral processing, which includes granite processing; chemical manufacturing; pulp and paper manufacturing; skins and leather processing; textiles and garment manufacturing; and rubber, resins and plastics manufacturing. If a company's

activities fell under one of these categories and it purchased depreciable assets, other than real estate, it could claim the deduction automatically in its IVA returns.

We verified that the credit is applied for simply by entering the proper amount in a year-end IVA return. There is no formal approval process. Rejections occur only if a tax audit reveals that a firm's activities fall outside Groups IV through XIV.

Because a six percent credit under Article 15 of Law 130 and under Law 696 was available to virtually all Italian manufacturing firms for depreciable assets related to manufacturing, and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not countervailable.

F. Income Tax Programs

The following programs were not alleged by petitioner but were discovered in reviewing the financial statements submitted by the respondent companies.

1. Reinvestment Fund Under Article 54 of DPR 597/73

Italian firms are permitted to claim a tax exemption for any capital gains earned on the sale of fixed assets, provided that the gains are reinvested in capital assets. Article 54 of Presidential Decree (DPR) 597/73 states that firms must establish a special liability fund for capital gains, and reinvest these tax-exempt gains in depreciable assets in the second fiscal year following the one in which the gains were realized.

We verified that this provision of Italian tax law is available to all entities in Italy, regardless of geographic location or type of industry. Receipt of this exemption is only contingent upon a company's subsequent use of the gains for reinvestment in capital assets. Because benefits under Article 54 of (DPR) 597/73 are available to all Italian firms and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we determine that this provision is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not countervailable.

2. Accelerated Depreciation

Article 68 of DPR 597/73 sets forth rules governing the depreciation of

assets under Italian tax law. The normal deductible depreciation of a company's assets is dependent upon the asset's classification in the Italian government's depreciation schedule. In addition, accelerated depreciation of an extra 15 percent above the normal rate can be claimed for the first three years after the asset is acquired.

We verified that normal rates of depreciation under Article 68 of DPR 597/73 are based on the useful lives of assets in individual industries and that the accelerated rate is available to all Italian firms regardless of geographic location or type of industry. On this basis, and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not countervailable.

3. Revaluation of Assets under Law 72 of 1983 and Law 576 of 1975

The Italian government allowed all companies to revalue assets in 1975 and again in 1983 to reflect market value rather than book value. The revaluations were necessary to account for periods of high inflation which preceded these years. Because we verified that all Italian firms, regardless of geographic location or type of industry, were permitted to revalue assets, and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we determine that these revaluations were not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, are not countervailable.

4. Contributions Under Article 55 of DPR 597/73

Article 55 of DPR 597/73, relating to "contingent assets," authorizes Italian companies to establish a reserve fund which postpones the payment of taxes on certain monies received by a company until such funds are distributed as profits to that company's shareholders. Funds received from the government in the form of a reimbursement, for example, would be included on the asset side of a company's balance sheet. Article 55 permits the company to shield temporarily such revenues from taxation by establishing an offsetting reserve fund on the debit side of its balance sheet, such that the money held on reserve becomes taxable only when distributed as profits.

Because we verified that Article 55 applies to all taxpayers regardless of geographic location or type of industry and because we have no evidence that the GOI exercises discretion through an application and approval process in administering the program, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not countervailable.

III. Programs Determined Not To Be Used

We determine, based on verified information, that manufacturers, producers or exporters in Italy of certain granite products did not apply for, claim, or receive benefits during the review period for exports of certain granite products to the United States under the following programs:

A. Rebates of Indirect Taxes Under Law 639

Italian Law 639 authorizes the rebate of customs duties and certain indirect taxes upon the export of products containing certain raw materials. We verified that the respondent companies were not eligible for and did not receive benefits under this program because it is available only to mechanical industries.

B. Export Credit Financing

Under Italian Law 227, a medium-term export credit line is available to foreign purchasers that import Italian goods and services. Administered by Mediocredito Centrale, this program applies only to export credits of greater than 18 months. We verified that none of the respondent companies, nor their U.S. importers, had outstanding credit lines under this program during the review period.

C. Mezzogiorno Regional Assistance Programs

Accordingly to the responses, companies with facilities located in the mezzogiorno region of Italy are eligible for certain government programs aimed at the economic development of this region. The programs alleged by the petitioner under this regional development plan are: (1) National corporate tax exemptions; (2) local corporate tax exemptions; (3) capital grants; (4) interest rate reductions; and (5) reductions in social security payments. We verified that the first four programs were not used by the respondent companies during the review period. The last program, reductions in social security payments, is described in section I.C. of this notice.

D. European Investment Bank (EIB) Lending

The EIB is a European Community (EC) financial institution which offers loans to designated depressed areas of EC member states. EIB loans were found to be countervailable in our 1982 steel cases after specific allegations from the petitioners involved and a full-length investigation of their countervailability. See *Carbon Steel Products from Belgium*, 47 FR 39304, 39929 (September 7, 1982).

In the present investigation, the petitioner did not allege any EC programs in its petition. We first found references to loans denominated in ECUs, some involving the "BEL," in company financial statements submitted as part of the responses to our initial questionnaire. We requested information on these loans in a supplemental questionnaire; however, the respondent companies stated that these loans were not from any EC-related entity, nor were they provided or mandated by any government program. As we normally do for purposes of preliminary determinations, we took these statements at face value. At no time did petitioner come in with a formal allegation against EC programs.

During our verification of company responses in late April, we examined all loan contracts entered into by these companies and discovered that several loans, although disbursed through Italian MLTs, were funded by the EIB. Immediately following verification, we reviewed prior countervailing duty determinations involving EC programs, and noted that EIB loans had been determined to be countervailable in the 1982 steel cases. On May 25, 1988, we requested comments on these loans from all interested parties including, for the first time, the Delegation of the Commission of the EC. In a May 27, 1988, letter, the EC Commission pledged its full cooperation in our investigation. We determined that it was appropriate to investigate these loans and, therefore, on June 1, 1988, we forwarded a questionnaire to the EC Commission, the respondent companies and the GOI. We received responses on June 14 and 15. Verification was conducted between June 29 and July 1, and included the EIB and the ECSC (discussed in Section I.B.). We received initial briefs on the EC verification on July 7 and rebuttal briefs on July 8.

By necessity, our investigation of EIB financing has been limited to abbreviated questionnaire and response, verification and briefing periods, covering a total of only five weeks. Due to time constraints, we were unable to

take full advantage of our standard investigative procedures, which normally allow ample time for supplemental questionnaires, the thorough analysis of responses and comprehensive, in-depth verifications. In contrast, we were fully able to follow such procedures in our investigation of the program administered by the GOI. For example, we sent an initial questionnaire and four supplemental questionnaires to the GOI and respondent companies between August 1987 and March 1988. We spent weeks analyzing each response before seeking additional information or clarifications. We also spent more than four weeks verifying the GOI and company responses.

Despite the restrictions described above, based on the questionnaire response submitted by the EC and the subsequent verification conducted at the EIB's offices in Luxembourg, we have been able to determine the countervailability of the ECSC interest rebates received by one respondent company (see section I.B., above) and to establish that none of the respondent companies received EIB-sourced loans for firms located in depressed areas of the EC. The loans actually disbursed to the respondent companies through the EIB are funded by resources under the New Community Instrument (NCI) and not by EIB's own resources. The NCI is a pool of funds that is financed directly by the EC Commission.

This is the first countervailing duty investigation in which we have examined NCI loans and, for the reason described above, this initial investigation has been an unusually short one.

The EC Commission has cooperated fully in this investigation, yet had only a fraction of the time available to the other parties to participate in this investigation. Because of the limited time which was available to us, we find that difficult questions remain concerning both the linkage between NCI loans and the EIB's regular lending and the EIB decision-making process in granting global loans to intermediary banking institutions in member states. Without the benefit of having more information on the record, particularly with respect to a program that we are examining for the first time, the only way we are examining for the first time, the only way we could make a determination as to the countervailability of this program would be by resorting to the best information available.

We have calculated benefits under the NCI program and found that the benefits

received by the respondent companies are *de minimis*. Furthermore, no company's subsidy rate would rise above *de minimis* were we to find this program countervailable and add *ad valorem* rates for this program to rates for the other programs. Therefore, due to the unique circumstances surrounding our investigation of the NCI program, we have decided to reserve judgment on the countervailability of this program until some future investigation allows us sufficient time and opportunity to examine the program in greater depth.

IV. Program Determined Not to Exist

We determine, based on verified information, that the following program does not exist. This program was described in *Certain Granite*:

Loans Under Law 908

During verification we found no evidence of the existence of Law 908 which was alleged to have provided subsidized loans at below market rates for certain industrial projects in northern and central Italy.

Interested Party Comment

Comment 1: Petitioner supports our preliminary determination that Decree 902 benefits are countervailable, based upon regional differences in interest rate, loan amount, repayment terms, and type of project eligible. Petitioner argues that there is no minimum benefit available to all companies in Italy under Decree 902, because a company in the Mezzogiorno is not eligible for the minimum Decree 902 benefit provided to companies in northern and central Italy. Petitioner contends that, where benefits vary from region to region, such benefits constitute regional subsidies, quoting *Groundfish from Canada* at 10045, "[d]espite the fact that the criteria for assignment to a tier [of benefits] may be neutral, the program nevertheless authorizes benefits to vary from tier to tier, and thus, from region to region." Petitioner further contends that it is immaterial that Decree 902 funds were provided to a wide range of industries, given the regional nature of the program.

Respondent companies and the GOI argue that the minimum Decree 902 benefit is available to all small- and medium-sized businesses in Italy and, therefore, does not constitute a countervailable regional subsidy. Respondents further argue that limitation to small- and medium-sized businesses does not render Decree 902 benefits countervailable. They cite the Department's *Final Affirmative Countervailing Duty Determination: Forged Undercarriage Components from*

Italy (48 FR 52111, 52116, November 16, 1983) (*Forged Undercarriage Components*), where the Department determined that a benefit that was generally available to small- and medium-sized companies in Italy pursuant to a program similar to Decree 902 was not countervailable.

Respondents argue that the Department distinguishes between special benefits provided to particular regions and any minimum benefit available to all companies in determining whether a program confers a preferential regional benefit, quantifying the amount of the preference by comparing the special benefits to the minimum benefit. Respondents contend that the benefit is countervailable only if the company's benefit exceeds the benchmark (*i.e.*, the minimum benefit), citing the Department's final determination in *Groundfish from Canada*, *supra*, at 10045.

DOC Position: A program is determined to be regional and, therefore, limited only when its funding is authorized by the central government to benefit only certain regions within its jurisdiction. In this investigation, we verified that Decree 902 provides varying levels of benefits, depending upon regional location, but that any small- and medium-sized business in Italy can receive at least the minimum Decree 902 benefit, regardless of location. We also verified that the respondent companies which received benefits under Decree 902 received only the minimum benefit.

Both petitioner and respondents cite *Groundfish from Canada*, in support of opposing arguments on this issue. In *Groundfish from Canada*, we found countervailable the IRDP program, which provided varying levels, or "tiers," of benefits to companies depending upon regional location. We determined the benefit under the IRDP program by taking the difference between the level of assistance actually provided to the companies under investigation and the level of assistance provided to companies located in areas eligible only for the minimum, or Tier I, benefit. We found countervailable only that portion of a company's benefit which exceeded the minimum-level benefit.

Applying the *Groundfish from Canada*, analysis to this case, the "benchmark" for determining whether the respondent companies received a countervailable subsidy would be the minimum benefit available under Decree 902. Because the respondent companies in question received only the minimum, or benchmark, Decree 902 benefit, there is no countervailable subsidy provided

under this program to the producers of certain granite products from Italy.

Comment 2: Respondent companies argue that Zilio Graniti S.p.A., a company related to Savema S.p.A. (Savema), has never received any benefits under Decree 902. Respondents contend that the "Zilio Graniti" identified by the Department during verification as having received a loan under Decree 902 is not the Savema-related Zilio Graniti S.p.A., but rather is an unrelated company, Remo Zilio Graniti & Marmi S.r.l.

Respondent companies also argue that the purchase of Furrer stock by Henraux in 1986 eliminated any possible benefit from the Decree 902 loan granted to Furrer. Any countervailable subsidy conferred by the loan "flowed through" to Furrer shareholders at the time of the purchase and, therefore, would no longer benefit Furrer.

DOC Position: We have found the minimum level of benefits under the Decree 902 program to be not countervailable and that the respondent companies received the minimum level. Therefore, the issue of an individual company's receipt of benefits under Decree 902 is moot.

Comment 3: Petitioner contends that, due to the direct financial involvement and control by the GOI in Mediocredito Centrale, IMI and regional credit institutions, all medium- and long-term loans granted by such credit institutions to respondent companies should be considered to confer countervailable subsidies where the terms and conditions are inconsistent with commercial considerations. Petitioner further contends that granite producers which were not reasonable commercial credit risks have been able to borrow from these institutions and that such borrowings amount to direct subsidization by the Italian government.

DOC Position: We disagree. Government ownership or control of a credit institution does not necessarily lead to the conclusion that the credit institution is operating in other than a commercial fashion, nor does it mean that the funds provided are part of a countervailable program. The fact that a credit institution is government-owned does not automatically make its loans preferential and countervailable. During verification, we reviewed all loan contracts for each company and identified the loan transactions which are given under government-mandated (GOI or EC) programs. We found no evidence that those that did not specify a government program were disbursed on a non-commercial basis.

Comment 4: Petitioner argues that the Italian respondent companies are

uncreditworthy and, as such, any countervailable loans should be analyzed in accordance with the methodology for uncreditworthy companies set forth in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 28, 1984).

Respondent companies assert that they are not uncreditworthy. Respondents argue that petitioner's uncreditworthiness allegation, filed immediately prior to verification and just two months before the final determination was both untimely and inadequate. In support of this argument, respondents cite previous determinations in which the Department dismissed such allegations on the basis of their untimeliness: *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, 5800, February 26, 1987) and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime from Mexico* (49 FR 35672, 35677, September 11, 1984).

DOC Position: We agree that the petitioner's uncreditworthiness allegation was untimely and, therefore, we did not consider this allegation in this investigation. A creditworthiness determination requires a complex analysis of a company's present and past financial health, as reflected in its financial statements and accounts, its ability to meet obligations with its cash flow, and projections of future profitability based on market studies, country and industry economic forecasts, and project and loan appraisals. Not only the verification, but the entire investigation must be structured to accommodate this analysis. Petitioner had access to respondents' financial statements as of October 1987. Using those financial statements as a basis, they alleged uncreditworthiness on April 1, 1988, two days before our departure for verification, and approximately two months before our scheduled final determination.

Comment 5: Petitioner contends that the average long-term interest rates provided by the GOI should not be used as benchmarks in any long-term loan calculation because the rates include other than commercial long-term lending rates. Petitioner adds that short-term benchmark information provided by the GOI is also insufficiently supported, and that both the long- and short-term

interest rates wrongly include rates on public sector financing.

Respondent companies argue that we should not exclude public sector financing in calculating a benchmark interest rate for short-term loans, because government ownership of a company does not mean that the company is subsidized. Therefore, they argue that such financing should be included in our benchmark, absent verified information that it is not given on commercial terms.

DOC Position: Since no respondent company received a countervailable short-term loan, this issue is moot with regard to a short-term benchmark. Since the long-term interest rates provided by the GOI for the stone-processing industries included short-term rates and the GOI could not separate out purely long-term rates, we examined long-term commercial interest rates in Italy published by Morgan Guaranty (World Financial Markets), by the International Monetary Fund, and by the Organization for Economic Cooperation and Development. In each case, the long-term interest rates reported by these organizations were lower than those reported by the GOI. Therefore, we used the rates provided by the GOI in lieu of appropriate company-specific long-term benchmarks for the respondent companies for which we calculated benefits (for sub-loans under the EC's NCI; see Section III.D.).

Comment 6: Petitioner supports the Department's preliminary determination on the countervailability of the program allowing for reductions in social security payments for companies located in the Mezzogiorno.

Respondent companies argue that benefits received by Henraux under this program for employees at storage yards in the Mezzogiorno are not

countervailable, because they do not benefit the production or exportation of the subject merchandise to the United States. Respondent companies contend that the Department confirmed during verification that all granite sold through Henraux's storage yards in the Mezzogiorno is sold to Italian customers, citing the Henraux verification report at pages two and nine. As further support for this argument, respondents cite the Department's *Final Affirmative Countervailing Duty Determination: Porcelain-On-Steel Cooking Ware from Mexico* (51 FR 38447, October 10, 1986) (*Mexican Cooking Ware*), in which the Department concluded that low-interest loans to finance consumer goods manufactured in Mexico did not provide countervailable subsidies because they did not benefit the production or

exportation of the subject merchandise to the United States. They also cite *Industrial Nitrocellulose from France: Final Results of Countervailing Duty Administrative Review* (52 FR 833, 836, January 9, 1987) which states that "benefits tied solely to the domestic sales of a product are not countervailable."

The GOI contends that, in accordance with the Department's policy and practice, reductions in social security payments for firms located in the Mezzogiorno is not a regional subsidy. As in the Department's determination concerning a labor assistance program in its *Final Affirmative Countervailing Duty Determination: Certain Steel Products from the Federal Republic of Germany* (47 FR 39345, September 7, 1982) (*German Steel*), the Mezzogiorno programs are structured to increase overall employment in this historically underdeveloped area—not to target a specific region or industry. Further, the GOI argues that the Department mistakenly has defined the Mezzogiorno as a "region." The Mezzogiorno is not a region, they argue, because it includes more than the geographic south.

DOC Position: We disagree with respondents' assertion that social security payment reductions benefit only domestic sales. In *Mexican Cooking Ware*, we investigated the Fomex frontier program, which finances the production, inventory, purchase and sale of consumer goods manufactured in border zones, as well as consumer products produced elsewhere and sold in border zones. "Border zones" are regions 20 kilometers wide, parallel to the U.S.-Mexican borderline, and certain other "free zones" within Mexico. We verified that the loans under this program were tied by law to sales of products within Mexico.

In the current investigation, social security reductions for companies located in the Mezzogiorno are not tied by law to domestic sales. There is no requirement in the program that benefits go to facilities which carry out domestic sales exclusively. Absent such an absolute link between benefits provided and domestic sales carried out, we cannot determine that no benefits are conferred on the production or export of granite destined for the United States. All sales may benefit equally from the social security reductions. Nothing prohibits a company from exporting granite from its facilities in the Mezzogiorno for which the social security reductions have been provided.

A program is determined to be regional and, therefore, limited when its funding is authorized by the central government to benefit only certain

regions within its jurisdiction. In *German Steel*, we found that certain labor assistance programs were part of a national policy to relieve unemployment and were not limited to specific regions. Although the Mezzogiorno may include more than the geographic south, as the GOI argues, it is still a "region" for our purposes. It is a legally recognized area within Italy, which has been designated to receive certain special benefits not available elsewhere. Thus, we have determined the program providing social security payment reductions for companies located in the Mezzogiorno to be countervailable.

Comment 7: Respondent companies and the GOI contend that the Department should not have broadened its investigation from seven to seventeen companies merely because the original seven companies and their related companies each requested exclusion from any countervailing duty order that might be issued. Respondent companies argue that by requesting exclusion, the original seven did not "set themselves on a separate investigative track." Therefore, they contend that the Department should terminate its investigation with respect to the ten additional companies.

Respondents further argue that nothing in the Department's regulations or in the countervailing duty law suggests that a distinction should be made between companies requesting exclusion and other companies. They argue that section 355.38 of the regulations provides only for exclusion from a countervailing duty order, not from an investigation. Therefore, respondents contend that, until an order is issued (if ever), the Department should conduct the investigation in the same manner as it would if no exclusions had been requested.

Furthermore, respondent companies and the GOI contend that the Department had presumably deemed the original seven companies as representative, in that the Department only issued its initial questionnaire to those seven companies. They assert that the representativeness of the original seven companies, based on 1986 export statistics, is an objective characteristic which cannot be changed by the legal actions taken by the companies after the commencement of the investigation. As support for these assertions, respondents cite *Fabricas el Carmen, S.A. v. United States*, 672 F. Supp. 1485, 1479 (Ct. Int'l Trade 1987), remand order vacated as moot, 680 F. Supp. 1577 (1988) (*Fabricas*), for the proposition that Commerce erred in excluding those

companies that had filed timely exclusion requests from its "representative" sample of the investigated industry used to calculate the country-wide countervailing duty rate.

Petitioner asserts that the Department's regulations permit an investigation of all producers of the subject merchandise, without limitation, that the Department has discretion to decide how many companies to investigate, and that the Department's regulations make no provision for terminating the investigation of companies after they have been included in the investigation.

DOC Position: Petitioner correctly states that the Department's regulations permit an investigation of all producers of the subject merchandise, without limitation, and that the Department has discretion to decide how many companies to investigate. While our preference is to examine all manufacturers, producers and exporters of the subject merchandise in each investigation, this may not be administratively feasible when there are numerous potential respondents. In such circumstances, we collect either aggregate data on the industry as a whole, if this is feasible and verifiable, or we select a representative group upon which to base our determinations.

We initially requested the GOI to identify the largest manufacturers and exporters accounting for 80 percent of exports of the subject merchandise to the United States and to forward copies of the questionnaire to them. Once identified, these companies requested exclusion. As discussed in our preliminary determination, it is our policy to select additional companies when companies in our original group request exclusion. The court in *Fabricas* addressed the issue of how we calculate country-wide rates; it did not suggest how we should structure our investigation to cover as large a group of producers as we find appropriate and administratively feasible to investigate. In this investigation, we determined it was necessary to examine a broader representation of companies which petitioner alleged received countervailable benefits.

Comment 8: Petitioner argues that only companies which both produce and export granite should be excluded from any countervailing duty order that may be issued. Because exporters can easily ship granite products produced by another, subsidized firm, the inclusion of exporters which do not produce granite is the only way to ensure that countervailing duties are levied on all subsidized granite imports.

Respondents argue that the Department should exclude from any countervailing duty order all companies that have filed timely requests for exclusion that are either producers or exporters of the subject merchandise. Respondents cite the Department's regulations, section 355.38: "[o]ny firm which does not benefit from a subsidy alleged or found to have been granted to other firms producing or exporting the merchandise subject to the investigation shall, on timely application therefor, be duly excluded from a Countervailing Duty Order", 19 CFR 355.38 (1987) (emphasis added).

DOC Position: Because our final determination is negative, this issue is moot.

Comment 9: Petitioner argues that depreciation under Article 68 of DPR 597/73 provides benefits (i.e., higher depreciation rates) for specific industries and, therefore, is countervailable. Because Italy's depreciation schedule classifications are industry specific rather than asset specific, and because rates vary across industries, petitioner argues that this tax provision should be determined to be countervailable. Petitioner further argues that the Department was unable to verify that a wide variety of industries used all of the tax programs. Respondent companies and the GOI argue that Italian tax law provisions concerning accelerated depreciation, revaluation of fixed assets, and capital gains reinvestment provide no countervailable benefit because they apply generally to all enterprises in Italy. In support of this contention, respondents cite *Bethlehem Steel Corp. v. United States*, 7 CIT 339, 590 F. Supp. 1237, 1245 (Ct. Int'l Trade 1984) ("laws of taxation are not subsidies to the taxpayer . . . when they present equal opportunities to reduce the exaction"); and *Carlisle Tire & Rubber Co. v. United States*, 5 CIT 229, 564 F. Supp. 834, 839 (Ct. Int'l Trade 1983) (*Carlisle*) (accelerated depreciation programs that were generally available to entire business community in investigated country were not countervailable benefits).

DOC Position: We verified that all the income tax programs under investigation are available to all Italian firms and that IVA deductions are available to Italian firms in virtually all industries. Furthermore, we established at verification that these provisions are widely used and, therefore, have found them to be not countervailable, including accelerated depreciation under Article 68 of DPR 597/73. By their nature, depreciation rates vary by both industry and by asset because the useful

lives of assets differ among industries and among types of assets. See, for example, the Class Life Asset Depreciation Range System (Rev. Proc. 77-10, 1977-1 C.B. 548 (RR-38)). We found nothing unusual in the Italian depreciation schedules to suggest that they benefit a specific enterprise or industry or group of enterprises or industries.

Comment 10: Petitioner argues that financing under the Sabatini Law is countervailable given that different interest rates are available to different regions in Italy. Furthermore, petitioner argues that a specific group of industries receives these benefits, i.e., companies which use machine tools and production machinery valued at over L. 1,000,000. They contend that the evidence of industry use on the record is insufficient to determine that Sabatini Law financing is not limited. Petitioner contends that we should consider verification of the Sabatini program to be inadequate because the GOI refused to allow the verification team to review documents on the approval process for this program. In addition, petitioner believes that an extra benefit is conferred on Sabatini Law recipients through the stamp and registration tax exemption.

Respondent companies and the GOI argue that verified evidence on the record demonstrates that benefits under the Sabatini Law are available to all Italian enterprises and that they do not benefit an individual industry or group of industries or a particular geographic region of Italy. Respondents argue that benefits under a program are not countervailable simply because minimum eligibility criteria exist, such as the Sabatini Law requirement that equipment purchases be valued in excess of L. 1,000,000. In support of this argument they cite *PPG Industries, Inc. v. United States*, 662 F. Supp. 258, 266 (CIT 1987) ("the mere fact that a program contains certain eligibility requirements for participation does not transform the program into one which has provided a countervailable benefit") and *Carlisle, supra*, at 836 note 3 (certain tax benefits are not countervailable simply because not every company could meet the specified eligibility criteria).

DOC Position: During this investigation, we reviewed both the laws and regulations governing various Italian programs as well as the actual availability and receipt of benefits under such programs. In each instance, we made a factual determination as to whether benefits were conferred in such a manner as to be properly considered

limited to a specific industry or group of industries.

We verified that companies throughout Italy are eligible for Sabatini benefits, although at varying levels. We also verified that the respondent companies which received Sabatini benefits received the minimum benefit. See section II.D. and DOC Position on Comment 1. Eligibility for Sabatini benefits is based on objective and precise criteria specified in the law and amending decrees, and we verified that each company which used this program qualified and was approved for Sabatini Benefits based on these criteria. We saw no evidence that the GOI exercises discretion or deviates from these criteria in granting Sabatini benefits. Furthermore, we verified that thousands of companies in virtually every sector have received Sabatini benefits.

The stamp and registration tax exemption applies to all companies that qualify under the Sabatini Law. We have determined that the minimum Sabatini benefit is not countervailable because it is not limited to a specific enterprise or industry, or group of enterprises or industries. The same holds true for the stamp and registration tax exemptions provided for under the Sabatini Law.

Comment 11: Petitioner argues that contributions for the purchase of electronic equipment granted under Law 696 are countervailable due to the Department's findings at verification that this program targeted manufacturing and mining. Petitioner asserts that, while it appears that a large number of industrial groups have benefitted from Law 696, there likely were many more companies deemed ineligible to receive benefits. Finally, petitioner argues that the Department should find the program countervailable because we received information during verification that Law 696 was terminated due to EC objections that Italy was "engaged in subsidization."

Respondent companies and the GOI argue that verified evidence on the record demonstrates that benefits under Law 696 are available to all Italian enterprises and that such benefits do not benefit an individual industry or group of industries or a particular geographic region of Italy. Furthermore, respondents argue that the fact that Law 696 benefits are limited to certain small- and medium-sized companies does not make the benefit countervailable, citing *Forged Undercarriage Components*, *supra*.

DOC Position: At verification, we confirmed that benefits under Law 696 are available to all small- and medium-sized companies in Italy that purchased

qualifying electronic equipment. We also examined the application and review process carried out by the Ministry of Industry and Commerce and observed that the approval and rejection of applications was based solely upon criteria set forth in the law (*i.e.*, that the company must be a small- or medium-sized enterprise and that it must actually purchase a piece of electronic equipment). Therefore, we found no governmental discretion outside the law in the administration of the Law 696 program. Finally, a determination by the EC that a program of an EC member state is (or is not) a subsidy is not pertinent to the Department's independent determination as to whether the same program constitutes a countervailable benefit within the meaning of the Act.

Comment 12: Respondents argue that if benefits under the Sabatini Law, Law 696, and Law 130 are found to be countervailable, such benefits should be allocated according to the Department's grant methodology, because they are all provided in the form of lump sum payments. According to respondents, such benefits should be allocated over the average useful life of the assets used to produce the subject merchandise, as set forth in the U.S. Internal Revenue Service 1977 Class Life Asset Depreciation Range System (Rev. 77-10, 1977-1 C.B. 548), or over ten years for assets used in the production of granite.

Respondent companies argue that to the extent the Department finds countervailable the benefits provided under Law 696, Law 130, Law 614, or Decree 902 (with respect to northern and central Italy), the countervailing duty rate set in the final determination must take into account the fact that benefits under these programs have been discontinued. Respondents cite *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia* (53 FR 13303, 13307, April 22, 1988), *Certain Textile Mill Products from Mexico: Final Results of Countervailing Duty Administrative Review* (52 FR 45010, 45012, November 25, 1987), and *Final Affirmative Countervailing Duty Determination: Acetylsalicylic Acid (Aspirin) from Turkey* (52 FR 24494, 24498, July 1, 1987), in support of this argument.

DOC Position: We have determined that the minimum level of benefits received by the producers of certain granite products under Law 902, Sabatini Law, Law 696 and Law 130 are not countervailable. Therefore, these issues are moot. Since the benefit under Law 614 is *de minimis*, the question of

issuing a separate duty deposit rate is also moot.

Comment 13: Petitioner contends that the provision of preferential transportation rates under Law 887 is countervailable because it provides a preferential benefit to a specific group of enterprises or industries. Petitioner bases this contention on the following conclusions: (1) The preferential transportation rates constitute a regional program applicable only to shipments from the Italian islands to the Italian mainland, and (2) the program is also industry-specific, providing lower rates only for shipments of raw mineral substances.

Respondent companies and the GOI argue that, because the reduced rail rates provided by the Italian State Railway are available to any consumer of minerals transported by rail from the Italian islands to the Italian mainland, these rates do not constitute countervailable benefits. They further assert that the industries which consume the minerals that benefit from reduced rail rates are numerous and diverse. In addition to the Italian stone industry, they cite industries that consume Sardinian coal (*i.e.*, steel, glass, textile, chemical, and electrical utilities) as examples of eligible beneficiaries of reduced rates. Respondent cite the *Final Negative Countervailing Duty Determination: Certain Softwood Products from Canada* (48 FR 24150, 24167 (May 31, 1983)) as support for this argument, based on the "legal principle" articulated in that case that a benefit is not countervailable if it is available to numerous and diverse industries.

Respondent companies also argue that the reduced rail rates do not confer a countervailable regional subsidy. They state that the only regional element to the reduced rail rates involves the raw mineral producers and not the consumers. Therefore, they argue that any regional benefit that may be provided goes only to the mineral producers (granite quarriers) and not to granite producers subject to this investigation.

Respondents further point out that reduced rail rates are paid or bestowed on granite blocks. They argue that, at most, granite producers may receive an upstream subsidy from this benefit on granite blocks, which are inputs used in the manufacture or production of the subject merchandise. They assert that any benefit related to these blocks would have to be analyzed under the upstream subsidy provision of the countervailing duty law, which requires an allegation of upstream subsidization by the petitioner.

DOC Position: Information submitted to us by the GOI prior to and during verification gave no indication that any respondent company actually received rail transportation benefits under Law 887 during the review period. Consequently, we did not press the GOI for extensive data regarding actual use of this program by Italian industrial groups. At verification, GOI representatives specified four raw mineral substances which qualify for the 30 percent rail reduction under Law 887: Oil, clay, marble and granite. The Department received no documented information from the GOI beyond this list of four substances during the course of this investigation. We therefore determine that reduced rail rates under Law 887 are limited to a specific enterprise or industry, or group of enterprises or industries. See discussion under Section I.A.

Furthermore, we disagree with respondents' argument that transportation benefits for granite blocks must be analyzed in the upstream subsidies context. The benefits discovered during company verification clearly were bestowed upon the respondent companies and not upon upstream input suppliers. Through examination of rail invoices, it was apparent that these companies paid for the transport of the granite blocks and, as such, directly benefitted from the reduced rate for rail transportation from the Italian islands.

Comment 14: Respondent companies argue that if reduced rail rates constitute countervailable benefits, the appropriate methodology is to calculate a benefit based on the difference between (1) the cost of commercially available transport alternatives (*e.g.*, trucking costs) and (2) the price that respondents actually paid as a result of reduced rates. They argue further that the benefit should be allocated over the combined sales of granite, travertine and marble sales, because reduced rates are available for shipment of all minerals from the Italian islands to the mainland.

DOC Position: We disagree. The benefit is the difference between what the company would have paid absent the 30 percent rail rate reduction and what it actually paid given the 30 percent reduction. Furthermore, verified information shows that the respondent companies benefitted from reduced rail rates for transport of granite blocks only. We therefore allocated the benefit solely over the total granite sales of the companies in question.

Comment 15: Petitioner agrees with the Department's preliminary finding that Law 614 local tax concessions are countervailable due to their regional

nature, but disagrees with the calculation methodology. Petitioner argues that the *ad valorem* rate for Law 614 benefits should not take into account the effect of the local tax (ILOR) reduction on the national corporate (IRPEG) tax liability. They argue that this approach is akin to the granting of an offset against the countervailable local tax subsidy by reason of the increase in national corporate taxes paid. They contend that such an offset is not in accordance with section 771(6)(b) of the Act, which places limitations on allowable offsets. Instead, petitioner argues that the entire amount of the local tax concession by itself should be measured in the year received.

Petitioner also argues that "it is the Department's policy to disregard secondary tax effects on countervailable subsidies," citing *Groundfish from Canada*, *supra*, and argues that the ILOR tax is a national, not a local tax.

Respondents state that they are in agreement with the Department's calculation in the preliminary determination of the Law 614 benefit to Granitex, taking into consideration the net impact of the benefit on the company's total corporate income tax liability. They state that the so-called local ILOR tax is not comparable to the state income taxes existing in the United States. They assert that ILOR and IRPEG are merely two elements of a single unified income tax established by the national Italian government.

DOC Position: We agree with the assessment of respondents that the ILOR tax is a local tax in name only. ILOR is imposed by the national government and calculated, as is IRPEG, in the national tax return. The tax incidence at issue in *Groundfish from Canada* was highly speculative; it involved a future and uncertain effect that was not simultaneously nor directly calculable from the tax benefit in question. In contrast, IRPEG liability bears a simple relationship to ILOR liability and, in fact, cannot be calculated until ILOR liability is calculated. Therefore, we have calculated the benefit under Law 614 based on the company's total corporate income tax liability, including both ILOR and IRPEG. As such, our calculation takes into account the primary, and not the secondary, tax effects of the program. The offset issue is not relevant in this situation.

Comment 16: Petitioner submits that the export statistics provided by the GOI are unreliable and should not be used as part of the calculations for any program found to be countervailable. Because not all exporters of granite to the United States were investigated,

petitioner further argues that only the sales figures of the companies under investigation may be used in determining the *ad valorem* benefit under specific programs.

DOC Position: Because no export programs have been found to be countervailable, we have not used export statistics in any of our calculations. In performing our calculations to determine the *ad valorem* benefit under specific domestic programs, we have used only the relevant sales values of the companies under investigation.

Comment 17: Respondents argue that the Department must base calculations of any countervailing duty rate in this investigation on sales of all respondents, not just on sales of those that did not request exclusion. They contend that the Department's general policy is to calculate a single, country-wide countervailing duty rate, as provided for under section 706(a)(2) of the Act, which states that a countervailing duty order presumptively applies to all of the subject merchandise exported from the country under investigation. They contend that neither the statute nor the existing or proposed regulations require that the Department remove from its calculation of a country-wide countervailing duty rate the sales revenues of the companies which requested exclusion.

Respondents also cite *Fabricas*, *supra*, in support of this assertion. They argue that the facts of *Fabricas* are similar to this investigation, with both cases involving hundreds of companies from which a small representative group was selected on which to base the investigation. In *Fabricas*, the Court of International Trade (CIT) held that it was unreasonable for the Department to exclude certain investigated companies, which did not receive greater than *de minimis* benefits, from the sample upon which a representative country-wide rate might be based.

DOC Position: It is our practice to calculate a country-wide rate which is a weighted-average rate for all companies whose individual rates are neither *de minimis* nor significantly different from the rates of other companies. In this investigation, no respondent company's individual rate is above *de minimis*. Therefore, we have not calculated country-wide rates for those programs determined to be countervailable.

Comment 18: Respondents state that the only exceptions to the statutory presumption in favor of calculating a country-wide rate are: (1) If the Department finds that a "significant differential" exists between the

subsidies received by the respondent companies, or (2) if one or more of the companies is a state-owned enterprise. Respondent asserts that none of the respondent companies in this investigation is owned by the state. They argue that any potential countervailable subsidies in this investigation are "minuscule" and that, therefore, it is inconceivable that any significant differential might exist in this investigation. Respondents further argue that, even if the weighted-average subsidy for all respondents under investigation were five percent, and the individual company subsidy amounts were to range from zero to ten percent, the Department lacks the authority to calculate more than one countervailing duty rate that would apply to the subject merchandise, as it would be illogical and unfair to calculate a single, country-wide rate based only on data for the subsidized companies but that would apply to all non-excluded companies, including unsubsidized companies.

DOC Position: See DOC Position on Comment 17.

Comment 18: Petitioner points out a number of problems with, or inaccuracies in, the GOI exclusion certification. Based on these problems, petitioner argues that the Department should not exclude any of the requesting companies from any countervailing duty order that may be issued. Petitioner argues that receipt of countervailable benefits by a company requesting exclusion must lead the Department to reject the GOI exclusion certification. Furthermore, petitioner states that all the companies requesting exclusion received loans from the EIB or ECSC and, therefore, should not be granted exclusion.

Respondents assert that the vast bulk of the information provided to the Department as part of the exclusion certification was confirmed during verification, with only minor exceptions. Therefore, they argue that the exclusion requests should be granted. Respondents further argue that statutory and regulatory authority does not require government certification as a prerequisite to granting exclusion, aside from the proposed and as yet unadopted regulations. Absent specific statutory or regulatory authority, respondents argue that the Department may not impose an additional requirement that a request for exclusion may not be granted absent government certification. Respondents state that even if subsidies have been received by companies requesting exclusion, the aggregate value of any subsidies is *de minimis*. Therefore, the

exclusion requests should still be granted.

DOC Position: See discussion under "Exclusion Requests" section.

Comment 20: Respondents argue that the Department should terminate its investigation of EC-related loan benefits, because the Department did not initiate a countervailing duty investigation specifically against imports of granite from the EC. They contend that the Department may not countervail subsidies received from EC-affiliated organizations in a countervailing duty investigation involving merchandise from a single EC member state (*i.e.*, Italy), asserting that the investigation is limited strictly to benefits provided by the GOI or subdivisions thereof. Respondents further argue that, because the Department calculates a single countervailing duty rate applying to all imports of the subject merchandise from a given country, the Department must limit its investigation to subsidies provided by the country under investigation and its political subdivisions. Otherwise, respondent companies assert that if the Department were to find that certain benefits provided by EC organizations confer countervailable subsidies on producers located in that member state, calculation of the subsidy rate based only on the benefits received by companies located in that member state (as opposed to the EC as a whole) might be distorted.

Petitioner argues that the Department has investigated and countervailed EC programs in several prior cases against specific EC member states, citing the 1982 steel investigations involving Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands, and the United Kingdom; and the 1985 table wine investigations involving France, the Federal Republic of Germany, and Italy. Because the EC is an "association" (within the meaning of 19 U.S.C. 1677(5) and 19 U.S.C. 1303(a)(1)) of member states, one of which is Italy, subsidies to Italy from the association may be countervailed under the law.

DOC Position: It is true that the Department has countervailed EC programs in prior cases against specific EC member states. The most recent example of this is found in our *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers From the Netherlands*, 52 FR 3301 (February 3, 1987) (*Netherlands Flowers*). There, as in previous cases, we examined EC programs alleged by petitioner to provide subsidies to the subject merchandise produced in a

specific member state. While petitioner in the current investigation did not file an allegation of EC subsidies, we discovered the programs during the course of verification and, after soliciting comments from the interested parties, including the EC, we deemed it appropriate to examine these programs.

Section 771(3) of the Tariff Act of 1930, as amended (the Act) 19 U.S.C. 1677(3) (1982) defines the term "country" as: "a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States." (Emphasis added.) The EC is an association of two or more countries as provided for under section 771(3).

The Department's general policy of calculating country-wide rates does not prohibit us from examining EC benefits in this investigation. Nor does it mean that calculation of a subsidy rate based only on benefits received by companies located in a single member state (rather than the EC as a whole) would somehow be distorted. In *Netherlands Flowers*, we found a joint Government of the Netherlands (GON) and EC program, Aids for the Creation of Cooperative Organizations, to be countervailable. We took the benefit from both the EC and the GON to Dutch flower growers and allocated the total over sales of those same flower growers. There is no distortion in a methodology which attributes benefits, whether provided by the national or some other level government, to a specific company or industry in a specific country, and allocates those benefits over the sales of that specific company or industry to arrive at the subsidy rate.

Comment 21: Petitioner asserts that there are three subsidies available under the ECSC loan program: (1) The five percent interest rebate over five years; (2) the five-year grace period on the loans; and (3) the interest rate on the loans. Petitioner therefore contends that the Department must calculate the total subsidy value of the ECSC loan using all three subsidy components.

DOC Position: We agree with petitioner that the five percent interest rebate is countervailable; but, as discussed in Section LB, we disagree that any other aspect of the loans are countervailable with respect to certain granite products.

Comment 22: Petitioner argues that the ECSC conversion loan provided to one of the respondent companies is

countervailable, because such loans target a specific enterprise or industry or group of enterprises or industries. Petitioner alleges that the loans are available only to firms which hire redundant coal and steel workers, and that they are given only in specific areas where there are steel mills or coal mines with redundant workers. Petitioner further alleges that the designation of "priority areas" makes this a countervailable regional subsidy program. Finally, petitioner contends that the program is not used by a wide variety of industries throughout the EC. Petitioner further contends that these loans were found countervailable in *Carbon Steel Products From Belgium* (47 FR 39323) (1982) (*Belgian Steel*) and are not part of an EC-wide unemployment policy.

Respondents argue that the ECSC loan provides no countervailable benefit because the loan (1) was provided as part of an EC-wide policy to relieve unemployment, and (2) was intended to confer a countervailable benefit, the Department should allocate that benefit over the ten-year life of the loan. **DOC Position:** These interest rebates are made only on a portion of the loan and are made as discreet, bi-annual cash payments over the first five years of a ten year loan. Therefore, we are expensing each such payment to the period of receipt, rather than allocating benefits over time. In its accounts, Fratelli Guarda does not credit the rebates to interest payable on the loan. **Comment 24:** Petitioner contends that EIB loans are still countervailable, as determined in *Belgian Steel*, because they are limited to specific "unbalanced" regions in the EC. Petitioner further contends that loans from the EIB's own funds and NCI loans should be treated as two distinct programs by the Department, arguing that they are separate programs even though both are administered by the EIB. As support for this argument, petitioner cites the fact that the EC created a separate fund when it first created the NCI in 1978, instead of just increasing the capitalization of the EIB in order to increase lending. Petitioner contends that the Department has examined programs administered by the same organization or entity and determined that they constitute separate countervailable subsidies. Petitioner cites as examples the General Development Agreements and the Special Recovery Capital Projects programs, *Groundfish from Canada* at 10048-49.

Respondents contend that the countervailability of NCI loans is a matter of first impression for the Department. Respondents further contend that the prior finding on EIB loans in *Belgian Steel* has no precedential value in determining the countervailability of NCI loans. **DOC Position:** Because of our determination discussed in section III.D., we have not reached this issue. **Comment 25:** Petitioner contends that regional location is a criterion for the granting of both EIB and NCI loans, that the loans granted for one region are not "interchangeable" with those granted for another, and that the loans are made at rates inconsistent with commercial considerations. Petitioner further contends that "few different companies actually receive EIB and NCI loans" and that there is no evidence to prove otherwise. In support of this argument, petitioner cites page 12 of the EC verification report, which lists several industries which EC officials state received EIB and NCI loans, but which does not provide a breakdown of companies receiving loans within each industry. For the program to be found not countervailable, there must be evidence on the record to refute petitioner's allegation that the loans are provided to a specific group of industries, and that oral statements by EC officials do not constitute verified evidence. Petitioner contends that "there is no documentary evidence which supports statements made by EC officials," and that "[t]he EC officials' statements seem to have been accepted at face value."

Respondent companies argue that the NCI financing received by certain respondents provides no countervailable benefit because such financing is available (1) to all regions of the EC and Italy, (2) to a broad range of industrial sectors, and (3) on commercial terms specified by the intermediary bank that actually lends the funds to the ultimate borrower.

DOC Position: Although documentation on the record is incomplete due to the previously noted time constraints and unusual circumstances governing this aspect of our investigation, documentary evidence does exist. Among other documentation, we reviewed industry breakdowns published in annual reports and policies and procedures discussed in official publications. For the reasons discussed in Section III.D., we have decided that we should not make a determination on NCI financing based on an incomplete record. **Comment 26:** Respondents contend that all EIB loans are available only for investment projects (*i.e.*, plant

modernization or expansion, or the construction of new production facilities). They further contend that the EIB loan to Giuseppe Furrer (Furrer) provides no countervailable subsidy toward Furrer's granite exports, because Furrer produces only marble.

Petitioner argues that, since Furrer exports granite, its operations and facilities are also involved with granite. Insofar as the company must take possession of the granite at times, such that it is physically present at the plant, and that company officials must process paperwork involved in selling and shipping granite, petitioner argues that the benefit of this loan should be allocated to Furrer's total sales.

DOC Position: Because of our determination discussed in Section III.D, we have not reached this issue.

Comment 27: Petitioner contends that the Department collected "no useful data" during verification regarding ECU-denominated loans whose contracts show no financing from the ECSC or EIB. Absent such verified information, petitioner contends that the Department must determine that these loans are countervailable where they are provided at interest rates and on terms inconsistent with commercial considerations. Petitioner argues that, according to information on the record, the Department found that ECU-denominated loans to the respondent companies are at interest rates inconsistent with commercial considerations.

Respondent companies argue that ECU-denominated loans were provided to several respondent companies entirely on commercial terms from commercial sources and without the involvement of the EIB or other EC-affiliated institutions. Respondents contend that ECUs are simply another type of currency in which Italian companies may borrow. Respondents further contend that EC-related loans to the respondent companies did not confer any countervailable benefit.

DOC Position: When we examine loan contracts and other documentation and see no evidence of government action or presence, we do not conclude that we lack verified information. In this investigation, we are relying upon verified information to find that ECU-denominated loans that were not disbursed through the ECSC or EIB involve no countervailable benefits of any kind. We examined loan contracts, among other documentation, for each loan and did not find any evidence that the EC or the GOI played any role in negotiating or specifying contractual terms for these loans. In contrast, contracts for loans financed by the

ECSC or the EIB specifically identify these institutions. We also established to our satisfaction that commercial banks in EC member states frequently lend in ECUs. Petitioner has offered no information or documentation that contradicts our verified information. Finally, because interest payments on these loans are calculated based on ECUs, Italian lire interest rates are not the appropriate benchmarks.

Comment 28: Petitioner asserts that its interests have been prejudiced by the acceptance of the GOI brief commenting on the Department's verification of the government responses. This brief was filed on June 13, 1988, but petitioner received it on June 17, 1988, one week after rebuttal briefs were due. Due to untimeliness, petitioner argues that the Department should not consider this brief. Furthermore, petitioner objects to the "late filing" by the GOI of eleven exhibits related to certification and to the Department's procedures in (1) extending normal deadlines to accommodate the GOI, and (2) not informing petitioner of the process. Petitioner states that the eleven exhibits must be rejected by the Department and that the Department should base its final determination regarding certification on the "properly noticed and conducted verification."

DOC Position: We allowed petitioner an extension of time to respond to the GOI brief of June 13, 1988. In so doing, we consider that any unfairness was eliminated in the briefing process. Petitioner filed its rebuttal to the GOI brief on July 7, 1988. Therefore, we will not reject the GOI brief and have considered it in making our final determination.

The eleven certification exhibits referred to by petitioner were submitted to the Department in Washington and were also reviewed by Department officials in Rome. However, we did not formally accept these documents as verification exhibits and did not take them into consideration in making our final determination on the exclusion/certification issue. Our final determination on the exclusion/certification issue is based solely on information reviewed and obtained during verification in Italy in April 1988.

Comment 29: Petitioner complains that it was disadvantaged by the following: (1) Public exhibits to the EC verification report were supplied to petitioner approximately five hours before initial comments were due; (2) the confidential version of the EC verification report was not provided to petitioner prior to the deadline for filing its initial comments; (3) confidential EC verification exhibits were not provided to petitioner; (4) the

Department granted petitioner only 48 hours to comment on the EC verification report; and (5) respondents had access to "substantially more" information than petitioner.

DOC Position: Petitioner had equal opportunity to comment and equal access to information as that afforded respondents. All parties were aware that verification of the EC response occurred between June 29 and July 1, that the verification report was completed and sent to all parties on the first business day, July 5, following the end of verification, and that the final determination, which could not be extended, was due approximately one week later on July 13.

Furthermore, petitioner was the first party to observe the public verification exhibits. Release of the confidential version of the verification report, which contained only one sentence and several numbers that were not in the public version and no substantive information not reported in the public version, was delayed for all parties except the EC. As it was, the EC did not even file a brief, but chose to provide only factual corrections to the report. In no respect did petitioner have access to less information than respondents.

Verification

In accordance with section 776(a) of the Act, except where noted in this determination, we verified the information used in making our final determination. We followed the standard verification procedures including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents of the respondents. Our verification results are outlined in detail in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since we have determined that only *de minimis* countervailable benefits are being provided to manufacturers, producers or exporters in Italy of certain granite products, the investigation will be terminated upon the publication of this notice in the Federal Register. Hence, the ITC is not required to make a final injury determination.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

July 13, 1988.

Jan W. Maros,
Assistant Secretary for Import
Administration.
[FR Doc. 88-16214 Filed 7-18-88; 8:45 am]
BILLING CODE 3510-05-M

National Bureau of Standards

National Oceanic and Atmospheric Administration

[Docket No. 61236-7140]

Proposal To Retain the Unit Known as the U.S. Survey Foot

AGENCIES: National Bureau of Standards, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for Public Comments.

SUMMARY: The purpose of this notice is to solicit comments from land surveyors and mappers, Federal, state and local officials, and from members of the public, regarding a preliminary decision by the Director of the National Bureau of Standards and the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, to retain the unit known as the U.S. Survey Foot, as defined in a 1959 Federal Register notice. A final decision will not be made until all comments received have been reviewed.

DATE: Comments must be received on or before November 16, 1988.

ADDRESS: The comments should be sent to Director, Charting and Geodetic Services, N/CG, WSC-1, Room 1006, National Ocean Service, NOAA, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Stem, N/CG1x4, Rockwall Building, Room 619, National Geodetic Survey, NOAA, Rockville, Maryland 20852; phone: 301-443-8749.

SUPPLEMENTAL INFORMATION: A Federal Register notice published jointly on July 1, 1959 (24 FR 5348) by the Directors of the National Bureau of Standards and the U.S. Coast and Geodetic Survey refined the definition of the yard in metric terms. The notice also pointed out the very slight difference between the new definition of the yard (0.9144 meter) and the 1893 definition (3600/3937 meter), from which the U.S. Survey Foot (1200/3937 meter) is derived. The "international foot" of 0.3048 meter is shorter than the U.S. Survey Foot by 2 parts per million.

The 1959 notice stated that the U.S. Survey Foot would continue to be used "until such time as it becomes desirable and expedient to readjust the basic

geodetic survey networks in the United States, after which the ratio of a yard, equal to 0.9144 meter, shall apply."

The readjustment of the basic geodetic survey networks by the Office of Charting and Geodetic Services, National Ocean Service, is complete. Hence a decision on whether to adopt the foot as derived from the international definition of the yard in accordance with the above-quoted portion of the 1959 notice will need to be made.

Since 1959, the U.S. Survey Foot has remained dominant in land surveying, mapping, and related activities in the United States, and still is incorporated in legal definitions in many states as well as in practical usage. Hence, it has tentatively been decided not to adopt the international foot of 0.3048 meter for surveying and mapping activities in the United States. Before reaching a final decision in this matter, it is deemed appropriate and necessary to solicit the comments of land surveyors, Federal, state and local officials, and any others from among the public at large who are engaged in surveying and mapping or are interested in or affected by surveying and mapping operations. A final decision will be reached after careful consideration of all the comments that are received in response to this notice. The final decision will be publicly announced in other media as deemed appropriate.

Even if the final decision affirms the preliminary decision not to adopt the international definition of the foot in surveying and mapping services, it should be noted that the Office of Charting and Geodetic Services, National Ocean Service, per a 1977 Federal Register notice (42 FR 15943), uses the meter exclusively and plans to provide the new coordinates resulting from the adjustment of the basic geodetic survey networks in meters. Technical advice in converting coordinates between meters and feet will be given to those requesting it.

The effect of this notice is to allow the U.S. Survey Foot to be used indefinitely for surveying and mapping in the United States. No other part of the 1959 notice is in any way affected by this notice.

Date: May 31, 1988.

Ernest Ambler,
Director, National Bureau of Standards.

Date: May 16, 1988.

John J. Carey,
Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

[FR Doc. 88-16174 Filed 7-18-88; 8:45 am]
BILLING CODE 3510-05-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,
Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-905,208 (4,743,266)

Process for Producing Smooth-Dry Cellulosic Fabric with Durable Softness and Dyeability Properties
SN 7-155,264

Cloned Genes Coding for Avian Coccidiosis Antigens which Induce a Cell-Mediated Immune Response and Method of Producing the Same
SN 7-173,910

Method for Producing Trichothecenes
SN 7-183,810

Use of Boron Supplements to Increase In Vitro Production of Hydroxylated Steroids
SN 7-186,990

Persistent Attractants for the Mediterranean Fruit Fly, the Method of Preparation and Method of Use

Department of Health and Human Services

SN E-117-88

A Percutaneous Device to Keep the Pulmonary Artery Open
SN E-88-87

Aliquot Collection Adapter for HPLC Automatic Injector Enabling Simultaneous Sample Analysis and Sample Collection
SN 6-635,610

Isolation of p24 Core Protein of HTLV-III, Serological Detection of Antibodies to HTLV-III in Sera of Patients with AIDS and Pre-AIDS Conditions, and Detection of HTLV-

III Infection by Immunoassays
Using Purified p24.
SN 7-110,305
Synthetic Peptides for the Production
of Specific Keratin Proteins

Department of the Air Force

SN 6-879,717 (4,745,808)
Laser Photography Pulse
Synchronization Circuit
SN 6-893,436
Technique for Drug and Chemical
Delivery
SN 7-059,641
Oxygen System Analyzer
SN 7-103,137
Magnesium Alloys and Articles
SN 7-110,903

Compact Device for Continuous
Removal of Water from an
Airstream-Cascade Impactor
SN 7-145,155
High Speed CDS Extraction System
SN 7-159,868
Band Clamp Apparatus
SN 7-160,893
Formation of Thin-Film Resistors on
Silicon Substrates
SN 7-170,172
Silicon Light-Emitting Diodes with
Integral Optical Waveguide

Department of the Army

SN 6-484,104 (4,744,299)
Impermeable Liner-Barrier for
Propellants Containing a High
Content of Carborane Burning Rate
Accelerator
SN 7-167,653
Superconductive Levitated Armatures
for Electromagnetic Launchers
SN 7-181,604
Improved Magnesium/Manganese
Dioxide Electrochemical Cell.

[FR Doc. 88-16185 Filed 7-16-88; 8:45 am]
BILLING CODE 3510-34-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations With the Government of the Dominican Republic

July 14, 1988.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Notice.

AUTHORITY: Executive Order 11651 of
March 3, 1972, as amended; Section 204
of the Agricultural Act of 1956, as
amended (7 U.S.C. 1854); Article 3 of the

Arrangement Regarding International Trade in Textiles.

FOR FURTHER INFORMATION CONTACT:
Naomi Freeman, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 377-4212. For information on
categories on which consultations have
been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION: On June
30, 1988, the Government of the United
States requested consultations with the
Government of the Dominican Republic
regarding men's and boys' suit-type
coats in Category 633, produced or
manufactured in the Dominican
Republic.

The purpose of this notice is to advise
the public that, if no solution is agreed
upon in consultations with the
Dominican Republic, the Committee for
the Implementation of Textile
Agreements may later establish a limit
for the entry and withdrawal from
warehouse for consumption of man-
made fiber textile products in Category
633, produced or manufactured in the
Dominican Republic and exported
during the twelve-month period which
began on June 30, 1988 and extends
through June 29, 1989, at a level of
54,869 dozen.

A summary market statement
concerning this category follows this
notice.

Anyone wishing to comment or
provide data or information regarding
the treatment of this category, or to
comment on domestic production or
availability of products included in
Category 633, is invited to submit 10
copies of such comments or information
to James H. Babb, Chairman, Committee
for the Implementation of Textile
Agreements, U.S. Department of
Commerce, Washington, DC 20230.

Because the exact timing of the
consultations is not yet certain,
comments should be submitted
promptly. Comments or information
submitted in response to this notice will
be available for public inspection in the
Office of Textiles and Apparel, Room
H3100, U.S. Department of Commerce,
14th and Constitution Avenue, NW.,
Washington, DC.

Further comment may be invited
regarding particular comments or
information received from the public
which the Committee for the
Implementation of Textile Agreements
considers appropriate for further
consideration.

The United States remains committed
to finding a solution concerning
Category 633. Should such a solution be
reached in consultations with the
Government of the Dominican Republic,

further notice will be published in the
Federal Register.

A description of the textile categories
in terms of T.S.U.S.A. numbers is
available in the CORRELATION: Textile
and Apparel Categories with Tariff
Schedules of the United States
Annotated (see Federal Register notice
52 FR 47745, published on December 16,
1987).

James H. Babb,
Chairman, Committee for the Implementation
of Textile Agreements.

Dominican Republic—Market Statement

Men's and Boys' Man-Made Fiber—Suit-type
Coats (Category 633)

June 1988.

Summary and Conclusions

U.S. imports of men's and boys' man-made
fiber suit-type coats (Category 633) from the
Dominican Republic reached 54,869 dozen
during the year ending March 1988, 21 percent
above the 45,448 dozen imported a year
earlier. Men's and boys' man-made fiber suit-
type coat imports from the Dominican
Republic were 52,740 dozen in 1987 and
43,647 dozen in 1986. During the first three
months of 1988, imports of men's and boys'
man-made fiber suit-type coats (Category
633) from the Dominican Republic reached
12,938, a 20 percent increase above the 10,809
dozen imported during the same period of
1987.

The U.S. market for men's and boys' man-
made fiber suit-type coats (Category 633) has
been disrupted by imports. The sharp and
substantial increase in imports from the
Dominican Republic is contributing to this
disruption.

U.S. Production and Market Share

U.S. production of men's and boys' man-
made fiber suit-type coats has been on the
decline, dropping from 1,189 thousand dozen
in 1983 to 951 thousand dozen in 1985, a
decline of 20 percent. Production in 1986
recovered slightly, reaching 1,006 thousand
dozen, but fell again in 1987 to a level of 907
thousand dozen, 10 percent below the 1986
level and 24 percent below the 1983 level. The
domestic manufacturers' share of the market
fell from 87 percent in 1983 to 71 percent in
1987, a drop of 16 percentage points.

U.S. Imports and Import Penetration

U.S. imports of men's and boys' man-made
fiber suit-type coats (Category 633) more than
doubled between 1983 and 1987, increasing
from 175 thousand dozen in 1983 to 364
thousand dozen in 1987. During the first three
months of 1988, imports of men's and boys'
man-made fiber suit-type coats (Category
633) reached 103 thousand dozen, nine
percent above the level imported during the
same period of 1987. The ratio of imports to
domestic production nearly tripled,
increasing from 15 percent in 1983 to 40
percent in 1987.

Duty-Paid Value and U.S. Producers' Price

All of Category 633 imports from the
Dominican Republic during the first three

months of 1988 entered under TSUSA number
381.9510—men's man-made fiber woven suit-
type coats and jackets, not ornamented.
These garments entered the U.S. at landed
duty-paid values below U.S. producers' prices
for comparable garments.
[FR Doc. 88-16178 Filed 7-16-88; 8:45 am]
BILLING CODE 3510-01-3

DEPARTMENT OF DEFENSE

Federal Acquisition Regulation Supplement; Supplement No. 6, DoD Spare Parts Breakout Program

AGENCY: Department of Defense (DoD).
ACTION: Notice of intent to revise DoD
FAR Supplement No. 6.

SUMMARY: The Department of Defense
proposes to issue a revised DoD FAR
Supplement No. 6, DoD Spare Parts
Breakout Program. This revised
Supplement will expand Acquisition
Method Codes (AMCs) and Acquisition
Method Suffix Codes (AMSCs); validate
AMC/AMSC combinations; remove the
threshold for breakout screening;
expand breakout screening to certain
provisioning situations; add and clarify
some definitions; and revise reporting
procedures. (Comments are solicited.)

ADDRESSES: Interested parties should
submit written comments to: Defense
Acquisition Regulatory Council, ATTN:
Mr. Charles W. Lloyd, Executive
Secretary, DAR Council, ODASD(P)/
DARS, c/o OASD(P&L) (MRS), Room
3D139, The Pentagon, Washington, DC
20301-3062. Please cite DAR Case 87-
133 in all correspondence related to this
subject.

FOR FURTHER INFORMATION CONTACT:
Mr. J. P. Thomas, Program Manager for
Breakout, OASD(P&L)/L(SD), (202) 695-
8360.

SUPPLEMENTARY INFORMATION:

A. Background

DoD FAR Supplement No. 6 is revised to:
Expand Acquisition Method Codes
(AMCs) and Acquisition Method Suffix
Codes (AMSCs); validate AMC/AMSC
combinations; remove the threshold for
breakout screening; expand breakout
screening to certain provisioning
situations; add and clarify some
definitions; and revise reporting
procedures. The revisions respond to
recommendations of GAO Report
NSIAD-87-16BR and also comply with
requirements of the Competition in
Contracting Act (CICA) of 1984.

Prior to the inception of the Federal
Acquisition Regulation (FAR) and the
DoD Supplement to the FAR (DFARS),
the Defense Acquisition Regulation

(DAR) included six separate
supplements as follows:

DAR Supplement No. 1—Contractor
Purchasing System Review (CPSR)
Program (DARS No. 1) (31 MAR 82)
ASPR (DAR) Supplement No. 2—
Contract File Maintenance, Closeout,
and Disposition (ASPS No. 2) (1 APR
70)

ASPR (DAR) Supplement No. 3—
Property Administration (ASPS No. 3)
(1 OCT 75)

ASPR (DAR) Supplement No. 4—
Procedures for Submission of
Applications To Be Placed on
Research and Development Bidders
Mailing Lists (ASPS No. 4) (1 APR 68)

ASPR (DAR) Supplement No. 5—
Procurement of Utility Services (ASPS
NO. 5) (1 OCT 74)

DAR Supplement No. 6—DoD
Replenishment Parts Breakout
Program (DARS NO. 6) (1 JUN 83)

Note: ASPR (DAR) Supplement No. 2 was
canceled by DAC #86-7, 2 NOVEMBER 1967.

The DAR Council will take action to
either cancel or revise Supplements Nos.
1, 3, 4, and 5 at a later date.

This document contains the proposed
revised Supplement No. 6 which will be
published after public comments are
considered.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition
Regulatory Council.

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

[Supplement No. 6; DFARSS No. 6]

DOD Spare Parts Breakout Program

December 1987.



DOD Federal Acquisition Regulation Supplement

[Supplement No. 6; DFARSS No. 6]

DOD Spare Parts Breakout Program

Foreword

Supplement No. 6 to the DoD FAR
Supplement entitled "DoD Spare Parts
Breakout Program," is issued by
direction of the Under Secretary of
Defense for Acquisition (USD/A)
pursuant to the authority contained in
Department of Defense Directive No.
5000.35 dated March 8, 1976, and in Title
10, United States Code 2202.

This supplement is issued pursuant to
DFARS 1.301 for the guidance of
Department of Defense personnel
engaged in acquisition (including
technical support thereto) of centrally
managed spare parts for military
systems and equipment. It prescribes
uniform policy, procedures and report
formats for the DoD Spare Parts
Breakout Program.

Copies of the DFARS Supplement No.
6 may be obtained by purchase from the
Superintendent of Documents, U.S.
Government Printing Office,
Washington, DC 20402.

SUPPLEMENT 6—DOD SPARE PARTS BREAKOUT PROGRAM

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Exhibit V Spare Parts Acquisition Report

DOD SPARE PARTS BREAKOUT PROGRAM

Part 1—General

S6-100 Scope. This Supplement establishes the DoD Spare Parts Breakout Program and provides uniform

policies and procedures for management and conduct of the program within and between the Military Departments and the Defense Agencies.

S6-101 Applicability.

(a) Except as provided in (b) below, this Supplement applies to:

- (1) any centrally managed replenishment or provisioned part (hereinafter referred to as "part") for military systems and equipment, and
- (2) all DoD personnel involved with design control, acquisition and management of such parts including, but not limited to, project/program/system managers, technical personnel, contracting officers, legal counsel, inventory managers, inspectors, and small business utilization specialists and technical advisors.

(b) This Supplement does not apply to:

- (1) component breakout (see DFARS 17.7202)

(2) foreign military sales (FMS) peculiar items

- (3) insurance items (e.g. one-time buy)
- (4) obsolete items
- (5) phase out items (e.g. life of type buy)

(6) items with annual buy values below the thresholds developed by DoD Components or field activities

(7) parts being acquired under other specifically defined initial support programs, or

(8) parts acquired through local purchase.

S6-102 General.

(a) Significant resources are dedicated to the acquisition and management of parts for military systems and equipment. Adequate consideration shall be given to decisions made early in a weapon system acquisition related to the ability to competitively buy spares. Initially, repairable or consumable parts are identified and acquired through a provisioning process; repairable or consumable parts acquired thereafter are for replenishment. The objective of the DoD Spare Parts Breakout Program is to reduce costs through the use of competitive procurement methods, or the purchase of parts directly from the actual manufacturer rather than the prime contractor, while maintaining the integrity of the systems and equipment in which the parts are to be used. The program is based on the application of sound management and engineering judgment in (i) determining the feasibility of acquiring parts by competitive procedures or direct purchase from actual manufacturers and (ii) overcoming or removing constraints to breakout identified through the screening process (technical review described in S6-302.

(b) This Supplement sets forth procedures to screen and code parts in order to provide contracting officers (i) summary information regarding technical data and (ii) sources of supply to meet the Government's minimum requirements. This information assists the contracting officer to select the method of contracting, identify sources of supply, and make other decisions in the preaward and award phases, with consideration for established parameters of system and equipment integrity, readiness, and the opportunities to competitively acquire parts (see FAR/DFARS Part 6). The identification of sources for parts, for example, requires knowledge of manufacturing sources, additional operation performed after manufacturer of parts possessing safety or other critical characteristics, and the availability of technical data.

(c) The result of the screening process (technical review) is indicated by an Acquisition Method Code (AMC) and an Acquisition Method Suffix Code (AMSC). This program provides procedures for both the initial assignment of an AMC and an AMSC to a part, and for the recurring review of these codes (see S6-202 and S6-203(b)(1)).

S6-103 Definitions. For purposes of this Supplement, the following definitions apply.

S6-103.1 Acquisition Method Code (AMC). A single digit numeric code, assigned by a DoD activity, to describe to the contracting officer and other Government personnel the results of a technical review of a part and its suitability for breakout.

S6-103.2 Acquisition Method Code Conference. A conference which is generally held at the contractor's facility for the purpose of reviewing contractor technical information codes (CTICs) and corresponding substantiating data for breakout.

S6-103.3 Acquisition Method Suffix Code (AMSC). A single digit alpha code, assigned by a DoD activity, which provides the contracting officer and other Government personnel with engineering, manufacturing and technical information.

S6-103.4 Actual Manufacturer. An individual, activity, or organization that performs the physical fabrication processes that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity. (See definition for design control activity.)

S6-103.5 Altered Item Drawing. See current version of DoD-STD-100, paragraphs 201.4.4 and 703.

S6-103.6 Annual Buy Quantity. The forecast quantity of a part required for the next 12 months.

S6-103.7 Annual Buy Value (ABV). The annual buy quantity (S6-103.6) of a part multiplied by its unit price.

S6-103.8 Bailment. The process whereby a part is loaned to a recipient with the agreement that the part will be returned at an appointed time. The Government retains legal title to such material even though the borrowing organization has possession during the stated period.

S6-103.9 Breakout. The improvement of the acquisition status of a part resulting from a technical review and a deliberate management decision. Examples are:

- (a) the competitive acquisition of a part previously purchased noncompetitively, and
- (b) the direct purchase of a part previously purchased from a prime contractor who is not the actual manufacturer of the part.

S6-103.10 Competition. A contract action where two or more responsible sources, acting independently, can be solicited to satisfy the Government's requirement. (See definitions for limited competition and full and open competition.)

S6-103.11 Contractor Technical Information Code (CTIC). A two digit alpha code assigned to a part by a prime contractor to furnish specific information regarding the engineering, manufacturing, and technical aspects of that part.

S6-103.12 Design Control Activity. A contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer. The design control activity is synonymous with design activity as used by DoD-STD-100. (See definition for actual manufacturer.)

S6-103.13 Director Purchase. The acquisition of a part from the actual manufacturer, including a prime contractor who is an actual manufacturer of the part.

S6-103.14 Engineering Drawings. See current versions of DoD-STD-100 and DoD-D-1000.

S6-103.15 Extended Dollar Value. The contract unit price of a part multiplied by the quantity purchased.

S6-103.16 Full and Open Competition. A contract action where all responsible sources are permitted to

compete. (See definitions for competition and limited competition.)

S6-103.17 Full Screening. A detailed parts breakout process, including data collection, data evaluation, data completion, technical evaluation, economic evaluation, and supply feedback, used to determine if parts can be purchased directly from the actual manufacturer(s) of can be competed.

S6-103.18 Immediate (Live) Buy. A buy which must be executed as soon as possible to prevent unacceptable equipment readiness reduction, unacceptable disruption in operational capability, and increased safety risks, or to avoid other costs.

S6-103.19 Life Cycle Buy Value. The total dollar value of all procurements that are estimated to occur over a part's remaining life cycle.

S6-103.20 Limited Competition. A competitive contract action where the provisions of full and open competition do not exist. (See definitions for competition and full and open competition.)

S6-103.21 Limited Screening. A parts breakout process covering only selected points of data and technical evaluations, and should only be used to support immediate buy requirements (see S6-301.3).

S6-103.22 Manufacture. The physical fabrication process that produces a part, or other item of supply. The physical fabrication processes include, but are not limited to machining, welding, soldering, brazing, heat treating, braking, riveting, pressing, chemical treatment, etc.

S6-103.23 Prime Contractor. A contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

S6-103.24 Provisioning. The process of determining and acquiring the range and quantity (depth) of spare and repair parts, and support and test equipment required to operate and maintain an end item of materiel for an initial period of service.

S6-103.25 Qualification. Any action (contractual or precontractual) that results in approval for a firm to supply items to the Government without further testing beyond quality assurance demonstrations incident to acceptance of an item. When prequalification is required, the Government must have a justification on file: (1) stating the need for qualification and why it must be done prior to award, (2) estimating likely cost of qualification, and (3) specifying all qualification requirements.

S6-103.26 Replenishment Part. A part, repairable or consumable, purchased after provisions of that part, for: replacement; replenishment of stock; or use of the maintenance, overhaul, and repair of equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronic systems, ground support, and test equipment. As used in this Supplement, except when distinction is necessary, the term "part" includes subassemblies, components, and subsystems as defined by the current version of MIL-STD-280.

S6-103.27 Reverse Engineering. A process by which parts are examined and analyzed to determine how they were manufactured, for the purpose of developing a complete technical data package. The normal, expected result of reverse engineering is the creation of level 3 engineering drawings (see the current version of DoD-STD-100) suitable for manufacture of an item by new sources.

S6-103.28 Selected Item Drawing. See current version of DoD-STD-100, paragraph 201.4.5.

S6-103.29 Source. Any commercial or noncommercial organization which can supply a specified part. For coding purposes, sources include actual manufacturers, prime contractors, vendors, dealers, surplus dealers, distributors, and other firms.

S6-103.30 Source Approval. The Government review that must be completed prior to a contract award.

S6-103.31 Source Control Drawing. See the current version of DoD-STD-100, paragraph 201.4.3.

S6-103.32 Technical Data. Specifications, plans, drawings, standards, purchase descriptions, and such other data to describe the Government's requirements for acquisition. For a more detailed definition, see DFARS 27.401.

S6-104 General Policies.
(a) The identification, selection, and screening of parts for breakout shall be made as early as possible to determine the technical and economic considerations of the opportunities for breakout to competition or direct purchase. Full and open competition is the preferred result of breakout screening.

(b) A part shall be made a candidate for breakout screening based on its cost effectiveness for breakout. Resources should be assigned and priority given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and

performance stability. Consideration of all such factors is necessary to ensure the maximum return on investment in a given breakout program. Occasionally an item will not meet strict economic considerations for breakout, but action may be required due to other considerations to avoid overpricing situations. Accordingly, no minimum DoD threshold is hereby set for breakout screening actions. DoD Components and field activities will develop annual buy thresholds for breakout screening which are consistent with economic considerations and resources. Every effort should be made to complete the full screening of parts that are expected to be subsequently replenished as they enter the inventory.

(c) Breakout improvement efforts shall continue through the life cycle of a part to improve its breakout status (see 98-203) or until such time as the part is coded 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z or 2Z.

(d) No firm shall be denied the opportunity to demonstrate its ability to furnish a part which meets the Government's needs, without regard to a part's annual buy value, where a restrictive AMC/AMSC is assigned (see FAR 9.202). A firm must clearly demonstrate, normally at its own expense, that it can satisfy the Government's requirements. The Government shall make a vigorous effort to expedite its evaluation of such demonstration and to furnish a decision to the demonstrating firm within a reasonable period of time. If a resolution cannot be made within 60 days, the offeror must be advised of the status of the request and be provided with a good faith estimate of the date the evaluation will be completed. Every reasonable effort shall be made to complete the review before a subsequent procurement is made. Also, restrictive codes and low annual buy value do not preclude consideration of a surplus dealer or other nonmanufacturing source when the part offered was manufactured by an approved source (see FAR 10.010). A potential surplus dealer or other nonmanufacturing source must provide the Government with all the necessary evidence which proves the proposed part meets the Government's requirements.

(e) The experience and knowledge accrued by contractors in the development, design, manufacture and test of equipment may enhance the breakout decision-making process. DoD activities may obtain technical information from contractors when it is considered requisite to an informed coding decision. The procedure for

contracting for this information is provided at Part 4. Contractor's technical information will be designated by CTICs. Only DoD activities shall assign AMCs and AMSCs.

(f) DoD activities with breakout screening responsibilities shall develop, document, and advertise programs which promote the development of qualified sources for parts that are currently being purchased sole source. These programs should provide fair and reasonable technical assistance (engineering or other technical data, parts on bailment, etc.) to contractors who prove they have potential for becoming a qualified second source for an item. These programs should also provide specially tailored incentives to successful firms so as to stimulate their investment in becoming qualified. For example, Government furnished equipment (GFE) or Government furnished material (GFM) for reverse engineering and technical data package review and assistance.

(g) DoD Components shall identify the engineering support activity, design control activity, actual manufacturer, and prime contractor for each part such that the information is readily available to breakout and acquisition personnel.

98-105 Responsibilities.

(a) The Assistant Secretary of Defense for Production and Logistics, shall exercise authority for direction and management of the DoD Spare Parts Breakout Program, including the establishment and maintenance of implementing regulations.

(b) The Military Departments and Defense Agencies shall perform audits to ensure that their respective activities comply with the provisions of this program.

(c) Commanders of DoD activities with breakout screening responsibility shall:

(1) Implement a breakout program consistent with the requirements of this Supplement.

(2) Assist in the identification and acquisition of necessary data rights and technical data during system/equipment development and production to allow, when feasible, breakout of parts.

(3) Designate a program manager to serve as the central focal point, communicate breakout policy, ensure cost effectiveness of screening actions and breakout program, provide assistance in implementing breakout screening, monitor ongoing breakout efforts and achievements, and provide surveillance over implementation of this Supplement. The program manager shall report only to the Commander, or his

deputy, of the activity with breakout screening responsibility.

(4) Ensure that actions to remove impediments to breakout are continued so long as it is cost effective, or until no further breakout improvements can be made.

(5) Invite the activity's Small and Small Disadvantaged Business Utilization (SADBU) Specialist and the resident Small Business Administration's Procurement Center Representative (PCR), if any, to participate in all acquisition method coding conferences at Government and contractor locations.

(6) Assure timely engineering and technical support to other breakout activities regardless of location.

i. In the case of parts where contracting or inventory management responsibility has been transferred, such support shall include:

(A) assignment of an AMC/AMSC prior to the transfer.

(B) assignment of an AMC/AMSC when requested by the receiving activity to parts transferred without such codes. The requesting activity may recommend an AMC/AMSC.

(C) full support of the receiving activities' breakout effort by providing timely engineering support in revising existing AMC/AMSCs.

ii. In all cases, such support shall include, but not be limited to, furnishing all necessary technical data and other information (such as code suspense date and procurement history) to permit acquisition in accordance with the assigned AMC/AMSC (see 98-105(d)(6)).

(7) Assure that appropriate surveillance is given to first time breakout parts.

(d) Breakout program managers shall be responsible for:

(1) Initiating the breakout process during the early phases of development and continue the process during the life of the part.

(2) Considering the need for Contractor Technical Information Codes (CTICs) and, when needed, initiating a contract data requirement.

(3) Identifying, selecting and screening in accordance with Part 3.

(4) Assigning an AMC/AMSC, using all available data, including CTICs.

(5) Responding promptly to a request for evaluation of additional sources or a review of assigned codes. An evaluation not completed prior to an immediate buy shall be promptly completed for future buys.

(6) Documenting all assignments and changes, to include rationale for assigning the chosen code, in a

permanent file for each part. As a minimum the file should identify the engineering support activity, cognizant design control activity, actual

manufacturer, prime contractor, known sources of supply, and any other information needed to support AMC/AMSC assignments.

(e) Contracting officers responsible for the acquisition of replenishment parts shall:

(1) Consider the AMC/AMSC when developing the method of contracting, the list of sources to be solicited, the type of contract, etc.

(2) Provide information which is inconsistent with the assigned AMC/AMSC (e.g., availability of technical data or possible sources) to the activity responsible for code assignment with a request for timely evaluation of the additional information. An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date.

Part 2—Breakout Coding

§ 6-200 Scope. This part provides parts breakout codes and prescribes responsibilities for their assignment and management.

§ 6-201 Coding. Three types of codes are used in the breakout program.

§ 6-201.1 Acquisition Method Codes. The following codes shall be assigned by DoD activities to describe the results of the spare parts breakout screening:

(a) AMC 0. The part was not assigned AMC 1 through 5 when it entered the inventory, nor has it ever completed screening. Use of this code is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMC is the objective. This code will never be used to recode a part that already has AMC 1 through 5 assigned, and shall never be assigned as a result of breakout screening. Maximum effort to determine the applicability of AMC 1 through 5 is the objective.

(b) AMC 1. Suitable for competitive acquisition for the second or subsequent time.

(c) AMC 2. Suitable for competitive acquisition for the first time.

(d) AMC 3. Acquire, for the second or subsequent time, directly from the actual manufacturer.

(e) AMC 4. Acquire, for the first time, directly from the actual manufacturer.

(f) AMC 5. Acquire, directly from a sole source contractor which is not the actual manufacturer.

§ 6-201.2 Acquisition Method Suffix Codes. The following codes shall be assigned by DoD activities to further describe the Acquisition Method Code.

Valid combinations of AMCs/AMSCs are indicated in each subparagraph below and summarized in Exhibit I.

(a) AMSC A. The Government's rights to use data in its possession is questionable. This code is only applicable to parts under immediate buy requirements and for as long thereafter as rights to data are still under review for resolution and appropriate coding. *This code is assigned only at the conclusion of limited screening*, and it remains assigned until the full screening process resolves the Government's rights to use data and results in assignment of a different AMSC. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, or if the data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(b) AMSC B. This part must be acquired from a manufacturing source(s) specified on a source control or selected item drawing as defined by the current version of DoD-STD-100. Suitable technical data, unlimited Government data rights, or manufacturing knowledge are not available to permit acquisition from other sources, nor qualification testing of another part, nor use of a second source part in the intended application. Although, by DoD-STD-100 definition, altered and selected items shall have an adequate technical data package, data review discloses that required data or data rights are not in Government possession and cannot be economically obtained. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(c) AMSC C. This part requires engineering source approval by the design control activity in order to maintain the quality of the part. Existing unique design capability, engineering skills, and manufacturing knowledge by the qualified source(s) require acquisition of the part from the approved source(s). The approved source(s) retain data rights, manufacturing knowledge, or technical data that are not economically available to the Government, and the data or knowledge is essential to maintaining the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity. The qualification procedures must be approved by the Government engineering activity having jurisdiction over the part in the intended application. If one source is approved, AMCs 3, 4 or 5 are valid. If at least two sources are approved or if data is

adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(d) AMSC D. The data needed to procure this part competitively is not physically available, it cannot be obtained economically, nor is it possible to draft adequate specifications or any other adequate, economical description of the material for a competitive solicitation. AMCs 3, 4 or 5 are valid.

(e) AMSC E. (Reserved)

(f) AMSC F. (Reserved)

(g) AMSC G. The Government has unlimited rights to the technical data, the data package is complete, and there are no technical data, engineering, tooling or manufacturing restrictions. (This is the only AMSC that implies that parts are candidate for full and open competition. Other AMSCs such as K, M, N, Q, and S may imply limited competition when two or more independent sources exist yet the technical data package is inadequate for full and open competition.) AMCs 1 or 2 are valid.

(h) AMSC H. The Government physically does not have in its possession sufficient, accurate or legible data to purchase this part from other than the current source(s). This code is applicable only to parts under immediate buy requirements and only for as long thereafter as the deficiency is under review for resolution and appropriate recoding. *This code is only assigned at the conclusion of limited screening*, and it remains assigned until the full screening process resolves physical data questions and results in assignment of a different AMSC. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(i) AMSC I. (Not authorized)

(j) AMSC J. (Reserved)

(k) AMSC K. This part must be produced from class 1 castings and similar type forgings as approved (controlled) by procedures contained in the current version of MIL-STD-2175. If one source has such castings and cannot provide them to other sources, AMCs 3, 4 or 5 are valid. If at least two sources have such castings or they can be provided to other sources, AMCs 1 or 2 are valid.

(l) AMSC L. The annual buy value of this part falls below the screening threshold established by DoD Components and field activities. However, this part has been screened for additional known sources, resulting in either confirmation that the initial source exists or that other sources may supply the part. No additional screening

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was performed to identify the competitive or noncompetitive conditions that would result in assignment of a different AMSC. This code shall not be used when screening parts entering the inventory. This code shall be used only to replace AMSC O for parts under the established screening threshold. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(m) AMSC M. Manufacture of this part requires use of master or coordinated tooling. If only one set of tooling exists and cannot be made available to another source for manufacture of this part, AMCs 3, 4, or 5 are valid. When the availability of existent or refurbishable tooling is available to two or more sources, then AMCs 1 or 2 are valid.

(n) AMSC N. Manufacture of this part requires special test and/or inspection facilities to determine and maintain ultra-precision quality for its function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. If the test cannot be made available for the competitive manufacture of the part, the required test or inspection knowledge cannot be documented for reliable replication, or the required physical test or inspection facilities and processes cannot be economically documented in a TDP, valid AMCs, are 3, 4 or 5. If the facilities or tests can be made available to two or more competitive sources, AMCs 1 or 2 are valid.

(o) AMSC O. The part was not assigned an AMSC when it entered the inventory, nor has it ever completed screening. Use of this code in conjunction with AMSC O is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMSC is the objective. Only AMSC O is valid.

(p) AMSC P. The rights to use the data needed to purchase this part from additional source(s) is not owned by the Government and cannot be purchased, developed or otherwise obtained. It is uneconomical to reverse engineer this part. This code is used in situations where the Government has the data but does not own the rights to the data. If only one source has the rights or data to manufacture this item, AMCs 3, 4 or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(q) AMSC Q. The Government does not have adequate data, lacks rights to data, or both needed to purchase this part from additional sources. The Government has been unable to economically buy the data or rights to

the data, although the part has been undergoing full screening for 12 or more months. Breakout to competition has not been achieved, but current, continuing actions to obtain necessary rights to data or adequate, reproducible technical data indicate breakout to competition is expected to be achieved. This part may be a candidate for reverse engineering or other techniques to obtain technical data. No immediate buy of this part has occurred to initiate limited screening and assignment of AMSCs A or H. This code may be used to change from AMSC O or any other noncompetitive AMSC except A or H (which are only assigned after limited screening). All AMSC Q items are required to be reviewed within the timeframes cited in S6-203(b). If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(r) AMSC R. The Government *does not own* the data or the rights to the data needed to purchase this part from additional sources. It has been determined to be uneconomical to buy the data or rights to the data. It is uneconomical to reverse engineer the part. This code is used when the Government did not initially purchase the data and/or rights. If only one source has the rights or data to manufacture this item, AMCs 3, 4 or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(s) AMSC S. Acquisition of this item is restricted to Government approved source(s) because the production of this item involves unclassified but militarily sensitive technology (see FAR 6.3). If one source is approved, AMCs 3, 4 or 5 are valid. If at least two sources are approved, AMCs 1 or 2 are valid.

(t) AMSC T. Acquisition of this part is controlled by qualified products list (QPL) procedures. Competition for this part is limited to sources which are listed on or are qualified for listing on the QPL at the time of award. (See FAR Part 9 and DFARS Part 9.) AMCs 1 or 2 are valid.

(u) AMSC U. The cost to the Government to breakout this part and acquire it competitively has been determined to exceed the projected savings over the life span of the part. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(v) AMSC V. This part has been designed a high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to

define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

(w) AMSC W. (Reserved)

(x) AMSC X. (Not authorized)

(y) AMSC Y. The design of this part is unstable. Engineering, required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(z) AMSC Z. This part is a commercial/non-development/off-the-shelf-item. Commercial item descriptions, commercial vendor catalog or price lists or commercial manuals assigned a technical manual number apply. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

S6-201.3 Contractor Technical Information Codes. The following two digit alpha codes shall be used by contractors, when contractor's assistance is requested. These codes are assigned in accordance with the current version of MIL-STD-780 and shall be considered during the initial assignment of an AMC/AMSC. For spare part breakout, requirements for contractor assistance through CTIC submission shall be accomplished as stated in Part 4 of this Supplement. Each CTIC submitted by a contractor must be accompanied by supporting documentation which justifies the proposed code. These codes and supporting documentation, transmitted by DD Forms 1418 and 1418-1 are useful not only for code assignment during acquisition coding conferences, but also for personnel conducting both full and limited screening of breakout candidates. Personnel conducting full and limited screening of breakout candidates should use the supporting documentation provided with CTICs as a source of information. However, they should not allow this information to substitute for careful analysis and further investigation of the possibilities of acquiring a part through competition or by direct purchase. The definitions for CTICs are listed below:

(a) CTIC CB Source(s) are specified on source control, altered item, or selected item drawings/documents. (The contractor shall furnish a list of the sources with this code.)

(b) CTIC CC. Requires engineering source approval by the design control activity in order to maintain the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity.

(c) CTIC CG. There are no technical restrictions to competition.

(d) CTIC CK. Produced from class 1 castings (see the current version of MIL-STD-2175) and similar type forgings. The process of developing and proving the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source. Each casting or forging must be produced along identical lines to those which resulted in initial acceptability of the part. (The contractor shall furnish a list of known sources for obtaining castings/forgings with this code.)

(e) CTIC CM. Master or coordinated tooling is required to produce this part. This tooling is not owned by the Government or, where owned, cannot be made available to other sources. (The contractor shall furnish a list of the firms possessing the master or coordinated tooling with this code.)

(f) CTIC CN. Requires special and/or inspection facilities to determine and maintain ultra-precision quality for function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. Other sources in industry do not possess, nor would it be economically feasible for them to acquire facilities. (The contractor shall furnish a list of the required facilities and their locations with this code.)

(g) CTIC CP. The rights to use the data needed to purchase this part from additional sources are not owned by the Government and cannot be purchased.

(h) CTIC CV. A high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. Continued control by the existing source is necessary to ensure acceptable reliability. (The contractor shall identify the existing source with this code.)

(i) CTIC CY. The design of this part is unstable. Engineering, manufacturing or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. (The contractor shall identify the existing source with this code.)

S6-202 Assignment of Codes. The purpose of AMC/AMSC assignments is to provide the best possible technical assessment of how a part can be procured. The technical assessment should not be based on issues such as: are the known sources actual manufacturers, or are there two actual manufacturers in existence; but rather on factors such as the availability of adequate technical data, the Government's rights to use the data, technical restrictions placed on the hardware (criticality, reliability, special testing, master tooling, source approval, etc.) and the cost of breakout vice projected savings. In cases where there is additional technical information which affects the way a part can be procured, it should be made available to the contracting officer, with the AMC/AMSC. Concerning the assignment of AMCs and AMSCs, it is DoD policy that:

(a) The assignment of AMC/AMSCs to parts is the responsibility of the DoD Component introducing the equipment or system for which the parts are needed in the inventory. Subsequent screening is the responsibility of the DoD Component assigned technical responsibility.

(b) When to or more AMSCs apply the most technically restrictive code will be assigned.

(c) Restricted combination of AMC/AMSCs are reflected in the AMSC definitions (see S6-201.2). The Defense Logistics Service Center will reject invalid code combinations, as shown in Exhibit I, submitted for entry into the Federal Catalog Program (see S6-204.2).

(d) One-time acquisition of a part by a method other than indicated by the code does not require a change to the AMC (e.g., when only one of a number of sources can meet a short delivery date, or when only one manufacturing source is known but acceptable surplus parts are available from other sources).

(e) After the first acquisition pursuant to AMC 2 or 4, the AMC shall be recoded 1 or 3 respectively.

(f) Both full and limited screening will result in the assignment or reassignment

of an AMC/AMSC. This assignment shall be based on the best technical judgment of breakout personnel and on information gathered during the screening process.

(g) A part need not be coded as noncompetitive based on an initial market survey which only uncovers one interested source. If the Government has sufficient technical data in its possession to enable other sources to manufacture an acceptable part, and there are no technical restrictions on the part which would preclude other sources from manufacturing it, the part should be coded competitive.

S6-203 Improving Part Status.

(a) General. An effective breakout program requires that all reasonable actions be taken to improve the acquisition status of parts. The potential for improvement of the acquisition status will vary with individual circumstances. On one end of the spectrum are those parts with acquisition method suffix codes of a temporary nature requiring vigorous follow-through improvement action (e.g., AMSCs A and H); on the other end are those parts with codes suggesting a relative degree of permanence (e.g., AMSC P). A code assigned to a part should never be considered fixed with respect to either technical circumstance or time; today's technical constraint may be overcome by tomorrow's technology and a contractor's rights to data, so zealously protected today, often become less important with time. The application of breakout improvement effort must always consider individual circumstances and overall benefits expected to be obtained.

(b) Code Suspense Dates. Every part whose breakout status can be improved shall be suspended for rescreening as appropriate. In general, the following codes cannot be improved: 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z or 2Z. The period between suspenses is a period for which the assigned AMC/AMSC is considered active, and routine rescreening of parts with "valid" codes is not required. Suspense dates may vary with the circumstance surrounding each part. A code reached as a result of limited screening (S6-304) shall not be assigned a suspense date exceeding 12 months; a code reached as a result of full screening (S6-303) shall not be assigned a suspense date exceeding three years. In exceptional cases, where circumstances indicate that no change can be expected in a code over an extended period, a suspense date not exceeding five years may be assigned in accordance with controls established by

the breakout activity. Items with a 1G or 2G code do not require a suspense date.

S6-204 Communication of Codes.

S6-204.1 *Communication Media.* The Federal Catalog Program formats, set forth in DoD Manual 4100.39-M, "Defense Integrated Data System (DIDS) Procedural Manual," communication media and operating instructions as augmented by this Supplement shall be employed to disseminate AMCs and AMSCs.

S6-204.2 Responsibilities.

(a) The Defense Logistics Service Center (DLSC) shall:

(1) Receive and disseminate AMCs and AMSCs for each National Stock Number (NSN) to all appropriate Government activities in consonance with scheduled Federal Catalog Program computer cycles.

(2) Make the AMCs and AMSCs a part of the data bank of NSN item intelligence.

(3) Perpetuate the codes in all subsequent Federal Catalog Program transactions; e.g., entry of new NSNs and Federal Supply Code (FSC) changes.

(4) Reject invalid code combinations submitted for entry into the Federal Catalog Program.

(b) DoD activities responsible for the assignment of AMCs and AMSCs shall:

(1) Transmit assigned codes for each NSN through normal cataloging channels to DLSC under existing Federal Catalog Program procedures.

(2) Notify DLSC by normal Federal Catalog Program maintenance procedures when a change in coding is made.

Part 3—Identification, Selection, and Screening of Parts

S6-300 *General.* This part sets forth procedures for the identification, selection and screening of parts.

S6-301 Identification and Selection Procedures.

S6-301.1 *Parts Entering the Inventory.* The breakout process should begin at the earliest possible stage of weapon systems acquisition. Generally, a provisioned part will require subsequent replenishment. Provisioning or similar lists of new parts are, therefore, the appropriate bases for selecting parts for screening. This is not to imply that breakout must be done on all items as part of the provisioning process. Priorities shall be applied to those parts offering the greatest opportunity for breakout and potential savings. The major factors in making this determination are: (1) the unit price, (2) the projected quantity to be purchased over the part's life cycle, and

(3) the potential for screening to result in a part being successfully broken out, e.g. item stability, cost and completeness of technical data, etc.

S6-301.2 *Annual Buy Forecasts.* Annually, lists shall be prepared that identify all parts projected for purchase during the subsequent 12-month period. Priority should be given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability and the availability of technical data. Parts with an expired suspense date or a suspense date which will expire during the forecast period (see S6-203(b)), need only be subjected to the necessary steps of the full screening procedure (see S6-303). Parts with a valid code that will not expire during the forecast period need not be screened. Parts coded 00 shall be selected for full screening.

S6-301.3 *Immediate Buy Requirements.* An immediate buy requirement will be identified by the user or the item manager in consonance with DoD Component regulations. When an immediate buy requirement meeting the screening criteria (see S6-104(b)) is generated for a part not assigned a current AMC/AMSC, the part shall be promptly screened in accordance with either the full or limited screening procedures (see S6-303 and S6-304).

S6-301.4 *Suspect AMC/AMSC.* Whenever AMC/AMSC is suspected to be inaccurate, even by the contracting officer, a rescreening shall be conducted for that part. Suspect codes include codes composed of invalid combinations of AMCs and AMSCs, those which do not truly reflect how a part is actually being procured, and those suspected of being more restrictive than necessary for the next buy.

S6-302 Screening.

(a) Screening procedures include consideration and recording of the relevant facts pertaining to breakout decisions. The objective of screening is to improve the acquisition status by determining the potential for competition, or purchase from an actual manufacturer. Consideration of any reasonable approach to establishing competition should be an integral part of the breakout process.

(b) Screening procedures may vary depending on circumstances related to the parts. No set rules will provide complete guidance for making acquisition method decisions under all conditions encountered in actual practice. An informed coding decision can be made without following the procedures step by step in every case.

(c) Activities involved in screening are encouraged to develop supplemental procedures which prove effective in meeting this regulation's objectives. These procedures should be tailored to the particular activity's operating environment and the characteristics of the parts for which it is responsible. Nevertheless, care should be taken in all cases to assure that:

(1) Responsible judgment is applied to all elements involved in the review of a part;

(2) The necessary supporting facts are produced, considered and recorded in the breakout screening file. The breakout screening file contains technical data and other documents concerning screening of the part;

(3) All cost effective alternatives are considered for establishing competition, or purchase from an actual manufacturer (see S6-105d(6));

(4) When possible, the sequence of the review allows for accomplishing several screening steps concurrently.

(d) Contractor participation in the decision-making process extends only to providing technical information. This technical information is provided via the supporting documentation (DD Forms 1418 and 1418-1) which includes the CTIC assignment. Government personnel shall substantiate the breakout decision by reference to the CTIC and by careful review of the supporting documentation. However, the CTIC provides guidance only, and it should be used as one of the inputs to arrive at an acceptable AMC and AMSC coding.

(e) Contractor's technical information furnished in accordance with MIL-STD-789 may indicate areas requiring additional research by the Government before screening can be completed. Seldom will industry's contribution to the screening process enable the Government to assign an AMC or an AMSC without additional review.

(f) During the screening process, it may be appropriate to communication with industry, particularly potential manufacturers of a part, to determine the feasibility of establishing a competitive source and to estimate the costs and technical risks involved.

(g) Coding conference with industry shall be documented.

(h) Screening may disclose a part is not suitable for competitive acquisition, but it may be possible to breakout the part for direct purchase from the actual manufacturer or to establish a second source. Parts particularly suited to direct purchase are those where neither the design control activity nor the prime contractor contribute additional value or

whose data belong to the actual manufacturer and will not be acquired by the Government, and where that manufacturer exercises total responsibility for the part (design and quality control, testing, etc.), and where additional operations performed by the prime contractor can be performed by the actual manufacturer or by the Government.

(i) For each part that is screened, a file shall be established to document and justify the decisions and results of all screening effort. (See S6-105d(6).)

(j) Full and limited screening procedures are two elements of breakout programs. Other spare parts initiatives to enhance breakout are reverse engineering, bailment, data rights challenges and publication of intended buy lists. Integration of other initiatives within the screening processes developed at each activity is encouraged.

S6-303 Full Screening Procedures.

(a) Full screening procedures should be developed so that the potential is fully evaluated for establishing competition or purchase from an actual manufacturer. Also, full screening procedures should facilitate accurate and consistent acquisition method code assignment. It is expected that each activity will develop its own operational screening procedures. A general model, full screening decision process is provided below to support the development of activity level procedures and to provide guidance regarding the general scope of these procedures. The full screening procedures involve 65 steps in the decision process, and are divided into the following phases:

- (1) Data Collection;
- (2) Data Evaluation;
- (3) Data Completion;
- (4) Technical Evaluation;
- (5) Economic Evaluation; and
- (6) Supply Feedback.

(b) The six phases listed above describe different functions that must be achieved during screening. The nature of the screening process does not permit clear distinction of one phase from another. Further, the order of performance of these phases may not correspond to the order listed here. In fact, these phases will often overlap and may be performed simultaneously. Their purpose is to identify the different functions comprising the screening process.

(c) A summary flow chart of the decision steps is provided as Exhibit II to assist in understanding the logical order of the full screening steps for various conditions. Use of the flow chart in connection with the text that follows

is essential to fully understand the order of the steps in the process.

S6-303.1 Data Collection Phase (Step 1).

(a) *Step 1.* Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part, including:

- (1) Normal identification required for cataloging and standardization review.
- (2) All known sources.
- (3) Historical contracting information, including the more recent awards, and unit price(s) for the quantities prescribed.

(4) Identification of the actual manufacturer(s), his latest unit price and the quantity on which the price is based. (When the actual manufacturer is not the design control activity, the design control activity may be consulted to ensure the latest version of the item is being procured from the actual manufacturer.)

(5) Identification of the activity, Government or industry, having design control over the part and, if industry, the cognizant Government engineering activity.

(6) The expected life in the military supply system.

(7) Record of any prior review for breakout, with results or findings.

(8) Annual demand.

(b) In the case of complex items requiring large numbers of drawings, collection of a reasonable technical data sample is sufficient for the initial technical data evaluation phase (Steps 2-14).

S6-303.2 Data Evaluation Phase (Steps 2-14).

(a) Data evaluation is crucial to the whole review procedure. It involves determination of the adequacy of the technical data package and the Government's rights to use the data for acquisition purposes.

(b) The data evaluation process may be divided into two stages:

(1) A brief but intensive analysis of available data and documents regarding both technical matters and data rights, leading to a decision whether to proceed with screening; and

(2) If the decision is to proceed with screening, further work is necessary to produce an adequate technical data package, such as research of contract provisions, engineering work on data and drawings, and requests to contractors for additional data.

(c) The steps in this phase are:

(1) *Step 2.* Are full Government rights established by the available data package? Evidence for an affirmative answer would include the identification

of Government drawings, incorporation by reference of Government specifications or process descriptions in the public domain, or reference to contract provisions giving the Government unlimited rights to data. If the answer is negative, proceed to Step 3; if positive, proceed to Step 6.

(2) *Step 3.* Are the contractor's limitations on use of rights to data established by the available data package?

A. The questions above (Steps 2 and 3) are not exclusive. The incorporation in a drawing of contract provisions reserving rights to the manufacturer, either in the whole design or in certain manufacturing processes, would establish a clear affirmative answer to Step 3 where there is substantiating Government documentation. Parts not in this group shall be retained for further processing (see Step 20). Data rights that cannot be substantiated shall be challenged.

B. In the case of clear contractor ownership of rights, proceed with Steps 4 and 5.

(3) *Step 4.* Are there bases for competitive acquisition without using data subject to limitations on use? This question requires consideration, for example, of the possibility of using performance specifications or substitution of military or commercial specifications or bulletins for limited elements of the manufacturing process. The use of sample copies is another possibility.

(4) *Step 5.* Can the Government buy the necessary rights to data? This is a preliminary question to the full analysis (in Steps 20 and 21 below) and is designed primarily to eliminate from further consideration those items which incorporate established data restrictions and for which there are no other bases for competitive acquisition nor is purchase of rights possible or feasible.

(5) *Steps 6 and 7.* Is the present technical data package adequate for competitive acquisition of a reliable part? *Steps 8 and 9.* Specify omissions. This question requires a critical engineering evaluation and should deal first with the physical completeness of the data—are any essential dimensions, tolerances, processes, finishes, material specifications, or other vital elements of data lacking from the package? If so, these omissions should be specified. A second element deals with adequacy of the existing package to produce a part of the required performance, compatibility, quality and reliability. This will, of course, be related to the completeness of data. In some cases, qualified engineering judgment may decide that in

spite of apparently complete data, the high performance or other critical characteristics of the item require retention of the present source. If such decision is made, the file shall include documentation in the form of specific information, such as difficulties experienced by the present manufacturer in producing a satisfactory item or the existence of unique production skills in the present source.

(8) *Steps 10 and 11.* Can the data be developed to make up a reliable technical data package? This implies a survey of the specified omissions with careful consideration to determine the resources available to supply each missing element. Such resources will vary from simple referencing of standard engineering publications to more complex development of drawings with the alternatives of either obtaining such drawings or developing performance specifications. In some cases, certain elements of data are missing because they have been properly restricted. If, however, there has been no advance substantiation of the right to restrict, the part should be further researched. If the answer to this question is negative, proceed to Step 12; if positive, proceed to Steps 13 or 14.

(7) *Step 12.* If the answer to the question in Steps 10 and 11 is no, which condition is the prime element in this decision, the lack of data or the unreliability of the data? Specific documentation is needed to support this decision.

(8) *Steps 13 and 14.* Estimate the time required to complete the data package. In those cases where the data package is found inadequate and specific additions need to be developed, an estimate of the time required for completion must be made in order to determine if breakout of the part is feasible during this review cycle and to estimate at what point in the remaining life of the part the data package could be available.

88-303.3 Data Completion Phase (Steps 15-21).

(a) The data completion phase involves acquiring or developing the missing elements of information to reach a determination on both adequacy of the technical data package and the restriction of rights to data. It may involve various functional responsibilities, such as examination of past contracts, queries directed to industry or to other Government Agencies, inspection of the part, reverse or other engineering work to develop drawings and write specifications, arrangements with the present source for licensing or technical assistance to new manufacturers, and negotiations for

purchase of rights to data. Additional research and information requests should be expeditiously initiated on those parts where there is a reasonable expectation of breakout. Because this phase is time-consuming, it should take place concurrently with other phases of the review.

(b) At the beginning of the data completion phase, the part falls into one of four steps as follows:

(1) *Step 15.* The data package is complete and adequate and the Government has full rights to use it for acquisition purposes. Such parts require no further data analysis. Proceed to Step 22.

(2) *Step 16.* The Government has full rights to use existing data. The data package is incomplete but there is a reasonable expectation that the missing elements can be supplied. Proceed to Step 19.

(3) *Step 17.* The data package is complete, but full Government rights to the data have not been established. Proceed to Step 20.

(4) *Step 18.* Neither rights nor completeness of data is adequately established; therefore, the part requires further research. Proceed to Step 20.

(c) *Step 19.* Obtain or develop the necessary data for a reliable data package. Reverse engineering to develop acquisition data may be employed (see DFARS 27.403-2) if there is a clear indication that the costs of reverse engineering will be less than the savings anticipated from competitive acquisition. If there is a choice between reverse engineering and the purchase of data (Step 21), the decision shall be made on the basis of relative costs, quality, time, and other pertinent factors.

(d) *Step 20.* Establish the Government's and the contractor's rights to the data. Where drawings and data cannot be identified to a contract, the following guidelines should be applied:

(1) Where drawings and data bear legends which warn of copyright or patent rights, the effect of such legends shall be resolved according to law and policy; however, the existence of patent or copyright restrictions does not per se preclude securing competition with respect to the parts described (see FAR/DFARS 27.3).

(2) Where drawings and data bear legends which state limitations on their use for reacquisition purposes, and it is determined that a question reasonably exists as to whether such limitations on use were properly affixed to the drawings or data, initiate action to challenge the contractor as to the reasons for limitations. Use of the

drawings and data shall be in accordance with the decision.

(3) Where drawings and data are unmarked and therefore free of limitation on their use, they shall be considered available for use in acquisition, unless the acquiring office has clear evidence to the contrary (see DFARS 27.403-3(d)).

(4) The decision process in situations described in (1), (2), and (3) requires the exercise of sound discretion and judgment and embraces legal considerations. In no case shall a decision be made without review and approval of that decision by legal counsel.

(5) If analysis fails to establish that any of the drawings and data are properly restricted to the present source or manufacturer, the Government shall attempt to obtain competition pursuant to the decisions resulting from concurrent technical and economic evaluation.

(e) *Step 21.* If restrictions on the use of data are established, determine whether the Government can buy rights to the required data. The procedure in DFARS 27.403-2(f) for the purchase of unlimited rights to data shall be followed when it is planned to purchase data with unlimited right for competitive acquisition.

88-303.4 Technical Evaluation Phase (Steps 22-37).

(a) Introduction.

(1) The purposes of technical evaluation are to determine the development status, design stability, high performance, and/or critical characteristics such as safety of personnel and equipment; the reliability and effective operation of the system and equipment in which the parts are to be used; and to exercise technical judgment as to the feasibility of breaking out the parts. No simple and universal rules apply to each determination, and the application of experience and responsible judgment is required. Technical considerations arise in several elements of the decision process, e.g., in determining adequacy of the data package (Steps 6-14).

(2) Certain manufacturing conditions may reduce the field of potential sources. However, these conditions do not justify the restriction of competition by the assignment of restrictive AMCs for the following reasons:

(i) *Parts Produced From Class 1 Castings and Similar Type Forgings:* The process of developing and proving the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source for each casting or forging along identical

lines to those which result in initial acceptability of the item. The particular manufacturer's process becomes the controlling factor with regard to the acceptability of any such item.

However, other firms can produce class 1 castings and similar type forgings and provide the necessary inspection, or the part may be procured from other sources which use castings or forgings obtained from approved (controlled) source(s).

(ii) *Parts Produced From Master or Coordinated Tooling, e.g., Numerically Controlled Tapes:* Such parts have features (contoured surfaces, hole locations, etc.) delineated according to unique master tooling or tapes and are manufactured to min/max limits and must be replaceable without additional tooling or fitting. These parts cannot be manufactured or configured by a secondary pattern or jigs independent of the master tooling and cannot be manufactured to requisite tolerances of fit by use of commercial precision machinery. In this context, jigs and fixtures used only for ease of production are not considered master tooling. However, master tooling may be reproduced.

(iii) *Parts Requiring Special Test and/or Inspection Facilities to Determine and Maintain Ultra-Precision Quality for the Function or System Integrity:* Substantiation and inspection of the precision or quality cannot be accomplished without specialized test or inspection facilities. Testing is often done by the actual manufacturer under actual operating use. However, such special test inspection facilities may be available at other firms.

(b) Design Procedures (Steps 22-31)

(1) *Step 22.* Will a design change occur during anticipated lead time? If affirmative, proceed to Step 23; if negative, proceed to Step 24. *Step 23.* Specify the design change and assign an appropriate code. *Step 24.* Is a satisfactory part now being produced? Concurrently with the research and completion of data, a technical determination is required as to the developmental status of the part. With the frequent telescoping of the development/production cycle as well as constant product improvement throughout the active life of equipment, parts are frequently subject to design changes. The present source, if a prime contractor, is usually committed to incorporate the latest changes in any deliveries under a production order. In considering the part for breakout, an assessment must be made of the stability of design, so that in buying from a new source the Government will not be purchasing an obsolete or incompatible part. The question of

obsolescence or noncompatibility is to some extent under Government control. Screening for breakout on parts that are anticipated to undergo design change should be deferred until design stability is attained.

(2) *Step 25.* Can a satisfactory part be produced by a new source? Determine whether technical reasons prohibit seeking a new source. The fact that the present source has not yet been able to produce a satisfactory part (Step 24) does not preclude another source from being successful. If the answer to Steps 24 or 25 is affirmative, proceed simultaneously to Steps 27 and 38. If the answer to Step 25 is negative, proceed to Step 26.

(3) *Step 26.* If the present source is producing an unsatisfactory part, but technical reasons prohibit seeking a new source, specify the reasons.

(4) *Step 27.* Does the part require prior qualifications or other approval testing? If the answer is positive, proceed to Step 28; if negative, proceed to Step 32. *Step 28.* Specify the requirement. *Step 29.* Estimate the time required to qualify a new source. *Step 30.* Is there currently a qualified source? *Step 31.* Who is responsible for qualification—the subcontractor, present prime contractor, the Government, or an independent testing agency?

i. If a qualified source is currently in existence, the review should consider who will be responsible for qualification in the event of competitive acquisition. If qualification testing is such that it can be performed by the selected source under a preproduction or first article clause in the contract, the costs of initial approval should be reflected in the offers received. If the part requires initial qualification tests by some other agency such as the present prime contractor, the Government, an independent testing agent outside the Government, or by technical facilities within the Military Services, out-of-pocket costs may be incurred if the part is competed. An estimate of qualification costs should then be made and recorded in such cases.

ii. Where facilities within the Government are not adequate for testing or qualification, or outside agencies such as the equipment contractor cannot or will not do the job, the economics of qualification may be unreasonable, and a narrative statement of these facts should replace the cost estimate. Whenever possible, such as in the case of engine qualification tests, economy of combined qualification tests should be considered.

(c) *Quality Assurance Procedures (Steps 32-33).* Quality control and inspection is a primary consideration

when making a decision to breakout. Where the prime contractor performs quality assurance functions beyond those of the part manufacturer or other sources, the Government may:

(1) develop the same quality control and inspection capability in the manufacturer's plant;

(2) assume the responsibility for quality; or

(3) undertake to obtain the quality assurance services from another source, possibly the prime contractor.

(4) *Step 32.* Who is now responsible for quality control and inspection of the part? *Step 33.* Can a new source be assigned responsibility for quality control? Is the level of the quality assurance requirements specified in the system contract necessary for the screened part? The minimum quality assurance procedures for each part shall be confirmed.

i. A new source shall be considered if: (A) Any essential responsibility (e.g., burn-in, reliability, maintainability) retained by the prime contractor for the part and its relationship to the end item can be eliminated, shifted to the new source, or assumed by the Government; or

(B) the prime contractor will provide the needed quality assurance services; or

(C) the Government can obtain competent, impartial services to perform quality assurance responsibility; or

(D) the new source can maintain an adequate quality assurance program, inspection system, or inspection appropriate for the part.

ii. If the prime contractor has responsibility for quality that a new source cannot assume or obtain, or that the Government cannot undertake or eliminate, consideration of the new source is precluded.

(d) *Tooling Procedures (Steps 34-37).*

Step 34. Is tooling or other special equipment required? *Step 35.* Specify the type of tooling. *Step 36.* Estimate additional acquisition lead time for setup and for tooling. *Step 37.* Does the Government possess this tooling? If tooling or special equipment is required for production of the part, the types and quantities should be specified.

Investigation can then be made as to whether the Government possesses such tooling and can make it available to a new source. A requirement for special tooling is not necessarily a deterrent to competitive solicitation for parts. The Government may find it desirable to purchase the needed tooling and furnish it to the new source. In this case, the costs can be determined with reasonable accuracy. However, if new

sources can provide the tooling or special equipment, this will be reflected in competitive prices and should not normally require further analysis.

S6-303.5 Economic Evaluation Phase (Steps 38-56).

(a) Economic evaluation concerns identification and estimation of breakout savings and direct cost offsets to breakout. The economic evaluation phase is composed of the three segments detailed in (b) through (d) below.

(b) Development of Savings Data (Steps 38-40). *Step 38.* Estimate remaining program life cycle buy value. *Step 39.* Apply either a savings factor of 25% or one determined under local conditions and experience. *Step 40.* Multiply the remaining program life cycle buy value by the savings factor to obtain the expected future savings, if the part is coded for breakout.

(c) Computation of Breakout Costs (Steps 41-47). Several groups of costs must be collected, summarized and compared to estimated savings to properly determine the economics of breakout. These costs include:

(1) Direct Costs (Steps 41-45). Direct costs of breakout normally include all expenditures which are direct and wholly identifiable to a specific, successful breakout action, and which are not reflected in the part unit price. Examples of direct costs include Government tooling or special test equipment, qualification testing, quality control expenses, and industry participation costs (such as completion of the Contractor Technical Information Data Record) if borne by the Government. *Step 41.* Estimate the cost to the Government for tooling or special equipment. *Step 42.* Estimate the cost, if any, to the Government for qualifying the new source. *Step 43.* Estimate the cost, if any, to the Government for assuring quality control, or the cost of contracting for quality control. *Step 44.* Estimate the cost to the Government for purchasing rights to data. *Step 45.* Add estimated total direct costs to the Government to breakout the item.

(2) Performance Specification Costs (Step 46-47). *Step 46.* Is the breakout candidate constructed to a performance specification? *Step 47.* If so, add performance specification breakout cost elements listed below to the result of Step 45.

1. The addition of an unknown number of nonstocked parts which must be stocked by the supply system for repairs is a significant element of cost associated with the decision to compete a performance specification assembly. (The same situation does not arise with respect to a design specification assembly since virtually all spare parts

used to repair such an assembly are exact copies of parts already in the assembly.) The cost of introducing these nonstocked parts into the system includes:

(A) Additional catalog costs. The number of nonstocked parts forecasted to be in the complete assembly, multiplied by the variable cost of cataloging per line item.

(B) Additional bin opening costs. The number of nonstocked parts forecasted to be in the completed assembly, multiplied by the variable cost of a bin opening at each of the locations where the part is to be stocked.

(C) Additional management costs. The number of nonstocked parts forecasted to be in the completed assembly, multiplied by the variable cost of management per line item.

(D) Additional technical data costs. The cost of a new set of technical data for the completed assembly, including the variable expenses of its production, reproduction, and distribution.

(E) Additional repair tools and test equipment costs. The costs of additional special tools and test equipment not otherwise required by the existing assembly.

(F) Additional logistics support costs. The costs associated with the new item such as spare and repair parts, technical manuals, and training.

(d) Comparison of Savings and Costs (Step 48-56). Compare estimated breakout costs to forecasted breakout savings. If costs exceed estimated savings, it will be uneconomical to compete the part. Performance specification parts should be analyzed to ensure that pertinent breakout costs have been considered and, if it is not economical to breakout the part, whether an appropriate design specification package reduces costs sufficiently to make breakout economical.

(1) *Step 48.* Compare total costs of breakout (Step 47) to estimated savings (Step 40).

(2) *Step 49.* Are costs of breakout greater or less than estimated saving? If greater, proceed to Step 50; if less, proceed to Step 57.

(3) *Step 50.* Is the breakout candidate constructed to a performance specification? If no, proceed to Step 54; if yes, proceed to Step 51.

(4) *Step 51.* Is it appropriate to obtain a design specification package? If yes, proceed to Step 52; if no, proceed to Step 54. The decision to change a performance specification part to a design specification part obviously requires a critical engineering examination of the part itself, as well as a review of the impact such a change

might have on the operational effectiveness of the system in which the equipment is to be employed. Procurement of a performance specification part by a subsequently acquired design specification subjects the Government to the additional hazard of losing the money paid for the development of the design specification, should the design be altered during the procurement lead time period. Accordingly, the engineering evaluation should closely review design stability over the anticipated procurement lead time in order to avoid procuring an obsolete or nonstandard part if the decision is made to compete it.

(5) *Step 52.* Add the estimated cost of obtaining a design specification package to the results of Step 45.

(6) *Step 53.* If the results of step 52 are less than the estimated savings, initiate action to obtain a design specification package. Proceed to Step 54 to code the part for a period until it can be rescreened using the design specification package. The code determined in this screening shall be assigned a suspense date commensurate with the lead time required to obtain the design specification package (see S6-203(b)).

(7) *Step 54.* Is the part manufactured by the prime contractor? If yes, code the part AMC 3; if no, proceed to Step 55.

(8) *Step 55.* Can the part be acquired directly from the actual manufacturer? If no, proceed to Step 56; if yes, code the part AMC 3 or 4, as applicable.

(9) *Step 56.* Specify the reasons for inability to obtain the part from the actual manufacturer. Code the part AMC 5.

S6-303.6 Supply Feedback Phase (Steps 57-65).

(a) The supply feedback phase of the analysis is the final screening phase for breakout parts. This phase is completed for all AMC 2 parts to determine if sufficient time is available to breakout on the immediate buy and to communicate this information to the inventory manager responsible for the requirement. For all additional time factors required to breakout the part are added. Total time is subtracted from the immediate and future buy date and the result compared to the current date. (Note: Not all time factors listed apply to each part screened.) If the result is the same or earlier than the required contract date, the part is coded competitive and action is begun to qualify additional sources as necessary. If the result is later than the required contract date, action to compete the immediate buy quantity should be initiated if the inventory manager can

find some means of accepting later delivery. If this is impossible, the appropriate records should be annotated for competitive acquisition of the next replenishment buy quantity. If late delivery is acceptable, the inventory manager should compute requirements for the part and initiate an appropriate purchase requisition.

(b) Procedures.

(1) *Step 57.* Add all additional time factors required to breakout the part (Steps 13, 14, 29, 38).

(2) *Step 58.* Add the results of Step 57 to the date of this review.

(3) *Step 59.* Compare the result of Step 58 to the date that the contract or order must be placed.

(4) *Step 60.* Is the result of Step 59 earlier than, later than, or the same as the contract or order date? (If earlier or the same, proceed to Step 61; if later, to Step 63.)

(5) *Step 61.* Can supply accept late delivery? If yes, go to Step 62; if no, go to Step 63.

(6) *Step 62.* Notify the inventory manager to compute requirements and initiate a purchase requisition. Go to Step 64.

(7) *Step 63.* Code the part AMC 2. Insufficient time to compete on this buy.

(8) *Step 64.* Code the part AMC 2.

(9) *Step 65.* Begin actions to qualify new sources, if required and possible.

S6-304 Limited Screening Procedures.

(a) Limited screening procedures are only appropriate when the full screening process cannot be completed for a part in sufficient time to support an immediate buy requirement. If limited screening does not result in a competitive AMC and the part is characterized by a high buy value and high buy quantity in the annual buy forecast, full screening procedures shall be immediately initiated.

(b) Limited screening procedures cover only the essential points of data and technical evaluations more completely described in full screening procedures (see S6-303). Extensive legal review of rights or technical review of data is not required; nor is back-up information on type and extent of qualification testing, quality control procedures and master tooling required. A summary flow chart of the limited screening decision steps is provided at Exhibit III.

(c) The limited screening decision steps are followed sequentially if the answer to the question in each step is affirmative. If any step is answered in the negative, proceed directly to Step 10.

(1) *Step 1.* Assemble all available data and establish a file for each part. Collect identification data, relevant data

obtained from industry, contracting and technical history data and current status of the part (see S6-303.1).

(2) *Step 2.* Do the available documents establish full Government rights to use the data for acquisition purposes? If the Government's rights to use data in its possession is questionable, resolution of the rights must continue beyond award of the immediate buy.

(3) *Step 3.* Is the data package sufficient, accurate and legible? If the Government does not have in its possession sufficient, accurate or legible data, action shall be promptly initiated to resolve the deficiency for the next buy.

(4) *Step 4.* Is the design of the part stable over the anticipated acquisition leadtime?

(5) *Step 5.* Is a satisfactory part now being produced?

(6) *Step 6.* Can the part be acquired from a new source without prior qualification testing or other approval testing?

(7) *Step 7.* Can the Government or a new source be responsible for quality assurance?

(8) *Step 8.* Can the part be manufactured without master or coordinated tooling or other special equipment; if no, is there more than one source which has the tooling or special equipment?

(9) *Step 9.* Assign AMC 2. Proceed to Step 11.

(10) *Step 10.* Assign AMC 3, 4 or 5, as appropriate.

(11) *Step 11.* Establish the date of the next review (see S6-104(c) and S6-203(b)).

Part 4—Contractor's Assistance

S6-400 General.

(a) Contractor's assistance in screening shall be requested on selected parts only after consideration of the benefit expected from the contractor's technical information and the cost to the Government of obtaining such assistance.

(b) Contractor's assistance shall not be requested for parts covered by Government/Industry specifications, commercially available parts or parts for which data is already available.

(c) Arrangements entered into with contractor to obtain technical information shall provide that (i) contractors will exert their best effort to make impartial technical evaluations using applicable technical data and the experience of competent personnel, and (ii) no costs to the Government will be incurred for duplicate screening of parts.

S6-401 Contractor's Technical Evaluation Procedures.

(a) Contractor's technical evaluation for the screening process shall be required contractually by incorporating MIL-STD-789, which delineates the contractor's responsibilities and procedures and prescribes use of the contractor Technical Information Record, DD Form 1418, and the Technical Data Identification Checklist, DD Form 1418-1, a copy of each document listed on DD Form 1418-1, and other substantive data that was used in developing the contractor's recommendations.

(b) When MIL-STD-789 is incorporated in a contract, the Contract Data Requirements List, DD Form 1423, shall specify the requirement for the submission of DD Form 1418 and DD Form 1418-1 in accordance with MIL-STD-789.

Part 5—Reporting System

S6-500 General. This part prescribes reports regarding the breakout program which cannot be obtained from other sources. These reports are used to evaluate the effectiveness of breakout programs, establish a baseline for all spare part acquisitions, and identify trends in spare parts acquisition.

S6-501 Reports.

(a) Spare Parts Breakout Screening Report (RCS DD P&I(Q&SA) 714A). This is a cumulative semi-annual report reflecting the accomplishments of the breakout program. The report describes the results of full and limited screening for provisioning and replenishment parts by number of different NSNs for each AMC. Each DoD Component shall also maintain actual cost data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually.

(b) Spare Parts Acquisition Report (RCS DD P&I(Q&SA) 714B). This is a cumulative semi-annual report for all purchases made of spare parts during the current fiscal year. This report describes the number and extended dollar value of different NSNs purchased for each AMC. Each DoD Component shall also maintain actual savings (or cost avoidance) data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually. Because of extraneous factors such as procurement leadtimes and changes in spare parts requirements, this report will not always reflect the acquisition of the parts screened during a reporting period (contained on the Spare Parts Breakout Screening Report). Also, it will not show in all instances how the part was actually procured. This report is intended to be an indication of the

success of the breakout program, and designed to show trends in the coding and data available to buyers in the procurement package.

S8-502 Reporting Procedures.

(a) Each Department shall maintain and forward semi-annual reports. The second semi-annual report in a fiscal year shall reflect cumulative totals for the current fiscal year using the attached formats (see Exhibits IV and V).

(b) The reports will be due no later than 45 days after the end of each period designated.

(c) Submissions will be made to the Assistance Secretary of Defense (Production and Logistics), Attention: Deputy Assistant Secretary for Logistics.

S8-503 Corrections and Revisions. Corrections and revisions to the mid-year report shall be contained in the

year-end report. Corrections and revisions to the year-end report shall be submitted within 30 days after the due date of the report.

S8-504 Reporting Instructions.

(a) Spare Parts Breakout Screening Report. Using the attached format, Exhibit IV, provide the following:

(1) Enter reporting activity name, fiscal year and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs for which screening was completed during the period. Show zeros where applicable. This should be done for both full and limited screening.

(3) Report the total costs of the breakout program incurred for the period. Although this will be primarily labor costs, it should also include appropriate prorated costs of ADP

services, office overhead, data retrieval service costs, etc. (see S8-303.5).

(b) Spare Parts Acquisition Report. Using the attached format, Exhibit V, provide the following:

(1) Enter reporting activity name, fiscal year and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs purchased during the current fiscal year and their extended dollar value.

(3) Report the actual breakout program savings or cost avoidances as measured by completed procurements (not anticipated procurements). Price differentials should be measured on each procurement where a breakout action has taken place. They should equal the difference between the previous contract unit price and the current contract unit price, times the number of units purchased.

VALID AMC/AMSC COMBINATIONS

AMSC	AMC					
	0	1	2	3	4	5
A.....	X	•	•	•	•	•
B.....	X	•	•	•	•	•
C.....	X	•	•	•	•	•
D.....	X	•	•	•	•	•
G.....	X	•	•	•	•	•
H.....	X	•	•	•	•	•
K.....	X	•	•	•	•	•
L.....	X	•	•	•	•	•
M.....	X	•	•	•	•	•
N.....	X	•	•	•	•	•
O.....	•	X	X	X	X	X
P.....	X	•	•	•	•	•
Q.....	X	•	•	•	•	•
R.....	X	•	•	•	•	•
S.....	X	•	•	•	•	•
T.....	X	•	•	•	•	•
U.....	X	•	•	•	•	•
V.....	X	•	•	•	•	•
Z.....	X	•	•	•	•	•

• = Valid combinations.
X = Invalid combinations.

Exhibit II—Full Screening Decision Process Summary Flow Charts

This flow chart cannot be printed because of its size. The exhibit may be

obtained from Mr. Charles W. Lloyd (see the Addresses section of the preamble).

BILLING CODE 2810-01-2

DOD SPARE PARTS BREAKOUT PROGRAM **LIMITED SCREENING DECISION PROCESS SUMMARY FLOW CHART**

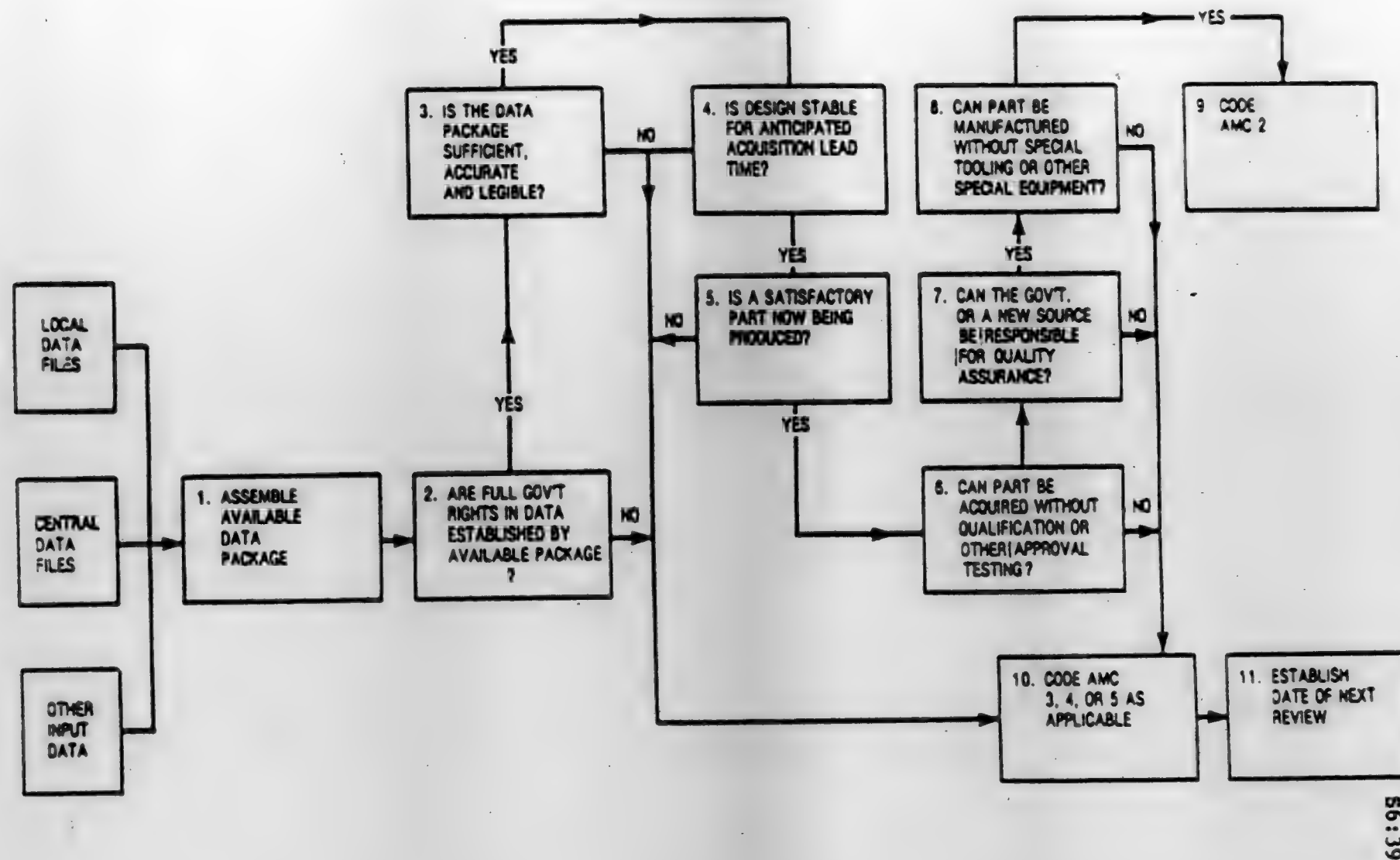


EXHIBIT III

SPARE PARTS BREAKOUT SCREENING REPORT

Reporting Activity _____ Fiscal Year _____ Period Ending _____

AMC/AMSC	Number of NSNs		
	Limited screening	Full screening	Total screening
*1 G Only			
1			
**2 G Only			
2			
3			
4			
5			
Total			

*Excluded from AMC 1 data.

**Excluded from AMC 2 data.

SPARE PARTS BREAKOUT PROGRAM COSTS \$ _____

SPARE PARTS ACQUISITION REPORT

Reporting Activity _____ Fiscal Year _____ Period Ending _____

AMC/AMSC	Purchases made	
	Number of NSNs	Extended dollar value
*1 G Only		
1		
**2 G Only		
2		
3		
4		
5		
Total		

*Excluded from AMC 1 data.

**Excluded from AMC 2 data.

SPARE PARTS BREAKOUT PROGRAM SAVINGS OR COSTS AVOIDANCES \$ _____

[FR Doc. 88-10053 Filed 7-18-88; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-16-NG]

IGI Resources, Inc.; Order Extending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory

Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending IGI Resources, Inc.'s (IGI), existing blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88-16-NG authorizes IGI to import up to 100 Bcf over an additional two-year period until August 1, 1990, for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 506-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 13, 1988.
Constance L. Buckley,Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.

[FR Doc. 88-16234 Filed 7-18-88; 8:45 am]

BILLING CODE 3450-01-M

Federal Energy Regulatory Commission

(Project Nos. 18-001 et al.)

Idaho Power Co. et al.; Intent To Prepare a Supplement to a Draft Environmental Impact Statement and To Hold Public Meetings

July 15, 1988.

Four applications have been filed for licenses for hydropower projects located on the Upper Snake River in Cassia,

Jerome, Minidoka, and Twin Falls Counties, Idaho. These projects are the Twin Falls Project (FERC No. 18), the Milner Project (FERC No. 2899), the Auger Falls Project (FERC No. 4797), and the Star Falls Project (FERC No. 5797). The Twin Falls Project would involve construction of a new powerhouse at the existing project, the Milner Project would involve modifications to existing facilities, and the other two projects would be entirely new facilities.

The Commission staff has previously determined that issuance of licenses for the proposed hydroelectric projects would constitute a major Federal action significantly affecting the quality of the human environment. The staff therefore prepared a Draft Environmental Impact Statement (EIS), which was completed in November 1987. There are significant new circumstances and information bearing on the proposed actions and their impacts. In order to address this information, the Commission staff intends to prepare a Supplement to the Draft EIS prior to issuing a Final EIS. Further, public meetings are scheduled for August 1988. A document describing the new circumstances and new information will be sent to all recipients of this notice prior to the public meetings. This document will be discussed during the public meetings, and these meetings will also provide an opportunity for the public to provide input on the new circumstances and new information.

Public Meetings

Interested agencies, officials, and members of the public are invited to express their views about the projects in these public meetings. There will be two

public meetings held on August 18, 1988, at the Holiday Inn Convention Center, 1350 Blue Lakes Boulevard North, Twin Falls, Idaho 83301. The first meeting will be held from 1:00 p.m. to 4:00 p.m.; the second meeting will be held from 7:00 p.m. to 10:00 p.m. The public meetings will be conducted by the Commission's staff. For further information, contact Kathleen Sherman at 202-376-9527.

At the public meetings persons may give their statements orally or in writing. The meetings will be recorded by a stenographer, and all statements (oral and written) will become part of the public meeting record. In addition, the public meeting record will remain open until October 1, 1988, and anyone may submit written comments until that time. Comments should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, and should clearly show the project names and numbers (e.g., the Twin Falls Project, FERC No. 18-001; the Milner Project FERC No. 2899-003, etc.) on the first page.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16219 Filed 7-18-88; 8:45 am]

BILLING CODE 3717-01-M

[Docket No. C164-676-000 et al.]

Mesa Operating Limited Partnership et al.; Applications for Certificate, Abandonment of Service and Amendment of Certificates¹

July 15, 1988.

Take notice that each of the

Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 28, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total succession; F—Partial succession]

Docket No. and date filed	Applicant	Purchaser and location	Description
C164-676-000, D, 6/23/88	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 75221-2880.	Northern Natural Gas Company, Division of Enron Corp., Mammoth Creek Field, Lipscomb Count, Texas.	(1)
C168-757-000, D, 6/28/88	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819 Dallas, TX 75221.	Panhandle Eastern Pipe Line Company, Putnam Field, Dewey County, Oklahoma.	(2)
C176-73-002, D, 6/28/88	do	Transwestern Pipeline Company, South Empire Deep Unit, Eddy County, New Mexico.	(2)
C181-224-001, D, 6/29/88	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221.	Trunkline Gas Company, Eugene Island Block 377, Offshore Louisiana.	(2)
C188-499-000 (C164-1314), B, 6/22/88	Enron Oil & Gas Company, P.O. Box 1188, Houston, TX 77251.	Valley Gas Transmission Inc., Sejita Field, Duval County, Texas.	(4)
C188-500-000 (C175-200), B, 6/22/88	do	Valley Gas Transmission, Inc., LaHuerta Field, Duval County, Texas.	(1)
C188-501-000 (C170-867), B, 6/22/88	do	CNG Transmission Corporation, Collins Settlement District, Lewis County, West Virginia.	(2)
C188-504-000 (C186-163-000), B, 6/20/88	TXO Production Corp., First City Center, 1700 Pacific Center, Dallas, TX 75201.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	(2)
C188-505-000, F, 6/24/88	Union Pacific Resources Company, P.O. Box 7, M.S. 3202, Fort Worth, TX 76101.	Tennessee Gas Pipeline Company, Stratton-Agua Dulce Field, Nueces County, Texas.	(10)

¹This notice does not provide for consolidation for hearing of the several matters covered herein.

(Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total succession; F—Partial succession)

Docket No. and date filed	Applicant	Purchaser and location	Description
C188-506-000 (C188-1267), B, 6/27/88	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Arkla Energy Resources, a division of Arkla, Inc., Denville Field, Bienville & Jackson Parishes, Louisiana.	(11)
C188-507-000 (C188-129), B, 6/27/88	Sun Exploration & Production Company	El Paso Natural Gas Company Basin Dakota Field, San Juan County, New Mexico.	(12)
C188-508-000 (C178-655), B, 6/27/88	do	Northwest Pipeline Corporation, Blanco (Pictured Cliffs) Field, Rio Arriba County, New Mexico.	(12)
C188-509-000 (C185-1243), B, 6/27/88	do	El Paso Natural Gas Company, Gallegos Canyon, et al., San Juan County, New Mexico.	(12)
C188-510-000 (G-15300), B, 6/28/88	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Vinegarone Field, Val Verde County, Texas.	(12)

1 Well was plugged and abandoned. Leases 1204, 1204-01 and 1204-02 were released.

2 Effective 12-5-73, ARCO assigned its interest in certain acreage to Zoller and Darnenberg Inc.

3 Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.

4 Not used.

5 Lease was released to Minerals Management Service on 9-21-86.

6 Effective 3-1-78, HNG Oil Company conveyed all of its interest in certain acreage to Glen A. Martin, and since Enron is the successor company to HNG, Enron requests that the certificate of public convenience and necessity issued in Docket No. C184-1314 be terminated and HNG's related Rate Schedule Nos. 14 and 15 be cancelled.

7 By Assignment dated 3-28-79, HNG assigned all of its interest in certain acreage to Robert Kibbe, and since Enron is the successor company to HNG, Enron requests that the certificate of public convenience and necessity issued in Docket No. C175-200 be terminated and HNG's related Rate Schedule No. 32 be cancelled.

8 Natural gas depleted.

9 The Nellie Scott #1 well, the only well covered under the 2-22-67, contract, became depleted and on 5-7-87, was plugged.

10 By Assignments dated 12-30-67, effective 1-8-68, Fine Oil and Chemical Company and Almaka, Ltd., conveyed to UPRC 100% of Fine's and Almaka's right, title and interest in certain oil and gas leases in the Stratton-Agus Dulce Field, Nueces County, Texas dedicated under the contract dated 1-11-61.

11 Conoco has no remaining leasehold interest subject to Rate Schedule No. 314.

12 Effective 12-1-87, Sun assigned its interest in Property No. 865688, State E. Gas Com. #1, Lease No. 913510, to El Paso Production Company.

13 Effective 12-1-87, Sun assigned its interest in Property No. 865678, San Juan 29-5, Lease No. 914192, to El Paso Production Company.

(FR Doc. 88-16221 Filed 7-18-88; 8:45 am)

BILLING CODE 9717-01-M

[Docket No. RP88-44-006]**El Paso Natural Gas Co.; Motion to Place Tariff Sheets into Effect and Compliance Filing**

July 14, 1988.

Take notice that El Paso Natural Gas Company (El Paso), on July 1, 1988, tendered for filing a motion to place into effect on July 1, 1988 certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A, and the rates and modifications set forth therein.

El Paso states that on December 31, 1987, it filed with the Commission on Docket No. RP88-44-000, among other things, a notice of change in rates and certain tariff provisions for natural gas service rendered to jurisdictional customers. By order issued January 29, 1988 at Docket Nos. RP88-44-000, *et al.*, the Commission conditionally accepted certain of the tariff sheets for filing and suspended their effectiveness for five (5) months to become effective July 1, 1988, subject to refund. Thereafter by orders issued March 31, 1988 and June 21, 1988 the Commission rejected compliance filings made by El Paso responsive to Commission orders.

On June 1, 1988, El Paso filed at Docket No. RP88-44-004, tariff sheets to reflect certain modifications to those

rates which were suspended until July 1, 1988 at Docket No. RP88-44-000. Such rates differ from the rates reflected in the revised compliance filing of May 6, 1988 at Docket No. RP88-44-003 in that the revised compliance rates were adjusted for the removal of take-or-pay buyout and buydown costs, an increase in throughput quantity and certain other adjustments. By order issued on June 30, 1988, the Commission approved certain of the tariff sheets, subject to refund and conditioned upon El Paso filing revised sheets within fifteen (15) days of the issuance of an order at Docket No. RP88-44-004 which comply with the Commission's January 29, 1988 order in said proceeding.

El Paso's motion placed into effect those tariff sheets approved by the Commission's June 30, 1988 order together with those tariff sheets not subject to rejection by the March 31, 1988 and June 21, 1988 orders. Additionally, El Paso requested waivers as may be appropriate. El Paso states that in order to comply with the conditions of the June 30, 1988 order, El Paso will file new rates on or before July 15, 1988, which El Paso moves to become effective July 1, 1988.

Copies of the filing were served upon each person designated on the official service list compiled by the Secretary in Docket No. RP88-44-000, and otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.11 (1967)). All such motions or protests should be filed on or before July 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

(FR Doc. 88-16220 Filed 7-18-88; 8:45 am)

BILLING CODE 9717-01-M

[Docket No. RP88-63-005]**Northwest Pipeline Corp.; Change in FERC Gas Tariff**

July 15, 1988.

Take notice that on July 8, 1988, Northwest Pipeline Corporation ("Northwest"), in compliance with the order issued by the Federal Energy Regulatory Commission ("Commission") on June 22, 1988 in Docket No. RP88-63-000, submitted the following tariff sheet to be a part of its FERC Gas Tariff. Northwest requests an effective date of August 4, 1988.

Original Volume No. 1-A

Third Revised Sheet No. 415

Northwest states the purpose of this filing is to revise the above-listed tariff sheet to comply with the conditions set forth in the Commission's June 22 Order, requiring Northwest to provide that interruptible transportation customers are required to tender gas within 15 days, rather than the 60 day period provided in the original filing in this docket.

A copy of this filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

(FR Doc. 88-16222 Filed 7-18-88; 8:45 am)

BILLING CODE 9717-01-M

ENVIRONMENTAL PROTECTION AGENCY**[FR-3416-1]****Agency Information Collection Activities Under OMB Review**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:**Office of Administration Resources Management**

Title: Acquisition Solicitations (RFP's and IFB's). (EPA ICR #1938).

Abstract: Full and open competition in the EPA procurement process is required under the Federal Acquisition Regulation (FAR). Request for Proposals (RFPs) or Invitations for Bids (IFBs) are used by the Agency to solicit acquisitions. Businesses desiring to sell goods or services to EPA submit proposals or bids, depending on the specific needs of the solicitation.

Burden Statement: Public reporting burden for this collection of information is estimated to average 84.9 hours per year per respondent. This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the recollection of information.

Respondents: Businesses.**Estimated No. of Respondents:** 2,046.**Estimated Total Annual Burden on Businesses:** 203,890 hours.**Frequency of collection:** 1 per FRP or IFB.

Title: Contractor Cumulative Claim and Reconciliation EPA From 1900-10. (EPA ICR #0246).

Abstract: At completion of "cost-reimbursement" type contracts, all costs invoiced must be reconciled as reimbursable under the contract. Contractors must complete EPA 1900-10 to serve as a basis for initiating a final audit of the contract.

Burden Statement: Public reporting burden for this collection of information is estimated to average 0.5 hours per year per respondent. This estimate includes the time to review instructions, researching existing data sources, process/compile data, and complete form 1900-10.

Respondents: EPA contractors.**Estimated Number of Respondents:** 300.**Estimated of Average Response Frequency:** 1 per contract.

Total Estimated Annual Burden: 150 hours. Send comments regarding these burden estimates, or any other aspects of these collections of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM 223), 401 M Street SW., Washington, DC 20460

and
Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place

NW., Washington DC 20503,
Telephone (202) 395-3084.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1012; PCB Disposal Permitting Regulations; was approved 06/27/88; OMB #2070-0011; expires 06/30/91.

EPA ICR #1246; Reporting and Recordkeeping for Asbestos abatement Worker; was approved 06/27/88; expires 06/30/91.

EPA ICR #0234; Laboratory Performance Evaluation of Water and Waste Laboratories; was approved 06/28/88; expires 06/30/91.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

(FR Doc. 88-16193 Filed 7-18-88; 8:45 am)

BILLING CODE 4650-50-M

[OPTS-59261B; FRL-3415-9]**Certain Chemicals Approval of a Test Marketing Exemption**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-88-14. The test marketing conditions are described below.

EFFECTIVE DATE: July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Keith Cronin, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3709).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test

marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-88-14. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-88-14. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

T-88-14

Date of Receipt: May 23, 1988.

Notice of Receipt: June 13, 1988 (53 FR 22044).

Applicant: Confidential.

Chemical: (G) Acid ester.

Use: (G) Dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Eighteen months, commencing on first day of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: July 6, 1988.

Wendy Cleland-Hamnett,
Deputy Director, Chemical Control Division,
Office of Toxic Substances.
[FR Doc. 88-16186 Filed 7-18-88; 8:45 am]
BILLING CODE 5560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

July 12, 1988.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0343

Title: 47 CFR 25.391—Qualifications of Domestic Satellite Space Station Licensees

Action: Extension

Respondents: Businesses

Frequency of Response: On occasion

Estimated Annual Burden: 25

Responses: 25,000 Hours

Needs and Uses: To enable the Commission to determine whether domestic fixed-satellite space station applicants are financially, technically, and legally qualified to construct, launch, and operate their proposed systems and have a justified need for additional satellites, applicants are required to submit certain documentation.

OMB Number: 3060-0339

Title: Section 78.11, Permissible Service

Action: Extension

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion

Estimated Annual Burden: 190

Responses: 47 Hours; 1,895

Recordkeepers, 947 Hours; 994 Total Hours

Needs and Uses: Records kept by cable television relay service licensees in

accordance with section 78.11 are used by FCC staff to ensure that contributions to capital and operating expenses are accepted only on a cost-sharing, nonprofit basis. Notifications filed with the FCC are used to provide information regarding alleged interference.

OMB Number: 3080-0341

Title: Section 73.1680, Emergency Antennas

Action: Extension

Respondents: Businesses (including small businesses) and nonprofit institutions

Frequency of Response: On occasion

Estimated Annual Burden: 119

Responses: 119 Hours

Needs and Uses: Within 24 hours of commencement of use of an emergency antenna, a licensee of an AM, FM, or TV station must submit an informal request to the FCC to continue operation with the emergency antenna. This information is used by FCC staff to ensure that interference is not caused to other stations.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-16185 Filed 7-18-88; 8:45 am]

BILLING CODE 4712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Office of Training

Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).
Dates of Meeting: July 31, 1988 to August 3, 1988.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, MD 21727.

Time: July 31—7:00 p.m. to 9:00 p.m.; August 1—8:30 a.m. to 5:00 p.m.; August 2—8:30 a.m. to 5:00 p.m.; August 3—8:30 a.m. to Agenda Completion.

Proposed Agenda: Welcome/orientation for 3 new members; follow-up on action items from April meeting.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South

Seton Avenue, Emmitsburg, Maryland 21727, (telephone number, 301-447-1251), on or before July 20, 1988.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

William Neville,

Acting Director, Office of Training.

Dated: July 13, 1988.

[FR Doc. 88-16157 Filed 7-18-88; 8:45 am]

BILLING CODE 4710-21-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-727; FHLBB No. 2976]

Franklin First Federal Savings & Loan Association of Wilkes-Barre, Wilkes-Barre, PA, Final Action Approval of Conversion Application

Date: July 13, 1988.

Notice is hereby given that on July 8, 1988, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Franklin First Federal Savings and Loan Association of Wilkes-Barre, Wilkes-Barre, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanvix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.

[FR Doc. 88-16201 Filed 7-18-88; 8:45 am]
BILLING CODE 4720-01-M

[No. AC-726; FHLBB No. 3196]

The Long Island City Savings & Loan Association, Long Island City, NY; Final Action Approval of Conversion Application

Date: July 8, 1988.

Notice is hereby given that on July 1, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Long Island City Savings and Loan Association, Long Island City, New

York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-16202 Filed 7-18-88; 8:45 am]

BILLING CODE 4720-02-M

[No. AC-728]

Robert Treat Savings & Loan Association of Newark, Newark, NJ; Final Action Approval of Conversion Application

Date: July 14, 1988.

Notice is hereby given that on June 30, 1988, the Office of General Counsel and the Office of Regulatory Policy, Oversight and Supervision, ("ORPOS") or their respective designees, acting pursuant to delegated authority, approved the application of Robert Treat Savings and Loan Association of Newark, Newark, New Jersey ("Robert Treat"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the Office of District Banks, with the concurrence of ORPOS and the Office of General Counsel, approved the application for Robert Treat to merge into AmeriFederal Savings Bank, Lawrenceville, New Jersey.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-16203 Filed 7-18-88; 8:45 am]

BILLING CODE 4720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice

appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004008-008.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland
Marine Terminals Corporation (MTC)

Synopsis: The agreement provides for direct payment of tariff charges to the Port by all users of the assigned premises and for Port payment to MTC of its compensation under the basic agreement.

Agreement No.: 224-200139.

Title: Port of New York and New Jersey Terminal Agreement.

Parties:

Port Authority of New York and New Jersey (Port Authority)
Sea-Terminals, Inc. (ST)

Synopsis: The proposed agreement provides for ST's use of the Port Authority's Howland Hook Marine Terminal for loading and unloading cargoes, storage of cargo, cargo-containers and equipment, and parking of motor vehicles.

Agreement No.: 224-010642-004.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland
Stevedoring Services of America (SSA)

Synopsis: The agreement provides for direct payment of tariff charges to the Port by all users of the assigned premises and for the Port payment to SSA of its compensation under the basic agreement.

Agreement No.: 224-004067-005.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland
Stevedoring Services of America

Synopsis: The agreement provides for (1) direct payment to the Port by all users of the assigned premises of tariff charges applicable to such use and (2) Port payment to SSA of its compensation under the Agreement.

By Order of the Federal Maritime Commission.

Dated: July 13, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-16123 Filed 7-18-88; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Availability of Draft Environmental Impact Statement for the Proposed Federal Building in Downtown Chicago, IL

July 15, 1988.

The General Services Administration (GSA) has prepared a Draft Environmental Impact Statement (DEIS) for the proposed construction of a 600,000 occupiable square foot Federal Building in downtown Chicago. The limits of the geographical area under consideration for the building are bounded to the north and west by the Chicago River, to the east by Lake Michigan, and to the south by Congress Parkway.

The proposed Federal Building will house the regional headquarters of various Federal agencies. The principal utilization of the facility will be for administrative and management functions; minimal public service functions are anticipated. Sixty parking spaces reserved for Government use will also be incorporated into the structure.

The building will be acquired through a lease finance mechanism which will place the property in private ownership for as long as thirty years. GSA intends to award a lease contract to a developer by the Fall of 1988. Offerors will identify, propose, and acquire the site, as well as suggest their own design for the building. Occupation of the completed facility is projected for mid-1991.

Copies of the Draft Environmental Impact Statement are available from: Matthew A. Kling, Planner, Planning Staff-5PL, 230 South Dearborn Street, Rm. 3618, Chicago, Illinois 60604, (312) 353-5610.

The Council on Environmental Quality regulations provide for a 60 day review period; comments can be directed to the person above.

Richard G. Austin and Kenneth J. Kalesow,
Acting Regional Administrator.

[FR Doc. 88-16172 Filed 7-18-88; 8:45 am]

BILLING CODE 6820-38-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health

Grants for Education Programs in Occupational Safety and Health; Availability of Funds for Fiscal Year 1988

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1988 for training grants in occupational safety and health as authorized by section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)(1)). Regulations applicable to this program are in Part 80, "Grants for Education Programs in Occupational Safety and Health," of Title 42, Code of Federal Regulations (42 CFR Part 80). The objective of this grant program is to award funds to eligible institutions or agencies to pay part or all of the costs of the combination of long-term and short-term training activities in occupational safety and health.

Fund in the total amount of \$9,880,000 will be available in Fiscal Year 1988. Approximately \$8,600,000 of the total funds available will be utilized as follows:

1. To award approximately 14 new, renewal and continuation Educational Resource Center (ERC) training grants ranging from approximately \$300,000 to \$700,000 with the average award being approximately \$500,000 (Program Announcement 51 FR 32963, September 17, 1986);

2. To award approximately 25 new, renewal or continuation long-term training grants ranging from approximately \$10,000 to \$200,000 with the average award being \$50,000 to support academic programs in the fields of industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety (Program Announcement 52 FR 3172, February 2, 1987); and

3. To conduct the peer review and evaluations of all new, competing renewal and supplemental applications received.

Awards will be made for a 1- to 5-year project period with an annual budget period.

In addition, \$1,100,000 of the total funds available will be awarded to Educational Resource Centers to support research training programs. The research training initiative was described in the ERC Program Announcement published in the Federal

Register on September 17, 1986 (51 FR 32963). Program support is available for faculty, staff, student support, and other resources to train teachers and researchers in the various occupational safety and health disciplines.

Approximately \$180,000 of the total funds available will be awarded to Educational Resource Centers to support the development and presentation of continuing education and short courses for professionals engaged in the management of hazardous substances. These funds were provided to NIOSH through an Interagency Agreement with the National Institute for Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (100 Stat. 1708-1710). The hazardous substance training funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERC's in FY 1984 and 1985 under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The ERC continuing education program was described in the Federal Register on September 17, 1986 (51 FR 32963). Program support is available for faculty, staff, and other resources to provide occupational safety and health training to practicing professionals in State and local health and environmental agencies and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities. It is anticipated that the total funds available for awards for this program in the future will be approximately as follows: FY 1989—\$250,000; FY 1990—\$950,000; FY 1991—\$1,100,000.

Eligible Applicants

Any public or private educational or training agency or institution located in a State is eligible to apply for a grant.

Application Procedures

Application forms for new, competing renewal, or supplemental applications may be obtained from: Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305.

The original and six (6) copies of new, competing, renewal, or supplemental applications should be submitted to: Division of Research Grants, National Institutes of Health, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20816.

These applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant. The submission schedule is as follows:

New/Renewal & Supplemental Receipt Dates

October 1
February 1
June 1

Applications not received by a designated receipt date will be held for review in the next cycle.

An original and two (2) copies of non-competing continuation applications should be submitted to: Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305.

Review Procedures

In reviewing long-term training grant applications, consideration will be given to:

1. The need for training in the program area outlined by the application.
2. The potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.
3. Methods proposed to evaluate effectiveness of the training.
4. The degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?
5. The competence, experience, training, time commitment to the program and availability of faculty to advise students.
6. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; whom they advise, role in designing curriculum and establishing program need.

In reviewing ERC grant applications, consideration will be given to:

1. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially with the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970.
2. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.
3. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements

are designed to effectively achieve Characteristics of an Educational Resource Center.

4. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, and critiques from continuing education courses.

5. The competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and of other professional staff in relation to the type and scope of training and education involved.

6. Institutional commitment to Center goals.

7. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Terry Maricle, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 842-6511.

Technical assistance may be obtained from John T. Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533-8241.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

(This program is described in the Catalog of Federal Domestic Assistance Program No. 13.263, Occupational Safety and Health Training Grants.)

Dated: July 11, 1988.

Larry W. Sparks,
Acting Director, National Institute for
Occupational Safety and Health.

[FR Doc. 88-16176 Filed 7-18-88; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 79P-0031]

Approved Variance For Infrared Illuminator; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing that an extension of a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for infrared illuminators manufactured by STC Defense Systems. The product is designed to illuminate with invisible infrared radiation a dark field of view in order that it can be viewed with night vision equipment. The infrared illuminator is designed for covert operations by governmental, military, and law enforcement agencies.

DATES: The extension of the variance became effective April 13, 1988, and ends December 30, 1993.

ADDRESS: The application and all correspondence on the application have been placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 356 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted STC Defense Systems, Brixham Rd., Paignton, Devon TQ4 7BE, England, an extension of a variance from the performance standard for laser products (21 CFR 1040.10 and 1040.11) for the Infrared Illuminator Models RT4A, RT5A, LM05, and LM10.

The original variance for these products was granted to the ITT Components Group and later transferred to STC Defense Systems. In addition, the variance is approved for the Infrared Illuminator Model LM18 under the same conditions. Specifically, the requirements of the laser products standard for which the variance was granted are the performance features of a remote interlock connector (21 CFR 1040.10(f)(3)); key control (21 CFR 1040.10(f)(4)); and emission indicator (21 CFR 1040.10(f)(5)(ii)).

Under the terms of the variance, the product will not incorporate a remote interlock connector, key control, or emission delay, although an alternate means (removable battery pack or normally-off power switches) shall be employed in place of the key control.

Therefore, on April 13, 1988, the requested extension of the variance was approved by a letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: July 11, 1988.

John C. Villforth,
Director, Center for Devices and Radiological Health.

[FR Doc. 88-16131 Filed 7-16-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0188]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® B&L 70™ (Lidofilcon A) Soft (Hydrophilic) Contact Lenses and Bausch & Lomb® CW 79™ (Lidofilcon B) Soft Contact Lenses

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of the BAUSCH & LOMB® B&L 70™ (lidofilcon A) Soft (Hydrophilic) Contact Lenses for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and BAUSCH & LOMB® CW 79™ (lidofilcon B) Soft Contact Lenses for vision correction in aphakic persons with nondiseased eyes. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of

April 29, 1988, of the approval of the application.

DATE: Petitions for administrative review by August 18, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On April 14, 1988, Bausch & Lomb Optics Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of the BAUSCH & LOMB® B&L 70™ (lidofilcon A) Soft (Hydrophilic) Contact Lenses and the BAUSCH & LOMB® CW 79™ (lidofilcon B) Soft Contact Lenses. The BAUSCH & LOMB® B&L 70™ (lidofilcon A) Soft (Hydrophilic) Contact Lenses are for extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lenses are indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lenses may be worn by persons who may exhibit up to 2.00 diopters (D) of astigmatism. These lens range in powers from -12.50 D to +8.00 D. The BAUSCH & LOMB® CW 79™ (lidofilcon B) Soft Contact Lenses are indicated for extended wear for vision correction in aphakic persons with nondiseased eyes. These lenses range in powers from +10.00 D to +20.00 D. The lenses are to be disinfected using either a heat (thermal) or a chemical (not heat) disinfection system. The application includes authorization from Allergan Medical Optics, Irvine, CA 92715, to reference the information contained in its approved applications for premarket approval (PMA) for the Sauflon 70 (lidofilcon A) and Sauflon PW (lidofilcon B) Soft (Hydrophilic) Contact Lenses (Docket No. 85M-0187; P790020).

On February 11, 1980, March 28, 1982, and January 28, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the Allergan Medical Optics' PMA No. P790020 and related supplements. On April 29, 1988, CDRH approved the application by Bausch & Lomb Optics Center by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the BAUSCH & LOMB® B&L 70™ CW 79™ (lidofilcon A) Soft (Hydrophilic) Contact Lenses and BAUSCH & LOMB® CW 79™ (lidofilcon B) Soft Contact Lenses states that the lenses are to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the Federal Register of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of

material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 FR 5.53).

Dated: July 11, 1988.

John C. Villforth,
Director, Center for Devices and Radiological Health.

[FR Doc. 88-16130 Filed 7-16-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0212]

Lamberts (Dalston) Ltd.; Premarket Approval of Prentif™ Cavity-Rim Cervical Cap

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Lamberts (Dalston) Ltd., Luton, England, for premarket approval, under the Medical Device Amendments of 1976, of the Prentif™ Cavity-Rim Cervical Cap for use by women of childbearing age as a barrier method of contraception. After reviewing the recommendation of the Obstetrics and Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 23, 1988, of the approval of the application.

DATE: Petitions for administrative review by August 18, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management

Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raju G. Kammula, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: On October 5, 1987, Lamberts (Dalston) Ltd., Luton LU1 5BW, England, submitted to CDRH an application for premarket approval of the Prentif™ Cavity-Rim Cervical Cap. The Prentif™ Cavity-Rim Cervical Cap is indicated for use by women of childbearing age as a barrier method of contraception. It is to be used in conjunction with a spermicidal cream or jelly to prevent pregnancy and must be left in place for a minimum of 8 hours after intercourse and may be left in place for a maximum of 48 hours (2 days).

On February 24, 1988, the Obstetrics and Gynecology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 23, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Raju G. Kammula (HFZ-470), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting

data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 11, 1988.

John C. Villforth,
Director, Center for Devices and Radiological Health.

[FR Doc. 88-16129 Filed 7-16-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Clinical Chemistry and Clinical Toxicology Devices Panel

Date, time, and place. August 15 and 16, 1988, 9 a.m., Room 703A-727A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, August 15, 1988, 9

BEST COPY AVAILABLE

a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open public hearing, August 10, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before August 1, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two premarket approval applications: (1) immunocytochemical assay employing monoclonal antibodies designed to detect estrogen receptor in human breast cancer tissue for use as an aid in the management of breast cancer, and (2) enzyme immunoassay for the quantitative measurement of human estrogen receptor in tissue cytosol to aid in the management of breast cancer patients.

Closed presentation of data. Trade secret and/or confidential commercial or financial information will be presented to the committee regarding the premarket approval applications for the above immunocytochemical assay and enzyme immunoassay. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial or financial information regarding the premarket approval applications for the above immunocytochemical assay and enzyme immunoassay. This portion of the meeting will be closed to permit discussions of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. August 29, 1988, 8:30 a.m., Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12:30 p.m.; closed committee deliberations, 1:30 p.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the committee contact person.

Open committee discussion. The committee will discuss: (1) myocardial oxygenation and contraction during isoflurane (Forane®, Anaquest) anesthesia, in patients with ischemic heart disease, and (2) new animal drug application Nos. 19-677 and 19-678, for edrophonium and atropine combination (Enlon Plus®, Anaquest).

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug No. 25-394. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public

hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that

those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on

matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 12, 1988.

Frank E. Young,
Commissioner of Food and Drugs.
[FR Doc. 88-16132 Filed 7-10-88; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Charge Code: (OR120-6310-02: GP8-190)]

Intention To Close Public Lands; Coos County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to close public lands in Coos County, Oregon.

SUMMARY: This notice is to inform the public that the Bureau of Land Management (BLM) intends to close certain public lands on Coos Bay North Spit in Coos County to all public use, including recreation, off-road vehicle use, hiking and shooting in accordance with the current Habitat Management Plan (HMP) and the North Spit Amendment to the South Coast-Curry Management Framework Plan (MFP). Seasonal and year-round closure designations will be in effect. These designations will remain in effect until rescinded or modified by the Tioga Area Manager.

The public lands affected by this closure are specifically identified as follows:

A. Seasonal Designation

The area designated for seasonal closure comprises approximately three (3) acres of dredge spoils material east of the country road in Section 7, Lot 6, T. 25 S., R. 13 W., Will. Mer.

Public use will be precluded annually from March 15 to September 15. The designated area will be posted with signs.

B. Year-Round Designation

The area designated for year-round closure comprises approximately ten (10) acres of dredge spoils material west of the county road in Section 7, Lot 5, T. 25 S., R. 13 W., Will. Mer.

The designated area will be fenced and posted with signs. This closure will go into effect upon completion of the

fence, approximately November 30, 1988.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure: Employees of the BLM, Oregon Department of Fish and Wildlife and Weyerhaeuser Company; and state, local and federal law enforcement and fire protection personnel. Access by additional parties may be allowed, but must be approved in advance in writing by the Tioga Area Manager.

These closures are in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), the Sikes Act (16 U.S.C. 670g) and 43 CFR, Subpart 8364.1. Any person who fails to comply with the provisions of this closure may be subject to penalties outlined in 43 CFR 8360.0-7.

The reason for these closures is to protect Western Snowy Plover nesting habitat as outlined in the HMP. Copies of the HMP are available from the Coos Bay District Office, 333 South Fourth St., Coos Bay, OR.

FOR FURTHER INFORMATION CONTACT: Richard M. Popp, Tioga Area Manager, Coos Bay District Office, at (503) 269-5880.

Richard M. Popp,
Area Manager.

[FR Doc. 88-16187 Filed 7-10-88; 8:45 am]
BILLING CODE 4310-33-M

[CA-940-08-4212-13; CACA 20226]

California; Realty Action; Exchange of Public and Private Lands in Riverside and San Bernardino Counties and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire a portion of the non-Federal land within the 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserves. The land acquired does not constitute habitat for the lizard, but

provides a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions for the preserve. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 978-4615.

1. The United States issued a land exchange conveyance document to The Nature Conservancy on July 1, 1988, pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described public land:

San Bernardino Meridian, California

T. 5 N., R. 14 E.,
Sec. 26, S $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 80 acres in San Bernardino County.

2. In exchange for the land described in paragraph 1, on July 1, 1988, the United States accepted title to the following described private land from the Nature Conservancy:

San Bernardino Meridian, California

T. 4 S., R. 7 E.,
Sec. 7, E $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

Except 50% of all mineral, gas, oil, and geothermal rights and substances under the real estate described in the deed, without rights of surface entry, as reserved in the deed from Lou R. Crandall and Marguerita Crandall, husband and wife, William V. Lawson and May Lou Lawson, husband and wife, Stanley N. Gleis and Kathleen R. Gleis, husband and wife, and William J.D. Lane and Kathleen C. Lane, husband and wife, each as to an undivided one-quarter interest, by deed recorded April 27, 1971, as instrument No. 43314 of Official Records of Riverside County, California.

The area described contains 40 acres in Riverside County.

3. The values of the public land and the private land were equalized by the procedures set forth in the Memorandum of Agreement dated December 10, 1987.

4. At 10 a.m. on August 22, 1988, the land described in paragraph 2 above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 22, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order for filing.

5. At 10 a.m. on August 22, 1988, the land described in paragraph 2 above shall be open to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Act required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on August 22, 1988, the land described in paragraph 2 above shall be open to applications and offers under the mineral leasing laws.

Date: July 11, 1988

Robert C. Nauer,

Chief, Branch of Adjudication and Records,
[FR Doc. 88-16168 Filed 7-18-88; 8:45 am]
BILLING CODE 4310-40-M

[NM-940-06-4220-11; NM NM 014018, NM NM 016580, NM NM 016634, NM NM 023844, NM NM 0220340, NM NM 1411, NM NM 0558981]

Proposed Continuation of Withdrawals; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of withdrawals for the Alamo Peak Lookout, Bluewater Lookout, Cloudcroft, Administrative Site, Cloudcroft Recreation Area, Cloudcroft Roadside Zone, Deerhead Campground, James Canyon Campground, Karr Canyon Picnic Area, Mayhill Administrative Site, New Carrissa Lookout, Sleepy Grass Recreation Area, Week Lookout, Haynes Canyon Research Natural Area, and Wofford Lookout continue for an additional 20 years, and Ski Cloudcroft Winter Sports Area continue for an additional 30 years which is the anticipated life of the projects. The lands will remain closed to mining and where closed be opened to surface entry. All of the lands have been and remain open to mineral leasing.

DATE: Comments should be received by October 17, 1988.

ADDRESS: Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1448, Santa Fe, NM 87504-1448.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM New Mexico State Office, 505-988-6554.

The Forest Service proposes that all or portions of the existing land withdrawals made by Public Land Order Nos. 1040, 1073, 1074, 1663, 2798, and 4424 be continued for a period of 20 years, and a portion of Public Land Order No. 4643 be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Lincoln National Forest

1. NM NM 014018—Public Land Order No. 1040

Cloudcroft Administrative Site

T. 10 S., R. 12 E.,

Sec. 5, NE $\frac{1}{4}$ of lot 7.

2. NM NM 016580—Public Land Order No. 1073

Deerhead Campground

T. 10 S., R. 12 E.,

Sec. 5, lot 21;

Sec. 8, lots 23 and 24

3. NM NM 016634—Public Land Order No. 1074

Alamo Peak Lookout

T. 10 S., R. 11 E.,

Sec. 34, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

Karr Canyon Picnic Area

(formerly Karr Canyon Forest Camp)

T. 10 S., R. 11 E.,

Sec. 22, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

Wofford Lookout Tower

T. 15 S., R. 13 E.,

Sec. 19 SW $\frac{1}{4}$ NE $\frac{1}{4}$.

Weed Lookout

T. 17 S., R. 13 E.,

Sec. 25, E $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

New Carrissa Lookout

T. 19 S., R. 13 E.,

Sec. 4, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 9, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

James Canyon Campground

T. 10 S., R. 14 E.,

Sec. 22, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

Mayhill Administrative Site

T. 10 S., R. 14 E.,

Sec. 13 SW $\frac{1}{4}$;

Sec. 14, E $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 23, E $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 24, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

Bluewater Lookout

T. 10 S., R. 14 E.,

Sec. 13, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

W $\frac{1}{4}$.

4. NM NM 023844—Public Land Order No. 1863

Cloudcroft Recreation Area

(formerly Unit A of Cloudcroft Experimental Forest)

T. 15 S., R. 12 E.,

Sec. 25, S $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 36, All.

Haynes Canyon Research Natural Area

(formerly Unit B of Cloudcroft Experimental Forest)

T. 10 S., R. 11 E.,

Sec. 1, S $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 12.

T. 10 S., R. 12 E.,

Sec. 7, lot 4.

5. NM NM 0220340—Public Land Order No. 2788

Cloudcroft Road (State No. 83)

Highway Roadside Zone

A strip of land 500 feet on each side of the centerline of U.S. 82 through the following legal subdivisions:

T. 15 S., R. 13 E.,

Sec. 31, lot 4, S $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 32, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 10 S., R. 12 E.,

Sec. 3, lot 1, 2, 4, 8;

Sec. 4, lots 1-6, inclusive, 8, 12;

Sec. 5, lot 1, SE $\frac{1}{4}$ of lot 7, 8, 33.

6. NM NM 1411—Public Land Order No. 4424

Sleepy Grass Recreation Area

(formerly Sleepy Grass Picnic Ground)

T. 10 S., R. 12 E.,

Sec. 4, lot 7, W $\frac{1}{4}$ of lot 10, SE $\frac{1}{4}$ of lot 14,

W $\frac{1}{4}$ of lot 15, NW $\frac{1}{4}$ of lot 16, lot 13,

SE $\frac{1}{4}$ of lot 20, lot 21, NW $\frac{1}{4}$ of lot 22;

Sec. 5, S $\frac{1}{4}$ of lot 22, S $\frac{1}{4}$ of lot 23, S $\frac{1}{4}$ of lot

24, N $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and

N $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

7. NM NM 0558981—Public Land Order No. 4643

Ski Cloudcroft Winter Sports Area

T. 10 S., R. 12 E.,

Sec. 3, lot 20;

Sec. 4, lot 17.

The areas described aggregate 2,670.27

acres in Otero County.

The withdrawals are essential for protection of substantial capital improvements on these sites. The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands will be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed

withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: July 7, 1988.

Monte G. Jordan,

State Director, Associate.

[FR Doc. 88-16168 Filed 7-18-88; 8:45 am]

BILLING CODE 4310-72-2

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on The Alaska Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.
ACTION: Notice of the availability of environmental documents prepared for outer continental shelf (OCS) minerals exploration proposals on the Alaska OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding this notice.

Proposal

Amoco requests to drill one exploratory well from either the Kulluk or the Explorer II on either lease OCS-Y 0817, 0818, or 0820 during the 1988 open-water period in the Eastern Alaskan Beaufort Sea. In addition, Amoco requests the waiver of Sale 67 Stipulation No. 4, the Seasonal Drilling Restriction, effective for 1988 and subsequent years. It has been MMS policy to provide only a one year modification to the Seasonal Drilling Restriction. The EA assesses waiving

the Seasonal Drilling Stipulation for only the 1988 drilling season. Should drilling be permitted during the fall bowhead whale migration, Amoco will monitor the migration using the National Marine Fisheries Service approved Wartok and Watkins study. Amoco will continue to support a 1988 agreement with the Alaska Eskimo Whaling Commission to help minimize potential conflicts between subsistence activities and drilling activities.

Location

Lease	Block(s)
OCS-Y: 0817..... 0818..... 0820.....	NR 7-3 724 725 768

Environmental Assessment

EA No. AK 88-02.

FONSI Date

May 25, 1988.

FOR FURTHER INFORMATION: Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the MMS office in the Alaska OCS Region.

The FONSI and associated EA are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 30th Avenue, Room 502, Anchorage, Alaska 99508, phone: (907) 261-4435.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public notice of Availability of environmental

documents required under the NEPA regulations.

Dated: July 8, 1988.
Alan D. Powers,
Regional Director, Alaska OCS Region.
[FR Doc. 88-16164 Filed 7-18-88; 8:45 am]
BILLING CODE 4310-39-M

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the South Bay Marchand Federal Unit Agreement No. 14-08-001-3915, has submitted a DOCD describing the activities it proposes to conduct on the South Bay Marchand Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on June 30, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8:00 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nixdorf; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2860.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 8, 1988.

J. Rogers Peary,
Regional Director, Gulf of Mexico OCS Region.
[FR Doc. 88-16166 Filed 7-18-88; 8:45 am]
BILLING CODE 4310-39-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 9, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 3, 1988.
Carol D. Shull,
Chief of Registration, National Register.

GEORGIA

De Kalb County

Briarcliff, 1280 Briarcliff Rd., NE, Atlanta, 88001167

Fulton County

Southern Belting Company Building, 236 Forsyth St., SW, Atlanta, 88001174

IOWA

Lyon County

Big Sioux Prehistoric Prairie Procurement System Archaeological District (Big Sioux Prehistoric Prairie Procurement System MPS), Address Restricted, Klondike vicinity, 88001169

Polk County

Civic Center Historic District (The City Beautiful Movement and City Planning in Des Moines, Iowa (1892-1938 MPS)), Des Moines River, Center St. Dam to Scott Ave. Dam, including both banks, Des Moines, 88001168

KANSAS

Greenwood County

Eureka Carnegie Library (Carnegie Libraries of Kansas TR), 520 N. Main, Eureka, 88001170

Morris County

Cottage House Hotel, 25 N. Neosho, Council Grove, 88001172

Saline County

Fox-Watson Theater Building, 155 S. Santa Fe Ave., Saline, 88001171

MASSACHUSETTS

Essex County

Ten Pound Island Light (Lighthouses of Massachusetts TR), Gloucester Harbor, Gloucester, 88001179

MINNESOTA

Brown County

Nora Free Christian Church, NM 257, Hanska vicinity, 88001176

MISSOURI

St. Louis Independent City

Stockton, Robert Henry, House, 3506 Samuel Shepard Dr., St. Louis, 88001177

NEW MEXICO

Eddy County

Caverns, The, Historic District, End of NM 7, Carlsbad vicinity, 88001173

NORTH CAROLINA

Orange County

Faucett Mill and House, Faucette Mill Rd. on the E side of Eno River, Hillsborough vicinity, 88001175

UTAH

Grand County

Julien Inscription Panel (Arches National Park MRA), Dark Angel vicinity, Moab vicinity, 88001184

Old Spanish Trail (Arches National Park MRA), Visitor Center vicinity, Moab vicinity, 88001181

Ringhoffer Inscription (Arches National Park MRA), Tower Arch, Moab vicinity, 88001185

Rock House—Custodian's Residence (Arches National Park MRA), Visitor Center vicinity, Moab vicinity, 88001186

San Juan County

Cave Springs Corral (Canyonlands National Park MRA), Cave Springs, Moab vicinity, 88001188

Cowboy Cave (Canyonlands National Park MRA), Cave Springs vicinity, Moab vicinity, 88001187

D.C.C.&P. Inscription B (Canyonlands National Park MRA), Confluence vicinity, Moab vicinity, 88001190

Julien Inscription (Canyonlands National Park MRA), Lower Red Lake vicinity, Moab vicinity, 88001196

Kirk's Cabin (Canyonlands National Park MRA), Upper Salt Creek Canyon, Moab vicinity, 88001192

Kirk's Corral (Canyonlands National Park MRA), Upper Salt Creek, Moab vicinity, 88001193

Kirk's Fence (Canyonlands National Park MRA), Upper Salt Creek Canyon, Moab vicinity, 88001194

Kirk's Second Corral (Canyonlands National Park MRA), Upper Salt Wash, Moab vicinity, 88001195

Kolb Inscription (Canyonlands National Park MRA), Big Drop #2 vicinity, Moab vicinity, 88001197

Lathrop Canyon Mine A (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001199
Lathrop Canyon Mine B (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001200
Lathrop Canyon Mine C (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001201
Lathrop Canyon Mine D (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001202
Lathrop Canyon Mine E (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001203
Lathrop Canyon Mine F (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001204
Lathrop Canyon Mine G (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001205
Lathrop Canyon Mine H (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001210
Lathrop Canyon Mine I (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001211
Lathrop Canyon Mine J (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001212
Lathrop Canyon Uranium Roads (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001206
Lost Canyon Cowboy Camp (Canyonlands National Park MRA), Lost Canyon vicinity, Moab vicinity, 88001191
Mine Lane (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001213
Murphy Trail (Canyonlands National Park MRA), Murphy Point vicinity, Moab vicinity, 88001198
Murphy Trail Bridge (Canyonlands National Park MRA), Murphy Trail, Moab vicinity, 88001190
Owachomo Bridge Trail, Armstrong Canyon, Blanding vicinity, 88001189
Rainy Day Shelter—Lathrop (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001204

[FR Doc. 88-16217 Filed 7-18-88; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

July 12, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) the title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the

collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. Law 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Categorical Assistance Progress Report.

(2) OJP Form 4587/1, Office of the Comptroller, Office of Justice Programs, Department of Justice.

(3) Quarterly, with final report.

(4) State or local governments, businesses or other for-profit, non-profit institutions. OMB Circulars A-102 and A-110 require grant recipients to submit performance reports to the grantor agency. This form is used to satisfy this requirement.

(5) 4,000 respondents at 2 hours each.

(6) 8,000 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection For Which Approval Has Expired

(1) Department of Justice Federal Coal Lease Review Information.

(2) ATR-139, ATR-140, Antitrust Division, Department of Justice.

(3) On occasion.

(4) Businesses or other for-profit. The information collected from prospective Federal coal leasees will be used in the Department's review of the competitive effects of Federal coal lease issuances, transfers, and exchanges.

(5) 25 respondents at 2 hours each.

(6) 50 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,
Department Clearance Officer, Department of Justice.

[FR Doc. 88-16122 Filed 7-18-88; 8:45 am]
BILLING CODE 4410-16-M

Lodging of Consent Decree Pursuant to the Clean Water Act and the Rivers and Harbors Act of 1899; United States v. Ashland Oil Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 6, 1988, a proposed Consent Decree in *United States v. Ashland Oil Company*, Civil No. 88-1487, was lodged with the United States District Court for the Western District of Pennsylvania. The proposed Consent Decree arises from a civil action filed simultaneously with the proposed Decree under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Rivers and Harbors Act of 1899, 33 U.S.C. 407, concerning a spill of approximately 3.7 million gallons of diesel fuel from Ashland Oil Company's oil marketing facility in Floreffe, Pennsylvania into and adjacent to the Monongahela River on January 2, 1988. The Consent Decree requires Ashland to conduct soil and groundwater remediation on its facility to clean-up the remaining oil and certain hazardous substances, to perform river water and river bank monitoring and clean-up if necessary, to reimburse the government's costs incurred in responding to the spill, and to perform several other environmental compliance requirements aimed at controlling pollution or the threat of pollution at the facility. The decree reserves the rights of the government to seek civil and criminal penalties, natural resource damages, and further injunctive relief as may be necessary.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Ashland Oil Co.*, DJ Ref. 90-5-1-3062.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be

examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of \$5.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88-16170 Filed 7-18-88; 8:45 am]
BILLING CODE 4410-01-01

Consent Judgement; Lea County Electric Cooperative, Inc., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 5, 1988, a proposed Consent Decree in *United States v. Lea County Electric Cooperative, Inc., Hatch & Kirk, Inc., George and Rose Bailes, individually and doing business as RCW Enterprises, Inc.*, Civil Action Number 87-1486C, was lodged with the United States District Court for the District of New Mexico. The Complaint filed by the United States on December 12, 1986, alleged violations of the Clean Air Act and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos. Defendant Lea County Electric Cooperative, Inc. ("LCEC") owns and operates an electric generation plant; the other defendants were the owners and operators of a salvage company involved in the removal of asbestos-containing materials from the LCEC plant. Defendants violated the Clean Air Act and the regulations promulgated thereunder by failing to notify the State of New Mexico prior to the commencement of the salvage operation at LCEC's plant in Lovington, New Mexico, and by failing to follow proper procedures for the removal, storage and disposal of the asbestos-containing material.

The Consent Decree provides that each of the defendant parties shall pay a civil penalty of \$15,000.00 for a total of \$45,000.00. It also contains a general provision requiring compliance with the requirements of the NESHAP for asbestos.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed

Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Lea County Cooperative, et al.*, D.J. No. 90-5-2-1-949.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 12020, United States Courthouse, 500 Gold Avenue, SW, Albuquerque, New Mexico 87103, at the Region VI office of the Environmental Protection Agency, Office of Regional Counsel, 1445 Ross Avenue, Dallas 75202-2733, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6314, Ninth Street and Pennsylvania Avenue, NW, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States v. Lea County Electric Cooperative, et al.*, D.J. No. 90-5-2-1-949.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88-16171 Filed 7-18-88; 8:45 am]
BILLING CODE 4410-01-01

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Transfer of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of transfer of records subject to the Privacy Act to the National Archives.

SUMMARY: Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the Federal Register. NARA publishes a quarterly notice of the records newly transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

DATE: Written comments must be received by August 18, 1988.

ADDRESS: Comments should be sent to Adrienne C. Thomas, Director, Program Policy and Evaluation Division (NAA),

National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Dr. Trudy Peterson, Assistant Archivist for the National Archives, on (202) 523-3130 or (FTS) 523-3130.

SUPPLEMENTARY INFORMATION: In accordance with section (1)(3) of the Privacy Act, archival records transferred from Executive Branch agencies to the National Archives of the United States are not subject to the provisions of the Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the Federal Register when records are transferred to the National Archives of the United States. The records of the United States Congress and all United States Courts are exempt from all provisions of the Privacy Act. Consequently, when records retrievable by personal identifiers are transferred from the Congress or the Courts to the National Archives of the United States, the notice in the Federal Register does not include these records.

After transfer of records retrievable by personal identifiers from executive branch agencies to the National Archives of the United States, NARA does not maintain these records as a separate system of records. NARA will attempt to locate specific records about the individual. Records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment.

Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series, and this notice uses the series title as the title of the system of records.

The following systems of records retrievable by personal identifiers have been transferred to the National Archives:

1. *System name:* National Archives Record Group 59, General Records of the Department of State, Records of the Board of Examiners, Tabulations of Consular Examinations and Scores of Candidates.

System Location: National Archives Building, 8th and Pennsylvania Avenue, NW, Washington, DC 20408.

Categories of individuals covered by the system: Consular Service officers.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (1)(3). Further information about uses and restrictions may be found in 36 CFR Part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Categories of records in the system: Forms on which are recorded the grades of each candidate on each part of a given examination for the consular service, 1902-1924.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

- Storage: Paper records stored in boxes.
- Retrievability: Scores are arranged alphabetically by name.
- Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.
- Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8th and Pennsylvania Avenue, NW, Washington, DC, 20408.

Notification Procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR Part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR Part 1253.

2. *System name:* National Archives Record Group 59, General Records of the Department of State, Records of the

Board of Examiners, Reports of Individual Grades on Diplomatic Examinations.

System location: National Archives Building, 8th and Pennsylvania Avenue, NW, Washington, DC 20408.

Categories of individuals covered by the system: Diplomatic Service officers.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses: Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(3). Further information about uses and restrictions may be found in 36 CFR Part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

Categories of records in the system: Forms giving the name of each candidate for the diplomatic service, his grade on the various parts of the examination, and pertinent information on his eligibility for appointment, 1906-1923. *Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

- Storage: Paper records stored in boxes.
- Retrievability: Arranged chronologically and thereunder alphabetically by surname.
- Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.
- Retention and disposal: Records are retained permanently.

System manager and address: The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8th and Pennsylvania Avenue, NW, Washington, DC, 20408.

Notification Procedures: Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR Part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United*

States, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR Part 1253.

Dated: July 12, 1988.

Don W. Wilson,
Archivist of the United States.
[FR Doc. 88-16206 Filed 7-18-88; 8:45 am]
BILLING CODE 7510-01-01

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

July 11, 1988.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on August 11-12, 1988.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Postoffice Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on August 11-12, 1988, will not be open to the public pursuant to subsections (c)(4), (8) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on August 11, 1988, will be as follows:

Committee Meetings

8:30-9:30 a.m.: Coffee for Council Members—Room 527 (Open to the Public)

9:30-10:30 a.m.: Committee Meetings—Policy Discussion

Education Programs—Room M-14

Fellowship Programs—Room 316-2

General Programs—Room 415

Research Programs/Preservation

Grants Programs—Room 315

State Programs/Challenge Grants—

Room M-07

10:30 a.m. until Adjourned—(Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on August 12, 1988, will convene at 9:00 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30-9:00 a.m.)

Minutes of the Previous Meeting Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous Quarter

D. Application Report and Matching Report

E. Status of Fiscal Year 1988 Funds

F. Status of Fiscal Year 1989

Appropriation Request

G. Committee Reports on Policy and General Matters

1. Education Programs

2. Fellowship Programs

3. General Programs

4. Research Programs

5. Preservation Grants

6. State Programs

7. Challenge Grants

8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

Stephen J. McCleary, Advisory Committee Management Officer. (FR Doc. 88-10216 Filed 7-18-88; 8:45 am) BILLING CODE 7000-01-0

NUCLEAR REGULATORY COMMISSION

(Docket No. 80-440)

The Cleveland Electric Illuminating Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58 issued to The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment**Identification of Proposed Action**

The proposed amendment would revise the Environmental Protection Plan in Appendix B of the Technical Specifications (TS) relating to the surveillance requirements for the monitoring of *Corbicula*. The principal change is a shift in the sampling area from the off-shore lake bottom adjacent to the Perry intake and discharge structures to sampling of sediments in the Perry raw water systems. The sampling procedures at the Eastlake Power Plant to detect the presence of *Corbicula* are also revised to use a hand dredge in lieu of SCUBA divers and suction devices.

The proposed action is in accordance with the licensees' application for amendment dated October 2, 1987.

The Need for the Proposed Action

The proposed change to the TS is required in order to take advantage of research conducted within the last few years which should improve the detection capability for the presence of *Corbicula* over that which currently exists.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. The proposed revision would provide a more effective and direct method for detecting the presence of *Corbicula*. This would reduce the likelihood of blockage of the Emergency Service Water System due to growth of water-borne organisms. Therefore, the proposed change does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in

the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves a change in sampling location from offshore lake bottom to a location within the restricted area as defined in 10 CFR Part 20. This would have less nonradiological impact than the current program. Additionally, use of a hand dredge instead of SCUBA divers with suction devices is proposed at the Eastlake Plant sampling location. The size of the hand dredge is small and the sampling frequency (semi-annually) is such that any additional impacts resulting from this change are considered very minor. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Determination in connection with this action was published in the Federal Register on March 9, 1988 (53 FR 7604). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in a less effective *Corbicula* monitoring program than proposed.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Perry Nuclear Power Plant, Units 1 and 2, dated August 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact

statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 2, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 8 day of July 1988.

For the Nuclear Regulatory Commission,
Kenneth E. Perkins,
Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

(FR Doc. 88-10198 Filed 7-18-88; 8:45 am)
BILLING CODE 7000-01-0

NUREG-1296, Thermal Overload Protection for Electric Motors on Safety-Related, Motor-Operated Valves—Generic Issue I.E.6.1; Availability of

The Nuclear Regulatory Commission has published a report that describes the thermal overload protection devices for safety-related motor-operated valve operators along with current and previous NRC guidance for the use of overload protection. It is recommended that uniform acceptable practices for the overload protection of valve motor operators be developed in the form of a standard or guidance document for the industry by cognizant standards developing organizations.

Copies of NUREG-1296 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 1717 H St., NW., Washington, DC.

Dated at Washington, DC, this 21st day of June 1988.

For the Nuclear Regulatory Commission,
Guy A. Ariotti,
Director, Division of Engineering, Office of Nuclear Regulatory Research.

(FR Doc. 88-10196 Filed 7-18-88; 8:45 am)
BILLING CODE 7000-01-0

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-25906; File No. SR-CBOE-87-46)

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On October 5, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to set forth guidelines for trading halts in equity options at the Exchange under varying circumstances.

The proposed rule change was noticed in Securities Exchange Act Release No. 25063 (October 28, 1987), 52 FR 42165 (November 3, 1987). No comments were received on the proposed rule change.

The CBOE states that the purpose of the proposed rule change is to provide members with a circular on the Exchange's existing trading halt policy for options on individual securities as well as additional guidelines for trading halts. The authority for trading halts is derived from CBOE Rule 6.3. Rule 6.3 provides any two Floor Officials with the authority to halt trading in any option contract, in the interests of a fair and orderly market, for a period not in excess of two consecutive business days. The rule currently states that, when determining whether a trading halt is necessary, Floor Officials may consider the following factors: (i) Trading in the underlying security has been halted or suspended in the primary market; (ii) the opening of such underlying security in the primary market has been delayed because of unusual circumstances; or (iii) other unusual conditions or circumstances are present. In addition, Rule 6.3 provides that trading in an option contract which is the subject of a trading halt may be resumed when the conditions which led to the halt are no longer present, or when the interests of a fair and orderly market are best served by a resumption of trading.

The proposed rule change provides additional specificity to rule 6.3 by describing seven situations which may require trading halts. The seven situations are: (1) There is no last sale and/or quotation dissemination either by the Exchange or by the Options Price

Reporting Authority ("OPRA");³ (2) the primary market trading in one or more stocks for regulatory reasons; (3) there is a primary market nonregulatory trading halt in one or more individual equity securities; (4) the primary market halts trading floor-wide; (5) the primary market is open but is unable to disseminate last sale or quotation information; (6) there is an over-the-counter quote dissemination halt; and (7) the dissemination of news, after the close of trading in the primary market, which causes the Exchange to believe that trading in options should be halted.

The proposed rule change also describes the procedures by which CBOE officials would determine whether a halt is warranted in each of the seven situations. For example, in situations three and four above, there are provisions for resuming trading in the affected options if trading activity in the underlying security other than on the primary market is sufficient to support options trading. Finally, the proposed rule change expresses the CBOE's preference that if any of the seven situations occurs on an expiration Friday, that trading in the affected option be allowed to continue.

The proposal notes that particular circumstances require the exercise of judgment and discretion, so that the Exchange's policy can only provide guidelines for trading halts. The CBOE's proposal reflects the Exchange's view that, so long as viable trading in the underlying security exists, options market participants should not be disabled from trading options. Moreover, the policy acknowledges the Exchange's overriding preference to allow market participants to trade options on expiration Friday, since this is the last opportunity to trade out of a

¹ Failures of dissemination of option last sale or quotation information could be manifested by a failure of either the last sale or quotation data stream, and the failure could be floor-wide or it might affect only a sector of the trading floor. The Exchange's policy provides that trading in affected securities would be halted upon establishing that the dissemination problem will not be cured within 15 minutes. Because a dissemination failure likely would result in the affected display information becoming stale, the Exchange would notify both member firm floor representatives and news wire services of the problem, in order to alert market participants that the markets may differ materially from the stale information. Trading would resume 15 minutes after notification to the news wire services if the Exchange believes that fair and orderly markets can be maintained. The Exchange believes that, ordinarily, the public is better served by being allowed to trade options in less-than-ideal dissemination conditions when the underlying securities markets are open for business. Letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Commission, dated April 22, 1988.

² 15 U.S.C. 78s(b)(1) (1982).

³ 17 CFR 240.19b-4 (1986).

position prior to expiration. In addition, the Exchange's trading halt policy provides that action be taken to notify market participants of resumption of trading after a halt. For example, where trading in individual equity options has been halted because the primary market has halted trading floor-wide, if two floor officials and a senior Exchange staff official determine that sufficient markets will support trading other than at the primary exchange, the Exchange will resume trading one hour after notification to the news wire services.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,⁴ and the rules and regulations thereunder. The Commission finds that the proposal will enhance market efficiency by providing a clearer description of the Exchange's existing trading halt policy for options on individual equity securities. The proposal was submitted by the CBOE after consultation with representatives from the other options exchanges, and reflects efforts by the CBOE to develop a uniform trading halt policy. The proposed rule change would be particularly helpful during times of high volatility, such as during the October 1987 market break. During the week of October 19, 1987, trading in securities underlying CBOE options had halted on the primary exchange. While this resulted in trading halts in the overlying options, additional clarity as to the conditions requiring an option trading halt would have reduced confusion for market participants. The proposed rule change should help provide this clarity.⁵

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Dated: July 13, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16230 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-0

⁴ 15 U.S.C. 78f (1982).

⁵ In approving this policy change, which antedates the events of last October, the Commission does not intend to suggest that further efforts to coordinate intermarket information sharing or trading halt policies are unnecessary. Rather, the Commission believes that even if further steps are necessary, this policy statement provides additional useful clarity.

⁶ 15 U.S.C. 78a(b)(2) (1982).

⁷ 17 CFR 200.30-3(a)(12) (1987).

[Release No. 34-25900; File No. SR-MSTC-88-03]

**Self-Regulatory Organizations;
Midwest Securities Trust Co.; Order
Approving Proposed Rule Change**

The Midwest Securities Trust Company ("MSTC") on February 23, 1988, submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would terminate one of MSTC's current securities withdrawal procedures. Notice of the proposal appeared in the Federal Register on February 23, 1988, to solicit public comment.¹

No comments were received. This order approves the proposed rule change.

1. Description of the Proposal

The proposal would amend Rule 1, Section 2(a) of Article II (Settlement Services) of the MSTC Rules to discontinue the service known as "demand street requests." By related conforming changes, the term "demand street requests" would be excised from all of MSTC's Rules.

An MSTC "demand street request," also known as a "demand street withdrawal request," is a request by a participant to MSTC for the withdrawal of street-name securities from MSTC's system and for their physical delivery or pick-up. MSTC currently processes such requests ahead of the more routine "street withdrawal requests" but at a higher charge to its participants.²

MSTC states that recent improvements to its electronic systems have expedited the processing of routine withdrawal requests. MSTC states that, consequently, the volume of requests for demand street requests, at their premium prices, has diminished significantly.

MSTC states that it proposes to terminate "demand street requests" because, in its business judgment, the declining use of that service does not justify the inefficiencies of continuing two parallel services that provide essentially the same product. MSTC believes that the proposal is consistent

with section 17A of the Act in that the proposal would provide MSTC with uniform security withdrawal procedures that would improve both cost effectiveness and the safeguarding of securities in the custody or control of MSTC.

3. Discussion

The Commission believes that this proposal is consistent with the Act, particularly section 17A of the Act. MSTC has reported that, due to systems enhancements, its participants have shown significantly reduced interest in using the more expensive withdrawal procedure that this proposal would eliminate. Moreover, MSTC has represented that a uniform system for its participants', withdrawal of street name securities would be more efficient in terms of: (1) Cost effectiveness, and (2) custodial techniques for safeguarding securities. Accordingly, the Commission believes that the proposal is designed to facilitate more efficient and safer procedures for the prompt and accurate clearance and settlement of transactions in securities.

4. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the above-mentioned proposed rule change (SR-MSTC-88-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 12, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16223 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-0

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Midwest Stock Exchange, Inc.**

July 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Burlington Resources, Inc.

Common Stock, \$0.1 Par Value (File

No. 7-3804)
Chaparral Steel Company
Common Stock, \$10 Par Value (File
No. 7-3805)
American Realty Trust, Inc.
Common Stock, \$1.00 Par Value (File
No. 7-3806)
Banco Central, S.A.
American Depository Shares, No Par
Value (File No. 7-3807)
SCECorp (Holding Company)
Common Stock, No Par Value (File
No. 7-3808)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16226 Filed 7-15-88; 8:45 am]

BILLING CODE 8010-01-0

[Release No. 34-25904; File No. SR-PSE-88-10]

**Self-Regulatory Organizations;
Proposed Rule Change by the Pacific
Stock Exchange, Inc. That Would
Allow Members To Give Pre-Opening
Option Market Quote Indications**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78a(b)(1) ("Act"), notice is hereby given that on May 31, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The PSE proposes to amend Rule VI, Section 38 by adding Commentary .02 which allows members to give pre-opening market indications in order to decrease the time required to complete opening rotations. In addition, the Exchange will add Options Floor Procedure Advice C-2 which sets out the procedures to be followed in order to implement the provisions of Commentary .02. (Brackets indicate language to be deleted; italics indicate new language.)

Rule VI

Trading Rotations

Sec. 38, Commentary .01 a, b, and c, no change.

Commentary .02

For those option classes and within such time periods as the Options Floor Trading Committee may designate, members may, prior to opening rotation, enter option market quote indications based upon the anticipated opening price of the securities underlying such designated option class.

Options Floor Procedure Advice C-2

**Subject: Pre-Opening Option Market
Quote Indication Procedure**

The following procedures shall be followed by the Order Book Official at each post when posting pre-opening option market quote indications.

1. For those options classes designated by the Options Floor Trading Committee as eligible for pre-opening option market quote indications procedures the OBO shall, no earlier than 6:15 a.m. (PT), request market quote indications from the members present in the trading crowd.

2. The Members may then provide pre-opening option market quote indications at which time the OBO shall post these quotations. Upon the opening of the underlying stock and no case earlier than 6:30 a.m. (PT) the OBO shall request verbal confirmation from the trading crowd that such pre-opening option market quote indications reflect the actual market and constitute valid opening quotations. If the crowd indicates that such pre-opening option market quote indications reflect the actual market and constitute valid opening quotations, the OBO shall conduct a one-price opening in accordance with applicable Exchange Rules for all series in which floor brokers in the crowd or the Book hold executable limit or market orders. After

such orders have been executed, the OBO shall note the time and declare the class open.

3. Notwithstanding paragraphs 1 and 2 of this Advice, the OBO may direct that an opening rotation take place pursuant to Rule VI, Section 38(a) if a) the OBO fails to receive market quote indications; or b) the underlying security opens substantially higher or lower than the opening price anticipated by the members of the crowd providing the pre-opening market quote indications; or c) there are substantial order imbalances affecting the options class or; d) for such other reasons as the Options Floor Trading Committee the OBO or the Exchange may determine.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for the Proposed Rule
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

**(A) Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for the Proposed Rule
Change**

The purpose of these amendments is to decrease the amount of time required to obtain opening market quotations during opening rotation. Under certain market conditions, such as the conditions that occurred during the October 1987 market break, it may take up to 45 minutes to obtain opening market quotations for all series of all classes of options traded in a particular pit.¹

Under the proposed Rule, members of a crowd wherein a designated option class is traded would have the opportunity, before 6:30 a.m. (PT), to provide pre-opening option market quote indications based upon the anticipated opening price of the underlying security. Then, if after the underlying has opened, and in no case earlier than 6:30 a.m. (PT), members confirm the pre-opening option market quote indications, a one price opening would take place pursuant to applicable Exchange Rules. If the pre-opening

¹ Telephone conversation between T. Glen Stanton, Staff Attorney, PSE, and Mary Revell, Attorney, Commission, July 12, 1988.

option market quote indications are not confirmed, the OBO would conduct a regular opening rotation in that class pursuant to applicable Exchange Rules.

Further, if any unusual conditions exist the OBO would have great flexibility to call for an opening rotation in the class.

Pre-opening option market quote indications would be provided by members for (a) all options classes whose underlying stock is sold over-the-counter and (b) those option classes whose underlying stock shows little market volatility.²

The Exchange believes the proposed rule change is consistent with section 6(b)(5) of the Act in that it will remove impediments to and perfect the mechanism of a free and open market by decreasing the amount of time required for opening rotations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

² The following criteria will be applied by the Options Floor Trading Committee ("Committee") to all equity options traded upon the Exchange's option floor in reaching a determination that the option's underlying stock shows little market volatility: (1) The average difference between the closing price and the opening price of the underlying security measured daily over a two-month period must be 1/4 point or less; and (2) the average daily volume of options contracts traded on the opening in the class over the same two-month period may not exceed 100 contracts. Once an option class has been designated as eligible for pre-opening procedures, it will remain eligible until the Committee makes a determination that it is no longer eligible. Letter from T. Glen Stanton, Staff Attorney, PSE, to Joseph Furey, Branch Chief, Commission, dated June 20, 1988.

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 8, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 13, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16224 Filed 7-19-88; 8:45 am]
BILLING CODE 8010-01-2

[Release No. 34-25905; File No. SR-PSE-88-08]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc. To Allow the Addition of One or More Series of Option Contracts at a Strike Price Up to 100 Points Above and Below the Current Price of the Financial News Composite Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 30, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule XXI, Section 8 by adding Commentary .01 which allows adding one or more series of option contracts at a strike price up to 100 points above and below the current index price of the Financial News Composite Index ("FNCI").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Self-Regulatory Organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for Proposed Rule Change

The proposed rule change allows the Exchange to open for trading options at a strike price up to 100 points above or below the current FNCI price. The Exchange believes that this will enable market participants to have a greater range of trading and hedging opportunities. The FNCI options market has a high degree of institutional activity and these sophisticated market participants believe that they can use a greater range of strike prices than can the typical retail investor.

The Exchange also recognizes that the proposed change will make available far out-of-the-money options, which have a relatively lower possibility of coming into the money before expiration. Accordingly, the Exchange has cautioned its member firms that these options, particularly the far out-of-the-money series, be closely scrutinized by the Exchange as to the suitability and propriety of transactions in these series by retail customers.

The Exchange believes that the proposed rule change is consistent with the provisions of the Act and, in particular, section 6(b)(5) thereof, in that the rule change is intended to increase market liquidity by providing sophisticated market participants with a greater range of options series for trading.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 9, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 13, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16225 Filed 7-19-88; 8:45 am]
BILLING CODE 8010-01-2

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

July 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American Realty Trust
Shares of Beneficial Interest, \$1.00 Par Value (File No. 7-3609)
Continental Graphics Corporation
Common Stock, \$1.25 Par Value (File No. 7-3610)
A.T. Cross Company
Common Stock, \$1.00 Par Value (File No. 7-3611)
Crown Crafts, Inc.
Common Stock, \$1.00 Par Value (File No. 7-3612)
Cyprus Funds, Inc.
Common Stock, \$0.01 Par Value (File No. 7-3613)
Frequency Electronics, Inc.
Common Stock, \$1.00 Par Value (File No. 7-3614)
Healthvent
Shares of Beneficial Interest (File No. 7-3615)
ICH Corporation
\$1.75 Convertible Exchangeable Preferred Stock (File No. 7-3616)
McClatchy Newspapers, Inc.
Common Stock, \$0.01 Par Value (File No. 7-3617)
Michaels Stores, Inc.
Common Stock, \$10 Par Value (File No. 7-3618)
MFS Government Market Income Trust
Common Stock, No Par Value (File No. 7-3619)
MSI Data Corporation
Common Stock, \$1.00 Par Value (File No. 7-3620)
New World Entertainment
Common Stock, \$0.01 Par Value (File No. 7-3621)
Newmark & Lewis, Inc.
Common Stock, \$0.05 Par Value (File No. 7-3622)
The Olsten Corporation
Common Stock, \$10 Par Value (File No. 7-3623)
Ply-Gem Industries, Inc.
Common Stock, \$25 Par Value (File

No. 7-3624)
Porta Systems Corporation
Common Stock, \$0.01 Par Value (File No. 7-3625)
Ransbury Corporation
Common Stock, \$15 Par Value (File No. 7-3626)
Taiwan Fund, Inc.
Common Stock, \$1.00 Par Value (File No. 7-3627)
Tejon Ranch Company
Common Stock, \$1.00 Par Value (File No. 7-3628)
Thermedica, Inc.
Common Stock, \$10 Par Value (File No. 7-3629)
The Timberland Company
Class A Common Stock, \$0.01 Par Value (File No. 7-3630)
Trinity Industries, Inc.
Common Stock, \$1.00 Par Value (File No. 7-3631)
The Washington Post Company
Class B Common Stock, \$1.00 Par Value (File No. 7-3632)
Advanced Micro Devices, Inc.
Depository Convertible Exchangeable Preference Shares (File No. 7-3633)
Arkla, Inc.
\$3.00 Convertible Exchangeable Preferred Stock, Series A (File No. 7-3634)
Arrow Electronics, Inc.
Depository Convertible Exchangeable Preference Shares (File No. 7-3635)
Hasbro, Inc.
8% Convertible Preferred Stock (File No. 7-3636)
Lomas & Nettleton Mortgage Investors
Warrants expiring March 1, 1990 (File No. 7-3637)
These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.
Interested persons are invited to submit on or before August 4, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16226 Filed 7-18-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-25896; File No. SR-PSE-88-07]

Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Arbitration Procedures and Filing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78a(b)(1), notice is hereby given that on June 3, 1988, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule XII, which pertains to rules for arbitration. Section 2 of Rule XII currently provides that claims of less than \$5,000 may be decided by a single arbitrator pursuant to expedited and simplified arbitration procedures. The proposed amendment would increase the limit on the size of claims for which the simplified arbitration procedures are available from \$5,000 to \$10,000, in order to increase substantially the number of cases processed under that provision; and would establish a filing fee of \$200 in cases where the amount in controversy is more than \$5,000 but does not exceed \$10,000.

Section 2(d) provides that, in a simplified arbitration, if a counterclaim exceeding \$10,000 is filed, the arbitrator may refer the claim, counterclaim, and/or third party claim, if any, to a panel of three or five arbitrators. The proposed amendment to section 2(d) would provide that the Director of Arbitration could refer the claim to a panel of a maximum of three arbitrators.

Section 8(a)(1) of Rule XII currently provides that in all matters involving public customers where the claim does not exceed \$500,000, or where the claim does not involve or disclose a monetary claim, the Director of Arbitration shall appoint a panel of no fewer than three, nor more than five arbitrators.

Section 8(a)(2) currently provides that in all matters involving public customers where the claim is \$500,000 or more, a panel of five arbitrators is required, unless the parties agree to have three arbitrators.

In order to alleviate administrative delays and costs frequently encountered in such cases, the proposed rule would eliminate the requirement of five-member panels, allowing the Director of Arbitration to exercise discretion in appointing panels of no more than three arbitrators in all cases not heard under the simplified arbitration procedures.

The proposed rule amending section 31(a), (c) and (d) of Rule XII would provide for an increase in the deposit for claims exceeding \$500,000, would provide that the maximum deposit for non-monetary claims be increased from \$750 to \$1,000, and would provide that the administrative fee retained in an arbitration case which is settled or withdrawn prior to the first hearing session to be increased from \$25 to \$100.

Section 31(a) would also be amended to provide for a nonrefundable filing fee to be imposed on all member firms for each Submission Agreement filed against a non-member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

A Uniform Arbitration Code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), to establish a uniform system of arbitration procedures throughout the securities industry. The proposed rule changes are intended to make Rule XII of PSE consistent with the Uniform Code. In general, the changes are intended to simplify arbitration procedures for claims up to \$10,000, to provide for a maximum of three arbitrators in certain matters, to update the filing fees, and to increase the amount retained from the deposit where a matter is settled or

withdrawn prior to the first arbitration session.

(1) *Increased limit on claims eligible for simplified arbitration procedures:* Section 2(a) of Rule XII currently provides that claims of less than \$5,000 may be decided by a single arbitrator pursuant to expedited and simplified arbitration procedures. The proposed rule change would increase the limit on the size of claims for which the simplified arbitration procedures are available from \$5,000 to \$10,000 in order to increase substantially the number of cases processed under that section; and would establish a filing fee of \$200 in cases where the amount in controversy is more than \$5,000 but does not exceed \$10,000.

(2) *Modification of composition of arbitration panels:* Section 8(a)(1) of Rule XII currently provides that in all arbitration matters brought by public customers, that do not exceed \$500,000, the Director of Arbitration shall appoint a panel of no less than three, nor more than five, arbitrators.

Section 8(a)(2) provides that in all such arbitration matters that exceed \$500,000, the Director of Arbitration shall appoint a panel of five arbitrators, unless the parties agree to a panel of three arbitrators.

In order to alleviate administrative delays and minimize the high costs frequently encountered in such matters, the proposed rule would provide for a maximum of three arbitrators in all public customer claims that exceed \$10,000.

(3) *Increased deposit for claims over \$500,000.* The proposed rule change amending section 31(a) of Rule XII would increase the deposit required for claims over \$500,000 from \$750 to \$1,000. In the case of non-monetary claims, the proposed rule would amend section 31(c) to provide a maximum deposit of \$1,000, rather than \$750.

(4) *\$500 non-refundable filing fee for claims against non-members:* The proposed rule amendment to section 31(a) establishes a non-refundable filing fee of \$500 imposed on all member firms for each arbitration Submission Agreement filed with PSE against a non-member. The proposed user-based fee reduces reliance upon general assessments in assisting PSE in recouping a portion of costs incurred in providing its arbitration facilities. The proposed fee would be charged without respect to the merit of the matter filed or submitted the amount at issue, or the disposition. The proposed fee is user-based, with those persons using PSE's services or facilities more often paying proportionately more than those using

the services or facilities less frequently. The proposed fee is equitable in that it will be imposed on all PSE member firms.

(5) *Increased amount of filing fee retained in cases settled or withdrawn before first session:* The proposed rule change amending section 31(d) of Rule XII would provide that the administrative fee retained in an arbitration case which is settled or withdrawn prior to the first hearing session be increased from \$25 to \$100.

PSE has adopted the proposed rule changes pursuant to section 6(b)(5) of the Act, which requires that PSE's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule changes impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participating in Others

PSE has neither solicited nor received comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes; or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-88-7 and should be submitted by August 9, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 11, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16231 Filed 7-18-88; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

CBI Industries, Inc.
Common Stock, \$2.50 Par Value (File No. 7-3597)
Commercial Metals Company
Common Stock, \$5.00 Par Value (File No. 7-3598)
Hexcel Corporation
Common Stock, No Par Value (File No. 7-3599)
Progressive Corporation
Common Stock, \$1.00 Par Value (File No. 7-3600)
Southern New England
Telecommunications Corp.
Common Stock, \$12.50 Par Value (File No. 7-3601)
Thermo Electron Corporation
Common Stock, \$1.00 Par Value (File No. 7-3602)
United Illuminating Company
Common Stock, No Par Value (File No. 7-3603)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1988,

written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-16227 Filed 7-18-88; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16481; 812-7029]

Application; Integrated Medical Venture Partners, L.P., et al.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Integrated Medical Venture Partners, L.P. ("MVP 1"), Integrated Medical Venture Partners 2, L.P. (the "Partnership") and Integrated Medical Venture Management 2 (the "Managing General Partner").

Relevant 1940 Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act.

Summary of Application: Applicants seek an order determining that (i) the Independent General Partners (as hereinafter defined) of the Partnership are not "interested persons" of the Partnership or the Managing General Partner solely by reason of their status as general partners of the Partnership or as independent general partners of Integrated Medical Venture Partners, L.P. ("MVP 1"), (ii) the independent general partners of MVP 1 will not be deemed "interested persons" of MVP 1 solely by virtue of serving as the Independent General Partners of the Partnership, and (iii) persons who become limited partners of the Partnership (the "Limited Partners") who own less than 5% of the units of limited partnership interest (the "Units") of the Partnership will not be "affiliated

persons" of the Partnership or of any general partners thereof.

Filing Date: The application was filed on May 10, 1988 and amended on July 1, 1988. A second amendment will be filed during the notice period the substance of which is contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 2, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request, personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20540.

Applicants, 733 Third Avenue, New York, New York 10017, Attention: Howard S. Wachtler.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a recently formed limited partnership organized under Delaware State law and is governed by an agreement of limited partnership (the "Partnership Agreement"). The Partnership has elected to be a business development company, and, therefore, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. The Partnership will terminate not later than December 31, 1998, unless extended for up to two additional two-year periods.

2. The Partnership filed a registration statement under the Securities Act of 1933 on Form N-2 (File No. 33-21281) with respect to an offering by the Partnership of up to 100,000 Units. Integrated Resources Marketing, Inc., a

wholly-owned subsidiary of Integrated Resources, Inc. ("Integrated"), will act as the selling agent for the Units on a "best efforts" basis.

3. The general partners of the Partnership ("General Partners") initially will consist of four individual General Partners (i.e., partners who are natural persons) and the Managing General Partners. Applicants proposed that the individual General Partners will be comprised of three independent General Partners (defined to be individuals who are natural persons and who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the 1940 Act) and one individual General Partner who is an affiliated person of the Managing General Partner as defined in section 2(a)(3) of the 1940 Act. The General Partners may determine to increase or to decrease the number of persons to serve as individual General Partners, however, they may not reduce the number of individual General Partners to less than four persons. If at any time the number of individual General Partners should for other reasons be less than four, the remaining Partners shall, within 90 days, designate one or more successor individual General Partners so as to restore the number of individual General Partners to not less than four. The Partnership Agreement further provides that a majority of such General Partners must be independent General Partners.

4. The Managing General Partner, a Delaware partnership, will be responsible for purchasing investments for the Partnership which have been approved by the independent General Partners. The Managing General Partner will also be responsible for providing various management and administrative services necessary for the ongoing operation of the Partnership and for managing the Partnership's short-term money market instruments pursuant to a management agreement with the Partnership. The Managing General Partner is a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). The general partners of the Managing General Partner are Integrated Medical Venture Investments, Inc. ("IMVI"), a wholly-owned subsidiary of Integrated, and BSW, Inc. BSW, Inc. and IMVI also act as general partners of Integrated Medical Venture Management, a Delaware general partnership, which acts as the Managing General Partner of MVP 1.

5. MVP 1, organized in 1987, is regulated under the 1940 Act as a business development company. In addition, MVP 1 is the subject of an

earlier exemptive order of the SEC (Investment Company Release No. IC-15881, July 17, 1987), which declares that the independent General Partners of MVP 1 are not interested persons of MVP 1 solely by reason of their being general partners of MVP 1; and that the limited partners of MVP 1 with power to vote less than five percent of the outstanding shares are not affiliated persons of MVP 1 or any general partner thereof solely by reason of being a limited partner of MVP 1; and which permits the acquisition by MVP 1 from its managing general partner or an affiliate thereof of certain initial venture capital investments.

6. The individual General Partners solely will manage the Partnership, except in regard to those specific activities of the Partnership for which the Managing General Partner in its capacity as Managing General Partner or as investment adviser will be responsible. The individual General Partners will provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of the corporation. The independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder or the disinterested directors of a registered investment company.

6. The Limited Partners have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partner under the Partnership Agreement, including voting rights and giving consents and approvals provided for in the Partnership Agreement. Limited Partners will be afforded all voting rights required by the 1940 Act. Applicants will obtain an opinion from the Delaware legal counsel for the Partnership that the existence of these voting rights does not subject the Limited Partners to liability as General Partners under the Delaware Revised Uniform Limited Partnership Act. In addition, the Partnership Agreement obligates the General Partners to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. An insurance policy to provide coverage to persons who become Limited Partners in the Partnership has not been obtained. Applicants state, however, that the General Partners will consider the possibility of obtaining errors and omissions insurance for the Partnership. In light of the view of the staff of the SEC that generous insurance coverage is appropriate in view of the special problems of using the limited

partnership form for registered investment companies, the independent General Partners will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

Applicants' Legal Analysis

1. Applicants request an exemption from the provisions of section 2(a)(19) of the 1940 Act to the extent that the independent General Partners of the Partnership would otherwise be deemed to be "interested persons" of the Partnership and of the Managing General Partner solely because such independent General Partners are general partners of the Partnership, and co-partners of any Managing General Partner. The Partnership has been structured so that the independent General Partners are the functional equivalents of the disinterested directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exemption for partners of an investment company.

2. In addition, the independent General Partners of the Partnership may be deemed to be "interested persons" of the Partnership by virtue of their service as independent General Partners of MVP 1, insofar as MVP 1 might be considered to be under "common control" with the Partnership and thus, an affiliated person of the Partnership. Moreover, since MVP 1 might be considered an affiliated person of the Partnership, Applicants also request that the independent General Partners of MVP 1 not be deemed "interested persons" of MVP 1 solely by virtue of serving as the independent General Partners of the Partnership. Applicants believe that service as an independent General Partner of the Partnership and MVP 1, a relationship similar to one in which an individual serves as a director of multiple investment companies in the same complex, will be beneficial to the Partnership and MVP 1.

3. Applicants further request an exemption from section 2(a)(3)(D) of the 1940 Act to the extent any Limited Partner owning less than 5% of the Units of the Partnership not be deemed an affiliated person of the Partnership, any other Limited Partner, or any of the General Partners solely by reason of

their status as Limited Partners. Since such Limited Partners have no exclusion under the 1940 Act comparable to that provided under section 2(a)(3) of the 1940 Act to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

5. Applicants submit that exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D) are necessary and appropriate and in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants agree that the Partnership will be structured so that the independent General Partners of the Partnership and MVP 1, are the functional equivalents of the non-interested directors of an incorporated investment company registered under the 1940 Act.

2. Under the Partnership Agreement, the Partnership is authorized to make in-kind distributions of portfolio securities to its partners. Applicants agree not to make any in-kind distributions of securities to partners of the Partnership until the Partnership has either obtained a "no-action" letter from the staff of the SEC or, alternatively, has obtained an order pursuant to Section 206A of the Advisers Act permitting such distribution.

3. Applicants will obtain an opinion of counsel satisfactory to the independent General Partners of the Partnership that the distributions and allocations to the Managing General Partner can be paid in accordance with section 205 of the Advisers Act. Applicants do not request SEC review or approval of such opinion letter.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

July 13, 1988.

[FR Doc. 88-16232 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw from Listing and Registration; (Landmark American Corp. Common Stock, \$.01 Par Value) File No. 1-9424

July 13, 1988.

Landmark American Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company believes that continued auction market trading in its stock on the Amex is inappropriate given the size of its public float and the geographic concentration of its shareholders.

The Company's common stock has been accepted for listing on the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). Trading in the Company's common stock on NASDAQ will commence at the opening of the business on August 9, 1988, and, concurrently therewith, such stock will be suspended from trading on the American Stock Exchange.

Any interested person may, on or before August 3, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20540, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-16229 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TREASURY

Customs Service

Application for Recordation of Trade Name: "J & J America, Inc."

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "J & J America, Inc.," used by J & J America, Inc., a corporation organized under the laws of the state of Florida, located at 11461 SW. 40th Street, Miami, Florida 33165.

The application states that the trade name is used in connection with textiles, textile products, fabrics, ladies handbags, luggage, audio/visual equipment, televisions, video camera recorders, electronic accessories, sporting goods, women's fashion accessories, and costume jewelry, manufactured in Korea.

Before final action is taken on the application, consideration will be given to any relevant data, views, or argument submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before September 19, 1988.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (Rm. 2104).

FOR FURTHER INFORMATION CONTACT: Betty Coombs, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-506-5765).

Dated: July 13, 1988.
Marvin M. Amernick,
Chief, Value, Special Programs & Admissibility Branch.
[FR Doc. 88-16177 Filed 7-18-88; 8:45 am]
BILLING CODE 4820-28-1

UNITED STATES INFORMATION AGENCY

Meeting of Advisory Board for Radio Broadcasting to Cuba

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on July 27, 1988, in Room 3557,

400 Sixth Street SW., Washington, DC. Below is the intended agenda.
Wednesday, July 27, 1988

Part One—Closed to the Public

10:00 a.m. 1. Report by the Director of Radio Marti (including status of back-up frequency)

10:45 a.m. 2. Status of selection of executive director

11:00 a.m. 3. TV Marti

12:00 noon Lunch

1:00 p.m. 4. Status of annual report

1:15 p.m. 5. Public testimony period

Items one through three, which will be discussed from 10:00 a.m. to 12:00 noon, will be closed to the public. Items one and three involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b(c)(1). Item two relates solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b(c)(2).

Members of the public interested in attending the meeting should contact Kathy Litwak (202) 486-7811 to make prior arrangements, as access to the building is controlled.

Dated: July 13, 1988.

Marvin Stone,
Deputy Director.

[FR Doc. 88-16149 Filed 7-18-88; 8:45 am]
BILLING CODE 4320-21-2

VETERANS ADMINISTRATION

Privacy Act of 1974: New System of Records

The Privacy Act of 1975 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the Federal Register a notice of the existence of character of their systems of records. Accordingly, the Veterans Administration (VA) published and adopted a notice of its inventory of personnel records on September 27, 1977 (42 FR 49728).

Notice is hereby given that the VA is adding a new system of records entitled "General Personnel Records (Title 38)-VA (76VA05). This system is authorized under 38 U.S.C. 210(c)(1), Chapter 73 and 75.

The Office of Personnel Management system of records, "General Personnel Records" (OPM/GOVT-1), covers the maintenance and release of information in general personnel records of Federal employees as defined in 5 U.S.C. 2105. To accommodate VA specific requirements under the Title 38 system and to facilitate administration of Privacy Act matters, the VA is publishing a new system of records.

The purpose of the new system of records is to officially establish a repository for the existing and future records, reports of personnel actions, and the documents and papers required in connection with these actions that were or will be effected during a Title 38 employee's service with the VA. Records in this system have various uses, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services.

This system contains routine uses as defined by the Privacy Act of 1974. These routine uses are compatible with the purpose for which the information is collected. The VA has determined that certain releases of data and information are necessary and proper for this system of records and these releases are described in the following system description.

Interested persons are invited to submit written comments, suggestions, or objections regarding this system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before August 17, 1988 will be considered. All written comments received will be available for public inspection only in Room 132 of the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 31, 1988.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the Federal Register by the Veterans Administration, the routine uses in this system are effective August 17, 1988.

A "Report of New System" and an advance copy of the new system have been sent to the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(c) (Privacy Act) and guidelines issued by OMB (50 FR 52730), December 24, 1985.

The Office of Management and Budget requires that a new system report be distributed not later than 60 days prior to the implementation of a new system. OMB has been requested to waive this requirement.

Approved: July 11, 1988.

Thomas K. Turnage,
Administrator.

76VA05

SYSTEM NAME:

General Personnel Records (Title 38)-VA.

SYSTEM LOCATION:

Active records are maintained at the Veterans Administration (VA) Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, VA field facilities, and the VA Data Processing Center, 1615 East Woodward Street, Austin, Texas 78772. The inactive records are retired to the National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees appointed under 38 U.S.C. Chapter 73 to the occupations identified in 38 U.S.C. 4103, 4104(1), and 4104(3); individuals in those occupations who are appointed under 38 U.S.C. 4114; and residents appointed under 38 U.S.C. 4114(b). This includes employees such as non-physician facility Directors, physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, certified respiratory therapy technicians, registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses. Current and former employees appointed under 38 U.S.C. Chapter 75 in the Veterans Canteen Service are also covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system are official personnel files reflecting work experience, licensure, credentials, educational level achieved, and specialized education or training occurring outside of Federal service; records reflecting Federal service and documenting work experience, education, training, and/or award received while employed, and all other information relating to qualifications; records containing information about past and present positions held, grades, salaries, duty station locations, and notices of all personnel actions such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, approval of disability retirement applications, retirements, and removals; records regarding career development and counseling(s); recruitment and

employment files; promotion, upward mobility, and conversion files; suitability files; computer printouts from an automated personnel system; records reflecting enrollment or declination of enrollment in the Federal Employees' Group Life Insurance Program and Federal Employees' Health Benefits programs as well as forms showing designation of beneficiary; records documenting findings and recommendations of reviewing Boards; certifications of outside professional activities; records relating to Government-sponsored training or participation in VA or other programs designed to broaden an employee's work experience and/or for purposes of advancement; performance appraisals or proficiency reports, supporting documentation, written recommendations for performance-based actions, statements made by the employee regarding an appraisal/proficiency report given, and any recommendations made based on them; records are documents on the processing of adverse actions and actions based on inaptitude, inefficiency, misconduct or disqualification during probation, any notice of proposed action, materials relied on by the VA to support the reasons in the notice, replies by the employee, statements of witnesses, hearing notices, reports, and decisions made.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. Chapter 3, Section 210(c)(1), Chapters 73 and 75.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. To disclose information to the Office of Personnel Management for the Central Personnel Data File.
2. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training course or programs, private schools, etc.) for training purposes.
3. To disclose information to educational institutions on appointment of a recent graduate to a position in the Federal service, and to provide colleges and university officials with information about their students working under programs necessary to a student's obtaining credit for the experience gained.
4. To disclose information to: The Department of Labor, Social Security Administration, Department of Defense, Federal agencies that have special civilian employee retirement programs; or a national, state, county, municipal,

or other publicly recognized charitable or income security administration agency (e.g., state unemployment compensation agencies), where necessary to adjudicate a claim under the retirement, insurance or health benefits programs of the Office of Personnel Management or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

5. To disclose to the Office of Federal Employees' Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

6. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

7. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

8. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

9. To consider employees for recognition through administrative and quality step increases and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

10. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matter affecting working conditions.

11. To disclose pertinent information to the appropriate Federal (including offices of Inspector General), State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the VA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

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12. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

13. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an Agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefits.

14. To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of the VA information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

15. To disclose information to private sector (i.e., non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commission (e.g., the Joint Commission on Accreditation of Healthcare Organizations). Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and, (3) the disclosure is in the best interests of the Government (e.g., to obtain accreditation or other approval rating). When cooperation with the private sector entity, through the exchange of individual records, directly benefits the VA's completion of its mission, enhances personnel management functions, or increases the public confidence in the VA's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity is to be furnished.

16. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection

with private relief legislation as set forth in OMB Circular No. A-19.

17. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

18. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena. Information is also made available pursuant to a court order directing production of personnel records.

19. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

20. To disclose information to the National Archives and Records Administration (NARA) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

21. To disclose to persons engaged in research and survey projects information necessary to locate individuals for personnel research or survey response, and to produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

22. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files in support of the functions for which the records were collected and maintained.

23. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual to the extent necessary to ensure payment of benefits to which the individual is entitled.

24. To disclose to the VA-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by the VA under medical evaluation (formerly fitness-for-

duty) examination procedures or Agency-filed disability retirement procedures.

25. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contacted an illness, been exposed to, or suffered from a health hazard while employed in the Federal work force.

26. To disclose to the Department of Defense specific civil service employment information required under law on individuals identified as members of the Ready Reserve, to ensure continuous mobilization readiness of Ready Reserve units and members.

27. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of Title 5, United States Code.

28. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

29. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

30. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

31. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former employee: Tenure of employment; civil service

status; length of service in the VA and the Government; and when separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

32. Records from this system of records may be disclosed to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual's employment histories or concerning the issuance, retention or revocation of licenses or registrations necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information determined relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of private sector patients.

33. To disclose information to a State or local government entity which has the legal authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

34. To disclose relevant information to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

35. To disclose information including the name, social security number, date of birth, sex, annual salary, service computation date of basic active service date, separation or retirement date, veteran's preference, retirement status, occupational series, position occupied, work schedule (full-time, part-time, or intermittent), Agency identifier, geographic location (duty station location), standard metropolitan statistical area, special program identifier, and submitting office number of all Federal employees to agencies

participating in the "Federal Employee Receiving Government Assistance" Matching Program conducted by the President's Council on Integrity and Efficiency to help eliminate fraud and abuse in the benefit program administered by agencies within the Federal Government and to collect debts and overpayments owed to the Federal Government.

36. To disclose to requesting States (and, upon specific VA approval, by those States to local governments) information including the name, social security number, date of birth, sex, annual salary, separation or retirement date, retirement status, occupational series, position occupied, work schedule (full-time, part-time, intermittent), Agency identifier, geographic location (duty station location), standard metropolitan statistical area, special identifier, and submitting office number of Federal employees for use in computer matching to help eliminate fraud and abuse in the benefit programs administered by the States and to collect debts and over-payments owed to those governments and their components.

37. To disclose hiring, performance, or other personnel-related information to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, microfilm, magnetic tape, disk.

RETRIEVABILITY:

Both paper and automated records are retrieved by name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Access to VA working and storage areas is restricted to VA employees on a "need to know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service.

Access to the VA Data Processing Center is restricted to authorized VA employees and authorized representatives of vendors. Access to the computer rooms within the data processing center is further restricted to

especially authorized VA personnel and vendor personnel. Access to computerized records is limited through use of access codes and entry logs. Additional protection is provided by electronic locking devices, alarm systems, and guard service.

Exchange of data from the system between the data processing center and the VA health care facilities is by use of the VADATS telecommunications network. Access to the VADATS network equipment is restricted since it is in the communications center of each facility. Strict control measures are enforced to ensure that disclosure is limited to a "need to know" basis.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the records disposition authorities found in General Records Schedule 1 and VA Records Control Schedule 10-1, except where otherwise required to be retained for a longer period of time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel and Labor Relations (05), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records containing information about them should contact the local VA facility at which they are or were employed. It is necessary that the following information be furnished in order that the appropriate records may be located and identified: full name(s); date of birth; social security number; and signature. To facilitate records identification, former employees must also provide the name of their last duty station, if different than last employing facility, and approximate dates of employment.

RECORD ACCESS PROCEDURES:

(See Notification Procedure.)

CONTESTING RECORDS PROCEDURES:

Current employees wishing to request amendment of their records should contact the Personnel Officer of their current installation. Former employees should contact the Director, Office of Personnel and Labor Relations. (See System Manager(s) and Address.) Individuals must furnish the following information for their records to be located and identified: Full name(s); date of birth; social security number; and signature. To facilitate records identification, former employees must also provide the name of their last

employing facility and approximate dates of employment.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual employee; examining physicians; educational institutions; VA officials and other individuals or entities, e.g., job references and supporting statements; testimony of witnesses; and correspondence from organizations or persons, e.g., licensing boards.

[FR Doc. 88-10133 Filed 7-18-88; 8:45 a.m.]

BILLING CODE 5320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 138

Tuesday, July 19, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Tuesday, July 26, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE

INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat on (202) 634-6748.

Date: July 14, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued July 14, 1988.

[FR Doc. 88-16243 Filed 7-18-88; 8:45 am]

BILLING CODE 5750-06-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 25, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16287 Filed 7-15-88; 4:09 pm]

BILLING CODE 3210-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: July 6, 1988, 53 FR 26125.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 13, 1988, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added to the agenda of July 13, 1988:

Item No., Docket No. and Company

M-7—CP68-532-000 and RP68-160-000, ANR Pipeline Company

M-7—CP68-589-000, Colorado Interstate Gas Company

M-7—RM87-5-000, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Lois D. Casbell,

Acting Secretary.

[FR Doc. 88-16301 Filed 7-15-88; 4:07 pm]

BILLING CODE 4717-05-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, July 26, 1988 at 4:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-411 (P) (Calcined Bauxite Proppants from Australia)—briefing and vote.

6. Inv. No. 731-TA-370-380 (F) (Certain Brass Sheet and Strip from Japan and the Netherlands)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 12, 1988.

[FR Doc. 88-16295 Filed 7-15-88; 4:09 pm]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, July 28, 1988 at 4:30 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. Nos. 701-TA-287 (F) and 731-TA-378 (F) (Certain Electrical Conductor Aluminum Redraw Rod from Venezuela)—briefing and vote.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Kenneth R. Mason,

Secretary.

July 12, 1988.

[FR Doc. 88-16290 Filed 7-15-88; 4:09 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 18, 25, August 1, and 8, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 18

Thursday, July 21

10:00 a.m.

Briefing on Current Status of Information Regarding the Possible Use of Substandard Components in Nuclear Power Plants (Public Meeting)

2:00 p.m.

Briefing on Individual Plant Examinations Generic Letter (Public Meeting)

2:30 p.m.

Affirmative-Discussion and Vote (Public Meeting) (if needed)

Friday, July 22

10:30 a.m.

Briefing on Interim Report on BWR Mark I Containment Issues (Public Meeting)

Week of July 25—Tentative

No Commission meetings scheduled for Week of July 25.

Week of August 1—Tentative

Wednesday, August 3

2:00 p.m.

Annual Briefing by NUMARC (Public Meeting)

Thursday, August 4

2:00 p.m.

Briefing on the Status of Sequoyah I (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 5

10:00 a.m.

Briefing on Status of Efforts to Enhance Safety of Users of By-Products Materials (Public Meeting)

Week of August 8—Tentative

Tuesday, August 9

10:00 a.m.

Briefing on Status of Agreements with OSHA, EPA and FEMA Concerning Jurisdiction Over Non-Radiological Hazards (Public Meeting)

Wednesday, August 10

10:00 a.m.

Briefing on Current Status of Nuclear Materials Transportation (Public Meeting)

Thursday, August 11

10:00 a.m.

Briefing on Status, Results, and Implementation of BAW Reassessment (Public Meeting)

2:00 p.m.

Follow on Briefing on Implementation of Severe Accident Policy (Public Meeting)

3:30 p.m.

Affirmative/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION Discussion of Pending Investigations (Closed—Ex. 5 & 7) was held on July 12.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0282.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1061.

William M. Hill, Jr.,

Office of the Secretary.

July 14, 1988.

[FR Doc. 88-16386 Filed 7-15-88; 4:07 pm]

BILLING CODE 7550-01-0

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 505

[Docket No. 87N-0091]

Current Good Manufacturing Practice Regulations for Certain Blood and Blood Components

Correction

In proposed rule document 88-13975 beginning on page 23414 in the issue of Wednesday, June 22, 1988, make the following correction:

On page 23414, in the third column, in the fourth paragraph, in the fifth and sixth lines, "21 U.S.C. 351(h)" should read "21 U.S.C. 351(h)".

BILLING CODE 1595-01-0

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0025]

Biological Resources, Inc.; Opportunity for Hearing on Intent To Revoke U.S. License No. 915

Correction

In notice document 88-13985 beginning on page 23453 in the issue of

Wednesday, June 22, 1988, make the following corrections:

1. On page 23453, in the second column, in the first complete paragraph, in the fifth line from the bottom, "electrophoresis" was misspelled.

2. On page 23454, in the first column, in the fourth line, "heading" should read "hearing".

3. On the same page, in the same column, in the 20th line, after "determination" insert "of wilfulness was based on the deficiencies".

4. On the same page, in the second column, in the last paragraph, in the second line from the bottom, "Commission" should read "Commissioner".

BILLING CODE 1505-01-0

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0050]

Investigation of Drugs in Humans; Availability of Revised Clinical Guideline

Correction

In notice document 88-13982 beginning on page 23456 in the issue of Wednesday, June 22, 1988, make the following correction:

On page 23458, in the third column, under SUPPLEMENTARY INFORMATION, in the second paragraph, in the fifth line, "DMRD's" should read "DMARD's".

BILLING CODE 1505-01-0

Federal Register

Vol. 53, No. 138

Tuesday, July 19, 1988

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-08-4212-13; A-18992]

Exchange of Public Land and Private Mineral Estate in Mohave County, AZ

Correction

In notice document 88-14003 appearing on page 24802 in the issue of Thursday, June 30, 1988, make the following corrections:

1. In the first column, in the third line from the bottom, "N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ S W $\frac{1}{4}$ " should read "N $\frac{1}{2}$ S $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{4}$ SW $\frac{1}{4}$ ".

2. In the third column, the 25th line should read "Sec. 19, lots 1 and 2, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ ".

BILLING CODE 1525-01-0

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 943-08-4220-10; CA 17849]

Proposed Withdrawal and Opportunity for Public Meeting; California

Correction

In the issue of Monday, June 27, 1988, on page 24171 in the first and second columns, a correction to FR Doc. 88-11820 appeared incorrectly and should have appeared as follows:

In the second column, under T. 11 N., R. 2 W., in Sec. 10, the second line should read "S $\frac{1}{2}$ SE $\frac{1}{4}$ ".

BILLING CODE 1525-01-0

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federal register

Tuesday
July 19, 1988

Part II

Environmental Protection Agency

40 CFR Parts 117, 302, and 355
Reporting Exemptions for Federally
Permitted Releases of Hazardous
Substances; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[FRL-3207-3]

Reporting Exemptions for Federally Permitted Releases of Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, requires that the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or greater than its reportable quantity (RQ) shall immediately notify the National Response Center of the release. Section 102(b) sets an RQ of one pound of hazardous substances, except those for which RQs have been established pursuant to section 311a(b)(4) of the clean Water Act. Section 102(a) authorizes the U.S. Environmental Protection Agency (EPA) to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment.

The notification requirement under sections 103(a) and 103(b) of CERCLA applies to any release of a hazardous substance "other than a federally permitted release." Section 101(10) of CERCLA defines "federally permitted release" in terms of the discharge requirements of a number of State and Federal programs. Section 107(j) of CERCLA also exempts a "federally permitted release" from liability under CERCLA for response costs and damages incurred due to the release.

The purpose of this rulemaking is to clarify the federally permitted release exemption from CERCLA release reporting and liability provisions. Today's proposed rule also addresses this exemption from the notification requirements under Title III of the Superfund Amendments and Reauthorization Act of 1980. The Agency also proposes in this rule to make conforming changes to the regulation (40 CFR Part 117) describing the notification requirements for releases of hazardous substances under section 311 of the Clean Water Act. Finally, this rulemaking addresses several issues related to which releases

into the environment require notification under CERCLA.

DATES: Comments must be submitted on or before September 19, 1988.

ADDRESSES:

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 101(10) FPR, Room LC-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are kept in Room LG-100, at the above address. The docket is available for inspection between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202/382-3046. As provided in 40 CFR Part 2, a reasonable fee (the first 50 pages are free and each additional page costs \$.20) may be charged for copying services.

FOR FURTHER INFORMATION CONTACT:

Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (WH-548B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2483; or the

RCRA/Superfund Hotline, 1-800/424-9358; in Washington, DC, 1-202/382-3000.

The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washington, DC metropolitan area, the number is 1-202/426-2575.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

- I. Introduction and General Comments
 - A. Background
 - B. Relationship to Reporting Under Title III
- II. Elements of the Exemption
 - A. In General
 - B. PCB Waste Disposal
- III. Notification for Certain Types of Releases
 - A. PCB Waste Disposal
- IV. Discharges to POTWs
- V. Regulatory Analyses
 - A. Executive Order No. 12291
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act

I. Introduction and General Comments**A. Background**

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), 42 U.S.C. 9601 *et seq.* (CERCLA or the Act), enacted on December 11, 1980, and amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), establishes broad Federal authority to respond to releases or threats of releases of hazardous

substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substances" chiefly by reference to other environmental statutes with authority further granted to the U.S. Environmental Protection Agency (EPA) to designate additional hazardous substances under CERCLA section 102(a). The CERCLA list currently contains 721 hazardous substances.

Section 103(a) of the Act requires that, as soon as the person in charge of a vessel or facility has knowledge of a release of a hazardous substance from such vessel or facility in a quantity equal to or greater than the reportable quantity (RQ) for that substance, the person shall notify the National Response Center immediately. Section 102(b) of CERCLA establishes RQs for releases of hazardous substances at one pound, except for those substances whose RQs were established at a different level pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the EPA Administrator to adjust all of these RQs by regulation (see 40 CFR 302.4).

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103 of CERCLA, as amended, authorizes EPA to seek criminal penalties for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and increases the maximum penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirement.

One of the exemptions from section 103 reporting requirements is for "federally permitted releases." The definition of "federally permitted release" in CERCLA section 101(10) specifically identifies releases permitted under other environmental statutes, including the following general types of releases:

- Discharges covered by a National Pollutant Discharge Elimination System (NPDES) permit, permit application, or permit administrative record;
- Discharges in compliance with a legally enforceable permit for dredged or fill materials under section 404 of the CWA;
- Releases in compliance with a legally enforceable Resource Conservation and Recovery Act (RCRA) hazardous waste management facility final permit;
- Releases in compliance with a legally enforceable permit under the

Marine Protection, Research, and Sanctuaries Act;

- Any injections of fluids authorized under federally approved underground injection control programs (including federally authorized State programs) pursuant to Part C of the Safe Drinking Water Act;

- Any air emissions subject to permit or control regulations under certain provisions of the Clean Air Act (CAA);

- Any injections of fluids or other materials authorized by applicable State law for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, or for other production or enhanced recovery purposes;

- The introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with pretreatment standards and a pretreatment program submitted to EPA for approval; and

- Any release of source, special nuclear, or byproduct material in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act.

In the May 25, 1983 Notice of Proposed Rulemaking (NPRM) (48 FR 23552) to adjust certain RQs, EPA explained the Agency's interpretation of each of the types of releases exempted by the definition of "federally permitted release." EPA has decided to repropose the rule for federally permitted releases today rather than publish a final rule because of the amount of time that has passed since the original proposal. Today's proposed regulation would add a definition of "federally permitted release" to 40 CFR 302.3, Definitions.¹

EPA received many comments on various aspects of the federally permitted release exemption, most of which urged a broader interpretation of one or more of the exemption categories. General comments on the scope of the exemption are discussed below, followed by discussion of comments on specific types of federally permitted releases.

Several commenters discussed the potential duplication between CERCLA reporting requirements and reporting requirements under existing permit programs for releases exceeding levels set by the terms of the permit. These commenters suggested that, because permit programs already may require notification of a regulatory authority in the event of a release exceeding permit levels, such releases should be exempt

¹ Further, today's proposal revises the definition of "release" to reflect SARA amendments to CERCLA section 101(22).

from notification when permitted levels are exceeded by an RQ or more.

CERCLA section 101(10), however, generally limits the federally permitted release exemption to those releases "in compliance with" permitted or regulatory requirements. A straightforward interpretation of the statute indicates that if a release exceeds permitted levels, it is not "in compliance with" the permit and cannot be "federally permitted." Therefore, if the amount of the release exceeding the permitted level, i.e., the portion of the release that is not federally permitted, is equal to or exceeds the RQ, the release must be reported immediately to the National Response Center. This approach also avoids the numerous and unnecessary reports that could be generated by the reporting of small permit excursions that are better addressed by the permitting authority.

EPA believes that its interpretation is required by the plain language of the statute and is essential to ensure adequate protection of public health and the environment. The Agency believes that CERCLA reporting and reporting under permit programs is not duplicative because there are significant differences between the purposes served by CERCLA notification and the purposes of permit programs. The permit notification requirements and the information that is reported under permit programs may differ from one program to another. If permit notification requirements were allowed to suffice for CERCLA notification, the information available to the CERCLA program on releases might be inconsistent and incomplete. Permit programs also differ in their reporting mechanisms and do not always require immediate notification. In some cases, releases in excess of permitted levels need only be reported at specific intervals (e.g., monthly). Moreover, releases in excess of permit levels are reported to different Federal and State authorities, depending upon the permit. CERCLA requires immediate notification to a central office, the National Response Center, as soon as the person in charge has knowledge of a release equal to or exceeding an RQ, so that timely response may be initiated if the appropriate government authority determines that the release may present substantial danger to public health or the environment.

Moreover, EPA is not convinced that requiring persons in charge of a vessel or facility to make additional telephone calls (to the National Response Center, the local community emergency coordinator, and the State emergency response commission) to a toll-free or

local number constitutes an undue burden on the regulated community. The Agency seeks comments on its interpretation of the burdens and the benefits of requiring reporting under CERCLA and Federal or State permit programs.

Several commenters recommended that releases be considered federally permitted releases (and therefore exempt from CERCLA notification and liability provisions) if they are exempt from regulation by the statutes listed in CERCLA section 101(10). EPA believes that exempting such releases would be contrary to the purpose of the notification requirements, which is to protect human health and the environment by requiring that responsible authorities be notified of releases that may require a timely response. The exemption of a type of release from regulation under a particular statute may have little or no bearing on whether a Federal response action might be needed for a specific release.

Examples illustrate the disparate reasons for exemptions. For instance, owners or operators of certain solid waste disposal facilities that handle hazardous waste only from generators of less than 100 kg. per month of nonacutely hazardous waste (See 40 CFR 261.5) are exempt from the requirement to obtain a hazardous waste management facility permit under section 3005 of RCRA. The exemption is based on a balancing of the administrative burden of including such wastes in the Subtitle C system against the threat the Agency determined would be posed by disposing of the wastes in unpermitted facilities (45 FR 33066, 33102-33105 (May 19, 1980)). Certain types of hazardous waste recycling activities—for example, the act of reclamation of a hazardous waste or burning a hazardous waste in a boiler or industrial furnace to recover energy—are exempt from regulation while EPA determines appropriate regulatory regimes for these activities. (See 40 CFR 261.6 and 40 CFR Part 266). Under the CWA, electroplating facilities that produce 1000 gallons of effluent per day are exempted from effluent standards because compliance is economically infeasible for these small firms (39 FR 11510, March 28, 1974). In each instance, the release may require response action, and the fact that the release is exempted from the statutory requirements is not relevant to this determination. The Agency has determined, therefore, that releases exempted from regulation by the statutes listed in section 101(10) will

not be considered federally permitted releases.

Although certain releases may not qualify as federally permitted, they may not pose a sufficient hazard to warrant reporting to the National Response Center. The Administrator will consider establishing an administrative exemption from CERCLA notification requirements if it appears that certain releases pose no hazard or pose a hazard only rarely and under circumstances that would not likely result in any action being taken to respond to the hazard. However, no such exemptions are proposed under this regulation.

One commenter requested that a release still be considered a federally permitted release when there is only a "technical" violation of permit conditions (i.e., where the violation relates to operating, monitoring, or reporting procedures and does not affect the character or quantity of the release). EPA agrees that notification of the National Response Center would be unnecessary in such a case and should be addressed by the permit programs, where appropriate, as a permit violation. If the characteristics of a release (both the substance involved and the quantity or concentration are in compliance with a permit described in section 101(10), CERCLA notification will not be required. However, to the extent that a release exceeds the permit limit with regard to the quantity of a hazardous substance, it will not be considered a federally permitted release and CERCLA notification will be required when the release of the hazardous substance exceeds its permitted level by an RQ or more. Some Federal permit programs do not include quantitative limits on the amounts of specific hazardous substances that can be released. Accordingly, no "permitted level" exists against which the released quantity can be compared to determine whether CERCLA notification is required (i.e., whether the permitted level has been exceeded by an RQ or more). In such cases, CERCLA notification will be required when the characteristics of the release are not in compliance with the permit (e.g., the allowable concentration of a particular constituent has been exceeded) and an RQ or more of a hazardous substance has been released.

Several commenters urged that various types of releases (such as all "routine" releases or releases covered by other permit programs) not mentioned in section 101(10) be considered federally permitted release. EPA cannot support this position.

Federally permitted releases are specifically listed in section 101(10). This detailed list clearly indicated that Congress did not intend releases other than those listed in section 101(10) to be considered federally permitted and thereby exempt from CERCLA reporting and liability requirements.

B. Relationship to Reporting Under Title III

Title III of SARA (sections 301-320) addresses emergency planning and community right-to-know and provides, among other things, emergency and annual notification requirements in addition to those included in section 103 of CERCLA. EPA has provided (see 52 FR 13377, April 22, 1987; 52 FR 21152, June 4, 1987) and will continue to provide regulations and guidance on the Title III requirements as necessary and appropriate.

With respect to emergency notification requirements, section 304 of SARA provides release reporting requirements that parallel the requirements of section 103(a) but are intended to make release information immediately available to State and local emergency officials as well as Federal response officials notified under CERCLA section 103. In addition, section 304(a) requires reporting of (1) releases for which notification is required under section 103(a) of CERCLA, and (2) releases of "extremely hazardous substances" that are not hazardous substances under CERCLA but that "occur in a manner which would require notification under section 103(a)" of CERCLA. Federally permitted releases, as defined by CERCLA section 101(10), are not required to be reported under section 304 of SARA (see 52 FR 13383). To clarify the type of releases that are defined as federally permitted releases, and thereby exempt from SARA section 304 reporting, today's rule proposes to revise the applicability section of the regulation implementing section 304 (40 CFR 355.40(a)) to add the definition of "federally permitted releases" provided in this rule. Thus, the interpretation of federally permitted release proposed in today's rule will define clearly the scope of the releases reportable under SARA section 304. With respect to annual notification of toxic chemical releases required under SARA section 313, however, federally permitted releases are not exempt.

II. Elements of the Exemption

Each element of the federally permitted release exemption is discussed below. Relevant comments received on the May 25, 1983, NPRM

pertaining to each element also are discussed.

Releases from Point Sources with National Pollutant Discharge Elimination System (NPDES) Permits. Introduction. Section 101(10) identifies three types of releases from point sources with NPDES permits as federally permitted releases:

(A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems * * *

This language is identical to that used in section 311(a)(2) of the CWA to exclude these releases from the term "discharge" with respect to EPA's oil and hazardous substances spill response and prevention program. Furthermore, Congress intended, in enacting CERCLA section 101(10) (A), (B), and (C), that EPA's interpretation of the provisions under the CWA be continued under CERCLA. (See S. Rep. No. 848, 96th Cong., 2nd Sess. 47 (1980).) Reflective of Congressional intent, the Agency proposes today that the interpretation provided in the regulatory language and the preambles to the rules implementing the CWA section 311(a)(2) exclusions be applied to the same exemptions under CERCLA section 101(10) (A), (B), and (C).

The legislative history of the CWA explains that the purpose of the section 311 exemptions was to exclude from the spill response provisions of section 311 three types of discharges subject to regulation under other CWA provisions; specifically, section 402 NPDES permits and section 309 enforcement provisions. Senator Stafford explained that:

* * * we are attempting to draw a line between the provisions of the [CWA] under sections 301, 304, 402 regulating chronic discharges and 311 dealing with spills. At the extremes, it is relatively easy to focus on the difference but it can become complicated. The concept can be summarized by stating that those discharges of pollutants that a reasonable man would conclude are associated with permits, permit conditions, operation of treatment technology and permit violations would result in 402/309 sanctions; those discharges of pollutants that a reasonable man would conclude are episodic or classical spills not intended or capable of being processed through the permitted treatment system and outfall would result in

the application of section 311. (124 Congressional Record 37883 (1978).)

In 1979, the Agency promulgated 40 CFR Part 117, which contains CWA reporting requirements for discharges of hazardous substances (44 FR 50776, August 29, 1979). Section 117.12 provided a regulatory interpretation of the three exclusions to the definition of "discharge" in 40 CFR Part 116 and CWA section 311(a)(2), and the preamble to the rule provided a detailed explanation of the three types of excluded discharges. In 1987, EPA amended the definition of "discharge" in 40 CFR Part 110, the discharge of oil regulation, to codify the same three CWA exclusions (52 FR 10712, April 2, 1987). The preamble to the oil discharge rule adopted the description of the three exclusions from the 1979 preamble to 40 CFR Part 117.

In today's rule, the Agency proposes to apply the existing interpretation of the three types of discharges that are excluded from coverage under CWA section 311 to the first three types of discharges under CERCLA section 101(10). Thus, this interpretation will apply to the following regulatory provisions: 40 CFR 110.1, 116.3, 117.12, 300.5, 302.3, and 335.40. The Agency, however, also is proposing to make two clarifying amendments to 40 CFR 117.12, as explained below, that also will be applicable to the corresponding exemptions under 40 CFR Parts 110, 116, 300, 302, and 355.

In the paragraphs that follow, the three types of NPDES discharges that correspond to the federally permitted releases in CERCLA sections 101(10) (A), (B), and (C) are described. For simplicity, these discharges will be referred to as Type A, B, and C, respectively.

Type A Discharges. Type A discharges are those that are in compliance with an NPDES permit limit that specifically addresses the discharge in question. To qualify as a Type A discharge, the permit must either address the discharge directly through specific effluent limitations or through the use of indicator pollutants. In the case of the latter, the administrative record prepared during permit development must identify specifically the discharge of the pollutant as one of those pollutants the indicator is intended to represent.

Type B Discharges. Type B discharges are foreseeable (i.e., identified in the NPDES permit's development record) and flow into a facility's effluent treatment system designed to treat the discharge. This second type of discharge is limited to on-site spills to the

permitted treatment system that were identified and considered in the issuance of the permit but are not subject to any specific effluent limitations. Discharges are included only where (1) the source, nature, and amount of a potential discharge were identified and made part of the public record, and (2) the permit contained a condition requiring that the treatment system be capable of eliminating or abating the potential discharge.

Therefore, if an on-site spill was processed through a treatment system capable of eliminating or abating the spill, and the spill is subject to a permit condition, a discharge resulting from the on-site spill would be subject to CWA sections 402 and 309 and would be a federally permitted release. If an on-site spill is not passed through a treatment system or is not otherwise treated in any way, the discharge resulting from the on-site spill is subject to CWA section 311 and is not a federally permitted release. Also, discharges that result from on-site spills that are passed through treatment systems (1) that have not been demonstrated as capable of eliminating or abating the discharge or (2) for which no permit condition exists are subject to CWA section 311 and are not federally permitted releases under CERCLA.

A "permit condition" would include the existence of a treatment system or release prevention plans and other best management practices designed to address the discharge. Best management practices are operating methods or procedures to prevent or minimize the potential for the discharge of toxic or hazardous substances from processes ancillary to the industrial manufacturing or treatment process. For example, a discharger has a drainage system that will route spilled material from a broken hose connection to a holding tank or basin for subsequent treatment or discharge at a specified rate. To be eligible as a Type B discharge, the discharger must identify specifically such a system in the permit application. The permit condition discussed in the application must be sufficient to treat the maximum potential spill from the identified source. Discharges that result from an on-site spill larger and more concentrated than the spill contemplated in the public record, and for which a condition was provided in the permit, will be subject to CWA section 311 and CERCLA notification and liability provisions (i.e., the discharge will not be a federally permitted release).

Today's rule proposes to amend 40 CFR 117.12(c) by deleting the phrase "whether or not the discharge is in compliance with the permit," for Type B

discharges, to avoid confusion caused by the phrase. The phrase was originally included in the rule because Type B discharges are discharges that result from circumstances identified and considered in the issuance of a permit but that are not subject to any specific effluent limitations. The Agency is concerned that the phrase may be interpreted incorrectly to mean that Type B could refer to discharges in which the permittee did not satisfy the condition placed in the permit. Because the Agency believes that the phrase causes confusion, the Agency proposes to delete the phrase from the regulation. The Agency solicits comments on this proposed revision to 40 CFR 117.12(c).

Type C Discharges. Type C discharges are from a point source and are (1) continuous or anticipated intermittent discharges, (2) identified in a permit or permit application, and (3) caused by events occurring within the scope of the relevant operating and treatment systems. Included within the scope of this provision are chronic, process-related discharges resulting from periodic upsets in the manufacturing and treatment systems, for example, the discharge created by a system backwash. Discharges caused by spills or episodic events that release hazardous substances to the manufacturing or treatment systems are not Type C discharges. The language of 40 CFR 117.12(d) provides further examples of discharges that fit within the category: (1) Provided that an on-site spill is not the cause, contamination of noncontact cooling water or storm water; (2) an upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge; or (3) where the discharge originates in the manufacturing or treatment systems, a continuous or anticipated discharge of process waste water.

Amendment to 40 CFR 117.12. With respect to Type C discharges, the Agency also is proposing in today's rule to amend 40 CFR 117.12(d)(2)(iii) by deleting the term "operator error" from the description of "an upset or failure of a treatment system." * The reasons for

* Section 117.12(d)(2)(iii) presently states:

(iii) An upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge where the upset or failure results from a control problem, an operator error, a system failure or malfunction, an equipment or system startup or shutdown, an equipment wash, or a production schedule change, provided that such upset or failure is not caused by an on-site spill of a hazardous substance.

the proposal to eliminate the term "operator error" are: (1) The use of the term "operator error" in describing an upset is inconsistent with the NPDES regulations (40 CFR 122.41) that provide that a discharge caused by an operator error is not an upset; and (2) the Agency believes that discharges caused by operator error are not likely to be "continuous or anticipated intermittent discharges," as provided by the statutory language. The Agency expects discharges caused by operator error to be episodic and unpredictable, as compared to discharges caused by system startups and shutdowns. The proposed deletion of the term "operator error" is intended to enhance the clarity and consistency of the regulatory language and is not meant to signal a change in policy. It is possible that under some circumstances an operator error may cause a failure of a treatment system or process, and produce a continuous or anticipated intermittent discharge. Such a discharge may meet the requirements for a federally permitted release. The term "upset" as used in 40 CFR Part 117, however, generally will be interpreted to be consistent with the term "upset" in 40 CFR Part 122, i.e., it does not include incidents caused by operational error. The Agency requests comments on its proposal to delete operator error from 40 CFR 117.12(d)(2)(iii).

Conclusion. Under both CWA section 311 and CERCLA, any discharge or release of a hazardous substance that is not federally permitted, as described above, must be reported immediately to the National Response Center if it exceeds permit limits by an RQ or more; if the hazardous substance discharge or release is not subject to a numerical permit limit, any discharge or release that triggers a permit violation and equals or exceeds an RQ must be reported immediately. Similarly, under 40 CFR Part 110, any oil discharge that exceeds permitted levels and causes an oil sheen must be reported immediately.

Discharges excluded from CWA section 311 coverage and defined as federally permitted releases under CERCLA sections 101(10) (A), (B), and (C) are subject to the CWA section 309 enforcement provision that provides EPA with the authority to issue compliance orders, bring civil actions, and impose criminal and civil penalties. In addition, under CWA section 311(b)(6)(D), if the Federal government incurs any costs of removal of discharges excluded by section 311(a)(2)(C), the Federal government can bring a civil action under the authority provided by CWA section 309(b) to

recover such removal costs. Furthermore, under CERCLA section 107(j), the response costs incurred by the Federal government in connection with the federally permitted releases defined by section 101(10) (B) and (C) can be recovered through a civil action brought under the authority of CWA section 309(b).

Finally, all three exemptions raise the issue of timeliness of notification. The reporting requirements for releases exempted from CERCLA reporting and liability under section 101(10) (A), (B), and (C) and excluded from CWA section 311(a)(2) are subject to the 24-hour notification requirements under CWA section 402. The Agency acknowledges that Congress recognized that the 24-hour reporting requirement may "create gaps in action necessary to protect the public or the environment." (See S. Rep. No. 848, 96th Cong., 2d Sess. 47 (1980).) The legislative history of section 101(10) suggests that the Agency could resolve this issue by amending the CWA section 402 reporting regulation to require that those releases excluded from CWA section 311 coverage and exempt from CERCLA reporting requirements be subject to an immediate notification requirement under the CWA section 402 NPDES regulations. (Ibid.) The Agency has not yet amended the NPDES regulations to require immediate notification of those releases exempt from section 311 and CERCLA. Before the Agency proposes to amend the CWA section 402 NPDES regulations (40 CFR Part 122) to revise the 24-hour notification requirement to an immediate notification requirement for the exempted releases, the Agency solicits comments on the "reporting gap," particularly examples of situations where the 24-hour notice was not sufficient to protect human health and the environment.

Releases Subject to CWA Section 404 Permits. Discharges that comply with a legally enforceable permit for dredge or fill materials under section 404 of the CWA also are federally permitted releases exempted from the notification requirements of CERCLA sections 103(a) and 103(b). Before issuing these permits, the government reviews the substances to be discharged. Permits allowing the discharge of hazardous substances are issued only if no significant degradation of the aquatic environment will result. This exemption applies to discharges in compliance with the terms and conditions of either an individual or a general CWA section 404 permit.

In regulations implementing section 311 of the CWA for hazardous substances, 40 CFR 117.12 (but not the

regulations for oil in 40 CFR Part 110), EPA exempted from the notification requirement not only those releases that were in compliance with section 404 permits, but also those releases that were exempt from permit requirements under section 404 of the CWA (sections 404(f) and 404(r)). These latter releases are not "federally permitted releases" for purposes of CERCLA because section 101(10)(D) is limited to releases in compliance with a legally enforceable permit under section 404 of the CWA. The Agency interprets the CERCLA notification requirements to exempt only those releases whose environmental and health effects have been evaluated and determined to be allowable under the appropriate permit program.

Releases from Facilities with Final RCRA Permits. Releases in compliance with a legally enforceable RCRA treatment, storage, or disposal final permit are, pursuant to CERCLA section 101(10)(E), federally permitted releases when the hazardous substances released are specified in the permit and subject under the permit to a specific limitation, standard, or control procedure (see 40 CFR Parts 264 and 270). Identifying releases on the record during the permit process is insufficient to qualify them for the section 101(10)(E) exemption because, in order to be exempt, the substances must be specified in the permit and subject to some permit condition or control.

Four commenters requested that facilities with interim status pursuant to section 3005(e) of RCRA and 40 CFR Part 265 be included in the "federally permitted releases" definition. Some of the commenters indicated that it may be some time before these facilities are issued final permits. The legislative history specifically rejects application of this exclusion to releases from facilities with interim status (S. Rep. No. 848, 96th Cong., 2d Sess. 48 (1980)).

Releases Pursuant to Marine Protection, Research, and Sanctuaries Act Permits. Section 101(10)(F) of CERCLA includes, in the definition of a federally permitted release, releases in compliance with legally enforceable permits issued under section 1202 (EPA ocean dumping permits) or section 103 (Corps of Engineers permits for ocean dumping of dredged materials) of the Marine Protection, Research, and Sanctuaries Act. Pursuant to EPA regulations, applicants for ocean dumping permits must identify the physical and chemical properties of the materials to be discharged, and the permit must identify the materials that may be discharged (see 40 CFR Parts 221 and 227). Similar procedures and criteria

apply to permits for ocean dumping of dredged material (see 33 CFR Part 324). These EPA and Corps of Engineers permits cover substances that can be discharged lawfully. Dumping of hazardous substances not specifically allowed in these permits is subject to the notification requirements of CERCLA section 103(a) because emergency response officials should be made aware of releases not evaluated previously by a permit program for health and environmental effects.

Underground Injections Authorized Pursuant to the Safe Drinking Water Act. CERCLA section 101(10)(G) exempts from the notification requirements "any injection of fluids" authorized under Federal injection control programs or State programs submitted for Federal approval pursuant to Part C of the Safe Drinking Water Act (and not disapproved by EPA).

EPA has published regulations establishing technical standards and criteria (40 CFR Part 146) and regulations governing approval of State programs and permit procedures (40 CFR Parts 122-124). Under the Safe Drinking Water Act, the States are to take the primary role in implementing the underground injection control program; EPA is to administer the program only if the State fails to submit an approvable program within a specified time period. Any underground injection of hazardous substances permitted under a State program that has been approved, or submitted and not disapproved by EPA, or permitted under an EPA-administered program, is considered federally permitted for purposes of CERCLA notification.

Emissions Subject to Clean Air Act Controls. Section 101(10)(H) of CERCLA provides an exemption for hazardous substance emissions that are subject to a Clean Air Act (CAA) permit or control regulation (see 40 CFR Parts 52, 60, 61, and 62). However, as stated in the preamble to the May 25, 1983 NPRM, for this exemption to apply, any such CAA controls must be "specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant." (See S. Rep. No. 848, 96th Cong., 2d Sess. 49 (1980)). The CAA exemption, therefore, cannot be read broadly to cover any and all types of air emissions. Moreover, as today's proposed rule makes clear, for the exemption to apply, the emission must be in compliance with the applicable permit or control regulation.

Several commenters suggested that the clear and unequivocal nature of the statutory language made elaboration on the CAA exemption unnecessary. Generally, these commenters took the

view that the CAA exemption covers nearly all air emissions because such emissions are in one way or another controlled by the CAA—either directly because they contain substances specifically regulated by the CAA, or indirectly, for example, through emission limitations established as part of State Implementation Plans (SIPs) approved under section 110 of the CAA. Some commenters even claimed that because controls could be developed for any hazardous substance, any release to the air is "subject" to CAA controls.

EPA does not agree that the broadest interpretations, under which virtually all air emissions including dangerous episodic releases would be exempt from CERCLA reporting requirements, could have been intended by Congress under section 101(10). Moreover, the exemption for "federally permitted releases" under CERCLA section 101(10) also applies to reporting of air releases to State and local governments under Title III of SARA. Title III, which is the Emergency Planning and Community Right-to-Know Act of 1986, was enacted in large part as a response to dangers posed by chemical air releases to surrounding communities, such as the catastrophic release of methyl isocyanate in Bhopal, India. Because Title III was intended to address particularly the dangers of air releases, interpreting the exclusion for federally permitted releases so that accidental air releases would not be reported locally would be directly contrary to the legislative purpose. Similarly, the purpose of notification requirements under section 103 of CERCLA is to ensure that the government is informed of any potentially dangerous releases of hazardous substances to the environment for which timely response may be necessary. Establishing a very broad interpretation of CAA controls, as requested by the commenters, could eliminate virtually any CERCLA reporting of air emissions and, thus, the potential for early Federal responses; such an approach would eviscerate not only the Congressional intent but also the major purpose of the section 103 notification requirement.

In addition, some commenters urged EPA to interpret the federally permitted release exemption to include any air emission from a permitted source. Some of the commenters used the word "reviewed" almost interchangeably with the word "permitted." A "reviewed" release is not necessarily a "permitted" release or a controlled release. A permitted release is an allowable release of a specific substance or emission. A reviewed release generally may be one of many releases from a

permitted source that is being checked for compliance with a variety of laws and regulations. The inclusion of a pollutant in a SIP review provision is not equivalent to subjecting the pollutant to CAA requirements or controls "designed specifically to limit or eliminate" the pollutant. (See S. Rep. No. 848, 96th Cong., 2d Sess. 49 (1980)). A reviewed release, therefore, is not necessarily a federally permitted release.

Several commenters stated that the air release exemption should apply broadly to substances such as volatile organic compounds (VOC) or total suspended particulates (TSP) regulated under the CAA (including those regulated under approved State programs). The commenters claimed that a permit or regulatory limit on such categorical emissions in effect constitutes a limit on each constituent in the group. EPA generally agrees with this position, but again is concerned that an overbroad interpretation of the air release exemption could result in nonreporting of dangerous chemical releases. A large release of a substance from a pressure release valve over a short period of time could be within a VOC limit established for a source, yet could pose a threat to nearby residents. Although the categorical limits indirectly restrict each constituent, those limits were established based on routine emissions over a specific averaging time, and were not predicated on an upset or excursion from normal operations. The Agency does not believe, therefore, that such an upset or excursion should be considered "permitted" within the meaning of section 101(10)(H) of CERCLA.

EPA is soliciting public comment today on three approaches to distinguishing emissions permitted under the CAA from releases that could create potential hazards to surrounding areas and for which timely notification under CERCLA and Title III is necessary. Under the first approach, EPA would interpret the air release exemption in a manner similar to the exemption for releases regulated under the CWA. Thus, air releases would be permitted to the extent that the constituent hazardous substances have been identified, reviewed, and made part of the public record during the permit issuance, State implementation plan, or regulation development process for the pollutant that includes the hazardous substance. The exemption would not extend to releases of constituent hazardous substances of a permitted or regulated pollutant category that are not identified expressly on the record with respect to

the applicable permit or control program. Once the constituent hazardous substance had been identified and reviewed appropriately, the limitation on the category of emissions of hazardous substances would provide the "permit or control regulation" needed for application of the section 101(10)(H) exemption. A specific issue on which the Agency solicits comments is the inclusion of negative determinations under the CAA section 112 program in the exemption.

The second approach would interpret broadly the regulatory programs governing pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under CAA section 109. These programs are developed under CAA section 111 New Source Performance Standards (NSPS) or CAA section 110 State Implementation Plans (SIPs). Under this approach, EPA would distinguish between emissions of hazardous substances that are VOCs and regulated as precursors of ozone, and constituents of the other NAAQS pollutants. For example, emissions of constituents of particulate matter would be considered "subject to a permit or control regulation" and, therefore, exempt from notification requirements. Emissions of individual VOCs, however, would not be considered subject to permit or control regulations solely because they are indirectly controlled by regulations limiting total VOC emissions. These emissions of individual VOCs in amounts equal to or in excess of an RQ, consequently, would be subject to notification requirements.

This approach is based on the recognition that for five of the present NAAQS (sulfur dioxide, particulate matter, nitrogen oxides, lead, and carbon monoxide) the standards in each case are based on the evidence of health effects of those emissions. In contrast, emissions of VOCs are regulated based on their reactivity and consequent contribution to the creation of ambient ozone levels for which NAAQS have been set. In setting the ozone NAAQS or establishing emission limitations for VOCs, no consideration was given to any direct health effects of ambient concentrations of total or any constituent VOC. As a result, interpreting VOC emission limitations to subsume consideration of the possible health effects of constituents appears to be inappropriate. Using this interpretation, a substance would be considered federally permitted if it is a constituent of, and, therefore, limited by regulations or standards for, any of the five pollutants enumerated above, but

not if it is limited by standards for VOCs.

Reportable quantities for the purpose of release notification requirements are established to ensure appropriate response to episodic releases of hazardous substances that have potential adverse health and environmental effects. A large release of an individual VOC in a quantity equal to or in excess of an RQ may be within total VOC emission limits and may make a negligible contribution to ozone formation, which is affected by photochemical conditions, meteorology, and the contributions of other VOC sources. Such a release may, nonetheless, potentially endanger human health because of the toxicity of the individual substance.

For example, under CAA section 111, EPA established controls on the rubber tire manufacturing industry limiting VOC emissions for a medium-sized plant to approximately 400 tons per year, or about 1.1 tons per day. Predominant VOCs emitted in the manufacturing process are white gasoline and petroleum naphtha. Toluene, xylene, ketones, and esters are also used throughout the industry. (48 FR 2876, September 15, 1983.) A release on one day of an RQ or more of one of these VOC constituents, such as 1000 pounds of toluene, although within the total VOC release limit of approximately 1 ton per day may pose a threat to human health or the environment because the total VOC limitation is based on controlling the formation of ozone, and not on the toxicity of toluene or another of the VOC emission constituents. The Agency would take the position that interpreting NSPS or SIP VOC emission limitations to subsume consideration of the possible health effects of such VOC constituents, and thereby exempt them from notification requirements, is inappropriate. Thus, EPA would require notification of releases of VOC constituents in amounts equivalent to or greater than an RQ under the second approach.

As a third option, EPA could interpret the CAA federally permitted release exclusion to apply only to releases that are subject to a CAA permit or control regulation and that are either the "routine" emissions for which the permit or control regulation was designed or in compliance with a specific standard for release of that substance specified in the permit or regulation. Unpermitted, nonroutine releases would include upsets from such devices as pressure release valves, storage tank reactor vessels, or sudden releases from valve

and pipe ruptures, equipment failure, and emergency startups and shutdowns.

EPA requests comments on these alternatives for defining the scope of the air release exemption. Specifically, EPA requests comments distinguishing releases of ozone precursors (VOC) constituents from releases of constituents of other categorical pollutants controlled by NAAQS. EPA also is soliciting comment on the "routine" vs. "nonroutine" distinction and the need to define "routine" in terms of specific emission points or circumstances, and solicits comments on what emission points should be included. In addition, EPA is concerned that the first approach may lead to overreporting of routine releases subject to adequate control under existing regulatory or permit limits that could divert resources from releases requiring immediate response. EPA solicits information on the number of facilities and types of releases that would require reporting under these approaches, and the types of releases that would be excluded under either approach, particularly with respect to any potentially dangerous releases that may be excluded.

In addition, the National Emission Standards for Hazardous Air Pollutants (NESHAPs) limits for radionuclides are health-based annual limits, whereas radionuclide RQs are reporting triggers based on 24-hour releases. The Agency will require a report if an RQ above any annual NESHAP limit is released in a 24-hour period. The Agency requests comments on the number of facilities and types of releases that may require reporting.³

Injection of Materials Related to Development of Crude Oil or Natural Gas Supplies. The injection of materials related to the production of crude oil, natural gas, or water is considered a federally permitted release if the injection material is authorized specifically under applicable State law. Because it is probable that all conceivable injection modes are not considered in State laws, EPA, in the preamble to the May 25, 1983 NPRM, interpreted the section 101(10)(I) provision to exempt only those activities or materials that are authorized

³ In support of the final rule adjusting the RQ for radionuclides (to be published in 1988), the Agency has prepared an Economic Impact Analysis that estimates the cost to the government and regulated community caused by the revised radionuclide RQ reporting requirements. This document is available for public inspection in Room LC-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 152RQ-EN).

specifically by State law, rather than those that are not prohibited by State law. This interpretation ensures that the appropriate authorities have consciously considered and intentionally authorized the injection activities and materials that are to be exempt from notification requirements and that the National Response Center will be made aware immediately of the potential need to respond to releases that have not been evaluated previously by a permitting authority.

EPA interprets the section 101(10)(I) exemption to apply only to those materials specifically authorized by State law to be used in activities whose sole purpose is the production of crude oil, natural gas, or water; the recovery of crude oil or natural gas; or the reinjection of fluids brought to the surface from such production. Some commenters objected to this interpretation and instead supported a broader interpretation that would exempt from CERCLA notification all materials used in gas and oil field operations. The National Response Center must be notified in any situation involving the use of injection fluids or materials that are not authorized specifically by State law for purposes of the development of crude oil or natural gas supplies and resulting in a release of a hazardous substance in an amount that equals or exceeds the applicable RQ. This will allow an immediate evaluation of the need for a response.

Introduction of Pollutants into Publicly Owned Treatment Works. A release to a Publicly Owned Treatment Works (POTW) is subject to the federally permitted release exemption if the release is (1) in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c), and (2) into a POTW with an approved local pretreatment program or a § 403.10(e) State-administered local program. One of the commenters on the May 25, 1983 NPRM suggested that the Agency broaden its approach to the POTW exemption to provide that the discharge be in compliance only with general pretreatment requirements and not with site-specific requirements. The Agency believes that for POTW to be considered "federally permitted," not only must the hazardous substance be a pollutant specified in applicable pretreatment standards and the release of the pollutant be in compliance with the categorical pretreatment standards, but the release also must be in compliance with the local limits developed on the basis of the site-specific conditions, because the

categorical standards alone may not be adequate to address the impact of pollutants on the POTW. Therefore, even though a release into a POTW is in compliance with the categorical pretreatment standards, the National Response Center must be notified if the release exceeds the local limits by an RQ or more, because the release may cause interference with the POTW's processes or may pass through the POTW to the navigable waters, either of which may result in a situation requiring an emergency response. This exemption applies only to industrial users⁴ discharging to POTWs; a POTW is subject to CERCLA reporting and liability provisions if its discharge of a hazardous substance violates its NPDES permit by an RQ or more. POTWs are not required to report hazardous substances that are traveling through their collection systems in quantities that equal or exceed RQs; however, the industrial user is responsible for reporting such releases into the collection system.

Sections 307(b)(1) and (c) of the CWA direct EPA to establish pretreatment standards "to prevent the discharge of any pollutant through treatment works . . . which are publicly owned, which pollutant interferes with, passes through, or is otherwise incompatible with such works." These sections address the problems created by discharges of pollutants from nondomestic sources to municipal sewage treatment works that interfere with the POTW or pass through the POTW to navigable waters untreated or inadequately treated. Pretreatment standards are intended to prevent those problems from occurring by requiring nondomestic users of POTWs to pretreat their wastes before discharging them to the POTW. In 1977, Congress amended section 402(b)(8) of the CWA to require POTWs to help regulate their industrial users by establishing local programs to ensure that industrial users comply with pretreatment standards.

In establishing the national pretreatment program to achieve these pretreatment goals, the Agency adopted a broad-based regulatory approach that implements the statutory prohibitions against pass through and interference at two basic levels. The first is through the promulgation of national categorical standards that apply to certain industrial uses within selected categories of industries that commonly discharge toxic pollutants. Categorical standards establish numerical,

⁴ "Industrial users," as the term is used in this discussion, includes mobile sources discharging hazardous substances to a POTW.

technology-based discharge limits derived from an assessment of the types and amounts of pollutant discharges that typically interfere with or pass through POTWs with secondary treatment facilities.

The potential for many pass through or interference problems depends not only on the nature of the discharge but also on local conditions (e.g., the type of treatment process used by the POTW, local water quality, POTW's chosen method for handling sludge), and thus needs to be addressed on a case-by-case basis. Examples of such problems include discharges to a POTW that may consist of pollutants not covered by a categorical standard or from nondomestic sources that are not in one of the industrial categories regulated by the categorical standards. Because categorical standards are established industry-wide, they cannot consider site-specific conditions and therefore may not be adequate to prevent all pass through and interference even for the regulated pollutants. EPA's General Pretreatment Regulations (40 CFR Part 403) address these areas of concern. First, 40 CFR 403.5(b) establishes specific prohibitions that apply to all nondomestic users and are designed to guard against common types of pollutant discharges that may result in interference and pass through (e.g., no discharge of flammable, explosive, or corrosive pollutants). Second, 40 CFR 403.5(a) establishes a general prohibition against pass through and interference that serves as a backup standard to address localized problems that occur. In addition, POTWs must develop and enforce specific local limits as part of their local pretreatment programs to prevent pass through and interference. POTWs not required to develop pretreatment programs also must develop local limits if they have recurring pass through and interference (see 40 CFR 403.5(c)).

The pretreatment standards a POTW user must meet to claim the federally permitted release exemption include both applicable national categorical standards and standards established by local law as described below. Compliance only with the general and specific prohibitions (40 CFR 403.5(a) and (b)) of the general pretreatment regulations is insufficient to qualify a release as federally permitted.

Only local limits applicable to the pollutant, developed in accordance with 40 CFR 403.5(c), and designed to implement the general prohibition against interference and pass through (§ 403.5(a)), can qualify the release of such pollutant as a federally permitted

release. The development of local limits under 40 CFR 403.5(c) involves three basic steps. First, a POTW must determine which, if any, of the pollutants discharged by its industrial users have a reasonable potential to pass through or interfere with the POTW. For each of the pollutants the POTW concludes may be of concern, the POTW must then determine the maximum amount of the pollutant it can accept (maximum headworks loading) and still prevent the occurrence of pass through or interference. Finally, after maximum allowable headworks loadings are determined for each of the pollutants of concern, the POTW must implement a system of local limits applicable to industrial users to assure that these loadings will not be exceeded.

EPA believes that only local limits that have been developed based upon procedures that evaluate the site-specific characteristics and treatment capabilities of a POTW should qualify the release of the pollutant for the exemption. Such an extensive analysis is needed to assure that pass through and interference problems do not arise. A discharge of a pollutant by an industrial user in compliance with a local limit not designed using these procedures may not address the statutory prohibitions against pass through and interference or provide the requisite degree of environmental protection to qualify for the federally permitted release exemption.

Thus, a release that exceeds by an RQ or more an applicable categorical pretreatment standard or a local limit developed in accordance with 40 CFR 403.5(c) must be reported. Moreover, the absence of a categorical pretreatment standard or a local limit for a specific pollutant precludes coverage for releases of that pollutant under the federally permitted release exemption. If an industrial user releases an RQ or more of a hazardous substance into a POTW that has not set a local limit for such a substance, or for which there is no limit based on a categorical standard, then the release is not federally permitted and is subject to CERCLA reporting and liability provisions.

Furthermore, the release of a pollutant to a POTW only would qualify for the federally permitted release exemption if (1) the POTW has a local pretreatment program approved by the "approved authority" (as defined in § 403.3(c)), or (2) a State, in lieu of the municipality, is implementing a pretreatment program for that POTW pursuant to 40 CFR 403.10(e).

Section 101(10)(j) provides that the pretreatment program must be "submitted by a State or municipality

for Federal approval." The Agency interprets this provision to mean that the program not only must be submitted for approval but must be approved. A strict reading of the statutory language would be contrary to the expressed congressional intent that discharges of hazardous substances into sewer systems qualify as federally permitted releases only if they are authorized under a pretreatment program (S. Rep. No. 848, 96th Cong., 2nd Sess. 48 (1980)). The fact that a POTW has submitted a program for approval does not necessarily mean the program is adequate to control the introduction of pollutants from nondomestic users of the POTW. Such a program may not be approved by the approval authority due to major deficiencies. For the discharge to be a federally permitted release, therefore, it must be specifically regulated in an approved program, a program that the approval authority has determined is consistent with the federally mandated minimum standard.

An approved program may be (1) designed and implemented locally by a POTW and approved by either EPA or an EPA-approved State pretreatment program, or (2) designed and implemented by an EPA-approved State pretreatment program. EPA approval of a State pretreatment program pursuant to section 402(b) of the CWA would not automatically qualify a release to a POTW in that State as federally permitted. The local pretreatment program must be approved either by EPA or by an EPA-approved State program. Generally, EPA approval of a State pretreatment program merely changes the approval authority for the POTW programs from EPA to the EPA-approved State pretreatment program. The approved State has primary responsibility for requiring local POTWs to develop and implement a pretreatment program to regulate users directly. The fact that a State pretreatment program has been approved by EPA does not in and of itself change the quality or approvability of local POTW programs. POTWs in approved States would still need to develop local pretreatment programs and receive pretreatment program approval if they have not done so already. Thus, to satisfy the federally permitted release exemption, individual approval of each POTW pretreatment program is necessary (except for a State administered § 403.10(e) program as described below).

Section 403.10(e) allows the State in lieu of the POTW to assume responsibility for developing and implementing POTW pretreatment program requirements. Because the

§ 403.10(e) program must meet the same standard as would be required for pretreatment programs developed by a municipality (§ 403.8(f)), EPA believes that the § 403.10(e) programs are the State pretreatment programs Congress intended to include under section 101(10)(j).

In the event that a State's § 403.10(e) program does not extend to all its POTWs, only those releases to POTWs for which the State has implemented the pretreatment program pursuant to § 403.10(e) would qualify as federally permitted. If a POTW is not regulated directly by its State NPDES program, the POTW nevertheless must implement an approved local pretreatment program in order for the discharges of industrial users to qualify for the federally permitted release exemption.

In summary, for a release to a POTW to be subject to the federally permitted release exemption, the release must be: (1) In compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c), and (2) into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

One of the commenters on the May 25, 1983 NPRM stated that discharges into a POTW are transfers between facilities, not "into the environment," and therefore all discharges into POTWs should be exempt from CERCLA reporting. The commenter's approach to defining "into the environment" is not consistent with the approach in today's proposal. To determine whether its release is federally permitted, therefore, an industrial user should measure its discharge at the point the substance leaves the industrial user's facility. In the case of indirect dischargers, the release should be measured when it leaves the discharger's building. Mobile sources should measure the discharge at the point it is released into the POTW, which will be at the headworks in most cases. Industrial users are not required under CERCLA to conduct monitoring activities different from those required by the applicable pretreatment program.

Releases of Source, Byproduct, or Special Nuclear Material. Radionuclides (which include source, byproduct, and special nuclear material) are listed generically under section 112 of the CAA and are therefore considered hazardous substances under CERCLA. CERCLA section 101(22)(C), however, excludes from the definition of "release" the discharge of:

source, byproduct, or special nuclear material from a nuclear incident, as those terms are

defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 [UMTRCA].

It should be noted that releases of source, byproduct, or special nuclear material from processing sites designated under section 102(a)(1) or section 302(a) UMTRCA are exempted from CERCLA response action provisions but not from reporting requirements under CERCLA section 103.

CERCLA section 101(10)(K) includes within the definition of federally permitted release, releases of source, byproduct, or special nuclear material that comply with the conditions of a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act (AEA). Therefore, releases of source, byproduct, or special nuclear material that exceed the licensed or permitted levels by an RQ or more, and that are not excluded by section 101(22), must be reported immediately to the National Response Center.

Under the AEA, the Nuclear Regulatory Commission is responsible for issuing licenses for the possession and use of source, byproduct, and special nuclear material. States that have entered into an agreement with the Nuclear Regulatory Commission (i.e., Agreement States) are also authorized under the AEA to issue licenses for the possession and use of source, byproduct, or special nuclear material. Releases of source, byproduct, or special nuclear material in compliance with licenses issued by the Nuclear Regulatory Commission or Agreement States are federally permitted releases under CERCLA section 101(10)(K).

The regulations of the Nuclear Regulatory Commission contain several important exemptions from their provisions, some of which are based on the small quantities of material involved or the low levels of radioactivity the materials emit. The Nuclear Regulatory Commission has developed "exempted quantities" for purposes of identifying facilities that are not subject to Commission licensing requirements. These quantities are smaller than the radionuclide RQs and, therefore, releases from these facilities will not be reported under CERCLA. Nevertheless, these releases are not federally

permitted under CERCLA and, therefore, these facilities are subject to the CERCLA section 107 liability provisions.

Some releases of source, byproduct, and special nuclear material may comply with licenses, permits, orders, or regulations issued under the AEA through provisions administered not by the Commission or its Agreement States, but by DOE, the Department of Defense, or EPA. For example, DOE governs its radiation protection activities under the AEA by a series of internal orders. When such orders are issued under DOE's AEA authority and releases of source, byproduct, or special nuclear material are in compliance with the applicable order(s), these releases are federally permitted under section 101(10)(K).⁶ The Department of Defense issues regulations under the AEA governing weapons and reactors within its jurisdiction, and EPA issues regulations under the AEA for certain operations involving radioactive material (e.g., 40 CFR Parts 190, 191, and 192). Releases of source, byproduct, or special nuclear material in compliance with these regulations are also federally permitted under section 101(10)(K). Any release that is an RQ or more above federally permitted levels, however, would be subject to the CERCLA notification requirements.

Further clarification is needed regarding the applicability of the definition of federally permitted releases to a fourth category of radioactive material called naturally occurring and accelerator-produced radioactive material (NARM). The AEA gives DOE broad authority to control its radiation-related activities and to protect public health and safety and the environment. This authority applies to activities involving NARM, as well as activities involving source, byproduct, and special nuclear material. CERCLA section 101(10)(K) refers, however, only to releases of source, byproduct, and special nuclear material. Thus, it provides no basis for exempting DOE's NARM releases from CERCLA's reporting and liability provisions. Furthermore, the AEA currently does not give authority to the Nuclear Regulatory Commission to license NARM, only source, byproduct, and

⁶ Under the DOE procurement regulations, provisions of the relevant DOE environmental and safety orders must be incorporated by reference into contracts entered into with managers and operators of DOE facilities (see 48 CFR 970.2300-2, 970.5204-2, 970.5104-28(b)). By virtue of their incorporation into binding contracts, the provisions of the DOE orders become binding on the managers and operators of DOE facilities and are enforceable by DOE on the basis of the facility management and operation contracts.

special nuclear material. Although Agreement States may regulate NARM, this regulatory authority is not federally derived. Therefore, releases of NARM are not considered federally permitted under section 101(10)(K). Certain NARM releases are, however, considered federally permitted under other CERCLA sections. For example, air releases of NARM that are in compliance with NESHAPs are federally permitted under section 101(10)(H).

In making this finding with respect to NARM and the definition of federally permitted releases in section 101(10)(K), the Agency wishes to differentiate between NARM, source material, and byproduct material. Both source and byproduct material are defined under the AEA to include certain naturally occurring radionuclides. Specifically, source material is natural uranium, natural thorium, or ores that contain 0.05 percent or more (by weight) of natural uranium or thorium. Byproduct material is defined to include naturally occurring decay products of uranium or thorium when those decay products are associated with mill tailings. The exclusion of NARM from the definition of federally permitted releases under section 101(10)(K) applies only to those naturally occurring radionuclides that do not qualify as either source or byproduct material. For example, naturally occurring radium used in medical and well logging devices does not meet the definition of source or byproduct material and, therefore, releases of radium from these devices does not qualify for the reporting exemption under section 101(10)(K).

All of the commenters on the radionuclides exemption felt that a broader exemption is warranted. Some commenters suggested that reports of releases currently required by the Nuclear Regulatory Commission are sufficient and comprehensive because they enable the Commission to determine the need for and the adequacy of response. These commenters felt that any additional reports to the National Response Center would be an unnecessary burden. EPA expects that most releases involving radionuclides will be excluded from the definition of release, will be federally permitted, or will involve a quantity smaller than the RQ. (The Agency published a rule that proposed RQs for radionuclides on March 16, 1987 in 52 FR 8172; these RQs are being revised and the Agency expects to publish final RQs for radionuclides in 1988.) EPA believes, however, that the reporting requirements imposed on the remaining releases of radionuclides, including

releases not subject to or in compliance with applicable permits, regulations, or orders, are essential to mitigate the risk to public health or welfare or the environment posed by such releases.

III. Notification for Certain Types of Releases

A. In General

This section addresses several recurring questions not related specifically to the definition of "federally permitted release" but that arise under the CERCLA section 103(a) reporting requirements. One such question involves releases to engineered structures designed specifically to prevent materials from reaching the land surface. The issues involve both interpretation of the phrase "release into the environment" and the appropriateness of CERCLA notification requirements for releases to such secondary containment devices. The Agency solicits comments on the following issues.

In the preamble to the April 4, 1985 final rule adjusting RQs for 340 CERCLA hazardous substance, EPA stated:

Hazardous substances may be released "into the environment" even if they remain on plant or installation grounds. Examples of such releases are spills from tanks or valves onto concrete pads or into ditches open to the outside air, releases from pipes into open lagoons or ponds, or any other discharges that are not wholly contained within buildings or structures. Such a release, if it occurs in a reportable quantity (e.g., evaporation of an RQ into the air from a dike or concrete pad), must be reported under CERCLA. On the other hand, hazardous substances may be spilled at a plant or installation but not enter the environment, e.g., when the substance spills onto the concrete floor of an enclosed manufacturing plant. Such a spill would need to be reported only if the substances were in some way to leave the building or structure in a reportable quantity. (Note, however, that the federal government may still respond and recover costs where there is a threatened release into the environment.) 50 FR 13462.

In applying the phrase "into the environment" to releases to secondary containment devices, EPA believes that a release inside a building or structure is not a release "into the environment" unless the spilled substance leaves the building.

On one hand, a release to a secondary containment device that is not wholly contained and that is located outside of a building or structure is "into the environment." Examples of releases to such devices that illustrate both the potential for a serious problem and an existing serious situation have been brought to the Agency's attention. These include a release of hydrochloric acid to

a dike that would have overflowed in a heavy rain, and radioactive contamination of water supplies apparently resulting from an improperly functioning secondary containment device at a nuclear facility.

On the other hand, it has been suggested that where engineered structures are open to the air, releases into such structures should be exempt from CERCLA notification unless an RQ or more of the substance reaches any ground or surface waters or land surface or evaporates into the ambient air. Releases to such structures may include such occurrences as releases onto concrete pads, secondary containment devices with sealed floors around storage tanks, or drip pans used to catch minor hose or line drainage.

The Agency is interested in receiving comments and data discussing the circumstances under which immediate notification of releases into secondary containment devices would not provide useful information for Federal response purposes under CERCLA. EPA is particularly interested in information on the significance of the issue, specific examples of procedures followed where there is a release to a secondary containment device and techniques used to prevent releases from such devices, data discussing the integrity of secondary containment devices, and suggestions on the appropriate means of eliminating any such unnecessary reporting. If the Agency decides to exempt from CERCLA notification certain releases into secondary containment devices, a demonstration may be required to show that the device is sufficiently protective and reliable.

B. PCB Waste Disposal

A second issue concerning the necessity for section 103 notification is whether approved polychlorinated biphenyl (PCB) disposal by incineration, landfilling, or alternate methods needs to be reported as a release under section 103. Because PCB disposal approvals under the Toxic Substances Control Act (TSCA) are not included in the CERCLA section 101(10) definition of federally permitted release, EPA does not believe that it has the authority to apply that exemption to such approvals.

At the same time, however, EPA does not believe that notification under section 103 of CERCLA provides any significant additional benefit so long as the disposal facility is in substantial compliance with all applicable regulations and approval conditions. The PCB regulations under TSCA, 40 CFR Part 761, require owners or operators of PCB disposal facilities, incinerators, chemical waste landfills,

and high efficiency boilers to obtain written EPA approval, based on compliance with detailed technical requirements designed to ensure proper disposal, before accepting PCB wastes. The TSCA approval process is designed to ensure that the operation of PCB disposal facilities does not present an unreasonable risk of injury to health or the environment from PCBs. In addition, 40 CFR Part 761, Subpart J, requires PCB disposal facility owners or operators to monitor carefully the facility's inventory and operation, maintain detailed records for periods of 5 to 20 years, and report under certain circumstances. The TSCA regulations provide the Federal government with the information necessary to determine whether an emergency response to a PCB disposal is required. Today's proposal not to require CERCLA reporting for EPA-approved PCB disposals is consistent with the overall objective of the CERCLA notification requirements. Therefore, EPA will not require reporting under section 103(a) of the approved, proper disposal of PCB wastes into a disposal facility. The Agency requests comments on this proposal to exempt administratively these releases from CERCLA notification.

A party responsible for a release of PCB wastes that need not be reported under CERCLA, however, remains liable for the costs of cleaning up the release and for any natural resource damages caused by the release. In addition, where the disposer knows that the facility is not in compliance with applicable regulations and approved conditions under TSCA, disposal of an RQ or more of PCB waste must be reported to the National Response Center. Likewise, spills and accidents occurring during disposal and outside of the approved operation and that result in releases of an RQ or more of PCB waste must be reported to the National Response Center. Finally, PCB releases of an RQ or more from a TSCA-approved facility (as opposed to disposal into such a facility) must be reported under CERCLA.

IV. Discharges to POTW's

The Agency recognizes that the regulation implementing CWA section 311 for hazardous substance discharges must be revised to be consistent with the Agency's regulatory approach taken under CERCLA section 101(10)(j). Under CERCLA section 101(10)(j), an indirect discharge to a POTW must be subject to and in compliance with categorical pretreatment standards and local limits applicable in an approved local

pretreatment program (see discussion under Section III of today's preamble). All indirect dischargers, i.e., both mobile and stationary sources, are subject to the same requirements for their discharges to be considered federally permitted releases.

Under 40 CFR 117.13, mobile sources discharging industrial waste are not subject to CWA section 311 coverage if the mobile source has contracted with, or otherwise received written permission from the POTW to discharge a designated quantity of industrial waste treated to comply with effluent limitations (under CWA sections 301, 302, or 306) or pretreatment standards (under CWA section 307). Indirect dischargers are not addressed under § 117.13. Paragraph (a) of § 117.13 was reserved to provide the conditions under which indirect discharges are subject to CWA section 311.

The Agency is proposing to amend 40 CFR 117.13 to state that indirect discharges are not subject to section 311 coverage if the indirect discharge is in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and is into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program. EPA also is proposing to revise paragraph (b) to apply the same conditions to mobile sources as would be applied to indirect discharges under paragraph (a). The Agency requests comments on this proposal.

V. Regulatory Analyses

A. Executive Order No. 12291

Rulemaking protocol under Executive Order (E.O.) 12291 requires that proposed regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

- (1) An annual effect on the economy of \$100 million or more; or
- (2) A major increase in costs or prices for consumers, individual industries, Federal, States, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Today's regulation is nonmajor, because adoption of the rule will result in zero costs and will not cause any of the significant adverse effects mentioned in (3) above. The Background Document for the Proposed Regulation on Federally Permitted Releases,

available for inspection in the public docket, shows that the proposed rule is simply a clarification of existing statutory requirements.

This rule has been submitted to OMB for review, as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." Today's proposed rule is not expected to significantly impact small entities because the rule proposes simply to clarify the existing statutory requirement. EPA certifies, therefore, that this proposed regulation will not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis is not required.

C. Paperwork Reduction Act

There are no reporting or recordkeeping provisions included in this proposed rule that require approval from the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 117

Hazardous Substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides, and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

40 CFR Part 355

Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Extremely hazardous substances, Hazardous substances, Reportable quantity, Reporting and recordkeeping requirements, Threshold planning quantity.

Dated: July 11, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 1321 and 1361.

2. Section 117.12 is revised to read as follows:

§ 117.12 Applicability to discharges from facilities with NPDES permits.

(a) This regulation does not apply to: (1) Discharges in compliance with a permit under section 402 of the Clean Water Act;

(2) Discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit; or

(3) Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

(b) A discharge is "in compliance with a permit issued under section 402 of the Clean Water Act" if the permit contains an effluent limitation specifically applicable to the substance discharged or an effluent limitation applicable to another waste parameter that has been specifically identified in the permit as intended to limit such substance, and the discharge is in compliance with the effluent limitation.

(c) A discharge results "from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit" where:

(1) The permit application, the permit, or another portion of the public record contains documents that specifically identify:

- (i) The substances and the amounts of substances; and
- (ii) The origin and source of the substances; and
- (iii) The treatment that is to be provided for the discharge either by:

(A) An on-site treatment system separate from any treatment system treating the permittee's normal discharge; or

(B) A treatment system that is designed to treat the permittee's normal discharge and that is additionally capable of treating the identified amount of the identified substance; or

(C) Any combination of the above; and

(2) The permit contains a requirement that the substances and the amounts of the substances, as identified in § 117.12(c)(1)(i) and § 117.12(c)(1)(ii), be treated pursuant to § 117.12(c)(1)(iii) in the event of an on-site release; and

(3) The treatment to be provided is in place.

(d) A discharge is a "continuous or anticipated intermittent" discharge "from a point source, identified in a permit or permit application under section 402 of the Clean Water Act," and "caused by events occurring within the scope of relevant operating or treatment systems", whether or not the discharge is in compliance with the permit, if:

(1) The hazardous substance is discharged from a point source for which a valid permit exists or for which a permit application has been submitted; and

(2) The discharge of the hazardous substance results from:

(i) The contamination of noncontact cooling water or storm water, provided that such cooling water or storm water is not contaminated by an onsite spill of a hazardous substance; or

(ii) A continuous or anticipated intermittent discharge of process waste water, and where the discharge originates within the manufacturing or treatment systems; or

(iii) An upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge where the upset or failure results from a control problem, a system failure or malfunction, an equipment or system startup or shutdown, an equipment wash, or a production schedule change, provided that such upset or failure is not caused by an on-site spill of a hazardous substance.

3. Section 117.13 is revised to read as follows:

§ 117.13 Applicability to discharges from other facilities.

(a) These regulations apply to all discharges of reportable quantities to a POTW, where the discharge originates from stationary industrial users, so long as the discharge is:

(1) In compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c); and

(2) Into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

(b) These regulations apply to all discharges of reportable quantities to a POTW, where the discharge originates

from a mobile source, so long as the mobile source can show that:

(1) Prior to accepting the substance from an industrial discharger, the substance being discharged was in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c); and

(2) The substance is being discharged into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

4. The authority citation for Part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

5. Section 302.3 is amended by adding in alphabetical order the definition "federally permitted release" and by revising the introductory text of the definition "release" to read as follows:

§ 302.3 Definitions.

"Federally permitted release" means

(1) a discharge in compliance with a permit under section 402 of the Clean Water Act;

(2) A discharge resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act and subject to a condition in such permit;

(3) A continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which is caused by events occurring within the scope of relevant operating or treatment systems;

(4) A discharge in compliance with a legally enforceable Federal or State, individual or general permit under section 404 of the Clean Water Act;

(5) A release in compliance with a legally enforceable Federal or State final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure, or bioassay limitation or condition, or other control on the hazardous substances in such a release;

(6) Any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine

Protection, Research, and Sanctuaries Act of 1972;

(7) Any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator) pursuant to Part C of the Safe Drinking Water Act;

(8) Any emission of a substance into the air which is named specifically or is included in a specifically named group of substances subject to and in compliance with a permit or control regulation under section 111, section 112, Title I Part C, Title I Part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator) when such permit or control regulation is specifically designed to limit or eliminate such emission of a designated hazardous pollutant or a criteria pollutant, including any schedule or waiver granted, promulgated, or approved under these sections;

(9) Any injection of fluids or other materials specifically authorized under applicable State law: solely for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water; solely for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas; or which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected;

(10) The introduction of any pollutant into a publicly owned treatment works (POTW) when such pollutant is specified in and in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program; and

(11) Any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or other issued pursuant to the Atomic Energy Act of 1954.

Federally permitted releases do not include releases exempt from regulation under the authority of one of the cited statutes; releases not in compliance with the applicable permit limit or condition, license, regulation, order, standard, or program; or releases into a medium other than that covered in the applicable

permit, license, regulation, order, standard, or program.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes

6. Section 302.6 is amended by adding new paragraphs (e) and (f) as follows:

§ 302.6 Notification requirements.

(e) Whenever a release of a hazardous substance exceeds its federally permitted level as defined under § 302.3 ("federally permitted release") by a reportable quantity or more, notification shall be made for such release in accordance with the requirements of this section or, if applicable, § 302.8. Where numerical levels for hazardous substances are not specified, any release not in compliance with the terms, related to the character or quantity of the release, of the applicable permit, license, regulation, order, standard or program that equals or exceeds a reportable quantity must be reported to the National Response Center in accordance with this section or, if applicable, § 302.8.

(f) Notification is not required for the disposal of polychlorinated biphenyl (PCB) approved by EPA and in substantial compliance with the applicable Toxic Substance Control Act (TSCA) regulations, 40 CFR Part 761, and approval conditions.

7. Section 302.7 is amended by revising paragraph (a)(3) to read as follows:

§ 302.7 Penalties.

(a)
(3) In charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that reportable quantity determined under this part who fails to notify immediately the National Response Center as soon as he or she has knowledge of such release or who submits in such a notification any information which he or she knows to be false and misleading shall be subject to all of the sanctions, including criminal penalties, set forth in section 103(b) of the Act.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

8. The authority citation for Part 355 is revised to read as follows:

Authority: 42 U.S.C. 11002 and 11048.

9. Section 355.40 is amended by revising paragraph (a) to read as follows:

§ 355.40 Emergency release notification.

(a) *Applicability.* (1) The requirements of this section apply to any facility:

(i) At which a hazardous chemical is produced, used, or stored; and

(ii) At which there is a release of a reportable quantity of any extremely hazardous substance of CERCLA hazardous substance.

(2) This section does not apply to:

(i) Any release that results in exposure to persons solely within the boundaries of the facility;

(ii) Any release that is a "federally permitted release," as defined as follows:

(A) A discharge in compliance with a permit under section 402 of the Clean Water Act;

(B) A discharge resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit;

(C) A continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which is caused by events occurring within the scope of relevant operating or treatment systems;

(D) A discharge in compliance with a legally enforceable Federal or State, individual or general permit under section 404 of the Clean Water Act;

(E) A release in compliance with a legally enforceable Federal or State final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure, or bioassay limitation or condition, or other control on the hazardous substances in such a release;

(F) Any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972;

(G) Any injection of fluids authorized under Federal underground injection

control programs or State programs submitted for Federal approval (and not disapproved by the Administrator) pursuant to Part C of the Safe Drinking Water Act;

(H) Any emission of a substance into the air which is named specifically or is included in a specifically named group of substances subject to and in compliance with a permit or control regulation under section 111, section 112, Title I Part C, Title I Part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator) when such permit or control regulation is specifically designed to limit or eliminate such emission of a designated hazardous pollutant or a criteria pollutant, including any schedule or waiver granted, promulgated, or approved under these sections;

(I) Any injection of fluids or other materials specifically authorized under applicable State law: solely for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water; solely for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas; or which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected;

(J) The introduction of any pollutant into a publicly owned treatment works (POTW) when such pollutant is specified in and in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and into a POTW with an approved pretreatment program or a 40 CFR 403.10(e) State administered local program; and

(K) Any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

(iii) Federally permitted releases do not include releases exempt from regulation under the authority of one of the cited statutes; releases not in compliance with the applicable permit limit or condition, license, regulation, order, standard, or program; or releases into a medium other than that covered in the applicable permit, license, regulation, order, standard, or program.

[FR Doc. 88-10192 Filed 7-10-88; 8:45 am]

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July 19, 1988

Part III

Farm Credit Administration

12 CFR Parts 622 and 623
Rules of Practice and Procedure;
Practice Before the Farm Credit
Administration; Final Rule

FCA Policy Regarding the Assessment of
Civil Money Penalties; Notice

FARM CREDIT ADMINISTRATION**12 CFR Parts 622 and 623****Rules of Practice and Procedure; Practice Before the Farm Credit Administration**

AGENCY: Farm Credit Administration.
ACTION: Final rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts in final form, amendments to the regulations relating to the definition of a Farm Credit System institution and the imposition of civil money penalties by the Farm Credit Administration (FCA). This action is being taken to implement certain statutory changes to the definition of Farm Credit System institutions and to the changes regarding the imposition of civil money penalties resulting from the enactment of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233.

It is intended that this action will specify the process and rights afforded to a person or institution to be assessed civil money penalties. Comments from the public have been considered and minor clarifying changes have been made to the proposed rule.

DATE: This regulation shall become effective after the expiration of 30 days from publication during which either or both Houses of Congress is in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Kathleen Eyer, Chief, Supervision Division, Office of Analysis and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4455; TDD (703) 883-4444

or

Elizabeth M. Dean, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020; TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On May 12, 1988, the FCA published a Proposed Rule (53 FR 16986) seeking public comments on the implementation of the 1987 Act relating to the imposition of civil money penalties and a technical amendment to the definition of Farm Credit System institution. The proposed regulations were also provided to the appropriate committees of the House of Representatives and the Senate for a 30-day review period in accordance with § 5.17 of the Farm Credit Act of 1971, as amended (1971 Act).

The rule implements a provision of the 1987 Act which amends §§ 4.9 and

5.35(3) of the 1971 Act by revoking the Charter of the Farm Credit System Capital Corporation (FCSCC), thereby eliminating FCSCC as a Farm Credit System institution, and by creating the Farm Credit Financial Assistance Corporation, the Federal Agricultural Mortgage Corporation and the Federal Farm Credit Bank Funding Corporation as Farm Credit System institutions. These changes to the statute are reflected in §§ 622.2 and 623.2 of 12 CFR.

The 1987 Act also expands the basis upon which FCA can assess a civil money penalty and requires the agency to solicit the views of the institutions or person to be assessed before imposing a civil money penalty assessment. Therefore, Subpart B of FCA's rules of practice, 12 CFR Part 622 are revised.

The FCA received two comments on the proposed rule, one from the Farm Credit Corporation of America (FCCA) on behalf of its member banks and one from the Farm Credit Banks of Baltimore (FCBB) concurring with the FCC comment. FCBB suggested that there be a minimum time limit of no less than 15 days to respond to FCA with respect to § 622.53 of 12 CFR relating to notification to the institution or person to be assessed of the violation(s) alleged to have occurred or to be occurring, and the solicitation of the written views of the institution or person regarding the imposition of such penalty. Although a minimum time period of 15 days to respond to FCA was considered and discussed, it has been determined that time frames will be set forth in the notification letter on a case-by-case basis. The suggestion of committing to a minimum time frame in the regulation does not provide the administrative flexibility desired by the FCA. Therefore, as previously stated in the preamble to the proposed rule, the FCA will notify the institution or person of the amount of time permissible for a response upon solicitation of their views.

The FCCA comment requested that the notice of assessment of civil money penalties specifically inform the institution or person to be assessed of their statutory right to seek judicial review of an adverse formal hearing determination and that failure to request a formal hearing constitutes a waiver of the right of judicial review. Having considered this comment, § 622.55 of 12 CFR has been modified to reflect the statutory authority, 12 U.S.C. 2268 (c) and (d), which refer to judicial review and the consequences of failing to request a formal hearing. Additionally, paragraph (6) was inserted into § 622.55 of 12 CFR to notify an institution or person to be assessed that failure to

request a hearing constitutes a waiver of the opportunity of a hearing and the notice of assessment shall constitute a final and unappealable order.

List of Subjects in 12 CFR Parts 622 and 623

Accountants, Administrative practice and procedure, Crime, Investigations, Lawyers, Penalties.

As stated in the preamble, Part 622, Subparts A and B, and Part 623, of Chapter VI, Title 12 of the Code of Federal Regulations are amended as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 622 is revised to read as set forth below and all other authority citations throughout Part 622 are removed.

Authority: Secs. 5.9, 5.10, 5.17, 5.25-5.37, 12 U.S.C. 2243, 2244, 2252, 2261-2273.

2. Section 622.2 is amended by revising paragraph (d) to read as follows:

Subpart A—Rules Applicable to Formal Hearings**§ 622.2 Definitions.**

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in § 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation, and any service organization chartered under Part E of Title IV of the Act.

3. Subpart B, §§ 622.51 to 622.60, is revised to read as follows:

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

Sec.
622.51 Definitions.
622.52 Purpose and scope.
622.53 Notification of alleged violations.
622.54 Relevant considerations.
622.55 Notice of assessment of civil money penalty.
622.56 Request for formal hearing on assessment.
622.57 Waiver of hearing; consent.
622.58 Hearing on assessment.
622.59 Assessment order.
622.60 Payment of civil money penalty.
622.61-622.75 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties**§ 622.51 Definitions.**

Unless noted otherwise, the definitions set forth in § 622.2 of Subpart A shall apply to this subpart.

§ 622.52 Purpose and scope.

The rules and procedures specified in this subpart and in Subpart A are applicable to proceedings by the FCA to assess and collect civil money penalties:

- (a) For a violation of the terms of a final cease and desist order issued under § 5.25 or 5.28 of the Act, or
- (b) For violation of any provision of the Act or any regulation issued under the Act.

§ 622.53 Notification of alleged violations.

Before determining whether to assess a civil money penalty and determining the amount of such penalty, the FCA shall notify the institution or person to be assessed of the violation(s) alleged to have occurred or to be occurring, and shall solicit the written views of the institution or person regarding the imposition of such penalty.

§ 622.54 Relevant considerations.

In determining the amount of any penalty assessed, the FCA shall consider the financial resources and good faith of the institution or person charged, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 622.55 Notice of assessment of civil money penalty.

(a) *Notice of assessment.* After considering any written materials submitted in accordance with § 622.53 and the factors stated in § 622.54, the FCA shall commence a civil money penalty proceeding with the issuance of a notice of assessment of a civil money penalty. The notice of assessment shall state:

- (1) The legal authority for the assessment;
- (2) The amount of the civil money penalty being assessed;
- (3) The date by which the civil money penalty shall be paid;
- (4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;
- (5) The right of the institution or person being assessed to a formal hearing to challenge the assessment in accordance with 12 U.S.C. 2268(c) and (d);
- (6) That failure to request a hearing constitutes a waiver of the opportunity for a hearing and the notice of assessment shall constitute a final and unappealable order in accordance with 12 U.S.C. 2268(c); and

(7) The time limit to request such a formal hearing.

(b) *Service.* The notice of assessment may be served upon the institution or person being assessed by personal service or by certified mail with a return receipt to the institution's or the person's last known address. Such service constitutes issuance of the notice.

§ 622.56 Request for formal hearing on assessment.

An institution or person being assessed may request a formal hearing to challenge the assessment of a civil money penalty. The request must be filed in writing, within 10 days of the issuance of the notice of assessment, with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102-5090.

§ 622.57 Waiver of hearing; consent.

(a) *Waiver.* Failure to request a hearing pursuant to § 622.56 constitutes a waiver of the opportunity for a hearing and the notice of assessment issued pursuant to § 622.55 shall constitute a final and unappealable order.

(b) *Consent.* Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative is deemed to have consented to the issuance of an assessment order.

§ 622.58 Hearing on assessment.

(a) *Time and place.* An institution or person requesting a hearing shall be informed by order of the Board of the time and place set for hearing.

(b) *Answer; procedures.* The hearing order may require the institution or person requesting the hearing to file an answer as prescribed in § 622.5 of Subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and Subpart A of these Rules shall apply to the hearing.

§ 622.59 Assessment order.

(a) *Consent.* In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil money penalty. In its assessment order, the Board may reduce the amount of the penalty specified in the notice of assessment.

(b) *Effective date and period.* An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(c) *Service.* An assessment order may be served by personal service or by certified mail with a return receipt to the last known address of the institution or person being assessed. Such service constitutes issuance of the order.

§ 622.60 Payment of civil money penalty.

(a) *Payment date.* Generally, the date designated in the notice of assessment for payment of the civil money penalty will be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the statute would be better served if the 60-day period were changed, the Board may shorten or lengthen the period or make the civil money penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of a civil money penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil money penalty is to be paid or collected.

(b) *Method of payment.* Checks in payment of civil money penalties should be made payable to the "Farm Credit Administration". Upon collection, the FCA shall forward the amount of the penalty to the Treasury of the United States.

§§ 622.61-622.75 [Reserved]**PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION**

4. The authority citation for Part 623 is revised to read as set forth below and all other authority citations throughout Part 623 are removed.

Authority: Secs. 5.9, 5.10, 5.17, 5.25-5.37, 12 U.S.C. 2243, 2244, 2252, 2261-2273.

5. Section 623.2 is amended by revising paragraph (d) to read as follows:

§ 623.2 Definitions.

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation and any service organization chartered under Part E of Title IV of the Act.

Dated: July 12, 1988.

David A. Hill,
Secretary, Farm Credit Administration Board.
[FR Doc. 88-16514 Filed 7-18-88; 8:45 am]
BILLING CODE 8705-01-8

FARM CREDIT ADMINISTRATION**FCA Policy Regarding the Assessment of Civil Money Penalties**

AGENCY: Farm Credit Administration.

ACTION: Notice; Farm Credit Administration policy regarding the assessment of civil money penalties.

SUMMARY: The Agricultural Credit Act of 1987 (Pub. L. 100-233), enacted on January 6, 1988, amending the provisions of the Farm Credit Act of 1971, (12 U.S.C. 2001 *et seq.*), provides that the Farm Credit Administration (FCA) may assess civil money penalties for a violation of law or regulation or a final cease and desist order. As a means of promoting consistency in the application of this authority, the FCA has adopted a policy similar to that of the Federal Financial Institutions Examination Council (FFIEC), (45 FR 59423-59424, September 9, 1980). The FFIEC is composed of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration and the Office of the Comptroller of the Currency. The FCA's policy is similar to that of the FFIEC in that it sets forth specific factors that should be taken into consideration in deciding whether, and in what amount, civil money penalties should be imposed. The FCA policy, like the FFIEC policy, does not attempt to establish an inflexible schedule of penalties.

EFFECTIVE DATE: July 19, 1988.

FOR FURTHER INFORMATION CONTACT:

Kathleen Eyer, Chief, Supervision Division, Office of Analysis and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4455, TDD (703) 883-4444

or
Elizabeth M. Dean, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4444

FCA Policy Regarding the Assessment of Civil Money Penalties

Under provisions of the Farm Credit Act of 1971, as amended in 1985, (Pub. L. 99-205) enacted on December 23, 1985 and subsequently amended by the Agricultural Credit Act of 1987 enacted on January 6, 1988 (Pub. L. 100-233) (Act), the FCA is authorized to assess civil money penalties for violations of the Act and regulations promulgated thereunder, as well as for a violation of

the terms of a final cease and desist order.

The maximum civil penalty that may be assessed for violation of a final cease and desist order is \$1,000 per day. The maximum civil penalty that may be assessed for violation of the Act or any regulation issued thereunder is \$500 per day. Civil money penalties continue for each day a violation continues.

Section 5.32(b) of the Act provides that the FCA solicit the views of the Farm Credit System (System) institution or person to be assessed and consider that party's financial resources and good faith, the gravity of the violation, any history of previous violations, and such other matters as justice may require.

The FCA has amended 12 CFR Part 622, Rules and Procedures for Assessment and Collection of Civil Money Penalties. The FCA, before determining whether to assess a civil money penalty and in determining the amount of such penalty, shall notify the System institution or person to be assessed of the violation of violations alleged to have occurred or to be occurring, and shall solicit the views of the System institution or person regarding the imposition of the civil money penalty.

The FCA procedures provide for the commencement of civil money penalty proceedings with the issuance of a notice of assessment. The notice generally contains:

- (1) The legal authority for assessment;
- (2) The amount of the civil money penalty being assessed;
- (3) The date by which the civil money penalty shall be paid;
- (4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;
- (5) The right of the institution or person being assessed to a formal hearing to challenge the assessment; and
- (6) The time limit to request such a formal hearing.

Under section 5.32 of the Act, the System institution or person against whom a penalty is assessed has the opportunity to challenge the assessment in a formal administrative hearing and, following the hearing, to obtain judicial review of any assessment in the appropriate United States court of appeals.

To provide guidance in the procedures and criteria used by the FCA in the assessment of civil money penalties under the Act, the FCA adopts this policy:

Considerations in the Assessment of Civil Money Penalties

In assessing a civil money penalty for a violation or violations of provisions under the Act, or regulations implemented thereunder, the FCA is required to consider the size of the financial resources and good faith of the respondent, the gravity of the violation, the history of previous violations, and such other matters as justice may require. In determining the amount of a civil money penalty, the FFIEC believes that a significant consideration should be the financial or economic benefit the respondent obtained from the violation. Accordingly, the FCA, like the agencies comprising the FFIEC, will consider, in addition to the other factors specified in the statute, the financial or economic benefit the respondent derived from the illegal activity. The removal of economic benefit will, however, usually be insufficient by itself to promote compliance with the statutory provisions. The penalty may, therefore, in appropriate circumstances reflect some additional amount beyond the economic benefit derived to provide a deterrent.

In determining whether the violation is of sufficient gravity (i.e., the importance, significance, and seriousness of the situation) to warrant initiating a civil money penalty assessment proceeding, the agencies have identified the following factors as relevant:

- (1) Evidence that the violation or pattern of violations was intentional or committed with a disregard of the law or the consequences to the institution;
- (2) The frequency or recurrence of violations and the length of time the violation has been outstanding;
- (3) Continuation of violation after the respondent becomes aware of it, or its immediate cessation and correction;
- (4) Failure to cooperate with the FCA in effecting early resolution of the problem;
- (5) Evidence of concealment of the violation, or its voluntary disclosure;
- (6) Any threat of or actual loss or other harm to the System, the System institution or the public confidence, and the degree of any such harm;
- (7) Evidence that participants or their associates received financial or other gain or benefit or preferential treatment as a result of or from the violation;
- (8) Evidence of any restitution by the participants in the violation;
- (9) History of prior violations, particularly where similarities exist between those violations and the violation under consideration;

(10) Previous criticism of the institution for similar violations;

(11) Presence or absence of a compliance program and its effectiveness;

(12) Tendency to create unsafe or unsound practices or breach of fiduciary duty; and

(13) The existence of agreements, commitments or orders intended to prevent the subject violation.

The delineation of these factors either singularly or in total, is intended to provide guidance regarding the circumstances under which the FCA may initiate a civil money penalty action and is not intended to preclude

the FCA from considering any other matters relevant to the appropriateness of a civil money penalty assessment.

Dated: July 12, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-16153 Filed 7-18-88; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Parts 260 and 261
Identification and Listing of Hazardous
Waste Treatability Studies Sample
Exemptions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[SWH-FRL-3350-4]

Identification and Listing of Hazardous Waste Treatability Studies Sample Exemption

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 18, 1987, the Environmental Protection Agency (EPA) published a Notice of Data Availability, which requested comment on whether the sample exclusion provision should be expanded to include waste samples used in small-scale treatability studies. The sample exclusion provision exempts from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) waste samples collected solely for the purpose of monitoring or testing to determine their characteristics or composition. The Notice also presented information and requested comment concerning the appropriate limitations that could be imposed if the sample exclusion were expanded.

As a result of comments received, EPA is today issuing a final rule that conditionally exempts waste samples used in small-scale treatability studies from Subtitle C regulation. Consequently, generators of the waste samples and owners or operators of laboratories or testing facilities conducting such treatability studies will be exempt from the Subtitle C hazardous waste regulations, including the permitting requirements, when certain conditions are met.

DATE: This regulation becomes effective on July 19, 1988.

ADDRESSES: The OSW Docket is located in the sub-basement at the following address and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays: EPA RCRA Docket (sub-basement), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment (to review docket materials) by calling (202) 475-9327. Refer to Docket number F-88-TSSE-FFFFF when making appointments to review any background documentation for this rulemaking. Copies cost \$0.15 per page. Copies of the background document entitled "Summary and EPA Responses to Public Comments on the September 18, 1987 Notice of Data Availability and Request for Comment, and the September 25, 1981 Interim Final Rule" are available for viewing in the OSW Docket Room.

For Further documentation and information, see Docket Number F-87-TSEF-FFFFF.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline toll free at (800) 424-9346 in Washington, DC, or at (202) 382-3000. For technical information contact Mike Petruska, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9888.

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I. Background

On September 25, 1981 (see 46 FR 47426), EPA issued an interim final rule that conditionally exempted from the Subtitle C hazardous waste regulations any waste samples collected solely for the purpose of monitoring or testing to determine their characteristics or composition. These regulations include the generator and transporter requirements of Parts 262 and 269 and the treatment, storage, and permitting requirements of Parts 264, 265, and 270. In particular, the regulations exempt waste samples from the Subtitle C

requirements when: (1) The sample is being transported to the laboratory for testing or is being transported back to the sample collector after the testing; (2) the sample is being stored by the sample collector or laboratory before testing or after testing prior to its return to the generator; (3) the sample is being analyzed to determine its characteristics or composition; or (4) the sample is being stored at the laboratory for a specific purpose such as a court case or enforcement action. However, samples subject to the exemption must still comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or other applicable shipping requirements. The sample must be packaged so that it does not leak, spill, or vaporize from its packaging.

The Agency granted this exclusion because of the *de minimis* public health and environmental risks involved. In particular, the Agency found that certain incentives already existed that would assure protection of human health and the environment without requiring these samples to be subject to the full set of Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. These incentives include (1) the costs associated with sample collection, shipping, analysis, and storage; (2) the generator's need to obtain results of analyses to determine if and how they must comply with the RCRA hazardous waste requirements; and (3) the considerable likelihood that a testing laboratory would return the sample to the generator as part of a contractual agreement (partly based on the generator's desire to protect proprietary information and partly based on the testing laboratory's desire to avoid the costs of disposal), reducing the concern that the sample would be indiscriminately disposed. The preamble stated that the exclusion did not cover large-size samples that are used in treatability or other testing at pilot scale or experimental facilities. However, the preamble did not specify whether the exclusion applied to small- or bench-scale treatability studies at laboratories or other testing facilities. Today's final rule directly addresses this issue.

The preamble of the 1981 interim final rule also stated that the Agency had considered and rejected a quantity limit for the samples subject to the exclusion. Its basis for this was that the available information indicated that the size of samples shipped for characterization or analytical purposes usually did not exceed 1 gallon. Therefore, the Agency saw no need to set a specific quantity limit. However, the preamble also stated that EPA would consider imposing a

limit on sample size if comments or experience indicated that such a limit was necessary (46 FR 47427).

While the comments received on the 1981 interim final rule generally supported the exclusion for samples shipped for waste characterization, a large percentage of commenters also recommended that the sample exclusion provision be expanded to include waste samples used in treatability studies, including large-size samples used in pilot-scale units or at experimental facilities.

Furthermore, on June 2, 1987, the Hazardous Waste Treatment Council (HWTC) submitted a rulemaking petition requesting that the Agency promulgate regulations to provide limited exemptions from the permitting requirements of RCRA to facilities conducting treatability studies. The petition proposed a three-part solution: (1) Expand the sample exclusion provision to allow treatability tests to be conditionally exempted from regulation; (2) expand the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) permits exclusion at 40 CFR 300.88(a)(3) to include off-site treatability testing when performed at the direction of an EPA or State on-scene coordinator to implement a response consistent with CERCLA section 121; and (3) issue interim guidance to implement, at least in part, the suggested changes described in (1) and (2) above (*i.e.*, interpret the existing sample exclusion in 40 CFR 261.4(d) to include treatability studies, and issue interim guidance to on-scene coordinators regarding off-site treatability studies). The petition proposed several limitations for small-scale treatability studies. The petition also recommended regulatory changes that would allow large-scale treatability studies to be conducted provided that the facility complies with the manifesting requirements and certain interim status standards. (See section II.C., Limitations, discussed below.)

The petition asserted that immediate regulatory relief was needed because the present RCRA Subtitle C permitting requirements unnecessarily interfere with the experimentation and research necessary to evaluate the various treatment options for CERCLA cleanup activities. HWTC further argued that these same problems will have a similar effect on RCRA corrective action. Agency experience with the Superfund Innovative Technology Evaluation (SITE) program and CERCLA cleanup actions support the HWTC's assertion.

Based on these factors (*i.e.*, comments on the sample exclusion interim final rule, the HWTC petition, and EPA's own

experience), EPA published a Notice of Data Availability and Request for Comment on September 18, 1987 (50 FR 35279). The Notice reopened the comment period on the earlier interim final rule and specifically asked whether EPA should expand the sample exclusion provision in 40 CFR 261.4(d) to include waste samples used in small-scale treatability studies. The Notice also presented information and requested comment concerning the appropriate limitations that could be imposed if the sample exclusion provision were expanded.

Almost all commenters to the notice recommended that the Agency expand the sample exclusion provision to include waste samples used in small-scale treatability studies. The commenters generally agreed that the Agency could promulgate such an exclusion and allow meaningful studies to be conducted because of the *de minimis* risk to human health and the environment. However, a number of commenters argued that the limitations discussed in the Notice were overly stringent and suggested that higher limitations be allowed.

Based on the Agency's own experience and the comments received, EPA is today issuing a final rule that conditionally exempts waste samples used in small-scale treatability studies from regulation under Subtitle C of RCRA. The Agency will address the second part of HWTC's petition concerning larger scale studies at a later date. The remainder of the preamble discusses the major comments received on the Notice of Data Availability and EPA's response to them. All other comments, both from the Notice of Data Availability and to the original interim final rule, are discussed in a background document that is available in the docket to this rulemaking. (See EPA RCRA docket address in preceding section.)

II. Discussion of Major Issues

A. Introduction

A total of 40 comments were received in response to the Notice of Data Availability. The commenters in general agreed with HWTC that the Agency should expand the sample exclusion provision to apply to waste samples used in small-scale treatability studies. However, there was a wide range of opinion as to the scope of activities that should be allowed under the exemption and the appropriate limitations that the Agency should impose. Before discussing these, however, it is appropriate to discuss the need and rationale for today's rulemaking.

1. Need and Rationale for Today's Rulemaking

In the Agency's experience, permitting requirements for offsite treatability studies have resulted in delays in evaluating remediation alternatives for both CERCLA site clean-ups and the RCRA corrective action program. Additionally, the current and upcoming Land Disposal Restrictions Program is another factor arguing strongly for a need to develop alternative treatment technologies.

The overriding objective of Congress in the 1984 RCRA Amendments—to reduce land disposal of hazardous wastes—has already resulted both in heavy demands for existing treatment technologies and in increased urgency for developing new and better treatment methods as an alternative to the land disposal of hazardous waste. In addition, developing techniques to minimize the generation of hazardous waste, and to promote recycling and reuse of waste, are all important Agency goals and Congressional mandates. EPA is committed to facilitating research and development activities that will help meet these objectives.

The Agency believes the current regulatory framework that sets forth RCRA permitting requirements for Subtitle C facilities is unnecessarily stringent for regulating certain activities, *e.g.*, small-scale treatability studies. As noted above, comments in 1981 suggested a need to extend the sample exclusion provision to treatability studies because of the low risk and the large benefits of conducting these studies if RCRA permits were not required.

The HWTC petition summarizes this position on behalf of many facilities that conduct treatability studies as part of their research activities. In addition, HWTC stressed that the development of new treatment capacity, needed to meet the demands placed on industry as the land disposal restrictions take effect, is not facilitated by the current regulations. The potential lack of treatment capacity, using either new or improved existing technologies, means that EPA may have to issue additional variances to the land disposal restrictions, posing an increased threat of ground water and surface water contamination.

Maintaining unnecessary regulatory barriers to conducting treatability studies is, therefore, contrary to the Agency's implementation of the mandated land disposal restrictions. Furthermore, these regulatory barriers send the wrong message to the regulated

community. The Agency intends to promote, not defeat, research and development in support of the national objectives to reduce land disposal of hazardous wastes and to increase reliance on waste minimization and treatment technologies that reduce risk to human health and the environment. However, the Agency remains pledged to carry out its primary statutory obligation to ensure that removing regulatory barriers does not result in unwarranted or increased risks to human health and the environment. The Agency has determined that this balance can be properly maintained in promulgating a RCRA exemption for small scale treatability studies.

2. Determination of De Minimis Risk

Since Congress passed RCRA in 1976, the Agency has developed and implemented a "cradle to grave" program to protect human health and the environment from the improper management of hazardous wastes. A principal purpose of the RCRA hazardous waste regulations is to ensure that hazardous wastes are safely transported to facilities properly designed and operated to manage these wastes in a manner that will minimize the threat to human health and the environment. Hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDFs) each have specific responsibilities for properly managing those wastes defined as hazardous.

The Agency believes that it can exempt hazardous waste that is used in small-scale treatability studies from the RCRA hazardous waste regulations because a number of factors will combine to ensure that the risks to human health and the environment are *de minimis*. These factors include: (1) A limitation on the size of the sample that is exempted; (2) the high cost of collecting and shipping the sample; (3) a limitation on the quantity of waste that can be shipped at any one time; (4) the applicability of the Department of Transportation (DOT), U.S. Postal Service (USPS), or other regulations governing the transportation of hazardous materials; (5) a limitation on the amount of hazardous waste that can be stored at a laboratory or testing facility; (6) a limitation on the amount of hazardous waste that may be processed (*i.e.*, tested in a treatability unit) in any one day; (7) the prohibitive costs involved in conducting legitimate treatability studies as an alternative to commercial treatment and disposal; (8) a limitation on the time that a waste sample used in a treatability study or

any residues generated from such studies may remain at the laboratory or testing facility without being subject to the hazardous waste regulations; (9) the RCRA requirement that any unused sample and residues from a treatability study must still be managed as a hazardous waste (if, in fact, it is still hazardous); and (10) certain reporting and recordkeeping requirements that will enable the Agency to conduct inspections and bring enforcement actions against persons who abuse this exemption. In addition, regulations and requirements administered by other Federal agencies such as the Occupational Safety and Health Administration (OSHA) also ensure proper management.

The Agency believes that all the above factors contribute to an argument for *de minimis* risk. Some factors, such as the sample size, shipment size, transportation standards, and storage limitations, directly relate to the *de minimis* risk in each phase of the treatability study process. Other factors such as the recordkeeping and reporting requirements and the one-time 1000 kg per waste stream limitation ensure that treatment and disposal of hazardous waste do not occur under the guise of conducting treatability studies.

More specifically, under the conditional exemption being promulgated today, the generator or sample collector may not ship more than one of the following in any single shipment: (1) 1000 kg of non-acute hazardous waste; (2) 1 kg of acute hazardous waste (see 40 CFR 261.33(e)); or (3) 250 kg of acute hazardous waste that is contained in contaminated soils, water, or some other contaminated medium. Since the shipments remain subject to DOT, USPS, or other applicable shipping regulations, they must be packaged and labeled in the same manner as other shipments of hazardous materials. One difference is that these waste samples will not require a manifest. EPA believes that a manifest is not required in this situation, since the generator is spending large sums of money to obtain the results of a treatability study. Thus, it is highly unlikely that the sample would be indiscriminately disposed. Furthermore, the generator or sample collector is likely to have a contractual arrangement with the laboratory or testing facility conducting the treatability study either to have the facility return any unused sample and/or any residues that are generated from the treatability study for subsequent manifesting and shipment to a designated facility (see 40 CFR 260.10) or recycling facility or to have the

laboratory or testing facility directly manifest and ship the wastes to an appropriate designated facility within specified time limits. Unless the context otherwise requires, the use of this term in today's preamble and rule does not imply that the facility is required to be permitted or to have interim status. The generator must also maintain copies of the shipping papers and the contract with the testing facility for a period ending 3 years from the completion date of the study.

The operator of a vehicle transporting waste samples is still required to comply with the applicable DOT requirements, including notification of the National Response Center in the event of a hazardous material spill of more than a reportable quantity and initiation of cleanup measures in accordance with 49 CFR 171.15.

Owners and operators of a laboratory or testing facility conducting such treatability studies must comply with the limitations regarding shipment, storage, treatment rate, and disposition of unused sample and residues after completion of the studies. The overall limitations on storage and treatment rates, discussed later in today's preamble, are sufficiently restrictive to compel a laboratory or testing facility to carefully coordinate the size and timing of treatability sample shipments. The owners and operators of these laboratories or testing facilities must also comply with applicable regulations promulgated by OSHA.

Further business and financial incentives compelling a laboratory or testing facility to properly handle these samples include the cost-intensive nature of conducting treatability studies, the need to provide the client with documented test results, the desire of the laboratory or testing facility to maintain its corporate reputation, and the desire to avoid any liability. After the treatability study is completed, the owners or operators of a laboratory or testing facility must either return the unused sample and residues to the generator or manifest and ship them to a RCRA designated facility (if the material is a RCRA hazardous waste) within the time limitations specified. A laboratory or testing facility not operating within these limitations must comply with the appropriate RCRA requirements.

Finally, the Agency is stipulating recordkeeping and reporting requirements that will document compliance with the limitations and will allow the Agency to take enforcement action against persons who attempt to abuse the exemption. The specific reporting and recordkeeping

requirements are discussed later in today's preamble.

B. Scope of the Exemption

1. Definition of Treatability Study

In the Notice of Data Availability, the Agency included a definition of "treatability study" similar to that proposed by HWTC. According to this definition, a treatability study is one in which a relatively small amount of hazardous waste is subjected to a known treatment process to determine the following: (1) Whether the waste is amenable to a treatment process; (2) what pretreatment (if any) is required; (3) the optimal process conditions needed to achieve the desired treatment; (4) the efficiency of the treatment process; or (5) the characteristics and volume of residuals from a particular treatment process. (See 52 FR 35280.)

The commenters generally agreed with the definition of treatability study. However, many commenters expressed concern that the use of the term "known treatment process" was overly restrictive and might hinder the development of innovative technologies. Thus, these commenters recommended that the word "known" be deleted from the definition in the final rule. HWTC's proposed regulatory language did not include a restriction to "known" technologies.

The Agency agrees with these commenters. As stated earlier, it is important to promote the development of treatment technologies that will reduce the land disposal of hazardous waste and increase the reliance on waste minimization and treatment technologies that reduce risk to human health and the environment. In so doing, EPA does not want to restrict industry to the technologies that are already established or "known"; rather, it wants to promote the development of innovative technologies. Therefore, the Agency has modified the definition of "treatability study" accordingly. At the same time, it is concerned that the treatability study sample exemption may be improperly used as a means to avoid regulation when regulation is warranted. To prevent this, EPA has included specific language in the definition of treatability study to guard against such abuse. This language makes it clear that the exemption is for the evaluation of a treatment process and is not to be used for commercial treatment or disposal of hazardous waste. Furthermore, the Agency emphasizes that the definition of treatability studies covered under the exemption does not apply where the practice could result in a significant

uncontrolled release of hazardous constituents to the environment. It would, therefore, include neither open burning nor any type of treatment involving placement of a hazardous waste on the land (*e.g.*, in situ stabilization).

Several commenters also suggested that the Agency list, in the rule, the types of treatment studies to be included in the final definition. Although the Agency can see some merit in this suggestion, it has decided not to incorporate a specific list into the regulations. EPA believes that such a list could hinder the development of innovative technologies. For example, if it included a list in the rule, the Agency would be required to go through rulemaking before new or innovative treatment technologies would get the benefit of the treatability exemption. As previously discussed, the Agency believes that as long as the limitations imposed in today's rule are met, any treatability study will pose a *de minimis* risk. Examples of the types of treatability studies included in the exemption are physical/chemical/biological treatment, thermal treatment (incineration, pyrolysis, oxidation, combustion) solidification, sludge dewatering, volume reduction, toxicity reduction, and recycling feasibility.

2. Inclusion of Liner Compatibility and Other Studies

In the Notice of Data Availability, the Agency solicited comment as to whether the exemption should include other waste testing studies, such as liner compatibility studies. Many commenters agreed that the exemption should be expanded to include other types of studies. The commenters argued that, in addition to liner compatibility studies, the exemption should also include studies of corrosion, toxicological and health effects, and other material compatibility studies (*e.g.*, pumps and personal protective equipment). While such studies are not strictly treatability studies under the proposed definition, the commenters argued that waste testing is necessary to develop improved hazardous waste management technologies.

The Agency agrees with the commenters that such studies, although not strictly treatability studies, are necessary for the further development of hazardous waste management technologies. Furthermore, the Agency believes that such studies can be conducted using small quantities of hazardous waste under laboratory conditions. Also, these types of studies are subject to the same financial and business incentives for safe handling as

are treatability studies. Therefore, with the imposition of the limitations in this final rule, these studies will involve only *de minimis* risk and need not be subject to RCRA permitting regulations. The Agency is, therefore, allowing the following types of studies to be conducted and exempted under the hazardous waste regulations: liner compatibility studies, corrosion studies, toxicological and health effects studies, and other material compatibility studies (*e.g.*, relating to leachate collection systems, geotextile materials, other land disposal unit requirements, pumps and personal protective equipment).

3. Effects on Exporters of Hazardous Waste

EPA, in today's rule, is exempting samples sent for treatability studies from Subtitle C requirements. These include the requirement to notify EPA prior to export of hazardous waste (40 CFR 262.50 *et seq.*). At the time export requirements were promulgated, EPA discussed in the preamble its rationale for allowing the export, without notification, of wastes exempt from manifesting requirements (51 FR 20664, August 8, 1986). In this discussion on export notification requirements, EPA specifically focussed on the sample exemption in 40 CFR 261.4(d).

The rule promulgated today expands the scope of this exemption as contemplated in 1986. For the same reasons discussed in the August 8, 1986, rule relating to § 261.4(d) samples (51 FR 20664 *et seq.*), exporters of treatability study samples who comply with the limitations of today's rule are also exempt from the export notification requirements of Subpart E of Part 262.

While the Agency is exempting these treatability study samples from the export notification requirements at this time, the Agency is revisiting the question as to whether it should exclude unmanifested waste from the export notification requirements and may modify its position in the future.

C. Limitations

In the Notice of Data Availability, the Agency requested specific comment on what types of limitations should be placed on the exemption if it were to be expanded to include treatability studies. In addition, EPA specifically requested comment on the limitations suggested by the HWTC in its petition. The HWTC suggested quantity limits for shipping, storage, and treatment of hazardous waste samples for the purpose of conducting a treatability study. In particular, the Notice suggested the following limits: (1) No shipment may

exceed 250 kg; (2) no more than 1000 kg of exempted waste (including residues derived from the treatability study) may be present at the laboratory or testing facility conducting the treatability study at any one time; and (3) no more than 250 kg of exempted waste may be introduced into the treatability study in any one day.

A wide range of opinions concerned appropriate limitations that would provide for meaningful treatability studies. While most commenters believed that the limitations they suggested were necessary to conduct treatability studies, no commenters provided data indicating that their suggested limits were protective of human health and the environment. The following indicates the range of quantity limits proposed by commenters for shipment, treatment, and storage:

Shipment:

mean quantity: 554 kg
standard deviation: 794 kg
range: 250 to 4000 kg
most frequently cited suggestion: 250 kg

Treatment:

mean: 446 kg
standard deviation: 417 kg
range: 250 to 2000 kg
most frequently cited suggestion: 250 kg

Storage:

mean: 2000 kg
standard deviation: 2285 kg
range: 250 to 10,000 kg
most frequently cited suggestion: 1000 kg

Many commenters were supportive of the limitations suggested by HWTC in its petition. However, some commenters argued that the limitations suggested in the notice were not sufficient; although these commenters provided no data suggesting that their limits were protective of human health and the environment, they maintained that larger quantities of waste sample were necessary to conduct treatability studies. In particular, some commenters argued that the storage limitations were unnecessarily restrictive. Additionally, some commenters urged that a higher treatability study limit was necessary as some of the treatability tests required quantities of waste in excess of 1000 kg. Finally, some commenters recommended that the Agency include a mechanism for approval of case-by-case variances from the HWTC quantity limitations or the quantity limitations ultimately chosen.

Nevertheless, all commenters generally agreed that suitable limitations combined with economic forces would prevent the exemption

from becoming a means to circumvent the RCRA Subtitle C regulations for treatment and disposal of hazardous waste. Additionally, many commenters noted that it would not be economically feasible for a person to perform an endless series of tests, since treatability study costs are much higher than commercial treatment or disposal costs on a per pound basis. In particular, Shirco (TSEF-001) stated that most treatability tests had unit costs greatly in excess of costs associated with treatment and disposal options. Shirco cited an example where treatability study costs were about \$1,000 per pound versus \$0.80 to \$1.20 per pound for disposal at a commercial facility. Numerous other commenters stated that the high costs associated with performing treatability studies would render invalid any concern the Agency had that the exemption could become a "loophole" in the RCRA Subtitle C regulations.

The Agency believes that the limitations established in this exemption will ensure that it does not become a "loophole" and will ensure *de minimis* risk so that no significant threat to human health and the environment will occur. The following sections discuss the limits selected by the Agency and present the rationale for the limitations adopted.

1. Quantity Limits per Waste Stream per Treatment Process

In response to the Notice of Data Availability, several commenters recommended that limits should be set for each generated waste stream to guard against the possibility that generators and facilities might conduct a plethora of treatability studies in lieu of hazardous waste treatment or disposal. While data was provided that would suggest this would not happen, the Agency has decided that some limitations should be imposed as an extra precaution. Thus, to avoid the potential for such an abuse, the Agency has first made it clear in the definition of "treatability study" that the exemption is for the evaluation of a treatment process and is not to be utilized as a commercial treatment option. In addition, the Agency has placed limits on the amount of waste that can be subject to a treatability study evaluation per generated waste stream. Thus, the rule provides for an exemption of 1000 kg of non-acute hazardous waste per waste stream per treatment process; 1 kg of acute hazardous waste per waste stream per treatment process; or 250 kg of soils, water, or debris contaminated by acute hazardous waste per waste stream per treatment process. The

Agency, in making this decision, realizes that a generator may need to evaluate alternative treatment processes for a particular waste stream. EPA believes that the limits set will be adequate to allow sufficient studies to be conducted. Furthermore, the quantity limits are consistent with other limits discussed elsewhere in today's preamble.

The Agency is broadly defining "waste stream" such that a waste stream and the quantity limit are not based on the EPA waste code alone; rather, the Agency will interpret and apply the quantity limit for each medium or physical form in which the waste appears. The Agency believes that this broad interpretation is necessary since each medium (i.e., soils, water, or debris) might require a different treatability study and may need to be shipped to a different laboratory or testing facility for such studies to be conducted. The Agency is also broadly defining "treatment process" to allow a generator to evaluate various alternative approaches. For example, a generator could send 1000 kg of non-acute hazardous waste, or 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each generated waste stream to a number of different processes: biological treatment, incineration, fixation, etc. As allowed by this exemption, the generator or sample collector would be limited to a total of 1000 kg of nonacute hazardous waste of a particular waste stream to investigate alternative fixation processes (or, as applicable, 250 kg of soils, water, or debris contaminated with acute hazardous waste, or 1 kg of acute hazardous waste). The Agency has selected the above limits recognizing that in some instances there may be a need to evaluate alternative treatment processes. Finally, the Agency has decided not to put any limits on the number of treatability studies that a laboratory or testing facility can perform per year. However, if this proves to be a problem, the Agency may consider additional regulations.

As noted above, some commenters suggested that higher quantity limits are necessary in order to evaluate certain treatability study processes or that additional amounts of waste may be necessary in instances where unforeseen circumstances have affected the results of all or part of a treatability study evaluation. They suggested that case-by-case allowances in excess of the amounts specified above should be made available if need can be demonstrated. The Agency agrees that some flexibility should be made

available to allow studies to be completed properly. However, the Agency wishes to ensure that adequate controls are placed on all such evaluations to protect human health and the environment. Accordingly, the Agency has included a provision that allows the Regional Administrator to grant requests for waste stream quantity limits in excess of those specified above, up to an additional 500 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water, and debris contaminated with acute hazardous waste. The Regional Administrator shall only allow additional quantities of hazardous waste when it can be demonstrated that one of the following circumstances or situations exist: (1) That there has been an equipment or mechanical failure and that additional waste is needed to conduct a study; (2) that there is a need to verify the results of a previously evaluated treatment process; (3) that there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or (4) that there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. These adjustments may be authorized only if the 1000 kg (or 250 kg for soils, water, or debris contaminated with acute hazardous waste, or 1 kg for acute hazardous waste) quantity limit per waste stream per treatment process has been subjected to a treatability study evaluation and insufficient data are available to properly design a treatment process. When authorizing additional quantities, the Regional Administrator will only authorize adjustments for the minimum quantity necessary to complete the treatability study evaluation. The Agency believes that most treatability studies can be completed utilizing an extra 250 kg of sample or less, and only in unusual circumstances will quantities greater than 250 kg be required.

Generators and/or sample collectors seeking such an authorization for additional quantities must furnish sufficient information to the Regional Administrator to verify that they have met the conditions allowing for quantity adjustments. Generators and/or sample collectors will be required to submit, in writing, the specific reason why an additional quantity of sample for the treatability study evaluation is necessary (i.e., one of the four situations described above). He or she shall also provide: (1) Verification of the additional quantity necessary; (2) documentation accounting for all

samples of hazardous waste from the waste stream which have previously been sent for treatability study evaluation; (3) a description of the technical modifications or change in specifications which will be evaluated and the expected results; and, (4) if further study is being required due to equipment or mechanical failure, the generator and/or sample collector must include information from the laboratory or testing facility indicating what handling procedures or equipment improvements have been made to protect against further breakdowns.

The Regional Administrator may perform or require additional analyses and investigations as are necessary to determine the minimal amount of additional waste necessary to conduct the study and yield the additional data necessary to properly design and/or evaluate the performance of the treatment process.

2. Transportation Shipment Limits—Generator and Facility

The HWTC, in its petition, suggested that shipments of waste samples weighing less than 250 kg (approximately one standard 55-gallon drum) should be exempted when such samples are being shipped for the purpose of conducting treatability studies. The petition also recognized that larger size samples might be necessary for conducting treatability studies on contaminated soils or water; hence, the HWTC recommended that a provision for exempting larger size samples should be available. A number of commenters indicated that the 250-kg shipment limit was too restrictive and suggested that the limit be increased to 1000 kg. These commenters argued that the risk associated with shipping a larger amount (e.g., 1000 kg) is no greater than that associated with four shipments of 250 kg each when one considers the potential for transportation accidents.

After careful consideration of all the issues, the Agency has decided to set a single shipment limitation of 1000 kg of non-acute hazardous waste; 1 kg of acute hazardous waste; or 250 kg of soils, water, or debris contaminated with acute hazardous waste. These shipment limitations (which, in effect, govern the exemption from the RCRA hazardous waste transporter regulations and manifesting requirements) will apply to the shipment of waste samples from the generator or sample collector to the laboratory or testing facility when such samples are being sent for the purpose of conducting a treatability study. The exemption will also apply when unused waste samples and residues generated by the treatability

study are returned to the generator or sample collector following completion of the study.

The Agency is setting this limit to be consistent with the quantity limits set on generators for the amount of waste that can be subject to the treatability study sample exemption as discussed in the previous section. The Agency agrees with commenters that the risk associated with shipping the maximum limit of 1000 kg is no greater than that associated with four shipments of 250 kg each. However, it also believes these levels will pose *de minimis* risk.

In addition, as already discussed, the Agency believes other factors exist that will ensure safe delivery of the waste samples to and from the laboratory or testing facility. For example, the waste samples will still be subject to the applicable DOT or USPS regulations regarding shipment of hazardous materials. If the shipments do not fall under DOT or USPS jurisdiction, the generator or sample collector and the laboratory or testing facility must follow the requirements for labeling and packaging as set forth by EPA in this amendment. The requirements state that a sample must be packaged so that it does not leak, spill, or vaporize from its packaging. In addition, the following information must accompany the sample: (1) The sample collector's name, address, telephone number, and EPA identification number; (2) the laboratory or testing facility's name, mailing address, telephone number, and EPA identification number; (3) the quantity of the sample; (4) the date of shipment; and (5) a description of the sample. Finally, the Agency believes that most shipments will be considerably smaller than the limit, since other forces, such as storage limits and treatment rates at the laboratory or testing facility, will require careful control of the amount of waste shipped to the laboratory or testing facility. The costs to conduct the study and to collect, pack, and ship the sample will tend to limit the sample size to the smallest amount practicable.

3. Treatment Rate Limit

The HWTC, in its petition, suggested that the treatment rate limit should be 250 kg per day per laboratory or testing facility. Many of the commenters agreed; however, others argued that the limit should be larger and that it should be based on either the number of treatment units or the number of treatment processes that the laboratory or testing facility was capable of conducting. For example, if a facility was capable of conducting several soil fixation studies or biological treatment studies at one

time, then the limit should be 250 kg per process. Other commenters argued for even higher limits, indicating that it should be 250 kg per unit.

After reviewing the available information and considering the comments, the Agency has adopted a treatment rate limit of 250 kg per day of "as received" waste for the entire laboratory or testing facility. The term "as received" has been chosen by the Agency because some of the treatment processes involve the addition of non-waste material to reduce the environmental mobility of hazardous constituents. "As received" refers to the waste shipped by the generator or sample collector as it arrives at the laboratory or testing facility. Based on the information provided by the HWTC, information submitted by other commenters in response to the Notice of Data Availability, and EPA's own experience, the Agency believes that most treatability studies can be conducted at or below the treatment rate limit of 250 kg per day.

The Agency believes this level will allow many wastes to be treated and evaluated as part of a treatability study, while posing only a *de minimis* risk to human health and the environment. For example, if a laboratory or testing facility were to conduct a treatability study on a waste using bench-scale incineration and the study achieved a 99% destruction removal efficiency, only a small amount of toxic material would be released into the environment. In most instances, the amount released is much lower than any level of concern. In addition, since in most cases these studies will be conducted on an intermittent basis, there is less concern with repeated exposure.

Laboratories or testing facilities that are conducting treatability studies and that meet the treatment rate limit are exempted from the requirements to obtain a Subtitle C treatment permit. The Agency wants to emphasize that the purpose of the exemption is for conducting treatability studies, not for the commercial management of hazardous waste. The Agency believes that facilities anticipating the need to conduct an excessively large number of studies, or those having numerous treatment units allowing them to conduct many studies concurrently, will probably need to obtain a Research, Development, and Demonstration permit (40 CFR 270.65). It should also be noted that the Agency recently promulgated a new set of permitting standards under Subpart X of Part 264 (52 FR 40946, December 10, 1987) for miscellaneous hazardous waste management units. The

Agency is also considering developing regulations under Subpart Y that would establish permitting standards for experimental facilities conducting research and development on the storage, treatment, or disposal of hazardous waste.

4. Storage Limits

The HWTC, in its petition, recommended that a facility be allowed to store 1000 kg of hazardous waste on site without a storage permit, as long as such waste is for the purpose of conducting treatability studies. HWTC argued that this amount is essentially equal to the small quantity generator (SQG) limits and that the 1000 kg of waste included all waste (both received waste and treated residue). Many commenters argued that the 1000-kg storage limit would not allow them sufficient inventory to conduct certain treatability studies or argued that the storage limit should be based on the number of units present at the facility.

After evaluating this issue, the Agency has decided to adopt a storage limitation of 1000 kg per laboratory or testing facility. However, the Agency has also decided to specify the 1000-kg storage limitation for "as received" waste. The 1000-kg storage limitation per laboratory or testing facility can include 500 kg of soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. The Agency is making it clear in this rule that the storage exemption only applies to laboratories or testing facilities conducting treatability studies. The quantity limitations allow sufficient inventory to conduct small-scale treatability studies while ensuring *de minimis* risk to human health and the environment. Higher storage limits would not give us this same assurance. Also the Agency notes, as discussed previously, financial and business incentives are present that help to ensure *de minimis* risk levels are maintained.

The Agency limits for soils, water, and other debris contaminated with acute hazardous waste were selected to allow small-scale treatability studies to be conducted on media contaminated with dioxin wastes and certain pesticides such as aldrin and aldicarb. Although the 500-kg storage limit is higher than that currently established for SQGs, the Agency believes that the 500-kg limit will still be protective of human health and the environment and pose *de minimis* risk, since in most instances the sample will only be stored for a short period of time prior to being utilized in a study. Furthermore, this category is limited to materials in which

the acute hazardous waste involves a contaminant in a medium such as water or soil. Therefore, EPA would expect the concentration of the acute hazardous waste to be very low. Furthermore, the contaminant may be bound to the medium itself. For other acute hazardous wastes (*i.e.*, the actual listed waste), the Agency has adopted a 1-kg limit consistent with the SQG regulations.

5. Residues and Unused Samples-Time Limitations

Although the Notice of Data Availability did not propose any time limitations for completion of a treatability study, some commenters strongly recommended that appropriate time limits be placed on the storage of the "as received" waste samples and the residues generated from the treatability study. Suggestions on appropriate time limits varied widely. However, the commenters generally indicated that 1 year provides ample time to complete most treatability studies.

The Agency is in agreement with commenters that specific time limits for completing treatability studies are necessary. Time limitations are necessary to guard against potential abuses such as use of a laboratory or testing facility for long-term storage to avoid treatment and disposal. Any untreated sample and any residue generated during the treatability study must be returned to the generator within 90 days of study completion or within 1 year from the date of shipment by the generator to the laboratory or testing facility, whichever is earlier. Otherwise, these materials must be managed, by the laboratory or testing facility conducting the treatability study, as a RCRA hazardous waste (unless the waste is no longer hazardous). These time limits provide the laboratory or testing facility conducting the treatability study enough time to do the evaluation, but at the same time do not allow persons to store these wastes indefinitely. The 1-year time limit proved to be noncontroversial when adopted in other areas. For example, the 1-year time limit is consistent with the speculative accumulation provision and the closed-loop tank provision. Under these provisions, persons or facilities holding materials have 1 year to accumulate them before they are potentially subject to regulation.

Laboratories or testing facilities that do not return the unused sample or the residues to the generator or sample collector within the specified time limits are subject to appropriate regulation. Facilities must determine if they meet

the SQG requirements of § 261.5 or the accumulation requirements of § 262.34, and they may need to obtain a storage permit and comply with its conditions. Once samples and residues are returned to the generator, they are no longer exempt under today's rule. Ultimately, the unused sample and residues that are still hazardous must be manifested and disposed of in a RCRA-designated facility by the laboratory or testing facility, the waste generator, or sample collector.

6. Mobile Treatment Units

Although the issue of mobile treatment units (MTUs) was not addressed in the Notice of Data Availability and Request for Comment, concern was expressed over how this exemption applies to MTUs. EPA has determined that MTUs conducting treatability studies may qualify for this exemption. However, each MTU or group of MTUs operating at the same location is subject to the treatment rate, storage, and time limitations and the notification, recordkeeping, and reporting requirements that are applicable to stationary laboratories or testing facilities conducting treatability studies. That is, a group of MTUs operating at one location will be treated as one MTU facility for purposes of § 261.4 (e) and (f). Furthermore, these requirements apply to each location where an MTU will conduct treatability studies.

D. Reporting and Recordkeeping Requirements

Although the Notice of Data Availability did not specifically recommend that reporting and recordkeeping provisions be adopted, some commenters suggested that some form of reporting and recordkeeping should be required in the treatability study exemption. They argued that, without some form of reporting or recordkeeping requirements, EPA would not have a means of determining who is violating the exemption or the amount of waste subjected to treatability studies.

The Agency strongly agrees with the commenters and believes that reporting and recordkeeping requirements are necessary to facilitate inspector review and, if necessary, to assist in enforcement action. In fact, 40 CFR 216.2(f) already requires that persons who claim that their waste is conditionally exempt from regulation must provide appropriate documentation that they meet the conditions of the exemption. Therefore, the Agency is stipulating specific reporting and recordkeeping requirements that will document

compliance with the quantity and time limitations set forth in this rulemaking. The reporting and recordkeeping requirements stipulated below are the minimum requirements necessary to ensure compliance with the limitations in the treatability sample exemption.

1. The generator of the sample (who may also be the shipper or sample collector) and the laboratory or testing facility conducting the treatability study must keep the following records for 3 years after the completion of the study:

- a. A copy of the contract (between the generator and the laboratory or testing facility) to conduct the treatability study;
- b. Copies of all shipping documents. (If the waste was shipped to an MTU, copies of the shipping papers must be kept with the unit for inspector review.)
- 2. Generators and sample collectors must also maintain records indicating the following: (1) The amount of waste (per waste stream and treatment process) shipped under the exemption; (2) to whom the shipment was sent (name, address, and EPA identification number of the laboratory or testing facility conducting the study); (3) the date shipment was made; and (4) whether or not any unused sample or any residue generated from the treatability study was returned. In addition, beginning in 1989, generators must report this information in their biennial reports.

3. In addition, laboratories or testing facilities conducting or intending to conduct treatability studies must accomplish the following:

- a. Send a letter to the EPA Regional Administrator or the authorized State informing the Agency that the laboratory or testing facility intends to conduct small-scale treatability studies. This letter must be received no less than 45 days before the facility begins conducting treatability studies. The letter should indicate the address and EPA identification number of the laboratory or testing facility conducting studies and the types of treatability studies anticipated. Owners and operators of facilities that do not have an EPA identification number must obtain one before conducting any treatability studies under this exemption. This reporting requirement and the requirement to obtain an EPA identification number apply to owners and operators of MTUs at every treatability study location (except at CERCLA sites where, under CERCLA section 121(e)(1) and 40 CFR 300.68(a)(3), RCRA permits are not required).
- b. Maintain appropriate records and documentation for a period of 3 years

following completion of each treatability study that show compliance with the appropriate quantity and time limitations addressed in the final rule. The records must indicate that the laboratory or testing facility is meeting the requirements for shipment limits, treatment rate limits, and storage limits. Specific minimum information, by treatability study, that must be maintained include the following:

- The name, address, and EPA identification number of the generator or sample collector of the waste samples;
- The date the shipment was received;
- The quantity of waste accepted;
- The quantity of "as received" waste in storage each day;
- The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
- The date the treatability study was concluded; and
- The date the unused sample and residue were returned to the generator or, if sent to a designated facility, the name of the facility and its EPA identification number. As noted above, the laboratory or testing facility must keep copies of all shipping documents associated with transport of the waste to and from the facility.

- c. By March 15 of each year, submit a report to the authorized State or Regional Administrator that includes an estimate of the number of studies and the amount of waste expected to be used in treatability studies during the current year and the following information for the previous calendar year:
 - The name, address, and EPA identification number of the generator or sample collector of each waste sample;
 - The date the shipment was received;
 - The quantity of waste accepted;
 - The total quantity of "as received" waste in storage each day;
 - The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
 - The date the treatability study was concluded; and
 - The date any unused sample and residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.
- d. Notify the Regional Administrator or authorized State by letter when and if the laboratory or testing facility is no longer planning to conduct any

treatability studies at the site. (For example, when an MTU completes a treatability study at a site, the owners or operators must submit the required notice that they will no longer be conducting treatability studies at that site.)

E. EPA Identification Numbers—Applicability of OSHA Training Requirements

Some commenters suggested that any laboratory or testing facility conducting treatability studies should be required to have an EPA identification number. These commenters argued that such a restriction would ensure that the facility is in compliance with the requirements to have a facility contingency plan, has established emergency procedures, and is in compliance with OSHA's hazardous waste workers' training and medical monitoring requirements. (See 29 CFR 1910.120, 51 FR 45054, December 19, 1986.)

The Agency partially agrees and is requiring any laboratory or testing facility conducting treatability studies to notify the Agency and obtain an EPA identification number if the facility does not already have one. However, as already explained, the Agency believes laboratories or testing facilities conducting treatability studies within the limits specified present a *de minimis* risk. For example, the OSHA hazardous waste operators and emergency response requirements (29 CFR 1910.120) are applicable except for SQGs and facilities complying with the accumulation time requirements of 40 CFR 262.34. Other OSHA requirements, such as the OSHA laboratory standards and general duty clause (29 USC 654(a)(1)), may apply depending on the type of laboratory or testing facility and the nature of its activities. Thus, EPA believes requirements such as contingency plans and emergency procedures are not necessary for the protection of human health and the environment.

F. Incentives for Safe Transport

In the Notice of Data Availability, the Agency specifically requested comment on whether the incentives for safe transport and storage of waste characterization samples would also apply to treatability samples. Most commenters agreed that suitable incentives exist to ensure proper handling and shipping of treatability study samples.

The Agency generally agrees. In particular, a principal purpose of the generator and transporter requirements is to assure that shipments of hazardous wastes are safely delivered to an

appropriate destination (i.e., a permitted or interim status hazardous waste management facility). This is accomplished through the requirements for manifesting, recordkeeping, packaging, and labeling of hazardous waste. The principal purpose of the manifest system is to ensure "cradle to grave" accountability for shipments of hazardous waste from the generator to a TSDF.

In the case of treatability study samples, EPA wants to ensure that the samples are delivered to the facility conducting the treatability study, and that both the unused sample and all residues generated in the treatability study are sent back to the generator or sample collector or, alternatively, shipped to a designated facility if the waste remains hazardous.

The Agency believes that sufficient incentives and requirements are in place to provide for the safe shipment of samples to and from laboratories and testing facilities conducting treatability studies. In particular, they include:

1. Maintenance of corporate reputation and public confidence;
2. The high cost of these studies coupled with the generator's or sample collector's need for properly documented results;
3. The need for the generator or sample collector to verify results of a treatability study; and
4. Requirements in today's rule for either returning the unused samples and residues to the generator or sample collector, or for manifesting and shipping these materials to a TSDF for ultimate disposal.

The Agency believes that the above incentives and requirements will guard against any facility not complying with the limitations or conducting bogus treatability studies. Furthermore, DOT or other regulations and guidelines control the transportation of such samples even in the absence of EPA regulation. The requirements to comply with DOT shipping regulations regarding packaging and labeling will be substantially the same as present requirements for shipping hazardous waste. Additionally, the USPS has stringent guidelines governing the shipment of hazardous materials, including samples. (See the "Domestic Mail Manual," Part 124 and Publication 52, "Acceptance of Hazardous or Perishable Articles.") For the above reasons, the Agency believes that the transport of small quantities of hazardous waste poses *de minimis* risk during shipment to a laboratory or testing facility or when being returned to the generator or sample collector.

III. Today's Amendment

The Agency believes that the full complement of the hazardous waste regulations found in 40 CFR, Parts 260 through 268 and 270, when applied to waste samples used in small-scale treatability studies, are more comprehensive than necessary to adequately protect human health and the environment. In addition, the Agency believes that it needs to promote research and the development of innovative technologies to manage hazardous wastes. Therefore, EPA is amending the regulations to conditionally exempt waste samples processed in small-scale treatability studies from the hazardous waste regulations under certain conditions.

In particular, EPA is today adding new paragraphs (e) and (f) to 40 CFR 261.4 which accomplish the following: First, persons who generate samples are exempted from the generator and transporter requirements when samples are shipped by the generator, or any other person who collects the sample (the "sample collector"), to a laboratory or testing facility for the purpose of conducting a treatability analysis, or when shipped from the facility back to the sample collector, provided that certain packaging and labeling requirements are met. Second, any laboratory or testing facility that conducts treatability studies may store these waste samples and residues generated from the treatability study within the quantity and time limits specified and not be subject to the requirements of 40 CFR, Parts 264, 265, and 270. Third, the actual testing of the samples does not require a permit, provided the laboratory or testing facility complies with the limitations specified in today's rule.

Laboratories and testing facilities that conduct treatability studies must also keep records and documents regarding each treatability study as enumerated in II.D.3.b. above. Additionally, today's rule requires facilities conducting treatability studies to submit an annual report to the authorized State or Administrator of the EPA Region in which the laboratory or testing facility is located. The required annual report must be a distinct document prepared by the owner and/or operator of the laboratory or testing facility indicating the previous calendar year's activities regarding treatability studies. The report must be submitted by March 15 of each year and must identify the laboratory or testing facility by name, EPA identification number, and the location (site address) at which the treatability

studies were conducted. Paragraph II.D.3.c. above lists specific information required in the report. The obligation to submit annual reports continues until the laboratory or testing facility discontinues treatability studies, returns all unused "as received" samples and any residues generated in the treatability studies back to the generator or sample collector, and notifies the Regional Administrator or State Director that the laboratory or testing facility no longer plans to conduct any treatability studies at the site.

Paragraph (e), Treatability Study Samples, provides an exemption for generators of samples of hazardous waste to be evaluated in treatability studies, while they are being prepared for transport or being transported, provided that these samples and their residues are returned to the generator within specified time limits. The exemption limits the sample collector or generator from shipping more than 1000 kg per non-acute hazardous waste stream per treatment process (or 250 kg of soils, water, or debris contaminated with acute hazardous waste, or 1 kg of acute hazardous waste). Shipments must comply with the applicable DOT, USPS, or other applicable regulations for shipping hazardous materials.

The generator or sample collector must also maintain records indicating the amount of waste shipped under the exemption, the name and address of the laboratory or testing facility, the facility EPA identification number, type of study, and the expected duration of the study. Beginning in 1989, the generator or sample collector must also include the above information in its biennial report.

Paragraph (f), Samples Undergoing Treatability Studies at Laboratories or Testing Facilities, describes the limitations that apply to a facility conducting treatability studies under this exemption. The facility may subject no more than 250 kg of "as received" waste to treatability studies in any one day. The facility may store a maximum of 1000 kg of "as received" waste, of which 500 kg can be soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. The facility must also return any unused sample and residues to the generator within 90 days after completion of the study or within 1 year after initial shipment (whichever is earlier), or otherwise manage the sample and residue as a RCRA hazardous waste, if the residue is still hazardous.

The facility must meet certain specified reporting requirements. The facility must provide notification (by letter) to the Regional Administrator or

authorized State indicating that the facility intends to conduct treatability studies under the exemption. It must obtain an EPA identification number if it does not have one. The facility must also maintain records documenting compliance with the specified time and quantity limits for treatment and storage and must keep records of all shipping documents for 3 years from the completion of the treatability study.

The owner or operator of a facility conducting treatability studies must also submit a report to the Regional Administrator or authorized State indicating the type and number of treatability studies conducted during the previous calendar year, for whom each study was conducted, the quantity of hazardous waste utilized in each treatability study, when each study was conducted, and the final disposition of residue and any unused sample. The report must include an estimate of the number of treatability studies to be conducted and the quantity of hazardous waste expected to be used in treatability studies during the coming year. The facility must also notify the Regional Administrator or authorized State by letter when and if the facility is no longer planning to conduct any treatability studies at the site.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR, Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3006, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new

requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect of State Authorizations

Today's announcement promulgates regulations that are not effective under HSWA in authorized States, since this rulemaking does not impose requirements or prohibitions contained in HSWA. Thus, the regulations will be applicable only in those States that do not have final authorization. In an authorized State, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States having final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within 2 years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have regulations similar to those in today's rule. These State regulations have not been compared with the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

Authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3006 of RCRA, which allows States to impose more stringent or broader regulations than the Federal program. The regulations promulgated today at

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§§ 261.4 (e) and (f) are considered to be less stringent than or reduce the scope of the existing Federal regulations because today's rule exempts certain activities now within the purview of RCRA. Therefore, authorized States are not required to modify their programs to adopt regulations consistent with and equivalent to this rulemaking.

Even though States are not required to adopt today's rulemaking, EPA strongly encourages States to do so as quickly as possible. As already explained in this preamble, today's rule is needed to facilitate evaluating remediation alternatives for CERCLA clean-ups and the RCRA Corrective Action Program, and to speed research and development for treatment alternatives to land disposal and waste minimization, recycling, and reuse. States are, therefore, urged to consider the adoption of today's rule; EPA will expedite review of authorized State program revision applications.

States are also encouraged to use existing authorities to provide for comparable treatability exemptions prior to adopting and receiving authorization for today's rule. Some States may have authority comparable to RCRA Section 7003, which allows EPA to order response action in the case of imminent and substantial endangerment to health or the environment "notwithstanding any other provision of this Act." An authorized State may use comparable section 7003-type authority to authorize treatability studies and may waive the generator, transporter, notification, and permit requirements consistent with today's rulemaking.

In addition to, or in lieu of, a section 7003-type authority, a State may have general waiver, permit waiver, or emergency permit authority. Consistent with this rule, states are encouraged to use any such authority to grant treatability exemptions in a manner consistent with today's rule.

V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions to those regulations take effect 6 months after promulgation. The purpose of this requirement is to allow facilities that handle hazardous wastes sufficient lead time to prepare for and to comply with major new regulatory requirements. Given the potential of this rule to increase the timeliness of CERCLA remedial clean-up activities, RCRA corrective actions, and compliance with the land disposal restrictions, the Agency believes that an effective date of 6 months after promulgation would unnecessarily

disrupt implementation of the regulations and would not be in the public interest. Since this amendment reduces, rather than increases, the existing requirements for facilities that handle waste samples, there is no basis for allowing a lengthy time period to prepare for compliance. The same reasons provide good cause to make this rule effective immediately upon publication notwithstanding section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). Therefore, this amendment takes effect immediately upon publication in the Federal Register.

The application of this final rule is prospective only. Any treatability studies covered by this final rule that were conducted before the effective date of this regulation are subject to the Subtitle C hazardous waste regulations, including permitting requirements.

VI. Regulatory Analyses

A. Executive Order No. 12291

Under Executive Order No. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final regulation is not major because it will not result in an effect on the economy of \$100 million or more, and it will not increase costs or prices to industry. Rather, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations by eliminating permitting requirements for laboratories and testing facilities intending to conduct treatability studies. The Agency estimates that perhaps 400 facilities and laboratories nationwide will be affected by promulgation of this rule. Facilities and laboratories will be spared the time (as much as 2 years) and the costs (estimated to be between \$100,000 and \$200,000) otherwise necessary to obtain a RCRA permit. In addition, there will be no adverse effect on the ability of U.S.-based enterprises to compete with the non-U.S.-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an Agency is required to publish general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that

describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. As noted previously in this preamble, the universe of facilities affected is estimated to total about 400; of these, perhaps 200 are small business entities. By eliminating time-consuming and costly permitting requirements, the Agency anticipates that promulgation of this rule will have a positive effect on small entities.

This amendment will have no adverse economic impact on small entities. In fact, it should reduce the burden imposed on small entities that conduct treatability studies and comply with the provisions of this rulemaking. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned the OMB control number 2050-0088 (Treatability Studies Notification and Recordkeeping).

Public reporting burden for this collection of information is estimated to vary from 90 to 250 hours per response, with an average of 155 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

VII. Supporting Documentation

A background document in which EPA responds to any comments not addressed in this preamble, entitled "Summary and EPA Responses to Public Comments on the September 18, 1987 Notice of Data Availability and Request for Comment, and the September 25,

1987 Interim Final Rule," dated June 1988, is available in the RCRA docket at EPA (LC-100), 401 M St., SW., Washington, DC 20460. The docket number for this rulemaking is F-88-TSSE-FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. Copies cost \$0.15 per page.

VIII. List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling.
Date: July 11, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The Authority Citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974.

2. Section 260.10 is amended by adding the following definition in alphabetical order:

§ 260.10 Definitions.

"Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the § 261.4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The Authority Citation for Part 261 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. Section 261.4 is amended by adding two new paragraphs (e) and (f) to read as follows:

§ 261.4 Exclusions.

(e) *Treatability Study Samples.* (1) Except as provided in paragraph (e)(2) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 260.10, are not subject to any requirement of Parts 261 through 263 of this chapter or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of § 261.5 and § 262.34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or
(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 1000 kg of any non-acute hazardous waste, 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and
(ii) The mass of each sample shipment does not exceed 1000 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste; and
(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(1) The name, mailing address, and telephone number of the originator of the sample;

(2) The name, address, and telephone number of the facility that will perform the treatability study;

(3) The quantity of the sample;
(4) The date of shipment; and
(5) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under § 261.4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) Copies of the shipping documents;
(B) A copy of the contract with the facility conducting the treatability study;
(C) Documentation showing:

(1) The amount of waste shipped under this exemption;
(2) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;
(3) The date the shipment was made; and
(4) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Regional Administrator, or State Director (if located in an authorized State), may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in paragraph (e)(2)(i) of this section, for up to an additional 500 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. The additional quantities allowed are subject to all the provisions in paragraphs (e)(1) and (e)(2)(ii)(vi) of this section. The generator or sample collector must apply to the Regional Administrator in the Region where the sample is collected and provide in writing the following information:

(i) The reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;

(ii) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the data each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(iii) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(iv) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(v) Such other information that the Regional Administrator considers necessary.

(f) *Samples Undergoing Treatability Studies at Laboratories and Testing Facilities.* Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirement of this Part, Part 124, Parts 262-266, 268, and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f) (1) through (11) of this section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f) (1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f) (1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Regional Administrator, or State Director (if located in an authorized State), in writing that it intends to conduct

treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 250 kg of "as received" hazardous waste is subjected to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 1000 kg, the total of which can include 500 kg of soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. This quantity limitation does not include:

(i) Treatability study residues; and

(ii) Treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or

sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Regional Administrator, or State Director (if located in an authorized State), by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under § 261.3 and, if so, are subject to Parts 261 through 268, and Part 270 of this Chapter, unless the residues and unused samples are returned to the sample originator under the § 261.4(e) exemption.

(11) The facility notifies the Regional Administrator, or State Director (if located in an authorized State), by letter when the facility is no longer planning to conduct any treatability studies at the site.

(Approved by the Office of Management and Budget under control number 2050-0088)

[FR Doc. 88-16188 Filed 7-19-88; 9:45 am]

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Tuesday
July 19, 1988

Part V

Department of Labor

Wage and Hour Division, Employment
Standards Administration

29 CFR Part 502

Reporting and Employment Requirements
for Employers of Certain Workers
Employed in Seasonal Agricultural
Services; Proposed Rule

federal register

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
Division

29 CFR Part 502

Reporting and Employment
Requirements for Employers of
Certain Workers Employed in Seasonal
Agricultural Services

AGENCY: Wage and Hour Division,
Employment Standards Administration,
Labor.

ACTION: Proposed rule.

SUMMARY: The Employment Standards Administration (ESA) of the U.S. Department of Labor (DOL) is promulgating proposed regulations regarding the reporting and employment requirements for any employer who employs certain resident aliens in seasonal agricultural services. These reporting requirements apply to workers employed from October 1, 1988, to September 30, 1992, and were developed with the Department of Agriculture after consultation with the Department of Justice and the Bureau of the Census.

Section 210A of the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA) requires any employer to report information about the quantity of work performed by a special agricultural worker employed in seasonal agricultural services. This information is submitted in certificate form to the Federal Government and to any individual replenishment agricultural worker. In part on the basis of this information furnished to the Federal Government, the Secretaries of Labor and Agriculture will determine the number, if any, of additional replenishment agricultural workers to be admitted into the United States.

These regulations specify the employer reporting requirements and provisions concerning the terms of employment respecting replenishment agricultural workers as prescribed by section 210A of INA.

DATE: Comments must be submitted on or before August 15, 1988. Early submission of comments is requested to facilitate publication of a final rule prior to the effective date of these statutory provisions.

ADDRESS: Submit comments to Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:
Paula V. Smith, Administrator, (202)
523-8305.

SUPPLEMENTARY INFORMATION:
Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to average 20½ minutes per response for the report to the Federal Government on Form ESA-92, one minute per response for the report to replenishment agricultural workers (optional Form WH-501R), and one hour per year for the underlying recordkeeping. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including comments on the ESA 92 and optional WH501R and suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

The Immigration and Nationality Act of 1952 (INA) was amended by the Immigration Reform and Control Act of 1986 (IRCA) to (1) control illegal immigration into the United States and (2) make limited changes in the system for legal immigration. In this regard, section 210 of the INA grants temporary resident alien status to special agricultural workers (SAWs) who can demonstrate that they performed seasonal agricultural services for at least 90 "man-days" (referred to in this document as "work-days" and meaning any day with at least four (4) hours worked) during the 12-month period ending May 1, 1986.

On the basis, among other things, of information regarding work-days of employment (during each fiscal year (FY) from FY 1989 to FY 1992) submitted to the Federal Government, the Secretaries of Labor and Agriculture shall determine the number, if any, of additional special agricultural workers, termed replenishment agricultural workers (RAWs), to be admitted (during each fiscal year from FY 1990 to FY 1993) temporary resident alien status to the United States to perform seasonal agricultural services. The admittance of replenishment agricultural workers is to meet a shortage of workers employed in seasonal agricultural services.

To make this determination, section 210A(b)(2) of the INA requires an employer of SAWs (including RAWs) employed in seasonal agricultural services to assemble employment information which is then reported to the Federal Government for the period beginning October 1, 1988, through September 30, 1992, and to any individual replenishment agricultural worker for the period beginning October 1, 1989, through September 30, 1992.

Section 210A(f)(4) of the INA provides for assessment of a civil money penalty of not more than \$1,000 for each violation, as provided under section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), for, among other things, failure to provide, or failure to provide accurately, the information as required by INA section 210A(b)(2).

Summary of Proposed Rule

This proposed rule would establish—

(1) Data collection procedures to enable the Federal Government to make determinations about the annual number of replenishment agricultural workers to be admitted in the United States and given temporary residency status, from October 1, 1989, to September 30, 1993, to meet a shortage, or replenish, the number of workers employed in seasonal agricultural services; and

(2) A method whereby a replenishment agricultural worker can assemble information necessary to establish the work history needed to apply and qualify for permanent resident status after three years (from being admitted for temporary residency). The work history needed is 90 work-days (any day with at least four (4) hours worked) a year for three consecutive years employed in seasonal agricultural services. Accordingly, an employer who hires a replenishment agricultural worker shall report the employment information specified by this rule to the worker each pay period when seasonal agricultural services are performed, for the period through September 30, 1992. Although replenishment agricultural workers will need such information for three years to retain temporary resident alien status and to avoid deportation (any RAWs admitted in FY 1993 will need to demonstrate a work history in seasonal agricultural services at least through FY 1995 to apply and qualify for permanent residency) and will need such data for at least five years to apply for citizenship, the statute only authorizes the Department of Labor to require such reporting through September 30, 1992.

To carry out the statutory requirements, employers are mandated to 1) identify each reportable worker employed in seasonal agricultural services subject to this part, 2) report to the Federal Government the number of work-days performed by any such reportable worker, and 3) report the number of work-days performed to each replenishment agricultural worker.

Under the provisions of Section 274A of the INA, and employer may only hire persons who are eligible to work in the United States. With respect to any person hired after November 6, 1986, every employer must verify the employee's identity and employment eligibility and complete the Immigration and Naturalization Service (INS) Employment Eligibility Verification Form I-9. See 8 CFR 274a.2. When completing the Form I-9, the employer is able to recognize reportable workers subject to the provisions of this part by the INS Alien Registration Number provided by the employee on the INS Form I-9.

Any prospective employee must provide documentation that establishes both identity and employment eligibility within three business days of hire. When completing the top portion of the I-9 form, a prospective employee who is not a United States citizen also provides an INS Alien Registration Number in completing the employee's part (Part 1) of the I-9 form. As long as the documents furnished by the worker satisfy the requirements of the INS regulations as set forth on the Form I-9, an employer may not require any additional or specific documents from the employee (see 8 CFR 274a.2(b)(v)).

An employer therefore is unable to determine which employees are special agricultural workers based on the document(s) presented to establish identity and employment eligibility. INS has, or will, assign INS Alien Registration Numbers in the A 90000000 series to all workers whose status has been adjusted under the provisions of the IRCA amendments to the INA, including special agricultural workers (and replenishment agricultural workers). Therefore these regulations define a reportable worker as any worker employed in seasonal agricultural services whose INS Alien Registration Number is within the A 90000000 series.

An employer must report to the Federal Government as prescribed herein on the employment of any and all resident aliens identified with an INS Alien Registration Number in the A 90000000 series who are employed in seasonal agricultural services for even one work day (any day in which at least

four hours of work are performed). Such reports must be submitted each quarter in which any reportable worker is employed in seasonal agricultural services for the period October 1, 1988, through September 30, 1992. Where employment verification has been performed by a State Employment Service, rather than the employer, these regulations require the State Employment Service to provide the Alien Registration Number on its certification to the employer. Therefore, in all cases the employer can identify the reportable worker under this part.

As set forth above, the INA as amended by IRCA requires that employers verify the identity and employment eligibility of all employees hired after November 6, 1986. However, the Act also provides that no penalties will be assessed prior to December 1, 1988, against employers with respect to employees in seasonal agricultural services. A statement of mutual understanding between representatives of agricultural growers and the INS provides that the INS will not initiate enforcement penalties against agricultural employers for failing to fulfill the I-9 requirements prior to December 1, 1988, and INS and the representatives of the growers will encourage the growers to complete the I-9 form for all employees hired after November 6, 1986. After December 1, 1988, agricultural employers will be liable for penalties for failing to conduct such verification and to complete I-9's on any workers then in their employment for whom there is no completed I-9.

These regulations require employers to report to the Federal Government on all workers employed in seasonal agricultural services after October 1, 1988, who are identified as reportable workers through the I-9 process (i.e., who have Alien Registration Numbers in the A 90000000 series. For the first quarter of reporting, October 1, through December 31, 1988, an employer must therefore report the number of workdays performed in seasonal agricultural services in the months of October and November, as well as December, with respect to all employees for whom I-9's are completed, whether completed before or after December 1, 1988, and whether the workers are employed before or after December 1, 1988.

The reports furnished to the Federal Government under these regulations are a part of the statutory process for determining the numerical limit on the number of replenishment agricultural workers admitted in the United States annually. After the reports are received by the Federal Government, the INS will

determine which of the resident alien workers in the A 90000000 series on whom reports were submitted were admitted under the special agricultural worker program. The Bureau of the Census will then use this data to determine the number of special agricultural workers employed in seasonal agricultural services (based on work performed by special agricultural workers who worked 15 work-days in the aggregate in seasonal agricultural services for any number of employers), and the average number of work-days in seasonal agricultural services performed by such special agricultural workers. In this regard, every employer of a reportable worker or workers is mandated to report as prescribed herein even one work-day (a day with four hours or more of work) in seasonal agricultural services by any reportable worker.

The determinations of the Bureau of the Census will then be used, along with other information, by the Secretaries of Labor and Agriculture to determine the number, if any, of replenishment agricultural workers to be admitted to the United States with temporary resident status to perform seasonal agricultural services in FY 1990 through FY 1993. Another rule will be promulgated to explain this procedure.

Included within the A 90000000 series are all of the replenishment agricultural workers who will be identified with an INS Alien Registration Number series to be incorporated in these regulations when announced by INS at a later date. As in the case of the special agricultural worker, any employer must report to the Federal Government on the employment of any replenishment agricultural worker in seasonal agricultural services. Also, any employer must report to each such replenishment worker, with each wage payment, information concerning the number of work-days the individual was employed in seasonal agricultural services. Since MSPA currently requires the provision of employment information to migrant and seasonal agricultural workers each pay day, optional form WH-501 used for such reports, is being modified (WH-501R) to include the work-day information required by these regulations. Employers have the option, however, of providing the information to the workers in any manner, such as on the pay stub furnished workers with their wages.

Because this employment information will be needed by replenishment workers to establish permanent residency and citizenship, these regulations require the WH-501R (or other form furnished to the workers), as

well as the underlying payroll data for such replenishment workers, to be retained for five years (the minimum employment period in seasonal agricultural services required for citizenship). This will assist the replenishment agricultural workers in establishing their employment history and will assist INS in verifying work histories provided by such workers. Other records and reports required by these regulations need to be retained for three years.

The responsible person to report to the replenishment agricultural worker and to the Federal Government is the person who prepares, and is responsible for retaining, the I-9 Form. In this regard the Department of Labor has incorporated the definitions of "employee," "employer," "employment," and "independent contractor" promulgated by the INS in its regulations, 8 CFR 274a.1. Those regulations define employer to mean the contractor, not the person using the contract labor. As a general matter, therefore, it is likely to be the farm labor contractor who is responsible for reporting, rather than grower who uses the services of the farm labor contractor.

Pursuant to section 210A (f)(1), (2), and (3) of the INA, additional provisions of the regulations require that employers of a replenishment agricultural worker must 1) provide the same transportation arrangements to other workers as are provided to a replenishment agricultural worker and 2) not discriminate against a replenishment agricultural worker. The Act at section 210A(f) further requires that employers who would otherwise be exempt from the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (29 U.S.C. 1801 et seq.) pursuant to section 4(a)(1) or (2) of MSPA, not knowingly provide false or misleading information to a replenishment agricultural worker concerning the terms, conditions, or existence of agricultural employment.

In addition, pursuant to the definition of "seasonal agricultural services" in section 210(h) of the Act, the Department of Labor has incorporated the definitions of "field work," "horticultural specialties," "fruits," "vegetables," and "other perishable commodities" promulgated by the Department of Agriculture regulations, 7 CFR Part 1d. The Department of Agriculture is currently considering amending these provisions. Any such amendments will be automatically incorporated in these regulations. In addition, pursuant to the order issued in *National Cotton Council of America v. Lyng*, Civil No. CA-5-87-0200 (N.D.

Tex., February 8, 1988) "cotton" has been declared to be a fruit and therefore it is not listed as an example of a commodity excluded from the definition of "other perishable commodities." Because application of the provisions of sections 210 and 210A to hay, sod, and sugar cane is in litigation, these proposed regulations also include field work on those crops for purposes of these regulations only. The requirement of reporting on these crops does not constitute evidence that they are eligible crops for purposes of the special agricultural worker program. Rather, they are included to enable the Federal Government and the individual replenishment workers to obtain data on work on these crops which will be needed if it is ultimately determined that they are eligible crops. Once the issues are finally resolved in the courts, these regulations will be amended accordingly.

Finally, the regulations contain enforcement procedures, including procedures for assessing civil money penalties for violations of section 210A in accordance with MSPA, pursuant to INA section 210A(f).

Executive Order 12291: Regulatory Flexibility Act

The Department has determined that this proposed rule is not a major rule under Executive Order 12291. The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities. These conclusions are reached because most of the entities affected are already providing agricultural workers with itemized pay stubs in compliance with the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The amount of time spent preparing reports to the Federal Government will not be substantial. Consequently, the Department certifies under the Regulatory Flexibility Act, that the rule will not have significant economic impact on a substantial number of small entities.

Editorial Note: The Department presents forms in the Appendix which satisfy certain disclosure and recordkeeping aspects of the Act and the regulations. These forms, however, will not appear in the Code of Federal Regulations.

Appendix

Appendix A—Work-Day Report, ESA-42.
Appendix B—Wage Statement, WH-501R.

List of Subjects in 29 CFR Part 502

Administrative practice and procedure, Agricultural associations, Agricultural worker, Aliens, Farmers, Farm labor contractor, Immigration, Investigation, Labor, Penalties, Replenishment Agricultural Workers, Reporting requirements, Special Agricultural Workers.

For the reasons set out in the preamble, Title 29 of the Code of Federal Regulations, Chapter V, is proposed to be amended as set forth below.

Signed at Washington, DC, this 14th day of July, 1988.

Ann McLaughlin,
Secretary of Labor.

Fred W. Alvarez,
Assistant Secretary for Employment Standards.

Paula V. Smith,
Administrator, Wage and Hour Division,
Employment Standards Administration.

A new Part 502 is added to read as follows:

PART 502—REPORTING AND EMPLOYMENT REQUIREMENTS FOR EMPLOYERS OF CERTAIN WORKERS EMPLOYED IN SEASONAL AGRICULTURAL SERVICES

Subpart A—General Provisions

- Sec.
- 502.0 Introduction.
- 502.1 Purpose and scope.
- 502.2 Definitions pertaining solely to a reportable worker employed in seasonal agricultural services.
- 502.3 Waiver of rights prohibited.
- 502.4 Investigation authority of Secretary.
- 502.5 Prohibition on interference with Department of Labor officials.
- 502.6 State Employment Service certificate form.

Subpart B—Employment and Reporting Requirements

- 502.10 Requirements for reporting and employing a reportable worker employed in seasonal agricultural services.
- 502.11 Recordkeeping.
- 502.12 Reporting to the Federal Government.
- 502.13 Reporting to a replenishment agricultural worker.
- 502.14 Accuracy of information furnished.
- 502.15 Discrimination prohibited.
- 502.16 Prohibition on providing false information when reporting to a replenishment agricultural worker or to the Federal Government.
- 502.17 Equal transportation provision.

Subpart C—Enforcement

- 502.20 Enforcement.
- 502.21 General.
- 502.22 Representation of the Secretary.
- 502.23 Civil money penalty assessment.
- 502.24 Enforcement of Wage and Hour investigative authority.

- 502.25 Civil money penalties—payment and collection.

Subpart D—Administrative Proceedings

General

- 502.30 Establishment of procedures and rules of practice.
- 502.31 Applicability of procedures and rules.

Procedures Relating to Hearing

- 502.32 Written notice of determination required.
- 502.33 Contents of notice.
- 502.34 Request for hearing.

Rules of Practice

- 502.38 General.
- 502.39 Service of determinations and computation of time.
- 502.40 Commencement of proceeding.
- 502.41 Designation of record.
- 502.42 Caption of proceeding.

Referral for Hearing

- 502.43 Referral to Administrative Law Judge.
- 502.44 Notice of docketing.
- 502.45 Service upon attorneys for the Department of Labor—number of copies.

Procedures Before Administrative Law Judge

- 502.46 Appearances; representation of the Department of Labor.
- 502.47 Consent findings and order.
- 502.48 Decision and Order of Administrative Law Judge.

Modification or Vacation of Order of Administrative Law Judge

- 502.49 Authority of the Secretary.
- 502.50 Procedures for initiating review.
- 502.51 Implementation by the Secretary.
- 502.52 Filing and service.
- 502.53 Responsibility of the Office of Administrative Law Judges.
- 502.54 Final decision of the Secretary.
- 502.55 Stay pending decision of the Secretary.

Record

- 502.56 Retention of official record.
- 502.57 Certification of official record.
Authority: 8 U.S.C. 1160, 1161; 29 U.S.C. 1801 et seq.; 502.6 also issued under 29 U.S.C. 49k.

Subpart A—General Provisions

§ 502.0 Introduction.

(a) Pursuant to the requirements of Section 210A of the Immigration and Nationality Act (INA), the regulations in this part are promulgated and apply to employers with obligations, among other things, to provide reports applicable to the employment of any reportable worker (as defined in this part) employed in seasonal agricultural services. Reporting shall be to the Federal Government and to any individual replenishment agricultural worker.

(b) The statute requires the Director of the Bureau of Census, on the basis of

information which is reported to the Federal Government, to estimate (1) the number of special agricultural workers employed in seasonal agricultural services in the United States at any time during the fiscal year and (2) the average number of "man-days" of labor performed by these workers during the fiscal year. (For purposes of this part, an alternative term "work-day" is adopted and incorporated into the text of this part in lieu of "man-day" and means any day when at least four (4) hours are worked.)

(c) The regulations contained in this part are issued in accordance with section 210A of INA in order to establish the rules necessary to carry out the provisions of INA.

§ 502.1 Purpose and scope.

(a) The INA was amended by the Immigration Reform and Control Act (IRCA) in 1986, in order to more effectively control illegal immigration to the United States and to make certain changes in the system for legal immigration.

(b)(1) Section 210 of the INA provides that the Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien resided in the United States and performed work in seasonal agricultural services in the United States for at least 90 work-days during the 12-month period ending on May 1, 1986. This worker is called a special agricultural worker (SAW). A special agricultural worker is given an INS Alien Registration Number in the A 90000000 series.

(2) Section 210A of the INA provides that before the beginning of each fiscal year (beginning 1990 and ending 1993), the Secretaries of Labor and Agriculture shall jointly determine the number (if any) of replenishment agricultural workers (RAWs) to be admitted to the United States, or otherwise acquire the status of aliens lawfully admitted for temporary residence, to meet a shortage of agricultural workers. A replenishment agricultural worker will be identified by an INS Alien Registration Number in a series (within the A 90000000 series) that INS will announce at a later date.

(c) This regulation establishes a method whereby an employer must assemble employment information on certain resident alien workers employed in seasonal agricultural services to be reported to the Federal Government and to any replenishment agricultural worker. This will assist the Secretaries of Labor and Agriculture in determining the number of replenishment agricultural workers to be admitted and will assist

the replenishment agricultural worker in establishing a work history so that after three (3) consecutive years the worker can apply for and be granted permanent residency in the United States. After five (5) years with such work history the worker can apply for naturalization. The work history needed is 90 work-days a year employed in seasonal agricultural services for three consecutive years after admission to qualify for permanent residency and for five years to apply for citizenship. The Act and these regulations require the reporting by the employer to the Federal Government and to the replenishment agricultural worker for employment in seasonal agricultural services from October 1, 1988, until September 30, 1992.

(d) Any person who hires any worker must complete the Employment Eligibility Verification Form (INS Form I-9). Any resident alien who is identified with an INS Alien Registration Number in the A 90000000 series (termed "reportable worker") on the I-9 Form, including any replenishment agricultural worker (who will be identified with an INS Alien Registration Number in a series, within the A 90000000 series, that INS will announce at a later date) and who is employed in seasonal agricultural services, is an employee subject of this part. Employers cannot determine whether such an employee is a special agricultural worker since potential employees cannot be required to document such status to anyone other than INS (see 8 CFR 274a.2(b)(v)).

(e) The provisions of Section 210A(b)(2) of INA establish reporting requirements when employing certain workers in seasonal agricultural services. These regulations require that for the period beginning October 1, 1988, and ending September 30, 1992—

(1) Any person or entity employing any reportable worker in seasonal agricultural services shall report employment information to the Federal Government each quarter;

(2) Any person or entity employing any replenishment agricultural worker in seasonal agricultural services shall report employment information directly to the replenishment agricultural worker individually on a pay period basis at the time of each wage payment and no less frequently than twice per month (as well as to the Federal Government each quarter).

(f) Any employment of a reportable worker (with an INS Alien Number within the A 90000000 series) in seasonal agricultural services is subject to the reporting requirements to the Federal Government. Additionally, any employment of a replenishment

agricultural worker (who will be identified with an INS Alien Registration Number in a series within the A 90000000 series that INS will announce at a later date) in seasonal agricultural services is subject to both the reporting requirements to the Federal Government and to the individual worker.

(g) The certificate submitted by an employer to the Federal Government shall contain the number of work-days of employment in seasonal agricultural services performed by each reportable worker employed during the preceding fiscal quarter. This information shall be provided to the Commissioner of the Immigration and Naturalization Service who shall determine which reportable workers are special agricultural workers. Information concerning them shall be provided to the Director of the Bureau of Census for use in—

(1) Estimating the number of special agricultural workers employed in seasonal agricultural services;

(2) Determining the average number of work-days performed by special agricultural workers; and

(3) Reporting to the Congress.

(h) Any person or entity who employs a reportable worker in seasonal agricultural services will meet the requirements of this regulation when—

(1) Accurate records are kept and reports are made as required under this part to the Federal Government;

(2) Accurate records are kept and reports are made as required under this part to each replenishment agricultural worker;

(3) The same transportation provided to any replenishment agricultural worker is provided to any other worker;

(4) There is no discrimination against any replenishment agricultural worker; and

(5) A replenishment agricultural worker is not knowingly furnished false or misleading information concerning the terms, conditions, or existence of agricultural employment with respect to the disclosure, posting, and recordkeeping requirements found in Sections 301 (a), (b), and (c) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 et seq.

(i) An employer of a reportable worker employed in seasonal agricultural services who is subject to the requirements of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 et seq.) and/or MSPA is required to comply with both the requirements of this part and the statutory labor standards protections provided by FLSA and/or MSPA.

(j) The Secretary of Labor may impose sanctions pursuant to Section 210A(f)(4)(C) of the INA, which incorporate the penalty provisions of MSPA. Accordingly, these regulations provide that the Secretary of Labor is empowered to impose an assessment and to collect a civil money penalty of not more than \$1,000 for each violation, to seek a temporary or permanent restraining order in a United States District Court, and to seek the imposition of criminal penalties under 18 U.S.C. 1001.

(k) Subparts A and B set forth the substantive regulations relating to any employer of a reportable worker employed in seasonal agricultural services. These subparts cover the applicability of the Act, the recordkeeping and reporting requirements, antidiscrimination protections, and prohibition against furnishing false statements, and equal transportation requirements.

(l) Subpart C sets forth enforcement responsibility and procedure.

(m) Subpart D sets forth the rules of practice for administrative hearings on the assessment of civil money penalties.

(n) The Department of Labor has developed two (2) forms for carrying out the purposes of the Act:

(1) The optional form (WH-501R) is offered to assist in carrying out the requirement that each replenishment agricultural worker receive a report each pay period in the form of a certificate from each employer indicating the number of work-days (any day with at least four (4) hours worked) employed in seasonal agricultural services; and

(2) The Work-Day Report (Form ESA-92) required to be submitted to the Federal Government, to certify the number of work-days performed by each reportable worker employed in seasonal agricultural services each quarter in which any reportable worker was employed in seasonal agricultural services for at least one work-day.

§ 502.2 Definitions pertaining solely to a reportable worker employed in seasonal agricultural services.

For purposes of this part:

(a) "Act" and "INA" mean the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA) 8 U.S.C. 1101 et seq., with references particularly to sections 210 and 210A.

(b) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, and such authorized representatives as may be

designated by the Administrator to perform any of the functions of the Administrator under this part.

(c) "Administrative Law Judge" means a person appointed as provided in Title 5 U.S.C. and qualified to preside at hearings under 5 U.S.C. 3105. "Chief Administrative Law Judge" means the Chief Administrative Law Judge, United States Department of Labor, Washington, DC 20036.

(d) "Alien 'A' Number" refers to an INS Alien Registration Number assigned to each alien.

(e) "DOL" means the United States Department of Labor.

(f) "Employee," "employer," "employment," and "independent contractor" are defined for purposes of the INA in regulations issued by INS at 8 CFR 274a.1, which definitions are incorporated into this part. They are restated in part and set forth below for information purposes only.

(1) "Employee" means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in this part.

(2) "Employer" means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term "employer" shall mean the independent contractor or contractor and not the person or entity using the contract labor;

(3) "Employment" means any service or labor performed by an employee for an employer within the United States.

(4) "Independent contractor" includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: Supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; directs the order or sequence in which the work is to be done; and determines the hours during which the work is to be done. The use of labor or services of an independent contractor is subject to the restrictions

in section 274A(a)(4) of the Act and 8 CFR 274a.5.

(g) "Employment Standards Administration" means the agency within the Department of Labor (DOL), which includes the Wage and Hour Division, and which is charged with carrying out certain functions of the Secretary under section 210A of the INA.

(h) "Exempt person" means a person or entity who would be subject to the provisions of the MSPA but for paragraph (1) or (2), or both, of section 4(a) of MSPA.

(i) "Form I-9" is an INS Form, "Employment Eligibility Verification" (EEV), which reflects the requirements established under section 274A(9)(b) of INA requiring employers to examine documents which establish the identity and employment eligibility of individuals hired since November 6, 1986. The EEV information must be recorded on a INS Form I-9 and be made available for inspection by INS and/or DOL representatives.

(j) "Immigration and Naturalization Service (INS)" is the component of the U.S. Department of Justice which is responsible for administering the INA.

(k) "Man-day." See "Work-day."

(l) "MSPA" refers to the Migrant and Seasonal Agricultural Worker Protection Act (29 USC 1801 et seq.), and is referred to in section 210A of INA. MSPA provides for the protection of migrant and seasonal agricultural workers and for the registration of contractors of migrant and seasonal agricultural labor.

(m) "Replenishment Agricultural Worker (RAW)" is an alien (to be identified with an INS Alien Registration Number in a series within the A 90000000 series to be announced in these regulations when announced by INS at a later date) who is admitted during FY 1990 through FY 1993 for lawful temporary resident status or for the adjustment of status to lawful temporary residency to meet a shortage of workers employed in seasonal agricultural services.

(n) "Reportable Worker" is an alien employed in seasonal agricultural services who was admitted with lawful temporary resident status or whose status was adjusted to lawful temporary residency, and who is identified by an INS Alien Registration Number in the A 90000000 series. This series includes (1) a legalized temporary resident alien admitted under section 245A of the INA, (2) a temporary resident alien-special agricultural worker admitted under section 210 of the INA, and (3) an anticipated temporary resident alien-replenishment agricultural worker

admitted between FY 1990 and FY 1993 under section 210A of the INA.

(o)(1) "Seasonal agricultural services" as provided by section 210(h) of the Act means "the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture".

(2) The Department of Agriculture regulation, 7 CFR Part 1d, definitions of "field work", "horticultural specialties", "fruits", "vegetables" and "other perishable commodities" are incorporated in this part. They are set forth below for information purposes only:

(i) "Field work" means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands. Thus, the drying, processing, or packing of fruits, vegetables, and other perishable commodities in the field and the "on the field" loading of transportation vehicles are included. Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural land are included. Supervising any of these activities shall be considered performing the activities.

(ii) "Horticultural specialties" means field grown, containerized, and greenhouse produced nursery crops which include juvenile trees, shrubs, seedlings, budding, grafting and understock, fruit and nut trees, fruit plants, vines, ground covers, foliage and potted plants, cut flowers, herbaceous annuals, biennials and perennials, bulbs, corms, and tubers.

(iii) "Fruits" means the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence.

(iv) "Vegetables" means the human edible leaves, stems, roots, or tubers of herbaceous plants.

(v) "Other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties,

spanish reeds (arundo donax), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal aquacultural commodities, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and poultry products, sod, sugar cane, wildlife, and wool.

(3) For purpose of these regulations, "seasonal agricultural services" include field work related to hay, sod, and sugar cane. The requirement of reporting on these commodities does not constitute evidence that they are eligible commodities for purposes of the special agricultural worker program. They are included to enable the Federal Government and the individual replenishment agricultural worker to obtain data on work on these commodities which will be needed if it is ultimately determined that they are eligible commodities. This regulation will be amended in accordance with the final disposition of the litigation concerning the application of sections 210 and 210A to these commodities.

(p) "Secretary" means the Secretary of Labor or the Secretary's designee.

(q)(1) "Solicitor of Labor" means the Solicitor, United States Department of Labor, and includes employees of the Solicitor of Labor designated by the Solicitor to perform functions of the Solicitor under this part.

(2) "Associate Solicitor for Fair Labor Standards" means the Associate Solicitor, who, among other duties, is in charge of litigation for MSPA, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, or the Associate Solicitor's designee.

(3) "Regional Solicitors" means the attorneys in charge of the various regional offices of the Office of the Solicitor, or their designees.

(r) "Special Agricultural Worker" (SAW) is (1) an alien granted temporary resident alien status as a result of an application filed pursuant to section 210 of the INA, establishing residence in the United States and employment in seasonal agricultural services for at least 90 work-days during the 12-month period ending May 1, 1986; and (2) a replenishment agricultural worker (RAW) granted temporary residency pursuant to section 210A of the INA.

(s) "Work-day" means a calendar day during which at least 4 hours of work in seasonal agricultural services is

performed. If one worker performs seasonal agricultural services for more than one employer on any one day, only one work-day will be counted.

Note: The alternative term "work-day" is adopted and incorporated into the text of this part to distinguish it from the term "man-day" as used in both the Fair Labor Standards Act (FLSA) and the MSPA, which in those acts means any calendar day when at least one hour of work is performed.

§ 502.3 Waiver of rights prohibited.

No person shall seek to have any worker waive rights conferred under section 210A of the INA or under these regulations. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or these regulations shall be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or these regulations. This does not prevent agreements to settle private litigation.

§ 502.4 Investigation authority of Secretary.

The Secretary, either pursuant to a complaint or otherwise, may investigate and, in connection therewith, inspect such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Secretary to determine compliance under section 210A of the INA or these regulations.

§ 502.5 Prohibition on interference with Department of Labor officials.

No person shall interfere with any official of the Department of Labor assigned to perform an investigation, inspection or law enforcement function pursuant to the INA and these regulations during the performance of such duties. The Wage and Hour Division of the Employment Standards Administration will seek such action as it deems appropriate, including an injunction to bar any such interference with an investigation and/or assess a civil money penalty therefor. Federal statutes which prohibit persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 1114.

§ 502.6 State Employment Service certificate form.

Pursuant to Section 274A of the INA, any State Employment Service may voluntarily establish a system to perform employment eligibility verification for employers when referring job applicants for employment vacancies listed through the local State

Employment Service offices. See 8 CFR 274a.6. In order that each employer can identify the reportable workers subject of this part, the State Employment Service certificate furnished to the employer must include the INS Alien Registration Number. If any, for each applicant referred for agricultural employment.

Subpart B—Employment and Reporting Requirements

§ 502.10 Requirements for Reporting and Employing a Reportable Worker Employed in Seasonal Agricultural Services.

Effective beginning October 1, 1988, any person employing a reportable worker in seasonal agricultural services shall do the following:

(a) *Identification of a reportable worker.* (1) When completing the I-9 at the time of hiring, identify any reportable worker subject to these regulations. A reportable worker is identified as a worker with an INS Alien Registration Number in the A 90000000 series employed in seasonal agricultural services;

(2) When employment eligibility has been verified by the State Employment Service, the Alien Registration Number, if any, shall be set forth on the certification furnished to the agricultural employer by the State Employment Service.

(b) *Report to the Federal Government.* (1) For the period October 1, 1988, through September 30, 1992, furnish to the Federal Government each quarter a certificate (Form ESA-92) containing the information specified in this part, formulated from information derived from employment records maintained, on any reportable worker employed in seasonal agricultural services; and

(2) Furnish accurate, complete, and legible information in the certificate (Form ESA-92) to the Federal Government.

(c) *Report to the worker.* (1) For the period October 1, 1989, through September 30, 1992, furnish to any replenishment agricultural worker (identified by an INS Alien Registration Number in a series that INS will announce at a later date), employed in seasonal agricultural services, a report on each pay day containing the information specified in this part, formulated from employment records maintained; and

(2) Furnish accurate, complete, and legible information in the report to the replenishment agricultural worker.

(d) *Worker's rights.* (1) Not perform any act of discrimination against a replenishment agricultural worker;

(2) Provide the same transportation arrangements or assistance provided any replenishment agricultural worker to all other workers; and

(3) Not provide false or misleading information concerning the terms, conditions, or existence of agricultural employment to a replenishment agricultural worker.

§ 502.11 Recordkeeping.

(a) Any person employing a reportable worker in seasonal agricultural services shall maintain for each such worker the records listed below for the period October 1, 1988, through September 30, 1992. Records may be maintained and preserved in any recordkeeping format, provided they are accessible, legible, and provided to a Department of Labor representative upon request. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be provided to the Department of Labor representative within 72 hours of a request from such representative.

(1) Name in full, INS Alien Registration Number, and social security account number;

(2) Local address including ZIP code and permanent address;

(3) Crop worked and tasks performed;

(4) Hours worked each day; and

(5) A copy of each—
(i) Dated and signed Work-Day Report (Form ESA-92) submitted to the Federal Government; and
(ii) Dated report provided to any replenishment agricultural worker of the number of work-days employed in seasonal agricultural services and the period covered by the report. The optional form WH-501R may be used for this purpose.

(b)(1) Records required by paragraph (a) of this section shall be maintained for three years, except with regard to such records on employment of replenishment agricultural workers.

(2) Records on employment of replenishment agricultural workers required by paragraph (a) of this section shall be maintained for five years.

(c) If subject to the requirements of MSPA, refer to 29 CFR 500.80 for the additional recordkeeping requirements.

(d) If subject to the requirements of FLSA, refer to 29 CFR Part 516 for the additional recordkeeping requirements.

§ 502.12 Reporting to the Federal Government.

(a) For the period beginning October 1, 1988, through September 30, 1992, any person employing a reportable worker in seasonal agricultural services shall

provide a certified report each quarter regarding each such worker's employment to the Federal Government.

(b) A reportable worker is any worker having an INS alien registration number ("A" Number) in the A 90000000 series who was employed in seasonal agricultural services at any time during the quarter reported. The alien registration number is furnished by the resident alien when the Form I-9 is completed at the time of hiring (or by a State Employment Service Agency on the certification of employment eligibility verification furnished the employer when referring an employee for agricultural employment).

(c) Each such worker's employment to be reported to the Federal Government shall be certified using the required form, Work-Day Report, Form ESA-92. Copies of Form ESA-92 can be obtained from the U.S. Departments of Labor or Agriculture and can be copied or reproduced. The signed and dated report shall include the employer name, address, telephone number (including area code), employer identification number, type of agricultural business, and crops on which such workers were employed. Other information furnished in the ESA-92 is derived from records required to be kept in section 502.11. This information for each reportable worker employed in seasonal agricultural services for one or more work-days during a calendar quarter is the following:

(1) Resident alien's name and INS Alien Registration Number; and

(2) The number of work-days (any day with at least four (4) hours of work) of employment performed by any alien during the fiscal quarter; and

(3) If hay, sod, or sugar cane, the crop in which the worker was employed.

(d) The information provided for this certified report must be tabulated and reported to the Federal Government each fiscal quarter. The first period to be reported will be October 1 through December 31, 1988. The last period to be reported will be July 1 through September 30, 1992. The reporting shall follow a regular sequence each year as follows:

(1) For the period October 1 thru December 31, certified report due by the following January 16;

(2) For the period January 1 thru March 31, certified report due by the following April 17;

(3) For the period April 1 thru June 30, certified report due by the following July 17; and

(4) For the period July 1 thru September 30, certified report due by the following October 16.

(e) The employing entity will keep a copy of the completed ESA-92s furnished to the Federal Government for no less than three years.

(f) The Form ESA-92 will be addressed to "Committee for Employment Information on Special Agricultural Workers" and mailed to P.O. Box XXXX, Washington, D.C. XXXX.

§ 502.13 Reporting to the replenishment agricultural worker.

(a) For the period beginning October 1, 1989, through September 30, 1992, any person employing any replenishment agricultural worker (identified by an INS Alien Registration Number in a series within the A 90000000 series that INS will announce at a later date) shall provide such worker, with each wage payment, but no less often than twice per month, a report certifying such alien's employment.

(b) The report shall include the date the report is furnished to the employee, employer name, address, telephone number (including area code), employer identification number, and type of agricultural business. Other information furnished by any such employing entity is derived from permanent records required to be kept by § 502.11. This information is the following:

(1) Replenishment agricultural worker's name, local address (including ZIP code), permanent address, INS Alien Registration Number, and social security account number;

(2) The date paid, the pay period covered by the report and the number of work-days (any day with at least four (4) hours of work) of employment performed by the replenishment agricultural worker in seasonal agricultural services during the pay period; and

(3) The crop worked and the tasks performed.

(c) Any such replenishment agricultural worker's employment may be reported using the WH501R, a pay stub reprinted for this use which also meets the requirements of MSPA.

[Copies of the Form WH-501R can be obtained from the Departments of Labor and Agriculture and can be copied or reproduced.] Completion of the form will meet the requirements of these regulations and MSPA.

(d) Use of the WH501R is optional, and the requirements of this part will be met as long as the information specified in § 502.13(b) is provided to the worker at the time of each wage payment, and no less than twice per month.

(e) The employing entity shall keep a copy of each completed WH501R (or whatever form is used to report)

furnished to the replenishment agricultural worker for no less than five years.

§ 502.14 Accuracy of information furnished.

(a) If subject to MSPA, no employer shall knowingly provide false or misleading information on the terms, conditions or existence of agricultural employment required to be disclosed by MSPA (and 29 CFR Part 500) to any worker subject to MSPA.

(b) Any employer who is exempt under either MSPA section 4(a)(1) or 4(a)(2) shall not knowingly provide false or misleading information to a replenishment agricultural worker concerning the following terms, conditions, or existence of agricultural employment which are described in subsections (a), (b), or (c) of section 301 of MSPA:

(1) With respect to disclosures to workers when an offer of employment is made, at the place of recruitment, or any other time—

(i) The place of employment;

(ii) The wage rates to be paid;

(iii) The crops and kinds of activities on which the worker may be employed;

(iv) The period of employment;

(v) The transportation and any other employee benefit to be provided, if any, and any costs to be charged for each of them;

(vi) The existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment; and

(vii) The existence of any arrangements with any owner or agent of any establishment in the area of employment under which a farm labor contractor or an employer is to receive a commission or any other benefit resulting from any sales by such establishment to the workers;

(2) With respect to any poster at the place of employment, information regarding the rights and protections afforded such workers; and

(3) With respect to records preserved by the employer and provided to employee at time of wage payment—

(i) The basis on which wages are paid;

(ii) The number of piecework units earned, if paid on a piecework basis;

(iii) The number of hours worked per day;

(iv) The total pay period earnings;

(v) The specific sums withheld; and

(vi) The net pay.

§ 502.15 Discrimination prohibited.

(a) It is a violation of the Act and these regulations for any person to

intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any replenishment agricultural worker who has:

- (1) Filed a complaint under or related to section 210A of the INA or this part;
- (2) Instituted or caused to be instituted any proceedings related to section 210A of the INA or this part;
- (3) Testified or is about to testify in any proceeding under or related to section 210A of the INA or this part; or
- (4) Exercised or asserted on behalf of themselves or others any right or protection afforded by section 210A of the INA or this part;

(b) Any worker who believes, with just cause, that the worker has been discriminated against by any person in violation of this section may, no later than 180 days after such violation occurs, file a complaint with the Secretary alleging such discrimination.

§ 502.16 Prohibition on providing false information when reporting to a replenishment agricultural worker or to the Federal Government.

(a) Any person or entity who employs a reportable worker in seasonal agricultural services during the period beginning October 1, 1988, and ending September 30, 1992, shall not furnish a certificate required under these regulations containing false information to the Federal Government.

(b) Any person or entity who employs a replenishment agricultural worker during the period beginning October 1, 1988, and ending September 30, 1989, shall not furnish a certificate required under these regulations to the individual replenishment agricultural worker which contains false information.

(c) Information, statements and data submitted in compliance with provisions of the Act or these regulations are protected as follows: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be subject to 18 U.S.C. 1001 and fined not more than \$10,000 or imprisoned not more than five years, or both.

§ 502.17 Equal Transportation Provision.

No person shall discriminate against any worker by failing to provide the same transportation arrangements or assistance (generally comparable in

expense and scope) as provided to a replenishment agricultural worker.

Subpart C—Enforcement

§ 502.20 Enforcement.

The investigations, inspections and law enforcement functions to carry out the provisions of section 210A of the INA, as provided in these regulations for enforcement by the Wage and Hour Division, pertain to

(a) The maintenance of records and the reporting to the Federal Government of those items required under §§ 502.11 and 502.12 of this part;

(b) The maintenance of records and the reporting to an individual replenishment agricultural worker of those items required under §§ 502.11 and 502.13 of this part;

(c) The truth of disclosures, whether in writing or not, of terms, conditions, or existence of agricultural employment offered to a replenishment agricultural worker under § 502.14 of this part;

(d) The anti-discrimination protections to any replenishment agricultural worker as required under § 502.15 of this part;

(e) The accuracy of information provided as required to a replenishment agricultural worker and the Federal Government under § 502.16 of this part; and

(f) The providing of the same transportation (comparable in expense and scope) to other workers as provided to a replenishment agricultural worker as required under § 502.17 of this part.

§ 502.21 General.

(a) Whenever the Secretary believes that the provisions of section 210A of the INA or these regulations have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(1) Petition any appropriate District Court of the United States for temporary or permanent injunctive relief to restrain violation of the provisions of the Act or this part by any person;

(2) Institute appropriate administrative proceedings, including the assessment of a civil money penalty against any person for a violation of the obligations of the Act or this part; or

(3) Refer any unpaid civil money penalty which has become a final and unappealable order of the Secretary or a final judgment of a court in favor of the Secretary to the Attorney General for recovery.

(b) The taking of any one of the actions referred to in paragraph (a) shall not be a bar to the concurrent taking of any other appropriate action.

§ 502.22 Representation of the Secretary.

(a) Except as provided in section 518(a) of Title 28, U.S. Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under section 210A of the Act.

(b) The Solicitor of Labor, through the authorized representatives, shall represent the Administrator and the Secretary in all administrative hearings under the provisions of section 210A of the Act and this part.

§ 502.23 Civil money penalty assessment.

(a) A civil money penalty in an amount not to exceed \$1,000 may be assessed for each violation of section 210A of the Act or this part.

(b) A civil money penalty may be assessed by the Administrator for:

(1) Failing to furnish any certificate as required under sections 502.12 and 502.13 of this part;

(2) Furnishing a false statement as prohibited in section 502.16 of this part;

(3) Failing to provide the same transportation to any worker as provided for a replenishment agricultural worker as required in section 502.17 of this part;

(4) Knowingly furnishing false or misleading information to a replenishment agricultural worker concerning the terms, conditions, or existence of agricultural employment as prohibited in section 502.14 of this part;

(5) Discriminating against a replenishment agricultural worker as prohibited in section 502.15 of this part;

(6) Failing to keep the records required by section 502.11 of this part;

(7) Failing to furnish records required to be kept under these regulations to Department of Labor officials upon request as required by section 502.11 of this part;

(8) Interfering with the performance of an investigation or inspection in the United States as prohibited in section 502.5 of this part; or

(9) Any other violation of the regulations in this part or section 210A(b)(2) or (f) of the Act.

(c) In determining the amount of penalty to be assessed for any violation outlined in paragraph (a) of this section, the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations of the provisions of the Act or this part;

(2) The number of workers affected by the violation or violations;

(3) The seriousness of the violation or violations;

(4) Efforts made in good faith to comply with the provisions of the Act and the regulations in this part;

(5) Explanation by person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public interest and whether the person has previously violated the provisions of the Act; and

(7) The extent to which the worker suffered loss or damage.

§ 502.24 Enforcement of Wage and Hour investigative authority.

Section 502.4 of this part prescribes the investigation authority of the Wage and Hour Division for the purpose of enforcing section 210A of the Act and this part. The taking of any action to interfere with Department of Labor officials in the conduct of an investigation is prohibited by section 502.5 of this part and will subject such person or entity to such action as appropriate, including the assessment of civil money penalties, an injunction to bar interference with the investigation, and criminal penalties.

§ 502.25 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Administrator, by an Administrative Law Judge, or by the Secretary, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

Subpart D—Administrative Proceedings

General

§ 502.30 Establishment of procedures and rules of practice.

This subpart codifies and establishes the procedures and rules of practice necessary for the administrative enforcement of the Act.

§ 502.31 Applicability of procedures and rules.

The procedures and rules contained in this subpart prescribe the administrative process necessary for a determination to impose an assessment of civil money penalties for violations of the Act or of these regulations. The "Rules of Practice and Procedure for Administrative

Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to this subpart, as provided in section § 502.38 of this part.

Procedures Relating to Hearing

§ 502.32 Written notice of determination required.

Whenever the Secretary determines to assess a civil money penalty for a violation of the Act or this part, the person against whom such penalty is assessed shall be notified in writing of such determination.

§ 502.33 Contents of notice.

The notice required by § 502.32 of this part shall:

(a) Set forth the determination of the Secretary and the reason or reasons therefore;

(b) Set forth a description of each violation and the amount assessed for each violation;

(c) Set forth the right to request a hearing on such determination;

(d) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Secretary shall become final and unappealable; and

(e) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 502.34 of this part.

§ 502.34 Request for hearing.

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, no later than thirty (30) days after the service of the notice referred to in § 502.33 of this part.

(b) No particular form is prescribed for any request for hearing permitted by this subpart. However, any such request shall:

(1) Be typewritten or legibly written on size 8½" x 11" paper;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for hearing must be received by the Administrator at the address set forth in paragraph (a) of this section, within the time set forth in that paragraph. For the affected person's protection, if the request is by mail, it should be by certified mail, return receipt requested.

Rules of Practice

§ 502.38 General.

Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to administrative proceedings under this subpart.

§ 502.39 Service of determinations and computation of time.

(a) Service of a determination to assess a civil money penalty shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by addressee;

(b) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day; and

(c) When a determination is served on a party by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

§ 502.40 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with section 502.34 of this part.

§ 502.41 Designation of record.

(a) Each administrative proceeding instituted under the Act and this part shall be identified of record by a number preceded by the year and the letters "S/RAW".

(b) The number, letter, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

§ 502.42 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows: In The Matter of —, Respondent.

(b) For the purposes of administrative proceedings under the Act and this part the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

Referral for Hearing**§ 502.43 Referral to Administrative Law Judge.**

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 502.34 of this part, the Secretary, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, promptly refer an authenticated copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this part.

(b) A copy of the Order of Reference, together with a copy of this part, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 502.44 Notice of docketing.

The Chief Administrative Law Judge shall promptly notify the parties of the docketing of each matter.

§ 502.45 Service upon attorneys for the Department of Labor—number of copies.

Two (2) copies of all pleadings and other documents required for any administrative proceeding provided by this part shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the

proceeding. Procedures Before Administrative Law Judge.

§ 502.46 Appearances; representation of the Department of Labor.

The Associate Solicitor, Division of Fair Labor Standards, and such other counsel as may be designated, shall represent the Department in any proceeding under this part.

§ 502.47 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such

agreement by issuing a decision based upon the agreed findings.

§ 502.48 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers a decision on the issues referred by the Secretary.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or those regulations and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to section 502.34 of this part which involve the imposition of a civil money penalty assessed for a violation of the Act or this part.

(d) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(e) The Administrative Law Judge shall transmit to the Chief Administrative Law Judge the entire record including the decision. The Chief Administrative Law Judge shall serve copies of the decision on each of the parties.

(f) The decision when served shall constitute the final order of the Secretary unless the Secretary, pursuant to section 210A(f)(4) of the INA modifies or vacates the decision and order of the Administrative Law Judge.

(g) Except as provided in §§ 502.48 through 502.53 of this part, the administrative remedies available to the parties under the Act will be exhausted upon service of the decision of the Administrative Law Judge.

Modification or Vacation of Order of Administrative Law Judge**§ 502.49 Authority of the Secretary.**

The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(a) Is inconsistent with a policy or precedent established by the Department of Labor;

(b) Encompasses determinations not within the scope of the authority of the Administrative Law Judge; or

(c) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive, the Secretary may modify or vacate such Decision and Order; or

(d) Otherwise warrants modifying or vacating.

§ 502.50 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 500.51. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

§ 502.51 Implementation by the Secretary.

(a) Whenever, on the Secretary's own motion or upon acceptance of a party's petition, the Secretary believes that a Decision and Order may warrant modifying or vacating, the Secretary shall issue a Notice of Intent to modify or vacate the Decision and Order in question.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be

submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

§ 502.52 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies.* An original and two copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date.

(d) *Manner and proof of service.* A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 502.53 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice of Intent to Modify or Vacate the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, index, certify and forward a copy of the complete hearing record to the Secretary.

§ 502.54 Final decision of the Secretary.

(a) The Secretary's final Decision and Order shall be issued within 120 days from the Notice of intent granting the petition, and shall be served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

(b) Upon receipt of an Order of the Secretary modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief

Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

§ 502.55 Stay pending decision of the Secretary.

(a) The filing of a petition seeking review by the Secretary of a Decision and Order of an Administrative Law Judge, pursuant to § 502.50 does not stop the running of the thirty-day time limit in which respondent may file an appeal to obtain a review in the United States District Court of an administrative order, under section 210A of the INA, as provided in section 503(b)(c) of the MSPA, unless the Secretary issues a Notice of Intent pursuant to § 502.51.

(b) In the event a respondent has filed a notice of appeal of the Administrative Law Judge's Decision and Order in a United States District Court prior to receipt of the Secretary's Notice of Intent, the Secretary shall seek a stay of proceedings in such United States District Court.

(c) Where the Secretary has issued a Notice of Intent, the time for filing an appeal of a Decision and Order issued under this part, shall commence from the date of the issuance of the Secretary's final decision, as provided in § 502.54.

Record.**§ 502.56 Retention of official record.**

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 502.57 Certification of official record.

Upon receipt of timely notice of appeal to a United States District Court of a decision and Order issued under this part, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Editorial Note.—The Department presents forms in the Appendix which satisfy certain disclosure and recordkeeping aspects of the Act and the regulations. These forms, however, will not appear in the Code of Federal Regulations.

BILLING CODE 4510-27-81

WORK-DAY REPORT

Pursuant to section 210A(b)(2) of the Immigration and Nationality Act, this report is to be submitted to the Committee for Employment on Special Agricultural Workers, P.O. Box XXXX, Washington, D.C. XXXX, for (CHECK APPROPRIATE BOXES):

6. The following employees had at least one day of 4 hours worked (a work-day) in seasonal agricultural services:

[illegible]

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE EMPLOYER TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 OF THE UNITED STATES CODE.

- See instructions on reverse.

7. Signature and Date

INSTRUCTIONS FOR COMPLETION OF FORM ESA-92
(For further details, refer to Regulations, 29 CFR Part 502)

The authority for this certification to the Federal Government is contained in Section 210A of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603. This form is to report employment information of certain workers employed in seasonal agricultural services. This information is used to identify labor shortages and, if necessary, to replenish the work force for this type of employment. A worker whose employment is to be reported is identified by Immigration and Naturalization Service (INS) as an individual with an Alien Registration Number (if applicable, submitted by the employee on the Form I-9) in the A-90000000 series and performing work in Seasonal Agricultural Services.

Performing work in "Seasonal Agricultural Services" means performing field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities* as defined in regulation 7 CFR part 1d. For purposes of this regulation only, "seasonal agricultural services" also includes field work performed in the following "contested crops": hay, sod, and sugar cane. The requirement of reporting these commodities does not constitute evidence that they are eligible commodities for purposes of the SAW program. The reporting requirements will enable the Federal Government and the replenishment agricultural worker to obtain needed data in the event that it is later decided that these commodities are SAW eligible.

"Field work" is defined as work performed on agricultural land for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities*. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities*, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands. Thus, drying, processing, or packing of fruits, vegetables, and other perishable commodities* in the field and the "on the field" loading of transportation vehicles are included. Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural lands are included. Supervising any of these activities shall be considered performing the activities.

"Agricultural lands" means any land, cave, or structure, such as a greenhouse, except packinghouses or canneries, used for the purpose of performing field work.

*Fruits and vegetables of every kind and other perishable commodities INCLUDE the following:

All fruits and vegetables, including (but not limited to) berries, melons, tree fruits and nuts, table vegetables; also corn and small grains, cotton, soybeans; other perishable commodities are limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties (field grown, containerized, and greenhouse produced nursery crops), spanish reeds (arundo donax), spices, sugar beets, and tobacco, as defined in 7 CFR Part 1d.

*Examples of other commodities which are EXCLUDED are:

Animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, flax, forest products, fur bearing animals and rabbits, honey, horses and other equines, livestock of all kinds including animal specialties, millet, milo, poultry and poultry products, sorghum, wildlife and wool.

"Contested crops" INCLUDE hay, sod, and sugar cane. Reports must be filed on field work performed by reportable workers in these crops.

INSTRUCTIONS FOR COMPLETION OF FORM ESA-92 (CONTINUED)

This form is to certify employment information of certain workers employed in seasonal agricultural services in which the employer is required to provide to the Federal Government.

ITEM 1. Indicate the fiscal year for which the information is submitted.

ITEM 2. Indicate the quarter for which the information is submitted.

ITEM 3. Enter the complete legal name, address, and telephone number (including area code) of the employer.

ITEM 4. Enter the employer federal tax identification number.

ITEM 5. Indicate in this space the crops (such as "cucumbers" or "wheat") in which the workers were employed.

ITEM 6. With respect to each resident alien worker with an Alien Registration Number in the A 90000000 series who is employed in seasonal agricultural services at any time during the quarter reported, enter each worker's name, and INS alien registration number; the crop on which the worker was employed if hay, sod, or sugar cane; and the total number of work-days that each worker was employed in seasonal agricultural services. A "work-day" is defined as any day during which at least four (4) hours of work in seasonal agricultural services is performed. If one worker performs seasonal agricultural services for more than one employer on any one day, only one work-day will be counted.

THIS FORM MUST BE SIGNED AND DATED BY THE REPORTING EMPLOYER OR A DESIGNATED REPRESENTATIVE OF THE EMPLOYER. NOTE: STATEMENTS SUBMITTED IN COMPLIANCE WITH THIS ACT ARE SUBJECT TO 18 U.S.C. 1001.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

Failure to accurately complete and mail this form within the time period specified in regulation 29 CFR 502 will be in violation of the Immigration and Nationality Act as amended by IRCA. The penalties imposed are contained in the statute and regulation 29 CFR 502.

Public reporting burden for this collection of information is estimated to average 20 1/2 minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

APPENDIX B—WAGE STATEMENT, WH-501R

Employee _____ Social Security No. _____								Date of Report: Workweek Ending (Month, day, year) _____		
Permanent Address _____ INS Alien Registration No. A _____										
Day/Date	Sun/	Mon/	Tues/	Wed/	Thurs/	Fri/	Sat/	Total Hours Worked in Week	Number Of Work-Days (At least 4 hrs worked each day)	
Starting Time										
Quitting Time										
Hours Worked										
Crop/Task Units Done								Total Gross Pay	ITEMIZED DEDUCTIONS	
									FICA	
									Federal Tax	
									State Tax	
									Rent	
									Food	
									Transportation	
									Other	
									Other	
Rate of Pay (Hourly or Piece Rate)									Total Deductions	
Daily Pay									Net Pay (Amount Due Employee)	
Employer _____ Address _____ Social Security Employer I.D. No. _____								Any information which pertains to "work days" for the person named above is provided in accordance with section 210A of the Immigration and Nationality Act. See reverse for instructions.		Date Paid:

Form WH-501R

Properly filled out, this optional form will satisfy the requirements of sections 201(d)(2) and (c)(2) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and will also satisfy the requirements of section 210A of the Immigration and Nationality Act (INA).

PAYROLL INFORMATION: Enter the month, day and year on which the employee's payroll workweek ends. Enter the calendar date of the day worked. Enter the time work started and ended each day. Enter the total time actually worked each day. Subtract bonafide meal periods. Crop/Task - Units done - Enter the kind of work (such as picking oranges per bin). Enter the number of units produced if the employee is paid on a piece work or task basis. Enter the hourly or piece rate of pay. Enter the amount of the daily pay computed at the hourly and/or piece rate.

NUMBER OF WORK-DAYS: For resident alien workers with INS registration number (a series that INS will announce at a later date) and performing work in seasonal agricultural services, enter the number of days that the worker worked at least four (4) hours.

ITEMIZED DEDUCTIONS: In addition to FICA (Social Security), federal tax, state, tax, and rent, food, and transportation deductions (if any), enter any other deductions and identify the purpose of each other deduction. Total Deductions - Enter total deductions in right column and then transfer to left. Subtract total deductions from total Gross Pay - Enter the result as Net Pay (Amount Due Employee). Enter date worker is paid.

Public reporting burden for this collection of information under both MSPA and the INA is estimated to average 2 minutes per response in addition to that incurred in the normal course of business, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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July 19, 1988

Part VI

**Environmental
Protection Agency**

40 CFR Part 761
Polychlorinated Biphenyls in Electrical
Transformers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

(OPTS-82035G; FRL 3366-4)

Polychlorinated Biphenyls in Electrical Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA issued a proposed rule, published in the Federal Register of August 21, 1987 (52 FR 31738) which proposed amendments to the rules governing the use of polychlorinated biphenyls (PCBs) in transformers. Among other things, this document finalizes those amendments which are related to the installation of PCB Transformers for emergency or reclassification situations and, with modification, the use of an alternative label on PCB Transformer locations. It also modifies some existing enhanced electrical protection requirements on lower secondary voltage network transformers, and sets guidelines for bringing PCB Transformers previously assumed to be PCB-contaminated transformers into compliance with all applicable regulations. This document reflects changes made in response to comments on the proposed rule.

DATE: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight Time on August 2, 1988. These amendments shall be effective September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202-554-1404), TDD-(202-554-0561).

SUPPLEMENTARY INFORMATION: Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the use of PCBs after January 1, 1978. The statute does, however, set forth two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. Under section 6(e)(2) of TSCA, EPA may allow PCBs to be used in a totally enclosed manner. TSCA also allows EPA to authorize the use of PCBs in a manner other than a totally enclosed manner if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

Public reporting burden for this collection of information is estimated to average 166 minutes per response, including time for reviewing

instructions, searching for existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

EPA promulgated a rule, which was published in the Federal Register of May 31, 1979 (44 FR 31514), to implement section 6(e) (2) and (3) of TSCA under 40 CFR Part 761. The rule, among other things, designated all intact, nonleaking capacitors, electromagnets, and transformers, other than railroad transformers, as "totally enclosed," thus permitting their use without specific authorizations or conditions. The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review a number of provisions of the rule, including the portion of the rule that designated all intact and nonleaking capacitors, electromagnets, and transformers as "totally enclosed" (*Environmental Defense Fund, Inc. v. Environmental Protection Agency*, 636 F.2d 1287).

On October 30, 1980, the court, among other things, decided that there was insufficient evidence in the record to support the Agency's classification of transformers, capacitors, and electromagnets as totally enclosed. The court invalidated this portion of the rule and remanded the rule to EPA for further action.

As a consequence of the October 1980 decision, EPA undertook a number of rulemaking actions. One such rule was published in the Federal Register of August 25, 1982 (47 FR 37342) (hereafter, "PCB Electrical Use Rule"). This rule authorized, among other things, the continued use, until October 1, 1985, of PCB Transformers (electrical transformers containing greater than 500 ppm PCBs) in facilities involved in the handling of food or feed items, and authorized for the remainder of their useful life, the use of all other categories of non-railroad electrical transformers containing or contaminated with PCBs. In the PCB Electrical Use Rule, EPA made a determination that authorizing the use of these transformers for the remainder of their useful life (subject to certain conditions) did not present an

unreasonable risk to public health or the environment. EPA's August 1982 decision to allow the continued use of electrical transformers containing PCBs was based on the reported low frequency of leaks and spills of PCBs from this equipment compared to the high costs associated with replacing this equipment with substitute transformers or requiring secondary containment to limit the spread of spilled materials. EPA determined that the most cost-effective means for reducing the risks posed by leaks and spills of PCBs from these transformers was to require routine inspections, repairs, and cleanup.

After promulgation of the PCB Electrical Use Rule, additional information came to EPA's attention which indicated that fires involving transformers that contain PCBs may occur more frequently than previously expected. Thus, EPA subsequently undertook an evaluation of the fire-related risks posed by the continued use of transformers that contain PCBs, and the costs and benefits of measures designed to reduce those risks. EPA issued a proposed rule, published in the Federal Register of October 11, 1984 (49 FR 39986), which contained EPA's determination that PCB Transformer fires (fires involving transformers containing greater than 500 parts per million (ppm) PCBs), particularly those fires which occur in or near commercial buildings, do present risks to human health and the environment. EPA reached this determination after considering the toxicity of materials which can be formed and released during fires involving this equipment, as well as the potential for human and environmental exposures to these materials from a single incident, and the expected frequency of incidents over the remaining useful life of this equipment.

The Agency issued a final rule, published in the Federal Register of July 17, 1985 (50 FR 29170) (hereafter, the "PCB Transformer Fires Rule") that amended the PCB Electrical Use Rule. The PCB Transformer Fires Rule placed additional restrictions and conditions on the use of PCB Transformers, particularly PCB Transformers located in or near commercial buildings. Among other provisions, EPA banned the further installation of PCB Transformers in or near commercial buildings, required the removal of PCB Transformers that posed particularly high fire-related risks, and required the installation of enhanced electrical protection on all other PCB Transformers located in or near commercial buildings.

After the promulgation of the PCB Transformer Fires Rule, Mississippi Power Company (hereafter, "Mississippi Power") filed a petition for review of the rule. In the context of settlement negotiations, EPA agreed to issue, for publication in the Federal Register, a notice of interpretation and to propose to amend portions of the PCB Transformer Fires Rule.

EPA issued a Notice of Interpretation of the PCB Transformer Fires Rule, published in the Federal Register of December 31, 1986 (51 FR 47241), that clarified several provisions of the regulations governing the use of electrical transformers containing PCBs. The questions concerned: (1) The PCB Transformer registration requirements; (2) the requirement for the removal of stored combustibles near PCB Transformers; (3) the requirement for the reporting of fire-related incidents to the National Response Center; (4) the definition of commercial building; (5) the status of mineral oil transformers which are found to contain over 500 ppm PCBs; (6) the ban on the installation of PCB Transformers in or near commercial buildings; and (7) the requirement for the labeling of the exterior of PCB Transformer locations.

Mississippi Power also raised additional, more substantive issues regarding EPA's ban on the installation of PCB Transformers, the requirements for enhanced electrical protection of lower secondary voltage network PCB Transformers, and the requirement for the labeling of the exterior of PCB Transformer locations. First, Mississippi Power questioned whether EPA had intended to ban the installation of PCB Transformers in emergency situations (where no other non-PCB substitute is available) and the installation of retrofilled PCB Transformers when installed for purposes of reclassification. Further, Mississippi Power asked EPA to reconsider the requirement for enhanced electrical protection of lower secondary voltage network PCB Transformers because of space constraints in sidewalk vaults, lack of suitable (i.e., waterproof) fuse enclosures, and Mississippi Power's belief that the cost of fuse installation is two to four times higher than EPA originally estimated. Finally, Mississippi Power asked that EPA allow the use of alternative labels on PCB Transformer locations, when such labeling occurred voluntarily prior to the effective date of the PCB Transformer Fires Rule.

EPA evaluated the additional information submitted by Mississippi Power in the context of settlement negotiations and decided that the new

information warranted a reconsideration of certain of the Agency's previous determinations. This rule presents the results of the Agency's further evaluations and finalizes, with some modification, the proposed amendments to the requirements of the PCB Transformer Fires Rule.

EPA received 15 comments on the proposed rule, four of which were received after the close of the comment period, October 5, 1987. There were no requests for an informal hearing.

EPA has considered all the comments received in response to the proposed rule (as well as comments received after the close of the comment period) and has modified the final rule where appropriate. Some comments either did not address issues in the proposed amendments, misinterpreted a proposed requirement, or, in one case, raised an interpretive issue, outside the scope of this rule, that cannot be immediately resolved. This issue concerns enhanced electrical protection on radial and low secondary voltage network PCB Transformers. EPA considers the issue outside the scope of the rule because the rule addresses only issues agreed upon in the Settlement Agreement.

In order to reduce the fire-related risks posed by the use of PCB Transformers, the July 1985 Transformer Fires Rule required, among other things, enhanced electrical protection on all radial PCB Transformers and low secondary voltage network PCB Transformers in use in or near commercial buildings by October 1, 1990. The rule called for current-limiting fuses or other equivalent technology which detect high current faults and provide for complete deenergization of the transformer within certain time limitations before transformer rupture occurred. The August 1987 proposed amendment retained that requirement, but offered, as an option to this protection, transformer removal by October 1, 1993.

The interpretive issue raised by two comments suggests that complete deenergization of a faulted transformer is not necessary to achieve the Agency's goal, i.e., to prevent PCB Transformer rupture from a fire-related incident. The argument is that since most PCB Transformers are three-phased with a current-limiting fuse on each phase, and that since most faults are internal faults and limited to one phase, deenergization of the specific faulted phase would achieve the required level of protection against rupture. Thus, these comments maintain that it is not necessary to deenergize the entire transformer.

EPA does not currently have enough information to be certain whether partial deenergization (i.e., of the faulted phase) would suffice in all situations. That is, EPA is not able at this time to state that deenergization of the faulted phase is equivalent (in terms of protection against rupture) to total deenergization of the transformer. EPA suggests that the commentors provide supplementary information so that EPA may resolve this interpretive issue. If EPA finds that deenergization of the faulted phase is equivalent to complete deenergization, EPA will issue an interpretive notice stating so. In the meantime, EPA requires enhanced electrical protection to achieve complete deenergization of a faulted transformer as stated in the July 1985 final rule. EPA has prepared a support document for this rulemaking that responds to those comments that did not result in modification of the rule. This document, entitled "Response to Comments on the Proposed Amendment to the PCB Transformer Fires Proposed Rule, June 1988," is in the public record and is available for review and copying from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays, in Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

For a more detailed discussion of all the issues involved in this rulemaking, see the proposed rule, published at 52 FR 31738, August 21, 1987.

II. Summary Of The Final Rule

Under section 6(e)(2)(B) of TSCA, EPA can authorize a use of PCBs provided that the use "will not present an unreasonable risk of injury to health or the environment." EPA had determined that the use of PCB Transformers until October 1, 1985 in facilities involved in the handling of food and feed items and the use of all other categories of non-railroad electrical transformers containing or contaminated with PCBs for the remainder of their useful lives would not present an unreasonable risk of injury to health or the environment. However, EPA later determined that PCB Transformer fires (fires involving transformers containing greater than 500 ppm PCB), particularly fires which occur in or near commercial buildings, do pose risks to humans and the environment. EPA determined that the continued use of PCB Transformers without additional regulatory control measures would present an unreasonable risk of injury to health and the environment and thus, in the PCB Transformer Fires Rule, imposed further restrictions and conditions on the use of PCB Transformers.

The PCB Transformer Fires Rule required the marking of the exterior of PCB Transformer locations with the PCB identification label, and prohibited, among other things, the further installation of PCB Transformers (electrical transformers containing 500 ppm or greater PCBs) in or near commercial buildings. The PCB Transformer Fires Rule also placed conditions on the continued use of lower secondary voltage network PCB Transformers in or near commercial buildings by requiring that these transformers be equipped with enhanced electrical protection as of October 1, 1990. Enhanced electrical protection was required by EPA to avoid electrical failures leading to fire-related incidents.

Following promulgation of the PCB Transformer Fires Rule, Mississippi Power filed suit against EPA. In comments submitted in the context of settlement discussion, Mississippi Power asked EPA to consider: (1) Clarifying the current language of the requirements for enhanced electrical protection by substituting the word "rupture" for "failure"; (2) modifying the requirement for enhanced electrical protection of lower secondary voltage network transformers because of space constraints in existing sidewalk vault locations; (3) allowing the installation of PCB Transformers in certain circumstances, such as in emergency situations and for purposes of reclassification; (4) allowing the use of alternative labels in situations where such labeling was voluntarily initiated prior to the effective date of the PCB Transformer Fires Rule; and (5) establishing a specific schedule for bringing mineral oil transformers, which are tested and found to contain 500 ppm or greater PCBs, into compliance with applicable requirements.

After reviewing the new information submitted by Mississippi Power and others, and considering their requests for amendments to the PCB Transformer Fires Rule, EPA determined that the issues raised by Mississippi Power and others warranted further Agency consideration and, therefore, proposed certain amendments to the PCB Transformer Fires Rule. In this document, EPA is amending the regulations that ban the further installation of PCB Transformers in or near commercial buildings and impose certain requirements for enhanced electrical protection, as of October 1, 1990, on lower secondary voltage network PCB Transformers.

EPA is also amending the regulations to allow: (a) The installation of PCB

Transformers in emergency situations (when no other non-PCB substitute is available); (b) the installation of retrofilled PCB Transformers for purposes of reclassification; and (c) the use of an alternative label to mark the exterior of certain PCB Transformer locations provided the labeling program meets certain specific requirements. The amendment will also offer owners of lower secondary voltage network PCB Transformers located in or near commercial buildings the option of enhanced electrical protection by October 1, 1990 (as is currently required), or removal by October 1, 1993. Further, EPA is prohibiting the use of lower secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings as of October 1, 1993.

In the proposed rule, EPA used the term "to register" in connection with notifying fire personnel where PCB Transformers were located. This term was used because legally it means "to record formally and exactly." EPA's enforcement experience with 40 CFR 761.30(a)(1)(vi), however, has demonstrated that some persons have misinterpreted "to register" to allow informal, nonwritten actions in place of a formal written record. To avoid misinterpretation, EPA has made it clear that it interprets this term to mean to inform or notify in writing.

Finally, EPA is amending 40 CFR 761.30(a)(1)(iv) and (v), by deleting the words "failure" and "failures" and substituting the words "rupture" and "ruptures" to avoid ambiguity in the language, and is requiring a specific schedule for bringing mineral oil transformers, found to contain 500 ppm or greater PCBs, into compliance with the applicable regulations.

III. Discussion Of The Final Rule

A. Installation Of PCB Transformers

The PCB Transformer Fires Rule banned the installation of PCB Transformers in or near commercial buildings after October 1, 1985. In the August 21, 1987 proposed rule, EPA proposed to allow the installation of PCB Transformers in or near commercial buildings in two situations that EPA believes warrant special consideration. The first is in emergency situations, where neither a non-PCB Transformer nor PCB-Contaminated transformer is currently available to replace a failed PCB Transformer, and immediate replacement is necessary to continue electrical service to the entity or entities served by the transformer. The second is for purposes of reclassification, so that a retrofilled transformer may accrue the

necessary in-service use time to allow reclassification of the unit. As discussed in the proposed rule (52 FR 31742), EPA believes installation of PCB Transformers for these two uses, under the conditions specified, will not present an unreasonable risk to human health or the environment. These provisions, as modified, are in § 761.30(a)(1)(iii) of the final rule.

In order to ensure consistent treatment to those owners who installed PCB Transformers in emergency situations or for reclassification purposes between October 1, 1985 and September 1, 1988, EPA has added § 761.30(a)(1)(iii)(D) to the final rule. Those owners must notify the appropriate Regional Administrator of such installations within 30 days after the effective date of the rule.

1. *Emergency installation.* In the proposed rule, EPA solicited comments on the availability of non-PCB Transformers for use in emergency situations and the ability of power companies to purchase and receive non-PCB Transformers quickly for use in emergency situations. This information was requested since various electric power companies had indicated replacement non-PCB Transformers were not readily available. EPA received a comment confirming their non-availability; therefore, EPA assumes that non-PCB Transformers or PCB-Contaminated transformers are typically neither readily available for installation nor can they be quickly acquired. The final rule retains the proposed provisions on installation of PCB Transformers in emergency and reclassification situations in § 761.30(a)(1)(iii)(A).

The proposed rule required documentation to support an "Emergency Situation" in accordance with the definition in § 761.3. There was no comment on maintaining documentation. For compliance monitoring purposes, EPA is adding to the final rule the requirement that documentation be completed 30 days after installation and be maintained at the owner's facility. The documentation required to show an "Emergency Situation" is set forth in the final rule in § 761.30(a)(1)(iii)(B)(1) (i) through (vi).

EPA received a comment on the proposed amendment as to whether a PCB Transformer installed in an emergency situation could then be subsequently reclassified to non-PCB or PCB-Contaminated transformer status. EPA's response is that a transformer, originally installed in an emergency situation, can be subsequently reclassified if the reclassification to non-

PCB or PCB-Contaminated status is completed within the 1 year allowed for a transformer originally installed in an emergency situation or by October 1, 1990, whichever is earlier. If the transformer cannot be reclassified in 1 year or by October 1, 1990, whichever is earlier, the transformer must be removed from service since it was originally installed in an "Emergency Situation" as defined in § 761.3. In the final rule, this requirement is in § 761.30(a)(1)(iii)(B)(3).

2. *Installation for reclassification purposes.* Although the current regulation prohibits the replacement of a failed PCB Transformer with another PCB Transformer in or near a commercial building, EPA believes that retrofitting and reclassification should be available as a viable option for this equipment. EPA has typically encouraged retrofitting and reclassification and believes that the benefits of reclassification in certain situations approach the benefits of PCB Transformer replacement.

Thus, EPA reconsidered its determination to ban further installation of PCB Transformers as of October 1, 1985 and proposed extending the effective date to allow the installation until October 1, 1990 of retrofilled PCB Transformers so that these units may accrue the necessary in-service use time to allow for reclassification. The final rule requires documentation of the installation of PCB Transformers for reclassification purposes to be maintained on the owner's premises in § 761.30(a)(1)(iii)(C)(1) (i) through (iv).

EPA solicited comments on the time needed to achieve reclassification. EPA received comments that reclassification to a non-PCB or PCB-Contaminated transformer can take as long as 3 years. However, EPA believes that 18 months provide sufficient time to reclassify a retrofilled PCB Transformer to a non-PCB or, at least, a PCB-Contaminated status and added that time period to the final rule in § 761.30(a)(1)(iii)(C)(2). EPA believes that the benefits of allowing the use of a PCB Transformer for this very limited time outweigh the potential risks involved. Allowing a retrofilled PCB Transformer to be placed in service for reclassification purposes encourages owners of PCB Transformers to reclassify these units and is consistent with the intent of the rule, which is to phase out gradually the use of PCB Transformers.

Thus, EPA is allowing the installation of retrofilled PCB Transformers until October 1, 1990; however, their in-service time is limited to 18 months after installation or until October 1, 1990, whichever is earlier, to achieve

reclassification to a non-PCB or PCB-Contaminated status. Therefore, for practical purposes, a PCB Transformer would have to be installed for reclassification purposes with enough time allowed for it to reach at least the PCB-Contaminated status by October 1, 1990.

EPA has also decided to allow this requirement to apply retroactively to October 1, 1985, for installation of PCB Transformers for emergency and reclassification purposes which has already taken place. Therefore, EPA has provided for these situations in § 761.30(a)(1)(iii)(D) of the final rule. However, those owners who installed PCB Transformers between October 1, 1985, and September 1, 1988, must provide the Regional Administrator, within 30 days after the effective date of this rule, a notice in writing that the PCB Transformer was installed for reclassification purposes. Information to be provided for compliance monitoring purposes includes (1) The date of installation; (2) the type of transformer installed; (3) the PCB concentration, if known, at the time of installation; and (4) the reclassification schedule. These requirements were added in the final rule under § 761.30(a)(1)(iii)(D).

EPA recognizes that there are differences between the installation for reclassification purposes of a retrofilled mineral oil PCB transformer and an "askarel" PCB Transformer. Since installation of a retrofilled mineral oil PCB transformer would not present an unreasonable risk, EPA proposed that a retrofilled mineral oil PCB transformer could be installed indefinitely after October 1, 1990 for reclassification purposes. Its reclassification to a PCB-Contaminated transformer or a non-PCB transformer status would then be determined by testing its PCB concentration 3 months after its installation for reclassification. There were no comments on this proposal and the provisions are retained in § 761.30(a)(1)(iii)(C)(2)(ii) and (iii)(C)(2)(iii) of the final rule.

B. Failure vs. Rupture

EPA proposed amending the language in § 761.30(a)(1)(iv), (iv)(A), and (v), by deleting the words "failure" and "failures", and substituting the words "rupture" and "ruptures". The preamble explained the need for this change was to avoid ambiguity; the final rule includes the amendment.

C. Alternative Labeling

EPA proposed to allow the use of an alternative label (other than that required under the current regulation) for marking PCB Transformer

locations—vault doors, machinery room doors, fences, hallways, or means of access, other than grates, and manhole covers. While EPA is interested in a consistent nationwide labeling system, EPA believes that those who voluntarily initiated labeling programs after consultation with local emergency response organizations should not be required to incur the additional expense associated with relabeling. There were no comments on this issue; however, internal EPA review and reevaluation resulted in some minor modifications to the proposal. When EPA proposed to allow the use of alternative marks, the Agency intended to limit this use to situations where a company can demonstrate that a local fire department knows and recognizes the alternative. For purposes of clarity for this rule, EPA intends that recognizing an alternative mark means to be able to identify it and know its meaning. Implicit in recognizing the use of the mark is the necessity that the local fire department has accepted the use of the mark, i.e., taken steps to make personnel aware of the mark by incorporating it into a formal or informal program used to make essential information available to fire department personnel. Thus, EPA is modifying the final rule to require that the company show specifically that the local fire department accepted the use of the mark by incorporating it into its training program. The use of the term "accept" in the final rule does not require any showing that the fire department has approved the mark, only that it has incorporated the use of the mark into its response procedures and training.

Alternative labeling, including the notification provisions, is retained in the final rule in § 761.40. Implicit in the proposed notification to the Regional Administrator was the authority to reject the alternative labeling if it is not substantiated as required. The final rule makes this authority explicit in § 761.40(j)(2)(iv). Also, to facilitate compliance monitoring and enforcement, the final rule requires documentation from the fire department with primary jurisdiction indicating the unit is aware of the alternative mark, accepts its use, and has incorporated it into its training materials. The final rule does require the Regional Administrator either to approve or disapprove in writing the use of an alternative label within 30 days of receipt of the documentation of a program.

D. Electrical Protection

EPA proposed to amend the electrical protection requirements on lower

secondary voltage network PCB Transformers. For lower secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings, EPA proposed requiring the removal of these transformers by October 1, 1993. (See discussion in Unit III.E. below.) For all other lower secondary voltage network PCB Transformers in or near commercial buildings, the proposed rule offered owners an option to the current requirement for enhanced electrical protection by October 1, 1990. This option is the removal of this equipment by October 1, 1993, provided that EPA is notified of the pending removal by no later than October 1, 1990. In short, EPA proposed to give owners of lower secondary voltage network PCB Transformers located in or near commercial buildings (in other than sidewalk vault locations) the option of implementing risk reduction measures on a shorter schedule, by complying with the current requirement to install enhanced electrical protection by October 1, 1990, or by removing the PCB Transformers by October 1, 1993. As discussed in the proposed rule (52 FR 31743), EPA believes that neither of these options will present an unreasonable risk to human health or the environment. EPA also proposed to require those owners who choose to remove this equipment by October 1, 1993, to register in writing those transformers with the EPA Regional Administrator in the appropriate region by October 1, 1990. This would provide the Regional Administrator with the information needed to facilitate compliance monitoring efforts. There were no comments on this provision and the final rule incorporates it in § 761.30(a)(1)(iv)(C).

E. Phaseout of Lower Secondary Voltage Network PCB Transformers in Sidewalk Vaults

Under the current PCB regulations, as of October 1, 1990, EPA prohibits the use of all network PCB Transformers with higher secondary voltages, while requiring enhanced electrical protection on the remaining commercial PCB Transformers, including all radial and lower secondary voltage network PCB Transformer.

EPA proposed requiring that owners of lower secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings remove those transformers from service by October 1, 1993. In the proposed rule, EPA did not give those owners the option available to owners of lower secondary voltage network PCB Transformers located outside of a sidewalk vault, either to

remove these transformers from service or to install enhanced electrical protection.

While EPA recognizes that allowing the use of this equipment until October 1, 1993 (an additional 3 years), without installing enhanced electrical protection poses some risk, EPA believes that phaseout of an additional class of transformers above those currently required to be phased out, further minimizes the risk of fire-related events involving PCB Transformers. EPA continues to prefer the regulatory option of transformer removal because it completely eliminates PCB Transformer fire-related risk, as well as the risks posed by leaks and spills of PCBs from these transformers. Thus, although there is some risk in allowing additional time to phase out this equipment, EPA believes the benefits of removing these PCB-containing transformers from service, thus eliminating any potential risk of PCB exposure, outweighs the risks incurred by allowing the use of these transformers for an additional 3 years. Further, EPA has determined that requiring phaseout of those transformers in sidewalk vaults would be practical since owners of this equipment express an interest in removing rather than installing enhanced electrical protection and EPA has already determined that for this type of equipment some risk reduction measure must be implemented.

There was no comment on the proposed amendment of the date for removal of these transformers and the provision remains in the final rule in § 761.30(a)(1)(iv)(B).

F. Discovery of a PCB Transformer

EPA proposed that in the event a mineral oil transformer, assumed to contain less than 500 ppm of PCBs under § 761.3, is determined through testing to be contaminated at 500 ppm or greater, efforts must be initiated immediately to bring the transformer into compliance in accordance with Part 761. The proposed rule contained a schedule for achieving such compliance and solicited comments on the time frames.

Two comments asked for a clarification regarding compliance with the recordkeeping and reporting requirements, specifically, whether records and reports had to be developed for the transformer while it was assumed to be below 500 ppm. It is not EPA's intention to require owners to develop records retroactively relating to the newly discovered PCB Transformer. EPA is requiring that, after discovering that a mineral oil transformer is a PCB Transformer (and transformer that contains 500 ppm PCB or greater), the

owner of the transformer comply with the schedule for bringing the transformer into compliance.

Comments indicated that anywhere from 2 to 15 days would allow ample time to purchase and affix labels to transformers, vault doors, machinery room doors, fences, hallways or other means of access to the PCB Transformer. Therefore, EPA is implementing in the final rule a 7-day period to mark the newly discovered PCB Transformer and transformer locations with the appropriate label, in § 761.30(a)(1)(xv) (B) and (C).

Comments received on the proposed rule agreed with EPA that 30 days was a reasonable amount of time to complete the written registration of the newly discovered PCB Transformer with appropriate fire response personnel and building owners. Therefore, in § 761.3(a)(1)(xv)(D) the final rule allows 30 days after the transformer is tested and found to contain greater than 500 ppm PCBs to register the transformer.

No other comments were received on the proposed schedule, and the final rule incorporates the other provisions as proposed.

G. Other Changes

Three other minor changes were made to the proposed rule for the purpose of clarification. The first is the addition of the definition of "Retrofit" to § 761.3 to make clear that it means the draining and refilling of a transformer. The second is in paragraph (2) of the definition "Emergency Situation" under § 761.3 which has been changed to indicate that immediate replacement must be necessary for continued service to "power users" rather than "utility customers." The third is in § 761.40(j)(3) where paragraph (j)(1) is referenced to indicate clearly the locations where the marking labels must be placed.

Finally, one comment indicated there could be confusion where phase-out of a PCB Transformer is required and reclassification has been achieved. EPA agrees that a PCB Transformer that has been retrofilled and reclassified to PCB-Contaminated or non-PCB status in accordance with the TSCA regulations meets the requirement for phase-out of a PCB Transformer.

IV. The Record For This Rule

A. Previous Rulemaking Record

(1) Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers" Final Rule, published in the Federal Register of July 17, 1985 (50 FR 29170).

(2) Official Record from "Notice of Interpretation of Transformer Fires Regulations," published in the Federal Register of December 31, 1986 (51 FR 47241).

(3) Official Record from "Polychlorinated Biphenyls in Electrical Transformers" Proposed Rule, published in the Federal Register of August 21, 1987 (52 FR 31738). FR 31738).

B. Support Documents

(4) USEPA, OPTS, EED, Putnam, Hayes and Bartlett, Inc. "Evaluation of the Sufficiency of Current and Projected PCB Disposal Capacity To Meet Demand Requirements," July 1986.

(5) USEPA, EED, "Response to Comments on the Proposed Amendment to the PCB Transformer Fires, Rule," June 1988.

(6) Letters received from:
a. Kansas City Power and Light dated September 11, 1985.

b. Electric Power Board of Chattanooga dated October 3, 1985.

c. UNISON Transformer Services, Inc. dated March 24, 1986.

(7) Correspondence between EPA and the National Bureau of Standards:

a. Letter to Richard W. Bukowski, Center for Fire Research, Fire Science and Engineering Division, National Bureau of Standards, Gaithersburg, Maryland, dated March 29, 1986.

b. Response from Richard W. Bukowski, dated April 18, 1986.

(8) Reports from Resource Planning Corporation submitted to Utility Solid Waste Activities Group, dated January 6, and 8, and April 23, 1986.

(9) Telephone communications between:

a. Joseph Arcoleo of Jersey Central Power and Light Company and Thomas Simons, Office of Toxic Substances, EPA, on November 18, 1987, on the time between installation for reclassification of a PCB Transformer and actual retrofilling.

b. Joseph Willoughby of the General Services Administration and Thomas Simons, Office of Toxic Substances, EPA, on December 15, 1987, on deenergization of PCB Transformers through the use of current-limiting fuses.

10. Communication between Chicago Fire Department and Commonwealth Edison Co.:

a. Letter to H.A. Onishi, Commonwealth Edison Co., from John M. Eversole, Chicago Fire Department, dated February 14, 1984.

b. Letter to Louis T. Galante, Chicago Fire Department, from H.A. Onishi, Commonwealth Edison Co., dated September 23, 1985.

c. Letter to H.A. Onishi, Commonwealth Edison Co., from

Thomas D. Roche, Chicago Fire Department.

V. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this amendment to the PCB Rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order and therefore is not subject to the requirement that a regulatory impact analysis be prepared.

While the rule places some additional restrictions and conditions on the use of PCB Transformers, it is worth noting that this rule allows the continued use of PCBs in electrical transformers that would otherwise be prohibited by section 6(e) of TSCA. This rule avoids the severe disruption of electric service to the public and industry that would occur if the use of this equipment were immediately prohibited. It also avoids the economic impact that would result from a requirement to replace the equipment as soon as possible.

This rule was submitted to OMB as required by Executive Order 12291. There were no comments from OMB on the rule.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

In general this rule reduces the burden on small businesses that would otherwise be encountered if an immediate ban on PCB-containing transformers were to take effect. If an immediate ban on the use of PCBs in transformers were imposed, large costs would be incurred by all producers and users of electricity, including small businesses.

EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping and reporting requirements of this final rule constitute a "collection of information" as defined

in 44 U.S.C. 3502(4). The provisions of 40 CFR 761.30 authorize the continued use of electrical equipment under certain circumstances which require recordkeeping and reporting. EPA has clearance to collect information for this authorization under OMB control numbers 2070-0003 and 2070-0073. Under the normal OMB information collection review cycle, 2070-0003 and 2070-0073 are being consolidated, and the notification required in the options allowed under this amendment are included under the consolidated OMB control number 2070-0003 for the use authorization for PCB electrical equipment.

Public reporting burden for this collection of information is estimated to average 188 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: July 6, 1988.

Lee M. Thomas,
Administrator.

Therefore 40 CFR Part 761 is amended as follows:

1. The authority citation for Part 761 continues to read as follows:

PART 761—[AMENDED]

Authority: 15 U.S.C. 2605, 2607, 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

2. In § 761.3 by adding the definitions of "emergency situation", "mineral oil PCB Transformer", "non-PCB Transformer", and "retrofill" alphabetically to read as follows:

§ 761.3 Definitions.

"Emergency Situation" for continuing use of a PCB Transformer exists when:

(1) Neither a non-PCB Transformer nor a PCB-Contaminated transformer is

currently in storage for reuse or readily available (i.e., available within 24 hours) for installation.

(2) Immediate replacement is necessary to continue service to power users.

"Mineral Oil PCB Transformer" means any transformer originally designed to contain mineral oil as the dielectric fluid and which has been tested and found to contain 500 ppm or greater PCBs.

"Non-PCB Transformer" means any transformer that contains less than 50 ppm PCB; except that any transformer that has been converted from a PCB Transformer or a PCB-Contaminated transformer cannot be classified as a non-PCB Transformer until reclassification has occurred, in accordance with the requirements of § 761.30(a)(2)(v).

"Retrofill" means to remove PCB or PCB-contaminated dielectric fluid and to replace it with either PCB, PCB-contaminated, or non-PCB dielectric fluid.

3. In § 761.30 by revising paragraphs (a)(1)(iii), (iv), and (v), by adding paragraph (a)(1)(xv), and by revising the OMB control number to read as follows:

§ 761.30 Authorizations.

(a) . . .
(1) . . .

(iii) Except as otherwise provided, as of October 1, 1985, the installation of PCB Transformers, which have been placed into storage for reuse or which have been removed from another location, in or near commercial buildings is prohibited.

(A) The installation of PCB Transformers on or after October 1, 1985, however, and their use thereafter, is permitted either in an emergency situation, as defined in § 761.3, or in situations where the transformer has been retrofilled and is being placed into service in order to qualify for reclassification under paragraph (a)(2)(v) of this section.

(B) Installation of a PCB Transformer in an emergency situation is permitted when done in accordance with the following:

(1) Documentation to support the reason for the emergency installation of a PCB Transformer must be maintained at the owner's facility and completed within 30 days after installation of the PCB Transformer. The documentation must include, but is not limited to:

(i) The type of transformer, i.e., radial or lower or higher network, that requires replacement.

(ii) The type(s) of transformers, i.e., radial or lower or higher network, that must be used for replacement.

(iii) The date of transformer failure.

(iv) The date of subsequent replacement.

(v) The type of transformer, i.e., radial or lower or higher network, installed as a replacement.

(vi) A statement describing actions taken to locate a non-PCB or PCB-Contaminated transformer replacement.

(2) Such emergency installation is permitted until October 1, 1990, and the use of any PCB Transformer installed on such an emergency basis is permitted for 1 year from the date of installation or until October 1, 1990, whichever is earlier.

(3) PCB Transformers installed for emergency purposes may be subsequently reclassified; however, the transformer must be effectively reclassified to a non-PCB or PCB-Contaminated status within 1 year after installation or by October 1, 1990, whichever is earlier because the transformer was initially installed in an emergency situation.

(C) Installation of a retrofilled PCB Transformer for reclassification purposes is permitted when it is done in accordance with the following:

(1) Those who installed transformers for reclassification purposes must maintain on the owner's premises, completed within 30 days of installation, the following information:

(i) The date of installation.

(ii) The type of transformer, i.e., radial or lower or higher network, installed.

(iii) The PCB concentration, if known, at the time of installation.

(iv) The retrofill and reclassification schedule.

(2) For purposes of this paragraph, the installation of retrofilled PCB Transformers for purposes of reclassification under paragraph (a)(2)(v) of this section is permitted until October 1, 1990.

(i) However, the use of a retrofilled PCB Transformer installed for reclassification purposes is limited to 18 months after installation or until October 1, 1990, whichever is earlier.

(ii) Retrofilled mineral oil PCB Transformers may be installed for reclassification purposes indefinitely after October 1, 1990.

(iii) Once a retrofilled transformer has been installed for reclassification purposes, it must be tested 3 months after installation to ascertain the concentration of PCBs. If the PCB concentration is below 50 ppm, the

transformer can be reclassified as a non-PCB Transformer. If the PCB concentration is between 50 and 500 ppm, the transformer can be reclassified as a PCB-Contaminated transformer. If the PCB concentration remains at 500 ppm or greater, the entire process must either be repeated until the transformer has been reclassified to a non-PCB or PCB-Contaminated transformer in accordance with paragraph (a)(2)(v) of this section or the transformer must be removed from service.

(D) Owners who installed PCB Transformers in emergency situations or for reclassification purposes between October 1, 1985 and September 1, 1988 must notify the Regional Administrator in writing by October 3, 1988 of such installation. The notification for emergency installation must include the information in paragraph (a)(1)(iii)(B)(1)(i) through (vi) of this section. The notification for reclassification must include the information in paragraph (a)(1)(iii)(C)(2)(i) through (iv) of this section. All PCB Transformers installed in an emergency situation or installed for reclassification purposes are subject to the requirements of this Part 761.

(iv) As of October 1, 1990, all radial PCB Transformers, in use in or near commercial buildings, and lower secondary voltage network PCB Transformers not located in sidewalk vaults in or near commercial buildings (network transformers with secondary voltages below 480 volts) that have not been removed from service as provided in paragraph (a)(1)(v) of this section, must be equipped with electrical protection to avoid transformer ruptures caused by high current faults.

(A) Current-limiting fuses or other equivalent technology must be used to detect sustained high current faults and provide for complete deenergization of the transformer (within several hundredths of a second in the case of radial PCB Transformers and within tenths of a second in the case of lower secondary voltage network PCB Transformers), before transformer rupture occurs. The installation, setting, and maintenance of current-limiting fuses or other equivalent technology to avoid PCB Transformer ruptures from sustained high current faults must be completed in accordance with good engineering practices.

(B) All lower secondary voltage network PCB Transformers not located in sidewalk vaults (network transformers with secondary voltages below 480 volts), in use in or near commercial buildings, which have not been protected as specified in paragraph

(a)(1)(iv)(A) of this section by October 1, 1990, must be removed from service by October 1, 1993.

(C) As of October 1, 1990, owners of lower secondary voltage network PCB Transformers, in use in or near commercial buildings which have not been protected as specified in paragraph (a)(1)(iv)(A) of this section and which are not located in sidewalk vaults, must register in writing those transformers with the EPA Regional Administrator in the appropriate region. The information required to be provided in writing to the Regional Administrator includes:

(1) The specific location of the PCB Transformer(s).

(2) The address(es) of the building(s) and the physical location of the PCB Transformer(s) on the building site(s).

(3) The identification number(s) of the PCB Transformer(s).

(D) As of October 1, 1993, all lower secondary voltage network PCB Transformers located in sidewalk vaults (network transformers with secondary voltages below 480 volts) in use near commercial buildings must be removed from service.

(v) As of October 1, 1990, all radial PCB Transformers with higher secondary voltages (480 volts and above, including 480/277 volt systems) in use in or near commercial buildings must, in addition to the requirements of paragraph (a)(1)(iv)(A) of this section, be equipped with protection to avoid transformer ruptures caused by sustained low current faults.

(xv) In the event a mineral oil transformer, assumed to contain less than 500 ppm of PCBs as provided in § 761.3, is tested and found to be contaminated at 500 ppm or greater PCBs, it will be subject to all the requirements of this Part 761. In addition, efforts must be initiated immediately to bring the transformer into compliance in accordance with the following schedule:

(A) Report fire-related incidents, effective immediately after discovery.

(B) Mark the PCB transformer within 7 days after discovery.

(C) Mark the vault door, machinery room door, fence, hallway or other means of access to the PCB Transformer within 7 days after discovery.

(D) Register the PCB Transformer in writing with fire response personnel

with primary jurisdiction and with the building owner, within 30 days of discovery.

(E) Install electrical protective equipment on a radial PCB Transformer and a non-sidewalk vault, lower secondary voltage network PCB Transformer in or near a commercial building within 18 months of discovery or by October 1, 1990, whichever is later.

(F) Remove a non-sidewalk vault, lower secondary voltage network PCB Transformer in or near a commercial building, if electrical protective equipment is not installed, within 18 months of discovery or by October 1, 1993, whichever is later.

(G) Remove a lower secondary voltage network PCB Transformer located in a sidewalk vault in or near a commercial building, within 18 months of discovery or by October 1, 1993, whichever is later.

(H) Retrofill and reclassify a radial PCB Transformer or a lower or higher secondary voltage network PCB Transformer, located in other than a sidewalk vault in or near a commercial building, within 18 months or by October 1, 1990, whichever is later. This is an option in lieu of installing electrical protective equipment on a radial or lower secondary voltage network PCB Transformer located in other than a sidewalk vault or of removing a higher secondary voltage network PCB Transformer or a lower secondary voltage network PCB Transformer, located in a sidewalk vault, from service.

(I) Retrofill and reclassify a lower secondary voltage network PCB Transformer, located in a sidewalk vault, in or near a commercial building within 18 months or by October 1, 1993, whichever is later. This is an option in lieu of installing electrical protective equipment or removing the transformer from service.

(J) Retrofill and reclassify a higher secondary voltage network PCB Transformer, located in a sidewalk vault, in or near a commercial building within 18 months or by October 1, 1990, whichever is later. This is an option in lieu of other requirements.

(Approved by the Office of Management and Budget under control number 2070-0003; the recordkeeping requirements of paragraph (a)(1)(xii) were approved by

the Office of Management and Budget under control number 2070-0007)

4. In § 761.40 by revising paragraph (i) to read as follows:

§ 761.40 Marking requirements.

(j) PCB Transformer locations shall be marked as follows:

(1) Except as provided in paragraph (j)(2) of this section, as of December 1, 1985, the vault door, machinery room door, fence, hallway, or means of access, other than grates and manhole covers, to a PCB Transformer must be marked with the mark M₁ as required by paragraph (a) of this section.

(2) A mark other than the M₁ mark may be used provided all of the following conditions are met:

(i) The program using such an alternative mark was initiated prior to August 15, 1985, and can be substantiated with documentation.

(ii) Prior to August 15, 1985, coordination between the transformer owner and the primary fire department occurred, and the primary fire department knows, accepts, and recognizes what the alternative mark means, and that this can be substantiated with documentation.

(iii) The EPA Regional Administrator in the appropriate region is informed in writing of the use of the alternative mark by October 3, 1988 and is provided with documentation that the program began before August 15, 1985, and documentation that demonstrates that prior to that date the primary fire department knew, accepted and recognized the meaning of the mark, and included this information in firefighting training.

(iv) The Regional Administrator will either approve or disapprove in writing the use of an alternative mark within 30 days of receipt of the documentation of a program.

(3) Any mark placed in accordance with the requirements of this section must be placed in the locations described in paragraph (j)(1) of this section and in a manner that can be easily read by emergency response personnel fighting a fire involving this equipment.

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Part VII

Department of Energy

Final Decision on Inclusion of a Private
Property Near Naturita, CO, for Remedial
Action Under the Uranium Mill Tailings
Radiation Control Act of 1978; Notice

DEPARTMENT OF ENERGY

Final Decision on Inclusion of a Private Property Near Naturita, CO, for Remedial Action Under the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604)

AGENCY: Department of Energy.

ACTION: Program Information Notice: Final decision on inclusion of a private property near Naturita, Colorado, for remedial action under Section 101 of Pub. L. 95-604, the "Uranium Mill Tailings Radiation Control Act of 1978," enacted on November 8, 1978.

SUMMARY: The "Uranium Mill Tailings Radiation Control Act of 1978" (UMTRCA or the Act) authorized the Department of Energy (DOE or the Department) to conduct, in cooperation with interested states, Indian Tribes, and persons who own or control certain inactive mill tailings sites, a program of assessment and remedial action to stabilize and control the tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards at these sites and at nearby vicinity properties.

The DOE has been requested by the Hecla Mining Company (Hecla) to include Hecla's "Durita" property as a designated property for the purposes of remedial action under the Act. The "Durita" property is located approximately nine miles west of Naturita off Colorado Highway 90S.

On April 28, 1988, DOE published a notice in the Federal Register in which it proposed not to include the "Durita" property as either a production site or vicinity property for the purposes of remedial action under the Act. 53 FR 15273. The purpose of the notice was to solicit comments on DOE's proposed decision. Accordingly, comments were received from the State of Colorado (letter from the Office of the Attorney General, dated June 10, 1988, hereafter State Comments) and the Hecla Mining Company (Comments and Objections of Hecla Mining Company by Davis, Graham & Stubbs, Denver, Colorado, dated June 3, 1988, hereafter Hecla Comments). As set forth below, after considering the comments, the Department has decided that the "Durita" property is not a proper candidate for inclusion in the remedial action program under UMTRCA.

Background

The "Uranium Mill Tailings Radiation Control Act of 1978," Pub. L. 95-604, 42 U.S.C. 7901, *et seq.*, establishes a program to provide for the stabilization, disposal, and control of uranium mill

tailings in a safe and environmentally sound manner. Under Title I of the Act, the DOE is authorized to conduct remedial actions at certain inactive processing sites.

Section 101(8) of the Act defines two types of "processing sites." The first is an inactive "production site" defined as:

(A) any site, including the mill containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, * * * unless (i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or (ii) a license (issued by the [Nuclear Regulatory] Commission or its predecessor agency under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date. The second type is a "vicinity property" defined as: "(B) any other real property or improvement thereon which—(i) is in the vicinity of such [production] site, and (ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Section 101(7) of the Act defines the term "residual radioactive material" to mean:

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores, and (B) other waste (which the Secretary determines to be radioactive) at a processing site which relate (sic) to such processing, including any residual stock of unprocessed ores or low-grade materials.

Furthermore, section 101(8) of the Act defines "tailings" to mean:

The remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

Discussion

Before the passage of UMTRCA on November 8, 1978, Ranchers Exploration & Development Corporation (Ranchers), the predecessor-in-interest to the Hecla Mining Company, owned and controlled a quantity of uranium mill tailings at a site known as "Naturita," a previously active mill site also near Naturita, Colorado. Ranchers possessed the tailings under license Colo. 317-01S, issued on November 12, 1976, by the State of Colorado. On June 9, 1977, a new state license, Colo. 317-02S, was issued superseding the previous license and permitting Ranchers to "transport and process" uranium mill tailings. Amendments 1 (October 26, 1977), 2 (December 12, 1977), and 3 (May 4, 1978)

modify the license to authorize the excavation and transportation of uranium mill tailings from the old Naturita mill site to the new "Durita" processing site for the "production of natural uranium concentrate by leaching of uranium mill tailings."

It is the Department's view that the "Durita" site was operating as an active mill site under a valid state production license at the time UMTRCA was enacted, and that the site does not fit within the definition of an inactive "production site" under section 101(8)(A) of the Act as a site appropriate for remedial action because the uranium produced there was not produced for sale to any Federal agency prior to January 1, 1971.

Furthermore, with respect to such "[a]ctive operations" at the time of the Act's passage, Congress in section 115(a) has prohibited expenditures with respect to any site licensed by a state at which production of any uranium product takes place. It was Congress' intent that remedial action at licensed active mill sites be taken by the license holder pursuant to the license requirements under the supervision of the regulating agency, and not be taken under UMTRCA at taxpayer expense.

In addition, because "Durita" was a licensed active mill site, it does not fit within the definition of a vicinity property under section 101(8)(B). Any remaining materials at the "Durita" mill site are "derived" from the active production operation itself rather than from the inactive Naturita mill site. Once the uranium mill tailings were excavated and transported from the Naturita mill site to "Durita" for processing, they lost their characteristic as "residual radioactive materials." As set out above, that term means "waste in the form of tailings." Although the materials taken from the Naturita mill site to the "Durita" mill site were tailings, they were not "waste," since they were transported as a valuable industrial product for use in a profit making venture, i.e., the production of uranium for sale as yellow cake to private industry. Indeed, in 1978 and 1979, Ranchers had revenues of \$8,841,737 and \$12,401,067, respectively, from the leaching of uranium mill tailings. The inclusion of "Durita" as a vicinity property would thus seem contrary to Congress' intent that such vicinity properties not have been active mill sites themselves at the time of UMTRCA's passage.

Even assuming that the materials at the "Durita" mill site qualify as residual radioactive material derived from the Naturita site which Ranchers was

processing under license Colo. 317-02S for sale to a Federal agency, the site would still not be appropriate for designation. Section 101(8)(A)(ii) precludes designation where a license, issued by a state for the production of any uranium product from ores, is in effect on January 1, 1978. However, in the stipulation following section 101(6)(B)(ii) and pursuant to the procedures established in section 108(b), an exemption is provided where a license is issued for the reprocessing of residual radioactive materials (mill tailings) at a designated site. In this case, the uranium production at the "Durita" mill site using mill tailings from the Naturita site was undertaken prior to the designation of Naturita as a "processing site." Moreover, since neither Ranchers nor Hecla took any action to meet the requirements of section 108(b) after Naturita's designation, in the Department's view the exception would not apply.

DOE has given full and deliberative consideration to comments and objections to its Proposed Decision, and our responses to specific comments are set out below. These comments were instrumental in DOE's formulation of a final decision regarding whether to include the "Durita" property in the UMTRCA remedial action program. Accordingly, DOE has determined that the "Durita" property is neither a production site nor a vicinity property within the definition of a processing site under UMTRCA, and therefore is not appropriate for remedial action under the Act.

Response To Comments

In its comments and objections to DOE's proposed decision, Hecla responds:

[DOE's] rationale misconstrues the basic intent of Congress in enacting UMTRCA. Congress clearly directed DOE to perform remedial action on "residual radioactive material" (i.e., uranium tailings) that had been generated as a result of federally-induced uranium production programs in the period before 1971."

Hecla Comments, page 4.

Hecla asserts that relocating and reprocessing tailings from another site, one which qualifies for remedial action, should not change the government's obligation to perform remedial action at the new site, i.e., the Durita site. *Id.* at 5.

These comments exemplify the value of the notice and comment procedure adopted by DOE in this instance, because they succinctly identify the source of Hecla's basic misunderstanding of the statute authorizing DOE to take remedial action. Contrary to Hecla's belief,

Congress did not direct DOE simply to perform remedial action on "residual radioactive material", but to perform remedial action at qualified sites. Indeed, the Act instructs the Secretary to designate "processing sites within the United States which he determines requires (sic) remedial action to carry out the purposes of [Title I]." 42 U.S.C. 7901(b)(1) and 7912(a)(1). This determination is to be made against certain criteria set out in the Act. In the present case, the Secretary has determined that the designation of the Durita site would not carry out the purposes of the Act. In general, it is the Department's position that UMTRCA's purpose is to cleanup sites contaminated as a result of the production of uranium sold to the government. Durita is not such a site. Contrary to what appears to be Hecla's understanding, UMTRCA does not encompass the cleanup of all residual radioactive material at any location irrespective of the reasons the material came to be present at such location.

One of the criteria established in Title I for designating a site is that the candidate processing site be one "at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971, under a contract with any Federal agency." 42 U.S.C. 7911(6)(A). The Durita property was not such a site since neither Hecla nor its predecessor produced uranium there for sale to a Federal agency before 1971. Indeed, the Durita property was only utilized to produce uranium to private industry after 1971. DOE's reading of the Act is consistent with the legislative history. For example, the House Committee on Interior and Insular Affairs, in discussing the characteristics of the sites deemed appropriate for remedial action under UMTRCA, stated that "[a]ll of them consist of tailings resulting from operations under Federal contracts," and that "the Secretary of Energy need not designate any sites to be included in the authorized program which are currently under active license, or which contain tailings from commercial production, unless it can be shown that the tailings hazard could in no way be remedied without such designation." H.R. Rep. No. 95-1480(I), August 11, 1978, reprinted in 1978 U.S. Code Cong. & Ad. News 7433, 7434-36.

Based on this analysis, it is the Department's view that once Hecla relocated and reprocessed the tailings from the Naturita site, it created a new site, one which does not meet the basic requirement of the Act, i.e., that a site qualified for remedial action under UMTRCA be one at which uranium was

produced for sale to a federal agency prior to January 1, 1971.

Hecla submitted a number of comments addressing the "licensed site exemption." Hecla Comments, pp. 5-6. This exemption is a proviso in section 101(6)(A)(ii). It forecloses designation of a site containing residual radioactive materials which is licensed by the Nuclear Regulatory Commission (NRC) or an agreement state on or after January 1, 1978. Durita is such a site, and DOE set out this exemption as an additional basis on which Durita would not qualify for remedial action.

First, Hecla submits that section 115's prohibition on the expenditure of UMTRCA funds on licensed sites does not apply to uranium production from residual radioactive materials. This misconstrues the statute. While section 115, on its face, appears to provide an exception for residual radioactive materials, a reading of this section in light of section 101(6) and the purpose of the statute leads DOE to conclude that Congress' intent was that the only active licensed sites containing residual radioactive material that are appropriate for remediation are ones complying with the provisions of section 108(b). This conclusion follows from a reading of the last sentence of section 101(6): "A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 108(b)." Hecla did not comply with the stipulations contained in section 108(b) for its Durita remilling operation.

Hecla also states that "Congress logically concluded that activities involving reprocessing of uranium tailings should not trigger the 'licensed site' exemption, because such reprocessing neither increases the government's cleanup burden nor alters the fact that the tailings meet Title I criteria." Hecla Comments, p. 6. This view ignores that Hecla has created an entirely new site at Durita which it has contaminated with radioactive materials, and which did not operate to produce uranium for any federal agency. Taken to its logical end, Hecla would have DOE, at taxpayer expense, cleanup after it in the wake of Hecla's industrial ventures at whatever sites it chooses to operate from. We do not believe the Act authorizes this.

Hecla further argues that the Durita site does not meet the licensed site exemption since its license was not issued pursuant to Section 274 of the Atomic Energy Act (AEA) because the

NRC did not have authority to delegate licensing of byproduct material to the States. Hecla Comments at p. 7. This argument fails to recognize the interrelation of the AEA and UMTRCA. Statutorily, a license within this particular exemption must be issued by the appropriate federal agency or by a State "as permitted under section 274 of the Act [42 USCS 2021]." 42 USCS 7911(b)(A)(1) (emphasis added). While the NRC did not have licensing authority over byproduct material until 1981, a State may have entered into an agreement with respect to byproduct material prior to 1981 "as permitted under section 274 of the Atomic Energy Act of 1954." 42 USCS 2021(h)(1), (2) (emphasis added). See also, 10 CFR 150.31(a). Thus, it is our position that Hecla's license with the State of Colorado was issued "as permitted" under section 274 of the AEA. In any event, Hecla's argument here is specious. The licensed site exemption only applies with respect to sites containing residual radioactive materials at which uranium was produced for sale to a federal agency prior to 1971. Durita, as noted earlier, is not such a site.

Hecla also disagrees that the prohibition of section 101(b)(A)(ii) applies to "tailings", since the word used in that exemption is "ores". *Id.*, p. 7. The Department has determined that the word ores should be read to encompass tailings which are reprocessed to extract their uranium value. This is consistent with one definition of ores: "a source from which a valuable matter is extracted." Webster's Ninth New Collegiate Dictionary at 831 (1983). This is also consistent with the stipulation following section 101(b)(B)(ii) which, the Department believes, allows the Secretary to treat a license for the production of uranium from residual radioactive material, including tailings, as a license for the production of uranium from ores.

Finally, Hecla asserts that the final sentence of section 108(b) "creates an uncertainty as to whether issuance of such a license to satisfy section 108(b) would alter the Title I status of a given site," and that the final sentence of

section 101(b) clarifies that "such licenses would not alter that site's Title I status." *Id.*, p. 8. We agree that the final sentence of section 101(b) makes clear that remilling pursuant to section 108(b) would not fall within the licensed site exemption. But Hecla's private remilling operation was not conducted or licensed pursuant to section 108(b), and the Act is silent as to these other types of licensed operations. Hecla argues that this silence does not imply that "any post-UMTRCA reprocessing of residual radioactive material which is not in accordance with section 108(b) automatically triggers the definitional exception in section 101(b)(A)(ii)." Hecla Comments, p. 8. No support for this statement is put forward, and the Department is aware of none. As discussed above, it is the Department's view that the licensed site exemption would apply to an operation such as Hecla's remilling at Durita. However, the exemption could not arise in any event since it only applies to sites at which uranium was produced for sale to a federal agency. It is undisputed that this was not the case with Durita's uranium reprocessing operation.

It is Hecla's position that its Durita site further qualifies as a vicinity property under UMTRCA. It states that "reprocessing of the tailings did not change their basic physical characteristic as Title I material." Hecla Comments, p. 9. This again points up Hecla's basic misunderstanding of the Act. The residual radioactive material at Naturita derived its "characteristic as Title I material" because of its presence at a Title I designated production site, not simply because the material itself was "Title I." Thus, it is a site qualified for designation under UMTRCA which defines the material, not vice versa. An otherwise non-qualifying and active licensed production site cannot qualify for remedial action under UMTRCA simply because its uranium resource base is material from a Title I inactive production site.

Hecla seeks to qualify its Durita production site as a vicinity property by asserting that its use of residual radioactive material for the extraction of uranium is no different than other private users of tailings in building

materials, fill material and other profit-making ways. *Id.*, p. 10. But these other uses utilized the tailings as a waste product suited to those particular activities, i.e., generally foundation material. Hecla, on the other hand, utilized the tailings for their inherent commercial value as a uranium resource for its remilling business. The former uses were unregulated and unlicensed because the material was generally thought to be harmless. Hecla's operation, on the other hand, was regulated by the State, and it required a license under which Hecla is to take remedial action, action which Congress said should not be taken under UMTRCA. H.R. Rep. 95-1480(I), *supra*. It is not tenable, in the view of DOE, to assert that these situations are the same. Indeed, Congress, in describing the characteristics of vicinity properties, referred to "structures and buildings located in the vicinity of such site which are contaminated with residual radioactive materials derived from such site." House Report No. 95-1480 (II), September 30, 1978, reprinted in 1978 U.S. Code Cong. & Ad. News 7462. The Durita property is not such a structure or building.

The State of Colorado, after reviewing the Notice of Proposed Decision, states that "we are in agreement with the proposed decision to exclude the Durita property from remedial action under UMTRCA for the reasons stated in the Notice." State Comments.

No other comments were received.

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Issued in Washington, DC, July 13, 1988.

John E. Baublitz,
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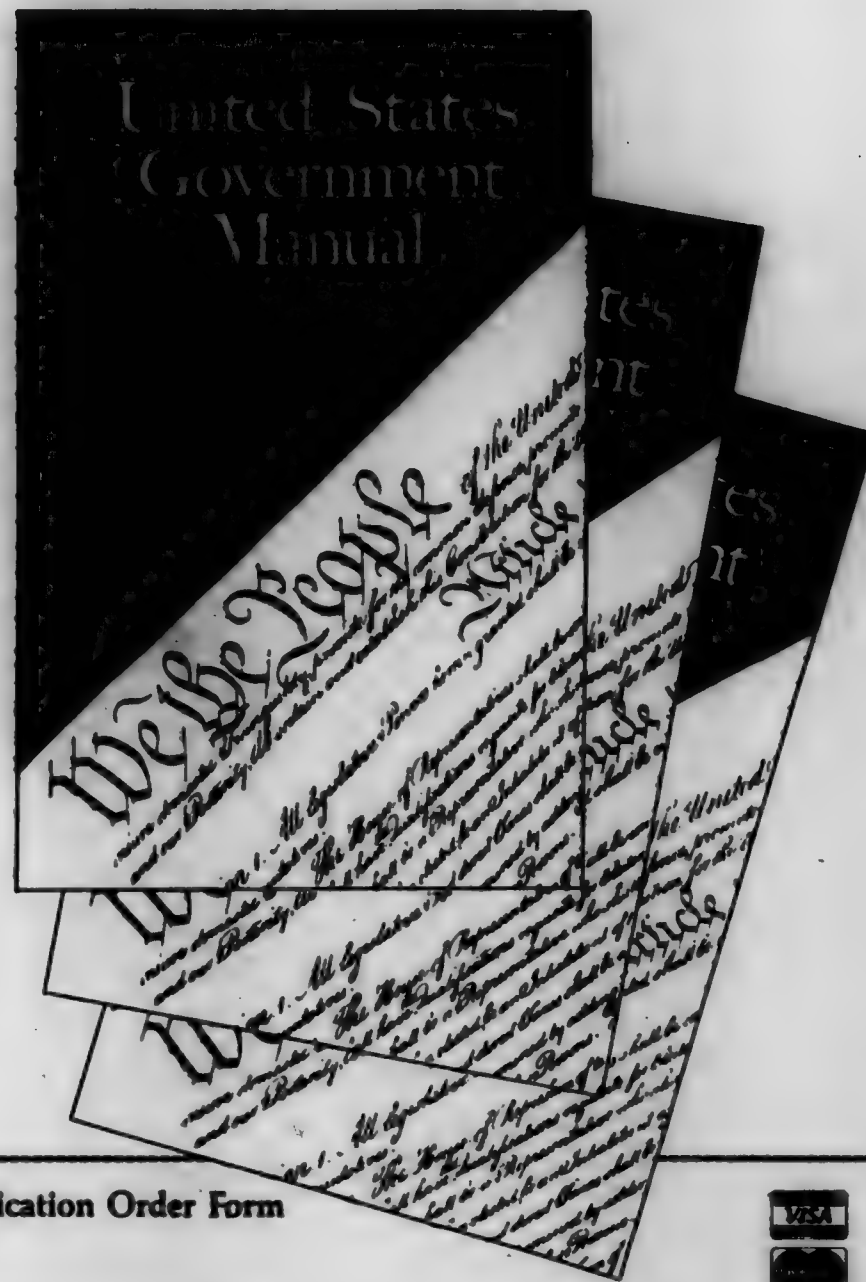
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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210

(INS Number: 1118-88)

Special Agricultural Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 210(b)(3)(B)(ii) of the Immigration Reform and Control Act of 1986 (IRCA) provides for the Attorney General to promulgate regulations relative to securing timely production of employment records from employers or farm labor contractors under the Special Agricultural Worker (SAW) program. This rule identifies Service procedures in securing SAW employment records.

DATES: The interim final rule is effective July 20, 1988. Comments must be received on or before August 19, 1988.

ADDRESSES: Written comments should be mailed in triplicate to Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "T" Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers, (SAW) (202) 786-3658.

SUPPLEMENTARY INFORMATION: Section 210.3(b)(4) is added to establish procedures for securing SAW employment records. This rule provides uniformity for securing records where a SAW applicant has filed an application, an interview has been conducted, the applicant's testimony appears credible and the Service has determined that the

application cannot be adjudicated in the absence of the employment records.

This rule provides for the use of regulatory procedures already in place at 8 CFR 287.4(a)(2) which enables the Service to "issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this Chapter, other than under Part 335 of this Chapter, or any application made ancillary to the proceedings."

In accordance with 5 U.S.C. 805(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR Part 299.

List of Subjects in 8 CFR Part 210

Aliens, Permanent resident status, Reporting and recordkeeping requirements, Temporary resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for Part 210 continues to read as follows:

Authority Pub. L. 99-603, 100 Stat. 3359; 8 U.S.C. 1101 note.

2. In § 210.3, a new paragraph (b)(4) added to read as follows:

§ 210.3 Eligibility.

(b) * * *
(4) *Securing SAW employment records.* When an applicant alleges that an employer or farm labor contractor refuses to provide the SAW applicant with employment records, the Service shall attempt to secure the employment records. However, prior to any attempt by the Service to secure the employment records, a SAW application must be filed, an interview must have been conducted, the applicant's testimony must support credibly his or her claim,

and the Service must determine that the application cannot be adjudicated in the absence of the employer or farm labor contractor records. If the employer or farm labor contractor refuses to release the needed employment records, District Directors may, after unsuccessful attempts for voluntary compliance, utilize section 235 of the Immigration and Nationality Act and issue a subpoena in accordance with 8 CFR 287.4.

Dated: June 30, 1988.

Richard E. Norton,
Associate Commissioner, Examinations,
Immigration and Naturalization Service.

(FR Doc. 88-16355 Filed 7-19-88; 8:45 am)

BILLING CODE 4110-10-10

FEDERAL TRADE COMMISSION

16 CFR Part 13

(Dkt. 8908)

Encyclopaedia Britannica, Inc., et al.;
Prohibited Trade Practices and
Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Modifying order.

SUMMARY: This order modifies the Preambles to Paragraphs I through IV, Paragraph ILC (Telephone Talk), and Paragraph ILL (No-Contact Period) of the 1976 final order (41 FR 17884) issued against the respondent. The Commission concludes that it is in the public interest to reopen the order and grant some of the modifications sought by the respondent. The modification of the Preambles clarifies that the order applies only to subsidiaries and employees of Encyclopaedia Britannica, Inc. engaged in selling or being recruited to sell via in-home, over-the-counter, direct mail, or telephone solicitations. The modification of Paragraph ILC requires respondent to disclose the sales purpose of a call or an appointment within 30 seconds of beginning a sales call or a call to make a sales appointment. The modification of Paragraph ILL allows respondent to contact purchasers to correct inadvertent errors on sales forms, or to obtain necessary information that respondent inadvertently failed to obtain during a sales presentation.

DATES: Final Order issued March 9, 1976. Modifying Order issued July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Jock Chung, FTC/S-4831, Washington, DC 20580. (202) 328-2984.

SUPPLEMENTARY INFORMATION: In the Matter of Encyclopaedia Britannica, Inc., et al. The prohibited trade practices and/or corrective actions, as set forth at 41 FR 17084, remain unchanged.

List of Subjects in 16 CFR Part 13

Encyclopaedias, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

Commissioners: Daniel Oliver, chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

[Docket No. 8908]

In the Matter of Encyclopaedia Britannica, Inc., Et Al.

Order Reopening the Proceeding and Modifying Cease and Desist Order

On September 22, 1987, Encyclopaedia Britannica, Inc. ("EB") filed with the Commission a request that the above-referenced proceeding be reopened and that the order issued therein on March 9, 1976, either

(1) Be set aside in its entirety; or
(2) Be modified by setting a date certain when the order would expire and in the interim modifying specific provisions; or

(3) Be modified by altering specific order provisions. The specific modifications requested were alterations to Parts I.B., II.C., II.H., IV., and the Preambles I-IV, and deletion of Parts I.D., I.E., II.L., and V. This petition replaced an earlier petition filed on April 2, 1987, that was subsequently withdrawn.

The petition contends that changed conditions of fact and law and the public interest require that the proceeding be reopened and the order be set aside or modified as respondent requests. One comment was received from placement of the petition on the public record.

On December 11, 1987, EB asserted that its petition has requested sunseting of the order in its entirety, or, in the alternative, sunseting of all the affirmative fencing-in provisions of the order. We disagree with EB. The petition sets forth the relief requested in its first page, and does not request sunseting all of the affirmative fencing-in provisions. If EB has wished to request such action, it could have clearly done so in its

subsequent refiling of January 22, 1988 so that the request would have clearly been presented to the public for comment. EB failed to do so. Even if the petition did request such relief, we would deny it for the reasons we here deny a sunseting of the entire order.

On December 29, 1987, EB submitted alternative language for the requested specific modifications and stated that it would accept whatever modifications the Commission would agree to.

On January 19, 1988, another comment regarding EB was received.

On January 22, 1988, EB withdrew its petition, and simultaneously refilled its petition with the addition of two affidavits, one from the president and one from the general counsel of EB. These affidavits provided clarification and additional evidence of some of the assertions EB made in its petition.

History of The Order Against EB

The complaint against EB and Britannica Home Library Services, Inc., ("BHLS") was issued by the Commission on December 11, 1972. It alleged that EB and BHLS has made certain false and misleading representations to induce consumers to purchase encyclopedias and accessories, to induce job recruits to accept sales positions, and to collect debts.

After several years of litigation, the Commission issued an order on March 9, 1976, which became effective on March 17, 1980, after the company exhausted its appeals. Since its effective date, the order has twice been modified at EB's request, first on October 28, 1980, and again on October 5, 1982.

Description of EB

EB publishes encyclopaedias and continuity book plans, and markets them through in-home sales talks, telephone solicitations, and over-the-counter sales. EB publishes and markets both the Encyclopaedia Britannica and the Compton's Encyclopaedia brands of encyclopedias. BHLS publishes and markets the annual supplements to encyclopaedias published by EB.

Description of the Order

The order comprises nine parts. Part I prohibits certain misrepresentations during employee recruitment and requires that certain information be supplied to prospective recruits. Part II prohibits certain misrepresentations during marketing of merchandise or services and requires that certain information be supplied to prospective buyers. Part III prohibits creation of any training devices or sales aids which are inconsistent with Parts I or II of the order. Part IV prohibits certain

misrepresentations in the marketing of continuity book programs and requires that certain information be supplied to prospective buyers. Part V prohibits certain misrepresentations during attempts to collect debts. Part VI requires measures to ensure compliance to the order by all respondents and their agents. Parts VII through IX are standard provisions requiring distribution of the order, notification to the Commission of any change in the corporate respondents, and filing of a compliance report with the Commission.

Summary of EB's Arguments for Reopening and Vacating or Sunseting the Order

In a request to reopen based on changed conditions or on public interest considerations, the burden is on the respondent to make the requisite satisfactory showing. Both the language of section 5(b) and its legislative history make it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979). The Commission is not required to reopen the order if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. In the present case, the petitioner has not met its burden to show that the order should be vacated or set to expire, and the Commission now declines to reopen the order to consider granting such relief.

Respondent alleges that three changed conditions of fact require the reopening and setting aside or modification: (1) The ownership and control of EB has been transferred to a private, noncommercial foundation, with profits from its operation going to the University of Chicago; (2) EB has instituted policies and procedures rendering the order unnecessary; and (3) EB has ceased the practices which caused the Commission to issue the complaint.

None of these allegations set forth changed conditions of fact that support reopening this matter. The Commission has previously considered and rejected in the context of EB's 1982 petition the argument that its transfer of ownership to the University of Chicago constitutes a change in fact. The implementation of internal policies to ensure adherence to

an order, and the alleged cessation of the practices giving rise to an order, are not the type of conduct to be rewarded by termination of an order, but are the minimum we require of a respondent for it to avoid civil penalties for violating the order.

Respondent further alleges that two changed conditions of law require the reopening and setting aside or modification: (1) Consumer protection statutes and regulations now render the order unnecessary; and (2) EB's situation is similar to that of various respondents whose orders (in decisions cited) were sunsetted or modified.

EB misconstrues the requirements for reopening an order based upon changed conditions of law. The Commission has consistently declined to reopen proceedings based upon changed conditions of law absent a specific showing that the order prohibits activity that subsequently has been found or made lawful. The petition makes no such showing, and therefore fails to state sufficient cause on this ground.

EB has cited several cases as precedent for reopening and sunseting or vacating orders on public interest grounds. These cases establish that the petitioner must demonstrate either that an order places it at a competitive disadvantage in the marketplace or that an order is no longer necessary because of changes in the marketplace. EB has shown neither.

EB has similarly not made a sufficient showing to support reopening the order to sunset the affirmative disclosure requirements on public interest grounds.

EB's Requests for Modifications to Specific Provisions

Respondent's petition alternatively alleges that several specific modifications to the order should be made. On December 29, 1987, EB stated that it would accept certain alternative modifications to those proposed in the petition. On January 22, 1988, EB provided additional evidence and clarification of its arguments for specific modifications. On June 9, 1988, EB stated that it would accept a proviso limiting Para. II.L. of the order in lieu of the deletion of that paragraph as EB had originally requested.

The Commission concludes that it is in the public interest to reopen the order and grant some of the modifications sought by the petitioners, but to deny other modifications requested.

Para. II.C. Telephone Talks

Para. II.C. requires EB to disclose the sales purpose of a telephone call before beginning any "sales presentation." The respondent complains that it has

expended considerable legal resources in defining what constitutes a "sales presentation." As respondent devises new telephone talks in the future, it is likely that this issue will continue to arise.

To prevent this, EB proposed in its petition that Para. II.C. be modified to require that in any telephone sales call, EB disclose the sales purpose within thirty seconds of the beginning of the call, and that in any call to set a sales appointment, EB disclose the sales purpose of the appointment before setting the date and time of the appointment. However, EB fails to show that it is in the public interest to reopen the order and grant a proposed modification that would, in effect, lessen consumer protection.

In its letter of December 29, 1987, EB indicated that it would accept a more limited modification of Para. II.C., which would require that EB disclose the sales purpose of a call or an appointment within thirty seconds of beginning a sales call or a call to make a sales appointment. This modification would not lessen consumer protection, and would effectively eliminate any conceivable ambiguity by establishing a bright line standard to measure future compliance.

Because of these advantages, we conclude that it is in the public interest to modify Para. II.C. of the order in accordance with the proposal in the letter of December 29, 1987.

Para. III.L. No-Contact Period

Para. III.L. forbids EB from contacting purchasers during the "cooling off" period when purchasers may cancel their contracts. One effect of this paragraph is to prevent EB from correcting certain inadvertent errors during this period.

In its petition, EB alleges that Para. III.L. should be deleted in the public interest to allow EB to contact consumers before the cooling-off period has expired so that EB may expedite corrections in the interests of consumers. EB has stated that this paragraph sometimes prevents it from contacting consumers to correct errors, such as when salespersons calculate incorrectly the date until which a consumer may cancel his or her order under the Commission's *Trade Regulation Rule, Cooling-Off Period for Door-to-Door Sales* (16 CFR 429.1). Such a calculation, if uncorrected, could mistakenly deprive a consumer of his or her rights. Therefore, there would be some benefit to the public if EB were allowed to contact persons to correct inadvertent mistakes or oversights. However, EB has not shown that it

would be in the public interest to delete Para. III.L. and allow EB to have unrestricted access to contact purchasers. EB has not shown that allowing such unrestricted access would benefit the public, or that allowing such access would relieve a burden from EB without potentially harming consumers' interests. On the other hand, we find that it would be in the public interest to modify the order to include the proviso to Para. III.L. agreed to by EB in its June 9, 1988 letter. That proviso allows EB to contact purchasers to correct inadvertent errors on sales forms, or to obtain necessary information that EB inadvertently failed to obtain during a sales presentation.

Preambles

The Preambles to paragraphs I through IV define the scope of coverage of the Order. In its petition, EB alleges that changes in fact require that the Preambles to paragraphs I through IV be modified so that the order covers EB subsidiaries only when they are engaged in certain selling practices and only when they are marketing merchandise or services related to encyclopedias, textbooks, reference materials, or educational materials. EB alleges that, because it has diversified its business, this modification is necessary to prevent the order from requiring EB to demand "false statements" from employees, i.e., statements from employees that they will comply with the order when in fact the order does not apply to them. However, the present order merely requires an agreement that the employee will comply with the order, and assumes that they are engaged in practices covered by the order. Obviously if the employee is not engaged in practices covered by the order, no obligation arises. EB has not made a showing sufficient to reopen the Order for this proposed modification, because no requirement exists that employees file "false statements."

In its letter of December 29, 1987, EB indicated that it would accept a more limited modification of the Preambles. This modification would clarify that the order applies only to subsidiaries and employees of EB engaged in selling or being recruited to sell via in-home, over-the-counter, direct mail, or telephone solicitations. Such has been the interpretation FTC staff has worked under, and the more limited modification is therefore a clarification of the coverage of this order.

This proposed modification, which merely states the Commission's interpretation of the order more clearly than does the present language, should

be made for purposes of clarification, and we so modify the order. Consistent with this modification and with our interpretation of the scope of the order, we interpret the phrase "successors and assigns, officers, agents, representatives and employees" in the preambles to Paras. I-IV, as "excluding independent retailers who derive the majority of their income from products or services not covered by the order, and who sell in-store." We also interpret the phrase "any of the publications, merchandise or services included in this order" in Para. VI.A. of the order as referring only to "any textbook, encyclopedia, reference or educational product or any publication, merchandise or service related thereto." And finally, we interpret the phrase "any person" in Para. VI.A. to exclude independent retailers who derive the majority of their income from products or services not covered by the order, and who sell in-store. We note that the exclusion of retailers is meant only to allow bona fide independent retailers to sell publications or merchandise covered by the order without being required to have their employees or assigns agree to the terms of the order, and without risking liability for infractions of the order. We note, however, that EB and BHLS are still liable under this order for violations of the order incurred "through any . . . device," including those incurred by independent retailers and their successors and assigns, officers, agents, representatives and employees, directly and indirectly.

Paras. I.B., I.D., I.E.

Para. I.B. prohibits EB from making misrepresentations regarding certain factors that would affect a recruit's income. Paras. I.D. and I.E. require certain disclosures be made to prospective sales representatives.

In its petition, EB alleges that Para. I.B. should be modified, and Paras. I.D. and I.E. deleted, to allow EB more flexibility in presenting prospective sales recruits with disclosures regarding employment. EB alleges that this modification would serve the public interest by eliminating needless burdens upon EB.

EB has not demonstrated that any burdens presented by the language it seeks to modify in Para. I. are so great as to outweigh benefits conferred by the language. If the order were modified as proposed, EB would not be required to make the disclosures which are presently required. These disclosures are necessary to inform prospective sales representatives of EB's unusual compensation methods, which in many ways treat the sales representatives as

independent contractors rather than employees, and which require sales representatives to bear many costs and risks normally borne by an employer rather than by a salesperson.

Para. II.H. Instant Research Service

Para. II.H. requires EB to disclose conditions and limitations on the use of its research services in writing in promotional materials and orally during sales presentations.

In its petition, EB alleged that Para. II.H. should be modified in the public interest to require respondents to disclose orally only that conditions and limitations upon its Instant Research Service exist. The petition also proposes to confine written disclosures to a single document that would be given to consumers during oral sales presentations, but would not necessarily be left with consumers. EB argues that this change would eliminate the present burden upon EB sales representatives to recite certain disclosures regarding EB's Instant Research Service to prospective purchasers when those same disclosures are given in writing to prospective purchasers. However, EB fails to show that it is in the public interest to reopen and modify the order as proposed.

In its letter of December 29, 1987, EB indicated that it would accept a modification of Para. II.H. that would require all advertising describing the features of a research service to disclose that conditions and limitations exist, and would require that these conditions and limitations be fully described in a written document to be left with purchasers during oral sales presentations. This modification would still lessen consumer protection, though less so than the modification proposed in the petition, because EB would no longer have to orally disclose the features of a research service to consumers. Such oral disclosure is more likely to ensure effective understanding by consumers than is a written disclosure, which may or may not be read by consumers. Therefore, it is not in the public interest to modify Para. II.H.

Para. IV. Continuity Book Sales

Para. IV.C. requires respondents EB and BHLS to make detailed disclosures about EB's continuity book plans on the return coupons, order forms, or any other documents used for responding to those plans.

EB alleges that Para. IV.C. should be modified to require on order forms only directions on where to find accompanying detailed disclosures of the terms and conditions for continuity book programs, not the detailed

disclosures themselves. EB alleges that it is presently at a competitive disadvantage in the marketplace, and that the proposed modification to Para. IV.C. would eliminate this disadvantage. EB further alleges that the proposed modification is consistent with the decisions in *G.R.I. Corp.*, 103 F.T.C. 442 (1984) and *Golden Tabs Pharmaceutical Co.*, 101 F.T.C. 410 (1983). Those decisions involved orders that originally required the companies to disclose all the terms and conditions to a "free" offer every time the offer was repeated within an advertisement and its attached coupon.

The Commission finds that EB has not established that the present order places EB at a substantial competitive disadvantage requiring modification of the order. Furthermore, the proposed modification would lessen consumer protection by lowering the likelihood that consumers will be fully informed about the terms of sale for EB's continuity book programs. In *G.R.I. Corp.* and *Golden Tabs*, the orders contemplated that full disclosure should always be made on or near a coupon. Both orders required that disclosure be made "in close proximity to the coupon," effectively requiring that a coupon either include complete disclosure itself or be a part of a document which includes the complete disclosure. EB's proposed modification, in contrast, would require only that complete disclosure be made in an "accompanying letter or advertisement." This language would allow EB to make its disclosures on a separate document from the coupon, which consumers may lose or not locate easily. Because EB's proposed modification to Para. IV.C. would lessen the likelihood that consumers will make fully informed decisions, it would not be in the public interest to modify the order as requested.

EB alleges that Para. IV.B.2. should be modified: (1) To clarify that EB may offer open-ended continuity book programs where the eventual number of volumes in a program is undetermined and (2) to clarify that the order requires only a disclosure that the eventual number of volumes is undetermined, and that the Para. IV preamble should be modified in accordance with EB's contention that Para. IV was never intended to cover annual supplements.

EB has not made a sufficient showing to reopen the order for either modification. Para. IV has never been interpreted to make it impracticable for EB to offer open-ended continuity programs, and we decline to so interpret it today. If EB does not know the total

number of volumes that will comprise a program, it may so state in its promotional material for that program, and in so doing it will be within the present order. Since the present order does not prevent EB from offering open-ended continuity programs, it is unnecessary to modify the order for the purpose of allowing EB to offer open-ended continuity programs.

We also decline to accept EB's contention that Para. IV was never intended to include annual supplements. EB has not offered any proof of its contention, but has merely pointed out that annual supplements are not mentioned in the documents recording the decisionmaking process leading to the order. However, the language of the preamble unmistakably applies Para. IV to annual supplements. Absent evidence that the Commission intended something other than the plain meaning of this provision, we decline to reopen the order to modify Para. IV.

Para. V. Debt Collection

EB alleges that deletion of Para. V is required by a change of law. It alleges that Para. V is rendered unnecessary by the Fair Debt Collection Practices Act. The order, however, covers EB's collection activities related to its own debts. These activities are not covered by the Fair Debt Collection Practices Act, which primarily covers activities by third party debt collectors.

EB has not demonstrated that the requirements of Para. V are a significant burden upon it, nor has it demonstrated that these practices should not be covered by the order. Therefore, EB has not made a showing sufficient to warrant reopening the order for consideration of this proposed modification.

It is therefore ordered that the Preambles to Paras. I through IV and Paras. II.C. and II.L. of the order be reopened and modified so that the order will read as follows:

This matter having been heard by the Commission upon the cross-appeals of complaint counsel and respondents' counsel from the initial decision and upon briefs and oral argument in support thereof and opposition thereto, and the Commission, for the reasons stated in the accompanying Opinion, having granted the appeals in part:

It is ordered that pages 1-117 of the initial decision of the administrative law judge be, and they hereby are, adopted as the Findings of Fact and Conclusions of Law of the Commission, with the following exceptions: those portions of pages 103-110 ("The Remedy") which are inconsistent with the opinion of the Commission herein.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

I. It is ordered that Respondent Encyclopaedia Britannica, Inc., and its successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division, or other device, engaged in direct selling to consumers, by means of in-home, over-the-counter, direct mail or telephone sales solicitations, in connection with the recruitment of persons to sell, rent, lease or distribute any textbook, encyclopedia, reference or educational product, or any other publication, merchandise or service, in commerce, or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, either orally or in writing, that:

(1) Respondent is offering positions in such fields as advertising analysis, public relations, marketing, interviewing, or in any field other than door-to-door sales, if door-to-door sales is included, to any extent, in the position for which persons are being recruited; or misrepresenting, in any manner, the job for which any person is being solicited;

(2) Persons will be trained as management trainees, or for other positions of responsibility concerned with administrative office functions unless, in fact, a formal management training program is available to persons accepting employment on the basis of such representations; or misrepresenting, in any manner, the amount and type of training that will be given;

(3) Any person who may be employed will contact prospects in their homes or places of business for the purposes of conducting surveys, advertising promotions, or other non-selling functions; or misrepresenting, in any manner, the purposes for which any person is engaged.

B. Misrepresenting, in any manner, the amount of income to be earned by any person or that may be earned by any person, the expenses that may be incurred by any person, the method of payment, or any condition or limitation imposed upon the compensation of any person.

C. Failing clearly and conspicuously to disclose in all advertising offering employment in any way involving door-to-door sales that respondent is recruiting persons for the sole purpose of soliciting or selling.

D. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at the initial face-to-face interview, and prior to executing any employment agreement with any such person, the following information:

(1) (a) That respondent is recruiting persons for the sole purpose of soliciting or selling;

(b) That the products or services being sold are encyclopedias or services to be used in connection therewith, or in the event that encyclopedias or such related services are not being sold, the products and services being sold; and

(c) The basis for compensating persons so engaged;

(2) that conditions or limitations upon the receipt of compensation, if any, do in fact

exist, together with an example of such a material condition or limitation, and that all such conditions and limitations will be stated in detail in an interview in the event an offer of employment is made to such person;

(3) where applicable, notification that such person will not be paid for time spent during orientation and training;

(4) that expenses will be incurred by such person in performing required duties, together with an example of such material expense, and that all such expense items will be stated in detail in an interview in the event an offer of employment is made to such person;

(5) (DELETED).

(6) that such soliciting or selling will be on an "in-home" basis, if such is the fact, or will include soliciting or selling on an "in-home" basis, if such is the fact.

E. Failing clearly and conspicuously to provide, both orally and in writing, to any prospective sales employee at an interview at which an offer of employment is made and prior to executing any employment agreement with any such person, the following information:

(1) A complete and detailed description of each condition and limitation imposed upon the receipt of any compensation;

(2) a complete and detailed description of any expense or expenses any such person may incur in performing the required duties;

(3) (a) the total number of sales employees employed by the office offering the position during the most recent calendar quarter, and

(b) the number of sales employees employed by the office who, during the prior calendar quarter, received net earnings equivalent to or greater than the amount represented in the advertisement to which the prospective employee is responding; provided, however, that if the office has been in existence for less than three months or has fewer than five sales employees, respondents shall provide the information described above pertaining to the Division in which the office is located; provided further that such information need not be furnished if the prospective sales employee contacts respondents more than ten days following the dissemination of the most recent advertisement that contains representations of earnings.

Respondent shall afford any prospective sales employee an adequate opportunity to review and consider the above information prior to requesting execution of any employment agreement.

F. Failing to furnish to persons at an interview when an offer of employment is made, and prior to executing any employment agreement with any such person, a copy of Paragraphs I, II, III, and VI of this Order, together with a cover letter as set forth in Appendix A attached hereto. Respondent shall afford any prospective sales employee an adequate opportunity to review and consider these provisions of the Order prior to requesting execution of any employment agreement.

II. IT IS FURTHER ORDERED that Respondent Encyclopaedia Britannica, Inc., and its successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any

corporation, subsidiary, division or other device, engaged in direct selling to consumers, by means of in-home, over-the-counter, direct mail or telephone sales solicitations, in connection with the publishing, advertising, offering for sale, sale, rental, lease or distribution of any textbook, encyclopedia, reference or educational product, or any other publication, merchandise or service, in commerce, or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, in any advertisement or promotional material that solicits participation in any contest, drawing, or sweepstakes, or solicits any response to any offer of merchandise, service, or information, and that employs any return card, coupon, or other device to respond to such solicitation, that a person who replies as requested will not be contacted directly by a salesperson for the purpose of selling respondents' products, unless such is the fact. Such advertisements or promotional material shall comply with this Paragraph only if they meet the criteria set forth in Appendix B.

B. Failing, upon the written request of the Associate Director for Enforcement or his designee, to (1) submit any advertisement or promotional material or (2) test any such advertisement or promotional material, using the Procedure set forth in Appendix B, to determine whether it complies with Paragraph II.A.

C. Failing to disclose, clearly and conspicuously, during the first 30 seconds of any telephone contact with prospective customers, the fact that the individual making the call is either soliciting the sale, rental, or lease of publications, merchandise, or services for respondents, or is arranging for a sales solicitation to be made, and that if the prospective customer so agrees, respondents will send a salesperson to visit said prospect for the purpose of soliciting the sale, rental, or lease of said publications, merchandise, or services.

D. Visiting the home or place of business of any person for the purpose of soliciting the sale, rental or lease of any publications, merchandise or service, unless at the time admission is sought into the home or place or business of such person, a business card of at least 2 inches by 3 1/4 inches containing only the following information is presented to such person:

- (1) The name of the corporation;
- (2) The name of the salesperson;
- (3) The term "sales representative";
- (4) An address and telephone number at which the corporation or salesperson may be contacted;
- (5) The product or the corporation logo or identifying mark.

E. Failing to give the card, required by Paragraph II(D) above, to each person and to provide each such person with an adequate opportunity to read the card before engaging any such person in any sales solicitation.

F. Representing, directly or by implication, either orally or in writing that:

- (1) Any person telephoning or visiting the home of any prospective purchaser is:
- (a) Engaged in or connected with "advertising," "marketing," "promotion,"

"education" or anything other than the door-to-door sale of encyclopedias or other reference materials.

(b) Conducting, taking or participating in a survey, advertising research analysis or any other information gathering activity, or

(c) Telephoning or visiting the home of said prospect for the primary purpose of delivering or disseminating prizes, gifts, gift certificates, chances in any contest, drawing, sweepstakes, educational fund, or any other merchandise or item of chance.

(2) Only a few minutes will be required to complete the visit inside the prospective purchaser's home or place of business; or misrepresenting, in any manner, the period of time required to complete the sales or other presentation;

(3) An offer is limited, must be accepted immediately or within any specified time period, or is a special offer, unless such is a fact; or misrepresenting, in any manner, the duration of any sales offer;

(4) Any publication, merchandise or service is being offered free, without cost, or is given as a bonus or otherwise to any prospective purchaser of respondent's publications, merchandise or services agreeing to perform any advertising, promotional or selling function, including but not limited to, any of the following acts or similar acts:

(a) Permit their names to be listed as local owners of the product or service;

(b) Provide the name of any person who may be interested in purchasing any publication, merchandise or service;

(c) Write a letter evaluating the merits of any publication or other item which may be used in advertising; or

(5) Any publication, merchandise, or service is being offered free, without cost, or is given as a bonus or otherwise to any purchaser of respondents' publications, merchandise, or services, pursuant to any agreement to purchase, rent, or lease any other publication, merchandise, service, or combination thereof from respondent, unless respondent complies with all of the terms of the Federal Trade Commission's "Guide Concerning Use of the Word 'Free' and Similar Representations," 16 C.F.R. Part 251, which is hereby incorporated into this Order, and with any modifications or changes that are made to this Guide. All of the provisions of the aforesaid Guide shall be construed as mandatory and binding upon the respondents.

G. Representing, directly or by implication, either orally or in writing that:

(1) Any person using any research service will receive answers to questions regarding all subjects other than legal or medical advice; or misrepresenting, in any manner, the research service that will be furnished to subscribers;

(2) Any answer provided by any research service is the product of detailed, exhaustive or original research generated by the specific question asked by any person utilizing said service, unless such is the fact; or misrepresenting, in any manner, the extent of research, preparation or quality of any answer furnished by any such research service.

H. Failing to disclose, clearly and conspicuously, in writing on all promotional

materials describing any research service, and orally during the course of any sales or other presentation relating to said service, each condition or limitation placed upon the use of such research service.

I. Representing to any person, directly or by implication, either orally or in writing that:

(1) Any price is the retail, regular, usual, or words of similar import or effect, price for any publication in any binding, merchandise or service, unless such price is an actual, bona fide price for which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

(2) Any price is the retail, regular, usual or words of similar import or effect, price for any set of publications in any binding and in combination with any other publication, merchandise or service, unless such price is an actual, bona fide price for which each such publication has been openly and actively offered for sale in the recent and regular course of business for a reasonably substantial period of time.

(3) Savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from respondent's former prices for its products unless:

(a) Such savings claims are based upon retail, regular, or usual prices, or combination prices, arrived at in accordance with Paragraph II (1) and (2) above;

(b) Respondent clearly and conspicuously specifies the publication, merchandise or service, or combination thereof, and the price from which the savings are to be realized; and

(c) The publication, merchandise or service is of comparable quality in all material respects with the publication, merchandise or service sold at the higher price;

(4) Savings may be realized by the purchase, rental or lease of any publication, merchandise or service, or any combination thereof, from comparable products of competitors unless:

(a) Respondent clearly and conspicuously specifies the publication, merchandise or service, or combination thereof, from which the savings are to be realized;

(b) The price utilized for comparison purposes is the price at which a substantial number of persons have purchased the item referred to in (a) immediately above;

(c) The item referred to in (a) above is of comparable quality in all material respects to the product being sold.

J. Misrepresenting in any manner, either orally or in writing:

(1) The amount of savings to be realized by any person who enters into an agreement with respondent for any publication, merchandise or service; or

(2) That any publication, merchandise or service is being offered free or without charge, or is given to any such person.

K. Failing to comply with any and all provisions of the Commission's *Trade Regulation Rule, Cooling-Off Period For Door-To-Door Sales*, (16 CFR 429.1), which are in effect on the date this Order becomes effective, and with any modifications or

changes in the aforesaid Rule which may be made from time to time. A copy of the said Rule shall be made a part of this Order for purposes of complying with other provisions hereof.

L. Initiating contact with any purchaser through any means for any reason from the time said purchaser enters into any agreement containing a NOTICE OF CANCELLATION, as required by Paragraph II K of this Order, until said buyer's cancellation period has expired. Provided, however, that nothing in this paragraph shall be construed to prevent respondent from contacting any purchaser to correct inadvertent errors on necessary sales forms, or to obtain necessary information that respondent inadvertently failed to obtain during the sales presentation.

M. Failing to maintain a copy of each NOTICE OF CANCELLATION received pursuant to Paragraph II.K. of this Order, and making said documents available for inspection and copying by the Commission's staff upon reasonable notice. Any such NOTICE shall be maintained for a period of three (3) years from date of receipt by respondent.

N. Failing to keep adequate records, which shall be maintained for a period of three (3) years and made available to the Commission's staff for inspection and copying upon reasonable notice, from which the validity of any savings claims, retail price claims, comparative value claims, or other representations of the type described in Paragraphs II.F.(5), II.I and II.J of this Order can be determined.

O. (DELETED).

P. (DELETED).

III. It is further ordered that Respondent Encyclopaedia Britannica, Inc., and its successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division, or other device, engaged in direct selling to consumers, by means of in-home, over-the-counter, direct mail or telephone sales solicitations, in connection with the recruitment, training, or orientation of any person to sell, rent, lease or distribute any textbook, encyclopedia, reference or educational product, or any other publication, merchandise or service, in commerce, or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, distributing, or using any training tapes, sales manuals, or any other document, method or device which contains any representation or instruction inconsistent with any provision of Paragraph I or Paragraph II of the Order.

IV. It is further ordered that Respondents Encyclopaedia Britannica, Inc. and Britannica Home Library Services, Inc. and their successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, engaged in direct selling to consumers, by means of in-home, over-the-counter, direct mail or telephone sales solicitations, in connection with the advertising, offering for sale, sale or distribution of any textbook, encyclopedia, reference or educational product, or any

other publication, merchandise or service, through the use of any program, plan, method, or device, that provides or purports to provide for the sale or distribution of any of said items to any person at intervals on an approval basis, in commerce, or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, either orally or in writing that:

(1) Any person has the option to receive each publication, merchandise or service, separately and individually, and to accept or reject same, unless such person is allowed in all instances to receive and to purchase or reject each such publication, merchandise or service separately and individually;

(2) Any person will not receive any further publication, merchandise or service after he notifies respondents of his cancellation of any such program, plan or method of sale of distribution, unless such is the fact; or misrepresenting, in any manner, any consequence resulting from any person's cancellation of his participation in any such program, plan, or method of sale or distribution; and

(3) Any person incurs no risk or obligation by joining or participating in any such program, plan, or method of sale or distribution; or misrepresenting, in any manner, any condition, right, duty or obligation imposed on any person.

B. Disseminating, or causing the dissemination of, any advertisement which fails to disclose in a clear and conspicuous manner:

(1) A description of the conditions and terms of any such program, plan, or method of sale or distribution, and the duties, risks and obligations of any subscriber thereto; and

(2) A description of each publication, merchandise or service to be offered for sale, the billing charge to be made therefor, the anticipated total number of publications, merchandise or services included in any such program, plan or method of sale or distribution, the number of publications, merchandise or services that will be included in each shipment of such items, and the number of and the intervals between each such shipment.

C. Failing to disclose, clearly and conspicuously, on any return coupon, order form or any other document used for responding to any such program, plan, or method of sale or distribution, the following information:

(1) The anticipated total number of publications, merchandise or services included in any such program, plan, or method of sale or distribution;

(2) The number of publications, merchandise or services that will be included in each shipment of such items; and

(3) The number of and the intervals between each such shipment.

D. Failing to disclose, clearly and conspicuously, in immediate conjunction with any publication, merchandise, service or notice thereof sent to any subscriber, the anticipated date on which respondents will initiate processing of the next shipment of any such item.

E. Failing to provide to any person in conjunction with each notice of any shipment of any publication, merchandise or service, a clear and conspicuous means by which said person may exercise his option or right to cancel said shipment, if such is his right.

V. It is further ordered, that respondents Encyclopaedia Britannica, Inc. and Britannica Home Library Services, Inc. and their successors and assigns, officers, agents, representatives and employees, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the collection or attempted collection of any debt allegedly owing to respondents for the purchase or other receipt of any textbook, encyclopedia, reference or educational product, or any other publication, merchandise or service, in commerce, or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, either orally or in writing that:

A. Any letter, notice or other communication which has been prepared, originated or composed by respondents has been prepared, originated or composed by any other person, firm or corporation; and

B. Suit will be instituted to recover any delinquent debt, or that any delinquent debt will be transferred to any attorney with instructions to institute suit, or that any other legal step to collect any outstanding debt will be taken, unless a definite date is set forth for such action and such are the facts; or misrepresenting, in any manner, respondents' relationship with, or instructions to, any attorney, or the course of action that will be taken by any attorney.

VI. It is further ordered, That respondents, Encyclopaedia Britannica, Inc. and Britannica Home Library Services, Inc., do the following:

A. Deliver, by registered mail, a copy of this order to each of their salesmen, agents, solicitors, independent contractors, or to any person engaged in the promotion, sale or distribution of any of the publications, merchandise or services included in this order, and to any person engaged by respondents to perform such duties in the future at the time such person is so engaged;

B. Obtain from each person described in Paragraph VI(A) a signed statement setting forth his intention to conform his business practices to the requirements of this order; retain said statement during the period of three (3) years thereafter; and make said statement available to the Commission's staff for inspection and copying upon reasonable notice;

C. Advise each such present and future salesman, agent, solicitor, independent contractor or any person engaged in the promotion, sale or distribution of any of the publications, merchandise or services included in this order that respondents will terminate the engagement or services of any such person, unless such person agrees to and does furnish to respondents a statement required by Paragraph VI(B), above; and

D. If any such person will not agree to file a statement with respondents as required by Paragraph VI(B) above and be bound by the provisions of this order, the respondents shall

immediately terminate the services of such person.

VII. It is further ordered, That the respondents shall forthwith distribute a copy of this order to each of their operating divisions.

VIII. It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of which may affect compliance obligations arising out of this order.

IX. It is further ordered, That respondents shall, within sixty (60) days after the effective date of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

APPENDIX A

Notice

Attached hereto are the pertinent provisions of a cease and desist order entered against Encyclopaedia Britannica by the Federal Trade Commission, an agency of the Federal Government. Violation of any provision of this Order can result in severe monetary penalties to Encyclopaedia Britannica. If you are employed by Encyclopaedia Britannica, you will be required to observe the provisions of this Order. Violation of any provision of this Order by an employee constitutes a violation of Federal law.

You should carefully read this Order before agreeing to any employment arranged with Encyclopaedia Britannica.

[President]
Encyclopaedia Britannica

APPENDIX B

This Appendix sets forth the methodology respondents shall employ to determine whether advertisements or promotional materials represent that a person who relies as requested may be contacted directly by a salesperson for the purpose of selling respondents' products, and the criteria for determining whether such advertisements or promotional materials comply with Paragraph II.A.

1. Format—Respondents shall test the comprehension level of advertisements or promotional material by conducting a mail-intercept test, using the questionnaire attached hereto as exhibit 1.

2. Sample Size—The sample shall consist of at least 150 subjects.

3. Demographics—Test subjects must:

- (a) Be between 25 and 49 years of age;
- (b) Have at least one child fifteen years of age or younger living at home;
- (c) Have household incomes of at least \$15,000 per year; provided that, upon respondents' request, the Division of Enforcement shall increase this figure by increments of \$5,000 whenever the percentage of households earning at least the requested amount equals or exceeds the percentage of households that, according to the 1980 United States Census, have household incomes of at least \$15,000 per year. The data for future changes shall be based on the most recently

published edition of the *Statistical Abstract of the United States*.

4. Location of Markets—The interviewing will be conducted in four geographically dispersed markets. The same central location facilities will be used wherever possible. If it is necessary to change any interviewing facility, the new facility shall have demographic characteristics similar to those of the facility it is replacing.

5. Criteria for acceptability of new coupon copy—New coupon copy shall comply with Paragraph II.A if at least seventy-five percent of the test subjects answer "yes" to question 6(b) of the questionnaire (exhibit 1).

Modifications to this Appendix, including the questionnaire, may be made upon a request by respondents and the approval of the Associate Director for Enforcement.

EXHIBIT 1

STUDY: COUPON COMPREHENSION STUDY

MARKETS:

Cleveland () -1
Boston () -3

(9)
New York () -2
Kansas City () -4

CARD:

INTERVIEWER'S NAME: _____

DATE: _____

TIME INTERVIEW BEGINS: _____

Hello, I'm _____ from _____. Today we are conducting a survey among men and women between the ages of 25 and 49 years of age.

1. Please tell me your approximate age. (READ LIST) (11)

Under 25 _____ Terminate
25 to 29 years _____ () -1
30 to 34 years _____ () -2
35 to 39 years _____ () -3
40 to 44 years _____ ()
45 to 49 years _____ ()
50 years and older _____ Terminate
Refused _____ Terminate

2. Do you have any children living at home 15 years of age or younger?

Yes _____ ()
No _____ Terminate

3. What are the ages of your children who live at home? (CHECK AS MANY AS APPLY) (12)

16 years or above _____ () -1
12 years to 15 years _____ () -2
8 years to 11 years _____ () -3
4 years to 7 years _____ () -4
3 years or younger _____ () -5

4a. Is your total family income:

\$15,000 and above _____ ()
Below \$15,000 _____ Terminate
Refused _____ Terminate

4b. Sex:

Male _____ () -1
Female _____ () -2

TAKE RESPONDENT TO A PRIVATE INTERVIEWING AREA IN YOUR CENTRAL LOCATION FACILITY FOR THE BALANCE OF THE INTERVIEW.

(HOLD UP AD IN A MANNER THAT PERMITS RESPONDENT TO SEE IT—COLOR CODED WITH QUESTIONNAIRE—AND SAY:)

"Suppose you saw this ad, and the coupon that was attached to it".

(HAND COUPON CARD—COLOR CODED WITH QUESTIONNAIRE—TO RESPONDENT AND SAY:)

"Now, using your imagination for a moment, assume you want to fill in and return this coupon which would be part of this ad for ENCyclopaedia Britannica".

"Read this coupon as though you were interested enough to fill it in".

(DO NOT RUSH RESPONDENT. TAKE COUPON CARD FROM RESPONDENT WHEN HE/SHE HAS FINISHED READING.)

BE SURE TEST COUPON CARD AND AD ARE OUT OF SIGHT BEFORE ASKING:

5a. Based on your reading of the coupon, what would you expect to happen if you send in the coupon? (PROBE FULLY AND CLARIFY)

(14) _____

(15) _____

(16) _____

(17) _____

5b. What else would you expect to happen? (PROBE FULLY AND CLARIFY)

(18) _____

(19) _____

(20) _____

(21) _____

5c. Is there anything else you would expect to happen?

(22) _____

(23) _____

(24) _____

(25) _____

"Now, I'd like to ask you a few more questions".

(INTERVIEWER: START AT THE "X" MARKED QUESTION AND PROCEED TO NEXT ONE, AND THEN BACK TO THE FIRST ONE, ETC.)

() 6a. Based on your reading of the coupon, would you expect to receive a free booklet, if you send in the coupon? (26)

Yes _____ () -1
No _____ () -2

Don't know (Volunteered) _____ () -3.

() 6b. Based on your reading of the coupon, would you expect a sales representative for ENCyclopaedia Britannica to contact you, if you send in the coupon? (27)

Yes _____ () -1
No _____ () -2
Don't know (Volunteered) _____ () -3.

() 6c. Based on your reading of the coupon, would you expect to get a free book rack, if you send in the coupon? (28)

Yes _____ () -1
No _____ () -2
Don't know (Volunteered) _____ () -3.

() 6d. Based on your reading of the coupon, would you expect to get a free globe of the world, if you send in the coupon? (29)

Yes _____ () -1
No _____ () -2
Don't know (Volunteered) _____ () -3.

If yes to Q. 6b.

7. If someone sent in the coupon, how likely do you think it would be that a sales representative from ENCyclopaedia Britannica would contact that person? (READ FIRST FOUR RESPONSES ONLY) (30)

Very likely _____ () -1
Fairly likely _____ () -2
Not too likely _____ () -3
Not likely at all _____ () -4
Don't know (Volunteered) _____ () -5.

RESPONDENT'S NAME _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____

TIME INTERVIEW ENDED: _____

(Area Code) _____

VALIDATED BY: _____

(31) _____

(32) _____

(33) _____

(34) _____

(35) _____

By the Commission, Commissioner Calvani dissenting.

Benjamin I. Berman,

Acting Secretary.

Statement of Chairman Daniel Oliver Concurring in Part and Dissenting in Part in the Matter of Encyclopaedia Britannica, Inc., et al. Petition to Reopen and Modify Consent Order

This is the third time in eight years the Commission has found it necessary to modify the order issued against Encyclopaedia Britannica, Inc. ("EB"). That experience should teach us something about the wisdom of entering

orders of such length and excruciating detail. I doubt that it is necessary for the Commission to micro-manage a respondent's business so closely in order to achieve effective relief. Nevertheless, that issue is water under the bridge. Accepting the EB order as a given, I turn to the merits of EB's latest modification petition.

I agree with the conclusion that EB has failed to demonstrate that changed conditions of fact or law require vacating, sunseting, or modifying the order. I also agree that EB has not shown that public interest considerations support vacating or sunseting the entire order, but that such considerations do support modifying specific provisions of the order. I therefore concur in the modifications and interpretations set forth in the Commission's order reopening this proceeding. I would go further, however, and grant two of EB's other requests.

First, I would grant EB's request to modify Paragraph II.H of the order.¹ Paragraph II.H requires detailed disclosure of all conditions and limitations on the use of EB's research services, both orally during sales presentations and in any written promotional materials. EB proposes to streamline this requirement. The requested modification would require all advertising describing the features of a research service to disclose that conditions and limitations exist, and would require that the conditions and limitations themselves be spelled out in a document left with consumers during oral sales presentations. Sales representatives would also be required to disclose orally that conditions and limitations exist and to refer consumers to the disclosure document for complete details.

In my view, this modification would not lessen the protection consumers derive from Paragraph II.H. The Commission order asserts that "oral disclosure is more likely to ensure effective understanding by consumers than is a written disclosure," but no support is offered for that assertion. Even assuming its truth, however, I would not automatically conclude that consumers would be less informed under the modification. It seems to me that a system in which consumers are alerted not once, but twice (in advertising and orally during the sales presentation), to the existence of conditions and limitations, are twice directed to a document explaining those conditions and limitations in full, and

are then left with the document to study at their leisure, is reasonably calculated to ensure effective understanding. I fail to see how requiring EB to duplicate the disclosures orally produces additional benefits.

At the same time, the costs of complying with Paragraph II.H would decrease dramatically under the proposed revision. EB would no longer be required to train sales representatives to memorize and recite detailed disclosures. Neither EB's counsel nor FTC enforcement staff would have to devote as many resources to reviewing ads and sales scripts. And oral sales presentations would be shortened, reducing opportunity costs for consumers—who, according to EB, often prefer not to listen to long-winded disclosures—and allowing EB's representatives to increase productivity by conducting a greater number of presentations in a given amount of time.

Because the costs imposed on a firm by a Commission order presumably are passed on to consumers in the form of higher prices, consumers benefit from modifications that increase an order's economic efficiency (i.e., achieve the same level of protection at lower cost or achieve a greater level of protection with no increase in costs). EB's proposed change to Paragraph II.H, which would maintain the current level of protection at less cost, is just such an efficiency-enhancing modification. Thus, I believe the public interest would be served by making this modification.

For similar reasons, I would also grant EB's request to modify Paragraph IV.C of the order. That provision requires EB to place detailed disclosures about its continuity book plans on return coupons and order forms. The respondent urges that Paragraph IV.C be modified so that order forms are required only to refer to full disclosures in accompanying materials or advertisements. Like the proposed change to Paragraph II.H, this approach would eliminate needless duplication while still providing ample safeguards to ensure that consumers understand the terms of EB's offer. Granting the request would therefore be in the public interest.²

¹ Granting this request would also be consistent with the Commission's actions in *G.R.I. Corporation*, 103 F.T.C. 442 (1984), and *Golden Tole Pharmaceutical Co.*, 101 F.T.C. 410 (1983). Those cases both involved orders requiring disclosure of the terms of a "free" offer every time the offer was repeated within a single ad and attached coupon. The Commission modified each order to eliminate the need to repeat the conditions on the coupon, as long as the coupon referred the reader to the text of the accompanying ad for a full disclosure of the conditions.

² I refer here to the revised request presented in EB's December 28, 1987 letter, not to the request as presented in its original petition.

Finally, although I concur in the decision not to modify Paragraphs I.B, I.D and I.E of the order in the specific manner requested by EB, I have no doubt that those provisions also could be modified in a way that reduces costs without lessening the protection afforded consumers. The Commission's order states that EB has not demonstrated that the burdens imposed by the language it seeks to modify outweigh the benefits conferred by that language. That may be so, but that observation skips over the question whether the burdens could be reduced while maintaining the same level of benefits.

For the reasons stated above, I dissent from the portions of the Commission's order denying the requests to modify Paragraphs II.H and IV.C. I also urge the Commission to consider carefully before issuing another order as detailed as this one. While we must ensure that law violations are effectively remedied, we should be conscious of the enormous amount of staff resources consumed in judging compliance with such detailed requirements—and in reviewing the repeated order modification petitions they spawn. This case is already a prime example of that type of resource commitment, and I doubt that we have seen the last of EB.

Dissenting Statement of Commissioner Calvani

The majority modifies the order against Encyclopaedia Britannica (EB) in several respects. I agree that most of these changes are justified. However, I do not agree that the modification to paragraph II.L of the EB order, described on pages eight and nine of the majority's opinion, is justified. Therefore, I have voted against the majority's order.

Statement of Commissioner Arcuena Concurring in Part and Dissenting in Part in Encyclopaedia Britannica, Inc. (D. 8988)

I concur in the Commission's decision to deny Encyclopaedia Britannica's petition to set aside the order in Docket No. 8908 or "sunset" that order. I also concur in the Commission's decision that the requested modifications of Paragraphs II.C. and II.L. and the Preambles to Paragraphs I through IV are in the public interest.

I dissent only from the Commission's denial of the requested modification of Paragraph II.H, which requires both oral and written disclosures of all conditions and limitations on the use of Encyclopaedia Britannica's research service. I believe that the requested modification (which would require EB

salespeople to disclose orally that conditions and limitations exist and are described fully in a written document that will be given to each prospective customer, and also would require that such a document actually be provided to the prospective customer) is in the public interest. The modified provision would give consumers sufficient information about the conditions and limitations on the research service, and would spare Encyclopaedia Britannica's salespeople and their prospective customers from a lengthy and perhaps unwanted oral recitation of those conditions and limitations.

Issued: July 5, 1988.

[FR Doc. 88-16293 Filed 7-19-88; 8:45 am]
BILLING CODE 5750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Cefadroxil Powder for Oral Suspension

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Laboratories, Inc., providing for safe and effective use of cefadroxil powder for oral suspension for treating certain genitourinary tract and skin and soft tissue infections of dogs, and skin and soft tissue infections of cats.

EFFECTIVE DATE: July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Inc., Division of American Home Products Corp., 800 Fifth St. NW., Fort Dodge, IA 50501-0508, filed NADA 140-884 providing for safe and effective use of Cefa-Drops® (cefadroxil powder for oral suspension). When reconstituted to an aqueous suspension, the drug is given orally to dogs for treating genitourinary tract infections (cystitis) caused by susceptible strains of *Escherichia coli*, *Proteus mirabilis*, and *Staphylococcus aureus*; and skin and soft tissue infections including cellulitis, pyoderma, dermatitis, wound infections, and abscesses caused by susceptible strains

of *Staphylococcus aureus*. The reconstituted drug is given orally to cats for treating skin and soft tissue infections including abscesses, wound infections, cellulitis, and dermatitis caused by susceptible strains of *Pasteurella multocida*, *Staphylococcus aureus*, *Staphylococcus epidermidis*, and *Streptococcus* spp.

The NADA is approved and the regulations are amended by adding new § 520.315 to reflect this approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:
Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by adding new § 520.315 to read as follows:

§ 520.315 Cefadroxil powder for oral suspension.

(a) *Specifications.* Cefadroxil powder is reconstituted to form a 50 milligram-per-milliliter aqueous suspension.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) For use in dogs as follows:

(i) *Indications for use.* For treating genitourinary tract infections (cystitis) caused by susceptible strains of *Escherichia coli*, *Proteus mirabilis*, and

Staphylococcus aureus; and skin and soft tissue infections including cellulitis, pyoderma, dermatitis, wound infections, and abscesses caused by susceptible strains of *Staphylococcus aureus*.

(ii) *Amount.* 10 milligrams per pound of body weight, twice daily.

(2) For use in cats as follows:

(i) *Indications for use.* For treating skin and soft tissue infections including abscesses, wound infections, cellulitis, and dermatitis caused by susceptible strains of *Pasteurella multocida*, *Staphylococcus aureus*, *Staphylococcus epidermidis*, and *Streptococcus* spp.

(ii) *Amount.* 10 milligrams per pound of body weight, once daily.

(3) *Limitations.* Discard unused portion of reconstituted product after 14 days. Treatment should continue for 48 hours after animal is afebrile or asymptomatic. If no response after 3 days, discontinue treatment and reevaluate therapy. Not for use in animals raised for food production. Safe use in pregnant or breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 12, 1988.

Richard H. Teske,
Deputy Director, Center for Veterinary Medicine.

[FR Doc. 88-16298 Filed 7-19-88; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove that portion of the regulations reflecting approval of a new animal drug application (NADA) held by Central Soya Co., Inc. The NADA provides for the use of a Type A medicated article containing 265.5 or 261.7 grams of monensin per ton for making Type C medicated feeds for broiler chickens. Elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue

of the Federal Register, FDA is withdrawing approval of Central Soya Co., Inc.'s NADA 119-546. The NADA provides for manufacturing Type A medicated articles for export which contain 265.5 or 261.7 grams of monensin per ton for use in making Type C medicated feeds for broiler chickens. The feeds are used as an aid in the prevention of coccidiosis. This document removes 21 CFR 558.355(b)(10), which reflects approval of the NADA.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 62 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended by removing paragraph (b)(10) and reserving it.

Dated: July 12, 1988.

Richard H. Teske,
Deputy Director, Center for Veterinary Medicine.

[FR Doc. 88-16294 Filed 7-19-88; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1925

[Docket No. H-330]

Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite

AGENCY: Occupational Safety and Health Administration, Labor.
ACTION: Extension of partial stay and amendment of final rule.

SUMMARY: OSHA is hereby extending the partial administrative stay of the revised final standards for occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry (§ 1910.1001) and construction (§ 1918.58), insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and

actinolite. The current partial stay, originally set to expire on April 21, 1987 and extended until July 21, 1988, is being further extended until July 21, 1989 to allow OSHA to conduct supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standard as asbestos, or should be treated in some other way. OSHA also is making minor conforming amendments to notes to the affected standards.

DATES: The partial stay of §§ 1910.1001 and 1925.58 is extended until July 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: In June 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry and construction which were to be effective on July 21, 1986. (See 51 FR 22812 *et seq.*, June 20, 1986).

On October 17, 1986 OSHA issued a partial stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite, in order to enable the Agency to review new submissions raising questions about the appropriateness of regulating these minerals in the revised asbestos standards, and to allow sufficient time to reopen the rulemaking record and conduct supplemental rulemaking proceedings limited to this issue (51 FR 37002).

OSHA extended the stay until July 21, 1988 in a notice published on April 30, 1987. (52 FR 15722). At that time OSHA stated that it was beginning to draft a notice of proposed rulemaking and was collecting data relating to the issue of whether and how to regulate these non-asbestiform minerals including the feasibility of regulating all impacted industries. The length of the initial partial stay had proven inadequate for the Agency to complete the rulemaking procedures contemplated because of the variety of the impacted industries.

Because of the problems described in the previous notice, OSHA now anticipates that it can publish a notice of proposed rulemaking concerning how to regulate rulemaking concerning how to regulate the non-asbestiform minerals in October 1988. Thus, the stay extension

announced in this notice is necessary to continue to collect and analyze sufficient health and feasibility data, to draft a supplemental rulemaking proposal and to complete the rulemaking called for. The agency believes, based on its current priorities and the estimates of agency staff and contractors, that the extension announced in this notice, i.e. until July 21, 1989, realistically reflects the time needed to conclude supplemental rulemaking on the regulation of non-asbestiform tremolite, anthophyllite and actinolite.

As was the case with the initial partial stay, the 1972 standard governing occupational exposure to asbestos (redesignated 29 CFR 1910.1101) will remain in effect to the extent of the stay during the period of the extension. The full text of the stay with respect to these non-asbestiform minerals was published in the October 17, 1986 Federal Register (51 FR 37002).

With respect to the extension of the partial stay, OSHA finds that advance notice and opportunity for comment are impractical and unnecessary within the meaning of 5 U.S.C. 553 in view of the limited duration of the extension and the continued applicability of the 1972 standard (29 CFR 1910.1101) to cover the gaps in coverage created by the partial stay.

The minor amendments to the notes to 29 CFR 1910.1001, 1910.1101, and 1928.58, similarly are made without advance notice and opportunity for comment. OSHA finds such process unnecessary and impracticable in that the changes merely reference the extension of the stay and restate the applicability of the 1972 standard.

No evidentiary issues are involved.

List of Subjects in 29 CFR Parts 1910 and 1928

Asbestos, Occupational safety and health.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC, 20210.

It is issued pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), 29 CFR Part 1911, Secretary of Labor's Order No. 9-83 (48 FR 35738), and 5 U.S.C. 551 *et seq.*

Signed at Washington, DC, this 14th day of July, 1988.
John A. Pendergrass,
Assistant Secretary for Occupational Safety and Health.

Amended Standards

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 8 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25058), or 9-83 (48 FR 35738), as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z-1, Z-2, Z-3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z-1.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1489 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1001 [Amended]

2. Section 1910.1001 is hereby amended by revising the note after Appendix H to § 1910.1001 to read as follows:

Note: Pursuant to an administrative stay effective July 21, 1988, published on October 17, 1986, (51 FR 37002) extended to July 21, 1988, (52 FR 15722), and to July 21, 1989 (at 53 FR July 20, 1988) enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

3. Section 1910.1101 is hereby amended by revising the note preceding § 1910.1101 (a) to read as follows:

§ 1910.1101 Asbestos.

Note: This section applies in lieu of the revised standards governing occupational exposure to asbestos, tremolite, anthophyllite, and actinolite (29 CFR 1910.1001; 29 CFR 1928.58), during the period and to the extent that the revised standards have been partially stayed. (See 51 FR 37002, Oct. 17, 1986, 52 FR 15722, Apr. 30, 1987, and 53 FR July 20, 1988, for a description of the stay).

Part 1928 of the Code of Federal Regulations is hereby amended as follows:

PART 1928—[AMENDED]

Subpart D—[Amended]

4. The authority citation for Subpart D of Part 1928 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25058), or 9-83 (48 FR 35738), as applicable. Sections 1928.55(c) and 1928.58 also issued under 29 CFR Part 1911.

§ 1928.58 [Amended]

5. Section 1928.58 is hereby amended by revising the note after Appendix I to § 1928.58 to read as follows:

Note: Pursuant to an administrative stay effective July 21, 1988, published October 17, 1986 (51 FR 37002), extended to July 21, 1988 (at 52 FR 15722, Apr. 30, 1987) and to July 21, 1989 (at 53 FR July 20, 1988) enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

(FR Doc. 88-16251 Filed 7-19-88; 6:45 am)
BILLING CODE 4910-36

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

(Region II Docket No. 85; FRL-3414-1)

Designation of Areas for Air Quality Planning—Section 107 Attainment Status Designations for the State of New Jersey; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is correcting errors in the New Jersey Section 107(d) attainment status designations for carbon monoxide (CO) which appeared in the Federal Register on March 3, 1978 (43 FR 8862). These corrections insert omitted footnotes indicating that EPA has designated an entire city or borough as being in non-attainment of the CO standard, in place of New Jersey's non-attainment designation of only the Central Business District of the city or borough. In addition, EPA is correcting the omission of two New Jersey Air

Quality Control Regions from the table of 107(d) attainment status designations in the Code of Federal Regulations (40 CFR 81.331).

EFFECTIVE DATE: March 3, 1978.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act, as amended in August 1977, directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of the national ambient air quality standards attainment status designations for all areas within the state. EPA received such designations from the State of New Jersey on December 5, 1977, and promulgated them, with the necessary modifications, on March 3, 1978 (43 FR 8862).

In the lists that were promulgated at 40 CFR Parts 81, footnotes were used to indicate that an EPA designation replaced a state recommendation. However, in the March 3, 1978, notice several EPA designations which replaced the New Jersey State recommendations for 107(d) attainment status designations for carbon monoxide (CO) were not so footnoted. Today's notice corrects these omissions by adding the appropriate footnotes to the designations at 40 CFR 81.331.

Consistent with EPA guidance based on the scope of the CO problem, as a minimum, EPA designated entire cities or boroughs as non-attainment of the CO standard. In its submittal New Jersey designated only the Central Business District of each city or borough as non-attainment.

In addition, at the request of the State, on August 18, 1983 (48 FR 37404) EPA approved a revision to the CO designation for the City of Asbury Park in Monmouth County from "does not meet primary standards" to "better than national standards." However, when the 107(d) attainment status designation table which contained this revision was published at 40 CFR Part 81 on July 1, 1984, two of New Jersey's four Air Quality Control Regions (AQCR's), the New Jersey Intrastate AQCR and the Pennsylvania Upper Delaware Valley Interstate AQCR, were missing from the table. The 107(d) attainment status designation table published in today's notice includes all four of New Jersey's AQCRs and, as such, corrects the omission of the New Jersey Intrastate AQCR and the Pennsylvania Upper Delaware Valley AQCR from 40 CFR 81.331.

List of Subjects in 40 CFR Part 81

Air pollution control.

July 6, 1988.

Christopher J. Daggett,
Regional Administrator, Environmental Protection Agency, Region II.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below.

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 81.331 is amended by revising the table entitled, "New Jersey-CO" to read as follows:

§ 81.331 New Jersey.

NEW JERSEY—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
New Jersey-New York-Connecticut Interstate AQCR:		
The City of Paterson.	'X'	
The City of Hackensack.	'X'	
The City of Jersey City.	'X'	
The City of Newark.	'X'	
The City of Elizabeth.	'X'	
The City of Morristown.	'X'	
The City of Perth Amboy.	'X'	
The Borough of Somerville.	'X'	
The Borough of Freehold.	'X'	
Remainder of AQCR.		X
Metropolitan Philadelphia Interstate AQCR:		
The City of Trenton.	'X'	
The City of Burlington.	'X'	
The City of Camden.	'X'	
The Borough of Penna Grove (those portions within 100 yards of the intersections of U.S. Route 130 and County Roads 675 and 607).	'X'	
Remainder of AQCR.		X
New Jersey Intrastate AQCR:		
The City of Atlantic City.	'X'	

NEW JERSEY—CO—Continued

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Toms River (portion of Dover Township). Remainder of AQCR.	'X'	
Remainder of AQCR.		X
Northwest Pennsylvania Upper Delaware Valley Interstate AQCR.		X

* EPA designation replaces State designation.

(FR Doc. 88-16101 Filed 7-19-88; 6:45 am)
BILLING CODE 5550-50-M

40 CFR Part 160

(PP 7F3517/R972; FRL-3417-1)

Pesticide Tolerance for Fenarimol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide fenarimol in or on pears. This regulation, to establish a maximum permissible level of residues of fenarimol in or on the commodity, was requested in a petition submitted by Elanco Products Co.

EFFECTIVE DATE: Effective on July 7, 1988.

ADDRESS: Written objections, identified by the document control number [PP 7F3517/R972] may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3706, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of May 25, 1988 (53 FR 18897), which announced that Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285, submitted pesticide petition (PP) 7F3517 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose

the establishment of a tolerance for the fungicide fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the raw agricultural commodity pears at 0.1 part per million (ppm).

There were no comments received in response to the notice of filing.

The data submitted in support of this petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include:

1. A 1-year dog feeding study using doses of 0, 1.25, 12.5, and 125 milligrams/kilograms (mg/kg) body weight (bwt)/day. The no-observed-effect level (NOEL) is 12.5 mg/kg bwt/day. The 125 mg/kg bwt/day dose level caused increased serum alkaline phosphatase, increased liver weights, increase in *p*-nitroanisole *o*-demethylase activity, and mild hepatic bile stasis.

2. An initial 2-year chronic feeding/oncogenicity study in rats using dietary concentrations of 0, 50, 130, and 350 ppm (nominal doses of 0, 2.5, 6.5, and 17.5 mg/kg bwt/day). The compound did not demonstrate any oncogenic effects under the conditions of the study. Because of the appearance of a low incidence of fatty change of the liver (nonneoplastic pathological lesions) in the low-dose groups in this study, it was unclear if a NOEL for fatty change of the liver was established in this study.

3. Additional 2-year chronic feeding/oncogenicity studies in rats using dietary concentrations of 0, 12.5, 25, and 50 ppm (nominal doses of 0, 0.63, 1.25, and 2.5 mg/kg bwt/day). The purpose of these additional studies was to assist in determining a NOEL for fatty liver changes. The first of these two studies was compromised, however, by an outbreak of chronic respiratory disease which reduced survival in all experimental groups, including control. The study was then repeated with the same dose levels. In the second study, no fatty liver changes or oncogenic effects were observed at the doses tested under the conditions of the study. Using data from all three 2-year studies, a NOEL for fatty liver change of 6.5 mg/kg bwt/day was established.

4. A 2-year oncogenicity study in mice using dietary concentrations of 0, 50, 170, and 600 ppm (equivalent to doses of 0, 7, 24.3, and 85.7 mg/kg bwt/day) that was negative for oncogenic effects at all doses tested under the conditions of the study. At 600 ppm, an increase in fatty change of the liver was demonstrated.

The NOEL for this effect was 170 ppm (24.3 mg/kg bwt/day).

5. A rabbit teratology study that was negative for teratogenic effects at all doses tested (0, 5, 10, and 35 mg/kg).

6. A rat teratology study that demonstrated hydronephrosis at 35 mg/kg (doses tested were 0, 5, 13, and 35 mg/kg). A second study in rats (with a postpartum evaluation) again demonstrated hydronephrosis at 35 mg/kg, but also indicated that the dose level of 35 mg/kg was associated with a maternal toxic effect (decreased body weight gain during treatment). The Agency considers the NOEL for hydronephrosis and for maternal toxicity to be 13 mg/kg.

7. A multigeneration reproduction study in rats that demonstrated decreased fertility in males and delayed parturition and dystocia in females at 5 mg/kg bwt/day. The NOEL for reproductive effects in this study was 2.5 mg/kg bwt/day.

8. Multigeneration reproduction studies in guinea pigs and mice that were negative for reproductive effects at doses up to 35 mg/kg bwt/day (highest dose tested) and 20 mg/kg bwt/day, respectively.

9. An aromatase inhibition study in rats that showed fenarimol to be a moderately weak inhibitor of aromatase activity.

The adverse reproductive effects observed in the rat multigeneration reproduction study are considered to be a species-specific effect caused by aromatase inhibition. This enzyme promotes normal sexual behavior in rats and mice, but not in guinea pigs, primates, or man. A NOEL of 35 mg/kg bwt/day for reproductive effects relevant to humans was established in the multigeneration reproduction study in guinea pigs.

10. A mouse lymphoma forward mutation assay; a DNA repair synthesis study in rat liver culture systems; gene mutation assays in *Salmonella typhimurium* (Ames test) and in *Escherichia coli*; a dominant lethal assay in Wistar rats; an assay for transformation activity in the C3H/10T 1/2 embryonic mouse fibroblast; and an *in vivo* assay for chromosome aberration in the Chinese hamster. Fenarimol did not demonstrate mutagenic activity in any of these studies.

In a previous Federal Register Notice (51 FR 7567, March 5, 1986), the Agency indicated fenarimol to be oncogenic. Since that time, the compound has been reevaluated. A discussion of the findings leading to the conclusion in the reevaluation follows:

The Agency's initial conclusion that fenarimol was oncogenic was based on

a finding in the 2-year rat study of a statistically significant increase in hepatic lesions (adenomas and hyperplastic nodules) at the highest dose tested (nominal dose of 17.5 mg/kg bwt/day), when data for male and female rats were combined. Presently, in the analyses of oncogenic activity by the Agency, it is considered more appropriate to separate data for males and females and to also separate hyperplastic nodules from tumors (adenomas and carcinomas). When a reevaluation of the hepatic lesions for males and females was performed separately with the elimination of hyperplastic nodules, the data did not demonstrate a statistically significant increase incidence in adenomas and/or carcinomas in either sex. Moreover, the mouse oncogenicity study did not demonstrate oncogenic potential at dose levels up to and including a nominal dose of 85.7 mg/kg bwt/day (the highest dose level tested).

The mutagenic potential of fenarimol has been evaluated in several assay systems (see item 10 above). Fenarimol did not demonstrate a mutagenic effect in any of these studies. Furthermore, fenarimol did not induce altered foci or neoplastic nodules in an initiation and promotion study in rat liver tissue.

Based on the above findings, the Agency concludes that fenarimol was not oncogenic in long-term studies in rats and mice under test conditions in which the highest dose tested for both species approached a maximum tolerated dose as evidenced by increased fatty change in the liver.

The acceptable daily intake (ADI) based on the 2-year rat chronic feeding study (NOEL of 6.5 mg/kg bwt/day), and using a hundredfold safety factor, is calculated to be 0.065 mg/kg bwt/day. The maximum permitted intake for a 60-kg person is calculated to be 3.9 mg/day. The theoretical maximum residue contribution from the established and proposed tolerances is 0.0001 mg/day and utilizes 0.187 percent of the ADI. Previous tolerances have been established for fenarimol in pecans, apples, apple pomace, milk and byproducts of cattle, goats, hogs, horses, and sheep; fat and liver of cattle, goats, hogs, horses and sheep.

The nature of the residue is adequately understood, and an adequate analytical method is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the *Pesticide Analytical Manual*, Vol. II, the analytical methodology is being made available in the interim to anyone

interested in pesticide enforcement when requested from:

William Grosse, Chief, Information Service Branch, Program Management and Support Division (TS-757C), 401 M Street SW., Washington, DC 20460
Office location and telephone number: Room 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2613.

The pesticide is considered useful for the purposes for which the tolerance is sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerance will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the *Federal Register*, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds

for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* on May 4, 1981 (46 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 7, 1988.
Susan H. Wayland,
Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.421 is amended by adding and alphabetically inserting the raw agricultural commodity pears, to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

Commodity	Parts per million
Pears	0.1

[FR Doc. 88-16331 Filed 7-19-88; 8:45 am]
BILLING CODE 6960-50-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register

Vol. 53, No. 139

Wednesday, July 20, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ANM-14]

Proposed Establishment of a VOR Federal Airway and Alteration of a VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-134 and establish Federal Airway V-591 located in the vicinity of Red Table, CO, very high frequency omni-directional radio range (VOR). V-134 and V-591 would have the Carbondale nondirectional radio beacon (NDB), CO, added to their descriptions. This action would improve the departure/arrival flow in the Aspen, CO, area.

DATES: Comments must be received on or before September 6, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 88-ANM-14, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98188.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO)-240, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone: (202) 267-6250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-134 between Grand Junction, CO, and Red Table, CO, by adding the Carbondale, CO, NDB (lat. 39°24'42"N., long 107°09'23"W.) to the route description. New VOR Federal Airway V-591 will be added between Grand Junction and Snow, CO, via the Carbondale NDB. Air Traffic in Aspen, CO, has been increasing and this action would improve the traffic flow in that area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.8D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.09.

§ 17.123 [Amended]

1. Section 71.123 is amended as follows:

V-134 [Amended]

By removing the words "Grand Junction, CO; 33 miles 12 AGL, 21 miles 127 MSL, 16 miles 120 MSL, 34 miles 12 AGL, Red Table, CO;" and substituting the words "Grand Junction, CO; Carbondale, CO, NDB; Red Table, CO;"

V-591 [New]

From Grand Junction, CO; Carbondale, CO, NDB; to Snow, CO.

Issued in Washington, DC., on July 14, 1988.

Temple H. Johnson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-16242 Filed 7-19-88; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 221

[Docket 45705; Notice 88-11]

RIN 2105-AB38

Posting of Tariffs; Contract of Carriage

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Department of Transportation (the "Department" or "D.O.T.") is proposing to allow carriers an alternative to the current requirement that they post their entire tariffs for passenger and cargo foreign air transportation in hard copy at each ticket sales location. Carriers would be able to provide more useful information to consumers using summaries, computer terminals, and printed copies of tariff information. This proposal would allow airlines to make tariff information available in an electronic medium rather than in paper medium.

DATE: Comments must be received no later than September 19, 1988.

ADDRESS: Five (5) copies of any comments should be sent to the Documentary Services Division, C-55, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590. Comments should refer to Docket 45705. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Chief, Tariffs Division, P-44, Department of Transportation, 400 7th Street SW., Washington, DC 20590. Telephone: (202) 365-2414.

SUPPLEMENTARY INFORMATION:

Background

The Department is concerned that consumers have available to them all terms and conditions with respect to any transportation being purchased or considered. An airline ticket or air waybill embodies the contract of carriage between the carrier and the consumer but, as the Civil Aeronautics Board (C.A.B.) noted on an earlier occasion, "[un]like the situation in many other industries, customers of airlines are governed by contract terms of which they do not have a copy."¹ To this end, going back almost to the beginning of federal airline regulation, the airlines have been required to make available to the public, upon request, all terms of any contract for air transportation, foreign or domestic.

For many years, the only method for making the information available consisted of posting the tariff at airline sales locations. Since all fares, rates, other charges, and rules applying to air transportation, in short, all contract terms, had to be filed formally in tariffs with the C.A.B., or D.O.T., the most straightforward fashion of ensuring that all applicable contract terms were made available to the public was to require the airlines to make copies of the tariffs available for inspection at all airline sales locations.

This was precisely what the regulations required for the period up to the early 1980's. Then, effective January 1, 1983, the Airline Deregulation Act of 1978 (ADA) eliminated domestic tariffs and the related requirement that those tariffs be posted. With the elimination of tariffs as a legal component of the contract of carriage, the C.A.B. recognized that a workable means had to be found to ensure that the public was adequately informed of applicable contract terms through the ticketing process.

The C.A.B. adopted a new regulatory approach regarding domestic air transportation, embodied in 14 CFR Part 253 (47 FR 52128, November 19, 1982).² In general, Part 253 provides that a domestic airline ticket may incorporate contract terms by reference, i.e., without stating their full text, provided that the ticket so notifies the passenger. It further requires the carrier to make

available for inspection at its airport and other ticket offices the full text of all incorporated terms and conditions (fare and non-fare). However, the medium by which the carrier must make this information available is left to the carrier's discretion. Carriers must also provide a copy of any term or condition, free of charge, by mail or other delivery service, to any person requesting it.

Part 253 has worked well. Not only has it accomplished the transition from a tariff to a non-tariff environment, but perhaps even more important, it has enabled the industry to mesh its consumer information obligations with the efficiencies of an electronic age. Specifically, it has permitted the airlines to satisfy the disclosure requirements quickly and economically by largely eliminating the costly and onerous medium of paper. Under Part 253, the airlines furnish information on fares and on rules subject to frequent change through the use of electronic transmissions to display terminals at their sales locations. This process also allows airlines to provide consumers with printed copies of this information upon request. Only those rules subject to infrequent changes are maintained in printed form.

This gain in efficiency has been achieved at no apparent loss in availability of information to the public. During the five years that Part 253 has been in effect, we have received an average of just four complaints a year concerning information on domestic contracts of carriage. Given the total number of enplaned passengers in domestic air transportation for this period, this translates to only one complaint to us per 88.5 million enplaned passengers.³

On August 19, 1985, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) (50 FR 33452, Docket 43343) indicating that it was considering the amendment of Part 221 to allow carriers to file tariffs electronically. As part of that notice, we set forth the possibility that, in an automated environment, carriers could fulfill the posting requirement by making tariffs available in an electronic, computerized format.

The responses the Department received on the posting issue ranged from no comment at all to the belief that the tariff posting requirement "has become obsolete and unnecessary even under our present system."⁴ The

¹ Order 83-9-116, September 28, 1983, CAB Docket 41357, denying the Petition of Certain Members of the Air Transport Association of America to repeal the notice concerning public inspection of tariffs (14 CFR 221.173).

² Since the ADA did not relieve airlines of the duty to file international tariffs, there was no impetus to alter the regulatory requirements on the posting of international tariffs.

³ Source: Domestic Monthly Air Carrier Traffic Statistics and consumer complaint records of the Civil Aeronautics Board and the Department of Transportation.

⁴ Comments of Airline Tariff Publishing Company.

majority of comments were from individual carriers or airline organizations and indicated that there is a need for relief from this requirement independent of our decision on the electronic tariff issue. In general, the comments suggested that it is no longer necessary to require the actual posting of tariffs at carrier offices, since the necessary information can be provided to consumers by other means. These methods include, for example, terminals at sales locations, memorandum tariffs, and summaries of contract terms.⁶ They further suggested that passengers or shippers could receive an actual copy of the tariff by contracting the carriers' main office.

At the request of a number of the commenters, we formed an Advisory Committee to assist us in the development of our proposed electronic tariff system.⁷ On June 30, 1987, the Advisory Committee formally recommended that the Department allow carriers the option of either (1) continue posting tariffs in the manner now prescribed by our regulations (Subpart N of Part 221 (14 CFR § 221.171)), or (2) provide passengers and shippers notice of any term or condition in the contract of carriage involving foreign air transportation in a manner consistent with Part 253 of the Department's Economic Regulations (14 CFR Part 253).

Although Part 253 is not directly applicable to international air transportation—because, for international air transportation, tariffs are still required—we believe the Committee's recommendation has considerable merit. We propose to provide airlines with an alternative to the current posting requirement by affording them the opportunity to provide notice of and access to tariff information on passenger and cargo foreign air transportation in a manner similar to that now applicable to incorporated contract terms for domestic air transportation. Our proposal recognizes current industry business practices, as well as the need to revise governmental requirements that impose unnecessary costs on airlines and, ultimately the consumer.

Most airlines and tariff filing agents have computerized their international

tariff information. They conduct their tariff business quickly and efficiently entirely without the medium of paper. Yet, those airlines and their tariff filing agents must convert this computerized tariff data back into printed form solely to comply with our filing and posting requirements. We estimate that if airlines offering international services were using procedures similar to Part 253 for disseminating their international fare and rate information to consumers, it would reduce their paper retention requirements at each sales location by almost 90%. See Regulatory Evaluation, in Docket 45705. See also Department of Transportation, Transportation Systems Center, Preliminary Electronic Tariff ADP Requirements Study, March 1987, at 2-26 in Docket 43343.

The need to provide carriers with a reasonable alternative to the current international posting rules is reinforced by changes that have occurred in the international marketplace since these rules were first promulgated. For instance, the international air transportation marketplace has become increasingly competitive. Today, there are far more carriers, offering a plethora of fares accompanied by a variety of different rules provisions, from which a passenger or shipper can choose. These fares, rates, and rules are subject to frequent changes. Under current rules, all such changes must be filed in the tariff and posted. This presents genuine and substantial logistical and financial problems to the carriers. They must move considerable amounts of paper around the world on a daily basis and at great cost. For example, over 95 percent of the international air tariffs are now filed on as little as one day's notice. Under our current Regulations, i.e., § 221.171(c), carriers are required to post such tariffs on like notice at all of their sales locations both within and without the United States. Considering the growth in competitive tariff filings, the compliance burden of this regulation on the carriers has become severe. In the vast majority of cases, it is likely that these costs are passed on to consumers in the form of higher fares and rates.

Based on the responses to our ANPRM and the views of the Electronic Tariff System Advisory Committee, we have serious reasons to question whether the present posting rule is performing its intended consumer information function. Tariffs, by their very nature, have always been complex, technical documents. Moreover, the number of fares, rates, and rules on file in tariffs has increased dramatically in the past few years, adding to the complexity. In some instances, fares

and/or rates are contained in one tariff, while the rules associated with such fares and/or rates are in a separate tariff. Also, finding the applicable fare, rate, or rule is sometimes only an intermediate step; the consumer must sift through a myriad of conditions to find those that apply to the transportation at issue. In addition, we doubt that most consumers today, especially vacation passengers, use tariffs as a price-shopping mechanism. Rather, they will either call the carrier or retail travel agent for this information. In fact, this was the observation of the Advisory Committee in making their recommendation to the Department on June 30, 1987.

The Advisory Committee, in making its recommendation to amend the posting rule, stated that:

(a) The current international air transportation marketplace, and the resulting large volume of tariff changes, have combined to make it difficult for carriers to keep their tariffs current; (b) The number of requests from passengers or shippers for access to the tariffs at carrier sales locations are very infrequent; (c) Tariffs are not really conducive to easy use by the average consumer; and (d) The current posting requirement does not truly benefit the majority of consumers since, for passenger travel at least, most ticketing is accomplished through retail travel agents, not carrier offices.

Regarding that last point, we note that retail travel agents have never been required by statute or regulation to post airline tariffs. We are not proposing to change that here. However, in light of the increased role that agents play in the sale of air transportation, we feel that they should be required to provide consumers of international travel with information akin to that they provide for buyers of domestic travel. Thus, we propose that travel agents must make explanations of certain "key terms" available to passengers in the same manner as they are required to do for domestic air transportation under Part 253. The "key terms" are those terms set forth in § 221.177(b)(2)(i) through (v) and (d), of our proposed rule. Under the latter section, a clear and conspicuous notice of "the salient features" of any terms restricting refunds, imposing monetary penalties on passengers, or permitting the carrier to raise the price, must also be provided on or with the ticket.

This proposal should not represent any appropriate increase in the cost of doing business to the travel agents, since it is our understanding that this information is already being made available. If such is not in fact the case,

we would welcome comments on this aspect of the proposed rule.

Part 253 allows carriers flexibility in the manner in which explanation of the "key terms" are to be made available to consumers. This requirement may be met in any manner that the carriers and their agents and ticket outlets consider practical and reasonable. It may consist of keeping ready for passenger inspection at ticketing locations a concise summary of the terms in question. (They could, for example, be included in the Official Airline Guide.) Or, it may consist of a telephone number, where informed personnel will give immediate answers to agents' questions, for the agents to then relay to consumers. It might even be displayed upon queries through agents' computer terminals. If the ticket is mailed to the passenger, it should include a reasonable and quick method for the passenger to obtain the information.

Regarding the example that such terms could be included in the Official Airline Guide, we note that the Air Traffic Conference of America publishes a booklet describing these terms on behalf of numerous air carriers. We are placing a copy of this booklet in Docket 43343 for inspection.

We emphasize that under our proposed rule, carriers (but not travel agents) are also obligated to maintain for public inspection at each airport or other ticket office the full text of all terms and conditions incorporated by law into the contract of carriage. As a practical matter, this will probably be accomplished most efficiently by keeping on display a printed copy of those terms and conditions which change infrequently, referenced for easy access. Terms and conditions which do change frequently may be displayed electronically and copies made upon request, when feasible.

Because of our commitment to the consumer's right to be informed of the terms of the contract of carriage, and pending our completion of the proposed electronic tariff system, we have been reluctant to tamper with the posting requirements. Now, in light of the recent recommendation of the Advisory Committee, it appears to us that it is an appropriate time to take steps to bring these requirements in line with today's airline environment, especially since we are convinced we can do so while protecting the public's rights. For these reasons, we believe that it is in the public interest to move forward with this proposed alternative to the current paper-based posting system.

Our proposed rule alternative would not relieve the international carriers from their statutory obligation to file

and to observe their tariffs filed with the Department. This proposal merely responds to the need to give the carriers greater flexibility in the marketplace to disseminate their tariff information to the public in a more meaningful and timely fashion.

Proposed Rule

Our proposed rule is, for the most part, similar to the notice scheme currently in effect for domestic air transportation. Specifically, it provides for the following:

a. Carriers and their agents are responsible for providing timely notice and explanation of important terms of each contract of carriage for foreign air transportation.

b. A passenger, shipper or consignee may inspect the full text of all incorporated terms and conditions (fares and non-fare) at any airport or other ticket office of the carrier. The medium, i.e., printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

c. Carriers are responsible for providing consumers with a free copy of the complete text of any/all terms and conditions upon request at any airport or other ticket office, immediately, where feasible, or otherwise promptly by mail or other delivery service. They must ensure that agents and other outlets provide consumers with sufficient information to order such copies directly from the carrier.

d. Carriers and their agents must provide explicit notice to the consumer, on or with the ticket or air waybill, of the existence and possible applicability of the key terms specified in § 221.177(b)(2)(i) through (v), of the proposed rule (set out below), as well as explicit notice of the salient features of any applicable terms specified in § 221.177(d) of the proposed rule.

e. A passenger may obtain an explanation of any of the types of rules listed below and in § 221.177(d) from any place where a carrier's tickets are sold, and a shipper or consignee may obtain an explanation of any of the types of rules listed below and in § 221.177(d) from any place where an air waybill is issued:

1. Limits on the carrier's liability for personal injury or death of passengers, and for loss, damage, or delay of goods and baggage, including fragile or perishable goods;

2. Claim restrictions, including time periods within which passengers or shippers must file a claim or bring action against a carrier for its acts or omissions or those of its agents;

3. Rights of the carrier to change the terms of the contract. (Rights to change the price, however, are governed by § 221.177(d);

4. Rules about re-confirmation of reservations, check-in times, and refusal to carry; and

5. Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

There are some differences between Part 253 and the rule we are proposing. For example, we would not differentiate between sales locations within and outside of the United States. Our experience under Part 253 suggests that, once having summarized the identified categories of key terms and conditions, carriers will not incur significant obstacles to their dissemination to all of their ticket offices and agency locations, wherever located.

We would also extend this notice option to cargo air transportation as well as to passenger air transportation. It is our intention to provide any benefits that will accrue to cargo carriers and shippers as well. In 1982, when the Board was considering the adoption of Part 253, airlines were no longer required to file or post tariffs for domestic cargo air transportation. The Board, on its own motion, had eliminated the requirements for those tariffs in 1979, and public comments uncovered no compelling reason for applying Part 253 to domestic cargo air transportation. For this reason we propose to give the same increased posting flexibility to the airlines for cargo services as we are proposing for passenger services. (See 47 FR 52128, November 19, 1982.)

Part 253 also provides that a passenger cannot be bound by any contract term incorporated by reference if notice of that term has not been provided to the passenger in accordance with that part. This provision provides a valuable protection to the passenger in an environment where there is no longer a tariff filed with the Department. For international transportation, of course, tariffs are still filed with the Department and continue to govern the transportation offered as provided by law.⁷ Traditionally, under our tariff

⁷ There are, for example, exemptions from the tariff adherence requirements, such as those in 14 CFR Part 296 (payment of fees to shippers), and in C.A.B. Orders 78-12-49 and 79-2-23 (resolution of consumer disputes and claims).

⁶ A memorandum tariff is an unofficial compilation of carrier fares, rates and rules, generally published in a bound volume and produced by an airline or a tariff publishing company.

⁷ The committee is made up of representatives of a variety of interests, including U.S. air carriers, foreign air carriers, tariff publishing agents, airline associations, the information industry and consumer groups.

regime, we have given carriers the option of either protecting ticket purchasers from subsequent tariff changes adverse to them through "guaranteed air fare" rules in their tariffs, or providing on each ticket a statement that the price of that ticket is subject to adjustment prior to the commencement of travel. See § 221.174. In each case, price has been broadly construed to include conditions of availability and carriage. Most carriers have opted for the filing of such guarantee rules in their tariffs. Section 221.177(d) of our proposed rule similarly requires direct, conspicuous notice of the salient features of price change as well as penalty terms affecting a ticket. We are proposing to provide carriers with the same option of providing guaranteed air fare rule protection against contract changes as is available under § 221.174.⁶ We also propose to amend § 221.174 to clarify our longstanding interpretation and to make its language consistent with the alternative direct notice requirement in § 221.177(d).

We also propose to make a technical amendment to the notice requirements in § 221.173 to reflect changes in retention requirements promulgated in 14 CFR Part 249 (46 FR 25415, May 6, 1981). In order to reduce the regulatory burden on carriers, in May 1981, the Board eliminated a requirement that carriers maintain canceled tariffs for a specific period of time after cancellation or expiration on the tariff. At that time, the Board neglected to amend § 221.173 to reflect the elimination of that requirement. We propose to amend § 221.173 in this rulemaking to reflect the action taken by the Board in 1981.

A principal feature of our proposed rule is that it would be permissive. It would provide carriers wishing to adopt the new approach the option of doing so. It would not, however, eliminate the alternative of using the current, paper-based tariff posting system. Carriers preferring to post tariffs exactly as they have been doing could continue to do so. Accordingly, our proposed action would in no way add to any carrier's burden. We believe the proposed rule could potentially reduce economic and paperwork burdens both on the industry and on government. The key point is that this proposal need have no impact on any carrier whatsoever unless the carrier so chooses. To the extent that

there is impact it promises to be positive. We have also prepared and placed in Docket 45705 a comprehensive Regulatory Evaluation Analysis. (A copy may be obtained by contacting Thomas G. Moore, Chief, Tariffs Division, P-44, Department of Transportation, 400 7th Street SW., Washington, DC 20590, Telephone: (202) 366-2414).

Executive Order 12291, Regulatory Flexibility Act, Paperwork Reduction Act, and Federalism Assessment

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies and substantial industry interest.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. Since the proposal simply presents an alternative, rather than mandates a change, the ability of such entities to engage in operations essentially will be unaffected by the proposed regulation. This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

With respect to the Paperwork Reduction Act of 1980, Pub. L. 96-511, the proposal should lessen substantially the paperwork burden on the airlines. Carriers would no longer be required to post the paper tariff at all of their offices and stations. This means that the hundreds, even thousands, of pages of tariff revisions that carriers are now required to circulate worldwide, could be largely eliminated.

We realize that this alternative posting rule may require some reprinting of ticket stock, and/or forms of notice given on or with the ticket. There is, however, no way prior to comment that

we could ascertain the extent to which this may be necessary. In addition, it must be borne in mind that this proposal is an alternative to the current posting rule and, therefore, we are not in a position to determine which carriers will opt to take advantage of this alternative. However, it is our belief that any cost of reprinting that may be necessary to comply with this proposed rule will be insignificant when weighed against the overall cost-savings that will be achieved by those carriers choosing to use the alternative method being proposed here. We welcome comments on the costs of this minor additional burden.

In 1987, the international airlines filed with the Department 241,230 tariff pages applicable to international air transportation. Of this total 219,503 applied to passenger service and 21,727 applied to cargo service. Each of these tariff pages was required to be posted at each carrier sales location worldwide. Taking into consideration only the passenger sales locations in the 48 contiguous states of the United States and the District of Columbia, we estimate that this necessitated the printing and distribution of approximately 535 million tariff pages. To arrive at our estimate, we checked our tariff files and the January, 1988 *Official Airline Guide (Worldwide Edition)* to determine the cities in the 48 contiguous states with airports at which international journeys might originate or terminate. Our analysis indicated that there are 384 airports for which international tariff posting would be required. Based on the number of airlines serving these airports, this calculated out to 1,787 airport sales locations. To this total we added 654 other ticket offices in 24 selected international gateways. The other ticket offices were determined from the latest telephone directories available in the Department's library. Combining the airport and other ticket locations, we arrived at a total of 2,441 airline sales locations. We multiplied this figure by the total number of applicable tariff pages, 219,503.

If our assumptions and estimates are correct, we estimate that, if the carriers had been able to use the proposed alternative tariff posting method in 1987, they could have reduced by 482 million the number of tariff pages that had to be printed and distributed for tariff posting.

We invite comments, especially from the industry, on our assumptions and estimates.

Economic Analysis

We believe the proposed rule will have a generally beneficial impact on the industry and the public, while imposing little, if any, cost. We expect the proposed rule to achieve substantial cost savings for the industry and ultimately for the consumer.

We estimate that the carriers spend approximately \$2,500 per sales location in direct labor costs just to maintain the current tariffs. The estimated cost of \$7,500 was determined as follows. We drew an analogy between the work performed by the Department's senior tariff filing clerk and the same type of work, i.e., filing current tariff pages, that would have to be performed by an airline employee at each airline sales location. We have determined that our tariff filing clerk spends one-third of his/her time performing this function. The direct labor costs for this senior tariff filing clerk is approximately \$22,500 annually. We then applied these estimates of time and cost to each airline sales location with the assumption there is a correlation between the Department's costs and the airline's costs. See also, Bulletin 2241, *Industry Wage Survey: Certificated Air Carriers, June 1984*, issued by the U.S. Department of Labor, Bureau of Labor Statistics (August 1985), Table 6, Page 9.

Assuming that this estimated cost per location is within acceptable parameters, we estimate that the carriers are currently spending around 18.3 million dollars annually within the 48 contiguous states of the United States and the District of Columbia to maintain the posted paper tariffs. We assume that substantially all of these costs would disappear if carriers choose the alternative provided under our proposed rule.

We invite comments, especially from the industry, on our assumptions and estimates.

Moreover, the proposed rule would allow the airline industry increased flexibility in disseminating tariff information to the public. The public, for its part, would have ready access to the basic information it needs through the carrier-prepared key terms of incorporated tariff terms. All other relevant consumer or tariff information would be made available by the carrier to consumers through electronic or paper medium. Under the former option, the consumer would be able to view substantially all information on a computer display screen for that data subject to frequent change. This option would also allow the carriers to make printed copies from the computer

display screen for the consumer, when feasible.

The proposed alternative would enable the public to be better informed and to make wiser economic choices. The tariff data available on the computer promises to be more up to date and readily available than the data currently being provided under the paper-based system, due to simply practicalities.

Our proposed rule presents compelling dual attributes. First, it offers an optimum balance between the need to ease the industry's burden and our desire to preserve the requisite degree of consumer information. Second, it is modeled on a rule that exists and that has been working well for five years. We thus have every reason to expect that a comparable rule, in the international sphere, would produce similarly favorable results. Moreover, because of our domestic experience, we are confident that these results could be achieved quickly.

Alternative Considered

Against this background, we see no alternatives as equally attractive. We specifically considered such alternatives as (a) maintaining the status quo; (b) eliminating the posting requirements; (c) deferring modification of the posting requirements until a final rule is issued in the Electronic Tariffs Docket; (d) transferring the responsibility for tariff posting to the tariff agents; (e) transferring the responsibility for tariff posting to the Department; (f) allowing carriers to maintain the posted tariff at their headquarters rather than at each sales location; or (g) using carrier memorandum tariffs to satisfy the posting requirements.

None of these possibilities combines the above-cited dual attributes of our proposed rule. Moreover, some of them would be inconsistent with our enabling statute.

Discussion of Alternatives

1. Maintaining the Status Quo

We are convinced that with the huge growth in tariff filings and the associated complexities of ascertaining the correct information from the posted tariff, the consumer is not being well served by the status quo. The status quo is inefficient, expensive and labor-intensive, constituting an unnecessary burden on the industry with limited benefits to the public.

2. Elimination of the Posting Requirements

Several respondents to the ANPRM on electronic tariff filing stated a

preference for total elimination of the posting requirement. Those in favor of this option have described the requirement as obsolete, unnecessary, and otherwise expensive and burdensome. Not surprisingly, all such arguments were advanced by the industry. While we may agree that the requirement should be reviewed for possible modification, we have obligations to consumers as well as the industry. The tariff is legally incorporated into the contract of carriage, and therefore some form of notice of contractual terms must continue to be available to consumers. Thus, the elimination of the posting requirement would be inconsistent with the general intent of the tariff posting requirements of section 403 of the Federal Aviation Act of 1958, as amended.

3. Defer Modification of Posting Requirement Until Issuance of a Final Rule on Electronic Filing of Tariffs

As we have noted, most carriers already have their tariffs computerized and could readily make this information available to the consumers at the airport and other ticket locations. We do not believe that we should make the public or the industry wait to enjoy the benefits of this enhanced electronic capability. While we are actively working towards completion of our electronic tariff rulemaking, that completing is not so imminent as to justify a deferral of the change in our posting rules.

4. Transfer Posting Requirement to Tariff Agents or to the Department

The posting of tariffs is a statutory requirement which is clearly the responsibility of the carrier. This reflects the fact that the carrier, as the real party in interest on the contract, is the party responsible for providing the contract terms.

Furthermore, either of these alternatives would entail a completely new regulatory approach, rather than allowing us to rely on the Part 253 model. The result would almost certainly be an unacceptable regulatory lag. Furthermore, these alternatives would necessitate a change in the statute, which would not provide any near term relief.

5. Allowing Carriers to Maintain the Posted Tariffs only at their Headquarters

This alternative would eliminate the requirement that the entire tariff be available at all carrier sales locations without any workable replacement; therefore this alternative would fail to

⁶ Refund/penalty terms must still be disclosed, however. In addition, we would note that the alternative direct notice requirement in proposed § 221.177(d) is intended to complement, rather than supersede, the disclosure requirements made applicable to passenger cancellation penalties by the CAB in Orders 70-12-130, 81-4-8 and 81-6-133.

ensure adequate consumer notice and protection.

6. Use of Memorandum Tariffs

Memorandum tariffs, because of their preparation time, can be expected to run two or more weeks behind in reflecting currently effective tariff matter. Therefore, we do not believe that this is a viable alternative to our proposal, which would allow immediate dissemination of tariff changes.

List of Subjects in 14 CFR Part 221

Air fares and rates, Explosives, Freight, Handicapped, Contracts, Claims, Consumer protection, Travel.

This rule is being issued under the authority delegated to the Assistant Secretary for Policy and International Affairs contained in 49 CFR 1.56(j)(2)(ii). For the reasons set forth herein, the Department of Transportation proposes to amend 14 CFR Part 221 as follows.

PART 221—TARIFFS

1. The authority citation for Part 221 would continue to read as follows:

Authority: Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-728, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 768, 771, 768; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1481, 1482.

2. Section 221.4 would be amended to add the following definitions in alphabetical order:

§ 221.4 Definitions.

"Consignee" means the person whose name appears on the air waybill as the party to whom the shipment is to be delivered by the carrier.

"Contract of carriage" means those fares, rates, rules, and other provisions applicable to the foreign air transportation of passenger, baggage, or property, as defined in the Federal Aviation Act.

"Passenger" means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

"Shipper" means the person whose name appears on the air waybill as the party contracting with, or a person who contacts a carrier or ticket agent for the purpose of contracting with, the carrier for carriage of a shipment.

"Ticket Office" means a station, office, or other location where tickets are sold, or air waybills or other similar documents are issued, that is under the charge of a person employed exclusively

by the carrier, or by it jointly with another person.

3. Section 221.170 would be added as follows:

§ 221.170 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

- (a) Sections 221.171, 221.172, 221.173, 221.174, 221.175, and 221.176 or
- (b) Sections 221.175, 221.176, and 221.177 of this subpart.

§ 221.173 (Amended)

4. Section 221.173 would be amended by removing the phrase "including canceled tariffs" from paragraph two of the Notice reading "PUBLIC INSPECTION OF TARIFFS".

5. Section 221.174 would be revised to read as follows:

§ 221.174 Notification to the passenger of status of fare, rule, charge or practice.

A carrier or ticket agent shall print, stamp upon, or affix to every purchased passenger ticket a notice stating that the terms and conditions of the contract of carriage including the price of the ticket are subject to adjustment prior to the commencement of transportation, except that such notice is not required where a passenger ticket is sold pursuant to an effective tariff rule which provides that the terms and conditions of the contract of carriage including the price of the ticket are not subject to any future adjustment during the validity of the ticket or the ticket is sold for transportation commencing on the same day.

6. A new § 221.177 would be added to read as follows:

§ 221.177 Alternative notice of tariff terms.

(a) Terms incorporated in the contract of carriage. (1) A ticket, air waybill, or other written instrument that embodies the contract of carriage for foreign air transportation shall contain or be accompanied by notice to the passenger, shipper, or consignee as required in paragraphs (b) and (d) of this section.

(2) Each carrier shall make the full text of all terms that are incorporated in a contract of carriage readily available for public inspection at each airport or other ticket office of the carrier provided, that: The medium, i.e., printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

(3) Each carrier shall display continuously in a conspicuous public place at each airport or other ticket

office of the carrier a notice printed in large type reading as follows:

Explanation of Contract Terms

All passenger (and/or cargo as applicable) contract terms incorporated by law to which this company is a party are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this office will lend assistance in securing information, and explaining any terms. In addition, a file of all tariffs of this company, with indexes thereof, from which the incorporated contract terms are obtained is maintained and kept available for public inspection at (Here indicate the place or places where tariff files are maintained, including the street address and, where appropriate, the room number.)

(4) Each carrier shall provide to the passenger, shipper or consignee a complete copy of the text of any/all terms and conditions applicable to the contract of carriage, free of charge, immediately, if feasible, or otherwise promptly by mail or other delivery service, upon request at any airport or other ticket office of the carrier. In addition, all other locations where the carrier's tickets or air waybills may be issued shall have available at all times, free of charge, information sufficient to enable the passenger, shipper or consignee to request a copy of such term(s).

(b) Notice of incorporated terms. Each carrier and ticket agent shall include on or with a ticket, or other written instrument given to the passenger, shipper, or consignee, that embodies the contract of carriage, a conspicuous notice that:

(1) The contract of carriage may incorporate by law terms and conditions filed in public tariffs with U.S. authorities; passengers, shippers and consignees may inspect the full text of each applicable incorporated term at any of the carrier's airport locations or other ticket offices of the carrier; and passengers, shippers and consignees have the right to receive, upon request at any airport or other ticket office of the carrier, a free copy of the full text of any/all such terms by mail or other delivery service;

(2) The incorporated terms may include, among others, the terms shown in paragraphs (b)(2)(i) through (v) of this section. Passengers may obtain a concise and immediate explanation of the terms shown in paragraphs (b)(2)(i) through (v) of this section from any location where the carrier's tickets are sold, and a shipper or consignee may obtain the same information at any location where an air waybill or any similar document may be issued:

(i) Limits on the carrier's liability for personal injury or death of passengers (subject to § 221.175), and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(ii) Claim restrictions, including time periods within which passengers, shippers, or consignees must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rights of the carrier to change the terms of the contract. (Rights to change the price, however, are governed by paragraph (d) of this section).

(iv) Rules about re-confirmation or reservations, check-in times, and refusal to carry.

(v) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

(3) The salient features of any applicable terms that restrict refunds of the transportation price, impose monetary penalties on passengers, shippers or consignees, or permit a carrier to raise the price, are also being provided on or with the ticket.

(c) Explanation of incorporated terms. Each carrier shall ensure that any passenger, shipper, or consignee can obtain from any location where its tickets are sold, or air waybills or any similar documents are issued, a concise and immediate explanation of any term incorporated concerning the subjects listed in paragraph (b)(2) or identified in paragraph (d) of this section.

(d) Direct notice of certain terms. A passenger, shipper or consignee must receive conspicuous written notice, on or with the ticket, air waybill, or other similar document, of the salient features of any terms that (1) restrict refunds of the price of the transportation, (2) impose monetary penalties on passengers, shippers, or consignees, or (3) permit a carrier to raise the price: Provided, That the notice specified in paragraph (d)(3) of this section is not required where a passenger ticket is sold pursuant to an effective tariff rule which provides that the terms and conditions of the contract of carriage including the price of the ticket are not subject to any future adjustment during the validity of the ticket or the ticket is sold for transportation commencing on the same day.

§ 221.240 (Amended)

7. Section 221.240(a)(4) would be amended by changing that part of the Letter of tariff transmittal which now reads:

Sufficient copies of the above-named publication of posting in accordance with

Subpart N of your Economic Regulations have been sent to each carrier participating in the above named publication.

To read:

Sufficient copies of the above-named publication have been sent to each carrier participating in the above-named publication for posting purposes in accordance with Subpart N of your Economic Regulations, where required.

Issued in Washington, DC, on July 15, 1988.

Matthew V. SCODOLZA,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-16305 Filed 7-19-88; 8:45 am] BILLING CODE 4910-22-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

(Docket C-2774)

Period for Public Comment on Petition To Reopen and Terminate or Modify Order; Lindal Cedar Homes, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and terminate or modify order.

SUMMARY: Lindal Cedar Homes, Inc. has filed a petition on July 1, 1988, requesting the Commission to reopen and vacate or modify the order. This document announces the public comment period on the petition.

DATE: The deadline for filing comments in this matter is August 15, 1988.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Sarah L. Fitzgerald, Attorney, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-3037.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2774 was published at 41 FR 6720 on February 13, 1976. The order settled FTC charges that Lindal misrepresented the ease of assembling the kits; used unfair contract terms; failed to make timely and complete deliveries; misled potential franchisees; violated credit terms and misled purchasers as to their warranty rights. The order requires Lindal to have a reasonable basis for ad claims; modify its sales agreements; offer a warranty;

establish a complaint-handling system; provide complete information to potential franchisees and comply with the credit law. The petition to vacate or modify was filed on July 1, 1988.

List of Subjects in 16 CFR Part 13

Pre-cut home kits, Trade practices.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-16290 Filed 7-19-88; 8:45 am]

BILLING CODE 4750-01-M

16 CFR Part 13

(File No. 661 0117)

Thomas L. Looby, M.D., et al.: Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, eleven physicians practicing in the Sioux Falls, S.D., area from continuing to act in combination to interfere with the operation of the University of South Dakota School of Medicine's obstetrical/gynecological (OB/GYN) program, and from further restricting competition for the provision of OB/GYN care in the Sioux Falls area.

DATE: Comments must be received on or before September 19, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: M. Elizabeth Gee, FTC/S-3115, Washington, DC 20580, (202) 326-2758.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Physicians, Obstetricians,
Gynecologists, Trade practices.

Before Federal Trade Commission

[File No. 861-0117]

Agreement Containing Consent Order to
Cease and Desist

In the matter of Thomas L. Looby, M.D.,
Dean L. Madison, M.D., Milton G. Mutch, Jr.,
M.D., James P. Ingvolstad, M.D., Russell T.
Orr, M.D., C. Roger Stoltz, M.D., Patricia S.
Wirtz, M.D., Samir Z. Abu-Ghazaleh, M.D., Si
G. Lee, M.D., Buck J. Williams, M.D., Gilbert
L. English, M.D.

The Federal Trade Commission
having initiated an investigation of
certain acts and practices of the
proposed respondents named in the
caption hereof, and it now appearing
that respondents are willing to enter into
an agreement containing an order to
cease and desist from the use of the acts
and practices being investigated,

It is hereby agreed by and between
proposed respondents, by their
attorneys, and counsel for the
Commission that:

1. Proposed respondents are
physicians licensed and doing business
under and by virtue of the laws of the
State of South Dakota.

2. Proposed respondents admit all the
jurisdictional facts set forth in the draft
of complaint here attached.

3. The proposed respondents waive:
(a) Any further procedural steps;
(b) The requirement that the

Commission's decision contain a
statement of findings of fact and
conclusions of law;

(c) All rights to seek judicial review or
otherwise to challenge or contest the
validity of the order entered pursuant to
this agreement; and

(d) Any claim under the Equal Access
to Justice Act.

4. This agreement shall not become
part of the public record of the
proceeding unless and until it is
accepted by the Commission. If this
agreement is accepted by the
Commission it, together with the draft
complaint contemplated thereby and
related materials pursuant to Rule 2.34,
will be placed on the public record for a
period of sixty days and information in
respect thereto publicly released. The
Commission thereafter may either
withdraw its acceptance of this
agreement and so notify proposed
respondents, in which event it will take
such action as it may consider
appropriate, or issue and serve its
complaint (in such form as the
circumstances may require) and
decision in disposition of this
proceeding.

5. This agreement is for settlement
purposes only and does not constitute
an admission by proposed respondents,
except to the extent described in
Paragraph Two, that the facts as alleged
in the draft complaint are true or that
the law has been violated as alleged in
the draft complaint.

6. This agreement contemplates that,
if it is accepted by the Commission, and
if such acceptance is not withdrawn by
the Commission pursuant to the
provisions of § 2.34 of the Commission's
Rules, the Commission may, without
further notice to respondents, (1) issue
its complaint corresponding in form and
substance with the draft complaint and
its decision containing the following
order to cease and desist in disposition
of the proceeding, and (2) make
information public in respect thereto.
When so entered, the order to cease and
desist shall have the same force and
effect and may be altered, modified, or
set aside in the same manner and within
the same time provided by statute for
other orders. The order shall become
final upon service. Delivery by the U.S.
Postal Service of the complaint and
decision containing the agreed-to order
to the address of each of the proposed
respondents as stated in the draft
complaint shall constitute service.

Proposed respondents waive any right
they may have to any other manner of
service. The complaint may be used in
construing the terms of the order, and no
agreement, understanding,
representation, or interpretation not
contained in the order or the agreement
may be used to vary or contradict the
terms of the order.

7. Proposed respondents have read the
proposed complaint and order
contemplated hereby. They understand
that when the order has been issued,
they will be required to file one or more
compliance reports showing they have
fully complied with the order. Proposed
respondents further understand they
may be liable for civil penalties in the
amount provided by law for each
violation of the order after it becomes
final.

Order

I

For purposes of this Order, the
following definitions shall apply:

A. "Respondents" means Samir Z.
Abu-Ghazaleh, M.D.; Gilbert L. English,
M.D.; James P. Ingvolstad, M.D.; Si G.
Lee, M.D.; Thomas L. Looby, M.D.; Dean
L. Madison, M.D.; Milton G. Mutch, Jr.,
M.D.; Russell T. Orr, M.D.; C. Roger
Stoltz, M.D.; Buck J. Williams, M.D.; and
Patricia S. Wirtz, M.D.

B. "Medical School" means University
of South Dakota School of Medicine.

C. "OB/GYN center" means any
medical facility or program established
to provide obstetrical or gynecological
care, research or education.

II

It is ordered, that each respondent
shall forthwith, directly, indirectly, or
through any corporate or other device,
in connection with the provision of
health care services in or affecting
commerce, as "commerce" is defined in
section 4 of the Federal Trade
Commission Act, as amended, cease and
desist from entering into, attempting to
enter into, organizing, continuing or
acting in furtherance of any agreement
or combination, either express or
implied, with any physician(s), to refuse
or threaten to refuse to deal with, or
otherwise coerce, any person or entity
for the purpose of with the effect of
interfering with the operation of the
academic or clinical programs of the
Medical School's obstetrical/
gynecological ("OB/GYN") department
or faculty, or of preventing or restricting
competition from any person or entity
for the provision of OB/GYN care in the
Sioux Falls, South Dakota, area,
including but not limited to any
agreement or combination to:

(1) Refuse or threaten to refuse to
serve on the faculty of the Medical
School;

(2) Make joint demands or joint
decisions as to any term or condition for
serving on the faculty of the Medical
School;

(3) Refuse, or threaten to refuse, to
refer patients to, receive referrals of
patients from, or provide any other form
of professional cooperation to, any
physician, based on his or her affiliation
or prospective affiliation with the
Medical School, or with any OB/GYN
center, or on his or her treatment of, or
attempts to attract, private patients;

(4) Interfere in a coercive manner with
any attempt by the Medical School to
recruit physicians to work in the Sioux
Falls area, or to negotiate jointly with
the Medical School concerning any term
or condition with respect to its
recruitment or hiring of such physicians;

(5) Refuse or threaten to refuse to
admit patients to any hospital or other
medical facility, based on the
relationship of the hospital or facility
with the Medical School, or based on
the actual or prospective operation or
funding, in whole or part, of any OB/
GYN center by the hospital or facility; or

(6) Coerce the Medical School, any
physician, or any other entity to
eliminate, limit or restrict advertising for
OB/GYN services in the Sioux Falls
area.

Provided that nothing in this Order
shall prohibit any respondent from
entering into an agreement of
combination with any physician with
whom the respondent practices
medicine in partnership or in a
professional corporation, or who is
employed by the same person as the
respondent.

III

It is further ordered that:

A. Respondent shall, within thirty (30)
days after this Order becomes final,
mail a copy of this Order and of the
Complaint in this proceeding to the
Administrator, the Chairman of the
Board of Directors, and the chief officer
of the medical staff of Sioux Valley
Medical Center and McKennan
Hospital, in Sioux Falls.

B. Each respondent shall, within (60)
days after service of this Order, and at
any time the Commission, by written
notice, may require, file with the
Commission a report, in writing, setting
forth in detail the manner and form in
which the respondent has complied with
this Order.

C. If a respondent, at any time,
discontinues his or her present business
or employment, he or she shall promptly
notify the Commission of such
discontinuance. In addition, for a period
of seven (7) years after this order
becomes final, each respondent shall
promptly notify the Commission
whenever he or she enters into any new
business or employment whose
activities involve the provision of OB/
GYN services in the Sioux Falls area.
Each such notice shall include the
respondent's new business address and
a statement of the nature of the business
or employment in which the respondent
is newly engaged as well as a
description of respondent's duties and
responsibilities in connection with the
business or employment. The expiration
of the notice provision of this paragraph
shall not affect any other obligation
arising under this order.

Analysis of Proposed Consent Order To
Aid Public Comment

The Federal Trade Commission has
accepted an agreement to a proposed
consent order from eleven physicians
practicing in the Sioux Falls, South
Dakota, area. The agreement would
settle charges by the Commission that
the proposed respondents, who are
obstetrician/gynecologists practicing in
six separate private medical practices,
violated section 5 of the Federal Trade
Commission Act by, among other things,
concertedly refusing to teach residents
in the University of South Dakota
School of Medicine's (the "Medical

School") residency program in obstetrics
and gynecology, in order to force the
Medical School to eliminate or limit the
provision of obstetrical/gynecological
("OB/GYN") care by members of its full-
time faculty in competition with the
proposed respondents.

The proposed consent order has been
placed on the public record for sixty (60)
days for reception of comments by
interested persons. Comments received
during this period will become part of
the public record. After sixty (60) days,
the Commission will again review the
agreement and the comments received
and will decide whether it should
withdraw from the agreement or make
final the agreement's proposed order.

The Complaint

A complaint has been prepared for
issuance by the Commission with the
proposed order. According to the
complaint, the Medical School expanded
its OB/GYN residency program in Sioux
Falls to a year-round program in July
1985, because Sioux Falls is the only
location in South Dakota with the
facilities, personnel and patients needed
to give OB/GYN residents sufficient
training in complex, subspecialty
fields—for example, perinatology, which
involves maternal-fetal medicine and
the treatment of high-risk pregnancies.
To make an adequate number of
patients available to residents for
instructional purposes, the Medical
School needs the services of private
practice OB/GYN specialists in the local
community who would serve as
"clinical"—part-time—faculty members.
The complaint alleges that the eleven
proposed respondents, along with one
other physician (the "other
obstetrician") who allegedly acted in
combination with them (and has been
charged in a separate complaint), were
the only obstetricians in private practice
in Sioux Falls in 1985, and were
therefore the only physicians available
to serve as OB/GYN clinical members.
Eight of the proposed respondents
served as clinical faculty members for
the 1985-1986 school year.

The complaint also explains that the
Medical School hired an obstetrician/
gynecologist whose subspecialty is
perinatology for its full-time faculty in
Sioux Falls in 1984. The professor was
the first practicing perinatologist in
Sioux Falls; prior to his arrival, patients
needing high-risk pregnancy care were
treated by local obstetricians who were
not trained in perinatal medicine or
were sent to perinatologists out of state.
Most members of the Medical School's
full-time faculty members treat private
patients through the School's Medical
Service Plan ("MSP"), a group practice

composed of full-time faculty members,
in which fees are split between the
School and the physician. The vast
majority of the physicians on the full-
time faculty did not compete in any
significant way with private
practitioners for paying patients, instead
they practiced in a manner
"complementary" to local private
practitioners. Unlike other members of
the full-time faculty, the perinatologist
began to advertise and directly solicit
patients shortly after he joined the
faculty. He indicated his availability to
provide general OB/GYN services as
well as perinatal services.

The Medical School planned,
according to the complaint, to recruit
additional subspecialty obstetricians/
gynecologists to its Sioux Falls faculty in
fields that were underserved in the
State, and to establish treatment centers
in those fields. The complaint alleges
that such recruitment posed a
competitive threat to respondents, as
they might lose business to the full-time
faculty members or find hiring
subspecialists for their own practices to
be less profitable or more difficult.

The complaint also alleges that, in
reaction to the competitive threat posed
by the full-time faculty, the eleven
respondents, along with the other
obstetrician, participated in a
combination or conspiracy to restrict
competition by concertedly refusing to
teach in the Medical School's OB/GYN
residency program after June 30, 1986.
The conduct of the twelve obstetricians
allegedly involved, among other things,
sending a letter signed by each of them
(the "resignation letter") to the dean of
the Medical School and administrators
of the two Sioux Valley hospitals, in
which they opposed the Medical
School's hiring of additional
perinatologists and announced their
"withdrawal" of support from the
residency program—meaning that none
of them would teach residents after June
30, 1986. The letter was, according to the
complaint, an attempt by proposed
respondents (and the other obstetrician)
to use their control over clinical faculty
services to force the Medical School to
limit the practice of its full-time faculty.

The complaint further alleges that
proposed respondents made numerous
joint demands on the School—most
involving restrictions on the private
practice and recruitment of full-time
faculty—as conditions for their teaching
in the OB/GYN residency program. The
Medical School responded to the
demands by putting a number of
limitations on the advertising and the
private practices of its full-time faculty.
The complaint also alleges that the

respondents and the other obstetrician tried to close down the OB/GYN residency program in Sioux Falls after it became clear that the Medical School would not accede to all of their demands and, on June 30, 1986, those respondents who were on the clinical faculty stopped teaching in the Medical School's OB/GYN residency program. The actions of the proposed respondents have, according to the complaint, significantly hindered the operation of the residency program and threatened its accreditation by causing a lack of faculty, patients, subspecialty training and funds; these deficiencies have led the national accrediting body to place the program on probation for four years.

The complaint alleges further that the conduct of the proposed respondents constitutes an unlawful conspiracy to eliminate or limit competition in the provision of OB/GYN care through the use of coercive conduct. It further alleges that the purposes or effects of the combination or conspiracy have been to restrict competition for the provision of OB/GYN care and for the provision of OB/GYN instruction among obstetrician/gynecologists in the Sioux Falls area, and thereby to deprive consumers of the benefits of competition.

With respect to anticompetitive effects in the provision of OB/GYN care, the complaint alleges, among other things, that (a) the Medical School and its full-time faculty have been restrained from competing for patients needing routine or subspecialty care; (b) the Medical School has been restrained from hiring full-time faculty and establishing needed subspecialty centers; and (c) consumers in South Dakota and neighboring states have been limited in their ability to choose among physicians and receive subspecialty care in Sioux Falls.

The Proposed Consent Order

Part II of the order describes the conduct prohibited; proposed respondents are prevented from agreeing or combining to refuse, or threaten to refuse, to deal with any person or entity for the purpose or with the effect of interfering with the operation of the academic or clinical programs of the Medical School's OB/GYN department or faculty, or of preventing or restricting competition from any person or entity for the provision of OB/GYN care in Sioux Falls, South Dakota. Subsections (1) through (8) of Part II list examples of the joint coercive conduct that is prohibited by the order, including: (1) Refusing or threatening to refuse to serve on the faculty of the Medical School, (2)

refusing or threatening to refuse to refer patients to, or receive referrals of patients from, any physician based on his or her affiliation with the Medical School; (3) refusing or threatening to refuse to admit patients to any hospital or other medical facility based on the relationship of the hospital or facility with the Medical School; (4) making demands or decisions as to any condition for serving on the faculty of the Medical School; (5) interfering in a coercive manner with any attempt by the Medical School to recruit physicians to work in the Sioux Falls area; and (6) coercing the Medical School, any physician, or any other entity to eliminate, limit or restrict advertising for OB/GYN services in the Sioux Falls area.

Part II also contains a provision that explains that the order does not prohibit any respondent from engaging in concerted conduct with any physician with whom he or she practices medicine in partnership or in a professional corporation, or who is employed by the same person as the respondent.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in the complaint.

Benjamin I. Herman,
Acting Secretary.

[FR Doc. 88-16282 Filed 7-19-88; 8:45 am]
BILLING CODE 6708-01-0

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Employee Benefit Plans

AGENCY: Equal Employment Opportunity Commission (EEOC, Commission).
ACTION: Withdrawal of proposed rule.

SUMMARY: This notice terminates the Commission's court-ordered rulemaking under section 4(f)(2) of the Age Discrimination in Employment Act of 1967, as amended (ADEA), 29 U.S.C. 623(f)(2), relating to the cessation of contributions and accruals to pension plans for employees who continue to work beyond normal retirement age. The Commission published a Notice of Proposed Rulemaking in the Federal Register on April 2, 1987, 52 FR 10584,

pursuant to an order entered on February 23, 1987 by Judge Harold Greene in *American Association of Retired Persons v. Equal Employment Opportunity Commission*, Civil Action No. 86-1740, United States District Court for the District of Columbia. For the reasons stated below, the Notice of Proposed Rulemaking is hereby withdrawn.

FOR FURTHER INFORMATION CONTACT: Paul E. Boymer, Office of Legal Counsel, Room 214, EEOC, 2401 E Street NW., Washington, DC 20507, (202) 634-6423.

SUPPLEMENTARY INFORMATION: The provisions of the Regulatory Flexibility Act and Executive Order 12291 do not apply to this notice.

Background

In 1979 the Department of Labor (DOL) published the "Employee Benefit Plans: Amendment to Interpretative Bulletin," 29 CFR 860.120, 44 FR 30648 (May 25, 1979), which provided comprehensive guidance on employee benefit plans covered under the ADEA. The Interpretative Bulletin contained "Special Rules" that allowed employers to cease contributions and accruals to pension plans for employees who continued to work beyond normal retirement age. When the Commission assumed responsibility for the ADEA in 1979, it stated that the IB would remain in effect pending review.

After a detailed analysis of the "Special Rules" and the legislative history of the ADEA, the Commission decided to develop regulations under section 4(f)(2) of the ADEA that would replace the "Special Rules" with rules prohibiting the cessation of contributions and accruals to pension plans on account of age. The Commission voted on March 5, 1985 to circulate draft rules to other affected agencies under Executive Order 12087. As the result of technical comments received from the Internal Revenue Service, the draft rules were restructured in 1986. The Commission was prepared to vote at its November 10, 1986 meeting regarding the publication of the proposed rules in the Federal Register for public comment after the coordination of the rules with the Office of Management and Budget under Executive Order 12291.

On October 17, 1986, however, Congress passed the Omnibus Budget Reconciliation Act of 1986 (OBRA), Pub. L. 99-509. In sections 6201-6204 of OBRA, Congress amended the ADEA by the addition of a new section 4(i) to require continuing contributions and accruals in a pension plan regardless of

an employee's age. In section 9204, Congress set forth the effective date of such rules. The amendments will be effective "only with respect to plan years beginning on or after January 1, 1988" with special rules for some collectively bargained plans. The Commission is currently engaged in a separate rulemaking under OBRA.

As the result of the passage of OBRA, the Commission reconsidered its intention to promulgate rules under section 4(f)(2) and at its meeting of November 10, 1986 decided that it would not be appropriate to continue the rulemaking begun in 1985 since: (1) Congress, in setting a 1988 or later implementation date, had set forth its clear desire to grant a grace period to allow employers time to implement a complex change to their pension programs; (2) the draft rules of March 1985, a modified in 1986, imposed an "equal cost" requirement while the OBRA amendments imposed an "equal benefit" requirement, a significant difference that would require employers to amend their plans twice within a one- or two-year period; (3) reviewing two sets of amendments within such a short period of time would prove to be a burden for the Internal Revenue Service, which has the responsibility for approving the tax aspects of such plan amendments; and (4) as the Commission was required under OBRA to issue final regulations relating to the amended sections prior to February 1, 1988, the Commission's resources would best be spent in developing the OBRA rules rather than the rules under section 4(f)(2) which would be rescinded in 1988.

Notwithstanding the Commission's decision of November 10, 1986, on February 26, 1987 the district court ordered the Commission to rescind the "Special Rules" and, after an extremely abbreviated period for notice, comment, and analysis, to publish regulations mandating continuing contributions and accruals regardless of age. The district court did not make a finding of law that the "Special Rules" violated the ADEA. On March 18, 1987, after the Commission's request for a stay pending appeal was denied, the Commission rescinded the "Special Rules" but appealed the balance of the order. On July 10, 1987, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's decision and vacated the part of the order directing the Commission to publish rules. The Court of Appeals instructed the district court to remand the case to the Commission for further assessment of its vote of November 10,

1986 in light of the court-ordered rescission of the "Special Rules." On April 7, 1988, the district court remanded the case to the Commission.

On June 1, 1988, the Commission met and reconsidered the question of whether to issue pension regulations under section 4(f)(2). The Commission reviewed the history of the ADEA and the regulatory project and carefully considered the effect of the rescission of the "Special Rules." The Commission concluded that the reasons set forth on November 10, 1986 for terminating the rulemaking were still valid.

The Commission believes that any minimal problems resulting from the lack of regulations would be far outweighed by the problems (listed above) that would be brought about by the promulgation of rules. Finally, the Commission realized that it would be irresponsible to make any section 4(f)(2) rules effective immediately (or retroactively). The rules under the ADEA and ERISA governing pension benefits are extraordinarily complex. Pension plans, particularly those developed through collective bargaining, need ample lead time to implement significant changes in regulatory positions such as envisioned by the Commission prior to its vote of November 10, 1986. In addition, any regulatory change should be effective on the first day of a pension plan's fiscal year, to avoid the necessity of making two complex sets of actuarial calculations in one plan year. Accordingly, as recommended by numerous commentators, the most appropriate effective date for each pension plan would be the first day of the first plan year beginning on or after January 1, 1988, with special extensions for plans covered by collective bargaining agreements, which is precisely the effective date provided by OBRA. Since the provisions of OBRA would supersede the provisions of section 4(f)(2), the Commission believes the promulgation of regulations under section 4(f)(2) would be an unwarranted and imprudent use of its discretionary rulemaking power.

It should be noted that the Commission does not normally publish a notice of this nature after each Commission vote. An exception is being made in this case in light of the litigation involved.

Decision

For the reasons stated above, the Commission announces that the court-ordered rulemaking under section 4(f)(2) of the ADEA relating to pension contributions and accruals is hereby terminated and the notice of proposed

rulemaking dated April 2, 1987, 52 FR 10584, is hereby withdrawn.

Signed on behalf of the Commission at Washington, DC on this 30th day of June, 1988.

Clarence Thomas,
Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88-16286 Filed 7-19-88; 8:45 am]
BILLING CODE 6708-01-0

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 736, 740 and 750

Surface Coal Mining and Reclamation Operations; Application Fee for Permit To Conduct Surface Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for Processing Permit Revisions, Transfers and Renewals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Reopening of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is reopening the public comment period on the proposed rule concerning permit fees for OSMRE permitting actions, for a period of 60 days, in response to several requests from interested parties.

DATE: The comment period is reopened until September 19, 1988. Comments will be accepted until 5:00 p.m. Eastern time on that date.

ADDRESSES: Written Comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131 L, 1951 Constitution Ave. NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Adele Merchant, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone (202) 343-1864 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: On May 17, 1988, OSMRE published in the Federal Register a proposed rule to establish a system of fees to be paid to OSMRE by applicants to obtain processing and issuance of surface coal

mining and reclamation permits and coal exploration permits, and renewals, revisions and transfers of existing permits, in Federal program States, on Federal lands where OSMRE issues a permit, and on Indian lands (53 FR 17568). The proposed regulations would establish a system of fees to implement the requirement at section 507(a) of the Surface Mining Reclamation and Control Act of 1977 (SMCRA) and 30 CFR 777.17 that permit fees shall accompany an application for a permit.

That notice stated that comments would be accepted on the proposed rule until 5:00 p.m. on July 18, 1988.

A public hearing on the proposed rule was held July 11, 1988, in Washington, DC; and on July 13, 1988, in Denver, Colorado.

This extension is being granted in response to several requests from interested parties that the comment period be extended from an additional 60 days, to allow commenters additional time to prepare their written comments on the proposed rule.

Date: July 14, 1988.

Robert E. Boldt,
Director, Office of Surface Mining
Reclamation and Enforcement.

[FR Doc. 88-16241 Filed 7-19-88; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 915

Iowa Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: OSMRE is announcing the receipt of revisions to previously proposed amendments to the Iowa permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to coal exploration, operations permit, and inspection and enforcement.

This notice sets forth the times and locations that the Iowa program and proposed amendments to that program are available for public inspection and the extended comment period during which interested persons may submit written comments on the proposed amendments.

DATE: Written comments relating to Iowa's proposed modification of its program not received on or before 4:00

p.m. on August 4, 1988, will not necessarily be considered in the Director's decision to approve or disapprove the amendment.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below. Copies of the Iowa program, the proposed amendments to the program, and all written comments received in response to this notice will be available for public review at the addresses listed below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64105.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240; Telephone: (202) 343-5492.

Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, East 9th and Grand Streets, Des Moines, Iowa 50319; Telephone: (515) 281-6142.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office at the address listed in "ADDRESSES"; Telephone (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 1981, the Secretary of the Interior approved the Iowa program. Information regarding general background on the Iowa program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981, Federal Register (46 FR 5865). Subsequent actions with regard to Iowa's approved program and program amendments can be found at 30 CFR 915.15.

II. Proposed Amendments

By letter dated February 9, 1988, Iowa submitted proposed amendments to its permanent regulatory program under SMCRA (Administrative Record No. IA-304). Iowa submitted the proposed amendments in response to an August 1, 1988, letter (Administrative Record No. IA-280) that OSMRE sent in accordance with 30 CFR Part 732. The proposed changes would rescind rules at 780—Chapter 4 within the Soil Conservation Department of the Iowa Administrative

Code (IAC) and adopt Chapters 40 through 49 within the Agriculture and Land Stewardship Department of the IAC. The Iowa Division of Soil Conservation (DSC) has incorporated by reference into the Iowa program, applicable sections of the July 1, 1987, Code of Federal Regulations (CFR) at 30 CFR Part 700 through Part 850.

OSMRE published a notice in the March 31, 1988, Federal Register (53 FR 10397) announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments. The public comment period ended May 2, 1988.

Iowa revised certain portions of its amendment prior to final adoption by the DSC. By letter dated June 9, 1988, Iowa has requested that OSMRE include these revisions in the amendment submitted February 9, 1988. The revisions include: 43.1(2), Coal Exploration; 43.2(3), 43.3(1), 43.4(3), 43.6(2), (3), and (6), and 43.8(4), Operations Permit; 46.3, Permanent Program Performance Standards; and 47.4(83), Inspection and Enforcement. The full text of the proposed program amendment is available for review at the locations listed above under "ADDRESSES."

The Director, OSMRE, is now seeking public comments on the adequacy of the State's submissions.

Accordingly, OSMRE is reopening and extending the comment period on Iowa's revised amendments. This action is being taken to provide the public with an opportunity to reconsider the adequacy of the proposed amendments.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,
Assistant Director, Western Field Operations.
Date: July 7, 1988.

[FR Doc. 88-16302 Filed 7-19-88; 8:45 am]

BILLING CODE 4310-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, and 58

[AD FRL-3417-4]

Proposed Decision Not To Revise the National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On April 28, 1988 (53 FR 14926), EPA proposed not to revise the national ambient air quality standards (NAAQS) for sulfur oxides (sulfur dioxide). In that same notice, EPA also solicited public comment on an alternative of adding a 1-hour primary standard of 0.4 ppm as well as other revisions to the remaining standards. The April 28, 1988 notice also announced proposed revisions to the Significant Harm Levels and associated episode contingency plan guidance (40 CFR Part 51), the Pollutant Standards Index for sulfur dioxide (40 CFR Part 58, and certain monitoring and reporting requirements (40 CFR Part 58). The notice established a deadline for receiving public comment on these proposals of July 25, 1988.

In response to a request from the public, today's notice extends the period for public comment on the proposals until September 23, 1988.

DATE: Written comments on these proposals must be received by September 23, 1988.

ADDRESSES: Submit comments on the proposed action on the NAAQS (40 CFR Part 50) (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-84-25, 401 M Street SW., Washington, DC 20460. Comments on the proposed revisions to the monitoring and reporting requirements and Pollutant Standards Index (40 CFR Part 58) should be separate from those pertaining to the standards and sent to the same address, Attn: Docket No. A-87-06. Comments on the proposed revisions to the Significant Harm Level and episode criteria (40 CFR Part 51) also should be sent separately to the same address. Attn: Docket No. A-87-12. These dockets are located in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M St. SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. John Haines, Air Quality Management Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-5533 (FTS 629-5533).

Date: July 14, 1988

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88-16330 Filed 7-19-88; 8:45 am]

BILLING CODE 6880-90-M

40 CFR Part 52

[FRL-3416-5]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed rulemaking.

SUMMARY: U.S. EPA proposed to disapprove a revision to the Michigan State Implementation Plan (SIP) for Ozone. This revision requests a relaxation of volatile organic compound (VOC) emissions limitations from vinyl coating operations at the Ford Motor Company's Mt. Clemens, vinyl plant located in Macomb County, Michigan. U.S. EPA is proposing to disapprove this SIP revision and supplement because the source is located in an area which lacks a federally approved 1982 Ozone SIP, and Michigan has yet to submit all required elements to this SIP.

DATE: Comments on this revision and on the proposed U.S. EPA action must be received by August 19, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886-6037, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, Steven T. Mason Building, 530 West Allegan, Lansing, Michigan 48909.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1985, the Michigan Department of Natural Resources (MDNR) submitted an Ozone SIP revision request for the Ford Motor Company's Mt. Clemens vinyl plant in the form of a Stipulation of Entry of Consent Order and Final Order SIP No. 1-1985. The Consent Order concerned VOC emissions from coating lines at the vinyl plant in the City of Mount Clemens, Macomb County, Michigan. Macomb County is an urban ozone nonattainment area.

On August 29, 1985, U.S. EPA prepared a Technical Support Document (TSD) which recommended disapproval of Consent Order No. 1-1985. On September 24, 1985, U.S. EPA sent the State of Michigan a letter addressing the deficiencies associated with the Ford Motor Company's Mt. Clemens vinyl plant Consent Order No. 1-1985.

On November 1, 1985, the State of Michigan sent U.S. EPA a letter requesting that U.S. EPA withhold formal disapproval rulemaking action Consent Order No. 1-1985, because a revised supplementary Consent Order addressing the U.S. EPA concerns identified in the September 24, 1985, letter was being prepared.

On April 29, 1986, the State of Michigan submitted supplemental information in the form of a First Supplement to Final Order Consent Order No. 1-1985. U.S. EPA prepared a TSD dated July 23, 1986, which again recommended disapproval. U.S. EPA reviewed Consent Order No. 1-1985, as modified, and determined that the revision did not change the requirements in Michigan's March 6, 1985, SIP submittal.

On September 8, 1986, U.S. EPA sent the State of Michigan a letter and a copy of the July 23, 1986, TSD recommending disapproval of Consent Order No. 1-1985, as supplemented. On November 20, 1986, the State of Michigan sent U.S. EPA a letter containing additional information and a copy of the Ford Motor Company's November 20, 1986, comment letter. U.S. EPA's response appears later in this notice.

On February 26, 1987, the State of Michigan sent U.S. EPA a letter which stated that the State no longer sought U.S. EPA approval of the shutdown schedule provided in the original Final Order SIP No. 1-1985 for the Mt. Clemens vinyl plant.

Summary of Ford-Mt. Clemens Printers and Cast Line

Mt. Clemens vinyl plant contains coating lines for the coating of vinyl

fabrics to be used in automobile seats, headliners, and other automobile applications. The nine vinyl coating lines at the plant are designated as printers 1, 2, 3, 5, 7, 8, 10, 11 and a cast line. Printers 1, 2, 3, 5, 9 and 10 are currently uncontrolled, while printers 7 and 8 are controlled by the Airco inert gas/solvent recovery systems, which is a liquid nitrogen based condensation process that recovers solvents. The expected performance of the Airco Systems was 81 percent overall VOC control, based on a combination of 90 percent fugitive solvent capture, and 90 percent efficiency of the condensation unit treating the captured solvent. However, following installation and operation of the Airco Units, Ford discovered that the optimum overall control efficiency is 53 percent on Printer No. 7, and 57 percent on Printer No. 8. Ford is currently achieving these levels of control. In order to further reduce emissions from Printers No. 7 and 8, additional emission control systems or conversion to water-based coatings would be required. However, because most of the VOC emissions still being emitted from Printers No. 7 and 8 are fugitive, the State of Michigan believes that no further add-on controls would be practical.

The cast line is controlled by a thermal incinerator. Printer No. 11 was installed in 1977 as a major source, subject to offset requirements, and is controlled by an afterburner, which MDNR contends achieves Lowest Achievable Emission Rate (LAER).

With respect to vinyl coating operations at Ford's Mt. Clemens Plant, Michigan's Rule 336.1610(3), Table 63, limits the emission rate to 4.5 pounds of VOC per gallon of coating (minus water) as applied. Compliance with R336.1610 is required on and after December 31, 1982. Consent Order No. 1-1985 sets forth a schedule of installation of control equipment on Printers No. 7 and 8 and the cast line; requires a 250-ton reduction of VOC emissions from other uncontrolled printers by December 31, 1985; and establishes a plant wide annual emissions cap of 440 tons of VOC emissions after January 1, 1986.

Consent Order No. 1-1985 (March 6, 1985)

Consent Order No. 1-1985 for the Mt. Clemens plant contains the following VOC emission limits and shutdown schedules:

Printer No. 1 and 5—After June 30, 1985, coating operations are permanently discontinued.

Printers No. 2, 3, and 9—After February 1, 1985, coating operations are permanently discontinued.

Printer No. 7—As of February 1, 1985, the VOC emissions shall not exceed 46 pounds of VOC per gallon of solids applied, based on a 15-day averaging period, and 55 pounds of VOC per gallon of solids applied, based on a 24-hour averaging period.

Printer No. 8—After February 1, 1985, the VOC emissions shall not exceed 47 pounds of VOC per gallon of solids applied, based on a 15-day averaging period and 51 pounds of VOC per gallon of solids applied, based on a 24-hour averaging period.

Printer No. 10—Until November 30, 1985, the VOC emissions shall not exceed 84 pounds of VOC per gallon of solids applied, based on a 15-day averaging period, and 117 pounds of VOC per gallon of solids applied, based on a 24-hour averaging period. After November 30, 1985, the Company shall permanently discontinue operation of Printer No. 10 and shall not resume operation, unless an approved permit to install is issued by the Michigan Air Pollution Control Commission.

Printer No. 11—Subject to offset requirements and controlled by an afterburner which MDNR believes represents LAER.

Cast line—After February 1, 1985, the VOC emissions from the cast line shall not exceed 9.0 pounds of VOC per gallon of solids applied based on a 15-day averaging period, and 11.0 pounds of VOC per gallon of solids applied, based on a 24-hour averaging period.

Supplemental Consent Order No. 1-1985 (April 23, 1986)

Michigan submitted supplemental information in the form of a First Supplement to Final Order Consent No. 1-1985 on April 29, 1986. This revised submittal does not change the requirements included in the original Consent Order No. 1-1985. Michigan's proposed supplement requested an extended shutdown schedule for the uncontrolled lines and a relaxation for controlled lines No. 7 and No. 8. (The letter of February 26, 1987, removed the request for consideration of the extended shutdown schedule.) Supplemental Consent Order No. 1-1985 for the Mt. Clemens plant contains the following provisions:

Printers No. 7 and 8—Compliance with emission limits for vinyl coaters 7 and 8 (as set forth in paragraph 8.b and 8.c.) of Consent Order No. 1-1985, shall be demonstrated (under paragraph 8.i) by determination of

overall average VOC reduction of 53 percent for vinyl coater No. 7 and 57 percent for vinyl coater No. 8.

Shutdown Schedule—After January 21, 1986, the company shall not operate any uncontrolled printers at the facility.

On November 20, 1986, the State of Michigan sent U.S. EPA a letter which contained additional information addressing U.S. EPA's July 23, 1986, evaluation of the Supplemental Consent Order No. 1-1985. Presented below is U.S. EPA's response to Michigan's November 20, 1986, letter.

Review of Michigan's November 20, 1986 Comments

MDNR Comment 1: In summary, Michigan's position is that the proposed limitations constitute RACT for this facility and that, therefore, Printers 7 and 8 should not be characterized as a "permanent relaxation." MDNR concluded that the proposed SIP revision, as supplemented, achieves RACT by requiring the 53 percent and 57 percent overall control.

USEPA Response: Whether the 53 percent and 57 percent overall control constitute RACT for printers No. 7 and No. 8, respectively, need not be determined for present purposes. This level of control is a "relaxation" in that it allows more VOC emissions from lines No. 7 and No. 8 than the limits in Michigan's federally approved SIP. As discussed below, U.S. EPA cannot approve this relaxation because (1) Michigan lacks an approved attainment demonstration as discussed below; and (2) Michigan has not met the EPA policy that relaxations in a nonattainment area lacking an approved attainment demonstration are approvable only if the state demonstrates progress towards attainment. Although Ford has reduced emissions from other plant sources over the last few years, the state has not met its burden of demonstrating that this SIP revision meets those progress requirements.

MDNR Comment 2: MDNR believes that the 53 percent and 57 percent control efficiencies are enforceable in the manner that they are presented in the supplement. The State further believes that the pound per gallon of solids limitations in paragraphs 8(b) and 8(c) of the original order are also enforceable. In other words, both limitations must be met at all times. It is MDNR's position that a violation of either the specified percent reduction or the pound per gallon limitation would constitute a violation of the Order. The company agrees with this interpretation

as stated in the attached letter dated November 20, 1986.

USEPA Response: As stated in the July 23, 1986, TSD, U.S. EPA did not consider Michigan's scheme to require 53 percent and 57 percent overall control for printers Nos. 7 and 8 to be enforceable. However, both Michigan's and Ford's November 20, 1986, letters take the position that the percent reduction requirements in Michigan's April 29, 1986, submittal of a "First Supplemental to Final Order" are separately enforceable. Therefore, the positions taken by Ford and Michigan (on separate enforceability of the percent reduction requirements) are sufficient to clarify the separate enforceability of the requirements. However, at this point, U.S. EPA does not need to address the positions taken by Ford and Michigan on the enforceability issue because the 1982 Michigan Ozone SIP deficiencies have not been resolved.¹

MDNR Comment 3: MDNR asserted that emission testing at steady-state operation is appropriate. Steady-state operation is the normal manner in which emission testing of stationary sources is routinely done in the State of Michigan on all stationary facilities. The company outlined a further description of conditions that would be maintained at the facility to achieve steady-state operation. MDNR contended that the same test methodology that was appropriate to establish the standard should also be appropriate to verify compliance.

USEPA Response: U.S. EPA has reviewed Michigan's and Ford's comments and agrees that the language, regarding steady-state operation in the "First Supplement to Final Order" is acceptable. Emission testing is appropriate at those conditions at which Printers No. 7 and No. 8 operate in normal production.

MDNR Comment 4: MDNR defended the extended shutdown dates for the uncontrolled printers by pointing out that these printers are not shut down and that the supplemental Consent

¹ The proposed SIP revision does not contain an adequate test method for determining compliance with the 53 percent/57 percent overall control emission limit. The applicable test method is contained in the "First Supplement to Final Order." This method allows calculation of the pounds of VOC per gallon in the coatings (EPA Method 24) and the calculation of the pounds of VOC recovered (weighing the solvent and excluding water using the ASTM method). The test method in the "supplement" does not allow calculation of the percentage reduction because the units obtained from EPA Method 24 (pounds per gallon) are not the same as the units obtained from weighing recovered solvent (pounds). In addition, note that the citation for the ASTM test method in the "supplement" is incorrect. It should read ASTM D3792-79.

Order bars operation of any uncontrolled printer after January 21, 1986. MDNR asserted that the company did proceed to expeditiously shut down the uncontrolled printers as required by the Order, once the Order was entered. While the timeliness of the past shutdown may be an issue to be resolved in pending litigation between Ford and the U.S. EPA, MDNR argued that it is simply not possible now to effect any earlier shutdown of these printers. Thus, MDNR asked that U.S. EPA approve the SIP revision because the company's past actions should not affect a SIP revision which addresses the future operations of the plant.

USEPA Response: U.S. EPA now evaluates the expeditiousness of a VOC compliance extension according to the provisions of the August 7, 1986, memorandum by J. Craig Potter, Assistant Administrator for Air and Radiation, titled "Policy on SIP Revisions Requesting Compliance Date Extensions for VOC Sources." This policy requires a survey of other sources in the same VOC category to evaluate expeditiousness. This survey has not been performed by Michigan; and, therefore, the expeditiousness of the extended shutdown schedule for the uncontrolled printers cannot be determined.

On February 26, 1987, the State of Michigan sent U.S. EPA a letter which stated that the State no longer seeks approval of the shutdown schedule provided in the original Final Order SIP No. 1-1985 for the Mt. Clemens vinyl plant. Thus, the reasonableness of the time extension is not under consideration in this rulemaking.

USEPA's Proposed Rulemaking Action

U.S. EPA is proposing to disapprove Consent Order No. 1-1985, as supplemented, for the Ford Motor Company's Mt. Clemens Vinyl plant because the source is located in an area which currently lacks a federally approved 1982 Ozone SIP.

Under U.S. EPA policy, as indicated in a July 29, 1983, memorandum from Sheldon E. Myers, former Director of the Office of Air Quality Planning and Standards, U.S. EPA will not approve a SIP revision allowing relaxed emission standards in a nonattainment area, unless the State demonstrates that the SIP as a whole, as revised, will result in attainment by the applicable date. This requirement has not been met here. Macomb County, Michigan, is an ozone nonattainment area and, as such, must be subject to an U.S. EPA-approved SIP demonstrating attainment as expeditiously as practicable, but no

later than the end of 1987. The Michigan ozone SIP has been submitted to U.S. EPA in large part, but is still undergoing U.S. EPA review. U.S. EPA's preliminary review indicates that the Michigan ozone plan lacks certain required RACT rules and other SIP-related elements. The attainment demonstration that Michigan submitted with its ozone plan purports to show attainment by the end of 1987 on the basis of reductions in VOC emissions in part from those sources for which no RACT rules have been submitted. Michigan's failure to submit these rules means that it has not demonstrated that the associated VOC reductions will occur, and thus that attainment will occur by the end of 1987 or even shortly thereafter.

In addition, under U.S. EPA policy, even if Michigan projected attainment solely from VOC reductions from sources other than those lacking RACT rules, RACT rules for all sources covered by RACT requirements are necessary as an additional safeguard for attainment. For this reason, too, the lack of RACT rules means U.S. EPA cannot approve the Michigan SIP. However, under EPA's emissions trading program, sources covered by RACT emission limits may be allowed to replace those limits with less stringent limits by obtaining emission credits from other sources in the area. Those credits must be obtained in accordance with the procedures established in the emissions trading policy and will generally be obtained by applying control to previously unregulated sources, by applying emission limits that are more stringent than RACT to other sources, or by taking credit from certain source shutdowns. It should be noted that EPA recently notified the Governor of Michigan that its ozone SIP for the Detroit area is substantially inadequate to attain and maintain the national ambient air quality standard for ozone and that Michigan must revise the plan. This action has the effect of reinforcing the area's classification as an area "needing but lacking an approved attainment demonstration" under the emissions trading policy, and thus requires any request for approval of an emissions trade to use a more stringent emissions "baseline" on which to determine surplus emission credits. In a separate notice, U.S. EPA will be addressing the deficiencies associated with the State of Michigan's proposed 1982 Ozone SIP revision.

A 30-day public comment period is being provided on this notice of proposed disapproval rulemaking. Public comments received on or before

August 19, 1988 will be considered in U.S. EPA's final rulemaking action.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. 605(b), I certify that this SIP disapproval section will not have a significant economic impact on a substantial number of small entities because this action applies to only one source. In addition, this action imposes no additional requirements on the source.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Dated: September 23, 1987.

(Editorial Note: This document was received at the Office of the Federal Register on July 15, 1988.)

Valdes V. Adamkus,
Regional Administrator.

[FR Doc. 88-16324 Filed 7-19-88; 8:45 am]

BILLING CODE 5510-50-01

40 CFR Part 52

[FRL-3416-4]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to disapprove a request to revise the Michigan State Implementation Plan (SIP) for Ozone for the Ford Motor Company's Romeo Tractor Plant. This proposed revision requests a compliance date extension for a number of paint operations and a relaxation of the volatile organic compound (VOC) emissions limit contained in Michigan's Rule 336.1621 for certain paint operations at the Ford Motor Company's Romeo Tractor and Equipment Plant in Macomb County, Michigan.

USEPA is proposing to disapprove this revision because: (1) The State failed to provide adequate documentation that the December 31, 1988, compliance date extension is as expeditious as practicable in accordance with the Clean Air Act and USEPA's policy; (2) the State has failed to demonstrate that a proposed emission limitation of 4.8 lbs. of VOC per gallon of coating for the final repair operations constitutes reasonably available control technology (RACT), or that the existing RACT-based emission limit is technologically or economically infeasible for these

operations; and (3) the State has not demonstrated that this relaxation would not interfere with timely attainment and maintenance of the ozone standard in the Detroit area.

DATE: Comments on this revision and on the proposed USEPA action must be received by August 19, 1988.

ADDRESSES: Copies of the SIP revision are available at the following address for review: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886-6037, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 W. Allegan, Lansing, Michigan 48909.

Comments on this proposed SIP revision request should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Michigan Regulatory Specialist, U.S. Environment Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On May 13, 1985, the Michigan Department of Natural Resources (MDNR) submitted a SIP revision request for the Ford Motor Company's Romeo Tractor and Equipment Plant in the form of a Stipulation for Entry of Consent Order and Final Order No. 3-1985. The Romeo plant is located in Macomb County, Michigan, which is in an urban ozone nonattainment area.

Summary of Ford-Romeo Tractor and Equipment SIP Revision

The Ford Motor Company's Romeo Tractor and Equipment Plant assembles and finishes a wide variety of heavy equipment for agricultural, construction and industrial applications. The plant includes six paint operations which are subject to the Michigan Air Pollution Control Commission (MAPCC) Rule 336.1621. These operations are: A small parts paint system, a flat deck tractor chassis system, a straddle mount tractor chassis system, and a touch-up and repair facility for agricultural and industrial tractor modifications and repairs. A system for painting hydraulic cylinder subassemblies and a modification building paint repair booth

are exempted from the requirements of R336.1621 because the annual emissions from these sources are under 10 tons. Primers and top coatings are applied by a "wet-on-wet" basis through conventional air atomized spray. The company uses approximately 160 topcoat colors, most of these consisting of specialty colors with annual usage volumes below 15 gallons. Current plant production is approximately 70 agricultural and 20 industrial tractors per day on two shifts per day, 5 days per week, 50 weeks per year.

Current Federally Approved State Rule Requirements

Michigan's Rule 336.1621 establishes VOC emission limits for miscellaneous metal coating operations and specifies a final compliance date of December 31, 1983. Rule 336.1621 was approved by USEPA as part of Michigan's Part D SIP on June 29, 1982 (47 FR 28097). The emission limits in R336.1621 require at least the application of RACT as required by section 172(b) of the Clean Air Act (CAA). The paint operations at the Romeo plant are presently subject to the VOC limit of 3.5 lbs. of VOC/gallon of coating, minus water, as applied, for "extreme performance" coatings set forth in R336.1621(i)(c).

Proposed Emission Limits

Consent Order No. 3-1985 would revise the existing SIP requirements in R336.1621 for the six paint operations at the Romeo Tractor and Equipment Plant described above as follows:

1. Three paint operations covered by the rule (the industrial tractor paint repair booth, the agricultural tractor paint repair booth and the touch-up paint repair booth) would have a higher final emission limit of 4.8 pounds of VOC/gallon, minus water, as applied for standard and specialty colors.

2. The final compliance date for all six paint operations covered by the Order would be extended to December 31, 1990.

3. Interim emission limits established for all six paint operations from 1983 to the final 1990 compliance deadline exceed the 3.5 pound/gallon limit set forth in R336.1621.

4. The MAPCC could establish "equivalent" emission limits expressed in terms of pounds of VOC per gallon of solids applied.

5. Compliance with the emission limits would be determined as a 24-hour weighted average of all the standard and specialty colors used. The current rule requires compliance with the VOC limits to be met on an instantaneous

basis. There is no provision for averaging over time.

Specifically, Consent Order No. 3-1985, includes the following compliance schedule and emission limits for each of the six paint operations covered in the order:

Flat Deck Chassis Paint Booth

- Until December 31, 1984, VOC emissions from the application of all standard and specialty colors shall not exceed 5.4 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- By December 31, 1984, and until December 31, 1986, the VOC emissions from the application of all standard and specialty colors shall not exceed 3.7 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- After December 31, 1986, the VOC emissions from the application of all standard and specialty colors shall not exceed 3.5 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

Straddle Mount Chassis Paint Booth

- Until December 31, 1985, VOC emissions from the application of all standard and specialty colors shall not exceed 5.2 pounds of VOC per gallon of coating, minus water, as applied.

- By December 31, 1985, and until December 31, 1988, the VOC emissions from the application of all standard and specialty colors shall not exceed 4.3 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- After December 31, 1988, the VOC emissions from the application of all standard and specialty colors shall not exceed 3.5 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

Small Parts Paint Booth

- Until December 31, 1985, VOC emission from the application of all standard and specialty colors shall not exceed 5.3 pounds of VOC per gallon of coating, minus water, as applied.

- By December 31, 1985, and until December 31, 1988, the VOC emissions from the application of all standard and specialty colors shall not exceed 4.3 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- After December 31, 1988, the VOC emissions from the application of all standard and specialty colors shall not exceed 3.5 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

Industrial Tractor Paint Repair Booth

- Until December 31, 1985, VOC emissions from the application of all standard and specialty colors shall not exceed 5.9 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- By December 31, 1985, and until December 31, 1986, the VOC emissions from the application of all standard and specialty colors shall not exceed 5.2 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- After December 31, 1986, the VOC emissions from the application and specialty colors shall not exceed 4.8 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

Agricultural Tractor Paint Repair Booth

- Until December 31, 1985, VOC emissions from the application of all standard and specialty colors shall not exceed 5.4 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- By December 31, 1985, and until December 31, 1986, the VOC emissions from the application of standard and specialty colors shall not exceed 5.0 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- After December 31, 1986, the VOC emissions from the application of all standard and specialty colors shall not exceed 4.8 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

Touch-Up Paint Repair Booth

- Until December 31, 1985, VOC emissions from the application of all standard and specialty colors shall not exceed 5.4 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour average.

- By December 31, 1985, and until December 31, 1986, the VOC emissions from the application of standard and specialty colors shall not exceed 5.2 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

- After December 31, 1986, the VOC emissions from the application of all standard and specialty colors shall not exceed 4.8 pounds of VOC per gallon of coating, minus water, as applied, based on a 24-hour averaging period.

USEPA's Evaluation of the Proposed Revision

Air Quality Considerations

Macomb County, where the Ford Romeo plant is located, is a primary

nonattainment area for ozone. Michigan requested and obtained from USEPA an extension for achieving the ozone national ambient air quality standard (NAAQS) for the Detroit Metropolitan area, including Macomb County, to December 31, 1987. Michigan was, therefore, required by the Clean Air Act (CAA) to submit a revised ozone plan for the Detroit area by July 1982, which demonstrated attainment of the ozone NAAQS not later than December 31, 1987. On April 3, 1983, Michigan submitted its 1982 Ozone SIP for the Detroit urban area, which USEPA proposed to disapprove on June 14, 1984, (49 FR 24544) due to the failure of the plan to demonstrate attainment.

Michigan submitted a revised 1982 Ozone SIP on June 12, 1985. The impact of the relaxations in this Consent Order on air quality and maintenance of reasonable further progress (RFP) are taken into account in the ozone attainment demonstration for the Detroit nonattainment area that was part of the June 12, 1985, submittal. The attainment demonstration, as submitted, predicts attainment of the ozone standard by 1987 as required by the CAA and USEPA guidelines. However, USEPA has not approved the State's proposed revised ozone plan for the Detroit Urban area. USEPA's SIP revision policy requires that the SIP include an approvable attainment demonstration, under which it can be determined that a proposed relaxation will not interfere with RFP toward, and timely attainment of, the ozone NAAQS.

The Michigan Ozone SIP has been submitted to USEPA in large part, but is still undergoing USEPA review. USEPA's preliminary review indicates that the Michigan ozone plan lacks certain required RACT rules and other SIP-related elements. In a separate action USEPA will be addressing the deficiencies associated with the State of Michigan's proposed 1982 Ozone SIP revision.

The attainment demonstration that Michigan submitted with its ozone plan purports to show attainment by the end of 1987 on the basis of reductions in VOC emissions in part from sources for which no RACT rules have been submitted. Michigan's failure to submit these rules means that it has not demonstrated that the associated VOC reductions will occur, and thus that attainment will occur by the end of 1987 or even shortly thereafter. In addition, under USEPA policy, even if attainment were projected to result solely from VOC reductions associated with sources other than those for which no RACT rules have been submitted, RACT rules

for all sources covered by RACT requirements are necessary as an additional safeguard for attainment. For this reason, too, the lack of RACT rules means USEPA cannot approve the Michigan SIP.

However, under EPA's emissions trading program, sources covered by RACT emission limits may be allowed to replace those limits with less stringent limits by obtaining emission credits from other sources in the area. Those credits must be obtained in accordance with the procedures established in the emissions trading policy and will generally be obtained by applying control to previously unregulated sources, by applying emission limits that are more stringent than RACT to other sources, or by taking credit from certain source shutdowns. It should be noted that EPA recently notified the Governor of Michigan that its ozone SIP for the Detroit area is substantially inadequate to attain and maintain the national ambient air quality standard for ozone and that Michigan must revise the plan. This action has the effect of reinforcing the area's classification as an area "needing but lacking an approved attainment demonstration" under the emissions trading policy, and thus requires any request for approval of an emissions trade to use a more stringent emissions "baseline" on which to determine surplus emissions credits.

Equivalent Emission Limitations

The consent decree would allow the MAPCC to determine and establish "equivalent" emission limits for the Romeo paint operations expressed in terms of pounds of VOC per gallon of solids applied. A determination of "equivalent" emission limits would require an evaluation of the baseline and actual transfer efficiency of the operations. Determining equivalent emission limits is not straightforward for miscellaneous metal sources because there is no pre-established baseline transfer efficiency (as exists for automotive and large appliance sources). For this reason, the formulation of equivalent emission limits for this type of source would involve the exercise of significant discretion by the State.

Under sections 110(a)(2) and 172(b) of the Clean Air Act, USEPA can approve SIP provisions only if they do not interfere with timely attainment and maintenance of the national ambient air quality standards. USEPA cannot be assured that the State's exercise of discretion in choosing equivalent emission limits for this type of source will be adequate to protect the standard.

Consequently, USEPA cannot approve this equivalency provision as a "generic" authorization for the state to adopt new federally enforceable limits without USEPA's subsequent case-by-case approval. Since the state apparently intended that USEPA approve this equivalency provision as such a generic authorization, USEPA proposes to disapprove the provision.

Relaxed Final Emission Limit For Final Repair Operations

Michigan justified the proposed relaxed limit of 4.8 pounds of VOC per gallon for the three tractor paint repair operations by stating that R336.1621 includes this same limit for truck final repair coatings. Michigan believes that the 4.8 limit for truck final repair should also apply to tractor final repair because "the air dry and color match requirements necessitating the 4.8 limit for trucks also exist for tractor final repair."

However, the existence of a 4.8 lbs/gal limit on truck final repair is not a basis for relaxing the tractor final repair limit. Michigan must present a basis for its position that a limit of 3.5 lbs/VOC gallon is not RACT for these sources at the Romeo Plant.

Compliance Date Extensions

USEPA has determined that the State has failed to adequately demonstrate that the December 31, 1986 compliance date extension is as expeditious as practicable in accordance with the Clean Air Act and USEPA's policy on compliance date extensions. In particular, the State has not adequately researched the compliance status of similar sources to determine if compliance by the original deadline was reasonable. Nor has the State demonstrated that the compliance date extension will not interfere with reasonable further progress toward attainment of the National Ambient Air Quality Standard for ozone. Therefore, USEPA is proposing to disapprove the compliance date extension.

Proposed Action

USEPA is proposing to disapprove Consent Order No. 3-1985 for the Ford Motor Company's Romeo Tractor and Equipment Plant, for the following reasons:

(1) The State failed to demonstrate that the compliance date extension is as expeditious as practicable in accordance with USEPA's August 7, 1986, policy.

(2) The order includes an equivalency provision that would grant the state overbroad discretion to change the SIP unilaterally in a manner that may

interfere with timely attainment and maintenance of the ozone standard.

(3) No documentation was provided to demonstrate that a final repair limit of 4.8 lbs. voc/gallon of coatings is consistent with RACT and that the existing SIP limit of 3.5 lbs. of VOC/gallon for these operations is infeasible.

(4) The source is located in Macomb County, an urban nonattainment area which currently lacks an approvable 1982 Ozone SIP.

A 30-day public comment period is being provided on this notice of proposed disapproval rulemaking. Public comments received on or before August 19, 1988 will be considered in USEPA's final rulemaking action.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under 5 U.S.C. 552(b), I certify that this SIP disapproval action will not have a significant economic impact on a substantial number of small entities because this action applies to only one source. In addition, this action imposes no additional requirements on the source.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Date: March 31, 1987.

Valdes V. Adamkus,
Regional Administrator.

[FR Doc. 88-16325 Filed 7-19-88; 8:45 am]
BILLING CODE 5000-50-M

40 CFR Part 51

[FRL-3417-2; EPA Docket No. 107 PA-47]

Designation of Areas for Air Quality Planning Purposes; Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to revise the attainment status designations of York and Lancaster Counties from "Do Not Meet Primary Standards" to "Better Than National Standards" with respect to ozone. The intent of this notice is to discuss the results of EPA's review of the Commonwealth's redesignation request and to solicit public comments on EPA's proposed action.

DATE: Comments must be received on or before August 19, 1988.

ADDRESSES: Copies of the proposed redesignation request and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency,
Region III, Air Management Division,
841 Chestnut Building, Philadelphia,
PA 19107, ATTN: David L. Arnold
Commonwealth of Pennsylvania,
Department of Environmental
Resources, Bureau of Air Quality
Control, 200 North 3rd Street,
Harrisburg, PA 17120 ATTN: Gary
Triplett.

All comments on the proposed revisions submitted within 30 days of publication of this notice will be considered and should be directed to David L. Arnold, Chief, Program Planning Section at the EPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, EPA docket No. 107PA-47.

FOR FURTHER INFORMATION CONTACT: Larry Budney (3AM13) at the EPA, Region III address above or call (215) 597-0545.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act, the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for all areas within each State (See 43 FR 8982 (March 3, 1978)). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

On April 16, 1987, the Pennsylvania Department of Environmental Resources (DER) submitted a request to EPA to have York and Lancaster Counties redesignated from "Do Not Meet Primary Standards" to "Better Than National Standards" with respect to ozone. With a May 19, 1987, acknowledgement of receipt of the request, EPA requested that DER provide additional documentation in support of the redesignation request, including information pertinent to control strategy implementation. DER submitted the supplemental information on February 16 and 23, 1988.

When considering a redesignation request for ozone, a number of criteria must be considered. The most important is the National Ambient Air Quality Standard (NAAQS) for ozone is defined to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million, 1 hour average) is greater than 1.0. A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 ppm ("Guidelines for the Interpretation of

Ozone Air Quality Standards," EPA-450/4-79-003). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (invalid or incomplete) have the same fraction of daily exceedances as those observed on monitored days (EPA-450/4-79-003).

Specific criteria for ozone redesignation reviews are given in an April 21, 1983 policy memorandum from Sheldon Meyers, former Director of EPA's Office of Air Quality Planning and Standards (OAQPS), and an April 6, 1987 policy memorandum from Gerald A. Emison, Director of OAQPS. Those memoranda indicate that the average number of expected exceedances for each monitoring site is to be based on ozone concentrations contained in the most recent three years of data, if three years of data are available. They also specify the requirement that observed improvements in air quality must be due to implementation of permanent and enforceable emission control measures, and that the EPA-approved control strategy be fully implemented.

Ambient ozone monitoring data from the York and Lancaster County monitors show one exceedance of the ozone NAAQS at each monitor during the 1985 through 1987 monitoring seasons. The annual average expected number of daily exceedances equals 0.34 at the York County monitor and 0.35 at the Lancaster County monitor during that three year period. Meteorological and economic conditions during the 1985-1987 period were reasonably typical. Therefore, ozone concentrations during that period are believed to be representative of ozone air quality that can be expected in York Lancaster Counties, and the data demonstrate monitored attainment of the ozone NAAQS. EPA examined the 1985 through 1987 air quality data and found that they were collected in accordance with all EPA requirements.

Over the longer term (since 1980), air quality in both counties has improved substantially. During the 1980-1984 period, the York County monitor showed an average of about 2.4 exceedances per year, and 3.6 exceedances per year at the Lancaster County monitor. As discussed above, each monitor has registered less than one exceedance per year since 1984.

In any proposed redesignation to attainment, it is important to be able to demonstrate that the observed improvement in air quality is due to permanent VOC (volatile organic compound) emission reduction measures rather than temporary factors such as changing economic conditions. In the

case of York and Lancaster Counties, no significant emission reductions have occurred due to economic downturn or temporary shutdowns. Therefore, economic downturn is not responsible for the observed improvement in air quality. Significant permanent emission reduction measures were implemented at several major point sources in each county since 1980. The total improvement in air quality during the 1980-1987 time period is attributed to implementation of area-wide Group I and II RACT (Reasonably Available Control Technology) controls and year-to-year mobile source emission reductions obtained through the Federal Motor Vehicle Control Program. Those regulations will remain in effect after the redesignation.

In addition to the above, EPA policy provides that redesignation of an area to attainment status for ozone requires that the current EPA approved control strategy for VOC sources be fully implemented. To judge whether this criterion has been satisfied, EPA looks to the Commonwealth to review source inspection and compliance records on file to confirm that all affected sources in the area under consideration have either installed and are operating RACT controls or are on an enforceable compliance schedule.

The Commonwealth conducted this review and determined that the stated criterion has been met in the affected counties. The EPA Region III Air Enforcement Branch, through further discussions with the Commonwealth and through an independent review of the Compliance Data System (CDS) Quick Look Report for those counties determined that, with one exception, all major VOC sources in those counties are in compliance with applicable RACT control requirements. The source in question had installed control equipment, but it was rendered inoperable due to a fire in December 1987. The source has been operating since without controls. The Commonwealth has subsequently negotiated a consent agreement with the source to repair the control equipment. The agreement contains a schedule for compliance by September 1988. In conclusion, EPA has determined that the Commonwealth is fully implementing its control strategy requirements.

Proposed Action

EPA finds that the proposed redesignations of York and Lancaster Counties, Pennsylvania for ozone are approvable, and therefore proposes to redesignate those counties to "Better Than National Standards." The

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proposed redesignations are based upon three years (1985-1987) of air quality data, which demonstrate attainment of the ozone NAAQS in both counties, combined with the fact that the approved emission control strategy has been fully implemented.

Interested parties are invited to submit comments on this action. EPA will consider comments received within 30 days of publication of this notice.

Under 5 U.S.C. 606(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7642.

Date: May 23, 1988.

James M. Self,
Regional Administrator.

[FR Doc. 88-16322 Filed 7-19-88; 8:45 am]
BILLING CODE 5565-50-5

40 CFR Part 180

[PP 8E3605/P456; FRL-3417-5]

Pesticide Tolerance for Metaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the fungicide metaxyl and its metabolites in or on the raw agricultural commodity papaya. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 8E3605/P456], must be received on or before August 19, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Room 246, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-757C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460
Office location and telephone number: Room 716H, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3605 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposes the establishment of a tolerance for the combined residues of the fungicide metaxyl, [N-(2,6-dimethylphenyl)-N-(methoxycarbonyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxy methyl-6-methyl)-N-(methoxycarbonyl)-alanine methylester, each expressed as metaxyl in or on the raw agricultural commodity papaya at 0.1 part per million (ppm).

The petitioner proposed that use of metaxyl on papaya be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered

useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 3-month feeding study in rats with a no-observed-effect level (NOEL) at 250 ppm (equivalent to 12.5 milligrams (mg)/kilogram (kg) of body weight/day).

2. A 2-year chronic feeding/oncogenic study in rats with no compound-related oncogenic effects under the conditions of the study at feeding levels up to 1,250 ppm (equivalent to 62.5 mg/kg/day) and an NOEL for systemic effects at 250 ppm (equivalent to 12.5 mg/kg/day).

3. A 2-year oncogenicity study in mice with no compound related oncogenic effects under the conditions of the study at dietary levels up to 1,250 ppm (equivalent to 187.5 mg/kg/day).

4. A 6-month dog feeding study with a NOEL of 250 ppm (equivalent to 6.25 mg/kg/day).

5. A three-generation reproduction study in rats with a NOEL greater than 62.5 mg/kg/day (highest dose tested).

6. A teratology study in rats with NOEL's for maternal and developmental toxicity of 50 mg/kg/day.

7. A teratology study in rabbits with a NOEL of 300 mg/kg/day for maternal toxicity and greater than 300 mg/kg/day for developmental toxicity.

8. Gene mutation assays in bacteria, yeast, and mouse lymphoma cells *in vitro*, with or without metabolic activation, are negative.

9. Structural chromosomal aberration assays are negative in yeast, hamsters (*in vivo* nucleus anomaly assay), and mice (a dominant lethal assay).

The acceptable daily intake (ADI), based on the 6-month dog feeding study (NOEL of 6.25 mg/kg body weight/day) and using a 100-fold safety factor, is calculated to be 0.06 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.010968 mg/kg of body weight/day; the current action will increase the TMRC by 0.0000008 mg/kg of body weight/day (an increase of less than 0.01 percent). Published tolerances utilize 18.3 percent of the ADI; the current action will utilize an additional 0.001 percent.

The nature of the residues is adequately understood and adequate analytical methods, gas-liquid chromatography, are available for enforcement purposes in the *Pesticide Analytical Manual* (PAM), Vol. II, Method I, and in PAM, Vol. I for metaxyl *per se*. No secondary residues in meat, milk, poultry, or eggs are expected as a result of the proposed use on papayas; papayas are not considered a livestock feed commodity. There are

currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.408 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

And person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 8E3605/P456]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 11, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.408 is amended by adding a new paragraph (c) to read as follows:

§ 180.408 Metaxyl; tolerances for residues.

(c) Tolerances with regional registration (refer to § 180.1(n)) are established for the combined residues of the fungicide metaxyl [N-(2,6-dimethylphenyl)-N-(methoxycarbonyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxy methyl-6-methyl)-N-(methoxycarbonyl)-alanine methylester, each expressed as metaxyl, in or on the following raw agricultural commodity:

Commodity	Parts per million
Papaya	0.1

[FR Doc. 88-16323 Filed 7-19-88; 8:45 am]
BILLING CODE 5565-50-4

40 CFR Part 300

[FRL-3406-4]

National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion of a Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites; request for comments.

SUMMARY: Since the Environmental Protection Agency (EPA) has determined that all appropriate response actions have been implemented at the Matthews Electroplating Site it announces its intent to delete the site from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by SARA. For deletion of this site EPA will accept and evaluate comments before making the final decision to delete.

DATE: Comments may be submitted on or before August 19, 1988.

ADDRESSES: Comments may be mailed to Paul H. Leonard, Remedial Project Manager, Superfund Branch (3HW24), Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107.

Background information on the site may be obtained from:

EPA Deletion Docket, Superfund Branch (3HW24), U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107, Attn: Paul Leonard, (215) 597-8257, Hours: 8 a.m. to 4 p.m.

Local Deletion Docket, Salem Public Library, 28 East Main Street, Salem, VA 24153, (703) 375-3089, Hours: Monday to Thursday 9 a.m. to 8 p.m.; Friday and Saturday, 9 a.m. to 5 p.m.; Sunday 2 p.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Paul Leonard, USEPA (215) 597-8257.

SUPPLEMENTARY INFORMATION:

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- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA), announces its intent to delete a site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to human health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Fund (Trust Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

EPA plans to delete the Matthews Electroplating Site in Roanoke County, Virginia, from the NPL.

The EPA will accept comments on this site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action and those that the Agency is considering using for future site deletions. Section IV discusses the Matthews Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Amendments to the NCP published in the Federal Register on November 20, 1985 (50 FR 47912) establish the criteria the agency uses to delete sites from the NPL. Section 300.66(c)(7) of the NCP provides that:

"Sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this

determination, EPA will consider whether any of the following criteria have been met."

(i) EPA in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of human health and environment, consistent with section 121(d) of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such action. Section 300.68(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this notice, § 300.68(c)(8) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For deletion of this site EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. Comments from the local community surrounding the site are likely to be the most pertinent to deletion decisions.

A deletion occurs when the Assistant Administrator for Solid Waste and Emergency response places a notice in the Federal Register, and the NPL will reflect those deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletions

The following site summary provides the Agency's rationale for intending to delete this site from the NPL.

Matthews Electroplating Site,
Roanoke County, VA.

The Matthews Electroplating site is a 1.7 acre site located in Roanoke County, Virginia. From 1972 to 1977, the two-building site operated as an auto bumped repair and replating facility. Local ground water was contaminated by chromium from the facilities process wastes. In 1975 the Virginia State Water Control Board issued orders to the owners of the site to cease and desist further discharging of process wastes to the ground or water. Shortly thereafter the owners declared bankruptcy and stopped operations.

To control, the flow of rain water and storm run-off through the contaminated areas, the new owners performed some surface clean-up and a clay cover was placed over a small area of the site where wastes had been discharged.

Based on the ground water and soil contamination, the site was proposed for inclusion on the NPL in October, 1981 and promulgated in September, 1983. EPA conducted a Remedial Investigation and Feasibility Study 1982 to 1983. After reviewing the results of this investigation, construction of a waterline extension from a nearby municipal water distribution system was approved to eliminate the risk to nearby residents by ingesting contaminated drinking water. Approximately 30 homes are being served by the new system. Since the levels of chromium were expected to decrease naturally, a ground water remedy was deferred at that time to assess the extent of the contaminant plume and whether further remedial actions were necessary.

The design of the new system was completed in 1984 and construction began in early 1985. Construction was completed and inspected in January, 1986. Following the completion of the waterline extension the EPA conducted post remediation sampling for both ground water and soil contamination. The results of these tests showed the level of chromium to have decreased to a point where it no longer posed a significant threat to public health or the environment. As a final measure several open drums were removed and two tanks were evacuated. Based on this action and prior response activities, EPA and the State of Virginia have determined that no further remedial measures are necessary or appropriate. The State of Virginia has agreed to conduct a post-deletion monitoring of the ground water. The Roanoke County Health Department has assured EPA that the installation of new wells in the area of the site would not be permitted.

Date: July 5, 1988.

Stanley L. Laskowski,
Acting Regional Administrator.
[FR Doc. 88-15637 Filed 7-19-88; 8:45 am]
BILLING CODE 2000-00-00

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

(CC Docket No. 88-326; FCC 88-202)

Access Tariff Filing Schedules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking revising access tariff filing schedules.

SUMMARY: The proposed rules would revise and consolidate existing schedules for local telephone companies to file amended rates for the access they provide to long distance companies, and for long distance companies to amend the rates they charge telephone subscribers. The current rules provide for three separate filings within a four-month period, and a fourth nine months later. This would be burdensome to the companies and confusing to subscribers. The proposed consolidation is intended to reduce the burdens for companies and the number of rate changes for subscribers.

DATES: Comments shall be due not later than July 22, 1988 and reply comments shall be due not later than August 5, 1988.

ADDRESS: Federal Communications Commission, Secretary's Office, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, Tariff Division, Common Carrier Bureau (202) 632-6387.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted June 20, 1988 and released June 21, 1988. The full text of this Notice may be obtained from the Commission's contract copier, International Transcription Service, Inc. (ITS), Room 246, 1919 M Street NW., Washington, DC 20554. The full text is also on file and available for public inspection in the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street NW.

Summary of Notice of Proposed Rulemaking

Under our current Rules, local telephone companies would be required to prepare and file three major revisions of their interstate access tariffs to be effective within a four-month period

from December 1, 1988 through April 1, 1989. The annual 1989 access tariffs updating and retargeting the LEC access tariff rates are required to be filed October 3, 1988 to be effective January 1, 1989. Changes to customer rates and access rates are scheduled to be effective December 1, 1988 and April 1, 1989. These access rate changes (charged primarily to long distance carriers) are expected to be accompanied by reductions in long distance rates. These access and long distance rates would, in turn be replaced nine months later, when the annual 1990 access tariffs become effective January 1, 1990.

The Commission believes a more consolidated schedule, with fewer effective dates, should reduce the burdens of preparing separate but interrelated filings, the number of filings that the interested public and this Commission must review, and the number of rate changes to which subscribers must adjust.

Accordingly, the Commission proposes to consolidate the annual 1989 access tariff filings with the filings to become effective April 1, 1989 and to delay the annual 1990 access tariffs to a July 1, 1990 effective date. The scheduled December 1, 1989 effective date would not be changed.

In addition, experience with the annual access tariff filings has increasingly led us to the conclusion that January 1 is not the most practical effective date for annual access tariff filings. The Notice proposes to use a permanent July 1 annual effective date starting in 1990.

We certify that the Regulatory Flexibility Act is not applicable to the rule changes we are proposing in this proceeding. As part of our analysis, however, this Commission has considered the impact of the proposal on small telephone companies, i.e., those serving 50,000 or fewer access lines. The action proposed herein would have a beneficial economic impact on all such telephone companies because it would reduce the number of filings required to be made by or on behalf of those companies, and thereby reduce their administrative costs.

The rulemaking proposed in this Notice has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure, or record retention requirements as contemplated under the statute. The rulemaking will not increase the collection of information burden imposed on the public.

For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted except during the "Sunshine Agenda" period. See generally § 1.120(a) of this Commission's Rules. During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by this Commission or Commission staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. See Section 1.1203 of this Commission's Rules.

In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding; or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. See § 1.1202 of this Commission's Rules. Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of that presentation to this Commission's Acting Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents date or arguments not already reflected in the person's previously filed written comments, memoranda, or filings in this proceeding must provide on the day of the oral presentation a written memorandum to the Acting Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and must state on its face that the Acting Secretary has been served with a copy and must also state by docket number the proceeding to which it relates. See § 1.1206 of this Commission's Rules.

All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, we may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of our reliance on such information is noted in the Order.

H. Walker Foster III,
Acting Secretary.

Proposed Changes

47 CFR Part 69 is proposed to be amended as follows:

PART 69—[AMENDED]

(Material to be deleted is enclosed in [brackets]. New material is in *italics*.)

1. The authority citation for Part 69 would continue to read as follows:

Authority: Secs. 4, 201, 202, 203, 218, 403, 48 Stat. 1068, 1070, 1072, 1077, 1084, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 would be amended by revising paragraphs (v) and (w) to read as follows:

§ 69.2 Definitions.

(v) Level II Contributors—A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than \$150 million in annual operating revenues that is not an association Common Line tariff participant, *that* files its own Common Line tariff effective [January 1, 1990] *July 1, 1990*, and that had a lower than average Common Line revenue requirement per minute of use in 1988 and thus was a net contributor (i.e., had a negative net balance) to the association Common Line pool in 1988.

(w) Level II Receivers—A telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than \$150 million in annual operating revenues that is not an association Common Line tariff participant, *that* files its own Common Line tariff effective [January 1, 1990] *July 1, 1990*, and that had a higher than average Common Line revenue requirement per minute of use in 1988 and thus was a net receiver (i.e., had a positive net balance) from the association Common Line pool in 1988.

3. Section 69.3 would be amended by revising paragraphs (a), (b), (e) introductory text, (6), and (9), and (f) to read as follows:

§ 69.3 Filing of access service tariffs.

(a) Except as provided in § 69.3(f) of this chapter, a tariff for access service shall be filed with this Commission for an annual period. Such tariffs shall be filed so as to provide a minimum of 90 days notice with a scheduled effective date of [January 1] *July 1*.

(b) The requirements imposed by paragraph (a) of this section shall not preclude the filing of revisions to those annual tariffs that will become effective on dates other than [January 1] *July 1*.

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff. Such a tariff may cross-reference the association tariff for some access elements and include separately computed charges of such company or companies for other elements. Any such

tariff must comply with the requirements hereinafter provided:

(8) A telephone company or companies that elect to file such a tariff shall notify the Association not later than December 31 of the preceding year, if such company or companies did not file such a tariff in the preceding annual period or cross-reference Association charges in such preceding period that will not be cross-referenced in the new tariff.

(9) A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff effective April 1, 1989 shall notify the association not later than August 30 of the preceding year that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff effective [January 1, 1990] July 1, 1990 or thereafter pursuant to § 69.3(a) shall notify the association not later than [June 30] December 31 of the preceding year that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elect to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff for all of its study areas.

(f) A tariff for access services shall be filed with this Commission for an annual period. Such tariffs shall be filed so as to provide a minimum of 90 days notice with a scheduled effective date of [January 1] July 1. A tariff for access service provided by telephone companies with 50,000 lines or fewer in a study area, as determined under § 67.611 of this chapter, may be filed for a biennial period, with a minimum of 90 days notice, to begin on [January 1] July 1 of any odd-numbered year. For purposes of computing end user charge access elements and carrier's carrier charges other than for the Carrier Common Line element to be effective on [January 1] July 1 of any even-numbered year, the association may propose rate changes based upon statistical methods which represent a reasonable equivalent to the cost support information otherwise required under Part 61 of this chapter.

Section 69.201 would be revised to read as follows:

§ 69.201 General.

Notwithstanding §§ 69.4, 69.104 through 69.108 and 69.111 through 69.112,

charges for the access elements described in this subpart shall be computed in accordance with this subpart during the period commencing January 1, 1984 and ending [May 31, 1990] June 30, 1990. This subpart does not supersede § 69.107 (f) through (h).

5. A new § 69.209 would be added and read as follows:

§ 69.209 Annual 1989 access tariff filings.

Notwithstanding §§ 69.3, tariffs for access service shall be filed to be effective April 1, 1989 for a period extending through June 30, 1990. Such tariffs shall be filed so as to provide a minimum for 90 days notice.

6. Section 69.606 would be amended by revising paragraph (b) to read as follows:

§ 69.606 Computation of average schedule company payments.

(b) The association shall submit a proposed revision of the formula for each annual period subsequent to December 31, 1986 or certify that a majority of the directors of the association believe that no revisions are warranted for such period on or before [June 30] December 31 of the preceeding year.

7. Section 69.612 would be amended by revising paragraph (a) introductory text, the opening clause of the first sentence of (a) (1) and (2), and (b)(1) and the opening clause of the first sentence of (b)(2) to read as follows:

§ 69.612 Long term and transitional support.

A telephone company that does not participate in the association Common Line tariff shall have computed by the association:

(a) Long Term Support Obligation.

(1) For the period from April 1, 1989 through [December 31, 1993] June 30, 1994, the long Term Support payment obligation shall be funded by all telephone companies that are not association Common Line tariff participants and do not receive transitional support pursuant to § 69.612(b).

(2) Beginning [January 1, 1994] July 1, 1994 and thereafter, the Long Term Support payment obligation shall be funded by each telephone company that files its own Carrier Common Line tariff and does not receive transitional support.

(b) Transitional Support. (1) Telephone Companies categorized as Level I and Level II Receivers that file

their own Common Line tariffs effective April 1, 1989 shall receive Transitional Support for a four year period commencing April 1, 1989. Level II Receivers that file their own Common Line tariffs effective [January 1, 1990] July 1, 1990 shall receive Transitional Support for a four year period commencing [January 1, 1990] July 1, 1990. Transitional Support for each of these telephone companies shall be computed on the basis of its net revenues less revenue requirement amounts for 1988 (adjusted for the additional revenues resulting from an increase in End User Common line charges to \$3.50). Transitional Support for these telephone companies during the transition period shall be as follows:

Year 1—80% of the adjusted 1988 frozen amount
Year 2—60% of the adjusted 1988 frozen amount
Year 3—40% of the adjusted 1988 frozen amount
Year 4—20% of the adjusted 1988 frozen amount

(2) For the period from April 1, 1989 through [December 31, 1993] June 30, 1994, the Transitional Support Fund shall be funded by all telephone companies or groups of affiliated telephone companies that are not association Common Line tariff participants and do not qualify under § 69.612(b)(1) for Transitional Support payment.

[FR Doc. 88-16369 Filed 7-19-88; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

(No. 40047)

Revision to Minimum Rule for Railroads' Property Units

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise its minimum rule for capitalization of railroad property units to \$3200 and to annually adjust this amount by the Producer Price Index for all commodities. The purpose and intended effect of the revision is increase the current \$2,000 minimum rule in order to reduce the burden associated with the accounting for minor items of property. This index and adjusted minimum capitalization level would be published in the Federal Register each year. This revision is proposed to be effective for the reporting year beginning January 1, 1988

DATE: Written comments are due on September 6, 1988.

ADDRESS: An original and 10 copies of any comments referring to No. 40047 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Brian A. Holmes, (202) 275-7510. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428. [TDD for hearing impaired: (202) 275-1721].

Regulatory Flexibility Act

This proposed rule will not have a significant impact on a substantial number of small entities. This proceeding relates to only the Class I railroads. There is no impact on smaller railroads because they are not required to file reports with the Commission. We request comments on this issue.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (5 U.S.C. Chapter 35). Respondents may direct comments on any paperwork

burden to OMB by addressing them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20503.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

Decided: July 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Noreta R. McGee, Secretary.

Title 49 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 1201—RAILROAD COMPANIES

1. The authority citation for Part 1201 would continue to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11106.

2. Instruction 2-2, "Minimum rule applicable to additions to property," is proposed to be revised to read as follows:

Instructions for Property Accounts

2-2 Minimum rule applicable to additions to property. An exception to the rule in instruction 2-1 is that when the cost of acquisition of units of road property and of additions to existing units of road property (other than land) is less than \$3200, such costs shall be charged to operating expenses. The minimum rule will be adjusted annually by the Producer Price Index for all

commodities. The annual revision will be effective as of January 1 of each year and shall be published in the Federal Register. The Carrier shall not parcel expenditures under a general plan bringing the accounting for such expenditures within this minimum rule. An amount of less than the current minimum capitalization level may be adopted for purposes of this rule provided the carrier first notifies the Commission of the amount it proposes to adopt and thereafter makes no change in the amount unless authorized to do so by the Commission.

3. Paragraph (a) of Instruction, 2-9, "Additions and retirements of other than units of property," is proposed to be revised to read as follows:

2-9 Additions and retirements of other than units of property. (a) When an item of road or equipment property, other than a complete unit, is added to the plant and the addition is not a replacement, the cost thereof shall be accounted for in the same manner as an addition of a complete unit of property, subject to the minimum rule applicable to road property (see Instruction 2-2). When an item of property other than complete unit (minor item) is replaced, independent of the complete unit of which it is a part, the cost of replacement shall be treated as maintenance and charged to operating expenses. (See instruction 2-8(b) covering retirement of a minor item not replaced.)

[FR Doc. 88-16179 Filed 7-19-88; 8:45 am]
BILLING CODE 7035-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency

DEPARTMENT OF AGRICULTURE

Office of Inspector General

Privacy Act of 1974; Public Notice of Computer Matching Program—State Agency Food Stamp Program Participant Files

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of computer matching programs.

SUMMARY: The Office of Inspector General (OIG), United States Department of Agriculture (USDA), is providing notice that it intends to conduct continuing matching programs to detect and prevent fraud and abuse in USDA programs. The matches will compare State agency Food Stamp Program (FSP) participant records against FSP participant records and wage and income records from other States to identify participants who are receiving FSP benefits to which they are not entitled. The matches will be made under written agreements between OIG and each of the State agencies involved. Set forth below is the information required by paragraph 5f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, U.S. Department of Agriculture, Office of Inspector General, Washington, DC 20250, telephone (202) 447-0915.

Report of Matching Programs: State Agency Food Stamp Program Participants

(a) **Authority:** Pub. L. No. 95-452, Inspector General Act of 1978, 5 U.S.C. App.

(b) **Program Description and Purpose:**

decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

One of the responsibilities of OIG under the Inspector General Act of 1978 (Pub. L. No. 95-452) is to prevent and detect fraud and abuse in USDA programs. As part of the effort to meet this responsibility, OIG plans to match State agency files of FSP participants between States. State agencies will provide to OIG lists of State FSP participants to be matched against FSP participant lists and wage and other income information records from other States to determine whether ineligible persons are receiving FSP benefits.

All matches will be accomplished through the use of computer files and will identify ineligible persons who are receiving FSP benefits. Common identifiers such as name, date of birth, and social security number will be used to identify common elements or "hits." OIG will follow up on matches of common elements or "hits" through review of program records and matching source records, and interviews of the "matching" individuals, as necessary. Instances where possible fraud or abuse are identified will be referred to the program agency for corrective action or to the proper authorities for prosecution, as appropriate.

(c) **Files to be used in this matching program:** State agency FSP master files for Arkansas, California, Colorado, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, and Washington; and State wage and income records for the District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Virginia.

(d) **Projected starting and ending dates:** This matching will be done on a continuous basis and is projected to begin in fiscal year 1988 and continue through fiscal year 1990.

(e) **Security safeguards:** Computer files used in the matching program will be stored in secure libraries and access will be restricted to those individuals

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who have a legitimate need to handle the material in order to accomplish the matches. The personal privacy of individuals identified on the files will be protected by strict compliance with the Privacy Act of 1974. Information concerning "nonmatching" individuals will not be extracted for any purpose and source files will not be used for any matches without specific written agreement between USDA and the respective source agency.

(f) **Disposition of source records and "hits":** All files received will be destroyed or returned to their source at the completion of the matches. Resulting "hit" information may be retained in audit workpapers and referred as noted above.

Dated: July 13, 1988.

Robert W. Benley,
Inspector General.

[FR Doc. 88-16270 Filed 7-19-88; 8:45 am]
BILLING CODE 3410-22-M

Privacy Act of 1974; Public Notice of Computer Matching Program—State Agency Food Stamp Program Participant Records and Federal Personnel Records

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of computer matching programs.

SUMMARY: The Office of Inspector General (OIG), United States Department of Agriculture (USDA), is providing notice that it intends to conduct continuing matching programs to detect and prevent fraud and abuse in USDA programs. The matches will compare State agency Food Stamp Program (FSP) participant records against the personnel records of the Office of Personnel Management (OPM), the Defense Manpower Data Center (DMDC), and the United States Postal Service (USPS), for the purpose of identifying Federal personnel (civilian and military, active duty and retired) who are receiving FSP benefits to which they are not entitled. The matches will be made under written agreements between USDA and DMDC, USPS, and OPM. Set forth below is the information required by paragraph 5f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of

Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Dianne Drew, Assistant Inspector General for Administration, U.S. Department of Agriculture, Office of Inspector General, Washington, DC, 20250, telephone (202) 447-0915.

Report of Matching Programs: State Agency Food Stamp Program Participant Records and Federal Personnel Records

(a) **Authority:** Pub. L. No. 95-452, Inspector General Act of 1978, 5 U.S.C. App.

(b) **Program Description and Purpose:** One of the responsibilities of OIG under the Inspector General Act of 1978 (Pub. L. No. 95-452) is to prevent and detect fraud and abuse in USDA programs. As part of the effort to meet this responsibility, OIG plans to match lists of State FSP participants with Office of Personnel Management (OPM) personnel records and also provide the Defense Manpower Data Center (DMDC) and the U.S. Postal Service (USPS) with lists of State FSP participants to be matched against DMDC and USPS personnel records to determine whether ineligible Federal personnel (civilian and military, active duty and retired) are receiving FSP benefits. These matches will be done on a continuous basis throughout the United States.

All matches will be accomplished through the use of computer files and will identify Federal personnel receiving FSP benefits. Income data will be compared to FSP requirements to determine whether ineligible Federal personnel are receiving FSP benefits. Common identifiers such as name, social security number, and date of birth will be used to identify the common elements or "hits." DMDC and USPS will provide to OIG a list of matches of common elements or "hits." OIG will follow up on "hits" through review of program records and matching source records, and interviews of the "matching" individuals, as necessary. Instances where possible fraud or abuse are identified will be referred to the program agency for corrective action or to the proper authorities for prosecution, as appropriate.

(c) **Files to be used in this matching program:**

(1) State agency FSP master files for selected States;
(2) Office of Personnel Management Central Personnel Data Files (CPDF) within the General Personnel Records

System (OPM/Govt-1), 49 FR 36954, and Civil Service Retirement and Insurance Files within the Civil Service Retirement and Insurance Records Systems (OPM/Central-1), 49 FR 36950;

(3) U.S. Postal Service, USPS 050.020, Finance Records—Payroll System, 52 FR 6251; and

(4) Department of Defense, Defense Logistics Agency (DLA), System Identification: S322.10 DLA-LZ, System Name: Defense Manpower Data Center Data Base, 53 FR 4442.

(d) **Projected starting and ending dates:** This matching will be done on a continuous basis throughout the United States and is projected to begin in fiscal year 1988 and continue through fiscal year 1990.

(e) **Security safeguards:** Computer files used in the matching program will be stored in secure libraries and access will be restricted to those individuals who have a legitimate need to handle the material in order to accomplish the matches. The personal privacy of individuals identified on the files will be protected by strict compliance with the Privacy Act of 1974. Information concerning "nonmatching" individuals will not be extracted for any purpose and source files will not be used for any matches without specific written agreement between USDA and the respective source agency.

(f) **Disposition of source records and "hits":** All files received will be destroyed or returned to their source at the completion of the matches. Resulting "hit" information may be retained in audit workpapers and referred as noted above.

Dated: July 13, 1988.

Robert W. Benley,
Inspector General.

[FR Doc. 88-16280 Filed 7-19-88; 8:45 am]
BILLING CODE 3410-22-M

Rural Electrification Administration

Finding of No Significant Impact; Oglethorpe Power Corp.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of 230 kV transmission and substation facilities in Coffee County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has

made a Finding of No Significant Impact (FONSI) with respect to construction of a 20 mile, 230 kV transmission line on steel H-frame support structures and a new 230/25 kV substation. Oglethorpe Power Corporation (OPC), of Tucker, Georgia, has requested approval to use general funds to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8438.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request from OPC for approval to use general funds to construct the project, required that OPC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impacts of the proposed project. The project will allow OPC to continue to meet its responsibilities to serve its load in a reliable and economical manner.

The length of the proposed transmission line is approximately 20 miles. It originates at an existing substation near Douglas in Coffee County, and terminates at a proposed substation near Wilsonville in Coffee County. The single circuit 230 kV line will require new right-of-way 125 feet in width. The Wilsonville Substation will require less than 2 acres of area that will be cleared and fenced to accommodate the facility.

REA has concluded that the proposed project will have no significant impact on wetlands, prime farmland, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, air quality, water quality and the health of humans or animals. Floodplains of numerous streams, wetlands, and potential prime farmland (soil surveys for Coffee County not complete) are located in the preferred line ROW. Some transmission line support structures may be located within these areas; however, REA believes that transmission line structure placement will have no significant impact to these areas. No practical alternative routes that could avoid these areas were identified. The substation will not be located in the 100-year floodplain or wetlands. The substation will be located on land that is

prime farmland; however, the site alternative with the least amount of impact to agricultural use was selected. Certain other impacts resulting from the proposed project are unavoidable such as the cutting of trees and vegetation for the right-of-way clearing and the aesthetic impact on the visual quality of the area.

Alternatives examined for the proposed project included no action, electrical alternatives, alternative line routes and alternative substation sites. REA determined that there is a demonstrated need for the project and constructing it within the preferred ROW will have no significant impact to the environment. Therefore, REA has concluded that its approval to allow OPC to use general funds to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. REA has reached a FONSI with respect to the proposed project.

Copies of the EA and FONSI can be obtained from the offices of REA in the South Agriculture Building, Room 0270, 14th and Independence Avenue SW., Washington, DC 20250 or at the office of Oglethorpe Power Corporation, P.O. Box 1349, Tucker, Georgia 30085-1349.

In accordance with the REA Environmental Policies and Procedures, 7 CFR Part 1794, OPC had a notice and advertisement published in *The Douglas Enterprise* which has a general circulation in Coffee County. The notice appeared in the February 24, 1988 issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by OPC or REA.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.8500-Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 312372 which requires intergovernmental consultation with state and local officials.

Date: July 13, 1988

John H. Arnesen,
Assistant Administrator—Electric.
[FR Doc. 88-16307 Filed 7-19-88; 8:45 am]
BILLING CODE 3410-15-M

Soil Conservation Service

Finding of No Significant Impact; Elk River Watershed Protection Plan, MI

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Elk River Watershed, Charlevoix and Antrim Counties, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect or any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation and treatment of practices for watershed protection. The practices will include: Conservation tillage, critical area treatment, gressed waterways, stripcropping, diversions, water and sediment control basins, wildlife plantings and water quality improvement measures. Total financial assistance cost is estimated to be \$2,803,700; \$1,613,200 Pub. L. funds and \$1,190,500 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to

various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Watershed Protection and Flood Prevention Program, Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is available.)

Date: July 6, 1988.

Homer R. Hilner,
State Conservationist.

[FR Doc. 88-16288 Filed 7-19-88; 8:45 am]
BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Questionnaire for Building Permit Official.

Form Numbers: Agency—SOC-603; OMB—0607-0125.

Type of Request: Extension of a currently approved collection.

Burden: 835 respondents; 200 reporting hours.

Average Time Per Response: 15 minutes.

Needs and Uses: This questionnaire will be used in personal interviews with building permit officials to obtain information on the operating procedures of their offices. Census interviewers use this information to locate, classify, list, and sample building permits for residential construction. Census' Construction Division uses the information to verify and update the geographic coverage of permit offices. The information is also used by economic policymakers to monitor residential construction.

Affected Public: State or local governments.

Frequency: Usually once a year.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395-7340.

Agency: Bureau of the Census.
Title: October 1988 School Enrollment Supplement.

Form Numbers: Agency—CPS-1; OMB—0607-0464.

Type of Request: Reinstatement of a previously approved collection.

Burden: 53,200 respondents; 5,320 reporting hours.

Average Time Per Response: 6 minutes.

Needs and Uses: This survey is needed to (1) obtain current data on high school graduates or dropouts (ages 16-24); (2) measure the differences between social and economic groups as far as young children being exposed to nursery school and kindergarten before entering regular school (ages 3 and 4); and (3) obtain data on persons recently graduated from high school and enrolled in college or vocational school (all ages). This school enrollment supplement is a continuing part of a data series that provides basic information on enrollment status of various segments of the population. In addition to BLS, other users include educational institutions, and employers and analysts who need current information to anticipate the composition of the labor force in the future.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20530.

Dated: July 12, 1988.

Edward Michals,
Department Clearance Officer, Office of Management and Organization.

[FR Doc. 88-16319 Filed 7-19-88; 8:45 am]
BILLING CODE 3510-07-M

Commercial Space Advisory Committee; Partially Closed Meeting

AGENCY: Office of the Associate Deputy Secretary, Commerce.

SUMMARY: Pursuant to the Federal Register notice of June 16, 1988, the Commercial Space Advisory Committee has been established to advise the Secretary of Commerce on matters of implementation and institutionalization of the National Space Policy and Commercial Space Initiative, as announced February 11, 1988, and to

attempt to determine the most productive course to be taken by this country relating to its commercial space goals.

Time and Place: July 29, 1988 from 9:30 a.m. to 4:00 p.m. The meeting will take place in the Secretary's Conference Room, U.S. Department of Commerce. Agenda for Open Session: 9:00-11:30 a.m.

Members will receive and discuss briefing materials on the various sectors of the commercial space market and the President's National Space Policy and Commercial Space Initiative.

Closed Session: 1:00-4:00 p.m.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of the General Counsel, formally determined, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the act relating to open meetings and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552(c)(4), (6), and (9)(B). The discussions are likely to disclose: Privileged or confidential commercial information and premature disclosure of information which would be likely to significantly frustrate the implementation of proposed agency actions and confidential recommendations to be made to the President of the United States. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Record Inspection Facility, Room 5317, Department of Commerce.)

FOR FURTHER INFORMATION CONTACT: Laura L. Boyle, Program Director, Office of Commercial Space Programs, U.S. Department of Commerce, Room 7064, Washington, DC 20230. Telephone: 202/377-8125.

Shellyn McCaffrey,
Associate Deputy Secretary.

Date: July 14, 1988.

[FR Doc. 88-16270 Filed 7-18-88; 4:41 pm]
BILLING CODE 3510-CW-M

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held August 9, 1988, 9:00 a.m. in the Herbert C. Hoover Building, Room B-841, 14th & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical

questions which affect the level of export controls applicable to computer systems or technology.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of Virtual Memory.
4. Presentation by National Bureau of Standards on Super-Computers.
5. Discussion of Definition for Microcomputers/PCs.
6. Discussion of Technical Data Proposal.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4606, 14th & Constitution Avenue NW., Washington, DC 20230.

For further information or copies of the minutes, contact Betty Anne Ferrell, 202-377-2583.

Date: July 14, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff,
Office of Technology & Policy Analysis.

[FR Doc. 88-16271 Filed 7-19-88; 8:45 am]
BILLING CODE 3510-07-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held August 9, 1988, 1:00 p.m. in the Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue NW., Washington, DC. The meeting will continue to its conclusion on August 10, 1988, in Room B-841. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of

meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2563.

Date: July 14, 1988.
 Betty Anne Ferrell,
 Acting Director, Technical Support Staff,
 Office of Technology & Policy Analysis.
 [FR Doc. 88-16272 Filed 7-19-88; 8:45 am]
 BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service;
 Marine Mammals; Application for Permit; Dr. J. Ward Testa (P420)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Dr. J. Ward Testa, Institute of Marine Science, University of Alaska, Fairbanks, AK 99775-5106.
2. Type of Permit: Scientific Research.
3. Name and Number of Marine Mammals: Weddell seal *Leptonychotes weddellii*, 1,000; crabeater seal *Lobodon carcinophagus*, 30; leopard seal *Hydrurga leptonyx*, 30; Ross seal *Ommatophoca rossii*, 30; southern elephant seal *Mirounga leonina*, 30.
4. Type of Take: The Applicant requests permission to (1) capture with physical restraint using a canvas bag placed over the head and tagged in the both rear flippers; (2) collect and import foreflipper claws from up to 100 subadult animals for age estimation; (3) weigh up to 200 pups and up to 200 adults and subadults of both sexes using a mobile platform sled; (4) conduct up to 7 censuses of the eastern McMurdo Sound population to count all seals present on the surface of the ice and record tag numbers; and (5) salvage and import any parts of natural fatalities of the five species. The research will provide continuing knowledge of the

accurate estimation of reproductive rates, survivorship, and population size.

5. Location and Duration of Activity: McMurdo Sound, Antarctica over a 1-year period.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Washington, DC; and
 Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Date: July 14, 1988.

Nancy Foster,
 Director, Office of Protected Resources and Habitat Programs.
 [FR Doc. 88-16263 Filed 7-19-88; 8:45 am]
 BILLING CODE 3510-06-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
 Dates of the Meeting: Intermittently 15-19 August 1988.
 Time of Meetings: 0830-1630 hours each day.
 Place: Concepts Analysis Agency, Bethesda, Maryland.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for briefings and discussions with Army agencies and elements of the Army staff and Secretariat which perform analysis or use analytical input for decision making. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined as to preclude any portion of the meetings to be opened to the public. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
 Administrative Officer, Army Science Board.
 [FR Doc. 88-16314 Filed 7-19-88; 8:45 am]
 BILLING CODE 3710-06-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
 Dates of Meeting: 16-19 August 1988.
 Time:
 0900-1700 hours, 16 August, 1988, Ft. Sill.
 0900-1200 hours, 17 August, 1988, Ft. Sill.
 0900-1700 hours, 18 August, 1988, Ft. Benning.
 0900-1200 hours, 19 August, 1988, Ft. Benning.

Place: Ft. Sill, OK and Ft. Benning, GA.
 Agenda: The Army Science Board Ad Hoc Subgroup on Close Combat Training Strategy for the 1990's will meet to gather information for their current study. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,
 Administrative Officer, Army Science Board.
 [FR Doc. 88-16315 Filed 7-19-88; 8:45 am]
 BILLING CODE 3710-06-M

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
 Dates of Meeting: 22 August 1988.
 Time: 0700-1700 hours.
 Place: The Pentagon, Washington, DC.
 Agenda: The Army Science Board Ad Hoc Subgroup on Army Family Programs will be hosted by the Deputy Chief of Staff for Personnel, Headquarters, Department of the

Army. The subgroup will be provided with selected briefings on soldier and family issues to include a review of current research findings. At the conclusion of the briefings, the chair will meet in closed executive session with subgroup members from 1300-1700 hours to review the arrangements and protocol to be used for their study effort. This last session is closed to the public because classified matters will be discussed. The other portions of the meeting are open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,
 Administrative Officer, Army Science Board.
 [FR Doc. 88-16310 Filed 7-19-88; 8:45 am]
 BILLING CODE 3710-06-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
 Dates of Meeting: 25 and 26 August 1988.
 Time:
 0800-1700 hours, 25 August
 0900-1430 hours, 26 August.

Place: Fort Rucker, Alabama.
 Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its initial meeting at the United States Army Safety Center (USASC), Fort Rucker, Alabama. Briefings will be conducted by various members of the USASC staff as well as a representative from the Army General Counsel. Past, current and planned actions will be discussed in accordance with the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,
 Administrative Officer, Army Science Board.
 [FR Doc. 88-16317 Filed 7-19-88; 8:45 am]
 BILLING CODE 3710-06-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).
 Date of Meeting: 26 August 1988.

Time of Meeting: 0630-1600 hours.
 Place: Picatinny Arsenal, Dover, New Jersey.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Explosive Systems (TEXS) will conduct its initial meeting at Picatinny Arsenal. Briefings will be conducted by various members of Project Manager Mines, Countermine and Demolitions, U.S. Army Armaments, Munitions and Chemical Command as well as a representative from the Army General Counsel. Past, current and planned actions will be discussed in accordance with the Terms of Reference. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
 Administrative Officer, Army Science Board.
 [FR Doc. 88-16318 Filed 7-19-88; 8:45 am]
 BILLING CODE 3710-06-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Marin County Shoreline, San Rafael Canal Flood Control Study (Feasibility Phase) at San Francisco Bay, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The Corps of Engineers, San Francisco District is beginning the Feasibility Phase of studying possible solutions to flooding in the City of San Rafael in Marin County. The flooding occurs when winter rain storms fall during periods of high tides in San Francisco Bay, which causes San Rafael Creek/Canal to overflow its banks.

2. Reasonable alternatives that have been identified to date are:
 a. A miter gate tide barrier structure at one of two locations at the mouth of the canal, which could block in-coming tides during periods of high storm runoff. Maximum duration of closure during once-in-a-hundred years event is expected to be 8-10 hours. Excess water upstream of the barrier would be pumped directly into the Bay. With one alternative location, localized flood protection would be added along Summit Avenue and Marina Vista Canal.

b. Flood walls on the South Bank, downstream of Highway 101, and possible limited flood walls on the North Bank will localized protection for vulnerable structures.

3.a. During the Reconnaissance phase, a public meeting was held January 15, 1987. Extensive input to project planning has also been made by the local sponsors of the project, the City of San Rafael.

b. The following significant issues have been identified as needing more in-depth analysis during the current phase of the project and addressing in the DEIS:

Aesthetics—tide barriers may be highly visible from certain vantage points
 Architectural—impact of flood protecting individual structures
 Endangered species—possibly Salt marsh harvest mouse, California clapper rail, Pt. Reyes bird's beak (plant)
 Habitat loss—if flood walls eliminate shallow waters under buildings and docks
 Historic properties—remnants of historic period structures
 Navigation—effect of barrier closure during storm periods
 Public access (including handicapped)—to boat docks, canal
 Siltation—effect of barrier closure, impact on benthic organisms
 Water quality—salinity alteration in canal and on wetlands during barrier closure periods
 Wetlands—impacts on tidal and seasonal wetlands
 c. A biological assessment concerning project area wetlands shall be prepared, and coordinated with the U.S. Fish and Wildlife Service in compliance with 50 CFR Part 402 (16 U.S.C. 662).

d. Because endangered species may be present in the wetlands, coordination with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.).

e. A consistency determination request shall be filed with the San Francisco Bay Conservation and Development Commission (BCDC) in accordance with section 307(c) of the Coastal Zone Management Act (16 U.S.C. 1450).

4.a. In order to further clarify issues and identify potential new ones that should be addressed in the DEIS, a scoping meeting will be held. Notice of the meeting is being widely distributed in the San Rafael Area, and to environmental groups in the greater San Francisco Bay Area.

b. The meeting will be held on Wednesday, August 17, 1988 in the City

Council Chambers, City of San Rafael, 1400 Fifth Avenue, San Rafael, Registration for those wishing to speak will begin at 7:00 pm. The agenda will be: 7:30-8:00 pm, project presentation; 8:00-8:30 pm, Federal, State and Regional agency plans and concerns; 8:30 pm, public comments begin.

c. Submission of written comments is encouraged, and may be sent to the address given below up to September 30, 1988.

5. It is estimated that the DEIS will be available for review in the spring of 1990.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Roderick A. Chisholm, II, Chief, Environmental Branch; U.S. Army Corps of Engineers; 211 Main Street; San Francisco, CA 94105-1905. (415) 974-0443.

Dated: July 12, 1988.

Galen H. Yanagihara,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88-16267 Filed 7-19-88; 8:45 am]
BILLING CODE 3710-PS-M

Department of the Navy

Intent To Grant Exclusive Patent License Megabyte, Inc.

AGENCY: Department of the Navy; DOD.

ACTION: Intent to grant exclusive patent license; Megabyte, Inc.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to Megabyte, Inc., a revocable, nonassignable, exclusive license to practice the Government-owned invention described in U.S. Patent Application Serial No. 054, 977 entitled "Block-Line Memory Element and RAM Memory" filed 28 May 1987; inventor: Leonard J. Schweg.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of the Chief of Naval Research (Code OOCNIP), Arlington, VA 22217-5000.

DATE: July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCNIP), 800 North Quincy Street, Arlington VA 22217-5000, telephone (202) 696-4001.

Date: July 13, 1988.

Jane M. Virga,
Lieutenant, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.
[FR Doc. 88-16265 Filed 7-19-88; 8:45 am]
BILLING CODE 3710-PS-M

DEPARTMENT OF ENERGY

Availability of Draft Environmental Impact Statement, Decontamination and Waste Treatment Facility (DWTF) at the Lawrence Livermore National Laboratory, Livermore, CA, and Public Hearing on the DEIS

AGENCY: Department of Energy.

ACTION: Notice of availability of Draft Environmental Impact Statement (DEIS) and notice to conduct a public hearing on the DEIS.

SUMMARY: The Department of Energy (DOE) announces the availability of a Draft Environmental Impact Statement, "Decontamination and Waste Treatment Facility at the Lawrence Livermore National Laboratory, Livermore, California," DOE/EIS-0133-D, which assesses the environmental effects of the proposed construction and operation of the DWTF. This new facility would provide centralized treatment, processing, and storage of Lawrence Livermore National Laboratory's (LLNL's) non-radioactive (both hazardous and nonhazardous), mixed, and radioactive waste, and would also include a decontamination facility. The proposed DWTF, which would replace existing Hazardous Waste Management (HWM) facilities, would assure that the long term management of waste at LLNL is accomplished in a safe, efficient, and environmentally acceptable manner in compliance with federal, state, and local environmental regulations and DOE orders.

Public comments are invited and a public hearing will be held with respect to the DEIS.

DATES: Written comments to the Department of Energy should be postmarked by September 6, 1988 to ensure consideration in the preparation of the final Environmental Impact Statement. A public hearing will be held on August 23, 1988 as described in this notice. Individuals desiring to make oral statements at the hearing should notify Mr. William Holman at the address below by August 22, 1988 so that the Department may arrange a schedule for presentations.

ADDRESSES: Requests for copies of the DEIS, written comments on the DEIS, requests to present oral statements at the hearing, and requests for further

information should be directed to: Mr. William Holman, Environmental Branch—Environment, Safety and Quality Assurance Division, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, California 94612, (415) 273-6370; ATTENTION: "DWTF DEIS."

For further assistance on the National Environmental Policy Act (NEPA) process contact: Ms. Carol M. Borgstrom, Acting Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent

The Department of Energy published a Notice of Intent (52 FR 8503) on March 18, 1987, regarding the preparation of a DEIS on the construction and operation of the DWTF at Lawrence Livermore National Laboratory.

II. Background Information

The Lawrence Livermore National Laboratory is a diversified applied research center operated by the University of California for DOE. LLNL is involved in nuclear and non-nuclear weapons design and also non-defense related programs such as magnetic and laser fusion energy research, basic science research, and biomedical and environmental science studies. LLNL generates a diversity of non-radioactive, mixed, and radioactive wastes. To handle this wide variety of generated wastes, flexible treatment processes and knowledgeable personnel are required to assure safe and effective waste management operations that are fully in compliance with applicable federal, state, and local regulations. An extensive upgrade in hazardous waste management at the Laboratory would result through the construction of the proposed DWTF. The proposed DWTF would replace and consolidate existing storage, treatment, and decontamination facilities presently in use at LLNL. The existing facilities are located in three separate areas of the Laboratory. The Decontamination Building, Building 419, is a 40-year-old former paint shop with limited capability to accept large pieces of equipment for decontamination. The Building 514 area contains the existing liquid waste treatment facilities consisting of a 15,000 gallon storage tank, six (6) open-top treatment tanks, and a vacuum filter press. Radioactive, mixed, and non-radioactive wastes are handled in the facility. The Building 612 area contains the outside waste storage yard receiving area, solid waste

processing building, reactive material storage, and a controlled air incinerator.

III. Scope of the DEIS

The scope of the DEIS was developed using comments received during a public scoping period (March 18 through May 7, 1987) including the public scoping meeting held in Livermore, California on April 30, 1987.

The U.S. Department of Energy has prepared this project-specific DEIS to provide environmental input into the selection and implementation of a long-term solution for treating, processing, and storing of radioactive, mixed, and non-radioactive wastes generated by LLNL programs that is consistent with federal, state, and local environmental regulations and DOE orders. The DEIS was prepared in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as amended, and to satisfy the requirements of the California Environmental Quality Act (CEQA) and the state's permitting regulations. It is intended to provide environmental input and support for project-specific decisions on the construction and operation of the DWTF. DOE has evaluated several alternatives for managing radioactive, mixed, and non-radioactive wastes generated by LLNL programs. The alternatives range in concept from the continued use of existing HWM facilities to the construction of a new DWTF that could safely treat, process, and store waste generated by LLNL in-house, thereby reducing the risks and liability of transporting large volumes of toxic waste to off-site treatment or disposal sites. Various sites for the construction of the proposed DWTF are also evaluated.

The following alternatives are evaluated in the DEIS:

- No action, i.e., continued operation of the existing hazardous waste management facilities;
- Increasing off-site treatment and disposal of waste generated by LLNL at DOE and commercial facilities;
- Upgrading the existing LLNL hazardous waste management facilities; and
- Developing a new on-site hazardous waste facility for which two design alternatives and three site alternatives are evaluated.

The environmental effects of the above alternatives are evaluated with respect to seismicity and to construction and operational impacts on soils, hydrology, air quality, occupational and public health, vegetation and wildlife, socioeconomics, land use, noise, transportation, and cultural resources.

IV. Comment Procedures

A. Availability of Draft EIS

Copies of the DEIS have been distributed to federal, state, and local agencies, organizations, environmental groups, and individuals known to be interested in the construction of the proposed DWTF at the Lawrence Livermore National Laboratory. Additional copies may be obtained by contacting Mr. William Holman at the address given above.

Copies of the DEIS and the documents referenced in the DEIS are available for public inspection at the LLNL Visitors Center which is located at the Greenville Road entrance to the Laboratory and at the Freedom of Information Reading Room, Room I E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC. Copies of the DEIS alone are also available for public inspection at the DOE San Francisco Operations Office, 1333 Broadway, Oakland, CA and at the following branches of the Livermore Public Library: Civic Center Branch at 1000 South Livermore, Livermore, CA and the Springtown Branch at 998 Bluebell Drive, Livermore, CA.

B. Written Comments

Interested parties are invited to provide comments on the DEIS to Mr. William Holman at the above address. Comment letters should be identified on the outside of the envelope with designation "DWTF-DEIS". All comments and related information should be postmarked by September 6, 1988 to ensure consideration in preparing the final EIS. Comments postmarked after September 6, 1988 will be considered to the extent practicable.

C. Public Hearing

1. Participation Procedure

A public hearing has been scheduled on the DEIS as follows:

Location: Holiday Inn, 720 Los Flores Road, Livermore, CA 94550

Date and Time: August 23, 1988 at 7:00 p.m.

The public is invited to provide comments on the DEIS at the hearing. The hearing will not be a judicial or evidentiary-type hearing. Individuals desiring to make an oral presentation at the hearing should notify Mr. William Holman at the address above as soon as possible so that the Department can arrange a schedule for the presentations. Persons who have not submitted a request to speak in advance may register to speak at the hearing before the hearing commences. Individuals and

representatives of organizations will be called on to present comments as time permits. To ensure that everyone has the opportunity to present comments, 5 minutes will be allotted to individuals and 10 minutes will be allotted to individuals representing groups. Comments received at the hearing will be considered in the preparation of the final EIS. Individuals or representatives of organizations presenting comments at the hearing are requested to have written copies of their comments available at the hearing.

2. Conduct of Hearing

The Department of Energy will arrange the schedule of commenters and will establish basic rules and procedures for conducting the hearing. Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the start of the hearing. A transcript of the hearing will be prepared, and the entire record of the hearing, including the transcript, will be available for public inspection at the Department's Freedom of Information Reading Room, Room I E-190, Forrestal Bldg., 1000 Independence Avenue SW, Washington, DC 20585, and the U.S. Department of Energy, San Francisco Operations Office Reading Room, 1333 Broadway, Oakland, CA, the LLNL Visitors Center, and the two branches of the Livermore Public Library.

Issued in Washington, DC June 30, 1988.

Ernest C. Baynard, III,
Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88-16347 Filed 7-19-88; 6:45 am]
BILLING CODE 3450-01-4

Financial Assistance Award; Intent To Award a Grant to the Hardin-Simmons University

AGENCY: Department of Energy.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b) it is restricting eligibility for the grant under procurement request number 19-88BC14288.000 to the Hardin-Simmons University for "Improved Oil Recovery Conference and Exhibition."

Scope: The grant is to assist the Hardin-Simmons University, Fairleigh Dickinson Research Center in conducting a conference and exhibition in Improved Oil Recovery. Emphasis will be to demonstrate available technologies to independent oil producers in the West Texas region.

The goals of the conference are to present improved and enhanced oil recovery methods through lectures, discussions, and exhibits to independent oil operators in the West Texas region; to determine the acceptability for application of such technologies by area producers; to establish a basis for technology and economic evaluation for the large scale application of enhanced oil recovery technologies.

The conference will be held at the Hardin-Simmons University, Fairleigh Dickinson Research Center approximately six (6) months after execution of the grant instrument. The term of the grant will be nine (9) months at an estimated amount of \$40,000.00. FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: Gregory J. Kawalkin. Telephone: AC 412/892-6039.

Date: July 11, 1988
Sun W. Chun,
Director.
[FR Doc. 88-16348 Filed 7-19-88; 8:45 am]
BILLING CODE 4450-01-M

Financial Assistance Award; Intent To Award Grant to the Interstate Oil Compact Commission

AGENCY: Department of Energy.
ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b) it is restricting eligibility for the grant under procurement request number 19-88BC14285.000 to the Interstate Oil Compact Commission for "Technology Transfer and the DOE Fossil Energy Oil and Gas R&D Program".

Scope: The grant is to assist the Interstate Oil Compact Commission in identifying target audiences, assessing their needs with respect to transfer of improved and enhanced oil recovery technologies, and to conduct various symposia, workshops, seminars, etc.

The purpose of this effort is to reach four target audiences: research and production areas of major oil companies, smaller independent operators, oil-field service companies,

and professional reservoir engineering and petroleum consultants. The effort will further define the technology transfer needs of these target audiences, identify the channels currently used and the obstacles encountered, define the most effective format for each audience, devise approaches to effect the transfer and development permanent links and mechanisms for the broad transfer of public and private research results. Lastly, new methods implemented e.g. symposia, workshops, etc. will be assessed and refined, where appropriate, leading to recommendations for future comprehensive technology transfer activities.

The term of the grant will be for a one year period at an estimated value of \$250,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: Gregory J. Kawalkin. Telephone: AC 412/892-6039.

Date: July 11, 1988
Sun W. Chun,
Director.
[FR Doc. 88-16349 Filed 7-19-88; 8:45 am]
BILLING CODE 4450-01-M

Financial Assistance Award; Intent To Award Grant to the United Nations Institute for Training and Research (UNITAR)

AGENCY: Department of Energy.
ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b) it is restricting eligibility for a grant under Procurement Request Number 19-88BC14259.000 to the United Nations Institute for Training and Research (UNITAR) for a conference on "Heavy Crude and Tar Sands".

Scope: The grant is to assist UNITAR in conducting the conference which will discuss the latest world developments in the exploration for and production of heavy crude and tar sands. Increased emphasis is being placed on expanding the knowledge of this potential to help meet the energy demands of the future.

The purpose of the conference is to draw the world's attention to the potential of heavy crude and tar sands. The conference plans to introduce participants to the state-of-the-art technology and facilitate contacts between the large producers and the more modest ones, especially between developed and developing countries. It

will encourage governments to set up legislation that will facilitate exploration and production of heavy crude and tar sands.

The conference will take place in Edmonton, Canada from August 7, 1988 to August 12, 1988. The terms of the grant shall terminate on August 12, 1988 and the grant is for \$50,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 900-33, Pittsburgh, PA 15236, Attn: Gregory J. Kawalkin. Telephone: AC 412/892-6039.

Sun W. Chun,
Director, Pittsburgh Energy Technology Center.
July 12, 1988.
[FR Doc. 88-16350 Filed 7-19-88; 8:45 am]
BILLING CODE 4450-01-M

Economic Regulatory Administration

[Docket No. ERA C&E 88-16; Certification Notice-21]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended; Ocean State Power Technology, Inc., et al.

AGENCY: Economic Regulatory Administration, DOE.
ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 et seq.), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. Two owners or operators of proposed new electric base load powerplants have filed self

certifications in accordance with section 201(d). Further information is provided

in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Mega-watt capacity	Location
American Cogen Technology, Inc., Salt Lake City, UT.	7-7-88	Cogeneration topping cycle	47	Salinas, CA.
Applied Energy, Inc., San Diego, CA	7-11-88	Cogeneration combined cycle	23	San Diego, CA.

Amendments to FUA on May 22, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on July 13, 1988.
Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.
[FR Doc. 88-16352 Filed 7-19-88; 8:45 am]
BILLING CODE 4450-01-M

[Docket No. ERA C&E 88-15; Certification Notice-20]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended; Ocean State Power

AGENCY: Economic Regulatory Administration, DOE.

Name	Date received	Type facility	Mega-watt capacity	Location
Ocean State Power, Boston, MA	6-20-88	Powerplant combined cycle	250	Burrillville, RI.

On December 31, 1986, Ocean State Power submitted a FUA exemption for the Burrillville, Rhode Island, facility based on the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The ERA noticed acceptance of the petition in the Federal Register on February 3, 1987, (52 FR 3332).

Amendments to FUA on May 22, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure. By filing a self certification, Ocean State Power has elected to cease ERA's processing of the FUA exemption filed earlier.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 et seq.), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance

with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Issued in Washington, DC, on July 14, 1988.
Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.
[FR Doc. 88-16353 Filed 7-19-88; 8:45 am]
BILLING CODE 4450-01-M

Office of Energy Research

Proposed Establishment of a Federally Funded Research and Development Center; Inhalation Toxicology Research Institute, Albuquerque, NM

AGENCY: Department of Energy.
ACTION: Notice No. 1 of proposed establishment of a Federally Funded Research and Development Center (FFRDC).

SUMMARY: In accordance with paragraph 6.b.(2) of Office of Federal

Procurement Policy, Policy Letter No. 84-1, the Department of Energy (DOE) announces its intention to establish the Inhalation Toxicology Research Institute (ITRI) located in Albuquerque, New Mexico, as an FFRDC. Early programs at ITRI concentrated on the study of radionuclide toxicity problems associated with the development, manufacture, testing and potential use of nuclear weapons, particularly the study of inhaled fission products. Today, the programs at ITRI include: (1) The physical and chemical characterization of airborne toxicants; (2) the disposition of inhaled materials within the body; (3) development of improved understanding of dose-response relationships for inhaled radionuclides; (4) studies of dose-response relationships for inhaled chemical toxicants; (5) studies on human health risks from combined exposure to

radiation sources and industrial chemicals; and (6) studies on the biological factors that influence responses to inhaled materials.

The nature of the research requires specialized facilities to conduct the integrated program of inhalation toxicology research needed to examine these issues. The ITRI facilities include three major inhalation exposure laboratory suites designed for the safe use and control of highly radioactive or potentially carcinogenic materials as well as specialized aerosol research laboratories. ITRI also has modern facilities for the care and housing of 10,000 contaminated and control animals, hospital facilities for specialized medical evaluation and treatment of laboratory animals and extensive pathology facilities. Based upon the long-term, multidisciplinary research programs of this laboratory which are supportive of DOE's mission, the Department has determined that ITRI should be designated as an FFRDC.

DATE: Any comments on this proposed action must be received on or before August 19, 1988.

ADDRESSES: Comments should be addressed to Kristine Forsberg, Deputy Director, Acquisition and Assistance Management, Office of Energy Research, ER-64, U.S. Department of Energy, Washington, DC 20545.

David B. Nelson,
Executive Director, Office of Energy Research.

[FR Doc. 88-16235 Filed 7-19-88; 8:45 am]
BILLING CODE 5480-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-564-000 et al.]

GNG Transmission Corporation et al.; Natural Gas Certificate Filings

July 14, 1988.

Take notice that the following filings have been made with the Commission:

1. GNG Transmission Corporation

[Docket No. CP88-564-000]

Take notice that on July 11, 1988, CNG Transmission Corporation, 445 West Main St., Clarksburg, West Virginia 26302-2450, filed in Docket No. CP88-564-000 prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorizations to transport natural gas for the shippers listed in the application under the certificate issued in Docket No. CP88-311-000, all as more fully set forth in the request with the Commission and open to public inspection.

CNG proposes to transport gas for the shippers on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies (LDCs). The receipt and delivery points, along with maximum daily, average daily and annual volumes are shown in the application.

CNG reported these transactions, with commencement dates, to the Commission. CNG proposes to continue these services in accordance with §§ 284.221 and 284.223(b).

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-537-000]

Take notice that on June 30, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-537-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of N-Gas, Inc., a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states pursuant to a Gas Transportation Agreement dated May 31, 1988, Northern would transport up to 50,000 MMBtu per day and up to 13,687,500 MMBtu annually pursuant to Rate Schedule IT-1 for N-Gas, Inc. from points of receipt in Texas, Oklahoma and Kansas. Northern proposes to deliver the gas for N-Gas Inc.'s account to points of delivery in Texas, Kansas, Wisconsin and Iowa. It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northern commenced such self-implementing service on April 25, 1988, as reported in Docket No. ST88-3828. It is further stated that construction of facilities would not be required to provide the proposed service.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP88-550-000]

Take notice that on July 7, 1988, United Gas Pipe Line Company (United),

P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-550-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide an interruptible transportation service on behalf of Exxon Corporation (Exxon), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that the interruptible gas transportation agreement dated April 21, 1988, proposes a maximum daily quantity of 51,500 MMBtu and 18,797,500 MMBtu on an annual basis pursuant to its Rate Schedule ITS. United states that service commenced May 1, 1988, as reported in Docket No. ST88-4369, pursuant to § 284.223(a). United states further that it will be using existing facilities to provide the transportation service, namely, the receipt-point interconnection with Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and the delivery-point interconnection with Columbia Gulf Transmission Company near Barron, Rapides Parish, Louisiana.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-500-000]

Take notice that on July 11, 1988, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP-560-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation service on behalf of Archer Daniels Midland Company, an end user of natural gas, under Northern's blanket certificate issued in Docket No. CP88-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to transport up to 20,000 MMBtu of natural gas per day and up to 7,300,000 MMBtu on an annual basis from numerous receipt points located in Oklahoma, Texas, Kansas and New Mexico to seven delivery points located in Minnesota, Nebraska, Iowa, and Wisconsin, pursuant to its Rate Schedule IT-1. Northern states that transportation for this shipper commenced June 1, 1988, under the

automatic authorization provisions of § 284.223(a) as reported in Docket No. ST88-4532. Northern states further that construction of facilities would not be required for the proposed service.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP88-585-000]

Take notice that on July 12, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-585-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Access Energy Corporation (Access), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP88-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 100,000 MMBtu of gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, and 9,125,000 MMBtu on an annual basis for Access. It is stated that Natural would receive the gas for Access's account at various existing receipt points in Texas, offshore Texas, Louisiana, offshore Louisiana, Oklahoma, New Mexico and Iowa. Natural then proposes to deliver equivalent volumes of gas in Texas, Illinois, Iowa, Louisiana, New Mexico and Kansas. It is asserted that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that the service commenced May 1, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

Comment date: August 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission's file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Casbell,
Acting Secretary
[FR Doc. 88-16346 Filed 7-19-88; 8:45 am]
BILLING CODE 8717-01-M

Southwestern Power Administration

Federal Hydroelectric Power; Proposed New Customer Selection Policy

AGENCY: Southwestern Power Administration, DOE.

ACTION: Proposed policy for the selection of new customers to receive Federal hydroelectric power and energy.

SUMMARY: In 1980, the Southwestern Power Administration (SWPA) adopted a Final Power Allocation which allocated existing and known future Federal hydroelectric peaking capacity to preference customers in the SWPA marketing area. That Power Allocation was published in the Federal Register (45 FR 19032) dated March 24, 1980. By letter dated January 24, 1984, President Reagan set forth a method of action which requires Federal agencies to negotiate reasonable non-Federal funding prior to the start of construction for new Federal hydroelectric power projects (new Federal projects). The 1980 SWPA Power Allocation does not address the allocation of new power from construction of new Federal projects with funds advanced by non-Federal entities. As a result of these changing conditions, SWPA believed a policy was needed to address the allocation of new power that may become available for marketing from existing and new, Federally and non-Federally funded, hydroelectric power projects. SWPA published the Power Allocation Policy (Policy) in the Federal Register August 12, 1987 (52 FR 29881).

Section I, Paragraph 3 of the Policy announced "New customers shall be selected in accordance with SWPA's New Customer Selection Policy." The Policy provided ten percent of any power available for allocation would be allocated to new customers. SWPA has received many formal and informal requests from applicants for allocations of power and energy from the SWPA hydroelectric power system. Therefore, in accordance with the above, SWPA has developed a Proposed New Customer Selection Policy. The Proposed New Customer Selection

Policy should not be confused with the selection procedure and criteria for non-Federal entities (sponsors) willing to provide funding prior to the start of construction for new Federal hydroelectric power projects.

DATE: Comments on the proposed policy must be submitted on or before August 19, 1988.

ADDRESS: Comments may be mailed to: Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director of Power Marketing (918) 561-7529.

SUPPLEMENTARY INFORMATION: The Proposed New Customer Selection Policy addresses the criteria and procedures SWPA proposes to use in selecting new customers when Federal hydroelectric power is available for allocation. This policy is a separate procedure from the selection of a non-Federal sponsor to participate financially in the development of a Federal hydroelectric power project. An entity applying to be a new customer of SWPA could also be a non-Federal sponsor for a project. Allocations will be made to new customers and non-Federal sponsors according to the SWPA Power Allocation Policy in effect at the time of the allocation.

SWPA published a Notice of Intent to Develop Policy for New Customer Selection in the Federal Register of February 10, 1987 (52 FR 4186). In the notice SWPA requested that interested parties provide comments and suggestions to SWPA by March 12, 1987, concerning the formulation of the policy. Twelve letters were received in response to the Notice of Intent. Summaries of the comments received concerning the development of a New Customer Selection Policy and SWPA's responses follow:

1. **Comment**—A new customer selected to receive power and energy from the Federal hydroelectric power system should be a preference customer as intended by section 5 of the Flood Control Act of 1944, as amended.

SWPA Response—SWPA agrees. Preference will be given in selecting new customers as required by section 5 of the Flood Control Act of 1944, as amended.

2. **Comment**—A proposed policy should be prepared and published for comments.

SWPA Response—SWPA agrees.

3. **Comment**—Existing power allocations should remain in effect and

existing power sales contracts should be satisfied before new preference customers are given an allocation.

SWPA Response—The 1980 power allocations were made using known existing and future resources and those allocations will remain in effect according to the 1980 Final Power Allocations. Power sales contracts related to the 1980 power allocations will be satisfied when the existing and future resources referred to therein are available. Any new allocations and related power sales agreements will be made in accordance with the allocation policy in effect at the time power becomes available for allocation.

4. **Comment**—Selection of public bodies and municipalities that have the ability to be served easily and economically through municipal joint action agencies would provide the most widespread benefits of Federal hydroelectric power generation.

SWPA Response—SWPA recognizes the economic benefits inherent to such a concept. Although SWPA has considered development of new customer selection based on the concept, SWPA believes that it is more equitable to select new customers individually on a first requested—first served basis.

5. **Comment**—For the purpose of establishing a priority listing of recipient customers, first consideration should be given to Federal agencies with authorizing legislation entitling them to project power where there are definite impacts from water development projects. Secondly, Federal installations within the boundaries of the generating facility should receive preference power for any energy excess to the needs for which the original plant was designed.

SWPA Response—SWPA, as authorized by section 5 of the Flood Control Act of 1944 (as amended), markets only that power and energy which is determined (in accordance with the authorizing legislation) to be excess to project requirements (general station service). Specific authorizing legislation would be required for a Federal agency, other than the construction agency, to receive station service power from an existing or newly constructed project.

Absent such legislation, the allocation (to a Federal agency) of "excess" Federal power and energy which may become available for marketing by SWPA would be made in accordance with the power allocation policy then in effect.

Southwestern Power Administration Proposed New Customer Selection Policy

The Administrator shall select new customers (applicants) requesting a power allocation on a first requested—first served basis and based on the following criteria:

1. Priority will be given to applicants within each state that currently have letters of application on file with Southwestern Power Administration (SWPA) by date of letter. Following is a list of such applicants by State and date of application:

State	Applicant	Date
Arkansas	North Little Rock	06-01-78
	Ark Val Elec Co-op (Ozark)	09-14-79
	Benton	06-30-80
	West Memphis	06-29-82
	Dardanelle	06-06-85
	Little Rock Air Force Base	09-18-85
	Big Lake National Wildlife Refuge-U.S. Fish and Wildlife Service	08-18-87
	Greens Ferry National Fish Hatchery-U.S. Fish and Wildlife Service	06-18-87
	Mammoth Spring National Fish Hatchery-U.S. Fish and Wildlife Service	08-18-87
	Norfolk National Fish Hatchery-U.S. Fish and Wildlife Service	08-18-87
	Wapanoseta National Wildlife Refuge-U.S. Fish and Wildlife Service	08-18-87
Kansas	Kiowa	06-30-82
	Elmwood	02-13-84
	Holington	02-13-84
	Pratt	02-14-84
	Larned	02-15-84
	Doniphan Elec Co-op (Troy)	02-17-84
Louisiana	Johnson	02-28-84
	McPherson	07-26-84
	Natchitoches National Fish Hatchery-U.S. Fish and Wildlife Service	06-18-87
Missouri	Sabine National Wildlife Refuge-U.S. Fish and Wildlife Service	06-18-87
	Harrisonville	10-07-88
	Gallatin	12-10-89
	Liberal	08-21-70
	Mansfield	01-20-72
	Pattonburg	06-11-72
	Pleasant Hill	03-11-75
	Independence	06-22-75
	Columbia	05-05-76
	Vandell	06-07-77
	Trenton	07-14-77
	Oacocla	03-14-79
	Crane	06-19-85
	Hannibal Board of Public Works	06-19-85
	Owensville	10-21-85
	El Dorado Springs	06-01-87

State	Applicant	Date
Oklahoma	Rolla	06-05-87
	Fredericktown	06-05-87
	Jackson	07-29-87
	Marion	11-18-88
	Marlow	08-08-89
	Anadarko	08-12-70
	Bramen	02-24-71
	Ponca City	06-28-74
	Stillwater	07-25-74
	Pond Creek	08-19-74
	Kaw City	05-05-75
	KAMO Electric Co-op	08-11-78
	NE Ok Elec Co-op	04-24-79
	Chickasaw Tribal Utility Authority	10-22-88
Texas	Edmond	11-14-86
	Fairview	06-29-87
	Oklahoma Municipal Power Authority	04-12-88
	Kirbyville	05-18-78
	Caldwell	07-12-78
	Lubbock	03-05-82
	Sam Rayburn Municipal Power Agency	07-02-85
	Hunt-Collin Electric Co-op	02-26-88
	Whitesboro	01-25-88

1 No date.

2. No further applications will be accepted from July 20, 1988 until 30 days after adoption of a New Customer Selection Policy.

3. Thirty days after adoption of a New Customer Selection Policy, new applicants' names will be placed below the names on the above list by state in order of date and time of receipt of applications by SWPA. If applications have the same date and time of receipt and are received from applicants located in the same State, the order of priority of such applications will be determined by lot.

4. All applications for an allocation shall include information to demonstrate that an applicant is, or will be, entitled to preference as defined by section 5 of the Flood Control Act of 1944, as amended. Applications shall also include specific information regarding the applicant's ability to use and receive that allocation through designated transmission paths.

5. If there are no pending applications for new customers on file with SWPA for a particular State, the amount of power and energy set aside for new customers in that State shall be allocated to the state most deficient in its fair share for allocation to new customers where applicants are available.

6. If and when there are no pending applications for new customers on file with SWPA, the Administrator shall allocate the power and energy set aside for new customers to existing customers in accordance with the Power Allocation Policy then in effect.

7. Only written applications (see attached application guidelines), received and date stamped by SWPA will be considered during an allocation. All written applications for a power allocation shall be mailed to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, or hand delivered to the Administrator's office in Tulsa, Oklahoma.

Ronald H. Wilkerson,
Administrator, Southwestern Power Administration.

New Customer Application Guidelines

Name and Address:

Utility Description:

(*) The new customer applicant should provide the date and place of incorporation, if applicable, and specify corporate or municipal affiliations, if any.

Service Area:

Distribution and Transmission Facilities:

(*) The applicant should attach, or at least reference, its lease agreements, if any.

Current Electrical Resources:

Current Electrical Peak Load:

[FR Doc. 88-16236 Filed 7-19-88; 8:45 am]

BILLING CODE 4550-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180784, FRL-3416-8]

Receipt of Application for an Emergency Exemption From Florida To Use Trifluralin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as "Applicant") to use the pesticide trifluralin (CAS 68894-11-1) to treat 245 acres of nursery and greenhouse grown *Spathiphyllum* varieties to control *Cylindrocladium* root and petiole rot.

The Applicant proposes the use of a new chemical, therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the

decision whether or not to grant the exemption.

DATE: Comments must be received on or before August 4, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180784" should be submitted by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 244, Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Terraguard 50W on *Spathiphyllum* spp. to control *Cylindrocladium* root and petiole rot. Information in accordance with 40 CFR Part 166 was submitted as part of this request. Trifluralin is not a currently registered chemical. The proposed use on *Spathiphyllum* is a non-food use.

The Applicant states that *Cylindrocladium spathiphylli* was introduced into Florida around 1977 by

movement of infected plants from the tropics. Dissemination of the disease was easily accomplished by transfer of infected seedlings, and contaminated seeds and plants.

The Applicant states that research on efficacy has shown the registered alternatives to be less effective in controlling *Cylindrocladium* on *Spathiphyllum* than trifluralin. Benomyl provided the best control of the registered fungicides tested. However, benomyl applied at rates necessary to achieve control is phytotoxic to the plants and is not effective at rates low enough to avoid phytotoxicity.

The 1985 Florida foliage production was estimated to have a wholesale value of \$272 million. Sales of *Spathiphyllum* are estimated to represent 10 percent of this value. Seventy-one percent of *Spathiphyllum* sold is produced by growers who are having problems with controlling *Cylindrocladium*. *Spathiphyllum* losses to *Cylindrocladium* are estimated to be 8 percent of the total crop value (about \$1.8 million). Available methods of control are not expected to provide economic control next season.

The Applicant plans to treat up to 245 acres using 14,700 pounds of product (7,350 pounds active ingredient). Applications are proposed for a period of one year from the date of approval. Applications of 4 to 8 ounces of Terraguard 50W in 100 gallons of water will be applied as a soil drench or through chemigation every two to four weeks or as needed to *Spathiphyllum* grown in greenhouse, interiorscapes, or commercial nurseries.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: July 5, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 88-16326 Filed 7-19-88; 8:45 am]

BILLING CODE 4550-01-M

BEST COPY AVAILABLE

[OPP-30289; FRL-3417-4]

Certain Companies Applications To Register Pesticide Products; Boyle-Midway Household Products, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by August 19, 1988.

ADDRESS: By mail submit comments identified by the document control number [OPP-30289] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 238 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/telephone number	Address
PM 15, George LaRocca	Rm. 204, CM #2 (703-557-2400).	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202.
PM 21, Lois Rossi	Rm. 227, CM #2 (703-557-1900).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

II. Products Involving a Changed Use Pattern

1. *File Symbol:* 475-ETT. Applicant: Boyle-Midway Household Products, Inc., South Ave. and Half St., Cranford, NJ 07016. Product name: Black Flag Roach Control System II. Insecticide. Active ingredient: Abamectin 0.075%. Proposed classification/Use: General. To include in its presently registered use, a new indoor/household use on all types of roaches such as the small (German) and large (American) roach. (PM 15)

2. *File Symbol:* 400-UGG. Applicant: Uniroyal Chemical Co., Inc., 74 Amity Road, Bethany, CT 06525. Product name: Terraguard® 50W. Fungicide. Active ingredient: Triflumizole [1-[1-[4-chloro-2-(trifluoromethyl) phenyl]imino]-2-propoxyethyl]-1H-imidazole] 50%. Proposed classification/Use: General. To include in its presently registered use, a new use as a soil drench foliar spray or though chemigation for control of diseases on commercial greenhouse, interiorscape, and nursery grown ornamentals. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It

is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3282), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: July 11, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-16332 Filed 7-19-88; 8:45 am]
BILLING CODE 5550-50-M

[OPP-30289; FRL-3417-7]

Brea Service, Inc.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Brea Agricultural Service, Inc., to register the pesticide product Propel, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA received an application from Brea Agricultural Service, Inc., PO Box 201059, 1336 West Fremont, Stockton, CA 95201, to register the pesticide product Propel, a plant growth regulator containing the active ingredient 2-hydroxypropanoic acid at 80 percent; not included in any previously registered product. The product, EPA Registration Number 9018-8, was registered on April 29, 1988 for general use on almonds, apples, beans (green and dry), broccoli, cabbage, cauliflower, cherries, citrus, corn (sweet and field), cotton, grapes, lettuce, peppers (green and chile), pineapples, prunes, strawberries, sugarcane, tomatoes, and walnuts. Because the notice of application to register the product was not published in the Federal Register, as required by section 3(c)(4) of FIFRA, as amended, interested parties may submit comments within 30 days from the date of publication of this notice.

The Agency has considered all required data on the risks associated with the proposed use of 2-hydroxypropanoic acid and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 2-hydroxypropanoic acid, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on 2-hydroxypropanoic acid.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 238, CM#2, Arlington, VA 22202 (703-557-4460). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: July 8, 1988.

Susan H. Wayland,
Acting Director, Office of Pesticide Programs.

[FR Doc. 88-16333 Filed 7-19-88; 8:45 am]

BILLING CODE 5550-50-M

[PF-499; FRL-3416-0]

Pesticide Tolerance Petitions; ATL Enterprises, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment and/or amendment of tolerances for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to: Information Service section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: Product Manager (PM) named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
Phil Hutton (PM 17).	Rm. 207, CM #2, (703)-557-2500.	Do.
Robert Taylor	Rm. 245, CM #2.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations

for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 8F3635.* ATL Enterprises, Inc., 3601 Garden Brook, Dallas, TX 75234, proposes to amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for aqueous extract of the roots, galls, and bark from Opinta Lindhimer, Quercus Placata, Rhus Aromatica, and Rhizophora Mangle, when used as a plant regulator in soil and/or foliar applications in or on all raw agricultural commodities. (PM 25).

2. *PP 8F3640.* BASF Corp., Chemical Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 40 CFR 180.412 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing 2-cyclohexen-1-one moiety in or on peas (dry and succulent) at 40 parts per million (ppm) and beans (dry and succulent) at 15 ppm. The proposed analytical method for determining residues is gas chromatography using sulfur-specific flame photometric detection. (PM-25).

3. *FAP 8H5557.* BASF Corp., Chemical Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes to amend 21 CFR Part 561 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxymino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing 2-cyclohexen-1-one moiety in or on peas (forage and hay) at 40 ppm and beans (forage and hay) at 40 ppm. (PM 25).

Amended Petition

1. *PP 4F3103.* EPA issued notice of the filing of the petition in the Federal Register of August 1, 1984 (49 FR 30789), by the Zoecon Corp., proposing that 40 CFR 180.359 be amended by establishing tolerances for residues of the insecticide methoprene [isopropyl (E,E)-11-methoxy-3,7,11-tri-methyl-2,4-dodecadienoate] in or on various commodities. Sandoz Crop Protection Corp. has submitted a revised Section F for the petition, proposing the establishment of tolerance as follows:

Commodities	Parts per million
Cereal grain Group XV (except popcorn and sweet corn)	5.0
Cereal grain milled fractions (except flour and rice hulls)	10.0

Commodities	Parts per million
Eggs	0.1
Fat of cattle, goats, hogs, horses, poultry, and sheep	1.0
Meat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep	0.1
Milk	0.1
Rice hulls	25.0

The proposed analytical method for determining residues is gas chromatography. (PM-17).

(7 U.S.C. 136e)

Dated: July 11, 1988.

Edwin F. Tinsworth,
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 88-18329 Filed 7-19-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100055; FRL-3415-8]

Cadmus Group Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Cadmus Group Inc. has been awarded a contract to perform work for the EPA Office of Policy, Planning and Evaluation (OPPE) and Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Cadmus Group as authorized by 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), respectively. This action will enable Cadmus Group to fulfill the terms of this contract and serves to notify affected persons.

DATE: Cadmus Group will be given access to this information no sooner than July 27, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Catherine S. Grimes, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis

Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-01-7363, Cadmus Group, Inc. will assist OPPE and OPP in assessing control options, information gathering methods, and performing other analyses relating to the control of chemicals and biological materials. The emphasis in these analyses will be on the Toxic Substances Control Act (TSCA), including engineering, economic, health, environmental and regulatory information. Some of this data may be FIFRA CBI. This contract involves no subcontractor.

The Office of Pesticide Programs and OPPE have determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that some pesticide chemicals such as Dinoseb, Silvex, and 2,4,5-T will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

This information is entitled to confidential treatment, having been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 406 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), Cadmus Group shall not use the information for any purpose other than purpose(s) specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, Cadmus Group is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Cadmus Group until the above requirements have been fully satisfied. Records of information provided to Cadmus Group will be maintained by the Task Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Cadmus Group by EPA for use in connection with this contract will be returned to EPA when Cadmus Group has completed its work.

Dated: July 6, 1988.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 88-18196 Filed 7-19-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36162; FRL-3415-4]

Standard Evaluation Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the following draft Standard Evaluation Procedures (SEPs) for public comment prior to its publication: Magnitude of Residue; Storage Stability; and Analytical Methods. The SEPs are a standard set of guidance documents on how the Hazard Evaluation Division (HED) in the Office of Pesticide Programs evaluates studies and scientific data to ensure consistency of scientific reviews of studies submitted by registrants in support of pesticide registrations. This will increase the efficiency of pesticide registration and other regulatory activities.

DATE: Comments, identified by the document control number [OPP-36162] should be received on or before September 19, 1988.

ADDRESS: Submit three copies of written comments, identified with the document control number [OPP-36162] by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, deliver comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Copies of the draft SEPs are also available at the following address:

FOR FURTHER INFORMATION CONTACT:

By mail: Orville E. Paynter, Hazard Evaluation Division (TS-788C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7695.

SUPPLEMENTARY INFORMATION: The SEPs are a standard set of guidance documents on how HED evaluates studies and scientific data to ensure consistency of scientific reviews. Not only will the SEPs serve as valuable internal reference documents and training aids for new staff, these documents will also inform the public and regulated community of important considerations in the evaluation of test data for determining chemical hazards.

The SEPs ensure a comprehensive, consistent treatment of major scientific topics in the Agency's reviews and provide interpretive policy guidance where appropriate, but are not so detailed that they inhibit creativity and independent thought. The SEPs also serve as training aids for new staff, and inform the public of the internal review process. Throughout the remainder of this and next fiscal year, HED will be writing additional SEPs on the scientific disciplines of toxicology, chemistry, exposure assessment, and ecological effects. Thirty-six SEPs have been published thus far and are available from the National Technical Information Service, which is responsible for distribution of all SEPs after they have been finalized. Prior to publication, each of the SEPs must undergo extensive peer review including Division, Office, Intra-Agency, FIFRA Scientific Advisory Panel, and public comment; this announcement serves to solicit public comment on the draft document.

Dated: July 7, 1988.

Anne Barton,

Acting Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 88-18074 Filed 7-19-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3417-3]

Salvo Property Site; Proposed Statement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Salvo Property Site, Lithia Springs, Georgia, with Joseph E. Salvo. EPA will

consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Rosemary L. Workman, Environmental Scientist, U.S. EPA, Region IV, Investigations and Cost Recovery Unit, Investigation Support Section, Site Investigation and Support Branch, Waste Management Division, 345 Courtland Street NE Atlanta, Georgia 30365, 404/347-5059.

Written comments may be submitted to the person above by August 19, 1988.

Date: July 11, 1988.

Joe R. Franzmathes,
Acting Regional Administrator.

[FR Doc. 88-18334 Filed 7-19-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59846; FRL-34166]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46086) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of ten such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 88-201, 88-202, 88-203, June 27, 1988.

Y 88-204, July 6, 1988.

Y 88-205, 88-206, 88-207, 88-208, July 11, 1988.

Y 88-209, and 88-210, July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection

Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 88-201

Manufacturer: NL Industries.
Chemical: (G) Alkyd resin.

Use/Production: (G) Open, nondispersive use. Prod. range: Confidential.

Y 88-202.

Manufacturer: Confidential.
Chemical: (G) Methoxy polyethylene oxide diol.

Use/Production: (S) Coatings prepolymer. Prod. range: Confidential.

Y 88-203

Manufacturer: Confidential.
Chemical: (G) Water-reducible alkyd resin.

Use/Production: (S) Air-dry water-reducible varnishes, stains, and enamels. Prod. range: Confidential.

Y 88-204

Manufacturer: Confidential.
Chemical: (G) Modified acrylic terpolymer.

Use/Production: (G) Thickener for aqueous mixtures, nondispersive use. Prod. range: Confidential.

Y 88-205

Manufacturer: Confidential.
Chemical: (G) Vinyl acetate/olefins tetrapolymer.

Use/Production: (G) Petroleum product additive. Prod. range: Confidential.

Y 88-206

Manufacturer: Confidential.
Chemical: (G) Vinyl acetate/olefins tetrapolymer.

Use/Production: (G) Petroleum product additive. Prod. range: Confidential.

Y 88-207

Manufacturer: Confidential.
Chemical: (G) Vinyl acetate/olefins tetrapolymer.

Use/Production: (G) Petroleum product additive. Prod. range: Confidential.

Y 88-208

Manufacturer: General Electric Company, GE Plastics.
Chemical: (G) Aryl alkyl polyamide resin.
Use/Production: (G) Thermoplastic resin for sheet and film. Prod. range: Confidential.

Y 88-209

Manufacturer: Reichhold Chemicals, Inc.
Chemical: (G) Aryl alkyl polyamine resin.
Use/Production: (S) Putty. Prod. range: Confidential.

Y 88-210

Manufacturer: Owens-Corning Corporation.
Chemical: (G) Polyvinyl acetate copolymer.
Use/Production: (S) Molding resin. Prod. range: Confidential.

Date: July 12, 1988.
Steve Newburg-Rinn,
Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.
[FR Doc. 88-16326 Filed 7-19-88; 8:45 am]
BILLING CODE 6550-50-5

[OPTS-51709; FRL-3416]**Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices**

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1592, 88-1593, 88-1594, 88-1595, 88-1596, 88-1597, 88-1598, 88-1599, 88-1600, 88-1601, 88-1602, 88-1603, 88-1604, 88-1605, 88-1606, 88-1607, 88-1608, 88-1609, September 18, 1988.
P 88-1610, September 19, 1988.
P 88-1611, 88-1612, 88-1613, September 20, 1988.
P 88-1614, and 88-1615, September 21, 1988.

Written comments by

P 88-1592, 88-1593, 88-1594, 88-1595, 88-1596, 88-1597, 88-1598, 88-1599, 88-1600, 88-1601, 88-1602, 88-1603, 88-1604, 88-1605, 88-1606, 88-1607, 88-1608, 88-1609, August 19, 1988.
P 88-1610, August 20, 1988.
P 88-1611, 88-1612, 88-1613, August 21, 1988.
P 88-1614, and 88-1615, August 22, 1988.

ADDRESS: Written comments, identified by the document control number "(OPTS-51709)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 88-1592

Manufacturer: Confidential.
Chemical: (G) Modified polysaccharide.
Use/Production: (S) Binder for fiberglass matting. Prod. range: 454,000-2,727,000 kg/yr.

P 88-1593

Importer: Mitsubishi International Corporation.
Chemical: (S) Phosphated, ethoxylated oleyl alcohol, compound with ethoxylated coco alkyl amine.
Use/Import: (S) Antistatic agent and emulsifier of spinnish for polyester filament yarn. Import range: 500-5,000 kg/yr.

P 88-1594

Manufacturer: Reichhold Chemicals, Inc.
Chemical: (G) Vinyl acrylic copolymer.
Use/Production: (S) Nonwoven binder. Prod. range: Confidential.

P 88-1595

Manufacturer: Hi-Tek Polymers, Inc.
Chemical: (S) Cyanic acid, 4,4'-diphenylether ester, homopolymer.

Use/Production: (S) Thermoset resin for use in fiber-reinforced structural and electrical composites. Prod. range: Confidential.

P 88-1596

Manufacturer: Hi-Tek Polymers, Inc.
Chemical: (S) Cyanic acid, (2,2,2-trifluoro-1-(trifluoromethyl) ethylidene)di-4,1-phenylene ester, homopolymer.

Use/Production: (S) Thermoset resin for use in fiber-reinforced structural and electrical composites. Prod. range: Confidential.

P 88-1597

Manufacturer: Hi-Tek Polymers, Inc.
Chemical: (S) Cyanic acid, (4,4-diphenylether)ether.
Use/Production: (S) Chemical intermediate destructive. Prod. range: Confidential.

P 88-1598

Manufacturer: Confidential.
Chemical: (G) Alkyl acid, (cycloalkyloxy)alkyl ester.
Use/Production: (S) Site-limited intermediate for chemical production. Prod. range: Confidential.

P 88-1599

Importer: Hoechst Celanese Corporation.
Chemical: (G) Modified polyester resin.
Use/Import: (S) Resin for powder coatings. Import range: 12,000-95,000 kg/yr.

P 88-1600

Importer: Hoechst Celanese Corporation.
Chemical: (G) Modified polyester resin.
Use/Import: (S) Resin for powder coatings. Import range: 12,000-95,000 kg/yr.

P 88-1601

Manufacturer: Darworth Company.
Chemical: (G) Acrylic copolymer emulsion.
Use/Production: (S) Used in manufacture acrylic latex caulking compounds. Prod. range: Confidential.

P 88-1602

Manufacturer: Darworth Company.
Chemical: (G) Acrylic copolymers emulsion.
Use/Production: (S) Used to manufacture acrylic latex caulking compounds. Prod. range: Confidential.

P 88-1603

Manufacturer: Reichhold Chemicals, Inc.

Chemical: (G) Vinyl acrylic copolymer.
Use/Production: (S) Nonwoven binder. Prod. range: Confidential.

P 88-1604

Manufacturer: Confidential.
Chemical: (G) Polyalkylmethacrylate.
Use/Production: (G) Motor oil additive. Prod. range: Confidential.

P 88-1605

Manufacturer: Confidential.
Chemical: (G) Acrylourethane.
Use/Production: (G) Confidential. Prod. range: Confidential.

P 88-1606

Manufacturer: Confidential.
Chemical: (G) Acrylourethane.
Use/Production: (G) Confidential. Prod. range: Confidential.

P 88-1607

Manufacturer: Confidential.
Chemical: (G) Acrylourethane.
Use/Production: (G) Confidential. Prod. range: Confidential.

P 88-1608

Manufacturer: Confidential.
Chemical: (G) Acrylated silicone.
Use/Production: (G) Coating for open non-dispersive use. Prod. range: Confidential.

P 88-1609

Importer: Ciba-Geigy Corporation: Dyestuffs Div.
Chemical: (G) Substituted triazine azomethanesulfonic acid.
Use/Import: (G) Textile dye. Import range: Confidential.

Toxicity Data: Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rat). Static acute toxicity: LC50 > 1,000 mg/l time 96 h species (Zebra fish). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 88-1610

Importer: Confidential.
Chemical: (S) Vinyl acetate; butyl acrylate; ethylene; acrylic acid.
Use/Import: (S) An adhesive for packing and laminating. Import range: Confidential.

P 88-1611

Manufacturer: Confidential.
Chemical: (G) Aliphatic acid/fatty acid/polyamine condensate.
Use/Production: (G) Dispersive. Prod. range: Confidential.

P 88-1612

Manufacturer: Allied-Signal, Inc.

Chemical: (G) Polyamide alloy.
Use/Production: (G) Polymer alloy. Prod. range: Confidential.

P 88-1613

Manufacturer: E.I. du Pont de Nemours & Co., Inc.
Chemical: (G) Polyester-polyurea.
Use/Production: (G) Open, nondispersive. Prod. range: Confidential.

P 88-1614

Manufacturer: Confidential.
Chemical: (G) Metal hydride.
Use/Production: (G) Contained use, additive for gas treatment. Prod. range: Confidential.

P 88-1615

Manufacturer: Dow Corning Corporation.
Chemical: (S) Reaction production of siloxanes and silicones, dimethyl, 3-(N-methylamino)isobutylterminated plus Cyclohexane, 1,1-methylenbis-4-isocyanato- plus 1,4 Butanediol plus Poly(oxy-1,2-ethanediyl), -Alpha-hydro-omega-hydroxy-.
Use/Production: (S) Semi-permeable coating. Prod. range: 1000-2000 kg/yr.
Toxicity Data: Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

Date: July 12, 1988.
Steve Newburg-Rinn,
Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.
[FR Doc. 88-16327 Filed 7-19-88; 8:45 am]
BILLING CODE 6550-50-5

FEDERAL MARITIME COMMISSION**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984. Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 224-200140.

Title: Georgia Ports Authority

Terminal Agreement.

Parties: Georgia Ports Authority

(GPA), Savannah International

Terminals (SIT).

Synopsis: The proposed agreement provides for SIT's lease of container yard space in GPA's Garden City Terminal.

By Order of the Federal Maritime Commission.

Dated: July 14, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-16244 Filed 7-19-88; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-011157-001

Title: Safbank Joint Venture

Agreement.

Parties:

The Bank Line Limited

The South African Marine

Corporation Limited

Synopsis: The proposed modification reflects a corporate reorganization that would add Safbank Line Limited (the joint venture) and Bank Line East Africa Limited (a subsidiary of The Bank Line Limited) as parties to the agreement.

Agreement No.: 203-011160-002.

Title: Agreement No. 11160.

Parties:

Atlantic Container Line, BV

n.v. CMB s.a.

Orient Overseas Container Line (UK)

Ltd.

Gulf Container Line (GCL) BV

Hapag-Lloyd AG

Johnson ScanStar

Nedlloyd Lijnen BV
Pacific Europe Express
P&O Container (TFL) Limited
Polish Ocean Lines
Sea-Land Service, Inc.
South Atlantic Cargo Shipping NV

Synopsis: The proposed modification would admit Deppe Linie GmbH & Co. as a party to the agreement.

By order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: July 13, 1988.

[FR Doc. 88-16285 Filed 7-19-88; 8:45 am]

BILLING CODE 4730-01-M

Survey of Ocean Freight Forwarders

The Federal Maritime Commission recently sent surveys to ocean freight forwarders seeking their views as to the impact of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"). The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act, which directed the Federal Maritime Commission to "collect and analyze information concerning the impact of this Act upon the international ocean shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the 1984 Act. The surveys are the second in a series to be distributed on an annual basis through 1989. Substantial revisions have been made to the 1988 survey based upon responses to the 1987 survey recommendations of the section 18 Study Advisory Committee.

The Federal Maritime Commission would like its survey to have the widest possible distribution. All interested ocean freight forwarders who have not received a copy of the survey are urged to contact: Allen E. Jackson; Bureau of Economic Analysis; Federal Maritime Commission; 1100 L Street NW.; Washington, DC 20573; telephone (202) 523-5870.

Joseph C. Polking,
Secretary.

[FR Doc. 88-16257 Filed 7-19-88; 8:45 am]

BILLING CODE 4730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 13, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB)

delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of an assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before August 4, 1988.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name follows. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension

without revision of the following reports:

1. *Report Title:* Applications for and Cancel Federal Reserve Bank Stock—National Bank, Nonmember Bank, Member Bank.

Agency Form No.: FR 2030, FR 2030a, FR 2056, FR 2056a, FR 2066b, FR 2067.

OMB Docket No.: 7100-0042.

Frequency: On occasion.

Reporters: National, State Member and nonmember banks.

Annual Reporting Hours: 1,134 (FR 2030: 155; FR 2030a: 32; FR 2056: 889; FR 2066a: 12; FR 2066b: 13; FR 2067: 33).

Number of Reporters: 2,268 (FR 2030: 308; FR 2030a: 64; FR 2056: 1,778; FR 2066a: 24; FR 2066b: 28; FR 2067: 67).

Average Number of Hours per Response: 0.5 (for each form) Small businesses are affected.

General Description of Report:

This information collection is mandatory (12 U.S.C. 222, 35, 287, 321, and 288 (1982)) and is not given confidential treatment. These Federal Reserve Bank Stock application forms are required to be submitted to the Federal Reserve System by any National Bank, State Member Bank or nonmember bank wanting to purchase stock in the Federal Reserve System, increase or decrease its Federal Reserve Bank Stock holdings, or cancel such stock.

Board of Governors of the Federal Reserve System, July 13, 1988.

William W. Wiles,
Secretary of the Board.

[FR Doc. 88-16247 Filed 7-19-88; 8:45 am]

BILLING CODE 4210-01-M

Agency Forms Under Review

July 13, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Neal, Jr.—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office

Building, Room 3208, Washington, DC 20503 (202-395-7304).

Proposal to approve under OMB delegated authority the extension, without revision, of the following

1. *Recordkeeping and Disclosure Requirements in Connection with Regulation BB (Community Reinvestment)*

Agency Form No.: Not applicable.

OMB Docket No.: 7100-0197.

Frequency: On occasion.

Reporters: State member banks.

Annual Reporting Hours: 6,137.

Requirement	Estimated number of responses	Estimated time per response (minutes)
Statement	1,085	4.5
Files	836	1.5

Small business are affected.

General Description of Requirements:

This information collection is mandatory [12 U.S.C. 2901] and is not given confidential treatments.

Regulation BB implements the Community Reinvestment Act and is designed to encourage banks to help meet the credit needs of their communities.

2. *Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending)*

Agency Form No.: Not applicable.

OMB Docket No.: OMB No. 7100-0199.

Frequency: On occasion.

Reporters: State member banks.

Annual Burden Hours: 1,871,708.

Requirement	Estimated number of responses	Estimated time per response (minutes)
Initial terms	1,200,000	2.50
Change in terms	2,600,000	1.00
Periodic statements	40,000,000	.75
Error resolution	8,500	15.00
Closed-end credit disclosures	6,000,000	6.50
Advertising	2,500	30.00

Small businesses are affected.

General Description of Requirements:

This information collection is mandatory (15 U.S.C. 1601 *et seq.*) and is not given confidential treatment.

Regulation Z prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts.

3. *Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Fund Transfers)*

Agency Form No.: Not Applicable.

OMB Docket Number: OMB No. 7100-0200.

Frequency: On occasion.

Reporters: State member banks.

Annual Burden Hours: 581,166.

Requirement	Estimated number of responses	Estimated time per response (minutes)
Initial disclosures:		
Initial terms	270,000	2.5
Change in terms	360,000	1.0
Transaction disclosures:		
Terminal receipts	77,000,000	.25
Deposit verification	450,000	1.5
Periodic disclosures	13,700,000	1.0
Error allegations	7,000	30.0

Small businesses are affected.

General Description of Requirements:

This information collection is mandatory (15 U.S.C. 1683 *et seq.*) and is not given confidential treatment.

Regulation E establishes the rights, liabilities, and responsibilities of parties in electronic fund transfers and protects consumers using EFT systems.

4. *Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity)*

Agency Form No.: Not Applicable.

OMB Docket No.: OMB No. 7100-0201.

Frequency: On occasion.

Reporters: State member banks.

Annual Burden Hours: 102,872.

Requirement	Estimated number of responses	Estimated time per response (minutes)
Notification	1,713,402	2.5
Credit history reporting	884,055	2.0
Monitoring:		
Customer notation	217,966	.5
Bank notation	23,351	.5

Small businesses are affected.

General Description of Requirements:

This information collection is mandatory (15 U.S.C. 1691) and is given confidential treatment.

Regulation B prohibits creditors from discriminating against credit applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information and requires creditors to give applicants a written notification of rejection of an application.

5. *Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing)*

Agency Form No.: Not Applicable.

OMB Docket No.: OMB No. 7100-0202.

Frequency: On occasion.

Reporters: State member banks.

Annual Burden Hours: 10,024.

Requirement	Estimated number of responses	Estimated time per response (minutes)
Disclosures	40,000	15
Advertising	48	30

Small businesses are affected.

General Description of Requirements:

This information collection is mandatory (15 U.S.C. 1601) and is not given confidential treatment.

Regulation M implements the consumer leasing provisions of the Truth in Lending Act.

6. *Recordkeeping and Disclosure Requirements in Connection with the Right to Financial Privacy Act.*

Agency Form No.: Not Applicable.

OMB Docket No.: OMB No. 7100-0203.

Frequency: On occasion.

Reporters: State member banks.

Annual Burden Hours: 11,367.

Estimated No. of Responses: 31,000.

Estimated Time Per Response: 22 minutes

Small businesses are affected.

General Description of Requirements:

This information collection is mandatory (12 U.S.C. 3401 *et seq.*) and is given confidential treatment.

The Right to Financial Privacy Act prescribes a recordkeeping requirement regarding the maintenance of a record of instance in which consumer financial information held by the institution is released to a government agency.

7. *Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Section 206.8(k) (2, 3 and 5) of Regulation H*

Agency Form No.: Not Applicable.

OMB Docket No.: 7100-0196.

Frequency: On occasion.

Reporters: State-chartered member banks and trust companies.

Annual Burden Hours: 152,461.

Requirement	Estimated number of responses	Estimated hours per response
Recordkeeping:		
Banks	23,000	.05
Trust Entities	2,040,000	.05

Requirement	Estimated number of responses	Estimated hours per response
Customer Notification:		
Banks	23,000	.05
Trust entities	929,220	.05
Policies/procedures statement	5,500	.25

Small businesses are not affected.
General Description of Requirements:
 These requirements are authorized by law (12 U.S.C. 248(a) (1) and 325).

The disclosure and recordkeeping requirements under this section of Regulation H are imposed on state-chartered member banks and trust companies that effect securities transactions for customers. They require customer notification, recordkeeping and written policies and procedures to protect customers, to avoid or settle customer disputes and to protect the bank against potential liability under the "anti-fraud" and insider trading provisions of the Securities Exchange Act of 1934.

8. Recordkeeping and Disclosure Requirements Associated with Real Estate in Flood Hazard Areas Pursuant to Section 208.8(e) of Regulation H

Agency Form No.: Not Applicable.
 OMB Docket No.: 7100-0196.
 Frequency: On occasion.
 Reporters: State-chartered member banks.

Annual Burden Hours: 6540.

Requirement	Estimated number of responses	Estimated hours per response
Recordkeeping procedures	65,400	.06
Disclosure to borrowers	16,350	.06

Small businesses are affected.
General Description of Requirements:
 These requirements are authorized by law (12 U.S.C. 325).

The disclosure and recordkeeping requirements under this section of Regulation H are imposed on state-chartered member banks to implement requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b) as amended). The regulation forbids banks to make or renew loans secured by real estate located in a flood hazard area unless the property is covered by flood insurance and requires them to keep records in connection with all loans secured by such real estate. It also requires member banks to provide notice to borrowers (1) that the property securing a loan is located in a flood hazard area; and (2) whether, in the

event of damage to the property caused by flooding in a federally declared disaster area, federal disaster relief assistance will be available for such property.

Board of Governors of the Federal Reserve System, July 13, 1988.
 William W. Wiles,
 Secretary of the Board.
 [FR Doc. 88-16240 Filed 7-19-88; 8:45 am]
 BILLING CODE 3210-01-M

Kentucky Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 10, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Kentucky Bancorporation, Inc., Covington, Kentucky; to acquire 100 percent of the voting shares of The First National Bank of Georgetown, Georgetown, Kentucky.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First Sterling Bancshares, Inc., Winter Haven, Florida; to acquire 80 percent of the voting shares of First Sterling Bank of Osceola County, Kissimmee, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60680:

1. Indiana Bancshares, Greenwood, Indiana; to acquire 100 percent of the voting shares of Hoosier Bancshares, Bloomington, Indiana, and thereby indirectly acquire The Bloomington National Bank, Bloomington, Indiana. Comments on this application must be received by August 5, 1988.

2. P.T.C. Bancorp., Brookville, Indiana; to acquire 100 percent of the voting shares of Bank of Versailles, Versailles, Indiana.

3. Valley Bancorporation, Appleton, Wisconsin; to acquire 100 percent of the voting shares of Colonial Bank-Thiensville, Thiensville, Wisconsin; Colonial National Bank-Port Washington, Port Washington, Wisconsin; and Colonial Bank-Richfield, Richfield, Wisconsin.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Clarkfield Bancshares, Inc., Clarkfield, Minnesota; to acquire 50.3 percent of the voting shares of Fergus Falls Bancshares, Inc., Fergus Falls, Minnesota, and thereby directly acquire Security State Bank of Fergus Falls, Fergus Falls, Minnesota.

2. Monycor Bancshares, Inc., Superior, Wisconsin; to become a bank holding company by acquiring 97.86 percent of the voting shares of Monycor Bank of Superior, Superior, Wisconsin.

3. Town & Country Bancorporation, Inc., Newport, Minnesota; to acquire 100 percent of the voting shares of Roseville Bancorp., Inc., Roseville, Minnesota, and thereby indirectly acquire Mid America Bank, N.A., Roseville, Minnesota. Comments on this application must be received by August 5, 1988.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ameribanc, Inc., St. Joseph, Missouri; to acquire 100 percent of the voting shares of First Financial Bank of St. Charles County, Lake St. Louis, Missouri. First Financial will be relocated after consummation of the proposal.

2. Wathena Bancshares, Inc., Wathena, Kansas; to become a bank holding company by acquiring 93.27 percent of the voting shares of Farmers State Bank, Wathena, Kansas.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. BFW Financial Corporation, Burleson, Texas; to acquire 100 percent of the voting shares of Alvord Financial

Corporation, Alvord, Texas, and thereby indirectly acquire The Alvord National Bank in Alvord, Alvord, Texas.

Board of Governors of the Federal Reserve System, July 14, 1988.

James McAfee,
 Associate Secretary of the Board.

[FR Doc. 88-16250 Filed 7-19-88; 8:45 am]
 BILLING CODE 3210-01-M

Southtrust of Florida, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1988.

A. Federal Reserve Bank of Atlanta (Rober E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. SouthTrust of Florida, Inc., St. Petersburg, Florida, and SouthTrust Corporation, Birmingham, Alabama; to engage de novo through their subsidiary, SouthTrust Estate & Trust Company, Inc., South Pasadena, Florida, in all functions or activities that may be performed by a trust company including activities of a fiduciary, agency, or custodial nature as authorized by state law pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, July 14, 1988.

James McAfee,
 Associate Secretary of the Board.
 [FR Doc. 88-16249 Filed 7-19-88; 8:45 am]
 BILLING CODE 3210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Central Soya Co., Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.
 ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Central Soya Co., Inc. The NADA provides for the use of a Type A medicated article containing 265.5 or 281.7 grams of monensin per ton for making Type C medicated feeds for broiler chickens. The firm requested the withdrawal of approval.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Central Soya Co., Inc., P.O. Box 1400, Fort Wayne, IN 46801-1400, is the sponsor of NADA 119-546 which was originally approved August 13, 1982 (47 FR 35186).

The NADA provides for manufacturing Type A medicated articles for export which contain 265.5 or 281.7 grams of monensin per ton for use in making Type C medicated feeds for broiler chickens. The feeds are used as an aid in the prevention of coccidiosis.

By letters dated September 3, 1987, and December 18, 1987, the sponsor requested the withdrawal of approval of the NADA because there is no need to

continue this NADA to manufacture the product (See 51 FR 7362; March 3, 1986 (final rule revising the agency's procedures and requirements concerning conditions of approval for the manufacture of feeds containing new animal drugs)).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 119-546 and all supplements thereto is hereby withdrawn, effective (August 1, 1988).

In a final rule published elsewhere in this issue of the Federal Register, FDA is removing 21 CFR 558.355(b)(10), which reflects this approval.

Dated: July 12, 1988.

Richard H. Teske,
 Deputy Director, Center for Veterinary Medicine.
 [FR Doc. 88-16209 Filed 7-19-88; 8:45 am]
 BILLING CODE 4160-01-M

[Docket No. 88F-0208]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
 ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N,N'*-(2-chloro-1,4-phenylene)bis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as a colorant for food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 884079) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of *N,N'*-(2-chloro-1,4-

phenylene)bis[4-[(2,5-dichlorophenyl)azo]-3-hydroxy-2-naphthalenecarboxamide] as a colorant for food-contact polymers.

The potential environmental impact of the action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: July 8, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-16340 Filed 7-19-88; 8:45 am]

BILLING CODE 4199-01-M

[Docket No. 88M-0159]

IOLAB® Intraocular, Premarket Approval of Models 85JS, 85JM, and 85JL Anterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOLAB® Intraocular, Claremont, CA, for premarket approval, under the Medical Device Amendments of 1976, of Models 85JS, 85JM, and 85JL Anterior Chamber Intraocular Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 31, 1988, of the approval of the application.

DATE: Petitions for administrative review by August 19, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-400), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8261.

SUPPLEMENTARY INFORMATION: On March 9, 1987, IOLAB® Intraocular, Claremont, CA 91711, submitted to CDRH an application for premarket approval of the Models 85JS, 85JM, and 85JL Anterior Chamber Intraocular

Lenses. The devices are intended for use in patients 80 years of age and older when a cataractous lens has been removed by primary intracapsular cataract extraction (ICCE); in primary extracapsular cataract extraction (ECCE) where there is a structural reason that the anterior chamber lens is the preferred one; in other primary ECCE provided that these devices be used only after the physician has compared the published results, or his/her own results, from the use of anterior chamber lenses with such results from the use of posterior chamber lenses; or in a secondary implant procedure. The devices are available in a range of powers from 10 diopters (D) through 25 D in 0.5 D increments.

On May 20, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-400), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(b)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will

publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 19, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 12, 1988.

John C. Villforth,

Director Center for Devices and Radiological Health.

[FR Doc. 88-16300 Filed 7-19-88; 8:45 am]

BILLING CODE 4199-01-M

Revised Chapter in Regulatory Procedures Manual; Recall Procedures; Availability

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Regulatory Procedures Manual, Chapter 5-00 "Recall Procedures" (Chapter 5-00 "Recall Procedures"). Chapter 5-00 "Recall Procedures" incorporates operational changes and updates unit titles and organizational symbols.

ADDRESS: Regulatory Procedures Manual, Chapter 5-00 "Recall Procedures" is available for public examination at the Freedom of Information Staff (HF1-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857. Written requests for single copies of Chapter 5-00 "Recall Procedures" may be sent to the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. To order copies, the current accession number for Chapter 5-00 "Recall Procedures" is: PB88-216128; the price is \$14.95 for a paper copy and \$6.95 for a microfiche copy. (Send two self-

addressed adhesive labels to assist NTIS in processing your requests.)

FOR FURTHER INFORMATION CONTACT: W. Remle Grove, Office of Regulatory Affairs (HFC-162), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1240.

SUPPLEMENTARY INFORMATION: Chapter 5-00 "Recall Procedures" provides operational policy definitions, responsibilities, and procedures for agency units in their review and audit of all recall actions. FDA has revised this chapter to incorporate new instructions regarding recalls involving Interstate Milk Shippers' products and clarifications regarding recalls under the Infant Formula Act. Operational changes were made involving processing of recall documents and disposition or recalled products.

Dated: July 11, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-16297 Filed 7-19-88; 8:45 am]

BILLING CODE 4199-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), Federal Register, Vol. 46, No. 223, pp. 56927-56928, dated Thursday, November 10, 1981, and Vol. 52, No. 178, pp. 34849-34850, dated Tuesday, September 15, 1987) is amended to correct a previous error affecting the administrative codes and to reflect a reorganization within Region I, Office of the Associate Administrator for Operations (AAO). The regional office is in the process of reorganizing from a functional structure to a programmatic structure with respect to the administration of Medicare and Medicaid. The reorganization is a pilot test, similar to those occurring in Regions III and VIII, which is targeted for a duration of up to 2 years. The reorganization abolishes the current Division of Program Operations and Division of Financial Operations and replaces them with the Division of Medicaid and the Division of Medicare.

The specific amendments to Part F. are described below:

• Section FP.20.D., Office of the Regional Administrator (FPD (I, II, IV-

VII, IX, and X), is amended to correct a previous error affecting the administrative codes. The new section reads: Section FP.20.D., Office of the Regional Administrator (FPD (I-X)).

• Section FP.20.D.3., Division of Financial Operations (FPD (I, II, IV-VII, IX, and X)C), is amended by deleting the functional statement and administrative code for Region I. The new section reads: Section FP.20.D.3., Division of Financial Operations (FPD (II, IV-VII, IX, and X)C).

• Section FP.20.D.4., Division of Program Operations (FPD (I, II, IV-VII, IX, and X)D), is amended by deleting the functional statement and administrative code for Region I. The new section reads: Section FP.20.D.4., Division of Program Operations (FPD (II, IV-VII, IX, and X)D).

• Section FP.20.D.5., the Division of Medicaid (FPD(III and VIII)E) is amended to include the functional statement and administrative code for Region I. The new section reads:

5. Division of Medicaid (FPD(I, III, and VIII)E)

Under the direction of the HCFA Regional Administrator, plans, manages, and provides Federal leadership to State agencies in program implementation, maintenance, and the regulatory review of State Medicaid program management activities under Title XIX of the Social Security Act and assures the propriety of Federal expenditures. Provides consultation and guidance to States on appropriate matters including interpretation of Federal requirements, options available to States under these requirements, and information on practices in other States. Maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves, and maintains official State plans and plan amendments for medical assistance. Provides consultation to States in the administration of the amount, duration, scope, and reimbursement of health services available under the State program. Reviews, approves, and monitors State reimbursement systems and determines the allowability or non-allowability of claims for Federal financial participation (FFP); and where State expenditures have not been in accordance with Federal requirements, takes action to disallow such claims. Stimulates State action toward achievement of selected program objectives and monitors their progress.

Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers reimbursement action on questionable State claims, reviews the claims for allowability, and recommends appropriate action. Issues orders suspending FFP on behalf of State payments to Title XIX provider institutions and the revocation of such suspension orders. Supports, evaluates, and provides advice on State management information and claims payment systems. Implements Title XIX special initiatives, such as prepaid health plans, health maintenance organizations, and other special or experimental programs, and operations of major management initiatives such as quality control. Where appropriate, provides an opportunity for State input to operational plans, policy, regulations, legislation, and budget formulation. Responds to beneficiary, congressional, provider, and public inquiries concerning Medicaid issues and takes appropriate action on individual case situations. Accepts and responds to Freedom of Information Act requests and on matters concerning the Privacy Act. Supports HCFA headquarters in activities concerning research and demonstration projects.

• Section FP.20.D.6., the Division of Medicare (FPD(III and VIII)F) is amended to include the functional statement and administrative code for Region I. The new section reads:

6. Division of Medicare (FPD(I, III, and VIII)F)

Under the direction of HCFA Regional Administrator, assures the effective administration of the Medicare program through the day-to-day working relationship with Medicare contractors, providers physicians, the Social Security Administration (SSA) regional office and district office personnel, elements of the Office of the Inspector General, and other organizations and individuals concerned with program operations. Assures continuing surveillance and appraisal of Medicare contractors in the administration of health insurance provisions. Identifies problems and initiates action to ensure contractor adherence to national Medicare policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth reviews to evaluate the effectiveness of the Medicare program. Conducts quality assurance programs and onsite performance appraisals and analyzes statistical performance reports.

Negotiates and approves contractor budget modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities. Reviews and approves certain subcontracts and leases, and monitors banking activities and evaluates the cost allocation procedures of contractors. Conducts contractor appraisals. Interprets HCFA's institutional reimbursement policies. Relates appropriately to elements of SSA, providing consultation on Medicare program matters and any other activity necessary to achieve program objectives. Provides direction to Medicare contractors in carrying out their responsibilities for interfacing with peer review organizations. Establishes and maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries. Takes necessary action on matters relating to the Freedom of Information Act and the Privacy Act. Performs regional responsibilities relating to experimental and demonstration projects. Assumes responsibility for program training and assures timely responses to congressional and public inquiries. Relates appropriately to central office components such as providing feedback on operations, activities, and problems, and by providing regional perspectives in the development of Agency policies, objectives and work plans. In coordination with the Division of Medicaid, handles inter-program activities such as the Medicare buy-in for Medicaid beneficiaries.

Robert A. Streiner,
Acting Associate Administrator for
Management and Support Services.

Date: June 30, 1988.

[FR Doc. 88-16208 Filed 7-19-88; 8:45 am]

BILLING CODE 4135-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. H-88-1532]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its

proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: July 13, 1988.

David S. Cristy,

Deputy Director, Information Policy and
Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee's Certification and Application for Assistance or Interest Reduction Payments

Office: Housing

**Description of the Need for the
Information and its Proposed Use:**

This information is needed because all assistance payments disbursed under this program must be monitored by HUD. The form, Monthly Summary of Assistance Payments (HUD-300), is submitted by the mortgagees with the form, Mortgagee's Certification and Application for Assistance or Interest Reduction Payments (HUD-93102). HUD-300 supports the billing information provided on HUD-93102 for each mortgage.

Form Number: HUD-300 and 93102

Respondents: Businesses or Other For-Profit

Frequency of Submission: Monthly
Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
HUD-93102.....	962	.....	18	.....	3	.....	51,948
HUD-300.....	962	.....	13.746	.....	1.2	.....	15,860

Total Estimated Burden Hours: 67,817
Status: Revision

Contact: Florence B. Brooks, HUD, (202) 755-7330; John Allison, OMB, (202) 395-6860

Date: July 12, 1988.

[FR Doc. 88-16330 Filed 7-19-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-08-4332-09; FES 88-18]

Availability of the Final Environmental Impact Statement for the Billings Resource Area, MT

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: The final Billings Resource Area Wilderness Environmental Impact Statement assesses the environmental consequences of managing four wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area, and (2) an "All Wilderness Alternative" for each wilderness study area.

The names of the wilderness study areas, their total acreages, and the proposed actions for each are as follows:

Twin Coulee—6,870 acres (all
unsuitable)
Pryor Mountain—16,927 acres (all
suitable)
Burnt Timber Canyon—3,430 acres (all
suitable)
Big Horn Tack-on—2,550 acres (all
suitable).

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

FOR FURTHER INFORMATION CONTACT: Billy McIlvain, Area Manager, Bureau of Land Management, Billings Resources Area, 610 East Main, Billings, Montana 59105, 406-657-6262.

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301-0940. Copies are also available for inspection at public libraries and the following locations: Department of the Interior, Bureau of

Land Management, 18th and C Streets,
NW., Washington, DC 20240.

Montana State Office, Bureau of Land
Management, 222 North 32nd Street,
P.O. Box 36800, Billings, Montana 59107.
Bureau of Land Management, Miles
City District Office, West of Miles City,
P.O. Box 940, Miles City, Montana
59301-0940.

Date: July 14, 1988.

Bruce Blanchard,

Director, Office of Environmental Project
Review.

[FR Doc. 88-16254 Filed 7-19-88; 8:45 am]

BILLING CODE 4310-04-M

[CO-0030-08-4332-09]

Proposed Change in Wilderness Suitability Recommendation; Colorado

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of public comment
period.

SUMMARY: In December 1984, the San Juan/San Miguel Resource Management Plan (RMP) and Environmental Impact Statement (EIS) identified the Bureau of Land Management's (BLM) suitability recommendations for eight wilderness study areas (WSAs). The BLM proposes to change the recommendation for Tabeguache Creek WSA from nonsuitable to suitable for wilderness designation. The public is invited to comment on the proposed change.

DATE: Comments must be received on or
before August 9, 1988.

ADDRESS: Written comments should be
sent to the District Manager, BLM, 2465
South Townsend, Montrose, CO 81401.

FOR FURTHER INFORMATION CONTACT:
Debbie J. Pietrzak, BLM Montrose
District Office, (303) 249-7791.

SUPPLEMENTARY INFORMATION: In April 1984, a draft wilderness EIS covering eight WSAs was issued in conjunction with the San Juan/San Miguel RMP and EIS. That document described management alternatives and associated impacts for each WSA. Five public hearings were held during the 90-day public comment period which followed. The BLM received 140 comments on the draft wilderness recommendations.

The final San Juan/San Miguel RMP and EIS was issued in December 1984. That document included the BLM's preliminary recommendations for the eight WSAs. The Dolores River Canyon WSA was recommended suitable for wilderness designation, and the Cahone Canyon, Cross Canyon, Menefee

Mountain, McKenna Peak, Squaw/
Papoose Canyon, Tabeguache Creek,
and Weber Mountain WSAs were
recommended nonsuitable at that time.

In light of the substantial public comment generated during the review process and the continued interest in the preliminary recommendations, the BLM re-evaluated those recommendations. As a result, the BLM proposes to change the recommendation for Tabeguache Creek WSA from nonsuitable to suitable for wilderness designation. The recommendations for the other seven WSAs remain unchanged. Comments are invited on the proposed change and rationale as described below.

Tabeguache Creek WSA contains a broad spectrum of wilderness characteristics and supplemental values. In addition to providing outstanding opportunities for primitive and unconfined recreation and solitude, the area is one of the last pristine canyons along the Uncompahgre Plateau. Vegetation varies from pinyon and juniper woodland on the canyon walls to ponderosa pine and riparian species in the canyon bottom. The presence of a perennial stream contributes to the area's wildlife habitat values and may have been a significant factor attracting prehistoric people to the area. The canyon served as a route onto the Uncompahgre Plateau for both the Fremont and Ute Indians.

The degree to which wilderness and supplemental values are present, the extent to which the area's naturalness is unimpaired, and the uniqueness of this combination of resources has led the BLM to propose that Tabeguache Creek WSA be recommended suitable for wilderness designation rather than nonsuitable. This recommendation would be forwarded through the Department of the Interior and the President to Congress. Congress would then make the decision whether to designate the area as wilderness. If designated, the area would be managed in accordance with the BLM's Wilderness Management Policy as described in the All Wilderness Alternative in the draft wilderness EIS. Comments on this proposed change will be considered and responded to in the final San Juan/San Miguel wilderness EIS.

Robert S. Schmidt,

Acting District Manager.

[FR Doc. 88-16264 Filed 7-19-88; 8:45 am]

BILLING CODE 4310-04-M

(AA-020-00-4111-01-24-10)

Availability of June 1988 Editions of Bureau-Approved Forms for Federal Onshore Oil and Gas Leasing Program**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of Availability of Revised June 1988 Editions of Bureau of Land Management-approved Forms for Federal Onshore Oil and Gas Leasing Program: Lease/offer Form 3100-11; Competitive Lease Bid Form 3000-2; Assignment of Record Title Interest Form 3000-3; Transfer of Operating Rights (Sublease) Form 3000-3a; Lease Bond Form 3000-4; and Exploration Bond Form 3000-4a; Previous Editions of Forms to be Deemed Obsolete Effective October 1, 1988.

SUMMARY: In conjunction with the Federal onshore oil and gas leasing program, revised June 1988 editions of certain Bureau of Land Management-approved forms, specified by the form numbers listed in the **ACTION** section above, are available for public use. These newly revised forms are provided in conjunction with requirements contained in final rulemaking published in *Federal Register* on May 16, 1988 (53 FR 17340) and June 17, 1988 (53 FR 22814). The specific June 1988 revised forms cited in the **ACTION** section above replace all earlier editions of Bureau-approved forms for oil and gas leases and lease offers; oil and gas and geothermal competitive lease bids; oil and gas and geothermal lease assignments of record title; oil and gas and geothermal lease transfers of operating rights; individual lease, statewide, and nationwide oil and gas and geothermal resources lease bonds; and oil and gas and geothermal resources geophysical exploration bonds. Effective October 1, 1988, all earlier versions of any of the forms listed above that contain an edition date prior to June 1988 (the date appearing in the upper left hand corner of the form, normally) are deemed obsolete, in accordance with the final regulations cited above. Any earlier versions of these forms shall not be accepted by the Bureau of Land Management after October 1, 1988.

EFFECTIVE DATE: October 1, 1988.**ADDRESS:** Inquiries or suggestions should be sent to: Director (620), Bureau of Land Management, Room 602, Premier Building, 1800 C Street, NW., Washington, DC 20240.**FOR FURTHER INFORMATION CONTACT:** Judith Reed or Lois Mason, (202) 653-2190.

Copies of the revised June 1988 editions of these forms may be obtained only from Bureau of Land Management State Offices (see 43 CFR 1821.2-1 for office locations).

SUPPLEMENTARY INFORMATION: The enactment on December 22, 1987, of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (hereafter referred to as the Reform Act) and final rulemaking published in the *Federal Register* on May 16, 1988 (53 FR 17340) and June 17, 1988 (53 FR 22814) required the revision of certain Bureau of Land Management-approved forms for use with the oil and gas and geothermal resources leasing programs. The following revised forms are hereby announced as being available to the public from any Bureau of Land Management State Office: Offer to Lease and Lease for Oil and Gas (Form 3100-11); Competitive Oil and Gas or Geothermal Resources Lease Bid (Form 3000-2); Assignment of Record Title Interest in a Lease for Oil and Gas or Geothermal Resources (Form 3000-3); Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources (Form 3000-3a); Oil and Gas or Geothermal Lease Bond (Form 3000-4); and Oil and Gas or Geothermal Exploration Bond (Form 3000-4a).

Form 3100-11, Offer to Lease and Lease for Oil and Gas (June 1988 Edition).

New statutory requirements in the Reform Act necessitated revisions to the Bureau of Land Management Lease Form 3100-11 (March 1984 edition). Effective October 1, 1988, the previous edition of Form 3100-11 shall not be accepted or used by the Bureau of Land Management. In accordance with the provisions in the regulations at 43 CFR 3110.4(a) and 43 CFR 3110.7(e), after October 1, 1988, any edition of Form 3100-11 filed with the Bureau other than the June 1988 edition shall not be acceptable.

Form 3000-2, Competitive Oil and Gas or Geothermal Resources Lease Bid (June 1988 edition).

In accordance with the requirements in the regulations at 43 CFR 3120.5-3(a), an oil and gas competitive lease bid shall constitute a legally binding commitment to accept a lease. Submission of the competitive lease bid form 3000-2 by the high bidder is required on the day of the oral auction of the lease parcel when the required lease payments are made. This requirement is to be stated in each Notice of Competitive Lease Sale. Copies of Form 3000-2 may be obtained prior to an oral auction from the appropriate Bureau State Office and

may be executed by the prospective lessee or an authorized representative prior to the oral auction. If the bid form is fully completed before the oral auction, it cannot be modified.

Therefore, prior to the auction, the portions of the bid form concerning the amount of bid may be left blank to be completed by the bidder at the auction. If the bid form is not executed prior to the oral auction, the prospective lessee shall be required to complete the form and execute it at the auction when the payments for the specific parcel are tendered to the authorized officer. The required use of the revised June 1988 edition of Form 3000-2 is effective for all parcels offered competitively at oil and gas lease sales held after June 17, 1988.

Form 3000-3, Assignment of Record Title Interest in a Lease for Oil and Gas or Geothermal Resources (June 1988 edition), and

Form 3000-3a, Transfer of Operating Rights (Sublease) in a Lease for Oil and Gas or Geothermal Resources (June 1988 edition).

Effective October 1, 1988, all prior editions of Forms 3000-3 and 3000-3a (May 1987 or earlier versions) and any previous lease assignment/transfer forms, including Forms 3100-5 and 3100-14, shall not be accepted by the Bureau of Land Management. In accordance with the regulations at 43 CFR 3108.4-1 and 43 CFR 3241.2-3, any assignment or transfer filed with the Bureau of Land Management for approval after October 1, 1988, on any edition of the forms other than the June 1988 edition, or an exact reproduction of the front and back thereof, shall be unacceptable and will be returned for re-execution on the current form.

Form 3000-4, Oil and Gas or Geothermal Lease Bond (June 1988 edition).

Effective October 1, 1988, all prior editions of Form 3000-4 (June 1987) and any previous bond forms, including but not limited to Forms 3104-1, 3104-2, 3104-8, 3104-4, 3200-12, 3200-13, and 3200-18, shall not be accepted or used by the Bureau of Land Management. In accordance with the regulations at 43 CFR 3104.6 and 43 CFR 3208.1-2, an individual lease, Statewide, or nationwide lease bond, whether a personal or surety bond, filed with the Bureau after October 1, 1988, on any bond form other than the June 1988 edition will not be accepted. The obsolete bond form will be returned by the Bureau with a request that the current bond form be executed and submitted. Bonds on any of the previous forms referenced above currently in force and maintained in any Bureau of

Land Management office are still valid. Such valid bonds shall not require resubmission on the revised June 1988 edition of the bond form.

Form 3000-4a, Oil and Gas or Geothermal Exploration Bond (June 1988 edition).

Effective October 1, 1988, all prior editions of Form 3000-4a (June 1987) and any previous exploration bond forms, including but not limited to Forms 3045-3 and 3200-11, shall not be accepted or used by the Bureau of Land Management. A bond for an individual exploration activity, or for exploration operations Statewide or nationwide, whether a personal or surety bond, filed with the Bureau after October 1, 1988, on any bond form other than the June 1988 edition will not be accepted. The obsolete bond form will be returned by the Bureau with a request that the current bond form be executed and submitted. Exploration bonds on any of the previous forms referenced above currently in force and maintained in any Bureau of Land Management office are still valid. Such valid bonds shall not require resubmission on the revised June 1988 edition of the bond form.

The information collection requirements contained in Forms 3000-2, 3000-3, and 3000-3a have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0074 (for Form 3000-2) and 1004-0034 (for 3000-3 and 3000-3a). The remainder of the revised June 1988 Bureau of Land Management forms addressed in this notice have been classified and declared by the Office of Management and Budget as used for "certification only."

Robert F. Burford,

Director.

[FR Doc. 88-16291 Filed 7-19-88; 8:45 am]

BILLING CODE 4310-84-M

(CA-940-07-5410-10-ZBKF; CACA 22690)

Realty Action; Conveyance of Mineral in California**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of segregative effect—conveyance of the Reserved Mineral Interests.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interest pursuant to section 209(b) of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Mount Diablo Meridian

CACA 22690

T. 4 S., R. 16 E.,

sec. 38, NE¼, N¼NW¼, SE¼NW¼, SW¼, NW¼SE¼.

The area described contains 400 acres in Mariposa County. Currently, 100 percent of the mineral interest in these lands is owned by the United States.

The application was filed on June 9, 1988.

Upon publication of this Notice of Segregative Effect in the *Federal Register* as provided in 43 CFR 2091.3-1(c) and 43 CFR 2720.1-1(b), the mineral interest owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either by publication of an opening order in the *Federal Register* specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; upon final rejection of the application or two years from the date of filing of the publication, whichever occurs first.

Date: July 11, 1988.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-16306 Filed 7-19-88; 8:45 am]

BILLING CODE 4310-40-M

(MTM-77153; MT-020-00-4212-13)

Realty Action; Exchange of Public and Private Lands in Carter County, MT**AGENCY:** Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action MTM-77153, Exchange of public and private lands in Carter County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian

T. 4 S., R. 58 E.,

Section 5, SW¼NW¼;

Section 6, Lot 3, SE¼NW¼, E¼NE¼

SW¼;

Section 21, E¼NE¼, E¼SW¼, SE¼;

Section 29, N¼NE¼.

Containing 559.83 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Thomas and Kathy Steig.

Principal Meridian

T. 3 S., R. 59 E.,

Section 31, W¼SE¼.

T. 4 S., R. 58 E.,

Section 27, S¼NW¼;

Section 28, S¼N¼;

Section 29, S¼NW¼, SE¼.

Containing 560 acres of private land.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals in the Federal lands being transferred.

3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

4. Value equalization by cash payments of acreage adjustments.

5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with the Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated time of the exchange is September of 1988. The public interest will be served by completion of this exchange as it will enhance legal access and increase management efficiency of public lands in the area.

Date: July 12, 1988.

David D. Swogger,
Acting District Manager.

[FR Doc. 88-16265 Filed 7-19-88; 8:45 am]
BILLING CODE 4310-0N-M

[CO-940-08-4220-10; C-44666]

Partial Cancellation of Withdrawal Application; Colorado

July 11, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture has cancelled their withdrawal application for the Deep Creek Caves geological site insofar as it affects approximately 1,742 acres of National Forest System lands within the White River National Forest. This notice terminates the segregation imposed by this application and opens the land to operation of the U.S. mining laws. This land has been and continues to be open to mineral leasing and to Forest Service management.

EFFECTIVE DATE: July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215, 303-236-1768. Withdrawal application C-44666 is hereby cancelled in part and the segregation imposed by Notice of Proposed Withdrawal published November 17, 1988, 51 FR 41541 (1986), as corrected by 51 FR 44568 (1986) and 51 FR 44694 (1986), is hereby terminated insofar as it affects the following described lands:

White River National Forest
Sixth Principal Meridian

T. 4 S., R. 87 W.,
Sec. 17: W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$
Sec. 18: E $\frac{1}{2}$ E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$
Sec. 19: W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 20: S $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$
Sec. 30: Lot 7
T. 4 S., R. 88 W.,
Sec. 13: E $\frac{1}{2}$
Sec. 24: E $\frac{1}{2}$
Sec. 25: E $\frac{1}{2}$

The areas described aggregate approximately 1,741.87 acres of National Forest System lands in Garfield County, Colorado.

Richard D. Tate,

Acting Chief, Branch of Adjudication.

[FR Doc. 88-16266 Filed 7-19-88; 8:45 am]
BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0560, Block 177, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on July 12, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested

parties became effective May 31, 1988 (53 FR 10595). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 12, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-16262 Filed 7-19-88; 8:45 am]
BILLING CODE 4310-MF-M

Development Operations Coordination Document; Mobil Exploration & Producing U.S. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0478, Block 116, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 6, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595). Those practices and

procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 7, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-16263 Filed 7-19-88; 8:45 am]
BILLING CODE 4310-MF-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-283]

Certain Electronic Dart Games; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 16, 1988, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Arachnid, Inc., 6421 Material Avenue, P.O. Box 2901, Rockford, Illinois 61103. A supplemental exhibit to the complaint was filed on July 6, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain electronic dart games and in their sale, by reason of alleged infringement of claims 1, 2, 6, 8, and 10 of U.S. Letters Patent 4,057,251. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1575.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 11, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the

unlawful importation into the United States of certain electronic dart games, or in their sale, by reason of alleged infringement of claims 1, 2, 6, 8, or 10 of U.S. Letters Patent 4,057,251, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Arachnid, Inc., 6421 Material Avenue, P.O. Box 2901, Rockford, Illinois 61103.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Franklin Sports Industries, Inc., 17 Campanelli Parkway, P.O. Box 508, Stoughton, Massachusetts 02072.

Hanover House Industries, Inc., 340 Poplar Street, Hanover, Pennsylvania 17333.

SYNC, 340 Poplar Street, Hanover, Pennsylvania 17333.

Adam York, 340 Poplar Street, Hanover, Pennsylvania 17333.

(c) T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401P, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge. Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial

determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, Telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: July 12, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-16339 Filed 7-19-88; 8:45 am]
BILLING CODE 7030-02-M

[Investigation No. 337-TA-268]

Certain High Intensity Retroreflective Sheeting; Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: International Trade Commission.

ACTION: The Commission has determined to issue a limited exclusion order and a cease and desist order in the above-captioned investigation.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53-210.58 of the Commission Rules of Practice and Procedure (19 CFR 210.53-210.58).

SUMMARY: Having determined that the issues of remedy, the public interest, and bonding are properly before the Commission, and having reviewed the written submissions filed on remedy, the public interest, and bonding, as well as those portions of the record relating to those issues, the Commission has determined to issue (1) a limited exclusion order prohibiting the entry into the United States, except under license, of high intensity retroreflective sheeting manufactured abroad by respondent Seibu Polymer Chemical Co., Ltd. which infringes claims 1, 3-5, or 7 of U.S. Letter Patent 4,025,159 (the '159 patent), and (2) a cease and desist order prohibiting respondent Seibulite International Inc. from marketing, distributing, selling, or offering for sale in the United States imported high intensity retroreflective sheeting which infringes the '159 patent.

The Commission has further determined that the public interest

factors enumerated in sections 337(d) and (f) (19 U.S.C. 1337(d) and (f)) do not preclude issuance of the aforementioned limited exclusion order and cease and desist order and that the bond during the Presidential review period should be in the amount of 8.5 percent of the entered value of the articles concerned.

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1107.

SUPPLEMENTARY INFORMATION: On June 2, 1987, Minnesota Mining and Manufacturing Company (3M) filed a complaint pursuant to section 337 alleging the unlawful importation and sale of certain high intensity retroreflective sheeting. 3M alleged that Seibu Polymer Chemical Co., Ltd. and Seibulite International Inc. were infringing certain claims of its '159 patent and that the effect or tendency of their unfair methods of competition and unfair acts was to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The Commission instituted an investigation and named Seibu Polymer Chemical Co., Ltd. and Seibulite International Inc. as respondents.

On April 15, 1988, the presiding administrative law judge issued his final initial determination (ID) finding a violation of section 337. On May 26, 1988, the Commission issued a notice of nonreview of the ID. The parties and interested members of the public were requested to file briefs on remedy, the public interest, and bonding. Notice of the Commission's decision not to review the ID was published in the Federal Register, 53 FR 20169 (June 2, 1988). Complainant, respondents, the Commission investigative attorney, and eight nonparties filed submissions.

Copies of the Commission's limited exclusion order and cease and desist order, the Commission Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1805.

By order of the Commission.

Issued: July 15, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-16358 Filed 7-19-88; 8:45 am]
BILLING CODE 7020-32-M

[Investigation No. 337-TA-257]

Certain Minoxidil Powder, Salts and Compositions for Use in Hair Treatment; Continued Suspension Of Investigation

AGENCY: International Trade Commission.

ACTION: Suspension of investigation.

SUMMARY: Notice is given that the Commission has determined to suspend the above-captioned investigation until 30 days after the Food and Drug Administration (FDA) takes final action on complainant The Upjohn Company's new drug application for the topical minoxidil compositions which are the subject of this investigation.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1092.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and Commission rule 210.59 (19 CFR 210.59). On February 18, 1988, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding a violation of section 337. The Commission investigative attorney (IA) filed a petition for review which included a suggestion to suspend the investigation pending final action by the FDA. On April 4, 1988, the Commission determined to review portions of the ID. Written submissions were filed by Upjohn and the IA. No public comments were received, but the FDA filed a written submission on May 13, 1988. On May 13, 1988, the Commission determined to suspend the investigation for 30 days from publication of notice of such decision in the Federal Register. On June 24, 1988, the Commission determined to continue the suspension of the investigation for another 30 days from publication of notice of the continuation of such suspension in the Federal Register.

Copies of the Commission Order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of

the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: July 13, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-16337 Filed 7-19-88; 8:45 am]
BILLING CODE 7020-32-M

[Investigation No. 337-TA-275]

Certain Nonwoven Gas Filter Elements; Commission Determination Not To Review Initial Determination and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: (1) Determination not to review an initial determination concerning the patent issues presented in the subject investigation and (2) request for submission of written comments on the issues of remedy, the public interest, and bonding.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: P. N. Smithy, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1061.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

The subject investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain nonwoven gas filter elements from Holland. The imports allegedly infringe claims 1-4 and 6-9 of U.S. Letters Patent 4,056,375

(the '375 patent) with an effect or tendency to destroy or substantially injure an efficiently and economically operated domestic industry. The complainant is the patent owner, Freudenberg Nonwoven Limited Partnership. The respondents are Filtrair, B.V., the Dutch manufacturer of the accused gas filter elements, and APB Corporation, the U.S. importer and distributor of the accused gas filter elements. See 52 FR 32182 (Aug. 26, 1987) as amended by 52 FR 44234 (Nov. 18, 1987).

On May 26, 1988, the presiding administrative law judge (ALJ) issued an ID concerning the patent issues raised in the subject investigation. The ID rejected the respondents' contention that the '375 patent is invalid under 35 U.S.C. 102(b), 103, 112, and/or 116. The ID also rejected the respondents' contention that the '375 patent is unenforceable on various grounds. On the question of infringement, the ID stated that the accused gas filter elements infringe claims 1-3 and 6-8 of the '375 patent, but not claims 4 and 9.

Two petitions for review were filed pursuant to 19 CFR 210.54. The respondents petitioned for review of the ALJ's findings with respect to the question of invalidity under 35 U.S.C. 102(b) and 103. They also contested the ALJ's refusal to accept certain submissions into evidence at the hearing conducted March 7-10, 1988. The Commission investigative attorney filed a conditional petition seeking review of a hypothetical finding in the ID's discussion of alleged invalidity of the '375 patent under 35 U.S.C. § 103. Complainant and the Commission investigative attorney filed responses opposing Filtrair's and APB's petition, but there were no responses to the IA's conditional petition.

Having examined the ID and the record upon which it is based, the Commission concluded that the ID does not warrant review. The ID thus has become the determination of the Commission pursuant to 19 CFR 210.53(h). The subject ID, coupled with a previous unreviewed ID (Order No. 13) granting complainant's motion for summary determination that the importation or sale of the accused gas filter elements has an effect or tendency to substantially injure an efficiently and economically operated domestic industry constitutes a final Commission determination that the importation and sale of the accused gas filter elements violates section 337. See 53 FR 12200 (Apr. 13, 1988).

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order

which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on Thursday, July 21, 1988. Reply submissions on these issues must be filed no later than the close of business on Thursday, July 28, 1988. No further submissions will be permitted unless otherwise ordered by the Commission.

Interested government agencies and members of the public also may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed no later than the close of business on Thursday, July 28, 1988.

COMMISSION HEARING: The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

ADDITIONAL INFORMATION: All parties, government agencies, and interested persons that file written submissions must file the original

document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

Copies of the nonconfidential version of the ID, the petitions for review, the responses opposing the respondents' petition, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

The one-year statutory deadline for concluding this investigation is Friday, August 26, 1988. See 19 U.S.C. 1337(b)(1); 19 CFR 210.59; 52 FR 32182 (Aug. 26, 1987).

By order of the Commission.

Issued: July 11, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-16335 Filed 7-19-88; 8:45 am]
BILLING CODE 7020-02-M

**[Investigation No. 731-TA-405
(Preliminary)]**

Sewn Cloth Headwear from the People's Republic of China

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to

¹ The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

² Commissioner Liebler, although available to participate in this determination, was unable to do so due to telecommunications difficulties. She notes that had she voted, she would have made an affirmative determination in this preliminary investigation.

BEST COPY AVAILABLE

section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the People's Republic of China (China) of sewn cloth headwear² and visors, provided for in items 702.06, 702.08, 702.12, 702.14, 702.20, 702.32, 703.05, 703.10, 703.16 and part 6F of Schedule 3 of the *Tariff Schedules of the United States* that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 26, 1988, a petition was filed with the Commission and the Department of Commerce by the Headwear Institute of America, New York, NY, alleging that an industry in the United States is materially injured, and threatened with further material injury, by reason of LTFV imports of sewn cloth headwear from China. Accordingly, effective May 26, 1988, the Commission instituted preliminary antidumping investigation No. 731-TA-405 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 3, 1988 (53 FR 20376). The conference was held in Washington, DC, on June 16, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its Determination in this investigation to the Secretary of Commerce on July 11, 1988. The views of the Commission are contained in USITC Publication 2096 (July 1988), entitled "Sewn cloth headwear from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-405 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the commission.

² For purposes of this investigation, sewn cloth headwear refers to hats, caps, visors, and other headwear, whether or not ornamented, each comprising cut-and-sewn woven or knit fabric of vegetable fibers (including cotton, flax, and ramie), of man-made fibers, or of blends thereof, provided in the cited provisions of the tariff schedules.

Issued: July 11, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-16336 Filed 7-19-88; 8:45 am]
BILLING CODE 7030-12-M

[Investigation No. TA-203-18]

Wood Shakes and Shingles

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 203(i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2)) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Following receipt of a request filed on July 1, 1988, by the United States Trade Representative under authority delegated by section 5(a) of Executive Order 11846, the United States International Trade Commission instituted investigation No. TA-203-18 under section 203(i)(2) of the Trade Act of 1974 for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the domestic industry concerned of the termination of import relief presently in effect with respect to shingles and shakes of western red cedar, provided for in item 200.85 of the Tariff Schedules of the United States (TSUS). Such relief was provided by Presidential Proclamation 5498 of June 6, 1986, published in the *Federal Register* on June 10, 1986 (51 FR 20953) and is set forth in items 924.30, 924.31, and 924.32 of the Appendix to the TSUS. The relief is scheduled to terminate on June 6, 1991.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 206, Subparts A and D (19 CFR Part 206), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-252-1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on August 16, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on August 3, 1988. All persons desiring to appear at the hearing and make oral presentations, with the exception of public officials and persons not represented by counsel, should file prehearing briefs by August 8, 1988, and attend a prehearing conference to be held at 9:30 a.m. on August 9, 1988, in the hearing room of the U.S. International Trade Commission Building. Posthearing briefs must be submitted not later than the close of business on August 19, 1988. Confidential material should be filed in accordance with the procedures described below.

Parties are encouraged to limit their testimony at the hearing to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the

hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 19, 1988. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under the authority of Section 201 of the Trade Act of 1974. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: July 15, 1988.

Kenneth R. Mason,
Secretary.

[FR Doc. 88-16336 Filed 7-19-88; 8:45 am]
BILLING CODE 7030-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 257X)]

CSX Transportation, Inc.; Abandonment; Sumter County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, abandonment by CSX Transportation, Inc. of a total of 7.68 miles in Sumter County, FL, subject to standard labor protective conditions. **DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 19, 1988. Formal expressions of intent to

file an offer¹ of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 8, 1988, and petitions for reconsideration must be filed by August 15, 1988. Request for a public use condition must be filed by August 1, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 257X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202, and Lawrence H. Richmond, 100 N. Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC metropolitan area) (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 12, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Norata R. McGee, Secretary.

[FR Doc. 88-16207 Filed 7-19-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; Greensburg, IN, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. City of Greensburg and State of Indiana*, Civil Action No. IP87-88-C, has been lodged with the United States District Court for the Southern District of Indiana. The complaint filed by the United States alleged that the defendant violated section 301 of the Clean Water Act, 33 U.S.C. 1301, by failing to comply with various

¹ See *Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 41 C.F.R. 2d 164 (1967), and final rules published in the *Federal Register* on December 22, 1967 (32 FR 46440-46446).

conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") Permit No. 0020133.

The proposed Decree establishes deadlines for achieving compliance with the permit conditions by requiring Greensburg to make specified improvements to its wastewater collection system and to nearly double the capacity of its wastewater treatment plant. In addition, the proposed Consent Decree requires defendant City of Greensburg to pay a civil penalty of \$50,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States v. City of Greensburg and State of Indiana*, D.J. Reference No. 90-5-1-1-2772.

The proposed Consent Decree may be examined at the office of the United States Attorney, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 6317, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of \$1.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-16260 Filed 7-19-88; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA in United States v. Ormond, Grisham and Burke

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 8, 1988, a proposed Consent Decree in *United States v. Hallie C. Ormond, C.C. Grisham and Mary F. Burke*, Civil Action No. 87-3034 was lodged with the United States

District Court for the Western District of Arkansas.

The Complaint in this enforcement action was filed on April 28, 1987 and amended on June 3, 1987, against the Ormond, Grisham and Burke ("the defendants") under sections 104 and 106 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9604, 9606, seeking injunctive relief for the failure to provide access to a tract of land to the authorized representative of the United States for the purposes of performing a response action at the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Ormond, Grisham and Burke*, D.J. No. 88-11-2-190.

The proposed Consent Decree may be examined at the office of the United States Attorney, 6th and Rogers, U.S. Post Office & Courthouse Bldg., Fort Smith Arkansas 72901 and at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of \$1.50 payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and
Natural Resources Division.
[FR Doc. 88-16250 Filed 7-19-88; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Under the Clean Water Act; Shreveport, LA, et al.

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on July 5, 1988 a proposed Consent Decree in *United States v. City of Shreveport, Louisiana and State of Louisiana*, Civil Action No. CA-88-1758 (W.D. La.) was lodged with the Western District of Louisiana. The complaint filed by the United States alleged numerous violations of the Clean Water Act and the NPDES permit for City of Shreveport, Louisiana's wastewater treatment facility. The complaint sought to impose injunctive relief and civil

penalties. The proposed Consent Decree imposes injunctive relief and civil penalties for past violations.

The Department of Justice will review for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States v. City of Shreveport, Louisiana and State of Louisiana*, Civil Action No. CA-88-1758 (W.D. La.), D.J. # 90-5-1-1-2767.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 3B12, Federal Building, Shreveport, Louisiana 71101 and at the Region VI Office of the Environmental Protection Agency, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice Room 6317, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.50 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and
Natural Resources Division.
[FR Doc. 88-16261 Filed 7-19-88; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree; Syntex (F.P.) Inc.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 14, 1988, a proposed consent decree in *United States v. Syntex (F.P.) Inc.*, Civil Action No. _____, was lodged with the United States District Court for the District of Puerto Rico. This consent decree settles a lawsuit filed simultaneously with the consent decree. The lawsuit, based on sections 301 and 309 of the Clean Water Act, 33 U.S.C. 301 and 309, sought injunctive relief and civil penalties of up to \$10,000 per day of violation before February 4, 1987, and \$25,000 per day of violation on or after February 4, 1987. The complaint alleges, among other things, that the defendant discharged pollutants not authorized by its National Pollutant Discharge Elimination System ("NPDES") permit,

thus violating section 301, 33 U.S.C. 1311.

The consent decree requires the defendant to pay a civil penalty of \$200,000 for past violations of the Act, and contains stipulated penalties for failure to comply with the terms of the consent decree.

The consent decree also requires the defendant to cease discharging pollutants into navigable waters in excess of its permit effluent limitations, either by improving its on-site treatment system or by discharging directly into the Puerto Rico Aqueduct and Sewer Authority (PRASA).

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States v. Industrias La Famosa, Inc.*, D.J. Ref. 90-5-1-1-2713.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region II

Contact: Warren Llewellyn, Esq., Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10276, (212) 264-9885.

United States Attorney's Office

Contact: Eduardo Toro Font, Esq., Assistant United States Attorney, District of Puerto Rico, 101 Federal Building, Carlos E. Chandon Street, Hato Rey, Puerto Rico 00918, (809) 753-4656.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of

\$1.20 payable to Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and
Natural Resources Division.
[FR Doc. 88-16250 Filed 7-19-88; 8:45 am]
BILLING CODE 4410-01-M

Consent Decree in Clean Water Act Enforcement Action; West Frankfort, IL

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Complaint and Consent Decree in *United States v. City of West Frankfort*, Civil Action No. 88-4175 was lodged with the United States District Court for the Southern District of Illinois of July 5, 1988. The Complaint alleges West Frankfort has violated the Clean Water Act ("Act") by failing to comply with the discharge limitations set forth in the National Pollutant Discharge Elimination System permit for West Frankfort's public water treatment works. The Complaint also names the State of Illinois as a defendant in accordance with the Act. The proposed decree requires West Frankfort to construct additional treatment capacity by 1990 and satisfy various reporting requirements, and orders West Frankfort to pay a civil penalty of \$23,000. If the initial construction does not ensure compliance with the Act, West Frankfort must construct additional modifications of its treatment facilities by 1993 and pay an additional civil penalty of \$15,000.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States v. City of West Frankfort*, 90-5-1-1-3109.

The proposed consent decree can be examined at the office of the United States Attorney, 750 Missouri Avenue, East St. Louis, Illinois 60604. Copies of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of \$2.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States. The

Decree can be examined at the above address without cost.

Richard J. Leon,
Deputy Assistant Attorney General, Land and
Natural Resources Division.
[FR Doc. 88-16309 Filed 7-19-88; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employees Welfare and Pension Benefit Plans; Extension of Announcement of Vacancies to August 5, 1988; Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of who shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of who shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of her functions under ERISA, and to submit to the Secretary recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Monday, November 14, 1988. The groups or fields represented are as follows: employee organizations (multiemployers), actuarial counseling field, investment

counseling, employers, and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefits Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to William E. Morrow, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N-5677, Washington, DC 20210.

Recommendations must be delivered or mailed on or before August 5, 1988. Recommendations may be in the form of a letter, resolution, or petition, signed by the person making the recommendation, or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation shall identify the candidate by name, occupation or position, telephone number and address. It shall include a brief description of the candidate's qualifications and shall specify the group or field which he or she would represent for the purposes of section 512 of ERISA, the candidate's political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC, this 15th day of July, 1988.

Ann L. Combs,
Acting Assistant Secretary of Labor for
Pension and Welfare Benefit Programs.
[FR Doc. 88-16321 Filed 7-19-88; 8:45 am]
BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-65]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: August 9, 1988, 9 a.m. to 5:15 p.m., and August 10, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Office Building 8, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code ADI-1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Dr. John L. McLucas and is composed of 25 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial use of space, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants.

Type of Meeting: Open.

Agenda:

August 9, 1988

9 a.m.—Introductory Remarks.

9:15 a.m.—Space Transportation System-26 Readiness.

9:45 a.m.—NASA Planning.

10:20 a.m.—Program and Budget Overview.

11 a.m.—Budget Reviews—Exploration, Space Science and Applications, Space Station, Space Flight, and Space Technology.

5:15 p.m.—Adjourn.

August 10, 1988

8:30 a.m.—Budget Reviews—Space

Operations, Aeronautics, Commercial Programs, and NASA Institution.

11:30 a.m.—Closing Discussion of Budget Issues.

1 p.m.—Science Update.

2:30 p.m.—Other Business.

3:30 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-10245 Filed 7-19-88; 8:45 am]

BILLING CODE 7510-01-2

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Closed Meeting

In Notice document 88-13729 in the issue of Friday, June 17, 1988, make the following amendment:

On page 22751, first paragraph, change to read: The meeting of the National Security Telecommunications Advisory Committee originally scheduled for July 21, 1988, has been postponed until September 22, 1988. The business session of the meeting will be held at the Departmental Auditorium, Constitution Avenue, between 12th and 14th Streets, NW., Washington, DC. An executive session of the meeting will be held at the Old Executive Office Building.

Business Session

—Call to Order

—Welcoming Remarks

—Opening Remarks

—Review of Government Activities

—Review of Ongoing NSTAC Activities

—Industry Information Security

—Telecommunications Systems

Survivability

—Break

—Telecommunications Industry

Mobilization

—National Telecommunications

Management Structure

—Telecommunications Service Priority

—Commercial Satellite Survivability

—Review NSTAC Recommendations to

the President

—Review NSTAC Charges to IES

—Closing Remarks

—Information Briefings

—Closed Session

—Adjourn

Executive Session

—Call to Order

—Opening Remarks by the Assistant to

the President for National Security Affairs

—Remarks by the Executive Agent

—President Arrives

—NSTAC Report to the President

—Remarks by the President

—Recognition of Departing and Arriving Chair

—Adjourn

Due to the requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 882-9274 or write to the Office of the Manager, National Communications System, Washington, DC 20305-2010.

Terrance N. Danner,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 88-10281 Filed 7-19-88; 8:45 am]

BILLING CODE 3510-05-2

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Computer Specialists. Affected Public: Individuals.

Responses/Burden Hours: 700

responses, 1 minute per response.

Abstract: Survey is needed to validate the Computer Specialties Occupational Taxonomy, which was developed, under grant, for NSF. None of the current occupational taxonomies include sufficiently detailed classifications of computer specialists. Upon validation, it is recommended that the taxonomy be incorporated as quickly as possible into all NSF surveys and studies.

Dated: July 13, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-10357 Filed 7-19-88; 8:45 am]

BILLING CODE 7560-01-2

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-368]

Arkansas Power And Light Co., Arkansas Nuclear One, Unit 2; Environmental Assessment And Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPP-8 issued to Arkansas Power and Light Company, (the licensee), for operation of the Arkansas Nuclear One, Unit 2 (ANO-2) located at Russellville, Arkansas.

Environmental Assessment

Identification of Proposed Action

By letter dated October 28, 1987 (2CAN108706), the licensee requested a change in the plant Technical Specifications (TSs) to decrease the required differential pressure produced by the high pressure safety injection pumps during surveillance testing, from 1402.5 paid to 1360.4 paid.

The Need for Proposed Action

The proposed TS change is needed because the current specification provides little margin for variation in pump performance. The proposed revision establishes a more realistic differential pressure requirement for the high pressure safety injection (HPSI) pumps which will increase operational flexibility. Recent analyses have shown that a lower differential pressure requirement will not adversely impact the original analysis results, and will result in only a very small reduction of the injection leg low rates.

Environmental Impact of the Proposed Action

The proposed reduction in the required differential pressure for the HPSI pumps was considered with respect to all the accident analyses in Chapter 15 of the Final Safety Analysis Report (FSAR), and also with respect to the loss of coolant accident (LOCA) analysis in Chapter 8 of the FSAR. The proposed reduction does not increase the probability or consequences of a previously evaluated accident. Therefore the proposed changes will not increase to greater than previously determined, the probability of accident and post-accident radiological releases, nor otherwise affect radiological plant effluents. The commission concludes that there are no significant radiological environmental impacts associated with the proposed TS changes.

With regard to potential non-radiological impacts, the proposed TS change involves features located entirely within the restricted area as defined in 10 CFR Part 20. This would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing regarding the proposed changes to the TS, was published in the Federal Register on December 28, 1987 (52 FR 48887). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's safety analysis and change to the TS that support the proposed amendment. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the applications for license amendment dated October 28, 1987. Copies are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room located at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-16199 Filed 7-19-88; 8:45 am]

BILLING CODE 7590-01-2

[Docket No. 50-293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of 10 CFR Part 50, Appendix R, to the Boston Edison Company (BECO/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of Appendix R of 10 CFR Part 50. The requests (Exemption Request Nos. 15, 18 and 22) seek exemptions from the provisions of subsections: (1) III.G.2.b to the extent that full area fire detection and automatic fire suppression would be required for the area between Corridor #137 (containing Division A safe shutdown circuits) on elevation 23 feet and Corridor #49 (containing redundant Division B safe shutdown circuits) on elevation (-) 1 foot; (2) III.G.2.b to the extent no combustibles or fire hazards are to be located between two redundant safe shutdown systems located in the same fire area. The subject of these exemption requests is a single cable tray located 13 feet above the floor on Elevation 23 feet that is located between the Train A and Train B Reactor Building Closed Cooling Water (RBCCW) rooms; and (3) III.G.3 that requires fire detection and automatic suppression for redundant safe shutdown equipment (in this case the normal torus water level indication cables) located in the same fire area when alternative safe shutdown capability is provided.

The Need for the Proposed Action

The proposed exemptions are needed because the plant-specific circumstances and features described in the licensee's requests regarding Exemption Requests Nos. 15, 18 and 22 are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

The existing physical arrangement, separation, lack of continuity of combustibles and existing automatic detection and suppression provide assurance that one train of redundant safe shutdown circuits would be available to achieve and maintain safe shutdown in the event of a fire in relation to Exemption Request No. 15.

The existence of a single cable tray (only intervening combustible) between redundant safe shutdown trains would not result in a single fire capable of simultaneously damaging both redundant trains due to the physical configuration, the existing detection and suppression, and the concrete plug that seals the equipment hatchway when equipment is not actually being moved. Thus, one train necessary to achieve and maintain safe shutdown would be available in the event of a fire in relation to Exemption Request No. 18.

The lack of fire detection and automatic suppression for the redundant torus water level indication cables would not result in the loss of both torus water level indications due to the lack of continuous combustibles, spatial separation and existing concrete barriers in the event of a fire in relation to Exemption Request No. 22.

Environmental Impacts of the Proposed Action

The proposed exemptions, based on the existing physical plant design and fire protection features, will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the applicable portions of Section III.G of the Appendix R requirements. Such action would not enhance the protection of the environment and would result in unjustified costs to the licensee.

Alternative Use of Resources

This action does not involve the use of any resources not considered previously in the Final Environmental Statements related to the operation of Pilgrim Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated August 10, 1987. The letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland, this 13th day of July, 1988.

For the Nuclear Regulatory Commission,
Richard H. Weseman,
Director, Project Directorate I-3, Division of
Reactor Projects I/II.
[FR Doc. 88-16341 Filed 7-19-88; 8:45 am]
BILLING CODE 7550-01-M

[Docket No. 50-025]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3 issued to Yankee Atomic Electric Company, (the licensee), for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) to permit loads greater than 900 pounds to travel over the spent fuel pit to enable removal of control rods from the spent fuel pit.

The proposed action is in accordance with the licensee's application for amendment dated January 15 and May 19, 1988.

The Need for the Proposed Action

The proposed change to the TS will permit the licensee to remove spent control rods from the fuel pit. The licensee desires to remove this activated material from the fuel pit prior to the November 1988 reload outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to

the TS. We reviewed the crane load path and restrictions on movement of material over the spent fuel pit. We also reviewed the licensee's cask drop analysis for the cask used to ship the control rod material off-site. We concluded that the movement of the cask and removal of spent control rods would not result in a loss of fuel pit integrity and that spent fuel in the pit is unaffected by this action. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the type of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. If the requested amendment was denied, the plant might have to shut down due to a reduction in the capability to store spent fuel. Thus, a substantial benefit, the energy generated by operation of the plant, would be lost without any offsetting benefits being realized, as any environmental cost of operation have already been incurred.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 15 and May 19, 1988 which are available for public inspection at the Commission's Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 13th day of July, 1988.

For the Nuclear Regulatory Commission
Richard H. Weseman,
Director, Project Directorate I-3, Division of
Reactor Projects I/II.
[FR Doc. 88-16342 Filed 7-19-88; 8:45 am]
BILLING CODE 7550-01-M

[NUREG/CR-5151]

Availability of Performance-Based Inspections

The Nuclear Regulatory Commission (NRC) has published a report that describes the concept of performance-based inspections that is being taught in an NRC training course, "Inspecting for Performance." This concept has been endorsed and is being implemented by the Nuclear Regulatory Commission.

NUREGs are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued NUREGs may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued NUREGs may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of July 1988.

For the Nuclear Regulatory Commission,
Jack W. Roe,
Director, Division of Licensee Performance
and Quality Evaluation, Office of Nuclear
Reactor Regulation.
[FR Doc. 88-16343 Filed 7-19-88; 8:45 am]
BILLING CODE 7550-01-M

[Docket No. 50-335]

Denial of Amendment to Facility Operating License and Opportunity for a Hearing; Florida Power and Light Co.

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Florida Power and Light Company (the licensee) for an amendment to Facility Operating License No. DPR-67, issued to the licensee for operation of the St. Lucie Plant, Unit No. 1 (the facility) located in St. Lucie County, Florida.

The proposed amendment would have increased the steam generator tube plugging limit from 40% to 54%. Notice of Consideration of Issuance of the Amendment was published in the Federal Register on February 18, 1987 (52 FR 4982). The licensee's application for amendment was dated December 12, 1986, as supplemented September 10, 1987.

The request was denied at this time based upon the following considerations. The staff was not satisfied that the proposed plugging limit made adequate allowance for eddy current measurement error. The licensee provided supporting data from field and laboratory tube specimens. The field data was very limited and did not provide a clear-cut basis for assuming that the measurement error was as small as was being assumed. The laboratory data was more extensive but did not conclusively demonstrate measurement accuracy which can be achieved for intergranular attack at eggcrate supports and tubesheet locations under actual field conditions.

The licensee was notified of the Commission's denial of this request by letter dated July 7, 1988.

By July 7, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esq., Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

For further details with respect to this action, see (1) the application for amendment dated December 12, 1986, as supplemented September 10, 1987, and (2) the Commission's letter to Florida Power and Light Company dated July 7, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida. Copies of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-I/II.

Dated at Rockville, Maryland, this seventh day of July 1988.

For the Nuclear Regulatory Commission,
E. G. Tourigny,
Project Manager, Project Directorate II-2,
Division of Reactor Projects-I/II, Office of
Nuclear Reactor Regulation.
[FR Doc. 88-16344 Filed 7-19-88; 8:45 am]
BILLING CODE 7550-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company (the licensee), for the operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine.

The proposed amendment would modify the Technical Specifications to reflect the operating limits for the Cycle 11 reload core.

Prior to the issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 19, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the

proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

present evidence and cross-examination witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-0000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Weissman, Project Directorate I-3: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. A. Ritscher, Ropes & Gray, 255 Franklin St., Boston, Massachusetts 02210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 24, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, Wiscasset Library, High St., P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, the 14th day of July, 1988.

For the Nuclear Regulatory Commission,
Vernon Rooney,
Acting Project Director, Project Directorate I-3,
Division of Reactor Projects I/II.
[FR Doc. 88-16345 Filed 7-19-88; 8:45 am]
BILLING CODE 7550-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25802]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

Foreign private issuers with total assets in excess of \$5,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94-29 (June 4, 1975)) (the "Act").¹

Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) provides an exemption from registration under section 12(g) of the Act for a foreign private issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed or is required to distribute to its security holders.

On October 6, 1983, the Commission revised Rule 12g3-2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on NASDAQ.² Securities of non-Canadian issuers in compliance with the information-supplying exemption as of October 6, 1983 and quoted in NASDAQ on that date were grandfathered indefinitely.³ However, the exemption

¹ Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*, as amended by Pub. L. No. 94-29 (June 4, 1975)).

² Securities Exchange Act Release No. 20264 (October 6, 1983).

³ If the securities are delisted from NASDAQ or the issuer fails to maintain or otherwise meet the

Continued

was extended to Canadian securities only until January 1988.

When it adopted Rule 12g3-2 and other rules relating to foreign securities,⁴ the Commission indicated that from time to time it would issue lists showing those foreign issuers that have obtained exemptions from the registration provisions of section 12(g) of the Act. The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the following list is available in the public files of the Commission.⁵

The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.⁶ The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers.⁷

Any questions regarding Rule 12g3-2 or the list included herein should be directed to Samuel Wolff, Special Counsel, Office of International

Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549, (202) 272-3246. Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, DC 20549, (202) 272-7450.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
July 34, 1988.

Company	File No.	Country
A & A Foods	82-1896	Canada.
A M P Explorations & Mining Co. Ltd.	82-1702	Do.
Aabco Ventures Inc.	82-1564	Do.
ABC Technologies Inc.	82-1750	Do.
ABO Resources Corp.	82-961	Do.
Academy Resources Ltd.	82-1773	Do.
Access Technologies Inc.	82-1740	Do.
Acorn Securities Ltd.	82-1676	Australia.
Acquisitor Mines Ltd.	82-1645	Canada.
Actoma Resources Ltd.	82-1537	Do.
Adriatic Resources Corp.	82-1911	Do.
Advanced Gravis Computer	82-1511	Do.
Advanced Growth Systems Inc.	82-1534	Do.
Afrikander Lease Ltd.	82-245	South Africa.
Afro West Mining Ltd.	82-1821	Australia.
Akers Medical Technology Ltd.	82-0160	Canada.
Alaskagold Mines Inc.	82-1866	Do.
Alaskan Resources Ltd.	82-1886	Do.
Alawas Gold Corp.	82-1312	Do.
Alban Exploration Ltd.	82-1941	Do.
Alberta Resource Capital Corp.	82-1924	Do.
Albury Resources Ltd.	82-1794	Do.
Algo Resources Ltd.	82-1625	Do.
Algoma Steel Corp. Ltd.	82-99	Do.
Alina International Industries Ltd.	82-1746	Do.
All Nippon Airways Co. Ltd.	82-1569	Japan.
All North Resources Ltd.	82-1546	Canada.
All Star Resources Ltd.	82-1633	Do.
Alliance Resources Ltd.	82-1899	Do.
Allied Cellular Systems Ltd.	82-1879	Do.
Allure Industries Corp.	82-1353	Do.
Alpine Exploration Corp.	82-1856	Do.
Amble Resources Ltd.	82-1102	Do.
Ancor Ltd.	82-1273	Australia.
Amer Group Ltd.	82-1544	Finland.
American Platinum Inc.	82-1204	Canada.
American Reserve Mining Corp.	82-1567	Do.
American Technology & Information Inc.	82-1019	Do.
American Volcano Minerals Corp.	82-1525	Do.
Amr Mines Ltd.	82-1070	Do.
Amsterdam Rotterdam Bank N.V.	82-1157	Netherlands.
Amulet Resources Corp.	82-1785	Canada.
Amusements International Ltd.	82-1763	Do.
Androne Resources Ltd.	82-1427	Do.
Angle Resources Ltd.	82-1657	Do.
Anglo American Corp. of South Africa Ltd.	82-97	South Africa.
Anoraq Resources Corp.	82-1917	Canada.
Anso Resources BC Ltd.	82-1315	Do.
Anvil Resources Ltd.	82-1244	Do.
Applied Electronics Ltd.	82-1867	Hong Kong.
Aqua Pura Technologies Inc.	82-2025	Canada.

requirements of the exemption, the grandfather provision will cease to apply.

⁴ Securities Exchange Act Release No. 8066 (April 28, 1967).

⁵ Inclusion of an issuer on the following list is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions

of the exemption provided by Rule 12g3-2(b). The list does identify those issuers that both have claimed the exemption and have submitted relatively current information to the Commission.

⁶ Paragraph (a)(4) of Rule 15c2-11 (17 CFR 240.15c2-11) requires a broker-dealer initiating a quotation for securities of a foreign private issuer to

maintain in its files, and to make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3-2(b) since the beginning of the issuer's last fiscal year.

⁷ See, e.g., *Hanly v. SEC*, 415 F.2d 589 (2d Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

Company	File No.	Country
Aquarius Seafarms Ltd.	82-1873	Do.
Archer International Developments Ltd.	82-1816	Do.
Area Serrano International Holdings SA	82-1768	Luxemburg.
Argenta Systems Inc.	82-1320	Canada.
Argenta Resources Exploration Corp.	82-1121	Do.
Argonaut Resources Ltd.	82-1694	Do.
Argon International Ltd.	82-1445	Do.
Argyle Ventures Inc.	82-2047	Do.
Ariel Resources Ltd.	82-1705	Do.
Arion Resources Inc.	82-1338	Do.
Arizona Jojoba Inc.	82-1385	Do.
Arizona Star Resource Corp.	82-1491	Do.
Armenian Express Canada Inc.	82-965	Do.
Arrow Business Corp.	82-1558	Do.
Arnwick International Resources Ltd.	82-1501	Do.
Ascot Investment Resources Ltd.	82-461	Do.
Asea AB	82-736	Sweden.
Ashikaga Bank Ltd.	82-1190	Japan.
Ashton Resources Ltd.	82-1722	Canada.
Asia Pacific Capital Corp.	82-2022	Do.
Asian Canadian Resources Ltd.	82-1308	Do.
Astro Mining NL	82-1469	Australia.
Ateba Mines Inc.	82-2078	Canada.
Athabasca Gold Resources Limited.	82-1908	Do.
Atlas Pacific Gold NL	82-1852	Australia.
Atna Resources Ltd.	82-1556	Canada.
Augmitta Explorations Ltd.	82-1242	Do.
Auridam Consolidated N.L.	82-1939	Australia.
Australia Wide Industries Ltd.	82-1654	Do.
Australian Gold Mines Corp.	82-1804	Canada.
Australian Hydrocarbons N.L.	82-856	Australia.
Austwhim Resources N.L.	82-1541	Do.
Avenue Resources Inc.	82-1585	Canada.
Award Resources Ltd.	82-1809	Do.
Baha Resources Ltd.	82-1085	Do.
Baker Gold Ltd.	82-780	Do.
Balcor Resources Corp.	82-1790	Do.
Balcol Lassiter Petroleum Ltd.	82-1955	Do.
Banbury Gold Mines Ltd.	82-828	Do.
Bank of Fukuoka Ltd.	82-1117	Japan.
Bank of Montreal	82-126	Canada.
Bank of Nova Scotia	82-132	Do.
Bar Resources Ltd.	82-1047	Do.
Barkhor Resources Inc.	82-1905	Do.
Barrack Energy Ltd.	82-1361	Australia.
Barrack Mines Ltd.	82-1362	Do.
Barrick Technology Ltd.	82-1380	Do.
Barrick Technology Inc.	82-1999	Canada.
Barris Klein Holdings Inc.	82-2010	Do.
Barsand Resources Inc.	82-1415	Do.
Bart Resources Ltd.	82-1114	Do.
Baryter Resources Corp.	82-1104	Do.
Basabe Enterprise Inc.	82-2074	Do.
Basic Resources S.A.	82-203	Luxemburg.
Bat Industries Ltd.	82-33	United Kingdom.
Bathrooms Beautiful Canada Ltd.	82-1925	Canada.
Bauska Manufacturing BC Ltd.	82-1516	Do.
BCE Development Corp.	82-0344	Do.
Bear Lake Resources	82-1373	Do.
Beatrix Mines Ltd.	82-1054	United Kingdom.
Beaufield Resources Inc.	82-1557	Canada.
Beaver Resources Inc.	82-436	Do.
Bell Resources Ltd.	82-919	Australia.
Benetton Group Spa	82-1533	Italy.
Bentley Resources Ltd.	82-892	Canada.
Bergesen d y A/S	82-1897	Norway.
Better Resources Ltd.	82-1859	Canada.
Big Bar Gold Corp.	82-1981	Do.
Big I Developments	82-1094	Do.
Big Valley Resources Inc.	82-1800	Do.
Bighorn Development Corp.	82-1545	Do.
Bio Feed Industries Ltd.	82-1807	Do.
Bio Logix (BC) Ltd.	82-507	Do.
Bi-Petro Resources	82-2048	Do.
Bishop Resources Development Ltd.	82-1005	Do.
Black Hill Minerals Ltd.	82-725	Australia.
Black Thunder Petroleum Corp.	82-1772	Canada.
Blackberry Gold Resources Inc.	82-1622	Do.
Blue Circle Industries PLC.	82-827	United Kingdom.
Blue Ridge Resources Ltd.	82-1815	Canada.
Blyvooruitzicht Gold Mining Co. Ltd.	82-89	South Africa.
Bolero Resources Inc.	82-1836	Canada.

Company	File No.	Country
Bond Corporation Holdings Ltd.	82-998	Australia.
Bondell Industries	82-2037	Canada.
Bonus Petroleum Corp.	82-1162	Do.
Booker Gold Explorations Ltd.	82-1984	Do.
Booker PLC	82-1531	United Kingdom.
Borealis Exploration Ltd.	82-1656	Canada.
Boulder Gold N.L.	82-1650	Australia.
Bowater Industries PLC	82-3	United Kingdom.
Bowes Lyon Resources Ltd.	82-974	Canada.
Brace Resources Ltd.	82-1014	Do.
Bracken Mines Ltd.	82-219	United Kingdom.
Bradsue Resources Ltd.	82-1508	Canada.
Brahma Resources Inc.	82-1022	Do.
Brescan Ltd.	82-4	Do.
Breakwater Resources Ltd.	82-853	Do.
Brent Resources Ltd.	82-321	Do.
Brenwest Mining Ltd.	82-1819	Do.
Bresea Resources Ltd.	82-1377	Do.
Bridgestone Corp.	82-1264	Japan.
Britannia Security Group PLC	82-2013	United Kingdom.
British Columbia Forest Products Ltd.	82-688	Canada.
British Medical Services Ltd.	82-1994	Do.
British Printing & Communications Corp. PLC	82-1620	United Kingdom.
Britoil PLC	82-1169	Do.
Brohm Resources Inc.	82-1226	Canada.
Bryndon Ventures Inc.	82-1363	Do.
BTR PLC	82-898	United Kingdom.
Buffelsfontein Gold Mining Co., Ltd.	82-302	South Africa.
Buhrmann Tetterside NV	82-1596	Netherlands.
Burdett Resources Ltd.	82-1967	Canada.
Burmah Oil Co. Ltd.	82-5	United Kingdom.
Burns Philip & Company Ltd.	82-1565	Australia.
Butler Mountain Minerals Corp.	82-727	Canada.
Butler Resources Ltd.	82-1869	Do.
B.Y.G. Natural Resources Inc.	82-2036	Do.
Cache Dor Resources Inc.	82-1720	Do.
Caddev Industries Inc.	82-1974	Do.
Cal Graphite Corp.	82-1322	Do.
Camfey Resources Ltd.	82-1700	Do.
Can Am Industries Corp.	82-1965	Do.
Canada Tungsten Mining Corp., Ltd.	82-290	Do.
Canadian Fibre Foods Inc.	82-1945	Do.
Canadian Imperial Bank of Commerce	82-103	Do.
Canadian Insulock Corp.	82-1649	Do.
Canadian Marconi Co.	82-36	Do.
Canadian Microcool Corp.	82-1596	Do.
Canadian Platinum Refineries Inc.	82-1560	Do.
Canadian Pawnee Oil Corp.	82-733	Do.
Canadian Spooner Resources Inc.	82-112	Do.
Canadian-United Minerals, Inc.	82-869	Do.
Canamin Resources Ltd.	82-1725	Do.
Canasia Industries Corp.	82-1391	Do.
Canby Resources Inc.	82-1837	Do.
Cancom Industries Inc.	82-1548	Do.
Canova Resources Ltd.	82-1714	Do.
Cansorb Industries Inc.	82-1760	Do.
Capella Resources Ltd.	82-1082	Do.
Capital Reserve Inc.	82-1923	Do.
Capricorn Resources Ltd.	82-1996	Do.
Caprock Energy Ltd.	82-1832	Do.
Carben Energy Inc.	82-1587	Do.
Cariana International Industries Inc.	82-8979	Do.
Carnes Creek Exploration Ltd.	82-1677	Do.
Carpenter Lake Resources Ltd.	82-1606	Do.
Carr Boyd Minerals Ltd.	82-1037	Australia.
Carrigan Industries Ltd.	82-1589	Canada.
Cassiar Mining Corp.	82-1243	Do.
Castello Resources Ltd.	82-1918	Do.
Catalyst Communications Group PLC	82-1779	United Kingdom.
Catear Resources Ltd.	82-1615	Canada.
Cathedral Gold Corp.	82-1990	Do.
C.C.C. Coded Communications Corp.	82-1594	Do.
CCW Systems Ltd.	82-1659	Do.
Celanese Canada Ltd.	82-171	Do.
Centaur Mining & Exploration Ltd.	82-1930	Australia.
Central Crude Ltd.	82-1933	Canada.
Central Pacific Minerals Ltd.	82-354	Australia.
Cetec Engineering Co. Inc.	82-1775	Canada.
Chablis Resources Ltd.	82-1647	Do.
Chalice Mining Inc.	82-1304	Do.
Chapel Resources Inc.	82-1783	Do.
Chapleau Resources Ltd.	82-1687	Do.

Company	File No.	Country
Charlie O Beverages Ltd.	82-1715	Do.
Charter Consolidated P.L.C.	82-233	United Kingdom.
Charter Mining N.L.	82-431	Australia.
Chase Resource Corp.	82-1978	Canada.
Chelsea Resources Ltd.	82-1940	Do.
Chelsea Securities Ltd.	82-1845	Australia.
Cheryl Resources	82-1424	Canada.
Chesapeake Computer Systems Inc.	82-1488	Do.
Chevy Development Corp.	82-1380	Do.
Christian Salvesen PLC	82-1691	United Kingdom.
Chutime Resources Ltd.	82-867	Canada.
City Resources	82-1301	Australia.
Claude Resource Inc.	82-1742	Canada.
Clifton Star Resources Inc.	82-1452	Do.
Coastoro Resources Ltd.	82-1728	Do.
Coats Patons PLC.	82-986	United Kingdom.
Coats Viyella PLC.	82-1751	Do.
Cobra Enterprises Ltd.	82-1704	Canada.
Cochrane Oil & Gas Ltd.	82-501	Do.
Colby Resources Corp.	82-417	Do.
Colchis Resources Ltd.	82-1437	Do.
Coldspring Resources Ltd.	82-1844	Do.
Coffax Energy Ltd.	82-1608	Do.
Collins Resources Ltd.	82-1603	Do.
Colray Resources Inc.	82-1536	Do.
Com Air Containers Canada Inc.	82-1487	Do.
Comanche Petroleum Inc.	82-1745	Do.
Cominco Ltd.	82-107	Do.
Camox Resources Ltd.	82-1806	Do.
Compass Resources Ltd.	82-2041	Do.
Concept Resources Inc.	82-1003	Do.
Condor Precious Metal Inc.	82-2013	Do.
Condr Australia N.L.	82-319	Australia.
Coniagas Mines Ltd.	82-168	Canada.
Conpak Seafloids Inc.	82-704	Do.
Consolidated Azure Resources Ltd.	82-1554	Do.
Consolidated Bathurst Ltd.	82-172	Do.
Consolidated Boulder Mountain Resources Ltd.	82-1139	Do.
Consolidated Exploration Ltd.	82-1839	Australia.
Consolidated Gold Fields P.L.C.	82-251	United Kingdom.
Consolidated Gold Mining Areas N.L.	82-413	Australia.
Consolidated McKinney Resources Ltd.	82-1474	Canada.
Consolidated Suncor Ventures Ltd.	82-1521	Do.
Contact Ventures Ltd.	82-581	Do.
Continental Dalatet Inc.	82-1641	Do.
Continental Gummi Werke Aktiengesellschaft.	82-1357	Germany.
Continental Silver Corp.	82-421	Canada.
Continental Pacific Resources Inc.	82-1803	Do.
Coopers Resources N.L.	82-444	Australia.
Copperfield Gold N.L.	82-1851	Do.
Cord Holdings Ltd.	82-988	Do.
Cordillera Resources Inc.	82-2012	Canada.
Coronado Resources Inc.	82-1074	Do.
Corporation Mapfre SA	82-1987	Spain.
Corplech Industries Inc.	82-1703	Canada.
Coseka Resources Ltd.	82-2195	Do.
Cove Energy Corp.	82-903	Do.
CRH PLC	82-1333	Ireland.
Croesus Resources Inc.	82-1719	Canada.
CSK Corp.	82-781	Japan.
Cumulus Technology Ltd.	82-1553	Canada.
Curling Lake Resources Inc.	82-1978	Do.
Cyll Industries Ltd.	82-1663	Do.
Dab Investments Ltd.	82-1245	South Africa.
Dafrey Resources Inc.	82-1913	Canada.
DAI'EI Inc.	82-230	Japan.
Daiwa Danchi Co. Ltd.	82-1218	Do.
Dalmation Resources Inc.	82-1683	Canada.
Dasher Resources Ltd.	82-1185	Do.
Dateland Capital Group Inc.	82-2058	Do.
Dawson Eldorado Mines Ltd.	82-1818	Do.
De Beers Consolidated Mines Ltd.	82-91	South Africa.
Death Valley Resources Ltd.	82-1982	Canada.
Decorstone Industries Inc.	82-671	Do.
Deekraal Gold Mining Co. Ltd.	82-246	South Africa.
Deep Shaft Technology International Inc.	82-1076	Canada.
Defiant Minerals Inc.	82-2043	Do.
Del Norte Chrome Corp.	82-1584	Do.
Del Rio Resources Ltd.	82-1983	Do.
Delaware Resources Corp.	82-1503	Do.
Delcorp Resources Inc.	82-691	Do.
Delta Gold N.L.	82-1221	Australia.

Company	File No.	Country
Deltac Resources Ltd.	82-1912	Canada.
Den Danske Bank of 1871 AG	82-1263	Denmark.
Denison Mines Ltd.	82-155	Canada.
Desert Rose Resources Inc.	82-1858	Do.
D.F.I. Ventures Ltd.	82-2052	Do.
Diplomat Resources Inc.	82-1670	Do.
DK Platinum Corp.	82-1383	Do.
Domini Sportswear Ltd.	82-2066	Do.
Dominion Explorers Inc.	82-504	Do.
Dominion Mining Ltd.	82-433	Australia.
Domtar Inc.	82-18	Canada.
Doomfontein Gold Mining Co. Ltd.	82-213	South Africa.
Dor Val Mines Ltd.	82-740	Canada.
Dorchester Hotels Inc.	82-1400	Do.
Dornoch International Inc.	82-726	Do.
Doron Explorations Inc.	82-2004	Do.
Dragoon Resources Ltd.	82-1858	Do.
DRC Resources Corp.	82-713	Do.
Dresdner Bank AG	82-229	Germany.
Drexore Development Inc.	82-1401	Canada.
Driefontein Consolidated Ltd.	82-124	South Africa.
Dual Resources Ltd.	82-1299	Canada.
Duke Minerals Ltd.	82-1860	Do.
Dupont Canada Inc.	82-19	Do.
Durban Roodepoort Deep Ltd.	82-156	South Africa.
Dynamic Oil Ltd.	82-702	Canada.
Eagle Corp.	82-476	Australia.
Eagle Mountain Trout Farms Ltd.	82-1865	Canada.
East Daggafontein Mines Ltd.	82-42	South Africa.
East Rand Gold & Uranium Co. Ltd.	82-289	Do.
East Rand Proprietary Mines Ltd.	82-239	United Kingdom.
Eastern Group Ltd.	82-752	Australia.
Eastfield Resources Ltd.	82-1929	Canada.
Echon Mountain Resources Ltd.	82-1466	Do.
Eden Resources Ltd.	82-1343	Do.
Edgemont Resources Corp.	82-1710	Do.
Egerton Trust PLC	82-1948	United Kingdom.
Egoli Consolidated Mines Ltd.	82-809	South Africa.
Ekaton Industries Inc.	82-1055	Canada.
Elanstrand Gold Mining Co. Ltd.	82-266	South Africa.
Elder Technologies Ltd.	82-1902	Canada.
Elder IXL Ltd.	82-1711	Australia.
Elegance Business Corp.	82-1323	Canada.
Elsburg Gold Mining Co. Ltd.	82-269	South Africa.
Emperor Mines Ltd.	82-969	Australia.
Empire Gold Resources Ltd.	82-2035	Canada.
Energy Oil & Gas N.L.	82-1195	Australia.
Enxco International Ltd.	82-884	Canada.
Enfield Resources Inc.	82-1268	Do.
Englefield Resources Ltd.	82-1758	Do.
Enhanced Resources 1986 Ltd.	82-1774	Do.
Enterprise Gold Mines N.L.	82-1807	Australia.
ENVIPCO Canada Western Inc.	82-2068	Canada.
Epic Resources BC Ltd.	82-1010	Do.
Equinox Resources Ltd.	82-1152	Do.
Equus Petroleum Corp.	82-1302	Do.
Eridania ZN SPA	82-902	Italy.
Essette AB	82-1355	Sweden.
Essence Biotechnologies Inc.	82-1752	Canada.
Etana Technologies Corp.	82-1848	Do.
Etruscan Enterprises Ltd.	82-1576	Do.
Eureka Resources Ind.	82-1031	Do.
Euro Asia Capital Ltd.	82-1792	Do.
Expeditor Resource Group Ltd.	82-1399	Do.
Extotal Resources Inc.	82-822	Do.
F H Tomkins PLC	82-1874	United Kingdom.
F P Special Assets Ltd.	82-1757	Hong Kong.
Fairfield Minerals Ltd.	82-1784	Canada.
Fairway Automotive Industries Ltd.	82-1962	Do.
Falcon Point Resources Ltd.	82-1713	Do.
Faraway Gold Mines Ltd.	82-1426	Do.
Fargo Resource Ltd.	82-2061	Do.
FCA International Ltd.	82-1310	Do.
Fiat SpA	82-116	Italy.
Fiberquest International Ltd.	82-1505	Canada.
Field Petroleum Corp.	82-904	Do.
Finnish Sugar Co. Ltd.	82-1643	Finland.
Firan Corp.	82-600	Canada.
First American Mining Corp.	82-1880	Do.
First Commercial Financial Group Inc.	82-1601	Do.
First Medical Management Ltd.	82-1957	Do.
First Pacific Holdings Ltd.	82-836	Hong Kong.

Company	File No.	Country
First Pacific International Ltd.	82-1287	Do.
Fisons PLC	82-202	United Kingdom.
Fleck Resources Ltd.	82-1048	Canada.
Fletcher Challenge Ltd.	82-1438	Norway.
Formosa Resources Corp.	82-1267	Canada.
Fort Knox Minerals Ltd.	82-1267	Do.
Fosco Minsep PLC	82-952	United Kingdom.
Foundation Resources	82-1992	Canada.
Free State Consolidated Gold Mines	82-44	South Africa.
Free State Development & Investment Corp. Ltd.	82-206	United Kingdom.
Freedom Marine Ltd.	82-1330	Canada.
Freegold Recovery Inc.	82-1225	Do.
Fremont Gold Corp.	82-1580	Do.
Freeport Resources Inc.	82-1131	Do.
Freeway Resources Ltd.	82-402	Do.
Frost Resources Inc.	82-2045	Do.
FTI Foodtech International Inc.	82-1626	Do.
Fuji Heavy Industries Ltd.	82-1132	Do.
Fuji Photo Film Co. Ltd.	82-78	Do.
Gazelle Resources Ltd.	82-1748	Canada.
Genbel Investments Ltd.	82-235	United Kingdom.
General Mining Union Corp. Ltd.	82-311	South Africa.
Geometals NL	82-398	Australia.
Gerle Gold Ltd.	82-1209	Canada.
Getchell Resources Inc.	82-2049	Do.
Giant Resources Ltd.	82-1951	Australia.
Gladstone Resources Ltd.	82-2055	Canada.
Glencar Explorations PLC	82-1421	Ireland.
Glenitron International	82-1610	Canada.
Glimmer Resources Inc.	82-1970	Do.
Global Alert Systems Corp.	82-1678	Do.
Global Data Systems Corp.	82-1677	Do.
GMN The Gospel Music Network Ltd.	82-2042	Do.
Golconda Minerals NL	82-1233	Australia.
Gold Fields of South Africa Ltd.	82-304	South Africa.
Gold Mines of Kalgoorlie Ltd.	82-2076	Australia.
Gold Ridge Resources Inc.	82-1903	Canada.
Gold Rite Mining Co.	82-1188	Do.
Goldale Investments Ltd.	82-887	Do.
Goldrae Developments Ltd.	82-887	Do.
Golden Chance Resources Inc.	82-1464	Do.
Gold Lion Resources Ltd.	82-936	Do.
Golden Nevada Resources Inc.	82-1080	Do.
Golden Pyramid Resources Inc.	82-1805	Do.
Golden Seven Industries Inc.	82-1830	Do.
Golden Seville Resources Ltd.	82-1407	Do.
Golden Trend Energy Ltd.	82-1739	Do.
Goldenrod Resources & Technology Inc.	82-1674	Do.
Goldlever Resources Ltd.	82-1822	Do.
Goldstack Resources Ltd.	82-506	Do.
Golden Sitta Resources Inc.	82-2040	Do.
Goodman Fielder Wattie Ltd.	82-2009	Australia.
Grenada Exploration Corp.	82-1893	Canada.
Grand Forks Mines Ltd.	82-1920	Do.
Grand Metropolitan PLC	82-1247	United Kingdom.
Grand National Resources Inc.	82-1100	Canada.
Grande Portage Resources Ltd.	82-1767	Do.
Grandex Resources Ltd.	82-1855	Do.
Grandma Lees Inc.	82-542	Do.
Granville Island Brewing Co.	82-1582	Do.
Great Central Mines Ltd.	82-1211	Do.
Great Eastern Mines Ltd.	82-732	Australia.
Great Weighs Industries Inc.	82-1708	Canada.
Great World Resources Ltd.	82-1581	Do.
Greentree Energy Inc.	82-1799	Do.
Grootvlei Proprietary Mines Ltd.	82-222	South Africa.
Guardian Resource Corp.	82-857	Canada.
Gust Keen & Nettelfolds PLC	82-1042	United Kingdom.
Gulf International Minerals Corp.	82-2029	Canada.
Gunflint Resources Ltd.	82-1522	Do.
Gunsteel Resources Inc.	82-1507	Do.
Hachijuni Bank Ltd.	82-1265	Japan.
Hagensborg Resources Ltd.	82-1089	Canada.
Haglund Industries International Inc.	82-1709	Do.
Haines Gypsum Inc.	82-1801	Do.
Hallmark Resources Ltd.	82-1820	Do.
Hang Lung Development Co. Ltd.	82-1439	Hong Kong.
Hank Seng Bank Ltd.	82-1747	Do.
Happy Industries Ltd.	82-1637	Canada.
Harmony Gold Mining Co. Ltd.	82-238	South Africa.
Hars Systems Inc.	82-1870	Canada.
Hawk Resources Inc.	82-1339	Do.

Company	File No.	Country
Hawley Group Ltd.	82-1087	Bermuda.
Hedley Sterling Explorations Inc.	82-1935	Canada.
Hemlo Explorations Ltd.	82-1734	Do.
Henderson Land Development Company Ltd.	82-1561	Hong Kong.
Henlys Group Ltd.	82-1278	Canada.
Hennessey Resource Corp.	82-1334	Do.
Heritage Petroleum Inc.	82-1624	Do.
Hestair PLC	82-1873	United Kingdom.
Hidden Valley Mines Inc.	82-1652	Canada.
High Level Resources Ltd.	82-1035	Do.
High River Resources Ltd.	82-1238	Do.
Highveld Steel & Vanadium Corp. Ltd.	82-595	South Africa.
Hill Minerals NL	82-1038	Australia.
Hilton Resource Corp.	82-1979	Canada.
Hino Motors Ltd.	82-1388	Japan.
HK TVB Ltd.	82-1072	Hong Kong.
Hokuriku Bank Ltd.	82-1045	Japan.
Hollinger Inc.	82-117	Canada.
Homestead Resources Inc.	82-1942	Do.
Hong Kong & China Gas Co. Ltd.	82-1543	Hong Kong.
Hong Kong & Shanghai Banking Corp.	82-883	Do.
Hong Kong Land Co. Ltd.	82-881	Do.
Hopewell Holdings Ltd.	82-1547	Do.
HO Minerals Ltd.	82-2002	Canada.
HTRI Industries Inc.	82-872	Do.
Hycroft Resources & Development Corp.	82-1113	Do.
Hyperion Resources Ltd.	82-1686	Do.
Hysan Development Co. Ltd.	82-1617	Hong Kong.
IBS Technologies Ltd.	82-914	Canada.
Imasco Ltd.	82-118	Do.
Impala Platinum Holdings Ltd.	82-350	South Africa.
Imperial Metals Corp.	82-1032	Canada.
Industrial Metals Corp.	82-1542	Do.
Inel Resources Ltd.	82-1987	Do.
Inn House Video	82-1707	Do.
Inocan Technologies Inc.	82-1616	Do.
Insecta Research Corp. 1986 Inc.	82-1718	Do.
Inspectorate International	82-2036	Switzerland.
Intamacion Resources Ltd.	82-705	Canada.
Intermin Resource Corp. Ltd.	82-1528	Australia.
International Airborne Systems Corp.	82-1977	Canada.
International Cablecasting Technologies Inc.	82-1519	Do.
International Charokas Developments Ltd.	82-1644	Do.
International Curator Resources Ltd.	82-1540	Do.
International Destron Technologies Inc.	82-1953	Do.
International Dorado Resources Ltd.	82-1914	Do.
International Hard Suits Inc.	82-1950	Do.
International Maggie Mines Ltd.	82-1680	Do.
International Markatch Corp.	82-1518	Australia.
International Mining Corp. NL	82-813	Do.
International Mitek Computer Inc.	82-876	Canada.
International Movie Group Inc.	82-1892	Do.
International Prime Technologies	82-1136	Do.
International Potential Explorations Inc.	82-1841	Do.
International Powertech Systems Inc.	82-1340	Do.
International Rex Ventures Inc.	82-1640	Do.
International Texcan Technology Corp.	82-945	Do.
INX Insearch Group of Companies Ltd.	82-1508	Do.
IPC International Prospector Corp.	82-1959	Japan.
Iron River Resources Ltd.	82-1672	Canada.
Island Mining & Explorations Co. Ltd.	82-556	Do.
Itezu Motors Ltd.	82-772	Japan.
Izone International Ltd.	82-782	Canada.
J R Energy Corp.	82-1579	Do.
J. Sainsbury Ltd. PLC	82-913	United Kingdom.
Jack the Gripper Inc.	82-2001	Canada.
Jacob Gold Corp.	82-1539	Do.
Jaguar Equities Inc.	82-2070	Canada.
James Hardie Industries Ltd.	82-972	Australia.
James Industries Inc.	82-1619	Canada.
Jantar Resources Corp.	82-1148	Do.
Japan Air Lines Inc.	82-122	Japan.
Jefferson Smurfit Group PLC	82-1311	Ireland.
Jentech Ventures Corp.	82-1864	Canada.
Jibbey Industries Ltd.	82-1629	Do.
Jingellic Minerals NL	82-1808	Australia.
John Labatt Ltd.	82-1103	Canada.
Jongol Explorations Ltd.	82-1989	Do.
Joutel Resources Ltd.	82-502	Do.
Julia Mines NL	82-1656	Australia.
Justice Mining Corp.	82-1188	Canada.
K 2 Resources Inc.	82-1673	Do.

Company	File No.	Country
Kasba Resources Inc.	82-1049	Do.
Kalbar Mining NL	82-774	Australia.
Kam Creed Mines Ltd.	82-1708	Canada.
Kelley Kerr Energy Corp.	82-1575	Do.
Kemgas Sydney Inc.	82-2075	Do.
Kenton Natural Resources Corp.	82-1455	Do.
Kerr Addison Mines Ltd.	82-14	Do.
Kettle River Resources Ltd.	82-966	Do.
Koy Anacon Mines Ltd.	82-23	Do.
Keystone Explorations Ltd.	82-1769	Do.
Kia Pacific Gold Ltd.	82-1639	Australia.
Killick Gold Co. Ltd.	82-1129	Canada.
Kinross Mines Ltd.	82-220	South Africa.
Kirin Brewery Co. Ltd.	82-188	Japan.
Kleena Kleena Gold Mines Ltd.	82-882	Canada.
Kloof Gold Mining Co. Ltd.	82-205	South Africa.
Kloster Cruise AS	82-1272	Norway.
Kobold Resources Ltd.	82-1756	Canada.
Koninklijke Wessanen NV	82-1306	Holland.
Kootenay King Resources Inc.	82-1997	Canada.
Krieger Data International Corp.	82-1504	Do.
La Fosse Platinum Group Inc.	82-1947	Do.
Ladbroke Group PLC	82-1571	United Kingdom.
Lane Gold Corp.	82-1712	Canada.
Landmark Corp.	82-176	Do.
Lansco Resources Ltd.	82-1562	Do.
Laverton Gold NL	82-1862	Australia.
Leaders Equity Corp.	82-1520	Canada.
Lectus Developments Ltd.	82-1364	Do.
Leisureland Corp. Ltd.	82-1900	New Zealand.
Lemming Resources Ltd.	82-1727	Canada.
Lennard Oil NL	82-238	Australia.
Lenora Explorations Ltd.	82-837	Canada.
Leslie Gold Mines Ltd.	82-223	South Africa.
Lexington Resources Ltd.	82-1871	Canada.
Libanon Gold Mining Co. Ltd.	82-215	South Africa.
Liberty Bell Mines Inc.	82-958	Canada.
Lightning Creek Mines Ltd.	82-1721	Do.
Link Resources Inc.	82-2024	Do.
Little Bear Resources Ltd.	82-1365	Do.
Logan Mines Ltd.	82-911	Do.
London International Group PLC	82-1468	United Kingdom.
Longreach Resources Ltd.	82-1470	Canada.
Lotus Cosmetics International Ltd.	82-1476	Do.
Louisiana Mining Corp.	82-1926	Do.
Lucero Resources Corp.	82-1758	Do.
Lucky Bay Mines Inc.	82-2034	Do.
Lunar Resources Ltd.	82-1754	Do.
Luxmar Resources Inc.	82-1791	Do.
Lydenburg Platinum Ltd.	82-312	South Africa.
Lysander Gold Corp.	82-1936	Canada.
Magenta Development Corp.	82-1422	Do.
Magnet Group Ltd.	82-299	Australia.
Mai PLC	82-1940	United Kingdom.
Makus Resources Inc.	82-1590	Canada.
Manitou Reef Resources	82-1071	Do.
Mantione Petroleum Corp.	82-1638	Do.
Marietta Resource Corp.	82-1040	Do.
Marivale Ltd.	82-224	South Africa.
Mariner Explorations Inc.	82-866	Canada.
Mariposa Resources	82-2060	Do.
Marks and Spencer PLC	82-1961	United Kingdom.
Marlborough Productions Ltd.	82-1408	Canada.
Marshall Energy Ltd.	82-1631	Do.
Marubeni Corp.	82-616	Japan.
Materials Technology Ltd.	82-1288	Australia.
Maverick Naturalite Beef Corp.	82-1405	Canada.
Mawson Pacific Ltd.	82-1467	Australia.
Max Minerals Inc.	82-1956	Canada.
Mayne Nickless Ltd.	82-1530	Australia.
McAdam Resources Inc.	82-1634	Canada.
McConnell Peel Resources Ltd.	82-1577	Do.
Medical Research International Ltd.	82-2026	Do.
Melcorp Securities Ltd.	82-146	South Africa.
Merika Mining Ltd.	82-1248	Canada.
Merlin Hygenic Products Ltd.	82-2077	Do.
Meridian Oil NL	82-397	Australia.
Merit Technologies Ltd.	82-1414	Canada.
Merlin Mining NL	82-1972	Australia.
Mi Software Corp.	82-1954	Canada.
Microphonics Technology International Corp.	82-1738	Do.
Micro Ventures Ltd.	82-2079	Do.

Company	File No.	Country
Microstat Development Corp.	82-1764	Do.
Milestone Resources Corp.	82-1808	Do.
Mine Lake Minerals Inc.	82-2059	Do.
Minerex Resources Ltd.	82-946	Do.
Ming Mines Ltd.	82-1850	Do.
Minroco Minerals & Resources Corp. Ltd.	82-205	Bermuda.
Mintel International Development Corp.	82-797	Canada.
Miramar Energy Corp.	82-1566	Do.
Mitsubishi Chemical Industries Ltd.	82-1191	Japan.
Modatex Systems Inc.	82-2006	Canada.
Mode Products Inc.	82-467	Do.
Moet Hennessy SA	82-734	France.
Mohave Gold Inc.	82-940	Canada.
Monarch Resources NL	82-339	Australia.
Mondavi Resources Ltd.	82-1993	Canada.
Monte Carlo Resources Ltd.	82-1901	Do.
Montello Resources Ltd.	82-1812	Do.
Mosquito Creek Gold Mining Co. Ltd.	82-904	Do.
Mount Angelo Exploration NL	82-1849	Australia.
Mount Burgess Gold Mining Co. NL	82-1235	Do.
Mountain West Resources Inc.	82-1201	Canada.
Mt Grant Mines Ltd.	82-1789	Do.
Mutual Resources Inc.	82-1095	Do.
Mutual Resources Ltd.	82-1171	Do.
MVP Capital Corp.	82-1932	Do.
Mystery Mountain Minerals Ltd.	82-1532	Do.
Napa Resources Inc.	82-2050	Do.
National Australia Bank	82-1015	Australia.
National Fuelcorp Ltd.	82-1893	Canada.
Nepheline Resources Ltd.	82-1814	Do.
Network Media Ltd.	82-1481	Australia.
Nevada North Resources Inc.	82-1665	Canada.
New Australian Resources	82-2069	Australia.
New Era Development Ltd.	82-1798	Canada.
New Impact Resources Inc.	82-1761	Do.
New Japan Securities Co. Ltd.	82-1813	Japan.
New Nadina	82-2054	Canada.
New Privateer Mine Ltd.	82-1408	Do.
New Signet Resources Inc.	82-1640	Do.
Newhawk Gold Mines Ltd.	82-739	Do.
Newline Resources Ltd.	82-1681	Do.
Newtec Industries Ltd.	82-926	Do.
Nexus Resources Corp.	82-679	Do.
Nimalo International	82-650	Bermuda.
Nippon Kangyo Kakumaru Securities Co.	82-1679	Japan.
Nissan Motor Co. Ltd.	82-207	Do.
Niugini Mining Ltd.	82-1230	New Guinea.
Nixdorf Computer AG	82-1730	Germany.
Nix-O-Tine Pharmaceuticals Ltd.	82-2030	Canada.
NMB Minebea Co. Ltd.	82-1069	Japan.
Nobelx Ltd.	82-1680	Australia.
Noble Mines & Oils Ltd.	82-509	Canada.
Nokia Corp.	82-1490	Finland.
Nora Industries AS	82-1613	Norway.
Noramex Minerals Inc.	82-939	Canada.
Noranda Mines Ltd.	82-158	Do.
Normandy Resources NL	82-1975	Australia.
Normine Resources Ltd.	82-1144	Canada.
Norsemont Mining Corp.	82-1485	Do.
Norsk Hydro AS	82-1212	Norway.
North American Aero Dynamics Ltd.	82-1664	Canada.
North American Fire Guardian Technologies Inc.	82-1921	Do.
North American Platinum Ltd.	82-1826	Do.
North Coast Industries	82-2073	Do.
North Kalguri Mines Ltd.	82-2086	Australia.
North Pacific Industries Corp.	82-1614	Canada.
North Queensland Resources NL	82-1749	Australia.
Northair Mines Ltd.	82-305	Do.
Northern Dynasty Explorations Ltd.	82-1295	Do.
Northfield Minerals	82-2065	Do.
Norton Group Public Ltd. Co.	82-2011	United Kingdom.
NRT Research Technologies Inc.	82-1626	Canada.
NTV Oil Service Industries Inc.	82-1453	Do.
Nu Crown Resources	82-2071	Do.
Nu Dawn Resources Inc.	82-1831	Do.
Nucleus Ltd.	82-1552	Australia.
Nuinsco Resources Ltd.	82-1846	Canada.
Nuspar Resources Ltd.	82-464	Do.
Oakwood Petroleum Ltd.	82-564	Do.
Odessa Explorations Inc.	82-1335	Do.
Ohio Resources Corp.	82-1729	Do.
Omoco Holdings Ltd.	82-1697	Do.

Company	File No.	Country
Orange Free State Investments Ltd.	82-1220	South Africa.
Orbex Industries Inc.	82-478	Canada.
Orex Resources Ltd.	82-1770	Do.
Orion Communications Inc.	82-474	Do.
Orion Resources Ltd.	82-1604	Do.
Ormont Exploration Ltd.	82-1608	Do.
Orsina Resources Ltd.	82-1555	Do.
Ossa Resources Inc.	82-2082	Do.
Overseas Inns SA.	82-166	Luxemburg.
Overseas Platinum Corp.	82-1780	Canada.
Owen Ventures Ltd.	82-1731	Do.
Owin Industries Ltd.	82-1402	Do.
Oy Warilla AB.	82-933	Finland.
Pachena Industries Ltd.	82-1589	Canada.
Pacific Kenridge Ventures Inc.	82-1777	Do.
Pacific Minerearch Ltd.	82-947	Do.
Pacific Sentinel Gold Corp.	82-2007	Do.
Pact Resources	82-1386	Australia.
Paget Resources Ltd.	82-1570	Canada.
Pak Man Resources Inc.	82-1186	Do.
Palmier Industries Ltd.	82-1882	Do.
Pamour Inc.	82-2015	Do.
Pan Australian Mining Ltd.	82-1753	Australia.
Pan Canadian Petroleum Ltd.	82-285	Canada.
Pan Island Resource Corp.	82-1828	Do.
Pan World Ventures Inc.	82-1785	Do.
Panasoni Engery Corp.	82-1475	Do.
Panorama Resources Ltd.	82-1885	Do.
Panther Mines Ltd.	82-1612	Do.
Paracom Technologies	82-2051	Do.
Paralex Development Corp.	82-1854	Do.
Pastel Food Corp.	82-1684	Do.
Pathronics Ltd.	82-1904	Do.
Payton Ventures Inc.	82-1828	Do.
PCH Post Career Habbits Inc.	82-1728	Do.
Peninsular and Oriental Steam Navigation Co.	82-2093	United Kingdom.
Perham Gold "N" Grains Inc.	82-1732	Canada.
Pesant Resources NL.	82-484	Australia.
Perslot Resources Corp.	82-1447	Canada.
Petrofarms International Resources	82-1701	Do.
Petrogulf Resources Ltd.	82-885	Australia.
Petrolia Oil & Gas Ltd.	82-2083	Canada.
Petrox Energy & Minerals Corp.	82-798	Do.
PIE Prospections International Corp.	82-2038	Do.
Pink Pages Publications Inc.	82-1964	Do.
Pisac Pacific Ltd.	82-1823	Australia.
Plastic Engine Technology Corp.	82-1823	Canada.
Platgold Pacific NL.	82-1847	Australia.
Plastonia Developments Inc.	82-1966	Canada.
PLC Systems	82-2072	Do.
Pola Resources Ltd.	82-780	Do.
Polly Peck International PLC.	82-1181	United Kingdom.
Powder Metals Australia Ltd.	82-1671	Australia.
Power Corporation of Canada	82-137	Canada.
Power Financial Corp.	82-1718	Do.
President Mines Ltd.	82-958	Do.
Presley Laboratories Inc.	82-1743	Do.
Princeton Resources Corp.	82-1514	Do.
Progressive Minerals Ltd.	82-1971	Do.
Promatek Industries Ltd.	82-1351	Do.
Prophet Resources Ltd.	82-1382	Do.
Prudential Corp. PLC.	82-1477	United Kingdom.
PSM Technologies Inc.	82-1151	Canada.
Purichlor Technology	82-1480	Do.
Pyro Air Technologies Inc.	82-2018	Do.
Qusdra Logic Technologies Inc.	82-1682	Do.
Qual Ridge Winery Napa Valley	82-1744	Do.
Quebec Explorers Corp. Ltd.	82-635	Do.
Queen Margaret Gold Mines NL.	82-414	Australia.
Queenslake Resources Ltd.	82-585	Canada.
Quilo Resources Inc.	82-1960	Do.
Quintal Industries Ltd.	82-1825	Do.
Quinto Mining Corp.	82-475	Do.
Quorum Resource Corp.	82-1838	Do.
R C J Resources Ltd.	82-1527	Do.
Racal Electronics PLC.	82-481	United Kingdom.
Rainmax Industries Ltd.	82-883	Canada.
Rai Marketing Group Inc.	82-1282	Do.
Ramm Venture Corp.	82-699	Do.
Ramtron Australia Ltd.	82-1430	Australia.
Rand Extensions & Exploration Ltd.	82-1834	South Africa.
Randfontein Estates Gold Mining Co. Witwatersrand Ltd.	82-287	Do.

Company	File No.	Country
Rank Organisation	82-17	Do.
Rapid Resource Corp.	82-2005	Canada.
Ray Net Communications Systems Inc.	82-1591	Do.
Rayrock Yellowknife Resources Inc.	82-378	Do.
Reako Explorations Ltd.	82-1286	Do.
Real de Minas Mining Inc.	82-2033	Do.
Recco Research Corp.	82-1688	Do.
Redfern Resources Ltd.	82-1624	Do.
Redwood Resources Inc.	82-806	Do.
Reg Resources Corp.	82-864	Do.
Regional Yellow Directories PLC.	82-2044	United Kingdom.
Rembrandt Gold Mines Ltd.	82-1782	Canada.
Revere Resources Ltd.	82-1771	Do.
Resource Mineral & Equities Ltd.	82-1844	Australia.
Reward Resources Ltd.	82-1667	Canada.
Rex Silver Mines Ltd.	82-1783	Do.
Redford Minerals Ltd.	82-1895	Do.
Rhys Ventures Ltd.	82-1938	Do.
Rich Coast Sulphur Ltd.	82-1621	Do.
Richwell Resources Ltd.	82-1890	Do.
Rimacan Resources Ltd.	82-1682	Do.
Ritz Resources Ltd.	82-1810	Do.
Rocket Energy Resources Ltd.	82-1916	Do.
Rockingham Resources Inc.	82-2064	Do.
Rockridge Mining Corp.	82-1842	Do.
Rockspan Resources Ltd.	82-863	Do.
Rococco Resources Ltd.	82-715	Do.
Roddy Resources Ltd.	82-893	Do.
Rojal Exploration Ltd.	82-1827	Do.
Roper Resources	82-2020	Do.
Roodport Gold Holdings Ltd.	82-1853	South Africa.
Rosenthal A G.	82-1648	Germany.
Rothchild Gold Corp.	82-1627	Canada.
Rothmans International PLC.	82-44	United Kingdom.
Roxwell Gold Mines Ltd.	82-1788	Canada.
Royal Bank of Canada	82-789	Do.
Royal Crystal Resources Ltd.	82-1787	Do.
Royal Pacific Sealarms Ltd.	82-1737	Do.
RTZ Corp. PLC.	82-1141	United Kingdom.
Rustenburg Platinum Holdings Ltd.	82-241	South Africa.
Rutland Biotech Ltd.	82-1526	Canada.
Saint Helena Gold Mines Ltd.	82-232	South Africa.
Samos Resources Ltd.	82-2027	Canada.
Sanderson Technologies Inc.	82-2080	Do.
San Miguel Corp.	82-306	Philippines.
Santos Ltd.	82-34	Australia.
Sanyo Electric Co. Ltd.	82-264	Japan.
Sanyo Securities Co. Ltd.	82-1857	Do.
Sarigan Granite Corp.	82-2023	Canada.
Sasol Ltd.	82-631	South Africa.
Sato Sleva International Inc.	82-1329	Canada.
Savanna Resources Ltd.	82-1258	Do.
Schmitt Industries Inc.	82-1872	Do.
Schreiber Resources Ltd.	82-1395	Do.
Scottish Heritable Trust	82-2063	Scotland.
Seadrift International Exploration Ltd.	82-459	Canada.
Seastar Resource Corp.	82-963	Do.
Sedgwick Group PLC.	82-1529	United Kingdom.
Seguro Resources Ltd.	82-1956	Canada.
Seven Mile High Resources Inc.	82-1307	Do.
Shakwak Exploration Co. Ltd.	82-1122	Do.
Shandon Resources Inc.	82-1875	Do.
Shanell International Energy Corp.	82-1689	Do.
Shannock Corp.	82-1782	Do.
Sherritt Gordon Mines Ltd.	82-29	Do.
Shilling Resources Inc.	82-2017	Do.
Shogun Developments Corp.	82-677	Do.
Siemens Aktiengesellschaft	82-73	Germany.
Siemont Resources Ltd.	82-1876	Canada.
Skaman Gold Resources Ltd.	82-1651	Do.
Silent Canyon Resources Ltd.	82-1632	Do.
Silver Hill Mines Ltd.	82-1496	Do.
Silver Princess Resources Inc.	82-1811	Do.
Silver Ridge Resources	82-1077	Do.
Silverhawk Resources Ltd.	82-1693	Do.
Silverword Corp.	82-1583	Do.
Silverquest Resources Ltd.	82-1861	Do.
Sino Business Machines Inc.	82-1510	Do.
Sino Land Co.	82-1868	Hong Kong.
Sirius Corp. NL.	82-1147	Australia.
Skandia International Holding AB.	82-1574	Sweden.
SKF.	82-139	Do.

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Company	File No.	Country
Sid Free Marine Inc.	82-1443	Canada.
Skyhigh Resources Ltd.	82-1495	Do.
Skyline Resources Ltd.	82-1232	Do.
Skyline Explorations Ltd.	82-1440	Do.
Skyworld Resources & Developments Ltd.	82-1498	Do.
Slumber Magic Adjustable Bed.	82-2957	Do.
Snowwater Resources Ltd.	82-1619	Do.
Societe Nationale Et Aquilane.	82-2046	France.
Softkey Software Products Inc.	82-1823	Canada.
Solo International Resources.	82-2000	Do.
Solo Petroleum Ltd.	82-2916	Canada.
Solomon Pacific Resources NL.	82-2821	Australia.
Sonatel Telecommunications Corp.	82-1416	Canada.
Sons of Gwalia NL.	82-1998	Australia.
South African Breweries Ltd.	82-383	South Africa.
South Roodport Main Reef Areas Ltd.	82-090	Do.
South African Land & Exploration Co. Ltd.	82-60	Do.
Southern Pacific Petroleum NL.	82-363	Australia.
Southern Star Resources Ltd.	82-1043	Canada.
Southlands Mining Corp.	82-1891	Do.
Southval Holdings Ltd.	82-197	South Africa.
Spargos Exploration NL.	82-1441	Australia.
SPI Safety Packaging International Ltd.	82-1822	Canada.
Springfield Resources Ltd.	82-1142	Do.
Springlake Resources Ltd.	82-1088	Do.
Stallion Resources Ltd.	82-907	Do.
Starke Industries Ltd.	82-1255	Do.
Stelco Inc.	82-141	Do.
Stella Resource Corp.	82-1206	Do.
Stet Societa Finanziaria Telefonica PA.	82-1073	Italy.
Stikmont Gold Mining Co. Ltd.	82-301	South Africa.
Stina Resources Ltd.	82-2082	Canada.
Stralek Resources Ltd.	82-578	Do.
Strates Corp. Ltd.	82-1448	Do.
Strategic Communications Ltd.	82-1778	Do.
Stratler Resources Ltd.	82-969	Do.
Sub Nigel Gold Mining Co. Ltd.	82-1798	South Africa.
Sulphurets Gold Corp.	82-1888	Canada.
Sunac Ventures Inc.	82-1538	Do.
Sun Entertainment Holding Corp.	82-1778	Do.
Sun Hung Kai Properties Ltd.	82-1755	Hong Kong.
Sun River Gold Corp.	82-1398	Canada.
Sun Valley Gold Mines Ltd.	82-1578	Do.
Sun Valley ID & Rad Lake Resources Ltd.	82-1828	Do.
Sunwest Energy 88 Inc.	82-1559	Do.
Sunshine Australia Ltd.	82-1223	Australia.
Sunrise Investments International Corp.	82-2001	Canada.
Supertech Industries Inc.	82-1791	Do.
Supreme Resources Inc.	82-1248	Do.
Surf Inlet Mines Ltd.	82-2057	Do.
Sutton Resources Ltd.	82-910	Do.
Swan Resources Ltd.	82-477	Australia.
Systems Designers PLC.	82-1188	United Kingdom.
T E N Private Cable Systems Inc.	82-1993	Canada.
T I Travel International Inc.	82-1817	Do.
TAB Ventures Corp.	82-1842	Do.
Tamara Resources Inc.	82-1214	Do.
Tam Pure Technology Corp.	82-1145	Do.
Taro-Vii Industries Ltd.	82-210	Israel.
Taron Resources Ltd.	82-1091	Canada.
Tattar Resources Ltd.	82-2008	Do.
Taywin Resources Ltd.	82-1546	Do.
Tchikazan Enterprises Inc.	82-1680	Do.
Technigen Platinium Corp.	82-1456	Do.
Teshin Resources Ltd.	82-901	Do.
Teijin Selti Co. Ltd.	82-1499	Japan.
Teletronics Holdings Ltd.	82-1951	Australia.
Telefonos de Mexico SA.	82-332	Mexico.
Telese Corp. Inc.	82-1988	Canada.
Tenajon Silver Corp.	82-2082	Do.
Tenquille Resources Ltd.	82-1907	Do.
Terracamp Developments Ltd.	82-1044	Do.
Terrace Industries Ltd.	82-1291	Do.
Terrax Resources Ltd.	82-646	Australia.
Teryl Resources Corp.	82-2926	Canada.
Teuton Resources Corp.	82-1394	Do.
Texas Northern Oil & Gas Inc.	82-1840	Do.
The J C Smith Marketing Corp.	82-1994	Do.
Thios Resources Inc.	82-1906	Do.
Thorn EMI Ltd.	82-573	United Kingdom.
Thunder Engine Corp.	82-1052	Canada.
Tiffany Resources Inc.	82-1550	Do.

Company	File No.	Country
Tiphook PLC.	82-1878	United Kingdom.
TME Resources Inc.	82-1200	Canada.
Toronto Dominion Bank.	82-142	Do.
Toyobo Co. Ltd.	82-1172	Japan.
Toyota Motor Co. Ltd.	82-208	Do.
Trac Industries Inc.	82-1008	Canada.
Tratfagar House PLC.	82-1884	United Kingdom.
Trans America Industries Ltd.	82-1900	Canada.
Trans Atlantic Resources Inc.	82-1682	Do.
Trans Rampart Industries Ltd.	82-1058	Do.
Transvaal Consolidated Land & Exploration Co.	82-304	South Africa.
Treasure Island Resources Corp.	82-750	Canada.
Tri Gold Industries Inc.	82-1833	Do.
Tri Pacific Resources Inc.	82-1723	Do.
Triad Minerals NL.	82-1595	Australia.
Triand Equities Ltd.	82-488	Canada.
Trinity Resources Ltd.	82-610	Do.
Triple M Mining Corp.	82-1699	Do.
Triumph Petroleum Ltd.	82-1688	Do.
Tropical Submarine Seaters Ltd.	82-906	Do.
True North Film & Video Productions Inc.	82-1800	Do.
Tylox Resource Corp.	82-1053	Do.
U S Grant Gold Mining Co. Ltd.	82-1915	Do.
U Save Foods Ltd.	82-1886	Do.
Ultramar PLC.	82-871	United Kingdom.
Umbertus Paris Enterprises Inc.	82-1324	Canada.
Unilever Optical Corp.	82-1188	Do.
Union Fidelity Trustee Company of Australia Ltd.	82-1443	Australia.
Unique Resources Ltd.	82-1927	Canada.
Unisel Gold Mines Ltd.	82-256	South Africa.
United Keno Hill Mines Ltd.	82-61	Canada.
United Sisco Mines Inc.	82-164	Do.
Univex Mining Corp. Ltd.	82-1805	Do.
US Ammunition Co. Ltd.	82-1509	Do.
US Platinum Inc.	82-714	Do.
UT Technologies Ltd.	82-1891	Do.
Vaal Reefs Exploration & Mining Co. Ltd.	82-56	South Africa.
Valentine Gold Corp.	82-1959	Canada.
Valley Oil & Gas Corp.	82-1991	Do.
Vananda Gold Ltd.	82-1883	Do.
Vancouver Venture Corp.	82-1998	Do.
Varistates Resources Ltd.	82-1436	Do.
Veitsher Magnesiumwerke AG.	82-1573	Austria.
Velcro Industries NV.	82-145	Netherlands.
Venterpost Gold Mining Co. Ltd.	82-216	South Africa.
Verdstone Gold Corp.	82-1735	Canada.
Vertex Resources Ltd.	82-1586	Do.
Viceroy Resource Corp.	82-1183	Do.
Vickers Public Ltd. Co.	82-1359	United Kingdom.
Victoria Exploration NL.	82-322	Australia.
Visible Gold Inc.	82-2019	Canada.
Vlaaktein Gold Mining Co. Ltd.	82-217	South Africa.
Voicocall Ltd.	82-1189	Australia.
VSC Technology Inc.	82-1593	Canada.
VTL Venture Corp.	82-1419	Do.
WCN Investment Corp.	82-1582	Do.
W C W Western Canada Water Enterprises Inc.	82-1885	Do.
Walhalla Mining Co. NL.	82-1036	Australia.
War Eagle Mining Co.	82-2008	Canada.
Walcor Purification Systems Inc.	82-1284	Do.
Welkom Gold Holdings Ltd.	82-57	South Africa.
West Delta Resources Ltd.	82-1535	Canada.
West Mar Resources Ltd.	82-751	Do.
West Rand Consolidated Mines Ltd.	82-314	South Africa.
West Rim Resources Inc.	82-1680	Canada.
Western Areas Gold Mining Co. Ltd.	82-268	South Africa.
Western Deep Levels Ltd.	82-68	Do.
Westlake Industries Inc.	82-821	Canada.
Westley Mines Ltd.	82-1088	Do.
Whim Creek Consolidated NL.	82-1245	Australia.
Wilton Resources Ltd.	82-63	Canada.
Williams Holdings PLC.	82-1889	United Kingdom.
Winkelhaak Mines Ltd.	82-221	South Africa.
Winstow Gold Corp.	82-1902	Canada.
Wunder Marine Resources Ltd.	82-1787	Do.
Woolworths Ltd.	82-970	Australia.
Wydmir Development Corp.	82-2056	Canada.
X Cal Resources Ltd.	82-1655	Do.
Xenium Resources Ltd.	82-1717	Do.
Yellow Band Resources Inc.	82-1884	Do.
Yellowjack Resources Ltd.	82-1765	Do.
Yukon Minerals Corp.	82-1535	Do.

Company	File No.	Country
Zanex Ltd.	82-932	Australia.
Zebec Resources Ltd.	82-1759	Canada.
Zenith Metals Recovery Inc.	82-1723	Do.
Zuri Energy Corp.	82-1689	Do.
2001 Resource Industries	82-1187	Do.

DEPARTMENT OF STATE

[CM-9/1202]

National Committee for the U.S. Organization for the International Consultative Committee on Radio (CCIR); Meeting

CCIR Study Group II concerning Space Research and Radio-astronomy will meet on August 10, 1988 at NASA Headquarters, 600 Independence Avenue, Washington, DC in Room 521J at 1:00 P.M. to review work and consider contributions for its next international meeting.

Members of the general public are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available.

Request for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC, telephone (202) 647-2502.

Date: July 18, 1988.

Richard Shrum,

Chairman, CCIR National Committee.

[FR Doc. 88-16310 Filed 7-19-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-9/1204]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 10:00 a.m., Wednesday, August 10, 1988, in Room 1205, Department of State, 22nd and C Streets NW., Washington, DC.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss the recently adopted Convention on the Regulation of Antarctic Mineral Resource activities. The upcoming first meeting of the Convention for the Conservation of Antarctic Seals, to be held in London, September 12-16, 1988, will be discussed, as will the seventh annual meeting of the Commission for the Conservation of Antarctic Marine Living

Resources, to be held in Hobart, November 1988. Department officials will also be prepared to discuss other key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Tuesday, August 9, in Room 1205, Department of State, 22nd and C Streets NW. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources. The upcoming meetings on Antarctic marine living resources and on seals will also be discussed. The meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356. The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future meetings and negotiations. Therefore, the meeting will not be open to the public, pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OPA, Room 5801, Department of State. He may be reached by telephone on (202) 647-3282.

Frederick M. Bernthal,

Chairman.

[FR Doc. 88-16311 Filed 7-19-88; 8:45 am]

BILLING CODE 4710-09-M

[CM-9/1203]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct two special open meetings in August 1988 in preparation for further consideration of the subject of liability and compensation related to maritime carriage of hazardous and noxious substances (HNS) by the International Maritime Organization (IMO) Legal Committee. The first meeting will be held at 0930 on Tuesday, August 9, 1988 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593. The second meeting will be held at 0930 on Thursday, 18 August 1988 at the same location.

As noted at the special SHC meeting held previously on June 30, 1988, the purpose of these additional special meetings is to discuss the various approaches currently being developed for a possible new international regime for liability and compensation related to maritime carriage of HNS and to consider U.S. positions on this question for the 60th Session of the IMO Legal Committee scheduled to meet in London from 10-14 October 1988.

Members of the public are invited to attend the meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting, contact either Captain Jonathan Collom or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), Washington, DC, 20593, telephone (202) 267-1527.

Date: July 8, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-16312 Filed 7-19-88; 8:45 am]

BILLING CODE 4710-07-M

[CM-9/1201]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Ship Design and Equipment; Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on

Safety of Life at Sea (SOLAS) will conduct an open meeting on August 4, 1988 at 9:30 a.m. in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting will be to discuss the results of the 31st Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE), held March 7 to 11, 1988, and to prepare for the 32nd Session of IMO DE scheduled for December 5 to 9, 1988. Items of discussion will include the following: Harmonization of alarm provisions; maneuverability of ships, review of the MODU Code; helicopter facilities offshore; operating mechanisms for watertight doors and operating procedures in service, materials other than steel for pipes; below deck openings into cargo tanks; requirements for purpose- and non-purpose-built ships dedicated for the carriage of irradiated nuclear fuel; ventilation of vehicles decks during loading and unloading; amendments of regulation II-1/41 of the 1974 SOLAS Convention, as amended; and, review of reporting requirements of Codes and Assembly resolutions related to work of the Subcommittee.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain J. C. Maxham at (202) 267-0795 or Lieutenant Commander P. A. Richardson at (202) 267-2208, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

Date: June 21, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88-16313 Filed 7-9-88; 8:45 am]

BILLING CODE 4710-07-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preference (GSP); Review of Product Petitions, Public Hearings, and List of Articles To Be Sent to the U.S. International Trade Commission (USITC) for Review

SUMMARY: The purpose of this notice on the GSP annual review is (1) to announce the acceptance for review of petitions to modify the list of articles eligible to receive duty-free treatment under the GSP; (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein will be sent by the United States Trade Representative to the USITC to seek advice with respect to modification of the list of eligible articles for GSP.

I. Acceptance of Product Petitions for Review

Notice is hereby given of acceptance for review of product petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in Title V of the Trade Act of 1974 (the Act) (19 U.S.C. 2461-2465). These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR Part 2007. Because of the complexity of country practice petitions submitted for review this year, notice of those petitions accepted for review will not be given until a later date.

1. Requests to Modify Product Eligibility

Petitions have been submitted by interested parties or foreign governments (1) to designate additional articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; or (3) to otherwise modify GSP coverage.

As in previous reviews, requests to add products to or remove them from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: the development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment and worker rights; and the overall economic interests of the United States. The GSP Subcommittee will review information for the relevant U.S. industry as enumerated in 15 CFR 2007.1(5) when considering the removal of any beneficiary developing country from GSP eligibility.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(C)(1) of the Trade Act of 1974, as amended. It also is possible to

withdraw GSP treatment on a product from certain beneficiary developing countries, or reduce the competitive need limit applicable to the countries and product in question, rather than remove the product entirely from GSP coverage.

2. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or nonconfidential").

3. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., Room 517, Washington, DC 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395-6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the Trade Policy Staff Committee (TPSC), and that such review will take place.

II. Deadline for Receipt of Requests to Participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR Part 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the product of interest in terms of both the current

Tariff Schedules of the United States (TSUS) nomenclature and the proposed Harmonized System tariff nomenclature.

Hearings will be held on October 3-5 beginning at 10:00 a.m. in the Commerce Department auditorium, 14th and Constitution Avenue, NW., Washington, DC. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than the close of business Monday, September 12. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business Monday, October 24. Rebuttal briefs should be submitted in twenty copies, in English, by close of business Monday, November 21.

Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, in connection with articles or countries under consideration in the public hearings, provided that such submissions are filed by Wednesday, October 26 and conform with the regulations cited above.

During 1988 and/or January 1989, an opportunity will be provided for the public to comment on nonconfidential USITC analysis. Notice of the

availability of this analysis and the timetable for comment will be published in the Federal Register.

III. List of Articles Which May be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and On Which the USITC Will be Asked to Provide Advice

1. In conformity with sections 502(a) and 131(a) of the Trade Act of 1974 as amended (19 U.S.C. 2543(A) and 2151(A)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP, or for modification of their current GSP status.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the USITC on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

2. As explained in 52 FR 10860, the Harmonized System tariff nomenclature is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the purposes of classifying goods in international trade. The Harmonized System is expected to be implemented by the United States and internationally on January 1, 1989, and will replace the current TSUS nomenclature. Product eligibility under the coverage of the GSP program is currently defined in terms of the five-digit TSUS classifications. However,

upon implementation of the Harmonized System, the coverage of the GSP program will be defined in terms of the Harmonized System. Therefore, all product-related petitions must identify the product(s) of interest in terms of both the current TSUS nomenclature and the proposed Harmonized System tariff nomenclature. The lists that follow describe the articles that have been accepted for review in this year's review in terms of both the TSUS nomenclature and the Harmonized System tariff nomenclature or in terms of only the Harmonized System. The TPSC reserves the right to convert all of its decisions to the Harmonized System nomenclature.

3. Advice of the United States International Trade Commission. On behalf of the President and in accordance with sections 503(A) and 131(A) of the Trade Act of 1974 as amended, the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles, eligible for GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the Act, the USITC is being asked to furnish economic advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of competitive need limits for the products identified in section C of the lists which follow.

Sandra J. Kristoff,
Chairwoman, Trade Policy Staff Committee.
BILLING CODE 3190-01-M

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item no.	Article	Petitioner
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[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

Grouped filaments and strips (in continuous form), whether known as tow, yarns, or by any other name:

Wholly of grouped filaments (except laminated filaments and plexiform filaments):

Of glass:
Not colored

PPG Industries, Inc.,
Pittsburgh, PA

Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure, not provided for in subpart A or C of part 1, schedule 4, of the TSUS:

[Articles provided for in items 402.00 thru 402.32]
Other:

Alcohols, phenols, ethers (including epoxides and acetals), aldehydes, ketones, alcohol peroxides, ether peroxides, ketone peroxides, and their derivatives:

[Articles provided for in items 403.16 thru 403.41]

Other:

Phenols and phenol-alcohols:
Phenol (Hydroxybenzene) and its salts

Government of Mexico;
Petroquímica, S.A. de C.V.,
Mexico

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item no.	Article	Petitioner
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)			
		All other products, by whatever name known, not provided for in subpart A or C of part 1, schedule 4, of the TSUS, including acyclic organic chemical products, which are obtained, derived, or manufactured in whole or in part from any of the cyclic products having a benzoid, quinoid, or modified benzoid structure provided for in the foregoing provisions of subpart B or in subpart A of part 1, schedule 4, of the TSUS:	
		[Articles provided for in items 406.64 thru 406.83]	
88-3	406.84	Fumaric acid	Government of Mexico
		[Articles provided for in items 406.86 thru 407.01]	
		Other:	
88-4	407.05(pt.)	Maleic acid; and Malic acid	do.
		Fatty substances, not sulfoxidated or sulfated, and not specially provided for:	
		Fatty alcohols of animal (including marine animal) or vegetable origin:	
		[Oleyl]	
		Other:	
88-5	490.73	Derived from coconut, palm-kernel, or palm oil	Government of the Philippines
		Travertine and articles of travertine:	
88-6	515.21 2/	Travertine, not hewn, not sawed, not dressed, not polished, and not otherwise manufactured	Government of Peru
		Slide fasteners, and parts thereof including tapes in continuous lengths but not including tapes wholly of textile fibers:	
88-7	745.74	Parts	Government of Colombia
		or	
88-8	745.7450	Sliders, with or without pulls	do.
		or	
88-9	745.7490	Other	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

2/ Request is for GSP eligibility under the TSUS; is eligible for GSP under the HTS effective the date of implementation of the HTS.

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item no.	Article	Petitioner
B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.			
		Products suitable for medicinal use, and drugs:	
		Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1, schedule 4, of the TSUS:	
		Drugs:	
		[Articles provided for in items 410.68 thru 411.27]	
		Other:	
		Drugs primarily affecting the central nervous system, except alkaloids and their derivatives:	
		Analgesics, antipyretics, and nonhormonal anti-inflammatory agents:	
88-10	412.2220	Ibuprofen	Ethyl Corporation, Richmond, VA
		Nitrogenous compounds:	
88-11	425.18	Hexamethylenetetramine	Wright Chemical Corporation, Wilmington, NC
		Pipe and tube fittings of iron or steel:	
		[Articles provided for in items 610.62 thru 610.74]	
		Other fittings:	
		[Ductile fittings]	
		Other:	
		[Flanges; couplings]	
		Other:	
		Butt-weld type fittings:	
		Under 14 inches (inside diameter):	
88-12	610.88	Other than alloy iron or steel	The United States Butt-Weld Fitting Committee, Washington, DC

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item no.	Article	Petitioner
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B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. (con.)

Other base metals, unwrought, and waste and scrap of such metals:

Other than alloys; and waste and scrap:

Silicon:

88-13 632.42

Containing by weight not over 99.7 percent of silicon

The Ferroalloys Association,
Washington, DC

Hydrometers and similar floating instruments; thermometers, pyrometers, barometers, hygrometers, and psychrometers, whether or not recording instruments; any combination of the foregoing instruments; and articles in which one or more of such instruments are incorporated as significant integral parts and which are ordinarily used in the home or office where they are usually hung on the wall, or placed in mantels, shelves, or furniture:

Thermometers, pyrometers, barometers, hygrometers, and psychrometers, whether or not recording instruments:

Non-recording instruments:

Thermometers:

Liquid-filled thermometers with the graduations on the tube or on a scale enclosed within an outer shell:

Clinical

88-14 711.91

Florida Medical Industries,
Inc.,
Leesburg, FL

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item no.	Article	Petitioner
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C. Petitions for waiver of competitive-need limit for a product on the list of eligible products.

Toys, and parts of toys, not specially provided for:
[Toys having a spring mechanism]

Other:

[Articles provided for in items 737.85 thru 737.96]

Other:

[Toys having a friction or weight operated motor]

Other (except parts):

Wholly or almost wholly of rubber or plastics:

Toy balloons and punchballs

88-15 737.9836
(Mexico)

American Imports, Inc.,
Irvine, CA

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex II

Petitions Accepted for Review

Case No.	HTS Subheading 1/	Article	Petitioner
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[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.

88-HS-1	1519.30.40	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols:	Government of the Philippines
		Industrial fatty alcohols:	
		Derived from fatty substances of animal or vegetable origin:	
		[Oleyl]	
		Other	
88-HS-2	2905.17.00	Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	do.
		Saturated monohydric alcohols:	
		Dodecan-1-ol (Lauryl alcohol), hexadecan-1-ol (Cetyl alcohol) and octadecan-1-ol (Stearyl alcohol)	
88-HS-3	2907.11.00	Phenols; phenol-alcohols:	Government of Mexico; Petroquímica, S.A. de C.V., Mexico
		Monophenols:	
		Phenol (Hydroxybenzene) and its salts	

1/ Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex II

Petitions Accepted for Review

Case No.	HTS Subheading 1/	Article	Petitioner
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A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.
(con.)

88-HS-4	2917.19.15	Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	Government of Mexico
		Acyclic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
		[Articles provided for in subheadings 2917.11.00 thru 2917.14.50]	
88-HS-5	2917.19.2510	Other:	do
		Fumaric acid:	
		Derived in whole or in part from aromatic hydrocarbons	
		Maleic acid;	
		Succinic acid derived in whole or in part from maleic anhydride or from cyclohexane;	
		Glutaric acid derived in whole or in part from cyclopentanone; and anhydrides, halides, peroxides, peroxyacids and other derivatives of adipic acid, fumaric acid derived in whole or in part from aromatic hydrocarbons, of maleic acid, of succinic acid derived in whole or in part from maleic anhydride or from cyclohexane or of glutaric acid derived in whole or in part from cyclopentanone, not elsewhere specified or included:	
		[Products described in additional U.S. note 3 to section VI of the HTS]	
		Other:	
		Maleic acid	

1/ Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex II

Petitions Accepted for Review

Case No.	HIS Subheading 1/	Article	Petitioner
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A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)

Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:

Carboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives:

[Articles provided for in subheadings 2918.11.00 thru 2918.17.50]

Other:

[Aromatic:]

Other:

88-HS-6 2918.19.50(pt.)

Malic acid

Government of Mexico

Mixed alkylbenzenes and mixed alkylisophthalenes, other than those of heading 2707 or 2902 of the HIS: Mixed alkylbenzenes

88-HS-7 3817.10.00

Shrieve Chemical Products, Inc.,
The Woodlands, Texas

Glass fibers (including glass wool) and articles thereof (for example, yarn, woven fabrics):

Slivers, rovings, yarn and chopped strands: Rovings

88-HS-8 7019.10.40

PPG Industries, Inc.,
Pittsburgh, PA

Slide fasteners and parts thereof: Parts

88-HS-9 9607.20.00

Government of Colombia

or

88-HS-10 9607.20.0040

Sliders, with or without pulls

do.

or

88-HS-11 9607.20.0080

Other

do.

1/ Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex II

Petitions Accepted for Review

Case No.	HIS Subheading 1/	Article	Petitioner
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B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.

Hydrogen, rare gases and other nonmetals:

Silicon:

[Containing by weight not less than 99.99 percent of silicon]

88-HS-12 2804.69.10

Other:

Containing by weight less than 99.99 percent but not less than 99 percent of silicon

The Ferroalloys Association,
Washington, DC

Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:

[Articles provided for in subheadings 2916.31.10 thru 2916.33.50]

88-HS-13 2916.39.15

Other:

Ibuprofen

Ethyl Corporation,
Richmond, VA

Heterocyclic compounds with nitrogen hetero-atom(s) only; nucleic acids and their salts: [Articles provided for in subheadings 2933.11.00 thru 2933.79.50]

Other:

[Aromatic or modified aromatic:]

Other:

Hexamethylenetetramine

88-HS-14 2933.90.47

Wright Chemical Corporation,
Wilmington, NC

1/ Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex II

Petitions Accepted for Review

Case No.	HIS Subheading 1/	Article	Petitioner
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B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences, (con.)

Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel:
[Articles provided for in subheadings 7307.11.00 thru 7307.29.00]

Other:

Butt welding fittings:
With an inside diameter of less than 360 mm:
Of iron or nonalloy steel

88-HS-15 7307.93.30

The United States Butt-Weld
Fitting Committee,
Washington, DC

Hygrometers and similar floating instruments,
thermometers, pyrometers, barometers, hygrometers
and psychrometers, recording or not, and any
combination of these instruments; parts and
accessories thereof:

Thermometers, not combined with other
instruments:

Liquid-filled, for direct reading:
Clinical

88-HS-16 9025.11.20

Florida Medical Industries,
Inc.,
Leesburg, FL

1/ Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Annex II

Petitions Accepted for Review

Case No.	HIS Subheading 1/	Article	Petitioner
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C. Petitions for waiver of competitive-need limit for a product on the list of eligible products.

Other toys; reduced-size ("scale") models and similar
recreational models, working or not; puzzles of all
kinds; and accessories thereof:

[Articles provided for in subheadings 9503.10.00
thru 9503.80.80]

Other:

[Kites]

Other:

88-HS-17 9503.90.50
(Mexico)

Inflatable toy balls, balloons and
punchballs

American Imports, Inc.,
Irvine, CA

88-HS-18 9503.90.60
(Mexico)

Other toys (except models), not having
a spring mechanism

Mattel, Inc.,
Hasbrouck, CA;
Kerner Parker Toys, Inc.,
Cincinnati, OH

88-HS-19 9503.90.70
(Mexico)

Other

do.

1/ Harmonized Tariff Schedule of the United States (USITC Publication 2030).

Implementation of Amendments to Specialty Steel Import Relief

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice revises the allocation for Austria for the restraint period July 20, 1988 through January 19, 1989 of the quotas currently applicable to imports of certain stainless steel wire rod and makes modifications in the Tariff Schedules of the United States (TSUS) to implement this allocation.

EFFECTIVE DATE: July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Cassidy or Ann Reed, Office of the United States Trade Representative, (202) 395-4510.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5679 of July 16, 1987 (58 FR 27306) provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States, pursuant to section 203 of the Trade Act of 1974. Proclamation 5679 authorizes the U.S. Trade Representative to take such actions and perform such functions for the United States as may be necessary to administer and implement the relief, including negotiating orderly marketing agreements and allocating quota quantities on a country-by-country basis. The U.S. Trade Representative is also authorized to make modifications in the TSUS headnote of items proclaimed by the President in order to implement such actions.

Accordingly, the U.S. Trade Representative has determined that Item 926.16, Schedule 9, Subpart A, Part 2 of the appendix to the TSUS be modified by changing the allocation for Austria and changing the quota quantity for "Other", for the restraint period July 20, 1988 through January 19, 1989, as follows:

Item	Articles	Quota quantity ¹
926.16	If entered during the period from July 20, 1988, through Jan. 19, 1989, inclusive: Austria..... Other, except as provided in headnote 10(g)(ii) to this subpart.	"54" "143"

¹ Quota quantity (in short tons) if entered during the restraint period: July 20 through Jan. 10.

I have determined that the above changes in the import relief are appropriate to carry out the authority granted by the President to the United States Trade Representative and the obligations of the United States, with due consideration to the interests of the domestic producers of such specialty steel. This action is subject to further modification.

Alan Holmer,

Deputy United States Trade Representative.

[FR Doc. 88-10452 Filed 7-19-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-835]

Mormac Marine Transport, Inc.; Application for a Modification

Notice is hereby given that Mormac Marine Transport, Inc. (MMT) by letter dated July 14, 1988, has applied to the Maritime Administration under section 805(a) of the Merchant Marine Act, 1936, as amended (Act), for modification to the written permission granted to Moore McCormack Bulk Transport, Inc. pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended, and Article II-13 of Operating-Differential Subsidy Agreement No. MA/MSB-295 for certain affiliations among officers and directors of Mormac Marine Group, Inc., formerly, Barker Associates, Inc., (Mormac Marine) and the Interlake Holding Company (Interlake Holding) and its subsidiaries.

By letter of March 20, 1987, to counsel for Moore McCormack Bulk Transport, Inc., the Maritime Administrator granted written permission for James R. Barker to own a pecuniary interest in, and to control Interlake Holding and Mormac Marine and through them, Interlake Steamship Company (Interlake), Interlake Leasing II, Inc., formerly Moore McCormack Leasing II, Inc. (Leasing) and MMT for the same scope of domestic ownership and operations by Interlake and Leasing as is contained in Article I-11 of MMT's Operating-Differential Subsidy Agreement. In addition, Maritime Administrator granted permission for any common officers and directors, so long as Mr. Barker's direct or indirect control of the companies exists.

MMT requests that this permission be modified to permit common ownership, officers and directors of Interlake, Leasing, and MMT, without a specific reference to Mr. Barker, in order to accommodate the sale of certain

portions of the stock in Mormac Marine and Interlake Holding to Paul R. Tregurtha.

Fifty percent of the issued and outstanding common stock of Mormac Marine would be sold by Mr. Barker and members of his family to Mr. Tregurtha. Following the acquisition of the stock by Mr. Tregurtha, Mr. Tregurtha would become Chairman of Mormac Marine and Mr. Barker would become Vice Chairman of Mormac Marine. Mr. Barker and Mr. Tregurtha will, for the duration of any outstanding Title XI debt, retain voting control of the Mormac Marine stock.

Twenty-seven and one-half percent of the issued and outstanding common stock of Interlake Holding would also be sold to Mr. Tregurtha by Mr. Barker and members of his family. Mr. Barker, members of Mr. Barker's family, and Mr. Tregurtha will enter into a voting agreement pursuant to which Mr. Barker and Mr. Tregurtha will have the power, collectively, to vote 100 percent of the shares of Interlake Holding, each with equal voting power. Following the acquisition of Interlake Holding stock, Mr. Tregurtha will become Vice Chairman of Interlake Holding.

In order to accommodate the common ownership of Mormac Marine and Interlake Holding by Mr. Barker and Mr. Tregurtha, the permission granted to Bulk Transport pursuant to section 805(a) needs to be modified to permit common ownership as well as common officers and directors, deleting the reference to Mr. Barker.

Any person, firm or corporation having any interest (within the meaning of section 805(a) in MMT's request and desiring to submit comments concerning the request must by 5:00 p.m. on July 27, 1988 file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating

exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.604 Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Date: July 18, 1988.

James E. Saari,
Secretary.

[FR Doc. 88-16380 Filed 7-19-88; 8:45 am]

BILLING CODE 4910-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 14, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB No.: 1515-0100.

Form No.: None.

Type of Review: Extension.

Title: Customhouse Brokers.

Description: 19 CFR Part 111, requires various types of information from customhouse brokers to ensure statutory and regulatory compliance. The information is used for audit and investigations of interstate theft, narcotics smuggling, and prevents persons connected with organized crime syndicates from penetrating the industry.

Respondents: Small businesses or organizations.

Estimated Number of Respondents:

Reporting: 2,246.

Recordkeeping: 4,682.

Estimated Burden Hours Per Response:

Reporting: 2 hours 15 min.

Recordkeeping: 308 hours 20 min.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,448,633 hours.

Clearance Officer: John Poore, (202) 566-2481, U.S. Customs Service, Room 6333, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Officer Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-16256 Filed 7-19-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 18-88]

Treasury Notes; Series G-1995

July 13, 1988.

The Secretary announced on July 12, 1988, that the interest rate on the notes designated Series G-1995, described in Department Circular—Public Debt Series—No. 18-88 dated July 6, 1988, will be 8% percent. Interest on the notes will be payable at the rate of 8% percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88-16246 Filed 7-19-88; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

TSUSA/HTSUS Cross Reference Clarification

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Use Limitations on TSUSA/HTSUS Cross Reference (USITC Publication 2051).

SUMMARY: The TSUSA/HTSUS Cross Reference Document is being improperly used by members of the international trade community as a substitute for the traditional tariff classification process. This notice informs interested persons that the use of the document provides only the probable classification of goods under the proposed Harmonized System and is not binding on the Customs Service.

EFFECTIVE DATE: July 20, 1988.

FOR FURTHER INFORMATION CONTACT: Hubbard L. Vollenick, International

Nomenclature Staff, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202) 566-8530.

Notice

In January 1988, the United States International Trade Commission (USITC) published a Report to the President under section 332 of the Tariff Act of 1930, entitled "Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System." The report, USITC publication 2051, was prepared in response to a request by the United States Trade Representative (USTR) in a effort to provide the international trade community with a means to bridge the current Tariff Schedules of the United States Annotated (TSUSA) and the proposed Harmonized Tariff Schedule of the United States (HTSUS). The proposed HTSUS is based on the Harmonized System, a nomenclature system developed by the Customs Cooperation Council for use in the Classification of goods for customs tariff, statistical and transport documentation purposes. The draft legislation to implement the Harmonized System in the U.S. is presently pending before the Congress. The Customs Service is currently providing the public upon request with advisory Harmonized System classification rulings.

The TSUSA/HTSUS cross-references are designed to assist the user in translating a known classification in the TSUSA into a likely classification under the HTSUS, and should not be viewed as a substitute for the traditional tariff classification process. The user is strongly cautioned against relying on the cross-references in order to determine appropriate tariff classifications under the proposed HTSUS. Such determinations can only be made by the U.S. Customs Service and depend upon the condition of an article as imported, the applicable article provisions and rules of classification set out in the proposed HTSUS, and the body of customs practices and regulations relevant to the importation.

Dated: July 13, 1988.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 88-16262 Filed 7-19-88; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 139

Wednesday, July 20, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, July 21, 1988, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Voluntary Standards Policy Regulation

The staff will brief the Commission on proposed amendments to the Commission's regulations 16 CFR Parts 1031 and 1032 concerning staff participation in voluntary standards activities.

2. Bunk Beds Petition CP 88-2

The Commission will consider petition CP 88-2 requesting the Commission to issue a mandatory standard for bunk beds to address risks of injury to children from falls, entrapment, and strangulation.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

PERSON FOR ADDITIONAL INFORMATION CONTACT: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md 20827, 301-492-5800.

Sheldon D. Butts,
Deputy Secretary.
July 18, 1988.

[FR Doc. 88-16420 Filed 7-18-88; 2:26 pm]
BILLING CODE 6355-01-M

COUNCIL ON ENVIRONMENTAL QUALITY

DATE, TIME AND PLACE: Monday, July 25, 1988, 10:00 a.m., Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The Council will be hearing a presentation from representatives of the U.S. Environmental Protection Agency on privatization of environmental financing.
2. Others matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Lynne Grant Mohr, Administrative Specialist, Council on Environmental Quality, 722 Jackson Place, NW.,

Washington, DC 20503; Telephone: (202) 395-5742.

Dinah Beer,
General Counsel.

[FR Doc. 88-16422 Filed 7-18-88; 2:26 pm]
BILLING CODE 3135-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Wednesday, July 20, 1988, 4:30 p.m.

PLACE: 1776 G Street, NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION:

Alan Hausman, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8405.

MATTERS TO BE CONSIDERED:

- Closed: Minutes of May 18, 1988 and June 2, 1988, Board of Directors' Meetings.
- Closed: President's Report.
- Closed: Briefing on Underwriting Guidelines.
- Closed: SS&TG Activities.
- Closed: Financial Report.

Date sent to Federal Register: July 15, 1988.

Maud Mater,

Secretary.

[FR Doc. 88-16368 Filed 7-18-88; 9:55 am]

BILLING CODE 6710-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on July 13, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, July 20, 1988.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda: Proposed book-entry securities service pricing change regarding reversal transactions.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16356 Filed 7-18-88; 8:50 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 2:00 p.m., Sunday July 24, 1988.

PLACE: Mariner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16370 Filed 7-18-88; 9:56 am]

BILLING CODE 6710-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:30 p.m., Wednesday, July 27, 1988.

PLACE: Filene Board Room, 7th Floor, 1776 G. Street, NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of previous open meeting.
2. Economic Commentary.
3. Federal Credit Union Loan Interest Rate Ceiling.
4. Central Liquidity Facility Report and Review of CLF Lending Rate.
5. Insurance Fund Report including Briefing on Normal Operating Level.
6. Semiannual agenda of regulations.
7. Regulatory review of NCUA's rules and regulations:
 - a. Final Amendments to Part 791, Rules of Board Procedure.
 - b. Final Amendments to § 701.33, Reimbursement and Indemnification.
 - c. Final Amendments to § 747.501 through 747.506, Rules and Procedures Relating to Suspension and Removal Actions under section 206(g) of the Federal Credit Union Act.
 - d. Repeal of Part 761, Share Draft Programs for Federally Insured State Chartered Credit Unions.

8. Request by Napa County Employees FCU to Convert to a Community Charter.

TIME AND DATE: 9:00 a.m., Tuesday, July 26, 1988.

PLACE: Filene Board Room, 7th Floor, 1776 G. Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of previous closed meetings.

2. Requests for exemption from § 701.21(h)(2)(ii), NCUA rules and regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Administrative action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

4. Administrative action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), and (8).

5. Proposed reorganization of ADP Oversight Committee. Closed pursuant to exemption (2).

6. NCUA's FY 89 and FY 90 Budgets. Closed pursuant to exemptions (2) and (9)(B).

7. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-16457 Filed 7-18-88; 3:12 pm]

BILLING CODE 7535-01-M

BEST COPY AVAILABLE

Corrections

Federal Register

Vol. 53, No. 130

Wednesday, July 20, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[Docket No. AO-295-A38; DA-88-111]

Milk in the Iowa Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Correction

In proposed rule document 88-15877 beginning on page 26446 in the issue of Wednesday, July 13, 1988, make the following correction:

§ 1079.2 [Corrected]

On page 26446, in the third column, in § 1079.2(c), in the first line, after "Clark," insert "Grundy."

BILLING CODE 1505-01-0

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 1421

Price Support and Production Adjustment Programs

Correction

In rule document 88-11362 beginning on page 20280 in the issue of Friday, June 3, 1988, make the following corrections:

On page 20287, in the third column, in the 16th and 18th lines, "§ 1421.16" should read "§ 1421.18".

BILLING CODE 1505-01-0

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41029; FRL-3381-7]

Twenty-second Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

Correction

In notice document 88-11254 beginning on page 18196 in the issue of Friday, May 20, 1988, make the following corrections:

1. On page 18203, in the second column, in the ninth line, "B-Methyl" should read "B-Methyl".

2. On page 18204, in the third column, in the sixth line under the equation, "<260° C" should read ">260° C".

3. On the same page, in the same column, in the 18th line under the equation, "Procter" was misspelled.

4. On page 18207, in the second column, the 19th line from the bottom should read: "Log Adsorption Coefficient (log K_{oc}):"

5. On page 18208, in the second column, in the first complete paragraph, the 21st line should read "0.35 ug/L of these compounds (Ref. 5)."

BILLING CODE 1505-01-0

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0242]

Hydrocortisone Acetate and Pramoxine Hydrochloride; Drugs for Human Use; Proposal To Withdraw Approval; Opportunity for a Hearing

Correction

In notice document 88-14876 beginning on page 25813 in the issue of Friday, July 1, 1988, make the following corrections:

1. On page 25013, in the first column, under SUMMARY, in the 13th line, between "that" and "hydrochloride" insert "pramoxine".

2. On the same page, in the third column, at the beginning of the fourth and sixth lines, "Cream" should read "Lotion".

BILLING CODE 1505-01-0

Wednesday
July 20, 1988

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

Explosive Materials in the Fireworks Industry; Notice of Proposed Rulemaking

federal register

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

(Notice No. 585; re Notice No. 530)

Explosive Materials in the Fireworks Industry

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend regulations in 27 CFR Part 55 to modify certain regulations and add new sections in Subpart K dealing with storage to specifically address the fireworks industry.

The proposed regulations are a result of increased concern about the number and severity of explosions which have occurred on the premises of special fireworks industry members and recent tests on certain stored fireworks explosive materials.

DATE: Written comments must be received by September 19, 1988.

ADDRESSES: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 189, Washington, DC 20044-0189. Copies of the written comments received in response to this notice will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lawrence White, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7501.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) has become increasingly concerned about the number and severity of explosions which have occurred on the premises of special fireworks plants. Serious explosions have occurred which resulted in multiple deaths, serious injuries, damage to surrounding property, and the partial or complete destruction of special fireworks factories.

ATF is particularly concerned about the safe storage of special fireworks explosive materials. These are large fireworks designed primarily for the purpose of producing visible or audible pyrotechnic effects by combustion, deflagration, or explosion. They are classified as Class B explosives by the

Department of Transportation in 49 CFR 173.88(d).

Most explosions occur while explosive materials are held in a building or area during an assembly process. The quantity and type of special fireworks explosive materials allowed to be held outside an approved storage magazine and in a building or area during an assembly process have not been the subject of specific regulations.

During May of 1985, the Bureau of Mines conducted tests for ATF to determine the sensitivity of special fireworks explosive materials to an accidental explosion when in storage. The results of these tests showed that special fireworks explosive materials are more sensitive to an accidental explosion than previously believed. As a result of these tests and industry recommendations, ATF published ATF Rul. 85-13, A.T.F.Q.B. 1985-3, 47, to provide that:

- (1) No more than 10 pounds of flash powder used in special fireworks may be kept outside of an approved magazine and in any one processing building or area during a day's assembling operations;
- (2) No more than 500 pounds of other explosive materials may be kept outside of an approved magazine and in any one processing building or area during a day's assembling operations; and
- (3) Holding up to 10 pounds of flash powder or 500 pounds of other explosive materials used in special fireworks beyond the completion of the workday will require that the processing building or area be located in accordance with the table of distance requirements of 27 CFR 55.215.

The proposed regulations incorporate the provisions of this ruling by restricting the amount of flash powder and other explosive materials used in fireworks that may be kept outside of an approved magazine and in a processing building or area during a day's manufacturing or assembling operations. Quantities in excess of these amounts are not within the exemption in 27 CFR 55.205 for explosive materials "in the process of manufacture" and must be stored in approved magazines.

The proposed regulations also require that dry explosive powders and mixtures, and finished and unfinished special fireworks in a manufacturing, assembly, or processing premises at the conclusion of a day's operations, are not "in the process of manufacture" or "being handled in the operating process" for the purposes of 27 CFR 55.205. Thus, flash powder and other explosive materials used in fireworks must be stored in approved magazines.

ATF is also proposing by this notice to extend the high explosives classification to flash powder and bulk salutes for storage purposes since they can be made to detonate by means of a blasting cap when unconfined. Under the proposed regulations "bulk salutes" means unfinished salutes and finished salutes which are segregated from other special fireworks. However, when finished salutes have been packed into shipping containers with other special fireworks, they are subject to the same storage requirements as for low explosives.

It is anticipated that the reclassification of flash powder and bulk salutes as high explosives for the purpose of storage will have an adverse economic impact on a number of fireworks industry members.

Specifically, some industry members will incur a one-time cost of upgrading or purchasing a magazine to store fireworks explosive materials. Further, certain industry members have premises where a magazine could not be located to comply with the American Table of Distances.

These industry members would need to relocate their plant premises, reduce capacity or purchase or lease magazines at a location other than their existing premises to and from which their explosive materials would be transported. Therefore, to lessen the impact on existing industry members, ATF is proposing to allow a 12-month period from the effective date of these regulations for existing industry members to comply with the high explosives storage requirements for flash powder and bulk salutes.

In addition to incorporating the provisions of ATF Ruling 85-13 and extending the high explosives classification to flash powder and bulk salutes, ATF is proposing by the notice (1) to establish new "minimum separation of distance" tables applicable to fireworks plants, fireworks process buildings, and fireworks plant magazines, (2) to incorporate provisions of ATF Rul. 79-8, A.T.F.Q.B. 1979-1, 27, relating to the recording of the quantity and description of special fireworks, and (3) to remove the recordkeeping requirement for licensees and permittees selling or disposing of exempt quantities of black powder.

The proposal relating to black powder would implement provisions of Pub. L. No. 96-308, 100 Stat. 449 (1986). Public Participation—Written Comments ATF is issuing this notice of proposed rulemaking to request comments concerning this proposed amendment of 27 CFR Part 55 and the initial regulatory

flexibility analysis. ATF is particularly interested in receiving any available detailed economic impact data during the comment period so that a final economic impact analysis can be made.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 60-day comment period. The request should include reasons why the respondent believes a public hearing is necessary. The Director reserves the right to determine whether a public hearing should be held.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13183 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in: (a) An annual effect on the economy of \$100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this proposal. An initial regulatory flexibility analysis has been prepared and reads as follows.

Initial Regulatory Flexibility Analysis for Explosive Materials in the Fireworks Industry—Regulations (27 CFR Part 55)

Rationale for Agency Action

The law (18 U.S.C. 841-848) sets forth a Federal responsibility over the importation, manufacture, distribution, and storage of explosive materials. Regulations implementing the law contain the procedural and substantive requirements relative to, among other things, the storage of explosive materials. There has been an increase in the number and severity of explosions on the premises of special fireworks

plants and ATF is particularly concerned about the safe storage of special fireworks, explosive materials. The quantity and type of special fireworks explosive materials allowed to be held outside an approved storage magazine and in a building or area during an assembly process have not been subject to specific regulations.

Objective and Legal Basis of the Proposed Rule

A. Objective basis. The objective basis of the proposed regulations is to extend the high explosives classification to certain special fireworks explosive materials for the purpose of storage and to establish new minimum separation of distance tables applicable to fireworks plants, fireworks process buildings, and fireworks plant storage magazines.

B. Legal basis. The legal basis for the proposed regulations is found in 18 U.S.C. 847. This law gives the Secretary of the Treasury broad discretion to enact rules and regulations reasonably necessary for the importation, manufacture, distribution, and safe storage of explosive materials.

Further, Section 846 of Title 18 authorizes the Secretary to prescribe precautionary measures to prevent the recurrence of accidental explosions in which explosive materials were involved. Treasury Department Order No. 120-01 dated June 6, 1972, effective July 1, 1972, (formerly No. 221) delegated to the Bureau of Alcohol, Tobacco and Firearms the function of administering such regulations.

C. Estimate of number of small entities affected and types. It is estimated that this document will affect about 300 small entities involved in the fireworks industry.

Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements Anticipated

A. Reporting requirements. The proposed regulations in this document will not affect reporting requirements.

B. Recordkeeping requirements. The proposed regulations in this document will not affect recordkeeping requirements.

C. Compliance requirements. The compliance requirements of the proposed regulations were determined by a survey conducted to determine the possible economic impact on the fireworks industry in requiring increased standards for the storage and handling of fireworks explosive materials. Approximately 50 percent of the 300 industry members were surveyed to arrive at projected costs in implementing the proposed regulations.

Two types of costs to fireworks industry members were projected in implementing the proposed regulations. A one time cost of upgrading or purchasing a magazine to store certain fireworks explosive materials would average about 2,500 dollars for an estimated 62 industry members for a total of 155,000 dollars.

The other cost, involving an estimated 29 industry members, is more difficult to establish. These industry members have premises on which storage magazines could not comply with the American Table of Distances. Based on their current levels of operation, these industry members would need to relocate their plant premises or purchase or lease magazines at a location other than their existing premises to and from which the explosive materials would be transported. The recurring annual costs to each of these 29 industry members may be as much as 5,000 dollars per year.

Conflicting, Duplicative or Overlapping Federal Rules

None of the requirements of these proposed regulations will conflict, duplicate, or overlap other Federal rules.

Alternatives

A. Multitiering. This concept was not used because the proposed regulations involve requirements protecting the public safety in the storage of special fireworks explosive materials applicable to all persons involved in the fireworks industry.

B. Simplification of requirements. The requirements as they are proposed were determined to be the minimum necessary to improve the safe storage of special fireworks explosive materials.

C. Performance standards. This concept was utilized by recognizing the economic impact on any industry member required to upgrade an existing storage facility to the standards for high explosives or to acquire a new high explosives storage magazine. ATF is proposing to allow a 12-month period from the effective date of these regulations for existing industry members to comply with the high explosives storage requirements for flash powder and bulk salutes. However, existing licensees or permittees who must file a new license or permit application for new or additional premises, or any new applicant desiring to enter into the fireworks business after the effective date of these regulations shall comply with the high explosives storage

requirements before the application is approved.

D. Exemption of small entities. The law does not authorize exemption of any entity from the requirements.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegation, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Drafting Information

The principal author of this document is Lawrence White, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

Obsolete Explosive Materials Rulings

The provisions of the following ATF Rulings and Procedures are either incorporated into or are obsolete by the proposed regulations: ATF Rul. 79-8, A.T.F.Q.B. 1979-1, 27; ATF Rul. 85-13, A.T.F.Q.B. 1985-3, 47; and Industry Circular 62-6, dated July 13, 1982.

Authority and Issuance

27 CFR Part 55—Commerce in Explosives is proposed to be amended as follows:

PART 55—[AMENDED]

Paragraph 1. The authority citation for Part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 55.11 is amended by revising the definition of ammunition to correct a misspelled word, and adding definitions for bulk salutes, bullet-sensitive explosive materials, common fireworks, fireworks, fireworks plant, flash powder, fireworks mixing building, fireworks nonprocess building, fireworks process building, fireworks plant warehouse, fireworks shipping building, pyrotechnic compositions, salute, screen barricade, and special fireworks to read as follows:

§ 55.11 Meaning of terms.

Ammunition. Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and $\frac{1}{2}$ inch and other external burning pyrotechnic hobby fuses. The term does not include black powder.

Bulk salutes. Salute components prior to final assembly into aerial shells, and finished salute shells held separately prior to being packed with other types of special fireworks.

Bullet-sensitive explosive materials. Explosive materials that can be exploded by 150-grain M2 ball ammunition having a nominal muzzle velocity of 2700 fps (824 mps) when fired from a .30 caliber rifle at a distance of 100 ft (30.5 m), measured perpendicular. The test material is at a temperature of 70 to 75 degrees F (21 to 24 degrees C) and is placed against a $\frac{1}{2}$ inch (12.4 mm) steel backing plate.

Common fireworks. Any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in Title 16, Code of Federal Regulations, Parts 1500 and 1507. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Common fireworks are classified as Class C explosives by the U.S. Department of Transportation (DOT).

Fireworks. Any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "common fireworks" or "special fireworks" described by U.S. Department of Transportation in 49 CFR 173.86 and 173.100.

Fireworks mixing building. Any building or area used primarily for mixing and blending pyrotechnic compositions.

Fireworks nonprocess building. Any office building, fireworks plant warehouse, or other building or area in a fireworks plant where no fireworks, pyrotechnic compositions or explosive materials are processed or stored.

Fireworks plant. All land and buildings thereon used for or in connection with the assembly or processing of fireworks, including

warehouses used with or in connection with fireworks plant operations.

Fireworks plant warehouse. Any building or structure used exclusively for the storage of materials which are neither pyrotechnic compositions nor explosive materials used to assemble fireworks.

Fireworks process building. Any mixing building; any building in which pyrotechnic compositions or explosive materials is pressed or otherwise prepared for finish and assembly; any finishing or assembly building; or any building in which fireworks are prepared for shipment, or any area where such activities occur.

Fireworks shipping building. A building used for the packing of assorted special fireworks into shipping cartons for individual public displays and for the loading of packaged displays for shipment to purchasers.

Flash powder. An explosive material intended to produce an audible report and a flash of light when ignited and typically containing potassium perchlorate, sulfur or antimony sulfide, and aluminum metal.

Pyrotechnic compositions. A chemical mixture which, upon burning and without explosion, produces visible, brilliant displays, bright lights, or sounds.

Salute. An aerial shell, classified as a special firework, that contains a charge of flash powder and is designed to produce a flash of light and a loud report as the pyrotechnic effect.

Screen barricade. Any barrier that will contain the embers and debris from a fire or deflagration in a process building, thus preventing propagation of fire to other buildings or areas. Such barriers may be constructed of metal roofing, $\frac{1}{4}$ to $\frac{1}{2}$ inch (6 and 13 mm) mesh screen, or equivalent material. The barrier extends from floor level to a height such a straight line from the top of any side wall of the donor building to the eave line of any exposed building intercepts the screen at a point not less than 5 feet (1.5 m) from the top of the screen. The top 5 feet (1.5 m) of the screen is inclined towards the donor building at an angle of 30 to 45 degrees.

Special fireworks. Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of

pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "common fireworks." Special fireworks are classified as Class B explosives by the U.S. Department of Transportation.

Par. 3. Section 55.28(a)(2) is revised to read as follows:

§ 55.26 Prohibited shipment, transportation, or receipt of explosive materials.

(a) * * *

(2) The lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed 50 pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

Par. 4. Section 55.105 is amended by revising paragraph (g) to read as follows:

§ 55.105 Distributions to nonlicensees and nonpermittees.

(g) A licensee or permittee disposing of surplus stock may sell or distribute commercially manufactured black powder in quantities of 50 pounds or less to a nonlicensee or nonpermittee if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

Par. 5. Section 55.122 is amended by revising paragraphs (b)(4) and (5) and (c)(4) and (5) and removing paragraph (f) to read as follows:

§ 55.122 Records maintained by licensed importers.

(b) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number or special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(c) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size

(length and diameter or diameter only of special fireworks).

Par. 6. Section 55.123 is amended by revising paragraphs (b)(3) and (4), (c)(4) and (5) and (d)(2) and (3) and by removing paragraph (g) to read as follows:

§ 55.123 Records maintained by licensed manufacturers.

(b) * * *

(3) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(4) Name, brand name or description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(c) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(d) * * *

(2) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(3) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

Par. 7. Section 55.124 is amended by revising paragraphs (b) (4) and (5) and (c) (4) and (5) and by removing paragraph (g) to read as follows:

§ 55.124 Records maintained by licensed dealers.

(b) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

(c) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

Par. 8. Section 55.125 is amended by removing paragraph (b)(3) and paragraph (f), by revising paragraph (c) (4) and (5), and redesignating paragraph (g) as paragraph (f) to read as follows:

§ 55.125 Records maintained by licensed manufacturers—limited and permittees.

(c) * * *

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of special fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), special fireworks (sf), etc.) and size (length and diameter or diameter only of special fireworks).

Par. 9. Section 55.127 is revised to read as follows:

§ 55.127 Daily summary of magazine transactions.

In taking the inventory required by §§ 55.122, 55.123, 55.124, and 55.125, a licensee or permittee shall enter the inventory in a record of daily transactions to be kept at each magazine of an approved storage facility; however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. Not later than the close of the next business day, each licensee and permittee shall record by manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day, and the total remaining on hand at the end of the day. Quantity entries for special fireworks may be expressed as the number and size of individual special fireworks in a finished state or as the number of packaged display segments or packaged displays. Information as to the number and size of special fireworks contained in any one packaged display segment or packaged display shall be provided to any ATF officer on request. Any discrepancy which might indicate a theft or loss of explosive materials is to be reported in accordance with § 55.30.

§ 55.130 (Removed)

Par. 10. Section 55.130 is removed.
Par. 11. Section 55.141(b) is revised to read as follows:

§ 55.141 Exemptions.

(b) *Black powder.* Except for the provisions applicable to persons required to be licensed under Subpart D, this part does not apply with respect to commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, as defined in 18 U.S.C. 921(a)(16) or antique devices, as exempted from the term "destructive devices" in 18 U.S.C. 921(a)(4).

Par. 12. Section 55.201 is amended by revising paragraph (a) and adding new paragraphs (d) and (e) to read as follows:

§ 55.201 General.

(a) Section 842(j) of the Act and § 55.29 of this part require that the storage of explosive materials by any person must be in accordance with the regulations in this part. Further, section 846 of this Act authorizes regulations to prevent the recurrence of accidental explosions in which explosive materials were involved. The storage standards prescribed by this subpart confer no right or privileges to store explosive materials in a manner contrary to State or local law.

(d) The regulations set forth in §§ 55.221 through 55.224 pertain to the storage of special fireworks, pyrotechnic compositions and explosive materials used in assembling fireworks.

(e) The provisions of § 55.202(a) classifying flash powder and bulk salutes as high explosives are mandatory after (30-days from the date of publication of the final rule in the *Federal Register*): *Provided*, That those persons who hold licenses or permits under this part on that date shall, with respect to the premises covered by such licenses or permits, comply with the high explosives storage requirements for flash powder and bulk salutes by (12-months from the effective date of the final rule published in the *Federal Register*).

Par. 13. Section 55.202 is amended to revise paragraphs (a) and (b) to read as follows:

§ 55.202 Classes of explosive materials.

(a) *High explosives.* Explosive materials which can be caused to detonate by means of a blasting cap when unconfined (for example, dynamite, flash powders, and bulk salutes). See also § 55.201(e).

(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined (for example, black powder, safety fuses, igniters, igniter cords, fuse lighters, and "special fireworks" defined as Class B explosives by U.S. Department of Transportation regulations in 49 CFR Part 173, except for bulk salutes).

Par. 14. Section 55.206 is amended by revising paragraph (b) to read as follows:

§ 55.206 Location of magazines.

(b) Outdoor magazines in which low explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of low explosives in § 55.219, except that the table of distances in § 55.224 shall apply to the minimum distances for the storage of special fireworks from these locations. The distances shown in § 55.219 may not be reduced by the presence of barricades.

Par. 15. Section 55.221 is added to read as follows:

§ 55.221 Requirements for special fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks.

(a) Special fireworks, pyrotechnic compositions and explosive materials used to assemble fireworks shall be stored at all times as required by this subpart unless they are in the process of manufacture, assembly, packaging, or are being transported.

(b) No more than 500 pounds (227 kg) of pyrotechnic compositions or explosive materials are permitted at one time in any fireworks mixing building, any building or area in which the pyrotechnic compositions or explosive materials are pressed or otherwise prepared for finishing or assembly, or any finishing or assembly building. All pyrotechnic compositions or explosive materials not in immediate use will be stored in covered, non-ferrous containers.

(c) The maximum quantity of flash powder permitted in any fireworks process building is 10 pounds (4.5 kg).

(d) All dry explosive powders and mixtures, partially assembled special fireworks, and finished special fireworks shall be removed from fireworks process buildings at the conclusion of a day's operations and placed in approved magazines.

Par. 16. Sections 55.222 through 55.224 are added to read as follows:

§ 55.222 Table of distances between fireworks process buildings and between fireworks process and fireworks nonprocess buildings.

Net weight of fireworks (pounds) ¹	Special fireworks (feet) ²	Common fireworks (feet) ³
0 to 100.....	57	37
101 to 200.....	59	37
201 to 300.....	77	37
301 to 400.....	85	37
401 to 500.....	91	37
Above 500.....	Not permitted ⁴	Not permitted ⁴

¹ Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.
² The distances in this column apply only with natural or artificial barricades. If such barricades are not used, the distances must be doubled.

³ While common fireworks in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks are subject to regulation. Thus, fireworks process buildings where common fireworks are being processed must meet these requirements.

⁴ A maximum of 500 pounds of in-process pyrotechnic compositions or explosive materials, either loose or in partially-assembled fireworks, is permitted in any fireworks process building. Finished special fireworks may not be stored in a fireworks process building.

⁵ A maximum of 10 pounds of flash powder, either in loose form or in assembled units, is permitted in any fireworks process building. Quantities in excess of 10 pounds must be kept in an approved magazine.

§ 55.223 Table of distances between fireworks process buildings and other specified areas.

DISTANCE FROM PASSENGER RAILWAYS, PUBLIC HIGHWAYS, FIREWORKS PLANT BUILDINGS USED TO STORE COMMON FIREWORKS, MAGAZINES AND FIREWORKS SHIPPING BUILDINGS, AND INHABITED BUILDINGS ¹ ²

Net weight of fireworks (pounds) ¹	Special fireworks (feet)	Common fireworks (feet) ³
0 to 100.....	200	25
101 to 200.....	200	50
201 to 300.....	200	50
301 to 400.....	200	50
401 to 500.....	200	50
Above 500.....	Not permitted	Not permitted

¹ This table does not apply to the separation distances between fireworks process buildings (see § 55.222) and between magazines (see §§ 55.218 and 55.224).

² The distances in this table apply with or without artificial or natural barricade or screen barricades.

However, the use of barricades is highly recommended.

³ Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

⁴ While common fireworks in a finished state are not subject to regulation, explosive materials used to manufacture or assemble such fireworks are subject to regulation. Thus, fireworks process buildings where common fireworks are being processed must meet these requirements.

§ 55.224 Table of distances for the storage of special fireworks (except bulk salutes).

Net weight of fireworks (pounds) ¹	Distance between magazine and inhabited building, passenger railway, or public highway (feet) ² ³	Distance between magazines (feet) ⁴
0 to 1000.....	150	100
1001 to 5,000.....	230	150
5001 to 10,000.....	300	200
Above 10,000.....	Use table § 55.216	

¹ Net weight is the weight of all pyrotechnic compositions, and explosive materials and fuse only.

² For fireworks storage magazines in use prior to (30-days from the date of publication of the final rule in the *FEDERAL REGISTER*), the distances in this table may be halved if properly barricaded between the magazine and potential receptor sites.

³ This table does not apply to the storage of bulk salutes. Use table at § 55.216.

⁴ For the purposes of applying this table, the term "magazine" also includes fireworks shipping buildings for special fireworks.

Signed: June 2, 1988.

Stephen E. Higgins,
Director.

Approved: July 1, 1988.

Salvatore R. Martocchio,
Acting Assistant Secretary for Enforcement.
[FR Doc. 88-16067 Filed 7-19-88; 8:45 am]

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Part III

Department of Defense
General Services
Administration

National Aeronautics and
Space Administration

48 CFR Part 5 et al.
Federal Acquisition Regulations (FAR);
Miscellaneous Amendments; Interim Rule
and Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 5, 6, 9, 13, 14, 15, 17, 19, 22, 23, 25, 30, 31, 35, 42, 45, 47, 52, and 53

(Federal Acquisition Circular 84-38)

Federal Acquisition Regulation (FAR);
Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments and final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-38 amends the Federal Acquisition Regulation (FAR) with respect to the following: Research and Development Contract Procedures (Broad Agency Announcements); Changes to the Government Procurement Code; Subcontracting Plans; Fast Payment Procedures; Furnishing Foreign Items under Small Business-Small Purchase Set-Asides; Use of Standard Form 99; Clarification of Status of Omission of Clean Air and Water Acts Clauses; Capitalization Threshold; Insurance Discount Factors; Symposia Costs; Parcel Post Shipments; Definition of Special Test Equipment; Fly America Act Clause; Evaluation Factors; and Integrity of Unit Prices.

DATES: Effective Dates: August 19, 1988, except as follows:

Item II—(Section 5.301 and Parts 14, 15, 17 and 25)—August 1, 1988.

Items XIII and IX—(Sections 30.404-63 and 30.416-63)—September 19, 1988.

Comment Date: Comments on the interim rule, Section 5.301 and Parts 14, 15, 17, and 25, should be submitted to the FAR Secretariat at the address shown below on or before September 19, 1988, to be considered in the formulation of a final rule. Please cite Item II, FAC 84-38, in all correspondence on this subject.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 84-38, Items I thru XIII. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or

collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

B. Regulatory Flexibility Act

FAC 84-38, Item I. DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule is directed toward achieving uniformity in internal procedures used by Federal agencies in soliciting and awarding contracts for basic research, and in awarding contracts based upon receipt of unsolicited research proposals. Procedures will benefit small entities providing research services to multiple Federal agencies. An Initial Regulatory Flexibility Analysis was performed and submitted to the Chief Counsel for Advocacy of the Small Business Administration and comments were invited from small entities and other interested parties. No comments were received that addressed the Initial Regulatory Flexibility Analysis. Accordingly, the Councils have not prepared a Final Regulatory Flexibility Analysis for the final rule.

FAC 84-38, Item II. Executive Order 12260 (December 31, 1980) implemented the Agreement on Government Procurement pursuant to Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511-2518 and Section 301 of Title 3 of the United States Code). By November 16, 1987, final acceptance of certain amendments was notified by all parties to the Agreement on Government Procurement. The interim rule implements the changes in the Federal Acquisition Regulation. The changes pertain to the extension of the applicability of the Trade Agreements Act to leases of designated country end products, not just purchases. In addition, the determination of applicability of the Act to a particular acquisition is now based on the estimated value of the acquisition, not the offers received. Other corresponding changes are being made to comply with requirements for synopses of award and notification to unsuccessful offerors. This interim rule, therefore, is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR sections will also be considered in accordance

with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88-610 in all correspondence.

FAC 84-38, Items III, VI, VII, XI, XII, and XIII. The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

FAC 84-38, Item IV. It is expected that this final rule will have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). A Final Regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

FAC 84-38, Item V. DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because this final rule is considered to represent a clarification of the policy already in FAR 19.501(f)(2). No comments were received from small entities in response to the proposed rule.

FAC 84-38, Items VIII and IX. DoD, GSA, and NASA certify that the revisions to FAR Part 30, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the changes deal with Cost Accounting Standards (CAS) from which small business concerns are exempt.

FAC 84-38, Item X. DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because meeting, conference, symposia, and seminar costs are not considered a significant cost of doing business in most situations. Furthermore, the revision to the current rule in this case is not a substantial one, but rather an elaboration and

clarification of existing policy defining the types of costs that are allowable as contract costs. No comments were received from any small entities.

C. Determination to Issue an Interim Regulation

FAC 84-38, Item II. A determination has been made under the authority of the Secretary of the Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that this regulation must be issued as an interim regulation to promptly implement the February 14, 1988, amendments to the Agreement on Government Procurement.

D. Public Comments

FAC 84-38, Item I. A proposed rule was published in the Federal Register on May 6, 1987 (52 FR 17280). The comments that were received as a result of the proposed rule were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84-38, Item IV. A proposed rule was published in the Federal Register on December 9, 1986 (51 FR 44410). The comments that were received as a result of the proposed rule were considered by the Councils in the development of this final rule.

FAC 84-38, Item V. A proposed rule was published in the Federal Register on July 29, 1986 (51 FR 27129). The final rule was modified to clarify that both manufacturer and regular dealers are required to provide domestically produced or manufactured products.

FAC 84-38, Items VIII and IX. See Part III—Preambles Published under the FAR System, in Appendix A to Part 30. The supplementary information under Preamble A to 30.404 and Preamble A to 30.416 provides information concerning the publication of the proposed rules and the public comments that were received.

FAC 84-38, Item X. A proposed rule was published in the Federal Register on May 13, 1987 (52 FR 18158). Based upon analysis of the public comments, it was determined that the proposed rule struck a proper balance of all interests concerned, although some minor changes were made to further clarify the rule as suggested by the comments.

FAC 84-38, Item XII. A proposed rule was published in the Federal Register on February 9, 1987 (52 FR 4088). Both Councils reviewed and considered the comments and agreed to proceed with the final rule without change.

Lists of Subjects in 48 CFR Parts 5, 6, 9, 13, 14, 15, 17, 19, 22, 23, 25, 30, 31, 35, 42, 45, 47, 52, and 53.

Government procurement.

Dated: July 15, 1988.

Harry S. Basinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-38 is effective August 19, 1988, except as follows:

Item II—(Section 5.301 and Parts 14, 15, 17, and 25)—August 1, 1988.

Items XIII and IX—(Sections 30.404-63 and 30.416-63)—September 19, 1988.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

John Alderson,

Acting Administrator, General Services Administration.

July 14, 1988.

Federal Acquisition Circular (FAC) 84-38 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Research and Development Contract Procedures (Broad Agency Announcements)

FAR 5.202, 6.003, 6.102, 6.302, 35.001, and 35.016 are revised to clarify procedures to be followed by agencies in awarding contracts based upon receipt of unsolicited research proposals by revising guidance contained within FAR Parts 5 and 6. These revisions are based, in part, upon clarifying amendments made to 10 U.S.C.

2304(d)(1)(A) by section 923(b), Title IX, Pub. L. 96-500, enacted on October 18, 1988. Additionally, this final rule amends FAR Part 35 and specifies procedures to be followed by agencies in soliciting and awarding contracts for basic research pursuant to general solicitations (broad agency announcements) as authorized by the Competition in Contracting Act of 1984, Pub. L. 98-368, and FAR 6.102(d)(2).

Item II—Changes to the Government Procurement Code

FAR 5.301 and Parts 14, 15, 17, and Subpart 25.4 are revised to incorporate changes necessitated by a major renegotiation of the Government Procurement Code of the United States Trade Representative. The primary purpose of the renegotiation was to bring the practices of the Signatories more into line with U.S. practices. The Office of the U.S. Trade Representative

published a notice of these changes in the Federal Register on February 4, 1988 (53 FR 3285).

Executive Order 12260 (December 31, 1980) implemented the Agreement on Government Procurement pursuant to Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511-2518 and 3 U.S.C. 301). The Agreement on Government Procurement was revised with an effective date of February 14, 1988. This item implements changes in Subpart 25.4 and in various other sections. There are two principal changes to Subpart 25.4. They pertain to the extension of the application of the Trade Agreements Act coverage to leases of designated country end products, not just to purchases. In addition, the determination of applicability of the Trade Agreements Act coverage to a particular acquisition is now based on the estimated value of the acquisition, not the offers received. Changes are also being made to Part 5 regarding synopsis of awards; to Parts 14 and 15 regarding the content of the notification to unsuccessful offerors; and to Part 17 regarding the use of options in calculating the estimated value of the acquisition.

The requirements of this interim rule are effective for all solicitations issued on or after August 1, 1988. Also, solicitations issued on or after February 14, 1988, and for which the date established for receipt of offers does not expire prior to August 1, 1988 shall be amended as appropriate to notify offerors of the application of the revised procedures in this interim rule.

Item III—Subcontracting Plans

FAR 9.104-3 and 19.705-6 are revised to clarify the requirements at Section 8(d)(4)(c) of the Small Business Act that the prospective contractor's compliance with subcontracting plans submitted on previous contracts be considered as a factor in determining contractor responsibility for future awards involving subcontracting plans; and to improve coordination and better define responsibilities of contracting officers and contract administration offices associated with administration of subcontracting plans.

Item IV—Fast Payment Procedure

FAR Subpart 13.3 and the related clause at 52.213-1, Fast Payment Procedure, are revised to implement requirements contained in Office of Management and Budget (OMB) Circular A-125, "Prompt Payment," on use of fast payment methods. Specific revisions will (a) allow, rather than mandate, use of fast payment procedures; (b) more

specifically describe the conditions that would justify use of the procedure; and (c) increase the period of time from 90 days to 180 days for verifying contractor delivery of required supplies and for corrective action by the Government as necessary.

Item V—Furnishing Foreign Items Under Small Business-Small Purchase Set-Aside

FAR 19.508(a) and the clause at 52.219-4, Notice of Small Business-Small Purchase Set-Aside, are revised to clarify that acquisitions for supplies are to be made from only either (a) small business concerns furnishing their own manufactured products or (b) small business concerns providing the product of another manufacturer. In either case, such products must be manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

Item VI—Use of Standard Form (SF) 99, Notice of Award of Contract

FAR 22.606-5(b) is deleted to eliminate the need to submit a Standard Form (SF) 99 to the Department of Labor (DOL) whenever SF 279 is not sent to the Federal Procurement Data System. In the Federal Register on March 2, 1987 (52 FR 6146), DOL revised their regulations to discontinue the use of Standard Form 99, Notice of Award of Contract, for contracts subject to the Walsh-Healey Public Contracts Act and eliminate the requirement for contracting agencies to report to DOL's wage and hour division each contract award subject to Walsh-Healey Public Contracts Act.

Item VII—Clarification of Status of Omission of Clean Air and Water Acts Clauses

FAR 23.104 is revised to clarify that the exemptions listed thereunder pertain only to the actions prohibited under 23.103(b).

Item VIII—Capitalization Threshold

FAR 30.404-40(b)(1), 30.404-60(a)(1), and 30.404-60(a)(1)(i), are modified to increase the minimum acquisition cost criterion for capitalization purposes from \$1000 to \$1500.

FAR 30.404-40(b)(1) provides that a contractor's capitalization policy shall designate a minimum service life criterion, which shall not exceed two years, and a minimum acquisition cost criterion, which shall not exceed \$1000. The modification increases the minimum acquisition cost criterion from \$1000 to \$1500 due to the impact of inflation. The purpose of the change is to only require

capitalization of those assets that are of significant value.

The effective date of this modification is September 19, 1988.

This modification of the Cost Accounting Standards shall be followed by each contractor on or after the start of its next cost accounting period, beginning after receipt of a contract to which this modification is applicable.

Recipients of this modification are encouraged to keep the previous version of the Standard until further advised.

Item IX—Insurance Discount Factors

FAR 30.416-50(a)(3)(ii) is modified to delete the requirement to use stated rates in discounting certain self-insured losses to present value.

FAR 30.416-50(a)(3)(ii) provides that, in measuring certain self-insured losses, contractors are to discount these losses to present value where payments to the claimant will not take place for over a year after the loss occurs. If a state provides a discount rate for computing lump-sum settlements, the Standard requires that the state rate be used for computing present value. Otherwise, the Pub. L. 92-41 Treasury Rate is to be used. The modification to FAR 30.416-50(a)(3)(ii) requires use of the Treasury Rate in all cases. The purpose of the modification is to provide a more accurate valuation of the contractor's liability.

The effective date of this modification is September 19, 1988.

This modification of the Cost Accounting Standards shall be followed by each contractor on or after the start of its next cost accounting period beginning after receipt of a contract to which this modification is applicable.

Recipients of this modification are encouraged to keep the previous version of the Standard until further advised.

Item X—Symposia Costs

There has been a proliferation of non-Federal Government sponsored symposia resulting in possibly unreasonable costs being charged against Government contracts. In addition, Government contracting officers and auditors have found that the previous cost principle at FAR 31.205-43 did not address the attendance of company employees at such activities, it did not describe the circumstances in which the cost of attendance by individuals who are not employed by the contractor might be allowable, and it did not distinguish between setting up or sponsoring meetings, conferences, symposia, and seminars and attending those events. This revised allowability rule clarifies the policy of the Government with respect to these costs,

and describes more specifically the nature of costs which are allowable. The revisions do not reflect or result from a change in allowability policy.

Item XI—Parcel Post Eligible Shipments

FAR 42.1404-1 is revised to incorporate additional procedures and limits for the use of parcel post eligible shipments. This will reduce handling cost and avoid additional delays in delivery of these shipments.

Item XII—Definition of Special Test Equipment

FAR 45.101 and the clause at 52.245-18, Special Test Equipment, are revised to reduce the possibility of misclassification of test equipment as either or special or general purpose. The clause and definition now provide a positive statement that general purpose components may be considered special when they are interconnected and interdependent.

Item XIII—Fly America Act Clause

FAR 47.405 and the clause 52.247-63, Preference for U.S.-Flag Air Carriers, are revised to clarify the statement of existing Government policy and when the clause should be included in contracts. This final rule clarifies that the clause should be included in contracts whenever international air transportation of Government-owned property may occur under the contract and not just when such transportation is required under the contract.

Therefore, 48 CFR Parts 5, 6, 9, 13, 14, 15, 17, 19, 22, 23, 25, 30, 31, 35, 42, 45, 47, 52 and 53 are amended as set forth below.

The interim rules in FAC 84-28, published in the Federal Register on June 9, 1987 (52 FR 21884), amending section 15.606 pertaining to Item III, Evaluation Factors, and amending section 15.612 and the clause at 52.215-26 pertaining to Item IV, Integrity of Unit Prices, are hereby adopted as final rules without change.

1. The authority citation for 48 CFR Parts 5, 6, 9, 13, 14, 15, 17, 19, 22, 23, 25, 30, 31, 32, 35, 42, 45, 47, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 496(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.202 is amended by revising paragraph (a)(8) to read as follows:

5.202 Exceptions.

(a) * * *

(8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see 6.003) and publication of any notice complying with 5.207 would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see 6.302-1(a)(2)(i)).

3. Section 5.301 is amended by revising the first sentence in paragraph (a) and by adding paragraph (c) to read as follows:

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsize in the Commerce Business Daily (CBD) awards exceeding \$25,000 that (1) are subject to the Trade Agreements Act (see 25.402 and 25.403), or (2) are likely to result in the award of any subcontracts. * * *

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers shall submit synopses in sufficient time to permit their publication in the CBD not later than 60 days after award.

PART 6—COMPETITION REQUIREMENTS

4. Section 6.003 is amended by adding in alphabetical order the definition "Unique and innovative concept" to read as follows:

6.003 Definitions.

"Unique and innovative concept," when used relative to an unsolicited research proposal, means that, in the opinion and to the knowledge of the Government evaluator, the meritorious proposal is the product of original thinking submitted in confidence by one source; contains new novel or changed concepts, approaches, or methods; was not submitted previously by another; and, is not otherwise available within the Federal Government. In this context, the term does not mean that the source has the sole capability of performing the research.

5. Section 6.102 is amended by revising paragraph (d)(2) to read as follows:

6.102 Use of competitive procedures.

(d) * * *
(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from—

6. Section 6.302-1 is amended by revising paragraph (a)(2)(i) to read as follows:

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) * * *
(2) * * *
(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that (A) demonstrates a unique and innovative concept, or, demonstrates a unique capability of the source to provide the particular research services proposed; (B) offers a concept or services not otherwise available to the Government; and (C) does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C. 2304(d)(1)(A) and 41 U.S.C. 253(d)(1)(A).)

PART 9—CONTRACTOR QUALIFICATIONS

7. Section 9.104-3 is amended by adding a fourth sentence in paragraph (c) to read as follows:

9.104-3 Application of standards.

(c) * * * Prior compliance with subcontracting plans required by Subpart 19.7 shall be considered in determining the responsibility of an offeror bidding on a contract requiring a subcontracting plan.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

8. Section 13.301 is amended by revising the first sentence of the introductory text to read as follows:

13.301 General.

The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. * * *

9. Section 13.302 is amended by revising both the introductory text and paragraph (a); by redesignating the

existing paragraphs (b) and (c) as (c) and (d); and by adding new paragraphs (b), (e), and (f) to read as follows:

13.302 Conditions for use.

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(a) Individual orders do not exceed \$25,000 except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the purchasing office at that activity.

(c) The purchasing instrument is a firm-fixed-price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure: (1) documenting evidence of contractor performance under fast payment acquisitions, (2) timely feedback to the contracting officer in case of contractor deficiencies, and (3) identification of suppliers who have a current history of abusing the fast payment procedure. (Also see Subpart 9.1.)

PART 14—SEALED BIDDING

10. Section 14.408-1 is amended by revising paragraph (a) to read as follows:

14.408-1 Award of unclassified contracts.

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)—

(i) Notify unsuccessful bidders promptly that their bids were not accepted;

(ii) Extend appreciation for the interest the unsuccessful bidders have shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(2) For acquisitions subject to the Trade Agreements Act (see 25.405(e)), within 7 working days after a contract award, agencies shall give unsuccessful offerors from designated countries written notice stating—

- (i) That their offers were not accepted;
- (ii) That a contract has been awarded;
- (iii) The dollar amount of the successful offer; and
- (iv) The name and address of the successful offeror.

PART 15—CONTRACTING BY NEGOTIATION

11. Section 15.1001 is amended by revising paragraph (c)(2) to read as follows:

15.1001 Notifications to unsuccessful offerors.

(c) * * *

(2) For acquisitions subject to the Trade Agreements Act (see 25.405(e)), provide the information in subparagraph (c)(1) of this section within 7 working days after a contract award to unsuccessful offerors from designated countries.

PART 17—SPECIAL CONTRACT METHODS

12. Section 17.203 is amended by adding paragraph (h) to read as follows:

17.203 Solicitations.

(h) See 25.402(a)(4) regarding use of options in calculating the estimated contract amount for application of the Trade Agreements Act threshold.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.506 [Amended]

13. Section 19.506 is amended by inserting the word "or" before the words "the Trust Territory" and by removing in paragraph (a)(1) the words "or the District of Columbia."

14. Section 19.705-6 is amended by adding paragraph (e) to read as follows:

19.705-6 Postaward responsibilities of the contracting officer.

(a) Forwarding a copy of each plan, or a determination that there is no requirement for a subcontracting plan, to the cognizant contract administration office.

PART 22—ACQUISITION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

15. Section 22.608-5 is revised to read as follows:

22.608-5 Award.

When a contract subject to the Act is awarded, the contracting officer, in accordance with regulations or instructions issued by the Secretary of Labor and individual agency procedures, shall furnish to the contractor DOL Publication WH-1313, Notice to Employees Working on Government Contracts.

PART 23—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

16. Section 23.104 is amended by revising paragraphs (a) and (c) to read as follows:

23.104 Exemptions.

(a) Except as provided in paragraphs (b) and (c) of this section, contracts and subcontracts are not subject to the restriction in 23.103(b) if they are (1) \$100,000 or under; or (2) for indefinite quantities and the contracting officer believes that the amount ordered in any year under the contract will not exceed \$100,000.

(c) The agency head may exempt any contract, subcontract, or class of contracts or subcontracts from the requirement in 23.103(b) for 1 year when it is in the paramount interest of the United States to do so.

PART 25—FOREIGN ACQUISITION

17. Section 25.105 is amended by adding paragraph (d) to read as follows:

25.105 Evaluating offers.

(d) The evaluation in paragraph (a) of this section shall not be applied to offers of Israeli end products at or above \$50,000 (see 25.402(a)(2)).

18. Section 25.402 is amended by revising paragraph (a)(1); by adding paragraphs (a)(3), (a)(4), and (f); and by revising paragraphs (c) and (d) to read as follows:

25.402 Policy.

(a)(1) Executive Order 12260 requires the U.S. Trade Representative to set the dollar threshold for application of the Trade Agreements Act. The threshold will be published in the Federal Register and will be distributed through agency procedures on an expedited basis. When the value of the proposed acquisition of

an eligible product is estimated to be at or over the dollar threshold, agencies shall evaluate offers for an eligible product without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (see Subpart 25.3). When the value of the proposed acquisition is estimated to be below the Trade Agreements Act threshold, the restrictions of the Buy American Act or the Balance of Payments Program shall be applied to foreign offers, except as noted in subparagraph (a)(2) of this section (see 25.105).

(3) To determine whether the Trade Agreements Act applies to the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase), the contracting officer shall calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of this acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by 48.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(4) If a contemplated acquisition includes an option clause (see Subpart 17.2), when calculating the threshold for application of Trade Agreements Act provisions include the value of all options.

(c) Except when waived under section 302(b)(2) of the Trade Agreements Act, there shall be no acquisition of foreign end products subject to the Act unless the foreign end products are designated country end products or Caribbean Basin country end products.

(d) No requirement for the acquisition of eligible products shall be divided with the intent of reducing the estimated value of the acquisition below the dollar threshold addressed in paragraph (a) of this section.

(f) Subject to the provisions of U.S. law and regulation, a supplier established in a designated country shall not be accorded less favorable treatment than is accorded to another

supplier established in that country on the basis of—

- (1) Foreign ownership or affiliation, or
- (2) Where the goods being supplied were produced, provided that the country of production is a designated country.

19. Section 25.403 is amended by revising paragraphs (a) and (b); and by removing and reserving paragraph (k) to read as follows:

25.403 Exceptions.

(a) An acquisition of an eligible product where the estimated value of the acquisition falls below the Trade Agreements Act dollar thresholds discussed in 25.402(a);

(b) Products of countries (1) not listed in 25.401, or (2) barred by 25.402(c);

(k) [Reserved]

20. Section 25.405 is amended by revising the introductory text and paragraph (e) to read as follows:

25.405 Procedures.

When the Trade Agreements Act applies, the following procedures shall be used:

(e) Within 7 working days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated countries written notice in accordance with 14.408-1(a) (2) and 15.1001 (c) (2).

PART 30—COST ACCOUNTING STANDARDS

21. Section 30.307 is amended by revising the first, fifth, and sixth sentences to read as follows:

30.307 Cost Accounting Standards Preambles.

Appendix A of this part contains the nonregulatory preambles to the Cost Accounting Standards, preambles to related Rules and Regulations, and preambles published under the FAR System. * * * Part I, Preambles to the Cost Accounting Standards, and Part II, Preambles to the Related Rules and Regulations, published by the Cost Accounting Standards Board, were originally published in Title 4 of the Code of Federal Regulations and are only published in the looseleaf edition of the FAR. Part III contains preambles published under the FAR system that are published in the Appendix A to Part 30 of Title 48, as well as in the looseleaf version of the FAR.

22. Sections 30.401-62 and 30.401-63 are added and reserved to read as follows:

30.401-62 Exemption. [Reserved]

30.401-63 Effective date. [Reserved]

23. Sections 30.402-62 and 30.402-63 are added and reserved to read as follows:

30.402-62 Exemption. [Reserved]

30.402-63 Effective date. [Reserved]

24. Sections 30.403-62 and 30.403-63 are added and reserved to read as follows:

30.403-62 Exemption. [Reserved]

30.403-63 Effective date. [Reserved]

30.404-40 [Amended]

25. Section 30.404-40 is amended in paragraph (b)(1) by removing in the second sentence the figure "\$1,000" and inserting in its place the figure "\$1,500."

30.404-60 [Amended]

26. Section 30.404-60 is amended by removing in the second sentence of paragraph (a)(1) the figure "\$1,000" and inserting in its place the figure "\$1,500"; and by removing in the first sentence of paragraph (a)(1)(i) the figure "\$1,200" and inserting in its place the figure "\$1,700."

27. Sections 30.404-61 and 30.404-62 are added and reserved to read as follows:

30.404-61 Interpretation. [Reserved]

30.404-62 Exemption. [Reserved]

28. Section 30.404-63 is added to read as follows:

30.404-63 Effective date.

The effective date of the modifications to 30.404-40 (b) (1), 30.404-60 (a)(1), and 30.404-60 (a)(1)(i), which increase the minimum acquisition cost criterion for capitalization of tangible capital assets to \$1,500, is September 19, 1988. The modification shall be applied to accrued expenditures for acquisition of tangible capital assets on or after the start of the contractor's next cost accounting period, beginning after receipt of a contract to which the modification is applicable.

29. Sections 30.405-61, 30.405-62, and 30.405-63 are added and reserved to read as follows:

30.405-61 Interpretation. [Reserved]

30.405-62 Exemption. [Reserved]

30.405-63 Effective date. [Reserved]

30. Sections 30.406-61, 30.406-62, and 30.406-63 are added and reserved to read as follows:

30.406-61 Interpretation. [Reserved]

30.406-62 Exemption. [Reserved]

30.406-63 Effective date. [Reserved]

31. Sections 30.407-61, 30.407-62, and 30.407-63 are added and reserved to read as follows:

30.407-61 Interpretation. [Reserved]

30.407-62 Exemption. [Reserved]

30.407-63 Effective date. [Reserved]

32. Sections 30.408-61, 30.408-62, and 30.408-63 are added and reserved to read as follows:

30.408-61 Interpretation. [Reserved]

30.408-62 Exemption. [Reserved]

30.408-63 Effective date. [Reserved]

33. Sections 30.409-61, 30.409-62, and 30.409-63 are added and reserved to read as follows:

30.409-61 Interpretation. [Reserved]

30.409-62 Exemption. [Reserved]

30.409-63 Effective date. [Reserved]

34. Sections 30.410-61, 30.410-62, and 30.410-63 are added and reserved to read as follows:

30.410-61 Interpretation. [Reserved]

30.410-62 Exemption. [Reserved]

30.410-63 Effective date. [Reserved]

35. Sections 30.411-61, 30.411-62, and 30.411-63 are added and reserved to read as follows:

30.411-61 Interpretation. [Reserved]

30.411-62 Exemption. [Reserved]

30.411-63 Effective date. [Reserved]

36. Sections 30.412-61, 30.412-62, and 30.412-63 are added and reserved to read as follows:

30.412-61 Interpretation. [Reserved]

30.412-62 Exemption. [Reserved]

30.412-63 Effective date. [Reserved]

37. Sections 30.413-61, 30.413-62, and 30.413-63 are added and reserved to read as follows:

30.413-61 Interpretation. [Reserved]

30.413-62 Exemption. [Reserved]

30.413-63 Effective date. [Reserved]

38. Section 30.414-61 is redesignated as 30.414-62 and sections 30.414-61 and

30.414-63 are added and reserved to read as follows:

30.414-61 Interpretation. [Reserved]

30.414-63 Effective date. [Reserved]

39. Sections 30.415-61, 30.415-62, and 30.415-63 are added and reserved to read as follows:

30.415-61 Interpretation. [Reserved]

30.415-62 Exemption. [Reserved]

30.415-63 Effective date. [Reserved]

40. Section 30.416-50 is amended by revising paragraph (a)(3)(ii) to read as follows:

30.416-50 Techniques for application.

- (a) . . .
- (3) . . .

(ii) If a loss has been incurred and the amount of the liability to a claimant is fixed or reasonably certain, but actual payment of the liability will not take place for more than 1 year after the loss is incurred, the amount of the loss to be recognized currently shall be the present value of the future payments, determined by using a discount rate equal to the interest rate as determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, in effect at the time the loss is recognized. Alternatively, where settlement will consist of a series of payments over an indefinite time period, as in workmen's compensation, the contractor may follow a consistent policy of recognizing only the actual amounts paid in the period of payment.

41. Sections 30.416-61 and 30.416-62 are added and reserved to read as follows:

30.416-61 Interpretation. [Reserved]

30.416-62 Exemption. [Reserved]

42. Section 30.416-63 is added to read as follows:

30.416-63 Effective date.

The effective date of the modification deleting the reference to state discount rates at 30.416-50(a)(3)(ii), is September 19, 1988. The modification shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract to which the modification is applicable.

43. Sections 30.417-61, 30.417-62, and 30.417-63 are added to read as follows:

30.417-61 Interpretation. [Reserved]

30.417-62 Exemption. [Reserved]

30.417-63 Effective date. [Reserved]

30.418-61 [Redesignated as 30.418-62]

44. Section 30.418-61 is redesignated as 30.418-62 and sections 30.418-61 and 30.418-63 are added and reserved to read as follows:

30.418-61 Interpretation. [Reserved]

30.418-63 Effective date. [Reserved]

30.420-61 [Redesignated as 30.420-62]

45. Section 30.420-61 is redesignated as 30.420-62 and new sections 30.420-61 and 30.420-63 are added and reserved to read as follows:

30.420-61 Interpretation. [Reserved]

30.420-63 Effective date. [Reserved]

46. Appendix A to Part 30 is added to read as follows:

Appendix A to Part 30—Preambles to the Cost Accounting Standards

Part I—Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board

Note: Preambles to the Cost Accounting Standards published by the Cost Accounting Standards Board appear in Title 4 of the Code of Federal Regulations and are republished in the looseleaf edition of the FAR.

Part II—Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board

Note: Preambles to the Related Rules and Regulations published by the Cost Accounting Standards Board appear in Title 4 of the Code of Federal Regulations and are republished in the looseleaf edition of the FAR.

Part III—Preambles Published Under the FAR System

Preamble A to 30.404, Capitalization of Tangible Assets

This final rule, in Federal Acquisition Circular (FAC) 84-38, revises 30.404-40(b)(1), 30.404-60(a)(1), and 30.404-60(a)(1)(i).

Summary

Section 30.404 requires that contractors have written policies for capitalization which must include a minimum acquisition cost criterion of \$1000. The Standard is being amended to raise the threshold to \$1500. The purpose of the change is to permit contractors to adopt practices appropriated in today's economy. *Effective date.* The effective date of this modification is September 19, 1988.

Supplementary Information:

Background

The CAS Board established the minimum acquisition cost criterion for capitalization at \$500 when it originally promulgated CAS 404

in 1973. The Board's initial \$500 limitation encompassed the practices of 87 percent of the companies whose Disclosure Statements were filed with the Board. In the promulgation comments to the Standard, the Board recommended that the special limits in the standard "... may need to be reviewed in the future ... (and will be revised) promptly if developments warrant a change."

On March 3, 1980, the Board *did* revise the limitation upward to \$1000 as it recognized that circumstances had changed significantly since the promulgation of Standard 404. The Board found that the performance of several official indices showed increases from 60 to 80 percent and a survey of companies not influenced by the limitation of Standard 404 showed a significant number using \$1000 as the minimum criterion for capitalization.

The impact of inflation has continued over the 7 years since 1980, although at a lower level. Indices from the Commerce Department for the implicit price deflators on nonresidential structures and machinery and equipment showed increases from 20 to 35 percent over the period 1979 through 1985. When applied to the current \$1000 criterion, this yields values from \$1300 to \$1350. In addition, economic projections showed inflation levels rising slightly from 1986 through 1989. Consequently, this change increases the minimum acquisition cost criterion for capitalization of tangible capital assets to \$1500 to cover both actual and projected price increases.

The amendment which is now being promulgated is derived directly from the proposed rule which was published in the Federal Register on July 9, 1986 (51 FR 24971), with an invitation for interested parties to submit comments.

Four letters of comment were received on the July 9, 1986, proposal. Only one letter directly addressed the appropriateness of the proposed revisions to 30.404. That comment stated that inflation should not be the motivating factor in determining significant costs for capitalization, but rather materiality of the cost should be the factor in determining significance.

The CAS Board's comments in the CAS 404 preamble and its action to increase the capitalization threshold based upon inflation, discussed above, indicate that the Board considered the materiality and significance of asset acquisition cost to be directly related to the level of prices in the economy. The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council agree with the CAS Board's outlook on this matter and expect the increase in capitalization threshold provided in this modification to 30.404 will be beneficial to Government contract costing by not requiring capitalization of assets that are of insignificant value.

Preamble A to 30.416, Accounting for Insurance Costs

This final rule, in Federal Acquisition Circular (FAC) 84-38, revises 30.416-50(a)(3)(ii).

Summary

FAR 30.416-50(a)(3)(ii) revisions delete the requirement to use state rates in discounting certain self-insured losses to present value.

Effective date: The effective date of this modification is September 19, 1988.

This modification shall be followed by each contractor on or after the start of its next cost accounting period, beginning after receipt of a contract to which this modification is applicable.

Supplementary Information

Background

Section 30.416 provides that the amount of insurance cost to be assigned to a cost accounting period is the projected average loss (PAL) for that period plus insurance administration expense in that period. The PAL is either the insurance premium, where the risk of loss is covered by the purchase of insurance, or a self-insurance charge, where the exposure to risk is not covered by the purchase of insurance. Where it is probable that the actual amount of losses will not differ significantly from the PAL, the actual amount of losses may be considered to represent the PAL for the period as the self-insurance charge.

In self-insurance, when the actual amount of losses is being used to represent the PAL, contractors are to discount those losses to present value, where payments to the claimant will not take place for over a year after the loss occurs. If a state provides a discount rate for computing lump-sum settlements, 30.416 requires that the state rate be used for computing present value. Otherwise, the Pub. L. 92-41 Treasury rate is to be used. The differing rates specified by the states, and the lack of specified rates in some states, result in inconsistent treatment of self-insurance charges on defense contracts.

The purpose of requiring a present value computation for contract cost accounting purposes is to recognize the time value of money for funds advanced to and used by the contractor for extended periods before being disbursed. The Pub. L. 92-41 Treasury rate is generally specified for this purpose. The majority of state laws covering worker's compensation insurance specify a discount rate in the range of 3-6 percent. The use of a low rate results in a larger settlement than would use of a current money market rate. The purpose of low state rates is to discourage lump-sum settlements. This purpose is unrelated to that of fair valuation for contract cost accounting purposes. The use of state rates may produce inaccurate measures of present values and will most certainly create inconsistencies in the pricing of contracts due to the lack of consistent determinations of present values. Consequently, the proposed rule, published in the Federal Register on July 9, 1986 (51 FR 24788), deleted the reference to state discount rates at 30.416-50(a)(3)(ii) and required use of the Pub. L. 92-41 Treasury rate in all cases.

Four comments were received in response to the proposed rule. None of the comments directly challenged the appropriateness of the proposed revision. Therefore, no changes were made to the proposed rule as a result of the public comments.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

47. Section 31.205-43 is amended by revising paragraph (c) to read as follows:

31.205-43 Trade, business, technical and professional activity costs.

(c) When the principal purpose of a meeting, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity:

- (1) Costs of organizing, setting up, and sponsoring the meetings, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;
- (2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and
- (3) Costs of attendance by individuals who are not employees of the contractor, *provided* (i) such costs are not also reimbursed to the individual by the employing company or organization, and (ii) the individual's attendance is essential to achieve the purpose of the conference, meeting, symposium, etc.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.001 [Amended]

48. Section 35.001 is amended by adding in alphabetical order the definition "Broad agency announcement" to read as follows:

"Broad agency announcement" means a general announcement of an agency's research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government's needs (see 6.102(d)(2)).

49. Section 35.016 is added to read as follows:

35.016 Broad agency announcement.

(a) *General.* This paragraph prescribes procedures for the use of the broad agency announcement (BAA) with Peer or Scientific Review (see 6.102(d)(2)) for the acquisition of basic and applied research and that part of development not related to the development of a specific system or hardware procurement. BAA's may be used by agencies to fulfill their requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific

system or hardware solution. The BAA technique shall only be used when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated.

(b) The BAA, together with any supporting documents, shall—

- (1) Describe the agency's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;
- (2) Describe the criteria for selecting the proposals, their relative importance and the method of evaluation;
- (3) Specify the period of time during which proposals submitted in response to the BAA will be accepted; and
- (4) Contain instructions for the preparation and submission of proposals.

(c) The availability of the BAA shall be published in the Commerce Business Daily and, if authorized pursuant to Subpart 5.5, may also be published in noted scientific, technical, or engineering periodicals. The notice shall be published no less frequently than annually.

(d) Proposals received as a result of the BAA shall be evaluated in accordance with evaluation criteria specified therein through a peer or scientific review process. Written evaluation reports on individual proposals will be necessary but proposals need not be evaluated against each other since they are not submitted in accordance with a common work statement.

(e) The primary basis for selecting proposals for acceptance shall be technical, importance to agency programs, and fund availability. Cost realism and reasonableness shall also be considered to the extent appropriate.

(f) Synopsis under Subpart 5.2, Synopses of Proposed Contract Actions, of individual contract actions based upon proposals received under the BAA is not required. The notice published pursuant to subparagraph (c), of this section, fulfills the synopsis requirement.

PART 42—CONTRACT ADMINISTRATION

50. Section 42.1404-1 is amended by revising the section title and by adding a new third and a new fourth sentence to paragraph (a)(1) to read as follows:

42.1404-1 Parcel post eligible shipments.

(a)(1) . . . Parcel post eligible shipments for overseas destinations will not be sent via Small Package Delivery services or parcel post to CONUS military air or water terminals. These

shipments will be mailed through the APO or FPO to the overseas user. . . .

PART 45—GOVERNMENT PROPERTY

51. Section 45.101(a) definition "Special test equipment" is revised to read as follows:

45.101 Definitions.

"Special test equipment," as used in this part, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes. . . .

PART 47—TRANSPORTATION

47.405 [Amended]

52. Section 47.405 is amended in the first sentence by removing the words "be required" and inserting in their place the word "occur".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

53. Section 52.213-1 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(April 1984)" and inserting in its

place the date "(JUL 1988)"; by revising the last sentence in paragraph (b); and by removing both derivation lines following "(End of clause)" to read as follows:

52.213-1 Fast Payment Procedure.

(b) . . . The Contractor shall either replace, repair, or correct those supplies promptly at the Contractor's expense, but only if instructions to do so are furnished by the Contracting Officer within 180 days from the date title to the supplies vests in the Government. . . .

54. Section 52.219-4 is revised to read as follows:

52.219-4 Notice of Small Business-Small Purchase Set-Aside.

As prescribed in 19.508(a), insert the following provision:

Notice of Small Business-Small Purchase Set-Aside (Jul 1988)

Quotations under this acquisition are solicited from small business concerns only. If this purchase is for supplies, it will be made only from a small business concern furnishing its own manufactured product, or from a small business concern providing the product of another manufacturer. In either case, such product must be manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands. Quotations that are not from a small business shall not be considered and shall be rejected. (End of provision)

55. Section 52.225-3 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUL 1988)"; by revising paragraph (b)(4); and by removing both derivation lines following "(End of clause)" to read as follows:

52.225-3 Buy American Act—Supplies.

(b) . . .

(4) For which the agency determines the cost to be unreasonable (see section 25.105 of the Federal Acquisition Regulation). . . .

56. Section 52.245-18 is amended by inserting in the introductory text a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the words "(JUL 1988)"; by revising paragraph (a) of the clause; and by removing the derivation line following "(End of clause)" to read as follows:

52.245-18 Special test equipment.

(a) "Special test equipment," as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes. . . .

52.247-63 [Amended]

57. Section 52.247-63 is amended in the first sentence of the introductory text by inserting a colon following the word "clause" and removing the remainder of the paragraph.

PART 53—FORMS

53.222 [Amended]

58. Section 53.222 is amended by removing in paragraph (b) the words "(See 22.606-5(b).)".

[FR Doc. 88-16269 Filed 7-19-88; 9:45 am]

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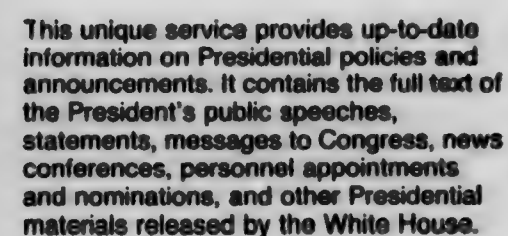
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210 and 250

Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Food Distribution Program Regulations (7 CFR Part 250) and the National School Lunch Program Regulations (7 CFR Part 210). This amendment will implement those provisions of Pub. L. 100-237 that relate to: (1) Dissemination of summaries of product specifications to recipient agencies; (2) semiannual collection of commodity acceptability information from recipient agencies (including a change in the submission dates for State Food Distribution Advisory Council Reports); (3) purchase of domestically-produced products; (4) testing and monitoring of processed commodities; (5) allocation procedures; (6) establishing commodity values; and (7) offering the per meal value of commodities to school food authorities. These changes will improve the manner in which commodities are distributed.

DATES: The provisions contained in this rule are effective in accordance with the following chart. Comments must be received on or before October 10, 1988.

Section	Description	Effective date
210.27(c)	State food distribution advisory council report submission dates.	Upon publication.

Section	Description	Effective date
250.3	Definition of "food product produced in the U.S."	Jan. 8, 1988.
250.13(a)(4)	Allocation procedures.	Upon publication.
250.13(a)(5)	Commodity value.	Jan. 8, 1988.
250.13(f)	Commodity specifications.	May 7, 1988.
250.13(g)	Commodity acceptability information.	Do.
250.17(d)	Commodity acceptability report.	Do.
250.23	"Buy American"	Jan. 8, 1988.
250.30(b)(1)	Processing acceptability testing.	Oct. 4, 1988.
250.47(a)	Food distribution program on Indian reservations.	May 7, 1988.
250.48(c)	Offering the per meal value.	Jan. 8, 1988.

ADDRESS: Comments should be sent to: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 508, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, at (703) 756-3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12281 and has not been classified major because it does not meet any of the three identified under the Executive Order. Compliance with the provisions in this rule will neither have an annual effect on the economy of more than \$100 million or more nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule implements a number of provisions contained in Pub. L. 100-237. The law requires that those provisions relative to the purchase of domestically-produced products, the establishment and use of commodity value information and offering the national per meal commodity value take effect upon the date of enactment of the Act. Thus, these provisions are being made effective without prior public comment retroactive to January 8, 1988.

The statute also requires that the Secretary implement those provisions relative to the collection of commodity acceptability information and the dissemination of summaries of product specifications within 120 days of enactment of the Act. Thus, in order to implement these provisions within the timeframes established in the law, those provisions of the rule are being made effective without prior public comment retroactive to May 7, 1988.

Pub. L. 100-237 requires the Secretary to establish Departmental allocation procedures in the regulations within 270 days of enactment. The regulatory provision regarding the allocation of commodities to States reflects current standard Departmental operations. Since this provision merely codifies existing procedures which would remain in effect during any period of public comment, it is being made effective upon publication with a request for public comment.

With regard to those provisions that relate to the testing and monitoring of processed end products, the Department is implementing these provisions by restating the requirements exactly as set forth in the law. Thus, they are being adopted without prior public comment.

The provision regarding the submission of the State Food Distribution Advisory Council Report is to extend the current submission dates. Since this amendment will provide additional time to submit the report it is being implemented without prior public comment upon publication of this interim rule.

For the reasons stated above, Anna Kondratas, Administrator of the Food and Nutrition Service (FNS) has found, in accordance with 5 U.S.C. 553(b), that prior notice and comment is impracticable, unnecessary and contrary to public interest, good cause exists for publishing this rule without prior public notice and comment. For these same

reasons, the Administrator has found, in accordance with 5 U.S.C. 553(d), that good cause exists for making the noted provisions of this rule effective less than 30 days after publication. However, since the Department believes that an opportunity for public comment could result in improved and simplified administration of the rule, it is being published as an interim rule with a 90-day comment period.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 801-812). Anna Kondratas, Administrator of FNS, has certified that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520), additional recordkeeping and reporting requirements contained in §§ 250.13(k) and 250.17(d) of this interim rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under Control Number 0584-0007.

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12472 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and the final rule related notice published at 48 FR 29114, June 24, 1983).

Background

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of FNS and distributing agencies with regard to the distribution and use of federally-donated foods. The current regulations provide for the distribution of donated foods to a variety of domestic outlets, including entities participating in the Child Nutrition Programs, Nutrition Programs for the Elderly and Charitable Institutions.

On January 8, 1988, President Reagan signed the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100-237). The purpose of the law is to improve the manner in which agricultural commodities are distributed to recipient agencies, to improve the quality of the commodities that are distributed and to increase the degree to which the distribution responds to the needs of recipient agencies while still carrying out the Department's responsibilities to support agricultural prices and remove surpluses from the market. Some of the provisions contained in the law which are nondiscretionary or for which legislated

timeframes for implementation are extremely limited are being implemented through this interim rule. In addition, provisions which were effective upon enactment of the legislation are included.

For further information concerning the Department's action to date in implementation of Pub. L. 100-237, see the Federal Register "Notice of Implementation of Pub. L. 100-237" which was published on April 19, 1988 (53 FR 12794) and the interim rule published on June 16, 1988 (53 FR 22406). The notice advises interested parties of how the Department has implemented or intends to implement all provisions of this law and the interim rule implements some of the requirements of the law.

State Food Distribution Advisory Council Report

Section 3(f)(2) of the new law requires that the Secretary establish procedures to ensure that information is received from recipient agencies at least semiannually about the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies. FNS currently receives information annually through the State Food Distribution Advisory Council Reports, a survey of school food authorities. To minimize the paperwork and recordkeeping burdens of this new statutory provision, the Department has decided that this report could serve as one of the two commodity acceptability reports required under § 250.13(k) of this rule.

However, to coordinate timing of the council report and the semiannual timeframes for data collection and reporting, it is necessary to extend the date for the submission of the Council Report. Under the current § 210.27(c), the Council report is due to the State educational agency no later than February 15; this interim rule changes the due date to March 30. A corresponding change has been made to the date by which the State educational agency must report Council recommendations to FNSRO. This date has been changed from March 15 to April 30. The extension will also allow Councils more time to collect information and to make specific recommendations on the acceptability of donated foods distributed in the same reporting school year. The selection of submission dates for the commodity acceptability information are discussed in the following section of the preamble.

Commodity Acceptability Information

As discussed in the preamble section regarding State Food Distribution Council Reports, section 3(f)(2) of the

new law requires that the Secretary establish procedures to ensure that information is received from recipient agencies, at least semiannually, about the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies. Furthermore, the new law requires the Secretary to use the information in the semiannual reports in determining the specifications for the types and forms of commodities and products to be provided to recipient agencies (Section 3(a)(1)) and in implementing a system to provide recipient agencies with options on package sizes and forms (section 3(b)(1)(A)).

Section 250.13(k) of this interim rule establishes minimum information collection requirements necessary to meet these needs. Therefore, the reports submitted to FNS shall reflect, at a minimum, the following (1) the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies, (2) commodity specification recommendations and (3) requests for options regarding package sizes and forms of commodities.

Section 250.13(k) of this interim rule requires that distributing agencies obtain this information from a sample of at least 10 percent or 100, whichever is less, of recipient agencies from each distinct program category. Individual program categories must be established for schools, the Child Care Food Program, the Summer Food Service Program, the Nutrition Program for the Elderly, the Commodity Supplemental Food Program, charitable institutions, summer camps, the Food Distribution Program on Indian Reservations, and the Temporary Emergency Food Assistance Program (TEFAP). Since § 251.4(a) of the TEFAP regulations provides that TEFAP commodities are made available in accordance with the terms and conditions of Part 250, to the extent that they are not inconsistent with the TEFAP regulations, the TEFAP State agency will be responsible for the collection of the TEFAP information. Distributing agencies must obtain this commodity information at least semiannually except for summer camps and the Summer Food Service Program. Since summer camps and the Summer Food Service Program are only in operation for a few months each year, it is not feasible for commodity acceptability information to be obtained semiannually. Thus, distributing agencies are required to obtain the information from recipient agencies

participating in these programs annually

In selecting the sample, distributing agencies must also consider the size and geographic location of the recipient agencies to ensure that each sample is representative of all agencies participating in a particular program. In addition, the regulation requires distributing agencies to alternate among recipient agencies so that over the course of several years each recipient agency is provided an opportunity to express its views.

Distributing agencies may use information which has been obtained from the State Food Distribution Advisory Council, under Part 210; and from the Food Distribution Program on Indian Reservations program's food preference reports, under Part 253, to represent one of the required acceptability reports for the respective program categories.

The procedures contained in this section provide for the collection of information in a manner which ensures representation of recipient agencies' needs by program. At the same time, the information is collected on a sample basis, rather than from each recipient agency twice a year. This relieves State and local agencies of an unnecessarily burdensome paperwork requirement. These procedures are being implemented under this interim rule because the law requires that the Secretary establish procedures for the collection of commodity acceptability information within 120 days of enactment of the law.

Section 250.13(k) and 250.17(d) require distributing agencies to submit commodity acceptability information from recipient agencies, with the exception of summer camps and the Summer Food Service Program, to the appropriate FNSRO by April 30 and November 30 of each year. Distributing agencies must submit the information for summer camps and the Summer Food Service Program to the appropriate FNSRO by November 30 of each year. Information received beyond the required dates will not be considered.

The April 30 submission date results in collecting data from recipient agencies near the end of the school year which will allow the Department to receive feedback on the types and forms of commodities distributed throughout that reporting year. This date also coincides with the revised requirement for submitting the State Food Distribution Advisory Council report in § 210.27 which is being amended by this interim rule. The Department selected the second submission date of November 30 taking the school year

calendar into consideration. Clearly, data collection and reporting between May and September would not be appropriate given school food authorities' schedules and workload.

The second data collection should include, but is not limited to, follow-up information to confirm trends previously noted by the State and to provide responses to USDA requests for specific information. The time between each submission of this information will provide the Department with ample time to review this information, to request follow-up information and to make changes to commodity specifications as warranted for the upcoming school or fiscal year. The Department is, however, specifically soliciting comments on the feasibility of collecting commodity acceptability information within these timeframes.

Food Distribution Program on Indian Reservations

Paragraph (a) of § 250.47 of this interim rule is being revised to require that distributing agencies that operate food distribution program on Indian reservations also comply with the commodity acceptability reporting requirement contained in paragraph (d) of § 250.17.

Buy American

Section 3(h) of the new law requires that recipient agencies purchase, whenever possible, only food products that are produced in the United States (U.S.). Recipient agencies in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands are exempt from this requirement. The law also permits the Secretary to grant waivers for: (1) Those recipient agencies that have unusual or ethnic preferences in food products; or (2) such other circumstances as the Secretary considers appropriate.

In order to incorporate these provisions into the regulations, § 250.23 has been added under this interim rule to require that, when ever possible, recipient agencies, with the exception of those in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, purchase only food products that are produced in the U.S. as defined in § 250.3.

However, the interim regulations limit the applicability of the "Buy American" provision to purchases of food products with Federal funds. The Department believes that absent any clear statement to the contrary, the "Buy American" provision should be interpreted so as to

avoid intrusion by the Federal Government into local purchasing decisions. This interpretation is further supported by a statement made by Congressman Ford, author of the "Buy American" provision, before the House of Representatives on December 17, 1967 (133 Cong. Rec. H11854 (daily ed., Dec. 17, 1967)). In that statement, Congressman Ford states that the provision applies only to food purchases made from Federal funds and not those from State or local sources. However, while the requirements of § 250.23 are limited to purchases made with Federal funds, the Department continues to encourage schools and other outlets to purchase food of domestic origin regardless of the funding source.

Several options were considered in defining what foods would be classified as "food products produced in the United States." The definition is clearcut for unmanufactured products—these must be of U.S. origin. For manufactured products, defining what a "food product produced in the U.S." is more difficult. The Department considered requiring that manufactured products primarily contain ingredients of U.S. origin and be manufactured by a company located in the U.S. However, many manufactured products that are labeled and canned in the U.S. may have some or all foreign ingredients. It would be extremely difficult and costly to determine which ingredients were exclusively or primarily of U.S. origin. Further, recipient agencies would not have a means to verify that the ingredients in the manufactured products they are buying came from U.S. markets. Therefore, § 250.3 of the interim rule defines "food product produced in the U.S." as an unmanufactured food product produced in the U.S. or a food product manufactured in the U.S. Defining food products produced in the U.S. in this manner eliminates the need for recipient agencies to determine if the ingredients in a product were produced in the U.S. In addition, purchases of processed food products can be monitored to ensure compliance since section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) requires imported articles to be marked with the country of origin.

The law also permits the Secretary to grant waivers of the "Buy American" requirement for those recipient agencies that have unusual or ethnic preferences in food products or such other circumstances as the Secretary considers appropriate. In accordance with the legislation, § 250.23 permits recipient agencies to purchase food products which are not produced in the U.S. when recipient agencies have

unusual or ethnic food preferences which can only be met through purchases of food products not produced in the U.S. The Department has identified two other situations which warrant a waiver. First, a foreign product may be purchased if the product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality. Second, if competitive bids reveal the cost of a U.S. product is unreasonable compared to a foreign product, the foreign product may be purchased. These objective criteria will allow recipient agencies to continue purchases of items like bananas and to buy foreign goods when the price compared to U.S. goods varies widely. Recipient agencies must keep records of how they implement this provision to demonstrate that U.S. products have been purchased whenever possible.

As required by section 14 of the law, the "Buy American" requirement tool effect upon enactment (January 8, 1988) and therefore, the provisions contained in § 250.23 are effective retroactive to January 8, 1988.

Allocation Procedures

Section 3(e)(1)(C) of Pub. L. 100-237 requires the Secretary to provide for, by regulation, procedures for allocating commodities among States. Presently, when a commodity is available in limited quantities, the Department uses allocation percentages, based on program participation data, to ensure States are allocated their pro rata share of such commodity. Allocation percentages are based on the most recent participation data available, by program designated to receive the commodity, at the time the commodity is offered to States. The Department is revising § 250.13(a)(4) (as recently amended by the interim rule published on June 10, 1988, (53 FR 22466)) to codify the Department's current method of allocating commodities among States.

Commodity Value

Section 3(b)(7) of Pub. L. 100-237 requires the Secretary to establish a value for all donated commodities (i.e. cost per pound) to be used by distributing agencies when allocating or charging commodities to recipient agencies. The established commodity values are also to be used by States in determining the value of commodities offered to recipient agencies to meet commodity assistance levels. Currently, when a commodity is offered or made available to States to order but is not yet actually purchased, FNS provides distributing agencies with an estimated cost per pound. Once a product is

purchased, an actual cost per pound (which includes the USDA cost of acquisition, transportation and other related purchase costs) is established and used to charge a State's entitlement. The cost per pound charged to a State's entitlement appears on the Entitlement Food Order Report (FNS Report No. 08) which is routinely provided to distributing agencies. An entitlement is the per meal value of donated foods the Department must provide to States for specific food assistance programs as established by law. Further explanation of entitlements follows in the section regarding offering the per meal value to school food authorities.

Current regulations do not require States to consistently value commodities when offering a commodity to recipient agencies or when determining the level of commodity assistance provided to recipient agencies. In accordance with the law, § 250.13(a)(5) of this interim rule has been revised to require that States use either the estimated cost per pound data or actual cost per pound data provided by USDA to value commodities offered to recipient agencies and to credit recipient agencies' planned assistance levels.

When States offer and charge commodities to recipient agencies, the distributing agency may use either the estimated or actual cost data provided by FNS, as long as the data chosen is used consistently throughout the State to value the commodities. Estimated cost data for grain, dairy, peanut and oil products (i.e. Group B commodities) shall be defined as the April 10 and October 10 costs listed in the USDA commodity file which are provided by the FNS regional offices to the distributing agencies. Estimated cost data for meat, fish, poultry, fruit and vegetable products (i.e. Group A commodities) shall be defined as the cost provided by USDA on commodity survey memorandum offering commodities to distributing agencies. Distributing agencies shall advise recipient agencies of the value of individual commodities at the time an offer is made. In instances where cost data used to allocate or credit commodity assistance levels differs from the cost data used to offer a commodity, distributing agencies shall advise recipient agencies of the cost used to allocate or credit a commodity.

Use of these criteria to value commodities will ensure that distributing agencies value commodities on the same basis for all recipient agencies throughout the State. The requirement that distributing agencies provide commodity values to recipient

agencies conforms with the voluntary performance standards developed by FNS last year in consultation with the American School Food Service Association (ASFSFA) and the National Association of State Agencies for Food Distribution (NASAFD). This standard recognized that dissemination of commodity values to recipient agencies is necessary for informed participation in the Food Distribution Program.

In § 250.13, paragraph (a) has been revised and restructured to include the provisions regarding allocation procedures and commodity value. As required by section 14 of the Act, the statutory provisions regarding commodity value took effect upon enactment (January 8, 1988) and therefore, the new provisions contained in § 250.13(a)(5) are effective retroactive to January 8, 1988.

Commodity Specifications

Commodity specifications precisely identify the product characteristics required in end products purchased by USDA. Lengthy and highly technical commodity specification documents are provided to vendors to ensure that end products meet USDA standards. Depending on the food product, components of a specification may include: (1) The name of the product; (2) quality or official grade; (3) kind, style, and/or variety; (4) product composition; (5) special instructions; (6) conditions that affect acceptability after the product has been inspected; (7) the size of the product; and (8) information about how the product is to be packaged.

Because of the length and technical nature of commodity specifications, it is difficult for those without a food technology background to understand or effectively use complete specifications. However, specifications do contain essential information about the commodities that is of value to recipient agencies. Therefore, the Department has developed summaries of commodity specifications which contain the most relevant information on the composition of commodities. The main requirements and standards listed in a commodity specification are contained in each summary, thus making it easier for meal service providers to find the information they need to accept, store and use commodities.

The FNS Instruction 716-1 contains the summaries of commodity specifications. In October 1987, the Department distributed this FNS Instruction to distributing agencies for further distribution to all school food authorities. Additional copies will be provided to all distributing agencies so

that they can be made available to other recipient agencies upon request.

Section 3(b)(3)(B) of Pub. L. 100-237 requires the dissemination of the summaries of commodity specifications by distributing agencies to recipient agencies upon request. The law requires implementation of this provision within 120 days of enactment of the bill. In accordance with Pub. L. 100-237, § 250.13 of this interim rule requires distributing agencies to make summaries of commodity specifications available to recipient agencies upon request.

Testing and Monitoring Processed End Products

Section 3(d)(5) of the law requires each distributing agency that enters into a processing contract for recipient agencies to test the product to determine the acceptability of the product prior to entering into a contract. The law also requires distributing agencies to develop a system to monitor product acceptability.

Under current regulations, distributing agencies may enter into processing contracts on behalf of recipient agencies. In addition, in an effort to ensure that recipient agencies are benefiting from the use of processed end products to the fullest extent possible, the Department revised the regulations in July 1988 to require that distributing agencies permit recipient agencies to enter into processing contracts.

The Department believes that the current regulatory provisions, coupled with this requirement to test and monitor the acceptability of processed end products, will result in recipient agencies receiving the most desirable end products. Section 250.30(b)(1) of this interim rule requires each distributing agency to test products with the recipient agencies eligible to receive them prior to entering into a processing contract and to develop a system to monitor product acceptability. However, the Department is not, at this time, establishing specific, detailed procedures for distributing agencies to use in testing and monitoring the acceptability of products. The Department is, however, soliciting comments from all interested parties about establishing specific procedures for testing and monitoring processed end products. Comments should include a description of any proposed system to be used for testing products and a description of the system to be used for monitoring product acceptability. Although this provision is not effective until October 7, 1988, the Department encourages distributing agencies to begin testing and monitoring end products as soon as possible. Based on

the comments, the Department will be developing further guidance.

Offering the Per Meal Value of Donated Foods

Section 6(e) of the National School Lunch Act requires that the Department provide commodity assistance to States for use by schools participating in the School Lunch Program. The level of assistance to be provided is determined by multiplying the appropriate national average value established under that section (i.e. per meal value) by the number of meals served in the current school year. Section 3(j) of Pub. L. 100-237 amends section 6(e) to require States to offer school food authorities the per meal value which is not less than the national average value of donated foods. The law also requires that offers include the full range of such commodities and products that are made available by the Secretary to the extent that quantities requested are sufficient to allow efficient delivery to and within the State.

Congress directed USDA to establish a consistent value for offering school food authorities commodity assistance so that school food authorities can claim their fair share of commodities. This provision is intended to prevent discriminatory distribution practices which may occur within a State. There is no evidence, however, of any intent to cause States to operate distribution systems inefficiently or to increase USDA's expenditures for commodities.

Current regulations do not define the value of commodities which States must offer individual school food authorities. Department policy and voluntary performance standards, however, set forth that States should establish planned assistance levels for school food authorities and allocate commodities equitably among school food authorities based on participation data. Section 250.48(c) of this interim rule is being revised to establish how States must determine the total value of commodities to offer school food authorities, to require an annual update of the commodity offer value and to specify the variety of commodities to offer and the type of commodities which count towards the per meal value that must be offered.

Commodity Offer Value. Section 250.48(c)(1) of this interim rule requires distributing agencies to offer school food authorities no less than the national average per meal value of donated foods established on July 1 of each school year by the Department in accordance with section 6(e) of the National School Lunch Act. The total value of donated foods which must be offered to school

food authorities shall be calculated by multiplying the per meal value of donated foods times the estimated number of eligible meals to be served by the school food authorities during the school year. This method was selected so that the States' determined value of commodities offered to school food authorities is consistent with the Department's determined value of commodities offered to States. States shall be required to maintain records of the value of commodities offered and refused in the event that these amounts must be substantiated in the future.

Section 250.48(c)(1) of this interim rule is also being revised to specify that distributing agencies shall be responsible for establishing the estimated number of meals to be served. This number shall be based on eligible meal count data submitted by school food authorities to the State education agency.

Update Requirement. Section 250.48(c)(2) requires, at a minimum, that the total value of commodities which must be offered to school food authorities shall be adjusted once annually to reflect significant changes in meals served. This rule is consistent with the voluntary distributing agency performance standards developed last year. During the development of these standards, State distributing agencies, recipient agencies and the Department agreed that significant changes in average daily participation must be recognized to ensure an equitable commodity offering, ordering and allocation system.

As required by § 250.48(c)(2), distributing agencies shall establish and communicate to school food authorities and FNS regional offices the following: (1) The method to be used for establishing the number of meals to be served; (2) procedures for updating the commodity offer value; and (3) timeframes for updating the commodity offer value information. As noted earlier regarding per meal value, the requirement to communicate information about commodity offers to school food authorities is consistent with the voluntary performance standard objective that school food authorities should have all information necessary for informed participation in the Food Distribution Program.

The Department considered specifying which meal count data (i.e. previous year's or actual to date) must be used to determine the commodity offer value and the timeframes for updating these data. However, a review of existing State commodity offering procedures revealed that many States use a variety

of equitable and accurate methods, based on various types of meal count data, to ensure that school food authorities have the opportunity to claim their fair share of commodities. Most methods allowed for updates, either monthly, quarterly or yearly, and take significant changes in participation into account. Several States have developed sophisticated computer systems to calculate and to monitor commodity offerings to ensure an equitable offering of the full range of available commodities to school food authorities. The Department has determined, however, that the States do not have any system in place for consistently offering a full range of commodities to school food authorities. Therefore, the Department has decided to set general guidelines for establishing the commodity offer value and minimum update requirements. Thus, those States without such a system will be required to establish one and those States with existing systems may continue to use them without disruption.

Commodity Variety Offered. Section 250.48(c)(3) of this interim rule requires distributing agencies to offer each school food authorities the full range of commodities to the extent that quantities requested or made available are sufficient to make statewide distribution and to allow for efficient delivery to and within the State. This regulation is to ensure that school food authorities have an opportunity to receive a wide variety of commodities in the various forms made available by the Department.

As recognized in the law, consideration must be given to the practical considerations necessary for the cost effective distribution of commodities. For cost effective purchasing, USDA requires distributing agencies to order commodities in full truck load quantities (approximately 40,000 pounds). Further, for cost effective shipping there is a limit to the number of destinations (i.e. stop-offs) to which this amount can be delivered. School food authorities should be aware of these constraints and work with each other and their distributing agency in order to receive as wide of a variety of commodities as possible.

The requirement that distributing agencies offer each school food authority the full range of commodities would also mean that distributing agencies must equitably and consistently offer commodities from the Group A and Group B category of entitlement commodities. An explanation of these two categories follows. States are provided an overall

entitlement value which is then separated into a Group A and a Group B category. The Group A category includes meat, fish, poultry, fruit and vegetable products which are designated as surplus-removal type commodities. These commodities are purchased by the Agricultural Marketing Service and are offered to States on a pro rata basis. Group B entitlement commodities may include grain, dairy, peanut and oil products which are acquired by the Agricultural Stabilization and Conservation Service under price-support authority or through direct purchases. Group B entitlement commodities are not allocated to States, but are made available to States in accordance with the procedures which follow.

For the past few years, States have been provided with the option of receiving from 15 to 20 percent of their overall entitlement in Group B foods. The percentage range of Group B foods offered to States depends on which commodities are designated for the Group B entitlement category. Therefore, a State's Group A and B portion of entitlement may vary from year to year depending on the percentage of Group B commodities that the distributing agency may elect to receive. Each year States notify the Department of the percentage of Group B entitlement selected for the upcoming school year. Within the established limits available to the State for Group B foods, distributing agencies have discretion over the kinds and quantities of commodities to order. The Department provides States with a list of available Group B foods and ordering options. Distributing agencies determine the types, package size, quantities and shipping periods in which to order this category of commodities.

A review of existing State systems for offering commodities revealed that some school food authorities were not provided with an opportunity to accept or reject their share of either category of commodities. The Department intends for distributing agencies to fairly offer both categories of commodities. Further, within each category, States should pass on ordering options and make as wide a variety of commodities available as possible to all school food authorities. The provisions of this paragraph are not, however, intended to require school food authorities to accept the full range of commodities offered. Further, these requirements are not intended to prevent school food authorities from receiving additional quantities that have been rejected by other school food authorities.

In the event that the amount of any commodity received from the Department is not sufficient to equitably distribute to all school food authorities, this section requires distributing agencies to develop and disseminate annually to school food authorities procedures for the allocation of such commodities. The procedures should result in the equitable distribution of commodities in limited supply.

Bonus Commodities. Section 250.48(c)(4) of this interim rule specifies that the value of bonus commodities offered shall not be included as a part of the per meal value of donated foods which must be offered to school food authorities and that States shall equitably distribute bonus commodities among school food authorities. Bonus commodities are donated by the Department to States and are not charged against a State's entitlement. A review of various State systems revealed that some States do not clearly distinguish between bonus and entitlement commodities distributed. Therefore, bonus commodities must be identified and should not be counted as a part of the value which States must offer school food authorities. Discrepancies from State to State in the per meal value provided to school food authorities in the past may be partially attributed to the fact that some States identify and credit bonus commodities differently.

As required by section 14 of the Act the offering of the per meal value requirement took effect upon enactment (January 8, 1988) and therefore, the provisions in § 250.48(c) are effective retroactive to January 8, 1988.

List of subjects

7 CFR Part 210

Food assistance programs, National School Lunch Programs, Commodity School Program, Grant programs—Social programs, Nutrition, Children, Reporting and record keeping requirements, Surplus agricultural commodities.

7 CFR Part 250

Aged, agricultural commodities, Business and Industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210 and 250 are amended to read as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 2-12, 60 Stat. 230, as amended; Sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751-1780, 1779.

2. In § 210.27, paragraph (c) is revised to read as follows:

§ 210.27 State Food Distribution Advisory Council

(c) **Council timeframe.** The council shall meet at least once a year and shall report to the State educational agency and State distributing agency, if it is a different entity, no later than March 30 of each year, recommendations concerning the manner of selection and distribution of commodity assistance for the next school year. The State educational agency shall inform FNSRO of the Council's recommendations no later than April 30, of each year.

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 is revised to read as follows:

Authority: Sec. 32, Pub. L. 74-320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 8, 9, 60 Stat. 231, 233, Pub. L. 79-386 (42 U.S.C. 1755, 1758); sec. 418, Pub. L. 81-438, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91-065, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 94-540, 70 Stat. 202 (7 U.S.C. 1659); sec. 9, Pub. L. 95-031, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 95-756, 74 Stat. 899 (7 U.S.C. 1431 nt); sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); sec. 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-286, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93-328, 88 Stat. 206 (42 U.S.C. 1762a); sec. 16, Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1798); sec. 1304a, Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c nt); sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 1561, Pub. L. 99-198, 99 Stat. 1589 (7 U.S.C. 612c); (5 U.S.C. 301), unless otherwise noted; Pub. L. 100-237, 101 Stat. 1733 (7 U.S.C. 612 note).

2. Section 250.3 is amended by adding the definition of "Food products produced in the U.S." in alphabetical order to read as follows:

§ 250.3 Definitions.

"Food products produced in the U.S." means an unmanufactured food product produced in the U.S. or a food product that is manufactured in the U.S.

3. In § 250.13:

- Paragraph (a) is revised.
- Paragraphs (j) and (k) are added. The revision and additions read as follows:

§ 250.12 Distribution and Control of Donated Foods.

(a) **Availability and use of donated foods.**—(1) **Availability and use.** Donated foods shall be available only for distribution and use in accordance with the provisions of this Part and, with respect to distribution to households on all or part of an Indian reservation, of Part 253 and 254 of this chapter. Donated foods not so distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. Donated foods which are provided as part of an approved food package or authorized program level of assistance may be transferred between like recipient agencies with only prior authorization of the distributing agency. Donated foods which are provided in addition to the State's authorized program level of assistance may be transferred between recipient agencies which are eligible to receive such foods with the prior authorization of the distributing agency. However, the transfer of donated foods between unlike recipient agencies (schools to charitable institutions), which have been provided as part of an approved food package or authorized program level of assistance, must be approved by the appropriate FNSRO. Food donated under section 32 of Pub. L. 74-320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under 7 CFR Part 251. A transfer between recipient agencies and emergency feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP. All transfers of donated foods shall be documented. Such documentation shall be maintained in accordance with the recordkeeping requirements in §§ 250.16 and 251.10(a).

(2) **Quantities.** (i) The quantity of donated foods to be made available for donation under this Part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation. (ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose

similar restrictions on recipient agencies.

(3) **Minimum donations.** Foods shall be donated only in such quantities as will protect the lower carload freight rate, except as deemed in the best interest of the program as determined by the Department.

(4) **Allocations.** As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food in addition to the general terms and conditions set forth herein. When a commodity is available in limited quantities the Department shall allocate such commodities among the States using allocation percentages which are based on the most recent participation data available for the program designated to receive the commodity.

(5) **Commodity Value.** To value a commodity offered to a recipient agency and to credit a commodity towards a recipient agency's commodity assistance level, distributing agencies shall use either actual cost per pound data used to charge a State's program entitlement or estimated cost per pound data provided by the Department, as long as the data chosen is used consistently throughout the State to value commodities. Actual cost data shall be defined as the cost per pound for an individual commodity charged to a State's entitlement on the Entitlement Food Order Report, which is based on the USDA purchase cost. Estimated cost data for grain, dairy, peanut and oil products (i.e. Group B commodities) shall be defined as the April 10 and October 10 costs listed in the USDA commodity file. Estimated cost data for meat, fish, poultry, fruit and vegetable products (i.e. Group A commodities) shall be defined as the cost provided by USDA on commodity survey memoranda. Distributing agencies shall notify recipient agencies of the cost per pound used to value commodities at the time a commodity is offered to recipient agencies. If the cost used to credit a commodity differs from the cost used to offer a commodity, distributing agencies shall advise recipient agencies of the cost used to credit a commodity.

(6) **Delivery of commodities.** The Department shall, to the extent practicable, make every effort to arrange deliveries based on information obtained from distributing agencies. However, the Department shall not be held fiscally responsible for any delay in

delivering or for nondelivery of donated foods due to any cause. To avoid untimely deliveries to recipient agencies, distributing agencies shall notify recipient agencies of: (i) Anticipated Department purchases and estimated shipping periods as such information becomes available; (ii) anticipated State delivery schedules at least quarterly; and (iii) changes in delivery schedules as they become known. In addition, distributing agencies shall maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies, and make donated foods available at least monthly.

(7) *Demonstrations and tests.* Notwithstanding any other provision of this part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonstrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

(j) *Commodity specifications.* Distributing agencies shall make summaries of commodity specifications available to recipient agencies upon request.

(k) *Commodity acceptability information.*—(1) *Information collection.* Distributing agencies shall obtain information from recipient agencies which reflects: (i) The types and forms of donated foods that are most useful to program participants; (ii) commodity specification recommendations; and (iii) requests for options regarding package sizes and forms of commodities.

(2) *Samples and Representation* shall be selected from each distinct program category, i.e. schools, the Child Care Food Program, the Summer Food Service Program, the Nutrition Program for the Elderly, the Commodity Supplemental Food Program, charitable institutions, summer camps, and the Food Distribution Program on Indian Reservations, and the Temporary Emergency Food Assistance Program. At a minimum, distributing agencies shall obtain this information from a sample of at least 10 percent or 100 recipient agencies, whichever is less. To ensure that the sample is representative of all recipient agencies, distributing agencies shall consider the size and geographic location of all recipient agencies within

the State and alternate among them so that over time each recipient agency is provided an opportunity to express its views. Distributing agencies may use information which is already being obtained from the State Food Distribution Advisory Council in accordance with Part 210 and the Indian tribes in accordance with Part 253 to represent one of the required commodity acceptability reports for the respective program categories.

(3) *Timeframes for submission.* Distributing agencies shall obtain commodity acceptability information from each program category at least semiannually except for summer camps and the Summer Food Service Program. Distributing agencies shall obtain commodity acceptability information from summer camps and the Summer Food Service Program annually. Distributing agencies shall submit commodity acceptability information from recipient agencies, with the exception of summer camps and the Summer Food Service Program, by individual program category to the appropriate FNSRO by April 30 and November 30 of each year. Distributing agencies shall submit commodity acceptability information from summer camps and the Summer Food Service Program to the appropriate FNSRO by November 30 of each year.

4. In § 250.17:

a. Paragraph (d) is redesignated as paragraph (e).

b. A new paragraph (d) is added to read as follows:

c. The OMB statement at the end of the section is amended by changing the reference to "paragraph (d)" to "paragraph (e)."

§ 250.17 *Reports.*

(d) *Commodity acceptability reports.* Distributing agencies shall submit to the FNSRO reports relative to the types and forms of donated foods which are most useful to recipient agencies in accordance with § 250.13(k) of this part.

5. Subpart B is amended by adding § 250.23 to read as follows:

§ 250.23 *Buy American.*

(a) *Purchase requirements.* When purchasing food products with Federal funds recipient agencies shall, whenever possible, purchase only food products that are produced in the United States as defined in § 250.3 of this part.

(b) *Exceptions.* The purchase requirements described in paragraph (a) of this section shall not apply in instances when the recipient agency determines: (1) Recipients have unusual

or ethnic food preferences which can only be met through purchases of products not produced in the U.S.; (2) the product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; (3) the cost of U.S. produced food products is significantly higher than foreign products; or (4) the recipient agency is located in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

6. In § 250.30 a new sentence is added to the end of paragraph (b)(1) to read as follows:

§ 250.30 *State processing of donated foods.*

(b) *Permissible contractual arrangements.*—(1) * * * Distributing agencies shall assure that the acceptability of processed end products is tested with recipient agencies eligible to receive them prior to entering into a processing contract and shall develop a system for monitoring product acceptability.

7. In § 250.47, paragraph (a) is revised to read as follows:

§ 250.47 *Food Distribution Program on Indian Reservations.*

(a) *Distribution.* Distributing agencies which operate a food distribution program on Indian reservations shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), § 250.14, §§ 250.15 and 250.17(d) to the extent that these provisions are not inconsistent with the regulations cited in paragraph (b) of this section.

8. In § 250.48, paragraphs (c), (d), (e) and (f) are redesignated as (d), (e), (f) and (g) respectively and new paragraph (c) is added to read as follows:

§ 250.48 *School Food Authorities.*

(c) *Offering the Per Meal Value of Donated Foods.*—(1) *Commodity offer value.* Distributing agencies shall offer each school food authority no less than the national average per meal value of donated foods established by the Department on July 1 of each year in accordance with § 250.48(b)(2) of this part. Distributing agencies shall document commodity offerings and refusals in order to verify that the per meal value of commodities was offered to all school food authorities. The total

value of donated foods which must be offered to school food authorities shall be calculated by multiplying the per meal value of donated foods times the number of estimated meals to be served by the school food authority during the school year. This value shall be referred to as the commodity offer value. Distributing agencies shall be responsible for establishing the number of estimated meals to be served.

(2) *Update requirement.* Meal count data used to determine the commodity offer value shall be updated at a minimum annually. Distributing agencies shall communicate to school food authorities and FNS regional offices the method for establishing estimated meals to be served, procedures for updating the commodity offer value and timeframes for updates. Commodity offer values shall be adjusted to reflect significant changes in meal data.

(3) *Commodity variety offered.* Distributing agencies shall offer each school food authority the full range of all commodities equitably and consistently to the extent that quantities requested or made available are sufficient to make a statewide distribution and allow for efficient delivery to and within the State. Distributing agencies shall develop and disseminate to school food authorities at least annually a procedure for the allocation of commodities when the amount received from the Department is not sufficient to make a statewide distribution to all school food authorities.

(4) *Bonus commodities.* Bonus commodities offered shall be distinguished from entitlement commodities and shall not be included as a part of the per meal value of donated foods which must be offered to school food authorities.

Date: July 15, 1988.

Anna Kondratas,
Administrator.

[FR Doc. 18449 Filed 7-20-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-88-014]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order

issued thereunder, this final rule increases the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1987 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

DATE: Effective August 22, 1988.

ADDRESS: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610-S; P.O. Box 96450, Washington, DC 20090-0450.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2850.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the Federal Register (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This final rule increases the assessments per pound on 2 of the 13 imported pork and pork products subject to assessment by an amount of one-hundredths of a cent per pound. Adjusting the rate of assessments on imported pork and pork products will result in an estimated \$30,000 more in assessments over a 12-month period. While the final rule will result in an increase in assessments, any additional costs will be outweighed by the benefits derived from the operations of the pork promotion, research, and consumer information program. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount

of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the Federal Register (51 FR 31898; as corrected at 51 FR 36363) and assessments began on November 1, 1986. The Order requires importers of porcine animals to pay to the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. As a matter of practicality, the assessment on imported pork and pork products is expressed in dollars per pound for each type of such products.

This rule increases the per-pound assessments on specified imported pork and pork products. This increase is consistent with increases in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1987 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This increase in cents-per-pound assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule will not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, Federal Register at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 618 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly,

the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment amount due on imported pork or pork products. The end result is expressed in an amount per pound for each type of pork or pork product.

The formula in the preamble for the order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1987, the average annual seven market price rose to \$51.04, an increase of about 1 percent over the 1986 per hundredweight price, which results in an increase in assessments for two TSUS categories 107.3525, in an amount equal to one-hundredth of a cent per pound. These two TSUS categories are for cooked, canned, boneless hams and shoulders. Based upon the conversion formula described above and the average seven market price of \$51.04, the remaining 11 TSUS categories would not require an increase in assessments. Based on Department of Commerce, Bureau of Census data on the volume of imported pork and pork products for 1987, the increase in the per-pound assessments would result in an estimated \$30,000 in additional assessments over a 12-month period.

On May 3, 1988, AMS published in the Federal Register (53 FR 15700) a proposed rule which would increase the per-pound assessments on imported pork and pork products consistent with increases in the 1987 average price of domestic barrows and gilts to provide comparability between importer and domestic assessments. The proposed rule was published with a request for comments by June 2, 1988. Thirteen comments were received—one from the National Pork Board; one from a national pork producer organization; one from a State farm organization, and 10 from State pork producer associations. All comments were in favor of the proposed increase in the assessments on imported pork and pork products. Most commenters expressed the opinion that the increase would promote

comparability between assessments on domestic hogs and imported pork and pork products and that it was fair and equitable. Accordingly, this final rule establishes the per-pound assessment on imported pork and pork products as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR Part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:
2. Amend Subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

Pork and pork products (U.S. Tariff Schedule No.)	Assessment (dollars per pound)
106.4020	0.0018
106.4040	.0018
106.8000	.0018
106.8500	.0018
107.1000	.0025
107.1500	.0025
107.3020	.0018
107.3040	.0018
107.3060	.0021
107.3515	.0028
107.3525	.0028
107.3540	.0019
107.3560	.0025

Done at Washington, DC, on: July 18, 1988.
J. Patrick Boyle,
Administrator.
[FR Doc. 88-16414 Filed 7-20-88; 8:45 am]
BILLING CODE 3410-32-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-22; Amdt. No. 29-5976]

Airworthiness Directives: Bell Helicopter Textron, Inc., Models 206A, 206B, 206L, 206L-1, and 206L-3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Bell Helicopter Textron, Inc., Models 206A, 206B, 206L, 206L-1 and 206L-3 helicopters by individual letters. The AD requires the removal and replacement of certain main rotor masts, which may be metallurgically defective, in order to prevent failures of the main rotor mast which could result in loss of the helicopter.

EFFECTIVE DATE: August 8, 1988, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 87-10-11, issued May 19, 1987, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Commercial Publications Distribution, or may be examined in the Regional Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: On May 19, 1987, Priority Letter AD No. 87-10-11 was issued and made effective immediately as to all known U.S. owners and operators of Bell Helicopter Textron, Inc., Models 206A, 206B, 206L, 206L-1, and 206L-3 helicopters. The AD required the removal and replacement of certain main rotor masts which may have been fabricated of material contaminated by sulfide stringer type inclusions which could degrade the fatigue properties of the mast. The AD action was necessary to prevent a possible premature main rotor mast failure.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued May 19, 1987, to all known U.S. owners and operators of Bell Helicopter Textron, Inc., Models 206A, 206B, 206L, 206L-1, and 206L-3 helicopters. These conditions still exist

and the AD is hereby published in the Federal Register as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12812, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the Regulatory Docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to the following helicopters certificated in any category (Airworthiness Docket No. 87-ASW-22).

(a) Model 206A and 206B helicopters equipped with the following mast assemblies, P/N 206-010-332-121: Serial Numbers FAJF-

58340 thru 58353, 58395 thru 58398, 58400, 58402 thru 58409, 58421 and 58423 thru 58434.

Note: The following model 206B serial numbered helicopters were delivered with the affected masts: 3933, 3934, 3937 thru 3940, 3942, 3944 thru 3946, 3953 thru 3955, and 3958.

(b) Model 206L, 206L-1, and 206L-3 helicopters equipped with the following mast assemblies, P/N 206-040-535-105: Serial Numbers NJF-835 thru 973, 1000, 1003, 1004, 1006 thru 1012, 1014 thru 1019, 1022 thru 1024, 1028, 1040 thru 1042, 1048, 1050 thru 1057, 1059, 1068, 1068, 1073, 1079, 1086, 1087, 1089 thru 1097, 1099, 1101, 1102, 1123, 1124, 1129, 1135, 1141, 1143, 1145, 1146, 1149, 1151, 1153, 1156, 1157, 1161, 1162, 1165, 1167, and 1169 thru 1172.

Note: The following Model 206L-3 serial numbered helicopters were delivered with the affected masts: 51173 thru 51175, 51178, 51179, 51181, 51183 thru 51185, 51187 thru 51191, 51194 thru 51205, and 51208 thru 51211.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main rotor mast, accomplish the following:

(a) Before further flight, determine if an affected serial number main rotor mast is installed on the helicopter.

(b) Within the next 25 hours' time in service after receipt of this AD but no later than May 31, 1987, remove the affected serial number main rotor mast from service and replace it with an airworthy part.

(c) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Helicopter Certification Branch, Aircraft Certification Division, FAA, Southwest Region, Fort Worth, Texas 76193-0170.

Note: Bell Helicopter Alert Service Bulletin Nos. 206-87-37, dated 4/23/87 and 206-44, dated 4/23/87 pertain to this AD.

This amendment becomes effective August 8, 1988, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 87-10-11, issued May 19, 1987 which contained this amendment.

Issued in Washington, DC, on July 15, 1988.

Daniel P. Salvano,
Acting Director, Office of Airworthiness.
[FR Doc. 88-16361 Filed 7-20-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-15-AD; Amdt. 39-5983]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently

requires inspection of the body station (BS) 1241 bulkhead splice strap and forging for cracks, and repairs, if necessary. This action requires that airplanes on which the strap replacement modification was incorporated in accordance with Boeing Service Bulletin 747-53-2219 be subjected to more frequent repetitive inspections. This action also requires that factory-modified airplanes be inspected. This action is prompted by reports indicating that modified airplanes are still subject to cracking. This condition, if not corrected, could lead to failure of the bulkhead forging, which could lead to loss of cabin pressure or the inability to withstand fail-safe loads.

EFFECTIVE DATES: August 28, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarga, Airframe Branch, ANM-120S; telephone (206) 431-1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-88968, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 84-18-01, Amendment 39-4905 (49 FR 35621; September 11, 1984), was published in the Federal Register on March 18, 1988 (53 FR 8927). This new AD affects additional airplanes previously modified by the manufacturer and increases the frequency of inspections performed on certain airplanes already affected. This action is necessary because service experience with the preventative modification indicated that it had a greater propensity for cracking than had been expected.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The airplane manufacturer commented that paragraphs A.2. and D.2. of the proposed rule should be revised to clarify that inspections at the forward hole are to be initiated if a crack is found on the aft edge of the bulkhead splice strap or at the aft hole.

The words "on the aft edge of the bulkhead splice strap" were not included in the proposed rule. The FAA concurs with this comment and the final rule has been revised accordingly. This change is for clarification purposes only and does not increase the scope of the rule.

The airplane manufacturer also commented that an ultrasonic inspection procedure would be an acceptable substitute for the eddy current inspection procedure which was proposed in the NPRM. The manufacturer, however, has not yet published its ultrasonic inspection procedures. Therefore, the final rule is adopted as proposed, in this regard. Paragraph E. of the AD provides for interested parties to request FAA approval for substituting ultrasonic inspections for eddy current inspections as an alternate means of compliance with the AD.

The final rule has been revised to remove certain references to the use of "later FAA-approved revisions" of the applicable service bulletin, in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by Paragraph E.

After careful review of the available data, including comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes previously noted.

It is estimated that 40 additional airplanes of U.S. registry will be affected by this AD, that it will take approximately 110 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$178,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12812, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant

under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39 Aviation safety, Aircraft.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The Authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.60.

§ 39.13 [Amended]

2. By superseding AD 84-10-01, Amendment 30-4905 (49 FR 35621; September 11, 1984), with the following new airworthiness directive:

Boeing: Applies to Groups 1, 2, and 3 Model 747 series airplanes, certificated in any category, listed in Boeing Service Bulletin 747-53-2283, dated December 17, 1987. Compliance required as indicated, unless previously accomplished.

To prevent failure of the body station (BS) 1241 bulkhead forging, accomplish the following:

A. For Group 1 airplanes on which the initial inspection requirements of airworthiness directive (AD) 84-10-01 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747-53-2219, dated February 19, 1982, or later revision:

1. Prior to the accumulation of 10,000 landings (13,000 landings for Model 747-100SR), perform an eddy current inspection of the BS 1241 bulkhead frame splice strap at the aft hole and visually inspect the aft edge of the strap, in accordance with Boeing Service Bulletin 747-53-2283, dated December 17, 1987. If no cracks are found inspect thereafter at intervals not to exceed 7,000 landings (10,500 landings for Model 747-100SR).

2. If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight, perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole, in accordance with Boeing

Service Bulletin 747-53-2283, dated December 17, 1987. If no cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the forward hole, then repeat the inspection at the forward hole at intervals not to exceed 3,000 landings (4,500 landings for Model 747-100SR).

3. If cracks are found at the forward hole in the bulkhead forging, repair as follows:

a. If the cracks found in the forging do not exceed the forward hole rework limits specified in Boeing Service Bulletin 747-53-2283, dated December 17, 1987, and the hole coldwork has not been previously accomplished, repair prior to further flight, in accordance with the service bulletin and then continue to inspect in accordance with paragraph A.2. of this AD.

b. If the cracks found in the forging exceed the forward hole rework limits, or if the hole coldwork has been previously accomplished, repair in accordance with an FAA-approved procedure prior to further flight.

B. For Group 1 airplanes on which the initial inspection requirements of AD 84-10-01 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747-53-2219, dated February 19, 1982, or later revisions: Continue to perform the repetitive inspections, and to make repairs, if necessary, as described in paragraph A. of this AD.

C. For Group 1 airplanes that have been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747-53-2219, dated February 19, 1982, or later revisions: Perform inspections and repairs, if necessary, as described in paragraph A. of this AD, except that the initial inspections must be conducted within 1,000 landings (1,500 landings for Model 747-100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings since the time of modification (13,500 landings for Model 747-100SR), whichever occur later.

D. For Group 2 and 3 airplanes:

1. Within the next 1,000 landings (1,500 landings for Model 747-100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for Model 747-100SR) total time-in-service, whichever occurs later, perform an eddy current inspection of the BS 1241 bulkhead splice strap at the aft hole and visually inspect the aft edge of the strap, in accordance with Boeing Service Bulletin 747-53-2283, dated December 17, 1987. If no cracks are found, repeat the inspections thereafter at intervals not to exceed 7,000 landings (10,500 landings for Model 747-100SR).

2. If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole, in accordance with Boeing Service Bulletin 747-53-2283, dated December 17, 1987. If not cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the forward hole, repeat the inspections at the forward hole at

intervals not to exceed 3,000 landings (4,500 landings for Model 747-100SR).

3. If cracks are found at the forward hole in the bulkhead forging, repair in accordance with an FAA-approved procedure prior to further flight.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 84-18-01, Amendment 30-4905.

This amendment becomes effective August 23, 1988.

Issued in Washington, DC, on July 14, 1988.

Daniel P. Salvano,
Acting Director, Office of Airworthiness.

[FR Doc. 88-16382 Filed 7-20-88; 8:45 am]

BILLING CODE 4810-13-8

14 CFR Part 71

[Airspace Docket Number 88-ACE-05]

Alteration of Transition Area; Milford, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the legal description and effective date for the Milford, Iowa, transition area (53 FR 23220, June 21, 1988). Subsequent to the issuance of this final rule, a typographical error was discovered in the latitude coordinate for the Fuller Municipal Airport transition area as well as an incorrectly cited effective date.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT:

Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 801 East 12th Street, Kansas City, Missouri 64108, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Subsequent to the issuance of the Rule altering the transition area at Milford, Iowa, it has been determined that the latitude coordinate for the Fuller Municipal Airport, Milford, Iowa, was incorrectly cited as "43°19'17" W." instead of "43°19'57" N." In addition, the effective date was in error. It should be August 25, 1988, rather than October 22, 1988. (53 FR 23220; June 21, 1988). Action is taken herein to make these corrections. Since these changes are editorial in nature, notice and public procedure thereon are not considered necessary and are contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety; Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 88-13862 on page 23220 of the Federal Register on Tuesday, June 21, 1988, is corrected to read as follows:

Fuller Municipal Airport, Milford, Iowa [Corrected]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.60.

§ 71.181 [Amended]

2. Section 71.181 is amended to read as follows:

That airspace extending upward from 700 ft. above the surface within a five (5) mile radius of the Fuller Municipal Airport [Lat. 43°19'57" N., Long. 95°08'29" W.] and within 1.75 mile each side of the 190° bearing from the Fuller Municipal Airport extending from the five (5) mile radius to 5.5 miles south of the airport.

This amendment becomes effective at 0901 u.t.c. August 25, 1988.

Issued in Kansas City, Missouri, on July 11, 1988.

Clarence E. Newbern,
Manager, Air Traffic Division.

[FR Doc. 88-16384 Filed 7-20-88; 8:45 am]

BILLING CODE 4810-13-8

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1261

Processing of Monetary Claims (General)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Policy statement.

SUMMARY: NASA is amending 14 CFR Part 1261 by adding § 1261.316 and § 1261.317. The National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568, 72 Stat. 426), grants the Administrator of NASA broad powers with regard to the settlement of civil claims arising out of activities of the agency. In addition, NASA, like other Federal agencies, can settle claims under the Federal Tort Claims Act, as amended. See 28 U.S.C. 2671-2680. However, there currently exists no clear statement of policy regarding the Administrator's ability to use agency funds to indemnify employees who become liable for money judgments or personal damage claims as a result of official acts. This policy statement, which will amend current agency regulations regarding the procedures for handling claims against employees, clarifies the situations where such indemnification may be granted. This policy statement is similar to one recently adopted by the Department of Justice. See 51 FR 27021-27023 dated July 23, 1986.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Frankle, Deputy General Counsel, Code G, National Aeronautics and Space Administration, Washington, DC 20546, 202-453-8600.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION: Existing NASA regulations do not address the issue of indemnification of agency employees who are sued in their individual capacity and who suffer an adverse judgment or other monetary consequences as a result of conduct taken within the scope of their employment. Lawsuits against Federal employees in their personal capacity have proliferated since the Supreme Court's decision in *Divens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As reported by the Department of Justice, since 1971 over 12,000 claims have been filed against Federal employees; nearly 3,000 actions are now pending.

While NASA's workforce is well-disciplined, the risk of personal liability and the burden of defending a suit as a result of performing one's employment duties can have a significant effect on NASA operations. An adverse judgment against any Federal employee has detrimental consequences for both the individual and the Government. The potential for being found personally liable and the uncertainty as to what actions may culminate in a lawsuit intimidate all employees, discouraging initiative and decisiveness. As Professor Kenneth Culp Davis has stated:

The public suffers whenever a government employee resolves doubts in order to protect his own pocketbook instead of resolving doubts in order to protect the public interest—courageous action of public employees is often essential, and it should not be discouraged by the threat of a lawsuit against the employee personally.

K. Davis, *Constitutional Torts* 25, 28 (1984).

On a broader scale, this fear of personal liability affects government operation, decision-making, and policy determination.

NASA believes that the potential of significant judgments or other monetary consequences flowing from lawsuits against Federal employees in their personal capacity can seriously hinder effective functioning. A clarification in agency policy to recognize NASA's inherent ability to indemnify its employees would help alleviate this problem and afford NASA employees the same protection now given to other Federal officials. As noted previously, the Department of Justice has recently enacted a similar amendment to its housekeeping regulation allowing for indemnification of Department of Justice employees. See 28 CFR 50.15. In this amendment, the Department of Justice

specifically recognized the inherent authority of all Executive Branch agencies to indemnify employees for liability resulting from official acts. *Id.*

The clarification in NASA policy published today does not mandate that the agency indemnify any employee who suffers an adverse judgment, verdict, or monetary award. To merit indemnification, the actions which give rise to the claim or judgment must fall within the individual's current or past scope of employment and indemnification must be in the interest of the National Aeronautics and Space Administration as determined by the Administrator or designee. In rare administrative instances, where the Administrator deems it appropriate, an individual damage claim may be settled with agency funds prior to entry of judgment. Absent exceptional circumstances, however, NASA will not agree to indemnify an employee or settle a claim before entry of an adverse determination. This provision is designed to discourage claims brought against agency employees solely in order to pressure the agency into settlement. Denial of dispositive motions or delay in deciding such motions ordinarily will not lead to settlement before trial and judgment.

In addition, the statement also reaffirms that agency attorneys participating in the process by which the agency seeks representation for present or former employees sued, subpoenaed, or charged in their individual capacity undertake a full attorney-client relationship with those employees with all attendant protections.

This policy statement will not have a significant economic impact on substantial numbers of small entities within the meaning of 5 U.S.C. 605(b). Moreover, as a matter relating to NASA management and internal personnel policy, this statement is not required to be published pursuant to the procedural requirements of 5 U.S.C. 553 *et seq.*

The National Aeronautics and Space Administration has determined that:

1. This policy statement is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This policy statement is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1261
Claims, Tort claims.

For reasons set forth in the Preamble, 14 CFR Part 1261 is amended as follows:

PART 1261—[AMENDED]

1. The authority citation for 14 CFR Part 1261 Subpart 1261.3 continues to read as follows:

Authority: 28 U.S.C. 2671–2680, 42 U.S.C. 2473(c)(13), and 28 CFR Part 14.

2. Section 1261.316 and Section 1261.317 are added to read as follows:

§ 1261.316 Policy.

(a) The National Aeronautics and Space Administration may indemnify a present or former NASA employee, who is personally named as a defendant in any civil suit in state or federal court, or in an arbitration proceeding or other proceeding seeking damages against that employee personally, for any verdict, judgment, appeal bond, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, appeal bond, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the National Aeronautics and Space Administration, as determined by the Administrator or designee.

(b) The National Aeronautics and Space Administration may settle or compromise a personal damage claim against a present or former NASA employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the National Aeronautics and Space Administration, as determined by the Administrator or designee.

(c) Absent exceptional circumstances as determined by the Administrator or designee, the agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(d) A present or past NASA employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, appeal bond, award, or settlement proposal to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the agency shall

seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Administrator for decision.

(e) Any payment under this section either to indemnify a National Aeronautics and Space Administration employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the National Aeronautics and Space Administration.

§ 1261.317 Attorney-client privilege.

(a) Attorneys employed by the National Aeronautics and Space Administration participate in the process utilized for the purpose of determining whether the agency should request the Department of Justice to provide representation to a present or former agency employee sued, subpoenaed, or charged in his/her individual capacity, and attorneys employed by the National Aeronautics and Space Administration provide assistance in obtaining representation of such an agency employee. In these roles, agency attorneys undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, National Aeronautics and Space Administration attorneys who assist in the representation of a present or former employee also undertake a full and traditional attorney-client relationship with that employee with respect to the attorney-client privilege.

(b) Any adverse information communicated by the client-employee to an agency attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the National Aeronautics and Space Administration, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided and even though representation may be denied or discontinued.

July 11, 1988.

James C. Fletcher,
Administrator.

[FR Doc. 88-16421 Filed 7-20-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

July 15, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee the Director, Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period August through October 1988. This benchmark rate is set at 12.36 percent.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION: On January 27, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.¹ Based on this procedure, the Commission, by its designee, the Director of the Office of Economic Policy, determines that the benchmark rate of return on common equity applicable to rate filings made during the period August 1 through October 31, 1988, is 12.36 percent.

Section 37.9 of the Commission's regulations² requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend

yields for the two most recent calendar quarters for a sample of 99 utilities.³ The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate: $k_t = 1.02 Y_t + 4.36$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the 99-company sample of utilities for the first and second quarters of 1988 are 7.76 and 7.91 percent, respectively. The average yield for those two quarters is 7.84 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.36 percent.

This notice supplements the generic rate of return rule announced in Order No. 488, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations as set forth below, effective August 1, 1988.

Douglas R. Bohi,
Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure

(d) *Table of Quarterly Benchmark Rates of Return.*

The following table presents the quarterly benchmark rates of return on common equity:

¹ As a result of the acquisition of Savannah Electric & Power Company by the Southern Company, the Commission has reduced the number of companies in the sample for the most recent quarter to 98. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).

² Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 488, 53 FR 3342 (Feb. 5, 1988), III FERC Stats. & Regs. ¶ 30,795 (Jan. 29, 1988).

³ 18 CFR 37.9 (1987).

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y _c)	Cost of common equity (K _e)	Benchmark rate of return
2/1/86-4/30/86	1.02	4.54	8.08	13.75	13.75
5/1/86-7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86-10/31/86	1.02	4.54	7.48	12.18	12.75
11/1/86-1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87-4/30/87	1.02	4.69	6.44	11.20	11.20
5/1/87-7/31/87	1.02	4.64	6.54	11.30	11.30
8/1/87-10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87-1/31/88	1.02	4.62	7.49	12.27	12.27
2/1/88-4/30/88	1.02	4.56	7.99	12.42	12.42
5/1/88-7/31/88	1.02	4.36	7.89	12.51	12.51
8/1/88-10/31/88	1.02	4.36	7.84	12.36	12.36

Note.—The Appendix will not be published in Code of Federal Regulations

Appendix

Exhibit No. and Title

- 1 Initial sample of utilities
- 2 Utilities excluded from the sample for the indicated quarter due to either

zero dividends or a cut in dividends for this quarter or the prior three quarters

- 3 Annualized dividend yields for the indicated quarter for utilities retained in the sample

Source of Data

Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

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EXHIBIT 1

SAMPLE OF UTILITIES

UTILITY	TICKER SYMBOL	INDUSTRY CODE	UTILITY	TICKER SYMBOL	INDUSTRY CODE
ALLEGHENY POWER SYSTEM	AYP	4911	MIDDLE SOUTH UTILITIES	MSU	4911
AMERICAN ELECTRIC POWER	AEP	4911	MIDWEST ENERGY CO	MNE	4931
ATLANTIC ENERGY INC	ATE	4911	MINNESOTA POWER & LIGHT	MPL	4911
BALTIMORE GAS & ELECTRIC	BGE	4931	MONTANA POWER CO	MTP	4931
BLACK HILLS CORP	BKH	4911	NECO ENTERPRISES INC	NPT	4911
BOSTON EDISON CO	BSE	4911	NEVADA POWER CO	NVP	4911
CAROLINA POWER & LIGHT	CPL	4911	NEW ENGLAND ELECTRIC SYSTEM	NES	4911
CENTERIOR ENERGY CORP	CX	4911	NEW YORK STATE ELEC & GAS	NGE	4931
CENTRAL & SOUTH WEST CORP	CSR	4911	NIAGARA MOHAWK POWER	NMK	4931
CENTRAL HUDSON GAS & ELEC	CNH	4931	NIPSCO INDUSTRIES INC	NI	4931
CENTRAL ILL PUBLIC SERVICE	CIP	4931	NORTHEAST UTILITIES	NU	4911
CENTRAL LOUISIANA ELECTRIC	CNL	4911	NORTHERN STATES POWER-MN	NSP	4931
CENTRAL MAINE POWER CO	CTP	4911	OHIO EDISON CO	OEC	4911
CENTRAL VERMONT PUB SERV	CV	4911	OKLAHOMA GAS & ELECTRIC	OGE	4911
CILCORP INC	CER	4931	ORANGE & ROCKLAND UTILITIES	ORU	4931
CINCINNATI GAS & ELECTRIC	CIN	4931	PACIFIC GAS & ELECTRIC	PCG	4931
CMS ENERGY CORP	CMS	4931	PACIFICORP	PPH	4931
COMMONWEALTH EDISON	CHE	4911	PENNSYLVANIA POWER & LIGHT	PPL	4911
COMMONWEALTH ENERGY SYSTEM	CES	4931	PHILADELPHIA ELECTRIC CO	PE	4931
CONSOLIDATED EDISON OF NY	ED	4931	PINNACLE WEST CAPITAL CORP	PNM	4911
DELMARVA POWER & LIGHT	DEW	4931	PORTLAND GENERAL CORP	PGN	4911
DETROIT EDISON CO	DTE	4911	POTOMAC ELECTRIC POWER	POM	4911
DOMINION RESOURCES INC-VA	D	4931	PSI HOLDINGS INC	PIN	4911
DPL INC	DPL	4931	PUBLIC SERVICE CO OF COLO	PSR	4931
DUKE POWER CO	DUK	4911	PUBLIC SERVICE CO OF N H	PNH	4911
DUQUESNE LIGHT CO	DQU	4911	PUBLIC SERVICE CO OF N MEX	PNM	4931
EASTERN UTILITIES ASSOC	EUA	4911	PUBLIC SERVICE ENTERPRISE GP	PEO	4931
EMPIRE DISTRICT ELECTRIC CO	EDE	4911	PUGET SOUND POWER & LIGHT	PSD	4911
FITCHBURG GAS & ELEC LIGHT	FGE	4931	ROCHESTER GAS & ELECTRIC	RGS	4931
FLORIDA PROGRESS CORP	FPC	4911	SAN DIEGO GAS & ELECTRIC	SDO	4931
FPL GROUP INC	FPL	4911	SCANA CORP	SCG	4931
GENERAL PUBLIC UTILITIES	GPU	4911	SIERRA PACIFIC RESOURCES	SRP	4931
GREEN MOUNTAIN POWER CORP	GMP	4911	SOUTHERN CALIF EDISON CO	SCE	4911
GULF STATES UTILITIES CO	GSU	4911	SOUTHERN CO	SO	4911
HAWAIIAN ELECTRIC INDS	HE	4911	SOUTHERN INDIANA GAS & ELEC	SIG	4931
HOUSTON INDUSTRIES INC	HOU	4911	ST JOSEPH LIGHT & POWER	SAJ	4931
I E INDUSTRIES INC	IEL	4931	TECO ENERGY INC	TE	4911
IDAHO POWER CO	IDA	4911	TEXAS UTILITIES CO	TXU	4911
ILLINOIS POWER CO	IPC	4931	TNP ENTERPRISES INC	TNP	4911
INTERSTATE POWER CO	IPM	4931	TUCSON ELECTRIC POWER CO	TEP	4911
IOWA RESOURCES INC	IOR	4911	UNION ELECTRIC CO	UEP	4911
IOWA-ILLINOIS GAS & ELEC	IWO	4931	UNITED ILLUMINATING CO	UIL	4911
IPALCO ENTERPRISES INC	IPL	4911	UNITIL CORP	UTL	4911
KANSAS CITY POWER & LIGHT	KLT	4911	UTAH POWER & LIGHT	UTP	4911
KANSAS GAS & ELECTRIC	KGE	4911	UTILICORP UNITED INC	UCU	4931
KANSAS POWER & LIGHT	KAN	4931	WASHINGTON WATER POWER	WWP	4931
KENTUCKY UTILITIES CO	KU	4911	WISCONSIN ENERGY CORP	WEC	4931
LONG ISLAND LIGHTING	LIL	4931	WISCONSIN PUBLIC SERVICE	WPS	4931
LOUISVILLE GAS & ELECTRIC	LOU	4931	NPL HOLDINGS INC	NPH	4931
MAINE PUBLIC SERVICE	MAP	4911			

N = 99

EXHIBIT 2

UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER
DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR
THIS QUARTER OR THE PRIOR THREE QUARTERS

----- YEAR=88 QUARTER=2 -----

TICKER SYMBOL	UTILITY	REASON FOR EXCLUSION
CMS	CMS ENERGY CORP	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
CHH	CENTRAL HUDSON GAS & ELEC	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 03/31/88
CX	CENTERIOR ENERGY CORP	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 06/30/88
GSU	GULF STATES UTILITIES CO	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
LIL	LONG ISLAND LIGHTING	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
MSU	MIDDLE SOUTH UTILITIES	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
NGE	NEW YORK STATE ELEC & GAS	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 03/31/88
NI	NIPSCO INDUSTRIES INC	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 09/30/87
NMK	NIAGARA MOHAWK POWER	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 09/30/87
PIN	PSI HOLDINGS INC	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
PNH	PUBLIC SERVICE CO OF N H	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
PNM	PUBLIC SERVICE CO OF N MEX	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 06/30/88
NGS	ROCHESTER GAS & ELECTRIC	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 09/30/87

N= 13

EXHIBIT 3

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR
UTILITIES RETAINED IN THE SAMPLE

----- YEAR=88 QUARTER=2 -----									
TICKER SYMBOL	PRICE, 1ST MONTH OF QTR-HIGH	PRICE, 1ST MONTH OF QTR-LOW	PRICE, 2ND MONTH OF QTR-HIGH	PRICE, 2ND MONTH OF QTR-LOW	PRICE, 3RD MONTH OF QTR-HIGH	PRICE, 3RD MONTH OF QTR-LOW	AVERAGE PRICE	DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
AEP	28.375	26.125	28.625	25.875	29.250	27.500	27.625	2.260	8.181
ATE	33.750	31.500	33.750	32.000	35.000	32.625	33.104	2.760	8.337
AYP	38.375	35.875	39.125	36.000	40.375	36.875	37.771	3.000	7.943
BGE	32.125	30.000	32.750	30.625	33.750	31.125	31.729	2.000	6.303
BKH	27.375	25.250	26.500	25.000	28.125	25.750	26.333	1.400	5.316
BSE	16.500	15.375	15.625	12.500	15.875	13.500	14.896	1.820	12.218
CER	32.750	30.250	32.875	31.500	34.500	32.125	32.333	2.400	7.423
CES	30.000	27.500	28.500	26.500	31.000	28.250	28.625	2.800	9.782
CIN	26.625	25.125	27.000	25.375	29.000	27.000	26.688	2.240	8.393
CIP	21.625	20.250	21.750	20.000	22.000	21.250	21.146	1.760	8.323
CNL	33.875	32.250	33.250	31.625	33.875	32.625	32.917	2.320	7.048
CPL	34.625	31.875	34.875	32.625	35.250	34.125	33.896	2.760	8.143
CSR	32.125	30.000	32.500	30.500	33.875	31.625	31.771	2.440	7.680
CTP	17.375	15.875	17.375	16.375	18.000	17.125	17.021	1.480	8.695
CV	23.500	22.375	24.500	22.875	25.375	23.625	23.708	1.900	8.014
CNE	27.250	22.750	24.375	23.375	28.875	24.250	25.146	3.000	11.930
D	43.500	40.875	43.500	41.375	44.500	42.500	42.708	3.080	7.212
DEM	18.000	16.875	17.500	16.500	19.000	17.125	17.500	1.460	8.343
DPL	26.125	23.750	26.875	24.000	27.625	26.250	25.771	2.160	8.382
DQU	14.875	14.375	14.875	14.125	15.125	14.625	14.667	1.200	8.182
DTE	13.875	13.125	13.750	12.000	14.125	13.000	13.313	1.680	12.620
DUK	45.500	42.500	45.500	42.250	47.875	44.625	44.708	2.800	6.263
ED	44.375	42.000	44.000	40.875	45.375	43.375	43.333	3.200	7.385
EDE	30.625	30.000	30.500	29.250	30.500	29.250	30.021	2.120	7.062
EUA	25.250	22.875	24.000	21.125	25.125	23.000	23.563	2.400	10.186
FGE	29.000	26.750	27.500	25.750	27.375	26.125	27.083	1.720	6.351
FPC	34.750	32.000	34.625	33.625	35.625	34.500	34.188	2.480	7.254
FPL	30.000	27.750	30.625	28.500	31.375	30.000	29.708	2.200	7.405
GMP	25.125	23.500	23.875	22.125	24.375	22.750	23.625	1.860	7.873
GPU	33.500	31.250	34.625	32.125	35.250	33.375	33.354	1.200	3.598
HE	33.625	31.125	32.250	30.500	31.750	30.500	31.625	1.920	6.071
HOU	31.750	29.375	31.375	29.375	32.500	30.375	30.792	2.960	9.613
IDA	24.750	22.125	22.875	20.875	22.750	21.125	22.417	1.800	8.030
IEL	24.250	23.000	23.750	22.500	24.000	22.750	23.375	2.020	8.642
IOR	20.750	17.000	17.375	15.875	18.000	15.250	17.375	1.660	9.554
IPC	22.500	17.375	17.875	16.500	19.750	17.250	18.542	2.640	14.238
IPL	23.375	21.750	23.375	22.125	24.250	22.625	22.917	1.640	7.156
IPW	22.250	20.875	21.625	19.875	22.500	20.375	21.250	1.960	9.224
INO	39.625	35.625	37.250	33.750	38.000	36.000	36.708	3.180	8.663
KAN	25.125	23.125	24.625	23.625	25.125	24.000	24.271	1.720	7.087
KOE	20.250	18.625	20.375	18.625	20.875	19.000	19.625	1.480	7.541
KLT	27.625	26.125	28.625	27.375	29.500	28.750	28.000	2.240	8.000
KU	19.750	18.125	18.875	17.625	19.000	18.250	18.604	1.340	7.203
LOU	32.625	31.500	33.750	31.750	35.625	33.625	33.146	2.660	8.025
NAP	28.500	26.000	29.625	28.625	30.500	29.000	28.708	2.000	6.967
NPL	24.625	22.000	25.750	23.375	26.000	24.125	24.313	1.720	7.075
HTP	35.000	32.125	35.000	33.000	35.875	34.500	34.250	2.680	7.825
MHE	20.000	18.125	19.250	17.750	19.375	18.000	18.750	1.520	8.107
NES	22.125	20.000	21.750	20.000	24.000	21.375	21.542	2.040	9.470
NPT	21.750	20.125	20.500	19.750	19.875	19.250	20.208	1.500	7.423
NSP	31.500	29.500	31.250	29.250	33.000	30.250	30.792	2.120	6.885

EXHIBIT 3 Continued

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR
UTILITIES RETAINED IN THE SAMPLE

YEAR=88 QUARTER=2

TICKER SYMBOL	PRICE, 1ST MONTH OF QTR-HIGH	PRICE, 1ST MONTH OF QTR-LOW	PRICE, 2ND MONTH OF QTR-HIGH	PRICE, 2ND MONTH OF QTR-LOW	PRICE, 3RD MONTH OF QTR-HIGH	PRICE, 3RD MONTH OF QTR-LOW	AVERAGE PRICE	DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
NU	20.250	18.875	19.875	18.500	20.375	18.875	19.458	1.760	9.045
NVP	22.000	20.000	21.125	19.750	21.500	20.125	20.750	1.480	7.133
DEC	19.250	17.250	18.875	17.625	19.000	17.875	18.313	1.960	10.703
DOE	31.125	29.125	32.000	30.125	32.750	31.750	31.146	2.280	7.320
DRU	30.125	28.000	29.375	28.125	31.250	28.750	29.271	2.220	7.584
PCO	16.000	14.250	15.875	14.000	16.125	15.125	15.229	1.920	12.607
PE	19.125	16.875	18.375	16.875	19.000	17.500	17.958	2.200	12.251
PEG	24.000	22.000	23.875	22.000	25.000	23.500	23.396	2.000	8.549
PON	22.625	21.250	23.500	22.125	24.125	22.250	22.646	1.960	8.655
PNW	28.000	25.000	25.125	22.750	24.875	23.000	24.792	2.800	11.294
POM	22.375	20.875	22.500	20.125	23.125	21.375	21.729	1.380	6.351
PPL	35.375	33.625	36.875	34.500	37.500	35.375	35.542	2.760	7.766
PPH	35.250	33.250	35.375	33.500	37.000	35.000	34.896	2.640	7.565
PSD	19.750	18.250	19.250	18.125	19.750	18.625	18.958	1.760	9.284
PSR	21.750	20.500	22.000	21.250	23.125	21.625	21.708	2.000	9.213
SAJ	24.500	21.750	22.000	20.125	22.750	20.250	21.896	1.400	6.394
SCE	32.000	30.000	33.625	30.500	37.250	32.500	32.646	2.380	7.290
SCO	31.625	30.000	32.875	30.625	33.750	31.625	31.750	2.400	7.559
SDO	32.500	30.625	33.625	30.625	33.875	31.875	32.188	2.600	8.078
SIO	27.250	26.000	28.750	26.250	29.250	27.000	27.417	1.700	6.201
SO	23.375	21.750	23.375	21.750	23.750	22.750	22.792	2.140	9.389
SRP	22.875	21.500	22.125	21.000	23.500	21.875	22.146	1.760	7.947
TE	23.250	21.375	22.500	21.250	24.000	22.625	22.500	1.420	6.311
TEP	58.250	54.750	57.250	54.875	58.625	55.500	56.542	3.900	6.898
TNP	19.000	18.125	19.250	18.500	19.875	19.125	18.979	1.470	7.745
TXU	26.250	24.750	25.875	25.000	27.125	25.125	25.688	2.880	11.212
UCU	19.363	17.770	20.098	18.000	19.375	18.000	18.768	1.040	5.541
UEP	23.875	21.875	23.750	21.750	24.375	22.625	23.042	1.920	8.333
UIL	20.500	19.750	21.750	19.125	23.000	19.500	20.604	2.320	11.260
UTL	30.125	29.250	29.875	28.750	29.250	27.875	29.188	2.040	6.989
UTP	30.750	29.375	31.000	29.875	30.875	27.500	29.896	2.320	7.760
MEC	25.375	23.750	26.250	24.625	27.375	26.000	25.563	1.540	6.024
NPH	45.500	42.625	44.625	43.000	47.125	44.625	44.583	3.240	7.267
NPS	21.875	21.000	22.000	20.625	22.750	21.875	21.688	1.540	7.101
NMP	26.375	24.375	26.875	25.500	28.250	26.375	26.292	2.480	9.433

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

(T.D. 8216)

Income Taxes; Definition of a Controlled Foreign Corporation and Foreign Personal Holding Company Income of a Controlled Foreign Corporation After December 31, 1986**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Temporary and final regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of the foreign corporation beginning after December 31, 1986. These regulations are necessary because of the changes made to the prior law by the Tax Reform Act of 1986. The regulations will provide the public with the guidance needed to comply with that act and would affect United States shareholders of controlled foreign corporations. The temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: Effective January 1, 1987.

The temporary regulations apply to the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of the foreign corporation beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Riea M. Lainoff of the Office of Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:LR:T (INTL-953-88)). Telephone (202) 586-8645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been

reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1088. The estimated average burden associated with the collection of information in this regulation is one hour per respondent.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Federal Register.

Background

This document contains temporary regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 954(b), 954(c) and 957(a) of the Internal Revenue Code. Sections 954 and 957 were amended by sections 1201, 1221, 1222 and 1223 of the Tax Reform Act of 1986 (Pub. L. 99-514). These regulations are issued under authority contained in section 7805 of the Internal Revenue Code of 1986.

Discussion**Statutory Provisions**

A U.S. shareholder of a controlled foreign corporation is subject to current U.S. taxation on the subpart F income of the foreign corporation. Subpart F income is defined under section 952 and consists of several categories of income. One of the principal categories of subpart F income is foreign base company income, as defined under section 954. Foreign base company income, in turn, consists of several categories of income, also defined under section 954. These categories include foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income, and foreign base company oil related income. In general, foreign personal holding company income consists of several types of passive, financial, or otherwise moveable types of income. These include, for example, interest, dividends, rents, royalties, annuities, and gains from various property transactions. The foreign base company sales and services income categories generally include income from activities that are routed through a controlled foreign corporation organized outside the country in which the economic activities occur.

The gross amounts of foreign base company income are subject to several

special rules and exceptions under section 954. These include an exception for de minimis amounts of foreign base company income, a full inclusion rule for large amounts of foreign base company income, and an exception for income subject to high foreign taxes. The definition of foreign personal holding company income also includes several exceptions and special rules. These include certain exceptions applicable to transactions engaged in by dealers and commodity merchants, an exception for certain transactions related to the business needs of a controlled foreign corporation, and an exception from certain export financing transactions. Additional exceptions apply to certain active rents and royalties and certain income received from related persons created or organized in the same foreign country as the foreign corporation.

Section 957 defines the term controlled foreign corporation. In general, a foreign corporation is a controlled foreign corporation if more than fifty percent of the total combined voting power or value of its outstanding shares is held by ten percent or greater U.S. shareholders.

1986 Act Changes

Although the provisions of subpart F were first enacted in 1962, the Tax Reform Act of 1986 made significant changes to those provisions. In general, the Act narrowed the exceptions to subpart F income, and added to it certain other types of income that Congress judged to be particularly susceptible to manipulation. New Types of income added to foreign personal holding company income include net gains on sales of property that do not generate active income, net commodities gains, and net foreign currency exchange gains. The prior law exception for certain payments between related persons has been limited by a look-through rule intended to prevent avoidance of subpart F when the related payor itself earned subpart F income. The Act repealed the prior law's exceptions from foreign personal holding company income for interest, dividends, and securities gains of banks and insurance companies.

Due in part to these expansions of Subpart F income, the Act placed increased reliance on the exception that excludes income that is subject to high foreign taxes from subpart F income. This rule is intended to distinguish cases in which a foreign corporation (instead of a U.S. corporation) is utilized for business reasons from those cases in which one is utilized for tax avoidance purposes. The Act therefore replaced the

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subjective "significant purpose" test that applied under prior law with an objective test to determine whether income that has been earned through a foreign corporation has in fact been subject to less tax than if it had been earned through a U.S. corporation.

Finally, the definition of a controlled foreign corporation under section 957 was modified by adding to the prior law's voting control test the additional stock-value test. This modification was based on Congress' concern that taxpayers could manipulate the prior test to avoid the provisions of subpart F by sharing voting stock evenly with non-U.S. shareholders while retaining the majority of the value of the foreign corporation in the form of preferred stock or other securities. Congress also considered but did not adopt a reduction of the "more than 50 percent" definition of control to "50 percent or more." Congress' retention of prior law in this regard is said to have been based in part on its understanding that under the provisions of § 1.957-1(b) a foreign corporation effectively controlled by U.S. shareholders will be treated as a controlled foreign corporation.

Summary of Regulation

Because of the substantial modification of the provisions of Subpart F by the Tax Reform Act of 1986, the regulations under section 954 relating to the general definition of foreign base company income and to the definition of foreign personal holding company income have been redrafted in their entirety, and are hereby adopted as temporary regulations §§ 1.954-1T and 1.954-2T, applicable with respect to taxable years of controlled foreign corporations beginning after December 31, 1986. The existing final regulations under section 954 are retained (although redesignated as §§ 1.954A-1 and 1.954A-2) because they remain applicable with respect to taxable years of controlled foreign corporations beginning before January 1, 1987. Similarly, several modifications in the form of temporary regulations are made to the final regulations under section 957.

Section 1.954-1T provides rules concerning the definition and computation of foreign base company income. The regulations first specify the order in which various special rules and exceptions must be applied by providing rules for computing gross, adjusted gross, net, and adjusted net foreign base company income, which is the amount ultimately includible under subpart F. (Certain of these provisions also apply for purposes of computing insurance income under section 953, another

category of subpart F income.) In connection with these computational rules, § 1.954-1T(b) provides specific guidance on the application of the de minimis and full inclusion rules of section 954(b)(3) in computing adjusted gross foreign base company income, including an anti-base rule to prevent manipulation of the rules through the use of multiple controlled foreign corporations.

Section 1.954-1T(c) provides rules for allocating and apportioning expenses among various types of adjusted gross foreign base company income and non-foreign base company income in order to compute net foreign base company income. In general, that paragraph references rules in regulations under section 904(d) relating to separate limitations and the foreign tax credit. Section 1.954-1T(c) provides, however, that each category of foreign base company income is not reduced below zero in allocating and apportioning expenses, so that the positive categories of foreign base company income are not effectively reduced by losses in negative categories of foreign base company income. No inference should be drawn from this provision regarding either the application of section 952(c), which limits a controlled foreign corporation's subpart F income by its current earnings and profits, or the apportionment of deductions between Subpart F and other income of a controlled foreign corporation.

Section 1.954-1T(d) provides specific guidance on the application of the high tax exception of section 954(b)(4) in computing adjusted net foreign base company income. To minimize the additional administrative burdens imposed by these rules, they rely to the greatest extent possible on calculations already required for purposes of the foreign tax credit limitation under section 904. Finally, § 1.954-1T(e) provides rules for characterizing income of a controlled foreign corporation, since the categories of income received by a foreign corporation will significantly affect the calculation of its subpart F income, and also provides coordination rules among the various categories of foreign base company income.

Section 1.954-2T provides detailed rules on the calculation of foreign personal holding company income under section 954(c). Rules of general application are set forth in § 1.954-2T(a), including coordination rules among the various categories of foreign personal holding company income, and relevant definitions. Section 1.954-2T(b) provides for the inclusion in foreign personal holding company income of dividends,

interest, rents, royalties, and annuities, and provides guidance on the export financing and same country related person exceptions applicable to certain types of such income. Several of these rules are based upon the old regulations, but they have been modified in several ways. In addition, a special rule preserves the character of tax exempt interest received by a controlled foreign corporation, ensuring that such income is exempt from income tax in the hands of a U.S. shareholder (but potentially subject to the alternative minimum tax). Rents received in the active conduct of a trade or business may be excluded from foreign personal holding company income pursuant to the rules set forth in § 1.954-2T(c). Similarly, § 1.954-2T(d) permits the exclusion of royalties received in the active conduct of a trade or business. In both cases the rules provided are based upon the old regulations under section 954, but have been modified in significant ways.

Section 1.954-2T(e) provides guidance concerning the new category of foreign personal holding company income arising from dispositions of property that either produces passive income or does not produce income. Since the amount included in foreign personal holding company income is specifically limited under the Code to the excess of gains over losses, any excess of losses over gains (i.e. a net loss in the category) is definitionally excluded from the computation of foreign personal holding company income and may not reduce any such income in another category. Special rules address the treatment of property that gives rise to more than one type of income, and specify the classification of gain or loss from dispositions of debt instruments and options.

Commodities transactions, another new category of foreign personal holding company income, are addressed by § 1.954-2T(f). The section provides definitions of relevant terms and detailed guidance on the exceptions applicable to certain active business sales and hedging transactions. In general, these exceptions are only available to an active producer, processor, merchant or handler of the commodity in question. Again, because the statutory provisions reaches only the excess of gains over losses, a net loss in this category is not taken into account in computing foreign personal holding company income.

Section 1.954-2T(g) provides rules concerning the new category of gains from foreign currency transactions. Rules are provided concerning the exception for transactions related to the

business needs of the controlled foreign corporation. In addition, the regulations provide a simplified alternative to the business needs rule, which permits an election to include in foreign personal holding company income a foreign corporation's net foreign currency gain or loss. This procedure is intended to reduce the administrative burden imposed on corporations that tend to hedge their foreign currency exposures resulting in negligible net gain or loss. Although the definitional limitation generally prevents the inclusion of a net currency loss, pursuant to the regulatory net inclusion election a net currency loss may be taken into account for purposes of computing foreign personal holding company income. Finally, a special rule is provided for qualified business units using the dollar approximate separate transactions method under § 1.985-3T.

Section 1.954-2T(h) provides guidance on the new category of income equivalent to interest. General guidance on the definition of such income is provided, together with specific rules concerning income from factoring receivables, and several examples are set forth. In addition, the regulation specifically excludes income from sales of property from its definition of income equivalent to interest. Finally, rules similar to those of sections 483 and 1274 apply to income from the performance of services where payment is delayed beyond 120 days. Although the legislative history of this provision provides relatively little guidance, the regulation seeks to define the term in a common-sense manner by comparing the income from the transactions in issue with income earned by lending money. Thus, for example, if a foreign corporation buys a note receivable from one person for \$95 and 60 days later collects \$100 from the obligor, its income would appear to be economically equivalent to the interest income it could have earned by advancing \$95 to another person in the form of a loan, to be repaid in 60 days with \$5 of interest. In both such cases the foreign corporation has advanced funds to another party, and received in return income attributable to the time value of money and the assumption of the risk of non-payment (and possibly the performance of a collection function). Such transactions are therefore included in income equivalent to interest, together with all transactions that yield a similar flow of income.

Section 1.957-1T modifies paragraph (a) of final regulations § 1.957-1 to conform its provisions to the changes made by the Tax Reform Act of 1986, and specifically to take into account the

new stock-value definition of control. The provisions of final regulations § 1.957-1(b) remain unchanged, but two additional examples are added by these temporary regulations to final regulations § 1.957-1(c).

Special Analyses

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). There is a need for immediate guidance with respect to the provisions contained in this Treasury decision because the provisions of the Internal Revenue Code concerning the definition of a controlled foreign corporation and foreign personal holding company income (sections 954(b), 954(c), and 957(a)) are applicable with respect to United States shareholders of controlled foreign corporations, foreign base company income and foreign personal holding company income of controlled foreign corporations for taxable years of the controlled foreign corporation beginning after December 31, 1986. For this reason, it is found impracticable to issue the regulations with notice and public procedure under subsection (b) of the section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Drafting Information

The principal author of this regulation is David L. Paul, formerly of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects in 26 CFR Parts 1.951-1 Through 1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended to read as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Sections 1.954-0T, 1.954-1T, 1.954-2T, and 1.957-1T also issued respectively under 26 U.S.C. 954(b), 954(c), and 957(a). * * *

Par. 2. The following new section is added immediately after § 1.953-6.

§ 1.954-0T Introduction (temporary).

(a) *Effective date.* (1) The provisions of §§ 1.954-1T and 1.954-2T apply to taxable years of a controlled foreign corporation beginning after December 31, 1986. Consequently, any gain or loss (including foreign currency gain or loss as defined in section 988(b)) recognized during such taxable years of a controlled foreign corporation is subject to these provisions.

(2) The provisions of §§ 1.954A-1 and 1.954A-2 apply to taxable years of a controlled foreign corporation beginning before January 1, 1987. All references therein to sections of the Code are to the Internal Revenue Code of 1954 prior to the amendments made by the Tax Reform Act of 1986.

(b) *Outline of regulation provisions for sections 954(b)(3), 954(b)(4), 954(b)(5) and 954(c) for taxable years of a controlled foreign corporation beginning after December 31, 1986.*

(i) § 1.954-0T Introduction.

(a) Effective dates.

(b) Outline.

(iii) § 1.954-1T Foreign base company income.

(a) In general.

(1) Purpose and scope.

(2) Definition of gross foreign base company income.

(3) Definition of adjusted gross foreign base company income.

(4) Definition of net foreign base company income.

(5) Definition of adjusted net foreign base company income.

(6) Insurance income definitions.

(7) Additional items of adjusted net foreign base company income or adjusted net insurance income by reason of section 952(c).

(8) Illustration.

(b) Computation of adjusted gross foreign base company income and adjusted gross insurance income.

(1) De minimis rule and full inclusion rule.

(i) In general.

(ii) Five percent de minimis test.

(iii) Seventy percent full inclusion test.

(2) Character of items of adjusted gross foreign base company income.

(3) Coordination with section 952(c).

(4) Anti-abuse rule.

(i) In general.

- (ii) Presumption.
 (iii) Definition of related person.
 (iv) Illustration.
 (5) Illustration.
 (c) Computation of net foreign base company income.
 (d) Computation of adjusted net foreign base company income or adjusted net insurance income.
 (1) Application of high tax exception.
 (2) Effective rate at which taxes are imposed.
 (3) Taxes paid or accrued with respect to an item of income.
 (i) Income other than foreign personal holding company income.
 (ii) Foreign personal holding company income.
 (4) Definition of an item of income.
 (i) Income other than foreign personal holding company income.
 (ii) Foreign personal holding company income.
 (A) In general.
 (B) Consistency rule.
 (5) Procedure.
 (6) Illustrations.
 (e) Character of an item of income.
 (1) Substance of the transaction.
 (2) Separable character.
 (3) Predominant character.
 (4) Coordination of categories of gross foreign base company income or gross insurance income.
 (III) § 1.954-2T Foreign Personal Holding Company Income.
 (a) Computation of foreign personal holding company income.
 (1) In general.
 (2) Coordination of overlapping definitions.
 (3) Changes in use or purpose with which property is held.
 (i) In general.
 (ii) Illustrations.
 (4) Definitions.
 (i) Interest.
 (ii) Inventory and similar property.
 (iii) Regular dealer.
 (iv) Dealer property.
 (v) Debt instrument.
 (b) Dividends, etc.
 (1) In general.
 (2) Exclusion of certain export financing.
 (i) In general.
 (ii) Conduct of a banking business.
 (iii) Illustration.
 (3) Exclusion of dividends and interest from related persons.
 (i) Excluded dividends and interest.
 (ii) Interest paid out of adjusted foreign base company income or insurance income.
 (iii) Dividends paid out of prior years' earnings.
 (iv) Fifty percent substantial assets test.
 (v) Value of assets.
 (vi) Location of tangible property used in a trade or business.
 (A) In general.
 (B) Exception.
 (vii) Location of intangible property used in a trade or business.
 (A) In general.
 (B) Property located in part in the payor's country of incorporation and in part in other countries.
 (viii) Location of property held for sale to customers.

- (A) In general.
 (B) Inventory located in part in the payor's country of incorporation and in part in other countries.
 (ix) Location of debt instruments.
 (x) Treatment of certain stock interests.
 (xi) Determination of period during which property is used in a trade or business.
 (xii) Treatment of banks and insurance companies (Reserved)
 (4) Exclusion of rents and royalties derived from related persons.
 (i) In general.
 (ii) Rents or royalties paid out of adjusted foreign base company income or insurance income.
 (5) Exclusion of rents and royalties derived in the active conduct of a trade or business.
 (6) Treatment of tax exempt interest.
 (c) Excluded rents.
 (1) Trade or business cases.
 (2) Special rules.
 (i) Adding substantial value.
 (ii) Substantiability of foreign organization.
 (iii) Definition of active leasing expense.
 (iv) Adjusted leasing profits.
 (3) Illustrations.
 (d) Excluded royalties.
 (1) Trade or business cases.
 (2) Special rules.
 (i) Adding substantial value.
 (ii) Substantiability of foreign organization.
 (iii) Definition of active licensing expense.
 (iv) Definition of adjusted licensing profit.
 (3) Illustrations.
 (e) Certain property transactions.
 (1) In general.
 (i) Inclusion of FPHC income.
 (ii) Dual character property.
 (2) Property that gives rise to certain income.
 (i) In general.
 (ii) Exception.
 (3) Property that does not give rise to income.
 (4) Classification of gain or loss from the disposition of a debt instrument or on a deferred payment sale.
 (i) Gain.
 (ii) Loss.
 (5) Classification of options and other rights to acquire or transfer property.
 (6) Classification of certain interests in pass-through entities.
 [Reserved]
 (f) Commodities transactions.
 (1) In general.
 (2) Definitions.
 (i) Commodity.
 (ii) Commodities transaction.
 (3) Definition of the term "qualified active sales".
 (i) In general.
 (ii) Sale of commodities.
 (iii) Active conduct of a commodities business.
 (iv) Definition of the term "substantially all."
 (4) Definition of the term "qualified hedging transaction".
 (g) Foreign currency gain.
 (1) In general.
 (2) Exceptions.
 (i) Qualified business units using the dollar approximate separate transactions method.

- (ii) Tracing to exclude foreign currency gain or loss from qualified business and hedging transactions.
 (iii) Election out of tracing.
 (3) Definition of the term "qualified business transaction".
 (i) In general.
 (ii) Specific section 959 transactions attributable to the sale of goods or services.
 (A) Acquisition of debt instruments.
 (B) Becoming the obligor under debt instruments.
 (C) Accrual of any item of gross income.
 (D) Accrual of any item of expense.
 (E) Entering into forward contracts, futures contracts, options, and similar instruments.
 (F) Disposition of nonfunctional currency.
 (4) Definition of the term "qualified hedging transaction".
 (i) In general.
 (ii) Change in purpose of hedging transaction.
 (5) Election out of tracing.
 (i) In general.
 (ii) Exception.
 (iii) Procedure.
 (A) In general.
 (B) Time and manner.
 (C) Termination.
 (h) Income equivalent to interest.
 (1) In general.
 (2) Illustrations.
 (3) Income equivalent to interest from factoring.
 (i) General rule.
 (ii) Exceptions.
 (iii) Factored receivable.
 (iv) Illustrations.
 (4) Determination of sales income.
 (5) Receivables arising from performance of services.

§ 1.954-1 (Redesignated as § 1.954A-1)

Par. 3. Section 1.954-1 is redesignated as § 1.954A-1.

Par. 4. The following new section is added:

§ 1.954-1T Foreign base company income; taxable years beginning after December 31, 1985 (temporary).

(a) In general.—(1) Purpose and scope. Section 954 (b) through (g) and §§ 1.954-1T and 1.954-2T provide rules for computing the foreign base company income of a controlled foreign corporation. Foreign base company income is included in the subpart F income of a controlled foreign corporation under the rules of section 952 and the regulations thereunder. Subpart F income is included in the gross income of a United States shareholder of a controlled foreign corporation under the rules of section 951 and the regulations thereunder, and thus is subject to current taxation under section 1 or 11 of the Code. The determination of whether a foreign corporation is a controlled foreign corporation, the subpart F income of which is included currently in the gross

income of its United States shareholders, is made under the rules of section 957 and the regulations thereunder.

(2) Gross foreign base company income. For taxable years of a controlled foreign corporation beginning after December 31, 1985, the gross foreign base company income of a controlled foreign corporation consists of the following categories of gross income:

- (i) Its foreign personal holding company income, as defined in section 954(c) and § 1.954-2T.
 (ii) Its foreign base company sales income, as defined in section 954(d) and the regulations thereunder.
 (iii) Its foreign base company services income, as defined in section 954(e) and the regulations thereunder.
 (iv) Its foreign base company shipping income, as defined in section 954(f) and the regulations thereunder, and
 (v) Its foreign base company oil related income, as defined in section 954(g) and the regulations thereunder.

(3) Adjusted gross foreign base company income. The term "adjusted gross foreign base company income" means the gross foreign base company income of a controlled foreign corporation as adjusted by the de minimis and full inclusion rules of paragraph (b) of this section.

(4) Net foreign base company income. The term "net foreign base company income" means the adjusted gross foreign base company income of a controlled foreign corporation reduced so as to take account of deductions properly allocable to such income under the rules of section 954(b)(5) and paragraph (c) of this section. In computing net foreign base company income, foreign personal holding company income is reduced (but not below zero) by related person interest expense before allocating and apportioning other expenses in accordance with the rules of paragraph (c) of this section and § 1.904(d)-5(c)(2).

(5) Adjusted net foreign base company income. The term "adjusted net foreign base company income" means the net foreign base company income of a controlled foreign corporation reduced by any items of net foreign base company income for which the high tax exception of paragraph (d) of this section is elected. The term "foreign base company income" as used in the Code and elsewhere in the regulations generally means adjusted net foreign base company income.

(6) Insurance income definitions. The term "gross insurance income" includes any item of gross income taken into account in determining insurance

income under section 953 and the regulations thereunder. The term "adjusted gross insurance income" means gross insurance income as adjusted by the de minimis and full inclusion rules of paragraph (b) of this section. The term "net insurance income" means adjusted gross insurance income reduced under section 953 and the regulations thereunder so as to take into account deductions properly allocable or apportionable to such income. The term "adjusted net insurance income" means net insurance income reduced by any items of net insurance income for which the high tax exception of paragraph (d) of this section is elected.

(7) Additional items of adjusted net foreign base company income or adjusted net insurance income by reason of section 952(c). Earnings and profits of the controlled foreign corporation that are recharacterized as foreign base company income or insurance income under section 952(c) are items of adjusted net foreign base company income or gross insurance income of the controlled foreign corporation in computing adjusted gross foreign base company income or adjusted gross insurance income (for purposes of applying the de minimis and full inclusion tests of paragraph (b) of this section).

(8) Illustration. The order of computation is illustrated by the following example. Computations in this paragraph (a)(8) and in paragraph (b)(5) of this section involving the operation of section 952(c) are included for purposes of illustration only and do not provide substantive rules concerning the operation of that section.

Example. (i) Gross income. CFC, a controlled foreign corporation, has gross income of \$1000 for the current taxable year. Of that \$1000 of income, \$100 is interest income that is included in the definition of foreign personal holding company income under section 954(c)(1)(A) and § 1.954-2T(b)(1)(ii), is not income from a trade or service receivable described in section 954(d)(1) or (6), and is not excluded from foreign personal holding company income under any provision of section 954(c) and § 1.954-2T. Another \$50 is foreign base company sales income under section 954(d) and the regulations thereunder. The remaining \$850 of gross income is not included in the definition of foreign base company income or insurance income under sections 954(c), (d), (e), (f), (g), or 953 and the regulations thereunder, and is foreign source general limitation income described in section 904(d)(1)(f) and the regulations thereunder.

(ii) Expenses. CFC has expenses for the current taxable year of \$500. Of that \$500, \$80 is from interest paid to a related person and is allocable to foreign personal holding company income along with \$2 of other expense. Another \$20 of expense is allocable to foreign base company sales. The remaining \$470 of expense is allocable to income other than foreign base company income or insurance income.

(iii) Earnings and deficits. CFC has earnings and profits for the current taxable year of \$500. In the prior taxable year, CFC had losses with respect to income other than gross foreign base company income or gross insurance income. By reason of the limitation provided under section 952(c)(1)(A) and the regulations thereunder, those losses reduced the Subpart F income (consisting entirely of foreign source general limitation income) of CFC by \$800 for the prior taxable year.

(iv) Taxes. Foreign tax of \$30 is considered imposed on the interest income under the rules of section 954(b)(4) and paragraph (d) of this section. Foreign tax of \$14 is considered imposed on the foreign base company sales income under the rules of section 954(b)(4) and paragraph (d) of this section. Foreign tax of \$177 is considered imposed on the remaining foreign source general limitation income under the rules of section 954(b)(4) and paragraph (d) of this section. For the taxable year of the foreign corporation, the maximum U.S. rate of taxation under section 11 is 34 percent.

(v) Conclusion. Based on these facts, if CFC elects to exclude all items of income subject to a high foreign tax under section 954(b)(4) and paragraph (d), it will have \$500 of subpart F income as defined in section 952(a) (consisting entirely of foreign source general limitation income) determined as follows. The following steps do not illustrate the computation of the subpart F income of a controlled foreign corporation that has income from a trade or service receivable treated as interest under section 954(d)(1) or interest described in section 954(d)(6).

Step 1—Determine gross income:

(1) Gross income.....\$1000

Step 2—Determine gross foreign base company income and gross insurance income:

(2) Interest income included in foreign personal holding company income under section 954 (c).....100
 (3) Foreign base company sales income under section 954(d).....50
 (4) Total gross foreign base company income gross insurance income as defined in sections 954(c), (d), (e), (f) and (g) and 953 and the regulations thereunder (line (3) plus line (4)).....150

Step 3—Determine adjusted gross foreign base company income and adjusted gross insurance income:

(5) Five percent of gross income (.05 × line (1)).....50
 (6) Seventy percent of gross income (.70 × line (1)).....700
 (7) Adjusted gross foreign base company income and adjusted

gross insurance income after the application of the de minimis test of paragraph (b) (line (4), or zero if line (4) is less than the lesser of line (5) or \$1,000,000).....	150
(8) Adjusted gross foreign base company income and adjusted gross insurance income after the application of the full inclusion test of paragraph (b) (line (4), or line (1) if line (4) is greater than line (6)).....	150
Step 4—Compute net foreign base company income:	
(9) Related person interest expense and other expense allocable and apportionable to foreign personal holding company income.....	10
(10) Deductions allocable and apportionable to foreign base company sales income.....	20
(11) Foreign personal holding company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (the lesser of line (2) or line (7), reduced (but not below zero) by line (9)).....	90
(12) Foreign base company sales income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (the lesser of line (3) or line (7), reduced (but not below zero) by line (10)).....	30
(13) Total net foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) (line (11) plus line (12)).....	120
Step 5—Compute net insurance income:	
(14) Net insurance income under section 953 and the regulations thereunder.....	0
Step 6—Compute adjusted net foreign base company income:	
(15) Foreign tax imposed on foreign personal holding company income (as determined under paragraph (d)).....	30
(16) Foreign tax imposed on foreign base company sales income (as determined under paragraph (d)).....	14
(17) Ninety percent of the maximum U.S. corporate tax rate.....	30.8
(18) Effective rate of foreign tax imposed on foreign personal holding company income (interest) under section 954(b)(4) and paragraph (d) (line (15) divided by line (11)).....	33
(19) Effective rate of foreign tax imposed on 50 of foreign base company sales income under section 954(b)(4) and paragraph (d) (line (16) divided by line (12)).....	47
(20) Foreign personal holding company income subject to a high foreign tax under section 954(b)(4) and paragraph (d) (zero, or line (11) if line (18) is greater than line (17)).....	90
(21) Foreign base company sales income subject to a high foreign tax under section 954(b)(4) and paragraph (d) (zero, or line (12) if line (19) is greater than line (17)).....	30
(22) Adjusted net foreign base	

company income after applying section 954(b)(4) and paragraph (d) (line (13), reduced by the sum of line (20) and line (21)).....0

Step 7—Compute adjusted net insurance income:

(23) Adjusted net insurance income.....0

Step 8—Additions to or reduction of adjusted net foreign base company income by reason of section 952(c):

(24) Earnings and profits for the current year.....500

(25) The excess in earnings and profits over subpart F income subject to being recharacterized as adjusted net foreign base company income under section 952(c)(2) (excess of line (24) over the sum of lines (22) and (23); if there is a deficit, then the limitation of section 952(c)(1) may apply for the current year).....500

(26) Amount of reduction in subpart F income for prior taxable years by reason of the limitation of section 952(c)(1) and the regulations thereunder.....600

(27) Subpart F income as defined in section 952(a), assuming section 952(a) (3), (4), or (5) does not apply (the sum of line (22), line (23), and the lesser of line (25) or line (26)).....500

(b) Computation of adjusted gross foreign base company income and adjusted gross insurance income—(1) De minimis rule, etc.—(i) In general.

If the de minimis rule of paragraph (b)(1)(iii) of this section applies, then adjusted gross foreign base company income and adjusted gross insurance income are each equal to zero. If the full inclusion rule of paragraph (b)(1)(iii) of this section applies, then adjusted gross foreign base company income consists of all items of gross income of the controlled foreign corporation other than gross insurance income, and adjusted gross insurance income consists of all items of gross insurance income. Otherwise, the adjusted gross foreign base company income of a controlled foreign corporation consists of the gross foreign base company income of the controlled foreign corporation, and the adjusted gross insurance income of a controlled foreign corporation consists of the gross insurance income of the controlled foreign corporation.

(ii) Five percent de minimis test—(A) In general. The de minimis rule of this paragraph (b)(1)(ii) applies if the sum of the gross foreign base company income and the gross insurance income of a controlled foreign corporation is less than the lesser of—

(1) 5 percent of gross income, or

(2) \$1,000,000. Controlled foreign corporations having a functional currency other than the U.S. dollar shall translate the \$1,000,000 threshold using the exchange rate

provided under section 909(b)(3) and the regulations thereunder for amounts included in income under section 951(a).

(B) Coordination with section 864(d). Gross foreign base company income or gross insurance income of a controlled foreign corporation always includes items of income from trade or service receivables described in section 864(d)(1) or (6), even if the de minimis rule of this paragraph (b)(1)(ii) is otherwise applicable. In that case, adjusted gross foreign base company income consists only of the items of income from trade or service receivables described in section 864(d)(1) or (6) that are included in gross foreign base company income, and adjusted gross insurance income consists only of the items of income from trade or service receivables described in section 864(d)(1) or (6) that are included in gross insurance income.

(iii) Seventy percent full inclusion test. The full inclusion rule of this paragraph (b)(1)(iii) applies if the sum of the foreign base company income and the gross insurance income for the taxable year exceeds 70 percent of gross income.

(2) Character of items of gross income included in adjusted gross foreign base company income. The items of gross income included in the adjusted gross foreign base company income of a controlled foreign corporation retain their character as foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income, or foreign base company oil related income. Items of gross income included in adjusted gross income because the full inclusion test of paragraph (b)(1)(iii) of this section is met are termed "full inclusion foreign base company income," and constitute a separate category of adjusted gross foreign base company income for purposes of allocating and apportioning deductions under paragraph (c) of this section.

(3) Coordination with section 952(c). Items of gross foreign base company income or gross insurance income that are excluded from adjusted foreign base company income or adjusted gross insurance income because the de minimis test of paragraph (b)(1)(ii) of this section is met are potentially subject to recharacterization as adjusted net foreign base company income or adjusted net insurance income (or other categories of income included in the computation of Subpart F income under section 952 and the regulations thereunder) for the taxable year under the rules of section 952(c). Items of full

inclusion foreign base company income that are included in adjusted gross foreign base company income because the full inclusion test of paragraph (b)(1)(iii) of this section is met, and are included in Subpart F income under section 952 and the regulations thereunder, do not reduce amounts that, under section 952(c), are subject to recharacterization in later years on account of deficits in prior years.

(4) Anti-abuse rule—(i) In general. For purposes of applying the de minimis and full inclusion tests of paragraph (b)(1) of this section, the income of two or more controlled foreign corporations shall be aggregated and treated as the income of a single corporation if one principal purpose for separately organizing, acquiring, or maintaining such multiple corporations is to avoid the application of the de minimis or full inclusion requirements of paragraph (b)(1) of this section. For purposes of this paragraph (b), a principal purpose need not be the purpose of first importance.

(ii) Presumption. Two or more controlled foreign corporations are presumed to have been organized, acquired or maintained to avoid the effect of the de minimis and full inclusion requirements of paragraph (b)(1) of this section if the corporations are related persons as defined in subdivision (iii) of this paragraph (b)(4) and the corporations are described in subdivision (A), (B), or (C). This presumption may be rebutted by proof to the contrary.

(A) The activities now carried on by the controlled foreign corporations, or the assets used in those activities, are substantially the same activities that were carried on, or assets that were previously held by a single controlled foreign corporation, and the United States shareholders of the controlled foreign corporations or related persons (as determined under subdivision (iii) of this paragraph (b)(4)) are substantially the same as the United States shareholders of the one controlled foreign corporation in that prior taxable year. A presumption made in connection with the requirements of this subdivision (A) of paragraph (b)(4)(ii) may be rebutted by proof that the activities carried on by each controlled foreign corporation would constitute a separate branch under the principles of § 1.367(a)-6T(g) if carried on directly by a United States person.

(B) The controlled foreign corporations carry on a business, financial operation, or venture as partners directly or indirectly in a partnership (as defined in section 7701(a)(2) and § 301.7701-3) that is a related person (as defined in subdivision

(iii) of this paragraph (b)(4)) with respect to each such controlled foreign corporation.

(C) The activities carried on by the controlled foreign corporations would constitute a single branch operation under § 1.367(a)-6T(g)(2) if carried on directly by the United States person.

(iii) Related persons. For purposes of this paragraph (b), two or more persons are related persons if they are in a relationship described in section 267(b). In determining for purposes of this paragraph (b) whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). In determining for purposes of this paragraph (b) whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(iv) Illustration. The following example illustrates the application of this paragraph (b)(4).

Example. USP is the sole United States shareholder of three controlled foreign corporations: CFC1, CFC2, and CFC3. The three controlled foreign corporations all have the same taxable year. The three controlled foreign corporations are partners in FP, a foreign entity classified as a partnership under section 7701(a)(2) and § 301.7701-3 of the regulations. For their current taxable year, each of the controlled foreign corporations derives all of its income other than foreign base company income from activities conducted through FP, and its foreign base company income from activities conducted both jointly through FP and separately without FP. Based on the facts in the table below, for their current taxable year, the foreign base company income derived by each controlled foreign corporation, including income derived from FP, is less than five percent of the gross income of each controlled foreign corporation and is less than \$1,000,000:

	CFC1	CFC2	CFC3
Gross income.....	\$4,000,000	\$6,000,000	\$12,000,000
Five percent of gross income.....	200,000	400,000	600,000
Foreign base company income.....	199,000	398,000	597,000

Thus, without the application of the anti-abuse rule of this subparagraph (5), each

controlled foreign corporation would be treated as having no foreign base company income after the application of the de minimis rule of section 954(b)(3)(A) and § 1.954-1T(b)(1).

However, under these facts the requirements of subdivision (i) of this paragraph (b)(4) are presumed to be met. The sum of the foreign base company income of the controlled foreign corporations is \$1,194,000. Thus, the amount of adjusted gross foreign base company income will not be less than the amount of gross foreign base company income by reason of the de minimis rule of section 954(b)(3)(A) and this paragraph (b).

(5) Illustration. The following example illustrates computations required by sections 952 and 954 and this § 1.954-1T if the full inclusion test of paragraph (b)(1)(iii) is met (see paragraph (a)(8) for an example illustrating computations required if the de minimis test of paragraph (b)(1)(ii) is met):

Example. (i) **Gross income.** CFC, a controlled foreign corporation, has gross income of \$1,000 for the current taxable year. Of that \$1,000 of income, \$720 is interest income that is included in the definition of foreign personal holding company income under section 954(c)(1)(A) and § 1.954-2T(b)(ii), is not income from trade or service receivables described in section 864(d)(1) or (6), and is not excluded from foreign personal holding company income under any provisions of section 954(c) and § 1.954-2T. The remaining \$280 is services income that is not included in the definition of foreign base company income or insurance income under sections 954(c), (d), (e), (f), (g) or 953 and the regulations thereunder, and is foreign source general limitation income for purposes of section 904(d)(1)(i).

(ii) Expenses. CFC has expenses for the current taxable year of \$650. Of that \$650, \$350 is from interest paid to related persons that is allocable to foreign personal holding company income along with \$50 of other expense. The remaining \$250 of expense is allocable to services income other than foreign base company income or insurance income.

(iii) Earnings and deficits. CFC has earnings and profits for the current taxable year of \$350. In the prior taxable year, CFC had losses with respect to income other than foreign base company income or insurance income. By reason of the limitation provided under section 952(c)(1)(A) and the regulations thereunder, those losses reduced the subpart F income of CFC (consisting entirely of foreign source general limitation income) by \$600 for the prior taxable year.

(iv) Taxes. A foreign tax of \$120 is considered imposed on the \$720 of interest income under the rules of section 954(b)(4) and paragraph (d) of this section, and a foreign tax of \$2 is considered imposed on the services income under the rules of section 954(b)(4) and paragraph (d) of this section. For the taxable year of the foreign corporation, the maximum U.S. rate of taxation under section 11 is 34 percent.

(v) *Conclusion.* Based on these facts, if CFC elects to exclude all items of income subject to a high foreign tax under section 954(b)(4) and paragraph (d), it will have \$350 of subpart F income as defined in section 952(a) determined as follows:

Step 1—Determine gross income:

(1) Gross income.....\$1000

Step 2—Compute gross foreign base company income and gross insurance income:

(2) Gross foreign base company income and insurance income as defined in sections 954(c), (d), (e), (f), (g) and 953 and the regulations thereunder (interest income).....720

Step 3—Compute adjusted gross foreign base company income:

(3) Seventy percent of gross income (.70 × line (1)).....700

(4) Adjusted gross foreign base company income or insurance income after the application of the full inclusion rule of this paragraph (b)(1) (line (2), or line (1) if line (2) is greater than line (3)).....1000

(5) Full inclusion foreign base company income under paragraph (a)(2)(vi) (line (4) minus line (2)).....280

Step 4—Compute net foreign base company income:

(6) Related person interest expense and other deductions allocable and apportionable to foreign personal holding company income under section 954(b)(5) and paragraph (c).....400

(7) Deductions allocable and apportionable to full inclusion foreign base company income under section 954(b)(5) and paragraph (c).....250

(8) Foreign personal holding company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (2) reduced (but not below zero) by line (6)).....320

(9) Full inclusion foreign base company income after allocating deductions under section 954(b)(5) paragraph (c) of this section (line (5) reduced (but not below zero) by line (7)).....30

(10) Total gross foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) (line (8) plus line (9)).....350

Step 5—Compute net insurance income:

(11) Net insurance income under section 953 and the regulations thereunder.....0

Step 6—Compute adjusted net foreign base company income:

(12) Foreign tax imposed on foreign personal holding company income (interest).....120

(13) Foreign tax imposed on full inclusion foreign base company income.....2

(14) Ninety percent of the maximum U.S. corporate tax rate.....30.6

(15) Effective rate of foreign tax imposed on \$320 of foreign personal holding company income under section 954(b)(4) and paragraph (d) (line (12) divided by line (8)).....38

(16) Effective rate of foreign tax imposed of \$30 of full inclusion foreign base company income under section 954(b)(4) and paragraph (d) (line (13) divided by line (9)).....7

(17) Foreign personal holding company income subject to a high foreign tax under section 954(b)(4) and paragraph (d) (zero, or line (8) if line (15) is greater than line (14)).....320

(18) Full inclusion foreign base company income subject to a high foreign tax under section 954(b)(4) and paragraph (d) (zero, or line (9) if line (16) is greater than line (14)).....0

(19) Adjusted net foreign base company income after applying section 954(b)(4) and paragraph (d) (line (10), reduced by the sum of line (17) and line (18)).....30

Step 7—Compute adjusted net insurance income:

(20) Adjusted net insurance income.....0

Step 8—Additions to or reduction of adjusted net foreign base company income by reason of section 952(c):

(21) Earnings and profits for the current year.....350

(22) The excess in earnings and profits over subpart F income, which is subject to being recharacterized as adjusted net foreign base company income under section 952(c)(2) (excess of line (21) over the sum of line (19) and line (20)); if there is a deficit, then the limitation of 952(c)(1) may apply for the current year.....320

(23) Amount of reduction in subpart F income for prior taxable years by reason of the limitation of section 952(c)(1) and the regulations thereunder.....600

(24) Subpart F income as defined in section 952(a), assuming section 952(a) (3), (4), or (5) does not apply (the sum of line (19) and line (20) plus the lesser of line (22) or line (23)).....350

(25) Amount of prior years' deficit remaining to be recharacterized as subpart F income in later years under section 952(c) (excess of line (23) over line (22)).....280

(c) *Computation of net foreign base company income.*—The net foreign base company income of a controlled foreign corporation is computed by reducing (but not below zero) the amount of gross income in each of the categories of adjusted gross foreign base company income described in paragraph (b)(2) of this section, so as to take into account deductions allocable and apportionable to such income. For purposes of section

954 and this section, expenses must be allocated and apportioned consistent with the allocation and apportionment of expenses for purposes of section 904(d). For purposes of this § 1.954-1T, an item of net foreign base company income must be categorized according to the category of adjusted gross foreign base company income from which it is derived. Thus, an item of net foreign base company income must be categorized as a net item of—

(1) Foreign personal holding company income,

(2) Foreign base company sales income,

(3) Foreign base company services income,

(4) Foreign base company shipping income,

(5) Foreign base company oil related income, or

(6) Full inclusion foreign base company income.

(d) *Computation of adjusted net foreign base company income or adjusted net insurance income.*—(1)

Application of high tax exception. Adjusted net foreign base company income (or adjusted net insurance income) equals the net foreign base company income (or net insurance income) of a controlled foreign corporation, reduced by any item of such income (other than foreign base company oil related income as defined in section 954(g)) subject to the high tax exception provided by section 954(b)(4) and this paragraph (d). An item of income is subject to the high tax exception only if—

(i) It is established that the income was subject to creditable income taxes imposed by a foreign country or countries at an effective rate that is greater than 90 percent of the maximum rate of tax specified in section 11 or 15 for the taxable year of the controlled foreign corporation; and

(ii) An election is made under section 954(b)(4) and paragraph (d)(5) of this section to exclude the income from the computation of subpart F income.

See paragraph (d)(4) of this section for the definition of the term "item of income." For rules concerning the treatment for foreign tax credit purposes of amounts excluded from subpart F under section 954(b)(4), see § 904-1.4(c)(1).

(2) *Effective rate at which taxes are imposed.* For purposes of this paragraph (d), the effective rate at which taxes are imposed on an item of income is—

(i) The amount of income taxes paid or accrued (or deemed paid or accrued) with respect to the item of income,

determined under paragraph (d)(3) of this section, divided by

(ii) The item of net foreign base company income or net insurance income, determined under paragraph (d)(4) of this section (including the appropriate amount of income taxes referred to in subdivision (i) of this paragraph (d)(2), immediately above).

(3) *Taxes paid or accrued with respect to an item of income.*—(i) *Income other than passive foreign personal holding company income.* The amount of income taxes paid or accrued with respect to an item of income (other than an item of foreign personal holding company income that is passive income) for purposes of section 954(b)(4) and this paragraph (d) is the amount of foreign income taxes that would be deemed paid under section 960 with respect to that item if that item were included in the gross income of a U.S. shareholder under section 951(a)(1)(A). For this purpose, the amounts that would be deemed paid under section 960 shall be determined separately with respect to each controlled foreign corporation and without regard to the limitation applicable under section 904(a).

(ii) *Passive foreign personal holding company income.* The amount of income taxes paid or accrued with respect to an item of foreign personal holding company income that is passive income for purposes of section 954(b)(4) and this paragraph (d) is the amount of foreign income taxes paid or accrued or deemed paid by the foreign corporation that would be taken into account for purposes of applying the provisions of § 1.904-4(c) with respect to that item of income.

(4) *Item of income.*—(i) *Income other than passive foreign personal holding company income.* The high tax exception applies (when elected) to all income that constitutes a single item under this paragraph (d)(4). A single item of net foreign base company income or net insurance income is an amount of net foreign base company income (other than foreign personal holding company income that is passive income) or net insurance income that:

(A) Falls within a single category of net foreign base company income, as defined in paragraph (c) of this section, or net insurance income, and

(B) Also falls within a single separate limitation category for purposes of sections 904(d) and 960 and the regulations thereunder.

(ii) *Passive foreign personal holding company income.*—(A) *In general.* For purposes of this paragraph (d) a single item of net foreign personal holding company income that is passive income is an amount of such income that falls

within a single group of passive income under the grouping rules of § 1.904-4(c) (3), (4), and (5).

(B) *Consistency rule.* An election to exclude income from subpart F must be consistently made with respect to all items of passive foreign personal holding company income eligible to be excluded. Thus, high-taxed passive foreign personal holding company income of a controlled foreign corporation must be excluded in its entirety, or remain subject to subpart F.

(5) *Procedure.* The election provided by this paragraph (d) must be made—

(i) By controlling United States shareholders, as defined in § 1.964-1(c)(5), by attaching a statement to such effect with their original or amended income tax returns, and including any additional information required by subsequent administrative pronouncements, or

(ii) In such other manner as may be prescribed in subsequent administrative pronouncements.

An election made under the procedure provided by this paragraph (d)(5) is binding on all United States shareholders of the controlled foreign corporation.

(6) *Illustrations.* The rules of this paragraph (d) are illustrated by the following examples.

Example (1). (i) *Items of income.* During its 1987 taxable year, controlled foreign corporation CFC receives from outside its country of operation portfolio dividend income of \$100 and interest income of \$100 (consisting of a gross payment of \$150 reduced by a third-country withholding tax of \$50). For purposes of illustration, assume that the CFC incurs no expenses. None of the income is taxed in CFC's country of operation. The dividend income was not subject to their-country withholding taxes. The interest income was subject to withholding taxes equal to \$50, and is therefore high withholding tax interest for purposes of section 960 (pursuant to the operation of section 904). The dividend income is passive income for purposes of section 960. Accordingly, pursuant to paragraph (d)(4) of this section, CFC has two items of income: (1) \$100 of FPHC/passive income (the dividends) and (2) \$100 of FPHC/high withholding tax income (the interest). The election under paragraph (d)(5) of this section to exclude high-taxed income from the operation of subpart F is potentially applicable to each such item in its entirety.

(ii) *Effective rates of tax.* No foreign tax would be deemed paid under section 960 with respect to item (1). Therefore, the effective rate of foreign tax is 0, and the item may not be excluded from subpart F under the rules of this paragraph (d). Foreign tax of \$50 would be deemed paid under section 960 with respect to item (2). Therefore, the effective rate of foreign tax is 33 percent (\$50 of creditable taxes paid, divided by \$150, consisting of the item of net foreign base

company income (\$100) plus creditable taxes paid thereon (\$50). The highest rate of tax specified in section 11 for the 1987 taxable year is 34 percent. Accordingly, item (2) may be excluded from subpart F pursuant to an election under paragraph (d)(5) of this section, since it is subject to foreign tax at an effective rate that is greater than 30.6 percent (90 percent of 34 percent). However, it remains high withholding tax interest when included.

Example (2). The facts are the same as in Example (1), except that CFC's country of operation imposes a tax of \$50 with respect to CFC's dividend income. The interest income is still high withholding tax interest. The dividend income is still passive income (without regard to the possible applicability of the high tax exception of section 904(d)(2)). Accordingly, CFC has two items of income for purposes of this paragraph (d): (1) \$100 of FPHC/high withholding tax interest income, and (2) \$50 of FPHC/passive income (net of the \$50 foreign tax). Both items are taxed at an effective rate greater than 31.6 percent. Item 1: Foreign tax (\$50) divided by sum (\$150) of income item (\$100) plus creditable tax thereon (\$50) equals 33 percent. Item 2: Foreign tax (\$50) divided by sum (\$100) of income item (\$50) plus creditable tax thereon (\$50) equals 50 percent. Accordingly, an election may be made under paragraph (d)(5) of this section to exclude either, both, or neither of items 1 and 2 from subpart F.

Example (3). The facts are the same as in Example (1), except that the \$100 of portfolio dividend income is subject to a third-country withholding tax of \$50, and the \$150 of interest income is from sources within CFC's country of operation, is subject to a \$10 income tax therein, and is not subject to a withholding tax. Although the interest income and the dividend income are both passive income, under paragraph (d)(4)(ii)(A) of this section they constitute separate items of income pursuant to the application of the grouping rules of § 1.904-4(c). Accordingly, CFC has two items of income for purposes of this paragraph (d): (1) \$50 (net of tax) of FPHC/non-country of operation/greater than 15 percent withholding tax income; and (2) \$140 (net of \$10 tax) of FPHC/country of operation income. Item 1 is taxed at an effective rate greater than 30.6 percent, but Item 2 is not. Item 1: Foreign tax (\$50) divided by sum (\$100) of income item (\$50) plus creditable tax thereon (\$50) equals 50 percent. Item 2: Foreign tax (\$10) divided by sum (\$150) of income item (\$140) plus creditable tax thereon (\$10) equals 6.67 percent. Therefore, an election may be made under paragraph (d)(5) of this section to exclude Item 1 but not Item 2 from subpart F.

Example (4). The facts are the same as in Example (3), except that the \$150 of interest income is subject to an income tax of \$50 in CFC's country of operation. Accordingly, CFC has two items of income, as in Example (4), but both items are taxed at an effective rate greater than 30.6 percent. Item 1: Foreign tax (\$50) divided by sum (\$100) of income item (\$50) plus creditable tax thereon (\$50) equals 50 percent. Item 2: Foreign tax (\$50) divided by sum (\$150) of income item (\$100) plus creditable tax thereon (\$50) equals 33

percent. Pursuant to the consistency rule of paragraph (d)(4)(ii)(B) of this section, CFC's shareholders must consistently elect or not elect to exclude from subpart F all items of FPHC income that are eligible to be excluded. Therefore, an election may be made to exclude both Item 1 and Item 2 from subpart F, or neither may be excluded.

(e) *Character of an item of income—*
(1) *Substance of the transaction.* For purposes of section 954 and the regulations thereunder, items of income shall be characterized in accordance with the substance of the transaction, and not in accordance with the designation applied by the parties to the transaction. For example, an amount received as "rent" which actually constitutes income from the sale of property, royalties, or income from services shall not be characterized as "rent" but shall be characterized as income from the sale of property, royalties or income from services, respectively. Local law shall not be controlling in characterizing an item of income.

(2) *Separable character.* To the extent one of the definitional provisions of section 953 or 954 describes a portion of the income or gain derived from a transaction, that portion of income or gain is so characterized. Thus, a single transaction may give rise to income in more than one category of foreign base company income described in paragraph (a)(2) of this section. For example, if a controlled foreign corporation, in its business of purchasing and selling personal property, receives interest (including imputed interest and market discount) on an account receivable arising from a sale, a portion of the income derived from the transaction by the controlled foreign corporation will be interest, and another portion will be gain (or loss) from the sale of personal property. If the sale is denominated in a currency other than a functional currency as defined in section 985 and the regulations thereunder, the controlled foreign corporation may have additional income in the form of foreign currency gain as defined in section 988.

(3) *Predominant character.* The portion of income derived from a transaction that meets the definition of foreign personal holding company income is always separately determinable, and thus must always be segregated from other income and separately classified under paragraph (2) of this paragraph (e). However, the portion of income derived from a transaction that would meet a particular definitional provision under section 954 or 953 and the regulations thereunder (other than the definition of foreign personal holding company income) in

unusual circumstances may be indeterminable. If such portion is indeterminable, it must be classified in accordance with the predominant character of the transaction. For example, if a controlled foreign corporation engineers, fabricates, and installs a fixed offshore drilling platform as part of an integrated transaction, and the portion of income that relates to services is not accounted for separately from the portion that relates to sales, and is otherwise indeterminable, then the classification of income from the transaction shall be made in accordance with the predominant character of the particular integrated arrangement.

(4) *Coordination of categories of gross foreign base company income or gross insurance income.* The definitions of gross foreign base company income and gross insurance income are limited by the following rules (to be applied in numerical order):

(i) If an item of income is included in Subpart F income under section 952(a)(1) and the regulations thereunder as insurance income, it is by definition excluded from any other category of subpart F income.

(ii) If an item of income is included in the foreign base company oil related income of a controlled foreign corporation, it is by definition excluded from any other category of foreign base company income, other than as provided in subdivision (i) of this paragraph (e)(4).

(iii) If an item of income is included in the foreign base company shipping income of a controlled foreign corporation, it is by definition excluded from any other category of foreign base company income, other than as provided in subdivisions (i) and (ii) of this paragraph (e)(4).

(iv) If an item of income is included in foreign personal holding company income of a controlled foreign corporation, it is by definition not included in any other category of foreign base company income, other than as provided in subdivisions (i), (ii), and (iii) of this paragraph (e)(4).

An item of income shall not be excluded from the definition of a category of gross foreign base company income or gross insurance income under this paragraph (e)(4) by reason of being included in the general definition of another category of gross foreign base company income or gross insurance income, if the item of income is excluded from that other category by a more specific provision of section 953 or 954 and the regulations thereunder. For example, income derived from a commodity transaction that is excluded from foreign personal holding company income under § 1.954-

2T(f) as income from qualified active sales may be included in gross foreign base company income if it also meets the definition of foreign base company sales income. See § 1.954-2T(a)(2) for the coordination of overlapping categories within the definition of foreign personal holding company income.

§ 1.954-2 [Redesignated as § 1.954A-2]

Par. 5. Section 1.954-2 is redesignated as § 1.954A-2.

Par. 6. The following new section is added:

§ 1.954-2T Foreign Personal Holding Company Income; taxable years beginning after December 31, 1986 (temporary).

(a) *Computation of foreign personal holding company income—*(1) *In general.* Foreign personal holding company income consists of the following categories of income:

(i) Dividends, interest, rents, royalties, and annuities as defined in paragraph (b) of this section;

(ii) Gain from certain property transactions as defined in paragraph (e) of this section;

(iii) Gain from commodities transactions as defined in paragraph (f) of this section;

(iv) Foreign currency gain as defined in paragraph (g) of this section; and

(v) Income equivalent to interest as defined in paragraph (h) of this section.

Paragraph (a)(3) of this section provides rules for determining the use or purpose for which property is held, if a change in use or purpose would affect the computation of foreign personal holding company income under paragraphs (e), (f), and (g) of this section. Paragraphs (c) and (d) of this section provide rules for determining certain rents and royalties that are excluded from foreign personal holding company income under paragraph (b) of this section.

(2) *Coordination of overlapping definitions.* If a particular portion of income from a transaction in substance falls within more than one of the definitional rules of section 954(c) and this section, its character is determined under the rules of subdivision (i) through (iii) of this paragraph (a)(2). The character of loss from a transaction must be similarly determined under the rules of this paragraph (a)(2).

(i) If a portion of the income from a transaction falls within the definition of income equivalent to interest under paragraph (h) of this section and the definition of gain from certain property transactions under paragraph (a) of this section, gain from a commodities transaction under paragraph (f) of this

section (whether or not derived from a qualified hedging transaction or qualified active sales), or foreign currency gain under paragraph (g) of this section (whether or not derived from a qualified business transaction or a qualified hedging transaction), that portion of income is treated as income equivalent to interest for purposes of section 954(c) and this section.

(ii) If a portion of the income from a transaction falls within the definition of foreign currency gain under paragraph (g) of this section (whether or not derived from a qualified business transaction or a qualified hedging transaction) and the definition of gain from certain property transactions under paragraph (e) of this section, or gain from a commodities transaction under paragraph (f) of this section (whether or not derived from a qualified hedging transaction or qualified active sales), that portion of income is treated as foreign currency gain for purposes of section 954(c) and this section.

(iii) If a portion of the income from a transaction falls within the definition of gain from a commodities transaction under paragraph (f) of this section (whether or not derived from a qualified hedging transaction or qualified active sales) and the definition of gain from certain property transactions under paragraph (e) of this section, that portion of income is treated as gain from a commodities transaction for purposes of section 954(c) and this section.

(3) *Changes in the use or purpose with which property is held—*(i) *In general.* Under paragraphs (e), (f), and (g) of this section, transactions in certain property give rise to gain or loss included in the computation of foreign personal holding company income if the controlled foreign corporation holds that property for a particular use or purpose. For purposes of this section, in determining the purpose or use for which property is held, the period shortly before disposition is the most significant period. However, if a controlled foreign corporation held property with a purpose that would have caused its disposition to give rise to gain or loss included in the computation of foreign personal holding company income under this section, and prior to disposition the controlled foreign corporation changed the purpose or use for which it held the property to one that would cause its disposition to give rise to gain or loss excluded from the computation of foreign personal holding company income, then the later purpose or use shall be ignored unless it was continuously present for a predominant portion of the period during which the

controlled foreign corporation held the property. Under paragraph (g)(4)(iii) of this section, a currency hedging transaction may be treated as two or more separate hedging transactions, such that each portion is separately considered in applying this paragraph (a)(3).

(ii) *Illustrations.* The following examples illustrate the application of this paragraph (a)(3).

Example (1). At the beginning of taxable year 1, CFC, a controlled foreign corporation, purchases a building for investment. During taxable years 1 and 2, CFC derives rents from this building that are included in the computation of foreign personal holding company income under paragraph (b)(1)(iii) of this section. At the beginning of taxable year 3, CFC changes the use of the building by terminating all leases, and using it in an active trade or business. At the beginning of taxable year 4, CFC sells the building at a gain. For purposes of paragraph (e) of this section (gains from the sale or exchange of certain property) the building is considered to be property that gives rise to rents, as described in paragraph (e)(2). Because there was a change of use at the beginning of year 3 that would cause the disposition of the building to give rise to gain or loss excluded from the computation of foreign personal holding company income, the characterization of the gain derived at the beginning of year 4 is determined according to the property's use during the predominant portion of the period from purchase to date of sale. Therefore, gain from the sale of that building is included in the computation of foreign personal holding company income under paragraph (e) of this section.

Example (2). For taxable years 1, 2, and 3, CFC, a controlled foreign corporation, is engaged in the active conduct of a commodity business as a handler of gold, as defined in paragraph (f)(3)(iii), and substantially all of its business is as an active handler of gold, as defined in paragraph (f)(3)(iv). At the beginning of taxable year 1, CFC purchases 1000 ounces of gold for investment. At the beginning of taxable year 3, CFC begins holding that gold in physical form for sale to customers. During taxable year 3, CFC sells the entire 1000 ounces of gold in transactions described in paragraph (f)(3)(ii) at a gain. For purposes of paragraph (f), CFC is considered to hold the gold for investment, and not in its capacity as an active handler of gold. Thus, under paragraph (f)(3)(i), the gold is not considered to be sold in the active trade or business of the CFC as a handler of gold, and gain from the sale is included in the computation of foreign personal holding company income under paragraph (f) of this section.

Example (3). CFC, a controlled foreign corporation, is a regular dealer in unimproved land. The functional currency (as defined in section 985 and the regulations thereunder) of CFC is country X currency. On day 1 of its current taxable year, CFC enters into an agreement with A to pay \$100 for certain real property to be held by CFC for investment. On day 10, under its method of accounting,

CFC accrues the value of \$100 in country X currency, but payment will not be made until the first day of the next taxable year (day 300). On day 100, CFC determines to hold the property for sale to customers in a transaction that would be a qualified business transaction under paragraph (g)(3) of this section. For purposes of this section, the land is considered to be held for investment, and the foreign currency gain attributable to that transaction is included in the computation of foreign personal holding company income under paragraph (g) of this section.

Example (4). CFC, a controlled foreign corporation, is a regular dealer in widgets. The functional currency (as defined in section 985 and the regulations thereunder) of CFC is country X currency. On day 1 of its current taxable year, CFC sells widgets held in inventory to A for delivery on day 60. The sales price is denominated in U.S. dollars, and payment is to be made by A on the same day the widgets are to be delivered to A. The remaining facts and circumstances are such that this sale would meet the definition of a qualified business transaction under paragraph (g)(4), the foreign currency gain from which would be excluded from the computation of foreign personal holding company income under paragraph (g). On day 1, CFC sells U.S. dollars forward for delivery in 60 days in a transaction that would be a qualified hedging transaction under paragraph (g)(5). On day 25 the sale of widgets to A is cancelled in a transaction that does not result in CFC realizing any foreign currency gain or loss with respect to the sale of widgets. However, CFC holds the dollar forward contract to maturity. Because the forward contract does not hedge a qualified business transaction during the period shortly before its maturity, it is not to be considered a qualified hedging transaction under paragraph (g), and any foreign currency gain or loss recognized therefrom is included in the computation of foreign personal holding company income under paragraph (g). However, if CFC identifies the portion of the foreign currency gain or loss derived from the forward contract that is attributable to days 1 through 25, and the portion that is attributable to days 25 through 60, the forward contract may be considered two separate transactions in accordance with the rules provided by paragraph (g)(4)(ii) of this section. Thus, the forward sale may be separately considered a qualified hedging transaction for day 1 through day 25, and the foreign currency gain or loss attributable to day 1 through day 25 may be excluded from the computation of foreign personal holding company income under paragraph (g) of this section.

Example (5). CFC, a controlled foreign corporation, has country X currency as its functional currency under section 985 and the regulations thereunder. On day 1 of the current taxable year, CFC, speculating on exchange rates, sells dollars forward for delivery in 120 days. On day 65, CFC sells widgets held in inventory at a price denominated in dollars to be paid on day 120 in a transaction that is a qualified business transaction. CFC had not made any other

dollar sales between day 1 and day 65 and does not anticipate making any other dollar sales during the taxable year. On day 65, CFC accrues the value of \$100 in country X currency. On day 120, CFC receives \$100 payment for the widgets and recognizes foreign currency loss pursuant to that transaction. On day 120 CFC also delivers dollars in connection with the forward sale, and recognizes foreign currency gain pursuant to the delivery. Under this paragraph (a)(3) the currency transaction is considered to have been entered into for speculation, and any currency gain recognized by CFC on the forward sale of dollars must be included in the computation of foreign personal holding company income under paragraph (g). However, if CFC identifies the portion of the forward sale, and the foreign currency gain or therefrom, that is attributable to day 1 through day 64, and the portion that is attributable to day 65 through day 120, the forward sale may be considered two separate transactions in accordance with the rules provided by paragraph (g)(4)(ii) of this section. Thus, the transaction for day 65 through day 120 may be considered a separate transaction that is a qualified hedging transaction, and the foreign currency gain attributable to day 65 through day 120 may be excluded from the computation of foreign personal holding company income under this paragraph (g) if all the other requirements for treatment as a qualified hedging transaction under paragraph (g) are met.

(4) *Definitions.* The following definitions apply for purposes of computing foreign personal holding company income under this section.

(i) *Interest.* The term "interest" includes amounts that are treated as ordinary income, original issue discount or interest income (including original issue discount and interest on a tax-exempt obligation) by reason of sections 482, 483, 864(d), 1273, 1274, 1276, 1281, 1286, 1288, 7872 and the regulations thereunder, or as interest or original issue discount income by reason of any other provision of law. For special rules concerning interest exempt from U.S. tax pursuant to section 103, see paragraph (b)(6) of this section.

(ii) *Inventory and similar property.* The term "inventory and similar property" (or "inventory or similar property") means property that is stock in trade of the controlled foreign corporation or other property of a kind which would properly be included in the inventory of the controlled corporation if on hand at the close of the taxable year (were the controlled foreign corporation a domestic corporation), or property held by the controlled foreign corporation primarily for sale to customers in the ordinary course of its trade or business. Rights to property held in bona fide hedging transactions that reduce the risk of price changes in the cost of "inventory and similar

property" are included in the definition of that term if they are an integral part of the system by which a controlled foreign corporation purchases such property, and they are so identified by the close of the fifth day after the day on which the hedging transaction is entered into.

(iii) *Regular dealer.* The term "regular dealer" means a merchant with an established place of business that—

(A) Regularly and actively engages as a merchant in purchasing property and selling it to customers in the ordinary course of business with a view to the gains and profits that may be derived therefrom, or

(B) Makes a market in derivative financial products of property (such as forward contracts to buy or sell property, option contracts to buy or sell property, interest rate and currency swap contracts or other notional principal contracts) by regularly and actively offering to enter into positions in such products to the public in the ordinary course of business.

Purchasing and selling property through a regulated exchange or established off-exchange market (for example, engaging in futures transactions) is not actively engaging as a merchant for purposes of this section.

(iv) *Dealer property.* Property held by a controlled foreign corporation is "dealer property" if—

(A) The controlled foreign corporation is a regular dealer in property of such kind, and

(B) The property is held by the controlled foreign corporation in its capacity as a dealer.

Property which is held by the controlled foreign corporation for investment or speculation is not such property.

(v) *Debt instrument.* The term "debt instrument" includes bonds, debentures, notes, certificates, accounts receivable, and other evidences of indebtedness.

(b) *Dividends, etc.—(1) In general.* Foreign personal holding company includes:

(i) Dividends, except certain dividends from related persons as described in paragraph (b)(3) of this section and distributions of previously taxed income under section 959(b) and the regulations thereunder;

(ii) Interest, except export financing interest as defined in paragraph (b)(2) of this section and certain interest received from related persons as described in paragraph (b)(3) of this section;

(iii) Rents and royalties, except certain rents and royalties received from related persons as described in (b)(4) of this section and rents and royalties derived in the active conduct of a trade

or business as defined in paragraph (b)(5); and

(iv) Annuities.

(2) *Exclusion of certain export financing.—(i) In general.* Pursuant to section 954(c)(2)(B), foreign personal holding company income computed under section 954(c)(1)(A) and this paragraph (b) does not include interest that is export financing interest. For purposes of section 954(c)(2)(B) and this section, the term "export financing interest" means interest that is derived in the conduct of a banking business and is export financing interest as defined in section 904(d)(2)(G) and the regulations thereunder. Pursuant to section 904(d)(5)(A)(iii), it does not include income from related party factoring that is treated as interest under section 864(d)(1) or interest described in section 864(d)(6).

(ii) *Conduct of a banking business.* For purposes of this section, export financing interest as defined in section 904(d)(2)(G) and the regulations thereunder is considered derived in the conduct of a banking business if, in connection with the financing from which the interest is derived, the corporation, through its own officers or staff of employees, engages in all the activities in which banks customarily engage in issuing and servicing a loan.

(iii) *Illustration.* The following example illustrates the application of this provision:

Example. DS, a domestic corporation, manufactures property in the United States. In addition to selling inventory (property described in section 1221(1)), DS occasionally sells depreciable equipment it manufactures for use in its trade or business, which is property described in section 1221(2). Less than 50 percent of the fair market value, determined in accordance with section 904(d)(2)(G) and the regulations thereunder, of each item of inventory or equipment sold by DS is attributable to products imported into the United States. CFC, a controlled foreign corporation related (as defined in section 954(d)) to DS, provides loans for the purchase of property from DS, if the property is purchased exclusively for use of consumption outside the United States.

If, in issuing and servicing loans made with respect to purchases from DS of depreciable equipment used in its trade or business, which is property described in section 1221(2) in the hands of DS, CFC engages in all the activities in which banks customarily engage in issuing and servicing loans, the interest accrued from these loans would be export financing interest meeting the requirements of paragraph (b)(2) of this section, which would not be included in foreign personal holding company income under section 954(c) and paragraph (b)(1)(ii) of this section. However, interest from the loans made with respect to purchases from DS of property which is inventory in the hands of DS cannot

be export financing interest because it is treated as income from a trade or service receivable under section 864(d)(6) and the regulations thereunder, and thus is included in foreign personal holding company income under paragraph (b)(1)(ii) of this section. See § 1.864-8T(d) for rules concerning certain income from trade and service receivables qualifying under the same country exception of section 864(d)(7).

(3) *Exclusion of dividends and interest from related persons.—(i) Excluded dividends and interest.* Foreign personal holding company income does not include dividends and interest if—

(A) The payor is a corporation that is a related person as defined in section 954(a)(3).

(B) The payor is created or organized ("incorporated") under the laws of the same foreign country as the controlled foreign corporation, and

(C) A substantial part of the payor's assets are used in a trade or business in the payor's country of incorporation as determined under subdivision (iv) of this paragraph (b)(3).

Except as otherwise provided under this paragraph (b)(3), the principles of section 367(a) and regulations thereunder shall apply in determining whether the payor has a trade or business in its country of incorporation, and whether its assets are used in that trade or business.

(ii) *Interest paid out of adjusted foreign base company income or insurance income.* Interest may not be excluded from the foreign personal holding company income of the recipient under this paragraph (b)(3) to the extent that the deduction for the interest is allocated under § 1.954-1T(c) to the payor's adjusted gross foreign base company income (as defined in § 1.954-1T(a)(3)), adjusted gross insurance income (as defined in § 1.954-1T(a)(6)), or other categories of income included in the computation of subpart F income under section 952(a), for purposes of computing the payor's net foreign base company income (as defined in § 1.954-1T(a)(4)), net insurance income (as defined in § 1.954-1T(a)(6)), or income described in sections 952(a)(3), (4), and (5).

(iii) *Dividends paid out of prior years' earnings.* Dividends are excluded from foreign personal holding company income under this paragraph (b)(3) only to the extent they are paid out of earnings and profits which were earned or accumulated during a period in which the requirements of subdivision (i) of this paragraph (b)(3) were satisfied or, to the extent earned or accumulated during a taxable year of the related foreign corporation ending on or before

December 31, 1962, during a period in which the payor was a related corporation as to be controlled foreign corporation and the other requirements of subdivision (i) of this paragraph (b)(3) are substantially satisfied.

(iv) *Fifty percent substantial assets test.* A substantial part of the assets of the payor will be considered used in a trade or business located in its country of incorporation only if, for each quarter during such taxable year, the average value (as of the beginning and end of the quarter) of its assets which are used in the trade or business and are located in such country constitutes over 50 percent of the average value (as of the beginning and end of the quarter) of all the assets of the payor (including assets not used in a trade or business). For such purposes the value of assets shall be determined under subdivision (v) of this paragraph (b)(3), and the location of assets used in a trade or business of the payor shall be determined under subdivisions (vi) through (xi) of this paragraph (b)(3).

(v) *Value of assets.* For purposes of determining whether a substantial part of the assets of the payor are used in a trade or business in its country of incorporation, the value of assets shall be their actual value (not reduced by liabilities), which, in the absence of affirmative evidence to the contrary, shall be deemed to be their adjusted basis.

(vi) *Location of tangible property used in a trade or business.—(A) In general.* Tangible property (other than inventory and similar property) used in a trade or business is considered located in the country in which it is physically located.

(B) *Exception.* If tangible personal property used in a trade or business is intended for use in the payor's country of incorporation, but is temporarily located elsewhere, it will be considered located within payor's country of incorporation if the reason for its location elsewhere is for inspection or repair, and it is not currently in service in a country other than the payor's country of incorporation and is not to be placed in service in a country other than the payor's country of incorporation following the inspection or repair.

(vii) *Location of intangible property used in a trade or business.—(A) In general.* The location of intangible property (other than inventory or similar property and debt instruments) used in a trade or business is determined based on the site of the activities conducted by the payor during the current year in connection with using or exploiting that property. An item of intangible property is located in the payor's country of incorporation during each quarter of the

current taxable year if the activities connected with its use or exploitation are conducted during the entire current taxable year by the payor in its country of incorporation. For this purpose, the determination of the country in which services are performed shall be made under the principles of section 954(e) and § 1.954-4(c).

(B) *Property located in part in the payor's country of incorporation and in part in other countries.* If the activities connected with the use or exploitation of an item of intangible property are conducted during the current taxable year by the payor in the payor's country of incorporation and in other countries, then a percentage of the intangible (measured by the average value of the item as of the beginning and end of the quarter) is considered located in the payor's country of incorporation during each quarter. That percentage equals the ratio that the expenses of the payor incurred during the entire taxable year by reason of such activities that are conducted in the payor's country of incorporation bear to the expenses of the payor incurred during the entire taxable year by reason of all such activities worldwide. Expenses incurred in connection with the use or exploitation of an item of intangible property are included in the computation provided by this paragraph (b)(3) if they are deductible under section 162 or includible in inventory costs or the costs of goods sold (were the payor a domestic corporation).

(viii) *Location of property held for sale to customers.—(A) In general.* Inventory or similar property is considered located in the payor's country of incorporation during each quarter of the taxable year if the activities of the payor in connection with the production and sale, or purchase and release, of such property and conducted in the payor's country of incorporation during the entire taxable year. If the payor conducts such activities through an independent contractor, then the location of such activities shall be the place in which they are conducted by the independent contractor.

(B) *Inventory located in part in the payor's country of incorporation and in part in other countries.* If the activities connected with the production and sales, or purchase and resale, of inventory or similar property are conducted by the payor in the payor's country of incorporation and other countries, then a percentage of the inventory or similar property (measured by the average value of the item as of the beginning and end of the quarter) is

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considered located in the payor's country of incorporation each quarter. That percentage equals the ratio that the costs of the payor incurred during the entire taxable year by reason of such activities that are conducted in the payor's country of incorporation bear to all such costs incurred by reason of such activities worldwide. A cost incurred in connection with the production and sale or purchase and resale of inventory or similar property is included in this computation if it—

(1) Must be included in inventory costs or otherwise capitalized with respect to inventory or similar property under section 61, 263A, 471, or 472 and the regulations thereunder (whichever would be applicable were the payor a domestic corporation), or

(2) Would be deductible under section 162 (were the payor a domestic corporation) and is definitely related to gross income derived from such property (but not to all classes of gross income derived by the payor) under the principles of § 1.861-8.

(ix) *Location of debt instruments.* For purposes of this paragraph (b)(3), debt instruments are considered to be used in a trade or business only if they arise from the sale of inventory or similar property by the payor or from the rendition of services by the payor in the ordinary course of a trade or business of the payor, but only until such time as interest is required to be charged under section 482 and the regulations thereunder. Debt instruments that arise from the sale of inventory or similar property are treated as having the same location, proportionately, as inventory or similar property that is held during the same calendar quarter. Debt instruments arising from the rendition of services in the ordinary course of a trade or business are considered located on a proportionate basis in the countries in which the services to which they relate are performed.

(x) *Treatment of certain stock interests.* For the purpose of determining the value of assets used in a trade or business in the country of incorporation, stock directly or indirectly owned by the payor within the meaning of section 958(a) in a controlled foreign corporation ("lower-tier corporation"), which is incorporated in the same country as the payor, shall be considered located in the country of incorporation and used in a trade or business of the payor in proportion to the value of the assets of the lower-tier corporation that are used in a trade or business in the country of incorporation. The location of assets used in a trade or business of the lower-tier corporation

shall be determined under the rules of this paragraph (b)(3).

(xi) *Determination of period during which property is used in a trade or business.* Property purchased or produced for use in a trade or business shall not be considered used in a trade or business until it is placed in service, and shall cease to be considered used in a trade or business when it is retired from service. The dates during which depreciable property is determined to be in use must be consistent with the determination of depreciation under sections 167 and 168 and the regulations thereunder.

(xii) *Treatment of banks and insurance companies.* [Reserved.]

(4) *Exclusion of rents and royalties derived from related persons—(i) In general.* Foreign personal holding company income does not include rents or royalties if—

(A) The payor is a corporation that is a related person as defined in section 954(d)(3), and

(B) The rents or royalties are for the use of, or the privilege of using, property within the country under the laws of which the recipient of the payments is created or organized.

If the property is used both within and without the country under the laws of which the controlled foreign corporation is created or organized, the part of the rent or royalty attributable to the use of, or the privilege of using, the property outside such country of incorporation is, unless otherwise provided, foreign personal holding company income under this paragraph (b).

(ii) *Rents or royalties paid out of adjusted foreign base company income or insurance income.* Rents or royalties may not be excluded from the foreign personal holding company income of the recipient under this paragraph (b)(4) to the extent that deductions for the payments are allocated under section 954(b)(5) and § 1.954-1T(a)(4) to the payor's adjusted gross foreign base company income (as defined in § 1.954-1T(a)(3)), adjusted gross insurance income (as defined in § 1.954-1T(a)(6)), or other categories of income included in the computation of subpart F income under section 952(a), for purposes of computing the payor's net foreign base company income (as defined in § 1.954-1T(a)(4)), net insurance income (as defined in § 1.954-1T(a)(6)), or income described in section 952(a)(3), (4), or (5).

(5) *Exclusion of rents and royalties derived in the active conduct of a trade or business.* Foreign personal holding company income shall not include rents or royalties which are derived in the active conduct of a trade or business

and which are received from a person other than a related person within the meaning of section 954(d)(3). Whether or not rents or royalties are derived in the active conduct of a trade or business is to be determined from the facts and circumstances of each case; but see paragraph (c) or (d) of this section for specific cases in which rents or royalties will be considered for purposes of this paragraph to be derived in the active conduct of a trade or business. The frequency with which a foreign corporation enters into transactions from which rents or royalties are derived will not of itself establish the fact that such rents or royalties are derived in the active conduct of a trade or business.

(6) *Treatment of tax exempt interest.*

Foreign personal holding company income includes all interest income, including interest that is exempt from U.S. tax pursuant to section 103 ("tax-exempt interest"). However, that net foreign base company income of a controlled foreign corporation that is attributable to such tax-exempt interest shall be treated as tax-exempt interest in the hands of the U.S. shareholders of the foreign corporation. Accordingly, any net foreign base company income that is included in the Subpart F income of a U.S. shareholder and that is attributable to such tax-exempt interest shall remain exempt from the regular income tax, but potentially subject to the alternative minimum tax, in the hands of the U.S. shareholder.

(c) *Excluded rents—(1) Trade or business cases.* Rents will be considered for purposes of paragraph (b)(5) of this section to be derived in the active conduct of a trade or business if such rents are derived by the controlled foreign corporation ("lessor") from leasing—

(i) Property which the lessor has manufactured or produced, or has acquired and added substantial value to, but only if the lessor is regularly engaged in the manufacture or production of, or in the acquisition and addition of substantial value to, property of such kind,

(ii) Real property with respect to which the lessor, through its own officers or staff of employees, regularly performs active and substantial management and operational functions while the property is leased,

(iii) Personal property ordinarily used by the lessor in the active conduct of a trade or business, leased during a temporary period when the property would, but for such leasing, be idle, or

(iv) Property which is leased as a result of the performance of marketing

functions by such lessor if the lessor, through its own officers or staff of employees located in a foreign country, maintains and operates an organization in such country which is regularly engaged in the business of marketing, or of marketing and servicing, the leased property and which is substantial in relation to the amount of rents derived from the leasing of such property.

(2) *Special rules—(i) Adding substantial value.* For purposes of paragraph (c)(1)(i) of this section, the performance of marketing functions will not be considered to add substantial value to property.

(ii) *Substantiality of foreign organization.* An organization in a foreign country will be considered substantial in relation to the amount of rents, for purposes of paragraph (c)(1)(iv) of this section, if active leasing expenses, as defined in paragraph (c)(2)(iii), equal or exceed 25 percent of the adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section.

(iii) *Active leasing expenses.* The term "active leasing expenses" means the deductions incurred by an organization of the lessor in a foreign country which are properly allocable to rental income and which would be allowable under section 162 to the lessor (were the lessor a domestic corporation) other than—

(A) Deductions for compensation for personal services rendered by shareholders of, or related persons with respect to, the lessor,

(B) Deductions for rents paid or accrued,

(C) Deductions which, although generally allowable under section 162, would be specifically allowable to the lessor (were the lessor a domestic corporation) under sections other than section 162 (such as sections 167 and 168), and

(D) Deductions for payments made to independent contractors with respect to the leased property.

(iv) *Adjusted leasing profit.* The term "adjusted leasing profit" means the gross income of the lessor from rents, reduced by the sum of—

(A) The rents paid or incurred by the controlled foreign corporation with respect to such gross rental income,

(B) The amounts which would be allowable to such lessor (were the lessor a domestic corporation) as deductions under section 167 or 168 with respect to such rental income, and

(C) The amounts paid to independent contractors with respect to such rental income.

(3) *Illustrations.* The application of this paragraph (c) is illustrated by the following examples.

Example (1). Controlled foreign corporation A is regularly engaged in the production of office machines which it sells or leases to others and services. Under paragraph (c)(1)(i) of this section, the rental income of A Corporation from the leases is derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (2). Controlled foreign corporation D purchases motor vehicles which it leases to others. In the conduct of its short-term leasing of such vehicles in foreign country X, Corporation D owns a large number of motor vehicles in country X which it services and repairs, leases motor vehicles to customers on an hourly, daily, or weekly basis, maintains offices and service facilities in country X from which to lease and service such vehicles, and maintains therein a sizable staff of its own administrative, sales, and service personnel. Corporation D also leases in country X on a long-term basis, generally for a term of one year, motor vehicles which it owns. Under the terms of the long-term leases, Corporation D is required to repair and service, during the term of the lease, the leased motor vehicles without cost to the lessee. By the maintenance in country X of office, sales, and service facilities and its complete staff of administrative, sales, and service personnel, Corporation D maintains and operates an organization therein which is regularly engaged in the business of marketing and servicing the motor vehicles which are leased. The deductions incurred by such organization satisfy the 25-percent test of paragraph (c)(2)(ii) of this section; thus, such organization is substantial in relation to the rents Corporation D receives from leasing the motor vehicles. Therefore, under paragraph (c)(1)(iv) of this section, such rents are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (3). Controlled foreign corporation E owns a complex of apartment buildings which it has acquired by purchase. Corporation E engages a real estate management firm to lease the apartments, manage the buildings and pay over the net rents to the owner. The rental income of E Corporation from such leases is not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (4). Controlled foreign corporation F acquired by purchase a twenty-story office building in a foreign country, three floors of which it occupies and the rest of which it leases. Corporation F acts as rental agent for the leasing of offices in the building and employs a substantial staff to perform other management and maintenance functions. Under paragraph (c)(1)(ii) of this section, the rents received by Corporation F from such leasing operations are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (5). Controlled foreign corporation G owns equipment which it ordinarily uses to perform contracts in foreign countries to drill oil wells. For occasional brief and irregular periods it is unable to obtain contracts requiring immediate performance sufficient to employ all such equipment. During such a period it sometimes leases such idle equipment temporarily. After the expiration

of such temporary leasing of the property, Corporation G continues the use of such equipment in the performance of its own drilling contracts. Under paragraph (c)(1)(iii) of this section, rents G receives from such leasing of idle equipment are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

(d) *Excluded royalties—(1) Trade or business cases.* Royalties will be considered for purposes of paragraph (b)(5) of this section to be derived in the active conduct of a trade or business if such royalties are derived by the controlled foreign corporation ("licensor") from licensing— (i) Property which the licensor has developed, created, or produced, or has acquired and added substantial value to, but only so long as the licensor is regularly engaged in the development, creation, or production of, or in the acquisition of and addition of substantial value to, property of such kind, or

(ii) Property which is licensed as a result of the performance of marketing functions by such licensor and the licensor, through its own staff of employees located in a foreign country, maintains and operates an organization in such country which is regularly engaged in the business of marketing, or of marketing and servicing, the licensed property and which is substantial in relation to the amount of royalties derived from the licensing of such property.

(2) *Special rules—(i) Adding substantial value.* For purposes of paragraph (d)(1)(i), the performance of marketing functions will not be considered to add substantial value to property.

(ii) *Substantiality of foreign organization.* An organization in a foreign country will be considered substantial in relation to the amount of royalties, for purposes of paragraph (d)(1)(ii) of this section, if the active licensing expenses, as defined in paragraph (d)(2)(iii) of this section, equal or exceed 25 percent of the adjusted licensing profit, as defined in paragraph (d)(2)(iv) of this section.

(iii) *Active licensing expenses.* The term "active licensing expenses" means the deductions incurred by an organization of the licensor which are properly allocable to royalty income and which would be allowable under section 162 to the licensor (were the licensor a domestic corporation) other than—

(A) Deductions for compensation for personal services rendered by shareholders of, or related persons with respect to, the licensor,

(B) Deductions for royalties paid or incurred,

(C) Deductions which, although generally allowable under section 162, would be specifically allowable to the licensor (were the controlled foreign corporation a domestic corporation) under sections other than section 162 (such as section 167), and

(D) Deductions for payments made to independent contractors with respect to the licensed property.

(iv) *Adjusted licensing profit.* The term "adjusted licensing profit" means the gross income of the licensor from royalties, reduced by the sum of—

(A) The royalties paid or incurred by the controlled foreign corporation with respect to such gross royalty income,

(B) The amounts which would be allowable to such licensor as deductions under section 167 (were the licensor a domestic corporation) with respect to such royalty income, and

(C) The amounts paid to independent contractors with respect to such royalty income.

(3) *Illustrations.* The application of this paragraph (d) is illustrated by the following examples.

Example (1). Controlled foreign corporation A, through its own staff of employees, owns and operates a research facility in foreign country X. At the research facility employees of Corporation A who are full time scientists, engineers, and technicians regularly perform experiments, tests, and other technical activities, which ultimately result in the issuance of patents that it sells or licenses. Under paragraph (d)(1)(i) of this section, royalties received by Corporation A for the privilege of using patented rights which it develops as a result of such research activity are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (2). Assume that Corporation A in example (1), in addition to receiving royalties for the use of patents which it develops, receives royalties for the use of patents which it acquires by purchase and licenses to others without adding any value thereto. Corporation A generally consummates royalty agreements on such purchased patents as the result of inquiries received by it from prospective licensees when the fact becomes known in the business community, as a result of the filing of a patent, advertisements in trade journals, announcements, and contacts by employees of Corporation A, that Corporation A has acquired rights under a patent and is interested in licensing its rights. Corporation A does not, however, maintain and operate an organization in a foreign country which is regularly engaged in the business of marketing the purchased patents. The royalties received by Corporation A for the use of the purchased patents are not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (3). Controlled foreign corporation B receives royalties for the use of patents which it acquires by purchase. The primary business of Corporation B, operated on a regular basis, consists of licensing patents

which it has purchased "raw" from inventors and, through the efforts of a substantial staff of employees consisting of scientists, engineers, and technicians, made susceptible to commercial application. For example, Corporation B, after purchasing patent rights covering a chemical process, designs specialized production equipment required for the commercial adaptation of the process and, by so doing, substantially increases the value of the patent. Under paragraph (d)(1)(i) of this section, royalties received by Corporation B from the use of such patent are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (4). Controlled foreign corporation D finances independent persons in the development of patented items in return for an ownership interest in such items from which it derives a percentage of royalty income, if any, subsequently derived from the use by others of the protected right. Corporation D also attempts to increase its royalty income from such patents by contacting prospective licensees and rendering to licensees advice which is intended to promote the use of the patented property. Corporation D does not, however, maintain and operate an organization in a foreign country which is regularly engaged in the business of marketing the patents. Royalties received by Corporation D for the use of such patents are not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

(e) *Certain property transactions—(1) In general—(i) Inclusion in FPHC income.* Foreign personal holding company income includes the excess of gains over losses from the sale or exchange of—

(A) Property which gives rise to dividends, interest, rents, royalties or annuities as described in paragraph (e)(2) of this section, and

(B) Property which does not give rise to income, as described in paragraph (e)(3) of this section.

If losses from the sale or exchange of such property exceed gains, the net loss is not within the definition of foreign personal holding company income under this paragraph (e), and may not be allocated to, or otherwise reduce, other foreign personal holding company income under section 954(b)(5) and § 1.954-1T(c). Gain or loss from a transaction that is treated as capital gain or loss under section 988(a)(1)(B) is not foreign currency gain or loss as defined in paragraph (g), but is gain or loss from the sale or exchange of property which is included in the computation of foreign personal holding company income under this paragraph (e)(1). Paragraphs (e)(4) and (5) of this section provide specific rules for determining whether gain or loss from dispositions of debt instruments and dispositions of options or similar property must be included in the computation of foreign personal holding

company income under this paragraph (e)(1). A loss that is deferred or that otherwise may not be taken into account under any provision of the Code may not be taken into account for purposes of determining foreign personal holding company income under any provision of this paragraph (e).

(ii) *Dual character property.* Property may only in part constitute property that gives rise to certain income as described in paragraph (e)(2) of this section or property that does not give rise to any income as described in paragraph (e)(3) of this section. In such cases, the property must be treated as two separate properties for purposes of this paragraph (e). Accordingly, the sale or exchange of such dual character property will give rise to gain or loss that in part must be included in the computation of foreign personal holding company income under this paragraph (e), and in part is excluded from such computation. Gain or loss from the disposition of dual character property must be bifurcated for purposes of this paragraph (e)(1)(i) pursuant to the method that most reasonably reflects the relative uses of the property. Reasonable methods may include comparisons in terms of gross income generated or the physical division of the property. In the case of real property, the physical division of the property will in most cases be the most reasonable method available. For example, if a controlled foreign corporation owns an office building, uses 60 percent of the building in its business, and rents out the other 40 percent, then 40 percent of the gain recognized on the disposition of the property would reasonably be treated as gain which is included in the computation of foreign personal holding company income under this paragraph (e)(1). This paragraph (e)(1)(ii) addresses the contemporaneous use of property for dual purposes; for rules concerning changes in the use of property affecting its classification for purposes of this paragraph (e), see paragraph (a)(3) of this section.

(2) *Property that gives rise to certain income—(i) In general.* Property the sale or exchange of which gives rise to foreign personal holding company income under this paragraph (e)(2) includes property that gives rise to dividends, interest, rents, royalties and annuities described in paragraph (b) of this section, except for rents and royalties derived from unrelated persons in the active conduct of a trade or business under paragraph (b)(5) of this section. The property described by this paragraph (e)(2) includes property which gives rise to export financing interest

described in paragraph (b)(2) of this section and property which gives rise to income from related persons described in paragraphs (b)(3) and (b)(4) of this section.

(ii) *Exception.* Property described in this paragraph (e)(2) does not include—

(A) Dealer property (as defined in paragraph (a)(4)(iv) of this section), and

(B) Inventory and similar property (as defined in paragraph (a)(4)(ii) of this section) other than securities.

(3) *Property that does not give rise to income.* The term "property that does not give rise to income" for purposes of this section includes all rights and interests in property (whether or not a capital asset) except—

(i) Property that gives rise to dividends, interest, rents, royalties and annuities described in paragraph (e)(2) of this section and property that gives rise to rents and royalties derived in the active conduct of a trade or business under paragraph (b)(5) of this section;

(ii) Dealer property (as defined in paragraph (a)(4)(iv) of this section);

(iii) Inventory and similar property (as defined in paragraph (a)(4)(ii) of this section) other than securities;

(iv) Property (other than real property) used in the controlled foreign corporation's trade or business that is of a character which would be subject to the allowance for depreciation under section 167 or 168 and the regulations thereunder (including tangible property described in § 1.167(a)-2 and intangibles described in § 1.167(a)-3);

(v) Real property that does not give rise to rental or similar income, to the extent used in the controlled foreign corporation's trade or business; and

(vi) Intangible property as defined in section 938(h)(3)(B) and goodwill that is not subject to the allowance for depreciation under section 167 and the regulations thereunder to the extent used in the controlled foreign corporation's trade or business and disposed of in connection with the sale of a trade or business of the controlled foreign corporation.

(4) *Classification of gain or loss from the disposition of a debt instrument or on a deferred payment sale—(i) Gain.* Gain from the sale, exchange, or retirement of a debt instrument is included in the computation of foreign personal holding company income under this paragraph (e) unless—

(A) It is treated as interest income (as defined in paragraph (a)(4)(i) of this section); or

(B) It is treated as income equivalent to interest under paragraph (h) of this section.

(ii) *Loss.* Loss from the sale, exchange, or retirement of a debt instrument is

included in the computation of foreign personal holding company income under this paragraph (e) unless—

(A) It is directly allocated to interest income (as defined in paragraph (a)(4)(i) of this section) or income equivalent to interest (as defined in paragraph (h) of this section) under any provision of the Code or regulations thereunder;

(B) It is required to be apportioned in the same manner as interest expense under section 864(e) or any other provision of the Code or regulations thereunder; or

(C) The debt instrument was taken in consideration for the sale or exchange of property (or the provision of services) by the controlled foreign corporation and gain or loss from that sale or exchange (or income from the provision of services) is not includible in foreign base company income under this section.

(5) *Classification of options and other rights to acquire or transfer property.* Subject to the exceptions provided in paragraphs (e)(3) (ii) and (iii) of this section (relating to certain dealer property and inventory property), rights to acquire or transfer property, including property that gives rise to income, are classified as property that does not give rise to income under paragraph (e)(3) of this section. These rights include options, warrants, futures contracts, options on a futures contract, forward contracts, and options on an index relating to stocks, securities or interest rates.

(6) *Classification of certain interests in pass through entities.* [Reserved.]

(f) *Commodities transactions—(1) In general.* Except as otherwise provided in this paragraph (f), foreign personal holding company income includes the excess of gains over losses from commodities transactions. If losses from commodities transactions exceed gains, the net loss is not within the definition of foreign personal holding company income under this paragraph (f), and may not be allocated to, or otherwise reduce, foreign personal holding company income under section 954(b)(5) and § 1.954-1T(a)(4). The terms "commodity" and "commodities transactions" are defined in paragraph (f)(2) of this section. Gains and losses from qualified active sales and qualified hedging transactions are excluded from the computation of foreign personal holding company income under this paragraph (f). The term "qualified active sales" is defined in paragraph (f)(3). The term "qualified hedging transaction" is defined in paragraph (f)(4) of this section. An election is provided under paragraph (g)(5) of this section to include all gains and losses from section

1256 foreign currency transactions, which would otherwise be commodities transactions, in the computation of foreign personal holding company income under paragraph (g) instead of this paragraph (f). A loss that is deferred or that otherwise may not be taken into account under any provision of the Code may not be taken into account for purposes of determining foreign personal holding company income under any provision of this paragraph (f).

(2) *Definitions—(i) Commodity.* For purposes of this section, the term "commodity" means:

(A) Tangible personal property of a kind which is actively traded or with respect to which contractual interests are actively traded, and

(B) Nonfunctional currency (as defined under section 988 and the regulations thereunder).

(ii) *Commodities transaction.* A commodities transaction means the purchase or sale of a commodity for immediate (spot) delivery, or deferred (forward) delivery, or the right to purchase, sell, receive, or transfer a commodity, or any other right or obligation with respect to a commodity, accomplished through a cash or off-exchange market, an interbank market, an organized exchange or board of trade, an over-the-counter market, or in a transaction effected between private parties outside of any market. Commodities transactions include, but are not limited to:

(A) A futures or forward contract in a commodity,

(B) A leverage contract in a commodity purchased from leverage transaction merchants,

(C) An exchange of futures for physical transaction,

(D) A transaction in which the income or loss to the parties is measured by reference to the price of a commodity, a pool of commodities, or an index of commodities,

(E) The purchase or sale of an option or other right to acquire or transfer a commodity, a futures contract in a commodity, or an index of commodities, and

(F) The delivery of one commodity in exchange for the delivery of another commodity, the same commodity at another time, cash, or nonfunctional currency.

(3) *Definition of the term "qualified active sales"—(i) In general.* The term "qualified active sales" means the sale of commodities in the active conduct of a commodity business as a producer, processor, merchant, or handler of commodities if substantially all of the controlled foreign corporation's business

is as an active producer, processor, merchant, or handler of commodities of like kind. The sale of commodities held by a controlled foreign corporation other than in its capacity as an active producer, processor, merchant or handler of commodities of like kind is not a qualified active sale.

(ii) *Sale of commodities.* The term "sale of commodities" means any transaction in which the controlled foreign corporation intends to deliver to a purchaser a commodity held by the controlled foreign corporation in physical form.

(iii) *Active conduct of a commodities business.* For purposes of this paragraph, a controlled foreign corporation is engaged in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities only if—

(A) It holds commodities as inventory or similar property (as defined in paragraph (a)(4)(ii)); and

(B) It incurs substantial expenses in the ordinary course of a commodities business from engaging in one of the following activities directly, and not through an independent contractor:

(1) Substantial activities in the production of commodities, including planting, tending or harvesting crops, raising or slaughtering livestock, or extracting minerals.

(2) Substantial processing activities prior to the sale of commodities including concentrating, refining, mixing, crushing, aerating, or milling; or

(3) Significant activities relating to the physical movement, handling and storage of commodities including preparation of contracts and invoices; arranging freight, insurance and credit; arranging for receipt, transfer or negotiation of shipping documents; arranging storage or warehousing, and dealing with quality claims; owning and operating facilities for storage or warehousing or owning or chartering vessels or vehicles for the transportation of commodities.

For purposes of this paragraph (f), a corporation is not engaged in a commodities business as a producer, processor, merchant, or handler of commodities if its business is primarily financial. In general, the business of a controlled foreign corporation is financial if it primarily engages in commodities transactions for investment or speculation, or if it primarily provides products or services to customers for investment or speculation.

(iv) *Substantially all.* Substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of

commodities if the activities described in paragraph (f)(3)(iii) give rise to 85 percent of the taxable income of the controlled foreign corporation (computed as though the corporation were a domestic corporation). For this purpose, gains or losses from qualified hedging transactions, as defined in paragraph (f)(4), are considered derived from the qualified active sales to which they relate or are expected to relate.

(4) *Definition of the term "qualified hedging transaction."* The term "qualified hedging transaction" means a bona fide hedging transaction that:

(i) Is reasonably necessary to the conduct of business as a producer, processor, merchant or handler of a commodity in the manner in which such business is customarily and usually conducted by others;

(ii) Is entered into primarily to reduce the risk of price change (but not the risk of currency fluctuations) with respect to commodities sold or to be sold in qualified active sales described in paragraph (f)(3) of this paragraph; and

(iii) Is clearly identified on the controlled foreign corporation's records before the close of the fifth day after the day during which the hedging transaction is entered into and at a time when there is a reasonable risk of loss; however, if the controlled foreign corporation does not at such time specifically and properly identify the qualified active sales (or category of such sales) to which a hedging transaction relates, the district director in his sole discretion may determine which hedging transactions (if any) are related to qualified active sales.

(g) *Foreign currency gain.*—(1) *In general.* Except as provided in paragraph (g)(2), foreign personal holding company income includes the excess of foreign currency gains over losses (as defined in section 988(b)) attributable to any section 988 transactions. If foreign currency losses exceed gains, the net loss is not within the definition of foreign personal holding company income under this paragraph (g), and may not be allocated to, or otherwise reduce, foreign personal holding company income under section 954(b)(5) and § 1.954-1T(a)(4). To the extent the gain or loss from a transaction is treated as interest income or expense under sections 988(a)(2) or 988(d) and the regulations thereunder, it is not included in the computation of foreign personal holding company income under this paragraph (g). (For other rules concerning income described in more than one category of foreign personal holding company income, see § 1.954-2(a)(2).) A loss that is deferred or that otherwise may not be taken into

account under any provision of the Code may not be taken into account for purposes of determining foreign personal holding company income under any provision of this paragraph (g).

(2) *Exceptions.*—(i) *Qualified business units using the dollar approximate separate transactions method.* Currency gain or loss determined under the dollar approximate separate transactions method ("DASTM gain or loss") provided by § 1.985-3T is foreign currency gain or loss attributable to a section 988 transaction for purposes of computing foreign personal holding company income under this paragraph (g). For purposes of section 1.954-1T, DASTM gain or loss shall be included in or reduce the category of foreign base company and insurance income to the extent allocated to such income under the rules of this paragraph (g)(2)(i).

DASTM gain or loss shall first be allocated pro rata to foreign source gross income in each separate category described in § 1.904-5(a)(1) (section 904(d) category) under the rules of § 1.904-4(j). The amount of DASTM gain or loss that is allocated to each separate 904(d) category shall then be further allocated pro rata to gross foreign source income in each of the following groups within a section 904(d) category: (A) Foreign base company income (including foreign currency gain or loss other than DASTM gain or loss); (B) Insurance income; (C) Other income.

For purposes of § 1.954-1T and this section, the amount of DASTM gain or loss that, under the rules of this paragraph (g)(2)(i), is allocable to foreign base company income within a section 904(d) category shall next be allocated pro rata to foreign source gross income in the categories described in § 1.954-1T(a)(2) that are within the section 904(d) category. Currency gain or loss determined under DASTM does not include currency gain or loss attributable to any transaction involving a third country currency (as described in § 1.985-3T(c)(7)(ii)). Foreign currency gains or losses attributable to third country currency transactions are subject to the treatment provided in paragraph (g)(1) and subdivisions (ii) and (iii) of this paragraph (g)(2).

(ii) *Tracing to exclude foreign currency gain or loss from qualified business and hedging transactions.* A foreign currency gain or loss is excluded from the computation of foreign personal holding company income under this paragraph (g) if it is clearly identified on the records of the controlled foreign corporation as being derived from a qualified business

transaction or a qualified hedging transaction. The term "qualified business transaction" is defined in paragraph (g)(3) of this section. The term "qualified hedging transaction" is defined in paragraph (g)(4) of this section. However, currency gain or loss of a qualified business unit included in the computation of currency gain or loss under subdivision (i) of this paragraph (g)(2) may not be excluded from foreign personal holding company income under the tracing rule of this paragraph (g)(2)(ii). Furthermore, the tracing rule of this paragraph (g)(2)(ii) will not apply if a controlled foreign corporation makes the election provided by paragraph (g)(2)(iii) of this section.

(iii) *Election out of tracing.* A controlled foreign corporation may elect a method of accounting under which all foreign currency gains or losses attributable to section 988 transactions are included in foreign personal holding company income. The scope and requirements for this election are provided in paragraph (g)(5) of this section. This election does not apply to foreign currency gains or losses of a qualified business unit included in the computation of gain or loss under paragraph (g)(2)(i) of this section.

(3) *Definition of the term "qualified business transaction."*—(i) *In general.* The term "qualified business transaction" means a transaction (other than a "qualified hedging transaction" as described in paragraph (g)(4) of this section) that:

(A) Does not have investment or speculation as a significant purpose;

(B) Is not attributable to property or an activity of the kind that gives rise to subpart F income (other than foreign currency gain under this paragraph (g)), or could reasonably be expected to give rise to subpart F income (including upon disposition); for example, the transaction may not be attributable to stock or debt of another corporation (including related corporations organized and operating in the same country), or property likely to give rise to foreign base company sales or services income; and

(C) Is attributable to business transactions described in subdivision (ii) of this paragraph (g)(3).

A qualified business transaction includes the disposition of a debt instrument that constitutes inventory property under paragraph (a)(4)(ii) or dealer property under paragraph (a)(4)(iv) of this section. The provisions of this paragraph (g)(3) do not apply to the foreign currency gain or loss of a qualified business unit (as determined under § 1.985-3T(d)(2)) included in the

computation of gain or loss under paragraph (g)(2)(i) of this section. The provisions of this paragraph (g)(3) do, however, apply to other currency transactions of a qualified business unit that elects (or is deemed to elect) the U.S. dollar as its functional currency under section 985(b)(3) and § 1.985-2T. Qualified business transactions and the amount of foreign currency gain or loss derived therefrom must be clearly identified on its records by the controlled foreign corporation. If the controlled foreign corporation is unable to specifically identify the qualified business transactions and the foreign currency gain or loss derived therefrom, the district director in his sole discretion may determine which transactions of the corporation giving rise to the foreign currency gains or losses are attributable to qualified business transactions.

(ii) *Specific business transactions.* A transaction of a controlled foreign corporation must meet the requirements of any of subdivisions (A) through (F) of this paragraph (g)(3)(ii) to be a qualified business transaction under this paragraph (g)(3).

(A) *Acquisition of debt instruments.* If the transaction is the acquisition of a debt instrument described in section 988(c)(1)(B)(i) and the regulations thereunder, the debt must be derived from—

(1) The sale of inventory and similar property to customers by the controlled foreign corporation in the ordinary course of regular business operations, or

(2) The rendition of services by the corporation in the ordinary course of regular business operations.

For purposes of this paragraph (g)(3)(ii)(A), a debt instrument will not be considered derived in the ordinary course of regular business operations unless the instrument matures, and is reasonably expected to be satisfied, within the period for which interest need not be charged under section 482 and the regulations thereunder.

(B) *Becoming the obligor under debt instruments.* If the transaction is becoming the obligor under a debt instrument described in section 988(c)(1)(B)(i) and the regulations thereunder, the debt must be incurred for:

(1) Payment of expenses that are includible by the controlled foreign corporation in the cost of goods sold under § 1.61-3 for property held primarily for sale to customers in the ordinary course of regular business operations, are inventoriable costs under section 471 and the regulations thereunder, or are allocable or apportionable under the rules of § 1.861-

8 to gross income derived from inventory and similar property.

(2) Payment of expenses that are allocable or apportionable under the rules of § 1.861-8 to gross income derived from services provided by the controlled foreign corporation in the ordinary course of regular business operations.

(3) Acquisition of an asset that does not give rise to Subpart F income during the current taxable year (other than by application of section 952(c)) and is not reasonably expected to give rise to Subpart F income in subsequent taxable years, or

(4) Acquisition of dealer property as defined in paragraph (a)(4)(iv) of this section.

The identification requirements of subdivision (i) of this paragraph (g)(3) will not be met with respect to a borrowing if the controlled foreign corporation fails to clearly identify the debt and the expenses (or categories of expenses) to which it relates before the close of the fifth day after the day on which the expenses are incurred.

(C) *Accrual of any item of gross income.* If the transaction is the accrual (or otherwise taking into account) of any item of gross income or receipts as described in section 988(c)(1)(B)(ii) and the regulations thereunder, the item of gross income or receipts must be derived from:

(1) The sale of inventory and similar property in the ordinary course of regular business operations, or

(2) The provision of services by the controlled foreign corporation to customers in the ordinary course of regular business operations.

(D) *Accrual of any item of expense.* If the transaction is the accrual (or otherwise taking into account) of any item of expense as described in section 988(c)(1)(B)(ii) and the regulations thereunder, the item of expense must be:

(1) An expense that is includible by the controlled foreign corporation in the cost of goods sold under § 1.61-3 for property held primarily for sale to customers in the ordinary course of regular business operations, is an inventoriable cost under section 471 and the regulations thereunder, or is allocable or apportionable under the rules of § 1.861-8 to gross income derived from inventory and similar property, or

(2) An expense that is allocable or apportionable under the rules of § 1.861-8 to gross income derived from services provided by the controlled foreign corporation in the ordinary course of regular business operations.

(E) *Entering into forward contracts, futures contracts, options and similar instruments.* If the transaction is entering into any forward contract, futures contract, option or similar financial instrument and if such contract or instrument is not marked to market at the close of the taxable year under section 1256, as described in section 988(c)(1)(B)(iii) and the regulations thereunder, then the contract or instrument must be property held as dealer property as defined in paragraph (a)(4)(ii) of this section.

(F) *Disposition of nonfunctional currency.* If the transaction is the disposition of nonfunctional currency, as described in section 988(c)(1)(C) and the regulations thereunder, then the transaction must be for a purpose described in paragraph (g)(3)(ii)(B), for the payment of taxes not attributable to subpart F income, or must be the disposition of property held as dealer property as defined in paragraph (a)(4)(iv) of this section.

(G) *Transactions in business assets.* The acquisition or disposition of an asset that is used or held for use in the active conduct of a trade or business.

(4) *Definition of the term "qualified hedging transaction"—(i) In general.* The term "qualified hedging transaction" means a bona fide hedging transaction meeting all the requirements of subdivisions (A) through (D) of this paragraph (g)(4)(i).

(A) The transaction must be reasonably necessary to the conduct of regular business operations in the manner in which such business operations are customarily and usually conducted by others.

(B) The transaction must be entered into primarily to reduce the risk of currency fluctuations with respect to property or services sold or to be sold or expenses incurred or to be incurred in transactions that are qualified business transactions under paragraph (g)(3) of this section.

(C) The hedging transaction and the property or expense (or category of property or expense) to which it relates must be clearly identified on the records of the controlled foreign corporation before the close of the fifth day after the day during which the hedging transaction is entered into and at a time during which there is a reasonable risk of currency loss.

(D) The amount of foreign currency gain or loss that is attributable to a specific hedging transaction must be clearly identifiable on the records of the controlled foreign corporation or its controlling shareholder (as defined in § 1.984-1(c)(5)).

The provisions of this paragraph (g)(4) do not apply to transactions of a qualified business unit included in the computation of gain or loss under paragraph (g)(2)(i). The provisions of this paragraph (g)(4) do apply, however, to other currency transactions of a qualified business unit that elects (or is deemed to elect) the U.S. dollar as its functional currency under section 985(b)(3) and § 1.985-3T. If the controlled foreign corporation does not specifically identify the qualified business transactions (or category of qualified business transactions) to which a hedging transaction relates or is unable to specifically identify the amount of foreign currency gain or loss derived from the hedging transactions, the district director in his sole discretion may make the identifications required of the controlled foreign corporation and determine which hedging transactions (if any) are related to qualified business transactions, and the amount of foreign currency gain or loss attributable to the qualified hedging transactions.

(ii) *Change in purpose of hedging transaction.* If a hedging transaction is entered into for one purpose, and the purpose for that transaction subsequently changes, the transaction may be treated as two separate hedging transactions for purposes of this paragraph (g)(4). In such a case, the portion of the transaction that relates to a qualified business transaction is considered a qualified hedging transaction if it separately meets all the other requirements of this paragraph (g)(4) for treatment as a qualified hedging transaction. For purposes of paragraph (g)(4)(i)(C), the foreign corporation must identify on its records the portion of the transaction that relates to a qualified business transaction by the close of the fifth day after the day on which the hedge becomes so related (i.e., either the day on which the hedge is first entered into or on the day on which it first relates to a qualified business transaction due to a change in its purpose). The foreign corporation must identify on its records the portion of the transaction that does not relate to a qualified business transaction by the close of the fifth day after the day on which the purpose for the hedging transaction changes.

(5) *Election out of tracing—(i) In general.* A controlled foreign corporation may elect to account for currency gains and losses under section 988 and gains and losses from section 1256 currency contracts by including in the computation of foreign personal holding company income under this paragraph (g) all foreign currency gains or losses attributable to section 988

transactions, and all gains or losses from section 1256 foreign currency contracts. Separate elections for section 1256 foreign currency contracts and section 988 transactions are not permitted. If a controlled foreign corporation makes the election described in this paragraph (g)(5)(i), the election is effective for all related persons as defined in section 954(d)(3) and the regulations thereunder.

(ii) *Exception.* The election provided by this paragraph (g)(5) does not apply to foreign currency gain or loss of a qualified business unit determined under § 1.985-3T(d)(2). It does, however, apply to other foreign currency gains or losses of a qualified business unit that elects (or is deemed to elect) the U.S. dollar as its functional currency.

(iii) *Procedure—(A) In general.* The election provided by this paragraph (g)(5) shall be made in the manner prescribed in this paragraph and in subsequent administrative pronouncements.

(B) *Time and manner.* The controlled foreign corporation may make the election by filing a statement with its original or amended information return for the taxable year for which the election is made. The controlling United States shareholders, as defined in § 1.984-1(c)(5), may make the election on behalf of the controlled foreign corporation and related corporations by filing a statement to such effect with their original or amended income tax returns for the taxable year during which the taxable year of the controlled foreign corporation for which the election is made ends. The election is effective for the taxable year of the controlled foreign corporation for which the election is made, for the taxable years of all related controlled foreign corporations ending within such taxable year, and for all subsequent years of such corporations. The statement shall include the following information:

(1) The name, address, taxpayer identification number, and taxable year of each United States shareholder;

(2) The name, address, and taxable year of each controlled foreign corporation for which the election is effective; and

(3) Any additional information to be required by the Secretary by administrative pronouncement. Each United States shareholder or controlled foreign corporation filing the election must provide copies of the election to all controlled foreign corporations for which the election is effective, and all United States shareholders of such corporations. However, failure to provide such copies

will not void (or cause to be voidable) an election under this paragraph (g)(5).

(C) *Termination.* The election provided by this paragraph (g)(5) may be terminated only with the consent of the Commissioner. Attn.: CC:INTL.

(h) *Income equivalent to interest—(1) In general.* Foreign personal holding company income includes income that is equivalent to interest. Income equivalent to interest includes, but is not limited to, income derived from the following categories of transactions:

(i) An investment, or series of integrated transactions which include an investment, in which the payments, net payments, cash flows, or return predominantly reflect the time value of money, and

(ii) Transactions in which the payments or a predominant portion thereof are in substance for the use or forbearance of money, but are not generally treated as interest.

However, amounts treated as interest under section 954(c)(1)(A) and paragraph (b) of this section are not income equivalent to interest under this paragraph (h). Income from the sale of property will not be treated as income equivalent to interest for purposes of this paragraph (h), subject to the rule of paragraph (h)(4) of this section, unless the sale is part of an integrated transaction that gives rise to interest or income equivalent to interest. See sections 482, 483 and 1274 for the extent to which such income may be characterized as interest income subject to paragraph (b) of this section. Income equivalent to interest for purposes of this paragraph (h) includes all income attributable to a transfer of securities subject to section 1058. Income equivalent to interest also includes a portion of certain deferred payments received for the purpose of services, in accordance with the provisions of paragraph (h)(5) of this section. Income equivalent to interest does not include income attributable to notional principal contracts such as interest rate swaps, currency swaps, interest rate floor agreements, or similar contracts except to the extent that such contracts are part of an integrated transaction that gives rise to income equivalent to interest. Income derived from notional contracts by a person acting in its capacity as a regular dealer in such contracts will be presumed not to be integrated with an investment.

(2) *Illustrations.* The following examples illustrate the application of this paragraph (h):

Example (1). CFC, a controlled foreign corporation, promises that A, an unrelated person, may borrow up to \$500 in principal

for one year beginning at any time during the next three months at an interest rate of 10 percent. In exchange, A pays CFC a commitment fee of \$2.00. Pursuant to this loan commitment, CFC lends \$80 to A. As a result, the entire \$2.00 fee is included in the computation of foreign personal holding company income under this paragraph (h)(1)(i).

Example (2). (i) At the beginning of its current taxable year, CFC, a controlled foreign corporation, purchases at face value a one-year debt instrument issued by A having a \$100 principal amount and bearing a floating rate of interest set at the London Interbank Offered Rate ("LIBOR") plus one percentage point. Contemporaneously, CFC borrows \$100 from B for one year at a fixed interest rate of 10 percent, using the debt instrument as security.

(ii) During its current taxable year, CFC accrues \$11 of interest from A on the bond. That interest is foreign personal holding company income under section 954(c)(1) and § 1.954-2T(b), and thus is not income equivalent to interest. During its current taxable year, CFC incurs \$10 of interest expense with respect to the borrowing from B. That expense is allocated and apportioned to, and reduces, foreign base company income or insurance income to the extent provided in sections 954(b)(5), 663(e), and 664(e) and the regulations thereunder.

Example (3). (i) At the beginning of its 1986 taxable year, CFC, a controlled foreign corporation, purchases at face value a one-year debt instrument issued by A having a \$100 principal amount and bearing a floating rate of interest set at the London Interbank Offered Rate ("LIBOR") plus one percentage point payable on the last day of CFC's current taxable year. CFC subsequently determines that it would prefer receiving interest at a fixed rate, and, on January 1, 1989, enters into an agreement with B, an unrelated person, whereby B promises to pay CFC on the last day of CFC's 1989 taxable year an amount equal to 10 percent on a notional principal amount of \$100. In exchange, CFC promises to pay B on the last day of CFC's 1989 taxable year an amount equal to LIBOR plus one percentage point on the notional principal amount.

(ii) CFC receives a total of \$10 from B, and pays \$9 to B. CFC also receives \$9 from A. The \$9 paid to B is directly allocated to, or is otherwise an adjustment to, the \$10 received from B. The transactions are considered an integrated transaction giving rise to \$9 of interest income (paid by A) and, under paragraph (h)(1)(i), \$1 of income equivalent to interest (paid by B).

Example (4). The facts are the same as in Example (3), except that CFC does not hold any debt obligations. Since the transaction with B is not integrated with an investment giving rise to interest or income equivalent to interest, the net \$1 of income realized by CFC does not constitute income equivalent to interest.

Example (5). (i) CFC, a controlled foreign corporation, enters into an agreement with A whereby CFC purchases commodity X from A at a price of \$100, and A contemporaneously repurchases commodity X from CFC for

payment and delivery in 3 months at a price of \$104 set by the forward market.

(ii) The transaction is in substance a loan from CFC to A secured by commodity X. Thus, CFC accrues \$4 of gross income which is included in foreign personal holding company income as interest under section 954(c)(1)(A) and paragraph (b) of this section.

Example (6). (i) CFC purchases commodity Y on the spot market for \$100 and contemporaneously, sells commodity Y forward for delivery and payment in 3 months at a price of \$104 set by the forward market.

(ii) The \$100 paid on the spot purchase of commodity Y offsets any market risk on the forward sale so that the \$4 of income to be derived predominantly reflects time value of money. Thus, under paragraph (h)(1)(i), the spot purchase of commodity Y and the offsetting forward sale will be treated as an integrated transaction giving rise to \$4 of income equivalent to interest.

(3) *Income equivalent to interest from factoring—(i) General rule.* Income equivalent to interest includes factoring income. Except as provided in paragraph (h)(3)(ii) of this section, the term "factoring income" includes any income (including any discount income or service fee, but excluding any stated interest) derived from the acquisition and collection or disposition of a factored receivable. The rules of this paragraph (h)(3) apply only with respect to the tax treatment of factoring income derived from the acquisition and collection or disposition of a factored receivable and shall not affect the characterization of an expense or loss of either the person whose goods or services gave rise to a factored receivable or the obligor under a receivable. The amount of income equivalent to interest realized with respect to a factored receivable is the difference (if a positive number) between the amount paid for the receivable by the foreign corporation and the amount that it collects on the receivable (or realizes upon its sale of the receivable).

(ii) *Exceptions.* Factoring income shall not include—

(A) Income treated as interest under section 864(d)(1) or (6) and the regulations thereunder (relating to income derived from trade or service receivables of related persons), even if such income is not treated as described in section 864(d)(1) by reason of the same-country exception of section 864(d)(7);

(B) Income derived from a factored receivable if payment for the acquisition of the receivable is made on or after the date on which stated interest begins to accrue, but only if the rate of stated interest equals or exceeds 120 percent of the Federal short term rate (as defined

under section 1274) (or the equivalent rate for a currency other than the dollar) as of the date on which the receivable is acquired by the foreign corporation; or

(C) Income derived from a factored receivable if payment for the acquisition of the receivable by the foreign corporation is made only on or after the anticipated date of payment of all principal by the obligor (or the anticipated weighted average date of payment of a pool of purchased receivables).

(iii) *Factored receivable.* For purposes of this paragraph (h)(3), the term "factored receivable" includes any account receivable or other evidence of indebtedness, whether or not issued at a discount and whether or not bearing stated interest, arising out of the disposition of property or the performance of services by any person, if such account receivable or evidence of indebtedness is acquired by a person other than the person who disposed of the property or provided the services that gave rise to the account receivable or evidence of indebtedness. For purposes of this paragraph (h)(3), it is immaterial whether the person providing the property or services agrees to transfer the receivable at the time of sale (as by accepting a third-party charge or credit card) or at a later time.

(iv) *Illustrations.* The following examples illustrate the application of this paragraph (h)(3).

Example (1). DP, a domestic corporation, owns all of the outstanding stock of FS, a controlled foreign corporation. FS acquires accounts receivable arising from the sale of property by unrelated corporation X. The receivables have a face amount of \$100, and after 30 days bear stated interest equal to at least 120 percent of the applicable short term Federal rate (determined as of the date the receivable is acquired). FS purchases the receivables from X for \$95 on Day 1 and collects \$100 from the obligor under the receivable on Day 40. Income (other than stated interest) derived by FS from the factored receivables is factoring income within the meaning of paragraph (h)(3)(i) of this section and, therefore, is income equivalent to interest.

Example (2). The facts are the same as in example (1), except that FS does not pay X for the receivables until Day 30. Income derived by FS from the factored receivables is not factoring income by reason of paragraph (h)(3)(ii)(B) of this section.

Example (3). The facts are the same as in Example (2), except that it is anticipated that all principal will be paid by the obligor of the receivables by Day 30. Income derived by FS from this "maturity factoring" of the receivables is not factoring income by reason of paragraph (h)(3)(ii)(C) of this section, and therefore does not give rise to income equivalent to interest.

Example (4). The facts are the same as in example (1), except that, rather than collecting \$100 from the obligor under the factored receivable on Day 40, FS sells the receivable to controlled foreign corporation Y on Day 15 for \$97. Both the income derived by FS on the factored receivable and the income derived by Y (other than stated interest) on the receivable are factoring income within the meaning of paragraph (h)(3)(i) of this section, and therefore, constitute income equivalent to interest.

Example (5). The facts are the same as in example (4), except that FS sells the factored receivable to Y for \$99 on Day 45, at which time interest is accruing on the unpaid balance of \$100. FS has \$4 of net factoring income that is income equivalent to interest. Because interest was accruing at the time Y acquired the receivable at a rate equal to at least 120 percent of the applicable short term Federal rate, income derived by Y from the factored receivable is not factoring income by reason of paragraph (h)(3)(ii)(B).

Example (6). DP, a domestic corporation engaged in an integrated credit card business, owns all of the outstanding stock of FS, a controlled foreign corporation. On Day 1 individual A uses a credit card issued by DP to purchase shoes priced at \$100 from X, a foreign corporation unrelated to DP, FS, or A. By prearrangement with DP, on Day 7, X transfers the receivable arising from A's purchase to FS in exchange for \$95. FS collects \$100 from A on Day 45. Income derived by FS on the factored receivable is factoring income within the meaning of paragraph (h)(3)(i) of this section and, therefore, is income equivalent to interest.

(4) *Determination of sales income.* Income equivalent to interest for purposes of this paragraph (h) does not include income from the sale of property unless the sale is part of an integrated transaction that gives rise to interest or income equivalent to interest. Income derived by a controlled foreign corporation will be treated as arising from the sale of property only if the corporation in substance carries out sales activities. Accordingly, an arrangement that is designed to lend the form of a sales transaction to a transaction that in substance constitutes and advance of funds will be disregarded. For example, if a controlled foreign corporation acquires property on 30-day payment terms from one person and sells that property to another person on 90 day payment terms and at prearranged prices and terms such that the foreign corporation bears no substantial economic risk with respect to the purchase and sale other than the risk of non-payment, the foreign corporation has not in substance derived income from the sale of property.

(5) *Receivables arising from performance of services.* If payment for services performed by a controlled

foreign corporation is not made until more than 120 days after the date on which such services are performed, then the income derived by the foreign corporation constitutes income equivalent to interest to the extent that interest income would be imputed under the principles of section 483 or the original issue discount provisions (section 1271 *et seq.*), if—

(A) Such provisions applied to contracts for the performance of services,

(B) The time period referred to in sections 483(c)(1) and 1274(c)(1)(B) were 120 days rather than six months, and

(C) The time period referred to in section 483(c)(1)(A) were 120 days rather than one year.

Par. 7. In section 1.957-1, the heading and text for paragraph (a) are removed and paragraph (a) is reserved.

Par. 8. The following new section is added immediately after § 1.957-1.

§ 1.957-1T *Definition of controlled foreign corporation for taxable years beginning after December 31, 1986 (temporary).*

(a) *In general.* For purposes of sections 951 through 954, the term "controlled foreign corporation" means any foreign corporation of which more than 50 percent (more than 25 percent, in a case to which section 957(b) applies, and 25 percent or more in a case to which section 953(c) applies) of either—

(1) the total combined voting power of all classes of stock of the corporation entitled to vote, or

(2) the total value of the stock of the corporation,

is owned within the meaning of section 958(a), or is considered as owned by applying the rules of section 958(b) and § 1.958-2, by United States shareholders on any day during the taxable year of such foreign corporation. If the United States shareholders own the requisite percentage of total combined voting power or the requisite percentage of total value in the foreign corporation as described in this paragraph (b), the foreign corporation is a controlled foreign corporation. For definition of the term "United States shareholder," see section 951(b) and the regulations thereunder. For definition of the term "foreign corporation," see § 301.7701-5 of this chapter (Procedure and Administration Regulations). For treatment of associations as corporations, see section 7701(a)(3) and §§ 301.7701-1 and 301.7701-2 of this chapter. For definition of the term "stock," see section 958(a)(3) and 7701(a)(7). For the classification of a

member in an association, joint stock company, or insurance company as a shareholder, see section 7701(a)(8).

(b) [Reserved.]

(c) *Illustrations.* The application of this section may be illustrated by the following examples.

Example (1). [Reserved]

Example (2). [Reserved]

Example (3). [Reserved]

Example (4). [Reserved]

Example (5). [Reserved]

Example (6). [Reserved]

Example (7). [Reserved]

Example (8). For its prior taxable year, JV, a foreign corporation, had outstanding 1,000 shares of class A stock, which is voting common, and 1,000 shares of class B stock, which is voting nonvoting preferred. DP, a domestic corporation, and FP, a foreign corporation each owned precisely 500 shares of both class A and class B stock, and each elected 5 of the 10 members of JV's board of directors. The other facts and circumstances were such that JV was not a controlled foreign corporation on any day of the prior taxable year. On the first day of the current taxable year, DP purchased one share of class B stock from FP. JV was a controlled foreign corporation on that day because over 50 percent of the total value in the corporation was held by a person that was a United States shareholder under section 951(b) and the regulations thereunder.

Example (9). X, a foreign corporation is incorporated under the laws of country Y. Under the laws of country Y, X is considered a mutual insurance company. X issues insurance policies that provide the policyholder with the right to vote for directors of the corporation, the right to a share of the assets upon liquidation in proportion to premiums paid, and the right to receive policyholder dividends in proportion to premiums paid. Only policyholders are provided with the right to vote for directors, share in assets upon liquidation, and receive distributions. United States policyholders contribute 25 percent of the premiums and have 25 percent of the outstanding rights to vote for the board of directors. Based on these facts, the United States policyholders are United States shareholders owning the requisite combined voting power and value. Thus, X is a controlled foreign corporation as defined in section 953(c).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for Part 602 continues to read as follows:
Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 10. Section 602.101(c) is amended by inserting in the appropriate place in

the table "§ 1.954-1T . . . 1545-1068", "§ 1.954-2T . . . 1545-1068".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved:

June 23, 1988.

Donaldson Chapoton,
Assistant Secretary of the Treasury.
[FR Doc. 88-16205 Filed 7-20-88; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 203

[DOD Instruction 6015.18]

Smoking in DOD Occupied Buildings and Facilities

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This action is taken to remove 32 CFR Part 203 in its entirety. DOD Directive 1010.10, "Health Promotion," replaced DOD Instruction 6015.18 (32 CFR Part 203). The replacement document will be printed in the Federal Register at a later date. Because 32 CFR Part 203 is no longer valid, this part is removed from the Code of Federal Regulations.

EFFECTIVE DATE: July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Colonel Hagey, Office of the Secretary of Defense (Health Affairs) (PA&QA), Room 3D368, the Pentagon, Washington, DC 20301, telephone (202) 695-6800.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 203

Federal buildings and facilities, Smoking.

PART 203—[REMOVED]

Accordingly, Title 32, Chapter 1, is amended by removing Part 203.

L.M. Byrum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
July 18, 1988.
[FR Doc. 88-16436 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

33 CFR Parts 209 and 245

Removal of Wrecks and Other Obstructions

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending its regulations concerning removal of wrecks and other obstructions in navigable waters. The regulation describes administrative procedures to be used by the Corps, and does not impose new requirements on the public. Revision to the procedures reflects legislative changes from the Water Resources Development Act of 1986, and an interagency agreement with the Coast Guard.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Kowalewski, 202-272-0281.

SUPPLEMENTARY INFORMATION:

Background

The marking and removal of wrecks is governed by sections 15, 19 and 20 of the River and Harbor Act of 1899, as amended (33 U.S.C. 409-415). Marking of wrecks is under the purview of the Coast Guard and regulated under 33 CFR Part 64, while removal is under the purview of the U.S. Army Corps of Engineers. To better coordinate federal interests in navigation, the Coast Guard and Corps of Engineers signed a Memorandum of Agreement (MOA) in October 1985, which outlined procedures for making joint determinations of hazards to navigation and for coordinating remedial actions when a hazard to navigation exists.

The Water Resources Development Act of 1986 (Pub. L. 99-662) amended the Rivers and Harbors Act of 1899, by extending jurisdiction to non-negligent sinkings, extending the obligation for marking and removal to vessel operators and lessees (in addition to owners), and providing for reimbursement to the U.S. Treasury for full costs of federal removal and disposal.

The Corps of Engineers has published, for public information, its policies and procedures for wreck removal under 33 CFR Part 209. On June 29, 1987 (52 FR 24177), a proposed rule was published in the Federal Register, inviting comments for a period ending July 31, 1987. The proposed rule provided updated procedures to correspond to the interagency MOA and Pub. L. 99-662. Written comments were received from two Coast Guard district offices.

The proposed rule was also reexamined by the Corps of Engineers for clarity and overall integrity. The final rule reflects the comments received, as well as a general reorganization based on internal review.

Changes from proposed rules

Paragraph (a) of § 209.170, "Violations of law protecting navigable waters; Wrecks and similar obstructions," is being deleted in its entirety. This paragraph simply restated and paraphrased the law.

The procedures are being moved from § 209.190 to a new CFR part by itself, to increase visibility and access.

Paragraphs have been reorganized in the final rule to present general policy first, followed by procedures in essentially the sequence they are executed, for improved clarity. General policy and definitions have also been rewritten for clarity. Paragraphs relating to internal Corps of Engineers reports, documentation, and funding procedures are being deleted, since these aspects of the wreck removal program have no impact on the public.

The statement of purpose in the proposed § 209.190 (new Part 245) is clarified to reflect the informational (vs. prescriptive) nature of this part.

Detailed references to marking requirements were deleted to avoid possible conflict with, or apparent preemption of, regulations published by the Coast Guard in 33 CFR Part 64. General references to marking requirements are retained, since marking of wrecks is strongly related to the Corps' wreck removal program.

The paragraph which encouraged people to report obstructions is inconsistent with the purpose of this CFR part, which is the publication of the agency's administrative procedure, and is therefore deleted.

Specific reference to the Memorandum of Agreement between the Corps of Engineers and the Coast Guard, dated October 1985, is deleted to avoid "dating" the CFR. References to interagency agreement are retained.

The paragraph which outlined priorities for removal has been deleted from the final rule. This paragraph was essentially common sense but framed in fairly rigid language, which unnecessarily constrained the District Engineer in making case-by-case judgments using the considerations outlined elsewhere in the regulation. Program priorities are further discussed under the heading "Program priorities" below.

Criteria for establishing abandonment have been rewritten for clarity and greater consistency with the wording in the law.

The final rule specifically addresses certain limits for wrecks which existed before Pub. L. 99-662. For pre-existing wrecks, reimbursement for federal removal remains limited to sinkings

which were voluntary or careless, and the obligation for removal is limited to the vessel owner.

Under "Applicability," the reference to the CFR definition of "navigable waters of the U.S." has been revised to correctly reflect the regulatory jurisdiction of the Corps of Engineers as stated in 33 CFR Part 329. The proposed rule referenced a section of the CFR addressing Coast Guard jurisdiction.

Discussion of comments

Two comments were received.

Both commenters objected to the apparent restriction of scope to federal project limits, and one comment noted that the exclusion of "private wharves or canals" was too broad. The final rule removes the restrictive wording concerning priorities for removal, in favor of more balanced judgments by the local District Engineer considering all relevant factors, as outlined under "Determination of hazard to navigation" and "Determination of remedial action."

One Coast Guard district requested specific notifications whenever the District Engineer knows of any change in conditions which were originally considered, and whenever the owner's marking or removal efforts are determined to be not diligent. The Coast Guard district also requested an information copy of the notice which is sent to the owner requiring marking and removal. These comments were not incorporated in the final rule, since notifications generally have been removed from the CFR. All of these concerns will be incorporated in an internal policy directive (Engineer Regulation) instead.

One commentator objected to wording which indicated the Corps would make independent determinations of hazards to navigation and of the need for marking, in conflict with the MOA. The final rule reflects that these are joint determinations at the field level, and outlines the process for conflict resolution. The Corps of Engineers still retains the ultimate authority and responsibility for making determinations which impact its activities. The final rule indicates that independent determinations can be made only after referral to the director of Civil Works.

Program priorities

Removal of obstructions to navigation at federal expense is generally limited to cases where the safety or sustenance of general navigation is affected (not merely an obstruction to a private dock or canal, or merely aesthetically displeasing). Priority is given to wrecks located within navigation channels or shipping lanes, or endangering

structures that facilitate navigation, or having a reasonably high potential for moving into any area of general navigation. The sustenance of commercial navigation is also given priority. Alternatives to removal, such as marking and charting, are also evaluated as possible remedies in lieu of federal removal if an adequate level of safety can be achieved.

The primary obligation for removal of wrecks belongs to the owner, operator or lessee. The policy of the Corps of Engineers (except in some emergency cases where impractical) is to pursue removal by these parties before undertaking removal at federal expense. This may include seeking a court judgment to require removal. If the responsible parties cannot be determined or do not take appropriate action, and a hazard to navigation exists which requires removal, the Corps may proceed with federal removal. Reimbursement is then sought from the owner, operator or lessee.

Regulatory Requirements

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, this rule may become effective less than 30 days after publication in the Federal Register.

List of Subjects**33 CFR Part 209**

Accidents, Administrative practice and procedure, Intergovernmental relations, Law enforcement, Navigation, Waterways.

33 CFR Part 245

Accidents, Administrative practice and procedure, Intergovernmental relations, Law enforcement, Navigation, Waterways.

Dated June 30, 1988.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

For the reasons set out in the preamble, Title 33, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 209—ADMINISTRATIVE PROCEDURE

1. The authority citation for Part 209 is revised to read as follows:

Authority: 5 U.S.C. 301; 33 U.S.C. 1; 10 U.S.C. 3012.

2. In § 209.170, paragraph (a) is removed and reserved.

§ 209.190 (Redesignated as Part 245 and revised)

3. Section 209.190 is redesignated as Part 245 and revised to read as follows:

PART 245—REMOVAL OF WRECKS AND OTHER OBSTRUCTIONS

Sec.

- 245.1 Purpose.
 - 245.3 Applicability.
 - 245.5 Definitions.
 - 245.10 General Policy.
 - 245.15 Delegation.
 - 245.20 Determination of hazard to navigation.
 - 245.25 Determination of remedial action.
 - 245.30 Identification of responsible parties.
 - 245.35 Judgments to require removal.
 - 245.40 Removal by responsible party.
 - 245.45 Abandonment.
 - 245.50 Removal by Corps of Engineers.
 - 245.55 Permit requirements.
 - 245.60 Reimbursement for removal costs.
- Authority: 5 U.S.C. 301; 33 U.S.C. 1, 409, 411-415; 10 U.S.C. 3012.

§ 245.1 Purpose.

This part describes administrative procedures and policy used by the Corps of Engineers in exercising its authority for wreck removal. Procedures are intended to insure that the impacts of obstructions are minimized, while recognizing certain rights of owners, operators and lessees.

§ 245.3 Applicability.

(a) These procedures apply to the removal of wrecks or other obstructions within the navigable waters of the United States, as defined in Part 329 of this chapter.

(b) This part does not apply to the summary removal or destruction of a vessel by the Coast Guard under authority of the Clean Water Act (33 U.S.C. 1321), or to any removal actions involving obstructive bridges which are subject to separate regulation under Part 114 of this title.

(c) For vessels which were sunk or wrecked prior to November 17, 1986, the statutory obligation to remove belongs solely to the owner (not the operator or lessee), and the owner's obligation to reimburse the U.S. Treasury for federal removal is limited to cases of voluntary or careless sinking.

§ 245.5 Definitions.

Abandonment means the surrendering of all rights to a vessel (or other obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned.

Hazard to navigation is an obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or

redefinition of a designated waterway to provide for navigational safety.

Obstruction is anything that restricts, endangers or interferes with navigation.

Responsible party means the owner of a vessel and/or cargo, or an operator or lessee where the operator or lessee has substantial control of the vessel's operation.

Vessel as used in this part includes any ship, boat, barge, raft, or other water craft.

§ 245.10 General policy.

(a) **Coordination with Coast Guard.** The Corps of Engineers coordinates its wreck removal program with the Coast Guard through interagency agreement, to insure a coordinated approach to the protection of federal interests in navigation and safety. Disagreements at the field level are resolved by referral to higher authority within each agency, ultimately (within the Corps of Engineers) to the Director of Civil Works, who retains the final authority to make independent determinations where Corps responsibilities and activities are affected.

(b) **Owner responsibility.** Primary responsibility for removal of wrecks or other obstructions lies with the owner, lessee, or operator. Where an obstruction presents a hazard to navigation which warrants removal, the District Engineer will attempt to identify the owner or other responsible party and vigorously pursue removal by that party before undertaking Corps removal.

(c) **Emergency authority.** Obstructions which impede or stop navigation; or pose an immediate and significant threat to life, property, or a structure that facilitates navigation; may be removed by the Corps of Engineers under the emergency authority of section 20 of the Rivers and Harbors Act of 1899, as amended.

(d) **Non-emergency situations.** In other than emergency situations, all reported obstructions will be evaluated jointly by the District Engineer and the Coast Guard district for impact on safe navigation and for determination of a course of action, which may include the need for removal. Obstructions which are not a hazard to general navigation will not be removed by the Corps of Engineers.

(e) **Corps removal.** Where removal is warranted and the responsible party cannot be identified or does not pursue removal diligently, the District Engineer may pursue removal by the Corps of Engineers under section 19 of the Rivers and Harbors Act of 1899, as amended, following procedures outlined in this CFR part.

§ 245.15 Delegation.

District Engineers may undertake removal without prior approval of the Chief of Engineers provided the cost does not exceed \$100,000. Removals estimated to cost above \$100,000 require advance approval of the Director of Civil Works.

§ 245.20 Determination of hazard to navigation.

(a) Upon receiving a report of a wreck or other obstruction, District Engineers will consult with the Coast Guard district to jointly determine whether the obstruction poses a hazard to navigation.

(b) Factors to be considered, as a minimum, include:

- (1) Location of the obstruction in relation to the navigable channel and other navigational traffic patterns.
- (2) Navigational difficulty in the vicinity of the obstruction.
- (3) Clearance or depth of water over the obstruction, fluctuation of water level, and other hydraulic characteristics in the vicinity.
- (4) Type and density of commercial and recreational vessel traffic, or other marine activity, in the vicinity of the obstruction.
- (5) Physical characteristics of the obstruction, including cargo, if any.
- (6) Possible movement of the obstruction.
- (7) Location of the obstruction in relation to existing aids to navigation.
- (8) Prevailing and historical weather conditions.
- (9) Length of time the obstruction has been in existence.
- (10) History of vessel accidents involving the obstruction.

§ 245.25 Determination of remedial action.

(a) **Consultation with Coast Guard.** After a determination has been made that an obstruction presents a hazard to navigation, District Engineers will consult with the Coast Guard district to determine appropriate remedial action for the specific situation.

(b) **Options.** The following options, or some combination of these options, may be considered:

- (1) No action.
- (2) Charting.
- (3) Broadcast notice to mariners and publication of navigational safety information.
- (4) Marking.
- (5) Redefinition of navigational area (e.g., channel, fairway, anchorage, etc.).
- (6) Removal.

§ 245.30 Identification of responsible parties.

(a) *Investigation.* When marking or removal are determined to be appropriate remedial action and no emergency situation exists, the District Engineer will investigate to determine the owner or, if the owner cannot be determined, the lessee or operator. If cargo is involved, ownership will be separately determined.

(b) *Notification.* If the owner or other responsible party can be determined, the District Engineer and/or the Coast Guard will send a notice, via certified mail, advising them of their legal obligation to mark (referencing Coast Guard requirements) and to remove the obstruction, and of the legal consequences for failure to do so, with a request for prompt reply or intent.

(c) *Public notice.* If the owner or responsible party cannot be determined from investigation, the District Engineer will publish a legal advertisement in a newspaper nearest the location of the obstruction and in a newspaper of at least 25,000 circulation, addressed "To Whom It May Concern," requiring removal by the owner, lessee or operator. The advertisement will be published at least once a week for 30 days.

§ 245.35 Judgments to require removal.

When the owner or responsible party has been identified, and refuses or fails to take prompt action toward removal, the District Engineer may seek a judgment by the district court requiring removal.

§ 245.40 Removal by responsible party.

(a) *Corps monitoring.* If the owner, lessee or operator agrees to remove a hazard to navigation, the District Engineer should ascertain that:

(1) Marking is accomplished promptly and is maintained,

(2) The plan for removal and disposal is reasonable and acceptable to the District Engineer,

(3) Removal operations do not unreasonably interfere with navigation,

(4) All conditions of the Corps of Engineers permit are met, and

(5) Removal operations are pursued diligently.

(b) *Deficiencies.* If the removal actions are not proceeding satisfactorily, the District Engineer will notify the responsible party of the deficiencies and provide a reasonable time for correction. If not corrected promptly, the District Engineer may declare the wreck "abandoned" and proceed with actions toward Corps removal.

§ 245.45 Abandonment.

(a) *Establishing abandonment.* Abandonment is the surrendering of all rights to a vessel (or similar obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned. In all cases other than emergency, abandonment will be established as a precondition to Corps removal, to avoid a "taking" of private property for public purposes. Abandonment is established by either:

(1) Affirmative action on the part of the owner declaring intention to abandon, or

(2) Failure to commence immediate removal of the obstruction and prosecute such removal diligently.

(b) *Owner declaration.* The Corps of Engineers will not "accept" a notice of abandonment received by the Corps of Engineers will be acknowledged only, and will stand by itself as a declaration. Abandonment by the operator or lessee alone does not constitute abandonment.

(c) *Non-diligence.* The determination of whether removal is commenced immediately and prosecuted diligently will be made by the District Engineer based on the degree of hazard to navigation, the difficulty and complexity of the removal operation, and the appropriateness of the removal effort.

When no removal actions are being undertaken and the District Engineer is unable to identify the owner through investigation or 30 days of public notice, abandonment is presumed.

(d) *Cargo.* If vessel and cargo are separately owned, or ownership of cargo is uncertain, abandonment of vessel and cargo will be established separately.

(e) *Later claims.* After abandonment is established, the owner may no longer undertake removal or make any claim upon the vessel (or other obstruction) or its cargo, unless expressly permitted by the District Engineer.

(f) *Continuing owner liability.* The abandonment of a wreck or other obstruction does not remove the owner's liability for the cost of removal and disposal if removal is undertaken by the Corps of Engineers, except in cases of nonnegligent sinking which occurred prior to November 17, 1986.

§ 245.50 Removal by Corps of Engineers.

(a) *Non-emergency situations.* In non-emergency situations, the District Engineer may undertake removal action (within the limits of delegation) after all of the following conditions have been met:

(1) A determination has been made, in consultation with the Coast Guard, that the obstruction is a hazard to navigation,

(2) The District Engineer and the Coast Guard agree on a course of action which includes the need for removal (or, if a conflict exists, the need for removal has been resolved at higher level),

(3) The District Engineer has made a reasonable attempt to identify the owner, operator, or lessee, and

(4) Abandonment of the wreck or obstruction has been established.

(b) *Emergency actions.* In emergency situations, the District Engineer may bypass (within the limits of delegation) any or all of the four conditions in the preceding paragraph if, in his judgment, circumstances require more immediate action, and if either one of the following conditions are met:

(1) The obstruction impedes or stops navigation, or

(2) The obstruction poses an immediate threat to life, property, or a structure that facilitates navigation.

§ 245.55 Permit requirements.

(a) *Permits for removal.* Marking and removal operations by the owner, operator or lessee are normally permitted under nationwide permits for such activities as outlined in Part 330 of this chapter. The activities must meet certain conditions as stated in those regulations, and additional permits may still be required from state or local agencies.

(b) *Special conditions.* The Corps of Engineers may add individual or regional conditions to the nationwide permit, or require an individual permit on a case-by-case basis.

§ 245.60 Reimbursement for removal costs.

The Corps of Engineers will seek reimbursement from the owner, operator, or lessee, if identified, for all removal and disposal costs in excess of the value of the recovered vessel (or other obstruction) and cargo.

[FR Doc. 88-16388 Filed 7-20-88; 8:45 am]

BILLING CODE 3710-03-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[FRL-3390-8]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Visibility Protection; Long-Term Strategy and Implementation Control Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the general plan provisions and long-term strategy for visibility in a revision to the Arkansas State Implementation Plan (SIP). This action is a result of rulemaking on November 24, 1987 (52 FR 45132), in which EPA disapproved SIPs of States which failed to comply with the provisions of 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). Additional details are discussed in the proposed rulemaking on March 12, 1987 (52 FR 7802).

The Governor of Arkansas submitted a SIP Revision for Visibility Protection on October 9, 1987. Review of the SIP revision indicated that Arkansas has met the criteria of 40 CFR 51.302 and 51.306. Consequently, this notice also revokes the November 24, 1987, Federally promulgated plan for Arkansas.

DATE: This action will become effective on September 19, 1988, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Tom Diggs, Chief (6T-AN), SIP/NSR Section, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Dallas, Texas 75202-2733

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460
Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, Air Programs Branch, SIP/NSR Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, telephone (214) 655-7214 or (FTS) 255-7214. Reference Docket File Number AR-87-2.

SUPPLEMENTARY INFORMATION:**Background****A. Regulatory Requirements and Litigation Challenges**

Section 169A of the Clean Air Act, 42 U.S.C. 7491, sets as a national goal "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Section 169A requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value.

"Mandatory Class I Federal areas" are certain national parks, wildernesses, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400-81.437. Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* In broad outline, the visibility regulations require 36 States listed in § 51.300(b) to (1) coordinate SIP development with the appropriate Federal land managers (FLMs), (2) develop a program to assess and remedy visibility impairment from new and existing sources, (3) develop a long-term (10 to 15 years) strategy to assure reasonable progress toward the national goal, (4) develop a visibility monitoring strategy to collect information on visibility conditions, and (5) consider in all aspects of visibility protection any "integral vistas" identified by the end of 1985 by the FLM's as critical to the visitor's enjoyment of the Class I areas. The regulations required the States to submit to EPA their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the Court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs.

B. Settlement Agreement

A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific

schedule. It required EPA to promulgate Federal Implementation Plans (FIPs) for visibility in States where SIPs are deficient with respect to the 1980 visibility regulations. Specifically, the first part of the agreement required EPA to propose and promulgate FIPs which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States (including Arkansas) on October 23, 1984, at 49 FR 42670. Arkansas submitted its Part I Plan on July 12, 1985, and EPA approved it on February 10, 1986, at 51 FR 4910.

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (40 CFR 51.302), integral vista protection (§§ 551.302 through 51.307), and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIPs to remedy any deficiencies on a specified schedule.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined the SIPs of 32 States were deficient with respect to the remaining visibility provisions.

A revised settlement agreement required EPA to propose and promulgate FIPs to address the deficiencies relating to the general plan requirements and long-term strategies and allowed EPA to defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal land managers (FLMs) have certified to EPA. The agreement allows EPA until August 31, 1988, to propose remedies for existing impairment (third part of the settlement agreement.)

On March 12, 1987, at 52 FR 7802, EPA proposed to disapprove the SIPs of 32 States (including Arkansas) for failing to meet the general plan and long-term strategy requirements of 40 CFR 51.302 and 51.306. There, EPA proposed that control strategies to remedy existing impairment were unnecessary in the SIPs for 28 States (including Arkansas) and deferred a decision on the necessity of best available retrofit technology (BART) in four States (Arizona, Maine, Minnesota, and Utah).

The States were given the opportunity to avoid Federal promulgation of the FIPs if they submitted SIP revisions to EPA by August 31, 1987. Three States (Georgia, Florida, and Kentucky) met this deadline. Several States (including Arkansas) have submitted draft or final SIPs after the August 31 date. The settlement agreement requires EPA to

promulgate FIPs for States which fail to meet the submittal deadline. Therefore, on November 24, 1987, at 52 FR 45132, EPA promulgated FIPs for 29 States (including Arkansas) to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306.

C. Today's Action

On October 9, 1987, the Governor of Arkansas submitted a Part II SIP Revision for Visibility Protection to meet the visibility general plan requirements and long-term strategies. The SIP revision is entitled "Arkansas Plan of Implementation for Air Pollution Control—Revision: Protection of Visibility in Mandatory Class I Federal Areas: Part II—Long Term Strategy, September 29, 1987." EPA has reviewed the State's submittal and developed an evaluation report.¹ The report concludes that the Arkansas SIP revision meets all of the requirements for a Part II Visibility Protection Plan as outlined in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. Today's action approves the Arkansas SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. Today's action also revokes the FIP promulgated for Arkansas on November 24, 1987, at 52 FR 45132.

Arkansas has two mandatory Class I areas: Upper Buffalo Wilderness in Newton County and Caney Creek Wilderness in Polk County. No other Class I areas currently exist in the State. The SIP commits the State to visibility protection consistent with the Clean Air Act to be afforded within the wilderness area boundaries. The SIP is to be reviewed every three years and revised as necessary.

Requirements

A. General Plan Requirements

The visibility regulations provide general plan requirements for the visibility SIPs. Section 51.302 sets specific State (and EPA in lieu of States) and FLM coordination requirements which must occur when developing a SIP. The general plan requirements of § 51.302(c) require that the SIPs include:

1. An assessment of visibility impairment and a discussion of how

each element of the plan relates to the national goal;

2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources;

3. Provisions to protect integral vistas identified pursuant to § 51.304;

4. Provisions to address any existing impairment certified by the FLM; and

5. A long-term (10-15 years) strategy for making reasonable progress toward the national goal.

(See 52 FR 7803 and 52 FR 45133 for further discussion of the general plan requirements and the process for developing control strategies to remedy existing impairment.)

The regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources.

B. Long-Term Strategy

The regulations require that the long-term strategy be a 10 to 15-year plan for making reasonable progress toward the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLMs have declared at least 6 months before plan submission. A long-term strategy must be developed which covers each Class I area within the State and each Class I area in another State that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The long-term strategy and SIP must provide for the review of the impact of new sources (see § 51.307). The State must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;

2. Additional emission limitations and schedules for compliance;

3. Measures to mitigate the impacts of construction activities;

4. Source retirement and replacement schedules;

5. Smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes; and

6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The State must commit to periodic review of the SIP on a schedule not less frequent than every 3 years. A periodic report must be developed in consultation with the FLMs and must contain the following:

1. Progress achieved in remedying existing impairment;

2. The ability of the long-term strategy to achieve reasonable progress toward the national goal;

3. Any change in visibility conditions since the last report or since plan approval;

4. Additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal;

5. The progress achieved in implementing BART and meeting other schedules laid out in the long-term strategy;

6. The impact of any exemption granted under § 51.303; and

7. The need for BART to remedy existing impairment in an integral vista declared since plan approval.

C. Integral Vistas

Where the FLM has adopted an integral vista under § 51.304, the regulations require the State to (1) analyze for BART any facility where impairment in an integral vista has been reasonably attributed to that facility, (2) consider any integral vistas established 12 months prior to SIP submittal in its long-term strategy, and (3) coordinate with the FLMs on any permit application under the Prevention of Significant Deterioration (PSD) program where the proposed facility or modification may affect visibility in an integral vista. The FLM identified only one integral vista, and that one is located in Maine (see 48 FR 22707). Therefore, EPA proposed to disapprove only the State of Maine's SIP for failing to provide for the protection of these vistas. Thus, the visibility protection plan requirements for integral vistas (§§ 51.302 through 51.307) are applicable only for Maine.

D. Federal Remedy

On November 24, 1987, at 52 FR 45132, EPA disapproved the SIPs of 29 States (including Arkansas) for failing to comply with the provisions in EPA's existing regulations for visibility protection in mandatory Class I Federal areas dealing with impairment which can be reasonably attributed to a source. EPA also incorporated Federal implementation plans into the SIPs of these States to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and

51.306. These actions were proposed on March 12, 1987, at 52 FR 7802 and are in accordance with the settlement agreement with the EDF.

State Submittal

A. General Plan Requirements/FLM Coordination

Under section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within Class I area. The FLM must maintain these areas consistent with congressional land use goals. The visibility regulations (40 CFR 51.302) allow the FLM the opportunity to identify visibility impairment and to recommend elements for inclusion in the long-term strategy.

The State of Arkansas has met the visibility general plan requirements of § 51.302. The State has accorded the FLM opportunities to participate and comment on its visibility SIP revision. Comments by the FLM were submitted to the State during the State's public notice period, and they were considered by the State and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program.

The Arkansas Part II Visibility Protection Plan incorporated into the SIP revision the following: (1) A determination that there is no existing visibility impairment that is reasonably attributable to specific sources; (2) a discussion of the SIP elements and how each element of the plan relates to the national goal; and (3) a long-term (10-15 years) strategy. Since no existing reasonably attributable impairment has been identified, all elements of the plan are intended to prevent future impairment of visibility. If existing reasonably attributable impairment is later identified, the State will revise its plan to remedy the impairment. The revision consists of a narrative only, no regulatory revisions. Currently, there are no integral vistas in Arkansas.

B. Long-Term Strategy

The Arkansas visibility long-term strategy section included the following: (1) Coordination with the FLM; (2) consideration of the six required factors for a long-term strategy; (3) a provision for the review of the impact of new sources, and a discussion of current visibility monitoring efforts; and (4) provisions for periodic review (i.e., every 3 years) of the plan, which review must include consultation with the Federal land manager and a report to

the public and to EPA on progress toward the national goal.

C. EPA Evaluation Summary

These provisions meet EPA criteria and EPA is approving this phase of the plan. EPA has reviewed the State's submittal and developed an evaluation report. The report shows that the Arkansas SIP revision meets all of the requirements for a Part II Visibility Protection Plan as specified in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy).

Final Action

By this notice, EPA is approving the Arkansas SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. (One should reference the March 12, 1987, 52 FR 7802, for additional information). The SIP commits to a 3 year periodic review and making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. This SIP revision remedies the deficiencies for all the remaining visibility requirements of Subpart P (i.e., § 51.302 and § 51.306) as identified in the November 24, 1987 (52 FR 45132), Federally promulgated plan. Consequently, this notice also revokes that Federal promulgation for Arkansas.

EPA has reviewed these revisions to the Arkansas SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no adverse comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that

this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Arkansas was approved by the Director of the Federal Register on July 1, 1982.

Date: May 27, 1988.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

40 CFR Part 52, Subpart E, is amended as follows:

Subpart E—Arkansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.170 is amended by adding paragraph (c)(25) as follows:

§ 52.170 Identification of plan.

(25) Part II of the Visibility Protection Plan was submitted by the Governor on October 9, 1987.

(i) Incorporation by reference.

(A) Revision entitled "Arkansas Plan of Implementation for Air Pollution Control—Revision: Protection of Visibility in Mandatory Class I Federal Areas: Part II—Long-Term Strategy, September 29, 1987". This submittal includes a visibility long-term strategy and general plan provisions as adopted by the Arkansas Commission on Pollution Control and Ecology on September 25, 1987.

(B) Arkansas Department of Pollution Control and Ecology, Minute Order No. 87-24, adopted September 25, 1987.

(ii) Additional material.

(A) None.

§ 52.183 [Removed]

3. Section 52.183 Visibility protection is removed.

[FR Doc. 88-12525 Filed 7-20-88; 8:45 am]

BILLING CODE 5510-50-01

¹Evaluation Report for the Arkansas Part II Visibility Protection Plan in Mandatory Class I Federal Areas, January 1988.

**GENERAL SERVICES
ADMINISTRATION****41 CFR Part 101-5**

(FPMR Amdt. A-44)

Ridesharing; Reporting Requirement**AGENCY:** Public Buildings Service, GSA.
ACTION: Final rule.

SUMMARY: This regulation revises a reporting requirement for agencies that submit an annual Federal Facility Ridesharing Report to GSA. The address where the report is to be sent is changed. The objectives of the Federal Facility Ridesharing Program are to reduce traffic congestion, improve air quality, provide an economical way for Federal employees to commute to and from work, and to reduce the need for parking at Federal facilities.

EFFECTIVE DATE: This regulation is effective July 21, 1988.

FOR FURTHER INFORMATION CONTACT: For further technical information contact Mr. John H. Quigley, Director, Assignment and Utilization Policy Division (202-566-0059).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-5

Government property management, Civil rights, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Ridesharing.

**PART 101-5—MISCELLANEOUS
REGULATIONS**

1. The authority citation for Subpart 101-5.3 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 480(c).

Subpart 101-5.3—Ridesharing**§ 101-5.300 [Amended]**

2. Section 101-5.300 is amended by revising paragraph (c) to read as follows:

(c) Agencies are required to submit a Federal Facility Ridesharing Report to GSA by June 1 of each year (see § 101-5.303). The report shall contain a summary of the information provided by the facility ETC's and any other pertinent information applicable to the agency's ridesharing program.

§ 101-5.303 [Amended]

3. Section 101-5.303 is amended by revising paragraph (b) to read as follows:

(b) Reports shall be submitted to: Federal Facility Ridesharing Program, General Services Administration (PQ) Washington, DC 20405. The telephone number for the program is FTS 566-0059 (202-566-0059).

Dated: June 29, 1988.

John Alderson,
Acting Administrator of General Services.
(FR Doc. 88-16381 Filed 7-20-88; 8:45 am)
BILLING CODE 4830-25-M

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Office of Child Support Enforcement****45 CFR Parts 303 and 305****Child Support Enforcement Program;
Provision of Services in Interstate IV-
D Cases**

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule; corrections.

SUMMARY: This document makes several corrections to the Provision of Services in Interstate IV-D Cases final regulations that appeared in the Federal Register on February 22, 1988 (53 FR 5246).

FOR FURTHER INFORMATION CONTACT: Joyce Linder, (202) 245-1773.

List of Subjects**45 CFR Part 303**

Child welfare, Grant programs, Social programs.

45 CFR Part 305

Child welfare, Grant programs, Social programs, Accounting.

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(e), 1396b(p) and 1396(k).

§ 303.7 [Corrected]

2. On page 5257, first column, in § 303.7(a), tenth and eleventh lines, "(6 months from publication)." should read "August 22, 1988."

3. On the same page, first column, in § 303.7(a)(4), last line, insert the word "review" after "status".

4. On the same page, same column, in § 303.7(b)(2), sixth line, "verification" should read "verification".

5. On the same page, second column, in § 303.7(b)(3), eighth line, "Request Form package" should read "Request Forms package".

6. On the same page, same column, in § 303.7(b)(3), the last sentence should read "The State may use computer-generated replicas in the same format and containing the same information in place of the forms."

7. On the same page, same column, in § 303.7(b)(4), eighth line, insert a comma between "form" and "or"; and tenth line, insert a comma between "information" and "and".

8. On the same page, same column, in § 303.7(b)(6), second line, "for status" should read "for a status"; and third line, "has elapsed" should read "have elapsed".

9. On the same page, third column, in § 303.7(c)(4)(ii), second line, insert a comma after "documentation".

10. On the same page, third column, in § 303.7(c)(6), second line, "different" should read "different".

11. On the same page, third column, in § 303.7(c)(7)(iv), eighth line, insert the word "refund" after the word "tax".

PART 305—[AMENDED]

12. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

§ 305.20 [Corrected]

13. On the same page, same column, in § 305.20(d)(5), last two lines, "(6 months from publication)" should read "August 22, 1988."

(Catalog of Federal Domestic Assistance Program No. 13.763, Child Support Enforcement Program.)

Dated: July 12, 1988.

James V. Oberthaler,
Deputy Assistant Secretary for Information
and Resource Management.

(FR Doc. 88-16438 Filed 7-20-88; 8:45 am)

BILLING CODE 4190-04-M

**COMMISSION ON THE BICENTENNIAL
OF THE UNITED STATES
CONSTITUTION****45 CFR Part 2001****Project Recognition and Use of Logo**

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Final rule.

SUMMARY: This notice announces an amendment made by the Commission on the Bicentennial of the United States Constitution regarding Project Recognition and Use of Logo which was published as a final rule on March 10, 1988 (51 FR 8300). The effect of this amendment is to ensure that the respective responsibilities and principle details of each project for which cosponsorship has been approved be set forth in a cosponsorship contract signed by all cosponsors. The amendment is a matter of internal procedure and policy and is issued as an amendment to the existing regulations.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kemp R. Harshman, Counsel, Commission on the Bicentennial of the United States Constitution, 808 17th Street NW, Washington, DC 20006; Telephone: (202) 653-7451.

SUPPLEMENTARY INFORMATION: This amendment was adopted by the Commission on December 6, 1987 as a rule to govern procedures and policies on project recognition and use of logo so that the respective responsibilities of each cosponsor is set forth in a cosponsorship contract signed by all cosponsors.

Classification

This is not a major rule under E.O. 12291 since it has no effect on costs, prices or economic competition.

Public Comment

This amendment to existing regulations is issued as a final rule without opportunity for public comment since its purpose is merely to inform the public as to the facts and functional requirements of the Commission with respect to cosponsored projects.

Statutory Authority

This amendment to existing regulations is issued under the authority of section 5(l), Pub. L. 96-101, 97 Stat. 719, as amended.

Paperwork Reduction Act

There is no information collection requirement in this amendment.

List Of Subjects in 45 CFR Part 2001

Government contract.
Mark W. Cannon,
Staff Director.

PART 2001—[AMENDED]

1. The authority citation for 45 CFR Part 2001 continues to read as follows:

Authority: Pub. L. 96-101; 97 Stat. 719; 5 U.S.C. 552.

§ 2001.34 [Amended]

2. Part 2001 is amended by the addition of one sentence of the end of paragraph (a) of § 2001.34 to read as follows: "The Commission will require that the respective responsibilities and principal details of each project for which cosponsorship has been approved be set forth in a cosponsorship contract signed by all cosponsors."

(FR Doc. 88-16455 Filed 7-20-88; 8:45 am)

BILLING CODE 3240-01-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration****50 CFR Part 680**

[Docket No. 80471-8128]

Western Pacific Precious Corals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 1 to the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP). Amendment 1 will (1) include the exclusive economic zone (EEZ) around the U.S. Pacific Island possessions as a combined single exploratory area with a 1,000 kg annual harvest quota for all species of precious corals combined, (2) expand the management unit species to include all precious corals in the genus *Corallium*, and (3) establish an experimental fishing permit (EFP) system under the FMP for fishing in exploratory areas. The intent of the amendment is to expand FMP management authority over precious coral resources in the EEZ and encourage domestic exploratory fishing

for precious coral under controlled conditions.

EFFECTIVE DATE: Section 680.10 is effective on July 18, 1988; all other provisions become effective on August 17, 1988.

ADDRESS: A copy of the amendment may be obtained by contacting the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1406, Honolulu, HI 96813, 808-523-1368.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Pacific Islands Coordinator, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822-2398, 808-955-8831.

SUPPLEMENTARY INFORMATION: The domestic and foreign fisheries for precious coral in the EEZ adjacent to the State of Hawaii and the territories of Guam and American Samoa are managed under the FMP, which was developed by the Western Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The notice of availability for Amendment 1 to the FMP was published in the Federal Register on March 29, 1988 (53 FR 10131). The proposed rule for Amendment 1 was published in the Federal Register on April 26, 1988 (53 FR 14824). The public comment period ended on June 6, 1988.

Amendment 1 implements three actions, as described in the following paragraphs.

**Extension of FMP Coverage to U.S.
Pacific Island Possessions**

When the FMP was first approved in 1980, the planning authority of the Council, as defined by the Magnuson Act, did not extend to the EEZ around the U.S. island possessions in the western Pacific, and the FMP management area included the EEZ only around Hawaii, Guam, and American Samoa. Public Law 97-453, which was enacted in 1983, amended the Magnuson Act to extend Council authority to the EEZ around the U.S. Pacific Island possessions.

Amendment 1 formally incorporates the EEZ around the U.S. possessions in the FMP management area and creates a new exploratory area (X-P-PI) for the U.S. possessions. This exploratory area will have a 1,000 kg annual harvest quota for all species of precious corals combined. The areas affected by this action include the EEZ around Johnston Atoll, Kingman Reef and Palmyra, Wake, Jarvis, Howland, and Baker Islands. The new management measures for the possessions are consistent with

the regulations currently in place for the other exploratory areas defined in the FMP.

Redefinition of the Management Unit Species

Amendment 1 extends the definition of precious corals covered under the FMP to include all species of precious corals in the genus *Corallium*. The management unit defined in the current regulations cover 12 species of coral, three of which are pink (or red) coral in the genus *Corallium*. The Council determined that this definition is unnecessarily restrictive in that it fails to recognize present taxonomic uncertainties that surround the recently discovered Midway deepsea coral (*Corallium* sp. nov.), and does not provide automatic FMP management authority in the event new species of *Corallium* precious corals are discovered in the EEZ. In order to manage the fishery while these taxonomic problems are being resolved, the new regulatory definition of precious coral includes all species of coral in the genus *Corallium*. Harvest quotas established for the exploratory areas remain unchanged. However, harvests of any new species of *Corallium* will count toward the established quotas.

Establishment of an Experimental Fishing Permit (EFP) System

The original goal of the FMP was to obtain optimum yield from the precious coral fishery in the EEZ by striking a balance among several objectives. These objectives included, among others, (1) encouraging development of a domestic fishery for precious coral, (2) generating new information needed for resource management, and (3) preventing overfishing and waste of the resource. The first two objectives have not been achieved.

The original FMP established a harvest quota of 1,000 kg of precious coral for each of the three exploratory areas defined in the FMP. It was believed that a 1,000 kg quota would provide sufficient incentive to stimulate exploration and discovery of new coral beds.

Rather than stimulate exploratory fishing for precious coral, the 1,000 kg quota has proven to be too low to justify the financial investments required by domestic fishermen to explore for and harvest precious coral. There has been no legal fishing for precious coral by domestic or foreign fishermen since the FMP went into effect. The absence of domestic or foreign fishing has prevented the Council and NMFS from obtaining any new information on precious coral resources which could be

used to refine the current management program. Neither State nor Federal fishery research budgets currently are able to finance a research initiative focused on precious coral.

To address these problems, the Council proposed the establishment of an experimental fishing permit (EFP) system. An EFP will allow fishermen to harvest precious coral in exploratory areas above current quota levels under tightly controlled conditions to prevent overharvesting. Harvest quotas will be assigned on a case-by-case basis to each vessel fishing under an EFP at a level that will be related to the cost of undertaking an exploratory fishing venture for precious coral and that will produce scientific information needed to better manage the resource. An EFP application and review process is established which defines the application requirements, review criteria, and operating conditions which may be attached to an EFP in order to protect precious coral beds. An environmental assessment would be prepared evaluating the potential impacts of fishing under each particular EFP proposed. An opportunity for public comment on EFP applications is provided. In addition, the Council will develop guidelines for its use in evaluating EFP applications and making recommendations to the Regional Director.

The Council recognizes the need to increase harvest quotas in the exploratory areas in order to stimulate domestic fishing and generate information needed for accurate resource assessment. However, because of limited information available on the size and reproductive condition of precious coral beds in these areas, the Council was reluctant to propose, and unable to justify, a permanent increase in harvest quotas for exploratory areas. Controlled fishing under an EFP was the preferred alternative to accomplish these objectives. Information generated by vessels fishing under an EFP will allow the Council to develop future harvest quotas which are more in line with resource abundance.

Public comments

No comments were received during the public comment period.

Changes from the Proposed Rule

The outdated phrase "Fishery conservation zone" and its abbreviation "FCZ" have been replaced by "Exclusive economic zone" and "EEZ" by a technical amendment published at 53 FR 24644 on June 29, 1988.

In § 680.5, paragraph (a)(3) is deleted because it is not necessary that

fishermen retain fishing logbooks for one year after a copy has been provided to NMFS.

Classification

The Director, Southwest Region, National Marine Fisheries Service determined that this FMP amendment is necessary for the conservation and management of the precious coral fisheries of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Council included as environmental review as part of the amendment. An environmental assessment supplementing the environmental review was prepared on the proposal to include the EEZ around the U.S. Pacific Island possessions in the FMP management area. The Council concluded that this action would not significantly affect the quality of the environment and determined that an environmental impact statement (EIS) was not required. The action to place all species of *Corallium* within the management unit of the FMP was determined to qualify for categorical exclusion under section 5(c)(3)(a) of NOAA Directives Manual 02-10, "Environmental Review Procedures" (NOAA NEPA Guidelines), because the analysis in the EIS for the original FMP applies to other corals as well. The action to establish the EFP system under the FMP qualifies for a categorical exclusion under section 5(c)(3)(f) of the NOAA NEPA Guidelines because establishing the system in itself does not have any direct impacts on the environment. Direct impacts result from actual issuance of EFPs, and a separate EA will be prepared for each EFP considered. The Assistant Administrator for Fisheries concluded, therefore, that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment supplementing the Council's environmental review may be obtained from NMFS at the above address.

Implementation of this rule is not an action that may effect any species listed as endangered or threatened under the Endangered Species Act of 1972, or the critical habitat of those species. A section 7 consultation was conducted on the original FMP and concluded that the fishery managed by the FMP did not constitute a threat to threatened or endangered species or their habitat. The actions proposed in Amendment 1 are passive with regard to habitat and conventional fishing practices and are not likely to affect adversely any listed species. Informal consultations between the Council and the Southwest Region

were conducted dealing with the amendment generally and with the proposed extension of the management measures to the Pacific Island possessions specifically, and it was concluded that the proposed action is not likely to have an adverse effect on any species listed as endangered or threatened, nor is it likely to affect any critical habitat for such species.

The Under Secretary of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary of this determination appears in the proposed rule (53 FR 14824, April 26, 1988) and is based on the regulatory impact review (RIR), which is included in the Amendment.

The Council prepared a regulatory impact review which concludes that this rule will have positive impact on small business entities. Current FMP regulations and harvest quotas have effectively prevented any domestic fishing for precious coral, particularly in the Hawaii exploratory area. The final rule is expected to provide new harvesting opportunities for domestic fishermen.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small businesses. A summary of this determination appears in the proposed rule.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of information requirement contained in this rule has been approved by the Office of Management and Budget under Control Number 0648-0198. The logbook collection requirement already contained in Part 680 has been approved under Control Number 0648-0198.

The Council has determined that the measures established in the FMP amendment will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Hawaii and the Territories of American Samoa and Guam. Hawaii has concurred with the Council's consistency determination for Amendment 1. American Samoa and Guam did not file any objections to the Council's findings within the period provided for such comments and did not respond to the Council's request for concurrence.

This rule does not contain policies with federalism implications sufficient to warrant preparation of federalism

assessment under Executive Order 12612.

Because the EFP provision of this rule relieves fishermen wishing to experimentally harvest precious coral resources from strict quota restrictions, that provision (§ 680.10) is not subject to the delayed effectiveness period required by the Administrative Procedure Act.

List of Subjects in 50 CFR Part 680

Fisheries, Reporting and recordkeeping requirements.

Dated: July 15, 1988.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 680 is amended as follows:

PART 680—[AMENDED]

1. The authority citation for 50 CFR Part 680 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 680.1, paragraph (b) is revised to read as follows:

§ 680.1 Purpose and scope.

(b) These regulations govern fishing for precious coral by fishing vessels of the United States within the exclusive economic zone seaward of Hawaii, Guam, American Samoa and the U.S. Pacific Island possessions of Johnson Atoll, Kingman Reef, and Palmyra, Wake, Jarvis, Howland, and Baker Islands.

3. In § 680.2, the definition of *Management area*, the introductory text of *Permit area*, and the introductory text of *Precious coral* are revised and listed in alphabetical order; and paragraph (d)(4) is added to the definition of *Permit area*, to read as follows:

§ 680.2 Definitions.

Management area means the EEZ of the United States seaward of the State of Hawaii, the Territory of Guam, the Territory of American Samoa, and the U.S. Pacific Island possessions of Johnson Atoll, Kingman Reef, and Palmyra, Wake, Jarvis, Howland, and Baker Islands.

Permit area is used to describe each precious coral bed in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(d) . . .

(4) Permit Area X-P-PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

4. A new § 680.10 is added to read as follows:

§ 680.10 Experimental fishing permits (EFP).

(a) *General.* The Secretary may authorize the direct or incidental harvest of precious coral managed by the FMP which would otherwise be prohibited in exploratory areas by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary to a vessel owner for a specific vessel in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An application for an EFP may be submitted by the owner of a vessel or a representative of the owner. An applicant for an EFP shall submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

- (1) The date of the application;
- (2) The applicant's name, mailing address, and telephone number;
- (3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;
- (4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;
- (5) For each vessel to be covered by the EFP:

- (i) Vessel name;
 - (ii) Name, address, and telephone number of owner and master;
 - (iii) U.S. Coast Guard documentation, State license, or registration number;
 - (iv) Home port;
 - (v) Length of vessel;
 - (vi) Net tonnage;
 - (vii) Gross tonnage;
 - (viii) Radio call sign;
 - (ix) Engine horsepower; and
 - (x) Approximate fish hold capacity.
- (6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

BEST COPY AVAILABLE

(7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant. The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(c) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the *Federal Register* with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State(s).

(2) At a Western Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Council, the U.S. Coast Guard, and the Director of the affected State(s) fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose information or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish, including precious coral, in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP; or

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The Secretary will publish a notice in the *Federal Register* announcing the decision to grant or deny an EFP. If the permit is granted, the *Federal Register* notice will describe the experimental fishing to be conducted under the EFP. The Secretary will attach terms and conditions to the EFP consistent with the purpose of the experiment to ensure consistency with the FMP and to ensure that the experiment does not undermine efforts to conserve and manage the resource. Terms and conditions may include, but are not limited to, the following:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The time(s) and place(s) where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements, including a requirement to report periodically and at the termination of the permit, the amount of each species that was harvested; and

(vii) Such other conditions as may be necessary to ensure consistent with the purposes of the EFP compliance with the FMP, including the objectives to generate new information needed for resource management and to prevent overfishing and waste of the resource.

(d) *Duration.* The effective period of the permit will be specified by the Secretary in the terms of the EFP. An EFP may be renewed by following the application procedures in this section.

(e) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(f) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(g) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The

EFP must be presented for inspection upon request of any authorized officer.

(h) *Surrender.* Upon issuance of an EFP the applicant must surrender to the Regional Director any permit to fish for precious coral that was issued under § 680.4 of this part.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated under this Act, will be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement reasons will be governed by 15 CFR Part 904 Subpart D.

(j) *Permit modification.* Where circumstances have changed such that a permittee desires to modify any term or condition of an EFP, the permittee must submit, to the Regional Director, a written request which provides full justification and supporting information for the proposed modification. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in paragraph (c) of this section.

Modifications to an EFP which are of a technical nature only and do not affect the substance of the fishing activity authorized by the EFP may be approved by the Regional Director without the notice and consultation provided for in paragraphs (c) (1) and (2) of this section.

(k) *Appeals of administrative action.* (1) Except as provided in Subpart D of 15 CFR Part 904, an applicant for a permit or a permit holder may appeal the denial or conditioning of a permit under § 680.10 to the Assistant Administrator for Fisheries, NOAA. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Assistant Administrator may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the criteria set out in this part, as appropriate, based upon information relative to the application on file at the NMFS and the Western Pacific Fishery Management Council and any additional

information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (k)(3) of this section, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reason(s) therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(3) If a hearing is requested, or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place and subject matter of the hearing in the *Federal Register*. A hearing will normally be held no later than 30 days following publication of the notice in the *Federal Register* unless the hearing officer extends the time for reasons deemed equitable. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or by counsel at the hearing

and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Assistant Administrator.

(4) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefor, in writing within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action shall constitute final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefor.

(1) *Protected species.* Vessels fishing under an EFP are required to report any

incidental take of, or fisheries interaction with, protected species in the fishing logbook described in § 680.5. As required by that section, copies of logbook sheets must be submitted to the Regional Director within 3 days of arriving in port.

§ 680.21 [Amended]

5. In § 680.21, Table 1, the coral bed named "Hawaii, American Samoa, Guam" is revised to read as "Hawaii, American Samoa, Guam, U.S. Pacific Island possessions."

6. In § 680.5, paragraph (a)(3) is removed and paragraph (a)(4) is redesignated (a)(3).

§§ 680.2, 680.4, and 680.21 [Amended]

7. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places: §§ 680.2, definition for Permit area, 680.4(k), and 680.21(a) Table 1, footnote (c).

[FR Doc. 88-16412 Filed 7-18-88; 3:30 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 140

Thursday, July 21, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

Irish Potatoes Grown in Colorado Area II; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenses and establish an assessment rate under Marketing Order No. 948 for the 1988-89 fiscal period. Authorization of this budget would allow the San Luis Valley Potato Administrative Committee Area II to incur expenses reasonable and necessary to administer the program. Funds to cover these expenses would be derived from assessments on handlers.

DATE: Comments must be received by August 1, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 948 (7 CFR Part 948) regulating the handling of potatoes grown in Colorado. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of Colorado Area II potatoes under this marketing order and approximately 290 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal period apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Secretary for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will

produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The San Luis Valley Potato Administrative Committee Area II met on June 10, 1988, and unanimously recommended 1988-89 expenditures of \$43,552. The proposed budget is \$1,350 more than last year's due to salary increases for the committee manager and office personnel and added insurance costs. The committee also recommended an assessment rate of \$0.0035 per hundredweight (cwt.) up from last season's rate of \$0.0034. This rate, when applied to anticipated shipments of 11,800,000 hundredweight, would yield \$41,300 in assessment revenue which, when added to interest income and reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes (Colorado).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be revised as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1-19, 46 Stat. 31, as amended; 7 U.S.C. 601-674. 2. Section 948.297 is added to read as follows:

§ 948.297 Expenses and assessment rate.

Expenses of \$43,552 by the San Luis Valley Potato Administrative Committee Area II are authorized, and an assessment rate of \$0.0035 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: July 19, 1988.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-16484 Filed 7-20-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 303 and 361

[Docket No. 87-029N]

Review of Retail Store Inspection Exemptions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Food Safety and Inspection Service (FSIS) is conducting a review of the retail store exemption provisions of the Federal Meat and Poultry Products Inspection Act, and the regulations promulgated thereunder, that govern exemptions from Federal inspection requirements for traditional and usual operations of retail stores which produce meat or poultry products for sale in normal retail quantities to consumers at such establishments. This review also includes an examination of FSIS' longstanding "two-store" policy which allows an exemption from Federal inspection requirements for any retail operator that owns only two retail stores and prepare meat and/or poultry products at one of its retail stores for sale to consumers in normal retail quantities at both stores. FSIS is publishing this notice in order to solicit public views and information on what, if any, changes should be considered regarding the retail store exemption from Federal inspection requirements and the "two-store" policy. The preamble to any proposed regulations that are issued will include a discussion of the comments received in response to this notice.

DATE: Comments must be submitted on or before September 19, 1988.

ADDRESS: Comments may be mailed to the Hearing Clerk, Room 3171-S, Food

Safety and Inspection Service, USDA, Washington, DC 20250, or delivered to room 3171-S, U.S. Department of Agriculture, between 9:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Conter, Assistant Deputy Administrator, Compliance Program, Food Safety and Inspection Service, Washington, DC 20250, (202) 447-7745.

SUPPLEMENTARY INFORMATION:

Background

In 1907, Congress passed the first permanent Federal Meat Inspection Act (34 Stat. 1260) (Act) which, among other things, provided an exemption from the inspection requirements of the Act for the meat and meat food products supplied by retail dealers and retail butchers to their customers. In 1938, the Meat Inspection Act of 1907 was amended (52 Stat. 1235). The 1938 amendment, among other things, reiterated the 1907 Act's exemption from the inspection requirements of the Act for meat and meat food products supplied by retail dealers and retail butchers to their customers, and also defined the terms "retail dealer" and "retail butcher."

In 1967, Congress enacted the Wholesome Meat Act (81 Stat. 584) which extensively revised the provisions of the Meat Inspection Act of 1907, as amended. The Wholesome Meat Act, among other things, deleted the exemptions from inspection for retail dealers and retail butchers and, instead, provided an exemption from the routine inspection requirements of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 603, 604, and 606), for certain operations of retail stores, restaurants, and similar retail type establishments that operated solely within designated States. This exemption, which is set forth in section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)), provides an exemption from the inspection requirements of the FMIA with respect to traditional and usual operations conducted at retail stores, restaurants, and similar type retail establishments, when these operations are conducted at retail stores, restaurants, or similar retail type establishments for sale or service of meat products in normal retail quantities to consumers at such establishments, if such establishments are subject to the inspection provisions of the FMIA only because they are in designated States. A designated State is a State designated for Federal inspection either because it does not have or is not effectively enforcing an inspection program which imposes requirements at least equal to those of the FMIA.

Thus, retail stores meeting the requirements of the FMIA's retail store exemption can engage in traditional and usual operations without having the products prepared during the course of these operations subject to the routine inspection requirements of the FMIA. However, although the FMIA's retail store provisions exempt retail stores from the routine inspection requirements of the FMIA, such stores are not exempt from the adulteration and misbranding provisions of the FMIA, other than the requirement that the official inspection legend be on products or their labels sold by retail stores.

In 1969, the Department proposed regulations, and in 1970 the Department proposed revised regulations, that defined the parameters of the FMIA's retail store exemption set forth in section 301(c)(2) of the FMIA (34 FR 13194; 35 FR 9291). On October 3, 1970, the Department of Agriculture published final regulations that became effective on December 1, 1970. The regulations, among other things, define various terms of the retail store exemption, including "retail store," "normal retail quantity," and "consumer," delineate what types of operations are traditional and usual for retail stores, and provide a percentage limitation and an annual dollar limitation on sales to nonhousehold consumers (35 FR 15552).

Since the 1970 final rule was published, certain aspects of the FMIA's retail store exemption regulations have changed. However, the definition of what a retail store is has remained unchanged, with the exception of adjusting the dollar limitation on sales to nonhousehold consumers by retail stores. Moreover, the definition of what a "normal retail quantity" is and who "consumers" are has remained unchanged. In addition, the parameters set forth in the 1970 final rule that reflect what operations of retail stores are traditional and usual have not changed, except for the addition made to these parameters in 1976, which recognized that the rendering or refining of livestock fat from prior inspected product for sale to household consumers only was a traditional and usual operation of a retail store (41 FR 36197).

The current FMIA's retail store exemption regulations are set forth in Volume 9 of the Code of Federal Regulations in § 303.1 (d) and (e).

These regulations, reflect in § 303.1(d)(1) (9 CFR 303.1(d)(1)), as does the corresponding statutory provision, that operations of types traditionally and usually conducted at retail stores are exempt from the routine inspection requirements of the FMIA, when these

operations are conducted for the purpose of the sale of meat products, in normal retail quantities, to consumers at these stores. The FMIA's retail store exemption regulations do not limit the scope of the retail store exemption to retail stores that operate only within a designated State. Rather, these regulations reflect the Department's interpretation of the retail store exemption provision of the FMIA, in conjunction with the Opinion of the Attorney General of August 17, 1972, [Vol. 42, Op. No. 44], that operations conducted at a store that meets the requirements of the retail store exemption, are exempt from the inspection requirements of the FMIA, regardless of whether the retail store operates in interstate commerce or solely within a designated State.

Section 303.1(d)(2)(iii) (9 CFR 303.1(d)(2)(iii)) of the regulations defines what a retail store is and reflects the traditional and usual activities of these stores. A retail store is defined as any place of business where: (1) Sales of product are made to consumers only; (2) at least 75 percent, in terms of dollar value, of total sales of product represents sales to household consumers and the total dollar value of sales to other than household consumers doesn't exceed the dollar limitation per calendar year established by the Administrator; (3) only federally or State inspected and passed product is handled and used in the preparation of all products, except, under prescribed conditions, those resulting from the custom slaughter or preparation of product not for sale; (4) no sale of product is made in excess of a normal retail quantity; (5) the preparation of products for sale to household consumers is limited to the traditional and usual operations of retail stores in regard to these consumers, that are delineated in the regulations; (6) and the sale of products to other than household consumers is limited to the traditional and usual operations of retail stores in regard to these consumers, set forth in the regulations.

Section 303.1(d)(2)(i) (9 CFR 303.1(d)(2)(i)) of the regulations sets forth the types of operations that are traditionally and usually conducted at retail stores. This section reflects the types of operations that were traditionally and usually undertaken by retail stores at the time the retail store exemption was added to the FMIA, by the passage of the Wholesome Meat Act in 1967. These operations are the: (1) Cutting up, slicing, and trimming of carcasses, halves, quarters, or wholesale cuts into retail cuts and the freezing of

these cuts; (2) grinding and freezing of products made from meat; (3) curing, cooking, smoking, rendering or refining of livestock fat, or other preparation of products, except slaughtering or the retort processing of canned products; (4) breaking bulk shipments of products; and (5) wrapping or rewinding of products.

The types of operations that a retail store can engage in without being subject to the inspection requirements of the FMIA is dependent upon whether it is preparing products for sale to household consumers or it is preparing products for sale to other types of consumers. Section 303.1(d)(2)(vi) of the regulations (9 CFR 303.1(d)(2)(vi)) defines the term consumers to include household consumers, hotels, restaurants, or similar institutions, as determined by the Administrator in specific cases.

Section 303.1(d)(2)(iii)(e) of the regulations (9 CFR 303.1(d)(2)(iii)(e)) permits retail stores to engage in all of the operations discussed above in regard to their preparation of products for sale to household consumers, since it is traditional and usual for retail stores to engage in all of these operations when meat products are prepared for sale to household consumers. However, § 303.1(d)(2)(iii)(f) (9 CFR 303.1(d)(2)(iii)(f)) permits retail stores to engage in only certain operations that are traditional and usual for retail stores in regard to the preparation of meat products for sale to nonhousehold consumers (i.e. hotels, restaurants, or similar institutions, as determined by the Administrator). Thus, a retail store may not engage in operations for sale to nonhousehold consumers if these operations involve curing, cooking, smoking, rendering or refining of livestock fat, or the preparation of product, other than as provided in § 303.1(d)(2)(i)(a)(b)(d) and (e).

All sales of product by a retail store, regardless of whether they are made to household or other types of consumers, must be of a normal retail quantity. The term "normal retail quantity" is defined in § 303.1(d)(2)(ii) of the regulations (9 CFR 303.1(d)(2)(ii)) to be any quantity of product that does not in the aggregate exceed one-half carcass, which for cattle is three hundred pounds, for calves is thirty-seven and one-half pounds, for sheep is twenty-seven and one-half pounds, for swine is one hundred pounds, and for goats is twenty-five pounds.

The Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) (PPIA) was enacted in 1957 (71 Stat. 441). At that time, the Act contained various

exemptions from the inspection requirements of the PPIA, including one for certain retail dealers and one for certain poultry producers. In 1968, the PPIA was extensively revised by the Wholesome Poultry Products Act (82 Stat. 791). The wholesome Poultry Products Act provides for an exemption from the inspection requirements of the PPIA, similar to that in the FMIA, for traditional and usual operations of certain retail stores and restaurants. This exemption is set forth in section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)). Retail stores meeting the requirements of this exemption can engage in traditional and usual operations, without having the poultry and poultry products prepared during the course of these operations subject to the routine inspection requirements of section 6(b) of the PPIA (21 U.S.C. 455(b)). As for meat products, retail stores processing poultry products are subject to the adulteration and misbranding provisions of the PPIA. However, unlike the FMIA, the PPIA also provides for various other exemptions for retail operations, set forth in section 15 of the Act (21 U.S.C. 464), including an exemption for certain retail dealers and certain poultry producers.

As with the FMIA, similar regulations have been promulgated that define the parameters of the PPIA retail store exemption set forth in section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)). These regulations are set forth in Title 9 of the Code of Federal Regulations in § 381.10(d). These regulations reflect in § 381.10(d)(1), as do the similar FMIA retail store exemption regulations, the Department's interpretation, in conjunction with the Opinion of the Attorney General of August 17, 1972, [Vol. 42 Op. No. 44], that the PPIA retail store exemption applies regardless of whether a retail store operates in a designated State and/or in interstate commerce.

In July of 1983, D&W Food Centers, Inc., hereafter D&W, a Michigan corporation that owned and operated thirteen retail stores in the designated State of Michigan, filed a lawsuit in the Western District of Michigan against the Department and the Secretary of Agriculture. The suit challenged the Department's position that D&W's operations of preparing meat pizzas in a central commissary at one of its retail stores, for distribution and sale at its thirteen stores, was subject to the inspection requirements of section 6 of the FMIA (21 U.S.C. 606).

In its suit, D&W sought declaratory and injunctive relief. D&W requested, among other things, a determination that

D&W's pizza-making operations were not subject to the inspection requirements of the FMIA, and that the Department's two-store policy for retail stores was null and void because it had not been promulgated and published in the Federal Register in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 552 and 553. The Department's two-store policy is a longstanding policy that permits a retail operator that owns and operates a total of two retail stores, that meet the requirements of the retail store exemption, to prepare product at one store and sell that product in normal retail quantities to consumers at that store, as well as its other retail outlet, without these operations being subject to the routine inspection requirements of the FMIA or the PPIA. This policy was adopted because it was traditional and usual in 1967 and 1968, when the FMIA and the PPIA retail store exemptions were added to the FMIA and PPA, for a retail store to prepare product for sale to consumers at that store, as well as for sale to consumers at one off-premises retail outlet under the same ownership, such as an outlet at a local farmer's market. Since D&W owned and operated more than two retail stores, it did not meet the requirement of the two-store policy.

The District Court ruled that D&W's pizza-making operations were not subject to the inspection requirements of section 6 of the FMIA, and that the Secretary's two-store policy was void for failure to comply with the rulemaking and publications provisions of the Administrative Procedure Act. *D&W Food Centers, Inc. v. Block*, No. G83-844 CA1 Slip. Op. (W.D. Michigan, July 20, 1984). The District Court permanently enjoined the Department from asserting its inspection authority over D&W's pizza-making operations in the designated State of Michigan. The District Court's opinion was upheld by the United States Court of Appeals for the Sixth Circuit. *D&W Food Centers, Inc., v. Block*, 786 F.2d 751 (6th Cir. 1986).

FSIS has undertaken a review of the FMIA and PPIA retail store exemption provisions and the regulations promulgated thereunder, as a result of the D&W decision and as a result of requests from certain members of the industry.

Request for Comments

FSIS invites public comment on all aspects of the Agency's retail store exemption regulations, and where appropriate, the underlying statutory provisions set forth in 21 U.S.C. 454(c)(2), 681(c)(2), as well as the

Agency's two-store policy for retail stores.

Specifically, in this solicitation of public comments, the Agency is particularly interested in receiving substantive comments, including data, which would enable it to identify: (1) operations which were traditional and usual for retail stores prior to 1967 for meat and meat products and before 1968 in the case of poultry and poultry products, but have not been adequately reflected in FSIS regulations, and (2) other types of operations that are currently subject to the inspection requirements of the FMIA and PPIA for which the public feels it would be appropriate to revise the law to permit retail stores to engage in such operations without being subject to the inspection requirements of the FMIA and the PPIA.

Additionally, the Agency solicits public comments about the Agency's longstanding "two-store" exemption policy for retail stores. As noted previously, this policy was adopted because many retail store meat/poultry operations were traditionally and usually selling their products prepared at one store to consumers at that store, as well as to consumers at one off-premises retail outlet under the same ownership, such as a local farmer's market.

The Agency also requests comments, from persons recommending regulatory or statutory changes, regarding any potential public health ramification of the options they recommend. In addition, the Agency requests information about the potential economic impact of any options recommended upon consumers, upon each class of business that would be affected by the change, and upon the economy in general. This information is necessary in order for the Agency to assess whether any potential recommended regulatory change might be a "major rule" under Executive Order 12291, or a rule requiring regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

All comments submitted in response to this notice must be received in duplicate on or before the date given above. Each comment should cite the docket number found in brackets at the top of this notice. All comments received will be available for public inspection in the Hearing Clerk's office from 9:00 a.m. until 4:00 p.m. each weekday.

Done at Washington, DC on: July 15, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-16409 Filed 7-20-88; 8:45 am]

BILLING CODE 3410-06-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-79-AD]

Airworthiness Directives; Boeing Model 707-300, -300B, -300C, and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Boeing Model 707-300 and -400 series airplanes, which currently requires modification of horizontal stabilizers that have accumulated 8,000 or more landings. This action would require rework of these stabilizers if necessary, to prevent stress corrosion in the horizontal stabilizer rear spar upper chord clevis. This condition, if not corrected, could lead to separation of the horizontal stabilizer.

DATE: Comments must be received no later than September 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-79-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Scott F. Romer, Airframe Branch, ANM-120S; telephone (206) 431-1986. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-79-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 79-01-06, Amendment 39-3388 (44 FR 2363; January 11, 1979), effective February 10, 1979, to require modification of the horizontal stabilizer on certain Boeing Model 707-300 and -400 series airplanes, in accordance with Boeing Service Bulletin A3313, Revision 8, and Boeing Service Bulletin 3331, Revision 2, both dated October 27, 1978. That action was prompted by an in-service incident of failure of the horizontal stabilizer due to fracture of the rear spar upper chord. This condition, if not corrected, could lead to separation of the horizontal stabilizer.

Since issuance of that AD, there have been several reports of stress corrosion cracking of the clevis fittings modified in accordance with Figure 5, Circle Note 24, of Boeing Alert Service Bulletin A3313. The FAA has determined that further modification of the fittings is necessary to prevent stress corrosion cracking which could lead to the separation of the horizontal stabilizer.

The FAA has reviewed and approved Boeing Alert Service Bulletin A3313, Revision 9, dated February 25, 1988, and Boeing Service Bulletin 3253, Revision 3, dated February 25, 1988, which specify

that the clevis fitting and bushing must be reworked to reduce the interference fit.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require, in addition to current requirements, reworking of the clevis fitting and bushing if they have been previously reworked in accordance with Boeing Alert Service Bulletin A3313, Revision 8 or earlier, or in accordance with Boeing Service Bulletin 3253, Revision 2 or earlier.

It is estimated that 55 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$220,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 707 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1422; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 79-01-06, Amendment 39-3388 (44 FR 2363; January 11, 1979), with the following new airworthiness directive:

Boeing: Applies to all Model 707-300, -300B, -300C, and -400 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the separation of the horizontal stabilizer, accomplish the following:

A. For airplanes on which the modification required by AD 79-01-06 has not been accomplished: Prior to the accumulation of 8,000 total landings, install structural improvement kits on the horizontal stabilizer outer panels and center section in accordance with Boeing Alert Service Bulletin A3313, Revision 9, dated February 25, 1988, and Boeing Service Bulletin 3331, Revision 2, dated October 27, 1978.

B. For airplanes which have been modified in accordance with Boeing Service Bulletin A3313, Revision 8 or earlier revisions, or Boeing Service Bulletin 3253, Revision 2 or earlier revisions, in compliance with AD 79-01-06: Within one year after the effective date of this AD, rework the clevis fittings in accordance with Boeing Alert Service Bulletin A3313, Revision 9, dated February 25, 1988.

Note.—The inspections required by AD 85-12-01 are not changed by this action.

C. Accomplishment of the modification requirements of this AD constitutes terminating action for AD's 77-10-11 and 78-01-04.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle,

Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on July 14, 1988.
Daniel P. Salvano,
Acting Director, Office of Airworthiness.
[FR Doc. 88-16366 Filed 7-20-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-78-AD]

Airworthiness Directives, Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes except the Model 747SP, which currently requires periodic inspection of both inboard and outboard trailing edge flaps carriage spindles for fracture or cracks, and repair or replacement, if necessary. This action would expand the scope of the AD by requiring additional inspections and revised compliance intervals to ensure continued airworthiness. This condition, if not corrected, could lead to the failure of the trailing edge flaps carriage spindles, which could result in the inability of the pilot to safely control the airplane during landing.

DATES: Comments must be received no later than September 13, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On February 4, 1988, the FAA issued AD 88-04-06, Amendment 39-5851 (53 FR 4114; February 12, 1988), applicable to Boeing Model 747 series airplanes, to require periodic inspections of both inboard and outboard trailing edge flaps carriage spindles for fracture or cracks, and repair or replacement, if necessary. That action was prompted by a report of two spindles failing on one flap, causing severe control problems during approach and landing. This condition, if not corrected, could lead to the failure of the trailing edge flaps carriage spindles, which could result in the inability of the pilot to safely control the airplane during landing. That AD was issued as an interim regulation until final action was identified.

Since issuance of that AD, the FAA has reviewed and approved Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988, which describes an inspection program that will allow early detection of corrosion of the flap carriage spindle. Unchecked corrosion of the flap carriage spindle may lead to the fracture of the carriage spindle and result in extensive flap damage and

severe control problems during approach and landing.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 88-04-06 to require inspection of both inboard and outboard trailing edge flaps carriage spindles for fracture or corrosion, and repair or replacement, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 160 airplanes of U.S. registry would be affected by this AD, that it would take approximately 684 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$4,377,600.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 (Amended)

2. By revising AD 88-04-06, Amendment 39-5851 (53 FR 4114; February 12, 1988), to read as follows:

Boeing: Applies to all Model 747 series airplanes, except the Model 747SP, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing edge flap carriage spindles, accomplish the following:

A. Prior to the accumulation by each new or overhauled flap carriage spindle of 30,000 flight hours, or eight years in service, whichever occurs first, or within 30 days after the effective date of this amendment, whichever occurs later, inspect the forward and aft journal areas of each trailing edge flap carriage spindle and overhaul, if necessary, at times and using methods specified in paragraphs A.1., A.2., or A.3., below.

1. **Option I: General Visual Inspection.** Perform a visual inspection of carriage spindle for cracking and corrosion, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988. Inspection in accordance with paragraph A.2., below, is required within 12 months after the initial inspection.

a. If no cracks or corrosion are found, repeat the visual inspection at intervals not to exceed 3 months.

b. If a cracked carriage spindle is found, replace the carriage spindle prior to further flight, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

c. If corrosion is found, inspect in accordance with paragraph A.2., below, within 3 months after detection of corrosion.

2. **Option II: Detailed Visual Inspections.** a. Remove aft link and perform detailed visual inspection of carriage spindle for cracking and corrosion, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988. If cracked carriage spindle is found, replace carriage spindle prior to further flight, in accordance with the service bulletin.

b. If no cracking or corrosion is found, repeat the inspections required by paragraph A.2.a., above, at intervals not to exceed 12 months. Remove carriage spindle and overhaul within 8 years after the initial inspection required by this AD, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

c. If no cracking is found, but light corrosion exists, repeat the inspections required by paragraph A.2.a., above, at intervals not to exceed 6 months. Remove carriage spindle and overhaul within 48 months after detection of light corrosion, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

Note: Light corrosion is considered to be corrosion with pits not exceeding 0.020 inch in depth.

d. If heavy corrosion is found, remove carriage spindle and overhaul in accordance

with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

Note: Heavy corrosion is considered to be corrosion with pits that exceed 0.020 inch in depth.

3. Option III: Overhaul.

Remove carriage spindle and overhaul in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on July 15, 1988.

Daniel P. Salvano,
Acting Director, Office of Airworthiness.
[FR Doc. 88-16365 Filed 7-20-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

(Airspace Docket No. 87-AWA-52)

Proposed Establishment of Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); extension of comment period and notice of informal airspace meeting.

SUMMARY: This notice announces extension of the comment period on an NPRM which proposes to establish an Airport Radar Service Area at Colorado Springs Municipal Airport, CO, and gives notification of informal airspace meeting. See 53 FR 674, January 11, 1988.

DATES: Comments must be received on or before November 7, 1988. Informal airspace meeting will be held October 6, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 87-AWA-52, 800 Independence Avenue SW., Washington, DC 20591.

Informal airspace meeting will be held at:

Date: October 6, 1988.

Time: 7:00 p.m.

Location: Best Western Palmer House, 1-25 at Fillmore, Colorado Springs, CO.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 918, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-52." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available

for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

The FAA will hold an additional informal airspace meeting for Colorado Springs Municipal Airport, CO, in order to receive additional input with respect to the proposal. The date, time, and place for this meeting are listed above. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at this meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal

Public Presentations and Discussion Background

Airspace Docket No. 87-AWA-52, published on January 11, 1988, (53 FR 674) proposed to establish an Airport Radar Service Area (ARSA) at Colorado Springs Municipal Airport, CO, and four other locations. In addition, an informal airspace meeting was held on March 10, 1988, to receive additional public comment on the proposal. The FAA intended to mail individual notices of the meeting to pilots in the Colorado Springs, CO, area, in addition to publication of the notice of the informal airspace meeting in the *Federal Register*. Due to an administrative error, not all of the individual mailings were made in a timely manner. This action extends the period for public comment on Airspace Docket No. 87-AWA-52, as it applies to Colorado Springs Municipal Airport, CO, only and schedules an additional informal airspace meeting.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Extension of Comment Period and Notice of Public Meeting

The comment period for Airspace Docket No. 87-AWA-52 as it applies to Colorado Springs Municipal Airport, CO, is extended to close on November 7, 1988. An informal airspace meeting is scheduled for October 6, 1988. The time and location are listed above.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on July 14, 1988.

Temple H. Johnson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-16365 Filed 7-20-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

(LR-83-87)

Income Taxes; Deductions in Excess of \$5,000 Claimed for Charitable Contributions of Certain Property; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to deductions in excess of \$5,000 claimed for charitable contributions of certain property.

DATES: The public hearing will be held on Friday, September 23, 1988, beginning at 10:00 p.m. Outlines of oral comments must be delivered or mailed by Monday, September 9, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-83-87) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 170A of the Internal Revenue Code of 1986. The proposed regulations appeared in the *Federal Register* for Thursday, May 5, 1988, (53 FR 16156).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than September 9, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:
Dale D. Goods,
Chief, Technical Section, Legislation and Regulations Division.
 [FR Doc. 88-16404 Filed 7-20-88; 8:45 am]
 BILLING CODE 4830-01-M

26 CFR Part 1 **(INTL-362-88)**

Income Taxes; Definition of a Controlled Foreign Corporation and Foreign Personal Holding Company Income of a Controlled Foreign Corporation After December 31, 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of foreign corporations beginning after December 31, 1986. In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to the definition of a controlled foreign corporation and definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of foreign corporations beginning after December 31, 1986. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATE: The regulations under §§ 1.954-OT, 1.954-1T, 1.954-2T, and 1.957-1T are proposed to be effective [date that is 30 days after publication of final regulations in the Federal Register] and are proposed to be applicable for taxable years of the foreign corporation beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by September 19, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR-T (INTL-0362-88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Riea M. Lainoff of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR-T (INTL-0362-88). Telephone (202) 566-8845 (not a toll-free call).

SUPPLEMENTARY INFORMATION: **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(4)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for the Internal Revenue Service, with copies to the Internal Revenue Service at the address previously specified.

The collection of information in this regulation is in §§ 1.954-1T(d)(5), 1.954-2T(a)(4)(ii), 1.954-2T(f)(4)(iii), 1.954-2T(g)(2)(ii), 1.954-2T(g)(2)(iii), 1.954-2T(g)(3)(i), 1.954-2T(g)(4)(i)(C), 1.954-2T(g)(4)(i)(D), and 1.954-2T(g)(5)(iii). This information is required by the Internal Revenue Service in order for taxpayers to elect to exclude from adjusted net foreign base company income subject to income taxes imposed by a foreign country at an effective rate that is greater than 90 percent of the maximum U.S. tax rate, to exclude from foreign personal holding company income gains or losses from qualified commodities hedging transactions and foreign currency gains or losses from qualified business transactions on qualified hedging transactions, or for controlled foreign corporations to elect a method of accounting under which all foreign currency gains or losses attributable to section 988 transactions and section 256 currency contracts are included in foreign personal holding company income. The information will be used to provide an exclusion from subpart F income for income taxes at a high rate in the foreign country, to exclude a qualified hedging transaction from commodities gains or losses that would otherwise be foreign personal holding company income, to exclude a foreign currency gain or loss from foreign personal holding company income, and to provide an exception to the requirement that, in order to exclude foreign currency gain or loss from foreign personal holding company income, such gain or loss must be properly identified as being derived from a qualified business transaction or qualified hedging transaction. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 49,417 hours.
 Estimated average annual burden per respondent: 1.1 hour.

Estimated number of respondents: 44,500.

Estimated annual frequency of responses: High tax election—Annually; Currency election—one time.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new §§ 1.954-OT, 1.954-1T, 1.954-2T, and 1.957-1T to Part 1 of Title 26 of the Code of Federal Regulations. These regulations implement sections 954(b), 954(c), and 957(a), which were amended by sections 1201, 1221, 1222, and 1223 of the Tax Reform Act of 1986 (Pub. L. 99-514). The preamble to the temporary regulations explains these additions to the Income Tax Regulations.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is David L. Paul formerly of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal

Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.951-1 Through 1.957-1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

The temporary regulations, FR DOC. 88-16205 [T.D. 8216] published in the Rules and Regulations portion of this issue of the Federal Register are hereby also proposed as final regulations under Title 26, Part 1, of the Code of Federal Regulations.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.
 [FR Doc. 88-16204 Filed 7-20-88; 8:45 am]
 BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Waiver of the 85-15 Percent Ratio Requirement

AGENCY: Veterans Administration.
ACTION: Proposed regulations.

SUMMARY: Generally, the law and the Code of Federal Regulations prohibit the Veterans Administration (VA) from approving new enrollments under many of the education programs which the VA administers when the VA finds that 85 percent or more of the students enrolled are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or the VA. There is provision for waiver of this requirement. However, the pertinent regulation is not clear as to who has the authority to grant this waiver. This proposed regulation corrects this.

DATE: Comments must be received on or before August 22, 1988. Comments will be available for public inspection until August 30, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until August 30, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: This proposal amends 38 CFR 21.4201(f) to add the Montgomery GI Bill—Active Duty to the list of education programs which must be considered in determining whether or not an educational institution should be exempted from the 85-15 percent veteran-nonveteran ratio requirement. The proposal amends 38 CFR 21.4201(h) to clarify that the Director, Vocational Rehabilitation and Education Service, has the authority to grant a waiver of the 85-15 percent ratio requirement when a school does not qualify for an exemption.

The VA has determined that these proposed regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because this change simply specifies the VA official who is authorized to exercise waiver authority. It does not change that authority. Moreover, it has been the agency's administrative experience that fewer than five educational institutions apply each year to the Director, Vocational Rehabilitation and Education Service, for a waiver. Many of these are not small entities. Even though a slight increase in this number can be expected as enrollments under the Montgomery GI Bill—Active Duty increase, the VA does not think that the number of small

entities affected by this proposal will be substantial. There will be no significant economic impact on a substantial number of other small entities, i.e., small businesses and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 29, 1988.
 Thomas K. Turnage,
Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Section 21.4201 is proposed to be amended by revising the first two sentences of paragraph (f)(1), paragraphs (f)(1)(ii) and (h) to read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(f) * * *

(1) Schools must submit to the VA all calculations needed to support the exemption found in paragraph (c)(4) of this section. If the school is organized on a term, quarter, or semester basis, it shall make that submission no later than 30 days after the beginning of the first term for which the school wants the exemption to apply. * * *

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chapters 30, 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time procedures contained in paragraph (f)(2) of this section shall apply.

(Authority: 38 U.S.C. 1673(d); Pub. L. 98-525)

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving VA education benefits equals

or exceeds 85 percent of the total full-time equivalent enrollments in the course may apply for a waiver to the Director, Vocational Rehabilitation and Education Service, through the Director of the VA field station of jurisdiction. When applying, a school must submit sufficient information to allow the Director, Vocational Rehabilitation and Education Service, to judge the merits of the request against the criteria shown in this paragraph. This information and any other pertinent information available to the VA shall be considered in relation to these criteria:

(1) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(2) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of its notice from the Department of Education that the school is eligible to be considered for a grant under the Strengthening Institutions Program or the Special Needs Program, if applicable. Otherwise the school should submit data sufficient to allow the Director, Vocational Rehabilitation and Education Service, to judge whether the school is similar to institutions which the Department of Education considers to be eligible to apply for a grant under these programs. The pertinent criteria and data categories are published in title 34, Code of Federal Regulations, chapter VI, part 624, subpart A; part 625, subpart A; and part 626, subpart A. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(3) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the VA.

(4) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(Authority: 38 U.S.C. 1673(d); Pub. L. 94-502, Pub. L. 95-202)

[FR Doc. 88-16394 Filed 7-20-88; 8:45 am]

BILLING CODE 9320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[FRL-3418-5]

Nebraska Department of Environmental Control; Underground Injection Control Program; Aquifer Exemption Proposal

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing and of public comment period.

SUMMARY: The purpose of this notice is to announce that (1) the Environmental Protection Agency (EPA) has received an aquifer exemption request along with technical data from the Nebraska Department of Environmental Control (NDEC) to exempt a portion of the Chadron Aquifer in Dawes County, Nebraska, for the purposes of permitting underground injection well for uranium mining; (2) the request and data are now available for inspection; (3) public comments are requested; and (4) a public hearing will be held.

The proposed comment period will provide EPA the breadth of information and public opinion necessary to approve or disapprove the application for aquifer exemption.

DATES: Requests to present oral testimony should be filed by August 10, 1988. The public hearing will be held on August 22, 1988, at 7:00 p.m. and will continue until the end of the testimony. Written comments must be received by September 6, 1988, at which time the comment period will end. EPA reserves the right to cancel the hearing should there be no significant public interest. Those informing EPA of their comments or their intention to testify will be notified of cancellation.

ADDRESSES: Comments and requests to testify should be mailed to Angela Ludwig, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the NDEC Aquifer Exemption Request and supporting documents are available, during the comment period, for review between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Region VII, Water Division, 726 Minnesota Avenue, Kansas City, Kansas 66101, Phone: (913) 236-2815
Nebraska Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509, Phone: (402) 471-2186

Nebraska Department of Environmental Control, Chadron Office—Room 112, Chadron, Nebraska 69337, Phone: (308) 432-2550

Nebraska Oil and Gas Conservation Commission, 1135 Jackson, Sidney, Nebraska 68162, Phone: (308) 254-4595

The hearing will be held in the Howard M. Dodd Hall, Highway 20, P.O. Box 392, Fort Robinson State Park, Crawford, Nebraska.

FOR FURTHER INFORMATION CONTACT: Angela Ludwig, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, phone (913) 236-2815. Comments should also be sent to this address.

SUPPLEMENTARY INFORMATION: The following portion of the Chadron aquifer in Dawes County, Nebraska, has been proposed for exemption for Class III injection well activities (involving mineral production of uranium) by NDEC in accordance with the provisions of subsections 144.7, 146.4, and 145.32 of Chapter I, Title 40, Code of Federal Regulations:

LEGAL DESCRIPTION OF THE PROPOSED PORTION OF THE CHADRON AQUIFER (DAWES COUNTY)

T.31N.R.52W. Section 11	S/2NE/4NW/4SE/4E/2SE/4.
T.31N.R.52W. Section 12	S/2NW/4SW/4S/2SE/4NW/4SE/4.
T.31N.R.52W. Section 14	NE/4NE/4.
T.31N.R.52W. Section 13	NW/4NE/4SE/4NE/4SW/4.
T.31N.R.51W. Section 17	SW/4SW/4.
T.31N.R.51W. Section 18	Lots 1,2,3,4SE/4NW/4S/2SE/4NW/4SE/4E/2SW/4.
T.31N.R.51W. Section 19	ALL
T.31N.R.51W. Section 20	W/2NW/4SW/4.
T.31N.R.52W. Section 24	E/2NE/4NE/4SE/4.
T.31N.R.51W. Section 29	W/2.
T.31N.R.51W. Section 30	NE/4NW/4NE/4NE/4SE/4.

The exemption request covers an area of approximately 3,000 acres. Vertically, the exempted area includes the Basal Member of the Chadron Formation. The bottom of the exempted aquifer ranges from a depth of approximately 850 feet below the surface in the southern part of the exempted area to 350 feet in the northern part. The vertical thickness of the Chadron Formation included in the exemption ranges from approximately 110 feet to 140 feet.

The portion of the Chadron Aquifer described above was approved by the Director, Nebraska Department of

Environmental Control, on March 23, 1984. On February 7, 1985, EPA approved approximately 6.7 acres of the Basal Chadron Aquifer for a research and development (R&D) project. The decision on the remaining portion was placed in abeyance until further data from the R & D project became available.

EPA today is particularly interested in receiving comments on current use of the aquifer as a source of drinking water.

On March 24, 1988, the NDEC submitted a request for the EPA to expand the Chadron Aquifer Exemption as part of a program revision to the state UIC program under 40 CFR 144.7, 145.32 and 146.4. This exemption will become part of the NDEC's state UIC program if approved by EPA.

Morris Kay,

Regional Administrator.

[FR Doc. 88-16403 Filed 7-20-88; 8:45 am]

BILLING CODE 9360-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

(BERC-465-CN)

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the May 27, 1988 issue of the Federal Register (FR Doc. 88-11751), beginning on page 19498, we proposed revisions to the Medicare inpatient hospital prospective payment system and set forth the proposed prospective payment rates for FY 1989. This notice corrects inadvertent errors made in the document.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 966-4529.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the May 27, 1988 document:

1. On page 19511, in the third column, in the thirty-second line from the top of the new page, "at least 20 percent" is changed to read "less than 20 percent".

2. On page 19517, line seven in the table in the first column should read as follows:

DRG	Name
460	Non-extensive burns w/o O.R. procedure.

3. On page 19521, the equation in the fourteenth line from the top of the page should read as follows:

$$1.89 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}} \right)^{.05} - 1 \right]$$

4. On page 19521, the equation in the

twentieth line from the top of the page should read as follows:

$$1.43 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}} \right)^{.05} - 1 \right]$$

5. On page 19522, in the first column, in the eighth line from the bottom of the page, "\$ 413.30(f)" is changed to read "\$ 413.40(f)".

§ 412.73 [Corrected]

6. On page 19529, in the first column, in § 412.73(c)(5)(i)(C)(1), line two, "urban" is changed to "rural" and in § 412.73(c)(5)(i)(C)(2), line two "rural" is changed to "urban".

§ 412.84 [Corrected]

7. On page 19530, in the first column, in § 412.84(h), line two, "computed by" is changed to read "computed annually by".

§ 413.40 [Corrected]

8. On page 19533, in § 413.40(b), in the third column, line ten, "nonparticipation of the Medicare program" is changed to read "nonparticipation in the Medicare program".

9. On page 19535, the equation in the twentieth line from the top of the page should read as follows:

$$1.89 \times \left[\left(1 + \frac{\text{interns and residents}}{\text{beds}} \right)^{.05} - 1 \right]$$

10. On page 19540, Table 1c is corrected to read as follows:

TABLE 1C.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2085.97	375.45	2065.60	371.79	1466.66	273.11

	Labor-related	Nonlabor-related
National	2311.73	775.98

11. On page 19585, in Table 6a, the second column is corrected by adding DRG 388 to diagnosis codes 785.00, 785.06, 785.07, and 785.08 and by adding DRG 387 to diagnosis code 785.10.

12. On page 19585, in Table 6b, the third column is corrected by changing the DRG for procedure code 20.95 from "3" to "55" and the DRG for procedure code 37.33 from "Non-OR" to "108, 109" and by adding DRG 156 to procedure code 42.25.

13. On page 19586, in Table 6c, the second column is corrected by adding the following after procedure code 15.13:

20.01 Myringotomy with insertion of tube.

14. On page 19617, in the third column, in the third line from the top of the page, "More than hospitals" is changed to read "More than 580 hospitals".

15. On page 19621, in the first column, beginning with the third line from the bottom of the page, "education; and the reclassification of hospitals in certain rural counties adjacent to urban areas." is changed to read "education."

16. On page 19621, the second column, in the third line from the top of the page, delete the following sentence: The combined effects of all changes mandated by statute are shown in column 3.

(Catalog of Federal Domestic Assistance Program No. 13.773; Medicare—Hospital Insurance)

Dated: July 12, 1988.

James V. Oberthaler,
Deputy Assistant Secretary for Information
Resources Management.

[FR Doc. 88-16467 Filed 7-20-88; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

50 CFR Part 625

[Docket No. 80735-8136]

Summer Flounder Fishery

AGENCY: National Marine Fisheries
Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA Issues this proposed rule to implement conservation and management measures as prescribed in the Fishery Management Plan for the Summer Flounder Fishery (FMP). The proposed rule would establish a minimum size limit for summer flounder; require that permitted vessels comply with the stricter of FMP or State minimum size limits; prohibit retention of summer flounder by foreign fishermen; require annually renewable permits; and establish a mechanism to increase minimum size limits if trends in fishing mortality rates so indicate. The regulations are intended to reduce fishing mortality, increase long-term yield from the fishery, improve uniformity of management, and provide better information.

DATE: Comments on the proposed rule must be received on or before September 6, 1988.

ADDRESSES: Send comments on the proposed rule and FMP to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Summer Flounder Plan".

Copies of the FMP, the environmental assessment (EA), the regulatory impact review (RIR), and other supporting documents are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901-6790.

Send comments on the proposed collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst) 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed FMP was published in the Federal Register on June 21, 1988 (53 FR 23292). Copies of the FMP are available from the Council (see ADDRESSES). The FMP would initiate management of the fishery for summer flounder (*Paralichthys dentatus*) pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act). The management unit is summer flounder in

the exclusive economic zone (EEZ) from North Carolina northward. Objectives of the FMP are to: (1) Reduce fishing mortality on immature summer flounder; (2) increase yield from the fishery; (3) promote compatible management regulations between state waters and the EEZ; and (4) minimize regulations to achieve the management objectives recognized above.

Background

The FMP was planned jointly with the Atlantic States Marine Fisheries Commission (ASMFC), the States, and the Council. The FMP is based on a management plan drafted by the State/Federal Summer Flounder Management Program pursuant to a contract between the New Jersey Division of Fish, Game, and Wildlife and NMFS. The State/Federal draft plan was adopted by ASMFC in October 1982. In June 1987 an ASMFC advisory committee was convened to review the objectives of the ASMFC plan and to evaluate the condition of the summer flounder stock. The committee recommended that the ASMFC plan should be updated once the FMP being prepared by the Council was approved by the Secretary, and that the States should be encouraged to implement recommendations of the original ASMFC plan. The Council approved the FMP for public hearings on October 29, 1987. Eleven public hearings were held in New England and the Mid-Atlantic coastal States in January 1988.

Measures proposed in the FMP support existing State regulations. The FMP provides that the operator of a vessel holding a Federal permit must fish under the more stringent of Federal or State rules. Because of the significant landings from State waters, the Council considers in critical to the success of the FMP that the States be given time to adjust their regulations to become compatible with those of the FMP.

Problems Addressed by the FMP

Fishing mortality of summer flounder is high. Best estimates indicate that the current instantaneous rate of fishing mortality is nearly double the rate that would produce maximum yield from a given year-class. Further, larger summer flounder are predominantly females and estimates of fishing mortality rates on these fish are nearly three times the rate that would produce maximum yield. By reducing fishing mortality, long-term yield from the fishery could be increased.

Evidence also indicates that, at best, the yield per recruit in the fishery is one-half of its maximum at current levels of

fishing; using more conservative evaluation criteria, the current yield per recruit is significantly less than that. Optimal levels of fishing mortality are considerably lower for females than for males. By increasing minimum size limits, yield per recruit could be increased significantly.

Spawning stock biomass per recruit of summer flounder declines markedly with increasing fishing mortality on females. This concept directly links egg production of a population with fishing mortality. Egg production is highest with no fishing, unless there is density-dependent fecundity, and can be increased by reducing or delaying mortality, such as through minimum size regulations.

The many jurisdictions involved in management of the summer flounder fishery create other problems. Between Massachusetts and North Carolina, a major portion of both recreational and commercial catch comes from State waters. Existing State regulations differ significantly. Maine, New Hampshire, and Pennsylvania have no specific laws relating to summer flounder because landings in those States are minimal or zero. Massachusetts, Rhode Island, Connecticut, New York, and Delaware have 14-inch total length (TL) minimum size limits. New Jersey has a 13-inch TL limit. Maryland and Virginia limits are 12 inches TL, while the North Carolina limit is 11 inches TL (to become 13 inches TL effective September 1, 1988). Several States have mesh size regulations for some or all of their waters (New York, 4 inches; New Jersey, 4.5 inches; Maryland, 2.5 inches for gillnets; Virginia, 4.5 inches; North Carolina, 4.5 inches). The lack of regulations in Maine, New Hampshire, and Pennsylvania does not present a direct problem because of the small amount of summer flounder landings in those States. However, it could be significant if vessels land summer flounder in those States to avoid regulations in other States.

Although tremendous advances in the quantity and quality of data have occurred since 1979 when the Marine Recreational Fishery Statistics Survey (MRFSS) was initiated and all States began separating summer flounder statistics from those for other flounders, there are still significant data gaps.

Biological characteristics of summer flounder have become better understood and most of the catch and biological information necessary for management is currently being collected. However, age composition of the commercial catch for recent years and age composition of the recreational catch are two critical pieces of biological information still needed. Also, very few economic data are currently being collected. The key economic item needed is better effort data for the fishery; nearly one-third of the commercial fishery landings have no associated effort data. Expenditure data for the recreational fishery are also needed.

The continued decline of the New England groundfish fishery will very likely cause more effort to be exerted on summer flounder stocks. Nearly all the major groundfish stocks in New England (haddock, yellowtail flounder, cod, redfish, etc.) have been severely depleted or have current catches exceeding the longterm potential catches. Summer flounder commercial catch has remained relatively constant over the past several years, while total flounder catches along the Atlantic coast have been decreasing. Increasing effort (numbers of vessels) has been directed towards summer flounder during the past 7 years.

Management Measures Proposed in the FMP

The FMP proposes the following management measures:

1. It would be illegal to possess summer flounder less than 13 inches TL or to possess summer flounder parts smaller than 13 inches prior to the point of landing. This is intended to reduce fishing mortality on small fish, preserve spawning stock, create uniform regulations in the EEZ, and provide enforceability of the minimum size limit.

2. Vessels issued permits under the FMP would be required to fish and land as required by the FMP unless the vessels land in States having larger minimum size limits for summer flounder, in which case the State limits would prevail. This allows States to maintain more conservative management measures consistent with those recommended by the ASMFC management plan, and would further reduce fishing mortality of small fish.

3. Foreign fishermen would not be allowed to retain summer flounder since domestic fishermen, by definition, would be harvesting the optimum yield from the resource.

4. Vessels fishing commercially for summer flounder, either directly or as a bycatch in other fisheries, and vessels for hire in the recreational fishery (party and charter boats) would be required to obtain annually renewable permits to improve knowledge of the fishing universe and facilitate data collection to improve management of the fishery.

5. States having minimum size limits larger than those in the FMP and minimum mesh size regulations would be encouraged to maintain them to reduce fishing mortality on summer flounder and improve yield from the fishery.

6. After 3 years of FMP implementation the Council would begin annually to examine fishing mortality estimates of 2-year-old summer flounder to measure effectiveness of the size limit relative to the FMP objectives. If the Council finds that fishing mortality rates for that age class have increased, and if the Regional Director, Northeast Region, NMFS, concurs with the Council, the minimum fish size limit would be adjusted to 14 inches TL. In determining need for such an action, the Council would examine fishing mortality estimates from (1) the Northeast Fisheries Center's (NEFC) spring survey and (2) a virtual population analysis (VPA) based on commercial and recreational catch-per-unit-effort (CPUE) indices. If the trend of either of the mortality estimates increases over a 3-year period, the minimum size increase would be required. The fishing mortality rate of 2-year-old fish estimated from NEFC's spring surveys would be measured relative to the baseline level established from NEFC survey data from 1976-1988. The trend in mortality rates determined by VPA would be compared to a baseline calculated from 1976-1988 catch-at-age data. Best estimates of discards would be incorporated into the catch-at-age and commercial CPUE data. CPUE indices used in VPA would be evaluated using standardized fishing power analyses of commercial and recreational fisheries data. This measure would provide a mechanism for rapid

adjustment of the size limit to reduce fishing mortality should scientific evidence indicate the need for further conservation.

Impact on Endangered Species

A consultation under section 7 of the Endangered Species Act is being conducted by NMFS and a biological opinion regarding potential impacts of the FMP on endangered and threatened sea turtles is being prepared. Copies of the opinion will be available from the NMFS Northeast Regional Office (see ADDRESSES).

Structure of Regulations

A recent restructuring of NMFS's domestic fishing regulations (53 FR 24644, June 29, 1988) consolidates sections affecting all domestic fisheries into a new 50 CFR Part 620. This proposed rule reflects the new structure by reference of Part 620, General Provisions for Domestic Fisheries. Changes in preamble and regulatory wording were made by NMFS to shorten and clarify the proposed rule as submitted by the Council.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce to publish regulations proposed by a Council within 15 days of receipt. At this time he has not determined that the FMP these rules would implement is inconsistent with the national standards, other provisions of the Magnuson Act, and other applicable law. In making that determination, he will take into account the information, views, and comments received during the comment period.

The Council prepared an EA for the FMP and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment from the Council (see ADDRESSES).

The Under Secretary of Commerce for NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft RIR, which demonstrates positive net short-term and long-term economic benefits to the fishery under the proposed management measures. The FMP is not expected to have an annual impact of \$100 million or more, nor to lead to an increase in costs or prices to consumers. Recreational anglers are expected to be affected to a small extent in the early years of the FMP, with a redistribution of expenditures of about \$300,000. Commercial fishery lost revenue in the first year is estimated at about \$1.3

million. However, over 10 years, the discounted benefits are projected to exceed costs by about \$300,000. These estimates do not include a value for expected benefits derived from stabilizing the summer flounder population. You may obtain a copy of the draft RIR from the Council (see ADDRESSES).

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The 13-inch minimum size requirement would impose a maximum reduction in revenue from summer flounder catches of approximately \$4,300 annually on vessels landing in the three states (Maryland, Virginia and North Carolina) with minimum sizes currently below that mandated by the FMP. Since most of those vessels participate in other mixed fisheries, the impact of the proposed regulations would probably be in a range of 4 to 5 percent of total annual ex-vessel revenue. North Carolina recently passed a resolution to increase the minimum size of summer flounder from 11 inches to 13 inches, effective September 1, 1988. This action was taken in support of the FMP, but is independent of its submission and approval. Impacts of the Federal regulations would be considerably reduced, since any effects from a 13-inch size limit would already have been imposed on the industry by the State requirement. After a 3-year monitoring period, a 14-inch minimum size could be implemented if justified by an examination of fishing mortality rates. This measure would impose a burden on fishermen landing in the States specified above and in New Jersey, which currently has a 13-inch minimum size. The maximum average vessel burden is estimated to be \$6,200. That burden would also be mitigated by the pending adjustment in the North Carolina size limit and the participation of affected vessels in mixed fisheries.

The prohibition of retention of summer flounder by foreign harvesters is expected to have no significant impact on domestic harvesters. Foreign catches of summer flounder have been incidental to directed catches of *Loligo* squid, and the expected phase-out of foreign fishing for squid would eliminate

the incidental catch of summer flounder by foreign fleets.

The annual permit for vessels fishing commercially for summer flounder is expected to impose an insignificant burden because the majority of the vessel owners that would apply already have a permit for other managed species. The inclusion of summer flounder would require little additional time for adding another species to a fishing permit application.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regional Director and to OMB (see ADDRESSES).

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. For New Hampshire, the evaluation concluded that the FMP might affect the coastal zone and was consistent. For Pennsylvania, the Council determined that this rule will not affect the coastal zone. These determinations were submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act; all of the States concurred with the Council's finding except Maine and Rhode Island, which did not respond.

This proposed rule does not contain certain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 625

Fishing, Fisheries, Vessel permits and fees.

Dated: July 15, 1988.

James W. Brennan,
Assistant Administrator For Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to add 50 CFR Part 625 as follows:

PART 625—SUMMER FLOUNDER FISHERY

Subpart A—General Provisions

- Sec.
- 625.1 Purpose and scope.
- 625.2 Definitions.
- 625.3 Relation to other laws.
- 625.4 Vessel permits and fees.
- 625.5 Recordkeeping and reporting.
- [Reserved]
- 625.6 Vessel identification.
- 625.7 Prohibitions.
- 625.8 Facilitation of enforcement.
- 625.9 Penalties.

Subpart B—Management Measures

- 625.20 Fishing year. [Reserved]
- 625.21 Allowable levels of harvest.
- [Reserved]
- 625.22 Closure of fishery. [Reserved]
- 625.23 Size restrictions.
- 625.24 Gear restrictions. [Reserved]
- 625.25 Time restrictions. [Reserved]

Authority: 16 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 625.1 Purpose and scope.

The regulations in this part (a) implement the Fishery Management Plan for the Summer Flounder Fishery (FMP), which was prepared and adopted by the Mid-Atlantic Fishery Management Council in cooperation with the New England and South Atlantic Fishery Management Councils and approved by the Under Secretary of Commerce for NOAA; and (b) govern fishing for summer flounder by vessels of the United States within the EEZ.

§ 625.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings:

Charter or party boat means any vessel which carries passengers for hire to engage in fishing.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Summer Flounder Fishery and any amendments thereto.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

NEFC means the Northeast Fisheries Center, NMFS, Water Street, Woods Hole, MA 02543.

Person who receives summer flounder for commercial purposes means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of summer flounder. The term includes, but is not limited to, dealers, brokers, processors, cooperatives, or fish exchanges. It does not include a person who only transports summer flounder

between a fishing vessel and a first purchaser.

Regional Director means the Director, Northeast Region, NMFS, Federal Building, 14 Elm Street, Gloucester, MA 01930-3799, telephone 617-281-3600, or a designee.

Regulated fishery means any fishery of the United States which is regulated under the Magnuson Act.

Summer flounder means *Paralichthys dentatus*.

Total length (TL) means the distance from the top of the head to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Vessel length means that length specified on State registration or U.S. Coast Guard documentation.

§ 625.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) The regulations governing fishing for summer flounder by foreign vessels in the EEZ are set forth in 50 CFR Part 611, Subparts A and C.

§ 625.4 Vessel permits and fees.

(a) *General*. Each fishing vessel, including party and charter boats, which fishes for summer flounder under this part must have a permit issued under this section. A vessel with a permit issued under these regulations is required to fish and land under these regulations unless the vessel lands in a State having larger minimum summer flounder size limits than those provided in these regulations; in that case the landings must meet the State limits. A vessel is exempt from the permitting requirement if it catches no more than 100 pounds of summer flounder per trip.

(b) *Eligibility*. [Reserved]

(c) *Application*. (1) An application for a permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide all the following information:

- (i) The name, mailing address including ZIP code, and telephone number of the owner and master of the vessel;
- (ii) The name of the vessel;
- (iii) The vessel's U.S. Coast Guard documentation number or the vessel's State registration number for a vessel not required to be documented under Title 46 of the U.S. Code;

(iv) Home port and principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) Engine horsepower of the vessel and the year the vessel was built;

(vi) Type of construction, type of propulsion, navigational aids (e.g., Loran C), type of on-board computer, and type of echo sounder of the vessel;

(vii) Permits number of any current or previous Federal fishery permit issued to the vessel;

(viii) Approximate fish hold capacity of the vessel (to the nearest 100 lbs);

(ix) Type and quantity of fishing gear used by the vessel;

(x) Average size of the crew, including the captain, which may be stated in terms of a normal range;

(xi) Directed fishery or fisheries;

(xii) Quantity of summer flounder landed during the calendar year prior to the one for which the permit is being applied;

(xiii) Number of passengers the vessel is licensed to carry (party and charter boats); and

(xiv) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(d) *Fees*. No fee is required for any permit issued under this part.

(e) *Issuance*. The Regional Director will issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(f) *Expiration*. A permit will expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port, or the regulated fisheries in which the vessel is engaged.

(g) *Duration*. A permit will continue in effect until December 31 of each year unless it is revoked, suspended, or modified under Part 621 of this chapter or 15 CFR Part 904.

(h) *Alteration*. No person may alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement*. Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application.

(j) *Transfer*. Permits issued under this part are not transferable or assignable. A permit will be valid only for the

fishing vessel and owner for which it is issued.

(k) *Display.* The permit is subject to inspection by an authorized officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Magnuson Act or these regulations, or if a civil penalty or criminal fine imposed under the Magnuson Act is not paid.

§ 625.5 Recordkeeping and reporting. [Reserved]

§ 625.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part and over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft.

(b) *Numerals.* (1) The official number must be displayed in block arabic numerals in contrasting color at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels over 25 feet in length.

(2) The official number must be permanently affixed to or painted on the vessel. However, charter or party boats may use non-permanent markings to display the official number whenever the vessel is fishing for summer flounder. The operator of each fishing vessel must:

- (i) Keep the official number clearly legible and in good repair; and
- (ii) Ensure that no part of the fishing vessel, its rigging or its fishing gear obstruct the view of the official number from any enforcement vessel or aircraft.

§ 625.7 Prohibitions.

In addition to the general prohibitions

specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Possess or retain summer flounder smaller than the legal minimum length established under § 625.23 of this part.

(b) Use any vessel for the taking, catching, harvesting, or landing of any summer flounder (except as provided for in § 625.4(a)) unless the vessel has a valid permit issued under this part on board the vessel.

(c) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel.

(d) Fail to affix and maintain markings as required by § 625.6.

(e) Refuse to permit an authorized officer to inspect any fishing vessel record.

(f) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer or processor report or other record required by this part.

(g) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, landing, purchase, sale, or transfer of any summer flounder.

(h) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part.

§ 625.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 625.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 625.20 Fishing year. [Reserved]

§ 625.21 Allowable levels of harvest. [Reserved]

§ 625.22 Closure of fishery. [Reserved]

§ 625.23 Size restrictions.

(a) *Minimum fish size.* Summer flounder: 13 inches TL; parts of summer flounder: 13 inches to the point of landing.

(b) *Adjustments to minimum fish size.*

(1) Following the third year of FMP implementation, and annually thereafter, the Council will examine fishing mortality estimates of age-2 summer flounder to measure the effectiveness of the size limit relative to the FMP's objectives. If the Council finds that the fishing mortality of age-2 summer flounder has increased, based on the adjustment criteria set forth in paragraph (b)(2) of this section, and if the Regional Director concurs with the Council, the minimum fish length would be increased to 14 inches TL, by notice in the Federal Register.

(2) The adjustment criteria are (1) estimated fishing mortality from NEFC's spring survey and (2) estimated fishing mortality from a virtual population analysis (VPA) based on commercial and recreational fishery catch-per-unit-effort (CPUE) indices. If the trend of either of these mortality estimates for age-2 fish increases over 3 years, an increase in the minimum fish length is required. The trends will be measured (1) relative to a baseline level determined from NEFC survey data from 1976-1988, and (2) relative to the baseline level from VPA using catch-at-age from 1976-1988. Best estimates of discards will be incorporated into both the catch-at-age data and commercial CPUE data. CPUE indices used for the VPA will be evaluated using standardized fishing power analyses of commercial and recreational fisheries data.

(c) If a vessel lands in a State with larger minimum fish sizes than those provided in this section, the State limit applies as the minimum fish size.

§ 625.24 Gear restrictions. [Reserved]

§ 625.25 Time restrictions. [Reserved]

[FR Doc. 88-16360 Filed 7-20-88; 8:45 am]
BILLING CODE 3510-32-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Form Under Review by Office of Management and Budget

July 15, 1988

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) name and telephone number of agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- *Agricultural Marketing Service*

Onions Grown in South Texas (Marketing Order No. 959)
Recordkeeping: Monthly; Daily
Farms; Businesses or other for-profit;
1,077 responses; 84 hours
Virginia Olson, (202) 447-5057.

Revision

• *Rural Electrification Administration*
7 CFR Part 1763, Architectural and Engineering Services—Telephone Program
REA Forms 179, 506 and 521
On occasion
Small businesses or organizations; 1,280 hours; 1,149 responses
John D. Soma, (202) 382-8529.

New Collection

• *Food and Nutrition Service*
Study of the Long Term Receipt of Food Stamps by Work Registrants One-time survey
Individuals or households; 500 hours; 375 responses
Mark Johnston, (703) 756-3232.
Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 88-16415 Filed 7-20-88; 8:45 am]
BILLING CODE 3410-01-M

Soil Conservation Service

Long Beach Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Long Beach Watershed, Harrison County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601-965-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that

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the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention to urban areas. Alternatives under consideration to reach these objectives include nonstructural measures and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from L. Pete Heard, State Conservationist, at the above address.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

L. Pete Heard,
State Conservationist.

Date: July 15, 1988.

[FR Doc. 88-16392 Filed 7-20-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Georgia Advisory Committee: Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission previously announced in 53 FR 25650 (July 8, 1988) has been rescheduled and relocated. The meeting will convene at 10:30 a.m. and adjourn at 1:30 p.m. on July 22, 1988, at the Richard B. Russell Federal Building, 75 Spring Street, Atlanta, Georgia 30303, room 1478. The purpose of the meeting is to discuss the status of the Committee's report entitled, "Proceedings on Bigotry and Violence" and program plans. Staff will give an orientation for new members.

BEST COPY AVAILABLE

Dated at Washington, DC, July 15, 1988.
Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-16382 Filed 7-20-88; 8:45 am]
BILLING CODE 6335-01-M

Iowa Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on August 25, 1988, at Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa. The purpose of the meeting is to discuss program plans and activities for the remainder of FY'88.

Persons desiring additional information should contact Committee Vice-Chairperson, Lee Furgerson, or Melvin Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC July 14, 1988.
Susan J. Prado,
Acting Staff Director.
[FR Doc. 88-16383 Filed 7-20-88; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Medal of Technology; Extension of Nomination Deadline

AGENCY: Office of Productivity, Technology and Innovation, Office of Economic Affairs, Commerce.

ACTION: Notice of nomination deadline extension.

SUMMARY: Notice is hereby given that the deadline for nominating persons or companies to be considered for receiving the National Medal of Technology in 1990 (Authorized by 15 U.S.C. 3711), has been extended from July 30, 1988 to December 31, 1988.

DATE: Nominations must be received on or before December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Executive Director, National Medal of Technology Nomination, Evaluation Committee, H-

4814, U.S. Department of Commerce, Washington, DC 20230, (202) 377-5572.
D. Bruce Merrifield,
Assistant Secretary, Productivity, Technology and Innovation.
[FR Doc. 88-16453 Filed 7-20-88; 8:45 am]
BILLING CODE 3510-16-M

Foreign-Trade Zones Board

[Order No. 390]

Temporary Extension of Authority for Subzone 50A, Long Beach, CA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

Whereas, on July 14, 1983, the Board authorized the Board of Harbor Commissioners of the City of Long Beach (BHC), grantee of FTZ 50, to establish Subzone 50A for the truck cargo body manufacturing plant of Toyota Auto Body, Inc., of California (Toyota) (formerly, Toyota Motor Manufacturing, U.S.A., Inc.) in Long Beach, California, for a period of five years, subject to extension (Board Order 213, 48 FR 34792);

Whereas, the authorization expires on July 14, 1988;

Whereas, BHC has made application to the Board (FTZ Docket 21-88, filed 4/14/88, 53 FR 16178) for an indefinite extension of the authority for Subzone 50A;

Whereas, the review being conducted by the Board will not be completed by July 14, 1988; and,

Whereas, the FTZ Staff has recommended a temporary extension of authority while a review of the application for an indefinite extension is being completed;

Now, Therefore, the Board hereby orders:

That the authority for Subzone 50A is extended to December 31, 1988, subject to all of the other conditions in Board Order 213.

Signed at Washington, DC, this 14th day of July 1988.

Jan W. Maros,
Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 88-16472 Filed 7-20-88; 8:45 am]
BILLING CODE 3510-05-M

[Order No. 391]

Temporary Extension of Authority for the Private Zone Sites in Foreign-Trade Zone 84, Houston, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR, Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Board authorized the Port of Houston Authority (PHA) to maintain several privately owned and operated sites in FTZ 84, Houston, Texas, on July 15, 1983 (Board Order No. 214), subject to conditions, including a time limit of five years, subject to extension after a review;

Whereas, the authorization expires on July 15, 1988;

Whereas, PHA, grantee of Foreign-Trade Zone 84, has made application to the Board (FTZ Doc. 8-88, filed 2-8-88, 53 FR 4865) to extend zone status on a permanent basis for several of the private sites;

Whereas, the application is supported by state and local public officials, but the Board's review will not be completed by July 15, 1988; and

Whereas, the FTZ Staff has recommended a temporary extension of authority while a review of the application for an indefinite extension is being completed;

Now, Therefore, the Board hereby orders:

That authority for the private sites in FTZ 84 is extended to January 15, 1989, subject to the other conditions in Board Order 214.

Signed at Washington, DC, this 14th day of July 1988.

Jan W. Maros,
Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 88-16473 Filed 7-20-88; 8:45 am]
BILLING CODE 3510-05-M

International Trade Administration

Short-Supply Review on Certain Steel Plate; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short-supply determination under Article 8 of the U.S.-Austria Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Korean Arrangement Concerning Trade in Certain Steel Products, and Article 8 of the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, with respect to certain steel plate used in the manufacture of large diameter pipe.

DATE: Comments must be submitted on or before August 1, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Austria Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, the U.S.-Korean Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the United States determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for various structural and API

5LX line pipe grades of steel plate, 0.25 to 1.50 inches in thickness, and 72 inches or more in width, for use in producing large diameter pipe.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than August 1, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Jan W. Maros,
Assistant Secretary for Import Administration.

July 14, 1988.
[FR Doc. 88-16471 Filed 7-20-88; 8:45 am]
BILLING CODE 3510-05-M

National Bureau of Standards

[Docket No. 80741-8141]

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of formal establishment of a laboratory accreditation program for laboratories that test the computer industry's implementation of communications protocols used by the Department of Defense.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the establishment of a laboratory accreditation program for laboratories that test the computer industry's implementation of communications protocols used by the Department of Defense (Protocols Program). Laboratories that are interested in becoming accredited under the Protocols Program may indicate their interest in the program by informing the Manager, Laboratory Accreditation, National Bureau of Standards of their specific interests.

FOR FURTHER INFORMATION CONTACT: John L. Donaldson, Manager, Laboratory Accreditation, National Bureau of Standards, Admin A527, Gaithersburg, MD 20899, (301) 975-4016.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with § 7.17 of the NVLAP Procedures (15 CFR Part 7). Establishment of this program for laboratories that test the computer industry's implementation of communications protocols used by the Department of Defense follows a request by the Defense Communications Agency. A Federal Register notice announcing the request for the Protocols LAP was published on December 3, 1987 (50 FR 45986-45988). Comments received in response to the announcement were reviewed by the Defense Communications Engineering Center whose director, Warren P. Hawrylko, has concluded that there were no valid reasons presented in the comment letters to prevent establishment of the Protocols LAP and therefore requested the National Bureau of Standards to proceed to establish the requested program.

The purpose of the LAP is to accredit and provide national recognition to laboratories capable of performing tests in accordance with the designated test methods. The scope of the LAP includes testing services for: (1) Defense Data Network (DDN) X.25 Link and Network Layer Protocols as specified in the DCA DDN X.25 Host Interface Specification; (2) the five DoD packet switching High Level Protocols (HLPs): (I) Internet Protocol (IP) MIL-STD 1777; (II) Transmission Control Protocol (TCP), MIL-STD 1778; (III) File Transfer Protocol (FTP), MIL-STD 1780; (IV) Simple Mail Transfer Protocol, MIL STD 1781; and (V) TELNET, MIL-STD 1782; and (3) the AUTODIN Mode I Protocol. Accreditation will be offered first for the X.25 protocol. Accreditation will be offered next, at least 45 days later, for the DoD HLPs (I)-(V). Accreditation for AUTODIN Mode I protocol will be offered last, after the initial X.25 protocol accreditations have been completed.

Procedure Prior to Application

Any testing laboratory interested in becoming accredited under this LAP should contact the Manager, Laboratory Accreditation, at the address shown above, specifying the protocols of interest. The laboratory will be sent the proposed technical documents for the requested protocol accreditation as they become available and will be invited to submit comments for their revision within 45 days of the publication date of this notice in the case of the X.25 protocol and of the mailing dates of the documents for the HLP and AUTODIN

protocols. A meeting of all interested parties will be scheduled after each of the closing dates to resolve conflicting comments. If none arise, no meeting will be scheduled. The completed technical documents, instructions, fee schedules, and applications will be sent separately for each protocol as they become available to all laboratories that have previously requested them.

Ernest Ambler,
Director.

Dated: July 15, 1988.

[FR Doc. 88-16439 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-13-M

International Laboratory Accreditation Conference (ILAC) 1988; Invitation To Participate and Public Meeting

AGENCY: National Bureau of Standards, Commerce.

ACTION: Invitation to participate in ILAC 88 Conference and announcement of public meeting.

DATES: Tenth ILAC meeting, Auckland, New Zealand, October 17-21, 1988, Open Pre-Conference Meeting, National Bureau of Standards, Gaithersburg, MD, September 16, 1988. Closing Date for Delegate Appointment, August 15, 1988.

SUMMARY: The Tenth International Laboratory Accreditation Conference (ILAC) will be held in Auckland, New Zealand, October 17-21, 1988. ILAC is an informal organization of approximately 42 nations and 12 international organizations whose overall purpose and objective is to promote: (1) The development of national programs for accrediting testing laboratories, (2) the employment of harmonized accreditation criteria, and (3) the development of bilateral or multilateral arrangements which would encourage importers to accept the results of tests and data made by laboratories that have been accredited under a laboratory accreditation program in exporting nations.

Conferences in support of ILAC's stated purpose have been held since 1977, to develop information about laboratory accreditation systems, to provide a forum for discussing differences among such systems, to describe basic principles and criteria for operating such systems, and to develop bilateral or other arrangements which would establish mutual recognition of such systems or of test reports issued by laboratories accredited under such systems. These bilateral arrangements are intended to minimize technical barriers to trade.

The U.S. Delegation is chaired by the Deputy Associate Director for Industry

and Standards. Anyone interested in attending this meeting in Auckland as a member of the U.S. Delegation, using his or her own financial resources for registration fees, hotel accommodations, food, and travel expenses, is invited to submit a request by August 15, 1988, to Mr. George Uriano, Deputy Associate Director for Industry and Standards, National Bureau of Standards, Admin. A603, Gaithersburg, MD 20899. Such persons should have a background in standards development, laboratory accreditation, product testing or product certification activities.

Notice is also given that the U.S. Delegation will hold an open pre-conference meeting at 10:00 a.m. on Friday, September 16, 1988, in Lecture Room C of the Administration Building at the National Bureau of Standards, Gaithersburg, Maryland, to prepare for the conference. The meeting attendees and delegates will: (1) Review ILAC Task Force and Committee reports, (2) consider the position that the U.S. Delegation should take in response to those reports, (3) prepare any proposed resolution for introduction at ILAC 88, and (4) consider any additional matters of interest. The pre-conference meeting will be chaired by Mr. Uriano.

Anyone wishing to attend this meeting, which is open to the public, or provide information on proposals for consideration by the delegation, should notify Mr. George Uriano, National Bureau of Standards, Admin. A603, Gaithersburg, MD 20899, telephone: 301-975-4003, by September 1, 1988.

Date: July 15, 1988.

Ernest Ambler,
Director.

[FR Doc. 88-16441 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-13-M

Public Meeting on U.S. Technical Participation in OIML International Conference

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of meeting.

SUMMARY: The National Bureau of Standards will hold a public meeting to discuss U.S. technical participation in the 8th Quadrennial Conference of the International Organization of Legal Metrology (OIML). The principal focus of the meeting will be on twenty-six proposed OIML International Recommendations on legal measuring instruments that will be presented for sanction at the Conference. These proposed Recommendations and OIML-member nations' technical comments on them will be reviewed with interested

parties who will be given also an opportunity to present their views on relevant issues of the Conference.

DATE: September 7, 1988 from 9:30 am to 4:00 pm.

Location of Meeting: National Bureau of Standards, Administration Building, Lecture Room D, Gaithersburg, MD.

Status: This is a meeting open to all interested parties. Participants with an expressed interest in particular topics may obtain limited copies of the Conference technical agenda, including the proposed OIML International Recommendations. Presentation of oral and written statements by interested parties should be arranged and scheduled beforehand.

FOR FURTHER INFORMATION CONTACT: Samuel E. Chappell; Chief, Office of Standards Management; National Bureau of Standards, Gaithersburg, MD 20899; telephone (301) 975-4023.

SUPPLEMENTARY INFORMATION: The International Organization of Legal Metrology (OIML) is a treaty organization in which the United States and 49 other member nations participate. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce and for monitoring and maintaining public health and safety. The harmonized results are to promote international trade of affected instruments and products.

The quadrennial meeting of the OIML International Conference will take place in Sidney, Australia from October 24-28, 1988. At that time, twenty-six proposed International Recommendations on legal measuring instruments will be considered for sanction by the member nations. These Recommendations and the OIML-member nations holding the responsible secretariat for each are as follows:

- PR1 Measuring Assemblies for Liquids Other Than Water Fitted with Volume Meters (West Germany, France)
- PR2 Visual Disappearing—Filament Pyrometers (USSR)
- PR3 Western Tubes for Measurement of Erythrocyte Sedimentation Rate (West Germany)
- PR4 Verification Methods for Indicating Pressure Gauges, Vacuum Gauges and Pressure-Vacuum Gauges with Elastic Sensing Elements and Direct Indication by Pointer and Graduated Scale—Ordinary Instruments (USSR)
- PR5 Verification Methods for Recording Pressure Gauges, Vacuum Gauges and Pressure-Vacuum Gauges with Elastic

Sensing Elements—Ordinary Instruments (USSR)

PR6 Information on Package Labels (USSR)

PR7 Road and Rail Tankers (France, Rumania)

PR8 Measuring Devices and Measuring Systems for Cryogenic Liquids (USA)

PR9 Gas Chromatographs for Measuring Pollution from Pesticides and toxic Substances (USA)

PR10 Gas Chromatographs Mass Spectrometer/Data System for Analysis of Organic Pollutants in Water (USA)

PR11 Heat Meters (West Germany)

PR12 Resistance-Thermometer Sensors Made of Platinum, Cooper or Nickel for Industrial and Commercial Use (USSR)

PR13 Automatic Measurement of the Level of Liquid in Fixed Storage Tanks (The Netherlands)

PR14 General Provisions for Volumetric Gas Meters (West Germany)

PR15 Diaphragm Gas Meters (The Netherlands)

PR16 Rotary Piston Gas Meters and Turbine Gas Meters (West Germany)

PR17 Drum Meters for Alcohol and Supplementary Devices (West Germany)

PR18 Net Content in Packages (Switzerland)

PR19 Integrating-Averaging Sound Level Meters (Switzerland)

PR20 Electroencephalographs; Metrological Characteristics and Methods and Means of Verification (USSR)

PR21 Electrocardiographs; Metrological Characteristics and Methods and Means of Verification (USSR)

PR22 Measurement of the Speed of Vehicles by Radar Equipment (Switzerland)

PR23 Non-Automatic Weighing Instruments (France, West Germany)

PR24 Wood Moisture Meters (USSR)

PR25 Focimeters (Hungary)

PR26 Electronic Weighing Instruments (USA)

Date: July 14, 1988.

Ernest Ambler,
Director.

[FR Doc. 88-16440 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification Request; Sea Life Park, Inc. (P10D)

Notice is hereby given that Sea Life Park, Inc., Makapuu Point, Waimanalo, Hawaii 96795, has requested a modification of Permit No. 629, issued on

March 23, 1988 (52 FR 46315), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder was authorized to take and import four (4) false killer whales (*Pseudorca crassidens*) from Japan for permanent maintenance in a public display program. The Permit Holder is now requesting to modify that Permit to allow the taking to occur in Hawaiian waters.

Concurrent with the publication of this notice in the *Federal Register*, The Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reason why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above request are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, Permit Division, 1825 Connecticut Avenue NW., Washington, DC; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: July 15, 1988.

[FR Doc. 88-16359 Filed 7-20-88; 8:45 am]

BILLING CODE 3515-22-M

Marine Mammals; Issuance of Permit; Dr. Douglas Wartzok (P375A)

On April, 11, 1988, notice was published in the *Federal Register* (53 FR 11894) that an application had been filed by Dr. Douglas Wartzok, Professor and Chairman, Department of Biological Sciences, Purdue University, Fort Wayne, Indiana 46805-1499 to take Weddell seals (*Leptonychotes weddelli*) for scientific research.

Notice is hereby given that on July 15, 1988 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1401), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs.

Date: July 15, 1988.

[FR Doc. 88-16411 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-32-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Consultations With the Government of Thailand To Review Trade in Category 369-D

July 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 22, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1654); Bilateral Textile Agreement of July 27 and August 8, 1983.

FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce.

(202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6561. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION: On June 30, 1988, the Government of the United States requested consultations with the Government of Thailand regarding cotton dish towels in Category 369-D, produced or manufactured in Thailand.

Pending a mutually satisfactory solution, the United States has decided to control imports of Category 369-D during the ninety-day consultation period. If no solution is reached the consultation period, the United States may establish a prorated limit for the period June 30, 1988 through December 31, 1988 at a level of 111,292 pounds.

A summary market statement concerning Category 369-D follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 369-D, under the agreement with Thailand, or in any other aspect thereof, or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Please be advised that imports of Category 369-D (cotton dish towels) from Thailand are within Category 369-O (other than luggage), and will require a 369-O visa. The visa arrangement for this category will remain unchanged until a part-category visa for 369-D is agreed upon by both the United States and Thailand Governments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement of

the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 369-D. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the *Federal Register*.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see *Federal Register* notice 52 FR 47745, published on December 10, 1987).

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Category 369 Pt.—Cotton Dish Towels
June 1988

Summary and Conclusions

United States imports of cotton dish towels—Category 369 Pt.—from Thailand were 163 thousand pounds (133 thousand dozen) during the year ending March 1988, up 39 percent from the 132 thousand pounds (112 thousand dozen) imported a year earlier. During the first quarter of 1988, imports from Thailand reached 79 thousand pounds (52 thousand dozen), four times the amount imported during the first quarter of 1987.

The sharp and substantial increase of low-valued imports of Category 369 Pt. dish towels from Thailand is a real risk of market disruption.

Production and Market Share

U.S. production of cotton dish towels declined from 8.1 million dozens, in 1984 to 6.6 million in 1985, a decrease of 19 percent. Production in 1986 partially recovered, reaching 7.3 million dozen, but fell again in 1987 to a level of 6.2 million dozen, 15 percent below 1986 level and 23 percent below the 1984 level.

The U.S. producers' share of the market for domestically produced and imported dish towels declined in every year since 1984, falling from 54 percent in 1984 to 37 percent in 1987.

Imports and Import Penetration

U.S. imports of Category 369 Pt. dish towels from all sources have been on the rise since 1984, reaching a record level of 10.5 million dozen in 1987, an increase of 51 percent over the 1984 level. During the first three months of 1988, imports of cotton dish towels were up 13 percent over the comparable period in 1987.

The ratio of imports to domestic production doubled, increasing from 85 percent in 1984 to 169 percent in 1987.

Import Values

During the period January-March 1988, 72 percent of Thailand's Category 369 Pt. dish

towel imports entered under TSUSA Nos 366.1720 and 366.2420—cotton terry dish towels. The duty-paid landed values of Category 369 Pt. dish towels from Thailand are well below the U.S. producers' prices for comparable dish towels.

Committee for the Implementation of Textile Agreements

July 15, 1988.

Commissioner of Customs,
Department of the Treasury, Washington,
D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 30, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, 1983 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 22, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the Category 369-D,¹ produced or manufactured in Thailand and exported during the ninety-day period which began on June 30, 1988 and extends through September 27, 1988, in excess of 64,219 pounds.²

Textile products in Category 369-D which have been exported to the United States prior to June 30, 1988 shall not be subject to this directive.

Textile products in Category 369-D which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1494(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Textile products in Category 369-D shall continue to require a "369-O"³ visa.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-16396 Filed 7-20-88; 8:45 am]

BILLING CODE 3610-01-01

¹ In Category 369-D, only TSUSA numbers 366.0615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2600.

² The limit has not been adjusted to account for any imports exported after June 23, 1988.

³ In Category 369-O, all TSUSA numbers except 706.3210, 706.3650 and 706.4111 in Category 369-L.

Announcement of Request for Bilateral Textile Consultations With the Government of the United Arab Emirates

July 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION: On June 27, 1988, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding cotton and man-made fiber textile products in Categories 338/339, 340/640, 341/641 and 347/348, produced or manufactured in the United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the United Arab Emirates the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on June 27, 1988 and extends through June 26, 1989, at levels of 176,565 dozen (Categories 338/339), 157,919 dozen (Categories 340/640), 121,205 dozen (Categories 341/641) and 115,942 dozen (Categories 347/348).

Summary market statement concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories, or to comment on domestic production or availability of products included in the categories, is invited to submit such comments or information in ten copies to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the

Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The United States remains committed to finding a solution concerning Categories 338/339, 340/640, 341/641 and 347/348. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the *Federal Register*.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see *Federal Register* notice 52 FR 47745, published on December 16, 1987).

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

United Arab Emirates—Market Statement

Men's and Boys' Cotton Knit Shirts and Blouses (Category 338/339)
June 1988

Summary and Conclusions

U.S. imports of cotton knit shirts and blouses (Category 338/339) from the United Arab Emirates increased steeply in 1987, and the rapid growth has continued unabated in 1988. Imports of Category 338/339 from the United Arab Emirates in the calendar year 1987 were 22 times the 1986 level. In January-March 1988, these imports were seven thousand times higher than the levels in the same period of 1987. The U.S. government regards with serious concern the alarming increase over a short period of time in a sensitive category of imports from an uncontrolled supplier.

Further, cotton knit shirts and blouses from the United Arab Emirates enter the U.S. market at an average price 66 percent below the price of domestically produced cotton knit shirts and blouses and on average 45 percent below the price of most foreign produced cotton knit shirts and blouses in the United States market.

The levels reached by U.S. imports of cotton knit shirts and blouses from the United Arab Emirates in the first three months of 1988 would, if maintained throughout the current year, reach an annualized level of nearly 580 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 66 percent below the domestic price will contribute to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first three months of data. At

this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major country suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The United Arab Emirates' duty-paid landed values are on average 45 percent below the duty-paid landed values of those MFA countries whose annual import limits would be equalled or exceeded by imports from the United Arab Emirates. The U.S. Government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under the auspices of the MFA.

Import Penetration and Market Share

Between 1982 and 1987 U.S. production of cotton knit shirts and blouses remained relatively flat while imports more than doubled. The ratio of imports to domestic production in Category 338/339 increased to 133 percent in 1987, up from 60 percent in 1982. The U.S. manufacturers' share of this market declined by 20 percent points, dropping from 63 percent in 1982 to 43 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

The United Arab Emirates ships in twenty individual tariff product classifications in Category 338/339. The three TSUSA classifications in which the United Arab Emirates ships the majority of their 338/339 garments, representing 44 percent of their shipments during the first three months of 1988, are as follows: TSUSA number 381.4130—men's and boys' cotton knit shirts, excluding t-shirts, sweatshirts and tank tops, not ornamented; TSUSA number 384.2915—women's and girls' cotton knit T-shirts, not ornamented; and TSUSA number 384.2950—women's cotton knit shirts, excluding T-shirts and sweatshirts, not ornamented. These garments entered the U.S. at duty-paid landed values on average 66 percent below U.S. producers' prices for comparable garments.

United Arab Emirates—Market Statement

Men's and Boys' Cotton and Man-Made Fiber Woven Shirts (Category 340/640)
June 1988

Summary and Conclusions

U.S. imports of men's and boys' cotton and man-made fiber woven shirts (Category 340/640) from the United Arab Emirates increased steeply in 1987, and the rapid growth has continued unabated in 1988. Imports of Category 340/640 from the United Arab Emirates in the calendar year 1987 were seven times the 1986 level. In January-March 1988, these imports were three times above the level in the same period of 1987. The U.S. government regards with serious concern the alarming increase over a short period of time in a sensitive category of imports from an uncontrolled supplier.

Further, men's and boys' cotton and man-made fiber woven shirts from the United Arab Emirates enter the U.S. market at an average price 64 percent below the price of

domestically produced men's and boys' cotton and man-made fiber woven shirts and on average 46 percent below the price of most foreign produced men's and boys' cotton and man-made fiber shirts in the United States market.

The levels reached by U.S. imports of men's and boys' cotton and man-made fiber woven shirts from the United Arab Emirates in the first three months of 1988 would, if maintained throughout the current year, reach an annualized level of 192 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 64 percent below the domestic price will contribute to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first three months of data. At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major country suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The United Arab Emirates' duty-paid landed values are on average 27 percent below the duty-paid landed values of those MFA countries whose annual import limits would be equalled or exceeded by imports from the United Arab Emirates. The U.S. Government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under the auspices of the MFA.

Import Penetration and Market Share

Between 1982 and 1987 U.S. production of men's and boys' cotton and man-made fiber woven shirts remained relatively flat while imports increased by 36 percent. The ratio of imports to domestic production in Category 340/640 increased to 159 percent in 1987, up from 122 percent in 1982. The U.S. manufacturers' share of this market declined from 45 percent in 1982 to 39 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 71 percent of Category 340/640 imports from the United Arab Emirates during the first three months of 1988 entered under TSUSA numbers 381.5850—men's cotton woven sport shirts, except those of corduroy, not ornamented; and 381.9540—men's and boys' man-made fiber woven dress shirts, other than those with two or more colors in the warp and/or the filling, not ornamented. These shirts entered the U.S. at landed duty-paid values on average 64 percent below U.S. producers' prices for comparable garments.

Market Statement

Women's and Girls' Cotton and Man-Made Fiber Woven Shirts and Blouses (Category 341/641)

United Arab Emirates—June 1988

Summary and Conclusions

U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses (Category 341/641) from the United Arab Emirates increased steeply in 1987, and

the rapid growth has continued unabated in 1988. Imports of Category 341/641 from the United Arab Emirates in the calendar year 1987 rose by more than three and one half times over the 1986 total. In January-March 1988, these imports were more than three times above the level in the same period of 1987. The U.S. government regards with serious concern the alarming increase over a short period of time in a sensitive category of imports from an uncontrolled supplier.

Further, women's and girls' cotton and man-made fiber woven shirts and blouses from the United Arab Emirates enter the U.S. market at an average price 74 percent below the price of domestically produced women's and girls' cotton and man-made fiber woven shirts and blouses and on average 61 percent below the price of most foreign produced women's and girls' cotton and man-made fiber woven shirts and blouses in the United States market.

The levels reached by U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses from the United Arab Emirates in the first three months of 1988 would, if maintained throughout the current year, reach an annualized level of nearly 270 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 74 percent below the domestic price will contribute to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first three months of data. At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major country suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The United Arab Emirates' duty-paid landed values are on average 50 percent below the duty-paid landed values of those MFA countries whose annual import limits would be equalled or exceeded by imports from the United Arab Emirates. The U.S. Government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under the auspices of the MFA.

Import Penetration and Market Share

Between 1982 and 1986 U.S. production of women's and girls' cotton and man-made fiber woven shirts and blouses remained relatively flat while imports more than doubled reaching a record level in 1986. The ratio of imports to domestic production in Category 341/641 increased to 104 percent in 1986, up from 49 percent in 1982. The U.S. manufacturers' share of this market declined by 16 percentage points dropping from 67 percent in 1982 to 49 percent in 1986. In 1987, U.S. production dropped sharply falling 21 percent below the 1986 level to its lowest level in the decade. Imports in 1987 declined from their 1986 record level, but remained at the second highest level on record. The import to production ratio increased to 118 percent in 1987 as the U.S. manufacturers' share of the market fell to 46 percent.

Duty-Paid Value and U.S. Producers' Price

Approximately 72 percent of Category 341/641 imports from the United Arab Emirates during the first three months of 1988 entered under TSUSA numbers 384.4608—women's cotton woven blouses with two or more colors in the warp and/or the filling, not ornamented; 384.4614—women's cotton woven blouses, other than those of poplin, broadcloth and those with two or more colors in the warp and/or the filling, not ornamented; and 384.4616—girls' cotton woven blouses, other than those of poplin, broadcloth and those with two or more colors in the warp and/or the filling. These blouses entered the U.S. at duty-paid landed values on average 74 percent below U.S. producers' prices for comparable blouses.

United Arab Emirates—Market Statement

Men's and Boys' Women's and Girls' Cotton Trousers, Slacks and Shorts (Category 347/348)

June 1988

Summary and Conclusions

U.S. imports of cotton trousers, slacks and shorts (Category 347/348) from the United Arab Emirates increased sharply in 1987, and the rapid growth has continued unabated in 1988. Imports of Category 347/348 from the United Arab Emirates in the calendar year 1987 rose by 42 percent over the 1986 total. In January-March 1988, these imports were 70 times higher than the levels in the same period of 1987. The U.S. government regards with serious concern the alarming increase over a short period of time in a sensitive category of imports from an uncontrolled supplier.

Further, cotton trousers, slacks and shorts from the United Arab Emirates enter the U.S. market at an average price 70 percent below the price of domestically produced cotton trousers, slacks and shorts and on average 56 percent below the price of most foreign produced cotton trousers, slacks and shorts in the United States market.

The levels reached by U.S. imports of cotton trousers, slacks and shorts from the United Arab Emirates in the first three months of 1988 would, if maintained throughout the current year, reach an annualized level of nearly 400 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 70 percent below the domestic price will contribute to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first three months of data. At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major country suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The United Arab Emirates' duty-paid landed values are on average 44 percent below the duty-paid landed values of those MFA countries whose annual import limits would be equalled or exceeded by imports from the United Arab Emirates. The U.S. Government is concerned

that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under the auspices of the MFA.

Import Penetration and Market Share

Between 1982 and 1987 U.S. production of cotton trousers, slacks and shorts remained relatively flat while imports more than doubled. The ratio of imports to domestic production in Category 347/348 increased to 70 percent in 1987, up from 33 percent in 1982. The U.S. manufacturers' share of this market declined from 75 percent in 1982 to 59 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 65 percent of Category 347/348 imports from the United Arab Emirates during the first three months of 1988 entered under TSUSA number 384.4723—infants', other than infant boys over 24 months of age, cotton woven shorts, not ornamented and 384.4724—women's and girl's cotton woven shorts, not ornamented. These garments entered the U.S. at duty-paid landed values on average 70 percent below U.S. producers' prices for comparable garments.

[FR Doc. 88-16397 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Low Observable Technology

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for June 22-23, 1988 as published in the *Federal Register* (Vol. 53, No. 13, Page 1658, Thursday, January 21, 1988, FR Doc. 88-1124) will be held on August 24-25, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88-16432 Filed 7-20-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology

ACTION: Cancellation of meeting.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for May 4, 1988 as published in the *Federal Register* (Vol. 53, No. 13, Page 1658,

Thursday, January 21, 1988, FR Doc. 88-1124) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88-16433 Filed 7-20-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Use of Commercial Components in Military Equipment will meet in open session on September 13, 1988 at TRW, Fairfax, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review issues concerning intellectual property, the domestic semiconductor industry, and issues as requested from industry.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88-16428 Filed 7-20-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1988 Summer Study on Countering Soviet Fire Support

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board 1988 Summer Study on Countering Soviet Fire Support scheduled for June 1-2, 1988 as published in the *Federal Register* (Vol. 53, No. 35, Page 5293, Tuesday, February 23, 1988, FR Doc. 88-3772) will be held on June 2-3, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88-16429 Filed 7-20-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack

ACTION: Change in date/location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Follow-on Forces Attack scheduled for June 28, 1988 at the Pentagon, Arlington, Virginia as published in the *Federal Register* (Vol. 53, No. 100, Page 18595, Tuesday, May 24, 1988, FR Doc. 88-11615) will be held on July 6, 1988 at the BDM Corporation, Rosslyn, Virginia.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88-16430 Filed 7-20-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack (FOFA)

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Follow-on Forces Attack (FOFA) scheduled for April 11, 1988 as published in the *Federal Register* (Vol. 53, No. 35, Page 5294, Tuesday, February 23, 1988, FR Doc. 88-3774) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88-16431 Filed 7-20-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force To Review the Strategic Force Modernization Program

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force to Review the Strategic Force Modernization Program will meet in closed session on September 27-28, October 26-27, November 8-9, and December 7-8, 1988 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine strategic force modernization issues within the context of evolving Soviet threat capabilities, potential strategic arms control restraints, and an increasingly austere fiscal environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings,

concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 18, 1988.

[FR Doc. 88-16434 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Advanced Naval Warfare Concepts

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Advanced Naval Warfare Concepts will meet in closed session on September 23, 1988, at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine advanced naval warfare concepts and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

July 18, 1988.
[FR Doc. 88-16423 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Army Subgroup on Low Observable Technologies will meet in closed session on September 8-9, 1988, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force

will examine and provide advice regarding Army activities in the area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 18, 1988.

[FR Doc. 88-16424 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board 1988 Summer Study on Assured Military Use of Space

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1988 Summer Study on Assured Military Use of Space scheduled for June 9-10, 1988 as published in the Federal Register (Vol. 53, No. 59, Page 9963, Monday, March 28, 1988, FR Doc. 88-6659) has been cancelled.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 15, 1988.

[FR Doc. 88-16425 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board 1988 Summer Study on Assured Military Use of Space

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1988 Summer Study on Assured Military Use of Space scheduled for July 12-13, 1988 as published in the Federal Register (Vol. 53, No. 35, Page 5393, Tuesday, February 23, 1988, FR Doc. 88-3771) has been cancelled.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 15, 1988.

[FR Doc. 88-16426 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment—Revisit

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Use of Commercial Components in Military

Equipment—Revisit scheduled for June 17, 1988 as published in the Federal Register (Vol. 53, No. 105, Page 19985, Wednesday, June 1, 1988, FR Doc. 88-12299) has been cancelled.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 15, 1988.
[FR Doc. 88-16427 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Coughlan, Personnel Management Specialist, Office of the Director of Personnel and Security, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 202/274-5798.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. William Sharkey Assistant Director, Policy and Plans, Defense Contract Audit Agency, Chairperson
Mr. Roy Heidemann Assistant Director, Operations, Defense Contract Audit Agency, member
Mr. John van Santen Assistant Director, Resources, Defense Contract Audit Agency, member

Regional Performance Review Board

Mr. Bernard Topf Regional Director, Western, Defense Contract Audit Agency, Chairperson
Mr. Robert Hubbard Regional Director, Southwestern, Defense Contract Audit Agency, member
Mr. Robert Matter Regional Director, Northeastern, Defense Contract Audit Agency, member

Linda M. Bynum,
Alternate Office of the Secretary of Defense,
Federal Liaison Officer, Department of
Defense.

July 15, 1988.
[FR Doc. 88-16437 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Membership of the Office of the Secretary of Defense Performance Review Board

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, DoD Field Activities, the Organization of the Joint Chiefs of Staff, the U.S. Court of Military Appeals, the Strategic Defense Initiative Organization, U.S. Mission to NATO, Defense Advanced Research Projects Agency, Defense Investigative Service, and the Defense Security Assistance Agency. The publication of PRB membership is required by 5 U.S.C. 4314 (c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Secretary of Defense.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Bobb, Chief, Senior Executive Service and Classification Division, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, the Pentagon, (202) 697-8304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314 (c)(4), the following executives are appointed to the OSD PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective August 1, 1988.

Office of the Secretary of Defense

Primary Members

Werner E. Michel, Chairman, Assistant To The Secretary of Defense (Intelligence Oversight)
Jordan E. Rizer, Director, American Forces Information Services

David J. Berteau, Deputy Assistant Secretary of Defense (Resource Management & Support)
Lenard G. Campbell, Director for Plans and Systems
Richard G. Howe, Director, Theater and Tactical C³I
John E. Mansfield, Director, Strategic Technology Office
Donald R. Greenlee, Deputy Director for Plans & Programs
John V. Bolino, Assistant Deputy Director for Test Facilities Resources
Charles R. Gentzel, Staff Specialist for Ground Air Defense Systems
Deborah P. Christie, Deputy Director, Theater Assessments and Planning
Robert L. Gilliat, Assistant General Counsel, Personnel and Health Policy
Cynthia Kendall, Deputy Director for Program and Financial Control
Frederick C. Smith, Principal Director, Policy Analysis
Thomas F. Garnett, Jr., Director for Workforce Relations, Training and Staffing Policy
Albert V. Conte, Deputy Assistant Secretary of Defense (Guard/Reserve Manpower and Personnel)
Anthony R. Grieco, Assistant Director, Electronic Combat Systems
John D. Martin, Special Advisor for International and Governmental Affairs
Gregory D. Hulcher, Assistant Deputy Under Secretary of Defense (Force Analysis Concepts and Plans)
Thomas F. Granahan, Clerk of the Court
Henry H. Gaffney, Jr., Director for Plans
Blair G. Ewing, Director for Management Improvement
William J. Sharkey, Jr., Director, Spares Program Management

Alternate Members

John L. Laughlin, Deputy Assistant Secretary of Defense (Guard/Reserve Program and Budget)
Diane D. Fountaine, Director, Information Systems
Mick L. Blackledge, Assistant Director for Technology, KEWO
Claiborne D. Haughton, Jr., Director for Civilian Equal Opportunity Program
John E. Lynch, Economic Advisor
William M. McDonald, Director, Freedom of Information and Security Review
Thomas E. Ewald, Deputy Director, Investigations
Vincent D. Kern, II, Director, Africa Region
William Kahn, Director, Theatre Nuclear Forces Policy
George W. Bader, Principal Director, European and NATO Policy
John M. Russ, Deputy Assistant Secretary of Defense (Resources)

James W. Brooks, Jr., Director, Strategic Defensive and Theater Nuclear Forces Division
Arthur W. Pennington, Director, Naval Forces Division
John H. McNeill, Assistant General Counsel (International and Intelligence)
Paris Genalis, Staff Specialist for Research
Walter B. Bergmann, III, Director, Logistics Planning and Analysis
Michael J. Mestrovich, Director, Defense Medical Systems Support Center
Joanne D. Shuck, Director, Resource Management
Irving Bialick, Joint ADP/Communications Integration Manager/Scientific and Technical Advisor
William T. Marquitz, Deputy Director, Technology Assessment and Long Range Planning Office
Thomas J. Welch, Deputy Assistant Secretary of Defense (Chemical Matters)
Karen A. Alderman, Director, Civilian Requirements and Analysis
L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 18, 1988.
[FR Doc. 88-16438 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Technological and Operational Surprise

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Technological and Operational Surprise in the US-Soviet Military Competition will meet in closed session on September 15-16, 1988, at the DIAC Building, Bolling AFB, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the potential for technological and operational surprise in the U.S.-Soviet military competition.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that

accordingly this meeting will be closed to the public.

Linda M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
July 18, 1988.
[FR Doc. 88-10435 Filed 7-20-88; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army, Corps of Engineers,

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Local Flood Protection Project for Petersburg, WV

AGENCY: US Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY:

1. *Proposed Action.* The Corps of engineers, acting as the Federal sponsor, and the local sponsor, the Interstate Commission on the Potomac River Basin (ICPRB), are examining alternative plans for local flood protection for Petersburg, West Virginia. Measures being considered included channel improvements and the construction of north and/or south bank levees along the South Branch Potomac River.

2. *Alternatives.* In the feasibility study, alternatives being considered include a combination of earth levees along one or both banks of the South Branch Potomac River and channel improvements in the vicinity of the Main Street Bridge. Depending on the level of protection, the earth levees may range from 5.5 to 12.5 feet high and may extend up to 13,000 feet. Channel improvements would consist of deepening and concrete lining of a reach of about 335 feet. Appurtenant project features would include facilities for interior drainage, stream diversion for Johnson Run, and a number of closure structures.

3. *Scoping Process.* The proposed public education and involvement program is being organized through the local sponsor (ICPRB) and consists of coordination meetings and distribution of information to interested and affected agencies, groups, and individuals. Input to the impact analysis is being solicited through letter survey of relevant agencies and news releases to local publications. Major concerns anticipated include effects on local stream habitat as well as historical and archaeological resources. Efforts will be made to identify any and all such impacts and develop mitigation strategies. Agencies contacted include

the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the West Virginia Department of Natural Resources, and the West Virginia Department of Culture and History. The draft environmental impact statement is expected to be available to concerned agencies and the public for review and comment on October 1989.

4. *Address.* Questions about the project and the draft environmental impact statement can be answered by Mr. Larry J. Lower, Chief, Environmental Analysis Branch, CENAB-PL-E, P.O. Box 1715, Baltimore, Maryland 21203-1715 or Dr. Nancy Ehrlich, Interstate Commission on the Potomac River Basin, Suite 300, 6110 Executive Boulevard, Rockville, Maryland 20852-1908.

Bernard E. Stalman,
Colonel, Corps of Engineers, Commanding.

Date: July 5, 1988.

[FR Doc. 88-16367 Filed 7-2-88; 8:45 am]

BILLING CODE 3710-41-M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.019, 84.021, 84.022]

Grants Available, etc.: Fulbright-Hays Faculty Research Abroad Fellowship Program, etc.

AGENCY: Department of Education.

ACTION: Combined notice inviting applications under Fulbright-Hays training grant programs: faculty research abroad, group projects abroad, and doctoral dissertation research abroad for fiscal year 1989 new awards.

Purpose: Applications are invited for new awards under the Fulbright-Hays Training Grant Programs include the Faculty Research Abroad, Group Projects Abroad, and Doctoral Dissertation Research Abroad Programs. Authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2450(b)(6)).

The Faculty Research Abroad Program offers opportunities to faculty members of institutions of higher education for research and study abroad in modern foreign languages and area studies.

The Group Projects Abroad Program provides grants to educational institutions or nonprofit organizations for training, research, and study abroad in modern foreign languages and area studies by groups of individuals engaged in a common endeavor.

The Doctoral Dissertation Research Abroad Program provides opportunities for graduate students to engage in full-

time dissertation research abroad in modern foreign languages and areas studies.

Deadline for Transmittal of Applications: October 31, 1988.
Applications Available: August 15, 1988.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.019, Faculty Research Abroad Program; 84.021, Group Projects Abroad Program; or 84.022, Doctoral Dissertation Research Abroad Program. 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Eligible Applicants: For the Faculty Research Abroad and Doctoral Dissertation Research Abroad Programs, eligible applicants are institutions of higher education.

For the Group Projects Abroad Program, eligible applicants include institutions of higher education, State departments of education, private nonprofit educational organizations, and

consortia of such institutions, departments, and organizations.

Priorities: The regulations governing the Faculty Research Abroad Program (34 CFR 663.32(c)), Group Projects Abroad Program (34 CFR 662.32(c)) provide for the establishment of funding priorities by the Secretary. For Fiscal Year 1989, the Secretary has established

funding priorities for these Fulbright-Hays programs. These priorities will be applied in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3). All available funds for these programs will be reserved solely for applications that propose research and training focusing

upon one or more of the following world areas: (1) Africa; (2) the Western Hemisphere; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East; or (7) South Asia. Applications that propose projects focusing on Western Europe will not be funded.

FULBRIGHT-HAYS TRAINING GRANTS PROGRAMS

Title and CFDA Number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Faculty Research Abroad (CFDA No. 84.019)	US \$700,000	\$8,000 to 60,000	\$26,000	25	3 to 12
Group Projects Abroad (CFDA No. 84.021)	US \$2,040,415, Rs. 4,500,000 ¹	20,000 to 200,000	55,000	38	1.5 to 12
Doctoral Dissertation Research Abroad (CFDA No. 84.022)	US \$1,500,000, Rs. 1,545,920 ¹	4,000 to 50,000	17,500	95	6 to 12

¹ Rupee allocation from the U.S.-India Fund.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies, 34 CFR Parts 662, 663, and 664.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Mrs. Merion Kane (Faculty Research Abroad Program), Telephone (202) 732-3301; Dr. Stephen J. Keyser (Group Projects Abroad Program), 732-3394 or Mr. John Paul (Doctoral Dissertation Research Abroad Program), (202) 732-3298, Department of Education, Mail Stop 3308, 400 Maryland Avenue, SW., Washington, DC 20202.

Authority: 22 U.S.C. 2452(b)(6).

Dated: June 27, 1988.

Kenneth D. Whitehead,
Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-16395 Filed 7-20-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conduct of Employees

Section 207(f), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsection (a) of section 207, title 18, United States Code, to permit a former employee with outstanding scientific or technological qualifications to make appearances before or communications to the

Department in connection with a particular matter which requires such qualifications, where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Richard H. Kropschot, formerly Associate Director of the Office of Basic Energy Sciences in the Department of Energy's Office of Energy Research, has outstanding scientific and technological qualifications in the fields of physics, chemistry, and materials sciences, and extensive experience in management and administration of energy sciences research and development programs. I am further satisfied that it will serve the national interest to permit him, in his capacity as Associate Laboratory Director for Energy Sciences of Lawrence Berkeley Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the funding, operation, and management of energy sciences programs of the Laboratory. I am satisfied that these activities are in a scientific or technological field and require the qualification stated.

I have, therefore, waived the post-employment prohibitions of subsection (a) of section 207, title 18, United States Code, in consultation with the Director of the Office of Government Ethics, with respect to contact by Dr. Kropschot with employees of the Department of Energy and other Government agencies to permit him to undertake the stated activities.

Date: July 15, 1988.

John S. Herrington,
Secretary of Energy.
[FR Doc. 88-16466 Filed 7-20-88; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP88-45-000, RP88-46-000]

Arkia Energy Resources, a Division of Arkia, Inc.; Informal Settlement Conference

July 19, 1988

Take notice that an informal settlement conference will be convened in the above proceeding on August 2, 1988 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC for the purpose of continuing to explore the possible settlement of the above-referenced dockets, and in particular, the offer of settlement to be circulated by the applicant prior to that time.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Castillo (202) 357-5737.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 88-16482 Filed 7-20-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA88-2-61-001]

Bayou Interstate Pipeline System; Supplement To Filing

July 19, 1988.

Take notice that on July 1, 1988, Bayou Interstate Pipeline System (Bayou) filed a supplement to its June 1, 1988 filing. The supplement included a Substitute Sixth Revised Sheet No. 4 and revised Exhibit B to be effective August 1, 1988.

Bayou state that, pursuant to Staff Request, its supplement relates to the Purchased Gas Cost Adjustment provision contained in section 15 of Bayou's tariff. A copy of the supplement is being mailed to Bayou's jurisdictional sales customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before August 8, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16475 Filed 7-20-88; 8:45 a.m.]
BILLING CODE 8717-01-M

[Docket Nos. RP88-297-001 and RP87-55-005]

Columbia Gas Transmission Corp.; Correction To Filing

July 18, 1988.

Take notice that on July 8, 1988, Columbia Gas Transmission Corporation (Columbia) filed a Substitute Sixteenth Revised Sheet No. 18A2 to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective August 1, 1988.

Columbia states that this tariff sheet corrects Sixteenth Revised Sheet No. 18A2 previously filed on July 1, 1988. Columbia states that Sixteenth Revised Sheet No. 18A2 contained an inadvertent clerical error in that the proposed 5.33 cent per dth Order No. 500 volumetric surcharge was included in the derivation of the minimum commodity rates under Rate Schedules FTS and ITS.

Columbia states that a copy of this filing was sent to all parties which were served with its July 1, 1988 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16476 Filed 7-20-88; 8:45 a.m.]
BILLING CODE 8717-01-M

[Docket Nos. TQ88-2-23-000 et al.]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 18, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on July 8, 1988, certain revised and alternate revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective June 1, 1988 and August 1, 1988, respectively.

ESNG states that the reason for making the instant tariff filing is threefold. (1) ESNG is filing substitute revised tariff sheets proposed to be effective June 1, 1988 in a manner consistent with the Commission's order issued May 25, 1988 in ESNG's Docket No. TA88-2-23-000, i.e., ESNG has removed from the Demand Charge 1 component of its sales rates Transco's fixed monthly charge for take-or-pay buyout/buydown costs of \$65,191. (2) ESNG is filing revised tariff sheets proposed to be effective June 1, 1988 to properly reflect their correct pagination as a result of the Commission's action in Docket No. TA88-2-23-000 by letter order dated May 25, 1988. (3) ESNG is filing revised tariff sheets proposed to be effective August 1, 1988 in accordance with § 154.306 of the Commission's Regulations and pursuant to section 21 (Purchased Gas Adjustment Clause) of ESNG's FERC Gas Tariff to reflect changes in its jurisdictional rates due to a change in its projected average cost of gas.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16477 Filed 7-20-88; 8:45 am]
BILLING CODE 8717-01-M

[Docket Nos. TQ88-2-34-000 and TQ88-2-34-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 18, 1988.

Take notice that on June 30, 1988, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective August 1, 1988.

FERC Gas Tariff, First Revised Volume No. 1

29th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

51st Revised Sheet No. 128

On July 12, 1988, FGT submitted Substitute 29th Revised Sheet No. 8 correcting a typographical error that was originally submitted in its June 30, 1988 filing.

Reason for Filing

The above referenced tariff sheets are being filed in accordance with § 154.306 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff. First Revised Volume No. 1 to reflect a decrease in FGT's jurisdictional rates due to a decrease in its average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ88-1-34-000, effective June 1, 1988.

FGT states that the effect of the purchased gas cost reduction being filed

represents a decrease of .049¢/therm for Rate Schedules G and I and .02¢/Mcf for Rate Schedule T-3 as measured against FGT's Quarterly PGA filing in Docket No. TQ88-1-34-000, effective June 1, 1988.

FGT states that copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16478 Filed 7-20-88; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. CP88-2-008]

Northern Natural Gas Co., Division of Enron Corp.; Sale of Natural Gas

July 19, 1988.

Take notice that on July 8, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-2, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC ¶ 61,303).

- (1) Name of Buyer: Enron Gas Processing Company (EGP).
- (2) Location of Buyer: Houston, Texas.
- (3) Affiliation between Northern and Buyer: EGP is a subsidiary of Enron Corp.; Northern is a division of Enron Corp.
- (4) Term of Sale: Through March 31, 1990.
- (5) Estimated Total and Maximum Daily Quantities: Maximum Daily Quantity: 50,000 MMBtu. Estimated Total: 1 Bcf per month.
- (6) Rate: \$1.35/MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16480 Filed 7-20-88; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. CP88-239-000]

Questar Pipeline Co.; Informal Technical Conference

July 18, 1988.

Take notice that a conference will be convened in this proceeding on August 23, 1988, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC for the purpose of technical understanding of data submitted by applicant in the captioned proceeding. Any party as defined by 18 CFR 385.102(c) is invited to attend. For additional information, contact Charles Barrow (202) 357-9049.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16481 Filed 7-20-88; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. RP88-115-002]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

July 18, 1988.

Take notice that on July 11, 1988 Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Substitute Fifth Revised Sheet No. 1
Substitute Twelfth Revised Sheet No. 10
Substitute Twelfth Revised Sheet No. 10-A
Substitute Third Revised Sheet No. 78

FPC Gas Tariff, Original Volume No. 2

Substitute Eighth Revised Sheet No. 82
Substitute Twenty-Fourth Revised Sheet No. 333
Substitute Ninth Revised Sheet No. 547
Substitute Ninth Revised Sheet No. 919
Substitute Eleventh Revised Sheet No. 982

Substitute Ninth Revised Sheet No. 1005
Substitute Second Revised Sheet No. 1123

FERC Gas Tariff, Original Volume No. 2-A

Substitute Original Sheet No. 1
Substitute Original Sheet No. 11
Substitute Original Sheet No. 14
Substitute Original Sheet No. 20
Substitute Original Sheet No. 21
Substitute Original Sheet No. 22
Substitute Original Sheet No. 23
Substitute Original Sheet No. 24
Substitute Original Sheet No. 25
Substitute Original Sheet No. 26
Substitute Original Sheet No. 27
Substitute Original Sheet No. 28
Substitute Original Sheet No. 29
Substitute Original Sheet No. 30
Substitute Original Sheet No. 42
Substitute Original Sheet No. 43
Substitute Original Sheet No. 44
Substitute Original Sheet No. 45
Substitute Original Sheet No. 46
Substitute Original Sheet No. 47
Substitute Original Sheet No. 48
Substitute Original Sheet No. 49
Substitute Original Sheet No. 50
Substitute Original Sheet No. 61
Substitute Original Sheet No. 62
Substitute Original Sheet No. 63
Substitute Original Sheet No. 91
Substitute Original Sheet No. 92
Substitute Original Sheet No. 94
Substitute Original Sheet No. 103
Substitute Original Sheet No. 110
Substitute Original Sheet No. 111
Substitute Original Sheet No. 113
Substitute Original Sheet No. 115
Substitute Original Sheet No. 119
Substitute Original Sheet No. 134

FERC Gas Tariff, Original Volume No. 3

Substitute First Revised Sheet No. 1
Substitute Third Revised Sheet No. 21
Substitute Fourth Revised Sheet No. 22

The revised tariff sheets are being filed pursuant to the "Order Rejecting and Accepting Tariff Sheets, For Filing, Subject to Refund and Conditions and Ordering Hearing" (Suspension Order) 43 FERC Para. 61,324, issued by the Commission on May 31, 1988, in Docket No. RP88-115-000.

Copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16479 Filed 7-20-88; 8:45 am]

BILLING CODE 6717-01-2

[Docket Nos. RP88-67-080 and RP88-61-000]

Texas Eastern Transmission Corp.; Informal Settlement Conferences

July 19, 1988

Take notice that conferences will be convened in this proceeding on August 11 and September 28, 1988, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c) or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin at (202) 357-8078.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16483 Filed 7-20-88; 8:45 am]

BILLING CODE 6717-01-2

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of \$28,348,738.50 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Exxon Corporation of Houston, Texas (Case No. KEF 0067). The fund will be available to customers who purchased refined petroleum products from Exxon during the period March 6, 1973 through January 27, 1981.

DATE AND ADDRESS: Applications for Refund of a portion of the consent order funds must be filed in duplicate no later than February 28, 1989 and should be addressed to: Exxon Corporation Refund

Proceeding Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0067.

FOR FURTHER INFORMATION CONTACT: Laurie Breslin, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4021.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 305.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by the DOE and Exxon Corporation of Houston, Texas. The consent order settled possible violations of the Federal petroleum price and allocation violations with respect to the firm's operations during the period January 1, 1973 through January 27, 1981. On September 10, 1987, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. 52 FR 35313 (September 18, 1987).

As the Decision and Order indicates, Applications for Refunds from the portion of the Exxon consent order fund available for distribution to purchasers of Exxon refined petroleum products may now be filed. Applications will be accepted provided they are filed no later than February 28, 1989. Applications will be accepted from customers who purchased refined petroleum products from Exxon during the period March 6, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: July 14, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 14, 1988.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Exxon Corporation

Date of Filing: February 6, 1987

Case Number: KEF-0067

On February 6, 1987, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed with the Office of Hearings and Appeals (OHA) a Petition for the Implementation of Special Refund Procedures to distribute funds received from Exxon

Corporation (Exxon) under the terms of an October 3, 1986 consent order between the DOE and Exxon. In accordance with the provisions of the procedural regulations at 10 CFR Part 205, Subpart V, the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were settled by the Exxon consent order. On September 10, 1987, the OHA issued a Proposed Decision and Order (PDO) which tentatively set forth procedures for disbursement of the Exxon consent order fund. 52 FR 35313 (September 18, 1987). We provided a 30 day period for submission of comments regarding the proposed procedures. The present Decision will address comments in connection with the procedures proposed for disbursement of the portion of the Exxon fund allocated to purchasers of Exxon refined products and will set forth final procedures for distribution of the Exxon refined product pool.

Section I below summarizes the tentative procedures set forth in the PDO for distributing the Exxon refined product pool. Section II reviews and considers the comments we received regarding those procedures. Section III sets forth the final Exxon refund procedures applicable to parties claiming refunds based upon Exxon's alleged overcharges in sales of refined products. The Appendix to this Decision is a suggested application form that refund applicants may use. Applications for refund from the Exxon refined product pool must be postmarked by February 28, 1989.

I. Summary of Proposed Exxon Refund Procedures

As we stated in the PDO, Exxon is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the price control period, the ERA conducted an extensive audit of Exxon's operations and alleged in several judicial and administrative proceedings that Exxon had violated certain applicable DOE price and allocation regulations in its sales of crude oil and refined petroleum products. Settlement discussions were held, and on October 3, 1986, the ERA and Exxon finalized a consent order (Consent Order No. REXL002012) that resolved issues pertaining to Exxon's crude oil and

refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (the consent order period). Pursuant to the consent order, Exxon remitted a total of \$37,798,318 (the consent order fund)¹ to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

In the PDO, we noted that the Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of enforcement proceedings. We further stated that the DOE policy is to use the Subpart V process to distribute such funds. We therefore tentatively granted the ERA's petition and assumed jurisdiction over disbursement of the Exxon consent order fund.

Because the consent order resolves alleged violations involving both sales of crude oil and refined petroleum products, we proposed to divide the consent order fund into two pools. As we stated in the PDO, 25 percent of the alleged violations settled by the consent order concern Exxon's production and sales of crude oil. We therefore proposed that this same percentage of the Exxon principal, or \$9,449,579.50, plus accrued interest, be set aside as a pool of crude oil funds available for disbursement. We further proposed that 75 percent of the principal contained in the Exxon escrow account, \$28,348,738.50, plus interest accrued on that amount, be made available for distribution to purchasers of Exxon refined petroleum products who demonstrate that they were injured as a result of Exxon's alleged regulatory violations. It is this latter sum which is the subject of this Decision and Order.²

The PDO set forth the procedures under which purchasers of Exxon refined products could apply for refunds from the \$28,348,738.50 pool apportioned to refined products. In this regard, we first presumed that the alleged overcharges were dispersed equally in all sales of refined product made by Exxon during the consent order period and that refunds should therefore be made on a pro-rata or volumetric basis. Under the volumetric refund approach, a claimant's allocable share of the refined

product pool is equal to the number of gallons of covered products purchased during the consent order period times the per gallon refund amount. In the PDO, we tentatively set the per gallon refund amount at \$0.0002419 per gallon. We derived this figure by dividing the consent order funds allocated to the Exxon refined product pool (\$28,348,738.50) by the approximate number of gallons of covered products other than crude oil which Exxon sold from March 6, 1973, the date that Exxon became subject to the Federal price controls under Special Rule No. 1 (38 Fed. Reg. 6283 (March 6, 1973)), through the date of decontrol for the relevant product (117,185,000,000 gallons).

In accordance with prior Subpart V proceedings, we also proposed to adopt a number of presumptions regarding injury for certain categories of Exxon refined product purchasers. First, we tentatively adopted the presumption that an end-user or ultimate consumer of Exxon petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. We therefore proposed that end-users of Exxon refined petroleum products need only document their purchase volumes from Exxon during the consent order period to make a sufficient showing that they were injured by the alleged overcharges and to receive a full volumetric refund.

We also proposed that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement needs only to submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members. However, we stated that a regulated firm or cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify

that it will notify the appropriate regulatory body or membership group of its receipt of the refund. This latter requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refunds received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreements which control prices would ensure that the alleged overcharges and, similarly, refunds would be passed through to its member-customers.

We also tentatively adopted the presumption that a firm who resold Exxon products and requests a small refund was injured by the alleged regulatory violations. Under the proposed small claims presumption, a refiner, reseller, or retailer seeking a refund of \$5,000 or less, exclusive of interest, would not be required to submit evidence of injury beyond documentation of the volume of Exxon covered products it purchased during the consent order period. As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.

We also tentatively adopted a 40 percent presumptive level of injury for all medium-range claimants in this proceeding, whereby, in lieu of making a detailed showing of injury, a refiner, reseller, or retailer claimant whose allocable share exceeds \$5,000 may elect to receive as its refund the larger of \$5,000 or 40 percent of its allocable share up to \$50,000. We stated that the use of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges. We therefore tentatively determined to adopt the single general presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined products they purchased, based upon the analyses in prior proceedings, most notably in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). Consequently, we proposed that an

¹ This amount consists of the principal consent order amount of \$36,930,356 plus \$867,962 in interest which accrued prior to Exxon's payment to the DOE.

² The final procedures for disbursing the Exxon crude oil refund pool were set forth in *Ernest A. Allerkamp*, 17 DOE ¶ 85,076 (1988).

applicant in this group would only be required to provide documentation of its purchase volumes of Exxon refined petroleum products during the consent order period in order to be eligible for a refund of 40 percent of its total allocable share.

II. Comments Regarding Distribution of the Exxon Refined Product Pool

The only comments we received concerning our proposed procedures for disbursement of the Exxon refined product pool were submitted by the Petroleum Marketers' Association of America (PMAA). In its comments, the PMAA expressed general support for the proposed procedures. However, it questioned the appropriateness of a general presumptive level of injury of 40 percent for all medium-range claimants, regardless of the products they purchased. Specifically, the PMAA suggests that we adopt higher presumptive levels of injury for medium-range refiner, reseller, and retailer purchasers of natural gas liquid products (NGLPs) and middle distillates as we did in *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986).

The PMAA has not provided us with convincing reasons why we should abandon or revise the general presumptive level of injury tentatively adopted in the PDO. The analysis in the Getty special refund proceeding was largely based upon data specific to that proceeding. There is no evidence that the firm-specific data utilized in the Getty proceeding should have any bearing in the present case. Furthermore from an administrative standpoint, a single cross-the-board presumptive level of injury allows us to streamline the process of evaluation of the numerous applications expected. We will therefore adopt the 40 percent presumptive level of injury for all medium-range refiner, reseller, and retailer purchasers of Exxon covered products as proposed in the PDO.

The PMAA also urges that we allow all refund applicants to submit in support of their Applications yearly schedules of their purchase volumes of Exxon covered products instead of the monthly schedules which we have required in most prior proceedings. We are not persuaded that a blanket approval of the use of yearly purchase volume schedules is appropriate. In evaluating a refund application, we are willing to accept reasonable estimates of the applicant's purchase volumes. In those cases where an applicant submits estimates, submission of only an annual schedule masks certain factors which help us to determine the authenticity of the estimates, such as seasonal patterns

in purchases. In such cases, it is clearly beneficial to be able to rely upon monthly figures. However, we will accept annual purchase volume data if submitted in a form that convinces us that the data is reasonably accurate, such as a computer printout of purchases provided by Exxon, or if submitted with supporting documentation.

Having considered these comments, we will assume jurisdiction over the Exxon consent order fund and will issue the final refund procedures applicable to refund claims from the Exxon refined product pool. These procedures are set forth in Section III below.

III. Refund Procedures for the Exxon Refined Product Pool

A. *Standards for Evaluation of Refined Product Refund Claims.* This Section sets forth the standards applicable to refund claims from the Exxon refined product pool by purchasers of Exxon products who demonstrate that they were injured by Exxon's alleged violations. From our experience with Subpart V proceedings, we expect that potential applicants will fall into the following categories of Exxon refined product purchasers: (i) End-users, i.e., ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) refiners, resellers, and retailers.

In order to receive a refund, each claimant will be required to submit a schedule of its purchases of Exxon refined petroleum products during the consent order period. If the product was not purchased directly from Exxon, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with Exxon.³

In addition, a refiner, reseller, or retailer claimant, except those who choose to utilize the injury presumptions set forth below, will be required to make a detail showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, the claimant will be required to show that it maintained

³ Indirect purchasers who establish that the purchases originated with Exxon will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the alleged Exxon overcharges to its customers. Compare *Southern Union Co./Union Carbide Corp.*, 16 DOE ¶ 85,026 (1987) (full refund to indirect purchaser) with *Resources Extraction & Processing Co./Mobil Oil Corp.*, 15 DOE ¶ 85,146 (1986), reconsideration denied, 15 DOE ¶ 85,334 (1987) (no refund to indirect purchaser). The level of the refund will depend on (i) whether the indirect purchaser falls within one of the classes of applicant whose injury is presumed, or demonstrates injury, and (ii) whether the intermediate supplier demonstrates that it absorbed a portion of the alleged overcharges.

"banks" of unrecovered increased product costs (banked costs) in excess of the refund claimed.⁴ See 10 CFR 212.83(e) (refiners) and 212.93(e) (resellers and retailers). Second, because a showing of banks alone is not sufficient to establish injury, the claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. See *National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, ¶ 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Exxon. *Id.*, See also *Allied Materials Corp./Great Plains Corp.*, 13 DOE ¶ 85,289 (1985).

1. *Presumptions for Claims Based upon Refined Product Purchases.* As discussed above and in the PDO, refunds will generally be made on a pro-rata or volumetric basis.⁵ In the present case, we expect an exceedingly large number of refund applications to be filed. As a result of our experience in previous special refund proceedings, especially those arising from global settlements with large refiners, we have decided to simplify the calculation of refunds by increasing the per gallon volumetric refund amount to \$0.00025 (1/40th of a cent).⁶

We will also adopt the presumptions set forth in the PDO regarding injury for claimants in each category listed below. These presumptions will generally simplify the refund process and will help to ensure that refund claims are evaluated in the most efficient and equitable manner possible.

⁴ Claimants who have previously relied upon banked costs in order to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. See *Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987).

⁵ Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that an allocation on the basis of a specifically alleged overcharge amount should be used in considering its refund application. See, e.g., *Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

⁶ This represents a 3% increase from \$0.0002410. *CF. Conoco Inc.*, 13 DOE ¶ 85,316 at 88,791 n. 0 (1985) (volumetric amount rounded to nearest 1/100 of a cent for the sake of simplicity of calculation). In addition, as in previous cases, we are establishing a minimum refund amount of \$15.00. We have found through our experience that the cost of processing claims for amounts less than \$15.00 outweighs the benefits of restitution in those instances. See *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

a. *End-users.* In order to make a sufficient showing that they were injured as a result of Exxon's alleged overcharges, end-users of Exxon refined petroleum products need only document their purchase volumes from Exxon during the consent order period.⁷

b. *Regulated Firms and Cooperatives.* A claimant whose prices for goods and services are regulated by a government agency, e.g., a public utility, or by the terms of a cooperative agreement, will not be required to make a detailed demonstration of injury.⁸ Such a claimant (i) must submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members; (ii) must certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution; and (iii) must certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund.

c. *Refiners, Resellers, and Retailers Seeking Refunds of \$5,000 or Less.* A refiner, reseller, or retailer seeking a refund of \$5,000 or less, exclusive of interest (i.e., who purchased less than 20,000,000 gallons of Exxon refined petroleum products during the consent order period), will not be required to submit evidence of injury beyond documentation of the volume of Exxon refined petroleum products it purchased during the consent order period.

d. *Medium-Range Refiner, Reseller, and Retailer Claimants.* In lieu of making a detailed showing of injury, a refiner, reseller, or retailer claimant whose volumetric share exceeds \$5,000 may elect to receive as its refund the larger of \$5,000 or 40 percent of its allocable share up to \$50,000.⁹ These claimants will only be required to provide documentation of their purchase volumes of Exxon refined petroleum products during the consent order period.¹⁰

⁷ A firm that purchased products from Exxon for use as fuel or raw materials in business operations that were subjected to the DOE regulations will be treated as refiner, reseller, or retailer, as applicable. See *Seminole Refining, Inc.*, 12 DOE ¶ 85,188 at 88,576 (1985); *National Helium Corp./Formland Industries*, 11 DOE ¶ 85,257 at 88,472 (1984).

⁸ A cooperative's sales to non-members will be treated in the same manner as sales by other refiners. See *Marathon Petroleum Co.*, 14 DOE ¶ 85,289 at 88,515 (1986).

⁹ That is, claimants who purchased between 20,000,000 gallons and 500,000,000 gallons of Exxon refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumption. Claimants who purchased more than 500,000,000 gallons may elect to limit their claim to \$50,000.

¹⁰ A claimant who makes a detailed demonstration of injury will be eligible to receive a

e. *Spot Purchasers.* We also are adopting the rebuttable presumption that a refiner, reseller, or retailer who made only spot purchases from Exxon did not suffer injury as a result of these purchases.¹¹ Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Exxon. In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. See *Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

f. *Consignees.* A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). We are adopting our proposed rebuttable presumption that consignees of Exxon refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. See, e.g., *Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). However, a consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices." See *Gulf Oil Corp./C.F. Carter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

refund equal to its full allocable share. However, a claimant who attempts to make a detailed showing of injury, but instead provides evidence that leads us to conclude that it passed through all of the alleged overcharges will receive no refund. If we conclude that claimant who attempts to prove injury absorbed some of the alleged overcharges, we will grant a partial refund based upon the extent of the injury shown and not the \$5,000 or 40 percent presumptions. See *Union Texas Petroleum Corp./Arrow Enterprises, Inc.*, 15 DOE ¶ 85,087 (1986); *Quaker State Oil Refining Corp./Campbell Oil Co.*, 15 DOE ¶ 85,069 (1986).

¹¹ As we have previously stated, spot purchasers tend to have considerable discretion as to the timing and market in which to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,398-97 (1981).

2. *Allocation Claims.* We also recognize that we may receive claims based upon Exxon's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. See 10 CFR Part 211. We will evaluate refund applications based upon allocation claims by referring to the standards set forth in Decisions such as *Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,048 at 88,220 (1982), and *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984). Under those standards an allocation claimant first must demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. Secondly, the claimant must provide evidence that it contemporaneously notified the DOE about, or otherwise sought redress from the alleged allocation violation. Finally, it must establish that it was injured and document the extent of the injury.

B. *Refund Application Requirements.* We will not accept Applications for Refund from purchasers of refined petroleum products sold by Exxon between March 6, 1973 and January 27, 1981. There is no specific application form that must be used. However, a suggested format for Exxon Applications for Refund is set forth in the Appendix to this Decision. Retailer applicants using the suggested format must file a separate form (with supporting schedules) for each retail station for which a refund is requested. All Applications for Refund must contain the following information:

(1) A conspicuous reference to "Exxon Refund Proceeding—Case No. KEF-0087" and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The manner in which the applicant used the Exxon product e.g., whether the applicant is a refiner, petroleum jobber, gas station, consumer, consignee agent, public utility, or cooperative.

(4) Monthly schedules of the applicant's purchases of each refined petroleum product that it purchased from Exxon from March 6, 1973 through the date of decontrol of that product (see p. 3 of suggested application form). The applicant must indicate the source of this volume information and, if

estimates were used, the estimation method must be explained. Alternatively, the applicant may submit yearly schedules that are (i) convincingly accurate on their face (such as computer printouts provided by Exxon), or (ii) accompanied by adequate supporting documentation.

(5) If the applicant was supplied directly by Exxon, it must provide its Exxon customer number. If the applicant was an indirect purchaser, it must submit the name and address of its immediate supplier and indicate why it believes that the covered product was originally sold by Exxon.

(6) If the applicant is a refiner, reseller, or retailer whose volumetric share exceeds \$5,000, it must indicate whether it elects to receive as its refund the larger of \$5,000 or 40 percent of its allocable share up to \$50,000. If it does not elect to use the presumptions, it must submit a detailed showing that it was injured by the alleged overcharges. See Part IIIA, *supra*.

(7) A statement whether it or a related firm has filed, or authorized any individual to file on its behalf any other refund application in the Exxon proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization.

(8) If the applicant is or was entirely or partly owned by Exxon, it must explain the nature of the affiliation.

(9) If the applicant has been involved in an enforcement proceeding brought by DOE or private action under section 210 of the Economic Stabilization Act of 1970, it should describe the action and its current status. If the applicant was a

party to any such action which is no longer pending, it should indicate how the proceeding was resolved. The applicant must keep the OHA informed of any change in status during the pendency of its Application for Refund.

(10) The Application should also contain the following statement signed by the individual applicant or a responsible official of the business or organization applying for a refund: "I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room."

All Applications should be sent to: Exxon Corporation Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All Applications must be filed in duplicate and postmarked by no later than February 28, 1989. Any applicant who believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application with the confidential information deleted,

together with a statement specifying why the information is confidential.

C. *Distribution of Funds Remaining after First Stage.* Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C.A. 4501-4507. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA Section 4502. The Secretary has delegated these responsibilities to the OHA, and any funds in the Exxon consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Exxon customers will be distributed in accordance with the provisions of PODRA.

It is Therefore Ordered That:
(1) Applications for refined product refunds from the fund remitted to the Department of Energy by Exxon Corporation pursuant to the consent order executed on October 8, 1986 may now be filed.

(2) Application for Refund from the Exxon Corporation refined product refund pool must be filed by no later than February 28, 1989.

George B. Breznay,
Director, Office of Hearings and Appeals.

Date: July 14, 1988.

BILLING CODE 6450-01-2

Suggested Format for Application for EXXON Refund -- KEF-0087

RF 307 -

DOE use only

1. Name of Applicant during refund period (3/73-1/81):

Address during refund period:

2. To whom should refund check be payable?

Address to which check should be sent:

Contact Person:

Telephone No.:

3. Type of Applicant:

Gas Station _____ Consumer _____ Consigner Agent _____ Petroleum Jobber _____ Public Utility _____

Cooperative _____ Other _____
(please specify)

4. (a) Total gallonage for which refund is requested:

(Enter total gallons here)

(b) Product(s) (e.g., gasoline, propane):

(c) Source of your gallonage information:

(If estimates, explain method on separate sheet.)

5. If you are a petroleum marketer (refiner, reseller, or retailer) and the total Exxon refund requested by your firm and all affiliated entities exceeds \$5,000, do you elect the 40 percent presumption of injury method or \$5,000 (whichever is greater) (See Questions & Answers 6-8)?

Yes ☐ No ☐ Not Applicable ☐

If you do not elect either the \$5,000 small claims amount or the 40 percent presumption of injury method, or if you are requesting a refund greater than \$50,000, attach the required "injury" showing. (See the Decision & Order for details on the injury showing required.)

BEST COPY AVAILABLE

(Check One)

6. Was the product you bought Exxon-branded? Yes ☐ No ☐7. Were you supplied by Exxon directly? Yes ☐ No ☐

If yes, please provide Exxon customer number here _____. If no, (i) attach an explanation of why you believe the product was sold by Exxon and (ii) include the name and address of the person or firm from which you purchased the product.

8. Is (was) your business owned all or in part by Exxon? If yes, please explain. Yes ☐ No ☐

9. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? (See Q & A No. 4)
If yes, please attach an explanation. Yes ☐ No ☐

10. Have you or a related firm filed any other application for refund involving any Exxon product in this proceeding? If yes, attach an explanation. Yes ☐ No ☐

11. Have you or a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf in this Exxon refund proceeding? If yes, attach an explanation. Yes ☐ No ☐

12. Were you an Exxon consignee agent? (See Q & A No. 13)
If yes, attach information sufficient to rebut the presumption of non-injury for consignees (See Decision for details.) Yes ☐ No ☐

13. Did ownership of your firm change during or since the refund period? Yes ☐ No ☐
If you answered yes, please provide an explanation that includes the names and addresses of any previous or subsequent owners.

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

Date_____
Signature of Applicant_____
Title

SCHEDULE OF PURCHASES

**NOTE: YOU DO NOT NEED TO COMPLETE THIS PAGE
IF YOU ATTACH THE PURCHASE VOLUME SCHEDULE PROVIDED BY EXXON.**

Name of Applicant: _____

RF307-

MONTHLY PURCHASE VOLUMES OF _____
(PRODUCT)

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*****	_____	_____	_____	_____	_____	_____	_____	_____
February	*****	_____	_____	_____	_____	_____	_____	_____	*****
March	_____	_____	_____	_____	_____	_____	_____	_____	*****
April	_____	_____	_____	_____	_____	_____	_____	_____	*****
May	_____	_____	_____	_____	_____	_____	_____	_____	*****
June	_____	_____	_____	_____	_____	_____	_____	_____	*****
July	_____	_____	_____	_____	_____	_____	_____	_____	*****
August	_____	_____	_____	_____	_____	_____	_____	_____	*****
September	_____	_____	_____	_____	_____	_____	_____	_____	*****
October	_____	_____	_____	_____	_____	_____	_____	_____	*****
November	_____	_____	_____	_____	_____	_____	_____	_____	*****
December	_____	_____	_____	_____	_____	_____	_____	_____	*****
Yearly	_____	_____	_____	_____	_____	_____	_____	_____	_____
Total	_____	_____	_____	_____	_____	_____	_____	_____	_____

TOTAL FOR THIS PRODUCT: _____ GALLONS

Claims for less than \$15.00 will not be processed (60,000 gallons total purchases).

☒ Do not include any purchases of product on or after that product's date of decontrol. (See below for decontrol dates)

Product	Date Decontrolled	Product	Date Decontrolled
Motor Gasoline, Propane	January 28, 1981	Diesel Fuel, Kerosene	July 1, 1976
Butane and Natural Gasoline	January 1, 1980	No. 1 and No. 2 Heating Oil	July 1, 1976
Aviation Gas and Jet Fuel	February 26, 1979	Residual Fuel	June 1, 1976
Naphtha-Based Jet Fuel	October 1, 1976	Ethane and Asphalt	April 1, 1974
Naphthas	September 1, 1976		

[FR Doc. 88-16485 Filed 7-20-88; 8:45 am]
BILLING CODE 6480-01-C

ENVIRONMENTAL PROTECTION AGENCY

(FRL-34128-1)

Grants; Availability and Review of New Financial Assistance Program; Water Pollution Revolving Fund**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a new financial assistance program (Catalogue of Domestic Federal Assistance # 66,458). Under this assistance program, States that establish water pollution control revolving fund (SRF) programs in accordance with the requirements of Title VI of the Clean Water Act (CWA) (33 U.S.C. 1381 *et. seq.*), are eligible to receive grants from EPA for the capitalization of SRFs.

In fiscal years 1987 through 1990, States may request a capitalization grant from allotments available to be awarded as construction grants under Title II of the CWA (33 U.S.C. 1281-1299), by submitting a Notice of Intent to the appropriate Regional Administrator by July 3 of the preceding fiscal year. For fiscal year 1987, the amount requested may not exceed 50 percent of the State's Title II allotment. For fiscal year 1988, the amount requested may not exceed 75 percent of the State's Title II allotment. Separate authorizations under Title VI for capitalization grants begin in fiscal year 1989 and continue through fiscal year 1994. Capitalization grants are available for obligation to the States in the year of allotment and during the following fiscal year.

FOR FURTHER INFORMATION CONTACT: EPA Regional SRF Coordinators:

Region I: Larry Brill, Water Management Division, US EPA Room 2203, John F. Kennedy Federal Building, Boston, MA 02203 (617/565-3560).

Region II: Leslie Peterson, Water Management Division, US EPA 28 Federal Plaza, New York, NY 10278 (212/264-3279).

Region III: Lee Murphy, Water Management Division, US EPA, 841 Chestnut Street, Philadelphia, PA 19107 (214/5497-3847).

Region IV: John Hagan, Water Management Division, US EPA, 345 Courtland Street, NE, Atlanta, GA 30305 (404/347-3833).

Region V: John Kelley, Water Division, US EPA, 230 South Dearborn Street, Chicago, IL 60604 (312/353-2123).

Region VI: John Cernero, Water Management Division, US EPA, 1445

Ross Avenue, Suite 1200, Dallas, TX 75202 (214/655-7110).

Region VII: Rosalie Minor, Water Management Division, US EPA, 726 Minnesota Avenue, Kansas City, KS 66101 (913/236-2813).

Region VIII: Harvey Hornberg, Water Management Division, US EPA, 999 18th Street, Suite 500, Denver, CO 80920-2405 (303/293-1545).

Region IX: Mike Muse, Water Management Division, US EPA, 215 Fremont Street, San Francisco, CA 94105 (415/974-8313).

Region X: Kathy Veit, Water Division, US EPA, 1200 Sixth Avenue, Seattle, WA 98101 (206/442/2728).

SUPPLEMENTARY INFORMATION: Section 601(a) of the CWA authorizes the Administrator of the EPA to make capitalization grants to States for deposit in State Water Pollution Control Revolving Funds (SRFs). From these Funds, States can provide loans and other types of financial assistance, but not grants, to communities and intermunicipal and interstate agencies for the construction of publicly-owned wastewater treatment facilities, and for implementation of nonpoint source management programs and development and implementation of plans under the new estuary protection program.

Congress created the SRF capitalization grant program to facilitate the establishment of permanent institutions in each State that would provide continuing sources of financing needed to maintain water quality. The SRF capitalization grant program is fundamentally different from the established construction grant program. In the existing grant program, EPA is ultimately responsible for awarding construction grants, with the States managing the projects on a day-to-day basis. In the capitalization grant program, the States have the responsibility for SRF operations, and provide assistance from State SRF funds for construction. Each SRF is to be primarily State-designed and operated, with minimal Federal requirements beyond those in Federal law imposed on its structure.

To bring about an effective transition from an EPA focused grant program to a State operated loan program, States and Regional Offices are encouraged to work closely to develop an application that effectively addresses all the critical areas of the new SRF program.

The SRF program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. The

State must notify the following office in writing within 30 days of this publication whether applications to this program are subject to the State's official Executive Order 12372 review process: Grants Policy and Procedure Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out whether capitalization grant applications (CFDA # 66,458) are subject to the State's official Executive Order review process and what material must be submitted to the SPOC for review. SPOCs and other reviewers should send their comments concerning applications to the appropriate Regional SRF Coordinator no later than 60 days after receipt of an application and other required material for review.

Date: July 7, 1988.

William A. Whittington,
Acting Assistant Administrator for Water.
[FR Doc. 88-16400 Filed 7-20-88; 8:45 am]
BILLING CODE 6560-50-M

(OPTS-44513; FRL-3418-3)

Toxic Substances Control Act; Chemical Testing; Receipt of Test Data**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: This notice announces the receipt of test data on the C9 aromatic hydrocarbon fraction and on ortho-cresol (CAS No. 95-48-7), meta-cresol (CAS No. 108-39-4), and para-cresol (CAS No. 106-44-5), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions**A. C9 Aromatic Hydrocarbon Fraction**

Test data for the C9 aromatic hydrocarbon fraction was submitted by the American Petroleum Institute pursuant to a test rule at 40 CFR 799.2175. It was received by EPA on July 5, 1988. The submission describes an inhalation developmental toxicity study in mice with C9 aromatic hydrocarbon fraction. Developmental toxicity testing is required by this test rule. This chemical is used in solvents, components of solvents and in gasoline blending.

B. Cresols

Test data for ortho-, meta-, and para-cresol were submitted by the Cresols Program Panel of the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.1250. The data were received by EPA on July 7, 1988.

The submissions describe: (1) Mutagenicity tests on para-, ortho- and meta-cresol in an *in vitro* cytogenetic assay measuring chromosomal aberration frequencies in Chinese hamster ovary (CHO) cells; (2) a mutagenicity test on meta-cresol in a rat primary hepatocyte unscheduled DNA synthesis assay; (3) mutagenicity tests on para- and meta-cresol in a mouse lymphoma mutation assay; (4) mutagenicity tests on meta- and para-cresol in the *in vitro* transformation of BALB/C-3T3 cells assay; (5) developmental toxicity evaluations of ortho-, meta-, or para-cresol administered by gavage to New Zealand white rabbit and to Sprague-Dawley (CD) rats; and (6) an analytical chemistry cresols report in support of *in vitro* genetic toxicology assessment of ortho-, meta- and para-cresol.

Cresols are used as wire enamel solvents, automotive cleaners, and organic intermediates in manufacturing phenolic resins and phosphate esters. Additional uses of either individual isomers or mixtures are: in the production of several herbicides and disinfectants; as cleaning compounds, degreasers and antioxidants; and in ore flotation.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44513). This record includes copies of all studies reported in this notice. The record is available for inspection from 8

a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 12, 1988.

Richard Troast,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-16410 Filed 7-20-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200141.

Title: Port of Portland Terminal Use Agreement.

Parties:

Port of Portland
Kawasaki Kisen Kaisha, Ltd. (K Line)

Synopsis: The agreement provides for the preferential use of berth, cranes and container yard area at Terminal 6. K Line guarantees the Port a minimum annual throughput of containers and will pay a set per container wharfage and dockage rate.

Agreement No.: 224-2000142.

Title: Port of Portland Terminal Use Agreement.

Parties:

Port of Portland
Hyundai Merchant Marine Co., Ltd. (Hyundai)

Synopsis: The agreement provides for the preferential use of (1) a container yard area located at Terminal 6, (2) one vessel berth and (3) two container cranes. Hyundai guarantees the Port a minimum annual throughput of containers and will pay a set per container wharfage and dockage rate.

By Order of the Federal Maritime Commission.

Dated: July 18, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-16456 Filed 7-20-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-06311]

Request for Comment; Private Sector Presentation**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Extension of comment period.

SUMMARY: On April 5, 1988, the Board requested public comment on the concept of requiring paying banks to pay for checks presented by private sector collecting banks before 2:00 p.m. in same-day funds and without the imposition of any fees for these presentments. 53 FR 11,911 (Apr. 11, 1988). The Secretary of the Board, acting pursuant to delegated authority, 12 CFR 262.2(a)(6), has extended the comment period for 120 days.

DATE: Comments must be received by December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202-452-2231), Louise L. Roseman, Associate Director (202-452-2789), Thomas C. Luck, Senior Analyst (202-452-3935), Division of Federal Reserve Bank Operations; Joseph R. Alexander, Senior Attorney (202-452-2489), Legal Division; or for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202-452-3544).

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), July 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-16371 Filed 7-20-88; 8:45 am]

BILLING CODE 6210-01-M

First Decatur Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or

through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Decatur Bancshares, Inc.*, Decatur, Illinois; to engage *de novo* through its subsidiary, First Tech, Inc., Decatur, Illinois, in data processing activities pursuant to § 225.25(b)(7); and courier services pursuant to § 225.25(b)(10) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 88-16372 Filed 7-20-88; 8:45 am]

BILLING CODE 3210-01-M

**First Wisconsin Corp. et al.,
Formations of; Acquisitions by; and
Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12

CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the Offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Metropolitan Bank Group, Inc., Bloomington, Minnesota, and thereby indirectly acquire MetroBank, Bloomington, Minnesota.

2. *Sullivan Bancshares, Inc.*, Sullivan, Illinois; to become a bank holding company by acquiring 97 percent of the voting shares of First National Bank of Sullivan, Sullivan, Illinois. Comments on this application must be received by August 10, 1988.

3. *Presidential Holdings, Inc.*, Bourbonnais, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bourbonnais, Bourbonnais, Illinois.

4. *F.W.S.B. Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Metropolitan Bank Group, Inc., Bloomington, Minnesota, and thereby indirectly acquire MetroBank, Bloomington, Minnesota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cattleman's Bancshares, Inc.*, Gordon, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Gordon, Gordon, Texas. Comments on this application must be received by August 5, 1988;

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16373 Filed 7-20-88; 8:45 am]

BILLING CODE 3210-01-M

**Jackson County Bancorp Inc.;
Formation of; Acquisitions by; and
Mergers of Bank Holding Companies;
Corrections.**

This notice corrects a previous Federal Register notice (FR Doc. 88-15425) published at page 26116 of the issue for Monday, July 11, 1988.

Under the Federal Reserve Bank of Kansas City, the first entry, for *IV Corporate Woods Acquisition, Inc.*, is revised to read as follows:

1. *Fourth Financial Corporation*, Wichita, Kansas; to acquire Corporate Bankshares, Inc., Overland Park, Kansas, and thereby indirectly acquire Corporate Woods State Bank, Overland Park, Kansas.

In connection with this application, IV Corporate Woods Acquisition, Inc., Wichita, Kansas, has applied to become a bank holding company by merging with Corporate Bankshares, Inc.

Comments on this application must be received by July 20, 1988.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16376 Filed 7-20-88; 8:45am]

BILLING CODE 3210-01-M

**Change in Bank Control Notices;
Acquisitions of Shares of Banks or
Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 5, 1988.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *David B. Lilly, Jr.*, Middleburg, Virginia; to acquire up to 18.3 percent of the voting shares of Harvest Bancorp, Inc., Hamilton, Virginia, and thereby indirectly acquire The Farmers & Merchants National Bank of Hamilton, Hamilton, Virginia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *A. Andrew Boemi* and *Flora Boemi*; *Andrew A. Boemi* and *Pamela L. Boemi*; and *Edwin Cee Buchanan* and *Marcia Buchanan*; to acquire 13.98 percent of the voting shares of Madison Financial Corporation, Chicago, Illinois, and thereby indirectly acquire Madison Bank and Trust Company, Chicago, Illinois; Madison National Bank of Niles, Des Plaines, Illinois; and 1st National Bank of Wheeling, Wheeling, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Thomas J. Sexton*, St. Paul, Minnesota, to acquire 30 percent; *Dennis J. Zaun*, St. Cloud, Minnesota, to acquire 30 percent; *James H. Lehr*, Ottertail, Minnesota, to acquire 20 percent; and *Gary Davis*, Wadena, Minnesota, to acquire 20 percent of the voting shares of Yellow Medicine Bancshares Inc., Granite Falls, Minnesota, and thereby indirectly acquire Yellow Medicine County Bank, Granite Falls, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Russell Moore*, Albuquerque, New Mexico, as trustee for Banco de Vizcaya, Bilbao, Spain; to acquire 42 percent of the voting shares of New Mexico Banquest Investors Corporation, Santa Fe, New Mexico, and thereby indirectly acquire New Mexico Banquest Corporation, Santa Fe, New Mexico, and thereby indirectly acquire Banquest National Bank, Albuquerque, New Mexico; The First National Bank of Santa Fe, Santa Fe, New Mexico; and Banquest/First State Bank of Taos, Taos, New Mexico.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16374 Filed 7-20-88; 8:45 am]

BILLING CODE 3210-01-M

**Alan S. Fellheimer, et al; Change in
Bank Control; Acquisitions of Shares
of Banks or Bank Holding Companies;
Collection**

This notice corrects a previous Federal Register notice (FR Doc. 88-15424) published at page 26116 of the issue for Monday, July 11, 1988.

Under the Federal Reserve Bank of Cleveland, the first entry, for Equimark Corporation, is revised to include the following individual as an acquiring party:

James M. Murphy, Bethel Park, Pennsylvania.

Comments on this application must be received by July 26, 1988.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16377 Filed 7-20-88; 8:45 am]

BILLING CODE 3210-01-M

**Regency Bancorporation; Acquisition
of Company Engaged in Permissible
Nonbanking Activities**

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 1988.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Regency Bancorporation*, to acquire the credit related insurance agency activity now conducted by its subsidiary bank, Pueblo Boulevard Bank, Pueblo, Colorado, and thereby engage in the sale of credit related life, accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16375 Filed 7-20-88; 8:45 am]

BILLING CODE 3210-01-M

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

**National Institutes of Health;
Statement of Organization, Functions,
and Delegations of Authority**

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 53 FR 4458, February 16, 1988) is amended to reflect the following changes in the Office of Director, NIH: (1) Revise the functional statements for the Office of Administration (HNA7) and the Office of Research Services (HNAA); and (2) transfer the Division of Procurement (HNAA6) and the Division of Logistics (HNAA7) from the Office of Research Services (HNAA) to the Office of Administration (HNA7). The transfer of these two divisions will centralize the business functions of the NIH under the Associate Director for Administration.

Section HN-B, *Organization and Functions* is amended as follows: (1) Under the heading *Office of Administration (HNA7)*, delete the functional statement in its entirety and substitute the following:

Office of Administration (HNA7), (1) Advises the Director, NIH, and staff on administration and management; (2)

provides leadership and guidance on all phases of administrative management; and (3) directs staff and service functions in the areas of budget and financial management, personnel management, management policy, grant and contract management, management survey and review, procurement, and logistics.

(2) After the statement of the *Division of Personnel Management (HNA73)*, under the heading *Office of Administration (HNA7)*, insert the following:

Division of Procurement (HNA74). (1) Is responsible for all aspects of station support and intramural procurement; (2) manages the program using small purchases, formal advertisement, and negotiated contracting procedures; (3) provides technical assistance in specification preparation and in Small and Disadvantaged Business opportunities; (4) provides for follow-up on orders and for continuing contract administration; (5) formulates and disseminates policies and procedures to implement Federal and Departmental regulations (meeting needs for guidance in the procurement function); and (6) provides oversight and technical assistance (manuals and training guides) to decentralize station support procurement operations.

Divisions of Logistics (HNA75). (1) Plans and operates a centralized NIH-wide supply system providing a variety of needed chemical and other scientific and medical requirements; (2) provides transport services both in connection with the central supply system and the self-service stores as well as support of all campus activities; and (3) manages a personal property program (which accounts for and effectively utilizes government property used at the NIH).

(4) Under the heading *Office of Research Services (HNAA)*, delete the functional statement in its entirety and substitute the following:

Office of Research Services (HNAA). (1) Advises the Director, NIH, and staff on the management and provision of technical and administrative services to all components of NIH in support of the research mission; (2) plans and directs service programs for engineering services, safety, and space management, and technical services.

(5) Under the heading *Office of Research Services (HNAA)*, delete the statements for the *Division of Procurement (HNAA6)* and the *Division of Logistics (HNAA7)* in their entirety.

Date: July 13, 1988.

Ona E. Bowen,
Secretary of Health and Human Services.
[FR Doc. 88-16418 Filed 7-20-88; 8:45 am]
BILLING CODE 4140-01-M

Office of the Secretary

Advisory Commission Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of August 1988:

Name: Secretary's Commission on Nursing

Date: August 4, 1988

Time: 8:30 a.m.

Place: Room 727A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda: The agenda for the August 4 meeting will consist of discussions about potential recommendations for inclusion in the Commission's final report.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission at least one week before the scheduled meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 600E, 200 Independence Avenue, SW., Washington, DC 20201, telephone 202/245-0409.

John Buse,

Administrative Officer, Secretary's Commission on Nursing.

[FR Doc. 88-16509 Filed 7-20-88; 8:45 a.m.]
BILLING CODE 4190-04-M

Centers for Disease Control

Gynecologic Cytology Quality Control Measures; Second Conference

ACTION: Notice of meeting—Second Conference on Quality Control Measures in Gynecologic Cytology.

Time and Date: 8:00 a.m. through 5:00 p.m., Thursday, September 1, 1988.

Place: Centers for Disease Control, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public for participation, comment, and observation, limited only by space available.

Purpose: The conference will provide one session for professional organizations, Government agencies, and academic and clinical laboratories concerned with gynecologic cytology testing to present their recommendations for personnel standards, daily workload, external monitoring of laboratory performance, and intra-laboratory quality assurance programs. Additional sessions at the conference will discuss optimal specimen collection techniques, criteria for assessing the adequacy of a Pap smear, and comparability of the various diagnostic nomenclatures.

Contact person for more information: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephones: FTS: 236-4111; Commercial: (404) 488-4111.

Dated: July 14, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-16442 Filed 7-20-88; 8:45 am]

BILLING CODE 4190-19-M

Food and Drug Administration

[Docket No. 88F-0209]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-(8-heptadecanyl)-4, 5-dihydro-1H-imidazole-1-ethanol as a multipurpose additive for lubricants with incidental food contact.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and

Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 884093) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of 2-(8-heptadecanyl)-4, 5-dihydro-1H-imidazole-1-ethanol as a multipurpose additive for lubricants with incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: July 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-16378 Filed 7-20-88; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225-88-4000]

Memorandum of Understanding Among the Food and Drug Administration, the Environmental Protection Agency, and the United Kingdom Department of Health and Social Security

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) among FDA, the Office of Pesticides and Toxic Substances, United States Environmental Protection Agency, and the Medical Division of Toxicology and Environmental Protection, United Kingdom Department of Health and Social Security. This MOU provides for (a) reciprocal recognition of each country's good laboratory practice program, (b) acceptance of test data collected in either country for evaluation of safety, and (c) implementation of procedures for continuing efforts between the countries.

DATE: The agreement became effective March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Walter J. Kuska, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the *Federal Register*, the agency is publishing this memorandum of understanding.

Dated: July 14, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Among the Food and Drug Administration, United States Department of Health and Human Services, and the Office of Pesticides and Toxic Substances, United States Environmental Protection Agency and the Medical Division of Toxicology and Environmental Protection, United Kingdom Department of Health and Social Security

I. Purpose

The participating agencies of the United States (US) and the United Kingdom (UK) have a concern for assuring the quality and integrity of safety evaluation data that support the approval of applications for research and/or marketing permits and licensing or registration of chemicals for agricultural, industrial, pharmaceutical, or food use. The parties share the view that health and environmental safety studies which are required to be submitted to a national authority should be conducted in accordance with principles of good laboratory practice (GLP) that are internationally recognized and that laboratories conducting such tests should be monitored by effective national inspection programs. Accordingly, this agreement provides for (a) reciprocal recognition of each country's good laboratory practice program (b) acceptance of test data collected in either country for evaluation of safety, and (c) implementation of procedures for continuing efforts between the countries.

It is intended that as a routine matter, inspections of health and environmental testing laboratories are to be carried out by the respective national authorities.

II. Background

Safety evaluation data submitted to one national authority are frequently based on studies conducted by laboratories located in another country.

Therefore, the standards observed by those laboratories that conduct health and environmental safety studies which are submitted to the authorities of the other country should be conducted in accordance with principles of good laboratory practice that are internationally recognized. When the safety evaluation data submitted to a national authority originate from a laboratory within another country, the national authority of the country of origin should be able to provide the other with information that assures that the laboratory is operated in accordance with recognized good laboratory practices.

The GLP authorities in both the United States and the United Kingdom have established national programs of inspection to verify the compliance of laboratories with those standards. Both standards and inspection programs are in accord with the Decision of the Council of the Organization for Economic Cooperation and Development (OECD) on "The Mutual Acceptance of Data in the Assessment of Chemicals" (May 12, 1981) including Annex 2, "OECD Principles of Good Laboratory Practice." These standards and procedures are consistent with the July 26, 1983, recommendation of the OECD Council on "The Mutual Recognition of Compliance with Good Laboratory Practice."

A. Good Laboratory Practice

The participating agencies of the United States and the United Kingdom have published comparable standards of good laboratory practice relating to health and environmental studies for safety evaluation experiments.

The inspectors of the US Food and Drug Administration (FDA) will rely on regulations relating to Good Laboratory Practice for Nonclinical Laboratory Studies (21 CFR Part 58) in evaluating the laboratories and auditing the data from the studies conducted in the US.

The inspectors of the US Environmental Protection Agency (EPA) will rely on the regulations relating to Pesticide Programs, Good Laboratory Practice Standards (40 CFR Part 160) and Toxic Substances Control, Good Laboratory Practice Standards (40 CFR Part 792) in evaluating the laboratories and auditing the data from the studies conducted in the US.

The inspectors of the UK Department of Health and Social Security (DHSS) will rely on the Approved Code of Practice: Principles of Good Laboratory Practice made under the "Health and Safety: Notification of New Substances Regulations, 1982," in evaluating the

laboratories and auditing the data from the studies conducted in the UK.

B. National Inspection Programs

The participating parties assess compliance of a laboratory with the standards of good laboratory practice by having a trained government inspector conduct a laboratory inspection approximately once every two years. The inspection programs permit assessment of current laboratory operations as well as the audit of data from completed studies. Laboratories are generally pre-notified and inspectional procedures are mutually consistent among the parties. A report of the results of the inspection is prepared that describes laboratory operations and addresses conformity with good laboratory practice standards and when appropriate, verification of adherence to study plans and data validation.

C. Compliance

Each of the parties has established satisfactory procedures to secure the compliance of laboratories with the standards of good laboratory practice. These procedures include, for example, notifying a laboratory of deficiencies observed and the issuance of corrective and/or warning notices, or the removal of a laboratory from national GLP compliance programs. These and other actions may lead regulatory authorities to invalidate specific studies or to cancel or refuse registration of specific chemicals. In some cases, depending upon the gravity and extent of the violation, more severe penalties may be applied.

III. Substance of the Agreement

A. The parties agree that: 1. Adherence to adequate standards of good laboratory practice is essential to the conduct of high quality safety testing;

2. A national program of periodic inspections conducted by a trained inspectorate is required to monitor adherence to the standards of good laboratory practice;

3. Appropriate compliance procedures are necessary to assure adherence to the standards of good laboratory practice;

4. Studies conducted in accordance with the respective standards of good laboratory practice promulgated by either country are to be acceptable to the parties for evaluation of safety.

B. Each party will: 1. Inform the other parties of changes in their respective good laboratory practice standards and their respective inspection programs;

2. Provide the other parties quarterly, with the names and addresses of health and environmental testing laboratories

operating within their national boundaries, the dates inspected, and the compliance designation of the laboratories which are inspected under the good laboratory practice program;

3. Provide upon request of one of the other parties, further information regarding whether or not a specific laboratory or study is in compliance with the good laboratory practice standards;

4. Agree to a request by the other party to conduct a good laboratory practice inspection or data audit at a specified health or environmental laboratory whenever (a) there is serious concern about the quality and integrity of the data submitted to either country, (b) an inspection has not been performed within the last 2 years, or (c) an approval of an application for research and/or marketing permit is pending based upon tests performed in a specified testing facility which are important to granting the approval. In exceptional situations in which the requesting party can justify a special concern, the requesting party may designate one or more of its scientists to participate in the audit of a study;

5. Conduct a joint inspection of a laboratory each year in order to maintain a continuing understanding of each party's inspection techniques. These joint inspections are to alternate each year in the United States and the United Kingdom;

6. Recognize the need to protect from public disclosure data and information that are exchanged between the parties and that fall within the definition of a trade secret, or confidential commercial or financial information.

IV. Participating Parties

A. Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857

B. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

C. Department of Health and Social Security, Hannibal House, Elephant and Castle, London SE1 6TE England

V. Liaison Officers

The parties respectively appoint the following officials to serve as liaison officers for all communications regarding matters relative to the memorandum.

A. For the Food and Drug Administration: Director, Division of Compliance Policy, Office of Regulatory Affairs, (Currently: Mr. Ernest L. Brisson), 5600 Fishers Lane, Rockville, Maryland 20857.

B. For the Environmental Protection Agency: Director, Laboratory Data Integrity Program, Office of Compliance

Monitoring, (Currently: Dr. Dexter Goldman), 401 M Street, SW., Washington, DC 20460.

C. For the Department of Health and Social Security: Chief, Good Laboratory Practice Monitoring Unit, Medical Division of Toxicology and Environmental Protection, (Currently: Mr. M. J. Van den Heuvel), Hannibal House, Elephant and Castle, London, SE1 6TE England.

VI. Duration of Agreement

This agreement shall become effective upon the date of the last signature and shall remain in effect for a period of five (5) years. It may be extended or amended by mutual written consent or terminated by any party upon written notice to the other parties.

Approved and accepted for the food and Drug Administration.

Frank E. Young,

Commissioner of Food and Drugs.

Date: March 28, 1988.

Approved and accepted for the Environmental Protection Agency.

John A. Moore,

Assistant Administrator, OPTS.

Date: February 3, 1988.

Approved and accepted for the Department of Health and Social Security.

Dr. B.H. MacGibbon,

Head, Medical Division of Toxicology and Environmental Protection.

Date: December 31, 1987.

[FR Doc. 88-16379 Filed 7-20-88; 8:45am]

BILLING CODE 4160-01-M

National Institutes of Health

Recombinant DNA Advisory Committee Ad Hoc Subcommittee on International Projects; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Ad Hoc Subcommittee on International Projects at the National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892, on August 15, 1988, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss applicability of NIH Guidelines to projects carried out abroad. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Ad Hoc Subcommittee on International Projects, Office of

Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770-0131.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Date: July 12, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-16445 Filed 7-20-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Function and Delegation of Authority

Part H, Chapter H (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38418-24, August 31, 1982 as amended most recently at 52 FR 43676-78, November 13, 1987) is amended to reflect the transfer of the program coordination functions from the Office of Program Support, Bureau of Health Professions, to the Office of Program Development, Bureau of Health Professions, within the Health Resources and Services Administration (HRSA).

Under HB-10, Organization and Functions, amend the following functional statements within HRSA.

1. Under the Bureau of Health Professions (HBP) delete the Office of Program Development (HBP13) in its entirety and insert the following:

Office of Program Development (HBP13). Serves as the Bureau focal point for planning, evaluation,

legislation, reimbursement, regulations, contracts, program award procedures, procurement plan and program award schedules, Federal Register notices, grant application materials, congressional reports, and OMB information clearances for forms and regulations. This includes the development and dissemination of program objectives, alternatives, and policy positions. Specifically: (1) Stimulates, guides, and coordinates program planning, reporting, and evaluation activities of the Divisions and staff offices; (2) provides staff services to the Bureau Director for program planning and its relation to the budgetary process, the development of issue papers, congressional reports, and coordination of OMB information clearance requests for forms and regulations; (3) coordinates the development and implementation of the Bureau's evaluation programs; (4) provides staff services and coordinates activities pertaining to legislative policy development, interpretation, and implementation, including the development of legislative proposals, the analysis of existing and pending legislation with other agencies, and distribution of legislative materials; (5) reviews and interprets program award policies and authorities for incorporation into the development and implementation of the Bureau's program and award procedures; (6) coordinates the development, clearance, and dissemination of legislative implementation plans, regulations, Federal Register notices, application guidelines and operating procedures; (7) identifies issues and coordinates the resolution of program award policy and procedural questions that arise; (8) coordinates the development of Bureau's annual procurement and conference plans and the award schedule for Bureau grants contracts and cooperative agreements; and (9) develops general guidance and criteria related to the Bureau's grant programs and coordinative management and information services for the Bureau's program contract activities.

2. Under the Bureau of Health Professions (HBP) delete the Office of Program Support (HBP12) in its entirety and insert the following:

Office of Program Support (HBP12). Plans, directs, coordinates and evaluates Bureauwide administrative management activities, including grants management and financial management activities. Maintains close liaison with officials of the Bureau, Agency, the Office of the Assistant Secretary for Health, and the Office of the Secretary on management and support activities.

Specifically: (1) Serves as the Bureau director's principal source for management and administrative advice and assistance; (2) provides advice, guidance, and coordinates personnel activities for the Bureau with the Division of Personnel, HRSA; (3) directs and coordinates the allocation of personnel resources; (4) provides organization and management analysis, develops policies and procedures for internal operation, and interprets and implements the Bureau's management policies, procedures and systems; (5) develops and coordinates program and administrative delegations of authority activities; (6) responsible for planning and directing Bureau financial management activities, including budget formulation, presentation, and execution functions; (7) conducts all business management aspects of the review, negotiation, award and administration of Bureau grants management activities; (8) directs and manages the National Advisory Council on Health Professions; (9) provides Bureauwide support services such as supply management, equipment utilization, printing, property management, space management, records management and management reports; (10) serves as the Bureau's focal point for correspondence control; (11) manages the Bureau's performance appraisal and employee's performance management systems; (12) coordinates and provides guidance on the Freedom of Information Act and Privacy Act activities, and (13) serves as the Bureau focal point for the analysis, selection and implementation of all ADP, word processing and telecommunication equipment and system.

Dated: July 14, 1988.

Ellen Wormser,

Acting Director, Office of Management.

[FR Doc. 88-16419 Filed 7-20-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-867-4213-15]

Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Afognak Joint Venture. The

lands involved are in the vicinity of Afognak Island, Alaska.

SEWARD MERIDIAN, ALASKA

Serial No.	Land description	Approximate acreage
AA-14637	T. 19 S., R. 20 W., unsurveyed Sec. 31.	1.0
AA-14638	T. 24 S., R. 24 W., unsurveyed Sec. 11.	2.0
AA-45834	T. 21 S., R. 16 W., unsurveyed Sec. 10; T. 21 S., R. 17 W., unsurveyed Secs. 13 and 24.	10 380

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until August 22, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,
Chief, Branch of KCS Adjudication.
[FR Doc. 88-10400 Filed 7-20-88; 8:45 am]
BILLING CODE 4310-JA-M

Closure Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Prohibition of shooting on certain public lands in San Benito, Monterey, and Fresno counties in the Hollister Resource Area, Bakersfield District, California.

SUMMARY: Certain described public lands within the Hollister Resource Area in and around public access points, high use areas, and a BLM administrative site are hereby closed to the shooting or discharge of any firearm, air or gas gun, sling, elastic or spring gun, slingshot, bow, crossbow, dart or any implement or mechanical appliance by which any bullet, shot, stone, dart or

other projectile may be propelled, sprung or thrown from one place to another for any reason. The closures are effective on all of the following described public lands:

1. **Condon Peak Parking Area**—Within 100 yards of the Condon Peak parking area and entrance road located at the Fresno/San Benito County line along the Coalinga/Los Gatos Creek Road in the SE 1/4 NW 1/4 Sec. 9, T.18S., R.12E., MDM.

2. **Laguna Mountain Parking Area**—Within 100 yards of the Laguna Mountain parking area and entrance road located along Coalinga Road in San Benito County in the N 1/4 Lot 3 Sec. 13, T.18S., R.10E., MDM.

3. **Upper Sweetwater Access (undeveloped)**—Within 100 yards of Coalinga Road where the public lands cross the road in San Benito County in the W 1/4 SW 1/4 Sec. 13, T.18S., R.10E., MDM.

4. **Lower Sweetwater Access**—Within 100 yards of the Lower Sweetwater parking areas along Coalinga Road in San Benito County in the SE 1/4 SW 1/4 Sec. 14, T.18S., R.10E., MDM.

5. **Short Fence Access**—Within 100 yards of the Short Fence parking areas and associated vehicle access route located along Coalinga Road in San Benito County in the NE 1/4 SW 1/4 Sec. 15, T.18S., R.10E., MDM.

6. **Section 17 Access (undeveloped)**—Within 100 yards of Highway 198 where the public lands cross the highway in Fresno County in the SE 1/4 SE 1/4 Sec. 17, T.21S., R.14E., MDM.

7. **Stockdale Mountain Parking Area**—Within 100 yards of the Stockdale Mountain parking area and entrance road at the north end of Slack Canyon Road in Monterey County in Lot 2 Sec. 21, T.22S., R.13E., MDM.

8. **BLM Administrative Site**—All lands in the NE 1/4 SE 1/4 Sec. 8, T.18S., R.10E., MDM. in San Benito County. Also within 100 yards of Coalinga Road on public lands in San Benito County located in the N 1/4 SW 1/4 Sec. 9, T.18S., R.10E., MDM.

9. **Panoche Access Road**—All public lands within the Panoche Access Road right-of-way between Little Panoche Road and the second gate. Also on public lands within 100 yards of the second gate. The Panoche Access Road includes public lands in Sections 11, 12, 13, 14, and 15, T.14S., R.10E., MDM. Restricted public lands adjacent to the second gate are in Lots 2 and 3, Sec. 18, T.14S., R.11E., MDM.

10. **Tumey Hills access point**—Within 100 yards of the Tumey Hills parking area off of Panoche Road in Fresno County in the NW 1/4 SW 1/4, Sec. 15, T.15S., R.12E., MDM.

11. **Griswold Hills access point**—Within 100 yards of Griswold Hills parking area off of New Idria Road in San Benito County in Lot 9, Sec. 1, T.16S., R.10E., MDM.

12. **Clear Creek Canyon**—On public lands within 1/4 mile of Clear Creek Canyon Road in San Benito County located in Secs. 1, 2, 10, 11, 12, 14, and 15, T.18S., R.11E., MDM Secs. 7 and 8, T.18S., R.14E., MDM. (This closure notice replaces Federal Regulation Notice Doc. #85-825 published 1-18-85 in Fed. Reg. Vol. 50 No. 13 Pg. 2733).

SUPPLEMENTARY INFORMATION: This order is necessary for the protection of public safety and for the protection of public and private property, lands and resources within and adjacent to the closed areas. This closure is issued under the authority of 43 CFR 8364.1. Any person who fails to comply with this closure order shall be subject to the penalties provided in 43 CFR 8360.0-7. Only delegated Federal Law Enforcement Officers, or any California State Peace Officer as defined in California Penal Code Section 830, while engaged in the execution of their official duties shall be exempt from this order.

DATES: This order is in effect immediately and the order is permanent until cancelled, amended or replaced.

FOR FURTHER INFORMATION CONTACT: J. Steven Addington, Acting Area Manager, Hollister Resource Area, Bureau of Land Management, P.O. Box 365, Hollister CA 95024-0365; (408) 637-8183.

Dated: July 13, 1988.

J. Steven Addington,
Acting Area Manager.
[FR Doc. 88-10400 Filed 7-20-88; 8:45 am]
BILLING CODE 4310-JA-M

[ON-090-08-5310-12; GFE-077]

Emergency Closure of Public Lands and Access Roads; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access roads in Lane County, Oregon are temporarily closed to all public use, including vehicle operation, camping, shooting, hiking and sightseeing, from July 18, 1988 through October 1, 1988. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as Clear Cut Unit No. 3 of Timber Sale Contract No. OR090-TS85-65 and are located as follows:

Willamette Meridian, Oregon

T. 15 S., R. 1 W.,
Sec. 33: Metes and Bounds within the SE 1/4 NE 1/4;
Sec. 34: Metes and Bounds within the SW 1/4 NW 1/4.

Containing approximately 31 acres.

All roads on the public lands listed above are closed as specified above, as are BLM Road No. 16-1-5.3 from its beginning in Section 5, T. 16 S., R. 1 W., W.M. to its junction with BLM Road No. 16-1-3 in Section 3, T. 16 S., R. 1 W., W.M. BLM Road No. 16-1-3 from its beginning to its junction with BLM Road No. 15-1-34.2 in Section 34, T. 15 S., R. 1 W., W.M. and BLM Road No. 15-1-34.2 in its entirety located in Section 34, T. 15 S., R. 1 W., W.M. Road Nos. 16-1-3, 15-1-34.2 and 15-1-34.3 are entirely located on public land, while Road No. 16-1-5.3 is located partially on public land and partially on private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and their subcontractors. In addition, the owners of the non-federal lands crossed by BLM Road No. 16-1-5.3 and those residing full time on such lands are exempt from the closure to the extent necessary to access and manage their lands. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0-7, which include a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access. In addition, the boundaries of the closed Clear Cut Unit are blazed, painted and posted.

The purpose of this emergency temporary closure is to protect valuable public timber resources from unauthorized damage, to facilitate authorized timber harvest operations, and to protect persons from potential harm from logging operations.

EFFECTIVE DATES: July 18, 1988 through October 1, 1988.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, McKenzie Area Manager, Eugene District Office, at (503) 683-6988.

Date: July 12, 1988.

Lee Lauritzen,

Area Manager.

[FR Doc. 88-16407 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-33-M

[I-25693]

Realty Action; Sale of Public Lands in Cassia County, ID

The following land has been found suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value (FMV). The land will not be offered for sale for at least 60 days after the date of this notice.

Legal description	Acreage	Appraised FMV
T. 14 S., R. 22 E., B.M., section 4: SW 1/4 SE 1/4	40	\$3,000

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The parcel will be offered for competitive sale beginning at 1:00 p.m. MDT, September 28, 1988, in the conference room of the Burley District Office, 200 South Oakley Highway, Burley, Idaho.

The parcel will be offered by sealed bid only. All bids must be submitted to the BLM's Burley District Office, 200 South Oakley Highway, Route 3 Box 1, Burley, Idaho 83318, by no later than 1:00 p.m. MDT, September 28, 1988.

Sealed bid envelopes must be marked on the front left corner with the parcel number and sale date. Bids must not be less than the appraised value specified in this notice. The bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the USDI, Bureau of Land Management, for not less than 30 percent of the bid amount. A bid will also constitute an application for conveyance of the mineral rights, except for geothermal, oil and gas. The

mineral interests being offered for conveyance have no known monetary value. Each bidder must submit a nonreturnable (for the successful bidder) fifty dollar (\$50.00) filing fee for the mineral conveyance (43 CFR 2720.1-2(c)).

The terms and conditions applicable to the sale are:

1. All oil, gas, and geothermal resource minerals shall be reserved to the United States.

2. A reservation for the City of Oakley road right-of-way, 1-26286, and the City of Oakley water system right-of-way, 1-012608, will be included in the patent.

3. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

Federal law requires that bidders must be U.S. citizens 18 years of age or older, or, in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid. If two or more valid bids are received for the parcel, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The remainder of the full bid price shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM.

Should the parcel not sell on the sale date, it will be offered competitively on a continuing basis until March 31, 1989, at the Burley District Office, Burley, Idaho. Sale will be by sealed bid. Sealed bids will be opened every Wednesday of each month at 1:00 p.m. All bids must be received at the Burley District Office no later than 1:00 p.m. on the day of the sale.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available for review at the Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Burley District, at the above address. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Date: July 13, 1988.

Marvin Bagley,

Associate District Manager.

[FR Doc. 10401 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-34-M

[NM-010-3110-10-7202; NM NM 85251/ GP8-0118]

Issuance of Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to the State of New Mexico on September 15, 1987, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716). The conveyance was issued for 24,721.22 acres of public land located in Torrance County, New Mexico. The public lands were described in the Notice of Realty Action published in the *Federal Register* (FR) on December 15, 1986, 51 FR 44951 and corrected notice published on January 26, 1987, 52 FR 2770.

In exchange for the public lands mentioned above, the State of New Mexico reconveyed to the United States 28,587.50 acres of non-Federal lands and interests therein located in Cibola County, New Mexico. The reconveyed lands were described in the Notice of Realty Action published in the *Federal Register* on December 15, 1986, 51 FR 44951 and corrected Notice published on January 26, 1987, 52 FR 2770.

The purpose of the exchange was to consolidate land ownerships for the Federal Government within El Malpais Special Management Area, the De-Na-Zin Wilderness Area, the Chaco Culture National Historic Park, or well blocked areas within the Rio Puerco Resource Area. In addition, the exchange consolidated the State's ownership in Torrance County. The exchange was consistent with the approved Rio Puerco Resource Management Plan approved on January 18, 1986. The values of the Federal land and the non-Federal land in the exchange were equal.

Dated: July 13, 1988.

Monte G. Jordan,
Associate State Director.

[FR Doc. 88-16396 Filed 7-20-88; 8:45 am]
BILLING CODE 4310-05-M

[MT-930-08-4220-11; M-034536]

Proposed Continuation of Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that the withdrawal for the Whitetail Creek and Caribou Recreation Areas on 52.65 acres of forest system lands

continue for an additional 20 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by October 19, 1988.

ADDRESS: Comments should be sent to Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, 406-657-8082.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture proposes that the existing mineral withdrawal made by Public Land Order 2850 of December 10, 1962, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Principal Meridian, Kootenai National Forest, Caribou Creek Recreation Area

T. 37 N., R. 30 W.,

Sec. 21, 8 1/4 of lot 5;

Sec. 22, W 1/4 SW 1/4 SW 1/4 SW 1/4;

Sec. 28, NE 1/4 NE 1/4 of lot 1.

The area described contains approximately 12.65 acres in Lincoln County.

Whitetail Creek Recreation Area

T. 35 N., R. 33 W.,

Unsurveyed, but when surveyed will probably be:

Sec. 1, N 1/4 N 1/4 SE 1/4.

The area described contains 40 acres in Lincoln County.

The purpose of the withdrawal is to protect unique resource areas with cultural value to the Kootenai Indians. The withdrawal segregates the land from prospecting, location, entry, and purchase under the United States mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, in the Montana State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for mineral resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the *Federal Register*.

The existing withdrawal will continue until such final determination is made.

July 14, 1988.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 88-16399 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-05-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Office, Washington, DC 20503, telephone (202) 395-7340.

Title: Requirement for Permits and Permit Processing, 30 CFR 773

Abstract: Section 510(c) Pub. L. 95-87 requires that prior to issuance of a surface coal mining and reclamation permit, the applicant and persons associated with the applicant be reviewed and finding made that all other mining operations of the applicant and associates, are being or have been conducted in accordance with the law. This information is used by the regulatory authority and the Office of Surface Mining Reclamation and Enforcement to ensure that surface coal mining and reclamation operations are conducted in a manner which preserves and enhances environmental concerns as expressed in the Act.

Bureau Form Number: None

Frequency: On occasion and annually

Description of Respondents: Business or other for profit

Annual Responses: 7,805

Annual Burden Hours: 36,889

Average Burden Hours Per Response: 5

Bureau Clearance Office: Nancy Ann Baka, (202) 343-5981.

Date: June 30, 1988.

Richard O. Miller,

Chief Regulatory Development and Issues Management Office.

[FR Doc. 88-16393 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-3 (Sub-78X)]

Missouri Pacific Railroad Co.—
Abandonment Exemption—
Plaquemines Parish, LA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 11-mile line of railroad between milepost 24.0 near Myrtle Grove, LA, and milepost 35.0 near Magnolia, in Plaquemines Parish, LA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 20, 1988, unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues¹ and formal

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by July 26, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 5, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Law Dept., Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (See) will prepare an environmental assessment (EA). See will serve the EA on all parties by July 21, 1988. Other interested persons may obtain a copy of the EA from See by writing to it (Room 5115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, See at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental, or public use conditions.

Decided: July 11, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-16276 Filed 7-20-88; 8:45 am]

BILLING CODE 7025-01-M

[Ex Parte No. 367 (Sub-No. 961)]

Petition to Disclose Long-Term Rail Coal Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Denial of petition to institute rulemaking.

SUMMARY: The Commission is denying a petition by Western Fuels Associations, Inc. to establish rules for disclosure of long-term coal contracts made pursuant to 49 U.S.C. 10713 and 49 CFR Part 1313. The petition is denied because it requests action that is contrary to section 10713 and interpreting that section.

² See *Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 184 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Authority: 49 U.S.C. 10321, 10713; and 5 U.S.C. 553.

Decided: July 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 88-16444 Filed 7-20-88; 8:45 am]

BILLING CODE 7025-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 18, 1988, a proposed consent decree in *United States v. Robert Countess, d/b/a Countess Service Center, et al.* (Civ. Action No. HAR-87-2347); *United States v. Capital Milk Producers Co-op, Inc., et al.* (Civ. Action No. HAR-87-2348); *United States v. Easton Petroleum Co., Inc., et al.* (Civ. Action No. HAR-87-2349), was lodged with the United States District Court for the District of Maryland.

The proposed consent decree resolves a judicial enforcement action brought by the United States against Fleet Transit, Inc. ("Fleet") for violations of the Clean Air Act. The complaints filed by the United States each alleged that Fleet violated the Unleaded Gasoline Regulations, 40 CFR Part 80.

The proposed consent decree enjoins Fleet from violating the Unleaded Gasoline Regulations in the future. The proposed consent decree also requires Fleet to establish an Unleaded Gasoline Quality Assurance Program, which consists of testing of gasoline storage tanks, to assure that Fleet's operations are effective in preventing contamination of unleaded gasoline. The consent decree further requires Fleet to

pay a civil penalty of \$18,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Robert Countess, d/b/a Countess Service Center, et al., United States v. Capital Milk Producers Co-op, Inc., et al., United States v. Easton Petroleum Co., Inc., et al.* D.O.J. Ref. Nos. 90-5-2-1-1060, 1079, and 1088.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, United States Courthouse, Eighth Floor, 101 West Lombard Street, Baltimore, Maryland 21201-2892 and at the Eastern Field Office I, Field Office and Support Division, of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Richard Friedman. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88-16391 Filed 7-20-88; 8:45 am]
BILLING CODE 4410-01-M

Pollution Control; Consent Judgments; Plainville Electro Plating Co., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 13, 1988, a proposed Consent Decree in *United States v. Plainville Electro Plating Co. and Gerald Glassman*, Civil Action Number H-88-342 AHN, was lodged with the United States District Court for the District of Connecticut. The Complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act of 1976, as amended. Defendants Plainville Plating Company and Gerald Glassman own and operate an electroplating facility in Plainville,

Connecticut which generated and disposed of hazardous wastes. Defendants violated the Resource Conservation and Recovery Act and the regulations passed thereunder by, *inter alia*, operating without an interim or final permit to treat, store or dispose of hazardous wastes, failing to implement an adequate groundwater monitoring program, failing to close its land disposal units in accordance with an appropriate closure plan, failing to establish a financial mechanism to assure proper closure, and failing to demonstrate financial responsibility for sudden and non-sudden accidental occurrences resulting in environmental impairment.

The Consent Decree provides that the defendants shall pay a civil penalty of \$230,000.00 and be subject to continuing obligations with respect to compliance with various hazardous waste regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Plainville Electro Plating Co. and Gerald Glassman, D.J.* No. 90-7-1-332.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 250, Federal Building, 450 Main Street, Hartford, Connecticut 06103, at the Region I office of the Environmental Protection Agency, Office of Regional Counsel, John F. Kennedy Federal Building, Boston, Massachusetts 02203, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States v. Plainville Electro Plating Company and Gerald Glassman, D.J.* No. 90-7-1-332, and include a check for \$2.80 (10 cents per page reproduction charge) payable to the United States Treasury.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88-16390 Filed 7-20-88; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Arenal Chemical Corp.

By Notice dated April 1, 1988, and published in the Federal Register on April 11, 1988; (53 FR 11919), Arenal Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 13, 1988.
Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
[FR Doc. 88-16457 Filed 7-20-88; 8:45 am]
BILLING CODE 4410-06-M

[Docket No. 87-60]

Melvin C. Butler, D.D.S.; Revocation of Registration

On June 12, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Melvin C. Butler, D.D.S. (Respondent) of 335 Coolspring Street, Uniontown, Pennsylvania 15401 proposing to revoke his DEA Certificate of Registration AB2377934 and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's lack of authorization to handle controlled substances in the Commonwealth of

Pennsylvania. In addition, the Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Due to Respondent's apparent lack of authorization to handle controlled substances in the Commonwealth of Pennsylvania, Government counsel filed a motion for summary disposition on August 10, 1987. Judge Bittner denied this motion after Respondent presented evidence that he was in fact licensed to handle controlled substances in Pennsylvania.

On June 8, 1988, Government counsel filed another motion for summary disposition based on an order dated March 31, 1988, issued by the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs whereby Respondent's license to practice dentistry was suspended. Subsequently, on June 8, 1988, Government counsel received a letter from Respondent withdrawing his request for a hearing. On June 10, 1988, the Administrative Law Judge issued an order terminating the proceedings before her. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between February 18, 1982 and March 11, 1982, while practicing dentistry in the State of New York, Respondent forged ten prescriptions each for 30 dosage units of Talwin 50 mg. using an associate's name and DEA number. As a result, on November 24, 1982, Respondent was convicted of one count of forgery in the third degree in violation of the laws of the State of New York.

The Administrator further finds that between April 13, 1987 and May 18, 1987, while practicing dentistry in the Commonwealth of Pennsylvania, Respondent wrote three prescriptions for Percocet, a Schedule II narcotic controlled substance, once again using an associate's prescription pad and DEA number. As with the prescriptions written in New York, Respondent forged his associate's signature on the prescriptions. Respondent filled two of the prescriptions at a local pharmacy and was arrested attempting to fill the third one. Following his arrest, Respondent admitted that he had forged the prescriptions. He indicated that he owed some individuals a large amount of money and had forged the

prescriptions in an attempt to make some extra money to satisfy his debts.

On July 9, 1987, Respondent was indicted in the United States District Court for the Western District of Pennsylvania and charged with two counts of possession with intent to distribute Percocet in violation of 21 U.S.C. 841(a)(1); two counts of acquiring and obtaining possession of Percocet by misrepresentation, fraud, forgery, deception or subterfuge in violation of 21 U.S.C. 843(a)(3); two counts of using a DEA number issued to another person for the purpose of acquiring or obtaining Percocet in violation of 21 U.S.C. 843(a)(2); and two counts of attempting to fraudulently acquire or obtain possession of Percocet in violation of 21 U.S.C. 846. On February 17, 1988, after entering a guilty plea in the United States District Court for the Western District of Pennsylvania, Respondent was convicted of one count of possession with intent to distribute Percocet; one count of acquiring or obtaining possession of Percocet by misrepresentation, fraud, forgery, deception or subterfuge; and one count of attempting to fraudulently acquire or obtain possession of Percocet, all felony offenses relating to controlled substances. Therefore, lawful grounds exist to revoke Respondent's DEA registration. 21 U.S.C. 824(a)(2).

Following his conviction, on March 31, 1988, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs suspended Respondent's license to practice dentistry, thereby terminating his ability to handle controlled substances in the Commonwealth of Pennsylvania. Therefore, additional grounds exist to revoke Respondent's DEA registration pursuant to 21 U.S.C. 824(a)(3).

The Administrator concludes that Respondent's actions exhibit a total disregard for the tremendous responsibilities which accompany DEA registration. Respondent had a duty to protect against the diversion of controlled substances into the illicit market. He ignored that duty and instead forged prescriptions for controlled substances in two different states.

Having concluded that lawful grounds exist to revoke Respondent's DEA registration, and having further concluded that under the facts and circumstances presented in this case the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby

orders that DEA Certificate of Registration AB2377934, previously issued to Melvin C. Butler, D.D.S., be, and it hereby is, revoked. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 21, 1988.

Date: July 13, 1988.
John C. Lawn,
Administrator.
[FR Doc. 88-16456 Filed 7-20-88; 8:45 am]
BILLING CODE 4410-05-M

Justice Programs Office

Office for Victims of Crime; Assistance to Victims of Federal Crime in Indian Country; Discretionary Grants

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime, Jane Nady Burnley, Director.

ACTION: Notice of availability of funds.

SUMMARY: The Office for Victims of Crime (OVC) is publishing this notice to announce a \$1 million discretionary grant program aimed at providing assistance to Native American Indians, and others, who are victims of crimes in Indian country that fall under the jurisdiction of the Federal government.

The money for these grants will come from the Victims of Crime Act of 1984 (VOCA), as amended, 42 U.S.C. 10601-10604 (Supp. 1987). The Act established a Crime Victims Fund in the Department of Treasury made up of monies received from certain Federal criminal fines; special penalty assessments; forfeited appearance, bail bonds, and collateral security; and literary profits due certain convicted Federal defendants. Under 42 U.S.C. 10603(c)(1)(B) a portion of these funds may be used to assist victims of Federal crimes.

This money, set aside to improve the treatment of victims of Federal crime, can be used for a wide variety of activities that include, but are not limited to: (a) Crisis intervention services such as counseling to provide emotional support to victims following a violent crime; (b) emergency short-term child care services or temporary shelter for family violence victims; (c) assistance in participation in Federal criminal justice proceedings; (d) payment of reasonable costs for a forensic medical examination to a Federal crime victim; (e) training of law enforcement personnel in the delivery of services to Federal crime victims and publication of related materials; and (f) the payment of salaries of personnel

who provide assistance services to victims of Federal crime.

During Fiscal Year 1988 OVC has assisted Federal victims by supporting training of Victim-Witness Coordinators in the U.S. Attorneys' offices, and by co-sponsoring a conference attended by teams of Assistant U.S. Attorneys, Coordinators, and Federal investigators on the investigation and prosecution of child sexual abuse. In addition, funds have been made available, through the U.S. Attorneys' offices, for direct assistance, e.g., mental health services, to victims of Federal crimes when no other source of support was available.

Consistent with Congressional intent, 132 Cong. Rec. H 11294 (daily ed. October 17, 1986), nearly all of the funds OVC has allocated to date for providing direct assistance to victims of Federal crime has been used to aid Native American Indians. This experience has convinced OVC of the need to commit significant funds to seed the development of victim assistance programs that will provide direct services to Federal crime victims in Indian country.

Consequently, OVC has decided to make available between eight and ten grants to selected state agencies presently administering VOCA victim assistance grants. These agencies will in turn either subgrant or contract for victim assistance services in Indian country where currently no programs exist or where services need to be augmented. This notice describes the availability and purpose of this grant program. Individual states that have a qualifying target population, eligible to receive these services, should contact OVC and request a grant information and application package.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to Stephen Appell, Federal Program Manager, OVC, or Cynthia Darling, Program Specialist, OVC, 633 Indiana Avenue NW., Washington, DC 20531, (202) 272-6500.

Purpose

The Office for Victims of Crime is making \$1 million available to selected states to promote the development of direct services to victims of Federal crimes in Indian country. The purpose of these grants are: (1) To address the clear and pressing needs of victims of Federal crime, particularly Native American Indians on Federal enclaves, who have limited access to existing victim assistance programs primarily due to geographic remoteness; and (2) to build upon the existing base of victim services

in Indian country and to seed the development of new programs where currently there are none. It is not our intention to establish a separate service system to assist victims of Federal crimes. Instead, our intention is to use a significant portion of funds available for Federal crime victims to foster the development of an expanded network of victim assistance services which will enable victims of Federal crimes in Indian country to have improved access to victim assistance and support services.

Eligible Applicants

Applications may be submitted by agencies designated by the chief executive officer of each state as responsible for applying for and administering VOCA victim assistance funds. Grants will be limited to those states where there are Federal victims of crime in Indian country. Copies of a program instruction detailing the application requirements and procedures will be sent to eligible states upon request. State agencies will either subgrant or contract the funds to eligible organizations that will establish or improve victim assistance programs in Indian country. In the subgrant process, preference will be given to Indian tribes or tribal organizations. When subgrants are awarded to Indian tribes, no matching funds will be required of the tribe.

Selection Criteria

Applications from states will be reviewed for criteria that will be described in full in the program instruction package. In determining which state applications to fund, OVC will consider: (a) Documentation of Federal criminal jurisdiction over the portion of Indian country covered by the application; (b) evidence of cooperation between tribal, local, state, and Federal agencies and officials, including the U.S. Attorney who has responsibility for the prosecution of Federal criminal matters and victim and witness coordination; (c) a description of the population(s) that could be served and a brief description of the victim service needs; and (d) a description of how the state agency intends to disperse the funds to organizations that will develop or expand victim services in Indian country.

Application Deadline

September 15, 1988.

Award Amounts

Awards to states will vary in size depending on the number of victims to be served and the number of grants

awarded. Generally they range from between \$100,000 to \$250,000.

Additional Information

Requirements relating to the preparation of the application, and reporting, financial management, civil rights, and other issues will be contained in the program instruction/application package.

Jane Nady Burnie,

Director, Office for Victims of Crime.

[FR Doc. 88-10470 Filed 7-20-88; 8:45 am]

BILLING CODE 4410-15-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers Section) to the National Council on the Arts will be held on August 16-17, 1988, from 9:00 a.m.-7:00 p.m., and on August 18, 1988, from 9:00 a.m.-5:30 p.m., in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-16384 Filed 7-20-88; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts

Advisory Panel (National Services Section) to the National Council on the Arts will be held on August 9, 1988, from 9:00 a.m.-6:00 p.m., and on August 10, 1988, from 9:00 a.m.-5:30 p.m., in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-16385 Filed 7-20-88; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Arts National Council

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on August 5-6, 1988, from 9:00 a.m. to 5:30 p.m. and on August 7, 1988, from 9:00 a.m. to 2:00 p.m., in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, August 5, 1988, from 9:00 a.m. to 5:30 p.m., and Saturday, August 6, 1988, from 9:00 a.m. to 1:00 p.m. The topics for discussion will include Program Review and Guidelines for Locals Program, Theater, Expansion Arts, Museums; Guidelines only for Music Fellowships, Inter-Arts Artists Projects; New Forms, and Challenge III; and the State of the Arts Report.

The remaining sessions on Saturday, August 6, 1988, from 2:30 p.m. to 5:30 p.m., and on Sunday, August 7, 1988, from 9:00 a.m. to 2:00 p.m., are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of

information given in confidence to the agency by grant applicants, and for discussion and development of confidential budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-16386 Filed 7-20-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.
2. The title of the information collection: Generic Letter to Collect Operator Licensing Examination Data.
3. The form number if applicable: N/A.
4. How often the collection is required: Annually.
5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.
6. An estimate of the number of responses: 88 annually.
7. An estimate of the total number of hours needed annually to complete the requirement or request: 176 annually, two hours per response.
8. Section 3504(h), Pub. L. 96-511 does not apply.
9. Abstract: This generic letter to nuclear power facilities requests the estimated number of candidates and

dates for operator licensing examinations. This letter also requests the anticipated dates for regualification examinations. This information is requested for four fiscal years, commencing with the present. This information would be used to plan budgets and resources in regards to operator examination scheduling in order to meet the needs of the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

ADDRESSES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer Vartkes L. Broussalian, (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 7th day of July 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88-16461 Filed 7-20-88; 8:45 am]

BILLING CODE 7530-01-M

[Docket No. 50-346]

Toledo Edison Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's), Section 4.4.5.2 relating to steam generator tube sample selection and inspection in accordance with Toledo Edison Company's application dated January 11, 1988.

Specifically, the proposed amendment would add a third, special interest group comprised of tubes near the centers of

both steam generators. This new special interest group shall be effective only through the fifth refueling outage.

The Need for the Proposed Action

The proposed changes are needed to support inspection of 100 percent of the specified region of tubes in the central regions of the steam generators in addition to the random sampling of the remaining tubes.

Environmental Impacts of the Proposed Action

The Davis-Besse steam generators provide primary to secondary pressure boundary and provide heat removal from the reactor vessel. The tube inspection ensures this boundary is maintained by verifying tube material integrity.

The Technical Specifications for the Davis-Besse Nuclear Power Station require periodic inspection of a minimum of 3% of the total tubes in both steam generators. The tubes for inspection are to be selected randomly, except that certain tubes known to have detectable wall penetrations are to be included in the inspection and at least 50% of the tubes to be inspected are to be in areas where experience has indicated potential problems.

Experience has shown that many tubes with defects are clustered in certain regions of the steam generators. This phenomenon is a result of the non-homogeneous arrangement of tubes in the steam generator which allows various degradation mechanisms to be more important in certain regions. The Technical Specifications, therefore, permit excluding tubes in certain regions from the random sample provided that all tubes in that region are inspected. The Davis-Besse Technical Specifications provide for two of these special-interest groups, and the proposed amendment would add a third. The designation of special-interest groups is important for several reasons, one of which is that since inspection frequency and subsequent sample size for inspection is dependent upon the results of the random sampling, exclusion of the special-interest groups from the random sample can result in substantially reduced numbers of tubes to be inspected. Thus, the inspection can be accomplished more economically with little or no reduction in safety.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined, and the proposed amendment does not otherwise affect radiological plant effluents during

normal operation. In addition, occupational radiation exposure is not changed significantly. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves a change in steam generator inspection performance and tube selection. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on March 25, 1988 (53 FR 9835). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility. Denial would result in fewer tube inspections and, therefore, decreased awareness of actual steam generator tube conditions.

Alternate Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 11, 1988 which is available for public inspection

at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43608.

Dated at Rockville, Maryland, this 14th day of July, 1988.

For the Nuclear Regulatory Commission,
Timothy G. Colburn,

Acting Director, Project Directorate III-3,
Division of Reactor Projects—III, IV, V &
Special Projects.

(FR Doc. 88-10450 Filed 7-20-88; 8:45 am)
BILLING CODE 7550-01-2

[Docket No. 50-293]

In the matter of Boston Edison Co., Exemption

I

The Boston Edison company (BECO), the licensee, is the holder of Operating License No. DPR-35, which authorizes operation of Pilgrim Nuclear Power Station. The license provides, among other things, that the Pilgrim Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor located at the licensee's site in Plymouth County, Massachusetts.

II

On November 19, 1980, the Commission published a revised Section 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 70002). The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features. One of these subsections, III.G, is the subject of this exemption request.

Section III.G.1 of Appendix R requires fire protection to be provided for structures, systems and components important to safe shutdown and capable of limiting fire damage so that:

a. One train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage; and

b. Systems necessary to achieve and maintain cold shutdown from either the control room or emergency control station(s) can be repaired within 72 hours.

Section III.G.2 of Appendix R requires that one of the redundant trains of systems necessary to achieve and maintain hot shutdown be maintained

free of fire damage by one of the following means:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If the above conditions are not met, Section III.G.3 requires that there be alternative or dedicated shutdown capability independent of the fire area of concern. Appendix R Section III.G.3 also requires that fire detection and a fixed fire suppression system be installed in the fire area of concern. These alternative requirements are not deemed to be equivalent; however, they provide equivalent protection for those configuration in which they are accepted.

Because it is not possible to predict the specific conditions under which fire may occur and propagate, design basis protective features rather than the design basis fire are specified in the rule. Plant-specific features may require protection different from the measures specified in Section III.G. In such a case, the licensee must demonstrate, by means of a detailed fire hazards analysis, that existing protection, or existing protection in conjunction with proposed modification, will provide a level of safety equivalent to the technical requirements of Appendix R Section III.G.

In summary, Section III.G is related to fire protection features provided for structures, systems and components important to safe shutdown by ensuring these features are capable of limiting fire damage.

Fire protection features must meet the specific requirements of Section III.G. or an alternative fire protection configuration must be justified by a fire hazards analysis. Generally the staff will accept an alternative fire protection configuration if the following criteria, to the extent applicable to the requested exemption, are satisfied.

- The alternative ensures that one train of equipment necessary to achieve hot shutdown from either the control room or emergency control station(s) is free of fire damage.

- The alternative ensures that fire damage to at least one train of equipment necessary to achieve cold shutdown is limited so that it can be repaired within a reasonable time (minor repairs using components stored on the site).

- Fire-retardant coatings are not used as fire barriers, and

- Modifications required to meet Section III.G would not significantly enhance fire protection safety levels above that provided by either existing or proposed alternatives, or the modifications would be detrimental to overall facility safety.

III

By letter dated November 16, 1983 (BECO 83-281), the licensee requested four exemptions from the technical provisions of Section III.G. of Appendix R to 10 CFR Part 50. The four exemptions requested were: Nos. 11 and 12, which pertain to the lack of rated fire barriers between the reactor building torus compartment and the control rod drive quadrant rooms; No. 13, which pertains to unprotected structural steel in the reactor building torus compartments; and No. 14, which pertains to unprotected structural steel in the reactor building steam tunnel. To simplify the review, exemptions 11 and 12 were considered together as one, and exemptions 13 and 14 were considered separately.

The requests for exemptions were clarified and modified to reflect both improvements in separation of redundant features and refinements in calculating the effects of varying combustible loadings. This supplementary information was furnished in letters dated December 27, 1984 (BECO 84-214), July 28, 1986 (BECO 86-110), November 14, 1986 (BECO 86-176), April 21, 1987 (BECO 87-062), August 4, 1987 (BECO 87-132), and in a meeting on November 24, 1987. In addition NRC Region I fire protection engineers visited Pilgrim on April 1, 1988 to inspect fire protection improvements and to examine the fire areas where the exemptions from Appendix R were requested. A site fire protection inspection and audit was also conducted by the Region I fire protection engineer, assisted by NRR and contractor personnel on May 11-15, 1987.

Tables 1, 2 and 3 consolidate the information gathered to date and reflect the Pilgrim Plant configuration as it will be modified prior to restart in 1988. The

information in the tables and the other information presented in the text were used in the staff evaluation leading to the conclusion that these exemptions should be granted.

Exemptions 11 and 12 pertain to the lack of 3-hour rated fire barrier separation between redundant trains of safe shutdown equipment. The most obvious location for those barriers is in the doorways between the reactor building torus compartment and surrounding compartments as described below.

The torus compartment is a circular shaped room having an outer wall of roughly 150 ft in diameter. This compartment is enclosed in a square section of the reactor building measuring about 160 ft on a side. The cutoff corners of the square outside the torus compartment house some safe shutdown components and connect to other areas also containing safe shutdown equipment. Redundant trains of safe shutdown equipment and cables are segregated so that only one train is in any one quadrant. The location of affected safe shutdown equipment is shown in Table 1. The torus compartment is designated fire zone (FZ) 1.30A and is about 40 ft high. Doorways to three of the four corner equipment rooms have been placed about half way up the 3 ft thick walls. The doorways connect to FZ 1.2 at the northwest corner, FZ 1.6/1.8 at the northeast corner, FZ 1.1 on the southeast corner, and FZ 1.5/1.7 on the southwest corner. FZ 1.2 and 1.1 are each 40 ft high. FZ 1.6 below/1.8 above, and 1.5 below/1.7 above are each 20 ft high. The relationship between redundant trains and interconnected fire zones is given in Table 2. Table 3 gives the combustible loadings in the affected fire zones along with the burning times for "standard fires."

Tables 1 and 2 reveal that the only common point between trains A and B is FZ 1.30 A, the torus compartment. Access from the torus compartment to train A is through the FZ 1.1 and 1.8 doorways; access to train B components is through the FZ 1.2 doorway. Therefore, with two exceptions, the analysis can be simplified to an evaluation of the torus compartment (FZ 1.30 A).

The first exemption is that train B cables for both the High Pressure Coolant Injection (HPCI) system and the Reactor Core Isolation Cooling (RCIC) system run in a cable tray about 8 feet above the fire zone 1.8 doorway. While both HPCI and RCIC are safe shutdown systems for other situations, they are not depended upon, and no credit is taken

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for them when considering a fire in fire zone 1.30A or other zones connected to FZ 1.30A.

The second exception is the presence of trains A and B of torus instrumentation (torus water level and torus water temperature) inside the torus compartment. The alternative torus instruments and cables are also located in FZ 1.30A. However, they are fully protected with a one-hour fire-rated wrapping inside FZ 1.30A, and the train A, train B and alternative system cables are located approximately 120° apart from each other on the torus compartment wall. (This arrangement was the subject of Exemption Request No. 5 and has already been reviewed and approved by the staff.)

The minimum horizontal distance between train A and train B safe

shutdown components, considering the path through the torus compartment, is over 100 feet and involves doorways between the torus compartment and the corner rooms on opposite sides of the torus compartment. Automatic fire detection and suppression through the torus compartment is not required because:

The combustible fuel load in the torus compartment is low;

• Automatic fire detection capability in three of the four corner rooms is expected to detect any fire of significance in the torus compartment; The Fire Brigade will be notified promptly of any fire in the area (torus compartment or corner rooms); and

• Portable extinguishers and manual hose stations (hoses are equipped with combination spray/straight stream

nozzles) located in the corner rooms are adequate for manual suppression of any anticipated fire in the torus compartment or the corner rooms.

In summary, we have concluded that the licensee's requests 11 and 12, which request exemption from the provisions of III.G.2.a, should be granted based on:

(1) No combustibles within 20 ft horizontally of the doorways to FZ 1.2 and 1.1,

(2) Combustible loads in FZ 1.30A (torus compartment) do not exceed 1500 Btu/ft²,

(3) Combustibles are located where they do not interfere with fire fighting activities, and

(4) Available fire fighting equipment is effective for fighting fires anywhere in the torus compartment or the corner rooms.

TABLE 1.—LOCATION OF AFFECTED REDUNDANT SAFE SHUTDOWN COMPONENTS

System	Train A	Train B
Reactor Heat Removal	FZ 1.1, 1.9, 1.8	FZ 1.2, 1.10
Core Spray	FZ 1.1, 1.9	FZ 1.2, 1.10
Reactor Building Closed Cooling Water	FZ 1.1, 1.9	FZ 1.2, 1.10
Area Coolers	FZ 1.1, 1.9	FZ 1.2, 1.10
High Pressure Coolant Injection	FZ 1.30A	FZ 1.30A
Reactor Core Isolation Cooling	FZ 1.30A	FZ 1.30A
Torus Water Level	FZ 1.30A	FZ 1.30A
Torus Water Temperature	FZ 1.30A	FZ 1.30A

TABLE 2.—FIRE ACCESS/PROTECTION FEATURES

Train	Fire zone	Adjoining fire zones/Fire propagation paths	Fire protection/Fighting features ¹
A	1.1	—1.9 above by open stairwell —1.30A by open doorway	A, C
A	1.9	—1.1 below by open stairwell —1.1, 1.10 adjoining	A, B, C Water curtain between 1.10.
A	1.8	—1.8 above by open stairwell	A, B, C
A	1.8	—1.9 above by open stairwell —1.6 below by open stairwell	A, B, C
B	1.2	—1.30A by open doorway —1.10 above by open stairwell	A, B, C
B	1.10	—1.30A by open doorway —1.2 below by open stairwell —1.9 adjoining	A, B, C Water curtain between 1.9.
B	1.30A	—Also has alternate shutdown panel —1.1 by open doorway —1.2 by open doorway —1.8 by open doorway —Also is connecting paths between Trains A and Train B Components	None except covered by portable fire extinguishers and manual hose stations in other adjoining areas.

¹ A—Smoke Detectors.
B—Portable Fire Extinguishers.
C—Manual Hose Stations.

TABLE 3.—FUEL AND FIRE DATA

Fire zone	Combustible	Quantity (Btu/ft ²)	Fire duration (in minutes)
1.1	Cable, Lube oil	15,300	12
1.9	Cable	59,200	30
1.6	Cable, Lube oil	11,000	8
1.8	Cable	1,600	1
1.2	Cable, Lube oil	14,900	11
1.10	Cable	35,400	26

TABLE 3.—FUEL AND FIRE DATA—Continued

Fire zone	Combustible	Quantity (Btu/ft ²)	Fire duration (in minutes)
1.30A	Cable	1,400	1
1.32	Cable	5,800	4

BECo exemption requests 13 is for relief from the requirements of Appendix R Section III.G.2.a to the extent that it requires structural steel forming a part of or supporting 3-hour rated fire barriers to be protected to provide fire resistance equivalent to that required of the barrier. The barrier in question is the ceiling of the torus compartment (FZ 1.30A), which forms the floor of fire zones 1.9 and 1.10.

BECo surveyed the structural steel in the torus compartment and found that six types of beams were required to maintain the integrity of the FZ 1.30A ceiling as a fire barrier. BECo analyzed the unprotected steel for potential failure caused by exposure to burning cable in trays. BECo demonstrated an adequate margin of safety for the structural steel and indicated that additional protection for the steel, either in the form of fire proofing applied directly to the steel, or tray covers installed on the cable trays in the area, is not required.

BECo first considered all of the fuel (cable insulation and jacket material) in the torus compartment to be burning, and evaluated the effect of the heat released on the unprotected structural steel. BECo calculated the average fuel loading per square foot of area in the locality of the exposed cable tray in the torus compartment to be about 1400 Btu/sq ft with an equivalent fire severity of less than 2-minutes. Existing fire test results have already shown these six beam types can survive a "Standard" fire for 14 to 21 minutes before failure. Therefore, a fire lasting less than 2-minutes will not lead to failure even if all of the heat released by the burning cables is assumed to heat only the steel.

BECo also assumed that the cable tray crossed under the structural steel at an angle of 90° and about 12-inches below the beam. The combustible insulation and jacket material in the cable tray is assumed to burn completely and release 100% of its potential heat of combustion. This heat of combustion was assumed to consist equally of radiant heat and convective heat in the fire plume. The final assumption is that 100% of the convective heat in the fire plume is absorbed in the steel section directly above the cable tray with no losses into the air, the surrounding concrete or by axial conduction into the remainder of the structural steel beam. Each of these assumptions is individually conservative. The temperatures calculated using those assumptions for the six beam types (or sizes) ranged from 685 °F for the heaviest beam to 970 °F for the lightest; these temperatures are well below the critical failure temperature of 1100 °F for this type of steel.

Based on the above evaluation the staff concludes that no additional fire protection features are required in FZ 1.30A for the structural steel supporting the floor forming the fire barrier between FZ 1.30A and fire zones 1.9 and 1.10 above it. Therefore; the licensee's

request 13, which requests exemption from the provisions of III.G.2.a, should be granted.

Exemption request 14 sought relief from Section III.G.2.a to the extent that it requires structural steel forming a part of or supporting the floor which forms the fire barrier between the reactor building steam tunnel, FZ 1.32, and fire zone 1.11 and 1.12 to be protected to provide fire resistance equivalent to that required of the barrier.

BECo performed an analysis to determine the quantity of combustible material that would be required to raise the temperature of the steel to the yield temperature, above which it would fail to support the floor. The analysis indicated that a combustible loading of 21,500 Btu per square foot would be required. The combustible contents of FZ 1.32 consist of exposed electrical cables that could yield approximately 5,800 Btu/ft², for an equivalent fire severity of approximately four minutes. The majority of cables in this fire zone are routed in conduits and no other combustible materials are present. Fire protection consists of a portable fire extinguisher and a manual hose station in an adjacent area.

The licensee's analysis indicates that the structural steel would not fail even if it instantaneously absorbed the entire heat of combustion of the materials present in fire zone 1.32. Although the licensee did not consider the effect of a fire plume impinging directly on a structural member as in FZ 1.30A, the negligible combustible loading makes it unlikely that such a fire exposure would be significant. Therefore, reasonable assurance exists that a fire originating in this fire zone will not prevent the plant from safely shutting down.

Based on the above evaluation, the staff concluded that the existing fire protection features for the structural steel in fire zone 1.32, which supports the floor of fire zones 1.11 and 1.12, provide an acceptable level of protection for the redundant trains of cables and equipment located in fire zone 1.11 and 1.12. Therefore; the licensee's request 14, which requests exemption from the provisions of III.G.2.a, should be granted.

Conclusion

Based on the evaluations described above, the staff concluded that the level of fire safety in fire zones 1.30 and 1.32 is equivalent to that achieved by compliance with the technical requirements of Section III.G of Appendix R to 10 CFR Part 50 and literal compliance would not significantly

enhance fire protection safety levels, therefore; the licensee's request for exemption in these zones (requests 11, 12, 13 and 14) should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), (1) the exemptions as described in Section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) in this case, special circumstances are present in the configuration of the plant and the quantities of combustible materials present to achieve the underlying purpose of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemptions from the requirements of Section III.G.2. a of Appendix R to 10 CFR Part 50 regarding fire barriers and protection of structural steel as follows:

(1) 3-hour rated fire barrier separation between redundant trains of safe shutdown equipment located in fire zones 1.2, 1.1, 1.8, which are connected through FZ 1.30A.

(2) 3-hour fire proofing for structural steel in the reactor building torus compartment, elevation 17 feet, fire zone 1.30A.

(3) 3-hour fire proofing for structural steel in the reactor building steam tunnel, elevation 23 feet, fire zone 1.32.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will not result in any significant environmental impact (52 FR 35803 September 22, 1987). A copy of the licensee's request for exemption dated November 16, 1983 and subsequent documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC, and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

These Exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 14 day of July, 1988.

For the Nuclear Regulatory Commission,
Steven A. Varga,
Director Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-10460 Filed 7-20-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Revision

Form N-1A, File No. 270-21

Form N-3, File No. 270-281

Form N-4, File No. 270-282

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to Forms N-1A, N-3, and N-4 under the Investment Company Act of 1940 and the Securities Act of 1933.

Form N-1A is the registration statement for use by open-end management investment companies, except small business investment companies and insurance separate accounts. There are approximately 2300 registrants using Form N-1A, with an estimated average compliance time of 1055 hours per registrant. The proposed amendments would reduce, by one hour, the time necessary for some registrants to comply with the form's requirements.

Form N-3 is the registration statement for use by insurance separate accounts organized as open-end management investment companies. There are approximately 53 registrants using Form N-3, with an estimated average compliance time of 514 hours per registrant. The proposed amendments would add two thirds of an hour to the time necessary for each registrant to comply with the form's requirements.

Form N-4 is the registration statement for use by insurance company separate accounts organized as unit investment trust. There are approximately 183 registrants using Form N-4, with an estimated average compliance time of 138 hours per registrant. The proposed amendments would add two thirds of an hour to the time necessary for each registrant to comply with the form's requirements.

General comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Direct any comments concerning the accuracy of the estimated average burden hours for compliance to Robert

Neal at the above address and to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-6004.

July 15, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-10446 Filed 7-20-88; 8:45 am]

BILLING CODE 8010-01-2

[Release No. 34-25918; SR-BSE-87-1]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change

I. Introduction

The Boston Stock Exchange, Inc. ("BSE" or "Exchange") has submitted for Commission consideration, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ a proposed rule change that would establish an automated communication, order routing and execution system for use by Exchange member organizations to be known as "Beacon".²

As proposed by the Exchange, generally, Beacon would guarantee automatic or manual execution of orders entered on the system by participating member firms in stocks traded on the Intermarket Trading System ("ITS")³ of up to either 599 or 1299 shares, depending on the classification of the stock. Orders would be executed at the Beacon quotation, that is the primary market price or, where a superior quote was present from another market for over 100 shares, at that superior price up to the number of shares (the "size") of the quote.

Under the proposed rules, BSE specialists would be permitted to increase the size of orders guaranteed automatic execution on specific stocks from all participating member firms. The proposal also allows specialists to

arrange with specific BSE member firms automatic order execution levels higher than the generally available guaranteed automatic execution level.

II. Description of Proposed Rule

All issues traded on the Exchange will be eligible for trading on Beacon but only agency orders (orders executed on behalf of a member organization's client) will be eligible for automatic execution. Orders entered on Beacon may be executed by the system either automatically or manually. Beacon permits orders to be routed to specialists or to floor brokers.⁴ The system also allows floor brokers to transmit orders directly to specialists.

Under the proposed rule, market and marketable limit orders in issues traded over ITS transmitted to the specialist prior to the BSE's opening will be given the opening price on the primary market on which it is traded. The only exception to applying the primary market opening price to an opening transaction will be where the member firm entering the order has asked, instead, for the order to be given the consolidated opening price. Market and marketable limit orders entered after the opening will receive an execution price based upon the Beacon quotation.⁵ Beacon orders, when transmitted to the specialist for execution, will be displayed on the specialist's video display terminal for up to 15 seconds to allow the specialist to improve on the Beacon quotation that was automatically determined by the system when the order was received.

The system will automatically execute all market and marketable limit orders in ITS issues up to 1299 shares for Tier I stocks and 599 shares for Tier II stocks.⁶

¹ 15 U.S.C. 78a(b).

² The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The initial set of rules proposed for BEACON (File No. SR-BSE-87-1) was noticed in Securities Exchange Act Release No. 24187, March 6, 1987; 52 FR 8682. No comments were received on this proposal. Subsequently, the Commission received amendments to the BSE's proposed BEACON rules. These amendments were noticed in Securities Exchange Act Release No. 24690, July 9, 1987; 52 FR 29612. On December 8, 1987, June 10, 1988, and July 1, 1988, the Commission received additional amendments to the proposed BEACON rules. These amendments were not separately noticed by the Commission.

³ ITS is a communication system designed to facilitate trading among competing exchanges and the National Association of Securities Dealers by providing each market with order routing capabilities based on current quotation information.

⁴ A floor broker receiving such an order would bring the order to the trading crowd for execution.

⁵ The Beacon quotation is the primary market quotation price. Regardless of the indicated size for such primary market quotations, market and marketable limit orders entered on Beacon that are within the guaranteed execution parameters for the particular stock will be executed in their entirety at this price. Where, however, bids and offers from other markets are displayed that are superior to the Beacon price and such quotes are for more than 100 shares, the market and marketable limit orders entered on Beacon will be executed at that superior price up to the size of the quote displayed.

⁶ Under the proposed rule, all ITS issues will be deemed Tier I stocks. Tier II stocks will be comprised of exceptions from Tier I. Those exceptions may be requested by specialists who must submit a statement to the BSE's Market Performance Committee that sets forth the specific reasons that would cause Tier I classification of the stock to be burdensome.

Specialists will be able to provide guaranteed automatic execution for Beacon orders above the Tier I or Tier II guaranteed execution levels on specific stocks.⁷ Guarantee levels in excess of a specialist's automatic execution guarantee may be made by arrangement between a specialist and a specific member organization.

III. Discussion

Currently, the BSE is unique among the regional exchanges because it only has manual systems for the routing and execution of small orders. Beacon is a key element in the BSE's overall effort to automate a substantial portion of its operations. The Exchange's development of Beacon will provide a major improvement for the BSE in terms of the speed and efficiency with which it can process and execute retail orders and submit reports of executed trades.

It is the Commission's understanding that the initial phase of Beacon's implementation involves allowing the system to accept and route to specialists market orders in three stocks. At this early stage the system's automatic execution feature will not be operational. After the system has successfully operated at this level for several days, additional stocks will be added in increments of two or three at a time. An interval of several days will follow each incremental increase in the number of stocks on the system to permit specialists and member firms to become familiar with the system and to allow the Exchange to identify and correct any problems with the system that may emerge.

The Commission has concluded that it is appropriate to permit the BSE to proceed with the initial stages of the implementation of Beacon. The system will enable BSE to make improvements in the speed and efficiency of its operations. Further, Beacon, when fully implemented, will enable the Exchange to compete more effectively with other markets for new retail order volume and enable it to better serve its member firms and their customers. During the initial implementation period, the Commission will closely review Beacon's test results as stocks are added to the system, more member firms

⁷ The Exchange currently has a execution guarantee under Chapter II, section 233 of the BSE Rules. Under this provision, BSE specialists guarantee execution on all agency orders from 100 up to 1299 shares in all issues traded through ITS registered to a BSE member specialist. For the 100 most actively traded stocks reported to the consolidated tape, BSE specialists must guarantee execution on all agency orders of up to 2500 shares. Market orders filled under this guarantee must be filled on the basis of the best Consolidated Quotation System ("CQS") bid or offer or better.

II. Description of Proposed Rule

The proposed rule would add a new Rule 901 specifying circumstances under which the Exchange could deny or condition membership on the Exchange or association with a member of the Exchange.³ Subparagraph (a) of the proposed rule expressly permits the Exchange to deny or condition membership, or deny from becoming associated with a member firm, any person subject to a statutory disqualification as defined in the Act.⁴ The rule would also allow, under subparagraph (b), the Phlx to deny or condition membership of a registered broker or dealer that is unable to demonstrate satisfactorily its capacity to conform to the requirements of sections 15 and 17 of the Act,⁵ and the rules and regulations thereunder, and the Exchange's rules relating to the maintenance of books and records. The Phlx would also be able to take such action where the broker or dealer has previously violated the requirements cited above, or similar requirements of other self-regulatory organizations ("SRO") of which the broker or dealer is or was a member, and there is a reasonable likelihood the broker or dealer will again violate those requirements.

Subparagraph (c) of the proposed rule specifies a number of additional circumstances under which the Exchange could deny or condition the membership of a broker or dealer, or bar or condition the association of a person with a member. These circumstances include where the broker or dealer or person:

- (1) Fails to pass a written qualification examination required by the Exchange;⁶
- (2) Fails to meet other qualification standards set by the Exchange;
- (3) Cannot demonstrate a capacity to conform to the policies, rules and requirements of the Exchange, other SROs, or the applicable Federal regulatory agency;

1988, 53 FR 17292. No comments were received on this proposal.

³ The Phlx's current Rules 901-904 will, accordingly, be renumbered as Rules 902-905.

⁴ See 15 U.S.C. 78c(a)(39).

⁵ Section 15 sets out the requirements for registration and regulation of brokers and dealers. Section 17 contains the requirements for the maintenance of accounts and records, dissemination of reports, and examinations of national securities exchanges, their members, and brokers or dealers.

⁶ Under subparagraph (d) of the proposed rule, the Phlx's Committee on Admissions may waive the applicable examination requirement in exceptional cases and where good cause is shown and accept other standards as evidence of an applicants' qualifications.

are brought on line, and additional specialist posts are provided with the system. Further, as more of the system becomes operational, the BSE has told the Commission that it will submit the results of stress tests on the system in order to demonstrate that Beacon has the capacity to handle transaction and order volume levels similar to those that BSE encountered during the October 1987 market break without the system experiencing significant order queues or delays in order execution.

Accordingly, the Commission has determined that the BSE may proceed with the initial stage of the implementation of Beacon, operating under the procedures outlined in the proposed Beacon rule, as amended. During this period BSE will be permitted to bring up to 20 stocks on to Beacon. Also during this period only market orders may be entered on Beacon for execution.

In view of the above, the Commission concludes that the initial stage of the implementation of the proposed Beacon system is reasonable and is consistent with the requirements of the Act, particularly section 6(b)(5).

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved with the limitations cited above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 15, 1988.

[FR Doc. 88-10447 Filed 7-20-88; 8:45am]

BILLING CODE 8010-01-2

[Release No. 34-25920; Filed No. SR-PHLX-88-5]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

On March 25, 1988 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,¹ a proposed rule change that would formally codify existing Exchange policies and adopt new provisions concerning denial or conditions for Exchange membership.²

¹ 15 U.S.C. 78b(b) and 17 CFR 240.19b-4.

² The proposed rule change was noticed in Securities Exchange Act Release No. 25680, May 8,

(4) Has been found by any of the above mentioned entities to have engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood the person will do so again;

(5)(i) Or is subject to any outstanding material liens, judgments or insubordinated creditor claims; (ii) has been or is the successor or an entity which has been subject to bankruptcy proceedings or receivership; (iii) has been or remains associated as a partner, principal, officer, director, stockholder, or Phlx registered trader for a member firm which has been subject to any material unsatisfied liens, judgments or insubordinated creditor claims; (iv) has engaged in a pattern of failure to pay just debts; (v) would bring the Exchange into disrepute; (vi) or for such other cause the Exchange may reasonably decide.

III. Discussion

As stated previously, the proposed rule change is largely a codification of current Phlx policies concerning the denial or imposition of conditions on Exchange membership. For example, subparagraph (a) of the proposed rule will expressly permit to Exchange to deny membership, or deny permission to become associated with a member, to any person subject to a statutory disqualification under the Act. Similarly, subparagraph (e) permits the Exchange to deny or condition membership of persons who have failed to pass Phlx required qualifying examinations. At the same time subparagraph (d) will codify the Admissions Committee's authority to waive an examination requirement under special circumstances such as where the applicant has passed a similar qualifying exam administered by another SRO.

Other provisions of the proposed rule permit the Exchange to deny or condition membership where the applicant has been unable to demonstrate satisfactorily to the Exchange a capacity to comply with requirements under the Act for brokers and dealers and for the maintenance of accounts and records, or similar requirements of the Exchange or other SRO's.

In general, as stated by the Exchange, these and the majority of the other circumstances described in the proposed rule under which the Exchange may deny or condition membership address situations where an individual or organization has failed to demonstrate the ability to comply with the significant financial and regulatory responsibilities attendant on Exchange membership. This includes the following

circumstances: Where the applicant cannot demonstrate the capacity to comply with applicable requirements of the Exchange, other SRO's and the applicable Federal regulatory agency; where a SRO or Federal regulatory agency has found that the applicant engaged in acts or practices inconsistent with just and equitable principles of trade; and a variety of circumstances where the applicant person or organization is, or has been, or was associated with an organization that was, subject to bankruptcy, receivership, unsatisfied liens, judgments creditor claims, or has evidenced a pattern of failure to pay just debts. As noted by the Exchange in its filing, these policies have functioned well in the past and their codification should permit the Phlx to ensure that its members will be able to comply with the financial and regulatory responsibilities that come with Exchange membership.

The language in Subparagraph (c) allowing the Exchange to deny or condition membership where the applicant "would bring the Exchange into disrepute" or "for such other cause as the Committee on Admissions reasonably may decide" is new. The Exchange states that these provisions are designed to cover important legal and ethical reasons for denial of membership not covered by other parts of the proposed rule but which should be available to the Exchange in its efforts to ensure that membership is extended only to individuals and firms of integrity and trustworthiness. The language of these provisions is substantially similar to language contained in a proposed rule change submitted by the Chicago Board Options Exchange ("CBOE") which was approved by the Commission.⁷ As noted by the Commission in our order approving the CBOE's proposed rule change, the "such other causes" language is a general saving clause needed because an SRO could not possibly specify all the individual reasons that might arise for denying membership. Moreover, the language in the CBOE clause, like that in the proposed Phlx rule, is limited in its discretionary application by the word "reasonably." Finally, an applicant who has been denied membership or association with a member would always have the right to appeal that decision to the Commission.

The Commission has closely reviewed the provisions of the proposed rule

change and believes that they are consistent with the requirements of the Act. In particular, the Commission believes that the proposed rule under which the Phlx may deny or condition membership is reasonable and consistent with section 6(b)(5) of the Act in that it promotes just and equitable principles of trade and, in general, serves to protect investors and the public interest, and is also consistent with the grounds upon which an exchange may deny or condition membership under section 6(c)(3) of the Act. Adoption of the proposed rule will provide applicants for Phlx membership with notice of the standards for Exchange membership and the general circumstances under which that privilege may be denied or conditioned. Similarly, codification of these policies will serve to focus, and limit, those grounds upon which the Exchange may seek to deny or condition membership.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: July 15, 1988.

[FR Doc. 88-16446 Filed 7-20-88; 8:45 am]
BILLING CODE 8010-01-2

[Release No. 34-25903; File No. SR-CBOE-88-12]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to deletion of rules concerning GNMA and Foreign Currency Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78e(b)(1), notice is hereby given that on June 27, 1988 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Note.—Italics indicates material proposed to be added.

Rule 6.1 Days and Hours of Business. No change.

Interpretations and Policies:

.01 No change
.02 The Board of Directors has established different hours of trading for Government security options (Rule 21.10, Interpretation .01) and index options (Rule 24.6) [and foreign currency options (Rule 22.5)].

Chapter XX GNMA Options

Delete Introduction and all rules in Chapter. The rules to be deleted are Rules 20.1 through and including Rule 20.18B, Rules 20.22 through and including Rule 20.25 and Rule 20.30. Rules 20.19, 20.20, 20.21, 20.26, 20.27, 20.28, and 20.29 were deleted as of October 25, 1983.

Chapter XXII Foreign Currency Options

Delete Introduction and all rules in Chapter. The rules to be deleted are Rules 22.1 through and including Rule 22.17.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule amendment would delete from Exchange rules all references to GNMA and foreign currency options because the Exchange does not presently nor does it intend in the future to trade such options contracts. The deletions are designed to avoid investor confusion that could arise from continuing to refer to Exchange rules for products that are no longer traded on the Exchange.

The proposed rule change is consistent with the provisions of the Securities Act of 1934 and, in particular, section 6(b)(5) thereof, in that the rules to be deleted are not being used and retaining the rules could confuse investors, and therefore the rule change is designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making writing submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: July 13, 1988.

[FR Doc. 88-16486 Filed 7-20-88; 8:45 am]
BILLING CODE 8010-01-2

[Release No. 34-25908; File No. SR-DTC-88-12]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by The Depository Trust Co.; Relating to the Proposed ADR Tax Withholding Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78e(b)(1), notice is hereby given that on July 1, 1988, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed "ADR Tax Withholding Service" will enable certain U.S. and Canadian investors in American Depositary Receipts for securities of United Kingdom issues ("UK ADRs") on deposit at DTC to receive at source, without having to withdraw the UK ADRs from DTC, the favorable tax treatment of dividends by the government of the United Kingdom (the "UK Government") to which they are entitled. In the UK, when a UK corporation pays a dividend to a shareholder, it simultaneously pays an "advance corporation tax" (the "ACT") to the UK Government. A UK shareholder is deemed to have received as income not only the dividend but also the ACT. The terms of the Double Taxation Convention (as hereinafter defined) or another tax treaty and the UK Government regulations known as the "H Arrangement" provide that certain U.S. and Canadian residents, such as certain U.S. investors who are not exempt from U.S. federal income tax, may receive some relief from double taxation at source—that is, on the occasion of the payment of the dividend. At that time the UK corporation will pay the dividend to each such U.S. or Canadian shareholder and the shareholder will also receive a partial refund of the ACT paid to the UK Government to the extent that the ACT exceeds 15% of the sum of the dividend and the ACT attributable thereto. This eliminates or reduces the need for a time-consuming and inefficient refund claims process for qualifying U.S. and Canadian residents. The beneficial owners of UK ADRs eligible for deposit

at DTC include U.S. and Canadian owners who are entitled to the benefits of the "H Arrangement" and U.S. owners and others who are not. Under the new service, DTC will receive all UK ADR dividends at the more favorable rate. DTC's Participants will certify to DTC the number of shares of each issue that are entitled to favorable tax treatment for their beneficial owners. DTC will pay each Participant the dividend reflecting the favorable rate on the certified number of shares and will pay the dividend at the unfavorable rate on the rest. DTC will then remit the amount attributable to shares paid at the unfavorable rate to the UK Government. The UK Government has approved this procedure. DTC will begin the new service for the dividend record date for UK ADRs of July 3, 1988.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The main purpose of DTC's ADR Tax Withholding Service is to eliminate a disincentive to the immobilization of American Depositary Receipts for shares of United Kingdom corporations at DTC. The statutory bases for encouraging immobilization are section 17A(e) of the Securities Exchange Act of 1934, as amended, and the "Convention Between the Government of the United States of America and the Government of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital Gains" (the "Double Taxation Convention").

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on

competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Progress in the development of DTC's ADR Tax Withholding Service in conjunction with the United Kingdom's Inspector of Foreign Dividends at Inland Revenue has been reported to DTC Participants in DTC Program Agenda Memoranda and DTC monthly Newsletters. No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary

Dated: July 14, 1988
(FR Doc. 88-16489 Filed 7-20-88; 8:45 am)
BILLING CODE 8010-01-31

(Release No. 34-25915; File No. SR-NASD-88-20)

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Reporting of Trade Data

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78a(b)(1), notice is hereby given that on June 20, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Article VII, Section 1 of the NASD By-Laws would require NASD members to provide the NASD with comparison and other trade data as may be required by the Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change was considered by the NASD Board of Governors and its Uniform Practice Committee and is intended to make clear the NASD's authority to require the reporting by members of trade data

which may be required by the NASD. This clarification of authority will be utilized in implementation of the requirement which was recently approved by the Commission that all NASD members which are participants in registered clearing agencies for purposes of clearance of over-the-counter securities shall participate in and reconcile eligible transactions through the facilities of the NASD's Trade Acceptance and Reconciliation Service. The proposed rule change will also facilitate the planned expansion of that requirement which will mandate that all NASD members conducting an interdealer business in over-the-counter securities submit trade reconciliation data as required by the NASD. The NASD is currently studying the most cost effective methods for allowing members that are not clearing corporation participants to input such trade comparison information. In addition, the proposed rule change will clarify the NASD's authority to require reporting of trade data, including aggregate volume information, on non-NASDAQ over-the-counter transactions which will facilitate the gathering of data on these transactions and the increased surveillance of the non-NASDAQ marketplace which has been requested by the Commission's Division of Market Regulation.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the NASD's rules be designed to foster cooperation and coordination with persons engaged in clearing, settling and facilitating transactions in securities, to remove impediments and perfect the mechanism of a free and open market and to protect investors and the public interest. The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions and will better enable the NASD to carry out its surveillance function of the over-the-counter market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD solicited comments on the proposed rule change in Notice to Members 87-79. The NASD received 16 comments in response to Notice to

Members 87-79. Six generally supported the amendment and 10 opposed the amendment.

Eight commentators opposing the proposal generally believed that the amendment would impose an undue burden on small member firms and would require such firms to incur additional costs which would, in some cases, cause the firms to cease doing an over-the-counter securities business. One commentator said that its current method of comparing OTC transactions through the facilities of a regional clearing corporation should be allowed to continue without having to be a TARS subscriber. Another commentator said that TARS participation should not be required for members using automated service bureau facilities that already efficiently generate trade comparisons.

The NASD Board reviewed the comment letters and concluded that the amendment to the NASD By-Laws should be adopted. The Board noted that the mandatory TARS requirement will not affect many commentators since they are not members of registered clearing corporations. Also, the mandatory trade comparison procedure for non-participants in clearing corporations, when implemented, will be structured in the most cost-effective manner for member firms.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

- By order approve such proposed rule change, or
- Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: July 14, 1988.
(FR Doc. 88-16487 Filed 7-20-88; 8:45 am)
BILLING CODE 8010-01-31

(Release No. 34-25918; File No. SR-NASD-88-27)

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Inclusion of Qualification as Limited Representative—Corporate Securities as Alternative Prerequisite for Qualification as Registered Options Principal and Registered Options Representative

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78a(b)(1), notice is hereby given that on July 1, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of proposed amendments to Part II, paragraph (2)(e) and Part III, paragraph (2)(d) of Schedule C to the NASD By-Laws. New text is italicized.

Schedule C

• • • • •

Part II

• • • • •

(2) Categories of Principal Registration.

• • • • •

- Registered Options Principals.
- No change.
- No change.

- (iii) No change.
- (iv) Each person required to register and qualify as a Registered Options Principal must, prior to or concurrent with such registration, be or become qualified pursuant to Part III hereof, as either a General Securities Representative or a Limited Representative—Corporate Securities and also qualified pursuant to Part III, section 2(d) hereof as a Registered Options Representative.
- (v) No change.

Part III

(2) Categories of Representative Registration.

(d) Registered Options Representative—Each person associated with a member whose activities in the investment banking or securities business include the solicitation and/or sale of option contracts shall be required to be certified as a Registered Options Representative and to pass an appropriate certification examination for such or an equivalent examination acceptable to the Corporation. Registered Options Representatives qualified in either put or call options shall not engage in both put and call option transactions until such time as they are qualified in both such options. Members shall be required to report to the Corporation the names of any associated persons certified as Registered Options Representatives pursuant to an examination approved by the Corporation. Registered Options Representatives must also be qualified with the Corporation as either General Securities Representatives or as a Limited Representative—Corporate Securities; provided, however, Registered Options Representatives of members that are members of a national securities exchange which has standards of approval acceptable to the Corporation may be deemed to be approved by and certified with the Corporation, so long as such representatives are approved by and registered with such exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 20, 1988, the Commission approved the establishment of a category of representative registration and a corresponding examination entitled Limited Representative—Corporate Securities (See Rel. No. 34-25719, File No. SR-NASD-87-50). The NASD Board of Governors has determined that it is appropriate to permit qualification as a Limited Representative—Corporate Securities to serve as an alternative to qualification as a General Securities Representative for purposes of satisfying the prerequisite for undertaking to qualify as a Registered Options Representative ("ROR") or a Registered Options Principal ("ROP"). The amendments set forth herein would accomplish this purpose.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Securities Exchange Act of 1934, which section provides that the NASD may prescribe standards of training, experience, and competence for persons seeking to associate with a registered broker-dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the addition of qualification as a Limited Representative—Corporate Securities as an alternative prerequisite for qualification as an ROR or ROP imposes any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20540. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-27 and should be submitted by August 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: July 15, 1988.
[FR Doc. 88-16488 Filed 7-20-88; 8:45 am]
BILLING CODE 8010-01-M

(Release No. SIPA-147; File No. SIPC 88-1)

Securities Investor Protection Corporation; Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members

Pursuant to section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA"), 15 U.S.C. 78ccc(e)(1), notice is hereby given that on June 22, 1988, the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission a proposed bylaw change. The Commission is publishing this notice to solicit comments on the proposed bylaw change from interested persons.

I. Description of Proposed Bylaw Change

The proposed bylaw change would amend section 1(a) of Article 6 of SIPC's

bylaw regarding SIPC Fund assessments on SIPC's members.¹ The bylaw change provides that, beginning on January 1, 1989, each SIPC member will be required to pay assessments at the rate of 1/4 of 1 percent of its gross revenues from the securities business, with a minimum assessment of \$150 per annum. Currently, each SIPC member's assessment is \$100 per annum. The SIPC bylaw change also provides that if SIPC determines that the SIPC Fund² totals or is reasonably likely to total less than \$250 million, the amount of each member's assessment shall be 1/4 of 1 percent of such member's gross revenues from the securities business (rather than 1/4 of 1 percent as is currently provided).³ SIPC indicates that the SIPC Board of Directors ("SIPC Board") took these actions after consultation with representatives of various self-regulatory and securities industry organizations and the Commission.

SIPC indicates that the SIPC Fund currently totals approximately \$385 million, and that SIPC maintains a \$500 million confirmed line of credit with a consortium of banks. SIPC indicates that while these amounts, coupled with its statutory right to borrow up to \$1 billion from the U.S. Treasury Department through the Commission, appear, in light of SIPC's historical experience, to be sufficient to enable SIPC to carry out its anticipated responsibilities, the SIPC Board believes that it is appropriate to increase gradually SIPC's resources.

SIPC indicates that the SIPC Board chose a commencement date of January 1, 1989, so as to give SIPC members ample time to plan for this expense and to give the collection agents (the self-regulatory organizations) time to prepare for these changes. SIPC further states that the SIPC Board selected 1/4 of 1 percent as a rate that would not prove too onerous for the securities industry, but would, over a reasonable period of time, add substantially to the SIPC Fund. SIPC states that the SIPC Board increased the minimum assessment from \$100 per

¹ All broker-dealers registered under section 15(b) of the Securities Exchange Act of 1934, with some minor exceptions, are SIPC members.

² The SIPC Fund consists of cash and amounts invested in U.S. government or agency securities.

³ Section 1(a) of Article 6 currently provides that if SIPC determines that the SIPC Fund totals or is reasonably likely to total less than (i) \$250 million, the amount of each member's assessment shall be 1/4 of 1 percent of such member's gross revenues from the securities business, (ii) \$150 million, the amount of each member's assessment shall be 1/4 of 1 percent of such member's gross revenues from the securities business and (iii) \$100 million, the amount of each member's assessment shall be 1/4 of 1 percent of such member's gross revenues from the securities business.

annum to \$150 because it believes that all registered broker-dealers benefit from the SIPC program and should pay a reasonable amount to support that program. SIPC notes that SIPC does not permit a greater minimum assessment than \$150 per annum.

Finally, in the past, SIPC assessments based on gross revenues were collected on a quarterly basis. In order to simplify the collection process, SIPC expects to collect assessments on a semi-annual basis for the first year. SIPC states that the frequently of collection will be reviewed next June.

II. Need for Public Comment

Section 3(e)(1) of the SIPA provides that SIPC must file with the Commission a copy of proposed bylaw changes. That section further provides that bylaw changes shall take effect 30 days after filing, unless the Commission either (i) disapproves the change as contrary to the public interest or the purposes of SIPA, or (ii) finds that the change involves a matter of such significant public interest that public comment should be obtained. Thus, under section 3(e)(1) of the SIPA, a proposed bylaw change does not have to be noticed for public comment. However, under section 3(e)(1)(B) of SIPA, the Commission can find that "such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained," in which case the Commission may, after notifying SIPC in writing of such finding, require that the proposed bylaw change be considered by the same procedures as a proposed rule change including, among other things, publication in the Federal Register and opportunity for public comment.

The SIPC Fund, which is built from assessments on its members and interest earned on the Fund, is used for the protection of customers of members liquidated under SIPA to maintain investor confidence in the securities markets. In light of this fact and the significant market developments since October 1987, the Commission finds that the proposed bylaw change involves a matter of significant public interest, that public comment should be obtained, and that the procedures applicable to proposed SIPC rule changes in section 3(e)(2) of the SIPA should be followed. As required by section 3(e)(1) of the SIPA, the Commission has notified SIPC in writing of its finding.

III. Date of Effectiveness of the Proposed Bylaw Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SIPC consents, the Commission will:

- (A) By order approve such proposed bylaw change, or
- (B) Institute proceedings to determine whether the proposed bylaw change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file three copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed bylaw change that are filed with the Commission, and all written communications relating to the proposed bylaw change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. All submission should refer to File Number SIPC 88-1 and must be received on or before August 11, 1988.

By the Commission.

Jonathan G. Katz,
Secretary.

July 14, 1988.
[FR Doc. 88-16485 Filed 7-20-88; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

(License No. 06/06-0187)

Grocers Small Business Investment Corp; Surrender of License

Notice is hereby given that Grocers Small Business Investment Corporation (Grocers), 3131 East Holcombe Blvd., Houston, Texas 77021, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Grocers was licensed by the Small Business Administration on February 14, 1977.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on July 8, 1988, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: July 18, 1988.

[FR Doc. 88-16450 Filed 7-20-88; 8:45 am]
BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting; California

The U.S. Small Business Administration, Region IX advisory Council, located in the geographical area of San Francisco will hold a public meeting at 2:30 p.m. On Tuesday, August 9, 1988 in the District Director's Conference Room, 4th Floor, 211 Main Street, San Francisco, California to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael R. Howland, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, California 94105, (415) 974-0642.

Jean M. Nowak,
Director, Office of Advisory Councils.
July 18, 1988.

[FR Doc. 88-10451 Filed 7-20-88; 8:45 am]
BILLING CODE 8025-01-M

[Application No. 09/09-0377]

Wells Fargo Capital Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Wells Fargo Capital Corporation, 420 Montgomery Street, 9th Floor, San Francisco, California 94103 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
John F. Grundhofer, 333 South Grand Avenue, Los Angeles, California 90071	Board Chairman	
Charles A. Greenberg, 420 Montgomery Street, San Francisco, California 94163	President, Director	
Sandra J. Menichelli, 420 Montgomery Street, San Francisco, California 94163	Vice President	
Guy Rounsaville, Jr., 420 Montgomery Street, San Francisco, California 94163	Secretary	
Ronald S. Parker, 333 South Grand Avenue, Los Angeles, California 90071	Director	
David M. Petrone, 420 Montgomery Street, San Francisco, California 94163	Board Vice Chairman	
Wells Fargo Capital Markets, Inc., 420 Montgomery Street, 9th Floor, San Francisco, California 94163	Investment Advisor/Manager, Parent	100

Wells Fargo Capital Corporation is a wholly owned subsidiary of Wells Fargo Capital Markets, Inc., which in turn, is a wholly owned subsidiary of Wells Fargo & Company, a bank holding company.

Prior to this application, Wells Fargo & Company established two small business investment companies. Wells Fargo Investment Company, License No. 12/12-0147, was licensed on January 6, 1980 and surrendered its license on July 18, 1984. Wells Fargo Equity Corporation, License No. 09/09-0316,

was licensed on October 29, 1982 and surrendered its license on December 4, 1985.

The Applicant, a California corporation, will begin operations with \$2,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

A copy of the notice shall be published in a newspaper of general circulation in the San Francisco, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: July 11, 1988.

[FR Doc. 88-10402 Filed 7-20-88; 8:45 am]
BILLING CODE 8025-01-M

UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Investment Policy Advisory Committee to be held Tuesday, July 26, 1988, from 9:30 a.m. to 12:00 Noon in Washington, DC will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Inquiries may be directed to Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Alan F. Holmet,
Acting United States Trade Representative.
[FR Doc. 88-16389 Filed 7-20-88; 8:45 am]
BILLING CODE 3169-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 26, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437, § 438(b), and Title 28, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 28, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future meetings. Correction and Approval of Minutes. Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.

Draft AO 1988-26:
Paul Supizio Associates on behalf of Tele/900 Inc., dba Teleline
Draft AO 1988-32:
Terry Lee George on behalf of Frank Shurden Democrat for U.S. Congress
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Information Officer,
Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 88-16565 Filed 7-19-88; 2:46 pm]
BILLING CODE 9715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on July 15, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, July 20, 1988.

CHANGES IN THE MEETING: The open meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204.

Dated: July 18, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-16510 Filed 7-19-88; 11:15 am]
BILLING CODE 8210-01-M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Pub. L. 94-409) (5 U.S.C. 552b)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at eight-thirty o'clock a.m. on Monday, July 11, 1988 at the Commission's Western Office, 1301 Shoreway Road, Fourth Floor, Belmont, California 94002. The meeting ended at or about 12:30 p.m. The purpose of the meeting was to decide approximately 24 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Nine Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Sandra Brown Armstrong, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Daniel R. Lopez, G. MacKenzie Rast, and Victor M.F. Reyes.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 18, 1988.

Benjamin F. Baer,
Chairman, U.S. Parole Commission.
[FR Doc. 88-16538 Filed 7-19-88; 2:10 pm]
BILLING CODE 4410-01-M

NATIONAL COUNCIL ON THE HANDICAPPED
Quarterly Meeting

Federal Register

Vol. 53, No. 140

Thursday, July 21, 1988

AGENCY: National Council on the Handicapped.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94-409).

DATES:

August 1, 1988, 9:00 a.m. to 5:00 p.m.
August 2, 1988, 8:30 a.m. to 5:00 p.m.
August 3, 1988, 9:00 a.m. to 12:00 noon

LOCATION: Away Grand Hotel, Grand Rapids, Michigan.

FOR FURTHER INFORMATION CONTACT:
Andrea Farbman, National Council on the Handicapped, 800 Independence Avenue SW., Suite 814, Washington, DC 20501, (202) 267-3848, TDD: (202) 267-3232.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Pub. L. No. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute of Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Report from the Chairperson and Executive Committee
Forum: Implementing Public Policy in Toward Independence
Introduction of New Executive Director
Site Visits to Rehabilitation Facilities
Status Reports on the Following:

Conference on Families for Persons with Disabilities
800 Information and Referral Number
Forum on Living Arrangements for Severely Disabled Children and Youth
Commission on Special Education
Presentation on Integrated Employment
Discussion of Unfinished and New Business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC, on July 15, 1988.

Ethel D. Briggs,

Acting Executive Director.

[FR Doc. 88-10541 Filed 7-19-88; 2:02 pm]

BILLING CODE 4820-85-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, August 3, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of July, 1988.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: July 18, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-10550 Filed 7-19-88; 2:03 pm]

BILLING CODE 7550-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 25, 1988.

A closed meeting will be held on Tuesday, July 26, 1988, at 2:30 p.m. An open meeting will be held on Thursday, July 28, 1988, at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries

will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 26, 1988, at 2:30 p.m., will be:

Formal order of investigation.

Settlement of administrative proceeding of an enforcement nature.

Institution of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, July 28, 1988, at 9:30 a.m., will be:

1. Consideration of whether to adopt amendments to Rule 204-2, the recordkeeping rule under the Investment Advisers Act of 1940. The amendments would require advisers to retain, for Commission inspection, all advertisements and supporting records for performance information in advertisements. Advertisements and supporting records would be required to be kept for five years from the end of the fiscal year in which the advertisement was last published. For further information, please contact Dorothy M. Donohue at (202) 272-2107.

2. Consideration of whether to propose for public comment forms N-17f-1 and N-17f-2 under the Investment Company Act of 1940 and form ADV-E under the Investment Advisers Act of 1940. The forms would serve as cover sheets for accountant examination certificates which are currently required to be filed with the Commission. The forms are designed to facilitate the proper filing of examination certificates and, thus, increase the accessibility of such information to both investors and the Commission's staff. For further information, please contact John McGuire at (202) 272-2107.

3. Consideration of whether to propose for public comment Rule 17 and amendments to Rule 2 and Form U-3A-2 under the Public Utility Holding Company Act of 1935. Rule 17 would specify the circumstances in which nonutility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers. Amended Rule 2 would provide that a claim of exemption under Rule 2 by an intrastate public-utility holding company, in order to be effective, would require the holding company to meet one of the safe harbor provisions of Rule 17, and amended Form U-3A-2 would require the company to furnish information

supporting its ability to rely on one of the safe harbor provisions of Rule 17. For more information, please contact Sidney L. Cimmet at (202) 272-7340.

4. Consideration of an application filed by Merrill Lynch California Municipal Series Trust *et al.* and all similar investment companies to be established, advised, or managed by Merrill Lynch Asset Management, Inc. ("MLAM") or Fund Asset Management, Inc. ("FAMI"), or distributed by Merrill Lynch Funds Distributor, Inc. ("MLFD") ("Funds"); MLAM; FAMI; and MLFD (collectively, "Applicants") for an order of the Commission under Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Applicants from Sections 10(f), 10(g), and 10(i) of the Act to the extent necessary to permit the Funds to sell separate classes of securities for the purpose of establishing a dual distribution system, and from the provisions of Sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit assessment of a contingent deferred sales charge on certain redemptions of a class of their securities, and waiver of the contingent deferred sales charge in certain redemptions; and for an order under Section 11(a) approving certain offers of exchange for shareholders of the Funds. For further information, please contact Fran Pollack-Matz at (202) 272-3024.

5. Consideration of whether to repropose for public comment Rule 11a-3 and to seek additional public comment on proposed Rule 11c-1, both under the Investment Company Act of 1940. Revised proposed Rule 11a-3 would allow certain open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same group of funds. Proposed Rule 11c-1 would allow unit investment trusts and their sponsors to make certain exchange offers to unitholders of the same trust or to unitholders of another trust having the same sponsor. Consideration will also be given to whether to seek comment on insurance considerations relevant to the question of whether the Commission should propose to amend Rule 11a-2, which permits certain insurance company separate accounts to make offers of exchange. For further information, contact Brian Kindelan at (202) 272-2048.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Martha Peterson at (202) 272-7502.

Jonathan G. Kats,

Secretary.

July 18, 1988.

[FR Doc. 88-10590 Filed 7-19-88; 4:03 pm]

BILLING CODE 8010-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80P-0157 *et al.*]

Approved Variances for Laser Light Shows; Availability

Correction

In notice document 88-15191 beginning on page 25547 in the issue of Thursday, July 7, 1988, make the following correction:

On page 25547, in the table, under "Demonstration laser product", in the fourth line, "krypton" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0250]

Drug Export; Ornade-A.F.* Spansule* Capsules

Correction

In notice document 88-15334 appearing on page 25691 in the issue of Friday, July 8, 1988, make the following corrections:

1. In the first column, under **SUMMARY**, in the sixth line, "Ornade" and "Spansule" were misspelled.

2. In the second column, in the second complete paragraph, in the third line, "July 8" should read "July 18".

3. In the same column, in the last paragraph, in the next to last line, between "for" and "Evaluation" insert "Drug".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8211]

Income Taxes; Income of Foreign Governments and International Organizations

Correction

In rule document 88-14429 beginning on page 24060 in the issue of Monday, June 27, 1988, make the following corrections:

1. On page 24061, in the first column, in the fifth paragraph, the first line should read "Paragraph (a) of § 1.1441-8T sets forth the ". Also, in the third line, "§ 1.144-1" should read "§ 1.1441-1".

§ 1.892-1T [Corrected]

2. On page 24061, in the third column, in § 1.892-1T(a), in the ninth line, "1.982-3T" should read "1.892-3T".

§ 1.892-2T [Corrected]

3. On page 24061, in the third column, in § 1.892-2T(a)(3), in the third line, "separated" should read "separate".

Federal Register

Vol. 53, No. 140

Thursday, July 21, 1988

§ 1.1441-8T [Corrected]

4. On page 24066, in the second column, in § 1.1441-8T(a), in the 10th line, "§ 1441.1" should read "§ 1.1441-1". Also, in § 1.1441-8T(b), in the fourth line from the bottom, "§ 1441-1" should read "§ 1.1441-1".

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL-285-88]

Income Taxes; Income of Foreign Governments and International Organizations

Correction

In proposed rule document 88-14428 beginning on page 24100 in the issue of Monday, June 27, 1988, make the following correction:

On page 24101, under **FOR FURTHER INFORMATION CONTACT**, in the seventh line, the telephone number should read "202-566-6384".

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Part II

**Department of
Transportation**

Office of the Secretary

**49 CFR Part 24
Uniform Relocation Assistance and Real
Property Acquisition Regulation for
Federal and Federally Assisted Programs;
Notice of Proposed Rulemaking**

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

(FHWA Docket No. 87-22)
RIN 2125-AB 85

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation implements statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, (1987 Amendments) Pub. L. 100-17, 101 Stat. 248-256. The Uniform Act applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacements caused by rehabilitation and demolition activities. Consequently, it affects a wide variety of Federal and federally funded programs and projects. This NPRM is the latest in a series of actions that have been taken to ensure that the implementation of the Uniform Act by Federal agencies is, in fact, as uniform and consistent as possible. While encouraging State and local discretion in implementing the Uniform Act's provisions.

DATES: Comments must be received on or before September 19, 1988. Public meetings will be held on August 17, 22, and 24; see Supplementary Information for further details.

ADDRESS: Submit signed, written comments to FHWA Docket No. 87-22, Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. Public meetings will be held in Philadelphia, Pennsylvania; Chicago, Illinois; and Portland, Oregon; see Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Chief, Policy Development, Office of Right-of-Way, HRW-11, (202) 366-0116; or Reid Alsop,

Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

A few provisions of the 1987 Amendments upon which the law is explicit and allows for little, if any, administrative discretion or interpretation, and for which a period of public notice and comment would have been impractical, were implemented in an interim final rule in Part 24 issued by FHWA (52 FR 47994) and referenced by all but one of the affected Federal agencies (52 FR 48015) on December 17, 1987. That one agency subsequently referenced Part 24 (53 FR 4964) on February 19, 1988. These agencies are as follows:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Environmental Protection Agency
Federal Emergency Management Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
National Aeronautics and Space Administration
Pennsylvania Avenue Development Corporation
Tennessee Valley Authority
Department of Transportation
Veterans Administration

In addition, the United States Postal Service issued a Final Rule in 39 CFR Part 777 on December 17, 1987 (52 FR 48029) to amend the Postal Service's regulations to make them consistent with the 1987 Amendments.

This proposed rule, if promulgated, would implement all of the remaining provisions of the 1987 Amendments by amending the existing interim final rule. Following consideration of comments received in response to this notice of proposed rulemaking (NPRM), as well as in response to the interim final rule, we anticipate promulgating a final rule in Part 24 that would replace the interim final rule. For the easy reference of the reader, Part 24 as proposed to be revised herein is printed in its entirety in order to present a complete full text regulation.

As originally enacted, the Uniform Act authorized "the head of each

Federal agency" to establish regulations and procedures for implementing the Uniform Act. Inevitably, this led to significant differences in agency implementing regulations. In a March 8, 1978, Report to Congress (GAO Report No. GGD-78-6, "Changes Needed in the Relocation Act to Achieve More Uniform Treatment of Persons Displaced by Federal Programs", B-148044 (1978)), the Comptroller General found that as a result of these differences the Federal government was not providing uniform treatment to people displaced from their homes and businesses by Federal or federally assisted programs. Those differences among Federal implementing regulations also imposed significant administrative burdens on State and local governments.

In 1981, for the Vice President's Presidential Task Force on Regulatory Relief, State and local governments identified the Uniform Act as a good candidate for State and local regulatory relief. Therefore, in May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each agency covered by the Uniform Act. On February 27, 1985, a Presidential Memorandum was signed and published in the Federal Register on March 5, 1985 (50 FR 8953), naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. The Secretary of the Department of Transportation delegated this responsibility to the Federal Highway Administration. On March 5, 1985 (50 FR 8953), DOT published in the Federal Register a model Uniform Act rule, which, in accordance with the President's February 27, 1985 memorandum, served as the basis for a proposed common Uniform Act rule for the 16 other affected agencies (50 FR 8955). The proposed common rule was issued for comment by those 16 agencies on May 28, 1985 (50 FR 21712). After consideration of comments, the disparate regulations of all affected agencies were superseded by the common rule which was published as a final rule on February 27, 1986 (51 FR 7000). This common rulemaking effort, applicable to both direct Federal programs and projects and federally-assisted programs and projects undertaken by State or local agencies, achieved consistency in regulations among the separate Federal agencies.

To a significant extent, this common rulemaking effort presaged many of the statutory changes to the Uniform Act made by the 1987 Amendments. In the administrative area, for example, the

Amendments specifically designate the DOT as lead agency and require it, in coordination with other Federal agencies, to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act. In the substantive area, with the major exception of payment levels or criteria that were set by statute, the common rulemaking effort granted greater flexibility and discretion to State and local agencies, a theme reiterated in the 1987 Amendments.

Implementation of the 1987 Amendments

On Tuesday, May 19, 1987 (52 FR 18768) the FHWA issued a Notice describing significant changes in the law and general plans to implement those changes. On Tuesday, December 1, 1987 (52 FR 45667) the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal agencies would take to implement the 1987 Amendments.

On December 17, 1987 (52 FR 47994) the FHWA issued an interim final rule in Part 24 that revised the common rule to include those provisions of the 1987 Amendments (primarily increases in the dollar amounts of specific relocation benefits) that did not allow for discretion in their implementation. This was done to allow those Federal, State and local agencies that were willing and able to implement those provisions to do so expeditiously. On the same day (52 FR 48015) 17 Federal Departments and agencies that administer the Uniform Act published interim final rules rescinding the common rule from each of their regulations and adopting in its place a cross-reference to the single governmentwide regulation published by FHWA at 49 CFR Part 24. The effective date for these agency rescissions and cross references varied, however all such actions will take effect on or before April 2, 1989, the date the 1987 Amendments become mandatory.

An eighteenth Federal Department, the Department of Housing and Urban Development (HUD), was unable to join the other Federal agencies in publishing an interim final rescission and cross referencing action on December 17, 1987, because of its need to first satisfy certain Congressional review obligations. HUD subsequently published such an interim rule on February 19, 1988 (53 FR 4964).

While comments were sought on these interim rules, only eight comments were received, seven by FHWA and one by the Department of Housing and Urban Development (HUD). The seven comments received by FHWA did not

address either the establishment of a single governmentwide regulation at 49 CFR Part 24, the agency rescission and cross-referencing actions, or the changes made in the interim rule. Rather, they concerned matters that are addressed in this NPRM, and they will therefore be considered, along with the comments received in response to this NPRM, in the development of a final rule. The one comment received by HUD objected to any delay in the effective date of the rescission and cross-referencing action contained in HUD's interim rule. However, the comment did not otherwise object to the rescission and cross-referencing action itself.

Since no comments were received concerning the use of rescission and cross-referencing actions by the various agencies to establish a single governmentwide regulation, the individual agencies will finalize their interim final actions. HUD will consider the comment concerning its interim rule's effective date before its interim rule is finalized.

Accordingly, the changes proposed in this NPRM, if adopted, will govern the relocation and land acquisition programs of all those 18 Federal departments and agencies, as well as the United States Postal Service. Those departments and agencies, and the parts of the Code of Federal Regulations which will contain a cross reference to this part, are listed below:

Department of Agriculture
7 CFR Part 21
Department of Commerce
15 CFR Part 11
Department of Defense
32 CFR Part 259
Department of Education
34 CFR Part 15
Department of Energy
10 CFR Part 1039
Environmental Protection Agency
40 CFR Part 4
Federal Emergency Management Agency
44 CFR Part 25
General Services Administration
41 CFR Part 105-51
Department of Health and Human Services
45 CFR Part 15
Department of Housing and Urban Development
24 CFR Part 42
Department of the Interior
41 CFR Part 114-50
Department of Justice
41 CFR Part 125-18
Department of Labor
29 CFR Part 12
National Aeronautics and Space Administration

14 CFR Part 1208
Pennsylvania Avenue Development Corporation
36 CFR Part 904
Tennessee Valley Authority
18 CFR Part 1306
Veterans Administration
38 CFR Part 25

The United States Postal Service will incorporate changes in its full-text regulation at 39 CFR Part 777 and intends to publish its final rule simultaneously with the publication of the final governmentwide rule at 49 CFR Part 24.

All members of the public who are affected by relocation or land acquisition activities undertaken or funded by those departments and agencies are encouraged to comment on this NPRM. Comments from interested State and local governments are particularly requested.

A description of the regulatory changes proposed in this part are set forth below. The only major changes proposed are those required by enactment of the 1987 Amendments. Where no such changes are required, the provisions of the governmentwide rule are generally repeated in this proposed rule. That is, the proposed rule is basically the same as the governmentwide rule with the exception of those changes that are necessary to fully implement the 1987 Amendments. Comments are invited on both those non-discretionary changes that were adopted in the December 17, 1987, interim final rule and the remaining changes proposed in this NPRM.

Public Meetings

In furtherance of the statutory objective of securing the views of State and local governments and the public in the promulgation of these regulations, the Federal Highway Administration proposes to conduct three public meetings during the comment period following publication of this proposed rule. The purpose of these meetings will be to receive comments on the proposed rule from interested parties. These comments will be entered in FHWA Docket No. 87-22 and will be given full consideration prior to issuance of the final rule.

The meetings will be held during the comment period. Dates for the meetings are August 17, 1988 in Philadelphia, Pennsylvania, August 22 in Portland, Oregon and August 24 in Chicago, Illinois. Specific information relative to these meetings will be detailed in a notice soon to be published in the Federal Register.

Speakers are invited to make brief presentations of no more than 10 minutes and will be scheduled based on the order of pre-registration and registration at the door. Written comments may also be submitted. Persons wishing to reserve presentation time or seating should contact Ms. Barbara J. Satorius, Realty Specialist, Policy Development Branch, HRW-11, (202) 366-0116, Federal Highway Administration, Washington, DC at least 10 days in advance of the meeting they wish to attend.

The major changes made by the 1987 amendments include:

—Expansion of the Uniform Act coverage to include virtually all activities that receive Federal funds, including those undertaken by private entities.

—A moderate increase in benefit levels.

—The establishment of a lead agency to issue a single governmentwide implementing regulation.

—Providing that the computation of certain relocation benefits be done in accordance with the lead agency regulations, rather than prescribing the computation method in the statute.

—Granting State greater flexibility and discretion in implementing the provisions of the Uniform Act.

Explanation of the Changes in This NPRM

The changes proposed in this NPRM are described in detail below. (For a description of the nondiscretionary provisions of the 1987 Amendments adopted in the interim final rule the reader is directed to the preamble to that rule at 52 FR 47984, December 17, 1987).

Subpart A—General

Section 24.1 Purpose.

A new paragraph (c) is proposed to replace the current paragraph which refers to changes made by the interim rule. The new paragraph would establish efficient and cost effective implementation as one of the primary purposes of this part. We are particularly concerned that State and local implementing agencies not be burdened with unnecessary regulatory requirements. In this regard such agencies should be fully aware of the waiver provision in § 24.7 and should utilize it when its use could avoid unnecessary delay or administrative burdens.

Section 24.2 Definitions.

Section 24.2(a) contains proposed definitions based on the generic term

"agency" which are found in the amended Uniform Act. These proposed definitions relate to particular functions agencies may be performing at a given time in program or project development. These definitions are not mutually exclusive and a single "agency" may be an acquiring agency, a displacing agency and/or a State agency, or all three, at various times during the performance of its Uniform Act activities.

Most significant is the fact that the 1987 Amendments broadened Uniform Act coverage to provide that a "person" who receives Federal financial assistance is now considered to be included within the definitions of acquiring agency, displacing agency, State agency or agency, depending upon the circumstances. It should be noted that, as a result of the 1987 Amendments, the relocation provisions in Title II of the Uniform Act now apply to all "displacing agencies". That term, as it is defined in the 1987 Amendments, includes all private entities that carry out projects with Federal financial assistance that cause people to be displaced whether or not such entities have the power of eminent domain. The real property acquisition policies and procedures in Title III of the Uniform Act, however, now apply to Federal agencies and to "acquiring agencies" that receive Federal financial assistance. Acquiring agencies are all State and private entities that have the power of eminent domain and such State or private entities without the power of eminent domain, to the extent provided in the lead agency regulations. While the term "Agency" is generally used throughout this proposed part, the proposed part reflects these changes in Uniform Act coverage.

In § 24.2(b) the definition of the term "appraisal" would be shifted from Subpart B to this subpart, without change.

Section 24.2(d) contains a new definition of a "comparable replacement dwelling". The proposed definition is based on the new statutory definition of a comparable replacement dwelling and proposes additional information on the meaning of the terms "functionally equivalent" and "financial means" as used in the definition.

Section 24.2(d)(8)(ii) defines the term "financial means" for a person renting a replacement dwelling. (See Subpart E of this preamble).

Section 24.2(d)(8)(iii) proposes financial means criteria for displaced persons not eligible for payments under §§ 24.401 or 24.402 of Subpart E of this part. It is proposed that such persons, because of their short tenure at the

displacement dwelling, be required to contribute, to the extent they are able, to any increased costs for affordable comparable replacement housing.

Proposed § 24.2(g) expands and modifies the definition of "displaced person" eligible for the benefits of the Uniform Act. The most significant additions to the definition, which derive from the 1987 amendments, bring persons displaced as a direct result of the rehabilitation or demolition of their dwellings within the coverage of the law.

Section 24.2(g)(2)(iv) would apply primarily to certain residential tenants affected by rehabilitation activities undertaken with financial assistance provided by the Department of Housing and Urban Development (HUD). This section indicates that residential tenants who are not required to move permanently from the building or from a nearby building on the real property as a result of such activities are not to be considered displaced persons within the meaning of the Uniform Act if they are provided with specific protections. These include an offer of a lease for a suitable, decent, safe and sanitary dwelling in the same building (or in a nearby building on the real property) under reasonable terms and conditions of continued occupancy, and reimbursement for out-of-pocket costs associated with any temporary relocation (including moving expenses incurred, and any increased rental and/or utility charges which a tenant is required to pay during the period of the temporary relocation to a decent, safe and sanitary dwelling).

This proposed regulation does not directly address an important issue relating to rehabilitation activities. The expanded definition of "displaced person" added by the 1987 Amendments includes residential tenants displaced as a direct result of assisted rehabilitation activities. Considerable controversy has arisen over the question of whether this definition covers a tenant who need not relocate permanently as a result of the physical alteration of his dwelling or a change in its legal ownership, but whose rent is increased significantly following the completion of rehabilitation activities, resulting in the tenant moving elsewhere.

Relocation assistance is now offered such tenants in some programs administered by HUD, but this is done on the basis of administrative requirements not emanating from the Uniform Act. HUD takes the position that a rental increase which prompts relocation is not a direct result of rehabilitation, as is required for

coverage of the Uniform Act, but is an indirect or secondary result of the assisted rehabilitation. While HUD generally agrees that its program regulations should provide for assistance to tenants moving as a result of these rental increases, HUD does not believe that such tenants are covered by the 1987 Amendments. Proposed § 24.2(g)(2)(iv) would not include such tenants within the definition of "displaced person" so long as the other conditions set forth in the section were satisfied.

From 1971 to 1975 HUD regulations implementing the Uniform Act, appearing at 24 CFR Part 42, did contain a provision permitting relocation assistance for those whose rent increased ten percent or more following activities designated "voluntary rehabilitation" under the urban renewal and model cities programs. Such activities under these specified programs were deemed "acquisition" for purposes of establishing eligibility for benefits under the Uniform Act by section 217 of the legislation, which has now been repealed. Nothing in section 217 or elsewhere in the statute addressed this question of rental increases, however. The regulatory provision was included to preserve a policy of the urban renewal program which had been followed since 1965. HUD did not believe that this policy had any basis in the law, and therefore eliminated it from its revised Uniform Act regulations which were published in February, 1975. HUD points out that this policy was not challenged by Congress or in the courts and has remained operative for the last thirteen years. HUD generally supports program regulations which provide relocation assistance to residential tenants that move because of substantial rent increases following rehabilitation, but believes that these regulations must be tailored to each such HUD program, and are not based upon the provisions of the Uniform Act. One effect of this approach would be to limit the uniformity among Federal and federally assisted programs that provide relocation assistance. Such uniformity is a primary goal of the Uniform Relocation Act.

To summarize, the 1987 Amendments alter section 101(6) of the Uniform Act to include as eligible for benefits residential tenants who move as a direct result of rehabilitation. HUD takes the position that Congress did not intend the 1987 Amendments to cover displacement resulting from rent increases that follow rehabilitation since they are the secondary consequence of assisted activities, and

that Congress fully understood and recognized the distinction between the "direct" and the "indirect" results of assisted rehabilitation.

A contrary opinion holds that these rental increases are such an integral and foreseeable consequence of assisted rehabilitation activities that displacement resulting from such increases must be considered to be a direct result of rehabilitation.

It also has been suggested that a further condition be added to proposed § 24.2(g)(2)(iv) to provide that so long as the tenant is offered an opportunity to rent an adequate decent, safe, and sanitary dwelling at a rent that is the same as that paid by the tenant before the project, or 30% of the household's gross income, whichever is greater, such tenant would not be considered a displaced person. If the rent for the dwelling offered to the tenant exceeded the greater of those figures, the tenant would then be considered a displaced person.

We invite public comment on this extremely important issue. Also, comment is solicited on any other federally funded activity which may cause a person to be displaced.

Section 24.2(j) proposes to except any interest reduction payment to an individual for the purchase and occupancy of a residence from the definition of Federal financial assistance. This exception is contained in the 1987 Amendments.

Section 24.2(k)(2) proposes to define the action which is the "initiation of negotiations" for displacements caused by rehabilitation, demolition or certain privately undertaken acquisitions, where there is no related acquisition by a Federal or State agency.

Section 24.2(l) is a proposed addition to this section which simply adopts the statutory definition of the term "mortgage".

Section 24.2(m) proposes a definition of the term "nonprofit organization" that would make it clear that this term refers to those organizations that are exempt from income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Section 24.2(n) proposes to revise the definition of "owner of a replacement dwelling" to include the owner of any dwelling.

Section 24.2(p) includes a new definition of the term "project". The effect of this proposed definition would be to exclude from coverage under this part those actions or activities that result from Federal or federally assisted payments that are made to individuals or families and which are intended

primarily to assist or benefit such individual or family.

Section 24.2(r) contains a proposed definition of the term "small business". It is a simple definition chosen for easy application to the eligibility requirements for the business reestablishment payment which was added by the 1987 Amendments. The proposed use of the number of employees (500) at the affected site as the sole criterion for defining a small business precludes an agency from having to delve into the financial affairs of a displaced business in order to qualify it for payments. This definition includes a business which may be considered a chain operation under the fixed payment criteria of § 24.304(a)(3), regardless of the total number of persons employed throughout the entire business enterprise, provided no more than 500 persons are employed at the affected site. Specific comment on the 500 employee threshold for the definition of a "small business" is solicited.

Section 24.2(u) defines the term "uneconomic remnant" and is shifted unchanged from Subpart B to this subpart.

Section 24.2(v) contains a proposed definition of the term "unlawful occupancy". The proposed definition evasions considerable Agency discretion in determining a person's lawful or unlawful occupancy. It discourages the use of trivial technical violations of codes or leases to deny eligibility for Uniform Act benefits due to unlawful occupancy.

Section 24.2(x) is a proposed definition of "utility costs" as they pertain to residential or commercial consumers.

Section 24.2(y) and (z) are proposed definitions of "utility facility" and "utility relocation" for use in the implementation of § 24.307, Subpart D of this part.

Section 24.4 Assurances, monitoring and corrective action.

Section 24.4(a)(2) is a proposed alternative to the retirement that all agencies seeking Federal financial assistance must submit assurances to funding Federal agencies that they will comply with the Uniform Act and this part. The details of the alternative procedure are found at Subpart G of this part.

Section 24.6 Administration of jointly-funded projects.

This section proposes to implement the new statutory mandate requiring the lead agency to designate one Federal

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agency as the cognizant agency when two or more Federal agencies fund activities in geographic or functionally related areas and when such agencies cannot agree upon which agency's procedures should be followed by the Agency or Agencies carrying out such activities.

Section 24.9 Recordkeeping and reports.

Section 24.9(c) requires that real property acquisition and displacement activities be reported in the format contained in Appendix B of this part. Appendix B proposes the use of a revised report form which has been reformatted, but does not require additional statistical data except for one added entry concerning the new business reestablishment payment. Special consideration and comment on the format and timing of this report is requested.

Section 24.10 Appeals.

Section 24.10(b) contains a proposed modification to accommodate the statutory expansion which allows any issue relating to an aggrieved person's application to be appealed. Because the statute is silent as to what issues should be appealable, it is proposed that any issue affecting a person's eligibility for, or the amount of a payment, including an Agency's failure to grant appropriate waivers in hardship cases could be appealed. This could also include issues involving benefit levels which are subject to Agency discretion.

Subpart B—Real Property Acquisition

Section 24.101(a)(1) would be clarified by including language addressing voluntary transactions. The current language would be removed from Appendix A and changed to eliminate the provisions relating to the location of the property to be acquired; since the essence of a voluntary transaction concerns only the fact that an agency will not acquire the property if an amicable agreement is not reached.

The 1987 Amendments broadened the scope of the real property provisions of the Uniform Act implemented in this subpart to include Federal agencies and acquiring agencies. "Acquiring agency" is defined in the 1987 Amendments to include both State agencies and persons with authority to acquire property by eminent domain; and State agencies or persons without such authority, to the extent provided in the lead agency regulations. (See proposed § 24.2(a)(4)). These regulations propose: in § 24.101(a)(3), to generally exclude a State agency or person without the

power of eminent domain from the requirements of this subpart, but to require that such agency or person (1) clearly advise any property owner, prior to making an offer, that it is unable to acquire the property except through amicable negotiations, and (2) advise the owner of what it believes to be the fair market value of the property, based on an appraisal. Comments are specifically requested on this aspect of the proposed requirements pertaining to an "acquiring agency," particularly with respect to whether these two conditions are adequate to protect persons whose property is purchased by such State agencies or persons acting without eminent domain authority.

Accordingly, it is proposed that this subpart apply to all programs or projects receiving Federal financial assistance, except where (1) the acquisition can be classified as a voluntary transaction, (2) the property to be acquired is in government ownership and cannot be taken by eminent domain, or (3) an Agency or person is acquiring real property with Federal financial assistance, but without the power of eminent domain. However, such agency or person would be required to ensure that an owner is advised of the value of the property, except as provided in § 24.102(c)(2).

Section 24.102(c) proposes to implement the 1987 Amendments which permits waiver of appraisals. An appraisal would not be required by this subpart where the owner is donating the property and releases the acquiring agency from the appraisal obligation. Also it is proposed to permit an acquiring agency to determine that an appraisal is not necessary because the valuation problem is uncomplicated and the estimated fair market value is \$2,500 or less. Such determination could be made where the property is being donated or where the owner is to receive compensation. This proposal is not intended to preclude any acquiring agency from preparing an appraisal whenever it is deemed prudent to do so. The \$2,500 amount is being proposed because it is consistent with § 24.103(e). Specific comment on the \$2,500 amount is requested.

Section 24.102(k) proposes to shift the definition of "uneconomic remnant" to § 24.2(u), Subpart A. The definition is proposed to be revised slightly to conform to the statutory definition, but no difference in meaning is intended.

Section 24.103 proposes to shift the definition of "appraisal" to § 24.2(b), Subpart A, without change. In addition, the term "detailed" would be added before "appraisal" in § 24.103(a). This is

considered to be an editorial change only. These changes would also require some paragraph relettering in this section.

Section 24.108 proposes revised language to conform to the new statutory language. This revision is considered to be editorial and no change in meaning is intended.

Subpart C—General Relocation Requirements

Section 24.204(c)(2) proposes to add payment of utility costs to increased rental costs incurred by persons required to temporarily relocate. This change is consistent with the overall revised policy regarding inclusion of utility costs as part of the monthly housing costs for displaced tenants.

Section 24.205(a) proposes to implement the new statutory requirement for relocation planning in the early stages of program or project development. Included in this proposed section is a suggested outline of the information considered to be essential to meaningful relocation planning. The Congress views effective relocation planning as essential for successful completion of any program or project which displaces persons and this proposed section is designed to reflect that view. Most displacing agencies are well aware of the program or project benefits which can be derived through early and sound relocation planning and many agencies currently use comprehensive planning techniques in project development. We do not, however, view relocation planning as a complicated, time consuming activity. Relocation planning is seen as a process which provides meaningful information to program or project decision makers and it need not result in a detailed document which contains unnecessary data and needless problem solving. Instead, it should be a process which is scoped to the complexity and nature of anticipated program or project relocation activity and should not require a burdensome commitment of Agency resources.

Proposed § 24.205(b) addresses the issue of loans for planning and preliminary expenses under section 215 of the Uniform Act. While the provision in section 215 for certain seed money loans remains a part of the Federal statute, it is not known to have ever been used, despite the existence of detailed implementing regulations in 24 CFR Part 43. Those regulations will be removed and rescinded on April 2, 1989 (53 FR 4964). The reason for the non-use of section 215 is that it provides project

funding for purposes for which project funding is already available under other sections of the Act. For this reason it is not considered appropriate to propose further regulations to implement this provision until such time as there is a demonstrated need to do so.

Section 24.205(c)(2)(vi) proposes to add to the list of persons eligible for advisory services those persons who occupy an acquired property on a short term rental basis by agreement with the Agency. This class of eligible persons was created by the 1987 Amendments.

Section 24.208 proposes to implement the new statutory change which will enable an Agency to take relocation assistance payments into account when determining a low-income person's eligibility for housing assistance.

For editorial purposes, several references in this subpart to other sections in this part have been changed and minor language clarifications have been made.

Subpart D—Payments for Moving and Related Expenses

Section 24.302 proposes a \$50 limitation for fixed residential moving payments to persons who are eligible for payment under the moving expense and dislocation allowance schedule, but who would incur little or no expense in moving their personal property. Special consideration and comment on this limitation is solicited.

Sections 24.304 (a), (c) and (d) propose to add the business reestablishment expense as an expense item which a business must forego when it elects a fixed payment in lieu of the payments for moving and related expenses. This payment, not to exceed \$10,000, was added by the 1987 Amendments and is further described in proposed § 24.306. The amended statute also provides that criteria for the fixed payment be established in this part.

Sections 24.304(a) (1), (3) and (4) contain new proposed criteria for eligibility for the nonresidential fixed payment. Under these proposals a business must (1) own or rent personal property which must be moved and the business itself must vacate the displacement site, (2) the business cannot be part of an enterprise having more than three other entities not being displaced. (This is to correct inequities and hardship frequently suffered by small "chains" where the displaced entity may be its owner's primary source of income), and (3) the business may not be operated solely for the purpose of renting a dwelling to others. (This implements the new statutory exclusion of such business from

eligibility for the fixed payment). Sections 24.304(a) (2) and (5) propose to retain two of the eligibility criteria previously contained in the Uniform Act relating to loss of patronage and material contribution to a person's income.

Section 24.304(d) proposes to establish a standard \$2,500 fixed payment for eligible nonprofit organizations. This recognizes that, while a nonprofit organization may not have taxable income, it can suffer substantial reductions in revenue due to displacement. For this same reason it is proposed that the condition currently in § 24.304(a)(3) that the organization not be part of an enterprise having more than one establishment be eliminated.

Section 24.306 contains the proposed provisions for implementation of the new business reestablishment expenses benefit authorized by the 1987 Amendments. This is a payment intended to assist a small business, farm or nonprofit organization to continue its operation at a new location, under conditions not less favorable than those prevailing prior to displacement. This proposed section contains non-exclusive listings of eligible and ineligible expenses for which reestablishment payments may be made. Although the statute imposes a \$10,000 maximum total amount for this payment, regulatory maximums are proposed for three eligible items. These are for (1) exterior signing to advertise the business, (2) advertisement of replacement location, and most importantly, (3) increased costs of operation at the replacement site. In order to minimize the effect of this payment on the replacement site selection process, particularly in influencing the selection of a far superior replacement site, the amount of the business reestablishment payment which may be applied to expenses for increased costs of operation is limited to \$5,000 over a two year period. It is not considered appropriate that substantial up-grading of business locations or facilities be made solely because public funds may be available for such up-grading. Any enhancements must be reasonable and necessary. The alternative to a monetary cap on costs for up-grading would be to impose a requirement that displacing agencies use a formal comparability process to set limits on expenditures for obviously superior replacement sites. This would, in turn, create additional administrative responsibilities for the displacing agency. Section 24.306(a)(13) proposes that a waiver of the regulatory maximum for this eligible item may be permitted in cases where up-grading cannot be avoided.

Section 24.307 contains proposed implementation requirements for the discretionary reimbursement of expenses incurred by owners of utility facilities which are displaced from publicly owned property by federally funded programs or projects. The authority for such reimbursement is embodied in the 1987 Amendments. This proposed section defines and provides for payment of "extraordinary expenses" incurred by displaced utility facilities. It also proposes eligibility criteria and guidance, in Appendix A, as to how agreement may be reached between the Agency and the utility facility owner on such items as scope of work, betterments, manner of disbursement and amounts of payment.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

In § 24.401(a)(2) a new provision is proposed which would permit a displacing Agency to extend, for good cause, the one-year period during which a displaced homeowner occupant has to purchase and occupy a decent, safe, and sanitary dwelling. This authority is contained in the 1987 Amendments.

In § 24.401(b)(2) a slight change in the wording is proposed to complement the major language changes that would be made in § 24.401(d).

In § 24.401(d) the use of the "annuity" formula for determining the amount to be paid to a displaced homeowner-occupant for increased mortgage interest costs would be eliminated. This method, formerly required by statute, has been a source of numerous windfall and unwarranted payments during past periods of inflation and high mortgage interest rates. For this reason it is proposed that the "annuity" method no longer be used. Instead, a more reasonable and equitable "buydown" approach to payment computation for increased mortgage interest costs is proposed. This method, which previously could only be used for last resort housing cases, was offered as an optional procedure in the interim final rule published by DOT on December 17, 1987. We now propose making the exclusive use of this payment computation method mandatory.

As a special note, the lead agency is giving serious consideration to an alternative approach to compensation for increased mortgage interest costs. This alternative would be a new simplified procedure for the computation and disbursement of this payment. The

simplified procedure is based on a recognition that favorable financing is considered to be a valuable attribute, the loss of which should require a relocation payment to its owner. For this reason, it would be proposed that the displacing agency not impose restrictions upon the disposition of the proceeds that provide compensation for such loss. Therefore, the displacing agency would no longer be required to examine the financial arrangements which the displaced homeowner makes for the purchase of a replacement dwelling in order to determine the amount of the increased mortgage interest payment. The payment determination would be made using a method designed to make it possible for the displaced homeowner to replicate the repayment terms of the existing mortgage(s) on the displacement dwelling, as to both the remaining term of the mortgage(s) and the amount of the monthly payments for principal and interest.

Further, the simplified procedure would permit the payments to be made at a time in the relocation process when it could readily be applied to the downpayment on the replacement dwelling, thereby reducing the balance to be financed and lowering the required monthly payments for such financing. If the displaced homeowner wishes to buy his future mortgage down to an even lower amount with his own funds, even to zero, that is certainly the owner's prerogative and the displacing agency need not follow up to ascertain the terms for the purchase of the replacement dwelling, except in those cases where incidental costs will be claimed by the displaced homeowner.

It is believed that the simplified procedure would accomplish two desirable objectives. First, it would provide a payment to the displaced homeowner at a time when such payment could actually be used for its intended purpose, i.e., applied toward the purchase price of the replacement dwelling, thereby offsetting the impact of any higher new interest rate on the monthly mortgage payment. Too often in the past, the mortgage interest differential payment was not computed until a replacement mortgage had been secured because the computation was based on the amount of the new mortgage. Therefore, when the payment was finally made to the displaced homeowner it was too late to apply the payment amount to the new mortgage in any way that would reduce the monthly mortgage payment amount. Secondly, the use of the simplified "buydown" procedure would significantly reduce

the displacing agency's administrative burden of having to follow through and examine the financial term for every displaced homeowner's replacement dwelling. It would also reduce paperwork burdens imposed on displaced homeowners. Careful consideration and comment on this possible alternative to the "buydown" procedure contained in § 24.401(d) of this subpart is requested.

Section 24.402 Replacement housing payment for 90-day occupants.

It is proposed that § 24.402(b) be substantially revised to meet the new statutory requirement that a low income person's income be taken into consideration when calculating rental assistance payments for comparable replacement housing. To reflect the requirement that income be taken into consideration in the fairest, yet simplest manner, it is proposed that this section depart entirely from the current "make-whole" approach for 90-day occupants and return to a former commonly used base monthly housing cost/monthly income formula for payment determination. It is proposed that an amount representing 30% of average monthly gross household income be used to compute a displaced person's replacement housing payment if the 30% figure is less than the rent actually paid at the displacement dwelling. The 30% figure is proposed as a reasonable percentage of income to be applied to rental housing costs under current market and economic conditions, and is consistent with the percentage of income figures currently being used in other subsidized housing and related programs. Further, the 30% of income test would be applied equally to all 90-day occupants regardless of income. This would assure consideration of income for all low income persons; and, at the same time, eliminate inequities for tenants with marginal incomes which might barely exceed criteria established under other methods for defining low income persons. Finally, because utility expenses are considered to be an integral part of monthly housing costs, it is proposed that these expenses be included in the monthly base housing cost computation.

It is proposed that § 24.402(c) be slightly revised to clarify the new statutory limitations on the amount of downpayment assistance a 90-day occupant may receive and the new agency discretion for modifying those amounts. Specific comment is requested on the issue of special criteria for use in the exercise of Agency discretion under this section. Suggestions are solicited for

methods of promoting uniformity and equity in this process.

Section 24.403 Additional rules governing replacement housing payments.

Because it is proposed that Subpart G, Last Resort Housing, be reformatted and redesignated as § 24.404, § 24.403(b) has been deleted and the balance of § 24.403 has been re-numbered accordingly.

Section 24.404 Replacement housing of last resort.

It is proposed that Subpart G, Last Resort Housing be reformatted and redesignated as § 24.404 in order to emphasize that housing of last resort is not an independent program, but is merely an extension of the replacement housing function. This simply means that, with few exceptions, the same basic eligibility criteria, payment computation methods, and displaced person protections apply equally to all persons eligible for replacement housing. Therefore, it was felt that the proposed melding of the two functions into one subpart might help dispel a common misconception that persons receiving payments under Section 206 of the Uniform Act are separate and distinct from those receiving payments under sections 203 and 204 of the Act, each having rights and entitlements that are different and exclusive.

In addition to the proposed shift to the new subpart, the last resort housing procedures would be revised to reflect a change in section 206(a) of the Uniform Act, as required by the 1987 Amendments. As amended, section 206(a) now specifically authorizes payments in excess of the maximum amounts payable under sections 203 and 204, on a case-by-case basis for good cause. Sections 24.404(a)(1) of this subpart proposes the elements which must be considered in determining "case-by-case for good cause." These elements would all be subject to a fundamental analysis and correlation of the housing needs of persons to be displaced, with the availability of appropriate housing resources to meet those needs, both within the monetary limits for owners and tenants under this subpart and within acceptable time constraints as dictated by project or program need. Failure of any or all of these elements to properly correlate would constitute "case-by-case for good cause" justification for authorizing replacement housing payments in excess of the normal prescribed limits.

Other minor revisions are proposed in the last resort housing section of this subpart. One deals with possible

variations from precise comparability, under limited circumstances; another would permit consideration of financial means, in special cases; but most are technical or editorial language changes for purposes of clarification.

Subpart F—Mobile Homes

Section 24.502 is proposed to be modified and simplified to apply only to the moving of the mobile home dwelling itself. It is considered that other moving expenses incurred by the occupant of the mobile home are adequately covered by § 24.501.

This subpart also contains some minor editorial alterations.

Subpart G—Certification

This subpart proposes implementation of the new process created by the 1987 Amendments whereby the head of a Federal agency may discharge his/her responsibilities under the Uniform Act by accepting a certification by a State agency that it shall accept such responsibility and that it shall conduct its Uniform Act activities in accordance with a State law and regulations which serves the same purpose and effect as the Uniform Act. The subpart proposes a multi-step procedure for the certification process. As part of that process, a major role would be played by the State governor or such person or agency as the governor designates. The certification process is proposed to proceed in the following manner:

1. If a State agency determines that it desires to operate under certified State law and regulations, it may submit a request for certification approval to the governor or State contact designated by the governor.
 2. The designated contact shall review the request and determine the adequacy of the applicable State law and regulations and of the State agency's staffing. If the designated State contact approves the request, it shall forward the request to the Federal funding agency.
 3. The Federal funding agency shall forward all complete requests to the Federal lead agency, along with its assessment of the State agency's capabilities.
 4. The Federal lead agency shall review the material received, solicit comments from the public and local governments, and then make a determination concerning the State agency's ability to satisfy Uniform Act responsibilities under the State law.
- Certification is a new concept for Uniform Act activities. For this reason, special attention and consideration of the proposed process is invited. We are

particularly interested in ideas and suggestions as to how this concept might best be implemented at the State and Federal levels, as well as alternative proposals for the sequencing of the certification process.

Appendix A—Additional Information

Proposed modification of the appendix includes the shifting of several portions of the appendix to the subparts to which they pertain. Discussions relative to these changes are found in the preambles for the appropriate subparts.

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

Explanatory information has been added to this section of the appendix relative to the adjustments required for the "buydown" increased mortgage interest cost payment when a person secures a mortgage on the replacement dwelling which is of a lesser amount than the remaining balance of the mortgages on the displacement dwelling.

Appendix B—Statistical Report Form

The instructions for completing the form propose to include a line item for reporting payments for the new statutory business reestablishment expense entitlement and the report form has been reformatted.

Regulatory Impact

The FHWA has determined that this action does not constitute a major proposed rule under Executive Order 12291 or a significant proposal under the regulatory policies and procedures of the Department of Transportation. Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or has certain other specified effects.

The economic impacts of this proposed rulemaking are primarily mandated by the provisions of the 1987 Amendments. Therefore, a full regulatory evaluation has not been prepared. However, since some of the statutory changes are administrative or procedural, savings to Federal, State, and local agencies should result in the administration of the Uniform Act. Other statutory changes, which alter benefit levels, and expand the Act's application to include certain private persons who receive Federal financial assistance, and persons displaced by certain nonacquisition activities, should result in a modest increase in amounts paid under the Uniform Act.

However, we do not believe that the proposed regulations will have an annual economic effect of \$100 million or more, or the other effects listed in the Executive Order. For this reason, we have determined that these proposed regulations are not a major rule within the meaning of the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact on a substantial number of small entities" an analysis be prepared describing the rules impact on small entities, and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities.

The provisions of the Uniform Act that are implemented in this proposed rule have not changed substantially. The primary impact of the 1987 Amendments is expected to be an increase in benefits provided to small businesses, the elimination of unnecessary administrative requirements imposed on State and local agencies, and the consequent reduction of burden on those affected entities, and the expansion of the Act's application to those private entities that seek and receive Federal financial assistance.

Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Requirements

Today's proposed rule would make one change to the Uniform Act Report form, which is contained in Appendix B of Part 24. A new item, 7A, would be added to obtain information relating to the new business reestablishment payment added by the 1987 Amendments. Several minor editorial changes would also be made in this form. If these proposed changes are adopted, the revised form will be submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h), the Paperwork Reduction Act, Pub. L. 98-511.

Federalism Assessment

As discussed in the Supplementary Information sections of this preamble, this proposed rule builds upon the positive Federalism accomplishments achieved in the promulgation of the governmentwide common rule on February 27, 1986 (51 FR 7000) which significantly reduced administrative burdens on States and local recipients of

Federal financial assistance. The FHWA has determined that the Federalism accomplishments of the common rule are retained in today's rule and any proposed changes are fully consistent with the principles and criteria contained in Executive Order 12612 and do not have sufficient further Federalism implications to warrant the preparation of a complete Federalism Assessment.

This proposed rule implements a provision of the 1987 Amendments that gives substantial additional discretion to the States. This is the certification procedure which provides an alternative whereby State agencies, with adequate authority under State law, can comply with the Uniform Act with a minimum amount of Federal supervision or oversight. As proposed, this certification procedure would give maximum authority and control to the State governor, or his or her designee, in managing and coordinating the certification procedure in each State.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Issued on: July 15, 1988.

Robert E. Farris,
Federal Highway Administrator.

It is proposed to amend Title 24 of the Code of Federal Regulations by revising Part 24 to read as follows:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.

- 24.1 Purpose.
- 24.2 Definitions.
- 24.3 No duplication of payments.
- 24.4 Assurances, monitoring and corrective action.
- 24.5 Manner of notices.
- 24.6 Administration of jointly-funded projects.
- 24.7 Federal agency waiver of regulations.
- 24.8 Compliance with other laws and regulations.
- 24.9 Recordkeeping and reports.
- 24.10 Appeals.

Subpart B—Real Property Acquisition

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.
- 24.106 Expenses incidental to transfer of title to the Agency.
- 24.107 Certain litigation expenses.
- 24.108 Donations.

Subpart C—General Relocation Requirements

- 24.201 Purpose.
- 24.202 Applicability.
- 24.203 Relocation notices.
- 24.204 Availability of comparable replacement dwelling before displacement.
- 24.205 Relocation planning, advisory services, and coordination.
- 24.206 Eviction for cause.
- 24.207 General requirements—claims for relocation payments.
- 24.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

- 24.301 Payment for actual reasonable moving and related expenses—residential moves.
- 24.302 Fixed payment for moving expenses—residential moves.
- 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 24.304 Fixed payment for moving expenses—nonresidential moves.
- 24.305 Ineligible moving and related expenses.
- 24.306 Reestablishment Expenses—nonresidential moves.
- 24.307 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

- 24.401 Replacement housing payment for 180-day homeowner-occupants.
- 24.402 Replacement housing payment for 90-day occupants.
- 24.403 Additional rules governing replacement housing payments.
- 24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

- 24.501 Applicability.
- 24.502 Moving and related expenses—mobile homes.
- 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.
- 24.504 Replacement housing payment for 90-day mobile home occupants.
- 24.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Certification

- 24.601 Purpose.
- 24.602 Certification application.
- 24.603 Monitoring and corrective action.
- Appendix A to Part 24—Additional Information.
- Appendix B to Part 24—Statistical Report Form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48 (dd).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§ 24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State, State agency, or person that acquires the real property or displaces a person.

(1) *Federal agency.* The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) *State agency.* The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(3) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(4) *Acquiring agency.* The term "acquiring agency" means a State agency, as defined in paragraph (a)(2) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such

authority, unless any such Agency or person is acquiring property pursuant to the provisions of § 24.101(a)(1), (2) or (3).

(5) *Displacing agency.* The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(b) *Appraisal.* The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e), plus any additional amount required to be paid under Subpart E of this part, last resort housing.

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income. Such rental assistance must be paid under last resort housing provisions in Subpart E of this Part for a period of 42 months.

(e) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the

taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5000; or

(2) Had average annual net earnings of at least \$1000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(f) *Decent, safe and sanitary dwelling.* The term "decent, safe and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climate conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(7) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(8) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(9) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(10) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(11) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(12) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(13) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(14) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(15) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(16) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(17) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(18) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(19) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(20) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(21) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person.* (1) *General.* The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project. This includes a person who does not meet the length of occupancy requirements of section 203 or 204 of the Uniform Act.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also § 24.403(e)), unless the Agency determines that the person was displaced as a direct result of the program or the project;

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A tenant-occupant of a dwelling who has been notified on a timely basis that he or she will not be displaced by the project, provided that:

(A) The tenant is offered a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or nearby building on the real property;

(B) The terms and conditions of continued occupancy are reasonable and set forth in a lease which is offered to the tenant; and

(C) If the tenant is required to relocate temporarily, the conditions of the temporary relocation shall be reasonable; the tenant shall be reimbursed for the actual out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent/utility costs; and the temporarily occupied dwelling shall be decent, safe and sanitary.

(v) An owner-occupant who moves as a result of an acquisition that is not

subject to the requirements of Subpart B of this part or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.)

(vi) A person who the Agency determines is not displaced as a direct result of a partial acquisition;

(vii) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(viii) An owner-occupant who voluntarily sells his or her property, as described at § 24.101(a) (1) or (3), after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; or

(xi) A person who is determined to be in unlawful occupancy (see paragraph (v) of this section) or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations for the property.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(m) *Nonprofit organization.* The term "nonprofit organization" means an organization that is exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(n) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(1) Fee title, a life estate, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (n) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(o) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(p) *Project.* The term "project" means any action or series of actions undertaken by a Federal agency or with Federal financial assistance that are designed primarily to further or complete an activity or program that will benefit the public as a whole. It does not include an action or series of actions undertaken by an individual or family with Federal financial assistance if such assistance is intended primarily to assist or benefit such individual or family.

(q) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(r) *Small business.* A business having not more than 500 employees working at the site being acquired or permanently displaced by a program or project.

(s) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(t) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(u) *Uneconomic remnant.* The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and

which the acquiring agency has determined has little or no value or utility to the owner.

(v) *Unlawful occupancy.* A person is considered to be in unlawful occupancy when such person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations for the acquisition of the occupied property. At the discretion of the displacing agency, squatters who occupy real property without the permission of the owner may be considered to be in unlawful occupancy. Technical violations of law and unlitigated violations of the terms of a lease, such as having an unauthorized pet or withholding rent because of improper building maintenance, do not render a person's occupancy unlawful for purposes of this section.

(w) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

(x) *Utility costs.* The term "utility costs" means expenses for heat, lights, water and sewer.

(y) *Utility facility.* The term "utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(z) *Utility relocation.* The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequency of project construction.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances.* (1) Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with Section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to Sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart C of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the

notice described at § 24.103(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part shall be in compliance with all applicable laws and implementing regulations, including the following:

- (a) Section I of the Civil Rights Act of 1968 (42 U.S.C. 1982 *et seq.*).
- (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12250.

(h) Executive Order 11240—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) Executive Order 12250—Leadership and Coordination of Fair Housing in Federal Programs.

(k) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234).

(l) Executive Orders 11868, Floodplain Management, and 11990, Protection of Wetlands.

(m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the

person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.*

The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal project, and to projects where there is Federal financial assistance in any part of project costs except for:

- (1) Voluntary transactions when the acquiring agency has the power of eminent domain, but it will not acquire the property in the event negotiations

fail to result in an amicable agreement, and the owner is so informed in writing.

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring agency does not have the authority to acquire the property through condemnation.

(3) Projects or programs undertaken by an acquiring agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property, based on an appraisal.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the requirements of this subpart apply to the acquisition of fee title, subject to a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the extent practicable under State law. (See § 24.1(a).)

§ 24.102 Basic acquisition policies.

(a) *Expedient acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the Agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.*

(1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.101(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at

\$2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant

delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(u).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the

real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 24.103 Criteria for appraisals.

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practices for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted under applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(q)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend

approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(q).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the

Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(g).

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) Ninety-day notice.

(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days

before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a

substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should include an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that may be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of last resort housing actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced

and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services.* (1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see § 24.6, Subpart A.)

§ 24.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in this part. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later. This section applies only if the Agency had intended to displace the person.

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expedient payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency

determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration, except that the expense and dislocation allowance to a person occupying a furnished one-room unit shared by more than one other person, or a person whose residential move is performed by an Agency at no cost to the person, shall be limited to \$50.

§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property describe at § 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to

adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good-faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated costs shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at

the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified

staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 24.304 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.303 and 24.306. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of \$2,500, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different

period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.306(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § 24.303(a)(3) and § 24.306(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

§ 24.306 Reestablishment expenses—nonresidential moves.

In addition to the payments available under § 24.303 of this subpart, a small business, as defined in § 24.2(r), farm or nonprofit organization may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business

operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed \$1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed \$1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Increased costs of operation during the first two years at the replacement site, not to exceed \$5,000, for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a)(3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the \$10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

(6) Payment to a person whose sole business at a displacement dwelling is the rental of such dwelling to others.

§ 24.357 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §§ 24.2(y) and (z)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is permitted by State statute.

(b) For the purposes of this section the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in

value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, § 24.307.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court; or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date such person is initially offered a comparable replacement dwelling, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c) (4) (iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section.

The payment shall be an amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d) (1)–(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balances on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buydown determination, the payment will be prorated and reduced accordingly. (See Appendix A.)

In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling regardless of the term of the new mortgage.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known and the payment

shall be made available at the time of closing on the replacement dwelling.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with § 24.402(b).

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See also § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances; or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.)

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(g), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment.*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(a)(2)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market

value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(f).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling; or
- (2) Purchases and rehabilitates a substandard dwelling; or
- (3) Relocates a dwelling which he or she owns or purchases; or
- (4) Constructs a dwelling on a site he or she owns or purchases; or
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the

payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

§ 24.404 Replacement housing of last resort.

(a) Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternate assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

- (i) The availability of comparable housing in the project or program area; and
- (ii) The resources available to provide comparable housing; and
- (iii) The individual circumstances of the displaced person; or

(2) By a determination that:

- (i) There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area; and, therefore a case-by-case justification for last resort housing assistance is not necessary; and

(ii) A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs. (Will project delay justify waiting

for less expensive replacement housing to become available?)

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation, and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(i) Replacement housing based on space and physical characteristics different from those in the displacement dwelling. (See Appendix A, § 24.404.)

(ii) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence.

(iii) The financial means of a displaced person who is not eligible to receive a replacement housing payment because of failure to meet length-of-occupancy requirements when comparable replacement rental housing is not available at rental rates within 30% of the person's gross monthly household income.

Subpart F—Mobile Homes

§ 24.501 Applicability.

This Subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this Subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 24.502 Moving and related expenses—mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile home site is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with § 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.503(a)(3), the owner is not eligible for payment for moving the mobile home.

(b) The following rules apply to payments for actual moving expenses under § 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be economically feasible to

incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

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(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(a)(3).

§ 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling.* (1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home, (ii) The cost of any necessary repairs or modifications, and (iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under the part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part,

he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

§ 24.602 Certification application.

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency.*

(1) The State agency's application shall be submitted to the governor, or his or her designee, for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Federal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall: (i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in (ii), (iii) and (iv), unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(ii) Analyze the extent to which the provisions of the applicable State laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the

State, as well as the views of interested Federal and State agencies; and consider all comments received as a result;

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

§ 24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) A Federal agency that has accepted a State Agency's certification pursuant to this subpart may withhold its approval of any Federal financial assistance to or contract or cooperative agreement with such State agency if it is found by the Federal agency to have failed to comply with the applicable State law and regulations.

(c) A Federal agency may, after consultation with the lead agency, and notice and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

Appendix A To Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2(j) Definition of comparable replacement dwelling.

The requirement in § 24.2(d)(2) that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be

capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequently less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(g)(2) Persons not displaced.

Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessary that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing

must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

Section 24.2(k) Initiation of negotiations.

This section of the part provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9(c) Reports.

This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101(b) Less-than-full-fee interest in real property.

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures.

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement.

This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession.

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, where there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental.

Section 301(e) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value . . . to a short-term occupier." The Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103(a) Standards of appraisal.

In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation.

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be

penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest.

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, § 23.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is \$2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at \$2,500, or less.

Section 24.104 Review of appraisals.

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.108 Expenses incidental to transfer of title to the Agency.

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements**Section 24.204(a) Availability of comparable replacement dwelling before displacement.**

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this

section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.206 Eviction for cause.

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied such requirements there is no basis for changing that determination.

Section 24.207 General requirements—claims for relocation payments.

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.

Subpart D—Payment for Moving and Related Expenses**Section 24.307 Discretionary utility relocation payments.**

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR, Part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments**Section 24.401 Replacement housing payment for 180-day homeowner-occupants.**

The provision in § 24.401(c)(4)(ii) to use the current fair market value for residential use does not mean the Agency must have an appraisal made. Any reasonable method of arriving at the fair market value may be used.

The provision in § 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages.

In any case where the person elects to obtain a replacement mortgage of a lesser amount than the one computed in the buydown determination, then the amount computed as the "buydown" payment must be adjusted to reflect the change in mortgage amount. This can be done through proration by dividing the amount of the actual

replacement mortgage by the computed eligible replacement mortgage amount. This calculation provides a percentage factor which can then be applied to the computed "buydown" amount resulting in an adjusted increased mortgage interest payment.

Section 24.402 Replacement housing payment for 90-day occupants.

The downpayment assistance provisions in § 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or indiscriminate fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.404 Replacement housing of last resort.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may vary from the usual standards of comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Section 24.404(b) Basic rights of persons to be displaced.

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement.

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. **Report coverage.** This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.

2. **Report period.** Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1–September 30.

3. **Where and when to submit report.** Submit an original and two copies of this report to (Name and Address of Federal Agency) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. **How to report relocation payments.** The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. **How to report dollar amounts.** Round off all money entries in Parts B and C to the nearest dollar.

6. **Statutory references.** The references in Part B indicate the Section of the Uniform Act that authorizes the cost housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(n). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing replacement housing.

The use of cost effective means of providing replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Subpart F—Mobile Homes**Section 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.**

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

Part A. Persons Displaced

Report in Part A the number of persons ("households," "businesses," and "farms") who

were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, not by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation Payments and Expenses

Columns (A) and (B). Report in Column (A) the number of claims approved during the report year. Report in Column (B) the total amount represented by the claims reported in Column (A).

Lines 7A and 8, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

Lines 12A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with Section 206(a) of the Uniform Act. Report in Column (B) the total financial assistance under Section 206(a) allocable to the households reported in Column (A). (If a household received financial assistance under Section 203 or Section 204 as well as under Section 206(a) of the Uniform Act, report the household as a claim in Column (A), but in Column (B) report only the amount of financial assistance allocable to Section 206(a). For example, if a tenant-household receives a payment of \$7,000 to rent a replacement dwelling, the sum of \$5,250 shall be included on Line 10, Column (B), and \$1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under Section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

Part C—Real Property Acquisition Subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

BILLING CODE 4910-22-8

UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__

REPORTING AGENCY _____

CITY/COUNTY/STATE _____

FEDERAL FUNDING AGENCY _____

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	TOTAL (A)	OWNERS (B)	TENANTS (C)
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. OF CLAIMS (A)	AMOUNT (B)
4. PAYMENTS FOR MOVING HOUSEHOLDS !ACTUAL EXPENSES-SEC.202(A)		
5. PAYMENTS FOR MOVING HOUSEHOLDS !SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC.202(B)		
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO !ACTUAL EXPENSES-SEC.202(A)		
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO !IN LIEU PAYMENTS-SEC.202(C)		
7A. NO. OF CLAIMS AND AMOUNT ON LINE 4 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES		
8. REPLACEMENT HOUSING PAYMENTS FOR 180 DAY HOMEOWNERS-SEC.203(A)		
9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS		
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC.204(1)		
11. NONPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC.204(2)		
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC.204(A) !OWNERS		
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC.204(A) !TENANTS		
13. RELOCATION ADVISORY SERVICES COSTS-SEC.205	!!!!!!!!!!!!!!	
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9	!!!!!!!!!!!!!!	
15. RELOCATION BRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM		!!!!!!!!!!!!!!

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. PARCELS (A)	COMPENSATION (B)
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		!!!!!!!!!!!!!!

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Thursday
July 21, 1988

Part III

Department of
Transportation

Federal Highway Administration

49 CFR Part 383
Commercial Driver Testing and Licensing
Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

(FHWA Docket No. MC-87-18)
RIN 2125-AD68Commercial Driver Testing and
Licensing StandardsAGENCY: Federal Highway
Administration (FHWA), DOT.
ACTION: Final rule.

SUMMARY: The FHWA is amending Part 383 of the Federal Motor Carrier Safety Regulations (FMCSRs) to establish minimum standards for State testing and licensing of commercial motor vehicle (CMV) drivers, in keeping with the Commercial Motor Vehicle Safety Act of 1986 (the Act). The FHWA, with this rulemaking, is establishing standards which include commercial driver licensing and testing procedures to be used by the States; knowledge, skills, and abilities which drivers of different types of CMVs must possess; and the information to be contained on the commercial driver's license (CDL) issued by the States. The standards also require that CMV drivers take and pass the appropriate knowledge and skills tests by April 1, 1992, in order to be qualified and licensed to operate a CMV. These actions are being taken to improve the safe operation of CMVs, and to help reduce truck and bus accidents and injuries by effecting minimum Federal standards for the qualification of CMV operators, as called for in the Act.

In addition, the FHWA published a request for comments on several petitions for waivers from various requirements of the Act for certain groups of drivers on April 14, 1988 (53 FR 12504; FHWA Docket No. MC-88-8). These groups included farmers, firefighters, transit workers, active duty military personnel, certain railroad employees and employees of public utilities. Specifically, the FHWA requested public comment on whether, if granted, the waivers would serve the public interest or diminish public safety as required by the waiver provisions included in the Act. The comment period closed on May 14, 1988, and the FHWA received over 2000 comments. These comments are being analyzed and a separate action will address them in detail.

EFFECTIVE DATE: August 22, 1988, except for § 383.23, which will be effective April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Standards

Review Division, Office of Motor Carrier Standards, (202) 366-4009, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20580. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Currently, only 32 States issue some form of a classified driver's license (i.e., a license which makes a distinction between types of vehicles the holder may operate). Of these, only 12 require State-conducted, behind-the-wheel testing of all applicants in a vehicle which represents the type which the driver operates or expects to operate. The other 20 States waive testing if the applicants meet certain conditions, such as certification of training and testing by their employer, and two States recognize training schools. The remaining 18 States and the District of Columbia do not require applicants to demonstrate their driving skills in the types of vehicles they drive or intend to drive, nor do they require certification of training and testing by the employer or a recognized training school. Drivers in these States who may be qualified to drive only a passenger car may also drive an 18-wheeler or a three-axle intercity bus.

The Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99-570) to address these problems. Section 12005 of the Act directs the issuance of minimum testing standards to ensure the fitness of drivers of CMVs. In general, the standards must include written and driving tests. The written tests must cover the driver's knowledge of Federal regulations related to the safe operation of CMVs contained in Title 49 of the FMCSRs (49 CFR Chapter III) and knowledge of the vehicle's safety systems. The skills tests must be taken in a vehicle representative of the type of vehicle that each person operates or expects to operate. Also, the standards must ensure that persons are qualified to operate a CMV according to regulations published in the FMCSRs, to the extent that these regulations are applicable to such persons. In addition, the standards must ensure that drivers of CMVs which contain hazardous materials are qualified to operate such vehicles and have a working knowledge of the hazardous materials regulations. Finally, minimum scores for passing the tests must be established.

Section 12006 requires establishment of minimum uniform standards for issuance of CDLs by States. At a

minimum, each person to whom a CDL is issued must pass written and driving tests that meet the established standards. Also, CDL documents must contain certain information and be tamperproof.

Section 12009 delineates requirements with which States must comply in order to avoid having Federal-aid highway funds withheld. Some of these requirements are related to issuance of a CDL and must be addressed in the driver licensing procedures. Generally, these requirements define the conditions which must be met for a State to issue a CDL, the information a State must provide to the Commercial Driver's License Information System (CDLIS) about its CDL holders, and the checks a State must make of each applicant's driving record before issuing the CDL.

Section 12011 of the Act provides for the withholding of funds from States which fail to substantially comply with any of the requirements listed in section 12009(a). This final rule addresses a portion of those requirements. Thus, a State that is not in substantial compliance (throughout Fiscal Year 1993 and subsequent years) with this and other regulations issued pursuant to the Act could lose 5 percent of its Federal-aid highway funds in Fiscal Year 1994, and 10 percent in later years. At a later date, the FHWA will propose in the Federal Register, for State and public comment, a definition of "substantial compliance" and the means of assuring it for the purposes of the withholding provisions of the Act.

Throughout implementation of the Act, the FHWA has solicited comment from the States, industry, and the general public. These cooperative efforts have helped to ensure the commercial driver's licensing program is effective and practical. The notice of proposed rulemaking (NPRM) requested comment to Docket MC-87-18 on three alternative approaches to establishing testing and licensing programs in consonance with the Act. In addition, the NPRM identified and sought comment on numerous issues associated with program implementation. To stimulate public comment and discussion, the FHWA organized four public forums—in Washington, DC, Atlanta, St. Louis, and Los Angeles—at which 60 persons testified on behalf of a full range of public agencies and private associations and enterprises. In addition, over 1,200 parties submitted comments to Docket MC-87-18.

Following is a listing of the comments submitted to Docket MC-87-18 by major categories:

NTSB.....	1
State agencies.....	30
State-related groups.....	3
Trucking industry and related parties.....	21
Bus industry and related parties.....	20
General trade associations.....	12
Insurance industry.....	3
Public interest associations.....	2
Farmers protesting rule or seeking waiver.....	1,019
Others protesting rule or seeking waiver.....	28
Other individuals.....	43
Total.....	1,200

The FHWA expects to assess whether and what types of duplication or overlap may exist between testing requirements of the CDL program and the requirements in Part 381 of the FMCSRs. This will be part of the FHWA's continuing efforts to ensure that the CDL program is practical and effective. Any reduction or elimination of burdens on drivers, States, or motor carriers that may be realized as part of this assessment would be incorporated into future rulemaking actions.

The rest of this supplementary information section summarizes the major differences between the NPRM and this final rule, discusses the FHWA's selection among the alternative approaches proposed in the NPRM, and presents a section-by-section analysis of the rule.

Major Differences Between NPRM and
Final Rule

In response to the many public comments on the NPRM, and FHWA has incorporated numerous changes and refinements in this final rule, all of which are discussed in detail further below. With respect to certain issues prominently raised in the NPRM or by the respondents to the docket, the FHWA has:

- (1) Selected Alternative 2 as the basis for the final rule.
- (2) Eliminated the Commercial Driver's Certificate (CDC), and replaced it—for foreign drivers only—with a "Nonresident CDL."
- (3) Eliminated the requirement that a State check an applicant's record with all other States.
- (4) Clarified which applicants may, at the discretion of the State, substitute driving record and other qualifications for their CDL skills tests.
- (5) Adopted a three-tiered vehicle classification system, based on weight and configuration, and added a passenger endorsement available in all three vehicle groups.

(6) Eliminated the air brake endorsement and substituted a restriction.

(7) Eliminated the skills test in a tank vehicle.

(8) Enhanced the flexibility accorded to the States with regard to knowledge and skills requirements.

(9) Allowed the States the leeway to establish their own knowledge and skills test performance standards.

(10) Omitted any specification for CDL document format.

The changes listed above only partially reflect the differences between the NPRM and the final rule; the section-by-section analysis presents the specifics and rationale of all such changes.

Selection Among Alternative
Approaches

Development of Alternatives

The Congress passed the Act because of public concern for improving safety on the Nation's highways. To remedy this concern and to assure the public that all CMV operators possess at least the minimum knowledge and skills necessary to safely operate their vehicles, the Act directed the Secretary to develop minimum testing and licensing standards which all States must meet. In response to this mandate, the FHWA, in its NPRM of December 11, 1987, considered whether to propose specific standards or more general standards that would give the States greater discretion in implementing the testing and licensing programs mandated by the Act. The FHWA decided to propose two principal alternatives for consideration by the States and other interested parties, and a third alternative that would allow States to use either of the two main alternatives.

Under NPRM Alternative 1, the States would have to develop and implement a CMV driver licensing program meeting the requirements of the Act without specific directions on program content. A State would be required to submit its testing and licensing plan to the FHWA explaining how its licensing program meets the requirements in the Act. The FHWA would then review each plan to determine whether it is likely to be effective in determining whether a person is qualified to operate a CMV.

Under NPRM Alternative 2, the FHWA would issue specific minimum standards, especially with regard to application procedures, the content of basic tests, and methods of testing. States would have to meet those specific

testing and licensing standards in order to satisfy the requirements of the Act. Under Alternative 2, the States also would have flexibility to exceed the prescribed Federal standards in all areas, and would benefit from considerable leeway in implementing many of the prescribed minimum standards.

Under NPRM Alternative 3, each State would elect either to participate in the iterative process described in Alternative 1, or to adhere to the requirements of Alternative 2.

In several areas, the FHWA proposed identical provisions for each of the three alternatives. These areas included the vehicle classifications, license endorsements, conditions States must meet to "grandfather" certain drivers, and information to be contained on the license document. Thus, while Alternatives 1 or 3 would have provided greater flexibility to the States, these alternatives required uniform minimum standards in the above areas.

Public Response to the Alternatives

In the NPRM, the FHWA solicited comments on the desirability of each of the three alternatives. As indicated in Exhibit 1, Alternative 2 garnered strong support from the overwhelming majority of respondents in virtually all categories, including: The NTSB; four-fifths of the States and the District of Columbia; the American Association of Motor Vehicle Administrators (AAMVA); trucking industry associations, carriers, and the International Brotherhood of Teamsters (IBT); general trade associations; the insurance industry; and public interest groups. Only transit and school bus interests endorsed Alternative 1 to any appreciable degree.

Of the States and the District of Columbia, 40 preferred Alternative 2; five argued for Alternative 1; and five supported Alternative 3. Dual opinions emerged from the docket responses of two transportation-related agencies in one State. In compiling these State totals, the FHWA first used the direct State responses to the NPRM docket. When a State did not submit a docket response, or did not address the alternatives issue in its response, the FHWA made use of a survey conducted and submitted to the docket by AAMVA. Thus, the FHWA gleaned 29 State responses on this issue directly from the docket, and 22 State and District of Columbia responses by means of the AAMVA submittal.

Exhibit 1—Stratified Tally of Preferences for Alternatives 1, 2, and 3

Respondent category	Total responses	Preferences by alternative			
		Alt 1	Alt 2	Alt 3	No opinion
NTSB	1		1		
States and D.C.:					
Direct responses to FHWA	29	5	19	4	1
Responses thru AAMVA	22	0	21	1	0
State/D.C. totals	51	5	40	5	1
State-related:					
AAMVA	1		1		
Natl. Conf. of State Legislatures	1				1
Essex Corp.	1		1		
Trucking industry and related parties:					
Trucking Associations	9		9		
Motor Carriers	9		7		1
Unions	1		1		
Driver Education Industry	3		3		
Bus industry and associations:					
Public Transit Industry:					
Carriers	6	4	1		1
APTA	1		1		
Private Bus Industry: Am. Bus Assoc.	1		1		
School Bus Industry:					
Wisconsin	18	18			
All others	3	1	1		1
Trade associations:					
General Industry	9		9		1
Agriculture	2	1			1
Assoc. of Am. Railroads	1		1		
Insurance Industry	3		3		
Public interest associations:					
AAA	1		1		
HUFSA	1		1		
Individuals	6	1	3	1	1

Selected Alternative

Based on the substance and volume of the arguments in the docket, which emphasized Alternative 2 as best meeting the Congressional mandate for minimum uniform Federal standards for the CDL program, the FHWA has selected Alternative 2 as its conceptual framework for the final rule. Thus, the final rule consists of NPRM Alternative 2, as modified in light of the comments to the docket. These modifications are described in the section-by-section analysis, which appears later in this preamble.

Issues and Arguments Underlying the Selected Alternative

In reviewing the docket, the FHWA identified several major issues bearing on the selection among alternatives. This part of the supplementary information section analyzes those issues, and shows how the Alternative 2 approach—as incorporated in the final rule—responds to them in comparison with Alternative 1.

The comments in favor of Alternative 3 were essentially the same as those supporting alternative 1 because Alternatives 3 and 2 differed largely in the former's inclusion of Alternative 1 as an option open to the States. Three respondents—the NTSB, the American Trucking Associations, Inc. (ATA), and

the Commonwealth of Pennsylvania—asserted that Alternative 3 was inferior to Alternative 1 because it would establish two completely different administrative paths for the States and the FHWA. As the NTSB stated, "Alternative 3 raises questions and problems that do not exist if either of the primary alternatives is chosen. There would be additional administrative burdens as FHWA attempts both to establish national standards and review and approve State plans." The ATA likewise opposed Alternative 3 "because it would exacerbate the problem (of lack of uniformity of licensing standards) by allowing two entirely different approaches to the establishment of licensing standards." For all of these reasons, the following discussion confines itself to the primary choices, Alternatives 1 and 2.

Federalism

This regulation has obvious Federalism implications because it will have a substantial direct effect on the States. This direct effect will result from the introduction of statutorily mandated minimum Federal standards for the testing and licensing of CMV operators. However, the FHWA has adhered strictly to the criteria of Executive Order 12612, "Federalism," in writing this rule. Specifically:

(a) The FHWA has closely examined the statutory authority supporting this action, and has carefully assessed its necessity. The rule derives its authority from the Commercial Motor Vehicle Safety Act of 1986, which requires the Secretary to "issue regulations to establish minimum Federal standards for testing and ensuring the fitness of persons who operate commercial motor vehicles," and to establish "minimum uniform standards for the issuance of commercial drivers' licenses by the States and for information to be contained on such licenses." (Pub. L. 99-570, sections 12005 and 12006.) The necessity for this action resides in the need for improved highway safety with respect to CMVs. For example, in 1985, medium and heavy trucks were involved in 12.3 percent of all fatal highway accidents, but accounted for only 4.9 percent of vehicle-miles traveled and approximately 2 percent of registered vehicles. Owing to this disproportionate involvement of CMVs in highway fatalities, the Congress found that minimum Federal standards for State testing and licensing of CMV operators were necessary to help assure that such drivers have the knowledge and skills necessary to operate their vehicles safely. Thus, this action is both authorized and necessary.

Moreover, the FHWA has consulted the States and relied heavily on their collective experience before implementing this action. The NPRM yielded comments on the proposed minimum uniform Federal standards from 29 States, and the other States expressed their opinions through the AAMVA. As Exhibit 1 indicates, the States and the District of Columbia overwhelmingly endorsed Alternative 2. With the changes introduced in this final rule to augment the flexibility available to the States, the FHWA believes that an even higher proportion of States will favor the conceptual basis of this rulemaking. Furthermore, the FHWA has constructively addressed many of the comments to the docket from those States supporting Alternative 1 or Alternative 3.

(b) Because the CMV safety problem is national in scope, it is necessary to have the reciprocity among the States that is mandated by the provisions of the Act. While this action establishes minimum standards for the issuance of CDLs, it does not in any way alter the basic role of the States in issuing driver's licenses.

(c) While specifying minimum uniform Federal standards for CMV operator testing and licensing, Alternative 2 grants to the States the maximum administrative discretion possible. Not only may each State choose to impose its own higher standards in every facet of the program, but the States will also benefit from significant flexibilities in applying the minimum standards. Indeed, the "flexibility" section below identifies (in Exhibit 2) 19 sample areas in which the States will exercise considerable latitude within the minimum standards.

(d) The language of the enabling legislation requires the establishment of uniform national standards for this program. However, the FHWA has carefully considered the comments of the States and their organizations in formulating these standards. In addition, the FHWA has worked closely with State officials in their independent efforts to develop materials and procedures with which to implement the CDL Program. Federal/State cooperation has also characterized the development of the CDLIS, an integral part of the total program.

This final rule, based on Alternative 2 in the NPRM, therefore, conforms fully to the letter and spirit of the Federalism Policymaking Criteria issued by the President.

Federal Involvement as Viewed by Respondents

The docket responses substantiated the FHWA's assessment of the Federalism implications of Alternative 2. Only a few responding organizations equated Alternative 2 with undue Federal interference in internal State prerogatives. On the other hand, at least one respondent argued that the Federal review and approval process embodied in Alternative 1 could lead to a more intrusive Federal presence than would be the case in Alternative 2. Thus, Pennsylvania observed:

While on the surface, Alternative 1 seems to provide greater flexibility for the States, in reality, there will be minimum standards that FHWA will utilize to judge whether a State's program is acceptable or not. However, these standards will not be openly discussed or developed Although [Alternative 1] provides the guise of State flexibility, it actually allows FHWA more latitude in interpreting without State comment what constitutes an acceptable program. A State could make an enormous investment in the development of a test only to have it rejected . . . because it is deemed "ineffective" by FHWA. However, "effectiveness" is not defined within the proposed rules [for Alternative 1]. Therefore, we feel that Alternative 2 provides States with more latitude in developing their testing programs by providing [them] with clear minimum guidelines for the program.

The Alternative 1 process would require each State to submit a planning document for FHWA review by July 15, 1989. The FHWA, in turn, would have 90 days to review each plan and issue a determination. The NPRM analysis states that the FHWA would judge whether each plan is "likely to result in an effective program that insures that only qualified driver applicants are licensed."

Given the short-time frame to evaluate 51 State and District of Columbia plans, however, the FHWA would have had to develop a set of "checklist" criteria against which discrete elements of each State plan would be judged.

Consonance With Goals of the Act

In issuing the NPRM, the FHWA determined that all three Alternatives would accord with the goals of the enabling legislation. However, the CDL program, far from being a unilateral Federal effort, will succeed or fail due to the degree of cooperation of a host of parties including the State motor vehicle administrations, carriers, drivers, and trade associations. The FHWA thus requested public comment on the desirability of each of the alternatives. Most respondents—including the groups critical to program implementation—

have asserted that only Alternative 2 provides the minimum uniform Federal standards called for in the Act. Exemplifying these responses, the State of Illinois writes: "Alternative 2 is the only alternative that professionally addresses the problems which generated (the Act) in the first place." By contrast, the respondent organizations overwhelmingly perceive Alternatives 1 and 3 as antithetical to the purpose of the Act.

A minority of respondents, on the other hand, argued that the latitude afforded by Alternative 1 would lead to greater compliance on the part of the States. These arguments imply that greater compliance would result in improved highway safety and would thus be consistent with the goals of the Act. On the basis of the tally of State opinions, the FHWA believes that compliance will also result if the rule encompasses the clear preference of most State respondents. In addition, the practical concerns discussed further below would support the FHWA's view that Alternative 2 could better permit the States to focus their resources so as to meet the statutory deadline for full implementation of the CDL testing and licensing program—April 1, 1992.

In sum, the FHWA agrees with the majority of respondents that Alternative 2 is the better means of meeting the provisions of the Act.

Testing Materials and Procedures

Simultaneously with this proceeding, a Committee of States (with FHWA funding and technical support) has been developing a comprehensive set of commercial driver testing materials and procedures through a contractor, the Essex Corporation. These Essex outputs had been circulated, in draft form, prior to the NPRM comment deadline. Several respondents misidentified NPRM Alternative 2 with the draft Essex outputs: that is, they mistakenly inferred that FHWA adoption of Alternative 2 would automatically include promulgation of the Essex testing materials and procedures as binding on all States. For example, since the draft Essex materials included a mandatory off-street driving skills test, certain respondents incorrectly concluded that off-street testing—including the provision of potentially costly sites and personnel—would be required of the States under Alternative 2.

Such an inference continues to be incorrect, both for the specific off-street testing example and for the Essex outputs as a whole. The FHWA regards the Essex materials as important, but optional, aids for the States to consider

in developing their own testing and licensing programs. States may incorporate all, some, or none of the Essex outputs in their testing programs, as long as those programs meet or exceed the minimum standards set forth in this rule. In the example cited above, this rule requires only that some or all of the skills test be given in actual traffic conditions. In other words, off-street testing remains an option available to, but not forced upon, each State. The same principle applies to all other elements of the Essex program, which may be of maximal utility to States that currently have no classified testing program in place and that do not wish to develop their own skills and knowledge tests.

Flexibility

The supporters of Alternatives 1 and 3 adduced as their prime argument the additional "flexibility" promised by those Alternatives. Comments by California and Pennsylvania, however, suggest that Alternative 1—with its early FHWA review requirement—would not be as flexible as it might appear, and Alternative 2 (as modified by the comments by AAMVA and the States) would offer a high degree of latitude to the States.

Exhibit 2 lists 19 examples of flexibility available to the States within the minimum standards of the final rule. As requested by AAMVA and several States, the FHWA has also revised the knowledge and skills listings of NPRM Alternative 2 to enhance State flexibility. Knowledge and skills requirements have been made more general so as to allow the States greater discretion in selecting specific topics for emphasis.

In arguing for the flexibility afforded by Alternative 3, the State of Alaska cited its own unique situation: The existence of many localities that, although physically detached from the State highway network and from driver testing facilities, still have CMVs and operators subject to this final rule. The FHWA believes that the waiver process as prescribed in the Act and in § 383.7 would be the most appropriate forum in which to address this specific local problem.

Exhibit 2.—Examples of Flexibilities Offered by Final Rule

Each State may . . .

- (1) Set the price level for the CDL.
- (2) Set age limits for CDL holders not covered by Part 391 of the Federal Motor Carrier Safety Regulations.
- (3) Establish the duration of its penalties against driver applicants

providing false information. (Section 383.73)

(4) Impose or omit knowledge and skills tests on applicants for renewal or for license transfer from other States. (Section 383.73)

(5) Develop alternative methods for the driver certifications to ensure compliance with verification of driver qualifications (Section 383.73)

(6) Contract with third parties to administer skills tests, or preserve skills testing as an exclusive State prerogative. (Section 383.75)

(7) Waive, or insist upon, driving skills tests for certain categories of initial CDL applicants who are already CMV operators. (Section 383.77)

(8) Incorporate, or omit off-street testing as part of the skills test. (Section 383.113)

(9) Use simulator technology in the skills testing program, although not as a substitute for the required test in traffic. (Section 383.113)

(10) Develop its own driver and examiner manuals incorporating test content and procedures. (Section 383.131)

(11) Administer knowledge tests in written, oral, or machine formats, or any combination thereof. (Section 383.133)

(12) Prepare its own knowledge test question and procedures in keeping with the required knowledge areas. (Section 383.133)

(13) Develop its own methods for skills testing and scoring. (Section 383.133)

(14) Set the qualification requirements for driver examiners. (Section 383.133)

(15) Accept in whole or in part, or ignore, the Essex Corporation materials and procedures now under development for the Committee of States.

(16) Determine the waiting period for an applicant to retake a test which he/she fails, and the maximum number of times a person may take and fail any test. (Section 383.135)

(17) Design the form its CDL document. (Section 383.153)

(18) Show or omit the applicant's Social Security Number, weight, eye color, or hair color on the CDL. (Section 383.153)

(19) Incorporate improved positive identification methods on the CDL. (Section 383.153)

In addition to the foregoing flexibilities, each State may add more stringent requirements to the minimum standards contained in all individual sections of the rule.

Cost

Most of the States supporting Alternatives 1 and 3 pointed to the allegedly higher costs of Alternative 2.

In reality, each State will be free to set the price of the CDL at any level, regardless of the selected Alternative. Furthermore, the "grandfathering" and "third-party testing" provisions of the final rule will allow the States to mitigate the impact of initial startup costs on State budgets. Inferring that Alternative 2 incorporated the Essex tests as requirements, certain respondents incorrectly ascribed to Alternative 2 the major capital investment associated with producing off-street testing sites Statewide. In fact, Alternative 2 did not include any such requirement, nor does the final rule. Conversely, Alternative 1 carried a significant administrative cost burden—preparation, submission, and iteration of the State Plan at an early date. Under the final rule, States will need to plan carefully for program implementation, but the clarity of the standards could lead to more efficient planning than would have been the case under Alternative 1. For all these reasons, cost considerations do not argue against Alternative 2 as incorporated in the final rule.

Reciprocity

The Act mandates reciprocity among all States. Many respondents argued that, given the history of the development of State licensing procedures, one State could hardly be expected to have full confidence in all the other State programs unless a perceived minimum uniform national standard prevailed. Reciprocity, in turn, will influence State decisions on such issues as transfer retesting. As the approach perceived by most respondents as uniform, Alternative 2 would encourage true nationwide reciprocity including the minimization of the retesting burden.

Practical Concerns

In arguing in favor of Alternative 2, most responding jurisdictions and organizations cited the practical problems inherent in the Alternative 1 process. Although time is of the essence in the CDL program, respondents pointed out, the requirement under Alternative 1 for a State plan, FHWA review, and possible further iterations would detract from the States' ability to comply with the April 1, 1992, deadline. The paperwork and likely time delays would create high cost burdens at both the State and Federal levels. By contrast, at least one respondent pointed out that adoption of Alternative 2 in mid-1988 would give all involved parties—including CMV operators and their employers—an early warning of

the April 1, 1992, requirements, hence a head start on responding to them. One State respondent claimed that Alternative 2, by advancing specific Federal requirements, could ease the task of pushing enabling legislation through the respective legislatures.

Mechanisms To Assure State Compliance

To assure proper implementation of the CDL testing and licensing standards, State compliance must take two forms. First, a State must design an organizational framework and set of procedures and materials that will allow the standards to be met. Second, the State must administer the program so that the organization, procedures, and materials actually function according to the program design. In the NPRM, Alternative 1 would have addressed the first form of compliance by producing an FHWA-approved State plan for CDL testing and licensing. By contrast, Alternative 2 would have included neither a requirement for State plans, nor a process for their review by FHWA. The NPRM did not address the second form of compliance in any way under either Alternative, except to raise the following question for comment:

• • • Is it appropriate for the Governor to certify that the State is in compliance? Should the FHWA monitor the licensing procedures and, if so, on what basis? What is the most practical and cost-effective method that can be used to certify that the States are in compliance? Should the FHWA approve each of the States' programs? If so, how often should the FHWA review these determinations?

In the NPRM docket, 19 States and the AAMVA responded to this question. No consensus emerged from their responses. The largest group of respondents (five States and AAMVA) asserted that State self-certification would suffice, without any subsequent FHWA audit programs. The 14 other commenters embraced ten different compliance certification schemes, most of which combined an initial State certification with some form of FHWA review on an initial, random, annual, or longer-term basis. One respondent suggested initial State certification with a periodic "peer review" to be conducted annually by AAMVA on behalf of FHWA.

Owing to this current lack of a consensus among the States on the important issue of compliance, the FHWA has elected to defer the establishment of a compliance certification and/or audit mechanism. In any event, the Act does not require full implementation by the States of the CDL program until October 1, 1993, when

statutory sanctions would take effect. Thus, ample time remains to resolve this important issue. The FHWA plans to seek additional State and public comments on the issue of a compliance certification and/or audit mechanism by issuance of a future Federal Register notice. The States, meanwhile, should proceed without delay to implement the testing and licensing standards contained in this final rule because CMV drivers must be relicensed under the program by April 1, 1992.

The rest of this supplementary section contains a section-by-section analysis of the final rule.

Section-by-Section Analysis

Section 383.5 Definitions.

Commercial motor vehicle (CMV). The Act (section 12019) defined a CMV, in part, as having "a gross vehicle weight rating of 26,001 or more pounds, or such lesser gross vehicle weight rating as the Secretary determines appropriate by regulation" This regulation has expanded that definition to include all vehicles having a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds. The definition change reflects comments received from the AAMVA with respect to vehicle groups. The FHWA agrees with AAMVA that combination vehicles, when hauling 5-ton and greater trailers, merit inclusion in the definition of a CMV because of their handling characteristics, even though the gross vehicle weight rating of the main vehicle, if operated without a trailer, may be well below 26,001 pounds. The operator of such a power unit would not have to possess a CDL if the unit is operated without a trailer, or with a trailer having a gross vehicle weight rating of less than 10,000 pounds.

Tank vehicle. In commenting on the NPRM, the National Tank Truck Carriers, Inc., asserted that the use of the term "cargo tank" would unduly constrain the types of vehicles for which the special dynamics of bulk cargoes would mandate an endorsement. The FHWA recognizes that "cargo tank" is a term of art in the hazardous materials regulations; to expand the definition of this term for the special purposes of Part 383 would create unnecessary inconsistencies among regulations issued by the Department of Transportation. Therefore, the final rule has eliminated the term "cargo tank" and substituted the term "tank vehicle."

A tank vehicle must meet the definition of a CMV as provided in this rule. Thus, a tank vehicle must either

satisfy the 26,001 pound vehicle weight floor as specified in § 383.5, or be of any size and be used in the transportation of materials requiring the motor vehicle to be placarded under the Hazardous Materials Regulations. Moreover, the tank vehicle must be designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Examples of such vehicles would be cargo tanks and portable tanks.

Drivers of vehicles that transport nonhazardous materials (such as milk) in bulk, and that have a weight rating below the 26,001 pound floor, would not require a CDL at all, since the vehicles they operate are not CMVs as defined in the final rule.

A tank vehicle required to be placarded by virtue of its hazardous gaseous or liquid cargo would generally be considered a tank vehicle regardless of its size or weight, and its operator would require the tank vehicle endorsement as well as the hazardous materials endorsement on a license appropriate to the vehicle group involved. However, the definition of "tank vehicle" specifically excludes portable tanks having a rated capacity under 1,000 gallons because their dynamic properties do not present so great a challenge to driver capabilities as to mandate a tank vehicle endorsement. This exclusion of portable tanks under 1,000 gallons relates to the tank vehicle endorsement only; the hazardous materials endorsement would still be applicable in keeping with the placarding requirements of the Hazardous Materials Regulations.

Subpart B—License Requirements

Section 383.23 Commercial Driver's License.

According to the requirements which became effective on July 1, 1987, drivers of CMVs can have only a single license. This section effects additional requirements for persons who operate CMVs. As of April 1, 1992, all operators of CMVs shall take and pass knowledge and driving tests that meet the minimum standards promulgated by FHWA. An operator of a CMV with special handling characteristics such as a double trailer combination, or a vehicle required to be placarded for hazardous materials, shall also take and pass additional tests to obtain an endorsement to the CDL authorizing him/her to operate such a vehicle. This regulation also requires CMV drivers to possess a CDL while operating a CMV. The CDL shall be

issued by States in accordance with these standards.

The Act clearly states that, as of April 1, 1992, at the latest, "no person" shall operate a CMV unless such person has qualified under the standards contained in the subject rule. Nevertheless, 10 States in their responses to the NPRM sought relief from the April 1, 1992, deadline for the qualification of all drivers. They maintained that this final rule would not be issued until July 15, 1988; that additional time would be required for States to implement the program through legislative and administrative action; and that States with 4- and 5-year renewal cycles would therefore find it impossible to handle the new CDL program in the normal course of renewal activity. Moreover, their argument ran, for the States to circumvent the normal renewal process would entail high overhead costs and would lead to confusion due to the existence of two classification systems. Thus, the concerned States argued, the FHWA should interpret the April 1, 1992, date as a deadline for implementation rather than completion of the CDL program.

The FHWA fully understands these States' concerns lest the CDL program deadline lead to temporary higher cost levels and disturb the normal scheduling of license renewals. However, the FHWA believes that the timeframes established in the Act are important to maintain as an acceptable goal for compliance. Many States are already moving to adopt and implement the CDL program based on the dates included in the Act as their goals. Also, the FHWA believes that changes in the April 1, 1992, deadline, either through legislation or rulemaking, would confuse the drivers and other groups, such as motor carriers and enforcement entities, who are necessarily concerned about when and what they need to do as a result of the CDL program. Thus, the final rule continues to incorporate this mandated date, and contains several provisions that will allow the States—with proper planning and programming—to comply more easily. First, the FHWA's adoption of Alternative 2 as the basis for the final rule will permit the States to proceed directly to implement the CDL program without an iterative Federal review and approval process in 1989. Second, the third-party testing provisions (§ 383.75) will assist the States in setting up their skills testing apparatus with minimal expansion of State personnel rosters and facilities. Third, the ability to "grandfather" certain highly qualified drivers from the skills tests can ease the burden on State resources. Finally, the

final rule allows the States full discretion to price the CDL. Should a State encounter unusual costs in accelerating its license renewal cycle to meet the April 1, 1992, deadline, it will be free to recover these incremental costs through the pricing mechanism. All these features will assist the States in complying with the April 1, 1992, deadline.

Section 12005(a)(9) of the Act allows the Secretary to consider a requirement that States issue certificates of fitness to operate a CMV to each person who passes the required tests. The NPRM of December 11, 1987, envisioned the creation of a CDC document to be issued by States that are in compliance with this part, so as to fulfill two separate needs. First, a CMV operator domiciled in a noncomplying State would have been eligible to apply for a CDC from a State which does conform to the testing standards. Second, a CMV operator who is domiciled in a foreign country, and whose home jurisdiction does not substantially comply with the testing and licensing standards contained in this part, would have applied for a CDC from a conforming State.

The CDC for domestic drivers elicited nearly unanimous disapproval from the respondents to the NPRM, who considered it premature, likely to undermine full compliance, and contrary to the single-license, single-record concept of the Act. In light of the exemplary cooperation already displayed by the States in the CDL program, the FHWA agrees that a domestic CDC may not be necessary, and has deleted it from the regulation. However, in order to assure that drivers and their employers are not adversely affected by this regulation due to factors that are solely within the purview of the States, the FHWA will monitor the extent of State compliance with this Part, and will deal with this issue, if necessary, in a future rulemaking.

Since Canada is working toward a strong testing/licensing program for CMV operators through its consensus National Safety Code, the CDC for foreign operators would have probably applied in large measure to drivers domiciled in Mexico (depending on an ongoing analysis of Mexican standards). The two States containing the most heavily trafficked Mexican border crossings, Texas and California, already require Mexican CMV operators to secure State licenses. To impose an additional or alternative requirement for a CDC would needlessly multiply the number and type of documents issued by those States. Moreover, in their

responses to the NPRM, both California and Texas opposed the issuance of CDCs and suggested that drivers residing in noncomplying jurisdictions receive CDCs instead. For these reasons, the FHWA has eliminated the CDC for foreign drivers and has substituted a "Nonresident CDL" to be issued by complying States as described and analyzed under Subpart E, "Testing and Licensing Procedures."

To allow novice drivers to obtain the necessary training in a CMV, the final rule allows States, if they so choose, to issue limited learner's permits. The issuance of a learner's permit will not be a required precondition to issuing a CDL. However, States may choose to make learner's permits available for limited time periods to first-time applicants for use in behind-the-wheel training on public roads or highways.

The NPRM proposed that States which issue learner's permits for CMV drivers would do so as a continuation of their existing learner's permit programs and might also require applicants to pass test(s) prior to issuance of the learner's permit for the specific vehicle group or endorsement desired. Conditions for issuance of a learner's permit and circumstances under which such permits may be used would have been solely determined by the State of issuance.

Of the 51 respondents addressing the question of learner's permits, about half recommended that Federal standards be set for State learner's permit programs directed toward CDL issuance. For example, the AAMVA urged the FHWA to require that applicants for learner's permits "satisfy CDL requirements including . . . written and medical exams, and that the record be added to the CDL Information System."

Responding to such safety-related concerns as AAMVA's, while preserving maximum flexibility for the States and meeting the behind-the-wheel training needs of prospective CDL applicants, this final rule specifies that a learner's permit holder must always be accompanied by the holder of a valid CDL during on-road training. (This provision was suggested by eight respondents in the trucking and public transit industries and State agencies.) Also, to be issued a learner's permit in a State for training in a CMV, an applicant must already possess a valid automobile driver's license, or pass the State's ordinary battery of vision, sign/symbol, and knowledge tests for automobile licensing purposes.

These learner's permit requirements are minimum standards, which the States can accommodate within their

existing programs. As elsewhere in this regulation, the States will be free to impose more stringent requirements (for instance, making successful completion of the CDL knowledge test a prerequisite for learner's permit issuance), should they elect to do so.

On the other hand, if a State does not issue learner's permits, the requirements stated in § 383.23(c) will not apply. In such a case, applicants would have to acquire their behind-the-wheel driving experience on other than public highways because of the prohibitions contained in § 383.23(a). However, a State not issuing learner's permits may conduct driving skills tests in traffic. Also, the final rule gives States the additional flexibility of allowing a person who does not already hold a valid driver's license to obtain a learner's permit. A typical situation in which this option may be helpful would be that of an individual who immigrates to the United States from another country and does not have a valid license. Therefore, this final rule does not require States to issue learner's permits, or to issue learner's permits only to valid automobile license holders, in order to implement the CDL program.

Subpart E—Testing and Licensing Procedures

This subpart contains the testing and licensing procedures for CDLs. The tests would be required for each vehicle group in which the applicant operates or wishes to operate, and would at least cover the general knowledge areas and skills described in Subpart G. Knowledge tests could be given in written, oral, and/or automated format. Skills tests would have to be given in a vehicle that is representative of the vehicle group within which the applicant operates or expects to operate.

Verification of Driver Qualification. Section 12005(a)(7) of the Act states that regulations for testing of CMV operators shall ensure that each person taking such tests is qualified to operate CMVs under regulations issued by the Secretary and contained in Title 49 of the CFR, "to the extent such regulations are applicable to such person." The driver qualification requirements found in Part 391 of the FMCSRs apply only to drivers of motor vehicles engaged in interstate commerce unless adopted by the State for intrastate movements. In response to section 12005(a)(7), the final rule will require that States include in the CDL application process, a means for an applicant to certify that he/she meets Federal driver qualification requirements if he/she operates or expects to operate in interstate

commerce. States would continue to have the responsibility to establish intrastate driver qualification standards and to determine the applicant's compliance with these standards. At this time, this regulation does not impose the physical and medical requirements of section 391 of this part on intrastate drivers as a minimum standard.

Enforcement of driver compliance with the driver qualifications requirements would continue under the current practice of roadside inspections, carrier audits, and other State and Federal enforcement avenues. The driver license agencies would also play a related enforcement role by obtaining required certifications, maintaining commercial driver records, completing required checks of these records, and making appropriate notifications to the CDLIS. States would also have the option to have their driver license agencies assume greater review of driver medical and other qualifications during the licensing process.

Section 383.71 Driver application procedures.

A CMV operator will obtain his/her license in the State in which he/she is domiciled, except in the case of foreign drivers as explained further below.

Every CDL applicant will, at a minimum, complete the following process to obtain his/her CDL for the first time (other than renewals or transfers):

- An applicant subject to 49 CFR Part 391 will certify that he/she meets the driver qualification requirements of Part 391 as a condition to taking the tests;
- Pass a knowledge test (as specified in Subpart G) to demonstrate that he/she is familiar with the regulations designed to ensure the public safety and with the skills needed to safely operate the type of vehicle that he/she operates or expects to operate;
- Certify that the vehicle in which he/she will take the driving skills tests is representative of the type of vehicle he/she operates or expects to operate;
- Pass the necessary driving skills tests as described in Subpart G; and
- Provide all information required by the regulation.

If he/she satisfies all of the requirements described above, surrenders his/her existing license, and is not disqualified according to Subpart D, then the State may issue the applicant a CDL.

Any driver who applies for a renewal of his/her CDL will make the certification of driver qualification, and provide an update of required

information. In addition, holders of the hazardous materials endorsement (§ 383.123) must pass the hazardous materials test to retain that endorsement. The hazardous materials endorsement retest will help keep drivers of such vehicles current on changes in the hazardous materials regulations and safety related procedures. As a minimum standard, this rule implicitly permits the State to impose additional testing requirements—for example, the full battery of knowledge and skills tests specified in § 383.71(a)—on CDL renewal applicants.

A commercial driver who wishes to drive a vehicle in a different vehicle group must make the certification of driver qualification, certify that the vehicle in which he/she takes the driving skills tests is representative of the type of vehicle he/she operates or expects to operate, and pass the tests related to the upgraded vehicle group or endorsement.

Any driver who moves (i.e., changes his/her domicile) from another State or jurisdiction will be required to apply for a new CDL within no more than 30 days of moving and to surrender his/her current CDL as a condition of receiving a new CDL. Such a driver would make the certification of driver qualification and provide any new or updated information required by the regulation. As in the case of CDL renewals, the new State may choose to impose additional knowledge and skills testing as a prerequisite to the transfer of a CDL, but is not required to do so. However, if the current CDL contains the hazardous materials endorsement, and the transfer applicant wishes to retain that endorsement, the new State of domicile must ensure that the applicant takes a new test or has, within the 2 years preceding the transfer, either passed a hazardous materials knowledge test given by the old State of domicile in accordance with § 383.121, or successfully completed hazardous materials testing or training that is given by an employer or some other third party. Such third party testing or training must be deemed by the State to substantially cover the knowledge areas listed in § 383.121. This provision reflects the FHWA's belief that an individual who passes a hazardous materials endorsement test or an equivalent third party testing or training program within the 2 years preceding the transfer will be sufficiently knowledgeable of the hazardous material regulations and of any changes in them which may impact safety.

The preceding paragraph will apply to all CMV operators after April 1, 1992, and to all CDL holders who change domicile from one CDL-issuing State to another CDL-issuing State before April 1, 1992. If, before April 1, 1992, a CDL holder moves to a State that does not yet issue CDLs, he/she must adhere both to the licensing requirements of the new State of domicile and to the single license provisions of § 383.21, which require a driver to surrender his/her old license when he/she receives a license from a new State of domicile.

As explained in the analysis of § 383.23, the FHWA has eliminated the proposed commercial driver's certificate (CDC) for domestic drivers, and has replaced the CDC for foreign drivers with the Nonresident CDL. A foreign driver applying for a Nonresident CDL must complete all the State requirements for a CDL. In addition, holders of a Nonresident CDL must notify the State of issuance of any disqualifications or license suspensions/revocations, whether in the United States or in the foreign driver's country of domicile.

Section 383.73 has been modified in the final rule to add a provision to allow the State to use alternative methods to achieve the objectives of the certifications in § 383.71(a). This section specifies that States may substitute these alternative methods, where applicable, as part of the driver application procedure.

Section 383.73 State procedures.

This section outlines the procedures which a State will follow, as a minimum, for the issuance of a CDL which meets the requirements of the Act.

While the procedures below may appear prescriptive, they are in fact the types of transactions and procedures which the States currently utilize. In addition, the AAMVA's Committee on the CDLIS is developing that system based on these transactions. The use of driver certifications is a common method which States now use to ensure compliance with many rules. The certification process places the burden on the driver applicant to know and comply with the rule. If the applicant has falsified the certification, the State would then be in a position to take action against the driver. The FHWA believes that the certification method is the minimum that a State should do to ensure compliance with the requirements of the Act. As discussed in this Section, however, the State would be permitted to use alternative methods to the certification process.

Initial CDL. Prior to the first-time issuance of a CDL to a person, a State will:

(a) Adopt a program for testing and ensuring the fitness of persons to operate CMVs in accordance with the standards;

(b) Ensure that persons choosing to operate in interstate commerce make the appropriate certifications regarding their qualifications under Part 391 of the FMCSRs prior to being issued a CDL;

(c) Issue CDLs only to persons who pass knowledge and skills tests for the operation of a CMV which comply with these standards;

(d) Issue CDLs which contain information and other specifications included in the standard;

(e) For persons moving from another State or jurisdiction, request and consider the applicant's driving record from the prior State of issuance before issuing an initial CDL and require the applicant to surrender his/her existing license;

(f) Not issue a CDL to a person who is disqualified from operating a CMV, or whose driver's license is suspended, revoked, or canceled;

(g) Issue CDLs only to persons domiciled in the State except persons domiciled in a jurisdiction of a foreign country that does not test and issue licenses meeting the standards may be issued a Nonresident CDL;

(h) Notify the CDLIS of the issuance of a CDL and provide the CDLIS with information on that driver. (The required information will be discussed in a separate rulemaking or other action on the CDLIS.)

Multiple License and Driver's Record Check. Section 383.21 already requires that persons who operate CMVs shall have only one driver's license. Also, section 12009 of the Act requires that a State not issue a CDL to an individual whose license is suspended, revoked, or canceled or who is disqualified from operating a CMV. To ensure these requirements are met by a driver applying for a CDL, States will check and consider information in the applicant's current driving record, in the CDLIS and in the National Driver Register (NDR) before issuing a CDL. Prior to April 1, 1992, a check only of the CDLIS and the NDR may not yield complete information about the driver because he/she does not yet have a CDL and would not be reflected in the CDLIS. To eliminate this problem, the FHWA proposed in the NPRM that States check with all other States to determine if the driver is licensed elsewhere. Citing unacceptable administrative difficulties and high costs in terms of personnel,

paperwork, and postage, respondents to the NPRM voiced unanimous disapproval of the 50-State check.

In its enforcement activities relative to the single license requirement, the FHWA has also discovered that some current State driver license records are not accurate. Many drivers who had moved between States and surrendered their former State driver's license were still shown as holding a license from the former State. The FHWA realizes that the proposal for the 50-State check in the NPRM could generate much inaccurate information about a driver's former license.

In light of these facts, the FHWA has determined that the 50-State check is impractical, and has incorporated two safeguards in its stead.

First, the applicant must certify that he/she holds only one license and is not subject to any adverse actions against his/her driving privilege. If a falsehood is discovered either before or after issuance of the CDL, this certification is subject to license suspension, revocation, or cancellation as specified in § 383.73, as well as any additional penalties imposed by applicable State statutes regarding falsification of information on drivers' licenses. The FHWA believes that these penalties, combined with possible disqualification and existing State sanctions for falsifying information, will result in an effective deterrent.

Second, the State must check the applicant's record prior to issuing a CDL. Although the CDLIS component of this check will not insure that the applicant possesses only one license and a satisfactory record prior to April 1, 1992, it will guarantee that the applicant holds only one "commercial driver's license" and that his/her record as a CDL holder meets minimum standards.

Although the States would not be required by this rule to check the NDR until it is determined to be operational by the National Highway Traffic Safety Administrator, it is recognized that the States are exploring the development of systems which would enable them to access both CDLIS and the NDR prior to that time. Efforts in this regard are strongly encouraged.

Transfers. The final rule includes requirements for a person who has a CDL and then changes his/her State of domicile and applies for a CDL from his/her new State. For these cases, the State will have the option to accept the credentials of that driver or to require that the driver be further tested according to its own testing and licensing procedures. At a minimum, the

new State of domicile will be required to obtain the certifications and identifying information updates, and complete the driver record checks that would be required for issuance of an initial CDL.

The State will also be required to ensure that those drivers who wish to retain the hazardous materials endorsement have either successfully passed a hazardous materials knowledge test within the preceding 2 years, or successfully completed hazardous materials testing or training that is given by an employer or some other third party. Such third party testing or training must be deemed by the State to substantially cover the knowledge areas listed in § 383.121. Without such a requirement, the potential would exist for CMV operators who frequently change domicile to avoid retesting the hazardous materials knowledge test for long periods of time. This eventuality cannot be permitted, in FHWA's view, because a CMV operator's hazardous materials knowledge is of critical importance to the public safety. Most States' commenting on the retesting of transfer applicants for hazardous materials knowledge, however, felt that such retesting should be at the option of the States. Because the FHWA believes that the States can best determine the knowledge levels of applicants transferring from another State, the final rule allows States the option to either retest or accept certification of successful hazardous materials testing or training within the preceding 2 years by another State or third party, including the employer. This provision reflects the FHWA's belief that an individual who passes a hazardous materials endorsement test or an equivalent third party testing or training program within the 2 years preceding the transfer will be sufficiently knowledgeable of the hazardous material regulations and of any changes in them which may impact safety.

Renewals. Minimum State procedures for renewing a CDL will include the certification of driver qualification, updates of information that would be required to be included on the CDL and completion of a check of the driver's record. A driver who desires to retain his/her hazardous materials endorsement will be required to successfully complete the test being given by the State for the hazardous materials endorsement to ensure he/she continues to be knowledgeable about hazardous materials regulations and safety procedures. This provision for hazardous materials knowledge retesting at license renewal (as opposed

to transfer) received the support of a majority of States commenting on the related question in the NPRM.

Upgrades. A State will follow a combination of procedures whenever a driver changes the vehicle group in which he/she is currently licensed to operate. The driver applicant will have to provide the certifications and information specified under the renewal section, and will be tested for the different portion(s) of the CDL as if he/she were making an initial application.

Nonresident CDL. As explained in the commentary to § 383.23, the FHWA has eliminated the CDC for domestic operators, and substituted the Nonresident CDL for the "foreign" CDC. The Nonresident CDL will be a CDL in every sense of the term. It will differ from all other CDLs only in that it will carry the word "Nonresident" on its face, and will show an address outside the United States.

To be empowered to issue a Nonresident CDL, a State must be fully capable of disqualifying its holder and of withdrawing, suspending, canceling, or revoking his/her Nonresident CDL. This provision is necessary because certain States legally require that notifications of certain adverse actions against the driving privilege be delivered by Certified Mail. If a foreign country does not participate in the Certified Mail Service the State could conceivably issue a Nonresident CDL that cannot be suspended, canceled, or revoked. To avoid this eventuality, States wishing to issue Nonresident CDLs may need to modify their statutes and/or regulations to ensure the enforceability of the penalties and sanctions that are integral to the CDL program.

License Issuance and Notification. This paragraph in the rule specifies that if the driver applicant has successfully met the requirements for a CDL, he/she can be issued a CDL. Once the document is issued, the State will inform the CDLIS and provide it with the appropriate information within 10 days beginning on the date of issuance. The NPRM proposed allowing the States 30 days to notify the CDLIS of such issuance. The reduction to 10 days reflects an analysis of comments from respondents to the related question in the docket, most of whom argued that the proposed notification period should be shortened. The 10-day notification period would be long enough to allow the States leeway in processing the required paperwork. The FHWA expects, however, that notification to the CDLIS will be simultaneous with issuance of the license, to prevent CMV

operators from applying for multiple licenses in contravention of law and regulation. The FHWA will address this issue further as the CDLIS develops.

Penalties for False Information. This paragraph contains minimum suspension, cancellation, or revocation requirements for persons who falsify the information or certifications required to be provided by CDL applicants. If a State determines at any time that a person falsified the information, the State would at a minimum suspend, revoke, or cancel the CDL no later than 30 days after discovering the falsification. The final rule leaves to the discretion of the States the duration of such a suspension, revocation, or cancellation, and allows the States the option of applying additional civil or criminal penalties in keeping with existing State statutes. Further, § 383.53 provides that individuals who violate the requirements in Subparts B and C are subject to civil or criminal penalties as specified in the Act. Any individual who falsifies license information to obtain more than one CDL would be in violation of Subparts B and C and would thus be subject to civil and criminal penalties under the Act. In responding to the NPRM, the NTSB recommended that the final rule prescribe specific penalties for drivers who falsely certify compliance with CDL requirements. The FHWA will address this issue in a separate NPRM.

To provide an added deterrent, the final rule now explicitly states that the penalties can also come into effect if the factual discrepancies are discovered subsequent to the issuance of the license. These changes from the wording in the NPRM reflect the elimination of the 50-State check and the substitution of a certification; the greater reliance on applicant-provided information requires a corresponding clarification of State procedures in the event of falsification.

Reciprocity. Section 12009(a)(14) of the Act requires that States allow any person who has a valid CDL and who is not disqualified from operating a CMV, to operate a CMV in the State. The FHWA has included this requirement in § 383.73 as a condition for States to issue a CDL which meets the standards.

Alternative procedures. States may implement alternative procedures to the certification requirements described in § 383.71(a), as long as such alternative procedures ensure that the substantive purposes of the requirements are met. For example, if a State undertakes the medical qualification review for the driver, a certification would not be required. This is an area where greater flexibility would be provided to the

State in the final rule than was the case in Alternative 2 of the NPRM.

Section 383.75 Third party testing.

In keeping with section 12005(c)(3) of the Act, this final rule permits States to use a third party to administer driving skills tests. According to the Act, a third party may be a person or a department, agency, or instrumentality of a local government. The FHWA has decided to allow a broad interpretation of this provision to include another State or any public or private organizations with which the State has an agreement. Examples of potential third-party testers would include employers, public transit authorities, school boards, and driver training schools.

Approximately 60 respondents to the NPRM (primarily States, members of the trucking industry, and public interest groups) addressed this issue. One-fourth of this number either opposed third-party testing outright or suggested more stringent FHWA-imposed requirements than those originally proposed. These respondents fear abuses from conflict of interest—for instance, driving schools seeking to upgrade their advertised pass rate, or trucking companies attempting to combat the driver shortage by lowering test standards. While recognizing the potential for such abuses, the FHWA also understands the benefits of a functioning third-party testing apparatus to assist the States in implementing the CDL program.

As minimum standards subject to State enhancement, the FHWA believes that the control mechanisms in the final rule will allow the States to provide adequate checks against abuses. Specifically, in order to ensure that people who pass the tests given by third parties would have passed tests had they taken them from the State, third parties will be able to give driving tests only if all the following conditions are met:

- (a) The tests given by the third party are the same as those which would otherwise be given by the State;
- (b) The State's agreement with the testing party allows the FHWA or its representative and the State to conduct random examinations, inspections, and audits without prior notice;
- (c) The State agrees to conduct on-site inspections at least annually;
- (d) All third party examiners meet such qualification and training standards as are imposed on State examiners and are relevant to proper administration of the driving tests (civil service examinations, for example, would not be required);
- (e) At least annually, State employees "check-ride" with examiners on actual

tests, or States test a sample of drivers who were examined by third parties to compare pass/fail results; and

(f) The State expressly reserves the right to take appropriate action if the third party fails to meet the CDL program standards.

The FHWA has added this last condition to the requirements enunciated in the NPRM to further strengthen internal controls in the third-party testing program, in response to the concerns voiced by the respondents.

Section 383.77 Substitute for driving skills test.

The FHWA recognizes the CMV drivers are professionals who are, as a group, highly experienced in the skills needed to operate such vehicles. In response to the fact, the final rule follows the NPRM in providing States with an option to allow certain drivers to substitute a good driving record and experience for the driving skills tests. The overwhelming majority of comments to the docket from the States and the motor carrier industry support this provision. The provision would not be used for the knowledge tests. The option would apply to a driver of CMVs who was currently licensed at the time of his/her application for a CDL, and who either (1) has a good driving record and has previously passed a State skills test in a CMV, or (2) has a good driving record in combination with certain driving experience. The FHWA believes that for many current drivers, experience is an appropriate indication that the individual has the minimum driving skills to operate a CMV. Accordingly, the FHWA believes that this provision will not diminish public safety or overall safe operation of commercial vehicles.

A State which chooses to exercise this option will have to adopt criteria to eliminate certain applicants from consideration under this provision. As a minimum, an applicant must be a CMV operator who is currently licensed at the time of his/her application for a CDL, and must:

- (1) Certify that he/she has not committed certain offenses; and
- (2) Certify and show that he/she has previously passed an acceptable skills test or has certain experience driving a CMV.

In the process of developing the NPRM, the FHWA evaluated the practices used by several States to determine whether applicants who are transferring their licenses from another State need to take driving tests. Based on these current analogous practices and the statutory requirements, the FHWA concluded that an applicant for

"grandfathering" would first have to certify that he/she has violated neither the single license provisions nor the disqualification provisions in Part 383 for the 2 years prior to applying for the CDL. In addition, an applicant could have neither a violation of State of local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, nor a record of an accident where he/she was at fault, during the 2 years immediately preceding application for a CDL. The applicant would have had to pass a State driving skills test given by a State with a classified licensing and testing system, and which was taken by the driver behind-the-wheel in a vehicle representative of the type of classification which the applicant operates or expects to operate. The State test, in conjunction with a driver's demonstrated safe driving record, is an acceptable substitute for a new driving skills test even if the previous test did not include each of the specific skill items which new drivers will need to demonstrate under the standard.

In lieu of a driving skills test, the applicant may qualify for an exception to the CDL skills test because of his or her prior experience. In this case, an applicant would be required to have 2 years of recent experience driving a vehicle that is representative of the group of vehicles for which he/she wishes to obtain a CDL. A State would need to ensure that the applicant has this experience through mechanisms such as requiring the employer to provide certification.

The NPRM restricted the pool of applicants eligible to substitute a good record and other qualifications for the driving skills test to those holding driver's licenses as of July 15, 1988. Many respondents contended that since the deadline for full CDL program implementation is not until April 1, 1992, the NPRM would arbitrarily exclude persons with up to 4 years' experience from the skills test substitution provisions. The final rule eliminates the July 15, 1988, cutoff date, and instead requires that an applicant hold a driver's license at the time he/she applies for the CDL, and that he/she be regularly employed as a CMV operator.

Similarly, the NPRM required that applicants eligible for substitution of the skills test have a driving record free of license suspensions, revocations, or cancellations, and free of disqualifying offenses, since July 1, 1987. For drivers applying for their CDLs in 1992, this provision would have required them to have a good record for almost 5 years.

The respondents on this issue generally favored less stringent standards and more discretion on the part of the States. As a result, the final rule has eliminated the July 1, 1987, date for all record-related prerequisites to substitution and has instead specified the 2-year period prior to application for the CDL. Each State would be free to impose more stringent requirements.

Several respondents requested that the final rule allow States to allow a substitution for the knowledge test in order not to penalize the safe, but functionally illiterate driver. The FHWA understands this concern; however, the FHWA believes that the purposes of the Act would be best met by retaining the knowledge test requirement for all current drivers. The rule is directed to "knowledge" tests, not "written" tests, so as to afford the States alternative ways to provide the drivers with the necessary information and to test them. Illiterate drivers have a handicap in regard to reading, but they can and should be expected to possess the required knowledge of safe vehicle operation. The State will have full discretion to adopt a testing format (or

formats) for the knowledge test, as long as the reliability and content standards are met. (See Subpart H.)

Subpart F—Vehicle Groups, Representative Vehicles, and Endorsements

In accordance with section 12005 of the Act, any applicant for a CDL must demonstrate driving skills in a vehicle which is representative of the type of vehicle such person operates or expects to operate. Three broad vehicle groups are established by FHWA to help define the types of vehicles which would be considered acceptable representative vehicles. These groups reflect different vehicle handling characteristics under different traffic conditions and situations. Thus, separate skills and, in some cases, knowledge tests are required for each group. These tests are described in Subpart G.

Section 383.91 Vehicle groups.

Responses received by FHWA to Docket MC-125 supported classification of vehicles according to weight and number of articulations points. The

AAMVA, the American Automobile Association (AAA), the American Trucking Association (ATA), the Highway Users Federation for Safety and Mobility (HUFSA), and the National Motor Carrier Advisory Committee (NMCAC) suggested specific vehicle classifications to FHWA. The vehicle groups included in the final rule generally follow the recommendations by AAMVA, ATA, and HUFSA. The three vehicle groups delineated by FHWA are depicted in Figure 1.

The NPRM had included a "Bus" group. However, several comments to the docket emphasized the significant differences in handling characteristics among buses of various sizes and weights. In order to reflect these differences without unduly multiplying the number vehicle groups and increasing the potential administrative burdens on the States' licensing agencies, the FHWA has eliminated the separate "bus" vehicle group and replaced it with a "passenger endorsement" that can be superimposed on the remaining Groups A, B, and C.

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Figure 1
VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

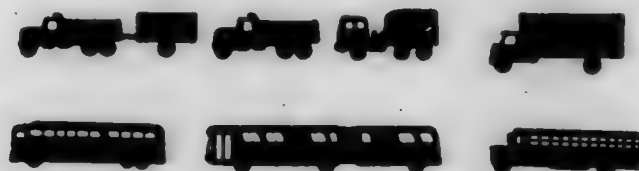
- | Group: | *Description: |
|--------|--|
| A | Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.) |

Examples include but are not limited to:



- | | |
|---|--|
| B | Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.) |
|---|--|

Examples include but are not limited to:



- | | |
|---|--|
| C | Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group applies to vehicles which are placarded for hazardous materials or designed to transport 16 or more persons, including the operator. |
|---|--|

Examples include but are not limited to:



* The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

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Representative Vehicles. Section 12005(a)(2) of the Act requires that the skills test be taken in a vehicle representative of the type which the person operates or expects to operate. Generally, the commenters to Docket MC-125 leaned toward testing in the type of vehicle the driver intends to drive. The NTSB recommended that applicants be tested in the largest vehicle allowable in a given class. Such a requirement would place an unreasonable burden on a driver applicant to obtain, for test purposes only, a vehicle other than one he/she typically operates or expects to operate. Alternatively, it would place a burden on States to acquire or to have available such vehicles for applicants to use for the tests.

Thus, the final rule requires an applicant to take his/her skills test in a representative vehicle, defined as any vehicle within the vehicle group in which he/she drives or intends to drive. The FHWA believes that the driving tests will adequately determine the ability of the driver to operate any CMV within that group. The applicant will certify to the licensing authority at the time of the test that the vehicle that he/she uses for the skills tests is a representative vehicle. This approach will give the States flexibility to allow drivers to undergo the skills test in vehicles other than the exact vehicle or the exact type of vehicle which the driver operates or expects to operate. By the same token, this broad definition of "representative vehicle" will allow drivers to switch jobs without retaking the skills test in a new, more narrowly defined "representative vehicle," except where endorsements or restrictions are involved. States would also have the option of providing the representative vehicle for any vehicle group. This flexibility could resolve problems associated with bringing unique vehicles, such as fire trucks and specialized auto transporters, to the skills test location while allowing States to require testing with such vehicles if deemed appropriate. As specified in § 383.75, States also have the option of allowing other persons or employers to administer the skills tests.

Section 383.93 Endorsements.

The endorsements to the CDL included in the final rule are designed to ensure that the operators of CMVs with specialized handling characteristics possess specialized knowledge and skills related to those vehicles. Drivers of such equipment must demonstrate this knowledge and skills, in addition to the knowledge and skills required for the basic vehicle group. Endorsements

are required for (1) double/triple trailers, (2) passenger vehicles, (3) tank vehicles, and (4) vehicles that carry hazardous materials in quantities sufficient to be placarded. For the passenger endorsement, the driver must pass knowledge and skills tests. For the other endorsements, the driver will be required to pass a knowledge test only.

Accident analyses indicate that the driver's actions and reactions are causal factors in the majority of preventable accidents involving motor carriers. The operation of certain heavy trucks and buses also requires specific skills and knowledge unique to their configuration, and loading and handling characteristics. Of particular concern are vehicles that have increased articulation points, vehicles which carry cargoes that change the handling and operating characteristics of the vehicle, or vehicles which require unique knowledge to operate safely. Therefore, the FHWA requires that operators of such vehicles have knowledge about the safe operation of these vehicles in addition to the knowledge related to the vehicle groups.

Double/Triple Trailers. The relative incidence of accidents involving operation of doubles or triples compared to tractor-semitrailer operation continues to be subject to much debate and study. The results of these debates and research efforts yield no conclusive results; except that it is clear that there are differences in the operation of double or triple trailers compared to the operation of tractor-semitrailers. For example, off-tracking of "twins" at low speeds has been shown to be significantly less than that which occurs at low speeds for a tractor semitrailer. On the other hand, a vehicle with shorter wheelbases, such as those typically used with twins, may be more difficult to control when turns are entered at high speed.

Therefore, the final rule requires drivers who operate or expect to operate doubles or triples to have an endorsement to their CDL in order to operate those vehicles.

The double/triple endorsement will require a knowledge test only. Skills testing was not proposed in the NPRM although comment was specifically sought on whether such tests should be required. Those who commented suggested that skills testing for doubles and triples would not be so different in content from that applicable to the combination vehicle group as a whole as to justify a separate behind-the-wheel examination. It should also be noted that § 391.31 of the FMCSRs already requires an employer to assure that a

driver demonstrates skills related to operating the vehicle that the carrier intends to assign him/her. Since most double/triple operations are interstate and since nearly all the States have adopted the FMCSRs for intrastate use or are in the process of adopting them, skills testing for double/triple operators is largely already being done by employers. If additional skills testing methods, specific to doubles and triples, should be developed by the Essex Corporation under the CDL grant to the State of Nebraska, or by other research, the FHWA would consider whether the tests required under § 391.31 and/or this part should be changed.

Passenger vehicles. Because the requirements for carrying passengers are different from those of other operations, and because the safety systems of buses are different from those of other CMVs, the FHWA has established a passenger endorsement. This endorsement will require a specialized knowledge test and a skills test taken in a vehicle that is representative of the applicant's actual or intended vehicle group. Tractor-trailer-type buses will fall into Group A, while flexible buses will be considered "straight vehicles" in Group B, as shown in Figure 1.

The operator of a passenger vehicle will be required to take the skills test in a "passenger" vehicle representative of the vehicle group (A, B, or C) for which he/she is applying. The holder of the passenger endorsement would be allowed to operate the nonpassenger vehicles in his/her vehicle group. However, the holder of a CDL without the passenger endorsement could not operate a passenger vehicle without taking the appropriate knowledge and skills tests.

The shifting of the passenger vehicle from a vehicle group, as contained in the NPRM, to an endorsement has a number of advantages. First, it allows the basic vehicle grouping to follow the A, B, C grouping recommended by the AAMVA and a majority of States. Second, it retains the distinction between passenger and nonpassenger vehicle operations. Furthermore, the use of passenger endorsements to a three-vehicle-group basic license requires the driver of a large passenger vehicle to be tested in a large vehicle, and allows a small passenger vehicle driver to be tested in a small passenger vehicle. Such a distinction was made in the material submitted to the docket by the Essex Corporation and is similar to the Canadian classification system which separates large and small passenger vehicles. The distinction among

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passenger vehicle sizes should also benefit drivers who may have access only to certain types of vehicles. The FHWA believes that the endorsement is an improvement over the one "bus" class proposed in the NPRM for these reasons.

Tank vehicles. The FHWA recognizes that tank vehicle operations present special concerns. For example, in 1986, there were 818 accidents reported to the FHWA involving tank vehicles transporting hazardous materials resulting in 136 fatalities (from all causes), 761 injuries, and over \$17 million in property damage. In the same year there were 1,276 accidents reported by tank vehicle carriers or nonhazardous materials, resulting in 142 fatalities, 1,177 injuries and over \$17 million property damage. The most important operating difference between driving a tank vehicle and a standard dry freight truck is liquid product surge which may be the most significant condition that a tank vehicle driver must be able to mitigate. Other factors that may threaten vehicle stability, therefore presenting a safety risk, include: sloshing liquids in various tank vehicle designs; various loading conditions; and the impact of liquids on driving maneuvers such as braking, backing, turning, and combined braking/steering maneuvers. It is important that the drivers of these vehicles be given special emphasis during the licensing process, and FHWA's standard includes a requirement that drivers of tank vehicles have an endorsement.

As a requirement for the tank vehicle endorsement, the NPRM proposed a knowledge test and a skills test in a half-filled vehicle. The majority of the respondents to this topic opposed the skills test because it would not simulate typical tank vehicle operations, because test conditions would vary significantly among vehicle and landing types, and because such a test could depend on the deliberate creation and successful mitigation of an inherently unsafe situation. Typical of these comments was that of the National Tank Truck Carriers, Inc.:

... For an applicant to meet the objective of the proposal (i.e., recognize the dynamics of shifting cargo and their relationship to vehicle stability), he/she would have to operate the test vehicle in such a manner as to approach the threshold of an overturn or jackknife. It is reasonable to assume that some applicants will cross that threshold, thus the potential for compromising the safety of both the applicant and the examiner is evident... (furthermore) the vehicle dynamics of different types of trailers may vary considerably and never replicate the actual

type of tank operated by a (potential) employer.

Furthermore, according to the National Private Trucking Association,

The load conditions which FHWA proposes to simulate would not be typical of what drivers experience. Indeed, in the vast majority of situations, tank trucks are operated either full or empty, and companies seek to avoid as much as possible having to operate less-than-full, if for no other reason that it simply is not economical...

The FHWA has embodied all these concerns in the final rule, which eliminates the tank vehicle skills test from the minimum standards. The tank vehicle knowledge examination would, however, test applicants' understanding of the causes, prevention, and effects of cargo surge, and related topics.

Just as in the case of double/triple trailers, employers of tank vehicle drivers are required (in § 391.31 of the FMCRs for interstate commerce, and by many States to assure that drivers demonstrate skills related to operating the vehicle that the carrier intends to assign him/her. As in the case of the doubles/triples endorsement, the FHWA intends to monitor the skills qualifications for tank vehicle operators. If additional appropriate testing methods are developed by the Essex Corporation or other research, the FHWA will consider whether the tests required under § 391.31 should be changed.

Hazardous Materials. Section 12005(a)(5) of the Act requires that drivers of vehicles that carry hazardous materials demonstrate a knowledge of hazardous materials regulations and emergency procedures. The FHWA has implemented this provision of the Act by including a special hazardous materials endorsement based on a knowledge test, in the standard. Also drivers of tank vehicles transporting hazardous materials would obtain an endorsement both for tank vehicles and hazardous materials.

Section 383.95 Air brake restriction.

The FHWA's data on equipment-caused accidents consistently show brake defects as the most frequently reported reason for such accidents. The NPRM treated air brake knowledge as an integral part of Group A "Combination Vehicles" (hence, requiring no endorsement), and as an endorsement to all other groups. However, many respondents suggested that the endorsement be eliminated and replaced with a restriction.

Information was also presented to the docket indicating that the vast majority of straight vehicles above 26,001 pounds

are manufactured with air brakes. While most of the vehicles below 26,001 pounds do not have air brakes, the only such vehicles specifically covered by this rule are placarded hazardous material laden vehicles and small buses.

In conformance with the comments to the docket, the final rule includes knowledge and skills related to air brakes as part of the basic requirements for all vehicle groups since the majority of CMVs subject to this rule are so equipped. An applicant who either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, will only (if found otherwise fully qualified by the State) be eligible to receive a CDL that must contain an air brake restriction prohibiting him/her from operating any CMV equipped with air brakes. The restriction is the approach now used by virtually all States to limit drivers to specific vehicle or operating conditions. A State may also impose more stringent standards, such as requiring all its CDL applicants to demonstrate knowledge and/or skills in the use of air brakes.

To avoid the restriction, the skills test must be performed in a vehicle equipped with an air brake system, or with a hybrid system containing air brake components. By the same token, the restriction shall apply to all vehicles equipped with air brakes, or with hybrid systems.

This approach will promote administrative uniformity across all vehicle groups, because the States have mechanisms in place to deal with restrictions. There will also be fewer restrictions under the final rule provisions than there would have been endorsements since the majority of CMVs are air brake equipped.

Subpart G—Required Driver Knowledge and Skills

This section describes the knowledge and skills which CMV operators would be required to have and demonstrate for each vehicle group and endorsement. Information about these skills and knowledge areas would be included in drivers' manuals available to driver applicants. The FHWA does not expect that each knowledge test given to each CDL applicant would cover every specific item of required knowledge. Rather, the tests would be a representative sampling designed to ensure that the applicant has sufficient breadth and depth of knowledge to operate his/her vehicle safely. States may also require knowledge of and include questions related to any unique

or special traffic laws and regulations within their jurisdictions. A sample of the more specific items on which a State may test to ensure the applicant's knowledge and skills in each general area is included in the appendix to Subpart G.

Section 383.111 Required knowledge.

A primary cause of accidents is improper vehicle control in adverse environmental conditions and/or emergency traffic situations. More than 20 percent of the preventable accidents involving CMVs are attributable to this cause. Other primary causes of accidents include: Following too closely; failure to maintain control, improper/erratic lane change; improper turning; starting and braking improperly; and failure to yield right-of-way. To ensure that all CMV drivers are at least aware of these dangers and the correct driving responses, an appropriate number of these areas must be covered in questions on the knowledge examinations. Several respondents to the docket, including the AAMVA and the States of California and New York, argued that the knowledge areas included in the NPRM were too rigidly prescribed. Instead, these respondents argued, the FHWA should list general knowledge areas, and the States should have the flexibility to determine specific subtopics for emphasis. In an effort to preserve maximum leeway for the States while assuring minimum uniform Federal standards in keeping with the Act, the FHWA has revised the listing of required knowledge areas to incorporate AAMVA's suggested approach. Thus, the final rule includes general areas which must be included on the tests.

Safe Operations Regulations. Section 12005(a)(4)(A) of the Act requires that tests ensure that drivers have working knowledge of regulations pertaining to safe operation of commercial vehicles issued under Title 49, CFR. To meet this requirement, the final rule specifies that applicants shall be provided with information about the regulations contained in Parts 391 through 397 and shall be tested on this information. This information is limited to that which a driver must have for safe operation of a CMV. The driver is not expected to have knowledge of subjects, such as vehicle mechanics, which go beyond the scope of the information necessary for safe operation of his/her CMV.

Commercial Motor Vehicle Safety Systems. Section 12005(a)(4)(B) requires that drivers have a working knowledge of the proper use of the safety systems of commercial vehicles. As promulgated in the final rule, drivers must have a "working knowledge" of such items as

proper use of lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, vehicle operation characteristics, diagnosing malfunctions, and proper use of these safety systems during emergencies.

Safe Vehicle Control. Section 12005(a)(1) requires that each CMV operator take written knowledge tests pertaining to safe vehicle control. The FHWA has determined that a CMV operator should have knowledge of the procedures used to safely operate the vehicles under various traffic and road conditions, and under various weather and lighting conditions.

Relationship of Cargo to Vehicle Control. The FHWA is also requiring that drivers have general knowledge about cargo placement, balance, securement and its relationship to safe vehicle operations for the particular vehicle group.

Vehicle Inspections. Pre-trip inspections as well as periodic inspection and repair are important actions which help prevent breakdowns and improve safety. Therefore, the final rule includes a requirement that CMV drivers must know and understand the various inspection procedures.

Hazardous Materials Knowledge. This category of knowledge will involve basic information regarding hazardous materials, in order to assure that every CMV operator can at least identify a hazardous cargo and the implications thereof. For drivers actually transporting placarded hazardous materials loads, the essential facts on the basic knowledge test must be supplemented by a special knowledge test for the hazardous materials endorsement.

Air Brake Knowledge. As discussed in the analysis of § 383.93 (Endorsements), knowledge of air brake systems now forms and integral part of the knowledge test for all vehicle groups.

Combination Vehicle Knowledge. The FHWA requires that an operator of a motor vehicle which falls into the Combination Vehicle classification (i.e., Group A) be tested on additional information as part of the basic knowledge requirements. As delineated in § 383.111, this information address coupling and uncoupling, as well as vehicle inspection procedures that are unique to Group A.

Section 383.113 Required driving skills tests.

Section 12005(a) of the Act requires that each driver applicant demonstrate his/her ability to safely operate a vehicle that is representative of the class or type of vehicle he/she operates

or expects to operate. Each driver applicant will be required to demonstrate the basic skills included in this final rule; the State may also test any other skills it deems appropriate and necessary. The skills tests will be conducted entirely in actual road conditions or in a combination of road and off-street conditions. Thus, the FHWA is not requiring States to include off-street testing as part of the CDL program. The decision as to where the skills test will be conducted will remain at the discretion of the States, as long as an in-traffic component is included. Wherever the skills test is conducted, an applicant for a CDL will have to demonstrate that he/she is capable of operating the CMV safely.

Applicants for each vehicle group would be required to successfully demonstrate the basic vehicle control skills, safe driving skills, and air brake skills (except for CDLs which restrict air brake use). The specific skills which would be required are contained in § 383.113 (a), (b), and (c).

With respect to safe driving skills, most of the respondents supported the proposal with some minor wording revisions to allow easier examiner interpretation. The FHWA incorporated these suggestions into the final rule. In one case, however, the AAMVA suggested a requirement that applicants "must communicate presence by properly using horns or lights." Since the test is to be taken primarily or exclusively in traffic, and since such required "communications" may be unnecessary and distracting to motorists, the FHWA has omitted this suggested addition.

In the NPRM, the FHWA elicited opinions on simulator technology in connection with the skills tests. The consensus of responses was that, as regards CMV operations, simulator technology has not yet advanced to a satisfactory stage of development. So as not to preclude further advances in this field, the final rule allows States to use simulator technology as part of the skills testing program, but not as a substitute for the required test in traffic.

Section 383.115-121 Endorsement tests.

The FHWA has determined that an operator of special types of CMVs shall obtain an endorsement to his/her CDL because of the specialized knowledge and skills needed, in addition to the knowledge and skills contained in §§ 383.111 and 383.113. Endorsements to the CDL will be prerequisite to the operation of vehicles equipped with double/triple trailers; passenger vehicles; tank vehicles; or vehicles involved in transportation of hazardous

materials. Each of the endorsements will require additional knowledge tests. The passenger endorsement will also require each driver to take and pass a skills test in a representative passenger vehicle. Information on these knowledge areas and skills will be included in the driver's manuals. The FHWA's specific minimum standards for each endorsement are contained in Subpart G and are summarized below:

Section 383.115 Double/triple trailers endorsement.

Increased length, larger freight capacity and greater number of articulation points lead to differences in handling and performance characteristics of double/triple trailers. Each applicant will undergo a knowledge test covering unit assembly and hookup, trailer placement, handling and stability characteristics, and potential problems of such vehicles in traffic. Skills test(s) are not proposed for this endorsement because of the administrative difficulties cited in the commentary on § 383.93, because the majority of double/triple trailer drivers already undergo road tests administered by employers under § 381.31, and because of a lack of evidence as to the specific skills on which a driver can be tested which would be different from the skills required in the basic test(s).

Section 383.117 Passenger endorsement.

To obtain the passenger endorsement, an applicant must satisfy both knowledge and skills test requirements. In addition to the basic knowledge test for the appropriate vehicle group, passenger operators must undergo a knowledge test pertaining to the operation of passenger transport vehicles and proper emergency and braking procedures. Applicants for the passenger endorsement need take only one skills test. The vehicle used in that test must be a bus or other passenger vehicle satisfying the requirements of the specific vehicle group that the applicant operates or expects to operate.

Section 383.119 Tank vehicle endorsement.

Each applicant for a tank vehicle endorsement must demonstrate his/her knowledge in areas such as vehicle operations under different loadings, product density, tank vehicle type and construction. The driver must also have knowledge of and be tested on the causes and prevention of cargo surge, and the likelihood of rollover due to improper control of cargo surge.

The NPRM proposed that each driver who wishes to obtain a tank vehicle

endorsement to his/her CDL would also demonstrate his/her skills by taking a skills test in a partially loaded tank vehicle (between 30 and 60 percent full in each compartment). For reasons addressed in the commentary to § 383.93, the FHWA has eliminated this requirement in the final rule; nevertheless, for employees subject to the FMCSRs and analogous State regulations, a test in a tank vehicle remains an employer responsibility.

Section 383.121 Hazardous materials endorsement.

Section 12006(a)(5) of the Act requires that an individual who will operate vehicles carrying hazardous materials shall be qualified to operate CMV in accordance with all regulations pertaining to the transportation of hazardous materials issued under the Hazardous Materials Transportation Act. The FHWA does not believe that an applicant needs to know all parts of these regulations. For drivers of vehicles which transport non-placarded quantities of hazardous materials, the FHWA believes the questions included in the basic knowledge test are sufficient. Drivers of vehicles carrying hazardous materials in placarded quantities require additional knowledge. In either case, only those sections of the hazardous materials regulations that are essential to a driver's safe operation of his/her vehicle are required to be included in the knowledge tests.

The applicant will demonstrate his/her knowledge of these areas to obtain an endorsement to his/her CDL as follows:

(a) *Hazardous material regulations*—will include the Hazardous Material Table, shipping paper requirements, hazardous material packaging, marking, labeling, and placarding requirements;

(b) *Hazardous material handling*—will include the different procedures to be utilized for different kinds of hazardous materials, general loading and unloading of materials requirements, cargo segregation, and regulations regarding the routing of materials (in tunnels, on highways etc.), attendance of vehicles, parking, fueling, and vehicle repair;

(c) *Operation of emergency equipment*—will include knowledge of when and how such equipment is to be used and any other precautions that the vehicle operator must implement to protect the public; and

(d) *Emergency response procedures*—will include general knowledge of appropriate and necessary actions for all types of hazardous materials. The preamble to the NPRM had suggested that this area of the hazardous materials

endorsement test should include specific knowledge for any type of freight (the applicant) expects to transport. However, such an implied standard would have required a customized test for each applicant, and would have implied frequent retesting as operators changed jobs or cargo types. The FHWA has, therefore, removed any mention of driver-specific commodity knowledge as part of this endorsement.

Subpart H—Tests

To ensure that all drivers have the knowledge and skills to safely operate a CMV on the public roadways, every CDL applicant must pass tests which demonstrate the person's knowledge or skills described in Subpart G. The FHWA intends that the tests shall have similar substantive content, and that test administration and scoring procedures shall meet similar performance standards, so as to establish valid and nondiscriminatory testing of CMV operators that is reasonably uniform in substantive results. This section contains the test administration methods and standards for minimum passing scores which the FHWA has adopted for the knowledge and skills tests.

Section 383.131 Procedures.

Because licensing examinations within a State are given to different applicants, at different times, in different locations, and by different examiners, it is critical to minimize any impact of these differences. Therefore, a State's standard test procedures and methods should be similarly applied throughout the State. The CDL program will include procedural information and directions for the test applicant and for the test examiner. For the knowledge and skills tests, the directions given to the driver applicant will cover the purpose of the test, how to choose a response, how to make a response, any time limits, and any other special procedures determined by the State. A State will be free to select a testing format or formats (e.g., paper, oral or automated equipment for knowledge tests) to meet the State's particular needs. Directions for taking knowledge tests will differ depending on the particular testing format(s) used by the States (e.g., written, oral, or automated). All information provided to the applicant will need to be at or below the six-grade reading level. The FHWA understands that this level of reading competency will be sufficient to fully test a driver's knowledge without discriminating based on literacy and

believes that the problems, expressed by some commenters, regarding "illiterate drivers" can be resolved by means of State adoption of several knowledge testing formats. To that end, the FHWA is working with the AAMVA to develop information and testing procedures which are geared to drivers with lower than sixth-grade reading levels.

The information manual(s) furnished by the States to applicants will include the substance of the knowledge and skills for which outlines are provided in Subpart G of the final rule.

Directions for the examiner will include such items as the information the examiner must give to the applicant, information about how to conduct the tests, and how to score the tests. Most respondents to the NPRM agreed with this section of the proposal or made no comment. One respondent did object to the requirement for manuals, evidently as a reaction to the length of the draft Essex Corporation materials. The FHWA believes that the requirements of this section preserve a high degree of flexibility for the States in terms of the contents, structure, and length of the manuals; furthermore, the final rule does not mandate State acceptance of the Essex materials. Because of this flexibility, and because the vast majority of respondents raised no objection to this section, the FHWA has preserved it essentially intact as proposed.

Section 383.133 Test methods.

The States will construct and offer tests corresponding to the vehicle groups and endorsements in Subpart F, and covering general areas described in Subpart G.

The States will be required to establish specific testing and scoring procedures and the associated administrative procedures that meet the standards. The knowledge and skills tests will uniformly assess the performance of applicants regardless of the location of the test.

To assure that the knowledge and skill tests can accurately determine the proficiency of CDL license applicants, the tests should be reliable. In its response to the NPRM, the Essex Corporation (Essex) provided the following useful definition of reliability:

The reliability of a test . . . is simply an index of the extent to which a person with a given level of knowledge or skill would make essentially the same score in taking the same test a second time, without any intervening study or forgetting. Or, it sometimes takes the form of a correlation of scores made by the same person on two alternative forms of a test, each of which purports to measure the same knowledge or skills. In the case of skills tests, reliability can [also] refer to the degree

of agreement between 2 independent examiners concerning the level of skill demonstrated by an examinee on a test of performance.

The mathematical index of reliability (correlation coefficient) can range from .00 which means total lack of reliability to 1.00 which means perfect reliability. In practice, no test is perfectly reliable . . . It is commonly accepted that written examinations should have reliabilities of about .80 or better . . . [for skills tests] reliabilities as low as .70 may have to be accepted in their everyday practical application . . . Generally speaking, the reliability of a test increases as the length of a test is increased.

The NPRM proposed that knowledge tests would have a minimum reliability coefficient of 0.90, and that skills tests would have a minimum interexaminer reliability of 0.80. The above comments by Essex, and comments by the States of Illinois and Montana, questioned the practicability of such high coefficients. "These requirements," Montana stated, "may exceed the abilities of many States at the outset of this program . . ." In addition, these specific reliability factors run directly counter to the wishes of the 10 respondent States which, in supporting Alternatives 1 or 3, placed a high priority on flexibility. Furthermore, the FHWA recognizes that several States already have in place testing programs that could serve as a strong basis for compliance with this final rule, but for which sophisticated statistical analyses and studies may not be available. Finally, the final rule does not require the States to adopt the Essex materials, which would in fact be the only source readily available to the States for scientifically determined reliability coefficients for CMV skills and knowledge tests. These Essex materials themselves are still in the developmental stage as of the writing of this final rule, so that their ultimate reliability results are not yet known.

To accord maximum flexibility to the States to modify their current examinations, to adopt the Essex materials, or to develop new tests as they see fit, the FHWA has omitted specific numerical reliability standards from the final rule. The rule still places heavy emphasis on the concept of reliability on both the knowledge and skills tests; for that reason, the minimum number of questions for each basic knowledge test has been retained. For the same reason, this section-by-section analysis presents desirable goals for reliability.

Each basic knowledge test must contain a minimum, exclusive of the air brake component, of 30 items covering all of the knowledge areas described in Subpart G for a given vehicle group. The

final rule, in response to numerous public comments, does not require a minimum number of questions on each endorsement knowledge test. However, each such test must be of a size sufficient to test a driver's grasp of the related knowledge in the manual. Each basic and endorsement knowledge test must, moreover, be reliable, to the extent required to assure that each applicant possesses the knowledge that the test is intended to cover. A desirable reliability coefficient would be the 0.80 mentioned by Essex.

A State would have flexibility to choose a specific method for giving the knowledge test as long as the tests meet the performance standards. For example, the knowledge tests could be administered by paper and pencil, orally, or given on automated equipment. States may also arrange for tests to be given with an oral interpreter as appropriate. (This would not relieve the interstate driver of the language requirements contained in § 391.11.)

Skill tests will have to have sufficient interexaminer reliability to ensure similarity of pass/fail rates on tests given by different examiners. As Essex points out, a practicable coefficient of interexaminer reliability of a State's examiners would be 0.70. Of course, a far more desirable goal would be the coefficient of 0.80 that has been established as a minimum in the *Torque* Tests developed by the National Highway Traffic Safety Administration (NHTSA), and the States are urged to strive to achieve that goal.

Specific methods for skill testing and scoring would be determined by each State. For example, the States may use a single score for a right hand turn starting with the initiation of the right turn signal and ending following the turn and cancellation of the turn signal, or they may use several scores for the turn comprised of the different performances involved in a right hand turn (initiates the turn signal, uses appropriate lanes, uses the right side mirror(s), blocks inside traffic, stays in roadway, cancels turn signal) or they may use some combination of the two approaches. The latter approach is a "disaggregate" or "elements" test approach which is used in the *Torque* tests.

The FHWA requires that the CDL examiners shall be qualified to administer the knowledge and skills tests. The FHWA expects that States will continue to ensure that their examiners have a high degree of ability, for example, by conducting rigorous training programs, by closely evaluating examiners' performance, and/or by requiring that they hold valid CDLs for

the classes of vehicles for which they give exams. States may also require examiners to pass endorsement tests identical to those given to CDL applicants. Although specific qualifications for examiners will remain a State prerogative, the final rule will influence State standards for examiners because achievement of the reliable examinations called for in this section will require not only good test design but also a high degree of examiner training and ability.

Section 383.135 Minimum passing scores.

For the knowledge tests, the driver applicant must correctly answer at least 80 percent of the questions to pass. For the skills tests, the applicant must successfully perform the skills identified in § 383.113 as being required for the standard tests. The State will define "successful performance" in the course of constructing its tests in keeping with §§ 383.131 and 383.133. To assure the required interexaminer reliability, the State's definition will have to be precise.

Section 383.135(d) specifies the procedure to be employed by the State in scoring the air brake components of the knowledge and skills tests (§ 383.133(i)) and issuing the air brake restriction (§ 383.95). If the applicant performs the skills test in a vehicle without air brakes, the air brake restriction will be indicated on his/her CDL, if it is issued. If the applicant fails the air brake component of the knowledge test, the air brake component would be removed from the test for scoring purposes, and the air brake restriction would be imposed. For example, if a State offers a 40-question basic knowledge test including 10 air brake questions, and the applicant scores less than 80 percent on the 10 air brake questions, then he/she can still obtain a CDL. He/she will, however, receive the air brake restriction. Implementing the wishes of most docket respondents, the changes discussed in this paragraph are necessary in order to convert the air brake endorsement in the NPRM into a restriction, while preserving the reliability of the basic knowledge and skills tests when taken by applicants who are not qualified in air brakes.

The State will automatically fail any driver applicant who does not obey traffic laws or causes an accident during the test. The State will determine the appropriate amount of time an applicant must wait in order to retake any test which he/she fails. The State would also determine the maximum number of times a person may take and fail any

test before he/she may be prohibited by the State from obtaining a CDL.

Subpart J—Commercial Driver's License Document

This section includes standards for CDLs that are required by section 12006 of the Act. Generally, these State-issued documents will be, to the maximum extent practicable, tamperproof, and will include information as described further below.

The FHWA included in Alternative 2 of the NPRM a sample set of uniform CDL document specifications which might be used by States. This sample set of specifications engendered misunderstandings on the part of the States and other commenters, many of whom interpreted it as a mandatory component of Alternative 2. A clear majority of the States responding to this issue wished to retain the freedom to determine the form of the CDL, with only minimum requirements in the final rule. Some nongovernmental parties expressed a preference for a uniform, Federally-mandated standard form. Because the States would be faced with the costs of creating a new form exclusively for CDL holders, the sample specification for the form of the CDL has been omitted from the final rule. Remaining in the final rule is a list of specific data items which the States must include on the CDL. These items are based on section 12006 of the Act.

Section 383.153 Information on the document and application.

Section 12006 of the Act delineates the information required to be included on all CDLs. Exhibit 3 compares the CDL contents as specified in the NPRM, and those contained in this final rule. In response to numerous comments, the FHWA has deleted the requirement for weight, eye color, and hair color, all of which can be changed by the applicant. However, States will be free to collect this information and submit it to the CDLIS.

EXHIBIT 3.—COMMERCIAL DRIVER'S LICENSE DOCUMENT

	Proposed in NPRM	Treatment in Final rule:	
		Required	Optional ¹
"Commercial Drivers License"	X		
"Commercial Drivers License" or "CDL"		X	
Full name	X	X	
Signature	X	X	
Mailing address	X	X	

EXHIBIT 3.—COMMERCIAL DRIVER'S LICENSE DOCUMENT—Continued

	Proposed in NPRM	Treatment in Final rule:	
		Required	Optional ¹
Information to identify:			
Date of birth	X	X	
Sex	X	X	
Weight	X		X
Height	X		X
Eye color	X	X	
Hair color	X		X
Color photograph	X	X	
Social security number	X	X	
State license number (if different from Social Security ²)		X	
Name of State	X	X	
Date of issuance	X	X	
Date of expiration	X	X	
Vehicle groups	X	X	
Endorsements	X	X	

¹ These items are ones that were proposed in the NPRM. However, in response to public comment the final rule will not list them as requirements. States will have the freedom to include other items not listed in the final rule.

² States will be required to collect the social security number and submit it to the CDLIS. However, they may choose not to show it on the license. In this case they will substitute a State produced license number on the license.

States will be required to collect the Social Security Number (SSN) and submit it to the CDLIS. They will also have to show the applicant's State license number on the CDL. If the State uses the SSN as the applicant's license number, the SSN must appear on the CDL. If, however, the State does not use the SSN as a license number, the State may choose to omit the SSN from the license document, but not the CDLIS. In addition to the identifiers listed in Exhibit 3, the final rule includes standard codes to be used for the vehicle groups and endorsements. The standard codes are intended to provide uniformity for enforcement purposes. While the FHWA proposal included some codes with double letters, many commenters suggested the use of single letter codes which would be more easily accommodated on the license document. The FHWA has therefore provided single letter codes which would eventually make the CMV driver documentation easily recognizable to enforcement officials. For example, a CDL with A-H would be recognized by enforcement officials across the country to mean the driver is authorized to drive a combination vehicle and has a hazardous materials endorsement.

A nonresident CDL must be clearly labeled as such, although the rule allows the States much latitude in the placement of the word "nonresident." Also, the rule provides for the air brake restriction, at the States' option.

Combined Endorsement Codes. The final rule provides an endorsement code, "X," for those drivers qualifying for both the hazardous materials and tank vehicle endorsements. This change is made in response to a number of States which expressed concern regarding the space limitations of the CDL and computer system needed to record endorsements. In addition, the rule allows States to develop additional combined endorsement codes provided that the codes are explained in the CDL itself.

Improved Identification Techniques. The FHWA and the docket respondents believe that there is room for improvement in assuring positive identification of CDL holders, but that present technologies are not yet cost-effective. For example, commenters believe that fingerprints, or more likely the thumbprint, cannot be placed on the license document because of space and readability after copying. While there was some interest in retaining prints on the application but not placing them on the license, many commenters believed that without digitizing or other special equipment prints are of little practical value.

Although the FHWA is aware of "state-of-the-art" technologies that may be available to help identify the driver, such as retinal imaging and digital dental records, their use is not required at this time as part of the standard because of concerns about their costs, benefits, and practicability. The FHWA and the States will explore these advanced technologies, as well as modern methods of encoding data such as magnetic strips. As technology evolves and better, more cost-effective identification means become available, States would be free to impose such methods. The FHWA believes that it would be premature to include them in this rulemaking.

Section 383.155 Tamperproofing requirements.

Section 12006 of the Act requires that the CDL document be tamperproof to the maximum extent practicable. A tamperproof license is one which is designed, manufactured and/or processed to protect against counterfeiting, forgery, and alteration, i.e., it would be beyond the capabilities of the general public to reproduce or change the document. All State licensing authorities will be required to use license materials and procedures to reasonably assure that their licenses are tamperproof. At a minimum, each State will continue to use the same tamperproof method it currently uses for noncommercial licenses. The FHWA has

provided the States flexibility to use current or future technologies to make the CDL tamperproof. As the technology is improved and new methods become cost-effective, the States will be free to improve tamperproof methods.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. The final rule is not expected to result in an annual effect on the economy of \$100 million, or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. However, because of the public interest in the issue of commercial motor vehicle safety and the expected benefit in transportation, this rule is considered significant under the regulatory policies and procedures of the DOT. For this reason and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. Since an analysis of impacts, including economic factors, involves consideration of related motor vehicle safety rulemaking proposals, an overall regulatory evaluation has been prepared for the various rulemaking actions that will be issued to implement the Act. This evaluation, which addresses some of the provisions contained in the final rule issued on June 1, 1987, and this final rule, has been placed in the public docket and is available for inspection in the Headquarters office of the FHWA, 400 Seventh Street SW., Washington, DC 20590. A regulatory evaluation addressing the specific impacts associated with this final rule has also been prepared and placed in the docket.

A significant part of the motor carrier industry and other employers covered by the Act consists of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the preliminary regulatory evaluation/initial regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and small entities have had the opportunity to submit comments to the public docket established in conjunction with the NPRM.

Moreover, the requirement that current drivers obtain a CDL will have only a slight effect on small entities. As the section-by-section analysis explains, the drivers will be given all needed materials to study for the tests. Current drivers may be able to substitute specific qualifications (a good driving record, plus experience or successful completion of an acceptable prior skills examination) for the required CDL driving test. The April 1, 1992, deadline provides ample opportunity for employees of small entities to comply with this regulation. In terms of efficiency and safety of operations, and the potential reduction of accidents and attendant liabilities, small business will materially benefit from the standards and controls imposed by the CDL program on holders of CDLs. For example, small entities cannot afford checks of driver's licenses; the CDLIS, and the accumulation of each CMV operator's violations on a single record, will produce better drivers for small business.

As the preceding facts demonstrate, the FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this proposal. Conversely, the CDL program will have distinct advantages to small entities.

Paperwork

While developing the testing and licensing standards, the FHWA recognized that they could impose a major paperwork burden on States and drivers. The FHWA attempted, to the extent practical, to design the final rule to be compatible with testing and licensing procedures now used by the States and to minimize the burden increase. The FHWA, however, believes that an increase in these burdens will be necessary to accomplish the goals and objectives of the Act. In the NPRM, the FHWA invited comments and creative approaches for reducing the burden without compromising safety. Based on these comments, the final rule contains several improvements—foremost among them, the elimination of the CDC, and of the 50-State pre-licensing record check—that will reduce the paperwork burden on the States from the levels implied by the NPRM. While the flexibilities inherent in the final rule will enable the States further to explore options for simplifying the procedures, minimizing the potential expense of licensing CMV drivers, and developing innovative testing techniques, there will remain an irreducible volume of paperwork associated with the CDL program.

Federalism Impact

The FHWA has carefully reviewed the proposed testing and licensing standards in light of the purposes of the Act and the President's Executive Order on Federalism (Executive Order 12612, October 28, 1987). In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress found that it is in the public interest to enhance commercial motor vehicle safety and that minimum standards for States to use to test and license CMV operators would help ensure that such drivers have the knowledge and skills needed to safely operate their vehicles. Congress thus identified commercial motor vehicle safety as a matter of national importance and included reciprocity requirements as part of the mandates in the Act.

In his Executive Order on Federalism, the President ordered Executive Departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies that have federalism implications. These policies have been taken fully into account in the development of this regulation, as the following paragraphs indicate.

The Act provides the Secretary with clear statutory authority to regulate CMV operators as defined in the Act. This means the operation of CMVs in interstate commerce as well as intrastate commerce. Thus, the FHWA recognizes that its minimum testing and licensing standards for CMV operators have Federalism implications.

The Act mandates minimum testing and licensing standards. This means that States may continue to adopt and enforce additional testing and licensing requirements for CMV operators within their State bounds. Also, States will continue to have sole discretion as to whether or not to license any CMV operator and what specific procedures, tests and fees are applicable.

The Federal testing and licensing standards establish minimum safety regulations which must be followed by the States and which may be supplemented by the States. The statutory basis for Federal regulations of CMV operators has been outlined above. Several issues addressed in this final rule, however, involve policies that have federalism implications. These issues have been addressed separately above. (See specifically the discussion of alternatives, substitute for skills tests and third party testing.) This final rule limits the policymaking discretion of the States only in narrow ways, and does so only to achieve the national purposes of the Act. Accordingly, it is certified that

the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and accord fully with the letter and spirit of the President's Federalism Initiative.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license documents, Commercial motor vehicles, Highways and roads, Motor carriers licensing and testing procedures, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.)

Issued on: July 15, 1988.

Robert E. Partle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Subchapter B, as set forth below.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for 49 CFR Part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. The table of sections to Part 383 is amended by adding § 383.23 and Subparts E through J to read as follows:

Subpart E—License Requirements

Sec.

383.23 Commercial driver's license.

Subpart F—Testing and Licensing Procedures

383.71 Driver application procedures.
383.73 State procedures.
383.75 Third party testing.
383.77 Substitute for driving skills tests.

Subpart G—Vehicle Groups and Endorsements

383.91 Commercial motor vehicle groups.
383.93 Endorsements.
383.95 Air brake restriction.

Subpart H—Required Knowledge and Skills

383.110 General requirement.
383.111 Required knowledge.

Sec.

383.113 Required skills.
383.115 Requirements for double/triple trailer endorsement.
383.117 Requirements for passenger endorsement.
383.119 Requirements for tank vehicle endorsement.
383.121 Requirements for hazardous materials endorsement.
Appendix to Subpart G—Required Knowledge and Skills: Sample Guidelines

Subpart I—Tests

383.131 Test procedures.
383.133 Testing methods.
383.135 Minimum passing scores.

Subpart J—(Reserved)

Subpart J—Commercial Driver's License Document

383.151 General.
383.153 Information on the document and application.
383.155 Tamperproofing requirements.

3. Section 383.1 is amended by removing the word "and" from the end of paragraph (b)(4), substituting a semicolon for the period at the end of paragraph (b)(5) and adding paragraphs (b)(6) through (b)(11) to read as follows:

§ 383.1 Purpose and scope.

- (b) Establishes testing and licensing requirements for commercial motor vehicle operators;
- (7) Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;
- (8) Sets forth commercial motor vehicle groups and endorsements;
- (9) Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements.
- (10) Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and
- (11) Establishes requirements for the State issued commercial license documentation.

4. Section 383.5 is amended by adding ten definitions and revising two definitions entitled "Commercial driver's license" and "Commercial motor vehicle," placing them in alphabetical order as follows:

§ 383.5 Definitions.

"Commercial driver's license (CDL)" means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR Part 383, to an individual which authorizes

the individual to operate a class of a commercial motor vehicle.

"Commercial driver's license information system (CDLIS)" means the CDLIS established by FHWA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

"Commercial motor vehicle (CMV)" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

- (a) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (b) Has a gross vehicle weight rating of 26,001 or more pounds; or
- (c) Is designed to transport 16 or more passengers, including the driver; or
- (d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

"Driver applicant" means an individual who applies to a State to obtain, transfer, upgrade, or renew a CDL.

"Endorsement" means an authorization to an individual's CDL required to permit the individual to operate certain types of commercial motor vehicles.

"Foreign" means outside the fifty United States and the District of Columbia.

"Nonresident CDL" means a CDL issued by a State to an individual domiciled in a foreign country.

"Representative vehicle" means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate.

"State of domicile" means that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.

"Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not

limited to, cargo tanks and portable tanks, as defined in Part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

"Vehicle" means a motor vehicle unless otherwise specified.

"Vehicle group" means a class or type of vehicle with certain operating characteristics.

5. Part 383, Subpart B is revised by adding a new § 383.23 to read as follows:

Subpart B—License Requirements

§ 383.23 Commercial driver's license.

(a) General rule. (1) Effective April 1, 1992, no person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which meet the Federal standards contained in Subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(2) Effective April 1, 1992, except as provided in paragraph (b) of this section, no person shall operate a commercial motor vehicle unless such person possesses a CDL which meets the standards contained in Subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) Exception. If a commercial motor vehicle operator is domiciled in a foreign jurisdiction which, as determined by the Administrator, does not test drivers and issue a CDL in accordance with, or similar to, the standards contained in Subparts F, G, and H of this part, the person shall obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such Subparts F, G, and H.

(c) Learner's permit. State learner's permits, issued for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

- (1) The learner's permit holder is at all time accompanied by the holder of a valid CDL; and
- (2) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automobile drivers' licenses.

6. Part 383 is amended by adding Subparts E, F, G, H, I, and J to read as follows:

Subpart E—Testing and Licensing Procedures

§ 383.71 Driver application procedures.

(a) Initial Commercial Driver's License.—Prior to obtaining a CDL, a person must meet the following requirements:

- (1) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to Part 391 of this title, shall certify that he/she meets the qualification requirements contained in Part 391 of this title. A person who operates or expects to operate entirely in intrastate commerce and is not subject to Part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to Part 391;

- (2) Pass a knowledge test in accordance with the standards contained in Subparts G and H of this part for the type of motor vehicle the person operates or expects to operate;
- (3) Pass a driving or skills test in accordance with the standards contained in Subparts G and H of this part taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party;

- (4) Certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate;

- (5) Provide to the State of issuance the information required to be included on the CDL as specified in Subpart J of this part;

- (6) Certify that he/she is not subject to any disqualification, suspension, revocation, or cancellation as contained in § 383.51 and that he/she does not have a driver's license from more than one State or jurisdiction.

- (7) The applicant shall surrender his/her non-CDL driver's licenses to the State.

- (b) License transfer. When applying to transfer a CDL from one State of domicile to a new State domicile, an applicant shall apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant shall:

- (1) Provide to the new State of domicile the certifications contained in § 383.71(a) (1) and (6);

(2) Provide to the new State of domicile updated information as specified in Subpart J of this part;

(3) If the applicant wishes to retain a hazardous materials endorsement, comply with State requirements as specified in § 383.73(b)(4); and

(4) Surrender the CDL from the old State of domicile to the new State of domicile.

(c) *License renewal.* When applying for a renewal of a CDL, all applicants shall:

(1) Provide certification contained in § 383.71(a)(1);

(2) Provide update information as specified in Subpart J of this part; and

(3) If a person wishes to retain a hazardous materials endorsement, pass the test for such endorsement as specified in § 383.121.

(d) *License upgrades.* When applying to operate a commercial motor vehicle in a different group or endorsement from the group or endorsement in which the applicant already has a CDL, all persons shall:

(1) Provide the necessary certifications as specified in § 383.71(a)(1) and (4); and

(2) Pass all tests specified in § 383.71(a)(2) and (3) for the new vehicle group and/or different endorsements.

(e) *Nonresident CDL.* When an applicant is domiciled in a foreign jurisdiction, as defined in § 383.5, where the commercial motor vehicle operator testing and licensing standards do not meet the standards contained in Subparts G and H of this part, as determined by the Administrator, such applicant shall obtain a Nonresident CDL from a State which meets such standards. Such applicant shall:

(1) Complete the requirements to obtain a CDL contained in § 383.71(a); and

(2) After receipt of the CDL, and for as long as it is valid, notify the State which issued the CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions would include but not be limited to license suspension or revocation, or disqualification from operating a commercial motor vehicle for the convictions described in § 383.51. Notifications shall be made within the time periods specified in § 383.33.

(f) If a State uses the alternative method described in § 383.73(i) to achieve the objectives of the certifications in § 383.71(a), then the driver applicant shall satisfy such alternative methods as are applicable to him/her with respect to initial licensing,

license transfer, license renewal, and license upgrades.

§ 383.73 State procedures.

(a) Initial licensure. Prior to issuing a CDL to a person, a State shall:

(1) Require the driver applicant to certify, pass tests, and provide information as described in §§ 383.71(a)(1) through (6);

(2) Check that the vehicle in which the applicant takes his/her test is representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification, suspensions, revocations, or cancellations as contained in § 383.51 and that the person does not have a driver's license from more than one State. The record check shall include but not be limited to the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle; and

(iii) A check with the National Driver Register (NDR), when it is determined to be operational by the National Highway Traffic Safety Administrator, to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in section 205(a)(3) of the National Drivers Register Act of 1962 (23 U.S.C. 401 note); and

(4) Require the driver applicant, if he/she has moved from another State, to surrender his/her driver's license issued by another State.

(b) *License transfers.* Prior to issuing a CDL to a person who has a CDL from another State, a State shall:

(1) Require the driver applicant to make the certifications contained in § 383.71(a);

(2) Complete a check of the driver applicant's record as contained in § 383.73(a)(3);

(3) Request and receive updates of information specified in Subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in § 383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in § 383.121; and

(5) Obtain the CDL issued by the applicant's previous State of domicile.

(c) *License Renewals.* Prior to renewing any CDL a State shall:

(1) Require the driver applicant to make the certifications contained in § 383.71(a);

(2) Complete a check of the driver applicant's record as contained in § 383.73(a)(3);

(3) Request and receive updates of information specified in Subpart J of this part; and

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test for such endorsement specified in § 383.121.

(d) *License upgrades.* Prior to issuing an upgrade of a CDL, a State shall:

(1) Require such driver applicant to provide certifications and pass tests as described in § 383.71(d); and

(2) Complete a check of the driver applicant's record as described in § 383.73(a)(3).

(e) *Nonresident CDL.* A State may issue a Nonresident CDL to a person domiciled in a foreign country if the Administrator has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction of domicile do not meet the standards contained in this part. State procedures for the issuance of a nonresident CDL, for any modifications thereto, and for notifications to the CDLIS shall at a minimum be identical to those pertaining to any other CDL, with the following exceptions:

(1) If the applicant is requesting a transfer of his/her Nonresident CDL, the State shall obtain the Nonresident CDL currently held by the applicant and issued by another State;

(2) The State shall add the word "Nonresident" to the face of the CDL, in accordance with § 383.153(b); and

(3) The State shall have established, prior to issuing any Nonresident CDL, the practical capability of disqualifying the holder of any Nonresident CDL, by withdrawing, suspending, canceling, and revoking his/her Nonresident CDL as if the Nonresident CDL were a CDL issued to a resident of the State.

(f) *License issuance.* After the State has completed the procedures described in § 383.73 (a), (b), (c), (d) or (e), it may issue a CDL to the driver applicant. The State shall notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information contained in Subpart J of this part or any of the certifications required in § 383.71(a), the State shall at a minimum, and within no more than 30 days after discovering the falsification, suspend, cancel, or revoke the person's CDL, or his/her pending application.

(h) *Reciprocity.* A State shall allow any person who has a valid CDL which is not suspended, revoked, or canceled, and who is not disqualified from operating a commercial motor vehicle, to operate a commercial motor vehicle in the State.

(i) *Alternative procedures.* A State may implement alternative procedures to the certification requirements of § 383.71(a)(1), (4), and (6), provided those procedures ensure that the driver meets the requirements of those paragraphs.

§ 383.75 Third party testing.

(a) *Third party tests.* A State may authorize a person (including another State, an employer, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) to administer the skills tests as specified in Subparts G and H of this part, if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the State; and

(2) The third party as an agreement with the State containing, at a minimum, provisions that:

(i) Allow the FHWA, or its representative, and the State to conduct random examinations, inspections and audits without prior notice;

(ii) Require the State to conduct on-site inspections at least annually;

(iii) Require that all third party examiners meet the same qualification and training standards as State examiners, to the extent necessary to conduct skills tests in compliance with Subparts G and H;

(iv) Require that, at least on an annual basis, State employees take the tests actually administered by the third party as if the State employee were a test

applicant, or that States test a sample of drivers who were examined by the third party to compare pass/fail results; and

(v) Reserve unto the State the right to take prompt and appropriate remedial action against the third-party testers in the event that the third-party fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract.

§ 383.77 Substitute for driving skills tests.

At the discretion of a State, the driving skill test as specified in § 383.113 may be waived for a CMV operator who is currently licensed at the time of his/her application for a CDL, and substituted with either an applicant's driving record and previous passage of an acceptable skills test, or an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test described in § 383.113. Such conditions must require at least the following:

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except in the instances specified in § 383.21(b));

(2) Has not had any license suspended, revoked, or canceled;

(3) Has not had any convictions for any type of motor vehicle for the disqualification offenses contained in § 383.51; and

(4) Has not had any violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

(b) An applicant must provide evidence and certify that:

(1) He/she is regularly employed in a job requiring operation of a CMV, and that either:

(2) He/she has previously taken and passed a skills test given by a State with a classified licensing and testing system, and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

(3) He/she has operated, for at least 2 years immediately preceding application for a CDL, a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate.

Subpart F—Vehicle Groups and Endorsements

§ 383.91 Commercial motor vehicle groups.

(a) *Vehicle group descriptions.* Each driver applicant must possess and be tested on his/her knowledge and skills, described in Subpart G of this part, for the commercial motor vehicle group(s) for which he/she desires a CDL. The commercial motor vehicle groups are as follows:

(1) *Combination vehicle (Group A).*—Any combination of vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

(2) *Heavy Straight Vehicle (Group B).*—Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.

(3) *Small Vehicle (Group C).*—Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group comprises vehicles designed to transport 16 or more passengers including the driver, and vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (40 CFR Part 172, Subpart F).

(b) *Representative vehicle.* For purposes of taking the driving test in accordance with § 383.113, a representative vehicle for a given vehicle group contained in § 383.91(a), is any commercial motor vehicle which meets the definition of that vehicle group.

(c) *Relation between vehicle groups.* Each driver applicant who desires to operate in a different commercial motor vehicle group from the one which his/her CDL authorizes shall be required to retake and pass all related tests, except the following:

(1) A driver who has passed the knowledge and skills tests for a combination vehicle (Group A) may operate a heavy straight vehicle (Group B) or a small vehicle (Group C), provided that he/she possesses the requisite endorsement(s); and







(2) A driver who has passed the knowledge and skills tests for a heavy straight vehicle (Group B) may operate any small vehicle (Group C), provided that he/she possesses the requisite endorsement(s).

(d) *Vehicle group illustration.* Figure 1 illustrates typical vehicles within each of the vehicle groups defined in this section.

BILLING CODE 4910-22-41

Figure 1
VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:	*Description:
A	Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.) Examples include but are not limited to:  
B	Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.) Examples include but are not limited to:  
C	Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group applies to vehicles which are placarded for hazardous materials or designed to transport 16 or more persons, including the operator. Examples include but are not limited to:  

* The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

BILLING CODE 4910-22-C

§ 383.93 Endorsements.

(a) *General.* In addition to taking and passing the knowledge and skills tests described in Subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section shall take and pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(b) *Endorsement descriptions.* An operator must obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:

- (1) Double/triple trailers;
- (2) Passenger vehicles;
- (3) Tank vehicles; or
- (4) Required to be placarded for hazardous materials.

(c) *Endorsement testing requirements.* The following tests are required for the endorsements contained in paragraph (b) of this section:

- (1) *Double/Triple Trailers*—a knowledge test;
- (2) *Passenger*—a knowledge and a skills test;
- (3) *Tank vehicle*—a knowledge test; and
- (4) *Hazardous Materials*—a knowledge test.

§ 383.95 Air brake restrictions.

(a) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State shall indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(b) For the purposes of the skills test and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

Subpart G—Required Knowledge and Skills**§ 383.110 General requirement.**

All drivers of commercial motor vehicles shall have knowledge and skills necessary to operate a commercial motor vehicle safely as contained in this subpart. A sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants is included in the appendix to this Subpart G.

§ 383.111 Required knowledge.

All commercial motor vehicle operators must have knowledge of the following general areas:

- (a) *Safe operations regulations.* Driver-related elements of the

regulations contained in 49 CFR Parts 391, 392, 393, 395, 396, and 397, such as: Motor vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe commercial motor vehicle operations.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) *Safe vehicle control.* (1) Control systems—The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

(2) Basic control—The proper procedures for performing various basic maneuvers.

(3) Shifting—The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions.

(4) Backing—The procedures and rules for various backing maneuvers.

(5) Visual search—The importance of proper visual search, and proper visual search methods.

(6) Communication—The principles and procedures for proper communications and the hazards of failure to signal properly.

(7) Speed Management—The importance of understanding the effects of speed.

(8) Space management—The procedures and techniques for controlling the space around the vehicle.

(9) Night operation—Preparations and procedures for night driving.

(10) Extreme driving conditions—The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions.

(11) Hazard perceptions—The basic information on hazard perception and clues for recognition of hazards.

(12) Emergency maneuvers—The basic information concerning when and how to make emergency maneuvers.

(13) Skid control and recovery—The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo.

(e) *Vehicle inspections.* The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety.

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, such as:* What constitutes hazardous material requiring an endorsement to transport; classes of hazardous materials; labeling/placarding requirements; and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows:*

(1) Air brake system nomenclature;

(2) The dangers of contaminated air supply;

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections.

(6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail.

(h) *Operators for the combination vehicle group shall also have knowledge of:*

(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) Vehicle inspection—The objectives and proper procedures that are unique for performing vehicle safety inspections on combination vehicles.

§ 383.113 Required skills.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills should include the ability to start, to stop, and to move the vehicle forward and backward in a safe manner.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the safe driving skills for their vehicle group. These skills should include proper visual search methods, appropriate use of signals, speed control

for weather and traffic conditions, and ability to position the motor vehicle correctly when changing lanes or turning.

(c) *Air brake skills.* Except as provided in § 383.95, all applicants shall demonstrate the following skills with respect to inspection and operation of air brakes:

(1) *Pre-trip inspection skills.*

Applicants shall demonstrate the skills necessary to conduct a pre-trip inspection which includes the ability to:

(i) Locate and verbally identify air brake operating controls and monitoring devices;

(ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;

(iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;

(iv) Ascertain, with the engine running, that the system maintains an adequate supply of compressed air;

(v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and

(vi) Operationally check the brake system for proper performance.

(2) *Driving skills.* Applicants shall successfully complete the skills tests contained in § 383.113 in a representative vehicle equipped with air brakes.

(d) *Test area.* Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) *Simulation technology.* A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

§ 383.115 Requirements for double/triple trailers endorsement.

In order to obtain a Double/Triple Trailers endorsement each applicant must have knowledge covering:

(a) Procedures for assembly and hookup of the units;

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, yaw stability in steady turns; and

(d) Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades,

longer passing times, possibility for blocking entry of other motor vehicles on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement.

§ 383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) *Knowledge test.* All applicants for the passenger endorsement must have knowledge covering at least the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad crossings and drawbridges; and

(5) Proper braking procedures.

(b) *Skills test.* To obtain a passenger endorsement applicable to a specific vehicle group, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that group as defined in § 383.91.

§ 383.119 Requirements for tank vehicle endorsement.

In order to obtain a Tank Vehicle Endorsement, each applicant must have knowledge covering the following:

(a) Causes, prevention, and effects of cargo surge on motor vehicle handling;

(b) Proper braking procedures for the motor vehicle when it is empty, full and partially full;

(c) Differences in handling of baffled/compartamental tank interiors versus non-baffled motor vehicles;

(d) Differences in tank vehicle type and construction;

(e) Differences in cargo surge for liquids of varying product densities;

(f) Effects of road grade and curvature on motor vehicle handling with filled, half-filled and empty tanks;

(g) Proper use of emergency systems; and

(h) For drivers of DOT specification tank vehicles, retest and marking requirements.

§ 383.121 Requirements for hazardous materials endorsement.

In order to obtain a Hazardous Material Endorsement each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR Parts 171, 172, 173, 177, 178, and 397 on the following:

(a) Hazardous materials regulations including:

- (1) Hazardous materials table;
- (2) Shipping paper requirements;
- (3) Marking;
- (4) Labeling;
- (5) Placarding requirements;
- (6) Hazardous materials packaging;
- (7) Hazardous materials definitions and preparation;
- (8) Other regulated material (e.g., ORM-D);

(9) Reporting hazardous materials accidents; and

(10) Tunnels and railroad crossings.

(b) Hazardous materials handling including:

- (1) Forbidden Materials and Packages;
- (2) Loading and Unloading Materials;
- (3) Cargo Segregation;
- (4) Passenger Carrying Buses and Hazardous Materials;

(5) Attendance of Motor Vehicles;

(6) Parking;

(7) Routes;

(8) Cargo Tanks; and

(9) "Safe Havens."

(c) Operation of emergency equipment including:

- (1) Use of equipment to protect the public;
- (2) Special precautions for equipment to be used in fires;
- (3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and

(4) Use of emergency equipment for tank vehicles.

(d) Emergency response procedures including:

- (1) Special care and precautions for different types of accidents;
- (2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;

(3) Emergency procedures; and

(4) Existence of special requirements for transporting Class A and B explosives.

Appendix to Subpart G—Required Knowledge and Skills—Sample Guidelines

The following is a sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants. This appendix closely follows the framework of §§ 383.111 and 383.113. It is intended to provide more specific guidance and suggestion to States. Additional detail in this appendix is not binding and States may depart from it at their discretion provided their CDL program tests for the general areas of knowledge and skill specified in §§ 383.111 and 383.113.

Examples of specific knowledge elements

- (a) *Safe operations regulations.* Driver-related elements of the following regulations:
- (1) Motor vehicle inspection, repair, and maintenance requirements as contained in Parts 393 and 395 of this title;
 - (2) Procedures for safe vehicle operations as contained in Part 392 of this title;
 - (3) The effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation as contained in Parts 391, 392, and 395 of this title;
 - (4) The types of motor vehicles and cargoes subject to the requirements contained in Part 397 of this title; and
 - (5) The effects of alcohol and drug use upon safe commercial motor vehicle operations as contained in Parts 391 and 395 of this title.
- (b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.
- (c) *Safe vehicle control.* (1) Control systems—The purpose and function of the controls and instruments commonly found on commercial motor vehicles.
- (2) Basic control—The proper procedures for performing various basic maneuvers, including:
 - (i) Starting, warming up, and shutting down the engine;
 - (ii) Putting the vehicle in motion and stopping;
 - (iii) Backing in a straight line; and
 - (iv) Turning the vehicle, e.g., basic rules, off-tracking, right/left turns and right curves.
 - (3) Shifting—The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions, including:
 - (i) Key elements of shifting, e.g., controls, when to shift and double clutching;
 - (ii) Shift patterns and procedures; and
 - (iii) Consequences of improper shifting.
 - (4) Backing—The procedures and rules for various backing maneuvers, including:
 - (i) Backing principles and rules; and
 - (ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.
 - (5) Visual search—The importance of proper visual search, and proper visual search methods, including:
 - (i) Seeing ahead and to the sides;
 - (ii) Use of mirrors; and
 - (iii) Seeing to the rear.
 - (6) Communication—The principles and procedures for proper communications and the hazards of failure to signal properly, including:
 - (i) Signaling intent, e.g., signaling when changing speed or direction in traffic;
 - (ii) Communicating presence, e.g., using horn or lights to signal presence; and
 - (iii) Misuse of communications.
 - (7) Speed Management—The importance of understanding the effects of speed, including:
 - (i) Speed and stopping distance;

- (ii) Speed and surface conditions;
 - (iii) Speed and the shape of the road;
 - (iv) Speed and visibility; and
 - (v) Speed and traffic flow.
- (8) Space management—The procedures and techniques for controlling the space around the vehicle, including:
- (i) The importance of space management;
 - (ii) Space cushions, e.g., controlling space ahead/to the rear;
 - (iii) Space to the sides; and
 - (iv) Space for traffic gaps.
- (9) Night operation—Preparations and procedures for night driving, including:
- (i) Night driving factors, e.g., driver factors, (vision, glare, fatigue, inexperience), roadway factors, (low illumination, variation in illumination, familiarity with roads, other road users, especially drivers exhibiting erratic or improper driving), vehicle factors (headlights, auxiliary lights, turn signals, windshields and mirrors); and
 - (ii) Night driving procedures, e.g., preparing to drive at night and driving at night.
- (10) Extreme driving conditions—The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions, including:
- (i) Adverse weather;
 - (ii) Hot weather; and
 - (iii) Mountain driving.
- (11) Hazard perceptions—The basic information on hazard perception and clues for recognition of hazards, including:
- (i) Importance of hazards recognition;
 - (ii) Road characteristics; and
 - (iii) Road user activities.
- (12) Emergency maneuvers—The basic information concerning when and how to make emergency maneuvers, including:
- (i) Evasive steering;
 - (ii) Emergency stop;
 - (iii) Off-road recovery;
 - (iv) Brake failure; and
 - (v) Blowouts.
- (13) Skid control and recovery—The information on the causes and major types of skids, as well as the procedures for recovering from skids.
- (d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo, including:
- (1) The importance of proper cargo handling, e.g., consequences of improperly secured cargo, drivers' responsibilities, Federal/State and local regulations.
 - (2) Principles of weight distribution.
 - (3) Principles and methods of cargo securement.
- (e) *Vehicle inspections:* The objectives and proper procedures for performing vehicle safety inspections, as follows:
- (1) The importance of periodic inspection and repair to vehicle safety and to prevention of enroute breakdowns.
 - (2) The effect of undiscovered malfunctions upon safety.
 - (3) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.
 - (4) Pre-trip/enroute/post-trip inspection procedures.

- (5) Reporting findings.
- (f) *Hazardous materials knowledge, as follows:*
- (1) What constitutes hazardous material requiring an endorsement to transport; and
 - (2) Classes of hazardous materials, labeling/placarding requirements, and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.
- (g) *Air brake knowledge as follows:*
- (1) General air brake system nomenclature;
 - (2) The dangers of contaminated air (dirt, moisture and oil) supply;
 - (3) Implications of severed or disconnected air lines between the power unit and the trailer(s);
 - (4) Implications of low air pressure readings;
 - (5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:
 - (i) Automatic fail-safe devices;
 - (ii) System monitoring devices; and
 - (iii) Low pressure warning alarms.
 - (6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail, including:
 - (i) Tests which indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and
 - (ii) Tests which indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.
 - (h) *Operators for the combination vehicle group shall also have knowledge of:*
 - (1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer.
 - (2) Vehicle inspection—The objectives and proper procedures that are unique for performing vehicle safety inspections on combination vehicles.

Examples of Specific Skills Elements

- These examples relate to paragraphs (a) and (b) of § 383.113 only.
- (a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills shall include:
- (1) Ability to start, warm-up, and shut down the engine;
 - (2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;
 - (3) Ability to bring the motor vehicle to a smooth stop;
 - (4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;
 - (5) Ability to position the motor vehicle to negotiate and then make left and right turns;
 - (6) Ability to shift as required and select appropriate gear for speed and highway conditions;
 - (7) Ability to back along a curved path; and

- (8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.
- (b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the following safe driving skills for any vehicle group. These skills shall include:
 - (1) Ability to use proper visual search methods.
 - (2) Ability to signal appropriately when changing speed or direction in traffic.
 - (3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo and driver conditions;
 - (4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;
 - (5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side as well as to prevent problems caused by off-tracking;
 - (6) Ability to maintain a safe following distance depending on the condition of the road, on visibility, and on vehicle weight; and
 - (7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes and following distance to maintain control.

Subpart H—Tests**§ 383.131 Test procedures.**

- (a) *Driver information manuals.* Information on how to obtain a CDL and endorsements shall be included in manuals and made available by States to CDL applicants. All information provided to the applicant shall include the following:
- (1) Information on the requirements described in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in Subpart E of this part;
 - (2) Information on vehicle groups and endorsements as specified in Subpart F of this part;
 - (3) The substance of the knowledge and skills which drivers shall have as outlined in Subpart G of this part for the different vehicle groups and endorsements;
 - (4) Details of testing procedures, including the purpose of the tests, how to respond, any time limits for taking the test, and any other special procedures determined by the State of issuance; and
 - (5) Directions for taking the tests.
- (b) *Examiner procedures.* A State shall provide to test examiners details on testing and any other State-imposed requirements in the examiner's manual, and shall ensure that examiners are qualified to administer tests on the basis of training and/or other experience. States shall provide standardized scoring sheets for the skills tests, as well as standardized driving instructions for

the applicants. Such examiners' manuals shall contain the following:

- (1) Information on driver application procedures contained in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in Subpart E of this part;
- (2) Details on information which must be given to the applicant;
- (3) Details on how to conduct the tests;
- (4) Scoring procedures and minimum passing scores;
- (5) Information for selecting driving test routes;
- (6) List of the skills to be tested;
- (7) Instructions on where and how the skills will be tested;
- (8) How performance of the skills will be scored; and
- (9) Causes for automatic failure of skills tests.

§ 383.133 Testing methods.

- (a) All tests shall be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in Subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.
- (b) States shall develop their own specifications for the tests for each vehicle group and endorsement which must be at least as stringent as the Federal standards.
- (c) States shall determine specific methods for scoring the knowledge and skills tests.
- (d) Passing scores must meet those standards contained in § 383.135.
- (e) Knowledge and skills tests shall be based solely on the information contained in the driver manuals referred to in § 383.131(a).
- (f) Each knowledge test shall be valid and reliable so as to assure that driver applicants possess the knowledge required under § 383.111.
- (g) Each basic knowledge test, i.e., the test covering the areas referred to in § 383.111 for the applicable vehicle group, shall contain at least 30 items, exclusive of the number of items testing air brake knowledge. Each endorsement knowledge test, and the air brake component of the basic knowledge test as described in § 383.111(g), shall contain a number of questions that is sufficient to test the driver applicant's knowledge of the required subject matter with validity and reliability.
- (h) The skills tests shall have administrative procedures, designed to achieve interexaminer reliability, that are sufficient to ensure fairness of pass/fail rates.

§ 383.135 Minimum passing scores.

- (a) The driver applicant must correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on such knowledge test.
- (b) To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113.
- (c) If the driver applicant does not obey traffic laws, or causes an accident during the test, he/she shall automatically fail the test.
- (d) The scoring of the basic knowledge and skills tests shall be adjusted as follows to allow for the air brake restriction (§ 383.95):
- (1) If the applicant scores less than 80 percent on the air brake component of the basic knowledge test as described in § 383.111(g), the driver will have failed the air brake component and, if the driver is issued a CDL, an air brake restriction shall be indicated on the license; and
 - (2) If the applicant performs the skills test in a vehicle not equipped with air brakes, the driver will have omitted the air brake component as described in § 383.113(c) and, if the driver is issued a CDL, the air brake restriction shall be indicated on the license.

Subpart I—(Reserved)**Subpart J—Commercial Driver's License Document****§ 383.151 General.**

The CDL shall be a document that is easy to recognize as a CDL. At a minimum, the document shall contain information specified in § 383.153.

§ 383.153 Information on the document and application.

- (a) All CDLs shall contain the following information:
- (1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in § 383.153(b).
 - (2) The full name, signature, and mailing address of the person to whom such license is issued;
 - (3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height;
 - (4) Color photograph of the driver;
 - (5) The driver's State license number;
 - (6) The name of the State which issued the license;
 - (7) The date of issuance and the date of expiration of the license;

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

- (i) A for Combination Vehicle;
- (ii) B for Heavy Straight Vehicle; and
- (iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

- (i) T for double/triple trailers;
- (ii) P for passenger;
- (iii) N for tank vehicle;
- (iv) H for hazardous materials;
- (v) X for a combination of the tank vehicle and hazardous materials endorsements; and

(vi) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(b) If the CDL is a Nonresident CDL, it shall contain the prominent statement that the license is a "Nonresident Commercial Driver's License" or "Nonresident CDL." The word "Nonresident" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License" or "CDL."

(c) If the State has issued the applicant an air brake restriction as

specified in § 383.95, that restriction must be indicated on the license.

(d) Except in the case of a Nonresident CDL:

- (1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and
- (2) The State must provide the Social Security Number to the CDLIS.

§ 383.105 Tamperproofing requirements.

States shall make the CDL tamperproof to the maximum extent practicable. At a minimum, a State shall use the same tamperproof method used for noncommercial drivers' licenses.

[FR Doc. 88-18384 Filed 7-16-88; 12:10 pm]

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Thursday
July 21, 1988

Part IV

**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 71

**Establishment of an Airport Radar
Service Area; Lincoln, NE; Final Rule**

federal register

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

(Airspace Docket No. 88-AWA-1)

Establishment of an Airport Radar Service Area; Lincoln, NE

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at Lincoln Municipal Airport, NE. This location is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of an ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended

Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA had designated 116 ARSA's as published in the Federal Register in the implementation of this NAR recommendation.

On February 5, 1988, the FAA proposed to designate an ARSA at Lincoln Municipal Airport, NE (53 FR 3528). This rule designates an ARSA at this airport. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held an informal airspace meeting for this proposed airport. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

Discussion of Comments

Two commenters wrote in objection to the proposed ARSA. The Soaring Society of America (SSA), though finding no evidence of soaring activities in the vicinity of the proposed location, objected based on a related requirement proposed in FAA Rulemaking Docket No. 25531, Notice No. 88-2, Transponder with Automatic Altitude Reporting Capability Requirement. This proposed rule has been adopted as Amendment No. 91-203 (53 FR 23356, June 21, 1988). SSA stated that when the related proposal was adopted as a final rule in accordance with section 203 of Pub. L. 100-223, the ARSA Regulatory Evaluation would be invalidated. SSA suggested that the FAA should, therefore, suspend all action on any proposed ARSA's. In addition, the SSA requested clarification of an excerpt from the public law.

The FAA does not agree. The possible effect of Amendment 91-203 has no bearing on this action at least until that portion of the rule which impacts upon the ARSA becomes effective on December 30, 1990. Furthermore, the potential impact of the requirements of that final rule on ARSA's has been fully considered in the rule's corresponding regulatory evaluation. Inclusion of those costs in the cost benefit analysis for this rulemaking would represent double-counting of the same impact. The FAA will continue to monitor the potential impact. The interpretation of Pub. L. 100-223 is discussed in the preamble to Amendment 91-203.

Another commenter objected stating that the ARSA was unnecessary; that it would cost him money because he would have to equip his airplane or circumnavigate the ARSA; and that it would overload the controllers. The FAA does not agree. The air traffic control facility has a need to know of all traffic operating in close proximity to the airport once an airport reaches this level of activity. The FAA finds that the cost to the commenter will be insignificant. Based on a comment in his letter, the commenter apparently already has a radio in his aircraft. That is all that is required to operate in an ARSA. Therefore, the commenter could operate through the ARSA if he desired by simply establishing two-way radio communication prior to entry. The small size of the ARSA and the low ceiling make circumnavigation very simple if that is the choice. The FAA, as stated in the Regulatory Evaluation, did not expect and has not found an overwhelming increase in the volume of traffic. The already high participation rate in existing radar services indicated that the major change would be to standardize airspace design and provide the FAA with knowledge of all aircraft in close proximity to the airport to enhance safety.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA site established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than \$100 thousand, to as much as \$300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA site established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the

mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the radar services and radio communication with ATC is voluntary, operations at airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates an Airport Radar Service Area (ARSA) at Lincoln Municipal Airport, NE. This location is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of

midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 20, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Part 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-440, January 12, 1983); 14 CFR 11.09.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Lincoln Municipal Airport, NE [New]

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Lincoln Municipal Airport (lat. 40°51'03"N., long. 96°45'32"W.) and that airspace extending upward from 2,700 feet MSL to 5,200 feet MSL within a 10-mile radius of the Lincoln Municipal Airport.

Issued in Washington, DC, on July 11, 1988.

Shelomo Wugalter,
Acting Manager, Airspace—Rules and Aeronautical Information Division.

(FR Doc. 88-16363 Filed 7-20-88; 8:45 am)

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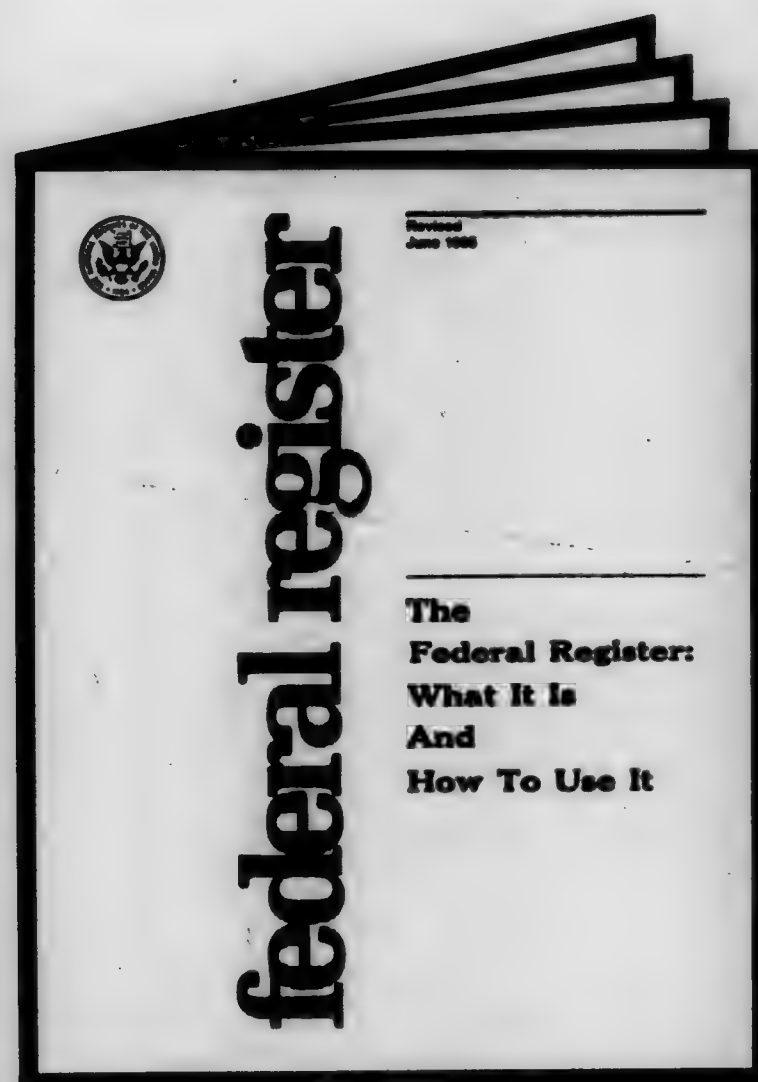
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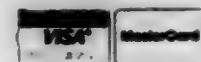
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Friday, July 22, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 41; Doc. No. 5786S]

General Crop Insurance Regulations; Malting Barley Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401) to revise and reissue the Malting Barley Option (7 CFR 401.135), effective for the 1989 crop year. The intended effect of this rule is to provide that: (1) Acceptable sales records of malting barley varieties may be substituted for a malting barley contract in obtaining a malting barley option; (2) malting barley units, in accordance with provisions of the barley endorsement, will be allowed; (3) if this option is elected, all barley acreage planted to any approved malting variety must be insured under this option; (4) the malting barley price election used to determine liability and indemnity will be contained on the actuarial table; (5) production to count will include all harvested and appraised production accepted by a buyer or meeting applicable malting barley standards provided in the option; (6) quality adjustment determinations for mature malting barley production will be based on a comparison of the malting barley price election to the local market value for No. 2 basic barley if the damaged malting barley grades higher than the endorsement standards, or if not, the value of such basic barley of similar quality; and (7) the date for contract changes will be September 1.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Additional minor editorial changes have been to improve compatibility with the General Crop Insurance Policy. These changes do not affect the meaning or intent of such provisions. The principal changes in the Malting Barley Option are:

1. A malting barley contract is no longer essential to obtain the option. Acceptable records of the sale of malting varieties for malting purposes may be used as a substitute.

2. Multiple malting barley units according to the provisions of the barley endorsement will be allowed.

3. If this option is chosen, then all barley acreage planted to any approved malting variety must be insured under this option. All other barley will be insured as basic barley under the endorsement.

4. The malting barley price election (only 1) used in determining liability and indemnities will be contained in the actuarial table.

5. Production to count will include all harvested and appraised production which is accepted by a buyer or meets applicable malting barley standards provided in the option.

6. Quality adjustment determinations for mature malting barley production will be based on a comparison of the malting barley price election to the local market value for No. 2 non-malting barley if the damaged malting barley grades higher than the basic barley endorsement standards, or if the damaged malting barley does not grade higher than the endorsement standards, the value of such non-malting barley of similar quality.

7. Several new definitions have been added while others have been revised.

8. The date by which changes to the option are to be available in the service office is now included in the option.

On Friday, June 3, 1988, FCIC published a notice of proposed rulemaking (NPRM) in the Federal Register at 53 FR 20332 to revise and reissue the Malting Barley Option (7 CFR 401.135) effective for the 1989 and succeeding crop years. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule but none were received.

In reviewing the rule FCIC has determined that several minor errors are contained in the NPRM and are corrected herein as follows:

1. In the heading of the document, the amendment number reads No. 27. This should have read Amendment No. 41.

2. The sunset review date for these regulations, under the USDA procedures established by Departmental Regulation 1512-2, reads May 1, 1993. This should have read April 1, 1991.

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3. The last word in Paragraph 9. of Subsection 401.135 reads "notice." This word should read "date."

Therefore, FCIC hereby adopts the rule published at 53 FR 20332 as a final rule.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Malting barley option.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), to revise and reissue the Malting Barley Option (7 CFR 401.135), to be effective for the 1989 and succeeding crop years, as follows:

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to revise and reissue the Malting Barley Option, (7 CFR 401.135) effective for the 1989 and succeeding crop years, to read as follows:

§ 401.135 Malting Barley Option.

The provisions of the Malting Barley Option for the 1989 and subsequent crop years are as follows:

United States Department of Agriculture
Federal Crop Insurance Corporation Barley Insurance Malting Barley Option

(This is a continuous Option. Refer to section 15 of the General Crop Insurance Policy)

Insured's name _____

Contract No. _____

Crop Year _____

Address _____

Identification No. _____

SSN _____

Tax _____

It is hereby agreed to amend the Federal Crop Insurance General Crop Insurance Policy and Barley Endorsement under, and in accordance with, the following terms and conditions:

1. The option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your malting barley acreage under this option.

2. You must have a Federal Crop Insurance General Crop Insurance Policy and Barley Endorsement ("Basic Policy") in force.

3. You must provide by the acreage reporting date:

a. Acceptable records of the sale of malting barley for malting purposes for 3 of the previous 5 crop years; or

b. A binding written contract with a buyer of malting barley for malting purposes, which states the quantity contracted and purchase price or method for determining such price.

4. All barley acreage in the county planted to an approved malting variety in which you

have a share, will be insured under this option ("Malting Barley"). All barley acreage of any non-malting variety will be insured under the terms of the Basic Policy ("Basic Barley"). Malting barley and basic barley acreage will be separate units. Further unit division may be allowed in accordance with the provisions of the basic policy.

5. You must elect the highest price election provided for basic barley.

6. Your premium rate for malting barley will be provided by the actuarial table.

7. In lieu of section 7.b. (1) and (2) of the Barley Endorsement:

a. Mature malting barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each one tenth (.1) percentage point of moisture in excess of 13.0 percent; or

b. Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley (see 10.c.), will be adjusted by:

(1) Dividing the value per bushel for the insured malting barley (see 10.d.) by the price election for malting barley; and

(2) Multiplying the result (not to exceed one (1.0)) by the number of bushels of such barley.

c. All grade determinations must be made by a grader licensed to grade barley under the United States Grain Standards Act from samples obtained by a licensed sampler or our loss adjuster. Any production which is not sampled and graded as provided by this section will be considered as malting barley meeting the applicable standards.

8. All provisions of the basic policy not in conflict with this option are applicable.

9. Contract changes will be available at your service office by September 1 preceding the cancellation date.

10. As used in this option:

a. "Applicable standards" for two-rowed and six-rowed malting barley are defined in the Official United States Grain Standards.

b. "Approved malting variety" means the varieties specified in the actuarial table or approved in writing by us.

c. "Buyer" means any business enterprise regularly engaged in the malting of barley or brewing of malt beverages for human consumption, or its representative which is authorized to engage in the purchase of malting barley on behalf of or for sale to the malting or brewing company.

d. "Value per bushel" for the insured malting barley means:

(1) The local market price of U.S. No. 2 barley (basic barley) if the insured mature malting barley production, due to insurable causes, has a test weight of greater than 40 pounds per bushel and, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains more than 85 percent sound barley; less than 8 percent damaged kernels; less than 35 percent thin barley; less than 5 percent black barley; and does not grade smutty, garlicky, or ergoty; or

(2) The local market price of basic barley of the same quality as the insured malting barley, if the malting barley does not meet all the standards in 10.d.(1).

The local market price for basic barley as identified in 10.d. (1) and (2) above will be the price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

(2) The local market price of basic barley of the same quality as the insured malting barley, if the malting barley does not meet all the standards in 10.d.(1).

The local market price for basic barley as identified in 10.d. (1) and (2) above will be the price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

Insured's Signature _____

Date _____

Corporation Representative's Signature and

Code Number _____

Date _____

Done in Washington, DC on July 18, 1988.

John Marshall,

Manager, Federal Crop Insurance

Corporation.

[FR Doc. 88-16549 Filed 7-21-88; 8:45 am]

BILLING CODE 3410-06-M

Agricultural Marketing Service

7 CFR Part 910

(Lemon Reg. 623)

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 623 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 385,000 cartons during the period July 24 through July 30, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 623 (§ 910.923) is effective for the period July 24 through July 30, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on July 19, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8-4 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.923 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.923 Lemon Regulation 623.

The quantity of lemons grown in California and Arizona which may be handled during the period July 24, 1988, through July 30, 1988, is established at 385,000 cartons.

Dated: July 20, 1988.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-16664 Filed 7-21-88; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Control of Aerosols and Gases

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the medical uses of byproduct material by removing the requirement that radioactive aerosols be administered to patients only in rooms that are at negative pressure relative to surrounding rooms. The rule, developed in response to PRM-35-6, allows the use of radioactive aerosols in locations such as intensive care units, critical care units, and patients' rooms. Evaluation of potential radiation hazards to hospital personnel showed minimal risk when a radioactive aerosol is used with a closed, shielded system either vented to the outside atmosphere through an air exhaust or a system which provides for collection and disposal of the aerosol. The rule allows physicians greater latitude in administering necessary clinical procedures to their patients. The safety requirement that certain diagnostic medical procedures be performed only in rooms at negative pressure relative to surrounding rooms continues to apply to the use of radioactive gases.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear

Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-3740.

SUPPLEMENTARY INFORMATION

Background

In 1983, NRC began authorizing medical licensees to administer radioactive aerosols by inhalation (see 48 FR 5217; February 4, 1983) to patients for diagnosing lung disease. The only safety measure required specific to this clinical procedure was that the licensee had to administer the radioactive aerosol "with a closed, shielded system that either is vented to the outside atmosphere through an air exhaust or provides for collection and disposal of the aerosol." (see 10 CFR 35.14(b)(8)). In a complete revision of 10 CFR Part 35, effective April 1, 1987, NRC added the requirement that aerosols be administered only in rooms that are at negative pressure (see § 35.205(b), 51 FR 36932; October 16, 1986). In response to a letter received in February 1987 that stated that application of the requirement would have a negative impact on health care delivery, medical licensees were temporarily exempted from the requirement in § 35.205(b) (see 52 FR 9292; March 24, 1987).

Petition for Rulemaking

On March 9, 1987, Mallinckrodt, Inc., submitted a petition for rulemaking which was docketed PRM-35-6 on March 11, 1987. A copy of the petition may be obtained from the Regulatory Publications Branch, Division of Freedom of Information and Publication Service, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The petitioner requested that the Commission remove the requirement that radioactive aerosols be administered only in rooms that are at negative pressure relative to surrounding rooms.

The petitioner submitted literature showing that, for many hospitals, TC-99m DTPA aerosol is the preferred lung ventilation imaging procedure. For critically ill patients who cannot be moved, it has been the only lung imaging technique available. If use of aerosols is restricted to negative pressure rooms, these patients would be deprived of the benefits of lung imaging.

The petitioner described a typical radioactive aerosol delivery system. Because the only radiation safety hazard is leakage of the aerosol, three potential leakage points external to the shield were identified in drawings. Two leakage points require patient compliance for safety; the frequencies of

patient non-compliance based on clinical experience were 10% and 5%. Corresponding durations of leakage were 2-3 exhalations and 1-2 exhalations. These numbers were used to calculate the average administration loss per patient. This quantity was used to calculate the maximum number of clinical procedures that could be performed in an average room per week without exceeding the maximum permissible concentration for Tc-99m in an unrestricted area. The very large number (238) of diagnostic procedures possible before exceeding the maximum permissible concentration greatly exceeds the busiest work load of 30 studies per week in a larger hospital. The third potential leakage point is the junction between the manifold and the plastic patient breathing tube. Leakage has been found to be negligible during routine, proper use.

The NRC examined Mallinckrodt's petition and supporting information and made a determination to grant the petition. The requirement for administering radioactive aerosols in rooms at negative pressure relative to their surroundings may adversely affect the public health and safety. Some patients requiring the clinical procedure cannot be moved safely to an appropriate room or another hospital that has the required facilities. These patients would not be able to be treated unless the restriction on the negative pressure is removed. Calculations show that worker health and safety does not require negative pressure rooms for administration of radioaerosols. This final rule completes the action necessary to grant PRM-35-6 and also completes action on the petition for rulemaking.

Public Comments

A notice of proposed rulemaking was published in the Federal Register on December 18, 1987 (52 FR 47726). Four letters of public comment were received and docketed in the NRC public docketing facilities. Georgetown University Hospital supported the rulemaking unequivocally. An E.I. DuPont de Nemours & Co. spokesperson had no objection to the amendment but requested a copy of the petition for rulemaking which was provided.

Representatives of the Bureau of Environmental Health of the State of Iowa, and the University of Washington commented that the rule was too broad, that it might permit the use of other radioisotopes in aerosol form which could pose a serious public health problem, and that the need for negative pressure or supplemental ventilation should be addressed on an individual

basis. Given that this amendment addresses the use of radioisotopes in aerosol form, administered by inhalation for diagnostic purposes, the Commission rejected these comments for the following reasons:

Although it is possible that some radioisotope other than Tc-99m might be developed in aerosol form for inhalation diagnostic studies, it is not likely that it would be in a different hazard classification. Considerations of patient dose would restrict half-life and decay mode. Future imaging techniques would require photon energies comparable to Tc-99m. Because imaging equipment detection sensitivities are high, total administered radioactivity for any new clinical diagnostic procedures would not need to be higher than current methods. Additionally, any new diagnostic radiopharmaceutical would be evaluated by the Food and Drug Administration prior to approval for use based on these considerations.

The clinical requirements for aerosol particle size and other physical properties are expected to remain constant so that the risk from dispersion of any aerosol lost during patient administration would be minimal. All devices currently used for aerosol administration include exhalant trapping, and the current requirements for using collection or atmospheric venting systems remain unchanged.

The NRC notes that relief from the negative pressure requirement of § 35.205(b) does not relieve licensees from the requirements to comply with other NRC regulations, orders, or license conditions limiting maximum permissible air concentrations in controlled and uncontrolled areas.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. In a revision to 10 CFR Part 35, effective April 1, 1987, the NRC added a requirement that radioactive aerosols be administered only in rooms that are at negative pressure. This was in addition to existing requirements that radioactive aerosols were to be administered "with a closed, shielded system that either is vented to the outside atmosphere through an air exhaust or provides for collection and disposal of the aerosol." In response to a letter stating that the negative pressure requirement would

have a negative impact on health care delivery, medical licensees were temporarily exempted from the requirement in March 1987, before the rule became effective. This action removes the requirement in 10 CFR Part 35 to use negative pressure rooms for the administration of radioactive aerosols, which requirement was never in fact implemented. The remaining requirements, a closed system either vented to the atmosphere or provided with collection and disposal, remain in effect, and were found when promulgated in February 1983 (48 FR 5217) to have no significant environmental impact. This action, removing a safety requirement for negative pressure rooms, which in fact was not implemented, has no significant environmental impact. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Alan K. Roecklein, USNRC, Washington, DC 20555, (301) 492-3740.

Paperwork Reduction Act Statement

The final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0010.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC.

Removing the requirement to use Tc-99m DTPA and other aerosols only in rooms kept at negative pressure will eliminate an unnecessary safety measure for medical licensees and will avoid depriving patients of a necessary clinical diagnostic procedure. No adverse impact on public or worker health and safety will result.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule removes a restriction imposed on many of the NRC's 2,500

medical licensees that administer radioactive aerosols by inhalation for diagnostic purposes. The NRC has adopted size standards that classify a hospital as a small entity if its annual gross receipts do not exceed \$3.5 million, and a private practice physician as a small entity if the physician's annual gross receipts are \$1 million or less (50 FR 50241; December 9, 1985). Although some NRC medical licensees could be considered "small entities," the number that would fall into this category does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The effect of the regulation is to remove a restriction applicable to the administration of radioactive aerosols. This will benefit all medical licensees but will provide special benefits for smaller institutions by allowing the continued use of a clinical diagnostic procedure without imposing the requirement of constructing additional facilities or modifying existing facilities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 does not apply to this final rule, and therefore, that a backfit analysis is not required for this rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 35.

PART 35—MEDICAL USES OF BYPRODUCT MATERIAL

1. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 35.11, 35.13, 35.20 (a) and (b), 35.21 (a) and (b), 35.22, 35.23, 35.25, 35.27 (a), (c) and (d), 35.31(a), 35.49, 35.50 (a)-(d), 35.51 (a)-(c), 35.53 (a) and (b), 35.59 (a)-(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70 (a)-(f), 35.75, 35.80 (a)-(e), 35.90, 35.92(a), 35.120, 35.200(b), 35.204 (a) and (b),

35.205, 35.220, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406 (a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610 (a) and (b), 35.615, 35.620, 35.630 (a) and (b), 35.632 (a)-(f), 35.633 (a)-(i), 35.636 (a) and (b), 35.641 (a) and (b), 35.643 (a) and (b), 35.645 (a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.980, 35.981, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27 (a) and (c), 35.29(b), 35.33 (a)-(d), 35.38(b), 35.50(e), 35.51(d), 35.53(c), 35.59 (d) and (e)(2), 35.59 (g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.406 (b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(j), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161a, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

2. In § 35.205, paragraphs (b) and (e) are revised to read as follows:

§ 35.205 Control of aerosols and gases.

(b) A licensee shall administer radioactive gases only in rooms that are at negative pressure compared to surrounding rooms.

(e) A licensee shall check the operation of reusable collection systems each month, and measure the ventilation rates available in areas of radioactive gas use each six months.

Dated at Rockville, Maryland, this 20th day of June, 1988.

For the Nuclear Regulatory Commission,

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 88-16587 Filed 7-21-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 88-578]

Over-the-Counter Financial Options Transactions; Accounting for Financial Options

Date: July 15, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations pertaining to financial option transactions by institutions whose accounts are insured by the FSLIC ("insured institutions"). Specifically, the Board is amending its regulations to allow insured institutions to engage in

over-the-counter ("OTC") financial option transactions with certain types of counterparties in addition to primary dealers in government securities. The Board believes that there are a variety of entities, other than primary dealers, that trade OTC options and are subject to capital adequacy standards and oversight that are sufficiently comparable to the standards applicable to primary dealers that such other entities should also be permissible counterparties in OTC option transactions. The amendments are intended to allow insured institutions to use more effectively the authority previously granted to them to engage in OTC option transactions.

The Board also is revising the manner in which insured institutions account for "short call" option positions for purposes of Risk Analysis Report ("RAR") to the Board. Under the existing regulations, an institution that enters into a short call option matched against a specific asset, liability, or intended cash-market transaction, may defer any realized losses on the option position over the estimated life of the matched item and recognize the option commitment fee as income over the term of the option. The Board believes that the present accounting rules may encourage insured institutions to enter into short call positions solely to take advantage of the favorable regulatory accounting treatment, rather than for sound economic reasons such as the reduction of interest rate risk. To eliminate that incentive, the Board is amending its regulation to require that the income recognition of the commitment fee received by an institution writing a call option be deferred until the option position is terminated. At that time, any gains or losses resulting from the option position shall be recognized, together with the fee income that had previously been deferred.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Robert J. Pomeranz, Senior Policy Analyst, Office of Policy and Economic Research, (202) 377-6760; Steven Gray, Attorney, Corporate and Securities Division, Office of General Counsel, (202) 377-7506; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552; or Carol Larson, Accounting Fellow, Office of Regulatory Policy, Oversight and Supervision, (202) 778-2535; Federal Home Loan Bank System, 900 19th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On August 11, 1982, the Board, as operating

head of the FSLIC, adopted regulations governing the extent to which insured institutions may trade financial options. Board Res. No. 82-557, 47 FR 36621 (Aug. 23, 1982). Those regulations permitted an institution to engage in financial option transactions by using any financial option contract designated by the Commodity Futures Trading Commission ("CFTC") or approved by the Securities and Exchange Commission ("SEC") and based upon a financial instrument in which the insured institution may invest, or based upon a financial futures contract. Additionally, such transactions were required to be conducted under the terms and conditions established by an exchange designated or regulated by the CFTC or the SEC. See 12 CFR 563.17-5 (1983). Thus, under the terms of that regulation, insured institutions were not permitted to engage in OTC financial option transactions because such transactions do not involve standardized contracts and are not considered to be part of an exchange. See Office of Examination and Supervision, Memorandum No. T74, Prohibition Against Over-the-Counter Options Trading (Feb. 14, 1985).

As a separate part of that regulation, the Board also established certain accounting rules to be used for purposes of regulatory reporting by insured institutions engaging in financial option transactions. The Board reasoned that the establishment of such rules was necessary because at that time there was no single accounting treatment for financial option transactions recognized by the accounting standard setting bodies. The rules adopted by the Board required insured institutions to use hedge accounting in recognizing gains or losses on long and short call options and long put options that were properly matched against cash or forward market positions. Unmatched long and short call positions, unmatched long put positions, and any short put positions were required to be accounted for on a mark-to-market basis. When using hedge accounting, an institution would treat the gain or loss from an option position as an adjustment to the carrying amount of the cash or forward market position against which the option was matched. In order to use hedge accounting, the Board's rules required that an institution match its option positions against cash or forward market positions and that the option transactions reduce the interest-rate risks of the corresponding transactions. The rules further required that an institution divide the option premium paid or received into two parts: An

option commitment fee and the immediate exercise value of the option. The commitment fee was to be recognized as an expense or revenue item over the term of the option and the change in immediate exercise value (or "intrinsic value") was to be treated as gain or loss subject to hedge accounting treatment.

On April 18, 1985, the Board amended 12 CFR 563.17-5 with regard to permissible types of financial option transactions and the regulatory accounting rules applicable to short call option positions and also requested public comment on the amendments, which were adopted in final form. Board Res. No. 85-293, 50 FR 16450 (April 20, 1985). As part of those amendments, the Board permitted insured institutions to engage in all types of OTC option transactions (*i.e.*, long calls, long puts, short calls, and short puts), but generally limited the permissible counterparties in an OTC option transaction to entities that were "primary dealers" in government securities (*i.e.*, members of the Association of Primary Dealers in United States Government Securities). The Board adopted the limitation on permissible counterparties as a means of minimizing the potential credit and liquidity risks to which an insured institution trading in OTC financial options could be exposed. See *id.* Because primary dealers are actively engaged in the distribution of government securities, are substantially capitalized, make continuous markets in government securities, have a long-term commitment to the market, are capable of maintaining a market in OTC option contracts, and are monitored by the Federal Reserve Bank of New York, the Board reasoned that permitting primary dealers to act as counterparties in OTC financial option transactions would not involve any substantial credit risk—arising by virtue of the nature of the counterparty involved—to insured institutions. Moreover, such a limitation made it unnecessary for the Board to monitor the capital adequacy of all potential counterparties with which an institution could trade OTC options. The Board also allowed insured institutions to conduct OTC option trading with affiliates of a primary dealer, provided, however, that the affiliate was substantially engaged in dealing in government securities and its performance under an OTC option contract was guaranteed by the primary dealer.

In those amendments, the Board also revised its regulatory accounting rules for short call option transactions in order to eliminate the potential for

certain abusive practices that had arisen under the initial accounting rules adopted in 1982. Under the prior rules, an institution receiving a fee for writing a call option would recognize the option commitment fee as income over the term of the option. If the option was matched against a specific asset, liability, or intended cash market position, any realized gains or losses on the option position would be deferred over the estimated life of the matched item. The Board expressed its belief at that time that such accounting treatment could lead an institution to enter into short calls to record the option commitment fee as current income. In order to deter insured institutions from entering into short call option positions solely for the benefit derived from a favorable accounting rule, the Board amended 12 CFR 563.17-5(g) to require that option commitment fees received for the sale of matched call options be recorded as a discount on the matched item. That fee, as well as any related losses from the option transactions, would be deferred and amortized over the estimated life of the matched item.

On May 24, 1985, the Board rescinded the accounting portion of the amendments that had been adopted on April 18, 1985, and reinstated the initial accounting rules in order to give further consideration to the most appropriate method of accounting for short call options. Board Res. No. 85-420, 50 FR 23395 (June 4, 1985). On the same date, the Board separately issued an advance notice of proposed rulemaking, which requested public comment on all of the related accounting aspects of short call option transactions in which insured institutions may engage. Board Res. No. 85-421, 50 FR 23432 (June 4, 1985).

After considering the comments received in response to the advance notice and the solicitation of comments made in conjunction with the April 18, 1985 amendments, the Board proposed amendments to 12 CFR 563.17-5 with regard to the permissible counterparties for OTC option transactions and the accounting rules for short call options. Board Res. No. 85-1198, 50 FR 53336 (December 31, 1985) (the "Proposal"). The comment period on the Proposal closed on March 3, 1986. The Board received eighteen comment letters in response to the Proposal. The largest group (8) were submitted by insured institutions. Of the remainder, 5 were submitted by trade associations, 3 were submitted by broker-dealer firms, 2 were submitted by law firms, 1 was submitted by an accounting firm, and 1 was submitted by a futures exchange. After carefully considering the issues raised

by the commenters, the Board today is adopting the Proposal as a final rule, with certain modifications as described below.

I. Permissible Counterparties

A. The Proposal

Based on its concerns that the present regulations may be unnecessarily restrictive, may have the unintended effect of denying smaller insured institutions access to the OTC option market, and may be anti-competitive by prohibiting well capitalized entities other than primary dealers from dealing with insured institutions, the Board proposed to amend 12 CFR 563.17-5 by allowing insured institutions to engage in OTC option transactions with the following additional types of entities:

- Banks that are subject to regulation and supervision by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System and are in compliance with their applicable regulatory capital requirement.
- Institutions that are subject to regulation and supervision by the FSLIC and are in compliance with their regulatory capital requirement.
- Brokers registered with the SEC and subject to regulation and supervision by the National Association of Securities Dealers ("NASD") and that are in compliance with their capital requirements.
- Futures commission merchants registered with the CFTC and that are in compliance with their capital requirements.
- The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association.
- Other entities, upon application, that the FSLIC determines are adequately regulated by a government entity or a self-regulatory agency, are subject to capital adequacy standards, and are regularly audited and examined.

The Board requested public comment on whether the types of institutions described in the above categories would be appropriate counterparties for insured institutions and whether there exist any additional entities whose capital adequacy, stability, and regulatory supervision are such that they also should be included in the category of entities permitted to act as counterparties in OTC option transactions. More specifically, the Board requested public comment on whether insured institutions should be permitted to engage in OTC option

transactions with certain unregulated entities, such as unregulated government securities dealers, or Federal Home Loan Banks ("District Banks"). The Board also requested comment on whether it should require the depository institutions that act as counterparties be in compliance with their regulatory capital requirements as a condition to acting as a counterparty to an insured institution.

B. Summary of Comments

All the commenters that commented on the permissible counterparties aspect of the Proposal supported the proposed expansion of the type of counterparties with which insured institutions may enter into OTC option transactions. One additional commenter, a national broker-dealer firm, supported expanding the list of permissible counterparties to include the Federal Home Loan Banks. In recognition of the potential benefits to insured institutions, the Board has determined that it is appropriate to include the District Banks as a category of permissible counterparties.

Several of the commenters stated their belief that any depository institution that is permitted to act as a counterparty in an OTC option transaction must be in compliance with its regulatory capital requirements in order to help satisfy the Board's liquidity and credit risk concerns. One commenter expressed the view that such a condition would be inequitable due to the variation in regulatory capital requirements between FDIC and FSLIC insured institutions. The Board notes, however, that any potential inequity will in time be largely obviated by its recently revised regulatory capital requirements. See Board Res. No. 86-857, 51 FR 33565 (September 22, 1986) and Board Res. No. 87-661, 52 FR 23845 (June 25, 1987). In the meantime, the Board believes it is desirable that each type of counterparty be in compliance with the capital requirement deemed appropriate for it by its regulator.

Several commenters felt strongly that unregulated securities dealers should not under any circumstances be permissible counterparties. In this regard, the Board notes that the Government Securities Act of 1986 (the "1986 Act"), amended the Securities Exchange Act of 1934 (the "Exchange Act"), effective July 25, 1987, to require previously unregulated government securities brokers and dealers to register with the SEC. Further, the 1986 Act authorizes the Secretary of the Treasury to propose and adopt rules with respect to financial responsibility and related practices of government securities brokers and dealers. See Exchange Act

Section 15C. The Treasury has exercised such authority by adopting various financial responsibility and related rules, which are patterned after similar SEC rules. See 52 FR 27910 (July 24, 1987).

Two commenters, a trade association and a savings and loan association, felt that the proposed requirements that each counterparty notify the District Director-Examinations of the Federal Home Loan Bank in the district in which the insured institution is located immediately following the entering into an OTC option transaction and that such counterparty report monthly on the outstanding position of the insured institution were impracticable. These commenters suggested that it would be more appropriate for the insured institutions to bear the responsibility for reporting information regarding OTC option transactions.

The Board agrees with these commenters that it would be appropriate for the bulk of the reporting obligation to be borne by the insured institutions. However, the Board notes that several of the District Banks have emphasized the usefulness of the counterparty reports they have been receiving pursuant to the no-action position taken by the Board in Res. No. 85-1196. Accordingly, the amendments retain the requirement for immediate notification but delete the monthly reporting requirement by the relevant counterparty.

One commenter, a futures exchange, expressed concern that the Proposal might be misunderstood by some insured institutions as authorizing OTC transactions in commodity options, subject to the jurisdiction of the CFTC pursuant to sections 2(a), 2(b) and 4(c) of the Commodity Exchange Act ("CEA"). This commenter pointed out that, except for certain limited exceptions that are generally inapplicable to transactions by insured institutions, the CEA and the regulations thereunder generally prohibit OTC transactions in commodity options by U.S. entities.¹ The Board did not and does not intend to authorize insured institutions to enter into OTC commodity option transactions subject to the jurisdiction of the CFTC that are not otherwise authorized under the CEA and the regulations thereunder. The final rule clarifies this point by excluding OTC commodity option transactions from the definition of financial option contract contained in 12 CFR 563.17-5(a)(4).

Two commenters, a national trade association and a law firm writing on

¹ See 17 CFR Parts 32 and 33.

behalf of a federal savings and loan association, were concerned that the Proposal could be read to have application to optional delivery forward commitment contracts (so-called "standby commitments") to purchase and sell mortgages and mortgage-backed securities. These commenters noted that the use of standby commitments was an integral component of the mortgage loan origination process for many insured institutions, especially smaller institutions. These commenters further noted that standby commitment funding was typically provided through special purpose subsidiaries of bank holding companies, a category of entities not included as possible permissible counterparties in the Proposal. These commenters urged the Board to clarify the Proposal to exclude standby commitments from the definition of "financial option contracts" in order to avoid denying smaller institutions access to the secondary mortgage market.

The Board wishes to make clear that the Proposal was not intended to cover standby commitments to purchase and sell mortgages and mortgage-backed securities when used by insured institutions as part of the mortgage loan origination process. Toward this end, the amendments to 12 CFR 563.17-5 specifically exclude standby commitments used as part of an insured institution's mortgage loan origination process from the definition of financial option transactions.

However, the Board is aware that certain insured institutions have issued standby commitments as a means to speculate on interest rates. Such speculative use of standby commitments appears indistinguishable from uncovered (or "naked") short put positions in financial option contracts from both economic and policy viewpoints. Accordingly, although the Board is leaving undisturbed the current preferential treatment of standby commitments used as part of an insured institution's mortgage loan origination process, it wishes to note its concerns in this area and to caution insured institutions against the speculative use of standby commitments.³ The Board

³ The Board further notes that 12 CFR 563.17-3(c)(1) prohibits insured institutions from entering into standby commitments at a price other than "actual market value." Accordingly, regardless of labels, any financial instrument concerning the purchase and sale of securities at a price other than "actual market value" would not be a standby commitment under the Board's regulation.

will monitor the activities of insured institutions with respect to the use of standby commitments and will propose additional amendments to its regulations in the future if warranted.

C. Amendments to 12 CFR 563.17-5

Having considered the comment letters summarized above, the Board is adopting amendments to 12 CFR 563.17-5 regarding permissible counterparties in OTC option transactions. The final rule, as adopted by the Board, incorporates several modifications of the Proposal.

One modification expands the list of permissible counterparties to include, not only the specific types of entities listed in the Proposal, but also the Federal Home Loan Banks, and government securities brokers and dealers registered with the SEC pursuant to section 15(b) or 15C of the Exchange Act, that are subject to regulation by the Treasury Department, that are members of either a Registered Securities Association or a National Securities Exchange (registered in accordance with sections 6 and 19(a) of the Exchange Act), and that are in compliance with their applicable capital requirements.

The category "brokers registered with the SEC and subject to regulation and supervision by the NASD * * *" has been slightly modified to be more technically precise. As adopted, this category reads: "Brokers or dealers registered with the Securities and Exchange Commission and subject to regulation and supervision by a Registered Securities Association (registered pursuant to section 15A of the Securities and Exchange Act of 1934 ("Exchange Act")) or a National Securities Exchange (registered pursuant to sections 6 and 19(a) of the Exchange Act) and that is in compliance with its applicable capital requirements."

In recognition of the credit and liquidity risk associated with long positions in OTC financial option contracts (e.g., in contrast to standardized option contracts, there are no performance guarantees to protect an insured institution from the risk of default by the short side of the OTC option contract), the amendments limit the dollar amount of long OTC option positions that an insured institution can maintain with any single counterparty to the same extent as the limitations placed on aggregate loans to one borrower, now or hereafter in effect, pursuant to 12 CFR 563.9-3(b)(1). As currently in effect, that limitation prohibits an insured institution from making loans to any one borrower in an

amount in excess of ten percent of such institution's withdrawable accounts or one hundred percent of its regulatory capital, whichever amount is less. The Board believes such a limitation is necessary with regard to OTC option transactions to protect the FSLIC fund from undue risk.

However, the Board recognizes that specific counterparties will have varying degrees of creditworthiness and that flexibility in this regard is desirable. Accordingly, the amendments authorize approval by an insured institution's Principal Supervisory Agent ("PSA") of proposed OTC option transactions with a specific counterparty in excess of the limitations imposed by 12 CFR 563.9-3(b)(1) whenever the PSA determines that such transactions do not subject the FSLIC to undue risk. In this regard, the amendments direct the PSA to consider the creditworthiness of the specific counterparty, the insured institution's experience with that counterparty and with transacting in financial option and futures contracts generally, the nature of the subject contracts (e.g., matched or unmatched), and any other circumstances deemed relevant by the PSA. In order to limit processing delays, the amendments provide that an application will be deemed approved if it is not denied by the PSA within 10 calendar days from the date the application was filed.

The Board believes that the prior approval mechanism for transactions that exceed the applicable limitations will provide insured institutions with necessary flexibility in implementing their investment and risk management strategies while, at the same time, protecting the FSLIC fund from undue risk. In addition, the Board notes that the subject limitations are substantially less stringent than the tentative thresholds for required disclosures regarding maximum credit risk concentrated in an individual counterparty (over 20 percent of equity and 1 percent of total assets, or over 10 percent of total assets) as announced by the Financial Accounting Standards Board ("FASB"). See Financial Accounting Standards Board, Exposure Draft, Proposed Statement of Financial Accounting Standards: Disclosure about Financial Instruments (November 30, 1987).

II. Accounting for Short Call Option Positions

A. The Proposal

Based on its desire to discourage insured institutions from entering into short call option positions solely to take

advantage of a favorable regulatory accounting treatment, the Board proposed to amend 12 CFR 563.17-5 to require insured institutions to use a simplified mark-to-market approach to account for short call financial option transactions. Under that approach, the option commitment fee received for writing a matched call option would be deferred until the option expires, the institution is called to perform under the option contract, or the institution offsets its short position. At the time that an institution terminates its short call position through one of the above methods, it would be required to aggregate the commitment fee received with any resulting gain or loss on the option position and record the net result as income or expense.

The Board noted in the Proposal its belief that by requiring insured institutions to recognize the net gain or loss at the time the option position is terminated, the resulting accounting would more accurately reflect the true economic substance of a short call option transaction than the existing accounting treatment. In addition, the Board notes that such an approach furthers the requirement in the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100-86, 101 Stat. 552, that the Board and the FSLIC issue regulations prescribing "uniformly applicable accounting standards to be used by all insured institutions for the purpose of measuring compliance with any rule or regulation" promulgated by the Board or the FSLIC "to the same degree that generally accepted accounting principles are used to determine compliance with rules and regulations of the Federal banking agencies."⁴

B. Summary of Comments

Eleven of the commenters commented on the accounting for short call options aspect of the Proposal. Two of the commenters supported the proposed change in the accounting for short call options. Two other commenters recommended that the Board not change existing accounting rules until such time as the FASB establishes generally accepted accounting principles ("GAAP") for financial option transactions.

The Board does not anticipate a FASB pronouncement in this area in the near future. For this reason, and in light of several recent instances where misuse of short call options has resulted in or contributed to financial difficulties for insured institutions,⁵ the Board believes

⁴ See section 402(b) of the CEBA.

⁵ For example, in one instance, an institution's covered call writing investment strategy

that leaving the existing regulatory accounting rules unchanged is not a viable alternative. At such time as GAAP for financial option transactions is clarified, the Board will reexamine its rules in this area.

Several commenters recommended that short call options be accounted for on a mark-to-market basis. Because insured institutions file regulatory reports with the Board on a monthly basis, such a requirement would necessitate marking positions to the market at least monthly. The Board has determined not to adopt such an approach at this time because it exceeds the scope of the Proposal. Instead, as described below, the amendments provided for a simplified approach effectively requiring option positions to be marked-to-market when such position is terminated.

One commenter, a futures exchange, observed that the proposed accounting fails to reflect the economic substance of options transactions. The concerns raised could be resolved only by requiring mark-to-market accounting for both the written option position as well as the matched cash market or anticipated transactions. Such an approach, although potentially justifiable on economic grounds, would mark a substantial departure from an historical cost accounting treatment under GAAP. The Board has, therefore, determined not to implement this alternative at this time.

Two commenters recommended that "hedge" accounting treatment should be afforded a short call option position when the options strike price is substantially below the market price for the underlying security (so-called "deep-in-the-money" option). Those commenters made reference to certain conclusions by the Accounting Standards Executive Committee issued on August 15, 1986, in response to a March 6, 1986 Issues Paper by the American Institute of Certified Public

degenerates into a large speculative option selling program. The institution sold increasing amounts of call and put options to offset losses on previously established option positions. The institution had large unrealized losses resulting from the exercise of short put options against it, which losses were subsequently offset by gains on sales of securities when, fortuitously, interest rates fell. The institution's speculative strategy could easily have resulted in its financial ruin under a different interest rate scenario. Such a strategy constitutes an unsafe and unsound practice.

In another instance, as part of an interest rate guarantee program, an institution (through an investment adviser) bought put options as protection against rising interest rates. To offset the cost of the put purchases, the institution sold naked short call options. When interest rates fell the institution incurred substantial losses, which led to its liquidation.

Accountants entitled "Accounting for Options," which would permit hedge accounting treatment for deep-in-the-money options.

The Board recognizes that a short call option that is matched to a long position in a specific security (so-called "covered call") does provide some protection against price changes in the matched security. Further, it is recognized that hedge accounting treatment for deep-in-the-money covered call positions does have some theoretical merit because, for limited intervals of price decreases in the underlying security, deep-in-the-money covered call options protect against a loss in value of the "covered" security. However, because of the calculation complexities in correctly accounting for such positions and because deep-in-the-money call options are rarely sold by insured institutions, the Board has determined that hedge accounting for any short call option position would be inappropriate.

Two commenters pointed out that call writing can be used effectively to hedge a long security position when the call position is periodically adjusted to "preserve delta neutrality." The Board notes that preservation of delta neutrality requires that position adjustments be made on an ongoing and frequent basis to insure that changes in the value of the security being hedged are exactly offset by changes in the value of the option position. Consequently, a great deal of position monitoring and adjustment to "hedge ratios" is necessary to maintain delta neutrality. Because of an almost constant need to monitor and adjust positions and, as previously noted, the complexities involved in hedge accounting, the Board does not believe applying hedge accounting to "delta neutral" positions (i.e., a position that utilizes the ratio of the change in option price to the change in price of the hedged assets to determine the precise number of option contracts required at any point in time in order to offset exactly the change in price of the hedged asset) is a practical alternative.

C. Amendments to 12 CFR 563.17-5

Having considered the comment letters summarized above, the Board is adopting amendments to 12 CFR 563.17-5 regarding the accounting treatment for short call financial option positions. The amendments follow the simplified mark-to-market approach substantially as proposed in the Proposal. The Board believes that the amendments will more accurately reflect the true economic substance of a short call option transaction and will discourage insured

institutions from entering into such positions solely to take advantage of the prior more favorable accounting treatment.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis.

1. Need For and Objectives of the Rule

These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

2. Issues Raised by Comments and Agency Assessment and Response

These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

3. Significant Alternative Minimizing Small-entity Impact and Agency Response

The amendments will allow smaller institutions greater access to the OTC options market than permitted under the present rules. There are no alternatives that would be less burdensome than the amendments in addressing the concerns expressed above in **SUPPLEMENTARY INFORMATION**.

List of Subjects in 12 CFR Part 563

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 60 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 120, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 62 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4061, 3 CFR 1943–1946 Comp., p. 1071.

2. Amend § 563.17–5 by revising paragraphs (a)(4), and (c); by revising the heading of the paragraph and the text of paragraph (e)(2); by revising paragraphs (g)(2), (g)(3)(ii)(B), and (g)(3)(ii)(C); by redesignating paragraph (g)(3)(ii)(D) as the new paragraph (g)(3)(ii)(E); by revising the new

paragraph (g)(3)(ii)(E); and by adding new paragraphs (a)(13) and (g)(3)(ii)(D), to read as follows:

§ 563.17–5 Financial options transactions.

(a) *Definitions.* . . .

(4) *Financial options contract.* An agreement (other than an optional delivery forward commitment contract to purchase and sell mortgages or mortgage-backed securities when used as part of the mortgage loan origination process) to make or take delivery of a financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by—(i) A board of trade designated as a contract market for the trading of option contracts by the Commodity Futures Trading Commission ("CFTC") or a national securities exchange registered with the Securities Exchange Commission (SEC) or

(ii) The insured institution and a "permissible counterparty," as defined in paragraph (a)(13) of this section, that are counterparties in an over-the-counter option transaction (other than an over-the-counter commodity option transaction subject to the jurisdiction of the CFTC that is not otherwise authorized under the Commodity Exchange Act and the regulations thereunder).

(13) *Permissible counterparty.* Any entity that is: (i) A primary dealer as defined in paragraph (a)(12) of this section;

(ii) A bank subject to the regulation and supervision of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System and that is in compliance with applicable regulatory capital requirements;

(iii) An institution that is subject to the regulation and supervision of the Federal Savings and Loan Insurance Corporation and is in compliance with applicable regulatory capital requirements;

(iv) A broker or dealer registered with the SEC and subject to regulation and supervision by a Registered Securities Association (registered pursuant to section 15A of the Securities and Exchange Act of 1934 ("Exchange Act")) or a National Securities Exchange (registered pursuant to sections 6 and 19(a) of the Exchange Act) and that is in compliance with applicable capital requirements;

(v) A government securities broker or dealer registered with the SEC that is subject to examination and supervision

by a Registered Securities Association (registered pursuant to section 15A of the Exchange Act) or National Securities Exchange (registered pursuant to sections 6 and 19(a) of the Exchange Act) and that is in compliance with applicable capital requirements;

(vi) A futures commission merchant registered with the CFTC and that is in compliance with applicable capital requirements;

(vii) The Federal Home Loan Banks;

(viii) The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

(ix) Any other entity that the Board, upon application, determines to be adequately regulated, capitalized, and audited or examined such that acting as a counterparty in an over-the-counter options transaction with an insured institution would not entail substantial credit risks for the institution. The Board delegates the authority to consider and approve such applications to the Executive Director of the Office of Regulatory Policy, Oversight and Supervision, with the concurrence of the General Counsel, or their respective designees.

(c) *Authorized contracts.* An insured institution may engage in financial option transactions using any financial option contracts either—

(1) Designated by the CFTC or approved by the SEC; or

(2) Entered into with a "permissible counterparty" (as defined in paragraph (a)(13) of this section) and based upon a financial instrument that the institution has authority to invest in or to issue.

(e) *Notification, reporting, and approval.* . . .

(2) An insured institution shall not engage in over-the-counter financial option transactions with any permissible counterparty unless such counterparty agrees to notify the Office of the Principal Supervisory Agent ("PSA") of the Federal Home Loan Bank district in which the insured institution is located immediately following the entering into such transaction. An insured institution shall not continue to engage in over-the-counter financial option transactions with any permissible counterparty that has failed to so notify the appropriate PSA with respect to previous over-the-counter financial option transactions with that insured institution. Notwithstanding the foregoing, no insured institution shall engage in a long over-the-counter

financial option transaction with a specific permissible counterparty, without obtaining the prior approval of its PSA, whenever the aggregate exercise value of all long over-the-counter financial option positions with the counterparty exceeds the limitations contained in § 563.9–3(b)(1). A PSA may approve any financial option transaction whenever it determines that such transaction does not subject the FSLIC fund to undue risk. In making such determinations, the PSA shall consider:

(i) The creditworthiness of the specific counterparty,

(ii) The insured institution's experience with such counterparty and with transacting in financial option and futures contracts generally,

(iii) The nature of the subject contracts (e.g., matched or unmatched), and

(iv) Any other circumstances deemed relevant by the PSA.

An application to enter into a financial option transaction under this paragraph (e)(2) shall be deemed approved if the PSA does not deny such application within 10 calendar days from the date the application was filed.

(g) *Accounting.* . . .

(2) *Option commitment fee.* (i) The option commitment fee paid for a long position or received from the sale of a short put option shall be amortized to income or expense over the term of the option, except as provided in paragraph (g)(3)(ii) of this section.

(ii) The option commitment fee received from the sale of a matched short call option shall be deferred until the option position is terminated. The option commitment fee received from the sale of an unmatched short call option shall be amortized to income over the term of the option.

(3) *Options contracts.* . . .

(ii) If a commitment fee has not been received with respect to a matched asset, the option commitment fee (except if received for the sale of a short call option) shall be amortized to income or expense over the commitment period by the straight-line method;

(C) Any resulting gain or loss from an option position (except from a short call option) shall be treated as a discount or premium on the matched asset or liability;

(D) Any resulting gain or loss from a short call option position shall be recognized as income or expense upon termination of the option position;

(E) In the event that an option position is not matched with a cash-market or forward-commitment position or if the

cash-market or forward-commitment position with which an option is matched is sold or will not occur, the option shall be marked to market.

By the Federal Home Loan Bank Board,
John M. Buckley, Jr.,
Secretary.
[FR Doc. 88–10591 Filed 7–21–88; 8:45 am]
BILLING CODE 4720–01–M

12 CFR Part 570

Insurance of Accounts; Interpretive Rule; Federal Savings and Loan Insurance Corporation

Date: July 18, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Interpretive rule; delay of effective date.

SUMMARY: The Federal Home Loan Bank Board (the "Board"), as operating head of the Federal Savings and Loan Insurance Corporation (the "FSLIC") is delaying the effective date of the implementation of its interpretive rule on annuity accounts, 12 CFR 570.13, as applied to certain annuity accounts opened before the interpretive rule's publication in August 1986. The Board is taking this action because it believes that the restructuring of annuity accounts contemplated in its August 1986 ruling is not feasible for many accountholders and insured institutions, given the constraints of IRS rulings and state laws.

EFFECTIVE DATE: This delay of effective date is effective July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, Regulations and Legislation Division, Office of General Counsel, (202) 377–6445, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Pursuant to 12 U.S.C. 1728(a), the Board as operating head of the FSLIC has issued regulations at 12 CFR Part 564 (1987) (the "Settlement of Insurance Regulations") setting forth the insurance coverage the FSLIC provides to institutions the accounts of which it insures ("insured institutions"). The settlement of insurance regulations contain specific requirements that must be satisfied in order for various types of accounts to qualify for separate insurance coverage. One such category is irrevocable trust accounts. Pursuant to 12 CFR 564.10 (1987), "all trust estates for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same

settlor (grantor)" are insured up to \$100,000 in the aggregate, separately from other accounts of the trustee, the beneficiary, or the settlor of the trust. 12 CFR 561.4 (1987) defines "trust estate" in relevant part as "the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statutes, but does not include any interest retained by the settlor."

As clarified in 12 CFR Part 564 Appendix Section G, in order to qualify for separate insurance, "the trust must be valid under local law. A trust which does not meet local requirements, such as one imposing no duties on the trustee or conveying no interest to the beneficiary, is of no effect for insurance purposes. An account in which such funds are invested is considered to be an individual account." Section 564.2(a) of the settlement of insurance regulations provides that to the extent that rules of local law enter into insurance determinations, the law of the jurisdiction where the insured institution is located shall be applied. 12 CFR 564.2(a) (1987).

Between 1980 and 1983, a number of insurance companies requested opinions from the Board's Office of General Counsel ("OGC") that certain accounts at insured institutions were insurable under these trust account provisions. These accounts were to be created in connection with annuity contracts issued by these insurance companies and are commonly referred to as "annuity accounts." While the various programs described in the letters requesting OGC opinions differed in certain particulars, they all were to be established pursuant to statutes in effect in a number of states governing accounts intended to fund life insurance contracts or annuity contracts. These statutes require insurance companies to establish a separate account, which may not be reached by creditors of the insurance company, for the purpose of funding the obligations arising from such contracts and are commonly referred to as "separate account statutes." They further provide that amounts allocated to a separate account are owned by the insurance company which establishes the account. These statutes typically provide that the insurance company establishing such contracts may neither act as, nor hold itself out as acting as, trustee with regard to the funds in these accounts.

These annuity account programs were also closely tied to certain rulings by the Internal Revenue Service ("IRS") regarding the tax status of such accounts. In 1980, the IRS reversed

certain earlier letter rulings that had treated the insurance companies as the owners of such accounts for tax purposes, and provided that the annuity holders would be considered owners of such funds and thus required to include earnings thereon in their gross income. The IRS indicated, however, that this revenue ruling would not be applied retroactively to funds placed in such accounts in the period between issuance of the earlier opinions and the revocation of such opinions.

In response to the insurance companies' requests, the OGC opined, in a number of letters issued between 1980 and 1983, that, regardless of provisions of the separate account statutes, the annuity accounts proposed to be established at insured institutions in connection with these annuity contracts would qualify for separate trust insurance coverage under 12 CFR 504.10 (1987). In reaching this conclusion, the OGC noted that courts were prone to treat similar arrangements as trusts, particularly when the existence of a trust was necessary to qualify for a benefit under a federal statute such as the Internal Revenue Code. By analogy, the OGC determined that courts might be likely to determine that the annuity contracts should be treated as trusts for purposes of FSLIC insurance coverage despite the express state law provisions to the contrary.

In reliance upon the 1980-1983 opinions of the OGC, a large number of accounts representing investments on behalf of a large number of annuity contract holders were established at FSLIC-insured institutions. However, between 1983 and 1986, the OGC had occasion to review its earlier treatment of annuity accounts under the settlement of insurance regulations in light of the explicit provision in the regulations requiring valid trust arrangements for irrevocable trust coverage and the equally explicit provision of the separate account statutes that insurance companies establishing such accounts owned such accounts and could not act as trustees with regard to such accounts. During this period, the OGC issued no further opinions indicating that accounts that did not otherwise meet the requirements of §§ 501.4 and 504.10 of the regulations would nevertheless be treated as irrevocable trust accounts for purposes of determining FSLIC insurance coverage.

In August 1986 the Board issued a ruling explicitly superseding the earlier opinions of its Office of General Counsel on annuity accounts. This ruling stated that annuity accounts established pursuant to separate account statutes do

not meet the requirements of the settlement of insurance regulations for separate irrevocable trust account coverage because they do not qualify as valid trust arrangements in that the separate account statutes explicitly provide that funds in such accounts remain the property of the insurance company, not the annuity contract holder, and that the insurance company has no power to act as trustee for such accounts. 51 FR 29458, 29459 (August 18, 1986), codified at 12 CFR 570.13(b) (1987). The Board provided, however, that application of this interpretation of the settlement of insurance regulations would be delayed until August 18, 1989. This delay in effective date was intended to permit the restructuring of the annuity accounts in accordance with the requirements of the settlement of insurance regulations. The Board suggested that such accounts might be collateralized or restructured to fall within the settlement of insurance provisions governing accounts held by agents on behalf of principals, 12 CFR 504.3(b) (1987). See 51 FR 29460 (1986).

Since August 1986, the Board has examined in greater detail the annuity accounts invested in FSLIC-insured institutions in reliance upon the 1980-1983 opinions of the Board's Office of General Counsel. The Board has reviewed the description of the annuity programs provided to OGC during that period, has noted that the programs were in fact established in the manner described, and has considered the substantial long-term investments made in reliance upon these opinions. It has also looked more closely at the IRS requirements for such accounts, applicable state laws, and the practical implications of requiring collateralization of these funds.

It has been and remains the Board's long-standing position that advice or opinions issued by its staff on insurance matters are advisory only. See 52 FR 8611, 8612 (1987); 50 FR 19185, 19194 (1985); 32 FR 18122, 18122 (1967). It has also been the Board's consistent position, however, that the FSLIC may, in its discretion, ratify such advice in considering the insurance claims of individual accountholders whose insurance coverage was the subject of an opinion. Because the subsequent claim may disclose facts and legal issues of which staff was not fully aware at the time of the advisory opinion, the FSLIC is not required to ratify such advice, however.

Upon review, the Board believes that the restructuring of annuity accounts contemplated in its August 1986 ruling is not feasible for many accountholders

and insured institutions, given the constraints of IRS rulings and state law. The Board has therefore determined to except certain annuity accounts ("excepted accounts") from the policy set forth at 12 CFR 570.13 (1988) for the duration of the annuity contracts underlying those accounts and, as operating head of the FSLIC, to ratify the advice given to the accountholding insurance companies in considering any FSLIC insurance claims that may arise on accounts opened in reliance on such advice. Excepted accounts are limited to those opened on or before August 18, 1986, in reliance upon opinions of the Office of General Counsel issued to that accountholder or its representative before that date. Therefore, the FSLIC will make insurance determinations on funds held in annuity accounts at FSLIC-insured institutions by accountholders who requested, received, and relied upon OGC opinions on the insurance coverage afforded annuity accounts before 1986 in accordance with the interpretations set forth in those opinions.

As part of its revision of the Settlement of Insurance Regulations, the Board is considering amending those regulations to deal specifically with annuity accounts. As set forth in the August 1986 ruling the Board does not believe that such annuity accounts are properly treated under the current irrevocable trust provisions of 12 CFR 504.10 because they do not constitute valid irrevocable trusts under the laws of states that have established separate account statutes. The Board currently anticipates that the revised settlement of insurance regulations, containing provisions specifically dealing with annuity accounts, will be published for notice and comment well before the expiration of the grandfathering provision of 12 CFR 570.13. Such revisions will govern annuity accounts not opened in reliance upon advice given to accountholders or their representatives in the period between 1980 and 1986.

Because this is an interpretive rule, it is exempt from the notice, comment, and delay-of-effective date requirements of 5 U.S.C. 553, 12 CFR 508.11, and 508.14 (1987).

List of Subjects in 12 CFR Part 570

Savings and loan associations. Accordingly, the Board hereby amends Part 570, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 570—BOARD RULINGS

1. The authority citation for 12 CFR Part 570 continues to read as follows:

Authority: Secs. 552, 559, 80 Stat. 383, 388, as amended (5 U.S.C. 552, 559); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431(e)(2)(c)); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-403, 405, 407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1726, 1728, 1730); sec. 414, as added by sec. 522, 94 Stat. 165, as amended (12 U.S.C. 1730g); Reorg. Plan No. 3 of 1947, 3 CFR, 1943-48 Comp., p. 1071.

2. Amend § 570.13 by revising paragraph (c) to read as follows:

§ 570.13 Insurance of annuity accounts.

(c) *Delay of effective date.* Application of the interpretation of the Corporation's insurance regulations set forth in this Ruling shall be delayed, in the case of annuity accounts opened before August 18, 1986 in reliance upon opinions of the Board's Office of General Counsel, until the expiration of the annuity contracts underlying those accounts.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-16594 Filed 7-21-88; 8:45 am]
BILLING CODE 6720-01-0

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 25654; Amdt. No. 1378]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight

operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a

special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same

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reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on July 6, 1988.

Robert L. Goodrich,
Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0601 u.t.c. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

• • • Effective September 22, 1988

Butler, PA—Butler County, ILS RWY 8, Amdt. 4

• • • Effective August 25, 1988

Santa Monica, CA—Santa Monica Muni, NDB-B, Orig.

Indianapolis, IN—Indianapolis Terry, VOR RWY 36, Amdt. 7

Indianapolis, IN—Indianapolis Terry, NDB RWY 36, Amdt. 3

Indianapolis, IN—Indianapolis Terry, RNAV RWY 18, Amdt. 5

Hammond, LA—Hammond Muni, VOR RWY 18, Amdt. 1

Hammond, LA—Hammond Muni, VOR RWY 31, Amdt. 2

Hammond, LA—Hammond Muni, NDB RWY 18, Amdt. 1

Hammond, LA—Hammond Muni, ILS RWY 18, Amdt. 1

New Orleans, LA—Lakefront, ILS RWY 18R, Amdt. 10

Baltimore, MD—Martin State, VOR RWY 14, Amdt. 5, Cancelled

Beverly, MA—Beverly Muni, LOC RWY 18, Amdt. 4

Pittsfield, MA—Pittsfield Muni, LOC RWY 28, Amdt. 3

Pittsfield, MA—Pittsfield Muni, NDB RWY 28, Amdt. 2

Boonville, MO—Jesse Viertel Memorial, VOR-A, Amdt. 2

Boonville, MO—Jesse Viertel Memorial, NDB RWY 18, Amdt. 6

Columbia, MO—Columbia Regional, VOR RWY 20, Orig.

Columbia, MO—Columbia Regional, VOR/DME RWY 20, Orig.

Columbia, MO—Columbia Regional, LOC BC RWY 20, Amdt. 9

Columbia, MO—Columbia Regional, NDB RWY 2, Amdt. 7

Columbia, MO—Columbia Regional, ILS RWY 2, Amdt. 11

Columbia, MO—Columbia Regional, RNAV RWY 20, Amdt. 3, Cancelled

Columbia, MO—Columbia Regional, VOR RWY 13, Amdt. 3, Cancelled

Columbia, MO—Columbia Regional, VOR RWY 13, Orig.

Columbia, MO—Columbia Regional, VOR RWY 20, Amdt. 9, Cancelled

Columbia, MO—E W Cotton Woods Memorial, VOR-A, Amdt. 4, Cancelled

Columbia, MO—E W Cotton Woods Memorial, VOR-B, Amdt. 2

Fulton, MO—Fulton Muni, VOR-A, Amdt. 2

Fulton, MO—Fulton Muni, NDB RWY 5, Amdt. 1

Fulton, MO—Fulton Muni, NDB RWY 23, Amdt. 1

Fulton, MO—Fulton Muni, RNAV RWY 5, Amdt. 1

Fulton, MO—Fulton Muni, RNAV RWY 23, Orig., Cancelled

Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Amdt. 2

Jefferson City, MO—Jefferson City Meml, NDB RWY 30, Amdt. 7

Sedalia, MO—Sedalia Memorial, NDB RWY 18, Amdt. 7

Sedalia, MO—Sedalia Memorial, NDB RWY 36, Amdt. 7

Astoria, OR—Port of Astoria, VOR RWY 8, Amdt. 11

Sioux Falls, SD—Joe Foss Field, VOR or TACAN RWY 15, Amdt. 17

Sioux Falls, SD—Joe Foss Field, VOR/DME or TACAN RWY 33, Amdt. 8

Sioux Falls, SD—Joe Foss Field, ILS RWY 3, Amdt. 25

Sioux Falls, SD—Joe Foss Field, ILS RWY 21, Amdt. 7

Sioux Falls, SD—Joe Foss Field, RADAR-1, Amdt. 7

Andrews, TX—Andrews County, NDB RWY 15, Amdt. 1

Midland, TX—Midland International, VOR or TACAN RWY 16R, Amdt. 22

Midland, TX—Midland International, VOR/DME or TACAN RWY 34L, Amdt. 8

Midland, TX—Midland International, LOC BC RWY 28, Amdt. 12

Midland, TX—Midland International, NDB RWY 10, Amdt. 10

Midland, TX—Midland International, ILS RWY 10, Amdt. 13

Midland, TX—Midland International, RADAR-1, Amdt. 4

Midland, TX—Midland International, RNAV RWY 16R, Amdt. 1

Midland, TX—Midland International, RNAV RWY 34L, Amdt. 1

Gillette, WY—Gillette-Campbell County, VOR RWY 18, Amdt. 8

Gillette, WY—Gillette-Campbell County, VOR/DME RWY 34, Orig.

Gillette, WY—Gillette-Campbell County, NDB RWY 34, Orig.

Gillette, WY—Gillette-Campbell County, ILS RWY 34, Amdt. 2

Sheridan, WY—Sheridan County, VOR RWY 13, Amdt. 5

Sheridan, WY—Sheridan County, VOR/DME 31, Amdt. 5

Sheridan, WY—Sheridan County, NDB RWY 31, Amdt. 1

Sheridan, WY—Sheridan County, ILS RWY 31, Amdt. 1

• • • Effective June 30, 1988

Thomson, GA—Thomson-McDuffie County, NDB RWY 28, Amdt. 7

Caldwell, ID—Caldwell Industrial, NDB RWY 30, Amdt. 3

Norfolk, NE—Karl Stefan Memorial, ILS RWY 1, Amdt. 3

Lubbock, TX—Lubbock Intl, LOC BC RWY 35L, Amdt. 14

Milwaukee, WI—Lawrence J. Timmerman, LOC RWY 15L, Amdt. 3

Pohnpei Island, Federated States of Micronesia—Pohnpei Intl, NDB/DME RWY 9, Amdt. 4

§ 97.27 [Amended]

The FAA published an Amendment in Docket No. 25592, Amdt. No. 1372 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 83 Page 15374; dated Friday, April 29, 1988) under § 97.27 effective June 30, 1988, which is hereby amended as follows:

Winnboro, SC—Fairfield County, NDB RWY 4, Amdt. 3 EFF 30 June 88. Effective date changed to 20 OCT 88.

§ 97.23 [Amended]

The FAA published an Amendment in Docket No. 25635, Amdt. No. 1376 to Part 97 of the Federal Aviation Regulations (VOL 53 FR No. 119 Page 23227; dated Tuesday, June 21, 1988) under § 97.23 effective 25 AUG 88, which is hereby amended as follows:

Marianna, FL—Marianna Muni, VOR/DME-B, Amdt. 2, EFF 25 AUG 88 and NDB-C, Amdt. 1, EFF 25 AUG 88 are hereby rescinded. Previous amendments remain in effect.

[FR Doc. 88-16503 Filed 7-21-88; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 234 and 255

[Docket No. 44827; Amdt. Nos. 234-5 and 255-6]

RIN 2105-AB28

Airline Service Quality Performance

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is making final its interim rule on airline service quality performance, issued December 22, 1987 (52 FR 48395), that allowed computerized reservations system (CRS) vendors 10 days, instead of 5 days, to include in their CRS displays the flight delay and cancellation information submitted by participating air carriers. The interim rule also required participating carriers to assign a letter code to flights scheduled to operate three times or less during a month in their reports to CRS vendors.

DATE: This rule is effective July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff or Sam Whitehorn, at 400 7th St., SW., Washington, DC 20590, (202) 366-9305; Shelton Jackson, at the above address or by phone at (202) 366-5397; or Robin Caldwell, at the above address or by phone at (202) 366-9059.

SUPPLEMENTARY INFORMATION: On September 9, 1987, the Department of Transportation (DOT or Department) published a final rule that required 14 air carriers to submit certain flight performance data to the Department each month for public dissemination, and to CRS vendors for incorporation into their primary schedule and availability displays. The carriers must provide this information to vendors in the form of a single-digit on-time performance code summarizing each flight's monthly performance as reported in the data submitted to DOT by the fifteenth day of the following month. The final rule required CRS vendors to include that information on their primary schedule and availability displays within 5 days after receiving it.

On October 2, 1987, the Air Transport Association (ATA) requested a permanent waiver of the 5-day display requirement (14 CFR 225.4(e)(1)) in favor of a 10-day period. It stated that the most efficient mechanism for transmitting the on-time performance codes is for the carriers to insert them as an additional data element in the tapes they submit to the vendors to update their CRS schedules. However, the rule's monthly deadlines for submitting and displaying the summary codes precluded their easy integration into the existing process for updating the CRS schedule displays. ATA claimed that CRS vendors generally arrange their loading dates during low usage periods for their computer systems, which usually occur on weekends; these loading dates are arranged a year or more in advance. Because of the varying lead times needed by carriers and the use of weekends, data submitted, for example, on the 15th of any month, particularly if it falls on a Thursday or Friday, might

not be loaded by a vendor until the following weekend (the 24th or 25th), more than five days later.

On December 22, 1987, the Department issued an interim final rule that allowed CRS vendors 10 days, instead of 5, to load the performance data into their CRS displays. The 10 day period gives vendors the flexibility they need to mesh the requirements of the rule with existing industry practice, without incurring the unnecessary costs of creating an independent reporting system for this data. The interim rule also required that carriers assign the letter "U" as the code for any flight scheduled to operate three times or less during a month in their report to CRS vendors. The Department determined that the delay rate of a flight with a small number of operations in one month may be somewhat misleading to consumers, particularly where a carrier adds a flight with only a few operations during a holiday period. A rating based on only a minimal number of operations of that particular flight may be an unreliable basis for determining its on-time performance. The use of a letter code, U, instead of number codes for these flights was deemed to be consistent with the treatment of new flights, which are given the letter code "N". However, carriers must continue to submit on-time performance data on these flights to the Department. Finally, the rule made a minor technical change to reflect the involvement of third parties in the transmission of the data to the CRS vendors. The rule requested public comments on these actions; however, no comments were received.

The Department adopts as final the interim rule without change. The rule does not affect the usefulness of the data to consumers, and any possible adverse impact of delaying the availability of the next month's data to consumers for an extra 5 days has been minimal. It also eliminates the need for carriers to create and maintain a costly separate updating system to accommodate our service quality performance rule.

The Department has determined that this rule is not major within the meaning of Executive Order 12291 or significant under the Department's regulatory policies and procedures. This amendment will make only minor changes that will ease implementation of the CRS display requirement. A regulatory evaluation was prepared in developing the initial rule and is available in the docket. Therefore, no further evaluation is necessary. I certify that this rule will not have a significant economic impact on a substantial

number of small entities for the purposes of the Regulatory Flexibility Act. None of the affected certificated air carriers or CRS vendors are small businesses within the meaning of the Act. The Department also has concluded that this rule will not have a significant impact on the environment under the National Environmental Policy Act. The rule does not impose any additional paperwork reporting requirements.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule has no federalism implication that warrants the preparation of a Federalism Assessment.

Under section 553(d) of the Administrative Procedure Act, the Department finds good cause to make this rule effective immediately, because the rule relieves a restriction and is already in effect.

List of Subjects

14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

14 CFR Part 255

Advertising, Air carriers, Air transportation-foreign, Antitrust, Consumer protection, Essential air service, Travel agents.

Accordingly, the interim final rule amending 14 CFR Parts 234 and 255, published at 52 FR 48395 on December 22, 1987, is adopted as a final rule without change.

Issued in Washington, DC, on July 15, 1988.

Mimi Dawson,

Acting Secretary of Transportation.

[FR Doc. 88-16502 Filed 7-21-88; 8:45 am]

BILLING CODE 4910-63-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Conduct of Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The rule revises the Commission's Code of Conduct for commission members and employees. Section 140.735-8(a) of the Commission's Code of Conduct, 17 CFR 140.735-8(a), generally prohibits Commission

members or employees from accepting any gift, meal, entertainment or other thing of monetary value from an organization or person with whom they transact official business. Section 140.735-8(b) of the Code of Conduct, 17 CFR 140.735-8(b), provides several exceptions to this general prohibition. The rule change permits Commission members and employees to accept food and refreshments at certain meetings and, under certain circumstances, at widely-attended events sponsored by what otherwise might be prohibited sources, provided that the General Counsel approves such acceptance in advance.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Susan M. Milligan, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-7110.

SUPPLEMENTARY INFORMATION: On April 22, 1988, the Commission published for public comment a proposal to revise its Code of Conduct, 17 CFR 140.735-1 *et seq.* (1986), which generally establishes ethical standards for Commission members and employees. 53 FR 13288. The revisions were proposed to conform to the Commission's Code of Conduct to an October 23, 1987 Office of Government Ethics memorandum interpreting Executive Order 11222 and 5 CFR 735.202 as precluding Commission members and employees from accepting food and refreshment at certain widely-attended gatherings absent an amendment to the Commission's Code of Conduct. The Commission received no comments in response to the notice of proposed rulemaking and has decided to adopt the rule as proposed.

The rule will permit Commission members and employees to accept food and refreshments at widely-attended events sponsored by what otherwise might be prohibited sources, provided that the General Counsel approves such acceptance in advance. The General Counsel's determination shall be made after consideration of the factors set forth in the rule. The Commission's action relates solely to agency organization, procedure, and practice.

Regulatory Flexibility Act; Paperwork Reduction Act

The Regulatory Flexibility Act, 7 U.S.C. 601 *et seq.*, requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these revisions to the Code of Conduct will impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby

certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

Because the rule adopted herein does not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 140

Commodity futures, Conflict of interests, Ethics, Organizations and functions.

PART 140—[AMENDED]

Accordingly, the Commission, pursuant to the authority contained in sections 2(a)(11), 8a(5), and 9(d) of the Commodity Exchange Act, 7 U.S.C. 4a(f) and 12a(5), and Pub. L. 99-541, Executive Order 11222, 3 CFR 1984-85 Comp., as amended, and 5 CFR 735-104, amends its Code of Conduct, Subpart C of Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as specified below:

1. The authority citation for Part 140, Subpart C, continues to read as follows:

Authority: Sec. 8a(5), 49 Stat. 1501, as amended (7 U.S.C. 12a(5)); E.O. 11222, 3 CFR, 1984-1985 Comp.; 5 CFR 735.104.

§ 140.735-8 [Amended]

2. Section 140.735-8(b) is revised to read as follows:

(b) *Exceptions.* This paragraph does not apply:

- (1) To things of nominal value;
- (2) When the circumstances make it clear that it is obvious family or personal relationships rather than the business of the persons concerned which govern and are the motivating factors;
- (3) When, on infrequent occasions, food and refreshments of nominal value are offered in the ordinary course of a luncheon or dinner meeting or other meeting;¹⁴⁴

¹⁴⁴ For the purposes of paragraph (b)(3) of this section, the Office of Government Ethics of the Office of Personnel Management, has defined the term "meeting" to mean a luncheon, dinner, or other meeting attended by a large group at which the Commission member or employee is the guest speaker, or a meeting at which food or refreshment is brought in to facilitate the continuance of the work and is not itself the focus of the meeting. See October 23, 1987 Memorandum Re: Acceptance of Food and Refreshments by Executive Branch Employees from Donald E. Campbell, Acting Director, Office of Government Ethics at 4-5.

(4) When unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars and other items of nominal value are offered;

(5) When local transportation is provided to the member or employee while he is on official business and alternative arrangements are impracticable;

(6) When the Commission, after due consideration, determines that an exception is warranted and appropriate in a particular situation;

(7) To customary loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as home mortgage loans;

(8) If the General Counsel approves in advance, to reasonable travel and subsistence expense reimbursement by potential employers provided the Commission member or employee is engaged in bona fide post-Commission employment negotiations and is not on official business at the time; or

(9) If the General Counsel approves in advance, to attendance and acceptance of food and refreshments served at widely-attended group events. In deciding whether Commission members and employees may attend and accept food and refreshments at such group events, the General Counsel will consider whether:

- (i) It is in the Commission's interest that the Commission member or employee attend the event where food and refreshments are being served;
- (ii) The sponsor of the event is an individual or entity that is regulated by the Commission, or an individual or entity that has some other business connection with the Commission or is directly involved in a matter pending before the Commission so that the timing or other circumstances surrounding the event would create an appearance of impropriety that outweighs the agency's interest in the Commission member's or employee's attendance;
- (iii) The event will be of mutual interest to the government and industry such as a reception, seminar, conference, industry trade fair, or training session, whose informational value is not merely incidental to its entertainment value (In instances where the Commission has paid for a member's or employee's admission to a conference or seminar, the member or employee may participate in all events hosted by the conference organizers as part of the paid admission. However, attendance and acceptance of food and refreshments at receptions and other events hosted by parties other than the

conference sponsor, but held during the course of the conference, must be approved in advance by the General Counsel in accordance with the requirements of this section);

(vi) The food and refreshments offered in conjunction with the event will be excessive;

(v) There are any other relevant factors that should be considered in reaching a determination.

Issued in Washington, DC, on July 19, 1988 by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88-16590 Filed 7-21-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard Communication

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Notice regarding enforcement of the Hazard Communication Standard.

SUMMARY: On August 24, 1987, OSHA revised its Hazard Communication Standard (HCS) (52 FR 31852) to expand the scope of the industries covered by the rule from the manufacturing sector to all industries where employees are exposed to hazardous chemicals. The revised rule required the non-manufacturing sector of industry to be in full compliance with its provisions May 23, 1988. The U.S. Court Appeals for the Third Circuit, however, has stayed the rule with respect to the construction industry. This document provides additional notice to employers in all non-manufacturing industries other than construction that the rule is in effect. Beginning August 1, 1988, OSHA will check for compliance with the HCS in all programmed inspections in covered non-manufacturing industries.

EFFECTIVE DATE: The revised rule has been in effect for all manufacturing establishments and for all non-manufacturing establishments other than construction since June 24, 1988. Compliance with the rule will not be checked during programmed inspections in covered non-manufacturing establishments until August 1, 1988. Section 1926.59 of Title 29 of the Code of Federal Regulations is temporarily stayed, effective June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3647, Washington, DC 20210; (202) 523-8151.

SUPPLEMENTARY INFORMATION: The HCS requires employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs. The original rule, which was promulgated on November 25, 1983, covered employees exposed to hazardous chemicals in the manufacturing sector of industry. The August 24, 1987, modified rule expanded coverage to all employees exposed to hazardous chemicals, thus providing protection for those in non-manufacturing employments as well as manufacturing (codified at 29 CFR 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59).

The August 1987 rule was scheduled to become fully effective on May 23, 1988. On May 20, 1988, the U.S. Court of Appeals for the District of Columbia Circuit transferred several consolidated cases challenging the standard to the U.S. Court of Appeals for the Third Circuit, and in the interim, ordered an administrative stay of the revised standard "until the Third Circuit ruled on the emergency motion for stay" which had been filed by petitioners representing the construction industry.

On June 24, 1988, the Third Circuit issued an order granting the stay requested by construction industry representatives. On July 8, 1988, the Third Circuit clarified its earlier order stating: "The order entered on June 24, 1988, is clarified to make clear that the stay applies only with respect to construction employers in the non-manufacturing sector."

OSHA knows that some employers in the non-manufacturing sector are unaware of the Third Circuit's order and clarification and that others are unsure whether they must comply with the revised HCS at this time. This document provides additional notice to employers and employees in the non-manufacturing sector that the HCS is in effect for all industry sectors except construction. In addition, as a matter of enforcement policy, OSHA will not check covered non-manufacturers for compliance with the HCS during programmed inspections until August 1, 1988.

The twenty-five (25) states with OSHA-approved State plans and their own hazard communication rules are not bound by the Court's action. Those

which have voluntarily honored the stay are expected to similarly begin enforcement in the non-manufacturing sector.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, under authority of section 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657); and 5 U.S.C. 553 (b)(A), (d)(2).

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard communication, Occupational safety and health, Right-to-know, labeling, Material safety data sheets, Employee training.

Signed at Washington, DC, this 18th day of July 1988.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 88-16460 Filed 7-21-88; 8:45 am]

BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of August 1988.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-776-8820 (202-776-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).)

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in cost or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676
Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.
.....
(c) Interest rates.

For valuation dates occurring in the month—	The values of $\frac{1}{12}$ are—											
	$\frac{1}{12}$	$\frac{2}{12}$	$\frac{3}{12}$	$\frac{4}{12}$	$\frac{5}{12}$	$\frac{6}{12}$	$\frac{7}{12}$	$\frac{8}{12}$	$\frac{9}{12}$	$\frac{10}{12}$	$\frac{11}{12}$	$\frac{12}{12}$
August 1988	.09875	.095	.09	.085	.08	.07375	.07375	.07375	.07375	.07375	.0675	.0675

Issued at Washington, DC, on this 5th day of July 1988.
Kathleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 88-16500 Filed 7-21-88; 8:45 am]
BILLING CODE 7706-01-8

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDS-88-05]

Drawbridge Operation Regulations; Atchafalaya River, LA

AGENCY: U.S. Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: At the request of the Kansas City Southern Railway Company, the Coast Guard is changing the regulation governing the operation of the swingspan railroad bridge over the Atchafalaya River, mile 133.1 above the mouth of the waterway (upstream from Atchafalaya Bay), at Simmesport, Louisiana, by permitting the draw to remain closed at all times; except that, the draw will be required to open on signal when at least three hours advance notice is given. This change is being made because of infrequent requests to open the draw. This action

will relieve the railroad from having a bridgetender on duty at the bridge on a full time basis and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 580-2965.
SUPPLEMENTARY INFORMATION: On 28 April 1988, the Coast Guard published a proposed rule (53 FR 15235) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 3 May 1988. In each notice interested parties were given until 13 June 1988 to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of Comments

Two letters of comment were received about the proposed rule change. The National Marine Fisheries Service and the Federal Emergency Management Agency offered no objection to the proposed rule change. A review of the bridgetender's log of openings for the past five years shows that the draw has been opened for the passage of vessels an average of 1.85 times per week. There

was no pattern to the bridge openings to indicate that vessel traffic is significantly heavier or lighter during any particular month or season of the year, with the exception of low-water period in August and September, when virtually all vessels can pass under the bridge. Outside the low-water period, the draw opened for the passage of vessels an average of 2.2 times per week. Therefore, the final rule is unchanged from the proposed rule as published in (53 FR 15235) on 28 April 1988.

Three hours advance notice for opening of the draw can be made by placing a collect call at any time to the Kansas City Southern Railway Company Chief Dispatcher at Shreveport, Louisiana, telephone (318) 227-7028. To provide for leeway in the appointed vessel arrival time, a bridgetender will be at the bridge at least one-half hour before the appointed opening time, and the tender will remain at least one-half hour after the appointed time for a late arriving vessel.

Economic Assessment and Certification

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the number of vessels passing requiring opening of the bridge averages only 1.85 per week. Since the economic impact of this proposal is expected to be minimal,

the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 409; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.422 [Redesignated from 117.423]

2. Section 117.423 (*Amita River*) is redesignated as § 117.422 and a new § 117.423 is added to read as follows:

§ 117.423 *Atchafalaya River.*

The draw of the Kansas City Southern Railway bridge, mile 133.1 (mile 5.0 on N.O.S. Chart) above the mouth of the waterway, at Simmesport, shall open on signal if at least three hours advance notice is given.

Dated: July 1, 1988.

W.F. Mertin,
Rear Admiral, U.S. Coast Guard, Commander,
Eighth Coast Guard District.
[FR Doc. 88-16497 Filed 7-21-88; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[CCGD788 20]

Security Zone Regulations; Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone around the vessels USNS ALTAIR and USNS ALGOL while they are in transit in the Savannah River and moored at Garden City Terminal, Georgia Ports Authority, Savannah, GA. This security zone is needed to safeguard the vessels ALTAIR and ALGOL against possible destruction from sabotage or other subversive acts. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on or about 15 August 1988 and terminates on or about 17 August 1988. It becomes effective again on or about 20 August 1988 and terminates on 22 August 1988, unless

sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT T.F. Mann, Readiness Planning Officer, Marine Safety Office, P.O. Box 8191, Savannah, GA 31412-8191, (912) 944-4371.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time to publish proposed rules in advance of the event and delaying the event is contrary to national interest since immediate action is needed to prevent possible damage to the USNS ALTAIR and USNS ALGOL or their cargoes.

Drafting Information

The drafters of this regulation are LT T.F. Mann, Project Officer, Captain of the Port Savannah and LCDR S.T. Fuger, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is projected to begin on 15 August 1988, and continue through 22 August 1988. The event is REFORGER-88, a military exercise involving the transit of the vessels USNS ALTAIR and USNS ALGOL in the Savannah River and loading at the Garden City Terminal, Georgia Ports Authority, Savannah, GA between 15 August and 22 August 1988. This security zone is necessary to protect the USNS ALTAIR and USNS ALGOL while they are participating in a military outload exercise at a commercial port facility. This action will minimize the hazards to the vessels USNS ALTAIR and USNS ALGOL, its personnel and cargo of possible damage from any person or persons. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation, (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 33 CFR 160.5 and 165.33.

2. A new § 165.T33 is added to read as follows:

§ 165.T33 *Security Zone: Savannah River, Savannah, GA.*

(a) *Location.* The following area is a security zone: A perimeter of 100 feet in every direction from the vessels ALTAIR, D550722, and ALGOL, D545201, while they are transiting the Savannah River and moored at Garden City Terminal, Georgia Ports Authority, Savannah, GA.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Savannah, GA. Section 165.33 also contains other general requirements.

(c) *Effective Date.* This regulation becomes effective on or about 15 August 1988, upon the arrival of the vessel ALTAIR at the entrance to the Savannah River, Savannah, GA, it terminates or about 17 August 1988 with the departure from the entrance to the Savannah River of the vessel ALTAIR. It again becomes effective on or about 20 August 1988, upon the arrival of the vessel ALGOL at the entrance to the Savannah River, Savannah, GA, it terminates on 22 August 1988, upon the departure from the entrance to the Savannah River of the vessel ALGOL, unless sooner terminated by the Captain of the Port Savannah. Changes to the effective dates will be by Captain of the Port order as promulgated by a Notice to Mariners.

Dated: July 6, 1988.

R.C. Wigger,
Commander, U.S. Coast Guard, Captain of the Port.
[FR Doc. 88-16413 Filed 7-21-88; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area in the Waters Contiguous to the Naval Air Station, Pensacola, FL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is hereby establishing a restricted area in the waters contiguous to the Naval Air Station at Pensacola, Escambia County, Florida. The purpose of the restricted area is to provide additional safety and

security for personnel and facilities at the naval air station.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Lonnie Sheppard at (904) 791-1677 or Mr. Ralph T. Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Corps of Engineers published this rule as a proposed rule on February 9, 1988, with the comment period expiring on March 10, 1988. No objections to the establishment of this Restricted Area were received. We are publishing these rules as proposed except for paragraph (b)(1) which contained an ambiguous statement regarding non-military United States vessels. The subparagraph is clarified by stating that the prohibition applies to all craft except United States military vessels.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and provisions of Executive Order do not apply. The Department of the Army certifies that this proposal will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the foregoing, the Department of the Army is amending Part 334 of Title 33 to read as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Section 334.776 is added as follows:

§ 334.776 Pensacola Bay and waters contiguous to the Naval Air Station, Pensacola, FL; restricted area.

(a) *The area:* Beginning at a point on the northerly shoreline of Grande (Big Lagoon) at Point 1, Latitude 30°19'42"N., Longitude 87°21'08"W., proceed southeasterly to Point 2, Latitude 30°19'27"N., Longitude 87°21'03"W.; thence, northeasterly, paralleling the shoreline at a minimum distance of 500 feet offshore, to Point 3, Latitude 30°19'48"N., Longitude 87°19'35"W.; thence, maintaining a minimum distance of 500 feet offshore or along the northerly edge of the Gulf Intracoastal Waterway Channel (whichever is less), continue to Point 4, Latitude 30°20'00"N., Longitude 87°19'03"W.; thence, maintaining a minimum distance of 500 feet offshore for the remainder of the area to: PT 5, Latitude 30°20'31"N.,

Longitude 87°16'01"W.; Thence to PT 6, Latitude 30°21'11"N., Longitude 87°15'29"W.; Thence to PT 7, Latitude 30°22'26"N., Longitude 87°15'43"W.; Thence to PT 8, Latitude 30°22'39"N., Longitude 87°16'08"W.; Thence to PT 9, Latitude 30°22'17"N., Longitude 87°16'09"W.; Thence to PT 10, Latitude 30°22'16"N., Longitude 87°16'35"W.; Thence to PT 11, Latitude 30°22'09"N., Longitude 87°17'10"W.; Thence to PT 12, Latitude 30°22'15"N., Longitude 87°17'19"W.; Thence to PT 13, Latitude 30°22'07"N., Longitude 87°17'48"W.; Thence to PT 14, Latitude 30°22'25"N., Longitude 87°17'53"W.; Thence to PT 15, Latitude 30°22'13"N., Longitude 87°18'54"W.; Thence to PT 16, Latitude 30°21'57"N., Longitude 87°19'22"W.; Thence to PT 17, Latitude 30°21'57"N., Longitude 87°19'37"W.; Thence to PT 18, Latitude 30°21'49"N., Longitude 87°19'49"W.; (a point on the southerly shoreline of Bayou Grande).

b. *The regulations:* (1) All pleasure (sailing, motorized, and/or rowed), private and commercial fishing vessels, barges and all other craft except United States military vessels are restricted from transiting, anchoring, or drifting within the above-described area when required by the Commanding Officer of the Naval Air Station Pensacola (N.A.S.) to safeguard the installation, its personnel and property in times of an imminent security threat, as required by a national emergency situation, natural disaster, or as directed by higher authority.

(2) All pleasure (sailing, motorized, and/or rowed), private and commercial fishing, and all other vessels, barges, and other craft except those owned by the United States Government's defense or law enforcement agencies are prohibited from transiting, anchoring, or drifting within 500 feet of any quay, pier, wharf, or levee along the N.A.S. shoreline abutting Pensacola Bay nor may such vessels or person thereon approach within 500 feet or land on or beach such craft on the beaches extending along the eastern shore of the N.A.S., southerly to a point on the shore located at Latitude 30°20'57"N., Longitude 87°15'52"W., nor may any above-described craft/vessel approach within 500 feet of any United States public vessel anchored or moored adjacent thereto without specific permission of the Commanding Officer, N.A.S. Pensacola or his/her designee or the Commanding Officer of the anchored/moored public vessel(s).

(3) The existing "Navy Channel" adjacent to the north shore of Magazine Point, by which vessels enter and egress Bayous Davenport and Grande into Pensacola Bay shall remain open to all

craft except in those extraordinary circumstances where the Commanding Officer, N.A.S. or his/her designee determines that risk to the installation, its personnel, or property is so great and so imminent that closing the channel to all but designated military craft is required for security reasons, or as directed by higher authority. This section will not preclude the closure of the channel as part of a security exercise; however, such closures of said channel will be limited in duration and scope to the maximum extent so as not to interfere with the ability of private vessels to use the channel for navigation in public waters adjacent thereto not otherwise limited by this regulation.

(4) The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Pensacola, Florida, and such agencies he/she may designate.

Date: June 27, 1988.

Approved:

Robert W. Page,
Assistant Secretary of the Army (Civil Works).

[FR Doc. 88-16534 Filed 7-21-88; 8:45 am]
BILLING CODE 3710-08-41

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Management of Municipal Watersheds

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture hereby revises its regulation at 36 CFR 251.9 governing agreements for the management of municipal watersheds. The revised rule transfers the approval authority for special management of municipal watersheds from the Chief to Regional Foresters, integrates the management of municipal watersheds with regulations governing forest planning at 36 CFR Part 219, and requires special use authorizations when land use restrictions are imposed for management of municipal watersheds. This action is necessary to conform with legislation enacted since the rule was last promulgated.

EFFECTIVE DATE: This rule is effective August 22, 1988.

FOR FURTHER INFORMATION CONTACT: Rhey Solomon, Watershed and Air Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (703) 235-8163.

SUPPLEMENTARY INFORMATION: The existing regulation at 36 CFR 251.9 was issued September 11, 1942, to provide guidance for implementing the Domestic Water Supply Act of 1940 (16 U.S.C. 552a). The regulation provides for the Chief of the Forest Service to enter into formal agreements with municipalities for the protection of watersheds on National Forests that provide municipal water supplies. The existing regulation anticipated mutual action by the municipality and the Forest Service for protection of municipal water supplies. The regulation states requirements to be contained in agreements, including the kinds of uses to be restricted, the nature and extent of restrictions, and special protective measures which may be necessary. The regulation also requires that any payment to compensate the United States for losses of revenue resulting from restrictions be clearly defined in agreements.

Since 1942, two significant laws were enacted which directly affect management of municipal watersheds: The National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

The Federal Land Policy and Management Act repealed a part of section 1 of the Domestic Water Supply Act of 1940 (16 U.S.C. 552a), which authorized the President to set aside National Forest lands from all forms of mineral location and entry. The National Forest Management Act requires comprehensive land and resource management plans for units of the National Forest System. These plans provide the detailed on-the-ground direction to guide the integrated management of the resources of these lands. Therefore, management of municipal watersheds must be reflected in and governed by these plans, not in separate formal agreements, the concept for which predates passage of the National Forest Management Act.

In addition, rules at 36 CFR Part 219 were developed to guide Agency compliance with the planning requirements of the National Forest Management Act. These planning rules delegate approval of land and resource management plans to Regional Foresters. This creates a conflict between the forest plan approval authority delegated to the Regional Forester by 36 CFR 219.4, and the approval authority for municipal watershed agreements assigned to the Chief by 36 CFR 251.9. On September 8, 1987, the Forest Service published a proposed rule (52 FR 33839) to eliminate the requirement for the Chief's approval

of municipal watershed agreements, thereby effectively delegating this authority to the Regional Forester, as part of forest plan approval. This delegation would remove one level of administrative approval and better integrate decisions for management of municipal watersheds with other land use decisions made as part of forest planning.

The proposed rule also clarified when special use authorizations are required to effect municipal watershed agreements. Many existing municipal watershed agreements are not accompanied by special use authorizations although the rule governing special uses—36 CFR Part 251 Subpart B—clearly requires such authorization. Therefore, the proposed rule made it clear that special use authorizations are required (1) for all municipal watersheds where the municipality desires to impose restrictions on the use of the land and (2) for construction and maintenance of any facilities on National Forest System lands.

Public Comments and Responses

Responses to the proposed rule were received from seven parties: six municipalities, and one individual. All were considered in the development of the final rule. The comments and Agency responses to them are summarized below.

Comment: Three respondents who currently have agreements with the Forest Service, asked whether, under the proposed rule, written municipal watershed agreements would still be allowed. The respondents were concerned that the existing agreements would be terminated.

Response: The proposed rule would allow written agreements. The proposed rule did not make reference to agreements; therefore, the respondents may have misunderstood the proposed rule. In consideration of the comments, paragraph (b) has been changed in the final rule to make clear that written agreements are still allowed when requested by the municipality and deemed appropriate by the Regional Forester. Existing formal agreements are still recognized and will continue in effect unless changed or terminated under provisions stipulated in these written agreements.

Comment: Two respondents stated that municipalities presently having formal agreements should not now be subject to special use permits and assessed a fee to continue these restrictions.

Response: Many municipalities have watershed agreements that predate

special use rules at 36 CFR 251.50-64. Forest officers have not always recognized the need for accompanying special authorizations for activities allowed under watershed agreements. Special authorization will be needed for existing and future agreements when the municipality is allowed to restrict public access within the watershed or for use and occupancy of the watershed. However, in accordance with 36 CFR Part 251, we cannot continue to allow municipalities to obtain special uses without payment when a fee is appropriate. Rental fees associated with special authorizations are outlined in 36 CFR 251.57. All or part of these fees may be waived by the authorized officer when equitable and in the public interest. Criteria for fee waiver include uses in the public interest, uses by non-profit organizations, or uses in the furtherance of public health, safety, or welfare.

Comment: Paragraph (b) of the proposed rule provides that a special use permit may indicate the "resources that are to be provided by the municipality." This concept should be clarified as to meaning and purpose.

Response: The resources to be provided by a municipality, if any, refer to such items as: funding, personnel, and/or equipment to monitor raw water quality to the extent that this exceeds monitoring which the Forest Service determines to be necessary to meet legal requirements. Because such items will be determined on a case-by-case basis and involve a broad range of items, attempted clarification of the term may unnecessarily restrict its meaning. The language of the proposed rule is believed to be appropriate and is retained in the final rule.

Comment: While paragraph (a) of the proposed rule requires that a special use authorization be obtained when "special protection needs exceed the level of protection provided in the forest plan," paragraph (d) provided that any special use authorization "shall be consistent with the forest plan." This is a potential inconsistency that must be clarified.

Response: The proposed rule allows for protection needs more specific than those which are stated in the forest plan, provided that such protection is not in conflict with uses and standards stated in the plan. Consistency with the forest plan is not intended to mean "equal to" requirements in the forest plan. Specific protection needs that outline how activities will be carried out may not appear in the forest plan, but are specified more fully during implementation of forest plans. We agree that the wording is not clear. The

rule has been changed to clarify that protection needs, restrictions, or uses not specified in forest plans, agreements, or special use authorizations must be submitted to the Forest Service for consideration. If protection needs, restrictions, or uses are found to be inconsistent with the forest plan, the plan may be amended or revised or the protection needs, restrictions, or uses changed to bring about consistency.

Comment: Two municipalities stated that the proposed rule gives Forest Service planners the right to "special use permit" a watershed out of existence by demanding payment. Water surveyors in small communities cannot afford these payments.

Response: There is no intent to demand excessive payments for special protection or use of municipal watersheds. However, it is important to retain the requirements that when use of forest land and multiple resources are substantially restricted to benefit a local group of users, the United States may be compensated for granting such a privilege. As noted earlier, all or part of these fees may be waived by the authorized officer when equitable and in the public interest. Criteria for fee waiver include uses in the public interest, uses by non-profit organizations, or uses in the furtherance of public health, safety, or welfare (36 CFR 251.57). We disagree that the proposed rule would "special use permit" a watershed out of existence. Most municipalities could satisfy criteria for fee waiver and; therefore, this aspect of the rule is not changed.

Comment: One respondent commented that regulations governing special use applications are too cumbersome and costly, and the proposed rule should not be adopted.

Response: Special use authorizations are administrative instruments to document terms and conditions of uses permitted on National Forest lands. Environmental, social, and economic analysis are required for any activity allowed on National Forest land in compliance with the National Environmental Policy Act. This analysis would be performed on any request for use restrictions within a municipal watershed with or without requirements for the special use authorization. Even if the rule were eliminated, special use authorizations are required by law to affect use restrictions or occupancy for protection of municipal watersheds. Therefore, we do not believe that the rule, in and of itself, requires more administrative work than without the rule.

Comment: Two municipalities stated that the proposed rule should explicitly provide consistency with the filtration and disinfection requirements in the EPA's proposed National Primary Drinking Water regulations (52 FR 42176, November 3, 1987).

Response: The proposed drinking water rule allows substitution of watershed controls for filtration, provided that a set of criteria be met. One such criteria is a formal agreement with landowners for control of human activity within the contributing municipal watershed. The Forest Service supports the multiple barrier approach for protection of municipal water supplies as outlined in the EPA's proposed rule, and our proposed rule allows for these formal agreements between municipalities and the Forest Service. These agreements could, in part, help municipalities meet requirements of the proposed drinking water regulations. Explicit reference to the drinking water regulations is inappropriate because the drinking water regulations set standards for water and water treatment, not requirements for watershed management. Municipal watersheds would not be governed by this EPA rule. In response to the concerns for meeting the EPA requirements, the final rule explicitly refers to the options for formal agreements with municipalities.

Comment: The proposed rule would shift too much decisionmaking power to Forest Service people who are not committed to or versed in watershed protection.

Response: The proposed rule shifts approval authority from the Chief to the Regional Forester because authority to approve forest plans already resides with the Regional Forester. This delegation of authority will not change the type of people making recommendations or evaluating municipal watershed alternative management prescriptions. No changes in the proposed rule were deemed necessary to clarify decisionmaking authority.

Comment: The "multiple use prescription" requirement in the proposed rule does not consider the implications and potential for water quality degradation and economics of water production.

Response: In the proposed rule, multiple use is a broad term which does not mean that all uses will occur in all areas. Multiple use prescriptions include consideration of water quality and economics in forest planning and in all environmental analyses done by the Agency. Protection of water quality is a

requirement of all Agency management activities. Therefore, no change to the proposed rule to refer to water quality or economics was deemed necessary since these requirements are met through other governing regulations. (40 CFR Part 1500, 36 CFR Part 219).

Comment: The proposed regulation will significantly alter management of many watersheds and afford less protection to water quality.

Response: Since this rule is primarily a procedural change, it should neither affect water quality nor alter existing municipal watershed management practices; i.e., activities that were carried out under the existing rule may be carried out under the new rule.

Comment: Two reviewers stated that the proposed rule seems to run counter to the Organic Act and Clean Water Act in requiring protection of water quality. The reviewers state that the polluter, rather than the municipality, should bear the costs of water quality protection.

Response: The rule is a procedural change that does not affect requirements of the Organic Act or the Clean Water Act. Water is being protected through the implementation of Best Management Practices on the ground to meet the requirements of the Clean Water Act. The cost of these practices is borne by the resource users and these practices become mitigation requirements in contracts and permits.

Regulatory Impact

This rule has been reviewed under E.O. 12291 and procedures of the Department of Agriculture. It has been determined that this is not a major rule. The regulation will have little or no effect on the economy since the changes are technical and administrative. This action will not have a significant economic impact on a substantial number of small entities because it is principally a procedural conforming regulation and does not substantially alter the existing regulation.

This rule removes an administrative level of approval and integrates the protection and management of municipal watersheds with existing planning mechanisms. This should result in more efficient and effective planning for protection of municipal watersheds.

Based on both past experience and environmental analysis, this rule will have no significant effect on the human environment, individually or cumulatively. The delegation of authority from the Chief to Regional Foresters, the requirements for the integration of municipal watersheds with forest planning, and the

clarification for the requirement of a special use authorization, in and of themselves, will not result in any additional environmental impact on the watersheds. Therefore, this action is categorically excluded from any requirement for documentation in an environmental assessment or environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 251

Environmental protection, National forests, Water resources, Watersheds.

Therefore, for the reasons set forth in the preamble, Subpart A of Part 251 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES

1. The authority citation for Subpart A is revised to read as follows:

Authority: 7 U.S.C. 1011; 16 U.S.C. 510, 551, 678a; Pub. L. 76-667, 54 Stat. 1197.

Subpart A—Miscellaneous Land Uses

2. Revise § 251.9 to read as follows:

§ 251.9 Management of Municipal Watersheds.

(a) The Forest Service shall manage National Forest watersheds that supply municipal water under multiple use prescriptions in forest plans (36 CFR Part 219). When a municipality desires protective actions or restrictions of use not specified in the forest plan, within agreements, and/or special use authorizations, the municipality must apply to the Forest Service for consideration of these needs.

(b) When deemed appropriate by the Regional Forester, requested restrictions and/or requirements shall be incorporated in the forest plan without written agreements. Written agreements with municipalities to assure protection of water supplies are appropriate when requested by the municipality and deemed necessary by the Regional Forester. A special use authorization may be needed to effect these agreements.

(c) In preparing any municipal watershed agreement for approval by the Regional Forester or issuing special use authorization to protect municipal water supplies, the authorized forest officer shall specify the types of uses, if any, to be restricted; the nature and extent of any restrictions; any special land management protective measures and/or any necessary standards and guidelines needed to protect water quality or quantity; and any resources that are to be provided by the municipality.

(d) A special use authorization (36 CFR 251.54) is required if the municipality is to use the subject lands, restrict public access, or control resource uses within the watershed. Special use authorizations issued pursuant to this section are subject to the same fee waivers, conditions, and procedures applicable to all other special uses as set forth in Subpart B of this part.

(e) Any municipal watershed management agreements, special use authorizations, requirements, and/or restrictions shall be consistent with forest plans, or amendments and revisions thereto.

Date: July 13, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-16552 Filed 7-21-88; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

(FRL-3418-4)

Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, Mississippi and Tennessee; Delegation of Authority to State and Local Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On August 11, 1987, the Metropolitan Health Department of Nashville/Davidson County, Tennessee requested delegation of one standard in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS); the standard was delegated to the agency on September 30, 1987. On January 6, 1988, the Division of Air Pollution Control for the State of Tennessee requested that their delegation of NSPS be updated; the delegation was updated on February 5, 1988. On January 29, 1988, the State of Mississippi requested delegation of authority for the implementation and enforcement of certain standards in 40 CFR Parts 60 and Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP) that had been promulgated and revised as of September 23, 1987; those standards were delegated to Mississippi on March 4, 1988. On May 19, 1988, the Knox County, Tennessee Department of Air Pollution Control requested authority to implement and enforce all NSPS and

NESHAP categories not previously delegated to the agency; those standards were delegated on June 1, 1988.

DATES: The effective dates of the delegations are: Nashville/Davidson County, Tennessee, September 30, 1987; Tennessee, February 5, 1988; Mississippi, March 4, 1988; Knox County, Tennessee, June 1, 1988.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letters of delegation of authority may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV—Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Metropolitan Health Department of Nashville and Davidson County, Air Pollution Control Division, 311-23rd Avenue, North, Nashville, Tennessee 37203

Bureau of Pollution Control, Mississippi Department of Natural Resources, Post Office Box 10385, Jackson, Mississippi 39209

Division of Air Pollution Control, Tennessee Department of Health and Environment, 4th Floor, Customs House, 701 Broadway Nashville, Tennessee 37219

Knox County Department of Air Pollution Control, City/County Building, Room 459, 400 West Main Street, Knoxville, Tennessee 37902

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Sections 111 and 112 of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

On August 11, 1987, the Metropolitan Health Department of Nashville/Davidson County requested delegation of authority of NSPS Subpart Kb (Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels)). After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with all the conditions set forth in the delegation letters dated May 25, 1977 and February 20, 1986. Sources in Nashville/Davidson County subject to the requirements of Subpart Kb of 40 CFR Part 60 as of September 30, 1987, will be under the jurisdiction of

Metropolitan Health Department of Nashville/Davidson County.

On January 6, 1988, the State of Tennessee requested that its NSPS delegation be updated for one source category, Subpart S (Primary Aluminum Reduction Plants). After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with all the conditions set forth in the April 11, 1980, delegation letter. Sources within the jurisdiction of the State agency will be subject to the requirements of Subpart S of 40 CFR Part 60 as of February 5, 1988.

On January 29, 1988, the State of Mississippi requested delegation of all NSPS and NESHAP categories which had been promulgated and revised as of September 23, 1987. Those source categories were:

40 CFR Part 60

Subpart Da Electric Utility Steam Generating Units For Which Construction Is Commenced After September 18, 1978

Db Industrial-Commercial-Institutional Steam Generating Units

J Petroleum Refineries

K Storage Vessels for Petroleum Liquids For Which Construction, Reconstruction Or Modification Commenced After June 11, 1973, And Prior To May 19, 1978

Ka Storage Vessels For Petroleum Liquids For Which Construction, Reconstruction Or Modification Commenced After May 18, 1978, And Prior To July 23, 1984

Kb Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) For Which Construction, Reconstruction Or Modification Commenced After July 23, 1984

BB Kraft Pulp Mills

DD Grain Elevators

EE Stationary Gas Turbines

BBB Rubber Tire Manufacturing Industry

40 CFR Part 61

Subpart C Beryllium

D Beryllium Rocket Motor Firing

E Mercury

F Vinyl Chloride

M Asbestos

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letter of November 20, 1981, and we delegated them to Mississippi on March 4, 1988.

On May 19, 1988, the Knox County Department of Air Pollution Control requested delegation of authority to implement and enforce the NSPS and NESHAP categories previously not delegated to the agency. Those source categories are as follows:

40 CFR Part 60

Subpart Db Industrial-Commercial-Institutional Steam Generating Units

Kb Volatile Organic Liquid Storage Vessels Constructed, Reconstructed Or Modified After July 23, 1984

BBB Rubber Tire Manufacturing Industry

TTT Surface Coating Of Plastic Parts For Business Machines

40 CFR Part 61

Subpart N Inorganic Arsenic Emissions

O Inorganic Arsenic Emissions From

Primary Copper Smelters

P Inorganic Arsenic Emissions From Arsenic Trioxide And Metallic Arsenic Production Facilities

After a thorough review of the request the Division Director of the Air Pesticides and Toxics Management Division determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letters of May 20, 1988 and December 13, 1985, and we delegated them to Knox County on June 1, 1988.

I certify, pursuant to 5 U.S.C. 605(b), that these delegations will not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Authority: Secs. 111 and 112 of the Clean Air Act (42 U.S.C. 7411 and 7412).

Dated: July 12, 1988.

Groer C. Tidwell,

Regional Administrator.

[FR Doc. 88-16543 Filed 7-21-88; 8:45 am]

BILLING CODE 4900-99-01

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures; Indian Probate Fees

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule in the Department's regulations governing hearings in Indian probate proceedings to remove a reference to the collection of fees for probating the estates of deceased Indians.

EFFECTIVE DATE: August 22, 1988.

FOR FURTHER INFORMATION CONTACT:

Parlen L. McKenna, Chief

Administrative Law Judge, Hearings,

Division, Office of Hearings and

Appeals, 4015 Wilson Boulevard, Arlington, VA 22203; Telephone: (703) 235-3800.

SUPPLEMENTARY INFORMATION: The authority for collecting probate fees was made obsolete by the repeal of 25 U.S.C. 375b and 377 in the Act of September 26, 1980, Pub. L. 96-363, section 2(a), 94 Stat. 1207. References in the Department's regulations in 43 CFR Part 4, Subpart D, to collection of probate fees were removed by publication in the Federal Register on October 2, 1988, effective November 3, 1988. See 51 FR 35218. The reference to probate fees in 43 CFR 4.234 was inadvertently overlooked.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure.

For the reason set forth above, 43 CFR Part 7, Subpart D, is amended as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 36 Stat. 566, 42 Stat. 1185, as amended, sec. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. sec. 2, 9, 372, 373, 374, 373a, 373b.

2. Section 4.234 is amended by deleting the reference to probate fees in the fifth sentence so that the sentence reads as follows:

§ 4.234 Witnesses, interpreters and fees.

Costs of administration so allowed shall have a priority for payment greater than that for any creditor claims allowed.

Dated: June 3, 1988.

Earl E. Gjeldre,

Under Secretary.

[FR Doc. 88-16531 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-79-01

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 35, 78, 97, 108, 167, and 195

[CGD 87-031a]

RIN 2115-AC 91

Posting Requirement for Placard of Lifesaving Signals and Breeches Buoy Instructions, Form CG-811

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations requiring merchant

vessels to post Form CG-811, entitled "Lifesaving Signals, Helicopter Recovery Procedures, and Breeches Buoy Instructions," in the pilothouse and several other locations throughout the vessel. This rule will amend the regulations by removing the requirement that Form CG-811 be posted in various locations throughout the vessel, and require only that it be readily available to the deck officer of the watch. This action reduces the burden on the public of posting and maintaining several copies of Form CG-811 and also reduces Coast Guard operating costs for printing, stocking, distributing and inspecting the document.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William J. Morani, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection, phone (202) 267-1055.

SUPPLEMENTARY INFORMATION: On August 24, 1987, the Coast Guard published in the Federal Register (52 FR 31786) an advance notice of proposed rulemaking concerning requirements regarding the providing of information and the maintenance and posting of various documents and placards. The goal was to identify and reduce the paperwork burdens placed on the public which are unduly burdensome or duplicative of information requirements placed by other agencies. A list of specific posting requirements was also included in this notice. Interested persons were invited to submit comments. Several comments were received and are currently being evaluated under CGD 87-031.

This rulemaking is under a separate docket number to immediately reduce the burden on the public while permitting the Coast Guard to continue analyzing and evaluating comments received under CGD 87-031 to further reduce the burden on the public.

The Coast Guard has also taken other separate rulemaking action to reduce the burden on the public. On November 6, 1987, the Coast Guard published in the Federal Register (52 FR 42649) a final rule which removed the regulations requiring merchant vessels to post, when provided by the Coast Guard, Form CG-3256, entitled "Atomic Attack Instructions for Merchant Vessels in Port," in five designated areas of the vessel. This action was taken because the information on the placard was either outdated or was provided in other publications required on merchant vessels. This eliminated the burden on the public of maintaining an unnecessary document and reduced

Coast Guard operating costs for printing, stocking, distributing and inspecting the document.

One of the posting requirements listed in the August 24, 1987 advance notice of proposed rulemaking (ANPRM) was Form CG-811 entitled "Lifesaving Signals, Helicopter Recovery Procedures, and Breeches Buoy Instructions." One comment concerning Form CG-811 was received in response to the ANPRM. The comment stated that the use of breeches buoys and lifesaving signals has been overtaken by time and is unnecessary in light of current technology. The comment also stated that if Form CG-811 is no longer in print, and if the information is no longer necessary, then the requirement to have Form CG-811 should be deleted.

The Coast Guard has evaluated this comment and has determined that the information contained in Form CG-811 is necessary but only need be readily available to the deck officer of the watch rather than posted in the pilothouse and other locations. Form CG-811 is still in print. There are currently over 10,000 copies available at the Coast Guard Supply Center in Brooklyn, New York. Therefore, this rule amends the regulations which require that Form CG-811 be posted in the pilothouse, amends the SOLAS citation to reflect the current SOLAS convention (1974) to which this requirement pertains, removes the requirement that Form CG-811 be posted in locations other than the pilothouse, and amends two sections to provide continuity with other subchapters containing the same requirement.

During the evaluation of the comment, the Coast Guard made several findings. First, Regulation 16, Chapter V, of the International Convention for Safety of Life at Sea, 1974 requires that an illustrative table describing the signals used by lifesaving stations and maritime rescue units when communicating with ships or persons in distress and by ships or persons in distress when communicating with lifesaving stations and maritime rescue units be made readily available to the officer of the watch. Regulation 16 does not require the table to be posted. The regulations presently cite SOLAS 1960. The current convention, which should be cited, is SOLAS 1974. Regulation 16 of SOLAS 1974 is the same as the SOLAS 1960 requirement. The Coast Guard's position is that having Form CG-811 readily available rather than posted complies with Regulation 16, and will not reduce vessel safety.

Second, the Coast Guard sees no reason why lifesaving signals should be posted in locations such as the control

room, engine room, mess room, and recreation areas. Primary users of this information are deck officers of the watch. Therefore, this rulemaking eliminates the requirement that Form CG-811 be posted or available in areas other than the pilothouse.

Finally, eliminating the pilothouse posting requirement will permit information of immediate safety concern, e.g., maneuvering characteristics, to stand out and be readily recognized.

In accordance with 5 U.S.C. 553 a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. In this case, notice and public procedure are unnecessary and contrary to the public interest. The existing rule requires vessels to post a placard containing information that need only be readily available to the deck officer of the watch. The requirement to have Form CG-811 posted does not serve a useful purpose, and promulgation of this rulemaking relieves the public of an unnecessary burden. Therefore, the change should be effectuated as soon as possible.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The principal persons involved in the drafting of this rule are Lieutenant Commander William J. Morani, Jr., Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Regulatory Evaluations

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary under DOT Order 2100.5 of May 5, 1980. Modifying the regulation would relieve the industry of an unnecessary burden of posting Form CG-811 in various locations on vessels. The Coast Guard would also recognize a small but significant savings in both manpower and money because it will reduce the

numbers of Form CG-811s printed, stocked, distributed and inspected.

Regulatory Flexibility Act

Since the impact of this final rule is expected to be minimal, the Coast Guard certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule imposes no new or additional information collection or recordkeeping requirements. Rather, the marine industry is relieved of an unnecessary burden of posting multiple copies of a document which needs to be only readily available to the deck officer of the watch.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary. This regulatory project is not anticipated to have an adverse impact on the environment.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil exploration, Vessels.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Parts 35, 78, 97, 108, 167, and 196 of Chapter I, Title 46, Code of Federal Regulations are amended as follows:

PART 35—[AMENDED]

1. The authority citation for Part 35 continues to read as follows:
Authority: 46 U.S.C. 3306, 3307; 49 CFR 1.46.

§ 35.12-5 [Amended]

2. In Part 35, § 35.12-5 is amended by removing the words "posted in the pilothouse and" and by replacing the year "1980" with the year "1974" in the first sentence of paragraph (a). Paragraph (b) is removed and reserved.

PART 78—[AMENDED]

3. The authority citation for Part 78 is revised to read as follows:
Authority: 46 U.S.C. 3306, 6101; 49 CFR 1.46.

§ 78.53-5 [Amended]

4. In Part 78, § 78.53-5 is amended by removing the words "posted in the pilothouse and" and by replacing the year "1980" with the year "1974" in the first sentence of paragraph (a). Paragraph (b) is removed and reserved.

PART 97—[AMENDED]

5. The authority citation for Part 97 is revised to read as follows:
Authority: 46 U.S.C. 3306, 6101, 6105; 49 CFR 1.46.

§ 97.43-5 [Amended]

6. In Part 97, § 97.43-5 is amended by removing the words "posted in the pilothouse and" and by replacing the year "1980" with the year "1974" in the first sentence of paragraph (a). Paragraph (b) is removed and reserved.

PART 108—[AMENDED]

7. The authority citation for Part 108 continues to read as follows:
Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306; 49 CFR 1.46.

8. In Part 108, § 108.659 is revised to read as follows:

§ 108.659 Breeches buoy and lifesaving signal instructions.

On each unit to which this subpart applies there must be readily available to the offshore installation manager, master, or person in charge a placard (Form CG-811) containing instructions for the use of breeches buoys and the

lifesaving signals set forth in Regulation 18, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

PART 167—[AMENDED]

9. The authority citation for Part 167 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

10. In Part 167, § 167.85-50 is revised to read as follows:

§ 167.85-50 Posting placards of lifesaving signals and breeches buoy instructions.

On all vessels to which this subpart applies there shall be readily available to the deck officer of the watch a placard (Form CG-811) containing instructions for the use of breeches buoys and the lifesaving signals set forth in Regulation 18, Chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals shall be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

PART 196—[AMENDED]

11. The authority citation for Part 196 continues to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

§ 196.43-5 [Amended]

12. In Part 196, § 196.43-5 is amended by removing the words "posted in the pilothouse and" and by replacing the year "1980" with the year "1974" in the first sentence of paragraph (a). Paragraph (b) is removed and reserved.

Dated: May 31, 1988.

J.D. Sipes,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 88-16494 Filed 7-21-88; 8:45 am]
BILLING CODE 4910-14-M

Federal Highway Administration

49 CFR Parts 390, 391, 392, 393, 394, 395, 396, and 397

[FHWA Docket No. MC-114]

RIN 2125-AA34

Federal Motor Carrier Safety Regulations: General; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document includes two technical amendments which correct the final rule that appeared in the *Federal Register* on Thursday, May 19, 1988 (53 FR 18042). The first correction is necessary to include a phrase that was inadvertently omitted in the rule, but which is necessary to accomplish what the FHWA originally intended in order to make the rule compatible with 49 CFR 397.21. The second correction amends the definition of "reportable accident" (49 CFR 394.3) to make it consistent with the applicability section found at 49 CFR 390.3. This document also clarifies which form number should be filed by a motor carrier to obtain an identification number.

EFFECTIVE DATE: November 15, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: In the final rule published at 53 FR 18042 on May 19, 1988, the preamble clearly indicated on page 18050, in the first column, the FHWA's requirement for vehicles laden with hazardous materials requiring placarding to be identified with (1) the name or trade name of the private motor carrier, and (2) the city or community and State abbreviation in which the motor carrier maintains its principal place of business or in which the vehicles are customarily based. In the amendatory language of the final rule on page 18055, the phrase "or in which the vehicle is customarily based" was inadvertently omitted from the rule.

On page 18052 of the same document, § 390.3, General applicability, states that the rules in Subchapter B are applicable to "commercial motor vehicles, which transport property or passengers in interstate commerce." Section 394.3(a) presently uses the term "motor vehicle" in its definition of a reportable accident. This term, "motor vehicle" is being changed to read "commercial motor vehicle" so that § 394.3 will be consistent with § 390.3.

In the Supplementary Information portion of the May 19 *Federal Register* document, at page 18050, it was stated that "Motor carriers that have not been assigned an identification number may obtain one by filing Form MCS-150, Motor Carrier Identification Report, with the FHWA. Form MCS-150 has not yet been approved by the Office of Management and Budget (OMB). Until

that approval has been granted, the motor carrier may obtain an identification number by filing Form MCS-137, Description of Motor Carrier Operations, with the FHWA.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 Through 397

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program No. 20.217, Motor Carrier Safety)
Anthony J. McMahon,
Chief Counsel, Federal Highway Administration.

Therefore, in view of the above, the FHWA is amending 49 CFR Parts 390 and 394 as follows:

PART 390—[AMENDED]

1. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.46.

2. In § 390.21, paragraph (b)(2) is revised to read as follows:

§ 390.21 Marking of motor vehicles.

(b) * * *

(2) The city or community and State (name abbreviated), in which the carrier maintains its principal place of business or in which the vehicle is customarily based.

PART 394—[AMENDED]

3. The authority citation for Part 394 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.46.

4. In § 394.3, paragraph (a) introductory text is revised to read as follows:

§ 394.3 Definition of "reportable accident."

(a) Except as provided in paragraph (b) of this section, the term "reportable accident" means an occurrence involving a commercial motor vehicle engaged in the interstate, foreign, or intrastate operations of a motor carrier

who is subject to the Department of Transportation Act resulting in—

Issued on: July 18, 1988.

Anthony J. McMahon,
Chief Counsel, Federal Highway Administration.

[FR Doc. 88-16500 Filed 7-21-88; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the James Spiny mussel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the James spiny mussel (*Pleurobema collina*). This species survives only in a few headwater streams of the James River in Virginia and West Virginia. This action is being taken because: (1) The range and numbers of this freshwater mussel have been drastically reduced to about 5-10% of historic levels, and (2) the few drainages that continue to support the species are subject to threats including invasion of essential habitats by the exotic Asiatic clam (*Corbicula fluminea*) and potential water quality degradation by agricultural and silvicultural runoff, effluent from sewage treatment plants, and chemical spills. This rule will implement Federal protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is August 22, 1988.

ADDRESSES: The complete file for this rule is available for inspection by appointment, during normal business hours at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Mr. G. Andrew Moser at the above address (301/269-6324).

SUPPLEMENTARY INFORMATION:

Background

The James spiny mussel was first discovered in the Calpasture River, Rockbridge County, Virginia, by T. A. Conrad in 1836 (Conrad 1846). The species was originally described by

Conrad (1837) as *Unio collinus*. It has been subsequently placed in different genera by various workers. Names that refer to this species are listed in the following abbreviated synonymy:

Unio collinus Conrad, 1936: Plate 36, Figure 2.

Margaron (Unio) collinus (Conrad).—Lea 1852:23.

Alasmidonta collina (Conrad).—Simpson 1900:669

Canthyria collina (Conrad).—Frierson 1927:1946; Stansbery 1971:14; Clarke and Neves 1984; Zeto and Schmidt 1984:147

Elliptio (Canthyria) collina (Conrad).—Morrison 1955:20.

Pleurobema collina (Conrad).—Boss and Clench 1967:45; Heard 1970:27; Burch 1975:12.

Pleurobema (Lexingtonia) collina (Conrad).—Johnson 1970:300.

Fusconaia (Lexingtonia) collina (Conrad).—Johnson and Clarke 1983:290.

The Service recognized the James spiny mussel under the name *Fusconaia collina* in the Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21875; May 22, 1984). Clarke and Neves (1984) subsequently determined that the James spiny mussel uses only its outer gills to brood glochidia and is therefore not a *Fusconaia*, which are currently understood to use all four gills to brood glochidia. Clarke and Neves (1984) suggested placement of the species in the genus *Canthyria*, because of the presence of spines on the shell and some characters of the soft anatomy. The Service believes that until further review and evaluation clarifies the taxonomic significance of these characters, the James spiny mussel should be recognized under the more established name *Pleurobema collina*.

The Service's Review of Invertebrate Wildlife included this species under the common name "Virginia spiny mussel." The Service is following the list of common names by Turgeon *et al.* (in press) in now using the name James spiny mussel.

The shells of juvenile James spiny mussels usually bear one to three short but prominent spines on each valve. The shells of adults usually lack spines. The foot and mantle of the adult are conspicuously orange and the mantle is darkly pigmented in a narrow band around and within the edges of the branchial and anal openings.

Aside from the James spiny mussel, only two other freshwater spined mussels are known to exist: *Elliptio (Canthyria) spinosa*, a large-shelled and long-spined species known only from

the Altamaha River system in Georgia, and *Elliptio (Canthyria) steinstansana*, a species with intermediate shell size and spine length found only in the Tar River in North Carolina. The latter species was listed as endangered on June 27, 1985 (50 FR 26575). The James spiny mussel has a smaller shell and shorter spines than these other two species.

The James spiny mussel has been collected on sand and mixed sand and gravel substrates, generally in areas of slow to moderate current and relatively hard water. Like other freshwater mussels, it feeds by filtering food particles from the water, a characteristic that makes it particularly susceptible to detrimental effects of water-borne pollutants. *P. collina* also shares with other freshwater mussels a complex reproductive cycle in which the mussel larvae attach for a short time to a fish host. The life span, time of spawning, host fish species, and many other aspects of the life history of *P. collina* are still unknown.

Collection records indicate that the James spiny mussel was once widely distributed in the James River drainage upstream of Richmond. All pre-1983 records for the species are from Virginia (Clarke and Neves 1984). They include: The James River, main stem, in Rockbridge, Botetourt, Fluvanna, Buckingham, Goochland, and Cumberland Counties; the Rivanna River in Fluvanna County; Mill Creek in Bath County; the Calpasture River in Rockbridge County, and Johns Creek in Craig County. The James spiny mussel was first reported from West Virginia in 1984 (Zeto and Schmidt 1984). This mussel is known to survive in only four creeks: Craig, Catawba, and Johns Creeks in Craig and Botetourt Counties, Virginia, and Potts Creek in Monroe County, West Virginia (Clarke and Neves 1984, M.C. Hove letter of comment).

Although it is probable that the decline of the James spiny mussel began with municipal growth and industrialization of cities and towns in the James River watershed, much of the decline has occurred in the last 20 years. The species remained in much of its historic range through the mid-1960's, but has since disappeared from the majority of known sites. It now appears to be extirpated from 90-95% of its historic range, with survival documented only in four headwater creeks in the James River drainage. This restricted distribution makes the species vulnerable to threats including water quality perturbations, disease, and displacement by expanding populations

of the exotic Asiatic clam (*Corbicula fluminea*).

In the Federal Register of May 22, 1984 (49 FR 21675), the James spiny mussel was included in category 2 of the Service's Review of Invertebrate Wildlife. Category 2 comprises those taxa for which proposed listing is possibly appropriate but for which conclusive data on biological vulnerability are not available to support a proposed rule. Additional data, including a Service-funded status survey (Clarke and Neves 1984), provided the information needed to support a listing proposal. On September 1, 1987, the Service published in the Federal Register (52 FR 32939) a proposed rule to list the James spiny mussel as an endangered species.

Pleurobema collina was placed on Virginia's state list of endangered species on October 1, 1987.

Summary of Comments and Recommendations

In the September 1, 1987, proposed rule (52 FR 32939) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Roanoke Times and World News on September 11, 1987, which invited general public comment. Six comments were received and are discussed below.

Letters supporting the listing were received from the Virginia Department of Game and Inland Fisheries, the West Virginia Department of Natural Resources, the Nature Conservancy, and Dr. Arthur H. Clarke, a malacologist with Ecoscience, Inc. The Virginia Department of Game and Inland Fisheries letter indicated that they had designated the James spiny mussel a State endangered species. This has been noted in the "Background" section of this rule.

Dr. Arthur Clarke's letter indicated that he would place this species in either the genus *Canthyria* or *Elliptio*, rather than *Pleurobema*. For the reasons given in the "Background" section, we plan to continue using the more established name, *Pleurobema*. Research currently underway at Virginia Polytechnic Institute and State University may provide the necessary information to settle this issue. Because of their frequent usage, we have added the generic names *Elliptio* and *Canthyria* as

synonyms in the table to be included in the list of Endangered and Threatened Wildlife (50 CFR 17.11).

A researcher at the Department of Fisheries and Wildlife Science at the Virginia Polytechnic Institute and State University provided additional information on the distribution of the James spiny mussel, including the discovery of a small population in Catawba Creek in Botetourt County, Virginia. Information on this new population has been incorporated in the "Background" section.

The County Planner and Zoning Administrator for Botetourt County, Virginia, provided comments indicating that minor modifications of the spiny mussel's habitat may occur due to the slow, but inevitable, growth/development which the upper reaches of the James River drainage will experience.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the James spiny mussel should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the James spiny mussel (*Pleurobema collina*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Results of recent surveys of the James River drainage (Clarke and Neves 1984, M. C. Hove letter of comment) have documented survival of the James spiny mussel only in Craig, Catawba and Johns Creeks in Craig and Botetourt Counties, Virginia, and a short reach of Potts Creek in Monroe County, West Virginia. This represents a very significant reduction (90-95%) in known range, as historic records indicate that the species was once found throughout much of the James River drainage upstream of Richmond.

Habitat modification has been a major factor in the James spiny mussel's abrupt decline. Adverse habitat changes including dam construction, industrial pollution, chemical spills, channelization, and sewage discharges have occurred at various locations within the species' historic range in the

James River drainage. Current threats to habitat in the Craig/Johns Creek and Potts Creek watersheds include the following:

- (1) Effluent discharges and accidental discharges of chlorine or raw sewage from sewage treatment plants;
- (2) Erosion and siltation resulting from logging operations in the upper Craig Creek Watershed and other locations;
- (3) Toxic chemical spills;
- (4) Agricultural runoff including pesticides and fertilizers;
- (5) Channelization

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although collection was probably an insignificant factor in this species' decline, it is becoming a problem now that the species is rare. Because additional interest in the spiny mussel is expected to be generated by the listing process, the Service is concerned that this problem may worsen in the future.

C. Disease or Predation

There is no evidence that disease or predation has been a problem for the James spiny mussel. However, extensive mussel dieoffs, possibly caused by a yet unknown disease, have occurred recently in the rivers of southwest Virginia, in the Tar River in North Carolina, and in numerous other locations. The Tar River dieoff, discovered in May 1986, was particularly severe, killing an estimated 75% of all mussels in the affected beds (R. Neves personal communication). Should such an outbreak occur in the Craig Creek or Potts Creek drainages, it would pose a very serious threat to the James spiny mussel because of the species' restricted range.

D. The Inadequacy of Existing Regulatory Mechanisms

Virginia State law (Section 29-113) requires a permit for the scientific collection of freshwater mussels. State law (Article 6, Chapter 3, Title 29.1 of the Code of Virginia) also declares it unlawful to take, transport, process, sell or offer for sale any threatened or endangered species. However, these State laws are difficult to enforce and do not protect the species' habitat from the potential impacts of Federal projects. Federal listing would provide protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Much of the James River drainage has become infested by the Asiatic clam (*Corbicula fluminea*), a species introduced accidentally from Asia. Competition from this non-native species may be a principal cause of the James spiny mussel's decline. Population densities of *C. fluminea* in excess of 1000 individuals per square meter (about 93 per square foot) have been reported in the James River downstream of Richmond (Diaz 1974). Because of the Asiatic clam's high population densities, its feeding activity may significantly reduce the availability of phytoplankton needed by the spiny mussel for food and may interfere with reproduction of the spiny mussel by filtering its sperm from the water column (Clarke 1981). Clarke and Neves (1984) consider the temporal correlation between the disappearance of downstream populations of the James spiny mussel and the appearance and proliferation of the Asiatic clam to be clear evidence that the spread of *Corbicula* is one of the chief causes of the spiny mussel's decline.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the James spiny mussel as endangered. The mussel's small population and restricted distribution make it vulnerable to pollution events, disease, and competition from exotic species; its range has greatly narrowed within the immediate past; therefore, threatened status would not be appropriate. The reasons for not designating critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the James spiny mussel at this time. This rare mussel is very unusual, being one of only three known species of spined freshwater mussels. There is a small but significant demand by collectors for this species. Because of this, the Service believes a detailed description of the species' habitat, required as part of any critical habitat designation, could increase the species' vulnerability to illegal taking and

increase law enforcement problems. Therefore, it would not be prudent to designate critical habitat for this species. Doing so would draw attention to the habitats supporting the James spiny mussel and risk depletion of an already limited population.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact the James spiny mussel and its habitat include, but are not limited to, the following: Issuance of permits for mineral exploration, timber sales, recreational development, stream alterations, road and bridge construction and maintenance, and implementation of forest management plans. It has been the experience of the Service that the large majority of section 7 consultations are resolved so that the species is protected and the project can continue.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to

the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Applicable regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Stansbery, D.H. 1971. Rare and endangered freshwater mollusks in the eastern United States. Pp. 5-18 in S.E. Jorgensen and R.W. Sharp (eds.), Proc. Symp. Rare and Endangered Mollusks (Naiades) of the U.S. U.S. Fish and Wildlife Service, Twin Cities, Minnesota.

Turgeon, D.D., A.E. Bogan, E.V. Cohn, W.K. Emerson, W.G. Lyons, W.L. Pratt, C.F.E. Roper, A. Scheltama, F.G. Thompson, and J.D. Williams. In press. Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Mollusks. Amer. Fisheries Soc. Spec. Publ. No. 16. Bethesda, Maryland.

Zeto, M.A. and J.E. Schmidt. 1984. Freshwater Mussels (Bivalvia: Unionidae) of Monroe County, West Virginia. The Nautilus 98 (4):147-151.

Author

The primary author of this final rule is G. Andrew Moser, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825B Virginia Street, Annapolis, Maryland 21401 (301/269-6324).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-350, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 90 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under

CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Clams: Spiny mussel, James (= Virginia spiny mussel).	<i>Pleurobema (=Fusconia, =Elliptio, =Cantharis) collina</i> .	U.S.A. (VA, WV).	NA	E	316	NA	NA

Dated: June 27, 1988.

Susan Rees,
Acting Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 88-18400 Filed 7-21-88; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 280, 630, and 642

[Docket No. 80557-8097]

Fishery Conservation and Management; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Final rule, technical amendment; correction.

SUMMARY: This document corrects the final rule; technical amendment which created a new Part 620 governing the domestic fisheries. The rule appeared in the Federal Register on June 29, 1988 (53 FR 24644).

EFFECTIVE DATE: June 28, 1988.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, Fishery Management Officer, 202-673-5315.

SUPPLEMENTARY INFORMATION: In rule document 88-14198 beginning on page 24644, in the issue of June 29, 1988, the following corrections are made:

1. On page 24645, column 1, line 1, the phrase, "and § 280.17 is redesignated § 280.3." is corrected to read "§§ 280.17 and 280.18 are redesignated §§ 280.3 and 280.4, respectively; and in newly redesignated § 280.4 introductory text, the reference §§ 280.2 to 280.18 is revised to read this part."

2. On page 24655, column 2, under instruction 39, the listing of section numbers should include "§ 642.2" before "§ 645.2."

3. On page 24660, column 1, line 11, reference to "§ 630.21(a)(3), (4), and (5)" are removed.

List of Subjects in 50 CFR Chs. II and VI Fisheries.

Note.—Additional corrections to this document are published in the Corrections Section of this issue of the Federal Register.
Dated: July 15, 1988.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.
[FR Doc. 88-16463 Filed 7-21-88; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 630

[Docket No. 80110-8010]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule to implement a technical amendment to the regulations for the Fishery Management Plan for Atlantic Swordfish (FMP). This is a housekeeping rule which corrects and clarifies definitions, removes definitions of terms not used, and clarifies the requirements for vessel identification and some of the prohibitions. The intent is to clarify the regulations and conform them with current usage.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen (Regulatory Coordinator), 813-893-3722.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the FMP and its implementing regulations at 50 CFR Part 630.

This rule corrects and clarifies the wording of two definitions, deletes six definitions that are no longer used in the regulations, and modifies slightly two definitions to better correspond to their usage in the regulations. This rule also restates the requirements for vessel identification in terms of vessels required to obtain permits, rather than

in terms of vessels in the fishery, and simplifies and clarifies the language regarding display of a vessel's official number. This rule provides specific prohibitions for failure to report information required in connection with a permit and failure to display a permit—both long-standing requirements of the regulations.

Other Matters

This final rule, technical amendment is issued under 50 CFR Part 630 and complies with Executive Order 12291. Because this rule only makes minor, non-substantive corrections, the Assistant Administrator for Fisheries, NOAA, finds that it is unnecessary under 5 U.S.C. 553(b)(3) to provide for prior public comment and that there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared. There is no change in the regulatory impacts previously reviewed and analyzed.

This rule is minor and technical in nature and therefore is not a major rule under Executive Order 12291. It does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 19, 1988.

James W. Brennan,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for Part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 630.2, in the definition of *Handline gear*, the words "the boat" are removed and the words "a fishing vessel" are added in their place; in the definition of *Western North Atlantic swordfish stock*, the word "out" between "latitude" and "to" is revised to read "east" and the word "continuing" is removed; the definitions for *Carcass*, *Dressed weight*, *Gill net or drift entanglement net*, *Pelagic longline*, *Radio buoy*, *Rod and reel fisherman*, *Variable season closure (VSC)*, and *Whole fish* are removed; and new definitions for *Carcass or dressed*, *Rod and Reel*, and *Whole* are added in alphabetical order to read as follows:

§ 630.2 Definitions.

Carcass or dressed means a fish that has been gutted and the head and fins have been removed.

Rod and reel means a hand-held (including rod holder) fishing rod with a manually or electrically operated reel attached.

Whole, when referring to swordfish, means a fish that is not gutted and the head and fins are intact.

3. In § 630.6, paragraph (a) is revised to read as follows:

§ 630.6 Vessel Identification.

(a) *Official number*. A vessel for which a permit is required by § 630.4 must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be

clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches in height for vessels over 65 feet in length and at least 10 inches in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

4. In § 630.7, paragraph (f) is redesignated (h) and new paragraphs (f) and (g) are added, to read as follows:

§ 630.7 Prohibitions.

(f) Fail to display a permit, as required by § 630.4.

(g) Fail to report information required to be submitted or reported, as specified in § 630.4.

[FR Doc. 88-10597 Filed 7-21-88; 8:45 am]
BILLING CODE 2510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 141

Friday, July 22, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT**5 CFR Part 317****Appointment, Reassignment, Transfer, and Reinstatement in the Senior Executive Service**

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations with comments invited for consideration in final rulemaking.

SUMMARY: These regulations would establish procedures governing Senior Executive Service (SES) appointment and staffing actions, including (1) qualifications standards; (2) agency recruitment and selection procedures for career appointments; (3) the 1-year probationary period for career appointees; (4) reinstatement to the SES; (5) reassignments and transfers; and (6) details within, into, and out of SES positions. The regulations are intended to provide for uniformity of agency operations, to ensure compliance with merit staffing provisions, and to implement statutory requirements for regulation by OPM.

DATE: Comments will be considered if received no later than September 20, 1988.

ADDRESS: Send or deliver written comments to the Director, Office of Executive Personnel, OEA, Office of Personnel Management, Room 6R48, 1900 E. Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 632-4625.

SUPPLEMENTARY INFORMATION: Section 3397 of Title 5 of the United States Code states that the Office of Personnel Management (OPM) shall provide regulations to carry out the provisions of Chapter 33, Subchapter VIII (Appointment, Reassignment, Transfer, and Development in the Senior Executive Service). Sections 3392 and 3393 delegate to OPM the responsibility for prescribing the methods for

developing qualifications standards and monitoring the Senior Executive Service (SES) merit staffing process.

These regulations would (1) implement the staffing provisions in title III of Pub. L. 98-615, November 8, 1984; (2) incorporate or modify existing SES instructions provided in Federal Personnel Manual (FPM) bulletins already issued to implement the Civil Service Reform Act of 1978 (Pub. L. 95-454) where it was found that regulations were needed to ensure consistent application of SES recruiting, appointing, and staffing provisions throughout the Government; and (3) revise interim regulations on reinstatement in the SES published on December 5, 1980 (45 FR 80467) under 5 CFR Part 317, Subpart C, to take into account comments on the regulations and the effect of Pub. L. 98-615.

The following major staffing provisions are incorporated in the regulations for the first time:

(1) Under § 317.401, agencies are required to develop the qualifications standard for a position in accordance with the procedures described in the regulations. Section 317.402 establishes the criteria agencies must follow in developing standards for career reserved positions. Section 317.403 permits agencies to use the same criteria for general positions.

(2) Under § 317.501(a), commissioned officers of the uniformed services on active duty in an agency are permitted to serve on the agency Executive Resources Board, in accordance with Pub. L. 98-615.

(3) Under § 317.501(b)(2), agencies are required to publish vacancy announcements in the biweekly OPM listing of SES vacancies to assure that notice of vacancies is made available to all groups of qualified individuals within the civil service and to the U.S. Employment Service. Agencies are also expected to do appropriate targeted recruiting on their own based on the type of position involved and the likely sources of qualified candidates, including women and minorities.

(4) Under § 317.501(c)(3), agency Executive Resources Boards are required to document the rating and ranking process used to screen applicants for career appointment to the SES to assure that there is sufficient information available to ascertain the adequacy of the merit staffing process.

In accordance with 5 U.S.C. 3393, written recommendations will have to be provided by the Board to the appointing authority on the eligible candidates. So as to minimize paperwork, these recommendations may consist of the screening panel rating sheets on the individual candidates, rather than separate recommendations prepared by the Board; but the Board members must still certify in writing the candidates to the appointing authority.

(5) Under § 317.502(c), the three criteria for Qualifications Review Board (QRB) certification for SES career appointment are stated. In accordance with 5 U.S.C. 3393(c)(2), an individual may be certified based on meeting any one of the criteria. The criteria are (A) demonstrate executive experience, (B) successful completion of an OPM-approved candidate development program, and (C) possession of special or unique qualities that indicate a likelihood of executive success. QRB certification was originally valid for 5 years in all cases, but was later changed to 3 years for criterion B cases (FPM Letter 412-4, July 18, 1984). Under the proposed regulations, the 3-year limitation would be extended to cover criteria A and C cases. The previous 5-year limitation would continue to apply to criteria A and C cases if the individuals were certified before the effective date of the final regulations, but had not yet been appointed to the SES. They would still be required to undergo competitive recruitment and appointment, however, if selected for a position other than the one for which originally certified. The 5-year limitation would also apply to criterion B cases where the individual was certified before July 18, 1984, or entered a candidate program before that date and was subsequently certified.

(6) Under § 317.502(d), OPM is given authority to determine the disposition of QRB cases between the time and agency head leaves office and the time a new agency head is confirmed and appointed. This authority is needed to assure that the new agency head will be able to make his or her own selections for key agency positions. OPM may return cases to agencies, hold them pending appointment of a new agency head, or submit them for QRB review depending on the circumstances, such as the organizational level of the position being filled, the degree to which the

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incumbent would be involved in policy matters, and how long before a new agency head is likely to take office.

(7) Under § 317.503, the length of the SES probationary period is set at one full year (i.e., 365 days, or 366 days, in a leap year), in accordance with 5 U.S.C. 3393(d).

(8) Under § 317.901, SES members who are to be reassigned outside the commuting area will be entitled to a 60-day advance written notice, following consultation on the reasons for the reassignment, in accordance with Pub. L. 98-615. The notice period may be waived only with the written consent of the appointee. Agencies may give more advance notice in hardship cases. A 15-day advance written notice is required for reassignments within a commuting area and also may be waived only with the written consent of the appointee.

(9) Under § 317.901(c), the provisions in law concerning the 120-day moratorium on involuntary reassignment actions of career appointees following the appointment of a new agency head or immediate noncareer supervisor are clarified.

(a) "Agency head" is defined as the head of an executive department (e.g., Secretary of Treasury), or a military department (e.g., Secretary of the Army), or an independent establishment (e.g., Chairman of the Federal Trade Commission). The term does not mean the head of a component within one of those agencies (e.g., IRS in Treasury). If an agency head changes, the 120-day moratorium applies to all involuntary reassignments throughout the agency.

(b) "Noncareer appointee" is defined as any noncareer-type supervisor; e.g., a Presidential as well as an SES noncareer appointee. If the noncareer supervisor changes, the 120-day moratorium applies only to involuntary assignments where the individual is the immediate supervisor with authority to take action, in accordance with 5 U.S.C. 3395(e)(1)(B). Thus, for example, if a noncareer bureau head changes, subordinate career supervisors, or noncareer supervisors who have been in their positions more than 120 days, may still reassign career appointees on their own staffs even though the bureau head may not involuntarily reassign career appointees reporting directly to him. (This assumes the agency head has been in office at least 120 days and there is no agencywide moratorium on reassignments.) It should be noted that it is not the intent of the law to pyramid 120-day moratoriums. Thus, when the bureau head changes, the agency head still has the authority, if he exercises it, to reassign bureau employees during the moratorium affecting the noncareer

bureau head if the agency head himself has served 120 days.

(10) Under § 317.903, the requirements for details of SES appointees, and details of non-SES appointees to SES positions, are specified. Details within an executive agency or military department are limited to 120-day increments, in accordance with 5 U.S.C. 3341. Only career SES appointees and career-type non-SES appointees may be detailed to SES career reserved positions. OPM's authority to set limits on the total length of SES details is stated. FPM Letter 300-32 of March 28, 1987, currently limits details of competitive service and General Schedule appointees to SES positions of 240 days without prior approval from OPM. OPM would place in the FPM any appropriate limits on details of SES appointees to other SES positions or to non-SES positions, as well as to unclassified duties. Agencies should note that SES appointees are also covered by the Comptroller General decision concerning the use of nonreimbursable details (see FPM Letter 300-31 of August 27, 1985).

The following major changes have been made in the previously issued reinstatement regulations (subpart G):

(1) The title of § 317.702 has been changed for clarity to read "General reinstatement: SES career appointees." The section has been revised to make clear that removal from the SES under adverse action procedures precludes reinstatement eligibility to the SES, unless the removal was for a failure to accept a directed reassignment or to accompany a position in a transfer of function to another commuting area and the individual was not subject to a written mobility agreement. This change is in accordance with Pub. L. 98-615, which distinguishes such removals from other types of adverse action removals; i.e., for misconduct, neglect of duty, or malfeasance.

(2) Section 317.703 has been revised to provide that reinstatement of a Presidential appointee, whether voluntary or OPM directed, should be effected under that section. Some commenters had questioned (in reference to the current regulations) whether a voluntary reinstatement to the SES of a Presidential appointee should be taken under § 317.702, covering general reinstatement of a former SES career appointee, or § 317.703, covering guaranteed reinstatement of a Presidential appointee. Our experience in directing reinstatement under the interim regulations has shown that, in some instances, the Presidential appointee negotiated his or her own offer of

reinstatement. OPM then followed with a formal order directing the reinstatement action. In order to eliminate additional paperwork, § 317.703 has been revised to include voluntary reinstatement by agencies.

(3) Section 317.703 has also been revised to make clear that an application for placement assistance may be submitted as soon as the Presidential appointee's resignation is requested or submitted; to clarify the standards applied by OPM in directing reinstatement; to specify actions needed in certain instances to help individuals retain their reinstatement rights; and to include a requirement that the agency notify OPM within 5 workdays of a reinstatement.

(4) The provision of Pub. L. 98-615 that has the primary impact on reinstatements is section 303(a), which eliminates the mandatory 1-year period for reinstatement in the SES for certain career appointees removed under 5 U.S.C. 3595 by reduction in force. Since the reinstatement requirement is no longer in effect except for those removed before October 1, 1984, it does not appear in the regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it deals with the SES of the executive branch of the Federal Government.

List of Subjects in 5 CFR Part 317

Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is proposing to amend 5 CFR Part 317 by revising the authority citation for the part and removing the authority citation for Subpart G; adding Subpart D, § 317.401 through § 317.404; adding Subpart E, § 317.501 through § 317.503; revising Subpart G, § 317.701 through § 317.703; adding Subpart I, § 317.901 through § 317.904; and adding Subpart J, § 317.1001, to read as follows:

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER, AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

Subpart D—Qualifications Standards

Sec.

317.401 General.

317.402 Career reserved positions.

317.403 General positions.

317.404 Retention of qualifications standards.

Subpart E—Career Appointments

317.501 Recruitment and selection for initial SES career appointment.

317.502 Qualifications Review Board certification.

317.503 Probationary period.

Subpart G—SES Career Appointment by Reinstatement

317.701 Agency authority.

317.702 General reinstatement: SES career appointees.

317.703 Guaranteed reinstatement: Presidential appointees.

Subpart I—Reassignments, Transfers, and Details

317.901 Reassignments.

317.902 Transfers.

317.903 Details.

317.904 Change in type of SES appointment.

Subpart J—Corrective Action

317.1001 OPM authority for corrective action.

Authority: 5 U.S.C. 3392, 3393, 3395, 3397, 3593, and 3595.

Subpart D—Qualifications Standards

§ 317.401 General.

The head of each agency is responsible for establishing the qualifications standard for Senior Executive Service (SES) positions in accordance with the procedures described in this subpart.

§ 317.402 Career reserved positions.

(a) The qualifications standard must be in writing and identify the breadth and depth of the professional and executive/managerial knowledge, skills, and abilities required for successful performance in the position.

(b) The standard must be specific enough to enable applicants to be rated and ranked according to their degree of qualifications when the position is being filled on a competitive basis.

(c) Each qualifications requirement in the standard must be job related. However, the standard may not emphasize agency-related experience to the extent that it precludes otherwise well-qualified candidates from outside the agency from appointment consideration.

(d) The standard may not include—

(1) A minimum length of experience requirement;

(2) A minimum education requirement beyond that authorized for similar positions in the competitive service; or

(3) Any criterion prohibited by law or regulation.

§ 317.403 General positions.

An agency may apply the criteria in § 317.402 when developing qualifications standards for general positions. If it does not, OPM must be consulted before the agency develops the standard.

§ 317.404 Retention of qualifications standards.

If a qualifications standard is changed, the old standard shall be retained for 2 years. If a position is cancelled, the current standard shall be retained for 2 years.

Subpart E—Career Appointments

§ 317.501 Recruitment and selection for initial SES career appointment.

(a) *Executive Resources Board (ERB).* The head of each agency shall appoint one or more ERB's from among employees of the agency or commissioned officers of the uniformed services serving on active duty in the agency. The ERB(s) shall, in accordance with requirements established by OPM, conduct the merit staffing process for career appointees.

(b) *Recruitment.* (1) As a minimum, the source of recruitment to fill a SES position by career appointment must include all groups of qualified individuals within the civil service (as defined by 5 U.S.C. 2101). It may also include qualified individuals outside the civil service.

(2) Announcements of SES vacancies to be filled by career appointment must be listed in OPM's publication of SES vacancies for such time as prescribed by OPM.

(c) *Merit staffing requirements.* As a minimum, agencies must—

(1) Provide that competition be fair and open, that all candidates compete and be rated and ranked on the same basis, and that selection be based solely on qualifications and not on political or other non-job-related factors.

(2) Provide that the ERB consider the qualifications of each candidate, other than those found ineligible because they do not meet the requirements of the vacancy announcement. Preliminary qualifications screening, rating, and ranking of candidates may be delegated by the ERB.

(3) Provide that the rating and ranking procedures sufficiently differentiate among candidates on the basis of the knowledge, abilities, and other job-related factors in the qualifications

standard for the position, so as to enable the appointing authority to adequately determine those most qualified. For this purpose, candidates may be grouped into broad categories, such as best qualified, qualified, and not qualified. Numerical rating and ranking and ranking are not required.

(4) Provide that the record be adequately documented to show the basis of qualifications, rating, and ranking determinations.

(5) Provide that the ERB make written recommendations to the appointing authority on the eligible candidates. Rating sheets may be used to facilitate consideration of large numbers of candidates.

(6) Provide that the appointing authority certify in writing that the candidate selected meets the qualifications requirements of the position and appropriate merit staffing procedures were followed.

(d) *Retention of documentation.* Agencies must keep such documentation as OPM prescribes for 2 years to permit reconstruction of merit staffing actions.

(e) *Applicant inquiries and appeals.* Individuals are entitled to obtain information from an agency regarding the process used to recruit and select candidates for career appointment to SES positions. Upon request, applicants must be told whether they were considered qualified for the position and whether they were referred for appointment consideration. Also, they may have access to questionnaires or other written material regarding their own qualifications, except for material that would identify a confidential source. There is no right of appeal by applicants to OPM on SES staffing actions taken by ERBs, Qualifications Review Boards, or appointing authorities.

§ 317.502 Qualifications Review Board certification.

(a) A Qualifications Review Board (QRB) convened by OPM must certify the executive/managerial qualifications of a candidate before a career appointment may be made to an SES position. More than one-half of the members of a QRB must be SES career appointees.

(b) Agency requests for certification of a candidate by a QRB must contain such information as prescribed by OPM, including evidence that merit staffing procedures were followed and that the appointing authority has certified the candidate's qualifications for the position. Requests must be received by OPM no later than 9 months from the closing date of the vacancy

announcement or, in cases where SES qualifications resulted from successful completion of an OPM-approved candidate development program, 9 months from the date of such completion.

(c) QRB certification must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. A QRB certification is valid for 3 years from the date of certification.

(d) OPM may determine the disposition of agency QRB requests if the agency head leaves office before QRB action.

§ 317.503 Probationary period.

(a) An individual's initial appointment as an SES career appointee becomes final only after the individual has served a 1-year probationary period as a career appointee.

(b) The probationary period begins on the effective date of the personnel action initially appointing the individual to the SES as a career appointee and ends one calendar year later. Service as a probationer that is interrupted is creditable toward completion of the probationary period as prescribed by OPM.

(c) Removal of a career appointee during the probationary period is covered by Subpart D of Part 359 of this chapter.

(d) A career appointee who resigns or is removed from the SES before completion of the probationary period cannot receive another SES career appointment unless selected under SES merit staffing procedures. The individual, however, need not be recertified by a QRB within 3 years of the previous QRB certification.

Subpart G—SES Career Appointment by Reinstatement

§ 317.701 Agency authority.

As provided for in §§ 317.702 and 317.703, an agency may reinstate a former SES career appointee without regard to the merit staffing requirements established by OPM under 5 U.S.C. 3393(b).

§ 317.702 General reinstatement: SES career appointees.

(a) *Eligibility for general reinstatement.* A former SES career appointee who meets the following conditions is eligible for reinstatement under this section:

(1) The individual completed an SES probationary period under a previous SES career appointment or was exempted from that requirement; and

(2) The individual's separation from his or her last SES career appointment was not a removal under Subpart E of Part 359 of this chapter for less than fully successful executive performance; or by order of the Special Counsel pursuant to 5 U.S.C. 1206; or under 5 U.S.C. 7532 (National Security); or under Subpart F of Part 752 of this chapter for misconduct, neglect of duty, or malfeasance; or a resignation after receipt of a notice proposing or directly removal under any of the above conditions. Failure to accept a directed reassignment to another commuting area, or to accompany a position in a transfer of function to another commuting area, does not preclude reinstatement to the SES unless the appointment to the original position included acceptance of a written nationwide mobility agreement or policy.

(b) *Applying for reinstatement; time limit.* Application for reinstatement under this section shall be made directly to the agency in which SES employment is sought. There is no time limit for reinstatement under this section.

(c) *Qualifications.* The individual must meet the qualification requirements of the position to which reinstated. The agency makes this determination.

(d) *Tenure upon reinstatement.* An individual who is reinstated under § 317.702 becomes an SES career appointee.

§ 317.703 Guaranteed reinstatement: Presidential appointees.

(a) *Eligibility for reinstatement.* A former SES career appointee who was appointed by the President to a civil service position outside the SES without a break in service, and who left the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance, is entitled by law to be reinstated to the SES.

(b) *Applying for reinstatement; time limit.* Except as provided in paragraph (d) of this section, an application in writing for reinstatement under this section must be made to OPM within 90 days after separation from the Presidential appointment. An application may be submitted as soon as the Presidential appointee's resignation is requested or submitted.

(c) *Directing reinstatement.* (1) To the extent practicable, OPM will direct reinstatement within 45 days of the date of receipt by OPM of the application for reinstatement or the date of separation

from the Presidential appointment, whichever is later.

(2) OPM will use the following order of precedence in directing reinstatement of a former Presidential appointee:

(i) The agency in which the individual last served as an SES career appointee before accepting the Presidential appointment;

(ii) The successor agency to the one in which the individual last served as an SES career appointee;

(iii) The agency or agencies in which the individual served as a Presidential appointee; or

(iv) Any other agency in the Executive branch with positions under the SES.

(3) The agency being directed to take the reinstatement action will be responsible for assigning the individual to a position for which he or she meets the qualifications requirements.

(4) When directing the reinstatement of a Presidential appointee, OPM may, as appropriate, allocate an additional SES space authority to the agency.

(5) When a Presidential appointee tenders his or her resignation, voluntarily or upon request, the agency in which the Presidential appointment was held, upon approval by OPM, may place the former Presidential appointee as an interim measure on a limited term SES appointment, pending reinstatement, to preclude a break in service after the Presidential appointment has terminated.

(6)(i) To preserve reinstatement rights under this section, an individual who has been serving in a Presidential appointment, if nominated by the President for another appointment in the same or a new agency, must be reinstated by the agency to an appropriate position as an SES career appointee before Senate confirmation, unless service as a Presidential appointee would be continuous.

(ii) If Senate confirmation is not required, reinstatement to the SES in the same or a new agency must occur before the effective date of the Presidential appointment, unless service as a Presidential appointee would be continuous.

(d) *Reinstatement following direct negotiations with an agency.* (1) A Presidential appointee who qualifies under paragraph (a) of this section may initiate direct negotiations with an agency regarding reinstatement under this section.

(2) An agency may voluntarily reinstate a former Presidential appointee without an order from OPM directing such action.

(3) The agency will be responsible for assigning the individual to a position for

which he or she meets the qualification requirements.

(4) Direct negotiations with an agency will not extend the time limit stated in paragraph (b) of this section for making application to OPM.

(5) OPM may, when appropriate and upon request by the agency, allocate an additional SES space authority to an agency that voluntarily reinstates a former Presidential appointee under this paragraph.

(6) An individual who is reinstated under this paragraph because of direct negotiations with an agency is not entitled to further assistance by OPM.

(e) *Tenure upon reinstatement.* (1) An individual reinstated under § 317.703 becomes an SES career appointee.

(2) An individual reinstated under § 317.703 who was serving an SES probationary period at the time of his or her Presidential appointment is required to complete the 1-year SES probationary period upon reinstatement.

(f) *Compliance.* (1) An agency must comply with an order to reinstate issued by OPM under this section as promptly as possible, but not more than 30 calendar days from the date of the order.

(2) The agency will notify OPM of a reinstatement action taken under this section within 5 workdays of the effective date of the reinstatement.

(3) An individual who declines a reinstatement ordered by OPM is not entitled to further placement assistance by OPM under this section.

Subpart I—Reassignments, Transfers, and Details

§ 317.901 Reassignments.

(a) In this section, "reassignment" means a permanent assignment to another SES position within the employing executive agency or military department. (See 5 U.S.C. 105 for a definition of "executive agency" and 5 U.S.C. 102 for a definition of "military department.")

(b) A career appointee may be reassigned to any SES position for which qualified in accordance with the following conditions:

(1) *Reassignment within a commuting area.* For reassignments within a commuting area, the appointee must receive a written notice at least 15 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(2) *Reassignment outside of a commuting area.* For reassignments outside of a commuting area, (i) the agency must consult with the appointee

on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and (ii) following such consultation, the agency must provide the appointee a written notice, including the reasons for the reassignment, at least 60 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to take the action.

(1) In this paragraph—
(i) "Agency head" means the head of an executive or military department or the head of an independent establishment.

(ii) "Noncareer appointee" means an SES noncareer or limited appointee, an appointee in a position filled by Schedule C or noncareer executive assignment, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions are not applicable to a reassignment resulting from an unsatisfactory performance rating under 5 U.S.C. 4314(b)(3) that was issued before the appointment of the person taking the reassignment action.

(3) Voluntary reassignments during the 120-day period are permitted, but the appointee must agree in writing before the reassignment.

§ 317.902 Transfers.

(a) *Definition.* In this section, "transfer" means a permanent assignment or appointment to another SES position in a different executive agency or military department.

(b) *Requirements.* Transfers are voluntary and cannot occur without the appointee's consent, except transfers connected with a transfer of functions to another agency.

§ 317.903 Details.

(a) *Definition.* In this section, "detail" means the temporary assignment of an SES Member to another position (within or outside of the SES) or the temporary assignment of a non-SES member to an SES position, with the expectation that the employee will return to the official position of record upon expiration of the detail. For purposes of pay and benefits, the employee continues to encumber the position from which detailed. The provisions of this section cover details within or outside of the employing agency.

(b) *Time Limits.* Details within an executive agency or military department must be made in no more than 120-day increments. OPM may set limits on the total length of details and the length of details that may be made without competition.

(c) *SES career reserved positions.* Only a career SES appointee or a career-type non-SES appointee may be detailed to a career reserved position.

(d) *SES general positions.* Any SES appointee or non-SES appointee may be detailed to a general position.

§ 317.904 Change in type of SES appointment.

An agency may not require a career SES appointee to accept a noncareer or limited SES appointment as a condition of appointment to another SES position. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the new appointment. A copy of such documentation must be retained permanently in the appointee's Official Personnel Folder.

Subpart J—Corrective Action

§ 317.1001 OPM authority for corrective action.

If OPM finds that an agency has taken an action contrary to law or regulation under this part, it may require the agency to take whatever corrective action OPM deems necessary.

[FR Doc. 88-16553 Filed 7-21-88; 8:45 am]

BILLING CODE 5325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A39; DA-88-047]

Milk in the Southern Michigan Marketing Area; Extension of Time for Filing Briefs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing briefs.

SUMMARY: This notice extends the time for filing briefs on the record of the hearing held May 24, 1988, at Romulus, Michigan, concerning proposals one through four to amend the Southern Michigan marketing order. Counsel for Kraft, Inc., requested more time to review the hearing record and to prepare a brief.

DATE: Briefs are now due on or before July 29, 1988.

ADDRESS: Briefs (4 copies) should be filed with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. 96456, Washington, DC 20090-0456 (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding.

Notice of Hearing: Issued April 29, 1988; published May 4, 1988 (53 FR 15851).

Notice is hereby given that the time for filing briefs, proposed findings and conclusions on the record of the public hearing held May 24, 1988, at Romulus, Michigan, on proposals one through four with respect to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area pursuant to notice of hearing issued April 29, 1988 (53 FR 15851, May 4, 1988) is hereby further extended to July 29, 1988.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on July 19, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88-16527 Filed 7-21-88; 8:45 am]

BILLING CODE 3410-22-M

Packers and Stockyards Administration

9 CFR Part 201

Scale Accuracy and Accurate Weights

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes to revise a regulation concerning scale accuracy and accurate weights to update an incorporation by reference of a National Bureau of Standards Handbook to refer to the latest edition thereof. The proposal will not require replacement of scales which comply with the previous requirements.

DATE: Comments must be submitted on or before September 20, 1988.

ADDRESS: Comments may be mailed to the Administrator, Packers and Stockyards Administration, Room 3039, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the Office of the Administrator.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, (202) 447-6951.

SUPPLEMENTARY INFORMATION: Section 201.71(a) of the regulations requires that all subject scales shall be installed, maintained, and operated to insure accurate weights. This part of the regulation also incorporates by reference portions of the 1983 edition of National Bureau of Standards Handbook 44, "Specifications, Tolerances and other Technical Requirements for Weighing and Measuring Devices." Handbook 44 is a product of the National Conference on Weights and Measures and is subject to change annually. It is adopted automatically by a majority of States and forms the basis for scale requirements for all State weights and measures jurisdictions in the United States. The 1988 edition of Handbook 44 contains provisions which are not included in the 1983 edition. These new provisions are being applied by State and local weights and measures jurisdictions. The proposed amendment to regulation § 201.71(a) to incorporate by reference the 1988 edition of Handbook 44 would make the requirements of the Packers and Stockyards Administration uniform with those applied by State and local weights and measures jurisdictions. Paragraphs (b), (c) and (d) of the regulation will not be changed.

The major differences between the 1983 edition of Handbook 44 and the 1988 edition result from the adoption by the National Conference on Weights and Measures of a new scale code which became effective and enforceable on January 1, 1988. The new scale code is applicable to scales manufactured after January 1, 1988 for most classes of scales but is applicable in part to all livestock and motor vehicle scales. The new scale code requires that new devices be marked with accuracy classes and institutes a different concept in tolerance application. Under the new scale code, tolerances are based on incremental values depending on the number of scale divisions comprised in a specific test load. For livestock and motor vehicle scales the basic tolerance is 1 scale division error for each 500 divisions of test load. This is equivalent to the old basic tolerance of 0.2% of test load but is applied in an incremental

fashion rather than in a linear fashion as with the old relative value tolerance. This results in a slightly more liberal tolerance at the lower end of each 500 division segment on some mechanical scales. Device manufacturers and scale service agencies are held accountable for compliance with the accuracy class marking requirement which they must meet in order for their devices to be accepted by the State weights and measures jurisdictions.

Executive Order

It has been determined that the proposal to amend this regulation relating to scale accuracy and accurate weights is not a "major" rule as defined by section 1(b) of E.O. 12291.

The proposed rule will not have an annual effect on the economy of \$100 million or more, will not result in major increases in cost or prices for consumers, individual industries, Government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, regulatory impact analyses are not required.

Regulatory Flexibility Act

B.H. (Bill) Jones, Administrator, Packers and Stockyards Administration, has determined that this proposal will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980 (44 U.S.C. 350)

This proposal does not impose any paperwork requirement.

List of Subjects in 9 CFR Part 201

Scales, Accurate weights.

Done at Washington, DC, this 19th day of July 1988.

B.H. (Bill) Jones,
Administrator, Packers and Stockyards Administration.

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. The authority citation for Part 201 continues to read as follows:

Authority: Secs. 202, 407, 407(a), 42 Stat. 160, 169 as amended, 7 U.S.C. 222, 228, 228(a).

2. It is proposed that 9 CFR 201.71(a) be revised to read as set forth below:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, or live poultry for the purpose of purchase, sale, acquisition, or settlement shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1988 edition of National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices", which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on _____. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Handbook 44 is subject to change annually. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, DC 20408.

[FR Doc. 88-16600 Filed 7-21-88; 8:45 am]
BILLING CODE 3410-KD-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-47]

Quality Technology Co.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-50-47) filed by Mr. Owen L. Thero, President of Quality Technology Company. The petition is being denied because (1) the existing regulations provided adequate assurance that safety related concerns are being reported; (2) the proposed additional regulation would not substantially increase the overall protection of the public health and safety; and, (3) the need for the proposed rule is not otherwise

demonstrated by the information provided.

The petitioner requested that NRC require all utilities involved in a nuclear program to (1) report all identified concerns relating to wrongdoing activities to the Office of Investigation and (2) maintain a nationwide employee concern program. Wrongdoing activities are not specifically defined by the petitioner but are assumed to be criminal-type activities. Examples might include use of drugs or alcohol on the job and the falsification of documents or records. The NRC has carefully considered the issues raised in the petition, and has taken them into account in reaching a decision on the areas which fall within its jurisdiction. **ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC's Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone (301)-492-3795.

SUPPLEMENTARY INFORMATION:

- I. The petition
- II. Basis for request
- III. Public comments on the petition
- IV. Staff action on the petition
- V. Reasons for denial

The Petition

In a letter dated October 27, 1986, Mr. Owen L. Thero, President of Quality Technology Company (QTC) filed with the NRC a petition for rulemaking. The petitioner requested that NRC expand the scope of its regulations so that all utilities involved in a nuclear program (1) report all identified concerns relating to wrongdoing activities to the Office of Investigation, much along the same lines as is required to report nuclear safety-related issues, and (2) maintain a nationwide employee concern program incorporating the applicable facets of the Employee Response Team recently conducted at the Tennessee Valley Authority Watts Bar Facility.

Basis for Request

The petitioner (QTC) bases the petition on their experience gained from involvement in employee concern programs at several utilities, most recently the TVA Watts Bar Facility. This involvement included the collection, collation and investigation of safety concerns. As a result of this experience, the petitioner states it had been in the unique position to observe the program's effectiveness from both

the perspective of management and the perspective of the employee. The petitioner contends that because of this unique vantage point and experience, they have observed that employees engaged in the construction or operation of a nuclear facility have the most accurate and insightful information about safety related issues. The petitioner claims that several thousands nuclear safety-related concerns and several hundred wrongdoing activities have been identified through the efforts of the employee concern programs conducted by QTC at Watts Bar and other facilities that otherwise would not have surfaced.

QTC believes that without resolution of employee identified safety-related concerns, the potential exists for costly hardware failures or potential danger to the employees of nuclear facilities or the general public.

The petitioner further believes that the disposition of wrongdoing activities by the licensee is not clear and in their experience the licensee has not allowed QTC to investigate reported wrongdoing issues nor have the licensees willingly reported such activities to the NRC or to the Department of Justice. QTC also claims that licensees have no effective corrective action mechanism to investigate or resolve wrongdoing issues; therefore, a corrective action mechanism is needed.

The petitioner concludes that the sheer number of identified concerns along with the very high rate of substantiation (greater than 50%) more than justifies the need for a nationwide employee concern program to be authorized and defined by law.

Public Comments on the Petition

A notice of filing of the petition for rulemaking was published in the Federal Register on January 12, 1987, (52 FR 1200) and included the full text of the proposal. Interested persons were invited to submit written comments. The comment period was subsequently extended 60 days to provide sufficient time for public comments. In response to the invitation in the Federal Register soliciting comments on the petition for rulemaking, a total of 34 letters were received. These letters came from individuals, law firms, public-interest groups, utilities, and other companies that manage nuclear plants. Five comments favored the petition and twenty-six comments were opposed to the petition. One comment requested an extension of the comment period to allow more time to respond. One comment favored the thrust of the proposal, but recommended that it be

held in abeyance pending Congressional action on some proposed In. pector General bills. The remaining comment by a Congressman favored the first part of the petition (i.e. report all identified concerns related to wrongdoing activities) but could not support the second part (establish an employee concern program) if there were not attendant requirements as to how the program would be operated in order to guarantee its integrity. For the purpose of summarizing, this split comment was considered as a favorable response. Hence, there were seven comments (21%) favoring the petition and twenty-six comments (79%) opposed. The seven comments favoring the petition came from two sources. Three comments were from individual citizens, three from public interest groups and, one from a Congressman. A summary of the significant comments in favor of the proposal are highlighted below.

A rule promulgated in response to the petition would:

- Provide a safe, confidential means for information to be volunteered by employees with no fear of reprisal.
- Be conducive to the identification of personnel who are using drugs or alcohol.
- Define wrongdoing activities to include non-nuclear and non-utility business, e.g. drug sales and bookmaking.
- Require licensees and holders of construction permits to report allegations of management wrongdoing or evidence bearing on the character and/or suitability of management.

Twenty-six comments opposed to the petition included twenty-four from utilities or companies that run utilities, one from a company (SYNDECO) that is a subsidiary of Detroit Edison Co. and the remaining comment was from the Atomic Industrial Forum. A summary of the significant comments opposing the petition are highlighted below:

- The petition may be motivated by self interest on the part of the petitioner (not considered).
- Current regulations are adequate to ensure safety problems are reported.
- Utilities' experience with employee concern programs does not support the petitioner's claim that the rate of substantiation is greater than 50%.
- No evidence was presented to show that public safety would be significantly enhanced as a result of the proposed rule.
- Various utilities indicated they were not aware of any industry problems regarding licensee treatment of employee concerns.

- Several employee concern programs voluntarily set up by utilities currently exist.
- No factual need was provided for the proposed rule.
- Mandatory employee concern programs could reduce the effectiveness of industry's voluntary programs by reducing management flexibility and safety related matters could go unreported.
- Current utility experience does not justify the imposition of additional regulatory reporting requirements.

One of the public comments raised an issue that was not raised by the petitioner. The issue is: Provide a safe, confidential means for information to be provided by employees with no fear of reprisal. Employees who wish to provide information or who have concerns have two options available to them. They may discuss the particular concern with their supervisor or plant management. If they cannot obtain satisfactory resolution or if they do not desire to use this avenue, they can take the concern directly to the NRC. NRC has maintained a policy that allows licensee employees to bring concerns to its attention. This can be done either verbally or in writing and can be done through the resident inspector, regional personnel, or NRC Headquarters personnel. This option may afford the individual confidentiality.

Staff Action on the Petition

The proposed petition was published in the Federal Register in January 1987. The comment period was extended (thru mid-May) in order to provide sufficient time for public comments. The resumption of action on the petition was delayed for approximately six months because of the NRC reorganization and the subsequent realignment of duties and responsibilities, and the prioritization of ongoing work. Action on the petition resumed in mid-November of 1987.

Reasons for Denial

The NRC has considered the petition, the public comments received, and the current regulatory structure. After consideration of the above, NRC has concluded that the petitioner's request should be denied. The discussion that follows addresses the various allegations contained in the petition and the NRC response to each of these allegations.

1. Allegation

Several thousand nuclear safety-related concerns and several hundred wrongdoing activities have been identified through the efforts of the

employee concern programs that QTC has either conducted or been associated with at several nuclear facilities that otherwise would not have surfaced.

Response

The main purpose of an employee concern program is to provide a forum in which to resolve employee concerns about the safety of a nuclear plant. Several utilities have established such programs, on a voluntary basis, some at a considerable expenditure of resources to assure that all employee concerns are investigated and resolved. Many of these programs have continued into the operational phases of a plant's existence. There is no question that these programs can and will identify employee concerns. But no evidence was presented that these concerns would not have surfaced through some other mechanism such as: A good quality assurance program, the normal employer-employee working relationship; or by reporting to the NRC. Although a large number of specific concern files from Watts-Bar are in the possession of NRC, the information contained in these files is very cryptic and generally does not contain specific technical detail to support the assertions by the petitioner. Additionally, no specific documentation concerning the rate of substantiation at Watts-Bar or other units has been provided by the petitioner to support the assertions.

2. Allegation

Unresolved nuclear safety-related concerns could have surfaced through a series of costly hardware failures and/or potential endangerment of the employees and the general public if allowed to go into operation uncorrected.

Response

In response to this assertion, one of the commenters (an engineering firm) felt strongly that there are very few engineering decisions made that are totally conclusive. Instead, considerable expertise and judgment go into the determination of most requirements of this type. The commenter stated that management makes decisions based on analysis and opinions. Experience has shown that very few, if any, employee concerns actually require hardware changes and very few of the hardware changes materially improve safety. No documented evidence of any type has been provided by the petitioner to support this assertion.

3. Allegation

The disposition of wrongdoing activities by licensees is not clear. In our experience, the licensee has not allowed us to investigate wrongdoing issues reported. Neither have they been willing to report these activities to the NRC or to the Department of Justice. They have no effective corrective action mechanism to investigate or resolve wrongdoing issues. These issues fall into a "black hole."

Response

In contemplating the addition of new regulations, NRC must ask if the new regulations are required to provide adequate protection of the public health and safety. The next level of questioning is: Will the proposed rule result in enhanced health and safety or an improved plant operation? Finally, what is the cost of the new regulation versus the benefits to be derived? This applies to the licensee as well as NRC. The present regulations set up a rather extensive system of reporting requirements which licensees are required to follow. The regulatory system is designed to provide a framework to ensure that events which are significant to the safe operation of nuclear power plants are reported to NRC so that the appropriate corrective action can be taken. In cases where employee concerns have not been resolved to the employees' satisfaction, there are means available for discussing their concerns with NRC. To date, non-safety-related concerns have essentially been the responsibility of licensee management. If licensee management demonstrates that they are unwilling or unable to handle such concerns, and NRC determines that these concerns are a problem at more than a few isolated plants, then NRC can consider taking a more direct action. Until then, licensee management should be given the opportunity to address the matter. The petitioner has not provided any factual evidence to show that a problem exists at any plant as alleged in the proposal.

4. Allegation

The sheer numbers of concerns identified along with the very high rate of substantiation (greater than 50%) more than justifies the need for a nationwide employee concern program to be authorized and defined by law.

Response

The petitioner's assertion appears to be based on experience gained primarily at TVA's Watts Bar Facility. Before

considering the implementation of a mandatory program on all nuclear power plants in the United States, a definitive basis should be established to show that such a requirement is in fact needed. As noted in reason #1 on page 9, the petitioner has provided no evidence or specific documentation other than its stated experience at one facility to support its assertion. With respect to experience with substantiation rates, three of the commenters stated that their experience does not support a substantiation rate in excess of 50%. In fact, their experience reflects a substantiation rate which is significantly less than 50%. The information provided is not sufficient to establish that a problem exists in the "industry" and that a rulemaking is needed to solve the problem.

In addition to reviewing the assertions of the petitioner and comments from the public, the petition was also examined in light of the existing regulatory structure. Although there are no regulations currently in effect regarding specific reporting of identified concerns related to wrongdoing activities as raised by the petitioner, there are several regulations in effect concerning the reporting of safety-related matters. These regulations are briefly listed below:

- 10 CFR Part 21 reporting of defects and noncompliance.
- 10 CFR 50.55(e) requires holders of construction permits to notify NRC regarding deficiencies in design or construction which could adversely affect safety.
- 10 CFR 50.7 prohibits licensees from discriminating against employees engaging in certain protected activities including providing information to the Commission regarding violations.
- 10 CFR 50.72 requires the notification of NRC regarding various classes of emergency and non-emergency events.
- 10 CFR 50.73 requires the notification of NRC of specific events reportable via the licensee event report program.
- Appendix B to 10 CFR Part 50, criteria 15 and 16 requires the licensees to document defects and take the appropriate corrective action including defects brought to the attention of the licensee by employees.
- 10 CFR 70.52 requires the licensee to report on accidental criticality or loss or theft of special nuclear material.
- 10 CFR 73.71 requires the licensee to report on unaccounted for shipments,

suspected thefts, unlawful diversion, radiological sabotage or other events which significantly threaten safeguards.

In addition to the above regulations, the NRC is presently preparing a proposed rule concerning fitness for duty at nuclear power plants which is expected to be published for public comment in June or July 1988. The objective of the fitness for duty rule is to provide for the public health and safety by eliminating access to protected areas at nuclear power plants by personnel who are judged to be unfit for duty. Personnel considered unfit for duty are those who are under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause which in any way affects their ability to safely and competently perform their duties. Employee assistance programs would be available for rehabilitation.

The regulations cited above have been promulgated by NRC with the intention of identifying deficiencies and non-compliances that either reduce or have the potential to reduce the degree of protection afforded to public health and safety or the environment. It is not NRC's intention to receive all employee non-safety-related concerns. The management of the utilities have certain responsibilities relative to employee concerns and as long as the concerns do not affect safety, they should remain the responsibility of utility management. If the utility management is not responsive or if there is concern with retaliation, there are adequate alternative means to bring matters of health and safety concern to the NRC for resolution, as discussed in this notice.

It appears that good management practices by the utilities and the existing regulatory structure together provide a reasonable assurance that valid problems identified by employees will be investigated and corrected. In light of the above, no additional action is required at this time.

Because each of the issues raised in the petition have been substantially addressed and resolved, the NRC has denied the petition.

Dated at Rockville, Maryland, this 11th day of July 1988.

For the Nuclear Regulatory Commission,
Victor Stello, Jr.,
Executive Director for Operations.
[FR Doc. 88-16586 Filed 7-21-88; 8:45 am]
BILLING CODE 7990-31-28

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

(Docket No. RM88-20-000)

5-Year Take-or-pay Make-up Provisions in Natural Gas Producer-Pipeline Contracts

Issued July 14, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to eliminate the requirement in its regulations that a gas purchase contract between an independent natural gas producer and an interstate natural gas pipeline must allow the pipeline a minimum 5-year make-up period in which to take gas for which payment has already been made (18 CFR 154.103 (1987)). The requirement is no longer necessary because of efforts by pipelines and producers to resolve take-or-pay issues and to enter into market-responsive contracts for future gas supplies.

DATE: An original and 14 copies of the written comments must be received by the Commission by August 15, 1988.

ADDRESS: All filings should refer to Docket No. RM88-20-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Proposed Rulemaking in Docket No. RM88-20-000 issued July 14, 1988. All persons interested in obtaining the full text of this document for inspection and copying may do so during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426. In addition, the Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission.

CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this notice of proposed rulemaking is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The Commission has determined that no environmental assessment or environmental impact statement is necessary in this rulemaking. Commission actions relating to the sale, exchange, or transaction of natural gas are categorically excluded from requiring environmental review.¹

List of Subjects in 18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 154, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lola D. Cashell,
Acting Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102-7352 (1982); E.O. 12009, 3 CFR Part 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1970).

§ 154.103 [Removed]

2. In Part 154, § 154.103 is removed.

[FR Doc. 88-10500 Filed 7-21-88; 8:45 am]

BILLING CODE 6717-01-M

¹ 18 CFR 380.4(a)(27) as added by Order No. 486, 52 FR 47807 (Dec. 17, 1987), III FERC Stats. & Regs. § 30.763 (1986).

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2584

Proposed Regulation Regarding Allocation of Fiduciary Responsibility, Federal Retirement Thrift Investment Board

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation under section 8477(e)(1)(E) of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act). That section provides that any fiduciary with respect to the Thrift Savings Fund¹ who, pursuant to procedures prescribed by the Secretary of Labor, allocates a fiduciary responsibility to another fiduciary shall not be liable for any act or omission of such fiduciary except in specified circumstances. Section 8477(e)(1)(E) specifically contemplates the issuance of regulations by the Department of Labor. The proposal describes the procedures which a fiduciary with respect to the Thrift Savings Fund must follow in order to allocate fiduciary responsibility to another fiduciary.

DATES: Written comments on the proposed regulation must be received by the Department of Labor on or before August 22, 1988. The proposed regulation, if adopted, would apply to transactions occurring on or after a date 30 days from the date the regulation is published in final form.

ADDRESSES: Written comments (preferably at least three copies) should be submitted to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: FERSA Allocation Regulation." All submissions will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Martin A. Staubus, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-9598; or Debra Silver, Pension and Welfare

¹ The Thrift Savings Fund is established and defined at 5 U.S.C. 8437.

Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-8671.

SUPPLEMENTARY INFORMATION: This document contains a proposed regulation under section 8477(e)(1)(E) of FERSA.² That section provides that any fiduciary with respect to the Thrift Savings Fund who, pursuant to procedures prescribed by the Secretary of Labor, allocates a fiduciary responsibility to another fiduciary shall not be liable for an act or omission of such fiduciary except in specified circumstances. Upon becoming effective, this regulation would prospectively supersede the interim regulations promulgated by the Executive Director of the Federal Retirement Thrift Investment Board which appear at Title 5, Code of Federal Regulations, Chapter IV, Section 1680.1-1680.5 (52 FR 38221, October 15, 1987). A discussion of section 8477(e)(1)(E) and a description of the proposed regulation follows:

Discussion

A. General Considerations

Subchapter III of FERSA provides for the creation of a retirement savings plan for federal employees to be known as the Thrift Savings Plan. As provided at section 8437 of FERSA, the plan is to be funded by the Thrift Savings Fund (Fund). The Fund consists of all employee and government contributions, increased by the total net earnings of the Fund or reduced by the total net losses of the Fund, and reduced by the total amount of payments made from the Fund.

Under the system of plan management prescribed at Subchapter VII of the Act, the authority and responsibility for the management and administration of the Fund is apportioned between the Federal Retirement Thrift Investment Board (the Board) and its Executive Director. Section 8472 of the Act charges the Board with board responsibility to establish policies for the investment and management of the Thrift Savings Fund and the administration of Subchapter III of FERSA. Section 8574 assigns the Executive Director the responsibility to implement the policies established by the Board and to invest and manage the

² Sections 8401 through 8670 of Title 5, United States Code (U.S.C.) were enacted by Congress at section 101(a) of FERSA. The Act itself provides no independent numbering system for these provisions, but directly assigns the chapter and section numbers under which those provisions are to be codified in Title 5 of the U.S.C. For purposes of clarity and convenience, therefore, this preamble references the provisions of FERSA by using the U.S.C. section numbers which Congress assigned to them in the Act. Thus, for example, the above reference to "section 8477(e)(1)(E) of FERSA" is to Title 5 U.S.C. 8477(e)(1)(E).

Fund assets in accordance with those policies and the provisions of the Act.

Pursuant to section 8474 (b)(5) and (c)(1) of the Act, the Executive Director is also granted authority to prescribe such regulations as may be necessary for the administration of the Fund. However, these statutory provisions expressly prohibit the Executive Director from prescribing any regulations relating to fiduciary responsibilities with respect to the Fund. Instead, at section 8477 of the Act, that regulatory authority is assigned to the Secretary of Labor. At section 8477(e)(1)(E), the Secretary is directed to prescribe, in regulations, procedures by which fiduciary responsibilities may be allocated among fiduciaries, including investment managers. An exception to the limitation on the Executive Director's rulemaking authority, however, was included at section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986 (Pub. L. 99-556). That section authorizes the Board to establish interim procedures concerning the allocation of fiduciary responsibilities. The Executive Director published such procedures in the Federal Register at 52 FR 38221 on October 15, 1987. Those procedures are to be effective only with respect to transactions which occur prior to the effective date of the final regulations prescribed by the Secretary of Labor under subparagraph (E) of section 8477(e)(1) of the Act; moreover, the authority to make allocations using the interim procedures must expire not later than December 31, 1988.

B. Interim Regulations

The interim regulations published by the Executive Director are divided into subparts A and B. Subpart A contains definitions of the key terms which appear in the interim regulations and general provisions concerning the powers, duties and responsibilities of fiduciaries with respect to the Thrift Savings Fund. Subpart B presents, in three sections, the procedures which are to govern the allocation of fiduciary responsibility on an interim basis. Section 1680.3 provides that a Fund fiduciary may allocate fiduciary responsibility to persons described in subparagraph (C) or (D) of FERSA section 8477(a)(3). Those subparagraphs refer, respectively, to "any person who has or exercises discretionary authority or discretionary control over the management or disposition of the assets of the Thrift Savings Fund" and "any person who, with respect to the Thrift Savings Fund, is described in section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.

1002(21)(A))." Section 1680.4 sets forth the requirement that an allocation must be in writing, signed by the Executive Director, acknowledged by the receiving fiduciary, and must set forth the responsibilities being allocated. Finally, § 1680.5 provides that a fiduciary who has allocated responsibility to another pursuant to these procedures will not be liable for the acts or omissions of the receiving fiduciary except as provided in the Act.³

C. Proposed Procedural Regulation

Section 2584.8477(e)-2 of the proposal describes the fiduciary duties which may be allocated, and to whom. Section 2584.8477(e)-3 describes the procedures for allocating those duties. Section 2584.8477(e)-4 describes the procedures for revoking such allocations. Section 2584.8477(e)-5 describes the effect of an allocation made pursuant to these procedures. Section 2584.8477(e)-6 defines certain terms used in the proposed regulation, and § 2584.8477(e)-7 establishes the effective date for the regulation.

1. Permitted Allocations

The Act initially vests all fiduciary responsibility for the Thrift Savings Fund with either the members of the Board or the Executive Director. While the interim regulations provide generally that any fiduciary may allocate fiduciary responsibilities to any person or persons described in subparagraph (C) or (D) of section 8477(a)(3) of the Act, the proposed regulation seeks to identify more specifically those persons who may allocate fiduciary responsibility and those to whom such responsibility may be allocated. To this end, § 2584.8477(e)-2 of the proposal provides, first, a procedure by which the Board members may allocate among themselves those responsibilities which have been charged to them collectively as members of the Board. This permits the Board to adopt, if it chooses, an arrangement whereby a collective fiduciary responsibility may be assigned to and discharged by one or a subgroup of the members. Second, § 2584.8477(e)-2 provides a procedure by which the Executive Director may allocate certain fiduciary responsibilities in connection with the management and investment of the assets of the Thrift Savings Fund, with respect to assets held in the Fixed Income Investment Fund,⁴ such

³ Provisions governing the liability of a fiduciary in such circumstances appear at section 8477(e)(1)(E) of FERSA.

⁴ Section 8438(b) provides that the Board is to establish three funds within the Thrift Savings Fund into which sums available for investment are to be

Continued

allocations may be made only to a qualified professional asset manager or managers (QPAMs).⁴ The proposal incorporates by reference the definition of "qualified professional asset manager" which appears at section 8438(a)(7) of the Act. With respect to assets held in the Government Securities Investment Fund or the Common Stock Index Investment Fund, such allocation may be made only to an investment manager. The proposal incorporates the definition of "investment manager" which appears at section 3(38) of the Employee Retirement Income Security Act of 1974 (ERISA). No other allocations, whether by a Board member, the Executive Director, or any other person who has or may acquire fiduciary responsibility in connection with the Thrift Savings Fund, are authorized. Thus, an investment manager to whom fiduciary responsibility has been allocated may not in turn allocate any part of that responsibility to a second investment manager. However, allocation to the second investment manager can be achieved by action of the Executive Director, who, under the proposed regulation, has the power and authority to revoke an allocation and they reallocate that fiduciary responsibility to another fiduciary.

The proposed procedures do not provide for any allocation which would violate an express policy established by the Board or which would result in an invalid delegation according to the Act or any other law. The department notes in this regard that while nothing in these procedures restricts the ability of a Fund fiduciary to assign any task or function to another person, such Fund fiduciary will continue to bear fiduciary responsibility for the acts and omissions of such other person unless such responsibility has been allocated pursuant to these procedures. Thus, in these instances where the delegation by a Fund fiduciary of a particular task or function would violate an express Board policy or a provision of law, that Fund fiduciary may not allocate the fiduciary responsibility for such task or function to another so as to relieve himself of his related fiduciary liability.

Invested. They are the Government Securities Investment Fund, the Fixed Income Investment Fund and the Common Stock Index Investment Fund.

⁴ Section 8438(b)(1) of the Act requires that the selection of assets to be held by the Fixed Income Investment Fund (other than certificates of deposit and insurance contracts) be made by a qualified professional asset manager. The Department has therefore proposed that, with respect to this fund, all allocations of management and investment authority be made to QPAMs.

2. Procedures for Allocation

Section 2584.8477(e)-3 of the proposal imposes specific procedural requirements to assure that, as to any allocation: (1) Both the allocating fiduciary and the receiving fiduciary are expressly and clearly informed of the fact of any allocation and the pertinent terms thereof; and (2) the participants and the beneficiaries of the Thrift Savings Funds are informed of the identity of any person or persons to whom fiduciary responsibility has been allocated, and the nature of that responsibility. In general, the first requirement is simply a continuation of a requirement of the interim regulation. First, any allocation made by the Board must be authorized by majority vote of the Board. Second, all allocations, whether by the Board or the Executive Director, must identify in writing the responsibilities to be allocated and must be signed by both the allocating and the receiving fiduciaries. The signature of the receiving fiduciary must represent his acknowledgment that, in accepting the allocated responsibilities, he becomes a fiduciary with respect to the Fund as to those responsibilities.

In contrast to the interim regulation, the proposed regulation also requires that all allocations must be communicated in a written form to the participants and beneficiaries of the Fund. This might be accomplished, for example, by including this information in the summary descriptions of investment options which must be furnished to participants and beneficiaries on a semi-annual basis pursuant to section 8439(c) of the Act.

3. Revocation and Termination of Allocations

To assure that the Board and the Executive Director may retain the necessary control over the management of the Fund which is consistent with their responsibilities under the Act, § 2584.8477(e)-4 of the proposal sets forth procedures for expeditious revocations and terminations of allocations. The interim regulations make no provision on this subject.

The proposed regulation requires that any allocation of fiduciary responsibility must be revocable at will by the allocating fiduciary. The proposal does not mandate a minimum notice period in order that a revocation may be effected quickly where circumstances reasonably require prompt action. In all cases, a revocation must set forth in writing the responsibilities which are the subject of the revocation and must be signed by the revoking fiduciary (in the case of the Board, by its Chairman).

The termination of an allocation by a person to whom responsibility has been allocated must follow similar procedures. In addition to setting forth the pertinent facts in writing, a termination must be acknowledged in writing by the fiduciary to whom the subject duties are being restored.

The proposed regulation assigns to the Executive Director the responsibility to communicate to the Fund participants and beneficiaries the occurrence of any revocation or termination. This communication must include information which identifies the fiduciaries who are to assume the responsibilities which were the subject of the revocation or termination.

4. Effect of Allocation

In general, § 2584.8477(e)-5 of the proposal states that where fiduciary responsibility has been allocated to another person pursuant to these procedures, the allocating fiduciary will be relieved of any fiduciary liability for any act of that person. However, similar to the interim regulations, the proposed regulation incorporates the provisions on fiduciary liability which are set forth at section 8477(e)(1)(E) of the Act. Thus, pursuant to the proposal, an allocating fiduciary will retain liability for an allocated responsibility where he or she has violated the prudence standard set forth at section 8477(b) of the Act with respect to: (a) The allocation or the continuation of the allocation; or (b) the implementation of the procedures set forth in the final version of this regulation. The duty to monitor the performance of a person to whom fiduciary responsibility has been allocated, which is implicit in the duty to discontinue any allocation where prudence so dictates, is explicitly imposed by the proposal, and the allocating fiduciary must prudently monitor.

FERSA section 8477(e)(1)(E) also imposes liability on an allocating fiduciary where such fiduciary would otherwise be liable under FERSA section 8477(e)(1)(D). FERSA section 8477(e)(1)(D) imposes joint and several liability upon a fiduciary with respect to

⁵Section 8477(b)(1) of the Act provides in relevant part: "(b)(1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of participants and beneficiaries and—

... (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives ..."

the Fund who: (1) Participates knowingly in, or knowingly attempts to conceal, conduct which the fiduciary knows to be a breach of fiduciary duty by another Fund fiduciary; (2) by failing to comply with the prudence standard of FERSA section 8477(b) in the performance of his fiduciary duties, enables another Fund fiduciary to commit a breach; or (3) has knowledge of a breach by another Fund fiduciary and fails to make reasonable efforts to remedy that breach. Thus, pursuant to the proposal, an allocating fiduciary will retain the co-fiduciary liability described in section 8477(e)(1)(D) of the Act.

5. Effective Date

Pursuant to § 2584.8477(e)-7 of the proposal, the regulation would be effective thirty days after publication in final form. Fiduciary liability for transactions occurring after that date would be determined by reference to this regulation regardless of whether any associated allocation may have been made before or after this effective date. Liability for transactions occurring before the effective date of the proposed regulation would continue to be governed by the interim regulation which appears at title 5, CFR, Chapter IV, Sections 1660.1 through 1660.5.

Executive Order 12291 Statement

The proposed regulation in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The action will impose no additional costs on the Thrift Savings Fund.

Regulatory Flexibility Act Statement

The Department has determined that this regulation would have no significant economic impact on small entities. In conducting the analysis required under the Regulatory Flexibility Act, it was estimated that the implementation of the proposed regulation would pose no additional costs to the Thrift Savings Fund. The only burden attributable to this regulation is the burden of written communication of an allocation by the Board or Executive Director to plan participants and beneficiaries, which

may be incorporated in other disclosure documents already required under current law. The regulation does not otherwise affect any small entities.

Paperwork Reduction Act Statement

Sections 2584.8477 (e)-3(a)(4), 3(b)(3) and 4(e) of the proposed regulation contain paperwork requirements. The regulation has been forwarded for approval by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). This proposed regulation has been assigned control number 1210-AA30.

Statutory Authority

The proposed regulation set forth herein is issued pursuant to section 8477(e)(1)(E) (Pub. L. 99-335, 100 Stat. 585, 5 U.S.C. 8477(e)(1)(E)) of the Act and under Secretary of Labor's Order No. 1-87.

List of Subjects in 29 CFR Part 2584

Employee benefit plans, Fiduciary, Government employees, Retirement, Pensions.

In view of the foregoing the Department proposes to amend Chapter XXV of Title 29 as follows:

By adding in the appropriate place, the following new Part 2584 to Subchapter J:

SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1923

PART 2584—RULES AND REGULATIONS FOR THE ALLOCATION OF FIDUCIARY RESPONSIBILITY

Sec.	
2584.8477(e)-1	General.
2584.8477(e)-2	Allocation of fiduciary duties.
2584.8477(e)-3	Procedures for allocation.
2584.8477(e)-4	Revocation and termination of allocation.
2584.8477(e)-5	Effect of allocation.
2584.8477(e)-6	Definitions.
2584.8477(e)-7	Effective date.
Authority: 5 U.S.C. 8477(e)(1)(E) and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).	

§ 2584.8477(e)-1 General.

5 U.S.C. 8477(e)(1)(E) provides that any fiduciary with respect to the Thrift Savings Fund of the Federal Employees Retirement System who allocates a fiduciary responsibility to another person pursuant to procedures prescribed by the Secretary of Labor shall not be liable for an act or omission of such person except in specified circumstances. This part sets forth the procedures which have been prescribed

by the Secretary of Labor for the allocation of fiduciary responsibilities.

§ 2584.8477(e)-2 Allocation of fiduciary duties.

(a) The fiduciary duties of the Board as set forth at 5 U.S.C. 8472 may not be allocated to any person other than a member or members of the Board.

(b) The Executive Director may allocate authority and responsibility for the investment and management of the Fixed Income Investment Fund to a qualified professional asset manager(s).

(c) The Executive Director may allocate authority and responsibility for the investment and management of the Government Securities Investment Fund and the Common Stock Index Investment to an investment manager(s).

(d) Notwithstanding any other provision of this part, no allocation may be made which would constitute:

(1) A violation of an express policy of the Board; or
(2) An invalid delegation according to the Act or any other law.

(e) Except as provided in this part, no person who has or may acquire fiduciary responsibility in connection with the Thrift Savings Fund may allocate such responsibility to another person.

§ 2584.8477(e)-3 Procedures for allocation.

(a) Any allocation made by the Board must—

(1) Be authorized by a majority vote of the Board;
(2) Be made in writing, signed by the Chairman of the Board and acknowledged in writing by the receiving Board member or members;
(3) Set forth the duties and responsibilities allocated, either in the body of the document or by reference to another document existing at the time of the allocation; and

(4) Be communicated in an appropriate written form to the Executive Director, the participants and the beneficiaries of the Thrift Savings Fund.

(b) Any allocation made by the Executive Director must—

(1) Be made in writing, signed by the Executive Director and acknowledged in writing by the receiving fiduciary;

(2) Set forth the duties and responsibilities allocated, either in the body of the document or by reference to another document existing at the time of the allocation; and

(3) Be communicated in an appropriate written form to the participants and beneficiaries of the Thrift Savings Fund.

§ 2584.8477(e)-4 Revocation and termination of allocation.

(a) Any allocation made pursuant to this part must be revocable at will by the allocating fiduciary, subject only to notice which is reasonable under the circumstances.

(b) Any revocation by the allocating fiduciary or termination of an allocation by the fiduciary to whom duties have been allocated must set forth in writing the duties and responsibilities as to which the revocation or termination is effective, either in the body of the document or by reference to another document existing at the time of the revocation or termination.

(c) Any revocation of an allocation must—

(1) In the case of an allocation which was made by the Board, be signed by the Chairman of the Board, or

(2) In the case of an allocation which was made by the Executive Director, be signed by the Executive Director.

(d) Any termination of an allocation, to be effective, must—

(1) In the case of an allocation which was made by the Board, be signed by the terminating fiduciary and acknowledged in writing by the Chairman of the Board, or

(2) In the case of an allocation which was made by the Executive Director, be signed by the terminating fiduciary and acknowledged in writing by the Executive Director.

(e) Any revocation or termination of an allocation must be communicated by the Executive Director in an appropriate written form to the participants and beneficiaries of the Thrift Savings Fund in a manner which identifies the person(s) assuming the responsibilities which were the subject of the revocation or termination.

§ 2584.8477(e)-5 Effect of allocation.

Where fiduciary responsibility has been allocated to another person or persons pursuant to the procedures contained in this part, the allocating fiduciary shall not be liable for any act or omission of such person or persons unless:

(a) The allocating fiduciary has violated 5 U.S.C. 8477(b) with respect to—

(1) The allocation or the continuation of the allocation,

(2) The implementation of these procedures, or

(3) The duty to monitor the performance of such person or persons in a reasonable manner during the life of the allocation, or

(b) The allocating fiduciary would otherwise be liable in accordance with 5 U.S.C. 8477(e)(1)(D).

§ 2584.8477(e)-6 Definitions.

As used in this part:

(a) "Act" means the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8401 *et seq.* (Supp. IV 1986);

(b) "Board" means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472;

(c) "Common Stock Index Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(C);

(d) "Executive Director" means the executive director of the Federal Retirement Thrift Investment Board as appointed pursuant to 5 U.S.C. 8474;

(e) "Fiduciary duty" and "fiduciary responsibility" mean any duty or responsibility which involves the exercise of discretionary authority or discretionary control over—

(1) The management or disposition of the assets of the Thrift Savings Fund, or

(2) The administration of the Thrift Savings Fund.

(f) "Fixed Income Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(B);

(g) "Government Securities Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(A);

(h) "Investment manager" means any fiduciary who—

(1) Has the power to manage, acquire or dispose of any asset of the plan,

(2) Is (A) registered as an investment adviser under the Investment Advisers Act of 1940, (B) a bank, as defined in that Act, or (C) an insurance company qualified to perform services described in subsection (1) under the laws of more than one state, and (3) has acknowledged in writing that he or she is a fiduciary with respect to the Thrift Savings Fund;

(i) "Qualified professional asset manager" has the meaning which is prescribed at 5 U.S.C. 8438(a)(7).

(j) "Thrift Savings Fund" means the fund established under 5 U.S.C. 8437.

§ 2584.8477(e)-7 Effective date.

This section is effective thirty days after publication in final form, and liability for any transaction which occurs on or after this date will be governed by this section only. In accordance with section 114(a) of Pub. L. 99-558, the interim regulations promulgated by the Board appearing at Title 5, CFR, Chapter VI, §§ 1000.1 through 1000.5, will no longer be effective as of [insert date 30 days after publication of final rule or January 1, 1988, whichever is earlier]. Liability for transactions which occurred during the effective period of the interim regulations will continue, however, to be governed by those regulations.

Signed at Washington, DC this 13th day of July, 1988.

David M. Walker,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 88-16125 Filed 7-21-88; 8:45 am]

BILLING CODE 4810-26-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Parts 66 and 164**

(CGD 88-011)

RIN 2115-AD04

Private Electronic Aids to Marine Navigation

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Coast Guard is considering amending its regulations to permit private radio aids to marine navigation. Present regulations prohibit all private radio aids, with the exception of radar beacons and shore based radar stations, and may unnecessarily restrict the mariner from making maximum use of available technology. The Coast Guard will also be examining the regulations pertaining to vessels that are required to carry an electronic position fixing device. The Coast Guard is requesting comments in these areas to assist it in drafting new regulations.

DATE: Comments must be received on or before December 2, 1988.

ADDRESS: Comments should be mailed to Commandant (G-LRA-2/21) (CGD 88-011), U.S. Coast Guard, Washington, DC, 20593-0001. Comments will be available for public inspection and copying between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-LRA-2/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant George H. Self, Jr., Project Manager, Office of Navigation Safety and Waterway Services (G-NRN-2), Room 1413, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-0287.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this advance notice of proposed rulemaking by submitting written views, data, or arguments. Persons submitting

comments should include their names and addresses, identify this notice as CGD 88-011, give specific sections of the notice to which their comments apply, and give reasons for the comments. If acknowledgment of receipt of a comment is desired, a stamped self-addressed postcard or envelope should be enclosed. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. All comments received will be considered in preparing a Notice of Proposed Rulemaking.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Drafting Information

The principal persons involved in drafting this rulemaking are: Lieutenant George H. Self, Jr., Project Manager, and Lieutenant Commander Don M. Wrye, Project Attorney, Office of Chief Counsel.

Background

The Coast Guard is authorized to establish and maintain marine aids to navigation by 14 U.S.C. 81. Private parties may establish aids after obtaining authorization from the Coast Guard as stated in 14 U.S.C. 83. This authorization must comply with applicable regulations.

The regulations promulgated in 33 CFR 66.01 require that permission to establish a private aid be obtained from Commandant, U.S. Coast Guard. Although the Coast Guard has statutory authority to permit private electronic aids, 33 CFR 66.01-1(d) states that "With the exception of radar beacons (racons) and shore based radar stations, operation of electronic aids to navigation as private aids will not be authorized."

This restriction prevents the Coast Guard from authorizing private electronic aids. The intent of this self-imposed restriction was to prevent the proliferation of radio navigation systems prior to the Department of Transportation decision to provide Coastal Confluence Zone (CCZ) coverage.

As stated in the 1986 Federal Radionavigation Plan (FRP), it is the policy of the federal government to provide radionavigation systems to

support national security, provide safety of travel and promote efficient transportation services. LORAN-C has evolved as the navigation system of choice for a mariner operating in the CCZ. OMEGA and TRANSIT are heavily relied on outside of LORAN-C coverage areas. The NAVSTAR Global Positioning System (GPS) will become operational in the 1990's and may become the new system of choice for the mariner.

These federally provided systems do not meet the marine navigation and positioning requirements of all users. In response to that, private electronic positioning systems have been marketed for several years. They are used for surveying, mapping, dredging, oil and mineral exploration, etc. The general characteristics of these systems are:

- High accuracy; better than 15 meters.
- Limited area and availability.
- Frequently require trained operators.
- Non-permanent installations.
- High cost user equipment.
- Frequently do not provide real time information to vessel navigator.

There is presently an effort originally sponsored by the Department of Transportation's Research and Special Programs Administration to have the Radio Technical Commission for Maritime Services (RTCM) issue a Differential GPS standard. This standard will encourage industry to market GPS receivers that can use GPS signal corrections to improve the accuracy of the position determined by the receiver. It would constitute providing a private aid to navigation if these corrections were provided by a non-federal entity.

New systems continue to be developed. Private entrepreneurs plan to implement radiodetermination satellite systems in the early 1990's. These systems can provide nearly global coverage and could be used for marine navigation.

The maritime industry will continue to need and want positioning and navigation systems beyond what the federal government can provide. The Coast Guard has received requests that its regulations be amended to allow private electronic aids so that industry's needs can be met.

If private marine radionavigation aids are allowed, some mariners may wish to use them in lieu of other federally required systems. Present regulations in 33 CFR 164.41 require certain vessels to have an electronic position fixing device on board. This device can be a LORAN-C receiver, or a satellite navigation receiver, or as stated in 33 CFR 164.41(a)(3), "A system that is found by

the Commandant to meet the intent of statements of availability, coverage, and accuracy for the U.S. Coastal Confluence Zone (CCZ) contained in the U.S. 'Federal Radionavigation Plan' * * *. The Coast Guard has yet to be asked to approve using something other than a LORAN-C receiver or a satellite navigation receiver under this regulation.

A radio aid operated outside the U.S. is typically outside its usable range in U.S. waters unless it is a satellite based system. The government provides the radionavigation signal when the government requires the mariner to have a radionavigation receiver on his ship. By providing the signal, the government ensures the availability, coverage, and accuracy of the system is adequate. In addition, the Coast Guard maintains transmitting station logs and reports to ensure accountability to the public for the operation of the system. Any private system used in place of a federally required system should also be held accountable.

Request for Data, Information, and Comments

1. Should the Coast Guard amend its regulations to allow for private electronic aids to marine navigation?
2. Should the Coast Guard allow private marine radio aids via a licensing program?

The Coast Guard would license, inspect and monitor all maritime electronic aids so that the federal government is aware of the operational status of all systems at all times.

This alternative will ensure that all applicants who desire to operate private electronic aids are capable of meeting a standard of performance the government deems necessary to ensure safe navigation. The Coast Guard is empowered by 14 U.S.C. 85 to prescribe and enforce rules and regulations relating to private aids to navigation.

This would parallel the Federal Aviation Administration (FAA) approach to private (the FAA calls them "Non-federal") air radionavigation aids. The FAA requires specific equipment be carried on certain aircraft for that aircraft to be allowed in federal air space. The federal government provides the radionavigation aid. The FAA and Federal Communications Commission (FCC) license the receivers. Non-federal radio aids are allowed but must be approved by the FAA and licensed by the FCC. The FAA conducts on site installation, operation, and maintenance inspections. Thus, by issuing a license, the Coast Guard would have a greater degree of control over private aids.

To perform this task would require the greatest amount of government resources. Establishing performance standards, conducting system evaluations, full time operational monitoring, and performance surveys would prove very costly in manpower and resources.

3. Should the Coast Guard allow private marine radionavigation aids and require system operators to certify that their systems meet yet to be established minimum performance standards when their system is used to satisfy the federal requirement for an electronic position fixing device? Who should issue these minimum performance standards?

Any new policy on private radio aids should seek to avoid a situation where unregulated systems hazard safe navigation. A situation where private radio aids are allowed and are then found to be the cause of several serious marine accidents is unacceptable. This desire to prevent marine disasters must be tempered with a clear intent to not over-regulate the marine industry.

Allowing private marine radionavigation aids with no regulation is inconsistent with existing policy and regulations. Private marine radio aids may have no negative impact on marine safety but since they have been prohibited up to now it is very difficult to predict exactly what will happen in the marketplace. Existing regulations require certain vessels to carry an electronic position fixing device. The government has ensured the availability, accuracy, and coverage of the signals used by these required devices. The government has also held itself accountable to the public for the integrity of these signals.

Regulations may be needed to require manufacturers to self-certify that the system they are providing meets stated measures of minimum performance. This could be done by requiring the manufacturer to place a label on each radionavigation receiver delivered. This label would state that the receiver, together with the other parts of that particular radio aid system, meets the intent of the statements of availability, coverage, and accuracy for U.S. coastal and harbor/harbor approach phase navigation contained in the FRP.

Additional regulations, if required, may be issued by the Coast Guard to require appropriate logs and records be maintained to ensure the provider is accountable for the proper operation of private marine radio aid. The FAA has already issued similar regulations for its "non-federal" aviation radio aids. The FCC would defer to the Coast Guard on what logs are required to ensure accountability in marine

radionavigation. The Coast Guard would not normally review the logs unless they were needed during an investigation of a marine accident.

These recordkeeping regulations could be implemented by the Coast Guard drafting or adopting a Minimum Performance Standard for Private Marine Radionavigation Aids. The public is invited to comment on who should draft the standard and its contents.

This alternative would not require any additional Coast Guard resources for follow up and would make the manufacturers accountable for the proper operation of their systems.

4. Should the Coast Guard allow operation of private electronic aids with little or no control?

The general public has several government navigation systems available at no direct cost to the user. Any private company that charges a user fee will have to offer a superior or unique service (not available to the general public even at a price), or they will go out of business.

The FCC is responsible for frequency management to prevent private radionavigation aids from interfering with existing public and private broadcasting systems. The Coast Guard and the FCC work closely through various committees to ensure that frequency allocations are not made that would interfere with existing Coast Guard systems.

Neither statutory nor regulatory law imposes upon the Coast Guard the duty to supervise the maintenance and operation of private aids. Ensuring that systems perform as specified could be supplemented by encouraging the formation of a marine radionavigation provider/user group. This group could establish standards of performance for this new industry and provide feedback that could bring potential problems to the attention of concerned agencies.

This alternative is the least expensive of all the alternatives and requires no additional resources and manpower. This alternative doesn't address the issues of system availability, coverage, accuracy, and accountability raised in 33 CFR 164.41.

5. Should 33 CFR 164.41 be changed to provide guidelines on how a private marine radio aid can qualify to be used in place of a federally provided system that is required on certain vessels?

Impact

An amendment of these regulations should have no significant environmental impact or direct impact on energy use. An indirect impact is the possible fuel saved and operating time

saved by vessels using the most direct route between waypoints.

Discussions with manufacturers of electronic navigation systems indicate there is a strong demand for specialized services that only electronic navigation aids can fulfill. Private electronic navigation systems are an untapped source of new jobs and revenue.

By charging user fees, private owners can recoup their investment. Users may benefit through more direct routing and increased safety. Since regulations prohibit the use of private aids to navigation, a definite impact on the economy cannot be determined. However, it is the Coast Guard's opinion that there is good potential for small businesses to get involved with the maintenance and operation of these systems.

Preliminary Regulatory Evaluation

The amendment under consideration, if adopted, is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The notice and comment procedure will identify interest in private electronic aids and give notice of the Coast Guard's intentions regarding these systems. An additional purpose of this advance notice of proposed rulemaking is to develop economic data with which the Coast Guard can determine the economic impact of the amendments being considered.

Paperwork Reduction Act

There may be some additional paperwork burdens placed on the Coast Guard and members of the public if the amendments being considered are adopted. Should any new or additional paperwork burdens be identified during the rulemaking process, approval will be sought from the Office of Management and Budget.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this advance notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: July 6, 1988.

R.T. Nelson,
Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.
[FR Doc. 88-16495 Filed 7-21-88; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Cleveland REG 87-02]

Safety Zone; Old River and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Proposed regulation; extension of comment period.

SUMMARY: The Captain of the Port, Cleveland, is further extending the comment period until December 1, 1988, to receive comments on this proposed regulation to create ten safety zones in the Old River and the Cuyahoga River. This action is being taken due to the progress being made by the ad hoc working group formed to examine the Cuyahoga River situation. The Captain of the Port has reason to believe that further progress will be made, and that an equitable solution will be reached obviating the need for further Federal regulation.

DATES: Written comments may be submitted on or before December 1, 1988.

ADDRESS: The mailing address for comments is the U.S. Coast Guard Marine Safety Office, 1055 E. 9th St., Cleveland, OH 44114. Comments may also be hand-delivered to this address. All comments received will be available for examination at the above address.

FOR FURTHER INFORMATION CONTACT: CDR Patrick A. Turlo, Captain of the Port, Cleveland (216) 522-4406.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published in the Federal Register on December 3, 1987 at page 45974 and was distributed to each of the affected entities.

The response to the proposed rulemaking indicated that the comment period should be extended and a public hearing scheduled. The public hearing and comment period extension were announced in the Federal Register on February 8, 1988 at page 3609. A public hearing was held on March 7, 1988, at which twenty-six commenters spoke. Several commenters expressed a desire to form a working group to examine the Cuyahoga River situation, and submit an alternative to the proposed regulations. The comment period was extended until June 8, 1988 in order to permit the comments of this working group to be entered into the record and considered as an alternative. The progress made by the working group has been such that the Captain of the Port is encouraged that a viable alternative to Federal regulation may be reached. All comments received will be considered before final action is taken on the proposed regulation.

Authority: 33 U.S.C. 409; 49 CFR 1.46; 33 CFR 1.05-1(g).

Dated: July 11, 1988.

P.A. Turlo,
Commander, U.S. Coast Guard, Captain of the Port, Cleveland, Ohio.

[FR Doc. 88-16498 Filed 7-21-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 166

[CGD 88-041]

Port Access Routes; Approaches to Chesapeake Bay, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; correction.

SUMMARY: This notice corrects an error published in the Federal Register July 12, 1988, Volume 53, page 28283. The error is in the first column, paragraph a. under the Issues section. The paragraph should read as follows:

a. Should the Atlantic Ocean Channel, when dredged to 650 feet wide and 60 feet deep, be used by both inbound and outbound vessels?

FOR FURTHER INFORMATION CONTACT: Mr. John Walters, (804) 398-6230.

Dated: July 18, 1988.

R.T. Nelson,
Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.
[FR Doc. 88-16496 Filed 7-21-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3418-7]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Alternative Reasonably Available Control Technology for Frisamar, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision provides an alternative reasonably available control technology (RACT) determination for the control of volatile organic compound (VOC) emissions from one paper coating line at Frisamar, Incorporated in Clinton, Connecticut. The intended effect of this action is to propose approval of the State's request to amend its SIP. This

action is being taken in accordance with section 110 of the Clean Air Act.

DATE: Comments must be received on or before August 22, 1988. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, EPA Region I, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of Connecticut's submittal and EPA's Technical Support Document prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203 and the Air Compliance Unit, Department of Environmental Protection, State Office Bldg., 165 Capitol Avenue, Hartford, CT 06100.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Connecticut Department of Environmental Protection (DEP) submitted a proposed SIP revision to EPA. This revision consists of proposed State Order No.6001 for Frisamar, Incorporated (Frisamar). This State Order was proposed pursuant to provisions found in subdivision 22a-174-20(cc)(3) of Connecticut's Regulations which allows the DEP to impose alternative limitations on a source that has demonstrated it cannot meet the RACT limitations in the SIP for technological and economic reasons.

EPA approved the provisions in subdivision 22a-174-20-(cc)(3) for making alternative RACT determinations on June 7, 1982 (47 FR 24552) as part of Connecticut's Ozone Attainment Plan. As part of that SIP revision, Connecticut submitted a letter dated January 11, 1982 in which the State committed to submit all alternative RACT determinations to EPA as SIP revisions.

Frisamar is a paper coating facility utilizing two coating lines. The facility is subject to subsection 22a-174-20(q), "Paper coating," of Connecticut's regulations which requires each coating line to meet an emission limitation of 2.9 pounds VOC/gallon of coating (minus water). Under Connecticut's regulations, a source subject to subsection 22a-174-20(q) must comply with the emission limitation contained in that regulation no later than July 1, 1985. Frisamar has installed an inert atmosphere solvent recovery system on one of its coating lines (coater #2). It other coating line

(coater #1) presently has no control equipment.

As alternative RACT for one of Frisnar's coating lines (coater #1), the State Order requires Frisnar to adhere to an emission rate of 5.32 pounds VOC/gallon of coating (minus water) for all first-pass coatings and an emission rate of 6.42 pounds VOC/gallon of coating (minus water) for all second-pass coatings. Additionally, to further limit the use of the higher VOC-containing second-pass coatings, the State Order requires Frisnar to adhere to a limitation of 20 pounds VOC/ream (3000 square feet) of material coated when utilizing second-pass coatings. Frisnar is required to adhere to the SIP emission rate (as set forth in subsection 22a-174-20(q)) of 2.9 pounds VOC/gallon of coating (minus water) on its other coating line (coater #2). Coaters #1 and #2 are required to maintain compliance with their applicable emission rates on an instantaneous basis. Further, the State Order requires Frisnar to achieve and maintain a minimum overall reduction level of ninety-three percent (93%) from the inert atmosphere solvent recovery system installed on coater #2.

Additionally, the State Order requires Frisnar to maintain daily and monthly caps of 918 pounds and 2,833 tons, respectively, for coater #1 and daily and monthly caps of 286.47 pounds and 2.87 tons, respectively, for coater #2. The monthly cap on coater #1 is required to be maintained on an average basis over every two consecutive month period. The daily and monthly caps insure that the VOC emissions from this facility will not interfere with reasonable further progress (RFP) towards attaining the National Ambient Air Quality Standard (NAAQS) for ozone in Connecticut.

To justify the above limitations as an alternative RACT determination, Frisnar has submitted an extensive amount of technical and economic information to the DEP showing that it cannot reasonably attain daily compliance with the emission limitations contained in Connecticut's federally-approved SIP for coater #1. EPA's evaluation of this information confirms that add-on control equipment is economically infeasible for coater #1. (A copy of EPA's analysis is contained in the Technical Support Document prepared for this revision and is available from the EPA Regional Office listed in the ADDRESSES section of this notice.)

Furthermore, Frisnar has researched the feasibility of reformulating its coatings used on coater #1 to complying levels. Through these efforts, Frisnar was able to realize a 28%

increase in the content of coating solids in the coating used on coater #1. Since the stencil manufacturing operation that Frisnar uses involves saturation as much as coating, however, the use of any higher solids-containing coatings is not possible since the tissue paper is simply unable to absorb such coatings. The result of using any higher solids coatings is "skipping" which renders the product useless for subsequent sale and use.

EPA has reviewed the requirements of proposed State Order No. 8001 and has determined that they constitute alternative RACT for Frisnar. Further justification and rationale for approving this revision are contained in the Technical Support Document prepared by EPA for this revision. Copies of that document may be obtained from the EPA Regional Office listed in the ADDRESSES section of this notice.

EPA is proposing to approve the DEP's proposed State Order as a revision to the Connecticut SIP, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this notice. This revision is being proposed under a procedure called parallel-processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to the proposed revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after a fully effective State Order has been issued by the Connecticut DEP and submitted to EPA as a formal revision for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Connecticut's proposed State Order No. 8001 as a revision to the Connecticut SIP. The provisions of Connecticut's proposed State Order No. 8001 impose alternative RACT on Frisnar, Incorporated pursuant to subdivision 22a-174-20(cc)(3) of Connecticut's Regulations. EPA is proposing to approve this revision based on justification received from Frisnar showing that it is economically infeasible for Frisnar to install add-on control equipment on coater #1. The provisions contained in the State Order for this coater restrict the overall use of this coater. This requires Frisnar to

utilize its controlled coater (i.e., coater #2) for a large majority of its production. This proposed approval covers only this limited case and should not be construed as a national precedent for other paper coating facilities.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Date: September 3, 1987.

Editorial Note: This document was received at the Office of the Federal Register on July 19, 1988.

Michael E. Deland,
Regional Administrator, Region 1.
[FR Doc. 88-10545 Filed 7-21-88; 8:45 am]
BILLING CODE 5500-30-01

40 CFR Part 52

[FRL-3415-3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing approval of revisions to the Illinois State Implementation Plan (SIP) for Ozone. The revisions pertain to the control of volatile organic compound (VOC) emissions from tank truck leaks, external floating roofs and the coating or miscellaneous metal parts. Additionally, Illinois has clarified its definition pertaining to 3-year averaged emissions. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed USEPA action must be received by August 22, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency,
Region V, Air and Radiation Branch
(5AR-26), 230 South Dearborn Street,
Chicago, Illinois 60604.

Illinois Environmental Protection
Agency, Division of Air Pollution
Control, 2200 Churchill Road,
Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:
Randolph O. Cano, Air and Radiation
Branch (5AR-26), Environmental
Protection Agency, Region V, Chicago,
Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For Illinois see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.314. For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the ozone NAAQS by December 31, 1982, or in certain cases, by December 31, 1987. The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), 44 FR 67182 (November 23, 1979), and 46 FR 7182 (January 22, 1981).

On July 11, 1985 (50 FR 28224), USEPA proposed to disapprove certain regulations developed to satisfy the reasonably available control technology (RACT) requirements for Illinois sources of VOC which are covered by USEPA's second set of Control Techniques Guidelines (CTGs). On June 25, 1987, the State of Illinois submitted revised regulations to satisfy these requirements for three source categories: Surface coating of miscellaneous metal parts and products, petroleum liquid storage in external floating roof tanks, and leak prevention from gasoline tank trucks and vapor collection systems. It also clarified its definition concerning 3-year averaging. USEPA will rulemake in the remaining CTG source categories in future Federal Register notices.

What follows is a discussion of the revised regulations for each of these

three source categories including the relevant background, a description of the revised regulations, and USEPA's evaluation of each provision. Finally, USEPA announces its proposed approval of these three rules and solicits public comments on the proposed SIP revision and USEPA's proposed approval. It should be noted that the geographic applicability of these regulations is statewide except as noted below.

A. Review of Illinois' Revision to its Miscellaneous Metal Parts and Products Rule

Background

On July 11, 1985, USEPA proposed disapproval of the exemption for the coating of marine propulsion equipment and the exteriors of airplanes in Illinois' definition of "Miscellaneous Metal Parts and Products" which is contained in Rule 201: Definitions. The basis of USEPA's disapproval was that the Group II CTG's are intended to apply to the coating of marine propulsion equipment and the exteriors of airplanes, if parts for the airplane exteriors are coated as a separate manufacturing operation. It should be noted that USEPA proposed to approve the underlying miscellaneous metal parts and products rule as Rule 205(n)(1)(f) in the July 11, 1985, proposed rulemaking, but final approval of the rule will be deferred until final rulemaking on this revised provision.

Revised Rule

Illinois revised its miscellaneous metals rule to satisfy USEPA's concerns. Its rule was revised as follows:

Section 211.122 Definitions

The exterior of airplanes and marine propulsion equipment were deleted as exemptions within the definition of "miscellaneous metal parts and products."

Section 215.208(b) Exemption from Emission Limitations

Outboard Marine Corporation's (OMC) Waukegan facility is exempt from Illinois' miscellaneous metals rules providing that its VOC emissions from miscellaneous metals coating operations do not exceed 35 tons per year.

Evaluation

OMC presented extensive documentation concerning the cost of complying with Illinois miscellaneous metal parts 3.5 lbs VOC/gal of coating limit through the use of high solids coatings. OMC estimated that capital costs in excess of \$1 million would be required. The principal costs associated

with converting to high solids coatings result from: the addition of an oven and cooling tunnels, modification of the parts washing and air handling systems, provision of proportioner pumps from the paint delivery system, and enlargement of the outboard engine prime and topcoat spray booths. Utilization of high solids coatings would reduce VOC emissions from OMC by 6-9 tons per year.

OMC documented that this would result in unreasonable costs. OMC submitted written cost estimates obtained from vendors of incineration and solvent concentrator systems. Installation of either of these systems would reduce plant emissions by 90% and would require unreasonable annualized costs.

Summary and Proposed Action

Illinois has deleted the exemption for marine propulsion equipment and the exterior of airplanes from its miscellaneous metal rules and has added a 35 tons per year cutoff exemption for OMC. It is proposed that these revisions be approved, as satisfying the deficiency noted in the July 11, 1985, NPR because the estimated cost effectiveness value for a high solids conversion or add on controls program is significantly higher than envisioned in the CTG.

It should be noted that this source is located in the Chicago ozone nonattainment and demonstration areas. USEPA will complete its rulemaking on the attainment demonstration for these areas in a separate Federal Register notice. (The "demonstration area" is the 10 Illinois counties for which the Illinois 1982 Ozone Plan and attainment demonstrations were developed—Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair and Will.) The proposed emission limitation will not increase the present emissions from this facility and, therefore, will not exacerbate the nonattainment problem.

B. Review of Illinois' Revision to its External Floating Roof Storage Tank Rule

Background

Rule 205(o)(3)(D)(iv) exempts stationary storage tanks, equipped with an external floating roof used to store crude, from the provision of Rule 205(o)(3)(C) which requires the use of secondary seals on external floating roof tanks. On July 11, 1985, USEPA proposed disapproval of Rule 205(o)(3)(D)(iv) because Illinois failed to

demonstrate that it is unreasonable to require the use of secondary seals.

Revised Rule

Illinois revised its rule on external floating roofs to satisfy USEPA's concerns. Its rule was revised as follows:

Section 215.240 Applicability

The following revisions (§§ 215.241 and 215.249) are applicable to the following counties: Cook, DuPage, Kane, Lake, Macoupin, Madison McHenry, Monroe, St. Clair, and Will.

Evaluation

This applicability requirement is approvable as it includes all of Illinois' ozone nonattainment (and demonstration) areas, and RACT is currently required only in nonattainment areas.

Section 215.241 External Floating Roofs

The only revision included in this section is contained § 215.241(d) which exempts external floating roof tanks used to store crude oil with a pour point of 50°F or higher as determined by ASTM Standard D97-86 from the requirement to use secondary seals.

Evaluation

This revision satisfies USEPA's concerns, as specified in the July 11, 1985, notice of proposed rulemaking (NPR). Section 215.241(d) specifically defines "waxy, heavy pour crude oil," and exempts only tanks with this type of crude oil from the requirement to have secondary seals. The December 1978 Control Technique Guideline (CTG) document titled "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks" recommends this exemption because "these crudes cause a deposit on the tank wall which is scraped onto the roof when the tank is worked, damaging the secondary seal."

Section 215.249 Compliance Dates

Final compliance, for the sources subject to the above, is required by December 31, 1987.

Evaluation

This compliance date is approvable as expeditious, because it allows less than a year for affected sources to achieve final compliance.

Summary and Proposed Action

Illinois has revised its exemption for crude oil storage to be consistent with USEPA policy, as specified in the external floating roof CTG. USEPA,

therefore, proposes to approve it as satisfying the deficiency cited in the July 11, 1985, NPR.

C. Review of Illinois' Gasoline Tank Truck Leak Rule

Background

On July 11, 1985, USEPA cited Illinois' Part D control strategy as being deficient, in part, because of its failure to have adopted regulations for leak prevention from gasoline tank trucks and vapor collection systems.

Revised Rule

Illinois revised its rules for bulk gasoline plants, bulk gasoline terminals, and gasoline dispensing stations, and added a rule for gasoline delivery vessels to satisfy USEPA's concerns. Its rules were revised as follows:

Section 211.122 Definitions

Illinois' definition of "vapor collection system" is consistent with the definition contained in the December 1978 CTG document titled "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems." This definition is, therefore, approvable.

It should be noted that Illinois' existing gasoline distribution regulations have been revised, to maintain consistency with the CTG, by replacing reference to "vapor balance system" with "vapor collection system."

Section 215.584 Gasoline Delivery Vessels

Illinois' rule reads as follows:

Section 215.584 (a) any delivery vessel equipped for vapor control by use of vapor collection equipment:

- (1) Shall have a vapor connection that is equipped with fittings which are vapor tight;
- (2) Shall have its hatches closed at all times during loading or unloading operations, unless a top loading vapor recovery system is used;
- (3) Shall not internally exceed a gauge pressure of 18 inches of water or a vacuum of 6 inches of water;
- (4) Shall be designed and maintained to be vapor tight at all times during normal operations;
- (5) Shall not be refilled in Illinois at other than:
 - (A) A bulk gasoline terminal that complies with the requirements of Section 215.582, or
 - (B) A bulk gasoline plant that complies with the requirements of Section 215.581(b)(1) and (2).
- (6) Shall be tested annually in accordance with the pressure-vacuum test procedure described in EPA 450/2-78-051 Appendix A. Each vessel must be repaired and retested within 15 business days after discovery of the leak by the owner, operator, or the Agency, when it fails to sustain:

- (A) A pressure drop of no more than 3 inches of water in 5 minutes; and
- (B) A vacuum drop of no more than 3 inches of water in 5 minutes.

Evaluation

Section 215.584(a) is approvable because it satisfies the following requirements:

- (1) It requires annual testing according to the test procedure described in the subject CTG.
- (2) It requires that a pressure change not exceed 3 inches of water in 5 minutes at the conditions specified in the test method.
- (3) It prohibits the delivery vessel from internally exceeding a gauge pressure of 18 inches of water or vacuum of 6 inches of water.
- (4) It contains additional requirements not specified in the CTG.

The only deviation from the CTG is Illinois' requirement that the delivery vessel be repaired and retested within 15 business days after discovery of the leak, as opposed to a requirement of 15 days in the CTG and the September 1979 document titled "Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories." This deviation is acceptable based on a survey by the Illinois Petroleum Marketers which indicated that 15 days is insufficient in Illinois to accomplish the required work and also because it is a minor deviation.

Section 215.584(b)

Any delivery vessel meeting the requirements of Subsection (a) shall have a sticker affixed to the tank adjacent to the tank manufacturer's data plate which contains the tester's name, the tank identification number and the date of the test. The sticker shall be in a form prescribed by the Agency and shall be displayed no later than December 31, 1987.

Evaluation

This section is approvable because it is consistent with the CTG and related guidance and December 31, 1987, constitutes an expeditious compliance schedule as it allows less than one year from adoption of the rule.

It should be noted that the stickers are invalid after one year. This is consistent with the requirements in § 215.584. USEPA believes that the State intends to require that new stickers be obtained on an annual basis. The State is requested to confirm this during the public comment period on this proposed rulemaking.

Section 215.584(c)

The owner or operator of a delivery vessel shall:

- (1) Maintain copies of any test required under subsection (a)(6) for a period of 3 years;
- (2) Provide copies of these tests to the Agency upon request; and
- (3) Provide annual test result certification to bulk gasoline plants and terminals where the delivery vessel is loaded.

Evaluation

These recordkeeping and reporting requirements are adequate for the purpose of assisting in the evaluation of the leak tightness of delivery vessels.

Section 215.584(d)

Any delivery vessel which has undergone and passed a test in another state which has a USEPA-approved leak testing and certification program will satisfy the requirements of Subsection (a). Delivery vessels must display a sticker, decal or stencil, approved by the State where tested, or comply with the requirements of Subsection (b). All such stickers, decals or stencils shall be displayed no later than December 31, 1987.

Evaluation

This is a reasonable requirement which is approvable. However, as noted above, a sticker is only valid for one year.

Section 215.581 Bulk Gasoline Plants

Section 215.582 Bulk Gasoline Terminals

Section 215.583 Gasoline Dispensing Facilities

The above rules have common requirements, largely for leaks from vapor collection systems, which will be grouped together as appropriate.

Section 215.581(a)(3), 215.582(a)(5), 215.583(a)(2)(c)

These actions require delivery vessels to display the appropriate sticker pursuant to the requirements of § 215.485 (b) or (d)

Evaluation

This requirement has the effect of prohibiting the use of delivery vessels which have not passed a leak test in the past year and is approvable.

Sections 215.581(4) and (5), 215.582(d)(1) and (2), 215.583(d)(4)

These sections require the bulk plant or terminal vapor collection systems and gasoline loading equipment be operated in a manner that prevents:

- (1) Gauge pressure from exceeding 18 inches of water and vacuum from

exceeding 6 inches of water as measured as close as possible to the vapor hose connection; and

- (2) A reading equal to or greater than 100% of the lower explosive limit (LEL measured as propane) when tested in accordance with the procedure described in EPA-450/2-78-051, Appendix B;
- (3) Avoidable leaks of liquid during loading or unloading operations; and
- (4) Each operator of a bulk gasoline plant or terminal is required to provide a pressure tap or equivalent on the vapor collection system in order to allow determination of compliance with item 1 above.

Items (2) and (3) also apply to the operation of vapor collection systems and delivery vessel unloading points at gasoline dispensing stations.

Evaluation

The above requirements are consistent with those in the CTG and related guidance for vapor collection systems and gasoline loading equipment.

Sections 215.581(d)(6), 215.582(d)(3), and 215.583(d)(5)

These sections require that within 15 business days after discovery of a leak, a vapor collection system must be repaired and retested.

Evaluation

These sections are consistent with the CTG and related guidance for vapor collection system. See also discussion of § 215.584.

Summary and Proposed Action

Illinois has adopted regulations for leak prevention from gasoline tank trucks and vapor collection systems. These regulations satisfy USEPA guidance for leak testing and repair of gasoline tank trucks and vapor collection systems. USEPA approved test methods have been adopted for use with these rules. USEPA, therefore, proposes to approve these regulations as satisfying the deficiency cited in the July 11, 1985, NPR and meeting the Act's RACT requirement for these three source categories.

D. Clarification of Three-Year Averaging

Illinois adopted the following language to clarify the applicability of those regulations which are qualified by the words "when averaged over the preceding three calendar years." The three-year averaging criterion is used to determine whether certain graphic arts sources and bulk gasoline plants are exempt from RACT control requirements, because their annualized

emissions fall below specified levels. The language adopted by Illinois is presented below:

Section 215.107 Determination of Applicability

(a) In determining the applicability of regulations in this part which are qualified by "when averaged over the preceding three calendar years" the "preceding three calendar years" shall mean:

- (1) The three years preceding the date by which compliance is required for purposes of determining initial applicability to existing sources;
- (2) Any consecutive 3-year period for purpose of determining applicability to sources not previously subject to the regulation on the date by which compliance is required.

(b) Sources to which the regulation has been applicable at any time shall continue to be subject to the applicable limitations, even if operation change so as to result in an average which is below that which initially made the regulation applicable to those sources' operation.

Evaluation

This method of determining applicability is approvable because it is unambiguous, requires sources subject to a regulation to remain subject regardless of subsequent emission levels, and require a source to be subject to a regulation at any time its emission exceed a specified level, even if initially the source was below the specified cutoff.

Proposed Rulemaking Action

Illinois' June 25, 1987, submission satisfies the RACT II deficiencies, cited in the July 11, 1985, (50 FR 28224) NPR for miscellaneous metals (marine propulsion exemption), external floating roofs, and leak prevention from gasoline tank trucks and vapor collection systems. In addition, Illinois adopted language to clarify the applicability of those regulations which are qualified by the words "when averaged over the preceding three calendar years". USEPA proposes to approve the incorporation of these regulations (§§ 211.122, 215.105, 215.107, 215.206, 215.240, 215.241, 215.249, 215.581, 215.582, 215.583, 215.584) into the Ozone SIP for the reasons cited above.

Public comment is solicited on the proposed SIP revision and on USEPA's proposed approval of it. Public comments received by the date indicated above will be considered by USEPA in its final rulemaking.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP

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approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401-7642.

Dated: December 30, 1987.

Editorial Note: This document was received at the Office of the Federal Register on July 19, 1988.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 88-16546 Filed 7-21-88; 8:45 am]

BILLING CODE 5600-50-01

40 CFR Part 52

[A-1-FRL-3418-6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Miscellaneous Amendments to the SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions involve regulatory amendments and additions to SIP regulations for new source review, gasoline marketing, monitoring and reporting, and surface coating.

These revisions are administrative and/or procedural in nature, and do not affect air quality or the ability of the Commonwealth of Massachusetts to attain and maintain the National Ambient Air Quality Standards (NAAQS). The intended effect of this action is to approve revisions made by the Commonwealth of Massachusetts in accordance with section 110 of the Clean Air Act.

DATE: Comments must be received on or before August 22, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of

Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu (617) 565-3250; FTS 635-3250.

SUPPLEMENTARY INFORMATION: On January 30, 1987, and February 10, 1987, the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE) submitted revisions to its State Implementation Plan (SIP). These revisions include regulatory changes to SIP regulations previously approved by EPA at 310 CMR 7.02(2)(b) 4, 5, and 6; 7.02(12)(b)3; 7.02(12)(d); and 7.18. These revisions also include additions of two new subsections at 310 CMR 7.14 (2) and (3).

(1) New Source Review Regulations 310 CMR 7.02(2)(b) 4, 5, and 6

Regulation 310 CMR 7.02(2)(b)6 is being amended by inserting the words "or a major modification" after "major stationary source" to identify the facilities subject to the requirements of 310 CMR 7.00 Appendix A. In addition, Regulations 310 CMR 7.02(2)(b)4-(6) are amended by replacing the terms "facility" and "facilities" by the terms "stationary source" and "stationary sources" in order to clarify the applicability of the Emission Offsets and Nonattainment Review Program as set forth in Appendix A of 310 CMR 7.00.

(2) Gasoline Marketing Facilities Regulation 310 CMR 7.02(12)(b)3

Regulation 310 CMR 7.02(12)(b)3 (which describes the emission and efficiency testing required for the facilities described in 7.02(12)(a), Bulk Plants and Terminals Handling Organic Material, and (b), Distribution of Motor Vehicle Fuel) is being deleted because its same requirements are set forth in 7.02(12)(d).

(3) Gasoline Marketing Facilities Regulation 7.02(12)(d)

Regulation 310 CMR 7.02(12)(d) is being amended by requiring that EPA Test Method 18 be used by gasoline marketing facilities and that any alternative method be approved by EPA and the DEQE.

In addition, Regulation 310 CMR 7.02(12)(d) is being amended by requiring that any alternative method to EPA Test Method 27 for the pressure vacuum certification required by 310 CMR 7.02(12)(c), Motor Vehicle Fuel Tank Trucks, must be approved by EPA and the DEQE.

(4) Monitoring Devices and Reports Regulation 310 CMR 7.14

The DEQE has submitted two new subsections, 7.14 (2) and (3), for incorporation into its SIP. These new subsections reference 40 CFR Part 51 Appendix P to require legally enforceable procedures for continuous emissions monitoring (CEM) and thereby comply with 40 CFR 51.214(a).

(5) Regulation 310 CMR 7.18 Volatile Organic Compounds

Regulation 310 CMR 7.18 currently covers ten VOC source categories (all surface coating operations) with emission limitations specified in terms of lbs. VOC per gallon coating (excluding water) at application. These source categories are metal furniture, metal cans, large appliances, magnet wire insulation, automobiles, metal coils, miscellaneous metal parts and products, paper, fabric, and vinyl surface coating operations. EPA and DEQE procedures regarding surface coating compliance determinations often require that emission rates be calculated in lbs. of VOC per gallon of coating on a solids basis. The conversion to solids basis in all surface coating regulations is allowed once the changes are consistent with EPA policy.

The DEQE has amended 310 CMR 7.18 Subsections (3), (4), (5), (6), (7), (10), (11), (14), (15), and (16) by converting the applicable limitations from "lbs. VOC per gallon coating (excluding water) at application" to their equivalents in "lbs. VOC per gallon of solids." This conversion of the applicable emission rates does not make them any more or less stringent as the amended emissions rates are equivalent to the original rates. Emission limitations expressed in terms of "lbs. of VOC per gallon of solids" reflect current EPA and DEQE compliance requirements.

For final EPA approval, the Commonwealth of Massachusetts must incorporate the following requirements.

(1) Explicit instructions must be given in the regulations for how an affected facility must determine the volume solids content from coating manufacturer's formulation data. (An EPA document, entitled "Procedure for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and other coatings," EPA-450/3-84-019, December 1984, sets forth procedures for determining the volume solids content.)

(2) Reference Method 24 with the volatile content of coatings determined for 60 minutes at 110 °C ± 5 °C must be required by the regulations.

(3) The affected facility must be required by regulation to track and record the amount of VOC in the coating "as applied" to the substrate by accounting for the quantity of diluent solvent added to the coating supplied by the manufacturer prior to application.

(4) The surface coating emission limitations expressed on a solids basis must conform to the guidance provided in an EPA document, entitled, "A Guideline for Surface Coating Calculations," EPA-340/1-86-016, July 1986 with respect to significant digits. The document provides for equivalent emission limits expressed on a solids basis for all surface coating operations.

EPA is proposing to approve the Commonwealth of Massachusetts State Implementation plan revisions for regulatory amendments to Regulations 310 CMR 7.02(2)(b) 4, 5, 6; 7.02(12)(d); and 7.14. EPA is proposed to approve the amendments to Regulation 310 CMR 7.18; with the understanding that the Commonwealth of Massachusetts shall incorporate the requirements outlined above. Those requirements must be incorporated and adopted by the Commonwealth before EPA can promulgate final approval of the revisions to 310 CMR 7.18.

EPA is soliciting public comments on issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

Proposed Action

EPA is approving the following revisions:

(1) Corrections to Regulation 310 CMR 7.02 which insert the words "or a major modification" after "major stationary source" in (b)6; and replace the terms "facility" and "facilities" with the terms "stationary source" and "stationary sources" in (b)4 through (b)6 as indicated in the DEQE's submittal which is being incorporated by reference.

(2) The deletion of Regulation 310 CMR 7.02(12)(b)3 which describes required emission and efficiency testing because those testing requirements are also set forth in 310 CMR 7.02(12)(d).

(3) Amendments to Regulation 310 CMR 7.02(12)(d) requiring that EPA test method 18 be used by specified gasoline marketing facilities and that any alternative method to EPA Test Method 18 be approved by EPA and the DEQE, and that any alternative to EPA Method 27, for the pressure vacuum certification required of fuel tank trucks, be approved by both EPA and the DEQE.

(4) Amendments to Regulation 310 CMR 7.14 adding subsections 7.14 (2) and (3) in order to meet EPA requirements for continuous emissions monitoring, recording, and reporting for certain stationary sources as required by 40 CFR 51.214(a).

(5) Amendments to Regulation 310 CMR 7.18 (3), (4), (5), (6), (7), (10), (11), (14), (15), and (16) for surface coating operations to convert the existing emission rates expressed in "lbs. of VOC per gallon of coating (excluding water) at application" to their equivalents in "lbs. of VOC per gallon of solids" with the understanding that the DEQE will revise these regulations by adopting the requirements described in this notice.

Under 5 U.S.C. 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a) (A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401-7642.

Editorial Note: This document was received at the Office of the Federal Register on July 19, 1988.

Dated: September 14, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88-16547 Filed 7-21-88; 8:45 am]

BILLING CODE 5600-50-01

40 CFR Parts 156 and 170

[OPP 300164B; FRL-3419-4]

Worker Protection Standards for Agricultural Pesticides; Public Meetings on Proposed Revision of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of the schedule of public meetings to be held

on the topic of EPA's proposal to revise its regulations governing worker protection from agricultural pesticides. At these meetings, EPA will explain the proposed rule and answer questions concerning the proposal. EPA believes that these meetings will assist potential commenters in understanding the proposal, leading to more useful public comments which the Agency will use in developing the final rule.

DATE: The public meeting will take place during the period from July 18, 1988, until August 12, 1988. The complete schedule of meeting dates and times is listed under the **SUPPLEMENTARY INFORMATION** unit of this notice.

ADDRESSES: The complete schedule of meeting addresses is listed under the **SUPPLEMENTARY INFORMATION** unit of this notice.

FOR FURTHER INFORMATION CONTACT:

By mail:

Patricia Breslin,
Director, Pesticide Farm Safety Staff
(TS-757C),

Office of Pesticide Programs,
Environmental Protection Agency,

401 M St. SW.,
Washington, DC 20460.

Office location and telephone number:

Rm. 1009, CM #2,
1921 Jefferson Davis Highway,
Arlington, VA,
(703) 557-7660.

SUPPLEMENTARY INFORMATION: EPA is proposing under authority of the Federal Pesticide, Fungicide, and Rodenticide Act (7 U.S.C. 136w(a)), to revise its regulations governing worker protection from agricultural pesticides (40 CFR Part 170). The proposed rule which published in the Federal Register of July 8, 1988 (53 FR 25970), would enlarge the scope of the standards; expand existing requirements for warnings about applications, wearing of personal protective equipment, and limitation on reentry; and add new provisions for decontamination, emergency medical duties, contact with handlers of highly toxic pesticides, cholinesterase monitoring of commercial pesticide handlers, and training. The proposal also includes a number of regulatory options on which EPA has specifically solicited public comment. There will be a 90-day public comment period on the proposal.

As part of its effort to obtain useful public comments on the proposal, EPA previously announced its intent to hold a series of public meetings for persons and groups affected by or interested in the proposed regulations (53 FR 25970). At these meetings EPA will explain the content of proposal and the associated

regulatory options, and answer any questions. No pre-registration is necessary for persons wishing to attend or speak at the meetings. Written comments on the proposed rule will be accepted at the meetings and placed in the EPA docket for this rulemaking. However, the meetings will not be transcribed by EPA, and oral comments made in the course of the meetings will not become part of the EPA docket.

Schedule of Meetings

A schedule of dates, times, and addresses for the public meetings follows:

July 18, 9 a.m., Office of Pesticide Programs, Crystal Mall #2, Room 1112, 1921 Jefferson Davis Highway, Arlington, Virginia.
July 25, 8 p.m., Orange County Library, 101 East Central Boulevard, Orlando, Florida.
July 26, 7 p.m., Palmer Pavillion, 301 Hackberry, McAllen, Texas.

July 27, 6 p.m., Holiday Inn, 777 North Pinal Avenue, Casa Grande, Arizona.
July 28, 6 p.m., State Office Building, Room 1036, 2550 Mariposa Mall, Fresno, California.
July 29, 7 p.m., Holiday Inn, 9 North Ninth Street, Yakima, Washington.
August 1, 7 p.m., College of Idaho, Student Union Building, Ohio Street, Caldwell, Idaho.
August 2, 6 p.m., Greeley Community Center, Room 101, 651 Tenth Avenue, Greeley, Colorado.
August 3, 7 p.m., Henry Wallace Building, Auditorium, East Ninth Street and Grand Avenue, Des Moines, Iowa.
August 4, 6 p.m., Lucas County Recreation Center, Luke's Barn, 2901 Key Street, Maumee, Ohio.
August 6, 6 p.m., Atlanta State Farmers Market, Exhibit Hall, 16 Forest Parkway, Forest Park, Georgia.

August 9, 7 p.m., Venice Inn, 431 Dual Highway (Route 40 East), Hagerstown, Maryland.
August 10, 6 p.m., Holyoke Community College, Frost 271, 303 Homestead Avenue, Holyoke, Massachusetts.
August 11, 7 p.m., University of Maine at Augusta, Jewett Auditorium, Room 156, Civic Center Drive, Augusta, Maine.
August 12, 7 p.m., Peninsula General Hospital Medical Center, Avery W. Hall Educational Center, Waverly and Locust Street, Salisbury, Maryland.
August 16, 7:30 p.m., State University of New York at New Paltz, New Paltz, New York.

Regional Contacts

Further information on each public meeting, including travel directions, is available from the contact person in the EPA Region in which the meeting is being held. At list of Regional contacts follows:

Meeting city	Contact person	Host EPA region	Telephone
Orlando	Ken Clark	IV	404-347-3222
McAllen	Van Kozak	VI	214-655-7240
Casa Grande	Caroline Irwin	IX	415-974-8366
Fresno	Sara Segal	IX	415-974-8366
Yakima	Alan Welch	X	206-442-8574
Caldwell	do	X	206-442-8574
Greeley	Ed Stearns	VIII	303-293-1745
Des Moines	Leo Alderman	VII	913-236-2835
Maumee	Dea Zimmerman	V	312-353-2192
Forest Park	Ken Clark	IV	404-347-3222
Hagerstown	Gordon Moore	III	215-507-9869
Holyoke	Andy Tnoli	I	617-565-3836
Augusta	do	I	617-565-3836
Salisbury	Gordon Moore	III	215-507-9869
New Paltz	Teresa Yaegel-Souffront	II	201-321-6765

A copy of the Agency's proposed rule may be obtained by calling the Regional contact identified above, or by writing or calling the contact person listed under **FOR FURTHER INFORMATION CONTACT**. Written comments on the proposal may be submitted to the Document Control Officer (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Comments should be in triplicate and bear the document control number, OPP-300164, and must be submitted by the October 6, 1988, deadline for comments.

Dated: July 15, 1988.
Douglas D. Campit,
Director, Office of Pesticide Programs.
[FR Doc. 88-16614 Filed 7-21-88; 9:45 am]
BILLING CODE 5540-20-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BERC-422-P]

Medicare Program; Explanation of Enrollee Rights and Other Provisions Applicable to Health Maintenance Organizations and Competitive Medical Plans

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Proposed rule.

SUMMARY: This proposed rule would revise current Medicare regulations relating to health maintenance organizations and competitive medical

plans. It would eliminate the requirement that organizations enroll two new Medicare beneficiaries for each present Medicare enrollee converted from a cost to a risk contract (the "two-for-one" rule), expand required information given to enrollees, and require annual notice of enrollees' rights under the plan. This rule would also add a provision to terminate a contract with an organization for noncompliance with the composition of enrollment standard requiring that no more than 50 percent of an organization's membership be comprised of Medicare and Medicaid enrollees (hereinafter referred to as the "50/50 rule") and would authorize sanctions when organizations fail to comply with the 50/50 rule or the terms of any waiver or exception to that rule. These provisions would conform our regulations with changes made by the

Omnibus Budget Reconciliation Acts of 1986 and 1987.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 20, 1988.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human Services, Attention: BERC-422-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If comments concern information collection or recordkeeping requirements please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3206, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BERC-422-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's Office at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Joan Mahanes (301) 966-4642, for two-for-one rule, and explanation of enrollee rights.
Larry Sobel (202) 245-0197, for 50 percent composition of enrollment rule.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Section 1876 of the Social Security Act (the Act) as amended by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248, provides for Medicare payment on a predetermined, per capita rate to eligible organizations that have entered into risk-sharing contracts with HCFA, and for payment on a prospective basis subject to annual adjustments based on reasonable costs to eligible organizations that have reasonable cost contracts. The definition of an eligible organization includes health maintenance organizations (HMOs) that have been Federally

qualified under title XIII of the Public Health Service (PHS) Act, and competitive medical plans (CMPs) that meet the requirements of section 1876(b)(2) of the Act. In general, eligible organizations must assume financial risk on a prospective basis for providing health care services to enrolled members, in exchange for a prepaid periodic payment made by the member or on the member's behalf. Medicare enrollees of organizations with risk-sharing contracts may be required to receive covered services only through the organization, except for emergency services and urgently needed out-of-area services.

Section 1876(c)(3)(B) of the Act provides that an eligible Medicare beneficiary may enroll with an eligible organization in the manner prescribed in regulations and may terminate his enrollment with the organization as of the beginning of the first calendar month after the beneficiary requests that his enrollment be terminated.

B. Two-for-one Rule

Section 114(c)(2)(A) of TEFRA provided that HMOs that had enrolled individuals under an existing cost contract could convert such individuals to enrollment under a risk contract only under limited circumstances. This provision is known as the two-for-one rule because the organization was required to enroll two "new" Medicare enrollees under its risk-sharing contract for each "current" non-risk Medicare enrollee it converted to coverage under the risk-sharing provisions of its contract. As defined in section 114(c)(2)(D) of TEFRA, a Medicare enrollee was "new" if the individual was not enrolled in the organization as a Medicare beneficiary prior to the time the organization entered into a risk contract. Regulations implementing the two-for-one rule and the established procedures for conversion are at 42 CFR 417.446.

C. Explanation of Enrollee Rights

Section 1876(c)(3)(C) of the Act provides that the Secretary may prescribe the procedures and conditions under which an eligible organization under contract with HCFA may advertise its product and enroll eligible Medicare beneficiaries. Prior to the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), there were no specific statutory provisions pertaining to disclosure of benefits, services and patient rights for Medicare beneficiaries enrolling in an HMO or CMP, although our regulations at 42 CFR 417.436 require that the organization maintain membership rules explaining these

matters. The regulations currently require that the membership rules explain that enrolling members of a risk contracting organization must accept that, except for emergency services and urgently needed out-of-area services, neither the organization nor the Medicare program has financial responsibility for services that are not provided through the contracting organization. In practice, CMPs may waive the requirement. However, under Title XIII of the Public Health Service Act, Federally-qualified HMOs may not provide out-of-plan coverage for basic health services except in the context of emergency or urgently needed care. The membership rules must also explain the organization's procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and enrolled Medicare beneficiaries, as required by section 1876(c)(5)(A) of the Act. Regulations at 42 CFR 417.436 currently require that the organization provide a copy of the rules to each Medicare enrollee and that it notify enrollees at least 30 days prior to any change in the rules.

D. Fifty Percent Composition of Enrollment

Section 1876(f) of the Act requires that an HMO or CMP providing services to Medicare under a risk contract maintain an enrollment consisting of no more than 50 percent Medicare beneficiaries and Medicaid recipients. Prior to the enactment of OBRA 86, this section also authorized the Secretary to modify or waive the 50/50 rule if he or she determined that special circumstances warranted a modification or waiver and the organization was making reasonable efforts to enroll individuals not entitled to Medicare or Medicaid. Regulations at 42 CFR 417.413 implemented the statutory requirement for composition of enrollment and the waiver or exception to composition of enrollment standards.

II. New Legislation

A. Repeal of "two-for-one" Rule

Section 9312(a) of OBRA, Pub. L. 99-509, amended section 1876(c)(2) of the Act by repealing the two-for-one conversion requirement for certain HMOs. In the report of the Committee on Ways and Means (H.R. Rep. No. 727, 99th Cong., 2d Sess., 442 (1986)), the Committee stated its belief that the two-for-one requirement was adversely affecting those Medicare enrollees enrolled in an HMO who could not convert to the risk contract, because

non-risk enrollees could not share in the additional benefits package provided to risk contract beneficiaries enrolled in the same HMO. Furthermore, the Committee stated that in some cases, the two-for-one requirement may place a burden on HMOs by placing them in a less competitive situation. The elimination of the two-for-one rule, effective April 1, 1987, permits non-risk Medicare enrollees who wish to be covered under the risk provisions of the HMO's contract to do so without limitation.

B. Explanation of Enrollee Rights

Section 9312(b) of OBRA 86 amended section 1876(c)(3) of the Act by providing that upon enrollment and annually thereafter, enrollees must receive from an HMO and CMP an explanation of rights, including the rights to benefits from the organization, the restrictions on payment for services furnished other than by or through the organization, out-of-area coverage provided by the organization, the organization's coverage of emergency services and urgently needed care, and appeal rights of enrollees. Prior to enactment of OBRA 86, the statute did not specify either the content or timeframes for furnishing information. This amendment was effective on January 1, 1987, and applies to enrollments effective on or after that date.

Section 4011(b) of OBRA 87, Pub. L. 100-203, amended section 1876(c)(3) of the Act by requiring that eligible organizations having a risk-sharing contract notify individuals eligible to enroll and individuals enrolled with the organization of the organization's option to terminate or nonrenew its contract with HCFA, and that nonrenewal or termination of the contract may result in termination of the individual's enrollment in the organization.

C. Waiver of 50/50 Rule in HMOs and CMPs

Section 9312(c) of OBRA 86 amended section 1876(f)(2) of the Act by deleting all former provisions and authorizing the Secretary to issue new modifications or waivers in only two circumstances: (1) Where more than 50 percent of the population of the area served by the organization consists of Medicare beneficiaries and Medicaid recipients; and (2) where the organization is owned and operated by a government entity, but only for the first 3 years after the government-owned organization first enters into a contract, and only if the organization is making reasonable efforts to enroll non-Medicare and non-Medicaid individuals. Section 9312(c) of

OBRA 86 also add a new paragraph (3) to section 1876(f) of the Act, which allows the Secretary to suspend enrollment or suspend payment for individuals newly enrolled after the date the Secretary notifies the organization that it is not complying with the 50/50 rule. OBRA 86 also modified section 1876(i)(1)(C) of the Act to provide specifically for termination of a Medicare contract if the Secretary finds that the organization no longer substantially meets the 50/50 rule.

Section 9312(c) of OBRA 86 authorizes the Secretary to extend waivers or exceptions to organizations currently under waiver or exception (i.e., former demonstration projects under section 222(a) of the Social Security Amendments of 1972 or section 402 of the Social Security Amendments of 1967) which do not meet the new requirements, but which continue to make reasonable efforts to meet scheduled enrollment goals approved by the Secretary. If the organization meets the scheduled enrollment goals or makes significant progress toward those goals, the waiver or exception may be continued. If the organization does not comply with the schedule, the Secretary may apply the sanctions (i.e., send notice requiring the organization to suspend enrollment of Medicare enrollees and suspend payments to the organization for Medicare enrollees enrolled after the date of the notice) specified in paragraph (3) of section 1876(f) of the Act, or he or she may institute termination proceedings as authorized by section 1876(i)(1)(c) of the Act.

III. Provisions of the Proposed Regulations

We propose to incorporate the OBRA 86 and OBRA 87 provisions into our regulations essentially without elaboration. These changes would be made to 42 CFR Part 417, Subpart C. The provisions of the regulations are discussed below.

A. "Two-for-one" Rule

We propose to delete paragraph (f) in § 417.432, which describes the two-for-one rule concerning conversion of current nonrisk Medicare enrollees.

Section 417.444 specifies rules for current nonrisk Medicare enrollees of an organization under a risk contract. We would delete paragraphs (a)(2)(i) and (ii) of this section, which contain the conditions for additional benefits pertaining to the two-for-one rule. We would also delete paragraphs (b) and (c) of this section, which make reference to the two-for-one rule. A new paragraph (b) would be added to require organizations

converting from a cost to a risk contract to inform current non-risk Medicare enrollees within 60 days of signing a risk contract of their right to remain as cost members indefinitely (until 75 or fewer cost members remain and HCFA requires their conversion to risk reimbursement, under the provisions of paragraph (a)(1) of this section) and their right to convert at any time to a risk enrollment under the provisions of paragraph (a)(2) of this section.

We would delete § 417.446, which specifies the two-for-one enrollment criteria.

We would also delete § 417.507(b)(4), which makes reference to special supplementary benefits in a plan.

B. Explanation of Enrollee Rights

Current regulations at § 417.436 establish minimum standards for membership rules. The regulations currently provide that membership rules must deal with, but are not limited to, procedures for paying premiums and other charges for which Medicare enrollees may be liable, grievance and appeal procedures, disenrollment rights, and how and where to obtain services from or through the HMO or CMP. We would add additional requirements parallel to the statute. These requirements would make it clear that a copy of the membership rules must be furnished to each Medicare enrollee at the time of enrollment and annually thereafter. The rules must include an explanation of the benefits provided by the organization, the amount of any premium or other charges imposed on the beneficiary, restrictions on coverage (if applicable) for services that are not received through the organization, and the organization's coverage of emergency services and services which are urgently needed while the enrollee is absent from the organization's geographic area, as defined in § 417.401.

The rules also must address any services the organization chooses to provide from sources outside the organization, other than emergency services and urgently needed services, and include the organization's policies concerning retention of members who leave the organization's geographic area for more than 90 days.

In addition, we are adding a new paragraph (10) to § 417.435(a) to comply with section 4011(b) of OBRA 87, which would require the HMO and CMP rules state the date on which the organization's contract with HCFA is renewed annually (or give the date of termination if the initial contract period is more than 12 months), that the organization may choose not to renew

its contract with HCFA at that time, and that beneficiaries may, if the contract is not renewed, be terminated as well from their enrollment in the organization. A similar advisement would be required to advise enrollees of the organization's rights to terminate its contract with HCFA and the corresponding effect such a termination could have on enrollees. Experience with recent contract terminations indicated that many beneficiaries were unaware that organizations have the right to choose not to renew their contracts.

C. Fifty Percent Composition of Enrollment

Section 417.413 of the Medicare regulations contains the operating experience and enrollment requirements with which an HMO or CMP must comply in order to contract with HCFA.

Section 471.413(d) specifies the requirements concerning composition of enrollment. We would revise paragraph (d)(2) to provide that HCFA may waive compliance with the requirements of § 417.413(d)(1) if the organization has made and is making reasonable efforts to enroll individuals who are not Medicare beneficiaries or Medicaid recipients and if the organization meets the requirements of either paragraph (d)(2)(i) or (d)(2)(ii) of this section. Under paragraph (d)(2)(i) of this section, HCFA may waive compliance with composition of enrollment requirements for an organization where Medicare beneficiaries and Medicaid recipients constitute more than 50 percent of the population in the geographic area (except that HCFA will not permit an organization's Medicare and Medicaid enrollment to exceed the representation of Medicare beneficiaries and Medicaid recipients in the general population of the geographic area). Paragraph (d)(2)(ii) of this section would be revised to provide a waiver for a government owned and operated organization which may not exceed a period of up to three years after the date the organization first enters into contract, and may not be extended. This would conform the regulation to section 1876(f)(2) of the Act, as amended by OBRA 86.

A new paragraph (d)(3) would be added to § 417.413 to specify that an organization which has received a waiver or exception to the composition of enrollment rule prior to October 21, 1986 may continue its waiver or exception if it makes reasonable efforts to meet scheduled enrollment goals approved by HCFA. If the organization does not comply or make significant progress toward compliance, the HCFA may apply the sanctions described in paragraphs (d) (6) and (7) of this section.

In a new § 417.413(d)(4), we would specify that HCFA may apply sanctions against an organization not in compliance with the composition of enrollment requirement as an alternative to instituting termination proceedings. In new paragraph (d)(5), we set forth the notice procedures that HCFA would follow in notifying organizations. We propose to give the organization 15 days after the date of the notice to provide evidence establishing the organization's compliance with the requirements in paragraph (d)(1) of this section. New paragraph (d)(6) of this section would describe the sanctions HCFA may apply (suspension of enrollment of Medicare enrollees and suspension of payments) and the circumstances under which they may be imposed. New paragraph (d)(7) of this section would specify that in addition to applying the sanctions in paragraph (d)(6) of this section, HCFA may terminate an organization's contract if the organization does not substantially comply with the composition of enrollment requirements.

We would delete the exception to composition of enrollment at § 417.413(e) and redesignate the standard for open enrollment at § 417.413(f) as paragraph (e).

We also propose to add conforming provisions to § 417.494(b) and § 417.640(c)(4) that would authorize HCFA to terminate a contract if the organization fails substantially to comply with the composition of enrollment requirements or the terms of any waiver or exception specified in § 417.413(d).

D. Clarification of Previous Regulations

Current regulations at § 417.428(a) describe required marketing activities for organizations contracting with HCFA. This section is based on section 1876(c)(3)(C) of the Act which permits the Secretary to prescribe the procedures and conditions under which an eligible organization that has entered into a Medicare contract may inform eligible individuals about the plan. We are proposing to add a new requirement to the regulation that requires the marketing materials of a plan to inform eligible individuals that the plan's contract with HCFA is subject to periodic renewal or termination, and that nonrenewal or termination of the contract may result in termination of an individual's enrollment. We are making this change to conform our regulations with a new section 1876(c)(3)(G) of the Act as added by section 4011(b)(1) of OBRA 87. Also, experience with recent contract nonrenewals indicates that most enrollees were unaware of the organization's right to choose not to renew its contract, and we believe that this information could affect an individual's decision whether to enroll in the organization.

Current regulations at §§ 417.446 (c) and (d) and 417.460(a)(2)(iv) specify the procedures under which enrollees may continue their membership in an organization while absent from the organization's geographic area for 90 days or more. There has been confusion over these provisions because the intent is not clearly explained, which was: (1) To protect enrollees who are absent from the geographic area for 90 days or less from arbitrary disenrollment by organizations, and to assure their coverage for emergency and urgently need care during their absence; (2) to set a reasonable limit (90 days) on a plan's responsibility to cover emergency and urgently needed care for enrollees who are absent, and to permit disenrollment if the absence extends to more than 90 days; (3) to permit plans and enrollees to exercise the option of extending enrollments for enrollees who take vacations of more than 90 days, but who maintain their permanent residence within the geographic area; and (4) to require enrollees to inform the organization of any absence of more than 90 days so the organization and the enrollee could arrange either for disenrollment or for the enrollment to continue.

The current regulations do not distinguish between "permanent moves," that is, an absence of 90 days or more from the organization's geographic area when the enrollee is not expected to return to the organization's geographic area to live; and an "extended absence," when the enrollee is expected to return to reside in the organization's geographic area within a reasonable period of time. Neither the law nor regulations contemplate enrollment by a beneficiary who is not a resident of the organization's geographic area. Therefore, we would define extended absence as a period of more than 90 days but less than one year, and are proposing to limit the exception in § 417.460(a)(2)(iv) to extended absences.

We are clarifying by means of this preamble that the exception in § 417.460(a)(2)(iv) is available only to those Federally qualified HMOs who are affiliated with another plan where the beneficiary will be going, since section 1301(b)(3)(A) of the PHS Act and regulations at 42 CFR 417.103 prohibit Federally qualified HMOs from reimbursing for services not provided or arranged for by the plan. We are also clarifying § 417.460(a)(2)(iv) to state that

the exception is available only when the enrollee remains within the United States.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if the proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provisions of section 603 of the RFA. For purposes of RFA, we treat all providers and fiscal intermediaries as small entities.

The proposed rule generally reflects statutory changes that would serve to codify in our regulations those practices which are required by recent legislation. The statutory changes repealing the "two-for-one" requirement, requiring an explanation of enrollee rights, and granting waivers for 50 percent composition of enrollment will increase Medicare program expenditures independently of the promulgation of this proposed rule. These provisions in themselves, would have a negligible impact on Medicare expenditures. Although the technical change provisions of this rule are new requirements, we expect that the impact on Medicare expenditures also would be negligible. For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and would not have a significant impact on the operations of a substantial number of small rural

hospitals. Therefore, we have not prepared a regulatory flexibility analysis.

V. Paperwork Reduction Act

Sections 417.428 and 417.436 of this proposed rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 as amended, 44 U.S.C. 3501-3511. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the ADDRESS section of the preamble.

VI. Response to Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule we will consider all comments contained in correspondence that we receive by the date specified in the DATE section of this preamble, and we will respond to the comments in the preamble to that rule.

List of Subjects in 42 CFR Part 417

Administrative practice and procedures, Health maintenance organizations (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417 Subpart C would be amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 Subpart C continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(a)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(a)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); section 9312(c) of Pub. L. 99-509; and sec. 1301 of the Public Health Service Act (42 U.S.C. 300e) and 31 U.S.C. 9701.

Subpart C—Health Maintenance Organizations and Competitive Medical Plans

2. The table of contents for Part 417, Subpart C is amended to remove § 417.446.

3. In § 417.413 paragraph (d) is revised, paragraph (e) is removed and paragraph (f) is redesignated as (e) and revised as follows:

§ 417.413 Qualifying condition: Operating experience and enrollment.

(d) *Standard: Composition of enrollment*—(1) *Requirement*. Except as specified in paragraphs (d)(2) and (e) of this section, not more than 50 percent of an organization's enrollment may be Medicare beneficiaries and Medicaid recipients.

(2) *Waiver of composition of enrollment standard*. HCFA may waive compliance with the requirements of paragraph (d)(1) of this section if the organization has made and is making reasonable efforts to enroll individuals who are not Medicare beneficiaries or Medicaid recipients, and it meets either of the following requirements:

(i) The organization services a geographic area in which Medicare beneficiaries and Medicaid recipients constitute more than 50 percent of the population.

However, HCFA will not grant a waiver that would permit the percentage of Medicare and Medicaid enrollees to exceed the percentage of Medicare beneficiaries and Medicaid recipients in the organization's geographic area.

(ii) The organization is owned and operated by a government entity. The waiver may be for a period up to three years after the date the organization first enters into a contract under this subpart, and may not be extended.

(3) *Waiver granted on or before October 21, 1986*. An organization (or a successor organization) that as of October 21, 1986, had been granted an exception, waiver, or modification of the requirements of paragraph (d)(1) of this section, but that does not meet the requirements of paragraph (d)(2) of this section, must make (and throughout the period of the exception, waiver, or modification continue to make) reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by HCFA. If HCFA determines that the organization has—

(i) Complied, or made significant progress toward compliance, with the approved schedule of compliance, and that an extension is in the best interest of the Medicare program, HCFA may extend such waiver or modification.

(ii) Not complied with the approved schedule, HCFA may apply the sanctions described in paragraphs (d)(6) and (d)(7) of this section.

(4) *Basis for application of sanctions*. HCFA may, as an alternative to termination, apply the sanctions specified in paragraph (d)(6) of this section if HCFA determines that the organization is not complying with the

requirements in paragraphs (d)(1), (d)(2), or (d)(3) of this section, as applicable.

(5) *Notice of sanction*. Prior to applying the sanctions specified in paragraph (d)(6) of this section, HCFA will send a written notice to the organization stating the proposed action and its basis. HCFA will give the organization 15 days after the date of the notice to provide evidence establishing the organization's compliance with the requirements in paragraphs (d)(1), (d)(2), or (d)(3) of this section, as applicable.

(6) *Sanctions*. If, following review of the organization's timely response to HCFA's notice, HCFA determines that an organization does not comply with the requirements of paragraphs (d)(1), (d)(2), or (d)(3) of this section, HCFA may apply the following sanctions:

(i) Require the organization to suspend enrollment of Medicare enrollees.

(ii) Suspend payments to the organization for individuals enrolled after a date specified by HCFA.

(7) *Termination by HCFA*. In addition to the sanctions described in paragraph (d)(6) of this section, HCFA may decline to renew an organization's contract in accordance with § 417.402(b), or terminate its contract in accordance with § 417.404(b) if HCFA determines that the organization no longer substantially meets the requirements of paragraphs (d)(1), (d)(2), or (d)(3) of this section.

(e) *Standard: Open enrollment*. (1) Except as specified in paragraph (e)(2) of this section, an organization must enroll Medicare beneficiaries on a first-come, first-served basis to the limit of its capacity and provide annual open enrollment periods of at least 30 days duration for Medicare beneficiaries.

(2) HCFA may waive the requirement of paragraph (e)(1) of this section if compliance would prevent compliance with the limitation on enrollment of Medicare beneficiaries and Medicaid recipients (paragraph (d) of this section) or result in an enrollment substantially nonrepresentative of the population of the organization's geographic area. The enrollment would be "substantially nonrepresentative" if the proportion of a subgroup to the total enrollment exceeded, by 10 percent or more, its proportion of the population in the organization's geographic area, as shown by census data or other data acceptable to HCFA. For purposes of this paragraph, a subgroup means a class of Medicare enrollees as defined in § 417.582.

4. In § 417.428, the introductory language of paragraph (a) is republished

and the section is amended by adding a new paragraph (a)(3) to read as follows:

and the section is amended by adding a new paragraph (a)(3) to read as follows:

§ 417.428 Marketing activities.

(a) *Required marketing activities*. An organization must meet the following requirements:

(3) Include in the organization's written materials provided to prospective enrollees prior to enrollment, notice that the organization is authorized by law to terminate or refuse to renew its contract with HCFA, and that termination or nonrenewal may result in termination of the individual's enrollment in the organization.

§ 417.432 [Amended]

5. In § 417.432, paragraph (f) is removed.

6. In § 417.436, paragraphs (a) (2), (3), (5), and (6) are redesignated as paragraphs (a) (7), (8), (2) and (11) respectively and republished; paragraphs (a) (1) and (4) are revised and redesignated as paragraphs (a) (6) and (9) respectively; new paragraphs (a) (1), (3), (4), (5) and (10) are added; and paragraphs (b) and (c) are revised. The section reads as follows:

§ 417.436 Membership rules for enrollees.

(a) *Maintaining rules*. An organization must maintain written membership rules that deal with, but need not be limited to—

(1) All benefits provided under the contract, as described in § 417.440;

(2) How and where to obtain services from or through the organization;

(3) The restrictions on coverage for services furnished from sources outside the organization, as described in § 417.448, other than emergency services and urgently needed services (as defined in § 417.401);

(4) The obligation of the organization to assume financial responsibility and provide reasonable reimbursement for emergency services and urgently needed services as required by § 417.414(c);

(5) Any services the organization chooses to provide from sources outside the organization, other than emergency services and urgently needed services, including the organization's policies concerning retention of members who leave the organization's geographic area for more than 90 days, as described in § 417.480(a)(2);

(6) The amount of and procedures for paying premiums and other charges for which Medicare enrollees may be liable;

(7) Grievance and appeal procedures;

(8) Disenrollment rights;

(9) The obligation of an enrollee who is leaving the organization's geographic

area for more than 90 days to notify the organization of the move or extended absence;

(10) The expiration date of the organization's contract with HCFA and notice that the organization is authorized by law to terminate or refuse to renew the contract, and that termination or nonrenewal of the contract may result in termination of the individual's enrollment in the organization; and

(11) Any other matters that HCFA may prescribe.

(b) *Availability of rules*. The organization must furnish a copy of the rules to each Medicare enrollee at the time of enrollment and at least annually thereafter.

(c) *Changes in rules*. If an organization changes its rules, it must submit the changes to HCFA in accordance with § 417.428(a)(3), and notify its Medicare enrollees of the changes at least 30 days before the effective date of the changes.

7. In § 417.444, the introductory language in paragraph (a) is republished, paragraph (a)(2) is revised; paragraphs (b) and (c) are removed and a new paragraph (b) is added. The section reads as follows:

§ 417.444 Special rules for current nonrisk Medicare enrollees of an organization under a risk contract.

(a) *Condition for additional benefits*. Current nonrisk Medicare enrollees of a risk organization may retain that status indefinitely and, therefore, are not entitled to the additional benefits under § 417.442 unless HCFA determines that the enrollee's status must be changed or a change is requested by the enrollee, as follows:

(2) A current nonrisk Medicare enrollee requests, using the same or a similar form to that described in paragraph (a)(1) of this section, that he or she be covered under the risk portion of the contract.

(b) *Notification*. Organizations converting from a cost to a risk contract must, within 60 days of signing the risk contract, inform current nonrisk Medicare enrollees of their right to remain current nonrisk Medicare enrollees or to convert to risk enrollment at any time under the provisions of paragraph (a)(2) of this section.

§ 417.446 [Removed]

8. Section 417.446 is removed.

9. In § 417.448, paragraphs (c) and (d) are revised to read as follows:

§ 417.448 Restriction on payments for services received by Medicare enrollees of risk organizations.

(c) **End of restriction.** The restriction on payments imposed by paragraph (a) of this section ends when a Medicare enrollee leaves the organization's geographic area for an extended period as defined in § 417.460(a)(2) and the organization and enrollee make arrangements for membership to continue as provided in § 417.460(a)(2)(iv).

(d) **Timing.** The effective date for the end of the restriction on payments, as discussed in paragraph (c) of this section is the first day of the first month following the month in which the enrollee notifies the organization as required in § 417.430(a)(9), that he or she has left the organization's geographic area for an extended period.

10. Section 417.460(a)(2)(iv) is revised to read as follows:

§ 417.460 Disenrollment of beneficiaries and termination of payments to an organization.

(a)

(2)

(iv) **Exception.** An organization may retain a Medicare enrollee who is absent from the organization's geographic area for an extended period, but who remains within the United States, if the enrollee agrees. For purposes of this exception, the following provisions apply:

(A) An absence for an extended period means an uninterrupted absence from the organization's geographic area for more than 90 days but less than one year.

(B) The organization and the enrollee may mutually agree upon restrictions for obtaining services while the enrollee resides out of the organization's geographic area. However, restrictions may not be imposed on the scope of services described in § 417.440.

(C) When the enrollee returns to the organization's geographic area, the restrictions under § 417.448(a) prohibiting Medicare payment for services not provided or arranged for by the organization apply again immediately.

(D) Organizations that choose to exercise this exception must make the option available to all Medicare enrollees who are absent for an extended period from the organization's geographic area. (However, organizations may limit this option to enrollees who go to a geographic area served by an affiliated organization.)

(E) If the enrollee fails to return to the organization's geographic area within 1 year of the date he or she left the geographic area, then the organization must disenroll the beneficiary on the first day of the month following the anniversary of the date the enrollee left the geographic area under the provisions of paragraph (a)(2)(i) of this section.

11. Section 417.494 is amended by revising paragraph (b)(1)(iii) and (iv) as follows:

§ 417.494 Modification or termination of contract.

(b) **Termination by HCFA.** (1) HCFA may terminate a contract for any of the following reasons:

(iii) The organization has failed substantially to comply with the composition of enrollment requirements specified in § 417.413(d).

(iv) HCFA determines that the organization no longer meets the applicable conditions necessary to qualify as an eligible organization under section 1876 of the Act and this subpart.

12. Section 417.597(b) is revised to read as follows:

§ 417.597 Withdrawal from a benefit stabilization fund.

(b) **Criteria for HCFA approval.** HCFA will approve an organization's request for a withdrawal from its benefit stabilization fund for use during the next contract period only if—

(1) The organization's average of its per capita rates of payment for the next contract period is less than that of the previous contract period;

(2) The organization's ACR for the next contract period is significantly higher than that of the previous contract period; or

(3) The organization's revenue requirements for the next contract period for providing the additional benefits it provided during the previous contract period is significantly higher than the requirements for that previous period and the ACR for the next contract period results in an additional benefits package that is less in total value than that of the previous contract period.

13. Section 417.640(c) is revised to read as follows:

§ 417.640 Determinations subject to appeal.

(c) A determination to terminate, or to refuse to renew, a contract with an organization because—

(1) The organization has failed substantially to carry out the terms of the contract;

(2) The organization is carrying out the contract in a manner that is inconsistent with the efficient and effective administration of section 1876 of the Act;

(3) The organization no longer meets the applicable conditions necessary to qualify as an eligible organization under section 1876 of the Act and this subpart; or

(4) The organization has failed to comply with the composition of enrollment requirements specified in § 417.413(d).

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program; No. 13.714, Medical Assistance)

Dated: April 20, 1988.

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: June 7, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-16570 Filed 7-21-88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine *Ranunculus acris* var. *aestivalis* (Autumn Buttercup) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Ranunculus acris* var. *aestivalis* (autumn buttercup) to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. The autumn buttercup is endemic to the upper Sevier River Valley in western Garfield County, Utah. This taxon was thought to be extinct until it was rediscovered in 1982. The plant is known only to occur on less than 0.01 acre of peaty hummocks within a fresh water marsh fed by a perennial spring above the bottom lands of the Sevier River. The single known population has experienced a population decline of over 90 percent in the past 5 years and now numbers only about 20 individuals. Continued livestock grazing and

trampling of the autumn buttercup and its occupied habitat is likely to cause the extinction of this taxon in the foreseeable future. This proposal, if made final, would implement protection provided by the Act and make available conservation measures implemented by the Act and identify the taxon as one in need of conservation to groups in and outside of the Federal government. The Service is requesting data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by September 20, 1988. Public hearing requests must be received by September 6, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Room 2078, Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, at the above address (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

Marcus E. Jones first collected the autumn buttercup in early September 1894. Jones' diary for the period indicates "Orton's Ranch" as the collection location (Benson 1948). Jones apparently did not describe the taxon (Jones 1895). In autumn 1948, Lyman Benson located a grandson of Orton who led him to a swampy area along the Sevier River. Benson located a population and collected specimens from a group of "15 or 20 small clumps" in the vicinity of the Jones collection of a half century earlier; from this collection Benson described *R. acris* var. *aestivalis* (Benson 1948). Despite Benson's very complete description of the population's location, the taxon was essentially lost for more than 30 years (Mutz 1984). The habitat was reported over-grazed in 1960 (Mutz 1984), and Ripley (1975) indicated that the taxon was probably extinct before 1975. During field work in connection with a review of the genus *Ranunculus* for Utah, Margaret Palmieri was unable to relocate the autumn buttercup in August of 1974 (Palmieri 1976).

On August 23, 1982, Kathryn Mutz located the autumn buttercup in a wetland above the Sevier River about 1 mile north of the type location. This newly discovered site was revisited by Mutz in 1983 in conjunction with the

preparation of a status report for the Service, and 407 adults and 64 seedlings were counted.

The species' habitat is a series of small peaty hummocks on a low knoll less than 0.01 acre in size surrounded by a marsh. The knoll may be the result of a raised peat bog uplifted by the upwelling waters of a spring which surrounds it. The overflow channel of a nearby spring-fed stock water pond also runs past the knoll. In 1984, the autumn buttercup was again observed but had been heavily grazed. In 1985, the habitat was heavily grazed and trampled; and only eight individuals were counted (Service 1985). In 1986, 14 plants were counted and there had been only moderate grazing in the immediate vicinity of the buttercups (Service 1986). In 1987, 12 plants were counted in early August. Three weeks later, the site had been moderately grazed, and all the flowering systems had been cropped before seed had set (Service 1987).

The autumn buttercup apparently has been extirpated from its type locality. Searches by Mutz in 1982 and 1983 (Mutz 1984) and by the Service in 1985, 1986, and 1987 have not located any other populations of *R. acris* var. *aestivalis*. The entire population of the taxon is on lands in private ownership.

The autumn buttercup is a herbaceous perennial plant normally growing between 1 and 2 feet tall. Most of the simple but deeply palmately divided leaves are clustered at the base. Leaves and stems are covered with fine hairs. Leaves with three linear divisions are found high on the flowering stems. Flowers, usually 6 to 10 per plant, are about 1/2 inch in diameter with five yellow petals and five reflexed yellow green sepals which fall off soon after the flower opens. Fruits of the buttercup are achenes. Twenty to forty of these small, dry, one-seeded fruits are clustered on the surface of the receptacle of the past flower in the shape of a cylinder or inverted cone from 0.25 to 0.33 inch high. Height of the buttercups at flowering may apparently be altered by the intensity of grazing; the few plants observed flowering in 1983 were less than 3 inches tall. Seedlings of the autumn buttercup have small (less than 0.5 inch wide) leaves with three broad, rounded lobes (Mutz 1984).

Benson (1948) followed a conservative taxonomic approach in his nomenclatural designations. His publication contained the scientific description and the naming of the autumn buttercup from the Sevier River Valley of central Utah as *R. acris* var. *aestivalis*. In the same publication, Benson indicated that by following a moderate policy in taxonomic

determination, it would have been appropriate to designate the autumn buttercup as a species in its own right rather than a variety of *R. acris* (i.e., *R. aestivalis*). *R. acris* var. *aestivalis* has floral characteristics very similar to typical *R. acris* (i.e., petal size and shape), although tending to be somewhat smaller. Seed characteristics, however, are markedly different, and leaf shape is different, with the lobes of *R. acris* var. *aestivalis* being much narrower than the other varieties.

Welsh (1986) and Welsh *et al.* (1987) assigned the taxon to *R. acris* as *R. acris* var. *aestivalis* based on the more angular lobes of the basal leaves and the short beak of the achene which are typical of *R. acris*. *R. acris* is native to Europe and Asia with one variety, *R. acris* var. *figidus*, occurring in the Aleutian Islands. Thus, *R. acris* var. *aestivalis* would represent a Pleistocene relict population extremely isolated geographically from the main body of that species' population. Benson (1948) argues that *R. turneri* of the Western American arctic may be a phylogenetic link between *R. acris* of the old world and the *R. occidentalis* group (including *R. acris* var. *aestivalis*) of the new world, with its closest relationship being with *R. acris* var. *montanensis*. Thomas Duncan (personal communication 1987) stated that his preliminary taxonomic evaluation of *R. acris* var. *aestivalis* would align that entity with *R. occidentalis* of the Pacific Northwest and that it appears to be a species in its own right. *R. acris* var. *aestivalis* represents an important part of scientific understanding of the development of the buttercup genus and its relationships in western North America and eastern Asia.

With the apparent extinction of all but one of its populations, an occupied habitat of less than 0.01 acre, a total population of about 20 individuals, and a documented population decline of more than 90 percent in its remaining occupied habitat within the past 5 years, the autumn buttercup is in imminent danger of extinction.

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report of those plants considered to be endangered, threatened or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the

Context of Section 4 of the Act and of its intention to review the status of plant taxa named within *R. acriformis* var. *aestivalis* was included on list "C" as probably extinct.

On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, Federal Register publication. *R. acriformis* var. *aestivalis* was included in that proposed rule and was marked with an asterisk to denote it as a species for which the Service especially desired information on living specimens and extant populations. Comments received in response to the 1976 proposal were summarized in the Federal Register on April 28, 1978 (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. Therefore, on December 10, 1979, the Service published a notice (44 FR 70790) withdrawing the June 16, 1976, proposal.

On December 15, 1980, the Service published a revised notice of review for native plants in the Federal Register (45 FR 62480); *R. acriformis* var. *aestivalis* was included in that notice as a category 1 species. Category 1 is comprised of taxa for which the Service has sufficient biological data to support proposing them as endangered or threatened. In addition, *R. acriformis* var. *aestivalis* was designated with an asterisk to identify that species as one that may recently have become extinct. In 1982, a *R. acriformis* var. *aestivalis* population was discovered (Mutz 1984). On November 28, 1983, the Service published a supplement to its December 15, 1980, notice of review in the Federal Register (48 FR 53640); *R. acriformis* var. *aestivalis* was included in that notice as a category 2 species. Category 2 is composed of taxa for which the Service has information which indicates that proposing to list those taxa as endangered or threatened species is possibly appropriate, but for which substantial data on biological vulnerability and threat are not currently known or on file to support proposed rules.

In 1983, another population of *R. acriformis* was discovered on the Wasatch Plateau of central Utah, and in 1984 still another population was found in the Wasatch Mountains of Utah. Before 1983, the only known occurrence

of *R. acriformis* in Utah was of the variety *aestivalis*. The *R. acriformis* populations of the Wasatch Mountains and Wasatch Plateau have now been determined to be the variety *montanensis*, which previously had a known distribution in the northern Rocky Mountains of Idaho, Wyoming, and Montana. *R. acriformis* var. *aestivalis* is morphologically, phenologically, and distributionally distinct from *R. acriformis* var. *montanensis*, which is located in Utah far to the north at a much greater elevation and flowers earlier than *R. acriformis* var. *aestivalis* (Welsh and Chatterley 1985, Welsh et al. 1987). As a consequence of a Service sponsored status survey (Mutz 1984) and taxonomic evaluation of the *R. acriformis* var. *aestivalis* and *R. acriformis* var. *montanensis* population in Utah (Welsh and Chatterley 1985), the Service changed the status of *R. acriformis* var. *aestivalis* back to category 1 in the updated plant notice of review published in the Federal Register on September 27, 1985.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1962, requires the Secretary of the Interior to make findings on certain petitions within 12 months of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *R. acriformis* var. *aestivalis* because of the Service's acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; October 10, 1986, and October 9, 1987, the Service made successive 1-year findings that the petition to list of *R. acriformis* var. *aestivalis* was warranted, but precluded by other listing actions of higher priority. The present proposal constitutes the next 1 year petition finding for this taxon.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ranunculus acriformis* var. *aestivalis* L. Benson (autumn buttercup) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The private landowner of the autumn buttercup's only known population has tentative plans to increase the size of the spring-fed manmade pond immediately to the north of the plants occupied habitat (Service 1986). That action has the potential to cause the extinction of the autumn buttercup through direct habitat destruction or modification.

B. Overutilization For Commercial, Recreational, Scientific, or Educational Purposes

With the very small existing population, any use of the autumn buttercup may seriously reduce the prospect of the species' survival. Benson (1948) recognized this threat. There is no known utilization of the autumn buttercup for commercial, recreational, scientific, or educational purposes. However, any collecting or vandalism could cause the extinction of the autumn buttercup.

C. Disease or Predation

The autumn buttercup apparently has been extirpated from its type locality about 1 mile south of its currently known location (Benson 1948, Palmieri 1976, Mutz 1984). The total known population of the autumn buttercup has been reduced to one hummocky knoll of less than 0.01 acre and about 20 individuals as of August 1987. In 1983, when the species was first censused, 407 adult plants and 64 seedlings were counted (Mutz 1984). In 1984, the species was observed in its extant population and was heavily grazed. In 1985, the Service censused the population; eight individuals were found, none of which had flowered that year, and the habitat had been heavily grazed. Only one mature leaf on one of the eight plants had not been grazed (Service 1985). In 1986, the population numbered 14 individuals, of which 4 flowered. There had been moderate grazing in the immediate vicinity of the buttercups (Service 1986). In 1987, the population numbered 12 adult plants and 6 seedlings. The flowering parts were all grazed before any seed was set (Service 1987). This taxon is endemic to spring-fed peaty marshes within wet meadows along the upper Sevier River in Garfield County, Utah. Most of the potential habitat has been and continues to be used for livestock pasture and other agricultural uses. Continued intense grazing of the autumn buttercup's occupied habitat is likely to cause its extinction in the foreseeable future.

There are no known insect parasites or disease organisms which significantly affect this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The autumn buttercup receives no protection or consideration under any Federal or State law or regulation.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The low numbers and limited distribution of the autumn buttercup contribute to the buttercup's vulnerability to natural or man-caused stresses. Further reduction in the number of plants would reduce the reproductive capability and genetic diversity of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ranunculus acriformis* var. *aestivalis* as endangered. Threatened status is not appropriate because *Ranunculus acriformis* var. *aestivalis* is in danger of extinction throughout its range due to the degradation of its habitat and apparently to direct livestock grazing pressure. For reasons given below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The limited distribution and accessibility of the autumn buttercup make it vulnerable to vandalism and collecting. These potential threats are of particular significance since the known population site is easily accessible and increased public access would be difficult to control under existing authorities. The one remaining site contains a very small population, and any loss could be extremely detrimental.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition

through listing encourages and results in conservation action by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. However, *R. acriformis* var. *aestivalis* is not known to occur on lands under Federal jurisdiction, and no Federal involvement with this species is currently known.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession this species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With respect to *Ranunculus acriformis* var. *aestivalis*, it

is anticipated that few if any, trade permits would ever be sought or issued since the species is not common in the wild and is unknown in cultivation. Requests for copies of the regulations on plants and inquires regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329 (202/343-4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Ranunculus acriformis* var. *aestivalis*;
- (2) The location of any additional population of this species and the reason why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if required. Request must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the State Supervisor, Fish and Wildlife Enhancement, Salt Lake City, Utah (see ADDRESSES above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined in the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is John L. England, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Salt Lake City, Utah (801/524-524-4430; FTS 586-4430, see ADDRESSES above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 97 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 90 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Ranunculaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.
(h) . . .

Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Ranunculaceae—Buttercup family: <i>Ranunculus acris</i> var. <i>acris</i> L. Benson (= <i>Ranunculus acris</i> var. <i>acris</i> L. Benson)	Autumn buttercup	U.S.A. (UT)	E		NA	NA

Dated: June 27, 1988.

Susan Recco,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-16401 Filed 7-21-88; 8:45 am]
BILLING CODE 4310-35-M

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This document proposes special migratory bird hunting regulations on Federal Indian reservations and ceded lands for the 1988-89 hunting season. This season will commence on September 1, 1988.

The Fish and Wildlife Service (hereinafter the Service) annually prescribes migratory bird hunting regulations frameworks to the States. This rule proposes migratory bird

hunting regulations to be established for certain tribes on Federal Indian reservations and ceded lands in the 1988-89 hunting season.

DATES: The comment period for these proposed regulations will end August 8, 1988.

Address Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240. Comments received on these proposed hunting regulations and tribal proposals will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act are available for public inspection in or are available from the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrows, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the

Interior, Washington, DC 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.) authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the January 21, 1988 Federal Register (53 FR 1645), the Service requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1988-89 hunting season, under the interim guidelines described in the June 4, 1988 Federal Register (at 50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on

their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season

required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservations is too small to have significant impacts on the migratory bird resource when compared with the much larger off-reservation sport harvest by non-Indians. The major area of concern relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse harvest impacts on one or more migratory bird species. The guidelines make such an event unlikely, however, because tribal proposals must include details on the harvest anticipated under the requested regulations; methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending evaluation and confirmation of harvest information obtained by the tribes.

The Service believes that the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. Nevertheless, the Service notes that they have been employed successfully since 1985 to establish special hunting regulations for Indian tribes. Therefore, the Service believes that they have been tested adequately and proposed to make them final for the 1988-89 season. It should be stressed here, however, that use of the guidelines is not necessary and no action is required if a tribe wishes to

observe the hunting regulations established by the State(s) in which the reservation is located.

Review of Comments Received on Notice Requesting Hunting Season Proposals From Indian Tribes

In a June 7, 1988 letter from The Wildlife Legislative Fund of America, James H. Glass, President, commented on the January 21, 1988 Federal Register in which the Service requested tribal proposals. In his letter, Mr. Glass recognized that differential treatment of Indians in the taking of wildlife is due to treaties made in the past. However, he pointed out that the Wildlife Legislative Fund of America has protested the discriminatory use of special regulations for Indians in the past, and he asked the Service to (1) join with others who also object, and (2) explain for the non-Indian majority the specific reasons for the continuing use of discriminatory regulations.

In response, the Service recognizes that special migratory bird hunting regulations for Indians are viewed as discriminatory by some people. The Service notes, however, that Indian tribes on most Federal Indian reservations have reserved hunting rights recognized or granted by treaty, executive order, statute, agreement, or other law. These reserved hunting rights are subject to reasonable and necessary nondiscriminatory conservation measures. The taking of waterfowl and other migratory game birds is a traditional practice by tribal members on many reservations. The Service believes that this harvest is small when compared with the sport harvest by non-Indians and does not oppose harvest by Indians provided it is not excessive and does not occur during the annual closed period required by the Canadian migratory bird treaty. In this manner, the reserved hunting rights of Indians are accommodated while the conservation goals of the treaty are satisfied. The Service recently employed the guidelines to reach agreement with the Mille Lacs Band of Chippewa Indians, Vineland, Minnesota, for on-reservation hunting by tribal members during the 1988-89 hunting season and reached a similar agreement last year. In addition, the Service currently is consulting with the Klamath Tribe, Chiloquin, Oregon, in regard to 1988-89 hunting regulations. The regulations would apply to hunting by members on certain lands within the exterior boundaries of the tribe's former reservation, under the general conditions of a Federal court decision. The Service will continue to work toward mutually acceptable hunting

regulations for other tribes that may wish to reach an accord.

The Service should also point out that some Indian tribes have the judicially recognized right to hunt migratory birds under special conditions on off-reservation ceded lands. Thus far, only the Great Lakes Indian Fish and Wildlife Commission, representing Chippewa Indians in Michigan, Minnesota, and Wisconsin, has asked for special migratory bird regulations for hunting on off-reservation ceded lands. The annual harvest by these Indians has been small.

The Service continues to believe that the greatest potential for excessive harvest is on reservations where tribes have established hunting programs to attract nontribal members, and where the hunting regulations would be within Federal frameworks but on dates that are different than those established by the State(s) in which a reservation is located. The migratory bird harvest is monitored on such reservations to ensure that the harvest does not have adverse effects.

Hunting Season Proposals From Indian Tribes and Organizations

In addition to the Mille Lacs Band and the Klamath Tribe, the Service received requests from eight tribes and Indian organizations for special migratory bird hunting regulations for the 1988-89 hunting season. Each of them had special regulations in the 1987-88 hunting season.

The proposed regulations for the different tribes are shown below. It should be noted that this proposed rule, and a final rule to be published later in an August 1988 Federal Register, will include tribal regulations for both early and late hunting seasons. The early season begins on September 1 each year and includes species such as mourning doves and white-winged doves. The late season usually begins on or around October 1 and includes most waterfowl species. Because final regulations for Indian tribes must be established by September 1, the proposed and final regulations for most tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early and late season regulations. For example, the daily bag and possession limits for ducks on reservations in the Southwestern United States will be shown as "Same as permitted Pacific Flyway States under final Federal frameworks to be announced," and limits for geese will be shown as the same that will be permitted the State(s) in which the reservations are located.

The proposed frameworks for early season regulations are scheduled for early July publication in the Federal Register, and final Federal frameworks will be published in early August. Proposed late season frameworks for waterfowl and coots will be published in mid-August, and the final Federal frameworks for the late season will be published in a mid-September Federal Register. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As discussed earlier in this document, no action is required by tribes that wish to observe the migratory bird hunting regulations established by the State in which a reservation is located.

1. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986-87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority.

In a May 10, 1988 proposal, the tribe requested the earliest opening date permitted Pacific Flyway States for ducks for the 1988-89 hunting season and a closing date of November 30, 1988. Daily bag and possession limits also would be the same as permitted Pacific Flyway States. The tribe requested that the season be closed for geese and other migratory game birds. The tribe conducts a harvest survey each year, and the estimated harvest was 1,057 ducks during the past season.

The requested regulations are the same as were established last year, and in view of the comparatively small duck harvest that occurred, the Service proposes to approve the tribe's request for the 1988-89 hunting season. However, the Service notes that the fall flight of ducks is expected to be far below normal because of severe drought on major production areas in the prairie regions of Canada and the United States. Consequently, it may be necessary, as a conservation measure, to establish more restrictive hunting regulations than were employed last year in the Pacific and other flyways.

2. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian reservation (in parts of Arizona, New Mexico, and Utah). The tribe owns almost all lands on the reservation and has full wildlife management authority.

In a May 12, 1988 letter, the tribe asked and the Service proposes to establish the following regulations on the reservation for both tribal members and nonmembers for the 1988-89 hunting season:

A. Ducks (including Mergansers)

Season Dates: Earliest opening date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

B. Canada Geese (season closed on other geese)

Season Dates: December 17-January 8.

Daily Bag and Possession Limits: Daily limit 2. Possession limit 4.

C. Coot and Common Moorhens (Gallinules)

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

D. Common Snipe

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Daily limit 8. Possession limit 18.

E. Band-tailed Pigeons

Season Dates: September 1-September 30.

Daily Bag and Possession Limits: Daily limit 5. Possession limit 10.

F. Mourning Doves and White-winged Doves

Season Dates: September 1-September 30.

Daily Bag and Possession Limits: 10 mourning and white-wing doves in the aggregate, of which no more than 6 may be white-winged doves. Possession limit after opening day is 20 mourning and white-winged doves in the aggregate, of which no more than 12 may be white-winged doves.

G. General Conditions

Tribal members and nonmembers will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special

regulations established by the Navajo Nation also apply on the reservation.

3. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because it seemed likely that they would provide some additional protection to mallards and pintails, and the State concurred with the zoning arrangement. The Service has no objection to the State's use of this zone in the 1988-89 hunting season, provided the duck and goose hunting season dates are the same as on the reservation. The Shoshone-Bannock Tribes have requested and the Service proposes to establish the following migratory bird hunting regulations for nontribal members on their reservation for the 1988-89 hunting season:

A. Ducks (including Mergansers)

Season Length and Dates: Same season length as permitted Pacific Flyway States under final Federal framework to be announced. If 79 hunting days are permitted, as in 1987-88, tribal season would run continuously with later opening and earlier closing closure (e.g., tribal season in 1987-88 was October 10-December 27).

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

B. Geese (including Canada, Black Brant, White-fronted and Snow)

Season Length and Dates: Same season length as permitted Idaho under final Federal frameworks to be announced. If 86 days are permitted, as in 1987-88, tribal season would run continuously with later opening and earlier closure (e.g., tribal season in 1987-88 was October 10-January 3). Tentatively, tribal duck and goose seasons would begin on same date, preferably a Saturday.

Daily Bag and Possession Limits: Same as permitted Idaho under final Federal framework to be announced.

C. Coots

Season Length and Dates: Same as for ducks.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

D. Common Snipe

Season Length and Dates: Same as for ducks.

Daily Bag and Possession Limits: 8 daily. Possession limit 18.

E. General Conditions

Nontribal members will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation State (Duck Stamp) signed in ink across the face. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

4. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. In a June 7, 1988 letter, the tribe requested a continuous waterfowl hunting season with the latest closing date and longest season permitted under final Federal frameworks to be announced. The tribe requested the same daily bag and possession limits for ducks permitted Pacific Flyway States and the same bag and possession limits permitted Arizona for geese. Season dates and bag and possession limits for band-tailed pigeons will be the same as established by Arizona under final Federal frameworks. The regulations will apply both to tribal members and nontribal members.

The regulations requested by the tribe are the same as were approved last year, and the Service proposes to establish them again for the 1988-89 hunting season.

5. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and they have full wildlife management authority. Beginning with the 1985 hunting season, the Service, as requested by the tribes, has established the same migratory bird hunting regulations on the reservation as

in the Colorado River Zone in California.

In a June 8, 1988 proposal, the tribes requested regulations that are almost identical to those approved last year. As discussed earlier, however, duck numbers in the fall likely will be much smaller than last year. There is special concern regarding the population status of pintails, whose numbers have declined alarmingly in recent years, as well as the status of canvasbacks and other ducks. Consequently, while the regulations frameworks for these species and other ducks have not been announced, it may be necessary to set more restrictive regulations in the 1988-89 hunting season. Therefore, the Service proposes to establish the same migratory hunting regulations on the reservation as will be established for California's Colorado River Zone. As in the past, the regulations will apply both to tribal members and nonmembers.

6. Penobscot Indian Nation, Old Town, Maine

Since June 1985, the Service has approved a general migratory bird hunting season for both tribal members and nonmembers, under regulations adopted by the State, and a sustenance season that applied only to tribal members. At the Service's request, the tribe has monitored black duck harvest during each sustenance season and has confirmed that it is negligible in size.

In a June 2, 1988 proposal, the tribe again requested special regulations for tribal members in Penobscot Indian Territory, an area of trust lands that includes but is much larger than the reservation. The tribe proposed a 1988-89 sustenance hunting season of 75 days (September 17-November 30), with a daily bag limit of 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members will be only the larger of the two daily bag limits. All other Federal regulations will be observed by tribal members, except that shooting hours will be from one-half hour before sunrise to one-half after sunset. Nontribal members hunting on Penobscot Indian Territory will adhere to the waterfowl hunting regulations established by the State of Maine.

The Service notes that the regulations requested by the tribe are nearly identical to those established last year and proposes to approve the tribal request.

7. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Since 1965, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds on Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (which represents the various bands). Beginning in 1986, the Michigan Department of Natural Resources agreed to accommodate a tribal season on ceded lands in the western portion of the State's Upper Peninsula, and the Service approved special regulations for tribal members in both Michigan and Wisconsin during the 1986-87 and 1987-88 hunting seasons. Last year, the Great Lakes Indian Fish and Wildlife Commission requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin officials raised concern about the possible effects of the early season on the State's efforts to establish local breeding populations of Canada geese, especially at Powell Marsh. Because of this concern, during the 1987-88 hunting season, the tribes agreed to certain regulatory safeguards on the Powell Marsh, including a 3-day closure prior to the beginning of the Wisconsin goose season. Minnesota did not concur with the proposed regulations, and in meetings and correspondence, stressed that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern but pointed out that the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin, even though the *Voigt* decision did not specifically address ceded land outside Wisconsin. The Service pointed out further that this was appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, and the fact that the tribal harvest was expected to be small, the Service approved special regulations for the 1987-88 hunting season on ceded lands in all three States.

On May 18, 1988, the Great Lakes Indian Fish and Wildlife Commission again requested special regulations, and copies of the proposal were mailed to officials in the affected States of Michigan, Minnesota, and Wisconsin. The proposed regulations are shown below. They are similar to those established in previous years, except that the daily bag limit for coots in Minnesota and Wisconsin will be 20 instead of 15, Wisconsin duck season dates also would apply in Minnesota, and there would be no three-day closure on Powell Marsh prior to the opening of the Wisconsin goose season.

In a June 24, 1988 letter, the Wisconsin Department of Natural Resources raised several concerns regarding the proposed regulations and asked that the Voigt Task Force of the Great Lakes Indian Fish and Wildlife Commission and the State negotiate an agreement for the upcoming waterfowl season similar to those entered into during the previous three years. The Service has no objection to most of the regulations requested by the Great Lakes Indian Fish and Wildlife Commission for the the upcoming hunting season and proposes to establish all of them, except those relating to duck hunting season dates in Minnesota and Wisconsin. As pointed out earlier in this document, the fall flight of ducks is expected to be much smaller than usual this year, and Federal frameworks for State hunting regulations likely will be more restrictive than was the case in the 1987-88 season. Consequently, as a conservation measure, the Service believes that some reduction in tribal hunting activity and duck harvest is needed. The Service intends to consult with tribal and Wisconsin officials and reach a prompt and mutually acceptable agreement on duck hunting season dates prior to the 1988-89 hunting season.

The State of Michigan raised no objections to the hunting regulations requested for ceded lands in the State's Upper Peninsula. However, in a June 23, 1988 letter from the Minnesota Department of Natural Resources, Roger Holmes, Wildlife Section Chief, stated that the State is opposed to special migratory bird hunting regulations for Chippewa Indians on ceded lands in Minnesota. In the letter, he acknowledged that the Minnesota Chippewa Tribe has established the right to hunt on certain reservations free of State interference. However, Mr. Holmes expressed the opinion that this right does not extend to ceded lands in Minnesota or to hunting migratory birds outside of the Federal frameworks. The Service notes the continued opposition

of Minnesota to special seasons on ceded lands in the State but believes that they are appropriate if carefully regulated. Accordingly, the Service intends to consult further with Minnesota State officials and tribal representatives with the aim of striving for agreement on off-reservation hunting regulations for the 1988-89 hunting season.

A. Ducks

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin State season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

Special Scaup—only Season

Wisconsin and Minnesota Zones: Same dates, season length, and daily bag and possession limits permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks.

B. Canada Geese

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

Michigan Zone

Season Dates: Same dates and season length permitted Michigan under final Federal frameworks to be announced.

Daily Bag and Possession Limits: 3 daily Possession limit 6.

C. Other Geese (Blue, Snow, and White-fronted Geese)

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final frameworks to be announced.

D. Coots and Common Moorhens (Common Gallinule)

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 20 daily, singly or in the aggregate. Possession limit 40.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

E. Sora and Virginia Rails

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 25 daily, singly or in the aggregate. Possession limit 25.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

F. Common Snipe

Wisconsin and Minnesota Zones:

Season Dates: Begin September 19. End with closure of Wisconsin duck season.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

G. Woodcock

Wisconsin and Minnesota Zones:

Season Dates: September 10-November 14.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

Michigan Zones: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

H. General Conditions

1. While hunting waterfowl a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Tribal members will comply with all basic Federal migratory bird hunting regulations, 50 CFR Part 20, and shooting hour regulations, 50 CFR Part 20, Subpart K.

3. Nontoxic shot will be required for all off-reservation hunting by tribal members of waterfowl, coots, moorhens, and gallinules.

4. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. **Wisconsin Zone.** Tribal members will comply with NR 10.09(1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. NR 10.12(1)(C), Wis. Adm. Code (shooting from structures), sec. NR 10.12(1)(g), Wis. Adm. Code (decoys), and sec. 29.27 Wis. Stats. (duck blinds). The Canada goose season at Powell Marsh will begin on September 19. A tribal quota of 25 Canada geese will be in effect until September 25, or until daily censuses by Great Lakes Indian Fish and Wildlife Commission or Wisconsin Department of Natural Resources employees indicate that at least 300 Canada geese are in the area, whichever comes first. If the tribal quota is reached before September 25 or before 300 Canada geese are present, Powell Marsh will be closed to tribal hunting until September 25. Thereafter, the tribal season will resume without a quota and with a daily bag limit of 3 Canada geese.

6. **Minnesota Zone.** Tribal members will comply with M.S. 100.29, Subd. 18 (duck blinds and decoys).

7. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

8. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

Last year, publication of special migratory bird hunting regulations for the Flathead Indian Reservation was delayed because of jurisdictional questions concerning regulation of hunting by nontribal members on reservation lands owned by non-Indians. However, the tribes and the State of Montana eventually reached agreement for the 1987-1988 hunting season, and the Service published the regulations in the November 10, 1987 Federal Register (52 FR 43308).

In a proposal received May 24, 1988, the Confederated Salish and Kootenai Tribes requested special waterfowl hunting regulations for the reservation for the 1988-89 hunting season. The proposal requested the same waterfowl and coot hunting regulations that will be established for the Pacific Flyway

portion of Montana and included provision for the customary early closure of the goose season on a portion of the reservation.

In a June 24, 1988 letter, James W. Flynn, Director, Montana Department of Fish, Wildlife and Parks, stated that the Confederated Salish and Kootenai Tribes and the State of Montana are working toward a long-term agreement. In his letter, Mr. Flynn stressed that there were some minor differences to be resolved but that he is confident that they can be worked out as they were last year so that regulations throughout the reservation are uniform and enforcement is by mutual consent.

The Service is pleased that negotiations between the Confederated Salish and Kootenai Tribes and Montana are progressing satisfactorily and urges that agreement be reached in time to include the 1988-89 migratory bird hunting regulations for the Flathead Indian Reservation in the final rule scheduled for publication in mid-August.

Public Comment Invited

Based on the results of recently completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations beginning as early as September 1, 1988 on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations for tribal or for both tribal members and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open season, shooting hours, and bag and possession limits for rails, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers), and geese.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, he desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and he will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comments. Two considerations compress the time in which this rulemaking process must operate: the need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1988, and on the other hand, the unavailability before late July of specific reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 8, 1988 is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in Room 536, Matomic Building, 1717 H Street, NW, Washington, DC 20240. All relevant comments on the proposals received no later than August 8, 1988 will be considered.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the Federal Register on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88-

14)", was filed on June 9, 1988, and notice of availability was published in the Federal Register on June 10, 1988 (53 FR 22582) and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On December 14, 1987 (at 53 FR 47428), the Service proposed nontoxic shot zones for the 1988-89 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1988-89 hunting season was published on June 28, 1988 in the Federal Register (53 FR 24284). All of the proposed hunting regulations covered by this proposed rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *."

Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the proposed hunting seasons on Federal Indian reservations and ceded lands.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the Federal Register dated March 9, 1988 (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory

Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240. As noted in the Federal Register, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rulemaking is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20.

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988-89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended.

Date: July 19, 1988.

Susan Rascoe,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-10519 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee, Working Group on Biocontainment; Change of Meeting Place

In accordance with the Federal Advisory Committee Act of October, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following change in meeting place of the working group on biocontainment of the Agricultural Biotechnology Research Advisory Committee (ABRAC).

In the Federal Register of July 11, 1988 (53 FR 28094), the USDA published a notice announcing the time and place for a meeting of the Working Group on Biocontainment of the ABRAC. This notice announces a change in the meeting place of the Working Group on Biocontainment as announced in the previous notice. The time of the meeting is unchanged.

The Working Group on Biocontainment will meet at the U.S. Department of Agriculture, Conference Room 338-C, Aerospace Building, 901 D Street SW., Washington, DC 20024 on August 11-12, 1988, from approximately 9:00 a.m. to 5:00 p.m. on August 11, and approximately 9:00 a.m. to adjournment at approximately 3:00 p.m. on August 12 to discuss biological containment and confinement in agriculture biotechnology research.

This working group meeting is open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, Office of Agricultural Biotechnology, Room 321-A, Administration Building, 14th Street and Independence Avenue SW.,

Washington, DC 20250, telephone (202) 447-9165.

Date: July 14, 1988.

Orville G. Bentley,
Assistant Secretary, Science and Education.
[FR Doc. 88-10526 Filed 7-21-88; 8:45 am]
BILLING CODE 3410-22-M

Animal and Plant Health Inspection Service

[Docket No. 88-114]

Boll Weevil Eradication Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document advises the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement (EIS) for the Federal/cooperative Boll Weevil Eradication program. This document also requests comments and gives notice of scoping meetings, to allow for public involvement in the scoping process as the first step in the development of the EIS. The impacts on the environment of the eradication of boll weevil will be evaluated in the EIS.

DATES: Written comments must be received by September 2, 1988. Scoping meetings concerning issues affecting the development of the EIS will be held in Montgomery, Alabama, on August 1, 1988; in Lubbock, Texas, on August 3, 1988; and in Phoenix, Arizona, on August 5, 1988.

ADDRESSES: Send an original and two copies of written comments concerning issues to be addressed during development of the EIS to Michael T. Werner, Environmental Specialist, Biotechnology and Environmental Coordination Staff (BECS), APHIS, USDA, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Please state that your comments refer to Docket No. 88-114. Comments received may be inspected at Room 1147 of the U.S. Department of Agriculture, 12th and Independence Avenue, SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The scoping meetings will be held at the following locations: (1) Alabama Department of Agriculture, Richard Beard Building, 1445

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Congressman W.L. Dickerson Drive, Montgomery, Alabama 36193 on August 1, 1988; (2) city of Lubbock Civic Center, 1501 8th Street, Lubbock, Texas 79401 on August 3, 1988; and (3) Cooperative Agricultural Extension Service, 4341 East Broadway, Phoenix, Arizona 85040, on August 5, 1988.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Environmental Specialist, BECS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-7602.

SUPPLEMENTARY INFORMATION: This document requests comments and gives notice of scoping meetings by the Animal and Plant Health Inspection Service (APHIS) to allow the public involvement in the scoping process as the first step in the development of a programmatic environmental impact statement (EIS) for the Federal/cooperative Boll Weevil Eradication program. Accordingly, comments at the scoping meetings and written comments by mail are invited from the public; from Federal, State, and local agencies that have an interest in APHIS or related programs; and from Federal and State agencies that have either jurisdiction by law or special expertise regarding any national program issue or environmental impact that should be discussed in the EIS.

Scoping Process/Procedures for Scoping Meetings

The initial step in the process of EIS development is scoping. Scoping includes solicitation of public involvement in the form of either written or oral comments, and evaluation of those comments. This process is used for determining the scope of issues to be addressed and for identifying the significant issues related to the Federal/cooperative Boll Weevil Eradication program.

A representative of APHIS will preside at the scoping meetings, where comments will be taken concerning any issue that would be relevant for consideration during preparation of the EIS. Interested persons may appear and be heard in person or by attorney or other representative.

Each meeting will begin at 9:00 a.m. and is scheduled to end at 4:00 p.m., local time. However, a meeting may be ended earlier if all persons who are

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present and who have requested an opportunity to speak have been heard. Persons who wish to speak should register with the presiding officer before the meeting. Pre-meeting registration will be conducted at each meeting location from 8 a.m. to 9:00 a.m. on the meeting date. Registered persons will be heard in the order of their registration. However, other persons who wish to speak at the meeting will be afforded that opportunity after the registered persons have been heard. It is requested that three copies of any written statements that are presented be provided to the presiding officer at the meeting. If the number of preregistered persons and other participants at the meeting warrants, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak an opportunity to be heard.

Background

The boll weevil was introduced to the United States in 1892 near Brownsville, Texas. From that point of introduction the weevil spread quickly, and by 1922, it had completely infested a region known since then as the Boll Weevil Belt. This area involves nearly 11 million acres of cotton.

As the boll weevil spread eastward and westward from its point of origin, it caused more damage than any other cotton pest. It is currently the most important agricultural pest in the United States, responsible for more than \$300 million in annual losses and control costs for cotton. The damage caused by the boll weevil and other pests has been estimated to be 7 to 20 percent of the U.S. crop.

In infested areas, economic losses can be prevented only by intensive use of chemicals by growers. Frequently, these chemicals must be applied repeatedly throughout the growing season to control weevils and any resulting secondary pests. Within the proposed program area, the boll weevil may be indirectly responsible for much of the damage caused by the bollworm (*Heliothis zea*, Boddie), the tobacco budworm (*Heliothis virescens*, Fabricius), and spider mites, because insecticides used to control the boll weevil destroy many of the natural enemies of these species. This, in turn, often results in higher crop losses and even more intensive use of insecticides to protect the crop from these pests. This boll weevil cycle results in very few grower options for using pest management control strategies against other pests.

APHIS initiated a Boll Weevil Eradication Trial in North Carolina and Virginia during 1978 through 1982. That

trial demonstrated that boll weevil can be eradicated, and, further, that the eradication of the boll weevil can also increase the value of land not previously planted for cotton production. The success of this trial program on nearly 40,000 acres resulted in program expansion to other cotton producing areas. A significant benefit of the program is the decline in cotton insecticide application for the eradication zone following the program. The decline in pesticide usage was estimated to be 55 percent. In the buffer zone, that area immediately outside of the eradication zone, private insect control expenditures also declined by about 14 percent.

APHIS has cooperated in three isolated Boll Weevil Eradication programs: Southeast, Texas High Plains, and Southwest. Because of the need to protect control areas from reinfestation, APHIS has cooperated with the Government of Mexico to control boll weevil in Mexican cotton fields adjacent to the U.S. border. Because of the success of the trial program and the relative success of the three cooperative programs, and the desire to instill more uniformity in the boll weevil eradication effort, APHIS proposes to implement a boll weevil eradication effort that covers the entire Boll Weevil Belt. The scope of that program, and the multi-year nature of the endeavor, triggers the need for a comprehensive, programmatic EIS.

Alternatives

The following alternative methods of control for boll weevil are to be considered in the EIS: (1) No Action; (2) Sterile Insect Technique (SIT); (3) Cultural; (4) Chemical; (5) Integrated Pest Management (IPM); (6) Limited Federal intervention, such as provision of guidance for instruction to growers concerning management practices, including avoiding planting cotton near sensitive areas; (7) Direct Subsidy to cotton growers to control boll weevils with Federal guidance as to control practices; and (8) Boll weevil suppression.

Major Issues

The following are some of the major issues to be discussed in the EIS:

- (1) Impacts of the alternatives on the biological environment, including target and nontarget species;
- (2) Impacts of the alternatives on the physical environment, including soil, water quality, and air quality.
- (3) Impacts of the alternatives on other aspects of the human environment, such as wilderness areas, domestic animals, recreation, public health and

safety, the cultural environment, public attitudes, energy, and the economy.

Preparation of EIS

Following scoping, a draft programmatic EIS will be developed. A "notice of availability" will be published in a subsequent Federal Register notice.

Done in Washington, DC, this 19th day of July 1988.

Larry B. Slagle,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-16675 Filed 7-21-88; 8:45 am]
BILLING CODE 3410-34-2

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: August 12, 1988.

Place: Butler Square West, 5th Floor, 100 North Sixth Street, Minneapolis, Minnesota 55403.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Grandy Amendment concerning export condition of grain; (2) end-use value report; (3) updates on oil and protein content in soybeans, CuSum, and wheat classification; (4) Grain Insect Interagency Task Force report; (5) financial matters; (6) FGIS mission and strategic planning; and (7) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 98454, Washington, DC 20090-6454, telephone (202) 382-0219.

Dated: July 18, 1988.

W. Kirk Miller,
Administrator.
[FR Doc. 88-16601 Filed 7-21-88; 8:45 am]

BILLING CODE 3410-24-2

Forest Service

Kenai Management Area Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed activities to occur under Management Area Analysis for the Kenai Management Areas on the Chugach National Forest, Alaska.

DATE: Comments concerning the scope of the analysis should be received by September 12, 1988.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis must be sent to Dalton Du Lac, Forest Supervisor, Chugach National Forest, 201 E. Ninth Avenue, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Fred Patten, Forest Planner, Chugach National Forest 201 E. Ninth Avenue, Anchorage, Alaska 99501, phone 907-271-2557.

SUPPLEMENTARY INFORMATION: The Chugach National Forest Land and Resource Management Plan was completed in July 1984. A Settlement Agreement to the appeal of the Forest Plan was signed November 26, 1985. That Settlement Agreement requires completion of Management Area Analysis for each of the nine management areas in the Forest Plan. The Settlement Agreement called for Management Area Analysis to be tied to the Forest Plan EIS, be consistent with the terms of the Agreement, and may result in an amendment or revision of the Forest Plan pursuant to 36 CFR 219.10 (e), (f) or (g) (1987).

Management Area Analysis will further specify if, how, when and where management activities specified by area in the Forest Plan are to be implemented for the life of the current Plan. Resource information needed to manage these Forest lands will be evaluated and updated where possible and appropriate so that cumulative effects of proposed management activities can be estimated.

Specific topics to be addressed in the Management Area Analysis include: minerals area management, recreation opportunities, timber management including salvage of beetle killed trees, wildlife and fisheries habitat improvement opportunities, subsistence requirements set forth in section 810 of ANILCA, transportation planning,

effects of land selections on the Management Areas, additional standards and guidelines and environmental impacts of proposed activities.

A range of alternatives for the Management Area will be considered. One of them will be no further development in the area. Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternative (i.e. direct, indirect, and cumulative effects and connected actions).

6. Determining potential cooperating agencies and task assignments.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1, 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that reviewers participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition Federal Court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the

reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). NEPA case law supports the proposition that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by December 1988. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Date: July 13, 1988.

Jan Deleo,
Acting Forest Supervisor.
[FR Doc. 88-16507 Filed 7-21-88; 8:45 am]
BILLING CODE 3410-11-2

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held August 17 and 18, 1988, in the Herbert C. Hoover Building, 14th & Constitution Avenue NW., Washington, DC.

The August 17 meeting will convene in Room B-841 at 9:00 a.m. On August 18, the meeting will reconvene at 9:00 a.m. and continue to its conclusion in Room B-841 of the Herbert C. Hoover Building. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls

applicable to electronics and related equipment and technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Public discussion on any other matters related to activities of the Electronic Instrumentation Technical Advisory Committee.

Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security.

Executive Session

4. Discussion on matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Betty Anne Ferrell, (202) 377-2583.

Dated: July 18, 1988.

Betty Anne Ferrell,
Acting Director, Technical Support Staff,
Office of Technology and Policy Analysis.
[FR Doc. 88-10511 Filed 7-21-88; 8:45 a.m.]
BILLING CODE 3510-07-M

International Trade Administration

(A-428-801 et al.)

Postponement of Preliminary Antidumping Duty Determinations; Antifriction Bearings, and Parts Thereof, From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom

In the matter of A-428-801, A-427-801, A-475-801, A-588-804, A-485-801, A-559-801, A-401-801, A-549-801, and A-412-801.

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is postponing its preliminary determinations in the antidumping duty investigation of antifriction bearings, and parts thereof, (antifriction bearings) from The Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and The United Kingdom. The statutory deadline for issuing these preliminary determinations is no later than October 27, 1988.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman (202-377-2438) or Gary Taverman (202-377-0161), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On April 20, 1988, the Department initiated antidumping duty investigations of antifriction bearings from The Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and The United Kingdom. The notices stated that we would issue our preliminary determinations on or before September 7, 1988 (53 FR 15073-15082, April 27, 1988).

We determine that these cases are extraordinarily complicated because they involve unusually large numbers of sales transactions, there are an extraordinarily large number of different products involved, there is further processing by the respondents' U.S. subsidiaries before sale to an unrelated party, and because we are investigating allegations that home market sales are being made below the cost of production. We have determined that the parties concerned are cooperating and that additional time is necessary to make preliminary antidumping duty determinations.

For these reasons, we determine that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) of the Tariff Act of 1930, as amended (the Act), and that additional time is necessary to make these preliminary determinations in accordance with section 733(c)(1)(B)(ii) of the Act. The statutory deadline for issuing these preliminary determinations is no later than October 27, 1988.

This notice is published pursuant to section 733(c)(2) of the Act.

July 15, 1988.

Jan W. Mares,
Assistant Secretary for Import Administration.
[FR Doc. 88-10564 Filed 7-21-88; 8:45 am]
BILLING CODE 3510-08-M

(C-122-803)

Preliminary Negative Countervailing Duty Determination; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Canada of thermostatically controlled appliance plugs and internal probe thermostats therefor (the subject merchandise) as described in the "Scope of Investigation" section of this notice. We have notified the U.S. International Trade Commission (ITC) of our determination. If this investigation proceeds normally, we will make a final determination by October 3, 1988.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Carole Showers or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3217 or 377-0181.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers,

or exporters in Canada of the subject merchandise.

Case History

Since the publication of the Notice of Initiation in the *Federal Register* (53 FR 16751, May 11, 1988), the following events have occurred. On May 24, 1988, we sent a questionnaire to the Government of Canada in Washington, DC, concerning petitioner's allegations. On June 10, 1988, ATCO Controls, Inc. (ATCO), the respondent company in this investigation, filed a timely request for exclusion from any countervailing duty order (see section on exclusion request below). On June 23, 1988, we received a response from the Government of Canada, the Province of Ontario, and ATCO. On July 11, 1988, we sent a deficiency questionnaire to the government, the province, and the respondent company, and received a response to this questionnaire on July 15, 1988.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On May 31, 1988, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of the subject merchandise (53 FR 21532, June 8, 1988).

On June 16, 1988, the petitioner filed a request that the preliminary determination be postponed for seven days. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determination to no later than July 18, 1988 (53 FR 24990, July 1, 1988).

Exclusion Request

On June 10, 1988, in accordance with § 355.38 of the Commerce regulations (19 CFR 355.38), ATCO, the only known producer and exporter of the subject merchandise in Canada, requested exclusion from any possible countervailing duty order which might result from this investigation. In its exclusion request, ATCO claimed not to have benefitted from any of the subsidy programs under investigation during the review period. On June 30, 1988, we sent a letter to the Embassy of Canada explaining the requirements for government certification of an exclusion request. We confirmed that a company would be eligible for exclusion if it either did not benefit, or benefitted only at a *de minimis* level overall, in the programs under investigation. We also informed the Canadian government that it was required to certify either non-use

by the company of the alleged subsidy programs, or that the overall net benefit received under these programs during the review period was *de minimis*. We received the government certification on July 15, 1988.

Based upon our analysis of the response submitted by ATCO and of the government certification, we preliminarily determine that ATCO would qualify for exclusion. However, exclusion is only relevant within the context of an affirmative determination for which there would be an estimated net subsidy rate and corresponding provisional measures from which to be excluded. In this investigation, since ATCO is the only respondent company and, according to its response, it did not receive any benefits under any of the alleged subsidy programs, we have found the preliminary estimated net subsidy to be zero. Therefore, for purpose of this preliminary negative determination, the exclusion provision does not apply.

Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances), consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *Tariff Schedules of the United States Annotated* item numbers 711.7820 and 711.7840 and under Harmonized System item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the

existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailing, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies (the review period) is August 1, 1986 to July 31, 1987 (ATCO's fiscal year). Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers, or exporters in Canada of the subject merchandise did not apply for, claim, or receive benefits during the review period for exports of the subject merchandise to the United States under the following programs:

A. Federal Programs

2. *Certain Types of Investment Tax Credits.* There are several categories of investment tax credits in Canada. A basic seven percent tax credit is available throughout Canada for qualified property, and transportation and construction equipment acquired before 1987. Additional tax credits are available to encourage investment in certain designated regions of Canada and for investment in scientific research and industrial research and development.

2. *Community-based Industrial Adjustment Program.* The community-based industrial adjustment program (CIAP) was established to encourage firms to undertake viable capital projects in designated communities that were affected by serious industrial relocation. Assistance was provided in the form of grants or loans covering a certain percentage of the costs associated with the CIAP project. According to the response, the program was terminated in 1984.

3. *Programs for Export Market Development and Promotional Projects.* The Program for Export Market Development (PEMD) has two major components: (1) Industry-initiated support for export market development, and (2) government-initiated support in

organizing and sponsoring international trade fairs and missions. Assistance is provided in the form of interest-free loans. According to the response, the Promotional Projects Program was the predecessor of PEMD.

4. *Regional Development Incentives Program.* The Regional Development Incentives Program (RDIP) was established to stimulate increased economic activity, industrial expansion, and employment opportunities in certain designated areas of Canada. Assistance was provided in the forms of grants and loan guarantees. According to the response, the program was terminated in 1983.

5. *Industrial and Regional Development Program.* The Industrial and Regional Development Program (IRDP) replaced previous programs of support such as RDIP. It was established to promote industrial development in certain designated regions of Canada. Assistance is provided in the forms of grants or loans, with the amount of the benefit varying between regions.

6. *Export Credit Financing.* The Export Development Corporation provides export credit financing of Canadian exporters and foreign buyers in order to facilitate and develop export trade.

B. Joint Federal-Provincial Programs

1. *Agricultural and Rural Development Agreements.* Agricultural and Rural Development Agreements (ARDA) (both regular and special) are joint federal/provincial efforts to promote economic development and to alleviate conditions of social and economic disadvantage in certain rural areas. ARDA assistance is provided in the form of grants.

2. *General Development Agreements.* General Development Agreements (GDA) enabled the federal government to work with provincial governments in formulating a basic strategy for economic development by establishing various programs, delineating administrative procedures, and setting our relative funding commitments. Assistance was provided in the form of grants. According to the response, all GDAs expired in 1984.

3. *Economic and Regional Development Agreements.* Economic and Regional Development Agreements (ERDA) are essentially a continuation of the GDAs. ERDA assistance, which is provided in the form of grants, is directed at providing or improving the infrastructure needed to encourage private sector investment and to create employment opportunities.

c. Provincial Program

Ontario Development Corporation (ODC). The Ontario Development Corporation (ODC) was established to assist in the development and diversification of industry in Ontario. Assistance is provided in the forms of loans (including export loans), loan guarantees, and grants.

Verification

In accordance with section 770(a) of the Act, we will verify the information used in making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on September 7, 1988, at 3:00 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the Federal Register.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by August 31, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 355.34,

written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

July 18, 1988.

Jan W. Mares,
Assistant Secretary for Import
Administration.

[FR Doc. 88-16565 Filed 7-21-88; 8:45 am]

BILLING CODE 3510-05-M

[C-557-902]

Preliminary Negative Countervailing Duty Determination; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Malaysia

AGENCY: Import Administration,
International Trade Administration,
Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Malaysia of thermostatically controlled appliance plugs and internal probe thermostats therefor (the subject merchandise) as described in the "Scope of Investigation" section of this notice. If this investigation proceeds normally, we will make our final determination on or before October 3, 1988.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0187 or 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of the subject merchandise.

Case History

Since the publication of the Notice of Initiation in the Federal Register (53 FR 16753, May 11, 1988), the following

events have occurred. On May 18, 1988, we presented a questionnaire to the Government of Malaysia in Washington, DC, concerning petitioner's allegations. On June 20, 1988, we received a response from the Government of Malaysia and a response from Power Electronics Sdn. Bhd. (Power Electronics). On July 1, 1988, we delivered a supplemental/deficiency questionnaire to the Government and the respondent company, and received a response on July 8, 1988.

On June 16, 1988, the petitioner filed a request that the preliminary determination be postponed for seven days. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determination to no later than July 18, 1988 (53 FR 24990, July 1, 1988).

Scope of Investigation

The products covered by this investigation are thermostatically controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings) and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *Tariff Schedules of the United States Annotated* item numbers 711.7820 and 711.7840 and under *Harmonized System* item numbers 9032.10.00, 9032.20.00, 9032.89.00, 9032.90.00, and 9033.00.00.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the

response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1987, which corresponds to the fiscal year of the respondent company. Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

1. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers, or exporters in Malaysia of the subject merchandise did not apply for, claim or receive benefits during the review period for exports of the subject merchandise to the United States under the following programs:

A. Export Tax Incentives

1. *Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and an Abatement of Five Percent of the Value of Indigenous Materials Used in Exports.* The Investment Incentives Act of 1968 provided for an abatement of taxable income based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the Promotion of Investments Act of 1986. Among other incentives, the new law provides for an abatement of adjusted income for exports. The amount of adjusted income to be abated is: (a) A rate equivalent to 50 percent of the ratio of export sales to total sales; and (2) five percent of the value of indigenous Malaysian materials incorporated in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

2. *Allowance of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-made Products.* Under the Promotion of Investments Act of 1986, an allowance of five percent of the F.O.B. value of export revenues is available to trading companies and agricultural companies exporting Malaysian-made products. This program is not available to companies still participating in programs under the

repealed Investment Incentives Act of 1968, including Pioneer Status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

3. *Double Deduction for Export Credit Insurance Payments.* The Income Tax Act of 1967, as amended, provides for a deduction to be taken on a company's tax return for the cost of export credit insurance in addition to a similar deduction allowed on a company's financial statement.

4. *Double Deduction for Export Promotion Expenses.* Section 41 of the Promotion of Investments Act of 1986 allows companies to deduct expenses related to the promotion of exports twice, once on the financial statement and again on the income tax form.

5. *Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales.* Effective in 1984, section 29 of the Investment Incentives Act of 1968 was amended to allow for a flat deduction of five percent of export revenues (based on F.O.B. value) from taxable income. Due to the enactment of the Promotion of Investments Act of 1986, this program currently applies only to trading companies and agricultural companies. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

6. *Industrial Building Allowance.* Sections 63-66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance was extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods.

B. Other Export Incentives

1. *Export Credit Refinancing.* The Bank Negara Malaysia, the central bank of Malaysia, provides pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively. The Bank offers order-based financing on specific shipments, as well as "certificate of performance" financing, which is a credit line based on the previous 12 months' export performance.

2. *Export Insurance Program.* Export credit insurance is provided by Malaysian Export Credit Insurance, Bhd. (MECIB). Established under the Malaysian Companies Act of 1965,

MECIB is owned jointly by the Government of Malaysia (53.6 percent) and by commercial banks and insurance companies (46.4 percent). MECIB provides insurance only to cover commercial and political risks.

C. Other Tax Incentives

1. Pioneer Status Under the Investment Incentives Act of 1966. Pioneer status under this Act, as amended, is available to companies producing a product (1) with favorable prospects for further development, including development for export, or (2) currently being produced in insufficient quantities to meet the development needs of Malaysia, including export. Benefits granted under pioneer status include exemptions on the portion of income derived from sales of the pioneer product from the following: (1) The 40 percent corporate income tax; (2) the five percent development tax; (3) the three percent excess profits tax; and (4) the 40 percent dividend tax. Pioneer status benefits are available for a period of up to five years and may be extended for up to an additional three years. This program is not available to companies granted pioneer status under the Promotion of Investments Act of 1966.

2. Pioneer Status Under the Promotion of Investments Act of 1966. As stated above, the Promotion of Investments Act of 1966 replaced the Investment Incentives Act of 1966. The primary changes in the pioneer status program under the new law are as follows: (1) The initial grant of pioneer status is five years for all companies, regardless of their level of investment; (2) the product must be on the "promoted product" or "promoted activities" list; (3) specific one-year extensions for location, priority products, and Malaysian content have been eliminated; (4) extensions are now granted for five years if the product is on the "promoted product" list for extensions and the company meets certain investment, employment, or development criteria; and (5) pioneer status may also be provided to non-corporate entities such as cooperative societies, associations, etc. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1966.

3. Investment Tax Allowance. The Promotion of Investments Act of 1966 provides for an investment tax allowance, limited by the amount of actual expenses, for qualifying capital expenditures. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1966 or under the Promotion of Investments Act of 1966.

4. Accelerated Depreciation Allowance. The Income Tax Act of 1967, as amended in 1979, provides for an accelerated depreciation allowance of 40 percent for qualifying expenditures. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1966 or under the Promotion of Investments Act of 1966.

5. Reinvestment Allowance. The Income Tax Act of 1967, as amended in 1979, provides for a reinvestment allowance of 25 percent for capital expenditures on a factory, plant or machinery. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1966 or under the Promotion of Investments Act of 1966.

D. Medium- and Long-term Government Financing

Medium- and long-term financing is provided by the following institutions:

- The Industrial Development Bank of Malaysia (IDBM).
- The Development Bank of Malaysia (DBM).
- The Borneo Development Corporation (BDC).
- The Sabah Development Bank (SDB).

IDBM, which is wholly owned by the Government of Malaysia, provides financing primarily to the shipping industry, whereas the main objective of DBM is to promote businesses owned by Bumiputras (native Malaysians not of Chinese or Indian descent). BDC was established to promote industrial development in the Sabah and Sarawak states; each state has a 50 percent ownership in the bank. SDB, wholly owned by the State of Sabah, was established to promote economic development in that state.

E. Reduction in the Cost of State Land for New Industry

Certain states may reduce the price of state land in order to attract investment and development.

F. Preferential Financing for Bumiputras

The DBM provides medium- and long-term financing as well as guarantees for industrial equipment loans to Bumiputras.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an

opportunity to comment on this preliminary determination on September 7, 1988, at 1:00 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the Federal Register.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by August 31, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 355.34, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

July 18, 1988.

Jan W. Maros,

Assistant Secretary for Import Administration.

[FR Doc. 88-16566 Filed 7-21-88; 8:45 am]

BILLING CODE 3010-06-30

[C-583-802]

Preliminary Affirmative Countervailing Duty Determination; Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 8.80 percent *ad valorem*.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing

the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy. If this investigation proceeds normally, we will make our final determination on or before October 3, 1988.

EFFECTIVE DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters in Taiwan of the subject merchandise. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

- Preferential Export Financing.
- Export Loss Reserves.
- Accelerated Depreciation and Tax Holidays.
- Preferential Income Tax Rate Ceiling of 25 Percent for Big Trading Companies.
- Duty Exemptions and Deferrals on Imported Equipment.
- Preferential Income Tax Rate Ceiling of 22 Percent.
- Overbate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise.
- Rebate of Import Duties and Indirect Taxes on Imported Materials not Physically Incorporated in Export Merchandise.

We preliminarily determine the estimated net subsidy for the subject merchandise to be 8.80 percent *ad valorem*. As discussed in the "Analysis of Programs" section below, this rate is based on best information available.

Case History

Since the publication of the Notice of Initiation in the Federal Register (53 FR 16754, May 11, 1988), the following events have occurred. On May 23, 1988, we presented a questionnaire to the

American Institute in Taiwan in Washington, DC and requested that it forward the questionnaire to the Taiwan authorities. We requested a response to our questionnaire by June 22, 1988. On May 26, 1988, the Taiwan authorities requested an extension of the questionnaire response due date. We informed the American Institute in Taiwan that the request for an extension of the due date should be in writing. At that time, we indicated that an extension until June 27, 1988 was possible. We did not receive a written request for an extension, and we did not receive a response from either the Taiwan authorities or the manufacturers, producers, or exporters of the subject merchandise in Taiwan by the June 27, 1988 extension date. On July 1, 1988, we sent a letter to Taiwan authorities through the American Institute in Taiwan, explaining that if we did not receive questionnaire responses from the Taiwan authorities and the companies which export the subject merchandise to the United States by July 6, 1988, we may be required to use the best information available to make our determination in accordance with § 355.39 of our regulations (19 CFR 355.39). We have not received questionnaire responses or any other correspondence to date.

On June 24, 1988 we received a letter from Henslee, Bradley and Robertson, P.C. stating that Etowah Taiwan Enterprises, Ltd., (ETECO) did not export the subject merchandise to the United States during the review period and is not currently exporting the subject merchandise to the United States. On July 8, 1988, we responded to this letter explaining that we will not require ETECO to submit a response for this investigation and that if the company decides to export the subject merchandise to the United States, it will be subject to any countervailing duties that are in effect, if this investigation results in a countervailing duty order.

Since Taiwan is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. On May 31, 1988, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of the subject merchandise (53 FR 21532, June 8, 1988).

Scope of Investigation

The products covered by this investigation are thermostatically

controlled appliance plugs and internal probe thermostats therefor. For purposes of this investigation, the term thermostatically controlled appliance plug refers to any device designed to connect an electrical outlet (typically a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically a griddle, deep fryer, fry pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set.

The term internal probe thermostat refers to any device designed to automatically regulate the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for under *Tariff Schedules of the United States Annotated* item numbers 711.7620 and 711.7640 and under the Harmonized System item numbers 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, 9033.00.00.

Analysis of Programs

Because we did not receive responses to our questionnaire, we are using the best information available as required under § 355.39 of our regulations (19 CFR 355.39), adversely inferring countervailability and receipt of benefits based on the absence of responses. As best information available, we used the highest estimated net subsidy found for each program in any past countervailing duty final determination involving Taiwan. For programs which have been alleged, but which were determined not used in all previous cases, the petitioner was unable to provide information as to whether and to what degree the manufacturers, producers, or exporters of the subject merchandise receive countervailable benefits under these programs. Therefore, we are inferring countervailability of these programs and are using, as the best information available, the highest rate applied to a subsidy program in this investigation.

Based upon our analysis of the petition and the past final countervailing duty determinations involving imports from Taiwan, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

A. Preferential Export Financing

Petitioner alleges that under the Export Financing Program, registered exporters, upon presentation of a letter of credit to authorized foreign currency banks, are eligible for below-market financing covering up to 85 percent of an export transaction. The Central Bank then arranges an interest rate accommodation with the participating banks. The most recent investigation in which this program was determining to be countervailable was the *Final Negative Countervailing Duty Determination: Porcelain-on-Steel Cooking Ware from Taiwan* (51 FR 36453, October 10, 1986) (*Porcelain-on-Steel Cooking Ware*). We have received no further information on the preferential export financing program in this investigation. Therefore, as best information available, we preliminarily determine that exporters of the subject merchandise in Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 0.10 percent *ad valorem*, which is the rate found in the *Final Negative Countervailing Duty Determination: Oil Country Tubular Goods from Taiwan* (51 FR 19583, May 30, 1986).

B. Export Loss Reserves

Petitioner alleges that Article 31 of the Statute for Encouragement of Investment (SEI) allows firms to set aside a reserve of up to one percent of the previous year's export sales to be used for compensation of export losses. Petitioner alleges that this reserve is treated as a deduction from taxable income and allows firms to shelter significant amounts of revenue from taxation. The most recent investigation in which this program was determined to be countervailable was the *Final Affirmative Countervailing Duty Determination: Stainless Steel Cooking Ware from Taiwan* (51 FR 4280, November 26, 1986) (*Stainless Steel Cooking Ware*). We have received no further information on the export loss revenue program in this investigation. Therefore, as best information available, we preliminarily determine that exporters of the subject merchandise from Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 0.02 percent *ad valorem*, which is the rate found in the *Final Negative Countervailing Duty Determination: Welded Carbon Steel Line Pipe from*

Taiwan (50 FR 53363, December 31, 1985).

C. Preferential Income Tax Rate Ceiling of 25 Percent for Big Trading Companies

Petitioner alleges that Article 15 of the SEI permits certain business firms to pay no more than 25 percent in corporate income tax rather than the standard 35 percent. We determined in *Stainless Steel Cooking Ware*, the most recent investigation in which this program was determined to be countervailable, that the 25 percent income tax ceiling granted to big trading companies is based on export performance; therefore, it confers an export subsidy. We have received no further information on the preferential income tax rate ceiling of 25 percent for big trading companies program in this investigation. Therefore, as best information available, we preliminarily determine that manufacturers, producers or exporters of the subject merchandise from Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 0.16 percent *ad valorem*, which is the rate found in *Porcelain-on-Steel Cooking Ware*.

D. Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise

Taiwan authorities give duty drawback on imported materials physically incorporated in export products. Duty drawback is refunded on a shipment-by-shipment basis and is calculated by applying a pre-estimated duty drawback rate to the net weight of the finished product in each shipment. The most recent investigation in which this program was determined to be countervailable was *Stainless Steel Cooking Ware*. We have received no further information on the overrebate of duty drawback on imported materials physically incorporated in export merchandise program in this investigation. Therefore, as best information available, we preliminarily determine that exporters of the subject merchandise from Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 2.13 percent *ad valorem*, which is the rate found in *Stainless Steel Cooking Ware*.

E. Rebate of Import Duties and Indirect Taxes on Imported Materials Not Physically Incorporated in Export Merchandise

Taiwan authorities approve rebates of imported duties and indirect taxes on

imported materials not physically incorporated in export merchandise. The most recent investigation in which this program was determined to be countervailable was *Stainless Steel Cooking Ware*. We have received no further information on the rebate of import duties and indirect taxes on imported materials not physically incorporated in export merchandise program in this investigation. Therefore, as best information available, we preliminarily determine that exporters of the subject merchandise from Taiwan benefit from this program.

The highest estimated net subsidy for this program in any previous final countervailing duty determination is 0.002 percent *ad valorem*, which is the rate found in *Stainless Steel Cooking Ware*.

F. Other Tax and Rebate Programs

The following programs were found to be not used in all previous countervailing duty determinations involving imports from Taiwan. Since respondents did not provide a response in this case, and the petitioner was unable to provide information as to whether and to what degree the manufacturers, producers, or exporters of the subject merchandise receive countervailable benefits under these programs, we are inferring countervailability of these programs and are using, as best information available, the highest rate applied to a subsidy program in this investigation. Therefore, the estimated net subsidy for each of the three programs listed below is 2.13 percent *ad valorem*, which is the rate applied in the "Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise" program in this investigation.

1. *Accelerated Depreciation and Tax Holidays*. Petitioner alleges that Article 6 of the SEI gives newly established "productive enterprises" the right to accelerate depreciation on fixed assets, machinery and equipment or to select a five-year holiday on corporate income taxes. In addition, expanding firms may select a four-year holiday on income derived from increased capacity or a rapid depreciation of newly purchased buildings or equipment.

2. *Duty Exemptions and Deferrals on Imported Equipment*. Petitioner alleges that Article 21 of the SEI allows productive enterprises to pay import duties and dues on selected capital equipment not manufactured domestically in a series of installments beginning one year from the date of importation. In addition, qualified

enterprises may be exempted from paying import duties on machinery or equipment to be used for the establishment or expansion of an approved project or for research and development.

3. *Preferential Income Tax Rate Ceiling of 22 Percent*. Article 15 of the SEI permits firms designated by the Taiwan authorities as "important" productive enterprises to pay a marginal tax rate of 22 percent as opposed to the standard income tax rate of 35 percent.

Verification

In accordance with section 776(a) of the Act, if we receive complete responses in a timely manner, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Taiwan which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register* and to require a cash deposit or bond for each entry in the amount of 8.80 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 120 days after the Department makes its preliminary affirmative determination, or 45 days after the Department makes its final determination, whichever is later.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on September

7, 1988, at 3:00 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice in the *Federal Register*.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by August 31, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 353.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within seven days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671(f)).

July 18, 1988.

Jan W. Mares,
Assistant Secretary for Import
Administration.

[FR Doc. 88-16567 Filed 7-21-88; 8:45 am]

BILLING CODE 3510-05-M

Department of Energy, Argonne National Laboratory, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1986 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-110

Applicant: U.S. Department of Energy, Argonne National Laboratory, Argonne, IL 60439-4812. Instrument: Tribometer. Manufacturer: Centre Suisse D'electronique et de Microtechnique, S.A., Switzerland. Intended Use: See notice at 53 FR 15101, April 27, 1988. Reasons for this Decision: The foreign instrument provides: (1) A load range from 10 to 2000 grams, (2) sliding speeds from 0.006 to 100 cm/s, and (3) direct

output of the friction coefficient. Advice Submitted by: The National Bureau of Standards, June 8, 1988.

Docket Number: 88-172

Applicant: California Institute of Technology, Pasadena, CA 91125. Instrument: Mass Spectrometer System, Model THQ. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 53 FR 18330, May 23, 1988. Reason for this Decision: The foreign instrument provides automated multiple sample analysis combining thermionic ionizations for isotopic ratio determinations and isotopic dilutions for trace element analysis. Advice Submitted by: The National Bureau of Standards.

Comments

None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Bureau of Standards advised that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88-16568 Filed 7-21-88; 8:45 am]
BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

[Docket No. 70221-8099]

National Fish and Seafood Promotional Council; Nominations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening of request for nominations.

SUMMARY: The Fish and Seafood Promotion Act of 1986 (FSPA), established a National Fish and Seafood Promotional Council composed of the Secretary of Commerce and fifteen voting members. This notice reopens requests for nominations for the remaining position of member-at-large on the National Council with

demonstrated expertise in fresh-water and inland commercial fisheries.

DATE: Nominations should be received by August 22, 1988.

ADDRESS: Nominations may be mailed to the Director, Office of Trade and Industry Services, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Shirley V. Smith, (202) 873-5371.

SUPPLEMENTARY INFORMATION: The National Council develops annual plans and budgets for generic marketing and promotion of fisheries products, including consumer education, research, and other appropriate activities. NOAA issued notices (52 FR 4926, February 18, 1987 and 52 FR 12044, April 14, 1987) for all interested parties to submit the names of nominees for membership on the National Council with biographical data. Members of the National Council are appointed for a term of four years. They receive no salary, but are reimbursed for reasonable travel costs and expenses incurred in performing their duties as Council members. Fourteen of the 15 members of the Council were appointed by the Secretary of Commerce in October 1987.

On June 27, 1988, the FSPA was amended to modify the restriction that precluded the consideration of those who reside in the Alaska, Pacific, Southeast, or Northeast Regions for the two members-at-large with demonstrated expertise in fresh water and inland commercial fisheries. Pursuant to this amendment, only one, rather than both of these members-at-large, is subject to such residency restriction. One member-at-large has been appointed who resides in an inland State. The remaining position on the National Council may therefore be filled by any qualified person without regard to any residency restriction.

Eligibility Requirements

To be eligible for the unfilled member-at-large position applicants must have demonstrated expertise in fresh-water and inland commercial fisheries.

Selection Criteria

In addition to the eligibility requirements defined above, the appointment will be based upon: (1) Length, breadth, and recent experience in freshwater and inland commercial fisheries; (2) overall knowledge of U.S. fisheries and the industry; and (3) other special qualifications, e.g., experience in and/or knowledge of market research and promotion, product development, public relations, and consumer

education; positions of leadership in the fishing industry, relevant education, etc.

Submission of Nominations: Nominations for this position should be accompanied by biographical information relevant to the above considerations. Nominations already submitted for this position as a result of earlier solicitations will be considered and need not be resubmitted.

(16 U.S.C. 4001-4017)

Dated: July 18, 1988.

[FR Doc. 88-16596 Filed 7-21-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Textile Products Exported From Taiwan

July 19, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain shipments.

EFFECTIVE DATE: July 26, 1988.

Authority

Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION: Shipments of textiles and textile products exported from Taiwan on or before August 1, 1988, will be permitted entry if accompanied by the old visa form.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the **CORRELATION:** Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 22202, published on June 14, 1988.

James H. Babb, Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
July 19, 1988.

Commissioner, Department of the Treasury, Washington, DC. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 9, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. You were directed to permit entry from Taiwan of shipments of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products which are accompanied by the new visa form and visa and exempt certification stamps issued by Taiwan on or after July 1, 1988.

Effective on July 26, 1988, you are directed further to permit entry of shipments of textiles and textile products exported from Taiwan on or before August 1, 1988 which are accompanied by the old visa form.

Goods exported from Taiwan after August 1, 1988 must be accompanied by either the new visa form and stamp or a visa waiver.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-16557 Filed 7-21-88; 8:45 am]

BILLING CODE 3510-09-M

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

July 19, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 26, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 369-L is being increased for carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the **CORRELATION:** Textile and Apparel Categories with Tariff Schedules of the United States

Annotated (see Federal Register notice 52 FR 47745, published on December 16, 1987. Also see 53 FR 60, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of implementation of certain of its provisions.

James H. Babb, Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 19, 1988.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 26, 1988, the directive of December 29, 1987 is amended to increase to 2,520,000 pounds¹ the current limit for cotton textile products in Category 369-L² as provided under the provisions of the current bilateral agreement between the Governments of the United States and Thailand.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-16558 Filed 7-21-88; 8:45 am]

BILLING CODE 3510-09-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 22, 1988.

¹ The limit has not been adjusted to account for any imports exported after December 31, 1987.
² In Category 369-L, only TSUSA numbers 700.3210, 708.3650 and 708.411.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 12 and May 16, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 4200 and 53 FR 17238) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities and services listed.
- The actions will result in authorizing small entities to provide the commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1988:

Commodities

Bedsprad

7210-00-728-0180
7210-00-728-0181
7210-00-728-0182
7210-00-728-0183
7210-00-728-0184
7210-00-728-0185

Services

Parts Sorting

Robins Air Force Base, Georgia.
Kelly Air Force Base, Texas.

Restocking Parts

Kelly Air Force Base, Texas.
E.R. Alley, Jr.,
Acting Executive Director.
[FR Doc. 88-16559 Filed 7-21-88; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1988; Proposed Addition and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: August 22, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1988, December 10, 1987 (52 FR 46926):

Grounds Maintenance and Sprinkler System Maintenance Buildings 2500, 2665, 3535, 5600, 5602, 5603, 5604, 5605, 6445, 6447, 420, Desert Villa Complex, 6000, 7220, 2421 and 5211, Edwards Air Force Base, California

Deletions

It is proposed to delete the following services from Procurement List 1988, December 10, 1987 (52 FR 46926):

Furniture Rehabilitation

Spokane, Washington, plus 30-mile radius

Janitorial/Custodial

Federal Building, Moultrie, Georgia.

U.S. Customs House, 6 McKinley

Square, Boston, Massachusetts.

Defense Mapping Agency, 175 Brookside Avenue, West Warwick, Rhode Island.

Mailing Service

Department of the Treasury, Bureau of Public Debt, 14th & C Streets, SW., Washington, DC.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-16560 Filed 7-21-88; 8:45 am]
BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION**New York Futures Exchange Proposed Option Contract**

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the Terms and Conditions of Proposed Commodity Option Contract.

SUMMARY: The New York Futures Exchange ("NYFE" or "Exchange") has applied for designation as a contract market in options on Commodity Research Bureau (CRB) Futures Price Index futures. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before August 22, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYFE CRB futures option contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYFE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures option contract, or with respect

to other materials submitted by the NYFE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 19, 1988.
Paula A. Tosini,
Director, Division of Economic Analysis.
[FR Doc. 88-16589 Filed 7-21-88; 8:45 am]
BILLING CODE 8351-01-M

DEPARTMENT OF DEFENSE**Armed Forces Epidemiological Board; Open Meeting**

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: September 29, 1988.
Time: 0830-1700.

Place: Parson's Island, Chester, Maryland.

Proposed Agenda: Preventive Medicine Officer Reports, hepatitis B, tuberculosis, rheumatic fever, service AIDS updates, Army cardiovascular screening followup.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Dated: July 8, 1988.

Robert A. Wells,
COL, USA, MSC, Executive Secretary.
[FR Doc. 88-16535 Filed 7-21-88; 8:45 am]
BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: September 30, 1988.
Time: 0800-1100.

Place: Parson's Island, Chester, Maryland.

Proposed Agenda: Ambulatory care date update, Armor health

environmental issues update, worldwide disease prioritization strategy.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Dated: July 8, 1988.

Robert A. Wells,
COL, USA, MSC, Executive Secretary.
[FR Doc. 88-16536 Filed 7-21-88; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION**Office of Vocational and Adult Education****Intent To Repay to the Hawaii State Board of Vocational Education Funds Recovered as a Result of a Final Audit Determination**

AGENCY: Department of Education.

ACTION: Intent to award Grantback funds

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), (20 U.S.C. 1234e), the Secretary of Education (Secretary) intends to repay to the Hawaii State Board of Vocational Education (State Board) under a grantback arrangement an amount equal to 75 percent of funds recovered by the Department of Education as a result of a final audit determination. This notice describes the State Board's plans for the use of funds which the Secretary intends to repay and the terms and conditions under which the Secretary intends to make these funds available and invites comments on the proposed grantback.

DATE: All written comments should be received on or before August 22, 1988.

ADDRESS: All written comments should be submitted to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202-5600.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, (202) 732-2237.

SUPPLEMENTARY INFORMATION:**A. Background**

In December 1986, the Department of Education recovered \$37,312 from the State Board in satisfaction of an audit, covering the period from July 1, 1977 to June 30, 1980. The auditors examined the accounting procedures, and system of internal controls of the State Board in expending funds under the Vocational Education Act of 1963 (VEA), as amended, 20 U.S.C. 2301 *et seq.* (1976).

The auditors issued the following monetary findings under which funds were recovered:

(1) Disadvantaged funds set aside under section 110(b) of the VEA were used statewide in a program in which the same occupational training was given to non-disadvantaged and disadvantaged students at the same time and not for excess costs of special services for disadvantaged students. Also, funds appropriated under section 140 of the VEA were not used as mandated for special programs for the disadvantaged but were used primarily to pay the salaries for regular occupational course instructors.

(2) The State Board did not maintain verifiable documentation to support secondary school costs claimed against Federal vocational guidance and counseling funds.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the State Board that resulted in the audit determination have been corrected, and that the State Board, in all other respects, is in compliance with the requirements of the applicable program;

(2) The State Board has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the State Board's plan would serve to achieve the purposes of

the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Agreement

Pursuant to section 456(a)(2) of GEPA, the State Board has applied for a grantback of \$27,984 and has submitted a plan to use the proposed grantback funds consistently with section 201 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2301 *et seq.* (Supp. IV 1986). The audit findings against the State Board resulted from improper expenditures of VEA funds. However, since the Perkins Act has superseded the VEA, the State Board's proposal reflects the requirements of the Perkins Act.

The State Board proposes to use grantback funds to pay the supplemental costs of equipment, supplies, and travel for disadvantaged students as well as travel to in-service training sessions for instructors involved in a Pre-Industrial preparation program to be conducted at Molokai High and Intermediate School. These costs will be matched by State costs for instructor and counselor salaries and in-kind expenditures for these special classes during the program year. The State Board's plan is available on request from the Department of Education contact person listed above.

D. The Secretary's Determination

The Secretary has carefully reviewed the request for repayment of funds, the plan, and other information submitted by the State Board. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the Federal Register a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with the requirement of section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Hawaii State Board of Vocational Education under a grantback arrangement. The grantback award would be in the amount of \$27,984 which is 75 percent of the

\$37,312 recovered by the Department as a result of the audit settlement.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The State Board agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements; and

(b) The plan that was submitted in conjunction with the grantback request dated April 29, 1987, as amended on September 25, 1987, and any other amendments to that plan that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than September 30, 1990, in accordance with section 456(c) of GEPA and the State Board's plan.

(3) The State Board must, not later than December 30, 1990, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: June 23, 1988.

William J. Bennett,
Secretary of Education.
[FR Doc. 88-16556 Filed 7-21-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY**Economic Regulatory Administration**

[ERA Docket No. 87-53-NG]

Tennessee Gas Pipeline Co.; Order Approving Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting authorization to import certain quantities of natural gas from Canada and conditionally authorizing import of certain additional quantities.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order in ERA Docket No. 87-53-NG granting authorization to Tennessee Gas Pipeline Company (Tennessee) to import from TransCanada PipeLines, Limited, progressively increasing quantities of Canadian natural gas—from 5,000 to 25,000 Mcf per day—for a scheduled term from November 1, 1987, to October 31, 2002. Except for the first 10,100 Mcf per day to be imported through existing facilities, the order is conditioned upon the completion and approval by the DOE of an environmental review of the construction of the new facilities needed to transport the additional quantities authorized for import during the later years of the term.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-0478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 18, 1988.
Constance L. Buckley,

Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.

[FR Doc. 88-16602 Filed 7-21-88; 8:45 am]

BILLING CODE 5495-01-M

Federal Energy Regulatory Commission

[Project No. 10441-000]

County of Aspen, CO; Availability of Environmental Assessment

July 20, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Maroon Creek Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices

at 825 North Capitol Street NE,
Washington, DC 20426.

Lois D. Casbell,

Acting Secretary.

[FR Doc. 88-16578 Filed 7-21-88; 8:45 am]

BILLING CODE 5717-01-M

[Project No. 5455-004]

New York City; Availability of Environmental Assessment

July 20, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption for the proposed Croton Hydroelectric Project on the Croton River in Croton-on-Hudson, Westchester County; the Titicus River in Putnam County; the West Branch Croton River in Brewster, Putnam County; and on the East Branch Croton River in Brewster, Putnam County, New York; and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE, Washington, DC 20426.

Lois D. Casbell,

Acting Secretary.

[FR Doc. 88-16579 Filed 7-21-88; 8:45 am]

BILLING CODE 5717-01-M

[Docket Nos. ST88-3392-000, et al.]

Sunflower Electric Coop., Inc., et al.; Self-Implementing Transactions

July 20, 1988

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).¹

¹ Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before August 8, 1988.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Casbell,
Acting Secretary.

Docket No. ¹	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date ²	Transportation rate (c/ MMBTU)
ST88-3392	Sunflower Electric Cooperative, Inc.	Northern Natural Gas Co.	05-02-88	C	09-29-88	23.00
ST88-3393	Natural Gas Pipeline Co. of America	Associated Intra. Pipeline Co., et al.	05-02-88	B		
ST88-3394	United Texas Transmission Co.	Neches Gas Distribution Co.	05-02-88	C		
ST88-3395	Sandy Hook Pipeline Inc.	United Gas Pipe Line Co.	05-02-88	C		
ST88-3396	Seagull Shoreline System	Northern Natural Gas Co.	05-02-88	C	09-29-88	30.00
ST88-3397	Transcontinental Gas Pipe Line Corp.	Yankee Taff Co.	05-02-88	B		
ST88-3398	Transcontinental Gas Pipe Line Corp.	Wintershall Louisiana Corp.	05-02-88	B		
ST88-3399	Transcontinental Gas Pipe Line Corp.	Baltimore Gas and Electric Co.	05-02-88	B		
ST88-3400	Transcontinental Gas Pipe Line Corp.	Bay State Gas Co., et al.	05-02-88	B		
ST88-3401	Transcontinental Gas Pipe Line Corp.	Combing Natural Gas Co., et al.	05-02-88	B		
ST88-3402	Transcontinental Gas Pipe Line Corp.	North Carolina Gas Service Co.	05-02-88	B		
ST88-3403	Transcontinental Gas Pipe Line Corp.	Bay State Gas Co., et al.	05-02-88	B		
ST88-3404	Transcontinental Gas Pipe Line Corp.	Bishop Pipeline Corp.	05-02-88	B		
ST88-3405	Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.	05-02-88	B		
ST88-3406	Transcontinental Gas Pipe Line Corp.	New Jersey Natural Gas Co.	05-02-88	B		
ST88-3407	Tennessee Gas Pipeline Co.	Mississippi Fuel Co.	05-02-88	B		
ST88-3408	Tennessee Gas Pipeline Co.	Berkshire Gas Co.	05-02-88	B		
ST88-3409	Tennessee Gas Pipeline Co.	CNG Transmission Corp.	05-02-88	G		
ST88-3410	Tennessee Gas Pipeline Co.	UER Marketing Co.	05-02-88	G-S		
ST88-3411	Northern Natural Gas Co.	Mobil Oil Corp.	05-02-88	G-S		
ST88-3412	Northern Natural Gas Co.	Northern Illinois Gas Co.	05-02-88	B		
ST88-3413	Northern Natural Gas Co.	Northern Natural Gas Supply Co.	05-02-88	G-S		
ST88-3414	ANR Pipeline Co.	Apache Transmission Co.	05-02-88	B		
ST88-3415	ANR Pipeline Co.	Great River Gas Co.	05-02-88	B		
ST88-3416	ANR Pipeline Co.	St. Joseph Light & Power Co.	05-02-88	B		
ST88-3417	ANR Pipeline Co.	Northern Indiana Public Service Co.	05-02-88	B		
ST88-3418	ANR Pipeline Co.	Michigan Gas Co.	05-02-88	B		
ST88-3419	ANR Pipeline Co.	Michigan Consolidated Gas Co.	05-02-88	B		
ST88-3420	United Gas Pipe Line Co.	Midcon Marketing Gas Co.	05-02-88	G-S		
ST88-3421	United Gas Pipe Line Co.	Clarke-Mobile Counties Gas District	05-02-88	B		
ST88-3422	United Gas Pipe Line Co.	Mobil Oil Exp. & Producing SE, Inc.	05-02-88	G-S		
ST88-3423	United Gas Pipe Line Co.	Clason Industrial Gas, Inc.	05-02-88	B		
ST88-3424	United Gas Pipe Line Co.	Amalgamated Pipeline Co.	05-02-88	B		
ST88-3425	United Gas Pipe Line Co.	Access Energy Pipeline Corp.	05-02-88	B		
ST88-3426	United Gas Pipe Line Co.	Midcon Marketing Corp.	05-02-88	G-S		
ST88-3427	United Gas Pipe Line Co.	United Texas Transmission Co.	05-02-88	B		
ST88-3428	United Gas Pipe Line Co.	Exterco, Inc.	05-02-88	B		
ST88-3429	United Gas Pipe Line Co.	Texas Southern Pipeline, Inc.	05-02-88	B		
ST88-3430	United Gas Pipe Line Co.	Wellhead Ventures Corp.	05-02-88	B		
ST88-3431	United Gas Pipe Line Co.	Enmark Gas Corp.	05-02-88	B		
ST88-3432	United Gas Pipe Line Co.	Amalgamated Pipeline Co.	05-02-88	B		
ST88-3433	Panhandle Eastern Pipe Line Co.	Consumers Power Co.	05-02-88	B		
ST88-3434	Panhandle Eastern Pipe Line Co.	Columbia Gas of Ohio, Inc.	05-02-88	B		
ST88-3435	Panhandle Eastern Pipe Line Co.	Columbia Gas of Ohio, Inc., et al.	05-02-88	B		
ST88-3436	Panhandle Eastern Pipe Line Co.	Ohio Gas Co.	05-02-88	B		
ST88-3437	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co.	05-02-88	B		
ST88-3438	Panhandle Eastern Pipe Line Co.	Citizens Gas Fuel Co.	05-02-88	B		
ST88-3439	Panhandle Eastern Pipe Line Co.	Louisiana State Gas Corp.	05-02-88	B		
ST88-3440	Southern Natural Gas Co.	Southeast Alabama Gas District	05-02-88	B		
ST88-3441	Southern Natural Gas Co.	South Carolina Pipeline Corp.	05-02-88	B		
ST88-3442	Southern Natural Gas Co.	Ueno, Inc.	05-02-88	B		
ST88-3443	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3444	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-02-88	B		
ST88-3445	Southern Natural Gas Co.	City of Boaz	05-02-88	B		
ST88-3446	Southern Natural Gas Co.	Alabama Gas Corp.	05-02-88	B		
ST88-3447	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-02-88	B		
ST88-3448	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3449	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3450	Southern Natural Gas Co.	Dalton Utilities	05-02-88	B		
ST88-3451	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3452	Southern Natural Gas Co.	City of Ashville	05-02-88	B		
ST88-3453	Southern Natural Gas Co.	City of Piedmont	05-02-88	B		
ST88-3454	Southern Natural Gas Co.	City of Dublin	05-02-88	B		
ST88-3455	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-02-88	B		
ST88-3456	Southern Natural Gas Co.	Sun Gas Transmission Co., Inc.	05-02-88	B		
ST88-3457	Southern Natural Gas Co.	Alabama Gas Corp.	05-02-88	B		
ST88-3458	Southern Natural Gas Co.	City of Andersonville	05-02-88	B		
ST88-3459	Southern Natural Gas Co.	City of Fultonville	05-02-88	B		
ST88-3460	Southern Natural Gas Co.	City of Oneonta	05-02-88	B		
ST88-3461	Southern Natural Gas Co.	City of Cartersville	05-02-88	B		
ST88-3462	Southern Natural Gas Co.	City of Alabaster	05-02-88	B		
ST88-3463	Southern Natural Gas Co.	City of Meigs	05-02-88	B		
ST88-3464	Southern Natural Gas Co.	Lynchburg Gas Co., et al.	05-02-88	B		
ST88-3465	Southern Natural Gas Co.	City of Summerville	05-02-88	B		

Docket No. ¹	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date ²	Transportation rate (¢/MMBTU)
ST88-3466	Southern Natural Gas Co.	Bishop Pipeline Corp.	05-02-88	B		
ST88-3467	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-02-88	B		
ST88-3468	Southern Natural Gas Co.	Bishop Pipeline Corp.	05-02-88	B		
ST88-3469	Southern Natural Gas Co.	City of Trussville	05-02-88	B		
ST88-3470	Southern Natural Gas Co.	South Carolina Pipeline Corp.	05-02-88	B		
ST88-3471	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3472	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3473	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3474	Southern Natural Gas Co.	City of Cartersville	05-02-88	B		
ST88-3475	Southern Natural Gas Co.	Decatur County Board of Comm.	05-02-88	B		
ST88-3476	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3477	Southern Natural Gas Co.	Lland, Inc.	05-02-88	B		
ST88-3478	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3479	Southern Natural Gas Co.	City of Dadeville	05-02-88	B		
ST88-3480	Southern Natural Gas Co.	Alabama Gas Corp.	05-02-88	B		
ST88-3481	Southern Natural Gas Co.	Texas Industrial Energy Co.	05-02-88	B		
ST88-3482	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3483	Southern Natural Gas Co.	City of Union Springs	05-02-88	B		
ST88-3484	Southern Natural Gas Co.	City of Pleasant Grove	05-02-88	B		
ST88-3485	Southern Natural Gas Co.	Texas Industrial Energy Co.	05-02-88	B		
ST88-3486	Southern Natural Gas Co.	Access Energy Pipeline Corp.	05-02-88	B		
ST88-3487	Southern Natural Gas Co.	City of Ragland	05-02-88	B		
ST88-3488	Southern Natural Gas Co.	Wisconsin Gas Co., et al.	05-02-88	B		
ST88-3489	Southern Natural Gas Co.	New York State Elect. & Gas Corp., et al.	05-02-88	B		
ST88-3490	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-02-88	B		
ST88-3491	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-02-88	B		
ST88-3492	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3493	Southern Natural Gas Co.	City of Lafayette	05-02-88	B		
ST88-3494	South Georgia Natural Gas Co.	Atlanta Gas Light Co.	05-02-88	B		
ST88-3495	South Georgia Natural Gas Co.	City of Meigs	05-02-88	B		
ST88-3496	South Georgia Natural Gas Co.	City of Andersonville	05-02-88	B		
ST88-3497	South Georgia Natural Gas Co.	Texas Industrial Energy Co.	05-02-88	B		
ST88-3498	South Georgia Natural Gas Co.	Texas Industrial Energy Co.	05-02-88	B		
ST88-3499	South Georgia Natural Gas Co.	Decatur County Board of Comm.	05-02-88	B		
ST88-3500	ANR Pipeline Co.	National Fuel Gas Distribution Corp.	05-03-88	B		
ST88-3501	ANR Pipeline Co.	Consumers Power Co.	05-03-88	B		
ST88-3502	ANR Pipeline Co.	Wisconsin Gas Co.	05-03-88	B		
ST88-3503	ANR Pipeline Co.	Coastal States Gas Transmission Co.	05-03-88	B		
ST88-3504	ANR Pipeline Co.	Iowa Electric Light & Power Co.	05-03-88	B		
ST88-3505	ANR Pipeline Co.	Wisconsin Power and Light Co.	05-03-88	B		
ST88-3506	ANR Pipeline Co.	Central Illinois Light Co.	05-03-88	B		
ST88-3507	ANR Pipeline Co.	Michigan Consolidated Gas Co.	05-03-88	B		
ST88-3508	ANR Pipeline Co.	Wisconsin Power and Light Co.	05-03-88	B		
ST88-3509	ANR Pipeline Co.	Coastal States Gas Transmission Co.	05-03-88	B		
ST88-3510	Tennessee Gas Pipeline Co.	Boston Gas Co.	05-03-88	B		
ST88-3511	Tennessee Gas Pipeline Co.	Central Hudson Gas and Electric Co.	05-03-88	B		
ST88-3512	Tennessee Gas Pipeline Co.	Niagara Mohawk Power Corp., et al.	05-03-88	B		
ST88-3513	Tennessee Gas Pipeline Co.	LTV Steel Co.	05-03-88	G-S		
ST88-3514	Tennessee Gas Pipeline Co.	Pennsylvania Gas and Water Co.	05-03-88	B		
ST88-3515	Tennessee Gas Pipeline Co.	Berkshire Gas Co.	05-03-88	B		
ST88-3516	Tennessee Gas Pipeline Co.	Southern Connecticut Gas Co.	05-03-88	B		
ST88-3517	Tennessee Gas Pipeline Co.	Tejas Power Corp.	05-03-88	G-S		
ST88-3518	Tennessee Gas Pipeline Co.	Central Ill. Public Service, et al.	05-03-88	B		
ST88-3519	Tennessee Gas Pipeline Co.	Colonial Gas Corp.	05-03-88	B		
ST88-3520	Tennessee Gas Pipeline Co.	North Penn Co.	05-03-88	B		
ST88-3521	Tennessee Gas Pipeline Co.	Intercon Gas, Inc.	05-04-88	G-S		
ST88-3522	Tennessee Gas Pipeline Co.	Orange and Rockland Utilities, Inc.	05-04-88	B		
ST88-3523	Northern Border Pipeline Co.	Northern Natural Gas Co.	05-03-88	B		
ST88-3524	Trunkline Gas Co.	Consumers Power Co.	05-04-88	B		
ST88-3525	Williams Natural Gas Co.	Mobil Oil Corp.	05-04-88	G-S		
ST88-3526	Williams Natural Gas Co.	Gastrol Corp.	05-04-88	G-S		
ST88-3527	Natural Gas Pipeline Co. of America	Central Illinois Public Service Co.	05-04-88	B		
ST88-3528	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co.	05-04-88	B		
ST88-3529	Colorado Interstate Gas Co.	Access Pipeline Co.	05-05-88	B		
ST88-3530	Northern Natural Gas Co.	Houston Pipe Line Co.	05-04-88	B		
ST88-3531	Questar Pipeline Co.	Northwest Natural Gas Co.	05-05-88	B		
ST88-3532	Natural Gas Pipeline Co. of America	Iowa-Indiana Gas & Electric Co.	05-05-88	B		
ST88-3533	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co.	05-05-88	B		
ST88-3534	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	05-05-88	B		
ST88-3535	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas, Inc.	05-05-88	B		
ST88-3536	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co.	05-05-88	B		
ST88-3537	United Gas Pipe Line Co.	Enmark Gas Corp.	05-05-88	B		
ST88-3538	United Gas Pipe Line Co.	Endevco Pipeline Co.	05-05-88	B		
ST88-3539	United Gas Pipe Line Co.	Clarke-McClellan Counties Gas District	05-05-88	B		
ST88-3540	United Gas Pipe Line Co.	Sun Gas Transmission Co., Inc.	05-05-88	B		
ST88-3541	United Gas Pipe Line Co.	Entex, Inc.	05-05-88	B		

Docket No. ¹	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date ²	Transportation rate (¢/MMBTU)
ST88-3542	United Gas Pipe Line Co.	OKY Cities Service NGL, Inc.	05-05-88	G-S		
ST88-3543	United Gas Pipe Line Co.	Liano, Inc.	05-05-88	B		
ST88-3544	United Gas Pipe Line Co.	Atlanta Gas Light Co.	05-05-88	B		
ST88-3545	United Gas Pipe Line Co.	Olympic Pipeline Co.	05-05-88	B		
ST88-3546	United Gas Pipe Line Co.	Cities Service Oil & Gas Corp.	05-05-88	G-S		
ST88-3547	United Gas Pipe Line Co.	Baltimore Gas & Elect. Co., et al.	05-05-88	B		
ST88-3548	United Gas Pipe Line Co.	City of Vicksburg	05-05-88	B		
ST88-3549	ANR Pipeline Co.	Memphis Light, Gas and Water Division	05-05-88	B		
ST88-3550	Texas Gas Transmission Corp.	Louisville Gas & Electric Co.	05-05-88	B		
ST88-3551	Texas Gas Transmission Corp.	Mississippi Valley Gas Co.	05-05-88	B		
ST88-3552	Texas Gas Transmission Corp.	Mississippi Valley Gas Co.	05-05-88	B		
ST88-3553	Columbia Gas Transmission Corp.	Citizens Gas Supply Corp.	05-05-88	G-S		
ST88-3554	Tennessee Gas Pipeline Co.	Public Service Elect. & GS Co., et al.	05-05-88	B		
ST88-3555	Tennessee Gas Pipeline Co.	Hydrocarbon Development Corp.	05-05-88	B		
ST88-3556	United Gas Pipe Line Co.	Bridge Gas System	05-06-88	B		
ST88-3557	United Gas Pipe Line Co.	Associated Intrastate Pipeline Co.	05-06-88	B		
ST88-3558	Natural Gas Pipeline Co. of America	North Shore Gas Co.	05-06-88	B		
ST88-3559	Northwest Pipeline Corp.	Corpus Christi Industrial Pipeline Co.	05-06-88	B		
ST88-3560	Northwest Pipeline Corp.	Quivira Gas Co.	05-06-88	B		
ST88-3561	Northern Natural Gas Co.	Peoples Gas Light & Coke Co.	05-06-88	B		
ST88-3562	Colorado Interstate Gas Co.	Lovera Pipeline Co.	05-06-88	B		
ST88-3563	Mississippi Fuel Co.	Transcontinental Gas Pipe Line Corp.	05-06-88	C	10-03-88	33.12
ST88-3564	Trunkline Gas Co.	Consumers Power Co.	05-06-88	B		
ST88-3565	Trunkline Gas Co.	Consumers Power Co.	05-06-88	B		
ST88-3566	Trunkline Gas Co.	Citizens Gas and Coke Utility	05-06-88	B		
ST88-3567	Trunkline Gas Co.	Consolidated Fuel Supply, Inc.	05-06-88	G-S		
ST88-3568	Trunkline Gas Co.	Amoco Production Co.	05-06-88	G-S		
ST88-3569	Trunkline Gas Co.	Union Gas Limited	05-06-88	B		
ST88-3570	Trunkline Gas Co.	Columbia Gas of Ohio, Inc.	05-06-88	B		
ST88-3571	Texas Gas Transmission Corp.	Mississippi Valley Gas Co.	05-06-88	B		
ST88-3572	Natural Gas Pipeline Co. of America	Monarch Gas Co.	05-06-88	B		
ST88-3573	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	05-06-88	B		
ST88-3574	Natural Gas Pipeline Co. of America	Iowa-Indiana Gas & Electric Co.	05-06-88	B		
ST88-3575	Natural Gas Pipeline Co. of America	Alabama-Tenn. Natural Gas Co., et al.	05-06-88	B		
ST88-3576	Natural Gas Pipeline Co. of America	Brighton Municipal Gas Systems, et al.	05-09-88	B		
ST88-3577	Natural Gas Pipeline Co. of America	Indiana Gas Co., Inc.	05-09-88	B		
ST88-3578	Panhandle Eastern Pipe Line Co.	Consumers Power Co.	05-09-88	B		
ST88-3579	Panhandle Eastern Pipe Line Co.	Consumers Power Co.	05-09-88	B		
ST88-3580	Panhandle Eastern Pipe Line Co.	Consumers Power Co.	05-09-88	B		
ST88-3581	Panhandle Eastern Pipe Line Co.	Michigan Gas Utilities Co.	05-09-88	B		
ST88-3582	Tennessee Gas Pipeline Co.	Blountville Gas Marketing Inc.	05-09-88	G-S		
ST88-3583	Tennessee Gas Pipeline Co.	Columbia Gulf Transmission Co.	05-09-88	B		
ST88-3584	Tennessee Gas Pipeline Co.	Niagara Mohawk Power Corp., et al.	05-09-88	B		
ST88-3585	Arkla Energy Resources	Wisconsin Public Service Co.	05-09-88	B		
ST88-3586	Trunkline Gas Co.	Amoco Production Co.	05-03-88	G-S		
ST88-3587	Trunkline Gas Co.	Sun Operating Limited Partnership	05-03-88	G-S		
ST88-3588	Trunkline Gas Co.	Panhandle Trading Co.	05-03-88	G-S		
ST88-3589	Trunkline Gas Co.	Consumers Power Co.	05-03-88	B		
ST88-3590	Trunkline Gas Co.	Panhandle Trading Co.	05-03-88	G-S		
ST88-3591	Trunkline Gas Co.	Tejas Power Corp.	05-03-88	G-S		
ST88-3592	Trunkline Gas Co.	City of Byhalia	05-03-88	B		
ST88-3593	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	05-09-88	B		
ST88-3594	Tennessee Gas Pipeline Co.	Coastal States Gas Transmission Co.	05-09-88	B		
ST88-3595	Northern Natural Gas Co.	Peoples Natural Gas Co.	05-09-88	B		
ST88-3596	ANR Pipeline Co.	Indiana Gas Co., Inc.	05-09-88	B		
ST88-3597	ANR Pipeline Co.	Wisconsin Gas Co.	05-09-88	B		
ST88-3598	ANR Pipeline Co.	Columbia Gas of Ohio, Inc.	05-09-88	B		
ST88-3599	El Paso Natural Gas Co.	Southern California Gas Co.	05-10-88	B		
ST88-3600	Natural Gas Pipeline Co. of America	Pacific Gas & Elect., et al.	05-10-88	B		
ST88-3601	Natural Gas Pipeline Co. of America	PSI, Inc.	05-11-88	G-S		
ST88-3602	Delhi Gas Pipeline Corp.	Northern Natural Gas Co.	05-11-88	C	10-08-88	35.00
ST88-3603	Oasis Pipe Line Co.	Natural Gas Pipeline Co. of America	05-11-88	C		
ST88-3604	Houston Pipe Line Co.	Natural Gas Pipeline Co. of America	05-11-88	C		
ST88-3605	Houston Pipe Line Co.	Seagull Interstate Corp.	05-11-88	C		
ST88-3606	Houston Pipe Line Co.	Northern Natural Gas Co.	05-11-88	C		
ST88-3607	Houston Pipe Line Co.	Transcontinental Gas Pipe Line Corp.	05-11-88	C		
ST88-3608	Houston Pipe Line Co.	Tennessee Gas Pipeline Co.	05-11-88	C		
ST88-3609	Oasis Pipe Line Co.	Transcontinental Gas Pipe Line Corp.	05-11-88	C		
ST88-3610	Oasis Pipe Line Co.	Tennessee Gas Pipeline Co.	05-11-88	C		
ST88-3611	ONG Transmission Co.	Panhandle Eastern Pipe Line Co.	05-11-88	C	10-08-88	24.32
ST88-3612	Natural Gas Pipeline Co. of America	Chevron U.S.A.	05-11-88	G-S		

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ST88-3613	Natural Gas Pipeline Co. of America	Consumers Power Co., et al	05-11-88	B		
ST88-3614	Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina	05-11-88	B		
ST88-3615	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.	05-11-88	B		
ST88-3616	Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.	05-11-88	B		
ST88-3617	Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co.	05-11-88	B		
ST88-3618	Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina	05-11-88	B		
ST88-3619	Transcontinental Gas Pipe Line Corp.	South Jersey Gas Co.	05-11-88	B		
ST88-3620	Transcontinental Gas Pipe Line Corp.	UGI Corp.	05-11-88	B		
ST88-3621	Transcontinental Gas Pipe Line Corp.	Public Service Electric and Gas Co.	05-11-88	B		
ST88-3622	Transcontinental Gas Pipe Line Corp.	Clinton Newberry Nat. Gas Authority	05-11-88	B		
ST88-3623	Transcontinental Gas Pipe Line Corp.	Baltimore Gas and Electric Co.	05-11-88	B		
ST88-3624	Transcontinental Gas Pipe Line Corp.	Washington Gas Light Co.	05-11-88	B		
ST88-3625	Transcontinental Gas Pipe Line Corp.	Public Service Electric and Gas Co.	05-11-88	B		
ST88-3626	Columbia Gulf Transmission Co.	Pennsylvania Gas and Water Co.	05-11-88	B		
ST88-3627	CNG Transmission Corp.	Niagara Mohawk Power Corp.	05-11-88	B		
ST88-3628	CNG Transmission Corp.	New York State Electric and Gas Co.	05-11-88	B		
ST88-3629	CNG Transmission Corp.	Niagara Mohawk Power Corp.	05-11-88	B		
ST88-3630	CNG Transmission Corp.	Peoples Natural Gas Co.	05-11-88	B		
ST88-3631	CNG Transmission Corp.	Peoples Natural Gas Co.	05-11-88	B		
ST88-3632	CNG Transmission Corp.	Rochester Gas and Electric Corp.	05-11-88	B		
ST88-3633	CNG Transmission Corp.	Rochester Gas and Electric Corp.	05-11-88	B		
ST88-3634	CNG Transmission Corp.	Corning Natural Gas Corp.	05-11-88	B		
ST88-3635	CNG Transmission Corp.	New York State Electric and Gas Co.	05-11-88	B		
ST88-3636	CNG Transmission Corp.	Niagara Mohawk Power Corp.	05-11-88	B		
ST88-3637	CNG Transmission Corp.	Niagara Mohawk Power Corp.	05-11-88	B		
ST88-3638	CNG Transmission Corp.	East Ohio Gas Co.	05-11-88	B		
ST88-3639	CNG Transmission Corp.	Niagara Mohawk Power Corp.	05-11-88	B		
ST88-3640	CNG Transmission Corp.	East Ohio Gas Co.	05-11-88	B		
ST88-3641	Natural Gas Pipeline Co. of America	North Shore Gas Co.	05-12-88	B		
ST88-3642	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co.	05-12-88	B		
ST88-3643	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co.	05-12-88	B		
ST88-3644	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	05-12-88	B		
ST88-3645	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	05-12-88	B		
ST88-3646	Natural Gas Pipeline Co. of America	Baltimore Gas & Elect. Co., et al	05-12-88	B		
ST88-3647	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co.	05-12-88	B		
ST88-3648	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	05-12-88	B		
ST88-3649	Trunkline Gas Co.	Chevron U.S.A.	05-12-88	G-S		
ST88-3650	Valero Transmission, L.P.	Valero Interstate Transmission Co.	05-12-88	C		
ST88-3651	Dohi Gas Pipeline Corp.	Northern Natural Gas Co.	05-12-88	C	10-09-88	35.00
ST88-3652	Tennessee Gas Pipeline Co.	Niagara Mohawk Power Corp.	05-12-88	B		
ST88-3653	Tennessee Gas Pipeline Co.	CNG Transmission Corp.	05-12-88	G		
ST88-3654	Tennessee Gas Pipeline Co.	Colonial Gas Corp.	05-12-88	B		
ST88-3655	Tennessee Gas Pipeline Co.	Access Energy Pipeline Corp.	05-12-88	B		
ST88-3656	Tennessee Gas Pipeline Co.	Pennsylvania Gas and Water Co.	05-12-88	B		
ST88-3657	Tennessee Gas Pipeline Co.	Elizabethtown Gas Co., et al	05-12-88	B		
ST88-3658	Colorado Interstate Gas Co.	Southern California Gas Co.	05-12-88	B		
ST88-3659	Texas Eastern Transmission Corp.	Midwest Natural Gas Corp.	05-13-88	B		
ST88-3660	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	05-13-88	B		
ST88-3661	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	05-13-88	B		
ST88-3662	Texas Eastern Transmission Corp.	City of Lafayette	05-13-88	B		
ST88-3663	Texas Eastern Transmission Corp.	City of Crossville	05-13-88	B		
ST88-3664	Texas Eastern Transmission Corp.	Central Illinois Public Service Co.	05-13-88	B		
ST88-3665	Texas Eastern Transmission Corp.	Associated Natural Gas Co.	05-13-88	B		
ST88-3666	Texas Eastern Transmission Corp.	City of Flora	05-13-88	B		
ST88-3667	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	05-13-88	B		
ST88-3668	Texas Eastern Transmission Corp.	Nashville Gas Co.	05-13-88	B		
ST88-3669	Texas Eastern Transmission Corp.	Oxford Natural Gas Co.	05-13-88	B		
ST88-3670	Texas Eastern Transmission Corp.	City of Batesville	05-13-88	B		
ST88-3671	Texas Eastern Transmission Corp.	City of Bude	05-13-88	B		
ST88-3672	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	05-13-88	B		
ST88-3673	Texas Eastern Transmission Corp.	Consumers Gas Co.	05-13-88	B		
ST88-3674	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	05-13-88	B		
ST88-3675	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	05-13-88	B		
ST88-3676	Texas Eastern Transmission Corp.	Long Island Lighting Co.	05-13-88	B		
ST88-3677	Texas Eastern Transmission Corp.	Huntingburg Municipal Gas System	05-13-88	B		
ST88-3678	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	05-13-88	B		
ST88-3679	Texas Eastern Transmission Corp.	City of Anna	05-13-88	B		
ST88-3680	Texas Eastern Transmission Corp.	City of Bernie	05-13-88	B		
ST88-3681	Texas Eastern Transmission Corp.	Fall River Gas Co.	05-13-88	B		
ST88-3682	Texas Eastern Transmission Corp.	City of Meadville	05-13-88	B		
ST88-3683	Texas Eastern Transmission Corp.	Lawrenceburg Gas Co.	05-13-88	B		
ST88-3684	Texas Eastern Transmission Corp.	City of Lebanon	05-13-88	B		
ST88-3685	Texas Eastern Transmission Corp.	Community Natural Gas Co., Inc.	05-13-88	B		
ST88-3686	Texas Eastern Transmission Corp.	United Cities Gas Co.	05-13-88	B		
ST88-3687	Texas Eastern Transmission Corp.	Mt. Carmel Public Utility Co.	05-13-88	B		
ST88-3688	Texas Eastern Transmission Corp.	Mississippi Gas Corp.	05-13-88	B		
ST88-3689	Texas Eastern Transmission Corp.	Consolidated Edison Co. of NY, Inc.	05-13-88	B		

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ST88-3690	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	05-13-88	B		
ST88-3691	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	05-13-88	B		
ST88-3692	Texas Eastern Transmission Corp.	City of Tompkinsville	05-13-88	B		
ST88-3693	Texas Eastern Transmission Corp.	Union Electric Co.	05-13-88	B		
ST88-3694	Texas Eastern Transmission Corp.	City of Tamm	05-13-88	B		
ST88-3695	Texas Eastern Transmission Corp.	City of Pulecki Natural Gas Dept.	05-13-88	B		
ST88-3696	Texas Eastern Transmission Corp.	City of Cairo	05-13-88	B		
ST88-3697	Texas Eastern Transmission Corp.	City of Cobden	05-13-88	B		
ST88-3698	Texas Eastern Transmission Corp.	National Gas and Oil Corp.	05-13-88	B		
ST88-3699	Texas Eastern Transmission Corp.	Columbia Gas of Kentucky, Inc.	05-13-88	B		
ST88-3700	Tennessee Gas Pipeline Co.	Bay State Gas Co., et al	05-13-88	B		
ST88-3701	Natural Gas Pipeline Co. of America	Southern California Gas Co.	05-16-88	B		
ST88-3702	Tennessee Gas Pipeline Co.	NGC Intrastate Pipeline Co.	05-16-88	B		
ST88-3703	ANR Pipeline Co.	Suburban Fuel Gas Corp.	05-13-88	B		
ST88-3704	ANR Pipeline Co.	Northern Indiana Public Service Co.	05-13-88	B		
ST88-3705	Arkla Energy Resources	Arkansas Louisiana Gas Co.	05-13-88	B		
ST88-3706	Arkla Energy Resources	Arkansas Louisiana Gas Co.	05-13-88	B		
ST88-3707	Texas Gas Transmission Corp.	Lawrenceburg Gas Co.	05-13-88	B		
ST88-3708	Texas Gas Transmission Corp.	Cincinnati Gas and Electric Co.	05-13-88	B		
ST88-3709	Natural Gas Pipeline Co. of America	Louisiana Resources Co.	05-13-88	B		
ST88-3710	Trunkline Gas Co.	Austell Gas System, et al	05-13-88	B		
ST88-3711	Northern Border Pipeline Co.	ANR Pipeline Co.	05-13-88	G		
ST88-3712	Northern Border Pipeline Co.	Natural Gas Pipeline Co. of America	05-13-88	G		
ST88-3713	Northern Border Pipeline Co.	Tennessee Gas Pipeline Co.	05-13-88	G		
ST88-3714	Northern Border Pipeline Co.	Transcontinental Gas Pipe Line Corp.	05-13-88	G		
ST88-3715	El Paso Natural Gas Co.	Southern California Gas Co.	05-16-88	B		
ST88-3716	Sea Robin Pipeline Co.	Stellar Gas Co.	05-16-88	B		
ST88-3717	Sea Robin Pipeline Co.	Bishop Pipeline Corp.	05-16-88	B		
ST88-3718	Sea Robin Pipeline Co.	Bridgeline Gas Distribution Co., et al	05-16-88	B		
ST88-3719	Sea Robin Pipeline Co.	Enmark Gas Corp.	05-16-88	B		
ST88-3720	United Gas Pipe Line Co.	Sabine-Desoto Pipeline Co., Inc.	05-16-88	B		
ST88-3721	United Gas Pipe Line Co.	Mississippi Valley Gas Co.	05-16-88	B		
ST88-3722	United Gas Pipe Line Co.	City of Vicksburg	05-16-88	B		
ST88-3723	Northwest Pipeline Corp.	Greeley Gas Co.	05-16-88	B		
ST88-3724	Southern Natural Gas Co.	City of Fultondale	05-16-88	B		
ST88-3725	Southern Natural Gas Co.	City of Lafayette	05-16-88	B		
ST88-3726	Southern Natural Gas Co.	City of Pleasant Grove	05-16-88	B		
ST88-3727	Southern Natural Gas Co.	City of Trussville	05-16-88	B		
ST88-3728	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-16-88	B		
ST88-3729	Southern Natural Gas Co.	City of Oneonta	05-16-88	B		
ST88-3730	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-16-88	B		
ST88-3731	Southern Natural Gas Co.	City of Piedmont	05-16-88	B		
ST88-3732	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-16-88	B		
ST88-3733	Southern Natural Gas Co.	South Carolina Pipeline Corp.	05-16-88	B		
ST88-3734	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-16-88	B		
ST88-3735	Southern Natural Gas Co.	The Gas Board of the Town of Sumner	05-16-88	B		
ST88-3736	Southern Natural Gas Co.	City of Dadeville	05-16-88	B		
ST88-3737	Southern Natural Gas Co.	City of Boaz	05-16-88	B		
ST88-3738	Southern Natural Gas Co.	City of Ashville	05-16-88	B		
ST88-3739	Southern Natural Gas Co.	City of Ragland	05-16-88	B		
ST88-3740	South Georgia Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-16-88	B		
ST88-3741	South Georgia Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-16-88	B		
ST88-3742	Southern Natural Gas Co.	City of Union Springs	05-16-88	B		
ST88-3743	Southern Natural Gas Co.	Alabaster Water & Gas Board	05-16-88	B		
ST88-3744	Natural Gas Pipeline Co. of America	Illinois Power Co.	05-16-88	B		
ST88-3745	Natural Gas Pipeline Co. of America	Central Illinois Light Co.	05-16-88	B		
ST88-3746	Tarpon Transmission	Bridgeline Gas Dist. Co., Et Al	05-16-88	B		
ST88-3747	Valero Transmission L.P.	Transwestern Pipeline Co.	05-16-88	B		
ST88-3748	Transcontinental Gas Pipe Line Corp.	Cincinnati Gas & Elect. Co., Et Al	05-19-88	B		
ST88-3749	Transcontinental Gas Pipe Line Corp.	Union Gas Co.	05-19-88	B		
ST88-3750	Transcontinental Gas Pipe Line Corp.	Union Gas Co.	05-19-88	B		
ST88-3751	Transcontinental Gas Pipe Line Corp.	Exxon Gas System, Inc.	05-19-88	B		
ST88-3752	Tennessee Gas Pipeline Co.	Northeast Ohio Natural Gas Corp.	05-20-88	B		
ST88-3753	Tennessee Gas Pipeline Co.	Public Service Electric and Gas Co.	05-20-88	B		
ST88-3754	Tennessee Gas Pipeline Co.	Union Texas Petroleum Corp.	05-20-88	G-S		
ST88-3755	Natural Gas Pipeline Co. of America	Bridgeline Gas Distribution Co.	05-20-88	B		
ST88-3756	Natural Gas Pipeline Co. of America	Bridgeline Gas Distribution Co.	05-20-88	B		
ST88-3757	Gas Co. of NM (Div. Public Serv. Co. NM)	El Paso Natural Gas Co.	05-20-88	G(HT)	10-17-88	85.80
ST88-3758	Arkla Energy Resources, (La Intra. Seg.)	Arkansas Louisiana Gas Co.	05-20-88	C		
ST88-3759	Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina	05-20-88	B		
ST88-3760	Transcontinental Gas Pipe Line Corp.	Delmarva Power and Light Co.	05-20-88	B		
ST88-3761	Transcontinental Gas Pipe Line Corp.	Coastal States Gas Transmission Co.	05-20-88	B		
ST88-3762	Transcontinental Gas Pipe Line Corp.	City of Lexington	05-20-88	B		
ST88-3763	Transcontinental Gas Pipe Line Corp.	Boston Gas Co., Et Al	05-20-88	B		
ST88-3764	Transcontinental Gas Pipe Line Corp.	Baltimore Gas and Electronic Co.	05-20-88	B		
ST88-3765	Transcontinental Gas Pipe Line Corp.	North Carolina Natural Gas Corp.	05-20-88	B		

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ST88-3766	Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	05-20-88	B	10-20-88	35.00
ST88-3767	Transcontinental Gas Pipe Line Corp.	Union Gas Co.	05-20-88	B		
ST88-3768	Transcontinental Gas Pipe Line Corp.	Consolidated Edison Co. of NY, Inc.	05-20-88	B		
ST88-3769	Transcontinental Gas Pipe Line Corp.	City of Lexington	05-20-88	B		
ST88-3770	El Paso Natural Gas Co.	MGTC, Inc.	05-20-88	B		
ST88-3771	Kentucky West Virginia Gas Co.	Columbia Gas Transmission Corp.	05-23-88	G		
ST88-3772	Delhi Gas Pipeline Corp.	Panhandle Eastern Pipe Line Co.	05-23-88	C		
ST88-3773	Natural Gas Pipeline Co. of America	Nagasco Marketing, Inc.	05-23-88	GS		
ST88-3774	Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina	05-23-88	B		
ST88-3775	Transcontinental Gas Pipe Line Corp.	Louisiana Gas Marketing Co.	05-23-88	B		
ST88-3776	Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	05-23-88	B		
ST88-3777	El Paso Natural Gas Co.	Southern California Gas Co.	05-23-88	B		
ST88-3778	El Paso Natural Gas Co.	Intersearch Gas Corp.	05-23-88	B		
ST88-3779	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America	05-23-88	C		
ST88-3780	Wintershall Pipeline Corp.	Georgia-Pacific Corp.	05-23-88	C	10-20-88	35.00
ST88-3781	Natural Gas Pipeline Co. of America	Panhandle Trading Co.	05-23-88	G-S		
ST88-3782	Texas Eastern Transmission Corp.	Southeastern Natural Gas Co.	05-23-88	B		
ST88-3783	Texas Eastern Transmission Corp.	Huntingburg Municipal Gas System	05-23-88	B		
ST88-3784	Texas Eastern Transmission Corp.	City of Kennett	05-23-88	B		
ST88-3785	Texas Eastern Transmission Corp.	Texas Gas Corp.	05-23-88	B		
ST88-3786	Texas Eastern Transmission Corp.	Excel Intrastate Pipeline Co.	05-23-88	B		
ST88-3787	Texas Eastern Transmission Corp.	Associated Natural Gas Co.	05-23-88	B		
ST88-3788	Texas Eastern Transmission Corp.	Mt. Carmel Public Utility Co.	05-23-88	B		
ST88-3789	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	05-23-88	B		
ST88-3790	Texas Eastern Transmission Corp.	Chambersburg Gas Dept., Chambersburg	05-23-88	B		
ST88-3791	Texas Eastern Transmission Corp.	Connecticut Light & Power Co.	05-23-88	B	10-20-88	35.00
ST88-3792	Texas Eastern Transmission Corp.	City of Carlo	05-23-88	B		
ST88-3793	Texas Eastern Transmission Corp.	Bay State Gas Co.	05-23-88	B		
ST88-3794	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	05-23-88	B		
ST88-3795	Texas Eastern Transmission Corp.	City of Pulesti Natural Gas Dept.	05-23-88	B		
ST88-3796	Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	05-23-88	B		
ST88-3797	Texas Eastern Transmission Corp.	City of Ulica	05-23-88	B		
ST88-3798	Texas Eastern Transmission Corp.	Providence Gas Co.	05-23-88	B		
ST88-3799	Texas Eastern Transmission Corp.	Commonwealth Gas Co.	05-23-88	B		
ST88-3800	Texas Eastern Transmission Corp.	Connecticut Light & Power Co.	05-23-88	B		
ST88-3801	Texas Eastern Transmission Corp.	Middleborough Gas & Electric Dept.	05-23-88	B	10-20-88	35.00
ST88-3802	Texas Eastern Transmission Corp.	Texas Southeastern Gas Co.	05-23-88	B		
ST88-3803	Texas Eastern Transmission Corp.	Consumers Gas Co.	05-23-88	B		
ST88-3804	Tennessee Gas Pipeline Co.	Various Corp.	05-23-88	B		
ST88-3805	Northwest Pipeline Corp.	Northwest Natural Gas Co.	05-23-88	B		
ST88-3806	Northwest Pipeline Corp.	Coastal States Gas Transmission Co.	05-23-88	B		
ST88-3807	ANR Pipeline Co.	Wisconsin Power and Light Co.	05-23-88	B		
ST88-3808	ANR Pipeline Co.	Community Natural Gas Co., Inc.	05-23-88	B		
ST88-3809	ANR Pipeline Co.	Wisconsin Gas Co.	05-23-88	B		
ST88-3810	Transcontinental Gas Pipe Line Corp.	North Carolina Natural Gas Corp.	05-24-88	B		
ST88-3811	Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.	05-24-88	B	10-20-88	35.00
ST88-3812	Valero Transmission, L.P.	Valero Interstate Transmission Co.	05-24-88	C		
ST88-3813	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	05-24-88	C		
ST88-3814	Valero Interstate Transmission Co.	Valero Transmission, L.P.	05-24-88	B		
ST88-3815	Natural Gas Pipeline Co. of America	Acacia Pipeline Corp.	05-24-88	B		
ST88-3816	Natural Gas Pipeline Co. of America	Texasco Producing, Inc.	05-24-88	G-S		
ST88-3817	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co.	05-25-88	B		
ST88-3818	Natural Gas Pipeline Co. of America	Quivira Gas Co.	05-25-88	B		
ST88-3819	Natural Gas Pipeline Co. of America	Wisconsin Co.	05-25-88	B		
ST88-3820	Tennessee Gas Pipeline Co.	Mid Louisiana Gas Co.	05-26-88	G		
ST88-3821	Colorado Interstate Gas Co.	Consumers Power Co.	05-23-88	B	10-20-88	35.00
ST88-3822	Colorado Interstate Gas Co.	Southern California Gas Co.	05-26-88	B		
ST88-3823	Colorado Interstate Gas Co.	Coastal States Gas Transmission Co.	05-26-88	B		
ST88-3824	Williams Natural Gas Co.	Kansas Power & Light Co.	05-26-88	G-S		
ST88-3825	Williams Natural Gas Co.	Golden Gas Energies, Inc.	05-26-88	G-S		
ST88-3826	Northern Natural Gas Co.	N-Gas, Inc.	05-26-88	G-S		
ST88-3827	Northern Natural Gas Co.	Lone Star Gas Co.	05-26-88	B		
ST88-3828	Texas Eastern Transmission Corp.	Columbia Gas of Virginia, Inc.	05-26-88	B		
ST88-3829	Texas Eastern Transmission Corp.	Columbia Gas of Ohio, Inc.	05-26-88	B		
ST88-3830	Texas Eastern Transmission Corp.	Columbia Gas of New York, Inc.	05-26-88	B		
ST88-3831	Texas Eastern Transmission Corp.	Columbia Gas of Maryland, Inc.	05-26-88	B	10-20-88	35.00
ST88-3832	Texas Eastern Transmission Corp.	North Attleboro Gas Co.	05-26-88	B		
ST88-3833	Texas Eastern Transmission Corp.	City of Jonesboro	05-26-88	B		
ST88-3834	Texas Eastern Transmission Corp.	City of Bernie	05-26-88	B		
ST88-3835	Texas Eastern Transmission Corp.	City of Jasper	05-26-88	B		
ST88-3836	Texas Eastern Transmission Corp.	Allied Gas Co.	05-26-88	B		
ST88-3837	Texas Eastern Transmission Corp.	Washington Gas Light Co.	05-26-88	B		
ST88-3838	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	05-26-88	B		
ST88-3839	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	05-26-88	B		
ST88-3840	Texas Eastern Transmission Corp.	Bay State Gas Co.	05-26-88	B		
ST88-3841	Texas Eastern Transmission Corp.	Colonial Gas Corp.	05-26-88	B	10-20-88	35.00

Docket No.¹	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date²	Transportation rate (\$/MMBTU)
ST88-3842	Texas Eastern Transmission Corp.	Public Service Gas and Electric Co.	05-26-88	B	10-20-88	35.00
ST88-3843	Texas Eastern Transmission Corp.	Corpus Christi Industrial Pipeline Co.	05-26-88	B		
ST88-3844	Texas Eastern Transmission Corp.	Consumers Gas Co.	05-26-88	B		
ST88-3845	Texas Eastern Transmission Corp.	Providence Gas Co.	05-26-88	B		
ST88-3846	Texas Eastern Transmission Corp.	Fall River Gas Co.	05-26-88	B		
ST88-3847	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	05-26-88	B		
ST88-3848	Texas Eastern Transmission Corp.	City of Norwich	05-26-88	B		
ST88-3849	Texas Eastern Transmission Corp.	Dayton Power and Light Co.	05-26-88	B		
ST88-3850	Texas Natural Gas Pipeline Co. of America	North Shore Gas Co.	05-26-88	B		
ST88-3851	United Gas Pipe Line Co.	Bridgeline Gas Distribution Co.	05-27-88	B		
ST88-3852	United Gas Pipe Line Co.	Chunchula Energy Corp.	05-27-88	B	10-20-88	35.00
ST88-3853	United Gas Pipe Line Co.	Wisconsin Public Service Corp., et al.	05-27-88	B		
ST88-3854	United Gas Pipe Line Co.	Clarke-Mobile Counties Gas District	05-27-88	B		
ST88-3855	United Gas Pipe Line Co.	Dow Intrastate Gas Co.	05-27-88	B		
ST88-3856	United Gas Pipe Line Co.	Transamerica Gas Transmission Corp.	05-26-88	B		
ST88-3857	United Gas Pipe Line Co.	DOW Intrastate Gas Co.	05-26-88	B		
ST88-3858	El Paso Natural Gas Co.	Wyoming Gathering and Production	05-26-88	B		
ST88-3859	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	05-27-88	C		
ST88-3860	Sandy Hook Pipeline Inc.	United Gas Pipe Line Co.	05-27-88	C		
ST88-3861	ANR Pipeline Co.	Michigan Consolidated Gas Co.	05-27-88	B		
ST88-3862	ANR Pipeline Co.	Michigan Consolidated Gas Co.	05-27-88	B	10-20-88	35.00
ST88-3863	El Paso Natural Gas Co.	Southwest Gas Corp.	05-27-88	B		
ST88-3864	El Paso Natural Gas Co.	Southwest Gas Corp.	05-27-88	B		
ST88-3865	Oasis Pipe Line Co.	Transwestern Pipeline Co.	05-27-88	C		
ST88-3866	Houston Pipe Line Co.	Texas Eastern Transmission Corp.	05-27-88	C		
ST88-3867	Oasis Pipe Line Co.	Transwestern Pipeline Co.	05-27-88	C		
ST88-3868	Houston Pipe Line Co.	Transwestern Pipeline Co.	05-27-88	C		
ST88-3869	Houston Pipe Line Co.	Transwestern Pipeline Co.	05-27-88	C		
ST88-3870	Houston Pipe Line Co.	Transwestern Pipeline Co.	05-27-88	C		
ST88-3871	Texas Eastern Transmission Corp.	Providence Gas Co.	05-27-88	B		
ST88-3872	Texas Eastern Transmission Corp.	T.W. Phillips Gas & Oil Co.	05-27-88	B	10-20-88	35.00
ST88-3873	Texas Eastern Transmission Corp.	Union Light, Heat & Power	05-27-88	B		
ST88-3874	Texas Eastern Transmission Corp.	City of Belmont	05-27-88	B		
ST88-3875	Texas Eastern Transmission Corp.	City of Smyrna	05-27-88	B		
ST88-3876	Texas Eastern Transmission Corp.	City of Anna	05-27-88	B		
ST88-3877	Texas Eastern Transmission Corp.	Mt. Carmel Public Utility Co.	05-27-88	B		
ST88-3878	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	05-27-88	B		
ST88-3879	Texas Eastern Transmission Corp.	City of Kennett	05-27-88	B		
ST88-3880	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	05-27-88	B		
ST88-3881	Texas Eastern Transmission Corp.	Orange and Rockland Utilities, Inc.	05-27-88	B		
ST88-3882	Texas Eastern Transmission Corp.	Commonwealth Gas Co.	05-27-88	B	10-20-88	35.00
ST88-3883	Texas Eastern Transmission Corp.	Central Hudson Gas and Electric Co.	05-27-88	B		
ST88-3884	Texas Eastern Transmission Corp.	Boston Gas Co.	05-27-88	B		
ST88-3885	Texas Eastern Transmission Corp.	Bay State Gas Co.	05-27-88	B		
ST88-3886	Texas Eastern Transmission Corp.	Boston Gas Co.	05-27-88	B		
ST88-3887	Texas Eastern Transmission Corp.	City of Tamm	05-27-88	B		
ST88-3888	Texas Eastern Transmission Corp.	Pottsville Gas Co.	05-27-88	B		
ST88-3889	Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	05-27-88	B		
ST88-3890	Texas Eastern Transmission Corp.	City of Lawrenceburg	05-27-88	B		
ST88-3891	Texas Eastern Transmission Corp.	City of Red Bay	05-27-88	B		
ST88-3892	Texas Eastern Transmission Corp.	City of Lebanon	05-27-88	B	10-20-88	35.00
ST88-3893	Texas Eastern Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	05-27-88	B		
ST88-3894	Texas Eastern Transmission Corp.	Colonia Gas Corp.	05-27-88	B		
ST88-3895	Texas Eastern Transmission Corp.	City of Harrisburg	05-27-88	B		
ST88-3896	Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	05-27-88	B		
ST88-3897	Tennessee Gas Pipeline Co.	Bishop Pipeline Corp.	05-31-88	B		
ST88-3898	Southern Natural Gas Co.	Oceana Heights Gas Co.	05-31-88	B		
ST88-3899	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B		
ST88-3900	Southern Natural Gas Co.	South Carolina Pipeline Corp.	05-31-88	B		
ST88-3901	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B		
ST88-3902	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B	10-20-88	35.00
ST88-3903	Southern Natural Gas Co.	Dekalb-Cherokee Counties Nat. Gas Dist.	05-31-88	B		
ST88-3904	Southern Natural Gas Co.	Olympic Pipeline Co.	05-31-88	B		
ST88-3905	Southern Natural Gas Co.	Bishop Pipeline Corp.	05-31-88	B		
ST88-3906	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B		
ST88-3907	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B		
ST88-3908	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B		
ST88-3909	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B		
ST88-3910	Southern Natural Gas Co.	Pontchartrain Natural Gas System	05-31-88	B		
ST88-3911	Southern Natural Gas Co.	Chattanooga Gas Co.	05-31-88	B		
ST88-3912	Southern Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-31-88	B	10-20-88	35.00
ST88-3913	Southern Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B		
ST88-3914	Southern Natural Gas Co.	Bishop Pipeline Corp.	05-31-88	B		
ST88-3915	Southern Natural Gas Co.	United Cities Gas Co.	05-31-88	B		
ST88-3916	South Georgia Natural Gas Co.	Atlanta Gas Light Co.	05-31-88	B		
ST88-3917	South Georgia Natural Gas Co.	SNG Intrastate Pipeline, Inc.	05-31-88	B		

Docket No. ¹	Transporter/seller	Recipient	Date filed	Subpart	Expiration Date ²	Transportation rate (¢/MMBTU)
ST88-3986	Transcontinental Gas Pipe Line Corp.	Washington Gas Light Co.	05-31-88	B		
ST88-3997	Transcontinental Gas Pipe Line Corp.	City of Laurens	05-31-88	B		
ST88-3996	Transcontinental Gas Pipe Line Corp.	City of Shelby	05-31-88	B		
ST88-3986	Transcontinental Gas Pipe Line Corp.	Kings Mountain	05-31-88	B		
ST88-4000	Transcontinental Gas Pipe Line Corp.	Spindletop Gas Distribution System	05-31-88	B		
ST88-4001	Transcontinental Gas Pipe Line Corp.	North Carolina Natural Gas Corp.	05-31-88	B		
ST88-4002	Transcontinental Gas Pipe Line Corp.	Wintershall Pipeline Corp.	05-31-88	B		
ST88-4003	Transcontinental Gas Pipe Line Corp.	Philadelphia Gas Works	05-31-88	B		
ST88-4004	Transcontinental Gas Pipe Line Corp.	Memphis Light, Gas and Water Division	05-31-88	B		
ST88-4005	Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.	05-31-88	B		
ST88-4006	Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina	05-31-88	B		
ST88-4007	Transcontinental Gas Pipe Line Corp.	Memphis Light, Gas and Water Division	05-31-88	B		
ST88-4006	Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.	05-31-88	B		
ST88-4009	Texas Gas Transmission Corp.	Indiana Gas Co., Inc.	05-31-88	B		

CP69-272	CP69-87
CP69-285	CP69-92
CP69-308	CP69-120
CP69-311	CP69-207
CP69-35	CP69-235
CP69-56	CP69-242
CP69-364	CP69-253
CP69-45	CP69-264
CP69-225	CP69-274
CP69-250	CP69-286
CP69-290	CP69-292
CP69-343	CP69-308
CP69-6	CP70-31
CP69-40	CP70-170
CP69-212	CP70-215
CP69-254	CP70-227
CP69-307	CP70-250
CP69-328	CP70-263
CP69-372	CP71-17
CP69-9	CP71-46
CP69-113	CP71-100
CP69-290	CP71-101
CP69-281	CP71-102
CP69-296	CP71-103
CP69-315	CP71-104
CP69-17	CP71-105
CP69-78	CP71-212

CP71-251
CP72-40
CP72-173
CP72-183
CP72-203
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CP72-240
CP72-250
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CP72-303
CP73-140
CP73-205
CP73-242
CP73-280
CP73-313
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CP74-54
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CP81-31
CP81-68
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CP81-244
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CP81-277
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CP81-285
CP81-487
CP81-441

CP61-447	CP63-403	CP66-311	CP67-371
CP61-452	CP63-410	CP66-312	CP67-428
CP61-484	CP64-32	CP66-319	CP67-447
CP61-490	CP64-126	CP66-320	CP68-69
CP61-519	CP64-127	CP66-344	CP68-88
CP61-526	CP64-274	CP66-625	CP68-128
CP62-10	CP64-280	CP66-626	CP67-401
CP62-11	CP64-286	CP66-694	CP67-418
CP62-61	CP64-300	CP66-728	CP68-8
CP62-113	CP64-308	CP67-5	RP65-160
CP62-135	CP64-320	CP67-31	RP65-179
CP62-162	CP64-326	CP67-195	RP65-118
CP62-167	CP64-375	CP67-303	RP68-10
CP62-191	CP65-52	CP67-315	TA67-3-22, et al
CP62-196	CP65-65	CP67-312	TA67-3-22, et al
CP62-277	CP65-67	CP67-314	
CP62-353	CP65-110		
CP62-381	CP65-246		
CP62-400	CP65-354		
CP62-415	CP65-355		
CP62-531	CP65-480		
CP62-537	CP65-584		
CP62-557	CP65-661		
CP63-3	CP65-669		
CP63-52	CP65-758		
CP63-82	CP66-3		
CP63-87	CP66-42		
CP63-176	CP66-45		
CP63-177	CP66-145		
CP63-326	CP66-206		
CP63-382	CP66-227		
CP63-386	CP66-277		

[FR Doc. 88-10577 Filed 7-21-88; 8:45 am]

BILLING CODE 6717-01-8

Office of Hearings and Appeals

Cases Filed: Week of May 27, 1988
Through June 3, 1988During the Week of May 27 through
June 3, 1988, the appeal and the

applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

July 15, 1988.

George B. Bressan,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 27 through June 3, 1988]

Date	Name and location of applicant	Case No.	Type of submission
May 27, 1988	Pennzoil/Weat Virginia, Charleston, WV	RM10-110	Request for Modification/Rescission. If granted: The January 29, 1988, Decision and Order issued to West Virginia (Case No. RO10-392) would be modified regarding the state's application in the Pennzoil second-stage refund proceeding, and the state would be granted permission to fund programs that were not included in the January 29 determination.
May 31, 1988	Amoco/Caribou Four Corners, Inc., Salt Lake City, UT	RR21-5	Request for Modification/Rescission. If granted: The April 22, 1988 Decision and Order issued to Caribou Four Corners, Inc. (Case No. RR21-4) would be modified regarding the firm's application in the Amoco refund proceeding and the firm would receive a refund.
June 3, 1988	Conoco/Pleas Motors Fuels, Inc., Washington, DC	RR220-1	Request for Modification/Rescission. If granted: The May 23, 1988 Decision and Order issued to Pleas Motor Fuels, Inc. (Case No. RF220-246) would be modified regarding the firm's application in the Conoco, Inc. refund proceeding, and the firm would receive a larger refund.
June 3, 1988	William R. Bowling, II, Rofia, MO	KFA-0191	Appeal of an Information Request Denial. If granted: The April 26, 1988 Freedom of Information Request Denial issued by the Executive Secretariat would be rescinded and William R. Bowling, II would receive access to information concerning a meeting of the Atomic Energy Commission held at Los Alamos on October 25, 1953.

REFUND APPLICATIONS RECEIVED

[Week of May 27 through June 3, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/24/88	Vickers/Wisconsin	RQ1-454
4/25/88	Amoco/Colorado	RQ251-455
5/31/88	Ohio/Amoco II/Ohio	RQ241-457
5/31/88	Ohio/Colina/Ohio	RQ2/458
5/31/88	Ohio/National Helium/Ohio	RQ3/459
5/31/88	Ohio/Pennzoil/Ohio	RQ10/460
5/31/88	Ohio/Perry Gas/Ohio	RQ183-461
5/31/88	Ohio/Windham Gas/Ohio	RQ43-462

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 27 through June 3, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/31/88	Vickers/Arkansas	RQ-456
6/1/88	Vickers/North Dakota	RQ1-453
5/27/88 through 6/3/88	Crude oil refund applications received.	RF272-58064 through RF272-58783
5/27/88 through 6/3/88	Gulf oil refund applications received.	RF300-7062 through RF300-7177

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 27 through June 3, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/27/88 through 6/3/88	ARCO refund applications received.	RF304-2622 through RF304-2652
5/24/88 through 6/3/88	Saville's Skelly Hop & Sack Convenience Stores.	RF265-2661 through RF265-2662
5/24/88 through 6/3/88	Twelve Mile Skelgas Service.	RF265-2663
5/24/88	Lehrns Oil Co.	RF265-2664

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 27 through June 3, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/24/88	Tonid Gas Co., Inc.	RF265-2665
5/31/88	Francis Sales & Service.	RF265-2666
5/31/88	Francis Sales & Service.	RF265-2667
5/31/88	Lampe Hardware, Inc.	RF265-2668
5/31/88	J-D Oil Co.	RF265-2669
5/19/88	Beaulier Oil Co.	RF225-11028
5/31/88	Wardair Canada, Inc.	RD272-18089
5/31/88	Canard Line Limited	RD272-18628
5/31/88	Shamrup Shipping Corp.	RD272-20516
5/31/88	Coulouthros, Ltd.	RD272-20528
5/31/88	Team Tankers A/S	RD272-22380
5/31/88	Admiral Cruises, Inc.	RD272-22325
5/31/88	Atlantic Cargo Services.	RD272-23534
5/31/88	Nonwegian Caribbean Lines.	RD272-23818
5/31/88	Contshiping Div. Cont.	RD272-25150
5/31/88	Vrontados Nafiki Eclair.	RD272-25262
5/31/88	Almare Di Navigazione S.P.A.	RD272-25507
5/31/88	Empress Lines Maritime Arg.	RD272-25879
5/31/88	Home Lines, Inc.	RD272-27325
5/31/88	Seleninvest A.B.	RD272-27768
5/31/88	Pacific Far East Line, Inc.	RD272-27769
5/31/88	Maison Navigation Co., Inc.	RD272-27772
5/31/88	Reefers Express Lines Pty., Ltd.	RD272-27773
5/31/88	Japan Air Lines Co., Ltd.	RD272-27774
5/31/88	Compagnie Nationale Air France.	RD272-27775
5/31/88	Lan-Chile Airlines.	RD272-27776
5/31/88	Stimar Cruises.	RD272-27787
5/31/88	Scula Oceanica S.P.A.	RD272-29349
5/31/88	Irving Goldman.	RD272-29774
5/31/88	Aetna/Neves DelMexico, S.A.	RD272-29798
5/31/88	G & H Towing Co.	RD272-36002
5/31/88	Belships Company Limited Shide.	RD272-36242
5/31/88	Broadwall Management Corp.	RD272-36416
5/31/88	Tolam Ocean Trailer Express.	RD272-41453
5/31/88	Zim Israel Navigation Co. Ltd.	RD272-42764
5/31/88	Seagroup, Inc.	RD272-44156
5/31/88	Puerto Rico Marine Mgt., Inc.	RD272-44657
5/31/88	C.E. Mills Construction.	RD272-17844
5/31/88	Blamirous Materials, Inc.	RD272-18001
5/31/88	Ulland Bros., Inc.	RD272-18088
5/31/88	South Texas Construction.	RD272-18427
5/31/88	Yonkers Contracting Co.	RD272-18474
5/31/88	Bresel & Sims Construction.	RD272-18588

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 27 through June 3, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/31/88	E.T. Simonds Construction.	RD272-18747
5/31/88	W.W. Clyde & Co.	RD272-19008
5/31/88	Sentee Portland Cement Co.	RD272-19825
5/31/88	Hugo Schultz, Inc.	RD272-19838
5/31/88	T.L. James & Co.	RD272-20026
5/31/88	Frank Whitcomb Construction.	RD272-20945
5/31/88	Macclair Asphalt.	RD272-21083
5/31/88	Flowe Construction.	RD272-21520
5/31/88	Monarch Asphalt Co.	RD272-21860
5/31/88	Strain Bros., Inc.	RD272-22536
5/31/88	The Brewer Co.	RD272-22560
5/31/88	West Lake Quarry & Material.	RD272-23187
5/31/88	Thompson-McCully Co.	RD272-23494
5/31/88	Ideal Basic Industries.	RD272-23514
5/31/88	Heavy Constructors, Inc.	RD272-23840
5/31/88	Sundt Corp.	RD272-23956
5/31/88	Hilde Construction.	RD272-24803
5/31/88	Ell Aquitaine Asphalt.	RD272-25151
5/31/88	W.E. Blain & Sons.	RD272-25369
5/31/88	Daley Corp.	RD272-25871
5/31/88	Calveras Cement Co.	RD272-25984
5/31/88	Vercello & Grogan, Inc.	RD272-26747
5/31/88	W.A. Elba Engineering.	RD272-26852
5/31/88	Washington Construction.	RD272-27801
5/31/88	Washington Corporations.	RD272-27802
5/31/88	Fred McDowell, Inc.	RD272-28146
5/31/88	Eastern Industries.	RD272-32261
5/31/88	Saginaw Asphalt Paving.	RD272-32201
5/31/88	Calmat Co.	RD272-34296
5/31/88	Gilbore and Reid Co.	RD272-35705
5/31/88	Northwood Stone & Asphalt.	RD272-35893
5/31/88	Staker Paving & Construction.	RD272-37012
5/31/88	The F.E. Hable Co.	RD272-41153
5/31/88	Des Moines Asphalt & Paving.	RD272-42154
5/31/88	Allied Paving Corp.	RD272-42610
5/31/88	B-Tu-Mia Construction.	RD272-43081
5/31/88	Summers-Taylor, Inc.	RD272-43741
5/31/88	Empire Asphalt.	RD272-44574
7/21/88	Wilmarth Oil Co.	RD225-11029
6/3/88	Paul & Wayne's, Inc.	RD265-2671
6/2/88	Northwest Orient.	RD269-34
5/31/88	American Blanks, Inc.	RD272-26760
5/31/88	Enron Corp.	RD272-27189
5/31/88	General Dynamics Corp.	RD272-27780
5/31/88	Escambia Treating Co.	RD272-27793
5/31/88	Offshore Log, Inc.	RD272-27810
5/31/88	Santa Fe Drilling Co.	RD272-28269
5/31/88	Kohler Co.	RD272-29731
5/31/88	Bayonne Industries Inc.	RD272-29793

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 27 through June 3, 1988]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/31/88	MGF Drilling Company Midland.	RD272-31596
5/31/88	Big Three Indust. Inc.	RD272-31804
5/31/88	Wholesale Drilling Co.	RD272-32264
5/31/88	Garber Industries, Inc.	RD272-32272
5/31/88	Justus Oil Co., Inc.	RD272-32495
5/31/88	C & K Coal Co.	RD272-32546
5/31/88	Shannon Coal Co.	RD272-32547
5/31/88	TXP Operating Co.	RD272-35382
5/31/88	Energy Corner Partners.	RD272-37416
5/31/88	Harbert International Inc.	RD272-38409
5/31/88	Champion Enterprises Inc.	RD272-40800
5/31/88	J.M. Huber Corp.	RD272-42024
5/31/88	Xerox Corp.	RD272-42576
5/31/88	The Badd Co.	RD272-43324
5/31/88	F.W. Woolworth.	RD272-43997
5/31/88	Garden State Tanning.	RD272-44640
5/31/88	Bowster, Inc.	RD272-18889
5/31/88	Brown Construction.	RD272-22309
5/31/88	Valley Asphalt Corp.	RD272-25379
5/31/88	Peckham Materials Corp.	RD272-28085
5/31/88	A. Duda and Sons, Inc.	RD272-41555
5/31/88	Service Corporation Int'l.	RD272-17474
5/31/88	Lever Bros. Co.	RD272-17754
5/31/88	Unifroyl Chemical Co.	RD272-18699
5/31/88	Amex Coal Co.	RD272-18673
5/31/88	Wheaton Industries.	RD272-18882
5/31/88	The Singer Co.	RD272-19009
5/31/88	Air Products & Chemicals.	RD272-18634
5/31/88	The Stanley Works.	RD272-18881
5/31/88	Revere Copper Products, Inc.	RD272-18882
5/31/88	General Motors Corp.	RD272-19929
5/31/88	Figgie Int'l Inc.	RD272-20153
5/31/88	DSM Chemicals.	RD272-20188
5/31/88	Augusta, Inc.	RD272-21082
5/31/88	Exterior Drilling Co.	RD272-21155
5/31/88	The Procter & Gamble Co.	RD272-21246
5/31/88	Eastman Kodak Co.	RD272-21816
5/31/88	FMC Corp.	RD272-22373
5/31/88	Drummond Co., Inc.	RD272-22386
5/31/88	MCR Corp.	RD272-22394
5/31/88	MCO Services.	RD272-22395
5/31/88	Halliburton Services.	RD272-22396
5/31/88	Brown & Root, Inc.	RD272-22397
5/31/88	The Walt Disney Co.	RD272-22398
5/31/88	American Host & Derrick Co.	RD272-22399
5/31/88	Lithium Corporation of America.	RD272-22399
5/31/88	BASF Chemical Division.	RD272-22399
5/31/88	BASF Corp.	RD272-22399
5/31/88	Two "R" Drilling Co., Inc.	RD272-22399
5/31/88	Peebody Coal Co.	RD272-22399
5/31/88	Cook Paint and Varnish Co.	RD272-22399
5/31/88	Benjamin Moore & Co.	RD272-22399
5/31/88	Philip Morris Companies, Inc.	RD272-22399

REFUND APPLICATIONS RECEIVED—
Continued

(Week of May 27 through June 3, 1988)

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/31/88	GAB Business Services, Inc.	RD272-23654
5/31/88	Delta U.S. Corp.	RD272-23787
5/31/88	Gannett Co., Inc.	RD272-23888
5/31/88	G.M.C. Delco Remy Division	RD272-24129
5/31/88	Reference Electric Co. General Felt Industries	RD272-24471
5/31/88	Mack Trucks, Inc.	RD272-24950
5/31/88	General Electric Co.	RD272-25002
5/31/88	Tidewater, Inc.	RD272-25357
5/31/88	Loffland Bros. Co.	RD272-25385
5/31/88	Aasroc, Inc.	RD272-25398
5/31/88	The Gillette Co.	RD272-25467
5/31/88	E.W. Moran Drilling Co.	RD272-25508
5/31/88	Humana Incorporated	RD272-25632
5/31/88	Guardian Industries Corp.	RD272-24968
5/31/88	Mooney's Inc.	RD272-25074
5/31/88	Border States Paving	RD272-17493
5/31/88	Okeelanta Corp.	RD272-17740
5/31/88	Container Corp of America	RD272-18009
5/31/88	The McCourt Construction Co.	RD272-18024
5/31/88	Merchants Fast Motor Lines	RD272-18397
5/31/88	Longview Fibre Co.	RD272-15485
5/31/88	Dahlan Transport, Inc.	RD272-18467
5/31/88	George A. Hornal & Co.	RD272-18997
5/31/88	W.J. Manefee Construction	RD272-19873
5/31/88	Highway Materials, Inc.	RD272-19918
5/31/88	Tri-City Paving, Inc.	RD272-20227
5/31/88	Roseburg Lumber Co.	RD272-20312
5/31/88	K.F. Jacobson & Co.	RD272-20331
5/31/88	Columbus Bituminous Concrete	RD272-21960
5/31/88	Holloway Construction	RD272-22415
5/31/88	El Lilly and Co.	RD272-22635
5/31/88	The Stroh Brewery Co.	RD272-23220
5/31/88	Hercules Inc.	RD272-23367
5/31/88	U.S. Sugar Corp.	RD272-24790
5/31/88	Cone Mills Corp.	RD272-24901
5/31/88	Midstate Contractors	RD272-24986
5/31/88	Pike Industries	RD272-25223
5/31/88	S.D. Warren Co.	RD272-25435
5/31/88	Crown Simpson Pulp Co.	RD272-25545
5/31/88	Heldenfels Brothers, Inc.	RD272-25583
5/31/88	Nashua Corp.	RD272-26039
5/31/88	Kornatz Construction	RD272-26238
5/31/88	Masonite Corp.	RD272-26582
5/31/88	Arthur L. Cooley	RD272-27159
5/31/88	Horton Falls Paper Mill, Inc.	RD272-27791
5/31/88	Meyer Construction	
5/31/88	Texas Fuel & Asphalt	
5/31/88	Atlantic Coast Paperboard Corp.	

REFUND APPLICATIONS RECEIVED—
Continued

(Week of May 27 through June 3, 1988)

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/31/88	Spreckles Sugar Co.	RD272-27796
5/31/88	Dole Fresh Fruit Co.	RD272-27811
5/31/88	Adams Construction	RD272-28135
5/31/88	James C. Landdowns	RD272-28359
5/31/88	Wyeth Laboratories, Inc.	RD272-29776
5/31/88	Russell Townsend	RD272-31072
5/31/88	McIntyre Construction	RD272-31512
5/31/88	Brown & Williamson Tobacco	RD272-31700
5/31/88	Delta Asphalt, Inc.	RD272-31710
5/31/88	Empire Sand & Gravel	RD272-31835
5/31/88	Iowa Road Builders	RD272-31046
5/31/88	Clayhyder Trucking Lines, Inc.	RD272-32457
5/31/88	I.A. Holding Corp.	RD272-32569
5/31/88	Zack Burkett Co.	RD272-33295
5/31/88	Industrial Asphalt	RD272-34209
5/31/88	Rohlin Construction	RD272-34219
5/31/88	Malich Corp.	RD272-34343
5/31/88	Legrand Johnson Construction	RD272-35869
5/31/88	Widing Transportation, Inc.	RD272-36219
5/31/88	Harris Farms, Inc.	RD272-38152
5/31/88	General Mills, Inc.	RD272-40849
5/31/88	Messery Sand and Rock Co.	RD272-41357
5/31/88	Hamelus Sugar Co., Inc.	RD272-41358
5/31/88	Constructors, Inc.	RD272-41924
5/31/88	Alpha Construction	RD272-43910
5/31/88	Coastal Industries, Bulk Co.	RD272-44276
5/31/88	Clifford D. Hatte	RD272-44615
5/31/88	First Chemical Corp.	RD272-26927
5/31/88	Firmis, Inc.	RD272-26279
5/31/88	Chembond Corp.	RD272-29724
5/31/88	General Chemical Corp.	RD272-29733
5/31/88	Faylor Middlecreek, Inc.	RD272-29836
5/31/88	W.R. Grace & Co.	RD272-30636
5/31/88	G. Heileman Brewing Co., Inc.	RD272-32245
5/31/88	General Tire, Inc.	RD272-32278
5/31/88	Broce Construction	RD272-32562
5/31/88	Central Allied Enterprises	RD272-32910
5/31/88	Superior Asphalt Co.	RD272-34112
5/31/88	Montana Sulphur & Chemical Co.	RD272-36050
5/31/88	D.L. Gesser Construction	RD272-38321
5/31/88	Henley-Lundgren Co.	RD272-40812
5/31/88	DeSoto, Inc.	RD272-42446
5/31/88	Air Products & Chemicals, Inc.	RD272-43638
5/31/88	ICI Americas, Inc.	RD272-44066
5/31/88	Occidental Chemical Corp.	RD272-44117
5/31/88	McLaughlin & Schultz, Inc.	RD272-19147
5/31/88	A.L. Blades & Sons	RD272-20176
5/31/88	Leuthoff Grain Co.	RD272-20524
5/31/88	Bunge Corp.	RD272-20571
5/31/88	John J. Hudson, Inc.	RD272-21107
5/31/88	Ocean Spray Cranberries, Inc.	RD272-21442

REFUND APPLICATIONS RECEIVED—
Continued

(Week of May 27 through June 3, 1988)

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/31/88	Hershey Foods Corp.	RD272-22913
5/31/88	Alpha Beta Stores, Inc.	RD272-23617
5/31/88	Safeway Stores, Inc.	RD272-23953
5/31/88	Nestle Foods Corp.	RD272-24490
5/31/88	Star-Kist Foods, Inc.	RD272-25303
5/31/88	Leeway Motor Freight, Inc.	RD272-25377
5/31/88	Liquid Transporters, Inc.	RD272-25552
5/31/88	Kraft, Inc.	RD272-25982
5/31/88	The Sup & Shop Companies, Inc.	RD272-25983
5/31/88	R.J. Noble Co.	RD272-27307
5/31/88	Carnation Co.	RD272-27518
5/31/88	BOH Bros.	RD272-27532
5/31/88	Heartorn Melody, Inc.	RD272-28348
5/31/88	Conagra Poultry Co.	RD272-28455
5/31/88	U.S. Gypsum-WCPD.	RD272-29509
5/31/88	Mid-State Construction	RD272-29745
5/31/88	Popejoy Construction	RD272-30950
5/31/88	Saharo Petroleum & Asphalt	RD272-31580
5/31/88	Widish Sand & Gravel	RD272-32275
5/31/88	New Enterprise Stone & Lins.	RD272-32263
5/31/88	George Brox, Inc.	RD272-32564
5/31/88	Milne Truck Lines, Inc.	RD272-33602
5/31/88	Brox Paving Materials	RD272-34380
5/31/88	Poellico Bros.	RD272-34433
5/31/88	Certified Grocers of California	RD272-35794
5/31/88	Phillips & Jordan, Inc.	RD272-35800
5/31/88	Gilpatrick Construction	RD272-35924
5/31/88	Soroco Products	RD272-36116
5/31/88	Standard Construction	RD272-37241
5/31/88	Dole Packaged Foods Co.	RD272-37066
5/31/88	Grace Pacific Corp.	RD272-37163
5/31/88	Transpo International, Inc.	RD272-38138
5/31/88	U.S. Gypsum Company ECPD.	RD272-42572
5/31/88	R.A. Cullinan & Son, Inc.	RD272-18159
5/31/88	Satterfield Construction	RD272-18095
5/31/88	Cooperative of Florida	RD272-20246
5/31/88	Tom Inman Trucking, Inc.	RD272-21125
5/31/88	Oregon Asphalt Paving	RD272-21551
5/31/88	Herzog Contracting	RD272-21581
5/31/88	Alexander & Baldwin, Inc.	RD272-22195
5/31/88	Skokie Valley Asphalt Co.	RD272-24474
5/31/88	Basic Resources	RD272-24800
5/31/88	Texas Industries	RD272-25498
5/31/88	Green Holdings, Inc.	RD272-25553
5/31/88	Blue Rock Industries	RD272-25521

REFUND APPLICATIONS RECEIVED—
Continued

(Week of May 27 through June 3, 1988)

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/31/88	El Paso Sand Products	RD272-25903
5/31/88	Giant Cement Co.	RD272-26655
5/31/88	Young Bros., Inc.	RD272-27446
5/31/88	Werner Construction	RD272-27568
5/31/88	Summit, Inc.	RD272-27778
5/31/88	Puerto Rican Cement Co.	RD272-28145
5/31/88	Colonial Sand & Stone Co.	RD272-29832
5/31/88	Stoneco, Inc.	RD272-31684
5/31/88	Morse Bros.	RD272-31817
5/31/88	Ajax Paving	RD272-32277
5/31/88	Southwestern Portland Cement	RD272-32476
5/31/88	Russell Industries	RD272-32575
5/31/88	Trumbull Corp.	RD272-34072
5/31/88	Commercial Carrier Corp.	RD272-34106
5/31/88	Mathy Construction Co.	RD272-34389
5/31/88	Western Paving Construction	RD272-35878
5/31/88	Hawaiian Cement	RD272-35909
5/31/88	West Virginia Paving	RD272-35936
5/31/88	Gifford-Hill & Co.	RD272-38282
5/31/88	Globe Industries	RD272-38383
5/31/88	Eaton Asphalt Paving Co.	RD272-37399
5/31/88	Tri-State Asphalt Corp.	RD272-41243
5/31/88	Rondo Sand & Gravel	RD272-41325
5/31/88	Ameron, Inc.	RD272-42426
5/31/88	Archer Daniels Midland	RD272-43109
5/31/88	Pizza Materials Co.	RD272-44723
5/31/88	Dover Equipment & Machine	RD272-17724
5/31/88	G.M.M. Corp.	RD272-18023
5/31/88	Mark Sand & Gravel	RD272-18471
5/31/88	V.R. Dennis Construction	RD272-18819
5/31/88	Goodyear Tire & Rubber Co.	RD272-20175
5/31/88	Churchill Construction Co.	RD272-20630
5/31/88	The Lubrizoll Corp.	RD272-20647
5/31/88	Roth-Filly Construction	RD272-20952
5/31/88	Commercial Asphalt Co.	RD272-21181
5/31/88	Peltier Bros., Inc.	RD272-21221
5/31/88	Scott Construction	RD272-21234
5/31/88	Geneva Rock Products	RD272-22941
5/31/88	Asphalt Paving Co.	RD272-23286
5/31/88	Eurasia Stone Quarry	RD272-23312
5/31/88	Jos. Schlitz Brewing Co.	RD272-23368
5/31/88	Shelly & Sands, Inc.	RD272-23457
5/31/88	The B.F. Goodrich Co.	RD272-23465
5/31/88	West Point Peppercott	RD272-23786
5/31/88	Harper Bros., Inc.	RD272-24568
5/31/88	Howell Asphalt Co.	RD272-24799
5/31/88	Du-Kane Asphalt Co.	RD272-24809
5/31/88	San Juan Cement Co.	RD272-25041

REFUND APPLICATIONS RECEIVED—
Continued

(Week of May 27 through June 3, 1988)

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/31/88	Metropolitan Asphalt Corp.	RD272-25153
5/31/88	Seneca Petroleum Co., Inc.	RD272-25544
5/31/88	Flatiron Paving Co. of Greeley	RD272-25573
5/31/88	Gerald A. Barrett, Inc.	RD272-25832
5/31/88	Barrett Paving Materials	RD272-26801
5/31/88	Great Northern Paper Co.	RD272-27784
5/31/88	Gniffith Co.	RD272-28254
5/31/88	Engelhard Corp.	RD272-28348

(FR Doc. 88-18803 Filed 7-21-88; 8:45 am)
BILLING CODE 4850-01-MENVIRONMENTAL PROTECTION
AGENCY

(ER-FRL-3419-2)

Environmental Impact Statements and
Regulations; Availability of EPA
Comments Prepared July 4 Through 8,
1988

Availability of EPA comments prepared July 4, 1988 through July 8, 1988 pursuant to the Environmental Review process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-AFS-K67000-CA, Rating EC2, Black Diamond Mine Development, Plan of Operations Approval, Angeles National Forest, Tujunga Ranger District, Los Angeles County, CA.

Summary: EPA expressed environmental concerns over impacts to air and water quality and the project's potential to degrade riparian habitat.

ERP No. D-BLM-L67019-AK, Rating E02, Birch Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, Steese National Conservation Area, Yukon-Tanana, AK.

Summary: EPA is concerned about the significant impacts to water quality, fish and wildlife habitat, vegetation, wetland functional values, and subsistence uses

that would occur under the proposed action, given the limited mitigation incorporated into this alternative.
ERP No. D-SCS-E36162-MS, Rating LO, Whites Creek Watershed Protection and Flood Prevention Plan, Funding, Possible 404 Permit and Implementation, Webster County, MS. Summary: EPA has no objections to the project as proposed.

Note: The above summary should have appeared in the 07-15-88 FR Notice.

ERP No. FS-SFW-A80084-00, Sport Hunting of Migratory Birds, Issuance of Regulations.

Summary: EPA feels the Fish and Wildlife Service adequately responded to concerns raised on the draft supplemental EIS.

Dated: July 9, 1988.

Richard E. Sanderson,
Director, Office of Federal Activities.
(FR Doc. 88-10607 Filed 7-21-88; 8:45 am)
BILLING CODE 4850-01-M

(ER-FRL-3419-1)

Environmental Impact Statements;
Notice of Availability of Environmental
Impact Statements Filed July 11, 1988,
Through July 15, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

EIS No. 880228, Final, FHW, OR, Airport Way Widening and Extension, I-205 to I-84, Funding, Multnomah County, OR, Due: August 21, 1988, Contact: Dale Wilken (503) 399-5749.

EIS No. 880227, Final, FHW, TX, TX-71/US 290 Improvements, R.M. 1826 to F.M. 973, Funding, Travis County, TX, Due: August 21, 1988, Contact: Gamaliel E. Olvera (512) 482-5966.

EIS No. 880228, Final, COE, ND, Souris Basin Flood Control Project, Floodwater Storage in Saskatchewan, Canada and Construction of Compatible Lake Darling Project Features, Implementation, Renville, Ward, McHenry, and Bottineau Counties, ND, Due: August 21, 1988, Contact: Charles Workman (612) 220-0264.

EIS No. 880229, Draft, COE, AL, Bayou La Batre Navigation Channel Improvements, Implementation, Mobile County, AL, Due: September 6, 1988, Contact: Susan Ivester (205) 690-2724.

EIS No. 880230, Final, COE, IL, MO, Mississippi River Locks and Dam 26 Replacement Construction, Second Lock, Implementation, Upper Mississippi and Illinois Rivers, Alton, Madison County, Illinois and St. Louis County, MO, Due: August 22, 1988, Contact: Daniel Ragland (314) 263-5711.

EIS No. 880231, Final, BLM, MT, WY, Billings Resource Area, Wilderness Study Areas (WSAs) Wilderness Recommendations, Designation or Nondesignation, Twin Coulees, Pryor Mountain, Burnt Timber Canyon and Big Horn Tack-On WSAs, Miles City District, Golden Valley and Carbon County, MT and Big Horn County, WY, Due: August 21, 1988, Contact: Billy McIlvain (406) 857-6262.

EIS No. 880232, Draft, DOE, CA, Lawrence Livermore National Laboratory, Nonactive, Mixed and Radioactive Waste Decontamination and Waste Treatment Facility, Construction and Operation, Implementation, Alameda County, CA, Due: September 6, 1988, Contract: William Holman (415) 273-6370.

Amended Notices

EIS No. 880102, Draft, AFS, CA, Black Diamond Mine Development, Plan of Operations Approval, Angeles National Forest, Tujunga Ranger District, Los Angeles County, CA, Due: July 31, 1988, Contact: Richard Borden (818) 574-5255. Published FR 4-8-88—Review period extended.

EIS No. 880212, Final, AFS, Silver Fire Recovery Project Area, August thru November 1987 Silver Complex Fire Land Management Plan, Implementation, Siakiyou National Forest, Josephine and Curry Counties, OR, Contact: Richard Stern (503) 476-1425.

Published FR 7-8-88—The 30 day NEPA Review Period for this EIS has been waived. The Forest Service and the Director, Office of Federal Activities had negotiated arrangements for this 30 day waiver before the FEIS was officially made available in the EPA weekly Notice of Availability. A Due Date of 8-8-88 was inadvertently published in the 7-8-88 EPA/NOA.

Dated: July 19, 1988.

Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 88-18906 Filed 7-21-88; 8:45 am]
BILLING CODE 8882-50-M

FEDERAL HOME LOAN BANK BOARD

Farmers Savings, A Federal Savings and Loan Association; Davis, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5 (d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Farmers

Savings, A Federal Savings and Loan Association, Davis, California on July 13, 1988.

Dated: July 18, 1988.

By the Federal Home Loan Bank Board.
John M. Buckley, Jr.,
Secretary.
[FR Doc. 88-10503 Filed 7-21-88; 8:45am]
BILLING CODE 8710-01-M

(FHLBB No. 5334; No. AC-729)

Mayflower Savings and Loan Association; Livingston, NJ; Final Action Approval of Conversion Application

Date: July 18, 1988.

Notice is hereby given that on July 7, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel of his designee, approved the application of Mayflower Savings and Loan Association, Livingston, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.
John M. Buckley, Jr.,
Secretary.
[FR Doc. 88-10502 Filed 7-21-88; 8:45 am]
BILLING CODE 8710-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 22, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Center for Disease Control

1. Third National Health And Nutrition Examination Survey (NHANES III)—NEW—The NHANES III will be conducted between 1988-1994. Respondents to the NHANES III are individuals and households. Respondents answer questionnaires and receive a free physical examination. Results will be used by a wide variety of public and private health organizations to analyze and describe the health status of the United States. Respondents: Individuals or households; Number of Respondents: 8,750; Frequency of Response: On Occasion; Estimated Annual Burden: 29,130 hours.
OMB Desk Officer: Shannah Koss-McCallum.

Health Care Financing Administration
(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Imposition of Cost Sharing Charges Under Medicaid—0838-0429—This collection of information requires the medicaid states to include in the state plan their provisions for imposition of cost sharing on the categorically and medically needy. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: On Occasion; Estimated Annual Burden: 2,700 hours.

2. Election to Recalculate Medicaid Reimbursement—0838-0482—Providers use this form to request that their fiscal intermediaries reopen one or more cost reports so that the provisions of 42 CFR 413.56, Malpractice Insurance Premium may be applied to settlement. Respondents: Business or other for-profit; Number of Respondents: 5,000; Frequency of Response: On Occasion; Estimated Annual Burden: 1,250 hours.

3. Information Collection Requirement in HSQ-109, Peer Review Organization Sanctions 42 CFR 1004.40, 1004.50, 1004.60 and 1004.70—0938-0444—PRO's are responsible for identifying violations and affording the affected party the opportunity to discuss them. These requirements describe the content of the notices sent and the report sent to OIG if violations are not resolved. Respondents: Business or other for-profit/Small business or organizations. Number of Respondents: 54; Frequency of Response: On Occasion; Estimated Annual Burden: 30,072 hours.

4. Organ Procurement Request for Certification—0938-0512—This form is a facility identification form used to initiate the certification or recertification process to determine if the provider is in compliance with the Medicare/Medicaid conditions of

participation. Respondents: Small business or organizations/State or local governments; Number of Respondents: 100; Frequency of Response: Annually; Estimated Annual Burden: 200 hours.

OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
FSA: 202-245-0652
SSA: 301-865-4149
OS: 202-245-6511
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3206, Washington, DC 20503.

Attn: Shannah Koss-McCallum.

Dated: July 18, 1988.

James V. Oberthaler,
Deputy Assistant Secretary, Information Resources Management.
[FR Doc. 88-10524 Filed 7-21-88; 8:45 am]
BILLING CODE 4110-04-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 22, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Food and Drug Administration

1. Medical Device listing—0910-0057—Section 510 of the FD&C Act requires manufacturers and other specified processors of Medical Devices to provide a list of all devices manufactured in any establishment which they can own or operate. Such information must be periodically updated as specified in 21 CFR 807.37. Respondents: Manufacturers and specified other specified processors of medical devices, business of other non-profit/small business organizations;

Number of Respondents: 2,449; Frequency of Response: initially upon marketing, changes and discontinuance; Estimated Annual Burden: 6,613 hours. Burden: 6,613 hours.

Center for Disease Control

1. Feasibility of Surveying Hospices and Home Health Agencies (Concept Clearance)—NEW—The purpose of this project is to develop and field test data sets, data collection procedures and instruments for obtaining information about home health agencies and hospices and about their clients. The data are needed by the long term care community to assist in setting standards, planning and assessing the need for long-term care services. Respondents: Home health agencies and hospices, business or other for-profit non profit institutions; Number of Respondents: 1; Frequency of Response: On occasion; Estimated Annual Burden: 1 hour.

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

Office of Family Assistance

1. Integrated Review Schedule—0035—State agencies are required to perform quality control reviews for AFDC, FNS and Medicaid. The Integrated Review Schedule was jointly designed and is being used by all three programs as a comprehensive data system form for all three programs as a comprehensive data system form for all three programs. Respondents: State or local governments; Number of Respondents: 73,886; Frequency of Response: 1; Estimated Annual Burden: 73,886 hours.

2. Corrective Action Plan and Progress report—0027—Corrective action plans and progress reports are a structured way for state agencies to plan, implement and evaluate corrective actions which are designed to reduce payment errors. OFA reviews the plans and makes recommendations for change and adjustments as needed.

Respondents: State or local government; Number of Respondents: 54; Frequency of Response: 108; Estimated Annual Burden: 12,960 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238

FSA: 202-245-0652
SSA: 301-865-4149
OS: 202-245-6511
OHDS: 202-472-4415.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3206, Washington, DC 20503.

Attn: Shannah Koss-McCallum.

Date: July 14, 1988.

James V. Oberthaler,
Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88-16525 Filed 7-21-88; 8:45 am]
BILLING CODE 4110-04-M

Office of Inspector General; Office of the Secretary; Delegation of Authority

Notice is hereby given that on July 13, 1988, the Secretary of Health and Human Services delegated to the Inspector General, with authority to redelegate, the authority to propose civil money penalties under sections 1819(b)(3)(B)(ii), 1819(g)(2)(A)(i), 1819(h)(2), 1919(b)(3)(B)(ii), 1919(g)(2)(A)(i), and 1919(h)(3) of the Social Security Act, as amended. The Secretary also delegated to the Inspector General the authority to develop criteria under sections 1819(h)(2) and 1919(h)(3) governing how and when those civil money penalties should be applied. The authority to issue regulations was excluded from the delegation.

This delegation provides the Inspector General with the authority to propose civil money penalties against persons who make or cause to be made false certifications in resident assessments, to propose civil money penalties against persons who notify or cause to be notified Medicare or Medicaid nursing homes of the time or date of a scheduled inspection survey, and to propose civil money penalties against Medicare or Medicaid nursing homes which fail to meet requirements for participation.

Dated: July 13, 1988.

Otis R. Bowen,
Secretary.

[FR Doc. 88-16506 Filed 7-21-88; 8:45 am]
BILLING CODE 4110-03-M

Centers for Disease Control

Population Base Used for Distribution of Preventive Health and Health Services Block Funds for Rape Prevention and Services

AGENCY: Centers for Disease Control (CDC), Public Health Service (HHS).
ACTION: Notice of intent to update the population base used to calculate the distribution of Preventive Health and Health Services Block Grant funds for services to victims of rape and for rape prevention.

SUMMARY: The CDC proposes to use the annual estimated census figures as the population base used for calculating the distribution of Preventive Health and Health Services Block Grant funds for services to victims of rape and for rape prevention.

EFFECTIVE DATE: October 1, 1988 (FY 1989). Comments on this proposed change must be received on or before August 22, 1988.

ADDRESS: Comments may be mailed to Deputy Director, Center for Prevention Services, CDC, 1600 Clifton Road, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: E. Jerry Spyke, Senior Public Health Advisor, Center for Prevention Services, CDC, Atlanta, Georgia 30333. Telephone:

FTS 236-1800, Commercial: (404) 639-1800.

Purpose and Background

The Preventive Health and Health Services Block Grants were first authorized and funded in fiscal year 1982. Of the funds currently appropriated, \$3.5 million is allocated to eligible recipients (States, Territories and the District of Columbia) for services to victims of rape and rape prevention. The amount allocated to each recipient is based on its population as a proportion of the total U.S. population. The authorizing legislation does not specify which population census is to be used for determining the allotments.

For the fiscal years 1982 through 1988, the Centers for Disease Control has used the 1980 census for calculation of rape fund distributions under the Block Grants. These figures were the most recent available at the initiation of the program in FY 1982 and remain the most recent complete census. The continued use of the 1980 census has been consistent with the distribution calculation for the rest of the block grant which is approximately \$82 million. This distribution, as required by law, is based upon the amount of categorical grants (i.e., hypertension, fluoridation, emergency medical services, etc.) the

States received for FY 1981. These categorical grants became part of the block grant. FY 1981 figures are still used for this purpose and Congress has not changed this method of calculation.

A review of estimated population figures for 1987 from the Bureau of the Census reveals increases and shifts of population which would change the distribution of the funds to the States for rape services and prevention. A table reflecting changes in the allotments from FY 1988 to FY 1989 using the 1980 and 1987 population figures respectively is provided.

In order to make allotments consistent with population changes, CDC proposes to base the distribution of the Preventive Health and Health Services Block Grant funds for services to victims of rape and for rape prevention on the most recent Bureau of the Census estimated annual census figures which will be updated annually. Population figures for the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau will be provided by the respective entities since the Bureau of the Census no longer provides census coverage for these Pacific areas.

Dated: July 18, 1988.

Glenda S. Cowart,
 Director, Office of Program Support, Centers for Disease Control.

DISTRIBUTION OF PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANT FUNDS

(Amount for Rape, \$3,500,000)

	Population for 1980	Population for 1987 ¹	Funding 1988	Funding 1989	Funding diff.	Percent change
1 Alabama	3,880,061	4,083,000	\$59,182	\$57,828	-\$1354	-2.968
2 Alaska	400,481	525,000	8,093	7,436	-657	-8.125
3 Am Samoa	32,385	37,300	493	528	35	7.099
4 Arizona	2,717,868	3,388,000	41,438	47,957	6509	15.984
5 Arkansas	2,285,513	2,388,000	34,771	33,822	-949	-2.729
6 California	23,888,582	27,883,000	380,083	381,796	1713	0.450
7 Colorado	2,888,834	3,296,000	43,949	48,882	4933	11.219
8 Connecticut	3,107,576	3,211,000	47,277	45,478	-1799	-3.805
9 Delaware	595,225	644,000	9,055	9,121	66	0.729
10 Dist of Colum.	637,861	622,000	9,701	8,810	-891	-9.185
11 Florida	9,739,822	12,023,000	148,180	170,284	22104	14.917
12 Georgia	5,484,265	6,222,000	83,131	98,123	14992	18.005
13 Guam	105,621	128,800	1,610	1,798	188	11.553
14 Hawaii	965,000	1,083,000	14,681	15,339	658	4.482
15 Idaho	942,935	998,000	14,361	14,135	-226	-1.574
16 Illinois	11,418,481	11,582,000	173,716	164,038	-9678	-5.571
17 Indiana	5,490,179	5,531,000	83,525	78,337	-5188	-6.211
18 Iowa	2,913,387	2,843,000	44,323	40,268	-4055	-9.153
19 Kansas	2,963,208	2,476,000	35,953	35,068	-885	-2.462
20 Kentucky	3,861,433	3,727,000	55,703	52,786	-2917	-5.237
21 Louisiana	4,203,972	4,461,000	63,957	63,182	-775	-1.212
22 Maine	1,124,660	1,187,000	17,110	18,812	1702	9.828
23 Marshall Isl	90,873	38,044	470	539	69	14.661
24 Maryland	4,216,448	4,335,000	64,147	64,230	83	0.128
25 Massachusetts	5,737,037	5,855,000	87,281	82,825	-4456	-5.091
26 Michigan	9,258,344	9,200,000	140,852	130,301	-10551	-7.481
27 Micronesia	73,160	92,262	1,113	1,507	394	34.930
28 Minnesota	4,077,148	4,248,000	62,028	60,137	-1891	-3.049
29 Mississippi	2,820,838	2,625,000	38,348	37,178	-1170	-3.051
30 Missouri	4,817,444	5,103,000	74,812	72,275	-2537	-3.391
31 Montana	788,690	809,000	11,988	11,458	-530	-4.261
32 Nebraska	1,570,008	1,584,000	23,885	22,570	-1315	-5.480

DISTRIBUTION OF PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANT FUNDS—Continued

(Amount for Rape, \$3,500,000)

	Population for 1980	Population for 1987 ¹	Funding 1988	Funding 1989	Funding diff.	Percent change
33 Nevada	798,184	1,007,000	12,158	14,282	2104	17.305
34 New Hampshire	920,610	1,057,000	14,008	14,370	362	2.583
35 New Jersey	7,364,158	7,872,000	112,035	108,880	-3155	-3.012
36 New Mexico	1,286,988	1,500,000	19,777	21,245	1468	7.423
37 New York	17,557,288	17,825,000	267,111	252,458	-14653	-5.486
38 N. Carolina	5,874,429	6,413,000	89,371	90,829	1458	1.631
39 N. Dakota	652,895	672,000	9,938	9,518	-412	-4.148
40 N. Mariana Is.	16,860	19,700	257	279	22	8.560
41 Ohio	10,797,418	10,784,000	164,287	152,736	-11531	-7.020
42 Oklahoma	3,025,288	3,272,000	48,025	48,432	407	0.848
43 Oregon	2,832,883	2,724,000	40,052	38,581	-1471	-3.673
44 Palau	12,116	13,873	184	190	6	3.252
45 Pennsylvania	11,958,728	11,988,000	180,535	188,052	7517	4.186
46 Puerto Rico	3,168,076	3,274,000	48,472	48,570	98	0.202
47 Rhode Island	947,154	986,000	14,470	13,905	-565	-3.968
48 S. Carolina	3,119,208	3,425,000	47,484	48,508	1025	2.159
49 S. Dakota	690,176	709,000	10,509	10,042	-467	-4.382
50 Tennessee	4,580,750	4,855,000	68,842	68,762	-80	-0.116
51 Texas	14,228,383	16,708,000	216,405	237,788	21383	10.050
52 Utah	1,461,037	1,880,000	22,228	23,784	1556	7.045
53 Vermont	511,456	548,000	7,781	7,781	0	0.000
54 Virginia	5,348,279	5,904,000	81,336	82,619	1283	1.576
55 Virgin Islands	95,591	108,500	1,454	1,551	97	6.671
56 Washington	4,139,183	4,538,000	62,835	64,273	1438	2.299
57 W. Virginia	1,949,844	1,887,000	28,681	28,868	187	0.651
58 Wisconsin	4,705,335	4,807,000	71,585	68,062	-3523	-4.913
59 Wyoming	470,816	480,000	7,103	6,940	-163	-2.293
U.S. TOTAL	230,057,717	247,119,479	3,500,000	3,500,000	0	0.000

¹ NOTE 1: July 1, 1987 (Bureau of Census) estimated for all entities except the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
 NOTE 2: Marshall Islands—estimated 1986 census, Micronesia—actual 1985 census, Palau—actual 1986 census.

[FR Doc. 88-16530 Filed 7-21-88; 8:45 am]
 BILLING CODE 4185-10-8

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA) (49 Federal Register 35247, dated September 8, 1984) is amended to include the Secretary's delegation of authority, to the Administrator, HCFA, to conduct a demonstration to determine the cost effectiveness of including influenza vaccine in the Medicare program as authorized under section 4071 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203.

The specific changes to Part F. are described below:

Section F.30., Delegations of Authority, is amended by adding paragraph Z. The new delegation of authority reads as follows:
 Z. The authority under sections 4071(b) of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, to conduct a demonstration of the provision of influenza vaccine as a

service for Medicare beneficiaries in order to determine the cost effectiveness of including influenza vaccine in the Medicare program and the authority to expend \$25,000,000 each year of the demonstration project for this purpose.

Reservation of Authority: The authority to make reports to Congress has been reserved by the Secretary and is not included in this delegation. The authority herein delegated may be redelegated. This delegation of authority is effective immediately. In addition, I hereby affirm and ratify any actions taken by you which, in effect, involved the exercise of the subject authority prior to the effective date of this delegation.

Date: July 15, 1988.

Otis E. Brown,
 Secretary, Department of Health and Human Services.

[FR Doc. 88-16530 Filed 7-21-88; 8:45 am]
 BILLING CODE 4185-10-8

Public Health Service

Office of the Assistant Secretary For Health; Patents And Inventions; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority by the Secretary under 45 CFR

Part 6.2 (31 FR 12842), the Assistant Secretary of Health has delegated to the PHS Agency Heads the following authorities as they pertain to the functions of their respective agencies:

1. 35 U.S.C. 202(c)(7), Disposition of Rights, as amended:

The authority to permit a nonprofit organization to assign the rights to a subject invention in the United States to organizations which do not have as one of their primary functions the management of inventions.

2. 35 U.S.C. 202(d), Disposition of Rights, as amended:

The authority to permit a contractor to grant requests for retention of rights by the inventor.

3. 35 U.S.C. 202(e), Disposition of Rights, as amended:

The authority to transfer or assign whatever rights the PHS agency may acquire in the subject invention, in any case when an agency employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm. Such rights may be transferred or assigned from the PHS agency employee to the contractor subject to the conditions set forth in this chapter.

4. 35 U.S.C. 203, March-in Rights, as amended:

The authority to require the contractor to grant nonexclusive, partially exclusive, or exclusive licenses to a responsible applicant(s), or the authority for PHS to grant such licenses, provided such action would be in the best interest of PHS, in accordance with all provisions of this section.

5. 35 U.S.C. 204, Preference for United States Industry, as amended:

The authority to waive the preference for United States industry requirement.

6. 35 U.S.C. 207(a), Domestic and Foreign Protection of Federally Owned Inventions, as amended:

The authority to (1) apply for, obtain, and maintain patents or other forms of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title or interest; (2) grant nonexclusive, exclusive, or partially exclusive licenses under federally owned patent applications, patents, or other forms of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions, including the grant to the licensee of the right of enforcement pursuant to the provisions of chapter 29 of this title as determined appropriate in the public interest; (3) undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal Government either directly, or through contract; (4) transfer custody and administration, in whole or in part, to another Federal agency, of the right, title, or interest in any federally owned invention.

7. 45 CFR 7.3 and 7.7, Determination as to Domestic Rights and Notice to Employee of Determination, as amended.

Authority to (1) leave title to invention in the PHS employee inventor, where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein; and (2) notify the PHS employee inventor of the determination in writing.

This delegation of authority supplements the February 4, 1988 delegation of authority under the Stevenson-Wydler Technology Innovation Act of 1980 as amended by the Federal Technology Transfer Act of 1986. The delegated authorities are to be exercised in compliance with all existing rules and regulations regarding patent and invention rights and responsibilities.

Restriction

The authority under 35 U.S.C. 207(a) (item 6. above) is restricted to the extent that the Assistant Secretary for Health is to be notified of any significant

invention, patent, or license, so that the Assistant Secretary for Health may decide whether or not documentation concerning any such invention, patent, or license should be submitted to the Assistant Secretary for Health for signature.

Redelegation

The following authority may not be redelegated:

Item 4: 35 U.S.C. 203, as amended.

All other authorities may be redelegated to bureau and institute directors or officials at equivalent level.

Information and Guidance

35 U.S.C. 202-206; 37 CFR Part 4; and 45 CFR Parts 6 and 7.

Effective Date

the delegation of authority became effective on July 15, 1988.

Date: July 15, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-10582 Filed 7-21-88; 8:45 a.m.]

BILLING CODE 4180-17-01

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permits Issued for the Months of April, May, and June 1988

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Office of Management Authority, P.O. Box 27328, Washington, DC, 20038-7238, telephone (202/343-4955) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

April		
Moses, Robert Jr.	724886	04/04/88
Moore, Robert	725169	04/04/88
Fedonick, Thelma June	724318	04/05/88
Newman, John	724657	04/06/88
Gladys Porter Zoo	725285	04/07/88
Brandenburg, Gordon H.	725785	04/19/88

San Diego Zoological Society	725772	04/19/88
Hawthorn Circus Corporation	727101	04/28/88
Hawthorn Circus Corporation	726308	04/28/88
U.S. Fish & Wildlife Service, Anchorage, AK	690715	04/29/88

May		
Darlan, Mardy E.	723982	05/03/88
Woodland Park Zoological Gardens	728028	05/04/88
Assistant Regional Director #1	725727	05/10/88
Peregrine Fund, Inc.	688387	05/11/88
Gruenewald, William	726239	05/11/88
Charles Pariko	725559	05/13/88
Woodland Park Zoological Gardens	726407	05/12/88
Erickson, Lloyd	726867	05/16/88
Harrington, David	726890	05/16/88
Regional Director #5	726618	05/16/88
San Diego Zoological Society	728973	05/17/88
d'Elia, Serge M.	726381	02/23/88
Greeter Baton Rouge Zoo	726825	05/25/88
Regional Director #2	688914	05/26/88

June		
Dallas Zoo	719622	06/02/88
Exotic Animals	704301	06/02/88
Wildlife Reserve of Western Canada	728876	06/02/88
Toledo Zoological Gardens	737201	06/03/88
San Antonio Zoological Gardens and Aquarium	721703	06/08/88
Little, Scott E.	728948	06/08/88
San Diego Zoological Society	727417	06/13/88
American Museum of Natural History	727374	06/14/88
Bennett, Herman Alton	727703	06/17/88
Carroll, Frank	727371	06/22/88
Texas A&M University	725379	06/22/88
Torgerson, Thomas B.	727375	06/28/88

Date: July 14, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88-10610 Filed 7-21-88; 8:45 am]

BILLING CODE 4810-AM-01

Intent To Prepare an Environmental Assessment on the Proposed Reintroduction of the Florida Panther (*Felis concolor coryi*) Into Areas Within Its Historic Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to gather information necessary for the preparation of an Environmental Assessment for the proposed reintroduction of the Florida panther (*Felis concolor coryi*) into areas within its historic range. This notice is being furnished as required by the National Environmental Policy Act Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the Environmental Assessment. Comments and

participation in this scoping process are solicited.

DATE: Written comments and information should be received by September 20, 1988.

ADDRESS: Comments should be addressed to: James W. Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT:

Dennis B. Jordan, Florida Panther Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611, telephone: 904/392-1861.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service, Department of the Interior, in cooperation with the Florida Game and Fresh Water Fish Commission, proposes to reintroduce the Florida panther (*Felis concolor coryi*) into portions of its historic range. The Florida panther originally ranged from eastern Texas eastward through Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, and parts of Tennessee and South Carolina.

Because of persecution, mainly through hunting and trapping, and habitat losses which started with the early settlers and have continued, the only known viable population of the Florida panther is found in the Big Cypress Swamp/Everglades region of south Florida. An estimated population of 30 to 50 animals is all that remains.

Because the Florida panther is listed as an endangered species under the provisions of the Endangered Species Act of 1973, as amended, a recovery plan has been prepared and was approved by the Fish and Wildlife Service in 1981. In conjunction with the plan's approval, the Florida Game and Fresh Water Fish Commission initiated several of the important panther studies identified as high priority needs in the plan. As a result of these studies, as well as other studies being conducted by the National Park Service, a great deal of information concerning the panther's habitat requirements, food habits, reproduction, population size and density, health conditions, etc., is becoming available. To better utilize and incorporate all of the current information into the recovery effort, the original recovery plan has been revised and was approved by the Fish and Wildlife Service on June 22, 1987.

The recovery objective as specified in the revised Florida Panther Recovery Plan is to achieve three viable, self-sustaining populations within the historic range. Only one population now exists according to the information which is currently available.

Consequently, population reestablishment through successful reintroductions will be crucial to achieving recovery for the Florida panther. The revised recovery plan contains a detailed outline and narrative section which addresses captive breeding and reintroduction plans for the Florida panther (pages 38 to 44). The process initially involves the use of nonendangered surrogate cougars as part of a feasibility study. This study is designed to test two different reintroduction techniques: the translocation and release of wild caught adults or subadults (two males and three females) into the reintroduction area, and the release of properly conditioned captive-raised offspring into the area. The two techniques, which will be tested separately, are scheduled to begin in June 1988 and extend for at least 1 year each. The animals will be sterilized and fitted with transmitter collars for intensive monitoring purposes. The feasibility study is being conducted by the Florida Game and Fresh Water Fish Commission. The experimental reintroduction area consists of approximately 1,180,000 acres comprised of Osceola National Forest, Okefenokee National Wildlife Refuge, and adjacent private/corporate lands in Baker and Columbia Counties in Florida, and Charlton, Clinch, and Ware Counties in Georgia. The area was selected by the Florida Game and Fresh Water Fish Commission after a comprehensive evaluation and ranking process of potential reintroduction sites in north and central Florida. A decision on the actual reintroduction of Florida panthers will not be made until a thorough examination and review of the results of the feasibility study and other relevant data. It is anticipated that this decision is at least 3 to 4 years away. In addition, any reintroduced Florida panthers would be designated and classified as nonessential experimental, as provided for under section 10(j) of the Endangered Species Act of 1973, as amended.

The environmental review of this project will be conducted in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), National Environmental Policy Act Regulations (40 CFR 1500-1508), other appropriate Federal regulations, and Fish and Wildlife Service procedures for compliance with those regulations.

Date: July 11, 1988.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 88-10601 Filed 7-21-88; 8:45 am]

BILLING CODE 4810-05-01

Issuance of Permit for Marine Mammals; Carle Foundation Hospital, PRT #891972

On June 6, 1988, a notice was published in the Federal Register (Vol. 53, FR No. 106) that an application had been filed with the Fish and Wildlife Service by Carle Foundation Hospital (PRT #891972) for a permit to import polar bear (*Ursus maritimus*) serum, urine and adipose tissue samples.

Notice is hereby given that on July 8, 1988, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Office of Management Authority, Room 403, 1375 K Street NW., Washington, DC 20005.

Dated: July 14, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 88-10611 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-AM-01

Bureau of Land Management

[AZ-050-8-4212-11, A-23255]

Realty Action, Lease of Lands; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of lands, Mohave County Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable to be classified for lease under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.) and the regulations established by 43 CFR Parts 2740 and 2910, as amended in the Final Rulemaking published in the Federal Register on December 10, 1985.

T. 20 N., R. 22 W., Gila and Salt River Meridian, Arizona, sec. 12, portion of Lots 5 and 6, containing 6.9 acres more or less.

The Bullhead Area Chamber of Commerce has applied to lease the above described lands for a Chamber of Commerce building and boat launch ramp. These are existing facilities on Federal lands currently leased to Mohave County and subleased to the Chamber of Commerce. Mohave County proposes to relinquish their lease interest in the above lands to allow the

Chamber of Commerce to obtain a direct lease from the Bureau of Land Management.

These public lands are hereby segregated from appropriation under any public land laws, including the general mining laws, except for recreation and public purposes and Title V of the Federal Land Policy and Management Act of 1976.

DATES: For a period of up to and including September 6, 1988, interested parties may submit comments to the District Manager, 3150 Winsor Avenue, Yuma, Arizona 85365. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, effective September 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602-855-8017.

Date: July 13, 1988.

Robert V. Abbey,

Acting District Manager.

[FR Doc. 88-10482 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-32-8

[NV-330-08-4212-13; N-47471]

Realty Action; Exchange of Public and Private Lands; Washoe County;

ACTION: Notice of realty action.

SUMMARY: Exchange of public and private lands in Washoe County N-47471.

DATE: July 14, 1988.

The following described public lands, comprising 77.83 acres, have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 33 N., R. 22 E.

Sec. 3, lot 9, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

In exchange for these lands, the United States will acquire the following private lands from Bruno Selmi, which comprise 68.52 acres:

Mount Diablo Meridian, Nevada

T. 33 N., R. 22 E.

Sec. 2, lot 3, excepting therefrom any portion of that certain parcel described below:

Beginning at the section Corner on the South common to Sections 34 and 35,

Township 34 North, Range 22 East, M.D.B.M.; thence Easterly along the Township Line common to Section 2, Township 33 North, Range 22 East, and Section 35, Township 34 North, Range 22 East, M.D.B.M., for a distance of 1850.00 feet; thence South at right angles, a distance of 330.00 feet; thence Westerly and parallel to said Township Line, a distance of 1850.00 feet; thence Northerly at a right angle, for a distance of 330.00 feet, to the point of beginning.

T. 34 N., R. 22 E.

Sec. 35, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{4}$ SW $\frac{1}{4}$ S, E $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.

The mineral estates in the offered and selected lands will be exchanged.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for wildlife habitat and municipal watershed. This exchange is consistent with Bureau of Land Management land use planning. The federal land is not needed for any federal program. The public interest will be served by completing the exchange.

The exchange will not result in the loss of AUM's to the grazing preference of the permittees in the Buffalo Hills allotment. No range improvements will be impacted by the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment of Department of Interior-BLM by Bruno Selmi of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

A patent, when issued, will contain the following reservation to the United States.

A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

And will be subject to:

Those rights for pipeline purposes which have been granted to Western Pacific Railroad, its successors or assigns, by right-of-way No. CC-017734, under the Act of February 15, 1901 (43 U.S.C. 959).

Upon publication of this Notice of Realty Action in the Federal Register, the federal land will be segregated from all other forms of appropriations under the public land laws, including the mineral leasing laws and the general mining laws. The segregative effect of the notice shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the Federal Register of a termination of the segregation or 2 years from the date of its publication, whichever occurs first.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the

office of the Bureau of Land Management, Winnemucca District, 705 E. 4th Street, Winnemucca, Nevada 89445.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Winnemucca District Manager, at the above address.

Dated this 14th day of July, 1988.

Gerald P. Brandvold,

Acting District Manager, Winnemucca.

[FR Doc. 88-16506 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-32-8

[OR-030-08-4212-13; GPB-188; OR 7920]

Realty Action; Exchange of Public Lands in Malheur County, OR

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 23 S., R. 36 E.

Sec. 12, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

Sec. 24, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

Sec. 25, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.

Sec. 26, E $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 23 S., R. 36 E.

Sec. 7, W $\frac{1}{2}$ SE $\frac{1}{4}$.

Sec. 16, S $\frac{1}{2}$.

Sec. 17, All.

Sec. 18, Lot 4, E $\frac{1}{4}$.

Sec. 19, Lots 1 to 10, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.

Sec. 20, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$.

Sec. 21, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$.

Sec. 30, Lots 2 to 9, S $\frac{1}{2}$ NE $\frac{1}{4}$.

The area described above aggregates 3719.95 acres in Malheur County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from Mary Arrien Cooper:

Willamette Meridian

T. 22 S., R. 36 E.

Sec. 24, W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.

Sec. 25, E $\frac{1}{4}$.

T. 23 S., R. 36 E.

Sec. 1, Lots 1, 2, 4, S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$.

Sec. 3, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$.

Sec. 9, NE $\frac{1}{4}$.

Sec. 10, W $\frac{1}{2}$, SE $\frac{1}{4}$.

Sec. 12, W $\frac{1}{2}$ E $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Sec. 13, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Sec. 15, N $\frac{1}{2}$, SE $\frac{1}{4}$.

Sec. 22, W $\frac{1}{2}$ NE $\frac{1}{4}$.

Sec. 23, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$.

Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$.

The area described above aggregates 3380.55 acres in Malheur County, Oregon.

The purpose of the land exchange is to facilitate resource management opportunities as identified in the Management Framework Plan for the

Northern Malheur Resource Area. The exchange is needed to effect a land tenure adjustment in which intermingling lands will be separated into solid ownership blocks. The tenure adjustment is prerequisite to intensive resource management and conservation treatment on the lands involved. The public interest will be highly served by making this exchange.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right, easement or lease of record.

Publication of this notice in the Federal Register segregates the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

Detailed information concerning the exchange, including the environmental analysis and record of public discussions, is available for review at the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Vale District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

George D. House,

Acting District Manager.

[FR Doc. 88-16606 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-32-8

[WY-040-08-4212-13; WYW-102189]

Realty Action; Exchange; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public lands in Sweetwater County for private lands in Lincoln County. WYW-102189.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by exchange under

section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716).

Sixth Principal Meridian

T. 19 N., R. 105 W.

Sec. 22: Lots 10, 11, 12, 13, 14, 15;

Sec. 28: Lots 2, 6, 7, 12.

The above land aggregates 401.91 acres.

In exchange, the United States proposes to acquire the following private surface estate from Frank A. Mau et al.

Sixth Principal Meridian

T. 23 N., R. 116 W.

Portion of Lot 37:

Sec. 1: Lots 2, 3, 4, 5, 6, 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 2: Lots 1, 2, 3, 4, 5, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 3: Lots 1, 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 11: N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 12: W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 24 N., R. 116 W.

Sec. 35: Portion of Lot 2.

The above land aggregates 1,066.77 acres.

The lands are also described and recorded in Lincoln County as the Bowie Wheat tracts 1-15, 20-45.

FOR FURTHER INFORMATION CONTACT: Ron Wenker, Area Manager, Kemmerer Resource Area, P.O. Box 632, Kemmerer, Wyoming 83101, (307) 877-3933.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire over 1686 acres of land highly valued for its historical, wetland and other wildlife resources. The exchange will be for an equal value amount of Federal surface. Values will be equalized with cash payment. The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. Segregative effect of this notice will terminate upon issuance of patent or in two years, which occurs first.

Conveyance of the above public lands will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States any identified mineral values on the Federal lands being transferred.

3. Valid existing rights of record. Specific information concerning these rights are on file at the Kemmerer Resource Area Office.

This exchange is consistent with Bureau of Land Management policies

and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, Area Manager, Kemmerer Resource Area Office, P.O. Box 632, Kemmerer, Wyoming 83101. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Ron Wenker,
Area Manager.

July 8, 1988.

[FR Doc. 88-10010 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-32-8

[AK-932-08-4220-10; F-85316]

Termination of Segregative Effect on Proposed Withdrawal; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The segregative effect of the proposed withdrawal for the Bureau of Land Management of public lands near the Nigu River, Alaska, will terminate on July 23, 1988. The land has been, and pursuant to overlapping PLO No. 5170, the land will remain closed to all forms of appropriation under the public land laws and from location and entry under the mining laws, including metalliferous minerals.

DATE: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-3342.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the segregation imposed by the Notice of Proposed Withdrawal published July 22, 1986 (51 FR 26311), and corrected on September 5, 1986 (51 FR 31845), will terminate at 8:00 a.m., Alaska Daylight Time, on July 23, 1988. The lands will remain subject to the terms and conditions of PLO No. 5179 (37 FR 5579-5582).

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 88-16506 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-32-8

Bureau of Reclamation

Intent To Prepare Environmental Impact Statement; Delta-Mendota California Aqueduct Intertie Project, San Joaquin County, CA

AGENCY: Bureau of Reclamation (USBR), Department of the Interior.

ACTION: Notice of intent to prepare a draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Delta-Mendota California Aqueduct Intertie Project, Westlands Water District.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended) and section 21002 of the California Environmental Quality Act, the USBR and Westlands Water District intend to prepare a joint EIR/EIS. The EIR/EIS will address the impacts from constructing and operating an intertie to convey 125,000 acre-feet of interim water annually from the Delta Mendota Canal to the California Aqueduct.

Meetings have been scheduled to solicit public input to determine alternatives to the proposed project, determine the scope of the EIR/EIS, and identify significant issues related to the proposed action.

DATE: The meetings will be held on August 8, 1988, at 7:30 p.m. in Fresno, California; and on August 9, 1988 at 7:30 p.m. in Sacramento, California.

ADDRESS: Hilton Hotel, 1055 Van Ness, Fresno, CA; Red Lion, 2001 Point West Way, Sacramento, CA.

FOR FURTHER INFORMATION CONTACT: Mr. John Brooks, Environmental Specialist, Mid-Pacific Region (MP-400), 2800 Cottage Way, Sacramento, CA 95825, telephone 916/978-5049. Please submit written comments by August 16, 1988 to Mr. John Brooks.

SUPPLEMENTARY INFORMATION: This project will transfer 125,000 acre-feet of water identified by the USBR as available for storage in San Luis Reservoir from the Delta-Mendota Canal to the California Aqueduct for 5-7 years commencing in the winter of 1989 for use in the 1990-1991 water year.

The water would be delivered from the Sacramento-San Joaquin Delta at the Tracy Pumping Plant and conveyed in the Delta-Mendota Canal to milepost 7. At that point, the water would be pumped from the canal and transferred to the California Aqueduct for conveyance to San Luis Reservoir. The 125,000 acre-feet of water would then be conveyed to Westlands Water District and used on farms in the district that have an irrigation water deficit. The

proposed diversion complies with existing diversion permits at the Tracy Pumping Plant and various court decisions addressing irrigation water entitlements and will adhere to water quality standards in the Delta.

Alternatives presently under consideration include diverting the 125,000 acre-feet directly into the California Aqueduct, pumping ground water to meet the 125,000 acre-feet demand, and acquiring additional surface water from other sources.

Environmental effects to be addressed in the EIR/EIS include economic impacts caused by the irrigation water shortfalls, impacts on fish and wildlife from additional diversions from the Delta, consequences of groundwater pumping, agricultural drainage, and water quality impacts.

DATE: July 20, 1988.

Sammie D. Gay,

Acting Commissioner.

[FR Doc. 88-10690 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-05-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan 30 CFR Part 780

Abstract: Sections 507(b), 508(a) and 515 (b) and (d) of Pub. L. 95-87 require applicants for surface mine permits to provide a description of each existing structure proposed to be used in the mining and reclamation operation and a compliance plan for structures proposed to be modified or constructed for use in the operation. This information is used by the regulatory authority in determining if the applicant can comply

with the applicable performance and environmental standards.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Surface Coal Mining Operators.

Annual Responses: 1,570.

Annual Burden Hours: 581,133.

Average Burden Hours Per Response: 370.

Bureau Clearance Officer: Nancy Ann Baka (202) 343-5981.

DATE: July 8, 1988.

Richard O. Miller,

Chief, Regulatory Development and Issues Management.

[FR Doc. 88-10637 Filed 7-21-88; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Little Caesars Enterprises, Inc., 24120 Haggerty Road, Farmington Hills, Michigan 48024, A Michigan Corporation.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation: Blue Line Distributing, Inc., 24120 Haggerty Road, Farmington Hills, Michigan 48024, A Michigan Corporation.

B. 1. Parent corporation and address of principal office: Diversified Technologies Inc., P.O. Box 8, George, Iowa 51235.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) * * * Sudenga Industries Inc.,

George, Iowa.

(ii) * * * Ranger All Season

Corporation, George, Iowa.

(iii) * * * Dur-A/Lift Inc.,

Emmetsburg, Iowa and George, Iowa.

(iv) * * * Ag Rec Inc., Emmetsburg,

Iowa and George, Iowa.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10275 Filed 7-21-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31295; Directed Service Order No. 1504]

The New York, Susquehanna and Western Railway Corp., Directed Service—the Delaware and Hudson Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments.

SUMMARY: By orders served June 22 and June 23, 1988, we authorized the New York, Susquehanna and Western Railway Corp. (NYS&W) to act as a directed rail carrier without federal subsidy or compensation under 49 U.S.C. 11125 over the lines of the Delaware and Hudson Railway Company (D&H), and in doing so to use D&H equipment (under a private compensation agreement). Directed service under these orders will expire on August 7, 1988. By this notice, the Commission seeks comment on various matters relating to the current situation and future plans.

DATE: Comments are due by August 1, 1988.

ADDRESS: An original and if possible 15 copies of comments referring to these docket numbers should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION:

The Commission seeks comment from affected parties, including localities and States, (including the D&H trustee in bankruptcy) on the following issues:

(1) D&H has not been relieved of its obligation to provide service. Does the D&H intend to resume service? If so, when?

(2) Should D&H not be prepared to resume service on August 8, 1988, what service alternatives are available as temporary replacement for service by the D&H?

(3) What are the intentions of the trustee regarding future service by the D&H or disposition of the property for continued operations by another service provider?

(4) Will NYS&W seek to extend the directed service period? If so, for how long?

(5) Is any other railroad interested in replacing NYS&W as the directed service operator? If so, under what terms?

(6) What is the position of D&H employees regarding resumption of service by the D&H, or the temporary or

permanent replacement of that service by another carrier or carriers?

Comments are also invited on any other issues relevant to this proceeding.

This notice will be served on all parties to this proceeding including those listed in our June 22, 1988 decision, as well as the trustee in bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88-3427).

Decided: July 15, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88-10563 Filed 7-21-88; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 290; Sub-2]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Proposed revision of the methodology for calculation of the fuel component of the all inclusive index of railroad costs.

SUMMARY: The Commission is proposing to calculate the fuel component of the all inclusive index of railroad costs using data from the large railroads which participate in the market basket of materials and supplies. A monthly average price per gallon is proposed, and it is proposed to include the purchase price per gallon, discounts, refunds, rebates, the costs of transportation, taxes and handling.

DATES: Comments are due August 11, 1988.

ADDRESS: Send an original and 15 copies to: Office of the Secretary, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275-7354

or

Robert C. Hasek, (202) 275-0838 [TDD for hearing impaired (202) 275-1721].

SUPPLEMENTARY INFORMATION: On January 2, 1985, the Commission served a decision (Ex Parte No. 290 (Sub-No. 2), Railroad Cost Recovery Procedures, 50 FR 67, January 2, 1985) which adopted the all inclusive index of railroad costs currently used to calculate the quarterly rail cost adjustment factor. That index includes a fuel component which is calculated on both a forecasted and an

actual basis. The forecasted fuel index develops a price per gallon which is estimated from a survey of railroad purchasing officers and an analysis of fuel price trends. The actual fuel index is calculated from a mid month price per gallon based on data provided by all Class I railroads.

On July 30, 1987 the Association of American Railroads filed a petition for modification of the methodology for calculating the fuel cost component of the all inclusive index of railroad costs. A reply was received from a shipper group.

The Commission is proposing that the methodology for calculating the fuel cost component of the all inclusive index of railroad costs be revised. Only the large railroads used for calculating the market basket of materials and supplies would supply data for the fuel cost calculation. The proposal would reduce the number of railroads providing data from sixteen to seven. The seven large railroads purchase in excess of 85 percent of the fuel used by Class I railroads. A monthly average price per gallon would be used which would reflect discounts, refunds, rebates, the costs of transportation, taxes and handling. Data used for calculation of the fuel component would be supported by adequate underlying records and would be subject to audit by both AAR's certified auditing firm and Commission staff. The proposed methodology shall be used to calculate the actual fuel cost index. The forecasting methodology currently used shall continue in place. No other aspects of the indexing methodology are proposed to be changed.

Assistance for the hearing impaired is available through TDD Services at (202) 275-1721.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: July 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley. Commissioners Simmons, joined by Commissioner Lamboley concurred with a separate expression.

Noreta R. McGee,

Secretary.

Commissioner Simmons, joined by Commissioner Lamboley, concurring:

I do not object to seeking comments on the AAR proposal. Nevertheless, I do not believe we have sufficient information at this time to actually

propose to adopt the requested change. The shipper reply to the AAR petition identifies several issues which must be considered in analyzing the proposal. Parties filing comments, including the AAR, should address themselves to these issues.

[FR Doc. 88-16523 Filed 7-21-88; 8:45 am]
BILLING CODE 7030-01-M

[Finance Docket No. 31291]

Heartland Rail Corp., Acquisition, Lease and Operation Exemption; Rail Line of Chicago and North Western Transportation Co.

Heartland Rail Corporation (Heartland), a noncarrier, has filed a notice of exemption to acquire two segments of rail line from Midwestern Rail Properties, Inc. (MRPI), a wholly-owned subsidiary of Chicago and North Western Transportation Company (C&NW). Heartland previously obtained trackage rights over these same segments when MRPI purchased them in 1984 from the Chicago, Rock Island and Pacific Railroad Company. At that time Iowa Interstate Railroad, Ltd. (IRR) entered into a lease with Heartland to operate these and other segments. That lease and operation was exempted by the Commission by decision served October 1, 1984, in Finance Docket No. 30554, *Iowa Interstate Railroad, Ltd. Lease and Operate—Exemption*. After Heartland acquires the subject segments, IRR will continue to provide operations over them under that lease. The line segments located at or near Des Moines, Polk County, IA extend from Milepost 350.8 to Milepost 353.25 and from Milepost 355.89 to Milepost 358.508, a total distance of 5.128 miles. The transaction also involves incidental trackage rights over C&NW between C&NW Mileposts 355.89 and 358.0. While connecting track will also be constructed at Milepost 358.0, the new connecting track merely replaces and constitutes a relocation of existing connecting track located at Milepost 355.89. As a result, Commission approval or an exemption need not be obtained for that construction. See *Denver and R. Gr. W.R. Co. Joint Const. Pr.—Relocation over B.N. R. Co.*, 4 I.C.C.2d 95 (1987).

Comments must be filed with the Commission and served on: T. Scott Bannister, Hanson Bjork & Russell, 1300 Des Moines Building, Des Moines, IA 50309.

Heartland has certified that there are no historic properties located on the track segments to be transferred.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 8, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.
Noreta R. McGee,
Secretary.

[FR Doc. 88-16273 Filed 7-21-88; 8:45 am]
BILLING CODE 7030-01-M

[Finance Docket No. 31300]

Tennessee Southern Railroad Co., Inc., Acquisition and Operation Exemption; Certain Rail Line of Southern Railway Co.

Tennessee Southern Railroad Company, Inc. (TS) has filed a notice of exemption to acquire by purchase and to operate approximately 1.4 route miles of rail line of Southern Railway Company (SR) located at Florence, AL, and extending from milepost 7.0-MF to milepost 8.4-MF. The agreement for the transfer of this rail line between TS and SR was to be consummated approximately on or before July 8, 1988.

This transaction will also involve the issuance of securities by TS, which will be a Class III carrier. The issuance of these securities will be an exempt transaction under 49 CFR 1175.1.

Any comments must be filed with the Commission and served on: Mark M. Levin, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue NW., Washington, DC 20005-4797, and G. William Schafer III, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

TS has certified that the appropriate State Historic Preservation Officer has been notified that no sites or structures of any kind exist in the subject area.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 14, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.
Noreta R. McGee,
Secretary.

[FR Doc. 88-16274 Filed 7-21-88; 8:45 am]
BILLING CODE 7030-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Judgment; Human Resources Administration, City of New York, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 5, 1988, a proposed consent judgment in *United States v. Human Resources Administration of the City of New York, Department of General Services of the City of New York, and the City of New York*, Civil Action No. 88 Civ. 4624 (RJV), was lodged with the United States District Court for the Southern District of New York. This consent judgment settled a lawsuit filed July 5, 1986, pursuant to section 113 of the Clean Air Act (the "Act"), 42 U.S.C. 7413, for injunctive relief and for the assessment of civil penalties against the Human Resources Administration of the City of New York ("HRA"), the Department of General Services of the City of New York (DGS"), and the City of New York (the "City"). The complaint is based on, among other things, certain asbestos removal operations that were conducted by HRA between March and July, 1986, at a homeless shelter located in New York, New York. The complaint alleged that the asbestos removal operations constituted violations of sections 112, 113, and 114 of the Act, 33 U.S.C. 7412, 7413, and 7414, and the National Emission Standard for Hazardous Air Pollutants relating to asbestos codified at 40 CFR Part 61, Subpart M ("asbestos NESHAPS").

Under the terms of the proposed consent judgment, HRA is enjoined from violating the Clean Air Act, 42 U.S.C. 7401-7642, and the asbestos NESHAPS. HRA is also required to notify the Environmental Protection Agency ("EPA"), regarding any renovations or demolitions subject to the requirements of the Act and the asbestos NESHAPS at least ten (10) days before each renovation or demolition is scheduled to begin, except in certain emergency situations. Further, HRA is required to submit quarterly reports to EPA of any renovations, demolitions, or removals and to either certify that the Act and the asbestos NESHAPS have been complied with or to report any violations thereof. In addition, the proposed consent judgment requires the City to pay a civil penalty of \$200,000 with respect to the violations of the Act and the asbestos NESHAPS alleged in the complaint.

The Department of Justice will receive comments relating to the proposed consent judgment for a period of thirty (30) days from the date of this

publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. All comments should refer to *United States v. Human Resources Administration of the City of New York, Department of General Services of the City of New York, and the City of New York*, D.J. Ref. 90-5-2-1-1160.

The proposed consent judgment may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region II, Contact: Alexandra Callam, Office of the regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-2211.

United States Attorney's Office, Contact: Gabriel W. Gorenstein, Assistant United States Attorney, Southern District of New York, One St. Andrews Plaza, New York, New York 10007, (212) 791-1879.

Copies of the proposed consent judgment may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1250, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044-7611. A copy of the proposed consent judgment may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, when requesting a copy of the proposed consent judgment, please enclose a check for copying costs in the amount of \$1.20 payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88-16539 Filed 7-21-88; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Partial Consent Decree; Jorge Luhring, Island Petroleum Products, Inc.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on July 11, 1988, a proposed partial consent decree in *United States v. Jorge Luhring, Island Petroleum Products, Inc., Bayamon Electroplating, Inc., and Taino Plating Corp.*, Civil Action No. 87-1258 (JP), was lodged with the United States District Court for the District of Puerto Rico. This partial consent decree settles the

United States' claims for injunctive relief in a lawsuit filed September 17, 1987, pursuant to section 309 of the Clean Water Act (the "Act"), 33 U.S.C. 1319, for injunctive relief and for the assessment of civil penalties against Jorge Luhring, Island Petroleum Products, Inc. ("Island"), Bayamon Electroplating, Inc., and Taino Plating Corp. The complaint is based on, among other things, Island's discharge of pollutants from its electroplating plant in Barrio Las Palmas, Catano, Puerto Rico, in violation of the Act and applicable pretreatment standards. (40 CFR 413.14).

The proposed partial consent decree requires Island to attain and maintain compliance with the general and categorical pretreatment standards, 40 CFR Parts 403 and 413, and the Puerto Rico Sewer Authority's ("PRASA") Rules and Regulations Relating to the Use of the Public Sewers. Island is required to take composite samples of the wastewater it discharges to the POTW in accordance with the monitoring and sampling provisions of the decree. The proposed partial consent decree also requires Island to submit monthly reports to the Environmental Protection Agency ("EPA") and PRASA that contain the results of sampling and monitoring required under the decree, discharge and flow information, plant modifications, and pretreatment compliance certification.

The Department of Justice will receive comments relating to the proposed partial consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. All comments should refer to *United States v. Jorge Luhring, Island Petroleum Products, Inc., Bayamon Electroplating, Inc., and Taino Plating Corp.*, D.J. Ref. 90-5-1-1-2834.

The proposed consent judgment may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

EPA Region II, Contact: David Brook, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-0444.

United States Attorney's Office, Contact: Eduardo E. Toro Font, Assistant United States Attorney, District of Puerto Rico, Federico Degetau Federal Building, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918, (809) 753-4658.

Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1250, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20044-7611. A copy of the proposed partial consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice. When requesting a copy of the proposed partial consent decree, please enclose a check for copying costs in the amount of \$1.70 payable to the Treasurer of the United States.

Roger J. Marzulla,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 88-16540 Filed 7-21-88; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Air Products and Chemicals Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision to the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

BEST COPY AVAILABLE

the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1988.

The petitions filed in this case are available for inspection at the Office of

the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC this 11th day of July 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petition No.	Articles produced
Air Products & Chemicals, Inc. (Workers)	Wilkes-Barre, PA	7/11/88	7/1/88	20,789	Cryogenic Equipment.
Automation Components, Inc. (Workers)	Peckville, PA	7/11/88	6/28/88	20,790	Fixed Ceramic Capacitors.
Bell-Incon Glass, Corp. (Workers)	Washington, PA	7/11/88	6/24/88	20,791	Glass Containers.
Belltex, Inc. (Workers)	Bergenfield, NJ	7/11/88	6/21/88	20,792	Hospital Garments, Uniforms and Linens.
Obdie Mfg. Co. (Workers)	Columbia, TN	7/11/88	6/29/88	20,793	Men's & Women's Bottom Garments.
Enron Corp., Gas Pipeline Group (Workers)	Omaha, NE	7/11/88	6/28/88	20,794	Crude Oil and Natural Gas.
Gavin Electronics, Div. of Tandy Corp. (Company)	Somerset, NJ	7/11/88	6/27/88	20,795	Electronic Components.
JFC Industries, Inc. (Workers)	Hialeah, FL	7/11/88	6/29/88	20,796	Men's Apparel (Pants & Jackets).
Miller Printing Equipment (Company)	Pittsburgh, PA	7/11/88	6/26/88	20,797	Printing Presses.
NCR Corporation (IBEW)	Cambridge, OH	7/11/88	6/28/88	20,798	Computer Products.
Natural Plastics, Inc. (ABGW)	Jeanette, PA	7/11/88	6/24/88	20,799	Glass Shades & Glass Parts.
Lightcraft Corp. (ABGW)	Jeanette, PA	7/11/88	6/24/88	20,800	Residential Lighting.
Victory Glass (ABGW)	Jeanette, PA	7/11/88	6/24/88	20,801	Sales & Adm. for National Plastics.
Scotsman Ice Systems (Workers)	Albert Lea, MN	7/11/88	6/18/88	20,802	Ice Machines.
Trio Accessories (ACATW)	New Jersey, NJ	7/11/88	6/27/88	20,803	Ladies Fur Hats.

[FR Doc. 88-16514 Filed 7-21-88; 8:45 am]
BILLING CODE 4810-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Whirlpool Corp. et al

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 4, 1988-July 11, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,600; Whirlpool Corp., Findlay Div., Findlay, OH

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,660; MacGregor Sandknit, Fox Lake, WI

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,661; Maxi-Switch, Ecco, Inc., Erwin, SD

A certification was issued covering all workers separated on or after April 25, 1987.

TA-W-20,656; Florida Shoe, Inc., Miami, FL

A certification was issued covering all workers separated on or after April 27, 1987.

TA-W-20,655; Hanson Textile Co., Hatfield, PA

A certification was issued covering all workers separated on or after April 26, 1987.

TA-W-20,641; GEM Products, Inc., Rib Lake, WI

A certification was issued covering all workers separated on or after April 18, 1987, and before January 31, 1988.

TA-W-20,685; Summit Sportsware, Stroughton, MA

A certification was issued covering all workers separated on or after May 2, 1987.

I hereby certify that the aforementioned determinations were issued during the period July 4, 1988-July 8, 1988. Copies of these determinations are available for inspection in Room

6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-16513 Filed 7-21-88; 8:45 am]
BILLING CODE 4810-30-M

Training and Employment Guidance Letter No. 1-88

Job Training Partnership Act; Presidential Awards for Program Year (PY) 1987

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the Job Training Partnership Act (JTPA) Presidential Awards Program and requests nominations from Governors with respect to Program Year 1987 (July 1, 1987-June 30, 1988).

DATE: Training and Employment Guidance Letter No. 1-88 was issued on July 6, 1988, and expires on July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Room N-4703, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202-535-0577.

Training and Employment Guidance Letter No. 1-88, announcing the procedures for the JTPA Presidential Awards Program, is printed below.

Signed at Washington, DC, this 14th day of July 1988.

Roberts T. Jones,
Acting Assistant Secretary of Labor.

Training and Employment Guidance Letter No. 1-88

FROM: Roberts T. Jones, Acting Assistant Secretary of Labor
SUBJECT: Job Training Partnership Act (JTPA) Presidential Awards for Program Year 1987

1. Purpose. To announce the Job Training Partnership Act (JTPA) Presidential Awards Program for Program Year (PY) 1987 and to request nominations from Governors.

2. Reference. Public Law (Pub. L.) 97-300, Pub. L. 99-570.

3. Background. Section 172 of JTPA authorizes Presidential Awards for outstanding contributions to JTPA by the private sector and for model program for those with multiple barriers to employment.

The JTPA Presidential Awards Program is designed to recognize accomplishments under JTPA and to strengthen support for innovative and effective employment and training initiatives. The Awards will afford increased visibility for JTPA. Through such visibility, we anticipate expanded private sector and community participation in JTPA activities.

This is the second year for the Awards Program. It is based on a very successful initial Program, which was developed after consultation with the Governors and the public interest groups that serve as our JTPA partners.

4. Program Parameters. Attachment I provides the specifics on the scope, categories and criteria for the Awards for PY 1987. It also details selection procedures and plans for Awards ceremonies.

5. Nomination Procedures. All nominations are to be made by the Governors of the States.

• Governors may submit one nomination each year in each of the three Annual Award categories.

• Governors also may submit no more than one nomination each year for a program deserving of a Special Award.

• In deciding on their nominations, Governors are encouraged to solicit recommendations from National Alliance of Business representatives as well as from other JTPA partners in the State, such as: service delivery areas; private industry councils; chief elected officials; State Job Training Coordinating Councils; local education organizations; Human Resources Development Institute; and State organizations representing the private sector, such as the Chamber of Commerce.

• Nominations are to be made on the PY 1987 JTPA Presidential Awards Entry Form (Attachment II), four copies of which are attached to this Training and Employment Guidance Letter (TEGL). A separate form, with three copies, is to be submitted for each nomination being made. Particular attention should be paid to Part D of the Form—Criteria Information. It is essential that each criterion for the category under which a nomination is made be listed and specifically addressed. The criteria for the categories are

found in Section C of Attachment I of this TEGL.

Only the written narratives addressing the criteria will be considered in the review of the nominations. No attachments (i.e., videos, brochures, etc.) will be considered.

• Nominations must be postmarked by midnight on September 30, 1988, and should be sent to: Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, U.S. Department of Labor, Room N-4703, 200 Constitution Avenue NW., Washington, DC 20210.

6. Awards Timetable.

• Nominations Postmarked by—September 30, 1988

• Award Selections by—December 31, 1988

• National Awards Ceremony—April 5, 1989

7. State Notification. A copy of this TEGL is also being sent to your State JTPA Liaison.

8. Federal Register Publication. A copy of this TEGL is being published in the Federal Register.

9. Inquiries. Questions concerning this guidance letter should be addressed to Robert N. Colombo on (202) 535-0577 or James Wiggins on (202) 535-0533.

A. Scope

Awards will be for activities carried out under Titles I, II, and III (Formula-Funded Programs only) of the Job Training Partnership Act (JTPA).

B. Categories

• Annual Awards

One award and two honorable mentions will be made each year in each of the following categories:

- Outstanding Contribution to a JTPA Program by a Private Sector Volunteer.
- Outstanding Contribution to a JTPA Program by a Private Industry Council.
- Outstanding Program for Assisting Individuals with Multiple Barriers to Employment.

• Special Awards

Each year, at the Secretary's discretion, additional Awards may be given to outstanding programs not falling within the Annual Award categories above. The Department intends to give preference in the Special Awards category to Title II programs which address and emphasize increasing basic skills and improving services to at-risk individuals, especially youth.

C. Criteria

Individuals and programs nominated must have been active under JTPA during Program Year 1987. Programs must have been in operation for at least one year, with measurable results. A nomination must meet all of the criteria of its category.

• Annual Awards

Following are the criteria to be met in each of the three Annual Awards categories:

- Outstanding contribution to a JTPA program by a private sector volunteer. The volunteer must:
 - Be a member of the private-for-profit sector. May be on the private industry council (PIC), the State Job Training

Coordinating Council, or be outside the official JTPA system as long as he/she contributes to JTPA through his/her efforts.

—Have demonstrated a commitment to JTPA through donation of time and services.

—Have exercised leadership in an area of the job training program system which, through such leadership, has improved substantially.

—Have been instrumental in increasing the awareness of the benefits of JTPA in the business community.

• Outstanding contribution to a JTPA program by a Private Industry Council. The PIC must have:

—Provided exemplary leadership.

—Exercised effective oversight over and guidance for the service delivery area's (SDA's) programs.

—Represented an SDA which serves the most at-risk population and has exceeded all seven Department of Labor performance standards as adjusted by the Governor for local conditions.

—Actively promoted increased private sector participation in JTPA activities, such as provision of training and placement of participants.

—Demonstrated the ability to leverage non-JTPA funds through collaboration and planning with human services agencies and the private sector.

• Outstanding program for assisting individuals with multiple barriers to employment. Program may be operated by an SDA, a contractor or by any other entity administering a JTPA program meeting the criteria below. Program must have:

—Exceeded all goals and performance standards established for the program.

—Been innovative, creative, and effective in its use of available resources.

—Been specifically targeted to those with multiple barriers to employment.

—Coordinated effectively with the private sector, other training and employment agencies, labor and other organizations.

—Achieved acceptance by the business community of those with multiple barriers to employment.

—Been well planned and administered, as demonstrated by successful financial management and performance results and evaluations.

• Special Awards

Programs nominated for a Special Award may be operated by an SDA, a contractor or by any other entity administering a JTPA program meeting the criteria below. Program must have:

—Exceeded all goals and performance standards established for the program.

—Been innovative, creative and effective in its use of available resources.

—Coordinated effectively with the private sector, other training and employment agencies, labor and other organizations.

—Been geared to the needs of the target population and the local economy.

—Been well planned and administered, as demonstrated by successful financial management and program performance results and evaluations.

—Been conducive to replication in other SDAs.

D. Selection

The selection process will be a four-tiered approach:

- Staff Review

Initial review and recommendations will be made by Department of Labor staff. The staff review will reduce the nominations from the Governors to no more than 20 for each Annual Award category and no more than 20 for Special Awards.

- Panel Review

A panel of training and employment experts from the public and private sectors will review each nomination.

The Panel will ensure that the possible top nominations in each category are thoroughly validated through a field review. The Panel will recommend to the Executive Committee five nominations for each of the Annual Award categories and nominations for Special Awards.

- Executive Committee Review

A committee, chaired by the Assistant Secretary for Employment and Training, comprised of a White House representative, a Secretary of Labor representative, and the Assistant Secretary will review the Panel's recommendations and results of the field reviews. The Committee will ensure that the most qualified nominations are recommended to the Secretary of Labor for his/her final section of Award recipients. The committee will recommend to the Secretary three nominations for each of the Annual Award categories and a limited number of the most qualified nominations for Special Awards.

- Secretary Review

The Secretary of Labor will review the Executive Committee's and Panel's recommendations and will make the final selection of winners and honorable mentions in all three of the Annual Award categories. The Secretary will also select the recipients of Special Awards.

E. Awards Ceremonies

Awards will be presented to the winners at a National Awards ceremony and, where possible and appropriate at local ceremonies in the hometown of each winner. The Awards ceremonies will be arranged by the Department of Labor in coordination with the White House, the Governors and its various JTPA partners as appropriate. The National awards ceremony will vary from year-to-year depending on the availability of locations and people. Where possible, a special White House or Department of Labor presentation will be held. The Department from time to time also may ask the various partners in the JTPA system to include the Awards ceremony as part of an annual conference. Local ceremonies in the hometowns of the winners will be held where possible and appropriate, with the Awards being presented by a high-level White House or Department of Labor official. Governors will be invited to participate in all ceremonies.

Attachment II—Program Year 1987 JTPA Presidential Awards Entry Form
PLEASE COMPLETE ALL ITEMS
APPLICABLE TO THE NOMINATION

Part A—Nominating Governor**I. NOMINATION SUBMITTED BY:**

(Name of Governor)

(State)

(Signature of Governor or Designated Representative)

II. ANY CLARIFICATIONS ON NOMINATION CAN BE OBTAINED FROM:

(State Contact)

(Telephone Number)

Part B—General Information**I. NOMINATION CATEGORY (one per entry form)**

- A. _____ Outstanding Private Sector Volunteer
B. _____ Outstanding Private Industry Council
C. _____ Outstanding Program for Serving Those With Multiple Barriers to Employment
D. _____ Special Award for _____

(Type of Program)

II. NOMINEE/PROGRAM IDENTIFYING INFORMATION

A. Volunteer/PIC/Program Nominated _____

Address _____

Telephone _____

Program Director (for PIC and Program Nominations) _____

B. In addition to information requested in II-A, provide:

1. For Volunteer nominees:

Employer _____

Title of Volunteer's Position _____

2. For PIC's:

Attach to this form a list of the names, titles, organizational affiliations and addresses of all PIC members. Indicate who serves as Chairperson.

3. For programs nominated under Multiple Barriers and Special Awards categories:

Period of Performance _____

JTPA Title and Funding _____

Source and Amount of Additional Funds (as appropriate) _____

Jurisdiction of Program _____

SDA — _____

Statewide _____

Number of Participants Served _____

Characteristics of Participants Served _____

III. SDA IDENTIFYING INFORMATION (for all but statewide program nominations)

Name and address of SDA with which nominee/program is affiliated:

Congressional District(s) _____

Contact Person: _____

(Name) _____

(Title) _____

(Phone Number) _____

Part C—Synopsis

Attach a brief synopsis (no more than one page) describing the outstanding accomplishments of the nominee or program and why the nominee/program should be considered for a Presidential Award.

Part D—Criteria Information

List and give information on each criterion for the category in which the nomination is being made. Try to limit information to no more than one page per criterion and have one criterion per page. Be as specific as possible; give examples of performance levels exceeded by the nominee/program and cite target populations served where appropriate. (Attach continuation sheets as needed).

[FR Doc. 88-10517 Filed 7-21-88; 8:45 am]

BILLING CODE 4510-30-M

**Employment Standards
Administration, Wage and Hour
Division**

**Minimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (48 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in

accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

**Modifications to General Wage
Determination Decisions**

The numbers of the decisions listed in the Government Printing Office

document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New York:

NY88-2 (Jan. 8, 1988) p. 667.
NY88-6 (Jan. 8, 1988) p. 728.
NY88-7 (Jan. 8, 1988) pp. 736-739.
NY88-12 (Jan. 8, 1988) p. 792.
NY88-14 (Jan. 8, 1988) p. 810.

Volume II

Illinois:

IL88-7 (Jan. 8, 1988) pp. 130-138.

Indiana:

IN88-1 (Jan. 8, 1988) pp. 234-235,
pp. 239-242.

IN88-2 (Jan. 8, 1988) pp. 248-251,
pp. 257-254.

IN88-4 (Jan. 8, 1988) pp. 276-280.

IN88-5 (Jan. 8, 1988) pp. 290-292.

IN88-6 (Jan. 8, 1988) pp. 300, 303-
305.

Michigan:

MI88-1 (Jan. 8, 1988) p. 411.

Volume III

Alaska:

AK88-1 (Jan. 8, 1988) pp. 2-3.

Montana:

MT88-2 (Jan. 8, 1988) pp. 186-188.

**General Wage Determination
Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current

general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed At Washington, DC, This 15th Day of July 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-16204 Filed 7-21-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-88-7-M]

**Copper Range Co.; Petition for
Modification of Application of
Mandatory Safety Standard**

Copper Range Company, P.O. Box 100, White Pine, Michigan 49871-0100 has filed a petition to modify the application of 30 CFR 57.11052 (refuge area) to its White Pine Mine (I.D. No. 20-00371) located in Ontonagon County, Michigan. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that refuge areas be provided with compressed airlines and waterlines.

2. As an alternate method, petitioner proposes to substitute the use of downcast airflow from the emergency escape shaft into the refuge chamber for installed compressed air lines; and to substitute bottled drinking water for installed waterlines.

3. In support of this request, petitioner states that—

(a) The refuge chamber is of concrete block construction, sealed with noncombustible bonding material, and is under constant positive pressure and has more than adequate air flow to maintain a respirable environment and assure the safety of miners both when occupying the chamber and during evacuation to the surface. Maintenance of these conditions are assured by the location of the refuge chamber and the pressures generated by the normal operation of the mine ventilation system. The positive pressures and air flows inside the refuge chamber are independent of the closet operating exhaust fan and can be maintained indefinitely by operation of the remaining two exhaust fans;

(b) This system is more dependable than compressed air lines. It does not have the potential for compressed air lines to be cut, burst or otherwise

malfunction. Nor does it have the problems inherent with the storage and use of compressed air cylinders, either alone or with air masks;

(c) The refuge chamber is not located near any combustible or explosive material. This limits the need for water supplies to drinking water. Drinking water is stored in the refuge chamber in factory sealed containers;

(d) The bottom of the emergency escape shaft is located inside the refuge chamber. This provides miners with an immediate route to the surfaces as well as providing a non interruptible supply of fresh air; and

(e) Additional water and compressed air cylinders or other supplies can be lowered to the refuge chamber if necessary.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 22, 1988. Copies of the petition are available for inspection at that address.

Date: July 15, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-10515 Filed 7-21-88; 8:45 am]

BILLING CODE 4810-40-M

[Docket No. M-88-122-C]

Old Ben Coal Co.; Petition for Modification of Application of Mandatory Safety Standards

Old Ben Coal Company, 200 Public Square, Room 7-D, Cleveland, Ohio 44114 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine No. 25 (I.D. No. 11-02392) located in Franklin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the

last open crosscut and be kept at least 150 feet from pillar workings.

2. The longwall mining equipment in use at the Mine is powered by 660-volt, a.c. electricity. The circuit breakers and cables used in this medium voltage system are at the practical limits of safe and efficient operation.

3. This equipment is subject to unacceptable voltage drops across the system which causes a decrease in the working torques of the drive motors and leads to excessive strain on equipment and high current loads in the electric circuitry. In order to maintain compliance with overcurrent protection in low or medium voltage systems, it is necessary to split the loads and increase the number of cables. This doubles the amount of cable handling and electrical connections that has to be done and results in a diminution of safety to miners.

4. As an alternate method, petitioner proposes to use a 2400-volt a.c. high voltage cable to supply power to the longwall mining equipment inby the last open crosscut and within 150 feet of gob areas with specific conditions as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 22, 1988. Copies of the petition are available for inspection at that address.

Date: July 15, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-10516 Filed 7-21-88; 8:45 am]

BILLING CODE 4810-45-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Art Agencies/National Assembly of Local Art Agencies Sub-

Committee to the National Council on the Arts will be held on August 4, 1988, from 2:00 p.m.—6:00 p.m., in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics of discussion will be a second draft report on the State of the Arts in the United States, Arts Education, and the conclusion of Cultural Facilities.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

July 19, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-10506 Filed 7-21-88; 8:45 am]

BILLING CODE 7037-01-M

National Endowment for the Arts; Music Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music/New Music Presenters Section) to the National Council on the Arts will be held on August 10-12, 1988, from 9:30 a.m. to 6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 12, 1988, from 1:30 p.m. to 3:30 p.m. The topics for discussion will include guidelines and policy issues.

The remaining session of this meeting on August 10, 1988, from 9:30 a.m. to 6:00 p.m., and on August 11, 1988, from 9:30 a.m. to 6:00 p.m., and on August 12, 1988, from 9:30 a.m. to 1:30 p.m., and 3:30 p.m. to 6:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman

published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

July 19, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-10509 Filed 7-21-88; 8:45 am]

BILLING CODE 7037-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for ORB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collections that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 367-9520.

OMB Desk Officer: ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Requests for proposals.

Affected Public: Individuals, State or Local governments, For-profit and Non-profit organizations, Small businesses or organizations.

Responses/Burden Hours: 256 responses—average of 120 hours per response—total 30,720 burden hours.

Abstract: Requests for Proposals used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Dated: July 19, 1988.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 88-10529 Filed 7-21-88; 8:45 am]

BILLING CODE 7560-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on August 3, 1988, Room 1048, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 3, 1988—9:00 a.m. Until the Conclusion of Business

The Subcommittee will review the draft SER of the Modular HTGR conceptual design.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: July 15, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-10581 Filed 7-21-88; 8:45 am]

BILLING CODE 7560-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on August 4, 1988, Room 1048, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, August 4, 1988—9:30 a.m. Until the Conclusion of Business

The Subcommittee will review the status of NUREG-1251 (Implications of Chernobyl) and the NRC Staff's program (at BNL) to address the implications of Chernobyl in regard to severe reactivity transients.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portions of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 7:30 a.m. and 4:15 p.m. Persons

planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any change in schedule, etc., which may have occurred.

Date: July 15, 1988.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 88-16582 Filed 7-21-88; 8:45 am]
BILLING CODE 7890-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on TVA Organizational Issues; Meeting

The ACRS Subcommittee on TVA Organizational Issues will hold a meeting on August 5, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, August 5, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the generic lessons learned from the Staff's review of TVA in regard to the restart of Sequoyah 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3287)

between 7:30 a.m. and 4:15 p.m. Since the need for this meeting will not be determined until July 22, 1988, persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: July 15, 1988.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 88-16583 Filed 7-21-88; 8:45 am]
BILLING CODE 7890-01-M

(Docket No. 50-334)

Duquesne Light Co., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 128 to Facility Operating License No. DPR-88, issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company, et al. (the licensee), which revised the Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1, located in Shippingport, Pennsylvania. The amendment is effective as of the date of issuance, to be implemented within 30 days of issuance.

The amendment changes Technical Specification 4.2.1.4 to require determination of the target flux difference by interpolating to the design end-of-cycle value, instead of interpolating to 0% at the end-of-life.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on February 2, 1988 (53 FR 2896). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not

have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 7, 1987, (2) Amendment No. 128 to License No. DPR-88, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the B.J. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, MD, this 13th day of July 1988.

For the Nuclear Regulatory Commission,
John F. Stolz,
Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 88-16586 Filed 7-21-88; 8:45 am]
BILLING CODE 7890-01-M

(Docket Nos. 50-321 and 50-366)

Georgia Power Co. et al.; Denial of Amendments to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) has denied a request by the licensee for amendments to Facility Operating License Nos. DPR-87 and NPF-5, issued to the Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and City of Dalton, Georgia (the licensee) for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (the facility) located in Appling County, Georgia.

The denied amendments proposed by the licensee, would modify the Unit 1 and Unit 2 Technical Specifications (TS) to allow the use of additional monitored release points for gaseous effluents. These additional release points would be used to augment existing ventilation systems on a temporary basis for temperature control and to reduce noble gas concentrations.

The licensee's application for the amendments was published in the Federal Register on June 3, 1987 (52 FR 20801).

The NRC staff requested additional information, more than a year ago, concerning specific release locations and methods and supporting data

regarding proposed monitoring of the augmented releases. No response has been received to the request for information.

Accordingly the requests were denied. The licensee was notified of the Commission's denial of this request by letter dated July 10, 1988.

By August 22, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by the proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 1, 1987, and (2) the Commission's letter to Georgia Power Company dated July 18, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III.

Dated at Rockville, Maryland, this 16th of July 1988.

Lawrence P. Crocker,
Project Manager, Division of Reactor Projects—I/II.
[FR Doc. 88-16585 Filed 7-21-88; 8:45 am]
BILLING CODE 7890-01-M

(Docket No. 50-327)

In the Matter of Tennessee Valley Authority; Exemption

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License No. DPR-77 which authorizes operation of the Sequoyah Nuclear Plant (SQN), Unit 1. This license provides that, among other things, the

facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The Sequoyah Unit 1 facility is a pressurized water reactor located at the licensee's site in Hamilton County, Tennessee.

II

Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50, require Type B and C leakage tests on containment penetrations and isolation valves, respectively, at intervals in no case greater than two years.

Sequoyah Unit 1 was shut down for refueling on August 22, 1985. During refueling from late August 1985 to late November 1985 all Unit 1 Type B and C tests were performed. Since that time, Unit 1 has remained in cold shutdown (Mode 5). The end of the two year test interval for Type B and C tests expired in late August to November 1987. Because the Unit 1 outage had extended past August 1987, the licensee in its letter dated August 5, 1987, requested that the Type B and C tests be deferred on a one-time basis until before Unit 1 enters Mode 4 in its return to power from this outage.

The licensee contended that an exemption from the Type B and C test frequency requirements is warranted on the following bases:

1. NRC proposed amendments to 10 CFR Part 50, Appendix J (reference pages 9 and 10 of the October 1986 Draft Regulatory Document prepared under Task MS 021-5) would supplement the two-year Type B and C test schedule with the following sentence: "If the two-year interval ends while primary containment integrity is not required, the test interval may be extended provided all deferred testing is successfully completed before containment integrity is required in the plant."

2. SQN Unit 1 Technical Specifications 3.6.1.1 and 3.6.1.2 require that primary containment integrity be maintained only when in Modes 1, 2, 3 and 4. In these modes, Type B and C tests are required for maintaining containment integrity.

3. Relief from testing is warranted under 10 CFR 50.12(a)(2)(iii) because compliance with the two-year test requirement would "result in undue hardship and costs that are significantly in excess of those contemplated when the regulation was adopted." The licensee also considers 10 CFR 50.12(a)(2)(v) to be applicable because this exemption would "provide only temporary relief from the applicable regulation."

The staff has considered the Appendix J exemption request from the Type B and C tests and has concluded that it is justified on a one-time basis since Unit 1 has been in Mode 5 (cold shutdown) for this period and containment integrity is not required when the reactor is in the cold shutdown condition. Furthermore, prior to entering Mode 4 (Heatup at Power), the licensee will conduct the Type B and C leakage tests in order to ensure containment integrity. Accordingly, the staff concludes that this Appendix J exemption is justified.

III

The Commission has evaluated the requested exemption and determined that the application of the regulations in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee's proposed Type B and C testing schedule meets the underlying intent of Appendix J which is to provide containment integrity during reactor operating modes when the containment is required to mitigate the consequences of a Design Basis Accident.

Because the plant has remained in Mode 5 since August 1987 and primary containment integrity has not been required, conducting the Type B and C tests at that time was not necessary to achieve the underlying purpose of the rule which is to demonstrate that the containment has integrity for operation (i.e., reactor Modes 1 to 4). Such integrity will be assured through conducting the Type B and C tests prior to entry into Modes 1 to 4. Therefore, application of the rule in these particular circumstances is not necessary to achieve the underlying purpose of the rule and the proposed exemption meets 10 CFR 50.12(a)(2)(ii).

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances provided in 10 CFR 50.12(a)(2)(ii) justify granting the exemption.

The Commission hereby grants a one-time exemption from the scheduler requirements of Appendix J to 10 CFR Part 50, Paragraphs III.D.2.(a) and III.D.3, to the licensee for operation of the Sequoyah Nuclear Plant, Unit 1, based on the condition that the required testing be conducted prior to entry into Mode 4.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will not have a significant adverse impact on the quality of the human environment (53 FR 23708, June 23, 1988).

This exemption is effective upon issuance. Dated at Rockville, Maryland, this 14th day of July, 1988.

For The Nuclear Regulatory Commission,

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 88-10584 Filed 7-21-88; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Allocating Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212-0035) contained in its regulation on Allocating Unfunded Vested Benefits (29 CFR Part 2642). The collection of information pertains to a request by the plan sponsor of a multiemployer pension plan for PBGC approval of certain changes in the method of allocating unfunded vested benefits to employers that withdraw from the plan. Current approval of the information collection expires on August 31, 1988. The effect of this notice is to advise the public of the PBGC's request for an extension of OMB's approval.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Allocating Unfunded Vested Benefits, 29 CFR Part 2642. Section 4211(c)(5)(A) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"), requires the PBGC to prescribe by regulation a procedure whereby multiemployer pension plans can change the way they allocate unfunded vested benefits to withdrawing employers, subject to PBGC approval. Approval of a change is to be based on a determination that the change will not significantly increase the risk of loss to plan participants or the PBGC. The allocation regulation is issued pursuant to this statutory requirement.

Section 2642.12 of the regulation prescribes the information that must be submitted to the PBGC under the regulation by a plan seeking PBGC approval of an amendment to its allocation method. This information is used by the PBGC to determine whether the proposed amendment satisfies the statutory standard.

Since few multiemployer plans change their allocation methods and based on its past experience, the PBGC estimates that 16 multiemployer plans per year will submit information under the regulation. Moreover, no plan is likely ever to submit more than one request for approval under the regulation. The PBGC estimates that it would take 3 hours to prepare a submission, for a total annual burden of 48 hours.

Issued at Washington, DC, this 15th day of July 1988.

Kathleen P. Utgoff,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-16528 Filed 7-21-88; 8:45 am]

BILLING CODE 7705-01-M

SECURITIES AND EXCHANGE COMMISSION

(File No. 500-1)

Order of Trading Suspension in the Securities of CTI Technical, Inc.

July 19, 1988.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information relating to the securities of CTI Technical, Inc., (CTI), a Nevada corporation headquartered in Las Vegas, Nevada, and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things: Control

of CTI; the beneficial ownership of its securities; the structure of its initial public offering; its acquisition of another company; its business prospects; its financial condition; its business plans; and, other matters. The Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of CTI.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that over-the-counter trading in the securities of CTI is suspended, for the period commencing at 9:30 a.m. (EDT), on July 19, 1988, and terminating at 11:59 p.m. (EDT), on July 25, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-16532 Filed 7-21-88; 8:45 am]

BILLING CODE 8010-01-M

(Rel. No. IC-16483; 812-5981)

Equitable Capital Partners, L.P., et al.; Application

July 15, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Equitable Capital Partners, L.P. (the "Enhanced Yield Fund"), Equitable Capital Partners (Retirement Fund), L.P. (the "Enhanced Yield Retirement Fund") (each a "Partnership" and collectively the "Partnerships"), Equitable Deal Flow Fund, L.P. (the "Institutional Fund") and Equitable Capital Management Corporation ("Equitable Capital").

Relevant 1940 Act Sections: Order requested under sections 6(c), 17(d) and 57(i) and Rule 17d-1 permitting certain joint transactions otherwise prohibited by the provisions of sections 17(d) and 57(a)(4).

Summary of Application: Applicants seek an order permitting the purchases of securities by the Partnerships in joint transactions with each other or in transactions in which an affiliate of Equitable Capital is a participant.

Filing Dates: The Application was filed on February 1, 1988 and amended on July 13, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must

be received by the SEC by 5:30 p.m., on August 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with the proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, 1286 Avenue of the Americas, New York, New York 10019, Attention: James P. Pappas, Esq.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each Partnership is a recently-formed limited partnership organized under Delaware State law and pursuant to separate Agreements of Limited Partnership (the "Partnership Agreement"). Each Partnership has elected to be a business development company and, therefore, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 50 thereof. The Partnerships will terminate no later than September 30, 1998 or 10 years from the final closing, if later, unless extended for up to two additional one-year periods.

2. The Partnerships have been designed to enable individuals to invest in privately structured, friendly leveraged buyouts and other enhanced yield transactions. The Partnerships will invest primarily in subordinated debt and related equity securities issued in conjunction with the "mezzanine financing" of friendly leveraged buyouts, leveraged acquisitions and leveraged recapitalizations ("Mezzanine Investments"). Each Partnership may provide interim debt financing ("Bridge Investments") to certain portfolio companies in which it has made or expects to make a Mezzanine Investment. Each Partnership may also invest up to 10% of its available investment capital in securities issued in

connection with other types of acquisitions and corporate restructuring, including investments in workouts and restructuring of financially troubled companies, turn around situations, debt and equity securities of highly leveraged companies issued other than in the context of a leveraged transaction, and nonleveraged acquisitions and recapitalizations ("Other Investments"). Mezzanine Investments, Bridge Investments, Other Investments and Follow On Investments (as defined below) are referred to collectively as "Enhanced Yield Investments." Following an investment in Enhanced Yield Investments, a Partnership may purchase additional debt and/or equity securities in the portfolio company or may exercise existing rights (such as warrants) under securities acquired in connection with the initial Enhanced Yield Investment ("Follow On Investments").

3. The Partnerships filed a joint registration statement on Form N-2 (File No. 33-20093) under the Securities Act of 1933 with respect to an aggregate public offering by the Partnerships of up to 500,000 units of limited partnership interest in the Partnerships (collectively, for both Partnerships, the "Units"). Merrill Lynch, Pierce, Fenner & Smith Inc. will act as the selling agent for the Units on a "best efforts" basis. Investors desiring to become Limited Partners in the Partnerships will be required to subscribe for at least five Units (\$1000 per Unit), and meet certain suitability standards set forth in the application.

4. The General Partners of each Partnership will consist initially of two (and in the future may be increased to nine) Independent General Partners (defined to be individuals who are natural persons and who are not "interested persons" of such Partnership within the meaning of the 1940 Act) and Equitable Capital, as managing general partner (the "Managing General Partner"). On June 21, 1988, the Commission issued an exemptive order declaring that the Independent General Partners of the Partnerships are not "interested persons" of such Partnerships within the meaning of section 2(a)(19) of the 1940 Act solely by reason of their status as a General Partner of the Partnership, or ownership of a less than 5% equity ownership in the Partnership (Investment Company Act Release No. IC-16444). A majority of the General Partners of each Partnership must be Independent General Partners. Each Partnership Agreement provides that if at any time the number of Independent General Partners is less than a majority of the General Partners, then within 90 days thereafter, the

remaining Independent General Partners shall designate and admit one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners. The Managing General Partner will be responsible for purchasing investments for a Partnership which have been approved by the Independent General Partners, for providing administrative services to the Partnership, and for the admission of additional or assignee Limited Partners to the Partnership. Equitable Capital, as Managing General Partner, has subcontracted with a third party for the provision of administrative services to the Partnerships. Equitable Capital will also act as the investment adviser to each Partnership pursuant to an investment advisory agreement (the "Advisory Agreement") between Equitable Capital and each Partnership. Under each Advisory Agreement, Equitable Capital will be responsible for the identification of all investments to be made by the respective Partnership and will perform other functions carried out by the investment adviser to a business development company.

5. Equitable Capital, an indirect, wholly owned subsidiary of The Equitable Life Assurance Society of the United States ("Equitable Life"), is a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Since January, 1983 Equitable Capital has advised Equitable Life and its affiliates with respect to portfolio securities and commitments issued in connection with enhanced yield transactions, including leveraged buyouts and recapitalizations. In rendering its advisory services, Equitable Capital utilizes its own separate staff of investment and financial professionals who are located in offices physically separate from Equitable Life and its other subsidiaries. Equitable Capital has in place "Chinese Wall" policies and procedures to prevent the flow of material nonpublic information, whether written or oral, between Equitable Capital and investment management personnel located elsewhere in the Equitable organization.

6. Each Partnership will be managed by the Independent General Partners thereof, except with regard to those specific activities of such Partnership for which Equitable Capital, in its capacity as the Managing General Partner or as the investment adviser of such Partnership, will be responsible. The Independent General Partners of a Partnership will provide overall

guidance and supervision of Partnership operations and will perform the same functions as directors of a corporation. The Independent General Partners will assure the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on the non-interested directors of a registered investment company.

7. The Institutional Fund is a Delaware limited partnership with an investment objective substantially identical to that of the Partnerships. Interests in the Institutional Fund are beneficially owned by fewer than 100 institutional investors and such fund is not registered under the 1940 Act in reliance upon the exemption from the definition of "investment company" in section 3(c)(1) of the 1940 Act. Equitable Managed Assets, L.P., a Delaware limited partnership of which Equitable Life and Equitable Capital are partners, serves as the general partner of the Institutional Fund and Equitable Capital serves as the manager (or investment adviser). Equitable Life and its affiliates have committed \$600 million to the Institutional Fund.

8. Applicants request an order pursuant to sections 6(c), 17(d) and 57(i) of the 1940 Act and Rule 17d-1 thereunder permitting the purchases of securities by the Partnerships in joint transactions with each other or in transactions in which an affiliate of Equitable Capital, or an affiliate of an affiliate of Equitable Capital, is a participant, which otherwise would be prohibited under sections 17(d) and 57(a)(4) of the 1940 Act. Each Partnership proposes to retain Equitable Capital as investment advisor in light of its expertise in enhanced yield investments in connection with leveraged buyouts, leveraged recapitalizations and other corporate reorganizations. Equitable Capital does not itself sponsor or invest in leveraged buyouts or recapitalizations, or invest for its own account. In connection with structuring the Partnerships, Equitable Capital has established specific guidelines for the Partnerships' investments (the "Guidelines"). These Guidelines are based on criteria utilized for institutional mezzanine funds that are exempt from registration under the 1940 Act such as the Institutional Fund. They serve to inform prospective investors as to parameters for the Partnerships' investments and are believed by the Applicants to limit potential conflicts by delineating specific categories of investments eligible for investment.

9. While Equitable Capital is responsible for the identification of

proposed Enhanced Yield Investments, the Independent General Partners must determine that an investment for a Partnership meets the applicable Guidelines. For proposed Mezzanine or Other Investments that do not meet such Guidelines, determinations as to several factors must be made by the Independent General Partners before any such investment is made. Bridge Investments must be approved by the Independent General Partners in the same manner, and subject to the same standards, as Mezzanine and Other Investments not meeting the Guidelines. If an Enhanced Yield Investment, taking into account any proposed Follow On Investment, continues to satisfy the Guidelines, Equitable Capital will certify to that effect to the Independent General Partners before a Partnership makes a related Follow On Investment. If the Enhanced Yield Investment, taking into account a proposed Follow On Investment, does not meet the Guidelines, the Follow On Investment will be subject to prior approval by the Independent General Partners in the same manner, and subject to the same standards as any Enhanced Yield Investment that does not meet the Guidelines. The Independent General Partners have retained independent legal counsel to advise them in the performance of their duties, including their responsibilities for monitoring compliance with the Guidelines. In addition, the Independent General Partners have all necessary authority to retain such other consultants or advisers as they deem necessary or appropriate.

10. The two principal categories of proposed investments for the Partnerships consist of "Managed Companies" and "Non-Managed Companies." As business development companies the Partnerships, under section 2(a)(48) of the 1940 Act, must make available "significant managerial assistance" to eligible portfolio companies comprising at least 70% of their assets. Managed Companies are those portfolio companies to which Equitable Capital, affiliates thereof or other persons in the investor group of which the Partnership is a member make available "significant managerial assistance" (as defined in section 2(a)(47) of the 1940 Act). Non-Managed Companies with respect to a Partnership are those portfolio companies to which neither Equitable Capital, any affiliate thereof nor any member of the investor group makes available "significant managerial assistance."

11. As used in the Guidelines, the term "Equitable Affiliates" includes Equitable Life (and its subsidiaries other than

Equitable Capital), the Institutional Fund and funds with similar investment objectives that may be sponsored or organized by Equitable Capital, and Equitable Capital advisory accounts with investment objectives similar to those of the Partnerships.

12. The Guidelines, which are primarily financial in nature, relate to various aspects of Enhanced Yield Investments, including minimum specified yield, cash distributions and limitations on investments in workouts and troubled companies. Under the Guidelines, with respect to Managed Companies, (i) if one or more Equitable Affiliates invests in securities of a portfolio company in which the Partnerships also invest, (a) each such Partnership will hold securities of every class issued by the Portfolio company to be acquired by an Equitable Affiliate, (b) the ratio of the amount (or number) of each class of securities acquired by such Equitable Affiliate to the amount (or number) of all securities in such classes acquired shall equal the ratio of the amount (or number) of each such class of securities acquired by each such Partnership to the amount (or number) of all such classes of securities acquired by each such Partnership, and (c) the terms of such purchases will be identical in all material respects to any investments by Equitable Affiliates, except that under limited circumstances Equitable Affiliates can purchase loan participations in senior bank debt of a portfolio company independent of an investment in such company by a Partnership (ii) an Equitable Affiliate must also invest in the securities constituting any Other Investment which is an investment in a financially troubled company; (iii) and Equitable Affiliate must also purchase Enhanced Yield Investments in a company in which a Partnership is investing if, at the time of investment, Equitable Affiliates owned more than 10% of the aggregate principal amount of outstanding debt securities or more than 10% of the outstanding equity securities of such company; (iv) the Partnerships must purchase all Enhanced Yield Investments on terms at least as favorable, in all material respects, as those available to any third party investors or Equitable Affiliates; and (v) a Partnership may not invest in a Non-Managed Company unless, at the time of such investment, at least 70% of its assets is invested in Managed Companies and certain other temporary investments. With respect to Non-Managed Companies, the Guidelines provide that (i) all of the above

Guidelines applicable to Managed Companies will apply; (ii) the Partnerships may not purchase, in the aggregate, more than 50% of a Mezzanine or Other Investment; and (iii) at least 25% of each class of security constituting part of a Mezzanine or Other Investment purchased by a Partnership must be purchased by one or more substantial institutional investors which may be Equitable Affiliates. In addition, to the above Guidelines, at the end of the first three-year period from the date of the final closing of the sale of Units, at least 15% of each Partnership's capital invested in Enhanced Yield Investments must be invested in transactions in which either no Equitable Affiliate has participated or unaffiliated institutional investors have purchased a majority of the securities constituting such Enhanced Yield Investments.

13. In addition to the Guidelines with respect to eligibility of securities for investment, additional conditions have been developed with respect to each Partnership's operations and investments. The terms and conditions which will be applicable to the operations of the Partnerships and co-investments by the Partnerships with each other and with Equitable Affiliates are as follows:

Conditions

(i) Other than certain temporary money market investments and other investments described in the application each investment made by a Partnership will have to meet, in the determination of the Independent General Partners of such Partnership, as described below, the Guidelines or be approved by the Independent General Partners.

(ii) Equitable Capital will evaluate each proposed Enhanced Yield Investment opportunity to ascertain whether it is an appropriate investment for the Partnerships. If it determines that a proposed investment is appropriate, Equitable Capital will bring such investment to the attention of the Independent General Partners of each Partnership for review in the manner described herein, subject to items (v) and (ix) below. If the Independent General Partners of a Partnership determine that the investment meets the applicable Guidelines, the investment would be eligible for investment by the Partnership, and subject to items (iii) below, each such investment will be acquired by the Partnership. If there are presented to the Independent General Partners more investments than a Partnership has available funds to acquire, the Independent General Partners will have to determine, with the advice of Equitable Capital, the order of priority of such investments. If a proposed Enhanced Yield Investment does not meet the Guidelines, the Independent General Partners will have to make the determinations specified in paragraph (iv) below in the manner described herein.

(iii) Each Enhanced Yield Investment will be allocated, as a general matter, to the

Partnerships and Equitable Affiliates according to a ratio based on the amount of capital that each such investor has indicated to Equitable Capital is available for investment in Mezzanine, Other, Follow On and Bridge Investments, as the case may be. However, under the terms of each Partnership Agreement, the Partnerships together will have the right to an allocation of at least 50% of any Enhanced Yield Investment which meets the investment objectives of the Partnerships until each Partnership has become 75% invested in Enhanced Yield Investments, and the right to an allocation of at least 25% of any such investments thereafter and prior to the time each one has become fully invested in Enhanced Yield Investments. This allocation formula reflects the fact that under its governing documents, the Institutional Fund also has the right to an allocation of 50% of any Enhanced Yield Investment which meets its investment objectives until it becomes 75% invested, and the right to an allocation of 25% thereafter until it becomes 90% invested, after which it has no allocation rights. Equitable Capital may grant similar allocation rights to other Equitable Affiliates, subject to the rights of the Partnerships and the Institutional Fund. Thus, the balance of an Enhanced Yield Investment not allocated to the Partnerships under the allocation rights described above may be subject to rights of other Equitable Affiliates, including the Institutional Fund. Enhanced Yield Investments will be allocated between the Partnerships based on the ratio of available capital which each Partnership has indicated is available for investment. With respect to the Enhanced Yield Fund, the determination of available capital during the first two years of the Investment Period will be made as if such Partnership had borrowed an amount equal to 50% of Net Proceeds Available for Investment (as defined above) and thereafter will be made based on the actual percentage of borrowings made by such Partnership. This allocation formula is designed to ensure that the overall allocation of Enhanced Yield Investments to the Enhanced Yield Fund, which has the right to borrow up to 50% of Net Proceeds Available for Investment, is made so that the allocation of investments between the Partnerships remains as constant as practicable throughout the term of the Partnerships and so that the portfolio investments made by each Partnership will be as similarly constituted as possible. Equitable Capital will provide the Independent General Partners with information concerning the amount of capital which Equitable Affiliates have available for investment in order to assist the Independent General Partners with their review of the Partnerships' investments for compliance with these allocation procedures.

(iv) Prior to committing to a particular investment that does not meet the Guidelines, the Independent General Partners of a Partnership will be required to determine that (a) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the Limited Partners of the Partnership and do not involve overreaching of the Partnership or such Partners on the part of any person concerned and (b) the proposed

transaction is consistent with the interests of the Limited Partners of the Partnership and is consistent with the policy of the Partnership as recited in filing made by the Partnership under the 1933 Act, its registration statements and reports filed under the Securities Exchange Act of 1934, as amended and its reports to partners.

(v) Other than as permitted pursuant to this order, no Equitable Affiliate will participate in a transaction in which a Partnership invests unless such participation is permitted by the 1940 Act or any other separate exemption obtained thereunder. Neither Partnership will invest in any securities issued in transactions sponsored by any Equitable Affiliate, including Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), a subsidiary of Equitable Life, or purchase securities in which DLJ is action as a managing or lead underwriter.

(iv) If one or more Equitable Affiliates invests proportionally in securities constituting an Enhanced Yield Investment in a portfolio company in which a Partnership also makes an Enhanced Yield Investment, such investments must be made in accordance with managed company Guideline 1 and the terms of purchase (including terms as to purchase price, settlement date, registration rights, if any, and other rights provided to purchasers of such investments) will be identical.

(vii) The Partnerships will participate in the disposition of securities held by them as coinvestments on a proportionate basis and on the same terms and conditions (a "lock-step" disposition). If a Partnership or any Equitable Affiliate proposes to dispose of a security purchased in a coinvestment by such Partnership with an Equitable Affiliate, each Partnership and any Equitable Affiliate holding such security will participate in the disposition of such security on a lock-step basis, unless the Independent General Partners determine, after considering any recommendations by Equitable Capital, that a Partnership should not participate in such sale or not participate on a lock-step basis. A Partnership may only not participate on a lock-step basis in the disposition of securities to be sold by an Equitable Affiliate if the Independent General Partners find that the retention or sale, as the case may be, of the securities is fair to the Partnership and that such Partnership's participation or choice not to participate in the sale is not the result of overreaching by Equitable Capital or an Equitable Affiliate. If the Independent General Partners of each Partnership do not make such a finding, then the Partnerships must participate in such sale on the basis of a lock-step disposition. If at any time the result of a proposed disposition of any portfolio security held by a Partnership would be to alter the proportionate holdings of each class of securities held by a Partnership and any Equitable Affiliate, then the Independent General Partners of the Partnership must determine that such a result is fair to the Partnership and is not the result of overreaching by an Equitable Affiliate.

(viii) The Independent General Partners of each Partnership will be provided quarterly for review all information concerning

coinvestments made by the Partnerships, including investments made by an Equitable Affiliate which one or more of the Partnerships declined to participate in, so that they may determine whether all investments made during the preceding quarter, including those investments such Independent General Partners declined to make, comply with the conditions set forth above. The Independent General Partners of each Partnership will consider on a quarterly basis the continuing appropriateness of the standards established for investments by the Partnership. In this regard, the Independent General Partners will consider whether use of such standards of each Partnership continues to be in the best interests of the Partnership and the Limited Partners and does not involve overreaching of the Partnership or its Limited Partners on the part of any party concerned.

(ix) Equitable Capital has in place and will maintain the following policies and procedures to ensure that neither Equitable Life nor any subsidiary of Equitable Life influences or (other than the Institutional Fund) participates in the identification, selection, structuring, negotiation or documentation of any Enhanced Yield Investment:

(a) Equitable Capital will evaluate each proposed Enhanced Yield Investment opportunity to ascertain whether it may be an appropriate investment for the Partnerships. If it determines that a proposed investment is appropriate, Equitable Capital will present such investment to the Independent General Partners of each Partnership, either certifying that such investment meets the Guidelines or, if it does not, seeking approval of such investment by the Independent General Partners, and the Independent General Partners shall either approve or disapprove such investment before Equitable Capital presents such proposed investment to Equitable Life or any Equitable subsidiary.

(b) No officer, director or employee of Equitable Capital shall have the authority to determine, and shall not determine, whether or not Equitable Life or any Equitable subsidiary will invest in or dispose of any Enhanced Yield Investment. Such determinations on behalf of Equitable Life will be made by the Chief Investment Officer of Equitable Life, or such members of his staff as he may designate, and no such person shall be an officer, director or employee of Equitable Capital. Such determinations on behalf of an Equitable subsidiary will be made by an appropriate officer of such subsidiary who is not an officer, director or employee of Equitable Capital.

(c) No officer, director or employee of Equitable Life or any Equitable subsidiary shall communicate in any manner with the Independent General Partners of the Partnerships on any matters pertaining to Enhanced Yield Investments made by the Partnerships, including any proposed investments in or dispositions of such securities, except that this condition shall not prohibit those officers of Equitable Capital who are also officers of Equitable Life from providing investment advisory services to the Independent General Partners in compliance with subparagraphs (a) and (b) of this paragraph (ix).

(d) Equitable Capital maintains separate books and records for its own affairs and has a capitalization and financial structure separate from Equitable Life and other Equitable subsidiaries.

(x) The Independent General Partners of each Partnership will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with section 57(h) of the 1940 Act and each of the Applicants will otherwise maintain all records required by the 1940 Act.

Applicants' Legal Analysis and Conclusions

1. The Applicants believe that the Partnership's operating policies, in conjunction with the structure of their management arrangements, support the issuance of the Order requested herein. In particular, the Applicants believe that the proposed terms and conditions applicable to the operations of each Partnership governing the allocation of investment opportunities between the Partners and the Equitable Affiliates and the disposition of investments held by such entities are consistent with policies underlying the 1940 Act and Rule 17d-1 thereunder. Moreover, the Applicants believe that the relief requested is consistent in all material respects with that granted by the SEC in the Matter of ML-Lee Acquisition Fund, L.P. et al. (Investment Company Act Release No. 16001, September 23, 1987.) Further, the Applicants submit that the terms of requested relief are consistent with the standards enumerated in section 6(c) of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants undertake that no changes will be made in the Guidelines or the Conditions until an amendment of such order is obtained from the Commission.

2. Under each Partnership Agreement, a Partnership is authorized to make in-kind distributions of portfolio securities to its Partners. Applicants agree not to make any in-kind distributions of securities to Partners of a Partnership until such Partnership has either obtained a no-action letter from the staff of the SEC or, alternatively, has obtained an order pursuant to section 206A of the Advisers Act permitting such distribution.

3. Applicants undertake that, at the end of the first three-year period from the date of the final closing of the sale of Units in a Partnership, at least 15% of such Partnership's capital invested in Enhanced Yield Investments must be invested in transactions in which either no Equitable Affiliate has participated

or unaffiliated institutional investors have purchased a majority of the securities constituting such Enhanced Yield Investments.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-16533 Filed 7-21-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before August 22, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 63), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20418, Telephone (202) 653-8536.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340. Title: Application for Section, 502/503/504 Loan.

Form Nos.: SBA Form 1244.

Frequency: One for each loan closed.

Description of Respondents Used to allow SBA Loan Officers to make eligibility and credit determinations for small businesses apply for financial assistance.

Annual Responses: 1,200.

Annual Burden Hours: 3,000.

Title: 13 CFR 112.9 of SBA's Nondiscrimination Rules and

Regulations, "Notice to New Borrowers".

Form Nos.: SBA Form 793.

Frequency: On occasion.

Description of Respondents:

Companies are required to keep records in order for SBA to determine the compliance status of the recipient.

Annual Responses: 135,000.

Annual Burden Hours: 11,250.

Elizabeth Zaic,

Deputy Director, Office of Administrative Services.

[FR Doc. 88-16520 Filed 7-21-88; 8:45 am]

BILLING CODE 8025-01-M

(License No. 88/09-0324)

Southwest Venture Corp.; License Surrender

Notice is hereby given that Southwest Venture Corporation (SVC), 5220 Wilshire Boulevard, Los Angeles, California 90036, has surrendered its license to operate as a small business investment company under section 301(c) the Small Business Investment Act of 1958, as amended (the Act). SVC was licensed by the Small Business Administration on January 27, 1987.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on June 23, 1988, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: July 18, 1988.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 88-16521 Filed 7-21-88; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m. on Tuesday, August 18, 1988, at the North Star Executive Center, 7400 Blanco Road, Suite 200, San Antonio, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, North Star Executive Center, 7400 Blanco Rd.,

Suite 200, San Antonio, Texas, (512) 229-4501.

July 18, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-16522 Filed 7-21-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

(Order 88-7-28)

Fitness Determination of Florida Air Transport, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter Air carrier fitness determination order to show cause.

SUMMARY: The Department of Transportation is proposing to find Florida Air Transport, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 3, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: July 18, 1988.

Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-16572 Filed 7-21-88; 8:45 am]

BILLING CODE 4910-02-M

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Amarillo International Airport, Amarillo, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Amarillo,

Texas, for Amarillo International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-103) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Amarillo International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 3, 1989.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 7, 1988. The public comment period ends August 15, 1988.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0611, (817) 624-5800.

Comments on the proposed noise compatibility programs should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Amarillo International Airport are in compliance with applicable requirements of Part 150, effective July 7, 1988. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 3, 1989.

This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of the Federal Aviation Regulations (FAR), Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has

taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Amarillo submitted to the FAA on November 16, 1987, noise exposure maps, descriptions and other documentation which were produced during the Amarillo International Airport FAR Part 150 Noise Exposure and Land Use Compatibility Plan (December 24, 1986). It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Amarillo, Texas. The specific maps under consideration are the existing conditions Noise Exposure Map (Figure 12, page 35) and the 5-year forecast Noise Exposure Map (Figure 22, page 73) in the submission. The FAA has determined that these maps for Amarillo International Airport are in compliance with applicable requirements. This determination is effective on July 7, 1988. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the

responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with whom consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Amarillo International Airport, also effective on November 16, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 3, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW, Room 617, Washington, DC 20591

Department of Transportation, Federal Aviation Administration, ATTN: Donald C. Harris, 4400 Blue Mound Road, Fort Worth, TX 76183-0611

Mr. William W. Wilson, Airport Manager, Amarillo International Airport, 10801 Airport Boulevard, Amarillo, TX 79111

Questions may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Fort Worth, Texas, July 7, 1988.

Don P. Watson,
Acting Regional Administrator, ASW-1.
[FR Doc. 88-10504 Filed 7-21-88; 8:45 am]
BILLING CODE 4910-15-4

[Summary Notice No. PE-88-28]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 11, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. —, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 19, 1988.

Denise D. Hall,
Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25605	Ameriflight, Inc.	14 CFR 135.89(b)(3)	To allow petitioner to operate pressurized jet aircraft engaged in cargo operations between 35,000 and 41,000 MSL without requiring one pilot at the controls to wear an oxygen mask.
24763	General Electric Co.	SFAR 27, Section 9b and 40 CFR 87.21	To amend Exemption No. 4594 by extending the termination date from April 1, 1988, to December 31, 1988. Exemption No. 4594 provided relief from the requirements of 40 CFR 87.21(d) to the extent necessary to permit General Electric to manufacture one hundred and ten (110) CF34 engines under Type Certificate E15NE after December 31, 1985, and before April 1, 1988. No additional exempt engines are requested.
25624	Douglas Aircraft Company	14 CFR 121.411 and 121.413 and Part 121, Appendix H.	To allow petitioner and any Part 121 certificate holder who contracts with petitioner for training to use certain of petitioner's instructor pilots and, if appropriate, flight engineer instructors to train the initial cadre of pilots and flight engineers and also to train the certificate holder's airman in initial, upgrade, transition, differences, and recurrent training without petitioner's instructors meeting all of the training requirements of Subpart N and employment requirements of Part 121, Appendix H.
25631	SimuFile Training International	14 CFR 135.63(a)(4); 135.303; 135.323(a)(1); 135.337(a)(2), (a)(3), and (b)(2); and 135.339(a)(2) and (c)(1).	To allow clients of petitioner's instructors and check airman who do not fully meet the certificate holder's training and checking requirements for operations conducted under Part 135.
25636	Fischer Brothers Aviation, Inc., d/b/a Midway Commuter Airlines	14 CFR 135.429(a) and 135.435	To allow petitioner to use components, parts, and accessories repaired, overhauled, or otherwise maintained by foreign original equipment manufacturers on its German-built DO228-201/202 aircraft.
017NM	Falcon Jet Corporation	14 CFR 25.813(e)	To allow petitioner to install a latchable sliding door which can be stored in a cabin partition during takeoffs, landings, and emergency conditions.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
23455	Reeve Aleutian Airways, Inc.	14 CFR 121.574(a)(1), (3), and (4)	To extend Exemption No. 4692 that allows petitioner to carry and operate aboard petitioner's aircraft certain oxygen storage, generating, and dispensing equipment for medical use by patients requiring emergency medical attention. Grant, July 13, 1988, Exemption No. 4692A.
25252	North American Training Group	14 CFR 61.63(d)(2) and (3), 61.157(d)(1), and 121.407(a)(1)(i).	To allow petitioner's students, who are applicants for a type rating to be added to any grade of pilot certificate in Boeing 727, 737, and 747 and McDonnell Douglas DC-8, DC-9, and DC-10 aircraft, to complete a portion of that practical test in an airplane simulator. Grant, July 17, 1988, Exemption No. 4658.
25506	Skyworld Airlines	14 CFR 121.301(a) and (e)	To allow petitioner to board passengers with three flight attendants on board its B-707 airplane while the fourth flight attendant supervises boarding from either a position on the ramp or inside a terminal building. Denial, July 15, 1988, Exemption No. 4680.
25514	Texas American Crew Training, Inc.	14 CFR 61.157(d)(1) and (2) and Part 61, Appendix A.	To allow petitioner to use the FAA-approved visual simulators to meet certain training and testing requirements of the FAR without being a Part 121 certificate holder. Partial Grant, July 11, 1988, Exemption No. 4658.
25522	Resort Air Inc. d/b/a Trans World Express	14 CFR 121.411 and 121.413	To allow petitioner to utilize qualified Aerospacelab pilots for the training of a selected number of petitioner's crewmembers in the ATR 42-type aircraft in Toulouse, France, and St. Louis, Missouri. Grant, July 7, 1988, Exemption No. 4657.
25615	Rosenbalm Aviation, Inc.	14 CFR 121.371(e) and 121.376	To amend Exemption No. 4748A that allows petitioner to utilize Scandinavian Airlines System (SAS) to perform a complete airframe overhaul (C and D checks) at the SAS overhaul facilities at Stockholm (Arlanda) and Stockholm-Bromma (Lind), Sweden. This amendment would add petitioner's DC-8-63 aircraft Registration No. N921F, Serial No. 46145, to the exemption. Grant, July 8, 1988, Exemption No. 4748B.

[FR Doc. 88-10573 Filed 7-21-88; 8:45 am]

BILLING CODE 4910-15-4

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective June 6, 1987, InterFirst Bank Dallas, N.A., Dallas, Texas, changed its name to First Republic Bank Dallas, N.A.

Dated: July 18, 1988.

By Order of the Maritime Administrator.

James E. Seart,

Secretary.

[FR Doc. 88-16671 Filed 7-21-88; 8:45 am]

BILLING CODE 4910-01-02

National Highway Traffic Safety Administration

[Docket No. T84-01; Notice 16]

Passenger Motor Vehicle Theft Data for 1987; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Request for comments.

SUMMARY: This notice seeks public comment regarding data on passenger motor vehicle thefts that occurred in 1987. These data were based on information provided to this agency by the National Crime Information Center (NCIC). These 1987 theft data indicate that vehicle thefts in 1987 increased above the 1983/1984 level. Of the 165 lines sold in the United States during 1987, 112 of the lines had theft rates that exceeded the median theft rate for 1983/1984.

To address the potential problem of multiple counting of the same vehicle theft, this notice uses the same approach adopted by the agency for the final calculation of 1983/1984 theft rates. That is, once a vehicle has been reported as stolen, any reported thefts of the same vehicle within seven calendar days of the first report were not counted as additional thefts of that vehicle.

DATE: All comments on this notice must be received by NHTSA not later than September 6, 1988.

ADDRESS: Comments should refer to Docket No. T84-01; Notice 16, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590 (202 366-4949).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202 366-4806).

SUPPLEMENTARY INFORMATION: Pursuant to Title VI of the Motor Vehicle

Information and Cost Savings Act (the Cost Savings Act, 15 U.S.C. 2021 *et seq.*), NHTSA promulgated a motor vehicle theft prevention standard applicable to high-theft car lines. Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies that three types of car lines are high theft lines within the meaning of Title VI. These three types are:

(1) Existing lines that had a theft rate exceeding the median theft rate in 1983 and 1984;

(2) New lines that are likely to have a theft rate exceeding the 1983-84 median theft rate; and

(3) Lines with theft rates below the 1983-84 median theft rate, but which have a majority of major parts interchangeable with lines whose theft rates exceeded or are likely to exceed the median theft rate.

Section 603(b) of the Cost Savings Act explains how the agency is to determine whether existing lines had a theft rate that exceeded the 1983-84 median theft rate. Section 603(b)(3) directs NHTSA to

obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, the (NHTSA) shall utilize theft data reported by Federal, State, or local police. After such publication and opportunity for comment, the (NHTSA) shall utilize the theft data to determine the median theft rate under this subsection.

In accordance with this statutory directive, NHTSA published a final notice on November 12, 1985, setting forth the 1983-1984 theft data; 50 FR 46866. Based on those data, NHTSA calculated the median theft rate for purposes of Title VI as 3.2712 thefts per 1000 vehicles produced.

Section 603(b) provides that NHTSA shall publish theft data for review and comment "immediately upon enactment of this title, and periodically thereafter." (Emphasis added) These updated publications of theft data do not affect the determination of which car lines are subject to the theft prevention standard. According to section 603, these periodic publications of updated theft data are *not* to be used by the agency to calculate an updated median theft rate, or to determine whether new lines are likely to be high theft lines, because such lines are likely to have theft rates exceeding some updated theft rate.

The agency believes that the reason for its being directed to periodically publish updated theft data was to inform the public, particularly law enforcement groups, automobile manufacturers, and Congress, of the extent of the vehicle theft problem and

the impact, if any, on vehicle thefts as a result of the Federal motor vehicle theft prevention standard. To carry out this purpose, this notice sets forth the theft rates for the 165 lines of passenger motor vehicles sold in the United States for the 1987 model year. NHTSA calculated these theft rates based on information provided by the NCIC.

These 1987 theft data show an increase in vehicle thefts above the levels experienced in 1983-1984. According to the Uniform Crime Reports published by the FBI, the median motor vehicle theft rate in 1987 increased 29.8 percent as compared with 1984. This increase in thefts is reflected in the 1987 theft rates. For 1983/1984, the median theft rate was 3.2712 thefts per 1000 vehicles produced. Exactly 50 percent of the lines exceeded this theft rate. For 1987, 112 of the 165 lines, or 67.9 percent, exceeded 3.2712 thefts per 1000 vehicles produced.

In calculating the 1987 theft data, the agency followed the same approach it used in calculating the 1983-1984 median theft rate for limiting the possibility of multiple countings of the same vehicle theft. NHTSA became aware of the possibility that multiple countings of a single theft could arise if a law enforcement agency computer operator followed incorrect data entry procedures after getting further information about a vehicle already reported as stolen. Operators are supposed to revise an existing theft data entry to reflect new or additional data about the theft, but they sometimes cancel the original theft entry and enter a new theft report. The result of such actions would be that one actual theft reported to NCIC would be entered into the system more than once. To address this situation for the 1983-1984 theft data calculations, NHTSA excluded all duplicate vehicle identification numbers (VINs) of stolen vehicles reported within seven calendar days of each other. This approach takes into account the possibility that a vehicle might actually be stolen more than once during a particular calendar year, but that it is highly unlikely to be stolen more than once in a week.

Interested persons are invited to submit comments on these data. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage

commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business

information regulation. (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above for the data will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered before publication of the final 1987 theft data. Comments on this notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing

date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules dockets should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 2023; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: July 15, 1988.

Barry Fehria,

Associate Administrator for Rulemaking.

MODEL YEAR 1987 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1987

Manufacturer	Make/Model (line)	Thefts 1987	Production (Mfg's) 1987	Theft rate (thefts/produced) (1987) (1,000's)
1 General Motors	Pontiac Firebird	2,424	80,414	30.1440
2 General Motors	Chevrolet Camaro	3,333	120,050	28.0277
3 General Motors	Chevrolet Monte Carlo	1,516	74,738	20.2936
4 Toyota	MR2	361	19,782	19.2590
5 General Motors	Buick Regal	910	61,659	14.7586
6 Mitsubishi	Starion	100	8,845	14.6002
7 Ferrari	Mondial	2	147	13.6054
8 Mitsubishi	Mirage	357	27,879	12.8053
9 General Motors	Pontiac Fiero	563	44,376	12.6970
10 General Motors	Oldsmobile Cutlass Supreme	1,338	114,013	11.7355
11 General Motors	Chevrolet Beretta/Corisca	186	16,109	11.5463
12 Porsche	911	104	9,047	11.4855
13 Chrysler Corp.	Chrysler New Yorker	747	68,106	10.9682
14 Chrysler Corp.	Chrysler Conquest	180	15,014	10.8557
15 General Motors	Pontiac Grand Prix	175	16,543	10.8369
16 Toyota	Corolla/Corolla Sport	1,851	175,011	10.5765
17 General Motors	Chevrolet Corvette	278	29,021	9.5793
18 Volkswagen	Cabriolet	165	17,268	9.5552
19 General Motors	Cadillac Seville	168	18,175	9.2435
20 Toyota	Cressida	275	31,828	8.6402
21 Lotus	Esprit	3	350	8.5714
22 General Motors	Cadillac Fleetwood Brougham (RWD)	522	61,733	8.4558
23 Mitsubishi	Cordia	39	4,801	8.1233
24 Chrysler Corp.	Chrysler LeBaron/Town & Country	489	60,243	8.1171
25 General Motors	Chevrolet Nova	1,167	147,105	8.0801
26 General Motors	Chevrolet Spectrum	734	91,730	8.0017
27 Volkswagen	Scirocco	69	8,815	7.8276
28 Mitsubishi	Tredia	57	7,290	7.8189
29 Mazda	626	648	85,385	7.5892
30 Chrysler Corp.	Dodge Lancer	183	26,521	7.2773
31 Ford Motor Co.	Lincoln Town Car	537	74,171	7.2400
32 Honda	Prelude	397	55,857	7.1076
33 Mitsubishi	Galant	93	13,128	7.0852
34 Hyundai	Excel	1,592	231,551	6.8754
35 Isuzu	I-Mark	167	28,804	6.4922
36 General Motors	Buick Riviera	83	14,586	6.3760
37 General Motors	Oldsmobile Toronado	90	14,272	6.3051
38 Ford Motor Co.	Ford Mustang	864	140,861	6.2846
39 Isuzu	Impulse	12	1,937	6.1951
40 Mazda	323	490	79,134	6.1920
41 General Motors	Pontiac Sunbird	540	87,251	6.1890
42 General Motors	Cadillac DeVille (FWD)	970	157,374	6.1637
43 Chrysler Corp.	Plymouth Caravelle	259	42,447	6.1017
44 Nissan	300ZX	203	33,961	5.9739
45 Chrysler Corp.	LeBaron GTS	227	38,790	5.8520
46 Mazda	RX-7	297	50,924	5.8322
47 Chrysler Corp.	Dodge Colt/Colt Vista	326	57,799	5.6748
48 Toyota	Supra	217	38,936	5.5732
49 Nissan	200 SX	201	36,116	5.5654
50 Ford Motor Co.	Ford Thunderbird	690	122,339	5.5583
51 Yugo	GY/GVX	183	35,000	5.5143
52 Chrysler Corp.	Plymouth Colt/Colt Vista	289	52,836	5.4698
53 Ford Motor Co.	Mercury Topaz	395	72,911	5.4176
54 Porsche	928	12	2,223	5.3961

MODEL YEAR 1987 THEFT RATES FOR CARS PRODUCED IN CALENDAR YEAR 1987—Continued

Manufacturer	Make/Model (line)	Thefts 1987	Production (Mfg's) 1987	Theft rate (thefts/product) (1987) (1,000's)
55 General Motors	Pontiac 6000	747	138,518	5.3829
56 Chrysler Corp.	Dodge 600	212	40,588	5.2517
57 General Motors	Oldsmobile 88 Regency	410	78,335	5.2338
58 AMC/Renault	Alliance/Encore	180	30,887	5.2122
59 Chrysler Corp.	Dodge Aries	487	98,043	5.0180
60 General Motors	Chevrolet Impala/Caprice	916	184,570	4.9629
61 General Motors	Buick Electra	413	83,813	4.9094
62 Chrysler Corp.	Laser/Daytona	161	32,840	4.9026
63 Toyota	Celica	451	93,127	4.8428
64 Ford Motor Co.	Mercury Lynx	192	40,006	4.7957
65 Nissan	Maxima	872	183,910	4.7414
66 Chrysler Corp.	Dodge Shadow	381	81,012	4.7030
67 Ford Motor Co.	Mercury Cougar	471	100,584	4.6627
68 General Motors	Cadillac Cimarron	68	14,580	4.6703
69 Ford Motor Co.	Ford Tempo	1,103	240,085	4.5940
70 Suzuki	Fore	21	4,587	4.5782
71 Volkswagen	Jetta	351	77,086	4.5534
72 General Motors	Oldsmobile Custom Cruiser Wagon	77	16,954	4.5417
73 General Motors	Chevrolet Cavalier	1,437	318,476	4.5408
74 Alfa Romeo	Spider Veloce 2000	14	3,090	4.5307
75 Chrysler Corp.	Plymouth Reliant	467	103,795	4.4993
76 General Motors	Buick LeSabre/Electra Estate Wagon	53	11,808	4.4885
77 TVR	2801	1	225	4.4444
78 Ford Motor Co.	Lincoln Mark VII	65	14,788	4.4014
79 General Motors	Oldsmobile Cutlass Ciera/Cruiser (FWD)	1,198	274,332	4.3670
80 General Motors	Buick Skylark/Somerset	331	76,125	4.3461
81 Porsche	944	60	13,872	4.3253
82 Chrysler Corp.	Chrysler Fifth Avenue/Newport	414	96,895	4.2819
83 Ford Motor Co.	Ford Escort	1,630	383,244	4.2532
84 General Motors	Chevrolet Chevette	150	35,448	4.2316
85 Nissan	Sentra	1,588	378,048	4.1478
86 Chrysler Corp.	Plymouth Horizon	469	113,526	4.1312
87 BMW	6	14	3,412	4.1032
88 General Motors	Chevrolet Celebrity	1,375	342,738	4.0116
89 Mercedes-Benz	580SL	54	13,575	3.9779
90 Volkswagen	Golf/GTI	218	55,894	3.9142
91 General Motors	Cadillac Eldorado	68	17,452	3.8884
92 General Motors	Pontiac Bonneville	423	111,398	3.7973
93 General Motors	Oldsmobile Cutlass	399	107,029	3.7280
94 General Motors	Pontiac Parisienne/Safari S/W	45	12,111	3.7156
95 General Motors	Oldsmobile Delta 88 Royale	578	155,098	3.7138
96 Peugeot	505	30	8,128	3.6908
97 Mercedes-Benz	560SEL	28	7,801	3.5893
98 Mercedes-Benz	190D/E	79	22,018	3.5880
99 General Motors	Buick Century	618	172,911	3.5741
100 General Motors	Pontiac T1000	20	5,629	3.5537
101 BMW	7	9	2,541	3.5419
102 Nissan	Pulsar	229	65,374	3.5029
103 Bertone	X-1/9	7	2,000	3.5000
104 Nissan	Stanza	393	113,596	3.4596
105 General Motors	Buick LeSabre	486	141,529	3.4339
106 General Motors	Pontiac Grand AM	775	226,453	3.4223
107 BMW	5	51	15,035	3.3821
108 General Motors	Buick Skyhawk	140	41,511	3.3726
109 Ferrari	328	2	595	3.3613
110 Ford Motor Co.	Mercury Grand Marquis	412	122,945	3.3511
111 General Motors	Chevrolet Sprint	207	61,825	3.3428
112 Chrysler Corp.	Plymouth Turismo	128	38,215	3.2971
113 Alfa Romeo	Milano	19	5,840	3.2534
114 BMW	3	218	72,180	3.0202
115 Honda/Acura	Integra	181	60,454	2.9940
116 Ford Motor Co.	Ford Taurus	1,015	348,502	2.9125
117 Toyota	Camry	498	175,373	2.8397
118 Mercedes-Benz	420SEL	50	17,848	2.7858
119 Honda/Acura	Legend	128	45,982	2.7837
120 Subaru	Subaru	157	80,000	2.6167
121 Audi	4000/Quattro	41	15,789	2.5967
122 Chrysler Corp.	Plymouth Sundance	202	81,725	2.4717
123 Ford Motor Co.	Lincoln Continental	40	16,832	2.3784
124 Volvo	740/760	143	60,890	2.3485
125 Honda	Civic	831	298,892	2.3484
126 Chrysler Corp.	Dodge Diplomat	72	30,804	2.3374
127 Ford Motor Co.	Ford Crown Victoria	225	97,349	2.3119
128 Honda	Accord	770	333,436	2.3093
129 Ford Motor Co.	Mercury XR4Ti	16	7,352	2.1783
130 Mercedes-Benz	300E	43	19,357	2.1548

MODEL YEAR 1987 THEFT RATES FOR CARS PRODUCED IN CALENDAR YEAR 1987—Continued

Manufacturer	Make/Model (line)	Thefts 1987	Production (Mfg's) 1987	Theft rate (thefts/product) (1987) (1,000's)
131 General Motors	Oldsmobile Firenza	45	21,042	2.1386
132 Chrysler Corp.	Plymouth Gran Fury	34	16,235	2.0942
133 Jaguar	XJ	27	12,919	2.0890
134 Mercedes-Benz	260E	14	6,723	2.0824
135 Jaguar	XJ-S	6	2,925	2.0513
136 Volkswagen	Quantum	16	7,990	2.0025
137 Audi	5000S	56	28,245	1.9827
138 Ford Motor Co.	Mercury Sable	213	110,114	1.9344
139 Saab	900	65	37,171	1.7487
140 Subaru	Justy	17	10,000	1.7000
141 Porsche	924	24	15,097	1.5897
142 Chrysler Corp.	Dodge Omni	146	94,861	1.5420
143 General Motors	Cadillac Allante	5	3,247	1.5388
144 Volvo	DL/GL	74	51,008	1.4508
145 Volkswagen	Fox	35	24,343	1.4378
146 Mercedes-Benz	560SEC	3	2,089	1.4301
147 Subaru	XT	64	45,000	1.4222
148 Volvo	780	1	704	1.4205
149 Austin Rover	Sterling	22	16,453	1.3371
150 Mercedes-Benz	300SDL	11	8,291	1.3257
151 Chrysler Corp.	Dodge Charger	41	42,368	0.9677
152 Toyota	Tercel	34	108,189	0.3143
153 Mercedes-Benz	300DT	3	12,552	0.2390
154 Saab	9000	18	147,675	0.1219
155 Ferrari	Testarossa	0	301	0.0000
156 Rolls-Royce/Bentley	Silver Spirit/Silver Spur/Mulsanne	0	410	0.0000
157 Aston Martin	Saloon/vantage/Volante	0	31	0.0000
158 Maserati	Quattroporte	0	73	0.0000
159 Excalibur	Phaeton/Roadster	0	70	0.0000
160 Aston Martin	Legonda	0	15	0.0000
161 Rolls-Royce/Bentley	Comiche/Continental	0	140	0.0000
162 Zimmer	Classic/Elegance/Cabriolet	0	170	0.0000
163 Rolls-Royce/Bentley	Camargue	0	40	0.0000
164 Maserati	Biturbo	0	973	0.0000
165 Bitter GMBH	Bitter GC	0	82	0.0000

[FR Doc. 88-18501 Filed 7-21-88; 8:45 am]
BILLING CODE 4910-30-2

Research and Special Programs Administration

Pipeline Safety User Fees

This notice announces that the fiscal-year 1988 user fee assessments for pipeline facilities will be mailed to operators on or about August 1, 1988. This notice also changes the previously announced policy regarding the payment due date.

The Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99-272; April 7, 1986) authorizes the assessment and collection of pipeline user fees for activities under the Natural Gas Pipeline Safety Act of 1988 and the Hazardous Liquid Pipeline Safety Act of 1979. The fees are assessed annually to operators of pipelines carrying petroleum, petroleum products, or anhydrous ammonia that are subject to the safety regulations in 49 CFR Part 195 (or the State equivalent); operators of gas transmission lines subject to 49 CFR Part 192 (or the State equivalent); and operators of liquefied natural gas (LNG)

facilities subject to 49 CFR Part 193 (or the State equivalent).

On December 30, 1987, the United States District Court for the Northern District of Oklahoma issued a decision declaring the pipeline safety user fee legislation to be unconstitutional. However, the Court stayed the effect of its decision pending the agency's appeal. An appeal has been filed with the United States Supreme Court, *James H. Burnley, IV v. Mid-America Pipeline Co., appeal filed No. 87-2098*. Pending the Supreme Court's decision in the case, the Department will continue to assess and collect the pipeline safety user fees.

The fiscal-year 1988 assessments will be made in the same manner as announced on December 29, 1986, in a Federal Register notice regarding agency interpretation and pipeline user fee policies and practices (51 FR 48875). The miles of pipeline and volume of LNG storage capacity each operator had in service at the beginning of fiscal year 1988, or October 1, 1987, will provide the basis for assessments.

Under the policies and practices published in the 1986 notice, operators were allowed 60 days after assessment before payment was due. However,

Departmental procedures and regulations of the Department of the Treasury require that payment due dates on invoices not be more than 30 days after the date of the invoice. Therefore, beginning with the fiscal year 1988 assessments, pipeline user fees will be due 30 days after the date of the assessment. Interest, penalties, and administrative charges will be assessed on delinquent debts in accordance with 31 U.S.C. 3717. Assessments for fiscal year 1988 will be dated August 1, 1988, and due August 31, 1988.

Issued in Washington, DC, on July 18, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88-18499 Filed 7-21-88; 8:45 am]

BILLING CODE 4910-30-2

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 15, 1988.

The Department of the Treasury has submitted the following public

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information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0013

Form Number: 3171

Type of Review: Extension

Title: Application—Permit-Special License-Unloading-Lading-Overtime Services

Description: This is an application, permit, and special license for unloading of passengers, cargo, and baggage from a vessel arriving from any port or place outside the Customs territory of the United States, or the lading of cargo, baggage, or other articles destined to a port of place outside the Customs territory of the United States. It is also an application for overtime or clearance of a vessel.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents:

1,500

Estimated Burden Hours Per Response: 6 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden:

39,900 hours

Clearance Officer: John Poore, (202) 566-2491, U.S. Customs Service, Room 6333, 1301 Constitution Avenue NW., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3206, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-10512 Filed 7-21-88; 8:45 a.m.]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review.

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirement submitted to OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the *Federal Register* notifying the public that such a submission has been made. USIA is requesting approval of a form used to certify the eligibility of foreign people for J-1 visas, so that they may visit the United States under one of USIA's exchange-visitor programs. This is a resubmission. The current clearance number is 3116-0006, expiration date January 1, 1994.

DATE: Comments must be received by August 15, 1988.

Copies: Copies of this request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the accuracy of the estimate and suggestions for reducing burden should be directed to OMB Clearance Officer and Agency Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Thomas Connor, United States Information Agency, M/AS, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-7480. OMB Review: Francine Picotti, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "Certificate of Eligibility for Exchange Visitor (J-1) Status", Form IAP-66. This form is provided to an exchange-visitor sponsor, who in turn send it to the individual abroad so that he or she may take it to the nearest American Consul to receive a J-1 visa.

Proposed Frequency of Responses

No. of Respondents: 90,000.
Recordkeeping Hours: 4,000.
Total Annual Burden: 15,500.
Average Burden per Response: 15 minutes.

Date: July 18, 1988.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 88-10542 Filed 7-21-88; 8:45 a.m.]

BILLING CODE 5230-01-M

Cultural Property Advisory Committee; Meetings

Open Subcommittee Meeting on August 3

On August 3, 1988, the Legal Subcommittee of the Cultural Property Advisory Committee will meet from 3 to 5 p.m. in Room 840 of the headquarters building of the United States Information Agency, 301 4th Street SW., Washington, DC. The Legal Subcommittee will hear the concerns of representatives of the American Association of Dealers in Ancient, Oriental and Primitive Art with regard to a request from the Government of Canada to the United States Government for import restrictions on certain of its archaeological and ethnological material.

Members of the public wishing to attend the subcommittee meeting on Wednesday, August 3, should contact Ms. Vicki Rose on 465-0612, for the exact location of the meeting. Public attendance will be limited due to the size of the meeting room and must be arranged in advance because of controlled access into the USIA Building.

Closed Committee Meeting on August 4

The Cultural Property Advisory Committee will conduct a meeting of the Committee on August 4, which will be closed to the public in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. 552 App.), the Government in the Sunshine Act (5 U.S.C. 552b), and the Convention on Cultural Property Implementation Act, as amended (19 U.S.C. 2601 et seq.). The session will be closed because the discussion will involve investigative techniques and information the premature disclosure of which would be likely to frustrate significantly implementation of proposed actions and policies. Disclosure of information at this time identifying specific cultural property is likely to frustrate the possible imposition of import restrictions on such cultural property. The Committee will discuss recommendations to the President as to appropriate U.S. action regarding requests from the Government of Canada and Bolivia under the terms of the Cultural Property Implementation Act. For the foregoing reasons the closing of the meeting is authorized under 5 U.S.C. 552b(c)(1), 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605.

Date: July 19, 1988.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 88-10551 Filed 7-21-88; 8:45 a.m.]

BILLING CODE 5230-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, July 19, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) Recommendations with respect to the initiation or conduct of administrative proceedings against certain insured banks; (2) matters relating to the possible closing of certain insured banks; and (3) personnel matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: July 20, 1988.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 88-10623 Filed 7-20-88; 10:38 am]
BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, July 27, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Request by the State of California for an exemption from the cosigner provision of the Board's Credit Practices Rule.

Discussion Agenda

2. Proposals regarding the Board's 1988 budget.

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

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Date: July 20, 1988.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-10676 Filed 7-20-88; 3:55 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:30 a.m., Wednesday, July 27, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Close.

MATTERS TO BE CONSIDERED:

1. Proposed revisions to the Federal Reserve Banks' Performance Cash Awards Program.
2. Policy proposals regarding a drug testing program.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-10677 Filed 7-20-88; 3:55 pm]

BILLING CODE 6210-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A25; DA-38-101]

Milk in the Chicago Regional Marketing Area; Order Amending Order

Correction

In rule document 88-15979 beginning on page 28758 in the issue of Friday, July 15, 1988, make the following corrections:

§ 1030.7 [Corrected]

1. On page 28760, in the first column, in § 1030.7(b) introductory text, in the 17th line, "January" was misspelled.
2. On the same page, in the second column, in § 1030.7(b)(4)(i)(B), in the 10th line, "quality" should read "quantity".

BILLING CODE 1905-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 620, 630, 638, 640, 641, 642, 645, 648, 649, 650, 651, 652, 653, 654, 655, 657, 658, 661, 662, 663, 669, 672, 674, 675, 676, 680, 681, 683, and 685

[Docket No. 80597-8097]

Fishery Conservation and Management

Correction

In rule document 88-14196 beginning on page 24644 in the issue of Wednesday, June 29, 1988, make the following corrections:

1. On page 24645, in the second column, in amendatory instruction 16, in the third line, "§ 285.35" should read "§ 285.85"

§ 620.8 [Corrected]

2. On page 24655, in the first column, in § 620.8(d)(1), the first line should read "(1) 'AA' repeated (- -) is the call to".

3. On the same page, in the same column, in § 620.8(d)(2), the first and second lines should read "(2) 'RY-CY' (- - - -) means 'you should proceed at slow'".

4. On the same page, in the second column, in § 620.8(d)(3), the first line should read "(3) 'SQ3' (- - - -) means".

5. On the same page, in the same column, in amendatory instruction 39, in the third line from the bottom, "moved" should read "removed".

6. On page 24658, in the first column, in amendatory instruction 48, in the third line, "paragraph (3)" should read "paragraph (e)".

7. On page 24657, in the third column, in amendatory instruction 68, in the fourth line, "moved" should read "removed".

BILLING CODE 1905-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147-9002]

Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 88-15885 beginning on page 28599 in the issue of Thursday, July 14, 1988, make the following corrections:

1. On page 28599, in the third column, under DATES, in the second line, after "accepted" insert "through".
2. On page 28600, in the first column, under SUPPLEMENTARY INFORMATION, in the second paragraph, in the ninth line, "§ 675.30(b)" should read "§ 675.20(b)".

BILLING CODE 1905-01-D

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

Correction

In rule document 88-15907 appearing on page 28599 in the issue of Thursday, July 14, 1988, make the following correction:

In the second column, under EFFECTIVE DATES, in the third line, "the" should read "to".

BILLING CODE 1905-01-D

DEPARTMENT OF ENERGY

10 CFR Part 1015

Collection of Claims Owed the United States

Correction

In rule document 88-14554 beginning on page 24624 in the issue of Wednesday, June 29, 1988, make the following corrections:

§ 1015.1 [Corrected]

1. On page 24624, in the third column, in § 1015.1 introductory text, in the first line, "established" should read "establishes"; and in the ninth line, "owned" should read "owed".

2. On the same page, in the same column, in § 1015.1(a), in the first line, "owned" should read "owed".

§ 1015.2 [Corrected]

3. On page 24625, in the first column, in § 1015.2(a), in the fourth line, "terms" was misspelled.

§ 1015.3 [Corrected]

4. On the same page, in the second column, in § 1015.3(c), in the seventh line, "unnecessary" was misspelled.

§ 1015.4 [Corrected]

5. On page 24626, in the third column, in § 1015.4(b), in the 12th line, "by" should read "but".

BILLING CODE 1905-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100053; FRL-3393-2]

Computer Science Corp.; Transfer of Data

Correction

In notice document 88-12764 beginning on page 21518 in the issue of Wednesday, June 8, 1988, make the following correction:

On page 21518, in the third column, under FOR FURTHER INFORMATION CONTACT, insert "By mail:".

BILLING CODE 1905-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PP 5G3232/T564; FRL-3393-8]

Triflurizole; Establishment of Temporary Tolerances

Correction

In notice document 88-12888 beginning on page 21522 in the issue of Wednesday, June 8, 1988, make the following corrections:

1. On page 21522, in the second column, in the second line from the bottom, "4-chloro-e" should read "4-chloro-2".

2. On the same page, in the third column, under SUPPLEMENTARY INFORMATION, in the seventh line,

"2(trifluoromethyl)" should read "2-(trifluoromethyl)".

3. On page 21523, in the first column, in the third complete paragraph, in the ninth line, "substania" should read "substantial".

BILLING CODE 1905-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100054; FRL-3393-3]

Research Triangle Institute and Engineering & Economics Research, Inc.; Transfer of Data

Correction

In notice document 88-12765 appearing on page 21519 in the issue of Wednesday, June 8, 1988, make the following correction:

In the second column, under SUPPLEMENTARY INFORMATION, in the third paragraph, in the fifth line, "FEDCA" should read "FFDCA".

BILLING CODE 1905-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240081; FRL-3392-9]

State Registration of Pesticides

Correction

In notice document 88-12772 beginning on page 21519 in the issue of

Wednesday, June 8, 1988, make the following corrections:

1. On page 21520, in the first column, under Arkansas, in the fourth line, "preemergency" should read "preemergence".

2. On the same page, in the third column, under Michigan, in the second paragraph, in the fourth line, "Work" should read "Worm".

BILLING CODE 1905-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5795]

Suspension of Community Eligibility; North Carolina and Idaho

Correction

In rule document 88-13341 beginning on page 22176 in the issue of Tuesday, June 14, 1988, make the following correction:

On page 22177, in the table, in the state column, in the 12th line, "Do" should read "Idaho".

BILLING CODE 1905-01-D

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federal register

Friday
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Part II

Department of Justice

Office of Juvenile Justice and
Delinquency Prevention Program

Missing and Exploited Children
Comprehensive Action Program; Notice
of Issuance of Solicitation for
Applications To Demonstrate Specific
Programmatic and Procedural
Approaches To Serve the Missing and
Exploited Child Population

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and
Delinquency Prevention ProgramMissing and Exploited Children
Comprehensive Action Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to demonstrate specific programmatic and procedural approaches to serve the missing and exploited child population.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 406(a) of the Missing Children's Assistance Act announces a program entitled: Missing and Exploited Children Comprehensive Action Program. This is a demonstration program. The purpose of the program is to design and test a strategy that encourages and guides community comprehensive program development and planning for missing and exploited children. The program will provide specific guidance regarding programmatic, policy and procedural approaches; and, community organization and planning activities that assist local communities in responding to their missing and exploited children problems and service needs. Through this program a variety of activities will be initiated, and numerous products will be prepared. These are explained in Section III, Program Strategy. Two of the primary products will be: A *program guide* that describes effective programmatic responses to parental and non-parental abduction and the exploitation of runaways; and, a *community action guide* that explains community organization and planning processes. These processes include convening appropriate decision makers, assessing community problems and resources, reviewing recommendations contained in the program guide, and designing, implementing and monitoring a systemwide strategy for providing services for missing and exploited children.

This announcement is cognizant of the fact that while resources already exist within medium to large sized jurisdictions to provide services enumerated in section 406(a), these services are often incomplete, nor do they necessarily reflect the state-of-the-art with respect to required services. This program in part is designed to identify those programs which are among the most promising while encouraging a process for their

systematic coordination within communities to facilitate a comprehensive, coordinated, and effective delivery system. The suggested program strategies will emphasize strengthening the family unit, as appropriate, as well as, using volunteers in all aspects of the juvenile justice service system's response to the problem. OJJDP demonstration programs contain four discrete sequential stages. The initial three stages will be implemented by the recipient during the first eighteen months of this program. The three stages are: *Assessment*, a review and assessment of information on community-based programs and practices, and on planning and development processes, related to missing and exploited children; *manual development*, the design of detailed operational information on selected effective programs and planning processes identified during the assessment process; and, *training/technical assistance*, the development of training and technical assistance materials to transfer the information contained in the manuals to local demonstration sites. The final stage, *replication*, the provision of training, technical assistance and limited financial assistance to demonstration sites, may be implemented in approximately eighteen months following the successful completion of the initial three stages.

Public agencies and not-for-profit organizations are invited to submit applications to enter into a cooperative agreement with OJJDP. OJJDP will select the applicant that presents the most cost-effective approach and best demonstrates the organizational capability, knowledge, and experience to conduct a multi-site demonstration program. The project period is three years. OJJDP has allocated up to \$400,000 for the first 18 months and initial three stages of this program. Based on successful completion of the first budget period, a non-competing continuation award is anticipated. Applicants are encouraged to submit cost competitive proposals. The deadline for the receipt of applications is August 22, 1988. The competition will be conducted according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart A published August 2, 1985 at 50 FR 31365-31367.

FOR FURTHER INFORMATION CONTACT: Robert O. Heck, Special Emphasis Division, Telephone (202) 724-5014, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20631.

SUPPLEMENTARY INFORMATION:
Table of Contents

- I. Introduction and Background
- II. Program Goals and Objectives
- III. Program Strategy
- IV. Dollar Amount and Duration
- V. Eligibility Criteria
- VI. Program Application Requirements
- VII. Procedures and Criteria for Selection
- VIII. Submission Requirements
- IX. Civil Rights Compliance

I. Introduction and Background

Missing and exploited children suffer from varied forms of victimization. The importance of paying attention to a child absent from his or her home has important consequences, no matter what reason may be attached to the absence.

Every child deserves protection from victimization particularly those involved in parental and non-parental abduction or exploitation as a result of being a runaway. Having a child missing from the security of the home or subjected to the physical and mental anguish associated with exploitation is intolerable. In recent years, the public has demanded that greater attention be given to crimes against children, particularly those crimes related to abduction and exploitation.

Coordination and cooperation among agencies and individuals at all levels in the child-serving system are critically needed to prevent these tragedies.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) considers the program approach outlined in this solicitation to be the most effective and timely way to provide, states and localities nationally, guidance in how to respond effectively to the problems and needs of missing and exploited children in their communities, particularly given the limited financial resources currently available.

We are all becoming more aware that child exploitation can and will produce more than cuts and bruises. Research has documented a link between sexual assault victimization of pre-adolescent males and females and their consequent future involvement in assaultive (sexual and otherwise) violent and self-destructive behavior. It becomes important, therefore, to establish and institutionalize an information linked, systems approach that coordinates the participation of police, schools, juvenile intake, prosecutors, judges, corrections and community mental/medical health authorities into a timely, responsible and resource effective response.

The Attorney General's Advisory Board on Missing Children has identified a number of recommendations to improve the safety and protection of children involved in parental and non-

parental abduction and the exploitation that results from being a runaway, as well as the systems that serve them and their families. These recommendations constitute elements of a plan to attack the nationwide problem of missing and exploited children. Selected recommendations are delineated below to guide the program development activities that are the focus of this solicitation.

- The crime of parental kidnapping demands greater attention from the criminal justice system. Prompt investigation and vigorous prosecution of parental kidnapping cases should be encouraged.

- To reduce the incidence of missing and exploited children and to ensure an effective response when incidents do occur, communities should develop juvenile service policies in a number of critical areas. These are:

- Prompt law enforcement investigation of missing child reports. At least 27 states have eliminated the arbitrary waiting periods that delay pursuit of missing children investigation.

- Training for law enforcement and child-serving professionals in the investigation of child sexual abuse and exploitation in regard to missing children.

- Community action policies should involve requirements for background checks for those working with children.

- Juvenile service agencies, especially in the juvenile justice area, should be adaptive to a coordinated and comprehensive case management process with regard to child exploitation and cases going before the courts.

- Community action groups should endeavor to continue their search for constitutionally valid ways to alleviate the trauma and intimidation that many children experience in court when they must continually repeat the details of the incident, face the assailant, and undergo cross-examination.

- Local agencies should adopt practices that require parents, guardians, and schools to promptly report missing children. These procedures also should require that law enforcement agencies report disappearances to the FBI's National Crime Information Center (NCIC).

- Schools should be responsible for both transferring and receiving student records from old schools to new schools so that concealing missing children will be more difficult. In addition to school records, birth records should be included in the transfer.

- Privacy and confidentiality laws should be carefully examined. Family court judges or magistrates should be encouraged to allow appropriate

persons to access and exchange critical information in missing and exploited children cases.

- The police, courts, welfare departments, and schools need to cooperate in thoroughly investigating cases of missing children.

- Crimes of parental and non parental abduction and the exploitation of runaways should be promptly investigated and vigorously prosecuted.

- Judicial sentences should reflect a concern for the continuing health and safety of the child victim, his or her family, and other potential victims.

- Public awareness programs should be reviewed both to ensure that children, parents, teachers, and other adults receive a balanced perspective on the issue of missing children and to teach them ways to identify and prevent abuse, exploitation, and abduction.

- Workable guidelines for dealing with cases of missing children should be adopted in every community.

II. Program Goals and Objectives

A. Goals

1. To identify and assess promising and effective community organization, planning strategies and procedures for responding to the needs of missing and exploited children;

2. To provide the capability to selected localities to implement programs in the context of effective community organization and planning strategies for responding to the needs of missing and exploited children; and,

3. To disseminate promising and effective program and planning strategies for responding to needs of missing and exploited children.

B. Objectives

The specific objectives enumerated below are offered pursuant to section 406(a) of the Missing Children's Act. Specifically sections 1-4, and 6.

1. Assess existing research and programs that: a. Educate parents, children and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

- b. Provide information and activities that will be of assistance in locating and returning missing and exploited children;

- c. Aid communities in collecting and providing information to parents and others in the identification of missing children;

- d. Increase knowledge of treatment and support services and communicate them to the families whose child has been abducted; both during the period of

disappearance and after the child is recovered.

- e. Address the particular needs of missing children by minimizing the negative impact of judicial and law enforcement procedures on children who are victims of exploitation and by promoting the active participation of children and their families in cases involving the exploitation of children.

2. Develop operational implementation manuals based on the assessments performed under Objective 1. (a)-(e).

3. Develop training and technical assistance materials to transfer the program technology identified under Objective 1. (a)-(e).

4. Provide training and technical assistance to selected sites to demonstrate the program approaches and the planning strategies. (Applicants are advised that this stage of the demonstration program initiative will not be funded during the initial funding period. However, demonstration of the program is one of the primary objectives of this initiative).

III. Program Strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases of development: Research, development, demonstration and dissemination.

The purpose of the demonstration phase is to identify promising or effective program activities and planning strategies and to implement the strategies and program approaches in selected jurisdictions in order to demonstrate their feasibility and effectiveness to the field.

OJJDP demonstration programs are developed incrementally in four discrete stages: (1) Assessment; (2) operational manual development; (3) training and technical assistance development; and, (4) training, financial and technical assistance to demonstration sites. This solicitation calls for completion of the demonstration phase of the development process in order to assist the juvenile justice system in designing and implementing more effective strategies and programs for handling missing and exploited children. The purpose of this demonstration is to identify operational promising or effective multi-agency community organization and planning strategies, as well as specific program approaches and procedures for handling missing and exploited children, and demonstrate those strategies and program approaches in selected sites.

An advisory committee established specifically for this program will provide

comments and recommendations to the recipient regarding the program strategy and activities. It may be necessary to change or supplement advisory committee members for different stages of the program. The advisory committee members will have combined expertise in missing and exploited children, community organization and planning, research and program evaluation, training and technical assistance delivery, and experience and knowledge of community youth services delivery systems. Each stage of the incremental demonstration process is designed to result in a complete and publishable product (e.g., final demonstration report) and a dissemination strategy to inform the field of the development of the program, and the results and products of each stage. A decision will be made at the completion of each stage, based on availability of funds and the quality and utility of the products, whether to invest additional funds to complete the current stage or terminate the program.

Stage 1—Assessment

The first stage of the program consists of an assessment of programs and information related to the planning, development, implementation and operation of missing and exploited children programs (as defined in II, B).

The recipient will develop criteria for identifying promising approaches to organizing appropriate community decision makers, and planning, developing and implementing programs for responding to the needs of missing and exploited children. The criteria will be used to select programs for review and documentation. Information to be collected and assessed should include, at a minimum, the historical development of the program; conceptual framework/theoretical assumptions; number and type of youth served; program costs per unit of service and per client; evaluation findings; sources of funding; staffing requirements; and program approach to management and administration.

The assessment should provide the basis for selecting the programs most appropriate for demonstration. The assessment phase may reveal that many programs have very effective components, but there are none that meet the majority of the criteria at a sufficient level to justify nationwide demonstration. If this is the case, an additional developmental phase may be initiated to design prototypical programs based on the best information available through the assessment and other sources. Evaluation issues that should be addressed through the demonstration program should also be identified.

Activities—The major activities of this stage are: 1. Establishment of the advisory committee; 2. Development of the assessment plan; 3. Review of the literature; 4. Development of criteria for identifying promising programs; 5. Identification and description of operational promising programs; 6. Preparation of assessment report; and, 7. Development and implementation of a dissemination strategy.

Products—The products to be completed in this stage are: 1. Assessment plan specifying each step of the assessment process in detail; 2. Draft report that includes:

- Literature review
- Criteria for identifying promising programs
- Recommendations for refining the goals and objectives of the program
- Descriptions of promising/effective programs
- 3. Final report;
- 4. Recommendations for developing program operation manuals; and,
- 5. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 2—Development of Descriptive Program Operation Manuals

Upon successful completion of Stage 1, and with the approval of OJJDP, the recipient will develop two descriptive program operation manuals: A *community action guide* containing community organization and planning strategies; and, a *program guide* containing programs, policies and procedures for responding to missing and exploited children.

The activities and products of this stage will be based on the information generated as a result of the assessment. Appropriate technical and subject matter expertise will be utilized to design the operation manuals which detail the promising programs and strategies.

Both of the operation manuals will provide guidance as appropriate regarding: identification and participation of the necessary community public and private organizations and decision makers; funding; program organization and management; the philosophy and approach of the community organization, planning and development activities; resource development; program assessment, coordination, development implementation and monitoring; and evaluation of program

effectiveness. This information will become part of a training and technical assistance package for dissemination to the appropriate State and local agencies. The recipient will also develop a strategy for demonstrating the comprehensive community action program.

Activities—The major activities of this stage are: 1. Preparation of a plan for developing the operation manuals; 2. Development of the operation manuals;

3. Participation and review by the advisory committee; 4. Development of recommendations for a program announcement to select demonstration sites;

5. Development of a demonstration strategy; and,

6. Development and implementation of a dissemination strategy.

Products—The products to be completed in this stage are: 1. Plan for operation manuals development;

2. Draft and final operation manuals design(s);

3. Demonstration strategy; and,

4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 3—Training and Technical Assistance Development Activities

Upon successful completion of Stage 2, and with the approval of OJJDP, the recipient will prepare a plan for developing the training and technical assistance packages. Based on the plan, the recipient will transfer the program operation manuals and related materials into a training and technical assistance package. Comprehensive training manuals that detail the program activities and planning strategies must be developed to encourage and facilitate implementation of the promising programs in the final stage of the demonstration phase.

The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policy makers and practitioners involved in resource allocation, program development and operation related to missing and exploited children programs. The manual should be designed for presentation in formal training sessions and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, each manual should include a complete description of both the promising programs and planning strategies. The manual should also contain instructions and supplementary materials for trainers to facilitate

presentation, and to assure understanding and successful adaptation and implementation of the promising programs.

The recipient will recruit and prepare the training and technical assistance personnel to be involved in this demonstration effort. Following this, the training curricula will be tested by the recipient on a limited basis in at least one test site. It is anticipated that this site will later serve as a training host site for other sites during the last stage of this initiative, the replication stage. The recipient will develop a set of recommendations for use by OJJDP in issuing a program announcement for the selection of demonstration sites. Further, the recipient will develop and implement a dissemination strategy to ensure broad distribution of the operations manual and related materials.

The recipient will, as part of the demonstration strategy, develop a strategy to conduct a series of seminars or conferences, nationally, to inform the field about the promising programs.

Activities—The major activities of this stage are: 1. Preparation of a plan for developing the training and technical assistance package;

2. Development of the training and technical assistance materials;

3. Recruitment and preparation of the training and technical assistance personnel;

4. Testing of training curriculum package;

5. Participation and review by the advisory committee;

6. Development of a dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Products—The products to be completed during the stage are: 1. Plan for the development of the training and technical assistance package;

2. Identification of training and technical assistance personnel;

3. Draft and final training and technical assistance package including the training manual and information materials; and,

4. Dissemination strategy.

Stage 4—Provisions of Training and Technical Assistance to Demonstration Sites

While a decision to demonstrate the Missing and Exploited Children Comprehensive Action Program will be made during or following completion of the operations manual development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage. As noted, funds for this stage

will be provided through a single noncompetitive continuation award. In order to ensure the applicant's understanding of the entire demonstration effort, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, operations manual development, training and technical assistance development, and provision of training and technical assistance to demonstration sites).

During this stage, the recipient will provide site selection assistance to OJJDP to facilitate the selection of the demonstration sites. Once these sites are selected and become operational, the recipient will provide intensive training and technical assistance support to them, to enhance the overall operational success of these sites. Further, the recipient must provide similar intensive training and technical assistance to those demonstration sites implementing the program evaluation. The recipient will implement a dissemination strategy, to present the program and evaluation results to policy makers and practitioners at the state and local level. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities—The major activities of this stage are:

1. Assistance to OJJDP in review and selection of demonstration sites;

2. Provision of intensive training and technical assistance to demonstration sites;

3. Assistance to sites in implementing the program evaluation; and,

4. Implementation of a dissemination strategy.

Products—The products to be completed during this stage are: 1. Plan for providing training and technical assistance to demonstration sites;

2. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

IV. Dollar Amount and Duration

Up to \$400,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, and the initial budget period will be for 18 months. It is anticipated that this demonstration program will entail three (3) years of program activities (i.e. three year project period), and consist of four stages (assessment, operational manual development, training and technical assistance development, and training and technical assistance to

demonstration sites). The initial award will provide support for stages one through three. Supplemental funds will be allocated for an additional 18 month budget period. Funding for the noncompeting continuation award, i.e. the second budget period within the approved three year project period, may be withheld for justifiable reasons. They include: (1) The results do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interest of the Government.

V. Eligibility Criteria

Eligible applicants include public agencies and not-for-profit research, and juvenile justice development and service delivery agencies and organizations. Applicant agencies or organizations may submit joint proposals with other eligible organizations provided one is designated in the application as the applicant, and any co-applicants are designated as such. The applicant or co-applicants must demonstrate in the application that they have experience in the following areas in order to be eligible for consideration:

A. Design and implementation of research and development activities on the effectiveness of youth service programs with emphasis on missing and exploited children; and design and implementation of community organization and planning strategies related to the youth service system with emphasis on missing and exploited children programs.

B. Demonstrated knowledge of the issues associated with the development, implementation and operation of missing and exploited children; and,

C. Management and financial capability to effectively implement a project of this scope and complexity.

VI. Program Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget and a budget narrative. All applications must include the

following information outlined in this section of the solicitation. The program narrative should not exceed 70 double-spaced pages in length. Applications that propose noncompetitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of \$10,000.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other applicants.

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of similar nature to their application.

2. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF 424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire OJP Form 7120/1).

Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals

A succinct statement of the applicant's understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy

Applicants should describe the proposed approach for achieving the goals and objectives of the Program. A discussion of how each of the four stages of the program would be accomplished should be included.

D. Program Implementation Plan

Applicants should prepare a plan which outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program, and how the program will be managed. The plan must also include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components; and a list of key personnel responsible for managing and implementing the four major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also provide recommendations for program advisory committee members. This documentation and individuals' resumes may be submitted as appendices to the application.

E. Time-Task Plan

Applicants must develop a time-task plan for the initial 18-month budget period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in Section III and indicate the anticipated cost schedule per month for the entire project period.

F. Products

Applicants must concisely describe the interim and final products of each stage of the program, and must address

the purpose, audience, and usefulness to the field of each product.

G. Program Budget

Applicants shall provide an 18-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate of costs they feel will be required to complete the balance of the program. The actual level of funding to be made available will be determined the year the project is implemented. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a four person advisory committee to meet four times during the first 18-month budget period.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31306-31307. The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (20 Points)

1. The extent and quality of organizational experience in the development, delivery, and coordination of missing and exploited children related research, training, or technical assistance which have been national in scope. (10 points)
2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursement and accounting of Federal funds. (10 points)

B. Soundness of the Proposed Strategy (30 Points)

Understanding of the nature of the program area and the soundness of the approach to each stage of the program: For meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 Points)
2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 Points)

D. Clarity and Appropriateness of the program implementation plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 Points)

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings". These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with

the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Applicants must submit the original signed application and three copies of OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on August 22, 1988. Those applications sent by mail should be addressed to Robert O. Heck, OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 752, 633 Indiana Avenue NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.
2. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the

decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendment of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

Verne L. Speaks,

Administrator, OJJDP.

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July 22, 1988

Part III

**Department of
Education**

Office of Educational Research and
Improvement

Library Programs for Fiscal Year 1989;
Invitation of Applications for New
Awards; Notice

DEPARTMENT OF EDUCATION

Library Programs for Fiscal Year 1989; Applications for New Awards

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for certain Library Programs for fiscal year 1989.

SUMMARY: The Secretary invites applications for new awards under the Library Career Training Program, Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program, Strengthening Research Library Resources Program, Library Literacy

Program, Library Research and Demonstration Program, and Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

Organization of Notice. This notice contains three sections. Section I includes a chart listing, in chronological order, closing dates and other information about programs covered by this notice. Section II consists of the individual application announcements for each program. Section III provides further guidance on the application process.

All programs announced in this notice are subject to the requirements of Executive Order 12372.

Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this Order will be included in the application package.

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESS: The address for submitting applications under this notice is listed in Section III of this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact the program contact person named in the application notice in Section II applicable to that program.

SECTION I—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

Title of program and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Applications available	Available funds	Estimated range of awards ¹	Estimated size of awards ²	Estimated number awards ²	Project period in months	Budget period in months
Library career training program—fellowship awards (84.035)	10/3/88	12/5/88	8/17/88	(¹)	\$10,800-84,000	\$14,800	25	12	15
Library career training program—institute awards (84.036)	10/3/88	12/5/88	8/17/88	(¹)	25,000-125,000	43,000	2-5	12	15
Library services to Indian tribes and Hawaiian Natives program—basic grants (84.163A)	10/21/88	12/20/88	9/8/88	(¹)	NA	3,700	200	12	12
Strengthening research library resources program (84.091)	* 11/2/88 and, 11/30/88, 11/18/88	1/3/89	8/17/88	(¹)	35,000-350,000	150,000	30	12	15
Library literacy program (84.167)	11/18/88	1/18/89	9/19/88	(¹)	1,000-25,000	20,000	250	12	12
Library research and demonstration program (84.039)	2/1/89	4/1/89	11/15/88	(¹)	50,000-100,000	70,000	3-5	12	15
Library services to Indian tribes and Hawaiian Natives program—special projects grants (84.163B)	4/7/89	6/6/89	2/21/89	(¹)	20,000-177,000	67,000	17	12	12-15
College library technology and cooperation grants program (84.167)	To be announced by 11/1/88.								

¹ The Administration's budget request for fiscal year 1989 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

² The Department is not bound by any estimates in this notice.

* 11/2/88 for institutions needing to establish eligibility, 11/30/88 for all others.

Section II—Application Notices

Title of Program: Library Career Training Program—Fellowships and Institutes (Higher Education Act—Title II, Part B)

CFDA No.: 84.036.

Purpose: Provides grants to train persons in librarianship through fellowships, institutes, and traineeships and to establish, develop, and expand programs of library and information science.

Applicable Regulations: (a) The Library Career Training Program Regulations, 34 CFR Part 776, and (b) the Education Department General

Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Priorities: In accordance with § 770.5 of the regulations referenced in this notice, each year the Secretary may select one or more of the program's six priorities and allocate funds to each selected priority. These priorities apply to both fellowships and institutes. For fiscal year 1989, the Secretary has selected the following as invitational priorities:

(a) To provide advanced training in the development, structure, and management of new library organizational formats, such as

networks, consortia, and information utilities;

(b) To increase excellence in library leadership through advanced training in library management;

(c) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology; and

(d) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

An application that meets these invitational priorities does not receive

from the Secretary competitive or absolute preference over other applications.

(34 CFR 75.105(c)(1))

The Secretary plans to allocate up to 30% of the available funds for institutes, if a sufficient number of institute applications warrant funding. The remaining funds will be allocated for fellowships.

For Applications or Information Contact: Frank A. Stevens, Director, or Yvonne B. Carter, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 1021 et seq.

Title of Program: Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act—Title IV)

CFDA No.: 84.163A.

Purpose: Provides basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Applicable Regulations: (a) The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations, 34 CFR Part 771, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 78, 79, and 80.

For Applications or Information Contact: Frank A. Stevens, Director, or Beth Fine, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 351 et seq.

Title of Program: Strengthening Research Library Resources Program (Higher Education Act—Title II, Part C)

CFDA No.: 84.091.

Purpose: Provides grants to the nation's major research libraries to maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Applicable Regulations: (a) The Strengthening Research Library Resources Program Regulations, 34 CFR Part 778, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, or Louise Sutherland, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 1021 et seq.

Title of Program: Library Literacy Program (Library Services and Construction Act—Title VI)

CFDA No.: 84.167.

Purpose: Provides grants not to exceed \$25,000 to State and local public libraries to support literacy projects.

Applicable Regulations: (a) The Library Services and Construction Act Library Literacy Program Regulations, 34 CFR Part 769, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 78, and 79, and 80.

For Applications or Information Contact: Frank A. Stevens, Director, or Carol Cameron, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 351 et seq.

Title of Program: Library Research and Demonstration Program (Higher Education Act—Title II, Part B)

CFDA No.: 84.039.

Purpose: Provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, training in librarianship, and for dissemination of information derived from such projects.

Applicable Regulations: (a) The Library Research and Demonstration Program Regulations, 34 CFR Part 777, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Priorities: The Secretary invites applications that meet one or more of four priorities. These priorities were developed in consultation with researchers, practitioners, civic and business leaders, policymakers, and professional associations, all of whom participated in a series of meetings sponsored by the Department to identify "Issues in Library Research—Proposals for the Nineties." Ten major issues were identified. From this list the Secretary selected four to implement in fiscal year 1989. In addition the Secretary may commission papers to implement some

of the priorities. For fiscal year 1989, the priorities are:

(a) *Libraries and Education (The Library's Role in Education).* To support one or more research projects addressing the appropriate educational, cultural, and intellectual role of the library in relation to other educational institutions in a community of which it is a part.

(b) *Information Needs/Users.* To support one or more research projects to determine what we need to know about library users, non-users, and potential users as we attempt to assess the quality of service and resources and the extent to which the information needs of the community are met in public, academic, and school libraries.

(c) *Technology and Access to Information.* To support one or more projects for identifying the potential effects of new technologies on user access to information, indicators of access to information, the extent to which format affects access and use of information, or what additional barriers to access are evident or anticipated.

(d) *Economics of Libraries and Library Funding.* To support one or more research projects to study factors influencing the funding of libraries, the relationship between expenditures on libraries and outcomes, the impact user fees have on funding and access to libraries, and existing examples of innovative approaches to library funding.

An application that meets these invitational priorities does not receive from the Secretary competitive or absolute preference over other applications.

(34 CFR 75.105(c)(1))

For Applications or Information Contact: Frank A. Stevens, Director, or Yvonne B. Carter, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 1021 et seq.

Title of Program: Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act—Title IV)

CFDA No.: 84.163B.

Purpose: With funds remaining after Basic Grants are awarded, the program provides grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indians and Hawaiian natives.

Applicable Regulations: (a) The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations, 34 CFR Part 772, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 78, 79, and 80.

For Applications or Information
Contact: Frank A. Stevens, Director, or Beth Fine, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 351 et seq.

Section III—Instructions for Transmittal of Applications

No grant may be awarded unless a complete form has been received.

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #(insert number)) Washington, DC 20202.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #(insert number)) Room 3633, Regional Office Building #3, Seventh & D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing: (1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Dated: July 18, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88-16054 Filed 7-21-88; 9:45 am]

BILLING CODE 4800-01-0

federal register

Friday
July 22, 1988

Part IV

Federal Home Loan Bank Board

12 CFR Part 563

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions; Withdrawal of Temporary Rule and Temporary Rule with Request for Comments

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

(No. 88-582)

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions

Date: July 20, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Withdrawal of temporary rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is withdrawing its temporary regulation addressing certain aspects of the purchase and sale of preferred stock of the Federal Home Loan Mortgage Corporation ("Freddie Mac") held by institutions insured by the FSLIC ("insured institutions"). On July 13, 1988 the Board issued a temporary regulation that replaced certain restrictions on actions that insured institutions that do not currently meet their minimum regulatory capital requirements may take regarding such stock. Upon further review, the Board has determined that certain revisions in the scope of that temporary regulation are both appropriate and necessary to the effective supervision of insured institutions not meeting their fully phased-in capital requirements. Therefore, the Board is today withdrawing that temporary regulation and, by separate action, adopting a revised temporary regulation.

DATE: This withdrawal of the temporary regulation adopted by Board Res. 88-577 is effective July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377-0445; Daniel G. Lonergan, Attorney, (202) 377-0458; or Thomas J. Delaney, Attorney, (202) 377-0417, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 13, 1988, by Board Res. No. 88-577, 53 FR 27153 (July 19, 1988), the Board adopted a temporary regulation with request for comments addressing certain aspects of the purchase and sale of Freddie Mac stock by certain insured institutions. Upon further review, the Board has determined that that temporary regulation did not fully address certain supervisory concerns the Board has regarding insured institutions which, while meeting their minimum capital levels, have not attained their fully phased-in capital requirements pursuant

to 12 CFR 563.13 and 12 CFR 563.14. As set forth more fully in the revised temporary regulation to be published elsewhere in the final rules section of the Federal Register, the Board believes that different restrictions are necessary and appropriate for such institutions because of the different concerns raised in that context. In order to minimize the confusion possibly generated by two separate documents addressing the purchase and sale of Freddie Mac stock, the Board is therefore withdrawing Board Res. No. 88-577, effective July 22, 1988.

By the Federal Home Loan Bank Board,
Nadine Y. Washington,
Assistant Secretary.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 258, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as amended by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 401-407, 48 Stat. 1285-1290, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 602 (12 U.S.C. 3809); Reorg. Plan No. 3 of 1967, 12 FR 4881, 3 CFR, 1943-1948 Comp., p. 1071.

§ 563.13-3 [Removed]

2. Section 563.13-3 is removed.

[FR Doc. 88-16700 Filed 7-21-88; 9:54 am]

BILLING CODE 6730-01-01

12 CFR Part 563

(No. 88-582)

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions

Date: July 20, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Temporary rule with request for comments.

SUMMARY: The Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is adopting a

temporary regulation addressing certain aspects of the purchase and sale of preferred stock of the Federal Home Loan Mortgage Corporation ("Freddie Mac") held by institutions insured by the FSLIC ("insured institutions"). On July 13, 1988 the Board issued a temporary regulation that placed certain restrictions on actions that insured institutions that do not currently meet their minimum regulatory capital requirements may take regarding such stock. Upon further review, the Board has determined that certain revisions in the scope of that temporary regulation are both appropriate and necessary to the effective supervision of insured institutions not meeting their fully phased-in capital requirements. By separate action, the Board is today withdrawing the previously published temporary regulation. Today's regulation replaces the one previously published.

Today's temporary regulation provides that no insured institution failing to meet its minimum regulatory capital requirement may buy or sell Freddie Mac preferred stock without obtaining prior approval from its Principal Supervisory Agent ("PSA") or his designee, subject to the concurrence of the Office of Regulatory Activities. It also sets forth general factors to be contained in an institution's written application for approval that the PSA will consider in determining whether to grant such approval. Additionally, the temporary regulation restricts those insured institutions not meeting their fully phased-in capital requirements from taking certain actions as a result of any purchase or sale of Freddie Mac stock that might adversely affect their ability to meet their fully phased-in capital requirements, absent prior approval from their PSA. Comments are solicited on all aspects of the temporary rule.

DATE: The temporary regulation is effective July 22, 1988. Comments must be received on or before September 20, 1988. The regulation will expire on December 31, 1988.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office, 801 17th Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377-0445; Daniel G. Lonergan, Attorney, (202) 377-0458; or Thomas J. Delaney, Attorney, (202) 377-0417.

Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 13, 1988, the Board of Directors of Freddie Mac voted in principle to permit holders of the preferred stock of Freddie Mac to sell such stock to the general public as of January 1, 1989. Before this time, pursuant to a previous resolution creating the class of preferred stock covered by the July 13 action, such stock could only be held by stockholders of a Federal Home Loan Bank, a Federal Home Loan Bank in connection with collateral for advances, the FSLIC in connection with the receivership or insolvency of a holder of the preferred stock, a pre-approved market maker or nominee thereof, or a specialist on any national securities exchange.

Additionally, single holders of such preferred stock were limited in the maximum amount of shares each could hold to 150,000, subject to certain grandfathering provisions. Freddie Mac's Board of Directors also acted on July 13, 1988 to increase sequentially the maximum number of shares that any single holder could own from 150,000 to 600,000 by January 1, 1989.

Currently, Freddie Mac preferred stock is primarily held by the approximately 3,000 insured institutions that own stock in the Federal Home Loan Banks. In general, the Board believes that any decision to purchase or sell Freddie Mac stock both before and after January 1, 1989, is best left to the sound business judgment of insured institutions themselves. The Board is concerned, however, with the possible effect of the removal of the restrictions on ownership and transferability of Freddie Mac preferred stock on those insured institutions not currently meeting their minimum regulatory capital requirement as set forth in 12 CFR 563.13 and 12 CFR 563.14. These institutions require closer supervision as a result of their impaired capital position. As a result, on July 13, 1988 the Board adopted a temporary rule with a request for comments placing certain restrictions on actions such institutions could take regarding this preferred stock without obtaining prior approval from their PSAs. See Board Res. No. 88-577, 53 FR 27153 (July 19, 1988).

Upon further review, however, the Board believes that that temporary regulation did not adequately address an equally important concern requiring prompt attention by the Board. It is the Board's view that any gains from such sale of Freddie Mac stock should generally be applied to improve the

capital position of insured institutions not yet meeting their fully phased-in capital requirement as set forth in 12 CFR 563.13 and 12 CFR 563.14. As the Board has indicated in the past, it is important that insured institutions raise their capital levels as rapidly as possible in order to provide adequate protection to insured institutions, their depositors, and the FSLIC fund. See Board Res. No. 87-881, 52 FR 23845 (June 25, 1987); Board Res. No. 88-857, 51 FR 33571-73 (Sept. 22, 1986); Board Res. No. 88-426, 51 FR 16550, 16552 (May 5, 1986). See also Board Res. No. 87-1298, 53 FR 369 (Jan. 6, 1988). It has therefore determined to withdraw that temporary regulation by a resolution published elsewhere in the final rules section of the Federal Register and to substitute this regulation in its place.

The temporary regulation adopted today and effective upon publication in the Federal Register requires that an insured institution not satisfying its minimum capital requirement obtain the approval of its PSA or his designee, subject to the concurrence of the Office of Regulatory Activities, before buying or selling any of the shares of Freddie Mac preferred stock it now holds or may later acquire. This restriction is similar to restrictions the Board has imposed on such institutions in other contexts. See, e.g., 12 CFR 563.4 (brokered deposits), 12 CFR 563.9-8 (c)(2)(iii) (equity risk investments). In so acting, the Board believed, as it does today, that the impaired capital status of such insured institutions warrants particular supervisory scrutiny of certain business decisions. The PSA for the institution is best able to determine whether an institution's decision to purchase or sell Freddie Mac preferred stock may have adverse consequences for the institution and ultimately the FSLIC as insurer of the institution.

The Board believes that the elimination of the ownership and transferability restrictions that had previously applied to Freddie Mac preferred stock may subject the value of those securities to increased market fluctuations. This could, in turn, have a significant impact on the financial condition of insured institutions holding such stock. To the extent that institutions can immediately increase their holdings of Freddie Mac preferred stock, the results of potential market fluctuations in the value of this stock take on more significant consequences.

With the removal of the previous Freddie Mac restriction significantly limiting the amount any single holder of preferred stock could own, insured institutions can immediately double

their holdings of Freddie Mac preferred stock. At the same time, the value of this stock may be subject to unprecedented volatility. The capital position of institutions that are not presently meeting their minimum capital requirement may be particularly vulnerable to these variations. The Board believes that before such institutions can significantly alter their holdings of Freddie Mac preferred stock, there must be an opportunity for the institution's Principal Supervisory Agent to evaluate the potential impact resulting from a change in the level of this type of investment. Although the Freddie Mac action does not contemplate that this preferred stock will be available for sale to the public until January 1, 1989, in the interim the Board recognizes that intra-industry purchases and sales among institutions with impaired capital could detrimentally affect the sound operation of such institutions.

The temporary rule that the Board adopts today will prevent institutions that do not meet their minimum regulatory capital requirement under §§ 563.13 and 563.14 from buying or selling Freddie Mac preferred stock without first obtaining written approval from the PSA or his designee, subject to the concurrence of the Office of Regulatory Activities.

The rule requires that institutions not meeting their minimum capital requirement must submit written applications to their PSAs. It sets forth general factors to be considered by the PSAs when evaluating an institution's application to buy or sell Freddie Mac preferred stock. In making a written application to buy or sell Freddie Mac preferred stock, such institutions will be required to demonstrate the effect that the proposed transaction will have on their overall asset composition. Factors that are to be addressed in applications include, but are not limited to, the effect the proposed transactions will have on an institution's future growth, its risk exposure, and its portfolio diversification. The PSA may require an institution to include in its application any additional information that the PSA may consider relevant to evaluating portfolio risk in connection with the purchase or sale of Freddie Mac preferred stock. If the institution proposes to sell its shares of Freddie Mac preferred stock, it must indicate in its application the manner in which the resulting proceeds are to be used. Moreover, it must comply with any conditions imposed by the PSA.

Separate and apart from the restrictions applying to those insured

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institutions not meeting their minimum capital requirements, the Board believes that certain restrictions may be appropriate for institutions not currently meeting their fully phased-in capital requirements as set forth in 12 CFR 563.13 and 12 CFR 563.14. The Board believes that supervisory input is important before such institutions declare dividends, or take other similar actions as a result of any gains on any sale of Freddie Mac stock because such actions may potentially delay the date institutions attain their fully phased-in capital requirements. As noted above, the Board continues to believe that it is in the best interests of insured institutions, their depositors, and the FSLIC fund that all insured institutions move as quickly as is reasonable to reach their fully phased-in capital levels. Furthermore, given that the gains on the sale of Freddie Mac preferred stock are not likely to be recurring income, the Board believes that such gains should be used to augment capital. Therefore, it has determined that institutions not meeting their fully phased-in capital requirement that sell shares of Freddie Mac preferred stock must exclude the gain on the sale of these shares from earnings in calculating allowable dividends under the Board's regulations unless prior approval is obtained from their PSA, with the concurrence of the Office of Regulatory Activities. Additionally, because certain other actions in connection with gains from the sale of Freddie Mac preferred stock, such as implementation of a stock repurchase program may have identical adverse consequences on or for an institution's financial condition and may delay the institution's attainment of its fully phased-in capital requirement, the Board has determined to require the same prior approval of such action. Cf. Board Res. No. 88-31, 53 FR 2477 (January 28, 1988) (restrictions on repurchase of stock of recently converted insured institutions).

The Board has therefore determined that immediate action is required to ensure that institutions that are failing their regulatory capital requirement buy and sell Freddie Mac preferred stock in a manner consistent with principles of safety and soundness and that adequate supervisory input is provided before institutions take certain actions as a result of gains from any sale of Freddie Mac stock that might adversely affect their ability to attain their fully phased-in capital requirements as expeditiously as possible. The Board also believes, however, that public comment on today's rule will be useful in shaping any permanent rule that it may

determine to adopt upon expiration of this temporary rule. It therefore requests public comment on the temporary regulation adopted today. Comments received will be taken into account in determining the scope of any final regulation that the Board may adopt.

The Administrative Procedure Act, 5 U.S.C. 553(b), (d)(3), provides that the general provisions requiring notice and comment and a delay in the effective date of a substantive regulation do not apply when an agency determines that the public interest would not be served by notice and comment before agency action and that good cause for dispensing with the delay in effective date exists and is published with the rule. As set forth elsewhere in this SUPPLEMENTARY INFORMATION, the Board believes that in order to preserve its ability to supervise institutions with impaired capital, its Principal Supervisory Agents must be able to act promptly to monitor the decision by any such institution to purchase or sell Freddie Mac preferred stock. It also believes that a lesser degree of supervisory input is equally important in order to assure that insured institutions not currently meeting their fully phased-in capital requirements move as expeditiously as possible toward that target. It anticipates that it will have adequate time, during the period this temporary rule is in effect, to review any comments received during the comment period and any other supervisory information regarding these institutions to determine the most effective way of affording such institutions managerial flexibility in this area consistent with the Board's supervisory concerns. The Board therefore finds that good cause exists for dispensing with a delayed effective date.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. Need For and Objectives of the Rule.

These elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. Issues Raised by Comments and Agency Assessment and Response

These elements will be considered by the Board in reviewing any comments received and will be fully addressed in any final regulation.

3. Significant Alternatives Minimizing Small Entity Impact and Agency Response

The Small Business Administration defines a small financial institution as

"a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed \$100 million." 13 CFR 121.13(a). This temporary regulation will only affect those small savings and loan associations that are not currently meeting their fully phased-in regulatory capital requirement. The Board believes that the temporary rule provides the least burdensome alternative available for addressing the Board's supervisory concern about the safe and sound operation of such insured institutions in this area. The Board will consider any alternatives presented in comments addressing this concern.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as amended by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 46 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 46 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-407, 46 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 42 Stat. 3, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4961, 3 CFR, 1943-1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.13-3 to read as follows:

§ 563.13-3 Sale of Federal Home Loan Mortgage Corporation Preferred Stock.

(a) An insured institution that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forbearances, shall not sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities. The Principal Supervisory Agent or his designee, may impose any conditions he deems appropriate in granting such approval, subject to the concurrence of the Office of Regulatory Activities.

(b) An insured institution that fails to satisfy the regulatory capital requirement set forth in §§ 563.13 and

563.14 of this subchapter shall make written application to the Principal Supervisory Agent for permission to buy or sell preferred stock of the Federal Home Loan Mortgage Corporation. The written application shall provide the Principal Supervisory Agent or his designee with sufficient information to demonstrate how the proposed sale or purchase of such preferred stock will affect the overall level of risk of the institution's portfolio, as well as any additional information which the institution may deem relevant to supervisory review. In evaluating the overall risks posed by the sale or purchase of preferred stock to the institution's portfolio, the Principal

Supervisory Agent or his designee shall consider the purposes for which such sale proceeds will be used, the effect of investment of the proceeds on the composition and quality of the institution's asset portfolio, the institution's growth plans, the likely effect on the institution's liquidity, as well as any additional relevant information the Principal Supervisory Agent or his designee may seek in evaluating overall portfolio risk.

(c) Except as approved by its Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities, an insured institution that fails to satisfy its fully phased-in regulatory capital requirement

as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forbearances, shall not be permitted to declare a dividend, repurchase its own stock, or take any equivalent action that might impair its ability to attain its fully phased-in regulatory capital requirement unless it has first subtracted any gain realized from the sale of Federal Home Loan Mortgage Corporation preferred stock from its earnings.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.
[FR Doc. 88-16701 Filed 7-21-88; 9:54 am]
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Part III

**Department of
Education**

Office of Educational Research and
Improvement

Library Programs for Fiscal Year 1989;
Invitation of Applications for New
Awards; Notice

DEPARTMENT OF EDUCATION

Library Programs for Fiscal Year 1989; Applications for New Awards

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for certain Library Programs for fiscal year 1989.

SUMMARY: The Secretary invites applications for new awards under the Library Career Training Program, Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program, Strengthening Research Library Resources Program, Library Literacy

Program, Library Research and Demonstration Program, and Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

Organization of Notice. This notice contains three sections. Section I includes a chart listing, in chronological order, closing dates and other information about programs covered by this notice. Section II consists of the individual application announcements for each program. Section III provides further guidance on the application process.

All programs announced in this notice are subject to the requirements of Executive Order 12372.

Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this Order will be included in the application package.

DATES: The closing dates for transmitting applications under this notice are listed in Section I of this notice.

ADDRESS: The address for submitting applications under this notice is listed in Section III of this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact the program contact person named in the application notice in Section II applicable to that program.

SECTION I—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

Title of program and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Applications available	Available funds	Estimated range of awards ¹	Estimated size of awards ²	Estimated number awards ²	Project period in months	Budget period in months
Library career training program—fellowship awards (84.036).	10/3/88	12/5/88	8/17/88	(¹)	\$10,000–64,000	\$14,800	25	12	15
Library career training program—institute awards (84.036).	10/3/88	12/5/88	8/17/88	(¹)	25,000–125,000	43,000	2–5	12	15
Library services to Indian tribes and Hawaiian Natives program—basic grants (84.183A).	10/21/88	12/20/88	9/6/88	(¹)	NA	3,700	200	12	12
Strengthening research library resources program (84.061).	² 11/2/88 and 11/30/88	1/3/89	8/17/88	(¹)	35,000–350,000	150,000	30	12	15
Library literacy program (84.167).	11/18/88	1/18/89	9/19/88	(¹)	1,000–25,000	20,000	250	12	12
Library research and demonstration program (84.039).	2/1/89	4/1/89	11/15/88	(¹)	50,000–100,000	70,000	3–5	12	15
Library services to Indian tribes and Hawaiian Natives program—special projects grants (84.163B).	4/7/89	6/6/89	2/21/89	(¹)	20,000–177,000	67,000	17	12	12–15
College library technology and cooperation grants program (84.107).	To be announced by 11/1/88.								

¹ The Administration's budget request for fiscal year 1989 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

² The Department is not bound by any estimates in this notice.

³ 11/2/88 for institutions needing to establish eligibility, 11/30/88 for all others.

Section II—Application Notices

Title of Program: Library Career Training Program—Fellowships and Institutes (Higher Education Act—Title II, Part B)

CFDA No.: 84.036.

Purpose: Provides grants to train persons in librarianship through fellowships, institutes, and traineeships and to establish, develop, and expand programs of library and information science.

Applicable Regulations: (a) The Library Career Training Program Regulations, 34 CFR Part 776, and (b) the Education Department General

Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Priorities: In accordance with § 776.5 of the regulations referenced in this notice, each year the Secretary may select one or more of the program's six priorities and allocate funds to each selected priority. These priorities apply to both fellowships and institutes. For fiscal year 1989, the Secretary has selected the following as invitational priorities:

(a) To provide advanced training in the development, structure, and management of new library organizational formats, such as

networks, consortia, and information utilities;

(b) To increase excellence in library leadership through advanced training in library management;

(c) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology; and

(d) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

An application that meets these invitational priorities does not receive

from the Secretary competitive or absolute preference over other applications.

(34 CFR 75.105(c)(1))

The Secretary plans to allocate up to 30% of the available funds for institutes, if a sufficient number of institute applications warrant funding. The remaining funds will be allocated for fellowships.

For Applications or Information Contact: Frank A. Stevens, Director, or Yvonne B. Carter, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 1021 et seq.

Title of Program: Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act—Title IV)

CFDA No.: 84.183A.

Purpose: Provides basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Applicable Regulations: (a) The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations, 34 CFR Part 771, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 78, 79, and 80.

For Applications or Information Contact: Frank A. Stevens, Director, or Beth Fine, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 351 et seq.

Title of Program: Strengthening Research Library Resources Program (Higher Education Act—Title II, Part C)

CFDA No.: 84.091.

Purpose: Provides grants to the nation's major research libraries to maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Applicable Regulations: (a) The Strengthening Research Library Resources Program Regulations, 34 CFR Part 778, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, or Louise Sutherland, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 1021 et seq.

Title of Program: Library Literacy Program (Library Services and Construction Act—Title VI)

CFDA No.: 84.167.

Purpose: Provides grants not to exceed \$25,000 to State and local public libraries to support literacy projects.

Applicable Regulations: (a) The Library Services and Construction Act Library Literacy Program Regulations, 34 CFR Part 769, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 78, and 79, and 80.

For Applications or Information Contact: Frank A. Stevens, Director, or Carol Cameron, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 351 et seq.

Title of Program: Library Research and Demonstration Program (Higher Education Act—Title II, Part B)

CFDA No.: 84.039.

Purpose: Provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, training in librarianship, and for dissemination of information derived from such projects.

Applicable Regulations: (a) The Library Research and Demonstration Program Regulations, 34 CFR Part 777, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Priorities: The Secretary invites applications that meet one or more of four priorities. These priorities were developed in consultation with researchers, practitioners, civic and business leaders, policymakers, and professional associations, all of whom participated in a series of meetings sponsored by the Department to identify "Issues in Library Research—Proposals for the Nineties." Ten major issues were identified. From this list the Secretary selected four to implement in fiscal year 1989. In addition the Secretary may commission papers to implement some

of the priorities. For fiscal year 1989, the priorities are:

(a) *Libraries and Education (The Library's Role in Education).* To support one or more research projects addressing the appropriate educational, cultural, and intellectual role of the library in relation to other educational institutions in a community of which it is a part.

(b) *Information Needs/Users.* To support one or more research projects to determine what we need to know about library users, non-users, and potential users as we attempt to assess the quality of service and resources and the extent to which the information needs of the community are met in public, academic, and school libraries.

(c) *Technology and Access to Information.* To support one or more projects for identifying the potential effects of new technologies on user access to information, indicators of access to information, the extent to which format affects access and use of information, or what additional barriers to access are evident or anticipated.

(d) *Economics of Libraries and Library Funding.* To support one or more research projects to study factors influencing the funding of libraries, the relationship between expenditures on libraries and outcomes, the impact user fees have on funding and access to libraries, and existing examples of innovative approaches to library funding.

An application that meets these invitational priorities does not receive from the Secretary competitive or absolute preference over other applications.

(34 CFR 75.105(c)(1))

For Applications or Information Contact: Frank A. Stevens, Director, or Yvonne B. Carter, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 1021 et seq.

Title of Program: Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act—Title IV)

CFDA No.: 84.163B.

Purpose: With funds remaining after Basic Grants are awarded, the program provides grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indians and Hawaiian natives.

Applicable Regulations: (a) The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations, 34 CFR Part 772, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 78, 79, and 80.

For Applications or Information Contact: Frank A. Stevens, Director, or Beth Finn, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402L, Washington, DC 20208-1430. Telephone (202) 357-6315.

Program Authority: 20 U.S.C. 361 et seq.

Section III—Instructions for Transmittal of Applications

No grant may be awarded unless a complete form has been received.

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #(insert number)) Washington, DC 20202.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #(insert number)) Room 3633, Regional Office Building #3, Seventh & D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing: (1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Dated: July 18, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88-16564 Filed 7-21-88; 6:45 am]

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federal register

Friday
July 22, 1988

Part IV

Federal Home Loan Bank Board

12 CFR Part 563

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions; Withdrawal of Temporary Rule and Temporary Rule with Request for Comments

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

(No. 88-582)

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions

Date: July 20, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Withdrawal of temporary rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is withdrawing its temporary regulation addressing certain aspects of the purchase and sale of preferred stock of the Federal Home Loan Mortgage Corporation ("Freddie Mac") held by institutions insured by the FSLIC ("insured institutions"). On July 13, 1988 the Board issued a temporary regulation that replaced certain restrictions on actions that insured institutions that do not currently meet their minimum regulatory capital requirements may take regarding such stock. Upon further review, the Board has determined that certain revisions in the scope of that temporary regulation are both appropriate and necessary to the effective supervision of insured institutions not meeting their fully phased-in capital requirements. Therefore, the Board is today withdrawing that temporary regulation and, by separate action, adopting a revised temporary regulation.

DATE: This withdrawal of the temporary regulation adopted by Board Res. 88-577 is effective July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377-8445; Daniel G. Lonergan, Attorney, (202) 377-8458; or Thomas J. Delaney, Attorney, (202) 377-8417, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 13, 1988, by Board Res. No. 88-577, 53 FR 27153 (July 19, 1988), the Board adopted a temporary regulation with request for comments addressing certain aspects of the purchase and sale of Freddie Mac stock by certain insured institutions. Upon further review, the Board has determined that that temporary regulation did not fully address certain supervisory concerns the Board has regarding insured institutions which, while meeting their minimum capital levels, have not attained their fully phased-in capital requirements pursuant

to 12 CFR 563.13 and 12 CFR 563.14. As set forth more fully in the revised temporary regulation to be published elsewhere in the final rules section of the Federal Register, the Board believes that different restrictions are necessary and appropriate for such institutions because of the different concerns raised in that context. In order to minimize the confusion possibly generated by two separate documents addressing the purchase and sale of Freddie Mac stock, the Board is therefore withdrawing Board Res. No. 88-577, effective July 22, 1988.

By the Federal Home Loan Bank Board,
Nedine Y. Washington,
Assistant Secretary.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 258, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as amended by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 738, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 401-407, 48 Stat. 1285-1290, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 682 (12 U.S.C. 3808); Reorg. Plan No. 3 of 1967, 12 FR 4881, 3 CFR, 1943-1948 Comp., p. 1071.

§ 563.13-3 [Removed]

2. Section 563.13-3 is removed.

[FR Doc. 88-16700 Filed 7-21-88; 9:54 am]
BILLING CODE 6730-01-4

12 CFR Part 563

(No. 88-583)

Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions

Date: July 20, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Temporary rule with request for comments.

SUMMARY: The Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is adopting a

temporary regulation addressing certain aspects of the purchase and sale of preferred stock of the Federal Home Loan Mortgage Corporation ("Freddie Mac") held by institutions insured by the FSLIC ("insured institutions"). On July 13, 1988 the Board issued a temporary regulation that placed certain restrictions on actions that insured institutions that do not currently meet their minimum regulatory capital requirements may take regarding such stock. Upon further review, the Board has determined that certain revisions in the scope of that temporary regulation are both appropriate and necessary to the effective supervision of insured institutions not meeting their fully phased-in capital requirements. By separate action, the Board is today withdrawing the previously published temporary regulation. Today's regulation replaces the one previously published.

Today's temporary regulation provides that no insured institution failing to meet its minimum regulatory capital requirement may buy or sell Freddie Mac preferred stock without obtaining prior approval from its Principal Supervisory Agent ("PSA") or his designee, subject to the concurrence of the Office of Regulatory Activities. It also sets forth general factors to be contained in an institution's written application for approval that the PSA will consider in determining whether to grant such approval. Additionally, the temporary regulation restricts those insured institutions not meeting their fully phased-in capital requirements from taking certain actions as a result of any purchase or sale of Freddie Mac stock that might adversely affect their ability to meet their fully phased-in capital requirements, absent prior approval from their PSA. Comments are solicited on all aspects of the temporary rule.

DATE: The temporary regulation is effective July 22, 1988. Comments must be received on or before September 20, 1988. The regulation will expire on December 31, 1988.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office, 801 17th Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Regulatory Counsel, (202) 377-8445; Daniel G. Lonergan, Attorney, (202) 377-8458; or Thomas J. Delaney, Attorney, (202) 377-8417.

Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 13, 1988, the Board of Directors of Freddie Mac voted in principle to permit holders of the preferred stock of Freddie Mac to sell such stock to the general public as of January 1, 1989. Before this time, pursuant to a previous resolution creating the class of preferred stock covered by the July 13 action, such stock could only be held by stockholders of a Federal Home Loan Bank, a Federal Home Loan Bank in connection with collateral for advances, the FSLIC in connection with the receivership or insolvency of a holder of the preferred stock, a pre-approved market maker or nominee thereof, or a specialist on any national securities exchange.

Additionally, single holders of such preferred stock were limited in the maximum amount of shares each could hold to 150,000, subject to certain grandfathering provisions. Freddie Mac's Board of Directors also acted on July 13, 1988 to increase sequentially the maximum number of shares that any single holder could own from 150,000 to 600,000 by January 1, 1989.

Currently, Freddie Mac preferred stock is primarily held by the approximately 3,000 insured institutions that own stock in the Federal Home Loan Banks. In general, the Board believes that any decision to purchase or sell Freddie Mac stock both before and after January 1, 1989, is best left to the sound business judgment of insured institutions themselves. The Board is concerned, however, with the possible effect of the removal of the restrictions on ownership and transferability of Freddie Mac preferred stock on those insured institutions not currently meeting their minimum regulatory capital requirement as set forth in 12 CFR 563.13 and 12 CFR 563.14. These institutions require closer supervision as a result of their impaired capital position. As a result, on July 13, 1988 the Board adopted a temporary rule with a request for comments placing certain restrictions on actions such institutions could take regarding this preferred stock without obtaining prior approval from their PSAs. See Board Res. No. 88-577, 53 FR 27153 (July 19, 1988).

Upon further review, however, the Board believes that that temporary regulation did not adequately address an equally important concern requiring prompt attention by the Board. It is the Board's view that any gains from such sale of Freddie Mac stock should generally be applied to improve the

capital position of insured institutions not yet meeting their fully phased-in capital requirement as set forth in 12 CFR 563.13 and 12 CFR 563.14. As the Board has indicated in the past, it is important that insured institutions raise their capital levels as rapidly as possible in order to provide adequate protection to insured institutions, their depositors, and the FSLIC fund. See Board Res. No. 87-861, 52 FR 23845 (June 25, 1987); Board Res. No. 88-857, 51 FR 33571-73 (Sept. 22, 1986); Board Res. No. 88-426, 51 FR 16550, 16552 (May 5, 1986). See also Board Res. No. 87-1298, 53 FR 389 (Jan. 8, 1988). It has therefore determined to withdraw that temporary regulation by a resolution published elsewhere in the final rules section of the Federal Register and to substitute this regulation in its place.

The temporary regulation adopted today and effective upon publication in the Federal Register requires that an insured institution not satisfying its minimum capital requirement obtain the approval of its PSA or his designee, subject to the concurrence of the Office of Regulatory Activities, before buying or selling any of the shares of Freddie Mac preferred stock it now holds or may later acquire. This restriction is similar to restrictions the Board has imposed on such institutions in other contexts. See, e.g., 12 CFR 563.4 (brokered deposits), 12 CFR 563.9-8 (c)(2)(iii) (equity risk investments). In so acting, the Board believed, as it does today, that the impaired capital status of such insured institutions warrants particular supervisory scrutiny of certain business decisions. The PSA for the institution is best able to determine whether an institution's decision to purchase or sell Freddie Mac preferred stock may have adverse consequences for the institution and ultimately the FSLIC as insurer of the institution.

The Board believes that the elimination of the ownership and transferability restrictions that had previously applied to Freddie Mac preferred stock may subject the value of those securities to increased market fluctuations. This could, in turn, have a significant impact on the financial condition of insured institutions holding such stock. To the extent that institutions can immediately increase their holdings of Freddie Mac preferred stock, the results of potential market fluctuations in the value of this stock take on more significant consequences.

With the removal of the previous Freddie Mac restriction significantly limiting the amount any single holder of preferred stock could own, insured institutions can immediately double

their holdings of Freddie Mac preferred stock. At the same time, the value of this stock may be subject to unprecedented volatility. The capital position of institutions that are not presently meeting their minimum capital requirement may be particularly vulnerable to these variations. The Board believes that before such institutions can significantly alter their holdings of Freddie Mac preferred stock, there must be an opportunity for the institution's Principal Supervisory Agent to evaluate the potential impact resulting from a change in the level of this type of investment. Although the Freddie Mac action does not contemplate that this preferred stock will be available for sale to the public until January 1, 1989, in the interim the Board recognizes that intra-industry purchases and sales among institutions with impaired capital could detrimentally affect the sound operation of such institutions.

The temporary rule that the Board adopts today will prevent institutions that do not meet their minimum regulatory capital requirement under §§ 563.13 and 563.14 from buying or selling Freddie Mac preferred stock without first obtaining written approval from the PSA or his designee, subject to the concurrence of the Office of Regulatory Activities.

The rule requires that institutions not meeting their minimum capital requirement must submit written applications to their PSAs. It sets forth general factors to be considered by the PSAs when evaluating an institution's application to buy or sell Freddie Mac preferred stock. In making a written application to buy or sell Freddie Mac preferred stock, such institutions will be required to demonstrate the effect that the proposed transaction will have on their overall asset composition. Factors that are to be addressed in applications include, but are not limited to, the effect the proposed transactions will have on an institution's future growth, its risk exposure, and its portfolio diversification. The PSA may require an institution to include in its application any additional information that the PSA may consider relevant to evaluating portfolio risk in connection with the purchase or sale of Freddie Mac preferred stock. If the institution proposes to sell its shares of Freddie Mac preferred stock, it must indicate in its application the manner in which the resulting proceeds are to be used. Moreover, it must comply with any conditions imposed by the PSA.

Separate and apart from the restrictions applying to those insured

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institutions not meeting their minimum capital requirements, the Board believes that certain restrictions may be appropriate for institutions not currently meeting their fully phased-in capital requirements as set forth in 12 CFR 563.13 and 12 CFR 563.14. The Board believes that supervisory input is important before such institutions declare dividends, or take other similar actions as a result of any gains on any sale of Freddie Mac stock because such actions may potentially delay the date institutions attain their fully phased-in capital requirements. As noted above, the Board continues to believe that it is in the best interests of insured institutions, their depositors, and the FSLIC fund that all insured institutions move as quickly as is reasonable to reach their fully phased-in capital levels. Furthermore, given that the gains on the sale of Freddie Mac preferred stock are not likely to be recurring income, the Board believes that such gains should be used to augment capital. Therefore, it has determined that institutions not meeting their fully phased-in capital requirement that sell shares of Freddie Mac preferred stock must exclude the gain on the sale of these shares from earnings in calculating allowable dividends under the Board's regulations unless prior approval is obtained from their PSA, with the concurrence of the Office of Regulatory Activities. Additionally, because certain other actions in connection with gains from the sale of Freddie Mac preferred stock, such as implementation of a stock repurchase program may have identical adverse consequences on or for an institution's financial condition and may delay the institution's attainment of its fully phased-in capital requirement, the Board has determined to require the same prior approval of such action. Cf. Board Res. No. 86-31, 53 FR 2477 (January 28, 1988) (restrictions on repurchase of stock of recently converted insured institutions).

The Board has therefore determined that immediate action is required to ensure that institutions that are failing their regulatory capital requirement buy and sell Freddie Mac preferred stock in a manner consistent with principles of safety and soundness and that adequate supervisory input is provided before institutions take certain actions as a result of gains from any sale of Freddie Mac stock that might adversely affect their ability to attain their fully phased-in capital requirements as expeditiously as possible. The Board also believes, however, that public comment on today's rule will be useful in shaping any permanent rule that it may

determine to adopt upon expiration of this temporary rule. It therefore requests public comment on the temporary regulation adopted today. Comments received will be taken into account in determining the scope of any final regulation that the Board may adopt.

The Administrative Procedure Act, 5 U.S.C. 553(b), (d)(3), provides that the general provisions requiring notice and comment and a delay in the effective date of a substantive regulation do not apply when an agency determines that the public interest would not be served by notice and comment before agency action and that good cause for dispensing with the delay in effective date exists and is published with the rule. As set forth elsewhere in this **SUPPLEMENTARY INFORMATION**, the Board believes that in order to preserve its ability to supervise institutions with impaired capital, its Principal Supervisory Agents must be able to act promptly to monitor the decision by any such institution to purchase or sell Freddie Mac preferred stock. It also believes that a lesser degree of supervisory input is equally important in order to assure that insured institutions not currently meeting their fully phased-in capital requirements move as expeditiously as possible toward that target. It anticipates that it will have adequate time, during the period this temporary rule is in effect, to review any comments received during the comment period and any other supervisory information regarding these institutions to determine the most effective way of affording such institutions managerial flexibility in this area consistent with the Board's supervisory concerns. The Board therefore finds that good cause exists for dispensing with a delayed effective date.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. Need For and Objectives of the Rule.

These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

2. Issues Raised by Comments and Agency Assessment and Response

These elements will be considered by the Board in reviewing any comments received and will be fully addressed in any final regulation.

3. Significant Alternatives Minimizing Small Entity Impact and Agency Response

The Small Business Administration defines a small financial institution as

"a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed \$100 million." 13 CFR 121.13(a). This temporary regulation will only affect those small savings and loan associations that are not currently meeting their fully phased-in regulatory capital requirement. The Board believes that the temporary rule provides the least burdensome alternative available for addressing the Board's supervisory concern about the safe and sound operation of such insured institutions in this area. The Board will consider any alternatives presented in comments addressing this concern.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as amended by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4961, 3 CFR, 1943-1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.13-3 to read as follows:

§ 563.13-3 Sale of Federal Home Loan Mortgage Corporation Preferred Stock.

(a) An insured institution that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forbearances, shall not sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities. The Principal Supervisory Agent or his designee, may impose any conditions he deems appropriate in granting such approval, subject to the concurrence of the Office of Regulatory Activities.

(b) An insured institution that fails to satisfy the regulatory capital requirement set forth in §§ 563.13 and

563.14 of this subchapter shall make written application to the Principal Supervisory Agent for permission to buy or sell preferred stock of the Federal Home Loan Mortgage Corporation. The written application shall provide the Principal Supervisory Agent or his designee with sufficient information to demonstrate how the proposed sale or purchase of such preferred stock will affect the overall level of risk of the institution's portfolio, as well as any additional information which the institution may deem relevant to supervisory review. In evaluating the overall risks posed by the sale or purchase of preferred stock to the institution's portfolio, the Principal

Supervisory Agent or his designee shall consider the purposes for which such sale proceeds will be used, the effect of investment of the proceeds on the composition and quality of the institution's asset portfolio, the institution's growth plans, the likely effect on the institution's liquidity, as well as any additional relevant information the Principal Supervisory Agent or his designee may seek in evaluating overall portfolio risk.

(c) Except as approved by its Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities, an insured institution that fails to satisfy its fully phased-in regulatory capital requirement

as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forbearances, shall not be permitted to declare a dividend, repurchase its own stock, or take any equivalent action that might impair its ability to attain its fully phased-in regulatory capital requirement unless it has first subtracted any gain realized from the sale of Federal Home Loan Mortgage Corporation preferred stock from its earnings.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 88-16701 Filed 7-21-88; 9:54 am]

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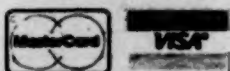
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